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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 723

RIN 0560–AD56

Tobacco Marketing Quotas, Acreage Allotments, and Production Adjustment

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: With revisions, this final rule adopts the proposed rule published in the **Federal Register** on January 11, 1994 (59 FR 1493). The proposed rule set out regulations for implementing for tobacco the domestic content assessment provisions added, as section 320C, to the Agricultural Adjustment Act of 1938 (1938 Act) by section 1106 of the Omnibus Budget Reconciliation Act of 1993 (the 1993 Act). Those provisions generally require a "domestic manufacturer of cigarettes" (as defined in the 1938 Act) to pay certain additional assessments and make certain tobacco purchases if, for any calendar year beginning with the 1994 calendar year, domestic tobacco constitutes less than 75 percent of the total tobacco used by the manufacturer to produce cigarettes in the United States. This final rule sets out requirements for recordkeeping, penalties, appeals, and other matters necessary to the enforcement and administration of section 320C.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael D. Thompson, Agricultural Program Specialist, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), P. O. Box 2415, Washington, DC 20013–2415, telephone 202–720–4281.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is issued in conformance with Executive Order 12866. This final rule has been determined to be economically significant. Therefore, a final regulatory impact analysis has been conducted. A copy of the Final Regulatory Impact Statement may be obtained from Dr. Robert Miller, Director, Tobacco and Peanut Analysis Division, Agricultural Stabilization and Conservation Service, USDA, P. O. Box 2415, Washington, DC 20013–2415, telephone: 202–720–8839.

The domestic marketing assessment (DMA) provisions of the 1993 Act are expected to increase the usage of domestic tobacco by 222 million pounds for marketing year (MY) 1994. Even if cigarette production declines to the extent forecast in the Final Regulatory Impact Analysis, by the sixth year with DMA provisions, extra domestic tobacco required to avoid any additional assessments by cigarette manufacturers will still be 115 million pounds. The increase in the use of domestic tobacco is expected to draw down current loan stocks of burley and flue-cured tobacco by 159 million pounds in MY 1994. Consequently, the Commodity Credit Corporation's loan outlays for tobacco for the 1994 MY are estimated to be about $320 million less. These actions should, in subsequent years, reduce the amount of the No-Net-Cost tobacco program assessments paid by producers and purchasers of domestic burley and flue-cured tobacco. Additionally, with the DMA in place, about 8,000 farms may remain in operation over the next six years that would otherwise go out of business.

Since the cost of domestic tobacco is higher than that of imported tobacco, manufacturers may shift some cigarette production to foreign based operations. The Final Regulatory Impact Analysis indicates that at a maximum, approximately 10,300 jobs could be lost if manufacturers shift cigarette production to foreign based operations and there is a reduction in U.S. unmanufactured exports. However, the largest domestic manufacturer of cigarettes has testified before a House of Representatives Subcommittee that it will not shift any cigarette production overseas as a result of the DMA.

The impact statement indicated little effect on the consumer prices for cigarettes because tobacco accounts for only about 3 percent of the retail cost of cigarettes.

This regulatory action is not expected to have an adverse effect on the environment, public health or safety, or State, local, or tribal governments or communities. This regulatory action is not expected to be inconsistent nor interfere with any action taken or planned by another Federal agency. Other than as indicated in the summary of the regulatory impact statement, this action would not alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations of the recipients thereof. This rule would be consistent with the President's priorities and principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule are retroactive to January 1, 1994, and preempt State laws to the extent that such laws are inconsistent with the provisions of this rule. Before any legal action is brought regarding determinations made under the provisions of 7 CFR part 723, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

This final rule imposes new recordkeeping and information collection requirements on "domestic manufacturers of cigarettes" (as defined in the 1938 Act) and related tobacco industry businesses. The content of, and justification for, the reporting and recordkeeping requirements has been submitted to the Office of Management and Budget (OMB), as an addendum to OMB No. 0560–0058, in accordance with the requirements of the Paperwork Reduction Act of 1980, as amended. The Department is seeking Expedited Clearance by OMB within 21 days of the date of the publication of this rule. These requirements will be conditional until such clearance is obtained. No person shall be penalized or otherwise adversely affected for a failure to comply with any recordkeeping requirements in this rule as concerns records that would have been required to be generated prior to the publication of the final rule implementing the program provided for in this rule. However, all persons shall be required to maintain and submit on request, all records generated prior to the publication of the final rule which are relevant to the provisions of this rule and shall be required, to the full extent possible, for all uses of tobacco relevant to this rule. Those comments which were received in response to the proposed rule which addressed recordkeeping and reporting requirements are addressed in the discussion which follows. The public burden is estimated to average 20 hours annually per response, including time for reviewing instructions, searching existing data sources, and completing and reviewing the information collection. Additional comments regarding the recordkeeping and reporting requirements contained in this final rule, and suggested alternatives, may also be sent to OMB, Paperwork Reduction Project (OMB No. 0560–0058), Washington, DC 20503; and to USDA, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250.

Background

Section 320C applies only to "domestic manufacturers of cigarettes" which are defined in Section 301 of the 1938 Act as including any manufacturer that produces at least 1 percent of the cigarettes produced and sold in the United States. Under Section 320C, effective with calendar year 1994, such a manufacturer must pay an assessment and make certain compensatory tobacco purchases unless domestic tobacco equals or exceeds 75 percent of the total tobacco used by the manufacturer to produce cigarettes in the United States for the calendar year. The Secretary of Agriculture can reduce the percentage in some circumstances. Penalties and other charges can apply for failing to pay the assessments or make the compensatory purchases. Domestic tobacco, under the proposed rule, was defined to be tobacco produced in the United States and "United States" was defined for all geographical purposes under the rule to include the fifty States, the territories and possessions of the United States, Puerto Rico, and the District of Columbia. Section 1106 of the 1993 Act, which added Section 320C to the 1938 Act, also provided for certain assessments on imported tobacco. Those assessments, which are different from those added in Section 320C, were implemented in an interim rule published on December 23, 1993 (58 FR 68017), and a final rule published on March 9, 1994 (59 FR 10939).

Comments

A. Commenters

Twenty-three comments were received in response to the rule proposed to implement section 320C. Six comments were from major cigarette manufacturers, six were from tobacco State farm organizations, one from a national farm organization, one from a tobacco producer loan association, one from a tobacco export organization, two from businesses related to the tobacco industry, one from a member of Congress, one from an international governmental commission, one from a national health organization, and three from individuals.

B. Discussion

(1) General Comments. One comment objected to the use of the term "domestic content requirement" in the rule since the 75 percent standard, even apart from the ability of the Secretary to reduce the percentage in certain instances, is not an absolute requirement. Rather the target, if met, serves as an alternative to certain additional assessments and purchases. Two comments suggested that section 320C violates understandings under the General Agreement on Tariffs and Trade (GATT). One comment sought an exemption from coverage for manufacturers of cigarettes whose output of cigarettes is sufficiently low that the manufacturer is not subject under other programs to certain labelling requirements. Four comments suggested delaying implementation of the rule until any GATT challenges were resolved or delaying implementation until January 1996 in order to allow for uninhibited use of current inventories of tobacco.

The use of "domestic content requirement" in this context can be misleading. The rule has been modified accordingly. GATT objections to the Congressionally-mandated 75 percent provision go beyond the scope of this rulemaking. Also, given that section 320C was enacted in August of 1993, and the lack of any provision in section 320C for delay, there is no authority or warrant for delaying the implementation of the rule. If needed, surplus quantities of foreign tobacco could, presumably, be re-sold.

(2) Regulatory Impact Analysis. Nine comments objected to matters contained in the regulatory impact analysis and have been considered in the final impact statement. To the extent those comments addressed particular provisions of the rule they are addressed in this discussion as well.

(3) Covered Tobacco and Cigarettes. Some have questioned whether two groups of tobacco, in particular, should be counted as being foreign or imported tobacco for the use calculations; namely: (1) Turkish and Oriental tobaccos and (2) stems, reconstituted tobacco and other unmanufactured tobacco for which no duty is collected by the United States Customs Service. Five comments favored, and two opposed, treating the two groups as countable tobacco. Three comments argued that limiting coverage to cigarettes produced in the United States was a "loophole" which could be avoided by subject manufacturers by relocating. Two comments suggested that cigarettes made in the United States and then exported should be excluded from coverage on the ground that such coverage would be detrimental to domestic manufacturing operations. Two comments favored the rule's provisions on coverage of cigarettes as they stood in the proposed rule. There are six manufacturers who, at the present time, appear to qualify as

"domestic manufacturers of cigarettes" (as defined in the 1938 Act). The six manufacturers suggested that the rule needed clarification on when tobacco would be considered used to produce cigarettes. They suggested that such use should be deemed to occur when the tobacco is removed from inventory for immediate manufacture into cigarettes. Three comments specified that they favored not counting reclaimed tobacco against the use calculations. In addition, manufacturers suggested that they should be able to rely on third party certifications regarding whether tobacco is foreign or domestic.

The treatment of all of that which is commonly considered to be "tobacco" as countable tobacco use is a matter of statutory construction. Upon review of the comments it continues to appear inappropriate, for reasons set out with the proposed rule, to exclude any such tobacco from such consideration despite some definitional issues that arise in connection with the 1938 Act. Thus, the final rule continues to treat Oriental and Turkish tobacco and tobacco in any form (including tobacco for which no duty is due) as "tobacco" for purposes of the rule. Countable tobacco would include, though not necessarily be limited to, all tobacco which is within the scope of Chapter 2401 of Harmonized Tariff Schedule (HTS) and certain classes within Chapter 2403 of the HTS. Likewise, the limitation of coverage in the rule to cigarettes produced in the United States by subject manufacturers is a matter of statutory construction and it continues to appear, for the reasons set out with the proposed rule, that this limitation is proper. With respect to weight calculations, it has been determined, as suggested in the comments, that tobacco be considered to have been used to produce cigarettes at the point at which it is removed from inventory for immediate manufacture into cigarettes. The commenters have indicated that manufacturers keep current records on that basis and adoption of that standard should be administratively workable with the least interference with commerce. Manufacturers will continue to have the burden of demonstrating compliance with the rule. Also, the final rule reflects agreement that reclaimed tobacco should not be counted when re-used by the same manufacturer. With respect to certifications for category of origin (foreign or domestic), the final rule allows such reliance by providing that certain purchases of tobacco whose identity might otherwise be unknown may be considered domestic tobacco if an appropriate certification is obtained from the party who transfers the tobacco to the manufacturer. The rule sets out requirements for the certification, which include acknowledgement that false certifications can lead to criminal or civil penalties or sanctions. The rule allows the Director of the Tobacco and Peanuts Division of the Agricultural Stabilization and Conservation Service (hereafter "Director") to prescribe the form of the certification to be used. If the Director has not prescribed such a form, then the manufacturer will be required to ensure that a form of the manufacturer's own design is used, maintained, and meets the specific requirements of the regulation.

(4) Domestic Assessment Rate, Required Purchases and Appeals. Under section 320C, those manufacturers who do not meet the critical use percentage must pay an assessment, over and above other assessments that may apply under the 1938 Act and other legislation, equal to the difference, by a formula set out in the statute, between the market prices of certain domestic tobaccos and the market price of imported tobacco. Four comments suggested that the domestic and foreign price comparison should be on the same weight basis ("green" or "dry") and it was also suggested that cigar tobacco should be excluded from the calculation of the imported tobacco market price. Two comments suggested the DMA should not be considered due until all administrative appeals by the manufacturer are completed. The statute further provides that a manufacturer who fails to make the critical use percentage must, to the full extent of the shortfall, purchase an equal amount of tobacco from the inventories of the producer owned cooperative marketing associations for burley and flue-cured tobacco. Two comments suggested that the rule's 30 calendar day period for such compensatory purchases was too short and should be 90 days. Also, two comments suggested that the time for administrative appeals should not be the 15 calendar days provided for in the proposed rule but 30 calendar days instead. Another suggested that a clarification was needed in the rule to ensure that all adverse determinations under the rule were administratively appealable.

Domestic tobacco is normally marketed on a "green" (unprocessed) weight basis but imported tobacco normally is purchased on a "dry" (processed) weight basis. In order to provide for a more accurate comparison of the market prices for use in calculating the DMA rate, the rule specifies that, as determined appropriate, the Director may use "dry" weight figures for both domestic and imported prices and may exclude cigar and other non-cigarette tobacco as the Director deems appropriate and practicable. The due date for the assessment has not been adjusted in the rule. To do so would provide an incentive for unnecessary appeals, and would dilute the intended effect of the assessment. However, the Director will have the discretion to extend the time for actual payment, subject to such conditions as the Director considers to be appropriate. Such extension will not toll the accrual of interest. The Director may also for cause extend the time for submitting an appeal; the 15 calendar day period should be enough time to express interest in an appeal and request an extension. The 15 calendar day period comports with the normal time for administrative appeals provided for in the generic appeal regulations found at 7 CFR part 780. The provisions of the rule have, however, been clarified, consistent with original intent, to specify that a manufacturer may appeal any adverse determination made under the rule with respect to that manufacturer. Also, to reflect commercial exigencies, the time for making compensatory purchases has been changed in the rule from 30 calendar days to 60 calendar days; the Director may grant further extensions for cause.

(5) Recordkeeping and Reporting Requirements. The six domestic manufacturers complained that the recordkeeping provisions of the rule did not comport with their current procedures, were excessive, and would require costly adjustments in their operations, particularly the proposal for batch-by-batch and lot-by-lot recordkeeping for tobacco removed from inventory for manufacture into cigarettes. Consistent with their other comments, the manufacturers suggested that recordkeeping for such tobacco uses be directed at total removals from inventory immediately before manufacture. The manufacturers indicated that all manufacturers, for that stage of the manufacturing process, maintain records by weight and category (domestic or foreign). These commenters also objected to the proposal requiring reporting of the manufacturer's total tobacco inventory and reporting of non-cigarette tobacco use; further, some suggested that USDA's Form TB–26, Tobacco Stock Report, be used instead of reports created specifically for compliance with the rule. The proposed rule provided for recordkeeping for a minimum of three years and four comments criticized a statement in the rule placing the risk on

the record keeper for any destruction of records after the minimum period. Another comment specifically supported having a provision in the final rule mandating that submitted records and reports be kept confidential by the agency. Further, as to audits, the statute allows for assessing the audit costs against the manufacturer. One comment suggested that the costs should, instead, be paid out of domestic assessments.

To comport with other changes in the rule, the recordkeeping requirements are modified in the final rule to focus, as far as end use is concerned, on the point at which tobacco is removed from inventory for immediate manufacture into cigarettes. Other modifications have been made, including removal of the need to keep records based on country of origin. Also, with the modifications, the manufacturer's records for tobacco used for the actual manufacture of cigarettes will not have to be kept batch-by-batch or lot-by-lot. However, lot-by-lot accounting will still be required for accounting for tobacco taken into inventory. The rule continues to require recordkeeping and reports for total inventory and for manufacturing uses for purposes other than cigarettes as such information will be needed as a check on reports of the tobacco used to manufacture cigarettes. Use of Form TB–26 will not be allowed in lieu of reports specifically created for compliance with the rule as that form is intended to serve other purposes and may not contain all the information and/or explicit or implied certifications of compliance needed. However, manufacturers are free to use whatever data source they wish in preparing reports relating to compliance with the rule, including data contained on Form TB–26, with the understanding that the resubmission of any data would carry with it a reaffirmation of its accuracy.

The three-year provision for mandatory recordkeeping is less than may be the applicable statute of limitations. Accordingly, it is not possible or appropriate to immunize parties subject to the rule from the effects of an imprudent record destruction. That risk can be avoided by more extended recordkeeping as circumstances dictate. Regarding confidentiality, it is the agency's intent to maintain the confidentiality of all records to the extent permitted by law. Section 320C(b)(2)(d) of the 1938 Act adopts the confidentiality provisions of Section 320B of the same Act. However, as confidentiality matters go to internal agency matters, rather than regulation of private entities or individuals, it has been determined that the final rule should not contain confidentiality provisions. Finally, as to audits, manufacturers will remain potentially liable for the cost of the audit since such liability is statutory. Moreover, relieving manufacturers of that liability would not only raise the potential cost of administering the program but could also discourage efficient recordkeeping which leads to easily-verified information.

In addition to the modifications indicated above, provisions have been included in the rule to take into account absences of records for events occurring prior to the publication of the final rule.

(6) Reduction in the Domestic Content Percentage. Section 320C(f) provides that if the Secretary, in consultation with producer owned cooperative marketing associations, determines that because of drought or other conditions beyond the control of producers, the quantity of domestic burley or flue-cured tobacco that is harvested and suitable for marketing is substantially less than the expected yield for the crop, and that pool inventories for the kind of tobacco involved have been depleted, then, effective for the calendar year following the year in which the crop loss occurs, the Secretary of Agriculture may reduce the critical domestic content percentage below 75 percent. The proposed rule specified that such reductions would be made only if the inventories of domestic burley or flue-cured tobacco fell below 25 percent of the "reserve stock level" for the respective tobacco. The manner in which the "reserve stock level" is calculated is by a formula set out in section 301 of the 1938 Act.

Three comments suggested that the reduction of the domestic content level be allowed in either of the two years following the disaster because the inventory effect on an individual manufacturer might not be felt for two years. Another comment suggested that reasons other than crop loss should trigger the reduction and that a reduction should be considered without adherence to a rigid requirement that domestic inventories of burley or flue-cured tobacco be down to 25 percent of the "reserve stock level." Another comment suggested that major cigarette manufacturers be consulted with respect to percentage reduction issues.

By statute, reductions in the domestic content nonassessment percentage is limited to the year following the year of the crop loss. Further, the necessity of such a crop loss is also statutory. However, in order to provide greater flexibility in responding to market circumstances, the reference to 25 percent of the reserve stock level has been dropped from the rule so as to allow the Director to exercise greater judgment in determining whether to reduce the percentage where the statutory preconditions for a reduction exist. Formal consultation with manufacturers regarding reductions is not provided for in the statute and goes to internal agency decision making; however, where there is a potential for a reduction, major manufacturers and other interested members of the public will be free to make their views known to the producer owned cooperative marketing associations and to USDA in the normal manner.

List of Subjects in 7 CFR Part 723

Acreage allotments, Assessments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 723 is amended as follows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 is revised to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

2. Part 723 is amended by adding subpart E to read as follows:

Subpart E—Domestically Produced Cigarettes

Sec.

723.501 Definitions.
723.502 Domestic tobacco content nonassessment percentage.
723.503 Domestic content marketing assessment.
723.504 Required purchases from tobacco loan stocks.
723.505 Reduction of domestic content nonassessment percentage.
723.506 Required records and reports; burden of proof.
723.507 False reports; failure to file reports; examinations of records; and records for events occurring prior to the publication of the final rule.
723.508 Reconsideration and appeal.

Subpart E—Domestically Produced Cigarettes

§ 723.501 Definitions.

In addition to the definitions set forth at § 723.104, the definitions set forth in this section shall be applicable for purposes of administering the provisions of this subpart.

ASCS. The USDA's Agricultural Stabilization and Conservation Service.

CCC. The Commodity Credit Corporation, an instrumentality of the USDA.

Covered cigarettes. Cigarettes produced in the United States.

Director. Except with respect to references to the National Appeals Division of ASCS, the Director of the Tobacco and Peanuts Division, or the successor to the Director.

Domestic assessment use shortage. For any domestic manufacturer, the domestic assessment use shortage shall be, as determined by the Director, the amount, converted to pounds, by which, for the relevant calendar year, domestic tobacco use for covered cigarettes produced by the manufacturer was less than the amount which, as a percentage of total tobacco use for these cigarettes, would have equaled the domestic content nonassessment percentage.

Domestic content nonassessment percentage. The domestic content nonassessment percentage shall be 75 percent unless otherwise specified in this subpart.

Domestic manufacturer. A domestic manufacturer of cigarettes.

Domestic manufacturer of cigarettes. A person who, as determined by the Director, produces and sells more than 1 percent of the cigarettes produced and sold in the United States.

Domestic tobacco. Any quantity of harvested tobacco which has been cultivated, grown, and produced in the United States.

Foreign tobacco. Tobacco that is not domestic tobacco.

Imported tobacco. Any tobacco, including (but not limited to) Oriental and Turkish tobaccos, that is not domestic tobacco and has been entered into the commerce of the United States. Any tobacco that cannot, as determined by the Director, be verified as to its being domestic tobacco shall be presumed to be imported tobacco.

NASS. The National Agricultural Statistics Service, USDA.

Origin category. The categorization of tobacco as either domestic or foreign tobacco.

Price support inventory. The inventory of tobacco which has been pledged as collateral for a price support loan made by CCC through a producer owned cooperative marketing association.

Producer owned cooperative marketing associations. Those associations which by law act as agents for producers for price support loans for tobacco. Those associations for burley and flue-cured tobacco are the Burley Tobacco Growers Cooperative Association, the Burley Stabilization Corporation, and the Flue-Cured Tobacco Cooperative Stabilization Corporation, or their successors.

Tobacco. Any commodity or substance that is commonly considered to be tobacco in the trade.

United States. The 50 States of the United States, the District of Columbia, Puerto Rico, or any Territory or Possession of the United States.

Unmanufactured tobacco. Any tobacco in any form that is not processed and packaged as a ready consumer tobacco product, including, but not limited to, tobacco in the form of leaf tobacco, strips, stems, scrap, and reconstituted, homogenized, and blended tobacco or products (other than consumer-ready products).

USDA. The U.S. Department of Agriculture.

§ 723.502 Domestic tobacco content nonassessment percentage.

(a) *General requirements.* (1)(i) For cigarette production for each calendar year beginning with calendar year 1994, the Director shall determine for each domestic manufacturer the percentage that domestic tobacco constitutes of the total tobacco used by that manufacturer to produce cigarettes in the United States. If such percentage use of domestic tobacco does not equal or exceed the domestic content nonassessment percentage for that calendar year, the manufacturer shall be deemed to have a domestic assessment use shortage and shall pay an assessment in the amount specified in § 723.503 and shall make compensatory tobacco purchases in the amount specified in § 723.504.

(ii) For any calendar year, the domestic content nonassessment percentage shall be 75 percent unless for that calendar year the percentage is reduced under § 723.505, in which case the domestic content nonassessment percentage shall be such reduced percentage.

(iii) Any assessment or purchase requirement which shall follow in the event of a domestic assessment use shortage shall be in addition to any other assessment or obligation that may be due or imposed.

(2) Any tobacco that has been reconstituted, or otherwise processed to the extent that it has lost its respective identity as either domestic tobacco or imported tobacco, shall be considered to be foreign tobacco when making determinations under this subpart.

(3) Any tobacco otherwise subject to paragraph (a)(2) of this section which is purchased by the manufacturer from a broker or processor may nonetheless be considered to be domestic tobacco by the Director if a valid certification meeting the requirements of this section and satisfactory to the Director is signed by the transferring party.

(4) In order to be credited under paragraph (a)(3) of this section, a certification must conform to all requirements imposed by the Director which may include use of a prescribed form.

(5) If the Director has not prescribed a form for use for such certifications, it shall be the responsibility of the domestic manufacturer to ensure that a proper certification has been obtained on a form devised by such manufacturer. In order to be valid for purposes of this section, the certification so devised must:

(i) Specify the total amount of tobacco being transferred to the domestic manufacturer by the certifying party and the amount of such tobacco which is domestic tobacco;

(ii) Certify, except as provided in paragraph (a)(6) of this section, that such domestic tobacco was purchased directly from a domestic producer (at auction, directly or from the price support inventory of the applicable association) at market rates for domestic tobacco, and that the certifying party can demonstrate the actual disbursement of the purchase price.

(iii) Certify that the certifying party has no reason to believe that the tobacco certified as domestic tobacco is foreign tobacco;

(iv) Refer to this subpart and section 320C of the Agricultural Adjustment Act of 1938 and state the purposes for which the certification is requested and made;

(v) State that the certification involves material information which may or will be relied upon by the United States government for purposes of enforcement of the provisions of this subpart;

(vi) State that false or inaccurate information may lead to civil or criminal penalties or sanctions under the provisions of 18 U.S.C. 1001 or other provisions of law.

(6)(i) If any such certifying party has not purchased the tobacco from a domestic producer or the price support inventory of the applicable association, the certifying party shall be required in lieu of the requirements of paragraph (a)(5)(ii) of this section to attach a certification from the party from whom the certifying party obtained the tobacco. Such sub-certification shall conform to the provisions of paragraph (a)(5)(i) through (a)(5)(vi) of this section Additional sub-certifications shall be required as needed to trace the tobacco back to the domestic producer.

(ii) In the event that such certifications as are otherwise required in order to treat tobacco as domestic tobacco cannot be reasonably obtained.

the Director may relieve the domestic manufacturer from such requirements based on such representations of the origin category of the tobacco as the Director finds sufficient to serve the purposes of this subpart.

(7) The domestic manufacturer shall be required to maintain all records as may be needed to establish the origin of tobacco taken into inventory including any certifications regarding such origin.

(8) Any tobacco having lost its identity with respect to its origin category during the manufacturing process but which in the normal course of business is recaptured and reused by the same manufacturer to manufacture cigarettes in the United States and any tobacco in any cigarettes returned to the manufacturer of the cigarettes which is reused by the same manufacturer to manufacture new cigarettes in the United States shall not be counted toward the domestic content calculations made under this subpart. The domestic manufacturer shall maintain such records that show the quantity of tobacco so reclaimed or reused in the manufacturing of cigarettes for the calendar year. However, any tobacco reused by a manufacturer different than the original manufacturer shall be counted toward the domestic use calculations for both manufacturers.

(b) *Year-end reports required to be made by manufacturers.* (1) In addition to any other reports required by this subpart, beginning with the 1994 calendar year, a domestic manufacturer of cigarettes shall report to the Director, for each calendar year, the following information:

(i) The total quantity of tobacco used by the manufacturer to produce cigarettes in the United States during such calendar year.

(ii) The total quantity of imported tobacco used by the manufacturer in the production of cigarettes in the United States during such calendar year.

(iii) The total quantity of domestic tobacco used by the manufacturer in the production of cigarettes in the United States during such calendar year.

(iv) The total quantity of tobacco reused in the production of cigarettes during such calendar year that was reclaimed from the manufacturing process or from returned cigarettes and is exempt from counting toward the total final domestic use calculation for the manufacturer under paragraph (a)(8) of this section.

(v) The total number of individual cigarettes produced during such calendar year.

(2) For purposes of the information required to be reported by paragraphs (b)(1)(i) through (b)(1)(iii) of this section, the quantities reported shall be based on the packed, redried weight of the tobacco when it is removed from inventory for immediate entry into the manufacturing process for making cigarettes. The weights required for paragraph (b)(1)(iv) of this section shall be the actual weight of the reclaimed tobacco.

(c) *Where and when to report.* The reports required by this subpart shall, unless otherwise specified in this subpart, be mailed or otherwise delivered in hard copy to the Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, USDA, P. O. Box 2415, Washington, DC 20013–2415 by February 15 of the year after the calendar year to which the report applies. The Director may specify the form in which any report required by this subpart shall be made and may make other requests for information as may be necessary to effectively enforce the provisions of this subpart.

(d) *Failure to report.* A manufacturer who fails to report the quantities of domestic and imported tobacco used for manufacturing cigarettes shall be presumed to have used only imported tobacco in such cigarettes. In addition, with respect to any recordkeeping or reporting requirement imposed by this subpart, the failure to file any report timely or to supply any required information shall permit the Director to determine that the information not timely filed or supplied is adverse to the party responsible for the submission and to make determinations under this subpart accordingly by any method determined reasonable by the Director. If the correct and verifiable information is later submitted, the Director may, in lieu of drawing such conclusions, assess the costs incurred as a result of the failure to supply the information in a timely manner.

§ 723.503 Domestic content marketing assessment.

(a) *General.* Effective beginning with the 1994 calendar year, each domestic manufacturer of cigarettes with a domestic assessment tobacco use shortage for a calendar year shall pay to CCC a non-refundable domestic marketing assessment under this section in an amount which equals the product calculated by multiplying the amount in pounds of the shortage by the assessment rate per pound calculated under paragraph (b) of this section.

(b) *Assessment rate.* The domestic marketing assessment rate for purposes of this section shall be determined separately for each calendar year. The assessment rate shall be the difference per pound between:

(1) One-half the sum of the average prices per pound received by domestic producers of burley tobacco and flue-cured tobacco, respectively, for their respective marketing years preceding the calendar year of the domestic assessment use shortage, and,

(2) The average price per pound of unmanufactured imported cigarette tobacco for the calendar year preceding the year of the shortage.

(c) *Data used to calculate market prices.* The Director may use data published by NASS for purposes of making market price determinations under this section and may use a weighted average price of unmanufactured cigarette tobacco which was imported during the previous calendar year, as calculated from Bureau of Census data, for such calendar year. The Director may make adjustments in the average prices or weights used to determine the domestic marketing assessment rate as determined appropriate by the Director to ensure that the average prices used for both domestic and imported tobacco are on an equivalent basis to the extent practical. Such adjustments, if any, shall be based on historical conversion yields common to the tobacco trade and may include the exclusion of cigar tobacco from the calculation of the average import price or the exclusion of other non-cigarette tobacco from such calculation.

(d) *Time for paying assessment.* The domestic manufacturer shall pay the domestic marketing assessment provided for in this section within 30 calendar days after demand for payment. However, if the manufacturer timely requests reconsideration or timely appeals the determination, the time for payment of the amount in dispute may be extended by the Director to a date no later than 30 calendar days after the final determination is rendered. Such extensions shall be subject to such conditions as the Director may impose and shall be subject to a continued accrual of interest, unless otherwise specified by the Director. The rate for such interest shall be the rate charged on any obligation owing to CCC at the time of the assessment, as determined by the Director.

(e) *Failure to timely pay assessment.* If a domestic manufacturer fails in a timely manner to pay any assessment under this section, such manufacturer shall be subject to a penalty in an amount equal to twice the amount of the initial assessment in addition to any interest that has accrued on such

obligations and in addition to any other charges or obligations that may apply.

(f) *Interest.* All sums due to CCC under this subpart shall accrue interest at a rate of interest which the Director determines is currently being assessed for any other obligations due CCC. Such charges shall be in addition to any other charges due.

§ 723.504 Required purchases from tobacco loan stocks.

(a) *General.* In addition to paying a domestic marketing assessment, each domestic manufacturer of cigarettes who for any calendar year beginning with the 1994 calendar year has a domestic assessment use shortage shall purchase a quantity of burley and flue-cured tobacco from the loan stocks of the producer owned cooperative marketing associations for burley and flue-cured tobacco in the amounts prescribed in this section.

(b) *Purchase quantity.* The amount of tobacco that must be purchased shall be an amount equal to the amount, in pounds, of the manufacturer's domestic assessment use shortage. The total amount of required purchases shall be divided equally between burley and flue-cured tobacco. If it is determined that the required amount of purchases by all manufacturers would reduce the inventories of burley or flue-cured tobacco below the reserve stock level, the Director may reduce the required purchase quantity on a proportional basis. Required purchases under this section shall not be considered as purchases for purposes of meeting the manufacturer's purchase intentions under section 320B of the 1938 Act.

(c) *Purchase price.* In order to receive credit for a purchase to satisfy a purchase required by this section, the purchase price must not be less than the published offer list price of the applicable producer owned cooperative marketing association which shall be a price available to all qualified buyers. Credit for required purchases shall not be allowed if discounts, rebates, or other special incentives have been offered and received in connection with purchases of tobacco loan stocks from association inventories.

(d) *Failure to purchase required amount.* Each manufacturer shall have 60 calendar days from date of notification of the required purchase amount to complete the purchases required under this section. The producer owned cooperative marketing associations shall report to the Director the quantities of required purchases that have been made. A manufacturer who fails to purchase, within the allotted time, the required quantity of burley or flue-cured tobacco shall be liable for penalty on each pound of tobacco for which there has been a failure to make a timely purchase. The penalty rate shall be the amount determined to be equal to 75 percent of the average market price for the kind of tobacco required to be purchased for the marketing year that ends in the calendar year of the manufacturer's domestic assessment use shortage.

§ 723.505 Reduction of domestic content nonassessment percentage.

(a) *General.* The Director, in consultation with the appropriate producer owned cooperative marketing associations, may reduce the domestic content nonassessment percentage for a calendar year to a percentage below 75 percent for any calendar year with respect to which the Director determines that the production of burley or flue-cured tobacco for the preceding year was substantially reduced because of natural disaster or other conditions beyond the control of producers and the loan stock inventory for the kind of tobacco is effectively depleted.

(b) *Expected production.* For purposes of this section, the Director may determine, but shall not be required to determine, the expected amount of production of tobacco based on the planted acreage as reported by NASS for the respective kind of tobacco multiplied by the simple average of the five most recent years' average yields per acre for the respective kind of tobacco. The Director may take into account such other factors as the Director may deem to be relevant and appropriate, including changes in the national quota set by the USDA for the kind of tobacco involved.

(c) *Deadline for determination.* The Director shall announce the reduced percentage by November 30 of the year preceding the calendar year to which the reduced percentage will apply.

§ 723.506 Required records and reports; burden of proof.

(a) *Required records.* Each domestic manufacturer, for all manufacturing plants producing cigarettes covered under this subpart, shall maintain records on a calendar year basis for each lot of unmanufactured tobacco taken into inventory that shows for each lot the:

(1) Kind or type of tobacco,

(2) Form of tobacco, such as leaf, strips, scrap, stems, reconstituted, reclaimed, etc.,

(3) Origin category of the tobacco (domestic or imported); and

(4) Weight of the tobacco.

(b) *Record retention period.* Records shall be retained for at least 3 calendar years after the calendar year to which the records apply. The minimum period of record retention may be extended upon written notification by the USDA Office of Inspector General or the Director. Nothing in this paragraph shall relieve the domestic manufacturer of the burden of establishing compliance with the provisions of this subpart.

(c) *Required reports.* (1) In addition to any other report or recordkeeping that may be required under this subpart or otherwise, each domestic manufacturer shall for each calendar year file a report with the Director showing, with the same particularity and categories of data required under paragraph (a) of this section, the quantity of unmanufactured tobacco that the manufacturer:

(i) Acquired during the calendar year,

(ii) Used to manufacture covered cigarettes during the calendar year,

(iii) Used, or otherwise disposed of, other than to manufacture covered cigarettes during the calendar year, and

(iv) Has in inventory at end of the calendar year.

(2) In addition, a one-time report containing the same particularity and categories of data required under paragraph (a) of this section shall be made by each domestic manufacturer setting out the total amount of unmanufactured tobacco in the manufacturer's inventory as of January 1, 1994. Such report shall be submitted within 15 calendar days after publication of this rule in the **Federal Register**.

(3) The information provided in the reports required in paragraph (c) of this section may be obtained from reports prepared and submitted to USDA for other purposes. The resubmission of such information shall constitute a current affirmation of the accuracy of such data or information.

(4) Reports required by this section shall be mailed or otherwise delivered in hard copy to the Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, USDA, P. O. Box 2415, Washington, DC 20013–2415 by February 15 of the year after the calendar year for which the report applies except with respect to the one-time report required by paragraph (c)(2) of this section, which shall be submitted by the date specified in paragraph (c)(2) of this section.

(d) *Variances in reports and recordkeeping and deadlines.* The Director may grant variances from the report, recordkeeping, and deadlines required by this section or subpart but only in writing and only to the extent that it is determined that such variances are justified, taking into account the overall purposes of this subpart and the

desire to avoid undue interference with commerce.

(e) *Burden of proof.* The burden of proof on all issues arising under this subpart regarding compliance with the provisions of this subpart shall be on the domestic manufacturer of cigarettes.

§ 723.507 False reports; failure to file reports; examination of records; and records for events occurring prior to the publication of the final rule.

(a) *False reports, failure to file report.* In addition to any other sanction or remedy or presumption that may apply, a person shall be subject to all other remedies provided for by law including, but not limited to, those that apply under section 320C of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1314i), and 18 U.S.C. 1001 for any:

(1) False or inaccurate report, certification, or statement, or

(2) Failure to provide required information.

(b) *Examination of records.* The Director, the Office of Inspector General, or any authorized representative of the United States may examine such records, books, computer files, or any other material to determine the correctness of any report or information provided to the Director or to obtain relevant information. Reasonable costs incurred with respect to any such audit may be charged to the domestic manufacturer which is the subject of the audit or examination.

(c) *Records for events occurring prior to the publication of the final rule.* No person shall be penalized or otherwise adversely affected for a failure to comply with any recordkeeping requirements in this rule as concerns records that would have been required to be generated prior to the publication of the final rule implementing the program provided for in this subpart. However, all persons shall be required to maintain and submit on request, all records generated prior to the publication of the final rule which are relevant to the provisions of this subpart and shall be required, to the full extent possible, for all uses of tobacco relevant to this subpart. Nothing in this paragraph shall be justification for the destruction of records or information, or for refusing a request for relevant information.

§ 723.508 Reconsideration and appeal.

A domestic manufacturer of cigarettes may request that the Director reconsider any adverse determination with respect to such manufacturer under this subpart. A request for reconsideration shall be made within 15 calendar days after the date of the notification of failure to comply except that the manufacturer for cause may request that the time for such filing be extended. The Director may grant such requests and may set conditions for such extensions. Unless otherwise specified by the Director, an extension of the time for reconsideration, or the pendency of reconsideration or appeal, shall not toll the time for payment of any amount due, nor toll the accrual of interest. If the domestic manufacturer is dissatisfied with the reconsideration determination rendered, such manufacturer may appeal the determination to the Director, National Appeals Division in accordance with part 780 of this title.

Signed at Washington, DC, on May 24, 1994.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

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Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 92–129–2]

Ruminants and Horses Imported From Canada; Importation of Wild Ruminants and Wild Swine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal import regulations to require that all ruminants imported from Canada for immediate slaughter be handled in a manner that now is required only for cattle, sheep, and goats imported from Canada for immediate slaughter. This action is necessary to help prevent the spread of livestock diseases into the United States. We are also making two additional amendments. The first will allow cattle, sheep, and goats imported from Canada for immediate slaughter to enter the United States without a certificate. The second will allow zoological parks approved to receive wild ruminants and wild swine from countries where foot-and-mouth disease or rinderpest exists to dispose of manure and other animal wastes outside the zoological park after the animal has been in the park for 1 year. These actions will relieve regulatory burdens without presenting a significant risk of introducing livestock diseases into the United States.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Bowling, Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) restrict the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases of livestock and poultry.

On November 9, 1993, we published in the **Federal Register** (58 FR 59414–59417, Docket No. 92–129–1) a proposal to make six amendments to the regulations, as follows: (1) We proposed to amend § 92.317 to allow blood samples taken from horses for a required test for equine infectious anemia (EIA) to be drawn within 365 days preceding the horses' importation into the United States, rather than 180 days, as is currently required; (2) we proposed to amend §§ 92.317, 92.418, and 92.419 to allow horses, cattle, sheep, and goats imported from Canada for immediate slaughter to be imported without a certificate; (3) we proposed to amend § 92.420 to require that all ruminants imported from Canada for immediate slaughter (not just cattle, sheep, and goats) be handled in a specified way to minimize any disease risk to U.S. livestock; (4) we proposed to amend §§ 92.404(c) and 92.504(c) to allow zoological parks that receive wild ruminants and wild swine from countries where foot-and-mouth disease and rinderpest exists to dispose of manure and other animal wastes outside the park after the animal has been in the park for 1 year, provided the animal shows no sign of any illness at the end of that year; (5) we proposed to update the regulations in §§ 92.404(c) and 92.504(c) by removing the reference to the "Animal Quarantine Station in Clifton, New Jersey" and replacing it with "Animal Import Center in Newburgh, New York," as the quarantine station in Clifton, New Jersey, is no longer in operation; and (6) we proposed to amend the regulations in §§ 92.316 and 92.518 to clarify what we mean by "directly", as used in the phrase "consigned from the port of entry directly to a recognized slaughtering establishment."

We solicited comments concerning our proposal for a 60-day comment period ending January 10, 1994. We

received two comments by that date. They were from a veterinarian association and a horse industry association. They are discussed below.

One comment favored the proposed rule, but questioned the part of the proposal that would allow horses, cattle, sheep, and goats imported from Canada for immediate slaughter to enter the United States without a certificate. The commenter noted that the our assertion that the proposal presents no significant risk of introducing livestock diseases into the United States depends on the assurance that these animals are not diverted from slaughter and are not commingled with other livestock, as well as a determination during inspection at the port of entry that the animals have not been exposed to communicable disease within 60 days prior to such inspection. The commenter asked us to clarify how we ensure the animal is not diverted from slaughter and how we determine whether or not an animal has been exposed to communicable disease within 60 days prior to inspection.

In almost all cases, it takes only about 7 days after exposure to a communicable disease for signs of the disease to appear. Therefore, inspection at the port of entry almost always reveals an exposed animal. If signs of a communicable disease are found in an animal that is part of a shipment of other animals, the entire shipment is denied importation into the United States. However, even if an exposed animal being sent to slaughter were to remain undetected during inspection, the risk of spreading the disease to U.S. animals is negligible, because slaughter animals move directly to slaughter and are not commingled with other livestock. To verify that the shipment was not diverted from slaughter, confirmation of the animals' arrival is sent from the slaughtering establishment to the port of entry.

The other comment opposed two of the proposed amendments. First, the commenter was concerned about the proposal to allow blood samples for the EIA test to be drawn within 365 days preceding a horse's importation into the United States. The commenter believes that the length of time is too long and significantly lessens the ability to prevent the importation of infected horses into the United States. Second, the commenter was opposed to allowing horses imported from Canada for immediate slaughter to be imported without a certificate.

We are withdrawing both these portions of the proposed rule. Our belief that the required time between EIA testing could be extended without significant risk was based on the low incidence of EIA in Canada, as established under Canada's current EIA program. Since publication of the proposal, we have learned that the Department of Agriculture of the Government of Canada may be making substantial changes to its EIA program within the next year. We do not wish to reduce any of our health certification requirements for horses from Canada until we have more information about Canada's changes to its EIA program. Therefore, we do not wish to extend our EIA testing requirement or remove the requirement for a certificate for slaughter horses at this time. If at a later date we determine that the required time between EIA tests can be extended to 365 days or that we can remove the certificate requirement without posing any significant risk to U.S. livestock, we will repropose the amendments.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule will require that all ruminants (not just cattle, sheep, and goats) imported into the United States from Canada for immediate slaughter be consigned from the port of entry directly to a recognized slaughtering establishment and there be slaughtered within 2 weeks from the date of entry. APHIS does not expect that the imposition of these requirements will increase or decrease the number of ruminants exported from Canada for immediate slaughter. This rule will not have a significant economic impact on importers, slaughtering establishments, or other entities, as the ruminants that will be affected, primarily bison and deer, normally go directly from the port of entry to slaughter and are slaughtered within 2 weeks. However, this action is necessary to ensure that bison, deer, and other ruminants imported for immediate slaughter are always handled in this way.

This rule also will allow cattle, sheep, and goats imported from Canada for immediate slaughter to enter the United States without a certificate. This action will facilitate the importation of cattle, sheep, and goats from Canada for immediate slaughter, thereby saving importers some time. It will also save importers the cost of acquiring a certificate for cattle, sheep, and goats. However, this savings constitutes an insignificant portion of the cost of importing these animals.

Finally, this rule will require that zoological parks approved to receive wild ruminants and wild swine from countries where foot-and-mouth disease or rinderpest exists dispose of manure and other animal wastes within the zoological park only for the first year after the animal enters the zoological park. This amendment will relieve some burden on approximately 30 zoos that import wild ruminants or wild swine from countries where foot-and-mouth disease or rinderpest exists. Each zoo may save an estimated $100 to $1000 each year in disposal costs, depending on the number of affected animals in the park.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b,

134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 92.316 is amended by adding a second and third sentence to read as follows:

§ 92.316 Horses from Canada for immediate slaughter.

* * * Such horses shall be inspected at the port of entry and otherwise handled in accordance with § 92.306. As used in this section, "directly" means without unloading en route if moved in a means of conveyance, or without stopping if moved in any other manner.

§ 92.404 [Amended]

3. Section 92.404 is amended as follows:

a. In paragraph (c)(1), second sentence, the reference "(c)(3)" is removed and "(c)(4)" is added in its place.

b. Paragraph (c)(3) is redesignated as paragraph (c)(4).

c. A new paragraph (c)(3) is added to read as set forth below.

d. In newly designated paragraph (c)(4), paragraph 4 of the agreement, the phrase "Animal Quarantine Station in Clifton, New Jersey" is removed and the phrase "Animal Import Center in Newburgh, New York" is added in its place.

§ 92.404 Import permits for ruminants and for ruminant specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by APHIS.

* * * * *

(c) * * *

(3) Manure and other animal wastes must be disposed of within the zoological park for a minimum of 1 year following the date a ruminant enters the park. If an APHIS veterinarian determines that a ruminant shows no signs of any illness at the end of this 1-year period, its manure and other wastes need not be disposed of within the park. If, however, an APHIS veterinarian determines that a ruminant does show signs of any illness at the end of this 1-year period, an APHIS veterinarian will investigate the illness and determine whether the ruminant's manure and other wastes may safely be disposed of outside the zoological park.

* * * * *

§ 92.418 [Amended]

4. In § 92.418, paragraph (a) is amended by removing the first word "Cattle" and adding the phrase "Except for cattle imported for slaughter in accordance with § 92.420, cattle" in its place.

§ 92.419 [Amended]

5. In § 92.419, paragraph (a) is amended by removing the first word "Sheep", and adding the phrase "Except for sheep and goats imported for slaughter in accordance with § 92.420, sheep" in its place; and paragraph (c) is removed.

6. Section 92.420 is revised to read as follows:

§ 92.420 Ruminants from Canada for immediate slaughter.

Any ruminant imported from Canada for immediate slaughter shall be consigned from the port of entry directly to a recognized slaughtering establishment and there be slaughtered within 2 weeks from the date of entry. Such ruminants shall be inspected at the port of entry and otherwise handled in accordance with § 92.408.

§ 92.504 [Amended]

7. Section 92.504 is amended as follows:

a. In paragraph (c)(1), second sentence, the reference "(c)(3)" is removed and "(c)(4)" is added in its place.

b. Paragraph (c)(3) is redesignated as paragraph (c)(4).

c. A new paragraph (c)(3) is added to read as set forth below.

d. In newly redesignated paragraph (c)(4), paragraph 4 of the agreement, the phrase "Animal Quarantine Station in Clifton, New Jersey" is removed and the phrase "Animal Import Center in Newburgh, New York" is added in its place.

§ 92.504 Import permits for swine and for swine specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by APHIS.

* * * * *

(c) * * *

(3) Manure and other animal wastes must be disposed of within the zoological park for a minimum of 1 year following the date the swine enters the park. If an APHIS veterinarian determines that the swine shows no signs of any illness at the end of this 1-year period, its manure and other wastes need not be disposed of within the park. If, however, an APHIS veterinarian determines that the swine does show signs of any illness at the end of this 1-year period, an APHIS veterinarian will investigate the illness and determine whether the swine's manure and other wastes may safely be disposed of outside the zoological park.

* * * * *

8. Section 92.518 is amended by adding a second sentence to read as follows:

§ 92.518 Swine from Canada for immediate slaughter.

* * * As used in this section, "directly" means without unloading en route if moved in a means of conveyance, or without stopping if moved in any other manner.

Done in Washington, DC, this 25th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-13289 Filed 5-31-94; 8:45 am]

BILLING CODE 3410-34-P

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9 CFR Part 94

[Docket No. 93-172-2]

Change in Disease Status of Hungary Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring Hungary free of rinderpest and foot-and-mouth disease. As part of this action, we are adding Hungary to the list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to restrictions on meat and other animal products offered for importation into the United States. We are also adding Hungary to the list of countries from which the importation into the United States of llamas and alpacas is restricted. This rule removes the prohibition on the importation into the United States, from Hungary, of ruminants and fresh, chilled, and frozen meat of ruminants, although those importations will be subject to certain restrictions. This rule also relieves restrictions on the importation, from Hungary, of milk and milk products of ruminants.

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen J. Akin, Senior Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 755, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7830.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine.

On March 2, 1994, we published in the **Federal Register** (59 FR 9939-9941, Docket No. 93-172-1) a proposal to amend the regulations by adding Hungary to the list in § 94.1(a)(2) of countries declared free of rinderpest and FMD and to the list in § 94.1(d) of countries from which the importation into the United States of llamas and alpacas is restricted. In that document, we also proposed to add Hungary to the list in § 94.11(a) of countries that, although declared free of rinderpest and FMD, are subject to special restrictions on the importation of their meat and other animal products into the United States. We further proposed to make several nonsubstantive editorial changes in the regulations.

We solicited comments concerning our proposal for a 60-day period ending on May 2, 1994. We did not receive any comments. The facts presented in the proposed rule still provide the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule removes the prohibition on the importation into the United States, from Hungary, of ruminants and fresh, chilled, and frozen meat from ruminants, and relieves restrictions on the importation, from Hungary, of milk and milk products from ruminants. We have determined that approximately 2 weeks are needed to ensure that Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule amends the regulations in part 94 by adding Hungary to the list of countries declared to be free of rinderpest and FMD. This action removes the prohibition on the importation into the United States, from Hungary, of ruminants and fresh, chilled, and frozen meat of ruminants, although those importations will be subject to certain restrictions. This revision also relieves restrictions on the importation, from Hungary, of milk and milk products of ruminants.

Based on available information, the Department does not anticipate a major increase in exports of ruminants and fresh, chilled, or frozen meat of ruminants from Hungary into the United States as a result of this rule.

The value of total U.S. imports of cattle in 1992 was $1.24 billion, and the value of total U.S. imports of sheep in 1992 was about $2 million. The United States did not import any cattle or sheep from Hungary during 1992. In fact, with the exception of a small number of cattle imported from the former Czechoslovakia, no cattle or sheep were imported into the United States from any country in Europe during 1992 (USDA, Economic Research Service [ERS], "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Clearly, Europe is not a source of ruminants for the United States, and it is unlikely that declaring Hungary free of rinderpest and FMD will have any effect on the existing trade patterns.

Due to current APHIS restrictions, the United States does not import any uncooked meat or meat products from Hungary. Total U.S. meat production in 1991 (excluding pork) was just under 10.7 million metric tons, while Hungarian meat production in 1991 reached approximately 115,000 metric tons, about 1 percent of the U.S. total (USDA, National Agricultural Statistics Service, "Agricultural Statistics, 1992," 1992). Therefore, even if Hungary exports a significant portion of its meat production exclusively to the United States, which is unlikely, the effect of those exports on U.S. domestic prices or supplies will be negligible.

As with the ruminants and meat products discussed above, the Department does not anticipate a major increase in exports of milk and milk products from Hungary into the United States as a result of this rule. The importation into the United States of all dairy products, except for casein and other caseinates, is restricted by quotas. Although the importation of casein into the United States is not regulated by quotas, world prices of casein are competitively set. The United States does not produce casein, but does import more than half of the casein produced in the world. The regulations currently allow casein and other caseinates to be imported into the United States from countries where rinderpest or FMD exists if the importer has applied for and obtained written permission from the Administrator. The United States imported about 662 metric tons of casein from Hungary in 1992 (USDA, ERS, "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Declaring Hungary free of rinderpest and FMD, thus removing the requirement for written permission from the Administrator, is not expected to have any effect on the amount of casein imported into the United States from Hungary because the restrictions we are removing did not substantially impede imports.

The importation of bovine semen and cattle embryos from countries affected with rinderpest and FMD is restricted under 9 CFR part 98. Although this rule has the effect of removing certain restrictions on the importation of bovine semen and cattle embryos from Hungary, the economic effect of this rule on the bovine semen and cattle embryo industries is also expected to be minimal. The United States is a net exporter of bovine semen and cattle embryos. In 1992, the value of U.S. bovine semen and cattle embryo imports was $4 million and $195,000, respectively, while the value of U.S. bovine semen and cattle embryo exports was $49.3 million and $6.8 million, respectively (USDA, ERS, "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Although it is likely that a few U.S. importers will be interested in importing bovine semen or cattle embryos from Hungary, the amount of each that might be imported is minimal when compared to U.S. domestic production.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings

before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding "Hungary," immediately after "Honduras,".

3. In § 94.1, paragraph (d)(1) is amended by adding "Hungary," immediately after "France,".

§ 94.9 [Amended]

4. Section 94.9 is amended as follows:

a. Paragraphs (b)(1)(ii)(*a*) and (*b*) are redesignated as paragraphs (b)(1)(ii) (A) and (B).

b. Paragraphs (b)(1)(iii)(*a*), (*b*), and (*c*) are redesignated as paragraphs (b)(1)(iii) (A), (B), and (C).

c. In newly designated paragraph (b)(1)(iii)(C)(*2*), the words "paragraph (b)(1)(iii)(*c*)(*1*) of" are removed and the words "paragraph (b)(1)(iii)(C)(*1*) of" added in their place, and the words "paragraphs (b)(1), (i), (ii), or (iii)" are removed and the words "paragraph (b)(1)(i), (ii), or (iii)" added in their place.

d. In paragraph (b)(2), the words "under paragraphs" are removed and the words "under paragraph" added in their place.

e. In paragraph (b)(3), the first sentence, the words "under paragraphs" are removed and the words "under paragraph" added in their place, and the words "paragraph (b)(1) (ii) or (iii) of this section has" are removed and the words "the provisions of paragraph (b)(1)(ii) or (iii) of this section have" added in their place.

f. In paragraph (c), the words "provisions of" are added immediately before the reference "§ 94.12(b)(1)(iii)".

§ 94.11 [Amended]

5. In § 94.11, paragraph (a), the first sentence is amended by adding "Hungary," immediately before "Japan,".

Done in Washington, DC, this 25th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–13290 Filed 5–31–94; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 94

[Docket No. 93–173–2]

Change in Disease Status of Austria Because of Rinderpest, Foot-and-Mouth Disease, and Swine Vesicular Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring Austria free of rinderpest, foot-and-mouth disease, and swine vesicular disease. As part of this action, we are adding Austria to the lists of countries that, although declared free of rinderpest, foot-and-mouth disease, and swine vesicular disease, are subject to restrictions on meat and other animal products offered for importation into the United States. We are also adding Austria to the list of countries from which the importation into the United States of llamas and alpacas is restricted. This rule removes the prohibition on the importation into the United States, from Austria, of ruminants and fresh, chilled, and frozen meat of ruminants, although these importations are still subject to certain restrictions. This rule also relieves restrictions on the importation, from Austria, of milk and milk products of ruminants.

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen J. Akin, Senior Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 755, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7830.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

On March 2, 1994, we published in the **Federal Register** (59 FR 9941–9944, Docket No. 93–173–1) a proposal to amend the regulations by adding Austria to the list in § 94.1(a)(2) of countries declared free of rinderpest and FMD and to the list in § 94.1(d) of countries from which the importation into the United States of llamas and alpacas is restricted. In that document, we also proposed to add Austria to the list in § 94.11(a) of countries that, although declared free of rinderpest, FMD, and SVD, are subject to special restrictions on the importation of their meat and other animal products into the United States. We further proposed to add Austria to the list in § 94.12(a) of countries that have been declared to be free of SVD. We also proposed to make several nonsubstantive editorial changes in the regulations.

We solicited comments concerning our proposal for a 60-day period ending on May 2, 1994. We did not receive any comments. The facts presented in the proposed rule still provide the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule removes the prohibition on the importation into the United States, from Austria, of ruminants and fresh, chilled, and frozen meat from ruminants and relieves restrictions on the importation, from Austria, of milk and milk products from ruminants. We have determined that approximately 2 weeks are needed to ensure that Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This final rule amends the regulations in part 94 by adding Austria to the list of countries declared to be free of rinderpest and FMD and to the list of countries declared free of SVD. This action removes the prohibition on the importation into the United States, from Austria, of ruminants and fresh, chilled, and frozen meat of ruminants, although those importations will remain subject to certain restrictions. This revision also relieves restrictions on the importation, from Austria, of milk and milk products of ruminants.

Based on available information, the Department does not anticipate a major increase in exports of ruminants and fresh, chilled, or frozen meat of ruminants from Austria into the United States as a result of this final rule.

The value of total U.S. imports of cattle in 1992 was $1.24 billion, and the value of total U.S. imports of sheep in 1992 was about $2.0 million. The United States did not import any cattle or sheep from Austria during 1992. In fact, with the exception of a small number of cattle imported from the former Czechoslovakia, no cattle or sheep were imported into the United States from any country in Europe during 1992 (USDA, Economic Research Service [ERS], "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Clearly, Europe is not a source of ruminants for the United States, and it is unlikely that declaring Austria free of rinderpest and FMD will have any effect on the existing trade patterns.

Due to current APHIS restrictions, the United States does not import any uncooked meat or meat products from Austria. Total U.S. meat production in 1991 (excluding pork) was just under 10.7 million metric tons, while Austrian meat production in 1991 reached approximately 230,000 metric tons, about 2 percent of the U.S. total (USDA, National Agricultural Statistics Service, "Agricultural Statistics, 1992," 1992). Therefore, even if Austria exports a significant portion of its meat production exclusively to the United States, which is unlikely, the effect of those exports on U.S. domestic prices or supplies will be negligible.

As with the ruminants and meat products discussed above, the Department does not anticipate a major increase in exports of milk and milk products from Austria into the United States as a result of this final rule. The importation into the United States of all dairy products, except for casein and other caseinates, is restricted by quotas. Although the importation of casein into the United States is not regulated by quotas, world prices of casein are competitively set. The United States does not produce casein, but does import more than half of the casein produced in the world. The regulations currently allow casein and other caseinates to be imported into the United States from countries where rinderpest or FMD exists if the importer has applied for and obtained written permission from the Administrator. The United States did not import any casein from Austria in 1992 (USDA, ERS, "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Declaring Austria free of rinderpest and FMD, thus removing the requirement for written permission from the Administrator, is not expected to have any effect on the amount of casein imported into the United States from Austria because the restrictions we are removing do not substantially impede imports.

The importation of bovine semen and cattle embryos from countries affected with rinderpest and FMD is restricted under 9 CFR part 98. Although this final rule removes certain restrictions on the importation of bovine semen and cattle embryos from Austria, the economic effect of this rule on the bovine semen and cattle embryo industries is also expected to be minimal. The United States is a net exporter of bovine semen and cattle embryos. In 1992, the value of U.S. bovine semen and cattle embryo imports was $4 million and $195,000, respectively, while the value of U.S. bovine semen and cattle embryo exports was $49.3 million and $6.8 million, respectively (USDA, ERS, "Foreign Agricultural Trade of the United States: Calendar Year 1992 Supplement," 1992). Although it is likely that a few U.S. importers will be interested in importing bovine semen or cattle embryos from Austria, the amount of each that might be imported will be minimal when compared to U.S. domestic production.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding "Austria," immediately after "Australia,".

3. In § 94.1, paragraph (d)(1) is amended by removing "September 28, 1990;" and by adding "September 28, 1990: Austria," in its place.

§ 94.11 [Amended]

4. In § 94.11, paragraph (a), the first sentence is amended by adding "Austria," immediately before "The Bahamas,".

§ 94.12 [Amended]

5. In § 94.12, paragraph (a), the first sentence is amended by adding "Austria," immediately after "Australia,".

§ 94.13 [Amended]

6. In § 94.13, in the introductory text, the first sentence is amended by adding "Austria," immediately before "The Bahamas,"; by adding a comma immediately after "Yugoslavia"; by removing the words "§ 94.12(a); are countries which" and adding the words "§ 94.12(a), are countries that" in their place; and by removing the words "or which have a common border with such countries; or which" and adding the words "have a common border with such countries; or" in their place.

Done in Washington, DC, this 25th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-13291 Filed 5-31-94; 8:45 am]

BILLING CODE 3410-34-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

RIN 3150-AE77

Uranium Mill Tailings Regulations; Conforming NRC Requirements to EPA Standards

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing the disposal of uranium mill tailings. These changes conform existing NRC regulations to regulations published by the Environmental Protection Agency (EPA). The conforming amendments are intended to clarify the existing rules by ensuring timely emplacement of the final radon barrier and by requiring appropriate verification of the radon flux through that barrier. This action is related to another action by EPA to rescind its National Emissions Standard for Hazardous Air Pollutants (NESHAPs) for radon emissions from the licensed disposal of uranium mill tailings at non-operational sites.

EFFECTIVE DATE: This regulation becomes effective on July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Catherine R. Mattsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6264.

SUPPLEMENTARY INFORMATION:

Background

On April 29, 1983 (48 FR 19584), EPA proposed general environmental standards for uranium and thorium mill tailings sites licensed by NRC or one of its Agreement States. Final standards were published on September 30, 1983 (48 FR 45926), and codified in 40 CFR part 192, subparts D and E. On October 16, 1985 (50 FR 41852), NRC published amendments to 10 CFR part 40 to conform its rules to EPA's general standards in 40 CFR part 192, as it affected matters other than ground water protection. Both NRC and EPA regulations included a design standard requiring that the tailings or wastes from mill operations be covered to provide reasonable assurance that radon released to the atmosphere from the tailings or wastes will not exceed an average of 20 picocuries per square meter per second (pCi/m²s) for 1000 years, to the extent reasonably achievable, and in any case, for 200 years.

Neither the EPA standards of 1983 nor NRC's conforming standards of 1985 established compliance schedules to ensure that the tailings piles would be expeditiously closed and the 20 pCi/m²s standard would be met within a reasonable period of time. Criterion 6 of appendix A to part 40 was initially only a design standard and did not require verification that the radon releases meet this "flux standard."

In response to the separate requirements of the Clean Air Act (CAA), EPA promulgated additional standards in 40 CFR part 61 (subpart T for non-operational sites) to ensure that the piles would be closed in a timely manner (December 15, 1989; 54 FR 51654). This regulation applies only to uranium mill tailings and requires, in addition to the flux standard of 20 pCi/m²s, that once a uranium mill tailings pile or impoundment ceases to be operational, it must be closed and brought into compliance with the standard within two years of the effective date of the standard (by December 15, 1991) or within two years of the day it ceases to be operational, whichever is later. If it were not physically possible for the mill owner or operator to complete disposal within that time, EPA contemplated a negotiated compliance agreement with the mill owner or operator pursuant to EPA's enforcement authority in order to assure that disposal would be completed as quickly as possible. Subpart T of 40 CFR part 61 also requires testing for all piles within the facility to demonstrate compliance with the emission limit and specifies reporting and recordkeeping associated with this demonstration.

Subpart T was challenged by a number of parties including the American Mining Congress (AMC), the Environmental Defense Fund (EDF), and the Natural Resources Defense Council (NRDC). In addition, AMC, the NRC, and others filed an administrative petition for reconsideration of subpart T. Among the concerns of these parties was the argument that the overlap between EPA's subpart D of 40 CFR part 192 (based on the Uranium Mill Tailings Radiation Control Act (UMTRCA)) and subpart T of 40 CFR part 61 (based on the CAA) resulted in regulations that are unnecessarily burdensome and duplicative. Among other things, the industry also alleged that subpart T was unlawful because it was physically impossible to come into compliance with subpart T in the time required. In November 1990, Congress amended the CAA by including a new provision, section 112(d)(9). This provision authorized EPA to decline to regulate radionuclide emissions from NRC licensees under the CAA if EPA found, by rule, after consultation with NRC, that the regulatory program implemented by NRC protects the public health with an ample margin of safety.

In July 1991, EPA, NRC, and the affected Agreement States began discussions concerning the dual regulatory programs established under UMTRCA and the CAA. In October 1991, those discussions resulted in a Memorandum of Understanding (MOU) between EPA, NRC, and the affected Agreement States. The MOU outlines the steps each party would take to both eliminate regulatory redundancy and to ensure uranium mill tailings piles are closed as expeditiously as practicable. (The MOU was published by EPA on October 25, 1991 (56 FR 55434) as part of a proposal to stay subpart T.) The primary purpose of the MOU is to ensure that the owners and operators of all disposal sites that have ceased operation and those owners and operators of sites that will cease operation in the future effect emplacement of a final earthen cover to limit radon emissions to a flux of no more than 20 pCi/m²s as expeditiously as practicable considering technological feasibility. The MOU presents a goal that all current disposal sites be closed and in compliance with the radon emission standard by the end of 1997 or within seven years of the date on which existing operations cease and standby sites enter disposal status. The attachment to the MOU lists specific target dates for completing emplacement of final earthen covers to limit radon emissions from non-operational tailings impoundments. These target dates were

based on consultations with the licensed mill operators.

On December 31, 1991, the EPA published three **Federal Register** notices: a final rule to stay the effectiveness of 40 CFR part 61, subpart T, as it applies to owners and operators of uranium mill tailings disposal sites licensed by the NRC or an Agreement State (56 FR 67537); a proposed rule to rescind 40 CFR part 61, subpart T, as it applies to uranium mill tailings disposal sites licensed by the NRC or an Agreement State (56 FR 67561); and an advance notice of proposed rulemaking to amend 40 CFR part 192, subpart D, to require that site closure occur as expeditiously as practicable considering technological feasibility and to add a demonstration of compliance with the design standard for radon releases (56 FR 67569). The stay of effectiveness of subpart T is to remain in effect until EPA takes final action to rescind subpart T and amend 40 CFR part 192, subpart D, to ensure that the remaining rules are as protective of the public health with an ample margin of safety as implementation of subpart T, or until June 30, 1994. If EPA fails to complete these rulemakings by that date, the stay will expire and the requirements of subpart T will become effective.

The stay of effectiveness of subpart T was also challenged. Discussions continued between EPA, the litigants, and the NRC. In February 1993, final agreement was reached to settle the pending litigation and the administrative proceeding, avoid potential future litigation, and otherwise agree to a consensus approach to regulation of licensed non-operational uranium mill tailings disposal sites. EPA announced the settlement agreement in a notice of April 1, 1993 (58 FR 17230). The NRC was not a signatory to this agreement but agreed in principle with the settlement agreement. The settlement agreement further defined steps for implementing the MOU. It called for the NRC to amend its regulations in appendix A of part 40 to be substantially consistent with a specific regulatory approach described in the settlement agreement. It also described actions to be taken by the parties to the agreement which were intended to implement the MOU and eliminate further litigation with respect to subpart T.

On June 8, 1993 (58 FR 32174), the EPA proposed minor amendments to 40 CFR part 192, subpart D, to ensure timely emplacement of the final radon barrier and to require monitoring to verify radon flux levels (a one-time verification). In that notice, the EPA stated its tentative conclusion that if those amendments to 40 CFR part 192, subpart D, were properly implemented by NRC and the Agreement States to ensure specific, enforceable closure schedules and radon level monitoring, the NRC's regulatory program for non-operational uranium mill tailings piles would protect the public health with an ample margin of safety. The EPA also noted its intent to publish a proposed finding for public comment on whether the NRC program protects public health with an ample margin of safety before taking final action on rescission of 40 CFR part 61, subpart T.

On November 3, 1993 (58 FR 58657), the NRC published a proposed revision to appendix A of part 40 intended to conform to EPA's proposed revisions to 40 CFR part 192, subpart D. On November 15, 1993 (58 FR 60340), the EPA published a final effective rule amending 40 CFR part 192, subpart D. This final amendment to appendix A of 10 CFR part 40 must conform to 40 CFR part 192, subpart D, as amended on November 15, 1993. Changes in this final rule that relate to changes made in EPA's final rule are noted in the detailed discussion.

On February 7, 1994 (59 FR 5674), the EPA published a supplement to its proposed rescission of subpart T as it applies to owners and operators of uranium mill tailings disposal sites licensed by the NRC or an Agreement State. That action was also taken in accordance with the settlement agreement. That notice did not present a change from EPA's plans, strategies, or findings as discussed in the actions pertaining to the revision of 40 CFR part 192, subpart D. EPA invited comments on the proposed rescission of subpart T and on its determination that the NRC regulatory program protects public health and safety with an ample margin. It does not specifically address NRC actions except that EPA has again stated that this conforming rule is necessary to support the rescission of 40 CFR part 61, subpart T.

EPA's revision to 40 CFR part 192 is not intended to change EPA's original rationale or scheme set forth in its 1983 rule. The EPA rule "seeks to clarify and supplement that scheme in a manner that will better support its original intent." EPA's final rule and this NRC conforming rule require that when a uranium mill becomes non-operational, the final barrier to control radon will be emplaced as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). Setting interim dates for achieving milestones towards emplacement will support and better assure this progress. Also, post-emplacement determination of radon flux will serve as confirmation that the design of the cover is working as intended. EPA's June 8, 1993 (58 FR 32174), notice of proposed rulemaking and its November 15, 1993 (58 FR 60340), notice of final rulemaking provide detailed discussion of the rationale for the action and the legislative and regulatory history leading to its proposal.

Coordination With Affected NRC Agreement States

The affected Agreement States of Colorado, Texas, and Washington, as well as the State of Illinois, were provided a draft of the proposed rule before its promulgation. These States' comments and the Commission's responses were discussed in the notice of proposed rulemaking of November 3, 1993 (58 FR 58657). Copies of that notice were sent to the affected States. One State submitted comments, which are addressed below along with the other comments received.

Issue of Compatibility With Agreement States

The Commission has determined that these changes are a Division 2 matter of compatibility. Under Division 2, States must adopt the provisions of an NRC rule but can adopt more stringent provisions. A State may not adopt less stringent ones. This designation (Division 2) is compatible with section 274o of the Atomic Energy Act of 1954, as amended (AEA).

Description of the Rule

Section 84a(2) of the AEA requires the Commission to conform its regulations governing uranium mill tailings to applicable EPA requirements and standards. Based on this requirement and the plans and schedules related to the rescission discussed in this document, the NRC proposed to amend appendix A of 10 CFR part 40 to conform to EPA proposed amendments to 40 CFR part 192, subpart D, concerning non-operational, NRC or Agreement State licensed mill tailings sites. Criterion 6 of appendix A to part 40 requires that an earthen cover (or approved alternative cover) be placed over uranium mill tailings to control the release of radon-222 at the end of milling operations. This cover is to be designed to provide reasonable assurance that releases of radon will not exceed an average of 20 pCi/m^{2}s and that the barrier will be effective in controlling radon releases to this level for 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years. The design for satisfying the

longevity requirement includes features for erosion control such as the placement of riprap over the earthen cover itself. (Criterion 6 is also applicable to thorium mill tailings. These amendments to Criterion 6 apply to uranium mill tailings only.)

This rule, both as proposed and as now being adopted, amends Criterion 6, adds a new Criterion 6A, and adds to the definitions contained in the Introduction to appendix A to part 40.

Paragraphs (1), (5), (6), and (7) of revised Criterion 6 contain the previously existing requirements of Criterion 6. These provisions were not the subject of or affected by this rulemaking. These preexisting portions of Criterion 6 appear in this notice only for the purpose of numbering the paragraphs for ease of reference to specific requirements contained within the criterion. However, minor conforming revisions, as proposed, have been made to paragraph (1) of Criterion 6 and its footnotes for clarity and consistency with the new requirements.

This rule adds a requirement to Criterion 6 for a one-time verification that the barrier, as constructed, is effective in controlling releases of radon from uranium byproduct material to levels no greater than 20 pCi/m²s when averaged over the pile or impoundment. This provision, which appears at paragraph (2), also specifies EPA method 115, as described in 40 CFR part 61, appendix B, as a standard for adequate demonstration of compliance. As is required by the recent amendments to 40 CFR part 192, subpart D, the licensee must use this method or another approved by the NRC as being at least as effective in demonstrating the effectiveness of the final radon barrier. A copy of 40 CFR part 61, appendix B, has been made available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Because of practical reasons, the verification of radon flux levels must take place after emplacement of the final radon barrier but before completion of erosion protection features. In order for the results of the verification to remain valid, erosion protection features must be completed before significant degradation of the earthen barrier occurs. The NRC will consider this in a final determination of compliance with Criterion 6. The NRC could require, among other things, repetition of part or all of the verification procedures on a case-by-case basis if significant delay occurs before completion of erosion protection features.

Paragraph (3) of revised Criterion 6 adds a requirement that, if the reclamation plan calls for phased emplacement of the final radon barrier, the verification of radon flux be performed on each portion of the pile or impoundment as the final radon barrier is completed.

Paragraph (4) specifies the reporting and recordkeeping to be made in connection with this demonstration of effectiveness of the final radon barrier. A one-time report that details the method of verification is to be made within 90 days of completion of the final determination of radon flux levels. Records will be required to be kept until license termination documenting the source of input parameters and the results of all measurements on which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. These reporting and recordkeeping requirements are comparable to the EPA requirements in 40 CFR part 61, subpart T.

The Commission notes that the proper implementation of the design standard of paragraph (1) of Criterion 6 is of primary importance in the control of radon releases. The addition of the requirement for verification of radon flux levels does not replace or detract from the importance of the radon attenuation tailings cover design standard.

The new Criterion 6A addresses the timeliness of achieving radon emission control in the case of uranium mill tailings. Criterion 6A requires that the emplacement of the earthen cover (or approved alternative cover) be carried out in accordance with a written, Commission-approved, reclamation plan that includes enforceable dates for the completion of key reclamation milestones. This plan will be incorporated as a condition of the individual license. This plan must provide for the completion of the final radon barrier as expeditiously as practicable considering technological feasibility after the pile or impoundment ceases operation. This timeliness requirement has the same goals for completing the final radon barrier as were in the MOU discussed above. In addition, erosion protection features must also be completed in a timely manner in accordance with the Commission-approved reclamation plan.

For the purposes of Criterion 6A, definitions are being added to the Introduction of appendix A to part 40 (in alphabetical order with the preexisting definitions) for: *as expeditiously as practicable considering technological feasibility, available technology, factors beyond the control of the licensee, final radon barrier, milestone, operation,* and *reclamation plan.* These definitions are substantively the same as contained in the EPA's recent amendment to 40 CFR part 192, subpart D. However, *reclamation plan* covers a broader range of activities than required in EPA's *tailings closure plan (radon).* Reclamation of the tailings in accordance with appendix A to part 40 includes activities also occurring after the end of operation that are beyond those involved in the control of radon releases, such as groundwater remediation. Thus, it is appropriate and efficient for planning if these activities are addressed in a single document. (This rule would also allow the reclamation plan to be incorporated into the pre-existing closure plan, also required by appendix A, which includes other activities associated with decommissioning of the mill.)

A definition of *final radon barrier* was also included in the Commission's proposed rule to facilitate the drafting of clear regulatory text and to eliminate any ambiguity with respect to compliance with the 20 pCi/m²s "flux standard" after completion of the final earthen barrier and not as a result of any temporary conditions or interim measures. This definition excludes the erosion protection features which were not a subject of EPA's amendment to 40 CFR part 192. The EPA's proposed rule had not provided a definition of this term or comparable term. However, in its final rule, the EPA added a definition of the term *permanent radon barrier,* also to reduce ambiguity. The EPA's definition is substantively the same as the NRC definition of *final radon barrier.* The EPA used the word "permanent" in keeping with the terminology of the settlement agreement but defined "permanent radon barrier" as "the final radon barrier constructed to achieve compliance with, including attainment of, the limit on releases of radon-222 in § 192.32(b)(1)(ii)." Both definitions refer to comparable standards requiring control of radon releases to levels not exceeding 20 pCi/m²s after closure. This final NRC rule continues to use the word "final" as proposed, because it is more appropriate. The word "final" more accurately describes the last earthen cover over the tailings pile without the erosion protection features. The barrier would not provide permanent protection without the erosion protection features. Even after these features are completed, the applicable long-term design standard in paragraph

(1) of Criterion 6 is "effective for 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years." Although not intended by EPA, the term "permanent" could be interpreted to imply "forever."

Factors beyond the control of the licensee are defined as factors proximately causing delay in meeting the schedule in the applicable reclamation plan for the timely emplacement of the final radon barrier notwithstanding the good faith efforts of the licensee to complete the barrier. Consistent with the final version of EPA's rule, the following description of possible factors beyond the control of the licensee has been added to the definition in this final rule: these factors may include, but are not limited to:

Physical conditions at the site;

Inclement weather or climatic conditions;

An act of God;

An act of war;

A judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance;

Labor disturbances;

Any modifications, cessation, or delay ordered by State, Federal, or local agencies;

Delays beyond the time reasonably required in obtaining necessary government permits, licenses, approvals, or consent for activities described in the reclamation plan proposed by the licensee that result from agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the reclamation plan; and

An act or omission of any third party over whom the licensee has no control.

In the definition of *available technology*, the phrase "and provided there is reasonable progress toward emplacement of a permanent radon barrier" was not included in the Commission's proposed rule as it seemed inappropriate within the definition and the concept is incorporated into the standard itself, i.e., Criterion 6A. This phrase has been included in the final definition with the word "final" in place of "permanent" in keeping with the terminology used in this rule. A parenthetical with illustrative examples of grossly excessive costs has also been added consistent with EPA's final amendments.

The definitions for *as expeditiously as practicable considering technological feasibility* and *reclamation plan* have been specifically identified as applying to only Criterion 6A to prevent any potential misapplication. This has not been done in the case of the other definitions because either the terms are not used elsewhere in appendix A or are used consistently with the definitions being added.

This rule goes beyond EPA's rule by requiring that the erosion protection barriers (or other features for longevity) be completed in a timely manner. However, the rule does not require that enforceable dates be established for completion of erosion protection as a condition of license. (The key reclamation activities or "milestones" for which enforceable dates are to be established are the same as in EPA's rule.) The reason for this difference is so that the NRC can assure that erosion protection is completed before the barrier could degrade significantly while allowing more flexibility in this regard than for the "key reclamation milestones." Allowing significant degradation of the cover before completion of other aspects of the design could violate the design basis.

As a result of the MOU, most affected licensees (those facilities that were non-operational at the time of the MOU) have voluntarily submitted reclamation plans which include proposed dates for attainment of key reclamation milestones. (Planning for reclamation activities with Commission approval was required by previously existing regulations.) The process of approving those reclamation plans, at least those portions dealing with control of radon emissions, and amending the licenses to make the dates for completion of key reclamation milestones a condition of license is complete with the exception of the Atlas site in Moab, Utah. (In this case, license amendment has been delayed pending resolution of issues raised when the action was noticed in the **Federal Register**.) These impoundments are in the process of being reclaimed with varying degrees of completion. Other affected NRC licensees include one whose impoundment has ceased operation since the MOU and who is in the process of preparing a reclamation plan, and four with operational impoundments who will be affected at the time the impoundments cease to be operational.

The considerations made in these recent licensing actions have been consistent with those reflected in this rule, i.e., paragraph (1) of Criterion 6A has essentially been implemented prior to promulgation as a result of the MOU and the settlement agreement and in anticipation of the amendments to 40 CFR part 192 and this rulemaking. Thus, the deadlines for completion of milestones established in licenses will not need to be reconsidered as a result of this rule. Also, the actions taken since the MOU in the case of the Atlas site in Moab, Utah are consistent with this rulemaking. The licensee has submitted proposed revisions to its reclamation plans. The licensee has also supplied further information and proposed modifications to address concerns that have been raised. Notices of proposed amendments to the license to provide for public participation have been published. The most recent of these was published on April 7, 1994 (58 FR 16665). Delays in the schedule for radon barrier emplacement are as a result of difficulties in resolving technical issues related to the adequacy of plans for erosion protection and groundwater protection and the consideration of alternatives under the National Environmental Policy Act. Thus, delays result from a combination of "the need for consistency with mandatory requirements of other regulatory programs" and "factors beyond the control of the licensee." This case is primarily an example of factor number (8) in the definition of *factors beyond the control of the licensee* concerning delays in obtaining necessary approvals. The issues of concern in the approval of this revised reclamation plan are yet to be resolved and further delays are possible. However, no new issues with regard to the scheduling of final radon barrier emplacement are added as a result of this rule. The license amendment process and the approval of the reclamation plans will not be adversely affected. The NRC staff is continuing to provide timely attention to the resolution of this case.

Paragraph (2) of Criterion 6A adds specific criteria for certain circumstances under which the NRC may extend the time allowed for completion of key milestones once enforceable dates have been established. An opportunity for public participation will be provided in a decision to extend the time allowed in these cases. The Commission may approve an extension of the schedule for meeting milestones if it is demonstrated that radon emissions do not exceed 20 pCi/m^2s averaged over the entire impoundment. The intent of this provision is that, if the radon release rates are as low as will be required after closure, there is no need

for complex justifications for delaying completion of reclamation. However, the Commission may not necessarily extend deadlines for completion of milestones indefinitely on this basis alone. In addition, the Commission may approve an extension of the final compliance date for completion of the final radon barrier based upon cost if the Commission finds that the licensee is making good faith efforts to emplace the final radon barrier, that the delay is consistent with the definition of *available technology*, and that the radon releases caused by the delay will not result in a significant incremental risk to the public health. If the basis for approving a delay is that the radon levels do not exceed 20 pCi/m²s, verification of radon levels will be required annually. Any other reconsideration of deadlines once established as a result of changing circumstances would be evaluated under paragraph (1) of Criterion 6A giving consideration to all factors relevant to the "as expeditiously as practicable considering technological feasibility" standard.

Paragraph (3) of Criterion 6A, as proposed, was to allow for the continued acceptance of uranium byproduct material or such materials that are similar in physical, chemical, and radiological characteristics to the uranium mill tailings and associated wastes in the pile or impoundment, from other sources, for disposal into a portion of the impoundment after the end of operation but during closure activities. This authorization was to be made only after providing an opportunity for public participation. This paragraph was intended to conform with proposed 40 CFR 192.32(a)(3)(iii). In the context of appendix A, "during closure activities" could include the period after emplacement of the final radon barrier. In this circumstance, the Commission may except completion of reclamation activities for a small portion of the impoundment from the deadlines established in the license. The proposed rule specified that the verification requirements for radon releases may still be satisfied in this case if the Commission finds that the impoundment will continue to achieve a level of radon releases not exceeding 20 pCi/m²s averaged over the entire impoundment. However, reclamation of the remaining disposal area, as appropriate, would be required in a timely manner once the waste disposal operations cease.

This paragraph has been somewhat revised in the final rule consistent with revisions made in EPA's final rule; these provisions now appear at 40 CFR 192.32(a)(3) (iv) and (v). Both final rules are more consistent with the settlement agreement in this regard. The revisions are (1) that only byproduct material, not "similar" material, will be approved for disposal after the final radon barrier is complete except for the continuing disposal area and the verification of radon flux levels has been made, and (2) that public participation is specifically to be provided for only in the case of continued disposal after radon flux verification.

The final rule has also been modified by changing the words "as expeditiously as practicable" in the last sentence of this paragraph to "in a timely manner" to avoid the unintended application of the definition of the term "as expeditiously as practicable considering technological feasibility" to activities beyond the emplacement of the final radon barrier. Additional clarifying language has also been added to this paragraph.

Note, as discussed in EPA's statements of consideration for its amendment of 40 CFR part 192 (at 58 FR 32183; June 8, 1993 and reiterated at 58 FR 60354; November 15, 1993), the reclamation of evaporation ponds may be dealt with separately from meeting the expeditious radon cover requirements if deemed appropriate by the Commission or the regulating Agreement State. This may be the case whether or not the evaporation pond area is being used for continued disposal of byproduct material.

The opportunities for public participation specified in Criterion 6A are in keeping with the MOU and the settlement agreement, and will be made through a notice in the **Federal Register** providing an opportunity for public comment on the proposed license amendment. This notice will also provide the opportunity to request an informal hearing in accordance with the Commission's regulations in 10 CFR part 2, subpart L.

Analysis of Comments

In response to the proposed rule, the Commission received comments from seven organizations including one State regulatory agency, the Environmental Protection Agency, and five industry organizations. Copies of the comments may be examined and copied for a fee at the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC. The following discussion summarizes and responds to the comments.

General: Need and Basis for Rule

Comment. The commenters were generally in favor of the proposed rule. However, most had some suggestions for modifications. Many of these proposed modifications reflected a desire for stricter adherence to the words of the settlement agreement or to EPA's final rule. One commenter said that it understood the proposal to be consistent with the terms that industry litigants accepted in the related EPA proceedings. The American Mining Congress (AMC) and the Atlantic Richfield Company (ARCO), which incorporated all of the AMC comments by reference in its comments, specifically supported the rule for the purpose of implementing the settlement agreement and in order that the "duplicative" Clean Air Act requirements in 40 CFR part 61, subpart T, would be rescinded. AMC and ARCO contended that the rule was not needed to protect public health with the ample margin of safety required as a basis for rescinding subpart T, but that it would strengthen existing protection. Specifically, it was suggested that § 40.63 gives NRC the ability to provide post-closure testing; that § 40.42(c)(2)(i), (iii), and (iv) can provide for timely reclamation of the tailings; that proper milestones have been added to licenses under the existing regulatory program; and that EPA has never issued a finding of unacceptable risk. In addition, AMC provided extensive background and support for rescission of subpart T and elimination of dual regulation.

Response. The Commission has stated and continues to believe that its program provides an adequate degree of protection of the public health and safety but that this rule provides greater assurance that the final radon barrier will be completed in a timely manner and in accordance with the design standard. The Commission disagrees with certain statements made by commenters to support their contention that this rule was not necessary to support the rescission of subpart T. With regard to § 40.63 and post-closure testing, because footnote 1 to Criterion 6 specifically indicated that no radon monitoring was required, the Commission would not have considered it appropriate to use § 40.63 to require post-closure testing to verify that radon flux levels do not exceed 20 pCi/m ²s. It was also suggested that § 40.42 adequately addresses the timeliness of tailings reclamation. Although decommissioning normally includes cleanup of a site, appendix A provides the detailed closure requirements for mills in which the reclamation of tailings is covered as a separate activity and, thus, is an exception to the general requirements for decommissioning. This is a result of the unique treatment of tailings under UMTRCA, which provides for the ultimate custodial care of tailings by the Federal government rather than a return to unrestricted use. The timeliness statement in § 40.42(c)(2)(iv) is interpreted as applying to the decommissioning of the mill not to reclamation of the tailings. The background materials submitted by AMC have been reviewed to assure that there are no gaps in the information previously available to the Commission in its deliberations.

As a general response concerning the use of the exact words of the settlement agreement and the EPA regulations, the Commission notes that it is required to "conform" to 40 CFR part 192 by section 84a(2) of the AEA and has agreed in principle to, but was not a party to, the settlement agreement. In past conforming changes, conformance has not been viewed as requiring identical wording and flexibility has been used for clarity and to account for different formats and contents of rules. Thus, the Commission is not bound to the exact words in either case. Some differences are necessary to avoid ambiguity or confusion. For example, with regard to this rulemaking, the scope of both the settlement agreement and the EPA amendments were limited to the completion of the final radon barrier and did not extend to the longevity aspect of radon control nor to other aspects of reclamation. The terms "reclamation" and "closure" have a broader meaning in appendix A than as used in the settlement agreement or in EPA's amendments to 40 CFR part 192. It would not be practical to limit the use of these terms for the purpose of these specific amendments to appendix A. There are other terms that must also be used carefully because of their use in NRC regulations or by the regulated industry. Beyond what was considered necessary to avoid ambiguity and to provide appropriate expansion beyond the scope of EPA's amendments, the Commission has attempted to be consistent with the words of the settlement agreement and 40 CFR part 192.

Definitions

Comment. The four industry commenters who suggested that changes were needed all believed it was important that the definitions of *factors beyond the control of the licensee* and *available technology* be completely consistent with the settlement agreement and the final amendments to 40 CFR part 192, subpart D, and specifically, to include all the illustrative examples within the definition, not just in the statement of considerations. Some also suggested that the words "complete the barrier" in the definition of *factors beyond the control of the licensee* be changed to "achieve compliance." They were concerned that the intent of the parties to the settlement agreement would not be carried out in the interpretation of these terms in the future. Some specifically noted the loss of personnel familiar with the issues that will accompany the close of the NRC uranium recovery field office (URFO). The EPA did not suggest that including all of the illustrative text was necessary for conformance but suggested it would be best to include the phrase "provided there is reasonable progress toward emplacement of the final radon barrier" (from 40 CFR 192.31(m)) in NRC's definition of *available technology*. The EPA also suggested adding "in compliance with Criterion 6A-(1)" after "complete the barrier" in the definition of *factors beyond the control of the licensee* for clarity and to assure proper implementation of subpart D of 40 CFR part 192.

Response. Explanations concerning the Commission's intent regarding its interpretation of its regulations that appear in statements of consideration stand as a record of the Commission's intent. However, inclusion within the regulatory text makes the illustrative examples more readily available so that questions of interpretation are less likely to arise. Consistent with EPA's final amendments to 40 CFR part 192, all of the illustrative examples have been added in the final definitions. The additional text suggested by EPA has also been included in these definitions.

Comment. Most of the industry commenters also wanted the definition of *milestone* to be worded exactly as in 40 CFR part 192. The concern was primarily that milestones not be required to be established for actions beyond meeting the radon "flux standard." Some of the commenters also suggested that the use in the preamble of varying modifiers, "key," "interim," and "reclamation," to "milestones" and "milestone activities," which are used interchangeably, was confusing.

Response. The definition of *milestone* has not been changed because the Commission believes it is less confusing in that it is in better agreement with normal usage. There is no substantive difference in the standard as a result of this difference and it gives the Commission the flexibility to use the term generically. The concerns expressed are addressed alternatively through minor revisions to the definition of *reclamation plan* and paragraph (2) of Criterion 6A to further clarify that no deadlines are required to be established in the licenses beyond completing the final radon barrier as a result of this rulemaking and that any other schedules established in a license do not come under the specific provisions of paragraph (2) of Criterion 6A. The term "milestone activities" has been avoided in this final rule as it is redundant given this definition. The terms "key," "interim," and "reclamation" are used in accordance with their dictionary definitions and require no further definition. As is clear from the definition of *reclamation plan*, the term "reclamation" is not limited to radon control measures.

No comments were received concerning the definitions of: *as expeditiously as practicable considering technological feasibility, final radon barrier,* and *operation.*

Criterion 6—Verification of Radon Release Levels

Comment. Some commenters suggested that paragraph (4) of Criterion 6 could be interpreted to require submission of the results of radon measurements after measurements are made on a portion of an impoundment in the case of phased emplacement of the radon barrier. Two commenters suggested that interim reports might be required in a particular case subject to the agreement of the licensee, but objected to the possible interpretation that separate reports be required routinely on each portion. One suggested that it should be clarified that the testing need not be done on each portion as the cover is completed.

Response. Paragraph (3) specifically requires testing to be done on each portion of the impoundment as the cover is completed in the case of phased emplacement. This was made a requirement rather than simply being allowed as in 40 CFR 192.32(b)(4)(ii) because of the requirement in paragraph (2) of this Criterion to conduct testing and analysis prior to placement of erosion protection features and the importance of timeliness in completing erosion protection features. There is, however, no specific time limit established in the regulation for these measurements on the individual portions of the impoundment.

Paragraph (4) requires submittal of a report 90 days after completion of the testing and analysis. Because this verification is of radon flux levels averaged over the impoundment, it is not complete until all testing and analysis is complete for the whole impoundment. Thus, only one report is required, although further testing and

analysis with associated reporting could be required in a particular case if the initial report is not acceptable. Minor editorial changes have been made to further clarify this point. Note, although it is impractical to do so routinely, riprap or other erosion protection barriers can be disturbed in order to take a radon emission measurement if necessary.

Comment. One commenter suggested that paragraph (2) of Criterion 6 should contain details such as are contained in 40 CFR part 61 on the one-time measurement which are intended to assure that conditions under which the flux is measured lead to a reasonable average flux. It was suggested that this would eliminate confusion with footnote 2 that applies to the design criterion. Related to this, some commenters argued for deletion of part of existing footnote 2 regarding average radon emissions being "over a period of at least one year, but a period short compared to 100 years." These commenters were concerned that long-term monitoring could be implied. Also, two commenters said the footnote was contrary to the settlement agreement and the EPA rule. One said specifically that it was inconsistent with language of 40 CFR 192.12(b)(2).

Response. Footnote 2 applies only to the design criterion. Although the new testing and analysis is intended to verify the effectiveness of the radon barrier, it does not need to take place over the period of time specified in footnote 2. However, it should be reasonably representative of long-term radon releases. The details concerning conditions for flux measurements in 40 CFR part 61 are contained in the description of Method 115 in appendix B and address such matters as the weather conditions at the time measurements are performed. Method 115 is specifically identified in this standard as acceptable and, if used, the conditions embodied in the description in appendix B of 40 CFR part 61 would apply. Because Method 115 is also a standard for the adequacy of other verification methods in Criterion 6, alternative methods must be approved by the Commission as being at least as effective as Method 115. Similar considerations to those embodied in Method 115 concerning the representiveness of the measurement results of the long term radon releases will be made in judging alternative methods. Details of conditions for measurement need not be specified in this rule.

Modifying footnote 2 substantively, as was suggested by the commenters, would be outside the scope of this rulemaking. Footnote 2 is consistent with 40 CFR part 192, subpart D, which contains the same footnote (in the comparable design standard, 40 CFR 192.32(b)(1)(ii)). The footnote was not intended to and does not require long-term monitoring. The Commission agrees that long-term monitoring would be contrary to the settlement agreement.

Comment. One commenter argued that the existing requirement to reduce gamma exposure to background levels should be eliminated or applied only at the site boundary. This commenter stated that this requirement appears to be a misinterpretation of the intent of 40 CFR part 192, subpart A. This commenter also said that the radon cover will attenuate gamma radiation to near background levels in most cases; and that in an unusual case, adding to the cover to control gamma exposure levels could be unnecessarily expensive, as access is restricted. The commenter believed that, as a minimum, the Commission should specify a limit based on acceptable risk to the maximum-exposed individual that can be supported by a cost-benefit analysis.

Response. The criterion on gamma exposure levels is not based on 40 CFR part 192 nor any other EPA regulation. It has been in appendix A to part 40 since it was originally added to part 40 on October 3, 1980 (45 FR 65521). This aspect of Criterion 6 is outside the scope of this rulemaking. However, if the cost of meeting any criterion in appendix A is excessive in a specific case due to unique conditions, the licensee may request an alternative approach in accordance with the Introduction to appendix A.

Criterion 6A, Paragraph (1)—Requirement for Timeliness

Comment. Two commenters were concerned that the parenthetical "(including factors beyond the control of the licensee)" was not included in the standard following, "as expeditiously as practicable considering technological feasibility" as in 40 CFR 192.32(a)(3)(i) even though it is contained in the definition of *as expeditiously as practicable considering technological feasibility*. They claimed that this could lead to misinterpretation that the standard deletes this essential concept.

Response. A parenthetical statement noting that the term *as expeditiously as practicable considering technological feasibility* is specifically defined in the Introduction and includes "factors beyond the control of the licensee" has been added.

Comment. Some of the commenters opposed the establishment of separate milestone deadlines for dewatering and recontouring, saying that the settlement agreement and 40 CFR part 192 specify only three required milestones including just one for interim stabilization. Dewatering and recontouring are part of interim stabilization. These commenters said that this was also inconsistent with the practice with existing licenses. The EPA noted that it agreed with NRC's statement in the preamble of its proposed rule that the concept of milestones could not be omitted.

Response. The final rule has been changed to specifically require the establishment of deadlines for only three milestones: Wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and final radon barrier construction. The Commission, however, retains the authority to require the establishment of additional milestones determined to be "key" to the completion of the final radon barrier in an individual case (note the words "but not limited to" in the definition of *reclamation plan*). This is consistent with 40 CFR part 192, subpart D, and with the settlement agreement. The Commission has no intent at this time to change the milestones for which deadlines have already been approved in individual licensing actions.

Comment. The EPA noted that it understands that emplacement of the final radon barrier is a requisite milestone but was concerned that it could be interpreted otherwise, and suggested clarification. The EPA also noted that it understands "deadlines" to mean dates by which actions must be completed and "established as a condition of an individual license" to mean incorporation of a condition into a license by the Commission. However, the EPA was concerned that paragraph (1) of Criterion 6A may be ambiguous and provided specific suggested edits.

Response. Paragraph (1) of Criterion 6A has been modified slightly to address EPA's concerns, although not exactly as suggested. The Commission believes it is clear that completion of the final radon barrier is a requisite milestone, that "deadlines" means dates by which actions must be completed, and that deadlines are to be established on the basis that the barrier is to be completed as expeditiously as practicable considering technological feasibility. The Commission also believes that its regulations are less subject to misinterpretation if there is consistency of style and terminology.

Comment. Two commenters were concerned about the NRC extending the

scope of the timeliness requirement from that of 40 CFR part 192, subpart D, stating that the "as expeditiously as practicable considering technological feasibility" requirement should not be extended to erosion protection. They contended that this is a term of art limited to radon emissions, that EPA used this term to eliminate the cost-balancing standards of the AEA from radon control measures, and that applying it to erosion protection would constrain the use of AEA cost considerations. They also noted that NRC has adequate authority under other aspects of its UMTRCA program to deal with concern for degradation of the barrier and stated that NRC should handle this on a site-specific basis through license amendment.

Response. The final rule has been modified so that the terminology "as expeditiously as practicable considering technological feasibility" is used only for emplacement of the final radon barrier. A general timeliness standard for completing erosion protection features is retained. Thus, it is clear that the licensee must complete these actions in a timely way and that the NRC has the authority to take action if necessary in this regard. However, the restrictive cost considerations specified for the completion of the final radon barrier do not apply to decisions concerning the timeliness of completion of erosion protection features. Instead, the more flexible, general cost considerations of the AEA (Section 84a(1)) apply.

Comment. The same commenters sought clarification of NRC's intent in extending reclamation plans to cover groundwater protection. They asked whether the NRC could prevent licensees from continuing surface reclamation until groundwater issues are resolved, stating that this was not past practice. However, they also wanted the Commission to confirm that groundwater concerns could constitute a legitimate cause for delay.

Response. It is important for all aspects of reclamation to be addressed in one plan so that potential interactions of various activities can be accounted for and that reclamation can be planned for overall efficiency. Nonetheless, all aspects of a reclamation plan would not necessarily be approved at the same time. Past licensing practice has not necessarily required all details of reclamation planning to be in one document; however, approvals of activities have included consideration of impacts to other aspects of reclamation. The NRC would not necessarily prevent licensees from continuing surface reclamation until groundwater issues are resolved. However, the words "the need for consistency with mandatory requirements of other regulatory programs" in the definition of "as expeditiously as practicable considering technological feasibility" make it clear that groundwater concerns could constitute a legitimate cause for delay. Whether or not a groundwater issue would be considered a legitimate cause for delay of radon control measures under paragraph (1) of Criterion 6A would depend on the nature of the interaction of the various reclamation activities in a particular case.

Criterion 6A, Paragraph (2)—Special Criteria for Approval of Delays

Comment. Two commenters stated that paragraph (2) of Criterion 6A does not fully implement the settlement agreement. They stated that the settlement agreement and 40 CFR 192.32(a)(3)(iii) include delay of interim milestones for reason of cost not just the dates for completion of the final radon barrier. These same commenters were concerned that it was not clear from paragraph (2) of Criterion 6A that deadlines for milestones could also be extended because of factors beyond the control of the licensee and also expressed strong agreement with the statement that there is "no need for complex justifications for delaying completion of reclamation" if the licensee demonstrates that the site meets 20 pCi/m^2s prior to final closure. These two commenters also stated that the intent of the settlement agreement is that interim milestones may be changed without meeting 20 pCi/m^2s, if there is no delay in final closure date. On this subject, the EPA specifically supported paragraph (2) of Criterion 6A as drafted. The EPA also specifically confirmed our interpretation of its amendments to 40 CFR part 192 in this regard and clarified that there may be other instances under which NRC may reconsider a date established for completion of a milestone. The EPA also stated in its comments that the alternative interpretation of its proposed amendments suggested in the Commission's preamble to its proposed rule (that meeting the 20 pCi/m^2s "flux standard" might be required in all cases) was incorrect.

Response. The Commission does not agree that the words "or relevant milestone" in section III.2.j of the settlement agreement and 40 CFR 192.32(a)(3)(iii) should be interpreted to mean that these paragraphs address delay of interim milestones for reason of cost. Also, approvals of extensions of interim milestones without meeting 20 pCi/m^2s are not necessarily limited to cases where there is no delay in final closure date.

Paragraph (2) of Criterion 6A and 40 CFR 192.32(a)(3)(ii) and (iii) set forth specific criteria for extensions of deadlines under certain circumstances These provisions do not cover all circumstances under which extensions may be approved. This interpretation was confirmed by EPA in the preamble of its final rule and in its comments submitted on NRC's proposed rule. All other approvals of extensions must be made under paragraph (1) of Criterion 6A through applying all of the concepts involved in the requirement for completion of the final radon barrier "as expeditiously as practicable considering technological feasibility" (including within its definition "factors beyond the control of the licensee"). This was stressed in EPA's final rule notice of November 15, 1993, at 58 FR 60351. In response to a commenter that noted that NRC or an Agreement State may extend the date for emplacement of the radon barrier based on "factors beyond the control of the licensee" as that term is implicit in the definition of "as expeditiously as possible," EPA stated in part that "there is no bar to NRC or an Agreement State reconsidering a prior decision establishing a date for emplacement of the radon barrier that meets the standard of 'as expeditiously as possible.' Such reconsideration could, for example, be based on the existence of factors beyond the control of the licensee, or on a change in any of the various factors that must be considered in establishing a date that meets the 'as expeditiously as practicable' standard of § 192.32(a)(3)(i). However, EPA stresses that such a change in circumstances would not automatically lead to an extension. It would be incumbent on NRC or an Agreement State to evaluate all of the factors relevant under § 192.32(a)(3)(i) before it could change a previously established milestone or date for the emplacement of the final barrier, and any new date would have to meet the standard set out in § 192.32(a)(3)(i)." The comparable standard in this NRC rule is set out in paragraph (1) of Criterion 6A.

Criterion 6A, Paragraph (3)—Continuing Disposal During Closure

Comment. Some commenters noted that Criterion 6A, paragraph 3, as proposed, was inconsistent with the final EPA rule. Some also suggested that it was inconsistent with the settlement agreement, could lead to premature closure, and would require radon monitoring during closure. One

commenter said that "during closure activities" does not include the period after emplacement of the final radon barrier according to the EPA rule and the settlement agreement, and that the intent should be that "once the final radon barrier has been placed over the impoundment, excluding the area receiving byproduct material, the 'closure process' ceases." Two of the commenters specifically agreed with the interpretation that "during closure activities" could include the period after emplacement of the final radon barrier and wanted the NRC to confirm this so that similar materials would still be allowed at that time. These two commenters did not want paragraph (3) of Criterion 6A to require an opportunity for public participation in approving acceptance of byproduct material "during closure." The EPA submitted suggested revisions to make final paragraph (3) of Criterion 6A consistent with the final amendments in 40 CFR 192.32(a)(3)(iv) and (v).

Response. EPA, in its proposed revision of 40 CFR part 192, subpart D, combined the provisions of sections III.2.c (i) and (ii) of the settlement agreement in one paragraph. In so doing, EPA, apparently inadvertently, differed somewhat from the settlement agreement but modified the final rule so that it is now consistent with the settlement agreement. The Commission must conform appendix A to 40 CFR part 192, as adopted, and has thus revised its final rule accordingly. The differences from the proposed rule are that (1) materials similar to byproduct material will not be approved for continued disposal after the verification of radon flux levels and (2) an opportunity for public participation will not specifically be provided in the case of continued disposal during closure prior to this point in time. Note, however, opportunity for public participation exists in any case under 10 CFR part 2, subpart L. The exact words suggested in EPA's comments have not been used but the revisions are substantively the same. The reasons for differing are the same as when the proposed rule was drafted: (1) the term "closure" in appendix A has a broader meaning than the scope of EPA's rule, and (2) the final radon barrier is not absolutely complete while disposal is continuing even though it may be adequate to demonstrate that average radon release levels meet the 20 pCi/m^2s "flux standard."

Miscellaneous comments

Comment. One State commenter strongly recommended that NRC offer guidance (not necessarily in the rule) on paragraph (3) of Criterion 6A on what materials are appropriately similar. The commenter suggested specification of limits to the range of variation of a critical property or concentration or activity.

Response. Guidance on considerations for the approval of disposal of non-11e(2) materials in tailings impoundments was published May 13, 1992 (57 FR 20525). This notice also presented a staff analysis on which the guidance is based and requested public comment to be considered in a decision on whether the guidance should be revised.

Comment. Two commenters stated, for the record, that they agreed with NRC that the implementation details of EPA's 40 CFR part 192, subpart D, are a special case and go beyond "generally applicable standards," and that these provisions should not set a precedent with regard to what constitutes a generally applicable standard. They contended that certain aspects of subpart D exceed EPA's statutory authority.

Response. The Commission noted in the preamble of the proposed rule that the nature of the revisions to 40 CFR part 192, subpart D, were influenced by the settlement agreement, that the settlement agreement included considerable detail concerning the specifics of the regulations that were to be developed, and that apparently as a result of this, 40 CFR part 192, subpart D, includes numerous details of implementation. The Commission also stated its view, which it still holds, that the inclusion of these implementation details is a special case because of the settlement agreement and does not establish any precedent with regard to what constitutes a generally applicable standard. With regard to the question of the limits of EPA's statutory authority, any challenge to EPA's authority to issue the November 15, 1993, final amendments to 40 CFR part 192 is outside the scope of this conforming action.

Comment. The AMC stated that even if the Commission makes this rule a Division 2 matter of compatibility, AMC will return to litigation if an Agreement State adopts more stringent provisions.

Response. UMTRCA provides the States an option for alternative, more stringent standards. The settlement agreement cannot eliminate this option. However, notice for comment and approval by NRC is required and AMC can raise appropriate issues at that time should a State propose more stringent standards. The Division 2 matter of compatibility is maintained.

Comment. The AMC contended that some statements in the preamble to the proposed rule were in error or in need of clarification. Among these contentions were that the summary of bases for AMC's challenge to subpart T implied that the limited bases mentioned were all inclusive.

Response. The primary bases for the various litigants' challenges were mentioned in a brief historical summary that was not presented as a complete background. The EPA's various notices are referenced in the background section of this notice for more details concerning subpart T and the related litigation.

Comment. AMC also stated that NRC had implied that EPA could not rescind subpart T if the planned rulemakings were not completed, arguing that EPA has adequate bases to rescind absent these rulemakings.

Response. NRC did not mean to imply that EPA could not rescind subpart T absent the planned rulemakings. However, EPA had made statements that it would not rescind subpart T unless comparable provisions were added to 40 CFR part 192 and 10 CFR part 40.

Comment. The AMC also stated that the timeliness of decommissioning rule should not have been suggested as in any way relevant and requested that NRC note that Chairman Selin is on record suggesting that a blanket exemption of uranium recovery facilities may make sense.

Response. Final action on the proposed NRC rule to require timeliness in decommissioning (January 13, 1993; 58 FR 4099) would be expected to impact the timing of decommissioning of the mill, not necessarily the timing of the impoundment going from operational status to closure. ("Closure" in appendix A does include both decommissioning of the mill and reclamation of the tailings and/or waste disposal areas.) If subpart T is rescinded, there will be no regulatory requirement for the tailings impoundment to change from operational to non-operational status within any specified time after the mill ceases operation. The definition of "operational" in subpart T would have restricted the continued use of the impoundment for extended periods after the associated mill was decommissioned.

No comments were received on the regulatory analysis or the environmental assessment and finding of no significant impact.

Conclusion

As indicated in the responses to the comments, the Commission has decided

to adopt the rule as proposed with minor modifications, which consist of revisions to conform to the final effective amendments to 40 CFR part 192 and clarifications.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. This final rule requires that enforceable dates be established for certain interim milestones and completion of the final radon barrier on non-operational mill tailings piles through an approved reclamation plan and that a determination of the radon flux levels be made to verify compliance with the existing design standard for the final radon barrier. It is intended to better assure that the final radon barrier is completed in a timely manner and is adequately constructed to comply with the applicable design standard. Thus, it provides an additional assurance that public health and the environment are adequately protected. Because the final rule is not expected to change the basic procedures or construction of the radon barrier, there should be no adverse environmental impacts. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Catherine R. Mattsen, U. S. Nuclear Regulatory Commission, Washington, DC 20555, Phone: (301) 415–6264.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150–0020.

Public reporting burden for this collection of information is estimated to average 156 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0020), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Catherine R. Mattsen, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–6264.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are only 19 NRC uranium mill licensees. Almost all of these mills are owned by large corporations. Although a few of the mills are partly-owned by companies that might qualify as small businesses under the Small Business Administration size standards, the Regulatory Flexibility Act incorporates the definition of small business presented in the Small Business Act. Under this definition, a small business is one that is independently owned and operated and is not dominant in its field. Because these mills are not independently owned, they do not qualify as small entities.

List of Subjects in 10 CFR part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 40.

PART 40—LICENSING OF SOURCE MATERIAL

1. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In appendix A, add the definitions of *as expeditiously as practicable considering technological feasibility, available technology, factors beyond the control of the licensee, final radon barrier, milestone, operation,* and *reclamation plan* to the Introduction in alphabetical order; revise Criterion 6; and add Criterion 6A to read as follows:

Appendix A to Part 40—Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for Their Source Material Content

Introduction

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As expeditiously as practicable considering technological feasibility, for the purposes of Criterion 6A, means as quickly as possible considering: the physical characteristics of the tailings and the site; the limits of *available technology*; the need for consistency with mandatory requirements of other regulatory programs; and *factors beyond the control of the licensee*. The phrase permits consideration of the cost of compliance only to the extent specifically provided for by use of the term *available technology*.

Available technology means technologies and methods for emplacing a final radon barrier on uranium mill tailings piles or impoundments. This term shall not be construed to include extraordinary measures or techniques that would impose costs that are grossly excessive as measured by practice within the industry (or one that is reasonably analogous), (such as, by way of illustration only, unreasonable overtime, staffing, or transportation requirements, etc., considering normal practice in the industry; laser fusion of soils, etc.), provided there is reasonable

progress toward emplacement of the final radon barrier. To determine grossly excessive costs, the relevant baseline against which cost shall be compared is the cost estimate for tailings impoundment closure contained in the licensee's approved reclamation plan, but costs beyond these estimates shall not automatically be considered grossly excessive.

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Factors beyond the control of the licensee means factors proximately causing delay in meeting the schedule in the applicable reclamation plan for the timely emplacement of the final radon barrier notwithstanding the good faith efforts of the licensee to complete the barrier in compliance with paragraph (1) of Criterion 6A. These factors may include, but are not limited to—

(1) Physical conditions at the site;

(2) Inclement weather or climatic conditions;

(3) An act of God;

(4) An act of war;

(5) A judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance;

(6) Labor disturbances;

(7) Any modifications, cessation or delay ordered by State, Federal, or local agencies;

(8) Delays beyond the time reasonably required in obtaining necessary government permits, licenses, approvals, or consent for activities described in the reclamation plan proposed by the licensee that result from agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the reclamation plan; and

(9) An act or omission of any third party over whom the licensee has no control.

Final radon barrier means the earthen cover (or approved alternative cover) over tailings or waste constructed to comply with Criterion 6 of this appendix (excluding erosion protection features).

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Milestone means an action or event that is required to occur by an enforceable date.

* * * * *

Operation means that a uranium or thorium mill tailings pile or impoundment is being used for the continued placement of byproduct material or is in standby status for such placement. A pile or impoundment is in operation from the day that byproduct material is first placed in the pile or impoundment until the day final closure begins.

* * * * *

Reclamation plan, for the purposes of Criterion 6A, means the plan detailing activities to accomplish reclamation of the tailings or waste disposal area in accordance with the technical criteria of this appendix. The reclamation plan must include a schedule for reclamation milestones that are key to the completion of the final radon barrier including as appropriate, but not limited to, wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and final radon barrier construction. (Reclamation of tailings must also be addressed in the closure plan; the detailed reclamation plan may be incorporated into the closure plan.)

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Criterion 6 (1) In disposing of waste byproduct material, licensees shall place an earthen cover (or approved alternative) over tailings or wastes at the end of milling operations and shall close the waste disposal area in accordance with a design [1] which provides reasonable assurance of control of radiological hazards to (i) be effective for 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years, and (ii) limit releases of radon-222 from uranium byproduct materials, and radon-220 from thorium byproduct materials, to the atmosphere so as not to exceed an average [2] release rate of 20 picocuries per square meter per second (pCi/m^{2}s) to the extent practicable throughout the effective design life determined pursuant to (1)(i) of this Criterion. In computing required tailings cover thicknesses, moisture in soils in excess of amounts found normally in similar soils in similar circumstances may not be considered. Direct gamma exposure from the tailings or wastes should be reduced to background levels. The effects of any thin synthetic layer may not be taken into account in determining the calculated radon exhalation level. If non-soil materials are proposed as cover materials, it must be demonstrated that these materials will not crack or degrade by differential settlement, weathering, or other mechanism, over long-term intervals.

(2) As soon as reasonably achievable after emplacement of the final cover to limit releases of radon-222 from uranium byproduct material and prior to placement of erosion protection barriers or other features necessary for long-term control of the tailings, the licensee shall verify through appropriate testing and analysis that the design and construction of the final radon barrier is effective in limiting releases of radon-222 to a level not exceeding 20 pCi/m^{2}s averaged over the entire pile or impoundment using the procedures described in 40 CFR part 61, appendix B, Method 115, or another method of verification approved by the Commission as being at least as effective in demonstrating the effectiveness of the final radon barrier.

(3) When phased emplacement of the final radon barrier is included in the applicable reclamation plan, the verification of radon-222 release rates required in paragraph (2) of this criterion must be conducted for each portion of the pile or impoundment as the final radon barrier for that portion is emplaced.

(4) Within ninety days of the completion of all testing and analysis relevant to the required verification in paragraphs (2) and (3) of this criterion, the uranium mill licensee shall report to the Commission the results detailing the actions taken to verify that levels of release of radon-222 do not exceed 20 pCi/m^{2}s when averaged over the entire pile or impoundment. The licensee shall maintain records until termination of the license documenting the source of input parameters including the results of all measurements on which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. These records shall be kept in a form suitable for transfer to the custodial agency at the time of transfer of the site to DOE or a State for long-term care if requested.

(5) Near surface cover materials (i.e., within the top three meters) may not include waste or rock that contains elevated levels of radium; soils used for near surface cover must be essentially the same, as far as radioactivity is concerned, as that of surrounding surface soils. This is to ensure that surface radon exhalation is not significantly above background because of the cover material itself.

(6) The design requirements in this criterion for longevity and control of radon releases apply to any portion of a licensed and/or disposal site unless such portion contains a concentration of radium in land, averaged over areas of 100 square meters, which, as a result of byproduct material, does not exceed the background level by more than: (i) 5 picocuries per gram (pCi/g) of radium-226, or, in the case of thorium byproduct material, radium-228, averaged over the first 15 centimeters (cm) below the surface, and (ii) 15 pCi/g of radium-226, or, in the case of thorium byproduct material, radium-228, averaged over 15-cm thick layers more than 15 cm below the surface.

(7) The licensee shall also address the nonradiological hazards associated with the wastes in planning and implementing closure. The licensee shall ensure that disposal areas are closed in a manner that minimizes the need for further maintenance. To the extent necessary to prevent threats to human health and the environment, the licensee shall control, minimize, or eliminate post-closure escape of nonradiological hazardous constituents, leachate, contaminated rainwater, or waste decomposition products to the ground or surface waters or to the atmosphere.

Criterion 6A (1) For impoundments containing uranium byproduct materials, the final radon barrier must be completed *as expeditiously as practicable considering technological feasibility* after the pile or impoundment ceases operation in accordance with a written, Commission-approved reclamation plan. (The term *as expeditiously as practicable considering technological feasibility* as specifically

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[1] In the case of thorium byproduct materials, the standard applies only to design. Monitoring for radon emissions from thorium byproduct materials after installation of an appropriately designed cover is not required.

[2] This average applies to the entire surface of each disposal area over a period of a least one year, but a period short compared to 100 years. Radon will come from both byproduct materials and from covering materials. Radon emissions from covering materials should be estimated as part of developing a closure plan for each site. The standard, however, applies only to emissions from byproduct materials to the atmosphere.

defined in the Introduction of this appendix includes factors beyond the control of the licensee.) Deadlines for completion of the final radon barrier and, if applicable, the following interim milestones must be established as a condition of the individual license: windblown tailings retrieval and placement on the pile and interim stabilization (including dewatering or the removal of freestanding liquids and recontouring). The placement of erosion protection barriers or other features necessary for long-term control of the tailings must also be completed in a timely manner in accordance with a written, Commission-approved reclamation plan.

(2) The Commission may approve a licensee's request to extend the time for performance of milestones related to emplacement of the final radon barrier if, after providing an opportunity for public participation, the Commission finds that the licensee has adequately demonstrated in the manner required in paragraph (2) of Criterion 6 that releases of radon-222 do not exceed an average of 20 pCi/m²s. If the delay is approved on the basis that the radon releases do not exceed 20 pCi/m²s, a verification of radon levels, as required by paragraph (2) of Criterion 6, must be made annually during the period of delay. In addition, once the Commission has established the date in the reclamation plan for the milestone for completion of the final radon barrier, the Commission may extend that date based on cost if, after providing an opportunity for public participation, the Commission finds that the licensee is making good faith efforts to emplace the final radon barrier, the delay is consistent with the definition of *available technology*, and the radon releases caused by the delay will not result in a significant incremental risk to the public health.

(3) The Commission may authorize by license amendment, upon licensee request, a portion of the impoundment to accept uranium byproduct material or such materials that are similar in physical, chemical, and radiological characteristics to the uranium mill tailings and associated wastes already in the pile or impoundment, from other sources, during the closure process. No such authorization will be made if it results in a delay or impediment to emplacement of the final radon barrier over the remainder of the impoundment in a manner that will achieve levels of radon-222 releases not exceeding 20 pCi/m²s averaged over the entire impoundment. The verification required in paragraph (2) of Criterion 6 may be completed with a portion of the impoundment being used for further disposal if the Commission makes a final finding that the impoundment will continue to achieve a level of radon-222 releases not exceeding 20 pCi/m²s averaged over the entire impoundment. In this case, after the final radon barrier is complete except for the continuing disposal area, (a) only byproduct material will be authorized for disposal, (b) the disposal will be limited to the specified existing disposal area, and (c) this authorization will only be made after providing opportunity for public participation. Reclamation of the disposal area, as appropriate, must be completed in a timely manner after disposal operations cease in accordance with paragraph (1) of Criterion 6; however, these actions are not required to be complete as part of meeting the deadline for final radon barrier construction.

Dated at Rockville, Maryland, this 24th day of May, 1994.

For the Nuclear Regulatory Commission

John C. Hoyle;

Acting Secretary of the Commission.

[FR Doc. 94–13248 Filed 5–31–94; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Surety Bond Guaranty Assistance Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is adopting as final a size standard for the Surety Bond Guaranty Program of $5.0 million in average annual receipts for firms in the construction and services industries. This size standard is being adopted in order to take into consideration the effect of inflation since 1978 on the current size standard and to expand eligibility for SBA surety guarantees to firms in the construction and services industries above $3.5 million that are experiencing difficulties in obtaining surety bonding in the private market.

DATES: Effective July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Director, Size Standards Staff, Tel: (202) 205–6618.

SUPPLEMENTARY INFORMATION: The SBA has administered a program of contract surety bond guarantee assistance for small businesses since 1971. The SBA guarantee enables participating surety companies to furnish surety bonds on behalf of small contractors that would be unable to obtain bonding on reasonable terms and conditions without an SBA guarantee. The SBA guarantees the surety company against a percentage of loss it may incur under an eligible contractor's bond.

This final rule will increase the surety bond guarantee size standard to $5.0 million in average annual receipts from $3.5 million for firms in the construction and services industries which apply for such guarantees. This adopted size standard is lower than the $6 million size standard the SBA had proposed on August 27, 1993 (58 FR 45300). As stated in the proposed rule, the SBA believes the current $3.5 million size standard, established in 1978 (43 FR 21689), should be increased for three reasons: (1) to account for the effects of inflation since 1978, (2) to bring the surety size standard closer to the size standards established for other program purposes for the construction industries ($7 million for special trades and $17 million for general and heavy construction), and (3) to extend assistance to firms above $3.5 million who otherwise could not obtain surety bonds on reasonable terms and conditions. Further consideration of the proposed size standard by the SBA in light of comments received to the proposed size standard has led to the conclusion that a size standard of $5 million is more appropriate for purposes of the surety bond guaranty program.

The SBA received a total of thirty-eight comments in response to the August 27, 1993 proposed rule. The comments received show approximately half in favor and half opposed to the proposed increase to $6.0 million. Twenty of the thirty-eight comments supported the proposed rule. The affirming comments, fourteen from surety companies and surety associations and six from contractors and contractor associations, agreed that inflation over the past 15 years has reduced the availability of surety bonds for small contractors by not being eligible for an SBA guaranteed surety bond due to their business size. These commenters agreed that the Surety Bond Guaranty size standard should be revised to $6.0 million based on inflation.

The SBA received eighteen comments opposing the proposed increase to $6.0 million in annual receipts. All eighteen comments were from surety companies and surety associations (SBA's partners in the surety bonding process). These comments disagreed with the need for the proposed rule and expressed concern about its impact on the Surety Guaranty Program.

All eighteen of the respondents commenting negatively on the proposed Surety Bond Guaranty size standard disagreed with the Agency position that $6 million in revenues should define a small business in the construction and service industries, and contended that the size standard should remain at the current level of $3.5 million. The commenters argued that, based on a recent study by the National Association of Surety Bond Producers, surety bonds are readily available for small firms with less than $2.0 million in revenues. The commenters emphasized that if the purpose of the SBA surety bond program is to assist small businesses in obtaining bonds, the current market availability of surety bonds is such that

assistance is not necessary. Therefore, they claimed that the SBA need not increase the size standard. Furthermore, several of the comments indicated that 97.4 percent of all construction enterprises meet the existing $3.5 million size standard. These commenters felt that the proposed rule would make the Surety Bond Guaranty size standard so large that it would include large businesses and, therefore, diminish the benefit to small businesses. According to these commenters, this action would defeat the original purpose of support for small contractors.

The SBA is aware that many firms with revenues between $3.5 million and $6 million have no difficulty obtaining bonds. Nonetheless, there exists a segment of firms over $3.5 million in revenues that are not able to obtain a surety bond on reasonable terms and conditions without an SBA guarantee. These firms are denied bonding because they are viewed by a private surety as presenting too great a risk. These firms may lack a track record because of their infrequency of seeking bonding or they may have been in business for a relatively short period of time. However, with an SBA guarantee, the risk is reduced to a level where the surety will issue a bond. The SBA believes the Surety Bond Guaranty Program should also be available to these firms so long as they meet other program and bonding criteria. It should be emphasized that many of these firms were at one time small businesses eligible for a surety bond guaranty, but inflation over the years has effectively increased their nominal size to a level exceeding the current size standard without a corresponding growth in real terms relative to other businesses.

The SBA agrees that the vast majority of construction firms are already included under the existing size standard. The SBA estimates that approximately 95 percent of existing companies fall within the existing standard. However, the more significant statistic is that these construction firms account for only about 40 percent of the total construction receipts. An increase in the size standard will continue to define as a small business, firms whose total combined receipts represent less than half of total construction receipts.

After considering the arguments presented by the public comments received opposing an increase in the current size standard, the SBA continues to believe that an increase in the Surety Bond Guaranty size standard is appropriate. It is being increased, however, to $5 million in annual receipts rather than the proposed $6 million size standard. The SBA is now persuaded, based on the negative comments to the proposal, that $5 million is a more appropriate size standard than $6 million for purposes of this surety bond guaranty program.

As a lower but needed increase to the surety guarantee size standard, the level of $5 million is being adopted. The SBA believes an increase in the size standard to $5 million is appropriate for several reasons. First, this increase makes the surety guarantee bond size standard consistent with increases recently adopted by the SBA for other program purposes in industries having a $3.5 million size standard (59 FR 16513). Under that action, size standards were adjusted for inflation occurring between the third quarter of 1982 through the fourth quarter of 1993. At the time of the last general inflationary adjustment effective in 1984, SBA made no adjustment to the surety bond guaranty program size standard of $3.5 million, even though that standard was established in 1978. The SBA believed at that time that the existing surety size standard continued to be appropriate for the Surety Bond Guaranty Program, but the effect of another ten years of inflation has now significantly eroded the base of firms eligible for the program. Although the $5 million size standard does not represent a full inflationary adjustment since 1978, it does take into account most of the effects of inflation, while still retaining a size standard at an acceptable level. Second, the $5.0 million level is, with few exceptions, the lowest size standard established by the SBA for nonmanufacturing industries, including the services industries to which the surety guarantee size standard also applies. Third, two major associations representing a large number of contractors and specialty sureties recommended an alternative size standard of $5 million to account for inflation and to meet the surety bonding needs of small "hard to place," minority and emerging contractors. The SBA believes the $5 million size standard is needed to assist such firms toward participation in the standard surety market by enabling them to remain eligible for SBA surety guarantees for an additional period of business growth, which can be critical to a firm's economic strength.

SBA considered carefully the nature and extent of the opposition to an increase to $6 million contained in the comments, and has concluded that its objectives in adjusting for inflation, achieving consistency with its overall system of size standards, and improving availability of program benefits for particularly vulnerable firms can be adequately met by raising the standard to only $5 million. Additionally, SBA now believes that a $6 million standard for this program would have unacceptable adverse consequences in terms of diminishing a market that a significant portion of the surety industry relies upon, and in terms of the willingness of all sureties to utilize the SBA guaranty rather than simply denying a bond to a contractor.

Some negative comments received on the proposed size standard pointed out that expanding the size standard would provide additional demand on the program. Some expressed fear that as larger companies participate in the program, the agency's limited resources would ultimately be unavailable to those small contractors that most need the assistance. This concern is underscored by the view that construction firms with receipts over $3.5 million have ample access to standard surety markets.

The SBA analysis of the Surety Bond Guaranty Program does indicate that the revised size standards will increase the demand on the Program. The SBA estimates that this additional demand could be as much as $200 million. However, a review of the program usage for the last three years indicates that the Program has been operating well below its appropriated limit. Therefore, the SBA concluded that the increased demand based on a $5.0 million Surety Bond Guaranty size standard could be accommodated with the existing funding levels appropriated by the Congress.

A final issue raised by several negative commenters expressed the concern that increasing the size standard would, of necessity, increase the government's potential for loss. These comments pointed out that contractors with receipts of $3.5 million to $6.0 million tend to perform larger jobs requiring more sophisticated levels of management control. These larger companies sometimes experience declines in bonding credit where management talents are not proven. The insurers point out that increasing the size standard would demand more oversight on the part of the SBA to ensure that larger contractors have the management expertise to perform these large contracts. They argue that in the absence of this additional oversight, the potential for government loss would be unduly increased.

The SBA recognizes that there is a valid concern when the potential for greater loss to the government is increased. The SBA notes that currently most of the contractors requiring

assistance in obtaining surety bonds have annual receipts of less than $2 million, and that the average surety bond is a little greater than $100,000. The Agency believes that the increase in the Surety Bond Guaranty size standard would not demand more oversight on the part of the SBA to ensure that larger contractors have the management expertise to perform. Because SBA is the guarantor to the participating sureties, SBA expects participating sureties to adhere to the SBA and industry general principles and practices used in evaluating credit, capacity, and the surety business. Prudent underwriting performed by the surety prior to obtaining SBA guarantee provides a reasonable expectation that the principal will perform according to the covenants and conditions of the contract. In addition, the terms and conditions of the surety bond are reasonable in light of the shared risks involved and the extent of the surety/SBA participation and monitoring of contract performance.

The SBA believes that the $5 million size standard will accomplish the purposes stated in the proposed rule for increasing the size standard. Those reasons were to take into consideration, as appropriate, inflation on the eligibility of firms for the Surety Bond Guaranty Program, to bring the Surety Bond Guaranty size standards closer to the size standards used in the construction industries for SBA's procurement and loan programs, and to extend assistance to contracting firms above $3.5 million in size who otherwise could not obtain surety bonds on reasonable terms and conditions without an SBA guarantee.

Compliance With Regulatory Flexibility Act, Executive Orders 12612, 12778, and 12866, and the Paperwork Reduction Act

General

SBA considers that this final rule will impact, in terms of eligibility, on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and will have a significant economic impact on a substantial number of small entities for purposes of this Act. Eligible contractors remit to the SBA a guarantee fee of $6 per $1,000 of the awarded contract price. The amount estimated below in (1) would represent an impact upon newly eligible contractors of approximately $1.1 million, at the estimated participation level. However, since the contemplated economic impact in terms of the amount of SBA guarantee utilization is approximately $200 million [see (1), below], it constitutes a significant rule for the purpose of E.O. 12866. Immediately below, the SBA has set forth a summary regulatory impact analysis and a final regulatory flexibility analysis of this rule.

(1) Description of Entities to Which the Rule Applies

SBA estimates that 11,500 additional firms (or an additional 2.2 percent), out of a total of 529,000 firms in the construction industries, will gain small business status for the Surety Bond Guarantee Program by adopting this final rule. There were approximately 11,500 firms in the construction industries with between $3.5 and $5.0 million in annual sales according to a special tabulation prepared by the Census Bureau for the SBA using 1990 data. These 11,500 firms accounted for approximately $44 billion in sales (8.5 percent of total construction receipts). With the adoption of this rule, they become eligible for SBA's surety bond assistance, provided they meet the other program requirements.

While an estimated 11,500 firms will be newly eligible as a result of this rule, the number of additional firms actually receiving assistance will be much fewer. The SBA estimates that 104 additional firms will receive assistance in an average year. This estimate is based on the fact that less than one percent (4,532 in FY 1991) of the 503,000 construction firms that are currently eligible now receive SBA guaranteed surety bonds, and it also assumes that a similar percentage of the newly eligible firms in the $3.5 million to $5.0 million size range would receive SBA guaranteed surety bonds.

SBA estimates of $200 million in additional guarantees will occur based on its experience with those firms that in the past have received SBA guaranteed bonds. SBA has observed that these users have obtained SBA guarantees on contract bonds representing approximately 61 percent of their gross revenue. Construction firms in the $3.5 to $5.0 million sales range generate nearly $44 billion in annual sales, or an average of $3.85 million per firm ($44 billion÷11,500 firms). One hundred and four of those newly eligible construction firms (less than 1 percent) are projected to utilize the SBA Surety Bond Guarantee Program. These firms collectively generate $400 million in sales. However, since approximately 61 percent of participating firms' sales are guaranteed under SBA's Surety Bond Program, roughly $244 million in additional SBA guaranteed contract surety bonding will be covered, or about $200 million in additional government commitments (see Table, below).

Construction firms in $3.5–$50 million range			Total receipts of firms receiving bonds (b)×(c)	Total value of bonding affected by the guarantee (d)×61%	Total government exposure (e)×82%
Total	Total to receive SBA surety guarantees (a)×0.91%	Average receipts per firm			
(a)	(b)	(c)	(d)	(e)	(f)
11,477	104 firms	$3.85 million	$400.4 million	$244.2 million	$200.3 million.

The adopted standard, however, does not impose a regulatory burden on these newly eligible firms because it does not regulate or control behavior.

(2) Description of Potential Benefits of the Rule

The benefit of this rule for the government is that the resulting additional competition from contracting firms that are newly eligible to bid on and perform contracts under the adopted size standard should result in lower costs to the Federal government and to other public and private contracting bodies for construction and service contracts. Since 1971, through and including fiscal year 1992, it is estimated that the Surety Bond Guarantee Program has saved the public sector over $1.2 billion. The savings is the computation between the lowest bid coming from the Surety Bond Guaranty Program participant and the next higher bidder. The premise is that the cost of the procurement has been reduced because the small contractor (i.e., the

lowest bidder), would not have been awarded the job had the contractor not been a participant in the Surety Bond Guarantee Program. The savings to the public sector at the local, city, state and federal levels will also include amounts these entities would have had to pay for the higher bidder's surety bond protection if the Surety Bond Guarantee Program were not in existence. Private sector savings are also believed to be significant, but not measurable. In addition, the firms that will now be considered small for purposes of surety bond assistance will benefit through the receipt of such assistance in further developing their business objectives.

(3) Description of Potential Costs of the Rule

This change in size standards as it impacts on government should not add a major element of cost to the government and, in fact, as described above in (2), may reduce the cost to a procuring Federal or other public agency as a result of additional competition for contracts. The competitive effects of size standards revisions differ from those normally associated with regulations affecting key economic factors such as the price of goods and services, costs, profits, growth, innovation, mergers and foreign trade. The change to size standards is not anticipated to have any appreciable effect on any of these factors.

(4) Description of the Potential Net Benefits from the Rule

From the above discussion, SBA believes that, because the potential costs of this rule are minimal, the potential net benefits are clear. By increasing the size standard to $5.0 million, a number of businesses in the $3.5 to $5.0 million range that presently have difficulty obtaining surety bonding will now be eligible for SBA surety bond guarantee assistance. As a result, competition will be similarly increased, and hence reduce the overall costs to both public and private procuring bodies.

(5) Description of Reasons Why This Action is Being Taken and Objectives of Rule

, SBA has provided above in the supplementary information a description of the reasons why this action is being taken and a statement of the reasons for and objectives of this rule.

(6) Legal Basis for the Rule

The legal basis for the rule is Sections 3(a), 5(b)(6), and 15(i) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

(7) Federal Rules

There are no Federal rules that duplicate, overlap or conflict with this rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards.

(8) Significant Alternatives to Rule

The changes to the current size standard set forth in this rule attempt to establish the most appropriate definition of small businesses eligible for SBA's Surety Bond Guarantee Program. The SBA considered a $6.0 million Surety Bond Guaranty size standard as well as a $5.0 million Surety Bond Guaranty size standard, but decided that $5.0 million was the best alternative for the reasons set forth in the supplementary information.

SBA certifies that the rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The SBA further certifies that this rule will not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C., Chapter 35.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small Business.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

2. Section 121.802, is amended by revising paragraph (a)(3) to read as follows:

§ 121.802 Establishment of the size standard.

(a) * * *

(3) *For purposes of surety bond guarantee assistance,*

(i) Any construction (general or special trade) concern is small if its annual receipts average for its preceding three completed fiscal years does not exceed $5.0 million.

(ii) Any concern performing a contract for services (including, but not limited to services set forth in Division I, Services, of the Standard Industrial Classification Manual) is small if its annual receipts average for its preceding three completed fiscal years does not exceed $5.0 million.

(iii) For other surety bond guarantee assistance, an applicant must meet the size standard set forth in § 121.601 for the primary industry (as defined in § 121.802(b)) in which the applicant, including its affiliates, is engaged.

* * * * *

Dated: May 5, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–13239 Filed 5–31–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–81, Special Conditions No. 25–ANM–84]

Special Conditions: Extended Range Operation of Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for approval of the Boeing Model 777 airplane for Extended Range Operation with Two-engine Airplanes (ETOPS) without the prerequisite service experience currently required for ETOPS approval. The manufacturer has requested that the Model 777 airplane be found to be acceptable for ETOPS operation at the time of type certification. Extended range operation of twin engine airplanes is not envisioned by the airworthiness standards for transport category airplanes, and has been determined to constitute a novel of unusual feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards for transport category airplanes.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Steven P. Clark, FAA, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2679.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1990, the Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207, applied for a type certificate for the new Model 777 airplane. The Model 777 is a long range, transport category airplane powered by two Pratt & Whitney PW4000 series, Rolls-Royce Trent 800 series, or General Electric GE90 series engines. The overall length of the Model 777 is 209 feet, the height is 61 feet, and the wingspan is 198 feet. The airplane has a seating capacity, in a typical three class configuration of 305 to 328 passengers, or 375 to 400 passengers in a two class configuration. The Model 777 has a maximum takeoff weight of 535,000 lbs., a maximum landing weight of 445,000 lbs., a maximum operating altitude of 43,100 ft., and a range of 4,200 nautical miles in a two class configuration or 6,600 nautical miles in a three class configuration.

Type Certification Basis

Under the provisions of § 21.17, Boeing must show that the Model 777 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–71. Boeing has also elected to comply with most of part 25 as amended by Amendment 25–77. The type certification basis for Model 777 is therefore part 25 through Amendment 25–77, except for § 25.571(e)(1), which remains at Amendment 25–71 level; and parts 34 and 36, each as amended at the time of certification. Boeing may also elect to comply with subsequent part 25 requirements to facilitate operators' compliance with corresponding part 121 requirements. The certification basis also includes other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Model 777 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis in accordance with § 21.17(a)(2).

Model 777 Design Features

The structure of the Model 777 is generally of conventional design and construction, but with considerable use of composite materials. Elements of the primary structure (the fin and horizontal tail) are constructed of composites, as are some elements of secondary structure, including the elevators, rudders, flaps, spoilers, ailerons, engine cowls, and main deck floor beams.

The Model 777 uses a combination of multiple computer channels and redundant sensors that channel command signals to various control surface actuators in response to programmed control laws. This control architecture, referred to as fly-by-wire (FBW), provide closed loop command to move servo-actuators for the elevators, ailerons, rudder, spoilers, horizontal stabilizer, slats and flaps, and engine power levers. In the unlikely event of simultaneous failure of all digital computers or signaling, a direct control path from the pilot's controllers to the surface actuators is provided through simple analog circuitry.

Hydraulic power for the flight control system is provided by three independent hydraulic systems. Functions are shared among these systems to ensure airplane control in the event of loss of one or two systems. The three systems are pressurized by variable displacement pumps. The left and right hydraulic systems each have one pump driven by the engine accessory gearboxes. In addition, the left and right systems each have one electrically driven demand pump. The center system can be pressurized by two electrically driven hydraulic pumps. This system also has two air driven demand pumps, which use air from the airplane pneumatic system. A ram air turbine (RAT) is also available to provide hydraulic power for the primary flight controls served by the center system.

Normal electrical power is supplied by two integrated drive generators, one on each engine. An electrical generator powered by an auxiliary power unit (APU) is also available. Backup electrical power is available to selected airplane alternating current (AC) busses from two variable speed, constant frequency generators, one of which is mounted on each engine. The main direct current (DC) system can also receive power from the backup generators. Primary power for the FBW system is provided by dedicated permanent magnet generators in each of the two backup generator units. The FBW system can alternately receive power from the main DC system or the standby DC system. The standby DC system is powered by a RAT-driven AC generator, which can provide a source of standby electrical power that is not time limited. The RAT is deployed automatically upon loss of all normal and backup AC power sources. A manual deploy feature is available to the flightcrew should the RAT fail to deploy automatically.

The engine control system consists of dual channel, full authority, digital engine controls (FADEC) mounted on the fan case of each engine. The (FADEC's are interfaced with the various airplane systems to provide redundant control of the engines through a "hard-wired" throttle angle resolver system. In addition, the throttles move in proportion to commanded changes in engine power, and in the event of a total failure of the engine indicating and crew alerting system (EICAS), analog rotor speeds are available to determine engine power levels. Each FADEC provides gas generator control, engine limit protection, power management, input to the thrust reverser system, and engine parameter inputs for the flight deck displays.

Control inputs are made through conventional flight deck control wheels, columns, and rudder pedals. The flight instruments are displayed on six liquid crystal flat panel displays. Two flat panel displays are mounted directly in front of both the pilot and copilot and display primary flight instruments and navigational information. The other two flat panel displays are located in the center of the instrument panel and display engine parameters, warnings, and system diagnostics.

The type design of the Model 777 contains novel or unusual design features not envisioned by the applicable part 25 airworthiness standards, including extended range operation with two-engine airplanes and therefore special conditions are considered necessary.

Discussion

All two-engine airplanes operating under part 121 of the FAR are required to comply with § 121.161, which states, in pertinent part, that "Unless authorized by the Administrator * * * no certificate holder may operate two-engine or three-engine airplanes * * * over a route that contains a point farther than one hour flying time * * * from an adequate airport." Advisory Circular (AC) 120–42A, Extended Range Operation With Two-Engine Airplanes (ETOPS), provides an acceptable means for obtaining FAA approval for two-engine airplanes to operate over a route that contains a point farther than one hour flying time from an adequate airport. The two basic objectives of this Advisory Circular are to establish that the airplane and its supporting systems are suitable for the extended range mission and that the maintenance and

procedures to be employed in conducting ETOPS operations are adequate. This is accomplished by acquiring a substantial amount of service experience during non-ETOPS operation and then extensively evaluating this experience in the areas of systems reliability, maintenance tasks, and operating procedures. When it is determined that the appropriate reliabilities and capabilities have been achieved, the airplane is found eligible to be considered for use in ETOPS operation by an airline.

Boeing has proposed that the Model 777 be approved for ETOPS operation simultaneously with the issuance of the basic type certificate. Procedures do not exist at this time for a finding of this type. Because the timing of the proposed ETOPS type design approval for the Model 777 airplane precludes use of the guidance given in AC 120–42A regarding the accumulation of service experience, an alternative method must be devised that will provide an adequate level of inherent airplane reliability for the ETOPS mission under consideration for approval. It is important to note that the requirements for certification of the airplane regarding the design's suitability for ETOPS operation, as described in these special conditions, relate to type certification approval only. Advisory Circular 120–42A contains guidance regarding operational and maintenance practices criteria that must be met by the operator before ETOPS operations can be conducted. It is incumbent upon the operator to apply for operational approval in accordance with the guidance contained in AC 120–42A. Satisfaction of the requirements of these special conditions does not constitute operational approval.

Existing practices to achieve airplane certification safety objectives have involved definition of performance requirements, incorporation of safety margins, and prediction of failure probabilities through analysis and test. However, historical evidence, in general, indicates that a period of actual revenue service experience is necessary to identify and resolve problems not observed during the normal certification process. Successful achievement of this experience has been a prerequisite for granting ETOPS type design approval for a specific airplane engine combination. However, several recent airplane engine combinations incorporating new or substantially modified propulsion systems have demonstrated a high level of reliability consistent with ETOPS operation upon entry into revenue service. In addition, this high level of reliability was demonstrated by the small number of problems encountered during basic certification activity. These recent successful airplane and engine development and certification programs led the FAA to consider it feasible that the proposed development and certification activities of the Model 777 engine and airplane have the potential of providing a relatively "mature" product at the time of entry into revenue service. Certification criteria for early ETOPS type design approval of the Model 777 airplane is largely dependent upon a process that requires demonstration of appropriate levels of reliability. This process is designed to result in a level of airplane reliability that is equivalent to the level of reliability previously found to be acceptable based upon service experience. Since the early ETOPS development process must have a means of measuring success, the certification requirements in these special conditions focus on defining a measurement process, as well as providing a feedback loop to quickly resolve problems that may occur.

Existing ETOPS airplane/engine assessments conducted in accordance with AC 120–42A focus on two main objectives: (1) preclude any failure or malfunction that could result in diversion from intended flight; and (2) protect the safety of the airplane and occupants during the diversion. A diversion is precluded by ensuring high reliability of the propulsion system and of all other systems important to ETOPS, and resolution of all problems that compromise the safety of ETOPS flight. Safety during the diversion is protected by high reliability of the propulsion system and of those systems important to the diversion, and resolution of all problems that compromise the safety of the diversion. The early ETOPS approval criteria maintain this two-fold safety concept.

The major elements of the early ETOPS type design approval process defined in these special conditions include an ETOPS type design assessment, additional analysis requirements, additional test requirements, including 1000 flights on a complete airplane that simulate actual airline operations, a problem tracking system, and a reliability assessment that will be carried out by an FAA Reliability Assessment Board. The Reliability Assessment Board will consist of members from a broad spectrum of FAA offices, including FAA airplane and engine certification offices, FAA aircraft evaluation groups for both the engines and airplane, FAA maintenance and operational approval offices, and FAA headquarters. The Reliability Assessment Board will have a function similar to that currently carried out by the Propulsion System Reliability Assessment Board, as defined in AC 120–42A, except that the Reliability Assessment Board will have the responsibility to review all of the relevant airplane systems in addition to the propulsion system.

Design requirements and relevant service experience assessments are required as part of the ETOPS type design assessment in order to define appropriate design, test, analysis, or other manufacturing, maintenance, or operational features necessary to comply with the applicable airworthiness requirements, as well as to achieve the two-fold ETOPS objectives (i.e., *preclude* and *protect* the diversion).

These special conditions require the frequency and type of failures or malfunctions that occur during the airplane flight test program, and the additional 1000-flight ETOPS test, to be consistent with the frequency and type of failures or malfunctions that might occur on certified 180-minute ETOPS airplanes. The ETOPS Reliability Assessment Board will be responsible for evaluating these problems and their solutions, and ultimately formulating a recommendation to the Manager, Transport Airplane Directorate, regarding the adequacy of the 777 type design for 180-minute ETOPS operation.

This determination will be based on a review of the circumstances surrounding each failure or malfunction, the effectiveness of the proposed corrective action, and the potential consequences of the event on the continued safe operation of the airplane. In addition, corrective actions must be identified and implemented prior to ETOPS approval for all problems identified during the test program that could affect the safety of ETOPS operations. These corrective actions must be substantiated to be effective in eliminating both the specific problem and any similar problems elsewhere in the design. These criteria will continue to apply a "fix all problems" approach that is also the basis for all ETOPS approvals made under AC 120–42A. In the event that a problem is discovered after entry into passenger service that could compromise the safety of the ETOPS mission, the FAA will, at its option, use the Airworthiness Directive (AD) process, as provided by part 39 of the FAR, to require corrective action.

Since the granting of a finding of ETOPS suitability concurrently with the issuance of the airplane type certificate is not envisioned by part 25 of the FAR, and since there is no appropriate guidance material available for this project, the FAA has determined that this method of finding ETOPS suitability is a "novel and unusual" feature within the meaning of § 21.16, and that therefore special conditions are required.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–93–3–NM for extended range operation of the Boeing Model 777 series airplanes was published in the **Federal Register** on May 5, 1993 (58 FR 26710).

Seven commenters responded to the proposed special conditions. Some of the comments were of an editorial or clarifying nature and have been incorporated where appropriate. A discussion of the remainder of the comments follows.

General Comments

Two commenters are opposed to granting 180-minute ETOPS approval at type certification without some kind of in-service experience.

The first commenter does not recommend any specific service experience requirement. This commenter does, however, recognize that the special conditions require some in-service experience to be simulated prior to certification. This commenter's "bottom line" is that this "equivalent in-service experience" must be a suitable substitute for "actual" in-service experience. The second commenter opposed to 180-minute ETOPS approval at type certification states that 120-minute ETOPS approval could be granted if all aspects of the special conditions approval plan have been completed. This commenter suggests that 180-minute ETOPS approval should be granted only after the accumulation of 20,000 engine hours for derivative technology powerplants, and 50,000 engine hours for new technology powerplants. It appears that the commenter's rationale for this position results from trying to balance the benefits of the lessons learned analyses, test programs, and problem detection and resolution programs with the limitations of those programs.

The FAA disagrees with the two commenters' position that some in-service experience should be required for 180-minute ETOPS approval at type certification. These special conditions consist of five main elements that provide adequate compensation for the service experience requirements previously used to establish 180-minute ETOPS eligibility. No single element is sufficient by itself, but together, the five elements provide an acceptable substitute for actual airline service experience. Any limitations of specific special condition elements were taken into account in the development of these special conditions. A general description of the five elements follows:

First Element: Design for Reliability. Paragraph (c)(1) requires that the propulsion system be designed to preclude failures and malfunctions that could result in an engine inflight shutdown. Propulsion systems on previous airplanes were designed and certified to be "fail-safe," in compliance with § 25.901 of part 25; in other words, any single failure, or probable combination of failures, would not jeopardize continued safe flight and landing of the airplane. Because safe flight following an engine shutdown is required by part 25, preventing engine inflight shutdowns has not been a major design objective on previous airplane designs. The additional design requirement in these special conditions to preclude failures and malfunctions that could result in an engine inflight shutdown has an enormous effect on propulsion system reliability in that normal design decisions must now consider whether a failure or malfunction might result in an engine inflight shutdown.

Second Element: Lessons Learned. Paragraph (c)(2) requires the airplane to be designed to prevent problems that have resulted in inflight shutdowns or diversions on previous airplanes (lessons learned). This process focuses on eliminating specific known failure causes from the new airplane design to allow some margin for unforeseen failure causes without having a detrimental effect on overall airplane and propulsion system reliability.

Third Element: Test Requirements. Testing required by paragraph (c)(4) must prove the effectiveness of design features incorporated into the new airplane to prevent problems that have resulted in inflight shutdowns or diversion on previous airplanes. This validates that the specific lessons learned fixes work. The extensive validation testing of the Model 777 required by paragraph (e) of these special conditions, including the 3000-cycle engine test and 1000-cycle airplane test, is designed to discover basic design flaws to a much greater extent than has ever been undertaken in any previous airplane development program. This includes testing to substantiate the suitability of any technology new to the applicant. The environmental conditions (hot and cold temperatures, high vibration, etc.) to which the engines and airplane will be exposed during this testing will allow the FAA the opportunity to observe the integrity of the airplane design under conditions that have taken a fleet of airplanes years to accumulate. Ninety-nine percent of problems resulting in inflight shutdowns have occurred within 3,000 cycles on airplanes that have been evaluated under the provisions of AC 120–42A. Based on this, the FAA has determined that, after completing the airplane and engine testing defined in these special conditions, sufficient experience will have been gained to reveal virtually all potential causes of inflight shutdowns.

Fourth Element: Demonstrated Reliability. Paragraph (b)(1) requires that, for the engine and airplane systems, the number and types of failures that occur during the airplane flight test program and the 1000 flight cycle ETOPS test must be consistent with the number and types of failures or malfunctions that would be expected to occur on presently certified 180-minute ETOPS airplanes. This requirement gives the FAA assurance that the overall design maturity is at a level expected of current in-service ETOPS airplanes.

Fifth Element: Problem Tracking System. Paragraph (f) requires that problems that could impact the safety of ETOPS operations occurring during airplane development and certification testing must have proven fixes incorporated into the design before the airplane may be approved for ETOPS operations. All such problems occurring after the airplane begins ETOPS operations must be promptly reported in order that the FAA may require appropriate corrective actions. This requirement ensures that the risk of additional occurrences of any unforeseen failures that could affect the safety of ETOPS operations is low.

The second commenter opposed to 180-minute ETOPS approval without some in-service experience also states that any deficiency in compliance with the approval plan should result in some lesser level of approval from that sought. This position is consistent with these special conditions. Paragraph (h)(2) specifies that if the corrective action for unplanned engine shutdown or loss of thrust, or any problem that jeopardizes the safety of an airplane diversion, occurring during airplane flight testing, requires a major system redesign, this would be cause for delayed ETOPS type design approval, or approval for reduced single engine diversion time.

The same commenter also suggests changes to several paragraphs of these

special conditions. The FAA has reviewed these suggested changes and considers that they are equivalent to the FAA wording and do not clarify the requirements. Therefore, they have not been adopted.

A third commenter does not directly oppose the concept of ETOPS approval at the time of airplane type certification, but suggests that the special conditions should depart from the existing AC 120–42A policy only where warranted by the experience of previous ETOPS programs. Starting with this premise, the commenter then identifies specific problem areas with the proposed special conditions.

First, the commenter questions the FAA's assessment that several airplane engine combinations incorporating new or substantially modified propulsion systems have demonstrated a high level of reliability consistent with ETOPS operation upon entry into revenue service. The commenter states that there is no single example of a completely new product (airplane and engine) that achieved stable reliability consistent with 180-minute ETOPS at entry into service, and that only those products with a high level of similarity to previous designs actually achieved this level of reliability.

The FAA disagrees with this commenter's distinction between "new" and "derivative" engines. There has been much discussion within the industry about gaining some service experience credit for derivative engines versus totally new designs in the application of the service experience criteria of AC 120–42A. However, the industry has never been able to agree on a standard by which to differentiate between derivative and new engine designs. In a sense, every engine to be developed since the first turbine engines were introduced are derivatives of previous designs. Each new engine type has benefited from the engine manufacturer's experiences with earlier models. Successful design features are kept and improved upon while unsuccessful ones are taken out of new designs. As a result, the FAA is not depending on whether the engines are, or are not, derivative in applying the requirements of these special conditions. The requirements apply equally in either case.

The FAA's assessment was based on a review of new propulsion system installations since the beginning of ETOPS operations in 1985. As an example, the only completely new two-engine airplane now in ETOPS service to be certified since ETOPS operations began is the Airbus A320. A review of the propulsion system reliability of the CFM56–5 series engine installation on the A320, as measured by a 13-month rolling average of the inflight shutdown (IFSD) rate, indicates an IFSD rate of 0.14/1000 engine hours four months after airplane entry into service. The IFSD rate, 0.02 for 180-minute ETOPS operations as defined in AC 120–42A, is not achieved until 16 months after entry into service.

At first glance, it appears that the A320 airplane did not exhibit an acceptable ETOPS propulsion system reliability until a substantial amount of service experience had been accumulated. A closer look at the data, however, reveals that there were only two inflight shutdowns in the first two years of revenue service. By the time the first inflight shutdown dropped out of the 12-month rolling average IFSD rate, the accumulation of engine fleet operating hours had reduced the rate to below the 0.02 standard for 180-minute ETOPS operation. The rate has been stable below that mark ever since. This clearly indicates that the A320 airplane with CFM56–5 engines achieved the high standard of propulsion system reliability at the time of type certification that led the FAA to consider defining a process that would have demonstrated the attributes of a relatively mature product at the time of entry into revenue service. The A–320 airplane achieved this high level of reliability even without the five-element certification program to ensure reliability that is required by these special conditions.

The same commenter also questions the FAA's statement in the proposed special conditions that a high standard of propulsion system reliability on several recently certified airplane engine combinations was evidenced during basic certification by a small number of problems encountered. The commenter states that there is no clear relationship between the number of problems that may be encountered during certification tests and the reliability level for ETOPS in such areas as engine IFSD rates, electronic generator failure rates, and failure rates of other ETOPS significant systems and components. The commenter goes on to state that the reliability levels required for ETOPS are too high for direct statistical demonstration during a test program with a sufficient level of confidence.

The FAA agrees with this commenter's assessment of the statistical confidence achieved by certification testing alone. The FAA did not intend to imply that a small number of problems occurring during type certification in any way demonstrates a statistically significant sample from which to base a failure rate calculation with a high degree of confidence. The correlation referred to by the FAA is that, relative to other airplane programs, the occurrence of a higher number of basic design problems during type certification testing generally has resulted in a higher number of problems occurring after the airplane entered service. Those airplanes with the best propulsion system reliability after entry into service have also, in general, encountered fewer design problems during the type certification program.

Even without the statistical confidence the commenter is referring to, experience has also shown that, in general, predictions of mature component reliability made in analyses for showing compliance with the safety assessment requirements § 25.1309 of the FAR have been conservative when compared with the actual achieved reliability in service. In most cases, the types of problems that prevent a system or component from achieving the predicated, mature level of reliability have been basic design or manufacturing deficiencies that could have been detected if extensive enough testing had been accomplished during development and certification prior to entry into service. Random type failures have not been a major contributor to unreliability. Therefore, the FAA is confident that a design will achieve a high level of reliability based on development and certification test results, provided the testing is thorough in evaluating all potential failure sources. The special conditions' relevant experience, analysis, and test requirements define the methods that must be used to accomplish a thorough evaluation of failure sources.

The same commenter states that the quantitative objectives for engine inflight shutdown rate from AC 120–42A do not appear in the special conditions. The commenter recommends that these objectives be retained and compliance shown using a rational method that provides a sufficient level of confidence.

As stated above, the FAA does not consider the testing to be accomplished during the certification program to provide a statistically significant sample from which to calculate a failure rate with a high degree of confidence. Based on this assessment, a rational method for calculating an inflight shutdown rate that provides a sufficient level of confidence does not appear to be achievable. As discussed above, experience has shown that failure rate calculations can provide misleading information when used for testing and

as a performance indicator of a limited number of units. As designed, the special conditions provide for assessment of demonstrated reliability in conjunction with oversight of corrective action, as well as overall performance, to make the eligibility assessment. This more comprehensive approach is more meaningful as an overall safety assessment process and permits the applicant to correct any discrepancy, rather than just delay the program. Therefore, the FAA did not include a quantitative inflight shutdown rate requirement in the special conditions. Specific evaluation of each problem and corresponding corrective action by the Reliability Assessment Board will provide confidence that appropriate corrective action is taken for each problem uncovered during testing.

Another commenter is concerned that a significant increase in drag would occur during a single engine diversion with a failed engine that has a locked rotor compared to a windmilling engine, due to a further reduction of mass flow through the inlet. This commenter suggests that ETOPS operational stability and control and extended range performance be based on wind tunnel test data, obtained at high Reynolds number, over the complete engine-inoperative flight envelope, with locked engine rotor airflow accurately represented.

The FAA considered the effects of a locked engine rotor on a single engine diversion during the development of the existing approval criteria defined in Advisory Circular 120–42A. The AC lists several factors that must be considered when planning how much fuel is required to dispatch an airplane for ETOPS operations. These include current forecast winds and meteorological conditions along the expected flight path, operation of ice protection systems and performance loss due to ice accretion on the unprotected surfaces of the airplane, operation of auxiliary power units, loss of airplane pressurization, an approach followed by a missed approach and subsequent approach and landing, navigational accuracy, and air traffic control constraints. Additional contingency fuel reserves are added to account for errors in wind forecasts, and deterioration of cruise fuel mileage from that provided the performance planning data. The FAA considered the addition of a "locked rotor" condition to be overly conservative and that any increase in drag would be adequately covered by existing fuel reserve requirements for ETOPS operations. Any effect that a locked engine rotor may have on airplane stability and control is a basic airplane airworthiness issue, and is covered as part of the basic 777 airplane certification program. Therefore, the FAA has concluded that a locked engine rotor is being adequately addressed without the need to change the ETOPS special conditions.

One commenter states that the special conditions do not address the conditions for approval of future design variants (e.g., higher thrust ratings or major engineering design changes that result in new engine model designations). This commenter expects the requirements to be different for later design changes in terms of test and assessment methods. While the FAA agrees that the test and assessment methods will be different for later design changes, the FAA does not agree that it is necessary to define specific requirements for future design variants. These special conditions address the initial certification of an airplane for ETOPS operations without the prerequisite service experience defined in Advisory Circular 120–42A. Upon issuance, these special conditions become a part of the airplane type certification basis for ETOPS type design approval. Future changes in design must meet the applicable requirements of these special conditions. However, the scope of specific test conditions and assessment methods used for particular design changes may differ from the initial ETOPS assessment program. This would depend on the degree of commonality with the existing approved design and how much credit for service experience the new design may be given. The methods to be used to show compliance with the special conditions requirements will be approved as part of the certification process. This process will be similar to what is currently done for existing approved ETOPS airplanes to determine if service experience is necessary before a design change becomes eligible for ETOPS operations.

This same commenter is concerned about the process to control and administer the airplane configuration, maintenance, and operational procedures pertinent to the ETOPS approval. This commenter is concerned about a statement at the end of the discussion section of the notice that appears to imply that the ETOPS configuration, maintenance, and procedures (CMP) document revision process is replaced by the airworthiness directive (AD) process. The FAA does not agree. The CMP document is a product of the ETOPS approval process defined in AC 120–42A. It defines the airplane configuration and any maintenance or operational procedures, beyond the baseline airplane definition, that are necessary to safely operate an airplane in an ETOPS operation. The need for the CMP document originated when airplanes approved under the AC guidance were not originally certified in consideration of the ETOPS mission. With a new airplane designed and certified in accordance with these special conditions, it is expected that a CMP document would contain very few items, since it is the intent of the manufacturer to build only ETOPS eligible airplanes. However, it is possible that the Reliability Assessment Board may require interim problem corrective actions to be incorporated as a condition for ETOPS approval, until final corrective actions become available several months after the airplane enters service. These conditional configuration requirements would need to be defined in a CMP document. In response to problems occurring after the airplane enters service, additional items may be added to the CMP in order to define an airplane configuration that may be used by 777 ETOPS operators to maintain acceptable system reliability in accordance with the existing CMP revision process identified in paragraphs 8g and 8h of AC 120–42A. The CMP document does not replace the AD process referred to by the commenter. Any problems occurring in service that would significantly affect the safety of an ETOPS operation will result in an AD being issued. The AD may reference a CMP document revision that defines the required configuration, but it does not have to.

Engine Assessment

One commenter recommends that the procedures for an engine condition monitoring program, required by paragraph (b)(2), should consider 200 minutes operation at maximum continuous thrust, followed by 5 minutes at inflight takeoff or go-around thrust. The commenter's rationale for this recommendation is that guidance for the maximum thrust required for a single engine diversion should be specified and that a realistic diversion thrust requirement should be padded by 20 minutes above the specified maximum diversion time. The FAA does not agree. Traditional engine condition monitoring programs are designed to determine if maximum takeoff thrust can be achieved. The intent of the validated condition monitoring program required by paragraph (b)(2) is to provide a means to determine when an engine is no longer capable of achieving maximum continuous thrust within approved engine limits. The duration that the

thrust would be available is not a consideration in this requirement, only that adequate thrust would be available. Based on current experience with engine deterioration rates, the engine certification requirements contained in part 33 of the FAR demonstrate that maximum continuous thrust will be available for any conceivable diversion time. It is not intended that the condition monitoring program identified in paragraph (b)(2) be able to predict impending failure conditions. Therefore, paragraph (b)(2) is adopted as proposed.

Design Requirements Assessment

One commenter states that paragraph (c)(1) of the special conditions only refers to the design requirements of part 25 and "does not call up the design requirements in AC 120–42A, paragraphs 8b(7), (8), (9), (10), and (11)." The FAA infers from this comment that the commenter desires that the AC paragraphs noted above be incorporated in the special conditions. The FAA agrees that the AC criteria are important; however, the advisory circular provides policy guidance for obtaining ETOPS approval for already certified two-engine airplanes. The design criteria referred to by the commenter were developed to allow approval of airplanes for which ETOPS types of operations were not considered when they were originally certified to part 25 airworthiness standards. With one exception, existing part 25 airworthiness standards are sufficient to properly certify a new two-engine airplane for ETOPS operation, as long as the ETOPS mission is considered in applying these requirements for all anticipated dispatch configurations. The purpose for the design requirements assessment of paragraph (c)(1) of these special conditions is to define the specific methods that will be used to show compliance with the part 25 airworthiness requirements when considering the ETOPS mission. These methods may include additional design features, analyses, tests, or a combination of the three. Depending on the system design, the specific design criteria called out in AC 120–42A may not be necessary or appropriate on a new airplane design.

The one exception to the airworthiness standards contained in part 25 that is necessary in order to certify an ETOPS suitable airplane is a requirement to design the airplane to preclude failures or malfunctions that could result in an engine inflight shutdown. Existing propulsion system installation requirements are based on the "fail-safe" concept. In other words, continued safe flight and landing are assured after any single propulsion system failure. Propulsion system reliability is not a major design consideration in existing airworthiness standards because failures must be shown to be "safe." ETOPS criteria are intended not only to ensure continued safe operation after an engine inflight shutdown, but also to prevent the failure condition that resulted in the shutdown. This additional requirement to prevent engine inflight shutdowns was included in paragraph (c)(1) of these special conditions. Based on these considerations, the special conditions are adopted as proposed.

The commenter also refers to several new design features that were considered during the development of the early ETOPS special condition, and questions why they were not included in the final proposal. Examples given include a 22,000 foot single engine cruise altitude, and a specific list of electrical services to be powered in the backup electrical configuration. As stated above, the FAA has determined that the existing airworthiness standards defined in part 25 are sufficient to properly certify a new two-engine airplane for ETOPS operation, as long as the ETOPS operational mission is considered in finding compliance. The FAA has also determined that including specific design requirements such as the two examples cited above may be too restrictive in defining what the applicant could do to comply with the safety objectives of part 25. This might result in a design requirement being imposed that is inappropriate because of a change in the airplane design that was not considered in the development of that requirement. However, as part of the requirements assessment, paragraph (c)(3) of the special conditions requires the applicant to consider the types of design features that the commenter is referring to, and to list those specific design features that are included in the airplane design to accommodate the ETOPS mission. The FAA therefore does not consider it necessary to revise the special conditions.

Another commenter states that the design feature consideration for fuel quantity indication to the flight crew in paragraph (c)(3)(i)(C) should include alerts for abnormal fuel management or transfer between tanks in addition to the other listed considerations. The FAA agrees with this comment and has revised paragraph (c)(3)(i)(C) accordingly.

Relevant Experience Assessment

One commenter recommends that paragraph (c)(2) clearly indicate that the relevant experience assessment shall include a demonstration of the applicability of the past experience to the new design, at the appropriate system, sub-system, or component level. The commenter suggests that this demonstration may be based on an engineering comparison at the appropriate level, but shall also be backed by comparison testing where the design differences are significant. The commenter supports this comment with the statement that there is substantial evidence that beyond a certain level of difference between the product that produced the past experience and the new product, the "lessons learned" assessment process ceases to be fully effective.

The FAA agrees that beyond a certain level of commonality, past experience may not be relevant to the new design. This is particularly true where a specific design feature that contributed to problems in previous airplanes is not a part of the new airplane design. However, the FAA does not concur that a change in the special conditions is necessary to achieve the results desired by the commenter. The demonstration of the applicability of past experience to the new design is inherent in the relevant experience assessment. Paragraph (c)(2) of the special conditions requires that corrective actions taken to preclude similar problems from occurring on the new airplane must be identified. Removal from the design of a system, sub-system, or component that has had problems in the past may be an acceptable corrective action, as long as it precludes similar problems from occurring. In addition, paragraph (c)(4) requires the applicant to define specific new or enhanced tests that will be used to assure engine and airplane system design integrity. In complying with this requirement, the tests derived from the relevant experience assessment will be used to substantiate that effective corrective action has been taken for each source of past problems.

This commenter also states that where new technology is introduced, the lessons learned assessment becomes impractical, as there is no previous experience with this technology. While the FAA agrees that there will be no previous experience with a new technology, there may still be applicable relevant experience. For example, an applicant's previous experience with new technology introductions may lead to changes in manufacturing and quality control processes. Further, lessons learned of general applicability can be introduced into the new technology design, such as a general design practice

to prevent cross-connector installation. The FAA has determined that the existing special conditions requirements meet the intent of the commenter's recommendation; therefore, the commenter's specific recommended change has not been adopted.

The same commenter also states that the special conditions should clearly indicate how much direct service experience shall be required in the case of a completely new design utilizing technology new to the manufacturer, for which no basis of relevant experience exists. The FAA does not concur. As stated above, there may be applicable relevant experience even for a completely new design incorporating new technology. In addition, relevant experience is only one aspect of these special conditions. It is not the only mechanism by which the airplane would be assessed for ETOPS approval. Among the other requirements, paragraph (e)(4) requires the applicant to conduct tests to substantiate the suitability of new technology. The commenter's recommended change therefore has not been adopted.

Additional ETOPS Test Requirements

One commenter recommends that the configuration requirements of paragraph (e)(1) also apply to the testing defined in paragraph (c)(4). The commenter's rationale for this recommendation is that the merits of incorporating sufficient component interfacing to simulate actual airplane installation interactions should justify expanding this requirement to other critical ETOPS systems not specifically enumerated in paragraph (e). The FAA appreciates the concerns expressed by the commenter, but does not agree that this recommendation is practicable. The scope of the testing covered under paragraph (c)(4) is such that many of the new or enhanced tests may be done with prototype hardware at the bench or component level early in the development program when sufficient interfacing system hardware is not available. In accordance with paragraph (c)(4), the applicant must define each test that will be used to assure design integrity. The enhanced testing defined by this paragraph will include the configuration proposed for certification and sufficient interfacing system hardware and software to simulate the actual airplane installation when it is necessary to accomplish this goal. As for other critical ETOPS systems not specifically identified in paragraph (e), the 3000-cycle engine and auxiliary power unit tests and 1000-cycle airplane test will provide an adequate opportunity to discover design problems with these systems.

1000-Cycle Airplane Test

One commenter questions the requirement to install either the 3000-cycle test engine or another high-cycle engine for part of the 1000-flight-cycle airplane test by stating that the rationale for the requirement is unclear. This commenter considers that a complete strip and inspection of the high-cycle engines to identify incipient problems is a more effective way of establishing early ETOPS suitability, than by inclusion in the flight program. This commenter goes on to say that history has shown that new problems are more likely to be exhibited by lower life engines rather than by mature engines, and the relevance of potentially non-representative high life failures is not immediately obvious.

The FAA does not concur with the commenter's assessment that any failures on the 3000-cycle engine during the 1000-cycle airplane test would be a non-representative high life failure. The 3000-cycle engine is representative of a high-time engine that would exist if the AC 120–42A criteria for operating experience for 180-minute ETOPS approval were considered. The 3000-cycle ground test will not subject the engine and engine-mounted airplane equipment to representative altitude conditions that the FAA is concerned may impact overall reliability. The reason for including the 3000-cycle test engine and its associated propulsion system equipment, or another suitable high-cycle engine and propulsion system, on the 1000-cycle airplane test vehicle is to expose an "aged" engine to altitude effects not possible to achieve on a ground test stand. Flight time with this aged engine will give the FAA additional confidence that the results achieved during the ground cyclic testing are representative of the actual airplane environment that is used to assess propulsion system reliability for ETOPS type design approval using the AC 120–42A criteria.

This same commenter expresses concern that a complete teardown and inspection of the high time engine will not be possible if it is installed on the 1000-cycle test airplane. The FAA does not agree. A complete teardown and inspection is planned for every engine and all the engine-mounted airplane equipment subjected to the 3000-cycle test. A teardown inspection is required in order for the Reliability Assessment Board to assess the design suitability for ETOPS approval in accordance with paragraph (g) of these special conditions. It was this concern for obtaining meaningful teardown results from the 3000-cycle test engine that prompted the FAA to allow another suitable high-cycle engine to be installed on the 1000-cycle test airplane. In addition, an airworthiness inspection will be performed on the high-time engine prior to its installation on the airplane in order to ensure that the engine complies with the maintenance manual acceptance limits for continued operational service. Any problems found during the airworthiness inspection will be reported in accordance with the problem tracking system requirements, and necessary repairs will be made prior to the engine's installation on the 1000-cycle test airplane.

One commenter recommends that "actual airline operation," as used in paragraph (e)(7), "be defined such that five percent of the 1000 flight cycles should be at altitudes and of duration typical of actual ETOPS operations to ensure no adverse impact on any aircraft systems and engines due to extended cold soaking, etc." The FAA agrees with the commenter's assessment of the need for high altitude, long duration flight cycles. However, the FAA does not concur with the commenter's suggested change. The mix of flight cycles to be flown during the 1000 cycle test is based on an assessment of flight operating conditions that have led to the types of problems that have occurred in service on those airplane engine combinations that currently have 180-minute ETOPS approval. The number of high altitude, long duration flight cycles that will be flown for each of the engine types to be certified on the 777 airplane is a result of this assessment combined with additional flight cycles that are necessary to validate airline operational readiness. The FAA considers that the change proposed by the commenter would unduly restrict the FAA in requiring development of an appropriate test plan for the 1000 cycle test.

Another commenter recommends that the "1000 cycle test should be done using published maintenance manual criteria in lieu of unique engineering allowances." The FAA concurs with this comment. It has always been the FAA's intent that the 1000-cycle airplane would be operated and maintained using the recommended operations and maintenance manual procedures. This is to validate that operating and maintenance procedures to be used during airline operations are correct and will not lead to errors that may result in engine inflight shutdowns or airplane diversions. Paragraph (e)(7) has been amended to make this clarification. In addition, the paragraph

has been reorganized to more clearly state the requirements.

Problem Tracking System

One commenter recommends that any problem reported under the problem tracking system must be under control within a maximum of 30 days. The FAA does not concur that the addition of a time limit is necessary or appropriate. The proposed special conditions did not specify a particular time interval by which all problems must be "under control." The intent of the problem tracking system is to provide a means by which the FAA will be promptly notified of problems occurring on the design so that the FAA Reliability Assessment Board can ensure that appropriate timely resolutions are implemented. Depending on the severity of the problem, a more immediate response than 30 days may be appropriate. For less severe problems, a slower response may be allowable. In each case, the FAA Reliability Assessment Board will determine the appropriate time interval for resolution of all ETOPS significant problems identified by the problem tracking system. Defining a specific time interval for problem resolution is too restrictive and, therefore, the FAA has not adopted the commenter's proposal in the final special conditions.

Reliability Assessment Board

One commenter is concerned that the proposed FAA Reliability Assessment Board (RAB) might be over-represented by FAA engine specialists. Specifically, the commenter would like the special conditions to include references to systems, avionics, and flight control representatives, as well as field inspectors, to help ensure a balanced board makeup. The FAA does not concur that identifying specific system specialists is appropriate. The purpose of the RAB is to address the suitability of the entire airplane for ETOPS and not just the propulsion system, as was the case with the Propulsion System Reliability Assessment Board defined in AC 120–42A. As stated in the preamble to the notice of these special conditions, the board will consist of members from a broad spectrum of offices, including FAA airplane and engine certification offices, FAA aircraft evaluation groups for both the engines and airplane, FAA maintenance and operational approval offices, and FAA headquarters. In addition to the Seattle Aircraft Certification Office (Seattle ACO), the following offices have been requested to support the RAB:

Los Angeles Aircraft Certification Office
Engine Certification Office
Flight Standards Air Transportation Division
Flight Standards Aircraft Maintenance Division
Flight Standards Technical Programs Division
Seattle Aircraft Evaluation Group
Boston Aircraft Evaluation Group
United Airlines FAA Certificate Management Office
(Pratt & Whitney engine installation only)

These special conditions define specific findings that the RAB must make in order to determine that the 777 airplane is suitable for 180-minute ETOPS operations. It is implicit in each of these findings that FAA technical specialists be involved in the decision process. This is in keeping with existing type certification practice. Therefore, naming specific system specialties for RAB membership is not necessary.

Reliability Demonstration Acceptance Criteria

One commenter states that proposed paragraph (h)(1) implies a direct relationship between the type and frequency of engine and systems events occurring during the test program and the demonstrated reliability of existing approved 180-minute ETOPS airplanes. This commenter goes on to state that this paragraph could be interpreted as a statement that a sample of 1000 flights is enough to produce a statistical demonstration of reliability, and recommends adding wording to the effect that "flight test and laboratory test * * * are not used to produce directly a measure of the reliability." The FAA infers from this statement that the commenter does not consider the reliability demonstration acceptance criteria of paragraph (h)(1) to provide a statistically meaningful assessment of airplane reliability.

While the FAA agrees that the airplane flight test program and the 1000-flight-cycle ETOPS test referred to in paragraph (h)(1) will not form a statistically significant sample from which to produce a direct measurement of reliability, a statistical calculation of reliability is not the intent of the requirement. As stated earlier, the occurrence of a relatively high number of basic design problems during type certification testing generally has resulted in a higher number of problems occurring after the airplane enters service. Those airplanes with the best propulsion system reliability after entry into service have also, in general, encountered relatively few design problems during the type certification program. Paragraph (h)(1), then, provides a measurement of design maturity based on the experience from past certification programs. The standard used to judge this maturity is the type and frequency of failures occurring on already certified 180-minute ETOPS airplanes. This is not to say that it is necessary to do a direct comparison of failure rates system by system. In gross terms, the FAA is expecting the 777 flight test airplanes to experience the same kinds of problems at about the same frequency that are occurring on ETOPS airplanes in revenue service. These special conditions define the standard by which the suitability of the 777 airplane will be assessed for ETOPS approval. The FAA does not consider it necessary to state that the testing does not produce a direct measure of reliability.

Demonstration of Compliance

One commenter recommends adding a new paragraph (i)(8) that would read as follows: "The accelerated engine cyclic endurance test program of paragraph (f)(5) must be in place." The commenter's rationale for this recommendation is that is it necessary to require timely program startup and to ensure that the test engine cycles remain well ahead of high-cycle revenue fleet engines. The FAA agrees with this comment and has added a new paragraph (i)(7) to the special conditions. Previously designated paragraph (i)(7) has been redesignated as paragraph (i)(8).

Miscellaneous Comments

One commenter notes that in the second sentence of paragraph (e)(6) the word "administration" appears to be a typographical error that should read "demonstration." The commenter is correct and the final special conditions are corrected as noted.

Some comments were received concerning compliance methods, although these commenters did not recommend any changes to the special condition requirements. These special conditions address the regulatory standards to be applied in obtaining Early ETOPS approval. The means by which compliance is demonstrated is not specifically addressed in this action. The specific methods that Boeing will use to demonstrate compliance with these special conditions will be approved as part of the normal certification process. This will be accomplished by FAA approval of the ETOPS type design assessment plan, required by paragraph (a) of these special conditions.

One comment concerns the process for an airline to receive early ETOPS operational approval. Operational approval is not addressed by these special conditions. As stated earlier, Advisory Circular 120–42A contains guidance regarding operational and maintenance practices criteria that must be met by the operator before ETOPS operations can be conducted. Satisfaction of the requirements of these special conditions does not constitute operational approval.

With the exception of the revisions noted above, the special conditions for extended range operation of the Boeing Model 777 airplane are adopted as proposed.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation Safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Boeing Model 777 airplane:

In addition to the airworthiness requirements of part 25 of the Federal Aviation Regulations (FAR), the Model 777 airplane must comply with the following requirements in order to be eligible for Extended Range Operation with Two-Engine Airplanes (ETOPS) without the requisite operating experience specified in Advisory Circular (AC) 120–42A:

(a) *Introduction.* An approved ETOPS Type Design Assessment Plan covering the engine and each applicable airplane system must be established. The specific methods that will be used to substantiate compliance with the requirements of these special conditions must be defined in the plan. Specific systems that will undergo the complete analysis, testing, and development program tracking defined in paragraph (c) of these special conditions must be identified. Other airplane systems that may contribute to the overall safety of an ETOPS operation, but that do not warrant the rigorous type design requirements and relevant experience assessments defined in paragraph (c) of these special conditions, must be identified and agreed to by the FAA. Compliance must be shown for these other systems with all provisions of these special conditions, except paragraph (c). In showing compliance with these special conditions, tests and analyses conducted to substantiate compliance with the basic airworthiness standards of part 25 may be referenced, if applicable.

(b) *Engine Assessment.*

(1) The ETOPS eligibility of the engine must be determined specifically for the airplane installation for which early ETOPS type design approval is requested.

(2) Procedures for an engine condition monitoring program must be defined and validated at the time of ETOPS type design approval. The engine condition monitoring program must be able to predict when an engine is no longer capable of providing, within certified engine operating limits, the maximum thrust required for a single engine diversion.

(c) *ETOPS Type Design Assessment.*

(1) *Design requirements Assessment.* Part 25 of the FAR, including applicable amendments, defines most of the requirements necessary to design an airplane that is suitable for ETOPS operation, as long as the ETOPS mission is considered in applying these requirements for all anticipated dispatch configurations. In addition to these requirements, the propulsion system must be designed to preclude failures or malfunctions that could result in an engine inflight shutdown. The applicant must identify and list methods of compliance for each of the applicable ETOPS requirements, including those specific part 25 requirements for which methods of compliance relative to the ETOPS mission are different from those traditionally used for two-engine airplanes. Paragraph (c)(3) of these special conditions lists certain design feature categories that may be affected by a consideration of the ETOPS mission in the design of these systems. The effects of the applicable ETOPS requirements on the design of any of those design feature categories listed in paragraph (c)(3) must be specifically addressed by this assessment.

(2) *Relevant Experience Assessment.* For each system covered by the ETOPS Type Design Assessment, there must be an assessment of the relevant design, manufacturing, and operational problems experienced on previous airplanes built by the applicant. The assessment must include the applicable relevant service experience of vendor supplied systems or, to the extent possible, the service experience of components on aircraft built by other manufacturers. Specific corrective actions taken to preclude similar problems from occurring on the new airplane must be identified.

(3) *Design Features.*

(i) The applicant must define any design features implemented to comply with the design requirements listed in paragraph (c)(1). Consideration of the following design feature categories must be specifically addressed:

(A) Airplane capabilities and capacities of the ETOPS mission;

(B) Fuel system integrity, including consideration of uncontained main engine rotor burst and fuel availability as affected by cross-feed capability and electrical power to pumps and other components;

(C) Fuel quantity indication to the flightcrew, including alerts that consider the fuel required to complete the mission, abnormal fuel management or transfer between tanks, and possible fuel leaks between the tanks and the main engines;

(D) Communication systems for the ETOPS environment;

(E) Navigation systems for the ETOPS environment;

(F) Minimum single-engine cruise altitude capability; and

(G) Failure tolerant design of caution indicating systems or avionics systems to prevent unnecessary airplane diversions.

(ii) The applicant must define the specific design features used to address problems identified in the relevant service experience assessment of paragraph (c)(2).

(4) *Test Features.* The applicant must define specific new tests, or enhanced tests that will be used to assure engine and airplane system design integrity. These test features may be derived from the requirements assessment of paragraph (c)(1) and the relevant service experience assessment of paragraph (c)(2).

(5) *Analysis Features.* The applicant must define specific new analyses, or enhanced analyses, that will be used to assure engine and airplane system design integrity. These analysis features may be derived from the requirements assessment of paragraph (c)(1) and the relevant service experience assessment of paragraph (c)(2).

(6) *Manufacturing, Maintenance, or Operational (Other) Features.* The applicant must define specific new, or enhanced, manufacturing processes or procedures, and maintenance or operational procedures that are being implemented to assure engine and airplane system integrity. These "other" features may be derived from the requirements assessment of paragraph (c)(1) of this section and the relevant service experience assessment of paragraph (c)(2).

(d) *Additional EOPS Analysis Requirements.*

(1) *Performance and Failure Analyses.* Engine and airplane performance and failure analyses required for certification must be expanded to consider ETOPS mission requirements, including exposure times associated with a 180-minute single-engine diversion and a subsequent 15-minute hold in the terminal airspace at the diversion airport. Consideration must be given to crew workload and operational implications of continued operation with failure effects for an extended period of time. The rationale and all assumptions used in the analyses must be documented, justified, and validated, including maintenance interval and maintainability assumptions.

(2) *Maintenance and Flight Operations Evaluation.* The Type Design Assessment Plan must contain a program to systematically detect and correct problems occurring as a result of improper execution of maintenance or flight operations. Corrective actions for any problems found must be identified and implemented through the Problem Tracking and Resolution System required by paragraph (f).

(3) *Manufacturing Variability.* The Type Design Assessment Plan must contain a program to minimize potential manufacturing problems. The plan should address early validation of tooling and procedures, as well as any related problems, as identified in paragraph (c)(2). Corrective actions for problems that impact the safe

operation of the airplane must be identified and implemented through the problem tracking and resolution system required by paragraph (f).

(e) *Additional ETOPS Test Requirements.* As part of, or in addition to, the testing identified in paragraph (c)(4), the following specific test requirements apply:

(1) *Configuration Requirements.* All testing defined in paragraph (e) must be conducted with the configuration proposed for certification, and must include sufficient interfacing system hardware and software to simulate the actual airplane installation.

(2) *Completion of Applicable Failure Analyses.* Failure analyses required for ETOPS type design approval must be submitted to the FAA prior to the start of the testing defined in paragraph (e).

(3) *Vibration Testing.* Vibration testing must be conducted on the complete installed engine configuration to demonstrate that no damaging resonances exist within the operating envelope of the engine that could lead to component, part, or fluid line failures. The complete installed engine configuration includes the engine, nacelle, engine mounted components, and engine mounting structure up the strut to wing interface.

(4) *New Technology Demonstration Testing.* Testing must be conducted to substantiate the suitability of any technology new to the applicant, including substantially new manufacturing techniques.

(5) *Auxiliary Power Unit Demonstration Test.* If requesting credit for APU backup electrical power generation, one auxiliary power unit (APU), of the type to be certificated with the airplane, must complete 9000 equivalent airplane operational cycles.

(6) *Engine Demonstration Test.* One engine of each type to be certificated with the airplane must complete 3000 equivalent airplane operational cycles. The engine must be configured with a complete airplane nacelle package for this demonstration, including engine-mounted equipment.

(7) *Airplane Demonstration Test.* For each engine type to be certificated with the airplane, one complete airplane must complete at least 1000 flight-cycles simulating an actual airline operation.

(i) The airplane must be exposed to representative environmental variations within the normal expected airplane operational envelope during the 1000 cycles.

(ii) The 3000-cycle test engine and propulsion system specified in paragraph (e)(6) above, or another suitable high-cycle test engine and propulsion system acceptable to the Administrator, must be installed on the airplane for a minimum of 500 cycles during this demonstration.

(iii) The 1000-cycle test airplane must be operated and maintained using the recommended operations and maintenance manual procedures.

(f) *Problem Tracking System.* An FAA-approved problem tracking system must be established to address problems encountered on the engine and airplane systems that could affect the safety of ETOPS operations.

(1) The system must contain a means for the prompt identification of those problems that could impact the safety of ETOPS operations in order that they may be resolved in a timely manner.

(2) The system must contain the process for the timely notification to the responsible FAA office of all relevant problems encountered, and corrective actions deemed necessary, in a manner that allows for appropriate FAA review of all planned corrective actions.

(3) The system must be in effect during the phases of airplane development that will be used to assess early ETOPS eligibility, and for at least the first 250,000 engine-hours of fleet operating experience after the airplane enters revenue service. For the revenue service period, this system must define the sources and content of in-service data that will be made available to the manufacturers in support of the problem tracking system. The content of the data provided must include, as a minimum, the data necessary to evaluate the specific cause of all service incidents reportable under § 21.3(c) of part 21, in addition to any other failure or malfunction that could prevent safe flight and landing of the airplane, or affect the ability of the crew to cope with adverse operating conditions.

(4) Corrective actions for all problems discovered during the development and certification test program that could affect the safety of ETOPS operations, or the intended function of systems whose use is relied upon to accomplish the ETOPS mission, must be identified and implemented in accordance with paragraph (g)(2). If, during the certification program, it is discovered that a fault has developed that requires significant rework of manufacturing, maintenance, and/or operational procedures, the FAA will review the ETOPS suitability of the affected system and interfacing hardware and identify any additional actions to be accomplished to substantiate the corrective actions.

(5) For each engine type to be certificated with the airplane, the system must include provisions for an accelerated engine cyclic endurance test program that will accumulate cycles on one representative production-equivalent propulsion system in advance of the high-cycle revenue fleet engine. This test program will assist the applicant and the FAA in identifying and correcting problems before they occur in revenue service. This program must be in place for, at a minimum, the first 250,000 engine-hours of fleet operating experience after the airplane enters revenue service. The representative production-equivalent propulsion system may, at the manufacturer's discretion, be used for other fleet support activities.

(g) *Reliability Assessment Board.*

(1) An FAA Reliability Assessment Board will be formed to evaluate the suitability of the airplane for ETOPS approval and make a recommendation to the Manager, Transport Airplane Directorate, regarding the adequacy of the type design for 180-minute ETOPS operation. The purpose of this board will be:

(i) To periodically review the development and certification flight test program accomplishments from both type design and operational perspectives;

(ii) To ensure that all specific problems, as well as their implications on the effectiveness of the Early ETOPS process, are resolved; and

(iii) To assess the design suitability for ETOPS. The board will consider design, maintenance, manufacturing, and operational aspects of the type design when finding suitability for ETOPS approval.

(2) The FAA Reliability Assessment Board will review and evaluate the data from the problem tracking and resolution system to establish compliance with the requirements of paragraph (h). The board will evaluate the overall type design for ETOPS suitability as demonstrated in flight test, and the 1000-cycle ETOPS test, considering all resolutions of problems. The following suitability criteria will be applied:

(i) Sources of engine shutdown/thrust loss, engine anomalies, or airplane system problems that have a potential significant adverse effect on in-service safety will be resolved.

(ii) Resolutions are identified for all items in paragraph (i) with analysis and/or testing to show all resolutions are effective. These resolutions may be accomplished through one or more of the following categories:

Design change
Operating procedure revision
Maintenance procedure revision
Manufacturing change

(iii) The resolutions of paragraphs (i) and (ii) will be incorporated prior to entry into service.

(iv) The engine shutdown history of the test program indicates that the engine reliability of the configuration is suitable for the ETOPS approval being considered.

(v) Where interim resolutions having operational impact are defined, the cumulative effect must be determined to be acceptable.

(vi) System or component failures experienced during the program are consistent with the assumptions made in the failure analyses.

(h) *Reliability Demonstration Acceptance Criteria.*

(1) For the engine and airplane systems, the type and frequency of failures that occur during the airplane flight test program and the 1000-flight-cycle ETOPS test must be consistent with the type and frequency of failures or malfunctions that would be expected to occur on presently certified 180-minute ETOPS airplanes. The failures to be considered are those associated with system components that conform to the type design requested for certification. The Reliability Assessment Board will determine compliance with this requirement based on an evaluation of the problem reporting system data, considering system redundancies, failure significance, problem resolution, and engineering judgment.

(2) Corrective action for any of the following classes of problems occurring during the testing identified in paragraph (h)(1) that requires a major system redesign would delay ETOPS type design approval, or result in approval of a reduced single-engine diversion time, unless corrective action has been substantiated to, and accepted by, the FAA Reliability Assessment Board:

(i) Any source of unplanned inflight shutdown or loss of thrust.

(ii) Any problem that jeopardizes the safety of an airplane diversion.

(3) The FAA Reliability Assessment Board must determine that the suitability criteria of paragraph (g)(2) have been met.

(i) *Demonstration of Compliance.* In order to be eligible for 180-minute ETOPS type design approval, the following conditions apply:

(1) The engine assessment has been completed and eligibility for ETOPS operation has been approved by the FAA Engine Certification Office.

(2) All design, manufacturing, maintenance, operational, and other features necessary to meet the ETOPS requirements of paragraph (c)(1), and to resolve the problems identified in paragraph (c)(2), have been successfully implemented.

(3) The identified test and analysis features in paragraph (c)(4) and (c)(5) have been shown to be effective in validating the successful implementation of the features in paragraph (i)(2).

(4) The additional analysis requirements of paragraph (d) have been completed and the results have been approved.

(5) The additional test requirements of paragraph (e) have been successfully completed.

(6) All significant problems identified in accordance with paragraph (f) have been resolved, and fixes substantiated to be effective have been implemented.

(7) The accelerated engine cyclic endurance test program of paragraph (f)(5) must be in place.

(8) Compliance with the reliability demonstration acceptance criteria of paragraph (h) has been found by the Reliability Assessment Board.

Issued in Renton, Washington, on May 18, 1994.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-13072 Filed 5-31-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 94-ANM-17]

Modification of Class D Airspace; Renton, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace area at Renton, Washington, by amending the area's effective hours to coincide with the associated control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with the air traffic control tower is required.

DATES: *Effective date:* 0901 UTC, August 18, 1994. *Comment date:* Comments must be received on or before August 11, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manger, Air Traffic Division, Docket No. 94-ANM-17, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone number: (206) 227-2007.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James E. Riley, ANM-537, Federal Aviation Administration, Docket No. 94-ANM-17, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone number: (206) 227-2537.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments, and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to delay the effective date of the rule or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace area at Renton, Washington, by amending the area's effective hours to coincide with the associated control tower's hours of operation. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at this airport. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with this air traffic control tower is required.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need of modify this Class D airspace area in order to promote the safe and efficient handling of air traffic in this area. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption Of The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting

Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows

Paragraph 5000—General

* * * * *

ANM WA D Renton, WA [Revised]

Renton Municipal Airport, WA (lat. 47°29'35"N., long. 122°12'56"W.)
Seattle VORTAC (lat. 47°26'07"N., long. 122°18'35"W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the Renton Municipal Airport, and within 1.8 miles each side of the Renton Municipal Airport 175° bearing extending from the airport to 5.9 miles south of the airport, excluding the airspace within a 4-mile radius of the Seattle VORTAC and within a 4-mile radius of the Renton Municipal Airport west of long. 122°13'37"W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on May 12, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division Northwest Mountain Region

[FR Doc. 94–13067 Filed 5–31–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing–Federal Housing Commissioner

24 CFR Parts 207, 213, 220, 221, 232, 241, 242, and 244

[Docket No. R–94–1662; FR–3224–F–02]

RIN 2502–AF64

Effect of Acquisition of Title by Mortgagee or the Secretary on a Title Insurance Policy

AGENCY: Office of the Assistant Secretary for Housing–Federal Housing Commissioner, HUD.

ACTION: Final rule; confirmation of interim rule.

SUMMARY: This rule adopts as final an interim rule published on June 24, 1993 that removed a provision in current HUD regulations requiring that any title insurance policy obtained in connection with the insurance of multifamily mortgages must provide that, upon acquisition of title by the mortgagee or the Secretary, "it will become an owner's policy running to the mortgagee or the Secretary, as the case may be" and substitute the provision "it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be". The purpose of this rulemaking was to remove a regulatory restriction and to adopt in its place a more efficient procedure.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Gaines E. Hopkins, Managing Attorney, Multifamily Mortgage Division, Office of General Counsel, Room 9228, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–4090, TDD (202) 708–3259. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 207.36 of Title 24 of the Code of Federal Regulations requires a mortgagee to furnish a survey and a policy of title insurance or its equivalent as a prerequisite to the closing of an insured multifamily housing loan. Where a title policy is to be furnished, the regulation requires that the policy name the mortgagee and HUD as the insured and also provide that, upon acquisition of title by either the mortgagee or HUD, the policy will become an owner's policy running to either the mortgagee or HUD.

If a mortgage default occurs and a mortgagee elects to exercise its right to assign the mortgage to HUD, it must comply with 24 CFR 207.258(b)(4)(ii). This provision requires that all policies of title insurance or evidences of title submitted to HUD have the original title coverage extended to include the date of the assignment of the mortgage. If the mortgagee elects to foreclose on the mortgage itself, or if it accepts a deed-in-lieu of foreclosure from the mortgagor, the requirements set out in §§ 207.258(c)(3) and 207.258a apply. These sections provide that if title insurance was utilized at the time of endorsement, the mortgagee will be required to submit an *owner's* title policy in favor of HUD that is effective on the date that the project is conveyed to the Secretary. If, however, an abstract and attorney's opinion were originally accepted at the time of endorsement, they are again acceptable. It should be noted that the aforementioned regulations either are incorporated into, or have a counterpart in, all parts of Title 24 of the Code of Federal Regulations that are applicable to multifamily and health care mortgage insurance programs.

There are two basic title insurance policy formats, one for owners/mortgagors and a second for lenders/mortgagees. Each is used in both commercial and residential transactions. The standard title policies have been written and promulgated by the industry trade organization, American Land Title Association (ALTA), and are used in most jurisdictions. In jurisdictions that mandate a particular format, HUD has deferred to state law and accepted the state-mandated format. For the last two decades, HUD has accepted the 1970 ALTA format, and no other ALTA format under the aforesaid regulatory requirements, in those jurisdictions that do not otherwise require the use of a particular title policy.

Periodically, ALTA has revised its approved standard title policy to provide for what it perceives as changing legal and market conditions. At the request of ALTA, HUD has reviewed each new policy format to assess its positive or negative impact upon the specific title insurance needs of the Department. In 1987, ALTA published a new title policy that was reviewed and subsequently approved by HUD, but only upon the condition that, in multifamily and health care cases, title companies add an endorsement to the lender's policy providing that it will automatically "convert" to an owner's policy if HUD becomes the owner of the FHA-insured project as a result of foreclosure. The HUD Office of General Counsel expressed the opinion that a "conversion" endorsement is necessary to comply with the requirement in § 207.36(a)(1) "that upon acquisition of title by the mortgagee or the Secretary, [the title policy] will become an owner's policy * * *." This endorsement condition has been strongly resisted by ALTA and some of its individual corporate members, resulting in situations where it was only with considerable difficulty that title insurance was obtainable.

Title Industry Position

The title industry argues that a lender's policy cannot be "converted" to an owner's policy as HUD has requested and raises arguments relating to (1) distinctions between the two formats that bear directly upon the "value" of the coverage; (2) cost schedules that are on file with state insurance commissioners; (3) the unavailability of coverage to other mortgagees or private mortgage insurers; (4) the prior practice of FHA; (5) a different interpretation of the regulation; and (6) the opinion that either HUD or the lender should pay the entire cost of a new owner's policy. Inasmuch as HUD, by this rule, is removing the regulatory restriction, it is not necessary to set forth the relative merits and demerits of this industry position.

Current HUD Procedure

At present, HUD acquires title to a project pursuant to one of several procedures. The most common procedure is for the mortgagee to assign the mortgage to HUD when there is a default. As part of the assignment process, the mortgagee is required, at its own expense, to extend the coverage of the original mortgagee policy to include the time period between the dates of original endorsement for insurance and the assignment. This is usually accomplished by a limited title search and a "date-down" endorsement of the existing title policy, but may also be done through the purchase of an entirely new lender's policy. After assignment of a mortgage, if the default continues, it is HUD's policy to employ an attorney who practices in the jurisdiction where the project is located to act as a commissioner or trustee in the foreclosure. It is the responsibility of the foreclosure commissioner to perform a limited title search covering the time period between the assignment of the mortgage to HUD and the institution of proceedings under the Federal Foreclosure Act. Even though no title policy is obtained by HUD as a result of the foreclosure commissioner's findings and report, HUD would have the power to bring a malpractice action against the licensed attorney who acted as the foreclosure commissioner if the work product were flawed.

A lender also may elect not to assign, but to institute foreclosure proceedings on its own or to take title from the mortgagor by a deed-in-lieu of foreclosure and to convey title directly to HUD. After the lender obtains title to the project by means of foreclosure or a deed-in-lieu, it is entitled to transfer title directly to HUD. If the lender chooses to proceed in this manner, § 207.258a requires that it purchase, at its own expense, an owner's title policy "effective on or after the date of the recording of the conveyance to the Commissioner."

It should also be noted that Section 207(k) of the National Housing Act and the implementing regulations also give HUD the option of either proceeding to foreclosure or taking a deed-in-lieu of foreclosure directly from the mortgagor, following the assignment of the project mortgage to the Secretary.

HUD Response

Title insurance is necessary in virtually all primary and secondary mortgage market transactions. Although individual title companies may still be willing to issue the 1970 ALTA lender's title policy on a case-by-case basis in those states where they are not forbidden by state regulation from doing so, the 1992 ALTA lender's policy format now represents the only title policy format that has the official approval of the title industry's trade association for use by title companies nationwide. The Department has determined that it is necessary to change its regulations so that the 1992 ALTA title policy format can be accepted by HUD for use in FHA-insured multifamily mortgage transactions.

Consequently, the Department's regulations are revised to remove the requirement that the Secretary, in every case, be issued an owner's title policy. HUD would retain the flexibility, however, to make such a determination on a case-by-case basis. Accordingly, in this rule HUD is revising 24 CFR 207.36(a)(1) and conforming other relevant sections by removing the phrase "it will become an owner's policy running to the mortgagee or the Secretary as the case may be," and substituting "it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be".

As a consequence of having removed the regulatory requirement in § 207.36 requiring the purchase of an owner's policy, HUD could either purchase an owner's title policy after acquisition of title, or HUD could choose to self-insure after acquisition of title. After this rule takes effect HUD will decide on a case-by-case basis either to purchase an owner's policy at its own expense, or to self-insure for the time period after acquisition of title."

"My question is where does HUD have the authority to purchase a title insurance policy from its own funds for its own protection? The long standing policy of the Federal Government, as enunciated frequently by the General Accounting Office, is that the Government is a self-insurer and will not purchase commercial insurance against loss or damage to its own property (presumably HUD inventory property is considered as Government property.) Does HUD have approval from the Comptroller to use Government funds to purchase title insurance to protect its ownership interest?"

HUD Response: It is true that the government is essentially a self-insurer in certain specific areas, primarily loss or damage to government property and the liability of government employees. But there are many situations in which the government buys or pays for insurance. Among the more well-known examples are the Employee's Health Benefits Program and the Federal Group Life Insurance. Moreover, even the self-insurance requirement for loss to government property does not apply in all situations. For example, the rule does not apply to a wholly-owned government corporation (the Federal Housing Administration (FHA) is treated as a corportion for this purpose, even though it is not chartered as one, 53 Comp Gen 337 (1973)). Furthermore, the Comptroller General has indicated that property acquired by FHA in exchange for the payment of insurance benefits occupies a different status from government owned property and does not fall within the meaning of the policy of not carrying hazard insurance on property it owns. Finally, the Comptroller General has never even defined title insurance as insuring property loss and thus prohibited from purchase.

II. Public Comment on Earlier Interim Rule

On June 24, 1993 (58 FR 34213), the Department published in the **Federal Register**, an interim rule. A request was made for comment by the public on this interim rule. One comment has been received. The commenter, a private individual, quotes the following paragraph from the Preamble to the interim rule and asks the following question:

"As a consequence of having removed the regulatory requirement in § 207.36 requiring the purchase of an owner's policy, HUD could either purchase an owner's title policy after acquisition of title, or HUD could choose to self-insure after acquisition of title. After this rule takes effect HUD will decide on a case-by-case basis either to purchase an owner's policy at its own expense, or to

III. Findings and Certifications

Regulatory Agenda

This rule was listed as item 1598 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20450) under Office of Housing, in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

Impact on Small Entities.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before its publication and, by approving it, certifies that this rule does not have a significant economic impact on a

substantial number of small entities. The rule effectively liberalizes title insurance requirements which must be met if a mortgage insurance claim is being made against HUD. Its impact on small entities will be minimal and any such impact will be beneficial.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule does not significantly change existing roles and relationships between federal, state and local governments in any of the programs to which it applies.

Impact on the Family

The General Counsel, as the Designated Official under Executive order 12606, *The Family*, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being.

Environment

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

List of Subjects

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and record-keeping requirements.

24 CFR Part 220

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 241

Energy conservation, Home improvement, Loan programs—Housing and Community Development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 244

Health facilities, Mortgage insurance, Reporting and record- keeping requirements.

The Catalog of Federal Domestic Assistance Numbers are: 14.112, 14.126, 14.128, 14.129, 14.134, 14.135, 14.138, 14.139 and 14.155.

Accordingly, the Department adopts as final and without change, the interim rule published on June 24, 1993 (58 FR 34213) that amended 24 CFR parts 207, 213, 220, 221, 232, 241, 242 and 244.

Dated: May 23, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 94–13224 Filed 5–31–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is announcing its decision to approve, with one required amendment, a proposed amendment to the Colorado permanent regulatory program (hereinafter referred to as the "Colorado program"), as administered by the Colorado Division of Minerals and Geology (Division) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to roads and support facilities; backfilling and grading; coal mine waste, coal processing waste, and noncoal waste disposal; mountaintop removal; and explosives. The amendment revises the Colorado program (1) to be consistent with SMCRA and the Federal regulations and (2) to improve operational efficiency.

EFFECTIVE DATE: June 1, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Acting Director, Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program
II. Submission of Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. Information regarding the general background on the Colorado program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Actions concerning program amendments taken subsequent to the approval of the Colorado program are found at 30 CFR 906.15, 906.16, and 906.30.

II. Submission of Proposed Amendment

By letter dated June 30, 1993, Colorado submitted to OSM a proposed amendment to the rules of the Colorado Mined Land Reclamation Board at 2 Code of Colorado Regulations (CCR) 407–2 (Administrative Record No. CO–552). Colorado submitted the proposed amendment in part at its own initiative and in part in response to certain issues identified in letters dated May 7, 1986, and March 22, 1990 (Administrative Record Nos. CO–282 and CO–496), that OSM sent to Colorado in accordance with 30 CFR 732.17(c).

In its June 30, 1993, amendment, Colorado proposed to revise the following provisions of 2 CFR 407–2: definitions for "road," "haul road," "access road," and "light-use road" at Rules 1.04(111) (a) through (c); permit application requirements for support facilities, stream fords used as temporary construction routes, and certification of plans and drawings for haul and access roads at Rules 2.05.3(3) (a) and (c) (vi) and (vii); reclamation plan requirements for all roads at Rule

2.05.4(2); permit application requirements for haul roads concerning general requirements, location, design and construction, maintenance, and reclamation at Rules 4.03.1(1) (a), (b), (d), and (e), 4.03.1(2)(b), 4.03.1(3)(c) and (e)(ix), 4.03.1(6)(c), and 4.03.1(7)(a)(ix) and (b); permit application requirements for access roads concerning general requirements, location, design and construction, maintenance, and reclamation at Rules 4.03.2(1) (a), (b), (e), and (f), 4.03.2(2)(b), 4.03.2(3)(c) and (e)(ix), 4.03.2(6) (a) and (c), and 4.03.2(7) (a)(ix) and (b); permit application requirements for light-use roads concerning general requirements, location, design and construction, maintenance, and reclamation at Rules 4.03.3(1) (a) and (b), 4.03.3(2)(b), 4.03.3(3)(c), 4.03.3(6)(c), and 4.03.3(7)(i); performance standards for coal exploration in regard to roads at Rules 4.21.4(3)(b) (i) through (iii), 4.21.4(3)(c) (i) through (iii), and 4.21.4(3)(d) (i) and (ii); permit application requirements for the return of coal mine waste and coal processing waste to abandoned workings at Rules 2.05.3(9)(a) and 2.05.3(10) (a) through (e); performance standards for disposal of spoil in head-of-hollow fills and disposal of noncoal waste at Rules 4.09.3(2)(c) and 4.11.4(3); general backfilling and grading requirements for cut-and-fill terraces at Rules 4.14.2(2) and (2)(c); performance standards for mountaintop removal operations at Rules 4.26.2(2) and (2) (a) through (c); and performance standards for the use of explosives at Rules 4.08.4(10), 4.08.4(10) (a) through (c), and 4.08.6(1).

In addition to the above revisions, Colorado's amendment also contained a "Statement of Basis, Specific Statutory Authority, and Purpose." This statement provided Colorado's rationale for submitting the revisions proposed in the amendment. In particular, Colorado included a policy statement explaining what it would consider, on a case-by-case basis, in making a determination of the program's jurisdiction over public roads. These considerations included whether the road is constructed or improved by an operator, mining-related use, and degree of mining-related impacts to the road.

OSM published a notice in the July 21, 1993, **Federal Register** (58 FR 38989) announcing receipt of the amendment and inviting public comment on its adequacy (Administrative Record No. CO–555). The public comment period ended August 20, 1993.

No substantive comments were received. The public hearing, scheduled for August 16, 1993, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns or requested clarification regarding Colorado's (1) criteria to be used for determining jurisdiction over public roads, specifically with regard to the concept of relative use proposed in the policy statement for Colorado's proposed definition for "road" at Rule 1.04(111); (2) regulation of road dust and dust occurring on other exposed surfaces proposed at rules 4.03.1(1) (a) and (b), 4.03.2(1) (a) and (b), and 4.03.3(1) (a) and (b); (3) alternative design criteria for haul and access roads proposed at Rules 4.03.1(1)(e) and 4.03.2(1)(e); and (4) the use of the term "solid waste material" instead of the term "noncoal mine waste" proposed in the performance standards for disposal of noncoal waste at Rule 4.11.4(3). OSM notified Colorado of the concerns by letter dated September 30, 1993 (Administrative Record No. CO–575). Colorado responded in a letter dated November 3, 1993, by submitting additional explanatory information and a revised amendment for the concerns identified above (Administrative Record No. CO–587).

Based upon the additional explanatory information and revisions to the proposed program amendment submitted by Colorado, OSM announced the reopening of the public comment period in the December 6, 1993, **Federal Register** (58 FR 64210; Administrative Record No. CO–594). The public comment period ended on December 20, 1993.

By letter dated December 21, 1993, Colorado withdrew all State-initiated revisions proposed at 2 CFR 407–2 Rule 4.08.4(10)(c)(i) concerning the detonation of the maximum weight of explosives used in blasting (Administrative Record No. CO–597). In an existing part of this same rule, Colorado also corrected a typographical error. It revised the word "with" to be "within" in the sentence that requires that the maximum weight of explosives to be detonated "within" any 8-millisecond period be determined by the formula $W=(D/D_s)^2$.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings for the proposed amendment submitted by Colorado on June 30, 1993, as revised on November 3 and December 21, 1993.

1. Substantive Revisions to Colorado's Rules That Are Substantively Identical to the Corresponding Federal Regulations

Colorado proposed revisions to the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulations (listed in parentheses).

Rule 2.05.3(c)(vii) concerning the review and certification of haul and access road plans and drawings by a qualified, registered professional engineer (30 CFR 780.37(b) and 784.24(b));

Rules 4.03.1(1)(d) [haul roads] and 4.03.2(1)(f) [access roads] concerning the certification of design and construction or reconstruction of roads by a qualified, registered professional engineer (30 CFR 816.151(a) and 817.151(a));

Rules 4.03.1(2)(b) [haul roads], 4.03.2(2)(b) [access roads], and 4.03.3(2)(b) [light-use roads] concerning roads located in intermittent or perennial streams (30 CFR 816.150(d)(1) and 817.150(d)(1));

Rules 4.03.1(6)(c) [haul roads], 4.03.2(6)(c) [access roads], and 4.03.3(6)(c) [light-use roads] concerning roads damaged by a catastrophic event (30 CFR 816.150(e)(2) and 817.150(e)(2));

Rules 4.03.1(7) (a)(ix) and (b) [haul roads], 4.03.2(7) (a)(ix) and (b) [access roads], and 4.03.3(7)(i) [light-use roads] concerning removal of road-surfacing materials that are incompatible with the postmining land use (30 CFR 816.150(f)(3) and 817.150(f)(3));

Rules 4.08.4(10), (10) (a) and (b), and 4.08.6(1) concerning the use of explosives (30 CFR 816.67(d) (2), (3), and (5), 817.67(d) (2), (3), and (5), 816.67(e), and 817.67(e)); and

Rule 4.11.4(3) concerning the disposal of noncoal mine waste (30 CFR 816.89(c) and 817.89(c)).

Because these proposed Colorado rules are substantively identical to the corresponding Federal regulations, the Director finds that they are no less effective than the corresponding Federal regulations and approves them.

2. Rules 1.04(111) and (111) (a) through (c), Definitions of "Road," "Haul Road," "Access Road," and "Light-Use Road."

a. *Rule 1.04(111), Definition of "road" and policy statement for determining when a public road falls under the jurisdiction of Colorado's program.* Colorado proposed revisions to the definition of "road" at Rule 1.04(111) to exclude ramps and routes of travel

within or adjacent to the immediate mining pit area or within spoil or coal mine waste disposal areas, and to state that public roads may be excluded from this definition based on a case-by-case consideration of the impact of the mining use on the roadway.

With respect to Colorado's proposal to not regulate as "roads" ramps and routes of travel within or adjacent to the immediate mining pit area or within spoil or coal mine waste disposal areas, the corresponding Federal definition of "road" at 30 CFR 701.5 includes an identical provision.

With respect to Colorado's proposal to not regulate as "roads" certain public roads based upon a case-by-case consideration of the impact of mining use on the roadway, Colorado proposed an implementing policy. In the November 3, 1993, "Statement of Basis, Specific Statutory Authority, and Purpose," submitted as a part of Colorado's amendment, Colorado identified the criteria it will use in determining whether a public road falls under the jurisdiction of its regulatory program. These criteria are:

a. Public roads will fall under the jurisdiction of the regulations if such roads are constructed or improved by the operator, and if the primary purpose of such construction or improvement is to facilitate mine access or operations.

b. Public road segments, which provide access to the permit area, and either terminate at the permit boundary or are subject to controlled access by the permittee within the permit area, will fall under the jurisdiction of the Division unless the operator demonstrates that such mine related use of the road segment has a minor effect on the roadway and is a minor source of off-site impacts.

c. The jurisdictional status of road segments which do not fit into either of the categories described above will be determined on a case-by-case basis, with the primary consideration being the extent of mine related impacts. The road will not fall under the jurisdiction of the Division if mine related use has a minor effect on the roadway and is a minor source of off-site impacts.

The Federal definition of "road" at 30 CFR 701.5 does not address the regulation of public roads. However, as discussed below, this issue has been addressed by SMCRA, other OSM regulations, and Federal court decisions.

Section 506(a) of SMCRA provides in part that "* * * no person shall engage in or carry out on lands within a State any surface coal mining operations unless such person has first obtained a permit * * *" (30 U.S.C. 1256(a)). The Federal regulations at 30 CFR 773.11(a) contain the same requirement.

Thus, under SMCRA and the corresponding Federal regulations, a permit is required before a person may engage in or carry out "surface coal mining operations." Among other things, such "operations" include certain roads. Specifically, under section 701(28)(B) of SMCRA, "surface coal mining operations" include "all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities [as are specified in paragraph (A) of this section] and for haulage" (30 U.S.C. 1291(28)(B)). The Federal regulations at 30 CFR 700.5, in paragraph (b) of the definition of "surface coal mining operations," contain the same requirement.

In the development of the Federal regulations, a significant issue has been the extent to which the term "roads" in the definition of "surface coal mining operations" applies to public roads. In paragraph (c) of the Federal definition of "affected area" at 30 CFR 701.5, OSM previously interpreted the term "affected area" as not applying to roads for which "there is substantial (more than incidental) public use" (48 FR 14814, 14819, 14822; April 5, 1983). However, that interpretation was successfully challenged in *In re: Permanent Surface Mining Regulation Litigation*, 620 F. Supp. 1519, 1581–82 (D.D.C. 1985), *modified sub nom., National Wildlife Federation* v. *Hodel*, 839 F.2d 694 (D.C. Cir. 1988). The court (in *In re: Permanent*) accepted the Secretary's premise that not every road when used to some degree for coal haulage or mine access falls within the definition of "surface coal mining operations." The court then noted that, presumably, when hauling or access are among many uses made of a road, such as an interstate highway, the effect from the mining use is relatively minor, and thus the road need not be included as part of the surface coal mining operation. However, the court held that the Federal definition of "affected area" went beyond what is called for in section 701(28) in exempting essentially all public roads without regard to the degree of effect that mining use has on the road. Therefore, the court ruled that roads experiencing substantial public use may also need to be included in the affected area on a case-by-case basis, based on the extent of mining-related use.

Pursuant to the court's order in *In re Permanent*, OSM modified its interpretation of the extent to which SMCRA applied to public roads. Specifically, OSM suspended the regulatory definition of "affected area" "to the extent that it excludes public roads which are included in the definition of 'surface coal mining operations'" (51 FR 41952, 41953; November 20, 1986). OSM said that "[t]he suspension will have the effect of including in the 'affected area' all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the regulated activities or for haulage" (51 FR 41953).

In the preamble to the final rule establishing performance standards for roads associated with surface coal mining operations (the November 8, 1988, roads rule), OSM said that SMCRA jurisdiction over mine roads is best determined on a case-by-case basis and did not adopt a comment that "public roads be excluded from applicability of the performance standards" (53 FR 45190, 45192). Thus, in determining which mining-related roads are subject to regulation, OSM currently relies on the applicable language of the Federal definitions of "surface coal mining operations" at section 701(28) of SMCRA and the Federal regulations at 30 CFR 700.5. This may require, in appropriate circumstances, that OSM and State regulatory authorities issue, and surface coal mine operators obtain, permits for certain public roads.

Colorado's proposed revision of the definition of "road" requires that "the impact of mining use on the roadway" be a determining factor as to whether a public road is regulated under its program. This proposed revision of the definition is consistent with the court's interpretation of the definition of "affected area" at 30 CFR 701.5 in *In re Permanent* and the preamble of the November 8, 1988, roads rule which require that, in determining whether a public road should be regulated, the degree of effect of mining use on the public road be considered.

Criterion "a" of Colorado's policy statement requires that a public road be regulated if it is constructed or improved by the operator and if the primary purpose of such construction or improvement is to facilitate mine access or operations. The Federal definitions of "surface coal mining operations" at section 701(28)(B) of SMCRA and 30 CFR 700.5 include "all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage." In effect, the Federal definitions and criterion "a" both require that a determination be made regarding the purpose of the construction or improvement of a public road. If the purpose of construction or improvement is to facilitate activities that fall under the definition of "surface coal mining operations," then the road

must be regulated. Therefore, criterion "a" is consistent with the Federal definitions of "surface coal mining operations" at section 710(28)(B) of SMCRA and 30 CFR 700.5.

Criterion "b" of Colorado's policy statement requires regulation of public road segments used to provide access to the permit area that either terminate at the permit boundary or are subject to controlled access by the permittee within the permit area, unless the operator demonstrates that mine-related use has a minor effect on the roadway and is a minor source of off-site impacts. With respect to the first part of criterion "b" that requires that a public road be regulated if it provides access to the permit area, criterion "b" is consistent with the Federal definitions of "surface coal mining operations" at section 701(28)(B) of SMCRA and 30 CFR 700.5, which include the use of existing roads to gain access to minesites. With respect to the second part of criterion "b" that a public road used to provide access to a permit area be regulated unless the operator demonstrates that mine-related use has a minor effect on the roadway and is a minor source of off-site impacts, criterion "b" is consistent with the court's interpretation of the Federal definition of "affected area" at 30 CFR 701.5 in In re: Permanent and the preamble of the November 8, 1988, roads rule, which require that, in determining whether a public road should be regulated, the degree of effect of mining use on the public road be considered.

Criterion "c" of Colorado's policy statement requires that all other instances of the jurisdictional status of road segments be determined on a case-by-case basis, with the primary consideration being the extent of mine-related impacts. Criterion "c" is consistent with the proposed revision of Colorado's definition of "road" at Rule 1.04(111), the court's interpretation of the Federal definition of "affected area" at 30 CFR 701.5 in In re: Permanent, and the preamble to the November 8, 1988, roads rule, all of which require a case-by-case consideration of the impact of mining-related use on a public road.

In summary, Colorado's proposed definition of "road" and the implementing policy statement provide for a determination of the jurisdictional reach of its approved program into the public road system and take into consideration the purpose and the impact of mining-related use as factors in determining whether a road is subject to the requirement for a permit. Colorado's proposal for this determination of jurisdiction over public roads is consistent with that contemplated by the Federal regulations.

For the reasons discussed above, the Director finds that Colorado's proposed definition of "road" at Rule 1.04(111), as supplemented by criteria "a," "b," and "c" in its November 3, 1993, "Statement of Basis, Specific Statutory Authority, and Purpose" for determining when a public road would fall under the jurisdiction of its program, is (1) no less effective than the Federal definitions of "affected area" and "road" at 30 CFR 701.5 and "surface coal mining operations" at 30 CFR 700.5 and (2) no less stringent than the Federal definition of "surface coal mining operations" at section 701(28)(B) of SMCRA. For these reasons, the Director approves the proposed definition of "road" at Rule 1.04(111) and the November 3, 1993, policy statement criteria "a," "b," and "c" that supplement it.

b. *Rules 1.04(111) (a) through (c), Definitions of "haul road," "access road," and "light-use road".* Colorado proposed revisions to the roads classification criteria in the definitions of "haul road" and "access road" at Rules 1.04(111)(a) and 1.04(111)(b) to indicate that any road used to transport spoil or coal mine waste would, depending upon other unchanged criteria in these definitions, either be classified as a haul road or access road. Colorado also proposed a revision to the roads classification criteria in the definition of "light-use road" at Rule 1.04(111)(c) to indicate that light-use roads could not be used for the transportation of spoil and coal mine waste.

The Federal regulations at 30 CFR 816.150(a)(2) and 817.150(a)(2) state, in part, that any road that is used for transporting coal or spoil is a primary road. The Federal regulations at 30 CFR 816.150(a)(3) and 817.150(a)(3) state that any road not classified as a primary road is an ancillary road. In Colorado's road classification system, "haul road" and "access road" correspond to the Federal "primary road," and "light-use road" corresponds to the Federal "ancillary road."

Colorado's proposal at Rules 1.04(111) (a) and (b) to regulate roads on which spoil or coal mine waste are transported as haul roads or access roads is consistent with the transportation uses specified for primary roads at 30 CFR 816.150(a)(2) and 817.150(a)(2). Colorado's proposal to exclude the transportation of spoil or coal mine waste as a use for a light-use road is consistent with the transportation uses allowed for ancillary roads at 30 CFR 816.150(a)(3) and 817.150(a)(3).

The Director finds that Colorado's proposed revisions to "haul road" and "access road" at Rules 1.04(111) (a) and (b) are no less effective than the criteria for primary roads at 30 CFR 816.150(a)(2) and 817.150(a)(2) and its proposed revisions to "light-use road" at Rule 1.04(111)(c) are no less effective than the criteria for ancillary roads at 30 CFR 816.150(a)(3) and 817.150(a)(3). The Director approves the proposed revisions to the definitions of "haul road," "access road," and "light-use road" at Rules 1.04(111) (a) through (c).

3. Rules 2.05.3(3)(a) and (3)(c)(vi) and Rules 2.05.4(2) and (2)(c), Permit Application Requirements for Support Facilities and Roads.

a. *Rule 2.05.3(3)(a), Maps, plans, and drawings for support facilities.* Colorado proposed revisions to Rule 2.05.3(3)(a) to require that the operation plan in a permit application contain (1) a description, plans, and drawings for, among other things, other support facilities including those listed in the support facilities performance standards at Rule 4.04 and (2) a map, cross sections, design drawings, and specifications sufficient to demonstrate compliance with Rule 4.04.

The Federal regulations at 30 CFR 780.38 and 784.30 require that the operation plan include (1) a description, plans, and drawings for each support facility and (2) a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with the support facilities performance standards at 30 CFR 816.181.

Colorado's referenced Rule 4.04 corresponds to the Federal referenced rules at 30 CFR 816.181 and 817.181. Because Colorado's proposed revisions include the same requirements as the counterpart Federal regulations, Colorado's proposed revisions to Rule 2.05.3(3)(a) are no less effective than the Federal regulations at 30 CFR 780.38 and 784.30. The Director approves proposed Rule 2.05.3(3)(a).

b. *Rule 2.05.3(3)(c)(vi), Drawings and specifications for stream fords used as temporary construction routes.* Colorado proposed to add Rule 2.05.3(3)(c)(vi) to require that the operation plan in a permit application contain drawings and specifications for any stream fords proposed for use as temporary construction routes.

The Federal regulations at 30 CFR 780.37(a)(3) and 784.24(a)(3) require that the permit application include the drawings and specifications of each proposed ford of perennial or intermittent streams, as necessary for approval of the road by the regulatory

authority in accordance with 30 CFR 816.151(c)(2) and 817.151(c)(2). These referenced regulations prohibit fords of perennial and intermittent streams by primary roads unless they are approved by the regulatory authority as temporary routes during periods of construction.

Colorado's proposed Rule 2.05.3(3)(c)(vi) differs from the corresponding Federal regulations at 30 CFR 780.37(a)(3), 784.24(a)(3), 816.151(c)(2), and 817.151(c)(2) in that it does not specify that it applies to just perennial and intermittent streams and to just haul and access roads, which correspond to the Federal primary roads. Therefore, Colorado's proposed rule (1) applies not only to perennial and intermittent streams (which it defines at Rules 1.04(84) and (69)), but also ephemeral streams (which it defines at Rule 1.04(42)) and (2) applies not only to haul and access roads, but also light-use roads. Because the proposed rule requires stream ford drawings and specifications for ephemeral streams and light-use roads, it provides a greater level of protection than the Federal regulations for ephemeral streams forded by haul and access roads, and perennial, intermittent, and ephemeral streams that are forded by light-use roads. For these reasons, Colorado's proposed Rule 2.05.3(3)(c)(vi) is no less effective than the Federal regulations at 30 CFR 780.37(a)(3), 784.24(a)(3), 816.151(c)(2), and 817.151(c)(2). The Director approves proposed Rule 2.05.3(3)(c)(vi).

c. *Rules 2.05.4(2) and (2)(c), Information on and a backfilling and grading plan for road reclamation.* Colorado proposed revisions at Rules 2.05.4(2) and (2)(c) to require that the reclamation plan in a permit application include (1) information for any roads which are to be removed or modified for retention as part of the postmining land use and (2) a backfilling and grading plan for road removal or modification in accordance with the roads performance standards at Rule 4.03.

The Federal regulations at 30 CFR 780.37(a)(6) and 784.24(a)(6) require that the reclamation plan describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use. The Federal regulations at 30 CFR 780.18(b)(3) and 784.13(b)(3) require a plan for backfilling and grading showing the anticipated final surface configuration of the proposed permit area, which although not specifically stated, would include areas where roads were removed or retained. Although the Federal regulations for backfilling and grading do not reference the roads regulations at 30 CFR 816.150, 816.151, 817.150, and 817.151, these roads regulations pertain to the construction of permanent roads as well as the reclamation of temporary roads. Colorado's proposed Rule 2.05.4(2)(c) includes a general reference to Rule 4.03 which is Colorado's counterpart to the Federal regulations at 30 CFR 816.150, 816.151, 817.150, and 817.151, thereby clearly linking the roads regulations to the backfilling and grading plan for road removal or modification.

Colorado's proposed revisions to Rules 2.05.4(2) and (2)(c) have the same or similar requirements that are no less effective than the requirements of the Federal regulations at 30 CFR 780.37(a)(6), 784.24(a)(6), 780.18(b)(3), and 784.13(b)(3). The Director approves proposed Rules 2.05.4(2) and (2)(c).

4. Rules 4.03.1(1) (a) and (b), 4.03.1(3) (c) and (e)(ix), 4.03.2(1) (a) and (b), 4.03.2(3) (c) and (e)(ix), 4.03.3(1) (a) and (b), and 4.03.3(3)(c), Performance Standards for Haul Roads, Access Roads, and Light-Use Roads

a. *Rules 4.03.1(1) (a) and (b), 4.03.2(1) (a) and (b), and 4.03.3(1) (a) and (b), Control or prevention of erosion and siltation, air or water pollution, and dust control.* Colorado proposed Rules 4.03.1(1) (a) and (b) [haul roads] and 4.03.2(1) (a) and (b) [access roads] and 4.03.3(1) (a) and (b) [light-use roads] that set forth requirements concerning control or prevention of erosion and siltation, air or water pollution, and dust control. Specifically, Colorado requires, for haul, access, and light-use roads, that (1) construction, maintenance, and postmining conditions (of the roads) will control or prevent erosion and siltation, pollution of air or water, and damage to public or private property, and (2) prudent dust control practices shall be used as necessary to comply with Rule 4.17. Rule 4.17 requires that each person who conducts surface coal mining and reclamation operations shall stabilize and protect all surface areas, including spoil piles, to effectively control erosion and attendant air pollution and shall conduct such operations in such a manner so as to comply with all applicable State and Federal air quality statutes and regulations.

The corresponding Federal regulations at 30 CFR 816.150(b)(1) and 817.150(b)(1) require that roads be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to control or prevent erosion, siltation, and the air pollution attendant to erosion "including road dust as well as dust occurring on other exposed surfaces." The preamble to these regulations (53 FR 45201–45203, November 8, 1988) clarified that road dust and dust occurring on other exposed surfaces as a result of vehicular traffic must be regulated under SMCRA.

Colorado's proposed Rules 4.03.1(1) (a) and (b), 4.03.2(1) (a) and (b), and 4.03.3(1) (a) and (b) do not include language similar to the phrase quoted above. However, in its November 3, 1993, response to OSM's September 30, 1993, issue letter, Colorado stated that it interprets paragraphs (a) and (b) of its proposed rules to require that road dust and dust occurring on other exposed surfaces, as a result of vehicular traffic on surface coal mining and reclamation operations, must be regulated under Colorado's program rather than under the Clean Air Act or corresponding State law.

Based on this interpretation, the Director finds that the revised requirements of proposed Rules 4.03.1(1) (a) and (b) [haul roads], 4.03.2(1) (a) and (b) [access roads], and 4.03.3(1) (a) and (b) [light-use roads] are no less effective than the requirements found in the Federal regulations at 30 CFR 816.150(b)(1) and 817.150(b)(1), as clarified by the preamble of November 8, 1988. The Director approves Colorado's proposed revisions to Rules 4.03.1(1) (a) and (b), 4.03.2(1) (a) and (b), and 4.03.3(1) (a) and (b).

b. *Rules 4.03.1(1)(e) and 4.03.2(1)(e), Allowance for alternative design criteria and specifications for haul and access roads, with the exception that any alternative to the gradient specifications for embankment slopes must include a demonstration of compliance with a minimum static safety factor of 1.3.* Colorado's existing Rules 4.03.1(1)(e) [haul roads] and 4.03.2(1)(e) [access roads] allow Colorado to approve alternative design criteria and specifications for haul and access roads if an operator provides a demonstration by a qualified registered professional engineer that the roads will (1) be as environmentally sound as those roads that comply with the requirements of Rules 4.03.1 and 4.03.2 and (2) meet such other criteria as are necessary to achieve reclamation in accordance with the requirements of Rules 4.03.1 and 4.03.2. Colorado proposed to revise Rules 4.03.1(1)(e) and 4.03.2(1)(e) to add the provision that alternatives to the design criteria and specifications of Rules 4.03.1(3)(e) and 4.03.2(3)(e) [for haul and access road embankments] may be utilized only if appropriate engineering tests establish compliance with a minimum static safety factor of 1.3.

The Federal regulations at 30 CFR 816.151(b) and 817.151(b) require that each primary road embankment have a

minimum static safety factor of 1.3 or meet the requirements established under the Federal regulations at 30 CFR 780.37(c) and 784.24(c). These referenced regulations provide that a regulatory authority may establish engineering design standards for primary roads in lieu of requiring engineering tests to demonstrate compliance with the minimum safety factor of 1.3 for all embankments.

Colorado's existing road embankment provisions at Rules 4.03.1(3)(e) (i) through (xi) [haul roads] and 4.03.2(3)(e) (i) through (xi) [access roads] provide the engineering design standards that may be used in lieu of the minimum safety factor demonstration.

Because Colorado has proposed that exceptions to the design requirements for embankments specified in Rules 4.03.1(3)(e) and 4.03.2(3)(e) cannot be approved unless there is a demonstration of compliance with a minimum static safety factor of 1.3, Colorado's proposed revision of Rules 4.03.1(1)(e) and 4.03.2(1)(e) is consistent with and no less effective than the Federal regulations at 30 CFR 816.151(b), 817.151(b), 780.37(c), and 784.24(c).

During review of this proposed amendment, however, OSM discovered a problem in the existing Colorado Rules 4.03.1(1)(e) and 4.03.2(1)(e). The existing general variance at Rules 4.03.1(1)(e) and 4.03.2(1)(e), which (as explained below) applies to all of the requirements for haul and access roads in Rules 4.03.1 and 4.03.2, was approved by OSM on December 16, 1982, as part of Colorado's original program (47 FR 56350). At that time OSM had no road regulations and there is no counterpart to the general variance at Rules 4.03.1(1)(e) and 4.03.2(1)(e) in the existing Federal roads regulations.

The Federal regulations at 30 CFR 816.150(c) and 817.150(c) require that the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the regulatory authority. In accordance with 30 CFR 816.150(c) and 817.150(c), Colorado established, at Rules 4.03.1(3) and 4.03.2(3), design criteria and specifications that are not in the Federal program.

Because Colorado's Rules 4.03.1 and 4.03.2 include both the counterparts to the existing Federal regulations for roads and specific design criteria that have no counterpart in the Federal regulations, the scope of the existing variance at Colorado's Rules 4.03.1(1)(e) and 4.03.2(1)(e) is not clear. In its November 3, 1993, response to OSM's September 30, 1993, issue letter, Colorado stated that proposed rules 4.03.1(1)(e) and 4.03.2(1)(e).

Would allow the Division to grant exemptions to all road design requirements, including the embankment design requirements of paragraphs 4.03.1(3)(e) and 4.03.2(3)(e). This is consistent with the Colorado regulations as currently promulgated. The change incorporated in the proposed rules is that the exemption as it applies to the embankment design requirements would be conditioned upon the 1.3 static safety factor demonstration.

To the extent that proposed rules 4.03.1(1)(e) and 4.03.2(1)(e) allow a variance from compliance with Colorado's counterparts to the Federal performance standards for all roads at 30 CFR 816.150 and 817.150, or the performance standards for primary roads at 30 CFR 816.151 (a), (c), (d), and (e), and 817.151 (a), (c), (d), and (e), proposed rules 4.03.1(1)(e) and 4.03.2(1)(e) are less effective than the Federal regulations at 30 CFR 816.150, 816.151, 817.150, and 817.151.

Based upon the above discussion, the Director approves the revisions proposed at Rules 4.03.1(1)(e) and 4.03.2(1)(e) only to the extent that the variance from compliance with design criteria for haul and access roads applies to the embankment design criteria in Colorado's Rules 4.03.1(3)(e) and 4.03.2(3)(e). In addition, the Director requires that Colorado further revise Rules 4.03.1(1)(e) and 4.03.2(1)(e) to clearly indicate that the variance from compliance with design criteria for roads may not be applied to Colorado's counterparts to the Federal regulations for all roads at 30 CFR 816.150 and 817.150, and primary roads at 30 CFR 816.151 (a), (c), (d), and (e), and 817.151 (a), (c), (d), and (e).

c. *Rules 4.03.1(3)(e)(ix) and 4.03.2(3)(e)(ix), Allowance for haul and access road embankments to exceed specified slope gradients if a demonstration has been made that a minimum static safety factor of 1.3 will be achieved.* Colorado proposed to revise Rules 4.03.1(3)(e)(ix) [haul roads] and 4.03.2(3)(e)(ix) [access roads] to clarify that if the slope gradients specified in Rules 4.03.1(3)(e)(ix) [haul roads] and 4.03.2(3)(e)(viii) [access roads] are exceeded on road embankments, a demonstration must be made that a minimum safety factor of 1.3, or higher if required by Colorado, will be achieved.

The Federal regulations at 30 CFR 816.151(b) and 817.151(b) require that each primary road embankment have a minimum static safety factor of 1.3 or meet the requirements established under the Federal regulations at 30 CFR 780.37(c) and 784.24(c). These referenced regulations provide that a regulatory authority may establish engineering design standards for primary roads in lieu of engineering tests to demonstrate compliance with the minimum safety factor of 1.3 for all embankments.

Colorado's proposed Rules 4.03.1(3)(e)(ix) and 4.03.2(3)(e)(ix) provide that a slope embankment must not be steeper than either 2h:1v, or, where embankment material is a minimum 85 percent rock, 1.3h:1v, unless an operator has demonstrated that a minimum safety factor of 1.3, or such higher factor as the Division may specify, will be achieved. In accordance with the Federal regulations at 30 CFR 816.151(b), 817.151(b), 780.37(c) and 784.24(c), OSM previously approved compliance with the design criteria for slope embankments (either 2h:1v or 1.3h:1v) in Rules 4.03.1(3)(e)(ix) and 4.03.2(3)(e)(ix) as no less effective than a demonstration of a static safety factor of 1.3. Although Colorado has proposed to allow operators to create slopes steeper than those provided for by the design criteria, Colorado has also required that a demonstration be made that the steeper slopes will meet a minimum static safety factor of 1.3. Therefore, Colorado's proposed Rules 4.03.1(3)(e)(ix) and 4.03.2(3)(e)(ix) are no less effective than the Federal regulations at 30 CFR 816.151(b). The Director approves the proposed rules.

d. *Rules 4.03.1(3)(c), 4.03.2(3)(c), and 4.03.3(3)(c), Road width.* Colorado proposed at Rules 4.03.1(3)(c) [haul roads], 4.03.2(3)(c) [access roads], and 4.03.3(3)(c) [light-use roads] to require that the width of a road be appropriate for the anticipated volume of traffic and the nature and speed of vehicles to be used. The Federal regulations at 30 CFR 816.150(c) and 817.150(c) require that the design and construction or reconstruction of roads shall, among other things, incorporate appropriate limits for width to ensure environmental protection appropriate for their planned duration and use.

Because Colorado's proposed rules for haul, access, and light-use roads require consideration of the anticipated volume of traffic and the nature and speed of vehicles to be used, the Director finds that proposed Rules 4.03.1(3)(c) 4.03.2(3)(c), and 4.03.3(3)(c) are no less effective than the Federal regulations at 30 CFR 816.150(c) and 817.150(c). The Director approves proposed Rules 4.03.1(3)(c), 4.03.2(3)(c), and 4.03.3(3)(c).

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5. Rules 4.21.4(3) (b), (c), and (d), Performance Standards for Roads and Other Transportation Facilities Used in Coal Exploration

Colorado proposed to (1) revise Rule 4.21.4(3)(b) and (2) delete Rules 4.21.4(3) (c) and (d) and in their place add Rules 4.21.4(3)(b) (i), (ii), and (iii). These rules pertain to roads and other transportation facilities used in coal exploration.

Based on the following discussions, the Director finds that Colorado's proposed revision of Rule 4.21.4(3)(b), addition of Rules 4.21.4(3)(b) (i), (ii), and (iii), and deletion of Rules 4.21.4(3) (c) and (d) are no less effective than the Federal definition of "substantially disturb" at 30 CFR 701.5 and the Federal regulations at 30 CFR 815.15(b), 816.180, 816.181, 816.150 (b) through (f), and 816.133(a) (1) and (2). The Director approves proposed Rules 4.21.4(3)(b), (b)(i), (ii), and (iii) and the deletion of Rules 4.21.4(3) (c) and (d).

a. *Rule 4.21.3(b), Compliance with the support facilities and light-use roads performance standards by new and significantly altered roads and other transportation facilities used in coal exploration.* At Rule 4.21.3(b), Colorado proposed that new and significantly altered existing roads and "other transportation facilities" that are used in coal exploration would be required to meet the applicable performance standards for support facilities at Rule 4.04 and the requirements for light-use roads at Rule 4.03.3.

With respect to the part of Rule 4.21.3(b) that references existing Rule 4.04 and addresses other transportation facilities, the Federal regulations at 30 CFR 815.15(b) require that transportation facilities other than roads, which are used for coal exploration that substantially disturbs the natural land surface, shall comply with the applicable provisions of 30 CFR 816.180 and 816.181, which pertain to the protection of utility installations and support facilities. Under the Federal regulations at 30 CFR 815.15(b), the term "other transportation facilities" means "any 'other transportation facility' used in the exploration operation besides roads" and includes facilities such as conveyor belts, aerial tramways, and aerial railroad loops (48 FR 40622, 40632, September 8, 1983). Colorado's referenced existing Rule 4.04 is no less effective than 30 CFR 816.180 and 816.181, and the part of Rule 4.21.3(b) addressing other transportation facilities is no less effective than 30 CFR 815.15(b).

With respect to the part of proposed Rule 4.21.3(b) that references Rule 4.03.3 and addresses new roads and significantly altered existing roads, the Federal regulations at 30 CFR 815.15(b) require that roads, used for coal exploration that substantially disturbs the natural land surface, shall comply with the applicable provisions of 30 CFR 816.150 (b) through (f), which are the general performance standards that all roads (primary and ancillary) must meet. Colorado's referenced Rule 4.03.3 is no less effective than the Federal regulations at 30 CFR 816.150 (b) through (f) (see discussion of Colorado's proposed revisions to Rule 4.03.3 in finding No. 4).

At 30 CFR 701.5, OSM defines "substantially disturb," in part to mean, to significantly impact land or water resources by construction of roads or other access routes for the purposes of coal exploration. This definition and the regulations at 30 CFR 815.15(b), when considered together, require that coal exploration road construction that significantly impacts land or water resources must comply with 30 CFR 816.150 (b) through (f).

In proposing Rule 4.21.4(3)(b), Colorado stated in its November 3, 1993, "Statement of Basis, Specific Statutory Authority, and Purpose" that the construction of new coal exploration roads will always constitute "substantial disturbance" under the Colorado program. Colorado's resultant requirement at proposed Rule 4.21.4(3)(b) that all new coal exploration roads must comply with the light-use road requirements of Rule 4.03.3, is consistent with the definition of "substantially disturb" at 30 CFR 701.5, and is no less effective than 30 CFR 815.15(b) and 30 CFR 816.150 (b) through (f).

For that part of proposed Rule 4.21.4(3)(b) requiring that any existing road that is significantly altered for use in coal exploration must also comply with the light-use road requirements of Rule 4.03.3, Colorado proposed at Rule 2.21.4(3)(b) that

> [a] road is significantly altered if it is widened, if the route or gradient is altered, or if the road is otherwise upgraded. Routine maintenance or minor rehabilitation activities including blading and culvert replacement do not constitute significant alteration of an existing road.

In the preamble to its final rule Federal Register notice revising the Federal regulations governing roads, OSM stated, in response to a comment on the term "substantially disturbed," as defined in 30 CFR 701.5, that

> OSMRE [(OSM)] does not believe the routine maintenance of an existing road used for coal exploration is a substantial disturbance requiring the road to be reclaimed in accordance with the performance standards of section 515 of the Act [(SMCRA)]. To use an existing road that is in poor condition due to lack of maintenance, a coal exploration operator may need to blade the road surface, replace some culverts, or do other minor routine maintenance. Such routine maintenance of an existing road would not be considered substantial disturbance of the natural land surface that would require reclamation of the road.
>
> (53 FR 45190, 45198, November 8, 1988)

Colorado's proposal at Rule 4.21.4(3)(b), which provides guidance for determining when a road is "significantly altered," is consistent with the above quoted preamble discussion. That part of proposed Rule 4.21.4(3)(b) requiring that any existing road that is significantly altered for use in coal exploration must also comply with the light-use road requirements of Rule 4.03.3 is consistent with and no less effective than the Federal definition of "substantially disturb" at 30 CFR 701.5, and the Federal regulations at 30 CFR 815.15(b), and 816.150 (b) through (f).

b. *Rule 4.21.3(b)(i), Compliance with all applicable Federal, State, and local requirements for existing roads other transportation facilities used for coal exploration.* At Rule 4.21.3(b)(i), Colorado proposed that existing roads and other transportation facilities used for coal exploration would have to meet "all applicable Federal, State, and local requirements." Although not explicitly stated, this rule applies to both insignificantly altered and significantly altered existing roads and other transportation facilities.

With respect to insignificantly altered, existing roads and other transportation facilities, the Federal regulations at 30 CFR 815.1 state that the 30 CFR Part 815 regulations do not address roads and other transportation facilities used for coal exploration that does not substantially disturb the natural land surface. With respect to significantly altered, existing roads and other transportation facilities, the Federal regulations at 30 CFR 815.15(b) do not require, as Colorado proposes, compliance with "all applicable Federal, State, and local requirements." Although Colorado does not specify what other Federal, State, and local requirements might apply, the proposed rule nevertheless offers a level of protection that is potentially greater than the Federal regulations that correspond to it. For this reason, proposed Rule 4.21.3(b)(i) is no less effective than 30 CFR 815.15(b).

c. *Rule 4.21.3(b)(ii), Compliance with erosion control and hydrologic balance requirements for existing roads and other transportation facilities used for coal exploration that are significantly altered, or, such roads and facilities that are insignificantly altered but contribute additional suspended solids to streamflow and runoff.* At Rule 4.21.3(b)(ii), Colorado proposed that existing roads and other transportation facilities that are significantly altered, or, such roads and facilities that are insignificantly altered but contribute additional suspended solids to stream flow and runoff, would be regulated under Rule 4.21.4(7) of Colorado's program, which requires erosion control, prevention of additional contributions of suspended solids to the extent possible using the best technology currently available, and under Rule 4.05.3, which contains the performance standards for diversions and conveyance of overland flow and shallow ground-water flow, and ephemeral streams draining a watershed area less than 1 square mile.

i. *Significantly altered existing roads and other transportation facilities.* With respect to Colorado's proposal for significantly altered existing roads and other transportation facilities, the Federal regulations at 30 CFR 815.15(b) require that roads and other transportation facilities, used for coal exploration that substantially disturbs the natural land surface, shall comply with the applicable provisions of 30 CFR 816.180 and 816.181, which pertain to the protection of utility installations and support facilities, and with the applicable provisions of 30 CFR 816.150 (b) through (f), which are the general performance standards that all roads (primary and ancillary) must meet.

The Federal regulations at 30 CFR 816.181 (b)(1) and (2)(i), which are incorporated by reference into 30 CFR 815.15(b), respectively require that support facilities shall be located, maintained, and used in a manner that (1) prevents or controls erosion and siltation and water pollution and (2) to the extent possible using the best technology currently available, minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area and ensures that any such contributions shall not be in excess of limitations of State or Federal law. The Federal regulations at 30 CFR 816.150(b) (3), (4), and (5), which are also incorporated by reference in 30 CFR 815.15(b), require that each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to (1) control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area, (2) neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters, and (3) refrain from seriously altering the normal flow of water in streambeds or drainage channels.

Therefore, the part of proposed Rule 4.21.3(b)(ii) which concerns roads and other transportation facilities that are significantly altered, and which references Rules 4.21.4(7) and 4.05.3, is no less effective than the corresponding Federal regulations at 30 CFR 815.15(b) which incorporate by reference 30 CFR 816.181 (b)(1) and (2)(i) and 30 CFR 816.150(b) (3), (4), and (5).

ii. *Insignificantly altered existing roads and other transportation facilities that contribute additional suspended solids to streamflow and runoff.* With respect to Colorado's proposal at Rule 4.21.3(b)(ii) for insignificantly altered existing roads and other transportation facilities that contribute additional suspended solids to streamflow and runoff, Colorado recognizes that there may be a need to regulate the use of roads and other transportation facilities, even if insignificantly altered, for erosion control and protection of water quality.

The Federal regulations at 30 CFR 815.15(b) address the regulation of roads and other transportation facilities that substantially disturb the land without attempting to define how such a determination might be made. In the preamble to its final rule Federal Register notice revising the Federal regulations governing roads, OSM stated that

> A road must comply with the applicable provisions of 30 CFR 816.150 only to the extent that the coal exploration activities substantially disturb the land where the road is located * * *.
>
> (53 FR 45190, 45198, November 8, 1988)

Colorado has, in effect, defined in proposed Rule 4.21.3(b)(ii) when "use" may constitute substantial disturbance and has required appropriate regulation under its program when such disturbance occurs. Therefore, Colorado's proposal at Rule 4.21.3(b)(ii) to regulate the use of insignificantly altered roads and transportation facilities for contribution of additional suspended solids to streamflow and runoff is consistent with this preamble discussion and no less effective than the requirements of 30 CFR 815.15(b) that incorporate by reference, as discussed above, the Federal regulations at 30 CFR 816.181 (b)(1) and (2)(i) and 30 CFR 816.150(b) (3), (4), and (5).

d. *Rule 4.21.3(b)(iii), Reclamation of existing roads used in coal exploration to a condition equal to or better than their pre-exploration condition.* At Rule 4.21.3(b)(iii), Colorado proposed that existing roads that will remain after exploration activities are completed shall be reclaimed to a condition equal to or better than their pre-exploration condition. Although not explicitly stated, this rule applies to both significantly altered and insignificantly altered existing roads. At Rule 4.21.3(b), Colorado proposed that new and significantly altered existing roads and "other transportation facilities" that are used in coal exploration would be required to meet the applicable performance standards for support facilities at Rule 4.04 and the requirements for light-use roads at Rule 4.03.3 (see discussion at finding No. 5a).

The Federal regulations at 30 CFR 815.15(b) require that roads, used for coal exploration that substantially disturb the natural land surface, shall comply with the applicable provisions of 30 CFR 816.150 (b) through (f), which are the general performance standards that all roads (primary and ancillary) must meet. The Federal regulations do not specifically address the retention of existing roads used for coal exploration. Colorado's proposal that existing roads used in coal exploration be reclaimed to a condition equal to or better than their pre-exploration condition is not inconsistent with the requirements of the Federal regulations. Because Colorado's proposed Rule 4.21.3(b) requires compliance with its counterparts to the Federal regulations at 30 CFR 816.150 (b) through (f) and 817.150 (b) through (f), Colorado's proposed Rule 4.21.3(b)(iii) is an additional requirement that provides a greater degree of environmental protection than do the Federal regulations. Therefore, Colorado's proposed Rule 4.21.3(b)(iii) is no less effective than the Federal regulations at 30 CFR 815.15(b)

6. Rule 2.05.3(9)(a), Disposal of Coal Mine Waste in Abandoned Mine Workings

Colorado proposed, at Rule 2.05.3(9)(a), to clarify that approvals from both the Division and the Mine Safety and Health Administration (MSHA) are required for disposal of "coal mine waste" in abandoned underground mine workings. Colorado also proposed to delete Rules 2.05.3(10) (a), (b), (c), (d), and (e) addressing disposal of "coal processing waste" in

underground mine workings. At Rule 1.04(22a), Colorado defines "coal mine waste" to mean "coal processing waste and underground development waste." Therefore, although Colorado proposes to delete Rule 2.05.3(10), it has incorporated the requirements of Rule 2.05.3(10), regarding the disposal of coal processing waste in abandoned underground mines, into proposed Rule 2.05.3(9)(a).

With one exception, the requirements of proposed Rule 2.05.3(9)(a) are substantively identical to the corresponding Federal regulation at 30 CFR 784.25(a), which sets forth the requirements for the return of coal processing waste to abandoned underground workings. The exception is that Colorado's proposed rule applies to "coal mine waste," which includes both "coal processing waste" and "underground development waste;" while the Federal regulation at 30 CFR 784.25(a) applies only to "coal processing waste." The Federal regulation at 30 CFR 817.81(f), however, provides for the disposal of "coal mine waste" (which does include coal processing waste and underground development waste) in underground mine workings or excavations in accordance with a plan approved by the regulatory authority and MSHA under 30 CFR 784.25. In addition, Colorado's existing definitions of "coal mine waste," "coal processing waste," and "underground development waste" at Rules 1.04(22a), (24), and (143) are substantively identical to the Federal definitions of the same terms at 30 CFR 701.5.

Because 30 CFR 817.81(f) provides for the disposal of both "coal processing waste" and "underground development waste" in accordance with 30 CFR 784.25, the Director finds that Colorado's proposed revisions of Rule 2.05.3(9)(a) and its deletion of Rule 2.05.3(10) are no less effective than the Federal regulations at 30 CFR 784.25(a) and 817.81(f). The Director approves proposed Rule 2.05.3(9)(a) and the proposed deletion of Rule 2.05.3(10) (a), (b), (c), (d), and (e).

7. Rules 4.14.2 (2) and (2)(c), General Backfilling and Grading Requirements for Cut-and-Fill Terraces, and Rule 4.09.1(9), Specific Requirements for Cut-and-Fill Terraces on Excess Spoil Piles

Colorado proposed to revise Rule 4.14.2(2) to correct a typographical error and Rule 4.14.2(2)(c) (a general backfilling and grading requirement specific to terraces) to delete an exception that allowed, under certain circumstances, terrace outslopes with a slope steeper than 2h:1v (50 percent). Colorado retained at Rule 4.14.2(2)(c) the requirement that the slope of a terrace outslope shall not be steeper than 2h:1v. Colorado's existing Rule 4.09.1(9) (specific to excess spoil fills), among other things, states that terraces may be utilized to control erosion and enhance stability if approved by the Division and if consistent with Rule 4.14.2(2)(c).

Therefore, Colorado's existing Rule 4.09.1(9), by referencing the requirement for terraces at proposed Rule 4.14.2(2)(c), requires that the slope of the terrace outslope on excess spoil fills be no steeper than 2h:1v. Colorado proposed to revise Rule 4.14.2(2)(c) so that Rule 4.09.1(9) would be consistent with the requirement of the Federal regulations.

The Federal regulations at 30 CFR 816.71(e)(3) and 817.71(e)(3) are specific to excess spoil fills and require, among other things, that the grade of the outslope between terrace benches shall not be steeper than 2h:1v. Colorado's existing Rule 4.09.1(9), which incorporates by reference the requirement at proposed Rule 4.14.2(2)(c) that terrace bench outslopes be no steeper than 2h:1v, is consistent with the Federal regulations at 30 CFR 816.71(e)(3) and 817.71(e)(3).

The general backfilling and grading requirements for terraces in the Federal regulations at 30 CFR 816.102(g)(1) and 817.102(g)(1) provide for the use of cut-and-fill terraces if (1) the terraces are needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes and (2) the terraces are compatible with the approved postmining land use. Although these Federal regulations do not include specific design requirements for cut-and-fill terraces, Colorado's design specification regarding the slope of terrace outslopes at proposed Rule 4.14.2(2)(c) is not inconsistent with the Federal regulations pertaining to terraces at 30 CFR 816.102(g)(1) and 817.102(g)(1).

Therefore, the Director finds that (1) proposed Rule 4.14.2(2)(c) is no less effective than 30 CFR 816.102(g)(1) and 817.102(g) (1) and (2) existing Rule 4.09.1(9), which references proposed Rules 4.14.2 (2) and (2)(c), is no less effective than the Federal regulations at 30 CFR 816.71(e)(3) and 817.71(e)(3). The Director approves proposed Rules 4.14.2 (2) and (2)(c).

8. Rule 4.26.2(2), Performance Standards for Stabilization of Mountaintop Removal Operations

Colorado proposed to revise Rule 4.26.2(2) to delete two provisions at Rules 4.26.2(2) (b) and (c) which provide the conditions under which outcrop coal barriers, used to stabilize mountaintop removal operations, may be removed. Outcrop coal barriers consist of the toe of the lowest coal seam and its associated overburden that are not disturbed by mining operations. An unrevised provision of Rule 4.26.2(2) requires that outcrop coal barriers must be of sufficient width to prevent slides and erosion. Rule 4.26.2(2)(b), proposed for deletion, allows the removal of the outcrop coal barrier adjacent to a head-of-hollow fill after the elevation of a head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier. Rule 4.26.2(2)(c), also proposed for deletion, allows the removal of the outcrop coal barrier if the removal would not cause slides and erosion, and a minimum static safety factor of 1.5 would be attained. The requirements to prevent slides, control erosion, and attain a minimum static safety factor of 1.5 are required by existing Colorado Rules 4.26.2 (2) and (3) for regraded slopes constructed *with* outcrop coal barriers.

Rule 4.26.2(2)(b) is substantively identical to the corresponding Federal regulation at 30 CFR 824.11(a)(6)(ii) concerning mountaintop removal. Because, by deleting Rule 4.26.2(2)(b), Colorado would no longer allow such conditional removal of the outcrop coal barrier adjacent to a head-of-hollow fill, Colorado's proposed Rule 4.26.2(2) offers a greater degree of safety and environmental protection than the corresponding Federal regulation at 30 CFR 824.11(a)(6).

There is no Federal counterpart at 30 CFR 824.11(a)(6) to Rule 4.26.2(2)(c) allowing removal of an outcrop coal barrier if a minimum static safety factor of 1.5, required for regraded slopes, would be attained. Because, by deleting Rule 4.26.2(2)(c), Colorado would no longer allow removal of the outcrop coal barrier even if a static safety factor of 1.5 would be attained, Colorado's proposed Rule 4.26.2(2) is no less effective than the corresponding Federal regulations at (1) 30 CFR 824.11(a)(6) that requires the use of outcrop coal barriers to prevent slides and to control erosion and (2) 30 CFR 824.11(a)(7) that requires a static safety factor of 1.5 on regraded slopes constructed with a coal outcrop barrier.

For these reasons, the Director finds that Colorado's proposed Rule 4.26.2(2) is no less effective than the Federal regulations at 30 CFR 824.11(a)(6). The Director approves proposed Rule, 4.26.2(2) and the proposed deletions of Rules 4.26.2(2) (b) and (c).

IV. Summary and Disposition of Comments

1. Public Comments

The Director solicited public comment on the proposed amendment and provided an opportunity for a public hearing. The scheduled public hearing was not held because no one requested an opportunity to testify. By letter dated August 19, 1993 (Administrative Record No. CO–563), a coal mining company made three comments on the proposed amendment that are discussed below.

The first comment concerned the disposal of noncoal mine waste and coal mine waste. The commenter noted that proposed Rule 4.11.4(3) would preclude the disposal of "noncoal mine waste" in a refuse pile or impoundment. The commenter was concerned that, without a definition of "noncoal mine waste," this term could be interpreted to include such material as spar rock and fallen roof (from underground mines), which are included within the definition of "coal mine waste" at Rule 1.04(22a). The effect of this interpretation, asserted the commenter, would be that these types of coal mine waste could not be disposed of in refuse piles or impoundments. The commenter requested that Colorado, at proposed Rule 4.11.4(3), concerning the disposal of noncoal mine waste, be required to "clarify that waste rock can be placed in a refuse pile."

It appears that the commenter was not aware of several of Colorado's existing rules. Rule 4.11.4(1), provides that the term "noncoal waste" includes, but is not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber, and other combustibles generated during surface or underground mining activities.

In addition, by definition at Rule 1.04(22a), "coal mine waste" includes underground development waste. Underground development waste includes waste rock such as spar rock and fallen roof about which the commenter is concerned. By definition at Rule 1.04(108a), "refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material. Rule 4.10 governs the disposal of coal mine waste in coal mine waste banks.

Because Colorado's Rule 4.11.4(1) clearly indicates that noncoal mine waste would not include waste rock and Rule 4.10 clearly regulates the disposal of waste rock, and would allow the disposal of spar rock and fallen roof in a coal mine waste bank, the Director is not requiring that Colorado further revise proposed Rule 4.11.4(3) in response to the commenter's request.

The second comment concerned the impact of catastrophic events on roadways. The commenter requested that Colorado be required, at Rules 4.03.1, 4.03.2, and 4.03.3 concerning performance standards for road, to add "landslides and mudslides" to the list of catastrophic events that can occur on a roadway. Colorado's proposed Rules 4.03.1(6)(c) [haul roads], 4.03.2(6)(c) [access roads], and 4.03.3(6)(c) [light-use roads] require that a road damaged by a catastrophic event, such as a flood or earthquake, be repaired as soon as is practicable after the damage has occurred. Because the examples of catastrophic events in the proposed rules are not exclusive of other types of catastrophic events, damage to roads from mudslides and landslides could be considered damage caused by a catastrophic event under Colorado's proposed rules. As discussed in finding No. 1, Colorado's performance standards concerning roads damaged by a catastrophic event at proposed Rules 4.03.1(6)(c), 4.03.2(6)(c), and 4.03.3(6)(c) are substantively identical to the Federal regulations at 30 CFR 816.150(e)(2) and 817.150(e)(2). Therefore, the Director is not requiring that Colorado further revise Rules 4.03.1, 4.03.2, and 4.03.3 in response to the commenter's request.

The third comment concerned the regulation of pioneer and construction roads. The commenter was concerned that Colorado's proposed definition of "road" at Rule 1.04(111) would require that pioneer and construction roads be regulated as light-use roads and requested that Colorado be required to retain the "exclusion for pioneer and construction roads" in its proposed definition of "road."

Colorado stated in its "Statement of Basis, Specific Statutory Authority and Purpose" that

> [T]he exclusion for pioneer or construction roadways was deleted because such roadways are part of the road construction process and as such they are subject to the general performance standards of rules 4.03.1(1) (a) and (b), 4.03.2(1) (a) and (b), and 4.03.3(1) (a) and (b), depending on classification [as haul, access, or light-use roads]. Pioneer or construction roadways are not subject to the standards applicable to completed roadways.

Colorado's proposed rules would not, as the commenter suggested, require compliance of pioneer and construction roads with the performance standards for light-use roads. As explained by Colorado in its "Statement of Basis, Specific Statutory Authority and Purpose," proposed Rules 4.03.1(1) (a) and (b) [haul roads], 4.03.2(1) (a) and (b) [access roads], and 4.03.3(1) (a) and (b) [light-use roads] apply to pioneer and construction roads because they apply to the construction and maintenance of all roads. These proposed rules require that roads be constructed and maintained to prevent (1) erosion and siltation, pollution of air or water, and damage to public or private property, and (2) damage to fish, wildlife, and related environmental values, and contribution of suspended solids to streamflow or runoff outside the permit area in excess of limitations of State or Federal law. In addition, these rules require prudent dust control practices as necessary to comply with Rule 4.17 (which pertains to compliance with all applicable State and Federal air quality statutes and regulations). The requirement that pioneer and construction roads be regulated to the extent that they are constructed and maintained, but not retained as permanent roads, is implicit in the Federal definition of "road" at 30 CFR 701.5 and the Federal performance standards for all roads at 30 CFR 816.150 and 817.150.

As discussed in finding Nos. 2a and 4a respectively, Colorado's proposed definition of "road" at Rule 1.04 (111) and proposed performance standards for roads at Rules 4.03.1(1) (a) and (b), 4.03.2(1) (a) and (b), and 4.03.3(1) (a) and (b), are no less effective than the Federal definition of "road" at 30 CFR 701.5 and the Federal performance standards for all roads at 30 CFR 816.150(b)(1) and 817.150(b)(1). Therefore, the Director is not requiring that Colorado further revise Rule 1.04(111) in response to the commenter's request.

2. Agency Comments

Pursuant to Section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), OSM solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and various other Federal agencies with an actual or potential interest in the Colorado program.

By letter dated July 27, 1993 (Administrative Record No. CO–558), the U.S. Forest Service responded that it concurred with the proposed amendment.

By letters dated July 28 and December 9, 1993 (Administrative Record No. CO–556 and CO–598), EPA's Region VIII office responded that it had no comments on the proposed amendment.

By letter dated August 2, 1993 (Administrative Record No. CO–557), the U.S. Department of Agriculture, Soil

Conservation Service (SCS), responded that it had no specific comment on the proposed amendment.

By letter dated August 9, 1993 (Administrative Record No. CO–560), and by telephone conversation on December 1, 1993 (Administrative Record No. CO–592), the U.S. Fish and Wildlife Service responded that it had no comments.

By letter dated August 10, 1993 (Administrative Record No. CO–561), and by telephone conversation on December 1, 1993 (Administrative Record No. CO–591), the U.S. Bureau of Mines responded that it had no comments.

By letters dated August 16 and December 3, 1993 (Administrative Record Nos. CO–564 and CO–593), the U.S. Army Corps of Engineers responded that the proposed amendment was satisfactory.

By letter dated October 21, 1993 (Administrative Record No. CO–580), the Mine Safety and Health Administration (MSHA) responded that nothing in the proposed amendment was found that would "contravene requirements" of the Federal regulations. However, MSHA questioned whether, in certain instances, Colorado's proposed amendment included all of the Federal regulation requirements. MSHA's concerns are summarized below in paragraphs a through k. For the reasons discussed below, the Director is not requiring that Colorado further revise its rules in response to the comments.

(a.) *Requirements for "ancillary roads."* The commenter stated that Colorado uses the term "frequently [traveled]" in the definition of "access road" at proposed Rule 1.04(111)(b), while the Federal definition of "ancillary road" provides that such roads may not be frequently used. In addition, the commenter was concerned that the term "frequently" was not defined.

The commenter inappropriately compares Colorado's requirements for "access roads" with the Federal requirements for "ancillary roads." As previously explained under finding No. 2b, Colorado's definition of "access road" corresponds to the Federal definition of "primary road," not to the Federal definition of "ancillary road." The Federal definition of "primary road" at 30 CFR 816.150(a)(2)(ii) includes all roads frequently used for access or other purposes for a period in excess of 6 months * * *" Under the Federal definition at 30 CFR 816.150(a)(3), a road that does not meet the above requirements is classified as an "ancillary road." Therefore, a road which is used infrequently for period in excess of 6 months would be classified as an ancillary road under the Federal regulations.

Under Colorado's proposed Rule 1.04(111)(b), an "access road" is one "frequently traveled for purposes other than the transportation of coal, spoil, or coal mine waste * * *" The Federal regulations do not define the term "frequently" as used in the definition of "primary road." However, since Colorado's proposed definition of "access road" requires that a road be used frequently and does not include the temporal limitation of the Federal definition that the road be used frequently for 6 months, Colorado's proposed definition of "access road," if anything, provides a greater degree of environmental protection than the corresponding Federal definition of "primary road."

Thus, contrary to the commenter's implication, Colorado's proposed definition of "access road" is not inconsistent with the Federal regulations in requiring that such roads be "frequently used." Therefore, as discussed in finding No. 2b, Colorado's proposed definition of "access road" at Rule 1.04(111)(b) is no less effective than the corresponding Federal definition of "primary road" at 30 CFR 816.150(a)(2). In response to the commenter's concern that Colorado did not define the term "frequently," OSM cannot require Colorado to define a term that is used but not defined in the Federal program.

b. *Maps required for support facilities.* The commenter was concerned that Colorado's proposed Rule 2.05.3(3)(a), pertaining to permit application requirements for plans and drawings of mine support facilities, did not satisfy the requirements for mine maps at 30 CFR 77.1200. As discussed in finding No. 3a, the requirements of proposed Rule 2.05.3(3)(a) are substantively identical to and no less effective than the corresponding Federal regulations at 30 CFR 780.38 and 784.30. These Colorado rules, like the corresponding Federal regulations, do not require compliance with MSHA regulations at 30 CFR 77.120.

c. *Performance standards for roads.* The commenter stated that Colorado's proposed Rule 2.05.3(3)(c)(vii), concerning permit application requirements for plans and drawings of haul and access roads, must include the requirements for roads that are in the Federal regulations at 30 CFR 816.150(b). As discussed in finding No. 1, the requirements of proposed Rule 2.05.3(3)(c)(vii) are substantively identical to and no less effective than those of the corresponding Federal regulations at 30 CFR 780.37(b) and 784.24(b). Colorado's performance standards for roads corresponding to the requirements of 30 CFR 816.150(b) are found in Rules 4.03.1, 4.03.2, and 4.03.3.

d. *Prudent dust control measures for roads.* The commenter stated that Colorado's proposed Rules 4.03.1(1)(b) [haul roads], 4.03.2(1)(b) [access roads], and 4.03.3(1)(b) [light-use roads], concerning (among other things) prudent dust control measures for roads, must include the mandatory surface coal mine health standards for dust found at 30 CFR 77.1. As discussed in finding No. 4a, Colorado's proposed Rules 4.03.1(1)(b), 4.03.2(1)(b), and 4.03.3(1)(b) reference the requirements of Rule 4.17, which requires compliance "with all applicable State and Federal air quality statutes and regulations."

e. *Performance standards for primary roads.* The commenter stated that Colorado's proposed Rules 4.03.1(3)(c) [haul roads], 4.03.2(3)(c) [access roads], and 4.03.3(3)(c) [light-use roads], concerning road widths, must include the additional requirements that might arise in the Federal regulations at 30 CFR 816.151 (a) through (e). As discussed in finding No. 4d, Colorado's proposed Rules 4.03.1(3)(c), 4.03.2(3)(c), and 4.03.3(3)(c) are no less effective than the corresponding Federal regulations at 30 CFR 816.150(c) and 817.150(c), which are general performance standards for all roads. The requirements of 30 CFR 816.151 (a) through (e) are specific to primary roads. Colorado's Rules 4.03.1 and 4.03.2 pertain to haul and access roads and correspond to primary roads as used in the Federal program. As discussed in finding Nos. 1 and 4, Colorado's proposed Rules 4.03.1 and 4.03.2, concerning performance standards for haul and access roads, are no less effective than the requirements found for primary roads at 30 CFR 816.151 (a) through (e).

f. *Disposal of road surfacing material.* The commenter stated that Colorado's proposed Rules 4.03.1(7)(ix) [haul roads], 4.03.2(7)(ix) [access roads], and 4.03.3(7)(i) [light-use roads], concerning removal of road-surfacing materials, must comply with 30 CFR 816.150(7)(e). There is no Federal regulation codified as 30 CFR 816.150(7)(e). As discussed in finding No. 1, Rules 4.03.1(7)(a)(ix) and (b), 4.03.2(7)(a)(ix) and (b), and 4.03.3(7)(i) are no less effective than the corresponding Federal regulations at 30 CFR 816.150(f)(3) and 817.150(f)(3).

g. *Road location.* The commenter stated that Colorado's proposed Rules 4.03.1(2)(b) [haul roads] and 4.03.2(2)(b)

[access roads], concerning roads located in intermittent or perennial streams, may be further restricted by 30 CFR 816.41 and 816.43 through 816.57, which provide for hydrologic balance, protection, and buffer zones for streams. As discussed in finding No. 1, Colorado's proposed Rules 4.03.1(2)(b) [haul roads], 4.03.2(2)(b) [access roads], and 4.03.3(2)(b) [light-use roads] are no less effective than the corresponding Federal regulations at 30 CFR 816.150(d)(1) and 817.150(d)(1). Colorado's existing Rules 4.05.1 through 4.05.18 address requirements that correspond to the requirements in the Federal regulations at 30 CFR 816.41, 817.41, 816.43 through 816.57, and 817.43 through 817.57.

h. *Roads used for coal exploration.* The commenter stated that Colorado's proposed Rules 4.21.4(3)(b) (i) through (iii), concerning roads used in exploration activities, must comply with the general requirements for roads at 30 CFR 816.150. Colorado's proposed Rules 4.21.4(3)(b) (i) through (iii) require that new and significantly altered existing roads meet the applicable performance standards for light-use roads at Rule 4.03.3. As discussed in finding No. 4, Colorado's provisions for light-use roads, as proposed at Rule 4.03.3, are no less effective than the Federal requirements for roads at 30 CFR 816.150 (b) through (f). Furthermore, as discussed in finding No. 5, Colorado's proposed Rules 4.21.4(3)(b) (i) through (iii) are consistent with and no less effective than the Federal regulations at 30 CFR 815.15(b), concerning roads used in coal exploration activities, as clarified by the preamble discussion to the Federal regulations.

i. *Disposal of noncoal mine waste.* The commenter stated that Colorado's proposed Rule 4.11.4(3), concerning restrictions on the disposal of noncoal mine waste, must meet the requirements of 30 CFR 816.89 (a) through (d). A Federal regulation codified as 30 CFR 816.89(d) does not exist. Colorado's existing Rules 4.11.4 (1) and (2), concerning disposal of noncoal mine waste, correspond to and are substantively identical to the Federal regulations at 30 CFR 816.89 (a) and (b) and 817.89 (a) and (b). As discussed in finding No. 1, Colorado's proposed Rule 4.11.4(3) is substantially identical to and no less effective than the requirements of the corresponding Federal regulations at 30 CFR 816.89(c) and 817.89(c).

j. *Use of explosives.* The commenter stated that Colorado's proposed Rule 4.08.4(10)(b)(ii), concerning the use of explosives, must meet the requirements of 30 CFR 816.67. As discussed in finding No. 1, Colorado's proposed Rules 4.08.4 (10), (10) (a) and (b), and 4.08.6(1) are substantively identical to and are no less effective than the requirements of the corresponding Federal regulations at 30 CFR 816.67(d) (2), (3), and (5), 817.67(d) (2), (3), and (5), 816.67(e), and 817.67(e).

k. *Blasting.* The commenter stated that Colorado's proposed Rule 4.08.4(10)(c)(i), concerning the detonation of the maximum weight of explosives used in blasting, must meet the requirements of 30 CFR 816.67(d)(3)(ii). By letter dated December 21, 1993, Colorado withdrew all State initiated revisions proposed at Rule 4.08.4(10)(c)(i) (Administrative Record No. CO–597).

3. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments

Pursuant to 30 CFR 732.17(h)(4), the Director is required to solicit comments from SHPO and ACHP for all amendments that may have an effect on historic properties. By letter dated August 18, 1993 (Administrative Record No. CO–565), the SHPO responded that the amendment would have no effect on historic properties. The ACHP did not respond to OSM's request.

4. EPA Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of EPA with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the changes that Colorado proposes to its rules revise air or water quality standards. Nevertheless, OSM requested EPA's concurrence on the proposed amendment (Administrative Record No. CO–588). By letter dated January 10, 1994 (Administrative Record No. CO–602), EPA concurred with the requirements of the proposed amendment.

V. Director's Decision

Based on the above finding Nos. 1 through 8, the Director approves Colorado's program amendment as submitted on June 30, 1993, and as revised on November 3 and December 21, 1993. The Director is approving the proposed rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

As discussed in finding No. 4b, the Director is approving the revisions proposed at Rules 4.03.1(1)(e) and 4.03.2(1)(e) to the extent that the variance provided for at these rules applies only to the design requirements for embankments specified in Rules 4.03.1(3)(e) and 4.03.2(3)(e), when there is a demonstration of compliance with a minimum static safety factor of 1.3. In this respect, he finds that proposed Rules 4.03.1(1)(e) and 4.03.2(1)(e) are consistent with and no less effective than the Federal regulations at 30 CFR 816.151(b), 817.151(b), 780.37(c), and 784.24(c). However, the Director finds that proposed Rules 4.03.1(1)(e) and 4.03.2(1)(e), to the extent that they allow a variance from Colorado's counterparts to the Federal regulations at 30 CFR 816.150, 817.150, 816.151 (a), (c), (d), and (e), and 817.151 (a), (c), (d), and (e), are less effective than the Federal regulations at 30 CFR 816.150, 816.151, 817.150, and 817.151. Therefore, he is requiring that Colorado further revise Rules 4.03.1(1)(e) and 4.03.2(1)(e) to clearly indicate that the variance from compliance with design criteria for roads may not be applied to Colorado's counterparts to the Federal regulations for all roads at 30 CFR 816.150 and 817.150, and primary roads at 30 CFR 816.151 (a), (c), (d), and (e), and 817.151 (a), (c), (d), and (e).

The Federal regulations at 30 CFR part 906 codifying decisions concerning the Colorado program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and

the Federal regulations at 30 CFR 780.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 25, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, the Code of Federal Regulations is amended as set forth below.

PART 906—COLORADO

1. The authority citation for Part 906 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 906.15 is amended by adding paragraph (p) to read as follows:

§ 906.15 Approval of regulatory program amendments.

* * * * *

(p) The revisions to the following provisions of 2 CCR 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on June 30, 1993, and as revised on November 3, and December 21, 1993, are approved on June 1, 1994. The amendment becomes effective upon State promulgation of the amendment in the same form as submitted to OSM.

Definitions of "road," "haul road," "access road," and "light-use road"—Rules 1.04(111) and (111)(a) through (c).

Permit application requirements for support facilities, stream fords used as temporary construction routes, and certification of plans and drawings for haul and access roads—Rules 2.05.3(3)(a) and (c)(vi) and (vii).

Reclamation plan requirements for all roads—Rule 2.05.4(2).

Permit application requirements for haul roads concerning general requirements, location, design and construction, maintenance, and reclamation—Rules 4.03.1(1)(a), (b), and (d), 4.03.1(2)(b), 4.03.1(3)(c) and (e)(ix), 4.03.1(6)(c), and 4.03.1(7)(a)(ix), and deletion of Rule 4.03.1(7)(b).

Permit application requirements for access roads concerning general requirements, location, design and construction, maintenance, and reclamation—Rules 4.03.2(1)(a), (b), and (f), 4.03.2(2)(b), 4.03.2(3)(c), and (e)(ix), 4.03.2(6)(a) and (c), and 4.03.2(7)(a)(ix), and deletion of Rule 4.03.2(7)(b).

Permit application requirements for haul and access roads concerning design and construction—Rules 4.03.1(1)(e) and 4.03.2(1)(e) are approved only to the extent that the variance provided for at these rules applies only to the design requirements for embankments specified in Rules 4.03.1(3)(e) and 4.03.2(3)(e), when there is a demonstration of compliance with a minimum static safety factor of 1.3.

Permit application requirements for light-use roads concerning general requirements, location, design and construction, maintenance, and reclamation—Rules 4.03.3(1)(a) and (b), 4.03.3(2)(b), 4.03.3(3)(c), 4.03.3(6)(c), and 4.03.3(7)(i).

Performance standards for roads and other transportation facilities used in coal exploration activities—Rules 4.21.4(3)(b)(i) through (iii), and deletion of Rules 4.21.4 (3)(c)(i) through (iii) and 4.21.4(3)(d)(i) and (ii).

Permit application requirements for the return of coal mine waste and coal processing waste to abandoned workings—Rules 2.05.3(9)(a) and deletion of Rules 2.05.3(10)(a) through (e).

Performance standards for disposal of spoil in head of hollow fills and disposal of noncoal waste—Rules 4.09.3(2)(c) and 4.11.4(3).

General backfilling and grading requirements for cut-and-fill terraces—Rules 4.14.2(2) and (2)(c).

Performance standards for mountaintop removal operations—Rule 4.26.2(2) and deletion of Rules 4.26.2(2)(b) and (c).

Performance standards for the use of explosives—Rules 4.08.4(10), (10)(a) and (b), and 4.08.6(1).

Policy statements in the November 3, 1993, revised amendment's "Statement of Basis, Specific Statutory Authority and Purpose" concerning the jurisdiction of the Colorado program over (1) public roads for Rule 1.04(111) and (2) roads and other transportation facilities used in coal exploration activities for Rule 4.21.4(3)(b).

3. Section 906.16 is amended by adding paragraph (f) to read as follows:

§ 906.16 Required program amendments.

* * * * *

(f) By September 30, 1994, Colorado shall submit an amendment to revise Rules 4.03.1(1)(e) and 4.03.2(1)(e) to clearly indicate that the variance from compliance with design criteria for roads may not be applied to Colorado's counterparts to the Federal regulations for all roads at 30 CFR 816.150 and 817.150, and primary roads at 30 CFR 816.151 (a), (c), (d), and (e), and 817.151 (a), (c), (d), and (e).

[FR Doc. 94–13261 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 205

RIN 1510–AA41

Rules and Procedures for Funds Transfers

AGENCY: Treasury, Fiscal, Financial Management Service.

ACTION: Final rule; amendment.

SUMMARY: This rule amends the regulations implementing the Cash Management Improvement Act of 1990 (CMIA), which governs the transfer of funds between the Federal Government and the States under Federal programs. It narrows the scope of CMIA implementation by excluding certain State-level entities that are fiscally or legally independent of the central State authorities.

DATES: This rule is effective July 1, 1994, and is applicable July 1, 1994, or the first day of a State's 1995 fiscal year, whichever is later for a given State.

FOR FURTHER INFORMATION CONTACT: Gary Grippo, 202–874–6955

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is authorized by the Cash Management Improvement Act of 1990 (CMIA), Public Law 101–453, codified at 31 U.S.C. 3335, 6501, and 6503. The purpose of CMIA is to ensure greater efficiency, effectiveness, and equity in the exchange of funds between the Federal Government and the States.

On September 24, 1992, the Financial Management Service (FMS) issued regulations at 31 CFR part 205 to implement CMIA. 57 FR 44272, September 24, 1992. Subsequently, when the effective date of CMIA was delayed by the Cash Management Improvement Act Amendments of 1992, Public Law 102–589, the FMS revised the rules at 31 CFR part 205 to change the implementation date. 57 FR 60676, December 21, 1992. The regulations finally took effect on July 1, 1993, or the first day of a State's 1994 fiscal year, whichever was later for a given State.

The CMIA statute defines the term "State" to mean "a State of the United States, the District of Columbia, a territory or possession of the United States, and an *agency, instrumentality*, or fiscal agent of a State * * *" (31 U.S.C. 6501). [Emphasis added.] The implementing regulations refined this definition to specify the meaning of a State agency or instrumentality: "A State agency or instrumentality is any organization or component unit of the State reporting entity as defined by Generally Accepted Accounting Principles" (31 CFR 205.3). This regulatory definition, however, has caused problems for States and Federal agencies because it includes autonomous State-level entities that are legally or fiscally independent of the Governor, Treasurer, and Comptroller.

Accordingly, the purpose of this amendment to 31 CFR part 205 is to narrow the scope of CMIA implementation by excluding certain State-level entities that are fiscally or legally independent of the central State authorities. This amendment responds to the concerns of States, Federal agencies, and independent State-level entities, such as public benefit corporations and institutions of higher education.

Definition of State Agencies and Instrumentalities

The existing regulation defines a State agency or instrumentality to be any organization or component unit of the State reporting entity, as defined by Generally Accepted Accounting Principles (GAAP). This rulemaking narrows that definition to exclude: (1) Component units of a State, and (2) institutions of higher education, hospitals, and nonprofit organizations.

The existing definition causes problems for States because it includes entities that are legally independent of the State executive or fiscally independent of the State Treasurer and Comptroller. It therefore makes States responsible for organizations over which they have no control, financially or otherwise.

This rulemaking, accordingly, narrows the definition of State agencies and instrumentalities based on the principles of legal and fiscal control. First, it excludes component units of a State, such as public benefit corporations, which are by definition legally independent of the primary State government. The distinction between component units of a State and the primary State government is taken directly from GAAP, specifically Statement No. 14 of the Governmental Accounting Standards Board, "The Financial Reporting Entity."

Second, this rulemaking excludes certain entities that are likely to be fiscally independent, if not legally independent, by excluding institutions of higher education, hospitals, and nonprofit organizations. This exclusion is based on the dichotomy established by the Office of Management and Budget Circulars on grant administration. Circular A–102 applies to States per se, while Circular A–110 applies to institutions of higher education, hospitals, and nonprofit organizations.

Pass-throughs

Both changes to the definition of State agencies and instrumentalities exclude particular entities from the scope of CMIA, but do not necessarily exclude from CMIA all Federal funds that flow to those entities. That is, these changes should not be construed to exempt Federal funds that pass from a covered State entity to an entity that would be excluded by this rulemaking. For example, if a State Department of Education draws down Federal funds and then passes them on to a State institution of higher education, the funds would be subject to CMIA while they were in accounts of the State Department of Education.

Excluded Entities With Accounts in the Central State Treasury

Finally, clarification may be needed for cases where an excluded entity maintains its bank accounts in the central State treasury, which is part of the primary State government and therefore ostensibly subject to CMIA. As a general rule, accounts in the central State treasury against which an excluded entity disburses funds to program recipients or contractors would not be covered by CMIA. If, for example, a State university maintains an account in the State treasury, keeps Federal funds in it, and issues checks to students against it, the provisions of the CMIA regulation would not apply.

Rulemaking Analysis

E.O. 12866: It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act: Since no notice of proposed rulemaking is required for this regulatory action, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Notice and Comment

The FMS issues this final rule without prior notice and without a comment period, in accordance with 5 U.S.C. 553(b)(B). The FMS has determined that a notice of proposed rulemaking is unnecessary and contrary to the public interest.

The FMS makes these determinations based on meetings and correspondence with Federal agencies and States, which have urged the FMS to change the definition of State agencies and instrumentalities. Forty States expressed unanimous concern about the definition at four regional roundtable discussions. Twenty-six States indicated in survey responses that there were legal and practical impediments to complying with the regulation. Virtually all States and Federal agencies, moreover, have written to the FMS to voice concerns about the existing definition.

Prior notice-and-comment on this rulemaking is unnecessary because all affected parties support it. States, Federal agencies, and independent State-level entities without exception have urged the FMS to narrow the definition of State agencies and instrumentalities. Since this rulemaking responds to the universal position of all parties subject to the regulation, prior notice and a comment period are not necessary.

The determination that notice-and-comment is contrary to the public interest is based on the following considerations. First, the existing definition of State agencies and instrumentalities, if implemented, could result in serious damage to State governments and to independent State-level entities, such as public benefit corporations, public authorities, and public institutions of higher education. This definition would place Governors and other officials of the primary State government in positions of legal and financial responsibility for entities that are by law independent. States and independent State-level entities have appealed to the FMS that the implications of this definition are financially and legally untenable.

Second, the existing regulatory definition could threaten the stability of the CMIA program by forcing States into either default or noncompliance. A State is in default of CMIA when it does not enter into a Treasury-State Agreement with the FMS to implement CMIA. Some States have indicated that they can not execute an agreement under the existing regulation because they would be binding entities they do not control legally or fiscally. Other States may enter into agreements on behalf of such entities but can not ensure compliance with what has been negotiated. The potential for both default and noncompliance is considerable under the current regulation and could undermine the implementation of sound cash management practices required by CMIA.

Finally, the existing regulation would result in unnecessary costs to the Federal Government and potential financial harm to States. Under the current regulation, States would incur added costs to modify the unique accounting system of each independent State entity. A State covering six independent entities, for example, would have additional costs that are six times those incurred by the State to adapt the central State accounting system to implement CMIA. These duplicative costs must either be charged to the Federal Government, or absorbed by the States, with but marginal benefits to the CMIA program.

List of Subjects in 31 CFR Part 205

Grant programs, Grant administration, Intergovernmental relations, Electronic funds transfers.

Issuance

For the reasons set forth in the preamble, 31 CFR part 205 is amended by this final rule as follows.

PART 205—[AMENDED]

1. The authority citation for 31 CFR part 205 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321, 3335, 6501, 6503

2. The definition of the term "State" in § 205.3 is revised to read as follows:

§ 205.3 Definitions.

* * * * *

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and an agency, instrumentality, or fiscal agent of a State so defined, but does not mean a local government or an Indian tribal government.

(1) A State agency or instrumentality is any organization of the primary government of the State financial reporting entity, as defined by Generally Accepted Accounting Principles, excluding institutions of higher education, hospitals, and nonprofit organizations.

(2) A fiscal agent of a State is an entity that pays, collects, or holds Federal funds on behalf of the State in furtherance of a Federal program, excluding private nonprofit community organizations.

* * * * *

Dated: May 27, 1994.

Michael T. Smokovich,

Acting Commissioner.

[FR Doc. 94-13406 Filed 5-31-94; 8:45 am]

BILLING CODE 4810-35-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Baltimore 94-009]

RIN 2115-AA97

Safety Zone Regulation; Potomac River Festival Fireworks Display, Potomac River, Colonial Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a temporary safety zone for the Colonial Beach fireworks display at the Colonial Beach municipal pier on the Potomac River, Colonial Beach, VA. The event will consist of fireworks being launched out over the Potomac River from the Colonial Beach municipal pier. This safety zone is necessary to control spectator craft and to provide for the safety of life and property on U.S. navigable waters during this event. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation will be effective from 8:30 p.m. until 10 p.m. July 4, 1994.

FOR FURTHER INFORMATION CONTACT: Timothy P. Ryan, Chief Warrant Officer, U.S. Coast Guard Marine Safety Office Baltimore, Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (410) 962-2651.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. The application to hold this event was not received at Marine Safety Office Baltimore until April 21, 1994 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The Town of Colonial Beach filed an application with the U.S. Coast Guard, Group Baltimore requesting a safety zone for the Potomac River Festival Fireworks Display to take place July 4, 1994. A safety zone has been determined to be necessary to control spectator craft during this event.

Discussion of Regulations

This regulation is necessary to ensure the safety of spectator craft, recreational vessels and to provide for the safety of life and property on U.S. navigable waters during the event. Since the main shipping channel of the Potomac River will not be closed during this event, vessel traffic should not be disrupted.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Drafting Information

The drafters of this regulation are Timothy P. Ryan, Chief Warrant Officer, project officer for the Captain of the Port, Baltimore, Maryland and Lieutenant Monica Lombardi, project attorney Fifth Coast Guard District Legal Staff.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.C. of Commandant Instruction M16475.1B, and actions to protect public safety have been determined to be categorically excluded from further environmental documentation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. Temporary section 165.T05-030 is added to read as follows:

§ 165.T05-030 Safety Zone: Potomac River Festival Fireworks Display, Potomac River, Colonial Beach, VA.

(a) *Location.* The following area is a safety zone: All waters within a 300 yard arc from the end of the Colonial Beach municipal pier located at:

Latitude	Longitude
38° 15' 03" N.	76° 57' 35" W.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(c) *General information.* The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962-5100. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF-FM channels 13 and 16.

(d) *Regulations.* (1) Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel which enters into or operates in this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(e) *Effective date.* This section is effective from 8:30 p.m. to 10 p.m. July 4, 1994; unless terminated sooner by the Captain of the Port, Baltimore, Maryland.

Dated: May 12, 1994

D.B. Crawford,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland

[FR Doc. 94-13086 Filed 5-31-94; 8:45 am]

BILLING CODE 4810-14-M

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33 CFR Part 165

[COTP Baltimore 94-006]

Safety Zone Regulation; Town of Colonial Beach Fireworks Display, Potomac River, Colonial Beach, VA

AGENCY: Coast Guard, DOT

ACTION: Temporary rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a temporary safety zone for the Colonial Beach fireworks display at the Colonial Beach municipal pier on the Potomac River, Colonial Beach, VA. The event will consist of fireworks being launched out over the Potomac River from the Colonial Beach municipal pier. This safety zone is necessary to control spectator craft and to provide for the safety of life and property on U.S. navigable waters during this event. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation will be effective from 8:30 p.m. until 10 p.m June 11, 1994.

FOR FURTHER INFORMATION CONTACT: Timothy P. Ryan, Chief Warrant Officer, U.S. Coast Guard Marine Safety Office Baltimore, Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (410) 962-2651.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. The application to hold this event was not received at Marine Safety Office Baltimore until April 7, 1994 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The Town of Colonial Beach filed an application with the U.S. Coast Guard, Group Baltimore requesting a safety zone for the Colonial Beach Fireworks Display to take place June 11, 1994. A safety zone has been determined to be necessary to control spectator craft during this event.

Discussion of Regulations

This regulation is necessary to ensure the safety of spectator craft, recreational vessels and to provide for the safety of life and property on U.S. navigable waters during the event. Since the main shipping channel of the Potomac River will not be closed during this event, vessel traffic should not be disrupted.

This regulation is issued pursuant to 33 US C. 1231 as set out in the authority citation for all of part 165.

Drafting Information

The drafters of this regulation are Timothy P. Ryan, Chief Warrant Officer, project officer for the Captain of the Port Baltimore, Maryland and Lieutenant Monica Lombardi, project attorney Fifth Coast Guard District Legal Staff.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not

require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.C. of Commandant Instruction M16475.1B, and actions to protect public safety have been determined to be categorically excluded from further environmental documentation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. In part 165 a temporary section 165.T05–029 is added to read as follows:

§ 165.T05–029 Safety Zone: Town of Colonial Beach Fireworks Display, Potomac River, Colonial Beach, VA.

(a) *Location.* The following area is a safety zone: All waters within a 300 yard arc from the end of the Colonial Beach municipal pier located at:

Latitude	Longitude
38°15'03" N.	76°57'35" W.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(c) *General information.* The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5100. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 13 and 16.

(d) *Regulations.*

(1) Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel which enters into or operates in this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(e) *Effective Date.* This section is effective from 8:30 p.m. to 10 p.m. June 11, 1994; unless terminated sooner by the Captain of the Port, Baltimore, Maryland.

Dated: May 12, 1994.

D.B. Crawford,

Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland

[FR Doc. 94–13085 Filed 5–31–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AG91

VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule with request for comments.

SUMMARY: The Homeless Veterans Comprehensive Service Programs Act of 1992 authorizes the Department of Veterans Affairs to assist public or nonprofit private entities in establishing new programs to furnish supportive services and supportive housing for homeless veterans through grants. The Act authorizes VA to provide per diem payments, or in-kind assistance in lieu of per diem payments, to eligible entities that established programs after November 10, 1992 that provide supportive services or supportive housing for homeless veterans, or service centers providing supportive services. This rule contains criteria and requirements relating to the awarding of grants and relating to per diem payments. Accordingly, this rule is necessary so that grants can be awarded and per diem payments can be made.

DATES: Effective date is June 1, 1994. Comments must be received on or before August 1, 1994.

ADDRESSES: All comments concerning this interim final rule should be addressed to the Secretary of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments will be available for public inspection in room 170, Veterans Service Unit, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until August 10, 1994.

FOR FURTHER INFORMATION CONTACT: Lynn Bailey, Program Manager, VA Homeless Providers Grant and Per Diem Program; Mental Health and Behavioral Sciences Service (111C), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; (202) 535–7311 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth a final interim rule to implement provisions of the "Homeless Veterans Comprehensive Service Programs Act of 1992" (Act).

Statistics indicate that on any given night, as many as 250,000 veterans are living on the streets or in shelters, and perhaps twice this number of veterans experience homelessness at some point during the course of a year. Many other veterans are considered "near homeless" or "at risk" because they are poor, suffer from various infirmities or have no real home of their own, and live on a temporary basis with friends or relatives or in cheap hotels, often in substandard or overcrowded conditions.

The vast majority of homeless veterans are single; about two percent of all homeless veterans are female. About 40 percent of homeless veterans suffer from severe mental illness and (with considerable overlap) about half have alcohol or other drug abuse problems.

The Act authorizes the Department of Veterans Affairs (VA) to assist public or nonprofit private entities in establishing new programs to furnish supportive services or supportive housing for homeless veterans, or to establish service centers meeting the requirements described in § 17.724(k) of this part through grants of up to 65 percent of the cost of acquiring, renovating, altering or constructing facilities, and of the cost of purchasing vans. It also authorizes VA to provide per diem payments, or in-kind assistance in lieu of per diem payments, to eligible entities that established programs after November 10, 1992 that provide supportive services or supportive housing for homeless veterans, or function as service centers.

This interim rule contains criteria and requirements relating to the awarding of grants and contains criteria and requirements relating to per diem payments. Portions of these criteria and requirements restate statutory language. However, insofar as they establish regulatory material beyond the statutory language the regulatory material is designed to provide a mechanism for awarding grants and for allowing per diem payments to be made. The rule also sets forth the rates for services furnished to a homeless veteran. These rates are consistent with the amounts for similar services allowed under "Aid to States for Care of Veterans in State Homes" program (See 38 U.S.C. 1741).

In developing the criteria and requirements for inclusion in this rule, section 3(b) of the Act requires VA to consult with organizations with experience in the area of providing services to homeless veterans. On September 16, 1993 over 250 letters soliciting input into drafting rules for the program were mailed to known organizations that provide services to homeless veterans, national offices of veteran's service organizations, State and local departments of veterans affairs, and program coordinators of all centrally-funded VA homeless programs. The letter also sought additional names for the mailing list. As additional names were provided, copies of the September 16, 1993 letter were mailed to them.

On December 17, 1993 a meeting was held in Washington, DC with individuals and organizations with experience in providing services to homeless persons, including veteran service organizations and private nonprofit organizations. The purpose of the meeting was to discuss the draft rule. Changes resulting from that meeting included improving nine definitions; minor wording modifications to 12 paragraphs that clarified the meaning of the paragraphs; deletion of paragraphs on technical assistance, funding minimums, recovery periods, a requirement for "adequate" supportive services, and a requirement for due process when recipients terminate assistance to veterans; and changes to paragraphs on use of grant funds for permanent housing or operating leases, construction standards, requirements for environmental review, deobligation of funds, site control, insurance on vans, fees and/or rents charged to veterans in funded programs, and matching fund requirements.

Executive Order 12866

This rule has been reviewed as a "significant regulatory action" under E.O. 12866 by the Office of Management and Budget.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, VA has found good cause to dispense with prior notice and comment on this interim final rule and to dispense with a 30-day delay of its effective date in light of the critical need to provide housing and other essentials to homeless veterans. Comments have been solicited for 60 days after publication of this document. VA may modify the rule in response to comments if appropriate.

Regulatory Flexibility Act

Because no notice of proposed rulemaking was required in connection with the adoption of this interim final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Catalog of Federal Domestic Assistance program number is 64.024.

List of Subjects in 38 CFR Part 17

Community action programs, Community development, Homeless veterans, Government contracts, Grant programs—health, Grant programs—homeless veterans, Grant programs—housing and community development, Grant programs—social programs, Grant programs—transportation, Health, Health care, Health facilities, Housing, Intergovernmental relations, Low and moderate income housing, Manpower training programs, Mental health centers, Mental health programs, Motor carriers, Motor vehicles, Public housing, Rent subsidies, Supportive housing, Supportive services, Veterans, Vocational education, Vocational rehabilitation, Work incentive programs.

Approved: May 12, 1994

Jesse Brown,

Secretary of Veterans Affairs

For the reasons set out in the preamble, 38 CFR Part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 is revised to read as follows:

Authority: 38 U.S.C. 501, 38 U.S.C. 7721 note, unless otherwise noted.

2. Part 17 is amended by adding §§ 17.700 through 17.731 and an undesignated center heading preceding 17.700 to read as follows:

VA Homeless Providers Grant and Per Diem Program

Sec.

17.700 Purpose and scope.
17.701 Definitions.
17.702 Types and uses of assistance
17.703 Grants for acquisition and rehabilitation.
17.704 Grants for new construction.
17.705 Grants for procurement of vans
17.706 Matching requirements.
17.707 Limitations on use of assistance
17.708 Notice of fund availability.
17.709 Grant award process.
17.710 Application requirements.
17.711 Ranking criteria for applications.
17.712 Selecting applications.
17.713 Obtaining additional information and awarding grants.
17.714 Environmental review requirements.
17.715 Aid for supportive services and supportive housing.
17.716 Eligibility to receive payments
17.717 Requesting recognition.
17.718 Approval of annexes and new facilities.
17.719 Amount of aid payable.
17.720 Approval of eligibility.
17.721 Inspections.
17.722 Prerequisite for payment of aid.
17.723 Audit of recipients of aid.
17.724 General operation.
17.725 Outreach activities.
17.726 Resident rent.
17.727 Grant agreement.
17.728 Program changes.
17.729 Obligation and deobligation of funds.
17.730 Displacement, relocation, and acquisition.
17.731 Site control.

VA Homeless Providers Grant and Per Diem Program

§ 17.700 Purpose and scope.

(a) *General.* The VA Homeless Providers Grant and Per Diem Program is authorized by sections 3 and 4 of Pub. L. 102–590, the Homeless Veterans Comprehensive Service Programs Act of 1992. The VA Homeless Providers Grant

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and Per Diem Program is designed to assist eligible entities in establishing new programs to furnish outreach, rehabilitative services, vocational counseling and training, and transitional housing assistance to homeless veterans. Section 3 of the Act provides for grants to eligible entities of up to 65 percent of the estimated cost to construct, expand, remodel or alter existing buildings; to acquire facilities for use as service centers, transitional housing or other facilities to serve homeless veterans; or to procure vans to provide transportation for and support outreach to homeless veterans. A grant may not be used to support operational costs. In addition, § 4 of Pub. L. 102–590 authorizes VA to provide to a recipient of a grant under § 3 (or entity eligible for such a grant as described in § 17.715(a) of this part) per diem payments for homeless veterans whom VA has referred to that entity; or for whom VA has authorized the provision of services. In lieu of per diem payments, VA may provide in-kind assistance through services of VA employees and the use of other VA resources. This program does not provide for funding to construct, expand, remodel or acquire buildings located on VA-owned property, nor does it provide for funding to expand, remodel or acquire unutilized or underutilized VA structures made available to homeless providers under Title V of the Stewart B. McKinney Homeless Assistance Act.

(b) *Components.* (1) Grants may be used for the three components described in § 17.702:

(2) Grant recipients or eligible entities may apply for per diem payments or receive in-kind assistance through VA as described in § 17.715.

(3) Applicants may apply for a grant for more than one component described in § 17.702 and/or per diem payments.

§ 17.701 Definitions.

As used in this part:

Capital lease means a lease that satisfies one of the following criteria:

(1) The lease transfers ownership to the lessee at the expiration of the lease term.

(2) The lessor bears no risk.

(3) The term of the lease exceeds 75 percent of the economic life of the asset.

(4) The lease contains a bargain purchase option.

(5) The present value of lease payments is equal to or greater than 90 percent of the fair market value of the asset.

Eligible entity means a public or nonprofit private entity with the capacity to effectively administer a grant under this section; which has demonstrated that adequate financial support will be available to carry out the project for which the grant is sought consistent with the plans, specifications and schedule submitted by the applicant; and which has agreed to; and has demonstrated the capacity to, meet the applicable criteria and requirements of the grant program.

Expansion of an existing building means an addition to an existing structure that does not increase the floor area by more than 100 percent.

Federally recognized Indian tribal government includes the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Homeless or homeless individual (1) includes:

(i) An individual who lacks a fixed, regular and adequate nighttime residence; and

(ii) An individual who has a primary nighttime residence that is—

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for persons intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) The term "homeless" or "homeless individual" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law. An individual on probation, parole or under electronic custody is not considered "imprisoned or otherwise detained".

New construction means the building of a structure where none existed or an addition to an existing structure that increases the floor area by more than 100 percent.

New program/new component of an existing program means a proposed program of supportive services, or a proposed addition of supportive services to an existing program, which services are not currently being provided by the entity proposing it, and for which there is a demonstrated need in the community served by that entity.

Nonprofit organization means a private organization, no part of the net earnings of which may inure to the benefit of any member, founder contributor, or individual. The organization must:

(1) Have a voluntary board.

(2) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(3) Practice nondiscrimination in the provision of supportive housing and supportive services assistance.

Operating costs means expenses incurred in operating supportive housing, supportive services or service centers with respect to:

(1) Administration (including staff salaries; costs associated with accounting for the use of grant funds, preparing reports for submission to VA and obtaining program audits; and similar costs related to administering the grant after the award), maintenance, repair and security for the supportive housing;

(2) Van or building rent (except under capital leases), utilities, insurance, fuel, furnishings, and equipment;

(3) Conducting on-going assessments of supportive services provided for and needed by participants and the availability of such services;

(4) Relocation assistance under § 17.730 of this part, including payments and services; and

(5) Other costs associated with operating the supportive housing.

Outpatient health services means outpatient health care, outpatient mental health services, outpatient alcohol and/or substance abuse services, and case management.

Participant means a person who receives services provided at sites funded with assistance provided under this part.

Project means a structure or structures (or portion of such structure or structures) acquired, rehabilitated, or constructed with assistance provided under this part. A project may be used to provide supportive housing or supportive services in single room occupancy dwelling units which may or may not contain bathrooms or kitchen facilities and are appropriate for use as supportive housing.

Recipient means any governmental or nonprofit entity that receives assistance under this part.

Rehabilitation means the improvement or repair of an existing structure. Rehabilitation does not include minor or routine repairs.

Secretary means the Secretary of Veterans Affairs.

Seriously mentally ill means having a severe and persistent mental or emotional impairment that seriously limits a person's ability to live independently. This may include an impairment related to substance (alcohol and/or drug) abuse.

Service center means a project which provides the supportive services specified at § 17.724(k) to homeless veterans for a minimum of 40 hours per week over a minimum of five days per week as well as on an as-needed, unscheduled basis.

Single room occupancy (SRO) housing means a unit for occupancy by one person, which need not but may contain food preparation or sanitary facilities, or both.

Sponsor means a public or nonprofit organization which owns or leases dwelling units in buildings acquired and/or renovated with funds from this grant program, and which makes such units available to eligible homeless veterans.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Supportive housing means housing in conjunction with which supportive services are provided for homeless veterans where:

(1) The housing is safe and sanitary and meets any applicable State and local housing codes and licensing requirements in the jurisdiction in which the housing is located, and the requirements of this part; and

(2) The housing is:

(i) Transitional housing; or

(ii) Is, or is a part of, a particularly innovative project for, or alternative method of, meeting the immediate and long-term needs of homeless veterans.

Supportive services (1) Means services, which may be designed by the recipient or program participants, that

(i) address the special needs of homeless veterans to be served by the project, and

(ii) provide appropriate services or assist such persons in obtaining appropriate services.

(2) Supportive services include:

(i) Outreach activities;

(ii) Providing food, nutritional counseling, counseling, health care, mental health treatment, alcohol and other substance abuse services, case management services;

(iii) Establishing and operating child care services for dependents of homeless veterans;

(iv) Providing supervision and security arrangements necessary for the protection of residents of supportive housing and for homeless veterans using the housing or services;

(v) Providing assistance in obtaining permanent housing;

(vi) Providing education, employment counseling, job training, establishing and operating an employment assistance program;

(vii) Providing assistance in obtaining other Federal, State and local assistance available for such residents including mental health benefits, employment counseling, veterans' benefits, medical assistance, and income support assistance such as Supplemental Security Income benefits, Aid to Families with Dependent Children, General Assistance, Food Stamps, etc.; and

(viii) Providing housing assistance, legal assistance, advocacy, transportation, and other services essential for achieving and maintaining independent living.

(ix) Inpatient acute hospital care does not qualify as a supportive service.

Transitional housing means housing that will facilitate the movement of homeless veterans and their dependents to permanent housing within 24 months, or within a longer period as described in § 17.724(i) of this part.

Unit of general local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Veteran means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

Veteran with disabilities means a veteran with a physical, mental, or emotional impairment which is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently; and is of such a nature that such ability could be improved by more suitable housing conditions. This may include a disability related to substance (alcohol and/or drug) abuse. A veteran may be considered to have a disability regardless of whether VA has or has not awarded compensation or a pension for the disability.

§ 17.702 Types and uses of assistance.

(a) *Grant assistance.* Grant assistance is available to:

(1) Construct structures to establish new supportive housing facilities, new facilities to provide supportive services, or to establish service centers;

(2) Acquire, expand and remodel/alter structures to establish new supportive housing facilities, new facilities to provide supportive services, or to establish service centers; and

(3) Procure vans to provide transportation for the purpose of providing supportive services to homeless veterans.

(4) Applicants may apply for more than one type of assistance.

(b) *Limitation on non-veteran participants.* Up to 25 percent of services available in projects funded through this grant program may be provided to participants who are not receiving those services as veterans.

(c) *Structures used for multiple purposes.* Structures funded through this grant program that are used to provide supportive housing, supportive services, or used as service centers may also be used for other purposes, except that assistance under this part will be available only in proportion to the use of the structure for supportive housing, supportive services, or as a service center.

(d) *Maximum amount of grant.* The amount of a grant under this part may not exceed 65 percent of the cost of acquisition, rehabilitation, acquisition and rehabilitation, construction or procurement.

§ 17.703 Grants for acquisition and rehabilitation.

(a) *Use.* VA will grant funds to recipients to:

(1) Pay a portion of the cost of the acquisition of real property selected by the recipients for use in the provision of supportive housing or supportive services, or to establish service centers, including the repayment of any outstanding debt on a loan made to purchase property that has not been used previously for supportive housing, supportive services, or service centers; and

(2) Pay a portion of the cost of rehabilitation of structures, including cost-effective energy measures, selected by the recipients to provide supportive housing or supportive services or to establish service centers.

(b) If grant funds are proposed to be used for acquisition or rehabilitation, the applicant must demonstrate that the

costs associated with acquisition or rehabilitation are less than the costs associated with new construction.

§ 17.704 Grants for new construction.

(a) *Use.* VA will grant funds to recipients to pay a portion of the cost of new construction, including cost-effective energy measures and the cost of land associated with that construction, for use in the provision of supportive housing or supportive services, or for service centers. If grant funds are proposed to be used for new construction, the applicant must demonstrate that the costs associated with new construction are less than the costs associated with rehabilitation of an existing building, or that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction. The applicant must also demonstrate that new construction is less costly than acquisition of an existing building. For purposes of this cost comparison, costs associated with rehabilitation or new construction may include the cost of real property acquisition.

(b) *Demolition plan.* The cost of demolition of a building cannot be included in the cost of construction unless the proposed construction is in the same location as the building to be demolished or unless the demolition is inextricably linked to the design of the construction project. If the applicant believes that this cost may be included in the cost of the construction project, a demolition plan should be submitted which includes the extent and cost of existing site features to be removed, stored, or relocated.

§ 17.705 Grants for procurement of vans.

(a) *Use.* VA will grant funds to recipients to pay a portion of the cost of procuring vans to provide transportation for and support outreach to homeless veterans.

(b) *Insurance.* Recipients of grants to procure vans who are nonprofit entities must insure vans to the same extent they would insure a van bought with their own funds.

(c) *Amount.* The estimated total costs of purchasing the van may include the purchase price, sales taxes, and title and licensing fees.

§ 17.706 Matching requirements.

(a) *General.* The recipient must, from sources other than grant funds received under this part, match the funds provided by VA to cover the percentage of the total cost of the acquisition, rehabilitation, construction or procurement not funded by the grant. This matching share shall constitute at least 35 percent of the total cost.

(b) *Maintenance of effort.* State or local government funds used in the matching contribution are subject to the maintenance of effort requirements described at § 17.707(a) of this part.

§ 17.707 Limitations on use of assistance.

(a) *Maintenance of effort.* No assistance provided under this part may be used to replace Federal, State or local funds previously used, or designated for use, to assist homeless veterans.

(b) *Primarily religious organizations.* VA will provide assistance to a recipient that is a primarily religious organization if the organization agrees to provide housing and supportive services in a manner that is free from religious influences and the organization complies with the following principles:

(1) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(2) It will not discriminate against any person applying for housing or supportive services on the basis of religion and will not limit such housing or services or give preference to persons on the basis of religion;

(3) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of housing and supportive services.

§ 17.708 Notice of fund availability (NOFA).

When funds are made available for assistance, VA will publish a notice of fund availability in the **Federal Register**. The notice will:

(a) Give the location for obtaining application packages, which will provide specific application requirements and guidance;

(b) Specify the date, time, and place for submitting completed applications; and

(c) State the amount and status of funding available under the notice.

§ 17.709 Grant award process.

General. The grant award process for assistance under this part consists of the following:

(1) Reviewing applications for eligibility for assistance;

(2) Rating applications (see § 17.711 of this part);

(3) Selecting applications conditionally (see § 17.712 of this part);

(4) Obtaining additional information and awarding grants (see § 17.713 of this part).

§ 17.710 Application requirements.

(a) *General.* Applications for grants must be submitted in the form prescribed by VA in the application package, must meet the requirements of this part, and must be submitted within the time period established by VA in the notice of fund availability under § 17.708 of this part. The application packet includes exhibits to be prepared and submitted as part of the application process, including:

(1) Justification for the project by addressing items listed in § 17.711(c) of this part;

(2) Site description, design, and cost estimates;

(3) Documentation on eligibility to receive assistance under this part;

(4) Documentation on matching funds committed to the project;

(5) Documentation on operating budget and cost sharing;

(6) Documentation on supportive services committed to the project;

(7) Documentation on site control and appropriate zoning;

(8) Applicants who are States must submit any comments or recommendations by appropriate State (and areawide) clearinghouses pursuant to E.O. 12372;

(9) Reasonable assurances with respect to receipt of assistance under this part that:

(i) The project will be used principally to furnish to veterans the level of care for which such application is made; that not more than 25 percent of participants at any one time will be non-veterans; and that such services will meet standards prescribed by VA;

(ii) Title to such site or van will vest solely in the applicant;

(iii) Each recipient will keep those records and submit those reports as VA may reasonably require, within the timeframes required; and give VA, upon demand, access to the records upon which such information is based; and

(iv) Adequate financial support will be available for the purchase of the van or completion of the project, and for its maintenance, repair and operation.

(b) *Pre-award expenditures.* Costs incurred for a project after the date the Department of Veterans Affairs notifies an applicant that the project is feasible for VA participation are allowable costs if the application is approved and the grant is awarded. These pre-award expenditures include architectural and engineering fees. Such notification occurs when VA requests information for the second submission portion of the application.

§ 17.711 Rating criteria for applications.

(a) *General.* Applications will be assigned a rating score and placed in

ranked order, based upon the criteria listed in paragraphs (b) through (d) of this section.

(b) *Threshold review.* Applicants will undergo a threshold review prior to rating and ranking, to ensure they meet the following:

(1) *Form, time and adequacy.* Applications must be filed in the form prescribed by VA in the application process and within the time established in the NOFA.

(2) *Applicant eligibility.* The applicant and project sponsor, if relevant, must be eligible to apply for the specific program.

(3) *Eligible population to be served.* The population proposed to be served must be homeless veterans and meet other eligibility requirements of the specific program.

(4) *Eligible activities.* The activities for which assistance is requested must be eligible for funding under this part.

(5) *Outstanding audit findings.* No organization that receives assistance may have an outstanding obligation to VA that is in arrears or for which a payment schedule has not been agreed to, or whose response to an audit is overdue or unsatisfactory.

(c) *Rating and ranking of first submission.* Applicants that pass the threshold review will then be rated using the eight selection criteria listed below. Applicants must receive at least 600 points (out of a possible 1,200) and must receive points under criteria 1, 2, 3, 4, and 8. Applicants that are applying as an innovative supportive housing project must achieve points under the "innovative quality of the proposal" criterion.

(1) Quality of the project—300 points
(2) Targeting to persons on streets and in shelters—150 points
(3) Ability of the applicant to develop and operate a project—200 points
(4) Need for the type of project proposed in the area to be served—150 points
(5) Innovative quality of the proposal—50 points
(6) Leveraging—50 points
(7) Cost effectiveness—100 points
(8) Coordination with other programs—200 points

(d) *Selection criteria*—(1) *Quality of the project.* VA will award up to 300 points based on the extent to which the application presents a clear, well-conceived and thorough plan for assisting homeless veterans achieve residential stability, increased skills and/or income, and more influence over decisions that affect their lives. Higher ratings will be assigned to those applications that clearly describe:

(i) How program participants will achieve residential stability, including how available supportive services will help participants reach this goal;

(ii) How program participants will increase their skill level and/or income, including how available supportive services will help participants reach this goal;

(iii) How program participants will be involved in making project decisions that affect their lives, including how they will be involved in selecting supportive services, establishing individual goals and developing plans to achieve these goals so that they achieve greater self determination;

(iv) How permanent affordable housing will be identified and made available to participants upon leaving the transitional housing, and how participants will be provided necessary follow-up services to help them achieve stability in the permanent housing;

(v) How the service needs of participants will be assessed on an ongoing basis;

(vi) How the proposed housing, if any, will be managed and operated;

(vii) How participants will be assisted in assimilating into the community through access to neighborhood facilities, activities and services;

(viii) How and when the progress of participants toward meeting their individual goals will be monitored and evaluated;

(ix) How and when the effectiveness of the overall project in achieving its goals will be evaluated and how program modifications will be made based on those evaluations; and

(x) How the proposed project will be implemented in a timely fashion.

(2) *Targeting to persons on streets and in shelters.* VA will award up to 150 points based on:

(i) The extent to which the project will serve homeless veterans living in places not ordinarily meant for human habitation (e.g., streets, parks, abandoned buildings, automobiles, under bridges, in transportation facilities) and those who reside in emergency shelters; and

(ii) The likelihood that proposed plans for outreach and selection of participants will result in these populations being served.

(3) *Ability of applicant to develop and operate a project.* VA will award up to 200 points based on the extent to which those who will be involved in carrying out the project have experience in activities similar to those proposed in the application. Rating will be assigned based on the extent to which the application demonstrates experience in the following areas:

(i) Engaging the participation of homeless veterans living in places not ordinarily meant for human habitation and in emergency shelters;

(ii) Assessing the housing and relevant supportive service needs of homeless veterans;

(iii) Accessing housing and relevant supportive service resources;

(iv) If applicable, contracting for and/or overseeing the rehabilitation or construction of housing;

(v) If applicable, administering a rental assistance program;

(vi) Providing supportive services for homeless veterans;

(vii) Monitoring and evaluating the progress of persons toward meeting their individual goals; and

(viii) Evaluating the overall effectiveness of a program and using evaluation results to make program improvements.

(4) *Need.* VA will award up to 150 points based on the applicant's demonstrated understanding of the needs of the specific homeless veteran population proposed to be served. Ratings will be made based on the extent to which applicants demonstrate:

(i) Substantial unmet needs, particularly among the target population who are living in places not ordinarily meant for human habitation (e.g., streets) and in emergency shelters, based on reliable data from surveys of homeless populations, a Comprehensive Housing Affordability Strategy (CHAS), or other reports or data gathering mechanisms that directly support claims made;

(ii) An understanding of the homeless population to be served and its unmet housing and supportive service needs.

(5) *Innovative quality of the proposal.* Applicants who have indicated in their application that they are applying under the innovative supportive housing component must receive points under this criterion to be eligible for award. VA will award up to 50 points based on the innovative quality of the proposal, when compared to other applications and projects, in terms of:

(i) Helping homeless veterans or homeless veterans with disabilities to be served to reach residential stability, increase their skill level and/or income and increase the influence they have over decisions that affect their lives; and

(ii) A clear link between the innovation(s) and its proposed effect(s); and

(iii) Its ability to be used as a model for other projects.

(6) *Leveraging.* VA will award up to 50 points based on the extent to which resources from other public and private sources, including cash and the value of third party contributions, have been

committed to support the project at the time of application.

(Note: Any applicant who wishes to receive points under this criterion must submit documentation of leveraged resources which meets the requirements stated in the application. This is optional; applicants who cannot, or choose not to, provide firm documentation of resources as part of the application will forego any points for leveraging.)

(7) *Cost effectiveness.* VA will award up to 100 points for cost effectiveness. Projects will be rated based on the cost and number of new supportive housing beds made available or the cost, amount and types of supportive services made available, when compared to other transitional housing and supportive services projects, and when adjusted for high cost areas. Cost effectiveness may include using excess government properties (local, State, Federal), as well as demonstrating site control at the time of application.

(8) *Coordination with other programs.* VA will award up to 200 points based on the extent to which applicants demonstrate that they have coordinated with Federal, State, local, private and other entities serving homeless persons in the planning and operation of the project. Such entities may include shelter, transitional housing, health care, or social service providers; providers funded through Federal initiatives; local planning coalitions or provider associations; or other programs relevant to the local community. Applicants are required to demonstrate that they have coordinated with the VA medical care facility of jurisdiction and VA Regional Offices of jurisdiction in their area.

(i) Higher points will be given to those applicants that can demonstrate that:

(A) They are part of an ongoing community-wide planning process which is designed to share information on available resources and reduce duplication among programs that serve homeless veterans;

(B) They have consulted directly with other providers regarding coordination of services for project participants. VA will award up to 50 points of the 200 points for this criterion based on the extent to which commitments to provide supportive services are available at the time of application. Applicants who wish to receive points under this optional criterion must submit documentation of supportive service resources.

§ 17.712 Selecting applications.

(a) *General.* The highest-ranked applications will be conditionally selected in accordance with their ranked order, as determined under § 17.711 of this part. Each will be requested, as necessary, to provide additional project information, as described in § 17.713 of this part, as a prerequisite to a grant award from VA.

(b) *Ties between applicants.* In the event of a tie between applicants, VA will use the selection criterion in § 17.711(d)(4) of this part, need for the type of project proposed in the area to be served, to determine which application should be selected for potential funding.

(c) *Procedural error.* If an application would have been selected but for a procedural error committed by VA, VA will select that application for potential funding when sufficient funds become available if there is no material change in the information that resulted in its selection. A new application will not be required for this purpose.

§ 17.713 Obtaining additional information and awarding grants.

(a) *Additional information.* Applicants who have been conditionally selected will be requested by VA to submit additional project information, as described in the second submission of the application, which may include:

(1) Documentation to show that the project is feasible;

(2) Documentation showing the sources of funding for the project and firm financing commitments for the match described in § 17.706 of this part;

(3) Documentation showing site control, as described in § 17.731 of this part;

(4) Information necessary for VA to ensure compliance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as described in § 17.714 of this part;

(5) A site survey performed by a licensed land surveyor. A description of the site shall be submitted noting the general characteristics of the site. This should include soil reports and specifications, easements, main roadway approaches, surrounding land uses, availability of electricity, water and sewer lines, and orientation. The description should also include a map locating the existing and/or new buildings, major roads, and public services in the geographic area. Additional site plans should show all site work including property lines, existing and new topography, building locations, utility data, and proposed grades, roads, parking areas, walks, landscaping, and site amenities.

(6) Design development (35 percent) drawings. (i) The applicant shall provide to VA one set of sepias and two sets of prints, rolled individually per set, to expedite the review process. The drawing shall indicate the designation of all spaces, size of the areas and rooms and indicate in outline the fixed and moveable equipment and furniture. The drawings shall be drawn at ⅛" or ¼" scale. Bedroom and toilet layouts showing clearances and Uniform Federal Accessibility Standards requirements, should be shown at ¼" scale. The total floor and room areas shall be shown in the drawings. The drawings shall include:

(A) A plan of any proposed demolition work;

(B) A plan of each floor. For renovations, the existing conditions and extent of new work should be clearly delineated;

(C) Elevations;

(D) Sections and typical details;

(E) Roof plan;

(F) Fire protection plans; and

(G) Technical engineering plans, including structural, mechanical, plumbing, and electrical drawings.

(ii) If the project involves acquisition, remodeling, or renovation, the applicant should include the current as-built site plan, floor plans and building sections which show the present status of the building and a description of the buildings current use and type of construction.

(7) Design development outline specifications. The applicant shall provide eight copies of outline specifications which shall include a general description of the project, site, architectural, structural, electrical and mechanical systems such as elevators, air conditioning, heating, plumbing, lighting, power, and interior finishes (floor coverings, acoustical material, and wall and ceiling finishes).

(8) Design development cost estimates. The applicant shall provide three copies of cost estimates showing the estimated cost of the buildings or structures to be acquired or constructed in the project. Cost estimates should list the cost of construction, contract contingency, fixed equipment not included in the contract, movable equipment, architect's fees and construction supervision and inspection.

(9) A design development conference. After VA reviews design development documents, a design development conference may be recommended in order to provide applicants and their architects an opportunity to learn VA procedures and requirements for the project and to discuss VA review comments.

(10) Such other documentation as specified by VA in writing to the applicant, that confirms or clarifies information provided in the application.

(b) *Receipt of additional information.* The required additional information must be received in acceptable form within the timeframe established by VA in a notice of fund availability published in the Federal Register. VA reserves the right to remove any proposed project from further consideration for grant assistance if the required additional project information is not received in acceptable form by the established deadline.

(c) *Grant award.* Following receipt of the additional information in acceptable form (and, where applicable, provided that the environmental review described in § 17.714 indicates that the proposed project is environmentally acceptable to VA), to the extent funds are available VA will approve the application and send a grant agreement for execution to the applicant.

§ 17.714 Environmental review requirements.

(a) *Generally.* Project selection is subject to completion of an environmental review of the proposed site; and the project may be modified or the site rejected as a result of that review. The environmental effects must be assessed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et. seq.*) (NEPA) as implemented pursuant to the Council on Environmental Quality's applicable regulations (40 CFR parts 1500–1508) and VA's applicable implementing regulations (38 CFR part 26).

(b) *Responsibility for review.* (1) VA will perform the environmental review, in accordance with part 26 of this title, for conditionally selected applications received directly from private nonprofit organizations and governmental entities with special or limited purpose powers. VA is not permitted to approve such applications prior to its completion of this review. Because of time constraints, any application subject to environmental review by VA that requires an Environmental Impact Statement (EIS) (generally, an application that VA determines would result in a major Federal action significantly affecting the quality of the human environment in accordance with the environmental assessment procedures at (38 CFR part 26) will not be eligible for assistance under this part.

(2) Applicants that are States, metropolitan cities, urban counties, Indian tribes, or other governmental entities with general purpose powers shall include environmental documentation for the project by submitting information establishing a Categorical Exclusion (CE), a proposed Environmental Assessment (EA), or a proposed Environmental Impact Statement (EIS). The environmental documentation will require approval by VA before final award of a construction or acquisition grant under this part. (See 38 CFR 26.6 for compliance requirements.) If the proposed actions involving construction or acquisition do not individually or cumulatively have a significant effect on the human environment, the applicant shall submit a letter noting a CE. If construction outside the walls of an existing structure will involve more than 75,000 gross square feet (GSF), the application shall include an EA to determine if an EIS is necessary for compliance with section 102(2)(c) of the National Environmental Policy Act of 1969. When the application submission requires an EA, the State shall briefly describe the possible beneficial and/or harmful effect which the project may have on the following impact categories:

(i) Transportation;
(ii) Air quality;
(iii) Noise;
(iv) Solid waste;
(v) Utilities;
(vi) Geology (soils/hydrology/flood plains);
(vii) Water quality;
(viii) Land use;
(ix) Vegetation, wildlife, aquatic, and ecology/wetlands;
(x) Economic activities;
(xi) Cultural resources;
(xii) Aesthetics;
(xiii) Residential population;
(xiv) Community services and facilities;
(xv) Community plans and projects; and
(xvi) Other.

(3) If an adverse environmental impact is anticipated, the action to be taken to minimize the impact should be explained in the EA. An entity covered by this section that believes that it does not have the legal capacity to carry out the responsibilities required by 38 CFR Part 26 should contact the VA Homeless Providers Grant and Per Diem Program, Mental Health and Behavioral Sciences Service (111C), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

§ 17.715 Aid for supportive services and supportive housing.

(a) *Per diem payments.* Aid in the form of per diem payments may be paid to a recipient of a grant under this part, or to an entity eligible for such a grant, that after November 10, 1992 establishes a program for providing supportive services or supportive housing to homeless veterans, or a service center if:

(1) VA referred the homeless veteran to a recipient of a grant under this part (or entity eligible for such a grant as described in § 17.715(a) of this part), or

(2) VA authorized the provision of supportive services or supportive housing for the homeless veteran.

(b) *In-kind assistance.* In lieu of per diem payments under this section, VA may, with approval of the grant recipient (or entity eligible for such a grant as described in § 17.715(a) of this part), provide in-kind assistance through the services of VA employees and the use of other VA resources, to a grant recipient (or entity eligible for such a grant as described in § 17.715(a) of this part).

§ 17.716 Eligibility to receive payments.

An entity must be formally recognized by VA as eligible to receive payments under this section before payments can be made for the care of homeless veterans, except that payments may be made on behalf of a veteran up to three days prior to this recognition. An entity may be recognized if:

(a) It is an entity receiving a grant, or eligible to receive a grant under this part,

(b) At least 75 percent of persons who are receiving supportive services or supportive housing from the entity are veterans who may be included in the computation of the amount of aid payable from the Department of Veterans Affairs, and

(c) The supportive services or supportive housing program for which per diem payments is requested was established after November 10, 1992.

§ 17.717 Requesting recognition.

Requests for recognition of eligibility may be addressed to the VA Homeless Providers Grant and Per Diem Program, Mental Health and Behavioral Sciences Service (111C), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

§ 17.718 Approval of annexes and new facilities.

Separate applications for recognition must be filed for any annex, branch, enlargement, expansion, or relocation of the site of service provision of an eligible entity's facility which is not on the same or contiguous grounds on which the parent facility is located. When an eligible entity establishes sites which have not been inspected and approved by VA, a request for separate approval of such sites must be made.

The prohibitions in § 17.720 are also applicable to applications for aid on behalf of any veteran cared for in a new annex, branch or enlarged, expanded or relocated facility

§ 17.719 Amount of aid payable.

(a) *Maximum amount payable.* The amount of per diem payments made under paragraphs (1) and (2) of this section for services rendered to a veteran shall not exceed one-half of the cost to the grant recipient (or entity eligible for such a grant as described in § 17.715(a) of this part) of providing such services.

(1) The maximum per diem amount payable for supportive housing is $30.00.

(2) The per diem amount payable for supportive services not provided in conjunction with supportive housing is $1.10 for each half hour during which supportive services are provided. The maximum per diem amount payable for supportive services not in conjunction with supportive housing is $17.60 per day.

(b) *Limitation on per diem payments.* Per diem payments may be paid for a veteran under paragraph (a)(1) or (a)(2) of this section, but not under both paragraphs (a)(1) and (a)(2).

(c) *Limitation on duration of per diem payments.* VA must periodically review and approve, or terminate approval for, continued per diem payments for each veteran. Such review shall occur at least once every three months.

§ 17.720 Approval of eligibility.

(a) *Eligibility determinations.* A grant recipient (or entity eligible for such a grant as described in § 17.715(a) of this part) will receive per diem payments or in-kind assistance from VA only for the care of veterans whose separate eligibility has been determined by VA, and only where VA has referred the veteran under § 17.715(a)(1) or has authorized the provision of supportive housing or supportive services under § 17.715(a)(2) of this part. A veteran does not have to be eligible for VA medical care in order for the Department to make per diem payments for that veteran.

(1) VA shall determine the eligibility of each veteran referred to a grant recipient (or entity eligible for such a grant as described in § 17.715(a) of this part) prior to making such referral.

(2) To obtain such determination for veterans not referred by VA, the grant recipient (or entity eligible for such a grant as described in § 17.715(a) of this part) will complete a VA application for medical benefits for each veteran and submit it to the VA medical care facility office of jurisdiction for determination of eligibility.

(b) *Retroactive payments.* Per diem payments may be paid retroactively for services provided not more than three days before VA approval is given where VA authorized the provision of services pursuant to § 17.715(a)(2).

§ 17.721 Inspections.

The Secretary may inspect any facility of an entity eligible for per diem payments under this section at such times as are deemed necessary. Such inspections shall be concerned with the physical plant; records relating to admissions, discharges and occupancy; fiscal records, and all other areas of interest necessary to a determination of compliance with applicable laws and regulations relating to the payment of Federal aid. The authority to inspect carries with it no authority over the management or control of any entity eligible for per diem payments under this section.

§ 17.722 Prerequisite for payment of aid.

No aid may be paid to eligible entities unless they meet the requirement and standards described in §§ 17.724 through 17.726 of this part.

§ 17.723 Audit of recipients of aid.

(a) *State and local government entities.* State, local and Indian tribal governments that receive $25,000 or more in assistance under this part shall have an audit made in accordance with the requirements of 38 CFR part 41.

(b) *Nonprofit entities.* Nonprofit entities receiving assistance under this part shall be subject to the audit requirements contained in OMB Circular A–133.

§ 17.724 General operation.

(a) *State and local requirements.* Each recipient of assistance under this part must provide housing or services that are in compliance with all applicable State and local housing codes, licensing requirements, fire and safety requirements, and any other requirements in the jurisdiction in which the project is located regarding the condition of the structure and the operation of the housing or services.

(b) *Habitability standards.* Except for such variations as are proposed by the recipient that would not affect compliance with paragraph (a) of this section and are approved by VA, supportive housing must meet the following requirements:

(1) *Structure and materials.* The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from the elements.

(2) *Access.* Entry and exit locations to the structure must be capable of being utilized without unauthorized use of other private properties, and must provide alternate means of egress in case of fire. Buildings constructed or altered with Federal assistance must also be accessible to the disabled, as required by § 502 of the Americans with Disabilities Act, referred to as the Architectural Barriers Act. Waiver of the standards of the Architectural Barriers Act requires approval of the Administrator of the General Services Administration.

(i) The Architectural Barriers Act requires that Federal and Federally-assisted buildings, the intended use for which either will require that such building be accessible to the public, or may result in the employment or residence therein of physically handicapped persons, be accessible to the disabled. This requirement applies to buildings to be constructed or altered by or on behalf of the United States, and to buildings to be leased in whole or in part by the United States (42 U.S.C. 4151).

(ii) Accessibility guidelines for buildings and facilities are set forth in 36 CFR part 1191.

(3) *Space and security.* Each resident must be afforded appropriate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep that is in compliance with local codes and regulations.

(4) *Interior air quality.* Every room or space must be provided with natural or mechanical ventilation. Structures must be free of pollutants in the air at levels that threaten the health of residents.

(5) *Water supply.* The water supply must be free from contamination.

(6) *Sanitary facilities.* Residents must have access to sufficient sanitary facilities that are in proper operating condition, may be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(7) *Thermal environment.* The housing must have adequate heating and/or cooling facilities in proper operating condition.

(8) *Illumination and electricity.* The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliances while assuring safety from fire.

(9) *Food preparation and refuse disposal.* All food preparation areas must contain suitable space and

equipment to store, prepare, and serve food in a sanitary manner.

(10) *Sanitary condition.* The housing and any equipment must be maintained in a sanitary manner.

(c) *Meals.* Each recipient of assistance under this part who provides supportive housing for homeless veterans with disabilities must provide meals or meal preparation facilities for residents.

(d) *Ongoing assessment of supportive services.* Each recipient of assistance under this part must conduct an ongoing assessment of the supportive services required by the residents of the project and the availability of such services, and make adjustments as appropriate.

(e) *Residential supervision.* Each recipient of assistance under this part must provide residential supervision necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate supportive housing. Residential supervision may include the employment or volunteer services of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(f) *Participation of homeless veterans.* (1) Each recipient of assistance under this part must provide for the consultation and participation of not less than one homeless veteran or formerly homeless veteran on the board of directors or an equivalent policymaking entity of the recipient, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. This requirement may be waived if an applicant, despite a good faith effort to comply, is unable to meet it and presents a plan, subject to VA approval, to otherwise consult with homeless or formerly homeless veterans in considering and making such policies and decisions.

(2) Each recipient of assistance under this part must, to the maximum extent practicable, involve homeless veterans and families, through employment, volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating the project and in providing supportive services for the project. Programs that do not involve homeless or formerly homeless veterans in such capacities may become ineligible to receive per diem payments. This requirement is waived if a recipient is unable to meet it and presents an explanation for VA approval

(g) *Accounting systems.* Each recipient shall establish procedures for fiscal control and fund accounting to ensure proper disbursement and accounting of assistance received under this part.

(h) *Confidentiality.* (1) Each recipient that provides family violence prevention or treatment services must develop and implement procedures to ensure:

(i) The confidentiality of records pertaining to any individual provided services; and

(ii) That the address or location of any project assisted will not be made public by the recipient and its staff, except with written authorization of the person or persons responsible for the operation of the project.

(2) Each recipient of assistance under this part must maintain the confidentiality of records kept on homeless veterans receiving services.

(i) *Limitation of stay in transitional housing.* A homeless veteran may remain in transitional housing for a period longer than 24 months, if permanent housing for the veteran has not been located or if the veteran requires additional time to prepare for independent living. However, VA may discontinue assistance for a transitional housing project if more than half of the homeless veterans remain in that project longer than 24 months.

(j) *Outpatient health services.* VA may disapprove use of outpatient health services provided through the recipient if VA determines that such services are of unacceptable quality. VA will not pay per diems for veterans who receive services from providers who VA has found to be of unacceptable quality.

(k) *Service center requirements.* A service center for homeless veterans shall provide services to homeless veterans for a minimum of 40 hours per week over a minimum of five days per week, as well as on an as-needed, unscheduled basis. In addition:

(1) Space in a service center shall be made available as mutually agreeable for use by VA staff and other appropriate agencies and organizations to assist homeless veterans;

(2) A service center shall be equipped to provide, or assist in providing, health care, mental health services, hygiene facilities, benefits and employment counseling, meals, and transportation assistance;

(3) A service center shall provide other services as VA determines necessary based on the need for services otherwise not available in the geographic area;

(4) A service center may be equipped and staffed to provide, or to assist in providing, job training and job placement services (including job readiness, job counseling, and literacy and skills training), as well as any outreach and case management services that may be necessary to meet the requirements of this paragraph.

§ 17.725 Outreach activities.

Recipients must use their best efforts to ensure that eligible hard-to-reach persons are served in the facility funded under this part. Recipients are expected to make sustained efforts to engage eligible persons so that they may be brought into the program. Outreach should be directed primarily toward eligible persons who have a nighttime residence that is an emergency shelter or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings (e.g., persons living in cars, streets and parks).

§ 17.726 Resident rent.

(a) *Calculation of resident rent.* Each resident of supportive housing may be required to pay as rent an amount determined by the recipient which may not exceed the highest of:

(1) 30 percent of the resident's monthly adjusted income (adjustment factors include the number of relatives in the family residing with the veteran, medical expenses, and child care expenses);

(2) 10 percent of his or her family's monthly income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

(b) *Use of rent.* Resident rent may be used in the operation of the project or may be reserved, in whole or in part, to assist residents of transitional housing in moving to permanent housing.

(c) *Fees.* In addition to resident rent, recipients may charge residents reasonable fees for services not paid with VA per diem funds or provided to the service provider by in-kind assistance through the services of VA employees and the use of other VA resources.

§ 17.727 Grant agreement.

(a) *General.* The duty to provide supportive housing or supportive services, or to establish a service center in accordance with the requirements of this part will be incorporated in a grant agreement executed by VA and the recipient.

(b) *Enforcement.* VA will enforce the obligations in the grant agreement

through such action as may be appropriate, including repayment of funds that have already been disbursed to the recipient.

§ 17.728 Program changes.

(a) *VA approval.* (1) A recipient may not make any significant changes to an approved program without prior VA approval. Significant changes include, but are not limited to, a change in the recipient, a change in the project site, additions or deletions in the types of activities listed in § 17.703 of this part approved for the program, certain shifts of funds from one approved type of activity to another, and a change in the category of participants to be served.

(i) Recipients of grants exceeding $100,000 for nonconstruction projects who are State or local governments must receive prior VA approval for cumulative transfers among direct cost categories which exceed or are expected to exceed ten percent of the current total approved budget.

(ii) Recipients of grants for projects involving both construction and nonconstruction who are State or local governments must receive prior VA approval for any budget revision which would transfer funds between nonconstruction and construction categories.

(iii) Recipients of grants exceeding $100,000 who are nonprofit entities must receive prior VA approval for cumulative transfers among direct cost categories or programs, functions and activities which exceed or are expected to exceed ten percent of the total budget as last approved by VA.

(2) Approval for changes is contingent upon the application ranking remaining high enough after the approved change to have been competitively selected for funding in the year the application was selected.

(b) *Documentation of other changes.* Any changes to an approved program that do not require prior VA approval must be fully documented in the recipient's records.

§ 17.729 Obligation and deobligation of funds.

(a) *Obligation of funds.* When VA and the applicant execute a grant agreement, funds are obligated to cover the amount of the approved assistance under §§ 17.702 through 17.707 of this part. The recipient will be expected to carry out the supportive housing or supportive services activities as proposed in the application.

(b) *Increases.* After the initial obligation of funds, VA will not make revisions to increase the amount obligated.

(c) *Deobligation.* (1) VA may deobligate all or parts of grants awarded under this part:

(i) If the actual total cost of acquisition, rehabilitation, acquisition and rehabilitation, or new construction of facilities, or the cost of procurement of a van, is less than the total cost anticipated in the application, or

(ii) Where a recipient materially fails to comply with the terms and conditions of an award under this part.

(2) The grant agreement may set forth in detail other circumstances under which funds may be deobligated, and other sanctions may be imposed. Such sanctions may include, among other remedies: temporarily withholding cash payments pending correction of a deficiency, denying the use of grant or matching funds for all or part of the cost of an activity not in compliance, wholly or partly suspending an award, and withholding further awards to the recipient.

(3) Where a recipient has no control over causes for delays in implementing a project, any delays due to causes beyond a recipient's control may, with VA approval, suspend the running of any period in which the recipient must implement a program or risk deobligation of funds or other VA remedies.

(4) VA may:

(i) Readvertise in a notice of fund availability under § 17.708 of this part, the availability of funds awarded that were deobligated in the same fiscal year as obligated; or

(ii) Award funds deobligated in the same fiscal year as obligated to applications previously submitted in response to the most recently published notice of fund availability, and in accordance with §§ 17.708 through 17.714 of this part; or

(iii) If legally authorized, award amounts deobligated in a fiscal year later than the fiscal year in which they were obligated to applications previously submitted in response to the most recently published notice of fund availability, and in accordance with §§ 17.708 through 17.714 of this part.

§ 17.730 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with other goals and objectives of this part, recipients must take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of supportive housing, supportive services, or service centers assisted under this part. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in the purchases.

(b) *Relocation assistance for displaced persons.* A displaced person must be provided relocation assistance at the levels described in, and in accordance with, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655).

(c) *Certification.* The recipient must certify that it will comply with the URA, and must ensure such compliance notwithstanding any third party's contractual obligation to the recipient to comply with these provisions.

(d) *Cost of relocation assistance.* The cost of required relocation assistance is not an eligible project cost, in that such costs are operational costs. Such costs must be paid for with local public funds or funds available from other sources.

(e) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the execution of the agreement between the recipient and VA, or selection of the project site, if later.

§ 17.731 Site control.

(a) *Site control.* (1) Where grant funds will be used for acquisition, rehabilitation, or new construction to provide supportive housing or supportive services, or to establish service centers, except where an applicant will provide services at sites not operated by the applicant, an applicant must demonstrate site control (*e.g.*, through a deed, capital lease, executed contract of sale) before VA will execute a grant agreement.

(2) If such site control is not demonstrated within one year after initial notification of the award of assistance under this part, the grant will be deobligated as provided in paragraph (c) of this section.

(b) *Site change.* (1) A recipient may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements for suitable sites under this part.

(2) If the acquisition, rehabilitation, acquisition and rehabilitation, or new construction costs of the substitute site are greater than the amount of the grant awarded for the site specified in the application, the recipient must provide for all additional costs. If the recipient is unable to demonstrate to VA that it

is able to provide for the difference in costs, VA may deobligate the award of assistance.

(c) *Failure to obtain site control within one year.* VA will deobligate any award for assistance under this part or pursue other remedies described in § 17.729(c) of this part if the recipient is not in control of a suitable site before the expiration of one year after initial notification of an award.

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[NV–960–4370–02–241A ; Circular No. 2655]

RIN 1004–AB84

Protection, Management, and Control of Wild Free-Roaming Horses and Burros

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations pertaining to the protection, management, and control of wild free-roaming horses and burros by revising the definition of wild horses and burros to exclude foals born to wild horses and burros after approval of a Private Maintenance and Care Agreement. This clarification is necessary to avoid the extreme administrative difficulties that would be associated with locating, identifying, and caring for widely dispersed animals in the possession of private individuals.

EFFECTIVE DATE: July 1, 1994.

ADDRESSES: Suggestions or inquiries should be sent to: Wild Horse and Burro National Program Office (NV–960), Bureau of Land Management, P.O. Box 12000, Reno, NV, 89520–0006.

FOR FURTHER INFORMATION CONTACT: Bruce Dawson, (702) 785–6583.

SUPPLEMENTARY INFORMATION: The regulations on the protection, management, and control of wild free-roaming horses and burros are presently silent regarding the ownership of foals born to mares and jennies under the maintenance and care of an adopter but for which no title has been issued. Although the Bureau of Land Management (BLM) has treated these foals as the private property of the adopter of the parent female, there has been no clear statement in regulation of this policy. Therefore, this amendment to 43 CFR 4700.0–5(l) is intended to clarify the ownership of these foals by explicitly excluding them from the definition of wild horses and burros.

Foals born to adopted wild horses and burros must be treated as private property to avoid the tremendous administrative difficulties and expense that would otherwise result. Titling of wild horses and burros is not mandatory and for various reasons many adopters do not apply for title. The BLM presently maintains records on about 11,000 untitled female wild horses and burros that are of reproductive age. If foals born to these animals were treated as wild, the BLM would need to locate, freeze mark, and catalog each animal, as well as enter into new Private Maintenance and Care Agreements, and collect adoption fees for each foal. In addition, if the offspring of the adopted mares and jennies were to be considered wild, subsequent generations would also have wild status until titles were issued.

A proposed rule addressing these concerns was published in the **Federal Register** on October 1, 1993 (58 FR 51297). One intradepartmental comment was received. It suggested that in amending the definition of wild horses and burros as it pertains to the status of foals, the rule should also address the status of foals born in BLM facilities, after mothers have been removed from public lands but before the mothers are placed in the care of the adopter. Language has been incorporated into this final rule to clarify that such foals would be considered to be wild horses or burros.

The principal author of this final rule is Vern Schulze of the Wild Horse and Burro National Program Office, BLM Nevada State Office, with the assistance of Heather Thomas of the Division of Legislation and Regulatory Management, BLM Washington Office.

The BLM has determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) is required. The BLM prepared an environmental assessment and a finding of no significant impact for the proposed action.

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the rule would not have a significant economic impact on a substantial number of small entities. The rule does not impose direct or indirect costs on small business, organizations, or small governmental jurisdictions. No direct or indirect benefits are quantifiable for small entities.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule will not cause a taking of private property.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* However, the collections of information contained in Group 4700 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0042.

List of Subjects in 43 CFR Part 4700

Advisory committees, Aircraft, Intergovernmental relations, Penalties, Public lands, Range management, Wild horses and burros, and Wildlife.

For the reasons set out in the preamble and under the authorities cited below, part 4700, subchapter D, chapter II, title 43 of the Code of Federal Regulations is now amended as follows:

PART 4700—PROTECTION, MANAGEMENT, AND CONTROL OF WILD FREE-ROAMING HORSES AND BURROS

1. The authority citation for 43 CFR part 4700 is revised to read as follows:

Authority: 16 U.S.C. 1331–1340; 18 U.S.C. 47; 43 U.S.C. 315 and 1740.

2. Section 4700.0–5 is amended by revising paragraph (l) to read as follows:

§ 4700.0–5 Definitions.

* * * * *

(l) *Wild horses and burros* means all unbranded and unclaimed horses and burros that use public lands as all or part of their habitat, that have been removed from these lands by the authorized officer, or that have been born of wild horses or burros in authorized BLM facilities, but have not lost their status under section 3 of the Act. Foals born to a wild horse or burro after approval of a Private Maintenance and Care Agreement are not wild horses or burros. Such foals are the property of the adopter of the parent mare or jenny. Where it appears in this part the term

wild horses and burros is deemed to include the term *free-roaming*.

Dated: May 17, 1994

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94-13207 Filed 5-31-94; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

RIN 0905-AC52

Health and Human Services Policy for Protection of Human Subjects Research

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule

SUMMARY: The Department of Health and Human Services (HHS) is amending its Human Subjects Protection regulations to rescind the provision requiring prior review and advice from an Ethical Advisory Board for research applications and proposals involving in vitro fertilization (IVF) of human ova as a prerequisite to funding by HHS and its components. The provision was nullified by the National Institutes of Health Revitalization Act of 1993. The regulations are being amended to reflect this statutory nullification. Institutional Review Board (IRB) review and approval of applications and proposals involving in vitro fertilization (IVF) of human ova continues to be required in accordance with other provisions of the Human Subjects Protection regulations. Furthermore, the Secretary may still exercise the option of seeking advice from an Ethical Advisory Board on ethical issues, including IVF, raised by research applications and proposals.

EFFECTIVE DATE: This amendment is effective on June 1, 1994

FOR FURTHER INFORMATION CONTACT: F. William Dommel, Jr., J.D., Office of Protection from Research Risks (OPRR), National Institutes of Health, Building 31, room 5B63, 9000 Rockville Pike, Bethesda, Maryland 20892-001, telephone (301) 496-7005 (this is not a toll-free number)

SUPPLEMENTARY INFORMATION: HHS is amending its Human Subjects Protection regulations at 45 CFR part 46, subpart B, by rescinding paragraph (d) of section 204 of the regulations. This provision of the regulations was nullified by section 121(c) of the NIH Revitalization Act of 1993, Public Law 103-43, enacted on June 10, 1993, and therefore no longer has any legal effect. HHS is rescinding paragraph (d) of section 204 now so that the regulations will accurately reflect the statutory nullification of the requirement for Ethical Advisory Board review of research involving the in vitro fertilization of human ova, as a prerequisite for funding by HHS and its components.

Notice, public comment, and delayed effective date have been waived for this amendment based on a finding of good cause. These procedures for ensuring public participation in the rulemaking process and time for compliance are unnecessary because the substantive change has already been made by Public Law 103-43. Furthermore, it is a change that relieves a restriction on the funding of research by HHS and its components.

Regulatory Impact Statement

The Secretary has examined this final rule in accordance with the requirements in Executive Order 12866, Regulatory Planning and Review, and has determined that it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order No. 12866. Therefore, it does not require: (1) An assessment of benefits anticipated from the action; (2) an assessment of costs anticipated from the action; or (3) an assessment of costs and benefits of potentially effective and reasonably feasible alternatives to the proposed regulations.

Regulatory Flexibility Act

The Secretary certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), is not required.

Paperwork Reduction Act of 1980

This final rule does not contain any information collection requirements subject to Office of Management and Budget (OMB) review and approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance (CFDA) numbered program affected by this final rule is: 93.891

List of Subjects in 45 CFR Part 46

Health, Human research subjects.

Dated: January 31, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: April 7, 1994.

Donna E. Shalala,

Secretary.

For the reasons set out in the preamble, subpart B of part 46, title 45 of the Code of Federal Regulations is amended as set forth below.

PART 46—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for part 46 is revised to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 289.

§ 46.204 [Amended]

2. Paragraph (d) of § 46.204 is removed.

[FR Doc. 94-13273 Filed 5-31-94; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 940253-4151; I.D. 021494C]

RIN 0648-AG20

King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS announces the approval of Amendment 2 to the Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands (BSAI). NMFS issues final regulations removing existing regulations that superseded State of Alaska (State) regulations that established Norton Sound as a superexclusive registration area in the exclusive economic zone (EEZ) of the BSAI. This action is necessary for effective management of the fishery having the smallest biomass and guideline harvest level (GHL) in the BSAI crab fisheries. This action is intended to promote management and conservation of crab and other fishery resources and to further the goals and objectives contained in the FMP for the Commercial King and Tanner Crab Fisheries of the BSAI.

EFFECTIVE DATE: June 27, 1994.

ADDRESSES: Copies of Amendment 2 and the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (907-271-2809).

FOR FURTHER INFORMATION CONTACT: Kim J. Spitler, Fisheries Management Division, Alaska Region, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The commercial king and Tanner crab fisheries in the EEZ of the BSAI are managed under the FMP. This FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). It is a framework FMP that, with oversight by the Council and the Secretary of Commerce (Secretary), defers management of the crab resources in the BSAI to the State. The FMP was approved by the Secretary and implemented on June 2, 1989. At times, regulations implementing the FMP must be amended to resolve problems pertaining to management of the BSAI crab fisheries.

The FMP contains three categories of management measures: (1) Specific Federal management measures that require an FMP amendment to change; (2) framework type management measures, with criteria set out in the FMP that the State must follow when implementing changes in State regulations; and (3) measures that are neither rigidly specified nor frameworked in the FMP, and that may be freely adopted or modified by the State, subject to an appeals process or other Federal laws. Registration areas are listed as a category 2 measure. Section 8.2.8 of the FMP specifies that king crab registration areas may be designated as either exclusive or nonexclusive. Designation of a registration area as superexclusive would require an FMP amendment and incorporation into the FMP as a category 1 management measure.

At its January 1994 meeting, the Council adopted Amendment 2 to the FMP and requested that NMFS prepare a rulemaking to implement the amendment. Amendment 2 establishes the Norton Sound Section of the Northern District of the BSAI king crab fishery as a superexclusive registration area.

A notice of availability of Amendment 2 was published in the **Federal Register** on February 23, 1994 (59 FR 8595), and invited comments on the amendment through April 25, 1994. A proposed rule to implement Amendment 2 was published in the **Federal Register** March 4, 1994 (59 FR 10365). Comments on the proposed rule were invited through April 14, 1994. One letter, containing 14 comments on Amendment 2 and the proposed rule, was received. These comments are summarized in the Response to Comments section, below.

Amendment 2 was approved by NMFS on May 18, 1994, under section 304(b) of the Magnuson Act. Under the amendment, the operator of any vessel registered in the Norton Sound Section of the Northern District of the BSAI king crab fishery superexclusive area cannot register the vessel in any other EEZ area of the BSAI during that registration year. Upon reviewing the reasons for Amendment 2, and the comments on the proposed rule to implement it, NMFS has determined that this final rule is necessary for fishery conservation and management. The final rule removes existing regulations at 50 CFR 671.20, which supersede existing State regulations designating Norton Sound as a superexclusive registration area.

The intent of this measure, implemented under Amendment 2, is to allow for a slower-paced fishery, full attainment of guideline harvest levels, longer seasons, and reduced administrative and enforcement costs. This measure also will provide for consistency between the FMP and State regulations governing the BSAI crab fishery. Further explanation of, and reasons for, this measure is contained in the preamble to the proposed rule (59 FR 10365, March 4, 1994).

Comments and Responses

One letter of comments from the Alaska Crab Coalition was received within the comment period. The comments were opposed to Amendment 2. A summary of comments and NMFS' response follow:

Comment 1. At the December 1993 Council meeting, the Scientific and Statistical Committee (SSC) commented that the EA prepared for Amendment 2 required considerably more development with respect to the costs and productivity rates of the larger and smaller vessels. The SSC further stated that data sources needed to be more fully described.

Response. The initial crab EA/RIR/IRFA was revised to address comments made by the SSC. A revised version was subsequently reviewed by the SSC. At the January 1994 Council meeting, the SSC reported that the analyses had addressed the issues identified in December by conducting additional analyses that examined, over a range of possible values, the sensitivity of the results to the assumed processing costs and productivity rates. In addition, the scenario where small and large vessels are assumed to have similar soak times for pots and to experience similar ex-vessel prices. In addition, the analysts provided a more detailed discussion of management and enforcement costs under the different alternatives. NMFS has determined that the specific issues raised by the SSC in its review of the initial EA/RIR/IRFA (December 14, 1993) have been adequately addressed in the EA/RIR/IRFA that was made available for public comment on January 1994.

Comment 2. The proposed amendment is not consistent with national standard 1 of the Magnuson Act in that it would not contribute to the long-term avoidance of overfishing. The procedures used to establish and enforce the GHL in the Norton Sound summer king crab fishery remain unchanged by Amendment 2. This refutes the claim in the EA that Amendment 2 would contribute to the avoidance of overfishing. Moreover, Amendment 2 encourages, and does not constrain, the development of new, small-boat capacity in the fishery. This could readily result in overcapitalization and a consequent future risk of fishing pressures, leading to overfishing.

The proposed amendment will not contribute to the attainment of optimum yield (OY) as claimed by the EA, which cites the substantial underharvest that occurred in 1992. The underharvest resulted from failure to provide for adequate management during the course of the 1992 opening. This was evidenced by a management decision to set the 1992 closure date in advance of the opening.

Response. Amendment 2 is consistent with national standard 1. It is not necessary to change the procedure used to establish a GHL to contribute to the avoidance of overfishing. The FMP authorizes the State to make inseason adjustments to GHLs after consideration of appropriate factors and in the event

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that inseason data are available. Some of these factors include the effect of overall fishing effort within the registration area, catch per unit of effort and rate of harvest, and timeliness and accuracy of catch reporting. The dispersion of effort predicted to occur in a superexclusive registration area can slow the pace of the fishery and reduce the necessity for conservative management measures (e.g., premature fishery closures) that sometimes are necessary to reduce the potential for overharvest of the GHL. Inseason data are more readily available and utilized in a slower-paced fishery. A critical aspect of national standard 1 is consideration of the rate of fishing mortality and its effect on the long-term capacity of the stock to produce maximum sustainable yield. Dispersing the fishing effort in a geographic region such as Norton Sound effectively slows the rate of fishing mortality.

The redistribution of fishing effort in Norton Sound that will result from superexclusive registration status does not involve vessels newly constructed solely for Norton Sound. New entrants are using existing and historical gear. Many had been idle due to failures in salmon and herring fisheries. Any potential increase in capacity in this small fishery would be limited by the Council's proposed vessel moratorium which, if approved, would limit the entry of new vessels over 32 ft (10 m) into the groundfish, crab, and halibut fisheries off Alaska. The proposed moratorium is intended as an interim management measure to curtail increases in fishing capacity until a comprehensive management plan for the groundfish and crab fisheries can be prepared and implemented.

National standard 1 requires appropriate consideration of pertinent social, economic, and ecological factors in the attainment of OY. Because of temporal variability in these factors, GHLs are adjusted annually, based upon current evaluations of the biological and socioeconomic components. The use of superexclusive registration area status as a management tool will address socioeconomic factors identified in the EA.

NMFS disagrees that the pre-announced 1992 fishery closure was an indication of mismanagement by the State of Alaska. Pre-announced closures have been used historically in some fisheries that experience pulse-type fishing patterns as a result of excessive effort, such as the halibut and black cod fisheries. For example, in 1992, the Norton Sound crab fishery experienced the second highest recorded number of pots ever fished and was conducted in a pulse-type fashion.

Comment 3. It is predicted that only small harvesting vessels and no catcher/processors would participate in the Norton Sound fishery if it is a superexclusive registration area. With no observer coverage, an essential management tool for effective fisheries management would be lost.

Response. Nothing in the amendment prohibits catcher/processors from participating in the Norton Sound king crab fishery if they so choose. NMFS has received information from the industry indicating that one floating processor may participate in the 1994 fishery. Observer information would be available for catcher vessels delivering to this processor. Even if no floating processor participated, management data would still be available.

In a crab fishery conducted predominantly by small catcher vessels, information necessary for effective fishery management is acquired by the Alaska Department of Fish and Game (ADF&G) staff monitoring shoreside deliveries. One reason the crab observer program was initiated was to enforce regulations on catcher/processors and floating processor vessels regarding the taking of sublegal and female crab. Compliance with these size and sex regulations on catcher vessels is enforced by shoreside ADF&G staff present at the time of delivery.

Comment 4. Amendment 2 is not consistent with national standard 2 of the Magnuson Act in that there has not been a good- faith effort to assemble and supply the best scientific information available. The assertion that data on 1993 participants are unavailable is highly implausible. The central reliance on a model is a fundamental defect of the EA, given the lack of revenue and cost data.

Response. Amendment 2 is based upon the best scientific information available and is consistent with national standard 2. The EA examined the seasonal fishing activities for Norton Sound crab vessels participating in other fisheries. The data for participation in other 1993 fisheries by vessels participating in the 1993 Norton Sound king crab fishery were not available at the time the EA was prepared, due to ongoing fishing seasons, the volume of incoming fish tickets, and the time necessary for fish ticket data entry and audit. Currently, most of these data still are not available. Preliminary review of the available 1993 fish ticket data indicates that only two of the 14 vessels registered in the Norton Sound king crab fishery participated in other BSAI king crab fisheries. If these operators choose to register in Norton Sound in the future, they would not be able to register their vessels in other BSAI king crab registration areas during that registration year.

NMFS disagrees that the EA displays a central reliance on a model. Models are only as good as the assumptions and input variables used. Model results are best used to gauge the relative effects of alternative management measures, rather than the actual quantitative impacts. This was the manner in which the model was used to analyze the economic effects of the Norton Sound superexclusive registration area on the participating fleet.

Comment 5. Notably absent from the EA is any serious discussion of the effect of Amendment 2 on crab fisheries, other than that in Norton Sound. The EA fails to address the effect of increased effort and the subsequent economic impact of additional vessels operating in the other crab fisheries as a result of large vessels that would no longer operate in Norton Sound.

Furthermore, the EA overwhelmingly is concerned with the economic benefits that allegedly will accrue to the local community from the adoption of Amendment 2. Amendment 2 would impose hardships on those who effectively are excluded from the Norton Sound summer crab fishery. The EA is superficial and legally insufficient in its treatment of this impact.

Response. The EA is legally sufficient. The vessel operators that choose not to register in the superexclusive Norton Sound fishery will not create an additional effort in other crab fisheries; they already participate in these other fisheries. Therefore, their decision not to register in Norton Sound would not indicate an increase in effort in these fisheries. Norton Sound crab accounts for a relatively small percentage of their total harvest, so the impacts of obtaining an equivalent harvest from other BSAI crab fisheries would be relatively insignificant in such fisheries.

A management objective of the crab FMP is to maximize the economic and social benefits to the Nation over time, including the economic stability of coastal communities. When selecting management measures, the impact of management alternatives on the distribution of benefits among members of the harvesting, processing and consumer communities must be considered. As indicated in the RIR, the economic impacts on the Norton Sound region from participation by small vessels and a longer season are relatively much greater than the economic impacts on crab communities such as Dutch Harbor, Bellingham, and Seattle. The 1993 Norton Sound crab fishery resulted in the greatest revenues of any fishery in the Norton Sound region that year, and a local fresh crab market was established.

Conversely, the large vessels that participate in the Norton Sound fishery obtain only a small percentage of their annual crab landings from this fishery. The Norton Sound fishery accounts for less than 1 percent of the total poundage of the entire BSAI crab fishery (the January draft EA reflects a typographical error; it indicates that Norton Sound accounts for less than 5 percent, not 1; see final EA at page 3–13). The primary fisheries for these vessels are Tanner crab and Bristol Bay red king crab. The hardship experienced by the operators of the large vessels was relatively less given that Norton Sound crab contributed no more than 0.7 percent to any of the 26 catcher/processor and catcher vessels' yearly crab landings for 1992 and no more than 1.6 percent of the total landings for any of the catcher/processors in 1990. Neither individual vessels nor participants in the pre–1993 fleet were dependent on this fishery in terms of year-to-year participation or landings within any one year.

Comment 6. Amendment 2 is not consistent with national standard 3 of the Magnuson Act in that it does not manage the Norton Sound summer king crab fishery in close coordination with other king crab fisheries. For instance, the implication in the EA that Amendment 2 coordinates with Adak brown crab fisheries is false, because no relationship exists between the vessels used in Norton Sound and those used in the Adak brown king crab fisheries.

Response. Amendment 2 is consistent with national standard 3. No direct relationship exists between the operators of vessels using single pot gear in the Norton Sound red king crab fishery and those using longline pot gear in the Adak brown king crab fishery. However, a relationship does exist between the Norton Sound and Adak red king crab fisheries, because single pot gear is used in both and the fisheries could be conducted by the same vessels.

Alternative 3 of the EA considered the option of creating an exclusive, rather than a superexclusive, registration area in Norton Sound. Exclusive registration in Norton Sound would require vessels to register in Norton Sound, but would also allow vessels registered in nonexclusive areas to register and participate in the Norton Sound fishery. An exclusive registration area would not remedy the situation of excessive vessel effort harvesting the small quota in a very short time. Therefore, unless the Adak red king crab fishery also was made exclusive, there would be no means of forestalling participation by much of that fleet in Norton Sound. The Council viewed Alternative 3 as more restrictive on the entire fleet than Alternative 2 because it would further limit their registration options. The Council and Secretary considered the close coordination that exists among the Norton Sound fishery and the other BSAI crab fisheries in developing the superexclusive area for Norton Sound.

Comment 7. Amendment 2 is not consistent with national standard 4 of the Magnuson Act in that it incorporates, or relies upon, a discriminatory state law or regulation. The precise effect of Amendment 2 is to advantage local Alaskan residents at the expense of non-Alaskans in the Norton Sound summer king crab fishery.

It is not necessary to allocate the Norton Sound summer king crab. Favoritism shown to Alaskan residents may lead to less responsible management through more leniency in the regulatory and enforcement processes. In fact, State management of the 1993 Norton Sound crab fishery relaxed time and area restrictions to allow local residents access to areas that have been closed for 5 years due to conservation problems.

Response. Amendment 2 is consistent with national standard 4. NMFS is not aware of any discriminatory State law or regulation incorporated in Amendment 2 that suggests a preference for Alaska residents in the management of the fisheries. The commenter did not cite the alleged discriminatory statute. The amendment does not prohibit any vessel in the fleet, regardless of where it is registered, from electing to fish in the Norton Sound superexclusive registration area or elsewhere in any year. Any vessel, including an Alaska-registered vessel, permitted to participate in the Norton Sound king crab fishery may not fish for king crab in any other BSAI registration area. Vessels from outside Alaska may operate in exclusive and nonexclusive areas, in only nonexclusive areas, or in the Norton Sound superexclusive area.

The designation of Norton Sound as a superexclusive registration area is not primarily an allocative measure. Title 50 CFR 602.14(c)(1) states that an allocation or assignment of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Many management measures have indirect allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of national standard 4. Allocations of fishing privileges include individual vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, assignment of ocean areas to different gear users, and limitation of permits to a certain number of vessels or fishermen. While the designation of Norton Sound as a superexclusive registration area is not primarily allocative, it does have allocative effects that are incidental to the primary conservation purpose of the amendment. NMFS expects operators of large vessels will be discouraged from participating in the Norton Sound fishery, because the resource base is relatively small and it is not economically feasible for large vessels to operate in Norton Sound. Therefore, NMFS did consider the three criteria outlined in 50 CFR 602.14(c)(3)(i) through (iii).

The amendment is fair and equitable. The 1993 GHL accounted for less than 1 percent of the total available harvest in all of the BSAI crab fisheries. There is crab available elsewhere for harvest by a vessel not registered in Norton Sound.

The amendment is consistent with 50 CFR 602.14(c)(3)(ii) in that it promotes conservation by encouraging a rational, more easily managed use of the resource. See NMFS' response to Comment 2. In the past 10 fishery seasons, the resource was overharvested 5 times, substantially underharvested once, and the fishery did not open in 1991 due to excessive effort present and concern over possible damage to the resource (see EA, Table 12). Designating Norton Sound as a superexclusive area is expected to dissuade the operators of large vessels from coming in and taking the crab quickly and risking overharvest, provide for better monitoring of the GHL with a small boat fishery, and promote OY by not leaving available crab on the grounds.

The amendment avoids the acquisition of excessive shares of fishing privileges by any one person or entity. The purpose of superexclusive registration is not to distribute fishing shares. Many factors can limit a vessel's fishing capacity. In Norton Sound, individual vessels are limited by size and by the number of pots deployed. Current regulations limit the number of pots to 40 on vessels 125 ft (38 m) or less. These restrictions effectively prevent any one vessel from harvesting an inordinate amount of the available GHL.

In anticipation of a longer season as a result of lowered pot limits and reduced effort, State management

adjusted,the opening date of the 1993 Norton Sound king crab fishery from August 1 to July 1. The intent of this action was to decrease the likelihood of the fishery being conducted in September when the crab are molting and mating. The 15 nautical mile closure line was reduced to 5 miles on July 15 by emergency order based on daily catch reports that indicated a poor catch rate. The poor catch rate was thought to be caused by the early timing of the fishery, in that the seasonal offshore migration of the crab had not yet occurred. The closure was reduced to allow for the efficient harvest of red king crab. The risk of handling sublegal crab and the associated mortality was considered prior to this decision being made. The fewer pots on the grounds and the ability of fishermen to rapidly move off small crab effectively lessened such a risk.

In 1982 the Alaska Board of Fisheries implemented a 15 nautical mile closure in the Norton Sound summer king crab fishery for purposes of biological conservation. Under appropriate circumstances, this closure could be reduced by ADF&G to allow the king crab fishery to obtain efficiently the allowable harvest of red king crab. Large and small vessels in the fleet benefitted from closure reductions that occurred in 1982 and 1985. The commenter's misperception of "leniency" shown toward local residents is erroneous. First, the "lenient" management approach deemed incompatible with basic conservation objectives by the commenter may better be described as a more rational, easily managed approach that was possible under the conditions present in 1993 and that successfully promoted conservation of the resource. Second, only four of the 14 vessels in 1993 were local. Relaxation of time and area restrictions also benefitted the other 10 vessels.

Comment 8. The problems of deadloss and handling mortality that allegedly exist under the status quo would not be effectively addressed by Amendment 2 and would predictably continue under the amendment.

Response. NMFS disagrees. Problems of deadloss and handling mortality would be addressed effectively in the Norton Sound fishery as a result of its superexclusive status. Norton Sound is unique among the BSAI crab fisheries in that the spring Yukon River run-off and concurrent ice melt creates a freshwater lens that can contribute substantially to deadloss and handling mortality. Larger vessels with live tanks require circulating water; this is a problem in Norton Sound because introduced freshwater can cause increased mortality of the live crab held in tanks. Smaller vessels typically do not have live tanks; therefore, the freshwater lens does not impact crab onboard. Evidence indicates that pulse-type fishing patterns typical of fisheries of short duration result in decreased pot soak times and more frequent pot pulls. Handling mortality of female and sublegal crab subsequently increases. Fisheries of longer duration, such as that expected through superexclusive registration, effectively increase soak time of pots. This allows smaller sublegal crab the opportunity to escape and reduces handling mortality.

Comment 9. Amendment 2 is not consistent with national standard 5 of the Magnuson Act in that it offers no prospect of long-term, increased efficiency in the Norton Sound summer king crab fishery, and would, instead, lead to decreased efficiency in the other crab fisheries. The operators of displaced vessels will respond by concentrating their efforts more intensively in the other, already overcapitalized, crab fisheries.

Response. NMFS disagrees. The amendment is consistent with national standard 5. See NMFS' responses to Comments 2 and 5.

Comment 10. The sole purpose of Amendment 2 is economic allocation, thus it is not consistent with national standard 5 of the Magnuson Act. A factual basis for a claim of an advantage to be gained for management of the fishery under Amendment 2 is lacking. Social claims that are cast in terms of benefits to local Alaskan communities are unsubstantiated.

Response. NMFS disagrees. The sole purpose of the amendment is not allocative. NMFS acknowledges that the amendment may have some indirect allocative effects and this is addressed in the response to Comment 7. Claims of advantages to management and of social benefits to local communities are clearly evident from the 1993 fishery, which was essentially managed as if it were superexclusive.

Comment 11. Amendment 2 is not consistent with national standard 6 of the Magnuson Act in that it does not allow for, or respond to, variations and contingencies in the Norton Sound summer king crab fishery. Amendment 2 encourages unconstrained building of new capacity for the fishery and does not address the prospect of overcapacity. It does not provide any advantage over the status quo management for contending with the likely influx of excessive capacity or the probable periodic decline of the resource base.

Response. NMFS disagrees. The amendment is consistent with national standard 6. Title 50 CFR 602.16(b) provides that fisheries exhibit unique uncertainties and that the particular management regime chosen must be flexible enough to allow timely response to resource, industry, national, and regional needs. Continual data acquisition and analysis will help the development of management measures to compensate for variations and to reduce the need for substantial buffers. Flexibility in the management regime and the regulatory process will aid in responding to contingencies. The likelihood of a timely response, continual inseason data acquisition, and management flexibility is greatly enhanced when the duration of the fishery is extended, as can be expected with a superexclusive registration status. The amendment does not encourage unconstrained capacity. See NMFS' responses to Comments 2 and 5.

Comment 12. Amendment 2 is not consistent with national standard 7 of the Magnuson Act in that a predicted increase in the length of the fishery and the associated reporting period will increase management and enforcement costs, rather than minimize them.

Response. The amendment is consistent with national standard 7. Costs to manage the fishery likely will be less under the superexclusive regime. Based on a review of the EA, the SSC concurred in this finding in its January report to the Council. The single greatest enforcement cost for a crab fishery is aerial surveys. When a fishery experiences a lengthened season, reduced effort, and a fleet dependent on daily shoreside deliveries, the need for aerial surveys is drastically reduced, if not eliminated. These same conditions also allow area managers to more easily administer the crab fishery along with other fishery duties. Therefore, in terms of management and enforcement costs, it is essentially more cost-effective to manage a relatively longer fishery than a very short one that requires labor-intensive aerial surveys.

Comment 13. The Magnuson Act allows for establishment of a system for limiting access to a fishery in order to achieve optimum yield. Amendment 2 cannot be characterized as being a measure calculated to achieve OY. Further, the EA does not genuinely take into account the full range of requisite considerations that must be considered when limiting access to a fishery.

Response. NMFS disagrees. The amendment can be characterized as a measure calculated to achieve OY. See NMFS' response to Comment 2. The amendment is not a form of limited access. As described at 50 CFR 602.15(c), a system for limiting access is a type of allocation of fishing privileges which attempts to limit units of effort in a fishery. Typically, the number of units of effort has been predetermined and those participating in the fishery must satisfy certain established criteria. Common forms of limited access are licensing of vessels, gear, or fishermen to reduce the number of units of effort, and dividing the total allowable catch into fishermen's quotas. There is no limit on the amount of effort that can occur in the fishery. Therefore, the amendment is not a form of limited access. A vessel operator need only register for the area in which he wishes to fish. Registration requirements are used to: (1) Make better preseason estimates of fishing effort and the rate at which resources will be harvested in each area so that the inseason monitoring of the fishery may be planned; and (2) limit the ability of vessels to fish in multiple areas, so that fishing effort is dispersed, while still allowing the majority of the fleet the opportunity to harvest the majority of the crab.

Comment 14. There is no evidence that vessel safety will improve under Amendment 2. It is more likely that a deterioration of safety will occur as more small vessels operate over longer periods of time in the open waters of the Northern Bering Sea fishery. The EA notes that weather conditions can create real safety problems for small vessels.

Response. NMFS believes that vessel safety considerations would not be exacerbated if longer periods of time were available to fish. Similar to the halibut fishery, which historically is conducted derby-style, a longer time period to harvest the available quota would allow vessel operators to remain shoreside during dangerous weather conditions.

Classification

NMFS prepared a FRFA, a copy of which is available from the Council (see ADDRESSES).

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Dated: May 25, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 671 is amended as follows:

PART 671—KING AND TANNER CRAB FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS

1. The authority citation for part 671 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 671.20 is removed and reserved.

[FR Doc. 94-13303 Filed 5-26-94; 3:13p.m.]

BILLING CODE 3510-22-F

50 CFR Part 676

[Docket No. 940103-4154; I.D. 122893B]

RIN 0648-AG21

Limited Access Management of Federal Fisheries in and Off of Alaska; Determinations and Appeals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the determinations and appeals procedures for the limited access management of Federal fisheries in and off of Alaska. This action is necessary to establish who may appeal initial administrative determinations; establish what must be included in appeals; establish procedures regarding acceptance of appeals; establish the authority of, and a procedure for disqualifying, appellate officers; establish evidentiary procedures and the hearing process; establish procedures for post-hearing decisions; and establish appeals procedures to the Director, Alaska Region, NMFS (Regional Director). The intended effect of this action is to provide an orderly process for appeals from initial administrative determinations made by NMFS management staff and from decisions issued by appellate officers under the Individual Fishing Quota (IFQ) program.

EFFECTIVE DATE: July 1, 1994.

ADDRESSES: Copies of this action, and the final environmental impact statement/supplementary environmental impact statement (FEIS/SEIS) for halibut and sablefish IFQ programs, respectively, may be obtained from the North Pacific Fishery Management Council (Council), P.O. Box 103136, Anchorage, AK 99510.

Appeals must be mailed to NMFS, Restricted Access Management, P.O. Box 21668, Juneau, AK 99802-1668, or delivered to NMFS, Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: John Lepore, Fisheries Regulations Specialist, Alaska Region, NMFS, at 907-586-7228.

Supplementary Information:

Background

This action implements the determinations and appeals process for the IFQ program, a regulatory regime intended by the Council to promote the conservation and management of halibut and sablefish resources, and to further the objectives of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and the Northern Pacific Halibut Act (Halibut Act).

Beginning in 1995, the Alaskan fisheries using fixed gear for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) in the areas defined in 50 CFR 676.10(b) and (c) will be managed in accordance with the IFQ regulations codified at 50 CFR part 676. Further information on the implementation of this program, and the rationale in support of it, is contained in the preamble to the final rule establishing the IFQ limited access program published on November 9, 1993 (58 FR 59375).

This action provides procedures for appeals for determinations under 50 CFR part 676. Persons may appeal initial administrative determinations made by NMFS management staff and appellate officers' decisions. These two levels of appeal will provide any person whose interests are directly and adversely affected by a determination or decision, a reasonable opportunity to present objections and be heard.

The proposed rule for this action was published on February 9, 1994 (59 FR 5979), and the public comment period ended on March 28, 1994. No public comment was received on the proposed rule.

Initial Administrative Determinations

Initial administrative determinations are the findings of NMFS staff on eligibility for, and the transfer and use of, quota share (QS) and IFQ under the IFQ program. Initial administrative determinations are made after evaluating all evidence provided by applicants, comparing that evidence with the data on the official record, and making a determination based on that comparison. Initial administrative determinations become final agency actions within 90 days unless appealed under the procedure described below.

Examples of initial administrative determinations are: (1) Whether applicants have submitted sufficient documentation to demonstrate they are qualified persons, or their successors-in-

interest, as defined in 50 CFR 676.20(a)(1); (2) whether to grant initial QS allocations based on the documentation provided in applications; (3) whether documentation submitted with applications, or documentation requested by NMFS staff, support the claims made for initial QS allocations; and (4) whether to grant initial QS allocations based on specific vessel categories and fishery statistical areas.

NMFS staff may request additional documentation from applicants to support their applications. Applicants will have 90 days to respond to these requests. Requests for additional documentation provide applicants with an opportunity to submit additional documentation for claims not consistent with data contained in NMFS files. Requests for additional documentation cannot be the subject of administrative appeals. Appealable determinations will not occur until: (1) Applicants respond to the request by providing additional information within the time period; (2) applicants waive the right to respond to the request for additional evidence, and instead request that a determination be made on the application in its current form; or (3) applicants do not respond within the time period.

Appeals

Persons whose interests are directly and adversely affected by initial administrative determinations or appellate officers' decisions can appeal those determinations or decisions. This action provides a two-tier appeals process (i.e., appeal of an initial administrative determination to an appellate officer and appeal of an appellate officer's decision to the Regional Director). This process provides applicants with a reasonable opportunity to be heard concerning agency actions.

Appeals must be in writing. The writing requirement protects the applicant (now appellant) by providing a written record of the issues appealed and ensuring that the appeal becomes part of the record. Appeals must also be in original form; NMFS will not accept appeals sent by electronic transmission (telefacsimile). Appeals may be either mailed or personally delivered to NMFS. Appeals submitted by mail may be sent certified, return receipt requested, to provide the appellant with evidence of mailing the appeal in case it becomes lost or destroyed.

Addresses of record will be established from the addresses used by persons on their first correspondence (see **ADDRESSES**). For most persons, this first correspondence will be their request for an application for QS allocation. Any changes to the address of record must be promptly provided to NMFS in writing. Notification of address changes to NMFS is the responsibility of the applicants, since they are in the best position to have knowledge of such changes. Supplying address changes ensures that NMFS has an accurate and current address for correspondence.

Eligibility to appeal begins on either the date initial determinations are made or on the date decisions are issued. Appeals must be filed with NMFS within 90 days of the date an initial administrative determination is made or within 45 days of the date an appellate officer's decision is issued.

Appellants are required to submit a full written statement in support of the appeal, including a concise statement of the reasons why the initial administrative determination has a direct and adverse effect on the appellant and should be reversed or modified. The appellate officer may request additional information from the appellant to resolve the appeal. Appeals merely challenging the IFQ regulations will not be accepted.

In addition to the written statement of appeal, an appellant may request, in writing, a hearing on one or more issues material to the appeal. A request for a hearing must be accompanied by a concise statement raising a genuine and substantial issue of adjudicative fact for resolution and listing available and specifically identified reliable evidence upon which the factual issue can be resolved. A hearing will not be held on issues of policy or law, or upon the basis of mere allegations, denials, or general descriptions of positions and contentions.

The appellant could, and is encouraged to, supply evidence supporting the statement of appeal and request for a hearing. Providing a complete and timely appeal with sufficient evidence increases the potential that the appellate officer can make a decision in the appellant's favor without further proceedings. If the appeal is incomplete, untimely, or not sufficiently supported, the appellate officer will deny the appeal, a decision that can be appealed to the Regional Director

Hearings

Written or oral hearings can be held to resolve genuine and substantial issues of adjudicative fact. The decision of whether to hold a written or oral hearing will be solely within the appellate officer's discretion and cannot be appealed to the Regional Director.

The appellate officer can order written hearings on a determination that the issues presented in an appeal are resolvable by allowing the appellant an opportunity to respond through written submissions. The written hearing process is the preferred method of resolving issues, unless the appellate officer determines that an oral hearing is necessary. The appellate officer can decide to order an oral hearing on one or more issues after beginning the written hearing process.

On ordering a written hearing, the appellate officer will provide the appellant with notice that a written hearing is ordered, provide the appellant with a statement of issues to be determined, and provide the appellant with 30 days to file a written response. The written response can include affidavits from the appellant or other witnesses. The statement of issues will provide the appellant with information concerning the issues to be determined by the appellate officer. This statement will help focus the appellant on pertinent, rather than extraneous, issues.

The appellate officer will order an oral hearing on a determination that an oral hearing would be necessary to resolve one or more issues presented in the appeal. On ordering an oral hearing, the appellate officer will provide the appellant with notice that an oral hearing is ordered, provide the appellant with a statement of issues to be determined by the hearing process, and provide the appellant with notice, at least 30 days in advance, of the place, date, and time of the oral hearing. Hearings will be held in Juneau, AK at the prescribed date and time, unless the appellate officer determines, based upon good cause shown, that a different place, date, or time would better serve the interests of justice. The appellate officer will have authority to conduct hearings in an orderly manner as described in § 676.25(i).

This action also allows appellate officers to order pre-hearing conferences. The pre-hearing conference can be used to simplify the issues, obtain stipulations and admissions of facts, and discuss the possibility of settlement without further proceedings. The formal rules of evidence will not apply.

Appellate officers will withdraw from an appeal at any time they deem themselves disqualified. This may occur because of financial connection to the case, *ex parte* communications, or some other personal bias. In addition, appellants can request withdrawal of the appellate officer. An appellate officer may withdraw upon the

appellant's motion if made prior to the issuance of a decision and the appellant demonstrates personal bias or other basis for disqualification. An appellate officer's denial of a motion to withdraw will be part of the record.

At the conclusion of the hearing, whether oral or written, the appellate officer will close the record and issue a decision. The appellate officer's decision will be based solely on the record of the proceedings. This ensures that the appellant will have the opportunity to review all information used in the decision-making process. This requirement also establishes a record for review on appeal to the Regional Director.

Appeal to the Regional Director

An appellant whose interests are directly and adversely affected by an appellate officer's decision will have an opportunity to appeal that decision to the Regional Director. A written appeal to the Regional Director must be filed within 45 days of the issuance of the appellate officer's decision. If the appellate officer's decision is not appealed within this 45-day period, it becomes effective and is considered a final agency action. An appeal to the Regional Director must clearly and concisely state the reasons why the appellate officer's decision has a direct and adverse effect on the appellant and why it should be modified, reversed, or remanded.

The Regional Director will resolve the appeal based solely on the record. Another hearing at this stage of the process is unnecessary, because all evidence and testimony for the proper disposition of issues should have been presented to the appellate officer and will be in the record. The appellate officer's decision will be affirmed by either the Regional Director's denying the appeal or the Regional Director's preparing an order affirming the appellate officer's decision. The Regional Director can deny appeals that were submitted beyond the 45-day period or appeals that did not articulate sufficient basis to modify, remand, or reverse the appellate officer's decision. The Regional Director can also order that an appellate officer's decision be modified or reversed, or remanded to an appellate officer for further proceedings consistent with the Regional Director's decision. In all cases, the Regional Director will issue a written decision explaining the reasons for the determination. Unless a remand is ordered, a decision by the Regional Director is a final agency action subject to judicial review.

Classification

A regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) was prepared for the IFQ limited access program for which these determinations and appeals regulations are a part. The Final Environmental Impact Statement for Amendment 15 to the Fishery Management Plan (FMP) for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Area, and for Amendment 20 to the FMP for Groundfish of the Gulf of Alaska, the document that contains the RIR/FRFA, is available (see **ADDRESSES**).

This final rule contains a collection of information requirement subject to the Paperwork Reduction Act. The estimated response time for the collection of information required to file an appeal to a QS application is 4 hours. The collection of information has been approved by the Office of Management and Budget, OMB control numbers 0648–0272 (IFQs for Pacific halibut and Sablefish in the Alaska Fisheries) and 0648–0269 (Western Alaska CDQ Program).

This final rule has been determined to be not significant for purposes of Equal Opportunity 12866.

List of Subjects in 50 CFR Part 676

Fisheries, Reporting and recordkeeping requirements.

Dated: May 25, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 676 is amended as follows:

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

1. The authority citation for 50 CFR part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

2. In § 676.25, the text is added to read as follows:

§ 676.25 Determinations and appeals.

(a) *General.* This section describes the procedure for appealing initial administrative determinations and appellate officers' decisions made under this part.

(b) *Who may appeal.* Any person whose interest is directly and adversely affected by either an initial administrative determination or an appellate officer's decision may file a written appeal. For purposes of this section, such persons will be referred to as "applicant" or "appellant".

(c) *Submission of appeals.* Appeals must be in writing and must be submitted in original form to NMFS, P.O. Box 21668, Juneau, AK 99802; or to NMFS, 709 W. 9th, Room 413, Juneau, AK 99801. Appeals transmitted by electronic means will not be accepted.

(d) *Time periods for appeals and date of filing.* (1) Appeals must be filed within the following time periods:

(i) Appeals from initial administrative determinations must be filed within 90 days of the date the determination was made; and

(ii) Appeals from appellate officers' decisions must be filed within 45 days of the date the decision was issued.

(2) The time periods within which appeals must be filed begin to run on the date of issuance of the initial administrative determination or appellate officer's decision that gives rise to the appeal. Saturdays, Sundays, and Federal holidays will not be included in computing such time periods, which conclude at the close of business of the final enumerated day except that when such time periods conclude on a Saturday, Sunday, or Federal holiday, such periods will be extended to the close of business on the next business day.

(3) For purposes of this section, the date of filing is the date the appeal is received by NMFS.

(4) All other time periods established under this section will be computed in a manner consistent with the provisions of paragraphs (d)(2) and (3) of this section.

(e) *Address of record.* NMFS will establish as the address of record the address used by the applicant in initial correspondence to NMFS, Restricted Access Management, after the application period has begun. Notices of all actions affecting the applicant after establishing an address of record will be mailed to that address unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notice is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS.

(f) *Statement of reasons for appeals from initial determinations.* Applicants must timely submit a full written statement in support of the appeal, including a concise statement of the reasons why the initial administrative determination has a direct and adverse effect on the applicant and should be reversed or modified. If the applicant requests a hearing on any issue presented in the appeal, such request for hearing must be accompanied by a

concise written statement raising genuine and substantial issues of adjudicative fact for resolution and a list of available and specifically identified reliable evidence upon which the factual issues can be resolved. The appellate officer will limit his/her review to the issues stated in the appeal; all issues not set out in the appeal will be waived.

(g) *Decision Whether to Order a Hearing.* The appellate officer will review the applicant's appeal and request for hearing and, at his/her sole discretion, proceed as follows:

(1) Deny the appeal. A decision to deny the appeal may be appealed to the Regional Director as provided in paragraph (o) of this section;

(2) Issue a decision on the merits of the appeal if the record contains sufficient information on which to reach final judgment. A decision on the merits of the appeal may be appealed to the Regional Director as provided in paragraph (o) of this section; or

(3) Order that a hearing be conducted. The appellate officer may so order only if the appeal demonstrates the following:

(i) There is a genuine and substantial issue of adjudicative fact for resolution at a hearing. A hearing will not be ordered on issues of policy or law;

(ii) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be ordered on the basis of mere allegations or denials or general descriptions of positions and contentions;

(iii) The evidence described in the request for hearing, if established at hearing, would be adequate to justify resolution of the factual issue in the way sought by the applicant. A hearing will not be ordered if the evidence described is insufficient to justify the factual determination sought, even if accurate; and

(iv) Resolution of the factual issue in the way sought by the applicant is adequate to justify the action requested. A hearing will not be ordered on factual issues that are not determinative with respect to the action requested.

(h) *Types of Hearings.* If the appellate officer determines that a hearing should be held to resolve one or more genuine and substantial issues of adjudicative fact, he/she may order:

(1) A written hearing, as provided in paragraph (m) of this section; or

(2) An oral hearing, as provided in paragraph (n) of this section.

(i) *Authority of the Appellate Officer.* The appellate officer is vested with general authority to conduct all hearings in an orderly manner, including the authority to:

(1) Administer oaths;

(2) Call and question witnesses; and

(3) Issue a written decision based on the record.

(j) *Evidence.* All evidence that is relevant, material, reliable, and probative may be included in the record. Formal rules of evidence do not apply to hearings conducted under this section.

(k) *Appellate Officers' Decisions.* The appellate officer will close the record and issue a decision after he/she determines that there is sufficient information on the record of the proceedings and all procedural requirements have been met. The decision must be based solely on the record of the proceedings. Appellate officers' decisions will become effective 45 days after the date the decision is issued, unless appellant files a timely appeal to the Regional Director in accordance with paragraphs (o)(1) and (2) of this section, or the Regional Director orders review of the appellate officer's decision in accordance with paragraph (o)(4) of this section.

(l) *Disqualification of an Appellate Officer.* (1) The appellate officer will withdraw from an appeal at any time he/she deems himself/herself disqualified.

(2) The appellate officer may withdraw from an appeal on an appellant's motion if:

(i) The motion is entered prior to the appellate officer's issuance of a decision; and

(ii) The appellant demonstrates that the appellate officer has a personal bias or any other basis for disqualification.

(3) If the appellate officer denies a motion to withdraw, he/she will so rule on the record.

(m) *Written Hearing.* (1) An appellate officer may order a written hearing under paragraph (h)(1) of this section if he/she:

(i) Orders a hearing as provided in paragraph (g)(3) of this section; and

(ii) Determines that the issues to be resolved at hearing can be resolved by allowing the appellant to present written materials to support his/her position.

(2) After ordering a written hearing, the appellate officer will:

(i) Provide the appellant with notice that a written hearing has been ordered;

(ii) Provide the appellant with a statement of issues to be determined at hearing; and

(iii) Provide the appellant with 30 days to file a written response. The appellant may also provide documentary evidence to support his/her position. The period to file a written response may be extended at the sole discretion of the appellate officer if the appellant shows good cause for the extension.

(3) The appellate officer may, after reviewing the appellant's written response and documentary evidence:

(i) Order that an oral hearing be held, as provided in paragraph (h)(2) of this section, to resolve issues that can not be resolved through the written hearing process;

(ii) Request supplementary evidence from the appellant before closing the record; or

(iii) Close the record.

(4) The appellate officer will close the record and issue a decision after he/she determines there is sufficient information on the record. This decision will be considered final for purposes of appeal to the Regional Director as provided in paragraph (o) of this section.

(n) *Oral hearing.* (1) The appellate officer may order an oral hearing under paragraphs (h)(2) and (m)(3)(i) of this section if he/she:

(i) Orders a hearing as provided in paragraph (g)(3) of this section; and

(ii) Determines that the issues to be resolved at hearing can best be resolved through the oral hearing process.

(2) After ordering an oral hearing, the appellate officer will:

(i) Provide the appellant with notice that an oral hearing has been ordered;

(ii) Provide the appellant with a statement of issues to be determined at hearing; and

(iii) Provide the appellant with notice, at least 30 days in advance, of the place, date, and time of the oral hearing. Oral hearings will be held in Juneau, AK at the prescribed date and time, unless the appellate officer determines, based upon good cause shown, that a different place, date, or time will better serve the interests of justice. A continuance of the oral hearing may be ordered at the sole discretion of the appellate officer if the appellant shows good cause for the continuance.

(3) The appellate officer may, either at his/her own discretion or on the motion of the appellant, order a pre-hearing conference, either in person or telephonically, to consider:

(i) The simplification of issues;

(ii) The possibility of obtaining stipulations, admissions of facts, and agreements to the introduction of documents;

(iii) The possibility of settlement or other means to facilitate resolution of the case; and

(iv) Such other matters as may aid in the disposition of the proceedings.

(4) The appellate officer must provide the appellant with notice of a pre-hearing conference, if one is ordered, at least 30 days in advance of the conference. All action taken at the pre-hearing conference will be made part of the record.

(5) At the beginning of the oral hearing, the appellate officer may first seek to obtain stipulations as to material facts and the issues involved and may state any other issues on which he/she may wish to have evidence presented. Issues to be resolved at the hearing will be limited to those identified by the appellate officer as provided in paragraph (g)(3) of this section. The appellant will then be given an opportunity to present his/her case.

(6) During the oral hearing, the appellant has the right to present reliable and material oral or documentary evidence and to conduct such cross-examination as may be required in the interests of justice.

(7) After the conclusion of the oral hearing the appellant may be given time by the appellate officer to submit any supplementary information that may assist in the resolution of the case.

(8) The appellate officer will close the record and issue a decision on the appeal after he/she determines there is sufficient information on the record. This decision will be considered final for purposes of appeal to the Regional Director as provided in paragraph (o) of this section.

(o) *Appeals to the Regional Director.* An appellant may appeal an appellate officer's decision to the Regional Director. All such appeals must be filed with the Regional Director within the time period established in paragraph (d)(1)(ii) of this section.

(1) An appeal to the Regional Director of an appellate officer's decision must be accompanied by a full written statement in support of the appeal, including a concise statement of the reasons why the appellate officer's decision has a direct and adverse effect on the appellant and should be modified, reversed, or remanded.

(2) The Regional Director may order a review of the appellate officer's decision and may issue a decision on review that modifies or reverses the appellate officer's decision, or remands that decision to the appellate officer for further proceedings consistent with the decision on review. The Regional Director's decision will be based solely on the record as developed before the appellate officer.

(3) If the Regional Director does not order review of the appeal, the appellate officer's decision is affirmed, and the action is a final agency action subject to judicial review under 5 U.S.C. 704.

(4) Within 45 days of the appellate officer's decision, the Regional Director may, at his discretion, order review of the officer's decision. If the Regional Director orders review of the officer's decision, the Regional Director must notify the appellant of an order that affirms, modifies, reverses, or remands the decision to the appellate officer for further proceedings consistent with the decision on review. If the appellate officer's decision is modified or reversed, the Regional Director must issue a written decision explaining the reasons for his/her determination. Unless a remand is ordered, the Regional Director's decision is a final agency action subject to judicial review under 5 U.S.C. 704.

IFR Doc. 94-13222 Filed 5-31-94; 8:45 am
BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 59, No. 104

Wednesday, June 1, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1530

Sugar Import Licensing

AGENCY: Foreign Agricultural Service, Agriculture.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: This document announces a 35-day extension of time, until July 8, 1994, for comments on the advance notice of proposed rulemaking for revising the regulations and other program provisions for the sugar import licensing programs published in the **Federal Register** on May 4, 1994 (59 FR 23017).

DATES: All comments on the advance notice of proposed rulemaking must be submitted on or before July 8, 1994 in order to be assured of consideration.

ADDRESSES: Comments should be mailed or delivered to the Team Leader, Import Quota Programs, Foreign Agriculture Service, Room 5531, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT:

Fred R. Kessel, (202) 720–5676.

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service (FAS) is requesting suggestions for revising the regulations and other program provisions for the sugar import licensing programs in order to improve program efficiency and compliance as well as to carry out relevant provisions of the North American Free Trade Agreement (NAFTA). Notice is hereby given that the period of time for submitting comments on the advance notice of proposed rulemaking published on May 4, 1994 (59 FR 23017) is extended to July 8, 1994.

Signed at Washington, DC, on May 26, 1994.

Richard B. Schroeter,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 94–13288 Filed 5–31–94; 8:45 am]

BILLING CODE 3410–10–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–20313, File No. S7–15–94]

RIN 3235–AF97

Custody of Investment Company Assets with Futures Commission Merchants and Commodity Clearing Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and request for comment.

SUMMARY: The Commission is proposing a new rule under the Investment Company Act of 1940 to permit registered management investment companies to use futures commission merchants and commodity clearing organizations as custodians of their assets in connection with futures contracts and commodity options regulated under the Commodity Exchange Act. Currently, investment companies generally must maintain special accounts with their custodian banks for these transactions. The proposed rule would enable investment companies to effect their commodity trades in the same manner as other market participants under conditions designed to ensure the safekeeping of investment company assets.

DATES: Comments must be received on or before August 1, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6–9, Washington, DC 20549. All comment letters should refer to File No. S7–15–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Elizabeth R. Kentzman, Special Counsel, or Diane C. Blizzard, Assistant Director, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed rule 17f–6 [17 CFR 270.17f–6] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Act"). The new rule would permit registered management investment companies to maintain their assets with certain futures commission merchants ("FCMs") and commodity clearing organizations in connection with futures contracts and commodity options regulated under the Commodity Exchange Act [7 U.S.C. 1–25] ("CEA"). The proposed rule would not affect the extent to which investment companies may engage in commodity trading.

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I. Introduction and Executive Summary

Over the last several years, investment company participation in the commodity market has increased.[1]

[1] Section 18 of the Act significantly restricts how investment companies, particularly open-end funds, may use leverage. 15 U.S.C. 80a–18. Although section 18 does not expressly address commodity transactions, the Commission has concluded that section 18 governs trading practices that have the potential for leveraging an investment company's assets. Securities Trading Practices of Investment companies, for example, use commodity investments to hedge their portfolios from declines in securities prices,[2] changes in interest rates, or foreign currency fluctuations.[2] Alternatively, investment companies enter into commodity transactions to adjust the percentage of their portfolios held in cash, long-term debt, and stocks without having to buy or sell the actual assets.[3]

To enter into a futures contract or write a commodity option, investors deposit a specified amount of assets or cash as initial margin.[4] The FCM then clears the transaction by posting margin either directly with a clearing organization (which matches the opposite side of the trade) or with one or more other FCMs that will effect the transaction through the clearing organization. Once a position is established, it is marked to market at least daily to reflect gains and losses in the position's value. Gains on commodity transactions are available for payment on the next business day.

Commodity investors other than investment companies generally initiate trades by posting margin directly with an FCM. Section 17(f) of the Act and related rules, however, currently do not permit FCMs to maintain custody of investment company assets.[5] FCM custody also presents certain risks because, in FCM bankruptcy proceedings, margin entrusted to an FCM's safekeeping may not be returned in full.[6]

Under no-action positions of the Division of Investment Management (the "Division"), investment companies must maintain their initial margin deposits in special accounts with a third party custodian bank.[7] Because investment company margin is held by a third party, FCMs must advance their own funds to cover investment company margin obligations with the clearinghouse or other FCM that will be used to effect the transaction.

Some have suggested that third party custodial accounts create systemic liquidity risks by diverting otherwise available FCM capital from the marketplace.[8] In addition, the CFTC staff has stated that third party accounts would not provide any special protection for investment company assets in the event of an FCM's bankruptcy.[9]

To address potential liquidity risks and the uncertain status of third party accounts in FCM bankruptcy proceedings, the Commission is proposing rule 17f–6. The proposal would permit FCM and clearinghouse custody of investment company margin, subject to conditions designed to ensure the safekeeping of investment company assets.

Under proposed rule 17f–6, investment companies could deposit initial margin with FCMs in amounts necessary to effect their futures contracts and commodity options.[10] FCMs also would be permitted to hold *de minimis* amounts of gain on commodity transactions; gains exceeding this threshold would have to be paid to the fund on the day after receipt by the FCM.[11]

To protect against the risks of FCM insolvency, rule 17f–6 would require FCMs holding investment company assets, including any FCMs used for clearing purposes, to have at least $20 million in adjusted net capital in excess of the minimum capital requirements established by the Commodity Futures Trading Commission ("CFTC"). As an additional measure of financial strength, the ratio of an FCM's adjusted net capital to the CFTC required minimum would have to equal or exceed 250 percent.[12]

The proposal also would require a written contract between the investment company and the FCM to contain certain provisions. Among other things, FCMs could transfer investment company assets for clearing purposes only to another FCM that satisfies the requirements of the rule (other than the requirement of a contract with the investment company), a bank, or a clearing organization.[13]

The board of directors would be responsible for selecting FCMs and monitoring the custodial arrangements. The board could delegate these responsibilities to the company's investment adviser or officers under the board's general oversight and certain procedural requirements.[14]

Finally, FCM custody would be permitted for foreign-related transactions traded on domestic contract markets, even if the margin is held overseas. FCM custody would not be allowed for foreign exchange-traded transactions, since margin for these trades does not enjoy the full protections of the CEA and CFTC rules.[15]

II. Background

A. Settlement of Futures Contracts and Commodity Options

Under the CEA and CFTC rules, trading of futures contracts and commodity options generally must take

Registered Investment Companies: General Statement of Policy, Investment Company Act Release No. 10666 (Apr. 18, 1979), 44 FR 25128. These transactions have been interpreted to include commodity investments. *See, e.g.*, Dreyfus Strategic Investing and Dreyfus Strategic Income (pub. avail. June 22, 1987). To avoid section 18's reach, investment companies must fully collateralize their commodity obligations by establishing a segregated account consisting of high-grade liquid assets. *Id.* Proposed rule 17f–6 does not address section 18 considerations or related restrictions attending commodity investments, and thus does not affect the extent to which investment companies may engage in these transactions.

Investment companies and their sponsors also may be subject to regulation as commodity pool operators under the CEA and Commodity Futures Trading Commission ("CFTC") rules, although most seek and qualify for exemption. *See* CEA section 1a(4), 7 U.S.C. 1a(4) (defining commodity pool operator); CFTC regulation 4.5, 17 CFR 4.5 (excluding certain institutional investors, including registered investment companies, and their principals and employees from the definition of commodity pool operator, subject to certain conditions).

[2] Commodity investments include futures contracts and options on futures contracts and physical commodities. A futures contract generally is a bilateral agreement providing for the purchase or sale of a specified commodity at a stated time in the future for a fixed price. Robert E. Fink & Robert B. Fedunlak, Futures Trading 10 (1988) [hereinafter Fink & Fedunlak]. A commodity option gives its holder the right, for a specified period of time, to either buy (in the case of a call option) or sell (in the case of a put option) the subject of the option at a predetermined price. The writer (seller) of an option is obligated to sell or buy the specified commodity at the election of the option holder. 1 Philip M. Johnson & Thomas L. Hazen, Commodities Regulation § 1.07 (2d ed. Supp. 1991) [hereinafter Johnson & Hazen].

[3] In this case, the investment would be used as a substitute for paying cash in the stock and bond markets. Taking a position in a futures contract, for example, may be quicker and cheaper than buying and selling the instruments subject to the contract due to lower brokerage and transaction costs.

[4] *See* "Background—Settlement of Futures Contracts and Commodity Options."

[5] 15 U.S.C. 80a–17(f), 17 CFR 270.17f–1 to 270.17f–5. *See* "Background—FCM and Clearinghouse Custody under the Act." *See also infra* note 28 (regarding the Department of Labor's position, which has not been adopted by the Division of Investment Management, that margin is not an asset for purposes of the custody requirements and certain other fiduciary provisions of the Employee Retirement Income Security Act of 1974 ("ERISA") [29 U.S.C. 1001–1461]).

[6] *See infra* notes 65–66 and accompanying text. *See also* "Background—Settlement of Futures Contracts and Commodity Options—FCM Insolvency Risks and the Settlement Process." As indicated *infra* at note 49, although the potential for loss exists, actual customer losses from FCM insolvencies are rare.

[7] *See* "Background—FCM and Clearinghouse Custody under the Act."

[8] *See* "Background—Problems with Current Custody Arrangements."

[9] *Id.*

[10] *See* "Discussion—Investment Company Margin—Initial Margin."

[11] *See* "Discussion—Investment Company Margin—Margin Gain."

[12] *See* "Discussion—FCMs Eligible to Hold Investment Company Assets" and "—Additional FCMs Used for Clearing Purposes."

[13] *See* "Discussion—Contract Requirements."

[14] *See* "Discussion—Responsibilities of the Board of Directors and Delegation."

[15] *See* "Discussion—Foreign-Related Commodity Transactions."

place on a designated contract market (an "exchange").[16] An FCM executing trades on an exchange must be a member of that exchange; nonmembers trade by entering orders through an exchange member.[17] All transactions are cleared through a clearing organization, which matches trades on behalf of the exchange, and acts as guarantor of the opposite side of each transaction accepted for settlement.[18] To clear transactions with a clearing organization, an FCM must be both an exchange member and a member of the clearing organization.[19] Non-clearing member FCMs must execute their transactions through a clearing member FCM.

Depending on an FCM's qualifications as an exchange or clearinghouse member, settlement of a commodity transaction may involve multiple FCMs. When one FCM acts on behalf of another, its "customer" is the FCM on whose behalf the order is effected, not that FCM's underlying customers. Similarly, clearinghouses consider FCM clearing members as their customers for purposes of settling trades.

1. Futures Contracts

Investors entering into futures contracts deposit a specified amount of assets or cash as initial margin.[21] Initial margin is intended to secure the obligations of the contracting parties as well as to protect those involved in the settlement process.[22] Initial margin is not considered to be part of the contract purchase price, and is returned upon the contract's termination unless it is used to cover a loss in the contract position.[24] Initial margin in futures transactions thus differs from securities margin, which represents a partial payment for securities purchased by the broker on its customer's behalf.[24]

Minimum initial margin requirements are set by the exchange on which the contract is designated to trade, although FCMs may impose higher requirements.[25] Clearing organizations also impose their own margin requirements for clearing members, which typically are less than exchange-established initial margin minimums.[26] Initial margin levels may be increased or reduced throughout the life of a contract.[27]

Customers other than investment companies generally post initial margin directly with an FCM when they initiate trades.[28] If the FCM is a clearing member, it must then satisfy clearinghouse margin requirements. The FCM typically deposits all or a portion of the customer's assets directly in a commingled account established by the clearinghouse for margin deposits and accruals on the FCM's customer positions.[29] Any funds remaining in the FCM's possession are deposited in a commingled customer bank account maintained by the FCM.[30] While section 4d(2) of the CEA permits the commingling of customer funds at both the clearinghouse and FCM levels, it requires FCMs to segregate customer assets from the FCM's own funds, including those used for its own trading, and prohibits the use of one customer's funds to carry another's trades.[31]

If an FCM is not a clearing member, the same procedures and requirements apply, except that the non-member FCM must post margin with the clearing member, which in turn must satisfy clearinghouse requirements.[32] FCM custody of customer margin in this case thus involves both the non-member and clearing member FCM.[33]

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[16] *See* CFTC regulation 1.3(h), 17 CFR 1.3(h) (defining contract market).

[17] Fink & Feduniak, *supra* note 2, at 88.

[18] *See* CFTC regulation 1.3(d), 17 CFR 1.3(d) (defining clearing organization). Some clearinghouses are organized as separate entities from the exchange, while others are departments within the exchange. Fink & Feduniak, *supra* note 2, at 154. *See generally* 1 Thomas A. Russo, Regulation of the Commodities Futures and Options Markets § 2.01 (1983 & Supp. 1992) [hereinafter Russo] ("Upon accepting trades for clearance, commodity exchange clearing houses interpose themselves as principals between the parties, becoming the 'seller to every buyer and the buyer to every seller' and thus 'a party to every trade.'") (citations omitted).

[19] *See* CFTC regulation 1.3(c), 17 CFR 1.3(c) (defining clearing member). Exchange membership is a prerequisite to clearing membership. *See* 1 Johnson & Hazen, *supra* note 2, § 2.49.

[20] Fink & Feduniak, *supra* note 2, at 154.

[21] *See* Jerry W. Markham, *Federal Regulation of Margin in the Commodity Futures Industry—History and Theory*, 64 Temple L. Rev. 59, n.12 (1991) (initial margin for futures contracts often is five to ten percent of the value of the commodity subject to delivery under the contract). *See also* 1 Johnson & Hazen, *supra* note 2, § 2.43 (Supp. 1991) (describing recent developments in the computation of margin, including "cross margining" involving coordination of margin levels for certain commodity and stock option positions).

See generally 1 Russo, *supra* note 18, § 1.20 ("Each of the exchanges has its own rules as to the types of assets, and as to the percentage of the fair market value of those assets [sometimes referred to as a *haircut*], which may be accepted in satisfaction of ...margin requirements.") (emphasis in original).

[22] *See* 1 Johnson & Hazen, *supra* note 2, § 1.10 ("margins serve not only to protect the parties against default, but the carrying brokers and clearing house as well").

[23] *Id.* § 1.10. *See* 2 *id.* §§ 3.76, 3.79.

[24] 1 *Id.* §1.10.

[25] 1 Russo, *supra* note 18, § 2.03. An FCM, for example, may increase margin requirements based on experience with a customer or the customer's financial resources. Division of Trading and Markets, CFTC, Follow-up Report on Financial Oversight of Stock Index Futures Markets During October 1987 at 28–29 (Jan. 6, 1988) [hereinafter CFTC October 1987 Follow-up Report].

[26] 1 Johnson & Hazen, *supra* note 2, § 1.10. Margin deposited to satisfy clearinghouse requirements is known as "original" margin. *Id.* Original margin requirements typically vary for different clearing members depending, for example, on each member's trading volume. 1 Russo, *supra* note 18, § 2.03. Under net clearing systems in effect at most exchanges, clearing members are not required to post original margin for offsetting customer positions. *Id.* § 2.06.

[27] 1 Johnson & Hazen, *supra* note 2, § 1.10 ("Commodity margins often vary depending on the stage of the transaction, the nature of the trading involved, and the volatility of market prices."); Markham, *supra* note 21, at 132 & n.513 (1991) (the Chicago Board of Trade changed margin levels over 200 times in 1987, often on a daily basis).

[28] Investment company third party customer arrangements are discussed below under "FCM and Clearinghouse Custody Under the Act." Some pension accounts also may use third party arrangements for their initial margin deposits, although they are not required to do so under the ERISA. The Department of Labor has held that, for purposes of the custody requirements and certain other fiduciary provisions of ERISA, margin deposited by a pension plan with an FCM does not constitute an asset of the plan; rather, the plan's assets are deemed to be the rights embodied in the futures contract. Op. No. 82–49A (Office of Pension and Welfare Benefits Program, U.S. Dept. of Labor 1982). The Division has not adopted this approach.

[29] 2 Johnson & Hazen, *supra* note 2, § 3.69. Clearing members maintain a proprietary account with the clearinghouse for their own trades, which must be kept separate from customer assets. 1 Russo, *supra* note 18, § 2.02. Accounts at the clearinghouse level are maintained by banks that have been approved by the clearinghouse as original margin depositories. *Id.* § 2.03.

An FCM may use its own assets to satisfy a customer's margin obligations, pending receipt of the required margin from the customer. CFTC regulation 1.23, 17 CFR 1.23. Exchange rules generally require FCMs to receive customer margin within a reasonable time after an order is accepted. *See* 1 Russo, *supra* note 18, § 1.20. Under CEA section 4d(2) and the special provisions of the Bankruptcy Code and CFTC rules that govern FCM liquidations, margin in the clearinghouse customer account is considered customer property, whether the margin represents actual customer assets or the FCM's own funds. 7 U.S.C. 6d(2); 11 U.S.C. 761–766; 17 CFR 190.01 to .10.

[30] 1 Johnson & Hazen, *supra* note 2, § 3.69. *See also* CFTC regulations 1.25, 1.26, 17 CFR 1.25, 1.29 (permitting FCMs to invest customer assets in their possession in certain United States government obligations and retain the interest thereon, unless the customer specifically arranges to receive the interest payments).

[31] *See also* CFTC regulations 1.20–.30, 17 CFR 1.20–.30 (implementing the requirements of section 4d(2)). The FCM at all times must have sufficient funds in segregation representing customer margin received or required to be paid. *Id.*

[32] *See* 2 Johnson & Hazen, *supra* note 2, § 3.76 ("customer funds routinely travel from the originating FCM to other FCMs, such as clearing member firms of a contract market, and to the clearing agencies of the contract market") If the FCM originating the trade effects the transaction through an exchange member that is not a clearing member, the exchange member FCM would be an additional party in the settlement chain.

[33] Under CFTC regulation 1.58, clearing member FCMs that carry customer positions on behalf of non-members must collect margin on a gross basis (i.e., based on the individual transactions of the non-member FCM's customers without regard to offsetting positions between such customers). 17 CFR 1.58. *See* Gross Margining of Omnibus Accounts, [1980–1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,296 at 25,675 (Dec. 29, 1981)

Once a contract position is established, variation margin is credited or assessed at least daily to reflect changes in the contract's value.[34] In contrast to initial margin, variation margin represents the system of marking to market the contract's value.[35] Through this system, losses on one side of a contract position are matched with and paid as profits to the other side of the transaction.[36]

At the end of each trading day, the clearing organization credits gains and debits losses on all contract positions in the clearing member's customer account.[37] Before the opening of the exchange on the next business day, the clearing member FCM must satisfy any variation margin call reflecting a net loss in contract positions and similarly is entitled to collect any net gain.[38]

The member FCM must reconcile its customers' positions by crediting gains and debiting losses on a customer-by-customer basis.[39] An FCM will require the customer to post additional funds to cover any losses that reduce the customer's margin below a specified "maintenance" level set by the exchange. The customer then will make a margin payment, or meet a "margin call," to restore its account to the initial margin level.[40] Whether gains on contract positions are collected by the customer immediately or held by the FCM depends on the customer's arrangements with the FCM.[41]

If a non-member FCM executes trades through a clearing member, variation margin payments are transferred between the clearing member and the originating FCM. The originating FCM then reconciles the individual contract positions of its customers.[42]

2. Commodity Options

Initial and variation margin for commodity options serve the same function as margin for futures contracts.[43] Unlike the parties to a futures contract, however, only the writer (seller) of an option is subject to margin requirements; the option holder (purchaser) pays the writer a one-time premium as compensation in full for its right to compel the writer's performance.[44] In addition, the writer's variation margin payments attributable to losses in its position, known as mark-to-market payments in the options context, are not available for collection by the option holder.[45] During the life of an option, the writer's mark-to-market payments are transferred to and held by all FCMs in the settlement chain and, ultimately, the clearing organization in the same way as initial margin deposits.

3. FCM Insolvency Risks and the Settlement Process

FCMs are financially responsible for the trade obligations of their customers.[46] If a clearing member FCM becomes insolvent and cannot cover the obligations of a defaulting customer, the FCM's non-defaulting customers may be affected.[47] The clearinghouse has the right to satisfy an outstanding margin call from the assets securing all of the member's customer trades at the clearinghouse level, which will create a shortfall in the clearinghouse account.[48] Exchanges and other parties may contribute additional funds to prevent customer loss.[49] Absent this voluntary action, however, a shortfall in the clearinghouse account will be borne by the member's non-defaulting customers.[50] Because a member's customers may include other FCMs, losses at the clearinghouse level may affect other FCMs and customer margin in their safekeeping.

(indicating that this approach transfers customer margin from non-member FCMs to the "stronger hands" of clearing members). Gross margining between clearing and non-clearing member FCMs contrasts with net margining, discussed *supra* note 26, between clearing organizations and their members.

[34] Some exchanges regularly make intraday variation margin calls and others may do so in response to market volatility. *See, e.g.*, CFTC October 1987 Follow-up Report, *supra* note 25, at 26; 1 Johnson & Hazen, *supra* note 2, § 2.50.

[35] 1 Russo, *supra* note 18, § 2.04. As a result of its function, variation margin, unlike initial margin, may be satisfied only in cash. Fink & Feduniak, *supra* note 2, at 146 ("If losing positions were permitted to be marked to market with Treasury securities, letters of credit, and so on, then clearinghouses and FCMs would face the impossible task of converting various and sundry types of collateral into the correct amounts of cash for potential withdrawal by customers with margin excesses."). *See supra* note 27.

[36] *See* CFTC October 1987 Follow-up Report, *supra* note 25, at 19 ("The daily settlement of profits and losses through the system of daily variation collections and payments reflects the 'zero sum' nature of the futures system in which profits and losses are exactly equivalent.").

[37] 1 Russo, *supra* note 18, § 2.04.

[38] *Id.*; CFTC October 1987 Follow-up Report, *supra* note 25, at 25–26.

[39] 1 Russo, *supra* note 18, § 2.04. *See* CFTC regulation 1.32, 17 CFR 1.32 (requiring daily computation of customer accounts).

[40] 1 Russo, *supra* note 18, § 1.20; 1 Johnson & Hazen, *supra* note 18, § 1.10

[41] *See, e.g.*, CFTC Financial and Segregation Interpretation No. 10, *Treatment of Funds Deposited in Safekeeping Accounts*, 1 Comm. Fut. L. Rep. (CCH) ¶ 7120 at 7128 n.15 (CFTC Division of Trading and Markets May 23, 1984) [hereinafter CFTC Interpretation No. 10].

[42] 1 Russo, *supra* note 18, § 2.04. If a non-exchange member FCM executes trades through an exchange member that is not a clearing member, variation margin transfers would occur between these two FCMs as well.

[43] *See supra* notes 22 & 35 and accompanying text.

[44] 1 Johnson & Hazen, *supra* note 2, § 1.07. Initial margin for commodity options may be based on the premium paid for the option and the initial margin requirements applicable to the underlying futures contract. *See, e.g.*, Goldman Sachs & Co. (pub. avail. May 2, 1986). Initial margin also may be determined by reference to the aggregate risk of the option and underlying futures contract. *See, e.g.*, 1 Johnson & Hazen, *supra* note 2, § 2.43 (Supp. 1991). The premium collected from the buyer is passed through the clearinghouse to the writer's FCM, which credits the writer's account for the premium received.

[45] The writer of an option is responsible for changes in the value of the position only if the option is exercised by the holder or closed out by the writer through an offsetting position. 1 Johnson & Hazen, *supra* note 2, §§ 1.31, 1.07. For this reason, unlike margin payments on futures contracts (as discussed *supra* note 35), payments for losses on option positions may be made in cash or other assets. *See, e.g.*, Goldman Sachs & Co., *supra* note 44 (option mark-to-market payments may be made in securities, such as U.S. Treasury obligations, or letters of credit). In the event of later gains, the writer would be entitled to collect the gain from previously made margin payments. *See* Markham, *supra* note 21, at 116.

[46] *See* CEA section 4d(2); 1 Johnson & Hazen, *supra* note 2, § 1.10.

[47] An FCM's insolvency may result from its obligation to cover the trades of a defaulting customer or for other unrelated reasons. *See, e.g.*, Andrea M. Corcoran & Susan C. Ervin, *Maintenance of Market Strategies in Futures Broker Insolvencies: Futures Position Transfers From Troubled Firms*, Wash. & Lee L. Rev. 852–70 (1987) [hereinafter Corcoran & Ervin] (the inability of certain customers to satisfy trade obligations of approximately $14 million caused the 1985 Volume Investors Corporation insolvency, which placed other customers at risk); CFTC News Release 3663–93 (May 24, 1993) (CFTC administrative complaints allege that Stotler and Company's insolvency followed improper conduct by its officers, accountants, and the Chicago Board of Trade including, among other things, overstating the firm's net capital).

[48] *See* CFTC Interpretative Statement No. 85–3, *Use of Segregated Funds by Clearing Organizations Upon Defaults by Member Firms*, [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,703 at 30,988 (CFTC Office of the General Counsel Aug. 12, 1985). While the CFTC staff has considered the rights of clearing organizations in these circumstances, an FCM's right to use another FCM's customer margin has not been determined. For example, it has not been established whether a clearing member FCM would be entitled to customer margin deposited by a non-member FCM in the event the non-member was unable to satisfy its customers' obligations. *See* Corcoran & Ervin, *supra* note 47, at nn.92, 95.

[49] *See generally* National Futures Association, Customer Account Protection Study 13 (Nov. 20, 1986) [hereinafter NFA Account Protection Study] (FCM insolvency losses from 1938 through 1985 totalled less than $10 million); Corcoran & Ervin, *supra* note 47, at 873 ("customer losses have been forestalled * * *, in significant measure, by the voluntary contributions of futures exchanges to the compensation of customers of failed clearing members.").

[50] *See infra* notes 65–66 and accompanying text regarding the treatment of customer margin in FCM bankruptcy proceedings.

B. FCM and Clearinghouse Custody Under the Act

Section 17(f) of the Act and the rules thereunder govern the safekeeping of investment company assets.[51] Under section 17(f), investment companies generally may maintain their assets only in the custody of a bank, a member of a national securities exchange, or a national securities depository.[52] FCMs and commodity clearing organizations do not fit within one of the statutory categories.[53]

Under Division no-action positions, investment companies deposit initial margin in special accounts with their custodian banks.[54] Although a third party account may be maintained in the name of an FCM, the FCM may withdraw funds from the account only if the investment company does not make a variation margin payment.[55] As a consequence, FCMs must advance their own funds to cover investment company margin obligations with the clearinghouse or other FCM that is used to effect the transaction.[56]

No-action letters and exemptive orders permit FCMs to retain custody of investment company gains on commodity positions in limited circumstances.[57] Under no-action positions, FCMs may hold margin gain overnight or over a weekend in recognition of the fact that, while positions are settled at the close of each day's trading, margin gain is not available to the FCM's customers until the following business day.[58] The Division has reasoned that such custody is incidental to the commodity investment and not of sufficient duration to trigger the requirements of section 17(f).[59] Exemptive orders permit FCMs to hold *de minimis* amounts of margin gain (e.g., $50,000) so that funds may avoid having to make daily withdrawals when only small amounts of margin accrue.[60]

C. Problems With Current Custody Arrangements

Commenters have criticized third party custodial accounts on several grounds. Some have asserted that current arrangements create systemic liquidity risks by diverting otherwise available FCM capital from the marketplace.[61] These risks may become acute in times of market volatility when liquidity may be most critical. Initial margin requirements typically rise during these periods, resulting in additional drains on FCM resources.[62] According to the 1988 Brady Report, third party custodial accounts may have been a source of liquidity stress in the clearing and credit systems during the October 1987 market break.[63]

Commenters also have contended that third party arrangements are unnecessary because they are unlikely to provide any special protection to investment company assets in FCM bankruptcy proceedings.[64] Special provisions of the Bankruptcy Code and related CFTC rules govern FCM liquidations.[65] Under these provisions, FCM customers generally have priority over other creditors' claims. All customer assets, even if specifically identifiable to one customer, are subject to disposition based on each customer's *pro rata* share of the available customer property.[66] The CFTC staff has stated that funds in a third party custodial

[51] The legislative history of section 17(f) indicates that Congress intended the assets of investment companies to be kept by a financially secure entity that has sufficient safeguards against misappropriation. *Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency*, 76th Cong., 3d Sess. 264 (1940).

[52] *See also* rule 17f–1 (governing custody of investment company assets by members of a national securities exchange) and rule 17f–4 (governing custody by national securities depositories). Under section 17(f) and rule 17f–2, investment companies also may maintain custody of their own assets.

[53] While certain FCMs also may be members of a national securities exchange, these FCMs cannot rely on rule 17f–1. This is because, in accepting margin deposits, the FCM would be acting in its capacity as a futures broker, and not as a securities broker as contemplated under rule 17f–1. In any event, rule 17f–1 is rarely used today because of its segregation and earmarking requirements. Thomas P. Lemke, *Investment Company Act of 1940*, in 4 Securities Law Techniques Transactions Litigation (A.A. Sommer, ed.) § 83.07, at 83–181 (Oct. 1993).

[54] *See, e.g.*, Prudential Bache Income Vertible Plus Fund, Inc. (pub. avail. Nov. 20, 1985). *See also* VALIC Timed Opportunity Fund, Inc., Investment Company Act Release Nos. 13891 (Apr. 17, 1984), 49 FR 17639 (Notice of Application), and 13943 (May 16, 1984), 30 SEC Docket 845 (Order).

In 1981, the CFTC considered third party arrangements as a way to address customer losses associated with FCM insolvency. Although the CFTC rejected this approach, it noted that to make segregation requirements completely effective, "access to customer money by the FCM would have to be totally prohibited. A third party trustee would have to accept and hold all customer funds and commingling of any kind would have to be prohibited." Gross Margining of Omnibus Accounts, *supra* note 33, at 25,504.

[55] *See, e.g.*, Pension Hedge Fund, Inc. (pub. avail. Jan. 20, 1984). *See also* CFTC Interpretation No. 10, *supra* note 41, and CFTC Interpretative Letter No. 85–6 *(Safekeeping Accounts)*, [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,579 at 30,495 (CFTC Division of Trading and Markets Apr. 19, 1985) (both concerning CFTC staff requirements attending the use of third party custodial accounts).

[56] *See, e.g.*, Letter of William J. Brodsky, President and Chief Executive Officer, Chicago Mercantile Exchange ("CME"), to Jonathan G. Katz, Secretary, SEC 4 (Oct. 12, 1990), File No. S7–11–90 (responding to the Commission's request for comments on the reform of investment company regulation in connection with the Division's 1992 report, Protecting Investors: A Half Century of Investment Company Regulation) [hereinafter CME Letter]. The CME Letter was resubmitted to the Commission last year in connection with other rule proposals. Letter of Carl A. Royal, Senior Vice President and General Counsel, CME, to Jonathan G. Katz, Secretary, SEC (Mar. 16, 1993), File No. S7–41–92.

[57] Gains on commodity positions are paid directly by an FCM to the investment company without flowing through or being held in the third party account. Goldman, Sachs & Company, *supra* note 44. Variation margin payments owed by an investment company due to declines in its position are liabilities of the company, and not fund assets under section 17(f). Montgomery Street Income Securities, Inc. (pub. avail. Apr. 11, 1983). Investment companies satisfy their variation margin obligations by paying the required amounts directly to FCMs. *See id.*

[58] *See supra* notes 37 & 38 and accompanying text.

[59] Montgomery Street Income Securities, *supra* note 57. *See also* Putnam Option Income Trust II (pub. avail. Sept. 23, 1985) (futures contracts); Goldman, Sachs & Company, *supra* note 44 (written options).

[60] *See, e.g.*, Drexel Bond-Debenture Trading Fund, Investment Company Act Release Nos. 13861 (Apr. 2, 1984), 49 FR 13934 (Notice of Application), and 13916 (May 1, 1984), 30 SEC Docket 671 (Order). *See also* Carnegie Government Securities Trust, Investment Company Act Release Nos. 15272 (Aug. 22, 1986), 51 FR 30927 (Notice of Application), and 15317 (Sept. 18, 1986), 36 SEC Docket 1044 (Order) (permitting up to $50,000 in margin gain to be maintained with any one FCM and limiting margin gain held by all FCMs to the greater of $100,000 or 1/8 of one percent of the fund's net assets).

[61] *See, e.g.*, Letter from Peter Karpen, First Boston Corporation, Steven Keltz, Shearson Lehman Brothers Inc., Anthony J. Leitner, Goldman, Sachs & Co., and John T. Shinkle, Saloman Brothers Inc., to Marianne K. Smythe, Director, Division of Investment Management, SEC 1–4 (Sept. 17, 1991) [hereinafter Joint FCM Letter] (observing that a survey of 12 FCMs revealed that as much as $2 billion may be maintained in third party custodial accounts, and suggesting by way of a conservative estimate that FCMs advance as much as 50% of initial margin deposited by investment companies).

Commenters also point out that FCMs incur financing and potential opportunity costs as a result of using their own assets to meet investment company margin requirements. *See, e.g.*, Letter from Barbara Wierzynski, General Counsel, Futures Industry Association Inc., to Elizabeth Krentzman, Division of Investment Management, SEC (Oct. 11, 1993) (securities deposited by FCMs on behalf of investment companies may not be pledged by the FCM to raise cash for other purposes). *See also* Letter from Thomas A. Russo, Cadwalader, Wickersham & Taft, to Mary Podesta, Chief Counsel, Division of Investment Management, SEC 13 (Sept. 23, 1988) [hereinafter Russo Letter II] (financing costs may cause FCMs to increase commission rates or limit the number and size of investment company accounts, forcing funds to trade through less well-capitalized FCMs).

[62] CFTC October 1987 Follow-up Report, *supra* note 25, at 65.

[63] Report of the Presidential Task Force on Market Mechanisms (1988) VI–73 to –74 (discussing statements of certain CME members).

[64] *See, e.g.*, Joint FCM Letter, *supra* note, at 4–6.

[65] 11 U.S.C. 761–766; 17 CFR 190.01 to .10. The CFTC bankruptcy regulations were adopted pursuant to CEA section 20, 7 U.S.C. 24.

[66] *See* United States Bankruptcy Code sections 766(d), (h). The claims of customers engaging in certain foreign-related commodity transactions may be subordinated in bankruptcy to the claims of other customers. *See infra* notes 148–151 and accompanying text.

account will be subject to the same *pro rata* treatment as all other customer assets.[67]

No court has examined the status of these accounts in bankruptcy. Commenters maintain that the issue inevitably will be litigated, which may carry its own adverse consequences.[68] In addition to freezing investment company assets during the pendency of the action, third party accounts may impede the transfer of investment company accounts to a financially strong FCM, subjecting the fund to possible losses.[69]

The Commission believes liquidity concerns and the absence of clear bankruptcy protection for third party accounts warrant proposing new rule 17f–6. The Commission, however, requests comment on these and any other factors concerning current investment company arrangements.[70]

III. Discussion

Proposed rule 17f–6 would allow FCM and clearinghouse custody of investment company margin, subject to conditions designed to ensure the safekeeping of investment company assets.[71] The proposal would govern initial margin deposits and FCM custody of margin gain, establish certain objective qualifications for FCMs that hold investment company assets, and require a written contract between the FCM and investment company to contain certain provisions. The board of directors would be responsible for selecting FCMs and monitoring the custodial arrangements, although the board could delegate its responsibilities to the investment company's investment adviser or officers. The rule's provisions (other than the requirement of a contract with the investment company) would apply to any FCM used to clear the fund's commodity transactions. FCM custody would be permitted in connection with foreign-related commodity transactions traded on domestic exchanges. It could not be used, however, for foreign-exchange traded transactions since margin for those trades does not enjoy the full protections of the CEA and CFTC rules.

Proposed rule 17f–6 would not be mandatory, and investment companies could use third party custodial accounts for their margin deposits.[72] Because of the uncertain status of third party accounts in FCM bankruptcy proceedings, investment companies using these accounts should satisfy themselves of the financial strength of the FCMs that carry their trades.[73] The Commission requests comment on whether investment companies should be permitted to continue to use third party arrangements if the proposed rule is adopted.

A. Investment Company Margin

Rule 17f–6 would permit investment companies to maintain margin with FCMs in connection with futures contracts and commodity options traded on a designated contract market.[74] This provision is intended to establish the parameters of fund transactions involving FCM custody and to ensure that margin underlying those transactions has the full protections of the CEA and CFTC rules.[75] Because only United States commodity exchanges may be designated contract markets, investment company margin deposits involving FCM custody would be limited to domestically traded transactions.[76]

1. Initial Margin

Under proposed paragraph (a), investment companies may place and maintain initial margin with FCMs in amounts necessary to effect their commodity trades.[77] This provision is intended to tie FCM custody of investment company assets to margin levels associated with specific transactions. Investment companies would be permitted to use FCM custody for margins established by exchanges as well as any additional requirements imposed by FCMs.

The Commission considered limiting FCM custody to exchange-established

[67] CFTC Interpretation No. 10, *supra* note 41, at 7129. The CFTC staff reasons that the Bankruptcy Code provisions were intended "to promote equitable treatment of customers and to provide for an across-the-board application of pro rata distribution to all customer commodity accounts whether or not the funds related to such accounts were maintained with separate depositories or otherwise were specifically identifiable." *Id. See also* Interpretative Letter No. 90–1 *(Safekeeping and Third-Party Custodial Accounts)* [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,579 at 36,505 (CFTC Division of Trading and Markets Jan. 19, 1990) (reaffirming this position).

[68] *See, e.g.*, Letter from Thomas A. Russo, Cadwalader, Wickersham & Taft, to Mary Podesta, Chief Counsel, Division of Investment Management, SEC 3–4 (Apr. 8, 1988) [hereinafter Russo Letter I]. *See also* CFTC Interpretation No. 10, *supra* note 41, at 7129 (if presented with the issue, the CFTC staff intends to strongly recommend that the CFTC take appropriate action "to ensure that all customers, including institutional customers, are treated equally" in FCM bankruptcy proceedings).

[69] Russo Letter I, *supra* note 68, at 4; Joint FCM Letter, *supra* note 61, at 5 ("even if such customers ultimately recover the entire equity in their account following liquidation, they will lose money as the result of prices realized on forced liquidations or they will lose the protection of hedges until they can replace the positions at a new firm."). *See generally* Corcoran & Ervin, *supra* note 47, at 872 (discussing the Bankruptcy Code's strong preference for immediate transfer of customer accounts to ensure daily payment of margin obligations and to minimize the possibility of margin default).

[70] Some commenters, for example, have identified certain operational difficulties associated with third party arrangements. *See, e.g.*, CME Letter, *supra* note 56, at 4 (third party accounts may take up to several weeks to establish and are expensive and complex to maintain). Other commenters have suggested certain benefits associated with their use. *See, e.g.*, Leslie L. Ogg, Remarks at the Meeting of the Financial Products Advisory Committee, CFTC, 54 (July 23, 1992) (noting that tax-exempt funds avoid earning taxable income (excluding any gains realized on contract positions) by maintaining their tax-exempt securities in third party custodial accounts).

[71] The Commission is not proposing to amend rule 7d–1 with respect to the use of proposed rule 17f–6 by investment companies organized under Canadian law and other foreign jurisdictions. 17 CFR 270.7d–1. Rule 7d–1 governs applications by Canadian funds seeking to obtain exemptive orders under section 7(d). 15 U.S.C. 7(d). Although rule 7d–1 by its terms only applies to Canadian investment companies, funds organized in other jurisdictions have agreed to comply with its conditions as a prerequisite to receiving a section 7(d) order. *See* Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation 193 n.23 (1992) [hereinafter Protecting Investors report]. Considerable time has passed since rule 7d–1 was last used. *Id.* Should an investment company seek relief pursuant to rule 7d–1 in the future, the Commission would consider any request to rely on proposed rule 17f–6, as it may be adopted, at that time.

[72] Investment companies also could continue to initiate their trades through introducing brokers, which do not take custody of customer margin. *See* CEA section 1(a)(14), 7 U.S.C. 1(a)(14) (defining introducing broker). When, however, an introducing broker is used and margin is placed in the custody of an FCM, the proposed rule would apply with respect to the FCM holding investment company assets.

[73] *See supra* notes 65–69 and accompanying text.

[74] *See* proposed subparagraph (d)(2) (defining exchange-traded futures contracts and commodity options). Fund investments for which FCM custody would be permitted include futures contracts, options on futures contracts, and options on physical commodities. *Id.* The Commission understands that options on physical commodities currently are not traded on any exchange, although CFTC rules would permit their trading. *See* CFTC regulation 33.7, 17 CFR 33.7. As discussed *supra* at note 57, since margin payments resulting from losses on commodity positions are not fund assets subject to section 17(f), the proposed rule would not govern these payments.

[75] *See, e.g.*, CEA section 4 (requiring the keeping of books and records); CEA section 4b (prohibiting fraudulent transactions); CEA section 4d (requiring segregation of customer funds and other safekeeping measures); CFTC regulation 1.10, 17 CFR 1.10 (financial reporting obligations); CFTC regulations 1.20 to .30 (safekeeping of customer funds); CFTC regulation 3.10, 17 CFR 3.10 (registration of FCMs).

[76] *See* CEA sections 4(a) and (b). Margin deposits in connection with foreign-related investments are discussed under "Foreign-Related Commodity Transactions" below.

[77] References to initial margin include maintenance margin deposited throughout the life of the transaction. Rule 17f–6 would not limit the types of assets that investment companies may use to satisfy margin requirements. In addition, in accordance with exchange rules, discounts may be applied to investment company securities posted as margin. *See supra* note 21.

margin requirements.[78] While this approach would address concerns that FCMs might hold more investment company assets than are technically necessary to enter into commodity transactions, it also could interfere with normal commodity settlement procedures.[79] In addition, investment companies should be able to bargain effectively with FCMs so that custody of fund assets is appropriately circumscribed. The Commission, however, requests comment on the proposed approach and whether any restrictions are necessary to address an FCM's discretion to increase exchange-established margin levels.

In addition, exchange rules and FCMs may restrict the types of assets that may be used to satisfy margin requirements.[80] When an investor does not have the assets required, the FCM may loan the investor cash or other acceptable assets to meet margin requirements upon taking possession of other assets as collateral for the loan.[81] The Commission requests comment on whether investment companies should be permitted to engage in these transactions and what, if any, additional protections should apply.[82]

2. Margin Gain

Paragraph (b) of proposed rule 17f–6 would permit FCMs to hold *de minimis* amounts of investment company margin gain. The Commission generally would expect that margin gain maintained with any one FCM would not exceed $50,000.[83] Consistent with current no-action positions and the commodity settlement process, margin gain exceeding *de minimis* amounts could be held by the FCM until the next business day following receipt.

The CFTC staff has suggested that margin gain should be collected daily to avoid possible losses resulting from the *pro rata* treatment accorded customer assets in FCM bankruptcy proceedings.[84] Exemptive applications, however, suggest funds may benefit from leaving small amounts of margin gain in FCM custody.[85] The Commission requests comment on whether FCMs should be permitted to hold margin gain beyond the next business day following receipt and, if so, whether the holding of such gain should be subject to a $50,000 or other *de minimis* limitation.[86] The Commission also requests comment on whether it would be appropriate for the rule to include, for example, a specific dollar limitation instead of the proposed *de minimis* standard.

B. FCMs Eligible to Hold Investment Company Assets[87]

FCMs maintaining custody of investment company margin would have to be registered under the CEA, and thus would be subject to CEA and CFTC regulation.[88] The proposal would not require FCMs to be members of a commodity exchange or clearing organization.

An exchange or clearing membership requirement might provide additional investor protections.[89] It also could reduce risks by limiting the number of FCMs involved in the settlement of investment company transactions.[90] Imposing either requirement, however, might restrict unnecessarily the number of FCMs eligible to hold investment company margin and force investment companies to use different FCMs for the various exchanges on which trading is conducted.[91] The Commission requests comment on the appropriateness of an exchange or clearing membership requirement.[92]

Under CFTC regulations, FCMs generally must maintain adjusted net capital equal to or exceeding the greatest of (i) $50,000,[93] (ii) four percent of customer funds maintained in safekeeping,[94] or (iii) for FCMs that are also registered securities broker-dealers, the net capital required by rule 15c3–1(a) under the Securities Exchange Act of 1934 [17 CFR 15c3–1(a)].[95] FCMs generally must notify the CFTC of potential capital impairment if the ratio of their total adjusted net capital to CFTC required minimums falls below 150%.[96]

Proposed subparagraph (a)(1)(i) would require an FCM to have at least $20 million in adjusted net capital in excess of the applicable CFTC minimum requirement.[97] In addition, the ratio of the FCM's adjusted net capital to the CFTC required minimum would have to equal or exceed 250%. These provisions seek to address FCM insolvency risks by establishing a cushion between the FCM's actual capital and minimum regulatory requirements.[98]

Because FCMs must compute their adjusted net capital to facilitate regulatory oversight, investment companies should be able to evaluate and monitor an FCM's compliance with the proposed requirements.[99] If the FCM's capital at any time falls below the proposed thresholds, the FCM no longer would be eligible to hold investment company assets, and the fund would be required to withdraw its assets from the FCM's safekeeping.[100]

The Commission requests comment on the proposed approach and the appropriateness of the proposed $20 million and 250% thresholds.[101] Specific comment is requested on the circumstances under which FCM capital may fluctuate below these levels and whether the proposed rule should incorporate a grace period or other mechanism to address such fluctuations. The Commission also requests comment on whether both requirements are necessary,[102] and on alternative capital requirements that would promote the safekeeping of investment company assets.[103]

Under proposed subparagraph (a)(2)(ii), FCMs holding investment company margin could not be affiliated persons of the company or affiliated persons of such persons.[104]

Although some investment companies may use affiliated FCMs to execute their trades,[105] custody by FCM affiliates raises additional investor protection concerns.[106] Investment companies wishing to execute their trades through affiliated FCMs may use third party custodial accounts for their margin deposits.

The Commission requests comment on whether the proposed approach would be unduly restrictive and whether there are alternative safeguards that would address investor protection concerns associated with these arrangements. For example, should the board of directors retain all responsibility for affiliated FCM custody arrangements, without being able to delegate FCM selection and monitoring responsibilities to the fund's adviser or officers?[107]

C. Contract Requirements

Subparagraph (a)(3) would require a written contract between the investment company and the FCM to contain certain provisions.[108] The contract would require the FCM to comply with the segregation requirements of section 4d(2) of the CEA and CFTC rules thereunder.[109] In addition, to facilitate the inspection of investment company assets, the FCM contract would have to provide that the FCM would furnish the Commission or its staff upon request with information concerning the FCM's custody of investment company margin.[110] The Commission requests comment on whether investment company contracts also should require FCMs to furnish information at the request of investment company accountants.[111]

The FCM would be permitted to transfer the investment company's assets for clearing purposes, consistent

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[78] *See* Russo Letter II, *supra* note 61, at 4 (recommending such a limitation).

[79] *See supra* notes 25 & 27 and accompanying text.

[80] 1 Russo, *supra* note 18, §§ 1.20, 4.28.

[81] *Id.* § 4.28. *See* CFTC regulation 1.30 (regarding FCM loans).

[82] *See, e.g.*, Inv. Co. Act Rel. 10666, *supra* note 1, 82 (requiring, among other things, the use of segregated accounts to fully collateralize investment company reverse repurchase agreements).

[83] The *de minimis* limitation would apply on a per FCM basis. This contrasts with certain exemptive orders which also limited the amount of margin gain held by all FCMs through which trades are effected. *See, e.g.*, Carnegie Government Securities Trust, *supra* note 60.

[84] CFTC Interpretation No. 10, *supra* note 41, at 7128 n.15. The risk of loss should be minimized by the proposed *de minimis* margin gain limitation and FCM capitalization requirements. *See* subparagraph (a)(1)(i) of the proposed rule (regarding the proposed FCM capitalization requirements), discussed under "FCMs Eligible to Hold Investment Company Assets" below.

[85] *See, e.g.*, Carnegie Government Securities Trust, *supra* note 60 (indicating that the fund's custodian imposed a $25 charge for each transfer of margin gain to the fund's account).

[86] The Commission, for example, considered whether to interpret the *de minimis* limitation based on the facts and circumstances of the fund involved. For example, $100,000 in margin gain could be considered *de minimis* for funds that are more actively engaged in commodity trading. The Commission also considered using a percentage limitation, which would take into account the size of the fund. Given the CFTC staff's position regarding daily collections of margin gain, however, the $50,000 level seems prudent.

[87] In addition to the objective requirements discussed in this section, the board of directors (or its delegate) would be required to determine that maintaining the fund's assets with a particular FCM is in the best interests of the investment company and its shareholders. *See* proposed subparagraph (a)(2), discussed under "Responsibilities of the Board of Directors and Delegation" below.

As discussed below under "Additional FCMs Used for Clearing Purposes," where the FCM accepting the investment company's trade orders uses one or more FCMs to clear the fund's transactions, each other FCM would be subject to the rule's requirements (other than the requirement of a contract with the investment company).

[88] Proposed subparagraph (d)(1) (defining futures commission merchant). *See* CFTC regulation 1.3(p), 17 CFR 1.3(p) (FCMs include any entity that solicits or accepts trade orders and also accepts customer assets to margin trades); CEA section 4d(1) (requiring FCM registration).

The CFTC has delegated its responsibility for processing FCM registrations to the National Futures Association ("NFA"). CFTC regulation 3.10. The NFA currently is the only futures association registered under the CEA and has its own rules governing FCM operations. *See* CFTC regulation 170.15, 17 CFR 170.15 (requiring FCMs to be members of at least one registered futures association); NFA Manual, Registration Rules, Part 400 (providing for FCM training and proficiency testing); NFA Manual, Compliance Rules, Part 3 (FCM disciplinary actions). Subject to the minimum financial requirements established by the CFTC (discussed in the text below), the NFA and the individual exchanges share responsibility for imposing financial standards and auditing FCMs: the NFA is responsible for FCMs that are not members of an exchange, while the exchanges are responsible for their members. CFTC regulation 1.52, 17 CFR 1.52.

[89] Members of an exchange are subject to the rules of that exchange and clearing members typically are subject to additional clearing organization requirements. 1 Johnson & Hazen, *supra* note 2, §§ 2.53, 3.49 (exchange rules); 1 Russo, *supra* note 18, §§ 2.08, 4.33 (clearing organization requirements).

Prior to 1981, a number of failures occurred among non-member FCMs that were not subject to the additional regulation and oversight of an exchange. *See* Division of Trading and Markets, CFTC, Commodity Account Protection Study 30 (Nov. 20, 1988) [hereinafter CFTC Account Protection Study]. In 1981, the NFA was given additional powers to regulate non-member FCMs to fill this regulatory gap. 1 Johnson & Hazen, *supra* note 2, § 1.89.

[90] *See* "Background—FCM Insolvency Risks and the Settlement Process" above.

[91] Based on information provided by the CFTC staff, of 265 FCMs registered under the CEA as of December 31, 1993, 184 FCMs, or 69.4%, are members of at least one exchange; 134 FCMs, or 50.5%, are members of at least one clearing organization. 117 FCMs, or 44.2%, are members of more than one exchange, and 90 FCMs, or 34%, are members of more than one clearing organization.

[92] As discussed *infra* at note 144 and accompanying text, a clearing membership requirement would eliminate the need to evaluate additional FCMs in the settlement process, as currently required under the proposed rule.

[93] Under NFA rules, FCMs are required to maintain adjusted net capital of at least $250,000. NFA Manual, Financial Requirements, section 1.

[94] This requirement is based on the amount of customer funds required to be segregated under CEA section 4d(2) and CFTC rules thereunder.

[95] CFTC regulation 1.17, 17 CFR 1.17. An FCM whose adjusted net capital falls below the required minimum generally must cease doing business as an FCM and transfer all customer accounts to an FCM that meets CFTC requirements. CFTC regulation 1.17(a)(4).

After the 1985 insolvency of Volume Investors Corporation, the CFTC proposed, but never adopted, a risk-based approach to FCM capital requirements. *See, e.g.*, Minimum Financial and Related Requirements for FCMs, [1986–1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,738 at 33,911 (CFTC July 29, 1987).

[96] CFTC regulation 1.12(b), 17 CFR 1.12(b).

[97] *See* proposed subparagraph (d)(3) (an FCM's adjusted net capital and required minimum adjusted net capital would be determined under CFTC regulation 1.17, which governs FCM minimum capital requirements). *See also* rule 17f–5 (generally requiring foreign banks holding investment company assets to have at least $200 million in shareholders' equity). Rule 17f–1, which governs custody of investment company assets by registered securities brokers, does not contain specific minimum capital requirements. As indicated *supra* at note 53, however, rule 17f–1 is rarely used, because it requires investment company assets to be individually segregated and marked as belonging to the fund.

[98] *See, e.g.*, Division of Trading and Markets, CFTC, Volume Investors Corporation 10 (July 1985) (Volume Investors Corporation reported excess adjusted net capital of $1.6 million and a ratio of 266% prior to its failure in March 1985); CFTC News Release No. 3663–93, *supra* note 47, at 2 (Stotler and Company claimed $9.5 million in excess capital on the eve of its failure in August 1993, but the CFTC later charged that its capital had fallen below the 150% ratio without the required notification more than six months before).

[99] FCMs, for example, must compute their adjusted net capital regularly to ensure compliance with the CFTC's notification requirement discussed *supra* at the text accompanying note 96. *See also* CFTC regulation 1.18, 17 CFR 1.18 (requiring FCMs to calculate their adjusted net capital as of the end of each month); CFTC regulation 1.10 (requiring FCMs to prepare and file periodic reports concerning their financial strength and operations). *See generally infra* note 128 (regarding the monitoring of FCM arrangements).

[100] *See* proposed subparagraph (a)(4), discussed under "Responsibilities of the Board of Directors and Delegation" below.

[101] Based on information provided by the CFTC staff, of 265 FCMs registered under the CEA as of December 31, 1993, 79 FCMs, or 29.8%, would satisfy the proposed excess capital and ratio requirements.

[102] Either requirement, standing alone, may not provide a complete picture of an FCM's financial strength. For example, without the proposed 250% ratio requirement, an FCM's capital may be sufficient to satisfy the proposed $20 million excess capital standard, but may fall below the CFTC 150% ratio signalling potential vulnerability.

[103] One commenter, for example, recommended a $10 million total (as opposed to excess) adjusted net capital requirement. Russo Letter II, *supra* note 61, at 2–3. This approach, however, may not reflect an FCM's financial strength. For example, depending of the amount of customer funds in safekeeping or the FCM's status as a registered broker-dealer, an FCM with $10 million in adjusted net capital may not satisfy applicable CFTC requirements.

[104] *See* section 2(a)(3) of the Act, 15 U.S.C. 80a–2(a)(3) (defining affiliated person).

[105] Several no-action letters concern commission payments to affiliated FCMs. *See, e.g.*, Prudential-Bache Government Plus Fund, Inc. (pub. avail. Sept. 3, 1985); Kidder, Peabody Government Income Fund, Inc. (pub. avail. Sept. 15, 1986).

[106] To guard against potential abuses resulting from control over fund assets by related persons, in other contexts rule 17f–2 has been read to require investment company affiliates to comply with its provisions or establish other appropriate safeguards. *See, e.g.*, Pegasus Income and Capital Fund, Inc. (pub. avail. Dec. 1, 1977) (custody by adviser-bank).

[107] *See* "Responsibilities of the Board of Directors and Delegation" below.

[108] The Commission understands that FCMs use standardized customer agreements, and that proposed subparagraph (a)(3) would require additional contract provisions for investment company clients.

[109] Proposed subparagraph (a)(3)(i). This provision is intended to ensure that investment company assets are not commingled with the FCM's own funds, and that the FCM could not assign, hypothecate, pledge or otherwise dispose of investment company margin except in connection with the fund's commodity transactions and as required by the exchanges and clearing organizations. *See supra* text accompanying note 31. *See also* Russo Letter II, *supra* note 61, at 2, 5–6.

Certain exchanges have applied to the CFTC for exemptions from section 4d(2) and other provisions of the CEA with respect to the trading of futures contracts and commodity options among institutional investors, including registered investment companies. Exemptions for Certain Exchange-Traded Futures and Options Contracts, 58 FR 43414 (Aug. 16, 1993). The Commission has urged the CFTC to disapprove these requests. Letter of Jonathan G. Katz, Secretary, SEC, to Jean A. Webb, Secretary, CFTC (Dec. 28, 1993).

[110] Proposed subparagraph (a)(3)(ii). See Russo Letter II, *supra* note 61, at 3 (recommending that the fund's commodity account and related assets be subject to Division inspection).

[111] *See* rule 17f–5(a)(1)(iii)(F) (imposing this requirement in connection with investment company foreign custody arrangements). The proposed rule also would not require the investment company's independent accountants to verify or otherwise examine the fund's margin held by the FCM. *See, e.g.*, rule 17f–2(f) (imposing such a requirement for self-custody arrangements).

with the commodity settlement process.[112] The FCM may deposit and maintain investment company margin with another FCM that meets the requirements of the rule (other than the requirement of a contract with the investment company),[113] a bank that satisfies section 26(a)(1),[114] or a clearing organization.[115] This provision is intended to accommodate the legitimate needs of the participants in the commodity settlement process consistent with the safekeeping of investment company assets.

The proposed contract provisions would not require that FCMs maintain specific records or furnish investment companies with specific reports concerning their commodity accounts. Under CFTC rules, FCMs must maintain daily financial ledger records of all customer transactions.[116] In addition, FCMs must supply customers with prompt confirmations of their trades and monthly statements concerning their accounts.[117] The Commission requests comment on whether the proposed rule should impose any additional recordkeeping or reporting requirements.[118] For example, would the transmission of daily account reports facilitate an investment company's compliance with the proposed limitations on FCM custody of margin gain?[119]

Subparagraph (a)(3) also would not require FCMs to indemnify investment companies or insure their assets against non-trading margin losses.[120] It appears that indemnification provisions in favor of FCM customers are not included in customary FCM account agreements.[121] Private insurance may not be available or may be unduly expensive.[122] Comment is requested on the feasibility of an indemnification or insurance requirement and whether such a requirement would be appropriate.[123]

D. Responsibilities of the Board of Directors and Delegation [124]

Under subparagraph (a)(2), the investment company's board of directors would be required to find that maintaining the investment company's assets with the FCM is in the best interests of the company and its shareholders.[125] The board would consider the FCM's financial strength and its general reputation and standing in the financial community, the FCM's internal procedures and safeguards regarding custody of the fund's assets, and such other factors as the board deems relevant.[126] This requirement is intended to complement the objective criteria set forth in proposed subparagraph (a)(1) to ensure that all considerations pertinent to the safekeeping of investment company assets are evaluated prior to depositing margin with a particular FCM.

Factors not enumerated in the proposed rule that the board may deem relevant would depend on the facts and circumstances. The board, for example, may want to consider the FCM's status as an exchange or clearing member.[127]

Subparagraph (a)(4) would require the board to establish a monitoring system to ensure compliance with the requirements of the proposed rule. This provision would require the board to create a means of receiving sufficient and timely information to alert it to any material change in circumstance.[128] If the custodial arrangement no longer complies with the proposed rule, the investment company would be required to withdraw its assets promptly. The Commission generally would expect such a withdrawal to be made within five business days. The Commission requests comment on the appropriateness of this time period.[129]

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[112] Proposed subparagraph (a)(3)(iii). As discussed *supra* at note 29, if an FCM advances its own funds to satisfy margin requirements, those funds are considered under the CEA to be customer property. Proposed subparagraph (a)(3)(iii) thus would apply without regard to whether an FCM advances its own funds or transfers investment company assets to effect the company's commodity transactions.

[113] In addition, proposed subparagraph (a)(3)(iii) would require the FCM to obtain the agreement of each FCM used for clearing purposes to comply with the segregation requirements of the CEA. *See* "Additional FCMs Used for Clearing Purposes" below.

[114] 15 U.S.C. 80a–26(a)(1). Section 26(a)(1) requires a bank to have at all times at least $500,000 in capital, surplus, and undivided profits. *See also* sections 17(f)(1) (investment company assets may be held by a bank meeting the requirements of section 26(a)(1)) and 2(a)(5), 15 U.S.C. 80a–2(a)(5) (defining bank).

[115] *See* proposed subparagraph (d)(4) (defining clearing organization in accordance with CFTC rule 1.3(q)).

[116] CFTC regulation 1.35, 17 CFR 1.35.

[117] CFTC regulation 1.33, 17 CFR 1.33.

[118] *See* Russo Letter II, *supra* note 61, at 4 (recommending that FCMs transmit daily transaction reports); rule 17f–5(a)(1)(iii)(D) and (F) (requiring records and periodic reports in connection with investment company foreign custody arrangements).

[119] *See* proposed paragraph (b), discussed under "Background—Investment Company Margin—Margin Gain" above.

[120] Indemnification could protect against the loss of investment company assets as a result of negligence or malfeasance. Third party insurance could protect against both impropriety and insolvency risks.

[121] The CFTC has established a customer reparations program that generally permits persons to seek redress with the CFTC for alleged violations of the CEA and CFTC regulations by registered FCMs. CEA section 14, 7 U.S.C. 18. Under this program, the CFTC may award damages without dollar limitation if it finds that a violation has occurred involving monetary injury. Damage awards are paid by the FCM against whom reparation is sought. *See id.*; CFTC regulations 12.1 [–.408], 17 CFR 12.1 [–.408].

[122] *See* CFTC Account Protection Study, *supra* note 89, at 63–68 (describing the experience of one commodity insurer organized in 1981, sold a year later, and no longer offering commodity coverage).

Unlike securities accounts of almost all broker-dealers registered with the Commission, FCM commodity accounts are not protected by the Securities Investor Protection Corporation ("SIPC") or mandatory insurance requirements. *See* Securities Investor Protection Act, 15 U.S.C. 78aaa–78lll (in the event of a member's financial failure, SIPC protects each securities customer for claims of up to $500,000 for cash and securities losses, with a $100,000 limit for cash losses); National Association of Securities Dealers, Inc. Rules of Fair Practice, Art. III, sec. 32 and Appendix C thereto (broker-dealer fidelity bonds). At the request of Congress and the CFTC, the CFTC staff and the NFA have studied these and other insurance mechanisms, and generally have concluded that insurance protection is neither necessary nor cost effective in the commodity context. *See, e.g.*, CFTC Account Protection Study, *supra* note 89; NFA Account Protection Study, *supra* note 49. Certain exchanges maintain trusts that could be used in the exchange's discretion to reimburse customer losses. Corcoran & Ervin, *supra* note 47, at nn.87 & 208.

[123] *See* rule 17f–5(a)(1)(iii)(A) (regarding indemnification and insurance for investment company foreign custody arrangements).

[124] As discussed below under "Additional FCMs Used for Clearing Purposes," where the FCM originating the trade uses one or more FCMs to clear the transaction, each other FCM would be subject to the rule's requirements (other than the requirement of a contract with the investment company).

[125] The rule would not require the investment company's contract with an FCM to be approved by the board. The board nonetheless may choose to review and approve the FCM contract in light of its fiduciary duties under state law. As discussed above, proposed subparagraph (a)(3) would mandate specific contract requirements.

[126] Proposed subparagraphs (a)(2)(i)–(iii). *See generally* Russo Letter II, *supra* note 61, at 4 (recommending similar factors to be considered by the board in selecting FCMs); Note 2 to rule 17f–5 (enumerating factors investment company boards should consider in selecting foreign custodians).

Under proposed subparagraph (a)(2)(i), the board would be required to consider the FCM's financial strength apart from the proposed capitalization requirements of subparagraph (a)(1)(i). The board, for example, may consider the FCM's financial history and any other lines of business undertaken by the FCM and its potential impact on the FCM's operations. *See also* Risk Assessment for Holding Company Systems, 59 FR 9689 (CFTC Mar. 1, 1993) (proposing rules to require FCM recordkeeping and reporting in connection with financial and operational risks presented by FCM affiliates).

[127] *See supra* "Background—Settlement of Futures Contracts and Commodity Options—FCM Insolvency Risks and the Settlement Process" and *infra* note 144.

[128] An investment company, for example, may arrange to receive regular reports of the FCM's financial condition. A fund also could require the FCM to notify it of changes, such as a drop in the FCM's adjusted net capital, that may affect the FCM's continued ability to meet the requirements of the rule. External sources, such as newspaper reports and other publications, may provide additional information.

[129] The Commission believes that five business days should be sufficient to withdraw margin deposits either by closing out existing positions or by transferring margin to an FCM that meets the requirements of the proposed rule. *Cf.* CFTC regulation 190.02(e) (requiring a trustee in FCM bankruptcy proceedings to transfer open customer

Under paragraph (c), the board could delegate its responsibilities for selecting and monitoring FCM arrangements to the investment company's adviser or officers, subject to the board's general oversight and certain conditions.[130] This approach is consistent with recommendations of the Division and rule amendments approved by the Commission to eliminate regulatory requirements that involve directors in detailed findings of fact that do not present serious conflicts of interest.[131]

Under proposed rule 17f–6, the board would be required to find that the delegation is in the best interests of the investment company and its shareholders.[132] In addition, the board would be required to adopt written guidelines and procedures governing the delegate's responsibilities, and make and approve changes to the guidelines and procedures as the board deems necessary.[133] The guidelines and procedures would require the delegate to notify the board of its selection of an FCM at or before the next regularly scheduled board meeting following the selection.[134] The delegate also would report any material changes in the investment company's custodial arrangements and the actions taken by the delegate with respect thereto.[135]

Reports of material changes would be given to the board as soon as reasonably practicable, but in no event later than the next regularly scheduled meeting after the event triggering the board's involvement.[136]

Delegation would not relieve the board of ultimate responsibility for the fund's custodial arrangements. Notification of an FCM's selection and reports of material changes would keep the board generally apprised of the investment company's custodial arrangements and facilitate the board's oversight of the delegate's performance. Based on this information, the board may determine to make adjustments in the written guidelines and procedures governing the delegate's responsibilities or overrule the delegate's decision to use a particular FCM. In some instances, the board may determine to rescind the delegation.

The Commission requests comment on the role and responsibilities of investment company boards and their delegates under proposed rule 17f–6. The Commission also requests comment on whether the board should be permitted to delegate its responsibilities to any other party, such as the investment company's primary bank custodian or a fund administrator, and what, if any, additional protections would be necessary or appropriate.[137]

E. Additional FCMs Used for Clearing Purposes

When the FCM that executes the investment company's trades is not an exchange or clearinghouse member, investment company margin will be transferred to one or more FCMs for clearing purposes.[138] The proposed rule would apply to each subsequent FCM in the settlement chain, although a contract with the investment company would not be required.[139]

When a non-clearing member FCM, for example, transfers investment company margin to a clearing member, the member FCM also would have to satisfy the objective requirements of proposed subparagraph (a)(1),[140] and be selected by the board (or its delegate) in accordance with proposed subparagraph (a)(2).[141] Under its contract with the investment company, the non-member could place and maintain the company's assets only with a clearing member that meets these requirements.[142] The non-member FCM also would be contractually responsible for securing the clearing member's agreement to comply with the segregation requirements of the CEA. Although the proposed approach would place certain contractual responsibilities on the non-member FCM, the board of directors and its delegate (if any) would remain responsible for the continuing appropriateness of the custodial arrangement.[143]

The Commission believes the proposed approach is appropriate to protect investment company assets when more than one FCM is involved in the settlement process. The Commission requests comment on the proposed approach and any alternatives that would ensure the safekeeping of investment company margin.[144] Specific comment is requested on whether an FCM to which assets are transferred should be required to satisfy only the objective requirements of proposed subparagraph (a)(1).[145]

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positions within four business days). Investment companies may wish to maintain alternative FCM arrangements to facilitate transfers of existing positions in the event of changed circumstances.

[130] The board would not be permitted to delegate certain responsibilities (e.g., FCM selection), while retaining others (e.g., monitoring).

[131] Protecting Investors report, *supra* note, 71 at 251–289; Exemption of Acquisitions of Securities Issued by Persons Engaged in Securities Related Businesses, Investment Company Act Release No. 19716 (Sept. 16, 1993) (eliminating the requirement in rule 12d3–1 [17 CFR 270.12d3–1] that directors determine the credit quality of debt securities of certain issuers involved in securities related activities). *See also* Letter from Matthew P. Fink, President, Investment Company Institute, to Marianne K. Smythe, Director, Division of Investment Management, SEC (Jan. 18, 1993) (recommending delegation of the board's responsibilities with respect to foreign custodian arrangements under rule 17f–5).

[132] Proposed subparagraph (c)(1).

[133] Proposed subparagraphs (c)(2) and (c)(3). The proposed approach is consistent with Investment Company Act rules 10f–3, 17a–7, and 17e–1. 17 CFR 270.10f–3, 17a–7, 17e–1. *See* Revision of Certain Annual Review Requirements of Investment Company Boards of Directors, Securities Act Release No. 7013 (Sept. 17, 1993), 58 FR 49919.

[134] The proposed notification of FCM selection also would extend to any other FCMs used for clearing purposes. *See* "Additional FCMs Used for Clearing Purposes" below.

[135] A material change would include, but not be limited to, discontinuing the use of a particular FCM or an FCM's loss of exchange or clearinghouse membership. A material change also would include circumstances that may adversely affect the FCM's financial strength, such as a change in control as a result of the FCM's sale. If appropriate, the delegate would report its reasons for continuing to use the FCM.

[136] Proposed subparagraph (c)(2)(ii).

[137] Because FCM selection also would involve brokerage considerations (*e.g.*, prompt execution and commission rates), investment company officers and advisers may be in a better position to make these determinations. In addition, officers and advisers have fiduciary duties to investment companies under section 36, 15 U.S.C. 80a–35.

[138] *See supra* notes 17–20 and 32–33 and accompanying text. *See also supra* note .

[139] Commodity customers enter into contracts only with the FCM with which orders are placed; as discussed above under "background—Settlement of Futures Contracts and Commodity Options," when one FCM acts on behalf of another, its "customer" is the FCM on whose behalf the order is effected, not that FCM's underlying customer. Thus, requiring a contract between the investment company and other FCMs in the settlement process would not be consistent with normal FCM/customer relationships.

[140] See "FCMs Eligible to Hold Investment Company Assets" above.

[141] *See* "Responsibilities of the Board of Directors and Delegation" above. Under most circumstances, the board or its delegate would evaluate the use of one or more clearing members at the same time it selects the non-member FCM. Under proposed subparagraph (c)(2)(i), if the board has delegated its responsibilities, the delegate would be required to notify the board of the selection of each FCM used for clearing purposes at or before the next regularly scheduled board meeting.

[142] Proposed subparagraph (a)(2)(iv).

[143] *See* "Responsibilities of the Board of Directors and Delegation" above, discussing proposed subparagraph (a)(4).

[144] For example, the transfer of investment company assets from one FCM to another could be eliminated by restricting FCM custody to FCM clearing members. Such a requirement, however, would limit the number of FCMs eligible to hold investment company assets. *See supra* note 91 and accompanying text. Under the proposed rule, investment companies would have the option of determining whether to execute their trades directly through a clearing member FCM.

[145] For example, the rule could require the FCM originating the fund's trades to determine whether an FCM used for clearing purposes satisfies the objective requirements of proposed subparagraph (a)(1). While such an approach would be less burdensome for investment companies, it would eliminate consideration of subjective factors relevant to the safekeeping of investment company margin.

F. Foreign-Related Commodity Transactions

Certain futures contracts and options involving foreign commodities or linked to foreign markets are traded on domestic exchanges. These transactions include commodity contracts and options involving foreign currencies and certain commodity investments that are effected through electronic links between United States and foreign exchanges.[146] Proposed rule 17f–6 would permit FCM custody of investment company margin for these domestically traded transactions, even if the margin is held overseas.[147] Because the transactions are traded on or linked to United States contract markets, margin underlying the transactions enjoys the full protections of the CEA and CFTC rules.

The CFTC has identified certain risks associated with domestically traded transactions margined in foreign currencies or overseas.[148] The CFTC requires customers with these accounts to enter into subordination agreements.[149] For example, customers trading in the currency of one jurisdiction or posting margin in the same jurisdiction must agree that, if their FCM becomes insolvent and there is a margin shortfall, claims to margin securing their trades will be subordinated to the claims of other customers.[150] The subordination requirement is intended to tie the risks of a particular jurisdiction and currency to investors engaging in commodity transactions relative to that jurisdiction and currency.[151] Investment companies depositing margin for foreign-related transactions would be subject to this requirement.[152]

The Commission requests comment on the proposed approach and whether any additional safeguards are necessary to address margin underlying foreign-related transactions. For example, should these margin deposits be required to be held in the United States? The Commission also requests specific comment on the appropriateness of investment companies entering into the required subordination agreements.[153]

Proposed rule 17f–6 would not allow FCM custody in connection with commodity investments effected on foreign exchanges.[154] These transactions are governed by special regulations, which do not provide customer funds with the full protections of the CEA and CFTC rules.[155] Although the proposed approach should not affect significantly investment company participation in foreign futures and options transactions,[156] the Commission requests comment on the proposed approach and alternatives that would address safekeeping considerations. For example, would risks be diminished if FCMs maintained custody of investment company margin in the United States and advanced their own funds for foreign exchange-traded transactions?

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rule 17f–6. The analysis states that the proposed rule would permit registered management investment companies to use FCMs and commodity clearing organizations as custodians in connection with CEA-regulated commodity transactions under conditions designed to ensure the safekeeping of investment company assets. The analysis explains that the proposed rule would provide flexibility and investor protection in a way that should minimize any impact on, or cost to, small business. To obtain a copy of the Initial Regulatory Flexibility Analysis, write to Elizabeth Krentzman, Division of Investment Management, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

V. Statutory Authority

The Commission is proposing rule 17f–6 pursuant to sections 6(c) and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 6(c), 37(a)].

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows

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[146] *See* Laurie Morse, *CME to Launch Derivatives in French Francs*, Financial Times, Sept. 16, 1993, at 23 (CME commodity trading based on the French franc, Deutsche mark, British sterling, Swiss franc, Japanese yen, and Canadian dollar); *Futures Exchanges—Open all hours*, The Economist, Nov. 6, 1993, at 107 (describing the "Globe" and "Access" computer systems). Additional transactions include those that are cleared on domestic exchanges pursuant to CFTC-approved linkage agreements between United States and foreign exchanges. Current arrangements involve the Singapore Monetary Exchange and the Sidney Futures Exchange Limited, although the Commission understands that no trading presently is conducted under the Australian agreement. *See* CFTC Interpretative Letter No. 84–19, *Mutual Offset System's Customer Funds Treatment*, [1984–1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,389 at 29 795 (CFTC Division of Trading and Markets Aug. 9, 1984); CFTC Interpretative Letter No. 86–26, *Treatment of Customer Funds Under Linkage Agreement Between Commodity Exchange, Inc. and the Sidney Future Exchange Limited*, [1986–1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,359 at 32,989 (CFTC Division of Trading and Markets Nov. 17, 1986).

[147] As discussed above under "Investment Company Margin," although FCM custody would be limited to domestically traded transactions, the proposal would not require investment company assets to be held in the United States. By virtue of proposed paragraph (a)(3)(iii), however, margin posted overseas would have to be maintained by a foreign branch of a United States bank to meet the definition of bank in section 2(a)(5). *See* International Resources Fund, Inc., Investment Company Act Release No. 2866 (Apr. 17, 1959). The Commission understands that this requirement generally would be consistent with current practices. Margin held by foreign subsidiaries of United States banks or other foreign entities would raise additional issues. *See* rule 17f–5 (governing custody of investment company assets by foreign entities in connection with foreign securities investments).

[148] *See, e.g.*, CFTC Financial and Segregation Interpretation No. 12, *Digest of Customer Funds in Foreign Depositories*, 1 Comm. Fut. L. Rep. (CCH) ¶ 7122 at 7129, 7130–31 (Nov. 16, 1976) (hereinafter CFTC Interpretation No. 12). These risks include various "location" risks, such as the risks of freezing and expropriation of margin deposits, and the risk of foreign currency fluctuations pending FCM insolvency proceedings. *Id*

[149] *Id*. The CFTC currently is reviewing Interpretation No. 12 with a view toward possible refinements.

[150] *Id*., at 7132–33. *See supra* notes 65–66—and accompanying text (regarding the treatment of margin funds in FCM bankruptcy proceedings).

[151] *See* CFTC Interpretation No. 12, *supra* note 148, at 1730.

[152] The fund's investment adviser would be expected to evaluate the risks associated with a particular foreign-related commodity transaction, such as the likelihood of expropriation or difficulties in converting foreign currencies to United States dollars, in connection with the adviser's decision to engage in that transaction on the fund's behalf. *But cf.* rule 17f–5, Note 1(d) & (e) (suggesting directors consider these risks in selecting foreign custodians). Foreign investment-related risks also would be disclosed, if material, in the fund's prospectus.

[153] Subordination would come into play only upon an FCM's insolvency, which other provisions of the proposed rule are intended to address

[154] Proposed subparagraph (d)(2) (defining exchange-traded futures contracts and commodity options to include investments traded on or subject to the rules of any contract market designated under the CEA and CFTC rules). *See supra* note 76 and accompanying text (only United States exchanges may be designated as contract markets). Although comment is requested on this approach, investment companies may use third party custodial accounts for foreign exchange-traded investments. *See* Koenig Tax-Advantaged Liquidity Fund, Inc., [pub. avail. Mar. 22, 1985

[155] *See* Foreign Futures and Foreign Options, 52 FR 28985 (Aug. 5, 1987) (recognizing "inherent limitations on the CFTC's ability to provide U.S. residents trading on foreign exchanges the substantial protections available to U.S. residents trading on U.S. contract markets"). *See also* CFTC regulations 30.1 through 30.10, 17 CFR 30.2–.10 (governing the sale of foreign exchange traded futures contracts and commodity options to United States residents).

[156] *See supra* notes 146–147 and accompanying text. It appears that most investment company foreign transactions are effected on the exempted counter market where the posting of margin generally is not required.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 et seq., 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. By adding § 270.17f–6 to read as follows:

§ 270.17f–6 Custody of investment company assets with futures commission merchants and commodity clearing organizations.

(a) A registered management investment company may place and maintain cash, securities, and similar investments with a futures commission merchant in amounts necessary to effect the company's transactions in exchange-traded futures contracts and commodity options, *provided that:*

(1) The futures commission merchant and each other futures commission merchant the futures commission merchant uses for purposes of clearing the company's transactions:

(i) Has adjusted net capital that is:

(A) At least $20,000,000 in excess of the futures commission merchant's required minimum adjusted net capital; and

(B) Equal to at least 250% of such required minimum adjusted net capital; and

(ii) Is not an affiliated person of the company or an affiliated person of such person.

(2) The board of directors of the company shall have determined that placing and maintaining the company's assets with the futures commission merchant and each other futures commission merchant used for clearing purposes is consistent with the best interests of the company and its shareholders, after considering:

(i) The financial strength of the futures commission merchant and its general reputation and standing within the financial community;

(ii) The futures commission merchant's internal procedures and safeguards regarding custody of the assets; and

(iii) Such other factors as the board deems relevant

(3) The manner in which the futures commission merchant maintains the company's assets shall be governed by a written contract which provides that:

(i) The futures commission merchant shall comply with the segregation requirements of section 4d(2) of the Commodity Exchange Act (7 U.S.C. 6d(2)) and the rules thereunder (17 CFR chapter I);

(ii) The futures commission merchant shall promptly furnish copies of or extracts from the futures commission merchant's records or such other information pertaining to the company's assets as the Commission through its employees or agents may request; and

(iii) The futures commission merchant may place and maintain the company's assets for clearing purposes only with another futures commission merchant that meets the requirements of paragraphs (a)(1) and (2) of this section, a bank that meets the requirements of section 26(a)(1) of the Act (15 U.S.C. 26(a)(1)), or a clearing organization. Each futures commission merchant used for clearing purposes shall agree to comply with the segregation requirements of section 4d(2) of the Commodity Exchange Act and rules thereunder.

(4) The board of directors shall establish a system to monitor the custodial arrangement to ensure it meets the requirements of this section. If the custodial arrangement no longer meets the requirements of this section, the company shall promptly withdraw its assets from the futures commission merchant.

(b) Subject to the requirements of paragraph (a) of this section, any gains of the company on exchange-traded futures contracts and commodity options may be maintained with the futures commission merchant in *de minimis* amounts. Gains in excess of such amounts may be maintained by the futures commission merchant until the next business day following receipt.

(c) The board of directors may delegate to the company's investment adviser or officers its responsibilities under this section, *provided that*

(1) The board determines that the delegation is consistent with the best interests of the company and its shareholders.

(2) The board adopts written guidelines and procedures under which the delegate shall act under this section, which shall include:

(i) Notifying the board of the selection of a futures commission merchant, including each other futures commission merchant used for clearing purposes, no later than the next regularly scheduled board meeting following such action; and

(ii) Reporting to the board any material change in the custodial arrangement and any action taken by the delegate with respect thereto as soon as is reasonably practicable under the circumstances, but not later than the next regularly scheduled board meeting.

(3) The board makes and approves such changes to the written guidelines and procedures required by paragraph (c)(2) of this section as the board deems necessary.

(d) For purposes of this section:

(1) Futures commission merchant is any person who is registered as a futures commission merchant under the Commodity Exchange Act (7 U.S.C. 1–25).

(2) Exchange-traded futures contracts and commodity options are commodity futures contracts, options on commodity futures contracts, and options on physical commodities conducted on or subject to the rules of any contract market designated for trading such transactions under the Commodity Exchange Act and the rules and regulations thereunder.

(3) Adjusted net capital and required minimum adjusted net capital shall be determined under rule 1.17 under the Commodity Exchange Act (17 CFR 1.17).

(4) Clearing organization has the meaning set forth in rule 1.3(d) under the Commodity Exchange Act (17 CFR 1.3(d)).

By the Commission.

Dated: May 24, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13213 Filed 5–31–94; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM94–14–000]

Nuclear Plant Decommissioning Trust Fund Guidelines; Notice of Proposed Rulemaking

May 25, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to adopt rules setting forth the guidelines for the formation, organization, and purpose of nuclear plant decommissioning trust funds, and for nuclear plant decommissioning trust fund investments.

DATES: An original and 14 copies of the written comments on this proposed rule must be filed with the Commission by August 1, 1994. An original and 14 copies of reply comments must be filed with the Commission by August 30, 1994. All comments should reference Docket No. RM94–14–000.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Joseph C. Lynch (Legal Information), Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2128.

James K. Guest (Accounting Information), Deputy Chief Accountant, Office of Chief Accountant, Federal Energy Regulatory Commission, 810 First St. NE., Washington, DC 20426, (202) 219–2602.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of the document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction

The Federal Energy Regulatory Commission is proposing to amend 18 CFR part 35 by adding a new subpart E, which would set forth the guidelines for the formation, organization, and purpose of nuclear plant decommissioning trust funds (Fund) by public utilities and for the investment of Fund assets.

II. Public Reporting Burden

The proposed rule, if adopted, would codify and clarify the Commission's guidelines regarding the organization and operation of Funds. The public reporting requirements for the information collection requirements contained in this rule are estimated to average 4 hours per response. The information will be submitted to the Commission on an annual basis. The number of respondents is estimated to be 72. The burden estimate includes the time required to implement the standards, search existing data sources, gather and maintain the data needed, and complete and review the information. The annual burden associated with this information requirement will be 288 hours.

Comments regarding these burden estimates or any other aspect of this information collection requirement, including suggestions for reducing this burden, should be filed at the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415, FAX (202) 208–2425], and sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission).

III. Background

In System Energy Resources, Inc. (System Energy I),[1] the Commission set forth the guidelines for public utilities to use when creating nuclear plant decommissioning funds and investing Fund assets. These guidelines, *inter alia*, were based on the then applicable Internal Revenue Service (IRS) standards for Fund investments, which imposed on Fund investments the same investment restrictions that the Internal Revenue Code (IRC) imposed on Black Lung Disability Trusts.[2] These investment restrictions limit investments to relatively conservative investments.

However, Section 1917 of the Energy Policy Act of 1992,[3] among other things, repealed the portion of section 468A(e)(4) of the IRC that restricted the types of assets in which a Fund could invest and still qualify for tax benefits. On December 30, 1992, the IRS amended its regulations to reflect the statutory change.

In response to section 1917 of the Energy Policy Act and the IRS's revised regulations, the Commission, in System Energy Resources, Inc. (System Energy II),[4] clarified its policy regarding permissible Fund investments. In that order, the Commission announced its policy to continue to restrict Fund investments to Black Lung assets. The Commission's order provided that:

> Except to the extent that a public utility can demonstrate in advance that a proposal [to deviate from the guidelines] offers equal or greater assurance of the availability of funds at the time of decommissioning and is at least as beneficial to consumers as the guidelines specified below, public utilities shall limit the investments in Nuclear Decommissioning Reserve Funds to: (1) public debt securities of the United States; (2) obligations of a State or local government which are not in default as to principal or interest; and (3) time or demand deposits in a bank, as defined in 26 U.S.C. 581 [5] or an insured credit union, within the meaning of 12 U.S.C. 1752(7), [6] located in the United States. [7]

Subsequently, Commonwealth Edison Company (Edison), the Arkansas Public Service Commission, the Louisiana Public Service Commission, and the Mississippi Public Service Commission (jointly, State Commissions), the City of New Orleans, Louisiana (New Orleans), Duke Power Company (Duke) (on its own behalf and with TU Electric Company, jointly, Duke/TU), the Edison Electric Institute (EEI), a group of investment advisory and trust companies (Investment/Trust Companies),[8] Maine Yankee Atomic Power Company (Maine Yankee), the National Association of Regulatory Utility Commissioners (NARUC), Oglethorpe Power Corporation, Old Dominion Electric Cooperative, the National Rural Electric Cooperative Association, and North Carolina Electric Membership Corporation (collectively, Cooperatives), System Energy Resources (System Energy), a group of electric

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[1] 37 FERC ¶§ 61,261 (1986).

[2] 36 FERC at 61,726–728. IRC section 486A(e)(4) imposed investment restrictions on Fund investments by cross-referencing IRC section 501(c)21, which allows a deduction for a contribution only to those Black Lung Disability Trusts that meet certain investment restrictions.

[3] Pub. L. No. 102–486, 106 Stat. 2776, 3024–25 (1992); see 26 U.S.C. § 468A(e) (1988).

[4] 65 FERC ¶ 61,083 (1993).

[5] 26 U.S.C. 581 provides that the term "bank" means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) or of any State, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency, and which is subject by law to supervision and examination by State or Federal authority having supervision over banking institutions. Such term also means a domestic building and loan association.

[6] 12 U.S.C. 1752(7) provides that the term "insured credit union" means any credit union the member accounts of which are insured in accordance with the provisions of subchapter II of this chapter.

[7] 65 FERC at 61,514.

[8] A list of the investment advisory and trust companies appears in Appendix A. **Note:** This Appendix will not appear in the Code of Federal Regulations.

utility companies (Utility Companies),[9] the Pennsylvania Public Utility Commission (Pennsylvania Commission) and the Department of Energy filed requests for rehearing of System Energy II.[10]

Companies, Cooperatives, the Department of Energy, Duke, Edison, Edison Electric, Investment/Trust Companies, NARUC, New Orleans, Pennsylvania Commission, State Commissions and the Utility Companies (collectively, Commenters) argue, among other things, that the Commission should vacate its order in System Energy II and adopt alternative standards for Fund investments. While the Department of Energy does not assert that the Black Lung guidelines for Fund investments are necessarily incorrect, it suggests that the Commission should have the benefit of a more extensive examination of this matter before it adopts a policy that may guide Fund investments for many years.[11]

IV. Criticisms of Black Lung Guidelines

Commenters recognize that the Commission's goal in System Energy II was to provide the greatest assurance possible that the necessary funds will be available at the time of decommissioning. But Commenters submit that the investment standards that the Commission set forth in System Energy II are inappropriate to this end. Their criticisms of the System Energy II guidelines have several principal themes with numerous variations. They argue that the guidelines: (a) Are not a guarantee against loss; (b) will result in increased risk that the returns will be insufficient to meet the decommissioning obligation; (c) will increase costs to customers to make up for what Commenters see as an unnecessary shortfall; (d) are inconsistent with the intention of Congress in removing the Black Lung restrictions on nuclear decommissioning trust funds from the IRC; and (e) will result in increased litigation and administrative costs.

Commenters maintain that restricting Fund investments to Black Lung assets will not necessarily minimize the risk that those funds will be lost. They state that many state and local obligations that are not in default (and so qualify as Black Lung assets) are, nevertheless, extremely risky.[12]

Commenters state that decommissioning is inflation-sensitive because it is a long-term obligation, and the decommissioning process is labor and energy intensive.[13] Commenters argue that Black Lung restrictions do not allow Funds to adjust for inflation and that imposition of these guidelines results in greater collections from ratepayers than would otherwise occur if Funds could acquire prudent investments providing greater yields.[14] Commenters urge the Commission to allow Funds to diversify beyond Black Lung assets; they argue that broader investment options will ensure that adequate funds will be available for decommissioning, while at the same time reducing the amount that public utilities must collect from their wholesale customers to meet the decommissioning liability.[15]

Commenters contend that the Commission's order restricting Fund investments to Black Lung assets is inconsistent with Congress' intent in removing Black Lung restrictions on Fund investments from the IRC.[16] Commenters also note that the Commission's Black Lung restrictions on Fund investments may be incompatible with state guidelines for that portion of Fund investments that is state-jurisdictional.[17] They fear that a discrepancy between Commission and state guidelines may result both in increased administrative costs (and reduced efficiency) and in increased litigation.[18]

V. Commenters' Recommendations

Commenters propose that the Commission withdraw the Black Lung guidelines and adopt one of several investment standards that would permit investment in a broader range of assets. Commenters suggest, for example, that the Commission adopt the prudent person standard that Congress has imposed for the investment of pension plan assets.[19] They argue that this standard is well-established and that investment advisors and other fiduciaries thoroughly understand its requirements. Most importantly, they submit, the prudent person standard permits an investment advisor or other fiduciary to tailor investments to general economic conditions, taking into account the remaining life of the plant before decommissioning.[20]

Commenters also suggest that, as an alternative to the prudent person standard, the Commission could either adopt the prudent investor standard,[21] or prescribe investment-grade limitations on investments in equities and corporate bonds and limit the portion of the Fund assets that a trustee may invest in particular classes of assets.[22] Duke/TU suggests that it may be appropriate for Funds to take additional risks in the early years in order to achieve higher returns, while investing more cautiously in the later years to ensure protection of principal.[23] New Orleans suggests that the Commission might apply to Funds the investment standards that it is adopting for Post-Employment Benefits Other Than Pensions.[24]

Commenters also suggest that, where the Commission-jurisdictional portion of a decommissioning trust fund is relatively small, the Commission could consider using state-imposed investment restrictions for the Commission-jurisdictional portion of the decommissioning trust fund.[25]

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[9] A list of the Utility Companies appears in Appendix B. **Note:** This Appendix will not appear in the Code of Federal Regulations.

[10] We will treat the requests for rehearing of System Energy II as comments in this proceeding. However, these parties may still file initial and reply comments, as provided below, if they wish to do so.

[11] Contemporaneously with this order we are issuing an order denying rehearing in System Energy II. However, we are commencing this Notice of Proposed Rulemaking to accord those guidelines further consideration. Utilities must continue to abide by the Black Lung guidelines pending completion of this rulemaking.

[12] Cooperatives Comments at 12; Duke Comments at 4, n.2; EEI Comments at 11; Investment/Trust Companies Comments at 14; Utility Companies Comments at 14.

[13] See, e.g. Cooperatives Comments at 11; Investment/Trust Companies Comments at 12, Utility Companies Comments at 12.

[14] See, e.g. Cooperatives Comments at 12.

[15] Cooperatives Comments at 13–14; Duke Comments at 4, n.2; EEI Comments at 7–9; Investment/Trust Companies Comments at 14–17 New Orleans Comments at 3–4; Utility Companies Comments at 14–17.

[16] Investment/Trust Companies Comments at 13 Utility Companies Comments at 13.

[17] EEI is aware of only one state that limits Fund investments to Black Lung assets. EEI Comments at 14.

[18] Investment/Trust Companies Comments at 7, Utility Companies Comments at 17.

[19] 29 U.S.C. 1104

[20] Cooperatives Comments at 16–17; Investment Trust Companies Comments at 18–19, Utility Companies Comments at 18–19

[21] Cooperatives suggest this standard, which appears at section 227 Restatement (Third) of Trusts. See Restatement (Third) of Trusts section 227 (1992). Cooperatives state that the prudent investor standard highlights diversification as fundamental to risk management and would allow Fund trustees the flexibility to obtain the maximum return on ratepayer-contributed funds. Cooperatives Comments at 14–16.

[22] Cooperatives Comments at 17; Investment Trust Companies Comments at 19–20, Utility Companies Comments at 19–20

[23] Duke/TU Comments at 13; see EEI Comments at 10

[24] New Orleans Comments at 5–6; see Post Employment Benefits Other Than Pensions, 61 FERC ¶61,330 (1992), *rehearing denied*, 65 FERC ¶61,035 (1993).

[25] Investment/Trust Companies Comments at 20, Utility Companies Comments at 20. Cooperatives state that the Commission "defers" to state regulation of securities issuances under section 204 of the Federal Power Act (FPA), and suggest that the Commission could also "defer" to state standards

Continued

VI. Alternative Proposed Guidelines

Based on the comments that it has accepted into this proceeding, and on the Commission's evaluation of this issue, the Commission is reconsidering its guidelines for Funds and for Fund investments. The Commission proposes to adopt, in proposed § 35.32, certain general guidelines for Funds [26] and, in proposed § 35.33, one of three alternative specific guidelines for Fund investments that appear in the proposed regulatory text.

The general guidelines will be in § 35.32. They will govern the organization and operation of the Fund. The general guidelines provide that the Fund must be an external trust fund and that the Trustee must be independent of the utility, have a net worth of at least $100 million, and exercise the care that a reasonable person would use in the same circumstances.[27] The general guidelines further provide that the Trustee must keep accurate and detailed records, and open the Fund to inspection and audit. The Trustee also must limit Fund investments to those that the Commission allows and must not invest in any securities of the utility that owns the plant, or in the utility's affiliates, associates, successors or assigns.

The Trustee may only use the Fund to decommission the nuclear power plant to which the Fund relates, and to pay any administrative or other expenses of the Fund. If Fund balances exceed the amount necessary for plant decommissioning, the utility will refund the excess to its customers in a manner that the Commission will determine. The utility must deposit in the Fund at least quarterly all monies that it collects in Commission-jurisdictional rates to fund decommissioning.

The general guidelines also provide that establishing a Fund does not relieve a utility of any obligation that it may have to decommission a nuclear power plant.

The specific guidelines will be in § 35.33. They will control what investments a Trustee may make. The Commission is considering three alternative specific guidelines for Fund investments: Alternative 1: No change (*i.e.*, continue using the Black Lung guidelines); [28] Alternative 2: The use of a reasonable person standard with no express limitations; or Alternative 3: The use of the reasonable person standard, but with express limitations on the quality of investments and the proportion of Fund assets that the trustee may invest in particular classes of assets over the life of the Fund.[29]

In deciding how Fund assets should be invested, the competing concerns are security on the one hand and maximizing return on the other hand. Alternative 1 is a continuation of the Black Lung guidelines. The Commission explained in both System Energy I and System Energy II that its overriding concern was that funds be available at the time decommissioning takes place. This concern prompted the Commission previously to rely upon the Black Lung guidelines as defining the limits of what were permissible investments. This concern is equally present today. Consequently, one of the options under consideration is the continuation of the Black Lung guidelines.

Alternative 2 envisions the use of a "reasonable person" standard—a standard that encompasses greater flexibility. In the context of a review of the prudence of a utility's decisionmaking, the Commission has explained this standard as follows:

> In performing our duty to determine the prudence of specific costs, the appropriate test to be used is whether they are costs which a reasonable utility management * * * would have made, in good faith, under the same circumstances, and at the relevant point in time * * *. [O]ur task is to review the prudence of the utility's actions and the costs resulting therefrom based on the particular circumstances existing either at the time the challenged costs were actually incurred, or the time the utility became committed to incur those expenses.[30]

However, we recognize that what we are concerned with here is a different factual setting. Accordingly, in addition to requesting comments on Alternative 2 generally, the Commission also solicits comments on what should be the precise definition and content of this standard in this circumstance. Should the standard encompass the "prudent person" standard, which has long governed trust investment,[31] or should it, for example, embody the "prudent investor" standard, which Cooperatives have proposed? [32] The two standards are different. The prudent person standard focuses on each investment individually and also proscribes certain investments as too risky.[33] The prudent investor standard, in contrast, does not focus on any single investment but rather insists on an evaluation of the entire portfolio (and thus allows more risk).[34] The Commission also requests comments on the use of other standards to govern Fund investments.

Alternative 3 provides for a reasonable person standard, and also provides express guidelines on what Fund investments are and are not permissible. In this regard, the Commission solicits comments on Alternative 3 generally, and also both on the definition and content of the reasonable person standard in this circumstance [35] and, as noted *supra* note 29, on the particular express limitations on Fund investments.

Finally, the Commission also requests comments on two additional issues: (1) The treatment of monies collected in rates for decommissioning prior to the effective date of a final rule in this proceeding (and earnings on such contributions); and (2) whether, and under what circumstances, the Commission should allow state trust funds and standards to be employed for that portion of contributions and earnings that are related to Commission-jurisdictional service.

VII. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[36] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment—such as electric rate filings under sections 205 and 206 of the FPA and the establishment of just and reasonable rates.[37] The proposed rule, regarding the collection and subsequent investment of monies to fund nuclear plant decommissioning, involves such matters. Accordingly, no environmental consideration is necessary.

VIII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act [38] requires rulemakings to either contain a description and analysis of the impact the proposed rule will have on small entities or a certification that the rule will not have a substantial economic impact on a substantial number of small entities. Most public utilities to which the proposed rule would apply do not fall within the definition of small entity.[39] Consequently, the Commission certifies that this proposed rule will not have "a significant economic impact on a substantial number of small entities."

IX. Information Collection Statement

The Office of Management and Budget's (OMB) regulations [40] require that OMB approve certain information collection requirements imposed by an agency. The information collection requirements in this proposed rule are contained in FERC–516 "Electric Rate Filings" (1902–0096).

The Commission uses the data collected in these information requirements to carry out its regulatory responsibilities pursuant to the Federal Power Act and the Energy Policy Act of 1992. The Commission's Office of Electric Power Regulation uses the data for determination of electric rate filings submitted by industry. The Office of the Chief Accountant uses the data to ensure that industry has followed the appropriate procedures for assumptions of obligation and also to ensure that jurisdictional companies comply with the Uniform System of Accounts.

Interested persons may send comments regarding collection of information to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, (202) 208–1415]; and to the Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

X. Public Comment Procedures

The Commission invites interested persons to submit written comments on the proposed guidelines. Parties must file with the Commission an original and 14 copies of their comments no later than August 1, 1994. Parties must file an original and 14 copies of reply comments with the Commission no later than August 30, 1994. Parties should submit their comments and reply comments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM94–14–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Section, Room 3408, at 941 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend part 35, chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. 18 CFR Part 35 is amended by adding Subpart E—Regulations Governing Nuclear Plant Decommissioning Trust Funds, consisting of § 35.32 and one of three alternative proposed § 35.33, to read as follows:

Subpart E—Regulations Governing Nuclear Plant Decommissioning Trust Funds

Sec.

35.32 General provisions.

35.33 Specific provisions

§ 35.32 General provisions.

(a) In order to provide funds for the decommissioning of a nuclear power plant, a public utility must establish, organize and maintain a nuclear plant decommissioning trust fund (Fund). The Fund must meet the following criteria:

(1) The Fund must be an external trust fund in the United States under the control of a Trustee (Trustee) that is independent of the utility, its subsidiaries, affiliates or associates.

(2) The Trustee must exercise the standard of care, whether in investing or otherwise, that a reasonable person would use in the same circumstances.

(3) The Trustee shall have a net worth of at least $100 million.

(4) The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements and transactions of the Fund. All accounts, books and records relating to the Fund shall be open to inspection and audit at reasonable times by the utility or its designee or by the Commission or its designee. The utility or its designee must notify the Commission prior to performing any such inspection or audit. The Commission may direct the utility to conduct an audit or inspection.

(5) Absent the express authorization of the Commission, no part of the assets of the Fund may be used for, or diverted to, any purpose other than to fund the costs of decommissioning the nuclear power plant to which the Fund relates, and to pay administrative costs and other incidental expenses, including taxes, of the Fund.

(6) If the Fund balances exceed the amount actually expended for decommissioning after decommissioning has been completed, the utility shall refund the excess jurisdictional amount to jurisdictional ratepayers, in a manner to be determined by the Commission.

(7) The Trustee shall limit Fund investments to those investments that the Commission allows in the specific provisions of § 35.33. The Trustee shall not in any circumstance invest in any securities of the utility, its subsidiaries, affiliates, or associates or their successors or assigns.

(8) The Trustee shall maximize the after-tax earnings over the life of the Fund, giving consideration to liquidity risk, diversification and other prudent investment objectives, consistent with sound business practices and subject to the specific provisions of § 35.33.

(9) Each utility shall seek to minimize the payment of taxes with respect to amounts collected for nuclear power plant decommissioning. In this regard, the utility shall develop, organize and maintain the Fund, when it is consistent with sound business practices to do so, to take maximum advantage of any tax deductions and credits.

(10) Each utility shall deposit in the Fund at least quarterly (or more often if the utility wishes to make deposits more often) all monies collected in

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of fiduciary care governing Fund investments. However, we note that the Commission does not "defer" to state regulation of securities issuances under section 204 of the FPA. Rather, the Commission does not have jurisdiction over issuances of securities or assumption of liability of a public utility organized and operating in a state that regulates the public utility's issuances of securities or assumptions of liability. 16 U.S.C. 824c(f).

[26] These have long been established, although not codified in the Commission's regulations, and were not at issue in System Energy II. Compare 37 FERC at 61,726–28 with 65 FERC at 61,513–14.

[27] We note that we invite comments below on the meaning of the reasonable person standard under Alternatives 2 and 3; we likewise invite comments on its meaning in this more general context.

[28] Several parties have challenged the Commission's jurisdiction to continue to impose Black Lung guidelines for Fund investments. The Commission requests comments on this issue.

[29] In Alternative 3, the Commission proposes particular express limitations on Fund investments. The Commission invites comments not only on the concept of express limitations generally, but also on the particular express limitations proposed.

[30] New England Power Company, Opinion No. 231, 31 FERC ¶ 61,047 at 61,084 (1985).

[31] See Restatements (Second) of Trusts § 227 (1959).

[32] See Cooperatives Comments at 14–16.

[33] See Restatement (Second) of Trusts section 227 & comments a through o (1959).

[34] See Restatement (Third) of Trusts § 227 (1992).

[35] Because Alternative 3 contains express limitations on Fund investments while Alternative 2 does not, we invite comments on whether the definition and content of a reasonable person standard would be the same no matter which alternative is selected, or would they be different.

[36] Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47987 (Dec. 17, 1987); FERC Stats. & Regs., Regulations Preambles 1986–90 ¶ 30,783 (1987)(codified at 18 CFR Part 380).

[37] 18 CFR 380.4(a)(15).

[38] 5 U.S.C. 601–612.

[39] See 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632, which defines "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation.

[40] 5 CFR 1320.13.

Commission-jurisdictional rates to fund nuclear power plant decommissioning.

(b) The establishment, organization, and maintenance of the Fund shall not relieve the utility or its subsidiaries, affiliates or associates of any obligations they may have as to the decommissioning of the nuclear power plant.

§ 35.33 Specific provisions.

Alternative 1:

(a) In addition to the general provisions of § 35.32, the Trustee must observe the following specific provisions of § 35.33(b).

(b) The Trustee may only use Fund assets to:

(1) Satisfy the liability of a utility for decommissioning costs of the nuclear power plant to which the Fund relates as provided by § 35.32; and

(2) Pay administrative costs and other incidental expenses, including taxes of the Fund as provided by § 35.32; and

(3) To the extent that the Trustee does not currently require the assets of the Fund for the purposes described in paragraphs (b)(1) and (b)(2), the Trustee may only invest those assets in:

(i) Public debt securities of the United States;

(ii) Obligations of state or local governments that are not in default as to principal or interest; or

(iii) Time or demand deposits in a bank, as defined in 26 U.S.C. 581 or in an insured credit union, within the meaning of 12 U.S.C. 1752(7), located in the United States.

(c) The utility must submit to the Commission by June 30 of each year a copy of the financial report furnished to the utility by the Fund trustee that shows for the most recent 12-month period: (1) Fund assets and liabilities at the beginning of the period; (2) Activity of the Fund during the period, including contributions received, purchases and sales of investments, gains and losses from investment activity, disbursements from the Fund for decommissioning activity and payment of Fund expenses, including income taxes; and (3) Fund assets and liabilities at the end of the period. If an independent public accountant has expressed an opinion on the report or on any portion of the report, then that opinion must accompany the report.

Alternative 2:

(a) In addition to the general provisions of § 35.32, the Trustee must observe the following specific provisions of § 35.33(b).

(b) The Trustee may only use Fund assets to:

(1) Satisfy the liability of a utility for decommissioning costs of the nuclear power plant to which the Fund relates as provided by § 35.32; and

(2) Pay administrative costs and other incidental expenses, including taxes of the Fund as provided by § 35.32; and

(3) To the extent that the Trustee does not currently require the assets of the Fund for the purposes described in paragraphs (b)(1) and (b)(2), the Trustee, when investing Fund assets, must exercise the same standard of care that a reasonable person would exercise in the same circumstances.

(c) The utility must submit to the Commission by June 30 of each year a copy of the financial report furnished to the utility by the Fund trustee that shows for the most recent 12-month period: (1) Fund assets and liabilities at the beginning of the period; (2) Activity of the Fund during the period, including contributions received, purchases and sales of investments, gains and losses from investment activity, disbursements from the Fund for decommissioning activity and payment of Fund expenses, including income taxes; and (3) Fund assets and liabilities at the end of the period. If an independent public accountant has expressed an opinion on the report or on any portion of the report, then that opinion must accompany the report.

Alternative 3:

(a) In addition to the general provisions of § 35.32, the Trustee must observe the following specific provisions of § 35.33(b).

(b) The Trustee may only use Fund assets to:

(1) Satisfy the liability of a public utility for decommissioning costs of the nuclear power plant to which the Fund relates as provided by § 35.32; and

(2) Pay administrative costs and other incidental expenses, including taxes of the Fund as provided by § 35.32; and

(3) To the extent that the Trustee does not currently require the assets of the Fund for the purposes described in paragraphs (b)(1) and (b)(2), the Trustee, when investing Fund assets, must exercise the same standard of care that a reasonable person would exercise in the same circumstances; and

(ii) must conform to the following guidelines:

(A) The Trustee must limit investment in equity securities to no more than a fixed percentage of Fund assets. As the nuclear power plant gets closer to the end of its licensed life, this percentage must decrease according to the following schedule:

(*1*) Commencement of operation until 15 years from end of license = 50 percent;

(*2*) 15 years from end of license to 10 years from end of license = 40 percent;

(*3*) 10 years from end of license to 5 years from end of license = 25 percent;

(*4*) 5 years from end of license to 2 years from end of license = 10 percent;

(*5*) 2 years from end of license to end of license = 0 percent.

(B) The Trustee must limit all investments, as follows:

(*1*) Common stocks must be listed on a principal exchange, and each company's common stock must have an aggregate market value of no less than $500 million and a rating of not lower than A– (Standard & Poors).

(*2*) Corporate, state, municipal, and local bonds must have a rating of not lower than Aa (Moody's) or A– (Standard & Poors).

(*3*) The Trustee may invest in cash equivalents, such as United States Treasury bills or high-grade commercial paper (*i.e.*, of not lower quality than A–2 (Standard & Poors) or P–2 (Moody's)).

(*4*) The Trustee may invest no more than 10 percent of the market value of the Fund in a single industry and no more than 2 percent of the market value of the Fund in a single company or its subsidiaries, affiliates or associates.

(c) The utility must submit to the Commission by June 30 of each year a copy of the financial report furnished to the utility by the Fund trustee that shows for the most recent 12-month period: (1) Fund assets and liabilities at the beginning of the period; (2) Activity of the Fund during the period, including contributions received, purchases and sales of investments, gains and losses from investment activity, disbursements from the Fund for decommissioning activity and payment of Fund expenses, including income taxes; and (3) Fund assets and liabilities at the end of the period. If an independent public accountant has expressed an opinion on the report or on any portion of the report, then that opinion must accompany the report.

[FR Doc. 94–13263 Filed 5–31–94; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional revisions pertaining to a previously proposed amendment to the Alabama Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Alabama Plan) under the Surface Mining Control and Reclamation act of 1977 (SMCRA). The additional revisions for Alabama's rules pertain to procedures for ranking and selecting and procedures for obtaining right-of-entry. Alabama has withdrawn its proposed change of date in its initial submission of October 1, 1993, in the emergency program section of the Plan.

This document sets forth the times and locations that the Alabama Plan and proposed changes will be available for public inspection, and the dates and times of the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received on or before 4 p.m. on June 16, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to Jesse Jackson, Jr., Director, Birmingham Field Office, at the address listed below. Copies of the Alabama program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below, during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSM Birmingham Field Office.

Jesse Jackson, Jr., Director, Birmingham Field Office, 135 Gemini Circle, Suite 215, Birmingham, Alabama 35209, Telephone: (205) 290–7287

Alabama Department of Industrial Relations, Abandoned Mine Lands Program, 649 Monroe Street, Montgomery, Alabama 36130, Telephone: (205) 242–8265.

FOR FURTHER INFORMATION CONTACT: Jesse Jackson, Jr., Director, Birmingham Field Office, (205) 290–7283.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program
II. Submission of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Alabama Program

Titlle IV of SMCRA Public Law 95–87, 30 U.S.C. 1202 *et seq.*, establishes an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. As enacted in 1977, lands and waters eligible for reclamation were those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

The AML Reclamation Act of 1990 (Pub. L. 101–508, Title VI, Subtitle A, Nov. 5, 1990, effective Oct. 1, 1991) amended SMCRA, 30 U.S.C. 1231 *et seq.*, to provide changes in the eligibility of project sites for AML expenditures. Title IV of SMCRA now provides for reclamation of certain mine sites where the mining occurred after August 3, 1997. These include interim program sites where bond forfeiture proceeds were insufficient for adequate reclamation and sites affected any time between August 4, 1997, and November 5, 1990, for which there were insufficient funds for adequate reclamation due to the insolvency of the bond surety. Title IV provides that a State with an approved AMLR program has the responsibility and primary authority to implement the program.

The Secretary of the Interior approved the Alabama Plan on May 20, 1982. Information pertinent to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings and the disposition of comments can be found in the May 20, 1982, **Federal Register** (47 FR 22062). Information concerning the previously approved plan and the proposed amendments may be obtained from the agency offices listed under **ADDRESSES**. Subsequent actions taken with regard to the Alabama Plan can be found at 30 CFR 901.25.

The Secretary has adopted regulations at 30 CFR part 884 that specify the content requirements of a State reclamation plan and the criteria for plan approval. The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.13 in approving or disapproving an amendment or revision.

II. Submission of the Proposed Amendment

By letter dated October 1, 1993, Alabama submitted a reclamation plan amendment to OSM (Administrative Record No. AL–0504). This formal amendment request was preceded by a letter dated July 12, 1993, which requested that the Alabama Plan be updated by revision. OSM determined on September 17, 1993, that the proposed revision represented a major change in the scope of the AMLR program and would necessitate processing as a formal Plan amendment The proposed amendment consisted of revised narratives to replace portions of three sections of the approved Alabama Plan as provided for by 30 CFR 884.13. Specifically, the Alabama Plan was revised to modify the eligibility date for AMLR reclamation from August 3, 1977, to November 5, 1990. This change was applicable to both nonemergency and emergency AMLR project sites and will allow reclamation of sites mined for coal after August 3, 1977.

OSM announced receipt of the proposed amendment in the October 21, 1993, **Federal Register** (58 FR 54313) and invited public comment on its adequacy. The public comment period ended on November 22, 1993.

During its review of the amendment, OSM identified concerns relating to: (a) the State's lack of specificity in proposing to extend eligibility to sites mined and abandoned prior to November 5, 1990, and (b) the State's plan to extend emergency eligibility to sites mined after August 3, 1977. OSM notified Alabama of the concerns by letter dated January 27, 1994 (Administrative Record No. AL–508). Alabama responded in a letter dated April 5, 1994 (Administrative Record No. AL–509), by submitting a revised amendment

Alabama proposes additional revisions to its procedures for ranking and selection by adding specific language describing those sites eligible for abandoned mine land reclamation. Alabama also proposes revisions to its procedures for obtaining right-of-entry by adding specific language describing those lands eligible for treatment under the AMLR Plan. Alabama is withdrawing its proposed change of date in the emergency program section of the AMLR Plan. It should also be noted that in its initial submission of October 1, 1993, Alabama included a copy of Senate Bill 162 which amended the statutory definition of "abandoned mine lands."

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Alabama program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h) and 30 CFR 884.14, OSM is seeking comments on whether the proposed amendment

satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alabama Plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Records.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior [516 DM 6, appendix 8, paragraph 8.4B(29)].

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State [or Tribal] submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State [or Tribe]. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface Mining, Underground mining.

Dated: May 25, 1994.

Alfred E. Whitehouse,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–13243 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–05–M

Minerals Management Service

30 CFR Chapter II

Meeting of the Federal Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Department of the Interior (Department) is establishing a Federal Gas Valuation Negotiated Rulemaking Committee (Committee) to develop specific recommendations with respect to Federal gas valuation pursuant to its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.* (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the Agency in performing its duties under FOGRMA. Once approved, the Committee's charter to conduct a negotiated rulemaking will be filed with the appropriate committees of Congress and the Library of Congress in accordance with section 9(c) of section 9(a)(2) of the Federal Advisory Committee Act (FAA), 5 U.S.C. App. 2.

DATES: The Committee will have its first meeting on June 15 and 16, 1994 from 8 a.m. to 5 p.m. and on June 17, 1994, from 8 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in the auditorium of building 85 on the Denver Federal Center, West Sixth Avenue and Kipling Street, Lakewood, Colorado.

Written statements may be submitted to Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3920, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3920, Denver, CO 80225–0165, telephone number (303) 275–7200, fax number (303) 275–7227.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register.**

The meeting will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to the address listed above. Minutes of Committee meetings will be available for public inspection and copying 10 days following each meeting at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address. Additional background information regarding the establishment and membership of this Committee will be released in the **Federal Register** announcing the approval of the charter.

Dated: May 26, 1994.

James W. Shaw,

Associate Director for Royalty Management

[FR Doc. 94–13371 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

Privacy Act; Implementation

AGENCY: Department of the Navy, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy has revised its Privacy Act Instruction. This proposed rule re-establishes the Navy's Privacy Program and incorporates the changes made to the revised Instruction.

EFFECTIVE DATE: Comments must be received on or before August 1, 1994, to be considered by this agency.

ADDRESSES: Send comments to Mrs. Gwen Aitken, Office of the Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwen Aitken at (703) 697–1459 or DSN 227–1459.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 701

Privacy.

Accordingly, 32 CFR part 701, subparts F and G are revised as follows:

PART 701 - AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

Subpart F - Department of the Navy Privacy Act Program

701.100 Purpose.
701.101 Applicability.
701.102 Definitions.
701.103 Policy.
701.104 Responsibility and authority.
701.105 Systems of records.
701.106 Safeguarding records in systems of records.
701.107 Criteria for creating, altering, amending, and deleting Privacy Act systems of records.
701.108 Collecting information about individuals.
701.109 Access to records.
701.110 Amendment of records.
701.111 Privacy Act appeals.
701.112 Disclosure of records.
701.113 Exemptions.
701.114 Enforcement actions.
701.115 Computer matching program.

Subpart G - Privacy Act Exemptions

701.116 Purpose.
701.117 Exemption for classified records.
701.118 Exemptions for specific Navy record systems.
701.119 Exemptions for specific Marine Corps records systems.

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

Subpart F–Department of the Navy Privacy Act Program

§ 701.100 Purpose.

This subpart F and subpart G of this part implement the Privacy Act (5 U.S.C. 552a), and DoD Directive 5400.11 [1], and DoD 5400.11–R [2], (see 32 CFR part 310) and provides Department of the Navy policies and procedures for:

(a) Governing the collection, safeguarding, maintenance, use, access, amendment, and dissemination of personal information kept by Department of the Navy in systems of records;

(b) Notifying individuals if any systems of records contain a record pertaining to them;

(c) Verifying the identity of individuals who request their records before the records are made available to them;

(d) Notifying the public of the existence and character of each system of records.

(e) Exempting systems of records from certain requirements of the Privacy Act; and

(f) Governing the Privacy Act rules of conduct for Department of the Navy personnel, who will be subject to criminal penalties for noncompliance with 5 U.S.C. 552a, as amended by the Computer Matching Act of 1988.

§ 701.101 Applicability.

This subpart and subpart G of this part apply throughout the Department of the Navy. It is also applicable to contractors by contract or other legally binding action, whenever a Department of the Navy contract provides for the operation of a system of records or portion of a system of records to accomplish a Department of the Navy function. For the purposes of any criminal liabilities adjudged, any contractor or any employee of such contractor is considered to be an employee of Department of the Navy. In case of a conflict, this subpart and subpart G of this part take precedence over any existing Department of the Navy directive that deals with the personal privacy and rights of individuals regarding their personal records, except for disclosure of personal information required by 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act and implemented by Secretary of the Navy Instruction 5720.42E [3], "Department of the Navy Freedom of Information Act Program."

§ 701.102 Definitions.

For the purposes of this subpart and subpart G of this part, the following meanings apply.

(a) *Access.* The review or copying of a record or parts thereof contained in a system of records by any individual

(b) *Agency.* For the purposes of disclosing records subject to the Privacy Act between or among Department of Defense (DoD) components, the Department of Defense is considered a single agency. For all other purposes, Department of the Navy is considered an agency within the meaning of Privacy Act.

(c) *Confidential source.* A person or organization who has furnished information to the Federal Government either under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 701.100.

[3] Copies available from Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

(d) *Defense Data Integrity Board.* Consists of members of the Defense Privacy Board, as outlined in DoD Directive 5400.11 and, in addition, the DoD Inspector General or the designee, when convened to oversee, coordinate and approve or disapprove all DoD component computer matching covered by the Privacy Act.

(e) *Disclosure.* The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review), to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

(f) *Federal personnel.* Officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals or survivors thereof, entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(g) *Individual.* A living citizen of the United States or alien lawfully admitted to the U.S. for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf. No rights are vested in the representative of a deceased person under this instruction and the term "individual" does not embrace an individual acting in a non-personal capacity (for example, sole proprietorship or partnership).

(h) *Individual access.* Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.

(i) *Maintain.* Includes maintain, collect, use, or disseminate.

(j) *Member of the public.* Any individual or party acting in a private capacity.

(k) *Minor.* Under this subpart and subpart G of this part, a minor is an individual under 18 years of age, who is not a member of the U.S. Navy or Marine Corps, nor married.

(l) *Official use.* Under this subpart and subpart G of this part, this term is used when Department of the Navy officials and employees have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties.

(m) *Personal information.* Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

(n) *Privacy Act (PA) request.* A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

(o) *Record.* Any item, collection, or grouping of information about an individual that is maintained by a naval activity including, but not limited to, the individual's education, financial transactions, and medical, criminal, or employment history, and that contains the individual's name or other identifying particulars assigned to the individual, such as a finger or voice print or a photograph.

(p) *Review authority.* An official charged with the responsibility to rule on administrative appeals of initial denials of requests for notification, access, or amendment of records. The Secretary of the Navy has delegated his review authority to the Assistant Secretary of the Navy (Manpower and Reserve Affairs (ASN(M&RA)), the General Counsel (OGC), and the Judge Advocate General (NJAG). Additionally, the Office of Personnel Management (OPM) is the review authority for civilian official personnel folders or records contained in any other OPM record.

(q) *Risk assessment.* An analysis which considers information sensitivity, vulnerability, and cost to a computer facility or word processing center in safeguarding personal information processed or stored in the facility or center.

(r) *Routine use.* Disclosure of a record outside the Department of Defense for a purpose that is compatible with the purpose for which the record was collected and maintained by the Department of Defense. The routine use must have been included in the notice for the system of records published in the **Federal Register**.

(s) *Statistical record.* A record maintained only for statistical research, or reporting purposes, and not used in whole or in part in making any determination about a specific individual.

(t) *System manager.* An official who has overall responsibility for a system of records. He or she may serve at any level in Department of the Navy. Systems managers are indicated in the published record systems notices. If more than one official is indicated as a system manager, initial responsibility resides with the manager at the appropriate level (i.e., for local records, at the local activity).

(u) *System of records.* A group of records under the control of a Department of the Navy activity from which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all Privacy Act systems of records must be published in the **Federal Register** and are also published in periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211 [4].

(v) *Word processing equipment.* Any combination of electronic hardware and computer software integrated in a variety of forms (firmware, programmable software, hard wiring, or similar equipment) that permits the processing of textual data. Generally, the equipment contains a device to receive information, a computer-like processor with various capabilities to manipulate the information, a storage medium, and an output device.

(w) *Word processing system.* A combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written communications into a form suitable to the originator. The results are written or graphic presentations intended to communicate verbally or visually with another individual.

(x) *Working day.* All days excluding Saturday, Sunday, and legal holidays.

§ 701.103 Policy.

It is the policy of Department of the Navy to:

(a) Ensure that all its personnel comply fully with 5 U.S.C. 552a, DoD Directive 5400.11 and DoD 5400.11–R, to protect individuals from unwarranted invasions of privacy. Individuals covered by this protection are living citizens of the U.S. or aliens lawfully admitted for permanent residence. A legal guardian of an individual or parent of a minor when acting on the individual's or minor's behalf, has the same rights as the individual or minor (A member of the Armed Forces is not a minor for the purposes of this subpart and subpart G of this part).

(b) Collect, maintain, and use only that personal information needed to support a Navy function or program as authorized by law or E.O., and disclose this information only as authorized by 5 U.S.C. 552a and this subpart and subpart G of this part. In assessing need, consideration shall be given to alternatives, such as use of information not individually identifiable or use of sampling of certain data for certain individuals only. Additionally, consideration is to be given to the length

[4] See footnote 3 to § 701.101

of time information is needed, and the cost of maintaining the information compared to the risks and adverse consequences of not maintaining the information.

(c) Keep only personal information that is timely, accurate, complete, and relevant to the purpose for which it was collected.

(d) Let individuals have access to, and obtain copies of, all or portions of their records, subject to exemption procedures authorized by law and this subpart and subpart G of this part.

(e) Let individuals request amendment of their records when discrepancies proven to be erroneous, untimely, incomplete, or irrelevant are noted.

(f) Let individuals request an administrative review of decisions that deny them access, or refuse to amend their records.

(g) Ensure that adequate safeguards are enforced to prevent misuse, unauthorized disclosure, alteration, or destruction of personal information in records.

(h) Maintain no records describing how an individual exercises his or her rights guaranteed by the First Amendment (freedom of religion, political beliefs, speech, and press; peaceful assemblage; and petition for redress of grievances), unless they are:

(1) Expressly authorized by statute;

(2) Authorized by the individual;

(3) Within the scope of an authorized law enforcement activity; or

(4) For the maintenance of certain items of information relating to religious affiliation for members of the naval service who are chaplains. This should not be construed, however, as restricting or excluding solicitation of information which the individual is willing to have in his or her record concerning religious preference, particularly that required in emergency situations.

(5) Maintain only systems of records which have been published in the **Federal Register**, in accordance with periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211 and § 701.105. These OPNAVNOTEs 5211 provide a listing of all Department of the Navy Privacy Act systems of records and identify the Office of Personnel Management (OPM) government-wide systems containing information on Department of the Navy civilian employees, even though technically, Department of the Navy does not have cognizance over them. A Privacy Act systems notice outlines what kinds of information may be collected and maintained by naval activities. When collecting/maintaining information in a Privacy Act system of records, review the systems notice to ensure activity compliance is within the scope of the system. If you determine the systems notice does not meet your needs, contact the systems manager or Chief of Naval Operations (N09B30) with your concerns so that amendment of the system may be considered.

§ 701.104 Responsibility and authority.

(a) *Chief of Naval Operations (CNO).* CNO is designated as the official responsible for administering and supervising the execution of 5 U.S.C. 552a, DoD Directive 5400.11, and DoD 5400.11–R. CNO has designated the Assistant Vice Chief of Naval Operations (N09B30) as principal Privacy Act Coordinator for the Department of the Navy to:

(1) Set Department of the Navy policy on the provisions of the Privacy Act.

(2) Serve as principal advisor on all Privacy Act matters.

(3) Oversee the administration of the Privacy Act program, which includes preparing the Department of the Navy Privacy Act report for submission to Congress.

(4) Develop Navy-wide Privacy Act training program and serve as training-oversight manager.

(5) Conduct staff assistance visits within Department of the Navy to review compliance with 5 U.S.C. 552a and this subpart and subpart G of this part.

(6) Coordinate and prepare responses for Privacy Act requests received for Office of the Secretary of the Navy records.

(b) *Commandant of the Marine Corps (CMC).* CMC is responsible for administering and supervising the execution of this subpart and subpart G of this part within the Marine Corps. The Commandant has designated the Director, Manpower Management Information Systems Division (HQMC (Code MI)) as the Privacy Act coordinator for Headquarters, U.S. Marine Corps.

(c) *Privacy Act Coordinator.* Each addressee is responsible for implementing and administering a Privacy Act program under this subpart and subpart G of this part. Each addressee shall designate a Privacy Act Coordinator to:

(1) Serve as principal point of contact on Privacy Act matters.

(2) Provide training for activity/command personnel on the provisions of 5 U.S.C. 552a and this subpart and subpart G of this part.

(3) Issue implementing instruction which designates the activity's Privacy Act Coordinator, Privacy Act records disposition, Privacy Act processing procedures, identification of Privacy Act systems of records under their cognizance, and training aids for those personnel involved with systems of records.

(4) Review internal directives, practices, and procedures, including those having Privacy Act implications and where Privacy Act Statements (PASs) are needed.

(5) Compile input and submit consolidated Privacy Act report to Echelon 2 Privacy Act Coordinator, who, in turn, will provide consolidated report to CNO (N09B30).

(6) Maintain liaison with records management officials (i.e., maintenance and disposal procedures and standards, forms, and reports), as appropriate.

(7) Provide guidance on handling Privacy Act requests and scope of Privacy Act exemptions.

(8) Conduct staff assistance visits within command and lower echelon commands to ensure compliance with the Privacy Act.

(9) Echelon 2 Privacy Act Coordinators shall provide CNO (N09B30) with a complete listing of all Privacy Act Coordinators under their jurisdiction. Such information should include activity name and address, office code, name of Privacy Act Coordinator, commercial and DSN telephone number, and FAX number, if applicable.

(d) *Release authority.* Officials having cognizance over the requested subject matter are authorized to respond to requests for notification, access, and/or amendment of records. These officials could also be systems managers (see § 701.104(g)).

(e) *Denial authority.* Within the Department of the Navy, the following chief officials, their respective vice commanders, deputies, principal assistants, and those officials specifically designated by the chief official are authorized to deny requests, either in whole or in part, for notification, access and amendment, made under this subpart and subpart G of this part, when the records relate to matters within their respective areas of responsibility or chain of command:

(1) *Department of the Navy:* Civilian Executive Assistants; CNO; CMC; Chief of Naval Personnel; Commanders of the Naval Systems Commands, Office of Naval Intelligence, Naval Security Group Command, Naval Imaging Command, and Naval Computer and Telecommunications Command; Chief, Bureau of Medicine and Surgery; Auditor General of the Navy; Naval Inspector General; Director, Office of Civilian Personnel Management; Chief of Naval Education and Training;

Commander, Naval Reserve Force; Chief of Naval Research; Commander, Naval Oceanography Command; heads of Department of the Navy Staff Offices, Boards, and Councils; Flag Officers and General Officers. NJAG and his Deputy, and OGC and his Deputies are excluded from this grant of authorization. While NJAG and OGC are not denial authorities, they are authorized to further delegate the authority conferred here to other senior officers/officials within NJAG and OGC.

(2) *For the shore establishment:*

(i) All officers authorized under Article 22, Uniform Code of Military Justice (UCMJ) or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C)[5], to convene general courts-martial.

(ii) Commander, Naval Investigative Service Command.

(iii) Deputy Commander, Naval Legal Service Command.

(3) In the Operating Forces: All officers authorized by Article 22, Uniform Code of Military Justice (UCMJ), or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C), to convene general courts-martial.

(f) *Review authority.* (1) The Assistant Secretary of the Navy (Manpower and Reserve Affairs), is the Secretary's designee, and shall act upon requests for administrative review of initial denials of requests for amendment of records related to fitness reports and performance evaluations of military personnel (see § 701.111(c)(3)).

(2) The Judge Advocate General and General Counsel, as the Secretary's designees, shall act upon requests for administrative review of initial denials of records for notification, access, or amendment of records, as set forth in § 701.111(c)(2) and (4).

(3) The authority of the Secretary of the Navy (SECNAV), as the head of an agency, to request records subject to the Privacy Act from an agency external to the Department of Defense for civil or criminal law enforcement purposes, under subsection (b)(7) of 5 U.S.C. 552a, is delegated to the Commandant of the Marine Corps, the Director of Naval Intelligence, the Judge Advocate General, and the General Counsel.

(g) *Systems manager.* Systems managers, as designated in Department of the Navy's compilation of systems notices (periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211[6], "Current Privacy Act Issuances") shall:

(1) Ensure the system has been published in the **Federal Register** and that any additions or significant changes are submitted to CNO (N09B30) for approval and publication. The systems of records should be maintained in accordance with the systems notices as published in the periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances."

(2) Maintain accountability records of disclosures.

(h) *Department of the Navy employees.* Each employee of the Department of the Navy has certain responsibilities for safeguarding the rights of others. These include:

(1) Not disclosing any information contained in a system of records by any means of communication to any person or agency, except as authorized by this subpart and subpart G of this part.

(2) Not maintaining unpublished official files which would fall under the provisions of 5 U.S.C. 552a.

(3) Safeguarding the privacy of individuals and confidentiality of personal information contained in a system of records.

§ 701.105 Systems of records.

To be subject to this subpart and subpart G of this part, a "system of records" must consist of "records" that are retrieved by the name, or some other personal identifier, of an individual and be under the control of Department of the Navy.

(a) *Retrieval practices.* (1) Records in a group of records that are not retrieved by personal identifiers are not covered by this subpart and subpart G of this part, even if the records contain information about individuals and are under the control of Department of the Navy. The records must be retrieved by personal identifiers to become a system of records.

(2) If records previously not retrieved by personal identifiers are rearranged so they are retrieved by personal identifiers, a new system notice must be submitted in accordance with § 701.107.

(3) If records in a system of records are rearranged so retrieval is no longer by personal identifiers, the records are no longer subject to this subpart and subpart G of this part and the records system notice should be deleted in accordance with § 701.107.

(b) *Recordkeeping standards.* A record maintained in a system of records subject to this subpart and subpart G of this part must meet the following criteria:

(1) Be accurate. All information in the record must be factually correct.

(2) Be relevant. All information contained in the record must be related to the individual who is the record subject and also must be related to a lawful purpose or mission of the Department of the Navy activity maintaining the record.

(3) Be timely. All information in the record must be reviewed periodically to ensure that it has not changed due to time or later events.

(4) Be complete. It must be able to stand alone in accomplishing the purpose for which it is maintained.

(5) Be necessary. All information in the record must be needed to accomplish a Department of the Navy mission or purpose established by Federal Law or E.O. of the President.

(c) *Authority to establish systems of records.* Identify the specific Federal statute or E.O. of the President that authorizes maintaining each system of records. When a naval activity uses its "internal housekeeping" statute, i.e., 5 U.S.C. 301, Departmental Regulations, the naval instruction that implements the statute should also be identified. A statute or E.O. authorizing a system of records does not negate the responsibility to ensure the information in the system of records is relevant and necessary.

(d) *Exercise of First Amendment rights.* (1) Do not maintain any records describing how an individual exercises rights guaranteed by the First Amendment of the U.S. Constitution unless expressly authorized by Federal law; the individual; or pertinent to and within the scope of an authorized law enforcement activity.

(2) First amendment rights include, but are not limited to, freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.

(e) *System manager's evaluations and reviews.* (1) Evaluate each new system of records. Before establishing a system of records, evaluate the information to be included and consider the following:

(i) The relationship of each item of information to be collected and retained to the purpose for which the system is maintained (all information must be relevant to the purpose);

(ii) The specific impact on the purpose or mission if each category of information is not collected (all information must be necessary to accomplish a lawful purpose or mission.);

(iii) The ability to meet the informational needs without using

[5] Copies available from the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400.

[6] See footnote 3 to § 701.101.

[6] See footnote 3 to § 701.101.

personal identifiers (will anonymous statistical records meet the needs?);

(iv) The length of time each item of information must be kept;

(v) The methods of disposal;

(vi) The cost of maintaining the information; and

(vii) Whether a system already exists that serves the purpose of the new system.

(2) Evaluate and review all existing systems of records.

(i) When an alteration or amendment of an existing system is prepared pursuant to § 701.107(b) and (c), do the evaluation described in § 701.105(e).

(ii) Conduct the following reviews annually and be prepared to report, in accordance with § 701.104(c)(8), the results and corrective actions taken to resolve problems uncovered.

(A) Training practices to ensure all personnel are familiar with the requirements of 5 U.S.C. 552a, and DoD Directive 5400.11, "DoD Privacy Program", this subpart and subpart G of this part, and any special needs their specific jobs entail.

(B) Recordkeeping and disposal practices to ensure compliance with this subpart and subpart G of this part.

(C) Ongoing computer matching programs in which records from the system have been matched with non-DoD records to ensure that the requirements of § 701.115 have been met.

(D) Actions of Department of the Navy personnel that resulted in either Department of the Navy being found civilly liable or a person being found criminally liable under 5 U.S.C. 552a, to determine the extent of the problem and find the most effective way of preventing the problem from occurring in the future.

(E) Each system of records notice to ensure it accurately describes the system. Where major changes are needed, alter the system notice in accordance with § 701.107(b). If minor changes are needed, amend the system notice pursuant to § 701.107(c).

(iii) Every even-numbered year, review a random sample of Department of the Navy contracts that provide for the operation of a system of records to accomplish a Department of the Navy function, to ensure the wording of each contract complies with the provisions of 5 U.S.C. 552a and § 701.105(h).

(iv) Every three years, beginning in 1992, review the routine use disclosures associated with each system of records to ensure the recipient's use of the records continues to be compatible with the purpose for which the information was originally collected.

(v) Every three years, beginning in 1993, review each system of records for which exemption rules have been established to determine whether each exemption is still needed.

(vi) When directed, send the reports through proper channels to the CNO (N09B30).

(f) *Discontinued information requirements.* (1) Immediately stop collecting any category or item of information about individuals that is no longer justified, and when feasible, remove the information from existing records.

(2) Do not destroy records that must be kept in accordance with retention and disposal requirements established under SECNAVINST 5212.5[7], "Disposal of Navy and Marine Corps Records."

(g) *Review records before disclosing outside the Federal government.* Before disclosing a record from a system of records to anyone outside the Federal government, take reasonable steps to ensure the record which is being disclosed is accurate, relevant, timely, and complete for the purposes it is being maintained.

(h) *Federal government contractors—(1) Applicability to Federal government contractors*—(i) When a naval activity contracts for the operation of a system of records to accomplish its function, the activity must ensure compliance with this subpart and subpart G of this part and 5 U.S.C. 552a. For the purposes of the criminal penalties described in 5 U.S.C. 552a, the contractor and its employees shall be considered employees of the agency during the performance of the contract.

(ii) Consistent with Parts 24 and 52 of the Federal Acquisition Regulation (FAR), contracts for the operation of a system of records shall identify specifically the record system and the work to be performed, and shall include in the solicitations and resulting contract the terms as prescribed by the FAR.

(iii) If the contractor must use records that are subject to this subpart and subpart G of this part to perform any part of a contract, the contractor activities are subject to this subpart and subpart G of this part.

(iv) This subpart and subpart G of this part do not apply to records of a contractor that are:

(A) Established and maintained solely to assist the contractor in making internal contractor management decisions, such as records maintained by the contractor for use in managing the contract;

(B) Maintained as internal contractor employee records, even when used in conjunction with providing goods or services to the naval activity;

(C) Maintained as training records by an educational organization contracted by a naval activity to provide training when the records of the contract students are similar to and commingled with training records of other students, such as admission forms, transcripts, and academic counseling and similar records; or

(D) Maintained by a consumer reporting agency to which records have been disclosed under contract in accordance with 31 U.S.C. 952d.

(v) For contracting that is subject to this subpart and subpart G of this part, naval activities shall publish instructions that:

(A) Furnish Privacy Act guidance to personnel who solicit, award, or administer Government contracts;

(B) Inform prospective contractors of their responsibilities under this subpart and subpart G of this part and the Department of the Navy Privacy Program;

(C) Establish an internal system for reviewing contractor's performance for compliance with the Privacy Act; and

(D) Provide for the biennial review of a random sample of contracts that are subject to this subpart and subpart G of this part.

(2) *Contracting procedures.* The Defense Acquisition Regulatory (DAR) Council, which oversees the implementation of the FAR within the Department of Defense, is responsible for developing the specific policies and procedures for soliciting, awarding, and administering contracts that are subject to this subpart and subpart G of this part and 5 U.S.C. 552a.

(3) *Contractor compliance.* Naval activities shall establish contract surveillance programs to ensure contractors comply with the procedures established by the DAR Council under the preceding subparagraph.

(4) *Disclosing records to contractors.* Disclosing records to a contractor for use in performing a contract let by a naval activity is considered a disclosure within Department of the Navy. The contractor is considered the agent of Department of the Navy when receiving and maintaining the records for that activity.

§ 701.106 Safeguarding records in systems of records.

Establish appropriate administrative, technical, and physical safeguards to ensure the records in every system of records are protected from unauthorized alteration, destruction, or disclosure.

[7] Copies available from OPNAV/SECNAV Directives Control Office, Washington Navy Yard, Building 200, Washington, DC 20350-2000

Protect the records from reasonably anticipated threats or hazards that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(a) *Minimum standards.* (1) Conduct risk analysis and management planning for each system of records. Consider sensitivity and use of the records, present and projected threats and vulnerabilities, and present and projected cost-effectiveness of safeguards. The risk analysis may vary from an informal review of a small, relatively insensitive system to a formal, fully quantified risk analysis of a large, complex, and highly sensitive system.

(2) Train all personnel operating a system of records or using records from a system of records in proper record security procedures.

(3) Label information exempt from disclosure under this subpart and subpart G of this part to reflect their sensitivity, such as "FOR OFFICIAL USE ONLY," "PRIVACY ACT SENSITIVE: DISCLOSE ON A NEED-TO-KNOW BASIS ONLY," or some other statement that alerts individuals of the sensitivity to the records.

(4) Administer special administrative, physical, and technical safeguards to protect records processed or stored in an automated data processing or word processing system to protect them from threats unique to those environments.

(b) *Records disposal.* (1) Dispose of records from systems of records so as to prevent inadvertent disclosure. Disposal methods are considered adequate if the records are rendered unrecognizable or beyond reconstruction (i.e., such as tearing, burning, melting, chemical decomposition, burying, pulping, pulverizing, shredding, or mutilation). Magnetic media may be cleared by completely erasing, overwriting, or degaussing the tape.

(2) The transfer of large volumes of records (e.g., printouts and computer cards) in bulk to a disposal activity such as a Defense Reutilization and Marketing Office for authorized disposal is not a disclosure of records, if the volume of records, coding of the information, or some other factor render it impossible to recognize any personal information about a specific individual.

(3) When disposing or destroying large quantities of records from a system of records, care must be taken to ensure that the bulk of the records is maintained to prevent easy identification of specific records. If such bulk is maintained, no special procedures are required. If bulk is not maintained, or if the form of the records makes individually identifiable information easily discernable, dispose of the records in accordance with § 701.106(b)(1).

§ 701.107 Criteria for creating, altering, amending and deleting Privacy Act systems of records.

(a) *Criteria for a new system of records.* A new system of records is one for which no existing system notice has been published in the **Federal Register**. If a notice for a system of records has been canceled or deleted, and it is determined that it should be reinstated or reused, a new system notice must be published in the **Federal Register**. Advance public notice must be given before a naval activity may begin to collect information for or use a new system of records. The following procedures apply:

(1) Describe in the record system notice the contents of the record system and the purposes and routine uses for which the information will be used and disclosed.

(2) The public shall be given 30 days to comment on any proposed routine uses before the routine uses are implemented.

(3) The notice shall contain the date the system of records will become effective.

(b) *Criteria for an alteration to a system of records notice.* A system is considered altered when any one of the following actions occur or is proposed:

(1) A significant increase or change in the number or types of individuals about whom records are maintained. For example, a decision to expand a system of records that originally covered personnel assigned to only one naval activity to cover personnel at several installations would constitute an altered system. An increase or decrease in the number of individuals covered due to normal growth or decrease is not an alteration.

(2) A change that expands the types or categories of information maintained. For example, a personnel file that has been expanded to include medical records would be an alteration.

(3) A change that alters the purpose for which the information is used. In order to be an alteration, the change must be one that is not reasonably inferred from any of the existing purposes.

(4) A change to equipment configuration (either hardware or software) that creates substantially greater use of records in the system. For example, placing interactive computer terminals at regional offices when the system was formerly used only at the headquarters would be an alteration.

(5) A change in the manner in which records are organized or in the method by which records are retrieved.

(6) Combining record systems due to a reorganization within Department of the Navy.

(7) Retrieving by Social Security Numbers (SSNs), records that previously were retrieved only by names would be an alteration if the present notice failed to indicate retrieval by SSNs. An altered system of records must be published in the **Federal Register**. Submission for an alteration must contain a narrative statement, the specific changes altering the system, and the system of records notice.

(c) *Criteria for amending a systems of records notice.* Minor changes to published system of records notices are considered amendments. All amendments should be forwarded to CNO (N09B30) for publication in the **Federal Register**. When submitting an amendment to a system of records notice, the naval activity must include a description of the specific changes proposed and the system of records notice.

(d) *Criteria for deleting a system of records notice.* When a system of records is discontinued, incorporated into another system, or determined to be no longer subject to this subpart and subpart G of this part, a deletion notice must be published in the **Federal Register**. The deletion notice shall include the system identification number, system name, and the reason for deleting it. If a system is deleted through incorporation into or merger with another system, identify the successor system in the deletion notice.

§ 701.108 Collecting information about individuals.

(a) *Collecting directly from the individual.* To the greatest extent practicable, collect information for systems of records directly from the individual to whom the record pertains if the record may be used to make an adverse determination about the individual's rights, benefits, or privileges under the Federal programs.

(b) *Collecting information about individuals from third persons.* It might not always be practical to collect all information about an individual directly from that person, such as verifying information through other sources for security or employment suitability determinations; seeking other opinions such as a supervisor's comments on past performance or other evaluations; obtaining the necessary information directly from the individual would be exceptionally difficult or would result in unreasonable costs or delays; or, the individual requests or consents to contacting another person to obtain the information.

(c) *Soliciting the social security number (SSN).* (1) It is unlawful for any Federal, State, or local government agency to deny an individual a right, benefit, or privilege provided by law because the individual refuses to provide his or her SSN. However, this prohibition does not apply if a Federal law requires that the SSN be provided, or the SSN is required by a law or regulation adopted before January 1, 1975, to verify the individual's identity for a system of records established and in use before that date.

(2) Before requesting an individual to provide the SSN, the individual must be advised whether providing the SSN is mandatory or voluntary; by what law or other authority the SSN is solicited; and what uses will be made of the SSN.

(3) The preceding advice relates only to the SSN. If other information about the individual is solicited for a system of records, a Privacy Act statement (PAS) also must be provided to him/her.

(4) The notice published in the **Federal Register** for each system of records containing SSNs solicited from individuals must indicate the authority for soliciting the SSNs and whether it is mandatory for the individuals to provide their SSNs. E.O. 9397 requires federal agencies to use SSNs as numerical identifiers for individuals in most federal records systems, however, it does not make it mandatory for individuals to provide their SSNs.

(5) When entering military service or civilian employment with the Department of the Navy, individuals must provide their SSNs. This is then the individual's numerical identifier and is used to establish personnel, financial, medical, and other official records (as authorized by E.O. 9397). The individuals must be given the notification described above. Once the individual has provided his or her SSN to establish the records, a notification is not required when the SSN is requested only for identification or to locate the records.

(6) The Federal Personnel Manual [a] must be consulted when soliciting SSNs for use in systems of records maintained by the Office of Personnel Management.

(7) A Department of the Navy activity may request an individual's SSN even though it is not required by Federal statute, or is not for a system of records in existence and operating prior to January 1, 1975. However, the separate Privacy Act Statement for the SSN, alone, or a merged Privacy Act Statement covering both the SSN and other items of personal information, must make clear that disclosure of the number is voluntary. If the individual refuses to disclose his or her SSN, the activity must be prepared to identify the individual by alternate means.

(d) *Contents of Privacy Act Statement.* (1) When an individual is requested to furnish information about himself/herself for a system of records, a Privacy Act Statement must be provided to the individual, regardless of the method used to collect the information (i.e., forms, personal or telephonic interview, etc). If the information requested will not be included in a system of records, a Privacy Act Statement is not required.

(2) The Privacy Act Statement shall include the following:

(i) The Federal law or E.O. that authorizes collecting the information (i.e., E.O. 9397 authorizes collection of SSNs);

(ii) Whether or not it is mandatory for the individual to provide the requested information (It is only mandatory when a Federal law or E.O. of the President specifically imposes a requirement to furnish the information and provides a penalty for failure to do so. If furnishing information is a condition for granting a benefit or privilege voluntarily sought by the individual, it is voluntary for the individual to give the information.);

(iii) The principle purposes for collecting the information;

(iv) The routine uses that will be made of the information (i.e., to whom and why it will be disclosed outside the Department of Defense); and

(v) The possible effects on the individual if the requested information is not provided.

(3) The Privacy Act Statement must appear on the form used to collect the information or on a separate form that can be retained by the individual collecting the information. If the information is collected by means other than a form completed by the individual, i.e., solicited over the telephone, the Privacy Act Statement should be read to the individual and if requested by the individual, a copy sent to him/her. There is no requirement that the individual sign the Privacy Act Statement.

(e) *Format for Privacy Act Statement.* When forms are used to collect information about individuals for a system of records, the Privacy Act Statement shall appear as follows (listed in the order of preference):

(1) Immediately below the title of the form,

(2) Elsewhere on the front page of the form (clearly indicating it is the Privacy Act Statement),

(3) On the back of the form with a notation of its location below the title of the form, or

(4) On a separate form which the individual may keep.

§ 701.109 Access to records.

(a) *Individual access to records—(1) Right of access.* Only individuals who are subjects of records maintained in systems of records and by whose personal identifiers the records are retrieved have the right of individual access under this subpart and subpart G of this part, unless they provide written authorization for their representative to act on their behalf. Legal guardians or parents acting on behalf of a minor child also have the right of individual access under this subpart and subpart G of this part.

(2) *Notification of record's existence.* Each naval activity shall establish procedures for notifying an individual, in response to his or her request, if a system of records identified by him/her contains a record pertaining to the individual.

(3) *Individual request for access.* Individuals shall address requests for access to records in systems of records to the system manager or the office designated in the Department of the Navy compilation of system notices (periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances").

(4) *Verifying identity.* (i) An individual shall provide reasonable verification of identity before obtaining access to records.

(ii) When requesting records in writing, naval activities may not insist that a requester submit a notarized signature. The courts have ruled that an alternative method of verifying identity must be established for individuals who do not have access to notary services. This alternative permits requesters to provide an unsworn declaration that states "I declare under perjury or penalty under the laws of the United States of American that the foregoing is true and correct."

(iii) When an individual seeks access in person, identification can be verified by documents normally carried by the individual (i.e., identification card, driver's license, or other license, permit or pass normally used for identification purposes).

(iv) When access is requested other than in writing, identity may be verified by the individual's providing minimum identifying data such as full name, date and place of birth, or other information

[a] Copies available from the Office of Personnel Management, 1900 E Street, Washington, DC 20415.

necessary to locate the record sought. If the information sought is sensitive, additional identifying data may be required. Telephonic requests should not be honored.

(v) Allow an individual to be accompanied by a person of his or her choice when viewing the record; however, require the individual to provide written authorization to have the record discussed in front of the other person.

(vi) Do not deny access to an individual who is the subject of the record solely for refusing to divulge his or her SSN, unless it is the only means of retrieving the record or verifying identity.

(vii) Do not require the individual to explain why he or she is seeking access to a record under this subpart and subpart G of this part.

(viii) Only a designated denial authority may deny access. The denial must be in writing and contain the information required by § 701.109(d).

(5) *Blanket requests not honored.* Do not honor requests from individuals for notification and/or access concerning all Department of the Navy systems of records. In these instances, notify the individual that requests for notification and/or access must be directed to the appropriate system manager for the particular record system being requested, as indicated in the periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances"; and the request must either designate the particular system of records to be searched, or provide sufficient information for the system manager to identify the appropriate system. Also, provide the individual with any other information needed for obtaining consideration of his or her request.

(6) *Granting individual access to records.* (i) Grant the individual access to the original record (or exact copy) without any changes or deletions, other than those made in accordance with § 701.113.

(ii) Grant the individual's request for an exact copy of the record, upon the signed authorization of the individual, and provide a copy to anyone designated by the individual. In either case, the copying fees may be assessed to the individual pursuant to § 701.109(b).

(iii) If requested, explain any record or portion of a record that is not understood, as well as any changes or deletions.

(7) *Illegible or incomplete records.* Do not deny an individual access solely because the physical condition or format of the record does not make it readily available (i.e., when the record is in a deteriorated state or on magnetic tape). Either prepare an extract or recopy the document exactly.

(8) *Access by parents and legal guardians.* (i) The parent of any minor, or the legal guardian of any individual declared by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, may obtain access to the record of the minor or incompetent individual if the parent or legal guardian is acting on behalf or for the benefit of the minor or incompetent. However, with respect to access by parents and legal guardians to medical records and medical determinations about minors, use the following procedures:

(A) In the United States, the laws of the state where the records are located might afford special protection to certain medical records (i.e., drug and alcohol abuse treatment, and psychiatric records). The state statutes might apply even if the records are maintained by a naval medical facility.

(B) For installations located outside the U.S., the parent or legal guardian of a minor shall be denied access if all four of the following conditions are met:

(1) The minor at the time of the treatment or consultation was 15, 16, or 17 years old;

(2) The treatment or consultation was within a program authorized by law or regulation to provide confidentiality to the minor;

(3) The minor indicated a desire that the treatment or consultation record be handled in confidence and not disclosed to a parent or guardian; and

(4) The parent or legal guardian does not have the written authorization of the minor or a valid court order granting access.

(ii) A minor or incompetent has the same right of access as any other individual under this subpart and subpart G of this part. The right of access of the parent or legal guardian is in addition to that of the minor or incompetent.

(9) *Access to information compiled in reasonable anticipation of a civil proceeding.* (i) An individual is not entitled under this subpart and subpart G of this part to access information compiled in reasonable anticipation of a civil action or proceeding.

(ii) The term "civil action or proceeding" includes quasi-judicial and pre-trial judicial proceedings, as well as formal litigation.

(iii) § 701.109(9)(i) and (ii) do not prohibit access to records compiled or used for purposes other than litigation, nor prohibit access to systems of records solely because they are frequently subject to litigation. The information must have been compiled for the primary purpose of litigation.

(10) *Personal notes or records not under the control of the Department of the Navy.* (i) Certain documents under the control of a Department of the Navy employee and used to assist him/her in performing official functions are not considered Department of the Navy records within the meaning of this subpart and subpart G of this part. These documents are not systems of records that are subject to this subpart and subpart G of this part, if they are:

(A) Maintained and discarded solely at the discretion of the author;

(B) Created only for the author's personal convenience;

(C) Not the result of official direction or encouragement, whether oral or written; and

(D) Not shown to other persons for any reason or filed in agency files.

(11) *Relationship between the Privacy Act and FOIA.* In some instances, individuals requesting access to records pertaining to themselves may not know which Act to cite as the appropriate statutory authority. The following guidelines are to ensure that the individuals receive the greatest degree of access under both Acts:

(i) Access requests that specifically state or reasonably imply that they are made under 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986, are processed under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(ii) Access requests that specifically state or reasonably imply that they are made under 5 U.S.C. 552a are processed under this subpart and subpart G of this part.

(iii) Access requests that cite both 5 U.S.C. 552a, as amended by the Computer Matching Act of 1988 and 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act are processed under the Act that provides the greater degree of access. Inform the requester which instruction was used in granting or denying access.

(iv) Do not penalize the individual access to his or her records otherwise releasable under 5 U.S.C. 552a and periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances", simply because he or she failed to cite the appropriate statute or instruction.

(12) *Time limits.* Acknowledge requests for access made under Privacy Act or this subpart and subpart G of this part within 10 working days after receipt and advise the requester of your

decision to grant/deny access within 30 working days.

(b) *Reproduction fees.* Normally, only one copy of any record or document will be provided. Checks or money orders for fees should be made payable to the Treasurer of the United States and deposited to the miscellaneous receipts of the treasury account maintained at the finance office servicing the activity.

(1) Fee schedules shall include only the direct cost of reproduction and shall not include costs of:

(i) Time or effort devoted to searching for or reviewing the record by naval personnel;

(ii) Fees not associated with the actual cost of reproduction;

(iii) Producing a copy when it must be provided to the individual without cost under another regulation, directive, or law;

(iv) Normal postage;

(v) Transportation of records or personnel; or

(vi) Producing a copy when the individual has requested only to review the record and has not requested a copy to keep, and the only means of allowing review is to make a copy (e.g., the record is stored in a computer and a copy must be printed to provide individual access, or the naval activity does not wish to surrender temporarily the original record for the individual to review).

(2) Fee schedules.

(i) Office copy (per page).....$.10

(ii) Microfiche (per fiche).....$.25

(3) Fee waivers. Waive fees automatically if the direct cost of reproduction is less than $15, unless the individual is seeking an obvious extension or duplication of a previous request for which he or she was granted a waiver. Decisions to waive or reduce fees that exceed $15 are made on a case-by-case basis.

(c) *Denying individual access.* (1) Deny the record subject access to requested record only if it was compiled in reasonable anticipation of a civil action or proceeding or is in a system of records that has been exempt from the access provisions of § 701.113.

(2) Deny the individual access only to those portions of the record for which the denial will serve a legitimate government purpose. An individual may be refused access for failure to comply with established procedural requirements, but must be told the specific reason for the refusal and the proper access procedures.

(3) Deny the individual access to his or her medical and psychological records if it is determined that access could have an adverse affect on the mental or physical health of the individual. This determination normally should be made in consultation with a medical practitioner. If it is medically indicated that access could have an adverse mental or physical effect on the individual, provide the record to a medical practitioner named by the individual, along with an explanation of why access without medical supervision could be harmful to the individual. In any case, do not require the named medical practitioner to request the record for the individual. If, however, the individual refuses or fails to designate a medical practitioner, access shall be refused. The refusal is not considered a denial for reporting purposes under the Privacy Act.

(d) *Notifying the individual.* Written denial of access must be given to the individual. The denial letter shall include:

(1) The name, title, and signature of a designated denial authority;

(2) The date of the denial;

(3) The specific reason for the denial, citing the appropriate subsections of 5 U.S.C. 552a or this subpart and subpart G of this part authorizing the denial;

(4) The individual's right to appeal the denial within 60 calendar days of the date the notice is mailed; and

(5) The title and address of the review authority.

§ 701.110 Amendment of records.

(a) *Individual review and amendment.* Encourage individuals to review periodically, the information maintained about them in systems of records, and to avail themselves of the amendment procedures established by this subpart and subpart G of this part.

(1) *Right to amend.* An individual may request to amend any record retrieved by his or her personal identifier from a system of records, unless the system has been exempt from the amendment procedures under this subpart. Amendments under this subpart and subpart G of this part are limited to correcting factual matters, not matters of opinion (i.e., information contained in evaluations of promotion potential or performance appraisals). When records sought to be amended are covered by another issuance, the administrative procedures under that issuance must be exhausted before using the Privacy Act. In other words, the Privacy Act may not be used to avoid the administrative procedures required by the issuance actually covering the records in question.

(2) *In writing.* Amendment requests shall be in writing, except for routine administrative changes, such as change of address.

(3) *Content of amendment request.* An amendment request must include a description of the information to be amended;the reason for the amendment; the type of amendment action sought (i.e., deletion, correction, or addition); and copies of available documentary evidence supporting the request.

(b) *Burden of proof.* The individual must provide adequate support for the request.

(c) *Verifying identity.* The individual may be required to provide identification to prevent the inadvertent or intentional amendment of another's record. Use the verification guidelines provided in § 701.109(a)(4).

(d) *Limits on amending judicial and quasi-judicial evidence and findings.* This subpart and subpart G of this part do not permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Amendments to such records must be made in accordance with procedures established for such proceedings. This subpart and subpart G of this part do not permit a collateral attack on a judicial or quasi-judicial finding; however, this subpart and subpart G of this part may be used to challenge the accuracy of recording the finding in a system of records.

(e) *Standards for amendment request determinations.* The record which the individual requests to be amended must meet the recordkeeping standards established in § 701.105. The record must be accurate, relevant, timely, complete, and necessary. If the record in its present state does not meet each of the criteria, grant the amendment request to the extent necessary to meet them.

(f) *Time limits.* Within 10 working days of receiving an amendment request, the systems manager shall provide the individual a written acknowledgement of the request. If action on the amendment request is completed within the 10 working days and the individual is so informed, no separate acknowledgment is necessary. The acknowledgment must clearly identify the request and advise the individual when to expect notification of the completed action. Only under exceptional circumstances should more than 30 working days be required to complete the action on an amendment request.

(g) *Granting an amendment request in whole or in part.—(1) Notify the requester.* To the extent the amendment request is granted, the systems manager shall notify the individual and make the appropriate amendment.

(2)*Notify previous recipients.* Notify all previous recipients of the

information (as reflected in the disclosure accounting record) that the amendment has been made and provide each a copy of the amended record. Recipients who are known to be no longer retaining the record need not be advised of the amendment. If it is known that other naval activities, DoD components, or Federal agencies have been provided the information that now requires amendment, or if the individual requests that these agencies be notified, provide the notification of amendment even if those activities or agencies are not listed on the disclosure accounting form.

(h) *Denying an amendment request in whole or in part.* If the amendment request is denied in whole or in part, promptly notify the individual in writing. Include in the notification to the individual the following:

(1) Those sections of 5 U.S.C. 552a or this subpart and subpart G of this part upon which the denial is based;

(2) His or her right to appeal to the head of the activity for an independent review of the initial denial;

(3) The procedures for requesting an appeal, including the title and address of the official to whom the appeal should be sent; and

(4) Where the individual can receive assistance in filing the appeal.

(i) *Requests for amending OPM records.* The records in an OPM government-wide system of records are only temporarily in the custody of naval activities. Requests for amendment of these records must be processed in accordance with OPM Regulations and the Federal Personnel Manual. The denial authority may deny a request, but all denials are subject to review by the Assistant Director for Workforce Information, Personnel Systems Oversight Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

(j) *Individual's statement of disagreement.* (1) If the review authority refuses to amend the record as requested, the individual may submit a concise statement of disagreement listing the reasons for disagreeing with the refusal to amend.

(2) If possible, incorporate the statement of disagreement into the record. If that is not possible, annotate the record to reflect that the statement was filed and maintain the statement so that it can be readily obtained when the disputed information is used or disclosed.

(3) Furnish copies of the statement of disagreement to all individuals listed on the disclosure accounting form (except those known to be no longer retaining the record), as well as to all other known holders of copies of the record.

(4) Whenever the disputed information is disclosed for any purpose, ensure that the statement of disagreement also is used or disclosed.

(k) *Department of the Navy statement of reasons.* (1) If the individual files a statement of disagreement, the naval activity may file a statement of reasons containing a concise summary of the activity's reasons for denying the amendment request.

(2) The statement of reasons shall contain only those reasons given to the individual by the appellate official and shall not contain any comments on the individual's statement of disagreement.

(3) At the discretion of the naval activity, the statement of reasons may be disclosed to those individuals, activities, and agencies that receive the statement of disagreement.

§ 701.111 Privacy Act Appeals

(a) *How to file an appeal.* The following guidelines shall be followed by individuals wishing to appeal a denial of notification, access, or amendment of records.

(1) The appeal must be received by the cognizant review authority (i.e., ASN (M&RA), NJAG, OGC, or OPM) within 60 calendar days of the date of the response.

(2) The appeal must be in writing and requesters should provide a copy of the denial letter and a statement of their reasons for seeking review.

(b) *Time of receipt.* The time limits for responding to an appeal commence when the appeal reaches the office of the review authority having jurisdiction over the record. Misdirected appeals should be referred expeditiously to the proper review authority.

(c) *Review authorities.* ASN (M&RA), NJAG, and OGC are authorized to adjudicate appeals made to SECNAV. NJAG and OGC are further authorized to delegate this authority to a designated Assistant NJAG and the Principal Deputy General or Deputy General Counsel, respectively, under such terms and conditions as they deem appropriate.

(1) If the record is from a civilian Official Personnel Folder or is contained on any other OPM forms, send the appeal to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415. Records in all systems of records maintained in accordance with the OPM government-wide systems notices are only in the temporary custody of the Department of the Navy.

(2) If the record pertains to the employment of a present or former Navy and Marine Corps civilian employee, such as Navy or Marine Corps civilian personnel records or an employee's grievance or appeal file, to the General Counsel, Navy Department, Washington, DC 20360–5110.

(3) If the record pertains to a present or former military member's fitness reports or performance evaluations to the Assistant Secretary of the Navy (Manpower and Reserve Affairs), Navy Department, Washington, DC 20350–1000.

(4) All other records dealing with present or former military members to the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400.

(d) *Appeal procedures.* (1) If the appeal is granted, the review authority shall advise the individual that his or her appeal has been granted and provide access to the record being sought.

(2) If the appeal is denied totally or in part, the appellate authority shall advise the reason(s) for denying the appeal, citing the appropriate subsections of 5 U.S.C. 552a or this subpart and subpart G of this part that apply; the date of the appeal determination; the name, title, and signature of the appellate authority; and a statement informing the requester of his or her right to seek judicial relief in the Federal District Court.

(e) *Final action, time limits and documentation.* (1) The written appeal notification granting or denying access is the final naval activity action on the initial request for access.

(2) All appeals shall be processed within 30 working days of receipt, unless the appellate authority finds that an adequate review cannot be completed within that period. If additional time is needed, notify the applicant in writing, explaining the reason for the delay and when the appeal will be completed.

(f) *Denial of appeal by activity's failure to act.* An individual may consider his or her appeal denied if the appellate authority fails to:

(1) Take final action on the appeal within 30 working days of receipt when no extension of time notice was given; or

(2) Take final action within the period established by the notice to the appellate authority of the need for an extension of time to complete action on the appeal.

§ 701.112 Disclosure of records.

(a) *Conditions of disclosure.* (1) 5 U.S.C. 552a prohibits an agency from disclosing any record contained in a system of records to any person or

agency, except when the record subject gives written consent for the disclosure or when one of the 12 conditions listed below in this subsection applies.

(2) Except for disclosures made under 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986 and Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program," before disclosing any record from a system of records to any recipient other than a Federal agency, make reasonable efforts to ensure the record is accurate, relevant, timely, and complete for Department of the Navy purposes. Records discovered to have been improperly filed in the system of records should be removed before disclosure.

(i) If validation cannot be obtained from the record itself, the naval activity may contact the record subject (if reasonably available) to verify the accuracy, timeliness, completeness, and relevancy of the information.

(ii) If validation cannot be obtained from the record and the record subject is not reasonably available, advise the recipient that the information is believed to be valid as of a specific date and reveal any factors bearing on the validity of the information.

(b) *Nonconsensual disclosures.* 5 U.S.C. 552a provides 12 instances when a record in a system of records may be disclosed without the written consent of the record subject:

(1) *Disclosures within the Department of Defense.* For purposes of disclosing records, the Department of Defense is considered a single agency; hence, a record may be disclosed to any officer or employee in the Department of Defense (including private contractor personnel who are engaged to perform services needed in connection with the operation of a system of records for a DoD component), who have a need for the record in the performance of their duties, provided this use is compatible with the purpose for which the record is maintained. This provision is based on the "need to know" concept.

(i) For example, this may include disclosure to personnel managers, review boards, discipline officers, courts-martial personnel, medical officers, investigating officers, and representatives of the Judge Advocate General, Auditor General, Naval Inspector General, or the Naval Investigative Service, who require the information in order to discharge their official duties. Examples of personnel outside the Department of the Navy who may be included are: personnel of the Joint Staff, Armed Forces Entrance and Examining Stations, Defense Investigative Service, or the other military departments, who require the information in order to discharge an official duty.

(ii) It may also include the transfer of records between naval components and non-DoD agencies in connection with the Personnel Exchange Program (PEP) and interagency support agreements. Disclosure accountings are not required for intra-agency disclosure and disclosures made in connection with interagency support agreements or the PEP. Although some disclosures authorized by this paragraph might also meet the criteria for disclosure under other exceptions specified in the following paragraphs of this section, they should be treated under this paragraph for disclosure accounting purposes.

(2) *Disclosures required by the FOIA.* (i) A record must be disclosed if required by 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986, which is implemented by Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(ii) 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986 and Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program" require that records be made available to any person requesting them in writing, unless the record is exempt from disclosure under one of the nine FOIA exemptions. Therefore, if a record is not exempt from disclosure, it must be provided to the requester.

(iii) Certain records, such as personnel, medical, and similar files, are exempt from disclosure under exemption (b)(6) of 5 U.S.C. 552 (1988) as amended by the Freedom of Information Act Reform Act of 1986. Under that exemption, disclosure of information pertaining to an individual can be denied only when the disclosure would be a clearly unwarranted invasion of personal privacy. The first step is to determine whether a viable personal privacy interest exists in these records involving an identifiable living person. The second step is to consider how disclosure would benefit the general public in light of the content and context of the information in question. The third step is to determine whether the identified public interests qualify for consideration. The fourth step is to balance the personal privacy interests against the qualifying public interest. Numerous factors must be considered such as: the nature of the information to be disclosed (i.e., Do individuals normally have an expectation of privacy in the type of information to be disclosed?); importance of the public interest served by the disclosure and probability of further disclosure which may result in an unwarranted invasion of privacy; relationship of the requester to the public interest being served; newsworthiness of the individual to whom the information pertains (i.e., high ranking officer, public figure); degree of sensitivity of the information from the standpoint of the individual or the individual's family, and its potential for being misused to the harm, embarrassment, or inconvenience of the individual or the individual's family; the passage of time since the event which is the topic of the record (i.e., to disclose that an individual has been arrested and is being held for trial by court-martial is normally permitted, while to disclose an arrest which did not result in conviction might not be permitted after the passage of time); and the degree to which the information is already in the public domain or is already known by the particular requester.

(iv) Records or information from investigatory records, including personnel security investigatory records, are exempt from disclosure under the broader standard of "an unwarranted invasion of personal privacy" found in exemption (b)(7)(C) of 5 U.S.C. 552. This broader standard applies only to records or information compiled for law enforcement purposes.

(v) A disclosure under 5 U.S.C. 552 about military members must be in accordance with Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program", but the following information normally may be disclosed from military personnel records (except for those personnel assigned to sensitive or routinely deployable units, or located in a foreign territory), without a clearly unwarranted invasion of personal privacy: Full name, rank, date of rank, base pay, past duty stations, present duty station and future duty station (if finalized), unless the stations have been determined by the Department of the Navy to be sensitive, routinely deployable; or located in a foreign territory, office or duty telephone number, source of commission, promotion sequence number, awards and decorations, attendance at professional military schools, and duty status at any given time.

(vi) The following information normally may be disclosed from civilian employee records about CONUS employees: Full name, present and past position titles and occupational series,

present and past grades, present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious and Distinguished Executive Ranks, and allowances and differentials), past duty stations, present duty station and future duty station (if finalized), including room numbers, shop designations, or other identifying information regarding buildings or places of employment, unless the duty stations have been determined by the Department of the Navy to be sensitive, routinely deployable, or located in a foreign territory, position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the disclosure of which would not interfere with law enforcement programs or severely inhibit Department of the Navy effectiveness.

(viii) Disclosure of home addresses and home telephone numbers normally is considered a clearly unwarranted invasion of personal privacy and is prohibited. However, they may be disclosed if the individual has consented to the disclosure; the disclosure is required by the FOIA; the disclosure is required by another law, such as 42 U.S.C. 653, which provides assistance to states in locating parents who have defaulted on child support payments, or the collection of alimony, and to state and local tax authorities for the purpose of enforcing tax laws. However, care must be taken prior to release to ensure that a written record is prepared to document the reasons for the release determination.

(A) When compiling home addresses and telephone numbers, the individual may be offered the option of authorizing disclosure of the information without further consent for specific purposes, such as locator services. In that case, the information may be disclosed for the stated purpose without further consent. If the information is to be disclosed for any other purpose, a signed consent permitting the additional disclosure must be obtained from the individual.

(B) Before listing home addresses and telephone numbers in Department of the Navy telephone directories, give the individual the opportunity to refuse such a listing. If the individual requests that the home address or telephone number not be listed in the directory, do not assess any additional fee associated with maintaining an unlisted number for government-owned telephone services.

(C) The sale or rental of lists of names and addresses is prohibited unless such action is specifically authorized by Federal law. This does not prohibit the disclosure of names and addresses made under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(D) In response to FOIA requests, information concerning special and general courts-martial results (e.g., records of trial) are releasable. However, information regarding summary courts-martial and non-judicial punishment are generally not releasable. The balancing of interests must be done. It is possible that in a particular case, information regarding non-judicial punishment should be disclosed pursuant to a FOIA request (i.e., the facts leading to a nonjudicial punishment are particularly newsworthy or the case involves a senior official abusing the public trust through office-related misconduct, such as embezzlement). Announcement of nonjudicial punishment dispositions under JAGMAN, subsection 0107, is a proper exercise of command authority and not a release of information under FOIA or this subpart and subpart G of this part. Exceptions to this policy must be coordinated with CNO (N09B30) or CMC (MI–3) prior to responding to requesters, including all requests for this type of information from members of Congress.

(3) *Disclosures for established routine uses.* (i) Records may be disclosed outside the Department of the Navy if the disclosure is for an established routine use.

(ii) A routine use shall:

(A) Be compatible with and related to the purpose for which the record was created;

(B) Identify the persons or organizations to whom the record may be disclosed;

(C) Identify specifically the uses for which the information may be employed by the receiving person or organization; and

(D) Have been published previously in the **Federal Register**.

(iii) A routine use shall be established for each user of the information outside the Department of the Navy who needs the information for an official purpose.

(iv) Routine uses may be established, discontinued, or amended without the consent of the individuals to whom the records pertain. However, new and amended routine uses must be published in the **Federal Register** at least 30 days before the information may be disclosed under their provisions.

(v) In addition to the routine uses established by the Department of the Navy for each system of records, common "Blanket Routine Uses," applicable to all record systems maintained with the Department of the Navy, have been established. These "Blanket Routine Uses" are published at the beginning of the Department of the Navy's **Federal Register** compilation of record systems notices rather than at each system notice and are also reflected in periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances." Unless a system notice specifically excludes a system of records from a "Blanket Routine Use," all "Blanket Routine Uses" apply to that system.

(vi) If the recipient has not been identified in the **Federal Register** or if the recipient, though identified, intends to employ the information for a purpose not published in the **Federal Register**, the written consent of the individual is required before the disclosure can be made.

(4) *Disclosures to the Bureau of the Census.* Records may be disclosed to the Bureau of the Census for purposes of planning or carrying out a census, survey, or related activities authorized by 13 U.S.C. 8.

(5) *Disclosures for statistical research or reporting.* Records may be disclosed to a recipient for statistical research or reporting if:

(i) Prior to the disclosure, the recipient has provided adequate written assurance that the records shall be used solely for statistical research or reporting; and

(ii) The records are transferred in a form that does not identify individuals

(6) *Disclosures to the National Archives and Records Administration.* (i) Records may be disclosed to the National Archives and Record Administration for evaluation to determine whether the records have sufficient historical or other value to warrant preservation by the Federal government. If preservation is warranted, the records will be retained by the National Archives and Record Administration, which becomes the official owner of the records.

(ii) Records may be disclosed to the National Archives and Record Administration to carry out records management inspections required by Federal law.

(iii) Records transferred to a Federal Records Center operated by the National Archives and Record Administration for storage are not within this category. Those records continue to be maintained and controlled by the transferring naval activity. The Federal Records Center is considered the agent of Department of the Navy and the disclosure is made under § 701.112(b)(1).

(7) *Disclosures when requested for law enforcement purposes.* (i) A record may be disclosed to another agency or an

instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity if:

(A) The civil or criminal law enforcement activity is authorized by law (federal, state or local); and

(B) The head of the agency (or his or her designee) has made a written request to the naval activity specifying the particular record or portion desired and the law enforcement purpose for which it is sought.

(ii) Blanket requests for any and all records pertaining to an individual shall not be honored. The requesting agency must specify each record or portion desired and how each relates to the authorized law enforcement activity.

(iii) If a naval activity discloses a record outside the Department of Defense for law enforcement purposes without the individual's consent and without an adequate written request, the disclosure must be under an established routine use, such as the "Blanket Routine Use" for law enforcement.

(iv) Disclosure to foreign law enforcement agencies is not governed by the provisions of 5 U.S.C. 552a and this paragraph, but may be made only under established "Blanket Routine Uses." routine uses published in the individual record system notice, or to other governing authority.

(8) *Disclosure to protect the health or safety of an individual.* Disclosure may be made under emergency conditions involving circumstances affecting the health and safety of an individual (i.e., when the time required to obtain the consent of the individual to whom the records pertain might result in a delay which could impair the health or safety of a person) provided notification of the disclosure is sent to the record subject. Sending the notification to the last known address is sufficient. In instances where information is requested by telephone, an attempt will be made to verify the inquirer's and medical facility's identities and the caller's telephone number. The requested information, if then considered appropriate and of an emergency nature, may be provided by return call.

(9) *Disclosures to Congress.* (i) A record may be disclosed to either House of Congress at the request of either the Senate or House of Representatives as a whole.

(ii) A record also may be disclosed to any committee, subcommittee, or joint committee of Congress if the disclosure pertains to a matter within the legislative or investigative jurisdiction of the committee, subcommittee, or joint committee.

(iii) Disclosure may not be made to a Member of Congress requesting in his or her individual capacity. However, for Members of Congress making inquiries on behalf of individuals who are subjects of records, a "Blanket Routine Use" has been established to permit disclosures to individual Members of Congress.

(A) When responding to a congressional inquiry made on behalf of a constituent by whose identifier the record is retrieved, there is no need to verify that the individual has authorized the disclosure to the Member of Congress.

(B) The oral or written statement of a Congressional staff member is sufficient to establish that a request has been received from the individual to whom the record pertains.

(C) If the constituent inquiry is made on behalf of an individual other than the record subject, provide the Member of Congress only that information releasable under 5 U.S.C. 552. Advise the Member of Congress that the written consent of the record subject is required before additional information may be disclosed. Do not contact the record subject to obtain consent for the disclosure to the Member of Congress unless the Congressional office specifically requests it be done.

(10) *Disclosures to the Comptroller General for the General Accounting Office (GAO).* Records may be disclosed to the Comptroller General of the U.S., or authorized representative, in the course of the performance of the duties of the GAO.

(11) *Disclosures under court orders.* (i) Records may be disclosed under the order of a court of competent jurisdiction.

(ii) When a record is disclosed under this provision and the compulsory legal process becomes a matter of public record, make reasonable efforts to notify the individual to whom the record pertains. Notification sent to the last known address of the individual is sufficient. If the order has not yet become a matter of public record, seek to be advised as to when it will become public. Neither the identity or the party to whom the disclosure was made nor the purpose of the disclosure shall be made available to the record subject unless the court order has become a matter of public record.

(iii) The court order must bear the signature of a federal, state, or local judge. Orders signed by court clerks or attorneys are not deemed to be orders of a court of competent jurisdiction. A photocopy of the order, regular on its face, will be sufficient evidence of the court's exercise of its authority of the minimal requirements of SECNAVINST 5820.8A [9], "Release of Official Information for Litigation Purposes and Testimony by Department of the Navy Personnel."

(12) *Disclosures to consumer reporting agencies.* Certain information may be disclosed to consumer reporting agencies (i.e., credit reference companies such as TRW and Equifax, etc.) as defined by the Federal Claims Collection Act of 1966 (31 U.S.C. 952d). Under the provisions of that Act, the following information may be disclosed to a consumer reporting agency:

(i) Name, address, taxpayer identification number (SSN), and other information necessary to establish the identity of the individual;

(ii) The amount, status, and history of the claim; and

(iii) The agency or program under which the claim arose. 31 U.S.C. 952d specifically requires that the **Federal Register** notice for the system of records from which the information will be disclosed indicate that the information may be disclosed to a consumer reporting agency.

(c) *Disclosures to commercial enterprises.* Records may be disclosed to commercial enterprises only under the criteria established by Secretary of the Navy Instruction 5720.42E and 42 U.S.C. 653, Parent Locator Service for Enforcement of Child Support.

(1) Any information required to be disclosed by Secretary of the Navy Instruction 5720.42E and 42 U.S.C. 653, Parent Locator Service for Enforcement of Child Support may be disclosed to a requesting commercial enterprise.

(2) Commercial enterprises may present a consent statement signed by the individual indicating specific conditions for disclosing information from a record. Statements such as the following, if signed by the individual, are considered sufficient to authorize the disclosure: I hereby authorize the Department of the Navy to verify my SSN or other identifying information and to disclose my home address and telephone number to authorized representatives of (name of commercial enterprise) to be used in connection with my commercial dealings with that enterprise. All information furnished will be used in connection with my financial relationship with (name of commercial enterprise).

(3) When a consent statement as described in the preceding subsection is presented, provide the information to the commercial enterprise, unless the

[9] Copies available from the Judge Advocate General, Navy Department, (Code 34), 200 Stovall Street, Alexandria, VA 22332-2400

disclosure is prohibited by another regulation or Federal law.

(4) Blanket consent statements that do not identify the Department of Defense or Department of the Navy, or that do not specify exactly the information to be disclosed, may be honored if it is clear that the individual, in signing the consent statement, was seeking a personal benefit (i.e., loan for a house or automobile) and was aware of the type of information necessary to obtain the benefit sought.

(5) Do not honor requests from commercial enterprises for official evaluations of personal characteristics such as personal financial habits.

(d) *Disclosure of Health Care Records to the Public.* This paragraph applies to disclosure of information to the news media and the public concerning individuals treated or hospitalized in Department of the Navy medical facilities and, when the cost of care is paid by the Department of the Navy, in non-Federal facilities.

(1) *Disclosures without the individual's consent.* Normally, the following information may be disclosed without the individual's consent:

(i) Information required to be released by Secretary of the Navy Instruction 5720.42E and OPM Regulations and the Federal Personnel Manual, as well as the information listed in § 701.112(b)(2)(v) for military personnel and in § 701.112(b)(2).

(ii) For civilian employees; and

(iii) General information concerning medical conditions, i.e., date of admission or disposition; present medical assessment of the individual's condition if the medical practitioner has volunteered the information, i.e., the individual's condition presently is (stable) (good) (fair) (serious) (critical), and the patient is (conscious) (semi-conscious) (unconscious)

(2) *Disclosures with the individual's consent.* With the individual's informed consent, any information about the individual may be disclosed. If the individual is a minor or has been declared incompetent by a court of competent jurisdiction, the parent of the minor or appointed legal guardian of the incompetent may give consent on behalf of the individual.

(e) *Disclosure of Personal Information on Group/Bulk Orders.* Do not use personal information including complete SSNs, home addresses and phone numbers, dates of birth, etc., on group/bulk orders. This personal information should not be posted on lists that everyone listed on the orders sees. Such a disclosure of personal information violates the Privacy Act and this subpart and subpart G of this part.

(f) *Disclosure Accounting.* Keep an accurate record of all disclosures made from a record (including those made with the consent of the individual) except those made to DoD personnel for use in performing their official duties; and those made under the FOIA. Disclosure accounting is to permit the individual to determine what agencies or persons have been provided information from the record, enable Department of the Navy activities to advise prior recipients of the record of any subsequent amendments or statements of dispute concerning the record, and provide an audit trial of Department of the Navy's compliance with 5 U.S.C. 552a.

(1) Disclosure accountings shall contain the date of the disclosure; a description of the information disclosed; the purpose of the disclosure; and the name and address of the person or agency to whom the disclosure was made.

(2) The record subject has the right of access to the disclosure accounting except when the disclosure was made at the request of a civil or criminal law enforcement agency under § 701.112(b)(7); or when the system of records has been exempted from the requirement to provide access to the disclosure accounting.

(g) *Methods of disclosure accounting.* Since the characteristics of various records maintained within the Department of the Navy vary widely, no uniform method for keeping disclosure accountings is prescribed. The primary criteria are that the selected method be one which will:

(1) Enable an individual to ascertain what persons or agencies have received disclosures pertaining to him/her;

(2) Provide a basis for informing recipients of subsequent amendments or statements of dispute concerning the record; and

(3) Provide a means to prove, if necessary that the activity has complied with the requirements of 5 U.S.C. 552a and this subpart and subpart G of this part.

(h) *Retention of Disclosure Accounting.* Maintain a disclosure accounting of the life of the record to which the disclosure pertains, or 5 years after the date of the disclosure, whichever is longer. Disclosure accounting records are normally maintained with the record, as this will ensure compliance with § 701.112(f).

§ 701.113 Exemptions.

(a) *Using exemptions.* No system of records is automatically exempt from all provisions of 5 U.S.C. 552a. A system of records is exempt from only those provisions of 5 U.S.C. 552a that are identified specifically in the exemption rule for the system. Subpart G of this part contains the systems designated as exempt, the types of exemptions claimed, the authority and reasons for invoking the exemptions and the provisions of 5 U.S.C. 552a from which each system has been exempt. Exemptions are discretionary on the part of Department of the Navy and are not effective until published as a final rule in the **Federal Register.** The naval activity maintaining the system of records shall make a determination that the system is one for which an exemption may be established and then propose an exemption rule for the system. Submit the proposal to CNO (N09B30) for approval and publication in the **Federal Register**.

(b) *Types of exemptions.* There are two types of exemptions permitted by 5 U.S.C. 552a.

(1) *General exemptions.* Those that authorize the exemption of a system of records from all but specifically identified provisions of 5 U.S.C. 552a.

(2) *Specific exemptions.* Those that allow a system of records to be exempt from only a few designated provisions of 5 U.S.C. 552a.

(c) *Establishing exemptions.* (1) 5 U.S.C. 552a authorizes the Secretary of the Navy to adopt rules designating eligible systems of records as exempt from certain requirements. The Secretary of the Navy has delegated the CNO (N09B30) to make a determination that the system is one for which an exemption may be established and then propose and establish an exemption rule for the system. No system of records within Department of the Navy shall be considered exempt until the CNO (N09B30) has approved the exemption and an exemption rule has been published as a final rule in the **Federal Register.** A system of records is exempt from only those provisions of 5 U.S.C. 552a that are identified specifically in the Department of the Navy exemption rule for the system.

(2) No exemption may be established for a system of records until the system itself has been established by publishing a notice in the **Federal Register,** at least 30 days prior to the effective date, describing the system. This allows interested persons an opportunity to comment. An exemption may not be used to deny an individual access to information that he or she can obtain under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program."

(d) *Exemption for classified material.* All systems of records maintained by the Department of the Navy shall be exempt under section (k)(1) of 5 U.S.C. 552a, to the extent that the systems contains any information properly classified under E.O. 12356 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

NOTE: Department of the Navy Privacy Act systems of records which contain classified information automatically qualify for a (k)(1) exemption, without establishing an exemption rule.

(e) *Exempt records in nonexempt systems.* (1) An exemption rule applies to the system of records which it was established. If a record from an exempt system is incorporated intentionally into a system that has not been exempt, the published notice and rules for the nonexempt system will apply to the record and it will not be exempt from any provisions of 5 U.S.C. 552a.

(2) A record from one component's (i.e., Department of the Navy) exempted system that is temporarily in the possession of another component (i.e., Army) remains subject to the published system notice and rules of the originating component's (i.e., Department of the Navy). However, if the non-originating component incorporates the record into its own system of records, the published notice and rules for the system into which it is incorporated shall apply. If that system of records has not been exempted, the record shall not be exempt from any provisions of 5 U.S.C. 552a.

(3) A record accidentally misfiled into a system of records is governed by the published notice and rules for the system of records in which it actually should have been filed.

(f) *General exemptions—(1) Central Intelligence Agency (CIA).* The Department of the Navy is not authorized to establish an exemption for records maintained by the CIA under subsection (j)(1) of 5 U.S.C. 552a.

(2) *Law enforcement.* (i) The general exemption provided by subsection (j)(2) of 5 U.S.C. 552a may be established to protect criminal law enforcement records maintained by Department of the Navy.

(ii) To be eligible for the (j)(2) exemption, the system of records must be maintained by an element that performs, as one of its principal functions, the enforcement of criminal laws. The Naval Investigative Service, Naval Inspector General, and military police activities qualify for this exemption.

(iii) Criminal law enforcement includes police efforts to detect, prevent, control, or reduce crime, or to apprehend criminals, and the activities of prosecution, court, correctional, probation, pardon, or parole authorities.

(iv) Information that may be protected under the (j)(2) exemption includes:

(A) Information compiled for the purpose of identifying criminal offenders and alleged criminal offenders consisting of only identifying data and notations of arrests; the nature and disposition of criminal charges; and sentencing, confinement, release, parole, and probation status;

(B) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; and

(C) Reports identifiable to an individual, compiled at any stage of the enforcement process, from arrest, apprehension, indictment, or preferral of charges through final release from the supervision that resulted from the commission of a crime.

(v) The (j)(2) exemption does not apply to:

(A) Investigative records maintained by a naval activity having no criminal law enforcement duties as one of its principle functions, or

(B) Investigative records compiled by any element concerning individual's suitability, eligibility, or qualification for duty, employment, or access to classified information, regardless of the principle functions of the naval activity that compiled them.

(vi) The (j)(2) exemption established for a system of records maintained by a criminal law enforcement activity cannot protect law enforcement records incorporated into a nonexempt system of records or any system of records maintained by an activity not principally tasked with enforcing criminal laws. All system managers, therefore, are cautioned to comply strictly with Department of the Navy regulations or instructions prohibiting or limiting the incorporation of criminal law enforcement records into systems other than those maintained by criminal law enforcement activities.

(g) *Specific exemptions.* [illegible] exemptions permit certain categories of records to be exempted from specific provisions of 5 U.S.C. 552a. Subsections (k)(1)-(7) of 5 U.S.C. 552a allow exemptions for seven categories of records. To be eligible for a specific exemption, the record must meet the corresponding criteria.

NOTE: Department of the Navy Privacy Act systems of records which contain classified information automatically qualify for a (k)(1) exemption, without an established exemption rule.

(1) (k)(1) exemption: Information properly classified under Secretary of the Navy Instruction 5720.42E, "Department of the Navy Freedom of Information Act Program" and E.O. 12356, in the interest of national defense or foreign policy.

(2) (k)(2) exemption: Investigatory information (other than that information within the scope of § 701.113(f)(2) compiled for law enforcement purposes If maintaining the information causes an individual to be ineligible for or denied any right, benefit, or privilege that he or she would otherwise be eligible for or entitled to under Federal law, then he or she shall be given access to the information, except for the information that would identify a confidential source (see § 701.113(h), "confidential source"). The (k)(2) exemption, when established, allows limited protection on investigative records maintained for use in personnel and administrative actions.

(3) (k)(3) exemption: Records maintained in connection with providing protective services to the President of the United States and other individuals under 18 U.S.C. 3056.

(4) (k)(4) exemption: Records required by Federal law to be maintained and used solely as statistical records that are not used to make any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(5) (k)(5) exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source. (See § 701.113(h), "confidential source"). This exemption allows protection of confidential sources in background investigations, employment inquiries, and similar inquiries used in personnel screening to determine suitability, eligibility, or qualifications.

(6) (k)(6) exemption: Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal or military service if the disclosure would compromise the objectivity or fairness of the testing or examination process.

(7) (k)(7) exemption: Evaluation material used to determine potential for promotion in the military services, but

only to the extent that disclosure would reveal the identity of a confidential source. (See § 701.113(h), "confidential source".)

(h) *Confidential Source.* Promises of confidentiality are to be given on a limited basis and only when essential to obtain the information sought. Establish appropriate procedures for granting confidentiality and designate those categories of individuals authorized to make such promises.

§ 701.114 Enforcement actions.

(a) *Administrative remedies.* An individual who alleges he or she has been affected adversely by a naval activity's violation of 5 U.S.C. 552a or this subpart and subpart G of this part shall be permitted to seek relief from SECNAV through proper administrative channels.

(b) *Civil court actions.* After exhausting all administrative remedies, an individual may file suit in Federal court against a naval activity for any of the following acts:

(1) *Denial of an amendment request.* The activity head, or his or her designee wrongfully refuses the individual's request for review of the initial denial of an amendment or, after review, wrongfully refuses to amend the record;

(2) *Denial of access.* The activity wrongfully refuses to allow the individual to review the record or wrongfully denies his or her request for a copy of the record;

(3) *Failure to meet recordkeeping standards.* The activity fails to maintain an individual's record with the accuracy, relevance, timeliness, and completeness necessary to assure fairness in any determination about the individual's rights, benefits, or privileges and, in fact, makes an adverse determination based on the record; or

(4) *Failure to comply with Privacy Act.* The activity fails to comply with any other provision of 5 U.S.C. 552a or any rule or regulation promulgated under 5 U.S.C. 552a and thereby causes the individual to be adversely affected.

(c) *Criminal penalties.* Subsection (i)(1) of 5 U.S.C. 552a authorizes three criminal penalties against individuals for violations of its provisions. All three are misdemeanors punishable by fines of $5,000.

(1) *Wrongful disclosure.* Any member or employee of Department of the Navy who, by virtue of his or her employment or position, has possession of or access to records and willfully makes a disclosure knowing that disclosure is in violation of 5 U.S.C. 552a or this subpart and subpart G of this part.

(2) *Maintaining unauthorized records.* Any member or employee of Department of the Navy who willfully maintains a system of records for which a notice has not been published under periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances."

(3) *Wrongful requesting or obtaining records.* Any person who knowingly and willfully requests or obtains information concerning an individual under false pretenses.

§ 701.115 Computer matching program.

(a) *General.* 5 U.S.C. 552a and this subpart and subpart G of this part are applicable to certain types of computer matching, i.e., the computer comparison of automated systems of records. There are two specific kinds of matching programs that are fully governed by 5 U.S.C. 552a and this subpart and subpart G of this part:

(1) Matches using records from Federal personnel or payroll systems of records;

(2) Matches involving Federal benefit programs to accomplish one or more of the following purposes:

(i) To determine eligibility for a Federal benefit.

(ii) To comply with benefit program requirements.

(iii) To effect recovery of improper payments or delinquent debts from current or former beneficiaries.

The record comparison must be a computerized one. Manual comparisons are not covered, involving records from two or more automated systems of records (i.e., systems of records maintained by Federal agencies that are subject to 5 U.S.C. 552a); or a Department of the Navy automated systems of records and automated records maintained by a non-Federal agency (i.e., State or local government or agent thereof). A covered computer matching program entails not only the actual computerized comparison, but also preparing and executing a written agreement between the participants, securing approval of the Defense Data Integrity Board, publishing a matching notice in the **Federal Register** before the match begins, ensuring that investigation and due process are completed, and taking ultimate action, if any.

Subpart G—Privacy Act Exemptions

§ 701.116 Purpose.

Subparts F and G of this part contain rules promulgated by the Secretary of the Navy, pursuant to 5 U.S.C. 552a (j) and (k), and subpart F, § 701.113, to exempt certain systems of Department of the Navy records from specified provisions of 5 U.S.C. 552a.

§ 701.117 Exemption for classified records.

All systems of records maintained by the Department of the Navy shall be exempt from the requirements of the access provision of the Privacy Act (5 U.S.C. 552a(d)) under the (k)(1) exemption, to the extent that the system contains information properly classified under E.O. 12356 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

§ 701.118 Exemptions for specific Navy record systems.

(a) *System Identifier and Name:* N01070–9, White House Support Program.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority: 5 U.S.C. 552a(k) (1), (2), (3), and (5).

Reasons: Exempted portions of this system contain information which has been properly classified under E.O. 12356, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system may also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information, and which was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record. Exempted portions of this system may also contain information collected and maintained in connection with providing protective services to the President and other individuals protected pursuant to 18 U.S.C. 3056. Exempted portions of this system may also contain investigative records compiled for law enforcement purposes, the disclosure of which could reveal the identity of sources who provide information under an express or implied promise of confidentiality, compromise investigative techniques and procedures, jeopardize the life or physical safety of law-enforcement personnel, or otherwise interfere with enforcement proceedings or adjudications.

(b) *System Identifier and Name:* N01131–1, Officer Selection and Appointment System.

Exemption: Portions of this system of records are exempt from the following

subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(1), (5), (6), and (7).

Reasons: Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(c) *System Identifier and Name:* N01133–2, Recruiting Enlisted Selection System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(1), (5), (6), and (7).

Reasons: Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(d) *System Identifier and Name:* N01640–1, Individual Correctional Records.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

Authority: 5 U.S.C. 552a(j)(2).

Reason: Granting individuals access to portions of these records pertaining to or consisting of, but not limited to, disciplinary reports, criminal investigations, and related statements of witnesses, and such other related matter in conjunction with the enforcement of criminal laws, could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirement of the other cited provisions

(e) *System Identifier and Name:* N01754–3, Navy Child Development Services Program.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

Authority: 5 U.S.C. 552a(k)(2).

Reasons: Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recrimination, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

(f) *System Identifier and Name:* N03834–1, Special Intelligence Personnel Access File.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(1) and (5).

Reasons: Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(g) *System Identifier and Name:* N04060–1, Navy and Marine Corps Exchange Security Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4) (G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(2).

Reasons: Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by these activities.

(h) *System Identifier and Name:* N04385–1, IG Investigatory System.

Exemption: Portions of this system or records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4) (G) through (I), (e)(5), (e)(8), (f), and (g).

Authority: 5 U.S.C. 552a(j) (2).

Reasons: Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, the orderly administration of justice, and might enable suspects to avoid detection and apprehension. Disclosures of this information could result in the concealment, destruction, or fabrication of evidence, and possibly jeopardize the safety and well being of informants, witnesses and their families. Such disclosures could also reveal and render ineffectual investigatory techniques and methods and sources of information and could result in the invasion of the personal privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his or her records, and the reasons therefore, necessitate the exemption of this system of records from the provisions of the other cited sections of 5 U.S.C. 552a.

(i) *System Identifier and Name:* N04385–2, Hotline Program Case Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f).

Authority: 5 U.S.C. 552a(k) (1), (2), (5), (6) and (7).

Reasons: Exempted portions of this system consist of information compiled for the purpose of investigations, including reports of informants and investigators. Such investigations may be associated with identifiable individuals. Disclosure of files in this system would interfere with orderly investigations, and possibly result in the concealment, destruction, or fabrication

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of evidence, and possibly jeopardize the safety and well-being of informants, witnesses and their families. Such disclosures could also reveal and render ineffectual investigatory techniques and methodsand sources of information and could further result in the invasion of the personal privacy of individuals only incidentally related to an investigation. Depending on the nature of the complaint, records may contain information that: is currently and properly classified pursuant to E.O. and must be kept secret in the interest of national defense or foreign policy, is confidentially provided information located in investigatory records compiled for the purposed of enforcement of non-criminal law, relates to qualifications, eligibility, or suitability for Federal employment, is test or examination material used to determine qualifications for appointment or promotion in the Federal service, is confidentially provided information used todetermine potential for promotion in the armed services.

(j) *System Identifier and Name:* N05300–3, Faculty Professional Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4) (G) and (H), and (f).

Authority: 5 U.S.C. 552a(k)(5).

Reasons: Exempted portions of this system contain information considered relevant and necessary to make a release determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(k).*System Identifier and Name:* N05354–1, Equal Opportunity Information Management System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(1) and (5).

Reasons: Granting access to information in this system of records could result in the disclosure of classified material, or reveal the identity of a source who furnished information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that will not disclose the identity of a confidential source.

(l) *System Identifier and Name:* N05520–1, Personnel Security Eligibility Information System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) and (I), and (f).

Authority: 5 U.S.C. 552a(k) (1). (2), (5), and (7).

Reasons: Granting individuals access to information collected and maintained in this system of records could interfere with orderly investigations; result in the disclosure of classified material; jeopardize the safety of informants, witnesses, and their families; disclose investigative techniques; and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified information that will not disclose the identity of sources who provide the information to the government under an express or implied promise of confidentiality.

(m) *System Identifier and Name:* N05520–4, NIS Investigative Files System.

Exemption (1): Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

Authority (1): 5 U.S.C. 552a(j)(2).

Reason (1): Granting individuals access to information collected and maintained by this activity relating to the enforcement of criminal laws could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirement of the other cited provisions.

Exemption (2): Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority (2): 5 U.S.C. 552a(k) (1), (3), (4), (5) and (6).

Reason (2): The release of disclosure accountings would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation, and the information contained, or the identity of witnesses or informants, would therefor present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Access to the records contained in this system would inform the subject of the existence of material compiled for law enforcement purposes, the premature release of which could prevent the successful completion of investigation, and lead to the improper influencing of witnesses, the destruction of records, or the fabrication of testimony. Exempt portions of this system also contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified information, and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record. The notice of this system of records published in the **Federal Register** sets forth the basic statutory or related authority for maintenance of the system.

The categories of sources of records in this system have been published in the **Federal Register** in broad generic terms. The identity of specific sources, however, must be withheld in order to protect the confidentiality of the source, of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

This system of records is exempted from procedures for notice to an individual as to the existence of records pertaining to him/her dealing with an actual or potential civil or regulatory investigation, because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation, pending or future. Mere notice of the fact of an investigation could inform the subject or others that their activities are under, or may become the subject of, an investigation. This could enable the subjects to avoid detection, to influence witnesses improperly, to destroy records, or to fabricate testimony.

Exempt portions of this system containing screening board reports. Screening board reports set forth the results of oral examination of applicants for a position as a special agent with the Naval Investigation Service Command. Disclosure of these records would reveal the areas pursued in the course of the examination and thus adversely affect the result of the selection process. Equally important, the records contain the candid views of the members composing the board. Release of the records could affect the willingness of the members to provide candid opinions and thus diminish the effectiveness of a program which is essential to maintaining the high standard of the Special Agent Corps., i.e., those records constituting examination material used solely to determine individual qualifications for appointment in the Federal service.

(n) *System Identifier and Name:* N05520–5, Navy Joint Adjudication and Clearance System (NJACS).

Exemption: Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (d)(1–5).

Authority: 5 U.S.C. 552a(k)(1) and (k)(5).

Reasons: Granting individuals access to information collected and maintained in this system of records could result in the disclosure of classified material; and jeopardize the safety of informants, and their families. Further, the integrity of the system must be ensured so that complete and accurate records of all adjudications are maintained. Amendment could cause alteration of the record of adjudication.

(o) *System Identifier and Name:* N05527–1, Security Incident System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), and (e)(4)(G) through (I), (e)(5), (e)(8), (f) and (g).

Authority: 5 U.S.C. 552a(j)(2)

Reasons: Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and of law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of privacy of individuals only incidentally related to an investigation.The exemption of the individual's right of access to his or her records, and the reason therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(p) *System Identifier and Name:* N05527–4, Naval Security Group Personnel Security/Access Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).Authority: 5 U.S.C. 552a(k)(1) through (k)(5).

Reasons: Exempt portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy. Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualification, eligibility or suitability for access to classified special intelligence information, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(q) *System Identifier and Name:* N05800–1, Legal Office Litigation/ Correspondence Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(1), and (f)(2), (3), and (4).

Authority: 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), (k)(6), and (k)(7).

Reasons: Subsection (d) because granting individuals access to information relating to the preparation and conduct of litigation would impair the development and implementation of legal strategy. Accordingly, such records are exempt under the attorney-client privilege. Disclosure might also compromise on-going investigations and reveal confidential informants. Additionally, granting access to the record subject would seriously impair the Navy's ability to negotiate settlements or pursue other civil remedies. Amendment is inappropriate because the litigation files contain official records including transcripts, court orders, investigatory materials, evidentiary materials such as exhibits, decisional memorandum and other case-related papers. Administrative due process could not be achieved by the "exparte" correction of such materials

Subsection (e)(1) because it is not possible in all instances to determine relevancy or necessity of specific information in the early stages of case development. What appeared relevant and necessary when collected, ultimately may be deemed unnecessary upon assessment in the context of devising legal strategy. Information collected during civil litigation investigations which is not used during subject case is often retained to provide leads in other cases or to establish patterns of activity.

Subsection (f)(2), (3), and (4) because this record system is exempt from the individual access provisions of subsection (d).

(r) *System Identifier and Name:* N05819–3, Naval Clemency and Parole Board Files.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(4), (d), (e)(4)(G), and (f).

Authority: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to records maintained by this Board could interfere with internal processes by which Board personnel are able to formulate decisions and policies with regard to clemency and parole in cases involving naval prisoners and other persons under the jurisdiction of the Board. Material will be screened to permit access to all material except such records or documents as reflect items of opinion, conclusion, or recommendation expressed by individual board members or by the board as a whole.

The exemption of the individual's right to access to portions of these records, and the reasons therefore, necessitate the partial exemption of this system of records from the requirements of the other cited provisions.

(s) *System Identifier and Name:* N06320–2, Family Advocacy Program System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

Authority: 5 U.S.C. 552a(k)(2) and (k)(5)

Reasons: Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accounting, could interfere with

ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(t) *System Identifier and Name:* N12930–1, Human Resources Group Personnel Records.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(4)(G) and (H), and (f).

Authority: 5 U.S.C. 552a(k)(5) and (k)(6).

Reasons: Exempted portions of this system contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing express or implied promise to the source that his or her identity would not be revealed to the subject of the record. Exempted portions of this system also contain test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would comprise the objectivity or fairness of the testing or examination process.

§ 701.119 Exemptions for Specific Marine Corps Record Systems.

(a) *System Identifier and Name:* MMN00018, Base Security Incident Reporting System.

Exemption: Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e) (2) and (3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

Authority: 5 U.S.C. 552a(j)(2).

Reasons: Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and might enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his or her records, and the reasons therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(b) *System Identifier and Name:* MIN00001, Personnel and Security Eligibility and Access Information System.

Exemption: Portions of this system of records are exempt for the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

Authority: 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5), as applicable.

Reasons: Exempt portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified, compartmented, or otherwise sensitive information, and was obtained by providing an expressed or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

Exempt portions of this system further contain information that identifies sources whose confidentiality must be protected to ensure that the privacy and physical safety of these witnesses and informants are protected.

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L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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Drawbridge Operation Regulations; Black Rock Canal, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Canadian National Railway Company, the Coast Guard is considering a change to the operating regulations governing the Canadian National railroad bridge at mile 3.8 across the Black Rock Canal in Buffalo, New York, by not requiring bridgetenders to be in constant attendance at the bridge during periods of time when there is little or no significant navigation on the Canal. This action should relieve the bridge owner of the burden of having a bridgetender in constant attendance and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before August 1, 1994.

ADDRESSES: Comments may be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, or may be delivered to room 2083D at the above address between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 522–3993.

The Commander Ninth Coast Guard District maintains the public docket for this rulemaking. Comments will become part of the docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Bloom, Jr., Chief, Bridge Branch at (216) 522–3993.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD09–94–008) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. This proposal may be changed in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Robert W. Bloom, Jr. at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Fred H Mieser, Project Manager, and Commander J.M. Collin, Project Counsel, Ninth Coast Guard District.

Background and Purpose

Presently, the Canadian National railroad bridge is required to have bridgetenders in constant attendance at all times. The owner requested that they be allowed to remove bridgetenders from the bridge between the hours of 11 p.m. and 7 a.m., seven days a week, from April 15 through November 30, with a requirement to open the bridge on signal when notice is given at least two hours in advance of a vessel's time of intended passage through the draw. From December 1 through April 14 the bridge would be unattended at all times with a requirement to open the bridge on signal if notice is given at least four hours in advance of a vessel's time of intended passage through the draw. At all times, the bridge will be roquired to open as soon as possible for the passage of public vessels of the United States, State or local government vessels used for public safety, and vessels in distress. The removal of bridgetenders is being proposed because there is little or no significant navigation on the Canal during these times.

Discussion of Proposed Amendment

Bridgetender logs furnished by the Canadian National Railway Company showed that in 1992, between the hours of 11 p.m. and 7 a.m., there were 38 requests for bridge openings, with the highest number of 12 openings occurring in September. For the same period of time in 1993, there were 38 requests for bridge openings, with the highest number of 8 openings occurring in May. During the winter navigation season, December 1 through April 14, there was one request for a bridge opening for both 1992 and 1993. The periods of time and the number of hours required for giving an advance notice to have the bridge opened when there is no bridgetender in attendance at the bridge, are identical to regulations currently in effect for the Ferry Street Bridge over the Black Rock Canal.

In addition, the name of the Ferry Street bridge and the words New York will be eliminated from the section heading in 33 CFR 117.769, which reads, Ferry Street, Black Rock Canal, New York. The new section heading is being changed to conform with the structure and nomenclature of 33 CFR 117, Subpart B, and will read *§ 117.769 Black Rock Canal* under the listing for the State of New York. The list of vessels to be passed as soon as possible specified in paragraph (b) of 117.769 will be removed. This requirement for these vessels is covered under § 117.31 (b)(1), (2), (3), and (4).

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)3 of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We conclude this because the periods of time specified by these regulations when the bridge would be unattended are periods when there are few requests to have the bridge opened for the passage of a vessel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Since the proposed rule allows the owner of the Canadian National Railway Bridge to remove bridgetenders from the bridge during times when there is little or no significant vessel traffic on the Black Rock Canal, and because those vessels that would transit the Canal during these times can do so by giving notice in advance of their time of intended passage through the draw, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have significant impact on a substantial number of small entities

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.5 of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATING REGULATIONS

1. The authority citation for part 117 continues to read as follows.

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.769 is revised to read as follows:

§ 117.769 Black Rock Canal.

The draws of the Ferry Street bridge, mile 2.6 and Canadian National Railway bridge, mile 3.8, both at Buffalo, shall operate as follows:

(a) From April 15 through November 30, the draws shall open on signal. However, between the hours of 11 p.m and 7 a.m., seven days a week, no bridgetender is required to be in attendance at the bridges and the draws shall open on signal if notice is given to the owners at least two hours in advance of a vessel's intended time of passage through the draws.

(b) From December 1 through April 14, no bridgetender is required to be in attendance at the bridges and the draws shall open on signal if notice is given to the owners at least four hours in advance of a vessel's time of intended passage through the draws.

Dated: May 17, 1994.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 94–13089 Filed 5–31–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300341; FRL–4864–1]

RIN No. 2070–AC18

1,1-Dichloro-2,2-Bis(p-Ethylphenyl) Ethane; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke the tolerances listed at 40 CFR 180.139 for residues of the pesticide 1,1-Dichloro-2,2-*bis*(*p*-ethylphenyl) ethane (also known as Perthane, Ethylan, or diethyl diphenyl dichloroethane, and hereafter referred to as Perthane) in or on raw agricultural commodities. This revocation is proposed because all registrations of Perthane have been canceled. The revocation would take effect 30 days after the date of publication of the final rule in the **Federal Register**.

DATES: Written comments, identified by the OPP document control number [OPP-300341], must be received on or before July 1, 1994.

ADDRESSES: By mail, submit comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed as confidential by marking any or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. until 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Crystal Station #1, 3rd Floor, 2800 Crystal Drive, Arlington, VA 22202, Telephone: (703)-308-8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

Currently, a tolerance of 15 ppm exists at 40 CFR 180.139 for residues of Perthane in or on the raw agricultural commodities apples, broccoli, brussels sprouts, cabbage, cauliflower, cherries, kohlrabi, lettuce, pears, and spinach; and a tolerance of 0 ppm for residues in milk and meat.

II. Background

Perthane is a chlorinated hydrocarbon insecticide chemically related to DDT. It was used for insect control on agricultural crops, on agricultural premises such as barns and corrals, in pet areas for tick control, in homes for mosquito and fly control, and in fabric for moth control. Rohm and Haas was the sole producer of technical Perthane, although many companies formulated end-use products.

On May 11, 1978, Rohm and Haas informed EPA that it was discontinuing production and sale of their Perthane insecticide because of its inability to produce the product at a reasonable cost and its loss of market share. Rohm and Haas also stated that it had already discontinued production of its last remaining Perthane product, which was technical Perthane. Rohm and Haas further stated that the expected sale of the remaining inventory was to be completed in the fourth quarter of 1978. The company also submitted a copy of a letter it was sending to its Perthane customers telling them of its business decision to stop producing this product and further stating that it would allocate existing stocks against open orders received by May 31, 1978.

On March 28, 1980, EPA issued a Data Call-In (DCI) for toxicology data to all technical and end-use registrants of Perthane. EPA had determined that it lacked adequate data to determine whether pesticide products containing Perthane cause unreasonable adverse effects on humans and the environment. Further, after reviewing all of the available acute, subchronic, and chronic toxicity studies supporting the registration of Perthane, the Agency determined that the available data were not sufficient to support the continued registration of these products.

On May 14, 1980, Rohm and Haas notified EPA by letter that it was choosing to voluntarily withdraw all the registrations it held for Perthane (Perthane 75% Solution — Registration 707-60, Perthane EC — Registration 707-65, and Perthane Technical -Registration 707-96). Subsequently, on June 20, 1980 (45 FR 41694), EPA announced that Rohm and Haas Co. had requested voluntary cancellation of the registrations of its three Perthane products. The effective date of the cancellation was July 21, 1980. Rohm and Haas was permitted to sell existing stocks of Perthane for 1 year.

On December 31, 1984, EPA issued a Data Call-In to the remaining registrants of Perthane to give them the opportunity to generate chronic toxicology data to support registrations of Perthane for food and certain non-food uses. In the ensuing years, registrations of end-use products of Perthane were canceled as a result of regulatory action and follow-up to the 1980 and 1984 DCIs. In 1990, the last Perthane registration, for a non-food use, was found to be unsupported for Phase II of reregistration and was subsequently canceled by Agency action (55 FR 31164).

III. Current Proposal

EPA is proposing to revoke all tolerances for Perthane under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq. The Agency is taking this action because all registrations for uses of Perthane have been canceled.

Once the tolerances for Perthane on these raw agricultural commodities are revoked, it will be unlawful to import into the United States any commodities or products containing any Perthane. EPA has no evidence of recent foreign usage of Perthane on commodities which may be imported into the United States.

EPA believes for the following reasons that it is unlikely that residues of perthane will be found in food commodities for which tolerances have been established. EPA has no evidence of domestic distribution of Perthane since at least 1985. In addition, the persistence of Perthane in crops (the half life) is about 30 to 40 days. Perthane may be moderately persistent in the environment. However, EPA believes that since so much time has lapsed since Perthane was produced and distributed for use, it is unlikely that Perthane will be found in either the commodities for which there are tolerances or in commodities for which

there are not tolerances. For these reasons, EPA does not recommend an action level.

IV. Public Comment Procedures

Any person who has registered or submitted an application for the registration of a pesticide under FIFRA, as amended, which contains Perthane, may request within 30 days after publication in the **Federal Register** that this proposal to revoke the Perthane tolerance listed in 40 CFR 180.139 be referred to an advisory committee in accordance with section 408(e) of FFDCA. Such requests should be addressed to the contact person listed at the beginning of this proposal

Interested persons are invited to submit written comments, information, or data in response to this proposed rule. Comments must be submitted by July 1, 1994. Comments must bear a notation indicating the document control number [OPP-300341]. Three copies of the comments should be submitted to either location listed under "ADDRESSES" above in this document. Documents considered and relied upon by EPA in reaching its decision and all written comments filed pursuant to this document will be available for public inspection at the Virginia address listed at the beginning of this document.

V. Other Regulatory Requirements

To satisfy requirements for analysis specified by Executive Order 12866, the Regulatory Flexibility Act, and the Paperwork Reduction Act, EPA has analyzed the impacts of this proposal. The complete analysis, summarized below, is available for public inspection at the address listed at the beginning of this proposal.

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3 (f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another Agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The last registration of Perthane was canceled voluntarily in 1990 as part of reregistration. However, the registrant requested cancellation of Perthane technical in 1980, and EPA understands that production of technical Perthane ceased in 1978. EPA has no evidence of recent domestic or foreign usage of Perthane. There has been no domestic distribution of Perthane since at least 1985. For these reasons, EPA believes that existing stocks of those products should have been depleted and that sufficient time has elapsed for residues to dissipate and for legally treated commodities to have gone through channels of trade. Thus, revocation of Perthane tolerances is expected to have no impact which meets the conditions set forth in E.O. 12866.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The proposed tolerance revocation has been reviewed under the provisions of the Regulatory Flexibility Act and the Agency has determined that it will have no economic impact on small businesses, small governments, or small organizations. As indicated in Unit V.A. above, the revocation of the tolerance for perthane is expected to have no impact on any entity of any size, since there appears to have been no distribution of the pesticide for several years. The proposed regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide might be used in an unregistered or illegal manner.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The proposed regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recorkeeping requirements.

Dated: May 17, 1994

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371

§ 180.139 [Removed]

2. By removing § 180.139 *1,1-Dichloro-2,2-bis(p-ethylphenyl) ethane; tolerances for residues.*

[FR Doc. 94-13192 Filed 5-31-94; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF DEFENSE

48 CFR Parts 245 and 252

Defense Federal Acquisition Regulation Supplement; Demilitarization

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; reinstatement and extension of comment period.

SUMMARY: The Defense Acquisition Regulations (DAR) Council published a proposed rule on March 16, 1994, (59 FR 12223). The rule proposed amendment of the Defense Federal Acquisition Regulation Supplement to address control of Munitions List items and Strategic List items and demilitarization of excess property. The original date for receipt of comments was May 16, 1994. This document reinstates and extends the comment period.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 30, 1994, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Directorate, ATTN: IMD 3D139, PDUSD(A&T), 3062 Defense Pentagon, Washington, DC 20301-3062. Fax (703) 604-5971. Please cite DAR Case 92-D024 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Green, (703) 604-5929

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Directorate.

[FR Doc. 94-13256 Filed 5-31-94; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Swift Fox as Endangered

AGENCY: Fish and Wildlife Service; Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to add the swift fox (*Vulpes velox*) to the List of Threatened and Endangered Wildlife and Plants. While the petition did not present substantial information indicating that the requested action may be warranted throughout the species range, the Service has found that substantial information exists to support a decision that listing of the swift fox may be warranted throughout its entire range. The Service is continuing a status review of the species and requests any additional information regarding this finding.

DATES: The finding announced in this notice was made on May 23, 1994. Comments and materials related to this petition finding may be submitted to the Field Supervisor (see **ADDRESSES** below) until further notice.

ADDRESSES: Information, comments, or questions concerning the swift fox petition may be submitted to the Field Supervisor, Ecological Services, U.S. Fish and Wildlife Service, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501–5408. The petition, finding, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Elizabeth McPhillips, Acting Supervisor, at the above address, telephone (605) 224–8693

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practical, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service also is required to promptly commence a status review of the species.

A petition dated February 22, 1992 from Mr. Jon C. Sharps was received by the Service on March 3, 1992. The petition requested the Service to list the swift fox (*Vulpes velox*) as an endangered species in the northern portion of its range, if not the entire range. A status review for the species was first initiated for the swift fox by a notice of review published on December 30, 1982 (47 FR 58454).

The petition and its referenced documentation states that the swift fox once occurred in abundant numbers throughout the species historical range. the species was known from the Canadian Prairie Province south through Montana, eastern Wyoming, and North and South Dakota to the Texas Panhandle. The petitioner asserts that the swift fox has declined and is considered rare in the northern portion of its range. The petitioner indicates that the swift fox is extremely vulnerable to human activities such as trapping, hunting, automobiles, agricultural conversion of habitat, and prey reduction from rodent control programs. The petitioner requests that, at a minimum, the swift fox be listed as an endangered species in Montana, North Dakota, South Dakota, and Nebraska. Justification for such action as cited by the petitioner includes the present status of the species and its habitat in the petitioned area, geographic and climatic positioning of the species, the strong link to the prairie dog ecosystem, the large distance from the kit-swift fox hybrid zone, and the potential for these populations to contain the subspecies, *Vulpes velox hebes* or northern swift fox.

The Service has reviewed information regarding the status of the swift fox throughout its range. Historically, the swift fox was considered abundant throughout the Great Plains and the prairie provinces of Canada (Hall and Kelron 1959; Egoscue 1979; Zumbaugh and Choates 1985; U.S. Fish and Wildlife Service 1990; FaunaWest 1991). Beginning in the late 1800's to early 1900's, the swift fox declined in numbers, and soon the northern population collapsed and the southern population became quite rare (Cary 1911; Warren 1942; Egoscue 1979; Bee et al. 1981; FaunWest 1991).

In the mid-1950's the swift fox staged a limited comeback in portions of its historical range (Long 1965; Kilgore 1969; McDaniel 1976; Sharps 1977; Hines 1980; FaunaWest 1991). However, this reappearance was limited in nature and in recent years many of these populations have again declined. Several factors are provided as reasons for the decline of the species throughout much of its historical range. These factors include: (1) Loss of native prairie habitat through conversion for agricultural production and mineral extraction, (2) fragmentation of the remaining habitat, creating a less suitable cropland-grassland habitat mosaic, (3) degradation of habitat due to colonial rodent control activities, (4) predation and interspecific competition and (5) the species' vulnerability to human activities, such as predator control, trapping, shooting, and collisions with automobiles (Hillman and Sharps 1978; Hines 1980; Armbruster 1983; Uresk and Sharps 1986; Jones et al. 1987; Sharps 1989; U.S. Fish and Wildlife Service 1990; FaunaWest 1991; Carbyn et al. 1992).

Currently, swift fox exist in highly disjunct populations in a greatly reduced portion of the species' historical range (Hines 1980; Jones et al. 1987; U.S. Fish and Wildlife Service 1990; FaunaWest 1991). Presently, North Dakota, Montana, and Oklahoma do not contain known populations of swift fox. South Dakota and Nebraska only contain one to five remnant populations in a fraction of the States' historical range. Kansas, Texas, and Wyoming maintain localized populations with limited distributions. Colorado and New Mexico appear to contain localized populations distributed throughout reduced portions of the States' historical range.

In 1970, the Service listed the northern subspecies (*Vulpes velox hebes*) as endangered (35 FR 8485). This designation was removed in the United States due to controversy over taxonomy; however, the designation for Canada as endangered remains in place (45 FR 49844).

Canada classified the swift fox as extirpated in 1978 (Carbyn et al. 1992). Since 1983, the Canadian Wildlife Service has been involved in a reintroduction experiment in the hope of recovering the swift fox. This 12-year program has resulted in an estimated wild fox population of 150 foxes within two release areas (Carbyn et al. 1992). However, the viability of this population is in question due to the low numbers of established animals, high predation rates, continued habitat loss or modification within the release areas, and the unpredictability of climatic or other stochastic events such as disease (Carbyn et al. 1992).

The Service notes that the majority of information reviewed supported many of the petitioner's contentions concerning the decline of and threats to the swift fox within the northern portion of its historical range. This information also indicated that many of the petitioner's contentions appear valid throughout the remainder of the species' range.

The petitioner provided substantial information that listing of the swift fox may be warranted in the northern portion of its range but did not provide substantial information on the species' status in the southern portion of its range. The Service found that additional information existed to indicate that listing of the swift fox throughout its range may be warranted.

Therefore, after reviewing the petition, accompanying documentation, references cited, and the best scientific and commercial data available, the Service finds that the requested action may be warranted throughout the swift fox's historical range. Through issuance of this notice of the 90-day finding, the Service is continuing a status review of the swift fox and solicits additional information on the species. The Service will prepare a 12-month finding to determine if the petitioned action is warranted as required by section 4(b)(3)(B) of the Endangered Species Act.

References Cited

A complete list of all references cited herein, as well as others, it available upon request from the Service's, Pierre Field Office (see **ADDRESSES** above).

Author

This notice was prepared by Daniel Eklund (see **ADDRESSES** above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: May 23, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–13283 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to Delist the Lahontan Cutthroat Trout (Oncorhynchus clarki henshawi) Within the Humboldt River Drainage Basin in Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to delist the Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) within the Humboldt River drainage basin of Nevada. The Service finds that the petition and a subsequent supporting letter pursuant to section 4 of the Endangered Species Act did not present substantial information indicating that the requested action may be warranted.

DATES: The finding announced in this document was made on May 24, 1994.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the Reno Field Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C–125, Reno, Nevada 89502. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David L. Harlow, Field Supervisor, at the above address (telephone 702/784–5227).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**.

On April 12, 1993, the Service received a petition dated April 8, 1993, to delist the threatened Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) within the Humboldt River drainage basin of Nevada. The petition was received from Mr. Gene Gustin, Chairman of the Elko County Federal Land Use Planning Commission, Elko, Nevada. The petition clearly identified itself as a petition, and contained the name, signature, and address of the petitioner. A supporting letter was received from Mr. Llee Chapman, Chairman of the Elko County Board of Commissioners on April 21, 1993, also petitioning the Service to delist the Lahontan cutthroat trout within the Humboldt River drainage basin. The Service's policy on letters received subsequent to an original petition is to consider the information presented, even if one or more of these letters identifies itself as a petition. In that way, the Service evaluates the petitioned action in the most timely manner as the first letter accepted as a petition sets the statutory deadlines.

The petition, supporting letter, and other documentation were reviewed to determine if substantial information was provided to indicate that the requested action may be warranted. The petition and the supporting letter contained several assertions to support the petitioner's contention that the Humboldt River basin Lahontan Cutthroat Trout was no longer in need of protection provided by the Act.

As evidence that this species should be removed from the threatened species list, the petitioner referenced the existence of management plans from the Nevada Department of Wildlife (Nevada Dept. of Wildlife 1990, Coffin 1982), the U.S. Bureau of Land Management (1992, 1993), and the U.S. Forest Service, and a letter written by the Forest Service in 1986 that suggested that these management plans and the draft Recovery Plan contained enough data and information to meet the objectives for delisting this species. The Service acknowledges the existence of these plans; however, full implementation of these plans has not occurred. Furthermore, the Lahontan cutthroat trout populations and habitat quality in the Humboldt River basin continue to decline (French 1993).

A species may be delisted if it has recovered to the point that the Act's protection is no longer needed (50 CFR 424.11(d)(2)). Before delisting may occur, the Service must determine that the species does not meet the definition of endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. A threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Neither the petition nor the supporting letter provided substantial information that

the Lahontan cutthroat trout within the Humboldt River drainage basin no longer meets the definition of threatened or that recovery has been achieved. This finding is based on the information contained in the petition, the supporting letter, and information otherwise available to the Service.

References

Bureau of Land Management. 1992. Results of the 1991 stream survey, Elko Bureau of Land Management—Elko Resource Area. Unpubl. rept. Bureau of Land Management, Elko, Nevada. 5 pp.

Bureau of Land Management. 1993. 1992 stream survey summary—Elko District, Wells Resource Area. Unpubl. rept. Bureau of Land Management. Elko, Nevada. 3 pp.

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Nevada Department of Wildlife. 1990. Endemic Gamefish Management, Lahontan Cutthroat Trout. Federal Aid Job Progress Report F–20–26. Nevada Department of Wildlife, Reno, Nevada. 4 pp.

Author

This document was prepared by Patrick Coffin of the Reno Field Office (see **ADDRESSES** section).

Authority:

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: May 24, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–13282 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 940553–4153; I.D. 050394A]

RIN 0648–AE98

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 7 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). Amendment 7 would divide the eastern zone commercial quota for the Gulf migratory group of king mackerel into equal quotas for the Florida east and west coast fisheries, further divide the quota for the west coast sub-zone into equal quotas for hook-and-line and run-around gillnet harvesters, and allow persons to fish under the gillnet quota in the west coast sub-zone only aboard vessels that have endorsements on their Federal commercial mackerel permits to fish with gillnets in that sub-zone. The intended effect of this rule is to equitably allocate the eastern zone commercial quota among users and avoid the negative social and economic emergencies related to a recent, disproportionately large, west coast harvest in the commercial fishery for Gulf group king mackerel off Florida.

DATES: Written comments must be received on or before July 11, 1994.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702.

Requests for copies of Amendment 7, which includes a regulatory impact review/initial regulatory flexibility analysis (IRFA) and an environmental assessment should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, suite 331, Tampa, FL 33609–2486, FAX 813–225–7015, or to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, suite 306, Charleston, SC 29407–4699, FAX 803–769–4520.

Comments regarding the collection-of-information requirement contained in this proposed rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic resources (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP. The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented through regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Background

During the previous fishing year (July 1, 1992, through June 30, 1993), the commercial quota for king mackerel from the eastern zone of the Gulf of Mexico migratory group was reached, and the fishery was closed, on January 13, 1993, before fishermen on the east coast of Florida could harvest an equitable share. The record low catch of the east coast king mackerel fishery constituted social and economic emergencies. Accordingly, by emergency interim rule (58 FR 10990, February 23, 1993), the commercial king mackerel fishery in the exclusive economic zone (EEZ) off the east coast of Florida was reopened from February 18 through March 26, 1993, under a possession limit of 25 fish per vessel per day.

To avoid a similar, disproportionately large harvest on Florida's west coast during the 1993/94 fishing year and to allow sufficient time for the Councils to develop more permanent remedial action, the eastern zone commercial quota for the Gulf migratory group of king mackerel was divided into equal quotas for the Florida east and west coast sub-zones by an emergency interim rule (58 FR 51789, October 5, 1993). Additional regulations, which established daily vessel trip limits in each of the sub-zones, were implemented under the framework procedure for adjusting FMP management measures (58 FR 58509, November 2, 1993). The daily vessel trip limits were intended to reduce daily catches, thus preventing market gluts, extending the harvest season, and reducing the likelihood of exceeding king mackerel quotas.

Amendment 7

Amendment 7 proposes to: (1) Continue in effect the division of the eastern zone commercial quota for Gulf migratory group king mackerel into equal quotas for the Florida east and west coast sub-zones that were established in the emergency interim rule of October 5, 1993; (2) divide the Florida west coast sub-zone quota equally between the hook-and-line and run-around gillnet harvesters; and (3) allow persons to fish under the gillnet quota in the Florida west coast sub-zone only aboard vessels that have endorsements on their Federal commercial mackerel permits to fish with gillnets in that sub-zone.

Rationale supporting the division of the eastern zone commercial quota for the Gulf migratory group of king

mackerel into equal quotas for the Florida east and west coast sub-zones was included in the emergency interim rule and is not repeated here. Rationale for implementation of equal sub-quotas for hook-and-line and gillnet sectors in the Florida west coast sub-zone and for allowing the use of gillnets in the west coast sub-zone only aboard vessels with permits with endorsements for use of such gear is discussed below.

Equal quotas in the west coast sub-zone for hook-and-line and gillnet fishermen, as proposed in this rule, will provide equitable sharing of the harvest of the annual quota between users of these two gear types, which are the only gears allowed to harvest Gulf group king mackerel. Depending on seasonal arrival of migrating schools and prevailing fishing conditions, the fishing power of either gear sector is sufficient to harvest a major and disproportionate share of the quota before the other sector could take an equitable share. The recent daily production of the 16–20 large gillnet vessels in the fishery and weekly catches of 80–100 hook-and-line vessels have demonstrated capacity of either gear sector to take the west coast sub-zone quota quickly. The daily harvesting capability of the hook-and-line users is not as great as that of gillnets. In December 1993, within a 24-hour period, the gillnet fleet landed in the lower Florida Keys approximately 250,000 pounds (lb) (113,398 kilograms (kg)) of king mackerel, which was 29 percent of the west coast sub-zone quota. Total gillnet production could easily double if catches for most of the large gillnet vessels approach their maximum holding capacity, which may be 50,000 pounds (22,690 kg) for the largest of these vessels. During the last two weeks of December 1992, the Key West hook-and-line fleet harvested approximately 380,000 pounds (172,365 kg) of king mackerel, which was 44 percent of the quota.

Implementation of the requirement for a gillnet endorsement on the Federal commercial mackerel permit would promote equitable harvest by the two gear harvesting sectors of the west coast sub-zone quota. The endorsement would restrict the gillnet users to their respective quota by counting all Gulf group king mackerel from the Florida west coast sub-zone harvested by vessels with gillnet endorsements against the gillnet quota. Except in the initial year of implementation, a vessel owner or any succeeding owner would have an opportunity to obtain the endorsement only during June each year, immediately prior to the July 1 commencement of the next fishing year. Once an owner or a succeeding owner obtains a gillnet endorsement, that individual and the designated vessel would be bound by the requirements of the endorsement for the entire fishing year in which it is issued, i.e., the endorsement could not be rescinded within the year issued. In 1994, the time frame for obtaining the endorsement would be immediately following publication of the final rule to implement Amendment 7.

Implementation of Amendment 7 would ensure equitable access to the king mackerel resource by fishermen in the Florida east and west coast fisheries, and equitable access by gear type in the west coast fishery. If approved, this rule would be effective early in the 1994/95 fishing year, which commences July 1, 1994, before a substantive commercial king mackerel fishery begins in the east coast sub-zone off Florida.

Additional background and rationale for the measures discussed above are contained in Amendment 7, the availability of which was announced in the **Federal Register** on May 6, 1994 (59 FR 23681).

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Councils prepared an IRFA as part of Amendment 7, which concludes that this proposed rule, if adopted, may have a significant economic impact on a substantial number of small entities. Specifically, equal division of the eastern zone quota of Gulf group king mackerel between the east and west coast sub-zones is expected to redistribute revenues among the participants in the fishery. Such redistribution is expected to approximate the historical distribution of revenues but may result in individual redistributions exceeding five percent of the revenues of some participants during the 1994/95 fishing year. All participants in the fishery are small entities. Copies of the IRFA are available (see **ADDRESSES**).

Section 642.4(m) of this proposed rule, concerning applications for gillnet endorsements on vessel permits, contains a collection-of-information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget (OMB) for approval. The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this reporting burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 26, 1994

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 642.4, new paragraph (m) is added to read as follows:

§ 642.4 Permits and fees.

* * * * *

(m) *Gillnet endorsement.*

(1) For a vessel to use a run-around gillnet for king mackerel in the Florida west coast sub-zone (see § 642.25(a)(1)(i)(B)), a vessel for which a king and Spanish mackerel permit has been issued under this section must have a gillnet endorsement on such permit. Such permit and endorsement must be on board the vessel.

(2) An owner of a permitted vessel may add or delete a gillnet endorsement on a permit by returning to the Regional Director the vessel's existing permit with a written request for addition or deletion of the gillnet endorsement. Such request must be postmarked or hand delivered during June, each year.

(3) A gillnet endorsement may not be added or deleted from July 1 through May 31 each year, any renewal of the permit during that period notwithstanding. From July 1 through May 31, a permitted vessel that is sold, if permitted by the new owner for king and Spanish mackerel, will receive a permit with or without the endorsement as was the case for the vessel under the previous owner. From July 1 through May 31, the initial king and Spanish mackerel permit issued for a vessel new to the fishery will be issued without a gillnet endorsement.

(4) The provisions of paragraph (m)(3) of this section notwithstanding, the initial requests for gillnet endorsements must be postmarked or hand delivered during the 45-day period commencing

on the first day of effectiveness of the final rule implementing this measure.

3. In § 642.7, paragraphs (p), (s), and (u) are revised, paragraph (t) is redesignated as paragraph (w), and new paragraphs (t) and (v) are added to read as follows:

§ 642.7 Prohibitions.

* * * * *

(p) After a closure specified in § 642.26(a), sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter a king or Spanish mackerel of the closed species/migratory group/zone/sub-zone/gear type, as specified in §§ 642.22(c), 642.24(a)(4), and 642.26(b)(3).

* * * * *

(s) In the eastern zone, possess or land Gulf group king mackerel in or from the EEZ in excess of an applicable trip limit, as specified in § 642.28(a) or § 642.28(b)(1)(ii), or transfer at sea such king mackerel, as specified in § 642.28(e).

(t) In the Florida west coast sub-zone, possess or land Gulf group king mackerel in or from the EEZ aboard a vessel that uses or has aboard a run-around gillnet on a trip when such vessel does not have on board a commercial permit for king and Spanish mackerel with a gillnet endorsement, as specified in § 642.28(b)(2)(i).

(u) In the Florida west coast sub-zone, transfer at sea Gulf group king mackerel taken by a vessel for which a commercial permit for king and Spanish mackerel with a gillnet endorsement has been issued, as specified in § 642.28(e).

(v) Violate any prohibitions or restrictions for the prevention of gear conflicts that may be specified in accordance with § 642.29.

* * * * *

4. In § 642.25, paragraph (c) is removed and paragraphs (a)(1) introductory text and (a)(1)(i) are revised to read as follows:

§ 642.25 Commercial allocations and quotas.

* * * * *

(a) * * *

(1) The commercial allocation for the Gulf migratory group of king mackerel is 2.50 million pounds (1.13 million kg) per fishing year. The Gulf migratory group is divided into eastern and western zones separated by a line extending directly south from the Alabama/Florida boundary (87°31'06"W. longitude) to the outer limit of the EEZ. Quotas for the eastern and western zones are as follows:

(i) 1.73 million pounds (0.78 million kg) for the eastern zone, which is further divided into quotas as follows:

(A) 865,000 pounds (392,361 kg) for the Florida east coast sub-zone, which is that part of the eastern zone north of a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4'N. latitude); and

(B) 865,000 pounds (392,361 kg) for the Florida west coast sub-zone, which is that part of the eastern zone south and west of the Dade/Monroe County, Florida boundary (25°20.4'N. latitude), which is further divided into quotas by gear types as follows:

(*1*) 432,500 pounds (196,179 kg) for vessels fishing with hook-and-line gear; and

(*2*) 432,500 pounds (196,179 kg) for vessels fishing with run-around gillnets.

* * * * *

5. Section 642.26 is revised to read as follows:

§ 642.26 Closures.

(a) *Notice of closure.* The Assistant Administrator, by filing a notice with the Office of the Federal Register, will close the commercial fishery in the EEZ for king mackerel from a particular migratory group, zone, sub-zone, or gear type, and for Spanish mackerel from the Gulf migratory group, when the allocation or quota under § 642.25(a) or § 642.25(b)(1) for that migratory group, zone, sub-zone, or gear type has been reached or is projected to be reached. The commercial fishery for Atlantic group Spanish mackerel is managed under the commercial trip limits specified in § 642.27 in lieu of the closure provisions of this section.

(b) *Fishing after a closure.* On and after the effective date of a closure invoked under paragraph (a) of this section, for the remainder of the appropriate fishing year for commercial allocations specified in § 642.20(a)—

(1) A person aboard a vessel in the commercial fishery may not fish for king or Spanish mackerel in the EEZ or retain fish in or from the EEZ under a bag limit specified in § 642.24(a)(1) for the closed species, migratory group, zone, sub-zone, or gear type, except as provided for under paragraph (b)(2) of this section.

(2) A person aboard a vessel, the permit for which indicates both commercial king and Spanish mackerel and charter vessel for coastal migratory pelagic fish, may continue to retain fish under a bag and possession limit specified in § 642.24 (a)(1) and (a)(2) provided the vessel is operating as a charter vessel.

(3) The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of king or Spanish mackerel of the closed species, migratory group, zone, sub-zone, or gear type is prohibited. This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and sold, traded, or bartered prior to the closure and held in cold storage by dealers or processors.

6. Section 642.31 is removed; §§ 642.28 through 642.30 are redesignated as §§ 642.29 through 642.31; and new § 642.28 is added to read as follows:

§ 642.28 Additional limitations for Gulf group king mackerel in the eastern zone.

(a) *Florida east coast sub-zone.* In the Florida east coast sub-zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4,

(1) From November 1, each fishing year, until 50 percent of the sub-zone's fishing year quota of king mackerel has been harvested—in amounts not exceeding 50 king mackerel per day; and

(2) From the date that 50 percent of the sub-zone's fishing year quota of king mackerel has been harvested until a closure of the Florida east coast sub-zone has been effected under § 642.26—in amounts not exceeding 25 king mackerel per day.

(b) *Florida west coast sub-zone.* (1) In the Florida west coast sub-zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4,

(i) From July 1, 1994, until 75 percent of the sub-zone's fishing year quota of king mackerel has been harvested—in unlimited amounts of king mackerel; and

(ii) From the date that 75 percent of the sub-zone's fishing year quota of king mackerel has been harvested until a closure of the Florida west coast sub-zone has been effected under § 642.26—in amounts not exceeding 50 king mackerel per day.

(2) In the Florida west coast sub-zone,

(i) King mackerel in or from the EEZ may be possessed aboard or landed from a vessel that uses or has aboard a run-around gillnet on a trip only when such vessel has on board a commercial permit for king and Spanish mackerel with a gillnet endorsement; and

(ii) King mackerel from the west coast sub-zone landed by a vessel for which such commercial permit with endorsement has been issued will be counted against the run-around gillnet quota of § 642.25(a)(1)(i)(B)(*2*).

(c) *Notice of trip limit changes.* The Assistant Administrator, by filing a notice with the Office of the Federal Register, will effect the trip limit changes specified in paragraphs (a) and (b)(1)(ii) of this section when the requisite harvest levels have been reached or are projected to be reached

(d) *Combination of trip limits.* A person who fishes in the EEZ may not combine a trip limit of this section with any trip or possession limit applicable to state waters.

(e) *Transfer at sea.* A person for whom a trip limit specified in paragraph (a) or (b)(1)(ii) of this section or a gear limitation specified in paragraph (b)(2) of this section applies may not transfer at sea from one vessel to another a king mackerel—

(1) Taken in the EEZ, regardless of where such transfer takes place; or

(2) In the EEZ, regardless of where such king mackerel was taken.

[FR Doc. 94–13302 Filed 5–26–94; 3:12 pm]
BILLING CODE 3510–22–P

VOL 59 ISS 104 JE 1 994 UMI

Notices

Federal Register
Vol. 59, No. 104
Wednesday, June 1, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–045–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit number	Permittee	Date issued	Oranisms	Field test location
94–055–01	Upjon Company	04–13–94	Tomato plants genetically engineered to express the nucleocapsid protein from tomato spotted wilt virus (TSWV) for resistance to TSWV.	Georgia.
94–069–02, renewal of permit 91–346–01, issued on 04–16–92.	Calgene, Incorporated	04–19–94	Rapeseed plants genetically engineered to express oil modification genes.	Michigan.
94–027–02	University of Idaho	04–21–94	Potato plants genetically engineered to express resistance to potato leaf roll virus, potato virus Y, tobacco vein mottling virus, barley yellow dwarf virus, and tobacco rattle virus.	Idaho.
94–039–03	Cornell University	04–21–94	Apple trees genetically engineered to express resistance to fire blight.	New York.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 25th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–13292 Filed 5–31–94; 8:45 am]

BILLING CODE 3410–34–P

Federal Grain Inspection Service

Designation of the Sioux City (IA) and Tischer (IA) Agencies

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Sioux City Inspection & Weighing Service Company (Sioux City) to provide official inspection services and A. V. Tischer and Son, Inc. (Tischer), to provide official inspection and Class X and Class Y weighing services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: July 1, 1994.

ADDRESSES: Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 30, 1993, **Federal Register** (58 FR 69316), FGIS announced that the designations of Sioux City and Tischer end on June 30, 1994, and asked persons interested in providing official services in the geographic areas assigned to Sioux City and Tischer to submit an application for designation. Applications were due by January 31, 1994.

There were three applicants. Sioux City and Tischer each applied for designation in the entire areas they are currently assigned. The D. R. Schaal Agency, Inc. (Schaal), applied for designation to serve part of the Tischer area: Big Six Cooperative Terminal, Burt, and West Bend Elevator Co., Algona, Kossuth county; Gold-Eagle Coop, Goldfield, and Clarion Farmers Elevator Cooperative, Holmes, Wright County, Iowa, in addition to the area they are already designated to serve. Tischer and Schaal are contiguous official agencies.

FGIS requested comments on the applicants in the March 3, 1994, **Federal Register** (59 FR 10110). Comments were due by March 31, 1994. FGIS received no comments on the Sioux City area designation by the deadline. FGIS received four comments on the Tischer area designation: two supporting the designation of Schaal and two supporting the designation of Tischer.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Sioux City is able to provide official services in the geographic area for which they applied. Effective July 1, 1994, and ending June 30, 1997, Sioux City is designated to provide official inspection services in the geographic area specified in the December 30, 1993, **Federal Register**.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Tischer is better able than any other applicant to provide official services in the geographic area for which they applied.

Effective July 1, 1994, and ending June 30, 1997, Tischer is designated to provide official inspection and Class X and Class Y weighing services in the geographic area described in the December 30, 1993, **Federal Register**.

Interested persons may obtain official services by contacting Sioux City at 712–255–8073, and Tischer at 515–955–7012.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended. (7 U.S.C. 71 *et seq.*).

Dated: May 24, 1994.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 94–13220 Filed 5–31–94; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity to Comment on the Applicants for the Minot (ND), Southern Illinois, and Tri-State (OH) Areas

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS is requesting comments on the applicants for designation to provide official services in the geographic areas currently assigned to Minot Grain Inspection Inc. (Minot), Southern Illinois Grain Inspection Service, Inc., and Tri-State Grain Inspection Service, Inc. (Tri-State).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by June 30, 1994.

ADDRESSES: Comments must be submitted in writing to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36CPDIR]. ATTMAIL and FTS2000MAIL users may respond to !A36CPDIR. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore the Executive Order and Departmental Regulation do not apply to this action.

In the April 1, 1994, **Federal Register** (59 FR 15370), FGIS asked persons interested in providing official services in the geographic areas assigned to Minot and Tri-State to submit an application for designation. Applications were due by May 2, 1994. Minot and Tri-State, the only applicants, each applied for designation to serve the entire area they are currently assigned.

In the April 7, 1994, **Federal Register** (59 FR 16613), FGIS asked persons interested in providing official services in the geographic area assigned to Southern Illinois to submit an application for designation. Applications were due by May 4, 1994. There were two applicants. Southern Illinois applied for designation to serve the entire area they are currently assigned. Decatur Grain Inspection, Inc. (Decatur), applied for designation to serve the entire Southern Illinois area in addition to the area they are currently assigned.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 24, 1994

Neil E. Porter,

Director, Compliance Division

[FR Doc. 94–13219 Filed 5–31–94; 8:45 am]

BILLING CODE 3410–EN–F

Opportunity for Designation in the Fostoria (OH), Idaho (ID), Lewiston (ID), and Utah Areas

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Fostoria Grain Inspection, Inc. (Fostoria), Idaho Grain Inspection Service, Inc. (Idaho), Lewiston Grain Inspection Service, Inc. (Lewiston), and the Utah Department of Agriculture (Utah) will end November 30, 1994, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before June 30, 1994.

ADDRESSES: Applications must be submitted to Neil E. Porter, Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Neil E. Porter. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Fostoria, main office located in Fostoria, Ohio, Idaho, main office located in Pocatello, Idaho, Lewiston main office located in Lewiston, Idaho, and Utah, main office located in Ogden, Utah, to provide grain inspection services under the Act on December 1, 1991.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Fostoria, Idaho, Lewiston, and Utah end on November 30, 1994.

The geographic area presently assigned to Fostoria, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the northern and eastern Fulton County lines; the eastern Henry County line; the northern and eastern Wood County lines; the northern Sandusky County line east to State Route 590;

Bounded on the East by State Route 590 south to Seneca County; the northern Seneca County line east to State Route 53; State Route 53 south to Wyandot County; the northern Wyandot County line; the northern Crawford County line east to State Route 19; State Route 19 south to U.S. Route 30;

Bounded on the South by U.S. Route 30 west to the western Hancock County line; and

Bounded on the West by the western Hancock County line; the southern Henry County line west to State Route 108; State Route 108 north to U.S. Route 24; U.S. Route 24 southwest to the Henry County line; the western Henry and Fulton County lines.

The geographic area presently assigned to Idaho, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

The southern half of the State of Idaho up to the northern boundaries of Adams, Valley, and Lemhi Counties.

The geographic area presently assigned to Lewiston, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

The northern half of the State of Idaho down to the northern boundaries of Adams, Valley, and Lemhi Counties.

The geographic area presently assigned to Utah, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Utah.

Interested persons, including Fostoria, Idaho, Lewiston, and Utah are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning December 1, 1994, and ending November 30, 1997. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: May 24, 1994.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 94–13221 Filed 5–31–94; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

International Trade Administration

Intent To Revoke Antidumping Duty Orders and Findings

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of intent to revoke Antidumping Duty Orders and Findings

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty orders and findings listed below. Domestic interested parties who object to these revocations must submit their comments in writing no later than the last day of June 1994.

EFFECTIVE DATE: June 1, 1994.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public

of our intent to revoke the following antidumping duty orders and findings for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

Antidumping Duty Proceeding

Belgium
Sugar
44 FR 33878
June 13, 1979
A–423–077
Contact: Joe Fargo at (202) 482–5345

France
Sugar
44 FR 33878
June 13, 1979
A–427–078
Contact: Joe Fargo at (202) 482–5345

Germany
Sugar
44 FR 33878
June 13, 1979
A–428–082
Contact: Joe Fargo at (202) 482–5345

Sweden
Stainless Steel Plate
38 FR 15079
June 8, 1973
A–401–040
Contact: Barbara Victor at (202) 482–0780

Taiwan
Carbon Steel Plate
44 FR 33877
June 13, 1979
A–583–080
Contact: Barbara Victor at (202) 482–0780

Germany
Barium Carbonate
46 FR 32884
June 25, 1981
A–428–061
Contact: Kim Moore at (202) 482–0090

Japan
Nitrile Rubber
53 FR 22553
June 16, 1988
A–588–706
Contact: Sheila Forbes at (202) 482–5253

Romania
Tapered Roller Bearings
56 FR 23320
June 19, 1987
A–485–602
Contact: Karin Price at (202) 482–3782

Taiwan
Fireplace Mesh Panels
47 FR 24616
June 7, 1982
A–583–003
Contact: Art DuBois at (202) 482–6312

Taiwan
Oil Country Tubular Goods
51 FR 22098
June 18, 1986
A–583–505
Contact: Barbara Victor at (202) 482–0780

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review, and domestic interested parties do not object to the Department's intent to revoke pursuant to this notice, we shall conclude that the antidumping duty orders and findings are no longer of interest to interested parties and shall proceed with the revocation.

Opportunity to Object

Domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings by the last day of June 1994.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4230.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: May 23, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–13458 Filed 5–31–94; 8:45 am]

BILLING CODE 3510–05–P

[C–533–812]

Preliminary Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 1, 1994.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Annika O'Hara, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0167 and (202) 482–4198, respectively.

PRELIMINARY DETERMINATION: The Department of Commerce ("the Department") preliminarily determines that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in India of certain carbon steel butt-weld pipe fittings. For information on the estimated net subsidies, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of initiation in the **Federal Register**, 59 FR 14148 (March 25, 1994), the following events have occurred.

On April 5, 1994, we issued a questionnaire to the Government of India ("GOI") in Washington, D.C. concerning petitioner's allegations. On May 9, 1994, we received questionnaire responses from the GOI, Karmen Steels of India ("Karmen"), and Sivanandha Pipe Fittings Limited ("Sivanandha"). According to the GOI, Karmen, Sivanandha, and Tata Iron & Steel Limited ("Tata") accounted for over 85 percent of exports of butt-weld pipe fittings to the United States. Therefore, these companies are the respondents in this investigation. However, Tata did not respond to the Department's questionnaire.

We issued deficiency questionnaires on May 11, 1994, to the GOI, Karmen, and Sivanandha. We received responses on May 18, 1994.

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings ("pipe fittings") having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows", "tees", "caps", and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the *Harmonized Tariff Schedule of the United States* ("HTSUS").

Although the HTSUS subheading is provided for convenience and customs

purposes, our written description of the scope of this proceeding is dispositive

Injury Test

Because India is a "country under the Agreement" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission ("ITC") is required to determine whether imports of pipe fittings from India materially injure, or threaten material injury to, a U.S. industry. On April 20, 1994, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from India of the subject merchandise (59 FR 18825).

Analysis of Programs

For purposes of this preliminary determination, the period for which we are measuring subsidies (the period of investigation ("POI")) is the respondents' fiscal year: April 1, 1993 to March 31, 1994.

Non-Responding Company

Since Tata did not respond to our countervailing duty questionnaire, we have used best information available ("BIA") in accordance with § 355.37(a) of the Department's regulations. As BIA, we have used information provided in the petition except where we have calculated a rate for a given program in a previous countervailing duty investigation or administrative review for India which is higher than that provided in the petition. We did not include in the BIA subsidy rate for Tata programs for which we have no basis to calculate a benefit (*i.e.*, programs for which rates are not calculated in the petition, programs not previously investigated, or programs previously found not used). Based on this approach, we calculated a BIA rate for Tata of 23.03 percent *ad valorem*.

Calculation of Country-Wide Rate

In determining the benefits to the subject merchandise from the various programs described below, we used the following calculation methodology. We first calculated a country-wide rate for each program. This rate comprised the *ad valorem* benefit received by each firm weighted by each firm's share of exports of the subject merchandise to the United States. The program rates were then added together to arrive at the country-wide rate.

Pursuant to 19 CFR 355.20(d) of the Department's regulations, we compared the total *ad valorem* benefit received by each firm to the country-wide rate for all programs. The rates for Karmen and Tata were significantly different from the country-wide rate. Therefore, Karmen and Tata received company-specific rates. Because Sivanandha was the only company whose total *ad valorem* benefit was not significantly different from the country-wide rate for all programs, we based the all-other rate only on benefits received by Sivanandha. We then assigned this all-other rate to all other manufacturers, producers, and exporters.

Consistent with our practice in preliminary determinations, when a response to an allegation denies that a program exists, that producers of the subject merchandise receive benefits under a program, or that producers of the subject merchandise are eligible for a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

Karmen's Exports of Refurbished Pipe Fittings

Karmen reported in its responses that in addition to its production of new pipe fittings, the company imports rusty, unused pipe fittings from a Singaporean company which it refurbishes and subsequently re-exports to a customer of the Singaporean company in the United States. For purposes of this preliminary determination, we have considered this refurbished merchandise to be covered by this proceeding. For the final determination, we will seek additional information concerning the following: (1) the nature and extent of the processing operation, and (2) the extent to which the refurbished pipe fittings are being subsidized.

In its responses, Karmen reported only the value added in the refurbishing process for these sales. The U.S. Customs Service, however, collects duties based on the full value of the subject merchandise exported, i.e., the value of the pipe fittings and any value-added through the refurbishing process. Therefore, to avoid an over-assessment of the duty, we have adjusted Karmen's sales value used as the denominator in our subsidy rate calculation. For purposes of this preliminary determination, we have valued Karmen's exports of refurbished pipe fittings using the price per metric ton of new pipe fittings because we do not have an actual export value of refurbished pipe fittings.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

A. Programs Preliminarily Determined to be Countervailable

1. Preferential Pre-Shipment Financing

Pre-shipment financing is extended to exporters prior to shipment as working capital for purchasing raw materials, processing, packing, warehousing, transporting and shipping. Any exporter showing a confirmed export order or a letter of credit is eligible for this program. Generally, the loans are extended for 180 days. According to the responses, both Karmen and Sivanandha used pre-shipment financing during the POI.

Because only exporters are eligible for loans under this program, we preliminarily determine that they are countervailable to the extent they are provided at a preferential interest rate. We have used the average annual commercial interest rate on short-term financing in the POI as the benchmark interest rate. The GOI reported a short-term financing rate of 16.5 percent. We compared this benchmark rate to the interest rate charged on pre-shipment loans and found that the interest rate charged was lower than the benchmark rate. Therefore, we determine that loans provided under this program are countervailable.

To calculate the benefit, we followed the short-term loan methodology which has been applied consistently in our past determinations and is described in more detail in the *Subsidies Appendix accompanying Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 49 FR 18006 (April 26, 1984); see also, *Alhambra Foundry v. United States*, 626 F. Supp. 402 (CIT 1985).

We compared the amount of interest paid during the POI to the amount of interest that would have been paid at the benchmark rate. The difference between these two amounts is the benefit. We then divided the benefit by total exports. On this basis, we preliminarily determine the estimated net subsidy from this program to be 0.23 percent *ad valorem* for Karmen and 0.84 *ad valorem* for all other manufacturers, producers, and exporters of pipe fittings in India.

2. Income Tax Deductions Under Section 80HHC

Income tax benefits are available to exporters in India under Section 80HHC of the Income Tax Act of 1961. This program allows exporters to reduce their taxable income by the profits earned on exports. Both Karmen and Sivanandha claimed deductions under this program on their income tax returns filed in the POI.

Since tax deductions under Section 80HHC are available only to exporters, we preliminarily determine that this program is countervailable. To calculate the benefit, we multiplied the amount of the deduction claimed by each company by the corporate income tax rate and divided the result by total exports. On this basis, we preliminarily determine the estimated net subsidy from this program to be 1.07 percent *ad valorem* for Karmen and 2.69 *ad valorem* for all other manufacturers, producers, and exporters of pipe fittings in India.

B. Programs Preliminarily Determined not to Provide Benefits During the POI

1. Advance Licenses and Advance Customs Clearance Permits ("ACCP's")

Under the GOI's Duty Exemption Scheme, inputs used in the production of exports may enter the country duty-free. Two mechanisms under the Duty Exemption Scheme are Advanced Licenses and Advanced Custom Clearance Permits ("ACCP's"). Sivanandha used Advanced Licenses to import seamless carbon steel pipes in the POI. Karmen used ACCP's to import rusty unused butt-weld pipe fittings in the POI.

Both Advance Licenses and ACCP's permit the importation of goods duty free provided the imports are used in the production of goods which are subsequently re-exported. We consider the use of Advance Licenses and ACCP's to be the equivalent of a duty-drawback program (see *Final Affirmative Countervailing Duty Determination: Steel Wire Rope from India*, 56 FR 46292 (September 11, 1991).

Under § 355.44(i)(4)(1) of the Department's proposed regulations (see *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31, 1989), the non-excessive drawback of import duties is not countervailable if the imported inputs are subsequently physically incorporated into exported products. According to the questionnaire responses, inputs imported under Advance Licenses and ACCP's were physically incorporated into pipe fittings which were subsequently re-exported. Therefore, we preliminarily determine that Advance Licenses and ACCP's did not provide a countervailable benefit in the POI.

2. *International Price Reimbursement Scheme*

The International Price Reimbursement Scheme ("IPRS") was established to compensate Indian exporters for the difference between the world market price and the domestic price of inputs. According to the responses, as of April 1, 1993, the input product used in the production of pipe fittings, *i.e.*, seamless carbon steel pipe, was no longer eligible for IPRS benefits. However, residual benefits could be received after that date and, in fact, Karmen indicated in its response that it received residual benefits under this program during the POI for exports of pipe fittings shipped prior to the POI.

Respondents maintain that the IPRS program is permissible within the framework of Item (d) of the Illustrative List of Export Subsidies annexed to the *Agreement on the Interpretation and Application of Article VI, XVI and XXIII of the General Agreement of Tariff and Trade* (1979). Pursuant to the Court of International Trade's decision in *Creswell Trading Co. v. United States*, 783 F. Supp. 1418 (CIT 1992), the IPRS program must be examined in light of Item (d). Accordingly, if the IPRS program does not provide a reimbursement which exceeds the difference between the international price and the domestic price, the program does not provide a countervailable benefit.

As discussed above, since the IPRS program was designed to compensate exporters for the difference between the world market price and the domestic price of inputs and since information provided in Karmen's response demonstrates that it was reimbursed in an amount equal to the difference between the domestic price and the international price, we preliminarily determine that the IPRS program is not countervailable with respect to inputs used in the production of pipe fittings.

C. Programs Preliminarily Determined to be not Used

The Department preliminarily determines that the following programs were not used during the POI.

A. *Preferential Post-Shipment Financing*
B. *Additional and Replenishment Licenses*
C. *Market Development Assistance*
D. *Export Promotion, Capitol Goods Scheme*
E. *Benefits for 100 Percent Export-Oriented Units*
F. *Benefits Provided to Export Processing Zones Verification*

In accordance with section 776(b) of the Act, we will verify the accuracy of the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of pipe fittings from India, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. This suspension will remain in effect until further notice.

Pipe fittings	Percent ad valorem
Karmen Steels of India	1.30
Tata Iron & Steel Limited	23.03
All-Others	3.53

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination on Wednesday, July 27, 1994, at 10 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit such a request within ten business days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, case briefs must be submitted to the Assistant Secretary no later than July 18, 1994. Rebuttal briefs must be submitted to the Assistant Secretary no later than July 25, 1994. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with section 355.38 of the Department's regulations and will be considered if received within the time limits specified above.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Susan G. Esserman,

Assistant Secretary for Import Administration.

Dated: May 24, 1994.

[FR Doc. 94-13316 Filed 5-31-94; 8:45 am]

BILLING CODE 3510-DS-P

[C-508-808]

Preliminary Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings From Israel

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Penelope Naas, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-0189 or 482-3534, respectively.

PRELIMINARY DETERMINATION: The Department preliminarily determines that benefits which constitute subsidies within the meaning of Section 701 of the Tariff Act of 1930, as amended (the Act) are being provided to manufacturers, producers, or exporters in Israel of certain carbon steel butt-weld pipe fittings (pipe fittings).

For information on the estimated net subsidies, please see the *Suspension of Liquidation* section of this notice.

Case History

Since the publication of the notice of initiation in the Federal Register (59 FR 14149, March 25, 1994), the following events have occurred.

On March 31, 1994, we issued a questionnaire to the Embassy of Israel in Washington, DC, concerning petitioners' allegations. On May 9, 1994, we received responses from the Government of Israel (GOI) and Pipe Fittings Carmiel, Ltd. (Carmiel). On May 11, 1994, we issued a supplemental questionnaire to the GOI and Carmiel. We received responses on May 16, 1994.

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld pipe fittings having an inside diameter of less than fourteen inches (355 millimeters), imported in either finished or unfinished condition. Pipe fittings are formed or forged steel products used to join pipe sections in piping systems where conditions require permanent welded connections, as distinguished from fittings based on other methods of fastening (*e.g.*, threaded, grooved, or bolted fittings). Butt-weld fittings come in a variety of shapes which include "elbows", "tees", "caps", and "reducers." The edges of finished pipe fittings are beveled, so that when a fitting is placed against the end of a pipe (the ends of which have also been beveled), a shallow channel is created to accommodate the "bead" of the weld which joins the fitting to the pipe. These pipe fittings are currently classifiable under subheading 7307.93.3000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Injury Test

Israel is a "country under the Agreement" within the meaning of section 701(b) of the Act. Therefore, Title VII of the Act applies to this investigation. Accordingly, the U.S. International Trade Commission ("ITC") must determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry. On April 20, 1994, the ITC published its preliminary determination that there is a reasonable indication that industries in the United States are being materially injured or threatened with material injury by reasons of imports from Israel of the subject merchandise (59 FR 18827, April 20, 1994).

Analysis of Programs

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

Period of Investigation

For purposes of this preliminary determination, the period of investigation ("the POI") is calendar year 1993.

I. Programs Preliminarily Determined to be Countervailable

We preliminarily determine that subsidies are being provided to manufacturers, producers or exporters in Israel of pipe fittings under the following programs:

A. Grants under the Encouragement of Capital Investments Law of 1959 (ECIL)

The ECIL program was established to develop the production capacity of the Israeli economy. In order to be eligible to receive benefits under the ECIL, the applicant must obtain "Approved Enterprise" status. Approved Enterprise status is obtained after a review of information submitted to the Investment Center of the Israeli Ministry of Industry and Trade.

The amount of an investment grant under ECIL is calculated as a percentage of the total approved investment in fixed assets. The amount of the grant also depends on the geographic location of the enterprise. For purposes of the ECIL program, Israel is divided into three zones—The Central Zone, Development Zone A and Development Zone B. Funding was restricted to companies in the Development Zones, with Development Zone A receiving a higher level of funding than those in Development Zone B. The Central Zone comprises the geographic center of Israel, including its largest and most developed population centers; companies in the Central Zone could not receive grants under this program at all.

In *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel ("IPA")* (52 FR 25447; July 7, 1987), the Department found the ECIL grants program to be *de jure* specific and, thus, countervailable because the grants are limited to

entperises located in specific regions (*i.e.*, Development Zone A and B). The GOI has provided no new information to warrant reconsideration of this finding.

Carmiel is located in Development Zone A, and received grants for two projects related to the production of subject merchandise. These grants were disbursed over the years 1983–1993.

It is our policy to allocate non-recurring grants over a period equal to the average useful life of assets in the industry, unless the sum of grants provided under a program in a particular year is less than 0.50 percent of a firm's total sales in that year. See *Countervailing Duties; Notice of Proposed Regulations and Request for Public Comments*, 54 FR 23366 (May 31, 1989(("Proposed Regulations") Section 355.49(a), and the General Issues Appendix to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austia*, 58 FR 37217, July 9, 1993. In this instance, respondents have not provided sales information for years prior to 1989. Therefore, we have no reason to believe the grants made before 1989 were less than 0.5 percent of sales in the year of receipt for these years and have preliminarily determined that the yearly disbursements should be allocated over time. In 1990, the sum of grants disbursed under the ECIL program accounted for less than 0.5 percent of Carmiel's total sales in that year. Therefore, benefits for 1990 were allocated to that year and are not included in our calculations. For all other years after 1989, the sum of the grants disbursed under the ECIL program accounted for more than 0.5 percent of Carmiel's total sales each year. Therefore, these benefits were allocated over time.

For ECIL grants allocated over time, we used a fifteen year allocation period (the average useful life of assets in the steel industry, as determined by the U.S. Internal Revenue Service Asset Depreciation Range System). The formula described in § 355.49(b)(3) of the Proposed Regulations for allocating grants relies on a fixed discount rate, which is based on the cost of long-term, fixed-rate debt of the firm or generally in the country under investigation. However, no long-term loans with fixed interest rates (or other long-term fixed-rate debt) were available to Carmiel or other companies in Israel during the years 1983–1993. Instead, the only long-term loans (or other long-term debt) available to companies in Israel appear to utilize variable interest rates, *i.e.* a fixed real interest rate added to the Consumer Price Index (CPI) or the dollar/shekel exchange rate.

We have preliminarily determined to adapt the grant allocation method described in our proposed regulations to use variable rather than fixed interest rates as the discount rate, given the absence of long-term fixed interest rates in the years these grants were disbursed. This methodology reflects the actual long-term options open to Israeli firms (*i.e.*, that long-term financing was only available through variable rate loans) and also ensures the the net present value of amounts countervailed in year of receipt does not exceed the face value of the grant.

In this preliminary determination, we have used the rate of return on CPI-indexed commercial bonds (the real rate of return, as published in the Bank of Israel Annual Reports, plus the CPI), as no actual loan rates for Carmiel or other companies in Israel were available. For use in our preliminary determination, CPI-indexed commercial bond rates were unavailable for the years 1983–1984, 1988–1989, and 1993. Therefore, for 1983 and 1984, we took the real rate reported for 1985 (information for prior years was not available) and added it to the CPIs for 1983 and 1984, respectively. For 1988 and 1989, we used the real rate for 1987 and added it to the CPIs for 1988 and 1989, respectively. For 1993, we used the real rate for 1992 and added it to the 1993 CPI.

We divided the benefit by Carmiel's 1993 total sales. On this basis, we preliminarily determine the estimated net subsidy for this program to be 2.12 percent *ad valorem* for the POI.

B. Long-Term Industrial Development Loans

Prior to July 1985, companies in Israel were eligible to receive long-term industrial development loans funded by the Goverhment of Israel. This program was used in conjunction with ECIL; however, a company did not have to be an Approved Enterprise in order to receive a development loan.

The GOI reported that loans under this program were provided to a diverse number of industries. However, the interest rates varied depending on the location of the borrower. The interest rates on loans to borrowers in Development Zone A were lowest, while those on loans to borrowers in the Central Zone were highest. In previous cases, the Department has treated long-term industrial development loans in Israel to be regional subsidies and countervailable to the extent that the applicable interest rates are less than those on loans to companies in the Central Zone (see *IPA*). The GOI has provided no new information to warrant reconsideration of this finding.

Carmiel received loans for one of its Approved Enterprise projects located in Zone A. These loans were received from the years 1983–1989. Under the terms of the program, the interest rates on these loans have two components—a fixed real interest rate and a variable rate, based on the Consumer Price Index (CPI) or the dollar/shekel exchange rate. Thus, these loans were variable rate loans. It is unclear from Carmiel's responses whether the loans they received were linked to the CPI or to the dollar-shekel exchange rate. Based on the limited information provided in the GOI and Carmiel's responses, we have assumed for purposes of the preliminary determination that all loans received by Carmiel had a fixed real rate of interest which was added to the CPI.

Because the CPI varies from year-to-year, we cannot calculate *a priorim* the payments that will be made over the life of these loans and, hence, we cannot calculate the "grant equivalent" of the loans. Accordingly, we have compared the interest that would have been paid by a company in the Central Zone, as a benchmark, to the amount actually paid by Carmiel during the POI (see Section 355.49(d)(1) of the Proposed Regulations). We divided the interest savings by Carmiel's total sales in 1993.

On this basis, we preliminarily determine the net subsidy rate from this program to be 0.15 percent *ad valorem* during the POI.

Exchange Rate Risk Insurance Scheme

Prior to September 1993, the Exchange Rate Risk Insurance Scheme (EIS) operated by the Israel Foreign Trade Insurance Corporation Inc. (IFTRIC), allowed exporters to insure themselves against the risk of losses which would occur when the rate of devaluation lagged behind the rate of inflation. The EIS was optional and open to virtually any exporter willing to pay a premium to IFTRIC.

Under EIS, if the rate [illegible] was greater than the rate of de[illegible] the exporter was compensated by an amount equal to the di[illegible] these two rates multip[illegible] added of the exports. If devaluation was higher [illegible] in the domestic price in[illegible] the exporter was require[illegible] IFTRIC. Companies using EIS a premium calculated as a perc[illegible] as a perc[illegible] exports.

In determining wh[illegible] insurance program prov[illegible] countervailable bene[illegible] whether the premiu[illegible]

changes are adequate to cover the program's long-term operating costs and losses. See Section 355.44(d) of the Proposed Regulations and *IPA*. We have reviewed EIS data in this investigation which showed that EIS operated at a loss from 1981 through 1991. We believe that this 11 year history is more than adequate to establish that the premiums and other charges are manifestly inadequate to cover the long-term operating costs and losses of the program. This preliminary determination that EIS is countervailable is consistent with our determination in *IPA*.

The GOI has provided information showing that EIS was terminated in September 1, 1993. It also confirmed that residual benefits would exist after September 1, 1993.

We have calculated the benefit under this program as the net amount of compensation Carmiel received during the review period from IFTRIC (compensation received less compensation and fees paid) expressly for pipe fittings exported to the United States. This amount was divided by the value of the company's exports of pipe fittings to the United States during the POI.

On this basis, we preliminarily determine the estimated net subsidy for Carmiel from this program to be 0.25 percent *ad valorem* during the POI.

II. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that producers or exporters in Israel of the subject merchandise did not receive benefits during the POI for exports of the subject merchandise to the United States under the following programs:

A. *Additional Incentives under the ECIL*
   1. *Preferential Accelerated Depreciation*
   2. *Tax Benefits*
   3. *Preferential Loans*
   4. *Industry Subsidy Payments*
B. *Labor Training Grants*
C. *Encouragement of Industrial Research and Development Grants*
D. *Special Export Financing Loans*
E. *Provision of Funds for Transportation to Eilat Harbor*

III. Programs for Which We Need More Information

A. Exceptions from Wharfage Fee

Importers in Israel pay a wharfage fee of 1.5 percent on goods entering the country. Exporters are required to pay a wharfage fee of 0.2 percent, unless they are exempted by the Port Authority. Currently, the Port Authority has exempted all exporters from payment of this wharfage fee. We are seeking further information on why these fees might differ for importers and exporters

B. Rebates of the Peace of Galilee Levy and Wharfage Fees

Exporters are also entitled to a partial rebate of levies paid under the Peace of Galilee and of wharfage fees paid on imported inputs which are physically incorporated into exported goods. It appears that these rebates are part of Israel's duty drawback system. However, we will be seeking further information to establish that these rebated were not excessive.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of pipe fittings from Israel, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries in the amount indicated below. This suspension will remain in effect until further notice.

Certain Carbon Steel Butt-Weld Pipe Fittings

Country-Wide *Ad Valorem* Rate—2.52%

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38, any interested party or U.S. Government agency may submit case briefs or other written comments with ten copies of the business proprietary version and five copies of the nonproprietary version to the Assistant Secretary no later than July 19, 1994, and rebuttal briefs no later than July 25, 1994. In accordance with 19 CFR 355.38(b), we will hold a public hearing, if requested by an interested party, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on July 27, 1994, at 1 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 355.38(b), oral presentations will be limited to issues in the briefs.

This determination is published pursuant to section 703(f) of the Act.

Dated: May 24, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–13317 Filed 5–31–94, 8:45 am]

BILLING CODE 3510-DS-P-M

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A

Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88–5A016."

Wood Machinery Manufacturers of America's ("WMMA") original Certificate was issued on February 3, 1989 (54 FR 6312, February 9, 1989) and previously amended on June 22, 1990 (55 FR 27292, July 2, 1990); August 20, 1991 (56 FR 42596, August 28, 1991); and December 13, 1993 (58 FR 66344, December 20, 1993). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Wood Machinery Manufacturers of America, 1900 Arch Street, Philadelphia, Pennsylvania 19103–1498.

Contact: Harold R. Zassenhaus, Export Director, Telephone: (301) 652–0693.

Application No.: 88–5A016.

Date Deemed Submitted: May 25, 1994.

Proposed Amendment: WMMA seeks to amend its Certificate to add each of the following companies as a new "Member" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Machine Systems, L.L.C., Bend, Oregon; Safranek Ent., Inc., Atascadero, California; and The Original Saw Co., Britt, Iowa.

Dated: May 25, 1994.

Fredrich R. Crupe,

Deputy Director, Office of Export Trading Company Affairs.

[FR Doc. 94–13313 Filed 5–31–94; 8:45 am]

BILLING CODE 3510–DR–F–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of a Request for Bilateral Textile Consultations on Certain Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Hong Kong

May 26, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories on which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On May 17, 1994, the Government of the United States requested consultations with the Government of Hong Kong regarding imports of men's and boys' coats and jackets in Category 834, produced or manufactured in Hong Kong. This request was made on the basis of the current bilateral agreement between the Governments of the United States and Hong Kong.

The United States reserves the right to control imports at the level under paragraph 7 of the agreement. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Hong Kong, further notice will be published in the Federal Register.

Anyone wishing to comment or provide data or information regarding the treatment of Category 834, under the agreement with the Government of Hong Kong, or in any aspect thereof, or to comment on domestic production or availability of products included in Category 834, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Hong Kong.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–13315 Filed 5–31–94; 8:45 am]

BILLING CODE 3510–DR–F

Deduction of Import Charges for Certain Wool Textile Products Assembled in the Dominican Republic

May 25, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice of visa waivers.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

CITA has agreed to issue visa waivers for certain textile products in Categories 433 and 443 which were cut in the Virgin Islands and assembled in the Dominican Republic and exported to the

United States in amounts up to 7,500 dozen for Category 433 and 2,500 numbers for Category 443. As part of this agreement, the Chairman of CITA has issued waivers on three different occasions (58 FR 61072, published on November 19, 1993; 58 FR 67396, published on December 21, 1993; and 59 FR 17339, published on April 12, 1994). In conformity with the agreement, CITA will continue to deduct import charges for Categories 433 and 443, up to the agreed amounts, for goods exported on or before December 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 67397, published on December 21, 1993.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–13315 Filed 5–31–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 30, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 25, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Extension.

Title: Lender's Application for Payment of Insurance Claims.

Frequency: On occasion.

Affected Public: Businesses or other for-profit; Non-profit institutions.

Reporting Burden: Responses: 18,462; Burden Hours: 2,769.

Recordkeeping Burden: Recordkeepers: 9,231; Burden Hours: 1,108.

Abstract: This form will be used by lenders to request payment of a claim for the Federal Insured Student Loan Program (FISL) or for the Federal Stafford, Federal Plus, Federal SLS, Federal Consolidation, or Federal Unsubsidized Programs when a guaranty agency no longer exists and ED becomes the guarantor. The Department will use the information to match disbursement data already on file for claim payment validation.

[FR Doc. 94–13217 Filed 5–31–94; 8:45 am]

BILLING CODE 4000–01–M

CFDA No.: 84.242

National Science Scholars Program

AGENCY: Department of Education

ACTION: Notice of the closing date for the submission of fiscal year 1995 nominations under the National Science Scholars Program.

SUMMARY: The Secretary gives notice of the closing date and procedures for the State nominating committees approved by the Secretary to submit the names to the President of fiscal year (FY) 1995 nominees under the National Science Scholars Program (NSSP) authorized by title VI, part A of the Excellence in Mathematics, Science and Engineering Education Act of 1990, as amended, 20 U.S.C. 5381 *et seq.* (the Act).

The NSSP supports Goals 2000, particularly the goals that call for American students to be first in the world in science and mathematics achievement and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The National Science Scholars Program advances these goals by providing scholarship assistance and other benefits to students selected by the President for undergraduate study of the physical, life, or computer sciences, mathematics, or engineering.

The Secretary will accept the names of nominees on behalf of the President from the nominating committees of States participating in the NSSP, including the 50 States and the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and Virgin Islands. Each State nominating committee must submit for consideration the names and pertinent information of at least four nominees from each congressional district in the State, at least half of whom must be female.

The Act provides that at least half of the nominees from each congressional district must be female and all of the nominees must be ranked in order of priority within each congressional district. A State with an approved nominating committee that desires to have a nominee considered for selection as a National Science Scholar must provide each nominee's name, permanent address, home telephone number, social security number if provided by the nominee, sex, congressional district, congressional representative's or delegate's name for that congressional district, priority ranking within the congressional district, NSSP subject area in which the nominee intends to major and specific major if known, and any other Office of Management and Budget (OMB) approved applicant information the Secretary deems necessary to operate the program.

Closing Date and Media for Transmitting NSSP Nominee Information

A State must provide its NSSP nominations for FY 1995 by submitting the nominee information either—

(1) In typewritten format;

(2) On a data diskette provided by the U.S. Department of Education that the U.S. Department of Education sends directly to all States; or

(3) Through a modem using a software program on a diskette provided by the U.S. Department of Education that the U.S. Department of Education sends directly to all States.

To ensure that State nominees are considered for FY 1995 funds, a State must submit nominee information by October 31, 1994.

State NSSP Nominations Delivered By Mail

NSSP nominations must be sent to the following address: National Science Scholars Program, U.S. Department of Education, Office of Student Financial Assistance, ROB–3, Room 4621, 400 Maryland Avenue, SW., Washington, DC 20202–5453.

A State must obtain proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a Commercial Carrier; or (4) any other proof of mailing acceptable to the Secretary.

If a State's NSSP nominations are sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. A State should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method as proof of mailing, a State should check with its local post office. A State is encouraged to use registered mail or at least first-class mail.

Each State submitting nominations after the closing date will be notified that its nominees cannot be assured of consideration for FY 1995 funding.

State NSSP Nominations Delivered By Hand

State NSSP nominations that are hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, 7th and D Streets, SW., room 4621, GSA Regional Office Building #3, Washington, DC Hand-delivered nominations will be accepted between 8 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

State nominations that are hand-delivered after 4:30 p.m. on the closing date cannot be assured of consideration.

State NSSP Nominations Transmitted Through A Modem

NSSP nominations transmitted to the U.S. Department of Education through a modem must be transmitted to (301) 587–1490. Modem transmissions must be received by the server (computer) no later than October 31, 1994. The transmission will be acknowledged by the server through transmission of a file to the sender that will display on the sender's computer screen, providing proof of the U.S. Department of Education's receipt of the transmission.

Program Information

Under the NSSP, the Secretary is authorized to award scholarships to outstanding students selected by the President for the study of physical, life, or computer sciences, mathematics, or engineering. The Secretary is authorized to award initial scholarships of up to $5,000 for the first year of undergraduate study to graduating high school students or those obtaining the equivalent of a certificate of graduation as well as continuation awards of up to $5,000 for up to four additional years of undergraduate study.

Applicable Statutory and Regulatory Provisions

The following statute and regulations are applicable to the FY 1995 NSSP:

(1) The program statute, 20 U.S.C. 5381 *et seq.*

(2) The National Science Scholars Program regulations in 34 CFR part 652.

(3) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (with the exception of subpart C, §§ 75.200–75.216, 75.218, and 75.220–75.261 of subpart D, and §§ 75.580–75.592 of subpart E); 77, 79, 81, 82, 85, and 86.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

FOR FURTHER INFORMATION CONTACT: Charles R. Brazil, U.S. Department of Education, Division of Higher Education Incentive Programs, suite C80, Portals Building, Washington, DC 20202–5329. Telephone: (202) 260–3257. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

(Catalog of Federal Domestic Assistance Number 84.242, National Science Scholars Program)

Program Authority: 20 U.S.C. 5381 et seq.

Dated: May 24, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–13216 Filed 5–31–94; 8:45 am]

BILLING CODE 4000–01–P–M

DEPARTMENT OF ENERGY

Office of Policy, Planning, and Program Evaluation

Guidelines for Voluntary Reporting of Greenhouse Gas Emissions and Reductions, and Carbon Sequestration

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of availability of draft guidelines and request for comment and notice of public hearing.

SUMMARY: Pursuant to section 1605(b) of the Energy Policy Act of 1992, the Department of Energy is developing guidelines for the voluntary reporting of greenhouse gas emissions, their reduction, and carbon fixation achieved through any measure. The data will be reported on forms to be developed by the Energy Information Administration (EIA) and entered into an EIA database.

The guidelines provide for the voluntary and accurate reporting of greenhouse gas emissions and reductions, and of carbon sequestration. The guidelines and supporting materials assist parties in analyzing activities and determining emissions and reductions

and carbon sequestration in order to voluntarily report this data. EIA will develop reporting forms consistent with the guidelines. Draft guidelines and supporting materials are available for public review and comment.

DATES: Written comments on the draft guidelines and supporting materials (10 copies) are due on or before August 1, 1994. DOE does not anticipate extending this date. A public hearing will be held on June 29, 1994, beginning at 8:30 a.m. at the address listed below. If necessary to accommodate requests to speak, the hearing will continue on June 30, 1994. Requests to speak must be received by the Department on or before June 22, 1994.

ADDRESSES: Written comments (10 copies) should be submitted to: U.S. Department of Energy, Office of Policy, PO–63/VRP NOA, Docket No. PO–VR–94–101, room 4G–036, 1000 Independence Ave., SW., Washington, DC 20585.

A copy of the draft guidelines and supporting materials may be obtained by telephone request to (301) 601–8284. Requests to speak at the hearing should be made by telephone at (301) 601–8284.

The public hearing will be held at The Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024. Copies of the transcript of the public hearing and public comments received will be available for inspection at the DOE Freedom of Information Reading Room, room 1E–090, at the address listed above, between the hours of 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Elmer Holt at (202) 586–0714.

SUPPLEMENTARY INFORMATION: Under section 1605(b) of the Energy Policy Act of 1992 (EPAct; Pub. L. 102–486), the Secretary of Energy with the Energy Information Administration (EIA) is to establish a voluntary reporting system and database on emissions of greenhouse gases (GHGs), reductions in emissions of these gases, and carbon fixation. DOE has consulted with the Environmental Protection Agency in developing the draft guidelines, as provided under section 1605(c).

The draft guidelines and supporting methodologies provide guidance on institutional and technical aspects of the voluntary program. They are presented in discrete parts, as discussed below. DOE requests comment on all provisions of the draft guidelines and supporting material.

I. Background

Under section 1605 of the EPAct, two databases related to greenhouse gases are to be established. These separately address (1) the inventory of aggregate national totals of greenhouse gas emissions, and (2) data voluntarily reported on emissions, reductions, and carbon sequestration.

First, under subsection (a), the Secretary of Energy through EIA and without any expanded data collection authority is required to develop an inventory of national aggregate emissions of each greenhouse gas for each calendar year of the baseline period of 1987 through 1990. This inventory was published in September, 1993 ("Emissions of Greenhouse Gases in the United States, 1985–1990;" DOE/EIA–0573). This inventory will be updated annually, as required by the legislation.

The voluntary reporting program database is required under subsection (b) of section 1605, and will consist of voluntarily reported information on annual greenhouse gas emissions and their reduction, and carbon sequestration. It is separate from the national aggregate inventory established and updated under subsection (a). Because submission of data to the program established under subsection (b) is voluntary, this database cannot be designed for use as a comprehensive national greenhouse gas accounting system, and thus may not serve to provide a statistically accurate representation of aggregate U.S. greenhouse gas emissions or their reductions.

The Secretary of Energy is required to issue guidelines with procedures for the accurate voluntary reporting of information on (1) greenhouse gas emissions on an annual basis for the baseline period 1987 through 1990, and for subsequent calendar years; (2) annual reductions of greenhouse gases and carbon fixation achieved through any measures; and (3) reductions in greenhouse gas emissions achieved voluntarily, or as a result of plant or facility closings, or as a result of State or Federal requirements.

The guidelines and supporting materials assist those who wish to report in determining or developing information necessary to report. EIA will develop and make available forms for voluntary reporting consistent with the final guidelines, and will develop a database for the information voluntarily submitted.

II. Public Input Process

The process for public input in developing the draft guidelines began with a Notice of Inquiry (NOI) in July 1993 (58 FR 40116; July 27, 1993), requesting comment on institutional and technical issues related to a 1605(b) reporting system. These comments assisted in developing the focus for discussion at six public workshops held in November and December of 1993. A summary of workshop sessions and a copy of all written comments submitted are available for public inspection in the DOE Freedom of Information Reading Room, listed in the **ADDRESSES** section above.

Additional public input to the guidelines is being sought through the comments requested and the public hearing announced in this notice.

III. Organization of the Draft Guidelines

The draft guidelines and supporting materials, "Voluntary Reporting of Greenhouse Gases Under Section 1605(b) of the Energy Policy Act of 1992: General Guidelines and Sector-Specific Issues and Reporting Methodologies," are presented in eight discrete parts. The first part, "General Guidelines," provides basic guidance for reporting under the program. Six parts, "Sector Specific Issues and Reporting Methodologies Supporting the General Guidelines" (or "supporting materials") discuss issues particular to specific sector or activity areas, as indicated: Electricity Supply, Residential and Commercial Buildings, Industrial, Transportation, Forestry, Agriculture.

The seventh supporting document, "Global Warming Potential and Other Indices for Representing Greenhouse Gas Effects on Climate" completes the guidelines set.

The public review draft does not include the sector-specific part on the Agriculture Sector; this document is expected to be available by the end of June. Notice of its availability for review and comment will be announced in the **Federal Register**.

IV. Goals of the Voluntary Reporting Program

The draft guidelines and supporting materials have been developed to reflect the dual goals of maximizing participation without compromising the usefulness of the data. These goals reflect public input received in response to the July 1993 Notice of Inquiry and the subsequent workshops discussed above.

Achievement of the participation goal will be measured by the numbers of voluntary reporters and the variety of economic sectors and activities they represent, and in the quantity of emissions and reductions and carbon sequestration reported. The draft guidelines and supporting materials

assist participation by minimizing administrative burden and repetitive submissions among data acquisition programs, and by providing flexibility for the use of self-generated data with optional default and prescribed data alternatives.

Usefulness of the data is defined not only by the quality, quantity, and variety of the data included, but also by its ability to serve the varied purposes of the program. These purposes include providing a database of information for entities seeking to reduce their own greenhouse gas emissions; formal recordation of emissions, reductions and carbon sequestration achievements for various objectives; and informing the public debate in future discussions on national greenhouse gas policy.

V. Summary Description and Discussion

A. What Are The Guidelines?

The guidelines define who may report, what information may be reported, and considerations in identifying or developing reportable data. Consistent with the guidelines, EIA will develop reporting forms for the program, receive submissions and evaluate them for compliance with the guidelines and reporting instructions, and develop and maintain the database of information reported.

The guidelines suggest to reporters data identification, collection and retention needs, and address the use by reporters of information which may be part of existing recordkeeping systems or standard business practices. They also provide a framework for analyzing activities with the goal of developing reportable data. Finally, the guidelines provide information for comparing emissions of gases on the basis of their differential greenhouse (radiative forcing) effects within the climate system. This discussion on differential effects is provided for information purposes only. The guidelines provide that data reported be in units of gas emitted or reduced, and not transformed by any radiative forcing index reported.

B. What is Covered by the Guidelines?

The reporter. The guidelines define "reporting entity" flexibly in order to accommodate total organization and project reporting, as well as reporting focused on specific activities or on specific sites. A reporting entity, or "reporter," may be any U.S. organization or individual that has taken actions which result in emissions, emissions reductions, or carbon sequestration, and that can define a project and report physical data in enough detail to quantify results of the activity. The following may report under the program: any U.S. citizen or resident alien; any company, organization, or group incorporated under or recognized by law; and any U.S. Federal, state, or local governmental entity.

Sector coverage. The guidelines may be used for all economic sectors. The supporting methodologies provide additional direction for reporting data on activities in the following sectors: electricity supply, residential and commercial buildings, transportation, industrial, forestry, and agriculture.

Size threshold. In order to encourage participation and to capture small-scale demonstration projects, DOE is not proposing minimum levels for participating in the reporting program. At the outset of the program design process, DOE assumed that the program would have a threshold level of participation to prevent overburdening EIA in managing a costly, inefficient database.

However, commenters recommended strongly that no threshold levels be set, in order to avoid unnecessary limitations that might discourage participation, particularly by those engaging in pilot projects and innovative approaches. In addition, setting threshold standards for the broad range of activities—for each gas, each sector, and for all activities within a sector—would be difficult.

DOE seeks comment on the possible need for a threshold level for participation. If thresholds are recommended, DOE requests suggestions for appropriate levels.

Direct and indirect emissions activities. The draft guidelines address activities that result in either direct or indirect emissions and reductions of greenhouse gas emissions. Direct greenhouse gas emissions may result from activities such as fossil fuel combustion and the venting of methane. DOE acknowledges that a program with submissions limited to direct emissions, and to activities directly producing or reducing those emissions, would be more manageable and transparent than the broad, flexible approach reflected in the draft guidelines.

The statute, however, provides some examples of activities which are to be covered which indirectly affect, or may indirectly affect, emissions or reductions. Among the activities mentioned are the manufacture of vehicles with reduced greenhouse gas emissions, appliance efficiency, and energy efficiency measures.

DOE believes that Congress intended that the program cover the broadest set of activities which impact greenhouse gases, both directly and indirectly. Thus, the guidelines address both indirect and direct emissions activities, which will be appropriately distinguished in submissions. Comment is specifically requested on the proposed approach which allows reporting emissions and reductions from indirect and direct emitting activities, with appropriate identification of each.

Multiple party activities. The guidelines permit the reporting of activities undertaken in association with others. The guidelines provide suggestions to the parties for assigning the ability to report among the parties, and ask that the reporter identify others who may also report the data. Examples of multiple party activities include utility demand-side management actions, and the manufacture, sale, and use of more efficient vehicles.

Some commenters urged that the guidelines prohibit "double reporting" of the results of joint activities, in order to prevent the accounting for the same emissions, reductions or sequestration more than once. DOE agrees. Thus, while the draft guidelines permit any party to the activity to report, they require reporters to identify the other parties to the activity. In addition, the guidelines suggest ways for reporters to help protect against "double counting." These methods are based on the nature of the relationship of the parties, and the comparative ability of the parties to perform adequate project analysis and to have, or have access to, necessary data. Methods suggested in the guidelines include contractual agreements.

Comment is specifically requested on the proposed approach on reporting multiple party activities. In particular, comment is requested on whether the guidelines and the reporting forms to be developed by EIA should contain additional protections against double counting.

Reporting through third parties. In order to increase participation, particularly of small reporters and small projects, the draft guidelines permit third party and aggregated reporting, at the reporter's discretion. For example, a trade association or other organization may, at the reporter's request, aggregate data from multiple entities. Such organizations may provide technical or administrative assistance in reporting, and aggregation of data may provide some degree of confidentiality of the data. However, third-party reporters may not be able to record individual achievements in the detail that individual reporters desire. The draft supporting documents provide a discussion of third-party reporting as it

may apply in each sector, as well as a discussion of the appropriateness of third-party reporting for different reporting purposes.

The gases. The draft guidelines cover emissions of the following greenhouse gases: carbon dioxide, nitrous oxide, methane, and the halogenated carbon substances. A more comprehensive list of greenhouse gases would include additional gases, most notably some of the conventional, or "criteria," pollutants for which emissions data is collected by EPA and State agencies under various air quality programs.

Because the Act does not provide a definition of "greenhouse gases," DOE has initially limited the coverage of the guidelines to those long-lived greenhouse gases specifically mentioned in the statutory provisions, or inferred to in the statutory language which provides examples of emissions reductions measures. Consistent with specific statutory language, the guidelines cover halogenated carbon substances such as CFCs.

Calculating radiative effects among different gases. The draft supporting materials for the guidelines provide methods for reporters to estimate, for their own use, the global warming potential of greenhouse gases, with a discussion of the radiative forcing system and the derivation and uncertainties of the estimates. In simplified terms, radiative forcing is the change in the balance (incoming versus outgoing) of solar and infra-red radiative energy in the troposphere (the layer of the atmosphere closest to Earth). Emitted gases have different direct radiative effects and atmospheric lifetimes. The Act requires the guidelines to establish procedures for taking into account these effects.

Because this area of science is complex and evolving, reporting activity results by any relative index would create an unnecessary additional burden in an area where few reporters are likely to have expertise. More importantly, the state of the science in this area is uncertain and rapidly changing; thus, any calculations performed will likely need revision. Therefore, while the draft guidelines provide information necessary for a reporter to perform these calculations, all data reported to this program will be in units of the gas emitted or reduced, and will not be transformed in voluntary submissions by any common radiative forcing index, such as the Global Warming Potential (GWP) index.

The draft supporting document on GWPs is based on the anticipated outcome later this year of ongoing international scientific inquiry and discussions. The Intergovernmental Panel on Climate Change Working Group I report, entitled "Second Supplemental Report to the IPCC Scientific Assessment (1994); Radiative Forcing of the Climate System" is scheduled to be released in November 1994. This document will provide the latest current scientific consensus on the issues of differential radiative activity of greenhouse gases.

The global warming potential supporting document will be finalized after release of the IPCC report, and will reflect that report. Since reporting will be by unit of gas emitted, neither the reporting program nor EIA forms development is dependent on this information. DOE seeks comment on this approach for assuring consistency with international scientific consensus and minimizing the immediate need for revision of guideline material.

Temporal and spatial coverage. The guidelines address reporting annual emissions for the historic baseline period of 1987 through 1990 (" historic baseline"), and subsequent years. The guidelines also cover the reporter's aggregate annual emissions and emissions reductions from all of its activities. Annual reductions of greenhouse gases and annual carbon sequestration, by activity and project, are also covered. Results of activities occurring outside the U.S. are covered in the same manner as those occurring within the U.S., as discussed below.

Reporters are encouraged to report and update historic baseline emissions and to report on an entity-wide (total organization) basis. The clarity and credibility of data provided by an organization will be enhanced by the optional submission of comprehensive greenhouse gas emissions data on the historic baseline and total annual emissions of the organization. While the guidelines do not require this comprehensive information to accompany reports of other, more focused data on projects and activities, reports will be identified within the database on the basis of the coverage of the submittal.

Causation. The guidelines require that reporters identify the cause for the activity resulting in greenhouse gas emission reductions. Section 1605(b) provides that the guidelines cover greenhouse gas emission reductions achieved as a result of: (1) plant or facility closings, (2) Federal or state requirements, and (3) voluntary reductions. Accordingly, the guidelines require reporters to identify, if appropriate, which of these factors caused the reported emissions reduction. Reports will identify the causative factor if it falls within these areas, but will not include any further information. Comment is specifically requested on the appropriateness of this limited identification of cause.

International activities. The draft guidelines provide that U.S. entities may report international activities to which they are a party if the submission meets the general reporting criteria. The Act is silent on the reportability of offshore activities to this program.

There is considerable interest in the potential for cooperation among firms in industrialized countries and governments, firms, or individuals in less developed countries in sequestering carbon and reducing global carbon emissions. Reporters are advised that there may be special difficulties in defining project boundaries, determining an appropriate reference case, and using appropriate estimation methods for offshore activities.

The United Nations Framework Convention on Climate Change (FCCC), Article 4, paragraph 2(A), requires some nations to take measures to mitigate climate change, and it allows the parties to implement these measures jointly with other parties. Criteria for "joint implementation," as this concept is known, will be formally addressed by FCCC's Conference of the Parties in 1995. Thus, it is impossible at this time to ensure that guidelines for the voluntary reporting of actions taken by U.S. entities in other countries will be consistent with the eventual requirements for joint implementation under the FCCC. Accordingly, the guidelines may be updated to reflect future decisions made by the Conference of the Parties.

VI. Relationship of the Voluntary Reporting Program to Other Greenhouse Gas Initiatives

EPAct, which requires the establishment of the voluntary reporting program, was enacted on October 24, 1992. It predates several domestic initiatives designed to respond to the threat of global climate change. Some of these initiatives refer to the voluntary reporting program as an associated tool in implementation. This reporting program can be used to record emissions reductions achieved under a variety of programs that may result in reducing greenhouse gas emissions or increasing carbon sequestration, whether as a primary goal or as a secondary result.

While activities that reduce or avoid greenhouse gas emissions or sequester carbon under existing programs would be reportable, the guidelines were not specifically designed to accommodate any particular program. Although the ability to report beneficial greenhouse gas impacts of activities may encourage activities under existing programs, the guidelines were designed to encourage reporting regardless of cause or motivation for an activity.

The language of section 1605(b)(1)(C) provides that the guidelines are to address reporting reductions achieved as a result of plant closings, and Federal and state requirements, in addition to those which result from voluntary actions. Thus, the guidelines do not limit submissions based on either the motivation of the parties involved or on the reason for the activity.

A. The Climate Change Action Plan

A year after passage of the Energy Policy Act of 1992, the President, with the goal of returning U.S. greenhouse gas emissions to their 1990 levels by the year 2000, released the Climate Change Action Plan (CCAP). This plan contains over forty new or expanded initiatives, most seeking voluntary participation. Three actions under the CCAP—Climate Challenge, Climate Wise and the U.S. Initiative for Joint Implementation—specifically refer to participant reporting under section 1605(b). DOE anticipates that most accomplishments under CCAP initiatives will be reported under section 1605(b), but reporting is not limited to these specific activities.

The 1605(b) program is flexibly designed to accommodate broad participation consistent with the purposes of 1605(b). It was not designed to meet the accounting goals of any particular program. Some programs such as Climate Challenge and Climate Wise may need to adopt supplemental accounting procedures for the purposes of those programs.

The Climate Challenge and Climate Wise programs are designed to elicit commitments by members of the utility and industrial communities to take actions which will reduce or avoid greenhouse gas emissions. While the 1605(b) voluntary reporting program will provide a mechanism for recording information on those achievements, it does not provide a mechanism for registering commitments.

DOE is exploring establishment of a separate reporting system for the pledge portion of the commitment programs. While as yet undeveloped, that system may look similar to the reporting program and database established under 1605(b). This similarity, however, should not be confused as allowing commitments to be reported into the section 1605(b) database; only achievements will be part of this database and any information system developed for commitments will be distinct.

B. United States Actions Under the United Nations Framework Convention on Climate Change (FCCC)

Under the FCCC, the United States will be submitting a national communication which contains a mitigation plan of policies and measures. While data submitted to the voluntary reporting program may provide some limited information concerning accomplishments under U.S. measures, it is not designed to be a primary data source for communications of the United States under the FCCC.

VII. Discussion of Report Development and Analysis

The Act requires that DOE develop guidelines on procedures for four reporting categories: baseline emissions for the period 1987 through 1990, annual emissions, emissions reductions, and carbon sequestration activities. It also requires the procedures to take into account the differential radiative effects of each gas covered. However, it does not require that each report include all of these activities or address radiative effects. The legislation does not require that historic baseline, annual, or total organization emissions be reported as a prerequisite to reporting emission reductions or carbon sequestration project information.

DOE is requesting comment on the guidelines approach, which allows voluntary reporters to determine how comprehensive their submissions will be relative to historic baseline, annual and total organization emissions.

A. Annual and Total Organization Emissions

The guidelines encourage, but do not require, reports of annual emissions for the historic baseline period 1987–1990, and for subsequent years. In reporting emissions for this historic baseline period, the reporter may choose to report annual emissions for each of these years, or the average of the four years' emissions. Where adequate data exists (for example, for regulated industries such as utilities), the inclusion of emissions reports for the period 1987 through 1990, and for each subsequent year, will provide enhanced clarity to submissions on reductions and carbon sequestration projects.

The guidelines encourage annual emissions reports on a total-organization basis, covering all greenhouse gas producing activities of the reporter. However, recognizing that adequate information may not be available or may be overly burdensome to collect and analyze (in the case, for example, where an organization has multiple sites and decentralized management), the guidelines allow emissions reporting on a project basis. A project is variously defined, at the discretion of the reporter, as a site, an activity, or a group of activities.

B. Emissions Reduction or Increased Carbon Sequestration Projects

Reports will be accepted on a project-by-project basis as defined by the reporter. The reporter may credibly define a project at the entity level, at a subentity level (such as a plant or production line), at a supra-entity level (including, for example, joint reporting of the manufacture and use of fuel-efficient vehicles), or at a specific activity level (such as replacement of equipment). When defining a project, the entity must consider the amount and accuracy of available data and possible secondary effects of the project as described below.

1. Defining the Project

The draft guidelines allow reporters latitude in defining the project to be reported and in performing analyses to substantiate claimed emission reductions or carbon sequestration. This latitude extends to permitting narrow delineation of a reportable activity which does not reflect the greenhouse gas effects of all of the operations of the reporter. Some commenters stated that requiring reports to cover all greenhouse gas emitting activities of the reporter is the only way to ensure that the program records only "real" reductions, that is, reductions from the entity's total emissions. Other commenters pointed out that participation in the program would be unnecessarily limited by the universal imposition of significant data collection and analytic burdens. In order to achieve the goal of maximum participation, as discussed above, the draft guidelines allow for a broad choice in designing the scope of submissions.

Project-level reporting provides maximum flexibility to reporters based on individual circumstances. Participation is facilitated since growing entities would be able to report, even though their total emissions are growing; and parties who do not have or cannot develop data at the total organization level will be able to report quality data on an individual project. The focus of the program on individual achievements is preserved.

DOE acknowledges that the breadth of reporter discretion permitted could result in some submissions which selectively provide only data on environmentally beneficial [illegible]

without addressing secondary and other effects. By providing an analytic framework on project boundary definition and secondary effects, and in encouraging the submission of reports showing total organization emissions and emission reductions, the guidelines seek to minimize inappropriate use of narrow reporting. DOE specifically seeks comment on whether the proposed degree of flexibility provided for the scope of reports is appropriate.

2. Reporter's Data Identification, Analysis, and Certification

To encourage voluntary reporting, the guidelines minimize reporting demands, both in terms of ease and cost of data identification, collection and analysis. Three strategies have been developed to accomplish this objective:

(a) Provide that a reporter may use, to the extent possible, information it already collects for other purposes.

(b) Provide two paths for data analysis and report preparation: the first with detailed assistance for smaller or less analytically sophisticated reporters without adequate data or expertise, and the second with more general guidance for reporters with experience in analyzing and reporting the type of data sought by this program.

(c) Accept self-certification as an adequate accuracy check for the current purposes of the program, recommending that reporters consider retaining records where they may be appropriate for future use.

a. Using existing information. Many reporters, such as utilities and members of other regulated industries, currently collect data relevant to this program. This data may be on greenhouse gas emissions specifically, or activity parameters which can be translated to emissions. Some reporters collect data for internal purposes, for example, in order to monitor energy use or expenditures. To minimize data collection burdens, the guidelines encourage the use of existing data for submissions.

Data are collected and reported in various industrial and economic sectors under existing programs at the Federal, state, and local levels. The following discussion illustrates the types of information which will be useful for submissions under this program.

Many reports already required of utilities will readily provide relevant data. These include, for example, specific carbon dioxide emissions reports from electric utility units affected under the Clean Air Act acid rain program (40 CFR part 75). Information needed to estimate emissions of greenhouse gases is reported by all major fossil fuel electricity generating plants in several reports submitted to EIA, for example, on EIA Form 767 (fuel use by generating unit) and EIA Form 861 (utilities' net generation and sales to ultimate customers). In addition, utilities gather relevant data in order to report to public utility commissions and other state an local bodies.

For the industrial sector, examples of information useful for reporting include that provided to the Census Bureau via the Census of Manufactures (CM), the Annual Survey of Manufacturers (ASM), and the Manufacturing Energy Consumption Survey (MECS). Industrial reporters may be collecting relevant data pursuant to existing programs such as the Clean Air Act requirements for halogenated substances, annual reports to the EPA Toxic Release Inventory System, and state programs such as California's Directed Inspection/Maintenance Programs. Data collected for reporting to the Federal Mining Safety and Health Administration and the Department of Transportation's Office of Pipeline Safety on methane may also be useful to the reporter.

In the transportation sector, reporters may have information gathered in planning and compliance activities undertaken for numerous programs, such as the corporate average fuel economy (CAFE) standards; EPAct and Clean Air Act mandates for alternative fuel use, employer carpooling and telecommuting; state-level subsidies for gasohol; and required fuel use reports by airlines an railroads.

Participants in voluntary programs in both the public and private sectors are or will be collecting information useful to reporting under this program. For example, DOE expects that data generated by participation in many initiatives under the CCAP will be reported under the EPAct 1605(b) program. Participation in private voluntary programs, such as trade association energy efficiency programs, will also result in participants generating data useful to reporting.

Ongoing Federal programs, generally concentrated at DOE and EPA but also at other agencies, afford participants the opportunity to use data generated for those programs in reporting under Section 1605(b). Among these are the Motor Challenge and the Golden Carrot programs. DOE's Energy Analysis and Diagnostic Center (EADC) energy audits, as well as independent energy audits, may provide data useful for the additional purpose of reporting here. EPA's voluntary programs, such as Green Lights, Natural Gas Star, Energy Star Transformers, and others, will also provide useful data.

In the forestry sector, participation in tree planting and urban forestry programs managed by agencies within the U.S. Departments of Agriculture (USDA), Interior, Transportation, and Defense, as well as by State forestry agencies, may provide useful data. Extensive physical data on land use and agricultural practices kept for and by the USDA's Soil Conservation Service and State agricultural agencies, developed for other purposes, may be useful in providing data on activities affecting greenhouse gas emissions and carbon sequestration in the agriculture sector.

b. Two paths for reporting. Public input into development of the draft guidelines indicated that at least two categories of reporters exist. The first includes large utilities and industrial organizations with extensive data collection programs and the capability to perform thorough organizational and project-specific analyses of activities and greenhouse gas and carbon sequestration achievements. The second category of reporters encompasses smaller entities with adequate physical information, but needing assistance in transforming this data into estimates of emissions and reductions or sequestration. To accommodate both categories of reporters, the guidelines ask reporters to provide adequate physical data about projects/activities, and provide two paths for estimating greenhouse gas emissions or carbon sequestration.

In all cases, submissions will include adequate physical data about projects; for example, how many and what type of trees were planted at a location, what quantities of materials were processed, or how many kilowatt hours were used. This information must be sufficient to derive a gross estimate of greenhouse gas emissions or carbon sequestration results.

However, two paths are open to reporters for deriving their estimates of the effects of reported projects. The first is to develop the data and methods needed to estimate credibly and accurately project effects. A variety of tools may be used—such as computer models, actual measurements, and engineering estimates—based on the circumstances of the project and the reporter's purpose for reporting.

The second path for reporters is the use of default values to derive estimates. The guidelines and supporting materials provide, or give references for, emission factors, stipulated savings, equations, and other default systems to be used at the option of the reporter. While the default path is likely to produce

conservative estimates (i.e., underreporting beneficial accomplishments) which are less precise than those derived from project-specific analyses, it will enhance the ability of less sophisticated reporters to report.

Identification of the types of tools used in either path will be part of the report.

c. Certification of submissions. EPAct 1605(b) requires self-certification of reported data. Consistent with the Act, the guidelines provide only for self-certification by the reporter of the accuracy of the submission.

DOE considered the private and public resources necessary for various types of verification of data submitted. The goal of broad participation would be adversely affected by imposing upon reporters additional requirements for certification or verification of submitted data.

Although the draft guidelines do not go beyond the self-certification specified in the statute, other verification and certification parameters may be set by and through other greenhouse gas programs in which a reporter participates. The reporter may identify data in its submission that has been verified by a third party. In addition, reporters may wish to retain auditable data supporting their reported data, based on the anticipated uses of the data.

VIII. Discussion of the Project Analysis Approach

This section discusses the basic approach of the draft guidelines for project analysis, and of the sector-specific supporting methodologies for applying this approach.

A. What the Reporter Must Be Able To Provide

The minimum requirements for reporting the achievements of a project include the following:

- Identifying information about the reporter and the project.
- Sufficient physical data on the project for calculating emission reductions or carbon sequestration results achieved.
- Definition of a reference case against which to measure reductions.
- Identification of the measurement and estimation methods used.

B. Reporting Emissions

Reporters are encouraged to provide total organization emissions data when reporting project emission reductions, as well as total project or activity emissions for the historic baseline period of 1987–1990 and subsequent years. Comprehensive reporting of all relevant emissions data will increase the credibility of any emission reduction reports, by providing a complete picture of the reporter's activities.

Reporters have the flexibility to determine and identify organization-wide reporting boundaries. The rationale for the boundaries they draw will depend, in part, upon the reasons the reporter is preparing and submitting information. If reporters are able to report emissions for their entire organization, they are encouraged to do so. Reporters do not need to report total organization emissions in order to report emission reduction and carbon sequestration projects. DOE recognizes, however, that reporting total emissions for a specific industrial plant, for example, may be more consistent with specific emissions reduction project elements of the report, and based on more readily available data than would a report on the organization's total emissions.

C. Reporting Emission Reductions or Carbon Sequestration: Project Analysis

Accurate and credible reporting under the EPAct 1605(b) program depends upon performing good project analysis. Entities may report emission reductions and carbon sequestration for projects which they define and for which they develop a basis of emissions with and without the project. The guidelines do not provide rigid rules for such an analysis, but provide general methodologies and considerations for use by the reporter, as discussed below.

After defining the project to report, a reporter will need to address three elements of project analysis: (1) Establishment of the reference case (the basis for comparison with the project); (2) definition of the project and reference case boundaries; and (3) estimation of emissions for the reference case and the project.

These elements are interdependent. For example, the selection of a reference case will depend upon both how widely the project boundaries are drawn and what data are available to measure or estimate emissions. The extent of the reporter's analytic efforts will be based on the purposes for reporting.

Defining the project to be reported. A project may consist of only one activity, undertaken for its projected cost savings (such as a relighting project) or as a pilot project (such as an experimental process change); several activities, perhaps as parts of an energy efficiency program (these may include activities, such as materials processing, outside the organization); or all emission-producing activities for the organization. The definition of a project depends on factors such as how clearly the reporter draws the boundaries, how credibly it defines a basis for comparison, and how well it can measure or estimate the effects of the activities.

Step 1. Establishing the reference case. A pivotal consideration in establishing project boundaries is how well the reporter can establish a reference case—that is, an emission level against which to measure the effects of a project. A reference case is often referred to as the "but for" scenario, as in, "but for this project, emissions would have been * * *." Two possible ways to finish this sentence are: (1) "* * * the same as a previous year" (the basic, or historic, reference case), or (2) "* * * different than any previous year" (the modified reference case, which is adjusted from historic data or projected). Each of these cases is discussed below.

Basic (or "historic"). Emissions from within the project boundary may be compared with the corresponding level for some previous year(s); for example, the 1987 to 1990 period, the year(s) just prior to commencement of the project, or some intervening year more indicative of normal operations. The reference case may be defined as the average annual emissions during some multiyear period or the highest or lowest annual emissions during that time. Alternatively, a single reporting year (e.g., 1990) could be chosen by the reporter as the reference case year.

Modified (or "projected"). Even in the absence of the project, emissions levels may differ from past levels, for example due to growth or decline in output and changed operations. In this case, the reference case might be extrapolated with the use of models from past trends and external data to determine what emissions "would have been" but for the project in the year in which the project's effects are being measured. Adjustments may involve estimating the emissions per unit of production using historic or current-year data and adjusting for growth by multiplying this rate by the rate of production in the year reported.

Under the guidelines, reporters may choose between these approaches depending on the reporter's purpose for reporting. For many purposes, a basic reference case using an average of emissions for the years 1987 to 1990 or the annual emissions in the year before the reported year may be more appropriate than a modified reference case.

In analyzing activities of a new entity or added capacity of an existing organization, extra care in constructing

a reference case is necessary. Use of industry standards or of the alternatives actually considered during planning for the new capacity will increase credibility of the reference case. Another approach is the use of a unit-production (or unit of service) reference case. For example, if an entity is adding capacity in order to increase production or service to customers, it may calculate emissions per unit or customer and show reductions based on this common standard.

Step 2. Defining project and reference case effects. The second major step in project analysis is identifying the types of effects the project had. The project may be primarily designed to reduce greenhouse gas emissions or increase carbon sequestration. It will, however, have both expected and unanticipated secondary effects. The reporter will need to address both primary and secondary effects in analyzing the project for reporting.

Primary effects. These are the obvious, immediate, direct and intended effects of the project, resulting in direct and indirect emissions and carbon sequestration. For example, the primary effect of an electricity conservation project is the reduction of electricity use and of the carbon dioxide emissions associated with the electricity generation avoided. The primary effect of a tree planting program is the sequestration of carbon.

Secondary effects. These are the more subtle, indirect, consequential, and perhaps unintended effects of projects. They may be positive (augmenting the primary effects) or negative (counterproductive to primary effects). Secondary effects may be large, in some cases as large as the primary effects, and include activity shifting, outsourcing, shifting emissions to different points of the life cycle, and offsetting emission reductions by residual market demand.

The guidelines ask the reporter to clearly state the primary effect of the project and identify any significant secondary effects. If the entity is quantifying the emission reductions or carbon sequestration associated with the project, the entity should try to quantify the secondary effects, particularly those that amount to ten percent or more of the primary effects. DOE recognizes that quantifying the effects of a project can be difficult. However, the credibility of emission reduction or carbon sequestration reports may be impaired if negative secondary effects rose, or appeared capable of rising, thereby offsetting a significant portion of the reported primary effects. Ultimately, the reporter must choose the balance between increased analysis cost and increased thoroughness of the analysis, depending upon the reasons for reporting.

Step 3. Quantifying reference case and project effects. The guidelines provide reporters with a wide range of options for identifying input data and defining methods for quantifying the project's impact on emissions or carbon sequestration. The types of data and methods used will be reported.

First, the guidelines recognize three types of data: physical, default, and measured/engineering.

Physical data. This is information that describes the activities involved in a project. For example, how many exit lights were replaced? What was the power requirement of the old and the new lights? How many hectares of which species of tree were planted?

Default Data. This is information provided in the guidelines and supporting methodologies to assist reporters in evaluating the effects of projects. While using default data will ease reporting for many reporters, it is generally conservative, and may not provide the reporter's desired precision. There are two types of default data:

Emissions Factors. These are factors that allow reporters to convert information about a change in energy use to an estimated change in greenhouse gas emissions. Emissions factors for direct emissions are more precise than for indirect emissions. For example, the change in direct emissions of carbon dioxide from a reduction in methane combustion is essentially constant, regardless of when or where the change takes place. Other emission factors, particularly those for indirect emissions, are less precise. For example, the draft guidelines provide emissions factors for electricity on a state-by-state basis. However, the effect that a specific change in electricity consumption has on emissions will vary by location within the state, the time of day, and the season in which a change occurs. Generally, the draft guidelines and supporting documents contain relatively conservative figures for indirect emissions factors.

Stipulated Factors. These are factors that allow reporters to convert physical data about projects into estimates of changes in energy use, greenhouse gas emissions or carbon sequestration. The guidelines provide this information for a few types of projects where the scope and nature of the project can be clearly defined and the effects on emissions predicted with relative certainty. For example, the guidelines provide stipulated factors for converting physical data about tree planting into estimates of carbon sequestration. They also provide stipulated factors for converting information about certain energy-efficiency projects into estimates of fuel savings. These estimates can be combined with default emissions factors to estimate reductions in greenhouse gas emissions.

Reporter-Generated Data. This is information developed by the reporter and used in estimating the effects of the reporter's projects. There are two types of reporter-generated data.

Measured Data. These are data on emissions operating parameters collected directly from the project or a control group, that a reporter can use in estimating project accomplishments.

Engineering Data. These are data that reporters derive from sources such as engineering manuals, manufacturer's equipment specifications, surveys, academic literature, and professional judgment.

Standard Project. These are projects for which the draft guidelines provide the procedures and information necessary to transform physical data into emissions reductions or carbon sequestration results, relying entirely on physical and default data. A few types of projects can be described through standard project reports; these are identified in the sector-specific methodologies supporting the guidelines. Reporters must recognize that, since the default values used are conservative, the precision of their report is lessened. However, for reporters who do not have direct project measurements or experience in estimation methods, standard project methodologies will allow them to quantify the effects of these activities

Reporter-Defined Project. These are projects that use physical and reporter-generated data, possibly in combination with default data, to estimate the accomplishments of the project. For this type of project, reporters will need to be able to clearly indicate the sources of all data, and in the case of reporter-generated data, how it was measured or derived. For reporter-defined projects, the principles and guidance are provided in the sector specific methodologies supporting the guidelines.

Estimation of reportable effects of most reporter-defined projects will require gathering basic data, and using it to derive the levels of project and reference case emissions. This may involve relatively simple calculations or complex modeling.

The guidelines suggest recording the nature of the calculations or the name of the model used.

In some instances, identified in the sector-specific supporting

methodologies, it may not be possible to estimate emissions for both the project and the reference case. In these cases, it may be necessary for the reporter to measure the emission reductions or operating parameters directly.

IX. Significant Issues

DOE requests comment on all issues raised by the draft guidelines and supporting materials and calls particular attention to several significant issues. Commenters are requested to consider the impact of any alternative approach they suggest on the goals of encouraging broad participation and generating useful data.

(1) Is the scope of the guidelines with respect to emissions of the gases and substances specified appropriate?

(2) Should threshold reporting levels of emissions or carbon sequestration be set? If so, at what levels and why?

(3) Do the guidelines appropriately address and distinguish between direct and indirect emissions of the applicable gases? Are there additional ways which can address the statutory references to reportability of activities which result in direct emissions and those that result in indirect emissions?

(4) In order to report an emissions reduction or carbon sequestration project, should reporters be required to report comprehensive data on their historic (1987–1990) emissions? On their organization's total greenhouse gas emissions? From all activities in the year covered by the project report?

(5) What categories of data derivation should be identified (e.g., measurement, engineering estimate) as appropriate to achieve the dual goals of the program?

(6) Is the approach to reporting activities taken in association with others appropriate for minimizing double counting while encouraging participation?

(7) How should activities outside the U.S. be handled by the reporting program?

(8) Is the information and approach provided on different radiative activity of gases appropriate? Should DOE delay finalizing this portion of the guidelines until completion of the current international deliberations?

X. Administrative Requirements

A. Regulatory Review

DOE has concluded that this is not a significant regulatory action because it does not meet the criteria which define such actions under Executive Order 12866, 58 FR 51735, and is therefore not subject to regulatory review. Accordingly, the Office of Management and Budget (OMB) has informed DOE that no clearance of the draft guidelines and supporting materials is required.

B. Issues Under the Paperwork Reduction Act

In addition to providing information to parties which wish to participate in voluntary reporting, the guidelines and supporting materials provide direction to EIA in developing the reporting forms and database for the program. Separate administrative requirements apply to the development of EIA reporting forms, which will proceed after DOE finalizes the guidelines.

Any information collection requirements proposed in EIA forms for the voluntary reporting program are subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and will be submitted to the Office of Management and Budget for review and approval of paperwork requirements. Because the reporting forms developed by EIA will be necessary for participation in the program and must be consistent with the guidelines, the draft guidelines and supporting materials may involve issues relevant to subsequent review of the forms for paperwork requirements. Comments on any paperwork issues identified by the draft guidelines and supporting materials are requested.

XI. Opportunities for Public Comment

A. Public Hearing Procedures

A public hearing on the draft guidelines and supporting documents will be held at the time and place indicated in the **DATES** and **ADDRESSES** sections above. Any person who has an interest in the draft guidelines may request the opportunity to make an oral presentation. DOE reserves the right to cancel the second day of the hearing if scheduled requests to speak can be accommodated in the first day. All requests to speak should be made by telephone at the number listed in the **ADDRESSES** section.

DOE reserves the right to schedule speaker presentations, and to establish procedures governing the conduct of the hearing. The length of each presentation may be limited to 5 minutes, or longer based on the number of persons requesting an opportunity to speak. Ten copies of the speaker's statement should be submitted at the hearing.

A DOE official will preside at the hearing. The hearing will be a legislative-type hearing; speakers will not be sworn in nor cross-examined. Further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer. A transcript of the hearing will be made and will be available for public inspection as indicated in the **ADDRESSES** section above.

B. Written Comments

Interested persons are invited to submit comments on the draft guidelines and sector-specific issues and methodologies, and on the questions presented in this notice.

Ten copies should be submitted to the address indicated in the **ADDRESSES** section above, and must be received by the date indicated in the **DATES** section of this notice. All written comments received will be available for public inspection in the DOE Freedom of Information Office Reading Room at the address provided at the beginning of this notice.

Pursuant to provisions of 10 CFR 1004.11, any person submitting information which that person believes to be confidential information and which may be exempt by law from public disclosure should submit one complete copy of the document as well as two copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information and to treat it according to its determination.

Issued in Washington, DC, on May 26, 1994.

Susan F. Tierney,

Assistant Secretary, Office of Policy, Planning, and Program Evaluation.

[FR Doc. 94–13304 Filed 5–31–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Policy, Planning and Program Evaluation

DOE Headquarters Washington, DC, Chicago Operations Office

AGENCY: Department of Energy.

ACTION: Acceptance of noncompetitive financial assistance.

SUMMARY: The Department of Energy (DOE), Office of Transportation Technologies, through the Chicago Operations Office, announces that it intends to award a grant to the Society of Automotive Engineers (SAE) of Warrendale, Pennsylvania. The proposed award meets the criteria in 10 CFR 600.7(i)(D). The financial assistnce is for support of the Society of Engineers TOPical TEChnical (TOP TEC) workshop on Hybrid-Electrical Vehicle Technology in conjunction with the Hybrid Electrical Vehicle student design competition. The workshop will be hosted Southfield, Michigan, and is scheduled for June 21, 1994.

SUPPLEMENTARY INFORMATION: The TOP TEC workshops are an innovative forum for presenting and addressing the issues in Alternative Fuel Technology. Professionals from industry, academia and Government will join together to listen to experts discuss a broad range of topics such as:

1. Understanding the construction and operation of electric & hybrid vehicles;

2. Learn the benefits and limitations of electric and hybrid vehicles;

3. Appraisal of the current state of the art electric and hybrid vehicle technology, including fuel cell technology applications;

4. Learn how electric vehicles will impact the environment, and what infrastructure development for these vehicles is required;

5. Identify areas for future research to ensure successful electric vehicle commercialization.

The DOE will provide funds in the amount of $25,000 for a period of 2 months from June 20, 1994 through August 20, 1994. The Society of Automotive Engineers and other sponsors will provide the remaining funding for the conference.

FOR FURTHER INFORMATION CONTACT: Robert Kost, EE–321, U.S. Department of Energy, 1000 Independence SW., Washington, DC 20585, (202) 586–2334.

Issued in Chicago, Illinois on May 18, 1994.

Alan E. Smith,

Director, Operations Management and Support Division.

[FR Doc. 94–13310 Filed 5–31–94; 8:45 am]

BILLING CODE 6450–01–M

Nevada Operations Office, Implementation of Noncompetitive Financial Assistance

AGENCY: U.S. Department of Energy (DOE), Nevada Operations Office.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rules. 10 CFR Section 600.7(b)(2), it is awarding a noncompetitive financial assistance grant to the state of Nevada, Commission on Economic Development, Las Vegas, to further economic development.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: Tammie Henderson, Program Management & Planning Division, P.O. Box 98518, Las Vegas, NV 89193–8518.

SUPPLEMENTARY INFORMATION: This award will provide financial support to the state of Nevada, Commission on Economic Development, to establish a communication system to link 12 public/private development authorities throughout the State to further economic development. This communication system will contribute to state-wide sharing of relevant economic development information by providing the potential of attracting new businesses, providing information on job opportunities, and providing information for displaced workers.

Eligibility for the award of this grant is being limited to the state of Nevada, Commission on Economic Development, because of their exclusive capability in having the only office with state-wide branches that contribute to economic development.

The project period for this grant is for one year and will commence on June 15, 1994, through June 14, 1995. The total estimated cost of this award is $200,000.

Issued in Las Vegas, Nevada, on May 23, 1994.

Nick C. Aquilina,

Manager, DOE Nevada Operations Office

[FR Doc. 94–13309 Filed 5–31–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed the Week of April 29 Through May 6, 1994

During the Week of April 29 through May 6, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: May 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 29 through May 6, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 7, 1994	Westinghouse Hanford Co., Richland, WA.	LWZ–0030	Motion to Dismiss. *If Granted:* Westinghouse Hanford Company would be dismissed as party to the hearing request filed by Helen G. Oglesbee (Case No. LWA–0006).
May 2, 1994	Shannon & Wilson, Inc., Seattle, WA.	LFA–0371	Appeal of an Information Request Denial. *If Granted:* Shannon & Wilson, Inc. would receive access to requested information in five areas regarding the referenced Request Regarding Proposal Number W–208829–MV for Environmental Compliance Geotechnical RCRA Support.
May 2, 1994	H and W Oil Co., Inc., Sparta, IL.	LEE–0115	Exception to the Reporting Requirements. *If Granted:* H and W Oil Company, Inc. would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
May 3, 1994	Concord Oil Co., San Antonio, TX.	LFA–0372	Appeal of an Information Request Denial. *If Granted:* The April 1, 1994 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs would be rescinded, and Concord Oil Company would receive access to various contracts pertaining to work already performed or to be performed on any UMTRA project

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of April 29 through May 6, 1994]

Date	Name and location of applicant	Case No.	Type of submission
May 3, 1994	Mary Ellen O'Brien, Reynolds Electric & Engineering Co., Las Vegas, NV.	LWA–0008 LWA–0009	Request for Hearing under DOE Contractor Employee Protection Program. *If Granted:* A hearing under 10 C.F.R. Part 708 would be held on the complaint of Mary Ellen O'Brien that reprisals were taken against her by management officials of Reynolds Electric & Engineering Company as a consequence of her having disclosed concerns of a supplier's alleged noncompliance with the terms of a contract, resulting in possible fraudulent charging practices.
May 4, 1994	Mark S. Boggs, Craig, CO	LFA–0373	Appeal of an Information Request Denial. *If Granted:* Mark S. Boggs would receive access to any information concerning the release of tissue samples from his deceased mother for the study of plutonium contamination from the DOE's Fernald site.
May 4, 1994	Nepera, Inc., Los Angeles, CA.	RR272–129	Request for Modification/Rescission in the Crude Oil Refund Proceeding. *If Granted:* The June 25, 1993 Dismissal Letter (Case No. RF272–48661) issued to Nepera, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
May 4, 1994	William H. Payne, Albuquerque, NM.	LFA–0374	Appeal of an Information Request Denial. *If Granted:* William H. Payne would receive access to DOE information.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/Name of refund application	Case no.
Dec. 6, 1993	Criswell's Texaco Service	RF321–20981
Dec. 6, 1993	Gressett's Texaco #3	RF321–20980
Apr. 29, 1994 thru May 6, 1994.	Crude Oil Refund, Applications Received	RF272–95260 thru RF272–95276
May 3, 1994	Ingram Shell Service	RF315–10285
May 3, 1994	Orr's Texaco Service Station	RF321–20982
May 5, 1994	H.H. Irwin Dist. Company	RF304–15454
May 5, 1994	H.H. Irwin Dist. Company	RF304–15455
May 5, 1994	H.H. Irwin Dist. Company	RF304–25456
May 6, 1994	Tom Lass	RF321–20984
May 6, 1994	Marine Drilling Companies	RF272–95276

[FR Doc. 94–13308 Filed 5–31–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of April 11 Through April 15, 1994

During the week of April 11 through April 15, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Clyde Excell Clements, Jr., 4/11/94, LFA–0364

Clyde Excell Clements, Jr. filed an Appeal from a denial by the DOE's Pittsburgh Naval Reactors Office of a Request for Information which he had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that a search for information conducted by the Pittsburgh Naval Reactors Office had been adequate. In addition, the DOE found that the FOIA does not require the Pittsburgh Naval Reactors Office to respond to questions posed in Clements' Appeal.

Coalition on West Valley Nuclear Wastes, 4/13/94, LFA–0361

The Coalition on West Valley Nuclear Wastes filed an Appeal from a partial denial of a Request for Information which the organization had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the Idaho Operations Office and its management and operating contractor, West Valley Nuclear Services Company, had conducted a search reasonably calculated to find any responsive documents related to the 1982 ground survey of the former site of a nuclear fuel reprocessing plant. An important issue considered in the Decision and Order was whether a thorough but fruitless search for documents of a type not normally retained or copied is considered responsive under the FOIA.

Vista Control Systems, Inc., 4/12/94, LFA–0362

Vista Control Systems, Inc. (Vista) filed an Appeal from a determination issued by the Office of Intergovernmental and External Affairs of the Department of Energy's Albuquerque Field Office (DOE/AL), in response to a request for information under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the University of California, a DOE contractor who possessed the records sought by Vista, is not an "agency" as defined in the FOIA. However, because the contract between the DOE and the University, which manages the DOE's Los Alamos National Laboratory (LANL), provided that all records acquired or generated by the University employee's at LANL shall be the property of the Government, the DOE found that the records requested by Vista were agency records subject to the

FOIA. The matter was therefore remanded to DOE/AL for a determination either releasing the materials requested or providing a detailed justification for their withholding. In all other respects, the Appeal was denied.

McKusick Petroleum, 4/12/94, LEE–0054

McKusick Petroleum (McKusick) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not experiencing a gross inequity or serious hardship. On February 24, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying McKusick's Application for Exception.

Miller's Bottled Gas, Inc., 4/13/94, LEE–0059

Miller's Bottled Gas, Inc. (Miller's) filed an Application for Exception from the requirement that it file Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Miller's to be permanently exempted from filing Form EIA–782B. In considering the request, the Office of Hearings and Appeals (OHA) found that the firm had not met the standards set forth by the DOE for exception relief. Furthermore, Miller's has never completed the form as required. Thus, the DOE found that the firm's claim that completion of the form would require an inordinate amount of time is purely speculative, and cannot provide a basis for relieving the firm of the filing requirement. Therefore, Miller's did not demonstrate that it is experiencing a serious hardship or gross inequity and exception relief was denied.

Refund Application

State Escrow Distribution, 4/12/94, RF302–15

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute $10,047,284 to the State Governments. The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Alan N. Abner et al	RF272–90936	04/13/94
Alfred Friedman Management Corporation	RF272–80410	04/15/94
Atlantic Richfield Company/Aristech Chemical Corporation	RF304–10989	04/12/94
Atlantic Richfield Company/Ben's Arco et al	RF304–13861	04/14/94
Atlantic Richfield Company/Warfel Trucking, Inc. et al	RF304–14357	04/12/94
Beacon Oil Company/Harmon's Service	RF238–136	04/15/94
Coca Cola Bottling Co. Consolidated et al	RF272–67200	04/13/94
Gulf Oil Corp./Magic Valley Electric Coop Inc et al	RF300–13158	04/13/94
North Daviess Community Schools et al	RF272–87042	04/14/94
Sears Roebuck & Co	RF272–235	04/12/94
Texaco Inc./Barnett's Texaco et al	RF321–51	04/15/94
Texaco Inc./Bob's Texaco et al	RF321–18887	04/13/94
Texaco Inc./Griffin Oil Company	RF321–2415	04/13/94
Griffin Oil Company	RF321–20966	
Griffin Oil Company	RF321–20967	
Texaco Inc./Jim Williams Texaco	RF321–20969	04/14/94
Texaco Inc./John Sorum Texaco	RF321–20968	04/12/94
Texaco Inc./Lake Joy Texaco et al	RF321–571	04/14/94
Texaco Inc./Leo Faulkner's Texaco	RF321–8673	04/13/94
Texaco Inc./Richmond Steel & Welding, Inc	RF321–20970	04/15/94
Transue & Williams Steel Forge et al	RF272–77391	04/13/94

Dismissal

The following submissions were dismissed:

Name	Case No.
Arizona Chemical	RF321–20517
B&G Wood Products, Inc	RF272–82422
City of Haysville, KS	RF272–85588
Dorazio's Texaco	RF321–20670
Eddie M. Vega Valle	RF321–20833
Elm Garage, Inc	RF321–20513
Garage Texaco De Teodoro Ruiz Brigoni.	RF321–20832
GCO Mineral Company	RF321–20518
Givens Texaco	RF321–18623
Hanson's Texaco	RF321–20810
Henderson's Texaco	RF321–19288
Highlands Texaco	RF321–20897
Hyde Park Super Service Station.	RF321–20847
International Paper Company.	RF321–20515
J&R Texaco	RF321–20815
Jay & Al Texaco	RF321–20950
Masonite Corporation	RF321–20516
Nagel Service Station	RF321–18707
Walter Zable	RF321–20929
Wayne's Texaco	RF321–20052
Whitefish Bay School District.	RF272–82554

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: May 25, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–13307 Filed 5–31–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of April 4 Through April 8, 1994

During the week of April 4 through April 8, 1994, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Christian County Farmers Supply Co., 4/7/94, LEE–0073

Christian County Farmers Supply Co (CCFSC) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting burden in a way that is significantly different from the burden borne by similar reporting firms and was not experiencing a serious hardship or gross inequity. Accordingly, exception relief was denied.

Decatur Cooperative Association, 4/5/94, LEE–0068

Decatur Cooperative Association (Decatur) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The DOE determined that Decatur did not meet the standards for exception relief because it was not experiencing a serious hardship or gross inequity as a result of the reporting requirements. Accordingly, exception relief was denied.

Minneola CO-OP, Inc., 4/6/94, LEE–0071

Minneola Co-op, Inc. (Minneola) filed an Application for Exception from the Energy Information Administration EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship. On February 15, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed within the prescribed time period. Therefore, on April 6, 1994, the DOE issued the Proposed Decision and Order in final form, denying Minneola's Application for Exception.

Ranchers Supply, Inc. 4/7/94, LEE–0072

Ranchers Supply, Inc. (Ranchers Supply) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering a gross inequity or serious hardship. On February 15, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied. No Notice of Objection to the Proposed Decision and Order was filed within the prescribed time period. Therefore, the DOE issued the Proposed Decision and Order in final form, denying Ranchers Supply's Application for Exception.

Schaal Oil Co., 4/6/94, LEE–0069

Schaal Oil Co. (Schaal) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting burden in a way that is significantly different from the burden borne by similar reporting firms and was not experiencing a serious hardship or gross inequity. Accordingly, exception relief was denied.

Star-Lite Propane Gas Corp., 4/8/94, LEE–0065

Star-Lite Propane Gas Corp. filed an Application for Exception from the requirement that it file Form EIA–782B entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm had failed to show that it suffered any burden significantly different from similarly situated reporting firms. Accordingly, exception relief was denied. The important issue discussed in the Decision and Order was that at the time it filed the Application, Star-Lite had not yet attempted to complete the form. Therefore, its claims of hardship regarding the time and effort needed to complete the form were speculative.

Motion for Reconsideration and/or Rescission

Energy Refunds, Inc., 4/5/94, LFR–0013

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Energy Refunds, Inc. (ERI). In its Motion, ERI requested that the DOE terminate the ERI's disqualification from representing refund applicants in OHA proceedings. *See Energy Refunds, Inc.*, 23 DOE ¶ 85,151 (1993); *Energy Refunds, Inc.*, 23 DOE ¶ 85,076 (1993).

In considering ERI's Motion, the DOE noted ERI's expressed commitment to accuracy in its submissions, as well as its proposed remedial procedures which, if conscientiously implemented, would prevent the repetition of the types of conduct for which it had been disqualified. Based on ERI's representations, the DOE determined that ERI should be reinstated, subject to OHA's further review of the firm's implementation of the procedures in question. Accordingly, the Motion for Reconsideration was granted

Implementation of Special Refund Procedures

J R. Cone, 4/5/94, LEF–0118

The DOE issued a final Decision and Order setting forth refund procedures for distributing $610,000, plus accrued interest, in alleged overcharges obtained from J. R. Cone (Cone). These funds were remitted by Cone to the DOE pursuant to a Consent Order resolving possible price violations with respect to sales of crude oil during the period September 1, 1973 through December 31, 1976. The DOE determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges (MSRP). Under the MSRP, crude oil overcharge monies are divided among the states (40%), the Federal Government (40%), and injured purchasers of refined products (20%). In this case, $244,000, plus accrued interest, was remitted to the states, $244,000, plus accrued interest, was remitted to the Federal government, and $122,000, plus interest accrued, has been reserved for direct restitution to injured purchasers of petroleum products. Applications for Refund from this fund will now be accepted. The specific information to be included in the Applications for Crude Oil Refunds, which must be submitted by June 30, 1994, is included in the Decision

Refund Applications

Donco Carriers, Inc., 4/5/94, RC272–234

. The DOE issued a Decision and Order concerning an Application for Refund submitted in the Subpart V crude oil refund proceeding by Donco Carriers, Inc. This Decision adjusted the original refund granted to Donco Carriers in the Decision and Order issued on November 30, 1993, *Donco Carriers, Inc.* (Case No. RF272–78471). The original refund was adjusted to account for subtracting owner-operator miles from the gallonage claim and for recalculating the dollars to gallons conversion using average annual

prices for distillate fuel. Accordingly, this Decision rescinded in part the original refund granted to Donco Carriers, Inc. in Case No. RF272–78471.

Gulf Oil Corporation/Dennis Lee Lay, 4/6/94, RF300–21298

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Frances Carolyn Lee Perry on behalf of her ex-husband Dennis Lee Lay. Ms. Perry applied for purchases of petroleum products made by her ex-husband Mr. Lay when he operated a Gulf station during the refund period. In addition to providing information that she and Mr. Lay formed an economic unit and that she helped operate the station, Ms. Perry also submitted a court order directing that the entire refund be granted to her because of her ex-husband's delinquency on child support payments. Based on these considerations, the DOE determined that the entire refund should be granted to Ms. Perry.

Gulf Oil Corporation/Siegel Oil Co., 4/7/94, RF300–9356

Siegel Oil Company filed an application for Refund in the Gulf Oil Corporation special refund proceeding. Siegel requested an above-volumetric refund based on two alternative theories: 1) that Gulf's use of a substitute supplier for Siegel violated the price and allocation regulations, causing Siegel injury and 2) that Gulf's use of a substitute supplier, even if lawful, caused Siegel to suffer injury which should be remedied through the refund process. In considering Siegel's Application, the DOE determined that Siegel had not made a reasonable demonstration that Gulf committed a regulatory violation and that, absent such a demonstration, there was no basis for an above-volumetric refund. Finally, the DOE determined that Siegel was eligible for a refund of $5,000 plus interest based on its indirect purchases of Gulf product and the small claims injury presumption.

Texaco Inc./Todd's Texaco, 4/8/94, RR321–124

Barbara Todd, the owner of Todd's Texaco, filed a Motion for Reconsideration of a Decision and Order that denied duplicate refund applications that Mrs. Todd had filed in the Texaco refund proceeding. Mrs. Todd stated that she had signed the second application, and certified that no other application had been filed, because she had asked her representative to cancel the first application. The DOE granted the Motion, finding that Mrs. Todd's explanation for filing the second application was credible. In considering Mrs. Todd's refund claim, the DOE found that, as an indirect purchaser of Texaco motor gasoline, she was eligible for a refund since her suppliers had not shown that they absorbed the Texaco overcharges. The total amount of the refund granted in this case was $1,828.

Texaco Inc./Tom's Texaco, 4/6/94, RR321–153

The DOE issued a Decision and Order denying a Motion for Reconsideration filed on behalf of Tom's Texaco in the Texaco in special refund proceeding. In this motion, Mr. Cirafici, owner of Tom's Texaco, attempted to show that the refund granted to Tom's Texaco was less than the refund for which Tom's Texaco is eligible. Mr. Cirafici relied solely on his memory to formulate additional gallonage estimates. The DOE found that Mr. Cirafici did not present sufficient evidence to support his estimates and that therefore he had not presented any new or overlooked information that would cause the DOE to alter its previous decision. Accordingly, the Motion for Reconsideration was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Atlantic Richfield Company/D&B Arco et al	RF304–13386	04/07/94
Bassett Mirror Co. et al	RF272–92000	04/08/94
Charter Oil Co./California	RF23–266	04/08/94
California	RF3–267	.....
City of Richland, Missouri et al	RF272–85395	04/07/94
Gulf Oil Corp./Beard's Gulf Service et al	RF300–20548	04/08/94
Gulf Oil Corp./Blue Flame Gas Co. of Polk County	RF300–19655	04/05/94
Blue Flame Gas Company	RF300–21781	.....
Gulf Oil Corp./Eastern Express, Inc	RF300–21775	04/08/94
Gulf Oil Corp./WJT Oil	RF300–16244	04/08/94
Livonia Public Schools et al	RF272–82146	04/06/94
McDowell County School District	RF272–127	04/06/94
Talbot County School District et al	RF272–81295	04/06/94
Texaco Inc./Bill & Charlie's Texaco et al	RF321–7705	04/05/94
Texaco Inc./Gallaway Texaco Truck Stop	RF321–155	04/08/94
Texaco Inc./Hope Service Station, Inc. et al	RF321–7486	04/05/94
Winston County School District	RF272–80647	04/08/94
Midview Local School District	RF272–80818	.....
Humboldt Community School	RF272–81161	.....

Dismissals

The following submissions were dismissed:

Name	Case No.
Barberton City School District.	RF272–82232
Betteroads Asphalt Corp	RF315–9162
Bill's ARCO	RF304–12132
Cathedral City, CA	RF272–85581
Dave's Texaco	RF321–8603
De Ruyter Central School	RF272–93109
Downtown Texaco	RF321–992
Georgetown Schools	RF272–80039
Green Oil Corporation	RF304–12125
Greenwood Lake Union Free School District.	RR272–106
Hipolex Corporation	RF272–67876
M&M Shell Station	RF315–5215
Manley Texaco	RF321–7175
Mike's Texaco & U-Haul	RF321–12604
Tri-State Homes, Inc	RF272–92520

Copies of the full text of these decisions and orders are available in the

Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: May 25, 1994

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–13306 Filed 5–31–94; 8:45 am]

BILLING CODE 6450–01–P

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $38,214.98, plus accrued interest, in refined petroleum overcharges obtained by the DOE under the terms of a Remedial Order issued to County Fuel Company, Inc., Case No. LEF–0015. The OHA has determined that the funds will be distributed in accordance with the provisions of 10 CFR part 205, Subpart V and 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act (PODRA).

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6602.

DATE AND ADDRESS: Applications for Refund must be filed in duplicate, addressed to County Fuel Company, Inc. Special Refund Proceeding and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Applications should display a prominent reference to the Case Number LEF–0015 and be postmarked on or before November 30, 1994.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $38,214.98, plus accrued interest, obtained by the DOE under the terms of a Remedial Order that the DOE issued to County Fuel Company, Inc., on May 7, 1984. Under the Remedial Order, County Fuel Company, Inc., was found to have violated the federal petroleum price and allocation regulations involving the sale of motor gasoline during the relevant audit period.

The OHA has determined to distribute the Remedial Order fund in a two stage refund proceeding. Purchasers of motor gasoline from County Fuel Company, Inc., will have an opportunity to submit refund applications in the first stage. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of motor gasoline which they purchased from County Fuel Company, Inc.

In the event that money remains after all first stage claims have been disposed of, the remaining funds will be disbursed in accordance with the provisions of 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA).

Applications for Refund must be postmarked on or before November 30, 1994. Instructions for the completion of refund applications are set forth in Section IV of the Decision that immediately follows this notice. Applications should be sent to the address listed at the beginning of this notice.

Unless labelled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: May 24, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Name of Firm: County Fuel Company, Inc.

Date of Filing: March 6, 1990.

Case Number: LEF–0015.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

In this Decision and Order, we consider a Petition for Implementation of Special Refund Procedures filed by the ERA on March 6, 1990, for funds obtained due to alleged pricing violations in the sale of motor gasoline at wholesale and retail levels. The funds at issue in that Petition were obtained through DOE enforcement proceedings involving County Fuel Company, Inc. (County), pursuant to 10 CFR part 205, subpart V. The present Decision will set forth final procedures for the distribution of these funds to qualified purchasers of County's motor gasoline.

I. Background

During the period covered by the Remedial Order (March 1, 1979, through March 18, 1980), County was a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and was located in Baltimore, Maryland. Accordingly, County was subject to the DOE Mandatory Petroleum Price Regulations. An ERA audit of County records revealed possible violations of these regulations in sales of County's motor gasoline during the period March 1, 1979, through March 18, 1980. On the basis of this audit, the ERA issued a Proposed Remedial Order (PRO) to County on May 24, 1982. This Office affirmed these alleged violations and issued a Remedial Order to County on May 7, 1984. *County Fuel Company, Inc.*, 12 DOE ¶ 83,007 (1984). The Remedial Order was affirmed by the Federal Energy Regulatory Commission on August 23, 1985. *County Fuel Company, Inc.*, 32 FERC ¶ 61,301 (1985). The Temporary Emergency Court of Appeals (TECA) affirmed the decision on August 12, 1987. *County Fuel Company, Inc., v. DOE*, 3 Fed. Energy Guidelines ¶ 26,588 (Temp. Emer. Ct. App. 1987).

However, County had filed for bankruptcy on July 6, 1981. Following the TECA decision, the DOE's claim as an unsecured creditor was allowed by the bankruptcy court in the amount of $254,766.49, including interest. *In re: County Fuel Company, Inc.*, No. 81–2–2208–L (D. Md. 1986). Under the Second Amended Plan of Reorganization, unsecured creditors were paid 15 percent of the allowed claim in cash or 100 percent of the claim in common stock. On August 25, 1988, County delivered a check in the amount of $38,214.98 to the DOE, representing 15 percent of the allowed claim. The ERA accepted this amount in lieu of payment in common stock. Interest in the amount of $14,047.66 has accrued as of March 31, 1994.

II. The Proposed Decision and Order

On March 8, 1994, the OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the alleged violation amount

obtained from County. 59 FR 11979 (March 15, 1994). The OHA tentatively outlined procedures under which purchasers of County's motor gasoline could apply for refunds. In order to permit applicants to make refund claims without incurring disproportionate costs as well as to allow the OHA to equitably and efficiently consider those claims, we set forth a number of presumptions pertaining to refund procedures.

First, we presumed that the alleged refined product overcharges were spread evenly over all of County's sales of motor gasoline during the Remedial Order period. We therefore proposed that an applicant's potential refund generally should be computed by multiplying the per-gallon refund amount by the number of gallons of County's motor gasoline that the claimant purchased during the Remedial Order period. The resulting figure is referred to as the claimant's "volumetric share" of the County Remedial Order funds. Because an applicant may have been overcharged by more than the volumetric refund presumption by showing that it sustained a greater amount of the overcharge.

Because it is potentially difficult, time-consuming, and expensive to demonstrate that one was forced to absorb any overcharges from County, we proposed to adopt a number of presumptions concerning injury. We proposed that resellers and retailers claiming refunds of $5,000 or less, end-users, agricultural cooperatives, and certain types of regulated firms would be presumed injuried by County's alleged overcharges. We proposed that refiners, resellers and retailers seeking refunds greater than $5,000 could receive a maximum of $20,000 based upon 40 percent of their volumetric share without having to prove injury. We also proposed to presume that claimants who made only spot purchases from County were not injured and must rebut that presumption to receive a refund. We stated that applicants not covered by one of the injury presumptions would be required to demonstrate that they were forced to absorb any overcharge by County in order to receive their full volumetric shares of the County Remedial Order funds.

Finally, we proposed that any money remaining after all County refund claims are analyzed should be disbursed as indirect restitution in accordance with the provisions of the Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. §§ 4501-4507 (1988).

The PDO provided a period of 30 days from the date of publication in the **Federal Register** in which comments could be filed regarding the tentative refund process. More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the County settlement funds. Consequently, the procedures will be adopted as proposed.

III. Refund Procedures

A. Eligibility for Refunds

As indicated above, the Remedial Order found that County overcharged its customers a total of $197,305.49, excluding interest, in violating 10 CFR 212.93, by charging prices in excess of its maximum lawful selling prices for motor gasoline. Accordingly, to the extent that is possible, the County Remedial Order amount of $38,214.98, plus accrued interest, will be distributed to purchasers of covered County motor gasoline who can show that they were injured by County's pricing practices during the period March 1, 1979, through March 18, 1980.

B. Calculation of Refund Amount

We are adopting a volumetric method to apportion the County escrow account. Under this volumetric refund approach, a claimant's allocable share of the refined products pool is equal to the number of gallons of covered products purchased during the Remedial Order period times a per gallon refund amount. We will derive the volumetric figure (per gallon refund amount) by dividing the $38,214.98 received from County by the total volume of motor gasoline sold by the firm during the regulatory period, 2,431,180 gallons. This yields a volumetric refund amount of $.0157 per gallon, exclusive of interest.[1] This method is based upon the presumption that the alleged overcharges were spread equally over all gallons of motor gasoline sold by County during the regulatory period. *E.g., American Pac. Int'l, Inc.*, 14 DOE ¶ 85,158, at 88,293 (1986).[2]

Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of covered products that it purchased from County during the period March 1, 1979, through March 18, 1980, multiplied by the per gallon volumetric amount for this proceeding. Accordingly, each claimant will be required to establish, by documentation of reasonable estimation, the volume of products that it purchased during this period. In addition, each successful claimant will receive a pro rata portion of the interest that has accrued on the County funds since the date of remittance. As in previous cases, we will establish a minimum amount of $15 for refund claims. *E.g., Ukon Oil Co.*, 9 DOE ¶ 82,541, at 85,225 (1982). Accordingly, an applicant must have purchased at least 924 gallons of motor gasoline from County in order for its claim to be considered.

C. Showing of Injury

Each claimant will be required to document its purchases of covered products from County during the Remedial Order period. In addition, in order to receive a refund, an applicant generally must demonstrate through the submission of detailed evidence that it did not pass on the alleged overcharges to its customers. *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597, at 85,396–97 (1981).

However, as we have done in many prior refund cases, we will adopt a number of presumptions regarding injury for claimants in each category listed below. These presumptions are intended to ease what would be a time-consuming and potentially expensive process if an applicant were forced to demonstrate that they absorbed the alleged overcharges.

1. End-Users

In accordance with prior Subpart V proceedings, we are adopting the presumption that an end-user or

[1] [illegible] accrued as of January 31, 1994, in the County Remedial Order Fund. It has come to our attention that this would lower the actual amount of restitution an applicant would receive when taking advantage of one of the presumptions. Therefore, in this Final Decision and Order, we have decided to only use the amount actually collected from County to compute the volumetric amount.

[2] Nevertheless, we realize that the impact on an individual claimant may have been greater than the volumetric amount. Therefore, the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. *E.g., Standard Oil Co. (Indiana) and Whitco, Inc.*, 19 DOE ¶ 85,314 (1989) (*Standard/Whitco*).

Air Force Exchange Service, 12 DOE ¶ 85,095 (1984). Such an application will be granted only if an applicant makes a persuasive showing that: (1) it was "overcharged" by a specific amount, (2) it sustained a disproportionate share of County's alleged overcharges, and (3) it was injured by the overcharges. *See MLO Holdings, Inc./Mid-Little American Refining Co.*, 19 DOE ¶ 85,543 (1989); *Marathon Petroleum Co./Reed Petroleum Co.*, 19 DOE ¶ 85,543 (1989); *Getty Oil Co./Atchison, Topeka & Santa Fe Railroad Co.*, 17 DOE ¶ 85,107 (1988). To the extent that a claimant's showing, it will receive a refund at the volumetric, related level. In computing the appropriate refunds of this type, we will [illegible] refund amount by the ratio of the County order amount as compared to the aggregate overcharge amount alleged by the claimants. *Standard/Whitco*, 19 DOE ¶ 85,314 (1989); *Standard/Whitco*).

ultimate consumer of County motor gasoline whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the remedial order. *See, e.g., Texas Oil and Gas Corp.* 12 DOE ¶ 85,069, at 88,209 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the remedial order period and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* Therefore, end-users of County motor gasoline need only document their purchase volumes from County during the remedial order period to make a sufficient showing that they were injured by the alleged overcharges.

2. Regulated Firms and Cooperatives

In order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, *i.e.*, a public utility, or an agricultural cooperative which is required by its charter to pass through cost savings to its member purchasers, need only submit documentation of purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or a cooperative will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund. *See Marathon*, 14 DOE at 88,514–15. This requirement is based upon the presumption that, with respect to a regulated firm, any overcharge would have been routinely passed through to its customers. Similarly, any refunds received should be passed through to its customers. With respect to a cooperative, in general, the cooperative agreement which controls its business operations would ensure that the alleged overcharges, and similarly refunds, would be passed through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.[3]

3. Refiners, Resellers, and Retailers

a. *Small claims presumption.* We will adopt a "small claims" presumption that resellers requesting relatively small refunds were injured by the alleged overcharges. Under the small claims presumption, a refiner, reseller, or retailer seeking a refund to $5,000 or less, exclusive of interest, will not be required to submit evidence of injury beyond documentation of the volume of County products it purchased during the remedial order period. *See TOGCO*, 12 DOE at 88,210. This presumption is based on the fact that there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; for small claims the expense might even exceed the potential refund. Consequently, failure to allow simplified refund procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable because it allows the OHA to process the large number of routine refund claims in an efficient manner.[4]

b. *Mid-level claim presumption.* In addition, a refiner, reseller, or retailer claimant whose allocable share of the refund pool exceeds $5,000, excluding interest, may elect to receive as its refund either $5,000 or 40 percent of its allocable share, up to $20,000,[5] whichever is larger.[6] The use of this presumption reflects our conviction that these larger, mid-level claimants were likely to have experienced some injury as a result of the alleged overcharges. *See Marathon*, 14 DOE at 88,515. We are adopting a 40 percent presumptive level of injury for all mid-level claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of County motor gasoline during the remedial order period in order to be eligible to receive a refund of 40 percent of its total allocable share, up to $20,000, or $5,000, whichever is greater.[7]

c. *Spot purchasers.* We are adopting a rebuttable presumption that a reseller that made only spot purchases from County did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers generally had considerable discretion as to the timing and market in which they made their purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. *See, e.g., Vickers*, 8 DOE at 85,396–97. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from County.[8]

4. *Allocation claims.* We may also receive claims based upon County's alleged failure to furnish motor gasoline that it was obliged to supply under the DOE allocation regulations that became effective in January 1974. *See* 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in Subpart V implementation cases such as *Office of Special Counsel*, 10 DOE ¶ 85,048, at 88,220 (1982), and refund application cases such as *Mobil Oil Corp./Reynolds Industries, Inc.*, 17 DOE ¶ 85,608 (1988); *Marathon Petroleum Co./Research Fuels, Inc.*, 19 DOE ¶ 85,575 (1989) (*Marathon/RFI*), *aff'd sub nom. Research Fuels, Inc.* versus *Department of Energy*, No. CA–3–89–2983G (N.D. Tex. 1990), *aff'd*, 977 F.2d 601 (Temp Emer. Ct. App. 1992). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the remedial order firm and the likelihood that the remedial order firm failed to furnish motor gasoline that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the

[3] A cooperative's purchases of County products which were resold to non-members will be treated in a manner consistent with purchases made by other resellers. *See Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc.*, 19 DOE ¶ 85,[illegible] (1989).

[4] In order to qualify for a refund under the small claims presumption, a refiner, reseller, or retailer must have purchased less than 318,504 gallons of County motor gasoline during the remedial order period.

[5] In most prior proceedings, we have used a $40,000 mid-level claim presumption. However, due to the small size of the County Remedial Order Fund, this amount would be impractical.

[6] That is, claimants who purchased more than 318,504 gallons of County motor gasoline during the remedial order period (mid-level claimants) may elect to utilize this presumption.

[7] A claimant who attempt to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the alleged overcharges, or that it is eligible for a refund of less than the applicable presumption-level refund, may not then be eligible for a presumption-based refund. Instead, such a claimant may receive a refund which reflects the level of injury established in its application. No refund will be approved if its submission indicates that it was not injured as a result of its purchases from County. *See Exxon*, 17 DOE at 89,150 n.10.

[8] In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that: (1) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases and (2) they were forced by market conditions to resell the product at a loss

DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that County may have had to the alleged allocation violation. *See Marathon/RFI*, 19 DOE ¶ 85,575. In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than County. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the portion of the County remedial order amount that the agency attributed to allocation violations in general and to the specific allocation violation alleged by the claimants. Finally, since the County Remedial Order Fund is less than County's potential liability in the proceedings, we will pro-rate those allocation refunds that would otherwise be disproportionately large in relation to the remedial order fund. *Cf. Amtel/Whitco*, 19 DOE ¶ 85,319.

D. Distribution of Funds Remaining After First Stage

In the event that money remains after all refund claims from the County fund have been analyzed, the remaining funds in that account will be disbursed as indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the County remedial order escrow account that the OHA determined will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

IV. General Refund Application Requirements

Pursuant to 10 C.F.R. 205.283, we will now accept Applications for Refund from individuals and firms that purchased motor gasoline sold by County during the period March 1, 1979, through March 18, 1980. There is no specific application form that must be used. However, the following information should be included in all Applications for Refund:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is a corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check.[9] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names.

(2) If the applicant's firm is owned by another company, or owns other companies, a list of those companies' names, addresses, and descriptions of their relationship to the applicant's firm.

(3) A brief description of the claimant's business and the manner in which it used the petroleum products listed on its application.

(4) A monthly schedule of the applicant's purchases of motor gasoline that it purchased from County during the Remedial Order period. The applicant must indicate the name of its supplier and the delivery location. The applicant should indicate the source of its volume information. Monthly schedules should be based upon actual, contemporaneous business records. If such records are not available, the applicant may submit estimates provided that those estimates are reasonable and the estimation methodology is explained in detail.

(5) If the applicant was an indirect purchaser, it should submit the name, address, and telephone number of its immediate supplier and indicate why it believes that the motor gasoline was originally sold by County.

(6) A statement whether the applicant or a related firm has filed, or authorized any individual to file on its behalf, any other Application for Refund in the County proceeding, and if so, the circumstances surrounding that filing or authorization.

(7) A statement whether the applicant was in any way affiliated with County. If so, the applicant should explain the nature of the affiliation.

(8) If the applicant is a reseller, retailer, or refiner whose volumetric share exceeds $5,000, it must indicate whether it elects to receive its maximum refund under the presumptions of injury. If it does not elect a presumption of injury, it must submit a detailed showing that it was injured by County's pricing practices.

(9) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along.

(10) A statement whether there has been any change in the ownership of the entity that purchased the covered County products at any time during or after the refund period. If so, the name and address of the current (or former) owner should be provided.

(11) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

I swear (or affirm) that this is the only refund Application filed on behalf of this applicant in the County Fuel Company, Inc. special refund proceeding and that the information contained in this Application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this Application is subject to public disclosure. I have enclosed a duplicate of this entire Application which will be placed in the OHA Public Reference Room.

We also invite each applicant to submit copies of no more than five contemporaneous invoices or other proofs of purchase showing that it purchased motor gasoline from County. While this information is not required of refund applicants, it may well expedite the processing of the refund application.

All applications should be either typed or printed and clearly labeled "County Fuel Company, Inc. Application for Refund." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be sent to: County Fuel Company, Inc. Refund Proceeding, Case No. LEF–0015, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

The filing deadline is November 30, 1994.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by County Fuel Company, Inc., pursuant to the Remedial Order finalized on May 7, 1984, may now be filed.

(2) All Applications submitted pursuant to Paragraph (1) above must be filed in duplicate and postmarked no later than November 30, 1994.

Dated: May 24, 1994.

George B. Breznay,

Director Office of Hearings and Appeals.

[FR Doc. 94–13305 Filed 5–31–94; 8:45 am]

BILLING CODE 6450–01–P

[9] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the OHA.

Federal Energy Regulatory Commission

[Project No. 7589–007]

Paul S. Boyer; Availability of Draft Environmental Assessment

May 25, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for license for the Shingle Creek Project, which would be located southwest of the town of Riggins on Shingle Creek, Idaho County, Idaho, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the environmental impacts of the project and has concluded that licensing the project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 7589 to all comments. For further information, please contact Dianne Rodman, Environmental Assessment Coordinator, at (202) 219–2830.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13271 Filed 5–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2587–002, Michigan and Wisconsin]

Northern States Power Company-Wisconsin; Availability of Draft Environmental Assessment

May 25, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a major license for the existing Superior Falls Hydroelectric Project, located in Iron County, Wisconsin, and Gogebic County, Michigan, and has prepared a Draft Environmental Assessment (EA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426. Please affix "Project No. 2587" to all comments. For further information, please contact Sabina Joe, Task Monitor, at (202) 219–1648.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13270 Filed 5–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST94–4399–000 et al.]

Gas Co. of New Mexico; Self-Implementing Transactions

May 23, 1994.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "part 284 subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–4399	Gas Co. of New Mexico.	El Paso Natural Gas Co.	03–01–94	G–HT	3,000	N	I	02–09–94	Indef.
ST94–4400	Midcon Texas Pipeline Corp.	Koch Gateway Pipeline Co.	03–01–94	C	75,000	N	I	02–01–94	Indef.
ST94–4401	ONG Transmission Co.	Arkla Energy Resources.	03–01–94	C	50,000	N	I	02–05–94	Indef.
ST94–4402	ONG Transmission Co.	Arkla Energy Resources.	03–01–94	C	50,000	N	I	02–02–94	Indef.
ST94–4403	ONG Transmission Co.	Phillips Gas Pipeline Co.	03–01–94	C	50,000	N	I	02–02–94	Indef.
ST94–4404	ONG Transmission Co.	Northern Natural Gas Co.	03–01–94	C	50,000	N	I	02–06–94	Indef.
ST94–4405	ONG Transmission Co.	Northern Natural Gas Co.	03–01–94	C	50,000	N	I	02–06–94	Indef.
ST94–4406	Gas Co. of New Mexico.	El Paso Natural Gas Co.	03–01–94	G–HT	1,000	N	I	02–02–94	Indef.
ST94–4407	Bridgeline Gas Distribution LLC.	Transco Louisiana Intrastate P/L Co.	03–01–94	G–HT	100	N	I	02–15–94	Indef
ST94–4408	Bridgeline Gas Distribution LLC.	Trunkline Gas Co	03–01–94	G–HT	6,000	N	I	01–29–94	Indef.
ST94–4409	Midwestern Gas Transmission Co.	Eastex Hydrocarbons, Inc.	03–01–94	G–S	9,900	N	F	02–16–94	Indef.
ST94–4410	Midwestern Gas Transmission Co.	Ledco, Inc	03–01–94	G–S	300,000	N	I	02–12–94	Indef.
ST94–4411	Midwestern Gas Transmission Co.	Westcoast Gas Services (USA), Inc.	03–01–94	G–S	5,000	N	F	02–12–94	Indef.
ST94–4412	Tennessee Gas Pipeline Co.	Interstate Gas Marketing Inc.	03–01–94	G–S	12,000	N	F	02–01–94	02–03–94
ST94–4413	Tennessee Gas Pipeline Co.	Direct Gas Supply Corp.	03–01–94	G–S	6,200	N	F	02–01–94	Indef.
ST94–4414	Tennessee Gas Pipeline Co.	NGC Transportation Inc.	03–01–94	G–S	1,000	N	F	02–02–94	Indef.
ST94–4415	Tennessee Gas Pipeline Co.	MG Natural Gas Corp.	03–01–94	G–S	15,000	N	F	02–01–94	Indef.
ST94–4416	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	03–01–94	G–S	20,000	N	F	02–18–94	Indef.
ST94–4417	Mississippi River Trans. Corp.	Ward Gas Services, Inc.	03–01–94	G–S	250	N	I	02–01–94	Indef.
ST94–4418	Trunkline Gas Co	NI–TEX, Inc	03–01–94	G–S	30,000	N	F	02–01–94	Indef.
ST94–4419	Channel Industries Gas Co.	Seagull Marketing Services, Inc.	03–01–94	G–I	50,000	N	I	02–01–94	Indef.
ST94–4420	El Paso Natural Gas Co.	Chevron U.S.A., Inc.	03–01–94	B	103,000	N	I	02–01–94	Indef.
ST94–4421	El Paso Natural Gas Co.	Meridian Oil Trading, Inc.	03–01–94	G–S	10,300	N	I	02–01–94	Indef.
ST94–4422	El Paso Natural Gas Co.	Helmrich & Payne Energy Services.	03–01–94	G–S	20,600	N	I	02–01–94	Indef.
ST94–4423	El Paso Natural Gas Co.	Amoco Energy Trading Corp.	03–01–94	G–S	51,500	N	I	02–01–94	Indef.
ST94–4424	El Paso Natural Gas Co.	Richardson Products II, Ltd.	03–01–94	G–S	50,000	N	I	02–01–94	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est max daily quantity[2]	AFF Y/A/ N[3]	Rate sch.	Date commenced	Projected termination date
ST94-4425	Williston Basin Inter. P/L Co	Rainbow Gas Co	03-01-94	G-S	365,228	A	I	02-01-94	07-31-94
ST94-4426	Mobile Bay Pipeline Co	KCS Energy Marketing, Inc	03-01-94	G-S	200,000	N	I	06-01-93	Indef
ST94-4427	Mobile Bay Pipeline Co	Tennaco Gas Marketing	03-01-94	G-S	200,000	N	I	07-01-93	Indef
ST94-4428	Mobile Bay Pipeline Co.	Boston Gas Co	03-01-94	G-S	N/A	N	I	11-01-93	Indef
ST94-4429	Mobile Bay Pipeline Co.	Associated Natural Gas, Inc.	03-01-94	G-S	400,000	N	I	05-14-93	Indef
ST94-4430	Mobile Bay Pipeline Co.	Sonat Marketing Co.	03-01-94	G-S	N/A	N	I	03-01-94	Indef
ST94-4431	Acadian Gas Pipeline System.	Columbia Gulf Transmission, et al.	03-02-94	C	10,000	N	I	02-03-94	Indef
ST94-4432	Acadian Gas Pipeline System	Nat. Gas P/L Co of America, et al.	03-02-94	C	25,000	N	I	02-02-94	Indef
ST94-4433	Channel Industries Gas Co	Northern Natural Gas Co., et al.	03-02-94	C	75,000	N	I	02-03-94	Indef
ST94-4434	Enogex Inc	Arkla Energy Resources Co.	03-02-94	C	30,000	N	I	03-01-94	Indef
ST94-4435	Overland Trail Transmission Co.	Kern River Gas Transmission	03-02-94	C	20,000	N	I	12-02-93	Indef
ST94-4436	Overland Trail Transmission Co.	Colorado Interstate Gas Co	03-02-94	C	100,000	N	I	03-01-93	Indef
ST94-4437	East Texas Gas Systems.	Texas Gas Transmission.	03-02-94	C	50,000	N	I	02-01-93	Indef
ST94-4438	East Texas Gas Systems.	Southern Natural Gas Pipeline.	03-02-94	C	50,000	N	I	04-01-93	Indef
ST94-4439	East Texas Gas Systems.	Southern Natural Gas Pipeline.	03-02-94	C	50,000	N	I	07-01-93	Indef
ST94-4440	East Texas Gas Systems.	Texas Eastern	03-02-94	C	50,000	N	I	06-01-93	Indef
ST94-4441	East Texas Gas Systems.	KCS Energy Marketing.	03-02-94	C	50,000	N	I	01-01-93	Indef.
ST94-4442	East Texas Gas Systems.	Southern Natural Gas Pipeline.	03-02-94	C	50,000	N	I	08-01-93	Indef
ST94-4443	East Texas Gas Systems.	Southern Natural Gas Pipeline.	03-02-94	C	50,000	N	I	10-01-93	Indef
ST94-4444	East Texas Gas Systems.	Southern Natural Gas Pipeline	03-02-94	C	50,000	N	I	05-01-93	Indef
ST94-4445	East Texas Gas Systems.	Koch Gateway Pipeline.	03-02-94	C	50,000	N	I	05-01-93	Indef
ST94-4446	East Texas Gas Systems.	Koch Gateway Pipeline.	03-02-94	C	50,000	N	I	07-01-93	Indef
ST94-4447	East Texas Gas Systems.	Texas Gas Transmission.	03-02-94	C	50,000	N	I	12-01-93	Indef
ST94-4448	East Texas Gas Systems.	Koch Gateway Pipeline.	03-02-94	C	50,000	N	I	06-01-93	Indef
ST94-4449	East Texas Gas Systems.	Arkla Energy Co	03-02-94	C	50,000	N	I	07-01-93	Indef
ST94-4450	Oasis Pipe Line Co	Natural Gas Pipeline Co. of America.	03-02-94	C	25,000	N	I	01-19-94	Indef
ST94-4451	Oasis Pipe Line Co	Transwestern Gas Co	03-02-94	C	25,000	N	I	01-23-94	Indef
ST94-4452	Oasis Pipe Line Co	Transwestern Gas Co.	03-02-94	C	100,000	N	I	01-19-94	Indef
ST94-4453	Oasis Pipe Line Co	El Paso Natural Gas Co.	03-02-94	C	25,000	N	I	01-18-94	Indef
ST94-4454	Oasis Pipe Line Co.	Northern Natural Gas Co.	03-02-94	C	25,000	N	I	01-19-94	Indef.
ST94-4455	Oasis Pipe Line Co.	El Paso Natural Gas Co.	03-02-94	C	25,000	N	I	02-02-94	Indef
ST94-4456	Oasis Pipe Line Co.	El Paso Natural Gas Co.	03-02-94	C	100,000	N	I	01-19-94	Indef.
ST94-4457	Oasis Pipe Line Co	Northern Natural Gas Co	03-02-94	C	25,000	N	I	01-20-94	Indef

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max daily quantity[2]	AFF Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–4458	Oasis Pipe Line Co.	El Paso Natural Gas Co.	03–02–94	C	50,000	N	I	02-02-94	Indef
ST94–4459	Oasis Pipe Line Co.	Transwestern Gas Co.	03–02–94	C	100,000	N	I	01–21–94	Indef.
ST94–4460	Williams Natural Gas Co.	ARCO Natural Gas Marketing, Inc.	03–02–94	G–S	10,000	N	I	10–01–93	10-31-98
ST94–4461	Williams Natural Gas Co.	GPM Gas Corp ...	03–02–94	G–S	1,150	N	I	12–01–93	06–30–94
ST94–4462	Williams Natural Gas Co.	Kaiser Francis Oil Co.	03–02–94	G–S	150	N	I	11–01–93	09–30–98
ST94–4463	Williams Natural Gas Co.	AMAX Gas marketing, Inc.	03–02–94	G–S	25,000	N	I	12–01–93	09–30–94
ST94–4464	Williams Natural Gas Co.	Consolidated Fuel Corp.	03–02–94	G–S	30,000	N	I	12–01–93	09–30–94
ST94–4465	Williams Natural Gas Co.	Coastal Gas Marketing.	03–02–94	G–S	50,000	N	I	12-01-93	09–30–98
ST94–4466	Williams Natural Gas Co.	Energy Dynamics, Inc.	03–02–94	G–S	30,000	N	I	12–01–93	09–30–98
ST94–4467	Williams Natural Gas Co.	Transok Gas Co ..	03–02–94	G–S	50,000	N	I	11–01–93	09–30–98
ST94–4468	Williams Natural Gas Co.	OXY USA, Inc	03–02–94	G–S	5,000	N	I	10–01–93	09–30–94
ST94–4469	Williams Natural Gas Co.	Ward Gas Services, Inc.	03–02–94	G–S	25,000	N	I	12–01–93	11–30–94
ST94–4470	K N Interstate Gas Trans. Co.	Chevron U.S.A., Inc.	03–02–94	G–S	2,500	N	F	02–01–94	04–30–94
ST94–4471	Transcontinental Gas P/L Corp.	ANP Power Co	03–02–94	G–S	200,000	N	I	02–19–94	Indef.
ST94–4472	Transcontinental Gas P/L Corp.	James River Paper Co., Inc.	03–02–94	G–S	25,000	N	I	02–16–94	Indef.
ST94–4473	Natural Gas P/L Co. of America.	Entex	03–02–94	B	41,500	N	F	02–01–94	11–30–99
ST94–4474	Natural Gas P/L Co. of America.	Arkla Energy Marketing Co.	03–02–94	G–S	80,000	N	F	02–01–94	02–28–94
ST94–4475	Natural Gas P/L Co. of America.	O & R Energy, Inc	03–02–94	G–S	20,000	N	F	02-01–94	02–28–94
ST94–4476	Natural Gas P/L Co. of America.	Reynolds Pipeline Systems, Inc.	03–02–94	G–S	7,000	N	F	02–10–94	02–28–94
ST94–4477	Natural Gas P/L Co. of America.	NGC Transportation, Inc.	03–02–94	G–S	25,000	N	F	02–01–94	02–28–94
ST94–4478	Natural Gas P/L Co. of America.	Broad Street Oil & Gas Co.	03–02–94	G–S	11,600	N	F	02–01–94	02–28–94
ST94–4479	Natural Gas P/L Co. of America.	North Shore Gas Co.	03–02–94	G–S	104,180	N	F	02–01–94	11–30–95
ST94–4480	Natural Gas P/L Co. of America.	American Hunter Energy.	03–02–94	G–S	1,000	N	F	02–01–94	11–30–00
ST94–4481	Natural Gas P/L Co. of America.	Peoples Gas Light & Coke Co.	03–02–94	G–S	254,026	N	F	02–01–94	11–30–95
ST94–4482	Natural Gas P/L Co. of America.	Polaris Pipeline Corp.	03–02–94	G–S	1,000	N	F	02–01–94	11–30–00
ST94–4483	Natural Gas P/L Co. of America.	Coastal Gas Marketing Co.	03–02–94	G–S	10,000	N	F	02–01–94	02–28–94
ST94–4484	Canyon Creek Compression Co.	Questar Pipeline Co.	03–02–94	G	6,000	N	F	12–01–93	11–16–02
ST94–4485	Tennessee Gas Pipeline Co.	Clinton Gas Marketing, Inc.	03–02–94	G–S	7,000	N	F	02–19–94	Indef
ST94–4486	Midwestern Gas Transmission Co.	H & N Gas, Ltd ...	03–02–94	G–S	100,000	N	I	02–26-94	Indef.
ST94–4487	Florida Gas Transmission Co.	United Gas Pipe Line Co.	03–02–94	G–S	120,000	N	I	01–31–94	Indef
ST94–4488	Florida Gas Transmission Co.	Deseret Ranches of Florida, Inc.	03–02–94	G–S	20	N	F	11–01–93	Indef
ST94–4489	CNG Transmission Corp.	Meridian Gas Marketing.	03–02–94	G–S	5,000	N	I	02–01–94	01–01–00
ST94–4490	CNG Transmission Corp	Yankee Gas Services Co.	03–02–94	G–S	3,577	N	F	02–14–94	03–31–03

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–4491	CNG Transmission Corp.	Clinton Gas Marketing.	03–02–94	G–S	5,000	N	I	02–17–94	03–31–94
ST94–4492	CNG Transmission Corp.	Washington Gas Light.	03–02–94	G–S	30,000	N	F	02–02–94	02–28–94
ST94–4493	CNG Transmission Corp.	Peoples Natural Gas.	03–02–94	G–S	199,316	N	F	02–01–94	03–31–02
ST94–4494	CNG Transmission Corp.	L G & E—Westmorland Rensselaer.	03–02–94	G–S	17,200	N	F	02–01–94	03–31–94
ST94–4495	Algonquin Gas Transmission Co.	Phibro Energy, Inc	03–02–94	G–S	700,000	N	I	02–03–94	Indef.
ST94–4496	Algonquin Gas Transmission Co.	CNG Gas Services.	03–02–94	B	23	N	F	02–01–94	Indef.
ST94–4497	Algonquin Gas Transmission Co.	CNG Gas Services.	03–02–94	B	268	N	F	02–01–94	Indef.
ST94–4498	Algonquin Gas Transmission Co.	Enron Gas Marketing, Inc.	03–02–94	G–S	350,000	N	I	02–11–94	Indef
ST94–4499	Panhandle Eastern Pipe Line Co.	Natural Gas Clearinghouse, Inc.	03–02–94	G–S	20,460	N	F	02–02–94	02–09–94
ST94–4500	Panhandle Eastern Pipe Line Co.	Missouri Gas Energy.	03–02–94	G–S	8,940	N	F	02–01–94	10–31–97
ST94–4501	Panhandle Eastern Pipe Line Co.	AIG Trading Corp	03–02–94	G–S	25,000	N	F	02–01–94	03–31–94
ST94–4502	Panhandle Eastern Pipe Line Co.	CMS Gas Marketing Co.	03–02–94	G–S	5,422	N	F	02–03–94	02–10–94
ST94–4503	Panhandle Eastern Pipe Line Co.	Nitex, Inc	03–02–94	G–S	7,035	N	F	02–01–94	02–06–94
ST94–4504	Panhandle Eastern Pipe Line Co.	Missouri Gas Energy.	03–02–94	G–S	8,941	N	F	02–1–94	04–30–95
ST94–4505	Panhandle Eastern Pipe Line Co.	Northern Indiana Public Service Co.	03–02–94	G–S	40,000	N	F	02–01–94	02–07–94
ST94–4506	Panhandle Eastern Pipe Line Co.	Nitex, Inc.	03–02–94	G–S	4,143	N	F	02–01–94	01–31–95
ST94–4507	Panhandle Eastern Pipe Line Co.	Vesta Energy Co	03–02–94	G–S	10,000	N	F	02–01–94	02–28–94
ST94–4508	Panhandle Eastern Pipe Line Co.	Kerr-McGee Corp	03–02–94	G–S	5,000	N	I	02–01–94	01–31–99
ST94–4509	Panhandle Eastern Pipe Line Co.	Aurora Natural Gas.	03–02–94	G–S	20,000	N	I	02–01–94	11–30–98
ST94–4510	Panhandle Eastern Pipe Line Co.	Coenergy Trading Co.	03–02–94	G–S	37,000	N	F	02–01–94	12–31–94
ST94–4511	Panhandle Eastern Pipe Line Co.	Tenneco Gas Marketing Co.	03–02–94	G–S	40,000	N	F	02–01–94	03–31–94
ST94–4512	Panhandle Eastern Pipe Line Co.	Panhandle Trading Co.	03–02–94	G–S	9,426	A	F	02–01–94	03–31–94
ST94–4513	Panhandle Eastern Pipe Line Co.	Borg-Warner Automotive.	03–02–94	G–S	4,000	N	I	02–01–94	01–31–97
ST94–4514	Panhandle Eastern Pipe Line Co.	Semco Energy Services, Inc.	03–02–94	G–S	2,000	N	F	02–01–94	06–30–94
ST94–4515	Colorado Interstate Gas Co.	Industrial Gas Services, Inc.	03–02–94	G–S	97	N	I	03–01–94	Indef

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–4516	Pacific Gas Transmission Co.	Southern California Edison Co.	03–02–94	G–S	201,687	N	F	12–20–93	10–31–23
ST94–4517	Pacific Gas Transmission Co.	Southern California Edison Co.	03–02–94	G–S	325,561	N	I	11–04–93	Indef.
ST94–4518	Pacific Gas Transmission Co.	Pacific Interstate Transmission Co.	03–02–94	G–S	304,500	N	F	01–01–94	10–31–06
ST94–4519	Pacific Gas Transmission Co.	Coastal Gas Marketing Co.	03–02–94	G–S	100,000	N	I	02–08–94	Indef.
ST94–4520	Pacific Gas Transmission Co.	Canwest Gas Supply, Inc.	03–02–94	G–S	15,708	N	F	02–14–94	10–31–09
ST94–4521	Florida Gas Transmission Co.	American Hunter Energy.	03–03–94	G–S	30,000	N	I	02–01–94	Indef.
ST94–4522	Florida Gas Transmission Co.	Vesta Energy Co .	03–03–94	G–S	5,000	N	I	02–01–94	Indef.
ST94–4523	Florida Gas Transmission Co.	Prior Intrastate Corp.	03–03–94	G–S	50,000	N	I	02–01–94	Indef.
ST94–4524	Black Marlin Pipeline Co.	Sonat Marketing Co.	03–03–94	G–S	2,625	N	F	02–02–94	02–01–95
ST94–4525	Black Marlin Pipeline Co.	Transok, Inc	03–03–94	B	100,000	N	I	02–23–94	Indef.
ST94–4526	Williams Natural Gas Co.	Colorado Interstate Gas Co.	03–03–94	G	4,000	N	I	11–10–93	04–01–94
ST94–4527	Williams Natural Gas Co.	Coastal Gas Marketing.	03–03–94	G–S	50,000	N	I	12–01–93	09–30–98
ST94–4528	Kentucky West Virginia Gas.	Equitable Resources Energy Co.	03–03–94	G S	35,000	A	I	02–01–94	Indef.
ST94–4529	Panhandle Eastern Pipe Line Co.	Nitex, Inc.	03–03–94	G–S	10,000	N	F	02–02–94	02–11–94
ST94–4530	Panhandle Eastern Pipe Lince Co.	PHIBRO Energy ..	03–03–94	G–S	100,000	N	I	02–04–94	01–31–95
ST94–4531	National Fuel Gas Supply Corp.	New Jersey Natural Gas Co.	03–04–94	G–S	3,248	N	I	08–01–93	10–31–94
ST94–4532	National Fuel Gas Supply Corp.	National Fuel Gas Distribution Corp.	03–04–94	G–S	1,148,648	A	I	08–01–93	03–31–03
ST94–4533	National Fuel Gas Supply Corp.	Clarion River Gas Co.	03–04–94	G–S	76	N	I	08–01–93	03–31–03
ST94–4534	National Fuel Gas Supply Corp.	Connectitut Natural Gas Co.	03–04–94	G–S	1,877	N	I	08–01–93	03–31–03
ST94–4535	National Fuel Gas Supply Corp.	Eastern Natural Gas Co.	03–04–94	G–S	10,058	N	I	08–01–93	03–31–07
ST94–4536	National Fuel Gas Supply Corp.	Elizabethcity Gas Co.	03–04–94	G–S	11,090	N	I	08–01–93	03–31–03
ST94–4537	National Fuel Gas Supply Corp.	Public Service Gas & Electric.	03–04–94	G–S	7,541	N	I	08–01–93	10–31–94
ST94–4538	National Fuel Gas Supply Corp.	Providence Gas Co.	03–04–94	G–S	1,889	N	I	08–01–93	03–31–03
ST94–4539	National Fuel Gas Supply Corp.	Yankee Gas Services Co.	03–04–94	G–S	1,797	N	I	08–01–93	03–31–03
ST94–4540	National Fuel Gas Supply Corp.	Granite State Gas Transmission.	03–04–94	G–S	1,540	N	I	08–01–93	03–31–03
ST94–4541	National Fuel Gas Supply Corp.	Peoples Natural Gas Co.	03–04–94	G–S	15,476	N	I	08–01–93	03–31–03
ST94–4542	National Fuel Gas Supply Corp.	North Attleborough Gas Co.	03–04–94	G–S	23	N	I	08–01–93	03–31–03
ST94–4543	National Fuel Gas Supply Corp.	Northeast Heat & Light.	03–04–94	G–S	4,031	N	I	08–01–93	03–31–03
ST94–4544	National Fuel Gas Supply Corp.	Southern Connecticut Gas Co.	03–04–94	G–S	1,457	N	I	08–01–93	03–31–03
ST94–4545	National Fuel Gas Supply Corp.	City of Rushford ..	03–04–94	G–S	49	N	I	08–01–93	03–31–95
ST94–4546	National Fuel Gas Supply Corp.	City of Middleborough.	03–04–94	G–S	34	N	I	08–01–93	03–31–03

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ST94–4547	National Fuel Gas Supply Corp.	Colonial Gas Co ..	03–04–94	G–S	577	N	I	08–01–93	10–31–00
ST94–4548	National Fuel Gas Supply Corp.	Brooklyn Union Gas Co.	03–04–94	G–S	2,486	N	I	08–01–93	10–31–93
ST94–4549	National Fuel Gas Supply Corp.	Bristol & Warren Gas Co.	03–04–94	G–S	158	N	I	08–01–93	03–31–03
ST94–4550	National Fuel Gas Supply Corp.	Boston Gas Co	03–04–94	G–S	6,335	N	I	08–01–93	03–31–03
ST94–4551	National Fuel Gas Supply Corp.	Norcon Power Partners L.P.	03–04–94	G–S	16,837	N	I	09–01–93	08–31–13
ST94–4552	National Fuel Gas Supply Corp.	Encogen Four Partners, Inc.	03–04–94	G–S	15,000	N	I	09–01–93	08–31–08
ST94–4553	National Fuel Gas Supply Corp.	Medina Power Co	03–04–94	G–S	2,000	N	I	08–01–93	11–09–94
ST94–4554	National Fuel Gas Supply Corp.	Northern Utilities. Inc.	03–04–94	G–S	286	N	I	11–01–93	03–31–03
ST94–4555	National Fuel Gas Supply Corp.	Iroquois Energy Management Inc.	03–04–94	G–S	702	N	I	11–01–93	10–31–03
ST94–4556	National Fuel Gas Supply Corp.	Columbia Gas Transmission Inc.	03–04–94	G–S	25,510	N	I	08–25–93	10–31–93
ST94–4557	National Fuel Gas Supply Corp.	LG&E-Westmoreland Rensselaer.	03–04–94	G–S	18,100	N	I	02–01–94	03–09–14
ST94–4558	National Fuel Gas Supply Corp.	Delmarva Power & Light Co.	03–04–94	G–S	2,800	N	I	01–01–94	12–31–04
ST94–4559	National Fuel Gas Supply Corp.	KCS Energy Management Services, Inc.	03–04–94	G–S	2,796	N	I	11–06–93	11–30–93
ST94–4560	National Fuel Gas Supply Corp.	KCS Energy Management Services, Inc.	03–04–94	G–S	6,000	N	I	11–01–93	11–01–06
ST94–4561	National Fuel Gas Supply Corp.	Transco Energy Marketing Co.	03–04–94	G–S	48,400	N	I	11–01–93	11–01–07
ST94–4562	National Fuel Gas Supply Corp.	Granite State Gas Transmission Inc.	03–04–94	G–S	7,265	N	I	03–01–93	08–31–03
ST94–4563	National Fuel Gas Supply Corp.	Fulton Cogeneration Associates.	03–04–94	G–S	6,050	N	I	03–01–93	10–31–05
ST94–4564	National Fuel Gas Supply Corp.	National Fuel Resources, Inc.	03–04–94	G–S	2,540	A	I	11–01–93	01–31–94
ST94–4565	National Fuel Gas Supply Corp.	New York State Electric & Gas Corp.	03–04–94	G–S	5,100	N	I	11–02–93	01–31–94
ST94–4566	National Fuel Gas Supply Corp.	Meridian Marketing & Trans. Corp.	03–04–94	G–S	7,500	N	I	11–01–93	01–31–94
ST94–4567	National Fuel Gas Supply Corp.	Iroquois Energy Management Inc.	03–04–94	G–S	3,000	N	I	11–01–93	01–31–94
ST94–4568	National Fuel Gas Supply Corp.	Northern Utilities. Inc.	03–04–94	G–S	960	N	I	11–01–93	08–31–03
ST94–4569	National Fuel Gas Supply Corp.	Consolidated Edison Co. or NY, Inc.	03–04–94	G–S	3,800	N	I	08–01–93	03–31–03
ST94–4570	National Fuel Gas Supply Corp.	Commonwealth Gas Co.	03–04–94	G–S	3,073	N	I	08–01–93	03–31–03
ST94–4571	Colorado Interstate Gas Co.	Tristar Gas Co	03–04–94	G–S	5,000	N	I	03–01–94	Indef.
ST94–4572	Transcontinental Gas P/L Corp.	New Jersey Natural Gas Co.	03–04–94	B	283,000	N	I	02–18–94	Indef.
ST94–4573	Northwest Pipeline Corp.	Boeing Co	03–04–94	G–S	4,000	N	F	02–01–94	Indef
ST94–4574	Natural Gas P/L Co. of America	Enron Gas Marketing, Inc.	03–04–94	G–S	5,000	N	F	02–10–94	02–28–94
ST94–4575	Natural Gas P/L Co. of America.	Panhandle Eastern Pipe Line Co.	03–04–94	G	200,000	N	I	02–10–94	Indef
ST94–4576	Natural Gas P/L Co. of America.	Total Pipeline Co .	03–04–94	B	7,000	N	F	11–30–93	06–30–96

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ST94–4577	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc.	03–04–94	G–S	15,000	N	F	02–10–94	03–31–94
ST94–4578	Natural Gas P/L Co. of America.	Brooklyn Interstate Nat. Gas Corp.	03–04–94	G–S	10,000	N	F	03–01–94	02–28–95
ST94–4579	Natural Gas P/L Co. of America.	Catex Vitol Gas, Inc.	03–04–94	G–S	50,000	N	F	03–01–94	03–31–94
ST94–4580	Natural Gas P/L Co. of America.	Valero Gas Marketing, L.P.	03–04–94	G–S	10,000	N	F	03–01–94	03–31–94
ST94–4581	Natural Gas P/L Co. of America.	Aquila Energy Marketing Corp.	03–04–94	G–S	1,000	N	F	03–01–94	11–30–00
ST94–4582	Natural Gas P/L Co. of America.	DGS Trading, Inc	03–04–94	G–S	10,000	N	F	03–01–94	04–30–94
ST94–4583	Natural Gas P/L Co. of America.	Industrial Energy Applications, Inc.	03–04–94	G–S	2,744	N	F	11–01–93	10–31–97
ST94–4584	Natural Gas P/L Co. of America.	Midcon Gas Services Corp.	03–04–94	G–S	159,500	N	F	01–17–94	11–30–98
ST94–4585	Natural Gas P/L Co. of America.	Valero Gas marketing, L.P.	03–04–94	G–S	39,000	N	F	03–01–94	03–31–94
ST94–4586	Panhandle Eastern Pipe Line Co..	Missouri Gas Energy.	03–04–94	G–S	8,987	N	F	02–01–94	03–31–98
ST94–4587	Columbia Gas Transmission Corp.	Aristech Chemical Corp.	03–04–94	G–ST	N/A	N	I	02–28–94	Indef.
ST94–4588	Columbia Gas Transmission Corp.	Enron Gas Marketing, Inc.	03–04–94	G–S	250,000	N	I	02–28–94	Indef.
ST94–4589	Columbia Gas Transmission Corp.	Fuel Services Group.	03–04–94	G–ST	N/A	N	I	03–23–94	Indef.
ST94–4590	Columbia Gas Transmission Corp.	Washington Gas Light Co.	03–04–94	G	309,531	N	F	03–01–94	Indef.
ST94–4591	Columbia Gas Transmission Corp.	Cenergy, Inc	03–04–94	G–ST	N/A	N	I	03–01–94	Indef.
ST94–4592	Columbia Gas Transmission Corp.	Washington Gas Light Co.	03–04–94	G	355,000	N	I	03–01–94	Indef.
ST94–4593	Columbia Gas Transmission Corp.	Kane Gas Light & Heating Co.	03–04–94	B	565	N	I	03–01–94	Indef.
ST94–4594	Columbia Gas Transmission Corp.	Glen Gery Corp ...	03–04–94	G–S	650	N	F	03–01–94	10–31–94
ST94–4595	Columbia Gas Transmission Corp.	Jones Hamilton Co.	03–04–94	G–S	154	N	F	03–01–94	02–28–95
ST94–4596	Columbia Gas Transmission Corp.	Corning Natural Gas Corp.	03–04–94	B	828	N	F	03–01–94	Indef.
ST94–4597	Columbia Gas Transmission Corp.	Roancke Gas Co	03–04–94	B	25,509	N	F	03–01–94	Indef.
ST94–4598	Columbia Gas Transmission Corp.	Waterville Gas Co	03–04–94	B	1,250	N	F	03–01–94	Indef.
ST94–4599	Columbia Gas Transmission Corp.	Union Light Heat & Power Co.	03–04–94	B	4,100	N	I	03–01–94	Indef.
ST94–4600	Columbia Gas Transmission Corp.	Orange & Rockland Utilities, Inc.	03–04–94	B	2,250	N	I	03–01–94	Indef.
ST94–4601	Columbia Gas Transmission Corp.	Pennsylvania Gas & Water Co.	03–04–94	B	20,000	N	I	03–01–94	Indef.
ST94–4602	Columbia Gas Transmission Corp.	Cincinnati Gas & Electric Co.	03–04–94	B	5,600	N	I	03–01–94	Indef.

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ST94–4603	Columbia Gas Transmission Corp.	Cincinnati Gas & Electric Co.	03–04–94	B	17,595	N	I	03–01–94	Indef.
ST94–4604	Columbia Gas Transmission Corp.	Corning Natural Gas Corp.	03–04–94	B	229	N	I	03–01–94	Indef.
ST94–4605	Lone Star Gas Co	Natural Gas Pipe Line Co. of America.	03–04–94	C	55,000	N	I	02–01–94	Indef.
ST94–4606	Lone Star Gas Co	Natural Gas P/L Co. of America, et al.	03–04–94	C	100,000	N	I	02–09–94	Indef.
ST94–4607	Delhi Gas Pipeline Corp.	Arkla Energy Resources, et al.	03–04–94	C	90,000	N	I	02–03–94	Indef.
ST94–4608	Acadian Gas Pipeline System.	Nat. Gas P/L Co. of America, et al.	03–04–94	C	50,000	N	I	02–05–94	Indef.
ST94–4609	Westar Transmission Co.	ANR Pipeline Co .	03–04–94	C	2,000	N	I	01–01–94	Indef.
ST94–4610	Westar Transmission Co.	Transwestern Pipeline Co.	03–04–94	C	10,000	N	I	01–01–94	Indef.
ST94–4611	Westar Transmission Co.	ANR Pipeline Co .	03–04–94	C	5,000	N	I	01–01–94	Indef.
ST94–4612	Sea Robin Pipeline Co.	Sonat Marketing Co.	03–07–94	G–ST	14,231	A	F	03–01–94	03–31–94
ST94–4613	Williams Natural Gas Co.	Premier Enterprises, Inc.	03–07–94	G–ST	5,000	N	I	03–01–94	10–01–94
ST94–4614	Wiliams Natural Gas Co.	Twister Transmission Co.	03–07–94	G–ST	25,000	N	I	02–26–94	Indef.
ST94–4615	Wiliams Natural Gas Co.	Miles, Inc	03–07–94	G–ST	2,600	N	I	03–01–94	Indef.
ST94–4616	Wiliams Natural Gas Co.	CIG Merchant	03–07–94	G–ST	1,000	N	I	02–03–94	Indef.
ST94–4617	Chandleleur Pipe Line Co.	International Paper Co.	03–07–94	K–ST	15,000	N	F	11–01–89	Indef.
ST94–4618	Chandleleur Pipe Line Co.	Chevron U.S.A., Inc.	03–07–94	K–ST	100,000	Y	I	08–01–93	Indef.
ST94–4619	Chendleleur Pipe Line Co.	Chevron U.S.A., Inc.	03–07–94	K–ST	190,000	Y	F	04–01–89	Indef.
ST94–4620	Chendleleur Pipe Line Co.	Koch Gateway Pipe Line Co.	03–07–94	K–ST	20,000	Y	I	03–01–94	Indef.
ST94–4621	Transok, Inc	ANR Pipeline Co., et al.	03–07–94	C	7,500	N	I	02–18–94	Indef.
ST94–4622	Delhi Gas Pipeline Corp.	Transcontinental Gas Pipe Line Co.	03–07–94	C	3,000	N	I	02–01–94	05–18–94
ST94–4623	Transok, Inc	ANR Pipeline Co., et al.	03–07–94	C	100,000	N	I	02–02–94	02–01–95
ST94–4624	U–T Offshore System.	Texaco Gas Marketing, Inc.	03–08–94	K–ST	25,000	N	F	02–01–94	Indef.
ST94–4625	K N Interstate Gas Trans. Co.	Cenergy, Inc	03–08–94	G–ST	50,000	N	I	03–01–94	Indef.
ST94–4626	K N Interstate Gas Trans. Co.	K N Gas Marketing, Inc.	03–08–94	G–ST	15,000	A	F	03–01–94	Indef.
ST94–4627	U–T Offshore System.	Mobil Natural Gas Inc.	03–08–94	K–ST	10,000	N	F	02–01–94	Indef.
ST94–4628	Canyon Creek Compression Co.	Midcon Gas Services Corp.	03–08–94	G–ST	10,000	Y	F	03–01–94	04–30–95
ST94–4629	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc.	03–08–94	G–ST	10,000	N	F	02–28–94	Indef.
ST94–4630	Trailblazer Pipeline Co.	Chevron U.S.A., Inc.	03–08–94	G–ST	10,000	N	F	03–01–94	02–28–97
ST94–4631	Trailblazer Pipeline Co.	Midcon Gas Services Corp.	03–08–94	G–ST	67,000	N	F	03–01–94	09–30–94
ST94–4632	Sabine Pipe Line Co.	Apache Corp	03–09–94	G–ST	100,000	N	I	03–02–94	Indef.
ST94–4633	Panhandle Eastern Pipe Line Co.	CMS Gas Marketing Co.	03–09–94	G–ST	149,000	N	I	02–18–94	04–30–98

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ST94–4634	Panhandle Eastern Pipe Line Co.	Enron Gas Marketing, Inc.	03–09–94	G–ST	10,000	N	F	12–01–93	03–31–94
ST94–4635	Panhandle Eastern Pipe Line Co.	Missouri Public Service.	03–09–94	G–ST	8,061	N	F	01–07–94	04–30–96
ST94–4636	Tennessee Gas Pipeline Co.	Ashland Petroleum.	03–09–94	G–ST	3,500	N	F	11–01–93	Indef.
ST94–4637	Northern Border Pipeline Co	Renaissance Energy (U.S.) Inc.	03–09–94	G–ST	15,220	Y	I	03–01–94	10–31–90
ST94–4638	Northern Border Pipeline Co.	Montana-Dakota Utilities Co.	03–09–94	B	15,000	N	I	02–17–94	09–14–95
ST94–4639	Northern Border Pipeline Co.	POCO Petroleum Ltd.	03–09–94	G–S	5,000	Y	I	03–12–94	10–31–04
ST94–4640	Northern Border Pipeline Co.	Texas Utilities Fuel Co.	03–09–94	B	35,000	N	F/I	01–26–94	Indef.
ST94–4641	El Paso Natural Gas Co.	Nevada Power Co	03–09–94	G–S	72,100	N	I	02–07–94	Indef.
ST94–4642	Northern Natural Gas Co.	Peoples Natural Gas Co.	03–09–94	G–S	25,000	N	I	02–07–94	03–31–94
ST94–4643	Northern Natural Gas Co.	Panhandle Eastern Pipe Line Co.	03–09–94	G	100,000	N	I	02–17–94	03–16–94
ST94–4644	Tejas Gas Pipe Line Co.	Transcontinental Gas P/L Corp.	03–09–94	C	13,490	N	I	01–21–94	Indef.
ST94–4645	Tejas Gas Pipe Line Co.	Texas Eastern Transmission Corp.	03–10–94	C	6,045	N	I	01–19–94	Indef.
ST94–4646	Olympic Pipeline Co.	Sabine Pipe Line Co.	03–09–94	C	15,000	N	I	01–02–93	Indef.
ST94–4647	Olympic Pipeline Co.	Sabine Pipe Line Co.	03–09–94	C	10,000	N	I	11–05–93	Indef.
ST94–4648	Olympic Pipeline Co.	Sabine Pipe Line Co.	03–09–94	C	15,000	N	I	11–13–93	Indef.
ST94–4649	Olympic Pipeline Co.	Sabine Pipe Line Co.	03–09–94	C	10,000	N	I	11–25–93	Indef.
ST94–4650	Olympic Pipeline Co.	Sabine Pipe Line Co.	03–09–94	C	20,000	N	I	11–20–93	Indef.
ST94–4651	Olympic Pipeline Co.	Sabine Pipe Line Co.	03–09–94	C	10,000	N	I	11–11–93	Indef.
ST94–4652	Olympic Pipeline Co.	Sabine Pipe Line Co.	03–09–94	C	25,000	N	I	11–04–93	Indef.
ST94–4653	Olympic Pipeline Co.	Sabine Pipe Line Co.	03–09–94	C	5,000	N	I	12–01–93	Indef.
ST94–4654	Orange & Rockland Utilities, Inc.	Mystic River Energy Corp.	03–10–94	G–HT	20,000	N	I	02–11–94	02–28–94
ST94–4655	Texas Eastern Transmission Corp.	Meridian Marketing & Trans. Corp.	03–10–94	G–S	10,000	N	I	02–11–94	06–30–94
ST94–4656	Panhandle Eastern Pipe Line Co.	Quantum Chemical Corp.	03–10–94	G–S	16,912	N	F	02–01–94	03–31–95
ST94–4657	Panhandle Eastern Pipe Line Co.	Tylex, Inc	03–10–94	G–S	2,700	N	F	11–01–93	03–31–96
ST94–4658	Panhandle Eastern Pipe Line Co.	K N Gas Marketing, Inc.	03–10–94	G–S	36,000	N	I	12–01–93	04–30–98
ST94–4659	Panhandle Eastern Pipe Line Co.	Michigan Consolidated Gas Co	03–10–94	B	45,000	N	I	01–28–94	04–30–98
ST94–4660	Panhandle Eastern Pipe Line Co.	Astral Industries, Inc.	03–10–94	G–S	20	N	I	02–21–94	11–30–94
ST94–4661	Stingray Pipeline Co.	Amerada Hess Corp.	03–10–94	K–S	100,000	N	I	02–26–93	Indef.
ST94–4662	Stingray Pipeline Co.	Pennzoil Gas Marketing Co	03–10–94	K–S	45,000	N	I	01–01–93	Indef.
ST94–4663	Koch Gateway Pipeline Co	Philbro Energy USA, Inc	03–10–94	G–S	N/A	N	I	02–15–94	Indef.

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ST94–4664	Koch Gateway Pipeline Co	Mississippi Valley Gas Co.	03–10–94	G–S	N/A	N	I	02–15–94	Indef.
ST94–4665	Koch Gateway Pipeline Co	LL & E Gas Marketing, Inc.	03–10–94	G–S	N/A	N	I	02–15–94	Indef.
ST94–4666	Koch Gateway Pipeline Co	KCS Energy Marketing, Inc.	03–10–94	G–S	N/A	N	I	02–15–94	Indef.
ST94–4667	Koch Gateway Pipeline Co.	City of Kaplan	03–10–94	G–S	1,680	N	F	02–15–94	04–01–97
ST94–4668	Koch Gateway Pipeline Co	Fina Natural Gas Co.	03–10–94	G–S	185,000	N	F	02–15–93	Indef.
ST94–4669	Koch Gateway Pipeline Co.	Energy Development Corp.	03–10–94	G–S	N/A	N	I	02–15–93	Indef.
ST94–4670	Koch Gateway Pipeline Co	Texican Natural Gas Co.	03–10–94	G–S	6,000	N	F	02–15–94	Indef.
ST94–4671	Koch Gateway Pipeline Co.	Texaco Gas Marketing Inc.	03–10–94	G–S	55,000	N	F	02–15–94	Indef.
ST94–4672	Koch Gateway Pipeline Co.	Shell Gas Trading Co.	03–10–94	G–S	10,000	N	F	02–15–94	Indef.
ST94–4673	Koch Gateway Pipeline Co	Phoenix Gas Pipeline Co.	03–10–94	G–S	N/A	N	I	02–15–94	Indef.
ST94–4674	Koch Gateway Pipeline Co.	Endevco Oil & Gas Co.	03–10–94	G–S	N/A	N	I	02–15–94	Indef.
ST94–4675	Koch Gateway Pipeline Co.	Delhi Gas Pipeline Corp.	03–10–94	G–S	N/A	N	I	02–15–94	Indef.
ST94–4676	Koch Gateway Pipeline Co	Coastal Gas Marketing Co.	03–10–94	G–S	N/A	N	I	02–15–94	Indef.
ST94–4677	Koch Gateway Pipeline Co.	Direct Gas Supply Corp.	03–10–94	G–S	N/A	N	I	02–15–94	Indef.
ST94–4678	Koch Gateway Pipeline Co.	Columbia Gas Transmission Corp.	03–10–94	G–S	10,570	N	F	02–15–94	Indef.
ST94–4679	Koch Gateway Pipeline Co.	Chevron U.S.A., Inc.	03–10–94	G–S	15,000	N	F	02–15–94	Indef.
ST94–4680	Koch Gateway Pipeline Co	Amoco Energy Trading Corp.	03–10–94	G–S	N/A	N	I	02–15–94	Indef.
ST94–4681	Arkansas Oklahoma Gas Corp	Ozark Gas Trans. System, et al.	03–11–94	G–HT	500	N	I	02–01–94	Indef.
ST94–4682	El Paso Natural Gas Co.	Velero Gas Marketing, L.P.	03–11–94	G–S	100,000	N	I	02–11–94	Indef.
ST94–4683	Columbia Gas Transmission Corp.	H & N Gas	03–11–94	G–S	100,000	N	I	03–01–94	Indef.
ST94–4684	Columbia Gas Transmission Corp.	Cabide Graphite Group, Inc.	03–11–94	G–S	5,000	N	I	03–01–94	Indef.
ST94–4685	Columbia Gas Transmission Corp.	Ohio Intrastate Gas Transmission Co.	03–11–94	B	4,000	N	F	03–01–94	10–31–94
ST94–4686	Columbia Gas Transmission Corp.	South Jersey Energy Co.	03–11–94	G–S	N/A	N	I	03–01–94	Indef.
ST94–4687	Columbia Gas Transmission Corp.	Ohio Intrastate Gas Transmission Co.	03–11–94	B	35,000	N	I	03–01–94	Indef.
ST94–4688	Columbia Gas Transmission Corp.	Atlantic City Electric Co.	03–11–94	B	60,000	N	I	03–01–94	Indef.
ST94–4689	Columbia Gas Transmission Corp.	Delmarva Power & Light Co.	03–11–94	B	100,000	N	I	03–01–94	Indef.
ST94–4690	Columbia Gas Transmission Corp.	South Jersey Gas Co.	03–11–94	B	1,000	N	I	03–01–94	Indef.
ST94–4691	Columbia Gas Transmission Corp.	South Jersey Gas Co.	03–11–94	B	3,400	N	I	03–01–94	Indef.
ST94–4692	Columbia Gas Transmission Corp.	South Jersey Gas Co.	03–11–94	B	1,000	N	I	03–01–94	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–4693	Columbia Gas Transmission Corp.	Ashland Petroleum Co.	03–11–94	G–S	N/A	N	I	03–04–94	Indef.
ST94–4694	Columbia Gas Transmission Corp.	Delmarva Power & Light Co.	03–11–94	B	20,000	N	I	03–01–94	Indef.
ST94–4695	Columbia Gas Transmission Corp.	Orange & Rockland Utilities, Inc.	03–11–94	B	600	N	I	03–01–94	Indef.
ST94–4696	Columbia Gas Transmission Corp.	New York State Elect. & Gas Corp.	03–11–94	B	900	N	I	03–01–94	Indef.
ST94–4697	Columbia Gas Transmission Corp.	Peoples Natural Gas Co.	03–11–94	B	1,100	N	I	03–01–94	Indef.
ST94–4698	Columbia Gas Transmission Corp.	Orange & Rockland Utilities, Inc.	03–11–94	B	45,000	N	I	03–01–94	Indef.
ST94–4699	Columbia Gas Transmission Corp.	Dayton Power & Light Co.	03–11–94	B	2,500	N	I	03–01–94	Indef.
ST94–4700	Columbia Gas Transmission Corp.	West Ohio Gas Co.	03–11–94	B	2,800	N	I	03–01–94	Indef.
ST94–4701	Columbia Gas Transmission Corp.	National Fuel Gas Supply Corp.	03–11–94	G	13	N	I	03–01–94	Indef.
ST94–4702	Columbia Gas Transmission Corp.	Gas Transport Inc	03–11–94	G	1,500	N	I	03–01–94	Indef.
ST94–4703	Columbia Gas Transmission Corp.	New York State Elect. & Gas Corp.	03–11–94	B	1,500	N	I	03–01–94	Indef.
ST94–4704	Columbia Gas Transmission Corp.	New York State Elect. & Gas Corp.	03–11–94	B	1,138	N	I	03–01–94	Indef.
ST94–4705	Columbia Gas Transmission Corp.	West Ohio Gas Co.	03–11–94	B	2,000	N	I	03–01–94	Indef.
ST94–4706	Columbia Gas Transmission Corp.	Columbia Gas of Maryland, Inc.	03–11–94	B	618	Y	I	03–01–94	Indef.
ST94–4707	Columbia Gas Transmission Corp.	West Ohio Gas Co.	03–11–94	B	639	N	I	03–01–94	Indef.
ST94–4708	Columbia Gas Transmission Corp.	West Ohio Gas Co.	03–11–94	B	2,910	N	I	03–01–94	Indef.
ST94–4709	Columbia Gas Transmission Corp.	Torch Energy Marketing, Inc.	03–11–94	G–S	50,000	N	I	03–01–94	Indef.
ST94–4710	Columbia Gas Transmission Corp.	Gas Transport, Inc.	03–11–94	G–S	50,000	N	I	03–01–94	Indef.
ST94–4711	Algonquin Gas Transmission Co.	New England Power Co.	03–11–94	G–S	20,200,200	N	I	02–27–94	Indef.
ST94–4712	Algonquin Gas Transmission Co.	NGC Transportation, Inc.	03–11–94	G–S	625,000	N	I	02–28–94	Indef.
ST94–4713	Algonquin Gas Transmission Co.	City of Norwich, Board Pub. Util.	03–11–94	B	580	N	I	02–01–94	Indef.
ST94–4714	ONG Transmission Co.	Northern Natural Gas Co.	03–14–94	C	50,000	N	I	12–28–93	Indef.
ST94–4715	ONG Transmission Co.	Williams Natural Gas Co.	03–14–94	C	30,000	N	I	02–01–93	Indef.
ST94–4716	ONG Transmission Co.	Panhandle Eastern Pipe Line Co.	03–14–94	C	30,000	N	I	09–15–93	Indef.

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ST94–4717	ONG Transmission Co.	ANR Pipeline Co .	03–14–94	C	50,000	N	I	10–08–93	Indef.
ST94–4718	ONG Transmission Co.	Panhandle Eastern Pipe Line Co.	03–14–94	C	100,000	N	I	12–28–93	Indef.
ST94–4719	ONG Transmission Co.	ANR Pipeline Co .	03–14–94	C	20,000	N	I	02–12–94	Indef.
ST94–4720	Tejas Gas Pipeline Co.	Natural Gas P/L Co. of America.	03–14–94	C	3,000	N	I	01–23–94	Indef.
ST94–4721	Channel Industries Gas Co.	Northern Natural Gas Co., et al.	03–14–94	C	75,000	N	I	02–10–93	Indef.
ST94–4722	Transcontinental Gas P/L Corp.	Pennzoil Gas Marketing Co.	03–14–94	G–S	300,000	N	I	03–01–94	Indef.
ST94–4723	Transcontinental Gas P/L Corp.	City of Bessemer .	03–14–94	G–S	750	N	F	03–01–94	02–28–14
ST94–4724	Transcontinental Gas P/L Corp.	City of Blacksburg	03–14–94	G–S	660	N	F	03–01–94	02–28–14
ST94–4725	Transcontinental Gas P/L Corp.	Premier Enterprises Inc.	03–14–94	G–S	30,000	N	I	03–02–94	Indef.
ST94–4726	Transcontinental Gas P/L Corp.	Petro Source Gas Ventures.	03–14–94	G–S	50,000	N	I	03–01–94	Indef.
ST94–4727	Transcontinental Gas P/L Corp.	Bristol and Warren Gas Co.	03–14–94	G–S	1,138	N	F	02–25–94	06–01–08
ST94–4728	Transcontinental Gas P/L Corp.	City of Union	03–14–94	G–S	595	N	F	03–01–94	02–28–14
ST94–4729	Great Lakes Gas Trans. L.P.	Union Gas Limited	03–14–94	G–S	25,000	N	F	03–01–94	03–31–94
ST94–4730	Great Lakes Gas Trans. L.P.	SEMCO Energy Services, Inc.	03–14–94	G–S	25,000	N	F	03–01–94	03–31–94
ST94–4731	K N Interstate Gas Trans. Co.	North Central Oil Corp.	03–14–94	G–S	1,500	N	I	02–03–94	Indef.
ST94–4732	Midwestern Gas Transmission Co.	Tenneco Gas Marketing Co.	03–14–94	G–S	9,900	A	F	03–01–94	Indef.
ST94–4733	Midwestern Gas Transmission Co.	Associated Natural Gas, Inc.	03–14–94	G–S	5,000	N	F	03–01–94	Indef.
ST94–4734	Tennessee Gas Pipeline Co.	North Atlantic Utilities, Inc.	03–14–94	G–S	150	N	F	03–01–94	Indef.
ST94–4735	Tennessee Gas Pipeline Co.	City of Grandview	03–14–94	G–S	472	N	F	03–01–94	Indef.
ST94–4736	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	03–14–94	G–S	8,000	N	F	03–01–94	Indef.
ST94–4737	Tennessee Gas Pipeline Co.	O & R Energy, Inc	03–14–94	G–S	5,000	N	F	03–01–94	Indef.
ST94–4738	Tennessee Gas Pipeline Co.	Atlas Gas Marketing, Inc.	03–14–94	G–S	2,500	N	F	03–01–94	Indef.
ST94–4739	Tennessee Gas Pipeline Co.	Transco Gas Marketing Co.	03–14–94	G–S	37,600	N	F	03–01–94	Indef.
ST94–4740	Tennessee Gas Pipeline Co.	O & R Energy, Inc	03–14–94	G–S	6,541	N	F	03–01–94	Indef.
ST94–4741	Tennessee Gas Pipeline Co.	Eastex Hydrocarbons, Inc.	03–14–94	G–S	10,000	N	F	03–01–94	Indef.
ST94–4742	Tennessee Gas Pipeline Co.	Aquila Energy Marketing Corp.	03–14–94	G–S	737	N	F	03–01–94	Indef.
ST94–4743	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co.	03–14–94	G–S	83,984	N	F	02–01–94	03–31–94
ST94–4744	Panhandle Eastern Pipe Line Co.	Maxus Gas Marketing Co.	03–14–94	G–S	55,000	N	I	12–28–93	12–09–98
ST94–4745	Panhandle Eastern Pipe Line Co.	Premier Gas Co ..	03–14–94	G–S	150,000	N	I	02–01–93	03–31–98
ST94–4746	Panhandle Eastern Pipe Line Co.	Enogex Services Corp.	03–14–94	G–S	98,500	N	I	01–01–94	04–30–98
ST94–4747	Natural Gas P/L Co. of America.	Diamond Shamrock Offshore Part. L.P.	03–14–94	G–S	50,000	N	I	10–01–90	Indef.

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ST94–4748	Tennessee Gas Pipeline Co	Catex Energy, Inc	03–15–94	G–S	10,000	N	F	03–01–94	Indef.
ST94–4749	Line Star Gas Co	Northern Natural Gas Co.	03–15–94	C	30,000	N	I	02–14–94	Indef.
ST94–4750	Williams Natural Gas Co.	Continental Natural Gas, Inc.	03–15–94	G–S	100	N	I	12–01–93	09–30–98
ST94–4751	Williams Natural Gas Co.	Midcon Gas Services.	03–15–94	G–S	10,000	N	I	12–01–93	11–30–03
ST94–4752	Questar Pipeline Co.	Universal Resources Corp.	03–16–94	G–S	5,000	A	I	03–01–94	10–31–94
ST94–4753	Delhi Gas Pipeline Corp.	Arkla Energy Resources, et al.	03–16–94	C	350,000	N	I	02–22–94	Indef.
ST94–4754	Delhi Gas Pipeline Corp.	El Paso Natural Gas Co., et al.	03–16–94	C	9,500	N	I	02–20–94	Indef.
ST94–4755	Noark Pipeline System, L.P.	Southwestern Energy Pipeline Co.	03–16–94	C	25,000	Y	F	01–01–94	Indef.
ST94–4756	Columbia Gas Transmission Corp.	UGI Utilities, Inc ..	03–16–94	B	600	N	I	03–01–94	Indef.
ST94–4757	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	03–16–94	B	4,200	Y	I	03–01–94	Indef.
ST94–4758	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	03–16–94	B	50,000	Y	I	03–01–94	Indef.
ST94–4759	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	03–16–94	B	4,341	Y	I	03–01–94	Indef.
ST94–4760	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	03–16–94	B	3,525	Y	I	03–01–94	Indef.
ST94–4761	Columbia Gas Transmission Corp.	Bethlehem Steel Corp.	03–16–94	B	15,000	N	I	03–01–94	Indef.
ST94–4762	Columbia Gas Transmission Corp.	Bethlehem Steel Corp.	03–16–94	B	11,000	N	I	03–01–94	Indef.
ST94–4763	Columbia Gas Transmission Corp.	Dauphin Manor County Home & Hosp.	03–16–94	B	250	N	I	03–01–94	Indef.
ST94–4764	Columbia Gas Transmission Corp.	Exide Corp	03–16–94	B	2,565	N	I	03–01–94	Indef.
ST94–4765	Columbia Gas Transmission Corp.	Tyson Foods, Inc	03–16–94	B	800	N	I	03–01–94	Indef.
ST94–4766	Columbia Gas Transmission Corp.	Air Products & Chemicals, Inc.	03–16–94	B	600	N	I	03–01–94	Indef.
ST94–4767	Columbia Gas Transmission Corp.	Quaker State Corp.	03–16–94	B	4,100	N	I	03–01–94	Indef.
ST94–4768	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	03–16–94	B	175	N	I	03–01–94	Indef.
ST94–4769	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	03–16–94	B	7,000	N	I	03–01–94	Indef.
ST94–4770	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	03–16–94	B	2,585	N	I	03–01–94	Indef.
ST94–4771	Columbia Gas Transmission Corp.	Columbia Gas Of KY, Inc.	03–16–94	B	20,000	Y	I	03–01–94	Indef.
ST94–4772	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	03–16–94	B	300	N	I	03–01–94	Indef.
ST94–4773	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	03–16–94	B	3,000	N	I	03–01–94	Indef.

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ST94–4774	Columbia Gas Transmission Corp.	Columbia Gas of KY, Inc.	03–16–94	B	600	Y	I	03–01–94	Indef.
ST94–4775	Columbia Gas Transmission Corp.	Columbia Gas of KY, Inc.	03–16–94	B	3,700	Y	I	03–01–94	Indef.
ST94–4776	Columbia Gas Transmission Corp.	Columbia Gas of KY, Inc.	03–16–94	B	425	Y	I	03–01–94	Indef.
ST94–4777	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	03–16–94	B	6,000	Y	I	03–01–94	Indef.
ST94–4778	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	03–16–94	B	8,000	Y	I	03–01–94	Indef.
ST94–4779	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	03–16–94	B	465	Y	I	03–01–94	Indef.
ST94–4780	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	03–16–94	B	11,000	Y	I	03–01–94	Indef.
ST94–4781	Columbia Gas Transmission Corp.	Mountaineer Gas Co.	03–16–94	B	160	N	I	03–01–94	Indef.
ST94–4782	Transok, Inc	ANR Pipeline Co., et al.	03–17–94	C	50,000	N	I	02–19–94	Indef.
ST94–4783	Transok, Inc	ANR Pipeline Co., et al.	03–17–94	C	5,000	N	F	03–01–94	02–28–95
ST94–4784	Mojave Pipeline Co.	Adobe Gas Marketing Co.	03–17–94	G–S	50,000	N	I	03–01–94	03–01–95
ST94–4785	Columbia Gas Transmission Corp.	Southern Gas Co., Inc.	03–17–94	G–S	N/A	N	I	03–10–94	Indef.
ST94–4786	Columbia Gas Transmission Corp.	South Jersey Gas Co.	03–17–94	B	15,000	N	I	03–15–94	Indef.
ST94–4787	Arkla Energy Resources Co.	Celotex Corp	03–17–94	G–S	500	N	F	03–15–94	Indef.
ST94–4788	Colorado Interstate Gas Co.	North Central Oil Corp.	03–17–94	G–S	6,378	N	I	10–01–93	02–01–96
ST94–4789	Colorado Interstate Gas Co.	KN Interstate Gas Transmission Co.	03–17–94	G–S	7,496	N	F	10–01–93	09–30–96
ST94–4790	Colorado Interstate Gas Co.	Cimarron Chemical, Inc.	03–17–94	G–S	12,600	N	F	10–01–93	09–30–08
ST94–4791	Colorado Interstate Gas Co.	Coastal Chem, Inc	03–17–94	G–S	23,220	Y	F	03–01–94	08–31–95
ST94–4792	Transok Gas Transmission Co.	Arkla Energy Resources, et al.	03–18–94	C	20,000	N	I	08–16–93	Indef.
ST94–4793	Noark Pipeline System, L.P.	Texas Eastern Trans. Co., et al.	03–18–94	C	141,000	N	I	09–01–92	Indef.
ST94–4794	Williston Basin Inter. P/L Co.	Union Oil Co. of California.	03–18–94	G–S	15,000	N	I	11–01–93	10–31–03
ST94–4795	Columbia Gas Transmission Corp.	Trigen Baltimore Energy Corp.	03–18–94	G–S	5,640	N	I	03–15–94	Indef.
ST94–4796	Columbia Gas Transmission Corp.	Diversified Energy Co.	03–18–94	G–S	15,000	N	I	03–01–94	Indef.
ST94–4797	Viking Gas Transmission Co.	Cenergy, Inc	03–18–94	G–S	50,000	Y	I	03–01–94	Indef.
ST94–4798	National Fuel Gas Supply Corp.	National Fuel Resources, Inc.	03–18–94	G–S	35,000	Y	I	03–11–94	03–09–14
ST94–4799	National Fuel Gas Supply Corp.	Myers Gas Co	03–18–94	G–S	30	N	I	02–07–94	01–19–99
ST94–4800	National Fuel Gas Supply Corp.	Three Rivers Pipeline.	03–18–94	B	20,000	N	I	03–02–94	02–06–14
ST94–4801	National Fuel Gas Supply Corp.	Hub Services, Inc	03–18–94	G–S	500,000	N	I	02–01–94	01–11–14

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ST94–4802	National Fuel Gas Supply Corp.	Louis Dreyfus Natural Gas Corp.	03–18–94	G–S	30,000	N	I	01–01–94	12–31–14
ST94–4803	National Fuel Gas Supply Corp.	Hub Services, Inc	03–18–94	G–S	50,000	N	I	02–27–94	01–11–14
ST94–4804	National Fuel Gas Supply Corp.	AGF-Direct Gas Sales, Inc.	03–18–94	G–S	1,000	N	I	10–02–93	08–31–13
ST94–4805	National Fuel Gas Supply Corp.	Hub Services, Inc	03–18–94	G–S	500,000	N	I	09–12–93	08–31–13
ST94–4806	National Fuel Gas Supply Corp.	Midland Marketing Corp.	03–18–94	G–S	30,000	N	I	12–11–93	11–30–13
ST94–4807	Channel Industries Gas Co	Transcontinental Gs. P/L Crp., et al.	03–18–94	C	75,000	A	I	02–03–94	Indef.
ST94–4808	Channel Industries Gas Co	Coastal Gas Marketing Co.	03–21–94	G–I	50,000	N	I	02–19–94	Indef.
ST94–4809	Noark Pipeline System, L.P.	Texas Eastern Transmission Corp.	03–21–94	C	141,000	N	I	09–11–92	Indef.
ST94–4810	Columbia Gas Transmission Corp.	Toyota Motor Manufacturing USA, Inc.	03–21–94	G–S	10,000	N	I	03–15–94	Indef.
ST94–4811	Southern Natural Gas Co.	City of Tallahassee.	03–21–94	G–S	10,000	N	I	02–25–94	Indef.
ST94–4812	Southern Natural Gas Co.	Chesapeake Energy Corp.	03–21–94	G–S	10,000	N	I	02–26–94	Indef.
ST94–4813	Southern Natural Gas Co.	Tenngasco Marketing Corp.	03–21–94	G–S	52,000	N	I	03–01–94	Indef.
ST94–4814	Southern Natural Gas Co.	P&P Producing, Inc.	03–21–94	G–S	10,000	N	I	03–11–94	Indef.
ST94–4815	Florida Gas Transmission Co.	Peninsula Energy Services Co.	03–21–94	G–S	10,000	N	I	02–17–94	Indef.
ST94–4816	Sabine Pipe Line Co.	KCS Energy Marketing, Inc.	03–21–94	G–S	4,839	N	F	03–01–94	03–31–94
ST94–4817	Sabine Pipe Line Co.	Midcoast Energy Resources Inc.	03–21–94	B	10,000	N	F	03–01–94	03–31–94
ST94–4818	Algonquin Gas Transmission Co.	Bristol & Warren Gas Co.	03–21–94	G–S	412	N	F	03–01–94	Indef.
ST94–4819	Algonquin Gas Transmission Co.	City of Middleborough.	03–21–94	G–S	34	N	I	03–02–94	Indef.
ST94–4820	Alabama-Tennessee Natural Gas Co.	Burnsville Gas Co	03–21–94	B	205	N	F	09–01–93	11–01–00
ST94–4821	Alabama-Tennessee Natural Gas Co.	Alatenn Energy Marketing Co., Inc.	03–21–94	G–S	559	N	I	11–01–93	12–31–01
ST94–4822	Valero Transmission, L.P.	Northern Natural Gas Co.	03–21–94	C	20,000	N	I	02–17–94	Indef.
ST94–4823	Questar Pipeline Co.	Mitchell Energy Corp.	03–21–94	G–S	22,000	N	I	03–16–94	Indef.
ST94–4824	Transcontinental Gas P/L Corp.	City of Sugar Hill .	03–22–94	G–S	63	N	F	03–02–94	03–01–14
ST94–4825	Transcontinental Gas P/L Corp.	Tuber Oil Co	03–22–94	G–S	150,000	N	I	03–10–94	Indef.
ST94–4826	Northern Illinois Gas Co.	Natural Gas Pipeline, et al.	03–22–94	C	20,000	N	I	02–08–94	02–28–94
ST94–4827	Northern Illinois Gas Co.	Natural Gas Pipeline, et al.	03–22–94	C	10,000	N	I	02–11–94	02–28–94
ST94–4828	Northern Illinois Gas Co.	Natural Gas Pipeline, et al.	03–22–94	C	7,000	N	I	02–18–94	02–28–94
ST94–4829	Tennessee Gas Pipeline Co.	Channel Industries Gas Co.	03–22–94	B	150	A	I	02–23–94	Indef.
ST94–4830	Acadian Gas Pipeline System.	Columbia Gulf Transmission, et al.	03–23–94	C	25,000	N	I	03–08–94	Indef.
ST94–4831	Acadian Gas Pipeline System.	Nat. Gas P/L Co. of America, et al.	03–23–94	C	25,000	N	I	03–05–94	Indef.

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ST94–4832	Arkla Energy Resources Co.	CPS Chemical Co., Inc.	03–23–94	G–S	470	N	F	03–01–94	02–28–95
ST94–4833	Arkla Energy Resources Co.	Coleman Dairy, Inc.	03–23–94	G–S	163	N	F	03–01–94	02–28–95
ST94–4834	Arkla Energy Resources Co.	Hudson Foods, Inc.	03–23–94	G–S	729	N	F	03–01–94	02–28–95
ST94–4835	Gas Co. of New Mexico.	Transwestern Pipeline Co.	03–24–94	G–HT	16,500	N	I	03–01–91	03–31–91
ST94–4836	Gas Co. of New Mexico.	American Processing Maple Taps.	03–24–94	G–HT	4,500	N	I	10–01–91	Indef.
ST94–4837	Gas Co. of New Mexico.	El Paso Natural Gas Co.	03–24–94	G–HT	500	N	I	01–01–91	Indef.
ST94–4838	Gas Co. of New Mexico.	El Paso Natural Gas Co.	03–24–94	G–HT	20,000	N	I	01–01–90	Indef.
ST94–4839	Channel Industries Gas Co.	Mobil Natural Gas	03–24–94	G–I	50,000	N	I	02–26–94	Indef.
ST94–4840	Tennessee Gas Pipeline Co.	Indeck Kirkwood, L.P.	03–24–94	G–S	10,400	N	F	11–01–93	Indef.
ST94–4841	Ozark Gas Transmission System.	Encore Energy, Inc.	03–24–94	G–S	50,000	N	F	03–01–94	Indef.
ST94–4842	Trunkline Gas Co	Polaris Pipeline Corp.	03–24–94	G–S	10,000	N	I	03–01–94	Indef.
ST94–4843	Trunkline Gas Co	Tenneco Gas Marketing Co.	03–24–94	G–S	1,000	N	F	03–01–94	Indef.
ST94–4844	Trunkline Gas Co	Semco Energy Services, Inc.	03–24–94	G–S	103,500	N	I	03–01–94	Indef.
ST94–4845	Trunkline Gas Co	Midland Cogeneration Venture.	03–24–94	G–S	50,000	N	I	03–01–94	Indef.
ST94–4846	Texas Gas Transmission Corp.	Boston Gas Co	03–24–94	G–S	13,280	N	F	12–01–93	Indef.
ST94–4847	Assoc. Louisiana Intra. P L Co.	Southern Natural Gas Co., et al.	03–25–94	C	70,000	N	I	03–01–94	Indef.
ST94–4848	Natural Gas P/L Co. of America.	Texaco Gas Marketing, Inc.	03–25–94	G–S	100,000	N	I	10–01–90	Indef.
ST94–4849	Natural Gas P/L Co. of America.	Catex Energy, Inc	03–25–94	G–S	50,000	N	F	03–01–94	02–28–95
ST94–4850	Natural Gas P/L Co. of America.	Chevron U.S.A., Inc.	03–25–94	G–S	80,000	N	I	10–01–90	Indef.
ST94–4851	Columbia Gulf Transmission Co.	Torch Energy Marketing, Inc.	03–25–94	C–S	50,000	N	I	03–01–94	Indef.
ST94–4852	Columbia Gulf Transmission Co.	Union Oil Co. of California.	03–25–94	G–S	10,000	N	F	03–01–94	10–31–94
ST94–4853	Columbia Gulf Transmission Co.	Marathon Oil Co ..	03–25–94	G–S	7,000	N	I	03–01–94	Indef.
ST94–4854	Columbia Gulf Transmission Co.	Northern Natural Gas Co.	03–25–94	G	35,000	N	F	03–01–94	04–30–95
ST94–4855	Columbia Gulf Transmission Co.	Tennessee Gas Pipeline Co.	03–25–94	G	12,288	N	F	03–01–94	01–10–95
ST94–4856	Columbia Gulf Transmission Co.	Texaco Gas Marketing, Inc.	03–25–94	G–S	25,000	N	F	03–01–94	10–31–94
ST94–4857	Texas Eastern Transmission Corp.	Endevco Oil & Gas Co.	03–25–94	G–S	20,000	N	I	02–28–94	03–31–94
ST94–4858	Tennessee Gas Pipeline Co.	Oak Ridge Utility District.	03–25–94	G–S	7,283	N	F	11–01–93	Indef.
ST94–4859	Tennessee Gas Pipeline Co.	Direct Gas Supply Corp.	03–25–94	G–S	3,438	N	F	03–16–94	Indef.
ST94–4860	El Paso Natural Gas Co.	Atlantic Richfield Co.	03–25–94	G–S	30,000	N	I	03–01–94	Indef.
ST94–4861	Transwestern Pipeline Co.	Richardson Products Co.	03–25–94	G–S	25,000	N	F	03–01–94	03–31–94
ST94–4862	Transwestern Pipeline Co.	Richardson Products Co	03–25–94	G–S	7,070	N	F	03–01–94	03–31–94

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94-4863	Transwestern Pipeline Co.	Cibola Corp	03-25-94	G-S	5,125	N	F	03-01-94	04-30-94
ST94-4864	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	03-25-94	G-S	750,000	A	I	02-25-94	Indef.
ST94-4865	Transwestern Pipeline Co.	Conoco Inc	03-25-94	G-S	20,000	N	F	03-01-94	10-31-96
ST94-4866	Transwestern Pipeline Co.	CPM Gas Corp	03-25-94	G-S	7,500	N	F	03-01-94	03-31-94
ST94-4867	Transwestern Pipeline Co.	Enron Gas Marketing, Inc	03-25-94	G-S	17,140	A	F	03-01-94	03-31-94
ST94-4868	Transwestern Pipeline Co.	Valero Gas Marketing, L.P.	03-25-94	G-S	4,290	N	F	03-01-94	03-31-94
ST94-4869	Transwestern Pipeline Co.	US Gas Transportation.	03-25-94	G-S	5,140	N	F	03-01-94	03-31-94
ST94-4870	Transwestern Pipeline Co.	Tristar Gas Marketing Co	03-25-94	G-S	3,420	N	F	03-01-94	03-31-94
ST94-4871	Transwestern Pipeline Co.	NGC Transportation, Inc.	03-25-94	G-S	15,430	N	F	03-01-94	03-31-94
ST94-4872	Transwestern Pipeline Co.	Valero Gas Marketing, L.P.	03-25-94	G-S	20,360	N	F	03-01-94	03-31-94
ST94-4873	Transwestern Pipeline Co.	Enogex Services Corp.	03-25-94	G-S	1,040	N	F	03-01-94	03-31-94
ST94-4874	Transwestern Pipeline Co.	Tristar Gas Marketing Co.	03-25-94	G-S	37,830	N	F	03-01-94	03-31-94
ST94-4875	Transwestern Pipeline Co	NGC Transportation, Inc.	03-25-94	G-S	31,530	N	F	03-01-94	03-31-94
ST94-4876	Transwestern Pipeline Co.	Clayton Williams Energy, Inc.	03-25-94	G-S	3,150	N	F	03-01-94	03-31-94
ST94-4877	Transwestern Pipeline Co	Anthem Energy Co., L.P.	03-25-94	G-S	75,000	N	I	03-01-94	Indef.
ST94-4878	Valero Transmission, L.P	Florida Gas Transmission Co.	03-28-94	C	5,000	N	I	03-01-94	Indef.
ST94-4879	Valero Transmission, L.P	Transwestern Pipeline Co	03-28-94	C	25,000	N	I	03-08-94	Indef.
ST94-4880	Transtexas Pipeline.	Florida Gas Transmission Co.	03-28-94	C	4,319	N	I	03-02-94	Indef.
ST94-4881	ONG Transmission Co	Transok, Inc	03-28-94	C	10,000	N	I	09-08-93	Indef.
ST94-4882	Transcontinental Gas P/L Corp	Transco Energy Marketing Co	03-28-94	G-S	500,000	A	I	03-18-94	Indef.
ST94-4883	National Fuel Gas Supply Corp	Utility-2000 Energy Corp.	03-28-94	G-S	70,000	N	I	03-18-94	02-28-14
ST94-4884	National Fuel Gas Supply Corp.	Hub Services, Inc	03-28-94	G-S	500,000	N	I	02-27-94	01-11-14
ST94-4885	National Fuel Gas Supply Corp.	Songer Gas Co	03-28-94	G-S	100	N	I	01-16-94	01-15-14
ST94-4886	National Fuel Gas Supply Corp	Songer Gas Co	03-28-94	G-S	500	N	I	01-16-94	01-15-95
ST94-4887	Florida Gas Transmission Co.	O & R Energy, Inc	03-28-94	G-S	100,000	N	I	02-25-94	Indef.
ST94-4888	Florida Gas Transmission Co.	Oryx Gas Marketing, L.P.	03-28-94	G-S	100,000	N	I	02-24-94	Indef.
ST94-4889	Panhandle Eastern Pipe Line Co.	North Atlantic Utilities	03-28-94	G-S	20,000	N	I	03-01-94	04-30-98
ST94-4890	Panhandle Eastern Pipe Line Co.	Arkla Energy Marketing Co	03-28-94	C-S	150,000	N	I	03-02-94	02-01-98
ST94-4891	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co.	03-28-94	G-S	25,000	N	I	03-05-94	04-30-98
ST94-4892	Panhandle Eastern Pipe Line Co.	Consumers Gas Co., Ltd.	03-28-94	G-S	20,000	N	F	03-01-94	10-31-94
ST94-4893	Panhandle Eastern Pipe Line Co.	Triumph Gas Marketing Co.	03-28-94	G-S	100,000	N	I	03-01-94	04-30-98

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94-4894	Panhandle Eastern Pipe Line Co.	Princeton Natural Gas Co.	03-28-94	G-S	10,000	N	I	03-01-94	01-31-99
ST94-4895	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	03-28-94	C	5,000	N	I	06-01-93	Indef.
ST94-4896	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	03-28-94	C	25,000	N	I	06-04-93	Indef.
ST94-4897	Montana Power Co.	Colorado Interstate Gas Co.	03-29-94	C	10,000	N	I	02-01-93	10-31-02
ST94-4898	Montana Power Co.	Williston Basin Inter. Pipeline Co.	03-29-94	C	20,000	N	I	12-17-92	12-31-99
ST94-4899	Montana Power Co.	Colorado Interstate Gas Co.	03-29-94	C	10,000	N	I	12-22-92	12-31-99
ST94-4900	Montana Power Co.	Colorado Interstate Gas Co.	03-29-94	C	20,000	N	I	03-01-93	10-31-02
ST94-4901	Montana Power Co.	Colorado Interstate Gas Co.	03-29-94	C	10,000	N	I	05-01-93	10-31-02
ST94-4902	Montana Power Co.	Colorado Interstate Gas Co.	03-29-94	C	32,000	N	I	08-01-93	10-31-02
ST94-4903	Montana Power Co.	Northern Natural Gas Co.	03-29-94	C	5,000	N	I	07-01-93	03-31-99
ST94-4904	Montana Power Co.	Colorado Interstate Gas Co.	03-29-94	C	32,000	N	I	09-01-93	10-31-02
ST94-4905	Delhi Gas Pipeline Corp.	Transwestern P/L Co., et al.	03-29-94	C	5,000	N	I	05-05-94	Indef.
ST94-4906	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	03-29-94	C	10,000	N	I	03-02-94	Indef.
ST94-4907	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	03-29-94	C	5,000	N	I	03-06-94	Indef.
ST94-4908	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	03-29-94	C	20,000	N	I	03-01-94	Indef.
ST94-4909	Texas Eastern Transmission Corp.	United Cities Gas Co.	03-29-94	G-S	10,000	N	I	03-09-94	01-31-95
ST94-4910	Oktex Pipeline Co	Ong Western, Inc	03-29-94	G-S	5,000	N	I	05-06-93	Indef.
ST94-4911	Oktex Pipeline Co	Equitable Resources Marketing Co.	03-29-94	G-S	50,000	N	I	09-01-93	Indef.
ST94-4912	Texas Eastern Transmission Corp.	Polaris Corp	03-29-94	G-S	25,200	N	I	03-31-94	Indef.
ST94-4913	Natural Gas P/L Co. of America.	Arcadian Corp	03-29-94	G-S	5,000	N	I	03-01-94	03-31-94
ST94-4914	Natural Gas P/L Co. of America.	Pegasus Energy Corp.	03-29-94	G-S	30,000	N	I	03-03-94	Indef.
ST94-4915	CNG Transmission Corp	Energy Sales Co	03-29-94	G-S	2,000	N	I	03-09-94	04-22-94
ST94-4916	CNG Transmission Corp.	Global Petroleum Corp.	03-29-94	G-S	30,000	N	I	03-15-94	04-30-94
ST94-4917	CNG Transmission Corp.	Columbia Gas of Ohio, Inc.	03-29-94	G-S	675	N	F	03-13-94	03-31-99
ST94-4918	CNG Transmission Corp.	Bristol & Warren Gas.	03-29-94	G-S	537	N	F	03-14-94	04-30-94
ST94-4919	CNG Transmission Corp.	Volunteer Energy	03-29-94	G-S	15,000	N	I	03-14-94	04-30-94
ST94-4920	CNG Transmission Corp.	Eastern Marketing Corp.	03-29-94	G-S	100,000	N	I	03-08-94	04-30-94
ST94-4921	CNG Transmission Corp	Equitable Resources Marketing.	03-29-94	G-S	200,000	N	I	02-24-94	04-30-94
ST94-4922	Williston Basin Inter. P/L Co.	Exxon Corp	03-29-94	G-S	310	A	I	03-01-94	03-11-95
ST94-4923	CNG Transmission Corp.	Energy Sales Co	03-29-94	G-S	2,000	N	I	03-09-94	04-22-94
ST94-4924	Channel Industries Gas Co.	Tennessee Gas Pipeline Co.	03-30-94	C	100,000	N	I	02-02-94	Indef.

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–4925	Transok Gas Transmission Co.	ANR Pipeline Co., et al.	03–30–94	C	12,000	N	I	08–01–93	Indef.
ST94–4926	Natural Gas P/L Co. of America.	Texaco Gas Marketing Inc.	03–30–94	G–S	15,000	N	F	03–01–94	02–28–95
ST94–4927	Tennessee Gas Pipeline Co.	NGO Development Corp.	03–30–94	G–S	5,000	N	I	03–01–94	Indef.
ST94–4928	Tennessee Gas Pipeline Co.	Interstate Gas Marketing Inc.	03–30–94	G–S	12,000	N	F	03–01–94	Indef.
ST94–4929	Tennessee Gas Pipeline Co.	O & R Energy Inc	03–30–94	G–S	5,000	N	F	03–01–94	Indef.
ST94–4930	Tennessee Gas Pipeline Co.	Enron Gas Marketing Inc.	03–30–94	G–S	14,000	N	F	03–01–94	Indef.
ST94–4931	Tennessee Gas Pipeline Co.	National Gas Resources, L.P.	03–30–94	G–S	20,202	N	I	03–01–94	Indef.
ST94–4932	Tennessee Gas Pipeline Co.	Gasco, Inc	03–30–94	G–S	10,000	N	F	03–01–94	Indef.
ST94–4933	Tennessee Gas Pipeline Co.	Enron Gas Marketing, Inc.	03–30–94	G–S	14,100	N	F	03–01–94	Indef.
ST94–4934	Tennessee Gas Pipeline Co.	O & R Energy Inc	03–30–94	G–S	5,000	N	F	03–01–94	Indef.
ST94–4935	Tennessee Gas Pipeline Co.	Imco Recycling	03–30–94	G–S	2,100	N	F	03–15–94	Indef.
ST94–4936	Tennessee Gas Pipeline Co.	Connecticut Natural Gas Corp.	03–30–94	G–S	15,000	N	F	03–01–94	Indef.
ST94–4937	Midwestern Gas Transmission Co.	Associated Natural Gas Inc.	03–30–94	G–S	21,661	N	F	03–01–94	Indef.
ST94–4938	Northern Natural Gas Co.	Aurora Natural Gas and Assoc. Prod.	03–30–94	G–S	5,000	N	F	01–04–94	Indef.
ST94–4939	Iriquois Gas Transmission Sys.	Connecticut Natural Gas Corp.	03–30–94	G–S	5,154	N	F	03–01–94	04–01–94
ST94–4940	Iroquois Gas Transmission Sys.	New England Power Co.	03–30–94	G–S	30,355	N	F	03–02–94	04–01–94
ST94–4941	Iroquois Gas Transmission Sys.	Direct Gas Supply/Iesco, Inc.	03–30–94	G–S	9,931	N	F	03–01–94	04–01–94
ST94–4942	Iroquois Gas Transmission Sys.	Continental Energy Marketing, Inc.	03–30–94	G–S	10,221	N	F	03–01–94	04–01–94
ST94–4943	Iroquois Gas Transmission Sys.	Connecticut Natural Gas Corp.	03–30–94	G–S	8,408	N	F	03–02–94	04–10–94
ST94–4944	Panhandle Eastern Pipe Line Co.	Lebanon Chemical.	03–31–94	G–S	100	N	I	05–01–93	04–30–98
ST94–4945	Panhandle Eastern Pipe Line Co.	Direct Gas Supply Corp.	03–31–94	G–S	20,000	N	I	11–04–93	04–30–98
ST94–4946	Panhandle Eastern Pipe Line Co.	Michigan Gas Utilities.	03–31–94	G–S	15,000	N	F	11–01–93	10–31–98
ST94–4947	Panhandle Eastern Pipe Line Co.	Tristar Gas Marketing Co.	03–31–94	G–S	30,000	N	I	11–17–93	04–30–98
ST94–4948	Panhandle Eastern Pipe Line Co.	Big Co	03–31–94	G–S	200	N	I	05–01–93	04–30–94
ST94–4949	Panhandle Eastern Pipe Line Co.	GPM Gas Corp ...	03–31–94	G–S	9,000	N	I	05–01–93	04–30–98
ST94–4950	Panhandle Eastern Pipe Line Co.	Southeastern Michigan Gas.	03–31–94	G–S	38,133	N	F	02–01–94	10–31–97
ST94–4951	Panhandle Eastern Pipe Line Co.	Arcadian Partners, L.P.	03–31–94	G–S	6,500	N	F	02–01–94	10–31–94

Docket number[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	AFF. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–4952	Panhandle Eastern Pipe Line Co.	National Steel Corp.	03–31–94	G–S	17,161	N	F	02–15–94	03–31–95
ST94–4953	Trunkline Gas Co	North Canadian Marketing Corp.	03–31–94	G–S	155,250	N	I	03–03–94	Indef.
ST94–4954	Trunkline Gas Co	Unigas Energy, Inc.	03–31–94	G–S	103,500	N	I	03–01–94	Indef.
ST94–4955	Enogex Inc	Panhandle Eastern Pipe Line Co.	03–31–94	C	10,000	N	I	03–11–94	Indef.
ST94–4956	Arkla Energy Resources Co.	Princeton Natural Gas Co.	03–31–94	G–S	25,000	N	I	02–01–94	Indef.
ST94–4957	Tennessee Gas Pipeline Co.	National Fuel Gas Distribution Co.	03–31–94	G–S	25,000	N	I	03–01–94	Indef.
ST94–4958	Midwestern Gas Transmission Co.	National Gas Resources, L.P.	03–31–94	G–S	20,000	N	F	03–01–94	Indef.
ST94–4959	Channel Industries Gas Co.	Seagull Marketing Services, Inc.	03–31–94	G–I	50,000	N	I	03–01–94	Indef.
ST94–4960	Channel Industries Gas Co.	Tennessee Gas Pipeline Co., et al.	03–31–94	C	50,000	Y	I	03–30–94	Indef.
ST94–4961	Channel Industries Gas Co.	Amerada Hess Corp.	03–31–94	G–I	50,000	N	I	03–04–94	Indef.
ST94–4962	ONG Transmission Co.	Caprock Pipeline	03–31–94	C	50,000	N	I	03–12–94	Indef.
ST94–4963	Channel Industries Gas Co.	Tennessee Gas Pipeline Co., et al.	03–31–94	C	50,000	Y	I	03–05–94	Indef.
ST94–4964	Chandeleur Pipe Line Co.	Associated Natural Gas, Inc.	03–31–94	K–S	30,000	N	I	02–26–94	Indef.
ST94–4965	Sabine Pipe Line Co.	Arkla Energy Marketing Co.	03–31–94	G–S	100,000	N	I	02–01–94	Indef.
ST94–4966	Sabine Pipe Line Co.	GEDI Inc	03–31–94	G–S	30,000	N	I	02–01–94	Indef.
ST94–4967	Sabine Pipe Line Co.	American Hunter Energy.	03–31–94	G–S	50,000	N	I	02–01–94	Indef.
ST94–4968	Sabine Pipe Line Co.	Appalachian Gas Sales.	03–31–94	G–S	50,000	N	I	02–01–94	Indef.
ST94–4969	Algonquin Gas Transmission Co.	New Jersey Natural Gas.	03–31–94	B	1,221	N	F	03–03–94	Indef.

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with Order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85.

[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.

[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 94–13071 Filed 5–31–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP93–99–000]

Colorado Interstate Gas Company; Informal Settlement Conference

May 25, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, June 7, 1994, at 10 a.m., at the offices of the Federal Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of discussing settlement in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervener status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Lorna J. Hadlock at (202) 208–0737.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13266 Filed 5–31–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–187–000, et al.]

Equitrans, Inc.; Informal Settlement Conference

May 25, 1994.

Take notice that an informal conference will be convened in this proceeding on Thursday, June 2, 1994, at 10 a.m., for the purpose of exploring the possible settlement of the above-referenced docket. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a

party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis J. Alpert at (202) 208–0783 or Arnold H. Meltz at (202) 208–2161.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13267 Filed 5-31-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-248-000]

K N Interstate Gas Transmission Co.; Waiver of Tariff Provision

May 25, 1994

Take notice that on May 13, 1994, K N Interstate Gas Transmission Co., (KNI), tendered for filing its request for a one-time waiver of compliance with FERC Gas Tariff, Second Revised Volume No. 1–B, Sheet No. 21, Section 15, "Fuel And Loss Reimbursement."

KNI states that the tariff provision would require KNI to file a revised fuel and loss reimbursement percentage on June 1, 1994 (to be effective July 1, 1994) based on only three months: October, November, and December of 1993. KNI states that a filing based on only three months of data would incorrectly represent the fuel and loss reimbursement percentages for 1994 by presenting an inaccurate and incomplete picture. KNI argues that at least twelve months of data are necessary to accurately revise the fuel and loss reimbursement percentage.

KNI respectfully requests that the Commission grant a one-time waiver of Section 15 "Fuel and Loss Reimbursement" to allow the filing of this annual report to take place on June 1, 1995. KNI states that the granting of such relief, on a one-time basis, will enable KNI to make its first yearly filing based on fifteen months of actual, historical fuel and loss reimbursement data (October 1993–December 1994) rather than on three-months of data (October–December 1993).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 2, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13268 Filed 5-31-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT94-44-000]

Trunkline Gas Company; Proposed Changes in FERC Gas Tariff

May 25, 1994

Take notice that on May 20, 1994 Trunkline Gas Company (Trunkline) tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 as listed on Appendix No. 1 attached to the filing. Trunkline proposes that the revised tariff sheets listed on Appendix No. 1 become effective September 1, 1993, November 1, 1993, December 1, 1993, January 1, 1994, February 1, 1994, March 1, 1994, April 1, 1994, April 15, 1994, and May 1, 1994, respectively.

Trunkline states that this filing is being made in compliance with Section 154.4(b) of the Commission's Regulations. The revised tariff sheets reflect updates to the Index of Firm Customers and the addition of this section to the Table of Contents in Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that copies of this filing are being mailed to all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 2, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to be proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois C. Cashell,

Secretary

[FR Doc. 94-13265 Filed 5-31-94; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2402-003, Michigan]

Upper Peninsula Power Company; Notice of 10(j) Meeting

May 25, 1994.

a. *Date and Time of Meeting*: June 8, 1994 at 9 am to 3 pm

b. *Place*: MI State Library & Historical Museum, 4th Floor, 717 West Allegan (Downtown), Lansing, MI 48918, (517) 373–0510.

c. *FERC Contact*: CarLisa Linton (202) 219–2802, Ed Lee (202) 219–2809.

d. *Purpose of the Meeting*: The Federal Energy Regulatory Commission, the Michigan Department of Natural Resources, and the Department of the Interior intend to have a Section 10(j) discussion and negotiation for the Prickett Hydro Project No. 2402.

e. *Proposed Agenda*: A. Introduction; Recognition of meeting participants, Teleconference procedures; B. Section 10(j) issues discussions; C. Section 10(j) negotiations; D. Issues outside of 10(j) discussion; and, E. Follow up actions.

f. All local, state and Federal agencies, Indian Tribes, and interested parties, are hereby invited to attend this meeting as participants. Questions should be directed to Messrs. Linton and Lee at the numbers listed above.

Lois D. Cashell,

Secretary

[FR Doc. 94-13263 Filed 5-31-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-550-000]

Washington Natural Gas Company, as Project Operator; Application

May 25, 1994.

Take notice that on May 17, 1994, Washington Natural Gas Company, as Project Operator of the Jackson Prairie Storage Project (Applicant), 815 Mercer Street, Seattle, Washington 98109, filed an abbreviated application pursuant to section 7(c) of the Natural Gas Act and Part 157.7(a) of the Commission's Regulations under the Natural Gas Act for a certificate of public convenience and necessity authorizing the further testing and development of an under ground reservoir for the possible storage of gas in the Jackson Prairie Project located in Lewis County, Washington, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that the Jackson Prairie Storage Project is an aquifer type storage facility which provides the storage capacity under existing authorizations to enable Northwest Pipeline Corporation (Northwest) to provide a winter season peaking service for its customers under Rate Schedules SGS–1, SGS–2 and SGS–21 in its FERC Gas Tariff, Third Revised Volume No. 1. Applicant further states that the Storage Project is connected to Northwest's mainline in Lewis County, near Chehalis, Washington, and Applicant receives gas from Northwest at the interconnection, transports the gas through the Project facilities, stores the gas in the Project and withdraws the gas on instructions from Northwest and transports the gas and returns it to Northwest at the interconnection.

Applicant further states that the Storage Project is owned in joint and equal individual interest by Washington Natural Gas Company (Washington Natural), The Washington Water Power Company and Northwest. It is said that, pursuant to agreement among the owners, Washington Natural acts as Project Operator, that the Federal Power Commission certificated Washington Natural as Project Operator in its representative capacity to operate the Storage Project (Opinion No. 620: 47 FPC 1527 (1972)) and the Storage Project is operated pursuant to a Gas Storage Project Agreement which is on file with the Commission as Washington Natural's Rate Schedule S–1 in its FERC Gas Tariff, Original volume No. 1.

Applicant seeks authorization to conduct up to a two-year program, for further testing and development of Zone 9 in the Jackson Prairie Storage Project. The testing and development proposal will include the drilling of two new wells (an observation well and an injection/withdrawal well) and related facilities at a cost of $950,000, and injection of 3.0 Bcf of cushion gas at a cost of $6,000,000. Also, the Applicant requests authority to temporarily install and subsequently remove, a 600 HP rental compressor in order to expedite the injection process. Applicant states that the total projected cost of the testing program is $7,163,000. Further, Applicant requests expeditious approval of said application in order to allow for a prompt determination of the possibilities for full development of the Zone 9 reservoir. Applicant states that development of additional storage capacity may help meet the growing gas demand in the Pacific Northwest, and thus, prompt commencement of the testing program is in the public interest.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 15, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed construction and operations are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary

[FR Doc. 94-13264 Filed 5-31-94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4889-5]

Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) for authorization to disclose Superfund confidential business information ("CBI") which has been submitted to EPA Region 2; Emergency and Remedial Response Division to the following contractor: TRC Environmental Corp. ("TRC") of New York, New York (referred to hereinafter as "Contractor"); and to the following subcontractor: DynCorp Viar of Alexandria, Virginia (referred to hereinafter as "Subcontractor"). TRC's principal offices are located at 291 Broadway, suite 1206, New York, New York 10007. DynCorp Viar's principal offices are located at 300 North Lee Street, Alexandria, Virginia 22314–2695.

FOR FURTHER INFORMATION CONTACT: Leslie Peterson, Program Support Branch, Emergency and Remedial Response Division, Environmental Protection Agency, Region 2, 26 Federal Plaza, New York, New York 10278. Telephone (212) 264–9251.

NOTICE OF REQUIRED DETERMINATIONS, CONTRACT PROVISIONS AND OPPORTUNITY TO COMMENT: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, (commonly known as "Superfund") requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300, also require the maintenance of many other records, including those relevant to cost recovery. EPA, Region 2, has entered into Contract No. 68–W4–0020 with TRC for management of these records. Pursuant to Contract No. 68–W4–0020, DynCorp Viar has entered into a subcontract with TRC under Work Assignment No. 003–RECD pursuant to which DynCorp Viar provides information management support services to EPA, Region 2. EPA, Region 2, has determined that disclosure of CBI to employees of the above Contractor and Subcontractor is necessary in order that the Contractor and Subcontractor may carry out the work required by the above contract and subcontract with EPA. The contract and subcontract complies with the requirements of 40 CFR 2.301(h)(ii). EPA, Region 2, requires that each employee of the Contractor and Subcontractor who will have access to CBI sign a written agreement that he or she (1) Will use the information only for the purpose of carrying out the work required by the contract or subcontract, (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information (and any abstracts or extracts therefrom) is no longer required by the Contractor or Subcontractor for

performance of the work required by the contract or subcontract, or upon completion of the contract or subcontract. These non-disclosure statements shall be maintained on file with the EPA, Region 2, Regional Project Officer.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii). Comments should be sent to: Environmental Protection Agency, Region 2, Attention: Leslie Peterson, 26 Federal Plaza, Room 759, New York, New York 10278.

Dated: May 4, 1994

George Pavlou,

Acting Director, Emergency and Remedial Response Division.

[FR Doc. 94-13186 Filed 5-31-94; 8:45 am]

BILLING CODE 6560-60-M

[OPP-00381; FRL-4870-7]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Water Quality & Pesticide Disposal; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Water Quality and Pesticide Disposal will hold a 2-day meeting, beginning on Monday, June 6, 1994, and ending on Tuesday, June 7, 1994. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG Working Committee on Water Quality and Pesticide Disposal will meet on Monday, June 6, 1994, from 8:30 a.m. to 5:00 p.m., and Tuesday, June 7, 1994, from 8:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at: The DoubleTree Hotel, National Airport - Crystal City, 300 Army-Navy Drive, Arlington, VA, 22202, 703-892-4100.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley M. Howard, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1109, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-305-7164.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee on Water Quality and Pesticide Disposal includes the following:

1. Reports from the SFIREG Working Committee members on State Water Quality and Pesticide Disposal Projects.
2. Update on Ground Water Conference in Atlanta, Georgia.
3. Discussion of Surface Water Monitoring.
4. Update on the Michigan Waste Pesticide Collection Program.
5. Status of Ground Water Issues Resolution Process.
6. Update on Ground Water Policy Committee Meeting.
7. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: May 25, 1994.

Allan S. Abramson,

Director, Field Operations Division, Office of Pesticide Programs.

[FR Doc. 94-13430 Filed 5-31-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 24, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3221 NEOB, Washington, DC 20503, (202) 395-3561.

OMB Number: 3060-0085

Title: Employment Inquiry

Form Number: FCC Form 65

Action: Revision of a currently approved collection

Respondents: Individuals or households and businesses or other for-profit

Frequency of Response: On occasion reporting requirement

Estimated Annul Burden: 600 responses; .25 hours average buden for response; 150 hours total annual burden

Needs and Uses: FCC Form 65 is used when obtaining references from former supervisors, co-workers, and other personal references furnished by an applicant for employment at the FCC. This is a long-term, standard practice for public and private employees. Reference contacts are made by personnel assistants and specialists. Contacts may be made by telephone, with responses recorded on the FCC Form 65, or by mailing the form to the reference source (furnished by the applicant), along with an addressed, franked envelope. The reference information is used by selecting officials to ensure that an applicant has an acceptable prior work history.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 94-13259 Filed 5-31-94; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 2012]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

May 25, 1994.

Petitions for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857-3800. Opposition to this petition must be filed June 16, 1994. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (MM Docket No. 92-266). Number of Petitions filed: 7.

Subject: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation (MM Docket No. 93-215) and Adoption of Uniform Accounting System for Provision of Regulated Cable Service. (CS Docket No. 94-28). Number of Petitions Filed: 6.

Subject: Implementation of Sections 3(n) and 332 of the Communications Act. Regulatory Treatment of Mobile Services. (GN Docket No. 93-252). Number of Petitions Filed: 15.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 94-13206 Filed 5-31-94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

Clearinghouse on Election Administration; Meeting

In accordance with the provisions of the Federal Advisory Committee Act (5

U.S.C. App. I) and Office of Management and Budget Circular A–63, as revised, the Federal Election Commission announces the following Advisory Panel meeting:

Name: Federal Election Commission Clearinghouse Advisory Panel
Date: 19–21 June 1994
Place: Westin La Paloma, 3800 E Sunrise, Tucson, AZ
Time: 1500–1730 on 19 June 1994; 0830–1200; 1330–1700 on 20 June 1994; and 0830–1230; 1400–1630 on 21 June 1994
Proposed Agenda: Leadership in Turbulent & Chaotic Environments; North American Conference on Elections; National Voter Registration Act: The Status of Commission Efforts; Retention of Election Records; Building Consensus for Effective Agency Registration; Advanced Technologies: Public and Private Perspectives on Telephone Voting; Experiences with All Mail Ballot Elections; Implementing Federal Bilingual Provisions.
Purpose of the Meeting: The Panel will present their views on problems in the administration of Federal elections, and formulate recommendations to the Federal Election Commission Clearinghouse for its future program development.

The Advisory Panel meeting is open to the public, dependent on available space. There is an $125.00 registration fee for food functions. Any member of the public may file a written statement with the Panel before, during or after the meeting. To the extent that time permits, the Panel Chairman may allow public presentation or oral statements at the meeting.

All communications regarding the Advisory Panel should be addressed to Penelope Bonsall, National Clearinghouse on Election Administration, Federal Election Commission, 999 E Street NW., Washington, DC 20463.

Dated: May 26, 1994.

Marjorie W. Emmons,

Secretary to the Commission.

[FR Doc. 94–13252 Filed 5–31–94; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

BACKGROUND: Notice is hereby given of the submission of proposed information collection to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy of the proposed information collection and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATES: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202/452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551. Milo Sunderhauf, OMB Desk Officer (202/395-7316), Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3001, Washington, DC 20503.

Request for OMB approval to extend, without revision, the following report:

1. *Report title:* Reports of Condition and Income
Agency form number: FFIEC 031-034
OMB Docket number: 7100-0036
Frequency: Quarterly
Reporters: State member banks
Annual reporting hours: 166,042
Estimated average hours per response: 42.1
Number of respondents: 986
Small businesses are affected.

General description of report:

This information collection is mandatory (12 U.S.C. 324) and is given partial confidential treatment.

SUMMARY: On a quarterly basis, state member banks are required to file detailed schedules of assets, liabilities, and capital in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes.

Board of Governors of the Federal Reserve System, May 25, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-13254 Filed 5-31-94; 8:45 am]

BILLING CODE 6210-01-F

Agency Forms Under Review

BACKGROUND: Notice is hereby given of the submission of proposed information collection to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATES: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202/452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551. Milo Sunderhauf, OMB Desk Officer (202/395-7316), Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3001, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Request for OMB approval to extend, without revision, the following report:

1. *Report title:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks
Agency form number: FFIEC 002
OMB Docket number: 7100-0032
Frequency: Quarterly
Reporters: U.S. branches and agencies of foreign banks
Annual reporting hours: 44,045
Estimated average hours per response: 19.15
Number of respondents: 575
Small businesses are affected.

General description of report:

This information collection is mandatory [12 U.S.C. 3105 (b)(2), 1817(a)(1) and (3), and 3102(b)] and is given partial confidential treatment [5 U.S.C. 552(b)(8)].

On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This balance sheet information is used to fulfill the

supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy purposes. The report is collected and processed by the Federal Reserve on behalf of all three federal bank regulatory agencies.

Board of Governors of the Federal Reserve System, May 25, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-13255 Filed 5-31-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Enforcement policy statement On Food Advertising

AGENCY: Federal Trade Commission.

ACTION: Enforcement policy statement.

SUMMARY: On May 13, 1994, the Federal Trade Commission ("the Commission") placed on the public record an enforcement policy statement to provide guidance regarding its enforcement policy with respect to the use of nutrient content and health claims in food advertising. The Commission believes the statement is appropriate in light of the passage of the Nutrition Labeling and Education Act of 1990 (NLEA), and the Food and Drug Administration's issuance of food labeling regulations implementing the NLEA. The NLEA applies only to labeling and did not change the FTC's statutory authority to prohibit deceptive acts or practices under sections 5 and 12 of the Federal Trade Commission Act. Nevertheless, in light of the comprehensive regulatory scheme established for food labeling by the NLEA, the Commission is issuing this statement to clarify how it will enforce its own statutes in the food advertising area in light of issues raised by FDA's food labeling regulations.

EFFECTIVE DATE: May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Anne V. Maher, (202) 326–2987, Michelle Rusk, (202) 326–3148, or Maureen Enright, (202) 326–3160, Division of Advertising Practices, Federal Trade Commission, 6th & Pennsylvania Ave. NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

ENFORCEMENT POLICY STATEMENT ON FOOD ADVERTISING

I. Introduction

The Federal Trade Commission (FTC) is issuing this statement to provide guidance regarding its enforcement policy with respect to the use of nutrient content and health claims in food advertising. The Commission believes the statement is appropriate in light of the passage of the Nutrition Labeling and Education Act of 1990 (NLEA),[1] and the Food and Drug Administration's (FDA) January 6, 1993, issuance of food labeling regulations implementing the NLEA.[2]

The FTC, FDA, and USDA share jurisdiction over claims made by manufacturers of food products pursuant to a regulatory scheme established by Congress through complementary statutes. Section 5 of the Federal Trade Commission Act (FTC Act) (hereinafter "section 5") prohibits "unfair or deceptive acts or practices," and, in the case of food products, sections 12 and 15 of the FTC Act prohibit "any false advertisement" that is "misleading in a material respect."[3] FDA's authority is embodied in part in section 403(a) of the Federal Food, Drug, and Cosmetic Act (FDCA) which prohibits "labeling [that] is false or misleading in any particular."[4] Since 1954, the FTC and the FDA have operated under a Memorandum of Understanding,[5] under which the Commission has assumed primary responsibility for regulating food advertising, while FDA has taken primary responsibility for regulating food labeling.[6]

The NLEA amended section 403 of the FDCA and effected broad changes in the regulation of nutrition claims on food labels. In addition to requiring nutrition information on virtually all food products, the NLEA directed FDA to standardize and limit the terms permitted on labels, and allows only FDA-approved nutrient content claims and health claims to appear on food labels.[7] While the NLEA is designed in part to prevent deceptive and misleading claims on labels, Congress also intended that nutrient content and health claims educate consumers in order to assist them in maintaining healthy dietary practices.[8] The NLEA also mandated that FDA undertake a consumer education effort to educate consumers about the new food label and the importance of diet to health.[9] Therefore, in keeping with its recently expanded and unique jurisdictional mandate, the requirements set forth in FDA's regulations have a broader purpose than preventing false and misleading claims in food labeling.

The NLEA applies only to labeling and did not change the FTC's statutory authority to prohibit deceptive acts or practices under section 5 of the FTC Act. Nevertheless, in light of the comprehensive regulatory scheme established for food labeling claims by the NLEA, the Commission is issuing this statement to clarify how its own authority relates to issues raised by FDA's food labeling regulations.

The Commission recognizes the importance of consistent treatment of nutrient content and health claims in food advertising and labeling and seeks to harmonize its advertising enforcement program with FDA's food labeling regulations to the fullest extent possible under the statutory authority of the FTC Act. The Commission also recognizes the scientific expertise of FDA in this area. The Commission has traditionally accorded great weight to FDA's scientific determinations in matters of nutrition and health and will continue to do so. In addition, as a general matter, it is unlikely that the Commission will take action under Sections 5 and 12 of the FTC Act regarding nutrient content and health claims if they comply with FDA's regulations.[10]

The principal elements of the Commission's authority to regulate nutrient content and health claims in food advertising are set forth below in the discussion of the Commission's legal framework in part II of this statement. Part III of the statement addresses the Commission's approach to harmonization with the NLEA and FDA's regulations in the area of nutrient content claims in food advertising. Part IV of the statement addresses the Commission's approach to health claims in food advertising. Claims made in food advertising may raise issues addressed in more than one section of this statement. Advertisers, therefore, should comply with all relevant provisions of the statement and not simply the provision that seems most directly applicable.

In issuing this statement, the Commission recognizes that the FDA intends its regulatory approach to be dynamic, designed to respond to changes in science and consumer understanding of nutrition and diet-disease issues. Therefore, while the Commission's purpose in issuing this statement is to provide guidance on how it will enforce sections 5 and 12 in the food advertising area, the statement is not intended to provide a comprehensive analysis of how each of FDA's regulations relates to the Commission's enforcement policy. Instead, this statement focuses on the general issues that are likely to remain relevant to the Commission's regulation of food advertising over time, as specific provisions in the FDA regulations are amended.

II. Legal Framework for Commission Action

As noted above, the FTC regulates food advertising under its statutory authority to prohibit deceptive acts or practices under Section 5 of the FTC Act. The Commission has set forth its interpretations of this authority in its Deception Policy Statement[11] and its Statement on Advertising Substantiation.[12] FTC food cases, applying the principles articulated in these statements, have also established a growing body of precedent against which food advertisers can assess the lawfulness of their claims.[13]

As set out in the Deception Statement, the Commission will find an advertisement deceptive under Section 5 and, therefore, unlawful, if it contains a representation or omission of fact that is likely to mislead consumers acting reasonably under the circumstances, and that representation or omission is material.[14]

The first step in a deception analysis is to identify representations made by an advertisement. A representation may be made by express or implied claims. An express claim directly makes a representation. The identification of an implied claim requires an examination of both the representation and the overall context of the ad,[15] including the juxtaposition of phrases, images, and the nature of the claim and the transaction.[16] In other words, in ascertaining the meaning of an advertisement, the Commission will focus on the ad's overall net impression.[17]

In addition to deception arising from affirmative representations in an advertisement, the omission of material information may also be deceptive in certain circumstances. First, deception can occur through omission of information that is necessary to prevent an affirmative representation from being misleading.[18] Second, "it can also be deceptive for a seller to simply remain silent, if he does so under circumstances that constitute an implied but false representation."[19] However, "[n]ot all omissions are deceptive, even if providing the information would benefit consumers."[20] As with advertisements that contain affirmative representations, the test for whether an omission is deceptive is whether the overall impression created by the ad is deceptive.[21]

The next step in identifying deception in an ad requires the Commission to consider the representation from the perspective of a consumer acting reasonably under the circumstances.[22] Finally, a representation must be material, *i.e.*, likely to affect a consumer's choice or use of a product or service.[23] Express claims and claims involving health or safety are presumptively material.[24]

In addition, objective claims carry with them the implication that they are supported by valid evidence. It is deceptive, therefore, to make an express or implied nutrition or health benefit claim for a food unless, at the time the claim is made, the advertiser possesses and relies upon a reasonable basis substantiating the claim.[25] A reasonable basis consists of competent and reliable evidence. In the context of nutrient content or health claims, substantiation will usually require competent and reliable scientific evidence sufficient to support the claim that is made.[26] Commission orders generally require that scientific evidence consist of tests, analyses, research, studies or other evidence conducted and evaluated in an objective manner by persons qualified to

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[1] Nutrition Labeling and Education Act of 1990, Public Law No. 101–535, 104 Stat. 2353 (codified in part at 21 U.S.C. 343(i), (q) and (r)).

[2] Food labeling regulations implementing the Nutrition Labeling and Education Act of 1990: opportunity for comments (58 FR 2066, January 6, 1993), codified in part in sections of 21 CFR parts 5, 20, 104, 105, and 130. Simultaneously, the Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture (USDA) issued its own nutrition labeling regulations relating to meat and poultry products. While FSIS's regulations were not mandated by the NLEA, these regulations were intended to implement the NLEA's goals for products regulated by USDA. Although the principles in this statement relate to FDA's regulations, the Commission intends to apply similar principles to consideration of claims for products regulated by USDA.

[3] 15 U.S.C. 45, 52, 55 (1980).

[4] 21 U.S.C. 343(a). USDA's authority is derived from the Federal Meat Inspection Act, 21 U.S.C. 601(n)(1) (prohibiting labeling of meat or meat products that is "false or misleading in any particular"), and the Poultry Products Inspection Act, 21 U.S.C. 453(h)(1) (prohibiting labeling of poultry products that is "false or misleading in any particular").

[5] Working Agreement Between FTC and Food and Drug Administration, 4 Trade Reg. Rep. (CCH) ¶ 9,850.01 (1971) (hereinafter "Memorandum of Understanding").

[6] The Memorandum of Understanding also reaffirms the agencies' shared commitment to prevent deception of the public, to coordinate their work to eliminate duplication of effort, and to promote consistency in handling matters of mutual concern.

[7] The NLEA defines a "nutrient content claim" as any claim that expressly or by implication "characterizes the level of any nutrient." 21 U.S.C. 343(r)(1)(A) (Supp. 1990). A "health claim" is defined as any claim that characterizes the relationship of any nutrient to a "disease or health related condition." 21 U.S.C. 343(r)(1)(B) (Supp. 1990).

[8] "Health claims supported by a [sic] significant scientific agreement can reinforce the Surgeon General recommendations and help Americans to maintain a balanced and healthful diet. Similarly, statements regarding the level of these nutrients in foods will assist Americans in following the Surgeon General's guidelines." House Committee on Energy and Commerce, Nutrition Labeling and Education Act of 1990, H.R. Doc. No. 538, 101st Cong., 2d Sess. 9–10 (1990).

[9] NLEA, 2(c).

[10] The Commission notes that the manner in which such information is conveyed in advertising may differ from the way it would be presented in labeling. The Commission cautions advertisers to consider carefully the importance of the context in which they make claims. Some claims that would technically comply with FDA's labeling regulations might be deceptive in advertising if the context of the ad renders the express message of the claim misleading.

[11] See Cliffdale Associates, Inc., 103 F.T.C. 110, 176 (1984), reprinting as appendix letter dated Oct. 14, 1983, from the Commission to The Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives ("Deception Statement").

[12] FTC Policy Statement on Advertising Substantiation, 48 Fed. Reg. 10,471 (1984), reprinted in Thompson Medical Co., 104 F.T.C. 648, 839 (1984), aff'd, 791 F.2d 189 (D.C. Cir. 1986), cert. denied, 479 U.S. 1086 (1987) ("Substantiation Statement").

[13] See, *e.g.*, cases cited *infra* notes 26–29, 32, 36, 50, 51, 74, 75, 81, 87, 96.

[14] Deception Statement, 103 F.T.C. at 183.

[15] Kraft, Inc., FTC Dkt. No. 9208, slip op. at 7 (Jan. 30, 1991), aff'd, 970 F.2d 311 (7th Cir. 1992), cert. denied, 113 S. Ct. 1254 (1993) (citing Thompson Medical Co., 104 F.T.C. at 789, 799; Cliffdale Associates, 103 F.T.C. at 164; Deception Statement, 103 F.T.C. at 176).

[16] Deception Statement, 103 F.T.C. at 176. The Commission may rely on its own expertise in finding claims that are reasonably clear from the face of an advertisement. Kraft, 970 F.2d at 319, and cases cited therein. If the Commission is unable to conclude that an implied claim is conveyed based on a review of the ad itself, the Commission may rely on extrinsic evidence demonstrating that the ad implies a claim. Kraft, slip op. at 7; Thompson Medical, 104 F.T.C. at 789.

[17] Kraft, slip op. at 7–8; Removatron Int'l Corp., 111 F.T.C. 206, 292 (1988), aff'd, 884 F.2d 1489 (1st Cir. 1989); Thompson Medical, 104 F.T.C. at 790.

[18] Deception Statement, 103 F.T.C. at 175 n.4; see also International Harvester Co., 104 F.T.C. 949, 1057 (1984); Campbell Soup Co., FTC Dkt. No. 9223 (Aug. 18, 1992) (consent order).

[19] International Harvester, 104 F.T.C. at 1057.

[20] Deception Statement, 103 F.T.C. at 175 n.4; International Harvester, 104 F.T.C. at 1059.

[21] Deception Statement, 103 F.T.C. at 175 n.4.

[22] Deception Statement, 103 F.T.C. at 177.

[23] *Id.* at 182.

[24] Kraft, slip op. at 22–23, Thompson Medical, 104 F.T.C. at 816–17; Deception Statement, 103 F.T.C. at 182–83.

[25] Substantiation Statement, 104 F.T.C. at 839.

[26] See, e.g., Kraft, slip op. at 2 (scientific evidence required to substantiate calcium content claims and comparative calcium content claims); Bertolli, Inc., FTC Dkt. No. C–3396 (Aug. 17, 1992) (consent order) (scientific evidence required to substantiate claims regarding edible oil's impact on any physiologic function or risk factor for disease or other health benefit); Pacific Rice Prods., FTC Dkt. No. C–3395 (Aug. 17, 1992) (consent order) (scientific evidence required to substantiate claims regarding health benefits derived from consumption of products); see also Thompson Medical, 104 F.T.C. at 822.

do so, using procedures generally accepted in the relevant profession to yield accurate and reliable results.[27] The substantiation must also be examined in the context of the entire body of relevant evidence, particularly if it produces results that are contrary to that body of evidence.

III. Nutrient Content Claims

A. Claims Describing the Absolute and Comparative Nutrient Content of Foods

As mandated by the NLEA, FDA's regulations define certain absolute and comparative terms that can be used to characterize the level of a nutrient in a food. "Absolute" terms (*e.g.*, "low," "high," "lean") describe the amount of nutrient in one serving of a food. "Relative" or comparative terms (*e.g.*, "less," "reduced," "more") compare the amount of a nutrient in one food with the amount of the same nutrient in another food. With very few exceptions, only these specific terms, and certain approved synonyms, may be used on food labels to characterize the level of a nutrient, although interested parties may petition FDA to authorize new nutrient content terms and synonyms.[28]

1. Absolute Nutrient Content Claims

Prior to the finalization of FDA's regulations, there was no comprehensive set of standardized definitions for absolute terms such as "low" and "high" to describe the level of a nutrient in a food. Now that FDA has established a standard metric to describe the nutrient content of foods, the Commission will apply FDA's definitions for absolute nutrient content terms when those terms are used in the same context in advertising. In general, the Commission will use FDA's serving size or reference amounts customarily consumed, as set forth in FDA's regulations, in its analysis of a claim. If, however, an advertiser chooses to depict a non-standard serving size in an advertisement, the Commission will require the advertiser to meet the FDA's standard both for the reference amount customarily consumed and for the serving size depicted.[29]

The Commission has previously indicated that where a claim is subject to the joint jurisdiction of the FTC and the FDA, it will accord significant deference to the FDA's standards.[30] Consumer understanding will be improved if the agencies responsible for regulating the use of express or implied absolute nutrient content descriptors have consistent requirements for use of these terms. Multiple governmental definitions for the same terms would have the potential to mislead consumers.[31]

Similarly, the use in advertising of FDA-defined terms in a manner inconsistent with FDA's definitions is likely to mislead consumers. The uniform and detailed nutrient content information required on food labels, as well as the NLEA-mandated educational effort, are likely to familiarize consumers with both the FDA-defined terms and their definitions, further reinforcing consumer expectation that nutrient content terms are consistently applied.

Furthermore, the principle that certain claims may be deceptive unless they are based on a common standard of measurement or testing is well founded under section 5.[32] At the same time, statements that a food is "high" or "low" in a particular nutrient are objective product claims that imply support by a reasonable basis.[33] The Commission generally determines what level of substantiation constitutes a reasonable basis by weighing the six factors set forth in Pfizer, Inc. and subsequent cases.[34] Applying those factors here leads the Commission to conclude that to avoid deception, advertisers should meet FDA's definitions for absolute nutrient content claims.

Where FDA has not established any standard metric, such as "low" or "high," for a specific nutrient, the Commission will closely review claims in food advertising that characterize the level of that nutrient.[35] The Commission has traditionally deferred to FDA's scientific and public health determinations, and will consult with FDA and other government and public health authorities regarding the significance of the nutrient for which such a claim is made.

2. Comparative Nutrient Content Claims

FDA's regulations also establish definitions for comparative terms that characterize the nutrient content of a labeled food relative to that of a comparison or "reference" food. These definitions require that a food bearing a comparative term meet specified minimum percentage differences in the relevant nutrient. For example, the regulations permit use of the terms "less" and "reduced" only where there is a minimum 25 percent difference in the relevant nutrient. In addition, comparative claims must disclose the reference food, the percentage difference in the nutrient between the labeled and reference food (*e.g.*, "50 percent less fat than our regular cheese"), and quantitative information regarding the absolute amount of the nutrient in the labeled and reference foods (*e.g.*, "fat reduced from 6 g. to 3 g. per serving").

Comparative nutrient content claims that comply with FDA's regulations will generally comply with section 5.[36] The Commission will scrutinize carefully comparative nutrient content claims that characterize nutrient differences in ways that do not comply with FDA's regulations. However, a comparative advertising claim that is accurately qualified to identify the nature of a nutrient difference and to eliminate misleading implications [37] may comply with section 5, even if the nutrient difference does not meet FDA's prescribed differences for purposes of labeling.[38]

In examining comparative claims, several principles are likely to be applied by the Commission. First, comparative claims should make clear the basis for the comparison.[39] Claims should identify the reference food to which the product is being compared so that the appropriate comparison is clear to consumers. Second, consistent with the position it has taken on the use of descriptors, the Commission believes that advertisers using unqualified comparative terms must meet FDA's minimum percentage difference requirements for those claims. For example, if an ad represents that a food has "less fat than Brand X," without indicating the percentage or absolute difference in fat, the Commission will rely on FDA's 25% minimum difference requirement in determining whether the claim is deceptive.

Third, comparative claims should not overstate the significance of a nutrient difference.[40] For this reason, some comparative claims may need to be qualified in a manner sufficient to ensure that consumers are not misled regarding the significance of the nutrient difference. For example, a simple statement of percentage difference for a food that contains only a small amount of a nutrient, such as "our crackers have one-third less fat than Brand X," may suggest that the nutrient difference is greater in an absolute sense than it actually is. This type of claim may need further qualification to prevent the claim from creating a misleading impression (*e.g.*, "one third less fat than Brand X—theirs has 3 g., ours has 2 g.").

Even where nutrient differences are substantial in an absolute sense, careful qualification may be necessary for products that despite such absolute reductions, still contain appreciable amounts of a nutrient, to ensure that consumers are not misled regarding the absolute level of the nutrient. Thus, a claim such as "20% less fat in our frozen entree compared to Brand X," regarding a product that nevertheless contains a significant amount of fat, may need to identify the quantitative amount of fat in the advertised food and the reference food (*e.g.*, "20% less fat than Brand X—Brand X has 25 g. fat, ours has 20 g. fat"), particularly in situations where consumers are not likely to be aware that the item is generally high in fat.

In summary, the Commission ordinarily will not challenge comparative nutrient content claims that comply with FDA's regulations, and will carefully scrutinize comparative nutrient content claims that characterize nutrient differences in ways that do not comply with FDA's regulations.[41]

3. Synonyms for Nutrient Content Claims

In addition to authorizing the use of only a limited set of defined nutrient content terms on food labels, FDA's regulations authorize the use of only certain synonyms for these defined terms.[42] The impetus behind Congress's requirement that FDA limit defined terms and synonyms may be found in the educational and public health goals of the NLEA—to promote consumer understanding of the meaning of the terms through a limited lexicon that will allow consumers to make informed dietary choices.[43]

The Commission will examine advertising to ensure that claims that characterize the level of a nutrient, including those using synonyms that are not provided for in FDA's regulations, are consistent with FDA definitions. Commission precedent establishes that an advertisement that can reasonably be interpreted in a misleading way is deceptive, even though other, nonmisleading interpretations may be equally possible.[44] Thus, when express or implied claims suggest that a food product meets the standard for use of an FDA-defined term, advertisers should ensure that the food actually meets the relevant FDA standard. For example, depending on the context of an ad, use of the phrases "packed with" or "lots of" to describe the level of fiber in a food could convey to some reasonable consumers that the food is "high" in fiber. Because FDA's regulations define the terms "good source" and "high" with respect to fiber,[45] consumers are likely to be misled if a "high fiber" claim is implied by an ad for a food that is only a "good source" of fiber.

4. Implied Nutrient Content Claims

As defined in FDA's regulations, an implied nutrient content claim is a claim that:

(i) Describes the food or an ingredient therein in a manner that suggests that a nutrient is absent or present in a certain amount (*e.g.*, "high in oat bran"); or

(ii) Suggests that the food, because of its nutrient content, may be useful in maintaining healthy dietary practices and is made in association with an explicit claim or statement about a nutrient (*e.g.*, "healthy, contains 3 grams (g) of fat").[46]

Under this definition, statements about ingredients may or may not be nutrient content claims.[47] FDA has

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[27] See Bertolli; Pacific Rice.

[28] 21 CFR 101.69(b) (1993).

[29] See, *e.g.*, Nestle Food Co., FTC Dkt. No. C–2265 (Jan. 21, 1992) (consent order) and Presto Food Prods., Inc., FTC Dkt. No. C–3480 (Feb. 23, 1994) (consent orde.) (resolving allegations that low fat claims based on the small serving of nondairy creamers that might be used in coffee were deceptive when made with respect to a larger serving that might be used over cereal or fruit or in cooking).

[30] See Thompson Medical, 104 F.T.C. at 826.

[31] In the past, courts have upheld the Commission's position that inconsistent meanings for the same terms have the potential to mislead consumers. In FTC v. Brown & Williamson Tobacco Corp., 778 F.2d 35 (D.C. Cir. 1985), the court held that Brown & Williamson had deceptively advertised its Barclay cigarettes as "1 mg. tar." The 1 mg. tar rating was a result of the cigarettes' different design, which caused the amount of tar that Barclay cigarettes delivered to smokers to be disproportionately greater than that delivered by cigarettes that were similarly rated under the FTC rating system. Considering the claim against the background of the Commission's tar and nicotine rating system, the court affirmed the Commission's position that the claim misled consumers who had come to rely on the FTC rating system to make comparative assessments regarding cigarettes.

[32] *E.g.*, Presto Food Prods., Inc., FTC Dkt. No. C–3480 (Feb. 23, 1994) (consent order); Clorox Co., FTC Dkt. No. C–3427 (May 17, 1993) (consent order); Isaly Klondike Co., FTC Dkt. No. C–3412 (Jan. 28, 1993) (consent order); Nestle Food Co., FTC Dkt. No. C–2265 (Jan. 21, 1992) (consent order).

[33] Substantiation Statement, 104 F.T.C. at 839.

[34] 81 F.T.C. 23, 64 (1972); Thompson Medical, 104 F.T.C. at 813, 821; Bristol-Myers, 102 F.T.C. at 321. These are: (1) the type of product advertised, (2) the type of claim, (3) the benefits of a truthful claim, (4) the ease of developing substantiation for the claim, (5) the consequences of a false claim, and (6) the amount of substantiation that experts in the field believe is reasonable.

[35] Under FDA's regulations, a label claim characterizing the level of a nutrient (*i.e.*, a nutrient content claim) is prohibited unless made in accordance with the regulations. 21 CFR 101.13(b) (1993). However, the label of a product may contain a statement of the amount of a nutrient, such as "1 g. of omega-3 fatty acids" if it does not explicitly or implicitly characterize the level of the nutrient. 21 CFR 101.13(i)(3) (1993). Thus, statements that merely note the amount of a nutrient without characterizing the level are permitted even for nutrients not approved to appear on the nutrition panel.

[36] This principle is already apparent from recent Commission consent orders, which provide safe harbors for those claims specifically permitted in labeling. See, *e.g.*, Nestle Food Co., FTC Dkt. No. C–2265 (Jan. 21, 1992) (consent order) (providing that nothing in the relevant portions of the order shall prohibit certain representations regarding total fat, saturated fat or cholesterol if such representations are specifically permitted in labeling, for the serving size advertised or promoted, by FDA regulation); Isaly Klondike Co., FTC Dkt. No. C–3412 (Jan. 28, 1993) (consent order) (providing that nothing in the order shall prevent respondent from making representations specifically permitted in labeling for food by the NLEA regulations).

[37] As it has in the past, the Commission emphasizes that truthful comparisons may need to be sufficiently qualified to remove deceptive implications. See Policy Statement in Regard to Comparative Advertising, 16 CFR 14.15 (1979) (comparative advertising regarding objective measurable attributes must have sufficient clarity or disclosures to ensure that such comparisons are not deceptive).

[38] For example, a small nutrient difference that appears as part of a claim touting the multidimensional nutritional differences offered by a product is less likely to overstate the significance of that difference than would such a claim standing alone. Thus, an advertiser may seek to signal to consumers that, while it has reduced total fat and saturated fat in its product by 25%, it has also achieved a small reduction in sodium compared with other products in the category. In these circumstances, a truthful claim that makes clear that the sodium reduction is less than the 25% reduction in other nutrients and does not overstate the significance of this incidental reduction is unlikely to mislead consumers.

[39] See Policy Statement in Regard to Comparative Advertising, 16 CFR 14.15 (1979). The Commission's Guides for the Use of Environmental Marketing Claims also include this requirement. 16 CFR 260.6(d) (1993).

[40] See P. Lorillard Co. v. FTC, 186 F.2d 52, 57 (4th Cir. 1950) (advertising claiming that cigarette was lowest in nicotine, tar and resins challenged in part because the difference was, in fact, insignificant); Sun Co., FTC Dkt. No. C–3381 (May 6, 1992) (consent order) (challenging advertising for octane gasoline that represented gas would provide superior power that would be significant to consumers).

[41] Although the term "light" is defined in FDA's regulations as a comparative descriptor, the term also has been used to describe the food itself, much like an absolute descriptor such as "low." As reflected in FDA's preamble and regulations, the term also is associated chiefly with substantial reductions in fat or calories. See 58 FR 2351–2358. Given the unique characteristics of the term "light" as reflected in FDA's regulations, it is unlikely that the term can be used in advertising without undue confusion unless the food meets FDA's definitions. Accordingly, the Commission will apply FDA's definition for "light" in determining whether advertising using the term is deceptive.

[42] 21 CFR 101.13(b) (1993). Interested parties may petition FDA to authorize additional synonyms. 21 CFR 101.69(b)(2) (1993).

[43] 58 FR 2319–20, Jan. 6, 1993. See Nutrition Labeling and Education Act of 1990, section 403(4)(2)(A)(i).

[44] Chrysler Corp. v. FTC, 561 F.2d 357, 363 (D.C. Cir. 1977); Kraft, slip. op. at 6 n.8. See also Deception Statement, 103 F.T.C at 178 n.21 ("A secondary message understood by reasonable consumers is actionable if deceptive even though the primary message is accurate").

[45] 21 CFR 101.54(b) and (c) (1993).

[46] 21 CFR 101.13(b)(2) (1993).

[47] 58 FR 2371, Jan. 6, 1993.

generally adopted a case-by-case approach to statements about ingredients that depends on the overall context of the label. The regulations also provide, however, that certain ingredient statements will be treated as nutrient content claims whenever they appear on labels.[48]

The Commission's approach to implied claims also relies on an analysis of the overall context in which a claim appears. As explained above, the Commission evaluates the overall impression created by an ad, including the ad itself, the arrangement of phrases and images in the ad, and the nature of the claim being made, in order to determine whether a representation is likely to mislead reasonable consumers.[49] If the net impression produced by an ad is likely to mislead reasonable consumers, the ad is deceptive and violates section 5

FTC food cases and consent agreements also demonstrate the principle that statements regarding ingredients may have nutrient content implications. For example, advertising may implicitly characterize the amount of a nutrient in a product through representations regarding the ingredients with which the product is made.[50] An ad may imply that a food is free of a particular nutrient by suggesting that the product is free of ingredients that are essentially the same from the consumer's perspective.[51]

Consistent with its statutory authority and its commitment to harmonization, the Commission will look closely at advertisements that may implicitly characterize the level of a nutrient. The Commission will give great weight to any FDA determinations concerning ingredient statements in analyzing the net impression conveyed by an ad.

B. Nutrient Content Claim Disclosures

As mandated by the NLEA, FDA's nutrient content labeling regulations require a number of disclosures. These mandated disclosures include, but are not limited to: (1) A referral statement to the nutrition panel, required whenever a nutrient content claim is made;[52] (2) disclosure of nutrients (fat, saturated fat, cholesterol, and sodium) present in a food at a level that FDA has concluded increases the risk of diet-related disease, required whenever a nutrient content claim is made;[53] and (3) "triggered" disclosures of the amount of certain related nutrients when claims concerning fiber, saturated fat, and cholesterol appear.[54]

As set forth in part II above, disclosure of material information that is necessary to prevent deception may be required under section 5 of the FTC Act.[55] For example, it is misleading to fail to disclose qualifying information necessary to prevent an affirmative statement from creating a misleading impression.[56] However, a seller's silence in circumstances that do not give a particular meaning to the silence is not deceptive.[57] The failure to provide nutrition information that consumers may find useful in improving their diet, while subject to challenge under the NLEA with respect to labels, therefore, is not necessarily subject to challenge as deceptive under Section 5.[58] In the context of advertising that makes affirmative nutrient content claims, the Commission's analysis of deception by omission will be based on a consideration of whether a nutrient content claim gives rise to a misleading impression absent disclosure of other nutrition information.

Some of FDA's disclosures appear designed to fulfill the educational goals of the NLEA, which are beyond the scope of the Commission's law enforcement mandate. For example, all nutrient content claims on a label must be accompanied by a statement referring the consumer to the nutrition panel, where complete nutrition information regarding the product is found.[59] While a complete nutrition portrait of a food may be useful to consumers, it is unlikely that the absence of this referral statement from an advertisement would render the ad deceptive to consumers.

In contrast, other disclosures mandated for food labels may also appropriately be required under certain circumstances to prevent deception in advertising under section 5. In determining whether such disclosures are necessary to prevent deception, the Commission will consider several factors. First, the Commission will carefully evaluate nutrient content claims for foods that contain a nutrient at a level considered by FDA to increase the risk of a diet-related disease.[60] When the context of an ad as a whole conveys to consumers the net impression that the food makes only positive contributions to a diet, or does not contain any nutrients at levels that raise the risk of diet-related disease, the failure to disclose the presence of risk-increasing nutrients is likely to be deceptive.[61]

Second, the Commission will also scrutinize nutrient content claims for cholesterol, saturated fat, and fiber Congress enacted "special rules"[62] requiring that claims for these nutrients trigger disclosure of other nutrients.[63] Consumers often may infer that certain nutrient claims imply a characterization of the amount of another nutrient. Similarly, where different nutrients are linked to the same health issue (for example, cholesterol and saturated fat, or dietary fiber and total fat), a claim regarding one of these nutrients is likely to give rise to a misleading impression regarding the benefit of the food absent disclosure of the presence of the other nutrient. Under these circumstances, the failure to correct these misimpressions through adequate disclosures is likely to be deceptive.

IV. Health Claims[64]

FDA's regulations for health claims in food labeling establish general standards

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[48] For example, the regulations state that "a claim that a food contains oat bran is a claim that it is a good source of dietary fiber; that a food is made only with vegetable oil is a claim that it is low in saturated fat; and that a food contains no oil is a claim that it is fat free." 21 CFR 101.65(c)(3) (1993).

[49] *Kraft*, slip op. at 7–8; Removatron, 111 F.T.C. at 292; Thompson Medical, 104 F.T.C. at 790. See also FTC v. Sterling Drug, 317 F.2d 669, 674 (2d Cir. 1963) (the Commission examines "the entire mosaic . . . rather than each tile separately").

[50] *Kraft*, 970 F.2d at 322 (upholding Commission's finding that claims about the amount of milk in processed cheese slices were, in context, implied claims about calcium content).

[51] See Estee Corp., 102 F.T.C. 1004 (1983) (consent order) (advertisements that claimed that foods sweetened with high-fructose corn syrup did not contain sugar and were accepted by the American Diabetes Association implied (falsely) that the foods were appropriate for persons who needed to avoid sugar).

[52] 21 CFR § 101.13(g) (1993).

[53] 21 CFR 101.13(h) (1993). As discussed in part IV, *infra*, these same levels of nutrients serve to disqualify foods from bearing health claims. See 21 CFR 101.14(a)(5) (1993).

[54] See 21 CFR 101.54(d) (requirements for fiber claims); 21 CFR 101.62(c) (requirements for saturated fat claims); 21 CFR 101.62(d) (requirements for cholesterol claims).

[55] Deception Statement, 103 F.T.C. at 176.

[56] International Harvester, 104 F.T.C. at 1057.

[57] *Id.* at 1059.

[58] *Id.* at 1058 ("[n]ot all omissions are deceptive, even if providing the information would benefit consumers").

[59] 21 CFR § 101.13(g) (1993).

[60] See North American Philips Corp., 111 F.T.C. 139, 177–84 (1988) (Initial Decision) (according great weight to other government agencies' determinations regarding the significance of a chemical added to drinking water by the water filter and thus whether the failure to disclose this fact was material).

[61] *Id.* at 175 (Commission's complaint alleged and the Administrative Law Judge found, that failure to disclose that water filter device introduced a potentially hazardous chemical into drinking water was misleading in light of representations that device would remove impurities and chemicals and clean the water).

[62] House Committee on Energy and Commerce, Nutrition Labeling and Education Act of 1990, H.R. Rep. No. 536, 101st Cong., 2d Sess. 20 (1990).

[63] 21 U.S.C. 343(r)(2)(A)(iii)–(v).

[64] FDA's definition of a health claim includes two basic elements: (1) A substance or nutrient; and (2) the relationship of that substance or nutrient to a disease or health-related condition. 21 CFR 101.14(a)(1) (1993). Thus, claims on food labels are

for the use of claims that characterize the relationship of a substance in a food to a disease or health-related condition.[65] These general standards include, among other things: (1) Limiting authorization of health claims only to those categories for which there is "significant scientific agreement" that the relevant diet-disease relationship is supported by the scientific evidence;[66] (2) establishing disqualifying levels for total fat, saturated fat, cholesterol, and sodium, above which foods are disqualified from bearing any health claims;[67] (3) for the specific substance that is the subject of a health claim, setting a threshold level for the amount of such substance in the food, that is either sufficiently low or sufficiently high to support the health claim;[68] (4) requiring that foods bearing health claims have some minimal nutritional value;[69] and (5) requiring that health claims identify those factors, other than dietary intake of the substance, that affect the diet-disease relationship.[70] In addition, as required by the NLEA, FDA's regulations provide a petition process for interested persons to seek FDA authorization of additional health claims.[71]

The Commission shares the concerns underlying the NLEA, and embodied in FDA's regulations, that health claims be adequately substantiated and presented in a manner that is truthful and not misleading. These same principles form the foundation of the Commission's well-established deception and advertising substantiation doctrines, described in part II above. The Commission's approach to the regulation of health claims in food advertising and FDA's approach to such claims in labeling therefore share many basic elements.

A. Standard for Substantiation of Health Claims

The NLEA directed FDA to promulgate regulations authorizing claims about diet-disease relationships only if FDA determined,

> based on the totality of the publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence.[72]

The NLEA directed FDA to apply this "significant scientific agreement" standard in determining whether there was adequate substantiation to permit health claims for ten specific diet-disease relationships.[73] After reviewing the scientific literature, FDA issued regulations authorizing a number of specific categories of health claims.

The Commission's standard for substantiation of health claims in food advertising shares many elements with FDA's approach to such claims in labeling. Like FDA, the Commission imposes a rigorous substantiation standard for claims relating to the health or safety of a product, including health claims for food products.[74] The Commission's standard that such claims be supported by "competent and reliable scientific evidence" has been more specifically defined in Commission orders addressing health claims for food products to mean:

> tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.[75]

Thus, both the Commission and FDA look to well-designed studies, including clinical research and other forms of reliable and probative scientific evidence, in evaluating health claims for foods.

In addition, the Commission, like FDA, evaluates substantiation for health claims in the context of the surrounding body of evidence, and does not look to isolated studies, especially if those studies are unrepresentative of the larger body of evidence. However, the Commission does not require food advertisers to establish that there is scientific consensus in support of their claims. Similarly, FDA has clearly indicated that its "significant scientific agreement" standard does not require that such agreement represent a "full consensus among scientists."[76]

In evaluating health claims, the Commission looks to a number of factors to determine the specific level of scientific support necessary to substantiate the claim.[77] Central to this analysis is an assessment of the amount of substantiation that experts in the field would consider to be adequate. The Commission regards the "significant scientific agreement" standard, as set forth in the NLEA and FDA's regulations, to be the principal guide to what experts in the field of diet-disease relationships would consider reasonable substantiation for an unqualified[78] health claim.[79] Thus, it is likely that the Commission will reach the same conclusion as FDA as to whether an unqualified claim about the relationship between a nutrient or substance in a food and a disease or health-related condition is adequately supported by the scientific evidence.

The Commission also recognizes the importance of the petition process, established under the NLEA and FDA's regulations, as a mechanism for authorizing health claims in food labeling. The Commission will look with particular care at any health claims not specifically considered by the FDA in this process. The absence of an FDA determination that a health claim is scientifically valid will be a significant factor in the Commission's assessment

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not governed by FDA's health claims regulations unless they include either express or implied references to both a substance and a disease. FDA's approach to implied health claims is similar to the Commission's in that this definition includes claims in which the disease element is implied through symbols or by other means, looking at the context of the entire label. *Id.*; see also discussion of FDA's definition of implied health claims, 58 FR 2483, Jan. 6, 1993. Like FDA, the Commission examines food claims in the context of the entire advertisement to determine whether an implied health claim is being made. Therefore, the Commission may determine in certain instances, based on its review of the entire context of an advertisement, that a nutrient content claim, even in the absence of any express reference to a disease or health-related condition, conveys an implied health message to consumers.

[65] 21 CFR 101.14 *et seq.* (1993)

[66] 21 CFR 101.14(c) (1993).

[67] 21 CFR 101.14(a)(5) (1993).

[68] 21 CFR 101.14(d)(2)(vi)-(vii) (1993)

[69] 21 CFR 101.14(e)(6) (1993).

[70] 21 CFR 101.14(d)(2)(iii) (1993)

[71] 21 CFR 101.70 (1993). This regulation requires that FDA take final action within 190 days of the receipt of a petition, either to deny the petition or to publish a proposal to amend the regulations to allow the use of the requested health claim.

[72] 21 U.S.C. 343(r)(3)(B)(i). This standard is also set forth in FDA's regulations at 21 CFR § 101.14(c) (1993)

[73] NLEA, 3(b)

[74] See, *e.g.*, Pacific Rice, FTC Dkt. No. C-3395 (Aug. 17, 1992) (consent order) (claims about health benefits of consuming rice bran cereal challenged as unsubstantiated); *see also* Thompson Medical, 104 F.T.C. at 822 (claims involving health or safety issues require a "relatively high level of substantiation, typically scientific tests").

[75] Gracewood Fruit Co., FTC Dkt. No. C-3470 (Oct. 29, 1993) (consent order); *see also* Pompeian, Inc., FTC Dkt. No. C-3402 (Oct. 27, 1992) (consent order).

[76] 58 FR 2505, Jan. 6, 1993.

[77] See Pfizer, Inc., supra note 34. See also Substantiation Statement, 104 F.T.C. at 840; Thompson Medical, 104 F.T.C. at 821.

[78] Unqualified as used in this discussion of substantiation refers to health claims that do not include specific disclosures concerning the extent of supporting scientific evidence.

[79] This approach is consistent with the Commission's approach to evaluating the substantiation for claims made for drug products and medical devices regulated by FDA. See, *e.g.*, Removatron, 111 F.T.C. at 305 (FDA's determination of efficacy of hair removal device given substantial weight); Thompson Medical, 104 F.T.C. at 826 (recognizing importance of applying standard consistent with FDA's in evaluating safety and efficacy of a drug product subject to jurisdiction of both agencies)

of the adequacy of substantiation for the claim.[80]

While the Commission's approach to evaluation of unqualified health claims will generally parallel FDA's assessment of whether there is significant scientific agreement supporting the relevant diet-disease relationship, the Commission recognizes that there may be certain limited instances in which carefully qualified health claims may be permitted under section 5 although not yet authorized by the FDA, if the claims are expressly qualified to convey clearly and fully the extent of the scientific support. At the same time, however, the Commission believes that qualified claims based on evidence that is inconsistent with the larger body of evidence have the potential to mislead consumers, and, therefore, are likely to violate section 5.

The Commission recognizes the need to scrutinize closely qualified claims to maintain the credibility of health claims in food advertising and labeling. The Commission will therefore be especially vigilant in examining whether qualified claims are presented in a manner that ensures that consumers understand both the extent of the support for the claim and the existence of any significant contrary view within the scientific community.[81] In the absence of adequate qualification, the Commission will find such claims deceptive.[82]

B. Health Claims for Foods That Contain a Nutrient at a Level That Increases the Risk of a Disease

FDA's health claim regulations identify four nutrients—total fat, saturated fat, cholesterol, and sodium—the consumption of which has been associated with increased risk of certain diseases or health-related conditions, particularly cancer, cardiovascular disease, and hypertension. For each of these nutrients, the regulations establish levels above which foods containing the nutrient are disqualified from bearing health claims.[83] The disqualifying levels set by FDA were based on an analysis of what level of these nutrients in a food would increase, "to persons in the general population, the risk of a diet-related disease, taking into account the significance of the food in the total daily diet."[84]

The Commission will rely heavily on FDA's scientific determination as to what levels of total fat, saturated fat, cholesterol, and sodium may increase the risk of a diet-related disease or other health condition[85] and, while not necessarily prohibiting all health claims in advertising for foods that contain such levels, will carefully scrutinize health claims for such foods to ensure that the claims are truthful and adequately qualified.[86] Situations involving risk-increasing levels established by FDA should not be interpreted as an exhaustive list of instances in which a broad, unqualified health claim for a food may be found deceptive by the Commission.

Unqualified health claims in advertising for such foods are likely to be deceptive when the risk-increasing nutrient is closely related to the subject health claim. Often the presence and significance of such a nutrient will have to be disclosed. Without such disclosures, consumers could infer from the health message that the food does not present any related health risks.[87] The failure to disclose the presence and significance of risk-increasing nutrients that are closely related to the health claim for such foods is likely to constitute an omission of a material fact and render the health claim deceptive.[88]

For example, a claim that a food will reduce the risk of one specified disease is likely to convey to reasonable consumers that the food will not increase the risk of some other health condition closely related to that disease. Thus, an unqualified claim that a food is low in saturated fat and cholesterol, and therefore compatible with a diet designed to reduce the risk of cardiovascular disease, would be deceptive if the food contained so much sodium that it might increase the risk of hypertension and thus, cardiovascular disease.[89] To prevent deception, a health claim for such a food is likely to need a disclosure that clearly conveys both the presence and significance of the risk-increasing nutrient.[90]

Even when the risk-increasing nutrient does not bear directly on the health condition that is the subject of the health claim, it may be necessary to disclose the presence of a risk-

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[80] Food marketers should not expect to circumvent FDA's petition process for health claims simply by limiting the assertion of unapproved or unreviewed claims to advertising.

[81] See, e.g., National Comm'n on Egg Nutrition (NCEN), 517 F.2d 485 (7th Cir. 1975), appeal after remand, 570 F.2d 157 (7th Cir. 1977), cert. denied, 483 U.S. 921 (1978). The final Commission order in NCEN, as modified by the court, required that the advertiser, if it made any claims regarding the relationship between dietary cholesterol and heart disease, disclose that there was a controversy among experts about the scientific basis for the link between egg consumption and heart disease, and that NCEN was presenting its side of that controversy. Where NCEN characterized the level of scientific evidence, the order further required a disclosure that many medical experts believed that increasing egg consumption might increase the risk of heart disease.

[82] In order to be effective, qualifications or disclosures should be sufficiently clear and prominent to prevent deception. See Deception Statement, 103 F.T.C. at 180; Thompson Medical, 104 F.T.C. at 789 n.9, 842–43; see also Guides for the Use of Environmental Marketing Claims, 16 C.F.R. § 260.6(a) (1993). Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent. See, e.g., Figgie Int'l, Inc., 107 F.T.C. 313, 401 (1986), aff'd, 817 F.2d 102 (4th Cir. 1987). For example, the Commission is unlikely to find a video superscript, without accompanying audio, to be an effective method of disclosure in a television ad. See, e.g., Kraft, slip. op. at 10. As always, the Commission will also consider any extrinsic evidence of the effectiveness of qualifications and disclosures in its determination of whether a claim is deceptive. In making this determination, the Commission will consider all reasonable interpretations of the advertisement. The Commission will find an advertisement to be deceptive if it can reasonably be interpreted in a misleading way, even though other, nonmisleading interpretations may be equally possible. See Kraft, slip. op. at 6 n.8.

[83] These specific disqualifying levels are set forth at 21 CFR 101.14(a)(5) (1993).

[84] 58 FR 2489, Jan. 6, 1993.

[85] The Commission has routinely accorded great weight to FDA determinations of the safety and efficacy of food and drug products. See, *e.g.*, Removatron, 111 F.T.C. at 305; Thompson Medical, 104 F.T.C. at 826; see also Sterling Drug, Inc., 102 F.T.C. 395, 768–69, *aff'd*, 741 F.2d 1146 (9th Cir. 1984), cert. denied, 470 U.S. 1084 (1985).

[86] For example, USDA has stated its "intention to publish a proposed rule on health claims in line with FDA's proposal." See 58 FR 632, 664, Jan. 6, 1993. If so, the regulation's disqualifying level for cholesterol will preclude health claims on the labels of virtually all meat and poultry products. Notwithstanding the regulations, however, the Commission would not prohibit a truthful advertising claim that explains in a nondeceptive manner the health advantages of substituting meat or poultry items that are relatively low in fat and saturated fat for higher fat alternatives (*e.g.*, a claim suggesting the merit of substituting skinless breast of turkey for hamburger). Such claims would assist consumers who are trying to improve their diets but who are unwilling to forgo all meat and poultry.

[87] See, *e.g.*, Campbell, FTC Dkt. No. 9223 (Aug. 18, 1992) (consent order required disclosure of sodium content and recommended maximum daily sodium intake in advertisements making claims about heart disease for soups with more than 500 mg. of sodium per 8-oz. serving).

[88] The Commission has traditionally required that material information be disclosed if its absence could mislead reasonable consumers. See Deception Statement, 103 F.T.C. at 182; see also International Harvester, 104 F.T.C. at 1057; North American Philips, 111 F.T.C. at 175, 195 (failure to disclose the fact that a water filter could introduce a harmful chemical into the water was misleading).

[89] In Campbell, the Commission charged that claims that the company's soups contained little fat or cholesterol, and were heart-healthy, were deceptive because the company had failed to disclose that the soups were high in sodium. Specifically, the complaint alleged that the high level of sodium was a material fact given that a diet high in sodium can contribute to hypertension, a risk factor associated with heart disease. FTC Dkt. No. 9223 (Aug. 18, 1992) (consent order).

[90] A statement indicating both the amount of the risk-increasing nutrient and the recommended maximum daily intake of that nutrient, as determined by FDA, would be one example of an acceptable disclosure, provided such information adequately conveys the health implications of the risk-increasing nutrient. See, *e.g.*, Campbell, *supra*

increasing nutrient. Depending on context, a specific health claim may convey to consumers a broader message that the food is healthful in all respects. For example, a health claim describing the benefits of calcium in reducing the risk of osteoporosis, when made in advertising for a dairy product that is high in saturated fat, may create the deceptive impression among reasonable consumers that consuming the dairy product will reduce the risk of osteoporosis without increasing the risk of any other health-related condition or disease, for example, heart disease. To prevent deception, a health claim for such a food may need to include a disclosure that conveys the presence and significance of the risk-increasing nutrient.[91]

In those instances, as outlined above, where disclosure of a risk-increasing nutrient level is necessary to prevent deception, the Commission will carefully scrutinize the disclosure to ensure that it is adequate to convey clearly the limited nature of the health claim being asserted.

C. Nutrient/Substance Levels Sufficient to Ensure Meaningful Health Benefits

In addition to establishing levels of total fat, saturated fat, cholesterol, and sodium, above which foods are disqualified from bearing health claims, FDA's regulations also establish threshold levels for the specific nutrients that are the subject of particular health claims made in food labeling. If a health claim is about the effects of consuming a substance at decreased dietary levels (*e.g.*, lowering saturated fat and cholesterol intake to reduce the risk of coronary heart disease), FDA sets the threshold at a level that it determines is "sufficiently low to justify the claim."[92] If a claim relates to the effects of consuming the substance at other than decreased dietary levels (*e.g.*, increasing calcium intake to reduce the risk of osteoporosis), FDA sets the threshold at a level that it determines is "sufficiently high to justify the claim."[93] In establishing these "high" and "low" thresholds, FDA specifically considered both whether these levels were sufficient to advance the public health policy of assisting consumers in maintaining healthy dietary practices,[94] and whether health claims for foods not meeting such thresholds would be "misleading because the nutrient levels [were] not low enough, or not high enough, to really contribute to the claimed effect."[95]

The Commission shares FDA's view that health claims should not be asserted for foods that do not significantly contribute to the claimed benefit. A claim about the benefit of a product carries with it the implication that the benefit is significant.[96] Thus, consistent with its position on the use of absolute nutrient content descriptors and unqualified comparative nutrient content claims, the Commission will ordinarily apply FDA's thresholds for specific nutrient levels in examining unqualified health claims for the specific nutrient levels that are the subject of the particular health claim.

The Commission recognizes, however, that there may be certain limited instances in which it is possible to craft a qualified, truthful, and nonmisleading claim comparing the relative health benefits of a food product to other products for which the food can be substituted, even if the nutrient level does not meet FDA's prescribed threshold for the food. Such comparative claims, encouraging consumers to substitute a food that is significantly lower or higher in the relevant nutrient than other foods in the same category, will be unlikely to mislead consumers if the claimed benefit from the substitution will contribute significantly to the claimed health effect.

In addition, such comparative claims must be sufficiently qualified to make clear to consumers that the benefit derives only from the substitution of the advertised food for a significantly less healthful alternative and that the subject product does not otherwise offer an overall health benefit. It may be necessary to disclose the actual level of the nutrient that is the basis for the claim and its significance to prevent deception.[97]

D. Minimum Nutritional Value for Foods Bearing Health Claims

Under FDA's regulations, any food bearing a health claim must not only meet the threshold level for the specific substance or nutrient that is the subject of the health claim, as discussed in part IV, section C., *supra*, but also must contain a sufficient amount of at least one of six nutrients and substances specified by FDA.[98] For example, a food that is sufficiently low in total fat to meet FDA's threshold level for a health claim about dietary fat and cancer would also need to contain one or more of the six specific nutrients or substances at a sufficient quantity to ensure that the food contributed significantly to a healthful diet. Like FDA's threshold levels, this rule ensures that health claims are reserved for foods that contribute significantly to a healthy diet.[99]

The Commission shares FDA's view that health claims may be misleading to the extent that they encourage consumers to choose foods that provide calories but have little or no nutritional value, under the mistaken belief that their choices will contribute to a healthy diet. The Commission believes that, like claims for foods that fail to meet FDA's threshold levels, health claims for foods with little or no positive nutritional value have the potential to be deceptive since they imply that the health benefit being asserted is significant.[100] Therefore, the Commission will generally give great deference to FDA's standards for minimum nutritional value for foods bearing unqualified health claims.

The Commission recognizes, however, that there may be some instances in which it is possible to craft a qualified, truthful, and nonmisleading claim comparing the relative health benefits of a food product to other products for which the food can be substituted, even if the food does not meet FDA's minimum nutritional value standards. While the food bearing such a qualified comparative health claim may not contribute in any absolute sense to a healthful diet, the substitution of such food for a less healthful food in the same category could result in a

[91] Further, FDA's treatment of health claims in labeling for any food containing a risk-increasing level of a nutrient, as well as the NLEA-mandated educational effort, could well increase consumers' expectations concerning the scope of unqualified health claims, including expectations that the foods do not present any significant health risks.

[92] 21 CFR 101.14(d)(2)(vi) (1993).

[93] 21 CFR 101.14(d)(2)(vii) (1993).

[94] 58 FR 2514, Jan. 6, 1993.

[95] 56 FR 60,553 (1992) (discussion of proposed regulations).

[96] See, *e.g.*, *Gracewood Fruit Co.*, FTC Dkt. No. C-3470 (Oct. 29, 1993) (consent order). The complaint accompanying the Gracewood consent agreement challenged claims that eating grapefruit could reduce serum cholesterol levels, in part because there was no evidence that the small amount of pectin (the relevant nutrient) in grapefruit was sufficient to cause any meaningful reduction in serum cholesterol. See also Lorillard, 186 F.2d at 57 (advertising claiming that cigarettes were lowest in nicotine, tars, and resins challenged in part because the difference was so small as to be insignificant). Similarly, the Commission's Guides for the Use of Environmental Marketing Claims include the general principle that claims should not be presented in a manner that overstates the attribute or benefit of a product, and that "[m]arketers should avoid implications of significant environmental benefits if the benefit is in fact negligible." 16 CFR 260.6(c) (1993).

[97] See discussion supra at Part III, Section A.2., (comparative nutrient claims).

[98] 21 CFR 101.14(e)(6) (1993).

[99] 58 FR 2522 (1994).

[100] See discussion supra at part IV, section C.

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meaningful contribution toward the claimed health effect without detracting from the healthfulness of the overall diet.[101]

As noted in part IV, section C., *supra*, such comparative claims must be sufficiently qualified to convey clearly that the claimed health benefit derives only from the substitution of the advertised food for a significantly less healthful alternative.

E. Relevance of Dietary Factors to Claimed Health Benefit

For each category of health claims approved by FDA, the regulations present model health claim language that places the health benefits to be derived from consuming a nutrient in the context of other factors that bear on the relevant disease or health-related condition.[102] For example, in authorizing claims about calcium/osteoporosis, FDA developed model language explaining how other factors like gender, age, ethnicity, and exercise bear on the relationship between calcium consumption and osteoporosis.[103] FDA's model health claims are intended to ensure that health claims are complete, truthful and not misleading. The model statements therefore include reference to the fact that factors other than consumption of the food also bear on the claimed health effect.[104]

The Commission shares FDA's concern that health claims for food products may mislead consumers if they oversimplify the diet-disease relationship or otherwise overstate the relative significance of dietary factors in achieving certain health effects. Health claims in food advertising should therefore be sufficiently qualified to avoid implying to reasonable consumers that consumers can achieve the claimed effect simply by consuming the food and without regard to other factors, such as overall diet, exercise, age, or family history, that may either contribute or detract from the claimed effect.

However, while the Commission recognizes the desirability of educating consumers about the role of other factors that bear on the risk of disease and how such factors interact with diet, the Commission must evaluate whether the failure to disclose such qualifying information in a claim about the health effects of a food would mislead consumers. As explained above, not all omissions of information are deceptive in violation of Section 5. In assessing whether an omission is deceptive, the Commission examines whether the omitted information would be necessary to prevent an affirmative claim from creating a misleading impression.[105]

The Commission will not require food advertisers to include in advertising containing health claims all potentially relevant information about the specific diet-related disease, or affirmatively to disclose that the risk of the disease depends on many factors, unless such disclosure is necessary to prevent consumers from being misled about the significance of diet as one of those factors. Indeed, in many forms of advertising it would not be feasible to include all nutritional information that may be of interest to consumers. While the additional dietary and nondietary factors associated with a health condition may be of interest to consumers, in most cases section 5 would not require full disclosure of such information to prevent consumers from being misled by statements about the contribution of a particular food to a health effect.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-13284 Filed 5-31-94; 8:45 am]

BILLING CODE 6750-01-P

[Dkt. C-3265]

Arkla, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This order grants a petition to reopen the proceeding and to modify the Commission's 1989 consent order by modifying the description of the assets identified in paragraph I(j) and Schedule B of the order as the Arkla Pipeline Assets. The Commission concluded that changed conditions warranted reopening and modifying the order.

DATES: Consent Order issued October 10, 1989. Modifying Order issued March 28, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Kenneth Libby, FTC/S-2115, Washington, DC 20580. (202) 326-2694.

SUPPLEMENTARY INFORMATION: In the Matter of Arkla, Inc. The prohibited trade practices and/or corrective actions as set forth at 55 FR 7565, are changed, in part, as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94-13287 Filed 5-31-94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 9189]

Detroit Auto Dealers Association, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, one hundred and forty four Detroit-area automobile dealerships, owners and managers, and dealer associations (including respondents associated with the sale of GM, Ford, Lincoln-Mercury and Volkswagen vehicles, and respondents associated with the sale of Chrysler, Plymouth and Dodge vehicles) to stay open a specified minimum number of hours a week. In addition, the order prohibits the respondents from entering into, continuing or carrying out any agreement to establish, fix or maintain any hours of operation.

DATES: Complaint issued December 20, 1984. Order issued April 20,1994.[1]

FOR FURTHER INFORMATION CONTACT: Ernest Nagata, FTC/H-394, Washington, DC 20580. (202) 326-2714.

SUPPLEMENTARY INFORMATION: On Thursday, February 10, 1994, there was published in the **Federal Register**, 59 FR 6263, a proposed consent agreement with analysis In the Matter of Detroit Auto Dealers Association, Inc., *et al.*, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 94-13285 Filed 5-31-94; 8:45 am]

BILLING CODE 6750-01-M

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[101] For example, a qualified comparative health claim suggesting that consumers switch from a high fat to a fat-free salad dressing, and indicating that diets low in total fat may contribute to a reduced risk of some forms of cancer, could encourage a dietary choice resulting in a significant health benefit, even if the fat-free salad dressing did not contain sufficient levels of any of the six nutrients or substances specified by FDA.

[102] FDA has stated that model health claim language can be paraphrased as long as all mandatory elements of the model statements are addressed. 58 FR 2510, Jan. 6, 1993.

[103] 21 CFR 101.72(e) (1993). In authorizing other health claims, FDA provides alternative approaches of either expressly enumerating the relevant factors, or stating more simply that the development of the disease depends on many factors. See, e.g., 21 CFR 101.73 (1993) (governing claims about dietary fat and cancer).

[104] 58 FR 2511, Jan. 6, 1993; 21 U.S.C. 343(r)(3)(B)(iii).

[105] Deception Statement, 103 F.T.C. at 176. In J.B. Williams Co. v. FTC, for example, the Commission challenged as deceptive advertising claims that a vitamin and iron supplement would reduce tiredness because the advertiser failed to disclose that those symptoms are usually caused by factors other than vitamin and iron deficiency. 381 F.2d 884, 890 (6th Cir. 1967). See also Keele Hair & Scalp Specialists, 55 F.T.C. 1840 (1959), aff'd, 275 F.2d 18 (5th Cir. 1960) (baldness cure claims challenged for failure to disclose significance of male heredity as cause of baldness, for which cure was ineffective).

[1] Copies of the Modifying Order are available from the Commission's Public Reference Branch, H-130, 6th & Pa. Ave., NW., Washington, DC 20580.

[1] Copies of the Complaint, and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Human Services Transportation Technical Assistance Project

AGENCY: The Assistant Secretary for Planning and Evaluation and the Director of the Office of Intergovernmental Affairs (IGA) of the Department of Health and Human Services (HHS).

ACTION: Request for applications for technical assistance in the area of human services transportation from national organizations with a record of assisting rural and special transportation needs.

SUMMARY: This announcement solicits applications and describes the application process for the award of the cooperative agreement. It is the intent of HHS to fund one project which address the various task areas in this announcement. The project period will be for three years. However, an award will be funded only for the first year with funding for years two and three subject to the government's determination to continue the project. A total of $400,000 is available for this cooperative agreement.

DATES: The closing date for submittal of applications under this announcement is July 1, 1994.

ADDRESSES: Send application to Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., room 405-F, Hubert H. Humphrey Building, Washington, DC 20201. Attn: Al Cutino.

FOR FURTHER INFORMATION CONTACT: Technical Questions, Dianne L. McSwain, HHS/IGA, 200 Independence Avenue, SW., room 621-E, Washington, DC 20201, Telephone: (202) 690-6036. Questions may be faxed to (202) 690-5672 (applications may not be faxed for submission). Application Instructions and Forms, should be requested from and submitted to: Grants Officer, Department of Health and Human Services, ASPE/IO, 200 Independence Avenue, SW., room 405-F, Washington, DC 20201, phone (202) 401-3951. No faxes will be accepted. Questions concerning the preceding information should be submitted to the Grants Officer at the same address.

Eligible Applicants

Eligible applicants are national organizations or large institutions with a record of assisting rural and special transportation needs. However, for-profit organizations are advised that no cooperative agreement funds may be paid as profit to any recipient of a grant or subgrant. Profit is any amount in excess of allowable direct or indirect costs of the grantee. Congress has indicated that the funded organization should have experience in administering a national toll-free hotline and electronic informational bulletin boards. It should regularly publish a national technical assistance periodical, maintain a national network of local and State affiliates, and have demonstrated experience in providing information and technical assistance on human service transportation to local agencies and programs.

SUPPLEMENTARY INFORMATION:

Part I

Legislative Authority

The Transportation Coordination Technical Assistance Project cooperative agreement(s) are authorized by section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under Public Law 103-112 (DHHS Appropriation Act for FY 1994).

Project History and Purpose

In FY 1990, Congress authorized $250,000 for the provision of technical assistance to human service transportation providers. This effort included the compilation of data on specific target populations, the development of mechanisms for dissemination of information, and the preparation of a report to the Secretary on the provision of transportation services to human service clients. For FYs 1991, 1992 and 1993, the Congress authorized $500,000 for this effort, adding funding for specific technical assistance and research and analysis in the implementation of the requirements of the Americans with Disabilities Act (ADA). For FY 1994, the Congress has again authorized $500,000 for continued technical assistance in human services transportation.

The purpose of this announcement is to solicit applications for the provision of technical assistance to those organizations, agencies and individuals involved in the planning and provision of human services transportation to the clients of HHS-funded programs. This announcement represents a follow-on activity to the efforts funded in FYs 1991-1993.

It is the policy of HHS to coordinate related programs at the Federal level wherever possible and to promote maximum feasible coordination at the State and local level. Coordination and collaborative effort maximize the resources available to address specific needs. Reflecting this policy, HHS and the DOT have established the Joint DHHS/DOT Coordinating Council on Human Services Transportation (Coordinating Council) as a focal point for the effort to coordinate HHS and DOT resources for transportation of HHS program client populations. The goals of the Coordinating Council are as follows: (1) To achieve the most cost-effective use of Federal, State and local resources for specialized and human services transportation; (2) to encourage State and local governments to take a more active role in the management and coordination of programs supporting specialized and human services transportation; (3) to adopt administrative and management practices in the implementation of Federal programs which encourage coordination among service providers and increase access to specialized and human services transportation; (4) to share technical resources and information with recipients of Federal assistance and transportation providers; and (5) to encourage the most efficient system of providing services, including consideration of private sector providers and use of competitive bidding.

In support of these goals, HHS has identified the following objectives for the Human Services Transportation Technical Assistance Project: (1) to

promote more efficient use of equipment, facilities, and staff resources at the State local level; and (2) to provide information, technical data, and assistance to State and local agencies to improve management of transportation services and the acquisition of appropriate equipment and facilities. Applicants should reflect an understanding of these goals and objectives in their applications.

Available Funds

HHS intends to award one cooperative agreement in the amount of $400,000 resulting from this announcement.

Period of Performance

The start-up date of the project will be July 1, 1994 for a project period of 36 months. However, an award will be funded only for the first year with funding for years two and three subject to the government's determination to continue the project.

Part II—Human Services Transportation Technical Assistance Project—Responsibilities of the Awardees and the Federal Government

Awardee Responsibilities

The Human Services Technical Assistance project requires the development and maintenance of mechanisms to provide information, technical assistance, and training to HHS human services transportation planners and providers on the efficient use of transit resources, equipment and facilities. Applicants should be aware of and be sensitive to the need to coordinate the activities herein with the activities of the Rural Transit Assistance Program (RTAP) funded through the Federal Transit Administration (FTA) of the Department of Transportation (DOT) and ongoing relevant transportation efforts by other federal departments. Knowledge of the universe of federal efforts pertaining to the transportation of human services clients will be considered partially indicative of ability to perform the required tasks.

The following tasks are to be specifically addressed in the project narrative of the application. Applicants are encouraged to be innovative and to suggest additional or alternative approaches through subtasks that may improve the potential for successful completion of the task. However, applicants are cautioned to provide suggestions for additional subtasks judiciously with concern for the overall cost of the project. There will be no additional funds beyond those appropriated by Congress for this project.

Task I: Project Planning and Coordination

Task I entails the preparation of a detailed work plan of the activities proposed to meet the stated objectives of the project, including monthly meetings with the federal project staff, quarterly written progress reports and a final report due at the end of the project period. The work plan provides detailed descriptions of task activities and specific time frames for the accomplishment of the activities in measurable terms and reflects consultation with the Federal Project Officer (FPO). In the second and third year, additional planning with the FPO should be reflected to allow for the annual minor project adjustments needed to keep the tasks relevant to consumer need.

Task II: Development and Maintenance of Human Services Transportation Resource Center

Task II addresses the development and maintenance of a central repository of information and technical assistance materials for developing or improving coordinated transportation systems (hereafter known as the Resource Center). Access to the Resource Center should be available to State and local human service agencies, planning entities, government decision-makers and transportation service providers. The Resource Center will be the focal point for the ongoing collection and dissemination of information on issues of specific concern to human services transportation planners and providers as the issues evolve. A priority of the Resource Center will be the support of regional, State or local groups that seek to improve coordination of human services transportation.

The Resource Center collection of materials will represent the universe of reports, studies, and additional written and video materials that represent the current knowledge base in human services transportation. The Resource Center will include, at a minimum, federal- and State-produced reports, technical assistance and training materials, federal human service transit-related legislation and regulations, training and technical assistance materials that will be developed through this effort, and other relevant materials as identified by HHS, the Coordinating Council, or the awardee. A thorough listing of proposed initial holdings for the Resource Center will be considered partially indicative of the ability to undertake this task. Although the awardee is encouraged to minimize costs by referral to other resources for acquisition of documents, a minimum of one copy of each identified referral piece will be maintained in the Resource Center for research purposes. In order to encourage students and practitioners to further the knowledge base, the Resource Center will be made available, within reasonable constraints, to individuals or organizations wishing to do research in the area of human services transportation.

Activities that might be undertaken to accomplish this task include: (1) Providing ready access to the technical assistance and information of the Center such as through the use of physical access, "hotlines" and electronic bulletin boards; (2) developing a mechanism for periodic systematic searches of appropriate online information services to identify new materials; (3) maintaining ongoing relationships with the recognized individuals undertaking research in relevant fields in order to identify new work and to provide feedback on new issues to be explored; (4) identifying and maintaining contact with relevant transportation-related programs in colleges and universities; (5) developing and maintaining a calendar of the meetings, conferences and events of major organizations that would be of interest to the human services transportation field; and (6) developing procedures to ensure that organizations or individuals obtain requested materials or information in a timely manner (Applicants are encouraged to disseminate information through links with other agencies rather than attempting to store and disseminate documents large quantities of documents).

Task III: Development and Coordination of a Resource Network of Knowledgeable Practitioners of Human Services Transportation

Task III represents the establishment and coordination of a network of identified, certified practitioners in the field of human services transportation whose expertise can be made available to transportation planners or providers. Such expertise might be called upon for presentations at conferences or meetings, through telephone or written exchange, or on-site visits. If the level of expertise that was required was significant, the certified peer might be assisted to visit the site of the requesting party to assist first-hand with the problem.

The following activities at a minimum, might be undertaken to complete this task; (1) develop a set of criteria against which practitioners may be certified; (2) develop and implement a plan to identify practitioners for certification; (3) develop an automated database to manage the certified practitioner data, including name, contact information, specific expertise, title and description of current transportation position, and record of activity within the peer network; (4) develop a mechanism for screening requests for technical assistance which will identify the need for practitioner assistance and that assistance can be provided by telephone, in writing, or if an on-site visit is warranted; and (5) develop a process for documenting the practitioner contacts for inclusion in the Resource Center and to be summarized in the quarterly reports. Emphasis might be placed on the use of certified peers in ways to meet the most need.

Task IV: Disseminate Information on the Provision of Human Services Transportation

Task IV addresses the dissemination of the information compiled through the Resource Center activities, information accumulated under Task III, and information that the federal government deems necessary for distribution to the human services transportation network. The dissemination of information and materials relating to the implementation of the ADA transportation requirements and the effective coordination of transportation resources is of priority under this task.

Project dissemination activities under Task IV will be coordinated with those of regional, State and other federal human services transportation coordination efforts to avoid duplication of efforts and to construct complementary and mutually beneficial activities. Under no circumstances should the awardee undertake the development of technical assistance or training information or materials that knowingly duplicate existing information or materials without prior written permission of the FPO.

At a minimum the awardee would be expected to undertake the following activities in support of Task IV: (1) Identifying opportunities to disseminate information through the existing publications of relevant human services organizations on human services transportation issues (a minimum of 6 articles during the project period); (2) identifying and coordinating through the practitioner network request for conveners and facilitators for regional, State and local-level human services organizations and forums (a minimum of 6 opportunities); (3) identifying, tracking and coordinating activities of other major national or regional human services organizations interested in human services transportation with activities planned this project including identifying opportunities to participate in national or regional conferences (present at a minimum of 5 human services meetings); (4) planning, organizing and presenting training conferences on coordination and ADA implementation issues (a minimum of two regional meetings linked to major human services meetings where feasible); (5) ensuring the availability of current information on the project resources and the Resource Center including the dissemination of a basic information package on the Resource Center through the major human services networks, at a minimum of once a year; (6) compile information on the transportation requirements of the ADA, as well as additional transportation requirements such as drug and alcohol testing and blood born pathogins handling, prepare summaries on these requirements and assist HHS programs in the dissemination of this information to the appropriate HHS grantees; (7) compiling information on the usage of the Resource Center and dissemination activities, including but not limited to the data on the rate of use, kinds of inquiries, and types of requesting organizations, to be included in the monthly project meetings; and (8) indicate a process for screening requests for information and technical assistance which will identify the appropriate level and type of technical assistance, such as immediate telephone response, research and compilation of a written response, practitioner network assistance by telephone, in writing, or through an on-site visit.

Federal Government Cooperative Agreement Responsibilities

HHS or its representatives will provide: (1) Consultation and technical assistance in planning, operating, and evaluating the technical assistance activities of the project; (2) up-to-date information on federal government regulations identified as affecting the provision of transportation services to human service clients; (3) assistance in the evaluation of project effectiveness; (4) assistance in collaborating with appropriate State and local governmental entities in the performance of the project activities; (5) assistance in the identification of HHS information and technical assistance resources pertinent to the success of this project; and (6) assistance in the transfer of "successful practices" in the human services transportation to other Federal, State and local entities.

Part III—Application Preparation and Evaluation Criteria

This part contains information on the preparation of an application for submission under this announcement, the forms necessary for submission and the evaluation criteria under which the applications will be reviewed. Potential applicants should read this part carefully in conjunction with the information provided in Part II.

To ensure that organizations with the greatest capacity for providing quality services participate in this effort, applicants for funding under the announcement should reflect, in the program narrative section of the application, how they will be able to fulfill the responsibilities and requirements described in this section of the announcement. Applicants must address all the identified tasks. It is the intent of HHS to make an award sufficient to accomplish the entire scope of effort described in this announcement, if submissions of sufficient scope and quality are received to permit it.

The applicant should include: (1) A management plan, which sets forth how the project will be managed and who will be the key personnel involved, including a Gantt chart and other graphics which specifically display the management information provided in text; and (2) a budget plan, which specifically delineates the costs associated with the project. When the applicant chooses to suggest additional efforts to support a task, the cost of those additional efforts (not required by this announcement) should be separately identified. However, at no time will a proposed budget in excess of $400,000 for all the Tasks listed in the Announcement be considered for funding, unless the amount in excess of $400,000 represents grantee cost-sharing.

Review Process and Funding Information

Applications that are submitted by the deadline date and which meet the screening criteria will be reviewed and scored competitively. The applications will be reviewed using the evaluation criteria listed below to score the applications. These review results will be a primary factor in funding decisions.

HHS reserves the option to discuss applications with other Federal agencies, Central or Regional Office staff, specialists, experts, States and the general public. Comments from these sources, along with those of the reviewers, will be considered in making funding decisions.

State Single Point of Contact (E.O. No. 12372)

The Department of Health and Human Services has determined that this program is not subject to Executive Order No. 12372, Intergovernmental Review of Federal Programs, because it is a program that is national in scope and the only impact on State and local governments would be through subgrants. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. No. 12372.

Deadline for Submittal of Applications

The closing date for submittal of applications under this announcement is July 1, 1994. Applications must be postmarked or hand-delivered to the application receipt point no later than 5 p.m. on July 1, 1994.

Hand-delivered applications will be accepted Monday through Friday prior to and on July 1, 1994 during the working hours of 9 a.m. to 5 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue SW., in Washington, DC. When hand-delivering an application, call 690–8794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before July 1, 1994; or (2) Postmarked before midnight of the deadline date, and received in time to be considered during the competitive review process (within two weeks of the deadline date).

When mailing application packages, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the July 1, 1994 deadline are considered late applications and will not be considered or reviewed in the current competition. HHS will send a letter to this effect to each late applicant.

HHS reserves the right to extend the deadline for all applications due to acts of God, such as floods, hurricanes, or earthquakes; due to acts of war; if there is widespread disruption of the mail; or if HHS determines a deadline extension to be in the best interest of the Government. However, HHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Application Requirements: Applicants are advised to read and follow this section very carefully. Applications which do not meet these initial requirements may not be considered or reviewed in the competition, and the applicant will be so informed. A complete and conforming application must meet the following requirements:

Eligible applicants are national organizations or large institutions with a record of assisting rural and special transportation needs. Congress has indicated that the funded organization should have experience in administering a national toll-free hotline and electronic informational bulletin boards. It should regularly publish a national technical assistance periodical, maintain a national network of local and State affiliates, and have demonstrated experience in providing information and technical assistance on human service transportation to local agencies and programs. However, for-profit organizations are advised that no cooperative agreement funds may be paid as profit to any recipient of a grant or subgrant. Profit is any amount in excess of allowable direct or indirect costs of the grantee.

Application Forms: See section entitled "Components of a Complete Application". All of these documents must accompany the application package.

Maximum Length: No specific limit will be set for the length of the application. However, applications that are overly long and/or contain superfluous material will be viewed as indicating an inefficient approach.

Evaluation Criteria: The evaluation criteria correspond to the outline for the development of the Program Narrative Statement of the application. Although not mandatory, it is strongly recommended that applications be prepared with the format indicated by this outline.

Applications which meet the initial requirements will be reviewed by a panel of at least three reviewers. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provided comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process.

1. Understanding of the Effort

The application discusses in detail the applicant's understanding of the need for the project, the background and evolution of the effort to coordinate human services transportation, the significant participants in the coordination effort, the universe of current federal activities, and the specific relevance of the proposed tasks to the identified need. The application relates the project to the goals and objectives described in the first section of this announcement. 20 points

2. Project Approach

The application outlines a sound and workable approach to the effort and details how the proposed tasks will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary collaborative involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

To the extent applicable, the application identifies the kinds of data to be collected and/or maintained, and discusses the criteria to be used to evaluate the results and successes of the project. It describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution. 35 points.

3. Staffing Utilization, Staff Background and Experience

The application identifies the background of the principal project staff members. The name, address, training, educational background, and other qualifying experience are provided for the project director and the key project staff. Any staff to be added as a result of the award of this cooperative agreement should be clearly delineated. The applicant provides assurance that the proposed staff will be available to work on the project effort upon award of the cooperative agreement. The principal author of the application is

identified and that person's role in the project is identified. 20 points

4. Organizational Experience

The application identifies the qualifying experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. Congress has directed HHS to identify the applicant as a national organization or large institution with a record of assisting rural and special transportation needs. The organization should have experience in administering a national toll free assistance hotline and electronic informational bulletin boards. It should regularly publish a national technical assistance periodical, maintain a national network of local and state affiliates, and have demonstrated experience in providing information and technical assistance on human services transportation to local agencies and programs. Previous specific experience with work similar to the tasks proposed is clearly and specifically described.

The relationship between this project and other work planned, anticipated, or underway by the applicant is described, including a chart which lists all related Federal assistance received within the last five years. In the event a consortium of applicants is proposed, the project history of prior joint work should be provided. The previous Federal assistance is identified by project number, Federal agency, and grants or contracting officer. 25 points

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424, REV 4–88);
2. Budget Information—Non-construction Programs (Standard Form 424B, REV 4–88);
3. Assurances—Non-construction Programs (Standard Form 424B, REV 4–88);
4. Table of Contents;
5. Budget justification for Section B—Budget Categories;
6. Proof of non-profit status, if appropriate;
7. Copy of the applicant's approved indirect cost rate agreement, if necessary;
8. Project Narrative Statement, organized in four sections addressing the following areas:
   (a) Understanding of the Effort,
   (b) Project Approach,
   (c) Staffing Utilization, Staff Background, and Experience
   (d) Organizational Experience;
9. Any appendices/attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension and Other Responsibility Matters; and
12. Certification and, if necessary, Disclosure Regarding Lobbying.
13. Supplement to Section II—Key Personnel.
14. Application for Federal Assistance Checklist.

Dated: May 17, 1994.

David T. Ellwood,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 94–13274 Filed 5–31–94; 8:45 am]

BILLING CODE 4151–04–M

Human Services Transportation Research and Analysis Project

AGENCY: The Assistant Secretary for Planning and Evaluation and the Director of the Office of Intergovernmental Affairs (IGA) of the Department of Health and Human Services (HHS).

ACTION: Request for applications for research and analysis in the area of human services transportation from national organizations with a record of successfully completing recognized research and analysis informing the field of human services transportation.

SUMMARY: This announcement solicits applications and describes the application process for the award of the cooperative agreement. It is the intent of HHS to fund one project which address the various task areas in this announcement. The project period will be for three years. However, an award will be funded only for the first year with funding for years two and three subject to the government's determination to continue the project. A total of $100,000 is available for this cooperative agreement.

DATES: The closing date for submittal of applications under this announcement is August 1, 1994.

ADDRESSES: Send application to Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., room 405–F, Hubert H. Humphrey Building, Washington, DC 20201. Attn: Al Cutino.

FOR FURTHER INFORMATION CONTACT: Technical Questions, Dianne L. McSwain, HHS/IGA, at (202) 690–6036. Questions may be faxed to (202) 690–5672 (applications may not be faxed for submission).

Eligible Applicants

Eligible applicants are nationally-recognized organizations, institutions, or for profit entities with a record of study and analysis in rural and special transportation needs. However, for-profit organizations are advised that no cooperative agreement funds may be paid as profit to any recipient of a grant or subgrant. Profit is any amount in excess of allowable direct or indirect costs of the grantee. Such applicants should indicate a significant publication history indicating a range of analysis and study projects in human services or specialized transportation brought to successful completion. Experience in working with special populations which represent HHS target populations will be of particular interest.

SUPPLEMENTARY INFORMATION:

Part I

Legislative Authority

The Transportation Coordination Research and Analysis Project cooperative agreement is authorized by Section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under Public Law 103–112 (DHHS Appropriations Act for FY 1994).

Project History and Purpose

In FY 1990, Congress authorized $250,000 for the provision of technical assistance to human services transportation providers. This effort included the compilation of data on specific target populations, the development of mechanisms for dissemination of information, and the preparation of a report to the Secretary on the provision of transportation services to human service clients. For FYs 1991, 1992 and 1993, the Congress authorized $500,000 for this effort, adding funding for specific technical assistance in the implementation of the requirements of the Americans with Disabilities Act (ADA). For FY 1994, the Congress has again authorized $500,000 for continued technical assistance and research and analysis in human services transportation.

The purpose of this announcement is to solicit applications for the performance of research and data analysis in various issue areas informing the provision of human services transportation to the clients of HHS-funded programs. This announcement represents a partial follow-on activity to the efforts funded in FYs 1991–1993 in that the short-term research and analysis tasks of the prior projects have been incorporated into a separate announcement for FY 1994.

It is the policy of HHS to coordinate related programs at the Federal level wherever possible and to promote maximum feasible coordination at the State and local level. Coordination and collaborative effort maximize the resources available to address specific needs. Reflecting this policy, HHS and the DOT have established the Joint DHHS/DOT Coordinating Council on Human Services Transportation (Coordinating Council) as a focal point for the effort to coordinate HHS and DOT resources for transportation of HHS program client populations. The goals of the Coordinating Council are as follows: (1) To achieve the most cost-effective use of Federal, State and local resources for specialized and human services transportation; (2) to encourage State and local governments to take a more active role in the management and coordination of programs supporting specialized and human services transportation; (3) to adopt administrative and management practices in the implementation of Federal programs which encourage coordination among service providers and increase access to specialized and human services transportation; (4) to share technical resources and information with recipients of Federal assistance and transportation providers; and (5) to encourage the most efficient system of providing services, including consideration of private sector providers and use of competitive bidding.

The research and analysis tasks of this effort represent data acquisition and synthesis support activities to the Coordinating Council and the Human Services Transportation Technical Assistance Project. In support of these goals, HHS has identified the following objectives for the Human Services Transportation Research and Analysis Project: (1) To develop information on the most efficient use of equipment, facilities, and staff resources at the State and local level; (2) to examine and analyze issues and concerns identified by the Coordinating Council; and (3) to provide information, technical data, and assistance for use by State and local agencies to improve management of transportation services and the acquisition of appropriate equipment and facilities. Applicants should reflect an understanding of these goals and objectives in their applications.

Available Funds

HHS intends to award one cooperative agreement in the amount of $100,000 resulting from this announcement

Period of Performance

The start-up date of the project will be on or before August 1, 1994 for a project period of 36 months. However, an award will be funded only for the first year with funding for years two and three subject to the government's determination to continue the project.

Part II—Human Services Transportation Technical Assistance Project—Responsibilities of the Awardee and the Federal Government

Awardee Responsibilities

The Human Services Transportation Research and Analysis project requires data acquisition, synthesis, examination, evaluation and analysis support for the Human Services Transportation Technical Assistance project and the Coordinating Council on the issues affecting efficient use of transit resources, equipment and facilities to serve the clients of HHS-funded programs. Applicants should be aware of and be sensitive to the need for flexibility to accommodate the shifting information needs and to coordinate the activities herein with the activities of the Community Transportation Assistance Project (CTAP) funded by HHS and the Rural Transit Assistance Program (RTAP) funded through the Federal Transit Administration (FTA) of the Department of Transportation (DOT) and as well as work undertaken through the Transportation Research Board and ongoing relevant transportation efforts by other federal departments. Knowledge of the universe of federal efforts pertaining to the transportation of human services clients will be considered partially indicative of ability to perform the required tasks.

The following tasks are to be specifically addressed in the project narrative of the application. Applicants are encouraged to be innovative and to suggest additional or alternative approaches through subtasks that may improve the potential for successful completion of the task. However, applicants are cautioned to provide suggestions for additional subtasks judiciously with concern for the overall cost of the project. There will be no additional funds beyond those appropriated by Congress for this project.

Task I: Project Planning and Coordination

Task I entails the preparation of a detailed work plan of the activities proposed to meet the stated objectives of the project, including monthly meetings with the federal project staff, quarterly written progress reports, and a final report due at the end of each identified activity. In addition, an overall final report of the project activities and recommendations for future activities due at the end of the project year should be included. The work plan provides detailed descriptions of task activities and specific time frames for the accomplishment of the activities in measurable terms and reflects periodic consultation with the Federal Project Officer (FPO). In the second and third year, additional planning with the FPO should be reflected to allow for the minor project adjustments needed to keep the tasks relevant to consumer need.

Task II: Identification of Research and/or Analysis Topics

Task II consists of the identification of the research and analysis topics to be examined during the initial and subsequent project years. Such topics might include a comprehensive review of the human service transportation interests and information needs among the members of the Coordinating Council; an evaluation of the Community Transportation Assistance Project (CTAP), identification of the information needs of Head Start grantees regarding the pending transportation regulations; development of a comprehensive database of the authorizing legislation for HHS programs providing funding for transportation services permitting tracking of the authorization cycles; examine the transportability of mobility devices; identify, describe and recommend solutions to inconsistencies in existing HHS regulations posing barriers to the effective coordination of transportation resources; and assisting the Coordinating Council with an ongoing strategic planning process. Some consideration should be made for the appearance of unanticipated topics during each project year.

The nature of the work of the Coordinating Council is such that issues/topics evolve quickly and the need for information within the human services transportation network can become critical quite quickly. Therefore, the awardee should anticipate sufficient resources to explore two to three additional topics beyond those proposed and agreed upon by the FPO at the initial project meeting. The suggestion of additional topics not listed herein will be considered indicative of knowledge of the field and current practices.

The activities which might be undertaken to accomplish this task could include: (1) Review of existing reports from meetings, conferences and roundtables which have identified current issues and concerns as identified by the providers and consumers of human services transportation; (2) discussions with the membership of the Coordinating Council and the workgroup supporting the Council on information needs within the various member programs; (3) consultation with the grantee supporting the CTAP project with regard to the most requested topics through the TAP-IN bulletin board and the hotline; (4) compilation of a suggested prioritized list of topics with rationale for inclusion and the resources necessary for completion of each activity; and (5) presentation of the topics list to the FPO for consultation and approval.

Task III: Performance of Topic Activities

Task IV represents the research and analysis activities to be undertaken as identified in Tasks II and III. No more than six separate topics will be explored during each project year from the list created in Task III as well as the unanticipated topics discussed in Task I. The number of completed activities will be driven by the complexity of the topics undertaken and the need for information within the human services transportation network.

The activities that might be undertaken with each topic to be explored under this task could include: (1) A comprehensive description/definition of the issue(s) with relevant existing data; (2) a detailed description of the proposed activity (analysis, synthesis, etc.) with resource requirements; (3) a rationale for the proposed approach; (4) a request for any required technical support from the FPO, other federal staff or the CTAP project; (5) completion of the proposed activities; and (6) monthly oral reports and quarterly written reports (if the activity will entail more than three months work) as well as a well documented written final report for each topic.

Part III—Application Preparation and Evaluation Criteria

This part contains information on the preparation of an application for submission under this announcement and the evaluation criteria under which the applications will be reviewed. Potential applicants should read this part carefully in conjunction with the information provided in Part II.

To ensure that organizations with the greatest capacity for providing quality services participate in this effort, applicants for funding under the announcement should reflect, in the program narrative section of the application, how they will be able to fulfill the responsibilities and requirements described in this section of the announcement. Applicants must address all the identified tasks. It is the intent of HHS to make an award sufficient to accomplish the entire scope of effort described in this announcement, if submissions of sufficient scope and quality are received to permit it.

The applicant should include: (1) A management plan, which sets forth how the project will be managed and who will be the key personnel involved, including a Gantt chart and other graphics which specifically display the management information provided in text; and (2) a budget plan, which specifically delineates the costs associated with the project. When the applicant chooses to suggest additional efforts to support a task, the cost of those additional efforts (not required by this announcement) should be separately identified. However, at no time will a proposed budget in excess of $100,000 for all the Tasks listed in the Announcement be considered for funding, unless the amount in excess of $100,000 represents grantee cost-sharing.

Review Process and Funding Information

Applications that are submitted by the deadline date and which meet the screening criteria will be reviewed and scored competitively. The applications will be reviewed using the evaluation criteria listed below to score the applications. These review results will be a primary factor in funding decisions.

HHS reserves the option to discuss applications with other Federal agencies, Central or Regional Office staff, specialists, experts, States and the general public. Comments from these sources, along with those of the reviewers, will be considered in making funding decisions.

State Single Point of Contact (E.O. No. 12372)

The Department of Health and Human Services has determined that this program is not subject to Executive Order No. 12372, Intergovernmental Review of Federal Programs, because it is a program that is national in scope and the only impact on State and local governments would be through subgrants. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. No. 12372.

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Hand-delivered applications will be accepted Monday through Friday prior to and on August 1, 1994 during the working hours of 9 a.m. to 5 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW., in Washington, DC. When hand-delivering an application, call 690–8794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before August 1, 1994, or (2) Postmarked before midnight of the deadline date, August 1, 1994 and received in time to be considered during the competitive review process (within two weeks of the deadline date).

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HHS reserves the right to extend the deadline for all applications due to acts of God, such as floods, hurricanes or earthquakes; due to acts of war; if there is widespread disruption of the mail; or if HHS determines a deadline extension to be in the best interest of the Government. However, HHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Application Requirements: Applicants are advised to read and follow this section very carefully. Applications which do not meet these initial requirements may not be considered or reviewed in the competition, and the applicant will be so informed. A complete and

conforming application must meet the following requirements:

Eligible applicants are nationally-recognized organizations, institutions, or for profit entities with a record of study and analysis in rural and special transportation needs. However, for-profit organizations are advised that no cooperative agreement funds may be paid as profit to any recipient of a grant or subgrant. Profit is any amount in excess of allowable direct or indirect costs of the grantee. Such applicants should indicate a significant publication history indicating a range of analysis and study projects in human services or specialized transportation brought to successful completion. Experience in working with special populations which represent HHS target populations will be of particular interest.

Application Instructions and Forms See section entitled "Components of a Complete Applications". All of these documents must accompany the application package. Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, room 405-F, 200 Independence Avenue, SW., Washington, DC 20201, Phone (202) 401-3951. No faxes will be accepted. Questions concerning the preceding information should be submitted to the Grants Officer at the same address.

Maximum Length: No specific limit will be set for the length of the application. However, applications that are overly long and/or contain superfluous material will be viewed as indicating an inefficient approach.

Evaluation Criteria: The evaluation criteria correspond to the outline for the development of the Program Narrative Statement of the application. Although not mandatory, it is strongly recommended that applications be prepared with the format indicated by this outline.

Applications which meet the initial requirements will be reviewed by a panel of at least three reviewers. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process.

1. Understanding of the Effort

The application discusses in detail the applicant's understanding of the need for the project, the background and evolution of the effort to coordinate human services transportation, the significant participants in the coordination effort, the universe of current federal activities, and the specific relevance of the proposed tasks to the identified need. The application relates the project to the goals and objectives described in the first section of this announcement. 20 points

2. Project Approach

The application outlines a sound and workable approach to the effort and details how the proposed tasks will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary collaborative involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates

To the extent applicable, the application identifies the kinds of data to be collected and/or maintained, and discusses the criteria to be used to evaluate the results and successes of the project. It describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution. 35 points

3. Staffing Utilization, Staff Background and Experience

The application identifies the background of the principal project staff members. The name, address, training, educational background, and other qualifying experience are provided for the project director and the key project staff. Any staff to be added as a result of the award of this Cooperative agreement should be clearly delineated. The applicant provides assurance that the proposed staff will be available to work on the project effort upon award of the cooperative agreement. The principal author of the application is identified and that person's role in the project is identified. 20 points

4. Organizational Experience

The application identifies the qualifying experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application specifically identifies the applicant as a nationally-recognized organization, institution, or company with a record of study and analysis of rural and special transportation needs. Previous specific experience with work similar to the Tasks proposed is clearly and specifically described. The relationship between this project and other work planned, anticipated, or underway by the applicant is described, including a chart which lists all related Federal assistance received within the last five years. In the event a consortium of applicants is proposed, the project history of prior joint work should be provided. The previous Federal assistance is identified by project number, Federal agency, and grants or contracting officer. 25 points

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424, REV 4-88);
2. Budget Information—Non-construction Programs (Standard Form 424A, REV 4-88);
3. Assurances—Non-construction Programs (Standard Form 424B, REV 4-88);
4. Table of Contents;
5. Budget justification for Section B-Budget Categories;
6. Proof of non-profit status, if appropriate;
7. Copy of the applicant's approved indirect cost rate agreement, if necessary;
8. Project Narrative Statement, organized in four sections addressing the following areas:
   (a) Understanding of the Effort,
   (b) Project Approach,
   (c) Staffing Utilization, Staff Background, and Experience
   (d) Organizational Experience;
9. Any appendices/attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension and Other Responsibility Matters; and
12. Certification and, if necessary, Disclosure Regarding Lobbying.
13. Supplement to Section II—Key Personnel.
14. Application for Federal Assistance Checklist

Dated: May 17, 1994

David T. Ellwood,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 94-13275 Filed 5-31-94; 8:45 am]

BILLING CODE 4151-04-M

Administration For Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act (44 U.S.C. chapter 35), we are requesting approval for a new information collection system titled: "Title IV–B and title IV–E of the Social Security Act: Data Collection for Foster Care and Adoption." This information collection is authorized by section 479 of the Social Security Act. This authority requires to States to establish and implement a national data collection system for all children who are in foster care under the responsibility of the State title IV–B/IV–E agency or adopted with the involvement of the same State agency.

ADDRESSES: Copies of this data collection system may be obtained from Edward E. Saunders of the Office of Information Systems Management, Administration for Children and Families, (ACF), by calling (202) 205-7921.

Written comments and questions regarding this requested approval should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Title IV–B and Title IV–E of the Social Security Act: Data Collection for Foster Care and Adoption.

OMB No.: New Request.

The Children's Bureau of the Administration on Children, Youth and Families, (ACYF), at the Administration for Children and Families (ACF) will be responsible for implementing a system for the collection of adoption and foster care data in the United States and shall assure that the information collection will be consistent among the States through the use of uniform definitions and methodologies.

This national data collection system will: (1) Provide comprehensive national information with respect to legal status, demographic characteristics of adoptive and foster children and their biological and adoptive or foster parents; (2) Provide the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care); and (3) Provide the number and characteristics of children placed in or removed from foster care and children adopted or children for whom adoptions have been dissolved, the extent and nature of assistance provided by Federal, State and local adoption and foster care programs and the characteristics of the children receiving the services.

ACF will aggregate the data both by State and nationally and will issue summaries to the States and to other organizations on request. In addition, the data will be analyzed by the Administration for Children and Families and will be used for preparing congressional testimony and special reports; determining foster care and adoption trends and projections; proposing policy and legislative changes and making budget forecasts.

Annual Number of Respondents: 51.

Annual Frequency: 2.

Average Burden Hours Per Response: 367.94.

Total Respondent Burden Hours: 37,530.

Number of Recordkeepers: 51

Number of Annual Hours Per Recordkeeper: 9,410.07

Total Recordkeeping Hours: 479,914

Total Annual Burden: 517,444

Dated: May 19, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94–13225 Filed 5–31–94; 8:45 am]

BILLING CODE 4184–01–M

Agency for Health Care Policy and Research

Requests for Nominations of Members of Clinical Practice Guideline Panel on Prevention of Osteoporosis

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Correction notice.

SUMMARY: The date for submission of nominations of members for the clinical practice guideline panel on osteoporosis in the May 18, 1994 issue (59 FR 25945–25946), should be changed to July 15. The date which appeared on page 25946 in the second complete paragraph of the second column was erroneously stated as June 15.

Dated: May 24, 1994

J. Jarrett Clinton,

Administrator

[FR Doc. 94–13205 Filed 5–31–94; 8:45 am]

BILLING CODE 4160–90–P

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee to the Director CDC.

Time and date: 8:30 a.m.–3 p.m., July 1, 1994.

Place: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee advises the Director, CDC, on policy issues and broad strategies that will enable CDC, the Nation's prevention agency, to fulfill its mission of promoting health and quality of life by preventing and controlling disease, injury, and disability. The committee recommends ways to incorporate prevention activities more fully into health care. It also provides guidance to help CDC work more effectively with its various constituents, in both the private and public sectors, to make prevention a practical reality

Matters to be discussed: The agenda will include remarks from CDC Director, David Satcher, M.D., Ph.D., and the remainder of time will be used to allow all committee members to present their perspectives on two major topics: marketing of public health and health communications. Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Martha F. Katz, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE., Mailstop D–23, Atlanta, Georgia 30333, telephone 404/639–3243.

Dated: May 25, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13230 Filed 5–31–94; 8:45 am]

BILLING CODE 4163–18–M

[CDC–441]

Announcement of a Grant to the National Foundation for the Centers for Disease Control and Prevention, Inc.

Summary

The Centers for Disease Control and Prevention (CDC) announces that approximately $500,000 is anticipated in fiscal year (FY) 1994 funds for a grant program for the National Foundation for the Centers for Disease Control and Prevention, Inc (NFCDC). The grant may be expended only for the purpose

of the administrative expenses of the NFCDC. It is expected that the award will begin on or before September 30, 1994, and will be made for a 12-month budget period within a project period of up to 5 years. Continuation of awards within the project period will be made on the basis of satisfactory progress. Approximately $500,000 is anticipated for each future fiscal year.

The purpose of this grant is to provide funding for the administrative expenses of the NFCDC. An illustrative, non-exhaustive list of administrative expenses includes administrative personnel salaries, benefits, and expenses; administrative travel; administrative equipment; office supplies; utilities, such as water, electricity, and gas; printing; postage; communications; and rent.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to all the priority areas. (For ordering a copy of "Healthy People 2000," see the section "Where To Obtain Additional Information.")

Authority

This grant is authorized under section 399F of the Public Health Service Act, 42 U.S.C. 280d–11.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicant

Assistance will be provided only to the National Foundation for the Centers for Disease Control and Prevention, Inc. (NFCDC). No other applications are solicited. The program announcement and application kit have been sent to NFCDC.

Public Law 102–531 was enacted on October 27, 1992, and authorized the establishment of the NFCDC. The NFCDC is a nonprofit corporation whose purpose is to support the mission of the CDC, primarily by supporting and carrying out activities in conjunction with the CDC for the prevention and control of diseases, disorders, injuries, and disabilities, and the promotion of public health. Public Law 102–531 requires the Director of CDC to make a grant to the NFCDC for administrative expenses for each fiscal year once the Foundation is established.

Use of Funds

Public Law 102–531 requires that grant funds be used only for the purpose of the administrative expenses of the Foundation. The grant award may not be used to fund endowments for positions that are associated with the CDC.

Executive Order 12372

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance number is 93.283.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this grant, please refer to Announcement 441 and contact Carole J. Tully, Grants Management Specialist, Grants Management Branch, 255 East Paces Ferry Road, NE., room 300, Mailstop E–09, Atlanta, GA 30305, telephone (404) 842–6880 for business management technical assistance.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–004373–1) referenced in the "Summary" may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 25, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13232 Filed 5–31–94; 8:45 am]

BILLING CODE 4163–18–P

[Announcement Number 482]

Regional Poison Control Center Demonstration Project; Notice of Availability of Funds for Fiscal Year 1994

Introduction

The Centers for Disease Control and Prevention (CDC), announces the availability of funds in fiscal year (FY) 1994 for a cooperative agreement for a comprehensive cost-effectiveness analysis of a regional Poison Control Center.

The Public Health service (PHS) is committed to achieving the health promotion and disease prevention objectives described in "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Reducing the Incidence of Unintentional Injuries and Poisonings. (For ordering a copy of "Healthy People 2000," see the Section "Where to Obtain Additional Information ")

Authority

This program is authorized under Sections 301 and 391 of the Public Health Service Act (42 U.S.C. 241 and 280b), as amended. Applicable program regulations are set forth in Title 42 CFR part 52.

Smoke-Free Workplace

The Public Health Service (PHS) strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Assistance will be provided only to a regional Poison Control Center which provides services in a single State, multi-state area or a portion of a State The center must be certified by the American Association of Poison Control Centers. Poison Control Centers are the only eligible applicants because no other organization can perform the project activities.

Availability of Funds

Approximately $188,000 is available in FY 1994 to fund one Regional Poison Control Center. It is expected that the award will begin on or about September 30, 1994, and will be made for a 12-month budget period, with a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation of funding for future years will be made on the basis of satisfactory progress, including the achievement of milestones, and the availability of Federal funds.

Use of Funds

These awards may be used for personnel services, supplies, equipment, travel, subcontracts and services directly related to project activities. Project funds may not be used to supplant existing State or local funds for poison control programs.

Purpose

The purpose of this cooperative agreement is to support a demonstration project at a regional Poison Control Center. This project will evaluate the costs and effectiveness of the regionalized approach to poison control. For a comprehensive evaluation, alternative methods for providing poison control services in the region served by the center also need to be analyzed.

Program Requirements

The applicant must be a certified member of the American Association of Poison Control Centers. In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A. (Recipient Activities), and CDC shall be responsible for activities under B. (CDC Activities).

A. Recipient Activities

1. Create the necessary data collection instruments and procedures, and provide coordination and standardization of data collection activities among multiple sites, if necessary.
2. Analyze and interpret the data.
3. Evaluate the cost-effectiveness of alternative poison control strategies including the regional control center. This includes incremental cost-effectiveness results, information on economies of scale (if such exist), distribution effects of the alternative strategies in terms of clients served and distribution of costs.
4. Publicize the outcome of the demonstration project.

B. CDC Activities

1. Provide up-to-date scientific information about cost-effectiveness study methodology.
2. Provide consultation and technical assistance in protocol development and design of data collection instruments and procedures.
3. Monitor data collection and analysis and provide consultation in establishing standardized data collection and reporting, if necessary.
4. Provide statistical support for appropriate data analysis and interpretation.
5. Assist in the transfer of information and methods developed in this project to other programs.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Background and Need (10%)

The extent to which the applicant demonstrates understanding of the need for a cost-effectiveness analysis of a regional Poison Control Center. The extent to which the applicant presents data describing the magnitude and type of human poisoning exposures and poisonings in the region served by the applicant, identifies alternative sources of poison control services, and demonstrates capacity through related work to conduct the proposed project.

2. Goals and Objectives (10%)

The extent to which the applicant has included goals that are specific, measurable, and relevant to the purpose of the proposal. The extent to which the applicant has included objectives that are specific, time-framed, measurable, feasible, and addressed all activities necessary to accomplish the purpose of the proposal.

3. Methods (40%)

The extent to which the applicant provides a detailed description of proposed activities that are likely to achieve each objective for the budget period. The extent to which the applicant provides a reasonable schedule for implementation of the activities and the extent to which coordination and supervision of staff and organizations involved in activities is apparent. The extent to which data collection, data processing, and management activities are described. The extent to which relationships between the applicant and necessary partners are clearly described and their qualifications and intentions to participate explicitly stated. The extent to which the applicant provides proof of support (e.g., letters of support and/or memoranda of understanding) for proposed activities.

4. Evaluation (30%)

The extent to which the proposed evaluation plan and research protocol are detailed and will document the cost-effectiveness of a regional Poison Control Center. The extent to which the evaluation plan is appropriate for the region served, data collection opportunities, and the proposed project period. The extent to which the various threats to the validity of the study are recognized and addressed.

5. Project Management and Staffing (10%)

The extent to which management and staff are clearly described, appropriately assigned, and have pertinent skills and experiences. Descriptions should include the position titles, education and experience required, and the percentage of time each will devote to the project. Curriculum vitae for existing staff should be included.

6. Budget Justification (not weighted)

The extent to which the applicant provides a detailed budget justification consistent with stated objectives, planned program activities and intended use of cooperative agreement funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (EO) 12372. EO 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and to receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.136.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be

subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit

Application Submission and Deadline

The original and five copies of the application PHS Form 398 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 321, Mailstop E–13, Atlanta, GA 30305, on or before July 29, 1994

1. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do no meet the criteria in 1.a. or 1.b. above are considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, business management technical assistance, and an application package may be obtained from Georgia Jang, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 321, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6634.

Scientific or technical assistance may be obtained from Daniel A. Pollock, M.D., and Paul Burlack, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop F–41, Atlanta, GA 30333, telephone (404) 488–4031

Programmatic technical assistance may be obtained from Paul Burlack, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop F–41, Atlanta, GA 30333, telephone (404) 488–4031.

Please refer to Announcement Number 482 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238

Dated: May 25, 1994

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13229 Filed 5–31–94; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 468]

Skin Cancer Primary Prevention Education Projects

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for cooperative agreements to develop skin cancer primary prevention education demonstration projects. Projects are to develop and evaluate educational messages that target parents and caregivers of children under the age of 13 in clinical settings, schools, and the community. Messages should heighten the awareness of parents and caregivers of the need to protect children from the sun's harmful rays

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Cancer (To order a copy of "Healthy People 2000," see the section "Where To Obtain Additional Information.")

Authority

This program is authorized under Section 317(k)(3) of the Public Health Service Act, as amended [42 U.S.C. 247b(k)(3)].

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

State and Territorial Health Departments (SHD) have a unique opportunity to impart primary prevention information regarding skin cancer. They have health education expertise and existing channels that can be used to identify and impart knowledge to those in the target populations. SHDs provide organizational structure that can facilitate collaboration with other organizations regarding the development of skin cancer primary prevention educational strategies.

Availability of Funds

Approximately $500,000 is available in FY 1994 to fund approximately five awards. It is expected that the average award will be $100,000, ranging from $75,000 to $125,000. It is expected that the awards will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds

Purpose

The purpose of this demonstration project is to design, conduct, and evaluate creative and innovative skin cancer primary prevention educational strategies by using the scientific process. Educational strategies can be defined as instruments that have been designed to impart information, such as information campaigns, health fairs, multi-media messages, etc. The intent is to successfully heighten the awareness and knowledge of parents and caregivers of the risks to children associated with exposure to the harmful rays of the sun and to ultimately affect sun protection behavior.

Program Requirements

The target population for the demonstration project is parents and caregivers of children under the age of 13. Caregivers are defined as those

individuals who spend a significant number of consecutive hours with a child or children on a daily basis, i.e., grandparents, day-care workers, teachers foster parents, etc.

Collaboration with agencies and organizations such as local and county health departments, education departments, parent groups, day-care centers, and voluntary organizations is considered essential to the success of this project. This collaboration should ensure that sound principles of behavioral science and the unique characteristics of the target population are reflected in the design of educational strategies. Single or multiple educational messages may be delivered to parents and caregivers in a variety of community settings including clinical settings, schools, day-care centers, and other locations where parents and caregivers gather. Educational design, implementation, and evaluation should be grounded in behavioral and educational theory.

Funds may not be used to pay for skin cancer screening.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities)

A. Recipient Activities

1. Select, convene, and maintain an advisory panel of not less than five persons to ensure target population input into designing, conducting, and evaluating creative and innovative skin cancer primary prevention educational strategies. In addition to parents and caregivers, the advisory panel membership may include representatives from the local and county health department, the education department, the American Cancer Society, the medical community (pediatricians, dermatologists, and family practice physicians), academic institutions (adult educators, early childhood educators), local representatives of community organizations, and others. (year one through year three)

2. Develop an Action Plan, in collaboration with CDC, that targets parents and caregivers of children under the age of 13. (year one)

3. Develop and field-test educational strategies and modify the strategies based on field-test results. (year one or year two)

4. Carry out educational strategies among the proposed target populations and evaluate the outcome according to a predetermined evaluation plan. (year two or year three)

5. Share information about program effectiveness and materials with CDC and with other interested recipients through electronic databases, bulletin boards, program conferences, and participation in CDC-sponsored training and demonstration workshops. (year two and year three)

6. Participate in at least two planning meetings with CDC per year. (year one through year three)

B. CDC Activities

1. Provide consultation on the design, evaluation, and management of the educational strategies in the project.

2. Collaborate in the design of data collection, analysis, and evaluation systems.

3. Collaborate in the transfer and dissemination of information, methods, and findings developed in the project.

4. Convene recipients at least twice a year to evaluate progress and provide technical assistance

Evaluation Criteria (Total of 100 Points)

Applications will be reviewed and evaluated according to the following criteria:

A. Experience and Background

The extent to which the applicant's past experience with the prevention of skin cancer or other cancers demonstrates the ability to design, develop, conduct, and evaluate educational messages and strategies; use behavioral science research for primary prevention; apply principles of adult learning and parental influence; and develop and maintain relationships with appropriate educational agencies and departments. (15 Points)

B. Collaboration

The extent to which the applicant proposes to involve, and describes collaboration with, relevant organizations, to include letters of support (15 Points)

C. Target Populations

The adequacy and extent of disease burden analysis; the sociodemographic and behavioral description of the geographic areas, communities, and target populations; and the degree to which the applicant demonstrates relevant experience and ability to work with interested target populations and the community. (15 Points)

D. Action Plan Development

The feasibility and appropriateness of the Action Plan and proposed timeline to establish: A procedure likely to develop, design, and carry out appropriate process and outcome objectives; methods for selection and development of educational strategies, selection of channels that reach parents and caregivers; field-testing educational strategies, procedures for conducting and disseminating strategies; and evaluation plan with process and outcome indicators and a method to track recipients of information. (25 Points)

E. Project Objectives

The appropriateness of proposed objectives that are specific, measurable, time-phased, and realistic for the first year activities and a brief description of proposed objectives for years two and three (excluding those proposed in the Action Plan), and the extent to which end-of-project expected outcomes are described. (15 Points)

F. Project Management and Staffing Plan

The extent to which the role(s) proposed for the advisory panel and the staff, organizational structure, staff experience and background, and job descriptions and résumé for proposed and current staff indicate ability to carry out the purpose of the project. (15 Points)

G. Budget

The extent to which the applicant provides a detailed budget and justification consistent with the stated objectives and proposed project activities. (Not Weighted)

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. Indian tribes are strongly encouraged to request tribal government review of the proposed application. If SPOCs or tribal governments have any process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants

Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" for State or tribal process recommendations it receives after that date.

Public Health Systems Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.943.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control Number 0937–0189) must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mail Stop E–18, Atlanta, GA 30305, on or before July 1, 1994.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mail Stop E–18, Atlanta, GA 30305, telephone (404) 842–6595.

Programmatic technical assistance may be obtained from Barbara A. Bewerse, M.N., M.P.H., Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mail Stop K–57, Atlanta, GA 30341–3724, telephone (404) 488–4347.

Please refer to Announcement Number 468 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 25, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13231 Filed 5–31–94; 8:45 am]

BILLING CODE 4163–18–P

Health Care Financing Administration

[BPD–774–CN]

RIN 0938–AG25

Medicare Program; Physician Performance Standard Rates of Increase for Fiscal Year 1994 and Physician Fee Schedule Update for Calendar Year 1994

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final notice with comment period.

SUMMARY: This document corrects an error that occurred in the calculation of the fiscal year 1994 Medicare volume performance standard for surgical services and that appeared in the final notice with comment period published in the **Federal Register** on December 2, 1993 (58 FR 63856) entitled "Medicare Program; Physician Performance Standard Rates of Increase for Fiscal Year 1994 and Physician Fee Schedule Update for Calendar Year 1994." This notice also corrects a typographical error in a date.

EFFECTIVE DATE: The performance standard rates of increase are effective on October 1, 1993. The Medicare physician fee schedule update is effective on January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Louisa Buatti, (410) 966–5716.

SUPPLEMENTARY INFORMATION:

Note: This notice corrects an error that occurred in the calculation of the 1994 Medicare volume performance standard (MVPS) for surgical services. The fiscal year (FY) 1994 MVPS is used in the calculation of the calendar year (CY) 1996 Medicare physician fee schedule update. While this notice announces the correct standard rate of increase for surgical services for FY 1994, it has no impact on current payment levels. The correct value will be used, however, in the default calculation of the CY 1996 physician fee schedule update for surgical services. This notice also corrects a typographical error in a date.

In **Federal Register** Document [93–29361] beginning on page 63856, in the issue of December 2, 1993, make the following corrections:

A. Page 63856

In the **SUMMARY** section, the second sentence is corrected to read "The physician performance standard rates of increase for Federal FY 1994 are 9.1 percent for surgical services, 10.5 percent for primary care services, 9.2 percent for other nonsurgical services, and 9.4 percent for all physicians' services."

B. Page 63858, MVPS Table, in the First Column

In the column headed "MVPS (percent)," the entry for FY 1994 surgical services is corrected from "8.6" to read "9.1."

MVPS

Fiscal year	MVPS (percent)	Actual (percent)	Difference (percent)
FY 1994:			
Surgical	9.1		

C. Page 63860

In the second column, in the first paragraph beneath the table, in the first sentence, the date is corrected to read "January 1, 1992."

D. Page 63863

In the section designated III.B., the first paragraph is corrected to read "Under the requirements in section 1848(f)(2)(A) and (B) of the Act, we have determined that the performance standard rates of increase for physicians' services for FY 1994 are 9.1 percent for surgical services, 10.5 percent for primary care services, 9.2 percent for other nonsurgical services, and 9.4 percent for all physicians' services."

E. Page 63864, Table at the Top of the Page

In the table at the top of the page, the legislation factor and the total for surgical services are corrected to read as follows:

Legislative factors	Surgical services (percent)	Primary care services (percent)	Nonsurgical services (percent)
Legislation	1.9	3.2	1.9
Total	9.1	10.5	9.2

(Section 1848 of the Social Security Act (42 U.S.C. 1395w–4))

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 20, 1994.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 94–13272 Filed 5–31–94; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

National Institute on Deafness and Other Communiction Disorders; Workshop on Communication Disorders and Juvenile Behaviors

Notice is hereby given of a Workshop on Communication Disorders and Juvenile Behaviors, sponsored by the National Institute on Deafness and Other Communication Disorders Advisory Council. The workshop will be held on June 14–15, 1994, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852. The meeting room will be posted in the hotel lobby.

The meeting will be open to the public on June 14 from 8:30 am to recess and on June 15 from 8:30 a.m. to adjournment at approximately 4 p.m. Attendance by the public will be limited to space available.

Further information concerning the meeting may be obtained from Dr. Jay Moskowitz, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, building 31, room 3C02, 9000 Rockville Pike, Bethesda, Maryland 20892, 301–402–2220. An agenda of the meeting and roster of the members may also be obtained from his office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Moskowitz.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: May 24, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–13210 Filed 5–31–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Notification of Expiring Project Periods for Community and Migrant Health Centers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that a total of 204 Community Health Center and Migrant Health Center (C/MHC) grantees will reach the end of their project periods during fiscal year (FY) 1995. Assuming the availability of sufficient appropriated funds in FY 1995, it is the intent of HRSA to continue to support health services in these areas, given the unmet need inherent in their designation as medically underserved. HRSA will open competition for awards under sections 329 and 330 of the Public Health Service (PHS) Act (42 U.S.C. 254c and 254b, respectively) to support health services in the areas currently served by these grants.

This notice provides interested parties the opportunity to gather information and decide whether to pursue Federal funding as a community or migrant health center. During this process, communication with Regional Office staff is essential (see Appendix I). A subsequent notice will be published in the **Federal Register** to announce the availability of funds for FY 1995 and provide detailed information on the grant application process and review criteria.

DATES: Current grant expiration dates vary by area throughout FY 1995. Applications for competing continuation grants are normally due 120 days prior to the expiration of the current grant award.

SUPPLEMENTARY INFORMATION: The C/MHC programs are carried out under the authority of sections 329 and 330 of the Public Health Service Act. The program regulations are codified in Title 42 of the Code of Federal Regulation (CFR), Parts 51c and 56. The C/MHC programs are designed to promote the development and operation of community-based primary health care service systems in medically underserved areas for medically underserved populations.

The list of service areas for which a current section 329/330 grant project period expires in FY 1995 is set forth in Appendix II. The service areas are listed by city and county. Detailed information about each service area, such as census tracts, can be obtained by contacting the appropriate PHS regional office (see Appendix I).

A project period is the total amount of time for which a section 329/330 grant has been programmatically approved. For the purposes of this notice, grant awards will be made for a one year budget period and project periods will be for up to three years.

Dated: May 24, 1994.

Ciro V. Sumaya,

Administrator.

Appendix I—Regional Office Staff

Region I

Rob Lawrence, DDS, Acting Director, Division of Health Services Delivery, DHHS—Region I, JFK Federal Building #1401, Boston, MA 02203

Region II

Ron Moss, Director, Division of Health Services Delivery, DHHS—Region II, JFK Federal Building, 26 Federal Plaza, New York, NY 10278

Region III

Bruce Riegel, Director, Division of Health Services Delivery, DHHS—Region III, 3535 Market Street, Philadelphia, PA 19101

Region IV

Ms. Marlene Lockwood, Division of Health Services Delivery, DHHS—Region IV, 101 Marietta Tower, Atlanta, GA 30323

Region V

Tony Levandowski, Acting Director, Division of Health Services Delivery, DHHS—Region IV, 105 West Adams Street, 17th Floor, Chicago, IL 60603

Region VI

Fred Pintz, M.D., Director, Division of Health Services Delivery, DHHS—Region VI, 1200 Main Tower Building, Dallas, TX 75202

Region VII

Ray Maddox, Director, Division of Health Services Delivery, DHHS—Region VII, Federal Office Building, 601 East 12th Street, Kansas City, MO 64106

Region VIII

Barbara Bailey, Director, Division of Health Services Delivery, DHHS—Region VIII, Federal Office Building, 1961 Stout Street, Denver, CO 80294

Region IX

Gordon Soares, Director, Division of Health Services Delivery, DHHS—Region IX, 50 United Nations Plaza, San Francisco, CA 94102

Region X

Doug Woods, Director, Division of Health Services Delivery, DHHS—Region X, Blanchard Plaza, 2201 Sixth Avenue, Seattle, WA 98121

APPENDIX II

Region/state/service area	Number of grants	Grant expiration date BCRR No.
REGION: 01		
CONNECTICUT	6	
Cities: New Haven		05/31/95
Counties: New Haven		
Cities: New London		06/30/95
Counties: New London		
Cities: Hartford		12/31/94
Counties: Hartford		
Cities: Bridgeport		01/31/95
Counties: Fairfield		
Cities: Bridgeport		01/31/95
Counties: Fairfield		
Cities: New Haven		03/31/95
Counties: New Haven		
MAINE	1	
Cities: Bethel		01/31/95
Counties: Oxford		
MASSACHUSETTS	12	
Cities: Quincy, Hull		05/31/95
Counties: Norfolk, Plymouth		
Cities: Lawrence		05/31/95
Counties: Essex		
Cities: New Bedford		05/31/95
Counties: Bristol		
Cities: Worthington, Huntington		05/31/95
Counties: Hampden, Hampshire		
Cities: Boston		05/31/95
Counties: Suffolk		
Cities: Springfield		06/30/95
Counties: Hampden		
Cities: Mattapan		03/31/95
Counties: Suffolk		
Cities: Dorchester, Boston		03/31/95
Counties: Norfolk, Suffolk		
Cities: Worcester		05/31/95
Counties: Worcester		
Cities: Lowell		03/31/95
Counties: Middlesex		
Cities: Worcester		03/31/95

APPENDIX II—Continued

Region/state/service area	Number of grants	Grant expiration date BCRR No.
Counties: Worcester		
Cities: Peabody, Salem		03/31/95
Counties: Essex		
NEW HAMPSHIRE	1	
Cities: Berlin		06/30/95
Counties: Coos		
VERMONT	2	
Cities: Burlington		06/30/95
Counties: Chittenden		
Cities: St. Johnsbury, Danville, Greensboro, Hardwick, Concord		03/31/95
Counties: Caledonia, Essex, Lamoille, Orleans, Washington		
REGION: 02		
NEW JERSEY	3	
Cities: New Brunswick		06/30/95
Counties: Middlesex		
Cities: Newark, East Orange		11/30/94
Counties: Essex		
Cities: Jersey City		03/31/95
Counties: Hudson		
NEW YORK	8	
Cities: Schenectady		05/31/95
Counties: Schenectady		
Cities: New York City		11/30/94
Counties: New York		
Cities: New York City		12/31/94
Counties: Kings		
Cities: Rochester		12/31/94
Counties: Monroe		
Cities: Warrensburg, Chestertown, North Creek, Indian Lake, Lake George		12/31/94
Townships: Minerva, Schroon, Indian Lake.		
Counties: Essex, Hamilton, Warren		
Cities: Pulaski		12/31/94
TOWNSHIPS: Albion, Boylston, Mexico, Orwell, Redfield, Richland, Sandycreek, Williamstown		
Counties: Oswego		
Cities: Mt. Vernon, Yonkers		12/31/94
Counties: Westchester		
Cities: New York City		01/31/95
Counties: Kings		
PUERTO RICO	4	
Cities: Rio Grande		06/30/95
MUNICIPOS: Rio Grande		
Cities: Naranjito, Corozal, Comerio, Barranquitas, Orocovis		05/31/95
Municipos: Barranquitas, Comerio, Corozal, Naranjito, Orocovis.		
Cities: Camuy		01/31/95
Municipos: Camuy.		
Cities: Arroyo		06/30/95
Municipos: Arroyo.		
REGION: 03		
DISTRICT OF COLUMBIA	1	
Cities: Washington, District of Columbia		01/31/95
Counties: District of Columbia		
MARYLAND	5	
Cities: Baltimore		06/30/95
Counties: Baltimore City		
Cities: Baltimore		05/31/95
Counties: Baltimore City		
Cities: Baltimore		11/30/94
Counties: Baltimore, Baltimore City		
Cities: Hancock		11/30/94
Counties: Allegany, Washington, Fulton, PA, Morgan, WV		
Cities: Denton, Goldsboro		12/31/94
Counties: Caroline		
PENNSYLVANIA	5	
Cities: Scranton		11/30/94
Counties: Lackawanna		
Cities: McKees Rocks		11/30
Counties: Allegheny		
Cities: Burgettstown		01/31

APPENDIX II—Continued

Region/state/service area	Number of grants	Grant expiration date BCRR No.
Counties: Washington		
Cities: Coalport, Glasgow		03/31/95
Counties: Cambria, Clearfield		
Cities: Harrisburg		03/31/95
Counties: Dauphin		
VIRGINIA	11	
Cities: Richmond		06/30/95
Counties: Richmond City		
Cities: Dungannon		05/31/95
Counties: Russell, Scott		
Cities: Laurel Fork		05/31/95
Counties: Carroll, Floyd, Patrick		
Cities: Arrington		12/31/94
Counties: Nelson		
Cities: Saltville		01/31/95
Counties: Smyth		
Cities: Bastian, Bland		01/31/95
Counties: Bland		
Cities: Aylett, Hanover		01/31/95
Counties: Caroline, King and Queen, King William		
Cities: Stoney Creek		01/31/95
Counties: Dinwiddie, Sussex		
Cities: Ivor		03/31/95
Counties: Isle of Wight, Southampton		
Cities: New Canton, Farmville, Esmont		03/31/95
Counties: Albemarle, Amelia, Buckingham, Charlotte, Cumberland, Fluvanna, Lunenburg, Nelson, Nottoway, Prince Edward		
Cities: Onancock		05/31/95
Counties: North Hampton		
WEST VIRGINIA	5	
Cities: Scarbro, Hico		11/30/94
Counties: Fayette		
Cities: Rock Cave		11/30/94
Counties: Lewis, Upshur, Webster		
Cities: Clay		11/30/94
Counties: Clay		
Cities: Fairmont, Shinnston		01/31/95
Counties: Harrison, Marion, Taylor		
Cities: Spencer		01/31/95
Counties: Roane		
REGION :04		
ALABAMA	7	
Cities: Mobile, Citronelle		05/31/95
Counties: Mobile		
Cities: Uniontown, Pine Apple, Yellow Bluff		05/31/95
Counties: Perry, Wilcox		
Cities: Huntsville		11/30/94
Counties: Madison		
Cities: Russellville, Town Creek, Decatur		11/30/94
Counties: Franklin, Lamar, Lawrence, Marion, Morgan		
Cities: Eutaw, Greensboro, Gilbertown, Livingston, Dempolis		01/31/95
Counties: Choctaw, Greene, Hale, Lowndes, Marengo, Sumter		
Cities: Vernon, Marion, Sipsey, Oakman, West Blocton, Clanton, Autaugaville, Eclectic, Rockford, Berry		01/31/95
Counties: Autauga, Bibb, Chilton, Coosa, Elmore, Fayette, Lamar, Perry, Walker		
Cities: Troy, Dozier, Clayton, Brundidge		03/31/95
Counties: Barbour, Crenshaw, Dale, Pike		
FLORIDA	8	
Cities: Palatka, Crescent City, Hastings, Interlachen		11/30/94
Counties: Putnam, St. Johns		
Cities: Parrish, Samoset, Palmetto, Myakka City, South County		11/30/94
Counties: Manatee		
Cities: Quincy, Chahahoochee, Midway		11/30/94
Counties: Gadsden		
Cities: Ft. Myers, Bonita Springs, La Belle		12/31/94
Counties: Glades, Hendry, Lee		
Cities: Miami, Hialeah		01/31/95
Counties: Dade		
Cities: Miami		01/31/95

APPENDIX II—Continued

Region/state/service area	Number of grants	Grant expiration date BCRR No.
Counties: Dade		
Cities: Miami, Homestead		01/31/95
Counties: Dade		
Cities: Wauchula, Frostproof, Avon Park		01/31/95
Counties: Hardee, Highlands, Polk		
GEORGIA	4	
Cities: Fitzgerald		06/30/95
Counties: Ben Hill, Irwin, Wilcox		
Cities: Columbus		06/30/95
Counties: Muscogee		
Cities: Morganton, Suches		11/30/94
Counties: Fannin, Union		
Cities: Palmetto		05/31/95
Counties: Fulton		
KENTUCKY	2	
Cities: Louisville, Taylorsville		11/30/94
Counties: Jefferson, Spencer		
Cities: Covington		01/31/95
Counties: Campbell, Kenton		
MISSISSIPPI	6	
Cities: Fayette		05/31/95
Counties: Jefferson		
Cities: Lexington		06/30/95
Counties: Holmes		
Cities: Vicksburg		11/30/94
Counties: Issaquena, Sharkey, Warren		
Cities: Liberty, Gloster		01/31/95
Counties: Amite		
Cities: Brandon, Mendenhall, Prentiss, Pelahatchie, New Hebron		01/31/95
Counties: Lawrence, Rankin, Simpson, Jefferson Davis		
Cities: Laurel, Sandersville		03/31/95
Counties: Clarke, Jasper, Jones, Smith, Wayne		
NORTH CAROLINA	3	
Cities: Durham		05/31/95
Counties: Durham		
Cities: Hollister		05/31/95
Counties: Halifax		
Cities: Hendersonville		03/31/95
Counties: Buncombe, Henderson, Polk, Rutherford		
SOUTH CAROLINA	8	
Cities: Clearwater		05/31/95
Counties: Aiken		
Cities: Trenton, Saluda, Ware Shoals, McCormick,		05/31/95
Counties: Abbeville, Aiken, Edgefield, Greenwood, McCormick, Saluda		
Cities: Society Hill, Bishopville, Clio, Cheraw		05/31/95
Counties: Chesterfield, Darlington, Dillon, Lee, Marlboro		
Cities: Orangeburg, Vance, Springfield, St. Matthews		11/30/94
Counties: Calhoun, Orangeburg		
Cities: Olanta, Manning		01/31/95
Counties: Clarendon, Florence, Williamsburg		
Cities: Greenville		01/31/95
Counties: Greenville		
Cities: Eastover		01/31/95
Counties: Richland		
Cities: Conway, Johnsonville, Myrtle Beach		03/31/95
Counties: Florence, Horry, Marion		
TENNESSEE	2	
Cities: Clairfield, Frakes		01/31/95
Counties: Bell, Ky, Campbell, Claiborne		
Cities: Maynardville, Washburn		03/31/95
Counties: Grainger, Union		
REGION: 05		
ILLINOIS	5	
Cities: Ullin		06/30/95
Counties: Alexander, Hardin, Johnson, Massac, Pope, Pulaski, Union		
Cities: Centreville		12/31/94
Counties: St. Clair		
Cities: Chicago		12/31/94

APPENDIX II—Continued

Region/state/service area	Number of grants	Grant expiration date BCRR No.
Counties: Cook		
Cities: Dongola, Vienna		01/31/95
Counties: Alexander, Jackson, Johnson, Massac, Pope, Pulaski, Union		
Cities: Chicago		01/31/95
Counties: Cook		
INDIANA	3	
Cities: Indianapolis		05/31/95
Counties: Marion		
Cities: Evansville		06/30/95
Counties:		
Cities: Indianapolis		11/30/94
Counties: Marion		
MICHIGAN	11	
Cities: Detroit		06/30/95
Counties: Wayne		
Cities: Carleton		11/30/94
Counties: Huron, Monroe, Wayne		
Cities: Lincoln, Alpena		05/31/95
Counties: Alcona, Alpena, Iosco, Presque Isle		
Cities: Spalding, Ewen		01/31/95
Counties: Chippewa, Delta, Dickinson, Gogebic, Menominee, Ontonagon		
Cities: Detroit		01/31/95
Counties: Wayne		
Cities: Saginaw, Caro, Greenville, Linwood		03/31/95
Counties: Arenac, Bay, Genesee, Lapeer, Saginaw, Tuscola		
Cities: Sterling		03/31/95
Counties: Arenac, Bay, Gladwin, Ogemaw		
Cities: Manistee, Shelby		03/31/95
Counties: Antrim, Benzie, Grand Traverse, Leelanau, Manistee, Mason, Muskegon, Oceana		
Cities: Temperance		03/31/95
Counties: Monroe		
Cities: Bangor, Pullman, South Haven, Plainwell, Pennville, Allegan		03/31/95
Counties: Allegan, Van Buren		
Cities: Flint		03/31/95
Counties: Genesee		
MINNESOTA	4	
Cities: Schroeder, Grand Maraise		05/31/95
Counties: Cook		
Cities: Minneapolis		06/30/95
Counties: Henngpin		
Cities: St. Paul		11/30/94
Counties: Ramsey		
Cities: Ada, Crookston, Breckenridge, Montevideo, Moorhead, Olivia, Dodge Center, Hopkins		01/31/95
Counties: Brown, Chippewa, Dodge, Freeborn, Grant, Hennepin, Kandiyohi, Kittson, Lac Qui Parle, Marshall, McLeod, Meeker, Nicollet, Norman, Otter Tail, Polk, Redwood, Renville, Sibley, Steele, Wilkin, Yellow Medicine		
OHIO	4	
Cities: Cleveland		12/31/94
Counties: Cuyahoga		
Cities: Toledo		11/30/94
Counties: Lucas		
Cities: Continental, Gibsonburg, Clyde, Tiffin, Fostoria, Freemont		03/31/95
Counties: Sandusky		
Cities: Youngstown		12/31/94
Counties: Mahoning		
WISCONSIN	4	
Cities: Cashton		06/30/95
Counties: Monrtoe		
Cities: Milwaukee		12/31/94
Counties: Milwaukee		
Cities: Wild Rose		03/31/95
Counties: Adams, Columbia, Dodge, Fond du Lac, Green Lake, Jefferson, Juneau, Marinette, Marquette, Oconto, Outagamie, Ozaukee, Portage, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago		
Cities: Milwaukee		03/31/95
Counties: Milwaukee		
REGION: 06		
ARKANSAS	3	
Cities: Marshall		06/0

APPENDIX II—Continued

Region/state/service area	Number of grants	Grant expiration date BCRR No.
Counties: Newton, Searcy		
Cities: Corning		06/30/95
Counties: Clay, Greene, Randolph		
Cities: Augusta, Cotton Plant, Des Arc, McCrory, Searcy, Hazen, Bald Knob, Carlisle		12/31/94
Counties: Cross, Jackson, Lonoke, Monroe, Prairie, White, Woodruff		
LOUISIANA	2	
Cities: Greensburg		06/30/95
Parishes: St. Helena		
Cities: Lake Charles		01/31/95
Parishes: Calcasieu		
NEW MEXICO	1	
Cities: El Rito, Ojo Caliente		06/30/95
Counties: Rio Arriba, Taos		
OKLAHOMA	1	
Cities: Konawa		05/31/95
Counties: Pottawatomie, Seminole		
TEXAS	12	
Cities: Lavelland, Morton, Lavelland		05/31/95
Counties: Cochran, Dawson, Hockley, Lynn, Terry, Yoakum		
Cities: Amarillo, Plainview, Hereford, Crosbyton, Friona, Dimmitt, Littlefield, Olton, Matador, Floydada, Muleshoe, Silverton		05/31/95
Counties: Bailey, Briscoe, Carson, Castro, Crosby, Deaf Smith, Floyd, Hale, Lamb, Motley, Parmer, Potter, Swisher		
Cities: Wichita Falls		06/30/95
Counties: Wichita		
Cities: De Leon, Goldthwaite, San Saba		11/30/94
Counties: Comanche, Mills, San Saba		
Cities: Pharr, Mission, Mercedes, Edcouch		12/31/94
Counties: Hidalgo		
Cities: Greenville, Ladonia, Commerce		01/31/95
Counties: Delta, Fannin, Hunt		
Cities: San Antonio		01/31/95
Counties:		
Cities: Port Arthur		03/31/95
Counties: Jefferson		
Cities: Cotulla, Pearsall, Carrizo Springs		03/31/95
Counties: Dimmit, Frio, La Salle		
Cities: La Marque, Galveston, Texas City		03/31/95
Counties: Galveston		
Cities: San Antonio, Somerset		03/31/95
Counties: Bexar		
Cities: Laredo		03/31/95
Counties: Webb		
REGION: 07		
IOWA	2	
Cities: Des Moines		05/31/95
Counties: Polk		
Cities: Des Moines		01/31/95
Counties: Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clay, Clayton, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Kossuth, Lee, Linn, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, O'Brien, Osceola, Page, Palo Alto, Plymouth, Pocahontas, Polk, Pottawattamie, Poweshiek, Ringgold, Sac, Scott, Shelby, Sioux, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Winnebago, Winneshiek, Woodbury, Worth, Wright		
KANSAS	2	
Cities: Kansas City		06/30/95
Counties:		
Cities: Topeka		06/30/95
Counties: Shawnee, Wyandotte		
MISSOURI	5	
Cities: Ellington		05/31/95
Counties: Carter, Reynolds, Shannon		
Cities: St. Louis		11/30/94
Counties: St. Louis, St. Louis City		
Cities: St. Louis		01/31/95

APPENDIX II—Continued

Region/state/service area	Number of grants	Grant expiration date BCRR No.
Counties: St. Louis City		
Cities: Richland		11/30/94
Counties: Pulaski, Miller, Laclede, Camden		
Cities: Hamilton		11/30/94
Counties: Caldwell		
REGION: 08		
COLORADO	4	
Cities: Dove Creek		05/31/95
Counties: Dolores, San Ivnquel, Montezuma		
Cities: Rocky Ford, Las Animas, La Junta		12/31/94
Counties: Crowley, Otero, Bent		
Cities: Norwood, Maturita		01/31/95
Counties: San Miguel, Montrose		
Cities: Ft. Lupton, Commerce City, Longmont, Brighton, Hudson, Frederick, Platteville, Ft. Morgan		05/31/95
Counties: Adams, Boulder, Denver, Weld, Morgan		
MONTANA	1	
Cities: Butte, Anaconda		01/31/95
Counties: Silver Bow, Deer Lodge		
NORTH DAKOTA	1	
Cities: Fargo, Moorhead, Minnesota		06/30/95
Counties: Cass, Clay, Minnesota		
SOUTH DAKOTA	1	
Cities: Isabel		03/31/95
Counties: Corson, Dewey, Ziebach		
UTAH	3	
Cities: Bicknell		05/31/95
Counties: Wayne		
Cities: Provo, Salt Lake City, Kearns		12/31/94
Counties: Salt Lake		
Cities: Enterprise		03/31/95
Counties: Washington		
WYOMING	1	
Cities: Guernsey, Torrington, Wheatland		01/31/95
Counties: Goshen, Platte		
REGION: 09		
ARIZONA	1	
Cities: Phoenix (South Central Phoenix)		11/30/94
Counties: Maricopa		
CALIFORNIA	16	
Cities: Susanville, Alturas, Westwood, Doyle		05/31/95
Counties: Lassen, Modoc (Southern Portion), Siskiyou (Southeastern Portion)		
Cities: Olivehurst		05/31/95
Counties: Butte, Colusa, Glenn, Sutter, Yuba		
Cities: Parlier, Huron, Orange Cove, Sanger, Earlimart, Kerman, Mendota, Selina		05/31/95
Counties: Fresno, Kern, Kings, Tulare		
Cities: Madera		11/30/94
Counties: Madera		
Cities: San Marcos, Encinitas, Ramona, Oceanside		12/31/94
Counties: San Diego		
Cities: San Francisco (Chinatown, North Beach, Telegraph Hill, Russian Hill, Nob Hill, Presidio, Marina, Parts of Inner and Outer Richmond)		12/31/94
Counties: San Francisco		
Cities: Los Angeles (Highland Park, Mt. Washington, Glessellpark, Lincoln Heights, Bell, Bell Gardens, Cudahy, El Sereno, Boyle Heights, East Los Angeles, City Terrace)		12/31/94
Counties: Los Angeles		
Cities: Union City, Newark, Fremont, Hayward		12/31/94
Counties: Alameda		
Cities: San Francisco (Mission District Including: Noe/Eureka Valley, Excelsior District, Berndi Heights, Glen Park, Crocker/Amayon)		01/31/95
Counties: San Francisco		
Cities: Porterville		01/31/95
Counties: Tulare		
Cities: San Francisco (South of Market, Tenderloin)		03/31/95
Counties: San Francisco		
Cities: Alviso, San Jose		03/31/95
Counties: Santa Clara		
Cities: Oakland (Downtown Oakland Including: Chinatown, Lake Merritt)		03/31/95

APPENDIX II—Continued

Region/state/service area	Number of grants	Grant expiration date BCRR No.
Counties: Alameda		
Cities: San Fernando, Pacoima, Arlata, Lake View Terrace, Sunland, Sun Valley, Sylwer, North Hollywood, Van Nuys, Pauorama City, Graneda Hills, Mission Hills, Sepulveda, North Hills, Northridge, Resada, Canoga Park, Chatsworth, Tujunga		
Counties: Los Angeles		11/30/94
Cities: Los Angeles (Chinatown, Koreatown, Cranshaw Districts of Metropolitan Los Angeles)		
Counties: Los Angeles		01/31/95
Cities: Camarillo, Fillmore, Oxnard, Ojai, Saticoy		
Counties: Ventura		03/31/95
NEVADA	1	
Cities: Beatty, Eureka, Gerlach, Amargosa, Valley, Austin		
Counties: Eureka, Lander, Washoe, Gerlach Township, Nye		05/31/95
FED. STATES OF MICRO	1	
Cities: Kolonia, Pohnpei		
Counties: Statewide/Nationwide Including Kosrae State, Pehnper State, Yap State, Chunk State		12/31/94
REGION: 10		
IDAHO	3	
Cities: Glenns Ferry, Grand View		
Counties: Elmore, Owyhee		05/31/95
Cities: Plummer		
Counties: Benewah, Kootenia, Idaho, Whitman, Spok, Washington		06/30/95
Cities: Boise, Horseshoe Bend, Garden Valley, Pierce		
Counties: Boise, Clearwater, Pierce, WA		11/30/94
OREGON	3	
Cities: Phoenix		
Counties: Jackson		05/31/95
Cities: Cave Junction		
Counties: Josephine		06/30/95
Cities: Cornelius		
Counties: Washington, Yamhill		03/31/95
WASHINGTON	5	
Cities: Bremerton		
Counties: Kitsap		06/30/95
Cities: Okanogan, Tonasket, Brewster		
Counties: Douglas, Okanogan		03/31/95
Cities: Wenatchee		
Counties: Chelan, Douglas, Washington		03/31/95
Cities: Seattle, Mt. Vernon, Bellingham, Marysville		
Counties: King, Skagit, Whatcom, Snohomish		03/31/95
Cities: Renton		
Counties: King		03/31/95

[FR Doc. 94–13260 Filed 5–31–94; 8:45 am]
BILLING CODE 4160–15–P

Substance Abuse and Mental Health Services Administration

Supplemental Awards to Demonstration Grant Program for the Prevention of Alcohol and Other Drug Abuse Among High Risk Youth Grantees

AGENCY: Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Availability of Supplemental Funds for Currently Funded Grantees in the Center for Substance Abuse Prevention's (CSAP) Demonstration Grant Program for the Prevention of Alcohol and Other Drug Abuse Among High Risk Youth.

SUMMARY: This notice informs the public that CSAP is making available approximately $1 million in Fiscal Year 1994 for up to 20 supplemental awards to existing grantees in its Demonstration Grant Program for the Prevention of Alcohol and Other Drug (AOD) Abuse Among High Risk Youth (HRY). The supplemental funding is intended to assist these grantees to enhance and expand their AOD prevention goals to include outreach and appropriate risk reduction intervention activities for preventing HIV/AIDS, and to evaluate these activities.

Consistent with the House of Representatives Report 103–156, Committee on Appropriations, only currently funded HRY grantees are eligible to apply for supplemental funding. Further, CSAP agrees that the limited funds available can be used most effectively by building on the existing grant infrastructures and intervening with active clients.

To apply for a supplemental award, a HRY grantee must have a minimum of 18 months remaining in the current grant as of September 30, 1994. Awards will be limited to one year and can not exceed a total of $50,000 in direct and indirect costs. The receipt date for applications is June 24, 1994. The application receipt and review and the award process will be handled in an expedited manner. Applications will be reviewed for merit by a panel of expert Federal and non-Federal reviewers, and supplements will be awarded on the basis of merit and availability of funds no later than September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Rose Kittrell, M.S.W. Division of Demonstrations for High Risk Populations, Center for Substance Abuse Prevention, Rockwall II, room 9B–03, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0353.

Authority. Awards will be made under the authority of section 517 of the Public Health Service Act, as amended.

The Catalog of Federal Domestic Assistance (CFDA) number for the CSAP Demonstration Grant Program for the Prevention of Alcohol and Other Drug Abuse Among High Risk Youth is 93.144.

Dated May 24, 1994.

Richard Kopanda.

Acting Executive Officer, SAMHSA.

[FR Doc. 94–13203 Filed 5–31–94; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–4111–03]

Egan Resource Management Plan Approved Oil and Gas Leasing Amendment and Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Egan Resource Management Plan (RMP) Approved Oil and Gas Leasing Amendment and Record of Decision (ROD) is available to the public. The ROD documents the Bureau of Land Management's (BLM) decision to select the Proposed Amendment as the Approved Amendment to the Egan RMP for Oil and Gas Leasing.

DATES: The Approved Amendment and ROD was available to the public on May 11, 1994.

ADDRESSES: The Approved Plan Amendment and ROD may be obtained from: Egan Resource Area Manager, Bureau of Land Management, 702 N. Industrial Way, HC 33, Box 33500, Ely, Nevada 89301–9408.

FOR FURTHER INFORMATION CONTACT: Brian C. Amme, Team Leader, at BLM's Ely District Office address listed above or telephone (702) 289–4865.

SUPPLEMENTARY INFORMATION: The Egan RMP Proposed Oil and Gas Leasing Amendment was prepared to bring the original Egan RMP into conformance with the Supplemental Program Guidance (SPG) for Oil and Gas Resources (BLM Manual 1624). This plan amendment describes and analyzes the options for management of oil and gas leasing on 3,841,633 acres of public lands in portions of Nye, Lincoln and White Pine Counties, Nevada. Alternatives analyzed included: (1) Proposed Amendment; (2) Continuation of Present Management (No Action); and (3) Standard Terms and Conditions (of the lease instrument).

The Approved Amendment allows 61 percent of the resource area to be open to leasing with standard leasing stipulations; 1.7 percent with No Surface Occupancy; 30.9 percent with Timing Limitations; and 6.4 percent with No Leasing.

In addition to the leasing determinations, the amendment describes the Standard Practices and Procedures (SPPs) for geophysical operations and Conditions of Approval (COAs) for exploratory and development drilling which will be enforced for each Notice of Intent (NOI) or Application for Permit to Drill (APD).

The Approved Amendment and ROD has been mailed to all interested individuals, agencies, interest groups and organizations who have participated in or have shown an interest in this planning process.

Dated: May 10, 1994.

Ronald B. Wenker,

Acting State Director, Nevada.

[FR Doc. 94–13246 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–HC–M

[NV–050–4410–08]

Notice of Availability of the Supplement to the Draft Stateline Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Supplement to the Draft Stateline Resource Management Plan and Environmental Impact Statement (RMP/EIS) is available to the public for a 90 day review period. The purpose of this supplement is to analyze four additional issues: (1) Ephemeral/perennial rangeland classification; (2) utility corridors; (3) mineral management in Wilderness Study Areas not designated by Congress; and (4) implications of the U.S. Fish and Wildlife Service's (FWS) Draft Tortoise Recovery Plan and Proposed Critical Habitat. These four issues have implications to all of the resources of the area, therefore a complete Alternative E was developed for consideration in this Supplement.

DATES: All written comments on the Supplement to the Draft RMP/EIS must be submitted to BLM in person or postmarked no later than August 19, 1994.

ADDRESSES: Written comments should be addressed to: Stateline Resource Area Manager, Attn. RMP Team Leader, Bureau of Land Management, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, NV 89126.

Copies of the Supplement to the Draft RMP/EIS may be obtained from the above BLM Las Vegas District Office.

Public reading copies are available for review at the public libraries of Clark and Nye Counties, all government depository libraries and at the following BLM locations:

Office of External Affairs, Main Interior Building, room 5000, 1849 C Street, NW., Washington, DC

Public Room, Nevada State Office, 850 Harvard Way, Reno, Nevada

Las Vegas District Office at the above address

FOR FURTHER INFORMATION CONTACT:

Jerry Wickstrom, RMP Team Leader, at BLM's Las Vegas District Office listed above or telephone (702) 647–5000.

SUPPLEMENTARY INFORMATION: The Supplement to the Draft is a complete alternative, Alternative E, to the five previous alternatives analyzed in the Draft RMP/EIS. All of these alternatives, along with public comment received during review of the Draft and also this Supplement, will be considered in preparation of a Proposed Resource Management Plan and Final Environmental Impact Statement.

The Supplement to the Draft provides resource recommendations that differ from the previous alternatives. Major variations include ephemeral/perennial range classification, revision and relocation of utility corridors, opening of wilderness study areas to mineral development if Congress does not designate, and incorporation of desert tortoise critical habitat and the Draft Desert Tortoise Recovery Plan. Areas of Critical Environmental Concern (ACECs) for protection of the desert tortoise have been reduced in size from the Preferred Alternative of the Draft. RMP/EIS.

During the 90 day comment period, public workshops may be held to discuss specific issues of the Supplement. Dates and location of these workshops will be announced at least 15 days prior to the meetings. Public requests for specific workshops will be considered during the 90 day comment period.

No public hearings are scheduled to be held on this Supplement.

Dated: May 13, 1994.

Ronald B. Wenker,

Acting State Director, Nevada.

[FR Doc. 94–13247 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–HC–M

[CO–932–4214–10; COC 55323]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado; Correction

Summary: This action will correct the original notice to include a parcel of land that was incorrectly omitted.

In 58 FR 51648, 51649, dated October 4, 1993, page 51648, third column, under McDonald Creek Cultural Resource Area, T. 10 S., R. 104 W., sec. 32 is corrected to include SW¼SE¼NE¼. The acreage total is corrected to 4,166.23 acres of public lands in Mesa County.

Robert S. Schmidt,

Chief, Branch of Realty Actions.

[FR Doc. 94–13245 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–JB–M

National Park Service

Katmai National Park and Preserve, AK

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of termination.

TITLE: Environmental Impact Statement (EIS) on the Plan of Operations for the Katmai Scientific Drilling Project.

SUMMARY: The National Park Service (NPS) in cooperation with the U.S. Geological Survey (USGS) is terminating the EIS process for the proposed Plan of Operations for the Katmai Scientific Drilling Project in designated wilderness of Katmai National Park and Preserve, Alaska.

An Interagency Coordinating Group for Continental Scientific Drilling (ICG/CSD) composed of the USGS, the Department of Energy and the National Science Foundation originally requested permission from the NPS in October 1988 to conduct scientific drilling in the wilderness area in the Valley of Ten Thousand Smokes of Katmai National Park. The primary purpose of the proposal was to gain new understanding into the nature of explosive volcanic eruptions through scientific study of subsurface structures and deposits. Primary objectives of the proposal were to study the behavior of magma as it ascends in highly explosive eruptions, investigate the transport of metals in igneous systems, and test models for the cooling of volcanic vents. To achieve the objectives, three core holes were planned within two years of operation: one vertical hole to 4,000 feet near Novarupta, the site of the historic 1912 eruption; one hole to 3,300 feet deviated from the first hole; and one slant hole to about 700 feet through the ashflow sheet about three miles from Novarupta.

Pursuant to the National Environmental Policy Act (NEPA) a Notice of Intent to prepare an EIS was published in the **Federal Register**, Vol. 56 No. 19, on Tuesday, January 29, 1991. Public scoping meetings were held on April 15 and 16, 1992, in Anchorage and King Salmon, Alaska, respectively. Work ensued on the draft EIS, but due to internal reviews and revisions to the original proposal, a draft EIS was not released.

The ICG/CSD has formally withdrawn its application to the NPS for a permit to conduct scientific drilling and related research at Katmai National Park and Preserve. The ICG/CSD gave two primary reasons for requesting termination of the EIS process: (1) Increased costs since the original proposal, and (2) procedural decisions affecting preparation and completion of the EIS. The NPS, therefore, will not complete the EIS process, and a draft EIS on the Plan of Operations for the Katmai Scientific Drilling Project will not be released. If a proposal is revived at a future date, the NEPA process will be reinitiated.

COMMENTS: For comments or further information on this action contact: Joan B. Darnell, Chief, Division of Environmental Quality, National Park Service, 2525 Gambell Street, room 107, Anchorage, Alaska 99503, Telephone (907) 257–2648.

John M. Morehead,

Regional Director, Alaska Region.

[FR Doc. 94–13277 Filed 05–31–94; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 21, 1994. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by June 16, 1994.

Beth M. Boland,

Acting Chief of Registration, National Register.

ALASKA

Juneau Borough-Census Area

Juneau Downtown Historic District, Roughly, Franklin St. from Second St. to S of Ewing Way, Second and First Sts. from Franklin to Main St., and Front St., Juneau, 94000603

FLORIDA

Sarasota County

Sanderling Beach Club, 105 Beach Rd., Sarasota, 94000618

ILLINOIS

McLean County

White Building, 215–223 E. Douglas St., Bloomington, 94000612

MICHIGAN

Calhoun County

Advent Historic District, Roughly bounded by N. Washington Ave., Champion St., Hubbard St. and Greenwood Ave., Battle Creek, 94000623

Merritt Woods Historic District, Roughly bounded by Orchard, Emmett and Chestnut Sts. and northernmost parts of Woodmer Dr. and Crest Dr., Battle Creek, 94000622

Washtenaw County

Detroit, Hillsdale and Indiana Railroad—Saline Depot (Saline MRA), 402 N. Ann Arbor St., Saline, 94000619

Wayne County

Saint Paul Catholic Church Complex, 157 Lake Shore Rd., Grosse Pointe Farms, 94000621

Wall, Carlton D., House, 12305 Beck Rd., Plymouth, 94000620

MISSOURI

Jackson County

Fitzhugh—Watts' Mill (Santa Fe Trail MPS), 103rd St., Kansas City, 94000616

Santa Fe Trail—Minor Park, Kansas City, Trail Segments, (Santa Fe Trail MPS), Red Bridge Rd. E of jct. with Holmes Rd., Kansas City, 94000617

Saline County

Santa Fe Trail—Saline County Trail Segments (Santa Fe Trail MPS), Co. Rd. 416 (Rural Rt. 3) W of jct. with MO 41, Stanhope vicinity, 94000615

NEW MEXICO

Socorro County

Seco Ruin (Pueblo IV Sites of the Chupadera Arroyo MPS), Address Restricted, Chupadera vicinity, 94000614

OHIO

Cuyahoga County

Cedar Glen Apartments, 11424–11432 Cedar Glen Pkwy., Cleveland, 94000594

Lorain Avenue Commercial Historic District, 3202–5730 Lorain Ave., Cleveland, 94000596

Franklin County

Livingston, Alexander W., House, 1792 Graham Rd., Reynoldsburg, 94000593

Hamilton County

Church, John, Company Building (Hannaford, Samuel, & Sons TR), 14–16 E. Fourth St., Cincinnati, 94000592

Lucas County

Brandville School, 1133 Grasser St., Oregon, 94000595

OREGON

Marion County

Elsinore Theater, (Architecture of Ellis F. Lawrence MPS), 170 High St. SE., Salem, 91001575

PUERTO RICO

Sabana Grande Municipality

Supulveda, Iberta, House, 37 Munoz Rivera St., Isabel Segunda, 94000624

SOUTH CAROLINA

Charleston County

Seaside School, 1097 SC 174, Edisto Island, 94000602

TENNESSEE

Unicoi County

Tilson Farm, 242 Little Branch Rd., Flag Pond, 94000613

TEXAS

Dallas County

Kessler Park Historic District (Oak Cliff MPS), Roughly bounded by Kidd Springs, Stewart, Oak Cliff, Plymouth, I–30, Turner, Colorado and Sylvan, Dallas, 94000607

King's Highway Historic District (Oak Cliff MPS), 900–1500 Blocks of King's Highway between W. Davis St. and Montclair Ave., Dallas, 94000606

Lake Cliff Historic District (Oak Cliff MPS), Roughly bounded by E. 6th St., Beckley Ave., Zangs Blvd. and Marsalis Ave., Dallas, 94000609

Lancaster Avenue Commercial Historic District (Oak Cliff MPS), Roughly bounded by E. Jefferson Blvd., S. Marsalis, E. 10th St., E. 9th St. and N. Lancaster Ave., Dallas, 94000605

Miller and Stemmons Historic District (Oak Cliff MPS), Roughly bounded by W. Davis St., Woodlawn Ave., Neches and Elsbeth, Dallas, 94000611

North Bishop Avenue Commercial Historic District (Oak Cliff MPS), Roughly bounded by 9th St., Davis St., Adams and Madison, Dallas, 94000608

Rosemont Crest Historic District (Oak Cliff MPS), Roughly bounded by 10th St., Oak Cliff Blvd., W. Davis St., N. Brighton Ave., W. 8th St. and Rosemont Ave., Dallas, 94000610

Tenth Street Historic District (Oak Cliff MPS), Roughly bounded by E. Clarendon Dr., S. Fleming Ave., I–35E, E. 8th St. and the E end of Church, E. 9th and Plum Sts., Dallas, 94000604

WISCONSIN

Chippewa County

Hotel Chippewa, 16–18 N. Bay St., Chippewa Falls, 94000598

Dane County

Eggiman, Ernest, House, 857 S. Shore Dr., Madison, 94000599

Kewaunee County

Ahnapee Brewery, 115 Navarino St., Algoma, 94000597

Lincoln County

Center Avenue Historic District, Roughly bounded by Cedar, Park, Third, Center and Seventh Sts., Merrill, 94000600

Waupaca County

Hansen, Jens, Wagon and Carriage Shop, 117 E. Fulton St., Waupaca, 94000601

[FR Doc. 94–13278 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Bureau of Reclamation To Negotiate Temporary Contracts With Umatilla Project Irrigation Districts for Water Service to Lands Outside District Boundaries

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation intends to negotiate temporary contracts for 1994 with the following Umatilla Irrigation Districts for the provision of water service to lands lying outside of their boundaries: Hermiston, Stanfield, Westland, and West Extension. These proposed temporary contracts will be subject to evaluation under the National Environmental Policy Act.

DATES: Comments on the proposed contracts may be submitted until June 10, 1994.

ADDRESSES: Written data, views, and comments concerning the proposed contracts may be submitted to the Bureau of Reclamation, Attention: PN–3323, 1150 N. Curtis Road, Boise, Idaho 83706–1234. Requests for copies of the proposed contracts may be placed by calling Larry Parsons at (208) 378–5346.

Dated: May 25, 1994.

Donald R. Glaser,

Acting Director, Program Analysis Office.

[FR Doc. 94–13319 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–94–P

Office of Surface Mining Reclamation and Enforcement

Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent to prepare an environmental impact statement, extension of scoping.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is extending the public comment period on the notice of intent to prepare an environmental impact statement (EIS) published in the April 28, 1994 **Federal Register** (59 FR 21996). This will provide more time in which to comment on the scope of the analysis.

DATES: Written comments: OSM will accept written comments on the scope of the EIS until 5 p.m. Eastern Time on June 30, 1994.

Scoping meetings: OSM will meet with interested persons upon request to discuss the scope of the EIS until June 30, 1994. See "**ADDRESSES**" for the locations of the meetings.

ADDRESSES: Written comments: Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol Street, NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record 660–NC, 1951 Constitution Avenue NW., Washington, DC 20240.

Scoping meetings: Upon request, OSM staff will be available to meet with interested persons, individually or in groups, during the comment period at the following OSM locations: Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220 (Contact: Chuck Wolf, 412–937–2897); Western Support Center, 1020 15th Street, Second floor, Denver, Colorado 80202 (Contact: Floyd McMullen, 303–844–3104); Knoxville Field Office, 530 Gay Street, suite 500, Knoxville, Tennessee 37902 (Contact: Gary Tucker, 615–545–4122); and Branch of Environmental and Economic Analysis, room 640, 800 North Capitol Street, Washington, DC 20002 (Contact: Andy DeVito, 202–343–5150).

FOR FURTHER INFORMATION CONTACT: Andy DeVito, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., room 640–NC, Washington, DC 20240; Telephone: 202–343–5150.

SUPPLEMENTARY INFORMATION: OSM published a notice of intent to prepare an EIS on April 28, 1994 (59 FR 21996).

The notice solicited comments on the scope of the analysis for a rulemaking that would (1) define the term valid existing rights (VER), and (2) determine the degree, if any, to which subsidence resulting from underground coal mining is subject to the prohibitions of section 522(e) of the Surface Mining Control and Reclamation Act of 1977.

The comment period for the notice of intent was scheduled to close on May 31, 1994. However, OSM has received requests for an extension in order to provide more time in which to comment on the scope of the analysis. Therefore, OSM is extending the comment period. Comments will now be accepted until 5 p.m. local time on June 30, 1994.

Dated: May 25, 1994.

Gene E. Krueger,

Acting Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 94–13208 Filed 5–31–94; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: JP Foodservice, Inc., 9830 Patuxent Woods Drive, Columbia, MD 21046.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

(i) Sky Bros., Inc.—Pennsylvania.

(ii) Illinois Fruit & Produce—Illinois.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–13280 Filed 5–31–94; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[AG Order No. 1882–94]

National Instant Criminal Background Check System

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: Under section 103(b) of the Brady Handgun Violence Prevention Act (Brady Act), Public Law 103–159, Title I, 107 Stat. 1536 (to be codified at 18 U.S.C. 922), the Attorney General is required by November 30, 1998, to establish a national instant criminal background check system (NICS). The NICS must be able to supply information immediately regarding whether receipt of a firearm by a prospective transferee would violate section 922 of Title 18, United States Code, or state law. Under section 103(a)(1) of the Brady Act, the Attorney General is required by June 1, 1994, to determine the type of computer hardware and software that will be used to operate the NICS and the means by which state criminal records systems and the telephone or electronic device of licensees will communicate with the national system. Under section 103(a)(3) of the Brady Act, the Attorney General is also required by June 1, 1994, to notify each state of these determinations.

This notice by the Attorney General provides the required information concerning the NICS to each state. It explains how the NICS will operate, how states will interface with the federal segment of the NICS, and how licensees will communicate with the NICS. Technological advances can be expected in the course of NICS development. Therefore, additional detailed information may be published regarding hardware and software for the NICS before its establishment. Final functional specifications for the NICS will be developed and published to enable the system to be operational by November 30, 1998. Regulations detailing the duties and obligations of the federal, state, and local agencies responsible for NICS development and operation, including security and privacy of the information contained in the system, will be published in the future.

EFFECTIVE DATE: This determination is effective on June 1, 1994.

FOR FURTHER INFORMATION CONTACT: Virgil L. Young, Jr., Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation, room 11854, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20537–9700, (202) 324–5084.

Notice of Determination

As required of me as Attorney General under section 103(a)(1) of the Brady Handgun Violence Prevention Act, I hereby determine that the NICS will include information from all of the states and the federal government, concerning whether receipt of a firearm by a prospective transferee would violate section 922 of Title 18, United States Code, or state law. A "state segment" of the NICS will consist of information provided at the state and local levels, and a "federal segment" will contain information from federal agencies. All background checks initiated by federal firearms licensees will go through the appropriate state or local law enforcement information system, as determined by the state, to reach the federal segment of the NICS.

The NICS will build upon existing information systems. One of these systems is the National Crime Information Center (NCIC) Interstate Identification Index, which includes state as well as federal criminal history records. Another is the future Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation (FBI), which when completed will provide the foundation for remote positive identification capabilities to state and local agencies. Records on wanted persons are currently available through NCIC. Other possible federal data files include Department of Defense records on persons who have been dishonorably discharged, Veterans Affairs Department records on mental commitments, Immigration and Naturalization Service records on illegal aliens, and Department of State records on individuals who have renounced their U.S. citizenship. The Department of Justice intends to secure such information directly from those agencies for inclusion in the federal segment of the NICS pursuant to section 103(e)(1) of the Brady Act.

All criminal records provided through the NICS will be supported by fingerprints. Some means of identification also will be associated with any other information included in the NICS. Fingerprints will be included with this information whenever possible.

The NICS itself will not approve or deny the transfer of a firearm. The NICS cannot by itself resolve important questions of fact and interpretation. Rather, a representative of a state or local criminal justice agency in the state where the firearm transaction is proposed to occur will make this decision.

There are several reasons why the state or local agency should make this determination. First, many individuals have the same names, and some individuals use several names. Before denial of a firearm transaction, there must be a determination that the prospective transferee is the same individual associated by the NICS with disqualifying information. The system cannot decide such questions of identity

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on its own. Second, information provided by the NICS may require interpretation. For instance, some information could represent a violation of the laws of one state but not another. Third, state and local agencies have disqualifying information that does not lend itself to storage or indexing at the federal level. An example is the observed use of illegal drugs in the absence of an arrest. Finally, because of state confidentiality laws and other restrictions, in some states, only state officials may review some of the records needed to make disqualification determinations. These restrictions apply, for example, to information about commitments to mental institutions. States and localities will use any relevant disqualifying information that they have in their files when making decisions concerning approval or denial of a firearm transaction.

Background checks from federal firearms licensees will go first to the state segment, possibly through local agencies, at the discretion of the state. States and localities may deny a firearm transaction without contacting the federal segment of the NICS if they find information in their own data files that disqualifies the prospective transferee. If no disqualifying information is found in state or local data files, the state will transmit the background check to the federal segment.

State information systems will communicate with the federal segment directly via their NCIC interface. Each state will determine the specific electronic means and procedures needed by the licensees in that state to access the state segment and the federal segment through the state. States will offer telephonic access at a minimum, and may offer other electronic means of access in addition to the telephone. If the state system allows automated access, then training for licensees will be provided by the state.

As part of the notification that the NICS is operational (by November 30, 1998), the Attorney General will inform licensees of any access options and interface requirements for the NICS that are available within their states. Licensees will not be required to use expensive equipment to access the federal segment.

The FBI will supervise the development and use of information in the federal segment for background checks with the full cooperation and support of other federal agencies having data files with potentially disqualifying information. The FBI will develop one consolidated federal response to a request for a background check. The response will be either (1) a notification that no information was found about the prospective transferee in the federal segment, or (2) a list that summarizes any potentially disqualifying information found in the federal segment, with a brief description of the person to whom the information relates. The FBI will provide this response to the state that requested the background check within 30 seconds of receiving that state's request. If a part of the federal response is unavailable within that time, then the consolidated response will identify the specific file information that is not yet available. The FBI will thereafter send the missing information to the state as soon as it is available.

A state of local agency representative where the firearm transaction is to occur will determine whether the transaction is (1) approved, (2) denied, or (3) "not approved at this time because part of the background check has not been completed." The state or local agency will communicate only this determination to the licensee, and not the information leading to the determination.

The use of any state or federal information in the NICS will be supervised and administered exclusively by criminal justice agencies. State will use security measures to ensure the integrity of the NICS, such as licensee terminal restrictions, telephone call-back, and caller ID. States will assign a unique transaction number for each approval and denial of a firearm transaction.

The Attorney General intends to provide access to appropriate information in the NICS for purposes of carrying out the Brady Act, and does not intend to charge for such access provided that there are sufficient appropriations. State and local agencies may, however, in accordance with their statutes, charge discretionary fees to recover their costs for background checks.

Dated: May 26, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94-13328 Filed 5-31-94; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 94-4]

Scot Kazalla, D.D.S.; Revocation of Registration

On July 2, 1993, the Deputy Assistant Administrator (then-Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Scot Kazalla (Respondent), 2910 University Drive, Coral Springs, Florida proposing to revoke his DEA Certificate of Registration, BK087152, and to deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was that: (1) Respondent lacked authorization to handle controlled substances in the State of Florida; (2) Respondent was convicted of a felony offense related to controlled substances; and (3) Respondent's continued registration was inconsistent with the public interest.

Respondent requested a hearing on the issues raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. On November 18, 1993, the Government filed a motion for summary disposition. The motion was supported by the Order of Emergency Suspension of the License issued by the State of Florida, Department of Professional Regulation, dated December 9, 1992.

On November 19, 1993, the administrative law judge issued an order which allowed the Respondent twenty days to file a response to the Government's motion. Respondent failed to file a response. On December 21, 1993, the administrative law judge issued her opinion and recommended decision, granting the Government's motion for summary disposition and recommending revocation of Respondent's DEA Certificate of Registration. No exceptions were filed and, on January 21, 1994, the administrative law judge transmitted the record of these proceedings to the Administrator. The Deputy Administrator, having considered the record in its entirety, hereby enters his final order in this matter pursuant to 21 CFR 1316.67.

The administrative law judge found that the Respondent is not currently authorized to practice dentistry in Florida. Based upon his lack of a valid dental license, Respondent is precluded from handling controlled substances in the State of Florida.

The Deputy Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See James H. Nickens, M.D., 57 FR 59847 (1992); Elliott F. Monroe, M.D. 57 FR 23246 (1992); Bobby Watts, M.D., 53 FR 11919 (1988), Robert F. Witek, D.D.S., 52 FR 47770 (1987); and cases cited therein.

Since there is no dispute about Respondent's lack of authority to handle controlled substances in the State of Florida, the administrative law judge properly granted the Government's motion for summary disposition. When no question of fact is involved, a plenary, adversarial administrative proceeding with the full panoply of due process rights is not obligatory. See Philip E. Kirk, M.D., 48 FR 32887 (1983), aff'd sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984); *United States v. Consolidated Mines and Smelting Company, Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971); NLRB v. International Association of Bridge, Structural and Ornamental Ironworks, AFL-CIO, 549 F.2d 634 (9th Cir. 1977).

Having considered the facts and circumstances in this matter, the Deputy Administrator concludes that Dr. Kazalla's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the State of Florida. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, BK0879152, previously issued to Scot Kazalla, D.D.S., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be and they hereby are, denied. This order is effective June 30, 1994.

Dated: May 25, 1994.

Stephen H. Greene,

Deputy Administrtor.

[FR Doc. 94-13209 Filed 5-31-94; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-29,405]

General Motors Corporation, Inland Fisher Guide Division, Syracuse, NY; Notice of Affirmative Determination Regarding Application for Reconsideration

On April 22, 1994, the United Auto Workers, Region 9 requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was published in the **Federal Register** on April 7, 1994 (59 FR 16663).

The union stated that a production relationship existed between General Motors' (GM) Tarrytown plant which was certified and Inland Fisher Guide in Syracuse. The Department will also review other certified G.M. plants to determine whether the Syracuse workers were adversely affected because of imports.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 23rd day of May 1994.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94-13296 Filed 5-31-94; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than June 13, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 13, 1994.

The petitions filed in this case are available for inspection at the Offices of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 16th day of may, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assitance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
BP Exploration and Oil, Inc (Co)	Houston, TX	05/16/94	04/27/94	29,861	Oil & Gas Exploration Production.
Wolverine International (Wkrs)	Bay City, MI	05/16/94	04/27/94	29,862	Ladies' Robes & Auto Seat Covers.
Sealy Mattress (UTWA)	Watertown, WI	05/16/94	04/28/94	29,863	Mattresses.
Philips Consumer Electronics Co (USWA).	Williamsport, PA	05/16/94	05/02/94	29,864	Electronic Components.
Prudential Insurance & Financial (Wkrs).	Newark, NJ	05/16/94	05/01/94	29,865	Insurance and Financial Services.
Whitehead Mfg Co (UAW)	Detroit, MI	05/16/94	05/03/94	29,866	Metal Stampings.
Struthers-Dunn, Inc & Hi-G. Co (IUE)	Pitman, NJ	05/16/94	04/29/94	29,867	Electro-Mechanical & Magnetic Relays.
Pat Fashions (ILGWU)	Wind Gap, PA	05/16/94	05/03/94	29,868	Ladies' Sportswear.
McCord Winn Textron (IUE)	Winchester, MA	05/16/94	04/19/94	29,869	Fuel Pump Parts.
ITT Automotive (UAW)	Selmer, TN	05/16/94	05/02/94	29,870	Automotive Security Door Alarm Switches.

APPENDIX—Continued

Petitoner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Digital Equipment Corp (Co)	Maynard, MA	05/16/94	04/29/94	29,871	European Support Group.
Baxter-Bentley Div (Wkrs)	Irvine, CA	05/16/94	04/26/94	29,872	Cardiovascular Products.
Allied Signal (Wkrs)	Teterboro, NJ	05/16/94	05/06/94	29,873	F–16 Component Parts.
Alcoa Recycling (Wkrs)	Knoxville, TN	05/16/94	05/02/94	29,874	Recycle Aluminum.
Alcoa Recycling (Wkrs)	Maryville, TN	05/16/94	05/02/94	29,875	Recycle Aluminum.
Posso Corporation (Wkrs)	Kerrville, TX	05/16/94	05/03/94	29,876	Wood & Plastic Cassette & Tape Storage.
Penny Sportswear, Inc (Wkrs)	Weissport, PA	05/16/94	05/04/94	29,877	Ladies' Skirts, Pants & Shorts.
Guardian Industries Corp (Wkrs)	Falconer, NY	05/16/94	04/20/94	29,878	Flat Glass Mirrors.
ARCO Oil and Gas Co (Co)	Dallas, TX	05/16/94	05/05/94	29,879	Oil and Gas.
ARCO Oil and Gas Co. (Co)	Houston, TX	05/16/94	05/05/94	29,880	Oil and Gas.
Karg Tanning (ACTWU)	Johnstown, NY	05/16/94	05/05/94	29,881	Tanned Leather.
Pan America (ACTWA)	Gloversville, NY	05/16/94	05/05/94	29,882	Tanned Leather.

[FR Doc. 94–13299 Filed 5–31–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,206]

Vought Aircraft Co., Dallas, TX; Notice of Negative Determination on Reconsideration

On April 7, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. This notice was published in the **Federal Register** on April 15, 1994 (15 FR 18162).

Both the company and the union claimed that one of Vought's customers ordered the production of subassemblies for its commercial aircraft to be transferred to firms in selected countries offshore to create a "market pull" for the sale of its aircraft.

On reconsideration the company submitted new data on the number of hours by shop and function which are offloaded to firms in selected countries overseas. The new data shows that the number of hours offloaded do not constitute a substantial amount of the total hours by shop and function and therefore did not contribute importantly to employment, sales and/or production declines at Dallas.

The Department would entertain a new petition when the amount of production offloaded overseas constitutes a substantial portion of the production at the Dallas facility.

The Department certified (TA–W–28,470) Vought workers producing manual fiberlite fabrications of aircraft skin panels (Job Family 7380) because Vought Aircraft shifted a significant portion of its manual fiberlite fabricating offshore thereby increasing company imports of aircraft skin panels in the first-quarter of 1993.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of the Vought Aircraft Company in Dallas, Texas.

Signed at Washington, DC, this 23rd day of May 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–13298 Filed 5–31–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,379]

Carter Automotive Company, Inc., a Federal-Mogul Co.; LaFayette, TN; Notice of Negative Determination Regarding Application for Reconsideration

By an application received April 28, 1994, Local #1988 of the United Auto Workers (UAW) requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was published in the **Federal Register** on March 30, 1994 (58 FR 14876).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation files show that the workers produced automotive fuel systems.

The union submitted additional information showing that components for fuel pumps and filter pump assemblies were imported to Lafayette for further production.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. All production was transferred to another corporate domestic plant in Indiana. A transfer of production to another domestic location would not provide a basis for a worker group certification.

The investigation files shows that the component parts (adapters, bodies, motors, etc.) used in the assembly of fuel systems which were purchased offshore were not produced at Lafayette during the relevant period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23rd day of May 1994.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–13295 Filed 5–31–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,789]

International Paper Company; Presque Isle, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 25, 1994 in response to a worker petition which was filed on April 18, 1994 on behalf of workers at International Paper Company, Presque Isle, Maine.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–29,721). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 18th day of May, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–13294 Filed 5–31–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,554]

O&K, Incorporated, Batavia, NY; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated May 13, 1994, Local #78 of the International Brotherhood of Boilermakers requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on April 29, 1994 and will soon be published in the **Federal Register.**

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings show that the workers performed warehousing, material handling including parts supply, technical services and general administrative functions for the sales and service of O&K front end loaders.

The Department's denial was based on the fact that the workers do not produce an article within the meaning of section 222(3) of the Trade Act. The Department has consistently determined that the performance of services does not constitute the production of an article and this determination has been upheld in the U.S. Court of Appeals. Accordingly, warehousing, material handling and general administrative duties, by themselves, do not constitute the production of an article.

All production of articles at Batavia ceased in March, 1992. Section 223(b)(1) of the Trade Act does not permit the certification of workers who were laid off prior to one year of the date of the workers' petition. The date of the union's petition is February 4, 1994. Workers laid off with the cessation of production at Batavia in March 1992 could not be covered under any certification whose petition is dated February 4, 1994.

The investigation files show that the workers were initially certified for TAA under TA–W–24,230, issued on June 14, 1990, when the workers were still producing front end loaders. However, this is not the case now since Batavia's function has changed from a producer to an importer of front end loaders. For importers, increased imports should have a positive impact on employment not the other way around.

The worker adjustment assistance program was not intended for everyone who is in some way affected by imports but only for those workers who were producing an article in the relevant period and were adversely affected because of increased imports of like or directly competitive products which contributed importantly to declines in employment and sales or production at the workers' firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23rd day of May 1994.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–13297 Filed 5–31–94; 8:45 am]
BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agrement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than June 13, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than June 13, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 23rd day of May, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received at Governor's office	Petition No.	Articles produced
General Electric Company; Motors (IUE).	Linton, IN	05/12/94	NAFTA–00110	Fractional horsepower electric motor parts.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Elf Atochem; Tacoma ( )	Tacoma, WA	05/16/94	NAFTA–00111	Industrial chemicals for forestry; i.e. chlorine.
NEC America, Inc.; PBX, Radio & Transmission (Wkrs).	Hillsboro, OR	05/13/94	NAFTA–00112	Cellular telephone mfg.
Infotec Development Inc.; Federal Systems Division (Wkrs).	Santa Ana, CA	05/03/94	NAFTA–00113	Computer integrated information systems (ie. GIS)
Portac, Inc.; Portac, Tacoma ( )	Tacoma, WA	05/17/94	NAFTA–00114	Softwood lumber (Hemlock and Fir) for construction of homes.
Canon Business Machines. Inc. (Wkrs).	Costa Mesa, CA	05/18/94	NAFTA–00115	Assembly of word processors and cassettes.
Fisher Price (Wkrs)	Brownsville, TX	05/20/94	NAFTA–00116	Toys.
Lennon Foods, Inc. ( )	Seattle, WA	05/19/94	NAFTA–00117	Processed pork and meat products.
Laurel Street Art Club Inc.; Art Workers Division (Wkrs).	Hebron, KY	05/20/94	NAFTA–00118	Production of art works for furniture retailers.

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of May, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,524; Vygen Corp., Ashtabula, OH

TA–W–29,681; National Steel Pellet Co., Keewatin, MN

TA–W–29,716; Armco Stainless & Alloys Products, Bridgeville, PA

TA–W–29,569; Display, Inc., Lewistown, PA

TA–W–29,590; Oahu Sugar, Waipahu, HI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,608; Koch Gathering Systems, Inc., Russell, KS

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,546; Apache International, A Div., of Apache Corp., Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,607; Koch Service, Inc., Roosevelt, UT

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,705; Widemer Bros. Well Service, Inc., Tioga, ND

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,754; Any Wash, Inc., Hialeah, FL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,578; General Well Service, Inc, Roosevelt, UT

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,535; Aviation Transport Services of Texaco, Inc, Houma, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,769; Charles Bluestone Co., Elizabeth, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,521; IBM Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,682; J.C. Penney Co., Inc., Drapery Fabrication Center, Custom Decorating Sales Center, Newark, DE

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,558; Genesco, Inc., (GPAB), Nashville, TN

TA–W–29,598; Genesco, Inc., Warehouse 63, Nashville, TN

TA–W–29,600; Genesco, Inc., Fayetteville, TN

TA–W–29,601; Genesco, Inc., Chapel Hill, TN

TA–W–29,602; Genesco, Inc., (Genstar), Nashville, TN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,653; Lockheed—Ft Worth Div., Ft Worth, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA–W–29,391; Teledyne Controls, West Los Angeles, CA

US imports of parts for civilian and military aircraft declined absolutely in the twelve month period of October 1992-September 1993 as compared to the same period a year earlier.

TA–W–29,677; Leviton Manufacturing Co., Inc., Melville, NY

A corporate decision was made to transfer certain product lines from the subject firm to more modern facilities in the US.

TA–W–29,678; Maspeth, Queens, NY

The services provided by the subject firm did not originate at a production facility whose workers met the statutory criteria for certification.

Affirmative Determinations for Worker Adjustment Assistance

TA–W–29,709; Abbott & Co. dba ABEPP Acquisition Crop., Manchester, TN

A certification was issued covering all workers separated on or after March 25, 1993.

TA–W–29,565; Crown Pacific Inland Lumber, Spokane, WA

A certification was issued covering all workers separated on or after February 17, 1993.

TA–W–29,555; Polo Clothing Co., Inc., Lawrence, MA

A certification was issued covering all workers separated on or after February 8, 1993.

TA–W–29,660; Portco Corp., Twine Div., Vancouver, WA

A certification was issued covering all workers separated on of after March 11, 1993.

TA–W–29,628; Western Publishing Co., Racine, WI

A certification was issued covering all workers separated on or after March 5, 1993.

TA–W–29,793; Dosimeter Corp., of America, Cincinnati, OH

A certification was issued covering all workers separated on or after April 12, 1993.

TA–W–29,741; Mallard I.V., Inc., McPherson, KS

A certification was issued covering all workers separated on or after March 28, 1993.

TA–W–29,450; Gandalf Systems Corp., Cherry Hill, NJ

A certification was issued covering all workers separated on or after January 11, 1994.

TA–W–29,643; Colebrook-Terry, Inc., Colebrook, PA

A certification was issued covering all workers separated on or after January 30, 1994.

TA–W–29,645 & TA–W–29,646; Colebrook-Terry, Inc., Leola, PA and, York, PA

A certification was issued covering all workers separated on or after February 15, 1993.

TA–W–29,771; Milco Industries, Inc., Bloomsburg, PA

A certification was issued covering all workers separated on or after April 8, 1993.

TA–W–29,696; Allen Drilling Co., Great Bend, KS

A certification was issued covering all workers separated on or after March 19, 1993.

TA–W–29,728 and TA–W–29,728A; Wundies Enterprises, Inc., Liberty, PA and Wellsboro, PA

A certification was issued covering all workers separated on or after April 1, 1993.

TA–W–29,662; Rose Oil Co., Rosehill, KS

A certification was issued covering all workers separated on or after March 15, 1993.

TA–W–29,572; Brooks Manufacturing, Inc., Fremont, NC

A certification was issued covering all workers separated on or after February 16, 1993.

TA–W–29,635; D.P.M., Inc/Sans Souci Lingerie, Poplar Bluff, MO

A certification was issued covering all workers separated on or after March 7, 1993.

TA–W–29,665, TA–W–29,666, TA–W–29,667, TA–W–29,668; J.E. Morgan Apparel, Wadesboro, NC

TA–W–29,669, TA–W–29,670; J.E. Morgan Apparel, Albemarle, NC

TA–W–29,671; J.E. Morgan Apparel, Pageland, SC

TA–W–29,672; J.E. Morgan Apparel, Great Falls, SC

A certification was issued covering all workers separated on or after March 14, 1993.

TA–W–29,584; Maybelle Manufacturing, Wiggins, MS

A certification was issued covering all workers separated on or after February 24, 1993.

TA–W–29,495; S.B. Manufacturing Co., Inc., Saddlebrook, NJ

A certification was issued covering all workers separated on or after January 25, 1994.

TA–W–29,575; Peterson Shake Co., Inc., Amanda Park, WA

A certification was issued covering all workers separated on or after February 16, 1993.

TA–W–29,534; Cowden Manufacturing Co., Lancaster, KY

A certification was issued covering all workers separated on or after January 26, 1993.

TA–W–29,633; Centurion International Manufacturing, Lee Park, Wilkes Barre, PA

A certification was issued covering all workers separated on or after March 10, 1993.

TA–W–29,603; Hughes Christianson Co., Headquartered in Houston, TX & Operating at Various Locations in the Following States: A; AK, B; AL, C; AR, D; AZ, E; CA, F; CO, G; CT, H; IL, I; KS, J; KY, K; LA, LI; MI, M; MO, N; MS, O; MT, P; ND, Q; NH, R; NM, S; OH, T; OK, U; OR, V; PA, W; SC, X; TX, Y; UT, Z; WI, AZ; WV, ZB; WY

A certification was issued covering all workers separated on or after January 11, 1993.

TA–W–29,557, TA–W–29,594, TA–W–29,595, TA–W–29,596, TA–W–29,599; Genesco, Inc., Danville, KY, Fulton, MS, Iuka, MS, Hohenwald, TN, Waynesboro, TN

TA–W–29,597; Genesco, Inc., J&M Plant, Nashville, TN

A certification was issued covering all workers separated on or after February 16, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of February, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA -TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either——

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

NAFTA–TAA–00080; Sunshine Rope Manufacturing, Inc., Miami, FL

The investigation revealed that criteria (1) was not met in conjunction with the requirements of Section 506 (b)(2) of the Act. Worker separations from the subject firm occurred prior to December 8, 1993, the earliest date for which certification under NAFTA–TAA applies.

NAFTA–TAA–00092; Indal Limited, Season-All Industries, Indiana, PA

The investigation revealed that criteria (1) was not met in conjunction with the requirements of Section 506 (b)(2) of the Act. Worker separations from the subject firm occurred prior to December 8, 1993, the earliest date for which certification under NAFTA–TAA applies.

NAFTA–TAA–00079; Swiss Precision Aproducts, Inc., Lake Havasu, AZ

The investigation revealed that criterion (3) and criterion (4) were not met. A survey of the subject plant's customers revealed that customers did not import small high precision connectors, pins, & contractors from Mexico or Canada during the relevant period.

NAFTA–TAA–00109; Wilmington Steel & Construction Co., Inc., New Castle, PA

The investigation revealed that criterion (3) and criterion (4) were not met. A survey conducted with customers to whom Wilmington Steel submitted bids for the fabrication of structural steel products revealed that the contacts that Wilmington Steel did not receive were awarded to domestic firms & all production was done domestically.

NAFTA–TAA–00078; Radform Tool Co., East McKeesport, PA

The investigation revealed that criterion (3) and criterion (4) were not met. Radform Tool Company closed on April 26, 1994, and all workers were permanently laid off at that time. A survey of major customers revealed that customers did not import machines tooling or replacement parts for nuclear & steam power systems from Canada or Mexico. Radform Tool did not shift production to Mexico or Canada.

NAFTA–TAA–00070; Quartet Fashions, Inc., Sportette Industries, Inc, Bath, PA

NAFTA–TAA–00102; Quartet Fashions, Inc., Denise Barry Fashions, Inc., Nazareth, PA

NAFTA–TAA–00103; Quartet Fashions, Inc., Sportette Industries, Inc., Nazareth, PA

The investigation revealed that criteria (3) and criteria (4) were not met. A survey conducted with major customers revealed that respondents did not import women's skirts and jackets from Mexico or Canada during the relevant time period. Customer imports of women's blouses and pants from Mexico or Canada were a very small proportion of the customers' total purchases & consequently, did not contribute importantly to production and employment declines at the subject firms.

Affirmative Determination NAFTA–TAA

NAFTA–TAA–00086; Pope & Talbot, Inc., Port Gamble, WA

A certification was issued covering all workers of Pope & Talbot, Inc., Port Gamble, WA separated on or after December 8, 1993.

NAFTA–TAA–00077; Data Products Corp., Norcross, GA

NAFTA–TAA–00077A; Staffing Resources, Norcross, GA

NAFTA–TAA–00077B; ATS Staffing, Norcross, GA

NAFTA–TAA–00077C; Maristaff Temporary Services, Inc., Atlanta, GA

A certification was issued covering all workers who were engaged in the production of typewriter ribbons separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of May, 1994. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: May 24, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–13293 Filed 5–31–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,350]

The Western Company of North America a/k/a Western Oceanic Services, Inc. Headquartered in Houston, TX and Operation at Various Locations in the Following States: TA–W–27,350A Alabama; TA–W–27,350B Mississippi; TA–W–27,350C Louisiana; TA–W–27,350D Colorado; TA–W–27,350E New Mexico; TA–W–27,350F Texas; TA–W–27,350G Kansas; TA–W–27,350H Oklahoma; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of The Western Company of North America, headquartered in Houston, Texas. The certification notice was issued on July 30, 1992 and published in the **Federal Register** on August 18, 1992 (58 FR 37173).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that some of the claimants' wages for The Western Company of North America were reported under a UI tax account for Western Oceanic Services, Inc. in Houston, Texas.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to TA–W–27350 is hereby issued as follows:

All workers of The Western Company of North America a/k/a Western Oceanic Services, Inc., Houston, Texas (TA–W–27,350) and operating at various locations in the following cited states, who became totally or partially separated from employment on or after May 27, 1991, are eligible to apply for adjustment assistance under Section 223 of the trade Act of 1974.

TA–W–27,350A Alabama
TA–W–27,350B Mississippi
TA–W–27,350C Louisiana
TA–W–27,350D Colorado
TA–W–27,350E New Mexico
TA–W–27,350F Texas
TA–W–27,350G Kansas
TA–W–27,350H Oklahoma

Signed at Washington, DC, this 19th day of May 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–13301 Filed 5–31–94; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Healthcare Reform of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until 12 noon, Wednesday, June 22, 1994, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This work group was formed by the Advisory Council to study issues relating to healthcare reform for employee benefit plans covered by ERISA.

The purpose of the June 22 meeting is to receive testimony from invited interested persons on the impact of proposed federal healthcare reform legislation on self-insured, ERISA-covered employee welfare benefit plans as well as participating employees and their families. The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before June 17, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 17, 1994.

Signed at Washington, DC this 25th day of May, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–13228 Filed 5–31–94; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Reporting and Disclosure of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 1 p.m. until 3:30 p.m., Wednesday, June 22, 1994, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210/

This work group was formed by the Advisory Council to study issues relating to reporting and disclosure for employee benefit plans covered by ERISA.

The purpose of the June 22 meeting is to hear testimony on the disclosure of plan information to participants and beneficiaries as identified in the Department of Labor's Disclosure Request for Information which appeared in the Monday, December 27, 1993 edition of the **Federal Register**, page 68339. The principal sources of information for such disclosure include summary plan descriptions, summary annual reports and individual benefit statements. The work group is interested in identifying information that is useful to and used by participants as well as representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before June 17, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 17, 1994.

Signed at Washington, DC this 25th day of May, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–13327 Filed 5–31–94; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Defined Contribution Plans of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until 12 noon, Thursday, June 23, 1994, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This work group was formed by the Advisory Council to study issues relating to defined contribution plans covered by ERISA.

The purpose of the June 23 meeting is to take testimony regarding five areas of defined contribution plans, i.e., the role of the trend toward participant self-directed investments in determining benefit levels; the impact of the current regulatory scheme on benefit levels for defined contribution plans in general and 401(k) plans in particular; from a retirement policy perspective, the level of benefits provided by defined

the costs and benefits of any proposed changes. The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before June 17, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 17, 1994.

Signed at Washington, DC this 25th day of May, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–13327 Filed 5–31–94; 8:45 am]

BILLING CODE 4510–29–M

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contribution plans in general and 401(k) plans in particular; mandatory employer contributions to defined contribution plans as a possible source of increase in the overall retirement income for most employees; the impact of increased educational efforts on benefit levels; and the impact of increased disclosure on benefit levels. The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before June 17, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 17, 1994.

Signed at Washington, DC this 25th day of May, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–13226 Filed 5–31–94; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397]

Washington Public Power Supply System WPPSS Nuclear Project No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing a license amendment in response to a Washington Public Power Supply System (the licensee) request for the WNP-2 nuclear plant, located in Benton County, Washington.

Environmental Assessment

Identification of Proposed Action

The proposed action would change the license to permit upgrading the analog main steam line (MSL) radiation monitors to digital monitors. The proposed action is in accordance with the licensee's November 30, 1993, amendment request.

The Need for the Proposed Action

The utility needs the MSL analog to digital radiation monitor upgrade because General Electric no longer manufactures the analog monitor currently installed at the plant. Thus, the utility is not sure replacement parts will be available in the future. The monitors are also becoming obsolete. The proposed change represents an unreviewed safety question, as defined in 10 CFR part 59. The digital monitors use a microcomputer, and have electronic circuits that could be susceptible to common-mode failures. Failure mechanisms include software, electrostatic discharge, and electromagnetic and radio frequency interference. Thus, the licensee needs prior NRC approval and a license amendment to make the change.

Environmental Impacts of the Proposed Action

The proposed exemption would not adversely affect radiation monitor functions since the licensee determined the replacement monitor is an exact replacement for the analog monitors. The MSL radiation monitors detect fuel element failures, and trip the main condenser mechanical vacuum pump and associated discharge valve. The new digital monitors will continue to do these functions. The digital monitor has present day state of the art technology and features, including improved drift rate, instrument accuracy and resolution, and reliability. The existing analog monitors have problems with signal drift, spiking, inaccuracy, and channel drawer failures. The new installation will use the existing ion chamber detectors and associated inplant cabling.

Issuing this exemption will not increase accident probability or result in any environmental impacts beyond those evaluated in the WNP-2 Final Environmental Statement. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on March 10, 1994 (59 FR 11334). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Any alternative with equal or greater environmental impact does not need to be evaluated since the Commission has concluded that the environmental effects of the proposed action are not significant.

The principal alternative would be to deny the license amendment request. This would not reduce the facility's environmental impact, and would result in a larger expenditure of licensee resources to maintain, calibrate, and test the MSL radiation monitors.

Alternative Use of Resources

This action does not use resources not previously considered in the Final Environmental Statement related to operation of the Washington Nuclear Project, Unit No. 2 dated December 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and consulted the Washington State official. The state official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmentall impact statement for the proposed exemption.

For further details with respect to this action, see the November 30, 1994, request for license amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated: Dated at Rockville, Maryland, this 25th day of May 1994.

For The Nuclear Regulatory Commission

Theodore R. Quay,

Director, Project Directorate IV–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–13249 Filed 5–31–94; 8:45 am]

BILLING CODE 7590–01–M

[IA 94–12]

Kelli J. Hinds; Muncie, Indiana; Order Prohibiting Involvement In Licensed Activities (Effective Immediately)

I

Ball Memorial Hospital, Muncie, Indiana (Ball or Licensee) is the holder of Byproduct Material License No. 13–00951–03 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 35. The license authorizes the use of byproduct material for medical purposes pursuant to 10 CFR part 35 (*e.g.*, as radiopharmaceuticals identified in 10 CFR 35.100, 35.200 and 35.300; as brachytherapy sources identified in 10 CFR 35.400; as sealed sources identified in 10 CFR 35.500; and as prepackaged in vitro kits identified in 10 CFR 31.11). The facility where licensed materials are authorized for use and storage is located at 2401 University Avenue, Muncie, Indiana. The license, originally issued on August 19, 1958, was last amended on February 24, 1994. The license was due to expire on December 31, 1993, but continues in effect pursuant to 10 CFR 30.37(b).

Ms. Kelli J. Hinds was employed by Ball from October 17, 1988, until her employment was terminated by Ball effective September 23, 1993. She most recently held the position of Acting Chief Nuclear Medicine Technologist at Ball with responsibilities involving compliance with NRC requirements for the use of byproduct materials.

II

On July 19, 1993, the NRC Region III Office received information from an individual outside of the Licensee's organization that the Licensee was investigating an allegation that it received from one of its nuclear medicine technologists in early June 1993. NRC contacted the Licensee to verify the information and determined that, allegedly, the Acting Chief Nuclear Medicine Technologist at Ball Memorial Hospital, Ms. Kelli J. Hinds, had increased the dosages of radiopharmaceuticals used in nuclear medicine diagnostic studies in order to reduce the imaging time and had falsified the records of the dosage measurements. In mid-June 1993, during the Licensee's investigation, Ms. Hinds admitted that she increased the dosages of radiopharmaceuticals given to patients for nuclear medicine diagnostic studies in order to minimize a patient's discomfort, to reduce the duration of a study of a critically ill patient, or to enhance the clarity of the image for a study performed on an obese patient. Based on the Licensee's investigation, the Licensee terminated Ms. Hinds' employment on September 23, 1993.

The NRC commenced an inspection on July 21, 1993, and determined that, for approximately 10 percent of the lung, liver, bone and gastrointestinal tract imaging studies using technetium-99m and xenon-133 that she performed between October 1988 to June 1993, Ms. Hinds increased the dosages of the radiopharmaceutical by as much as 40 percent above the approved dosage ranges without authorization from a physician authorized user. Further, Ms. Hinds entered false information in the dosage measurement records (*i.e.*, dosages within the approved range were indicated in the records even though the actual administered dosages were higher). In addition, even after Ms. Hinds became Acting Chief Nuclear Medicine Technologist in December 1992, she stated that she requested and received approval from the Radiation Safety Committee to increase dosage amounts for various studies but continued to administer dosages greater than the authorized quantities without physician approval and recorded false information. As a result of the NRC inspection, a Confirmatory Action Letter (CAL) was issued to the Licensee on July 26, 1993, and a Confirmatory Order was issued to the Licensee on October 20, 1993 (EA 93–215). The CAL and Order documented specific procedures and verifications to prevent any further unauthorized increases in patient dosages.

The NRC Office of Investigations (OI) is conducting an investigation of this matter. While the investigation has not been completed, the available information establishes that, since 1988, Ms. Hinds deliberately increased the dosges of NRC-licensed materials used in certain nuclear medicine procedures and attempted to conceal the increase in the dosage by falsifying the dosage measurement records. In a transcribed sworn statement on September 1, 1993, Ms. Hinds stated that she was aware of the authorized radiopharmaceutical dosage limits at Ball and she admitted that, since 1988, she has increased the dosage of radiopharmaceuticals given to some patients without express authorization from a physician authorized user and that she falsified the records of those radiopharmaceutical dosage measurements. Although the NRC investigation is continuing, the following significant violations have been identified to date:

A. Ms. Hinds' deliberate actions caused the Licensee to be in violation of 10 CFR 35.25(a)(2) in that Ms. Hinds failed to follow the instructions of the supervising physician authorized users as contained in the Licensee's procedure, "Approved Dose Ranges of Radiopharmaceutical Use." That procedure specifies the radioisotope, procedures and dosage ranges to be used. Ms. Hinds intentionally increased the dosages beyond the range prescribed by the procedure.

B. Ms. Hinds' deliberate actions caused the Licensee to be in violation of License Condition No. 16, which requires the Licensee to implement the model safety rules published in NRC Regulatory Guide 10.8, appendix I, Item 14. Item 14 requires that each patient dosage be assayed in the dose calibrator and prohibits the use of a dosage if it is more than 10 percent off from the prescribed dosage. Ms. Hinds indicated that she increased some patient dosages by 10–40%.

C. Ms. Hinds' deliberate actions caused the Licensee to be in violation of 10 CFR 30.9(a), which requires that records required to be maintained by a licensee be complete and accurate in all material respects. More specifically, 10 CFR 35.53(c) requires that records of the measurement of radiopharmaceutical dosages contain certain information, including the prescribed dosage and activity of the dosage at the time of measurement. Ms. Hinds admitted that from October 1988 to June 1993, she increased the activity of some radiopharmaceutical dosages after the initial assay was performed and she did not enter into the dosage measurement records the actual activity of the radiopharmaceutical that was given to some patients. Rather, she entered an activity level which was within the dosage range prescribed by the physician authorized users at Ball.

The deliberate actions described in A–C above caused Ms. Hinds to be in violation of 10 CFR 30.10(a)(1), which requires in part that any employee of a licensee may not engage in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission.

III

As the Licensee's Acting Chief Nuclear Medicine Technologist from approximately December 1992 through June 1993, Ms. Hinds supervised the other nuclear medicine technologists employed by Ball and Ms. Hinds was responsible for ensuring that the Commission's rules, regulations, and license conditions in her area of responsibility were met and the records that were created to demonstrate compliance with the Commission's rules, regulations, and license conditions were true and accurate in all material respects.

As set forth above, Ms. Hinds engaged in deliberate misconduct from October 1988 through June 1993, by increasing the dosages of radiopharmaceuticals given to patients at Ball Memorial Hospital without first receiving the approval of a physician authorized user as required by the Commission's regulations. Ms. Hinds further engaged in deliberate misconduct by entering false information into the dosage measurement records for the dosages actually given to patients. These actions constitute violations of 10 CFR 30.9, 35.25(a)(2), 35.53, and Condition No. 16 of NRC Byproduct Materials License No. 13–00951–03 on the part of the Licensee; and violations of 10 CFR 30.10 on the part of Ms. Hinds.

Consequently, I lack the requisite reasonable assurance the NRC-licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, if Ms. Hinds is permitted at this time to supervise or otherwise reengage in licensed activities. Therefore, the public health, safety and interest require that Ms. Hinds be prohibited from being involved in any NRC-licensed activities for a period of one year from the date of this Order. In addition, for a three year period from the date of the Order, the public health, safety and interest require that Ms. Hinds be required to: (1) Provide a copy of this Order to any prospective employer who engages in NRC-licensed activities at the time that Ms. Hinds solicits or begins negotiating employment with such prospective employer. The purpose of this notice is so that any prospective employer is aware of Ms. Hinds' prohibition from NRC-licensed activities for a period of 1 year from the date of this Order and so that any prospective employer is aware of the Order prior to making a decision regarding Ms. Hinds employment in NRC-licensed activities for a period of 2 years following the 1 year prohibition from NRC-licensed activities, and (2) notify the NRC of the acceptance of employment involving NRC-licensed activities to assure that the NRC can monitor the status of Ms. Hinds' compliance with the Commission's regulatory requirements. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 30, and 10 CFR part 35, It Is Hereby Ordered, Effective Immediately, That:

A. Ms. Kelli J. Hinds is prohibited from engaging in NRC-licensed activities for a period of one year from the date of this Order. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

B. For a period of three years from the date of the Order, Ms. Hinds shall:

1. Provide a copy of this Order to any prospective employer who engages in NRC-licensed activities (as defined in A above) at the time that Ms. Hinds solicits or begins negotiating employment with such prospective employer. The purpose of this requirement is to ensure that all prospective employers are aware of Ms. Hinds' prohibition from engaging in NRC-licensed activities for a period of 1 year from the date of this Order and are aware of the Order prior to making a decision regarding Ms. Hinds' employment in NRC-licensed activities for a period of 2 years following the 1 year prohibition from NRC-licensed activities.

2. With 20 days of her acceptance of an employment offer involving NRC-licensed activities, or her becoming involved in NRC-licensed activities, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where she is, or will be, involved in the NRC-licensed activities.

C. If Ms. Hinds is currently involved in NRC-licensed activities at any employer or entity, Ms. Hinds shall, in accordance with Paragraph IV.A above, immediately cease involvement in the NRC-licensed activities and, within 20 days of the date of this Order, provide notice to the Director, Office of Enforcement, at the address in Paragraph IV.B.2 above, of the name, address, and telephone number of the employer or entity where the licensed activities were being conducted.

The Director, Office of Enforcement, NRC, may, in writing, relax or rescind any of the above conditions upon demonstration by Ms. Hinds of good cause.

V

In accordance with 10 CFR 2.202, Ms. Kelli J. Hinds must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Ms. Hinds or other persons adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same address; to the Regional Administrator, Region III, U.S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532–4351; and to Ms. Hinds, if the answer or hearing request is by a person other than Ms. Hinds. If a person other than Ms. Hinds request a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Ms. Hinds or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Ms. Hinds, or any person adversely affected by this Order, may in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in section IV above shall be final 20 days from the date of this Order without further order or proceedings. An Answer or a Request for a Hearing Shall Not Stay the Immediate Effectiveness of This Order.

For The Nuclear Regulatory Commission

Dated at Rockville, Maryland, this 23rd day of May 1994.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Supports.

[FR Doc. 94–13251 Filed 5–31–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–316]

Indiana Michigan Power Co. (DC Cook 2); Exemption

I

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating License No. DPR–74 which authorizes operation of the Donald C. Cook Unit 2 Nuclear Plant at steady-state reactor power levels not in excess of 3411 megawatts thermal. The Cook 2 facility is a pressurized water reactor located at the licensee's site in Berrien County, Michigan. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Section 50.54(o) of 10 CFR part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of appendix J to 10 CFR part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak tight integrity of the primary reactor containment and systems and components which penetrate the containment.

Paragraph III.D.2.(a) of appendix J to 10 CFR part 50 requires, in part, that Type B tests, except tests for air locks, shall be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years. Type B tests are intended to detect local leaks and to measure leakage across each pressure-containing or leakage-limiting boundary for certain reactor containment penetrations.

Paragraph III.D.3. of appendix J to 10 CFR part 50 requires that Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. Type C tests are intended to measure containment isolation valve leakage rates for certain containment isolation valves.

Pursuant to 10 CFR 50.12(a), the NRC may grant exemptions from the requirements of the regulations (1) which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present.

III

By letter dated March 9, 1994, and supplemented April 13, 1994, the licensee requested a one-time exemption from the requirements of 10 CFR part 50, appendix J, III.D.2.(a) and III.D.3 for a period of 150 days for the testing of Type B and C penetrations.

The underlying purpose of the requirement to perform Type B and C containment leak rate tests at intervals not to exceed 2 years is to ensure that any potential leakage pathways through the containment boundary are identified within a time span that prevents significant degradation from continuing or being unknown, and long enough to allow the tests to be conducted during scheduled refueling outages. This interval was originally published in appendix J when refueling cycles were conducted at approximately annual intervals and has not been changed to reflect 18-month or 2-year operating cycles. It is not the intent of the regulation to require a plant shutdown solely for the purpose of conducting the periodic leak rate tests. Based on historical data at Cook any incremental increase in leakage because of the extension would be expected to be small. Corrective actions taken for several Type C valves that were found with excessive leakage in 1992 provide increased assurance that these components will perform their safety function. In addition, recent as-found leak rates, which were only a small fraction above the previous as-left leak rates, have been 30 percent of the established reference leak rates. Therefore, since the extension is relatively short compared to the 2-year test interval requirement, it is unlikely that substantial degradation of the containment components leading to the failure of the containment to perform its safety function would occur. As a result, the application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

IV

Based on the above, the NRC staff has concluded that the licensee's proposed increase of the 2-year time interval for performing Type B and C containment leak rate tests will not present an undue risk to the public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), such that application of 10 CFR part 50, appendix J, sections III.D.2.(a) and III.D.3. are not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption as described in section III above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

Therefore, the Commission hereby grants a one-time exemption as described in section III above from the requirement in 10 CFR part 50, appendix J, III.D.2.(a) and III.D.3. to extend the allowed interval between the performance of Type B and C containment leak tests by 150 days.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (59 FR 22870).

This exemption is effective upon issuance.

For The Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 24th day of May 1994.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 94–13250 Filed 5–31–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34103; File No. SR-Amex-93-18]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to a Proposed Rule Change by the American Stock Exchange, Inc., Relating to Position Limits on Options on the S&P MidCap Index

May 24, 1994.

On April 20, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to options on its S&P MidCap Index ("MID"). Notice of the proposal appeared in the **Federal Register** on June 22, 1993.[3] No comment letters were received on the proposed rule change. The Amex subsequently filed Amendment No. 1 to the proposed rule change on January 7, 1994, Amendment No. 2 on May 5, 1994, and Amendment No. 3 on May 19, 1994.[4] This order approves the Exchange's proposal, as amended.

Since the inception of standardized options trading, the options exchanges have had in place rules imposing limits on the aggregate number of options contracts of the same class that a market participant or market participants acting in concert could hold or exercise. Specifically, these restrictions are known as position and exercise limits.[5] These rules are intended to, among other things, prevent the establishment of large options positions that can be used to manipulate or disrupt the underlying market so as to benefit the holder of an options position.

According to the Amex, active participants in the MID options market have included institutional and professional investors with large stock portfolio holdings who use MID options as a mechanism to hedge those holdings. With trading interest continuing to grow, the Exchange has received some complaints from member firms that current MID position limits are too restrictive and have caused some users to utilize the over-the-counter derivatives market to fashion contracts to meet their needs.[6] The Exchange believes that increasing position and exercise limits for MID options from current limits and allowing a customer facilitation exemption from position and exercise limits will increase institutional use of this product which will benefit not only the beneficiaries of assets managed by these institutions but also the market as a whole through increased liquidity.

Currently, Exchange rules provide for MID position and exercise limits of 25,000 contracts on the same side of the market with a "telescoping" provision that no more than 15,000 of such contracts may be held in series with the nearest expiration month. The Exchange now proposes to: (1) Increase MID position and exercise limits to 45,000 contracts on the same side of the market with a telescoping provision of no more than 25,000 contracts on the same side of the market in series with the nearest expiration month; (2) provide that no more than 25,000 MID options contracts may be used for index arbitrage; and (3) provide an exemption from position and exercise limits for member firms of 75,000 MID contracts on the same side of the market for the facilitation of customer orders for MID options.[7]

As discussed below, the Commission believes that the Amex proposal is consistent with the requirements of Section 6 of the Act, in general, and section 6(b)(5)[8] in particular, in that it should help to remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade and protect investors and public interest.

Initially, the Commission notes that in July and October of 1992, the Commission approved similar increases in position and exercise limits and approved customer facilitation exemptions for the Exchange's Institutional Index ("XII") options[9] and for the Chicago Board Options Exchange, Inc.'s ("CBOE") Standard & Poor's 500 Index ("SPX") options.[10] To the Commission's knowledge, the increased position and exercise limits for XII and SPX options have not resulted in any problems. These increases were made in conjunction with options on both the XII and SPX moving from afternoon settlement (based on closing prices of component stocks) to morning settlement (based on opening prices of component stocks) ("A.M.-Settlement"). Specifically, the change to A.M.-Settlement for options on the XII and SPX were made in response to concerns about stock market volatility experienced on expiration Fridays and particularly on the four Fridays per year (each known as a "triple witching day") when individual

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] See Securities Exchange Act Release No. 32472 (June 16, 1993), 58 FR 33960 (June 22, 1993).

[4] In Amendment Nos. 1 and 2, the Amex proposed changes to the position and exercise limits and hedge exemptions for MID options proposed in the original filing. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Richard Zack, Branch Chief, Office of Derivatives and Equity Oversight ("ODEO"), Division of Market Regulation ("Division"), Commission, dated January 7, 1994; and Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, ODEO, Division, Commission, dated May 5, 1994. The changes proposed in Amendment Nos. 1 and 2, however, were withdrawn and superseded by the changes proposed in Amendment No. 3. Specifically, in Amendment No. 3 the Amex proposes to: (1) Raise position and exercise limits fro MID options to 45,000 contracts on the same side of the market with no more than 25,000 contracts in series with the near-term month; (2) provide that no more than 25,000 MID options contracts may be used for purposes of taking advantage of any differential in price between the MID and the securities underlying the MID; (3) eliminate its earlier proposal seeking a hedge exemption of 75,000 contracts on the same side of the market; (4) limit the customer facilitation exemption for member organizations to a maximum of 75,000 MID options contracts on the same side of the market; (5) eliminate its earlier proposal seeking a money manager exemption for MID options positions; and (6) amend Rule 904C, Commentary .02, to set forth the index options and the contract limits for which facilitation exemptions have been approved by the Commission. See Letter from Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Michael Walinskas, Branch Chief, ODEO, Division, Commission, dated May 19, 1994 ("Amendment No. 3").

[5] Position limits impose a ceiling on the number of options contracts relating to an underlying instrument which an investor, or group of investors acting in concert, may own or control. Exercise limits prohibit the exercise by an investor, or group of investors acting in concert, of more than a specified number of option contracts on a particular underlying security within five consecutive business days.

[6] See Letter from Bruce Hackett, Managing Director and Member of Executive Committee, Salomon Brothers, to Howard Baker, Vice President, Amex, dated April 12, 1993; Letter from William S. Diskin, Managing Director, Furman Selz Incorporated, to Howard Baker, Vice President, Amex, dated March 19, 1993; Letter from Tom Peters, Managing Director, Susquehanna Investment Group, to Howard Baker, Vice President, Amex, dated March 22, 1993.

[7] The Exchange also originally proposed a position limit hedge exemption for MID options. Amex's position limit hedge exemption for broad-based index options was approved as a one-year pilot program in 1988. See Securities Exchange Act Release No. 25938 (July 22, 1988), 53 FR 28738 (July 29, 1988). The pilot was subsequently extended for one additional year. See Securities Exchange Act Release No. 27326 (October 2, 1989), 54 FR 423121 (October 13, 1989). Because this pilot program lapsed in 1990, however, the Exchange has withdrawn this portion of the proposal. Telephone conversation between Claire McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Brad Ritter, Attorney, ODEO, Division, Commission, on May 23, 1994; and see Amendment No. 3, *supra* note 4.

[8] 15 U.S.C. 78f(b)(5) (1988).

[9] See Securities Exchange Act Release No. 31330 (October 16, 1992), 57 FR 48408 (October 23, 1992) ("Exchange Act Release No. 31330").

[10] See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

stock options, stock index options, stock index futures, and options on such futures all expire together. The Commission notes, however, that since its introduction in February of 1992,[11] the MID has always had an A.M.-Settlement feature, which, according to the Exchange, negates any "triple witching day" concerns which could be attributed to increased position limits.[12] The Commission further notes that the proposed MID position limits would allow a significantly smaller portfolio to be fully hedged than that allowable pursuant to the position limits approved for options on the SPX and XII,[13] thus further minimizing manipulative concerns. Accordingly, the Commission believes that the A.M.-Settlement of the MID is helpful in insuring that the increased position and exercise limits should not unduly disrupt the market in the securities underlying the MID.

1. Position and Exercise Limit Increase

In analyzing and reviewing specific position and exercise limits proposed by the options exchanges, the Commission has attempted to balance two competing concerns. First, position limits must be sufficiently low to prevent investors from disrupting the underlying cash market. Second, limits must not be established at levels that are so low as to unnecessarily discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain fair and orderly markets.

The Commission believes that the proposed position and exercise limits may increase the depth and liquidity of the MID options market[14] without significantly increasing concerns regarding intermarket manipulations or disruptions of the markets for the options or the underlying securities. Specifically, the Commission notes that the MID is a broad-based index consisting of 400 domestic securities which are highly capitalized, and have large public floats and high trading volume. As the Commission has previously stated, markets that exhibit active and deep trading, as well as broad public ownership, are more difficult to manipulate or disrupt than less active markets with smaller public floats.[15] Additionally, the proposed position limits include a 25,000 contract telescoping provision for near-term series which further minimizes the potential for manipulation of the MID and the securities underlying the MID as expiration of a particular series of MID options approaches. Finally, even with the position limit increased to 45,000 contracts, the proposal limits to 25,000 contracts the number of MID options positions that may be used for purposes of index arbitrage. This is consistent with the proposal previously approved by the Commission regarding options on the XII[16] and serves to further minimize the potential for trading in MID options to disrupt the market for the securities underlying the index. Accordingly, given the size and breadth of the MID, the Commission does not believe that increasing the position and exercise limits for options on the MID as proposed herein will increase the MID's susceptibility to manipulation or increase the potential for disruption in the markets for the underlying securities.

2. Customer Facilitation Exemption

The proposal would also enable a member organization to obtain a position limit exemption of up to 75,000 contracts on the same side of the market in order to facilitiate the execution of large customer orders.[17] The Commission believes that this customer facilitation exemption from MID option position and exercise limit rules for member organizations may further enhance the depth and liquidity of the options and underlying cash markets by providing members greater flexibility in executing large MID options customer orders.[18]

The Commission also believes that the Exchange has proposed several safeguards in connection with the customer facilitation exemption that will serve to minimize any potential disruption or manipulation concerns. First, the member organization must receive approval from the Exchange prior to executing customer facilitation trades. In this regard, the Commission believes that permitting the Amex to grant oral approval of customer facilitation exemptions will not result in trading abuses because of the follow-up documentation required. Second, a member granted a customer facilitation exemption must hedge all exempt options positions that have not been previously liquidated within five business days after the execution of the customer facilitation exemption order, and furnish to the Exchange documentation reflecting the resulting hedged positions. Third, a member granted a customer facilitation exemption is required to provide the exchange with any information or documents requested concerning the exempted options positions and the positions hedging them. Fourth, a member granted a customer facilitation exemption is not permitted to use the facilitation exemption for the purpose of engaging in index arbitrage. Thus, the Commission concludes that the member organization customer facilitation exemption from position and exercise limits is consistent with the Act and will promote fair and orderly markets.

3. Conclusion

In summary, the Commission believes that the increase in position and exercise limits as well as the addition of the customer facilitation exemption from position and exercise limits may benefit market participants by allowing them to take larger MID options positions in the context of an exchange-traded and regulated product without unnecessarily increasing manipulative concerns. In addition, the customer facilitation exemption is limited and positions established pursuant to it must be liquidated or fully hedged within five business days. Further, the Commission believes that the customer facilitation exemption is appropriate in light of the composition, depth, and liquidity of the S&P MidCap Index, making it less susceptible to manipulation.

Nevertheless, as a result of the significant increase in MID options positions that may result from this proposed rule change, the Commission believes that the Amex should study the market impact of these changes. Specifically, the Commission expects

[11] See Securities Exchange Act Release No. 30200 (January 27, 1992), 57 FR 4072 (February 3, 1992).

[12] The Commission continues to believe that basing the settlement of index options on opening, as opposed to closing prices on expiration Fridays, helps alleviate the stock market volatility once experienced on expiration Fridays. See Securities Exchange Act Release No. 24262 (March 27, 1987), 57 FR 10836 (April 3, 1987).

[13] Based on the closing values of the various indexes on May 2, 1994, the proposed MID position limits would allow a portfolio of approximately $781.695 million to be fully hedged, while the position limits approved for the XII and SPX (excluding applicable position limit hedge exemptions) would allow qualified portfolios of approximately $2.037 billion and $2.039 billion, respectively, to be fully hedged.

[14] The increase in position limits may increase trading activity in MID options and may increase market depth and liquidity by giving market participants wider latitude in trying to manage their portfolios.

[15] See, e.g., Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20207 (June 2, 1988).

[16] See Exchange Act Release No. 31330, *supra* note 9.

[17] A customer facilitation trade is an order which is only executed, in whole or in part, in a cross transaction with an order for a public customer of the member organization. See Amex Rule 950(e)(iv).

[18] The proposed customer facilitation exemption for MID option positions is 25,000 contracts less than the level approved by the Commission for AMEX's XII options. See Exchange Act Release No. 31330, *supra* note 9.

the Amex to report on an annual basis for the next three years on the following matters:

(1) the number of market participants that are at or near the 45,000 contract position limit level;

(2) any market impact conterns or issues raised by the large options positions, such as frontrunning, mini-manipulation, capping and pegging, and other similar trading abuses;

(3) how often the customer facilitation exemption is utilized;

(4) the frequency and size of the customer facilitation exemption utilized;

(5) the number of position limit violations;

(6) any disciplinary actions brought as a result of such violations; and

(7) the number of oral exemption requests, the number of requests granted, and the number of times documentation was not timely filed.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.[19] Specifically, Amendment No. 3: (1) Raises position and exercise limits for MID options to 45,000 contracts on the same side of the market with no more than 25,000 contracts in series with the near-term month; (2) provides that no more than 25,000 MID options contracts may be used for purposes of index arbitrage; (3) reduces the proposed MID customer facilitation exemption to 75,000 contracts on the same side of the market; and (4) eliminates the requested position limit hedge exemption and money manager exemption for MID options positions. For the reasons stated above, the Commission believes that these proposals may increase the market depth and liquidity in MID options while not increasing the susceptibility of the MID to manipulation or the potential for disruption in the markets for the securities underlying the MID. Additionally, the changes proposed in Amendment No. 3 are more restrictive than the position limits and exemptions originally proposed and no comments were received by the Commission concerning the original proposal.

Finally, Amendment No. 3 would amend Rule 904C, Commentary .02, to set forth in the rule the specific indexes for which position limit customer facilitation exemptions have been approved, and the numerical levels of those exemptions. The Commission believes that this amendment will serve to minimize investor confusion as to the availability of the customer facilitation exemption for approved index options and, therefore, is consistent with the Act.

Based on the foregoing, the Commission believes the changes proposed in Amendment No. 3 are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to facilitate transactions in securities. Therefore, it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 3 to the Amex's proposal on an accelerated basis.

Interested person are invited to submit written data, views and arguments concerning Amendment No. 3 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Amex–93–18 and should be submitted by June 22, 1994.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Amex–93–18), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13215 Filed 5–31–94; 8:45 am]

BILLING CODE 8010–01–M

[19] As noted previously, Amendment No. 3 withdraws and supersedes Amendment Nos. 1 and 2. See Amendment No. 3, *supra* note 4.

[20] 15 U.S.C. 78s(b)(2) (1988).

[21] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34104; File Nos. SR–CBOE–93–19]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Extension of Market Maker Margin and Capital Treatment to Certain Market Maker Orders Entered From Off the Trading Floor

May 25, 1994.

On April 20, 1993, as amended on March 16, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposal which would extend market maker capital and margin treatment to orders entered by CBOE market makers from off the Exchange floor, provided that at least 80% of their total transactions on the Exchange are executed in person and not through the use of orders.[3] In addition, the proposal requires all off-floor orders for which a market maker receives market maker treatment to be subject to the obligations of CBOE Rule 8.7(a), "Obligations of Market Makers," and in general to be effected for the purpose of hedging, reducing the risk of, rebalancing or liquidating open positions of the market maker.

The original proposal was published for comment in Securities Exchange Act Release No. 32500 (June 23, 1993), 58 FR 35060 (June 30, 1993). Amendment No. 1 to the proposal was published for comment in Securities Exchange Act Release No. 33853 (April 1, 1994), 59 FR 16869 (April 8, 1994). No comments were received on the original proposal or on Amendment No. 1 to the proposal. This order approves the Exchange's proposal, as amended.

Currently, under CBOE Rule 8.1, "Market Maker Defined," only transactions initiated on the CBOE's floor count as market maker transactions. Thus, only on-floor market maker transactions qualify for favorable capital and margin treatment under the CBOE's rules, even if such orders are entered to adjust or hedge the risk of positions of the market maker that result from his on-floor market making

[1] 15 U.S.C. 78s(b)(1) (1984).

[2] 17 CFR 240.19b–4 (1993).

[3] The CBOE originally proposed requiring that 75% of a market maker's total transactions be executed in person on the CBOE's floor in order to be eligible for the special off-floor order treatment. In addition, the original proposal did not contain a reference to market making obligations.

activity.[4] The CBOE states that because a market maker cannot effectively adjust his positions or engage in hedging or other risk limiting opening transactions from off the Exchange floor without incurring a significant economic penalty, CBOE market makers must either be physically present on the floor at all times while the market is open, or face significant risks of adverse market movements during those times when they must necessarily be absent from the trading floor. The CBOE argues that by imposing costs on certain hedging or risk-adjusting transactions of market makers, the CBOE's current rules may prevent market makers from effectively discharging their market making obligations and expose them to unacceptable levels of risk.

The Exchange states that its proposal is designed to accommodate the needs of market makers occasionally to adjust or hedge options positions in their market maker accounts at times when they are not physically present on the trading floor, without diluting the requirement that the trading activity of market makers must fulfill their market making obligations and must contribute to the maintenance of a fair and orderly market on the Exchange.

Currently, under CBOE Rule 8.7, Interpretation and Policy .03(b), a market maker must execute at least 25% of his total transactions in person on the trading floor and not by entry of orders. The CBOE proposes to amend Exchange Rule 8.7 to allow market makers who elect to meet a more stringent in-person requirement to receive market maker margin and capital treatment for opening transactions executed through off-floor orders. Specifically, the CBOE proposes to amend CBOE Rule 8.7, Interpretation and Policy .03, to allow makers to elect to receive market maker treatment for off-floor opening transactions if the market maker, in addition to satisfying the requirements of Interpretation and Policy .03(a),[5] executes at least 80% of his total transactions for any calendar quarter in person and not through the use of orders. In addition, the off-floor orders for which a market maker receives market maker treatment shall be subject to the obligations of CBOE Rule 8.7(a)[6] and in general shall be effected for the purpose of hedging, reducing risk of, rebalancing or liquidating open positions of the market maker.[7]

CBOE market makers who elect market who elect market maker treatment for off-floor opening transactions but fail to satisfy the proposal's requirements, including the 80% in-person requirement, will be referred to the CBOE's Business Conduct Committee and subject to the disciplinary measures provided in Chapter 17 of the CBOE's rules.[8] Under CBOE Rule 17.1, "Disciplinary Jurisdiction," the Exchange may impose appropriate discipline for violations of the Act and the Exchange's rules, including expulsion, suspension, limitation of activties, functions, and operations, fine, censure, being suspended or barred from being associated with a member or any other fitting sanction.

The CBOE believes that the amended proposal presents a more appropriate and realistic treatment of market maker transactions initiated from off the trading floor than what is provided for under existing Exchange Rule 8.1. The CBOE believes that extending favorable margin and capital treatment for off-floor transactions only to those market makers who submit to an 80% in-person requirement should have the effect of increasing the extent to which market maker transactions contribute to liquidity and to the maintenance of fair and orderly markets on the CBOE by providing for a greater degree of in-person trading by market makers and by enabling market makers to better manage the risk of their market making activities. Thus, the CBOE believes that the proposal is consistent with and in furtherance of the objectives of section 6(b)(5) and section 11(a) of the Act in that it will promote the maintenance of fair and orderly markets on the CBOE and will contribute to the protection of investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) in that the proposal is designed to promote just and equitable principles of trade and to protect investors and the public interest.[9] In addition, the Commission finds that the proposal is consistent with the requirement under section 11(b) of the Act and the rules thereunder that require market maker transactions to be consistent with the maintenance of fair and orderly markets.[10]

The Commission believes that the proposal is a reasonable effort by the CBOE to accommodate the needs of CBOE market makers to effect off-floor opening transactions while maintaining the requirement under CBOE rule 8.7(a) that market makers' transactions constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. Specifically, in order to qualify for market maker treatment for off-floor orders, the proposal requires a market maker to execute at least 80% of his total transactions for any calendar quarter in person and not through the use of orders. In addition, the proposal states that the off-floor orders for which a market maker receives market maker treatment shall be subject to the obligations of CBOE Rule 8.7(a) and in general shall be effected for the purpose of hedging, reducing risk of, rebalancing or liquidating open positions of the market maker. The Commission believes that these requirements, taken together, will help to ensure that all market maker transactions continue to contribute to the maintenance of fair and orderly markets while, at the same time, enabling market makers to better manage the risk of their market making activities.[11]

As the CBOE has noted, under the current requirements market makers who adjust existing positions for hedging purposes while not physically present on the floor cannot receive market maker margin treatment for such orders under any circumstances and must decide whether to close out their positions or place their orders in a customer margin account requiring 50% margin. While the Commission believes

[4] Questions of margin and capital treatment do not arise in connection with closing transactions initiated from off the floor, since they only reduce or eliminate existing positions.

[5] Under Interpretation and Policy .03(a), at least 75% of a market maker's total contract volume in each calendar quarter must be in option classes to which he has been appointed pursuant to CBOE Rule 8.3, "Appointment of Market Makers."

[6] CBOE 8.7(a) states that the "[t]ransactions of a market maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and no market maker should enter into transactions or make bids or offers that are inconsistent with such a course of dealings."

[7] See Amendments No. 1, *supra*

[8] Telephone conversation between Mary Bender, First Vice President, Division of Regulatory Services, CBOE, and Sharon Lawson, Assistant Director, Commission, on May 4, 1994

[9] 15 U.S.C. 78f(b)(5) (1982).

[10] 15 U.S.C. 78k (1982) and 17 CFR 240.11b–1

[11] The CBOE believes that the proposal will facilitate the maintenance of fair and orderly markets by reducing risk to market makers and their clearing firms. Specifically, the CBOE believes that allowing market makers to receive market maker treatment for off-floor transactions will encourage market makers to adjust their positions to respond to changing market conditions, thereby helping them to avoid losses. In addition, the ability to manage their positions when away from the floor may help market makers to avoid significant "wind downs" due to planned absences. See Letter from Charles J. Henry, President and Chief Operating Office, CBOE, to Richard Zack, Branch Chief, Options Regulation, Division of Market Regulation Commission, dated September 22, 1993.

that this may not be an unreasonably result in many cases, the Commission believes that the CBOE has set forth a reasonable proposal that permits market maker treatment for certain off-floor orders under very limited circumstances that ensure that such orders must contribute to the maintenance of fair and orderly markets and that require market makers comply with a heightened 80% in person trading requirement.

By requiring both more stringent in person trading requirements and that off-floor opening transactions be effected only for the purpose of hedging, reducing the risk of, rebalancing or liquidating open positions, the proposal should help to ensure the stability and orderliness of the CBOE's markets.

The Commission expects the CBOE to closely monitor those market makers electing to receive market maker treatment for certain off-floor orders as provided under the proposal to ensure that they are meeting the in person trading requirements in addition to other market making obligations required under the proposal. The CBOE has represented that market makers who choose to receive favorable margin and capital treatment under the proposal but fail to satisfy the proposal's requirements will be subject to full disciplinary proceedings under Chapter 17 of the CBOE's rules. As noted above, the sanctions possible under Chapter 17 include expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member or any other fitting sanction. The Commission expects the Exchange to impose strict sanctions for violations of the rule, particularly in cases of egregious or repeated failures to comply with the rule's requirements.[12]

Finally, the Commission notes that the staff of the Board of Governors of the Federal Reserve System ("Board") has issued a letter raising no objection to the Commission's approval of the proposal based on the Commission's belief that the off-floor transactions of CBOE market makers under the proposal are designed to contribute to the maintenance of a fair and orderly market and are consistent with the obligations of a specialist under Section 11 of the Act.[13]

[12] The CBOE plans to issue a circular to its membership describing the rule change and emphasizing the importance of monitoring off-floor trading activity.

[13] See Letter from Scott Holz, Senior Attorney, Board, to Howard Kramer, Associate Director, Division, Commission, dated March 9, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–CBOE–93–19) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13276 Filed 5–31–94; 8:45 am]

BILLING CODE 8010–01–M

[14] 15 U.S.C. 78s(b)(2) (1982).

[15] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–20316; 812–8968]

The Alger Fund and Fred Alger & Company, Inc.; Application

May 25, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Alger Fund (the "Fund") and Fred Alger & Company, Inc. ("Alger Inc.").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from sections 2(a) (32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION : Applicants seek an amended order to permit applicants to expand the circumstances under which the Alger Fund may waive its contingent deferred sales charge ("CDSC").

FILING DATE: The application was filed on April 29, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 20, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 30 Montgomery Street, Jersey City, New Jersey 07302.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 942–0572, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is an open-end management investment company composed of seven series. Fred Alger Management, Inc. serves as the investment adviser to each series, and Alger Inc. serves as their distributor. Fred Alger Management, Inc. is a wholly-owned subsidiary of Alger Inc., which in turn is a wholly-owned subsidiary of Alger Associates, Inc.

2. Applicants currently assess and, under certain circumstances, waive a CDSC on redemptions of shares pursuant to an existing order (the "Existing Order").[1] In accordance with the Existing Order, applicants may waive the CDSC on redemptions of shares effected: (a) Following death or disability; (b) in connection with certain redemptions from individual retirement accounts ("IRAs") or other qualified retirement plans; (c) pursuant to the Fund's automatic cash withdrawal plan; (d) by (i) employees of Alger Associates, Inc. and its subsidiaries, (ii) IRAs, Keogh plans, and employee benefit plans for those employees, and (iii) spouses, children, siblings, and parents of those employees, and trusts of which those individuals are beneficiaries, as long as orders for the Fund's shares on behalf of those individuals and trusts are placed by the employees; (e) by (i) accounts managed by investment advisory subsidiaries of Alger Associates, Inc. that are registered under the Investment Advisers Act of 1940, (ii) employees, participants, and beneficiaries of those accounts, (iii) IRAs, Keogh plans, and employee benefit plans for those employees, participants, and beneficiaries, and (iv) spouses and minor children of those employees, participants, and beneficiaries as long s orders for the Fund's shares are placed by the employees, participants, and beneficiaries; (f) by directors or trustees of any investment company for which Alger Associates, Inc. or any of its

[1] Investment Company Act Release Nos. 20030 (Jan. 21, 1994) (notice), and 20078 (Feb. 16, 1994).

subsidiaries serves as investment adviser or distributor; (g) by an investment company registered under the Act in connection with the combination of the investment company with the Fund by merger, acquisition of assets, or by any other transaction; (h) pursuant to the Fund's right to liquidate involuntarily a shareholder's account with a current value of less than $250; (i) by defined contribution plans with respect to which Fred Alger Management, Inc. or an affiliate provides certain non-fiduciary services; (j) by registered investment advisers, banks, trust companies, and other financial institutions exercising discretionary authority with respect to the money invested in Fund shares; and (k) by registered investment advisers for their own accounts.

3. Applicants seek to amend the Existing Order to add two waiver categories and to expand one existing category. Applicants propose to waive or reduce the CDSC for redemptions of shares (a) purchased by a broker-dealer, bank, or other financial institution that purchases shares for its customers ("Processing Organization") as shareholder of record on behalf of the following categories of customers: (i) Investment advisers or financial planners trading for their own accounts or the accounts of their clients and who charge a management, consulting, or other fee for their services; and clients of such investment advisers or financial planners trading for their own accounts if the accounts are linked to the master account of the investment adviser or financial planning on the books and records of the Processing Organization, and (ii) retirement and deferred compensation plans and trusts used to fund those plans and (b) purchased by registered representatives of broker-dealers which have entered into dealer agreements with Alger Inc., and their spouses, children, siblings and parents.

4. The Existing Order currently permits a waiver of the CDSC on redemptions of shares of defined contribution plans for which Alger Management or an affiliate provides services. Applicants propose to expand this category to permit a waiver of the CDSC on redemptions of shares held through any defined contribution plan.

5. Applicants request that relief be extended to any future series of the Fund and any registered investment company for which Alger Inc. serves in the future as principal underwriter or for which any person controlling, controlled by, or under common control with Alger Inc. (within the meaning of section 2(a)(9) of the Act) may in the future serve as principal underwriter.

Applicants' Legal Analysis

1. Applicants request an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to permit the Funds to waive or reduce the CDSC as described above. Applicants submit that the requested exemption, as required by the standards for an exemption under section 6(c) of the Act, is in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

Applicants' Condition

Applicants agree that the order of the Commission granting the requested relief will be subject to the following condition:

1. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13214 Filed 5–31–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Stratford Capital Group, Inc.; Notice of Issuance of a Small Business Investment Company License

[License No. 06/06–0307]

On December 9, 1993, a notice was published in the **Federal Register** (58 FR 64790) stating that an application has been filed by Stratford Capital Group, Inc., suite 1650, Dallas, Texas 75201 with the Small Business Administration (SBA) pursuant to section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) for a license to operate as a small business investment company.

Interested parties were given until close of business January 8, 1994, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 06/06–0307 on May 19, 1994, to Stratford Capital Group, Inc. to operate as a small business investment company.

Fundex Capital Corporation, Inc.; License No. 02/02–0340 Filing of an Application for Transfer of Ownership and Control and Capital Reorganization

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to section 107.601 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by Fundex Capital Corporation, 525 Northern Boulevard Great Neck, New York 11021, for transfer of ownership and control and capital reorganization, under the Small Business Investment Act of 1958, as amended, (the Act) (15 U.S.C. *et seq.*). The transfer of ownership and control of Fundex Capital Corporation (Fundex) which was licensed May 18, 1978, is subject to prior written approval of SBA.

If approved, Anglo-African Holdings Limited (Anglo) will invest $1.0 million in capital into Fundex Capital Corporation (Fundex). Concomitant with this new investment, Fundex's existing capital will be restructured resulting in the conversion of certain shareholders common stock to nonvoting 3% Cumulative Class B preferred stock. This conversion, subject to adjustment based upon realization of Fundex's assets existing as of June 30, 1994, will result in Anglo holding a direct controlling interest in the voting common stock of Fundex of approximately 58% and control of three of the five Board of Director positions. Furthermore, Anglo may indirectly own an additional 16.3% to 19.5% of the voting common stock of Fundex through an investment made in Liberty Finance Corporation (Liberty) which holds an option to acquire an existing shareholder's interest.

The proposed officers and directors of the Applicant are:

Name and Title

Howard F. Sommer, President and Director, 1852 Muttontown Road, Muttontown, New York 11791

Ivor J. Jacobson, Secretary and Chairman, 200 North Street, Harrison, New York 10528

Gregg Sommer, Assistant Vice President and Treasurer, 124 W. 60th Street, Apt. 33N New York, New York 10023

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 25, 1994.

Robert D. Stillman,

Associate Administrator.

[FR Doc. 94–13240 Filed 5–31–94; 8:45 am]

BILLING CODE 8025–01–M

Lawrence I. Linksman, Assistant Vice President, 54 Richfield Street, Plainview, New York 11803
Peter C. Woodthorpe, Director, 21D Highgate Close, Highgate, London, England N64SD
Timothy P. Bucke, Director, P.O. Box 438, Tropic Isle Building, Road Town, Tortola, British Virgin Islands

The Officers and Directors of Anglo African Holdings Ltd., which is acquiring the controlling interest in Fundex are as follows:

Name and Title

Peter C. Woodthorpe, Managing Director and Director
Timothy P. Bucke, Director
Amanda Chorn, Director, 41 Knox Street, Waverly 2090, Johannesburg, South Africa
Integro Trust (BVI) Limited, Registered Agent, P.O. Box 438, Tropic Isle Building, Road Town, Tortola, British Virgin Island
Ivor J. Jacobson, CEO, North American Operations, 200 North Street, Harrison, New York 10528

The applicant's day to day operations will continue to be overseen by the above listed officers and a subsidiary of Liberty, a proposed affiliate of Fundex, through an assumption of an advisory/management agreement previously approved by SBA. Anglo is also a shareholder in Liberty. As proposed, the applicant will continue operations with private capital of approximately $3.2 million.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3d Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: May 25, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94-13241 Filed 5-31-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 2015]

Announcement of Groundrules for U.S. Initiative on Joint Implementation

ACTION: Final groundrules.

SUMMARY: The U.S. Climate Change Action Plan, announced by President Clinton on October 19, 1993, set forth a series of measures designed to return U.S. greenhouse gas emissions to 1990 levels by the year 2000 through domestic actions alone. Recognizing the enormous potential for cost-effective greenhouse gas emission reductions in other countries, the Administration also called for a pilot program—the U.S. Initiative on Joint Implementation [USIJI]—to help establish an empirical basis for considering approaches to joint implementation internationally and thus help realize the potential of joint implementation both to combat the threat of global warming and to promote sustainable development.

Department of State Public Notice 1918 (58 FR 66057–66059, December 17, 1993) set forth draft Groundrules for the U.S. Initiative on Joint Implementation as directed by the President in the U.S. Climate Change Action Plan, to provide criteria for the operation of a pilot program. This notice provides the final Groundrules, together with a summary of and response to comments on the draft Groundrules.

FOR FURTHER INFORMATION CONTACT: Daniel A. Reifsnyder, Director, Office of Global Change, OES/EGC, room 4333, Department of State, 2201 C Street, Washington, DC 20520–7818, telephone: (202) 647–4069, facsimile: (202) 647–0191.

SUMMARY OF AND RESPONSE TO COMMENTS ON THE DRAFT GROUNDRULES: The Department of State received twelve sets of comments on the draft Groundrules. The discussion below provides a review of the comments received, as well as an explanation of the rationale for making revisions to the Groundrules. Comments are organized according to the outline of the Groundrules themselves: (I) Purpose, (II) evaluation and assessment, (III) eligible participants, (IV) evaluation panel, and (V) criteria for project eligibility.

Section I. Purpose

Only one comment was received on this section. It proposed revising the language to reflect that used in the United Nations Framework Convention on Climate Change. As the intent of the Groundrules is, in part, to provide an empirical basis for use internationally, the Groundrules were modified to maintain appropriate parallelism with the Convention.

Section II. Evaluation and Reassessment

Comments on this section raised two issues: (1) Questions regarding the timing of the evaluation of the pilot program, and (2) recommendations that the evaluation process be open to the public. Regarding the timing of the evaluation, one comment suggested that the first evaluation should be within one year of the issuance of the Groundrules. Section IV, paragraph C(8) of the draft Groundrules called for the preparation of annual reports; this paragraph has been maintained, and in the Department's view, fully covers the need for a one-year interim assessment of the USIJI.

With regard to opening the evaluation to the public, it was decided that the modalities for preparing the evaluation should be left to the discretion of the Evaluation Panel. To this end, a specific responsibility related to "operational modalities" has been added to the Panel's tasks (IV.C.(7)); this new language appropriately covers the specific circumstance referred to in the comment.

Section III. Eligible Participants

Two main issues emerged in comments on this section: (1) Recommendations that "groups" of entities be entitled to submit projects, and (2) recommendations regarding restrictions on foreign participants in the program.

To address the former comment, the text has been revised to allow for groups. This change takes account of the potential for a consortium of companies to coordinate in the preparation and implementation of a JI project.

Comments on the latter point included suggestions for restricting eligibility of foreign participants to (i) countries that are parties to the FCC, or (ii) Annex I Parties only. As the Groundrules are designed to allow for the maximum number of acceptable projects to go forward, additional restrictions such as limitations on project participant eligibility were not incorporated.

Section IV. Evaluation Panel

Comments were received on the Evaluation Panel membership, as well as on its responsibilities. On membership, commenters proposed that non-governmental representatives from both industry and the environmental

community be added to the Evaluation Panel. In the revised Groundrules, language has been added which requires the Evaluation Panel to develop operational modalities for implementing the program, providing the Panel with the opportunity to assure public participation. Furthermore, while the Department recognizes the importance of full public consultations, it supports the existing language which establishes responsibility at the federal level to accept or reject project proposals.

One commenter proposed deleting Evaluation Panel authority to approve or reject a project. The commenter argued that the Evaluation Panel should accept all projects unless they were deficient, putting the onus on the Evaluation Panel to discover deficiencies rather than on the project to demonstrate adequacy. The Department's view is that such a procedure would be inappropriate; project proposers have the information at hand, and the responsibility for compiling information needed is appropriately theirs. The Panel will not have adequate resources to perform such a review.

Original item IV.C(3) has been amended to specify that the Evaluation Panel will be responsible for reviewing and evaluating project submissions, including baseline projections (further discussed under Section V. amendments).

Many of the comments received stressed the importance of the operational aspects of joint implementation. The Department fully agrees that these issues are critical, although the stipulation of such detailed operational guidance is beyond the purview of these Groundrules. For this reason, and to indicate explicitly the important attached to the development of operational criteria, a new section (Section IV.C(7)) has been added to the text to allow the Evaluation Panel to oversee the development of the day-to-day operations of the USIJI, including such tasks as preparing the forms for project submissions, setting internal rules to determine what constitutes a "complete" submission, and the degree of assistance which may be provided by the Evaluation Panel to project applicants.

One commenter suggested requiring the return of project evaluations within 30 days of receipt of a completed application. In the Department's view, a 30-day turnaround would be impossible to meet, and would provide too little time for adequate review of project submissions.

It was recommended that the Panel coordinate with other organizations such as the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Enterprise for the Americas Program. The Department fully agrees with the thrust of this recommendation; however, representation by each of these organizations on the Evaluation Panel is not necessary to assure this coordination, modalities for which can be left to the Evaluation Panel to develop.

It was recommended that the Evaluation Panel be specifically authorized to establish either *od hoc* or standing sub-committees with technical expertise in areas related to evaluating eligibility requirements to assist the Evaluation Panel in executing its duties. The Department agrees with this recommendation, and believes that such specific operational modalities are covered by the additional language in this section.

Section V. Criteria

Nearly every set of comments referred both generally to this section, and more specifically to the language of individual criteria; to simplify the discussion, each criterion is discussed separately below. In this discussion, criterion numbers refer to those of this new, revised text except where otherwise stated.

Chapeau for Subsection A.

One commenter recommended that the language in the chapeau paragraph be changed from "must find" to "shall consider". The commenter argued that in a pilot phase, the more stringent "must fine" requirement would rule out all projects. However, the Department strongly believes that a credible minimum standard must be set for projects to be included as part of this initiative. Further, in the Department's view, each of the criteria contained in this section is critical to the acceptability of a project submission. The language of this chapeau was therefore left unchanged.

Criterion A.1

Several commenters noted potential difficulties with this criterion, questioning both the uncertain nature of documentation required to assure host government "acceptance", and the value of having such a criterion at all. while the Department agrees that the nature of the documentation that must be provided to determine "acceptability" has not been defined, the Department also believes the criterion—for the host government to find the project acceptable—is essential. Unless the United States, through the USIJI, can begin to examine how other countries' governments treat JI projects during the pilot phase, it will be impossible to develop an empirical database for developing appropriate criteria in the operational phase.

Criteria A.2, A.3 and A.4

Numerous comments were received on these criteria. Issues were raised regarding, for example: How to interpret the requirement; the difference between "actual" and "projected" reductions; the level of certainty required regarding the likelihood of the projected reductions; whether a grandfathering of projects should be allowed; requirements to reject projects that may be mandated but not implemented under host country law; and the need to include the information regarding fiscal year 1993. The Department agrees that the operational modalities for these are complex matters; however, as noted above, language has been added to provide the Evaluation Panel with the authority to develop the appropriate forms and specifications required for projects. However, in addition to this language, the text of these criteria has been amended in several ways from that originally published for public review and comment.

First, a new criterion has been added (Section V.A. (2)):

> To be included in the USIJI, the Evaluation Panel must find that a project submission involves specific measures to reduce or sequester greenhouse gas emissions initiated as the result of the U.S. Initiative on Joint Implementation, or in reasonable anticipation thereof.

As used here, the term "specific measures" is meant to refer to actions to reduce or sequester greenhouse gas emissions that may form a part of a broader project. In some cases, the specific measures may constitute the entire project; in other cases, the specific measures may be a lesser subset of the project.

This criterion is designed to promote "additionality"—that is, actions above and beyond those that would have been taken otherwise. It seeks to do so in two ways:

(1) By establishing a reference date before which it would be difficult to conclude that activities were undertaken as the result of the USIJI; and

(2) By requiring that project participants demonstrate what measures were or will be implemented in response to the USIJI.

With respect to the reference date, the phrase "or in reasonable anticipation thereof" is designed to provide a reasonable "grace period" for

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participants and to establish some certainty. The United Nations Framework Convention on Climate Change involved negotiations on joint implementation and provides for joint implementation in Article 4.2. It would thus be reasonable to consider project submissions involving measures initiated after the date of the Convention's adoption—May 9, 1992; although it would be more difficult to reach such a conclusion with respect to measures initiated prior to that date, the Evaluation Panel may do so on a reasonable showing that the measures were undertaken in anticipation of joint implementation.

With respect to the need to demonstrate what measures were or will be implemented in response to the USIJI, the Department acknowledges the difficulty in seeking to gauge why participants undertook or plan to undertake specific measures, since most projects will be implemented for multiple reasons. At the same time, the integrity of the pilot program would be undermined if participants were able simply to repackage activities that would otherwise have been undertaken and submit them for inclusion under the USIJI. In this regard, the Department notes that an issue closely debated at the 9th Session of the Intergovernmental Negotiating Committee for the Framework Convention on Climate Change (February 1994) was the need to assure "additionality" with respect to joint implementation projects. To promote such "additionality", it will be important for project participants to demonstrate to the satisfaction of the Evaluation Panel that the measures undertaken or to be undertaken were implemented in response to the USIJI or in reasonable anticipation thereof. In particular, they will need to demonstrate how these measures are above and beyond what would reasonably have been or be likely to occur otherwise.

The original criteria under Section V. have also been amended to eliminate the tautology that would have been established by original Section V.A.(3). Original Section V.A.(2) has also been amended in this process.

These two amended criteria (new Section V.A.(3) and (4)) are also intended to promote "additionality." In this sense they are similar to the requirement with respect to federally funded activities, i.e., that they be undertaken with funds in excess of those available for such activities in fiscal year 1993.

Under new Section V.A.(3), project submissions will need to include data and methodological information sufficient to establish a baseline of current and future emissions—both in the absence of, and as the result of, the specific measures taken or to be taken to reduce or sequester greenhouse gas emissions. Under new Section V.A.(4), the Evaluation Panel will need to find that the specific measures have reduced or sequestered, or will reduce or sequester, greenhouse gas emissions beyond the baseline of current and future emissions in the absence of the specific measures taken or to be taken. In reaching such a conclusion, the Evaluation Panel will need to pay particular attention to baseline projections in the absence of the project's specific measures. The Evaluation Panel will need to find that such baseline projections are reasonable. Relevant factors the Evaluation Panel may consider include, among others:

—Whether the baseline projections are consistent with the prevailing standard of environmental protection in the country involved
—Whether the baseline projections are consistent with existing business practices within the particular sector or industry
—Whether the baseline projections are consistent with trends and changes in those practices
—Whether a project was altered before or after being implemented to take into account considerations related to joint implementation

As noted, the Evaluation Panel will be able also to consider any other evidence it deems relevant to its assessment of the reasonableness of the baseline projections. The Evaluation Panel will be able to reject project submissions which, in its judgment, do not establish reasonable baseline projections.

With respect to measures already undertaken, participants may be able to demonstrate "additionality" and "reasonable anticipation" in a number of ways. Relevant factors the Evaluation Panel may consider include, among others:

—Evidence that a project was altered before or after implementation to take into account considerations related to joint implementation
—Evidence that a project was specifically undertaken to promote joint implementation
—Contract provisions that specifically allocate among project participants the greenhouse gas emissions reduced or sequestered

Criterion A.5

One commenter suggested requiring the project proposers to include in their submissions a monitoring schedule. While such recommendations may be appropriate to the operational activity, in the Department's view the specific criteria for monitoring cannot be resolved at this time, and should be thoroughly discussed and established by the Evaluation Panel. The addition of language providing the Evaluation Panel with authority to develop operational modalities will assure that this issue can properly be addressed.

Criterion A.6

No comments received.

Criterion A.7

Several commenters proposed that the criterion be deleted as placing too onerous a burden—i.e., for a full environmental impact assessment—on each project. In the Department's view, it is imperative not to move forward with projects which, while leading to greenhouse gas reductions, also lead to potentially significant but unidentified negative non-GHG environmental impacts. Again, however, the details of what will be required to meet this criterion are appropriately left to the Evaluation Panel.

Another commenter proposed that the criterion be strengthened so that project submission would be automatically rejected if any negative impact were found. In the Department's view, the Evaluation Panel itself must be given discretion to evaluate the results—and this is done through Section V.B, which allows other environmental considerations to be used in determining the acceptability of the project.

Criterion A.8

One commenter suggested limiting the time over which the reduction credit could be claimed as part of the assurance that emissions reduced or sequestered were real. The Department believes that this is a matter for individual project participants to determine, and that individual circumstances warrant individual attention from the Evaluation Panel.

Original Criterion A.8 (now deleted)

In the December 17 **Federal Register** notice draft Groundrules, this criterion provided for registration of the project in the national inventory established under section 1605 of the Energy Policy Act of 1992. While the Administration is rapidly moving to develop this registry, guidelines for the program have not yet been completed. Thus, this criterion has been deleted. However, it is the Department's firm expectation that the 1605 registry will be developed in a manner consistent with these USIJI Groundrules, and that in the future, project participants may be expected to register their projects through the 1605 program.

Criterion A.9

Commenters suggested amending the criterion to limit how the "credit" for the project could be apportioned—with a minimum amount allocated to the host country, and an automatic discounting of total allowable emissions reduced or sequestered based on the uncertainty of the project. In the Department's view, it is most appropriate that the allocation of emissions reduced or sequestered be decided by the participants. Thus this suggestion was not included.

Section V.B

The second category of criteria in the Groundrules contains items that the "Panel shall also consider"—a less stringent formulation than that required for the criteria in Section V.A. The principal comment on this section proposed to delete it as being redundant with Section V.A. As discussed above, in the Department's view, it is essential to establish two categories—one for minimum requirements that must be met to include a project submission; the other with additional items that the Evaluation Panel shall also consider in deciding whether to include a project submission.

General Comments on Language

A number of the comments received addressed the usage of the word "net" throughout the text. The comments expressed concern that the word could be read to require project submitters to total their domestic emissions with their international emissions (and for that total to be reduced through the JI project) to allow the project submission to be included. This reading was not intended. As a consequence, the language has been changed throughout the text, and the words "reduced or sequestered" are now used vice "net." The Department interprets "reduced" also to include "avoided."

Groundrules

The following describes the U.S Initiative on Joint Implementation (USIJI), which shall be established as a pilot program.

Section I—Purpose

The purpose of the pilot program shall be to:

(1) Encourage the rapid development and implementation of cooperative, multually voluntary, cost-effective projects between U.S. and foreign partners aimed at reducing or sequestering emissions of greenhouse gases, particularly projects promoting technology cooperation with and sustainable development in developing countries and countries with economies in transition to market economies;

(2) Promote a broad range of cooperative, mutually voluntary projects to test and evaluate methodologies for measuring, tracking and verifying costs and benefits;

(3) Establish an empirical basis to contribute to the formulation of international criteria for joint implementation;

(4) Encourage private sector investment and innovation in the development and dissemination of technologies for reducing or sequestering emissions of greenhouse gases; and

(5) Encourage participating countries to adopt more complete climate action programs, including national inventories, baselines, policies and measures, and appropriate specific commitments.

Section II. Evaluation and Reassessment of Pilot Program

The pilot program shall be evaluated and reassessed within two years of its inception or within six months of adoption of international criteria for joint implementation by the Conference of the Parties to the United Nations Framework Convention on Climate Change, whichever is earlier.

Section III—Eligible Participants

A. Domestic

(1) Any U.S. citizen or resident alien;

(2) any company, organization or entity incorporated under or recognized by the laws of the United States, or group thereof; or

(3) any U.S. federal, state or local government entity.

B. Foreign

(1) Any country that has signed, ratified or acceded to the United Nations Framework Convention on Climate Change;

(2) any citizen or resident alien of a country identified in B(1) of this section;

(3) any company, organization or entity incorporated under or recognized by the laws of a country identified in B(1) of this section, or group thereof; or

(4) any national, provincial, state, or local government entity of a country identified in B(1) of this section.

Section IV—Evaluation Panel

A. An Evaluation Panel is hereby established.

B. The Evaluation Panel shall consist of eight members, of whom:

(1) One shall be an employee of the Department of Energy, who shall serve as Co-Chair;

(2) One shall be an employee of the Environmental Protection Agency, who shall serve as Co-Chair;

(3) One shall be an employee of the Agency for International Development

(4) One shall be an employee of the Department of Agriculture;

(5) One shall be an employee of the Department of Commerce;

(6) One shall be an employee of the Department of the Interior;

(7) One shall be an employee of the Department of State; and

(8) One shall be an employee of the Department of the Treasury.

C. The Panel shall be responsible for

(1) Advising and assisting prospective U.S. and foreign participants on the technical parameters (including with respect to baselines, measuring and tracking) of projects submitted for inclusion in the USIJI;

(2) Accepting project submissions from eligible U.S. participants and their foreign partners;

(3) Reviewing and evaluating project submissions, including baseline projections;

(4) Approving or rejecting project submissions for inclusion in the USIJI, based on criteria contained in section V

(5) Providing written reasons for its decisions, which shall be made publicly available, within 90 days of receipt of a complete submission or resubmission;

(6) Certifying emissions reduced or sequestered estimated to result from projects;

(7) Developing operational modalities for the implementation of the Program and

(8) Preparing an annual report of its activities, including a summary of approved projects.

Section V—Criteria

A. To be included in the USIJI, the Evaluation Panel must find that a project submission:

(1) Is acceptable to the government of the host country;

(2) Involves specific measures to reduce or sequester greenhouse gas emissions initiated as the result of the U.S. Initiative on Joint Implementation, or in reasonable anticipation thereof;

(3) Provides data and methodological information sufficient to establish a baseline of current and future greenhouse gas emissions;

(a) In the absence of the specific measures referred to in A.(2)— of this section; and

(b) As the result of the specific measures referred to in A.(2) of this section;

(4) Will reduce or sequester greenhouse gas emissions beyond those referred to in A.(3)(a) of this section, and if federally funded, is or will be undertaken with funds in excess of those available for such activities in fiscal year 1993;

(5) Contains adequate provisions for tracking the greenhouse gas emissions reduced or sequestered resulting from the project, and on a periodic basis, for modifying such estimates and for comparing actual results with those originally projected;

(6) Contains adequate provisions for external verification of the greenhouse gas emissions reduced or sequestered by the project;

(7) Identifies any associated non-greenhouse gas environmental impacts/benefits

(8) Provides adequate assurance that greenhouse gas emissions reduced or sequestered over time will not be lost or reversed; and

(9) Provides for annual reports to the Evaluation Panel on the emissions reduced or sequestered, and on the share of such emissions attributed to each of the participants, domestic and foreign, pursuant to the terms of voluntary agreements among project participants.

B. In determining whether to include projects under the USIJI, the Evaluation Panel shall also consider:

(1) The potential for the project to lead to changes in greenhouse gas emissions elsewhere;

(2) The potential positive and negative effects of the project apart from its effect on greenhouse gas emissions reduced or sequestered;

(3) Whether the U.S. participants are emitters of greenhouse gases within the United States and, if so, whether they are taking measures to reduce or sequester such emissions; and

(4) Whether efforts are underway within the host country to ratify or accede to the United Nations Framework Convention on Climate Change, to develop a national inventory and/or baseline of greenhouse gas emissions by sources and removals by sinks, and whether the host country is taking measures to reduce its emissions and enhance its sinks and reservoirs of greenhouse gases.

Dated: May 24, 1994

David Colson,

Acting Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs

[FR Doc. 94-13262 Filed 5-31-94; 8:45 am]

BILLING CODE 4710-09-M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 104

Wednesday, June 1, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 2, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Baby Bath Rings and Seats

The staff will brief the Commission on options for Commission action to address risks of injury and death associated with baby bath rings and seats.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: May 27, 1994.

Sadye E. Dunn,

Secretary

[FR Doc. 94- Filed 5-27-94; 4:06 pm]

BILLING CODE 6355-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, June 6, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 27, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13407 Filed 5-27-94; 12:19 pm]

BILLING CODE 6210-01-P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, June 7, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open

MATTERS TO BE CONSIDERED:

6125A Highway Accident Report: US Towboat CHRIS Collision With the Judge William Seeber Bridge, New Orleans, Louisiana, May 28, 1993.

NEWS MEDIA CONTACT: Telephone: (202) 382-0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: May 27, 1994.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 94-13404 Filed 5-27-94; 12:03 pm]

BILLING CODE 7533-01-P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 30, June 6, 13, and 20, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS OF BE CONSIDERED:

Week of May 30

There are no meetings scheduled for the Week of May 30.

Week of June 6—Tentative

Monday, June 6

10 a.m.
Briefing by DOE on HLW Program (Public meeting)
(Contact: Linda Desell, 202-586-1462)
1 p.m.
Briefing on Proposed Rule on Radiological Criteria for Decommissioning (Public meeting)
(Contact: Chip Cameron, 301-504-1642)

Wednesday, June 8

10 a.m.
Briefing on Electricity Forecast from Energy Information Administration (EIA) Annual Energy Oulook (Public meeting)
(Contact: Mary Hutzler, 202-586-2222)

Thursday, June 9

10 a.m.
Briefing on Review of Rulemaking Process (Public meeting)
(Contact: William Olmstead, 301-504-1740)
11:30 a.m.
Affirmation/Discussion and Vote (Public meeting)
a. Licensee Submittal of Data in Computer—Readable Form
(Contact: R. Gramann, 301-504-2456)
b. Advanced Medical Systems, Inc.—Appeal of LBP-90-17 (Suspension Order Proceeding)
(Contact: Stephen Burns, 301-504-2184)
c. Final Rule on "Timeliness in Decommissioning of Materials Facilities"
(Contact: Mary Thomas, 301-492-3886)
d. Intervention Petitions Challenging Proposed Fuel Shipments to Temelin Reactors in the Czech Republic (Contact: Grace Kim, 301-504-3605)
2 p.m
Briefing on Final Rule for Protection Against Malevolent Use of Vehicles at Nuclear Power Plants—Part 73 (Public meeting)
(Contact: Phillip Mckee, 301-504-2933)
3:30 p.m.
Update on Design Basis Threat (Closed—Ex. 1)

Friday, June 10

10 a.m.
Briefing on Proposed Rule for License Renewal—Part 54 (Public meeting)
(Contact: William Travers, 301-504-1117)
2 p.m.
Briefing on Status of Nuclear Issues Concerning Russia (Closed—Ex. 1)

Week of June 13—Tentative

Thursday, June 16

11:30 a.m
Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of June 20—Tentative

Monday, June 20

10 a.m
Discussion of Management Issues (Closed—Ex. 2 and 6)

Thursday, June 23

9:30 a.m
Periodic Briefing on Operating Reactors and Fuel Facilities
(Contact: Victor McCree, 301-504-1711)
11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific

subject listed for affirmation this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: May 27, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary

[FR Doc. 94–13436 Filed 5–27–94; 2:05 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register

Vol. 59, No. 104

Wednesday, June 1, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 940245-4134; I.D. 012694F]

RIN 0648-AE35

Pelagic Fisheries of the Western Pacific Region

Correction

In rule document 94-12536 beginning on page 26979 in the issue of Wednesday, May 25, 1994, make the following correction:

§ 685.9 [Corrected]

On page 26983, in the third column, in § 685.9(c)(4), in the last line; "September 21, 1994" should read "September 22, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP83-58-020 and TM94-3-7-001]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 94-12705 appearing on page 27013 in the issue of Wednesday, May 25, 1994, make the following corrections:

1. The Docket number should appear as set forth above.

2. In the third column, at the end of the document, the FR Doc. line was omitted and should appear as follows:

[FR Doc. 94-12705 Filed 5-24-94; 8:45 am]

BILLING CODE 6717-01-M

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[CGD 90-039]

RIN 2115-AD43

Traffic Separation Scheme; In the Approaches to Chesapeake Bay

Correction

In rule document 94-10176 beginning on page 21935 in the issue of Thursday, April 28, 1994, make the following corrections:

1. On page 21937, in the first column, under *Federalism*, in the second full paragraph, in the third line, "across" should read "access".

§ 167.203 [Corrected]

2. On the same page, in the third column, in § 167.203(c), in the first line under *Latitude*, "34"" should read "36"".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94-AGL-17]

Establishment of Class E Airspace Areas; Waukegan, IL, Lafayette, IN, Willoughby, OH, Mosinee, WI, and La Crosse, WI.

Correction

In rule document 94-11720 beginning on page 24911 in the issue of Friday, May 13, 1994, make the following correction:

§ 71.1 [Corrected]

On page 24912, in the second column, in § 71.1, under *Paragraph 6002*, in the second full paragraph, in the first line, "IL" should read "IN".

BILLING CODE 1505-01-D

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Federal Register

Wednesday
June 1, 1994

Part II

Federal Emergency Management Agency

United States Fire Administration

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

United States Fire Administration

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: June 30, 1994.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other changes to the list, see Supplemental Information below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Monday, November 29, 1993, 58 FR 62718, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 58 FR 17020 on March 31, 1993. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Michael B. Hirsch,

Acting General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MAY 23, 1994 UPDATE

Index/property name	PO Box/Rt #	Street address	City/state/zip	Telephone
ADDITIONS				
Arkansas				
AK0041 Land's End		4786 Homer Spit Rd.	Homer, AK 99603–	(907) 235–2500
Arizona				
AZ0183 Best Western Cottonwood Inn.		993 S. Main Street	Cottonwood, AZ 86326–	(602) 634–5575
AZ0184 Best Western Sunrise Inn.		128 North Main	Eagar AZ 85925–	(602) 333–2540
AZ0182 Howard Johnson Scottsdale.		5101 North Scottsdale Road	Scottsdale, AZ 85253–	(602) 945–4392
California				
CA1146 Best Western Stardust.		1057 W. Ball Road	Anaheim, Ca 92802–	(714) 774–7600
CA1142 Best Western Northwoods Inn.		655 Redwood Hwy. 101, South	Crescent City, CA 95531–	(707) 464–9771
CA1095 Residence Inn Livermore Pleasanton.		1000 Airway Blvd.	Livermore, CA 94550–	(510) 373–1800
CA1141 Best Western Norwalk Inn.		10902 Firestone Blvd.	Norwalk, CA 90650–	(310) 929–8831
CA1094 Residence Inn Ontario Airport.		2025 E. D St.	Ontario, CA 91764–	(909) 983–6788
CA1147 Best Western Shelter Island Marina Inn.		2051 Shelter Island Dr.	San Diego, CA 92106–3194	(619) 222–0561
CA1145 Best Western Canterbury Hotel.		750 Sutter St.	San Francisco, CA 94109–	(415) 474–6464
CA1143 Juliana Hotel		590 Bush St.	San Francisco, CA 94108–	(415) 392–2540
CA1144 The Hotel Majestic		1500 Sutter St.	San Francisco, CA 94109–	(415) 441–1100

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MAY 23, 1994 UPDATE—Continued

Index/property name	PO Box/Rt #	Street address	City/state/zip	Telephone
District of Columbia				
DC0046 Capitol Hill Suites		200 C St. SE	Washington, DC 20003–	(202) 543–6000
Delaware				
DE0037 Econo Lodge		4361 Highway One (1)	Rehobath, DE 19971–	(302) 227–0500
Illinois				
IL0501 Best Western Regency Inn.		350 Hwy. 173	Antioch, IL 60002–	(708) 395–3606
IL0502 Best Western Bradbury Suites.		2111 S. Arlington Heights Rd.	Arlington Heights, IL 60005–	(708) 956–1400
IL0498 Forsyth Hampton Inn		1429 Hickory Point Dr.	Decatur, IL 62526–	(217) 877–5577
IL0499 Springfield Courtyard		3462 Freedom Dr.	Springfield, IL 62704–	(217) 793–5300
IL0500 Springfield Sleep Inn		3470 Freedom Dr.	Springfield, IL 62704–	(217) 787–6200
Kansas				
KS0120 Comfort Inn		2225 S. Range Ave.	Colby, KS 67701–	(913) 462–3833
KS0121 Comfort Inn		1214 S. Washington	Junction City, KS 66441–	(913) 238–7887
KS0122 Econo Lodge		2331 S. Cedar Rd.	Ottawa, KS 66067–	(913) 242–3400
KS0123 Comfort Inn		1820 W. Crawford St.	Salina KS 67401–	(913) 826–1711
KS0124 Comfort Inn		4849 S. Laura	Wichita, KS 67216–	(316) 522–1800
KS0125 Comfort Inn at Quail Ridge.		77 North at Quail Ridge	Winfield, KS 67156–	(316) 221–7529
Louisiana				
LA0103 Tante Da's Bed and Breakfast.		2631 SE Evangeline Thruway	Lafayette, LA 70508–	(318) 264–1191
Michigan				
MI0285 Best Western Greenfield Inn.		3000 Enterprice Dr.	Allen PK/Dearborn, MI 48101–	(313) 271–1600
MI0287 Knights Inn South		2595 Capital Ave. S.W.	Battle Creek, MI 49015–4160	(616) 964–2600
MI0286 Best Western Kelly Inn.		3640 E. Cork St.	Kalamazoo, MI 49001–	(616) 381–1900
MI0288 Knights Inn		1250 N. Dixie Highway	Monroe, MI 48161–5223	(313) 243–0597
Minnesota				
MN0238 Crown Sterling Suites Minneapolis Airport.		7901 34th Ave. S.	Bloomington, MN 55425–	(612) 854–1000
MN0240 Best Western Golden Valley House.		4820 Hwy. 55	Minneapolis, MN 55422–	(612) 588–0511
MN0239 Crown Sterling Suites Downtown Minneapolis.		425 S. 7th St.	Minneapolis, MN 55415–	(612) 333–3111
Missouri				
MO0231 Best Western Music Capital Inn.		3257 Shepherd of Hills Expwy	Branson, Mo 65616–	(417) 334–8578
MO0225 Boxcar Willie Motel #1.		3454 W Hwy 76	Branson, MO 65616–	(417) 334–8873
MO0228 Branson Towers		236 Shepherd of Hills Expwy	Branson, MO 65616–	(800) 683–1122
MO0224 Classic Motor Inn		2384 Shepherd of Hills Expwy	Branson, MO 65616–	(417) 334–6991
MO0239 Econo Lodge of Branson.		230 South Wildwood Dr	Branson, MO 65616–	(417) 336–4843
MO0229 Kings Quarters Hotel		580 Shepherd of Hills Expwy	Branson, MO 65616–	(417) 334–5401
MO0218 Ozark Regal Hotel		3010 Green Mt Dr	Branson, MO 65616–	(417) 336–2200
MO0240 Quality Inn—Shepherd of the Hills Expressway.		3269 Shepherd of Hills Expway	Branson, MO 65616–	(417) 335–6776
MO0227 Settle Inn		3050 Green Mountain Dr	Branson, MO 65616–	(417) 335–4701
MO0221 Seven Gables Inn		305 Hwy 165 South	Branson, MO 65616–	(417) 334–7027
MO0226 The Towers Motor Inn.		2825 Green Mountain Drive	Branson, MO 65616–	(417) 335–8903
MO0249 Travelers Inn		1970 West Highway 76	Branson, MO 65616–	(417) 336–1100
MO0250 B/W Acorn Inn		I–35 & US–36	Cameron, MO 64429–	(816) 632–2187
MO0233 Super 8 Motel		1710 N Walnut	Cameron, MO 64429–	(816) 632–8683
MO0241 Econo Lodge		1441 W Central	Carthage, MO 64836–	(417) 358–3900
MO0223 Cuba Super 8		Rt 2 Box 2987 Jct I–44 Hwy 19	Cuba, MO 65453–	(314) 885–2087
MO0242 Comfort Inn		Hwy 84 E	Hayti, MO 63851–	(314) 359–0013
MO0243 Comfort Inn Northeast.		1051 N Cambridge	Kansas City, MO 64120–	(816) 483–7900
MO0232 Historic Suites of America.		612 Central	Kansas City, MO 64105–	(816) 842–6541
MO0219 Southmoreland on the Plaza–an Urban Inn.		116 East 46th St	Kansas City, MO 64112–	(816) 531–7000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MAY 23, 1994 UPDATE—Continued

Index/property name	PO Box/Rt #	Street address	City/state/zip	Telephone
MO0248 Kirksville Comfort Inn.		2209 North Baltimore	Kirksville, MO 63501–	(816) 665–2205
MO0216 Holiday Inn Lebanon		Business Rt 44 West	Lebanon, MO 65536–	(417) 532–7111
MO0244 Econo Lodge		2808 N Kansas	Springfield, MO 65803–	( ) –
MO0220 Hampton Inn South		3232 S Stewart	Springfield, MO 65802–	(417) 882–6611
MO0245 Econo Lodge MO 058.		3040 W Clay	St Charles, MO 63301–	(314) 946–9992
MO0246 Quality Hotel		9600 Natural Bridge Rd	St Louis, MO 63134–	(314) 427–7600
MO0230 Main Street Inn		221 N Main St	Ste Genevieve, MO 63670–	(314) 883–9199
MO0247 Econo Lodge		204 Cleveland	Warrensburg, MO 64093–	(816) 429–2400
MO0237 Days Inn	HC2 Box 61–50	Jct I–UU & Hwy 28 exit 163	Waynesville, MO 65583–	(314) 336–5556
Mississippi				
MS0066 La Quinta Inn—Jackson North.		616 Briarwood Dr.	Jackson, MS 39236–	(601) 957–1741
Montana				
MT0095 Billings Fairfield Inn		2026 Overland Ave.	Billings, MT 59102–	(406) 652–5330
MT0088 Kelly Inn Motel		5425 Midland Rd.	Billings, MT 59101–	(406) 252–2700
MT0096 City Center Motor Inn		507 W. Main	Bozeman, Mt 59715–	(406) 587–3158
MT0089 War Bonnet Inn		2100 Cornell Ave	Butte, MT 59701–	(406) 494–7800
MT0098 S'to Inn Helena		2020 Prospect Ave	Helena, MT 59601–	(503) 641–6565
MT0099 Red Lion Motel Kalispell.		1330 Hwy. 2 W	Kalispell, MT 59901–	(406) 775–6700
MT0093 Livingston Comfort Inn.		114 Love Ln.	Livingston, MT 59047–	(406) 222–4400
MT0097 City Center Motel		338 E. Broadway	Missoula, MT 59802–	(406) 543–3193
MT0101 Goldsmith's Bed and Breakfast Inn.		809 E. Front	Missoula, MT 59802–	(406) 721–9732
MT0090 Red Lion Missoula		700 W. Broadway	Missoula, MT 59802–	(406) 728–3300
MT0092 Redwood Lodge		8060 Hwy. 9310	Missoula, MT 59802–	(406) 721–2110
MT0091 Ruby's Reserve St Inn.		4825 N. Reserve	Missoula, MT 59802–	(406) 721–0990
MT0100 Best Western Kwataqnuk Resort.		303 U.S. Hwy. 93 E	Polson, MT 59860–	(406) 883–3636
MT0094 Comfort Inn		6390 S. Hwy. 93	Whitefish, MT 59937–	(406) 862–4020
North Carolina				
NC0276 Residence Inn by Marriott Tycola Exec. Pk..		5800 Westpark Dr	Charlotte, NC 28217–	(704) 527–8110
NC0313 Luxbury Hotel		9701 E. Independence Blvd	Matthews, NC 28105–	(704) 845–5911
NC0315 Sheraton Grand New Bern (Hotel).	PO Box 130	1 Bicentennial Park	New Bern, NC 28563–	(919) 638–3585
NC0314 Sheraton Inn Winston-Salem.		5790 University Parkway	Winston-Salem, NC 27105–	(910) 767–9595
New York				
NY0573 Best Western Inn of Cobleskill.		Route 7	Cobleskill, NY 12043–	(518) 234–4321
NY0572 Park Plaza Inn		581 Harry L Drive	Johnson City, NY 13790–	(607) 770–9333
NY0574 Best Western Playmore Farms.		3291 Route 9	Saratoga Springs, NY 12866–	(518) 584–2480
Oregon				
OR0151 Ponderosa Motel		477 W. Monroe	Burns, OR 97720–	(503) 573–2047
OR0147 Cottage Grove Comfort Inn.		845 Gateway Blvd	Cottage Grove, OR 97424–	(503) 942–9747
OR0154 Holiday Inn Express Grants Pass.		105 NE Agness Avenue	Grants Pass, OR 97526–	(503) 471–6144
OR0152 Dreamers Lodge		144 North Canyon Blvd	John Day, OR 97845–	(503) 575–0526
OR0150 Super 8 Motel La Grande.		2407 East R Ave	La Grande, OR 97850–	(503) 963–8080
OR0153 Best Western Rama Inn.		4430 SE Highway 101	Lincoln City, OR 97367–	(503) 994–6060
OR0148 Econo Lodge Airport		9520 NE Sandy Blvd	Portland, OR 97220–	(503) 252–6666
OR0156 Red Lion Hotel/Coliseum.		1225 North Thunderbird Way	Portland, OR 97227–	(503) 235–8211
OR0155 Best Western Garden Villa Motel.		760 NW Garden Valley Blvd	Roseburg, OR 97470–	(503) 672–1601
OR0149 Rodeway Inn		3480 Hutton Street	Springfield, OR 97477–	(503) 746–8471
Pennsylvania				
PA0395 Econo Lodge at Valley Forge.		815 West DeKalb Pike	King of Prussia, PA 19406–	(215) 265–7200

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MAY 23, 1994 UPDATE—Continued

Index/property name	PO Box/Rt #	Street address	City/state/zip	Telephone
PA0396 Shannon Inn	RR5 Box 5202	Interstate 80 Exit 52	Stroudsburg, PA 18301–	(717) 424–1951
South Carolina				
SC0204 Best Western Inn		1540 Savannah Hwy	Charleston, SC 29407–	(803) 571–6100
SC0203 Sheraton Hotel and Conference Center.		2100 Bush River Rd	Columbia, SC 29210–	(803) 731–0300
SC0203 Econo Lodge		962 Riverview Rd	Rock Hill, SC 29730–	(803) 329–3232
Virginia				
VA0535 Best Western Thunderbird.		3000 Plank Road	Fredericksburg, VA 22401–0000.	(703) 786–7404
VA0534 Best Western Leesburg—Dulles.		726 E. Market Street	Leesburg, VA 22075–0000	(703) 777–9400
CORRECTIONS/CHANGES				
Arizona				
AZ0026 Best Western Papago Inn & Resort.		7017 E. Mcdowell Rd	Scottsdale, AZ 85257–	(602) 947–7335
California				
CA0136 Best Western Pine Tree Motel.		12018 Central Ave	Chino, CA 91710–	(909) 628–6021
CA0036 Mikado Best Western Hotel.		12600 Riverside Dr	North Hollywood, CA 91607–3496.	(818) 763–9141
Delaware				
DE0036 Econo Lodge		3 Memorial Drive	New Castle, DE 19720–	(302) 654–5400
Hawaii				
HI0096 Best Western Outrigger Waikiki Tower.		200 Lewers St	Honolulu, Oahu, HI 96815–	(808) 922–6424
Illinois				
IL0320 Holiday Inn Alsip		5000 W. 127th St	Alsip, IL 60658–	(708) 371–7300
IL0488 Kankakee Fairfield Inn		1550 St. Rte 50	Bourbonnais, IL 60914–	(815) 935–1334
IL0393 Casey Motel	PO Box 62	Rt. 40 E and NE 13th	Casey, IL 62420–	(217) 932–4044
IL0327 Stouffer Riviere Hotel		1 W. Wacker Dr	Chicago, IL 60601–	(312) 372–7200
IL0485 Danville Fairfield Inn		389 Lynch Dr	Danville, IL 61832–	(217) 443–3388
IL0263 Marriott Suites Downers Grove.		1500 Opus Pl.	Downers Grove, IL 60515–	(708) 852–1500
IL0429 Indian Mound Motel		4700 Collinsville Rd	Fairmont City, IL 62201–	(618) 279–570
IL0486 Fairview Heights Hampton Inn.		140 Ludwig Dr	Fairview Heights, IL 62208–	(618) 397–9705
IL0062 Best Western Quiet House Suites.		9923 US Rt. 20 W	Galena, IL 61036–	(815) 777–2577
IL0374 Chain of Rocks Motel		3228 Chain of Rocks Rd.	Granite City, IL 62040–	(618) 931–6600
IL0236 Best Western Windsor Oaks Inn.		2200 S. Court St	Grayville, IL 62844–	(618) 375–7930
IL0422 2 Acres Motel & Restaurant		I–70 & Rt. 127	Greenville, IL 62246–	(618) 664–3131
IL0036 Holiday Inn Morris		I–80 & Il. 47	Morris, IL 60450–	(815) 942–6600
IL0482 Peoria Residence Inn		4201 N. War Memorial Dr	Peoria, IL 61614–	(309) 681–9000
IL0097 Plaza One Hotel		Third Ave. and 17th St	Rock Island, IL 61201–	(309) 794–1212
IL0481 Rockford Residence Inn.		7542 Colosseum Dr	Rockford, IL 61107–	(815) 227–0013
IL0110 Best Western at O'Hare.		10300 W. Higgins Rd	Rosemont, IL 60018–	(708) 296–4471
IL0174 Holiday Inn O'Hare International.		5440 N. River Rd	Rosemont, Il 60018–	(708) 671–6350
IL0023 Best Western Sky Harbor Inn.		1701 J. David Jones Pkwy	Springfield, IL 62702–	(217) 753–3446
IL0022 Hampton Inn Springfield		3185 S. Dirksen Pkwy	Springfield, IL 62703–4501	(217) 529–1100
IL0293 Springfield Fairfield Inn.		3446 Freedom Dr	Springfield, IL 62704–	(217) 793–9277
Kansas				
KS0109 Lansing Econo Lodge		504 N. Main St	Lansing, KS 66043–	(913) 727–2777
Maryland				
MD0043 Comfort Inn West		6700 Security Blvd	Baltimore, MD 21207–	(410) 281–1800
Michigan				
MI0290 Motel 6		3764 S. State St	Ann Arbor, MI 48108–	(313) 665–9900
MI0252 Hampton Inn		1461 N. Opdyke Rd	Auburn Hills, MI 48326–	(313) 370–0044

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MAY 23, 1994 UPDATE—Continued

Index/property name	PO Box/Rt #	Street address	City/state/zip	Telephone
MI0291 Motel 6		830 Royal Dr.	Jackson, MI 49204–	(517) 789–7186
MI0292 Motel 6		7326 W. Saginaw Hwy	Lansing, MI 48917–	(517) 321–1444
MI0289 Motel 6		6361 Dixie Hwy	Saginaw, MI 48722-	(517) 777–2582
Minnesota				
MN0007 Best Western Bradbury Suites.		7770 Johnson Ave	Minneapolis, MN 55435–	(612) 893–9999
MN0208 Best Western Inn		Hwy. 32 S	Thief River Falls, MN 56701–	(218) 681–7555
Missouri				
MO0236 Branson Fairfield Inn		220 Hwy 165 South	Branson, MO 65616–	(417) 336–5665
MO0234 Clarion Fall Creek Resort		#1 Fall Creek Dr	Branson, MO 65616–	(417) 334–6404
MO0222 Ozark Valley Inn	PO Box 6582	2693 Shepherd of Hills Expwy	Branson, MO 65616–	(417) 336–4666
MO0217 Tara Inn		245 Shepherd of Hills Expwy	Branson, MO 65616–	(417) 334–8272
MO0235 Yellow Rose Motel		3140 Falls Parkway	Branson, MO 65616–	(417) 336–3658
MO0207 Econo Lodge		4575 N. Lindbergh Blvd	Bridgeton, MO 63044–	(314) 731–3000
MO0115 Airport Doubletree Hotel.		8801 NW 112th St	Kansas City, MO 64195–	(816) 891–8900
MO0011 Best Western Country Inn—KCI Airport.		11900 Plaza Circle	Kansas City, MO 64153–	(816) 464–2002
MO0013 Best Western Country Inn—North.		2633 NE 43rd Street	Kansas City, MO 64117–	(816) 459–7222
MO0012 Best Western Country Inn—Worlds of Fun.		7100 NE Parvin Road	Kansas City, MO 64117–	(816) 453–3355
MO0126 Inn Towne Lodge		2550 NE 43rd St	Kansas City, MO 64117–	(816) 453–6550
MO0043 KC Marriott Downtown.		200 W. 12th St	Kansas City, MO 64105–	(816) 421–6800
MO0097 Econo Lodge	PO Box 992	Business Rt 44 West	Lebanon, MO 65536–	(417) 586–3226
MO0170 Best Western Skyline Inn.		Hwy 36 West	Macon, MO 63552–	(816) 385–2125
MO0188 Super 8 Motel	PO Box 513	1420 N. Rutherford Jct 36 & 63	Macon, MO 63552–	(816) 385–5788
MO0238 Holiday In Express at Six Flags.		1400 W. Osage	Pacific, MO 63069–	(314) 257–8400
MO0033 Econo Lodge-East		2611 N. Glenstone	Springfield, MO 65803–	(417) 864–3565
MO0179 Summerfield Suites Hotel.		1855 Craigshire Rd	St. Louis, MO 63146–	(314) 878–1555
Mississippi				
MS0002 Best Western Northgate Inn	PO Box 5757	Hwy. 49	Hattiesburg, MS 39402–	(601) 268–8815
MS0001 Key West Inn	Rt. 3	Box 659	Iuka, MS 38852–	(601) 423–9221
Montana				
MT0015 Valu Inn Missoula		3001 SW Brooks St	Missoula, MT 59801–	(406) 721–9600
North Carolina				
NC0138 Best Western Cary Inn.		1722 Walnut St	Cary, NC 27511–	(919) 481–1200
NC0067 Best Western Luxbury Inn		4904 N. I–85 Service Rd	Charlotte, NC 28206–	(704) 596–9229
NC0257 Holiday Inn Bordeaux		1707 Owen Drive	Fayetteville, NC	(910) 323–0111
New York				
NY0050 Best Western Captains Quarters Hotel		26 E. First St	Oswego, NY 13126–	(315) 342–4040
Oregon				
OR0015 Super 8 Motel Baker City.		250 Campbell St	Baker City, OR 97814–	(503) 523–8282
OR0017 Best Western Entrada Lodge		19221 Century Dr	Bend, OR 97702–	(503) 382–4080
OR0090 Best Western New Redmond Hotel		521 S. 6th St	Redmond, OR 97756–	(503) 923–7378
Pennsylvania				
PA0074 Knights Inn	Rd 3 Box 253	I–80 & Rt. 68	Clarion, PA 16214–	(814) 226–4550
PA0129 Knights Inn		1215 S. Main St	Greensburg, PA 15601–	(412) 836–7100
PA0155 The Hershey Lodge & Conv Center.	PO Box 446	W. Chocolate Ave. & University	Hershey, PA 17033–	(717) 533–3065
PA0251 Best Western		11580 Roosevelt Blvd	Philadelphia, PA 19116–	(215) 464–9500
PA0266 Doubletree Hotel		Broad & Locust St	Philadelphia, PA 19107–	(215) 893–1600
PA0390 Residence Inn by Marriott—Phila. Airport		4630 Island Avenue	Philadelphia, PA 19153–	(215) 492–1811

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST MAY 23, 1994 UPDATE—Continued

Index/property name	PO Box/Rt #	Street address	City/state/zip	Telephone
PA0274 Wyndham Franklin Plaza		Two Franklin Plaza	Philadelphia, PA 19103–	(215) 448–2000
Virginia				
VA0450 Econo Lodge (Airport).		3343 N. Military Hwy	Norfolk, VA 23503–	(804) 480–9611
VA0426 Days Inn Aquia		2868 Jefferson Davis Hwy	Stafford, VA 22554–	(703) 659–0022
VA0529 Residence Inn Tysons Corner.		8616 Westwood Center Drive	Vienna, VA 22182–0000–	(703) 893–0120
DELETIONS None				

[FR Doc. 94–13212 Filed 5–31–94; 8:45 am]
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Federal Register

Vol. 59, No. 104

Wednesday, June 1, 1994

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28207–28458.....1

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

S. 636/P.L. 103–259

Freedom of Access to Clinic Entrances Act of 1994 (May 26, 1994; 108 Stat. 694; 4 pages)

S. 2024/P.L. 103–260

Airport Improvement Program Temporary Extension Act of 1994 (May 26, 1994; 108 Stat. 698; 7 pages)

S. 2087/P.L. 103–261

To extend the time period for compliance with the Nutrition Labeling and Education Act of 1990 for certain food products packaged prior to August 8, 1994. (May 26, 1994; 108 Stat. 705; 1 page)

Last List May 31, 1994

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June 10	June 27	July 11	July 25	August 9	September 8
June 13	June 28	July 13	July 28	August 12	September 12
June 14	June 29	July 14	July 29	August 15	September 12
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June 27	July 12	July 27	August 11	August 26	September 26
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103d Congress, 2d Session, 1994

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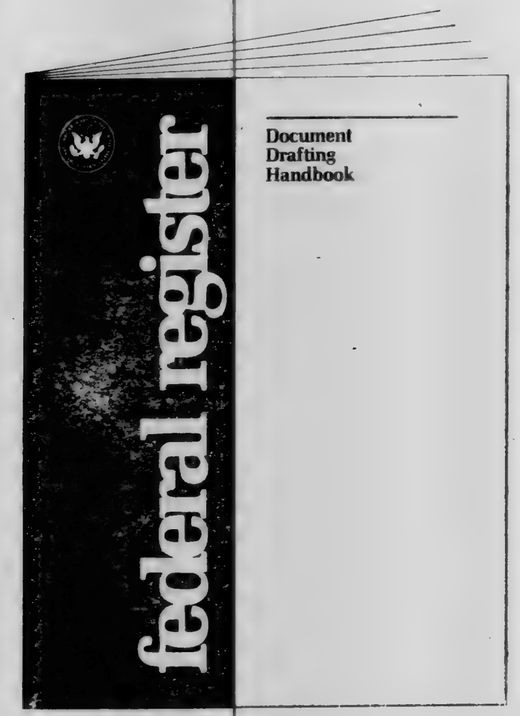
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Federal Register

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federal register

Thursday
June 2, 1994

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Thursday, June 2, 1994

Presidential Documents

Title 3—

The President

Proclamation 6695 of May 27, 1994

National Safe Boating Week, 1994

By the President of the United States of America

A Proclamation

The discovery and subsequent development of the United States evolved through the exploration and utilization of the abundant waterways of this great Nation. During the territorial expansion, our founders could scarcely have dreamed of the significant role our vast water resources would ultimately play in commerce, agriculture, industry, energy production, and boundless recreational activities. This year it is anticipated that more than 70 million Americans will enjoy on-the-water recreation throughout our country.

While boating can be a wonderful source of pleasure, improperly handled watercraft can be dangerous and sometimes even deadly. Tragically, approximately 800 persons die each year in boating-related accidents in our Nation alone. Because most of these accidents can be prevented, the United States Coast Guard and other Government agencies are working with volunteer organizations around the country to educate the boating public and to make safety the number one priority for all who use the Nation's waterways.

It is imperative that those enjoying the privilege of aquatic recreational activities must accept the responsibility of ensuring safety on the water. For boaters, this means respecting the marine environment, being well-informed, carrying, maintaining, and using the proper equipment, and remaining sober. Only then will boaters be prepared to prevent hazardous situations or deal with them if they arise. When boat operators and their passengers disregard their personal responsibilities, the consequences can be serious and direct. Statistics indicate that about 50 percent of boating accidents are alcohol-related and that more than 85 percent of the people who die while boating are not wearing personal floatation devices.

Accordingly, this year during National Safe Boating Week, proclaimed annually at the start of the summer boating season, recreational boaters are urged to heed the call of responsibility—to "Boat Smart, Boat Safe, Boat Sober."

In recognition of the need to promote safe boating practices, the Congress by joint resolution approved June 4, 1958 (36 U.S.C. 161), as amended, has authorized and requested the President to proclaim annually the week commencing on the first Sunday in June as "National Safe Boating Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning June 5, 1994, as National Safe Boating Week. I encourage the Governors of the 50 States and the Commonwealth of Puerto Rico, and officials of other areas subject to the jurisdiction of the United States, to provide for the observance of this week. I also urge all Americans to become informed and to always practice safe recreational boating.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–13573
Filed 5–31–94; 2:24 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6696 of May 30, 1994

Prayer for Peace, Memorial Day, 1994

By the President of the United States of America

A Proclamation

Each year as summer approaches, we pause to honor the memory of those who died in service to our Nation. Even though the Cold War is over, there are still reminders—past and present—that the price of peace can be very dear indeed. One reminder, engraved in the stone memorial at the Omaha Beach Cemetery, eloquently states, "To these we owe our highest resolve, that the cause for which they died, shall live." Whether at Valley Forge or in the skies above Iraq, this tribute poignantly expresses the gratitude felt by all Americans as we remember the men and women in uniform who made the supreme sacrifice.

Each year, on the last Monday in May, we pause to pray for peace and to pay homage to those who have died defending our liberties, service men and women from all generations and from all wars. But this year, Memorial Day especially recalls those Americans who helped change the course of history and helped preserve a world in which the ideals of freedom and individual rights could flourish. One week from today, on June 6, we will observe the 50th Anniversary of D-Day. On that day in 1944, the world witnessed perhaps the greatest military action in history—and the beginning of the end of Nazi Germany's stranglehold on Europe.

The passage of 50 years has seen the birth of new generations of Americans who know of D-Day only from their history lessons. Fifty years may have dimmed the memories of some who were alive during World War II, but we need only look at those "reminders" of the price of freedom to understand what happened on that day 50 years ago.

Anzio, Utah Beach, Omaha Beach, Pointe du Hoc, and Normandy—each is an unforgettable chapter in our Nation's history. Each is a name that invokes memories of patriotism and valor, of teamwork and sacrifice.

Each reminds us that our Nation was founded on the belief that our democratic ideals are worth fighting for and, if necessary, worth dying for. We have a sacred obligation to remember for all time the names and the deeds of the Americans who paid that price for all of us.

In respect and recognition of those courageous men and women to whom we pay tribute today, the Congress, by joint resolution of May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Memorial Day, May 30, 1994, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11 o'clock in the morning of that day as a time to unite in prayer. I urge the press, radio, television, and all other information media to cooperate in this observance.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff during this Memorial Day on

all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–13585
Filed 5–31–94; 2:39 pm]
Billing code 3195–01–P

Editorial note: For the President's remarks honoring our veterans, see volume 30, issue 22 of the *Weekly Compilation of Presidential Documents*

Presidential Documents

Proclamation 6697 of May 30, 1994

D-Day National Remembrance Day and Time for the National Observance of the Fiftieth Anniversary of World War II, 1994

By the President of the United States of America

A Proclamation

Fifty years ago on June 6, 1944, the largest armada of land, sea, and air forces ever assembled embarked on a great crusade across the English Channel to free the European continent of a tyranny that had taken hold and threatened to strangle the very freedoms we cherish most. Over 5,000 ships and 10,000 aircraft carried more than 130,000 soldiers, sailors, and airmen from the United States, Great Britain, Canada, Poland, France, Norway, the Netherlands, Czechoslovakia, New Zealand, Australia, Luxembourg, and Belgium to the shores of Normandy. More than 9,000 Americans never returned.

D-Day was considered crucial not only by the Allies, but also by the Axis powers. Field Marshall Irwin Rommel, commander of the enemy forces in the area, dubbed the first 24 hours as "The Longest Day," referring to the fact that if the Allies were successful in establishing a beachhead, many more units would follow, overwhelming the enemy in the West. However, for the Allied forces, June 6, 1944, was truly "The Longest Day" for a different reason. For the men who landed on the beaches that fateful day, each minute of combat was like an eternity as they were continuously bombarded by the unyielding Nazi forces.

But the enemy was unsuccessful, as the Allied forces had more than just their will to win urging them on. As defenders of justice, they were driven by the desire to restore the peace and freedom that the Nazi occupation had denied to millions of people. Anne Frank wrote of the impending invasion in her diary:

> "It's no exaggeration to say that all Amsterdam, all Holland, yes the whole west coast of Europe, right down to Spain, talks about the invasion day and night, debates about it, and makes bets on it and—hopes . . . . The best part of the invasion is that I have the feeling that friends are approaching. We have been oppressed by those terrible Nazis for so long, they have their knives at our throats, that the thought of friends and delivery fills me with confidence."

For Anne Frank, that deliverance never came, for she died in a concentration camp just months before the end of the war. But millions of others were delivered from oppression and fear. Those who landed on the beaches of Normandy, not only on D-Day but also throughout the rest of the war, were responsible for the liberation of many of the concentration camps as well as cities, towns, and villages throughout Europe that had suffered for so many years.

Thus, 1944 was a year of triumphs and sorrows. The Allies made great advances in bringing liberty to millions, while families and friends on the home front, faced with the knowledge that many of their loved ones would not return, continued to build the "Arsenal of Democracy."

It is to those millions of American men and women, veterans and civilians, those who came home from the war and those who made the ultimate sacrifice that we say "a grateful Nation remembers." We must never forget the high price paid by the valiant to ensure the freedoms of the many.

The Congress, by House Joint Resolution 303, has designated June 6, 1994, as "D-Day National Remembrance Day."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 6, 1994, as D-Day National Remembrance Day, and May 30, 1994, through June 6, 1994, as a Time for the National Observance of the Fiftieth Anniversary of World War II. I call upon all Americans to observe this period with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94-13591
Filed 5-31-94; 2:52 pm]
Billing code 3195-01-P

Editorial note: For the President's remarks at a ceremony honoring the heroes of D-Day and World War II, see volume 30, issue 22 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

Federal Register
Vol. 59, No. 105
Thursday, June 2, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

RIN 0575–AB69

Business and Industrial Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Business and Industry guaranteed loan program regulations, which are utilized by the Rural Development Administration (RDA), to provide procedures for interest rate buydown. This action is needed to implement provisions of the Supplemental Appropriations Act of 1993. The intended effect is to provide for payment by the Government of one percentage point of interest on certain guaranteed loans in areas affected by Hurricanes Andrew and Iniki and Typhoon Omar, thereby reducing the effective rate of interest to be paid by the borrower.

DATES: Interim rule effective on June 2, 1994. Written comments must be received on or before August 1, 1994.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulations, Analysis, and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, Ag-Box 0743, 14th Street and Independence Avenue SW., Washington, DC 20250–0743. All written comments will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Business and Industry Loan Specialist, Rural Development Administration, USDA, Ag-Box 3221, 14th Street and Independence Avenue SW., Washington, DC 20250–3221, Telephone (202) 720–6819.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.768, Business and Industrial Loans.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the revised information collection and/or recordkeeping requirements included in this interim rule will not become effective until approved by the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, FmHA, Ag-Box 0743, Washington, DC 20250.

Intergovernmental Review

As set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983, Business and Industrial Loans are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA and RDA conduct intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

Civil Justice Reform

This document has been reviewed in accordance with Executive Order 12778. It is the determination of RDA and FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the Executive Order.

Environmental Impact Statement

The action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA and RDA have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of the Rule

The Supplemental Appropriations Act of 1993, Public Law 103–50, authorized the Secretary of Agriculture to transfer certain funds previously authorized by Public Law 102–368 to a program designed to reduce the interest rate on certain Business and Industry Guaranteed loans. The funds will remain available through fiscal year 1994. Borrowers must be located in areas affected by Hurricanes Andrew and Iniki and Typhoon Omar and unable to make the full payments on the proposed loan. The interest rate charged by the lender must not exceed the prime rate by more than 100 basis points. The lender will receive payments from the Government to reduce the effective interest rate paid by the borrower by one percentage point.

Interim Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, we are making this action effective upon publication in the **Federal Register** without securing prior public comment. This action implements a program authorized by statute and intended to assist with economic recovery of areas affected by certain natural disasters. The program will only be available for new loans approved before the funding expires at the end of fiscal year 1994. It is necessary to implement the program as soon as possible to help stimulate the economy of the disaster area as soon as possible, to provide assistance to struggling businesses before they are forced to close, and to provide potential applicants the opportunity to develop applications and have them processed before the funding authority expires. Comments will be accepted for 60 days after publication and, if appropriate, adjustments will be made in the regulations based on the comments.

List of Subjects in 7 CFR Part 1980

Administrative practice and procedure, Agriculture, Business and industry, Loan programs—Agriculture, Loan programs—Business, Rural areas.

Accordingly, part 1980, chapter XVIII, title 7 of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 is revised to read as follows:

Authority: 7 U.S.C. 301 and 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Subpart E—Business and Industrial Loan Program

2. Section 1980.490 is added to read as follows:

§ 1980.490 Business and industry buydown loans.

(a) *Introduction.* This section contains regulations for the Business and Industry Buydown (BIB) loan program. The purpose of this program is to provide loan guarantees with reduced interest rates to the borrowers, under the authority of Public Law 103–50 (107 Stat. 241). All provisions of Subparts A and E of this part apply to BIB loans except as provided in this section. All forms used in connection with a BIB loan will be those used with other B&I loans, except as provided in this section.

(b) *Location of applicants.* Businesses eligible for BIB loans shall be located within the area covered by the Presidential disaster declaration related to Hurricanes Andrew or Iniki or Typhoon Omar.

(c) *Interest rate.* (1) If the interest rate charged by the lender (note rate) on a BIB loan is a variable rate in accordance with § 1980.423 of this subpart, the base rate must be the prime rate as published in the Wall Street Journal and the note rate must not exceed the prime rate as published in the Wall Street Journal by more than 100 basis points. If the note rate is fixed, it must not exceed by more than 100 basis points the prime rate as published in the Wall Street Journal on the day the Loan Note Guarantee is issued.

(2) The note rate for a BIB loan must be the same for the entire loan, including both the guaranteed and unguaranteed portion.

(d) *Interest rate buydown.* (1) To be eligible for a BIB loan, the business must provide evidence and the lender and FmHA must determine that, at least for the first year of the loan, the business will not have adequate cash flow to meet all of its financial obligations including the required payments on the proposed loan at the note rate, but that it can meet all obligations if the interest rate is reduced by 100 basis points.

(2) During the first year after a Loan Note Guarantee is issued for a BIB loan, FmHA will pay one percentage point of interest on the loan directly to the lender, thereby reducing the interest due from the borrower by this amount. This interest payment shall be applied to both the guaranteed and unguaranteed portion of the loan pro ratably according to FmHA regulations.

(3) Interest payments by FmHA may continue in subsequent years if the borrower's cash flow is insufficient to pay all obligations including the required payments on the proposed loan at the note rate. On or about each yearly anniversary of the promissory note the lender may submit a request to FmHA for continued interest payments, along with current profit and loss and cash flow statements and cash flow projections to show that the continued payments are needed for another year. FmHA will promptly review the material submitted, determine whether the continued interest payments by FmHA are needed to provide for sufficient cash flow in the coming year, and notify the lender in writing of the determination. Once interest payments by FmHA are terminated because the borrower's cash flow is determined to be sufficient to pay the note rate, such payments will not be made in subsequent years even if the cash flow decreases.

(4) This section does not authorize interest payments by FmHA on B&I loans other than those approved under this section. To be eligible for interest payments by FmHA, the loan must be designated as a BIB loan when approved and funded from funds authorized by Public Law 103–50.

(e) *Duration of BIB loan program.* No BIB loan will be obligated after September 30, 1994.

(f) *Administrative procedures.* (1) A lender that wants a B&I application considered under BIB authorities should so indicate by notation on Form FmHA 449–1 or by letter submitted with the Form FmHA 449–1.

(2) FmHA will identify a loan as a BIB loan by notation in the top margin of Form FmHA 449–29 and by the "type of assistance" code listed on Form FmHA 1940–3, in accordance with the Forms Manual Insert.

(3) FmHA will set out the interest buydown provisions in accordance with this section in the Conditional Commitment for Guarantee. When the Loan Note Guarantee is issued, the lender and FmHA will execute Form FmHA 1980–48, "Business and Industry Interest Rate Buydown Agreement."

(4) The lender will request the interest payment from FmHA by submitting Form FmHA 1980–23, "Request for Business and Industry Interest Buydown Payment," to the FmHA servicing office. Each request must cover exactly 1 year and be filed within 30 days after the anniversary date of the promissory note, except when interest buydown is terminated between anniversary dates. The FmHA servicing office will review each request for consistency with FmHA regulations and the Form FmHA 1980–48 and, if the claim is valid, will approve it and forward it to the Finance Office for issuance of the payment to the lender.

(g) *Termination of interest buydown.* When FmHA purchases a portion of a loan, interest buydown will cease on the entire loan. Interest buydown will also cease upon termination of the Loan Note Guarantee or assumption/transfer of the loan. In the event of any action that causes the interest buydown to terminate, the lender will submit a claim on Form FmHA 1980–23 for interest buydown payments through the date of termination.

(h) *Loan purposes.* (1) *Refinancing.* Section 1980.452 *Administrative* C.1. (d) of this subpart does not apply to BIB loans if refinancing is needed as a direct consequence of the disaster. In such cases, the lender may be allowed to bring previously unguaranteed exposure under the guarantee. No loan will be refinanced unless the current market value of the collateral is at least equal to the amount of the loan to be refinanced plus any new loan amount.

(2) *Agriculture.* Section 1980.412 (e) of this subpart does not apply to BIB loans. BIB loans may be guaranteed for agriculture production, which means the cultivation, production (growing), and harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption), and disposal or marketing thereof, the raising, housing, feeding (including commercial custom feedlots), breeding, hatching, control and/or management of farm or domestic animals.

(3) *Other eligible businesses.* Eligible types of businesses also include:

(i) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of vegetables from seed to the transplant stage.

(ii) Forestry which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iii) The growing of mushrooms or hydroponics.

(4) *Recreation and tourism.* Loans may be guaranteed for tourist or recreation facilities except for hotels, motels, bed and breakfasts, race tracks, gambling, or golf courses.

(5) *Meat processing facilities.* The provisions of § 1980.411 (a)(8) of this subpart will not apply to BIB loans. Loans, including working capital or debt refinancing, may be guaranteed for businesses engaged in meat or poultry processing.

(i) *Small Business Administration.* Section 1980.451 (c) of this subpart will not apply to BIB loans. Applicants eligible for Small Business Administration assistance will be advised of the availability of that assistance.

(j) *Loan guarantee limits.* Notwithstanding the provisions of § 1980.420 of this subpart, the guarantee percentage on any BIB loan will not exceed 80 percent.

(k) *Credit quality analysis.* In analyzing the credit quality of a proposed loan to a business that has lost assets to a natural disaster, primary emphasis will be placed on the operating history of the business, rather than its current financial condition. If the business has a sound, profitable and successful history prior to the disaster and there are reasonable projections to ensure it can operate successfully in the future, the proposed loan may be approved even if disaster losses have caused somewhat less equity and/or collateral than would normally be expected for a B&I loan guarantee. If the business appears to have had an unprofitable operation or inadequate cash flow prior to the disaster, the proposed loan guarantee will not be approved.

(l) *Equity requirements.* The equity requirements of § 1980.441 of this subpart do not apply to BIB loans.

(m) *Collateral.* Section 1980.443 Administrative A. 2., 3., and 4. of this subpart will not apply to BIB loans. Collateral may be considered at its current market value without discount. Work-in-process inventory may be valued at the estimated market value of the finished product. All costs of producing the finished product must be included in the cash flow analysis.

(n) *Conditional approval.* A Form FmHA 449–14 may be issued prior to receipt of specific items needed to complete an application package provided:

(1) The lender and/or borrower demonstrates to the Government's satisfaction that it has a need for a prompt indication of the availability of the proposed loan guarantee and the conditions under which a guarantee are available;

(2) The specific items missing from the application package will take considerable time to obtain;

(3) The lender requests a commitment prior to providing the items;

(4) The attachment to Form FmHA 449–14 clearly states that the commitment is conditioned on satisfactory completion of the missing item(s) and a guarantee will not be issued unless all conditions of these regulations are met; and

(5) No Form FmHA 449–14 will be issued prior to the obligation date established with the Finance Office.

(o) *Financial statements.* All requirements of § 1980.451(i)(13) of this subpart will apply except that for BIB loans minimum annual financial statements will be required as follows:

(1) For nonagricultural borrowers with a B&I indebtedness of $500,000 or less, an annual compilation by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(2) For nonagricultural borrowers with a B&I indebtedness of $500,001 through $1 million, an annual review by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(3) For nonagricultural borrowers with a B&I indebtedness of more than $1 million, an annual audited financial statement by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970.

(4) All agricultural loans will require annual financial statements per § 1980.113 of subpart B of this part.

(p) *Agriculture loans.* The following additional provisions apply to BIB loan guarantees for businesses engaged in agriculture production:

(1) *General policy.* Paragraph (p) of this section contains the regulations for making BIB loans to farmers for agricultural purposes. BIB loans made for agricultural purposes are subject to the provisions in subparts A and E of this part except as specified. In addition, certain sections of subpart B of this part referenced in this section are applicable subject to the limitations outlined in this section. Several key loan processing and loan servicing requirements stipulated in subpart B of this part do not apply to loans made to borrowers under this section.

(2) *Type of guarantee.* BIB loans will be processed under the Loan Note Guarantee option of § 1980.101 (e)(1) of subpart B of this part Only. No loan will be processed for a Contract of Guarantee (Line of Credit) under § 1980.101 (e)(2) of subpart B of this part.

(3) *Farm size.* Loan guarantees may be made under the BIB program without regard to the size of the farming operation.

(4) *Filing and processing preapplications and applications.* If the applicant has already developed material for an FmHA Farmer Program loan or if the financial and production information required by § 1980.113 of subpart B of this part is needed to document repayment ability or is required by the lender, § 1980.113 of subpart B of this part may apply with the following exceptions:

(i) Lines of credit will not be guaranteed.

(ii) If the application is submitted solely for a farm as defined in § 1980.106(b) of subpart B of this part, Form FmHA 1980–25, "Farmer Programs Application," or Form FmHA 449–1, will be used as an application for assistance.

(5) *Evaluation of applications.* If the application is developed and processed in accordance with § 1980.113 of subpart B of this part, the provisions outlined in § 1980.114 of subpart B of this part apply with the following exceptions:

(i) Timeframe requirements for the evaluation of applications and references to the Approved Lender Program are not applicable.

(ii) County Committee reviews of applications processed under this section will not be required. If the loan approval official finds the applicant is not eligible, the applicant will be notified in writing of the reasons for disapproval and his/her rights through inclusion of the Equal Credit Opportunity Act (ECOA) statement. An opportunity will be given for an appeal as set out in subpart B of part 1900 of this chapter.

(iii) When applied to BIB applications, references in § 1980.114 of this part to "County Office" shall normally be construed to mean "State Office." References to "County Supervisor" shall be construed to mean "Business and Industry Chief or Community and Business Programs Chief, or other appropriate FmHA official as designated by the State Director."

(6) *Terms of loan repayment.* (i) Principal and interest on the loan will be due and payable to coincide with the cash flow operating cycle of the business. Installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably assure repayment of the loan. The first installment to include a repayment of principal may be scheduled for payment after the project is operational and has begun to generate income. However, such installment will be due and payable within 6 years from the date of the debt instrument and at least annually thereafter. Interest will not be deferred and will be due at least annually from the date of the debt instrument. In granting a deferral of principal payment, the loan approval official must document based on pro forma financial statements and the nature of the crop that the deferral of payments is necessary.

(ii) The lender must ensure that loan repayment is scheduled to eliminate the possibility of a balloon payment at the end of the loan.

(7) *Agriculture BIB loan purposes.* Loans may be made only for the following purposes:

(i) Operating purposes as outlined in § 1980.175 (c)(1) of Subpart B of this part except for those stipulated in § 1980.175(c)(1)(iv) and (vii).

(ii) Real estate purposes as outlined in § 1980.180 (c) of Subpart B of this part except for those stipulated in § 1980.180 (c)(1) and (4).

(iii) Refinancing in accordance with paragraph (h)(1) of this section and §§ 1980.411 (a)(11), 1980.451 (i)(19), and 1980.452 Administrative C. (except § 1980.452 Administrative C. 1. (d) of this subpart.

(8) *Sodbuster and swampbuster requirements.* The provisions of exhibit M of subpart G of part 1940 of this chapter will apply to loans made to enterprises engaged in agricultural production.

Dated: May 3, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94-13218 Filed 6-1-94; 8:45 am]

BILLING CODE 3210-32-U

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 574

[No. 94-20]

RIN 1550-AA53

Acquisition of Control of Savings Associations; Applications, Approval Standards and Procedural Requirements

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its acquisition of control regulations to implement section 211 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). The final rule specifies additional factors that the OTS must consider in acting on applications to acquire savings associations under section 10(e) of the Home Owners' Loan Act (HOLA). The intended effect of these amendments is to conform OTS regulations to the statutory changes.

In addition, the OTS is amending its acquisition of control regulations to reflect the previous combination of the various holding company application forms in order to provide consistency between the forms and the regulations, to eliminate confusion, and to streamline the regulations.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: David Sjogren, Program Manager, Corporate Analysis, (202) 906-6739, Supervisory Operations, Robyn Dennis, Program Manager, (202) 906-5751, Policy, or Kevin A. Corcoran, Assistant Chief Counsel, (202) 906-6962, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The OTS is adopting a final rule that revises its acquisition of control regulations to include new supervisory factors that the FDICIA requires the OTS to consider in reviewing and acting on applications to acquire savings associations under section 10(e) of the HOLA. These changes are required by section 211 of the FDICIA, Public Law 102-242, 105 Stat. 2236. In addition, the OTS is amending its acquisition of control regulations to reflect the previous combination of the various holding company application forms.

On November 23, 1993, the OTS issued notice of a proposal to amend the agency's regulations implementing section 10(e) of the HOLA in accordance with section 211 of the FDICIA, and to amend the acquisition of control regulations to reflect the combination of the holding company application forms.[1] The public comment period expired on December 23, 1993.

Section 211 of the FDICIA provides that the OTS must disapprove an application to acquire a savings association under section 10(e) of the HOLA:

(1) If the company fails to provide adequate assurances to the OTS that the company will make available to the OTS such information on the operations or activities of the company, and any affiliate of the company, as the OTS determines to be appropriate to determine and enforce compliance with the HOLA; or (2) in the case of an application involving a foreign bank, if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in the bank's home country.

Section 211 of the FDICIA also provides that the OTS's consideration of the managerial resources of a company or savings association shall include consideration of the competence, experience and integrity of the officers, directors and principal shareholders of the company or savings association.

The OTS is adopting the final rule substantially as proposed. As proposed, the final rule, rather than including a separate definition of the term "principal shareholder," relies on existing terminology, "controlling shareholder," in the OTS acquisition of control regulations for this purpose, and requires the OTS to consider the competence, experience, and integrity of "controlling shareholders."[2]

In addition, the final rule provides that the OTS also will consider whether an applicant has provided the OTS with adequate assurances that it will make available such information on its operations or activities, and the operations or activities of any affiliate of the applicant, that the OTS deems appropriate to determine and enforce compliance with the HOLA.

[1] 58 FR 61850 (November 23, 1993).

[2] Under the OTS acquisition of control regulations, a "controlling shareholder" is "any person who directly or indirectly or acting in concert with one or more persons or companies, or together with members of his or her immediate family, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company or controls in any manner the election or appointment of a majority of the company's board of directors." 12 CFR 574.2(g).

The OTS has determined, in general, not to require additional assurances from domestic applicants. The OTS currently seeks all information needed to consider holding company applications,[3] has promulgated regulations and issued forms that require savings and loan holding companies to file information with the OTS on a regular basis,[4] and has broad authority under section 10(b) of the HOLA to examine savings and loan holding companies and their affiliates. In addition, the OTS has broad authority to investigate and bring enforcement actions against holding companies and other affiliates of savings associations under section 10(g) of the HOLA, as well as other statutory provisions, including section 8 of the Federal Deposit Insurance Act. Nevertheless, section 10(e)(2)(C) gives the OTS broad discretion with respect to the circumstances under which additional assurances may be required, as well as the nature of such assurances, and the OTS may, where appropriate, seek additional assurances regarding the availability of information from an applicant and its affiliates.

With respect to holding company applications submitted by foreign acquirors, the OTS has, as a matter of policy, required foreign acquirors to enter into a foreign acquiror agreement.[5] Foreign acquiror agreements generally state, *inter alia*, that the foreign acquiror (i) voluntarily consents to United States jurisdiction for purposes of laws relating to United States depository institutions, (ii) shall designate agents in the United States for service of process, and (iii) shall permit the OTS to examine it to such extent as the Director may prescribe. In addition, as a policy matter, the OTS and its predecessor, the Federal Home Loan Bank Board, have generally required foreign acquirors to establish a United States holding company as the direct holding company of the acquired savings association.

The OTS will continue to require foreign acquirors to enter into foreign acquiror agreements, but will not require further assurances as a general matter. As noted above, the OTS, where appropriate in the context of a particular application, may seek additional assurances from a foreign acquiror that it will make information available to the OTS concerning itself or its affiliates.

[3] See OTS Form H-(e)_____.

[4] See 12 CFR 584.1 and OTS Forms H-(b)10 and H-(b)11.

[5] In addition, the OTS has required foreign acquirors that attempt to rebut a rebuttable determination of control under 12 CFR 574.4(b) and 574.4(e) to file a foreign acquiror agreement.

In the case of applications involving a foreign bank, the OTS will consider whether the bank is subject to comprehensive supervision on a consolidated basis by the appropriate authorities in the foreign bank's home country. In the proposal, the OTS requested comment on the standards to be applied in this area, and on whether the OTS should subject foreign bank holding companies to the same requirement. As the statute refers only to foreign banks, the final rule, as was the case with the proposal, refers only to foreign banks.

The regulations of the Board of Governors of the Federal Reserve System (Federal Reserve Board) implementing section 202(a) of the FDICIA set forth the basis on which the Federal Reserve Board will determine whether a foreign bank is subject to "comprehensive supervision or regulation on a consolidated basis."[6] The Federal Reserve Board regulation provides that the Federal Reserve Board will determine whether the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation.[7]

The OTS believes that Federal Reserve Board regulations set forth appropriate standards in this area, and is not currently aware of any compelling reasons to use a standard differing from that used by the Federal Reserve Board. Accordingly, the final regulation generally incorporates the standard set forth in the Federal Reserve Board's regulations. OTS believes this approach also will promote regulatory uniformity by applying similar standards to foreign banks that propose to acquire banks and savings associations.

The OTS also requested comment regarding the manner in which the OTS should implement this standard, *i.e.*, whether the OTS should conduct a case-by-case analysis, or adopt some other approach, such as a country-by-country, or regulator-by-regulator approach. The OTS has decided to adopt the approach taken by the Federal Reserve Board. The Federal Reserve Board has stated that as the standard requires a bank-specific determination, it will address the standard on a case-by-case basis.[8]

[6] See 58 FR 6348, 6360-6361 (12 CFR 211.24(c)(1)(ii)).

[7] *Id.* The regulation sets forth certain factors that the Federal Reserve Board will assess, including the extent to which the home country supervisor: Ensures that the foreign bank has adequate procedures for monitoring and controlling its activities worldwide; obtains information on the foreign bank and its subsidiaries and offices outside the home country through regular reports of examination, audit reports, or otherwise; obtains information on the dealings and relationships between the foreign bank and its foreign and domestic affiliates; receives from the foreign bank financial reports that are consolidated on a worldwide basis, or comparable information; and evaluates prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

II. Summary of Comments

The OTS received two comments regarding the proposed amendments, one from a savings association and one from a thrift industry trade association. The savings association expressed general support for the proposed rule. The trade association commenter addressed four issues.

First, the commenter requested that the OTS, in defining the term "principal shareholder," consider alternatives to the ten percent threshold, and urged the OTS to address the merits of a 25 percent threshold.

The OTS continues to believe that a ten percent threshold is appropriate. Under the OTS acquisition of control regulations, an individual acquiror generally acquires control of a savings association or savings and loan holding company, subject to rebuttal, upon acquiring over ten percent of a class of voting stock and acquiring a "control factor."[9] Such an acquiror must submit a change of control notice or rebuttal of control prior to exceeding the ten percent threshold.[10]

As the OTS noted in the proposal, the statutory language does not prevent the OTS from considering the extent to which a "principal shareholder" or "controlling shareholder" is involved in the affairs of a savings association or savings and loan holding company. An underlying purpose of section 211 is to permit the OTS to consider the abilities of the principal shareholders of savings associations and savings and loan holding companies in appropriate situations, including situations where a principal shareholder has or could have a significant effect on the financial and managerial resources, future prospects, or safety and soundness of a savings association or savings and loan holding company. Thus, the OTS, in weighing the shareholder's experience and

[8] The Federal Reserve Board has stated that it expects, as it acts on applications, to use information already reviewed regarding comprehensive supervision in particular countries to make judgments without requiring significant input from similar applicants chartered in the same country. See 58 FR 6348, 6349.

[9] 12 CFR 574.4 (b) and (c).

[10] See 12 CFR 574.3, 574.4.

competence, would give significant consideration to whether the shareholder proposes to be a passive investor. For instance, a principal shareholder who holds a passive investment would not need the same level of experience and competence required of a principal shareholder who could exert significant influence upon the direction of the savings association or savings and loan holding company.

The OTS notes that its approach is similar to the approach taken by the Federal Reserve Board.[11]

Second, the commenter responded to the OTS's request for comment as to whether the OTS should seek specific assurances concerning the operations or activities of an acquiror or its affiliates.[12] The commenter urged that the OTS not add requirements regarding such assurances to the proposed regulations. As previously noted, the OTS generally will not require specific assurances regarding these matters.

Third, the commenter responded to the OTS's specific request for comment on the manner in which assurances should be presented to the OTS as to the availability of information on the operations or activities of certain companies. The commenter observed that it is a federal crime to file false statements with the OTS, and, therefore, that the assurances need not take the form of an affidavit or certification.

The OTS has, under various circumstances, required materials to be submitted in the form of an affidavit or certification. As noted above, the OTS is not generally requiring applicants to provide specific assurances regarding the availability of information. In the event that the OTS requires additional assurances in a particular case, the OTS will determine what form of assurance is appropriate under the circumstances.

Fourth, the commenter addressed the OTS's determination of whether a foreign bank is subject to "comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country." The commenter noted that the OTS has not traditionally made determinations regarding this issue, and urged the OTS to consider deferring to or otherwise using the resources of the Federal Reserve Board and other banking agencies. The commenter urged the OTS to take advantage of the expertise of other agencies in this area.

As the OTS must act on applications under section 10(e) of the HOLA, it is the OTS's responsibility to determine whether the applicant satisfies the applicable standards. Nevertheless, the OTS intends to consider previous determinations made by the Federal Reserve Board (or other applicable Federal regulatory agency) regarding supervision or regulation of a foreign bank, and applicants should provide such information to the OTS in the application process. The OTS believes that consideration of determinations made by other regulatory agencies decreases the burden on applicants to provide information, and facilitates prompt processing of applications. The OTS recognizes that such determinations may not be available in every case, because the Federal Reserve Board (and the OTS) make their determinations on a case-by-case (rather than, *e.g.*, a country-by-country) basis. In addition, as stated above, the OTS has generally incorporated the Federal Reserve Board's standards in this area.

[11] See 58 FR 471, 472 (January 6, 1993), and 58 FR 4073, 4074 (January 13, 1993), in which the Federal Reserve Board defines "principal shareholder" using a ten percent threshold.

[12] In this context, in response to the OTS's request for comment regarding foreign acquiror agreements, the commenter made general observations regarding the enforceability of foreign acquiror agreements.

III. Executive Order 12866

The Director of the OTS has determined that this proposal does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

IV. Regulatory Flexibility Act

It is certified that this proposal will not have a significant economic impact on a substantial number of small entities. Consequently, a Regulatory Flexibility Analysis is not required.

List of Subjects in 12 CFR Part 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends part 574, subchapter D, chapter V, title 12, Code of Federal Regulations as set forth below:

PART 574—[AMENDED]

1. The authority citation for part 574 continues to read as follows:

Authority: 12 U.S.C. 1467a, 1817, 1831i.

2. Section 574.6 is amended by revising paragraph (a) to read as follows:

§ 574.6 Procedural requirements.

(a) *Form of application or notice.* An application, notice, or informational filing required by § 574.3 of this part shall be filed on the Application/Information Filing H–(e) _____ form. (As specified in the form's instructions, the blank line following the H–(e) should be filled in by applicants with the appropriate "1", "1–S", "2", "3", or "4" depending on the type of application.) The specific application requirements for each type of filing are indicated on the form. An acquiror may request confidential treatment of portions of an application or notice only by complying with the requirements of paragraph (f) of this section. In the case of an application involving a merger (including a merger with an interim association) the Application/Information Filing H–(e) _____ form shall be used in lieu of an application that otherwise would be required for such merger under §§ 546.2, 552.13, and 563.22 of this chapter.

(1) *H–(e)1.* This application type shall be filed under § 574.3(a) of this part by a company, other than a savings and loan holding company, for approval to acquire direct or indirect control of one savings association.

(2) *H–(e)1–S.* This application type shall be filed under § 574.3(a) of this part by a savings association for approval to reorganize into a holding company structure, provided that the proposed transaction satisfies each of the conditions for automatic approval specified in § 574.7 (a)(2) and (a)(3) of this part.

(3) *H–(e)2.* (i) This application type shall be filed under § 574.3(a) of this part:

(A) By a savings and loan holding company for approval to acquire and hold separately one or more savings associations;

(B) By any other company for approval to acquire and hold separately more than one savings association;

(C) By a savings and loan holding company for approval of an acquisition of shares issued by a savings association in a qualified stock issuance pursuant to § 574.8 of this part; or

(D) By any director, officer, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of a savings and loan holding company for approval of an acquisition of one or more savings associations.

(ii) The OTS may determine as a general matter or on a case-by-case basis not to require application information not relevant to transactions described in paragraphs (a)(3)(i) (C) and (D) of this section.

* * * * *

3. Section 574.7 is amended by revising the section heading and paragraph (c) to read as follows:

§ 574.7 Determination by the OTS.

* * * * *

(c) *Application criteria.* (1) The OTS may deny an application by a company or certain persons, described in paragraph (b) of this section, affiliated with a savings and loan holding company, to acquire control of a savings association, or by a savings and loan holding company to acquire a qualified stock issuance pursuant to § 574.8 of this part:

(i) If the OTS finds that the financial and managerial resources and future prospects of the acquiror and association involved would be detrimental to the association or the insurance risk of the SAIF or BIF; or

(ii) If the acquiror fails or refuses to furnish information requested by the OTS.

(2) Consideration of the managerial resources of a company or savings association shall include consideration of the competence, experience, and integrity of the officers, directors, and controlling shareholders of the company or association. In connection with the applications filed pursuant to §§ 574.6 (a)(3) and (a)(4), and 574.8 of this part, the OTS will also consider the convenience and needs of the community to be served. Moreover, the OTS shall not approve any proposed acquisition:

(i) Which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States;

(ii) The effect of which on any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the OTS finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served;

(iii) If the company fails to provide adequate assurances to the OTS that the company will make available to the OTS such information on the operations or activities of the company, and any affiliate of the company, as the OTS determines to be appropriate to determine and enforce compliance with the Home Owners' Loan Act; or

(iv) In the case of an application by a foreign bank, if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the home country of the foreign bank. For purposes of this paragraph (c)(2)(iv), "comprehensive supervision or regulation on a consolidated basis by the appropriate authorities" shall be determined using the standards set forth at 12 CFR 211.24(c)(1)(ii).

* * * * *

Dated: March 1, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–13400 Filed 6–1–94; 8:45 am]

BILLING CODE 6720–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

[FR Doc. 94–7844]

Small Business Investment Companies; Valuation Guidelines; Correction

AGENCY: Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: SBA is correcting the presentation of certain information concerning valuation guidelines which was included in the final rule published in the **Federal Register** on April 8, 1994 (59 FR 16933). Certain paragraphs were not printed in bold type as intended.

EFFECTIVE DATE: April 25, 1994.

FOR FURTHER INFORMATION CONTACT: Saunders Miller, Senior Policy Advisor, Investment Division; Telephone (202) 205–6510.

SUPPLEMENTARY INFORMATION: On April 8, 1994, SBA published a final rule (59 FR 16933) which included the addition of a new appendix III to part 107 of title 13 of the Code of Federal Regulations. The appendix sets forth valuation guidelines for Small Business Investment Companies (Licensees). In Section III of appendix III, it was SBA's intention to have certain paragraphs printed in bold type and other paragraphs printed in regular type. Bold type was intended to identify a model valuation policy which could be adopted verbatim by Licensees, while regular type was intended to identify supplementary information which would assist Licensees in interpreting and applying the model policy. When the final rule was printed, however, none of the text in Section III appeared in bold type.

In order to allow Licensees to distinguish between the model valuation policy and the supplementary information, SBA is publishing a reorganized version of appendix III. Section III of the reorganized appendix is retitled "Model Valuation Policy" and includes only those paragraphs originally intended to be printed in bold type. A new Section IV is entitled "Valuation Policy With Supplementary Information" and contains both the model and supplementary paragraphs with no difference in type face. An explanation of the difference between Sections III and IV, and how each may be used by Licensees, is provided in paragraphs H. and I. of Section II of the appendix.

In FR Doc. 94–7844, published in the **Federal Register** on Friday, April 8, 1994, appendix III of 13 CFR part 107 is corrected to read as follows:

Appendix III To Part 107—Valuation Guidelines for SBICs

I. Introduction

This appendix describes the policies and procedures to which Licensees (SBICs and SSBICs) must conform in valuing their Loans and Investments and provides guidance as to the techniques and standards which are generally applicable to such valuations.

The need for clearly defined valuation policies and procedures and understandable techniques arises in connection with the requirement that Licensees report the worth of their portfolios to investors and SBA. This information assists SBA in its assessment of the overall operational performance and financial condition of individual Licensees and of the industry.

II. Overall Guidelines

A. Definitions

1. *Asset Value* means the amount that the general partners or board of directors of a Licensee have established as a current value in accordance with its Valuation Policy.

2. *Marketable Securities* means securities for which market quotations are readily available and the market is not "thin", either in absolute terms, or relative to the potentially saleable holdings of the Licensee and other investors with saleable blocks of such securities. These securities are valued as follows: (a) For over-the-counter stocks, taking the average of the bid price at the close for the valuation date and the preceding two days, and (b) for listed stocks, taking the average of the close for the valuation date and the preceding two days. This classification does not include securities which are subject to resale restrictions, either under securities laws or contractual agreements, although other securities of the same class may be freely marketable.

3. *Other Securities* means all Loans and Investments not defined in paragraph A.(2) of this section. Such securities shall be valued at Asset Value. Most SBIC and SSBIC investments will fall in this classification.

4. *Valuation Policy* means the official document of a Licensee that definitively sets forth the Licensee's methods of valuing Loans and Investments in accordance with the requirements of § 101(g) and this appendix.

B. Objective

The goal of a Licensee's valuation process is to value its Loans and Investments

However, the very nature of Licensees' investments sometimes makes the determination of fair market value problematical. In most cases there is no market for the investment at the time of valuation. Therefore, except where market quotations are readily available and the markets are not "thin", the Boards of Directors or General Partners are necessarily responsible for determining in good faith the value of Loans and Investments.

Determination of value will depend upon the circumstances in each case. No exact formula can be devised that will be generally applicable to the multitude of different valuation issues that will arise. This is especially true for semiannual valuation updates of relatively new investments for which current results either exceed or do not meet the Small Concern's forecasts. A sound valuation should be based upon all of the relevant facts, with common sense and informed judgement influencing the process of weighing those facts and determining their significance in the aggregate.

C. General Considerations

The Asset Value of Loans and Investments will depend upon the circumstances of each individual case and will be based upon the nature of the asset and the stage of a company's existence.

In negotiating the terms and conditions of an investment with a Small Concern, the Licensee, in effect, establishes an initial valuation for the investment, which is cost. Cost shall be the Asset Value until there is a basis to increase or decrease the valuation.

Unrealized appreciation should be recognized when warranted, but should be limited to those investments that have a sustained economic basis for an increase in value. Temporary market fluctuations or a temporary increase in earnings should not be the cause or sole reason for appreciation.

Unrealized depreciation should be recorded when portfolio companies show sustained unfavorable financial performance. Continuous close scrutiny of Loans and Investments will provide insight into the business cycles and problems encountered by small business concerns. This insight will allow the Licensee to differentiate between a temporary downturn or setback and a long-term problem indicating a measurable decline in Asset Value.

When a decline in Asset Value appears permanent, a complete or partial write-off of the asset (i.e., recording a realized loss rather than unrealized depreciation) should occur. Some of the more obvious indications of permanent impairment of an investment include the termination of business operations, a petition for bankruptcy protection or liquidation, or the absence of a verifiable forwarding address of the business or its proprietor(s). Less obvious situations may include the loss of major revenue accounts, the shut down of a critical distribution channel, an adverse legal or regulatory ruling, or the expiration of a priority claim on collateral in a distressed Small Concern. These and other possible circumstances should be assessed on a case-by-case basis, with supporting documentation on file.

D. Valuation Responsibility

As specified in 13 CFR 107.101(g), the Licensee's Board of Directors or General Partners have the sole responsibility for determining Asset Value. In determining Asset Value, the Board of Directors or General Partners must satisfy themselves that all appropriate factors relevant to a good faith valuation have been considered and that the methods used are reasonable and prudent and are consistently applied. Although the Board of Directors or General Partners have the ultimate responsibility for determining Asset Value, they may appoint management or other persons to assist them in such determinations and to provide supporting data and make the necessary calculations pursuant to the Board's or General Partners' direction. It is essential that a careful, conservative, yet realistic approach be taken by Licensees in determining the Asset Value of each Loan and Investment.

As part of the annual audit of the Licensee's financial statements, the Licensee's independent public accountant has responsibility to review the Licensee's valuation procedures and implementation of such procedures including adequacy of documentation. The independent public accountant also has reporting responsibility regarding the results of this review. (See appendix I to this part, section III and section V, paragraphs I and J).

E. Frequency of Valuation

Loans and Investments shall be valued individually and in the aggregate by the Board of Directors or General Partners at least semiannually—as of the end of the second quarter of Licensee's fiscal year and as of the end of Licensee's fiscal year, *Provided however*, That Licensees without Leverage need only perform valuations once a year. On a case-by-case basis, SBA may require valuations to be made more frequently. Only valuations performed as of the fiscal year-end are required to be reviewed by the Licensee's independent public accountant, as discussed in paragraph D. of this section. Each Licensee shall forward a valuation report to SBA within 90 days of the end of its fiscal year in the case of annual valuations, and within thirty days following the close of other reporting periods. Material changes in valuations shall be reported not less often than quarterly within thirty days following the close of the quarter. Since the valuations will only be as sound as the timeliness of the financial information upon which they are based, Licensees shall require frequent financial statements from Small Concerns. Monthly financial statements are normally appropriate.

F. Written Valuation Policy

Each Licensee shall establish a written Valuation Policy approved by its Board of Directors or General Partners that includes a statement of policies and procedures that are consistent with Section III of this appendix.

G. Documentation

Each Licensee shall prepare and retain in its permanent files a valuation report as of each valuation date documenting, for each portfolio security, the cost, the current Fair Value and the previous Fair Value, plus the methodology and supporting data used to determine the value of each such portfolio security. The minutes of meetings of Boards of Directors or General Partners at which valuations are determined will contain a resolution confirming that the valuations of each portfolios security were determined in accordance with Licensee's duly adopted valuation procedures and will incorporate by reference the valuation report signed by each Director or General Partner along with any dissenting valuation opinions.

H. Instructions

A model Valuation Policy is presented in Section III below. Licensees may adopt the model in its entirety or make appropriate modifications, additions or deletions. Any changes, however, must be generally consistent with the model.

A second version of the model Valuation Policy is presented in Section IV. This section repeats the language of Section III, but is expanded to include additional explanatory paragraphs. These paragraphs are commentary provided by SBA to assist Licensees in interpreting and applying some of the model valuation criteria. They may be adapted for inclusion in the Licensee's Valuation Policy, if desired.

I. Approval

1. Any Licensee that utilizes the exact wording of Section III, without any additions, deletions, or changes will be presumed to have an acceptable Valuation Policy. It is acknowledged, however, that this wording may not be entirely applicable to all Licensees. If a Licensee wants to adopt a Valuation Policy that is different from Section III, the Licensee must obtain SBA's written approval of such Policy. If changes from the wording of Section III are minor, it is suggested that the Licensee indicate deletions with a caret (^) and underline additions.

2. Applicants for either a Section 301(c) or 301(d) license must submit their Valuation Policies for approval as part of the licensing application process.

III. Model Valuation Policy

A. General

1. The [Board of Directors] [General Partners] have sole responsibility for determining the Asset Value of each of the Loans and Investments and of the portfolio in the aggregate.

2. Loans and Investments shall be valued individually and in the aggregate [at least semi-annually—as of the end of the second quarter of the fiscal year and as of the end of the fiscal year.] [at least annually—as of the end of the fiscal year.] Fiscal year-end valuations are audited as set forth in 13 CFR Part 107 Appendix III, Section II, paragraph D.

3. This Valuation Policy is intended to provide a consistent, conservative basis for establishing the Asset Value of the portfolio. The Policy presumes that Loans and Investments are acquired with the intent that they are to be held until maturity or disposed of in the ordinary course of business.

B. Interest-Bearing Securities

1. Loans shall be valued in an amount not greater than cost, with Unrealized Depreciation being recognized when value is impaired. The valuation of loans and associated interest receivables on interest-bearing securities should reflect the portfolio concern's current and projected financial condition and operating results, its payment history and its ability to generate sufficient cash flow to make payments when due.

2. When a valuation relies more heavily on asset versus earnings approaches, additional criteria should include the seniority of the debt, the nature of any pledged collateral, the extent to which the security interest is perfected, the net liquidation value of tangible business assets, and the personal integrity and overall financial standing of the owners of the business. In those instances where a loan valuation is based on an analysis of certain collateralized assets of a business or assets outside the business, the valuation should, at a minimum, consider the net liquidation value of the collateral after reasonable selling expenses. Under no circumstances, however, shall a valuation based on the underlying collateral be considered as justification for any type of loan appreciation.

3. Appropriate unrealized depreciation on past due interest which is converted into a security (or added to an existing security) should be recognized when collection is doubtful. Collection is *presumed* to be in doubt when one or both of the following conditions occur: (i) Interest payments are more than 120 days past due; or (ii) the small concern is in bankruptcy, insolvent, or there is substantial doubt about its ability to continue as a going concern.

4. The carrying value of interest-bearing securities shall not be adjusted for changes in interest rates.

5. The valuation of convertible debt may be adjusted to reflect the value of the underlying equity security net of the conversion price.

C. Equity Securities—Private Companies

1. Investment cost is presumed to represent value except as indicated elsewhere in these guidelines.

2. Valuation should be reduced if a company's performance and potential have significantly deteriorated. If the factors which led to the reduction in valuation are overcome, the valuation may be restored.

3. The anticipated pricing of a Small Concern's future equity financing should be considered as a basis for recognizing Unrealized Depreciation, but not for Unrealized Appreciation. If it appears likely that equity will be sold in the foreseeable future at a price below the Licensee's current valuation, then that prospective offering price should be weighed in the valuation process.

4. Valuation should be adjusted to a subsequent significant equity financing that includes a meaningful portion of the financing by a sophisticated, unrelated new investor. A subsequent signtficant equity financing that includes substantially the same group of investors as the prior financing should generally not be the basis for an adjustment in valuation. A financing at a lower price by a sophisticated new investor should cause a reduction in value of prior securities.

Depreciation being recognized when value is impaired. The valuation of loans and associated interest receivables on interest-bearing securities should reflect the portfolio concern's current and projected financial condition and operating results, its payment history and its ability to generate sufficient cash flow to make payments when due.

2. When a valuation relies more heavily on asset versus earnings approaches, additional criteria should include the seniority of the debt, the nature of any pledged collateral, the extent to which the security interest is perfected, the net liquidation value of tangible business assets, and the personal integrity and overall financial standing of the owners of the business. In those instances where a loan valuation is based on an analysis of certain collateralized assets of a business or assets outside the business, the valuation should, at a minimum, consider the net liquidation value of the collateral after reasonable selling expenses. Under no circumstances, however, shall a valuation based on the underlying collateral be considered as justification for any type of loan appreciation.

3. Appropriate unrealized depreciation on past due interest which is converted into a security (or added to an existing security) should be recognized when collection is doubtful. Collection is *presumed* to be in doubt when one or both of the following conditions occur: (i) Interest payments are more than 120 days past due; or (ii) the small concern is in bankruptcy, insolvent, or there is substantial doubt about its ability to continue as a going concern.

4. The carrying value of interest-bearing securities shall not be adjusted for changes in interest rates.

5. If substantially all of a significant equity financing is invested by an investor whose objectives are in large part strategic, or if the financing is led by such an investor, it is generally presumed that no more than 50% of the increase in investment price compared to the prior significant equity financing is attributable to an increased valuation of the company.

6. Where a company has been self-financing and has had positive cash flow from operations for at least the past two fiscal years, Asset Value may be increased based on a very conservative financial measure regarding P/E ratios or cash flow multiples, or other appropriate financial measures of similar publicly-traded companies, discounted for illiquidity. Should the chosen valuation cease to be meaningful, the valuation may be restored to a cost basis, or in the event of significant deterioration in performance or potential, to a valuation below cost to reflect impairment.

7. With respect to portfolio companies that are likely to face bankruptcy or discontinue operations for some other reason, liquidating value may be employed. This value may be determined by estimating the realizable value (often through professional appraisals or firm offers to purchase) of all assets and then subtracting all liabilities and all associated liquidation costs.

8. Warrants should be valued at the excess of the value of the underlying security over the exercise price.

D. Equity Securities—Public Companies

1. Public securities should be valued as follows: (a) For over-the-counter stocks, take the average of the bid price at the close for the valuation date and the preceding two days, and (b) for listed stocks, take the average of the close for the valuation date and the preceding two days.

2. The valuation of public securities that are restricted should be discounted appropriately until the securities may be freely traded. Such discounts typically range from 10% to 40%, but the discounts can be more or less, depending upon the resale restrictions under securities laws or contractual agreements.

3. When the number of shares held is substantial in relation to the average daily trading volume, the valuation should be discounted by at least 10%, and generally by more.

IV. Valuation Policy With Supplementary Information

A. General

1. The [Board of Directors] [General Partners] have sole responsibility for determining the Asset Value of each of the Loans and Investments and of the portfolio in the aggregate.

2. Loans and Investments shall be valued individually and in the aggregate [at least semi-annually—as of the end of the second quarter of the fiscal year and as of the end of the fiscal year.] [at least annually—as of the end of the fiscal year.] Fiscal year-end valuations are audited as set forth in 13 CFR Part 107, Appendix III, Section II, paragraph D.

3. This Valuation Policy is intended to provide a consistent, conservative basis for establishing the Asset Value of the portfolio. The Policy presumes that Loans and Investments are acquired with the intent that they are to be held until maturity or disposed of in the ordinary course of business.

B. Interest-Bearing Securities

1. Loans shall be valued in an amount not greater than cost, with Unrealized Depreciation being recognized when value is impaired. The valuation of loans and associated interest receivables on interest-bearing securities should reflect the portfolio concern's current and projected financial condition and operating results, its payment history and its ability to generate sufficient cash flow to make payments when due.

2. When a valuation relies more heavily on asset versus earnings approaches, additional criteria should include the seniority of the debt, the nature of any pledged collateral, the extent to which the security interest is perfected, the net liquidation value of tangible business assets, and the personal integrity and overall financial standing of the owners of the business. In those instances where a loan valuation is based on an analysis of certain collateralized assets of a business or assets outside the business, the valuation should, at a minimum, consider the net liquidation value of the collateral after reasonable selling expenses. Under no circumstances, however, shall a valuation based on the underlying collateral be considered as justification for any type of loan appreciation.

3. Appropriate unrealized depreciation on past due interest which is converted into a security (or added to an existing security) should be recognized when collection is doubtful. Collection is presumed to be in doubt when one or both of the following conditions occur: (i) Interest payments are more than 120 days past due; or (ii) the small concern is in bankruptcy, insolvent, or there is substantial doubt about its ability to continue as a going concern.

a. Licensees may rebut this presumption by providing evidence of collectibility satisfactory to SBA. Such evidence may include the existence of collateral, the value of which has been verified through an appraisal by an independent professional appraiser acceptable to SBA. Such an appraisal shall be at liquidation value (net of liquidation costs) and shall have been performed within the 12 months immediately preceding the valuation date. In considering whether collateral provides an appropriate basis for valuations, SBA will review the Licensee's operating history for evidence concerning its willingness and ability to pursue available remedies (including foreclosure) in default situations.

b. For those Licensees primarily involved in making loans, the use of a loan classification system is strongly encouraged to help manage portfolios and determine Asset Values, with loans that warrant extra attention being flagged by the Licensee's management. Such a "watch list" can also be used to report to the Board of Directors or General Partner(s). For each loan placed on the watch list, a reason or statement should describe the particular situation. Danger signals that should alert the Licensee to potential problems include delinquency, a

lack of profitability, weak or decreasing equity, increasing debt load, a deteriorating cash position, an abnormal increase in accounts payable, inaccurate financial information, insurance cancellation, judgments and tax liens, family problems, loss of employees, collateral problems, slowdown in inventory turnover, poor maintenance of plant and equipment, and heavy reliance on short term debt.

c. Upon careful consideration of all the relevant factors, the Board of Directors or General Partners shall determine which loans require recognition of Unrealized Depreciation. It is a good rule of operation for a Licensee to perform downward valuations earlier rather than later. When the quality of a loan recovers, a higher Asset Value may subsequently be assigned.

4. The carrying value of interest-bearing securities shall not be adjusted for changes in interest rates.

5. The valuation of convertible debt may be adjusted to reflect the value of the underlying equity security net of the conversion price.

a. Accepted methods for valuing convertible debentures generally involve one of two approaches. The first approach views the debenture as a debt obligation. Under this approach, the Licensee should utilize the loan valuation techniques described in this section above. The second approach considers the conversion of all convertible securities of the same class into their common stock equivalent, taking into account dilution, and a subsequent valuation of the Licensee's proportionate equity interest. Valuation of this equity interest should follow the equity valuation techniques described in Paragraph C. of this section.

b. Normally, the reported value is the higher of these two alternatives. However, Licensees should disregard higher equity values and retain lower debt-based valuations if there are circumstances which make conversion undesirable. When equity considerations govern the Asset Value assigned, all underlying factors should be disclosed.

C. Equity Securities—Private Companies

1. Investment cost is presumed to represent value except as indicated elsewhere in these guidelines.

2. Valuation should be reduced if a company's performance and potential have significantly deteriorated. If the factors which led to the reduction in valuation are overcome, the valuation may be restored.

3. The anticipated pricing of a Small Concern's future equity financing should be considered as a basis for recognizing Unrealized Depreciation, but not for Unrealized Appreciation. If it appears likely that equity will be sold in the foreseeable future at a price below the Licensee's current valuation, then that prospective offering price should be weighed in the valuation process.

4. Valuation should be adjusted to a subsequent significant equity financing that includes a meaningful portion of the financing by a sophisticated, unrelated new investor. A subsequent significant equity financing that includes substantially the same group of investors as the prior financing should generally not be the basis for an adjustment in valuation. A financing at a lower price by a sophisticated new investor should cause a reduction in value of prior securities.

5. If substantially all of a significant equity financing is invested by an investor whose objectives are in large part strategic, or if the financing is led by such an investor, it is generally presumed that no more than 50% of the increase in investment price compared to the prior significant equity financing is attributable to an increased valuation of the company.

6. Where a company has been self-financing and has had positive cash flow from operations for at least the past two fiscal years, Asset Value may be increased based on a very conservative financial measure regarding P/E ratios or cash flow multiples, or other appropriate financial measures of similar publicly-traded companies, discounted for illiquidity. Should the chosen valuation cease to be meaningful, the valuation may be restored to a cost basis, or in the event of significant deterioration in performance or potential, to a valuation below cost to reflect impairment.

a. Under these conditions, valuation factors that may be considered include:

(1) The utilization of a multiple of earnings, cash flow, or revenues, which are commensurate with the multiples which the market currently accords to comparable companies in similar businesses and industries, with an appropriate discount for conditions such as illiquidity or a minority position. Care should be taken to use only comparable companies, including not only business similarities but also similarities as to size, financial condition, and earnings outlook. However, in order for comparative market prices to be meaningful, data for a representative sample of similar companies must be available.

(2) Among the more important factors to be considered in a particular case are (i) the nature of the business, (ii) the risk involved, and (iii) the growth, stability or irregularity of earnings and cash flows. A company with a positive earnings trend and a favorable outlook may command a capitalization factor (multiplier) in the marketplace that will result in a stock valuation well above book value. When the gross value of a small concern is computed by applying a capitalization rate to pre-interest, pre-tax earnings, the value of equity securities is derived by subtracting the outstanding debt of the concern from the gross value. While capitalization rates do vary, an appropriate rate can be determined by analyzing rates for comparable companies in the same industry. Investigating similar companies in the same industry or geographic area can be done directly or through published material from sources such as the Value Line, Standard and Poor's, Robert Morris and Associates, or any other of the numerous sources available for comparative industry data.

(3) Another method discounts the present value of estimated future proceeds to a Licensee, including dividend income and sales of securities, using a discount rate that reflects the degree of risk of the equity interest.

(4) One may also utilize the recent sale prices of comparable blocks of the issuer's securities in arm's length transactions.

b. Equity interests or limited partnership interests without the benefit of stock certificates and which generally define a certain percentage of the profits to be allocated to each of the investors based on its relative contributions should be valued in a manner similar to the valuation methods described in this section.

7. With respect to portfolio companies that are likely to face bankruptcy or discontinue operations for some other reason, liquidating value may be employed. This value may be determined by estimating the realizable value (often through professional appraisals or firm offers to purchase) of all assets and then subtracting all liabilities and all associated liquidation costs.

a. Liquidation value will depend on the decreasing value of wasting assets, the costs experienced by the business being liquidated, the expenses borne by the Licensee in order to be able to realize any liquidating value, the elapsed time until such net proceeds can be realized, the ranking of the Licensee's claims relative to other security interests and subordination agreements, and the probability of any ultimate realization of value.

b. Incorporating this approach as a normal step in valuation can provide improved understanding of the downside of an investment.

c. Licensees should recognize unrealized appreciation or depreciation, as appropriate, on Assets Acquired in Liquidation of Loans and Investments. In order to recognize Unrealized Appreciation, asset values must be verified by an appraisal which meets all the conditions specified in the preceding paragraph; *Provided, however,* that if the assets acquired constitute a going concern, such assets may be appraised as a going concern rather than at liquidation value. Unrealized Appreciation may not be recognized if the Licensee does not benefit from such appreciation. For example, an asset acquired through foreclosure should not be carried at a value greater than the defaulted loan balance plus any expenses and penalties to which the Licensee is entitled.

8. Warrants should be valued at the excess of the value of the underlying security over the exercise price.

a. Valuation of debt with detachable warrants can be done similarly to convertible debt by treating the debt and warrants as a unit, or, alternatively, the debt can be valued on its own basis as a debt instrument, and the warrants separately. If the warrants are valued separately, the following factors must be taken into account:

(1) Current value of issued shares.

(2) The differential between the exercise private and the underlying share values if the current share values are higher than the exercise price.

(3) Time until expiration dates are reached or dates of changes in terms of exercise prices.

(4) Number of shares into which the warrants are exercisable on various dates.

(5) Restrictions on sale of the underlying stock.

(6) Restrictions on the transferability of the warrants.

(7) Registration rights for the warrants or the underlying shares.

(8) Financial ability of the Licensee to perform the exercise of its rights or to sell its warrants.

(9) The ultimate desirability, if any, of exercising the rights given by the warrants.

D. Equity Securities—Public Companies

1. Public securities should be valued as follows: (a) For over-the-counter stocks, take the average of the bid price at the close for the valuation date and the preceding two days, and (b) for listed stocks, take the average of the close for the valuation date and the preceding two days.

a. However, securities are not deemed to be freely marketable in those situations where such securities are very thinly or infrequently traded, or may be lacking in truly representative market quotations, or where the market for such securities cannot absorb the quantity of shares which the Licensee and similar investors may want to sell.

b. In such cases, Asset Value must be determined by the Board of Directors or General Partners.

2. The valuation of public securities that are restricted should be discounted appropriately until the securities may be freely traded. Such discounts typically range from 10% to 40%, but the discounts can be more or less, depending upon the resale restrictions under securities laws or contractual agreements.

3. When the number of shares held is substantial in relation to the average daily trading volume, the valuation should be discounted by at least 10%, and generally by more.

Dated: May 19, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–13322 Filed 6–1–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–167–AD; Amendment 39–8923; AD 94–11–07]

Airworthiness Directives; British Aerospace Model BAC 1–11–200 and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1–11–200 and –400 series airplanes, that requires inspection of the landing gear brakes for wear, and replacement of the brakes if the wear limits prescribed in this amendment are not met. This amendment also requires that the specified maximum brake wear limits be incorporated into the FAA-approved maintenance inspection program. This amendment is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes; and the subsequent review of allowable brake wear limits for all transport category airplanes. The actions specified by this AD are intended to prevent the loss of brake effectiveness during a high energy RTO.

EFFECTIVE DATE: July 5, 1994.

ADDRESSES: Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1–11–200 and –400 series airplanes was published in the **Federal Register** on January 27, 1994 (59 FR 3798). That action proposed to require the inspection of certain landing gear brakes for wear, and the replacement of brakes if the wear limits prescribed in the proposal are not met. That action also proposed that the specified maximum brake wear limits be incorporated into the FAA-approved maintenance inspection program.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

Another commenter requests that NOTE 2 of the proposal be clarified. This commenter points out that proposed NOTE 2 states, "* * * Brake units having wear indicators set at 1.06 inch will be considered to be fully worn when either wear indicator pin is 1.0 inch or less above the surface of the carrier. * * *" In effect, this wording permits a total brake wear (from new to fully worn brake) of only 0.06 inch. This clearly is incorrect. This commenter states that a correctly set wear indicator pin protrudes above the surface of the carrier when in normal operation, but will be flush with the surface when the brake is fully worn. Thus, the dimension by which the pin protrudes above the surface of the carrier is the amount of wear still available. Therefore, a wear indicator pin set for the existing limit of 1.06 inch will protrude above the surface of the carrier by 0.06 inch when the new wear limit of 1.00 inch is reached. The FAA concurs and has revised NOTE 2 of the final rule to clarify this point.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 100 Model BAC 1–11–200 and –400 series airplanes of the affected design in the worldwide fleet.

The FAA estimates that 10 Model BAC 1–11–200 series airplanes of U.S. registry and 2 U.S. operators of these airplanes will be affected by this proposed AD. For these airplanes and operators, although the rule requires the incorporation of maximum brake wear limits into the FAA-approved maintenance inspection program, no other specific additional action, inspection, or part replacement costs relative to that requirement is involved; such actions are currently a part of the current maintenance program. However, it is estimated that it will take approximately 1 work hour, at an average labor rate of $55 per work hour, for each operator to incorporate the revision into its FAA-approved maintenance inspection program. Based on these figures, the total cost impact of the requirement to revise the FAA-approved maintenance inspection program on U.S. operators of Model BAC 1–11–200 series airplanes is estimated to be $110, or $55 per operator.

The FAA estimates that 20 Model BAC 1–11–400 series airplanes of U.S. registry and 19 U.S. operators of these airplanes will be affected by this AD. It is estimated that it will take approximately 1 work hour, at an average labor rate of $55 per work hour, for each operator to incorporate the revision into its FAA-approved maintenance inspection program. Based on these figures, the total cost impact of that requirement on U.S. operators of Model BAC 1–11–400 series airplanes is estimated to be $1,045, or $55 per operator.

Additionally, the FAA estimates that for operators of Model BAC 1–11–400 series airplanes, it will take approximately 2 work hours per airplane to shorten the wear pins for replacement brakes, and 8 work hours per airplane to change the brakes, at an average labor rate of $55 per work hour. The cost of required parts to accomplish the change in wear limits for these airplanes (that is, the cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) is estimated to be $912 per airplane. Based on these figures, the total cost impact of these requirements on U.S. operators of Model BAC 1–11–400 series airplanes is estimated to be $29,240, or $1,462 per airplane.

The total cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–11–07 British Aerospace: Amendment 39–8923. Docket 93–NM–167–AD.

Applicability: All Model BAC 1–11–200 and –400 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of brake effectiveness during a high energy rejected takeoff (RTO), accomplish the following:

(a) Within 180 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Inspect main landing gear brakes having the brake part numbers listed below for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within that limit.

BRITISH AEROSPACE MODEL BAC 1–11–200 and –400 SERIES AIRPLANES EQUIPPED WITH BENDIX BRAKES

Airplane model	Brake part No.	Maximum brake wear limit (inch/mm)
BAC 1–11–200	2601225–1	0.75 inch (19.1 mm)
BAC 1–11–400	2601240–1	1.0 inch (25.4 mm)

Note 1: Measuring instructions for Bendix brakes can be found in Revision 4 of the Allied Signal Component Maintenance Manual.

Note 2: Revision 4 of the Allied Signal Component Maintenance Manual specifies a brake wear limit of 1.06 inch for brake part number 2601240–1. That brake wear limit is superseded by the brake wear limit of 1.0 inch specified above for that brake part number. Revision 5 of the Allied Signal Component Maintenance Manual will reflect the revised brake wear limit of 1.0 inch. Brake units having wear indicators set at 1.06 inch will be considered to be fully worn when either wear indicator pin is 0.06 inch or less above the surface of the carrier, provided the wear indicator pin has not been shortened on that brake unit.

Note 3: Each operator should provide a method of identifying modified brakes until Revision 5 of the Allied Signal Component Maintenance Manual has been issued. Revision 5 of the manual will define a method of brake identification and reflect the brake wear limits specified above. A paint scheme similar to that used to differentiate between new and refurbished brakes could be used, for example, if a different color is used.

(2) Incorporate into the FAA-approved maintenance inspection program the maximum brake wear limits specified in paragraph (a)(1) of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on July 5, 1994.

Issued in Renton, Washington, on May 25, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13236 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–AGL–5]

Modification of Class E Airspace; Sault Ste. Marie, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Sault Ste. Marie, Michigan to change the controlled airspace operations from part-time to continuous operation. Controlled airspace to the surface, and a control zone is needed for instrument flight rules (IFR) operations at the Chippewa County International Airport. Currently, at least half of the operations at Chippewa County International Airport are scheduled during the times when the Class E2 airspace is inactive (uncontrolled). The intended effect of this proposal is to provide adequate Class E airspace for IFR operators at Chippewa County International Airport.

EFFECTIVE DATE: 0901 UTC, August 18, 1994.

FOR FURTHER INFORMATION CONTACT:
Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On March 29, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E2 airspace from part-time use to continuous use at Sault Ste. Marie, Michigan. This modification provides adequate controlled airspace to accommodate existing operations at Chippewa County International Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies Class E2 airspace at Sault Ste. Marie, Michigan to provide adequate controlled airspace to accommodate existing operations at Chippewa County International Airport. The modification changes the operations from part-time use to continuous use operations.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

AGL MI E2 Sault Ste. Marie, MI [Revised]

Chippewa County International Airport
(Lat. 46°14'52" N., long. 84°28'15" W.)

Within a 4.4-mile radius of the Chippewa County International Airport.

* * * * *

Issued in Des Plaines, Illinois, on May 19, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–13443 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AGL–4]

Modification of Class E Airspace; Freeport, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace near Freeport, IL, to accommodate a new Nondirectional Beacon (NDB) Runway 06 Standard Instrument Approach Procedure (SIAP) and a new Localizer (LOC) Runway 24 SIAP to Albertus Airport, Freeport, IL. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for Instrument Flight Rules (IFR) operations during portions of the terminal operation and while transiting between the enroute and terminal environments. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 UTC, August 18, 1994.

FOR FURTHER INFORMATION CONTACT:
Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, April 6, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace near Freeport, IL, (59 FR 16153). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies Class E airspace near Freeport, IL, to accommodate a new NDB Runway 06 SIAP and a new LOC Runway 24 SIAP to Albertus Airport, Freeport, IL. This modification increases the Class E airspace area radius from 6.4 miles to 6.5 miles. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain IFR operations during portions of the terminal operation and while transiting between the enroute and terminal environments.

The area will be depicted on aeronautical charts to enable pilots to circumnavigate the area in order to comply with applicable VFR requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AGL IL E5 Freeport, IL [Revised]

Freeport, Albertus Airport, IL
(Lat. 42°14'48" N., long. 89°34'55" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Albertus Airport.

* * * * *

Issued in Des Plaines, Illinois on May 19, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–13444 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AGL–2]

Establishment of Class E Airspace; Savanna, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace near Savanna, IL, to accommodate a new Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME–A) instrument approach procedure to Tri-Township Airport, Savanna, IL. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for Instrument Flight Rules (IFR) operations during portions of the terminal operation and while transiting between the enroute and terminal environments. The area will be depicted on aeronautical charts to enable pilots to circumnavigate the area in order to comply with applicable Visual Flight Rules (VFR) requirements.

EFFECTIVE DATE: 0901 u.t.c., August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, April 6, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace near Savanna, IL (59 FR 16155). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace near Savanna, IL, to accommodate a new VOR/DME–A instrument approach procedure to Tri-Township Airport, Savanna, IL. Controlled airspace extending upward from 700 to 1200 feet AGL is needed for IFR operations during portions of the terminal operation and while transiting between the enroute and terminal environments. The area will be depicted on aeronautical charts to enable pilots to circumnavigate the area in order to comply with applicable VFR requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AGL IL E5 Savanna, IL [New]

Savanna, Tri-Township Airport, IL
(Lat. 42°02'48" N., long. 90°06'34" W.)

That airspace extending upward from 700 feet above the surface within a 6.4 mile radius of the Tri-Township Airport.

* * * * *

Issued in Des Plaines, Illinois, on May 19, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–13447 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27761; Amdt. No. 1603]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPS). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **FEDERAL REGISTER** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. This, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification, and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on May 20, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPS;

§ 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

...Effective Aug 18, 1994

Bowling Green, OH, Wood County, VOR RWY 18, Amdt 12
Bowling Green, OH, Wood County, VOR/DME RNAV RWY 27, Amdt 1
Toledo, OH, Toledo Express, VOR/DME or GPS RWY 34, Amdt 6
Toledo, OH, Toledo Express, NDB or GPS RWY 7, Amdt 24
Toledo, OH, Toledo Express, ILS RWY 7, Amdt 26
Toledo, OH, Toledo Express, ILS RWY 25, Amdt 6
Toledo, OH, Toledo Express, RADAR-1, Amdt 19
Borger, TX, Hutchinson County, VOR RWY 17, Amdt 7
Borger, TX, Hutchinson County, VOR/DME RWY 35, Amdt 2

...Effective July 21, 1994

Blytheville, AR, Blytheville Muni, NDB RWY 36, Amdt 1
Blytheville, AR, Blytheville Muni, NDB RWY 18, Amdt 1
Chino, CA, Chino, VOR-B, Amdt 3
Ballinger, TX, Bruce Field, NDB RWY 35, Amdt 1

...Effective June 23, 1994

West Memphis, AR, West Memphis Muni, VOR/DME-A, Amdt 5
West Memphis, AR, West Memphis Muni, NDB-B, Amdt 2
West Memphis, AR, West Memphis Muni, NDB RWY 17, Amdt 9
West Memphis, AR, West Memphis Muni, ILS RWY 17, Amdt 1
West Memphis, AR, West Memphis Muni, RADAR-1, Amdt 9
Eastport, ME, Eastport Muni, NDB RWY 15, Orig
Eastport, ME, Eastport Muni, NDB RWY 33, Orig
Lee's Summit, MO, Lee's Summit Municipal, VOR-B, Amdt 3
Akron, OH, Akron Fulton Intl, LOC RWY 25, Amdt 13
Akron, OH, Akron Fulton Intl, NDB RWY 25, Amdt 13
Cleveland, OH, Burke Lakefront, LOC RWY 24R, Amdt 10
Cleveland, OH, Burke Lakefront, NDB or GPS RWY 24R, Amdt 1
Altus, OK, Altus Muni, VOR-A, Amdt 4
Altus, OK, Altus Muni, VOR-B, Orig
Myerstown, PA, Decks, VOR/DME-A, Amdt 1

..Effective upon publication

Atlanta, GA, Peachtree City-Falcon Field, LOC BC RWY 13, Amdt 2
Cincinnati, OH, Cincinnati-Blue Ash, NDB RWY 6, Orig
Cincinnati, OH, Cincinnati-Blue Ash, NDB RWY 24, Orig

[FR Doc. 94-13442 Filed 6-1-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 94N-0191]

Food Labeling: Application of Nutrition Labeling, Nutrient Content Claims, and Juice Labeling Requirements to Food Products; Certification

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; notice of legislation and of address for submission of certifications.

SUMMARY: The Food and Drug Administration (FDA) is announcing the address to which a person should submit certifications made pursuant to Pub. L. 103-261. The public law extends the time period for compliance with certain provisions of the Food, Drug, and Cosmetic Act (the act) but makes the extension contingent upon the submission of a certification to FDA. This notice is published in response to the passage of Pub. L. 103-261.

DATES: Certifications must be received before June 15, 1994.

ADDRESSES: Certifications should be sent to the Office of Food Labeling (HFS-150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFS-151), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4561.

SUPPLEMENTARY INFORMATION: President Clinton has signed into law Pub. L. 103-261. This law extends the time period for food products to comply with section 403(q) and 403(r)(2) of the act (21 U.S.C. 343(q) and 343(r)(2)), and with the provision of section 403(i) of the act (21 U.S.C. 343(i)) that was added by section 7(2) of the Nutrition Labeling and Education Act (NLEA) (21 U.S.C. 343), until after August 8, 1994. This delay is contingent, however, on the person who introduces the product, or delivers it for introduction, into interstate commerce submitting before June 15, 1994, a certification to the Secretary of Health and Human Services that such person will comply with Pub. L. 103-261 and with section 403(q) and 403(r)(2) of the act, and the provision of section 403(i) of the act referenced above, after August 8, 1994.

All such certifications should be submitted to: Office of Food Labeling (HFS-150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

The words "NLEA certification" should be placed on the bottom left-hand corner of the envelope containing the certification.

All labels and labeling applied to food after August 8, 1994, must comply with section 403(q) and 403(r)(2) and with the provision of section 403(i) of the act referenced above, as well as the regulations implementing these sections of the act (see 58 FR 44033, August 18, 1993; 58 FR 49190, September 22, 1993; and 59 FR 15049 March 31, 1994).

Dated: May 27, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-13467 Filed 5-27-94; 4:18 pm]

BILLING CODE 4160-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[OH44-1-5936; FRL-4890-2]

Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is deleting all total suspended particulate (TSP) area designations in the State of Ohio. This direct final action was prompted by the Ohio Environmental Protection Agency's request to redesignate all areas in the State, except for Cuyahoga County and a portion of Jefferson County, from TSP nonattainment to attainment. Section 107(d)(4)(B) of the Clean Air Act (CAA) authorizes USEPA to eliminate all area TSP designations once the increments for particulate matter with an aerodynamic diameter less than 10 microns are promulgated. On June 3, 1993 (58 FR 31622), USEPA published the final rulemaking revising the prevention of significant deterioration (PSD) particulate matter increments so that the increments are measured in terms of particulate matter with an aerodynamic diameter less than or equal to 10 microns (respirable particulate matter). The June 3, 1993 final rulemaking also establishes the method by which USEPA deletes such TSP designations. Today's action becomes effective on June 3, 1994, the effective date of the respirable particulate matter increments.

Please note that for this action, the term "respirable particulate matter" only applies to particulate matter with an aerodynamic diameter less than or equal to 10 microns. "Respirable particulate matter" is not to be confused with particulate matter with an aerodynamic diameter less than or equal to 2.5 microns.

EFFECTIVE DATE: This rulemaking will become effective on June 3, 1994.

ADDRESSES: Copies of the State submittal for this action are available for public inspection during normal business hours at the following address: (It is recommended that you telephone Gina Smith at (312) 886-7018 before visiting the Region 5 Office.): U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Gina M. Smith, Air Enforcement Branch, Regulation Development Section, (AE-17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois, 60604, (312) 886-7018.

SUPPLEMENTARY INFORMATION:

Background

In 1971, USEPA promulgated primary and secondary national ambient air quality standards (NAAQS) for particulate matter to be measured as TSP. On July 1, 1987 (52 FR 24634), USEPA revised the NAAQS for particulate matter, replacing the TSP indicator with the respirable particulate matter indicator. The particulate matter standard was revised under the authority of Section 109(d) of the CAA, which requires periodic review and, if appropriate, revision of existing criteria and standards.

In a related rulemaking published in the July 1, 1987, **Federal Register** (52 FR 24672), the Agency determined that the respirable particulate matter standard would be implemented pursuant to section 110 of the CAA. As a result, the area designation process of section 107 and the nonattainment provisions of Part D did not apply to the respirable particulate matter NAAQS. Consequently, TSP designations were retained as a means of differentiating areas needing nonattainment area new source review as opposed to attainment area prevention of significant deterioration review and to provide for attainment area increment tracking.

In the 1990 amendments to the CAA, section 107 established designations of attainment status for respirable particulate matter. In addition, section 107(d)(4)(B) expressly states that any designation for particulate matter (measured in terms of TSP) that the Administrator promulgated prior to enactment of the 1990 Amendments shall remain in effect for purposes of implementing the particulate matter (measured in terms of TSP) increments until the Administrator determines that such designation is no longer necessary for that purpose. Section 166(f) authorizes USEPA to replace the TSP increment with respirable particulate matter increments.

Upon enactment of the Clean Air Act Amendments of 1990, Cuyahoga County and a portion of Jefferson County were designated as nonattainment areas for respirable particulate matter. These two areas, as well as seven other areas within the State, had previously been designated TSP nonattainment areas. Cuyahoga County and a portion of Jefferson County will remain designated as nonattainment areas for respirable particulate matter.

On June 3, 1993 (58 FR 31622), USEPA published the final rulemaking revising the particulate matter increments so that they are measured in terms of respirable particulate matter. As a result of the rulemaking, the PSD increments and NAAQS for particulate matter will be measured by the same indicator. The final rulemaking also establishes the method by which USEPA will delete TSP area designations.

As stated at 58 FR 31635, the deletion of TSP area designations for each State will occur at the same time that USEPA (1) approves a State's revised PSD program containing the respirable particulate matter increments, (2) promulgates the PM-10 increments into a State's SIP when the State chooses not to adopt the increments on their own, or (3) approves a State's request for delegation of PSD responsibility under § 52.21(u). For States already having delegated authority to implement the Federal PSD regulations, the rulemaking states that "USEPA will eliminate the TSP designations when the PM-10 increments become effective under § 52.21 on June 3, 1994."

USEPA has delegated to the State of Ohio the authority to implement the PSD program. The delegation agreement provides for automatic adoption of the revised respirable particulate matter increments once the increment becomes effective. On August 3, 1993 (58 FR 41218), USEPA proposed to approve the State of Ohio's regulations providing for attainment of respirable particulate matter air quality standards in areas that are currently designated nonattainment and unclassifiable for respirable particulate matter.

USEPA interprets section 107(d)(4)(B) of the CAA to allow elimination of all TSP area designations once the respirable particulate matter increments are promulgated. The respirable particulate matter increments will become effective June 3, 1994 and would automatically be delegated for implementation by the State of Ohio. USEPA finds that the promulgation of the respirable particulate matter increments and USEPA's proposed approval of Ohio's respirable particulate matter SIP fulfills the criteria for eliminating TSP area designations altogether.

Although the OEPA requested redesignation of all areas in the State, except Cuyahoga County and Jefferson County, from TSP nonattainment to attainment, USEPA believes that it is administratively more efficient to delete TSP area designations totally since the deletion eliminates the need for two rulemaking proceedings. If USEPA were to redesignate the TSP nonattainment areas at this time, the Agency would then have to promulgate another rulemaking on or after June 3, 1994, when the respirable particulate matter PSD increments become effective.

USEPA is publishing this action without prior proposal because, due to the change from TSP to respirable particulate matter under the particulate matter regulatory scheme, the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective June 3, 1994 unless, within 30 days of its publication, notice is received that adverse critical comments will be submitted.

If such notice of comments is received, this action will be withdrawn before the effective date by publishing two subsequent notices. A notice would be published withdrawing the final action, and another notice would begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on June 3, 1994.

Final Action

USEPA is taking action to delete all TSP area designations in the State of Ohio since the Agency believes it is administratively more efficient than redesignating the TSP nonattainment areas, except for Cuyahoga County and a portion of Jefferson County, to attainment. Deletion of the TSP area delegations at this time eliminates the need for two rulemaking proceedings and has the same effect as redesignating TSP nonattainment areas to attainment. Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future

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request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this action for conformance with the provisions of the Clean Air Act Amendments of 1990 enacted on November 15, 1990 and determined that this action conforms with the statute as amended. The Agency has examined the issue of whether this action should be reviewed only under the provisions of the law as it existed on the date of submittal to the Agency (i.e., prior to November 15, 1990) and has determined that the Agency must apply the new law.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has exempted the regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

USEPA's action under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this action. Moreover, USEPA's action does not impose any new Federal requirements. Therefore, USEPA certifies that this action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 1, 1994. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 22, 1994.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 81 is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Within § 81.336—Ohio, the table entitled "Ohio-TSP" is removed.

[FR Doc. 94–13329 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–30072K; FRL–4780–1]

Tolerance Processing Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The change in fees reflects a 4.23 percent increase in locality pay for civilian Federal General Schedule (GS) employees working in the Washington, DC/Baltimore, MD metropolitan area in 1994.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Concerning this rule contact: By mail: Ken Wetzel, Program Management and Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 700–F, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–305–5128). Concerning tolerance petitions and individual fees: Jim Tompkins (703–308–8780)

SUPPLEMENTARY INFORMATION: The EPA is charged with administration of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerances for raw agricultural commodities. Section 408(o) requires that the Agency collect fees as will, in the aggregate, be sufficient to cover the costs of processing petitions for pesticide products, i.e., that the tolerance process be as self-supporting as possible.

The current fee schedule for tolerance petitions (40 CFR 180.33) was published in the **Federal Register** on March 24, 1993 (58 FR 16094) and became effective on April 23, 1993. At that time the fees were increased 3.7 percent in accordance with a provision in the regulation that provides for automatic annual adjustments to the fees based on annual percentage changes in Federal salaries. The specific language in the regulation is contained in paragraph (o) of §180.33 and reads in part as follows:

> (o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale* * *. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective thirty days or more after publication, as specified in the rule.

The Federal Employees Pay Comparability Act of 1990 (FEPCA) initiated locality-based comparability pay, known as "locality pay." The intent of the legislation is to make Federal pay more responsive to local labor market conditions by adjusting General Schedule salaries on the basis of a comparison with non-Federal rates on a geographic, locality basis.

The processing and review of tolerance petitions is conducted by EPA employees working in the Washington, DC/Baltimore, MD pay area. The pay raise in 1994 for Federal General Schedule employees working in the Washington, DC/Baltimore, MD metropolitan pay area is 4.23 percent; therefore, the tolerance petition fees are being increased 4.23 percent. The entire fee schedule, §180.33, is presented for

the reader's convenience. (All fees have been rounded to the nearest $25.00.)

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements

Dated: May 23, 1994.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.33 is revised to read as follows:

§180.33 Fees.

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established, shall be accompanied by a fee of $58,550, plus $1,450 for each raw agricultural commodity more than nine on which the establishment of a tolerance is requested, except as provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of $13,400 plus $900 for each raw agricultural commodity on which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of $10,800.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of $23,400 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of $3,325.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of $11,675 plus $900 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of $7,325. Such fee is not required when, in connection with the change sought under this paragraph, a petition or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less $1,450 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less $1,450 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

(h) Each petition or request for a crop group tolerance, regardless of the number of raw agricultural commodities involved, shall be accompanied by a fee equal to the fee required by the analogous category for a single tolerance that is not a crop group tolerance, i.e., paragraphs (a) through (f) of this section, without a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of $2,925.

(j)(1) In the event of a referral of a petition or proposal under this section to an advisory committee, the costs shall be borne by the person who requests the referral of the data to the advisory committee.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 180.11(c) and the expenses of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of $29,225 to cover the costs of the advisory committee. Further advance deposits of $29,225 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(k) The person who files a petition for judicial review of an order under section 408(d)(5) or (e) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition for judicial review.

(l) No fee under this section will be imposed on the Inter-Regional Research Project Number 4 (IR–4 Program).

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (7505C), Washington, DC 20460. A fee of $1,450 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(n) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled "Tolerance Petition Fees" and should be accompanied only by a copy of the letter or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded within 30 days of payment to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division, (7504C) Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the

new fee schedule will be published in the **Federal Register** as a Final Rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

[FR Doc. 94–13431 Filed 6–1–94; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 260

[FRL–4889–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Wastes From Wood Surface Protection; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This notice contains corrections to the final regulation (FRL–4804–9) which was published Tuesday, January 4, 1994 ("Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Wastes from Wood Surface Protection; Final Rule", 59 FR 458). This notice corrects inaccurate references in that Final Rule to the EPA Publication SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods".

EFFECTIVE DATE: June 2, 1994.

FOR FURTHER INFORMATION CONTACT: Kim Kirkland at (202) 260–4761, Office of Solid Waste (Mailcode 5304), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction (January 4, 1994, 59 FR 458) amended the hazardous waste regulations by adding the sodium and potassium salts of pentachlorophenol and tetrachlorophenol to appendix VIII of 40 CFR part 261. The final regulations also amended EPA Publication SW–846, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," by adding Method 4010 to the Third Edition of SW–846 as Update IIA. SW–846 contains the analytical and test methods that EPA has evaluated and found to be among those acceptable for testing under Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. The Agency added Method 4010 to SW–846 as an appropriate method, in general, for testing for the presence of the sodium and potassium salts of pentachlorophenol and tetrachlorophenol which, as noted above, were added by the final rule to appendix VIII of 40 CFR part 261.

In the final regulation of January 4, 1994 (59 FR 458), the Agency amended 40 CFR 260.11(a) to incorporate by reference both Update IIA (Method 4010) and Update II of SW–846; and to indicate that these updates are available from the U.S. Government Printing Office (GPO). These amendments to 40 CFR 260.11 contain two technical errors: (1) Update II of SW–846 is still being developed by EPA and was not promulgated by the final regulations of January 4, 1994, or by any other regulation to date, and is not available from GPO; and (2) Update IIA (Method 4010), although promulgated by the January 4, 1994 rule, is also not available from the GPO.

Need for Correction

As published, the final regulations of January 4, 1994 were in advertent error with respect to the incorporation by reference of Update II of SW–846, Third Edition, into the hazardous waste regulations at 40 CFR 260.11(a): The regulations were also in inadvertent error with respect to the availability of Updates II and IIA from the U.S. Government Printing Office. These errors, therefore, need correction. Because this action is a technical correction, prior notice and opportunity for comment is unnecessary, and good cause exists for this change to take effect immediately (see 5 U.S.C. 553(6)). Accordingly, the Agency is not seeking any comments based on today's notice.

Correction of Publication

Accordingly, the publication on January 4, 1994 of the final regulation, 59 FR 458, "Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Wastes from Wood Surface Protection; Final Rule" (FRL–4804–9), which was the subject of FR Doc. 93–32032, is corrected. Specifically, on page 468, in the third column, § 260.11(a) is corrected to read as follows:

§ 260.11 References [corrected].

(a) * * *

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846 [Third Edition (November, 1986), as amended by Updates I and IIA]. The Third Edition of SW–846 and Update I (document number 955–001–00000–1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238; and Update IIA is available from the Office of Solid Waste (Mailcode 5304), U.S. EPA, 401 M Street, SW., Washington, DC 20460 or by calling the Methods Information Communication Exchange (MICE) Service at (703) 821–4789. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

* * * * *

Dated: May 17, 1994.

Elliott P. Laws,

Assistant Administrator.

[FR Doc. 94–13190 Filed 6–1–94; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base (100-year) flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base (100-year) flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base (100-year) flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: Alameda (FEMA Docket No. 7081).	City of San Leandro	December 3, 1993, December 10, 1993, The Daily Review.	The Honorable John Faria, mayor, city of San Leandro, 835 East 14th Street, San Leandro, California 94577.	November 19, 1993.	060013
Hawaii: Maui (FEMA Docket No. 7081).	Unincorporated areas.	December 10, 1993, December 12, 1993, The Maui News.	The Honorable Linda Crockett Lingle, mayor, county of Maui, 200 South High Street, Wailuku Maui, Hawaii 96793.	November 22, 1993	150003

(Catalog of Federal Domestic Assistance No 83.100, "Flood Insurance")

Dated: May 24, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–13395 Filed 6–1–94; 8:45 am]
BILLING CODE 6718–03–P

44 CFR Part 65

[Docket No. FEMA–7094]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community

where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community no.
Arizona: Pima	Unincorporated areas.	March 18, 1994, March 25, 1994, The Daily Territorial.	The Honorable Edwin Moore, Chairman, Pima County Board of Supervisors, 130 West Congress Street, Tucson, Arizona 85701.	February 14, 1994.	040073
Arizona: Pima	City of Tucson	March 18, 1994, March 25, 1994, The Daily Territorial.	The Honorable George Miller, mayor, city of Tucson, P.O. Box 27210, Tucson, Arizona 85726–7210.	February 14, 1994.	040076
Arizona: Santa Cruz	City of Nogales	May 5, 1994, May 12, 1994, Nogales Daily Herald.	The Honorable Jose Canchola, mayor, city of Nogales, 777 North Grand Avenue, Nogales, Arizona 85621.	March 17, 1994.	040091
California: Riverside	City of Temecula	April 22, 1994, April 29, 1994, The Californian.	The Honorable Ron Roberts, mayor, city of Temecula, 43174 Business Park Drive, Temecula, California 92590.	March 29, 1994.	060742
California: Solano	City of Vacaville	June 23, 1994, June 30, 1994, Vacaville Reporter.	The Honorable David Fleming, mayor, city of Vacaville, City Hall, 650 Merchant Street, Vacaville, California 95688.	March 11, 1994.	060373
Colorado: Adams	City of Aurora	May 25, 1994, June 1, 1994, The Aurora Sentinel.	The Honorable Paul Tauer, mayor, city of Aurora, 1470 South Havana Street, 8th Floor, Aurora, Colorado 80012–4090.	March 21, 1994.	080002
Colorado: Denver	City and county of Denver.	April 19, 1994, April 26, 1994, Daily Journal.	The Honorable Wellington E. Webb, mayor, city and county of Denver, 1437 Banock Street, room 350, Denver, Colorado 80202.	April 8, 1994	080046
Texas: Dallas, Denton, and Collin.	City of Carrollton	April 14, 1994, April 21, 1994, Metrocrest News.	The Honorable Milburn Gravley, mayor, city of Carrollton, P.O. Box 110535, Carrollton, Texas 75011–0535.	March 24, 1994.	480167
Texas: Dallas	City of Dallas	March 24, 1994, March 31, 1994, The Dallas Morning News.	The Honorable Steve Bartlett, mayor, city of Dallas, City Hall SE North, 1500 Madrilla, Dallas, Texas 75201.	March 1, 1994.	480171
Texas: Fort Bend	Unincorporated areas.	March 16, 1994, March 23, 1994, Fort Bend Star.	The Honorable Roy Cordes, Jr., Fort Bend County Judge, 309 South Fourth Street, Richmond, Texas 77469.	February 24, 1994.	480228

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community no.
Texas: Collin	City of Frisco	March 24, 1994, March 31, 1994, Frisco Enterprise.	The Honorable Robert Warren, mayor, city of Frisco, P.O. Drawer 1100, Frisco, Texas 75034.	January 7, 1994.	480134
Texas: Tarrant	City of North Richland Hills.	March 3, 1994, March 10, 1994, The Mid-Cities News.	The Honorable Tommy Brown, mayor, city of North Richland Hills, 7301 North East Loop 820, North Richland Hills, Texas 76180.	January 18, 1994.	480607
Texas: Parker	Unincorporated areas.	March 24, 1994, March 31, 1994, The Weatherford Democrat.	The Honorable Ben Long, Parker County Judge, P.O. Box 819, Weatherford, Texas 76086.	March 2, 1994.	480520
Texas: Collin	City of Plano	March 4, 1994, March 11, 1994, The Dallas Morning News.	The Honorable James N. Muns, mayor, city of Plano, P.O. Box 860358, Plano, Texas 75986–0358.	February 16, 1994.	480140
Texas: Bexar	City of San Antonio	March 18, 1994, March 25, 1994, San Antonio Express News.	The Honorable Nelson W. Wolff, mayor, city of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	February 2, 1994.	480045
Texas: Fort Bend	City of Stafford	March 16, 1994, March 23, 1994, Fort Bend Star.	The Honorable Leonard Scarcella, mayor, city of Stafford, 2610 South Main, Stafford, Texas 77477.	February 24, 1994.	480233
Texas: Smith County	City of Tyler	March 8, 1994, March 25, 1994, The Tyler Morning Telegram.	The Honorable Smith T. Reynolds, Jr., mayor, city of Tyler, P.O. Box 2039, Tyler, Texas 75710.	February 24, 1994.	480571
Texas: Parker	City of Weatherford	March 24, 1994, March 31, 1994, The Weather-ford Democrat.	The Honorable Sherri Watson, mayor, city of Weatherford, P.O. Box 255, Weatherford, Texas 76086.	March 2, 1994.	480522

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 24, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–13396 Filed 6–1–94; 8:45 am]

BILLING CODE 6718–03–P

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 1601, 1602, 1609, 1615, 1632, 1642, 1646, and 1652

RIN 3206–AE67

Federal Employees Health Benefits Acquisition Regulation; Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: On March 30, 1994, the Office of Personnel Management (OPM) published a final rule that amended certain provisions of the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). The regulations were effective immediately upon publication and OPM intended that they would apply for the first time to the 1995 FEHB contract (rate) year. Upon publication, we found two references in the Supplementary Information Section with regard to the effective date that we believe will be confusing to FEHB carriers. We are publishing the following corrections to clarify our intent and eliminate the ambiguity.

In the **SUPPLEMENTARY INFORMATION** section beginning on 59 FR 14761, in the issue of Wednesday, March 30, 1994, make the following corrections:

(1) On page 14762, in the 2nd column, the first full paragraph, in the fifth line, "1994" should read "1995."

(2) On page 14763, in the 1st column, the first full paragraph, last sentence should read, "These regulations will be in effect beginning with the 1995 rate year."

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–13320 Filed 6–1–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 178 and 179

[Docket No. HM–166Z; Amdt. Nos. 171–125, 172–134, 173–237, 174–76, 178–102, 179–48]

RIN 2137–AC46

Transportation of Hazardous Materials; Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule incorporates into the Hazardous Materials Regulations (HMR) a number of changes based on rulemaking petitions from industry and RSPA initiative. These changes are necessary to recognize recent editions of certain matter incorporated by reference, to eliminate certain inconsistencies and typographical errors, and to reinstate a shipping description. The intended effect of these regulatory changes is to improve clarity and, consequently, reduce confusion.

DATES: Effective: July 5, 1994.

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Compliance date: Compliance with the regulations, as amended herein, is authorized immediately.

Incorporation by reference: The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Office of the Federal Register as of July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: This final rule makes changes to the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) based on either requests from industry or agency initiative. These changes clarify and correct certain inconsistencies appearing in the HMR, add a specific shipping description currently authorized by approval, and update certain standards incorporated by reference under § 171.7. These changes impose no new requirements on persons subject to the HMR and do not adversely affect safety.

The following is a discussion of the changes made under this final rule.

Section 171.7

RSPA received several requests to update various standards currently incorporated by reference in the table contained in § 171.7(a)(3). These standards are as follows:

The Oak Ridge Institute for Science and Education requested RSPA to incorporate into the HMR the latest American National Standards Institute, Inc. (ANSI) pamphlet, ANSI N14.1–1990, entitled "Uranium Hexafluoride—Packaging for Transport." Incorporating the 1990 edition of the standard into the HMR will enhance uranium hexafluoride transportation safety by recognizing the use of packagings fabricated to certain updated industrial specifications and standards. The 1990 standard also contains specific information on the reuse of valves and various editorial clarifications. Section 173.420 of the HMR permits uranium hexafluoride to be transported in packagings designed, fabricated, inspected, tested and marked in accordance with certain DOT and industry standards that include packagings fabricated to the ANSI N14.1 (1987, 1982, or 1971 edition) in effect at the time the packaging was manufactured. This section also provides that, before initial filling and during periodic inspection and test, the packagings must be cleaned in accordance with the ANSI N14.1 requirements.

The American Pyrotechnic Association (APA) petitioned (P–1174) to update APA Standard 87–1, entitled "Standard for Construction and Approval for Transportation of Fireworks and Novelties," from the September 1987 edition to the April 1993 edition. APA Standard 87–1 contains procedures for construction and approval for transportation of new fireworks and novelty items. In the revised standard, the shipping descriptions, hazard classes, and section references are consistent with the current HMR. The revised standard also has been expanded to offer guidance on conducting the fireworks stability test, and to address packaging requirements, EX-number markings, and transitional provisions.

The Association of American Railroads (AAR) petitioned (P–1193) to update "AAR Manual of Standards and Recommended Practices, Section C—Part III, Specification for Tank Cars, Specification M–1002," from the 1988 edition to the September 1, 1992 edition. The revised AAR publication contains updated discussions of matters such as repair of cracks, weld overlay, inspection of rubber-lined tank cars, and the renewal of approvals for valves and fittings.

The Compressed Gas Association (CGA) petitioned (P–1196) to update CGA Pamphlet C–7, entitled "A Guide for the Preparation of Precautionary Markings for Compressed Gas Containers, appendix A," from the April 15, 1983 edition to the 1992 (sixth) edition. In the 1992 edition, revisions have been made to the shipping descriptions for consistency with the current HMR.

The Institute of Makers of Explosives (IME) petitioned (P–1171) to update IME Safety Library Publication 22 (IME Standard 22) entitled "Recommendation for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials," from the January 1, 1985 edition to the May 1993 edition. This standard contains information relative to the use and construction of IME–22 containers or compartments for the transport of certain detonators. Section 173.63 authorizes the use of these containers and compartments for packaging detonators and § 177.835(g) authorizes the transportation of these packages on the same transport vehicle with other explosives. The IME standard is used extensively by safety personnel in the commercial explosives industry for training purposes and by users of explosives. In the revised standard, the shipping descriptions, hazard classes, and section references have been revised for consistency with recent changes to the HMR.

RSPA has reviewed these updated standards. RSPA found no provisions that would impose additional requirements and agrees that they should be incorporated by reference.

With regard to the AAR standards referenced in § 171.7, the table contains separate entries for "AAR Specification for Tank Cars, Specification M–1002, 1988" and "AAR Specification for Tank Cars, Specification M–1002, Section C—Part III, September 1988," which are the same standard. The first entry is removed, and the second entry is revised to clarify that this standard is contained in the AAR Manual of Standards of Recommended Practices. These changes were proposed under a separate rulemaking action [Docket HM–197; May 7, 1993; 58 FR 27257] and were supported by commenters. They are merely finalized under this docket.

Sections 172.101 and 172.102

IME and several explosives companies jointly petitioned (P–1143) to amend the Hazardous Materials Table (the Table) in § 172.101 to reinstate an entry for "Ammonium nitrate fertilizer, UN2067." This shipping description was one of six entries for ammonium nitrate fertilizers removed from the Table under a revised final rule issued December 20, 1991 [Docket HM–181; 56 FR 66124]. Although these descriptions are contained in the United Nations' Recommendations on the Transport of Dangerous Goods (UN Recommendations), they were removed because RSPA found them confusing and difficult to use. However, petitioners assert that this shipping description, "Ammonium nitrate fertilizer, UN2067," has been used widely for many years and the domestic industry has relied upon the "Definition and Test Procedures for Ammonium Nitrate Fertilizer," published by The Fertilizer Institute, to ensure the stability of their material. Petitioners stated that their vehicle placards, shipping papers, and industry training procedures, including emergency response training, rely on the identification number "2067." They asserted that it would be a questionable expenditure of time and money for them to convert their placards, documents and training procedures to show a different identification number. RSPA agrees with the petitioners that adequate justification exists for reauthorizing the description "Ammonium nitrate fertilizer, UN2067." RSPA issued an approval (CA 93–10006) authorizing use of the description "Ammonium nitrate fertilizer, UN2067" not meeting Class 1 (explosive) criteria. Therefore, in this final rule, "Ammonium nitrate fertilizer, 5.1, UN2067, III" is added to the Table, subject to Special Provision 23. RSPA is also adding Special Provision 23 in § 172.102(c)(1) stipulating that material shipped or transported under this description may not meet Class 1 (explosive) criteria.

Amalgamet Canada petitioned (P–1171) to amend the entry "Titanium Tetrachloride" in the Table by removing Special Provision N41, which does not allow any packaging material to be made of metal construction. RSPA agrees that removal of N41 would eliminate an inconsistency with Special Provisions B32 and T45, which allow the use of certain containers made of stainless steel.

RSPA is amending Special Provision B13 to extend the September 1, 1993 date for construction of cargo tanks that are equivalent to MC 306 cargo tank specifications until August 31, 1995. This change is consistent with a final rule authorizing the continued construction of MC 306 cargo tanks until August 31, 1995 [Docket HM–183, January 12, 1994; 59 FR 1784].

Section 173.34

Paragraph (e)(15)(i) was revised under Docket HM–166X [58 FR 50496; September 27, 1993] to allow DOT 3A and 3AA cylinders over 35 years old to be retested every 10 years rather than every five years, provided they were manufactured after December 31, 1945. However, § 173.34(e)(15)(v) continues to allow only cylinders less then 35 years old to be stamped with a five-point star showing that these cylinders may be tested every 10 years. Therefore, in this final rule, § 173.34(e)(15)(v) is revised, for consistency with paragraph (e)(15)(i), to permit cylinders manufactured after December 31, 1945, to be stamped with a five-point star. Also, because cylinders manufactured on or before December 31, 1945, do not qualify for a ten-year retest period under these provisions, the wording of paragraph (e)(15)(i) has been simplified.

Paragraph (e)(17) requires DOT 8 and 8AL acetylene cylinders to be requalified, on a phase-in basis, in accordance with CGA Pamphlet C–13. Because many acetylene cylinder owners voluntarily complied with CGA Pamphlet C–13 prior to issuance of the final rule, RSPA granted an exception, in paragraph (e)(17)(ii), for all cylinders requalified and marked in accordance with the CGA pamphlet before January 15, 1993. The time required for RSPA to implement the registration procedures for acetylene cylinder retesters resulted in a backlog of requests. To alleviate unnecessary burdens to industry, RSPA has allowed retesters to continue requalifying and marking the cylinders in accordance with CGA Pamphlet C–13. Accordingly, the date in paragraph (e)(17)(ii) is revised to reflect an extension to October 1, 1994.

Section 173.225

In paragraph (b), in Note 9 following the "Organic Peroxides Table," the reference to "§ 173.225(e)(3)(v)" is corrected to read "§ 173.225(e)(3)(ii)."

Section 173.247

In revisions to a final rule concerning the transport of elevated temperature materials [Docket HM–198A; 58 FR 3344; January 8, 1993], RSPA revised the bulk packaging requirements for the transport of asphalt by highway in § 173.247. In paragraph (g)(1)(iii)(B), to ensure that a reclosing pressure relief device is not rendered inoperable by viscous lading, RSPA allowed an opening with a maximum three-inch nominal pipe diameter. The maximum effective area of the opening was incorrectly given as 46 cm^2 (7.1 in^2). The correct maximum effective area is 48 cm^2 (7.4 in^2). This final rule corrects this error.

Sections 173.302 and 173.304

Sections 173.302(h) and 173.304(g) provide that mixtures meeting Division 2.3, Hazard Zone A, must conform to § 173.40. These provisions are revised to clarify that § 173.40 applies to a pure gas, as well as a gas mixture, meeting Division 2.3, Hazard A.

Section 173.306

In a final rule published on December 20, 1991 [Docket HM–181; 56 FR 66124], RSPA revised the limited quantity provisions in § 173.306(b)(3) to include Division 6.1 Packing Group III materials. Through an oversight, a similar revision was not made to the aerosol provisions contained in paragraph (a)(3). Therefore, in this final rule, RSPA is amending paragraph (a)(3) by adding the phrase "(other than a Division 6.1 Packing Group III material)."

Section 173.420

In paragraph (a)(2)(i), the 1990 revision of ANSI N14.1 is added to the earlier editions of ANSI N14.1 cited in this paragraph. Also, in paragraph (b), the reference to ANSI Standard N14.1–1987 is updated to 1990. These changes are made for consistency with the incorporation by reference of the 1990 edition of this standard under this final rule.

Section 174.25

The example provided in paragraph (c) is revised by adding the wording "PG II" to reflect a complete basic description, as stated in the sentence preceding the example.

Section 178.503

The 17th Session of the UN Committee of Experts on the Transportation of Dangerous Goods adopted amendments for incorporation in the eighth revised edition of the UN Recommendations. One amendment provides that UN markings on certain steel drums must include the thickness of the packaging material to the nearest tenth of a millimeter; however, the amendment does not require the marking to contain a unit of measurement (i.e., "mm"). Section 178.503(a)(9) states that the marking must include the "mm" abbreviation for millimeters as part of the thickness marking for metal and plastic drums and jerricans intended for reuse or reconditioning as single packagings o the outer packagings of composite packagings. For consistency with the eighth revised edition of the UN Recommendations, paragraph (a)(9) is revised to clarify that the marked thicknesses must be shown to the nearest tenth of a millimeter and to reflect that the "mm" abbreviation is not required. Recognizing that some manufacturers may choose to include the "mm" abbreviation or may already be including the "mm" in drums markings, the provision allows marking of the "mm" symbol on a permissive basis. Corresponding minor editorial changes are made to the UN marking examples shown in paragraphs (d)(2)(ii) and (d)(3).

Section 178.505

In § 178.505, a typographical error is corrected in the last sentence of paragraph (b)(1) by changing the reference from "§ 178.503(a)(10)" to "§ 178.503(a)(9)."

Section 178.506

In § 178.506, a typographical error is corrected in the last sentence of paragraph (b)(1) by changing the reference from "§ 178.503(a)(10)" to "§ 178.503(a)(9)."

Section 178.509

In § 178.509, a typographical error is corrected in the last sentence of paragraph (b)(4) by changing the reference from "§ 178.503(a)(10)" to "§ 178.503(a)(9)."

Section 178.511

In § 178.511, a typographical error is corrected in the last sentence of paragraph (b)(1) by changing the reference from "§ 178.503(a)(10)" to "§ 178.503(a)(9)."

Section 178.601

In § 178.601, a typographical error is corrected in the first sentence of paragraph (g)(7) by changing the reference from "§ 178.601 (g)(1) and (g)(2)" to "§ 178.601 (g)(1) through (g)(6)."

Section 178.605

In § 178.605, a typographical error is corrected in the last sentence of paragraph (b) by changing the reference from the "Associate Administrator of Hazardous Materials Safety" to

"Associate Administrator for Hazardous Materials Safety."

Section 178.606

In § 178.606, a typographical error is corrected in the third sentence of paragraph (b) by changing the reference from the "Associate Administrator of Hazardous Materials Safety" to "Associate Administrator for Hazardous Materials Safety."

Section 179.105–7

In § 179.105–7, in paragraph (b), the reference to the 1976 edition of the AAR Specifications for Tank Cars is updated to reference the September 1, 1992 edition.

This final rule will facilitate compliance with the HMR by correcting errors, clarifying provisions and updating obsolete matter incorporated by reference. All of the changes are noncontroversial. With regard to matter incorporated by reference, there is a need to update IME Standard 22 as quickly as possible to avoid misunderstandings that can adversely affect the safe transportation of detonators. Other provisions of this rule provide minor relief from regulatory provisions which will have an immediate benefit to the affected entities. For these reasons, RSPA has determined that public notice and comment procedures, prior to adoption of this final rule, are not required under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The impacts of the changes are so minimal that a regulatory evaluation is unnecessary.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"). The Hazardous Materials Transportation Act contains express preemption provisions (49 App. U.S.C. 1811) that preempt a non-Federal requirement if (1) compliance with both the non-Federal and the Federal requirement is not possible; (2) the non-Federal requirement creates an obstacle to accomplishment of the Federal law or regulations; or (3) it is preempted under 49 App. U.S.C. 1804(a)(4), concerning certain covered subjects, or 49 App. U.S.C. 1804(b), concerning highway routing. Covered subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

49 App. U.S.C. 1804(a)(4)(A) and (B).

This rule concerns the description and handling of hazardous materials. This rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above. The HMTA (49 App. U.S.C. 1804(a)(5)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for the requirements in this rule concerning covered subjects is October 1, 1994. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule relaxes certain provisions that apply to hazardous materials shippers, carriers and packaging manufacturers, some of whom are small entities. This final rule should result in minor cost savings to affected entities. It also reduces confusion by incorporating by reference the latest editions of certain standards that have been revised for consistency with the current HMR.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packagings and containers, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, Title 49, chapter I, subchapter C of the Code of Federal Regulations, is amended as set forth below:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1815 and 1818; 49 CFR part 1.

§ 171.7 [Amended]

2. In § 171.7, in the table in paragraph (a)(3), the following changes are made:

a. Under "American National Standards Institute, Inc.," in column 1, the entry "ANSI N14.1 Standard for Packaging of Uranium Hexafluoride for Transport, 1971, 1982 and 1987 Editions." is revised to read "ANSI N14.1 Standard for Packaging of Uranium Hexafluoride for Transport, 1971, 1982, 1987 and 1990 Editions.".

b. Under "American Pyrotechnics Association (APA)," in column 1, the entry "APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks and Novelties, September 1987 Edition." is revised to read "APA Standard 87–1, Standard for Construction and Approval for Transportation of Fireworks and Novelties, April 1993 Edition.".

c. Under "Association of American Railroads," in column 1, the entry "AAR Specification for Tank Cars, Specification M–1002, 1988" is removed and, in Column 2, the entry "173.31; 179.100" is removed.

d. Under "Association of American Railroads," in column 1, the entry "AAR Specification for Tank Cars, Specification M–1002, Section C—Part III, September 1988" is removed and the entry "179.6; 179.12; 179.100; 179.101; 179.102; 179.103; 179.105; 179.200; 179.201; 179.220; 179.300; 179.400" is removed from column 2.

e. Under "Association of American Railroads," the entry "AAR Manual of Standards and Recommended Practices, Section C—Part III, Specification for Tank Cars, Specification M–1002, September, 1992. . . . . .173.31; 179.6; 179.12; 179.100; 179.101; 179.102; 179.103; 179.105; 179.200; 179.201; 179.220; 179.300; 179.400" is added.

f. Under "Compressed Gas Association, Inc," in column 1, the entry "CGA Pamphlet C–7, A Guide for the Preparation of Precautionary Markings for Compressed Gas Containers, appendix A, issued April 15, 1983." is revised to read "CGA Pamphlet C–7, A Guide for the Preparation of Precautionary Markings for Compressed Gas Containers, appendix A, issued 1992 (6th Edition)."

g. Under "Institute of Makers of Explosives," in column 1, the entry "IME Safety Library Publication No. 22 (IME Standard 22), Recommendation for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials, January 1, 1985." is revised to read "IME Safety Library Publication No. 22 (IME Standard 22), Recommendation for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials, May 1993.".

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808, 49 CFR part 1, unless otherwise noted.

4. In § 172.101, in the Hazardous Materials Table, the following entries are revised or added in appropriate alphabetical sequence:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	Packing group	Label(s) required (if not excepted)	Special provisions	(8) Packaging authorizations (§ 173.* * *)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[ADD].												
	Ammonium nitrate fertilizers, uniform non-segregating mixtures of ammonium nitrate with added matter which is inorganic and chemically inert towards ammonium nitrate, with not less than 90% ammonium nitrate and not more than 0.2% combustible material (including organic material calculated as carbon), or with more than 70% but less than 90% ammonium nitrate and not more than 0.4% total combustible material.	5.1	UN2067	III	Oxidizer	23	152	213	240	25 kg	100 kg	B	48, 53, 60, 117.
	[REVISE].												
	Titanium tetrachloride	8	UN1838	II	Corrosive, poison.	2, A3, A6, B7, B9, B14, B32, B41, B74, B77, T38, T43, T45.	None	227	244	Forbidden	30L	C	8, 40.

5. In § 172.102, in paragraph (c)(1), Special Provision 23 is added to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

23 Ammonium nitrate fertilizer may not meet the definition and criteria of Class 1 (explosive) material (see § 173.50 of this subchapter).

* * * * *

§ 172.102 [Amended]

6. In addition, in § 172.102, in paragraph (c)(3), Special Provision B13 is amended in the introductory text by removing the wording "September 1, 1993" and adding in its place, the wording "August 31, 1995".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

7. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

8. In § 173.34, paragraph (e)(15)(i) and the first sentence in paragraph (e)(15)(v), are revised to read as follows:

§ 173.34 Qualification, maintenance and use of cylinders.

* * * * *

(e) * * *

(15) * * *

(i) The cylinder was manufactured after December 31, 1945.

* * * * *

(v) Each cylinder is stamped with a five-point star at least one-fourth of an inch high following the test date. * * *

* * * * *

9. In addition, in § 173.34, the first sentence in paragraph (e)(17)(ii), the date "January 15, 1993" is revised to read "October 1, 1994".

§ 173.225 [Amended]

10. In § 173.225, in paragraph (b), in Note 9 following the "Organic Peroxides Table," the reference "173.225(e)(3)(v)" is revised to read "173.225(e)(3)(ii)".

11. In § 173.247, paragraph (g)(1)(iii)(B) is revised to read as follows:

§ 173.247 Bulk packaging for certain elevated temperature materials (Class 9) and certain flammable elevated temperature materials (Class 3).

* * * * *

(g) * * *

(1) * * *

(iii) * * *

(B) For transportation of asphalt by highway, a safety relief device incorporating a frangible disc or a permanent opening, each having a maximum effective area of 48 cm^2 (7.4 in^2); or

* * * * *

§ 173.302 [Amended]

12. In § 173.302, in paragraph (h), the wording "poison gases and poison gas" is added immediately after "containing" and before "mixtures".

§ 173.304 [Amended]

13. In § 173.304, in paragraph (g), the wording "poison gases and poison gas" is added immediately after "containing" and before "mixtures".

§ 173.306 [Amended]

14. In § 173.306, paragraph (a)(3) introductory text is amended by adding the phrase "(other than a Division 6.1 Packing Group III material)" between the words "nonpoisonous" and "liquid" in the first sentence.

§ 173.420 [Amended]

15. In § 173.420, the following changes are made:

a. In paragraph (a)(2)(i), the year "1990," is added before the wording "1987, 1982 or 1971" within the parentheses.

b. In paragraph (b) "American National Standard N14.1–1987" is revised to read "American National Standard N14.1–1990".

PART 174—CARRIAGE BY RAIL

15a. The authority citation for part 174 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e), 1.53, App. A to part 1.

§ 174.25 [Amended]

16. In § 174.25, paragraph (c), in the penultimate sentence, the wording "UN 1255" in the example is revised to read "UN 1255, PG II".

PART 178—SPECIFICATIONS FOR PACKAGINGS

17. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1.

18. In § 178.503, paragraph (a)(9) is revised to read as follows:

§ 178.503 Marking of packagings.

(a) * * *

(9) For metal or plastic drums or jerricans intended for reuse or reconditioning as single packagings or the outer packagings of a composite packaging intended for reuse or reconditioning, the minimum thickness of the packaging material expressed in millimeters. Thicknesses must be marked to the nearest tenth of a millimeter. The thickness expressed in millimeters may be indicated by the abbreviation "mm". Where a drum is constructed with different head and body thicknesses, the different thicknesses may be marked (e.g., "1.2–1.0" for drums having different head and body thicknesses, and "0.8–1.0–1.2" for drums having different top head, body and bottom head thicknesses, respectively); and

* * * * *

§ 178.503 [Amended]

19. In addition, in § 178.503, in the examples shown in paragraphs (d)(2)(ii) and (d)(3), the illustrations are revised to read as follows:

§ 178.503 Marking of packagings.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

BILLING CODE 4910–60–M



1A1/Y1.4/150/83

USA/VL824

1.0

* * * * *

(3) * * *



1A1/Y1.4/150/83

USA/VL824 1.0

USA\RS\10-85RL

BILLING CODE 4910-60-C

* * * * *

§ 178.505 [Amended]

20. In § 178.505, in the last sentence of paragraph (b)(1) the reference "178.503(a)(10)" is revised to read "178.503(a)(9)".

§ 178.506 [Amended]

21. In § 178.506, in the last sentence of paragraph (b)(1) the reference "178.503(a)(10)" is revised to read "178.503(a)(9)".

§ 178.509 [Amended]

22. In § 178.509, in the last sentence of paragraph (b)(4) the reference "178.503(a)(10)" is revised to read "178.503(a)(9)".

§ 178.511 [Amended]

23. In § 178.511, in the last sentence of paragraph (b)(1) the reference "178.503(a)(10)" is revised to read "178.503(a)(9)".

§ 178.601 [Amended]

24. In § 178.601, in the first sentence of paragraph (g)(7) the reference "§ 178.601(g)(1) and (g)(2)" is revised to read "§ 178.601(g)(1) through (g)(6)".

§ 178.605 [Amended]

25. In 178.605, in the last sentence of paragraph (b) the reference to the "Associate Administrator of Hazardous Materials Safety" is revised to read "Associate Administrator for Hazardous Materials Safety".

§ 178.606 [Amended]

26. In 178.606, in the third sentence of paragraph (b) the reference to the "Associate Administrator of Hazardous Materials Safety" is revised to read "Associate Administrator for Hazardous Materials Safety".

PART 179—SPECIFICATIONS FOR TANK CARS

27. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

§ 179.105–7 [Amended]

28. In § 179.105–7, in paragraph (b) the wording "1976 edition" is revised to read "September 1, 1992 edition".

Issued in Washington, DC on May 24, 1994, under authority delegated in 49 CFR part 1.

Ana Sol Gutiérrez,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 94–13138 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–60–6

Proposed Rules

Federal Register
Vol. 59, No. 105
Thursday, June 2, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 6

Section 22 Dairy Import Quotas

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Advance notice of proposed rule making.

SUMMARY: The Foreign Agricultural Service of the Department of Agriculture is considering making certain technical changes to the Import Regulation for dairy products. The Department is also making certain changes which will enable the Department to implement the commitments undertaken by the United States under the Uruguay Round of Multilateral Trade Negotiations, and forthcoming implementing legislation.

DATES: In order to assure consideration of your views and comments, interested persons are invited to submit written comments regarding proposed changes on or before August 1, 1994.

ADDRESSES: Mail comments to Dairy Import Quota Manager, Import Licensing Group, Import Policies and Trade Analysis Division, room 5531–S, Department of Agriculture, Washington, DC 20250. All written comments received in response to this advance notice will be available for public inspection in room 5531, South Building, 14th and Independence Avenue SW., Washington, DC between the hours of 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, room 5541 South Building, Department of Agriculture, Washington, DC 20250, phone (202–720–1342).

SUPPLEMENTARY INFORMATION:

Regulations, known as the Import Regulations, promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.34 provide for the issuance of licenses to importers of certain dairy products which are subject to quotas proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Those dairy products covered by the Import Regulation may only be entered into the United States by or for the account of a person or firm to whom such license has been issued and only in accordance with the terms and conditions of such license, the Import Regulation, and the Harmonized Tariff Schedule of the United States.

Import licenses are issued on a calendar year basis and each license authorizes the license holder to import a specified quantity and type of dairy product from a specified country. The utilization of licenses by the license holders, and entries made under such licenses are carefully monitored by the Department of Agriculture and the U.S. Customs Service.

Rule changes of a technical nature being considered by the Department include modifications, revisions, and updating with respect to: Definitions; eligibility requirements; transfer of eligibility; allocation of annual quotas and issuance of licenses; issuance of ex-quota permits; sales-in-transit; records and inspection; and suspension and revocation procedures.

On April 15, 1994, the United States concluded the Uruguay Round of Multilateral Trade Negotiations and entered into agreements which provide for increased market access opportunities for most products, including dairy products. The Uruguay Round Agreement on Agriculture necessitates the development of new rules to implement commitments undertaken including those pertaining to: Tariffication and modification of existing import quotas to permit additional entry of dairy products; consolidation of certain existing dairy quota products as provided for in the Agreement; and methods of administering and allocating the new tariff-rate quota system.

Interested persons are encouraged to submit their comments, views, and suggestions on forthcoming proposed changes as well as any other comments that they may feel appropriate.

Signed at Washington, DC, on April 28, 1994.

Richard B. Schroeter,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 94–13362 Filed 6–1–94; 8:45 am]
BILLING CODE 3410–10–M

Rural Electrification Administration

7 CFR Part 1710

Credit Support of Power Supply Borrowers

AGENCY: Rural Electrification Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Rural Electrification Administration (REA) is considering revising its policies regarding credit support required in connection with loans to power supply borrowers (G&T's) and is hereby soliciting comments from interested parties on issues relating to credit support.

DATES: Written comments and recommendations must be received by REA by July 18, 1994.

ADDRESSES: Written comments should be addressed to F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, Rural Electrification Administration, room 2234, 14th and Independence Avenue, SW., Washington, DC 20250–1500. REA requires a signed original and three copies of all comments (7 CFR 1700.30(e)). All comments received will be made available for public inspection in room 2234–S (address as above) during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, room 2234–S, at the above address. Telephone: (202) 720–0736.

SUPPLEMENTARY INFORMATION:

Background

REA-financed cooperatives are generally organized on a two-tier system with power supply borrowers providing wholesale service to their member/owners, the distribution cooperatives. The power supply borrower owns or controls generation and bulk transmission facilities. The distribution members own the facilities necessary to

serve consumers on the retail level. Taken together, a power supply borrower and its distribution members are essentially one economic unit, similar to a typical investor-owned utility which owns or controls both the sources of production and the retail franchises. This unity of ownership and interest between the power supply cooperative and its owners has made possible a highly efficient capitalization structure uniquely suited to the needs of REA's constituency.

Distribution cooperatives entered into long term contracts to purchase all their power requirements from the power supply cooperative at the rates necessary to cover all the power supplier's costs, including debt service on its loans. These contracts, together with all other assets of the power supply cooperative, are pledged as security for billions of dollars of loans to the power supply cooperatives by the Government and private sector alike. The Government and other lenders have generally not required power suppliers to develop and maintain equity. As a result, consumers benefitted from lower electric rates,

While, in most cases, REA credit support requirements currently include the long term, all-requirements wholesale power contract and the first lien on all property including after acquired property, in several instances REA has required additional credit support in the form of guarantees from the G&T's members.

REA is undertaking to review the requirement for credit support in connection with G&T loans and loan guarantees. REA will be taking into consideration the G&T profile and the projects undertaken by the G&T. This profile includes some of the following characteristics: 100% debt financing from REA; equity considerations; and complex issues concerning their wholesale power contract agreements. REA financing of G&T projects generally consists of primarily guarantees of FFB loans and lien accommodations.

I. Credit Support Considerations

REA is requesting input on all factors that impact on the feasibility and risks associated with the borrower and the project to be financed. Factors to be considered may include the following:

a. The regulatory climate (degree of regulation, regulatory body policies);

b. Economics of the service territory (consumer growth trends, consumer load diversity, revenue by consumer class),;

c. The power supply borrowers' current and future electric resource arrangement (capacity, fuel agreements, purchased power, generation statistics);

d. Construction and operating risk of the proposed facility;

e. Quality of management (strategic planning, consumer relations, experience, depth, capability, credibility, response to changing environment);

f. Whether the borrower is operating under a debt restructure agreement with REA

g. Impact on distribution member cooperative rates; and

h. Rate competitiveness;

i Territorial integrity.

j. Diversification activity and/or plans:

k. Analysis of accounting practices vs. industry practices.

Comments are specifically requested on what factors should be considered, how the factors should be weighted, i.e. the ranking criteria, and on when REA should generally not require additional credit support.

REA anticipates reserving the right to require credit support on any loan or loan guarantee it deems necessary.

II. Types of Support

REA is also requesting input on the forms of credit support REA should require under those circumstances where additional credit support is required. Respondents should consider, among others, in addition to the lien on wholesale power contracts and all system assets, the following types of support:

a. G&T member guarantees of loans made to a G&T;

b. Guarantees by financial institutions of G&T loans in lieu of member guarantees; and

c. Letters of Credit obtained by members in lieu of a guarantee.

REA is also requesting comments and suggestions on the terms and conditions that would attach to such credit support. Comments are specifically requested on the concepts of joint and several liability of guarantors, liability caps, pro rata sharing of liability, acceleration of the support obligations under certain circumstances, collateralization, term, and termination.

Authority: 7 U.S.C. 901–950(b); Public Law 99–591; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary of Small Community and Rural Development, 7 CFR 2.72.

Dated: May 26, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–13402 Filed 6–1–94; 8:45 am]

BILLING CODE 3410–15–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AF02

List of Approved Spent Fuel Storage Casks: Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to add the Standardized NUHOMS Horizontal Modular Storage System to the List of Approved Spent Fuel Storage Casks. This amendment will allow the holders of power reactor operating licenses to store spent fuel in this approved cask under a general license.

DATES: Submit comments by August 16, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch.

Deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Copies of the comments received and the environmental assessment and finding of no significant impact can be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of these documents can be obtained from Mr. G. E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3803.

FOR FURTHER INFORMATION CONTACT: Mr. G. E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3803; or Mr K. C. Leu, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2685.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982 (NWPA) directs that, "[T]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian power reactor sites, with the objective of

establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the NRC." Section 133 of the NWPA states, in part, that "the Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the Commission approved dry storage of spent nuclear fuel in NRC-approved casks, publishing a final rule on 10 CFR Part 72 entitled "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181). This rule also established a new subpart L within 10 CFR part 72 entitled "Approval of Spent Fuel Storage Casks," containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

The 1990 rulemaking listed four casks in § 72.214 of subpart K as approved by the NRC for storage of spent fuel at power reactor sites under general license by persons authorized to possess or operate nuclear power reactors. Since then, two more casks have been listed in § 72.214, one on April 7, 1993 (58 FR 17948) and another on October 5, 1993 (58 FR 51762).

Discussion

This proposed rulemaking would add the Standardized NUHOMS Horizontal Modular Storage System to the list of NRC approved casks for spent fuel storage in § 72.214. Following the procedures specified in § 72.230 of Subpart L, VECTRA Technologies, Inc. (formerly Pacific Nuclear Fuel Services, Inc. (PNFSI)) [1] submitted an application for NRC approval, together with a "Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel" (SAR), NUH–003, Revision 2, dated November 1993. The NRC evaluated VECTRA's submittal and issued a draft Safety Evaluation Report (SER) on VECTRA'S SAR and a draft certificate of compliance for the Standardized NUHOMS Horizontal Modular Storage System. On January 24, 1994, Pacific Nuclear Systems, Inc., (parent company of PNSFI) changed its name to VECTRA Technologies, Inc., after it acquired ABB Impell Corporation.

The NRC is proposing to approve VECTRA's Standardized NUHOMS Modular Storage System for Irradiated Nuclear Fuel, for storage of spent fuel under the conditions specified in the draft certificate of compliance. This cask, when used in accordance with the conditions specified in the certificate of compliance and NRC regulations, will meet the requirements of 10 CFR Part 72; thus, adequate protection of the public health and safety would be ensured. This cask is being proposed for listing under § 72.214, "List of Approved Spent Fuel Storage Casks" to allow holders of power reactor operating licensees to store spent fuel in this cask under a general license. The certificate of compliance would terminate 20 years after the effective date of the final rule listing the cask in § 72.214, unless the cask's certificate of compliance is renewed. The certificate contains conditions for use which are similar to those for other NRC approved casks, however, the certificate of compliance for each cask may differ in some specifics—such as, certificate number, operating procedures, training exercises, spent fuel specification. The draft certificate of compliance for the Standardized NUHOMS cask and the underlying draft SER, are available for inspection and comment at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the proposed certificate of compliance may be obtained from Mr. K. C. Leu, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2685.

Submission of Comments in Electronic Format

In addition to the original paper copy, commenters are encouraged to submit a copy of the letter in electronic format on IBM PC-compatible 5.25- or 3.5-inch computer diskette. Data files should be provided in one of the following formats: WordPerfect, IBM Document Content Architecture/Revisable-Form-Text (DCA/RFT), or unformatted ASCII text.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The rule is mainly administrative in nature. It would not change safety requirements and would not have significant environmental impacts. The proposed rule would add one cask known as the Standardized NUHOMS Modular Storage System to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals by the NRC. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Mr. G. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3803.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission issued an amendment to 10 CFR Part 72. The amendment provided for the storage of spent nuclear fuel under a general license. Any nuclear power reactor licensee can use these casks if (1) they notify the NRC in advance, (2) the spent fuel is stored under the conditions specified in the cask's certificate of compliance, and (3) the conditions of the general license are met. In that rulemaking, four spent fuel storage casks were approved for use at reactor sites, and were listed in 10 CFR 72.214. That rulemaking envisioned that storage casks certified in the future could be routinely added to the listing in § 72.214 through rulemaking procedures. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR 72.230. Subsequently, two additional casks were added to the listing in § 72.214 in 1993.

The alternative to this proposed action is to withhold certification of this new design and give a site-specific license to each utility that proposed to use the cask. This alternative however, would cost the NRC more time and money for each site-specific review. In addition, withholding certification

[1] On January 24, 1994, Pacific Nuclear Systems, Inc., (parent company of PNFSI) changed its name to VECTRA Technologies Inc.

would ignore the procedures and criteria currently in place for the addition of new cask designs. Further, it is in conflict with NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the extent practicable, the need for additional site reviews. Also, this alternative is anticompetitive in that it would exclude new vendors without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees.

Approval of the proposed rulemaking would eliminate the above problems. Further, the proposed rule will have no adverse effect on the public health and safety.

The benefit of this proposed rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs which can be used under a general license. However, the newer cask design may have a market advantage over the existing designs in that power reactor licensees may prefer to use the newer casks with improved features. The new cask vendors with casks to be listed in § 72.214 benefit by having to obtain NRC certificates only once for a design which can then be used by more than one power reactor licensee. Vendors with cask designs already listed may be adversely impacted in that power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and NWPA direction to certify and list approved casks. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plants in the United States without the need for farther site-specific approval by NRC.

This proposed rulemaking has no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the proposed rule are commensurate with the Commission's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants and cask vendors. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this proposed rule, and thus, a backfit analysis is not required for this proposed rule because this amendment does not involve any provisions which would impose backfits as defined in the backfit rule.

List of Subjects In 10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 1068(c)(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145 (g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

In § 72.214, Certificate of Compliance 1004 is added to read as follows:

§ 72.214. List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004
SAR Submitted by: VECTRA Technologies, Inc.
SAR Title: Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel, Revision 2
Docket Number: 72–1004
Certification Expiration Date: (20 years after final rule effective date)
Model Numbers: NUHOMS–24P for Pressurized Water Reactor fuel; NUHOMS–52B for Boiling Water Reactor fuel.

* * * * *

Dated at Rockville, Maryland, this 12th day of May 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–13385 Filed 6–1–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ASO–11]

Proposed Amendment of Class E Airspace; Nashville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at Nashville International Airport, Tennessee Runways 2C and 20C have been extended. The Class E airspace extending upward from 700 feet above the surface is proposed to be extended from a 10-mile radius to a 15-mile radius of the Nashville International Airport to contain IFR operations within controlled airspace for these runways.

DATES: Comments must be received on or before July 8, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 94–ASO–11, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337;telephone (404) 305–5200.

FOR FURTHER INFORMATION CONTACT: Wade T. Carpenter, JR., Airspace Section, Systems Management Branch, Air Traffic Division, Federal-Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ASO–11." The postcard will be date/time stamped and returned to the commenter. All Communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Systems Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular no. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Nashville International Airport, Tennessee. Runways 2C and 20C have been extended. The Class E airspace extending upward from 700 feet above the surface is proposed to be extended from a 10-mile radius to a 15-mile radius of the Nashville International Airport to contain IFR operations within controlled airspace for these runways. The coordinates for this airspace docket are based on North American Datum 83. Designations of Class E airspace extending upward from 700 feet or more above the surface are published on Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in CFR 71.1 effective September 16, 1993. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter than will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para. 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASO TN E5 Nashville, TN [Amended]

Nashville International Airport, TN
(Lat. 36°07'31" N, long. 86°40'35" W)
Smyrna Airport
(Lat. 36°00'32" N, long. 86°31'12" W)
Sumner County Regional Airport
(Lat. 36°22'36" N, long. 86°24'32" W)
Lebanon Municipal Airport
(Lat. 36°11'28" N, long. 86°18'56" W)
Murfreesboro Municipal Airport
(Lat. 35°52'39" N, long. 86°22'39" W)
John C. Tune Airport
(Lat. 36°10'56" N, long. 86°53'12" W)

That airspace extending upward from 700 feet above the surface within a 15-minute radius of Nashville International Airport and within a 90-mile radius of Smyrna Airport and within a 7-mile radius of Sumner County Regional Airport and within a 10-mile radius of Lebanon Municipal Airport and within a 9-mile radius of Murfreesboro Municipal Airport and within an 8-mile radius of John C. Tune Airport.

* * * * *

Issued in College Park, Georgia, on May 18, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–13446 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–20]

Proposed Amendment to Class E Airspace; Hoquiam, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Hoquiam, Washington, Class E airspace. The action would provide controlled airspace for a new instrument approach procedure at the Hoquiam, Bowerman Airport, Hoquiam,

Washington. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area would be depicted on aeronautical charts to provide reference for pilots.

DATES: Comments must be received on or before July 15, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–20, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 94–ANM–20, 1601 Lind Avenue SW., Renton, Washington 98055–4056; Telephone: (206) 227–2530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Hoquium, Washington, to provide controlled airspace for a new instrument approach procedure at the Bowerman Airport. The area would be depicted on aeronautical charts for pilot reference. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and certain airspace extending upward from 700 feet or more above the surface of the earth is now designated Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM WA E5 Hoquiam, WA [Revised]

Hoquiam, Bowerman Airport, WA
(Lat. 46°58'16" N, long. 123°56'12" W)
Hoquiam VORTAC
(Lat. 46°56'49" N, long. 124°08'58" W)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of the Bowerman Airport and within a 13-mile radius arc of the airport, bounded on the north by a line 1.8 miles north of and parallel to the Hoquiam VORTAC 068° radial and on the south by a line 3 miles south of and parallel to the Hoquiam VORTAC 088° radial; that airspace extending from 1200 feet above the surface within 5.3 miles north and 7.9 miles south of the Hoquiam VORTAC 081° and 261° radials extending from 7 miles east to 16.6 miles west of the VORTAC.

* * * * *

Issued in Seattle, Washington, on May 13, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–13448 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Appropriateness of Requested Single Location Bargaining Units in Representation Cases

AGENCY: National Labor Relations Board (NLRB).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The National Labor Relations Board (NLRB) is publishing an advance notice of proposed rulemaking on the issue of the appropriateness of requested single location bargaining units in representation cases. This rule would be applicable only in cases involving initial organizing in the retail, manufacturing and trucking industries. The Board is publishing this advance notice to seek timely comments and suggestions from the public, labor organizations, employer groups, and other interested organizations on how the Board may best fulfill its statutory obligation to determine an appropriate unit when a single location bargaining unit is sought in these particular industries.

DATES: All responses to this notice must be received on or before July 29, 1994.

ADDRESSES: All responses should be sent to: Office of Executive Secretary, 1099 14th Street, NW., room 11600, Washington, DC 20570. Telephone: (202) 273–1940.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: The question of the appropriateness of a single location bargaining unit when requested by a labor organization has been an issue in NLRB representation proceedings for almost 60 years. See, e.g., *Atlantic Refining Co.* 1 NLRB 359, 364–5 (1936). In the vast majority of cases, the single location unit is found appropriate, but only after extensive litigation of such factors as geographical separation, similarity of employee skills and terms and conditions of employment, autonomy of the location manager, extent of employee interchange, contact between facilities, functional integration, and other miscellaneous matters. The years of litigation have not been enlightening. A presumption of separate appropriateness has evolved in most industries when the unit petitioned for is single facility in scope. See, e.g., Sav-On Drugs, Inc., 138 NLRB 1032, 1033 (1962); and Haag Drug Co., 169 NLRB 877 (1968).[1] One court spent nine pages reciting the facts in two separate cases, involving two separate industries, reaching opposite results in the cases despite combining them for purposes of decision. *NLRB* v *Chicago Health & Tennis Clubs*, 567 F.2d 331 (7th Cir. 1977). (In the course of its opinion, the court noted that the Board's approach in this area has "fluctuated" (pages 335–336, fn. 7). We believe it is time to strive for more certainty and less litigation and delay on this issue, and invite comments on how best to do this in the retail, manufacturing and trucking industries.

Many different industries have been involved in litigation of this issue, but large groups of cases have centered on the retail, manufacturing and trucking industries. See e.g., Red Lobster, 300 NLRB 908 1990 (retail); J&L Plate, 310 NLRB 429 (1993) (manufacturing); and Bowie Hall Trucking 290 NLRB 41 (1988) (trucking). Although this issue is litigated in other industries, cases involving these other industries fall outside the scope of the Board's concern in this proceeding. With regard to retail, manufacturing and trucking, however, the factors considered by the Board in these cases, including the presumptive appropriateness of a separate facility, appear to us to be well-established. The Board's decisions in these industries are reasonably predictable; with certain limited exceptions, the single-facility unit usually is found appropriate. We believe, that in normal circumstances, it is no longer necessary for the Board and the parties involved to expend extensive resources litigating the issue. Hence, the Board seeks to promulgate a rule or rules to limit to the extent possible the necessity to adjudicate the appropriateness of petitioned-for single facility units in these three industries.

One possibility would be for the Board to promulgate a rule or several rules which are specifically tailored to these particular industries.[2] It is possible, though not certain, that the issue of separate appropriateness when raised in different industries may present different considerations. For example, a rule which finds a single facility appropriate, in part, because of a defined insubstantial amount of interchange among locations may differ between the trucking industry and the retail industry because of the differing nature of the duties of the employees in the two industries, including their itinerant as opposed to stationary work stations, respectively.

Another possibility would be to promulgate a single rule applicable across all three industries, deeming appropriateness to be determined by reference to several specified factors. For example, a rule could be promulgated which would declare appropriate any separate facility unit requested where (a) A given number of employees—for example, 15—were employed, or (b) no other facility of the employer was located within a specified distance—for example, one mile—and where, in addition, a supervisor within the meaning of the Act, located at the site, oversaw operation of the facility requested. Extraordinary circumstances would render the rule inapplicable. One such extraordinary circumstance might be where a set percentage (e.g., at least 10 percent) of the employees in the unit sought performed work at other locations a certain percentage (e.g., at least 10 percent) of the time (frequently referred to as temporary interchange.) Because they have seldom made a difference in prior Board decisions, permanent interchange would no longer be deemed relevant; nor would centralization of personnel functions, functional integration, or contact between employees at the facilities. If extraordinary circumstances were present, or if the rule were for other reasons inapplicable, the issue would be decided by adjudication, under published precedent.

The rule or rules also may address the definitional question of what constitutes a single facility. See, e.g., Child's Hospital, 307 NLRB 90 (1992).

Numerous other possibilities present themselves on these subjects.

Given the fact that the Board has made no decision on the propriety of any form of rulemaking in this area, we invite all interested parties to comment on (a) The wisdom of promulgating a rule or rules on this issue in the three specified industries, and (b) the appropriate content of such a rule or rules.

Statement of Member Stephens and Member Cohen

The rule declaring the presumptive appropriateness of a single facility bargaining unit has had a long and somewhat stable history, unlike the Board's turbulent experience with health care unit determinations that prompted our rulemaking on that subject in 1987. Nevertheless, given the prevailing view of

[1] The presumption does not apply when the unit petitioned for is multi-facility in scope. See, e.g., *Capital Coors Co.*, 309 NLRB 322 (1992), and cases cited therein.

[2] It is not the Board's present intention to promulgate rules for any particular sub-categories or sub-industries within the retail, manufacturing or trucking industries. The Board's intention is to promulgate a rule or rules with the broadest applicability possible within these three generic categories of industries.

our colleagues that the single facility presumption should be reexamined and perhaps strengthened, we have no objection to considering the matter in the context of informal rulemaking. Unlike case adjudication, an advance notice proceeding such as this will enable the Board to solicit comments from a broad cross-section of interested persons before making a final decision on the relevant issues, including whether rulemaking is at all warranted, whether (and how) the substantive law defining the pertinent factors that can rebut the presumption should be changed, and whether indeed extensive (and perhaps unnecessary) resources are being expended litigating this unit question. Until the appropriate administrative record is compiled, we join our colleagues in deferring a final decision on any of these questions.

Dated: Washington, DC, May 27, 1994.

By Direction of the Board.
National Labor Relations Board.

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 94–13429 Filed 6–1–94; 8:45 am]

BILLING CODE 7545–01–M

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee: Meeting

AGENCY: Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of the forthcoming meeting of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee. This notice also describes the functions of the committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: June 20–22, 1994 from 9 a.m. to 5 p.m.

ADDRESSES: The Dupont Plaza Hotel, 1500 New Hampshire Avenue NW., Washington, DC, (202) 483–6000.

FOR FURTHER INFORMATION CONTACT: Jennifer Peck, Office of the Assistant Secretary for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., (room 4082, ROB–3), Washington, DC 20202–5100, Telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee is established by Sections 422 and 457 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66; 20 U.S.C. 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–648, as amended; 5 U.S.C. 561). The Advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing the Direct Student Loan Program beginning with academic year 1995–1996. The Direct Student Loan Program is authorized by the Student Loan Reform Act of 1993. The Act authorizes the Secretary of Education to enter into agreements with selected institutions of higher education. These agreements will enable the institutions to originate loans to eligible students and eligible parents of such students.

The meeting is open to the public. The agenda will include the following:

—Borrower defenses
—Participation and selection criteria and procedures
—Origination criteria
—Entrance counseling requirements
—Certain cross-cutting issues affecting both the Direct Lending and the FFEL Programs, e.g., the medical/intern economic hardship deferment criteria
—Discussion of preamble language

Records are kept of all Committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. and 5 p.m. weekdays, except Federal holidays.

Dated: May 26, 1994.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.

[FR Doc. 94–13341 Filed 6–1–94; 8:45 am]

BILLING CODE 4000–01–M

34 CFR Chapter VI

Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee: Meeting

AGENCY: Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of the forthcoming meeting of the Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee. This notice also describes the functions of the committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: June 23–24, 1994 from 9 a.m. to 5 p.m.

ADDRESSES: The Dupont Plaza Hotel, 1500 New Hampshire Avenue NW., Washington, DC (202) 483–6000

FOR FURTHER INFORMATION CONTACT: Jennifer Peck, Office of the Assistant for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (room 4082, ROB–3), Washington, DC 20202–5100 Telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Guaranty Agency Reserves Negotiated Rulemaking Advisory Committee is established by sections 422 and 457 of the Higher Education act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66;20 U.S.C. 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–648, as amended; 5 U.S.C. 561). The advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing advances for reserve funds of State and nonprofit private loan insurance programs. These standards, criteria, procedures and regulations will implement Section 422 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 beginning with the academic year 1995–1996 (20 U.S.C. 1072).

The meeting is open to the public. The agenda will include discussion of preamble language.

Records are kept of all committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. and 5 p.m. weekdays, except Federal holidays.

Dated: May 26, 1994.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education; U.S. Department of Education.

[FR Doc. 94–13342 Filed 6–1–94; 8:45 am]

BILLING CODE 4000–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52-

[OAQPS CA38–5–6308; FRL–4890–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from pleasure craft coating operations and set general recordkeeping requirements for VOC emissions.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before July 5, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Chris Stamos (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION: The rules being proposed for approval into the California SIP are: South Coast Air Quality Management District (SCAQMD) Rule 1106.1, Pleasure Craft Coating Operations and Rule 109, Recordkeeping for Volatile Organic Compound Emissions. These rules were submitted by the California Air Resources Board (CARB) to EPA on September 14, 1992.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Los Angeles-South Coast Air Basin. 43 FR 8964, 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the SCAQMD's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme;[2] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on September 14, 1992, including the rules being acted on in this document. This document addresses EPA's proposed action for SCAQMD Rule 1106.1, Pleasure Craft Coating Operations, and for SCAQMD Rule 109, Recordkeeping for Volatile Organic Compound Emissions. SCAQMD adopted Rule 1106.1 on May 1, 1992 and Rule 109 on March 6, 1992. These submitted rules were found to be complete on November 20, 1992 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V[3] and are being proposed for approval into the SIP.

Rule 1106.1 requires the use of low VOC coatings for marine pleasure craft coating operations and coating application methods with high transfer efficiencies, and Rule 109 sets out general recordkeeping requirements for regulating volatile organic compound (VOC) emissions for a variety of source categories. VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of the district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Los Angeles South Coast Air Basin retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). Rule 1106.1 controls emissions from a source category for which EPA has not issued a CTG and Rule 109 is a general recordkeeping rule and therefore does not have a corresponding CTG. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD's submitted Rule 109, includes the following significant changes from the current SIP:

- Adds a definition for Exempt Compounds,
- Removes Executive Officer Discretion from sections (c)(2) and (c)(3) as prescribed in the Technical Support Document (TSD) (dated January 15, 1992), and
- Adds EPA-approved test methods.

SCAQMD Rule 1106.1 is a new rule which was adopted to regulate emissions for the coating of marine pleasure craft.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1106.1 and Rule 109 are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 222) from the requirements of Section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 18, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94–13456 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 264, 265, 270, and 271

[FRL–4891–3]

Corrective Action for Solid Waste Management Units (SWMUs) at Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of a revised draft Regulatory Impact Analysis (RIA) prepared by the Agency for the proposed Resource Conservation and Recovery Act (RCRA) requirements for corrective action for solid waste management units at hazardous waste management facilities The information includes data in support of the proposed Subpart S rule relating to corrective action, published on July 27, 1990, and the final rule for Corrective Action Management Units (CAMUs) and Temporary Units (TUs), promulgated on February 16, 1993.

DATES: Comments on this report must be submitted on or before July 18, 1994.

ADDRESSES: Copies of the report may be obtained by calling or visiting the RCRA Information Center. The RCRA Information Center is located in Room M2616 at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Requests for obtaining the document by telephone may be made by calling (202) 260–9327. Copies cost $0.15 per page.

Comments on the data in the document must be submitted to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Information Center (5305), 401 M Street, SW., Washington, DC 20460. One original and two copies of comments must be sent and identified by regulatory docket reference number (F–94–CA2A–FFFFF). In order not to be considered "late", comments must be postmarked on or before July 18, 1994.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (800) 424–9346; in the Washington D.C. metropolitan area the number is (703) 412–9810, TDD (703) 412–3323. For technical information regarding the Regulatory Impact Analysis, contact Linda Martin (Mail Code 5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260–0062.

SUPPLEMENTARY INFORMATION:

I. July 27, 1990 Proposal

On July 27, 1990 EPA proposed a comprehensive rule (Subpart S) specifying corrective action requirements for facilities regulated under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (55 FR 30798). The proposed rule was developed to replace the existing Hazardous and Solid Waste Amendments (HSWA) rules with a detailed regulatory program for implementing corrective action. A Regulatory Impact Analysis (RIA) to estimate the costs and benefits of the Subpart S proposed rule was developed to support the proposed rule. In that proposal, the EPA explained that it would continue to refine its estimates. As indicated in that proposal, the EPA is making available this revised draft RIA, and the Agency will take public comments, as well as comments received from EPA's Science Advisory Board (November 1993) into account in making its decision on how to proceed with the final Subpart S rulemaking.

This Subpart S RIA includes supporting data regarding studies conducted by EPA concerning the use of CAMUs in RCRA corrective actions. EPA used these supporting data in a recent rulemaking authorizing the establishment of CAMUs (58 FR 8658, February 16, 1993). Although the CAMU rulemaking included a separate RIA and a summary report, some commenters requested additional information on the data supporting that analysis. EPA believes the summary report provided sufficient detail for purposes of the CAMU rulemaking; however, because the results of the CAMU RIA will be important for regulatory options analysis in the final Subpart S RIA, a more detailed breakdown of the CAMU data is included in this first installation of data.

Additionally, the data made available through this notice may be relevant to a related RCRA rulemaking initiative, known as the Hazardous Waste Identification Rule (HWIR) for contaminated media, which is intended to result in amended RCRA rules for the management of contaminated media. Comments on the data made available in today's notice may assist the Agency in assessing how the CAMU rule may relate to this new rulemaking initiative.

II. Description of Available Data

Included in the RCRA Docket for review are:

—Draft Regulatory Impact Analysis for the Final Rulemaking on Corrective Action for Solid Waste Management Units: Proposed Methodology for Analysis (with APPENDICES), March 1993;
—CAMU Analysis Expert Panel Outputs summarizing remedy selection;
—"Supplementary Data for Corrective Action Management Units (CAMU): Facility characteristics" (Table 1);
—"Supplementary Data for Corrective Action Management Units (CAMU): SWMU characteristics" (Table 2); and,
—"Overview of SAB Comments and Recommendations on the Proposed RIA for the RCRA Corrective Action Rule," November 1993. (Compilation of six reports).

Dated: May 18, 1994.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 94–13450 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7095]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base (100-year) flood elevation modifications for the communities listed below. The base (100-year) flood elevations and modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Louisiana	City of Shreveport, Caddo and Bossier Parishes.	Cross Bayou	At confluence with Red River	*166	*167
			At Old Blanchard Road	*169	*167
		Twelve Mile Bayou	At confluence with Cross Bayou	*167	*167
		Cross Bayou Lateral	At confluence with Cross Bayou	*167	*167
			At Abbie Street	*175	*176
			At confluence with Sycamore Lateral	None	*182
			Approximately 80 feet upstream of Weinstock Street.	None	*196
		McCain Creek	At confluence with Twelve Mile Bayou	*169	*167
			Approximately 1,300 feet upstream of confluence with Twelve Mile Bayou.	*171	*167
			Approximatelay 5,000 feet downstream of Pine Hill Road.	*175	*173
			At Pine Hill Road	*181	*178
		Cooper Road Ditch	At confluence with McCain Creek	None	*167
			At confluence with Green Oaks Lateral	None	*174
		Green Oaks Lateral	At confluence with Audrey Lane Lateral	None	*186
			At confluence with Cooper Road Ditch	None	*174
			At Pearl Street	None	*189
		Audrey Lane Lateral	Just upstream of confluence with Cooper Road Ditch.	None	*187
			Approximately 1,400 feet upstream of Fifth Street.	None	*200
		Sycamore Lateral	At confluence with Cross Bayou Lateral	None	*182
			Just upstream of Weinstock Street	None	*186
		Country Club Lateral	At confluence with Cross Lake	*176	*177
			At Jewella Street	*189	*189
			At San Jacinto Street	None	*198
			Approximately 750 feet upstream of Catherine Street.	None	*212
		Ford Park Lateral	At confluence with Cross Lake	None	*177
			Approximately 300 feet downstream of Sandra Drive.	None	*177
			Approximately 400 feet upstream of intersection of Gorton and Yarbough Roads.	None	*196
		Galaxy Lateral	At confluence with Cross Lake	*176	*177
			Just upstream of Jefferson-Paige Road	*196	*197
		Boggy Bayou	Approximately 4,500 feet upstream of Southern Pacific Railroad.	*167	*168
			Approximately 9,000 feet upstream of Southern Pacific Railroad.	*171	*170
			Approximately 13,500 feet upstream of Southern Pacific Railroad.	*172	*172
		Green Terrace Lateral	At confluence with Boggy Bayou	None	*168
			Just upstream of Green Terrace Road	None	*188
			At Cedar Creek Drive	None	*224
		Gilmer Bayou	At confluence with Boggy Bayou	*170	*169
			At Texas and Pacific Railroad	*188	*189
			At Bumcomb Road	*218	*212
		Industrial Park Lateral	At confluence with Gilmer Bayou	*173	*171
			At confluence with Lincoln Memorial Lateral.	*184	*186
			Just upstream of Bert Kouns Industrial Loop.	*215	*213
		Savanna Lateral	At confluence with Summer Grove Ditch	None	*183
			At Savanna Drive Ditch	None	*192
			Approximately 150 feet upstream of Mansfield Road.	None	*214
		Bayou Pierre	Approximately 15,000 feet downstream of Flournoy Lucas Road.	None	*152
			At Flournoy Lucas Road	*160	*157

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			At Gregg Street	*167	*167
			At Dalzell Street	None	*172
		St. Vincent Academy Ditch	At confluence with Ockley Ditch	None	*179
			Approximately 400 feet upstream of St. Vincent Convent.	None	*187
		Sand Beach Bayou	At confluence with Bayou Pierre	None	*158
			At confluence with Old River	*160	*160
		South Broadmoor Lateral	Just upstream of East 70th Street	*163	*162
			At confluence with Sand Beach Bayou	*159	*159
			At State Highway 1	*160	*159
		Old River	At Pomeroy Street	None	*159
			At confluence with San Beach Bayou	*160	*160
			At Bert Kouns Industrial Loop	*167	*162
			Approximately 3,500 feet upstream of 70th Street.	*167	*165
		Pierremont Ditch	At confluence with Bayou Pierre	None	*164
			At Gilbert Drive	None	*165
			Just upstream of Creswell Street	None	*170
		Ockley Ditch	At confluence with Gilbert Lateral	*168	*168
			At Southern Avenue	*181	*179
			At Woodrow Street	*193	*192
			Just upstream of Southern Pacific Railroad.	None	*209
		Gilbert Lateral	At confluence with Ockley Ditch	*168	*168
			Approximately 1,200 feet upstream of Ratcliffe Street.	*173	*172
		Betty Virginia Ditch	At confuence with Ockley Ditch	None	*172
			Just upstream of Baltimore Avenue	None	*180
			Approximately 500 feet upstream of confluence with Avery Ditch.	None	*199
		Average Ditch	At confluence with Betty Virginia Lateral	None	*197
			Approximately 1,000 feet upstream of confluence with Betty Virginia Lateral.	None	*209
		Lincoln Memorial Lateral	At confluence with Industrial Park Lateral	*184	*186
			Just upstream of Flournoy Lucas Road	*213	*214
			At West 70th Street	None	*232
		Shirley Francis Lateral	At confluence with Industrial Park Lateral	*207	*208
			Just upstream of Woolworth Road	*213	*212
		Southwood High Lateral	At confluence with Gilmer Bayou	*182	*178
			Approximately 3,200 feet upstream of confluence with Gilmer Bayou.	*188	*187
			Approximately 6,800 feet upstream of confluence with Gilmer Bayou.	*196	*196
		Rose Park Lateral	At confluence with Country Club Lateral	None	*180
			Just upstream of Sumner Street	None	*191
			Just upstream of Claiborne Street	None	*206
		Bickham Bayou	At confluence with Cross Lake	*176	*177
			Just upstream of Jefferson-Paige Road	*186	*188
			Just upstream of Pines Road	*213	*211
		Brush Bayou	Approximately 2,800 feet downstream of Flournoy Lucas Road.	*160	*163
			At confluence with Lynbrook Lateral	*174	*178
			Just upstream of 70th Street	*192	*193
			Just upstream of Missouri Pacific Railroad.	*210	*215
		Ranchmoor Lateral	At confluence with Brush Bayou	None	*167
			At Linwood Avenue	None	*168
			Approximately 500 feet upstream of Frontage Road.	None	*181
		Brookwood Ditch	At confluence with Brush Bayou	*166	*172
			Just upstream of Acacia Street	*177	*182
			Just upstream of Hawthorne Street	None	*193
		Lynbrook Lateral	At confluence with Brush Bayou	None	*178
			Just upstream of Lynwood Avenue	None	*184
			Just downstream of St. Vincent Avenue	None	*189
		81st Street Drainage Ditch	At confluence with Brush Bayou	None	*182
			Just upstream of St. Vincent Avenue	None	*200
			Approximately 200 feet upstream of the intersection of 75th Street and Southern Avenue.	None	*208

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		75th Street Drainage Ditch	At confluence with Brush Bayou	*178	*182
			At Wallace Avenue	*190	*190
			Approximately 700 feet upstream of 68th Street.	None	*207
		Airport Ditch	At confluence with Brush Bayou	*178	*183
			Just upstream of West 70th Street	*209	*206
			Just upstream of Meriwether Road	*229	*228
		Jenkins Acres Lateral	At confluence with Airport Ditch	None	*190
			Just upstream of Missouri Pacific Railroad.	None	*197
			Approximately 2,300 feet upstream of Missouri Pacific Railroad.	None	*203
		Hollywood Ditch	At confluence with Airport Ditch	*196	*194
			At Mayfield Street	*211	*209
			Approximately 2,400 feet upstream of Hollywood Avenue.	*220	*217
		Murry Lateral	At confluence with Hollywood Ditch	None	*212
			Just upstream of Baxter Street	None	*221
			Just upstream of Interstate Highway 20	None	*240
		Cargill Lateral	At confluence with Airport Ditch	None	*194
			Just upstream of Wisteria Street	None	*213
			Just upstream of Lotus Lane	None	*224
		Courtesy Lane Lateral	At confluence with Brush Bayou	None	*186
			At Courtesy Lane	None	*202
			Approximately 700 feet upstream of Hollywood Street.	None	*210
		Werner Park Lateral	At confluence with Brush Bayou	*198	*198
			At Hollywood Avenue	*206	*207
			At Westover Street	*213	*212
		Summer Grove Ditch	At Williamson Way	*170	*170
			Just downstream of Southern Pacific Railroad.	*184	*183
			Just upstream of Industrial Loop	None	*210
		Lambert Park Lateral	At confluence with Summer Grove Ditch	None	*172
			Just upstream of Baird Road	None	*189
			Approximately 350 feet upstream of Urban Dale Road.	None	*200
Maps are available for review at the City of Shreveport, Project Engineer's Office, 1234 Texas Avenue, Shreveport, Louisiana. Send comments to The Honorable Hazel Beard, Mayor, City of Shreveport, P.O. Box 31109, Shreveport, Louisiana 71130.					
Nebraska	Sarpy County Unincorporated Areas.	Big Papillion—Papillion Creek	At Laplatte Road	*967	*967
			At the extraterritorial limits of the City of Bellevue, approximately 2,300 feet downstream of Burlington Northern Railroad.	*973	*973
Maps available for review at Sarpy County Courthouse, 1210 Golden Gate Drive, Papillion, Nebraska. Send comments to The Honorable Ron Woodle, Chairman, Sarpy County, Board of Commissioners, Sarpy County Courthouse, 1210 Golden Gate Drive, Papillion, Nebraska 68046					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: May 24, 1994

Richard T. Moore,

Associate Director for Mitigation

[FR Doc. 94-13394 Filed 6-1-94; 8:45 am]

BILLING CODE 6718-03-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB

Endangered and Threatened Wildlife and Plants; Notice of Availability of Data Pertaining to the Subspecies Taxonomy of the California Gnatcatcher

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of availability, opening of public comment period.

SUMMARY: The Fish and Wildlife Service (Service) listed the coastal California gnatcatcher (*Polioptila californica californica*) as a threatened species on March 25, 1993. On May 2, 1994, this listing was invalidated by the United States District Court for the District of Columbia on the basis that the Secretary of the Interior failed to obtain and make available for public review and comment the data underlying a published scientific report on the subspecific taxonomy of the California gnatcatcher. In response to the court's decision the author of that report has provided these data to the Service. The Service if seeking public comment on these data.

DATES: Comments and materials must be received August 1, 1994.

ADDRESSES: Copies of the subject data are available from the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California, 92008. Comments and materials concerning these data should be submitted to the above address. The data, public comments, and other materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gail Kobetich, Field Supervisor, at the address listed above (619/431-9440; facsimile 619/431-9624).

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1993, the U.S. Fish and Wildlife Service published a final rule in the **Federal Register** determining the coastal California gnatcatcher to be a threatened species (58 FR 16741). In its decision to list the gnatcatcher the Service relied, in part, on taxonomic studies conducted by Dr. Jonathan Atwood of the Manomet Bird Observatory, Manomet, Massachusetts. As is standard practice in the scientific community, the Service did not request, nor was it offered, the data used by Dr. Atwood in reaching his conclusions. Instead, the Service relied upon the conclusions published in Dr. Atwood's peer reviewed scientific report on the subspecific taxonomy of the California gnatcatcher (Atwood 1991). This report was used by the Secretary to support, in part, a finding that the southern range limit of the coastal California gnatcatcher occurs at 30 degrees north latitude in Baja California, Mexico.

The Building Industry Association of Southern California (BIA) and others filed suit in Federal court challenging the listing on several grounds, including the claim that the Service was legally required to obtain and make Atwood's data available for review and comment. On May 2, 1994, the court ruled in favor of the BIA and vacated the listing. In response to the court's decision, Dr. Atwood has agreed to release his data to the Service. With this notice, the Service makes available for public review and comment Dr. Atwood's data.

The Secretary has filed a motion for reconsideration of the court's decision and, alternatively, a motion to stay the portion of the decision that vacated the listing while the Service receives public comment on these data. These motions are currently pending before the court. The Service is also reviewing several other options to provide the protection of the Endangered Species Act to the gnatcatcher. These options include appealing the court's decision, listing the gnatcatcher on an emergency basis, and proposing a new rule to list the gnatcatcher.

The Service solicits public comments on Dr. Atwood's data in order to assist it in further evaluating the decision to list the coastal California gnatcatcher pursuant to the Endangered Species Act.

References Cited

Atwood, J.L. 1991. Subspecies limits and geographic patterns of morphological variation in California gnatcatchers (*Polioptila californica*). Bull. Southern California Acad. Sci. 90(3):118-133

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: May 25, 1994.

Thomas J. Dwyer,

Acting Regional Director, Region I, U.S. Fish and Wildlife Service.

[FR Doc. 94-13375 Filed 6-11-94; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 59, No. 105
Thursday, June 2, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 27, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- *Agricultural Stabilization and Conservation Service*

7 CFR 1413, 1414, 1415 and 1416—Forms for Participation in Price Support and Production Adjustment Programs

ASCS–503, 658–1; CCC–135, 135 appendix, 136, 300, 300 appendix, 302, 406, 406 appendix, 477, 477 appendix, 477A, 477B, 505, 507A

Annually

Farms; 1,734,000 responses; 430,400 hours

Bruce Hiatt (202) 690–2798

- *Agricultural Marketing Service*

Domestic Dates Produced or Packed in Riverside County, California—Marketing Order No. 987

FV–191, FV–192, FV–72, & FV–73

Recordkeeping; monthly; annually; biennially

Farms; Small businesses or organizations; 709 responses; 263 hours

Valerie L. Emmer, (202) 205–2829

Extension

- *Federal Crop Insurance Corporation*

Collector's Contact Report

FCI–3

On occasion

Individuals or households; farms; 600 responses; 300 hours

Bonnie L. Hart, (202) 254–8393

- *Federal Crop Insurance Corporation*

Peach Producer's Picking Records

FCI–55

On occasion

Individuals or households; farms; 3,000 responses; 3,000 hours

Bonnie L. Hart (202) 254–8393

- *Packers and Stockyards Administration*

Regulations and Related Reporting and Recordkeeping requirements; Packers and Stockyards Act

Recordkeeping; on occasion; semi-annually; annually

Businesses or other for-profit; 29,517 responses; 361,874 hours

Patrick D'Agostino, (202) 720–8214

New Collection

- *Cooperative State Research Service*

National Research Initiative Competitive Grants Program Application Kit

CSRS–1232, 1233, 1234

On occasion

Individuals or households; businesses or other for-profit; Federal agencies or employees; non-profit institutions; 4,563 responses; 4,140 hours

Robert MacDonald, (202) 401–4114.

Donald E. Hulcher,

Deputy Department Clearance Officer

[FR Doc. 94–13401 Filed 6–1–94; 8:45 am]

BILLING CODE 3401–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–84–29]

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: June 29, 1994.

Time: 10 a.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina, 27608.

Purpose: To elect officers, establish submarketing areas, discuss selling schedules, review the 1994 policies and procedures, and other related matters for the 1994 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: May 26, 1994

Lon Hatamiya,

Administrator.

[FR Doc. 94–13363 Filed 6–1–94; 8:45 am]

BILLING CODE 3410–02–M

Forest Service

Rocky Mountain Region; AA Production, Inc.; Twin-Creeks-Unit; Grand Mesa, Uncompahgre and Gunnison National Forests; Gunnison County, Colorado; Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on an AA Production, Inc., proposal to drill 4 coal bed methane wells on existing leases and construct a transportation system to these wells within the Clear Creek Roadless Area on the Gunnison National Forest, Paonia Ranger District, approximately 23 miles north, northwest of the town of Paonia, Colorado.

DATES: An open house is scheduled for June 9, 1994, at the Panonia Town Hall from 2–5 p.m. and from 6–9 p.m. to display and discuss the Twin-Creeks-Unit proposal. Comments concerning the scope and issues of the analysis should be received by July 15, 1994; Publication of Draft EIS: December, 1994; final EIS: July, 1995.

ADDRESSES: Send written comments to Twin-Creeks-Unit, Paonia Ranger District, PO Box 1030, North Rio Grande Ave., Paonia, CO 81428.

FOR FURTHER INFORMATION CONTACT: Mike Ward, Paonia Ranger District, PO Box 1030, North Rio Grande Ave., Paoni, CO 81428, (303) 527–4260.

SUPPLEMENTARY INFORMATION: AA Production, Inc. has submitted a proposal to drill 4 coal bed methane wells with foreseeable development of additional wells if the first 4 are successful. Drilling would occur on existing leases granted before 1980 in the Clear Creek Roadless area between Deadhorse Creek and Jones Park. The wells would be located within one mile of an existing road (FDR 844) and a pipeline which parallels the road. The 4 proposed wells are more precisely located in the Southwest Quarter of Section 21—Township 10 South—Range 90 West of the 6th Principal Meridian.

It is important to remain clear about the decisions to be made on the Twin-Creeks-Unit proposal. Decisions on whether or not this area of the Forest will or will not be available for oil and gas leasing have already been made. AA Production, Inc., holds valid oil & gas leases and have a legal right to drill on their leases. The 1993 Forest Oil & Gas Leasing EIS has allocated the Clear Creek Roadless area to oil & gas development. These decisions will not be revisited, unless an unavoidable effect on some very significant resource is discovered through this analysis. At this point, we do not anticipate any effects such as this. We do have an obligation to consider all environmental factors, analyzed to the latest standards, before we allow the proposed oil and gas development to occur so appropriate protection or mitigation measures can be developed and implemented. This EIS will accomplish this.

The Forest Service will decide how, when, and exactly where, oil & gas development will occur while minimizing effects on the human environment to the extent practical. The Forest Service has responsibility for managing surface resources.

Specifically, Forest Service decisions to be made are:

1. Determine specifically where, how, when, and under what conditions the transportation system and well pads will be developed for the 4 wells proposed for drilling.
2. Determine general locations for the foreseeable wells, and any other mitigation needed in addition to those for the first 4 proposed wells.
3. Determine if there are site specific unavoidable effects on very significant resources in the area which would preclude drilling or surface occupancy.

Any well development other than the current proposal to drill 4 wells will require additional site specific environmental analysis.

The Bureau of Land Management is responsible for deciding how actual down-hole drilling activities will occur and has the authority to approve the Application For Permit To Drill (APD).

Preliminary scoping has identified nine issues. These issued are: (1) Visual Quality, (2) The proposed wells are within a roadless area identified during the 1979 RARE II process, (3) Transportation System, Development, (4) Wildlife Management and Protection including Threatened, Endangered, & Sensitive Wildlife & Plants, (5) Retention of Water Quality, Wetlands, and Riparian areas, (6) Soils & Geologic Hazards, (7) Effects on Recreation Opportunities & Outfitter Guides, (8) Social & Economic Effects, (9) Cultural & Historic Resources.

Scoping will consist of public meetings, news releases, and a scoping letter sent to people, organizations, and public agencies who may be interested in this project. An open house is scheduled for June 9, 1994. A new release to local media and interested parties is being made in conjunction with the June 9 meeting.

The U.S. Fish & Wildlife Service will be consulted on possible effects on threatened and endangered plant and animal species and may be asked to provide expertise for the environmental analysis. The Forest Service may consult with other local, State, or Federal agencies as needed. The Bureau of Land Management and the U.S. Geological Survey will be asked to serve as Cooperating Agencies. The U.S. Geological Survey will serve as a coal-bed-methane well expert. The Bureau of Land Management will serve as a drilling expert and is responsible for approving actual down-hole drilling techniques. The U.S. Forest Service will be the Lead Agency.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Circuit, 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these rulings, it is very important that those interested in this proposed action participate by the close of the 45 day draft environmental impact statement comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Please note that comments on the draft environmental impact statement will be regarded as public information.

The responsible Bureau of Land Management official is Sally Wisley, Area Manager, San Juan Resource Area, Federal Building, 701 Camino Del Rio, Durango, Colorado 81301.

The responsible Forest Service official is Ray L. Kingston, Paonia District Ranger, Grand Mesa, Uncompahgre and Gunnison National Forests, P.O. Box

1030, North Rio Grande Avenue, Paonia, Colorado 81428.

Dated: May 26, 1994

Ray L. Kingston,

District Ranger.

[FR Doc. 94–13378 Filed 6–1–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052694D]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's Groundfish Permit Review Board will hold a meeting on June 17, 1994, in the Conference Room at the NMFS Technical Service Division, 911 NE. 11th Avenue, Portland, OR 97232. The meeting will begin at 8 a.m. and will continue until all business is completed.

The purpose of the meeting is to review appeals on applications for West Coast groundfish limited entry permits, which were denied by NMFS.

FOR FURTHER INFORMATION CONTACT: Peter Fricke, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; telephone: (206) 526–6140.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Peter Fricke at (206) 526–6140 at least 5 days prior to the meeting date.

Dated: May 26, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–13361 Filed 6–1–94; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

Agency Information Collection Extensions

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy has submitted the following two public information collection packages to the Office of Management and Budget for renewal under the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), in accordance with sections 3506 and 3513, thereof.

The packages cover management and procurement collections of information from management and operating contractors of the Department of Energy's Government-owned/contractor-operated facilities, offsite contractors, financial assistance recipients, grantees, and the public. The information is used by Departmental management to exercise management oversight concerning the implementation of applicable statutory and contractual requirements and obligations. The listing for each package contains the following information: (1) Title of the information collection package; (2) current Office of Management and Budget control number; (3) type of respondents; (4) estimated number of responses; (5) estimated total burden hours, including recordkeeping hours, required to provide the information; (6) purpose; and (7) number of collections.

DATES AND ADDRESSES: Comments regarding the information collection packages should be submitted to the Office of Management and Budget Desk Officer at the following address no later than July 5, 1994. Mr. Troy Hillier, Department of Energy Desk Officer, Office of Management and Budget (OIRA), room 3001, New Executive Office Building, Washington, DC 20503, (202) 395–3084. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the Office of Management and Budget Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the Department of Energy contact listed in this notice.)

FOR FURTHER INFORMATION CONTACT: Mary Ann Wallace, Record Management Division (HR–422), Department of Energy, Washington, DC 20585, (301) 903–3524.

Package Title: Financial Assistance and Incentives.

Current Office of Management and Budget No.: 1910–0400.

Type of Respondents: Department of Energy management and operating contractors, offsite contractors, grantees, and the general public.

Estimated Number of Responses 66,907.

Estimated Total Burden Hours 666,983.

Purpose: This information is required by the Department to ensure that financial assistance and incentives resources and requirements are managed efficiently and effectively; and to exercise management oversight of Department of Energy contractors, grantees, and the general public. The package contains 58 information and/or recordkeeping requirements.

Package Title: Safeguards and Security.

Current Office of Management and Budget No.: 1910–1800.

Type of Respondents: Department of Energy management and operating contractors and offsite contractors.

Estimated Number of Responses: 101,830.

Estimated Total Burden Hours: 638,802.

Purpose: This information is required by the Department to ensure that safeguards and security resources and requirements are managed efficiently and effectively; and to exercise management oversight of Department of Energy contractors. The package contains 32 information and/or recordkeeping requirements.

Raymond S. Barrow,

Director, Office of IRM Policy, Plans, and Oversight.

[FR Doc. 94–13418 Filed 6–1–94; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee on Human Radiation Experiments

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463,86 Stat. 770), notice is hereby given of a meeting of the Advisory Committee on Human Radiation Experiments.

DATES: June 13, 1994, 9:30 a.m.–5:30 p.m.; June 14, 1994, 9 a.m.–3:30 p.m.

ADDRESSES: The Ramada Plaza Hotel, 10 Thomas Circle, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Steve Klaidman, The Advisory Committee on Human Radiation Experiments, 1726 M Street, NW, suite 600, Washington, DC 20036. Telephone: (202) 254–9795.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Advisory Committee on Human Radiation Experiments was established by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Monday, June 13, 1994

9 a.m. Call to Order and Opening Remarks
9:15 a.m. Briefing on Background Issues, Advisory Committee Members
10:45 a.m. Break
11 a.m. Briefing on Background Issues, Advisory Committee Members (continued)
12:15 p.m. Lunch
1:15 p.m. Discussion, Status and Strategies of Document Collection and Review
3 p.m. Break
3:15 p.m. Discussion, Status and Strategies of Document Collection and Review (continued)
4 p.m. Public Comment
5 p.m. Meeting Adjourned

Tuesday, June 14, 1994

9 a.m. Opening Remarks
9:15 a.m. Discussion, Status and Strategies of Document Collection and Review (continued)
10:45 a.m. Break
11 a.m. Discussion, Status and Strategies of Document Collection and Review (continued)
12:15 p.m. Lunch
1:15 p.m. Discussion, Status and Strategies of Document Collection and Review (continued)
2 p.m. Subcommittee meetings on Scope, Cold War Data Collection, Ethics Data Collection, and Outreach
3:25 p.m. Future Meeting(s)
3:30 p.m. Meeting Adjourned

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make a five-minute oral statement should contact the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

This notice is being published with less than fifteen days notice because of programmatic delays.

Issued at Washington, DC on May 27, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer

[FR Doc. 94–13421 Filed 6–1–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EL94–64–000, et al.]

Middleborough Gas and Electric Department and Pascoag Fire District, et al.; Electric Rate and Corporate Regulation Filings

May 24, 1994.

Take notice that the following filings have been made with the Commission:

1. Middleborough Gas and Electric Department and Pascoag Fire District v. Montaup Electric Company and Eastern Edison Company

[Docket No. EL94–64–000]

Take notice that on May 5, 1994, Middleborough Gas and Electric Department and Pascoag Fire District (Middleborough) tendered for filing a complaint against Montaup Electric Company and Eastern Edison Company. In its complaint Middleborough moves to consolidate this proceeding with Montaup Electric Company, ER94–1062–000.

Middleborough and Pascoag seek an order from the Commission: (1) Finding that the rates charged by Montaup to Middleborough and Pascoag for their wholesale power purchases, as well as under the Middleborough breaker and radial contracts, may produce excessive revenues from Middleborough and Pascoag and should be subject to reduction and refund consistent with this complaint; (2) establishing a refund effective date 60 days after the date of filing of this complaint; (3) setting for hearing under section 206 whether the provisions of the Middleborough and Pascoag contracts regarding contract demands and terminations are unjust, unreasonable, and unduly discriminatory and preferential, or otherwise contrary to the public interest and if so, establishing just, reasonable and not unduly discriminatory or preferential terms; (4) consolidating the consideration of the matters raised by this complaint with the ongoing proceeding in Docket No. ER94–1062–000; and (5) affording Middleborough and Pascoag such other relief as may be deemed appropriate.

Comment date: June 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Utah Associated Municipal Power Systems v. PacifiCorp

[Docket No. EL94–66–000]

Take notice that on May 18, 1994, the Utah Associated Municipal Power Systems (UAMPS) tendered for filing a revised complaint against PacifiCorp. In its complaint UAMPS states that PacifiCorp has refused to provide firm transmission services over existing facilities from UAMPS' resource available at Four Corners to UAMPS' loads in PacifiCorp's control area. UAMPS further states that it had seriously filed its complaint on May 6, 1994, but that it had revised the complaint and refiled it in light of recent Commission precedent. UAMPS requests that the revised complaint be substituted for its May 6, 1994 complaint.

Comment date: June 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Cogenerators of Southern California, Midway-Sunset Cogeneration Company, Harbor Cogeneration Company, Kern River Cogeneration Company, Sycamore Cogeneration Company

[Docket No. EL94–69–000]

Take notice that on May 16, 1994, Cogenerators of Southern California and its members tendered for filing a petition asking the Commission to undertake an enforcement action against the California Public Utilities Commission (CPUC) for implementing improperly the Commission's regulations under PURPA with respect to the calculation of avoided cost payments at the time of delivery.

Comment date: June 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Chicago Energy Exchange of Chicago, Inc.

[Docket No. ER90–225–016]

Take notice that on April 7, 1994, Chicago Energy Exchange of Chicago, Inc. (Energy Exchange) filed certain information as required by the Ordering Paragraph (L) of the Commission's April 19, 1990 order in this proceeding, 51 FERC ¶ 61,054 (1990). Copies of Energy Exchange's informational filing are on file with the Commission and are available for public inspection.

5. Elkem Metals Company

[Docket No. ER94-966-000]

Take notice that Elkem Metals Company (Elkem), on April 22, 1994, tendered for filing with the Commission additional information to its February 9, 1994, filing of an initial rate schedule pursuant to a request by Commission Staff.

Copies of the filing were served by Elkem upon what will be its sole jurisdictional customer, Appalachian.

Elkem renews the request for waiver made in its original February 9, 1994; filing of the Commission's Rules and Regulations to permit the proposed sale to become effective on less than 60 days notice.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13389 Filed 6-1-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP94-557-000, et al.]

High Island Offshore System, et al.; Natural Gas Certificate Filings

May 24, 1994.

Take notice that the following filings have been made with the Commission:

1. High Island Offshore System

[Docket No. CP94-557-000]

Take notice that on May 19, 1994, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94-557-000, an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon transportation service currently being rendered for Northern Natural Gas Company (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In its application, HIOS proposes to terminate its firm transportation service for Northern which HIOS is rendering in accordance with its Rate Schedule T-9, as well as associated interruptible overrun transportation service for Northern rendered in accordance with its Rate Schedule I. HIOS states that the currently effective contract demand under Rate Schedule T-9 is 20,657 Mcf per day and the volume under Rate Schedule I is 74,800 Mcf per day. HIOS proposes to terminate these services at the end of the primary term of Rate Schedule T-9 on August 22, 1994, in accordance with the terms of such rate schedules and in accordance with a timely notice given by Northern to HIOS.

HIOS states that no facilities are proposed to be abandoned and that the capacity resulting from the proposed abandonment will be available under its open access tariff for services it provides under part 284 of the Commission's regulations.

Comment date: June 14, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. High Island Offshore System

[Docket No. CP94-558-000]

Take notice that on May 19, 1994, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94-558-000, an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon transportation service currently being rendered for Northern Natural Gas Company (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In its application, HIOS proposes to terminate its firm transportation service for Northern which HIOS is rendering in accordance with its Rate Schedule T-10, as well as associated interruptible overrun transportation service for Northern rendered in accordance with its Rate Schedule I. HIOS states that the currently effective contract demand under Rate Schedule T-10 is 67,800 Mcf per day and the volume under Rate Schedule I is 60,000 Mcf per day. HIOS proposes to terminate these services at the end of the primary term of Rate Schedule T-10 on August 31, 1994, in accordance with the terms of an agreement between Northern and HIOS.

HIOS states that no facilities are proposed to be abandoned and that the capacity resulting from the proposed abandonment will be available under its open access tariff for services it provides under part 284 of the Commission's regulations.

Comment date: June 14, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Co.

[Docket No. CP94-559-000']

Take notice that on May 20, 1994, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed a request, pursuant to §§ 157.205 and 157.212 of the Commission's Regulations and Applicant's blanket authority granted in Docket No. CP82-413-000, for authorization to construct and operate delivery point facilities in Essex County, Massachusetts, in order to deliver gas to Colonial Gas Company (Colonial), all as set out in the request on file with the Commission and open to public inspection.

Applicant proposes to construct a delivery point interconnect allowing Colonial to source its gas under one or more of Applicant's existing contracts under Rate Schedule FT-A. Such gas will be transported pursuant to authority granted Applicant in Docket No. CP87-115-000, and § 284.223 of the regulations.

Applicant proposes to install, own, operate and maintain data acquisition and control equipment, one six-inch hot tap assembly, approximately 2100 feet of 8' pipe, and measurement facilities located at M.P. 270 - 101+8.93 in Essex County, Massachusetts. The cost of this new delivery point is $690,000, to be reimbursed by Colonial.

Applicant states that the total quantity authorized for delivery to Colonial will not increase as a result of this proposal. Applicant asserts that the proposed delivery point is not prohibited by its tariff. Also, Applicant states that it has enough capacity to make deliveries at the proposed delivery point without harming other customers.

Comment date: July 8, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13390 Filed 6-1-94; 8:45 am]

BILLING CODE 6717-01-P

[Project No. 11326-002 Utah]

Colton Springs Hydro Associates; Surrender of Preliminary Permit

May 26, 1994.

Take notice that Colton Springs Hydro Associates, Permittee for the Colton Springs Project No. 11326, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11326 was issued March 29, 1993, and would have expired February 28, 1996. The project would have been located on Colton Springs, a tributary to the Price River, in Carbon County, Utah.

The Permittee filed the request on May 11, 1994, and the preliminary permit for Project No. 11326 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-13348 Filed 6-1-94; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 11179-001 Idaho]

Faulkner Land and Livestock, Inc.; Surrender of Preliminary Permit

May 26, 1994.

Take notice that Faulkner Land and Livestock Inc., Permittee for the Freeway Drop Project No. 11179, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11179 was issued February 19, 1992, and would have expired January 31, 1995. The project would have been located on the Little Wood River, utilizing the North Side Canal Company's canal system, in Elmore County, Idaho.

The Permittee filed the request on May 9, 1994, and the preliminary permit for Project No. 11179 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-13349 Filed 6-1-94; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 11327-001 Utah]

Leamington/Rocky Ford Hydro Associates; Surrender of Preliminary Permit

May 26, 1994.

Take notice that Leamington/Rocky Ford Hydro Associates, Permittee for the Leamington/Rocky Ford Project No. 11327, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11327 was issued March 29, 1993, and would have expired February 28, 1996. The project would have been located on the existing Utah Canal Diversion structure, on the Sevier River, in Jaub County, Utah.

The Permittee filed the request on May 11, 1994, and the preliminary permit for Project No. 11327 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-13349 Filed 6-1-94; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 11328-001 Utah]

Sevier Bridge Hydro Associates; Surrender of Preliminary Permit

May 26, 1994.

Take notice that Sevier Bridge Hydro Associates, Permittee for the Sevier Bridge Project No. 11328, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11328 was issued March 29, 1993, and would have expired February 28, 1996. The project would have been located at Sevier Bridge Dam, on the Sevier River, in Juab County, Utah.

The Permittee filed the request on May 11, 1994, and the preliminary permit for Project No. 11328 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR

385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13350 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–161–001]

Avoca Natural Gas Storage; Petition

May 26, 1994.

Take notice that on May 17, 1994, Avoca Natural Gas Storage (Avoca), One Bowdoin Square, Boston, Massachusetts 02114, filed in Docket No. CP91–161–001 a petition, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(5), and section 7(c)(1)(B) of the Natural Gas Act, seeking approval of a temporary exemption from certificate requirements, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Specifically, Avoca seeks an exemption to construct and test three water production wells and five monitoring wells. The data received will enable the Susquehana River Basin Commission (SRBC) [1] to review the water withdrawal impacts of the Avoca project. Avoca states that the SRBC's review and approval of the proposed water withdrawal is necessary before construction commences on its natural gas storage project pursuant to the issuance of a section 7(c) certificate by this Commission.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 3, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13359 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–258–000]

Canyon Creek Compression Co.; Proposed Changes in FERC Gas Tariff

May 26, 1994.

Take notice that on May 24, 1994, Canyon Creek Compression Company (Canyon) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet Nos. 142, 147 and 148, and Original Sheet No. 148A, with a proposed effective date of June 23, 1994.

Canyon states that the purpose of the filing is to modify the capacity release provisions of its Tariff to change the (1) definition of Short-Term Prearranged Releases, and (2) deadlines for submission of capacity release requests for first of the month service and the starting and ending times for open seasons.

Canyon requested whatever waivers may be necessary to permit the tariff sheets to become effective June 23, 1994.

Canyon states that a copy of the filing was mailed to Canyon's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 85 North Capitol Street, NE., Washington, DC 20426, in accordance with section 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13358 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–160–021]

Columbia Gulf Transmission Co.; Compliance Filing

May 26, 1994.

Take notice that on May 19, 1994, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following proposed changes to be effective January 1, 1994:

Second Substitute First Revised Sheet No 019A

On February 7, 1994, Columbia Gulf filed revised tariff sheets pursuant to the Federal Energy Regulatory Commission's (Commission) Letter Order issued on January 19, 1994, in Docket Nos. RP91–160, *et al.*, RP92–2, *et al.*, RP90–107, *et al.*, and RS92–6, *et al.*

On May 10, 1994, the Commission issued a Letter Order (Order) in Docket No. RP91–160–018, relating to the February 7, 1994, filing which directed Columbia Gulf to refile Second Substitute First Revised Sheet No. 019A to correctly supersede Sub 1st Revised Sheet No. 019A. Columbia Gulf states that the instant filing is being tendered to comply with that directive.

Columbia Gulf states that a copy of the filing is being served upon all parties to these proceedings, jurisdictional customers and interested state Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13351 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–556–000]

Colorado Interstate Gas Co.; Notice of Request Under Blanket Authorization

May 26, 1994

Take notice that on May 19, 1994, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed a prior notice

[1] The SRBC was created pursuant to a federal compact. The compact was ratified by New York, Maryland, and Pennsylvania, the three states which border the river basin. The SRBC's regulations are found at 18 CFR 801, *et seq.*

request with the Commission in Docket No. CP94–556–000 pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a two-inch delivery tap to provide interruptible service to Amoco Energy Trading Corporation (Amoco) under CIG's blanket certificates issued in Docket Nos. CP83–21–000 and CP86–589–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

CIG proposed to construct and operate a two-inch meter run and appurtenant facilities in Las Animas County, Colorado for the interruptible delivery of approximately 200 Mcf per day of start-up fuel gas to Amoco. CIG states that its FERC Gas Tariff does not prohibit the addition of the proposed delivery point. CIG also states that the proposed deliveries are within the certificated entitlements for the proposed delivery tap.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13388 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–45–000]

El Paso Natural Gas Co.; Tariff Filing

May 26, 1994.

Take notice that on May 24, 1994, El Paso Natural Gas Company (El Paso), tendered for filing and acceptance pursuant to part 154 of the Federal energy Regulatory Commission (Commission) Regulations Under the Natural Gas Act, its Third Revised Volume No. 1 Tariff.

El Paso states that it has submitted for filing its Third Revised Volume No. 1 which replaces El Paso's Second Revised Volume No. 1 in its entirety. El Paso states that the tendered tariff volume has been significantly repaginated due to a change in word processing computer software. However, El Paso states, the textual contents have not changed except for minor conforming changes.

El Paso requests that the tendered tariff sheets be accepted for filing and permitted to become effective July 1, 1994.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system sales customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13345 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–46–000]

El Paso Natural Gas Co.; Tariff Filing

May 26, 1994

Take notice that on May 24, 1994, El Paso Natural Gas Company (El Paso), tendered for filing and acceptance pursuant to part 154 of the Federal Energy Regulatory Commission (Commission) Regulations Under the Natural Gas Act, its Second Revised Volume No. 1–A Tariff.

El Paso states that it has submitted for filing its Second Revised Volume No. 1–A which replaces El Paso's First Revised Volume No. 1–A in its entirety. El Paso states that the tendered tariff volume has been repaginated due to a change in word processing computer software. However, El Paso states the textual contents have not changed except for minor conforming changes related to the repagination.

El Paso requests that the tendered tariff sheets be accepted for filing and permitted to become effective July 1, 1994.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system transportation customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13346 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–255–000]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

May 26, 1994.

Take notice that on May 24, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet No. 247, Original Sheet No. 247A, First Revised Sheet Nos. 289, 297 and 298, and Original Sheet No. 298A, with a proposed effective date of June 23, 1994.

Natural states that the purpose of the filing is to modify the capacity release provisions of its Tariff to change (1) section 8.5 of the General Terms and Conditions to conform to Commission Orders in Docket No. RS94–45, (2) the definition of Short-Term Prearranged Releases, and (3) the deadlines for submission of capacity release requests for first of the month service and the starting and ending times for open seasons.

Natural requested whatever waivers may be necessary to permit the tariff sheets to become effective June 23, 1994.

Natural states that a copy of the filing was mailed to Natural's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE.,

Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13355 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–254–000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 26, 1994.

Take notice that on May 23, 1994, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of July 1, 1994:

Second Revised Sheet Number 156
Third Revised Sheet Number 157
First Revised Sheet Number 227
First Revised Sheet Number 279
Second Revised Sheet Number 455
Third Revised Sheet Number 501

Northern states that the purpose of this filing is (i) to revise the Maximum Rate and Minimum Revenue Credit under Rate Schedule IT–1; (ii) to revise the testing period for measuring equipment; (iii) to reduce the posting period for capacity releases of a calendar month; and (iv) to reflect housekeeping changes.

Northern Border states that none of the herein proposed changes result in a change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Northern Border proposes to decrease the Maximum Rate from 4.170 cents per 100 Dekatherm-Miles to 4.000 cents per 100 Dekatherm-Miles and to decrease the Minimum Revenue Credit from 2.225 cents per 100 Dekatherm-Miles to 2.182 cents per 100 Dekatherm-Miles. The revised Maximum Rate and Minimum Revenue Credit are to be effective July 1, 1994, in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 3, 1994. Protests will be considered but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13354 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–104–000]

Overthrust Pipeline Co.; Informal Settlement Conference

May 26, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, June 2, 1994, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1993).

For additional information, contact Arnold H. Meltz at (202) 208–2161 or John P. Roddy at (202) 208–1176.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13352 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–256–000]

Stingray Pipeline Co.; Proposed Changes In FERC Gas Tariff

May 26, 1994.

Take notice that on May 24, 1994, Stingray Pipeline Company (Stingray) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet Nos. 150, 156 and 157, and Original Sheet No. 157A, with a proposed effective date of June 23, 1994.

Stingray states that the purpose of the filing is to modify the capacity release provisions of its Tariff to change the (1) definition of Short-Term Prearranged Releases, and (2) deadlines for submission of capacity release requests for first of the month service and the starting and ending times for open seasons.

Stingray requested whatever waivers may be necessary to permit the tariff sheets to become effective June 23, 1994.

Stingray states that a copy of the filing was mailed to Stingray's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13356 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–257–000]

Trailblazer Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 26, 1994.

Take notice that on May 24, 1994, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet Nos. 149, 155 and 156, and Original Sheet No. 156A, with a proposed effective date of June 23, 1994.

Trailblazer states that the purpose of the filing is to modify the capacity release provisions of its Tariff to change the (1) definition of Short-Term Prearranged Releases, and (2) deadlines for submission of capacity release requests for first of the month service and the starting and ending times for open seasons.

Trailblazer requested whatever waivers may be necessary to permit the tariff sheets to become effective June 23, 1994.

Trailblazer states that a copy of the filing was mailed to Trailblazer's jurisdictional transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 285.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13357 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–172–001 and RP94–205–001]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 26, 1994.

Take notice that on May 23, 1994, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet Nos. 6 and 6A, with a proposed effective date of June 1, 1994.

WNG states that the purpose of this filing is to comply with a Commission order dated May 6, 1994, in the above-referenced dockets and propose revised fuel reimbursement percentages to be applied to transportation on WNG's system.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the docket referenced above and on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13353 Filed 6–1–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Environmental Management

Innovative Technologies to Accelerate Characterization, Treatment, Remediation, and Storage/Disposal of Mixed Radioactive/Hazardous Waste at Federal Facilities

AGENCY: Office of Environmental Management, U.S. Department of Energy (DOE).

ACTION: Notice of request for information (RFI).

SUMMARY: The U.S. Department of Energy's (DOE) Office of Environmental Management (EM) is soliciting information from private companies regarding their capabilities to demonstrate new and innovative technologies that may accelerate or enhance site activities in characterization, treatment, remediation, and storage/disposal of mixed radioactive/hazardous wastes at federal facilities in the Western United States. This is not a solicitation for government proposals or bids for procurement or financial assistance, but rather a request for information on new and innovative technologies which may address characterization, treatment, and storage/disposal of mixed or hazardous waste. Based on information received from this RFI, a formal RFP(s) may be issued focusing on specific needs and site characteristics.

DATES: Information should be submitted by August 31, 1994.

ADDRESSES: Information should be submitted to Dr. George Coyle, Office of Technology Development, EM–50, U.S. Department of Energy, 1000 Independence Avenue SW., room 5B–014, Washington, DC 20585. FAX 202–586–6773.

FOR FURTHER INFORMATION CONTACT: Dr. George Coyle, at the above address, or by phone at 202–586–6382.

SUPPLEMENTARY INFORMATION: The responses to the RFI will be reviewed by the Mixed Radioactive/Hazardous Waste Working Group of the Federal Advisory Committee to Develop On-Site Innovative Technologies (DOIT Committee). The DOIT Committee consists of the Secretaries of the U.S. Departments of Energy, Defense, and the Interior, the Administrator of the U.S. Environmental Protection Agency, and members of the Western Governor's Association (or their designees). The Federal Advisory Committee will recommend a program to review information concerning technologies regarding environmental restoration/waste management at DOE sites in western states; recommending demonstration projects for implementation; and identifying regulatory, institutional, or other barriers to technology development. Pursuant to the Advisory Committee's Charter, the initial lead agency is the Department of Energy, for which the Office of Technology Development serves as the coordinating office.

The Department of Energy has requested funding in its budget proposal for a project to conduct field demonstrations of innovative technology involving mixed waste (characterization, treatment, and storage/disposal) beginning in calendar year 1995. This program will implement the recommendations of the DOIT Committee. The goal will be to expedite cleanup of federal sites by demonstrating environmental technologies which will address regulatory barriers and public concerns throughout the technology demonstration project process.

Factors that should be addressed in descriptions of cleanup technology are:

—Ability to alleviate risks to public health and safety and to the environment;
—Capacity for public acceptance, permit and regulatory issues;
—Extent of private sector and multi-agency involvement;
—Potential for technology transfer or commercialization;
—Likelihood of successful demonstration (technical risks, technology component and system);
—Capacity for volume reduction of hazardous and radioactive components;
—Viability of final waste forms and treated secondary waste forms which can gain public acceptance, be relatively stable, and meet regulatory criteria;
—Magnitude of recycling and material recovery potential; and
—Ease of implementation to full scale initiative.

Additionally, the following factors are considered to be important by the Mixed Radioactive/Hazardous Waste Working Group of the Committee in its review of cleanup technologies:

—The extent to which the technologies will ultimately remediate mixed

waste at sites in one or more of the following states and territories: Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Northern Marianna Islands, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming;

—The magnitude of the problem to which this technology can be applied (total volume, multiple sites, etc.); and

—The extent to which the stakeholders will want to support DOE's development of the technology.

Interested parties should submit a short paper not to exceed five (5) pages that will describe the technology and explain why it will ultimately achieve the above mentioned objectives. If possible, papers should not include corporate and proprietary information. Respondents are advised to clearly identify any and all proprietary data submitted in response to this RFI, so that the Department is made aware of information which may need such protection. The duty to identify proprietary information is not the responsibility of the Department of Energy. In addition, the Department is under no obligation to pay for the expenses of submitting responses to the RFI. The dates on which the Working Group will discuss specific concept papers will be published in advance in the **Federal Register**. Those meetings will be open to the public.

Issued in Washington, DC, on May 25, 1994.

Clyde Frank,

Deputy Assistant Secretary, Office of Technology Development.

[FR Doc. 94–13420 Filed 6–1–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4891–4]

Air Pollution Control; Ozone Transport Commission; Recommendation That EPA Adopt Low Emission Vehicle Program for the Northeast Ozone Transport Region

AGENCY: Environmental Protection Agency.

ACTION: Notice of Round-Table Meetings.

SUMMARY: On February 10, 1994, the Northeast Ozone Transport Commission (OTC) submitted a recommendation to EPA under Section 184 of the Clean Air Act (the Act), for additional control measures to be applied throughout the Northeast Ozone Transport Region (OTR). Specifically, the OTC recommended that EPA require all State members of the OTC to adopt an Ozone Transport Commission Low Emission Vehicle (OTC LEV or LEV) program for the entire OTR. Under Section 184(c)(3) of the Act, EPA is to review the OTC's recommendation to determine whether the additional control measures are necessary to bring any area in the OTR into attainment by the dates specified in the Act, and are otherwise consistent with the Act. Based on this review, EPA is obligated to approve, disapprove, or partially approve and partially disapprove the OTC's recommendation.

EPA recently issued a proposed rule describing the framework for EPA's action on the OTC's recommendation and describing the issues EPA is considering in deciding whether to approve, disapprove, or partially approve and partially disapprove the recommendation. Thereafter, EPA held public hearings on the OTC's recommendation in Hartford, Connecticut on May 2–3, 1994. As previously announced, EPA will be holding a series of three public meetings in the OTR during June and July, 1994 to provide an opportunity for interactive discussion of the issues involved. As discussed in greater detail below, EPA is structuring these three public meetings to generally follow the framework for analysis it has described in its proposal for action on the OTC's recommendation.

At the first meeting, EPA expects the discussion to focus on the standard or test the Agency should apply in analyzing the OTC's recommendation and the need for the Agency to act in a timely fashion based on the best available information. Also at the first meeting, EPA expects the discussion to focus on issues related to the OTC LEV program, itself. At the second meeting, the Agency intends to take up the policy, legal, and technical issues relating to the magnitude of reductions needed, against which the OTC LEV program should be assessed. Also, at the second meeting EPA intends to begin a discussion of alternative proposals for obtaining additional emissions reductions from new cars. EPA expects this discussion may carry over into the third meeting. EPA also is reserving time at the third meeting to discuss new issues that might arise in the course of the foregoing agenda that EPA does not foresee now, or issues that should be revisited in light of later discussions.

DATES: EPA will be holding three public round-table meetings on: Wednesday, June 8, 1994 in Philadelphia, Pennsylvania; Thursday, June 23, 1994 in Durham, New Hampshire; and Wednesday, July 13, 1994 in New York, New York. Each round-table meeting will commence at 9 a.m. and conclude by approximately 6 p.m.

ADDRESSES: The first round-table meeting will be held at: Center City WHYY Television Station, Sixth & Arch Streets, Philadelphia, Pennsylvania.

The second round-table meeting will be held at: The New England Center, University of New Hampshire, 1515 Stratford Avenue, Durham, New Hampshire 03824.

The third round-table meeting will be held at: Holiday Inn Crown Plaza, Manhattan, 1605 Broadway (at 49th Street), New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Mike Shields, Office of Mobile Sources, USEPA, 401 M Street SW., Washington, DC 20460, telephone: (202) 260–3450.,

SUPPLEMENTARY INFORMATION:

I. Organization of Public Meetings

EPA intends that the three public meetings will allow for a fruitful exchange of information and views among the various interested parties, the affected States, and EPA. The meetings will be organized as "roundtable" discussions. In order to promote an interactive discussion, EPA has retained a facilitator to direct discussions among the various parties. EPA will arrange for representatives of the various stakeholders, including the States, the auto manufacturers, other industry, and environmental interest groups, to be seated at a table with EPA. The facilitator will direct discussion first among these representatives. All members of the public are encouraged to attend and participate, and the public will have an opportunity to comment on the discussion of each discrete topic on the agenda.

EPA believes that an opportunity for public interactive discussions will provide a valuable opportunity for EPA to refine and synthesize information from individual participants relevant to its action on the OTC's recommendation. EPA is not, however, establishing the representatives invited to participate in the roundtable discussions as an advisory committee, and EPA is not seeking a group opinion or recommendation from these representatives.

II. Agendas for Discussion

EPA's announcement of its receipt and availability of the OTC's recommendation provides a short background discussion of the

recommendation and its context, 59 FR 12914 (March 18, 1994). EPA's recent notice of proposed rulemaking, 59 FR 21720 (April 26, 1994), provides a detailed description of the framework for EPA's action on the recommendation and the issues EPA is considering in reaching a decision. The reader should refer to these earlier notices for a full understanding of the OTC's recommendation and the issues EPA is interested in pursuing at the public meetings. Additional information may be obtained from the docket for this rulemaking (A–94–11), which includes a transcript of the May 2–3 public hearing held on EPA's notice of proposed rulemaking. The description of the agendas for the public meetings, below, presumes familiarity with these notices.

To allow participants to focus their attention and prepare for topics on the agenda in advance, the Agency is disinclined to substantially change these agendas. As the process advances, however, the Agency may make slight changes in light of new issues that may emerge or to proceed quickly through issues that may require less time and attention than originally scheduled.

A. First Meeting; Philadelphia, PA on June 8, 1994

At the first meeting, EPA intends the morning discussion to focus on the legal and policy aspects of the standard or test the Agency should apply in analyzing the OTC's recommendation. The Agency believes this is an overarching issue that should be addressed at the outset. Background for this topic can be found in EPA's proposal, 59 FR at 21725–27.

The agenda for the morning session is as follows:

Interpretation of "Necessity" Finding

1. Relevance of standard under Section 211(c)(4)(C).
2. Relevance of alternatives.
3. Criteria for alternatives: standards for cost-effectiveness, practicability and reasonableness.
4. Deference to the OTC and EPA's factual burden.
5. The need for a timely decision based on available information despite scientific uncertainty.

At the first meeting, EPA intends in the afternoon session to shift the discussion to focus on the recommended OTC LEV program, itself. Background information for this topic can be found in EPA's proposal, 59 FR at 21722–23, 21730–31, and 21734–36. EPA believes there are both important legal and policy, as well as technical aspects of the OTC LEV program that merit discussion. Of course, the Agency has an obligation to evaluate whether the recommended program is consistent with the Act. While many issues regarding the legality of an OTC LEV program have been the subject of litigation and may be addressed adequately in written submissions, EPA believes that discussion of certain issues would be helpful.

The agenda for the afternoon session is as follows:

OTC LEV

1. Required elements of an OTC LEV program for purposes of consistency with Sections 177 and 209.
2. Reductions from an OTC LEV program: what; where; when.
3. Cost-effectiveness of an OTC LEV program.
4. Assumptions about fuel used throughout the OTR, including attainment areas.
5. ZEV Component of OTC LEV
   - Is the ZEV sales mandate required to be part of the OTC LEV program?
   - Status of Electric Vehicle technology
   - Permutations on the ZEV Sales Mandate
   - Possible conditions or incentives for ZEVs (such as sales tax rebate or income tax credit).
   - Emissions impact of conditions or incentives for ZEVs in the absence of a sales mandate.
   - Consistency of conditions or incentives for ZEVs with Sections 177 and 209.

B. Second Meeting: Durham, NH on June 23, 1994

EPA intends the morning session to focus on the magnitude of reductions needed in assessing the OTC LEV program or alternatives. The Agency believes the amount of reductions that additional control measures must achieve for attainment is a threshold criterion for discussion. As noted in EPA's proposal, studies have consistently concluded that substantial reductions in NO_x and VOC emissions are likely to be necessary to reduce ozone to the 0.12 ppm NAAQS or below throughout the OTR during periods of adverse meteorological conditions. The best available information about the amount, location, timing, and type of these reductions may be important in assessing the need for the OTC's recommended LEV program. EPA recognizes the discussions regarding the magnitude of reductions needed involves legal, policy and technical aspects that are in many ways interrelated. EPA expects that all of these aspects will be addressed in the discussion of these issues. Background information for the legal and policy aspects of this topic can be found in EPA's proposal, 59 FR at 21727–30. Background information for the technical aspects of this topic can be found in EPA's proposal, 59 FR at 21730–31.

Also in the morning session, the Agency intends to provide an opportunity for discussion of whether alternative control measures are available to obtain sufficient emissions reductions so that more stringent emissions standards for new cars would not be necessary. This information could be relevant to the need for the OTC LEV program or a program to obtain similar reductions from new cars. As discussed in EPA's proposal, other measures may qualify as "alternatives" to LEV only if the other measures, singly or in combination, generate enough reductions to fill the entire shortfall needed without LEV. Background information for the alternatives topic can be found in EPA's proposal, 59 FR at 21733–34.

The agenda for the morning session is as follows:

Magnitude of Reductions

1. Location of needed reductions: relevance of contribution to downwind nonattainment, including discussion of requirements for attainment demonstration and relevance of boundary conditions.
2. Best current information regarding the OTR's needs for attainment, including timing of reductions for moderate, serious, and severe areas.
3. Need for reductions for maintenance.
4. Magnitude of motor vehicle emissions in the overall inventory.
5. Confidence in current technical tools and information.

Sufficiency of Alternatives that Might Render OTC LEV Unnecessary, Including Magnitude of Reductions Available, Cost, Practicability, and Reasonableness

In the afternoon session, EPA intends to begin discussion of alternative programs designed to reduce emissions from new motor vehicles. EPA recognizes that such alternatives designed to reduce emissions from new motor vehicles could conceivably constitute an "alternative" to OTC LEV. Such alternatives that obtain reductions from the same sources as the OTC LEV program would thus be, at least in part, redundant of the reductions that the OTC LEV program would generate. (If entirely redundant of OTC LEV reductions, the sufficiency of such an

alternative to fill the entire shortfall might arguably not be important.) EPA intends to begin discussion of such motor vehicle alternatives in the afternoon session.

As a threshold matter, EPA notes that its responsibility under Section 184 of the Act is to approve or disapprove the OTC's LEV recommendation, and that Section 184 does not appear to authorize EPA to mandate alternatives. Nevertheless, EPA believes that the emergence of another approach to obtaining emissions reductions from new vehicles might conceivably affect the need for the OTC LEV program.

EPA believes that threshold issues regarding such alternatives include how they might affect EPA's obligations regarding the OTC's recommendation now before EPA, and their legal consistency with Sections 177 and 209 of the Act. Thereafter, EPA expects that the discussion would turn to the specifics of the alternative proposals, which will carry over into the third meeting.

The Environmental Defense Fund (EDF) has presented one such alternative. Under EDF's approach, the auto manufacturers would be responsible for achieving reductions commensurate with those that the OTC LEV program would achieve, and could do so by selling cars meeting LEV standards or by trading emissions reduction credits among themselves or with stationary sources. EPA expects to begin discussion of this alternative in the afternoon session. EPA recognizes that it may be ambitious to cover this entire topic at the second meeting, and may have to resume discussion of it at the third meeting. Further information pertaining to EDF's proposal is available in EDF's comments and testimony in the public docket.

The agenda for the afternoon session is as follows:

Relevance of New Motor Vehicle Standards Alternatives to EPA's Obligation to Approve or Disapprove the OTC LEV Recommendation

1. Should EPA disapprove the OTC LEV recommendation based on proposals to change that program or on different, more stringent new motor vehicle standards (e.g. The EDF proposal or the auto manufacturers proposal, discussed below)?

2. Must there be a mechanism for EPA to be assured that the States will adopt the different approach, and if so what would that mechanism be?

EDF Trading Proposal

1. Mechanism for implementation.

2. Extent of trading: among auto companies; with stationary sources; across State boundaries.

3. Baseline for assessing whether reductions are surplus and can be traded to avoid otherwise applicable emissions reduction obligations.

4. Constraints on trading to ensure that areas reduce emissions that contribute to nonattainment downwind.

5. Need for discounting credits.

6. Role of ZEVs in a trading scheme.

7. Consistency with Sections 177 and 209.

C. Third Meeting; New York, NY on July 13, 1994

EPA intends to dedicate the third meeting to continued discussion of other proposals for obtaining additional emissions reductions from new motor vehicles or other sources. EPA intends to first complete any remaining carryover discussion of the EDF proposal from the second meeting. EPA intends to then continue with a discussion of the auto manufacturers' proposed alternative known as the Federal LEV or FLEV program. EPA's proposal describes this alternative, 59 FR at 21732–33.

Also in the morning session, the Agency intends to provide an opportunity for discussion of the proposal presented at EPA's May 2–3 public hearing by Texaco, Inc., Public Service Electric and Gas (PSE&G), and Merck & Company, Inc. Further information regarding this proposal is available in comments and testimony from these companies in the public docket.

EPA expects that time will be left at the end of the third meeting to address previously unidentified topics, alternatives or issues that were not raised earlier. In addition, EPA expects that issues addressed in the earlier meetings might be revisited at this time in light of later discussions.

The agenda for the third meeting is as follows:

FLEV Proposal

1. Enforceability.

2. SIP creditability.

3. Consistency with Sections 177 and 209.

4. Emissions reductions, and comparison with LEV emissions reductions, including timing.

5. EPA's authority to disapprove the OTC LEV recommendation based on an alternative that States apparently could not adopt in their SIPs or otherwise into State law.

NOx Cap Proposal from Texaco, PSE&G, and Merck

Additional Topics Not Previously Addressed or to be Revisited

Dated: May 24, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94–13453 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4890–8]

Proposed Settlement; Acid Rain Core Rules Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement of *Alabama Power Company, et al.*, v. *United States Environmental Protection Agency*, No. 93–1611 (D.C. Cir.), and a proposed partial settlement of *Environmental Defense Fund* v. *Carol M. Browner, et al.*, No. 93–1203 (and consolidated cases) (D.C. Cir.).

The first case involves a challenge to a statement set forth by EPA in the preamble of a proposed EPA action published in the **Federal Register** on July 16, 1933, entitled "Acid Rain Program: Notice of Draft Permits and Public Comment Period." 58 FR 38370 (July 16, 1993).

The second case involves challenges by several parties to the acid rain core rules published in the **Federal Register** on January 11, 1993, at 58 FR 3590 (January 11, 1993). The proposed settlement related principally to the substitution and reduced utilization provisions of the January 11, 1993 rules.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlements from persons who were not named as parties to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7606. Written comments should be sent to Patricia A. Embrey at the above address and must be submitted on or before July 5, 1994.

Dated: May 23, 1994

Jean C. Nelson,

General Counsel.

[FR Doc. 94–13454 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4891–1]

TechLaw, Inc.; Transfer of Data to Contractor

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This is a notice to persons who have submitted information to the United States Environmental Protection Agency (EPA) under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA has contracted with TechLaw, Inc. as a primary contractor to perform work for EPA Region I (Contract No. 68–W4–0019). In order to do this work, the contractor will be provided access to certain information submitted to EPA under CERCLA section 104. Some of these materials may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to TechLaw, Inc. consistent with the requirements of 40 CFR 2.310(h)(2). Access to this information by TechLaw, Inc. is necessary for the performance of this contract.

DATES: Comments must be provided on or before June 7, 1994. The transfer of data submitted under CERCLA section 104 and claimed to be confidential will occur no sooner than 10 working days after publication of this notice in the **Federal Register**.

ADDRESSES: Comments should be addressed to LeAnn Walls, U.S. Environmental Protection Agency, Office of Regional Counsel, RCU, J.F.K. Federal Building, Boston, MA 02203, and should reference Sullivan's Ledge Superfund Site.

FOR FURTHER INFORMATION CONTACT: LeAnn Walls, U.S. Environmental Protection Agency, Office of Regional Counsel, RCU, J.F.K. Federal Building, Boston, MA 02203, (617) 565–4891.

SUPPLEMENTARY INFORMATION: TechLaw, Inc. will be performing work for EPA Region I regarding the Sullivan's Ledge Superfund Site litigation, *U.S.* v. *Federal Pacific Electronics, Inc., et al.*, including document preparation for litigation (bate stamping of documents, preparation of a final privilege list and quality control of EPA's site files). EPA Region I Waste Management Division has determined that, in order for the contractor to perform the work assigned, they will need access to information in EPA's files which has been claimed as CBI.

Pursuant to 40 CFR 2.310(h)(2), the contractor is legally required to safeguard this information from any unauthorized disclosure. In accordance with these regulations, EPA's contract with TechLaw, Inc. prohibits the use of the information for any purpose not specified in the contract, prohibits disclosure of the information in any form to a third party without prior written approval from EPA, and requires the return to EPA of all copies of the information upon request by EPA, whenever the information is no longer required by the contractor for the performance of the contract, or upon completion of the contract. Each employee of the contractor who will have access to the information has been or will be required to sign a written agreement honoring the terms specified in the contract, before they have access to any confidential information. Pursuant to 40 CFR 2.310(h)(2), EPA is providing notice and an opportunity to comment to affected parties who have submitted CBI regarding this Site. These parties have five (5) business days from the publication of this Notice in which to comment on the anticipated release of this information to EPA's contractor.

Dated: May 16, 1994

Patricia L. Meaney,

Acting Regional Administrator.

[FR Doc. 94–13451 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4890–7]

Hawaii: Final Determination of Adequacy of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy for Hawaii's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(c)(1)(B), requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator hazardous waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). Section 4005(c)(1)(C) of RCRA, 42 U.S.C. 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs.

Approved State permit programs provide interaction between the State and MSWLFs owners and operators regarding site-specific permit conditions. Only owners or operators located in States with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State permit program allows such flexibility. EPA notes that regardless of the approval status of a State and the permit status of any facility, the Federal MSWLF criteria will apply to all permitted and unpermitted MSWLF facilities.

Hawaii applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Hawaii's application and issued for public comment a tentative determination that Hawaii's permit program is adequate to assure compliance with the revised MSWLF Criteria. Based on a thorough review of Hawaii's MSWLF program and the fact that no comments were received from the public, EPA is today issuing a final determination that Hawaii's MSWLF program is adequate.

EFFECTIVE DATE: The determination of adequacy for Hawaii shall be effective on June 2, 1994.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California, 94105. Attn: Greg Wilmore, mail code H–3–1, phone (415) 744–2093.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, 42 U.S.C. 6941–6949(a), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Section 4005 of RCRA, 42 U.S.C. 6945, also requires that EPA determine the adequacy of State MSWLF permit programs to ensure that facilities comply with the revised Federal Criteria. To facilitate this requirement, the Agency has drafted and is in the process of proposing a State and Tribe Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State and Tribal landfill permit programs.

EPA intends to approve State MSWLF permit programs prior to the promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. EPA interprets the statutory requirements for States to develop "adequate" permit programs to impose several minimum standards. First, each State must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State must also provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA, 42 U.S.C. 6974. Finally, the State must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State has submitted an "adequate" program based on the interpretation outlined above. EPA expects States to meet all of the criteria for all elements of a MSWLF program before it gives full approval to a MSWLF program. In addition, States may use the draft STIR as an aid in interpreting these requirements.

On October 8, 1993, Hawaii submitted an application for adequacy determination for Hawaii's MSWLF permit program. On March 7, 1994, EPA published a tentative determination of adequacy for all portions of Hawaii's MSWLF program. Further background on the tentative determination of adequacy appears at 59 FR 10644 (March 7, 1994).

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA received neither comments nor a request for a public meeting on this determination.

The State of Hawaii has the authority to enforce the requirements of its MSWLF program at all MSWLFs in the State.

B. Decision

In the tentative determination, EPA proposed to fully approve Hawaii's MSWLF program. Hawaii's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Hawaii is granted a determination of adequacy for all portions of its MSWLF permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's MSWLF program are already in effect as a matter of State law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945, 6949a(c).

Dated: May 10, 1994.

Harry Seraydarian,

Acting Regional Administrator.

[FR Doc. 94–13455 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4890–9]

South Dakota; Tentative Determination of Adequacy of State's Municipal Solid Waste Permit Program Over Non-Indian Lands for the Former Lands of the Yankton Sioux, Lake Traverse (Sisseton-Wahpeton) and Parts of the Rosebud Indian Reservations; Extension of Comment Period

AGENCY: Environmental Protection Agency (Region 8).

ACTION: Extension of comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258).

On April 7, 1994, the Environmental Protection Agency (EPA) issued in the **Federal Register** (59 FR 16647) a notice of tentative determination on application of the State of South Dakota for Program Adequacy Determination Over Non-Indian Lands for the Former Lands of the Yankton Sioux, Lake Traverse (Sisseton-Wahpeton) and parts of the Rosebud Indian Reservations. In order to provide additional opportunity for all interested parties to review and comment on this proposed action, EPA is extending the public comment period beyond the original June 2, 1994, date provided for in the April 7, 1994 **Federal Register** notice to July 1, 1994.

DATES: All comments on South Dakota's application for determination of adequacy must be postmarked by July 1, 1994.

ADDRESSES: Copies of South Dakota's application for adequacy determination are available from 8 a.m. to 4 p.m. at the following addresses for inspection and copying: South Dakota Department of Environment and Natural Resources, Office of Waste Management, Foss Building, 523 East Capitol, Pierre, South Dakota 57501; Yankton Sioux Indian Reservation, Chairman's Office, Marty, South Dakota; Rosebud Sioux Indian Reservation, Office of the Tribal Chairman, Office of Water Resources, Rosebud, South Dakota; Lake Traverse Indian Reservation, Sisseton-Wahpeton Dakota Nation, BIA/Tribal Administration Building, Office of the Tribal Chairman, Planning and Development Department, Agency Village, South Dakota; and U.S. EPA Region 8 Library, 999 18th Street, First Floor, Denver, Colorado 80202–2466, telephone (303) 293–1444. Written comments should be sent to Ms. Judith Wong, Mail Code 8HWM–WM, U.S. EPA Region 8, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Judith Wong, Mail Code 8HWM–WM, Waste Management Branch, U.S. EPA Region 8, 999 18th Street, Denver, Colorado 80202–2466, telephone (303) 293–1667.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6912, 6945 and 6949(a)

Dated: May 25, 1994

Patricia Hull,

Acting Regional Administrator

[FR Doc. 94–13449 Filed 6–1–94; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–59982; FRL–4870–8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 19 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 94–89, 94–90, 94–91, 94–92, May 9, 1994.

Y 94–93, 94–94, May 10, 1994.

Y 94–95, May 11, 1994.

Y 94–96, 94–97, May 12, 1994

Y 94–98, May 16, 1994.

Y 94–99, 94–100, May 19, 1994.

Y 94–101, 94–102, 94–103, May 22, 1994.

Y 94–104, May 23, 1994.

Y 94–105, May 25, 1994.

Y 94–106, 94–107, May 26, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Non-Confidential Information Center (NCIC), NEM–B607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

Y 94–89

Manufacture. Confidential.

Chemical. (G) Acrylate/methacrylate copolymer.

Use/Production. (S) Polymer resin for file forming application craft turbine oil. Import range: Confidential.

Y 94–90

Manufacture. Confidential.

Chemical. (G) Acrylate/methacrylate copolymer.

Use/Production. (S) Polymer resin file forming application. Prod. range: Confidential.

Y 94–91

Importer. Royal Lubricant Company, Inc.

Chemical. (S) 2-propenoic acid, 2-methyl-, C_{6-18}-alkyl esters.

Use/Import. (S) Aircraft turbine oil. Import. range. Confidential.

Y 94–92

Importer. Shin-Etsu Silicones of America, Inc.

Chemical. (S) Siloxanes and silicones, di-me, hydrogen, hydrogen-terminated, poly(oxy-1,2-ethanediyl), a-methyl-a-(2-propenyloxy)-.

Use/Import. (S) Additive for adhesives and/or paints and surfactant for polyurethane foam. Import range: 1,000–3,000 kg/yr.

Y 94–93

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester.

Use/Production. (S) All purpose resin in synthetic marble. Prod. range: Confidential.

Y 94–94

Manufacturer. C. J. Osborne, Div. of Suvar Corporation.

Chemical. (G) VT copolymer alkyd.

Use/Production. (S) Pigmented coatings. Prod. range: Confidential.

Y 94–95

Manufacturer. Confidential.

Chemical. (G) Polyester polyurethane.

Use/Production. (G) Coating for open, non-dispersive use in original equipment manufacture. Prod. range: Confidential.

Y 94–96

Manufacturer. Eastman Kodak Company.

Chemical. (G) Crosslinked product of a substituted benzene.

Use/Production. (G) Contained use in an article. Prod. range: Confidential.

Y 94–97

Manufacturer. Confidential.

Chemical. (G) Polymethacrylic acid, sodium salt.

Use/Production. (S) Water treatment cooling, water and boiler water conditioner, and pigment dispersant in coating and inks. Prod. range: Confidential.

Y 94–98

Manufacturer. Confidential.

Chemical. (G) Polymethacrylic acid, sodium salt.

Use/Production. (S) Water treatment cooling, water and boiler water conditioner, and pigment dispersant in coating and inks. Prod. range: Confidential.

Y 94–99

Importer. Takeda America, Inc.

Chemical. (G) Acrylated copolymer.

Use/Import. (G) Modified for plastics. Import range: Confidential.

Y 94–100

Manufacturer. Gor-Star, Inc.

Chemical. (S) 1,4-Butanediol; diethyl oxalate.

Use/Production. (S) Intermediate polymer for subsequent modification of commercial polyesters. Prod. range: 3,000–10,000 kg/yr.

Y 94–101

Manufacturer. Confidential.

Chemical. (G) Water-reducible alkyd.

Use/Production. (S) Clear and pigmented water-thinned finishes Prod. range: Confidential.

Y 94–102

Manufacturer. Confidential.

Chemical. (G) Short oil soya alkyd.

Use/Production. (G) Baking or air-dry finishes for metal or wood fora single customer. Prod. range: Confidential.

Y 94–103

Manufacturer. Cargill, Incorporated.

Chemical. (G) Short oil alkyd.

Use/Production. (S) Baking finishes for wood or metal. Prod. range: Confidential.

Y 94–104

Importer. Confidential.

Chemical. (G) Rosin modified alkyd.
Use/Import. (G) Paint. Import range: Confidential.

Y 94–106

Manufacturer Reichhold Chemicals, Inc.
Chemical. (G) Polyester resin.
Use/Production. (S) Traffic paint resin. Prod. range: Confidential.

Y 94–106

Manufacturer Goldschmidt Chemical Corporation.
Chemical. (G) Aliphatic polyurethane urea.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Y 94–107

Importer. Unitika America Corporation.
Chemical. (G) Co-polyester.
Use/Import. (G) Resin for powder coating. Import range: 20,000–30,000 kg/yr

List of Subjects

Environmental protection, Premanufacture notification.

Dated: May 25, 1994.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics

[FR Doc. 94–13432 Filed 6–1–94; 8:45 am]
BILLING CODE 6560–60–F

[OPPTS–51831; FRL–4776–1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 150 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 94–376, 94–377, 94–378, 94–379, 94–380, 94–381, 94–382, 94–383, 94–384, 94–385, 94–386, 94–387, 94–388, 94–389, 94–390, 94–391, 94–392, 94–393, 94–394, 94–395, 94–396, 94–397, 94–398, 94–399, 94–400, February 28, 1994.

P 94–401, 94–402, 94–403, 94–404, March 1, 1994.

P 94–405, 94–406, 94–407, 94–408, 94–409, 94–410, March 2, 1994.

P 94–411, March 5, 1994.

P 94–412, March 2, 1994.

P 94–413, 94–414, March 5, 1994.

P 94–415, 94–416, 94–417, 94–418, 94–419, 94–420, 94–421, 94–422, 94–423, 94–424, 94–425, 94–426, 94–427, 94–428, March 6, 1994.

P 94–429, March 7, 1994.

P 94–430, March 2, 1994.

P 94–431, 94–432, 94–433, 94–434, 94–435, 94–436, March 7, 1994.

P 94–437, March 8, 1994.

P 94–438, 94–439, 94–440, March 9, 1994.

P 94–441, March 12, 1994.

P 94–442, 94–443, 94–444, 94–445, 94–446, 94–447, 94–448, 94–449, 94–450, 94–451, 94–452, 94–453, 94–454, 94–455, 94–456, March 13, 1994.

P 94–457, 94–458, 94–459, 94–460, 94–461, 94–462, 94–463, March 14, 1994.

P 94–464, 94–465, 94–466, 94–467, 94–468, March 15, 1994.

P 94–469, 94–470, March 16, 1994.

P 94–471, 94–472, March 19, 1994.

P 94–473, 94–474, 94–475, 94–476, 94–477, 94–478, 94–479, 94–480, 94–481, 94–482, 94–483, 94–484, 94–485, 94–486, 94–487, 94–488, March 20, 1994.

P 94–489, 94–490, 94–491, March 19, 1994.

P 94–492, 94–493, 94–494, 94–495, 94–496, March 21, 1994.

P 94–497, March 22, 1994.

P 94–498, March 26, 1994.

P 94–499, March 29, 1994.

P 94–500, March 26, 1994.

P 94–501, March 27, 1994.

P 94–502, 94–503, March 28, 1994.

P 94–504, 94–505, March 29, 1994.

P 94–506, 94–507, 94–508, 94–509, April 2, 1994.

P 94–510, 94–511, 94–512, 94–513, 94–514, 94–515, 94–516, 94–517, 94–518, 94–519, 94–520, 94–521, 94–522, 94–523, 94–524, 94–525, April 3, 1994.

Written comments by:

P 94–376, 94–377, 94–378, 94–379, 94–380, 94–381, 94–382, 94–383, 94–384, 94–385, 94–386, 94–387, 94–388, 94–389, 94–390, 94–391, 94–392, 94–393, 94–394, 94–395, 94–396, 94–397, 94–398, 94–399, 94–400, January 29, 1994.

P 94–401, 94–402, 94–403, 94–404, January 30, 1994.

P 94–405, 94–406, 94–407, 94–408, 94–409, 94–410, January 31, 1994.

P 94–411, February 3, 1994.

P 94–412, January 31, 1994.

P 94–413, 94–414, February 3, 1994.

P 94–415, 94–416, 94–417, 94–418, 94–419, 94–420, 94–421, 94–422, 94–423, 94–424, 94–425, 94–426, 94–427, 94–428, February 4, 1994.

P 94–429, February 5, 1994.

P 94–430, January 31, 1994.

P 94–431, 94–432, 94–433, 94–434, 94–435, 94–436, February 5, 1994.

P 94–437, 94–438, February 6, 1994.

P 94–439, 94–440, February 7, 1994.

P 94–441, February 10, 1994.

P 94–442, 94–443, 94–444, 94–445, 94–446, 94–447, 94–448, 94–449, 94–450, 94–451, 94–452, 94–453, 94–454, 94–455, 94–456, February 11, 1994.

P 94–457, 94–458, 94–459, 94–460, 94–461, 94–462, 94–463, February 12, 1994.

P 94–464, 94–465, 94–466, 94–467, 94–468, February 13, 1994.

P 94–469, 94–470, February 14, 1994.

P 94–471, 94–472, February 17, 1994.

P 94–473, 94–474, 94–475, 94–476, 94–477, 94–478, 94–479, 94–480, 94–481, 94–482, 94–483, 94–484, 94–485, 94–486, 94–487, 94–488, February 18, 1994.

P 94–489, 94–490, 94–491, February 17, 1994.

P 94–492, 94–493, 94–494, 94–495, 94–496, February 19, 1994.

P 94–497, February 20, 1994.

P 94–498, February 24, 1994.

P 94–499, February 27, 1994.

P 94–500, February 24, 1994.

P 94–501, February 25, 1994.

P 94–502, 94–503, February 26, 1994

P 94–504, 94–505, February 27, 1994.

P 94–506, 94–507, 94–508, 94–509, March 3, 1994.

P 94–510, 94–511, 94–512, 94–513, 94–514, 94–515, 94–516, 94–517, 94–518, 94–519, 94–520, 94–521, 94–522, 94–523, 94–524, 94–525, March 4, 1994

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51831]" and the specific PMN number should be sent to Document Control Center (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington DC 20460 (202) 260–1532

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404. TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received

by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), NEB–607 at the above address between 12 and 4 p.m., Monday through Friday, excluding legal holidays.

P 94–376

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, ethylene diamine salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–377

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, sodium salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–378

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl, polyol, trialkyl derivative ester, potassium salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–379

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, dimethylethanolamine salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–380

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, ammonium salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–381

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl trialkyl derivative ester, monoethanolamine salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–382

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, diethanolamine salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–383

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, triethanolamine salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–384

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, morpholine salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–385

Manufacturer. AKZO Coating, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, diethanolamine salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–386

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, 2-amino-2 methyl-propanol salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–387

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, 2-amino-2 methyl-propanol salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–388

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, 2-dimethylamino-2 propanol salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–389

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, urea salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–390

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialky derivative ester, diethylamine salt.
Use/Production. (G) Prining ink and coatings. Prod. range: Confidential.

P 94–391

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, triethylamine salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–392

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, *N*-propylamine salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–393

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, di isopropanolamine salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–394

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, tri isopropanolamine salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–395

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, polyol, trialkyl derivative ester, trimethylamine salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–396

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, ethylene diamine salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–397

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, sodium salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–398

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol, trialkyl derivative ester, potassium salt
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–399

Manufacturer. AKZO Coatings, Inc.
Chemical. (G) Rosin, fumaric acid, castor oil adduct, phenyl alkyl polyol,

trialkyl derivative ester, dimethylethanolamine salt.
Use/Production. (G) Printing ink and coatings. Prod. range: Confidential.

P 94–400

Manufacturer. Confidential.
Chemical. (G) Dialkylsulfosuccinate.
Use/Production. (G) Surfactant. Prod. range: Confidential.

P 94–401

Manufacturer. Confidential.
Chemical. (G) Substituted bis(phenyl)isobenzofuranone.
Use/Production. (G) Intermediate used in the manufacture of a component or paper coatings. Prod. range: Confidential.

P 94–402

Manufacturer. Confidential.
Chemical. (G) Substituted bis(methylphenyl)isobenzofuranone.
Use/Production. (G) Intermediate used in manufacture of a component for paper coatings. Prod. range: Confidential.

P 94–403

Manufacturer. Confidential.
Chemical. (G) Amine terminated epoxy polymer.
Use/Production. (G) Polymer curative. Prod. range: Confidential.

P 94–404

Manufacturer. Confidential.
Chemical. (G) Amine terminated epoxy polymer.
Use/Production. (G) Polymer curative. Prod. range: 4,000–8,000 kg/yr.

P 94–405

Importer. Confidential.
Chemical. (G) Oxirane, polymer with methyl/oxirane, phthalate anhyride, dimer acid, 2-propenoic acid, alkyl tetrakisol.
Use/Import. (G) Component for specialty industrial coatings, inks and adhesives. Import range: Confidential.

P 94–406

Manufacturer. Confidential.
Chemical. (G) Styrene acrylate polymer.
Use/Production. (G) Component of coating with dispersive use. Prod. range: 500,000–1,200,000 kg/yr.

P 94–407

Manufacturer. Confidential.
Chemical. (G) Styrene acrylate polymer.
Use/Production. (G) Component of coating with dispersive use. Prod. range: 500,000–1,200,000 kg/yr.

P 94–408

Manufacturer. Confidential.
Chemical. (G) Styrene acrylate polymer.
Use/Production. (G) Component of coating with dispersive use. Prod. range: 500,000–1,200,000 kg/yr.

P 94–409

Manufacturer. Confidential.
Chemical. (G) Styrene acrylate polymer.
Use/Production. (G) Component of coating with dispersive use. Prod. range: 500,000–1,200,000 kg/yr.

P 94–410

Manufacturer. Confidential.
Chemical. (G) Styrene acrylate polymer.
Use/Production. (G) Component of coating with dispersive use. Prod. range: 500,000–1,200,000 kg/yr.

P 94–411

Manufacturer. Agrisense Division of Biosys.
Chemical. (S) 1, (E/Z)-9-Dodecadiene.
Use/Production. (S) Chemical intermediate in synthesis of insect pheromones. Prod. range: 1,000–10,000 kg/yr.

P 94–412

Importer. Hach Company.
Chemical. (S) 5-Bromo-4-chloro-3-indolyn-beta-*D* glucuronic acid, cyclohexylammonium salt.
Use/Import. (S) Detector for *E.coli* in micro medium. Import. range: 1–10 kg/yr.

P 94–413

Importer. Aceto Corporation.
Chemical. (G) Complex of amino naphthalene disulfonic acid.
Use/Import. (S) Detector for *E.coli* in micro medium. Import. range: 1–10 kg/yr.

P 94–414

Manufacturer. Amoco Corporation.
Chemical. (G) Modified polyphenylsulfone.
Use/Production. (G) Manufacture of molded parts and coating for wires. Prod. range: Confidential.

P 94–415

Manufacturer. Minnesota Mining & Manufacturing Company.
Chemical. (G) 1,1-Methylene bis(isocyanatobenzene) polymer.
Use/Production. (G) Adhesive. Prod. range: Confidential.

P 94–416

Manufacturer. Confidential.
Chemical. (G) Succinimide-zinc sulfonate complex.
Use/Production. (G) Emulsifier. Prod. range: Confidential.

P 94–417

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (S) Final product synthesis. Prod. range: 300,000–600,000 kg/yr.

P 94–418

Manufacturer. Confidential.
Chemical. (G) Polyurethane resin.
Use/Production. (S) Spray applied coatings. Prod. range: 480,000–720,000 kg/yr.

P 94–419

Manufacturer. Confidential.
Chemical. (G) Polyurethane resin.
Use/Production. (S) Spray applied coatings. Prod. range: 480,000–720,000 kg/yr.

P 94–420

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (S) Spray applied coatings. Prod. range: 120,000–240,000 kg/yr.

P 94–421

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (S) Spray applied coatings. Prod. range: 120,000–240,000 kg/yr.

P 94–422

Manufacturer. Confidential.
Chemical. (G) Branched synthetic fatty acid.
Use/Production. (G) Industrial lubricant raw material. Prod. range: Confidential.

P 94–423

Manufacturer. Henkel Corporation.
Chemical. (S) Boric acid, triester with alcohols C_{10-16} alkyl.
Use/Production. (S) Intermediate for fatty alcohol purification. Prod. range: 600,000 kg/yr.

P 94–424

Manufacturer. Henkel Corporation.
Chemical. (S) Boric acid, triester with alcohols, C_{8-10} alkyl.
Use/Production. (S) Intermediate for fatty alcohol purification. Prod. range: 600,000 kg/yr.

P 94–425

Manufacturer. Henkel Corporation.
Chemical. (S) Boric acid, triester with alcohols, C_{9-11} alkyl.
Use/Production. (S) Intermediate for fatty alcohol purification. Prod. range: 600,000 kg/yr.

P 94–426

Importer. H.W. Sands Corporation.
Chemical. (S) 2-(4-Dimethylcarbomoyl-pyridino)-ethanol-1-sulfonate.
Use/Import. (S) Intermediate for fatty alcohol purification. Import range: 600,000 kg/yr.

P 94–427

Manufacturer. Henkel Corporation
Chemical. (G) Polyether polyester urethane.
Use/Production. (G) Adhesive. Prod. range: Confidential.

P 94–428

Manufacturer. Resinall Corporation.
Chemical. (G) Hydrocarbon modified rodin resin.
Use/Production. (S) Resin for printing ink. Prod. range: Confidential.

P 94–429

Manufacturer. Confidential.
Chemical. (G) Polyurethane/urea polymer dispersion.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 94–430

Manufacturer. Confidential.
Chemical. (G) Resorcinol/formaldehyde polymer, monopotassium salt.
Use/Production. (S) Ion exchange resin. Prod. range: 12,000–20,000 kg/yr.

P 94–431

Manufacturer. Confidential.
Chemical. (S) 2,4-Diisocyanato-methyl benzene; hydroxyethyl acrylate; furan, tetrahydro-3-methyl polymer with tetrahydrofuran.
Use/Production. (S) Component of an industrial coating that cures under exposure to ultraviolet light or electron beam. Prod. range: Confidential.

P 94–432

Manufacturer. Confidential.
Chemical. (G) Alkanolamines, reaction products with polymerized rosin.
Use/Production. (G) Tackifier. Prod. range: Confidential.

P 94–433

Manufacturer. Confidential.
Chemical. (G) Alkanolamines, reaction products with rosin formaldehyde polymers.
Use/Production. (G) Tackifier. Prod. range: Confidential.Confidential.

P 94–434

Manufacturer. Confidential.
Chemical. (G) Alkanolamines, reaction products with rosin formaldehyde polymers.
Use/Production. (G) Tackifier. Prod. range: Confidential.

P 94–435

Manufacturer. Confidential.
Chemical. (G) Alkanolamines, reaction products with rosin formaldehyde polymers.
Use/Production. (G) Tackifier. Prod. range: Confidential.

P 94–436

Manufacturer. Confidential.
Chemical. (G) Alkanolamines, reaction products with rosin formaldehyde polymers.
Use/Production. (G) Tackifier. Prod. range: Confidential.

P 94–437

Importer. MTC America, Inc.
Chemical. (G) Isocyanate.
Use/Import. (S) Application: spectacle lenses with isocyanate compound for polyurethane and paint. Import. range: Confidential.

P 94–438

Importer. MTC America, Inc.
Chemical. (G) Thia alkanethiol.
Use/Import. (S) Application: spectacle lenses with thio compound for polythiourethane. Import. range: Confidential.

P 94–439

Manufacturer. Loctite Corporation.
Chemical. (G) (Alkyl-substituted propenoate)-terminated alkyl and alkoxy substituted siloxanes.
Use/Production. (S) A comment in additive and sealant formulation malusite limited chemical intermediate. Prod. range: Confidential.

P 94–440

Manufacturer. Loctite Corporation.
Chemical. (S) A complex reaction mixture consisting of the following: Siloxanes and silicones, di-me, mono-hydroxy terminated; siloxanes and silicones, di-me, hydroxy terminated; siloxanes and silicones, di-me.
Use/Production. (S) A site limited chemical intermediate. Prod. range: 2,000–10,000 kg/yr.

P 94–441

Importer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Benzothiazole-based dye.
Use/Import. (G) Dye for graphic artsfilm, Open, non-dispersive use Import range: Confidential.

P 94–442

Manufacturer. Confidential.
Chemical. (G) Pentaerythritol tetraesters with straight-chain and fatty acids.
Use/Production. (G) Synthetic aircraft engine lubricant for contained use. Prod. range: Confidential.

P 94–443

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane based on polyisocyanates, polyols and polyamines.
Use/Production. (G) A pigment textile coating. Prod. range: Confidential.

P 94–444

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane based on polyisocyanates, polyols, and polyamines.
Use/Production. (G) A pigment textile coating. Prod. range: Confidential.

P 94–445

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane based on polyisocyanates, polyols, and polyamines.
Use/Production. (G) A pigment textile coating. Prod. range: Confidential.

P 94–446

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane based on polyisocyanates, polyols, and polyamines.
Use/Production. (G) A pigment textile coating. Prod. range: Confidential.

P 94–447

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethanes based on polyisocyanates polyols, and polyamines.
Use/Production. (G) A pigment textile coating. Prod. range: Confidential

P 94–448

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane based on polyisocyanates, polyols, and polyamines.
Use/Production. (G) A pigment textile coating. Prod. range: Confidential.

P 94–449

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane based on polyisocyanates, polyols, and polyamine.
Use/Production. (G) A pigment textile coating. Prod. range: Confidential.

P 94–450

Manufacturer. Confidential.
Chemical. (G) Polyurethane based on polyisocyanates, polyols, and polyamines.
Use/Production. (G) A pigment textile coating. Prod. range: Confidential.

P 94–451

Manufacturer. Confidential.
Chemical. (G) Phosphonate.
Use/Production. (G) Scale inhibitor. Prod. range: Confidential.

P 94–452

Manufacturer. Confidential.
Chemical. (G) Silica-supported transition metal complex.
Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

P 94–453

Manufacturer. Confidential.
Chemical. (G) Silica supported trsnsition mental complex.
Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

P 94–454

Manufacturer. Confidential.
Chemical. (G) Polyol terminated urethane.
Use/Production. (G) Urethane prepolymer. Prod. range: 6,000–7,500 kg/yr.

P 94–455

Importer. BASF Corporation.
Chemical. (S) 1,5-Pentane diamine, 2-butyl-2-ethyl-.
Use/Import. (S) Hardener for epoxy systems. Import range: 1,000–10,000 kg/yr.

P 94–456

Importer. Ciba-Geigy Corporation.
Chemical. (G) Substituted methane derivative, acetate salt.
Use/Import. (S) Paper dye for tissue, nonwoven, box board and fine paper. Import range: Confidential.

P 94–457

Manufacturer. Confidential.
Chemical. (G) Hydroxyl terminated aryl alkyl polyester resin.
Use/Production. (G) Resin for coatings. Prod. range: Confidential.

P 94–458

Manufacturer. Confidential.
Chemical. (G) Acrylic grafted poly (amide-ester).
Use/Production. (G) Printing ink resin. Prod. range: Confidential.

P 94–459

Manufacturer. Confidential.
Chemical. (S) Modified polymeric diphenylmethane diisocyanate prepolymer.
Use/Production. (G) Contained use. Prod. range: Confidential.

P 94–460

Importer. Confidential.
Chemical. (G) Phosphoric acid fatty alcohol polyethyleneglycol ester.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 94–461

Importer. Confidential.
Chemical. (G) Aliphatic amine.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 94–462

Importer. Confidential.
Chemical. (G) Polyimine.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

P 94–463

Importer. Confidential.
Chemical. (G) Polyimine.
Use/Import. (G) Open, non-dispersive use. Import range: confidential.

P 94–464

Importer. Ciba-Geigy Corporation.
Chemical. (G) Ttriaryl sodium salt of antimony hexafluoride.
Use/Import. (G) Initiator for epoxy polymerization. Import range: 10–100 kg/yr.

P 94–465

Manufacturer. Confidential.
Chemical. (G) Metallated polystyrene.
Use/Production. (G) Contained use additive for gas treatment. Prod. range: Confidential.

P 94–466

Importer. Confidential.
Chemical. (G) Cresol novolac resin.
Use/Import. (G) Material for lithography. Import range: confidential.

P 94–467

Importer. Confidential.
Chemical. (G) Substituted benzophenone ester.
Use/Import. (G) Material for lithography. Import range: Confidential.

P 94–468

Importer. Confidential.
Chemical. (G) Cresol novolac ester.
Use/Import. (G) Naterial for lithography. Import range: Confidential.

P 94–469

Manufacturer. E.I. du Pont de Nemours & Company.
Chemical. (G) Polysubstituted methacrylic copolymer latex.
Use/Production. (G) Fabric finish - open, non-dispersive use. Prod. range: Confidential.

P 94–470

Manufacturer. Max Marx Color Company.
Chemical. (G) Ethanethylamium, *N*-((4-diethylaminplphenyl)(4-ethylamino)-1-naphthalenyl)=methylene-2,5-cyclohexadien-1-=ylidene)-*N*-ethyl-, copper(1+) (oc-6-11)-hexakis(cyano-c')=ferrate (4-) (2:2:1).
Use/Production. (S) A pigment used in water-base inks. Prod. range: 15,000–20,000 kg/yr.

P 94–471

Manufacturer. Confidential.
Chemical. (G) Polyalphaolefins.
Use/Production. (G) Functional fluid Prod. range: Confidential.

P 94–472

Manufacturer. Confidential.
Chemical. (G) Polyalphaolefins.
Use/Production. (G) Functional fluid Prod. range: Confidential.

P 94–473

Manufacturer. Confidential.
Chemical. (G) Crosslinked butyl rubber.
Use/Production. (G) Thermoplastic resin for medical and other molded part applications. Prod. range: Confidential.

P 94–474

Manufacturer. Confidential.
Chemical. (G) Crosslinked butyl rubber.
Use/Production. (G) Thermoplastic resin for medical and other molded part applications. Prod. range: Confidential.

P 94–475

Manufacturer. Confidential.
Chemical. (G) Crossliked butyl rubber
Use/Production. (G) Thermoplastic resin for medical and other molded part applications. Prod. range: Confidential.

P 94–476

Manufacturer. Confidential.
Chemical. (G) Crosslinked butyl rubber.
Use/Production. (G) Thermoplastic resin for medical and other molded part applications. Prod. range: Confidential.

P 94–477

Manufacturer. Confidential.
Chemical. (G) Saccharide derivative.
Use/Production. (G) Binder additive for nonwoven substrate. Prod. range: Confidential.

P 94–478

Manufacturer. Confidential.
Chemical. (G) Saccharide derivative.
Use/Production. (G) Binder additive for nonwoven substrate. Prod. range: Confidential.

P 94–479

Manufacturer. Confidential.
Chemical. (G) Saccharide derivative.
Use/Production. (G) Binder additive for nonwoven substrate. Prod. range: Confidential.

P 94–480

Manufacturer. Confidential.
Chemical. (G) Saccharide derivative.
Use/Production. (G) Binder additive for nonwoven substrate. Prod. range: Confidential.

P 94–481

Manufacturer. Confidential.
Chemical. (G) Saccharide derivative.
Use/Production. (G) Binder additive for nonwoven substrate. Prod. range: Confidential.

P 94–482

Manufacturer. Confidential.
Chemical. (G) Saccharide derivative.
Use/Production. (G) Binder additive for nonwoven substrate. Prod. range: Confidential.

P 94–483

Manufacturer. Confidential.
Chemical. (G) Saccharide derivative.
Use/Production. (G) Binder additive for nonwoven substrate. Prod. range: Confidential.

P 94–484

Manufacturer. Confidential.
Chemical. (G) Saccharide derivative.
Use/Production. (G) Binder additive for nonwoven substrate. Prod. range: Confidential.

P 94–485

Manufacturer. Olin Corporation.
Chemical. (G) Alcohol alkoxylate.
Use/Production. (G) Surfactant. Prod range: 303,030–3,909,090.91 kg/yr.

P 94–486

Manufacturer. Confidential.
Chemical. (G) Acrylate/methacrylate copolymer.
Use/Production. (G) Polymer resin for film forming applications. Prod. range: Confidential.

P 94–487

Manufacturer. Confidential.
Chemical. (G) Acrylate/methacrylate copolymer.
Use/Production. (G) Polymer resin for film forming applications. Prod. range: Confidential.

P 94–488

Manufacturer. Confidential.
Chemical. (G) Acrylate/methacrylate copolymer.
Use/Production. (G) Polymer resin for film forming applications. Prod. range: Confidential.

P 94–489

Importer. Confidential.
Chemical. (G) Alpha-hydro-omega-hydroxypoly(oxy-1,2-ethanediyl),polymer with 2-hydroxyethyl ether, 2,2'- oxydiethanol. 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 5-isocyanato-1-(isocyanatomethyl)- 1,3-trimethyl cyclohexane, 2-propenoic acid, 2-hydroxyethyl ester, adipic acid, 2-oxepanone, and isophthalic acid derivative.
Use/Import. (G) Polymer component for specialty industrial coatings, inks, and adhesives. Import range: Confidential.

P 94–490

Importer. Confidential.
Chemical. (G) 2-Propenoic acid, 2-hydroxyethyl ester polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and poly(alkylene ether) glycol.
Use/Import. (G) Polymer component for specialty industrial coatings. inks,and adhesives: Import range: Confidential.

P 94–491

Importer. Confidential.
Chemical. (G) Alpha-hydro-omega-hydroxypoly(oxy-1,2-ethanediyl), polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, adipic acid, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, 2-propenoic acid, 2-Hydroxyethyl ester, 2-hydroxyethyl ether, 2,2'-oxydiethanol, and isophthalic acid derivative.
Use/Import. (G) Polymer component for specialty industrial coatings, inks, and adhesives. Import range: Confidential.

P 94–492

Manufacturer. Exxon Chemical Company.
Chemical. (S) 1,2,4-Benzene tricarboxylic acid, tris(nonyl) ester, branched and linear.
Use/Import. (G) Plasticizer. Prod. range: Confidential.

P 94–493

Importer. The Goodyear Tire & Rubber Company.
Chemical. (G) Acrylonitrile/styrene/acrylate rubber.
Use/Import. (S) Rubber modified for thermoplastics. Import. rangr: 200,000–1,000,000.

P 94–494

Importer. Enthone-OMI, Inc.
Chemical. (G) Substituted pyridine.
Use/Import. (G) Used in gold plating process. Import range: Confidential.

P 94–495

Importer. Enthone-OMI, Inc.
Chemical. (G) Aralkyl-nitrogen heterocycle.
Use/Import. (G) Polymer component for specialty industrial coatings,inks, and adhesives. Import range: Confidential.

P 94–496

Importer. Confidential.
Chemical. (G) 2-Propenoic acid reaction products with oxirane, methyl oxirane, and alkyl terakisol.
Use/Import. (G) Component for specialty industrial coatings, inks. and adhesives.

P 94–497

Manufacturer. E.I. du Pont de Nnemours & Ccompany.
Chemical. (G) Hydrofluorocarbon.
Use/Production. (S) Refrigerant: formning agent for plastic foams; invet vehicle for sterilants; fire extinguishant

P 94–498

Manufacturer. Confidential.
Chemical. (G) Acid functional polyester.
Use/Production. (G) Dispersively applied binder resin. Prod. range: 31,000–150,000 kg/yr.

P 94–499

Importer. Ciba-Geigy Corporation.
Chemical. (G) Substituted azo metal complex dye.
Use/Import. (G) Textile dye. Import range: Confidential.

P 94–500

Manufacturer. Confidential.
Chemical. (G) Plant extract.
Use/Production. (G) Raw material for use in fragrances (perfumes and colognes) raw material for use in fragrances for soap). detergents and household products.

P 94–501

Manufacturer. The Dow Chemical Company.
Chemical. (G) Brominated aromatic hydrocarbon.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 94–502

Manufacturer. Rhone-Poulenc, Inc.
Chemical. (G) Vinyl copolymer.
Use/Production. (G) Adhesive. Prod range: Confidential.

P 94–503

Manufacturer. Shell Oil Company.
Chemical. (G) Brominated epoxy resin.
Use/Production. (S) Printed circuit laminated miscellaneous industrial application. Prod. range: Confidential.

P 94–504

Importer. Confidential.

Chemical. (S) Polyether polyol; diisocyanate diamine; monoisocyanate.
Use/Production. (S) A breakable water proof coating for textile fabrics. Prod. range: Confidential.

P 94–505

Manufacturer. Confidential.
Chemical. (G) Aqueous polyurethane dispersion.
Use/Production. (S) A protective coating for fabric, leather and other flexible substrates. Prod. range: Confidential.

P 94–506

Manufacturer. Henkel Corporation.
Chemical. (G) Alkyl polyether carboxylic acid ester.
Use/Production. (G) Textile lubricant. Prod. range: Confidential.

P 94–507

Manufacturer. Henkel Corporation.
Chemical. (G) Alkyl polyether carboxylic acid ester.
Use/Production. (G) Textile lubricant. Prod. range: Confidential.

P 94–508

Manufacturer. Henkel Corporation.
Chemical. (G) Alkyl polyether carboxylic acid ester.
Use/Production. (G) Textile lubricant. Prod. range: Confidential.

P 94–509

Manufacturer. Henkel Corporation.
Chemical. (G) Alkyl polyether carboxylic acid ester.
Use/Production. (G) Textile lubricant. Prod. range: Confidential.

P 94–510

Importer. Confidential.
Chemical. (G) Hydroxy acrylic polymer.
Use/Production. (G) Textile lubricant. Prod. range: Confidential.

P 94–511

Manufacturer. Owens-Corning.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Molding resin. Prod. range: Confidential.

P 94–512

Manufacturer. Confidential.
Chemical. (G) Tannin, sodium salt, polymer with acrylic monomers.
Use/Production. (S) Cement additive for oil and gas wells. Prod. range: Confidential.

P 94–513

Importer. Ciba-Geigy Corporation.
Chemical. (G) Phenolic derivative.
Use/Production. (S) Light stabilizer absorber for automobile coatings. Import range: Confidential.

P 94–514

Manufacturer. Confidential.
Chemical. (G) Unsaturated epoxy ester.
Use/Production. (G) Component of coatings, inks, and adhesives.Prod range: Confidential.

P 94–515

Manufacturer. Confidential.
Chemical. (G) Unsaturated epoxy ester.
Use/Production. (G) Component of coatings, inks, and adhesives. Prod range; Confidential.

P 94–516

Manufacturer. Confidential.
Chemical. (G) Unsaturated epoxy resin.
Use/Production. (G) Component of coatings, inks, and adhesives. Prod range; Confidential.

P 94–517

Manufacturer. Confidential.
Chemical. (G) Unsaturated epoxy ester.
Use/Production. (G) Component of coatings, inks, and adhesives. Prod range; Confidential.

P 94–518

Manufacturer. Confidential.
Chemical. (G) Unsaturated epoxy ester.
Use/Production. (G) Component of coatings, inks, and adhesives. Prod range: Confidential.

P 94–519

Manufacturer. Confidential.
Chemical. (G) Unsaturated epoxy ester.
Use/Production. (G) Component of coatings, inks, and adhesives. Prod range: Confidential.

P 94–520

Manufacturer. Confidential.
Chemical. (G) Unsaturated epoxy ester.
Use/Production. (G) Component of coatings, inks, and adhesives. Prod range: Confidential.

P 94–521

Manufacturer. Confidential.
Chemical. (G) Unsaturated epoxy ester.
Use/Production. (G) Component of coatings, inks, and adhesives. Prod range; Confidential.

P 94–522

Manufacturer. Confidential.
Chemical. (G) Unsaturate epoxy ester.
Use/Production. (G) Component of coatings, inks, and adhesives. Prod range: Confidential.

P 94–523

Manufacturer. Confidential.
Chemical. (G) Unsaturated epoxy ester.
Use/Production. (G) Component of coatings, inks, and adhesives. Prod range: Confidential.

P 94–524

Manufacturer. Confidential.
Chemical. (G) Unsaturated epoxy ester.
Use/Production. (G) Component of coatings, inks, and adhesives. Prod range: Confidential.

P 94–525

Manufacturer. Confidential.
Chemical. (G) Unsaturated epoxy ester.
Use/Production. (G) Component of coatings, inks, and adhesives. Prod range: Confidential.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: May 25, 1994.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–13433 Filed 6–1–94; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Industry Advisory Committee for WRC–95

Released: May 20, 1994.

Upon approval from OMB pursuant to E.O. 12838, the FCC proposes to establish an advisory committee for preparations for WRC–95. The proposed date of its first meeting will be May 31, 1994. The Federal Communications Commission intends to establish an Advisory Committee for the 1995 World Radiocommunication Conference (WRC–95 Advisory Committee). This committee would advise the FCC staff on topics relating to preparations for WRC–95. The committee would develop and present proposals and positions on topics to be addressed at WRC–95. The FCC believes establishment of the committee is in the public interest.

This notice also advises interested persons of the tentative proposed date of the initial meeting of the WRC–95 Advisory Committee.

TENTATIVE DATE: May 31, 1994; 8:30–11:30 a.m.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., room 856, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: The WRC–95 Advisory Committee is intended to provide to the agency advice, technical support and recommendations relating to preparation of U.S. proposals and positions for the 1995 World Radiocommunication Conference.

AGENDA: The planned agenda for the proposed first meeting is as follows:

1. Introductions and Welcoming Remarks
2. Approval of Agenda
3. Committee Charter and other Administrative Matters
4. WRC–93 Conclusions: Agendas for WRC–95 and WRC–97
5. Work Program
6. Organization of Work
7. Meeting Schedule
8. Agenda for Next Meeting
9. Other Business

The Advisory Committee will have an open membership, and all interested parties will be invited to participate. This policy will ensure a balanced membership and adequate representation of women and minority members.

A formal notice of establishment and first meeting notice will be issued immediately following OMB approval

FOR FURTHER INFORMATION CONTACT: Thomas M. Walsh (202–632–0935), or Cecily C. Holiday (202–634–1629).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–13327 Filed 6–1–94; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Delegations of Authority With Respect to Undercapitalized Institutions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: FDIC has delegated limited authority to its Executive Director for Supervision and Resolutions and/or its Director, Division of Supervision (DOS), to determine that action other than appointing a receiver would better achieve the statutory purpose of minimizing long-term loss to the deposit insurance fund from resolving the problems of insured depository institutions and to make certain other determinations relating to prompt corrective action.

FOR FURTHER INFORMATION: Jesse G. Snyder, (202) 898–6915, Assistant Director, Operations Branch, Office of Supervision and Applications, Division of Supervision, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Effective December 19, 1992, section 38(h)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1831o(h)(3)) mandates appointment of a receiver not later than 90 days after an institution becomes critically undercapitalized unless the appropriate regulator, with FDIC concurrence, determines that an alternative course of action "would better achieve the purpose of [section 38 to resolve the problems of insured depository institutions at the least possible long-term loss to the deposit insurance fund]". Such a determination is valid for up to 90 days and may be reinstated for additional periods of up to 90 days by new determinations properly documented. After one year a receiver must be appointed unless the head of the appropriate regulatory agency and the Chairperson of the FDIC certify that "the institution is viable and not expected to fail" and the institution also meets four other specific criteria.

Section 38 also permits the appropriate federal banking agency of an undercapitalized institution to determine not to take certain otherwise mandated corrective actions under subsection (f) if to do so would not further the purpose of section 38.

II. Delegation of Authority

A. Deferring Appointment of Receiver

In connection with the resolution of critically undercapitalized institutions, there are certain cases where it is appropriate to extend the 90-day receivership deadline, such as where the chartering authority or appropriate federal banking agency sets a resolution date beyond the deadline in order to accommodate the information gathering needs required to facilitate an orderly resolution. Another example might be an institution with a promising recapitalization in progress which will not be fully effected prior to the deadline but has a good chance of being successful. It is appropriate that such matters be acted on at the staff level, under delegated authority, with respect to the first determination to defer the appointment of a receiver for up to 90 days for a particular institution. Accordingly, the Board has delegated authority to the Executive Director for Supervision and Resolutions, the Director, DOS, and where confirmed in writing by the Director, to an associate director, to make determinations under section 38(h)(3)(A)(ii) with respect to institutions for which the FDIC is the appropriate federal banking agency, and to affirmatively concur with actions thereunder by other appropriate federal banking agencies, as to any action in lieu of appointing a receiver for a critically undercapitalized institution.

This delegated authority does not extend to actually appointing a conservator or a receiver under section 38(h)(3)(A)(i), or to concurring therein, and also does not include authority to grant or concur in more than one deferral per institution or to withhold FDIC concurrence with respect to any action taken under section 38(h)(3)(A) by an appropriate federal banking agency in lieu of appointing a receiver. Each action under delegated authority will be documented in writing, setting forth how deferring the appointment of a receiver or conservator for the initial 90-day period will minimize long-term loss to the deposit insurance fund.

B. Waiver of Certain Corrective Actions

Section 38(f) requires that at least the following three types of specific action be taken against critically and significantly undercapitalized institutions, as well as against undercapitalized institutions which have failed to submit and implement an acceptable capital restoration plan, unless the agency determines that the actions would not further the purpose of section 38: (1) Requiring the sale of securities or consolidation with another institution; (2) requiring compliance with section 23A of the Federal Reserve Act without benefit of the exemption therein for transactions with certain affiliated institutions; and (3) restricting the interest rates paid on deposits to prevailing rates. Where, for example, a near-term resolution or recapitalization of an institution is anticipated, the pursuit of such formal actions against an institution would not normally minimize loss to the insurance fund. In those and other cases, making such determinations would be appropriately delegable to staff. Accordingly, the Board has delegated such authority under section 38(f)(3) to the Executive Director for Supervision and Resolutions, the Director, DOS, or an associate director designated in writing by such Director. Each such action under delegated authority must be documented in writing, clearly setting forth the reasons therefor.

By order of the Board of Directors

Dated at Washington, DC, this 24th day of May 1994.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Acting Executive Secretary

[FR Doc. 94–13365 Filed 6–1–94; 8:45 am]
BILLING CODE 6714–01–P

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Privacy Act of 1974; Amendment to an Existing System of Records

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of amendment to an existing system of records—"Confidential Employee Financial Disclosure Statement System" (formerly "Employee Financial Disclosure Statement System").

SUMMARY: As part of an ongoing examination of the FDIC's systems of records, the "Employee Financial Disclosure Statement System" has been reviewed for compliance with the Privacy Act of 1974, 5 U.S.C. 552a. Numerous minor amendments have been made that will clarify and/or more accurately describe the following categories in this system of records: System name, system location, categories of individuals covered by the system, categories of records in the system, authority for maintenance of the system, retrievability, and retention and disposal.

EFFECTIVE DATE: June 2, 1994.

FOR FURTHER INFORMATION CONTACT: Frederick N. Ottie, Attorney, FDIC, 550–17th Street NW., Washington, DC 20429, (202) 898–6679.

SUPPLEMENTARY INFORMATION: The FDIC's system of records entitled "Employee Financial Disclosure Statement System" is being amended to clarify and/or more accurately describe its contents. These modifications include changing the system name to the "Confidential Employee Financial Disclosure Statement System," updating titles of existing forms and sources of authority, and rewording descriptions of the contents of existing forms. Additionally, the description of individuals covered by the system specifically includes prospective employees in order to extend system coverage to those individuals under consideration for positions identified in 5 CFR 2634.904 who are required to file a Confidential Financial Disclosure Report as authorized by 5 CFR 2634.903(b)(3). This refinement has been coordinated with and approved by the Office of Government Ethics. Finally, the description of retention and disposal procedures is expanded to delineate the retention and disposal procedures for the records of prospective employees who are not selected for employment and to clarify that disposal of information in automated computer files is by deletion.

Accordingly, the Board of Directors of the FDIC amends the "Employee Financial Disclosure Statement System" to read as follows:

FDIC 30–64–0006

SYSTEM NAME:

Confidential Employee Financial Disclosure Statement System.

Note: Complete text appears at 46 FR 45687, Sep. 14, 1981; amended at 47 FR 42162, Sep. 24, 1982; amended at 53 FR 48039, Nov. 29, 1988.

SYSTEM LOCATION:

Records are located in designated divisions and offices, and regional and consolidated offices, to which individuals covered by the system are assigned. Duplicate copies of the above records are maintained in the Office of the Executive Secretary, FDIC, 550–17th Street, NW., Washington, DC 20429, for the purpose of certification of review and resolution of conflicts of interest disclosed therein. A list of the system locations is available from the Ethics Section, Office of the Executive Secretary, FDIC, 550–17th Street, NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current, former, and, in the case of item (1) below, prospective FDIC officers, employees, and special government employees required to file any of the following forms: (1) Confidential Financial Disclosure Report; (2) Confidential Report of Indebtedness; (3) Confidential Report of Interest in FDIC-Insured Depository Institution Securities; (4) Confidential Report of Employment Upon Resignation; (5) Employee Certification and Acknowledgement of Standards of Conduct Regulation and Presidential Executive Orders; (6) Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention-Notice of Disqualification.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system includes data directly furnished by the individual on the following six forms or related records that may be generated in the course of the FDIC's administration of Executive Order 12674, as modified by Executive Order 12731, 5 CFR part 2634, 5 CFR part 2635, 5 CFR part 3202, and 12 CFR part 336—Subpart C, or any successor regulation thereto:

(1) Confidential Financial Disclosure Report—contains statements of personal and family holdings, interests in business enterprises and real property, creditors, and outside employment.

(2) Confidential Report of Indebtedness—contains information on extensions of credit (loans and credit cards) by FDIC-insured depository institutions or any affiliates or subsidiaries of FDIC-insured depository institutions; may also contain memoranda and correspondence relating to requests for approval of certain loans extended by insured banks or affiliates thereof.

(3) Confidential Report of Interest in FDIC-Insured Depository Institution Securities—contains a brief description of an employee's direct or indirect interest in the securities of an FDIC-insured depository institution or affiliate, including a depository institution holding company, and the date and manner of acquisition or divestiture; a brief description of an employee's direct or indirect continuing financial interest through a pension or retirement plan, trust or other arrangement, including arrangements resulting from any current or prior employment or business association, with any FDIC-insured depository institution, affiliate, or depository institution holding company; and a certification acknowledging that the employee has read and understands the rules governing the ownership of securities in FDIC-insured depository institutions.

(4) Confidential Report of Employment Upon Resignation—contains information as to the employee's prospective employer, the nature of the business or organizational activities of the prospective employer, the position the employee will occupy, dates of negotiation for such employment, and the employee's official involvement, if any, with the prospective employer.

Note: Information is no longer collected on this form. However, previously collected records continue to be maintained for six years from the date of filing. All such records will be destroyed by 1997 except for any which may be involved in an ongoing investigation.

(5) Employee Certification and Acknowledgement of Standards of Conduct Regulation and Presidential Executive Orders—contains employee's certification and acknowledgement that he or she: has received a copy of the Standards of Ethical Conduct for Employees of the FDIC, including Part I of Executive Order 12674, 5 CFR part 2635, and 12 CFR part 336—Subpart C, or any other supplemental regulations; has been provided a minimum of one hour of official time to review them; has been advised of the names, titles, office locations, and telephone numbers of ethics officials responsible for answering ethics questions; and has a positive responsibility to comply with the standards of conduct.

(6) Confidential Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention-Notice of Disqualification—identifies FDIC-insured State nonmember depository institutions outside the employee's region of assignment from which a credit card was obtained, and employee certification that the credit cards listed were obtained only under such terms and conditions as are available to the general public, that the line of credit does not exceed $10,000, and that the employee is aware of and understands the requirement for self-disqualification from participation in matters affecting the creditors identified.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 1819(a); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p.215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p.306; 5 CFR 2634.103.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETRIEVABILITY:

Indexed by name, and, in the Office of the Executive Secretary, on an automated system also indexed by name. The automated system does not index the names of prospective employees who are not selected for employment.

* * * * *

RETENTION AND DISPOSAL:

Records concerning prospective employees who are not selected for employment are retained for one year and then destroyed by shredding except that documents needed in an ongoing investigation will be retained until no longer needed in the investigation. All other records are retained for six years and then destroyed by shredding (entries from automated computer index are deleted) except that documents and computer index entries needed in an ongoing investigation will be retained until no longer needed in the investigation.

* * * * *

By direction of the Board of Directors.

Dated at Washington, DC, this 24th day of May, 1994.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Acting Executive Secretary

[FR Doc. 94–13367 Filed 6–1–94; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1022–DR]

Amendment to Notice of a Major Disaster Declaration; TN

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1022–DR), dated April 14, 1994, and related determinations.

EFFECTIVE DATE: May 25, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee dated April 14, 1994, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 14, 1994:

McMinn County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–13393 Filed 6–1–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council

Time: 10 a.m.

Date: June 14, 1994.

Place: Fourth Floor, Conference Room, Federal Retirement Thrift Investment Board, 1250 H. Street NW., Washington, DC

Status: Open.

Matters to be Considered: Approval of the minutes of the November 10, 1993, meeting; report of the Executive Director on the status of the Thrift Savings Plan; Thrift savings Plan open season activities; participant actions during recent volatile market; additional Thrift Savings Plan investment funds update; proposals to cut Thrift Savings Plan match; implementation of Public Law 103–226; and new business

Any interested person may attend, appear before, or file statements with the Council For further information contact John J. O'Meara, Committee Management Officer, on (202) 942–1662.

Date: May 26, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94–13369 Filed 6–1–94; 8:45 am]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

[File Nos. 912 3248; 912 3295; 922 3001; 922 3002]

Beverly Hills Weight Loss Clinics International, Inc.; Doctors Medical Weight Loss Centers, Inc., et al.; Quick Weight Loss Centers, Inc., et al. (Texas); Quick Weight Loss Centers, Inc., et al. (Georgia); Proposed Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the four consent agreements, accepted subject to final Commission approval, would prohibit, among other things, four commercial diet program companies and their officers from misrepresenting the performance or safety of any diet program they offer in the future, and would require the respondents to possess competent and reliable scientific evidence to substantiate any future claims they make about weight loss, weight loss maintenance, or rate of weight loss; to make a number of disclosures regarding maintenance success claims; and to disclose all mandatory fees.

DATES: Comments must be received on or before August 1, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Kelly or Eric Bash, FTC/H–200, Washington, DC 20580. (202) 326–3304 or 326–2892 or Gary Cooper, FTC/Boston Regional Office, 101 Merrimac St., suite 810, Boston, MA. 02114–4719. (617) 424–5960.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's rules of Practice (16 CFR 2.34), notice is hereby given that the following consent

agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(B)(6)(ii)).

In the Matter of Beverly Hills Weight Loss Clinics International, Inc., a corporation. File No. 912–3248.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Beverly Hills Weight Loss Clinics International, Inc., a corporation ("proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It Is Hereby Agreed by and between Beverly Hills Weight Loss Clinics International, Inc., by its duly authorized officers, and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Beverly Hills Hills Weight Loss Clinics International, Inc. ("Beverly Hills"), is a Virginia corporation, with its office and principal place of business located at 200 Highpoint Avenue, suite B–5, Portsmouth, Rhode Island 02871.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (b) make information pubic in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the attached draft complaint and the following order. Proposed respondent understands that once the order has been issued, it was be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. *Competent and reliable scientific evidence* shall mean those tests, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results;

B. *Weight loss program* shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. A *broadcast medium* shall mean any radio or television broadcast, cablecast, home video or theatrical release;

D. For any Order-required disclosure in a print medium to be made *clearly and prominently* or in a *clear and prominent* manner, it must be given both in the same type style and in: (1) Twelve point type where the representation that triggers the disclosure is given in twelve point or large type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any Order-required disclosure given orally in a broadcast medium to be made "clearly and prominently" or in a "clear and prominent" manner, the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure.

E. *A short broadcast advertisement* shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I

It Is Ordered that respondent, Beverly Hills Weight Loss Clinics International, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation, provided, further, that for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants using the program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; provided, however, that the required sample may exclude those participants who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance of respondent's program or earlier termination, as applicable; and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary."; provided further, that respondent shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondent's weight loss program, provided, however, that a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the following information:

(1) The average percentage of weight loss maintained by those participants;

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, provided, further, that if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

(3) If the participant population referred to is not representative of the general participant population for respondent's programs:

(a) The proportion of the total participant population in respondent's programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

(b) The statement: "Beverly Hills makes no claim that this [these] result(s) is [are] representative of all participants in the Beverly Hills program.";

Provided, further, that compliance with the obligations of this paragraph I.C. in no way relieves respondent of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondent:

(1) Includes, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our clinics for details about our maintenance record.";

(2) For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, complies with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondent:

(a) Give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C.(1)–(3) of this order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 pt. bold), lead-in (Times Roman 12 pt.), disclosures (Helvetica 14 pt. bold), acknowledgment language (Times Roman 12 pt.) and signature block therein; provided, further, that no information in addition to that required to be included in the document required by this subparagraph I.D.(2) shall be included therein:

Maintenance Information

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here]

For many dieters, weight loss is temporary

I have read this notice

(Client Signature) (Date)

(b) require each potential client to sign such document; and

(c) give each client a copy of such document; and

Provided, however, that if any potential participant who does not then participate in the program refuses to sign or accept a copy of such document, respondent shall so indicate on such document and shall not, for that reason alone, be found in breach of this subparagraph I.D.(2); and

(3) retain in each client file a copy of the signed maintenance notice required by this paragraph;

Provided, further, that:

(i) Compliance with the obligations of this paragraph I.D. in no way relieves respondent of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss; and

(ii) respondent must comply with both paragraph I.D. and paragraph I.C. of this Order if respondent includes in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term"; and provided, however, that the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondent's weight loss programs if the weight loss success or weight loss

maintenance success depicted in the advertisement is not representative of what participants in respondent's weight loss programs generally achieve, unless respondent discloses, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss success or weight loss maintenance success:

(1) what the generally expected success would be for Beverly Hills customers in losing weight or maintaining achieved weight loss; provided, however, that in determining the generally expected success for Beverly Hills customers respondent may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(2) one of the following statements:

(a) "You should not expect to experience these results."

(b) "This result is not typical. You may not do as well."

(c) "This result is not typical. You may be less successful."

(d) "_____'s success is not typical. You may not do as well."

(e) "_____'s experience is not typical. You may achieve less."

(f) "Results not typical."

(g) "Results not typical of program participants.";

Provided, further, that if the endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure; and provided, however, that:

(i) For endorsements or testimonials about weight loss success, respondent can satisfy the requirements of subparagraph I.E. (1) by accurately disclosing the generally expected success in the following phrase: "Beverly Hills clients lose an average of _____ pounds over an average _____—week treatment period"; and

(ii) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraph I.E. (1) or (2) herein, respondent may substitute a clear and prominent disclosure of the percentage of all of respondent's customers that the group or subset defined in the advertisement represents.

F. Representing, directly or by implication, that the price at which any weight loss program can be purchased is the only cost associated with losing weight on that program, unless such is the case.

G. Representing, directly or by implication, the price at which any weight loss program can be purchased, unless respondent discloses, clearly and prominently, either:

(1) In close proximity to such representation, the existence and amount of all mandatory costs or fees associated with the program offered; or

(2) in immediate conjunction with such representation, one of the following statements:

(a) "Plus the cost of [list of products or services that participants must purchase at additional cost]."

(b) "Purchase of [list of products or services that participants must purchase at additional cost] required.";

Provided, further, that in broadcast media, if the representation that triggers any disclosure required by this paragraph is oral, the required disclosure must also be made orally.

H. Representing, directly or by implication, that any weight loss program or services can be obtained for free, unless respondent discloses, clearly and prominently, either (1) in close proximity to such representation, the existence and amount of all mandatory fees associated with the free offer; or (2) in immediate conjunction with such representation, the following statement: "You must pay for [list of products or services that participants must purchase at additional cost] to take advantage of this free offer."; provided, further, that in broadcast media, if the representation that triggers the disclosure is oral, the disclosure required by either (1) or (2) of this paragraph must also be made orally.

I. Failing to disclose over the telephone, for a period of time beginning with the date of any advertisement of the price at which any weight loss program can be purchased and ending no sooner that 180 days after the last dissemination of any such advertisement, to consumers who inquire about the cost of any weight loss program or are told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees associated with participation in the program; provided, however, that respondent may satisfy this requirement by directing its weight loss centers to disclose the information, by providing the center personnel with suggested language to be used when responding to telephone inquiries and by making its best efforts to ensure compliance with its directive to disclose price information over the telephone.

J. Representing, directly or by implication, the average or typical rate or speed at which participants or prospective participants in any weight loss program have lost or will lose weight, unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

K. Representing, directly or by implication, that participants or prospective participants in respondent's weight loss programs have reached or will reach a specified weight within a specified time period, unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

L. Making comparisons between the efficacy of respondent's weight loss program(s) and the efficacy of any other weight loss and/or diet program(s), unless at the time of making such representation, respondent possesses and relies upon a competent and reliable scientific study or survey substantiating the representation.

M. Making comparisons between the safety of respondent's weight loss program(s) and the safety of any other weight loss and/or diet program(s), unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

N. Failing to disclose, clearly and prominently, either (1) to each participant who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2%) of said participant's initial body weight, or three pounds, whichever is less, for at least two consecutive weeks, or (2) in writing to all participants, when they enter the program, that failure to follow the diet instructions and consume the total caloric intake recommended may involve the risk of developing serious health complications.

O. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

P. Misrepresenting, directly or by implication, the performance, efficacy, or safety of any weight loss program or weight loss product.

II

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

III

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that respondent shall distribute a copy of this Order to each of its officers, agents, representatives, independent contractors and employees, who is involved in the preparation and placement of advertisements or promotional materials or in communication with customers or prospective customers or who have any responsibilities with respect to the subject matter of this Order; and, for a period of five (5) years from the date of entry of this Order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

V

It is further ordered that:

A. Respondent shall distribute a copy of this Order to each of its franchisees and licensees and shall contractually bind them to comply with the prohibitions and affirmative requirements of this Order; respondent may satisfy this contractual requirement by incorporating such Order requirements into its current Operations Manual; and

B. Respondent shall further make reasonable efforts to monitor its franchisees' and licensees' compliance with the Order provisions; respondent may satisfy this requirement by: (1) Taking reasonable steps to notify promptly any franchisee or licensee that respondent determines is failing materially or repeatedly to comply with any other provision; (2) providing the Federal Trade Commission with the name and address of the franchisee or licensee and the nature of the noncompliance if the franchisee or licensee fails to comply promptly with the relevant Order provision after being so notified; and (3) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, diligently pursuing reasonable and appropriate remedies available under its favorable or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

VI

It is further ordered that respondent shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Beverly Hills Weight Loss Clinics International, Inc., (hereinafter "Beverly Hills"), marketer of the Beverly Hills low-calorie diet (hereinafter "LCD") program. The Beverly Hills diet program is offered to the public in the eastern United States through company-owned and franchised clinics.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondent deceptively advertised: (1) Its LCD program's success in helping customers achieve and maintain weight loss; (2) the typical rate or speed at which customers will lose weight; (3) the time frame within which customers will achieve their desired weight loss goal; (4) the safety of the Beverly Hills program in comparison to other weight loss programs; (5) the purchase price of the Beverly Hills program; and (6) the terms of the company's offers of free weight loss services. The complaint further alleges that Beverly Hills engaged in the deceptive practice of failing to warn clients it monitors of the health importance of following the diet instructions.

Success

The complaint against Beverly Hills alleges that the company failed to possess a reasonable basis for claims it made regarding the success of its customers in losing weight and avoiding the regain of weight lost during the program. Through consumer testimonials and other advertisements, Beverly Hills represented that its customers typically are successful in reaching their weight loss goals and in maintaining their weight loss achieved under the Beverly Hills diet program either long-term or permanently.

The Commission believes that these success claims for customer weight loss and maintenance of achieved weight loss are deceptive because at the time it made the claims Beverly Hills did not possess adequate substantiation for those claims.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in several ways. First, the order (part I.A.) requires the company to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of participants on any diet program in achieving or maintaining weight loss. To ensure compliance, the order further specifies what this level of evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all participants using the program or any subset of those participants, that evidence shall be based on a representative sample of: (a) All participants who have entered the program, where the representation relates to such persons; or (b) all participants who have completed a particular phase of the program or the entire program, where the representation only relates to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the evidence of participants who were followed for a period of at least two years after their completion of the respondent's program, including any periods of participation in respondent's maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of participants who were followed for a period of time after completing the program that is either: (a) Generally recognized by experts in the field of treating obesity as being of

sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent; or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

Second, as measures to ensure future compliance, the proposed order requires the proposed respondent for any claim that participants of any diet program have successfully maintained weight loss to disclose the fact that "For many dieters, weight loss is temporary" (part I.B.), as well as the following information relating to that claim (part I.C.):

(1)The average percentage of weight loss maintained by those participants (e.g., "60% of achieved weight loss was maintained"),

(2) the duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in proposed respondent's maintenance program(s) that follows active weight loss, if that is the case—e.g., "participants maintain an average of 60% of weight loss 22 months after active weight loss (includes 18 months on maintenance program)", and

(3) where the participant population referred to is not representative of the general participant population for that program, the proportion of the total participant population that those participants represent, expressed in terms of a percentage or actual numbers of participants—e.g. "Participants on maintenance—30% of our clients—kept off an average of 66% of the weight for one year (includes time on maintenance program)" or, in lieu of that factual disclosure, the statement: "Beverly Hills makes no claim that this result is representative of all participants in the Beverly Hills program."

Third, for maintenance success claims made in broadcast advertisements of thirty seconds or less duration, the proposed order (part I.D.) requires that Beverly Hills, in lieu of making the factual disclosures required for such claims by Part I.C: (1) Include in such advertisements the statement "Check at our centers for details about our maintenance record."; and (2) provide consumers at point-of-sale with a required form that includes the factual disclosures required by Part I.C., which form must be signed by the client and retained in the company's client file.

The proposed order makes clear that this alternative disclosure requirement does not relieve Beverly Hills of the obligation to substantiate any maintenance success claim, in accordance with part I.A. of the order, and it "takes back" the exception from full quantitative disclosures in short broadcast advertising if Beverly Hills makes a maintenance success claim that uses numbers or descriptive terms that convey a quantitative measure, such as "most of our customers maintain their weight loss long term." Beverly Hills in that case would have to make all the required disclosures in the ad and provide the disclosures at point-of-sale.

Fourth, for weight-loss and weight-loss maintenance success claims made through endorsements or testimonials that are not representative of what Beverly Hills idet program participants generally achieve, the order (part I.E.) requires that Beverly Hills disclosure either what the generally expected success would be for Beverly Hills customers, or one of several alternative statements, such as "This result is not typical. You may be less successful", which explains the limited applicability of atypical testimonials in accordance with the Commission's "Guides Concerning Use of Endorsements and Testimonials in Advertising" 16 CFR 255.2(a). Under the proposed order, Beverly Hills may satisfy the requirements of the first disclosure concerning generally expected success by accurately disclosing those facts in the following format: "Beverly Hills clients lose an average of ____ pounds over an average ____-week treatment period."

Finally, the proposed order (part I.P.) generally prohibits the company from misrepresenting the performance or efficacy of any weight loss program.

Rate of Weight Loss

The Commission's complaint further alleges that Beverly Hills failed to possess a reasonable basis for claims it made concerning the average rate of weight loss for participants in its program. The proposed consent order addresses this practice (part I.J.) by prohibiting Beverly Hills from representing that participants in its programs will lose weight at an average or typical rate or speed, unless Beverly Hills possesses and relies upon competent and reliable scientific evidence substantiating the representation.

Projection of Weight Loss

The Commission's complaint further alleges that Beverly Hills failed to possess a reasonable basis for its claim made during initial sales presentations that consumers will typically reach their desired weight-loss goal within the time frame computed by Beverly Hills personnel. To address this practice, the proposed order (part I.K.) prohibits Beverly Hills from representing that participants or prospective participants will reach a specified weight within a specified period of time, unless proposed respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

Comparative Safety Claim

The Commission's complaint further alleges that Beverly Hills failed to possess a reasonable basis for its claim that its weight loss programs are safer than other weight loss programs that do not include essential fatty acid supplementation. The proposed order seeks to address this practice in two ways. First, part I.M. requires the company to have competent and reliable scientific evidence substantiating any claim that compares the safety of its weight loss program with that of any other weight loss or diet program. Second, part I.P. of the proposed order prohibits the company from misrepresenting, among other things, the safety of any weight loss program or weight loss product.

Monitoring Practices

According to the complaint, Beverly Hills provides its customers with diet instructions that require the customers to come in to one of the proposed respondent's centers three times a week for monitoring of their progress, including weighing in. In the course of regularly ascertaining weight loss progress, respondent, in some instances, is presenting with weight loss results indicating that customers are losing weight significantly in excess of their projected goals, which is an indication that they may not be consuming all of the food prescribed by their diet instructions. According to the complaint, such conduct could, if not corrected promptly, result in health complications. In light of this monitoring practice, the Commission's complaint alleges that Beverly Hills has failed to disclose to consumers who are losing weight significantly in excess of their projected goals that failing to follow the diet instructions and consume all of the food prescribed could result in health complications.

The proposed consent order seeks to address the alleged monitoring misrepresentation cited in the accompanying complaint in two ways. First, the order (part I.N.) requires Beverly Hills to disclose in writing to all participants when they enter the program, that failure to follow the program instructions and eat all of the food recommended may involve the risk of developing serious health complications. Second, the proposed order (part I.P.) generally prohibits any misrepresentation concerning the safety of any weight loss program.

Price

The Commission's complaint against Beverly Hills also alleges that the company falsely represented that the price it advertised far its diet program is the only cost associated with losing weight on the diet program, when, in fact, there are substantial additional mandatory expenses that far exceed the advertised price. The complaint further alleges that Beverly Hills failed to disclose adequately to consumers the existence and amount of all mandatory expenses associated with participation in the diet program.

The proposed consent order seeks to address these practices in three ways. First, part I.F. of the proposed order prohibits untrue representations that an advertised price for a weight loss program is the only cost associated with losing weight on that program. Second, for any advertisement containing a price at which any weight loss program can be purchased, the proposed order (part I.G.) requires Beverly Hills to disclose either the existence and amount of all mandatory costs or fees associated with the program offered or a statement identifying a list of all products or services that participants must purchase at an additional cost. This disclosure must be made orally under the proposed order if the price representation is made orally under the proposed order if the free offer is made orally in broadcast media.

Finally, the proposed order (part I.I.) requires the proposed respondent to disclose over the telephone to callers who inquire or ara told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees associated with participation in the program. Under the order, Beverly Hills can satisfy this requirement by: (1) Providing the center personnel with suggested language to be used when responding to telephone inquiries; and (2) making its best efforts to ensure compliance with its directive to disclose price information over the telephone.

Fee Offers

The Commission's complaint also alleges that, through offers of free weight loss services, Beverly Hills falsely represented that its weight loss programs were being offered to consumers at no cost. The complaint further alleges that the company failed to disclose adequately to consumers that the receipt of free weight loss services is contingent upon the purchase, at substantial expense to the consumer, of other goods or services that are mandatory for participation in the company's weight loss programs.

The proposed consent order (part I.H.) seeks to address this practice by requiring that the company disclose either (1) the existence and amount of all mandatory fees associated with the free offer, or (2) a list of all products or services that participants must purchase at an additional cost to take advantage of the free offer. This disclosure must be made orally under the proposed order if the free offer is made orally in broadcast media.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

In the matter of Doctors Medical Weight Loss Centers, Inc., a corporation, Doctors Weight Loss Centers, Inc., a corporation, and Joyce A. Schuman, individually and as an officer of said corporation. File No. 912 3295.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Doctors Medical Weight Loss Centers, Inc. ("DMWLC"), a corporation, Doctors Weight Loss Centers, Inc. ("DWLC"), a corporation, and Joyce A. Schuman, individually and as an officer of said corporations, and it now appearing, that DMWLC, a corporation, DWLC, a corporation, and Joyce A. Schuman, individually and as an officer of said corporation (hereinafter, collectively, "proposed respondents" or "respondents"), are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between DMWLC and DWLC, by their duly authorized officers; Joyce A. Schuman, and counsel for the Federal Trade Commission, that:

1. Proposed respondents DMWLC and DWLC are corporations organized, existing and formerly doing business under and by virtue of the laws of the State of Florida, with their offices and principal place of business located at 5479 A North Federal Highway, Fort Lauderdale, Florida 33309.

2. Proposed respondent Joyce A. Schuman is an individual with her principal residence located at 2730 Sea Island Drive, Fort Lauderdale, Florida 33301.

3. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following Order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any to any other manner of service. The complaint

may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

8. Proposed respondents have read the attached draft complaint and the following Order. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. *Competent and reliable scientific evidence* shall mean those tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results;

B. *Weight loss program* shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. *A broadcast medium* shall mean any radio or television broadcast, cablecast, home video, or theatrical release;

D. For any Order-required disclosure in print media to be made *clearly and prominently*, or in a *clear and prominent manner*, it must be given both in the same type style and in: (1) Twelve point type where the representation that triggers and disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any Order-required disclosure given orally in a broadcast medium to be made "clearly and prominently," or in a "clear and prominent manner," the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure;

E. A *short broadcast advertisement* shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I.

It is ordered that respondents DMWLC, a corporation, DWLC, a corporation, their successors and assigns, and their officers, and Joyce A. Schuman, individually and as an officer of said corporations, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation, provided, further, that for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants of respondents' program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; provided, however, that the required sample may exclude those participants who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance phase of respondents' program or earlier termination, as applicable; and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary"; provided, further, that respondents shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents' weight loss program; provided, however, that a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants on any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the following information:

(1) The average percentage of weight loss maintained by those participants;

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, provided, further, that if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

(3) if the participant population referred to is not representative of the general participant population for respondents' programs:

(a) The proportion of the total participant population in respondents' programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

(b) The statement: "[Doctors Medical Weight Loss Centers/Doctors Weight Loss Centers] makes no claim that this [these] result[s] is [are] representative of all participants in the [Doctors Medical Weight Loss Centers/Doctors Weight Loss Centers] program." provided, further, that compliance with the

obligations of this paragraph I.C. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondents:

(1) Include, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our centers for details about our maintenance record";

(2) For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, comply with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondents:

(a) Give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C. (1)–(3) of this Order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 point bold, lead-in (Times Roman 12 point), disclosures (Helvetica 14 point bold), acknowledgment language (Times Roman 12 point), and signature block therein; provided, further, that no information in addition to that required to be included in the document required by this subparagraph I.D. (2) shall be included therein;

Maintenance Information

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here] For many dieters, weight loss is temporary.

I have read this notice.

_____

(Client Signature) (Date)

(b) Require each potential client to sign such document; and

(c) Give each client a copy of such document; and

(3) Retain in each client file a copy of the signed maintenance notice required by this paragraph;

provided, further, that:

(i) Compliance with the obligations of this paragraph I.D. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss;

(ii) Respondents must comply with both paragraph I.D. and paragraph I.C. of this Order if respondents include in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term";

provided, however, that the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondents' weight loss programs if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants of respondents' weight loss programs generally achieve, unless respondents disclose, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss success or weight loss maintenance success:

(1) What the generally expected success would be for DMWLC/DWLC customers in losing weight or maintaining achieved weight loss; provided, however, that the generally expected success for DMWLC/DWLC customers may exclude those customers who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(2) One of the following statements:

(a) "You should not expect to experience these results."

(b) "This result is not typical. You may not do as well."

(c) "This result is not typical. You may be less successful."

(d) "_____'s success is not typical. You may not do as well."

(e) "_____'s experience is not typical. You may achieve less."

(f) "Results not typical."

(g) "Results not typical of program participants."

provided, further, that if the endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner, and in immediate conjunction with the representation that triggers the disclosure:

provided, however, that:

(i) For endorsements or testimonials about weight loss success, respondents can satisfy the requirements of subparagraph I.E. (1) by accurately disclosing the generally expected success in the following phrase: "Doctors Medical Weight Loss Centers, Inc./Doctors Weight Loss Centers, Inc. participants lose an average of _____ pounds over an average _____-week treatment period"; and

(ii) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraphs I.E. (1) or (2) herein, respondents may substitute a clear and prominent disclosure of the percentage of all of respondents' customers that the group or subset defined in the advertisement represents.

F. Representing, directly or by implication, that the price at which any weight loss program can be purchased is the only cost associated with losing weight on that program, unless such is the case.

G. Representing, directly or by implication, the price at which any weight loss program can be purchased, unless respondents disclose, clearly and prominently, either:

(1) In close proximity to such representation, the existence and amount of all mandatory fees associated with the program offered; or

(2) In immediate conjunction with such representation, one of the following statements:

(a) "Plus the cost of [list of products or services that participants must purchase at additional cost]"; or

(b) "Purchase of [list of products or services that participants must purchase at additional cost] required";

provided, further, that in broadcast media, if the representation that triggers any disclosure required by this paragraph is oral, the required disclosure must also be made orally.

H. Failing to disclose over the telephone, for a period beginning with the date of any advertisement of the price at which any weight loss program can be purchased and ending no sooner than 180 days after the last dissemination of such advertisement, to consumers who inquire about the cost of any weight loss program, or are told about the cost of any weight loss program, the existence and amount of

any and all mandatory costs or fees associated with participation in the program; provided, however, that respondents may satisfy this requirement by directing their weight loss centers to disclose the information, by providing the center personnel with suggested language to be used when responding to phone inquiries and by making their best efforts to ensure compliance with their directive to disclose price information over the telephone.

I. Representing, directly or by implication, that prospective participants in respondents' weight loss programs will reach a specified weight within a specified time period, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

J. Representing, directly or by implication, the average or typical rate or speed at which any participant on any weight loss program has lost or will lose weight, unless at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

K. Failing to disclose, clearly and prominently, either (1) to each participant who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2%) of said participant's initial body weight, or three pounds, whichever is less, for at least two consecutive weeks, or (2) in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications.

L. Misrepresenting, directly or by implication, the performance, efficacy, or safety of any weight loss program.

II

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s) that may affect compliance obligations arising out of this Order.

III

It is further ordered that respondent Joyce A. Schuman shall promptly notify the Commission of the discontinuance of her present business or employment and of her affiliation with a new business or employment. In addition, for a period of three (3) years from the service date of this Order, the individual respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities relate to the advertising, promotion, offering for sale, or sale of any weight loss program. When so required under this paragraph, each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which the individual respondent is newly engaged, as well as a description of the individual respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

IV

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials possessed and relied upon to substantiate any such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is further ordered that respondents shall distribute a copy of this Order to each of their officers, agents, representatives, independent contractors and employees who are involved in the preparation and placement of advertisements or promotional materials or in communication with customers or prospective customers or who have any responsibilities with respect to the subject matter of this Order; and, for a period of three (3) years from the date of entry of this order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

VI

It is further ordered that respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and from in which they have complied with this Order.

File No. 922 3001.

In the matter of Quick Weight Loss Centers, Inc., a Texas corporation, Don K. Gearheart, individually and as an officer of said corporation, and Joyce A. Schuman, individually and as an officer of said corporation.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Quick Weight Loss Centers, Inc., a Texas corporation ("QWLC-Tex."), Don K. Gearheart, individually and as an officer of said corporation, and Joyce A. Schuman, individually and as an officer of said corporation, and it now appearing that QWLC-Tex., a corporation, Don K. Gearheart, individually and as an officer of said corporation, and Joyce A. Schuman, individually and as an officer of said corporation (hereinafter, collectively, "proposed respondents" or "respondents"), are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between QWLC-Tex., by its duly authorized officers, Don K. Gearheart, Joyce A. Schuman, and counsel for the Federal Trade Commission, that:

1. Proposed respondent QWLC-Tex. is a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of Texas, with its offices and principal place of business located at 2900 Gateway, suite 605, Irving, Texas 75063.

2. Proposed respondent Don Gearheart is an individual with his principal residence located at 9520 East Pinnacle Pear Road, Scottsdale, Arizona 85255.

3. Proposed respondent Joyce A. Schuman is an individual with her principal residence located at 2730 Sea Island Drive, Fort Lauderdale, Florida 33301.

4. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

5. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (1) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following Order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

9. Proposed respondents have read the attached draft complaint and the following Order. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. *Competent and reliable scientific evidence* shall mean those tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results;

B. *Weight loss program* shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. A *broadcast medium* shall mean any radio or television broadcast, cablecast, home video, or theatrical release;

D. For any Order-required disclosure in print media to be made *clearly and prominently*, or in a *clear and prominent manner*, it must be given both in the same type style and in: (1) Twelve point type where the representation that triggers the disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any Order-required disclosure given orally in a broadcast medium to be made " clearly and prominently," or in a "clear and prominent manner," the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure;

E. A *short broadcast advertisement* shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I

It is ordered that respondents QWLC-Tex., a corporation, its successors and assigns, and its officers, and Don K. Gearheart, individually and as an officer of said corporation, and Joyce A. Schuman, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation, *provided*, further, that for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants of respondents' program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; provided, however, that the required sample may exclude those participants who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representations only relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance phase of respondents' program or earlier termination, as applicable; and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is neither:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight

loss is temporary"; provided, further, that respondents shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents' weight loss program; provided, however, that a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants on any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the following information:

(1) The average percentage of weight loss maintained by those participants;

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, provided, further, that if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

(3) If the participant population referred to is not representative of the general participant population for respondents' programs:

(a) The proportion of the total participant population in respondents' programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

(b) The statement: "[Quick Weight Loss Centers] makes no claim that this [these] result[s] is [are] representative of all participants in the [Quick Weight Loss Centers] program."

provided, further, that compliance with the obligations of this paragraph I.C. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondents:

(1) Include, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our centers for details about our maintenance record";

(2) For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, comply with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondents:

(a) Give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C. (1)–(3) of this Order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 point bold), lead-in (Times Roman 12 point), disclosures (Helvetica 14 point bold), acknowledgment language (Times Roman 12 point), and signature block therein; provided, further, that no information in addition to that required to be included in the document required by this subparagraph I.D (2) shall be included therein:

Maintenance Information

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here _____] For many dieters, weight loss is temporary.

I have read this notice. _____
[Client Signature) (Date)

(b) Require each potential client to sign such document; and

(c) Give each client a copy of such document; and

(3) retain in each client file a copy of the signed maintenance notice required by this paragraph;

provided, further, that:

(i) Compliance with the obligations of this paragraph I.D. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss;

(ii) Respondents must comply with both paragraph I.D. and paragraph I.C. of this Order if respondents include in any such short broadcast advertisement a representation about maintenance success that states a number of percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term";

provided, however, that the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondents' weight loss programs if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants of respondents' weight loss programs generally achieve, unless respondents disclose, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss success or weight loss maintenance success:

(1) What the generally expected success would be for QWLC-Tex. customers in losing weight or maintaining achieved weight loss; provided, however, that the generally expected success for QWLC-Tex. customers may exclude those customers who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(2) one of the following statements:

(a) "You should not expect to experience these results."

(b) "This result is not typical. You may not do as well."

(c) "This result is not typical. You may be less successful."

(d) "_____'s success is not typical. You may not do as well."

(e) "_____'s experience is not typical. You may achieve less."

(f) "Results not typical."

(g) "Results not typical of program participants."

provided, further, that if the endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner, and in immediate conjunction with the representation that triggers the disclosure;

provided, however, that:

(i) For endorsements or testimonials about weight loss success, respondents can satisfy the requirements of subparagraph I.E. (1) by accurately disclosing the generally expected success in the following phrase: "Quick Weight Loss Centers, Inc. participants lose an average of _____ pounds over an average _____-week treatment period"; and

(ii) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraphs I.E. (1) or (2) herein, respondents may substitute a clear and prominent disclosure of the percentage of all of respondents' customers that the group or subset defined in the advertisement represents.

F. Representing, directly or by implication, that the price at which any weight loss program can be purchased is the only cost associated with losing weight on that program, unless such is the case.

G. Representing, directly or by implication, the price at which any weight loss program can be purchased, unless respondents disclose, clearly and prominently, either:

(1) In close proximity to such representation, the existence and amount of all mandatory fees associated with the program offered; or

(2) in immediate conjunction with such representation, one of the following statements:

(a) "Plus the cost of [list of products or services that participants must purchase at additional cost]"; or

(b) "Purchase of [list of products or services that participants must purchase at additional cost] required";

provided, further, that in broadcast media, if the representation that triggers any disclosure required by this paragraph is oral, the required disclosure must also be made orally.

H. Failing to disclose over the telephone, for a period beginning with the date of any advertisement of the price at which any weight loss program can be purchased and ending no sooner than 180 days after the last dissemination of such advertisement, to consumers who inquire about the cost of any weight loss program, or are told about the cost of any weight loss program, the existence and amount of any and all mandatory costs or fees associated with participation in the program;

provided, however, that respondents may satisfy this requirement by directing their weight loss centers to disclose the information, by providing the center personnel with suggested language to be used when responding to phone inquiries and by making their best efforts to ensure compliance with their directive to disclose price information over the telephone.

I. Representing, directly or by implication, that prospective participants in respondents' weight loss programs will reach a specified weight within a specified time period, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

J. Representing, directly or by implication, the average or typical rate or speed at which any participant on any weight loss program has lost or will lose weight, unless at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

K. Failing to disclose, clearly and prominently, either (1) to each participant who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2%) of said participant's initial body weight, or three pounds, whichever is less, for at least two consecutive weeks, or (2) in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications.

L. Representing, directly or by implication, that any weight loss program is supervised or monitored by health care professionals, unless such is the case, or otherwise misrepresenting, directly or by implication, the extent to which any weight loss program is supervised or monitored by health care professionals.

M. Misrepresenting, directly or by implication, the performance, efficacy, or safety of any weight loss program.

II

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s) that may affect compliance obligations arising out of this Order.

III

It is further ordered that respondents Don K. Gearheart and Joyce A. Schuman shall promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. In addition, for a period of three (3) years from the service date of this Order, the individual respondents shall promptly notify the Commission of each affiliation with a new business or employment whose activities relate to the advertising, promotion, offering for sale, or sale of any weight loss program. When so required under this paragraph, each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which the individual respondent is newly engaged, as well as a description of the individual respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

IV

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials possessed and relied upon to substantiate any such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is further ordered that respondents shall distribute a copy of this Order to each of their officers, agents, representatives, independent contractors and employees who are involved in the preparation and placement of advertisements or promotional materials or in communication with customers or prospective customers or who have any responsibilities with respect to the subject matter of this Order; and, for a period of three (3) years from the date of entry of this Order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

VI

It is further ordered that respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

File No. 922 3002.

In the matter of Quick Weight Loss Centers, Inc. a Georgia corporation, and Don K.

Gearheart, individually and as an officer of said corporation.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Quick Weight Loss Centers, Inc., a Georgia corporation ("QWLC–Ga."), and Don K. Gearheart, individually and as an officer of said corporation, and it now appearing that QWLC–Ga., a corporation, and Don K. Gearheart, individually and as an officer of said corporation (hereinafter, collectively, "proposed respondents" or "respondents"), are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It Is Hereby Agreed by and between QWLC–Ga., by its duly authorized officers, Don K. Gearheart, and counsel for the Federal Trade Commission, that:

1. Proposed respondent QWLC–Ga. is a corporation organized, existing and formerly doing business under and by virtue of the laws of the State of Georgia, with its offices and principal place of business located at 1401 Johnson Ferry Road, suite 276, Marietta, Georgia 30062.

2. Proposed respondent Don Gearheart is an individual with his principal residence located at 9520 East Pinnacle Pear Road, Scottsdale, Arizona 85255.

3. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following Order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

8. Proposed respondents have read the attached draft complaint and the following Order. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. *Competent and reliable scientific evidence* shall mean those tests, analysis, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results;

b. *Weight loss program* shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. A *broadcast medium* shall mean any radio or television broadcast, cablecast, home video, or theatrical release;

D. For any Order-required disclosure in print media to be made *clearly and prominently*, or in a *clear and prominent manner*, it must be given both in the same type style and in: (1) Twelve point type where the representation that triggers the disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any Order-required disclosure given orally in a broadcast medium to be made "clearly and prominently," or in a "clear and prominent manner," the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure;

E. A *short broadcast advertisement* shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I.

It is ordered that respondents QWLC–Ga., a corporation, its successors and assigns, and its officers, and Don K. Gearheart, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation, provided, further, that for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants of respondents' program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; provided, however, that the required sample may exclude those participants who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representation only relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance phase of respondents' program or earlier termination, as applicable; and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary"; provided, further, that respondents shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents' weight loss program; provided, however, that a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants on any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the following information:

(1) The average percentage of weight loss maintained by those participants;

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, provided, further, that if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

(3) If the participant population referred to is not representative of the general participant population for respondents' programs:

(a) The proportion of the total participant population in respondent's programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

(b) The statement: "[Quick Weight Loss Centers] makes no claim that this [these] result[s] is [are] representative of all participants in the [Quick Weight Loss Centers] program."

provided, further, that compliance with the obligations of this paragraph I.C. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondents:

(1) Include, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our centers for details about our maintenance record";

(2) For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, comply with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondents:

(a) Give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C. (1)–(3) of this Order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 point bold), lead-in (Times Roman 12 point), disclosures (Helvetica 14 point bold), acknowledgment language (Times Roman 12 point), and signature block therein; provided, further, that no information in addition to that required to be included in the document required by this subparagraph I.D. (2) shall be included therein;

Maintenance Information

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here _____. For many dieters, weight loss is temporary.

I have read this notice.

(Client Signature) (Date)

(b) Require each potential client to sign such document; and

(c) Give each client a copy of such document; and

(3) Retain in each client file a copy of the signed maintenance notice required by this paragraph; provided, further, that:

(i) Compliance with the obligations of this paragraph I.D. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss;

(ii) Respondents must comply with both paragraph I.D. and paragraph I.C. of this Order if respondents include in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term";

provided, however, that the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondents' weight loss programs if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants of respondents' weight loss programs generally achieve, unless respondents disclose, clearly and prominently, and in close proximity to the endorser's statement of his or her

weight loss success or weight loss maintenance success:

(1) What the generally expected success would be for QWLC-Ga. customers in losing weight or maintaining achieved weight loss; provided, however, that the generally expected success for QWLC-Ga. customers may exclude those customers who dropped out of the program within two weeks of their entrance, or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(2) One of the following statements:

(a) "You should not expect to experience these results."

(b) "This result is not typical. You may not do as well."

(c) "This result is not typical. You may be less successful."

(d) "_____'s success is not typical You may not do as well."

(e) "_____'s experience is not typical. You may achieve less."

(f) "Results not typical."

(g) "Results not typical of program participants."

provided, further, that if the endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner, and in immediate conjunction with the representation that triggers the disclosure;

provided, however, that:

(i) For endorsements or testimonials about weight loss success, respondents can satisfy the requirements of subparagraph I.E. (1) by accurately disclosing the generally expected success in the following phrase: "Quick Weight Loss Centers, Inc. participants lose an average of ____ pounds over an average ____-week treatment period"; and

(ii) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraphs I.E. (1) or (2) herein, respondents may substitute a clear and prominent disclosure of the percentage of all of respondents' customers that the group or subset defined in the advertisement represents.

F. Representing, directly or by implication, that the price at which any weight loss program can be purchased is the only cost associated with losing weight on that program, unless such is the case.

G. Representing, directly or by implication, the price at which any weight loss program can be purchased, unless respondents disclose, clearly and prominently, either:

(1) In close proximity to such representation, the existence and amount of all mandatory fees associated with the program offered; or

(2) In immediate conjunction with such representation, one of the following statements:

(a) "Plus the cost of [list of products or services that participants must purchase at additional cost]"; or

(b) "Purchase of [list of products or services that participants must purchase at additional cost] required";

provided, further, that in broadcast media, if the representation that triggers any disclosure required by this paragraph is oral, the required disclosure must also be made orally.

H. Failing to disclose over the telephone, for a period beginning with the date of any advertisement of the price at which any weight loss program can be purchased and ending no sooner than 180 days after the last dissemination of such advertisement, to consumers who inquire about the cost of any weight loss program, or are told about the cost of any weight loss program, the existence and amount of any and all mandatory costs or fees associated with participation in the program; provided, however, that respondents may satisfy this requirement by directing their weight loss centers to disclose the information, by providing the center personnel with suggested language to be used when responding to phone inquiries and by making their best efforts to ensure compliance with their directive to disclose price information over the telephone.

I. Representing, directly or by implication, that prospective participants in respondents' weight loss programs will reach a specified weight within a specified time period, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

J. Representing, directly or by implication, the average or typical rate or speed at which any participant on any weight loss program has lost or will lose weight, unless at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

K. Failing to disclose, clearly and prominently, either (1) to each participant who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2%) of said participant's initial body weight, or three pounds, whichever is less, for at least two consecutive weeks, or (2) in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications.

L. Misrepresenting, directly or by implication, the performance, efficacy, or safety of any weight loss program.

II

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting on the emergency of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s) that may affect compliance obligations arising out of this Order.

III

It is further ordered that respondent Don K. Gearheart shall promptly notify the commission of the discontinuance of his present business or employment and of this affiliation with a new business or employment. In addition, for a period of three (3) years from the service date of this Order, the individual respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities relate to the advertising, promotion, offering for sale, or sale of any weight loss program. When so required under this paragraph, each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which the individual respondent is newly engaged, as well as a description of the individual respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

IV

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials possessed and relied upon to substantiate any such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is further ordered that respondents shall distribute a copy of this Order to each of their officers, agents, representatives, independent contractors and employees who are involved in the preparation and placement of advertisements or promotional materials or in communication with customers or prospective customers or who have any responsibilities with respect to the subject matter of this Order; and, for a period of three (3) years from the date of entry of this Order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

It is further ordered that respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted for comment three separate proposed consent orders with the following: (1) Doctors Medical Weight Loss Centers, Inc. ("DMWLC"), Doctors Weight Loss Centers, Inc. ("DWLC"), and Joyce A. Schuman ("Schuman"); (2) Quick Weight Loss Centers, Inc., a Georgia corporation ("QWLC–Ga."), and Don K. Gearheart ("Gearheart"); and (3) Quick Weight Loss Centers, Inc., a Texas corporation ("QWLC–Tex."), Gearheart, and Schuman. Under the direction and control of Gearheart and Schuman, the companies marketed similar low-calorie diet programs through weight loss centers in Florida, Georgia, and Texas, and used substantially similar advertisements and promotional materials to do so.

The Commission has placed the proposed orders on the public record for sixty days for comment by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the three agreements and decide whether it should withdraw from, or make final, any or all of the proposed orders.

The Commission's three complaints charge that all of the proposed respondents deceptively promoted the efficacy and price of their diet programs, the rate at which their customers lose weight, and used deceptive monitoring practices. The complaint against QWLC–Tex., Gearheart, and Schuman also charges that they deceptively promoted the qualifications of, and supervision offered by, their staff.

Efficacy

The Commission's three complaints first charge that all of the proposed respondents failed to substantiate claims that their customers typically are successful in reaching and maintaining their goal weight.

The agreed-to orders seek to address these charges in several ways. First, the proposed orders simply prohibit representations about the success of customers in achieving or maintaining weight loss, unless proposed respondents have and rely upon competent and reliable scientific evidence to substantiate the representations. (¶ I.A.) For representations that any weight loss achieved or maintained through weight loss programs is typical or representative of all, or any subset, of customers, the required "competent and reliable scientific evidence" must be based upon a sample of (1) all customers who entered the diet programs, where the representation relates to such customers, or (2) all customers who completed a particular phase of a diet program, or the entire program, where the representation relates only to such customers. (¶ I.A. (1)) For representations that any weight loss is maintained long-term, the supporting evidence must be based upon the experience of customers who were followed for at least two years after they completed the maintenance phase of the diet programs (or earlier termination, as applicable). (¶ I.A. (2)) For representations that any weight loss is maintained permanently, the required evidence must be based upon the experience of customers who were followed for a period of time that is either (1) generally recognized by experts in the field of treating obesity as being of sufficient length to predict that weight loss will be maintained permanently, or (2) demonstrated by competent and reliable survey evidence as being of sufficient length to permit such a prediction. (¶ I.A. (3))

The proposed orders also prohibit proposed respondents from representing that customers of any weight loss program have successfully maintained weight loss, unless they also disclose that "for many dieters, weight loss is temporary" (¶ I.B), as well as the following factual information: (1) The average percentage of weight loss maintained by those customers; (2) the duration over which the weight loss was maintained, measured from the date that customers ended the active weight loss phase of the program; and (3) if the customers referred to are not representative of the general customer population of respondents' programs, either (a) the proportion of the total customer population in respondents' programs that those customers represent, or (b) the statement that proposed respondents make no claim that the results are representative of all participants in their programs. (¶ I.C)

The proposed orders further prohibit representations, in broadcast advertisements of thirty seconds or less, that participants of any weight loss program have successfully maintained weight loss, unless proposed respondents also:

(1) Include the statement: "Check at our centers for details about our maintenance record";

(2) For a period of time beginning with the date of the first broadcast advertisement of any such advertisement and ending no sooner than thirty days after the last broadcast advertisement, comply with the following procedures for information from a potential client:

(a) Give to each potential customer a separate document that includes the maintenance information disclosures discussed above;

(b) Require each potential customer to sign this document; and

(c) Give each customer a copy of the document, and retain a copy of the document (¶ I.D.)

When proposed respondents use advertisements containing the endorsement or testimonial of one of their customers about weight loss success or weight loss maintenance success, and the success depicted in the advertisement is not representative of what their customers generally achieve, the proposed orders also require proposed respondents to disclose what the generally expected success would be for customers of proposed respondents in losing weight or maintaining weight loss, or one of several alternative statements that disclaim the typicality of the success depicted. (¶ I.E.)

Rate of Weight Loss

The Commission's three complaints also charge that all of the proposed respondents claimed that an appreciable number of customers following their diet programs typically lose weight at an

average rate of six or more pounds per week, when they did not have a reasonable basis for those claims. The Commission's complaints against (1) DMLWC/DWLC and Schuman and (2) QWLC–Tex., Gearheart, and Schuman also charge that these proposed respondents claimed that customers following their diet programs typically lose weight at an average rate of thirty pounds in thirty days, or three to eight pounds per week, when they did not have a reasonable basis for doing so.

To remedy these practices, the proposed orders prohibit representations that customers will reach a specified weight within a specified period of time, without having and relying upon competent and reliable scientific evidence to support those claims. (¶ I.I.) The proposed orders also prohibit representations about the average or typical rate or speed at which customers have lost or will lose weight, without having and relying upon competent and reliable scientific evidence to support those claims. (¶ I.J.)

Price

The complaints further allege that proposed respondents falsely claimed that the prices they advertised for their diet programs were the only costs associated with losing weight on their diet programs, and that their failure in such advertisements to disclose the existence and amount of all mandatory expenses was a deceptive practice.

The proposed orders seek to remedy these charges in several ways. First, the proposed orders prohibit untrue claims that any price is the only the cost associated with losing weight on their diet programs. (¶ I.F.) Second, when representing the price of their diet programs, the proposed orders also require proposed respondents either (1) to disclose the existence and amount of all mandatory fees associated with the advertised diet programs, or (2) to state in one of two ways that customers are not required to purchase additional products or services. (¶ I.G.) Finally, the proposed orders require telephone disclosures to all prospective customers who ask, or are otherwise told about, the price of their weight loss programs, about the existence and amount of all mandatory fees. (¶ I.H.)

Monitoring Practices

The complaints also charge that proposed respondents engaged in deceptive monitoring practices. Proposed respondents instructed their customers to check in with the weight loss centers three to six times per week so that proposed respondents could monitor the weight loss progress of their customers. Sometimes, when the customers checked in, they presented the proposed respondents with weight loss results indicating that they may not have been consuming all of the food recommended by proposed respondents. The Commission's complaints charge that proposed respondents' failure to disclose that this conduct could result in serious health complications was a deceptive practice.

The proposed orders seek to remedy this practice by requiring proposed respondents to disclose that failure to eat all of the food recommended may involve developing serious health complications. The proposed orders require proposed respondents to make this disclosure either (1) to all customers in writing when they start the weight loss program, or (2) to those customers who, after their first two weeks on the diet program, average a weekly weight loss that exceeds 2% of their initial body weight, or three pounds, whichever is less, for two consecutive weeks. (¶ I.K.)

Medical Supervision

Finally, the Commission's complaint against QWLC-Tex., Gearhart, and Schuman charges that these proposed respondents falsely claimed that customers who participated in their diet programs were monitored by health professionals.

The proposed order addresses this allegation by prohibiting untrue representations that any weight loss program is supervised or monitored by health care professionals, or other misrepresentations about the extent to which any weight loss program is supervised or monitored by health care professionals. (¶ I.L.)

The purpose of this analysis is to facilitate public comment on the three proposed orders. This analysis is not intended to constitute an official interpretation of any of the agreements and proposed orders, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 94–13286 Filed 6–1–94; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the regular monthly meeting of the Federal Accounting Standards Advisory Board will be held on Wednesday, June 22, 1994 from 1 p.m. to 4 p.m. and Thursday, June 23, from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G Street NW., Washington, DC.

The agenda for the meeting includes discussions on (1) Stewardship reporting issues, (2) the Cost Accounting Exposure Draft, and (3) either the Liabilities Exposure Draft or the Revenue Recognition Exposure Draft.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First Street NE., room 1001, Washington, DC 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: May 26, 1994

Ronald S. Young,

Executive Director.

[FR Doc. 94–13360 Filed 6–1–94; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Committee on Immunization Practices.

Times and Dates: 8:30 a.m.–5 p.m., June 29, 1994; 8:30 a.m.–12:45 p.m., June 30, 1994.

Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters To Be Discussed: The committee will discuss implementation of the "Vaccines for Children Program"; the scope of the "Vaccines for Children Program," including specific wording for hepatitis B, second dose Measles, Mumps, Rubella (MMR) and MMR catch-up, and influenza and pneumococcal vaccines for high-risk children; "Vaccines for Children Program": Other issues and statement; status of simplification of vaccine schedule; adolescent immunizations; Institute of Medicine report on vaccine safety, DTP and chronic encephalopathy, and other vaccines; proposed hepatitis A statement; hepatitis C; revised hepatitis B recommendation; revision of the varicella statement and status of application for licensure; revision of polio vaccine recommendation; BCG update; cost benefit analysis of rotavirus vaccines; National Vaccine Advisory Committee—adult immunization; an update on the National Vaccine Program; and an update on the Injury Compensation Program. Other matters of relevance among the committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Gloria A. Kovach, Committee Management Specialist, CDC (1–B72), 1600 Clifton Road NE., Mailstop A20, Atlanta, Georgia 30333, telephone 404/639–3851.

Dated: May 25, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13376 Filed 6–1–94; 8:45 am]

BILLING CODE 4163–18–M

Advisory Council for the Elimination of Tuberculosis; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.—4:30 p.m., June 27, 1994; 8:30 a.m.—12 noon, June 28, 1994.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, room 1413, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters To Be Discussed: Update on Childhood Pediatric TB Meeting plans; current research activities; tuberculosis in the foreign-born; update on federal tuberculosis activities; energy testing; the BCG statement; and the Screening statement.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Alan R. Hinman, M.D., Director, National Center for Prevention Services, and Acting Executive Secretary, ACET, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333, telephone 404/639–8000.

Dated: May 25, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13377 Filed 6–1–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Science Board to the Food and Drug Administration

Date, time, and place. June 28, 1994, 8:30 a.m., Parklawn Bldg., conference rm. D, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Closed committee deliberations, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 6 p.m.; Neil Wilcox, Office of the Senior Advisor for Science (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5839.

General function of the board. The board provides advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board provides advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It also provides a means for critical review of agency sponsored intramural and extramural scientific research programs.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Those desiring to make formal presentations must notify the contact person before June 14, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present and the names and addresses of proposed participants. Each presenter will be limited in time and not all requests to speak may be able to be accommodated. All written statements submitted in a timely fashion will be provided to the board.

Open committee discussion. The board will discuss issues relevant to toxicity testing and their potential impact on the scientific effectiveness of the agency. The discussion is designed to give the agency direction for future program development.

Closed committee deliberations. The board will discuss information concerning nominations for the FDA award for scientific achievement, that if discussed in public would disclose information of a personal nature which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

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Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 25, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations

[FR Doc. 94–13330 Filed 6–1–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Privacy Act of 1974; System of Records; Correction

AGENCY: Department of Health and Human Services, Health Care Financing Administration.

ACTION: Correction to the notice published for the National Claims History Privacy Act System of Records.

SUMMARY: In the notice document 94–9804 appearing on page 19181, in the issue of Friday, April 22, 1994, appendix A was inadvertently left out. We are publishing the Appendix below.

Dated: May 23, 1994.

Richard A. DeMeo,

Privacy Act Officer, Health Care Financing Administration.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE

Data element	Description	Function
1. HI Claim Number	Encrypted to protect the identity of the beneficiary.	To determine the number of stays for a beneficiary.
2. Day of Admission	1—Sunday 2—Monday 3—Tuesday 4—Wednesday 5—Thursday 6—Friday 7—Saturday	To facilitate analysis of admission patterns.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE—Continued

Data element	Description	Function
3. Sex	—male —female —unknown	To measure sex-based differences.
4. Medicare Status Code	Code to show reason for beneficiary's entitlement. —aged without ESRD —aged with ESRD —disabled—without ESRD —disabled with ESRD —ESRD only	To examine effectiveness of care for different categories of Medicare beneficiaries.
5. Discharge Destination	—To home, self care —To short-term hospital —To SNF —To other type facility —To home health service —Left against medical advice —Died —Still a patient	To group stays into Diagnosis Related Groups (DRGs).
6. Medicare Provider Number	Identification number of hospital	To allow for review of care on an institution-specific basis.
7. Date of Admission	Date, plus/minus 1 to 20 days*	To measure intervals between hospital episodes.
8. Date of Discharge	Date, plus/minus 1 to 20 days*	To measure intervals between hospital episodes.
9. Length of Stay	Number of days in hospital stay	To examine days of care.
10. Intensive Care and Coronary Care Days.	Days in special care units of hospitals	To measure outcomes in and use of special care units.
11. Total Charges 12. Routine Accommodation Charges. 13. Intensive Care and Coronary Care Charges. 14. Total Department (Ancillary) Charges. 15. Operating Room Charges. 16. Pharmacy Charges. 17. Laboratory Charges. 18. Radiology Charges. 19. Supplies Charges. 20. Anesthesia Charges. 21. Inhalation Therapy Charges.	All charge fields (fields 11–21) are in whole dollars.	Charge fields 11–21 are included in measure relative resource use across cases.
22. Principal and Other Diagnosis Codes	Five ICD–9–CM Codes	Fields 22–23 are included to identify diagnostic/surgical information and to group stays into DRGs.
23. Surgical Codes	Three ICD–9–CM Volume 3 codes	To measure intervals between admission/discharge and surgery
24. Date of Surgery	Date plus/minus 1 to 20 days*	To measure outcomes.
25. Blood Furnished	Number of pints	To define diagnostic groups used in the Prospective Payment System.
26. Diagnosis Related Group	DRG1–DRG475	To determine mortality rates.
27. Date of death	Date, plus/minus 1 to 20 days*	To examine variations in care in urban and rural areas.
28. Urban/rural residence	1=urban 2=rural	To examine variations in care in small areas.
29. Zip-Code	5 digit zip	Distinguishes PPS-exempt unit records
30. Special Unit Code	S—Psychiatric Unit T—Rehabilitation Unit U—Swing-bed Hospital V—Alcohol/Drug Unit Blank	
31. Beneficiary State of Residence	Two-position SSA numeric code	To facilitate seasonal migration studies.
32. Source of Admission	Admission Type 1, 2, or 3: 1—Physician Referral 2—Clinic Referral 3—HMO Referral 4—Transfer from Hospital 5—Transfer from SNF 6—Transfer from Another Health Care Facility 7—Emergency Room 8—Court/Law Enforcement 9—Unknown Admission Type 4: 1—Normal Delivery 2—Premature Delivery 3—Sick Baby 4—Extramural 5—Unknown	To allow analysis of admissions and episodes of care.

APPENDIX A.—DATA ELEMENTS CONTAINED IN THE QUALITY OF CARE MEDPAR FILE—Continued

Data element	Description	Function
33. Type of Admission	1—Emergency 2—Urgent 3—Elective 4—Newborn 9—Unknown	To allow analysis of admissions and episodes of care.
34. Number of Diagnosis Codes	1 through 5	Enable search of diagnosis fields.
35. Number of Surgical Codes	1 through 3	Enable search of surgical procedures fields.
36. Actual Age	Three-position age of beneficiary based on the date of admission.	To measure age-based differences.

* The same random number will be added to all dates in every discharge record occurring for a beneficiary during the year. The random number will range from ± 1 through 20.

The following subsets will be available (no combinations): one to five States; one to five DRGs; one to five ICD–9–CM codes; and standardized subsamples (5, 10, or 20 percent).

[FR Doc. 94–13331 Filed 6–1–94; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

Notice of Meeting of the Genome Research Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Genome Research Review Committee, National Center for Human Genome Research, June 14–15, 1994, at the Hotel Washington, Pennsylvania Avenue at 515 15th Street, NW., Washington, DC.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on June 14 from 5 p.m. to recess and on June 15 from 8 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Engel, Chief, Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, building 38A, room 604, Bethesda, Maryland 20892, (301) 402–0838, will furnish the meeting agenda, roster of committee members and consultants, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Felecia Taylor, (301) 402–0838, two weeks in advance of the meeting.

This notice is being published less than the 15 days prior to the meeting due to the difficulty of coordinating schedules.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: May 25, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–13340 Filed 6–1–94; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of a Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: Review of 1 Asthma Academic Award (K07) (Telephone Conference Call)
Date: June 23, 1994
Time: 2 p.m.
Place: 5333 Westbard Avenue, Rm. 550, Bethesda, Maryland
Contact Person: Kathryn W. Ballard, Ph.D., Scientific Review Administrator, 5333 Westbard Avenue, room 550, Bethesda, Maryland 20892, (301) 594–7450
Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 25, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–13339 Filed 6–1–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–7122–03–8532]

Proposed Reestablishment of the Copper Flat Mine in Sierra County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Notice of Scoping Meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM), Las Cruces District Office, will be directing the preparation of an EIS to be prepared by a third party contractor. The EIS will describe the potential impacts of the proposed re-establishment of the Copper Flat open-pit copper mining project located approximately 5 miles northeast of Hillsboro in Sierra County, New Mexico. The proposed Copper Flat Project would re-establish an open-pit copper mining operation at a site that was developed and operated from April 1982 to July 1982. All surface facilities were removed from the site in 1986 and a BLM-approved reclamation plan was implemented. The proposed Copper Flat Project would resume mining operations at the site and would reconstruct the associated processing facilities. The proposed project would mine and process an average of 16,500 tons of ore per day over a projected operating life of at least 10 years.

The public is invited to participate in the planning process. Public scoping meetings will be held at the following times and locations:

Time/Date and Location

7 p.m. June 22, 1994: Truth or Consequences Civic Center, 400 West Forth Avenue, Truth or Consequences, New Mexico

7 p.m. June 23, 1994: Hillsboro Community Center (in the old High School Building), Hillsboro, New Mexico.

DATES: Written comments on the scoping process will be accepted through July 5, 1994.

ADDRESSES: Comments should be sent to Russell Jentgen, Bureau of Land Management, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Russell Jentgen, BLM Las Cruces District Office, at (505) 525–4351.

SUPPLEMENTARY INFORMATION: Gold Express Corporation submitted a Plan of Operations to BLM proposing to re-establish the Copper Flat Project in 1991. As required by NEPA, an Environmental Assessment (EA) was prepared for the proposed Plan of Operations. Based on comments received on the EA and BLM's evaluation of the environmental impacts described in the EA, BLM notified Gold Express Corporation by letter dated October 7, 1993, that an EIS would need to be prepared before the BLM could approve the proposed Plan of Operations. Alta Gold Co. (Alta) acquired an option to purchase the Copper Flat Project from Gold Express Corporation in July 1993 and has exercised the option.

As proposed in the Plan of Operations, the project would be a conventional open-pit mining operation with an average daily production of 16,500 tons of ore. Ore would be crushed and processed on site to produce a copper concentrate that would be transported off-site for further processing. Waste rock and tailings produced by the proposed project would be placed in disposal facilities located on site. Water for mining and processing purposes would be provided from production wells located approximately 8 miles east of the mine site. In addition, ground water entering the pit would be pumped out to facilitate mining operations. The project is expected to have a life of at least 10 years and would employ approximately 150 people.

During the EA process, BLM identified four areas to be addressed in the EIS: (1) Potential impacts to the ground water system from pumping of the production wells; (2) potential impacts to the ground water system from dewatering of the pit; (3) potential impacts on ground water quality from placement of tailings in the tailings impoundment; and, (4) potential impacts to surface and ground water quality from drainage from the overburden and waste rock disposal areas. ELM is soliciting comments on these and other issues and opportunities to be addressed in the EIS.

BLM's scoping process for the EIS will include: (1) Identification of issues to be addressed; (2) identification of viable alternatives, and (3) notifying interested groups, individuals, and agencies so that additional information concerning these issues can be obtained. The scoping process will consist of a news release announcing the start of the EIS process; letters of invitation to participate in the scoping process; and a scoping document which further clarifies the proposed action and significant issues being considered to be distributed to those on the mailing list and available upon request.

Dated: May 25, 1994

Kathy Eaton,

Acting State Director.

[FR Doc. 94–13437 Filed 6–1–94; 8:45 am]

BILLING CODE 4310–FB–M

[OR–088–04–6332–01; GP–4–178]

Motor Vehicle Use Restrictions: Oregon

ACTION: Motorized Vehicle and Off-Highway Vehicle (OHV) Restriction Order Established: Molalla River, Clackamas Resource Area, Salem District, Salem, Oregon.

SUMMARY: Establish a motorized vehicle and OHV restriction order for areas on BLM-administered lands along the Molalla River, Clackamas County, Oregon. Motorized vehicles will be prohibited on forest roads, BLM trails, and lands west of the Molalla Forest Road in sections 7, 18, 19, 30, and 31, T. 6 S., R. 3 E., Willamette Meridian, and Sections 6, 7, and 17, T. 7 S., R. 3 E., Willamette Meridian. The Molalla Forest Road will remain open for public use.

Under special circumstances, the area manager may authorize motorized vehicle use within closed areas. However, the granting of motorized vehicle use within closed areas is a discretionary matter and must be approved prior to the motorized vehicle or OHV activity. Requests for motorized vehicle use within closed areas must be in writing 2 weeks prior to the proposed activity and will be considered on a case-by-case basis.

A copy of this restriction order is conspicuously posted at the Salem District Office, 1717 Fabry Road, SE., Salem, Oregon, and at Bureau of Land Management sites where other such notices are posted.

This restriction order does not apply to any Federal, State, or local officer or any member of an organized rescue or fire fighting force actively involved in the performance of an official duty. It does not apply to private forest landowners who have existing easement or road use rights for access for forest management activates. It does not apply to recreation uses or activities other than motorized vehicle or off-highway vehicle use.

EFFECTIVE DATE: July 1, 1994.

For further information contact: Area Manager, Clackamas Resources Area, Salem District Office, Bureau of Land Management, (503) 375–5646.

SUPPLEMENTARY INFORMATION: This restriction order is necessary to:

(1) Preclude any individual or group from using motorized vehicles or OHVs on trails or roads intended for non-motorized activities with the Molalla River Recreation Corridor outside of designated trails, areas, or roads designed for such use.

(2) Prevent or reduce unacceptable sanitary, erosion, and solid waste disposal problems; reduce non-point source pollution to the Molalla River, a municipal water source.

(3) Prevent or reduce unacceptable riparian vegetation damage or bank erosion along the river.

(4) Preserve and protect the natural, cultural, and scenic resource values of the river corridor.

(5) Reduce the incidence of human-caused fires, littering, vandalism, and illegal dumping.

(6) Reduce or eliminate conflicts and safety hazards between non-motorized recreation activities such as equestrian use, hiking, or bicycling and provide for a full range of recreation opportunities within the Molalla River Recreation Corridor.

Authority for implementing this restriction order is contained in the Code of Federal Regulations, title 43, chapter II part 8340, subparts 8341, 8342, 8343, 8344 and part 8360, subparts 8364 and 8365. Any person failing to comply with the motorized vehicle and off-highway vehicle restriction described in this notice may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as specified in the Code of Federal Regulations, title 43, chapter II, part 8360 and 8360.0–7.

This restriction order is effective July 1, 1994, and shall remain in effect unless revised, revoked, or amended.

Dated: May 23, 1994.

Van Manning,

District Manager.

[FR Doc. 94-13335 Filed 6-1-94; 8:45 am]

BILLING CODE 4310-33-M

[ID-050-406A-02; IDI-29779]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Blaine County, ID

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: The following public land in Blaine County, Idaho has been examined and found suitable for classification and conveyance to the Ketchum Rural Fire District under the provisions of the *Recreation and Public Purposes Act*, as amended (43 U.S.C. 869 *et seq.*). The Ketchum Rural Fire District proposes to use the land for a fire station location.

T. 4 N., R. 17 E., Boise Meridian, Section 1: Portion of Lot 1, further described by metes and bounds survey: Beginning at the north ¼ corner, Section 1. Thence S. 70°43'44" W., 265.34 feet to the TRUE POINT OF BEGINNING Thence: S. 26°07'00" E., 560.51 ft.; N. 49°47'40" W., 86.76 ft.; N. 54°13'17" W., 183.34 ft.; N. 50°44'30" W., 61.13 ft.; N. 10°12'51" W., 97.39 ft.; N. 15°02'57" W., 97.07 ft.; N. 63°53'00" E., 107.07 ft.; to the TRUE POINT OF BEGINNING, containing 1.31 acres, more or less.

At time of patenting, the land will carry a lot designation based upon an April 1994 field resurvey of the parcel.

The land is not needed for federal purposes. Conveyance is consistent with current Bureau of Land Management and local county planning, and is in the public interest.

The patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior;

2. A right-of-way for ditches and canals constructed by the authority of the United States;

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information regarding this action is available for review at the office of the Shoshone District Bureau of Land Management, 400 West F Street, Shoshone, Idaho.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the land to the District Manager, Shoshone District Office, P.O. Box 2-B, Shoshone, ID 83352.

CLASSIFICATION COMMENTS. Interested parties may submit comments involving the suitability of the land for a rural fire station. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a rural fire facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register.**

Dated: May 16, 1994.

Janis L. VanWyhe,

Associate District Manager.

[FR Doc. 94-13332 Filed 6-1-94; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Receipt of Application(s) for Permit

The public is invited to comment on the following application(s) for permits to conduct certain activities with marine mammals. The application(s) was/were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18).

Applicant: Washington State University, Pullman, Washington, PRT-789955.

Type of Permit: Scientific Research.

Name and Number of Animals: Polar Bear (*Ursus maritimus*), 50.

Summary of Activity to be Authorized: The applicant requests a permit to take collect blood and adipose tissue samples, collect vestigial premolars, hair clippings, claw tip clippings, tattoo and tag up to 50 polar bears. The applicant also requests authorization to radio-collar and release 2 male and 8 female polar bears to monitor this species in the North Pole region. Collected samples will be used to determine the levels of organochlorine and heavy metal contaminants, food chain dynamics, and ageing.

Source of Marine Mammals for Research: Wild polar bears of all ages and sexes.

Period of Activity: Through December 1994.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, room 420(c), Arlington, Virginia 22203, telephone 703/358-2104 or fax 703/358-2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice at the above address.

Dated: May 27, 1994.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94-13411 Filed 6-1-94; 8:45 am]

BILLING CODE 4310-55-P

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Wildlife Conservation Society, Prospect Park Wildlife Center, Brooklyn, NY 11225, PRT-790081.

The applicant requests a permit to purchase in interstate commerce four female, captive born, white-fronted wallabies (*Macropus parma*) from the Oklahoma City Zoo for breeding to enhance the propagation and survival of the species.

Applicant: Tigerin Peare, Columbus, OH, PRT-790349.

The applicant requests a permit to collect blood samples from 50 nesting female and 300 emerging hatchlings of green sea turtles (*Chelonia mydas*) at Melbourne Beach, Florida, for DNA analysis to enhance the survival of the species.

Applicant: Tortoise Group, Las Vegas, NV, PRT-789731.

The applicant requests a permit to euthanize Desert tortoises (*Gopherus agassizii*) donated from the general public. These tortoises will be part of a continual selection process as needed to remove those with upper respiratory tract disease and to prevent tortoise numbers from exceeding the holding capacity of applicant's facilities to enhance the survival of the species.

Applicant: Michael Brandman Associates, Sacramento, CA, PRT-782274.

The applicant requests an amendment to their current permit to take (conduct focused field surveys, approach and inspect nests) the least Bell's vireo (*Vireo bellii pusillus*) in Southern California for the purpose of determining the presence or absence of this species.

Applicant: Wildlife Conservation Society, New York, NY, PRT-790230.

The applicant requests a permit to import two male and two female Black tamarins (*Leontopithecus chrysopygus*) from Fundacao Parque Zoologico, Sao Paulo, Brazil, to enhance the propagation and survival of the species through breeding.

Applicant: Laboratory of Molecular Systematics, Washington, DC, PRT-789980.

The applicant requests a permit to import one blood sample taken from a captive-held male woodrail (*Tricholimnas sylvestris*) from the Taronga Zoo, Mosman, Australia, for genetic research aimed to enhance the survival of the species.

Applicant: Greenfalk Consultants, Worthington, OH, PRT-790001.

The applicant requests a permit to import blood, feathers and addled eggs from Peregrine falcons (*Falco peregrinus*) and gyrfalcons (*Falco rusticolus*) in the wild for the purposes of genetic and environmental research to enhance the survival of the species.

Applicant: Exotic Feline Breeding Compound Inc., Rosamond, CA, PRT-790140.

The applicant requests a permit to import two captive-bred male Chinese leopards (*Panthera pardus japonensis*) from the Magdeburg Zoological Gardens, Magdeburg, Germany, to enhance the propagation and survival of the species through breeding.

Applicant: Daniel Varland, Hoquiam, WA, PRT-790136.

The applicant requests a permit to take (capture, band, color mark, and release) Peregrine falcons (*Falco peregrinus*) in Western Washington, for the purpose of enhancement of the survival of the species.

Applicant: Biosystems Analysis, Tiburon, CA, PRT-789996.

The applicant requests a permit to take (capture/release) the Cui-ui sucker (*Chasmistes cujus*), Lost River sucker (*Deltistes luxatus*), Shortnose sucker (*Chasmistes brevirostris*), and Modoc sucker (*Catastomus microps*) throughout the historic range of the species for the purpose of determining the presence or absence of this species.

Applicant: David Germano, Bakersfield, CA, PRT-789957.

The applicant requests a permit to take (capture/hold/release) Tipton's kangaroo rat (*Dipodomys nitratoides nitratoides*), Fresno kangaroo rat (*D. n. exilis*), Giant kangaroo rat (*D. ingens*), and Blunt-nosed leopard lizard (*Gambelia sila*) in Southern California for the purpose of enhancing the survival of the species.

Applicant: Brian Foster, San Diego CA, PRT-789253.

The applicant requests a permit to take the California least tern (*Sterna antillarum browni*) in Southern California for the purpose of enhancement of survival of the species.

Applicant: University of California, Santa Barbara, CA, PRT-790167.

The applicant requests a permit to take (capture, hold, release, and sacrifice) the Tidewater goby (*Eucyclogobius newberryi*) in Southern California for the purpose of determining the presence or absence of this species. Up to three fish will be sacrificed for voucher specimens from previously unknown areas where this species may occur for the purpose of enhancement of the survival of the species.

Applicant: Philip Behrends, Solana Beach, CA, PRT-756268.

The applicant requests an amendment to his current permit to take (live-trap and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*) in Southern California for species identification and scientific research aimed at the enhancement of survival of the species.

Applicant: World Center for Birds of Prey, Boise, ID, PRT-787554.

Applicant requests a permit to import one female captive-bred Harpy eagle (*Harpia harpyia*) from PROFAUNA, Venezuela, to enhance the propagation and survival of the species through breeding.

Applicant: Arthur McGowan, Colorado Springs, CO, PRT-790002.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive-herd maintained by Mr. F. Bowker, "Thornkoof", Grahamstown, South Africa, for the purpose of enhancement of survival of the species.

Applicant: Robert Patton, San Diego, CA, PRT-789255.

The applicant requests a permit to take the California least tern (*Sterna antillarum browni*) in Southern California for the purpose of enhancement of survival of the species.

Applicant: Elizabeth Copper, Coronado, CA, PRT-789254.

The applicant requests a permit to take the California least tern (*Sterna antillarum browni*) in Southern California for the purpose of enhancement of survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington,

Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 27, 1994.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–13412 Filed 6–1–94; 8:45 am]

BILLING CODE 4310–55–P

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029–0102), Washington, DC 20503, telephone 202–395–7340.

Title: Areas Designated by Act of Congress, 30 CFR part 761

OMB Number: 1029–0102

Abstract: 30 CFR part 761 allows coal mining companies to submit documentation that demonstrates it meets the definition of Valid Existing Rights (VER) to mine coal in an area prohibited by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM will use the information in making a VER determination.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Individual coal mining companies

Annual Responses: 40

Annual Burden Hours: 8,400

Estimated Completion Time: 210 hours

Bureau clearance officer: John A. Trelease (202) 343–1475.

Dated: March 10, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 94–13413 Filed 6–1–94; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029–0033), Washington, DC 20503, telephone 202–395–7340.

Title: Part 772—Requirements for Coal Exploration

OMB Number: 1029–0033

Abstract: The requirements in section 512 of Public Law 95–87 provide that persons conducting coal exploration shall comply with exploration regulations issued by the regulatory authority. Information collection is needed to determine whether there will be substantial disturbance during exploration which is subject to the reclamation and environmental protection provisions of the Act.

Bureau Form Number: None

Frequency: On Occasion

Description of Respondents: Coal Mining Companies

Annual Responses: 1,982

Annual Burden Hours: 11,881

Estimated Completion Time: 6 hours

Bureau clearance officer: John A. Trelease (202) 343–1475.

Dated: March 10, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 94–13414 Filed 6–1–94; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, the related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029–0063), Washington, DC 20503, telephone 202–395–7340.

Title: Coal; Production and Reclamation Fee Report, OSM–1

OMB Number: 1029–0063

Abstract: In order to ensure compliance with 30 CFR 870, a quarterly report is required of coal produced for sale, transfer or use nationwide. Individual reclamation fee payment liability is based on this information.

Bureau Form Number: OSM–1

Frequency: Quarterly

Description of Respondents: Coal mine permittees

Annual Responses: 12,312

Annual Burden Hours: 3,365

Estimated Completion Time: 16 minutes

Bureau Clearance Officer: John A. Trelease (202) 343–1475.

Dated: February 3, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 94–13415 Filed 6–1–94; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0035), Washington, DC 20503, telephone 202–395–7340.

Title: Surface Mining Permit Applications—Minimum Requirements for Environmental Resources, 30 CFR part 779.

OMB approval number: 1029–0035.

Abstract: Applicants for surface coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed surface mining activities. The information will be used by the regulatory authority to determine

if the applicant can comply with environmental protection performance standards.

Bureau Form Number: None.
Frequency: On occasion.
Description of Respondents: Coal Mine Operators.
Annual Responses: 550.
Annual Burden Hours: 43,085.
Estimated Completion Time: 78 hours.
Bureau clearance officer: John A. Trelease, (202) 343–1475.

Dated: October 28, 1993

Gene E. Krueger,

Chief, Division of Technical Services.

Editorial note: This document was received at the Office of the Federal Register May 27, 1994.

[FR Doc. 94–13416 Filed 6–1–94; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701–TA–355 and 731–TA–660 (Final)

Grain-Oriented Silicon Electrical Steel From Italy and Japan

Determination

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Italy of grain-oriented silicon electrical steel, provided for in subheadings 7225.10.00, 7226.10.10, and 7226.10.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Italy. The Commission further determines,[3] pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Japan of grain-oriented silicon electrical steel that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective January 28, 1994, following a preliminary determination by the Department of Commerce that imports of grain-oriented silicon electrical steel from Italy were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports of grain-oriented silicon electrical steel from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 23, 1994 (59 FR 8658). The hearing was held in Washington, DC, on April 12, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 27, 1994. The views of the Commission are contained in USITC Publication 2778 (May 1994), entitled "Grain-oriented Silicon Electrical Steel from Italy and Japan: Investigation No. 701–TA–355 and 731–TA–660 (Final)."

By order of the Commission.

Issued: May 24, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13436 Filed 6–1–94; 8:45 am]

BILLING CODE 7020–02–P

Investigation No. 731–TA–699 (Preliminary)

Stainless Steel Angles From Japan; Import Investigations

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of stainless steel angles,[3] provided for in subheading 7222.40.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 8, 1994, a petition was filed with the Commission and the Department of Commerce by Slater Steel Corp., Fort Wayne, IN, alleging that an industry in the United States is materially injured by reason of LTFV imports of stainless steel angles from Japan. Accordingly, effective April 8, 1994, the Commission instituted antidumping investigation No. 731–TA–699 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 14, 1994 (59 FR 17790). The conference was held in Washington, DC, on April 29, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 23, 1994. The views of the Commission are contained in USITC Publication 2777 (May 1994), entitled "Stainless Steel Angles from Japan: Investigation No. 731–TA–699 (Preliminary)."

Issued: May 25, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13435 Filed 6–1–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Crawford dissenting; Vice Chairman Watson not participating and Commissioner Bragg not participating in the determination in this investigation.

[3] Commissioner Bragg not participating in the determination in this investigation.

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Bragg not participating in the determination in this investigation.

[3] For purposes of this investigation, stainless steel angles are defined as hot-rolled products of stainless steel, whether or not annealed or descaled, angled at 90 degrees, that are not otherwise advanced.

Comments on the following assessment are due 15 days after the date of availability:

AB–1 (Sub-No. 253X), Chicago and North Western Transportation Company—Abandonment-in Monroe County, Iowa. EA available 5/27/94.

Comments on the following assessment are due 30 days after the date of availability:

No. AB–43 (Sub-No. 157X), Illinois Central Railroad Company—Abandonment Exemption—In St. Tammany Parish, LA. EA available 5/24/94.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–13409 Filed 6–1–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–1 (Sub-No. 249X)]

Chicago and North Western Transportation Company—Abandonment Exemption—Between Norfolk and Merriman, NE

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Chicago and North Western Transportation Company (CNW) of approximately 248 miles of track between milepost 88.3 near Norfolk and milepost 331.0 near Merriman, NE, subject to standard labor protective and interim trail use conditions. The transaction is also exempted from the public use procedures of 49 U.S.C. 10906.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 17, 1994. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 10, 1994, petitions to stay must be filed by June 13, 1994, and petitions to reopen must be filed by June 22, 1994.

ADDRESSES: Send pleadings, referring to Docket No. AB–1 (Sub-No. 249X), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) petitioner's representative: Stuart F. Gassner, Chicago and North Western Transportation Company, One North Western Center, 165 North Canal St., Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Decided: May 20, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan. Chairman McDonald commented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–13410 Filed 6–1–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32508]

Wisconsin Central Ltd.—Trackage Rights Exemption—Illinois Central Railroad Co.

Illinois Central Railroad Company (ICR) has agreed to grant overhead trackage rights to Wisconsin Central Ltd. to operate over ICR's main line (1) between a connection with The Chicago, Central & Pacific Railroad Company at Belt Tower, IL (milepost W 8.4) and Moyers Intermodal Terminal at Harvey, IL (milepost 21.2), a distance of 26 miles; and (2) between a connection with Chicago and North Western Transportation Company near 16th Street and the Chicago River in Chicago, IL (milepost W 2.3) and Moyers Intermodal Terminal at Harvey, IL (milepost 21.2), a distance of 20 miles. The trackage rights were to become effective on or after May 25, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Janet Gilbert, Assistant General Counsel, Wisconsin Central Ltd., 6250 North River Road, suite 9000, Rosemont, IL 60018.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: May 26, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–13408 Filed 6–1–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems

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[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

Policy Staff/Information Resources Management/Justice Management Division, suite 850, WCTR, Washington, DC 20530

For further information contact: Merrily Friedlander, Acting Chief, Coordination and Review Section, Civil Rights Division, United States Department of Justice, P.O. Box 66118, Washington, DC 20035–6118, or at (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Civil Rights Division's Americans with Disabilities Act Information Line); or John Wodatch, Chief, Public Access Section, Civil Rights Division, United States Department of Justice, P.O. Box 66738, Washington, DC 20035–6738, or at (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line).

Copies of this notice and the Department of Justice regulations are available in the following alternate formats: Large print, Braille, electronic file on computer disk, and audio-tape. Copies may be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY). The rule is also available on electronic bulletin board at (202) 514–6193.

Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(1) Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities.
(2) Civil Rights Division
(3) One time only.
(4) State or local governments. Under title III of the Americans with Disabilities Act, on application from a State or local government, the Attorney General may certify that a State or local building code meets or exceeds the minimum accessibility and usability standards set forth in the Americans with Disabilities Act regulations.
(5) 25 annual respondents at 32 hours per response.
(6) 800 annual burden hours.
(7) Not applicable under section 3504(h).

Public comment on this item is encouraged.

Dated: May 27, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–13383 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–13–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

For further information contact: Merrily Friedlander, Acting Chief, Coordination and Review Section, Civil Rights Division, United States Department of Justice, P.O. Box 66118, Washington, DC 20035–6118, or at (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Civil Rights Division's Americans with Disabilities Act Information Line); or John Wodatch, Chief, Public Access Section, Civil Rights Division, United States Department of Justice, P.O. Box 66738, Washington, DC 20035–6738, or at (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line).

Copies of this notice and the Department of Justice regulations are available in the following alternate formats: large print, Braille, electronic file on computer disk, and audio-tape. Copies may be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY). The rule is also available on electronic bulletin board at (202) 514–6193.

Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(1) Nondiscrimination on the Basis of Disability in State and local government Services.
(2) Civil Rights Division.
(3) Recordkeeping.
(4) State or local governments. Under title II of the Americans with Disabilities Act, State and local governments are required to evaluate their current services, policies, and practices for compliance with the Americans with Disabilities Act. Under certain circumstances, such entities must also maintain the results of such self-evaluation on file for public review.
(5) 25,000 recordkeepers, 6 hours per response.
(6) 150,000 annual burden hours.
(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: May 24, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–13384 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–13–M

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, notice is hereby given that on 20 May 1994, a proposed consent decree in *United States* v. *GCI, Inc.*, Civil Action No. F–87–263 was lodged with the United States District Court for the Northern District of Indiana. The Complaint filed by the United States alleged violations of the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.* The Consent Decree requires the defendant to maintain compliance with the Clean Water Act and pay a civil penalty of $70,000.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the

Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *GCI, Inc.*, DJ Ref. #90–5–1–1–2879.

The proposed consent decree may be examined at the office of the United States Attorney, 3128 Federal Building, 1300 South Harrison Street, Fort Wayne, Indiana and at the Region V Office of the Environmental Protection Agency, 111 West Jackson Blvd., 3rd floor, Chicago, Illinois 60604. Copies of the proposed consent decree may also be examined at the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $11.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 94–13425 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Apache Energy & Minerals Co., et al.*, Civil Action No. 86–C–1675, concerning the California Gulch Superfund Site in and near Leadville, Colorado (the "Site") was lodged on May 16, 1994 with the United States District Court for the District of Colorado. The proposed consent decree is between the United States and the State of Colorado, as plaintiffs and counter-defendants (collectively the "governments"), and defendants and counter-plaintiffs ASARCO Incorporated ("ASARCO"), Resurrection Mining Company ("Resurrection"), Newmont Mining Corporation ("Newmont"), and the Res-ASARCO Joint Venture ("Res-ASARCO") (collectively the "Settling Defendants").

The decree provides for the reimbursement of the response costs incurred by the United States between February, 1991 and July, 1993, and the response costs incurred by the State of Colorado between February 1992 and July, 1993, from Res-ASARCO in the combined amount of $7.6 million (the claims against the Settling Defendants for the governments' response costs prior to these time periods having been previously addressed in a prior partial consent decree), and the reimbursement of the governments' future response costs incurred at the Site after July, 1993 from ASARCO and Resurrection in proportion to their assigned "work areas" under the decree. The decree establishes a process by which ASARCO and Resurrection will perform and pay for the clean-up of assigned "work areas" within the Site which are defined in the decree. In exchange for their commitments under the decree, the Settling Defendants are released from any alleged liability at those portions of the Site outside their respective "work areas," subject to specific exclusions from the decree which are reserved for resolution at a later date.

The decree also resolves the counterclaims of the Settling Defendants against the governments, and the alleged liability of the United States and the State at the Site, subject to the same exclusions applicable to the Settling Defendants (plus one additional exclusion applicable to the United States), on a cash basis. Under the terms of the decree, the United States will pay $6.1 million to ASARCO from the Judgment Fund plus an additional amount, not to exceed $4.05 million, equal to 15% of ASARCO's costs of implementing certain work under the decree if ASARCO's costs exceed $23 million. The State of Colorado will pay ASARCO a lump sum payment of $271,250.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Apache Energy & Minerals Co., et al.*, DOJ Ref. # 90–11–3–138.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, District of Colorado, 633 17th Street, suite 1600, Denver, Colorado 80202 or at the Region VIII office of the Environmental Protection Agency, 999 18th Street, Denver, Colorado, 80202. A copy may also be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005 (202–624–0892). When requesting a copy of the proposed consent decree (including attachments), please refer to the referenced case and enclose a check in the amount of $76.00 (25 cents per page reproduction costs), payable to the "Consent Decree Library". If the attachments are not required, please so specify and enclose a check in the amount of $33.50 (25 cents per page reproduction costs).

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 94–13428 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 U.S.C. 50.7, and section 122(d), (g), and (i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622 (d), (g), and (i), notice is hereby given that on May 6, 1994, a proposed partial consent decree in *United States* v. *Apache Energy & Mineral Company, et al.*, Civil Action No. 86–C–1675 (consolidated with Civil Action No. 83–C–2388), was lodged with the United States District Court for the District of Colorado.

The proposed consent decree between the United States and Hecla Mining Company ("Hecla") is a cash-out settlement pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. 9604 and 9607. The proposed partial consent decree resolves Hecla's alleged liability for the generation and disposal of the Malta Gulch Tailings into the Malta Gulch Tailings Impoundments portion of the California Gulch Superfund Site ("Site"). The proposed consent decree also settles any remaining CERCLA liability Hecla may have at the Site as a result of the impacts of releases of the Malta Gulch Tailings, except liability for natural resource damages.

The proposed consent decree also settles the alleged liability of the United States for disposal of mill tailings containing hazardous substances at the Malta Gulch Tailings Impoundments portion of the Site.

Under the terms of the proposed partial consent decree, within 30 days of the effective date of the decree Hecla will pay $516,000 and the United States will pay $100,000 to reimburse the Hazardous Substance Superfund. The United States will pay an additional $72,000 plus interest to the Superfund within 1 year of the effective date of the decree. The decree provides that, subject to certain reservations, the United States covenants not to sue or take any other civil or administrative action against Hecla pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. 6973. The Environmental Protection Agency ("EPA") also covenants not to take administrative action against the United States under these same statutes and sections.

The Department of Justice will receive comments relating to the proposed consent decree between the United States and Hecla for a period of thirty (30) days from the date of this publication. Comments should be submitted to the Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Apache Energy & Mineral Company, et al.*, DOJ Ref. 90–11–3–138.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, District of Colorado, 1961 Stout Street, suite 1200, Denver, Colorado or at the EPA Superfund Records Center, 999 18th Street, 5th floor, South Tower, Denver, Colorado between 8:30 a.m. and 4:30 p.m. A copy may also be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005 (202–624–0892). When requesting a copy of the proposed consent decree, please refer to the referenced case and enclose a check in the amount of $9.75 (25 cents per page reproduction costs), payable to the "Consent Decree Library".

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 94–13426 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Consent Decree in Action Brought Under the Comprehensive Environmental Response, Compensation, and Liability Act, and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a Partial Consent Decree in *United States* v. *Boeing Company*, Civil Action No. C 94–746 WD, was lodged with the United States District Court for the Western District of Washington on May 16, 1994. This Consent Decree settles an action filed by the United States pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, and section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973, naming The Boeing Company ("Boeing") as defendant.

The United States Department of Justice ("the United States") brought this action on behalf of the U.S. Environmental Protection Agency, for reimbursement of past costs and future oversight costs in connection with the Queen City Farms Site ("the Site"). The United States also sought to obtain injunctive relief against defendant.

The United States' claims are based on the contamination of the Site resulting from the disposal of industrial waste liquids which contained hazardous substances. The United States alleges in its Complaint that Boeing disposed of, or arranged for the disposal of hazardous wastes, hazardous substances, or materials which contained hazardous substances at the Site.

In this settlement, the Consent Decree provides for Boeing to reimburse the Superfund for past costs totaling $566,027.14. Boeing will also pay the United States' future oversight costs at the Site, and will implement the injunctive relief outlined in the Consent Decree.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Boeing Company*, DOJ number 90–11–3–1150.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Washington, 800 Fifth Avenue Plaza, Seattle, Washington, 98104, at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region X, 1200 Sixth Avenue, Seattle, Washington 98101, and at the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the Consent Decree, please enclose a check in the amount of $19.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–13423 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that a proposed consent decree in *United States* v. *Silvertone Plating Company, Inc.*, Civil Action No. 92–CV–76076 (E.D. Mich.), was lodged on May 13, 1994 with the United States District Court for the Eastern District of Michigan.

The Consent Decree resolves certain claims for civil penalties in connection with violations of a Consent Agreement and Final Order ("CAFO") under the Resource Conservation and Recovery Act 42 U.S.C. 6901 *et seq.* ("RCRA"), at a facility located at 7 South Emerick Street, Ypsilanti, Michigan. The Consent Decree requires Silvertone to pay the United States $1,000, but reserves the United States' rights with respect to injunctive relief and other claims. In the Decree, Sivlertone certified that it is no longer conducting business at the facility.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Silvertone Plating, Company, Inc.*, DOJ Ref. #90–7–1–636.

The proposed consent decree may be examined at the Office of the United States Attorney, 231 West LaFayette Street, Detroit, Michigan 48226; the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois, 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $3.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–13424 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice hereby given that on May 18, 1994 a proposed Consent Decree in *United States* v. *Stern Enterprises, Inc., et al.*, Civil No. 1:92CV1488, was lodged in the United States District Court for the Northern District of Ohio. The Complaint filed by the United States alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos, 40 CFR part 61, subpart M. The Consent Decree requires the defendants to pay a total civil penalty of $205,000 in full settlement of the claims set forth in the Complaint filed by the United States. The Consent Decree also requires the defendants to comply with the asbestos NESHAP and to complete all asbestos removal and demolition at the facility that is the subject of the Complaint by September 30, 1944.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Stern Enterprises, Inc., et al.*, D.J. Ref. No. 90–5–2–1–1595.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Ohio, 1800 Bank One Center, 600 Superior Avenue, East, Cleaveland, Ohio 44114–2600 (contact Assistant United States Attorney Arthur I. Harris); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Susan Perdomo); and (3) the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005), (202) 624–0892. Copies of the proposed Consent Decree may be obtained in person or by mail from the consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. For a copy of the Consent Decree, please enclose a check in the amount of $3.00 (25 cents per page reproduction charge) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–13427 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 15, 1994, Radian Corporation, 8501 Mopac Blvd., P.O. Box 201088, Austin, Texas 78720, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Ibogaine (7260)	I
Dihydromorphine (9145)	I
Cocaine (9041)	II
Codeine (9050)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The firm plans to import deuterated material not currently available in the United States for manufacturing of exempt products.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 5, 1994.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 23, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–13397 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to section 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on April 15, 1994, Radian Corporation, 8501 Mopac Blvd., P.O. Box 201088, Austin, Texas 78720, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590).	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahyrocannabinols (7370)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymeth-amphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Heroin (9200)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II

	Schedule
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to manufacture deuterated material for use in exempt products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 5, 1994.

Dated: May 23, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–13398 Filed 6–1–94; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–029]

NASA Advisory Council (NAC), Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: June 29, 1994, 9 a.m. to 4 p.m.

ADDRESSES: Building 4200, room P110, George C. Marshall Space Flight Center, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, room 9K70, 300 E Street, SW., Washington, DC 20546, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Last Meeting and Action Items
—Rcap of MBRAC Activites and Accomplishments
—Report of the Associate Administrator for Small and Disadvantaged Business Utilization
—Current SDB Issues Regarding NASA Procurements
—Status of SDB Participations in Space Station and Other Major NASA Programs
—Chairman's Report
—Committee Reports
—Invitation for Suggestions by Individuals in Attendance

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: May 25, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94–13434 Filed 6–1–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Announcement of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on June 13–14, 1994. The panel will meet from 9 a.m. to 5:45 p.m. on June 13 and from 9 a.m. to 5 p.m. on June 14 in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506

This meeting will be open to the public on a space available basis for a discussion of guidelines and field issues.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: May 23, 1994.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–13337 Filed 6–1–94; 8:45 am]

BILLING CODE 7537–01–M

Announcement of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on June 16, 1994. The panel will meet from 9 a.m. to 3:30 p.m. in room M–09, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis for a discussion of guidelines and field issues.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contract the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington DC, 20506, 202/682–5532, TYY 202/682–5496, at least (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Office, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: May 23, 1994.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–13336 Filed 6–1–94; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Humanities

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Office, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contracting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial of financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meeting, dated July 19, 1993, I have determined that these meeting will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United States Code.

1. *Date:* June 21, 1994.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after December 1, 1994.

2. *Date:* June 23, 1994.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after December 1, 1994.

3. *Date:* June 28, 1994.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after December 1, 1994.

4. *Date:* June 27, 1994.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Public Challenge Grants, submitted to the Division of Public Programs, for projects beginning after December 1, 1994.

David C. Fisher,
Advisory Committee Management Officer.
[FR Doc. 94–13422 Filed 6–1–94; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35):

1. Type of submission, new, revision or extension: Revision.
2. Title of the information collection: Policy Statement, Cooperation With States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities.
3. The form number if applicable: Not applicable.
4. How often the collection is required: On occasion.
5. Who will be required or asked to report: States.
6. An estimate of the number of requests: 50.
7. An estimate of the total number of hours annually needed to complete the requirement or request: 1,000.
8. The average burden per respondent: 20 hours.
9. An indication of whether section 3504(h), Public Law 96–511 applies: Not Applicable.
10. Abstract: States wishing to enter into an agreement with NRC to observe or participate in NRC inspections at nuclear power facilities are requested to provide certain information to the NRC to ensure close cooperation and consistency with the NRC inspection program as specified by the Commission's Policy of Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production and Utilization Facilities.

Copies of the submittals may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555.

Comments and questions can be directed by mail to the OMB reviewer:

Troy Hillier, Officer of Information and Regulatory Affairs, NEOB–3019, 3150–0163, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

Dated at Rockville, Maryland, this 25th day of May 1994.

For the Nuclear Regulatory Commission
Gerald F. Cranford,
Designated Senior, Official for Information Resources Management.
[FR Doc. 94–13387 Filed 6–1–94; 8:45 am]
BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: New
2. The title of the information collection: Regulatory Impact Survey for Materials Licensees
3. The form number if applicable: Not applicable.
4. How often the collection is required: Licensees are requested to respond only once.
5. Who will be required or asked to report: NRC materials licensees selected as part of a sample.
6. An estimate of the number of annual responses: 420
7. An estimate of the total number of hours needed annually to complete the requirement or request: 45 minutes per response. The industry total is 315 hours.
8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.
9. Abstract: NRC will survey a sample of materials licensees to determine their views of the impact of NRC regulation on the safe operation of their facility. This survey is designed to elicit licensee views of the efficacy of NRC regulation in ensuring safety, the burden on licensees of compliance, and the relationship between these two factors. The results of the survey will be used to help the NRC accomplish its mission while minimizing adverse impacts on licensees.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer:

Troy Hillier, Office of Information and Regulatory Affairs, NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 415–7232.

Dated at Rockville, Maryland, this 25th day of May 1994.

For the Nuclear Regulatory Commission
Gerald F. Cranford,
Designated Senior Official for Information Resources Management.
[FR Doc. 94–13386 Filed 6–1–94; 8:45 am]
BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Meeting

SUMMARY: The Office of Personnel Management (OPM) announces the eighth meeting of the National Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet June 8, 1994, 1 p.m., in the OPM Conference Center, room 1350, at the Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street NW., Washington, DC 20415–0001. The conference center is located on the first floor.

TYPE OF MEETING: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact OPM to obtain appropriate accommodations.

POINT OF CONTACT: Douglas K. Walker, Office of Communications, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street NW., room 5F12, Washington, DC 20415–0001, (202) 606–1800.

SUPPLEMENTARY INFORMATION: The Council will receive reports on and discuss activities contained in its work plan for calendar year 1994, *Strategy To Promote Change*, which was adopted at the April 12, 1994, meeting.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Douglas K. Walker at the address shown above. Comments should be received by June 3, in order to be considered at the June 8, meeting.

Office of Personnel Management
James B. King,
Director.
[FR Doc. 94–13321 Filed 6–1–94; 8:45 am]
BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34110; File No. SR–ICC–600–21]

Self-Regulatory Organizations; The Intermarket Clearing Corporation; Notice of Filing of the Withdrawal of an Application for Registration as a Clearing Agency

May 25, 1994.

Pursuant to section 19(a)(3) of the Securities Exchange Act of 1934 ("Act"),[1] The Intermarket Clearing Corporation ("ICC") has filed with the Securities and Exchange Commission ("Commission") notice of its intent to withdraw its request for permanent registration as a clearing agency and to terminate its temporary registration as a clearing agency.[2] The Commission is publishing this notice to solicit comments on ICC's proposal from interested persons.

I. Discussion

ICC is the commodity clearing subsidiary of The Options Clearing Corporation ("OCC"). ICC commenced operations in 1985 as a "clearing organization," as defined in the rules promulgated under the Commodity Exchange Act,[3] and therefore is subject to oversight and regulation by the CFTC. ICC guarantees, clears, and settles futures contracts, options on futures contracts, and commodity options which are traded on those contract markets that have designated ICC as their clearing organization.[4]

Because the economic similarity between certain securities products and certain commodity products created opportunities for intermarket hedging and arbitrage, ICC and OCC developed a program to offer cross-margining to joint members of ICC and OCC.[5] The original cross-margining program between ICC and OCC required a joint member to transfer positions in securities options eligible for cross-margining from its OCC account to its account at ICC. Such options positions and futures contracts eligible for cross-margining were margined at ICC based upon the net risk of the combined positions. ICC held all positions, margin deposits, and clearing fund deposits with respect to the cross-margining program. ICC was obligated to OCC to perform a participating joint member's obligations with respect to short positions in securities options held in the joint member's ICC cross-margining account, and OCC remained obligated to collect and pay all premiums for transactions in securities options and to effect settlement of all exercises. Because securities positions were held and were margined at ICC and because ICC held all the margin deposits and clearing fund deposits with respect to cross-margined positions, ICC believed that it could possibly be viewed as being within the Act's definition of a clearing agency[6] and therefore registered with the Commission as such.[7]

[1] 15 U.S.C. 78s(a)(3) (1988).

[2] Letter from James C. Yong, Vice President and Assistant Secretary, ICC, to Jonathan G. Katz, Secretary, Commission (March 24, 1994).

[3] Commodity Futures Trading Commission ("CFTC") Rule 1.3(d) [17 CFR 1.3(d) (1993)] defines clearing organization as the person or organization which acts as a medium for clearing transactions in commodities for future delivery or commodity option transactions or for effecting settlements of contracts for future delivery or commodity option transactions for and between members of a contract market.

[4] Currently, ICC acts as the clearing organization for the Amex Commodities Corp., the New York Futures Exchange, Inc., and the Philadelphia Board of Trade.

[5] Securities Exchange Act Release Nos. 26153 (October 3, 1988), 53 FR 39567 [File No. SR–OCC–88–17] (order approving OCC/ICC proprietary cross-margining program) and 30041 (December 5, 1991), 56 FR 64824 [File Nos. SR–OCC–90–04 and SR–ICC–90–03] (order approving OCC/ICC non-proprietary, market professional cross-margining program).

[6] Section 3(a)(23)(A) [15 U.S.C. 78c(a)(23)(A) (1988)] defines a clearing agency as any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement, to reduce the number of securities transactions, or for the allocation of securities settlement responsibilities.

[7] On October 3, 1988, the Commission granted ICC temporary registration as a clearing agency for a period of eighteen months (Securities Exchange Act Release No. 26154 (October 3, 1988), 53 FR

Continued

Following regulatory approval of the cross-margining program between ICC and OCC, OCC entered into cross-margining arrangements with several other commodity clearing organizations.[8] Pursuant to those later cross-margining programs, instead of transferring all cross-margined option and futures positions into an account held at one clearing organization, cross-margined option positions are held at OCC and cross-margined futures positions are held at the participating commodity clearing organization. OCC and the participating commodity clearing organization share information regarding the positions held in their cross-margining accounts and treat the cross-margining accounts as being combined for purposes of calculating margin requirements. Collateral deposited to satisfy margin requirements is subject to the joint control of OCC and the participating commodity clearing organization. Members electing to participate in a cross-margining program must grant OCC and the participating commodity clearing organization cross-liens on option positions maintained at OCC and on futures positions maintained at the participating commodity clearing organization. Under this later cross-margining structure, a participating commodity clearing organization is not considered to be within the Act's definition of a clearing agency and therefore is not required to register with the Commission as such.

Recently, the cross-margining program between ICC and OCC was restructured so that it parallels the cross-margining programs between OCC and other participating commodity clearing organizations.[9] ICC believes that under the restructured cross-margining program it will no longer be acting as an intermediary in making payments or deliveries in connection with securities transactions and therefore will not be a clearing agency under the Act.[10] Accordingly, ICC requests that its application for permanent registration with the Commission as a clearing agency be withdrawn.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to File No. SR–ICC–600–21 and should be submitted by July 5, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13380 Filed 6–1–94; 8:45 am]

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39556). On April 5, 1990, October 3, 1991, and April 2, 1993, the Commission extended ICC's temporary registration for additional eighteen month periods (Securities Exchange Act Release Nos. 27879 (April 5, 1990), 55 FR 39556; 29781 (October 3, 1991), 56 FR 50959; and 32098 (April 2, 1993), 58 FR 18277).

[8] *E.g.*, Securities Exchange Act Release Nos. 27296 (September 26, 1989), 54 FR 41195 (order approving OCC/CME cross-margining program for proprietary positions); 29991 (November 26, 1991), 56 FR 61458 (order approving expansion of OCC/CME cross-margining program to include positions held for market professionals); 29688 (October 31, 1991), 56 FR 56680 (order approving OCC/Board of Trade Clearing Corporation cross-margining program for proprietary positions); 32681 (July 27, 1993), 58 FR 41302 (order approving expansion of OCC/BOTCC cross-margining program to include positions held for market professionals); 30413 (February 26, 1992), 57 FR 7830 (order approving OCC/Kansas City Board of Trade Clearing Corporation ["KCBOTCC"] cross-margining program for proprietary positions); and 32708 (August 2, 1993), 58 FR 42586 (order approving the expansion of the OCC/KCBOTCC cross-margining program to include positions held for market professionals).

[9] Securities Exchange Act Release No. 33342 (December 22, 1993), 58 FR 67885 (File Nos. SR–OCC–93–07 and SR–ICC–93–04) (order approving proposed rule changes to restructure the cross-margining program between OCC and ICC).

[10] ICC and OCC also offer joint members a cross-netting service which provides for the netting of a member's OCC exercise and assignment settlement obligations with its ICC settlement obligations. Previously, a joint member was able to select either ICC or OCC as its designated clearing organization ("DCO") for the purpose of settling its cross-netted obligations. The clearing agency selected as DCO was to act as the agent of the other clearing organization in effecting the cross-netted settlements. ICC has never been selected as a joint member's DCO, and pursuant to the recent approval of rule changes filed by ICC and OCC, members are no longer able to select ICC as their DCO. For a more detailed description of the proposed rule changes, refer to Securities Exchange Act Release No. 34088 (May 19, 1994), 59 FR 27303 [File Nos. SR–OCC–94–01 and SR–ICC–94–01] (order approving proposed rule change related to restructuring of cross-netting agreement between ICC and OCC). Accordingly, ICC believes that it will no longer be performing any activity with respect to cross-netting that would bring it within the definition of a clearing agency under the Act.

[Release No. 34–34109; File No. SR–Phlx–93–29]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Enhanced Specialist Participation in Parity Options Trades.

May 25, 1994.

On August 9, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to enhanced specialist participation in parity options trades. Notice of the proposal appeared in the **Federal Register** on September 20, 1993.[3] One comment letter was received opposing the proposed rule change,[4] to which the Phlx responded.[5] On April 19, 1994, the Exchange filed Amendment No. 1.[6] This order approves the Exchange's proposal, as amended.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 32891 (September 14, 1993), 58 FR 48921.

[4] See Letter from Jay Mizrahi, General Partner, P.J. Shoreline Securities ("Shoreline"), to Jonathan Katz, Secretary, Commission, dated December 16, 1993 ("Shoreline Securities Letter").

[5] See Letter from William Uchimoto, Vice President and General Counsel, Phlx, to Sharon Lawson, Assistant Director, Office of Derivatives and Equity Oversight ("ODEO"), Division of Market Regulation ("Division"), Commission, dated February 23, 1994 ("Phlx Response Letter").

[6] On April 19, 1994, the Exchange filed Amendment No. 1 to the proposed rule change to specify that: (1) The Exchange's Allocation, Evaluation and Securities Committee ("Committee") may only extend the proposed six month Enhanced Parity Split (as defined herein) for one additional six month period; and (2) the Enhanced Parity Split cannot cause a customer order to receive a smaller participation as a result of this rule than any other crowd participant, including the specialist. Further, Amendment No. 1 clarifies that (1) a "New Unit" would be any new equity options specialist unit approved by the Exchange on or after June 16, 1993; (2) a 'New Options Class" is any class of options listed for trading by the Exchange on or after June 16, 1993; and (3) the Enhanced Parity Split may be granted for a New Options Class after the initial six month period has expired as long as the New Options Class is assigned to the New Unit while it is still entitled to receive the Enhanced Parity Split

Description of Proposal

In order to encourage the registration with the Exchange of New Units,[7] the Exchange proposes to add now Commentary .17 to Rule 1014. Specifically, the proposal would enable New Units trading New Options Classes,[8] to execute 50% of the contracts in transactions where the New Unit is on parity with one registered options trader ("ROT"), and 40% of the contracts in a transaction where the New Unit is on parity with two or more ROTs ("Enhanced Parity Split"); provided, however, that no customer order which is on parity may receive a smaller participation than any other crowd participant, including the specialist.[9]

A New Unit can be formed by current ROTs and/or specialists as long as a new broker-dealer firm is established. Because the proposal will be limited to New Options Classes, options classes that are leased or otherwise transferred from an existing specialist to a New Unit, or that were listed on the Exchange prior to June 16, 1993, and which are assigned to a New Unit, and not covered by the proposed rule.

The Enhanced Parity Split would be effective for a period of six months from the commencement of trading by the New Unite of its first New Options Class.[10] Furthermore, the Committee may extend the Enhanced Parity Split for one additional six month period upon petition by the New Unit and a determination by the Committee that such extension is consistent with the promotion of just and equitable principles of trade and the public interest.[11] The Enhanced Parity Split will also be applicable to any additional New Options Classes that are assigned to a New Unit, provided that at the time such classes are assigned, the New Unit is still entitled to receive the Enhanced Parity Split on the first New Options Class it commenced trading pursuant to this rule.[12] The Committee may terminate any extension of the Enhanced Parity Split if the Committee determines that such action is consistent with the promotion of just and equitable principles of trade and the public interest.[13]

Comment Letter

The Comment letter received opposing the proposed rule change made several arguments as to why the proposed rule change is inappropriate.[14] The commenter first argues that the Exchange has no evidence that granting an Enhanced Parity Split to New Units will in any way benefit Phlx public customers. In fact, the letter argues that the proposed rule is anti-competitive and will ultimately harm public customers by acting as a disincentive for ROTs to make competitive markets, thus removing liquidity from the market. Shoreline believes that price competition is restricted whenever the specialist is granted a benefit not available to the ROTs in the crowd. Shoreline also argues that there is no evidence that the Enhanced Parity Split will encourage New Units to make tight and liquid markets, as the Phlx claims.

The commenter's next argument is that the proposed rule allows, but does not require, the New Unit to invoke the Enhanced Parity Split. Shoreline believes that this further harms ROTs because there may be instances where ROTs are forced to accept a greater percentage of an undesirable trade than they would if the New Unit is required to accept the Enhanced Parity Split.

Shoreline also argues that by allowing existing specialists and ROTs to form New Units, the proposal does not serve its stated purpose, which is to encourage the formation and registration with the Exchange of new specialist units.

Finally, the commenter argues that the Phlx has provided no specific criteria for maintaining or revoking the Enhanced Parity Split with respect to a particular New Options Class. Shoreline believes that if the Enhanced Parity Split is to be offered to New Units, the Committee should have objective standards to apply in making a determination of whether to extend the Enhanced Parity Split for the allowed additional six month period.

Phlx Response

The Phlx refutes the arguments raised by Shoreline.[15] First, the Phlx believes that the proposal will in fact add liquidity to the market, thus directly benefiting public customers. The Phlx believes the proposal will attract new specialist units to the Exchange and will encourage these New Units to make tight markets in New Options Classes in order to attract order flow to the Exchange. The Phlx argues that because every newly listed options class is subject to multiple listings, disincentives are created which discourage specialist units from acting as specialists for those new classes of options. The Phlx believes that the Enhanced parity Split will counteract these disincentives by offering New Units a direct benefit if they are able to attract order flow to the Exchange. The Exchange believes the New Units will be able to attract this order flow, and thus capitalize on the Enhanced Parity Split, only if they maintain tight markets in the New Options Classes. As a result, the Phlx believes that public customers will directly benefit from the proposed rule change.

The Phlx also disagrees with Shoreline's contention that any enhanced split is anti-competitive. First the Enhanced Parity Split is available to any market making firm that is willing to establish a New Unit. Secondly, the proposal does not impact parity splits on existing options classes or New Options Classes traded by existing specialist units. Finally, a market maker can always establish priority in a trade by improving the market or by being the first in establishing a market that would otherwise be on parity.

[7] See Amendment No. 1, *supra* note 6

[8] *Id.*

[9] In such cases, the specialist may waive the Enhanced Parity Split. Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Attorney, ODEO, Division, Commission, on May 20, 1994.

[10] On August 17, 1992, the Exchange filed a similar proposal pursuant to which all specialists would have received the enhanced parity split contained in this proposal. See File No. SR–Phlx–92–19. The Exchange has withdrawn that proposal. See Letter from Keith Kessel, Phlx, to Brad Ritter, Attorney, Office of Derivatives Regulation, Division of Market Regulation, Commission, dated December 2, 1993. On February 28, 1994, the Exchange filed another proposal which provides for a different form of enhanced parity participation for existing specialist units and for New Units that become ineligible for the Enhanced Parity Split pursuant to this proposal. See Securities Exchange Act Release No. 33935 (April 20, 1994), 59 FR 22030 (April 28, 1994) (notice of File No. SR–Phlx–94–12). If approved, the enhanced parity participation for specialists proposed in File No. SR–Phlx–94–12 would not be available to New Units that are eligible for the Enhanced Parity Split pursuant to this proposal. Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Attorney, ODEO, Division, Commission, on April 20, 1994.

[11] See Amendment No. 1, *supra* note 6.

[12] Once granted, the Enhanced Parity Split on additional New Options Classes assigned to a New Unit may remain in effect for up to one year as provided herein even though the Enhanced Parity Split on the first New Options Class assigned to the New Unit terminates during that time period. *Id.*

[13] The Exchange represents that a New Unit will need the initial six month period in order to establish a trading record in the New Options Class. If, however, the New Unit's performance during the initial six month period is substandard, the Committee may reallocate the particular options class to another specialist pursuant to Phlx Rule 511. See Letter from William Uchimoto, General Counsel, Phlx, to Richard Zack, Branch Chief, ODEO, Division, Commission, dated January 5, 1994.

[14] See Shoreline Securities Letter, *supra* note 4.

[15] See Phlx Response Letter, *supra* note 5

In response to the commenter's claims that market makers are unfairly disadvantaged by this proposal, the Phlx makes several arguments. First, the Phlx states that the claims that market makers will be hampered in hedging trades where they improve the market does not take into account the possibility that the market maker may be able to hedge by improving both sides of the market or by utilizing another options series for purposes of hedging. Additionally, the proposal does not impact in any manner the ability of a market maker to hedge an options position with underlying stock. Further, the Phlx argues that specialists have responsibilities and are subject to certain costs that market makers do not have, such as, updating and disseminating quotes, reflecting all market interest in the displayed quotes, and the fixed staffing cost committed to market making in a particular issue whether it is active or not. In order to attract specialist units to the Exchange who are willing to accept these responsibilities, the Phlx believes it is necessary to provide specialists with some benefits that are not available to ROTs. The Phlx believes that any negative impact to ROTs that may be caused by this proposal is more than offset by the benefit to the Exchange and its customers of attracting New Units to the Exchange.

The Phlx also refutes the commenter's claim that ROTs are further harmed because the New Unit is not required to invoke the Enhanced Parity Split. The Phlx argues that because specialists and ROTs both desire to buy at the bid and sell at the ask, there should be few undesirable trades where the specialist would not find it desirable to invoke the Enhanced Parity Split. As a result, the Exchange believes that any negative impact on the ROTs as a result of the permissive nature of the rule will be de minimis.

Finally, the Phlx argues that because the Enhanced Parity Split can apply to a New Options Class for at most one year, the Exchange does not believe that detailed evaluative criteria for use in awarding or removing the Enhanced Parity Split will be particularly effective or necessary. The Exchange believes that by the time that the New Unit establishes a trading history which can be reviewed and evaluated, the Enhanced Parity Split will probably have lapsed. Even without such criteria, however, the Phlx notes that the Committee has the ability to review the performance of a New Unit and to remove the Enhanced Parity Split at the end of the initial six month period, or in more egregious cases, to reallocate an options class for inadequate specialist performance.

Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)[16] in that the proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest. Specifically, the Commission finds that the proposal may serve to remove impediments to and perfect the mechanism of a free and open market by encouraging the creation of New Units and by encouraging those New Units to maintain tight markets for New Options Classes in order to attract order flow to the Exchange. The Commission believes the proposed rule change is a reasonable attempt by the PHlx to enhance the ability of New Units to compete for order flow in the environment of multiply-traded options classes. In addition, the protection of investors and the public interest is maintained because the Committee can refuse to extend the Enhanced Parity Split for an additional six months if the performance of the New Unit does not warrant an extension. Further, the proposed rule change provides the Enhanced Parity Split cannot disadvantage a public customer order that is on parity with a New Unit.[17]

The Commission agrees with the Exchange that in order to attract order flow to the Exchange, the Phlx needs to be able to attract and retain well capitalized specialist units that are willing to trade New Options Classes, as well as existing options classes. Further, the Commission disagrees with the commenter that the proposed rule change will disadvantage public customers. On the contrary, the proposed rule change eliminates any direct injury to public customers by providing that customer orders on parity may not receive a smaller participation than any other crowd participant, including the specialist.[18] Furthermore, because the proposal may serve to add liquidity to the market by encouraging New Units to maintain tight markets in order to attract order flow to the Exchange, the Commission believes that public customers could benefit from the proposed rule change.[19] Accordingly, the Commission believes there is no evidence to support a conclusion that the proposed rule change will disadvantage public customers.

The Commission also acknowledges that specialists have responsibilities that ROTs do not have and that these responsibilities have certain costs associated with them, such as the staff costs associated with continually updating and disseminating quotes. As a result, the Commission believes it is reasonable for the Exchange to grant certain advantages, such as the Enhanced Parity Split, to New Units in order to encourage New Units to register as specialists for New Options Classes. Accordingly, as long as these advantages do not unreasonably restrain competition and do not harm investors, the Commission believes that the granting of such benefits to specialists is within the business judgment of the Exchange. Therefore, even though the proposed rule change could arguably have some negative impact on ROTs, for the reasons stated above, the Commission believes the proposal is consistent with the Act.[20]

Finally, the Commission agrees with the Phlx that the lack of quantifiable standards for the Committee to apply in determining whether to extend the Enhanced Parity Split for an additional six month period does not make the proposal unreasonable. Even if the Phlx proposed such standards, some time period would be necessary in order for the New Unit to establish a trading history in the New Option Class in order for such a review to have any validity. In addition, the Committee still will review the performance of the New Unit in determining whether to extend the Enhanced Parity Split for an additional six months for particular New Options Classes. Because the Enhanced Parity Split can be in effect for at most one year for each New Options Class, the Commission believes that the lack of such standards does not prevent a finding that the proposal is consistent with the Act.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the

[16] 15 U.S.C. 78f(b)(5) (1988).

[17] See Amendment No. 1, *supra* note 6.

[18] The specialist may waive the Enhanced Parity Split in these circumstances. See *supra* note 9.

[19] The Commission notes that contrary to the commenter's contention, ROTs may in fact benefit from the Enhanced Parity Split if the New Units are successful in attracting order flow to the Exchange.

[20] Further, the Commission disagrees with the commenter that ROTs may be disadvantaged by the fact that New Units are not required to accept the Enhanced Parity Split in those instances where it applies. In those cases where a New Unit determines to waive the Enhanced Parity Split, the Exchange's normal parity rules will apply and the ROTs involved will be no worse off than they would on any other parity trade.

thirtieth day after the date of publication of notice of filing thereof in the Federal Register. First, Amendment No. 1 limits to one year the maximum time period during which the Enhanced Parity Split can exist with respect to any New Options Class and provides that the proposed rule cannot disadvantage customer orders. The purpose of the Enhanced Parity Split is to encourage New Units to maintain tight spreads in New Options Classes, which is a benefit to investors. The Commission believes that providing such an incentive to specialists is appropriate for New Options Classes for the period during which the market for such options classes is being established as long as safeguards exist to ensure that customers are not harmed. As a result, the Commission believes these amendments accomplish these goals consistent with the Act. Secondly, Amendment No. 1 also clarifies certain aspects of the proposed rule change. The Commission believes that these amendments strengthen the proposed rule change by minimizing any confusion that may arise as to the applicability of the rule. As a result, the Commission believes it is consistent with section 6(b)(5) of the Act to approve Amendment No. 1 to the Phlx's proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–93–29 and should be submitted by June 23, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of Act,[21] that the proposed rule change (SR–Phlx–93–29) is hereby approved, as amended.

[21] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13344 Filed 6–1–94; 8:45 am]

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[22] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–20320; 812–6980]

The First Trust Special Situations Trust, Oppenheimer Global and Treasury Securities Trust, Series 1 and Subsequent Series, et al.; Notice of Application

May 26, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The First Trust Special Situations Trust, Oppenheimer Global and Treasury Securities Trust, Series 1 and Subsequent Series (the "Trust"); Oppenheimer Global Fund, Oppenheimer Fund, Oppenheimer Gold & Special Minerals Fund, Oppenheimer Global Growth & Income Fund, Oppenheimer Equity Income Fund, Oppenheimer Main Street Income & Growth Fund; Oppenheimer Asset Allocation Fund; Oppenheimer Global Bio-Tech Fund; Oppenheimer Total Return Fund, Inc., Oppenheimer Discovery Fund, Oppenheimer Time Fund, Oppenheimer Special Fund, and Oppenheimer Target Fund, on behalf of themselves and any open-end management investment companies, other than money market or no-load funds (*i.e.*, companies that do not impose a sales load, deferred sales load, or bear distribution expenses pursuant to a rule 12b–1 plan), that may in the future be advised by Oppenheimer Management Corporation or an adviser owned directly or indirectly by it or its parent corporation, Oppenheimer Acquisition Corp. (the "Funds"); Oppenheimer Management Corporation (the "Adviser"); Oppenheimer Funds Distributor, Inc. (the "Distributor"); and Nike Securities L.P. ("Nike," together with any sponsor controlled by or under common control with Nike, the "Sponsor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from sections 12(d)(1), 14(a), 19(b), and 22(d) and rule 19b–1; under sections 11 (a) and (c) to permit certain offers of exchange; and under section 17(d) and rule 17d–1 to permit certain affiliated transactions.

SUMMARY OF APPLICATION: Applicants seek an order: (a) Permitting series of the Trust to invest in shares of one of the Funds and zero coupon obligations; (b) exempting the Sponsor from having to take for its own account or place with others $100,000 worth of units in the Trust; (c) permitting the Trust to distribute capital gains resulting from redemptions of Fund shares along with the Trust's regular distributions; (d) permitting waiver of any contingent deferred sales charge otherwise applicable on Fund shares that the Trust has purchased; (e) permitting certain offers of exchange involving the Trust; and (f) permitting certain affiliated transactions involving the Trust.

FILING DATES: The application was filed on May 6, 1994. Counsel, on behalf of applicants, has agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 20, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Nike, 1001 Warrenville Road, Lisle, Illinois 60532; Oppenheimer Main Street Income & Growth Fund, Oppenheimer Total Return Fund, Inc., and Oppenheimer Equity Income Fund, 3410 South Galena Street, Denver, Colorado 80231; Other applicants, Two World Trade Center, New York, New York 10048–0203.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is a registered open-end management investment company. The Adviser serves as the Funds' investment adviser, and the Distributor serves as the Funds' principal underwriter. In accordance with the terms of an exemptive order, certain of the Funds offer multiple classes of shares with front-end sales loads, and in certain instances, contingent deferred sales charges ("CDSCs").[1] Each of the existing Funds has adopted a rule 12b–1 plan.

2. The Trust is a registered unit investment trust that will offer units in series ("Trust Series"), each of which will contain shares of one of the Funds that normally are offered with a sales load and U.S. Government zero coupon obligations ("zero coupon obligations"). The Trust's objective is to provide protection of capital while providing for capital appreciation through investments in zero coupon obligations and shares of the Funds. Each Trust Series will be organized pursuant to a trust indenture which will incorporate a master trust agreement relating to the entire Trust and which will name a qualified bank as trustee (the "Trustee").

3. Each Trust Series will be sponsored by the Sponsor, who will perform the functions typical of unit investment trust sponsors, including: depositing fund shares in the Trust Series; acquiring zero coupon obligations and depositing them in the Trust Series; arranging for the evaluation of the zero coupon obligations by an independent evaluator (but not shares of the Funds since the Funds calculate net asset value daily); offering units to the public; and maintaining a secondary market in units. The Sponsor expects to deposit in each Trust Series substantially more than $100,000 aggregate value of zero coupon obligations and Fund shares. Simultaneously with such deposit, the Trustee will deliver to the Sponsor registered certificates for units which will represent the entire ownership of the Trust Series.

4. Units of the Trust Series will be offered to the public initially at prices based on the net asset value of the Fund shares selected for deposit in the Trust Series plus the offering side value of the zero coupon obligations contained therein plus a sales charge. The Trust Series will redeem units at prices based on the aggregate bid side evaluation of the zero coupon obligations plus the net asset value of the Fund shares.

5. With the deposit of the securities in the Trust Series on the initial date of deposit, the Sponsor will have established a proportionate relationship between the principal amounts of zero coupon obligations and Fund shares in the Trust Series. The Sponsor will be permitted under the trust agreement to deposit additional securities, but will maintain the original proportionate relationship between the principal amounts of zero coupon obligations and Fund shares in the Trust Series. Fund shares may be redeemed only to meet redemptions by unitholders or to pay Trust Series expenses in the event that distributions received on Fund shares prove insufficient to cover the expenses.

6. The Trust Series will be structured so that each Trust Series will contain a sufficient amount of zero coupon obligations to assure that, at the specified maturity date for such Trust Series, the purchaser of a unit will receive back the approximate total amount of the original investment in the Trust Series, including the sales charge. The Sponsor intends to maintain a secondary market for Trust Series units based on the aggregate bid side evaluation of the zero coupon obligations and the net asset value of the Fund shares, but is not obligated to do so. In the event that the Sponsor does not maintain a secondary market, the trust agreement will provide that the Sponsor will not instruct the Trustee to sell zero coupon obligations from any Trust Series until shares of the Fund have been liquidated, unless the Trustee is able to sell such zero coupon obligations and still maintain at least the original proportionate relationship to unit value and, further, that zero coupon obligations cannot be sold to meet Trust Series expenses.

7. The sales load that normally would be applicable on sales of underlying Fund shares will be waived. The Sponsor and the Distributor will rebate to the Trustee any rule 12b–1 fees they receive on shares of the Funds held by the Trust Series.

8. Applicants have taken certain steps to reduce the impact of the termination of a Trust Series on the Fund deposited therein. First, the Trust Series will, with respect to all unitholders still holding units at the scheduled termination and to the extent desired by such unitholders, transfer the registration of their proportionate number of Fund shares from the Trust Series to the investor in lieu of redeeming such shares. Second, the Fund will offer all such unitholders the option of investing the proceeds from the zero coupon obligations in Fund shares at net asset value (*i.e.*, without the imposition of the normal sales load). The Fund also will offer unitholders the option of investing all distributions from the Trust Series during the life of the Trust Series in Fund shares at net asset value.

Applicants' Legal Conclusions

1. Section 12(d)(1) generally limits acquisition by an investment company of shares of a registered investment company in the following ways: (1) The acquiring company may not acquire more than 3% of the voting stock of the acquired company; (2) the securities of the acquired company may not amount to more than 5% of the value of the assets of the acquiring company; and (3) securities of the acquired company and all other investment companies may not represent more than 10% of the assets of the acquiring company.

2. A major purpose of section 12(d)(1) is to prevent the duplication of costs and other adverse consequences to investors incident to the pyramiding of investment companies. This proposal is structured to eliminate the pyramiding of expenses. No sales charge or distribution fee will be imposed on Fund shares deposited in the Trust. No investment advisory fee will be charged with respect to the Trust Series since they will be unmanaged, and no evaluation fee will be charged with respect to Fund shares in the Trust Series. Another concern addressed by 12(d)(1) is potentially abusive control problems that could result from the concentration of voting power in a fund holding company. To address this concern, applicants have agreed that shares of a Fund that are held by a Trust Series will be voted by the Trustee in the same proportion as all other shares of that Fund not held by the Trust Series are voted. Another concern underlying section 12(d)(1) is the possibility of large-scale redemptions of shares of the underlying fund. The trust agreement will, however, permit the Trust Series to sell Fund shares only when necessary to meet redemptions or pay Trust Series expenses. Neither the Trustee nor the Sponsor will have any discretionary authority to determine when shares of the underlying Funds are to be sold or to substitute shares of another Fund for those deposited in a Trust Series. The threat to a Fund from large-scale redemptions is further reduced by the fact that each Trust Series is prohibited from acquiring more than 10% of the outstanding shares of any Fund.

3. Section 14(a) requires that investment companies have $100,000 of net worth prior to making a public offering. Applicants recognize that by withdrawing certificates representing the entire beneficial ownership of the Trust Series, the Sponsor may be deemed to be reducing the Trust Series' net worth below the requirements of section 14(a). Applicants intend to comply in all respects with the requirements of rule 14a–3, which provides an exemption from section 14(a), except that the Trust Series would not restrict its portfolio to "eligible trust securities."

4. Section 19(b) and rule 19b–1 provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. These provisions were designed to remove the temptation to realize capital gains on a frequent and regular basis and to eliminate attempts by investment advisers to time distributions to be advantageous to shareholders. Moreover, there was concern that investors would be confused by a failure to distinguish between regular distributions of capital gains and distributions of investment income. Applicants request an exemption from Rule 19b–1 to the extent necessary to permit capital gains earned in connection with the redemption of Fund shares to be distributed to unitholders along with the Trust Series' regular distributions. The requested exemption is consistent with the purposes of section 19(b) and rule 19b–1 because the dangers of manipulation of capital gains and confusion between capital gains and regular income distributions does not exist in the Trust Series. The Trust Series and their Sponsor have substantially no control over events, other than the selection of the portfolio, which might trigger capital gains (*i.e.*, the tendering of units for redemption). Moreover, because distributions of capital are clearly indicated in accompanying reports to unitholders as a return of principal, the danger of confusion is not present in the operations of the Trust Series.

5. Section 22(d) generally prohibits a registered investment company from selling its shares except at a current offering price described in the prospectus. Applicants request an exemption from the provisions of section 22(d) to permit the waiver of any otherwise applicable CDSC where: (a) The Sponsor has purchased such shares in connection with the sale of units; (b) the proceeds of zero-coupon obligations upon termination of a Trust Series, and distributions from a Trust Series made during the existence of the Trust Series, ahve been reinvested by a unitholder in additional Fund shares; and (c) a Trust Series at maturity has transferred a unitholder's proportionate number of Fund shares from the Trust Series to the unitholder in lieu of redeeming such shares. Waiver of the sales load will not harm the Funds or remaining shareholders. All Funds whose shares are subject to any sales load will fully disclose the waiver provision in their prospectuses.

6. Section 11(a) makes it unlawful for an registered open-end investment company or principal underwriter for such company to make certain offers of exchange on any basis other than the relative net asset value of the securities to be exchanged, unless the terms of the exchange offer have first been approved by the SEC. Section 11(c) provides that section 11(a) will be applicable to any type of exchange offer involving securities of a registered unit investment trust, irrespective of the basis of exchange. Applicants seek an order pursuant to section 11 (a) and (c) approving the termination option described below. At the termination of the Trust Series, unitholders still holding units at maturity will have the option of either (a) transferring the registration of their proportionate number of Fund shares from the Trust Series to a registration in the investor's name, or (b) receiving a cash distribution. Such unitholders also will have the option of either (a) reinvesting the proceeds of the zero-coupon obligations in additional shares of the Fund (without imposition of the normal sales load), or (b) receiving a cash distribution. The exchange will be made on the basis of the net asset value of the Fund shares.

7. Section 17(d) and rule 17d–1 make it unlawful for any affiliated person of, or principal underwriter for a registered investment company, or any affiliated person of either of them, acting as a principal, to engage in a joint transaction with the investment company unless the joint transaction has been approved by the SEC. Applicants believe that the proposed arrangements are consistent with the provisions, policies, and purposes of the Act, and participation by each registered investment company is not on a basis less advantageous than that of other participants.

Applicants' Conditions

Applicants agree to the following as conditions to the granting of the requested order:

1. The Trustee will not redeem Fund shares except to the extent necessary to meet redemptions of units by unitholders, or to pay Trust expenses should distributions and rebated 12b–1 fees received on Fund shares prove insufficient to cover such expenses.

2. Any rule 12b–1 fees received by the Sponsor or the underwriters of Fund shares in connection with the distribution of Fund shares to the Trust will be promptly rebated to the Trustee.

3. No one Trust Series will, at the time of any deposit of any Fund shares hold as a result of that deposit, more than 10% of the then-outstanding shares of a Fund.

4. All Trust Series investing in shares of the same Fund will be structured so that their maturity dates will be at least thirty days apart from one another.

5. Applicants will comply in all respect with the requirements of rule 14a–3, except that the Trust Series will not restrict their portfolio investments to "eligible trust securities."

6. Shares of a Fund which are held by a Trust Series will be voted by the Trustee of the Trust, and the Trustee will vote all shares of a Fund held in a Trust Series in the same proportion as all other shares of that Fund not held by the Trust are voted.

7. No sales charge or redemption fee will be imposed on any shares of the Funds deposited in any Trust Series or on any shares acquired by unitholders through reinvestment of dividends or distributions or through reinvestment at termination.

8. Applicants agree to comply with rule 6c–10 as currently proposed, and as it may be reproposed, adopted or amended.

9. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of a reinvestment option will disclose that unitholders who elect to invest in Fund shares will incur a rule 12b–1 fee.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13382 Filed 6–1–94, 8:45 am.]

BILLING CODE 8010–01–M

[1] Oppenheimer Management Corporation, Investment Company Act Release Nos. 19821 (Oct. 28, 1993) (notice) and 19894 (Nov. 23, 1993) (order).

[Rel. No. IC–20318; 812–8758]

Fortis Advantage Portfolios, Inc., et al.; Notice of Application

May 25, 1994.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Fortis Advantage Portfolios, Inc., Fortis Equity Portfolios, Inc., Fortis Fiduciary Fund, Inc., Fortis Growth Fund, Inc., Fortis Income Portfolios, Inc., Fortis Money Portfolios, Inc., Fortis Tax-Free Portfolios, Inc., and Fortis

Worldwide Portfolios, Inc. (the "Funds"); Fortis Advisers, Inc. (the "Adviser"), and Fortis Investors, Inc. (the "Underwriter").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c) and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order that would permit the Funds to issue multiple classes of shares representing interests in the same portfolio of securities and to assess, and under certain circumstances waive, a contingent deferred sales charge ("CDSC"). The order would supersede a prior order ("Prior Order") and would permit the Funds to impose CDSC schedules that may be different from the one described in the Prior Order.

FILING DATES: The application was filed on January 3, 1994, and amended on April 6, 1994. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 20, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 500 Bielenberg Drive, Woodbury, Minnesota 55125.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are open-end management investment companies. Each Fund other than Fortis Fiduciary Fund and Fortis Growth Fund is organized as a series investment company and is authorized to issue its shares in more than one series. Fortis Fiduciary Fund and Fortis Growth Fund currently are authorized to issue only one series of shares. The Adviser serves as the investment adviser of each Fund. The Underwriter serves as the principal underwriter of the shares of each Fund.

2. The Fortis Money Fund series of Fortis Money Portfolios offers one class of shares at net asset value without the imposition of a FESC or CDSC. Each of the other Funds offers one class of shares at net asset value plus a front-end sales charge ("FESC") in connection with investments of up to $1 million. Investments of $1 million or more are not subject to a FESC, but rather a CDSC, which is permitted by the Prior Order.[1]

A. Variable Pricing System

1. Applicants, on behalf of themselves and future investment companies for which the Adviser, or any person controlled by or under common control with the Adviser, may serve as investment adviser, or for which the Underwriter, or any person controlled by or under common control with the Underwriter, may serve as principal underwriter, request an order that would permit the Funds to issue multiple classes of shares and to assess a CDSC. The order would supersede the Prior Order and would permit the Funds to impose CDSC schedules that may be different from the one described in that order.

2. Under applicants' proposal, the Funds could offer classes of shares either: (a) Subject to a FESC (with respect to investments of less than $1 million) or a CDSC (with respect to investments of $1 million or more) and subject to a 12b–1 distribution plan ("Class A shares");[2] (b) subject to a CDSC (expected to range from 4% on redemptions made during the first two years following purchase to 1% on redemptions made during the sixth year); a rule 12b–1 distribution plan with a service fee at an annual rate of up to .25% and a distribution fee at an annual rate of up to .75% of average daily net assets, and an automatic conversion to Class A after a certain period of time ("Class B shares"); (c) subject to a CDSC (expected to be 1% on redemptions made during the first two years following purchase), a rule 12b–1 service fee at an annual rate of up to .25% and a rule 12b–1 distribution fee at an annual rate of up to .75% of average daily net assets ("Class C shares"); (d) subject to a FESC, a rule 12b–1 service fee at an annual rate of up to .25%, and a rule 12b–1 distribution fee at an annual rate of up to .75%, of average daily net assets ("Class D shares"); (e) subject to a FESC (with respect to investments of less than $1 million) or a CDSC (with respect to investments of $1 million or more) but not subject to rule 12b–1 fees ("Class E shares");[3] (f) without a FESC or CDSC, but subject to a rule 12b–1 service fee at an annual rate of up to .25% of average daily net assets, for purchase exclusively by investors meeting such minimum investment and/or other eligibility requirements established by applicants ("Class Y shares"); and (g) without any sales or service charges for purchase exclusively by the Adviser, the Underwriter, certain agents and affiliates of the Adviser and Underwriter, and officers, directors, and employees of such entities ("Class Z shares"). The Funds also may establish one or more additional classes to be sold with different sales loads and service and distribution fee structures.

3. Class B shares of a Fund held for a specified number of years will convert automatically to Class A shares of such Fund at the relative net asset values of each of the classes.[4] For purposes of calculating the holding period, Class B shares will be deemed to have been issued on the sooner of: (a) The date on which the issuance of Class B shares occurred; or (b) for Class B shares obtained through an exchange, or a series of exchanges, the date on which

[1] Fortis Advantage Portfolios, Inc., *et al.*, Investment Company Act Release Nos. 19264 (February 11, 1993) (notice) and 19320 (March 9, 1993) (order), that permitted applicants to eliminate the FESC, and impose a CDSC, on sales of shares in the amount of $1 million or more. The CDSC may be in an amount of up to 1% and will be imposed only on shares redeemed within a period of up to 24 months after purchase.

[2] Applicants contemplate that existing shares of the Funds will be designated Class A shares upon implementation of the multi-class structure (except that existing shares of those Funds that do not currently have a 12b–1 plan will be designated Class E).

[3] Applicants anticipate that Class E shares would be implemented for each of the Funds that currently have no rule 12b–1 plan. If a Fund offers Class E shares, all existing shares would become Class E shares. Sales of Class E shares would be available only to those investors who were holders of a Fund's shares at the time of implementation of the multi-class structure.

[4] Applicants currently contemplate that Class B shares will be the only class of shares that automatically convert to another class of shares, except that upon the initial offering of Class Y and/or Class Z shares of any Fund, applicants may provide that shareholders of such Fund who would qualify for investment in Class Y or Class Z shares would automatically convert into Class Y or Class Z shares, as applicable.

the issuance of the original Class shares occurred.

4. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares are also Class B shares. However, for purposes of conversion to Class A, all Class B shares in a shareholder's Fund account that were purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares (and which have not converted to Class A shares) will be considered to be held in a separate sub-account. Each time any Class B shares in the shareholder's Fund account (other than those in the sub-account) convert to Class A, a *pro rata* portion of the Class B shares then in the sub-account also will convert to Class A. The portion will be determined by the ratio that the shareholder's Class B shares converting to Class A bears to the shareholder's total Class B shares not acquired through dividends and distributions.

5. A class of shares will be exchangeable only for shares of the corresponding class of other Funds, all exchanges between Funds will comply with rule 11a–3 under the Act.

6. The classes of a Fund will represent interests in the same portfolio of investments, and will be identical in all respects except: (a) Each class would have a different designation; (b) each class may bear any rule 12b–1 plan payments related to that class (and any other costs related to obtaining shareholder approval of the rule 12b–1 plan for that class or an amendment to its rule 12b–1 plan); (c) each class may bear expenses determined by the board of directors to be allocated to that class, which are set forth in condition 1 below; (d) only shareholders of the affected classes would be entitled to vote on matters pertaining to the rule 12b–1 plan relating to their respective class in accordance with the procedures set forth in rule 12b–1; (e) each class would have different exchange privileges; and (f) classes that impose a rule 12b–1 fee may convert into another class.

7. The sum of any FESC, service fees, distribution fees, and CDSC will not exceed the maximum sales charge provided for in Article III, section 26 of the Rules of Fair Practice of the National Association of Securities Dealers ("NASD").

8. Because of the varying levels of rule 12b–1 fees and other class-level expenses paid by the holders of different classes of shares, the net income attributable to and the dividends payable on each class may differ and, consequently, different classes of shares may have different net asset values.

B. The CDSC

1. Applicants also request an exemption that would permit the Funds to impose a CDSC and to waive the CDSC in certain cases. With respect to any class of shares of any Fund that charge a CDSC, the applicable CDSC will be calculated on the lesser of the net asset value at the time of the issuance or redemption of the shares. No CDSC will be imposed on: (a) Shares, or amounts representing shares, purchased through the reinvestment of dividends or capital gains distributions; (b) an amount that represents an increase in the value of the shares due to capital appreciation; or (c) shares held for longer than the applicable CDSC period. Upon any request for redemption of shares that imposes a CDSC, it will be assumed, unless otherwise requested, that shares subject to no CDSC will be redeemed first in the order purchased (however, if a shareholder owns more than one class of shares, then shares not subject to a CDSC with the highest rule 12b–1 fee will be redeemed in full prior to any redemption of shares not subject to a CDSC with a lower rule 12b–1 fee), all remaining shares that are subject to a CDSC will be redeemed in the order purchased.

2. Applicants request the ability to waive the CDSC in the following instances: (1) Involuntary redemptions effected pursuant to a Fund's right to liquidate shareholder accounts having an aggregate net asset value of less than the minimum account balance set forth in the Fund's then current prospectus; (b) the death or disability of a Fund shareholder within the meaning of section 72(m)(7) of the Internal Revenue Code; (c) in connection with redemptions of any shares held by tax-qualified retirement plans, excluding individual retirement accounts, simplified employee pension plans, section 403(b) plans and section 457 plans; (d) in connection with purchases of shares funded by the proceeds from the redemption of shares of any unrelated investment company that charges a FESC, provided that there was no CDSC, fee, or other charge imposed in connection with such redemption and if the purchase is made within 60 days following the redemption; (e) in connection with purchases of Fund shares funded by the proceeds from the surrender of a fixed annuity contract within 60 days of the purchase of Fund shares; (f) in connection with purchases of Fund shares by the following categories of investors and transactions: (i) Fortis, Inc., and its subsidiaries and specified persons associated with such companies; (ii) Fund directors and officers and specified persons associated with such directors and officers; (iii) representatives or employees of the Underwriter (including agencies) or of the other broker-dealers having a sales agreement with the Underwriter and specified persons associated with such entities; (iv) pension, profit-sharing and other retirement plans of the persons referenced in clause (i), (ii) and (iii); (v) registered investment companies; (vi) registered investment advisers, trust companies and bank trust departments exercising discretionary authority or using a money management/mutual fund "wrap" program; (vii) purchases that are funded by the proceeds from the plans referenced in clause (iv) upon the retirement or employment termination of such persons; (viii) purchases by employees (including their spouses and dependent children) of banks and other financial services firms that provide referral and administrative services pursuant to a sales agreement with the Underwriter or one of its affiliates; (ix) with respect to Asset Allocation Portfolio of Advantage Portfolios only, former officers and directors of Morison Asset Allocation Fund, and officers, directors and employees of Morison Asset Management, Inc. and its affiliates; (x) with respect to Government Total Return Portfolio of Advantage Portfolios only, officers and trustees of the Olympus Funds Trust officers, directors and employees of Furman Selz Capital Management, and Furman Selz Mager Dietz and Birney, members of the Xerox Employee's Credit Union and members of their immediate family and persons owning shareholder accounts which were in existence and entitled to purchase shares of Olympus U.S. Government Plus Fund at net asset value, without the imposition of a FESC, at the time that such Fund's assets were acquired by Advantage Portfolios; (xi) with respect to Growth Fund, the Fortis U.S Government Securities Fund series of Income Portfolios and each current series of Advantage Portfolios only, persons owning shareholder accounts of the applicable series of Carnegie-Capiello Trust or Carnegie Government Securities Trust that was acquired by the applicable Fund if, at the time of such acquisition, such shareholder accounts were in existence and entitled to purchase shares of the applicable Carnegie fund at net asset value, without the imposition of a FESC; (xii) with respect to the Fortis U.S Government Securities Fund series of

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Income Portfolios and the New York Portfolio series of Tax Free Portfolios only, persons owning shareholder accounts of the applicable series of The Pathfinder Heritage Funds that was acquired by the applicable Fund if, at the time of such acquisition, such shareholder accounts were in existence and entitled to purchase shares of the applicable Pathfinder fund at net asset value, without the imposition of a FESC; and (xiii) with respect to Fiduciary Fund only, persons having a Fiduciary Fund account on April 30, 1986; and (g) for an amount that represents, on an annual (non-cumulative) basis, up to 10% of the amount (at the time of the investment) of the shareholder's purchases.

3. In regard to waiver category (d) above, applicants will take such steps as may be necessary to determine that the shareholder has not paid a deferred sales load, fee or other charge in connection with such redemption, including, without limitation, requiring the shareholder to provide a written representation in the shareholder's application that no deferred sales load, fees or other charge was imposed in connection with such redemption and, in addition, either requiring that shareholder provide the redemption check of such unrelated open-end investment company (or a copy of the check) or a copy of the confirmation statement showing the redemption.

4. Applicants intend to provide a one time credit for any CDSC paid upon redemption, the proceeds of which are reinvested in the same class of shares of a Fund within 60 days of redemption. The Underwriter will provide this credit from its own assets.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) of the Act from sections 18(f)(1), 18(g), and (18)(i) of the Act to the extent that the proposed issuance of various classes of shares representing interests in the same Fund might be deemed to result in a "senior security" within the meaning of section 18(g) and thus be prohibited by section 18(f)(1), and to violate the equal voting provisions of section 18(i). Applicants believe that the proposed multi-class arrangement does not present the concerns that section 18 was designed to address. The multi-class arrangement does not involve borrowing, nor will it affect the Fund's existing assets or reserves, and does not involve a complex capital structure.

2. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c-1 thereunder to assess and, under certain circumstances, waive a CDSC on redemption of shares. The order would supersede the Prior Order and would permit the Funds to impose CDSC schedules that may be different from the one described in the Prior Order.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among various classes of shares of the same Fund will relate solely to: (a) The designation to each class of shares of the Fund; (b) expenses assessed to a class as a result of a rule 12b–1 plan providing from a service and/or distribution fee; (c) different expenses which the board of directors of a Fund may in the future determine to allocate to a specific class ("class-specific expenses"), which will be limited to: (i) Transfer agency fees as identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) director's fees incurred as a result of issues relating to one class of shares; (d) voting rights on matters exclusively affecting one class of shares (e.g., the adoption, amendment, or termination of a rule 12b–1 plan) in accordance with the procedures set forth in rule 12b–1 (except as provided in condition 15 below); (e) the different exchange privileges of the various classes of shares as described in the prospectuses of the Funds; and (f) classes that impose a 12b–1 fee may convert to another class. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the SEC pursuant to an amended order.

2. The directors of each the Funds, including a majority of the independent directors, shall have approved the variable pricing system prior to the implementation thereof by a particular Fund. The minutes of the meetings of the directors of each of the Funds regarding the deliberations of the directors with respect to the approvals necessary to implement the variable pricing system will reflect in detail the reasons for determining that the proposed variable pricing system is in the best interest of the Fund and its shareholders.

3. The initial determination of the class-specific expenses, if any, that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the directors of the affected Fund, including a majority of the independent directors. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet class-specific expenses shall provide to the directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purpose of which the expenditures were made.

4 On an ongoing basis, the directors of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Underwriter will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Adviser and the Underwriter at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

5. The directors of the Funds will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale of servicing of a particular class will not be presented to the directors to justify any fee attributable to the class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

6. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that fee payments made under the rule 12b–1 plan relating to a particular class will be borne exclusively by each class and except that any class-specific expenses will be borne by the applicable class of shares.

7. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of income and expenses among the classes has been reviewed by an expert (the "Independent Examiner"). The Independent Examiner has rendered a report, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the SEC staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the SEC, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocation of income and expenses among such classes of shares and this representation has been concurred with by the Independent Examiner in its initial report referred to in condition (7) above and will be concurred with by the Independent Examiner, or appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. The applicants agree to take immediate corrective action if the Independent Examiner, or an appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

9. The prospectuses of the Funds will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different levels of compensation for selling one particular class of shares over another in a Fund.

10. The Underwriter will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of the Funds with respect to the variable pricing system will be set forth in guidelines which will be furnished to the directors.

12. Each Fund prospectus (regardless of whether all classes of shares of such Fund are offered through such prospectus) will disclose the respective expenses, performance data, distribution arrangements, services, fees, FESC, CDSC, exchange privileges, and conversion features applicable to each class of shares. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data and ratios, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the expenses and/or performance data applicable to all classes. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will separately present each class of shares.

13. The applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 plans in reliance on the exemptive order.

14. Any class of shares with a conversion feature ("Purchase Class") will convert into another class ("Target Class") of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

15. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The directors shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the directors to implement the foregoing, such actions may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class will convert into New Target Class. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the directors reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange or conversion of New Target Class or New Purchase Class shall be borne solely by the Adviser and the Underwriter. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares

subject to the higher maximum payments, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

16. Applicants will comply with the provisions of proposed Rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as currently proposed and as it may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13343 Filed 6–1–94; 8:45 am]

BILLING CODE 8010–01–M

[File No. 81–919]

Application and Opportunity for Hearing: McKinsey & Company, Inc.

May 26, 1994.

Notice Is Hereby Given that McKinsey & Company, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") for an order exempting Applicant from the registration provisions of section 12(g) of the Exchange Act.

For a detailed statement of the information presented, all persons are referred to said application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice Is Further Given that any interested person not later than June 27, 1994, may submit to the Commission in writing its views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed to: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing the reason for such a request, and the issues of fact and law raised by the application which it desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13381 Filed 6–1–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20319; 812–8826]

Payden & Rygel Investment Group, et al.; Notice of Application

May 26, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Payden & Rygel Investment Group (the "Trust"), Payden & Rygel (the "Adviser"), and Payden & Rygel Distributors, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek a conditional order exempting them from the provisions of sections 18(f), 18(g), and 18(i) to the extent necessary to permit each of the Trust's existing and future investment portfolios (the "Funds") to issue two classes of shares.

FILING DATES: The application was filed on February 15, 1994, and amended on May 9, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applications with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 20, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 333 South Grand Avenue, 32nd floor, Los Angeles, California 90071.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. The original name of the Trust was P&R Investment Trust. The Trust currently is comprised of five Funds: The Payden & Rygel Global Fixed Income Fund, the Payden & Rygel Short Bond Fund, the Payden & Rygel Intermediate Bond Fund, the Payden & Rygel Opportunity Fund, and the Payden & Rygel Tax Exempt Bond Fund. Currently, shares of each Fund primarily are offered to pension and profit sharing plans, employee benefit trusts, endowments, foundations, other institutions, corporations, and individuals with high net worth.

2. The Trust has entered into an investment management agreement with the Adviser, a registered investment adviser, whereby the Adviser manages the investment of the assets of the Funds and reviews, supervises, and administers all investments of the Funds. Shares of each Fund are distributed through the Distributor, a wholly-owned subsidiary of the Adviser. No compensation is payable by any Fund to the Distributor for its services. The Winston Company Limited Partnership (the "Administrator") serves as administrator to the Funds pursuant to an administrative agreement with the Trust. Under the administration agreement, the Administrator receives a monthly fee from the Funds based on a specified schedule of rates that is based on the Funds' average daily net assets. The Winsbury Service Corporation, an affiliate of the Administrator, provides accounting, dividend disbursing, and transfer agency services pursuant to a separate agreement with the Trust.

3. Applicants request a conditional order to permit each portfolio of the Fund to offer an additional class of shares ("Class B shares") that would be identical to existing shares except that Class B shares would be subject to a non-rule 12b–1 shareholder service plan (the "Plan"). Under the requested order, the existing shares would be "Class A" shares that would no be subject to a Plan and related fees. The Plan would authorize each Fund to compensate the Distributor and other securities broker-dealers and service organizations for shareholder services provided to Class B shareholders. Services to be provided under the Plan may include: (a) Establishing and maintaining client/shareholder accounts and records; (b) aggregating and processing purchase, exchange, and redemption requests; (c) investing the assets of clients' accounts in Class B shares pursuant to specified pre-authorized instructions; (d) arranging for bank wires; (e) providing sub-accounting services and preparing tax reports and forms on behalf of shareholders; and (f) forwarding shareholder communications from the Funds.

4. It currently is contemplated that the service organizations would be compensated at an annual rate of up to 0.20% of the daily net asset value of the Class B shares of each Fund. The fees would be payable even if the amounts paid exceed the service organizations' actual expenses.

5. The services provided under the Plan are not primarily intended to result in the sale or distribution of Fund shares. Applicants in all cases will comply with article III, section 26 of the Rules of Fair Practice of the National Association of Securities Dealers as it relates to the maximum amount of asset-based sales charges that may be exposed.

6. All transfer agency expenses and other expenses incurred with respect to a specific class will be borne by that class. All other expenses incurred by a Fund will be allocated between the two classes of shares based on the net assets of the Fund attributable to each class. Because of the service fees paid by Class B shareholders, the net income attributable to and the dividends payable on the Class B shares generally will be lower than those of the Class A shares. As a result, the net asset value per share of each class generally will differ.

7. Shares of the Funds generally may be exchanged at net asset value for shares of other Funds. The exchange privilege will comply with rule 11a–3 under the Act.

Applicants' Legal Analysis

Applicants request an order exempting them from the provisions of sections 18(f)(1), 18(g), and 18(i) of the Act to the extent that the proposed creation of the Class B shares may result in one class having priority over another as to payment of dividends, and thus be a "senior security" as defined in section 18(g) of the Act, and prohibited under section 18(f). The creation of Class B shares, where Class B shareholders would be entitled to exclusive voting rights with respect to matters concerning the Plan, also may violate the equal voting provision of section 18(i).

2. Applicants believe that the proposed arrangement will better enable the Funds to meet the competitive demands of today's financial services industry. Under the dual distribution system, an investor will be able to choose the method of purchasing shares that is most beneficial to an investor given his or her relevant circumstances.

3. Applicants assert that the proposed allocation of expenses and voting rights in the manner described is equitable and would not discriminate against any group of shareholders. In addition, these arrangements should not give rise to any conflicts of interest because the rights and privileges of such class of shares are substantially identical.

4. Applicants believe that the proposed arrangement does not present the concerns that section 18 of the Act was designed to ameliorate. The dual distribution system will not increase the speculative character of the shares of the Fund. The arrangement does not involve borrowing, nor will it affect the Funds' existing assets or reserves, and does not involve a complex capital structure. Nothing in the dual distribution system suggests that it will facilitate control by holders of any class of shares.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences between the classes of shares of the same Fund will relate solely to: (a) The designation of each class of shares of a Fund, (b) the exclusive right of Class B shares to vote on matters related to the Plan, (c) the impact of the disproportionate payments made under the Plan, (d) the incremental transfer agency costs attributable to the Class B shares of the Fund; (e) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class; (f) SEC registration fees incurred by a class of shares; (g) the expense of administrative personnel and services as required to support the shareholders of a specific class; (h) trustees' fees or expenses incurred as a result of issues relating to one class of shares; (i) accounting expenses relating solely to one class of shares; (j) Blue Sky registration fees incurred by one class of shares; (k) litigation of other legal expenses related solely to one class of shares; and (l) any other incremental expenses subsequently identified that should be properly allocated to one or more classes of shares that shall be approved by the SEC pursuant to an amended order.

2. The Trust's board of trustees, including a majority of trustees who are not interested persons of the Trust, will approve the dual distribution structure. The minutes of the meetings of the board of trustees regarding the deliberations of the trustees with respect to the approvals necessary to implement the dual distribution system will reflect in detail the reasons for the trustees' determination that the dual distribution system is in the best interests of both the Funds and their respective shareholders.

3. On an ongoing basis, the trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the two classes of shares. The trustees, including a majority of the trustees who are not interested persons of the Trust, will take such action as is reasonably necessary to eliminate any conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, the Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that the shareholders need not receive the voting rights specified in rule 12b–1.

5. The board of trustees will receive quarterly and annual statements concerning shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the servicing of a particular class of shares will be used to justify any servicing fee charged to that class. Expenditures not related to the servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the trustees who are not interested persons of the trust in the exercise of their fiduciary duties.

6. Dividends paid by a Fund with respect to teach class of shares, to the extent any dividends are paid, will be

calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that payments for services described in condition 1 above that are rendered to a particular class of shares will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value, and dividends and distributions of the two classes have been reviewed by an expert (the "Expert") who has rendered a report of applicants, which has been provided to the staff of the SEC, stating that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made, and, based upon this review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to these reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the SEC staff upon the written request to a Fund for these work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, and Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the two classes of shares and the proper allocation of expenses between the two classes of shares, and this representation will be concurred with by the Expert in the initial report referred to in condition 7 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 7 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

9. The conditions pursuant to which the order is granted and the duties and responsibilities of the trustees of the Trust with respect to the Plan will be set forth in guidelines which will be furnished to the trustees.

10. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads deferred sales loads, and exchange privileges applicable to the two classes of shares, regardless of whether both classes of shares in the portfolio are offered through the same prospectus. Each Fund will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses and/or performance data applicable to either class of shares, it will also disclose the respective expenses and/or performance data applicable to the other class of shares of such Fund. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value or public offering price will separately present this information for each class of shares of such Fund.

11. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to the Plan in reliance on the exemptive order.

12. The initial determination of the class expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Trust including a majority of the trustees who are not interested persons of the Trust. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet class expenses shall provide to the board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

13. The prospectus of each fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

14. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares to agree to conform to such standards.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13379 Filed 6–1–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2014]

Advisory Committee on International Law; Meeting

A meeting of the Advisory Committee on International Law will take place on Tuesday, June 14, 1994, from 1:30 through 5 p.m., as necessary, in room 1408 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, Conrad K. Harper, and will be open to the public up to the capacity of the meeting room. The meeting will focus on the establishment of an international criminal court, United States participation in the Law of the Sea Treaty, ratification of human rights conventions, possible ratification of the Vienna Convention on Treaties, as well as review of other current developments in international law.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, prior to June 13, 1994, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647–6771) of their name, affiliation, address and telephone number in order to arrange admittance.

Dated: May 19, 1994

Bruce C. Rashkow,

Assistant Legal Adviser for United Nations Affairs; Executive Director, Advisory Committee on International Law.

[FR Doc. 94–13334 Filed 6–1–94; 8:45 am]

BILLING CODE 4710–08–M

Bureau of Political-Military Affairs

[Public Notice 2016]

Arms Embargo on Rwanda

AGENCY: Department of State.

ACTION: Public Notice.

SUMMARY: Notice is hereby given that all licenses and other approvals to export or otherwise transfer defense articles or defense services to Rwanda are suspended until further notice pursuant to Sections 38 and 42 of the Arms Export Control Act.

EFFECTIVE DATE: May 27, 1994.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance & Analysis Branch, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: United Nations Security Council Resolution 918 requires that all States prevent the sale or supply to Rwanda by their nationals or from their territories or using their flag vessels or aircraft of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts. On May 26, 1994, the President issued Executive Order 12918 implementing the Security Council arms embargo on Rwanda. Pursuant to the Executive Order, the following activities are prohibited:

(a) The sale or supply to Rwanda from the territory of the United States by any person, or by any United States person in any foreign country or other location, or using any U.S.-registered vessel or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for the aforementioned, irrespective of origin.

(b) Any willful evasion or attempt to violate or evade any of the prohibitions set forth in the order.

Pursuant to the Executive Order, section 38 of the Arms Export Control Act (22 U.S.C. 2778)(AECA), and the International Traffic in Arms Regulations (22 CFR parts 120–130)(ITAR), the export or other transfer to Rwanda of defense articles and services is prohibited.

It is the policy of the U.S. Government to deny all applications for licenses and other approvals to export or otherwise transfer defense articles and services to Rwanda. All such applications which have been submitted since the current strife in Rwanda began on April 6, 1994 have been denied. In addition, U.S. manufacturers and exporters and any other affected parties are hereby notified that the Department of State has suspended all previously issued licenses and approvals authorizing the export or other transfer of defense articles or defense services to Rwanda. These actions have been taken pursuant to Sections 38 and 42 of the AECA (22 U.S.C. 2778 and 2791) and § 126.7 of the ITAR.

The licenses and approvals that have been suspended include any manufacturing licenses, technical assistance agreements, technical data, and commercial military exports and reexports of any kind involving Rwanda subject to the AECA. This action also precludes the use in connection with Rwanda of any exemptions from licensing or other approval requirements included in the ITAR, with the exception of those exemptions specified in § 126.1(a).

Dated: May 27, 1994.

William P. Pope,

Acting Deputy Assistant Secretary for Export Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 94–13552 Filed 6–1–94; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 49472; Order 94–5–36]

Application of Frontier Airlines, Inc. For Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Frontier Airlines, Inc., fit, willing, and able and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than June 6, 1994.

ADDRESSES: Objections and answers to objections should be filed in Docket 49472 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: May 26, 1994

Robert Goldner,

Special Assistant to the Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–13392 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–62–P

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice.

SUMMARY: The Department of Transportation is announcing that the Office of Management and Budget (OMB) has approved information collection requirements contained in final alcohol and drug testing rules covering safety-sensitive employees in commercial transportation.

DATE: May 25, 1994.

FOR FURTHER INFORMATION CONTACT: Susan Pickrel, Departmental Reports Clearance Officer, Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION: The reporting and recordkeeping requirements were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). For information collections submitted with final rules, title 5 CFR part 1320 requires that after receipt of notification of OMB's approval, agencies shall publish a notice in the **Federal Register** to inform the public of OMB's decision.

Items Approved by OMB

Office of the Secretary, U.S. Department of Transportation Breath Alcohol Testing Form (OMB Number 2105–0529); Research and Special Programs Administration, Alcohol Misuse Prevention Program (OMB Number 2137–0587); Research and Special Programs Administration, Drug Testing (OMB Number 2137–0579); Federal Aviation Administration, Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities (OMB Number 2120–0571); Federal Aviation Administration, Anti-Drug Program for Personnel Engaged in Specified Aviation Activities (OMB Number 2120–0535); Federal Highway

Administration, Controlled Substance and Alcohol Testing (OMB Number 2125–0543); Federal Railroad Administration, Control of Alcohol and Drug Use in Railroad Operations (OMB Number 2130–0526); Federal Transit Administration, Control of Alcohol Misuse in the Transit Industry (OMB Number 2132–0557); Federal Transit Administration, Prevention of Prohibited Drug Use in Transit Operations (OMB Number 2132–0556); and U.S. Coast Guard, Collection of Commercial Vessel and Personnel Accident (Marine Casualty) Information and Programs for Chemical, Drug and Alcohol Testing of Commercial Vessel Personnel, including required Drug and Alcohol Testing following a Serious Marine Incident and Management Information System Reports (OMB Number 2115–0003).

Issued in Washington, DC, on May 25, 1994.

Paula R. Ewen,

Chief, Information Management Division.

[FR Doc. 94–13364 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–94–19]

Petitions for Exemption; Summary of Petitions Received; Dispositions and Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 22, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independent Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 25, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations

Petitions for Exemption

Docket No.: 27620
Petitioner: Mr. Douglas A. Balasco
Sections of the FAR Affected: 14 CFR 65.77
Description of Relief Sought/ Disposition: To allow Mr. Balasco to complete the remainder of his training for a mechanic certificate in the Albany/Schenectady, New York area instead of at a certificated aviation maintenance technician school.

Dispositions of Petitions

Docket No.: 20049.
Petitioner: T.B.M., Inc.
Sections of the FAR Affected: 14 CFR 91.529(a)(1).
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 2956, which permits T.B.M., Inc., to operate McDonnell Douglas DC–6 and DC–7 aircraft without a flight conducted in preparation for firefighting ferry, and test flights conducted in preparation for firefighting operations.
Grant, April 29, 1994, Exemption No. 2956H.

Docket No.: 24041.
Petitioner: Butler Aircraft Company.
Sections of the FAR Affected: 14 CFR 91.529(a)(1).
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 2989, which would continue to permit Butler Aircraft Co. to operate McDonnell Douglas DC–6 and DC–7 aircraft without a flight engineer during flightcrew training, ferry, and test flights conducted in preparation for firefighting operations.
Grant, April 29, 1994, Exemption No. 2989G.

Docket No.: 24165.
Petitioner: The Department of the Air Force.
Sections of the FAR Affected: 14 CFR 91.209 (a) and (b).
Description of Relief Sought: To allow the Department of the Air Force to deviate from the pertinent provision of the FAR which constrains aviation operations necessary to carry out the assigned night flight military training mission.
Grant, May 4, 1994, Exemption No. 5891.

Docket No.: 25886.
Petitioner: Washoe County Sheriff's Office.
Sections of the FAR Affected: 14 CFR 61.118.
Description of Relief Sought: To extend the termination date of Exemption No. 5119, which would continue to permit the Washoe County Sheriff's Office to reimburse members of the Sheriff's Air Squadron for fuel, oil, and maintenance costs that occur during official search missions.
Partial Grant, April 29, 1994, Exemption No. 5119B.

Docket No.: 26461.
Petitioner: Freedom Air.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5438, which allows appropriately trained pilots employed by Freedom Air to remove and reinstall aircraft cabin seats in company aircraft used in part 135 operations.
Grant, April 28, 1994, Exemption No. 5438A.

Docket No.: 26478.
Petitioner: The Department of the Air Force.
Sections of the FAR Affected: 14 CFR 91.209 (a) and (d).
Description of Relief Sought: To extend the termination date of Exemption No. 5305, which allows the Department of the Air Force to deviate from the pertinent revisions of the FAR which constrain aviation operations necessary to carry out the assigned counternarcotics training mission.
Partial Grant, April 29, 1994, Exemption No. 5305A.

Docket No.: 26600.
Petitioner: Keflavik Navy Flying Club.
Sections of the FAR Affected: 14 CFR 91.411(b) and 91.413(c).
Description of Relief Sought: To extend the termination date of Exemption No. 5513, which allows the Keflavik Navy Club to use the Maintenance Department of Icelandair to conduct and record the inspections and test required by the aforementioned sections.
Grant, May 3, 1994, Exemption No. 5513A.

Docket No.: 27243.
Petitioner: Chalk's International Airlines.
Sections of the FAR Affected: 14 CFR 135.153.
Description of Relief Sought/ Disposition: To permit Chalk to operate its Grumman Turbo Mallard (G–73) aircraft, subject to specified conditions and limitations, in passenger carrying operations, under day visual flight rules (VFR), south of the 27 degree parallel, without a ground proximity warning system (GPWS).
Denial, April 18, 1994, Exemption No. 5769A.

Docket No.: 27373.
Petitioner: Sky King Inc..
Sections of the FAR Affected: 14 CFR 125.224.
Description of Relief Sought: To allow Sky King to operate one 400 series BAC 1–11 (equipped with more than 30 passenger seats) without Traffic Alert and Collision Avoidance System (TCAS) II and the appropriate class of Mode S transponder.
Denial, April 29, 1994, Exemption No. 5886.

Docket No.: 27560.
Petitioner: Samoa Aviation.
Sections of the FAR Affected: 14 CFR 135.153.
Description of Relief Sought: To allow Samoa Aviation to continue operating its two DHC–6 deHavilland Twin Otters and one BE–A100 Beechcraft aircraft without Ground Proximity Warning
Denial, April 18, 1994, Exemption No. 5874.

Docket No.: 27598.
Petitioner: Sunaire Express.
Sections of the FAR Affected: 14 CFR 135.153.
Description of Relief Sought/ Disposition: To allow Sunaire Express to continue operating its DHC–6 Twin Otter aircraft without Ground Proximity Warning Systems (GPWS).
Denial, April 18, 1994, Exemption No. 5873.

Docket No.: 27645.
Petitioner: Trans World Express, Inc.
Sections of the FAR Affected: 14 CFR 135.253.
Description of Relief Sought: To allow Trans World Express, Inc., to continue operating its aircraft without Ground Proximity Warning Systems (GPWS).
Denial, April 18, 1994, Exemption No. 5871.

Docket No.: 27667.
Petitioner: Leading Edge Aviation Services, Inc.
Sections of the FAR Affected: 14 CFR 135.153.
Description of Relief Sought: To allow Leading Edge Aviation Services, Inc. to operate two deHavilland DHC–6 Twin Otter aircraft, Canadian registrations C–GKBC and C–GKBH, without an approved Ground Proximity Warning System (GPWS).
Denial, April 20, 1994, Exemption No. 5881.

Docket No.: 27670.
Petitioner: Four Star Aviation.
Sections of the FAR Affected: 14 CFR 135.153.
Description of Relief Sought: To allow Four Star Aviation to operate two deHavilland DHC–6 Twin Otter aircraft without an approved Ground Proximity Warning System (GPWS).
Denial, April 18, 1994, Exemption No. 5880.

Docket No.: 27698.
Petitioner: Carnival Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 135.153.
Description of Relief Sought: To permit Carnival to operate one Airbus A300 B4–203 (A300 B4) aircraft without an approved airborne windshear warning system.
Denial, April 20, 1994, Exemption No. 5890.

[FR Doc. 94–13440 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–94–20]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 22, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 25, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations

Petitions For Exemption

Docket No.: 27701.
Petitioner: Mercy Hospital of Redding, Inc.
Section of the FAR Affected: 14 CFR 135.267(d).
Description of Relief Sought/ Disposition: To allow the Mercy Hospital of Redding, Inc., d.b.a. Mercy Medical Center, to count time spent in reserve away from the place of employment as rest time to satisfy the regulatory requirement that at least 10 consecutive hours of rest be provided during the 24 hours that precedes planned completion time of an assignment.

Docket No.: 27709.
Petitioner: Mr. Deryl Moses
Section of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To permit Mr. Moses to serve as a pilot in part 121 air carrier operation after his 60th birthday.

Dispositions Of Petitions

Docket No.: 17145.
Petitioner: United Airlines.
Section of the FAR Affected: 14 CFR 121.665 and 121.697 (a) and (b).
Description of Relief Sought/ Disposition: To extend the termination

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date of Exemption No. 2466, which permits United Airlines to use computerized load manifests that bear printed name and position of the person responsible for loading the aircraft.

Grant, May 9, 1994, Exemption No 2466I.

Docket No.: 25336.

Petitioner: United Airlines.

Section of the FAR Affected: 14 CFR 121.667(a)(3), 121.697 (b) through (d) and 121.709(b)(3).

Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5121, which permits United Airlines to use a computerized signature to satisfy the signature requirements in lieu of physical signatures on the airworthiness release that is part of the log book carried aboard aircraft operated by United Airlines.

Grant, May 11, 1994, Exemption No. 5121C.

Docket No.: 26267.

Petitioner: Hill Management Services, Inc.

Section of the FAR Affected: 14 CFR 121.311(b).

Description of Relief Sought: To allow Jacqueline A. Julio to use her personal safety belt and be held on the lap of her caregiver while aboard aircraft even though she has reached her second birthday.

Grant, May 9, 1994, Exemption No. 5195B.

Docket No.: 26703.

Petitioner: Soloy Dual Pac, Inc.

Section of the FAR Affected: 14 CFR 21.19(b)(1).

Description of Relief Sought/ Disposition: To permit Soloy to apply for a supplemental type certificate to make a design change on the De Havilland DHC–3 Otter airplane, increasing the number of engines from one to two.

Grant, May 5, 1994, Exemption No. 5392.

Docket No.: 27243.

Petitioner: Chalk's International Airlines.

Section of the FAR Affected: 14 CFR 135.153.

Description of Relief Sought: To allow flights to Walker's Cay Bahamas without a ground proximity warning system (GPWS).

Grant, May 10, 1994, Exemption No. 5769B.

Docket No.: 27665.

Petitioner: Arnautical, Inc.

Sections of the FAR Affected: 14 CFR 121.411(a) (2), (3) and (b)(2), 121.413 (b), (c) and (d) and part 121, appendix I.

Description of Relief Sought/ Disposition: To permit Arnautical, Inc., without holding an air carrier operating certificate, to train the certificate holder's pilots and flight engineers in initial, transition, upgrade, differences, and recurrent training.

Partial Grant, May 10, 1994, Exemption No. 5894.

Docket No.: 27690.

Petitioner: Atlas Air, Inc.

Sections of the FAR Affected: 14 CFR appendix H of part 121.

Description of Relief Sought: To allow B747 initial or upgrade training to second in command (SIC) in a Phase II (Level C) simulator for experienced pilots and flight engineers who have not received any training or checking in the actual airplane.

Grant, April 29, 1994, Exemption No. 5888.

Docket No.: 27697.

Petitioner: Alaska Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 133.51.

Description of Relief Sought: To permit AHI to perform rotorcraft external-load operations in support of constructing the USAF ACMI repeater sites located in the Yukon 1, Yukon 2, and R–2202 Military Operating Areas in Alaska, using Bell Helicopters-Textron model 205A–1 or 212 Canadian-registered helicopter(s).

Grant, May 9, 1994, Exemption No. 5893.

Docket No.: 27726.

Petitioner: Twin Town Leasing Company.

Sections of the FAR Affected: 14 CFR 135.153.

Description of Relief Sought/ Disposition: To permit Twin Air to operate one Embraer Model EMB110 PI (EMB 110), registration number N360CL, that is not equipped with an approved ground proximity warning system (GPWS).

Denial, April 20, 1994, Exemption No. 5895

Docket No.: 27730.

Petitioner: Ronson Aviation Incorporated.

Sections of the FAR Affected: 14 CFR 135.153.

Description of Relief Sought: To allow Ronson Aviation Incorporated to continue operating its two Beechcraft C99 aircraft, registration numbers N6645K and N6656N, without Ground Proximity Warning Systems (GPWS).

Denial, May 10, 1994, Exemption No 5896

[FR Doc. 94–13441 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: St. Clair and Madison Counties, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the construction of a Mississippi River crossing, which would add capacity and divert traffic from the Poplar Street Bridge between Missouri and Illinois. The proposed project study area will extend from the McKinley Bridge on the north to Illinois Route 157, or Cherokee Street in St. Louis, on the south.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Partlow, Design Operations Engineer, Federal Highway Administration, Illinois Division, 3250 Executive Park Drive, Springfield, Illinois 62703, Telephone: (217) 492–4622; Mr. Dale L. Klohr, District Engineer, Illinois Department of Transportation (IDOT), 1100 Eastport Plaza Drive, Collinsville, Illinois 62234, Telephone: (618) 346–3110.

SUPPLEMENTARY INFORMATION: The proposed action is to construct a new crossing of the Mississippi River at downtown St. Louis. The proposed project study area will extend from the McKinley Bridge on the north to Illinois Route 157, or Cherokee Street in St. Louis, on the south.

The need for a new Mississippi River crossing is based on the transportation demands, safety considerations and the opportunity for economic enhancement in the greater downtown St. Louis and East St. Louis area. The Poplar Street Bridge, which presently caries 128,000 vehicles per day, is operating over capacity in the peak periods, resulting in delays and congestion. By the year 2020, this condition will deteriorate and affect all of the other existing crossings.

Consideration of facility type to this point has been focused on a freeway to freeway bridge with two possible alternates identified within the study area. Because this project qualifies as a major metropolitan transportation investment, the St. Louis Metropolitan Planning Organization (East-West Gateway Coordinating Council) and the Illinois Department of Transportation, the Federal Highway Administration and the Federal Transit Authority are currently applying major transportation analysis procedures to determine other alternate modes which may be considered.

In addition to the major investment analysis, an informal scoping process will be undertaken as part of this project. The process will include meetings, review sessions as appropriate, and discussions at regularly scheduled meetings. Participants will include the East-West Gateway Coordinating Council, the Missouri Highway and Transportation Department and other Federal, State and local agencies. Further details and a scoping information packet may be obtained from one of the contact persons listed above.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or IDOT contact persons at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on April 28, 1994.

James C. Partlow,

Design Operations Engineer, Federal Highway Administration, Illinois Division, Springfield, Illinois.

[FR Doc. 94–13338 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Support Biomechanics Research

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of Discretionary Cooperative Agreement to Support Biomechanical Research.

SUMMARY: This notice announces a discretionary cooperative agreement program with the National Highway Traffic Safety Administration to support research studies to evaluate the biomechanical response of human surrogates to impact and solicits applications for projects under this program.

DATES: Applications must be received on or before July 5, 1994.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Belinda Leapley, 400 Seventh Street, SW., room 5301, Washington, DC 20590, USA. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–94–R–07260. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Belinda Leapley, Office of Contracts and Procurement, at (202) 366–9566. Programmatic questions relating to this cooperative agreement program should be directed to Richard M. Morgan, Biomechanics Division (NRD–12), 400 Seventh Street, SW., room 6221B, Washington, DC 20590, USA, at (202) 366–4717.

SUPPLEMENTARY INFORMATION:

Background and Objectives

The National Highway Traffic Safety Administration is responsible for devising strategies to save lives and reduce injuries from motor vehicle crashes. The purpose of this cooperative agreement program is to promote the improvement of traffic safety for the public through the support of research studies designed to evaluate the biomechanical response of human surrogates to impact as a means of expanding the base of scientific knowledge in this field and to provide for the coordinated exchange of scientific information collected as a result of the studies conducted.

Impact trauma research employs the principles of mechanics to discover the physical response and physiological results of impacts to the human body. Generally, the teams doing the research are comprised of individuals from different disciplines: engineering, physiology, medicine, biology, and anatomy. The team studies the physical response of the body to impact by measuring and recording engineering parameters defining the event, such as force, accelerations, displacements, surface contours, strains, pressure, etc., and observing the physiological consequences in terms of physical or functional alterations to the body.

One of the major research materials used to simulate injury to the living human is the human cadaver (hereinafter referred to as a human surrogate) exposed to impact and detailed response measurement.

The focus of this cooperative research effort is the study of human surrogate response and injury to physical impacts simulating some significant aspect of automotive impact injury, *i.e.*, head, neck, torso, or lower extremity injury produced in drivers and passengers, restrained by various safety devices and exposed to either a frontal, lateral, or rear impact. The specific objectives of this cooperative research effort are to: (1) Delineate the mechanism of injury, (2) develop functional relationships between the measurable engineering parameters and the extent and severity of injury, and (3) quantify the impact response of the body in such a way as to allow the development of mechanical analogs of the human body.

NHTSA Involvement

The NHTSA, Biomechanics Division, will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide, on an as-needed basis, one professional staff person, to be designated as the Contracting Officer's Technical Representative (COTR), to participate in the planning and management of the cooperative agreement and coordinate activities between the organization and the NHTSA;

2. Make available information and technical assistance from government sources, within available resources and as determined appropriate by the COTR;

3. Provide liaison with other government agencies and organizations as appropriate; and

4. Stimulate the exchange of ideas and problems among cooperative agreement recipients, and, if appropriate, NHTSA contractors and other interested parties.

Involvement for Recipient of an Award

Any recipient of an award will:

1. Perform an effort in accordance with the application proposal and any incorporation revisions;

2. Contribute any in-kind resources, that might have been specified by the recipient in the application, for the performance of the effort under the agreement;

3. Meet periodically with the NHTSA COTR to promote the exchange of information so as to assure coordination of the cooperative effort and related projects; and

4. Provide the NHTSA COTR with following required reports:

a. Data Reports: The dynamic and other data measured in each human surrogate impact test will be provided by the recipient(s) within four (4) weeks after the test is run. For each and every test performed with a human surrogate, a data package shall be submitted to the COTR. For example, were a human subject to be impacted by pendulum to the right femur and later to be impacted by pendulum to the thorax, the two (2) impacts are separate tests even though there was only one (1) human surrogate.

A data package consists of (1) high speed film, (2) paper test report, and (3) either magnetic tape or floppy disk complying with the NHTSA Data Tape Reference Guide. The NHTSA, Biomechanics Division, maintains a Biomechanics Data Base which provides information, upon request, to the public, including educational institutions and other research organizations.

To facilitate the input of data as well as the exchange of information, any recipient of a cooperative agreement awarded as a result of this notice must provide the magnetic tape in the format specified in the "NHTSA Data Tape Reference Guide." A copy of this document may be obtained from the programmatic information contact designated in this notice.

b. Performance Reports: The recipient shall present one (1) hour semiannual technical performance briefings at the NHTSA headquarters building (at 400 Seventh Street, SW., Washington, DC 20590) which shall be due 30 days after the reporting period and a final performance report within 90 days after the completion of the research effort. An original and two copies of the final performance report shall be submitted to the COTR.

Period of Support

The research effort described in this notice will be supported through the award of at least one cooperative agreement. NHTSA reserves the right to make multiple awards depending upon the merit of the applications received.

Contingent upon the availability of funds and satisfactory performance, a cooperative agreement(s) will be awarded to an eligible organization(s) for project periods of up to five years. No cooperative agreement awarded as a result of this notice shall exceed $550,000 per year or $2,750,000 for five years.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, an applicant must be an educational institution or other nonprofit research organization. For profit research organizations may apply; however, no fee or profit will be allowed.

Application Procedure

Each applicant must submit one original and two copies of their application package to: Cooperative Agreement Program No. DTNH22–94–R–07260, Office of Contracts and Procurement (NAD–30), NHTSA, 400 Seventh Street, SW., room 5301, Washington, DC 20590, USA. Only complete application packages received on or before the date identified above under **DATES:** shall be considered. Submission of three additional copies will expedite processing but is not required.

Application Contents

1. The application package must be submitted with OMB Standard Form 424 (Rev, 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and the certified assurances included. While the Form 424–A deals with budget information, and section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which represents a detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort.

2. Applications shall include a program narrative statement which addresses the following:

a. The objectives, goals, and anticipated outcomes of the proposed research effort;

b. The method or methods that will be used;

c. The source of the human surrogates to be used;

d. The number, quality, and anticipated ages at death (Because NHTSA has interest in obtaining knowledge of the impact injury process and its effect on the total automotive-population-at-risk, an experimental human subject pool with ages representative of this population is highly desirable.) of the human surrogates (viz human cadavers) the applicant expects to use for this research effort along with documentation (retrospective or prospective) that provides evidence that the applicant has access to the proposed quantity, quality, and projected ages of the experimental material;

e. The proposed program director and other key personnel identified for participation in the proposed research effort, including a description of their qualifications and their respective organizational responsibilities;

f. A description of the general, as well as specialized impact simulation, test facilities and equipment currently available or to be obtained for use in the conduct of the proposed research effort; and

g. A description of the applicant's previous experience or on-going research program that is related to this proposed research effort.

Review Process and Criteria

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to assure that the application contains all of the information required by the Application Contents section of this notice.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated using the following criteria:

1. The applicant's understanding of the purpose and unique problems represented by the research objectives of this cooperative agreement program as evidenced in the description of their proposed research effort. Specific attention shall be placed upon the applicant's stated means for obtaining the quantity of experimental material necessary to conduct the proposed research effort.

2. The potential of the proposed research effort accomplishments to make an innovative and/or significant contribution to the base of biomechanical knowledge as it may be applied to saving lives and reducing injuries resulting from motor vehicle crashes.

3. The technical merit of the proposed research effort, including the feasibility of the approach, planned methodology, and anticipated results.

4. The adequacy of test facilities and equipment identified to accomplish the proposed research effort, including impact simulation.

5. The adequacy of the organizational plan for accomplishing the proposed research effort, including the qualifications and experience of the research team, the various disciplines represented, and the relative level of effort proposed for professional, technical, and support staff.

Award Selection Factors

The award selection may not be based solely on the evaluation results. Award preference may be given to an innovative or creative approach that offers a potentially significant contribution to achieve the specific objectives of this cooperative research effort. Award preference may be given to a proposal with a larger percentage of cost sharing.

Terms and Conditions of the Award

1. The protection of the rights and welfare of human subjects in NHTSA-sponsored experiments is established in Department of Transportation 49 CFR Part 11 and in NHTSA Orders 700–1, 700–3, and 700–4. Any recipient must satisfy the requirements and guidelines of 49 CFR part 101 and the NHTSA Orders 700 series prior to award of the cooperative agreement. A copy of 49 CFR part 11 and the NHTSA 700 series may be obtained from the programmatic information contact designated in this notice.

2. Prior to award, each recipient must comply with the certification requirements of 49 CFR part 29— Department of Transportation Government-wide Department and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants), as well as 49 CFR part 20— Department of Transportation New Restrictions on Lobbying.

3. During the effective period of the cooperative agreement(s) awarded as a result of this notice, each agreement shall be subject to the general administrative requirements of OMB Circular A–110, the cost principles of OMB Circular A–21, A–122, or FAR 31.2 as applicable to the recipient, the requirements of 49 CFR parts 20 and 29, and the NHTSA General Provisions for Assistance Agreements.

Issued on: May 20, 1994.

George L. Parker,

Associate Administrator for Research and Development.

[FR Doc. 94–13457 Filed 6–1–94; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–46; Notice 1]

Notice of Receipt of Petition for Determination That Nonconforming 1988 Volkswagen Golf Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1988 Volkswagen Golf passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1988 Volkswagen Golf that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is July 5, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers of importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

J.K. Motors of Kingsville, Maryland ("J.K.") (Registered Importer R–90–006) has petitioned NHTSA to determine whether 1988 Volkswagen Golf passenger cars are eligible for importation into the United States. The vehicle which J.K. believes is substantially similar is the 1988 Volkswagen Golf that was manufactured for important into, and sale in, the United States and certified by its manufacturer, Volkswagenwerk A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1988 Volkswagen Golf to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1988 Volkswagen Golf, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1988 Volkswagen Golf is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating System*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from Kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.—model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.—model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp; (d) replacement of bulb failure modules with U.S.—model components.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side

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rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a key microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* installation of a relay in the wiring for the power window system so that the window transport is inoperative when the ignition is turned off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer, wired to the seatbelt latch.

Standard No. 214 *Side Door Strength:* installation of doorbars.

Additionally, the petitioner states that the bumpers on the 1988 Volkswagen Golf must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date with also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 26, 1994

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94-13325 Filed 6-1-94; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 105

Thursday, June 2, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 93-13101.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 2, 1994, 10 a.m., meeting open to the public.

The following items were deleted from the Agenda:

Convention Regulations: Final Rules and Explanation and Justification
Foreign Nationals Brochure

The following items were added to the agenda:

Advisory Opinion 1994-9: Grant S. Cowan on behalf of Amoco Steel Company, L.P. (continued from meeting of May 26, 1994)
Advisory Opinion 1994-11: Alan R. Kahrson of FMC Corporation (continued from meeting of May 26, 1994)
Advisory Opinion 1994-13: Peter Bagatelos on behalf of Voter Education Project (continued from meeting of May 26, 1994)

DATE & TIME: Tuesday, June 7, 1994 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.
Briefing on Allocation Regulations.

DATE AND TIME: Thursday, June 9, 1994 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Draft Final Rules Implementing the Commission's Responsibilities under the National Voter Registration Act, with Statement of Basis and Purpose
Administrative Matters

DATE AND TIME: Thursday, June 9, 1994 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1994-14: Scott Lehman of Tsakanikas for U.S. Congress
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155

Delores Hardy,

Administrative Assistant

[FR Doc. 94-13590 Filed 6-1-94; 1:22 pm]

BILLING CODE 6715-01-M

NATIONAL SCIENCE FOUNDATION, NATIONAL SCIENCE BOARD

DATE AND TIME:

June 9, 1994, 10 a.m., closed session
June 9, 1994, 10:05 a.m., open session
June 10, 1994, 8:30 a.m., open session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS: Part of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, June 9, 1994

Closed session (10 a.m.-10:05 a.m.): Minutes of May Meeting
Open session (10:05 a.m.-12:00 p.m.) and (1:30 p.m.-5:30 p.m.): Minutes from May Meeting; Chairman's Report; Director's Report; and Long-Range Planning

Friday, June 10, 1994

Open session (8:30 a.m.-12 p.m.): Long-Range Planning; Continued; and Other Business/Adjourn

Marta Cehelsky,

Executive Officer

[FR Doc. 94-13597 Filed 6-1-94; 1:22 pm]

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Federal Register

Thursday
June 2, 1994

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910, 1917, and 1918
Longshoring and Marine Terminals; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1917, and 1918

[Docket No. S–025]

Longshoring and Marine Terminals

AGENCY: Occupational Safety and Health Administration (OSHA).

ACTION: Proposed rule; Notice of informal public hearings.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes to revise its Safety and Health Regulations for Longshoring and, to a far lesser extent, to amend its Safety and Health Regulations for Marine Terminals. The proposed rule covers cargo handling and related activities conducted aboard vessels and at Marine Terminals. The proposed amendments to the Marine Terminals standard are intended primarily to provide regulatory consistency with the proposed Longshoring ship-board rules. The proposed rules would be "vertical" standards which apply to longshoring and marine terminal activities only, except for those general industry provisions referenced within this proposed rule.

This proposal contains requirements for longshoring and marine terminal operations; the testing and certification of specific types of cargo lifting appliances and associated auxiliary gear; other cargo handling equipment such as conveyors and industrial trucks; access to vessels; working surfaces; and personal protective equipment. Additionally, specialized longshoring operations such as containerized cargo, roll-on roll-off (Ro-Ro) and menhaden are specifically addressed.

The principal hazards addressed by this proposal are injuries and accidents associated with cargo lifting gear, vehicular cargo transferral, manual cargo handling, hazardous atmospheres and materials, and finally, those hazards posed by the more modern and sophisticated cargo handling methods brought about by intermodalism.

This provides notice of OSHA's intent to schedule informal public hearings on OSHA's proposed rulemaking on Longshoring and the related Marine Terminal provisions.

DATES: Written comments on the standard must be postmarked on or before September 23, 1994. Notices of intention to appear at the informal public hearings must be postmarked by August 24, 1994. Written comments, testimony, and all evidence which will be offered into the hearing record must be postmarked by 21 days prior to the date of the hearing to be attended. The hearings will begin at 9:30 a.m. and be held in the following cities, beginning on the following dates:

Charleston, South Carolina on September 20, 1994;

Seattle, Washington on October 19, 1994; and

New Orleans, Louisiana on November 15, 1994.

Requests for public hearings in locations other than the above must be received by July 11, 1994.

Parties who request more than 10 minutes for their presentation at the informal public hearing and parties who will submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence, postmarked on or before 21 days prior the date of the hearing to be attended.

ADDRESSES: Written comments and requests for additional hearings should be submitted to the Docket Office, Docket S–025, Room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: (202) 219-7894. Comments of 10 pages or less may be faxed to the Docket Office, if followed by a hard copy. The OSHA Docket Office fax number is (202) 219–5046.

Notice of intention to appear, testimony and documentary evidence to be submitted at the hearing are to be sent to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. S–025, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, DC 20210, telephone (202) 219–8615.

Actual addresses for the locations of the regional hearings in Charleston, South Carolina, Seattle, Washington, and New Orleans, Louisiana will be announced in a later Federal Register document.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Information and Consumer Affairs, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION

I. Background

As a result of the high number and serious nature of accidents occurring to port workers in the United States, Congress, in 1958, amended the Longshore and Harborworker's Compensation Act (LHWCA) (33 U.S.C. 901 *et seq.*) to provide a large segment of port based employees with a safer work environment. The amendments (P.L. 85–742, 72 Stat. 835) significantly strengthened Section 41 of the LHWCA (33 U.S.C. 941) by requiring employers covered by that Act to "furnish, maintain and use" equipment, and to establish safe working conditions in accordance with regulations promulgated by the Secretary of Labor Two years later, the Labor Standards Bureau (LSB) of the Department of Labor issued the first set of safety and health regulations for longshoring activities as 29 CFR part 9 (25 FR 1565). These standards were amended on several occasions between 1960 and 1971. Since 1971, there have been no substantive changes to these provisions

The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 650 *et seq.*), which established the Occupational Safety and Health Administration (OSHA), directed the Secretary of Labor to adopt, under the authority conferred by section 6(a) of the Act, "Any established Federal standard" as an OSHA standard during the first 2 years of the Act. The Longshoring standards, then codified as 29 CFR part 1504, were adopted by OSHA under section 6(a) in 1971, and were recodified as 29 CFR part 1918.

The longshoring industry has changed dramatically since 1971. The methods of cargo handling and the equipment associated with those methods have undergone significant modification. Vessels designed specifically for the carriage of intermodal containers, vehicular rolling stock, and even barges, are now the most common types of ships calling at U.S. ports. By contrast, the established Longshoring standard was designed largely for activities being conducted using methods and equipment that have been overshadowed or replaced by more modern methods of cargo handling. The proposal being published today will seek to modernize OSHA's regulatory approach to deal with these changes in the industry. It is important to consider, however, that some of the older, more conventional vessel configurations, equipped with features and aspects that are addressed in the current standard, continue to call at U.S. ports. For that reason, the Agency will retain in this proposal a number of provisions whose utility, although diminished, will continue to be necessary. Nevertheless, the Agency requests the public to comment on certain provisions that it considers obsolete and no longer in use. For example, the Agency is considering deleting the provisions that address the

manually lowering or topping of booms based on a determination that these operations are no longer performed as a part of longshoring work.

On July 5, 1983, OSHA published its final rule for Marine Terminals (48 FR 30886)(Ex. 1–101). These rules were designed to address the shoreside segment of marine cargo handling. Since the Marine Terminal standards currently address equipment and situations (i.e., powered industrial trucks; conveyors; passage between levels and across openings; etc.) that have shipboard counterparts, appropriate provisions from those standards are incorporated into this proposal for shipboard cargo handling, as well. Accordingly, the Agency will rely upon background material and data used to substantiate OSHA's rule for Marine Terminals, and incorporates the docket (S–506) developed in that rulemaking.

This proposal seeks to provide a practical continuity as it addresses the more conventional and time proven methods of cargo handling along with those more modern and revolutionary. The Agency welcomes all suggestions on how to better meet this goal.

Longshoring Hazards

Traditionally, the longshore industry has been notable in terms of its accident experience. The work environment found in the marine cargo handling sector exposes workers to a greater risk of injury than is true for most other industries. In fact, in the last calendar year for which industrial illnesses and accidents are fully tabulated, this industrial sector had one of the highest rate of lost workdays in the nation. The following tables found in BLS reports (Exs. 1–109, 1–110, 1–111, 1–112, and1–113) are useful in making a comparative assessment:

Table A

Total of lost workdays (rate per 100 full time employees)	1985	1986	1987	1988	1989	1990	1991
Private sector	64.9	65.8	69.9	76.1	78.7	84.0	86.5
Construction	129	134	136	142	143	148	148
SIC 446 (449)	350	405	422	436	343	284	329

Note: These 1988 to 1991 figures are based on SIC Code 449, which includes water transportation. It should be noted that the SIC Code for water transportation was changed from 446 to 499 in 1987.

Table B

Total cases (rate per 100 full-time employees)	1985	1986	1987	1988	1989	1990	1991
Private sector	7.9	7.9	8.3	8.6	8.6	8.8	8.4
Construction Trades	15.2	15.2	14.7	14.6	14.3	14.2	13.0
SIC 446 (449)	16.3	18.0	17.0	14.5	14.7	13.5	13.9

Note: These 1988 to 1991 figures are based on SIC Code 449, which includes water transportation. It should be noted that the SIC Code for water transportation was changed from 446 to 449 in 1987.

In 1985, OSHA requested the Bureau of Labor Statistics (BLS) to initiate a survey that could be used to develop common aspects of accidents occurring within the current longshore sector (Ex. 1–73). This survey helped to point out that in spite of the increases in automation that have occurred in the industry, injuries and lost workday cases continue to remain high and the break bulk type of operation still accounts for a major portion of the injuries that occur aboard ship.

OSHA sought to validate even further the conclusions it could draw, both from this survey and from regularly published BLS occupational safety and health statistics. In so doing, the Agency reviewed data published in *Seafarer* magazine (April 1987). In an article entitled "WGMA reports safety statistics for 85–86 contract year" (Ex. 1–14), that periodical listed a number of pertinent figures that serve to corroborate the other accident information OSHA has secured. The West Gulf Report, prepared by Mr. Hal Draper, Director of Safety, Health and Training for the West Gulf Maritime Association, addressed the accident experience of several ports from Lake Charles, Louisiana to Brownsville, Texas. Quoting directly from the article:

West Gulf Report. Draper's report on West Gulf longshore accidents during the 1985–86 contract year covered a total of 1,192 incidents.

According to his analysis, 70% of the accidents occurred on board ships; the remaining 30% on the dock or in the warehouse/terminal. Cargo was involved in 30% of the accidents, 64% of which involved sacks/bags, and 12% steel/pipe. Two hundred and forty of the incidents (20%) involved the individual being struck by a moving object; 221 (19%) resulted from lifting, pushing, pulling or bodily reaction; 208 (17%) from falls from the same level-slip or trip; 142 (12%) from striking against, or stepping/jumping on an object; 130 (11%) from being struck by a falling object; and 109 (9%) from being caught in, under, or between objects. Thirteen percent of all accidents involved stevedore gear/equipment.

Another way the Agency attempted to identify the major sources of longshoring accidents for rulemaking purposes was to examine a number of fatal or near fatal accidents reported to OSHA from this industry sector during the period July 1972–March 1992. In conducting this analysis, OSHA examined these case files to determine the precise cause of the accident. A brief summary of a few of the more than 250 such accidents reviewed is provided below.

Boston, Massachusetts—August 1974. A longshoreman, seriously injured while working in the hold of a bulk cargo vessel, was placed aboard a stokes basket stretcher to be transported ashore by the vessel's cargo hoisting gear. The stokes basket had no effective means to secure the injured worker to the stretcher. While in transit, the injured worker fell out of the litter, back into the hold (Ex. 1–90).

Port Elizabeth, New Jersey—June 1978. One employee was killed and one seriously injured when an intermodal container lifting beam, being lowered to hoist the container both men were standing on, suddenly fell. The device, weighing in excess of 4 tons, crushed both employees. Compliance with proposed §1918.81(k) would have prevented this accident (Ex. 1–87)

Port Newark, New Jersey—August 1976. An employee aboard an elevator Ro-Ro ship, while in the process of discharging automobiles, drove into what was thought to be an available elevator to gain access to the ramp or discharge deck. The elevator was

actually at a higher deck. The employee and vehicle fell into the shaft and down three decks. Barricading of the open deck spaces could have prevented this accident (Ex. 1–88).

San Juan, Puerto Rico—August 1978. An employee aboard a seagoing, multi-deck Ro-Ro barge was run over and killed by a tractor trailer while the trailer was being maneuvered into its stowage position. No signalman was provided to protect employees from the hazard that ultimately killed this lasher (an employee engaged in securing cargo). Additionally, illumination was severely lacking within the confines of the vessel's below deck cargo spaces. The use of proper illumination and a signaller for this operation could have prevented the fatality (Ex. 1–89).

Port Elizabeth, New Jersey—August 1984. Two workers, while driving in a vehicle within a large Ro-Ro vessel, fell from the end of an elevated internal ramp back down to deck level. These employees thought the ramp could take them to the next higher deck, however, the ramp was not so positioned. The car they were operating landed on its roof. One employee was killed, the other was injured. Barricading of the ramp could have prevented this accident (Ex. 1–86).

Houston, Texas—July 1987. Two longshoremen were killed while positioned atop a deck stowed intermodal container. As they were performing their work, an empty forty foot container being passed over their heads became disengaged from the lifting gear and fell on them. These fatalities could have been prevented if the employees had stayed clear of the overhead drafts (Ex. 1–74).

Port of Los Angeles, California—March, 1992. One longshoreman was killed while working on top of a stack of containers on the deck of a container vessel. A container top safety device was available, but the longshoreman was not attached to it. The safety device, which was attached to the container crane spreader bar, moved and became hung up. When it released, it catapulted the longshoreman off of the stack of containers and onto the dock. This incident could have been prevented if the employee had not been working on the top of the container, or had been using fall protection if it were necessary to be working there (Ex. 1–108).

Based on the BLS data, the West Gulf Maritime Association's accident analysis, and OSHA's own analysis of fatal or near fatal accidents in the cargo handling industry , OSHA concludes that regulatory action is necessary in order to meet its mandate under the Act. See Section III, Statutory Considerations, below, for a complete discussion of OSHA's "significant risk" findings.

II. General Format of the Standard

A. Vertical vs. Horizontal Standards

This proposed Longshoring standard has been drafted in a manner that will allow it to stand by itself, i.e., to be a "vertical" standard. Vertical standards are those that apply specifically to a given industry, in lieu of any other OSHA standard. In several areas of coverage specified in the proposal's scope section, OSHA's General Industry standards are incorporated by reference. This approach follows OSHA's other marine cargo handling standard, Marine Terminals, 29 CFR part 1917 (48 FR 30886). Vertical standards can encourage voluntary compliance because they are directed to the particular problems of the industry, and because they only contain provisions that are appropriate to the industry in question. On the other hand, since many industries covered by OSHA do in fact use the same or similar equipment and processes, and therefore have employees who are exposed to the same hazards, it is usually a more efficient use of the Agency's resources to develop "horizontal" standards (those applying across industry lines). It is also more efficient to train field personnel in general safety programs tailored to the horizontal General Industry standards than to train field staff in individual programs designed for specific industries.

In 1983, OSHA promulgated a vertical standard for the shoreside aspect of marine cargo handling (48 FR 30886)—OSHA's rules for Marine Terminals. As was the case in that rulemaking, the Agency is proposing the inclusion of a list of applicable General Industry standards which will supplement the specific provisions in part 1918. This provides coverage for hazards for which the marine cargo handling industry is neither unique nor different from other industries. As an example, OSHA proposes to adopt by reference §1910.95, titled "occupational noise exposure." The detrimental effects of prolonged high levels of noise is the same whether the exposure takes place aboard a vessel or in a factory. The exposure may not be as constant or the workforce may not be subjected to the same type of noise day after day, however the potential for overexposure is there. OSHA does not feel it is necessary to write a "vertical" standard that covers exposure to noise when the General Industry standard will suffice. This is entirely consistent with the current coverage provided by OSHA rules for Marine Terminals (part 1917).

The majority of this proposed Longshore standard is a "vertical" standard. The work environment aboard ship is unique in many respects. Longshore workers must continually work in the harsh environment of the waterfront, which requires exposure both to work-related hazards, such as falling cargo, and to environmental hazards, such as drowning and working around machinery in bad weather. Longshore workers perform some of the same high-hazard tasks, and confront many of the same heavy-industry hazards, as those typically associated with the construction industry. Examples of such hazards include falls, and crushing and caught-in injuries. Cargo handling and construction work are also both weather-dependent and have a high proportion of part-time and transient employees. The extremely high occupational injury and illness incidence rates for the marine cargo handling industry, mentioned in the previous section, testify to the hazardous nature of the longshoring industry.

OSHA has decided to continue a vertical standard for many aspects of this high-hazard industry, supplemented by general industry standards where necessary and appropriate. The Agency believes that this approach is necessary to adequately address the unique hazards and working conditions of this industry. OSHA also has a vertical standard for the construction industry (29 CFR part 1926), another hazardous industry with a large workforce.

OSHA solicits comments both as to the merits and the limitations of a vertical standard for longshoring operations.

B. Performance vs. Specification

The format and substance of this standard reflect OSHA's effort to eliminate unnecessary regulations and to simplify and update others. To achieve these goals, the Agency has adopted a performance approach to writing new rules and revising existing ones. A performance-based standard identifies a hazard and the level of control required to protect against the hazard, without specifying the precise means of achieving such control. while a specification standard stipulates design and construction criteria to be met to achieve a particular safety objective. The lack of flexibility in many specification standards fails to take into account the adequacy of many existing operations and work practices and discourages innovation. In keeping with

OSHA's commitment to clarity, flexibility, and in order to encourage employers to comply with the standards, this longshore industry proposal has adopted the performance approach except in those cases in which employee safety would be enhanced by more specific requirements. The Agency is interested in receiving comments from persons who feel that certain of the proposed provisions would benefit from a greater degree of specification or from a more goal-oriented approach.

III. Statutory Considerations

A. *Introduction.* Throughout this proposal, OSHA describes the hazards confronted by employees who are engaged in longshoring activities and the measures required to protect affected employees from those hazards. The Agency is providing the following discussion of the statutory mandate for OSHA rulemaking activity to explain the legal basis for its determination that the Longshoring standard, as proposed, is reasonably necessary to protect affected employees from significant risks of injury and death.

Section 2(b)(3) of the Occupational Safety and Health Act authorizes "the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce", and section 5(a)(2) provides that "each employer shall comply with occupational safety and health standards promulgated under this Act" (emphasis added). Section 3(8) of the OSH Act (29 U.S.C. § 652(8)) provides that:

> . . . the term 'occupational safety and health standard' means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

In two recent cases, reviewing courts have expressed concern that OSHA's interpretation of these provisions of the OSH Act, particularly of section 3(8) as it pertains to safety rulemaking, could lead to overly costly or under-protective safety standards. In *International Union, UAW v. OSHA*, 938 F.2d 1310 (D.C. Cir. 1991), the District of Columbia Circuit rejected substantive challenges to OSHA's lockout/tagout standard and denied a request that enforcement of that standard be stayed, but it also expressed concern that OSHA's interpretation of the OSH Act could lead to safety standards that are very costly and only minimally protective. In *National Grain & Feed Association v. OSHA*, 866 F.2d 717 (5th Cir. 1989), the Fifth Circuit concluded that Congress gave OSHA considerable discretion in structuring the costs and benefits of safety standards but, concerned that the grain dust standard might be under-protective, directed OSHA to consider adding a provision that might further reduce significant risk of fire and explosion.

OSHA rulemakings involve a significant degree of agency expertise and policy-making discretion to which reviewing courts must defer. (See for example, *Building & Constr. Trades Dept. AFL-CIO v. Brock*, 838 F.2d 1258, 1266 (D.C. Cir. 1988); *Industrial Union Dept. AFL-CIO v. American Petroleum Inst.*, 448 U.S. 607, 655 n. 62 (1980).) At the same time, the Agency's technical expertise and policy-making authority must be exercised within discernable parameters. The lockout/tagout and grain handling standard decisions sought from OSHA more clarification on the agency's view of the scope of those parameters. In light of those decisions, OSHA believes it would be useful to include in the preamble to this proposed safety standard a statement of its view of the limits of its safety rulemaking authority and to explain why it is confident that its interpretive views have in the past avoided regulatory extremes and continue to do so in this rule.

Stated briefly, the OSH Act requires that, before promulgating any occupational safety standard, OSHA demonstrate based on substantial evidence in the record as a whole that: (1) the proposed standard will substantially reduce a significant risk of material harm; (2) compliance is technologically feasible in the sense that the protective measures being required already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be developed; (3) compliance is economically feasible in the sense that industry can absorb or pass on the costs without major dislocation or threat of instability; and (4) the standard is cost effective in that it employs the least expensive protective measures capable of reducing or eliminating significant risk. Additionally, proposed safety standards must be compatible with prior agency action, must be responsive to significant comment in the record, and, to the extent allowed by statute, must be consistent with applicable Executive Orders. These elements limit OSHA's regulatory discretion for safety rulemaking and provide a decision-making framework for developing a rule within their parameters.

B. Congress concluded that OSHA regulations are necessary to protect workers from occupational hazards and that employers should be required to reduce or eliminate significant workplace health and safety threats. At section 2(a) of the OSH Act (29 U.S.C. § 651(a)), Congress announced its determination that occupational injury and illness should be eliminated as much as possible: "The Congress finds that occupational injury and illness arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments." Congress therefore declared "it to be its purpose and policy ... to assure so far as possible every working man and woman in the Nation safe ... working conditions (29 U.S.C. § 651(b))."

To that end, Congress instructed the Secretary of Labor to adopt existing Federal and consensus standards during the first two years after the OSH Act became effective and, in the event of conflict among any such standards, to "promulgate the standard which assures the greatest protection of the safety or health of the affected employees (29 U.S.C. § 655(a))." Congress also directed the Secretary to set mandatory occupational safety standards (29 U.S.C. § 651(b)(3)), based on a rulemaking record and substantial evidence (29 U.S.C. § 655(b)(2)), that are "reasonably necessary or appropriate to provide safe ... employment and places of employment." When promulgating permanent safety or health standards that differ from existing national consensus standards, the Secretary must explain "why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard (29 U.S.C. § 655(b)(8))." Correspondingly, every employer must comply with OSHA standards and, in addition, "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees (29 U.S.C. § 654(a))."

"Congress understood that the Act would create substantial costs for employers, yet intended to impose such costs when necessary to create a safe and healthful working environment. Congress viewed the costs of health and safety as a cost of doing business.... Indeed, Congress thought that the financial costs of health and safety problems in the workplace were as large as or larger than the financial costs of eliminating these problems (*American*

Textile Mfrs. Inst. Inc. v. Donovan, 452 U.S. 490, 519–522 (1981) (ATMI); emphasis was supplied in original]." "[T]he fundamental objective of the Act [is] to prevent occupational deaths and serious injuries [*Whirlpool Corp. v. Marshall*, 445 U.S. 1, 13 (1980)]." "We know the costs would be put into consumer goods but that is the price we should pay for the 80 million workers in America [S. Rep. No. 91–1282, 91st Cong., 2d Sess. (1970); H.R. Rep. No. 91–1291, 91st Cong., 2d Sess. (1970), reprinted in Senate Committee on Labor and Public Welfare, Legislative History of the Occupational Safety and Health Act of 1970, (Committee Print 1971) ('Leg. Hist.') at 444 (Senator Yarborough)]." "Of course, it will cost a little more per item to produce a washing machine. Those of us who use washing machines will pay for the increased cost, but it is worth it, to stop the terrible death and injury rate in this country [*Id.* at 324; see also 510–511, 517]."

[T]he vitality of the Nation's economy will be enhanced by the greater productivity realized through saved lives and useful years of labor. When one man is injured or disabled by an industrial accident or disease, it is he and his family who suffer the most immediate and personal loss. However, that tragic loss also affects each of us. As a result of occupational accidents and disease, over $1.5 billion in wages is lost each year [1970 dollars], and the annual loss to the gross national product is estimated to be over $8 billion. Vast resources that could be available for productive use are siphoned off to pay workmen's compensation and medical expenses....Only through a comprehensive approach can we hope to effect a significant reduction in these job death and casualty figures. [Id. at 518–19 (Senator Cranston)] Congress considered uniform enforcement crucial because it would reduce or eliminate the disadvantage that a conscientious employer might experience where inter-industry or intra-industry competition is present. Moreover, "many employers—particularly smaller ones—simply cannot make the necessary investment in health and safety, and survive competitively, unless all are compelled to do so [Leg. Hist. at 144, 854, 1188, 1201]."

Thus, the statutory text and legislative history make clear that Congress conclusively determined that OSHA regulation is necessary to protect workers from occupational hazards and that employers should be required to reduce or eliminate significant workplace health and safety threats.

C. As construed by the courts and by OSHA, the OSH Act sets a threshold and a ceiling for safety rulemaking that provide clear and reasonable parameters for agency action. OSHA has long followed the teaching that section 3(8) of the OSH Act requires that, before it promulgates "any permanent health or safety standard, [it must] make a threshold finding that a place of employment is unsafe—in the sense that significant risks are present and can be eliminated or lessened by a change in practices [*Industrial Union Dept., AFL-CIO v. American Petroleum Inst.*, 448 U.S. 607, 642 (1980) (plurality) (Benzene); emphasis was supplied in original]." When, as frequently happens in safety rulemaking, OSHA promulgates standards that differ from existing national consensus standards, it must explain "why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard [29 U.S.C. § 655(b)(8)]." Thus, national consensus and existing federal standards that Congress instructed OSHA to adopt summarily within two years of the OSH Act's inception provide reference points concerning the least an OSHA standard should achieve (29 U.S.C. § 655(a)).

As a result, OSHA is precluded from regulating insignificant safety risks or from issuing safety standards that do not at least lessen risk in a significant way.

The OSH Act also limits OSHA's discretion to issue overly burdensome rules, as the agency also has long recognized that "any standard that was not economically or technologically feasible would *a fortiori* not be 'reasonably necessary or appropriate' under the Act. See *Industrial Union Dept., v. Hodgson*, [499 F.2d 467, 478 (D.C. Cir. 1974)] ('Congress does not appear to have intended to protect employees by putting their employers out of business.') [American Textile Mfrs. Inst. Inc., 452 U.S. at 513 n. 31 (a standard is economically feasible even if it portends 'disaster for some marginal firms,' but it is economically infeasible if it 'threaten[s] massive dislocation to, or imperil[s] the existence of, the industry')]."

By stating the test in terms of "threat" and "peril," the Supreme Court made clear in ATMI that economic infeasibility begins short of industry-wide bankruptcy. OSHA itself has placed the line considerably below this level. (See for example, *ATMI*, 452 U.S. at 527 n. 50; 43 FR 27360 (June 23, 1978). Proposed 200 µg/m³ PEL for cotton dust did not raise serious possibility of industry-wide bankruptcy, but impact on weaving sector would be severe, possibly requiring reconstruction of 90 percent of all weave rooms. OSHA concluded that the 200 µg/m³ level was not feasible for weaving and that 750 µg/m³ was all that could reasonably be required). See also 54 FR 29245–246 (July 11, 1989); American Iron & Steel Institute, 939 F.2d at 1003. OSHA raised engineering control level for lead in small nonferrous foundries to avoid the possibility of bankruptcy for about half of small foundries even though the industry as a whole could have survived the loss of small firms.) Although the cotton dust and lead rulemakings involved health standards, the economic feasibility ceiling established therein applies equally to safety standards. Indeed, because feasibility is a necessary element of a "reasonably necessary or appropriate" standard, this ceiling boundary is the same for health and safety rulemaking since it comes from section 3(8), which governs all permanent OSHA standards.

All OSHA standards must also be cost-effective in the sense that the protective measures being required must be the least expensive measures capable of achieving the desired end [ATMI, at 514 n. 32; *Building and Const. Trades Dept., AFL-CIO v. Brock*, 838 F.2d 1258, 1269 (D.C. Cir. 1988)]. OSHA gives additional consideration to financial impact in setting the period of time that should be allowed for compliance, allowing as much as ten years for compliance phase-in. (See *United Steelworkers of America v. Marshall*, 647 F.2d 1189, 1278 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981).) Additionally, OSHA's enforcement policy takes account of financial hardship on an individualized basis. OSHA's Field Operations Manual provides that, based on an employer's economic situation, OSHA may extend the period within which a violation must be corrected after issuance of a citation (CPL. 2.45B, Chapter III, paragraph E6d(3)(a), Dec. 31, 1990).

To reach the necessary findings and conclusions that a safety standard substantially reduces a significant risk of harm, is both technologically and economically feasible, and is cost effective, OSHA must conduct rulemaking in accord with the requirements of section 6 of the OSH Act. The regulatory proceeding allows it to determine the qualitative and, if possible, the quantitative nature of the risk with and without regulation, the technological feasibility of compliance, the availability of capital to the industry and the extent to which that capital is required for other purposes, the industry's profit history, the industry's ability to absorb costs or pass them on to the consumer, the impact of higher costs on demand, and the impact on competition with substitutes and imports. (See ATMI at 2501–2503; American Iron & Steel Institute generally.) Section 6(f) of the OSH Act further provides that, if the validity of

a standard is challenged, OSHA must support its conclusions with "substantial evidence in the record considered as a whole," a standard that courts have determined requires fairly close scrutiny of agency action and the explanation of that action. (See *Steelworkers*, 647 F.2d at 1206–1207.)

OSHA's powers are further circumscribed by the independent Occupational Safety and Health Review Commission, which provides a neutral forum for employer contests of citations issued by OSHA for noncompliance with health and safety standards (29 U.S.C. §§ 659–661; noted as an additional constraint in Benzene at 652 n. 59). OSHA must also respond rationally to similarities and differences among industries or industry sectors. (See *Building and Construction Trades Dept., AFL-CIO v. Brock*, 838 F.2d 1258, 1272–73 (D.C. Cir. 1988).)

OSHA safety rulemaking is thus constrained first by the need to demonstrate that the standard will substantially reduce a significant risk of material harm, and then by the requirement that compliance is technologically capable of being done and not so expensive as to threaten economic instability or dislocation for the industry. Within these parameters, further constraints such as the need to find cost-effective measures and to respond rationally to all meaningful comment militate against regulatory extremes.

D. The proposed revisions of the Longshoring and Marine Terminal standards comply with the statutory criteria described above and are not subject to the additional constraints applicable to section 6(b)(5) standards.

Standards that regulate hazards that are frequently undetectable because they are subtle or develop slowly or after long latency periods, are frequently referred to as "health" standards. Standards that regulate hazards, like explosions or electrocution, that cause immediately noticeable physical harm, are called "safety" standards. (See *National Grain & Feed Assn., v. OSHA (NGFA II)*, 866 F.2d 717, 731, 733 (5th Cir. 1989). As noted above, section 3(8) provides that all OSHA standards must be "reasonably necessary or appropriate." In addition, section 6(b)(5) requires that OSHA set health standards which limit significant risk "to the extent feasible." OSHA has determined that the proposed revisions of the Longshore and Marine Terminal standards are safety standards, because these standards address hazards, such as falling, falling objects and crushing, that are immediately dangerous to life or health, not the longer term, less obvious hazards subject to section 6(b)(5).

The OSH Act and its legislative history clearly indicate that Congress intended for OSHA to distinguish between safety standards and health standards. For example in section 2(b)(6) of the OSH Act, Congress declared that the goal of assuring safe and healthful working conditions and preserving human resources would be achieved, in part:

by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety. The legislative history makes this distinction even clearer:

[The Secretary] should take into account that anyone working in toxic agents and physical agents which might be harmful may be subjected to such conditions for the rest of his working life, so that we can get at something which might not be toxic now, if he works in it a short time, but if he works in it the rest of his life might be very dangerous; and we want to make sure that such things are taken into consideration in establishing standards. [Leg. Hist. at 502–503 (Sen. Dominick), quoted in *Benzene* at 648 49] Additionally, Representative Daniels distinguished between "insidious 'silent killers' such as toxic fumes, bases, acids, and chemicals" and "violent physical injury causing immediate visible physical harm" (Leg. Hist. at 1003), and Representative Udall contrasted insidious hazards like carcinogens with "the more visible and well-known question of industrial accidents and on-the-job injury" (Leg. Hist. at 1004). (See also, for example, S.Rep. No. 1282, 91st Cong., 2d Sess 2–4 (1970), U.S. Code Cong. & Admin News 1970, pp. 5177, 5179, reprinted in Leg Hist. at 142–43, discussing 1967 Surgeon General study that found that 65 percent of employees in industrial plants "were potentially exposed to harmful physical agents, *such as severe noise or vibration*, or to toxic materials"; Leg.Hist at 412, *id.* at 446, *id.* at 516, *id.* at 845; International Union, UAW at 1015.)

In reviewing OSHA rulemaking activity, the Supreme Court has held that section 6(b)(5) requires OSHA to set "the most protective standard consistent with feasibility" (Benzene at 643 n. 48) As Justice Stevens observed:

The reason that Congress drafted a special section for these substances ... was because Congress recognized that there were special problems in regulating health risks as opposed to safety risks. In the latter case, the risks are generally immediate and obvious, while in the former, the risks may not be evident until a worker has been exposed for long periods of time to particular substances [Benzene, at 649 n. 54.] Challenges to the grain dust and lockout/tagout standards included assertions that grain dust in explosive quantities and uncontrolled energy releases that could expose employees to crushing, cutting, burning or explosion hazards were harmful physical agents so that OSHA was required to apply the criteria of section 6(b)(5) when determining how to protect employees from those hazards. Reviewing courts have uniformly rejected such assertions. For example, the Court in *International Union, UAW v. OSHA*, 938 F.2d 1310 (D.C. Cir. 1991) rejected the view that section 6(b)(5) provided the statutory criteria for regulation of uncontrolled energy, holding that such a "reading would obliterate a distinction that Congress drew between 'health' and 'safety' risks." The Court also noted that the language of the OSH Act and the legislative history supported the OSHA position (International Union, UAW at 1314) Additionally, the Court stated: "We accord considerable weight to an agency's construction of a statutory scheme it is entrusted to administer, rejecting it only if unreasonable" (International Union, UAW at 1313, citing Chevron U.S.A. Inc. v. NRDC, 467 U.S. 837, 843 (1984))

The Court reviewing the grain dust standard also deferred to OSHA's reasonable view that the Agency was not subject to the feasibility mandate of section 6(b)(5) in regulating explosive quantities of grain dust (*National Grain & Feed Association v. OSHA* (NGFA II) 866 F.2d 717, 733 (5th Cir. 1989)). It therefore applied the criteria of section 3(8), requiring the Agency to establish that the standard is "reasonably necessary or appropriate" to protect section 3(8), requiring the Agency to establish that the standard is "reasonably necessary or appropriate" to protect employee safety

As explained in Section I, Background, above, and Section V, Summary and Explanation of the Proposal and in Section VIII, Preliminary Regulatory Impact Analysis and Regulatory Flexibility Analysis, below, OSHA has determined that marine cargo handling activities pose significant risks to employees (18 fatalities and 7,593 injuries annually) and that the provisions of the proposed rule are reasonably necessary to protect affected employees from those risks. The Agency estimates that compliance with the proposed revisions of the Longshoring and Marine Terminal standards will cost $4.7 million the first year and $1.8 million annually thereafter and will reduce the risk of the identified hazards (preventing 3 fatalities and 1,262 injuries annually) This constitutes a substantial reduction of significant risk of material harm for the population at risk of approximately 93,000 employees. The Agency believes that compliance is technologically feasible because all of the provisions of the proposed standard can be met by using currently available equipment.

facilities, supplies, and work practices. Additionally, OSHA believes that compliance is economically feasible, because, as documented in the Regulatory Impact Analysis, all regulated sectors can readily absorb or pass on compliance costs during the standard's first five years, and economic benefits will exceed compliance costs thereafter.

As detailed in Section VIII, Preliminary Regulatory Impact Analysis and Regulatory Flexibility Analysis and Table 1, below, the standard's costs, benefits, and compliance requirements are consistent with those of other OSHA safety standards, such as the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard.

Standard (CFR cite)	Final rule date (FR cite)	Number of deaths prevented annually	Number of injuries prevented annually	Annual cost first five yrs (mill)	Annual cost next five yrs (mill)
Grain handling (1910.272)	12–31–87 (52 FR 49622)	18	394	5.9 to 33.4	5.9 to 33.4
HAZWOPER (1910.120)	3–6–89 (54 FR 9311)	32	18,700	153	153
Excavations (Subpt P)	10–31–89 (54 FR 45,954)	74	800	306	306
Process Safety Mgmt (1910.119)	2–24–92 57 FR 6356	330	1,917	880.7	470.8
Permit-Required Confined Spaces (1910.146)	1–14–93 58 FR 4462	54	5,041	202.4	202.4

OSHA assessed employee risk by evaluating exposure to marine cargo handling hazards. The Agency acknowledges that some industries covered by the proposed revisions of the Longshoring and Marine Terminal standards have more documented marine cargo handling injuries or fatalities than do others. OSHA does not believe that the risk associated with exposure to marine cargo handling related hazards varies according to the number of incidents documented for a particular SIC code. OSHA has set the scope of the proposed revisions of the Longshoring and Marine Terminal standards to address those situations where employees are exposed to marine cargo handling hazards, regardless of the relative frequency of incidents. The Agency believes, based on analysis of the elements of the hazards identified, there is sufficient information for OSHA to determine that employees in the covered sectors face significant risks marine cargo handling activities. Therefore, the Agency has determined that all employees within the scope of the proposed standard face a significant risk of material harm and that compliance with the proposed revisions of the Longshoring and Marine Terminal standards is reasonably necessary to protect affected employees from that risk.

IV. Review of General Industry Standards for Longshoring Operations Applicability

Of all the work environments OSHA regulates, the shipboard workplace ranks high among those that do not track easily with many of the regulations that comprise 29 CFR part 1910 (General Industry standards). For instance, subjects such as scaffolding; powered platforms; power presses; wood working machinery; abrasive wheels; forging machines; pulp and paper mills; bakery equipment; laundry machinery; sawmills; logging; telecommunications; and spray painting, all of which receive comprehensive discussion within the text of part 1910, are virtually non-existent concerns in shipboard longshoring operations. Essentially longshoring is a transport industry and, as such, is free from many of the hazards found in general industry. Accordingly, these provisions are not included in this proposed rule.

In some areas where there is current coverage in part 1918, there is similar coverage in part 1910. OSHA's primary concern is to make sure that the 1910 provisions needed to supplement the 1918 coverage are included in the proposal. For instance, subjects such as ladders; slings; conveyors; industrial trucks; cranes and personal protective equipment, which are fully addressed within part 1910, are presently addressed with a specific regard for the maritime workplace, within OSHA's current Longshoring rules. This proposal seeks to update and revise the existing part 1918 and in some instances has relied in substantial measure upon part 1910 language. In other instances, such as when addressing container and roll on/roll off operations, entirely new concepts have been developed to take account of the sometimes unique operational aspects of the modern stevedoring community.

Where the hazards present in shipside cargo handling are directly parallel to those encountered in the shoreside aspect of marine cargo handling, such as in sanitation considerations, OSHA is proposing that the language of provisions designed to address such shoreside hazards be the same as in the Marine Terminal standards in 29 CFR part 1917.

Interested parties are requested to submit any information related to the coverage of this proposed revision of the Longshoring rules. For example, are specific hazards adequately addressed in this proposal? Are longshore worker exposed to safety and health hazards which this proposal does not adequately address? Have unnecessary provisions been included in the proposal? Are there any areas of general industry coverage that have not been included in the proposal that should be? OSHA would particularly appreciate information on these issues.

V. Summary and Explanation of the Proposal

Subpart A—Scope and Definitions

Section 1918.1 *Scope and applicability.* Proposed §1918.1 describes the scope and applicability of the Longshoring standard. The Longshoring rules apply from the foot of the gangway up, to include all cargo handling related activities aboard a given vessel. It is important to remember, however, that in ship to shore/shore to ship cargo transfer operations using shore based material handling devices, all lifting device specific aspects of such transfers will be covered by the part 1917 rules. When cargo transfer is accomplished using ship's cargo gear, the part 1918 rules shall apply.

In keeping with the concept outlined in the foregoing section of this preamble (II. General Format of the Standard), certain selected provisions currently found in OSHA's part 1910 standards have been identified to have application to shipboard longshoring operations. Sections 1918.1(b)(1) through (4), (b)(6) through (8), and (b)(10) through (12)

provide coverage for hazards for which the marine cargo handling industry is neither unique nor different from other industries. These hazards are not otherwise addressed by existing maritime standards. The hazards addressed by §1918.1(b)(5) (Tools) and (b)(9) (Machine Guarding), on the other hand, are addressed by existing maritime standards but do not receive the comprehensive treatment afforded by part 1910, subpart P, (Hand and Portable Powered Tools and Other Hand-Held Equipment) and subpart O, (Machinery and Machine Guarding).

OSHA is proposing to delete the current requirements for hand tools, §1918.72, titled Tools, and replace it with Subpart P of 29 CFR part 1910, titled Hand and Portable Powered Tools and Other Hand-Held Equipment OSHA believes that the general Industry Subpart P regulations are more comprehensive and afford better protection. OSHA proposes to do the same in the Marine Terminal regulations by replacing the paragraphs under the sections heading Hand tools, §1917.51 and replacing them with 29 CFR 1910 subpart P.

For the same reasons, OSHA is also proposing to remove the requirements under §1917.151 titled Machine guarding, and replace them with Subpart O of the General Industry standards, part 1910, titled Machinery and Machine Guarding. OSHA is also proposing to include Subpart O, Machinery and machine guarding, to the Scope and Applicability section of part 1918.

OSHA promulgated the hazardous waste operations and emergency response (HAZWOPER) standard on March 6, 1989 (54 FR 9294). OSHA'S decision to cover all emergency response was based upon the high risk associated with emergency response by untrained and unprotected employees and the need for proper training and equipment to be provided for emergency response to hazardous substance releases. This standard currently applies in its entirety to shipboard longshoring operations.

HAZWOPER divides emergency response into three separate areas: (1) Response at uncontrolled hazardous waste sites (§1910.120(l)); (2) response at Resource, Conservation and Recovery Act of 1976 (RCRA), as amended, facilities (42 U.S.C. 6901 et seq.) §1910.120(p)(8); and (3) response to emergency hazardous substance releases not covered by the previously noted paragraphs §1910.120(q). Since the activities described in the first two areas of the HAZWOPER standard do not represent marine cargo handling activities within the scope of part 1917 or part 1918, OSHA is proposing to only apply §1910.120(q) to longshore (part 1918) and marine terminal operations (part 1917).

Paragraph (q) covers employees engaged in toxic substance emergency response no matter where it occurs. This paragraph, essentially, requires employers to develop and implement an emergency response plan to handle anticipated toxic substance emergencies prior to the commencement of emergency response operations. If employers decide to evacuate their employees from the danger area when an emergency occurs and do not permit their employees to assist in handling the emergency, they are exempt from the requirements of this paragraph if they provide an emergency action plan and meet other requirements in accordance with §1910.38(a) which states:

> The emergency action plan shall be in writing * * * and shall cover those designated actions employers and employees must take to ensure employee safety from fire and other emergencies.

Simply stated, if an employer decides "not to fight a fire" (i.e., not to respond to an emergency), then §1910.120(q) does not apply but §1910.38(a) does.

OSHA is proposing to delete the current requirements for hand tools, §1918.72, titled Tools, and replace it with subpart P of 29 CFR Part 1910, titled Hand and Portable Powered Tools and Other Hand-Held Equipment. OSHA believes that the general Industry subpart P regulations are more comprehensive and afford better protection. OSHA proposes to do the same in the Marine Terminal regulations by replacing the paragraphs under the sections heading Hand tools, §1917.51 and replacing with 29 CFR part 1910 subpart P.

For the same reasons, OSHA is also proposing to remove the requirements under §1917.51 titled Machine guarding, and replace them with subpart O of the General Industry Standards, part 1910, titled Machinery and Machine Guarding.

Proposed §1918.2 carries over many of the definitions from the current Longshoring regulations. However, there are some new definitions or some modifications to existing definitions that reflect changes in current custom and practice in the Longshore industry

For example, the term "designated person", which is not used in the current longshore regulation, is used in this proposal. The term is used to identify a person who has a special skill in a particular area and has been so noted by the employer. Because of this skill, this employee is assigned to perform specific tasks in this area of expertise. While the concept of "designated person" is found throughout the current requirements, it is expressed in many different ways. This proposal tightens up the use of this concept by its consistent use of the term "designated person" throughout the standard. Some examples of the use of the term are: §1918.51(b) requires that a designated representative, in lieu of the employer, shall inspect vessel's cargo gear before use and at intervals during use; and §1918.55 (c)(7) where a designated person is one with knowledge in crane operations, specifically when using two or more cranes to hoist in unison, along with knowledge in rigging.

In addition, the current references to the "Federal maritime jurisdiction" and "navigable waters" in the definitions of "employee" in paragraph (e) and "employer" in paragraph (f) are being dropped. The current rules were originally promulgated under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941) for which the navigable waters was a jurisdictional prerequisite. With the promulgation of the OSH Act, which applies to private sector employment in workplaces in a covered jurisdiction, however, such a prerequisite was no longer necessary. Therefore, OSHA is proposing to update these rules by eliminating the reference to navigable waters in this definition.

Additionally, several new or substantially revised definitions are found in paragraphs (d), (g), (h), (j), (k), and (n) of this section. The definitions for enclosed space and fumigant are added to this section for clarity since these terms are used in the standard. In addition, they are virtually identical, with the exception of the examples, to those found in the Marine Terminal standards. The term "hazardous cargo" has been expanded to reflect the Marine Terminal's definition of "hazardous cargo, materials, substance or atmosphere." This definition goes beyond the current part 1918 definition by including references to subpart Z as well as oxygen-deficient atmospheres Additionally, it is, in turn, consistent with the Hazardous Communication standard found at 29 CFR 1910.1200 Another new definition is integral to the major impetus for revising part 1918, as discussed above: "intermodal container." The definition for "intermodal container" reflects both the definition found in the International Labor Organization (ILO) Code of Practice for Safety and Health in Dock Work, (Ex. 1–135) and the definition

found in International Standards Organization (ISO) Standard 830, Freight Containers-Terminology, (Ex. 1–134). This definition is also being proposed to replace the current definition for "intermodal container" found in the Marine Terminal standard, §1917.2(u).

The definitions of "dockboards" and "ramps", currently found in the Marine Terminal standard, are being proposed for Longshoring, as well, with minor modification.

Certain definitions currently in part 1918 would be deleted. Existing definitions referring to the existing §1918.13, certification of shore-based material handling devices were deleted because they were superseded by the Marine Terminal standard. The existing definition of the term "shall" is being deleted as unnecessary.

Subpart B—Gear Certification

A. *Section 1918.11 Gear certification.* Since 1960, safety and health regulations designed to protect U.S. dockworkers (with particular regard to vessel's cargo handling gear) have relied upon the documentary proofs of tests and examinations mandated by International Labor Organization (ILO) Convention 32 (Ex. 1–34). In Article 9 of that Convention, units and articles comprising ship's cargo handling gear are enumerated and assigned an annual/quadrennial schedule of tests/examinations that must be attended and attested to by individuals judged to be "competent" by the national authorities of the vessel's registry. Although not a signatory to that Convention, the United States has conformed to this Convention via regulation promulgated by: (1) the U.S. Coast Guard, with regard to inspected U.S. flag vessels; and (2) OSHA, with regard to foreign flag vessels (§1918.12). The Coast Guard has promulgated cargo gear regulations that exceed those found in Convention 32, namely 46 CFR part 91, that promote safe and unencumbered operations for U.S. flag vessels trading at foreign ports. On foreign flag vessels trading at U.S. ports, however, OSHA has sole responsibility for regulating and enforcing rules that address the cargo gear U.S. longshore workers utilize.

Under Convention 32, proof load testing[1] was only required initially before being taken into service. Thereafter, components such as derricks, goosenecks, mast bands, derrick bands and any other difficult to disassemble fixed gear, were to be "thoroughly examined" every four years and "inspected" every 12 months. Other hoisting machinery, such as cranes, winches, blocks, shackles, and any other accessory gear, were to be "thoroughly examined" every 12 months.

Under Convention 32, the vessel's cargo handling gear was proof load tested initially, and then perhaps never again. After that initial test, such gear received various degrees of visual scrutiny, complemented on some occasions by non-destructive testing, i.e., a hammer test.

Convention 152, adopted June 25, 1979, requires that such proof load testing is to occur at least every five years, and applies to all ship's lifting appliances. Within Article 3 of the new Convention, the term "lifting appliance" is defined as follows:

> Lifting appliance covers all stationary or mobile cargo-handling appliances, including shore-based power-operated ramps, used on shore or on board ship for suspending, raising or lowering loads or moving from one position to another while suspended or supported. (Ex. 1–5, pg.2)

Thus, the extent of cargo handling equipment found aboard ship requiring testing and certification, heretofore restricted to specific assemblies and components (i.e., derricks, cranes, winches, etc.) is being expanded in this proposal to include all "lifting appliances" under the terms of the newer ILO Convention. This would include forklifts and other powered industrial equipment used to handle cargo that might be carried by a Ro-Ro vessel; and elevators found on Ro-Ro vessels used to move cargo from one deck level to another—in addition to vessel cranes and derricks. Under this proposal in §1918.11, all this equipment would be required to be tested and thoroughly examined initially before being put into use; retested and thoroughly examined every five years; and thoroughly examined every 12 months.

In those situations where one container is used to lift another container, using twist locks, then the upper container and twist locks become, in effect, a lifting appliance and must be certified as such.

International Aspects

As is the case with all Federal agencies whose regulations impact international trade, OSHA has developed this proposal in light of international considerations. Through both law and policy, the United States has decided that standards-related activities shall not unnecessarily be a barrier to trade. The Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq*). addresses technical barriers to trade with regard to federal regulation. This Act states in Title 19 of the U.S. Code as follows:

> §2532. FEDERAL STANDARDS-RELATED ACTIVITIES
>
> No Federal Agency may engage any standards related activity that creates unnecessary obstacles to the foreign commerce of the United States, * * *.
>
> (1) Nondiscriminatory treatment. * * *
>
> * * * * * * *
>
> (2) Use of international standards. — (A) In general. * * * each Federal agency, in developing standards, shall take into consideration international standards and shall, if appropriate, base the standards on International standards.

Additionally, and consonant with this country's position on barriers to international trade, the United States is a signatory to the Multilateral Convention on the Facilitation of International Maritime Traffic (1965) (Ex. 1–3). As a contracting government, the United States has agreed to:

> * * * Undertake to cooperate in securing the highest practicable degree of uniformity in formalities, documentary requirements and procedures in all matters in which such uniformity will facilitate and improve international maritime traffic and keep to a minimum any alterations informalities, documentary requirements and procedures necessary to meet special requirements of a domestic nature. (Article 3)

Mindful of these international aspects, OSHA sought to formulate an acceptable approach to the vessel's cargo handling gear issue, and to other issues. The Agency requested the Department of State (Ex. 1–7) to present OSHA's tentative approach to all foreign nations whose flags may enter U.S. ports. This exercise was conducted in hope of ascertaining global acceptance Reports back from responding foreign nations (Ex. 1–6) indicated overwhelming support for the Agency's approach to these issues, and OSHA has incorporated it in this proposal. Most nations, although stipulating that they had not as yet ratified the more recent ILO Convention, indicated that national laws recently ratified or those currently in the legislative process were at least as strong, and in some cases more stringent, than Convention 152. In consideration of this widespread international acceptance of ILO Convention 152's approach to testing and certification of cargo gear, OSHA has decided to propose it in this revision of the Longshoring standards The Agency is interested in any additional comment on this issue that interested parties may be in a position to offer.

[1] Proof load testing, as used here, means lifting an known weight that is in excess of the safe working load (SWL) of the lifting appliance being tested.

Subpart C—Means of Access

Section 1918.21 Gangways and other means of access. This proposed section joins together two similar sections (§1918.11—Gangways and §1918.21—Gangways and Other Means of Access) of OSHA's current Longshoring rules. Clarity is improved in that rules addressing the same specific issue will no longer be situated in two different subparts of part 1918. As is the case in the current rules, gangway dimensions and characteristics are set out in proposed paragraph (a) to provide the safe access to vessels necessary for longshore workers. By using a blend of specification with performance based alternatives, the proposal lends the flexibility needed in accommodating foreign vessels. Language has been added that allows the use of materials that have been developed since the current rule was written, as long as the material has a strength equivalent to those that are listed.

Proposed paragraph (b) carries over language from the current rules, as well as the term "trimmed" found in the Joint Maritime Safety Code of the New York Shipping Association/International Longshoremen's Association (NYSA/ILA Safety Code) (Ex. 1–2) part M, paragraph 1), and requires that despite changing conditions brought about by tides, cargo operations, etc., the gangway and its components must be wholly serviceable.

Proposed paragraphs (c) through (k) are similar to the language found in the current rules. Some paragraphs have been modified to address some problems associated with the current language. Paragraph (d) has been modified to require a safety net or suitable protection when the gangway overhangs the water in such a manner that there is a danger of employees falling between the ship and the dock. The net is required to prevent an employee from falling to a lower level. This is consistent with ILO'S "Safety and Health in Dock Work," (Ex. 1–138). A new paragraph (i) has been added to address the hazard associated with slippery handrails and walking surfaces on gangways. Paragraph (j) references §1918.92 for illumination requirements on a gangway. In summary, these paragraphs address the requirement for a safe passage from the dock to the deck.

Proposed paragraph (l) recognizes the U.S. Coast Guard's authority relating to jurisdictional matters aboard vessels having a current and valid certificate of inspection. Notwithstanding, for the purpose of this rule, if access is attained other than by the vessel's regular gangway, that access shall conform to the entirety of this section.

Proposed §1918.22 carries over language from the current rules. Both paragraphs of this section contain the standard universal criteria for rope ladders, also known as "Jacob's ladders", namely, that such ladders be either double-runged or flat-treaded, so as to provide a more substantial tread surface; that they be well maintained and properly secured to available fittings; and that they not be permitted to hang from their lashing points with slack in them.

It is often the case that such ladders are provided by the vessel when a more traditional means of access cannot be utilized. Notwithstanding, under these proposed rules the employer (who is often a contractor rendering a service to the vessel) must comply with this proposed section before employees are permitted to use these ladders.

Proposed §1918.23 also carries over language from the current rules. Paragraph (a) sets out criteria for ramps used to gain vehicular access to or between barges. Of primary importance is that such ramps be of sufficient strength for the intended load. These ramps must be equipped with sideboards that will prevent vehicles from falling. They must also be well maintained and properly secured during use.

Paragraph (b) addresses employee passage to and from certain floating craft. Under favorable conditions, it is sometimes possible to pass to and from such vessels without the aid of any device. In other than favorable conditions, however, this paragraph sets forth the criteria to provide safe passage. Of significant importance is the exception included at the end of the paragraph. That exception recognizes practical difficulties encountered on the Mississippi River system in providing traditional means of access on all occasions. When originally promulgated in 1960, the longshore rules (Ex. 1–39) took no cognizance of these special difficulties. In 1965, the Labor Standards Bureau published the following proposed clarification. (Ex. 1–40):

> In order to provide practical solutions in cases where current requirements cannot be met, because of local river and bank conditions (this section) should be amended by the addition of a provision. (p.7609)

A provision to that effect was published in the Federal register in final form on May 21, 1966 (Ex. 1–41). Historically (Ex. 1–98), this exception has been based on tidal and current conditions on the Mississippi system (see definition at proposed §1918.2(s)). OSHA's experience has thus far concluded that such exceptional conditions prevail only on this inland system; however, the Agency solicits comments from interested individuals with other information on this issue.

A sentence has been added to proposed §1924.23(c) that requires no more than two Jacob's ladders for any single barge, raft, or log boom being worked. This proposal is consistent with the requirements in §1918.25(a) which requires a maximum of two access ladders in a hatch. The term "gang" is used here and several other places in this proposal. It refers to a group of longshore persons that are assigned to a particular hold, deck, etc., on a ship for the purpose of loading or discharging cargo.

A new paragraph (e) has been added to this section to address the problem associated with the lower rungs of a Jacob's ladder being crushed between the barge and another structure by requiring that a spacer or equivalent means be used to prevent it from occurring. If the lower rungs are crushed, this could cause an employee to fall between the barge and other structure.

Another new paragraph (f) has been added to this section. This paragraph requires the a net or equivalent protection if there is a space between the vessel, barge or other structure when using a Jacob's ladder to prevent an employee from falling into the water.

Proposed §1918.24 combines the current language of the existing longshore provisions for bridge plates and ramps with the terms that apply to similar shoreside equipment within 29 CFR part 1917 (Marine Terminals, §1917.124).

In the adoption of such parallel rules, OSHA hopes to enhance the uniformity of regulation that is critical to safety performance both shipboard and shoreside. Throughout this proposal, the Agency has attempted to foster such uniformity and requests comments as to how this goal can be better achieved.

Paragraphs (a)(1)(iv) and (b)(1)(v) would be revised to require sideboards that are at least 6 inches (.16 m) high. This height is the same as found for bull rails that were in place at the time of the effective date of the Marine Terminal standard, found in §1917.112. OSHA believes that specifying the height of the sideboards will provide the necessary protection to prevent vehicles and equipment from accidently falling off the edge. OSHA requests comment from the public concerning appropriateness of the height of the sideboards. OSHA is also proposing to require the same 6

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inch (.16 m) sideboards for dockboards and ramps that are in the Marine Terminal standard, §1917.124.

Proposed §1918.25 combines the current requirements for portable ladders contained in the existing Longshoring rules with the similar rules of §1917.119. For fixed ladders, however, there is a distinction between the proposed and current Longshore standard which has to do with clearance in back of the ladder rungs. The existing requirement is 4 inches (.11 m), but the proposed clearance is 6 inches (.16 m), which reflects the current ILO Standard.

Consistent with ILO's Guide to Safety and Health in Dock Work, (Ex. 1–129), OSHA is proposing that vessels built after December 5, 1981, (the date when ILO Convention 152, Occupational Safety and Health in Dock Work was put into effect), have a 6-inch (15 cm) clearance between the ladder and the surface to which it is fastened. Vessels built prior to December 5, 1981, however, may have a 4 inch (10 cm) clearance between the ladder and the surface to which it is fastened. OSHA encourages comment on this issue. (It should be noted where a fixed ladder has inadequate clearance, a suitable portable ladder could be used.)

Generally, proposed §1918.25 includes much of the current language for ladders with some modifications. Provisions have been added that reference ANSI standards for manufactured portable ladders. There are also proposed provisions for ladder maintenance and usage that are similar to what is in the Marine Terminals standard, but are new to Longshoring.

In paragraphs §1918.25(c) and (e) the phrase "positively secured against shifting or slipping" has been changed to "positively secured or held against shifting or slipping while in use". This change acknowledges that a worker(s) may hold a portable ladder in place while another worker is climbing the ladder in situations where the ladder cannot be secured and is consistent with the PMA-ILWU Safety Code, Rule 1506 (Ex. 1–145).

In addition, for the purpose of clarifying paragraph (e), where the employer can demonstrate that employees can safely use the cargo itself to climb in and out of the hold (often referred to as "safe cargo steps"), a straight ladder is not necessary.

Paragraph (j)(8) on, ladder usage, acknowledges that while some ladders may not have slip-resistant bases, they can be readily secured by lashing them in place to prevent slipping or shifting when being used.

Subpart D—Working surfaces

OSHA clearly understands that many of the falling hazards addressed in part by this and other subparts, represent working environments and physical characteristics no longer observed with the type of frequency that was the case when the current Longshoring rules were last revised. Nonetheless conventional cargo handling methods together with more traditional vessel designs are still encountered at U.S. ports. For this reason, OSHA proposes to retain current provisions that still have application.

As an example, proposed §1918.31(c) prohibits employers from allowing work to be conducted on surfaces comprised of missing, broken or poorly fitting hatch covers. Currently, it is relatively rare to experience a vessel trading at U.S. ports, fitted with the type of removable hatch covers this provision addresses. Despite that rarity, such situations do arise.

Proposed §1918.31(d) prohibits the placing of poorly fitting hatch covers and hatch beams that would constitute a work surface. As a practical matter, it is rare to see vessels at U.S. ports fitted out with hatch beams. In those instances, however, identifying marks are usually permanently fixed to such equipment. Those marks correspond to marks found on receptacle fittings on the vessel proper. In all cases, notwithstanding the presence of corresponding marks, the employer must make sure that all hatch beams and covers are seated securely, providing a strong and stable work surface.

Proposed §1918.32(a) carries over language from the current Longshoring rule. Frequently cargo must be landed on temporary surfaces, generally presented by other cargo stows, prior to its ultimate place of rest. When this is so, it is important that employees have enough available space to work in safety upon such a surface, and that the temporary table is strong enough to safely support the loads being imposed. There are obviously many strength and size possibilities, which will be dictated by the size and weight of the drafts being landed.

Proposed §1918.32(b) has been revised to address changes that have occurred in technology and work practices. Employees working on the tops of containers are now covered by §1918.85(j), Container top safety. (For a full discussion see the preamble to §1918.85(j) below). When employees working in cargo holds, are exposed to falls of more than 8 feet (2.4 m), the edge of the working surface must be guarded by a safety net, or must be otherwise rendered safe (such as by providing guardrails or fall arrest systems) to prevent employee injury. It should be noted that proposed §1918.32(b) does not include employees working on the top of intermodal containers in a hold as this is also covered under §1918.85(j).

Of prime importance is that the intent of this provision is satisfied, rather than providing just the appearance of compliance. Many times, particularly when safety nets have been rigged, they have been allowed to become very slack, and have sometimes been secured only at their top ends. The improper rigging of safety nets compromises or even removes the protection provided to falling employees. In these very critical fall hazard situations, this provision insists that fully considered precautions are taken. The Pacific Coast Marine Safety Code (PCMSC) Rule 1016 (Ex. 1–145) is very similar in construction.

This paragraph has also been revised to distinguish between the purpose and use of vertical safety nets, which rise at right angles at the perimeter of a work surface thus preventing employees from falling, and trapeze nets, which are designed to be placed horizontally below a raised work surface to prevent falling employees from striking the surface below. Additionally, this section requires that any nets used for purposes of fall protection meet the applicable requirements.

Proposed §1918.33(a) and (b) are carried over from the current Longshoring rules. As the heading of this section indicates, these provisions address the safe performance of work on or around deck loads. Provisions for work performed by employees atop deck-stowed intermodal containers will be found at proposed §1918.85(j).

OSHA is proposing to change the title and text of §1918.34. The current title of this section is "Skeleton decks." OSHA has consulted, without success, numerous individuals from the maritime community and researched several maritime publications, textbooks, etc. in an effort to define the terms "skeleton deck" and "mechano deck." OSHA feels that the use of these terms and the practice of working cargo on these particular types of decks are obsolete. Since the hazards remain even though these terms do not, OSHA is proposing to change the title of the section to "Other decks" in order to group unique or uncommon decks; using generic language to address the hazards associated with landing cargo on such decks that are not designed for such use. OSHA encourages the public to comment on whether the terms "skeleton deck" and "mechano deck" should be kept in the text of the standard and on whether these provisions are necessary.

Proposed §1918.35 addresses hazards longshore workers face when conducting operations around open weather deck hatchways. Vessels calling at U.S. ports are of varied designs and capabilities. Some vessels have coamings, which are the vertical structure that surrounds the hatch opening on a ship, that are substantially higher than the proposed section's minimum acceptable range (36 to 42 inches) (.92 to 1.07 m) other vessels may have no hatch coamings at all, but rather flush decks or decks with an abbreviated sill, which present substantial fall hazards to longshore workers. On such vessels, when workers work around the perimeter of open hatchways, appropriate guarding must be provided. This proposal stipulates that taut lines or guardrails attaining the acceptable range be erected on all but the working side of the hatch. This proposal mandates that stanchions or uprights used in their construction be supported or secured in a manner that will prevent them from coming accidentally loose.

Proposed §1918.37 addresses the fall hazards associated with working on the decks of lighters and barges. Proposed paragraph (a) retains language from the current rule. It prohibits the use of marginal (less than 3 feet (.92 m) wide) deck space along the sides of covered lighters or barges on all such vessels having coamings over 5 feet (1.5 m) high. Alternately, an employer must provide a taut handline or, as is most often the case, the vessel must be fitted with a serviceable grab rail.

Proposed paragraph (b), also retains language from the current rule. It prohibits working or walking on unsound surfaces. This can be a particularly important consideration on barges, in that powered industrial trucks are often brought aboard to assist in operations. The proposed rule requires a visual check of such decks before loading operations begin. If during the course of discharge operations an unsafe surface is discovered, work must be discontinued until protective measures are taken (such as bridging the unsafe surface with steel plate or barricading a deck section deemed unsafe).

Proposed §1918.38, as well as §1918.88 titled "log operations" are entirely new sections addressing log loading operations and reflect current industry practice. Section 1918.38 is based on Rules 640 and 641 of the PCMSC (Ex. 1–145), on a report on log operations submitted to OSHA's Maritime Safety Standards Office by Region X (Ex. 1–146); and a training video on log operations produced by the PMA and ILWU (Ex. 1–147). Loading logs from water presents very serious falling and drowning hazards. Thus, safe walking working surfaces are extremely important to longshore workers who are positioned offshore during log loading operations. Sound footing is essential during access to and while working on log rafts, which are in fact the cargo. The proposed requirements provide for safe access to the worksite and a safe working surface area. The working surface must be wide enough to allow for stable footing, securely fastened together, and substantial enough to support the weight of the employees on it. OSHA has concluded that the basic requirements for providing such safe surfaces should be included in this rulemaking, and seeks comment on their completeness.

Subpart E—Opening and closing hatches

Proposed §1918.41 addresses coaming clearances and provides requirements to protect longshore workers from fall hazards and from being struck by falling cargo during the process of opening up and closing hatches. Proposed paragraph (a) addresses weather deck clearances. When a smooth-sided deck load is stowed within 3 feet (.92 m) of the hatch coaming, and the available coaming height is <24 inches, a taut handline shall be provided so that employees are able to safely remove or replace hatch beams and covers. Similar language covering such situations is found in the NYSA/ILA Joint Maritime Safety Code—part C/Rule 38 (Ex. 1–2) and the PCMSC—Rule 1007 (Ex. 1–145).

Throughout this proposal, OSHA has specified that "taut" lines or "taut" handrails or guardrails be provided in certain situations where available walking or working space is compromised because of inevitable stowage or vessel design considerations. In using the term taut, as with other terms commonly encountered in maritime safety codes, OSHA is using language which is familiar in the industry under current practices. Where necessary, OSHA is proposing definitions for various terms used in the proposed standards, to ensure that these terms are uniformly understood. To be as clear as possible with regard to its intention in utilizing the term "taut" in connection with the subject lines, handrails and guardrails, the Agency states that "taut" connotes tightly and securely drawn, and as length and distance may warrant, securely fastened at intervals. The idea behind providing these taut lines, etc., is to allow an employee to rely on these objects in maintaining or regaining a stable balance in a constrained work area.

Generally, guardrails successfully serve their purpose when their height can stay within a serviceable range (42 to 36 inches) (1.07 m to .92 m). "Taut" handrails and "taut" lines, however, are sometimes required to be fitted to objects and structures of varying dimensions (such as deck cargo and the sides of covered lighters) for the purpose of enabling an employee to maintain balance and footing.

Proposed paragraph (b)(1) addresses intermediate deck hatchway clearance, and requires that a 3 foot (.91 m) clear work area be provided between stowed cargo and hatch coaming at both sides and one end of hatches with athwartship beams, and at both ends of hatches with fore and aft beams, while employees are engaged in opening or closing the hatchway. Proposed paragraph (b)(2) makes it clear that the 3-foot (.91 m) working surface under proposed paragraph (b)(1), is not required when a fall hazard is not present. Proposed paragraph (b)(3) recognizes that fitted grating over-decking, such as the type used in some perishables trades, can be considered part of the actual deck or working space (for the purposes of assessing compliance with proposed paragraph (b)(1)), if they are properly placed within the 3-foot clearance area and if they are in good condition (flush fitting and presenting a level work surface). OSHA has dropped the reference to "banana" gratings because OSHA feels it is an unnecessary reference.

Proposed paragraph (c) would require grab rails or taut hand lines to be provided where, because of wing-space structures or spare parts storage, coaming clearance is minimized. Proposed paragraph (d) advises that this proposed section is inapplicable in situations that permit the opening and closing of hatches without employees having to place or remove individual sections manually. It cautions, however, that whenever the 3-foot clearance is lacking, cargo which is likely to shift or fall must be blocked or otherwise restrained.

Proposed §1918.42, similar to §1918.41, is carried over substantively in its entirety from the current longshore rules, although some editing has been done for clarity. Provisions in this section addresses the hazards associated with handling hatch beams and pontoons, such as falling into the hatch or being struck by these removable items. Equivalent rules can

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be found on section 2 of the PCMSC (Ex. 1–145) and parts C and O of the NYSA/ILA Joint Maritime Safety Code (Ex. 1–2). In summary, it is proposed that hatch beam and pontoon bridles be long enough to easily fit their attachment points. Hatch beam bridles must be equipped with attachment devices that cannot become accidentally dislodged, such as toggles. Pontoon bridles are required to have the appropriate number of legs to conform to the design of the cover. All such legs must be utilized when lifting. If all legs of a bridle cannot be used due to the design of the cover, the spare leg(s) must be prevented from free swinging. Finally, as for the construction of these bridles, OSHA requires that for proper manual guidance, at least two legs be fitted with a fibre rope lanyard, and that the bridle end of the lanyard (the end attached directly to the bridle) be constructed of chain or wire rope.

Proposed §1918.43 is generally carried over from the current longshore rules, with some changes made for clarity, a revision to paragraph (j), and the addition of a new paragraph (i). Provisions in this section address the hazards associated with handling and stowing of hatch boards, hatch beams, and pontoons, such as falling into the hatch or being struck by improperly stowed items. Similar requirements are found in Section X of the PCMSC (Ex. 1–145), part O of the NYSA/ILA code (Ex. 1–2), and ILO Convention 152.

In revised paragraph (j), tarpaulins may be used to reduce the dust emissions of bulk cargoes instead of night tents if the vessel lacks cargo gear. In these situations, OSHA requires positive means, such as placards or barricades, be taken to prevent employees from walking on the tarpaulin that is covering an open or partially open hatch. Verbal warnings or instructions do not satisfy this provision.

A new paragraph (i) is being proposed to address the hazards of unsecured materials falling from hatch covers when they are being moved overhead.

Subpart F—Vessel's Cargo Handling Gear

Proposed subpart F would apply to all gear and equipment used in cargo handling that is the property of the vessel. Examples of this type of equipment can include cranes, derricks, specialized bridles, winches, wire rope, and shackles. This subpart addresses hazards associated with the use of that gear. This would include such hazards as using faulty gear, overloading or improperly rigging cargo gear, or improper operation of cargo gear, which can result in serious injury or death. (See Ex. 1–103.)

Proposed §1918.51 contains general requirements that apply to all cargo handling equipment that is permanently attached to a vessel.

Proposed paragraph (a) stipulates that the safe working load of the gear, whether marked on the lifting appliance itself or specified in the required certificates/gear register, shall not be exceeded. Proposed paragraph (b) requires that each component of ship's cargo handling gear be inspected by the employer before use, and at intervals during use. This requirement is more clearly worded than the existing requirement by specifying the employer's obligation to perform a visual inspection. Also, this new language more closely parallels the shoreside requirement found in 29 CFR 1917.42(a)(2). The paragraph also prohibits the use of unsafe gear. Proposed paragraph (c) provides criteria for splicing wire rope and for wire rope configuration characteristics. Additionally, the paragraph conforms the Longshore regulations to some current use criteria for wire rope that appear in OSHA's rules for the shoreside aspect of marine cargo handling (Marine Terminals—29 CFR part 1917). Proposed paragraphs (d), (e), and (f), also parallel the shore side rules. OSHA believes that the new language in this section enhances the safety of the worker in several ways. In paragraph (c), new and more stringent requirements are proposed for wire rope that is part of the ship's cargo handling gear. In addition, the new provisions (paragraphs (d), (e), and (f)) set replacement criteria for wire rope slings, natural and synthetic fibre rope slings, synthetic web slings, chains and chain slings, none of which are addressed by the existing standard.

Proposed §§1918.52, 1918.53, and 1918.54 and all address the subject of rigging and operating vessel's cargo handling gear. By and large, the requirements of these sections are found in the existing rules. Some language modifications have been made to enhance clarity. In addition, some paragraphs have new language that enhances the understanding of the provision which promotes greater compliance and eases enforcement burdens. For example, proposed §1918.53(e) adds to the existing reporting requirement of a defective winch, the following requirement "... and the winch shall not be used until the defect or malfunction is corrected." Similarly, paragraph (i) adds a monitoring requirement during operation and (k) removes a feasibility exception based on design that is no longer necessary today due to technological improvements.

OSHA wishes to raise the issue and solicit comment from the public regarding whether or not to delete §1918.52(b). This paragraph addresses the use of chain topping lift stoppers and clamp type stoppers that are used to manually lower and raise the boom. This method of topping the boom is a potentially dangerous operation and has been largely replaced by the use of electric topping lift winches, which do not require the use of stoppers. However, OSHA understands that as a result of the breakup of the Soviet Union, vessels which had not been allowed to sail into the U.S. because of restrictions placed on Soviet bloc countries, are now calling on various ports of the United States. In some cases, these vessels are old, and have types of cargo handling gear that had been largely replaced by more modern gear. In light of this occurrence, OSHA solicits public comment on this issue.

A new paragraph has been added, §1918.54(a), that addresses the hazard associated with the poor practice of rigging guys or preventers so that they chafe against other guys, preventers, or stays. This practice can cause the vessels's cargo gear to fail as the chafing can cause the wires to separate. This can lead to serious injury or death as the gear and cargo fall down on the deck or into the hold.

Proposed §1918.55 covers deck cranes permanently affixed to a vessel. The existing rule only addresses one of the hazards—the guarding of the swing radius. The new requirements more completely address the hazards encountered in the use of ship's cranes. These rules become necessary due to the widespread replacement of winches and booms by ship's cranes on newer vessels. In addition, the new provisions closely parallel similar shoreside requirements in part 1917 and other OSHA crane standards.

This section prohibits the use of cranes which develop a visible or known defect that impacts on its safe operation. In addition, the operator's position must be well maintained, with good visibility provided through the operator cab's glass. During cargo operations, areas that are within the swing radius of the body of revolving cranes and are accessible to employees must be guarded to prevent an employee from being caught between the body of the crane and any fixed structure, or between parts of the crane. Paragraph (c) of §1918.55 also addresses the danger of employees being caught between shipboard gantry cranes, such as would

be found on a LASH (Lighter aboard ship) vessel or a self contained container ship, and fixed structures on deck along the path of the cranes travel. (Ex. 1–103, cases 26 and 27).

Crane brakes must be monitored throughout the workshift. If they are unable to hold the load, the crane must not be used. If cranes are used in tandem, a designated person (see definitions) must direct the operation with special emphasis on positioning, rigging and movement.

Subpart G—Cargo Handling Gear and Equipment Other than Ship's Gear

Proposed Subpart G applies to all cargo handling gear utilized in cargo operations that is not part of the vessel (ship's gear). Proposed §1918.61 is very broad in its coverage. In paragraph (a) it stipulates that all gear and equipment brought aboard a vessel must be inspected before and during its use by the employer or a designated person to determine its condition. If, upon inspection, an unsafe condition is found, the gear must not be used until deficiencies are corrected.

Proposed paragraph (b)(1) is carried over from the current longshore rules and requires that the Safe Working Load (SWL) of the gear not be exceeded. Proposed paragraph (b)(2) is new. This paragraph requires the marking of the SWL on special stevedoring gear with a safe working load (SWL) of over five short tons. OSHA believes that this is a basic requirement (Ex. 1–151), and that most gear in use is already marked with the SWL on it.

Paragraph (c), which is similar to the current language, stipulates that the weight of any article of stevedoring gear that exceeds 2,000 pounds (1 short ton) must be plainly marked with the weight of that article before being hoisted by the ship's gear. Examples of such stevedoring gear are container handling lifting frames and certain multi-point engagement bridles. It is important to consider the weight of such articles when evaluating safe working loads of the ship's cargo gear. This is because the weight of the gear must be added to the weight of the load being lifted to determine the actual load, which together cannot exceed the SWL.

Proposed paragraphs (d) and (e) remain unchanged and address certification and certification procedures.

Proposed paragraph (f) addresses special stevedoring gear fabricated of components that are not common, off-the-shelf type items. For example, gear room constructed spreader bars for heavy lift cargo, special lifting devices for unique pieces of cargo, or bar pallet bridles will have some components that are not marketed or purchased with a specific cargo handling use in mind. Such certification must be performed in accordance with paragraphs (d) and (e) by an agency accredited by the Department of Labor under 29 CFR part 1919 before being put into use. Also, all intermodal container spreaders that are supplied by the stevedore for hoisting afloat shall be similarly inspected, tested, and certificated. Special stevedoring gear with a SWL of five short tons or less can continue to be inspected and tested as a unit by a designated person.

OSHA is also proposing that all cargo handling gear covered by §1918.61(f) with a SWL greater than 5 short tons be inspected and proof load tested every four years in accordance with the chart found in paragraph (f) of this section. This inspection and proof load test may be done by an agency accredited by the U.S. Department of Labor under 29 CFR part 1919, or it can be done by a designated person.

This change to the existing longshore regulations parallels similar requirements found in 29 CFR part 1917, Marine Terminals. For consistency between the two parts, OSHA is proposing in this rulemaking, to change §1917.50(b)(5) to reflect the 5 long ton exemption that is being proposed in §1918.61 and to require the periodic testing of special stevedoring gear and container spreaders every four years by a designated person, shoreside as well as shipside.

OSHA feels that this will provide additional protection for those employees that use special stevedoring gear and will eliminate any confusion that may currently exist by requiring special stevedoring gear with a SWL greater than five long tons and spreaders supplied by the employer to be inspected, tested, and certificated whether it is used by shore-based material handling equipment or by cargo handling gear afloat.

Proposed §1918.62 covers all miscellaneous gear that is not part of ship's gear, such as all slings, shackles, hooks, blocks and pallets (loose gear), employed aboard a vessel for use in cargo handling operations. The hazards addressed by this section are those generally associated with an employee's being struck by falling objects, i.e. dunnage, gear or cargo, when the gear fails. The provisions in this section helps to assure that loose gear used in the longshoring operation is both adequate in strength and size and in good enough condition to safely perform the operation. To foster uniformity, the Agency proposes the same requirements for miscellaneous gear as required in shoreside cargo handling at 29 CFR 1917.42. (See 46 FR 4194 and 48 FR 30895 for a full discussion of the rationale for these provisions.)

OSHA proposes a comprehensive system of tables (See Appendix II) that will be utilized in the event that manufacturer's recommendations/certificates are not immediately available at the worksite for safe working load assessment. The tables are primarily based on ASME B30.9–1990 (Slings). (Ex. 1–148), as well as requirements applying to wire rope clips and shackles currently contained in the Agency's rules for Marine Terminals. It is OSHA's position that the manufacturers's recommended use and safe working load criteria, given the wide universe of international fabrication of all miscellaneous gear, are the most reliable factors to utilize in determining safe usage. However, the Agency appreciates that certificates or manufacturers' use recommendations may not be instantly available in certain circumstances. For instance, when inbound pre-slung drafts of cargo are ready for discharge at a given port, certificates or use recommendations might not be found aboard the vessel. Because such pieces of miscellaneous gear are not "ship's gear," it is likely that no data on them will appear within the ship's collection of certificates. Likewise, such gear cannot be properly classified as "stevedore supplied gear," for the stevedore will not have known the characteristics of the slings until the hatch section is actually observed. In these circumstances, the tables found in Appendix II can be relied upon to provide a realistic safe working load.

In accordance with I.L.O. recommendation 160 (Ex. 1–8), OSHA, in proposed requirement §1918.62(h)(5)(ii), has added wording to prohibit the use of wrought iron in new parts of lifting appliances or loose gear. As a practical matter, wrought iron is rarely seen on vessels that are trading today. However, as with many of the regulations in this rule that have reduced application, there is the possibility that such conditions may still exist, and for that reason the relevant standards are being left in the proposal. OSHA invites the public to comment on this matter.

Finally, a new paragraph is proposed to be added, (g)(2)(vi), that adds an additional criterion to cause a synthetic web sling to be removed from service. If warning threads or markers that the manufacturer has designed to indicate excessive wear or damage are visible, than the sling must be removed from service. Proposed §§1918.63 and

1918.64 provide requirements for the use of chutes, rollers and both gravity and mechanically powered conveyors. OSHA proposes to bring into part 1918 the requirements that cover such pieces of equipment within the shoreside (29 CFR 1917.48 and 1917.49) rules. In this manner, no regulatory disparity will exist with equipment that often physically originates on shore and extends onto the ship. (See 46 FR 4208 and 48 FR 30900 for a full discussion of the rationale for these provisions as adopted in the Marine Terminal standard.) Notable among the changes brought about by bringing those shoreside rules aboard vessels, is the requirement that powered conveyors be locked out and tagged during most maintenance, repair, and serving. Also, that same procedure would be required in most situations that require the removal of a jam or overload on the powered conveyor system.

Proposed §1918.65 covers the use of all mechanically powered vehicles brought aboard vessels to conduct or assist in cargo handling operations. Included in this category of equipment are all industrial trucks and all bulk cargo moving vehicles. In that these same vehicles are similarly utilized in the shoreside aspect of marine cargo handling, the hazards are essentially the same. These would include, among others, exceeding the safe working capacity of the vehicle; cargo falling on the operator either from stowage on the vessel or from being handled by the vehicle itself; improper maintenance which could lead to unsafe operation of the vehicle; and the falling hazards associated with the lifting of personnel by mechanically powered vehicles. Therefore, OSHA has proposed to track the requirements found in §1917.43 that are applicable to this class of equipment. (See 46 FR 4197 and 48 FR 30896 for a full discussion of the rationale of these provisions as adopted in the Marine Terminal standard.) Additionally, the Agency is proposing a requirement for roll-over protection on bulk cargo moving vehicles (such as the type used to trim and position bulk cargo in underdeck spaces). Such protection is required on similar pieces of equipment used in construction industry settings, where the hazard posed by turnover also exists. OSHA seeks comment on whether this provision provides adequate protection shipside and whether similar protection is needed shoreside.

OSHA is proposing, in §1918.65(g), that vehicles purchased after the effective date of the final rule shall be equipped with parking brakes. OSHA believes that, although most older equipment may not be equipped with parking brakes, equipment that is currently being manufactured is generally equipped with such brakes. A parking brake is especially important when working Ro-Ro type vessels where the ramps can have a steep grade.

Proposed §1918.66 covers all cranes and derricks which are not part of a vessel's permanent cargo handling gear, but are placed aboard a vessel temporarily to conduct cargo operations. As an example, mobile and crawler type cranes are at times positioned upon barges and thereupon transported to locations adjacent to a vessel to load and discharge cargo. Given that these hoisting devices are identical at both the shoreside and shipboard location, the hazards associated with the operation of this equipment are basically the same. These would include, among others, exceeding the safe working capacity of the crane or derrick; improper operation; improper maintenance; exposed mechanical moving parts; falling hazards associated with lifting personnel; and crushing hazards. Therefore, OSHA has relied upon its rules for cranes and derricks found in 29 CFR 1917.45 to provide regulatory consistency to the marine cargo handling industrial sector. (See 46 FR 4201 and 48 FR 30897 for a full discussion of the rationale of these provisions as adopted in the Marine Terminal standard.)

In one obvious departure from the foregoing principle, the Agency has chosen not to propose requirements for load indicating devices within this section for shipside cargo handling. Usually such devices rely upon boom radius (outreach) as a component determinant in arriving at a load indication. When afloat, however, boom radius can be compromised by load and stability factors, resulting in indications that are not accurate. OSHA seeks comment from interested persons as to whether this approach provides adequate safety. In addition, the Agency solicits comment on alternative means of preventing overloads of cranes used aboard ships. Are there reliable alternate devices (that do not use radius as a central component in arriving at a load indication) that are sufficiently developed to accurately indicate the weight of the load? Would load moment indicators provide equal or better protection. Are some systems more precise than others? What other procedures could be employed to prevent overload conditions?

Additionally, proposed §1918.66(c)(2) requires that the hoisting mechanism of cranes and derricks, when being used to hoist personnel, shall operate in the power up and power down mode with automatic brake application when stopped. This provision is similar to the requirements found in the personnel hoisting section of the OSHA Construction standards at 29 CFR 1926.550(g)(ii)(D). Earlier OSHA had proposed such a rule for all cranes in the Marine Terminal Proposal (46 FR 4237) but comments and other record evidence convinced OSHA that, at the time, this would be infeasible for mobile cranes. The final Marine Terminal standard, promulgated in 1983, therefore, only applied this provision to overhead and container gantry cranes.

However, in 1988, OSHA issued its Construction standard for Crane or Derrick Suspended Personnel Platforms, (29 CFR 1926.550(g); 53 FR 29116). This rulemaking reexamined the feasibility of the controlled load lowering provision and, based on the record evidence, OSHA determined that controlled load lowering was both feasible and necessary when using cranes to hoist employees. For a detailed discussion, see 53 FR 29122.

In light of these findings, OSHA is proposing to include the controlled load lowering provision in this part, and to amend part 1917 (§1917.45(j)(2)) to cover all cranes and derricks, including mobile cranes. OSHA wishes to emphasize that hoisting employees by crane is *not* a safe practice and should be used only where other means are not feasible. OSHA solicits comment on this issue.

Proposed §1918.66(c)(3) is a new requirement has also been taken from the from OSHA's Construction Safety standards applicable to hoisting personnel. This requires that a crane used to lift personnel be equipped with an anti-two block device. This is a device which prevents the hoist block from coming into contact with the head block of the boom. Such "two-blocking" can occur when the operator is not paying attention to how high the hoist block is in relation to the head of the boom. After contact, continued hoisting of the block can cause the block to separate from the load line, or break the load line itself, causing the hoist block and load to fall. OSHA feels that this requirement is necessary to prevent serious injury or death to employees being hoisted by a crane. In the 1988 construction rulemaking, this requirement was also found to be both necessary and feasible.

Proposed §1918.67 carries over the exact requirements currently found in OSHA's Longshoring rule at §1918.75. Paragraphs (a) and (b) both provide that the employer must obtain permission from the officer in charge of the vessel whenever internal combustion or electrically powered tools, equipment or vehicles are brought aboard, and whenever the ship's power is needed for operating the employer's electrical tools or equipment. These requirements are prudent, in that such employer-provided equipment may be incompatible with vessel systems and could lead to electrical and ventilation problems, among others.

Proposed §1918.68 provides for the effective grounding of all portable electrical equipment, such as saws, drills, grinders, etc., through a separate equipment conductor that either runs with or encloses both circuit conductors. This represents a clarification of the current rule. Double-insulated tools and battery-operated tools are excluded from the requirements.

Proposed §1918.69 is a section titled "Tools." The current requirements with the same title are found in §1918.72, which addresses the safety devices that are required on portable tools, generally, and portable circular saws specifically. OSHA believes that the current OSHA General Industry standards, subpart P, titled "Hand and Portable Powered Tools and Other Hand-Held Equipment" comprehensively address the subject of portable tools. The hazards presented by these tools in this industry are no different than in general industry. Rather than repeating these requirements here, OSHA has decided to reference them in this proposal.

Subpart H—Handling Cargo

Proposed Subpart H specifically covers the cargo handling process. These sections (§§1918.81–89) address the hazards encountered by longshore workers while loading and unloading cargo. The primary hazards involve situations where the employee falls or is struck by cargo during the operation. In this subpart, OSHA is proposing to retain many of the rules currently found within subpart H of the current Longshoring standards (part 1918); to carry over applicable regulatory language from the Agency's rules for the shoreside segment of marine cargo handling (part 1917); and to add new requirements to account for occupational situations that are both unique to the shipboard workplace setting and up to date in their coverage of intermodal transport systems.

Sections 1918.81 through 1918.84 address those hazards common to the handling of break bulk (or general) cargo. They require proper slinging, building, bulling and stowing drafts of cargo in order to prevent cargo from coming loose from the draft and falling on or tipping over on workers.

Proposed paragraph (a) of §1918.81 is a general requirement for safety in the hoisting of slung drafts (loads hoisted by a sling or slings). Many factors can result in an unsafely slung draft. For instance, the wires of the sling may be placed on or around the cargo in a manner that causes a load to become unstable once it is hoisted. Such a situation can be recognized and effectively handled simply by rearranging the placement of the sling. Also, multi-tiered drafts are sometimes hoisted in a very unstable condition that is caused by one tier resting off center of another. Even a slight slacking of the gear can cause drafts slung in this manner to come apart. Readjustment of such drafts before hoisting can easily remedy that unsafe condition.

Proposed paragraph (b) requires that slings attached to the lifting gear for handling more than one draft in succession be positively engaged to the hoisting system. This is usually accomplished by shackling the bridle (or sling) directly into the falls. Mousing (closing off) the throat of the cargo hook assembly, is not permitted.

Proposed paragraph (c) provides protection for a common hazard encountered in break bulk cargo operations; that of being struck by sliding pieces of cargo or dunnage (shoring materials) that fall from the draft while in transit. There are at least two ways to correct such a situation: the first is to reconfigure the sling so that the top layer of the cargo is effectively engaged; the second is to secure the potential "sliders" to themselves (by banding them, for instance) or to the more substantial part of the draft.

Proposed paragraphs (d), (e), and (h) are virtually identical to the current rules but are modified somewhat for clarity. Proposed paragraphs (f) and (g), on the other hand, are derived from the Marine Terminal standard which address the hoisting of "unitized loads." Unitized loads are loads that are banded or strapped together into a unit. Hoisting hazards with such loads occur when the bands are used to hoist the load but were not designed to do so; and when hoisting is performed when the banding is damaged. (See full discussion at 46 FR 4189.)

Proposed paragraph (i) requires that loads not be hoisted unless the crane or winch operator can clearly see the draft at all times, or, alternatively, can clearly see the signals given by a signal person who is observing the draft. This is particularly important in that many break bulk vessels in current use and under construction are being fitted with revolving deck cranes. When using booms rigged in union purchase (the rigging of two booms together to be used as one lifting unit) the position of the boom head (and thus the location of the load's ultimate place of landing) is predetermined, rarely changed, and fairly reliable. By contrast, in using deck cranes, the position of the boom head can be varied easily. Loads, therefore, can be landed at many more locations, causing increased exposure of personnel to being struck by loads. Effective signaling requires a clear observation of the load by the signalperson and of the signalperson by the operator.

Proposed paragraph (k) provides that the employer must require employees to stay clear of the area beneath overhead drafts or descending lifting gear. The employer is obligated to train certain employees in correct and safe procedures associated with the job, and to require that employees adhere to the well established and enforced work rules that are contained in that training. (See full discussion at 46 FR 4194.) OSHA is also proposing to include the same language in the Marine Terminal standard in §1917.13(h).

Proposed paragraph (l) prohibits riding of the load or the cargo engaging means. This precludes the utilization of any cargo or any cargo engaging device (hook, clamshell, grapple, etc.) as a personnel conveyance. This proposed paragraph does not cover, however, the riding of loaded intermodal container spreaders, which is addressed in §1918.85(g). In accordance with proposed §1918.23(b), specific latitude is afforded longshoring operations taking place on the Mississippi river system, where the use of a personnel basket may be used. However, careful consideration and consultation with the Agency is important in the exercise of that latitude.

Proposed §§1918.82 and 1918.83 (a) and (b) address the hazards of cargo becoming inadvertently dislodged from an improperly built draft or improper stowage and falling or shifting, thus striking workers. The language is virtually identical to the current longshore rule. §1918.83(c), however, addresses a different hazard—losing workers in the hold of a ship. Such a hazard is greatly enhanced when the worker is working alone or in an isolated area, such as in tanks or cargo compartments. Also, workers surrounding grain could be lost in the cargo. To deal with these hazards, the proposed and current rules require an employee check-in, check-out system or frequent checks thereby accounting for the safety of employees working in these conditions.

Proposed §1918.84 addresses the "bulling" of cargo. Bulling is the horizontal dragging of cargo (across a deck space) with none of the weight of the cargo supported by the hoisting wire(s). In practice, this procedure is accomplished with power generally provided by the cargo winch (with the hoist runner led out through the heel block), and then to an angled system of "fairleads" that provide mechanical advantage in achieving a horizontal pull on the cargo. The paragraphs that comprise this section are all taken from the current part 1918 regulations, but have been somewhat clarified and reordered into a more logical sequence. They are also covered (in part) within the NYSA-ILA Safety Code (Ex. 1–2) and the PCMSC (Ex. 1–145).

Proposed §1918.85 applies to containerized cargo operations of any form. The proposed paragraphs track both the current Longshoring standards of part 1918, as well as the shoreside requirements found in the Marine Terminals rule (part 1917). In summary, each intermodal container (see definition at §1918.2(h)) must be marked with its gross, net, and tare (empty) weights. Generally, containers must be weighed *before* being hoisted aboard a vessel, to arrive at an actual gross weight. No container is permitted to be hoisted aboard a vessel if its actual gross weight exceeds either the maximum gross weight marked on the container or the safe working load of the gear that is being utilized to load the ship. In the case of containers coming from foreign ports, container weights must be determined by utilizing data provided in shipping documents or, as is most often the case, by weights shown on cargo stow plans.

Proposed paragraph (b) addresses the topic of overloaded intermodal containers. This issue has raised a good deal of international concern (Exs. 1–120, 1–121, 1–122, 1–123, 1–124, 1–125, 1–126). The proposed provisions largely reflect the current rules in both the Longshore and Marine Terminal standards. OSHA feels that the protection afforded by its rules as they pertain to outbound (export) containers, namely that with few exceptions all are weighed before hoisting, will permit very few overweight loads going out from U.S. ports. The reliability of manifested or stow plan weights of containers coming into U.S. ports, however, appears to be in serious question as documented by the previous exhibits. The question then becomes, whether there is a better method of determining the actual weights of these containers, and how should such a method be implemented in the standards. The Agency requests interested persons to submit comment into the record concerning both as to the Agency's perception of the problem, and what better regulatory approach OSHA may take in seeking resolution. For instance, instead of relying upon the proposed language of this section, should OSHA require that container handling gantry cranes (currently exempted from the rule requiring a load indicating device—§1918.74(a)(9)(viii)) be fitted with such a piece of equipment?

In addition, a new proposed §1918.85(b)(6) has been added as a result of OSHA Instruction STD 2.2 dated July 3, 1989 (Ex. 1–114). Prior to the issuance of this instruction, the rule required closed containers loaded only with automobiles to be weighed. This instruction (and the language of this paragraph) allows closed dry van containers that have been loaded with vehicles to be loaded onto a vessel without being weighed on a scale. By contrast, other loaded containers, other than open top containers and containers solely used for the carriage of compressed gases, have to be weighed on a scale before being loaded onto a vessel. The reasoning behind the Instruction and this paragraph is that the weight of the vehicles inside a container will not exceed the net weight that the container itself is designed to carry. There are, however, three conditions that must be met in order for this exception to apply. First, the container must only contain assembled vehicles and no other cargo; second, the container must be marked on the outside so that an employee can readily discern that the container is carrying vehicles; and finally, the vehicles must have been loaded at the marine terminal. This paragraph is also to be proposed to be put into the Marine Terminal standard as 29 CFR 1917.71(b)(6).

Proposed paragraph (d) addresses the hazard of handling a defective container. Although existing §1918.85(d) addresses the inspection of both outbound and inbound containers for visible defects, the proposed language does not mention the limitation of outbound or inbound. With regard to outbound containers, the hazards associated with handling a defective container are effectively covered by §1917.71(g) of the Marine Terminal standard. In this paragraph, OSHA chooses not to limit the inspection requirement to only inbound containers since certain other containers, including possibly defective ones, may need to be shifted in order to discharge an inbound container. Since a defective outbound container can create an identical hazard to the worker as does a defective inbound container, this proposal makes no distinction between the two. Finally, the provisions for handling a defective container remain the same as the current requirements: special safe handling or emptying of the container.

In proposed paragraph (e), the Agency would require that employees be required to stay clear of the area beneath suspended containers. Accidents of an extremely serious nature have occurred in recent years (Ex. 1–37, 1–87) that highlight the need to propose this provision. Additionally, the Agency has such a requirement in its shoreside rules (§1917.71(d)(2)).

Proposed paragraph (f) on lifting fittings contains identical language to that found in the Agency's shoreside rules (§1917.71(f)). Discussion is warranted, however, on the need to apply paragraph (f)(1)(i) on board ships. Often, particularly in below deck stowage on conventional break bulk vessels, it may be tempting to utilize ship's gear or shoreside mobile cranes and rig four leg bridles with hooks (engaging the four top corner castings) to facilitate easier stowage. In handling loaded containers, this practice is dangerous and is prohibited. The International Cargo Handling Coordination Association (ICHCA), has published a paper entitled "The Safe Handling of ISO Freight Containers with Hooks * * *" that clearly outlines the inherent dangers of this practice (Ex. 1–13) as well as methods to accomplish stowage safely in such situations. Additionally, other international standards exist (Exs. 1–115, 1–116 and 1–117) that recommend that loaded containers only be lifted vertically when being handled from the top. Any method of lifting containers that is not vertical places undue stress which could lead to failure of the container. OSHA believes that this regulatory approach is well taken and reasonable.

In proposed paragraph (g), the Agency requires that a safe means of access and egress be provided to each employee who, due to the nature of the work, must work atop stowed containers—both above and below deck. In practice, most employees gain such access by riding aboard safety platforms installed on container crane lifting frames. Such means are permissible when conducted in a manner consistent with design requirements found in the shoreside rules (§1917.45(j)). While the shoreside rules already apply whenever a shore-based crane acts as the personnel conveyance, this proposed paragraph (which incorporates by reference the shoreside design criteria) provides for the same requirements to apply whenever shipboard equipment carries out the same function.

Proposed paragraph (h) applies on vessels so equipped, to any loaded intermodal container spreader. It is well known throughout the industry that there are significant risks associated with riding a loaded container spreader. "Free falls" (or the unintended release of a container from a spreader), although infrequent, occur only while under load (Exs. 1–25 and 1–26). Additionally, having riders aboard a loaded spreader adds to the responsibilities of the crane operator, and whose attention is already occupied with the task of getting the containers to their intended location. The Agency is proposing a similar prohibition for the shoreside aspect of marine cargo handling (part 1917) as part of this proposal, proposed §1917.45(j)(9).

In proposed paragraph (i), OSHA would require (when safer methods are available) that ladders not be used to gain access to the tops of containers that are stowed greater than two high. The Agency deems gaining access by means of a properly designed and conveyed personnel platform (such as those often found on intermodal container spreaders) as being safer than employing ladders in climbing to heights that can attain 50. ft or more (Ex. 1–10).

Proposed paragraph (j) covers the hazard of falling from the tops of intermodal containers. This hazard has long been recognized by the stevedoring industry as both extremely dangerous and difficult to prevent.

Although constituting a small percentage of the total number of shipboard accidents in the United States, falls from the tops of containers have resulted in a number of serious occupational injuries and fatalities (Exs. 1–18, 1–19, 1–20, 1–21, 1–22, 1–23, 1–24, 1–43, 1–67, 1–68, 1–100, 1–108). As early as 1968, U.S. terminal operators recognized the need to improve container top safety. Matson Terminals, Inc., in conjunction with their parent ocean operator, Matson Navigation Company, developed the first system of container top fall protection within the worldwide intermodal network (Ex. 1–53). In that system, Matson provided for a "D" ring fixture to be installed within the roof of each company-owned intermodal container. Employees working aloft were provided with a safety belt and lanyard that could be secured to the "D" ring anchorage. For a number of reasons, use of the system proved to be difficult, and it is not widely used today.

In 1970, OSHA's predecessor agency, the Bureau of Labor Standards, was contacted by the Coast Labor Relations Committee of the International Longshoremen's and Warehousemen's Union, who raised this issue specifically. In their letter of August 24, 1970 (Ex. 1–50), the Coast Committee asserted:

> Consider if you will the dangers attendant to working atop containers. They are not equipped with skidproof surfaces, there are no protective railings, and there are no requirements that safety belts be provided. In dry warm weather such work is dangerous enough, but the dangers are critically compounded when workers must labor atop these during windy and wet weather. At the very least, BLS regulations ought to provide that * * * safety belts be [required] for men working aloft.

As the containerized transport revolution progressed during the 1970's and into the 1980's, and intermodal containers become more common in the cargo handling trades, container top exposures increased proportionately. At that time, there was no specific container top safety provision in the Longshoring standards. The Agency issued citations under the General Duty Clause (Section 5(a)(190) of the Act and §1918.32(b) of OSHA's rules for Longshoring (Exs. 1–139). The latter provision states, in the context of applying to stowed cargo and temporary landing platforms:

> When the edge of a hatch section or stowed cargo more than 8 feet high is so exposed that it presents a danger of an employer falling, the edge shall be guarded by a safety net of adequate strength to prevent injury to a falling employee, or by other means protection equal protection under the existing circumstances.

Although there were questions regarding the applicability of §1918.32(b) to container operations, it was determined that the provision did indeed have application to container top on-deck exposures. In an Instruction to the Field (CPL 2–1.17) dated August 30, 1982, the Agency's policy on the issue was spelled out (Ex. 1–49). In that instruction, OSHA determined that although the §1918.32(b) provision applied, there would be situations where the abatement of the container fall hazard was not feasible. In such situations, the instruction noted:

> A violation (of §1918.32(b)) shall not be issued; however, OSHA should recommend and encourage the employer to work toward a solution and assist the employer in every way possible to effect a means of protection by advice, consultation and dissemination of information obtained during other inspections.

With the onset of containerized cargo handling, it became necessary to secure containers (not placed in cell guides) to each other to prevent unintentional movement during transit. To achieve this stability, workers placed stacking cones in the corner castings of the container ("coning") while the containers were being loaded on the ship. While the containers were unloaded from the ship, workers removed stacking cones from the corner castings of the container ("deconing"). The original stacking cones were replaced in the early 1970's by conventional twistlocks which eliminated the need for some lashing but still required workers to climb on top of the containers to place or remove them. Today twistlocks are the most commonly used fitting for securing freight containers onboard vessels (Ex 1–140). Semi-automatic twistlocks, developed in the mid 1980's, eliminate the need for some lashing but also eliminate the need for workers to go on top of the containers for the purposes of coning and deconing. While some work performed on container tops remains unaffected by the use of SATLs, most of the work that would otherwise require workers to go atop containers could be eliminated. The use of these devices could, effectively, "engineer out" exposure to container top falling hazards.

Industry efforts to find feasible methods for container top fall hazard abatement received a significant impetus when, on June 27, 1985, Longshore Division members of the International Longshoremen's and Warehousemen's Union (ILWU) called a work stoppage that put at a standstill all container operations at the ports of Los Angeles and Long Beach, California. The work stoppage (Ex. 1–42) punctuated the ILWU's concern over a series of work related deaths that occurred over a 14-month period. Although only one of these occupational fatalities was attributable to container top exposure, the labor union insisted that an effective work rule to minimize the hazards associated with container top work be instituted, and asserted that such a work rule was central to averting a continued work stoppage.

On July 1, 1985, the ILWU and the Pacific Maritime Association (PMA), acting as management's representative, agreed upon a package of 25 work rules that were specifically designed to enhance safety at container terminals. That successful management and labor agreement led to the resumption of work.Internationally, a number of national and multi-national organizations are aware of and have

acted upon the problem. The International Labor Organization, in its Code of Practice for Safety and Health in Dockwork (Ex. 1–130) specifically requires that:

> A person gaining access to the top of a container should be adequately protected against the danger of falling, e.g., by appropriate by wearing a suitable safety harness properly tethered, or by other effective means, whilst on the container.

In its Directions for Safety in Dockwork, the National Swedish Board of Occupational Safety and Health (Ex. 1–131) provides, in pertinent part, that

> Work on top of a container is only permissible if measures have been taken to prevent falling down.

In the Netherlands, the Inspectorate of Dock Labor notes (Ex. 1–34) that:

> For general containertop [sic] safety in most cases the recommendations of I.L.O. and ICHCA are followed.

In the port of Hamburg, Germany, a "lash basket" designed by a dockworker (Ex. 1–45) rides underneath the container spreader and moves between container stows, minimizing containertop exposures. Also, in the port of Bremerhaven, a specially designed "rigger box," which is similar in configuration to some U.S. designs, protects dockworkers who go on top of containers in that port (Ex. 1–52).

In the wake of a fatal accident that occurred in a New Zealand port in 1979, the New Zealand section of ICHCA responded by conducting and publishing a study, entitled: "Container Top Safety—An Overview" (Ex. 1–46). In that study, ICHCA analyzed the problem and a number of possible solutions, among them having the employee tethered to a fixed anchorage. Other tentative solutions arrived at by a number of worldwide locales were also discussed.

OSHA believes that longshore workers who work on container tops are exposed to fall hazards that can cause serious injury or death. Containers are typically stacked from one to nine below deck and one to six above deck. The loading and unloading procedures typically require a worker to place and remove container stacking alignment cones in and from the container's corner castings. This means that workers performing these tasks are regularly exposed to falling hazards of up to 90 feet (27.3 m).

Within the last few years, advances have been made in the technology of securing intermodal containers which have had a dramatic effect on container top safety. The use of positive container securing devices or systems, such as semi-automatic twistlocks (SATL) and above deck cell guides, can nearly eliminate the need for workers to work on the tops of containers thereby eliminating the falling hazard. Although OSHA has participated in an ongoing dialogue with industry, labor, the international cargo handling community, and others interested in how these technologies can improve worker safety, actual record evidence is somewhat limited. However, OSHA's information does include a comprehensive study prepared by a safety expert under contract to OSHA that addresses the hazards associated with containerized cargo handling (Ex. 1–139); an ICHCA Safety Panel Research Paper addressing the use of semi-automatic twistlocks (Ex. 1–140); a time-and-motion study comparing the use of conventional twistlocks (also referred to as manual twistlocks) with semi-automatic twistlocks (Ex. 1–141); safety information produced by the United Kingdom (U.K.) addressing jammed container fittings (Ex. 1–142); an article published by a U.K. terminal association that addresses the freeing of jammed twistlocks (Ex. 1–143); and a newsletter from an insurance company addressing container twistlocks (Ex. 1–144).

The ICHCA study is the most comprehensive study on the SATL experience (Ex. 1–140). This study defines SATL at page 3 as follows:

> Semi-Automatic Twistlock (SATL)—A twistlock which will automatically engage in the locked position when the locking mechanism has been triggered by the weight of the container as it is landed onto another container or deck foundation.

Since prototypes were first developed in Japan in the mid 1980's, manufacturers around the world have made improvements on the design which enhance both durability and reliability. (Id.) In fact, the ICHCA study indicates the existence of approximately 22 different models of SATLs (Id. P. 6). Manufacturers indicate that, with proper use and maintenance, the average lifespan of the SATL in the marine environment would be about the same as a conventional twistlock—about 10 years (Id. p. 59).

As indicated in both the ICHCA study (Id.) and the OSHA study (Ex. 1–139), the use of SATLs is widespread throughout the world and the United States. In fact, OSHA estimates that over 25 percent of ships calling in U.S. ports are already utilizing SATLs. Proponents of the use of SATLs argue that the device avoids accidents and saves money. Unlike conventional twistlocks, which must be inserted by workers on top of the container and manually locked, semi-automatic twistlocks are inserted into the bottom of the container by workers standing on the dock and lock automatically when placed upon another container. Both SATLs and conventional twistlocks can be unlocked by workers standing on the deck of the ship using an actuator pole. In the case of unloading with the conventional twistlock, the upper container is then removed leaving the twistlocks on the top of the lower container. The major operational distinction is that workers must remove conventional twistlocks from the top of a shipboard container before the spreader can attach to the corner castings, while the SATL is designed to remain attached to the bottom of the container being unloaded. SATLs are then removed by workers standing on the dock. This operation using SATLs, therefore, eliminates worker exposure to falling hazards. Finally, proponents argue that the use of SATLs enhances productivity and reduces lashing costs (Ex. 1–140, p. 76; Ex. 1–141). In fact, a time-and-motion study that compares the performance of conventional twistlocks to that of SATLs indicates an increase in productivity in the range of 25 to 29 percent. This translates to a 11.1 percent reduction in stevedoring costs (Ex. 1–141, p. 4 and 5; Ex. 2). To the extent that this study is representative of all container cargo handling operations affected by this rule, it indicates substantial reductions of fall hazards by the use of SATLs. OSHA seeks comment from interested parties including any additional data or studies that address this issue.

As indicated above, another advancement in securing containers in transit that eliminates the need for workers to go on top of containers is the development of above deck cell guides. Cell guides are rigid, structural members that form cells where containers are stowed. These cell guides allow for the ready placement of containers in a manner that prevents movement once so placed. Although cell guides in the hold are common in container ships, above deck cell guides are far less common, constituting only 2 percent (Ex. 2, pgs 2–19) of container ships calling at U.S. ports.

In addition, OSHA is aware of the existence of positive container securing devices other than those discussed above, such as the SeaLand framing system (Ex. 1–57). OSHA believes that use of the term "positive container securing devices" is broad enough to allow for innovative technological improvement.

While the use of SATLs is the most widespread method of positively

securing containers that eliminates the fall hazard, OSHA is aware of certain problems that have been encountered with their application, use and design. (Ex. 1–140, 1–142, 1–143,1–144). The Agency is working closely with those international standards setting organizations responsible for developing design and use specifications. In this rulemaking, OSHA solicits relevant information regarding the use of SATLs.

Proposed §1918.85(j) addresses the hazards associated with working on the tops of containers. In keeping with OSHA's hierarchy of controlling hazards, this paragraph requires the use of feasible engineering controls. In proposed paragraph (j)(1) a definition for "fall hazard" is provided in a footnote. The definition seeks to narrow the elevated work surfaces where fall hazards exist in order to reflect the reality of a changing work surface. A longshore worker working on the top of containers for the purpose of loading or unloading a layer of containers is working on an elevated work surface that can increase or decrease at the rate of 320 square feet (29.4 m^2) every few minutes. OSHA believes that such a rapidly changing elevated work surface is unique to this industry. For example, five 40-foot containers stowed side by side present a work surface of approximately 40 foot (12.2 m) by 40 foot (12.2 m) (1600 square feet)(147.2 m^2). According to this definition, falling hazards (absent weather considerations) only exist within 3 feet (.92 m) of the perimeter or 3 feet (.9 m) by 148 feet (45.1 m) (444 square feet) (40.8 m^2). By contrast, the hazardous area on top of a single container is 252 square feet (23.4 m^2) of the 320 square feet (29.4 m^2). The definition makes it clear that it is the unprotected edge where the hazard exists, and not necessarily the entire work surface. Additionally, any gap of 12 inches (.31 m) or more on a horizontal surface formed by containers is considered an unprotected edge and a falling hazard would exist under this definition. (For further discussion of the gap issue see 51 FR 42685 and 53 FR 48186). Finally, OSHA believes that any work within 3 feet (.92 m) of the unprotected edge constitutes a hazard (See Ex. 1–139).

Another important element of this definition is the vertical distance necessary to constitute a fall hazard. OSHA believes that, in this industry and in this work operation, 10 feet (3.0 m) is the appropriate vertical distance. There are several considerations that leads OSHA to this conclusion. The height of the overwhelming majority of intermodal containers range from 8 feet (2.4 m) to 9½ feet (2.7 m) (Ex. 1–139). Therefore, an employee working on top of a one-high container where the surface is less then 10 feet (3.04 m) would not, by definition, be exposed to a fall hazard. However, such containers are usually worked off ladders, not the top. Also, if such a container is stowed on a raised surface, such as a hatch cover or pedestal, that puts the top of the container at 10 feet or over, then any workers on top would, by definition, be exposed to fall hazards. The unique working surface in this operation coupled with heightened awareness of the longshore worker and the absence of accident data at this distance further assures OSHA that 10 foot is the appropriate height.

OSHA is aware that an opposing view exists. Labor is of the opinion that OSHA should make this vertical height 8 feet (2.4 m) to be consistent with the proposed requirement §1918.32(b) where a fall hazard is considered to exist over 8 feet (2.4 m) when handling non-containerized cargo (Ex. 1–150). OSHA wishes to fully assess all factors attendant to this issue, and solicits all pertinent views and data on the appropriate height for fall protection.

Two final considerations in the definition of a fall hazard are with regard to the elements and the "adjoining surface." When weather conditions are such that the vision or footing of workers on top of containers is impaired then a fall hazard will, by definition, exist. The proposed standard requires such workers to be protected by fall protection, regardless of the fall distance or their proximity to the edge. OSHA notes that unsure footing on container top work surfaces created by oil or grease is addressed in the housekeeping section, §1918.91, of this proposed standard. In addition, in the Marine Terminal standard, OSHA defers to adverse weather conditions by prohibiting terminal crane operations in high-wind conditions (§1917.45(g)).

The other consideration involves the measurement of the vertical distance from "the adjoining surface." Informal discussions between OSHA staff and various affected parties have indicated concern that this phrase must be carefully defined in order to avoid confusion in the maritime community. An enforcement concern is a that vertical height measurement might be made from the elevated surface to an adjoining surface which would not be the landing surface in the event of a fall. Should the term, "adjoining surface" be further clarified by adding either performance or specification language? For example, the term could read, "adjoining landing surface (in the event of a fall)"; or "adjoining surface with a minimum 8 by 8-foot area (2.4 m by 2.4 m)." OSHA solicits comment on this issue.

In view of the recent technological improvements in positive container securing devices indicated above, OSHA feels that many work operations, notably coning and deconing, that exposed workers to container top fall hazards can now be eliminated. As noted above, SATLs have proven to be particularly effective when container gantry cranes are utilized (Ex. 1–140). In fact, the use of these devices in these circumstances can, in most instances, eliminate the need for workers to go on top of containers. In light of this, three years after the date of publication of this proposal, proposed §1918.85(j)(1) would prohibit the performance of any work, notably coning and deconing, on top of containers that can be eliminated by the proper use of these devices. OSHA has estimated that over 25 percent of ships calling at U.S. ports already utilize SATLs (Ex. 2). Since it is OSHA's policy to allow a reasonable time to come into compliance with final standards, the proposed compliance date for the implementation of engineering controls would be three years.

OSHA is optimistic that exposures to container top fall hazards will significantly decrease with the expanded deployment of positive container securing devices worldwide. At the same time, the Agency is sensitive to the magnitude of a phase-in process for SATLs. Consequently, OSHA is proposing a lengthy effective date of this section of three years from the date the proposed standard is issued. Consonant also with the Agency's policy, OSHA will continue to disseminate information to employers and employees in this industrial sector, as to how other operations throughout the nation and the world are approaching the problem.

OSHA recognizes that positive container securing devices will not entirely eliminate the need for workers to go on the top of containers. Certain container placement or securing tasks, in addition to coning or deconing, must be performed. In these situations (e.g., securing bridge clamps or releasing jammed twistlocks), a comprehensive fall protection program must be implemented.

Where cranes other than container gantry cranes are used to handle containers, OSHA recognizes that the use of SATLs may not be feasible. Precise placement capabilities of a container gantry crane are far superior to other lifting devices, thus facilitating the use of SATLs. This enhanced capability is due to the four point

suspension system of the gantry crane, which provides greater stability and control of the container being handled, enabling the crane operator to place the container without assistance. Container operations where the spreader is suspended from a single point, on the other hand, have far less stability and control and typically requires the assistance of other employees in the placement of containers. In these circumstances, employees can frequently be exposed to fall hazards. In light of the discussion above, even when the use of SATLs is feasible when other than gantry cranes are being utilized, the need for employees to work on container tops in the handling of containers may not be eliminated. Therefore, OSHA would not require the use of positive container securing devices when containers are not being handled by container gantry cranes.

Nonetheless, there is nothing in the proposed standard that would prohibit an employer from employing SATLs where a single point suspension is in use. However, under these circumstances, SATLs in the container being placed have been shown to jam or puncture the top of the container below with improper alignment (Ex. 1–140). OSHA solicits all pertinent views and information on all issues.

With regard to the feasibility of fall protection, OSHA recognizes that, in this industry, there may be particular instances when even fall protection may not be feasible. An example of circumstances where fall protection may not be feasible is the placement of an overheight container on a chimney stow using gear that requires the manual release of hooks. In these situations the proposed standard requires the employer to:

1. Make a determination that an employee will be exposed to a fall hazard but that the use of fall protection is not feasible;

2. Alert the exposed employee about the hazards involved; and

3. Instruct the exposed employee how to best minimize the hazard.

OSHA wishes to emphasize that such a situation is not common and that when they occur, the burden is on the employer to fully comply with these requirements prior to the actual exposure. In fact, the OSHA study indicated that a "specific set of circumstances could not be framed" where fall protection might not be feasible (Ex. 1–139, p. 1). Furthermore, situations that will be considered infeasible for fall protection will be narrowly construed in the enforcement context. A footnote in the standard refers to non-mandatory Appendix III which provides examples of situations where it may be considered infeasible to use fall protection. Where feasible, however, OSHA will require that fall protection be provided.

Proposed §1918.85(k) establishes the technical requirements necessary to provide a fall protection system that is tailored to the handling of containers. Most of the requirements in this paragraph are basic to any occupationally related fall protection system. These include all of the paragraphs with the exception of (k)(7) and (k)(10), and are based on the PCMSC (Ex. 1–145), American National Standards Institute (ANSI) consensus standard Z359.1–1992 and the OSHA standards §§1910.66 and 1926.104. Essentially, these requirements address the design, selection, care and proper use of a personal fall protection system. In addition, §1918.85(k)(7) and (10) have been specially crafted for the container top situation. Paragraph (k)(7) addresses the situation where a container gantry crane, or its extension, is being used as the anchorage point for the fall protection system in use. Under these circumstances, the crane must be placed in the slow speed mode and equipped with a remote shut-off switch in the control of the tied off employee. In addition, an indicator must be present to inform the employee when the remote is operational. OSHA seeks comment on whether the indicator should reflect that both the slow speed mode and the remote shut-off are operational.

The other proposed requirement unique to this work operation, paragraph (k)(10), addresses the situation where the employee is being transported by a device, such as a safety cage, attached to a container gantry crane spreader. Such a device is required to have a means of attachment to the spreader in place in addition to the primary attachment mechanism of the spreader (hydraulic twistlock mechanism) to prevent accidental disengagement. OSHA is aware of several instances where accidental disengagement of a load has occurred (Ex. 1–25, 1–26). This secondary means of attachment is intended to minimize the potential for injury if accidental disengagement were to occur.

A final issue for discussion in this section is Paragraph (k)(13) where an employee retrieval procedure in the case of a fall must be established. It has been suggested that local emergency response personnel be consulted in the development of this procedure in order to assure that rescue or retrieval efforts do not exacerbate any injury. OSHA believes that such a consultation would be prudent.

OSHA invites comment on all issues related to container top safety and encourages the submission of relevant views and information.

Proposed §1918.85(l) addresses container operations that require employees to work along unguarded edges other than on container tops. In these situations, fall protection meeting the requirements of paragraph (k) of this section must be provided where the fall distance is greater than 8 feet (2.4 m). This primarily addresses work operations such as lashing or locking and unlocking twist locks from other surfaces, or signalling to direct the placement of containers. Frequently, this work operation requires employees to work in elevated positions that remove the fall protection that would have normally been provided by the ship's coaming or railings. OSHA recently investigated a fatality where an employee fell 34 feet (10.3 m) from a lashing platform that was inadequately guarded (Ex. 1–149).

Proposed §1918.86 is a new section that addresses operations aboard vessels that accommodate Ro-Ro (Roll-on/Roll-off) traffic. The emergence of Ro-Ro vessels is a fairly recent development and were not addressed in the current rules. Along with container operations, this section proposes new provisions that address advances in modern technology in the marine cargo handling industry. Examples of such vessels are car carriers, which facilitate the import and export automobile trades, and stern or side port combination carriers, which provide water carriage for wheel mounted as well as containerized cargo. Commonly such vessels are fitted with ramps that extend to the dock or wharf, and are fitted with ramps internally or, alternatively, are fitted with cargo elevators (lifts). In this manner, cargo is either driven through the vessel from deck to deck until reaching its final stowage location, or hoisted by cargo elevator to its proper deck and then driven to its final stowage location. Once positioned in its stowage location, the wheeled cargo is lashed to securing fittings that are provided on the deck. In such operations, lashing personnel are exposed to being struck by vehicular traffic. In addition, other workers involved with loading or unloading wheeled cargo, both drivers and pedestrians, are exposed to traffic hazards. OSHA is aware of a number of accidents (Ex. 1–78, 1–89) that are attributable to this process, wherein employees are interspersed with vehicles in a closely confined,

marginally illuminated and poorly traffic managed space.

In proposed paragraph (a), OSHA would require an organized system of traffic control to be established and maintained at each entrance and exit ramp. The confluence of vehicular and pedestrian traffic in Ro-Ro operations, and thus the area where substantial accident potential is most pronounced, is the area on and around access ramps. With this mode of cargo carriage on the increase, accident potential is expected to increase proportionately. Ramps inside the vessel, although generally not as congested as ship-to-shore access lanes, must also be addressed by the traffic control system if they experience a periodic traffic flow that warrants such control. In developing this rule, OSHA considered positions taken by the International Labor Organization in their Code of Practice for Dock Work (Ex. 1–106), which provides that:

> A system of movement control of vehicles used in loading and unloading ships should be effectively and continuously applied.

In assessing other national requirements, the Agency found that Sweden in its Dock Work Directions issued by the National Board of Occupational Safety and Health (Ex. 1–136), also requires that:

> A traffic guard shall be stationed wherever motor vehicles need to be directed, e.g., on roll on-roll off ramps, narrow wharves and places where there is traffic crossing and the view is limited.

Clearly, shipside traffic control is just as necessary as it is in the shoreside environment. In OSHA's preamble to the Marine Terminals standard, the Agency emphasized (46 FR 4200) in its assessment of the importance of traffic control at the shoreside marine terminal setting:

> * * * the importance of these practices to employee safety cannot be over estimated.

Given the close relationship between shoreside and shipboard vehicular utilization, it is appropriate that OSHA's rules addressing the two be complementary.

Proposed paragraph (b) addresses the hazard of exceeding the capacity of the ramp used to transfer cargo. As a result of ramp failure, the likely injury to occur is drowning or being crushed in the vehicle. Ramps must be plainly marked with their load capacity and these capacities must not be exceeded (Ex. 1–5).

Proposed paragraph (c) provides protection for employees that use the ship's ramp for access. In such situations, OSHA proposes that a physical separation, i.e., a barrier, be provided to separate the employee and the vehicles. Often vessels are fitted out in this manner (Ex. 1–84). However, should it be the case that a particular vessel is not so fitted, it is a matter that is easily rectified. When the design of the ramp prevents physical separation of pedestrians from vehicles, a signalperson shall direct traffic, and shall not allow concurrent use. Additionally, OSHA proposes to require that such ramps utilized for pedestrian access be fitted out in the same manner as would a traditional pedestrian gangway (see §1918.21).

Proposed paragraph (d) requires that ramps be properly maintained and secured. This is consistent with §1918.24(b) which addresses maintaining and securing portable ramps.

Proposed paragraph (e) recognizes that in many of the modern generations of Ro-Ro vessels, internal ramps are elevatable. Such a construction feature allows for multiple access destinations, depending upon the placement of the ramp. If a ramp is placed in such a manner as to allow access to a given deck, thereby creating a void in another access route (that could perhaps lead to a substantial drop or fall), this paragraph provides that the incomplete route be clearly identified and barricaded. OSHA has investigated at least one (Ex. 1–86) occupational fatality in which this circumstance was apparent.

Paragraph (f) requires that all brake air lines be connected and tested prior to commencing operations. The proper operation of brakes is necessary when operating inside a Ro-Ro vessel that typically has ramps with steep grades.

Proposed paragraph (g) requires that flat bed and low boy trailers be marked with their cargo capacity and not be overloaded. These operations typically employ the use of trailers not designed for over-the-road use such as low boy trailers (sometimes referred to as "mafi's") that allow access to low deck height spaces found in Ro-Ro vessels.

Proposed paragraph (h) is analogous to OSHA's current weight requirement for intermodal containers. It would require that cargo to be handled via the ship's ramp be either marked with its weight or have such weight clearly marked in a written record.As a practical matter, vessel stow plans most always contain such data.

Proposed paragraph (i) requires tractors to have sufficient power and braking capacity to safely operate on Ro-Ro vessels.As previously noted, this is especially important in negotiating tight spaces and steep grades on Ro-Ro vessels.

Proposed paragraph (k) would require that internal combustion engine vehicles only be operated when adequate ventilation exists or is provided. It also provides guidance in determining acceptable levels of air contaminants generated by the internal combustion process, by referring the reader to the appropriate section of this part and part 1910, subpart Z (which is referenced in subpart A of this proposal In most situations, the vessels themselves are fitted out with ventilation systems at all decks. It has been the Agency's observation that a number of purpose built Ro-Ro vessels possess ventilation systems that function remarkably well (Ex. 1–72). monitoring ambient air for various air contaminants as well as explosive properties.

Proposed paragraph (l) would require that cargo be secured to prevent sliding loads. This addresses the specific hazard of cargo falling off trailers while in transit on Ro-Ro vessels.

Proposed paragraph (m) would require that authorized persons, equipped with high visibility vests (or equivalent protection), be the only employees permitted on any deck where Ro-Ro operations are being conducted. Requiring only high visibility vests (or equivalent protection) and eliminating the allowance of using decals or reflectors is a departure from what has been allowed in the Marine Terminal standard. As is noted in Section VI of this preamble, OSHA proposes to eliminate the allowance of decals or reflectors in §1917.71(e) because of problems experienced with the use of decals, reflectors, and similar items. The reflective area of a decal on a hard hat is obviously less than that of a vest. Also, the reflective value is lost during daylight hours or whenever the wearer takes off the hard hat. A number of serious accidents (Exs. 1–78, 1–89) have occurred in the past due to the nature of the work involved in such cargo operations. This paragraph, along with the signalling requirements in proposed paragraph (n) that follow, are expected to enable employers to avoid vehicle-related accidents onboard ships. Paragraph (n) addresses signalling requirements for maneuvering vehicles into stowage positions while other personnel are in the adjacent vicinity.

In proposed §1918.87, OSHA sets out requirements for the utilization of shipboard elevators (lifts). Elevators are most common on a number of different Ro-Ro and Combination carrier vessel designs. The hazards addressed by this section are cargo falling from an improperly loaded elevator; and from wheeled cargo or employees falling into

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open spaces in the deck created by a moving elevator. In approaching the issue of elevator usage, the Agency remained mindful of foreign vessel design prerogatives. Consequently, the four paragraphs proposed within this section, are protective of U.S. longshore workers obliged to use such installations, but are not expected to have an impact on any other nation's vessel designs.

In summarizing this section, OSHA would require that safe working loads of elevators be determined and adhered to. As a "lifting appliance," shipboard elevators are part of a complement of gear that comes under considerable discussion in ILO Convention No. 152 (see discussion of Subpart B—Gear Certification). As such, shipboard installations of elevators will require certification of safe working loads as well as the posting of elevator capacity. In practical terms, the employer's responsibility with regard to this paragraph is relatively simple to discharge. The requirement for evenly distributing the weight(s) to be lifted, particularly when considering the various drive mechanisms providing power to the elevator platforms, is an important provision.

Proposed paragraph (c) also is an important requirement that, while allowing the driver of a vehicle to remain at the vehicle's controls, prohibits other persons from riding the elevator to other decks. Of necessity, the sides of many shipboard elevators are unguarded while in transit. Riders, therefore, would be exposed to falls from sometimes significant heights. The ILO's Code of Practice for Dock Work (Ex. 1–107) addresses this issue in much the same manner.

In proposed paragraph (d), OSHA addresses a problem that both this Agency and the earlier Labor Standards Bureau have recognize as needing attention (Ex. 1–82). This provision would require that if fall hazards are created by open decks during the operation of shipboard elevators, the decks shall be barricaded. OSHA believes that under current international practice most installations will already be effectively guarded. In those situations, however, where the installation falls short in providing this safeguard, the employer must take the initiative in acquiring and effectively utilizing the required barrier protection.

Proposed §1918.88, "Log operations," as previously mentioned in the preamble discussion of proposed §1918.38 "Log rafts," is also an entirely new section addressing the hazards associated with loading logs from the water into a vessel. This is a particularly hazardous operation both because of the location where it occurs (on the water) and the nature of the cargo. Logs that are loaded from the water usually have been in the water for a long period of time, causing them to absorb water. The extra water adds to their weight and also loosens the bark, making the log surface very unsure and slippery. The proposed provisions of this section have been taken from both existing longshore regulations and from the ILWU-PMA Pacific Coast Marine Safety Code (PCMSC) (Ex. 1–145). In addition, these new requirements are supported by record evidence developed by OSHA personnel in Region 10 (Ex. 1–146).

Proposed paragraph (a) is taken from PCMSC Rule 417 (Ex. 1–145) and addresses the hazards associated with unstable logs that could be in the hold of a vessel creating a situation where employees could be injured or killed should the logs shift. Employees must not be in spaces in the hold when and where logs being loaded could strike them.

Proposed paragraph (b) addresses the hazard associated with the physical condition of the log surface, which may be slippery if there is no bark, or otherwise hazardous if the bark is loose and slides off the log as the employee is stepping on it. Employers must provide appropriate footwear to employees that have to climb on the log. Such footwear typically are spiked, also known as "caulked" shoes, may be styled like a sandal that attaches to existing footwear, and specifically designed for working logs (Ex. 1–146, pp.13–14).

Proposed paragraph (c), which is taken from the current longshore 1918.96(f), requires that lifelines be furnished and hung over the side when working log booms or cribs.

Proposed paragraph (d) is also taken from the current longshore regulation §1918.23(c), and requires that a Jacob's ladder be provided for each gang when working a log boom. However, in accordance with the provision in proposed §1918.23(c), no more than two Jacob's ladders are required for each log boom being worked.

Proposed paragraph (e) has also been taken from the current longshore regulations, §1918.96(e), and requires that a U.S. Coast Guard approved life ring with at least 90 feet (27.4 m) of line be in the vicinity of the work area.

The final paragraph, (f), requires that a rescue boat be available when employees are working on log rafts or booms. This requirement is similar to that found in Rule 638 of the PCMSC (Ex. 1–145). This addresses the hazard of employees falling into the water while loading logs and being carried away by the river current and possibly drowning. The requirement of a rescue boat would allow an employee who falls into the water to be quickly rescued.

Much of the proposed language in this section is based on rules found in the Pacific Coast Marine Safety Code (PCMSC) (Ex. 1–145), which has been negotiated by the Pacific Maritime Association and the International Longshoremen's and Warehousemen's Union. In addition, OSHA believes that the proposed requirements reflect the current safe industry practice.

OSHA requests comment from the public concerning the completeness of these proposed regulations pertaining to handling logs from the water.

Proposed §1918.89, addressing hazardous cargo, is carried over from the existing Longshore standard (§1918.86). The same language is found addressing this issue when at shoreside cargo handling operations (§1917.22). Proposed §1918.89 and the Hazard Communication rule that is referenced in the "Scope and Applicability" paragraph, §1918.1(b)(6), complement one another in covering employee notification and procedures for handling hazardous cargo. OSHA requests comment from the public on whether §1918.89(a) and (c), and similar language in §1917.22(a) and (c) is repetitious in light of the Hazard Communication rule, keeping in mind that HazCom is referenced in both Parts. (In addition, the exposure of employees to toxic and hazardous substances is addressed in subpart B of part 1917, in proposed subpart I of part 1918 and in subpart Z of part 1910.)

Subpart I—General Working Conditions

In 1987, OSHA extended the coverage of the Hazard Communication standard (HazCom) (29 CFR 1910.1200) to all employers with employees exposed to hazardous chemicals in their workplaces. As a result, subpart I of part 1918 was amended to include the requirements of that standard as §1918.90. Basically the HazCom standard requires such employers to provide information to their employees concerning hazardous chemicals by means of hazard communication programs. These programs would include the use of labels, material safety data sheets (MSDS), training and access to written records. In addition, distributors of hazardous chemicals are required to ensure that containers they distribute are properly labeled, and that a material safety data sheet is provided to their customers.

On August 24, 1987, OSHA, in expanding the coverage of this rule, also made certain revisions that address the handling of sealed containers of hazardous materials, such as is usually done in longshoring work. Specifically, OSHA stated at 52 FR 31861:

> There are a number of work situations where employees only handle sealed containers of chemicals, and under normal conditions of use would not open the containers and would not expect to experience any measurable exposure to the chemicals. Such work operations include, for example, warehousing, retail sales, *marine cargo handling*, and trucking terminals. (Emphasis added.)

OSHA recognized, nonetheless, that even under these circumstances, the potential for a hazardous exposure could occur.

> It is reasonable to assume, however, that all such containers are subject to leakage and breakage, and these employees are in fact potentially exposed by virtue of the presence of these hazardous chemicals in their workplaces. Because of this potential exposure, they need information to protect themselves form the hazards of these chemicals in the event such an emergency situation occurs. (Id.)

Proposed §1918.90 consists solely of a cross-reference to the Scope and Applicability section of the proposal, specifically §1918.1(b)(6), which references the Hazardous Communication standard, §1910.1200. OSHA has decided to reference the Hazard Communication standard in the scope section of this proposal as one of the part 1910 provisions applicable to longshoring. This would have no effect on either the enforceability or the applicability of HazCom to longshoring. OSHA proposes to do the same in the Marine Terminals standard (part 1917).

The primary HazCom obligations that apply to longshoring are found in §1910.1200(b)(4). This paragraph sets out the basic duties of employers: (1) not to remove or deface labels affixed to containers of hazardous chemicals; (2) to maintain and provide access to any MSDS's that are received for hazardous chemicals while the chemicals are in the workplace; and (3) to obtain an MSDS when one is not received but an employee requests one. In addition, the employer must train employees in accordance with the provisions of the rule to ensure they are protected in the event of a spill or leak. The Agency seeks comment on this different approach.

Proposed §1918.91 addresses housekeeping. In assessing the types of accidents that most occur in shipboard cargo handling, one fact has remained constant: many involve slips, trips, and falls (Exs. 1–14, 1–73). Housekeeping factors cause a substantial number of such accidents. Staying with the principle of providing a uniform regulatory approach to shipboard and shoreside occupational safety and health, OSHA proposes, in this section, to bring into part 1918 those applicable provisions of part 1917 that cover the same hazards on shore. Those remaining provisions, which are vessel-specific, would be retained from the current part 1918. In addition, OSHA considers lashing gear that is used with containers, roll-on, roll-off cargo, and, in particular, automobiles, to be "equipment," as referred to in paragraph (a).

Proposed §1918.92 provides illumination requirements for cargo handling work aboard vessels. Here again, OSHA remains consistent with its shoreside rules in requiring 5 footcandles (average) (54 lux) of illumination at cargo operations. In proposing this standard, OSHA believes that it will not only remain uniform with its shoreside rule (§1917.123), but also remain consistent with good illumination safety principles. (Ex. 1–152)

In crossing from one location to another, in this case shore to ship, it is a well-recognized safety practice to provide uniform lighting. On this topic, the American National Standard practice for Industrial Illumination (ANSI/IES RP–7–1991) (Ex. 1–152) states the following:

> Alternate areas of extreme luminance differences are undesirable because it tires the eyes to adjust to them.
> .... uniformity permits flexibility of functions and equipment and assures more uniform luminances.

Proposed paragraph (c) would require that lighting provided aboard ship does not shine into the eyes of personnel in key positions of cargo control, such as crane and winch operators. Certainly it is extremely important to allow a clear and unencumbered view to those that are in control of the cargo transit. With the same principle in mind, it would also be required that stationary lights (those not mounted on vehicles) on Ro-Ro vessels not shine into the eyes of drivers. In addition, the proposed requirements for portable lights and entry into dark areas closely parallel the provisions in the existing standard.

Proposed §1918.93, Hazardous atmospheres and substances, is designed to provide protection from atmospheric hazards which are not specifically addressed in other proposed sections. In as much as these hazards are virtually identical to those found in marine terminals, the language of this section largely tracks the requirements found in §1917.23. Since the promulgation of the Marine Terminal standard, OSHA has promulgated a Permit-Required Confined Spaces standard for General Industry (58 FR 4462, Jan. 14, 1993). Since both the Marine Terminal and Longshoring standards currently addressed hazards associated with confined spaces, OSHA did not intend the General Industry standard to apply to these workplaces. However, OSHA also had planned, in its ongoing development of this longshore proposal, to conform the relevant longshore requirements to the more explicit and protective marine terminal requirements. Furthermore, this approach is consistent with the vertical nature of these maritime standards.

The use of the phrase "the employer is aware" that a hazardous condition exists means that the employer is or should be aware of the hazardous condition. This section establishes requirements for the determination of the hazard, the testing during ventilation, and the procedures for entry into hazardous atmospheres. In addition, the hazards associated with emergency entry, inadvertent entry and asbestos spills are also addressed.

Proposed §1918.94 provides requirements for ventilation and atmospheric workplace conditions. Proposed paragraph (a) specifically addresses the hazards associated with carbon monoxide (CO) aboard ship. Longshoring work frequently involves the use of internal combustion-powered equipment to facilitate the stowage and removal of cargo. This equipment would include fork lift trucks, bulk cargo movers and the cargo itself (vehicles on Ro-Ro ships). Occupational fatalities and disabling illnesses still appear on the waterfront (Exs. 1–76, 1–77, and 1–81) due to high levels of (CO) accumulating from these sources in cargo spaces.

Currently OSHA's limit for (CO) in General Industry, Construction, and Shipyards is 50 ppm as an 8-hour TWA. The limits in Marine Terminals and Longshoring are a 50 ppm and, in confined spaces, a 100 ppm ceiling. The ACGIH–1986 has a TLV®-TWA of 50 ppm and a TLV®-STEL of 400 ppm for (CO) (Ex. 3–8). NIOSH (Ex. 3–21) recommends an 8-hour TWA limit of 35 ppm and a 200 ppm ceiling. For both Longshoring and Marine Terminals, OSHA is proposing to lower the PELs for CO to 35 ppm (8-hour TWA) and is proposing a 200 ppm (ceiling, not to exceed over 5 minutes) in outdoor, non-enclosed spaces. OSHA is proposing to retain the 100 ppm ceiling for CO in enclosed spaces in Marine Terminals and Longshoring. NIOSH concurs (Ex.

3–2) that the proposed limits are appropriate.

Carbon monoxide is a flammable, colorless, practically odorless gas. It is used as a reducing agent in metallurgical operations, in the manufacture of metal carbonyls and zinc-based white pigments, and as a chemical intermediate. Most occupational exposures to this ubiquitous substance are the result of the incomplete combustion of organic material (HSDB 1990; Ex. 3–18).

Carbon monoxide has caused a large number of industrial fatalities as a result of its tendency to combine readily with hemoglobin to form carboxyhemoglobin (COHb). The Immediately Dangerous to Life and Health (IDLH) level for carbon monoxide is 1500 ppm (Ex. 3–3). At levels above this, workers quickly lose consciousness; if exposure is not terminated immediately, death by asphyxiation follows quickly.

In experimental animals, asphyxiation occurs when the air-borne concentration of CO exceeds 3 percent (30,000 ppm) (HSDB 1990). CO also causes reproductive and developmental effects in animals. The LD_{50} in rats is 1807 ppm for 4 hours (Ex. 3–4).

Excessive accumulations of COHb cause hypoxic stress in healthy individuals as a result of the reduced oxygen carrying capacity of the blood. In patients with cardiovascular disease, such stress can further impair cardiovascular function. A number of studies show that 8-hour TWA exposures to 50 ppm carbon monoxide generally results in COHb levels of 8 to 10 percent. Such levels are not generally associated with overt signs or symptoms of health impairment in healthy individuals with strong cardiovascular systems who are working under nonstressful conditions. However, the ACGIH believes that a TLV®-TWA of 25 ppm, which results in COHb levels of 4 percent or less, may be necessary to protect workers with cardiovascular disease, because this condition places workers at higher risk of serious cardiovascular injury (Ex. 3–8, p. 1106). The NIOSH REL of 35 ppm TWA is also aimed at protecting workers with chronic heart disease (CHD); NIOSH believes that such workers should not be allowed to have carboxyhemoglobin levels that approach 5 percent. In the part 1910 air contaminants rulemaking, several commenters questioned the need to lower the 8-hour TWA and to add a STEL. In response to these commenters, OSHA quoted the ACGIH (Id.):

> Each molecule of CO combining with hemoglobin reduces the oxygen carrying capacity of the blood and exerts a finite stress on man. Thus, it may be reasoned that there is no dose of CO that is not without an effect on the body. Whether that effect is physiologic or harmful *depends upon the dose of CO and the state of health of the exposed individual.* The body compensates for this hypoxic stress by increasing cardiac output and blood flow to specific organs, such as the brain or the heart. When this ability to compensate is overpowered or is limited by disease, tissue injury results [emphasis added].
>
> Exposure to CO sufficient to produce COHb saturations in the 3-5% range impairs cardiovascular function in patients with cardiovascular disease and in normal subjects. * * * The primary effect of exposure to low concentrations of CO on workmen results from the hypoxic stress secondary to the reduction in the oxygen-carrying capacity of blood. * * * Workmen with significant disease, both detected and undetected, may not be able to compensate adequately and are at risk of serious injury For such workers, a TLV of 25 ppm * * * might be necessary. Even such a concentration might be detrimental to the health of some workers who might have far advanced cardiovascular disease. * * * It would appear to the Committee that the time-weighted TLV of 50 ppm for carbon monoxide might also be too high under conditions of heavy labor, high temperatures, or at high elevations (Ex. 3–8).

Thus, the ACGIH also regards a lower limit for CO as necessary to protect workers with cardiovascular or pulmonary disease or those working under stressful conditions.

OSHA believes that it is clearly necessary to set a CO level that protects workers who have CHD because (1) a large percentage of employees have it, (2) it is often not diagnosed or diagnosable, and (3) it is frequently fatal. The 35 ppm 8-hour TWA is designed to protect employees with asymptomatic CHD. The term CHD is generally used to refer to the process of atherosclerosis of the coronary arteries, which leads to disturbances in the myocardial blood supply.

The general worker population in the United States is composed of a very significant number of persons with CHD. Since the identification of such persons in the absence of overt clinical symptoms is virtually impossible, it is necessary to assume that the average worker has asymptomatic CHD, especially when his/her first clinical symptom may be sudden death (Ex. 3–1). Several studies demonstrate the significant risk associated with CO exposure, particularly with respect to coronary heart disease. A study of firefighters in Los Angeles (Ex. 3–10) suggests that CO exposure during firefighting may be responsible for the high incidence of heart disease in firefighters. In some fires, peak exposures were occasionally as high as 3000 ppm CO, with 40 percent of peak values in the 100-to 500-ppm CO range. However, in some fires, the peak CO exposure was below 100 ppm. Although these peak exposures in firefighters were high, firefighters are likely to be exposed overall for fewer hours than the workers of concern in this rulemaking.

A prevalence study was recently performed on angina pectoris, ECG changes, and blood pressure that involved 1,000 workers from 20 foundries (Ex. 3–11). A clear dose-response was found with regard to the prevalence of angina (as obtained by history on a World Health Organization-recommended questionnaire) and CO exposure in workers (both smokers and nonsmokers).

NIOSH conducted a prospective cohort mortality study among 1,558 white male motor vehicle examiners who were employed in New Jersey for a minimum of 6 months between 1944 and 1973 (Ex. 3–12). Industrial hygiene surveys indicated that the examiners were exposed to carbon monoxide at a time-weighted-average (TWA) of 10 to 24 ppm. Using a modified life table technique, the expected deaths were compared to the expected deaths through August 1973. The overall deficit of mortality observed (SMR180) in this occupational cohort during the first 10-year period was to be expected as a result of the widely accepted "healthy worker effect." However, the component SMR for cardiovascular disease deaths (134) was unexpected, since the "healthy worker effect" had been most significantly associated with decreased cardiovascular disease mortality (Ex. 3–13). This evidence suggests that slightly elevated COHb may contribute to excess cardiovascular disease rates in a healthy population that is of average fitness (since the work is not physically hard).

A recent study (Ex. 3–14) reviewed the epidemiological evidence for an association between carbon monoxide and heart disease and concluded that carbon monoxide exerts acute and possibly reversible short-term effects that can increase the risk of cardiovascular disease.

In another recent study, male volunteers aged 35 to 75 with stable exertional angina pectoris and positive exercise treadmill tests were exposed to CO concentrations designed to cause 2.2 to 4.4 percent COHb levels after exercise. The subjects performed a symptom-limited exercise test on a treadmill, followed by exposure for 1 hour to CO, and then performed a second treadmill test. All subjects who completed the study (N=63) showed significant decreases in time to onset of ischemic ST-segment changes; in the 2 percent COHb group, this change

equalled 5.1 percent, and in the 4 percent COHb group it averaged a 12.1 percent decrease (Allred, Bleecher, Chaitman, Dahms, Gottlieb, Hackney et al. 1989, in Res. Rep. Hlth. Effect. Inst 25:79).

As pointed out above, cardiovascular disease (detected or undetected) and pulmonary impairment are widespread in the general population in this country, in workers as well as other sub-populations. In addition, OSHA is particularly concerned about the adverse effects of CO because workers regularly encounter complex and stressful situations at work, including heat stress, jobs demanding heavy exertion, and tasks requiring both judgment and motor coordination. OSHA standards are intended to protect workers of average and below-average fitness and those who engage only intermittently in heavy physical labor and who do not therefore receive the benefit of physical conditioning.

OSHA thus has determined that, in Longshoring and Marine Terminals, the proposed 8-hour TWA of 35 ppm for carbon monoxide is needed to reduce the significantly increased risk of cardiovascular disease that is associated with overexposure to CO. The Agency also believes that a ceiling of 200 ppm in outdoors, non-enclosed spaces is necessary to ensure that peak CO exposures are kept below the 1500 ppm IDLH level by a reasonable safety factor. The ceiling limit will also assist in keeping COHb levels below 5 percent; the ceiling will be measured over 5 minutes to permit the use of simpler monitoring techniques.

Based on this evidence, OSHA is proposing an 8-hour TWA of 35 ppm and a ceiling of 200 ppm in outdoor, non-enclosed spaces as the PELs for carbon monoxide in the longshoring and marine terminal industries. In these industries, however, most employees regularly enter and work in a compartment, hold, or other enclosed space, in which CO levels can increase rapidly if uncontrolled. CO, therefore, presents an especially great danger of death from IDLH levels of CO. Consequently, OSHA is retaining the 100 ppm ceiling for CO in such spaces, as well as the provision requiring monitoring of these spaces. The Agency would continue to require that the employer monitor the ambient air within any cargo space where internal combustion engines discharge their exhaust. Therefore, when concentrations of CO in these enclosed spaces reach 100 ppm, work shall be suspended and the workers removed from the spaces. Work shall not resume until concentrations of CO, as determined by actual monitoring, have been reduced to within the allowable limits.

The Agency believes that these limits will ensure that the COHb levels of exposed workers (especially of non-smokers) in these sectors are maintained at or below 5 percent, which will protect those workers at greater risk because of cardiovascular or pulmonary impairment. In addition, these revised limits will protect healthy workers in the affected sectors who must work in environments involving intermittent exertion, heat stress, or other strenuous conditions. OSHA believes that these limits are necessary to substantially reduce the significant occupational risk associated with both chronic and peak exposures to carbon monoxide in the workplace. The hypoxic stress associated with exposure to carbon monoxide clearly constitutes a material impairment of health and functional capacity. For a more complete discussion of these health effects see 57 FR 26371.

If natural or vessel supplied ventilation is not sufficient to maintain levels within the allowable limits, the employer must utilize supplemental methods until such levels are reached (generally accomplished with portable blowers). It should be noted that the proposed requirement deletes the language "before work is resumed." This is to make the requirement reflect more clearly the actual industry practices being employed to control exposure to CO through the use of engineering controls. The longshoring work itself generates CO through the use of the loading equipment. In reality, then, it is not the circumstance that 100 ppm is routinely reached, the hold is cleared of workers, supplemental blowers are used to clear the air and then the workers return to work. Rather, when a sustained build-up of CO is detected, even at much lower levels, the supplemental blowers or other additional means are employed to maintain the exposures to within the allowable limits.

Portable ventilating equipment must be guarded to prevent employee injury, and they must be effectively grounded by a grounding conductor run with or enclosing the circuit conductors. In situations where portable ventilating equipment is run by vessel supplied power, the grounding conductor must be bonded to the structure of the vessel. Given the shipboard environment, careful attention must be paid to the electric cords of portable equipment, making certain they are not worn or otherwise unserviceable.

OSHA is proposing to retain the requirement for recording tests of the atmosphere. The stevedoring community is successfully using such testing logs as a frame of reference in assessing atmospheric conditions from one point in time to the next.

In proposed paragraph (b), OSHA addresses the longshoring hazards associated with handling grain that has been treated with fumigants. Grain is subject to infestation by insects and rodents during storage and shipping. Fumigants used to control infestation can be liquid or solid compounds that release poisonous gases and can be applied in the form of sprays, fogs or gases or by direct contact (Ex. 1–104).

> * * * these gases are harmful, possibly fatal, to humans as long as they remain potent. Therefore, they constitute a safety hazard from the time of application throughout the duration of their potency—which may last for several days. (Id. p.36)

Here, OSHA would require that the employer determine whether or not grain to be loaded or discharged aboard a vessel had been fumigated. Such a determination shall be based on direct communication with knowledgeable persons from both the grain elevator and the vessel.

When a cargo has been fumigated, an employer shall designate a person (see §1918.2(c)), who is thoroughly familiar with the characteristics of the fumigant being used and how to properly assess contaminant levels; fully aware of the manufacturer of the fumigant's use recommendations and warnings; and knowledgeable about the proper personal protective equipment which must be worn to safely guard against the possible effects of the fumigant. The designated person must test the vessel's compartments after loading begins, but before longshore employees (generally trimmers) enter. Subsequent tests must be made to ensure that fumigant concentrations to exposed personnel never attain levels that are beyond the allowable limits. Records of those tests are retained by the employer for a period of 30 days. Whenever the concentration in any compartment reaches the level specified as hazardous by the fumigant manufacturer or by subpart Z of 29 CFR part 1910, whichever is lower, all employees shall be removed from such compartments and shall not be permitted to re-enter until such time as tests demonstrate that the atmosphere is within allowable limits.

Consistent with §1917.25 of the Marine Terminal standard, during emergencies or while tests are being undertaken in compartments that have

hazardous or unknown concentrations of fumigant, the designated person entering the compartment must be properly outfitted with personal protective equipment, (See criteria at proposed §1918.94(b)(3)(v)), and must be observed while conducting such tests by two standby employees, who are themselves properly outfitted. The personal protective equipment used by the designated person and the observers, will be required to be readily available wherever fumigated grains are handled.

In situations where it is necessary to carry out insecticide or pesticide treatment of a localized nature, such as in rodent control, paragraph (b)(4) would require that employees conducting the treatment and those that may be exposed to the chemical(s) applied, be equipped with personal protective equipment that meets the specifications set out by the manufacturer of the chemical(s) being used.

In proposing these rules covering fumigated grain cargoes, the Agency has relied upon the existing rule for longshore employment (Ex. 1–39) but has also utilized the Agency's experience in promulgating the general industry Permit-required Confined Space standard (29 CFR 1910.146, 58 FR 4549), together with accident data (Ex. 1–104) relating to fumigated grain cargoes aboard ship. Finally, these rules are further supported by similar provisions found in the Pacific Coast Marine Safety Code (Ex. 1–145) and the U.S. Coast Guard's "Interim Regulations for Shipboard Fumigation," 46 CFR–147A (Ex. 1–105).

In proposed paragraph (c), the Agency proposes requirements for handling cargoes of fumigated tobacco. Tobacco cargoes, both ported and exported, are shipped most typically in bales, in hogsheads, and in intermodal containers. OSHA's proposed Longshoring requirements apply when cargoes are break-bulk, i.e., piece lots of bales or in hogsheads. When such cargoes are containerized, OSHA addresses employee exposure in the Marine Terminal standard (29 CFR 1917.25(g)).

In the case of break-bulk fumigated tobacco cargoes, the employer would be required to determine (by written notification) if the cargo has in fact been fumigated. If so, the employer would be further required to obtain a written warranty from the fumigator(s) that the cargo has been sufficiently aerated (concentration of fumigant is within allowable limits.) OSHA notes that this practice is currently in place at all longshore operations in the U.S. handling tobacco. In the case of containerized shipments of fumigated tobacco, OSHA is proposing new language that can be found in the proposed changes to the Marine Terminal regulations, §1917.25(g), which is part of this proposal and which is discussed in Section VI of this rulemaking.

Proposed paragraphs (d) and (e) remain virtually identical to the existing provisions. Paragraph (d) involves a work practice to discover hazardous exposures to fumigants of any cargo other than grain and tobacco while paragraph (e) involves the use of personal protective equipment to protect against heavy concentrations of dust.

Proposed paragraph (f) addresses operations aboard vessels engaged in the menhaden trade. Menhaden is a term that refers to several species of trash fish. Menhaden is used to produce, among other products, fertilizer, pet food and fish oil. (See 46 FR 4213.) As cargo to specialized menhaden marine terminals, menhaden presents a health hazard to longshore workers when it decomposes, generating hydrogen sulfide (H_2S). As recently as 1987, a hydrogen sulfide incident aboard a menhaden vessel led to serious injury and a fatality (Ex. 1–80). OSHA's current limit for hydrogen sulfide in Marine Terminals is 20 ppm as an 8-hour TWA; the current Longshore standard is silent with regard to both $H_2$2S and menhaden. The 1986 ACGIH TLV"s for hydrogen sulfide are 10 ppm as an 8-hour TWA and 15 ppm as a 15 minute STEL (Ex. 3–8); NIOSH has a 10-ppm, 10-minute REL for this substance (Ex. 3–3). OSHA is proposing an 8-hour TWA of 10 ppm in Longshoring and Marine Terminals with a STEL of 15 ppm. Promulgation of these PELs will make OSHA's limits for hydrogen sulfide consistent with the best available evidence on the hazards of H_2S exposure.

Hydrogen sulfide is a colorless, flammable gas with the odor of rotten eggs. It is widely used as a chemical intermediate, an analytical reagent, and in the manufacture of "heavy water" (H_2O_2) in the utilities sector. In agriculture, it is used as a disinfectant (HSDB 1985). It is also generated by the fermentation of animal manure. Many farm workers have been exposed to this substance while working in the vicinity of liquid manure storage pits and have been asphyxiated as a consequence (Ex. 4–1). Hydrogen sulfide also is encountered in natural oil and gas deposits and in sewers, caissons, tunnels, and other construction sites (Grant 1986, p. 495). When used in pesticidal applications and as directed on the label, this substance is regulated by the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In longshoring, the hazard is brought about by the generation of hydrogen sulfide gas, caused by the decomposition of the menhaden (and similar species) catch.

Hydrogen sulfide's effects on experimental animals are similar to those seen in exposed workers: conjunctivitis, pulmonary irritation, acute poisoning, and death by chemical asphyxiation (Ex. 4–2). The LD_{50} in mice is 673 ppm for 1 hour (Ex. 4–3). A number of experiments have demonstrated that exposure to hydrogen sulfide concentrations of 50 to 100 ppm for several hours (or sometimes longer) causes damage to the corneal epithelium of dogs, cats, rabbits, and guinea pigs; animals are believed to be somewhat less sensitive than humans to hydrogen sulfide's ocular effects but may be more sensitive to its pulmonary effects (Grant 1986, p. 1496).

When inhaled at concentrations exceeding 500 ppm, exposure to hydrogen sulfide has caused respiratory paralysis and death. Acutely poisoned individuals who recover may experience headaches, fatigue, dizziness, and nystagmus; eventually, however, recovery is usually complete (Ex. 4–4). The 1986 ACGIH *Documentation* (Ex. 1-3, p. 1316) cites several reports (Ex. 4–6) of the occurrence of adverse ocular effects, including conjunctivitis, caused by exposure to 20 ppm or less of hydrogen sulfide. A study by Poda and Aiken (Ex. 4–7) reports that the adoption of a voluntary limit of 10 ppm in two heavy-water plants eliminated exposure problems at those facilities. An early study by Flury and Zernik (1931f) reports that the conjunctivitis caused by the exposure of volunteers to 20 to 15 ppm of hydrogen sulfide for six hours endured for several days; however, this substance is not known to have caused irreversible eye damage. The author of the best-known general source on the toxicology of the eye (Grant 1986) states that "where the concentration [of hydrogen sulfide] is regularly kept below 10 ppm in air, it is rare to have any irritation of the eyes" (p. 1456). OSHA believes that the proposed STEL will ensure that concentrations are maintained close to the 8-hour TWA and that excursions above irritant levels are thus minimized.

Based on this evidence, OSHA believes that the current 10-ppm 8-hour TWA limit alone does not adequately protect workers in Longshoring and Marine Terminals against the adverse ocular effects associated with exposure to concentrations of hydrogen sulfide above 10 ppm. OSHA believes that the eye irritation and conjunctivitis associated with such exposures represent a significant risk of material health impairment to these workers because they may experience pain and other ocular effects and be forced to seek medical treatment after such exposures. OSHA is accordingly proposing an 8-hour TWA limit of 10 ppm for hydrogen sulfide with a short-term limit of 15 ppm in these parts 1917 and 1918. Based on available information, the Agency has determined that these limits are necessary to provide protection from the significant risk of exposure-related ocular effects, including conjunctivitis, corneal edema, and distortion of vision, associated with occupational exposure to hydrogen sulfide.

Since the hazard this paragraph seeks to avoid is brought about by the generation of hydrogen sulfide gas, caused by the decomposition of the menhaden (and similar species) catch, the requirements are not applicable to operations aboard vessels with operable refrigerated compartments used to hold the catch. Paragraph (f) requires that tests be performed before and during discharge, by designated personnel who are trained and competent in their understanding of the potential hazards involved within the catch hold(s). The test would include assessments of hydrogen sulfide and oxygen content of the atmosphere(s) within the hold(s). Employers would be prohibited from sending employees into the hold(s) unless the hydrogen sulfide level was kept below 10 parts per million on a time weighted average with a short term exposure limit of 15 ppm measured over a 15 minute sampling period. Oxygen levels must be maintained to at least 19.5 percent.

In arriving at these proposed requirements, OSHA utilizes information that supported similar requirements for the shoreside aspect of menhaden operations in the Agency's rules for Marine Terminals (§1917.73; See discussion at 46 FR 4213). Also, in the development of the proposed requirements, the National Fish Meal & Oil Association was clearly supportive of the proposed regulatory posture. In communications between that group and the Department of Labor, and in memoranda to the association's membership (Ex. 1–56), it is clear that industry practice is quite consistent with OSHA's proposal.

Proposed §1918.95 contains requirements for sanitary considerations at all longshoring operations. OSHA believes that the hazards associated with poor sanitation and sanitary practices are well established and need not be elaborated here. The proposed provisions are fully consistent with the current regulations for shoreside cargo handling (§1917.127), providing the uniformity that is necessary between the two segments of marine cargo handling. OSHA is proposing in both §§1917.127 and 1918.95 to include tables which specify the number of toilet facilities according to the number of employees at the worksite. This table has been taken from the sanitation section in OSHA's Construction Safety Regulations, 29 CFR 1926.51(c). OSHA requests the public to comment on the inclusion of this table in this proposal.

Summarizing the section, OSHA would require that employers provide their workers with washing and toilet facilities that are equipped with hot and cold (or tepid) running water; soap; clean hand towels (or warm air blowers); clean and functional toilets (that offer separate compartments with a latched door), and clean drinking water (with no common cups). The consumption of food or drink would continue to be prohibited wherever hazardous materials are stowed or being handled (see definition at §1918.2(g)). Additionally, cargo handling operations are to be separated (by barriers) from the vessel's uncovered refuse and, in the unlikely event of a sanitary line overboard discharge, from it as well. Since longshoring work is performed adjacent to a marine terminal, if the marine terminal's sanitation facilities are available for longshore employees' use, this would constitute compliance with §1918.95. (Section 1917.127, which covers sanitation at marine terminals, is virtually identical to proposed §1918.95.)

Because longshoring operations generally take place in a location with restricted space, i.e., aboard a ship, other non-associated but often necessary work (such as ship's maintenance and repair) must be conducted carefully, with due deference to the cargo handling being performed. In such circumstances, employees may be exposed to hazards associated with excessive noise leading to impaired communications, excessive light or heat from hot work, overspray from abrasive blasting or spray painting, or non-ionizing radiation. In OSHA's current rules for Longshoring (§1918.95), the Agency has prescribed requirements to account for the hazards that can be anticipated when maintenance and repair work are concurrently undertaken with cargo handling. Those same rules are proposed in §1918.95 (with very minor change) to be included in the revision of this part. Summarizing them, longshoring operations would be prohibited when noise produced by such concurrent work interferes with the communication of warnings or instructions; when falling objects could fall on cargo handlers from such work being conducted overhead; when welding slag, burning sparks or welding rod flash could injure cargo handlers; and when abrasive blasting or spray painting is being performed in the vicinity of cargo operations.

Additionally, OSHA is proposing to prohibit cargo handling operations where the employees are exposed to electromagnetic (non-ionizing) radiation that is emitted from the radio and radar equipment on the vessel. This could be especially dangerous when employees are working on the tops of containers while work is being done to the radar or radio equipment. OSHA is also aware of the dangers associated with non-ionizing radiation emitted from radio and television towers that are close to marine cargo handling facilities and has included the words "or from radio or television transmitting towers ashore" in this paragraph. OSHA issued a Hazard Information Bulletin on September 5, 1990, concerning a non-ionizing radiation incident caused by radio transmitting towers that were near a cargo handling facility. The radio frequency emissions were aimed in the direction of the cargo handling operation and the radiation caused longshore workers touching the crane wires and hooks to be burned. This situation was corrected by having the transmissions directed away from the cargo handling area, however other options were available such as, insulating the cargo hook, or providing proper personal protective equipment (Ex. 1–137).

Proposed §1918.97 sets out requirements for first aid and lifesaving, and parallels closely the same considerations set out by OSHA in its rules for the shoreside aspect of marine cargo handling (§1917.26). The hazards that this section is meant to address are those that would occur in the absence of first aid or rescue; that is, following an accident, this section is intended to mitigate the extent of injury to the employee.

In summarizing this proposed section, the employer would be required to direct all employees to report all injuries. A first aid kit would be required to be available at each vessel being worked, with at least one person holding a valid first aid certificate also available to administer first aid. OSHA does not stipulate who the certificate's issuing organization must be, but

remains consistent with its position taken while developing the Marine Terminals rule, wherein the agency stated at 46 FR 4193:

> No particular first aid course or approving agency is designated, so long as the certificate is issued by a responsible organization which requires successful completion of a course as evidence of qualification.

OSHA sets out no specific criteria for the contents of the required first aid kit(s). The Agency does, however, propose to have those needs individualized by a physician who, in consultation with the employer, can customize first aid kit contents to the hazards to be encountered. This is consistent with the approach taken by OSHA in its General Industry (§1910.151(b)) and its Construction standards (§1926.50(d)(1)). OSHA believes this approach to be not only more flexible, but more protective as well. It should be noted that OSHA is proposing to amend the Marine Terminal regulations to read the same as what is being proposed in this draft in regards to first aid kits and emergency stretchers. Requiring weekly checks of the contents of first aid kits is again consistent with OSHA's Safety and Health Regulations for Construction, §1926.50(d)(2).

Additionally, OSHA proposes to include more specific requirements addressing strength and design characteristics of emergency stretchers (Stokes baskets). These requirements reflect the terms of an agreement between the West Gulf Maritime Association and individual locals of the I.L.A. operating on the Gulf of Mexico, which OSHA considers to be appropriate for inclusion in the proposal. The requirement that the stretcher have at least four sets of "effective" patient restraints means that the restraints must be able to secure the patient to the stretcher even if the stretcher and patient is being lifted vertically. In an accident cited earlier in the preamble, (Ex. 1–90), where the employee was being carried vertically in the stretcher, the restraints were not effective and the patient fell off.

In proposed §1918.98, OSHA sets out requirements for the qualifications of machinery operators, i.e., crane or winch operators, industrial truck drivers, conveyor operators, etc., and provides proposed language to require the training of supervisory personnel, i.e., gang foremen, stevedore superintendents, etc., in accident prevention. The hazards addressed by this section arise from inexperienced, untrained or inappropriate operators of cargo handling machinery; and hazards created by improperly trained supervisory personnel. These hazards can readily lead to accidental injury or death.

Both topics originate in the shoreside rules (§1917.27), and focus on very important aspects indisputably tied to safe cargo operations. The proposed provisions would require that all employees (except supervised trainees) be familiar with signs, signals and operating instructions before operating cargo handling machinery or before giving signals to operators. OSHA would require that employee competency to perform such work be determined by the employer, using training and experience as criteria in making such a determination. The employer would be prohibited from allowing employees with a known incapacitating ailment, such as heart disease or epilepsy, or employees with defective uncorrected hearing or eyesight, from operating that equipment. Because supervisory training is considered to be essential to reducing the amount of accidents in any industrial setting, the Agency proposes to set requirements for the shipboard cargo handling workplace that will complement such requirements already in place for shoreside work. OSHA asks the public to comment on the effectiveness of the shoreside supervisory programs and benefits that have been derived. In proposing this requirement, the Agency notes that the great majority of supervisory persons already trained in accident prevention under the part 1917 rules, are those same individuals who would be covered by the training requirement under this proposal. The Agency requests interested persons to submit comment on the proportion of supervisory employees for whom such training would actually be required. The same built-in transition periods established for training within the Marine Terminals rule (two years after the promulgation of the final rule and after that date 90 days after supervisory assignment), are proposed also for shipboard application. The criteria for course content is performance-based, allowing for instruction to be tailored to the particular operation(s). The recommended topics included as a footnote are considered to be rudimentary to most shipboard cargo handling operations.

It should be noted that current §1918.98 entitled "Grain fitting" is being deleted by this proposal. OSHA believes that this type of longshoring operation is obsolete and no longer exists. OSHA, however, recognizes that interested parties may have differing views regarding this deletion and invite comment on this point.

Subpart J—Personal Protective Equipment

All proposed sections of this subpart are based in the requirements for personal protective equipment found in the shoreside requirements for marine cargo handling (§§1917.91, 1917.92, 1917.92, 1917.93, 1917.94, and 1917.95). The hazards addressed by this section are those that personal protective equipment can eliminate or ameliorate by its proper use. For example, eye protection can prevent the loss of an eye; foot protection can prevent a broken foot; respirators can prevent toxic poisoning; and so on. As was the case in that rulemaking, (48 FR 30903), OSHA again sets out the principle that whether the PPE costs must be borne by employers depends largely on whether the employee has possession, responsibility and control over the specific piece of equipment. As an example, items such as protective gloves and foot wear are among pieces of gear that employees may bring home for personal use between work shifts, but the employees would be protected by the gear while at work. As such, the employer has to make available and assure that employees wear such equipment, but the standard does not require the employer to furnish it free of cost. Other items however, such as respirators, fall protection systems and special protective clothing, are pieces of gear that the employer is required to furnish and maintain.These are items that do not leave the workplace and are always under the control of the employer. Such items are those for which the employee is not obligated to bear any cost under the standards. OSHA understands that various arrangements exist for shared cost responsibilities and sole cost responsibilities at different parts of the Nation's waterfront, and leaves to the employers and employees the right to resolve such issues.

Proposed §1918.101, would require employees performing work which is hazardous to the eyes be provided with protection that meets the requirements (evidenced by marking or labeling) of the American National Standard for Occupational and Educational Eye and Face Protection (ANSI Z87.1–1989). Such eye protection would be required to be maintained in good condition, with cleaning and disinfection performed prior to issuance to another worker.

Proposed §1918.102 refers to §1918.1(b)(12), which adopts by reference OSHA's General Industry standard for respiratory protection (§1910.134). The shipboard cargo handling environment is not unique in the selection or use of respiratory protection.

In proposed §1918.103, the Agency requires that employees whose heads are exposed to hazards associated with impact or electric shocks or burns be equipped with and be required to wear protective hats that meet the design requirements (evidenced by marking or labeling) of American National Standard Requirements for Protective Head Wear for Industrial Workers (ANSI Z89.1–1986), it also requires that cleaning and disinfection be performed when reissued to another worker

Proposed §1918.104 addresses foot protection, requiring that employees exposed to impact or puncture hazards wear safety footwear meeting the design requirements of the American National Standard for Personal Protection—Protective Footwear. ANSI Z41–1991.

In this rulemaking, OSHA also proposes to update the American National Standards Institute (ANSI) references that are in the Marine Terminal standard so that they are the same as in the proposed Longshoring standard; §1917.91 (Eye protection); §1917.93 (Head protection); and §1917.94 (Foot protection).

In proposed §1918.105, other forms of protective measures for personnel are addressed. In summary, OSHA adopts a general approach to all additional protective clothing which requires that the employer provide and see to the proper use of all such measures. The Agency would require that all additional protective clothing be cleaned and disinfected before reissuance. It notes, however, that some types of equipment, such as disposable coveralls, require no cleaning or disinfection since they are single use items and discarded once used. Also, in some instances protective clothing may be issued, but because never worn or soiled, necessitates no further sanitary measures.

Personal flotation devices would be provided by the employer and required for all employees whose work exposes them to falls into the water in any of the following circumstances: when they are working in isolation (such as when adjusting by oneself mooring lines of a small craft abreast of a larger vessel); where physical constraints posed by limited working or walking area creates a fall hazard (such as when securing lines at the outboard edge of a barge having a narrow fore and aft walkway, or where the work area is obstructed by cargo or other obstacles in a manner that does not allow employees safe footing (such as when securing boom tie-downs at the outboard edge of a floating crane whose deck is congested with auxiliary hoisting equipment). OSHA is also proposing to add that personal flotation devices be worn by employees that are doing any work on the deck of a barge There are numerous incidents of drowning which have occurred when employees have fallen overboard from a barge. Often these falls from a barge occur in the river system, where rapid currents increase the danger of drowning (Exs. 1–103, Case Nos. 13, 17, 18, 72, 77, 78, 79, 80, 81, 82, 101, 130 136, 139, 143). OSHA feels that the danger of falling overboard while working on the deck of a barge (as opposed to working on the deck of a ship where the edge of the deck generally is guarded by a bulwark and railing) is sufficiently great as to add this proposed language. All personal flotation devices would be required to be a Coast Guard approved preserver or vest, and would be expected to be maintained in a safe and serviceable condition (no rips, rot or punctures and all closure devices in good order).

In all cases, it is clearly not enough just to have PPE available; the equipment needs to be used. The standard requires the employer to enforce the wearing of each type PPE whenever it is needed.

Appendices I, II, and III

Appendix I is a non-mandatory appendix that sets out the format of vessel cargo gear registers and certificates, under the terms of ILO Convention 152 (Ex. 1–33), discussed earlier in reference to §1918.11. Major changes from the original ILO Convention 32 (Ex. 1–34), include a new Form (Form No. 2 (U) which is a certificate issued by a "competent person" (most often a surveyor under the employ of a vessel classification society or inspection surety service) that contains the results of testing and examination of derricks used in union purchase.

In the case of foreign flagged ship's gear with which U.S.longshore workers load or discharge cargo, OSHA acts in the role of the "competent authority" in determining which "competent person(s)"/"responsible person(s)" are in fact qualified to witness tests/exams and execute certificates and registers. For this purpose, as a practical matter, OSHA recognizes persons and organizations acceptable to the Nation under whose laws the particular vessel is registered. In the event that a given flag has no laws that specifically apply (Ex. 1–91), OSHA would rely upon the vessel having a register and certificates endorsed by an entity approved for that purpose by the Commandant of the U.S Coast Guard (see 46 CFR 91.37) or, alternately, an organization accredited by OSHA under part 1919 of this chapter (see proposed §1918.11). Another significant change from the original Convention, is the interval between tests of cargo handling gear. Such gear, under the terms of Convention 32, was required to be tested (for the assignment of a safe working load) initially before being taken into use. Because OSHA's current rule adopts the testing and examination requirements for vessel's cargo gear contained in Convention 32 (see §1918.12(a) of the current rules), the Agency can presently require that such gear is initially tested but, absent special circumstances, the gear is not required to be tested again. As a practical matter, most vessels (those operating under the rules of classification societies and international inspection services) have been operating under a quadrennial test schedule. With the advent of Convention 152, the international standard has shifted to "at least once in every five years," giving latitude to all organizations desiring to maintain the four year cycle. In proposing to stay in step with the international standard, OSHA offers this Appendix to assist employers and employees in correctly ascertaining the form and content of registers and certificates prescribed for in the newer Convention.

Appendix II, which is also non-mandatory, is offered as an aid to employers and employeas in arriving at strength values of various pieces of gear used aboard ship in longshoring operations. Although the primary source for information on component gear strength is "the manufacturer's recommendations" or "the manufacturer's recommended ratings," the Agency appreciates that instances will arise wherein such recommendations or ratings will not be available (such as when some preslung cargoes are to be discharged from foreign ports). In such instances, proposed Appendix contains tables which can be used to evaluate hoisting equipment. Many of the tables appearing in this Appendix are taken directly from the latest American National Standard (ASME B30.9–1990 and addenda titled, Slings) (Ex. 1–148). The balance of the tables (those for allowable chain wear; shackle safe working loads; and wire rope clips) are derived from an amalgam of other OSHA rules for Longshoring, Construction (§1926.251), and General

Industry (§1910.184). These tables have been carefully assessed by OSHA as to their appropriateness for cargo handling applications, and the Agency believes that they will serve as fully protective criteria.

Appendix III, which is also non-mandatory, recognizes that, in some very limited situations, the use of fall protection may be infeasible. OSHA has listed two narrowly defined situations where it feels that fall protection may not be feasible. OSHA solicits comment from the public regarding the appropriateness of these two examples and whether there are additional examples of infeasibility. In addition, OSHA would consider this as an appropriate place to include any other advisory information regarding container top safety and solicits comments accordingly.

VI. Proposed Amendments and Corrections To Marine Terminal Standards

Several of the proposed amendments to the Longshoring standard (part 1918) address marine cargo handling hazards that should be reflected by a corresponding provision in the Marine Terminal standard (part 1917). For example, both parts currently do not explicitly prohibit employees from riding the hook or the load. By contrast, proposed §1918.81(l) prohibits this practice as does proposed §1917.45(l). The basis for this prohibition is discussed above. For the purposes of this discussion, when the basis for a proposed amendment is treated in the preamble above, it is not necessary to repeat it here. OSHA is requesting comment from the public on proposed amendments to Marine Terminals (part 1917) standards.

A new paragraph (d) has been added to §1917.11 that addresses the hazards associated with protruding nails that may be left in materials, such as dunnage, that have ben removed from the vessels and placed ashore. This paragraph has been taken from language that is in the current Longshoring regulations and is in the proposal at §1918.91(h)(2).

Currently in both parts, the allowable exposure limits for carbon monoxide is 50 ppm over an 8-hour time weighted average with a ceiling of 100 ppm. OSHA is proposing to change the 8-hour time weighted average to 35 ppm while leaving the ceiling limit at 100 ppm. This change is reflected in both proposed parts in §§1918.94 and 1917.24. (See above.)

In another example, currently in both §§1918.96 and 1917.26, the contents of a first-aid kit are specifically listed. In proposed §1918.96, however, the contents of a first-aid kit are to be determined by a physician. OSHA feels that the proposed part 1918 standard is more protective and proposes to amend §1917.26 to be consistent. OSHA would also incorporate into part 1917 the more extensive provisions that are found in proposed §1918.96 pertaining to the requirements for stokes basket stretchers.

In §1917.45(j)(2), OSHA is proposing to require that all cranes used to hoist personnel be equipped with and operate in the power up and power down mode and have the brake apply automatically when not hoisting or lowering. This is consistent with proposed §1918.66(c)(2).

OSHA is proposing a new requirement in §1917.50(i)(1), that prohibits exceeding the safe working load of cargo handing gear which is similar to language found in proposed §1918.61(b)(1). OSHA is also proposing a new requirement in §1917.50(i)(2), which requires the safe working load be marked on cargo handling gear with a safe working load greater than 5 short tons. This proposal is similar to proposed §1918.61(b)(2). See the discussion on these proposed requirements in the preamble for §1918.61.

In §1917.71(e), OSHA is proposing to allow only high-visibility vests (or equivalent protection) to be worn and remove the words "decals or reflectors." This would be in agreement with proposed §1918.86(n). As indicated above, the reflective area of a decal on a hard hat is obviously less than that of a vest. Also, the reflective value is lost during daylight hours or whenever the wearer takes off the hard hat. A number of serious accidents (Exs. 1–78, 1–89) have occurred in the past due to the nature of the work involved in such cargo operations. Additionally, OSHA is proposing to amend the language found in §1917.71(f)(5) to reflect the language found in proposed §1918.86(f), which requires that all brake air-lines be connected when pulling trailers equipped with air brakes.

OSHA is proposing to change §1917.73(a)(2) to read 10 ppm of hydrogen sulfide to agree with proposed §1918.94(f)(4). As recently as 1987, a hydrogen sulfide incident aboard a menhaden vessel led to serious injury and a fatality (Ex. 1–80). (See discussion of this for 1918.94(f) in Section V of this proposal).

OSHA proposes to carry over to §1917.71 the provision found in proposed §1918.86(g) that requires that flat bed and low boys trailers (mafi's) be marked with their cargo capacities and not be overloaded.

OSHA also seeks public comment on two proposed rules to be included in the Marine Terminal standard that do not have analogous rules in the proposed Longshoring standard. First, OSHA proposes to require that seat (lap) belt restraints be installed in the crane operators seat in high-speed container gantry cranes. High speed container gantry cranes are now capable of hoist speeds of 360 feet per minute (110 m/min) (without a load) and trolley speeds of 500 feet per minute (152 m/min). OSHA is concerned that the operator may be exposed to potentially injurious effects of sudden stops and starts (Ex. 1-133). OSHA believes that operator restraints will minimize the hazard and seeks comment from the public on this issue.

In the case of shipments of tobacco that have been containerized and then fumigated, OSHA is proposing, in §1917.25(g), that such containers be aerated (before being loaded on a ship) as follows: (1) If in unsealed bales or in hogsheads, aerated (with doors open) for 48 hours after fumigation has been completed, and, (2) if contained in a plastic enclosure, aerated (with doors open) for 72 hours. In proposing these requirements, OSHA relies on studies performed by the U.S. Department of Agriculture, Agriculture Research Service (Ex. 1–70). These studies concluded that intermodal containers so treated required 48 to 72 hours aeration to be free of hazardous fumigant levels. Past and recent communications (Ex. 1-95) with the Tobacco Association of the United States, also show that organization in accord with the 72-hour aeration required for tobacco shipped in polyethylene or similarly lined boxes carried in intermodal containers.

Upon the publication of the final Marine Terminal standard, several technical drafting amendments were treated in the preamble that were not consistently picked up in the subsequent regulatory text. OSHA is now proposing that these amendments be made. Several paragraphs have been corrected by removing the phrase, "The employer shall ensure...", from the beginning of the paragraph. See the discussion for this in 48 FR 30888-30889. The paragraphs that have been corrected in this manner are: §§1917.18(a); 1917.43(e)(1)(i); 1917.44(o)(3)(ii); 1917.44(o)(4); 1917.126(b); 1917.152(f)(1); 1917.152(f)(2) and 1917.152(i)(3)(iv). In addition, several paragraphs are being proposed to be revised by changing the phrase, "shall be available at the terminal" to the phrase, "shall be made

available for inspection". See the discussion for this in 48 FR 30889. The proposed paragraphs that reflect this change are: §§1917.24(d), 1917.25.(c), 1917.42(b)(4), 1917.42(c)(1), 1917.42(d)(1), 1917.42(h)(4), and 1917.42(h)(5).

OSHA is also aware of several typographical errors that are in the current 29 CFR part 1917 and intends to correct those in this rulemaking. For example, one of these corrections is in §1917.42. A square root sign has been added to the formula found in paragraph (d)(2), correcting an error that is in the current formula. OSHA seeks public comment on any other areas in the Marine Terminal standard that are affected because of the changes proposed to the Longshoring standard in this rulemaking.

VII. Other Issues

A. OSHA is raising the issue of the possible harmful effects of diesel exhaust on employees, especially those employees who work Ro/Ro vessels where exposure to such exhaust is probably the greatest. OSHA is aware that studies have been done concerning the effects of diesel exhaust by the Mine Safety and Health Administration (MSHA) in the mining industry. OSHA is not aware of any studies relating to the longshoring industry, (although the International Cargo Handling and Coordination Association (ICHCA) is in the process of drafting a paper entitled "Fumes in Ships", which will address this topic), and requests the public to submit pertinent information. OSHA requests information of the following: 1. What are the health effects of diesel exhaust? 2. What are the typical timeframes where employees are exposed to diesel exhaust? 3. Is mechanical ventilation sufficient to eliminate any harmful effects? 4. What other methods can be employed to reduce any harmful effects?

B. OSHA is aware of the problem of picking up the chassis and fifth wheel along with the container due to the failure of the container and chassis to separate during a loading operation. This is due to one or more of the chassis's twistlocks being in the locked position or one or more of the twist locks "hanging up" while in the unlocked position. Unfortunately, the driver of the fifth wheel is in the cab as it is being lifted and often sustains injuries when the cab and chassis fall back to the ground before the crane operator can lower everything back down. OSHA requests information on the following questions: 1) How frequently does this problem occur? 2) OSHA believes this is primarily a problem on the West Coast. Is this true and why? 3) OSHA is aware of several devices that have been developed to shut the crane down once the device detects the fifth wheel being raised off the ground. OSHA seeks information on the effectiveness of these devices in eliminating the problem, and the cost to purchase and install these devices; 4) Are there other ways to eliminate the problem, such as better "monitoring" of the chassis twistlocks under the hook through training and work practices, or requiring the driver to get out of the cab until the container is lifted clear of the chassis?

C. OSHA has long recognized the utility of comprehensive occupational safety and health programs, and adopted non-mandatory guidance for safety and health program management on January 26, 1989 (54 FR 3904). These guidelines were based on a distillation of safety and health management practices used by employers that have implemented successful comprehensive programs. The major elements OSHA identified in the guidelines for effective occupational safety and health programs are: 1) management commitment and employee involvement; 2) worksite analysis to anticipate and identify potential hazards; 3) hazard prevention and control; and 4) safety and health training.

Successfully implemented programs generally result in facilities that have a lower incidence of occupationally related illnesses and injuries. In particular, OSHA has found that companies which have implemented comprehensive safety and health programs and are participating in its Voluntary Protection Programs (VPP) have lost-workday rates that range from one-fifth to one-third the rates experienced by average worksites within their industrial classification. In addition, participating sites have reported improved employee morale, product quality, and productivity as some of the secondary benefits of their safety and health management activities.

Occupational safety and health standards and guidelines, whether mandatory or developed as voluntary consensus activities, traditionally have tended to focus on specific problems or hazards rather than taking a broad, program-oriented approach. In recent years, however, OSHA has promulgated a number of generic standards that have program requirements. There is now increasing evidence that a requirement for all employers to address occupational safety and health programmatically can provide an effective supplement to specific hazard-related requirements, and provides an added degree of safety and health for employees.

Properly designed and implemented comprehensive programs focus the attention of both employers and employees on safety and health in the workplace. With increased awareness of safety and health concerns, and the commitment to alleviate the hazards by implementing appropriate controls, workplace-related safety and health injuries and illnesses are expected to decrease.

While the specific elements of existing comprehensive occupational safety and health (COSH) programs may vary, the general concept is the same. COSH programs are designed to coordinate and integrate all facets of occupational safety and health into the management practices for the facility. Rather than addressing problems on a one-by-one basis, implementation of a COSH program requires company management to systematically review all hazards in the facility, and develop a plan to prevent or control them. All employees of the facility must be involved in the development and implementation of the plan, and there must be a company-wide commitment to controlling or eliminating occupational safety and health problems. The program is implemented on a continuing basis, that is, there are provisions for ensuring that the situation in the facility is monitored on a regular basis to ensure that the program is working. Program evaluation activities to assess effectiveness are also part of the concept.

The logic of this approach is simple—prevent adverse effects from occurring by identifying hazards, and implementing a plan to eliminate or minimize them. By doing this systematically, resources are not duplicated or wasted, and a coordinated, integrated strategy can be implemented. Effective functioning of such a program depends largely on the commitment and involvement of all members of the organization, beginning with the highest level of management.

OSHA believes the COSH program approach can be applied in any establishment, and in any size facility. The complexity of the specific program in a particular establishment will depend on the nature of the business, the number of employees, and the types of hazards present. While the basic components of a COSH program would be the same in, for example, a marine terminal and an automobile manufacturing plant shop, the methods used to implement them would vary based on the different needs of the facilities. Every type and size of

establishment should nevertheless have a systematic approach to addressing occupational safety and health concerns. All workplaces, from office situations to health care facilities, restaurants to stevedoring operations, can benefit from the development and implementation of an appropriate COSH program.

Request for Comments and Information

OSHA is raising this issue to solicit public input on COSH programs. The Agency is particularly interested in learning about the experiences of employers who have already implemented such programs, and those of employees who work in facilities where these programs have been implemented. The purpose of collecting these comments is to determine whether OSHA should adopt mandatory requirements for comprehensive occupational safety and health programs; what the components of such programs should be; what problems employers have had in implementing such programs, and what can be done to alleviate those problems; the benefits of implementing COSH programs; methods that can be used to evaluate the effectiveness of the programs; the costs and economic feasibility of such programs; the impacts on small businesses; and suggestions regarding existing OSHA rules that could be consolidated or modified as a result of promulgating requirements for mandatory COSH programs.

Format of Questions and Responses

The specific questions asked are designed to elicit the information OSHA believes would be helpful in determining appropriate elements for COSH programs in longshoring work. The questions are in some cases directed towards specific audiences, such as employers who have implemented programs. Other questions have more general applicability. Interested persons may also submit other information or opinions which they believe are relevant.

OSHA asks that commenters respond to the specific questions enumerated, and to number responses in accordance with the number of the question to which the response is addressed. In addition, it would also be helpful for OSHA to receive copies of written materials to supplement these responses, such as copies of written programs, examples of forms used, and sample evaluations.

1) OSHA would like to receive information and data regarding the respondents to this notice in order to properly profile the responses. If you are submitting comments in response to this notice on behalf of an employer or group of employers that have implemented a COSH program, or employee or group of employees working in such a facility, please provide the following specific information. If you are not one of either of these groups, please indicate your role or relation to COSH programs.

a) The size of the facility by number of employees;

b) When the program was implemented;

c) Why the program was implemented (e.g., voluntary decision, state requirements, insurance carrier's requirements, etc.);

d) What the major components of the existing program are;

e) What the initial and annual costs of implementing each of these components have been, and how you derived these costs;

f) What resources have been required to operate the programs; and,

g) What cost savings, illness or injury reductions, or other benefits (e.g., changes in productivity, absenteeism, turnover, insurance, etc.) have accrued due to implementation of the program, and how you derived these benefits.Components of a COSH Program

As described above, OSHA has published and distributed guidelines for safety and health management programs which include four major elements. OSHA would like comments on whether these elements are appropriate; whether more specific information should be provided regarding what should be addressed under each of these elements; and what other elements may be appropriate for inclusion in COSH programs.

Management commitment and employee involvement. The first element included in the guidelines is management commitment and employee involvement, or management leadership. Management commitment is expected to be stated in a worksite policy which outlines the organization's priority on safety and health, and indicates who has primary responsibility for implementation of various aspects of the policy. Other facets of this element include establishing and communicating clear goals and objectives for the program; providing visible management involvement; ensuring employee involvement; providing adequate authority and resources for those responsible; holding those responsible accountable; ensuring contract workers are protected; and reviewing and evaluating the program at least annually.

2) Please comment on the inclusion of management commitment and employee involvement as a major element of a COSH program.It has been OSHA's experience and that there is no situation where these considerations are inappropriate.

3) Is this a common program component? How is it implemented? Is the program integrated into the overall management of the workplace? How well does this work?

4) Who is responsible for managing the program? What skills and knowledge must this person have to be the program manager? What is the role of the President or Chief Executive Officer? The facility manager? The supervisor? The employee? Do performance evaluations include an assessment of performance with regard to safety and health? Are managers and employees held accountable for safety and health performance? How?

5) Are written policy statements prepared and distributed? Please provide examples. Are there situations where a program can operate effectively without having a written plan?

6) What was the primary motivation for implementing the program (e.g., voluntary, state requirements)? Have insurance companies encouraged adoption of COSH programs? How was this done?

7) How is employee involvement ensured in existing programs? Are labor-management committees used? If so, please provide details about how the committees are formed and are operating. What other suggestions do you have for ensuring employee involvement?

8) How are existing programs evaluated to determine whether or not they are effective? Are worksite program audits conducted? What do the audits include? How often are workplace conditions reevaluated after the initial assessment? Please provide copies of any evaluation procedures that may be available. What are the criteria for determining that the program is or is not effective? What type of evidence is required to demonstrate that each program element has been implemented? Is the program integrated into the overall management of the workplace?

9) Have any problems been encountered in implementing this element in existing programs? If so, how were these problems solved? Is the guidance provided in the voluntary guidelines sufficient to implement this element appropriately? What other information would be useful?

Worksite analysis. The second element in the guidelines is worksite analysis. Employers must identify all worksite hazards by conducting an initial and subsequent periodic comprehensive baseline worksite surveys for safety and health. The surveys would vary by the type of workplace, and the nature of the hazards present, but would include an assessment of both safety and health hazards. Examples of situations that would have to be assessed would include: exposure to chemicals; exposure to noise, radiation, or other physical hazards; ergonomics hazards; procedures to handle chemicals that have physical effects such as flammability and reactivity; machine guarding; shoring of trenches; and potential for falls. Programs must include provisions for regular worksite inspections to determine if existing controls are working, and to identify uncontrolled hazards; investigations of accidents, or other unusual incidents; analysis of planned and new facilities, processes, materials and equipment; job hazard analysis; an employee hazard reporting system; and analysis of injury and illness trends.

10) Do existing programs you are familiar with include worksite analysis? How is it implemented, and who is responsible for doing it? Please provide examples of how this element is being implemented in existing programs. What criteria are used to determine what hazards are present? Are there OSHA standards, guidelines, or other documents you can recommend to assist employers? What do you consider to be the most significant hazard in the workplace?

11) Do existing programs include chemical exposure assessments as part of the worksite analysis process? Should further guidance be provided for exposure assessment? What criteria for exposure assessment are used in existing programs? Is exposure monitoring conducted? What criteria are used to determine when monitoring is to be done? Who is performing exposure monitoring? What training or background did they have to prepare them for this? Are other types of hazards subject to monitoring (such as noise, radiation)? What criteria are used to monitor these hazards?

12) Do existing programs include an ergonomics component? How are ergonomics problems identified? What criteria are used? Who does the evaluation, and what is their relevant training or background?

13) Has any illness/injury trend analysis been undertaken in facilities with COSH programs? What have the trends shown? What action was taken as a result of the findings? Please provide any trend data you have to demonstrate the effect of such programs.

14) What problems have been encountered in implementing this element in existing programs? How were these problems solved? Is the guidance provided in the voluntary guidelines sufficient to implement this element appropriately? What other information would be useful?

Hazard prevention and control. Once the hazards have been identified, the third element the COSH program must address is hazard prevention and control. The current and potential hazards must be corrected or controlled in a timely manner, using engineering techniques where feasible and appropriate.Procedures for working safely are to be established, and all affected parties must understand and follow them. Personal protective equipment is to be made available where appropriate; administrative controls are to be used when necessary; provision is to be made for repair and maintenance of equipment; emergency preparedness is to be addressed; and a medical program must be available.

15) Do existing programs you are familiar with include hazard prevention and control? How is it implemented, and who is responsible for doing it? Please provide examples of how this element is being implemented in existing programs. In particular, please provide any available information about how hazards and risks are defined, and how risk reduction goals are set. Who decides what control measures are implemented? What criteria are used? Does the program include an evaluation of occupational safety and health implications when new facilities, processes, materials, or equipment are planned?

16) Do existing programs include standard operating procedures for repair and maintenance?

17) Are their programs for emergency preparedness? If so, how are they compiled and made available? Is there a plan for emergency response? If so, what types of emergencies are addressed? Please provide samples of your standard operating procedures and emergency preparedness and response plans.

18) Is a medical program available? What is the scope of the program, e.g. does it cover assessments related to workplace conditions, wellness programs, etc.? Are medical services provided in-house, or are they contracted out? What types of health professionals are involved in delivering occupational health services? What are their respective roles and what is their relevant training or background?

19) Does the medical program include preplacement medical surveillance? Periodic medical surveillance? What criteria are used to determine what surveillance is done? Who decides what surveillance is to be done? Are medical records reviewed to determine if there are trends in injuries and illnesses? Who conducts the review? What is done with the results?

20) Have problems been encountered in implementing this element in existing programs? If so, how were these problems solved? Is the guidance provided in the voluntary guidelines sufficient to implement this element appropriately? What other information would be useful?

Safety and health training. The last major element in the voluntary guidelines for COSH programs is safety and health training. In order to ensure that the program works effectively, all employees must be trained to understand the safety and health concerns in their workplace; the plan to minimize or eliminate those concerns; and their roles in implementation of the plan. This includes training for those in supervisory or management roles. Responsibilities must be clearly described, and the lines of authority appropriately drawn. OSHA has published Voluntary Training Guidelines to provide employers with information about designing and implementing an appropriate safety and health training program. (See Training Requirements in OSHA Standards and Training Guidelines, OSHA 2254 (Revised), 1992.)

21) Do existing programs include safety and health training? How is it implemented, and who is responsible for performing and implementing it? Please provide examples of how this element is being implemented in existing programs, including the type of training, such as classroom instruction, on-the-job work practices training, videotapes, or interactive videos. Does the type of training vary with the type of operation? Have OSHA's Voluntary Training Guidelines been used in designing and implementing the safety and health training program?

22) Is safety and health training conducted prior to workplace assignment? What does it include in this situation? Are training requirements for various programs combined into one training program? Approximately how long does the initial training take for managers? For supervisors? For other workers? Is periodic training conducted? How often? How long does

periodic training take? What is included in the periodic training?

23) Do you have workers who are subject to training certification requirements? How has this worked?

24) Is the training evaluated to determine whether or not it is effective? How is this done?

25) What qualifications do the trainers have?

26) Have problems been encountered in implementing this element in existing programs? If so, how were these problems solved? Is the guidance provided in the voluntary guidelines sufficient to implement this element appropriately? What other information would be useful?

Issues Related to Regulation

If OSHA determines that it would be appropriate to promulgate a standard for COSH programs, there are a number of other issues which will have to be addressed. Comments from the public are solicited on the following:

27) Should the voluntary guidelines OSHA issued in 1989 be the primary basis for any future regulatory activity in this area? Based on your experiences, what modifications to the guidelines would be necessary in order for OSHA to use them as a basis for regulation? Are there additional elements that should be included in a COSH program? What other information do you think employers would need to implement an appropriate program?

28) The current guidelines are very generally written, and OSHA believes they can be applied in any type of industry or workplace. Do you think that industry-specific guidelines are required? If so, what should the breakdown be, and what is the rationale for different program requirements?

29) The current guidelines are also applicable to all sizes of industries. Do you think that small businesses should be treated differently? If so, why, and in what way?

30) It has been suggested that if OSHA promulgates requirements for COSH programs, there are existing OSHA standards that could be revised, modified, consolidated, or otherwise changed as a result. Without diminishing employee protections under current OSHA standards, what rules do you think could be reconsidered if the Agency promulgates a new rule requiring COSH programs? Commenters are requested to be specific, and provide the rationale for any suggestions.

31) If OSHA promulgates a rule for COSH programs, what type of outreach or compliance assistance materials would you suggest be made available to employers? What would be the most effective way for OSHA to reach small employers who do not belong to trade associations or professional societies?

D. OSHA is aware of the increased usage of Flexible Intermediate Bulk Containers (FIBC's) which are used to handle bulk chemical solids. Some of the FIBC's are designed only to be used for one voyage while others are designed for repeated usage. OSHA wishes to know: 1) What means are used to mark and identify the one use only type of FIBC, and are they adequate? and 2) What are the current industry practices regarding the testing of FIBC's and should OSHA incorporate them into this regulation?

E. OSHA issued a standard for the control of hazardous energy sources (lockout/tagout) that applied to general industry employment under 29 CFR part 1910 as §1910.147 (54 FR 36645). This standard addresses practices and procedures that are necessary to disable machinery or equipment and to prevent the release of potentially hazardous energy while maintenance and servicing activities are being performed. The standard requires that lockout be utilized for equipment which is designed with a lockout capacity, and tagout may be used for equipment which was not designed to be locked out. Servicing and maintenance activities are necessary adjuncts to the industrial process. They are needed to maintain the ability of all machines, equipment, or processes to perform their intended functions. OSHA believes that these types of operations present the employee with the same types of hazards of unexpected activation, re-energization, or the release of stored energy, regardless of the type of industrial setting. For these reasons, OSHA is soliciting public comment regarding the appropriateness of including "The control of hazardous energy (lockout/tagout)" in the "Scope and applicability" sections of both 29 CFR part 1917 (Marine Terminals) and 29 CFR part 1918 (Longshoring). While OSHA recognizes that marine terminal activities are more likely to contain work operations where lockout/tagout hazards are present, it also sees the potential to occur in some longshoring related operations. OSHA wants to know: 1) should §1910.147 be included in Marine Terminals and why or why not, and 2) should §1910.147 be included in longshoring and why or why not?

F. As indicated earlier, OSHA contracted a safety expert, A. J. Scardino, to conduct a study of the fall hazards associated with the cargo handling of intermodal containers. (Ex. 1–139). The development of the data, that was used in formulating the opinions and recommendations of this study, involved the visiting and documentation of the activities at 20 major ports in the United States. Those ports were: Gulfport, MS, Houston, TX, Barbers Cut, TX, Galveston, TX, Miami, FL, Miami River, FL, Port Everglade, FL, Charleston, SC, Savannah, GA, Norfolk, VA, Portsmith, VA, Elizabeth, NJ, New Jersey, NJ, Long Beach, CA, Los Angeles, CA, Seattle, WA, Tacoma, WA, Oakland, CA, San Francisco, CA, Honolulu, HI. As part of the data gathering process the contractor conferred with: members of the Technical Committee of the National Maritime Safety Association, representatives of Labor Associations, individual Stevedores, Longshore personnel, and Port representatives.

Of the many areas of inquiry that resulted in positive recommendations, the issue of the location of the fixed anchorage point in relation to the working surface was addressed:

> When feasible the attachment point of the fall protection system shall be located "above" the head of the employee. Every effort should be made to assure that the attachment point for the system is located no lower than the vertical height position of the harness "D" ring. According to "Humanscale 7a", for the 50th percentile male, this would be 1.4 meters (55.4 inches).

In support of this position, the study cites the National Safety Council in its *Accident Prevention Manual for Industrial Operations 9th. Edition* (the Bible on Safety) states: (p. 347) "A belt or harness is worthless unless it is being worn at the time that a fall is possible and attached to a lanyard or fall arrestor with an *adequate overhead anchorage*." (Emphasis added; Id. p. 3.) In addition Mr. Scardino indicates the importance of pre-exposure planning by citing Best's Safety Directory 1994 Edition which states: (p634) "A fixture point above head height always should be planned." (Id.)(Ex. 1–153)

With regard to current practice, many fall protection systems in use could meet the raised attachment requirement recommended by Mr. Scardino "* * * approximately 70 to 75% of the existing operations that employ various fall protection techniques would be able to meet * * *" the requirement. (Id.) Some existing systems have attachments to devices that are installed on the work surface. Recommendations addressing these systems include:

> The use of systems that are at foot level, thereby creating a tripping hazard, should be discouraged. If these systems are to be used, then, the components that make up the system should be of a high visibility color. This field study further determined that [illegible]

systems were not reliable and created a sense of false security.

> While it is recognized that there is in existence, fall protection that does not meet this criteria, steps should be taken to meet these minimums *within a three year period*

In light of these recommendations, OSHA wishes to raise an additional issue. To what extent is it necessary and appropriate to add an additional criteria to those found in §1918.85(k) requiring an elevated anchorage point in order to assure worker safety.

VIII. Preliminary Regulatory Impact and Regulatory Flexibility Analysis

Note: Numbered references that appear in brackets in this Section VIII, Preliminary Regulatory Impact and Regulatory Flexibility Analysis, are to the References that appear at the end of Section VIII.

A. Executive Summary

Introduction

Executive Order 12866 and the Regulatory Flexibility Act require OSHA to analyze the costs, benefits, and other consequences and impacts associated with proposed standards. Consistent with these requirements, OSHA has prepared this regulatory impact analysis for the proposed revisions to the Longshoring and Marine Terminals standards.

This analysis includes a description of the industries affected by the regulation, an evaluation of the risks addressed, an assessment of the benefits attributable to the proposed revisions, the determination of the technological feasibility of the new requirements, the estimation of the costs of compliance with proposed revisions, the determination of the economic feasibility of compliance with the proposed revisions, and an analysis of the economic and other impacts associated with this rulemaking.

Affected Industries

The requirements of the proposed revisions apply to all establishments involved in marine cargo handling. As classified by the 1987 Standard Industrial Classification (SIC) manual, this industry consists of establishments in SIC 4491 as well as establishments in other SICs conducting marine cargo handling activities.

Evaluation of Risk and Potential Benefits

An estimated 7,593 injuries and 18 fatalities occur annually during marine cargo handling activities. The proposed revisions to the Longshoring and Marine Terminals standards are expected to result in the prevention of 1,262 injuries and 3 fatalities, annually. Many additional fatalities and injuries would be prevented through full compliance with existing requirements retained in the proposed standards. Most of the injuries occurring during marine cargo handling activities could be prevented through compliance with the existing as well as with the proposed standards. In addition to the unquantifiable benefits associated with the reduction in pain and suffering associated with these incidents, the prevention of these injuries will result in savings of over $18 million dollars, annually. This estimate includes savings related to wage and productivity losses, medical costs, administrative expenses, and other costs associated with accidents.

Technological Feasibility

Since the proposed requirements can be met using existing equipment and methods, the proposed new requirements are considered to be technologically feasible.

Costs

The estimated costs associated with the proposed revisions to the Longshoring and Marine Terminals standards amount to less than $4.7 million for the first year and less than $1.8 million, annually, after the first year. These costs primarily reflect the sum of various minor expenditures associated with modifications to existing standards. New provisions involving compliance costs include requirements for sideboards on dockboards and ramps, required certification of fall protection systems, requirements for the vertical application of lifting forces to containers, requirements for high visibility vests, and requirements to provide personal flotation devices, among others.

Economic Impacts

Compliance with the proposed new requirements of the Longshoring and Marine Terminals standards has been determined to be economically feasible and is not expected to produce any significant adverse economic impacts. The costs that are imposed by the regulation should be a minimal burden on marine cargo handling establishments. The total estimated first-year costs of compliance represent less than 0.06 percent of revenues associated with marine cargo handling activities and less than 1.19 percent of profits. Total annualized costs for subsequent years represent less than 0.03 percent of revenues and 0.46 percent of profits.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, OSHA has made an assessment of the impact of the revised standards and has concluded that it would not have a significant impact upon a substantial number of small entities. The estimated compliance costs do not involve large capital expenditures, and there is no significant differential effect on small firms relative to that on large firms.

B. Industry Profile

Introduction

This section provides an overview of affected establishments, classifications of affected vessels, population at risk, wages of affected workers, gang sizes and cargo handling rates, operating revenues and shipping costs.

Overview of Stevedoring and Marine Terminals

Marine terminals are designated areas of ports which include wharves, bulkheads, quays, piers, docks and other berthing locations. Adjacent storage or contiguous areas associated with the primary movements of cargo or materials from vessel to shore or shore to vessel, and structures devoted to receiving, handling, holding, consolidating, loading or delivering waterborne shipments are considered part of the marine terminal. Marine terminals are the facilities owned or leased by stevedores or marine terminal operators (MTOs). MTOs and stevedores provide most of the portside services that shipping lines require. They provide the equipment and machinery for conducting cargo handling at multi-use terminal facilities, in addition to specialized terminals designed to handle specific types of cargo [2].

Stevedores are persons or firms contracting with a ship owner or agent for the purpose of loading or unloading ships or barges in ports. Stevedores are direct employers of longshore labor and contractors to ship owners. Basically, they are middlemen between the entity requiring the service and the longshore workers who perform the physical labor. The stevedore's role is to provide the cargo handling expertise and the equipment required to load or unload all types of cargo safely and efficiently.

The stevedore may also be the MTO. The functional roles and activities of stevedores and MTOs vary throughout the United States and often cannot be distinguished. The stevedore contractor and the MTO may be distinctly different entities, the same entity, or corporately related. In some cases, public entities or port authorities may be the MTOs. These entities may also act as stevedores or lease the terminals to private operators [2].

Workplaces Affected

Compliance with the proposed revisions to the Longshoring and Marine Terminals standards will affect two

areas where marine cargo handling operations occur. Activities that occur off the dock (work aboard vessels) are covered under OSHA's Longshoring standard (29 CFR part 1918) and those which occur on the dock fall under the Marine Terminals standard (29 CFR part 1917). The Longshoring standard covers establishments classified under SIC 4491 (marine cargo handling), as well as various establishments in manufacturing; transportation; communications; electric, gas and sanitary services; and wholesale trade.

Data on the exact number of stevedoring companies currently operating in the United States are not available. For the purposes of this analysis, the number of marine terminals estimated by the Maritime Administration (MARAD) was used as the estimate of the total number of firms affected by the Longshoring standard. According to MARAD, there are a total of 3,700 marine terminals in the United States [4]. Establishments engaged primarily in marine cargo handling are classified under Standard Industrial Classification (SIC) 4491, Marine Cargo Handling. The Bureau of the Census estimated that 746 establishments are classified under SIC 4491 [7]. To identify other affected industry sectors, Kearney/Centaur screened OSHA inspection data for non-SIC 4491 sectors where 29 CFR part 1918 citations were issued. Non-SIC 4491 establishments primarily engage in activities other than longshoring, although longshore work is a small part of their overall operation. For example, manufacturing establishments which load their products directly onto barges are covered by the OSHA's Longshoring standard, though these operations represent only a very small part of their total activity. Kearney/Centaur estimated the distribution of the remaining establishments among affected industry sectors according to the distribution of non-SIC 4491 29 CFR part 1918 citations issued in other sectors. The estimated number of affected establishments is shown in Table B-1 by industry and in Table B-2 by region. Although only 20 percent of establishments affected by the longshoring standard are in SIC 4491, the majority of affected workers, as discussed below, are accounted for in SIC 4491.

Table B–1—Number of Affected Establishments, by Industry

Industry	Longshoring 29 CFR part 1918	Marine Terminals 29 CFR part 1917
SIC 4491–Marine Cargo Handling	746	746
Manufacturing	1660	N/A
Transportation, Communications, and Electric, Gas and Sanitary Services	662	662
Wholesale Trade	273	161
Other SICs[1]	359	359
TOTAL	3,700	1,928

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].

[1]Other SICs include SIC 13 (Oil and Gas Extraction), SIC 15 (Building Construction), and sectors under SIC 44 (Water Transportation) other than SIC 4491.

Table B–2—Number of Affected Establishments, by Region

Industry	Longshoring 29 CFR part 1918	Marine Terminals 29 CFR part 1917
Atlantic	586	305
Gulf/Mississippi	2,164	1,128
Great Lakes	301	157
Pacific	649	338
TOTAL	3,700	1,928

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].

Of the industry sectors covered by the Longshoring standard, most also fall under the scope of the Marine Terminals standard, with the exception of manufacturing establishments and some wholesale trade establishments. Approximately 1,928 of the 3,700 marine terminals covered by the Longshoring standard are estimated to fall under the scope of the Marine Terminals standard [1].

The stevedore/MTO typically hires longshore workers, usually on a daily basis, from a hiring hall or labor pool of union or nonunion members. Labor force size varies directly with the amount of work contracted to be performed. This method of hiring creates difficulty in determining the size of the affected establishments. No data were available on the number of small stevedoring firms. To estimate the number of small firms, the percent of establishments in SIC 4491 classified by the Bureau of the Census as employing fewer than 20 workers, is used. Fifty-six percent of affected establishments are estimated to be small establishments [7].

Types of Vessels

This discussion describes the affected vessels calling at U.S. marine terminals. The proposed rule will be applicable to five broad vessel categories. Four of these categories are self-propelled vessels: bulk carriers, freighters, combination passenger/cargo ships, and cruise ships. The fifth category consists of non-self-propelled dry cargo barges. Descriptions of these vessel categories, as well as important subcategories, are presented in Tables B-3 and B-4. Tankers and tanker barges are excluded since these vessels are primarily under the jurisdiction of the U.S. Coast Guard.

Table B–3—Categories of Self-Propelled Vessels

BULK CARRIERS	
Ships designed to carry dry bulk cargo such as ore, wood chips, coal, and grain. They are also used to carry heavy general cargo items such as logs or steel.	
FREIGHTERS	
General Cargo Carriers	Includes refrigerated and unrefrigerated breakbulk carriers as well as car carriers, cattle carriers, pallet carriers, and timber carriers. Breakbulk cargo consists of heterogeneous items of general cargo, packaged and moved as single parcels or assembled together on pallet boards and wire rope slings. These packages are loaded and unloaded using ship's gear or wharf cranes. Containers are also carried on general cargo carriers.
Full Containerships	Ships equipped with permanent below-deck container cells with little or no space for other types of cargo.
Partial Containerships	Multi-purpose ships where one or more, but not all, compartments are fitted with permanent container cells. The remaining compartments are used for other types of cargo. Partial containerships include container/car carriers, container/rail car carriers, and container/roll-on/roll-off ships.
Roll-On/Roll-Off (RO-RO) Ships	Ships which are specially designed to carry wheeled containers or container/trailer combinations, automobiles, and other vehicles which are loaded and unloaded using the roll-on/roll-off method. Containers are often carried on the upper deck of RO-RO ships.
Barge Carriers	Ships designed to carry either barges or some variable number of barges and containers simultaneously. Currently this class includes two types of vessels, the LASH (lighter aboard ship) and the SEABEE. They differ in that barges are loaded onto LASH ships by crane and onto SEABEE ships by a submersible elevator at the stern of the vessel.
COMBINATION PASSENGER/CARGO SHIPS	
Cargo ships with a capacity for 13 or more passengers.	
CRUISE SHIPS/PASSENGER SHIPS	
Ships functioning primarily to transport passengers, usually for purposes of recreation and tourism. Does not include passenger ferries.	

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2]

Table B–4—Non-Self-Propelled Vessels

DRY CARGO BARGES	
Large mostly double hulled cargo holds lacking an internal means of propulsion. Virtually all barges used on the inland river system are 195 feet long by 35 feet wide and have loaded drafts of up to nine feet. Barges can carry virtually any dry cargo and have and average capacity of 1,500 tons or about 52,500 bushels. Also classified as barges are scows and ocean-going barges. These barges tend to be much larger and have a higher freeboard than barges used on the inland river system.	
Barges are typically lashed together in groups referred to as tows. The standard tow on most navigable rivers is three barges wide by five barges long for a total of 15 barges. Tow sizes, however, vary by waterway with tows as large as 45 barges on the lower Mississippi and as small as two barges on the intracoastal waterway. Tows are usually propelled by a towboat pushing them ahead, though occasionally they are moved by a towboat pulling them on a hawser.	
Open Hopper	Barges used primarily for dry bulk cargo, such as sand, gravel,and coal, which are not suseptible to weather damage.
Covered Hopper	Barges used for grain and other commodities that need to be protected from the weather
Scows and Ocean-Going Barges	Barges which generally carry most of their cargo on deck
Deck Barges	Barges used for transporting vehicles and heavy equipment
Container Barges	Barges used to transport standardized container cargo.

Source: U.S. Department of Labor, OSHA Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].

Self-Propelled Vessels

Table B–5 shows the number of self-propelled vessels of 1,000 gross tons (GTs) and over in the world fleet, by type of vessel. Of the 692 U.S. flag vessels, approximately two-thirds are privately owned and the remaining one-third are Government owned. Only 11 of the 225 Government owned vessels were active as of mid–1992 and were being used by several Government agencies, state maritime academies, or private steamship companies under various forms of agreement with the Maritime Administration. All U.S. flag vessels are owned either by the Government or U.S. firms. However, U.S. firms also own a substantial number of merchant vessels that are registered under foreign flags. As shown in Table B–5, 313 of the 23,549 foreign flag vessels are owned by U.S. parent companies. Although no data were available on the total number of self-propelled vessels in the world fleet of under 1,000 Gts, data were available on the number of vessels calling at U.S. ports. According to Bureau of the Census data [5], approximately 1,980 U.S. flag and 9,593 foreign flag self-propelled vessels called at U.S. ports in 1992.

Table B–5—Self-Propelled Vessels of 1,000 Gross Tons and Over in the World Fleet, 1992

Vessel Type	U.S. Flag Vessels			Total Number of Foreign Flag Vessels	Foreign Flag Vessels Owned by U.S. Companies	World Fleet
	Private	Government	Total			
Bulk Carriers	92	1	93	5,449	47	5,542
Tankers	203	25	228	5,316	208	5,544
Total Freighters	167	192	359	12,222	55	12,581
Break Bulk Carriers	26	120	146	9,977	29	10,123
Containerships	83	9	92	1,198	15	1,290
Partial Containerships	17	35	52	110	0	162
Roll-On/Roll-Off	29	21	50	916	7	966
Barge Carriers	12	7	19	21	4	40
Combination Passenger/Cargo	3	7	10	337	3	347
Cruise Ships/Passenger Ships	2	0	2	225	N/A	227
TOTAL	467	225	692	23,549	313	24,241

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].

Non-Self-Propelled Vessels

The total number of non-self-propelled vessels is shown in Table B–6. Of the 31,017 non-self-propelled vessels, 87 percent are dry cargo barges, 13 percent are tanker barges, and less than 1 percent are railroad car floats. Nearly 86 percent of all non-self-propelled vessels in the United States operate on the domestic river and intracoastal waterway system and carry nearly all of the waterborne cargo transported on the inland waterways. Thirteen percent of the non-self-propelled vessels (4,158 vessels) in the United States operate on the Atlantic, Gulf and Pacific coasts. The remaining 1 percent of non-self-propelled vessels operate in the Great Lakes.

Table B–6—Non-Self-Propelled Vessels in the U.S. (as of December 31, 1990)

Vessel Type	Atlantic, Gulf and Pacific Coasts	Inland Waterways[1]	Great Lakes	Total
Dry Cargo Barges	3,500	23,320	271	27,091
Tanker Barges	652	3,231	30	3,913
Railroad Car Floats	6	2	5	13
TOTAL	4,158	26,553	306	31,017

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].
[1]Includes Mississippi River System, the Gulf and Atlantic Intracoastal Waterway and the Columbia/Snake River System.

Containers and Container-Carrying Vessels

Over recent years, there has been an increase in the volume of containerized cargo handled. Containers are large, standard size metal boxes, equipped with corner castings, into which cargo is packed for shipment. Containers are designed to be moved with common handling equipment enabling economical, high-speed intermodal transfers in large units between ships, railcars, truck chassis, and barges, using a minimum of labor. The container, therefore, serves as the transfer unit rather than the cargo contained therein. Most containers in the U.S. inventory are either 20-foot (6.1 m) containers (56 percent) or 40-foot containers (12.2 m) (42 percent).

Containerships are vessels equipped with permanent container cells. They have little or no space for other types of cargo. Partial containerships are multi-purpose ships where one or more, but not all, compartments are fitted with permanent container cells. The remaining compartments are used for other types of cargo. Several other types of vessels also carry containers.

Table B-7 presents the number of liner service container-carrying vessels calling at U.S. ports by type of vessel, flag of vessel (U.S. or foreign), and container capacity.

Table B–7—Number and Container Capacity of Liner Service Container Carrying Vessels Calling at U.S. Ports, 1992

Vessel Type	Number of Vessels			Container Capacity in TEUs[1]		
	U.S.	Foreign Flag	Total	U.S.	Foreign Flag	Total
Bulk/Containership	0	106	106	0	130,279	130,279
Containership	83	510	593	183,358	1,126,341	1,309,699
RO-RO/Containership	7	36	43	10,031	51,584	61,615
Partial Containership	17	135	152	7,422	58,961	66,383
Barge Carrier	11	0	11	6,940	0	6,940
Other						
Break Bulk	N/A	N/A	11	N/A	N/A	3,161
RO/RO[2]	29	75	104	28,509	73,748	102,257
TOTAL	147	862	1,020[3]	236,260	1,440,913	1,680,334[4]

Source. U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].
[1]TEU - Twenty-foot Equivalent Unit equal to the capacity of a 20x8x8 foot container.
[2]Includes 13 RO-RO tug/barge combinations.
[3]Number of U.S. and foreign flag vessels does not add to the total shown since a breakdown of the number of break bulk carriers between U.S. and foreign flag fleets was not available.
[4]The container capacity of U.S. and foreign flag vessels does not add to the total shown since a breakdown of the container capacity of break bulk carriers between U.S. and foreign flag fleets was not available

Vessels in liner service operate on fixed routes to advertised ports on published schedules. As shown in the table, 1,020 container-carrying liner service vessels with a total container capacity of approximately 1.7 million TEUs (twenty-foot equivalent units) called at U.S. ports in 1992. Virtually all containerships, partial containerships, bulk/containerships, RO RO/containerships and barge carriers are in liner service, and essentially, the entire container capacity of these types of vessels are accounted for in liner services. Break bulk freighters and RO RO ships also carry containers. Although RO-RO ships are generally in liner service, break bulk carriers are not. Data on the number and container capacity of non-liner service break bulk carriers were unavailable. However, based on the proportion of container traffic accounted for by break bulk freighters, the estimated number of voyages made annually to the United States by these vessels, and their average container capacity, Kearney/Centaur estimated that 544 non-liner service break bulk freighters with a container capacity of 78,336 containers called at U.S. ports in 1992.

Combining the number of liner service and non-liner service container-carrying vessels, OSHA therefore estimates that a total of 1,564 container-carrying vessels, with an overall container capacity of 1.76 million TEUs, call annually at U.S. ports [1]

Population at Risk

Based on employment data from the Bureau of the Census and OSHA inspection data, approximately 93,427 workers are estimated to be affected by the Longshoring standard, over 58 percent of which are employed in SIC 4491. Kearney/Centaur estimated that about 70,140 of these workers would also be covered by the Marine Terminals standard, 78 percent of which are in SIC 4491. Estimates of full-time equivalent workers, as well as the population at risk are shown in Table B-8, by industry and in Table B-9, by region.

Table B–8—Number of Full-Time Equivalent Workers and Population at Risk, by Industry

Industry	Number of FTE Workers Covered by 29 CFR part 1918[1]	Population at Risk Covered by 29 CFR part 1918	Number of FTE Workers Covered by 29 CFR part 1917[1]	Population at Risk Covered by 29 CFR part 1917
SIC 4491–Marine Cargo Handling	54,617	54,617	54,617	54,617
Manufacturing	13,700	21,811	N/A	N/A
Transportation, Communications, and Electric, Gas and Sanitary Services	7,467	8,705	7,467	8,705
Wholesale Trade	3,100	3,582	1,823	2,106
Other SICs[2]	4,067	4,712	4,067	4,712
TOTAL	37,951	93,427	67,974	70,140

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2]

[1]The number of full-time equivalent (FTE) workers is based on a 1,436 hour which is the average number of hours worked per year by longshore workers in SIC 4491.

[2]Other SICs include SIC 13 (Oil and Gas Extraction), SIC 15 (Building Construction), and other sectors under SIC 44 (Water Transportation) other than SIC 4491

Table B–9—Number of Full-Time Equivalent Workers and Population at Risk, by Region

Industry	Number of FTE Workers Covered by 29 CFR part 1918[1]	Population at Risk Covered by 29 CFR part 1918	Number of FTE Workers Covered by 29 CFR part 1917[1]	Population at Risk Covered by 29 CFR part 1917
Atlantic	13,923	14,789	10,761	11,103
Gulf/Mississippi	51,451	54,655	39,765	41,032
Great Lakes	7,150	7,596	5,526	5,703
Pacific	15,426	16,387	11,922	12,302
TOTAL	87,950	93,427	67,974	70,140

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2]

[1]The number of full-time equivalent (FTE) workers is based on a 1,436 hour which is the average number of hours worked per year by longshore workers in SIC 4491.

Gang Sizes and Cargo Handling Rates

Table B-10 summarizes the average stevedoring crew sizes by type of operation. These estimates include both off-the-dock and dockside workers directly involved in the loading or unloading of cargo. Average cargo handling rates are also presented. Based on cargo handling rates, and the types and total tonnages of cargo handled Kearney/Centaur estimated that approximately 54 million person-hours of exposure occur during longshoring loading and unloading activities, annually.

Table B–10—Summary of Average Stevedoring Gang Size and Cargo Handling Rates, by Type of Loading and Unloading Operation

Operation	Number of Workers			Average Cargo Handling Rate in Short Tons per		
	Off-the-Dock	On-the-Dock	On-Site	Gang Hour	Off-the-Dock Employee Work-hour	Dockside Employee Work-hour
Break Bulk	9	6	15	80.0	8.9	10.3
Container	8	9	17	232.9	29.1	25.9
Bulk Carrier/Conveyor Loading	7	2	9	1,250.0	178.6	625.0
Bulk Carrier/Clam Shell Unloading	2	3	5	250.0	125.0	83.3
RO-RO	25	4	29	90.0	3.6	22.5
Barge/Break Bulk	4	5	9	112.5	28.1	22.5
Barge/Conveyor Loading	2	3	5	168.8	84.4	56.3
Barge/Bulk-Clam Shell Unloading	1	2	3	150.0	150.0	75.0

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2]

Wages

Wages of longshore workers vary among regions and ports. Two primary factors account for this variation. First, local union contractual agreements vary in wage rates, holidays, and other rules or benefits which affect the wages and earnings of longshore workers. Second, the number of hours worked per year varies by port and region, resulting in variations in overtime wage payments. The average national wage rate of longshore workers, including overtime and benefits, is estimated to be $40.30 per hour. The average supervisor wage rate, including overtime and benefits, is estimated at $50.78 [1].

Operating Revenues and Shipping Costs

Statistics on shipping costs were estimated based on vessel operating revenue data for domestic water carriers compiled by The U.S. Department of Transportation. Table B-11 presents operating revenues and tonnage data, by region, for 1990.

As shown, operating revenues were nearly $3.0 billion for Coastal regions, $2.9 billion for Inland waterways, and $0.6 billion for the Great Lakes region. The operating revenues per ton of freight hauled were $10.27, $4.57 and $5.33, respectively.

The cost for shipping a 40-foot (12.0 m) container with FAK (freight-of-all-kinds) worth $100,000 and weighing 10 long tons from New York to Rotterdam was estimated to range from $277.40 to $300.50 per long ton. The cost for the same shipment from Los Angeles to Tokyo was estimated to range from $243.60 to $288.30 per long ton [1]

Table B–11—Operating Revenues, Ton-Miles, Tons, and Average Haul of Freight Carries, 1990

Region	Operating Revenues ($ millions)	Ton-Miles (millions)	Operating Revenues per Ton-Mile	Tons of Freight Hauled (millions)	Average Haul per (miles/ton)	Operating Revenues per Ton of Freight Hauled
Coastal	$3,008	470,000	$0.006	293	1,604	$10.27
Inland	2,865	283,000	0.010	627	451	4.57
Great Lakes	576	57,000	0.010	108	528	5.33
All Regions	$6,449	810,000	$0.008	1,028	788	$6.27

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 2].

C. Technological Feasibility and Costs of Compliance

Technological Feasibility

All of the requirements of the proposed standard can be met using currently available equipment, facilities, tests, inspections, supplies, and work practices. OSHA's analysis of the technological requirements of each provision indicates that none of the proposed provisions will create any problem of supply or availability of equipment, facilities, or personnel.

Although the proposed standard will require the expenditure of resources to fully comply, there are no technological constraints associated with full compliance with the proposed regulation.

Costs of Compliance

This section presents preliminary estimates of costs that will be incurred by firms to come into compliance with the proposed revisions to the Longshoring and Marine Terminals standards. The costs of the proposed revisions to the two standards are shown in Table C–1.

Table C–1—Summary of Total Compliance Costs (1993 Dollars)

Rule	Total First-Year Costs	Total Annualized Costs*
29 CFR part 1918, Longshoring	$4,088,445	$1,755,773
29 CFR part 1917: Marine Terminals	535,585	20,099
TOTAL	$4,624,029	$1,775,872

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

* Annualized cost is the sum of annualized capital costs and recurring annual costs.

Total first-year costs are estimated to amount to less than $4.7 million. After the first year, affected establishments will incur costs of approximately $1.8 million, annually. These costs were estimated using a baseline of full compliance with existing rules and estimates of current practice for those cost elements not required under previous standards[2]. OSHA welcomes comments on the preliminary costs and assumptions presented in this analysis.

Methodology

A side-by-side comparison of the proposed and existing rules was conducted to identify revisions to the existing rules. In addition, a profile of current industry practices was developed to enable estimates of incremental compliance costs to be made.

The data used in this preliminary analysis of compliance costs were obtained from three studies conducted in 1986, 1989 and in 1994 by OSHA's contractor, Kearney/Centaur. In 1986 and 1989, analyses were performed on proposed requirements identified as changes to existing standards. These studies were conducted through field visits and telephone surveys of U.S. ports.

The 1994 study was conducted to update information collected in previous studies and to collect information on the impact of proposed revisions made recently to the Longshoring and Marine Terminals standards. Efforts included interviews with industry officials to gather information on key cost issues, and calls to equipment manufacturers, suppliers, and professional service providers.

Three general types of costs were identified: first-year costs, capital costs, and recurring annual costs. First-year costs are training and workplace analysis costs that which are expected to be incurred in the first year after promulgation of a final rule. Capital costs are costs for equipment with a working life of more than one year. Recurring annual costs are costs that will be incurred each year after promulgation of a final rule.

The majority of compliance costs are expected to be borne directly by stevedoring companies, although vessel operators may incur some short-term costs.

Revisions to 29 CFR part 1918: Longshoring

This section presents preliminary cost estimates attributable to proposed revisions to OSHA's Longshoring standard. Provisions for which costs are not specifically addressed are not expected to have any incremental costs beyond those estimated for workplace analysis and general training.

General First-Year Costs

Proposed revisions to the existing Longshoring standard will result in general costs for workplace analysis and training. Total first-year costs for these activities are estimated at $1,607,563, and will most likely be borne by stevedoring firms.

Workplace Analysis

Workplace analysis involves evaluating an establishment to determine what needs to be done to achieve compliance with the proposed rule. Preliminary costs for this activity are estimated using the hourly wage rate of a safety consultant or safety engineer. The average hourly fee for a safety consultant is estimated to be $87.50, based on a range of $50 to $125 per hour [1]. The average time per establishment to have a safety consultant conduct such an analysis is estimated to be about an hour and a half [1]. This yields an average cost per facility of $131.25. The total first-year workplace analysis cost across all 3,700 affected establishments is estimated to be $485,625. This cost will most likely be borne by stevedoring firms.

Training

First-year costs will be necessary to train supervisors on the new requirements of the proposed rule. No recurring annual training costs are estimated since interviews with industry officials indicated that longshore supervisors receive regular safety training, and training in new requirements will replace safety training related to the existing rule. Kearney/Centaur field visits, and telephone interviews with longshore safety experts and industry officials revealed that supervisors will assure implementation of proposed requirements. No additional training time will be required for longshore workers. The proposed rule will result in three types of training: (1) general training in new requirements; (2) additional safety training for RO-RO and containerized operations; and (3) accident prevention proficiency training for supervisors overseeing five or more workers. The costs of additional training for container and RO-RO operations, and accident prevention proficiency training will be discussed under the appropriate subparts.

OSHA assumes that first-year supplementary general training will be required to familiarize supervisors with the new requirements of the proposed rule. The number of supervisors that will need general training is estimated using a 10 to 1 employee to supervisor ratio. As discussed in the Industry Profile, approximately 93,427 workers are estimated to be at risk. Hence, 9,343 supervisors are estimated to require general training. Kearney/Centaur estimated that less than one hour of training, in addition to regular safety training, will be necessary to train each supervisor. Using an average supervisor wage rate of $50.78, the total first-year cost of supervisor time to receive general training is estimated at $474,438.

In addition to the cost of supervisor training time, the cost to provide safety instruction is estimated. The fee for an instructor is estimated to be about $175 per hour of training [1]. The total cost for general safety instruction is estimated at $647,500.

Subpart C: Means of Access

Most of the proposed revisions to this subpart are not expected to impose additional costs on affected establishments. For example, proposed requirements for portable ladders are already addressed in the existing Marine Terminals standard. Since portable ladders used on the vessel are typically the same ladders used on the dock, no incremental costs are expected to be incurred. No additional costs are expected to result from requiring 6 inches (15.2 cm) or more of clearance in the back of ladder rungs. This requirement can be met using portable ladders, which are currently available on-site [1].

The proposed requirement for 6 inch (15.2 cm) sideboards on dockboards and ramps is expected to impose additional costs on stevedoring firms. Based on Kearney/Centaur interviews with regional industry representatives, approximately 1,070 ramps will need to be retrofitted at a unit cost of $1,000 [1]. The incremental capital cost for this provision is estimated at $1,070,000.

Subpart D: Working Surfaces

In the existing rule, 29 CFR 1918.32(b) requires fall protection for workers exposed to fall hazards at the edge of a hatch section or stowed cargo over 8 feet (2.4 m) high. Although changes to the regulatory text are being proposed for clarification purposes, the proposed language does not impose additional responsibilities upon employers. Hence, no incremental costs are attributed to this provision. This is consistent with court interpretations, as found by the Occupational Safety and Health Review Commission in its decision of October 24, 1979, OSHRC Docket No. 15242 concerning §1918.32(b) citation of Seattle Crescent Container Service, and the decision of the U.S. Court of Appeals, Ninth Circuit in Long Beach Container Terminal Inc. v. OSHRC and Brock, February 23, 1987.

Proposed revisions to Subpart D also include requirements for "walking sticks" (floating walking and working surfaces) for employees working logs out of the water. However, local rules in ports affected by this requirement currently include these requirements, and affected establishments are already in compliance [1].

Subpart E: Opening and Closing Hatches

The proposed rule includes several revisions to this subpart. Proposed revisions impose more restrictions on working spaces along coamings, more flexibility on covering hatches with tarpaulins, and more flexibility on securing hatch covers. The proposed revisions would also require that all unsecured materials be removed before moving hatch covers. Such changes in work practices are not expected to result in incremental costs other than first-year costs for general training discussed earlier in this chapter [1].

Subpart F: Ship's Cargo Handling Gear

Proposed revisions to this subpart address changes in work practices. Costs attributed to changes in work practices are accounted for in the general first-year cost estimates.

Subpart G: Cargo Handling Gear and Equipment Other Than Ship's Gear

This subpart covers all employer-provided gear and equipment used in longshoring operations aboard vessels. The majority of the gear used aboard vessels is also used on the dock. To the extent that proposed revisions to the Longshoring standard covering this gear are addressed by the existing Marine Terminals standard, no incremental costs are estimated.

The proposed rule would require that all special stevedoring gear purchased or fabricated 90 days or more after publication of a final rule, and having a safe working load of 5 short tons or over, be certified by an OSHA accredited agency in accordance with 29 CFR part 1919. Most gear covered under this subpart is either also used on the dock and therefore, already required to be certified under 29 CFR 1917.50, or already certified prior to purchase by the manufacturer. Although situations do arise in which special gear is manufactured and used only on the vessel, such occurrences are rare and the overall cost to affected establishments is expected to be minimal.

Two requirements, however, are expected to impose costs on affected establishments. The proposed requirements for the quadrennial testing of special stevedoring gear and the lockout/tagout of powered conveyors are expected to generate compliance costs.

OSHA assumes that only the 746 establishments classified under SIC 4491 will be affected by the proposed requirement for quadrennial testing of special gear and equipment. Testing is estimated to take an average of five hours per affected establishment. Assuming that a designated person with an average wage rate of $40.30 will do the testing, the average cost per

[2] This is not intended to suggest that all establishments are fully complying with existing regulations. However, the costs presented in this analysis reflect only those costs which are attributable to to proposed revisions to existing regulations.

establishment is estimated to be $201.50 every four years, or $50.36 annually. The total annual cost for affected establishments to comply with this provision is estimated at $37,583 [1].

Compliance costs are also expected to result from the proposed revision requiring the lockout/tagout of powered conveyors. Those conveyors with master shut-off switches used only aboard vessels and not on the dock will be affected. Kearney/Centaur estimated that existing switches on a total of 60 powered conveyors would need to be replaced by general duty 240 volt/100 amp, 3 pole, fused, lockable safety switches. The unit cost for switch replacement, including installation charges, is estimated to be $315 each ($130 for materials cost, $112 direct labor, $73 overhead and other charges) [1]. OSHA estimates that the total capital cost associated with the lockout/tagout of powered conveyors is $18,900. This cost will most likely be borne by stevedoring firms.

Subpart H: Handling Cargo

Nine proposed revisions to the existing rule were identified as substantive changes to the existing rule.

Vertical Lifting of Containers

The proposed rule requires that, when containers are being hoisted by the top fittings, lifting forces must be applied vertically from at least four such fittings. Since container gantry cranes provide vertical lifts, only non-container cranes will be affected. Stevedores using non-container cranes currently use either box spreaders, or wires and hooks to lift containers. The use of box spreaders would provide vertical lifts. Approximately 423 non-container gantry cranes are used to lift containers. However, box spreaders would only need to be purchased for 8 to 20 percent of these cranes [1]. Approximately one 20 foot (6.1 m) box spreader and one 40 foot (12.2 m) box spreader will need to be purchased for 59 cranes (14 percent of non-container cranes). Kearney/Centaur estimated, based on an interview with a box spreader manufacturer, that a 20-foot (6.1 m) box spreader costs about $8,800 and a 40-foot (12.2 m) box spreader costs about $9,800. The total cost per crane to purchase one 20-foot (6.1 m) box spreader and one 40-foot (12.2 m) box spreader is, therefore, estimated at $18,600 ($8,800 + $9,800). Thus, the total capital cost that will be incurred by stevedoring companies to comply with this provision is estimated at $1,101,492 [1].

Prohibiting Work On Top of Containers to the Extent Feasible

The proposed rule would eliminate work on top of container stacks, to the extent feasible, through the use of engineering controls. Compliance with this proposed requirement is considered feasible, for most operations, when container gantry cranes are used to move containers. To secure stacked containers, twistlocks are placed in the corner castings of each container. When manual twistlocks are used, workers are placed, usually by crane, on top of each container to place or remove (cone or decone) twistlocks. The use of semi-automatic twistlocks (SATLs) and above-deck cell guides would eliminate the need for workers to go atop containers for the purpose of coning or deconing. These engineering controls would greatly reduce the time spent on top of containers and thus, reduce the fall hazards. The use of such controls would also eliminate the need to use personal protective equipment (PPE) for the purposes of coning and deconing.

Kearney/Centaur conducted a time-motion study comparing the use of SATLs with the use of fall protection using tie-off. Through field visits to eight ports, Kearney/Centaur observed various container operations on different types of vessels. Activities that directly affect the total time to complete a project (activities on the critical path) were identified, and the average time to complete each of these activities was estimated. Operations that delay the crane are activities on the critical path. The study demonstrated that the use of SATLs would result in significant decreases in crane delay time, since workers would no longer need to be placed on each container to cone or decone. This finding is consistent with other studies conducted on the use of SATLs [1, Appendix E].

The unit cost of a SATL is about $20 more than the cost of a conventional twistlock. Thus, the incremental cost per SATL is estimated to be $20 [1]. An estimated 177 U.S.-owned vessels and 350 foreign-owned vessels will need to purchase SATLs. The total annualized investment cost to purchase SATLs is estimated at about $2 million for U.S. vessel operators and $4 million for foreign operators.

The use of SATLs is expected to result in cost savings to vessel operators, as well as to stevedores, in terms of productivity increases. The total dollar value of the cost savings depends on the time savings per vessel, the vessel configuration, the number of containers carried, the number of container cranes used to load or unload the vessel, and the number of trips made to U.S. ports. In each case, as analyzed in Kearney/Centaur's study, cost savings exceed the annualized cost of purchasing SATLs. Even under the worst case scenario, annual productivity increases more than offset the annualized investment cost of the SATLs.

The use of SATLs also results in reduced damage to containers. Conventional twistlocks are often thrown or dropped onto the tops of containers, often damaging them. Since SATLs are placed and removed on the dock, such damage would be avoided.

Furthermore, interviews with industry officials revealed that shipping lines are already rapidly converting to the use of SATLs. Approximately 47 to 55 percent of all containerships calling at U.S. ports are currently using SATLs. An estimated 22 to 26 percent of U.S. flag containerships and 74 to 78 percent of foreign flag containerships currently use SATLs. In addition, major shipping lines are currently in the process of fully converting to the use of SATLs [1].

In conclusion, based on the Kearney/Centaur study, the annual productivity gains realized as a result of using of SATLs are expected to exceed the annualized investment cost to purchase SATLs. OSHA requests additional data and comments on this issue.

Certification of Fall Protection Systems

The certification of fall protection systems used in container operations is also expected to result in compliance costs. The proposed rule would require that all fall protection systems be certified by a registered professional engineer as being capable of sustaining at least twice the potential impact of an employee's fall. Based on Kearney/Centaur interviews with industry officials, compliance with this provision would require, on average, one annual certification per establishment involved in container operations. Each certification is expected to take about two hours. Approximately 277 establishments are estimated to be involved in container operations [1]. The services of a registered professional engineer to conduct the required testing and provide certification are estimated to cost about $50 per hour, or $100 per establishment, annually. In addition, there may be a $200 documentation fee and a 15 percent administrative surcharge. This results in an average cost of $345 per establishment, and a total annual recurring cost of $95,565 for stevedoring firms.

Secondary Attachments for Safety Cages

The proposed standard requires the use of secondary attachments for safety cages attached to container gantry cranes which are used to hoist employees. Few safety cages have secondary means of attachment. The installation of padeyes on cages to allow them to be attached to the spreader by chains and hooks would satisfy this requirement. Approximately 75 to 100 safety cages are currently in use, 90 percent of which lack secondary means of attachment [1]. Applying this percentage to 88 safety cages (the midpoint of the estimated range of safety cages in use) yields an estimate of 79 cages that will need to be retrofitted. The installation of padeyes is estimated to cost $200 per safety cage. No costs are attributed to the purchase of hooks and chains since these items are readily available from existing inventories of equipment. The total capital cost to comply with this provision is estimated at $15,840. This cost would is likely to be borne by stevedoring companies [1].

Marking of Load Capacities on RO-RO Ramps

The proposed provision requiring that RO-RO ramps be marked with their load capacities is expected to impose first-year costs primarily on vessel operators. Field visits and interviews with industry representatives indicated that virtually none of the vessels have load capacities marked on their ramps. The Bureau of the Census reported that 147 RO-RO vessels called at U.S. ports in 1992. Approximately 120 of these are RO-RO car carriers, and 27 are heavy capacity RO-RO vessels. On average, car carriers have about four ramps each and heavy capacity RO-RO vessels have 1.5 ramps each. Thus, an estimated 521 ramps would need to be marked. Industry officials indicated that this procedure would require about 0.5 hour per vessel to obtain the necessary information, and 0.5 hour to mark each ramp. Thus, a total of 334 labor hours would be required. Using a labor rate of $40.30, the total estimated first-year cost for vessel operators to comply with this requirement is $13,460.

Separation of Vehicles and Pedestrians on RO-RO Ramps

The proposed rule also requires that pedestrians and vehicles be physically separated on RO-RO ramps. When no physical separation is present or feasible, a signal person would be required to direct traffic, disallowing concurrent use. Although some heavy capacity RO-RO ramps have pedestrian walkways built into them, most are relatively wide and are often used concurrently by pedestrians and vehicles.

For car carriers, ramps are narrow and many do not have room to designate both a pedestrian walkway and a car lane. Discussions with car carrier foremen indicated that, currently, a gang member is assigned the duty of directing traffic and coordinating the movement of vehicles. Consequently, no incremental costs are expected to be incurred for a signal person. However, decreases in productivity may result since vehicles, which would normally be driven onto ramps when pedestrians are present, would have to wait until all pedestrians clear the ramp.

Kearney/Centaur indicated that productivity decreases would be in the form of additional personnel rather than vessel delays. Based on the number of vehicles imported to and exported from the United States each year, the probability that pedestrians and vehicles would concurrently use a ramp, and the average delay time that would result for each incident, Kearney/Centaur estimated that this proposed requirement would result in a total annual delay time of about 2,178.7 hours [1]. Applying an average longshore worker wage rate of $40.30 to the total time delay yields a recurring annual cost of about $87,801.

Marking Flat Bed and Low Boy Trailers

The proposed rule requires that flat bed and low boy trailers (mafis) be marked with their load capacities. Kearney/Centaur concluded that the 307 establishments involved in container and RO-RO operations will be affected by this requirement, 80 percent of which are already in compliance [1]. To mark all mafis would take about eight hours per establishment. Using an average hourly wage rate of $40.30, the first-year incremental cost of this requirement is estimated at $19,795.

High Visibility Vests

The proposed rule would require that high visibility vests be used during RO-RO and container operations. Kearney/Centaur estimated that one vest would be required, annually, for each affected worker [1]. OSHA estimates that about 75 percent (40,963 workers) of SIC 4491 workers are involved in container or RO-RO operations. The average unit cost of a high visibility vest is estimated to be $6.50 [1]. Therefore, the annual recurring cost for high visibility vests is estimated at $266,260.

Additional Training in Container and RO-RO Safety

Since there are several revisions proposed for container and RO-RO operations, additional training is expected to be needed. OSHA estimates that 75 percent of longshore workers employed in SIC 4491 (40,963 workers) engage in either container or RO-RO operations or both. Assuming one supervisor will need to be trained for every 10 workers at risk, 4,096 supervisors will need additional training. Additional training in container and RO-RO operations is not expected to exceed 0.5 hour [1]. Applying an hourly supervisor wage rate of $50.78 yields a first-year cost of approximately $103,997.

A first-year cost to provide safety instruction is also estimated. An estimated 307 establishments will need instructors for container and RO-RO safety training [1]. Using an hourly instruction fee of $175 per hour of training provided, the estimated instruction cost is $26,863.

The total first-year cost for additional container and RO-RO safety training is estimated to be $130,860, and will most likely be borne by stevedoring firms.

Subpart I: General Working Conditions

Illumination

According to industry officials, most lighting situations meet the proposed requirement of 5 footcandles (54 lux) of illumination. The existing rule requires that "adequate" lighting be provided at all times. OSHA assumes that establishments not using at least 5 footcandles (54 lux) of lighting would be in violation of the existing rule. Thus, no incremental costs are estimated for this provision.

Sanitation

The proposed standard includes specifications on the number of toilets that would need to be available to longshore workers. Kearney/Centaur interviews with industry representatives indicated that current practice already meets this proposed requirement, with the exception of certain situations in the Gulf region. Compliance with this requirement can be achieved through semi-monthly rentals of portable toilets at a rental cost of $65 each. The total recurring annual cost to comply with the proposed sanitation requirements is estimated to be $1,560 for stevedoring companies operating in the Gulf [1].

First Aid Kits

The proposed rule would require that first aid kits be checked at least weekly and that contents be approved by a physician. Industry officials indicated that first aid kits currently in use are stocked on the basis of recommendations by first aid and safety professionals and are expected to already meet physicians' recommendations. Thus, kit contents are not expected to change as a result of proposed revisions. Incremental costs are expected to result in the form of labor time necessary to perform weekly checks of the contents of each kit. This

procedure is not expected to take more than 5 minutes per week per establishment. Applying an average hourly wage rate of $40.30 yields an annual cost of $174.63 per establishment per year. The total recurring annual cost for all 3,700 establishments to comply with this requirement is estimated at $646,143.

Stretchers

Incremental costs are expected to result from the proposed requirement that stretchers be equipped with four sets of working patient restraints. Costs are estimated assuming that 25 percent of the affected workplaces would need to retrofit their stretchers. Approximately one stretcher per establishment would need to be retrofitted at an average cost of $400 each [1]. The total capital cost for this requirement is estimated at $370,000.

Accident Prevention Proficiency Training for Supervisors

The proposed rule would require that all supervisors overseeing more than five workers complete a course in accident prevention. This training is currently required under the Marine Terminals standard. Kearney/Centaur field visits indicated that approximately 75 percent of supervisors already receive accident prevention training [1]. Each course is estimated to take two hours. At an average supervisor wage rate of $50.78 per hour, the cost for 2,336 supervisors to receive this training is $237,244. The average fee to provide instruction is estimated to be $175 per hour of training. Assuming that 25 percent of the affected establishments (925 establishments) would require such training, the cost for instruction is estimated at $323,750 ($175 x 2 x 925). The total first-year cost for accident prevention proficiency training is, therefore, estimated to be $560,994 and is expected to be borne by stevedoring companies.

In addition to first-year costs, annual recurring costs are expected to be incurred as a result of supervisor turnover. Kearney/Centaur estimated that the turnover rate for longshore supervisors is about five percent per year. The resulting annual cost of supervisor time is estimated at $11,883. The annual cost to provide instruction is $16,188, assuming that five percent of establishments would need such instruction. The recurring annual cost for accident prevention proficiency training is, therefore, estimated at $28,070.

Subpart J: Personal Protective Equipment

The proposed rule would broaden the existing scope to require that personal flotation devices be used in more situations where workers may be at risk of falling into the water. Since the existing rule already requires the use of personal flotation devices in the Gulf/Mississippi region, no incremental costs in addition to general training costs are expected to be incurred by establishments in this region. To estimate the number of flotation devices that would be needed, OSHA assumes that 50 percent of employees not working in the Gulf/Mississippi region (19,386 workers), would need personal flotation devices. The average unit cost per life vest meeting the required specifications is estimated at $55 [8]. Thus, the total capital cost to purchase personal flotation devices is estimated at $1,066,230.

Summary

As shown in Table C–2, the total first-year cost of the proposed revisions to the Longshoring standard is estimated at $4,088,445. After the first year, establishments will incur an estimated $1,755,773, annually.

Table C-2—Preliminary Cost Estimates of Proposed Revisions to 29 CFR Part 1918 (Longshoring) (1993 Dollars)

Source	First-Year Costs	Capital Costs	Annualized Capital Costs*	Recurring Annual Costs	Total First-Year Costs	Total Annualized Costs
Workplace Analysis	485,625				485,625	
General Training						
Supervisor Time	474,438				474,438	
Instruction	647,500				647,500	
Subpart C						
6″ sideboards: dockboards/ramps		1,070,000	174,138		174,138	174,138
Subpart G						
4-yr. testing of special gear				37,580	37,580	37,580
Lockout/tagout: powered conveyors		18,900	3,076		3,076	3,076
Subpart H						
Vertical lifts		1,101,492	179,263		179,263	179,263
Certification: fall protection				95,565	95,565	95,565
Secondary safety cage attachments		15,840	2,578		2,578	2,578
Marking RO-RO ramps	13,460				13,460	
Separation of vehicles/pedestrians on RO-RO ramps				87,801	87,801	87,801
Marking flat bed/low boy trailers	19,795				19,795	
High visibility vests				266,260	266,260	266,260
Training						
Supervisor Time	103,997				103,997	
Instructor	26,863				26,863	
Subpart I						
Sanitation				1,560	1,560	1,560
First aid kits				646,143	646,143	646,143
Stretchers		370,000	60,216		60,216	60,216
Accident prevention training	560,994			28,070	589,064	28,070
Subpart J						
Personal flotation devices		1,066,230	173,524		173,524	173,524

Table C-2—Preliminary Cost Estimates of Proposed Revisions to 29 CFR Part 1918 (Longshoring) (1993 Dollars)—Continued

Source	First-Year Costs	Capital Costs	Annualized Capital Costs*	Recurring Annual Costs	Total First-Year Costs	Total Annualized Costs
TOTAL	$2,332,672	$3,642,462	$592,794	$1,162,979	$4,088,445	$1,755,773

Source: U.S. Department of Labor OSHA, based on Kearney/Centaur [1, Chapter 4]
* Annualized over 10 years using a 10% interest rate.

Revisions to 29 CFR Part 1917: Marine Terminals

Several of the proposed revisions to the Marine Terminals standard are not expected to generate any specific costs. Some of the costs of the proposed revisions are included in the cost analysis of the proposed Longshoring standard. For example, the first aid kits and stretchers used for workers aboard vessels are the same ones used in marine terminals. Also, Kearney/Centaur concluded, based on interviews with industry representatives, that many of the proposed requirements reflect current practices. For example, current industry practice prohibits riding the load and hoisting workers by hooks. In addition, industry officials indicated that lowering the 8-hour time-weighted average exposure limit of carbon monoxide from 50 ppm to 35 ppm would not be a problem.

Compliance with most of the proposed revisions to the Marine Terminals standard can be met through workplace analysis and general training. Specific compliance costs are expected to be generated from the proposed requirement for seat belts in high speed container gantry cranes.

First-Year Costs

Costs for workplace analysis and general training are based on the assumption that 1,928 establishments and 70,140 workers (see Industry Profile), would be affected by proposed revisions to the Marine Terminals standard [1]. The total first-year cost for these activities is estimated at $515,485.

Workplace Analysis

Approximately one hour, on average, is estimated to be required for a safety consultant, familiar with the proposed rule, to evaluate an establishment. At an average fee of $87.50 per hour, the total estimated first-year cost for workplace analysis is $168,700 [1].

General Training

One supervisor per every 10 workers (7,014 supervisors) would receive supplementary general training in the proposed new requirements. General training in the proposed requirements is estimated to take about 0.5 hour. Using an average supervisor wage rate of $50.78, the total first-year cost of supervisor time for additional training is estimated at $178,085. The cost per establishment to provide instruction, using an average fee of $175 per hour of training, is estimated at $168,700.

Thus, the total first-year cost of general training is estimated at $346,785, and will most likely be borne by stevedoring firms.

Seat Belts

The proposed rule requires that seat belts be placed in the operators' seats of high-speed container gantry cranes. Kearney/Centaur estimated that 40 percent of the 411 container gantry cranes in U.S. ports are already equipped with chest harnesses. Based on interviews, the cost to retrofit one crane is estimated at $500. The total capital cost to retrofit 247 container cranes is estimated to be $123,500.

Summary

Proposed revisions to the Marine Terminals standard are estimated to result in first-year costs totalling $535,585 and annualized costs totalling $20,099 (Table C–3).

Table C-3—Preliminary Cost Estimates of Proposed Revisions to 29 CFR Part 1917 (Marine Terminals) (1993 Dollars)

	First-Year Cost	Capital Cost	Annualized Capital Cost*	Total First-Year Cost	Total Annualized Cost*
Workplace Analysis	168,700			168,700	
General Training					
Supervisor Time	178,085			178,085	
Instructor	168,700			168,700	
Seatbelts		123,500	20,099	20,099	20,099
TOTAL	$515,485	$123,500	$20,099	$535,585	$20,099

Source: U.S. Department of Labor OSHA, based on Kearney/Centaur [1, Chapter 4].
* Annualized over 10 years using a 10% interest rate.

D. Benefits

Introduction

The proposed revisions to the Longshoring and Marine Terminals standards are expected to reduce the numbers of injuries and fatalities in the marine cargo handling industry. Since affected workers are involved in both off-the-dock (covered under 29 CFR part 1918) and on-the-dock activities (covered under 29 CFR part 1917), separate analyses are presented on accidents that occur in each area of operation.

Injuries and Fatalities

As presented in the Industry Profile, approximately 87,951 full-time equivalent (FTE) longshore workers, based on a 1,436 hour work-year, are affected by the Longshoring standard. Approximately 67,974 of these workers are also covered by the Marine Terminals standard. About 54,617 of affected workers are employed in SIC 4491, while the others are employed in establishments classified under other industry sectors. A summary of injuries occurring among affected workers in the marine cargo handling industry is shown in Table D-1. As shown, a total of 18 fatalities and 7,593 injuries occurred among workers affected by the Longshoring and Marine Terminals standards.

Table D-1—Estimated Annual Number of Fatalities and Injuries Occurring Among Affected Workers

Type of Incident	Total Cases	Off-the-Dock	On-the-Dock
Fatalities	18	10	8
Injuries	7,593	4,208	3,385
Non-Lost Workday Cases	2,903	1,609	1,294
Lost Workday Cases	4,690	2,599	2,091
Lost Workdays	182,442	101,109	81,332

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, based on Kearney/Centaur [1, Chapter 5]

Injuries

The Bureau of Labor Statistics (BLS) provided the 1991 injury rate for SIC 4491. This rate was 13.6 for every 100 FTE workers, based on a 2000 hour work-year [1]. The lost workday and non-lost workday injury rates per 100 FTE workers were 8.4 and 5.2, respectively. An average of 38.9 lost workdays occurred per lost workday injury.

BLS also conducted a study of longshore-related injuries processed under the Federal Longshoremen's and Harbor Workers' Compensation Act [9]. According to this study, 49 percent of longshore-related injuries occurred off the dock, while 51 percent occurred on the dock.

Since BLS injury rates are per 100 FTE workers based on a 2,000 hour work-year, the number of FTE workers based on a 1,436 hour work-year must be converted to FTEs based on a 2,000-hour work-year. The conversion results in 63,148 FTE off-the-dock workers and 48,805 FTE on-the-dock workers.

Off-the-Dock

The number of off-the-dock injuries was estimated by applying 49 percent of the BLS injury rate to the 63,148 FTE off-the-dock workers (based on a 2,000 hour work-year). As a result, 4,208 annual injuries are estimated to occur off the dock. Of these, 2,599 are lost workday cases resulting in 101,109 lost workdays, and 1,609 are non-lost workday cases.

On-the-Dock

The number of FTE workers affected by the Marine Terminals standard, based on a 2,000 hour work-year, is 48,805. Applying 51 percent of the BLS injury rate to the 48,805 FTE workers on the dock yields 3,385 annual injuries occurring on the dock. Of these, 1,294 are non-lost workday cases and 2,091 are lost workday cases resulting in 81,332 lost workdays.

Fatalities

Although BLS did not provide a fatality rate for SIC 4491, data were available on the total of number of 1992 fatalities that occurred in SIC 4491. BLS indicated that 13 fatalities occurred among SIC 4491 workers [1]. Since 54,617 FTE workers (based on a 1,436 hour work-year) are estimated to be employed in SIC 4491, a fatality rate of 0.0238 per 100 FTE workers (based on a 1,436 hour work-year) was derived.

Off-the-Dock

To determine the number of off-the-dock fatalities occurring annually, 49 percent of the fatality rate was applied to the 87,951 FTE longshore workers (based on a 1,436 hour work-year). This results in 10 fatalities occurring, annually, off the dock.

On-the-Dock

To estimate the number of fatalities occurring among the population covered by the Marine Terminals standard, OSHA used 51 percent of the fatality rate estimated above. As a result, approximately eight fatalities are estimated to occur on the dock, annually.

BENEFITS

The proposed revisions to the Longshoring and Marine Terminals standards are expected to reduce many of the risks involved in marine cargo handling operations. Reductions in fatalities and injuries are expected as a result of proposed revisions to the two standards.

In reviewing OSHA's first reports of serious accidents in the marine cargo handling industry, Kearney/Centaur estimated the percent of fatalities that would have been prevented by proposed revisions to the existing standards. Approximately 30 percent of off-the-dock fatalities and injuries could have been prevented through compliance with proposed requirements. Thus, an estimated 3 fatalities are expected to be prevented, annually, by the proposed requirements. In addition, an estimated 1,262 injuries would be prevented annually through compliance with proposed new requirements. Many additional fatalities and injuries would be prevented through full compliance with existing requirements retained in the proposed standards.

Summary of Benefits

All of the proposed revisions to the Longshoring and Marine Terminals standards are likely to reduce the risk of injuries occurring in the marine cargo handling industry. The proposed new requirements are expected to prevent approximately 3 of the 18 fatalities and 1,262 of the 7,593 injuries occurring annually among affected workers. Approximately 779 lost workday injuries involving 30,303 lost workdays are expected to be prevented, annually. An additional 483 non-lost workday cases are also expected to be avoided. Many additional fatalities and injuries would likely be prevented through full compliance with existing requirements retained in the proposed standards.

E. Economic Impacts

Compliance with the requirements of the proposed revisions to the Longshoring and Marine Terminals standards are not expected to produce any significant adverse economic impacts. The costs that are imposed by the regulation should be a minimal burden on all affected establishments.

The total annual revenues and profits associated with longshoring operations are approximately $7.8 billion and $388.9 million, respectively [1]. The total estimated costs of compliance with the proposed revisions to the Longshoring and Marine Terminals standards rules are less than $4.7 million for the first year after promulgation of the final rules and less than $1.8 million annually, thereafter. Thus, the total first-year costs of compliance with the proposed revisions represent less than 0.06 percent of the revenues and 1.19 percent of the profits of the industry. Compliance costs for subsequent years represent less than 0.03 percent of revenues and less than 0.46 percent of profits.

Current practices in the marine cargo handling industry indicate that the requirements of the proposed standard can generally be met without significant hardship. Many employers already comply with the proposed requirements and presumably are not imposing substantial disadvantages on themselves.

Since stevedoring establishments engaging in similar cargo handling operations in the United States would be subject to the same regulations, no competitive disadvantages between industries or with regard to international trade are projected. Costs are expected to be passed through as an increase in the costs of cargo handling and shipping, and the effect on profits and prices should be negligible. The estimated compliance costs would represent an average increase in cost of less than 25 cents for shipping a loaded container in or out of U.S. ports, which costs an average of about $3000. On the whole, the costs of marine cargo handling operations for society would actually decrease as fewer accidents would mean less lost time and wages and fewer medical and legal resources

necessary for a given amount of cargo shipping and handling.

The estimated savings to society attributable to the prevention of injuries and fatalities would far outweigh the costs of preventing these incidents. According to the National Safety Council, the total costs associated with occupational injuries and deaths in 1992 were $115.9 billion, or an average cost of over $15,000 per case. This estimate includes wage and productivity losses, medical costs, administrative expenses, and other costs associated with accidents. The estimated benefits anticipated from proposed requirements include unquantifiable reductions in pain and suffering, plus estimated savings of over $18 million annually.

REGULATORY FLEXIBILITY ANALYSIS

Pursuant to the Regulatory Flexibility Act (P.L. 96-353, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*)), OSHA has made an assessment of the impact of the proposed revisions to the Longshoring and Marine Terminals standards, and has concluded that they would not have a significant impact upon a substantial number of small entities.

The important criterion that governs a Regulatory Flexibility Analysis is whether the proposed standards would impose significant costs upon small entities. "Significance" is determined by the effect upon profits, market share, and the entity's financial viability. In particular, the effect of the proposed revisions upon small entities relative to their effect upon large entities needs to be specifically evaluated. That is, OSHA must determine whether the proposed requirements would have a relatively greater negative effect upon small entities than they would have upon large entities, thereby putting small entities at a competitive disadvantage, and if so, whether there are ways to minimize any differentially adverse effects without increasing the risk to employees.

If the costs of compliance are proportional to firm size and are insignificant to small firms, then there is no significant differential burden on small firms relative to that on large firms. In those cases involving large absolute costs (typically capital equipment costs), financing may be more difficult to obtain for small entities than for larger entities and in such cases of economies of scale in compliance, the burden on small firms will be greater than the burden on large firms. The proposed changes to the Longshoring and Marine Terminals standards, however, require minimal capital expenditures and generally impose costs that are proportional to firm size and the amount of business done. In addition, these costs would be a minimal component of the overall costs of operations. As a result, small entities would not be put at a competitive disadvantage to large entities due to these compliance costs.

Thus, OSHA concluded that the proposed revisions to the Longshoring and Marine Terminals standards would not have a significant adverse impact upon a substantial number of small entities.

F. Other Impacts

Impact Upon International Trade

OSHA determined that compliance with the proposed revisions to the Longshoring and Marine Terminals standards would not have any measurable impact upon international trade. The compliance costs are minimal and are not expected to affect exports, imports, or international competitiveness. To the extent that compliance with the proposed rule would increase cargo handling efficiency and reduce the number of injuries and fatalities associated with these operations, shipping costs may be reduced and result in a general increase in the competitiveness of U.S. firms.

References

1. Kearney/Centaur, Division of A T Kearney, Inc., *Economic Assessment of OSHA's Proposed Longshoring Standard*, prepared for the U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis, Contract No. J-9-F-1-0015

2. U.S. Department of Transportation, Maritime Administration, "The U.S. Stevedoring and Marine Terminal Industry," January 1993.

3. U.S. Department of Transportation, Maritime Administration, "Merchant Fleets of the World: Oceangoing Steam and Motor Ships of 1,000 Gross Tons and Over as of January 1, 1992."

4. U.S. Department of Transportation, Maritime Administration, "A Report to Congress on the Status of the United States 1990–1991," December 1992.

5. U.S. Department of Commerce, Bureau of the Census, Foreign Trade Division, computer printout on the number of vessels calling at U.S. ports in 1992, May 4, 1993.

6. U.S. Department of Transportation, Maritime Administration, "Inventory of American Intermodal Equipment 1990," April 1991.

7. U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, County Business Patterns 1990—United States.

8. SAFECO, Inc. Occupational Health and Safety Products Supply Catalog.

9. U.S. Department of Labor, Bureau of Labor Statistics, "Injuries Involving Longshore Operations," Bulletin 2326, May 1989

IX. Environmental Impact

The proposed revisions to the Longshoring and Marine Terminals standards have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and DOL NEPA Procedures (29 CFR Part 11). No significant negative impact is foreseen on air, water or soil quality, plant or animal life, the use of land or sea, or other aspects of the environment.

X. Recordkeeping Requirements

Part 1320 of title 5 of the CFR sets forth procedures for agencies to follow in obtaining OMB clearance for information collection requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The proposed Longshoring standard requires the employer to allow OSHA access to records. In accordance with the provisions of the Paperwork Reduction Act and the regulations issued pursuant thereto, OSHA certifies that it has submitted the information collection to OMB for review under section 3504(h) of that Act.

Public reporting burden for this collection of information is estimated to average five minutes per response to allow OSHA compliance officers access to the employer's records. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Information and Regulatory Affairs Management and Budget, Washington, D.C. 20503.

XI. State Plan Requirements

Those of the 25 states with their own OSHA-approved occupational safety and health plans whose plans cover the issues of maritime safety and health must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing state standard covering this area is already "at least as effective" as the revised Federal standard. Currently five states (California, Minnesota, Oregon, Vermont and Washington) with their own state plans cover private sector onshore maritime activities. Federal OSHA enforces maritime standards offshore in all states and provides onshore coverage

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of maritime activities in Federal OSHA states and in the following state Plan States: Alaska, Arizona, Connecticut[3], Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York[4], North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands, and Wyoming (all states with state plans must also extend coverage to state and local government employees engaged in maritime activities.)

XII. Federalism

The standard has been reviewed in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987) regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear constitutional authority and the presence of a problem of national scope. Additionally, the Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The Federal standards on longshoring and marine terminal operations address hazards which are not unique to any one state or region of the country. Nonetheless, those States which have elected to participate under section 18 of the OSHA Act would not be preempted by this final regulation and would be able to deal with special, local conditions within the framework provided by this performance-oriented standard while ensuring that their standards are at least as effective as the Federal standard.

XIII. Public Participation

Interested persons are requested to submit written data, views and arguments concerning this proposal. Responses to the questions raised at various places in the proposal are particularly encouraged. These comments must be postmarked by September 30, 1994. Comments are to be submitted in quadruplicate or 1 original (hard-copy) and 1 disk (5¼ or 3½) in WP 5.0, 5.1, 6.0 or Ascii. Note: Any information not contained on disk, e.g., studies, articles, etc., must be submitted in quadruplicate to: The Docket Office, Docket No. S–025, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone No. (202) 219–7894.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

Notice of Intention to Appear at the Informal Hearing

Pursuant to section 6(b)(3) of the OSH Act, informal public hearings will be held on this proposal in:

Charleston, South Carolina on September 30, 1994.

Seattle, Washington on October 31, 1994.

New Orleans, Louisiana on November 29, 1994. Actual addresses for the locations of the regional hearings in Charleston, South Carolina, Seattle, Washington, and New Orleans, Louisiana will be announced in a later Federal Register notice.

Persons desiring to participate at the informal public hearing must file a notice of intention to appear by August 31, 1994. The notice of intention to appear must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The issues that will be addressed;
5. A brief statement of the position that will be taken with respect to each issue; and
6. Whether the party intends to submit documentary evidence and, if so, a brief summary of it.

The notice of intention to appear shall be mailed to Mr. Thomas Hall, OSHA Division of Consumer Affairs, Docket No. S–025, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Telephone (202) 219–8615.

A notice of intention to appear also may be transmitted by facsimile to (202) 219–5986, by the same date, provided the original and 3 copies are sent to the same address and postmarked no later than 3 days later.

Individuals with disabilities wishing to attend the hearings should contact the hearing management officer, Mr. Tom Hall, to obtain appropriate accommodations at the hearing.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than ten (10) minutes for presentation at the informal public hearing, or who intends to submit documentary evidence, must provide in quadruplicate the testimony and evidence to be presented at the informal public hearing. One copy shall not be stapled or bound and be suitable for copying. These materials must be provided to Mr. Thomas Hall, OSHA Division of Consumer Affairs at the address above and be postmarked no later than 21 days prior to the date of the hearing.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact prior to the informal hearing.

Any party who has not substantially complied with the above requirement may be limited to a ten-minute presentation and may be requested to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify for no more than 10 minutes as time permits, at the discretion of the Administrative Law Judge, but will not be allowed to question witnesses.

Notice of intention to appear, testimony and evidence will be available for inspection and copying at the Docket Office at the address above.

Conduct and Nature of Hearing

The hearing will commence at 9:30 a.m. on the first day. At that time, any procedural matters relating to the proceeding will be resolved.

The nature of an informal rulemaking hearing is established in the legislative history of section 6 of the OSH Act and is reflected by OSHA's rules of procedure for hearings (29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, the proceeding is informal and legislative in type. The Agency's intent, in essence, is to provide interested persons with an opportunity to make effective oral presentations which can proceed expeditiously in the absence of procedural restraints which impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding rather than an adjudicative one. The technical rules of evidence, for example do not apply. The regulations that govern hearings and the pre-hearing guidelines to be issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. Those rules and guidelines will be interpreted in a manner that furthers that development. Thus, questions of relevance, procedure and participation generally will be decided so as to favor development of the record.

The hearing will be conducted in accordance with 29 CFR part 1911. It should be noted that §1911.4 specifies the Assistant Secretary may upon reasonable notice issue alternative procedures to expedite proceedings or for other good cause. The hearing will be presided over by an Administrative Law Judge who makes no decision or recommendation on the merits of OSHA's proposal. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge, therefore, will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911 including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentations to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit the questioning of any witnesses and to limit the time for questioning; and
6. In the Judge's discretion, to keep the record open for a reasonable, stated time (known as the post-hearing comment period) to receive written information and additional data, views and arguments from any person who has participated in the oral proceedings.

OSHA recognizes that there may be interested persons or organizations who, through their knowledge of the subject matter or their experience in the field, would wish to endorse or support the whole proposal or certain provisions of the proposal. OSHA welcomes such supportive comments, including any pertinent data and cost information which may be available, in order that the record of this rulemaking will present a balanced picture of public response on the issues involved.

List of Subjects in 29 CFR parts 1910, 1917, and 1918

Cargo, Cargo gear certification, Intermodal container, Longshoring, Maritime, Marine terminal, Hazardous materials, Labeling, Occupational safety and health, Protective equipment, Respiratory protection, Signs and symbols.

XIV. Authority and Signature

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210.

Accordingly, pursuant to sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); and 29 CFR part 1911 and Secretary of Labor's Order No. 1–90 (55 FR 8033), OSHA proposes to amend 29 CFR parts 1910, 1917 and 1918 as set forth below.

Signed at Washington, D.C. this 12th day of May, 1994.

Joseph A. Dear,

Assistant Secretary of Labor

For the reasons set out in the preamble 29 CFR Chapter XVII would be amended as follows:

PART 1910—[AMENDED]

1. The authority for part 1910 would continue to read as follows:

Authority: Secs. 4, 6 and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 41 U.S.C. 35 *et seq*; Service Contract Act of 1965, 41 U.S.C. 351 *et seq*; sec. 107, Contract Work Hours and Safety Standards Acts (Construction Safety Act), 40 U.S.C. 333; Sec. 41, Longshore and Harbor Workers' Compensation Act 33 U.S.C. 941; National Foundation of Arts and Humanities Act, 20 U.S.C. 951 *et seq.*; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 1911, 9–83 (48 FR 35736), or 1–90 (55 FR 9033) as applicable.

2. Paragraphs (a) and (b) of §1910.16 would be revised to read as follows:

§ 1910.16 Longshoring and marine terminals.

(a) *Safety and health standards for longshoring.* (1) Part 1918 of this chapter shall apply exclusively, according to the provisions thereof, to all employment of every employee engaged in longshoring operations or related employment aboard any vessel. All cargo transfer accomplished with the use of shore-based material handling devices shall be regulated by part 1917 of this chapter.

(2) Part 1910 does not apply to longshoring operations except for the following provisions:

(i) *Toxic and hazardous substances.* Subpart Z applies except that the requirements of subpart Z of this part do not apply when a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements.[1]

(ii) *Access to employee exposure and medical records.* Subpart C, §1910.20;

(iii) *Commercial diving operations.* Subpart T of this part;

(iv) *Electrical.* Subpart S of this part; when shorebased electrical installations provide power for use aboard vessels;

(v) *Hand and Portable Powered Tools and Other Hand-Held Equipment.* Subpart P of this part;

(vi) *Hazard Communication.* Subpart Z, §1910.1200;

(vii) *Hazardous waste operations and emergency response.* Subpart H, §1910.120(q).

(viii) *Ionizing radiation.* Subpart G, §1910.96;

(ix) *Machinery and Machine Guarding.* Subpart O, §1910.211;

(x) *Noise.* Subpart G, §1910.95;

(xi) *Nonionizing radiation.* Subpart G, §1910.97; and

(xii) *Respiratory protection.* Subpart I, §1910.134.

(b) *Safety and health standards for Marine Terminals.* Part 1917 of this chapter shall apply exclusively, according to the provisions thereof, to employment within a marine terminal, except as follows:

(1) The provisions of part 1917 of this chapter do not apply to the following:

(i) Facilities used solely for the bulk storage, handling and transfer of flammable and combustible liquids and gases.

(ii) Facilities subject to the regulations of the Office of Pipeline Safety Regulation of the Materials Transportation Bureau, Department of

[3] Plan covers only state and local government employees.

[4] Plan covers only state and local government employees.

[1] The International Maritime Organization publishes the International Maritime Dangerous Goods Code to aid compliance with International legal requirements of the International Convention for the Safety of Life at Sea, 1960.

Transportation, to the extent such regulations apply to specific working conditions.

(iii) Fully automated bulk coal handling facilities contiguous to electrical power generating plants.

(2) Part 1910 does not apply to Marine Terminals except for the following:

(i) *Abrasive blasting.* Subpart G, §1910.94(a);

(ii) *Access to employee exposure and medical records.* Subpart C, §1910.20;

(iii) *Commercial diving operations.* Subpart T of this part;

(iv) The control of hazardous energy (lockout/tagout). Subpart J, §1910.147;

(v) *Electrical.* Subpart S of this part;

(vi) *Grain handling facilities.* Subpart R, §1910.272;

(vii) *Hand and Portable Powered Tools and Other Hand-Held Equipment.* Subpart P of this part;

(viii) *Hazard Communication.* Subpart Z, §1910.1200;

(ix) *Machinery and Machine Guarding.* Subpart O;

(x) *Noise.* Subpart G, §1910.95;

(xi) *Respiratory protection.* Subpart I, §1910.143;

(xii) *Safety requirements for scaffolding.* Subpart D, §1910.28;

(xiii) *Servicing multi-piece and single piece rim wheels.* Subpart N, §1910.177; and

(xiv) *Toxic and hazardous substances.* Subpart Z applies except that the requirements of Subpart Z of this part do not apply when a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements.[1]

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PART 1917—MARINE TERMINALS

1. The authority citation for part 1917 would continue to read as follows:

Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs.4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; 29 CFR part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

Subpart A—Scope and Definitions

2. In § 1917.1, the introductory text of (a) and paragraphs (a)(2)(i) through (a)(2)(x) are proposed to be revised and paragraphs (a)(2)(xi) through (a)(2)(xvii) are proposed to be added to read as follows:

§ 1917.1 Scope and applicability.

(a) The regulations of this part apply to employment within a marine terminal as defined in § 1917.2(u), including the loading, unloading, movement or other handling of cargo, ship's stores or gear within the terminal or into or out of any land carrier, holding or consolidation area, any other activity within and associated with the overall operation and functions of the terminal, such as the use and routine maintenance of facilities and equipment. All cargo transfer accomplished with the use of shore-based material handling devices shall be regulated by this part.

* * * * *

(2) * * *

(i) *Abrasive blasting.* Subpart G, § 1910.94(a);

(ii) *Access to employee exposure and medical records.* Subpart C, § 1910.20;

(iii) *Commercial diving operations.* Subpart T of part 1910;

(iv) *The control of hazardous energy (lockout/tagout).* Subpart J, § 1910.147;

(v) *Electrical.* Subpart S of part 1910;

(vi) *Grain handling facilities.* Subpart R, § 1910.272;

(vii) *Hand and portable powered tools and other hand-held equipment.* Subpart P of part 1910;

(viii) *Hazard communication.* Subpart Z, § 1910.1200;

(ix) *Hazardous waste operations and emergency response.* Subpart H, § 1910.120(q);

(x) *Ionizing radiation.* Subpart G, § 1910.96;

(xi) *Machinery and machine guarding.* Subpart O of part 1910;

(xii) *Noise.* Subpart G, § 1910.95;

(xiii) *Nonionizing radiation.* Subpart G, § 1910.97;

(xiv) *Respiratory protection.* Subpart I, § 1910.143;

(xv) *Safety requirements for scaffolding.* Subpart D, § 1910.28;

(xvi) *Servicing multi-piece and single piece rim wheels.* Subpart N, § 1910.177; and

(xvii) *Toxic and hazardous substances.* Subpart Z of part 1910 applies, except that the requirements of subpart Z of part 1910 do not apply when a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements.[1] Notwithstanding the rules for Hazard Communication (§ 1910.1200) shall apply.

3. In § 1917.2, the paragraph designations to each definition are proposed to be removed and the definitions placed in alphabetical order, definitions for the terms *Employee* and *Employer* are proposed to be added, and the definition for the term *Intermodal container* is proposed to be revised to read as follows:

§ 1917.2 Definitions.

* * * * *

Employee means any longshore worker, or other person engaged in marine terminal operations or related employments.

Employer means an employer any of whose employees are employed, in whole or in part, in marine terminal operations.

* * * * *

Intermodal container means a reusable cargo container of rigid construction and rectangular configuration; fitted with devices permitting its ready handling, particularly its transfer from one mode of transport to another; so designed to be readily filled and emptied; intended to contain one or more articles of cargo or bulk commodities for transportation by water and one or more other transport modes without intermediate cargo handling. The term includes completely enclosed units, open top units, fractional height units, units incorporating liquid or gas tanks and other variations fitting into the container system. It does not include cylinders, drums, crates, cases, cartons, packages, sacks, unitized loads or any other form of packaging.

* * * * *

Subpart B—Marine Terminal Operations

4. Section 1917.11 is proposed to be amended by adding paragraph (d) to read as follows:

§ 1917.11 Housekeeping.

* * * * *

(d) Dunnage, lumber, or shoring material in which there are visibly protruding nails shall be removed from the immediate work area or if left in the area, the nails shall be rendered harmless.

5. Section 1917.13 is proposed to be amended by revising paragraph (g) and adding paragraphs (h) and (i) to read as follows:

[1] The International Maritime Organization publishes the International Maritime Dangerous Goods Code to aid compliance with International legal requirements of the International Convention for the Safety of Life at Sea, 1960.

[1] The International Maritime Organization publishes the International Maritime Dangerous Goods Code to aid compliance with the International legal requirements of the International Convention for the Safety of Life at Sea, 1960.

§ 1917.13 Slinging.

* * * * *

(g) Intermodal containers shall be handled in accordance with § 1917.71(f).

(h) The employer shall require employees to stay clear of the area beneath overhead drafts or descending lifting gear.

(i) Employees shall not be permitted to ride the hook or the load.

6. Section 1917.17 is proposed to be amended by revising paragraphs (i), (j), and (k) to read as follows:

§ 1917.17 Railroad facilities.

* * * * *

(i) If powered industrial trucks are used to open railcar doors, the trucks or the railcar doors shall be equipped with door opening attachments. Employees shall stand clear of the railcar doors while they are being opened and closed.

(j) Only railcar door openers or powered trucks equipped with door opening attachments shall be used to open jammed doors.

(k) Employees shall not remain in or on gondolas or flat cars when drafts that create overhead, caught-in, caught-between or struck-by hazards are being landed in or on the railcar; end gates, if raised, shall be secured.

* * * * *

7. Section 1917.18 is proposed to be amended by revising paragraph (a) to read as follows:

§1917.18 Log handling.

(a) Structures (bunks) used to contain logs shall have rounded corners and rounded structural parts to avoid sling damage.

* * * * *

8. Section 1917.20 is proposed to be revised to read as follows:

§ 1917.20 Interference with communications.

Cargo handling operations shall not be carried on when noise-producing maintenance, construction or repair work interferes with the communication of warnings or instructions.

9. Section 1917.23 is proposed to be amended by revising paragraphs (b)(1) and (d) introductory text to read as follows:

§ 1917.23 Hazardous atmospheres and substances.

(See § 1917.2(r))

* * * * *

(b) *Determination of hazard.* (1) When the employer is aware that a room, building, vehicle, railcar, or other space contains or has contained a hazardous atmosphere, a designated and appropriately equipped person shall test the atmosphere before employee entry to determine whether a hazardous atmosphere exists.

* * * * *

(d) *Entry into hazardous atmospheres.* Only designated persons shall enter hazardous atmospheres, in which case the following provisions shall apply:

* * * * *

10. Section 1917.24 is proposed to be amended by revising paragraphs (a) and (d) to read as follows:

§ 1917.24 Carbon monoxide.

(a) *Exposure limits.* The carbon monoxide content of the atmosphere in a room, building, vehicle, railcar, or any enclosed space shall be maintained at not more than 35 parts per million (ppm) (0.0035%) as an 8-hour timeweighted average and employees shall be removed from the enclosed space if the carbon monoxide concentration exceeds 100 ppm (0.01%). The short term exposure limit in outdoors, non-enclosed spaces shall be 200 ppm (0.02%) measured over a 5 minute period.

* * * * *

(d) *Records.* A record of the data time, location and results of carbon monoxide tests shall be available for at least 30 days. Such records may be entered on any retrievable medium and shall be available for inspection.

* * * * *

11. Section 1917.25 is proposed to be amended by revising paragraphs (a) and (c) and adding paragraph (g) to read as follows:

§ 1917.25 Fumigants, pesticides, insecticides and hazardous preservatives.

(See § 1917.2(p))

(a) At any time the hold concentration in any compartment reaches the level specified as hazardous by the fumigant manufacturers or by Table Z–1 of 29 CFR 1910.1000, whichever is lower, all employees shall be removed from such holds or compartments and shall not be permitted to re-enter until such time as tests demonstrate that the atmosphere is safe.

* * * * *

(c) Results of any tests shall be available for at least 30 days. Such records may be entered on any retrievable medium, and shall be available for inspection.

* * * * *

(g) In the case of containerized shipments of fumigated tobacco, the contents of the container shall be aerated by opening the container doors for a period of 48 hours after the completion of fumigation and prior to loading. When tobacco is within shipping cases having polyethylene or similar bag liners, the aeration period shall be 72 hours. The employer shall obtain a written warranty from the fumigation facility stating that the appropriate aeration period has been met.

* * * * *

12. Section 1917.26 is proposed to be amended by revising paragraphs (c) and (d) to read as follows:

§ 1917.26 First aid and lifesaving facilities.

* * * * *

(c) *First aid kit.* First aid kits shall be weatherproof and shall contain individual sealed packages for each item that must be kept sterile. The contents of each kit shall be determined by a physician and such contents shall be checked at least weekly. Expended items shall be promptly replaced.

(d) *Stretchers.* (1) There shall be available for each vessel being worked, one Stokes basket stretcher, or its equivalent, permanently equipped with bridles for attaching to the hoisting gear.

(2) Stretchers shall be kept close to vessels and shall be positioned to avoid damage.

(3) A blanket or other suitable covering shall be available.

(4) Stretchers shall have at least four sets of effective patient restraints in operable condition.

(5) Lifting bridles shall be of adequate strength, capable of lifting 1,000 pounds (454 kg) with a safety factor of five, and shall be maintained in operable condition. Lifting bridles shall be provided for making vertical patient lifts at container berths. Stretchers for vertical lifts shall have foot plates.

(6) Stretchers shall be maintained in operable condition. Struts and braces shall be inspected for damage. Wire mesh shall be secured with no burrs. Damaged stretchers shall not be used until repaired.

(7) Stretchers in permanent locations shall be mounted to prevent damage and protected from the elements if located out-of-doors. If concealed from view, closures shall be marked to indicate life saving equipment.

* * * * *

13. Section 1917.27 is proposed to be amended by revising paragraph (a)(2) to read as follows:

§ 1917.27 Personnel.

(a) * * *

(2) No employee known to have defective uncorrected eyesight or hearing, or to be suffering from heart disease, epilepsy, or similar ailments which may suddenly incapacitate the employee shall be permitted to operate a crane, winch or other power-operated

cargo handling apparatus or a power-operated vehicle.

* * * * *

14. Section 1917.28 is proposed to be amended by removing the regulatory text and revising the section heading to read as follows:

§ 1917.28 Hazard Communication.

(See § 1917.1(a)(2)(viii)).

Subpart C—Cargo Handling Gear and Equipment

15. Section 1917.42 is proposed to be amended by revising paragraphs (b)(4), (c)(1), (d), (h)(4), (h)(5), and (j) to read as follows:

§ 1917.42 Miscellaneous auxiliary gear.

* * * * *

(b) * * *

(4) Where wire rope clips are used to form eyes, the employer shall adhere to the manufacturer's recommendations, which shall be made available for inspection. If "U" bolt clips are used and the manufacturer's recommendations are not available, Table C–1 shall be used to determine the number and spacing of clips. "U" bolts shall be applied with the "U" section in contact with the dead end of the rope.

* * * * *

(c) * * *

(1) The employer shall ascertain the manufacturer's ratings for the specific natural fibre rope used and have such ratings available for inspection. The manufacturer's ratings shall be adhered to and a minimum design safety factor of five maintained.

* * * * *

(d) *Synthetic rope.*

(1) The employer shall adhere to the manufacturer's ratings and use recommendations for the specific synthetic fibre rope used and shall make such ratings available for inspection.

(2) Unless otherwise recommended by the manufacturer, when synthetic fibre ropes substituted for fibre ropes of less than 3 inches (7.62 cm) in circumference, the substitute shall be of equal size. Where substituted for manila rope of 3 inches or more in circumference, the size of the synthetic rope shall be determined from the formula:

$$C = \sqrt{0.6C_s^2 + 0.4C_m^2}$$

Where C= the required circumference of the synthetic rope in inches, C_s= the circumference to the nearest one-quarter inch of a synthetic rope having a breaking strength not less than that of the size fibre rope that would be required by paragraph (c) of this section and C_m= the circumference of fibre rope in inches which would be required by paragraph (c) of this section. In making such substitution, it shall be ascertained that the inherent characteristics of the synthetic fibre are suitable for hoisting.

* * * * *

(h) * * *

(4) Chains shall be repaired only under qualified supervision. Links or portions of chain defective under any of the criteria of paragraph (h)(3)(iii) of this section shall be replaced with properly dimensioned links or connections of material similar to that of the original chain. Before repaired chains are returned to service, they shall be tested to the proof load recommended by the manufacturer for the original chain. Tests shall be performed by the manufacturer or shall be certified by an agency accredited for the purpose under part 1919 of this chapter. Test certificates shall be available for inspection.

(5) Wrought iron chains in constant use shall be annealed or normalized at intervals not exceeding 6 months. Heat treatment certificates shall be available for inspection. Alloy chains shall not be annealed.

* * * * *

(j) *Hooks other than hand hooks.* (1) The manufacturer's recommended safe working loads for hooks shall not be exceeded. After October 3, 1983, hooks other than hand hooks shall be tested in accordance with § 1917.50(c)(6).

* * * * *

16. Section 1917.43 is proposed to be amended by revising paragraph (e)(1)(i) to read as follows:

§ 1917.43 Powered industrial trucks.

* * * * *

(e) *Fork lift trucks.* (1) *Overhead guards.* (i) When operators are exposed to overhead falling hazards, fork lift trucks shall be equipped with securely attached overhead guards. Guards shall be constructed to protect the operator from falling boxes, cartons, packages, or similar objects.

* * * * *

17. Section 1917.44 is proposed to be amended by revising paragraphs (a), (i), (o)(3)(i), (o)(3)(ii), and (o)(4) to read as follows:

§ 1917.44 General rules applicable to vehicles.[4]

(a) The requirements of this section apply to general vehicle use within Marine Terminals except in cases where the provisions of paragraphs (c) and (l) of this section are preempted by applicable regulations of the Department of Transportation.[5]

* * * * *

(i) A distance of not less than 20 feet (6.1 m) shall be maintained between the first two vehicles in a check-in, check-out, roadability, or vessel loading/discharging line. This distance shall be maintained between any subsequent vehicles behind which employees are required to work.

* * * * *

(o) * * *

(3) * * *

(i) Only employees trained in the procedures required in paragraph (o)(4) of this section and who have demonstrated their ability to service multi-piece rim wheels shall be assigned such duties.

(ii) Employees assigned such duties shall have demonstrated their ability by the safe performance of the following tasks:

(4) *Servicing procedures.* The following procedures shall be followed:

* * * * *

18. Section 1917.45 is proposed to be amended by revising the section heading, paragraphs (f)(4)(iii), (f)(5), (f)(7), (f)(13)(ii), (i)(5)(i) introductory text, (j)(1)(iii)(D), (j)(2), and by adding paragraph (j)(9) to read as follows:

§ 1917.45 Cranes and derricks.

(See also § 1917.50.)

* * * * *

(f) * * *

(4) * * *

(iii) Stairways on cranes shall be equipped with rigid handrails meeting the requirements of § 1917.112(e).

* * * * *

(5) *Operator's station.* (i) The cab, controls and mechanism of the equipment shall be so arranged that the operator has a clear view of the load or signalman, when one is used. Cab glass, when used, shall be safety plate glass or equivalent and good visibility shall be maintained through the glass. Clothing, tools and equipment shall be stored so as not to interfere with access, operation, and the operator's view.

(ii) [Insert date 90 days after publication of the Final Rule] A seat (lap) belt, meeting the requirements of 49 CFR 571.208–210 for a Type 1 seat belt assembly, shall be installed on the operator's seat of high speed container gantry cranes where the seat trolleys.

* * * * *

(7) *Outriggers.* Outriggers shall be used according to the manufacturer's specifications or design data, which shall be available. Floats, when used, shall be securely attached to the outriggers. Wood blocks or other support shall be of sufficient size to support the outrigger, free of defects that may affect safety and of sufficient width and length to prevent the crane from shifting or toppling under load.

* * * * *

(13) * * *

(ii) Each independent hoisting unit of a crane, except worm geared hoists, the angle of whose worm is such as to prevent the load from accelerating in the lowering direction, shall, in addition to a holding brake, be equipped with a controlled braking means to control lowering speeds.

* * * * *

(i) * * *

(5) *Operating near electric power lines.* (i) *Clearance.* Unless electrical distribution and transmission lines are de-energized and visibly grounded at point of work, or unless insulating barriers not apart of on an attachment to this crane have been erected to prevent physical contact with lines, near cranes may be operated near power lines only in accordance with the following:

* * * * *

(j) * * *

(1) * * *

(iii) * * *

(D) Equipped with a device to prevent access doors, when used, from opening accidently;

* * * * *

(2) Except in an emergency, the hoisting mechanism of all cranes or derricks used to hoist personnel shall operate in power up and power down, with automatic brake application when not hoisting or lowering.

* * * * *

(9) Employees shall not be hoisted on intermodal container spreaders while a load is engaged.

* * * * *

19. Section 1917.48 is proposed to be amended by revising paragraph (d)(2) to read as follows:

§ 1917.48 Conveyors.

* * * * *

(d) * * *

(2) Conveyors using electrically released breaks shall be constructed so that the breaks cannot be released until power is applied, and that the brakes are automatically engaged if the power fails or the operating control is returned to the "stop" position.

* * * * *

20. Section 1917.50 is proposed to be amended by revising paragraphs (c)(5) and (i) and adding paragraph (j) to read as follows:

§ 1917.50 Certification of marine terminal material handling devices.

* * * * *

(c) * * *

(5) *Special gear.* (i) Special stevedoring gear provided by the employer, the strength of which depends upon components other than commonly used stock items such as shackles, ropes, or chains, that has been purchased or fabricated after [Insert date 90 days after publication of Final Rule], and has a Safe Working Load (SWL) greater than 5 short tons (10,000 lbs. or 4540 kg.), shall be inspected and tested as a unit in accordance with the following table before initially being put into use:

Safe working load	Proof load
Up to 20 short tons (18.1 metric tons).	25 percent in excess
Over 20 to 50 short tons (18.1 to 45.3 metric tons)	5 short tons in excess.
Over 50 short tons (45.3 metric tons).	10 percent in excess.

(ii) Special stevedoring gear provided by the employer, the strength of which depends upon components other than commonly used stock items such as shackles, ropes, or chains, with a SWL of 5 short tons (10,000 lbs. or 4540 kg.) or less shall be inspected and tested as a unit in accordance with this section or by a designated person, in accordance with the table in § 1917.50(c)(5)(i) before initially being put into use.

(iii) Every spreader not a part of ship's gear and used for hoisting intermodal containers that has been purchased or fabricated after [Insert date 90 days after publication of Final Rule], shall be inspected and tested to a proof load equal to 25 percent in excess of its rated capacity before being put into use. In addition, any spreader that suffers damage necessitating structural repair shall be inspected and retested after repair and before being returned to service.

(iv) All cargo handling gear covered by this section with a SWL greater than 5 short tons (10,000 lbs. or 4540 kg.) shall be proof load tested according to the chart in paragraph (c)(5)(i) of this section every 4 years in accordance with paragraph (b) of this section or by a designated person.

* * * * *

(i) *Safe working load.* (1) The safe working load of gear as specified in § 1917.50 shall not be exceeded.

(2) All cargo handling gear provided by the employer with a safe working load greater than 5 short tons (10,000 lbs. or 4540 kg.) shall have its safe working load plainly marked on it.

(j) The certification requirements of this section do not apply to the following equipment:

(1) Industrial trucks and small industrial crane trucks; and

(2) Any straddle truck not capable of straddling two or more intermodal containers 16 feet (4.8 m) in width

* * * * *

21. § 1917.51 is proposed to be amended by removing the regulatory text and revising the section heading to read as follows:

§ 1917.51 Hand tools.

(See subpart P of 29 CFR part 1910.)

22. Section 1917.71 is proposed to be amended by revising paragraphs (b)(6)(b)(7), (c), (e), (f)(1)(i) and adding paragraphs (b)(8), (f)(4) and (f)(5) to read as follows:

§ 1917.71 Terminals handling intermodal containers or roll-on roll-off operations.

* * * * *

(b) * * *

(6) Closed dry van containers carrying vehicles are exempted from paragraph (b)(4) of this section provided that:

(i) The container carries only completely assembled vehicles and no other cargo;

(ii) The container is marked on the outside in such a manner that an employee can readily discern that the container is carrying vehicles; and

(iii) The vehicles were loaded into the container at the marine terminal.

(7) The weight of loaded inbound containers from foreign ports shall be determined by weighing or by the method of calculation described in paragraph (b)(4)(ii) of this section or by shipping documents.

(8) Any scale used within the United States to weigh containers for the purpose of the requirements of this section shall meet the accuracy standards of the state or local public authority in which the scale is located.

(c) No container or containers shall be hoisted if its actual gross weight exceeds the weight marked as required in paragraph (a)(2) of this section, or if it exceeds the capacity of the crane or other hoisting device intended to be used.

* * * * *

[4] The United States Coast Guard at 33 CFR 126.15 (d) and (e) has additional regulations applicable to vehicles in terminals.

[5] Department of Transportation regulations in 49 CFR part 393, Subpart C-Brakes, address the immobilization of trailer road wheels prior to disconnection of the trailer and until braking is again provided. Section 49 CFR 393.84 addresses the condition of flooring. These DOT rules apply when the motor carrier is engaged in interstate commerce or in the transport of certain hazardous items wholly within a municipality or the commercial zone thereof.

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(e) Employees working in the immediate area of container handling equipment or in the terminal's traffic lanes shall wear high visibility vests (or equivalent protection).

(f) * * *

(1) * * *

(i) When hoisting by the top fittings, the lifting forces shall be applied vertically from at least four (4) such fittings.

* * * * *

(4) Flat bed and low boy trailers (mafis) shall be marked with their cargo capacities and shall not be overloaded.

(5) Air brake connections. Tractors shall connect all brake air lines when pulling trailers equipped with air brakes.

* * * * *

23. Section 1917.73 is proposed to be amended by revising the section heading and paragraph (a)(2) to read as follows:

§ 1917.73 Terminal facilities handling menhaden and similar species of fish.

(See § 1917.2(p).)

(a) * * *

(2) Before employees enter a dock tank, it shall first be drained, rinsed and tested for hydrogen sulfide and oxygen deficiency. The hydrogen sulfide content of the atmosphere in a dock tank, compartment, or any enclosed space shall be maintained at not more than 10 parts per million (ppm) (0.0010%) as an 8-hour time weighted average. The short term exposure limit shall be 15 ppm (0.0015%) measured over a 15 minute period. The oxygen level must be maintained at at least 19.5 percent.

* * * * *

24. Section 1917.91 is proposed to be amended by revising paragraph (a)(1) to read as follows:

§ 1917.91 Eye protection.

(a)(1) When employees perform work hazardous to the eyes, the employer shall provide eye protection equipment marked or labeled as meeting the manufacturing specifications of American National Standards, Practice for Occupational and Educational Eye and Face Protection, ANSI Z–87.1–1989 and shall require that it be used.

* * * * *

25. Section 1917.93 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1917.93 Head protection.

* * * * *

(b) Protective hats shall bear identifying marks or labels indicating compliance with the manufacturing provisions of American National Standards, Requirements for Protective Headwear for Industrial Workers, ANSI Z–89.1–1986.

* * * * *

26. Section 1917.94 is proposed to be amended by revising paragraph (b) to read as follows:

1917.94 Foot protection.

* * * * *

(b) Protective shoes shall bear identifying marks or labels indicating compliance with manufacturing provisions of the American National Standard for Personal Protection—*Protective Footwear*-ANSI Z41–1991.

* * * * *

27. Section 1917.112 is proposed to be amended by revising paragraph (a)(1) to read as follows:

§ 1917.112 Guarding of edges.

(a) * * *

(1) Vehicle curbs, bull rails, or other effective barriers at least 6 inches (15.24 cm) in height, shall be provided at the waterside edges of aprons and bulkheads, except where vehicles are prohibited. Curbs or bull rails installed after October 3, 1983, shall be at least 10 inches (25.4 cm) in height.

* * * * *

28. Section 1917.118 is proposed to be amended by revising paragraphs (d)(2)(i) and (f)(2) to read as follows:

§ 1917.118 Fixed ladders.

* * * * *

(d) * * *

(2)(i) Ladders installed before October 3, 1983, shall have rungs evenly spaced from 9 to 16½ inches (22.9 to 41.9 cm) apart, center to center.

* * * * *

(f) * * *

(2) Form a continuous ladder, uniformly spaced vertically from 12 inches to 16 inches (30.5 to 41 cm) apart, with a minimum width of 10 inches (25.4 cm) and projecting at least 4½ inches (11.43 cm) from the wall:

* * * * *

29. Section 1917.119 is proposed to be amended by revising paragraphs (b)(1), (d)(2), and (f)(4) to read as follows:

§ 1917.119 Portable ladders.

* * * * *

(b) * * *

(1) Rungs of manufactured portable ladders obtained before October 3, 1983, shall be capable of supporting a 200-pound (890 N) load without deformation.

* * * * *

(d) * * *

(2) Are capable of supporting a 250-pound (1120 N) load without deformation; and

* * * * *

(f) * * *

(4) Individual sections from different multi-sectional ladders or two or more single straight ladders shall not be tied or fastened together to achieve additional length.

* * * * *

30. Section 1917.121 is proposed to be amended by revising paragraph (b)(3) to read as follows:

§ 1917.121 Spiral stairways.

* * * * *

(b) * * *

(3) Minimum loading capability shall be 100 pounds per square foot (4.79 kPa), and minimum tread center concentrated loading shall be 300 pounds (1334 N);

* * * * *

31. Section 1917.124 is proposed to be amended by adding paragraphs (c)(5), (c)(6), and (d)(5) and revising the section heading and paragraph (d)(1) to read as follows:

§ 1917.124 Dockboards (car and bridge plates).

* * * * *

(c) * * *

(5) Dockboards shall be equipped with side boards that are at least 6 inches (15.2 cm) high along the space bridged.

(6) Dockboards shall be well maintained.

* * * * *

(d) *Ramps.* (1) Ramps shall be strong enough to support the loads imposed on them, provided with sideboards that are at least 6 inches (15.2 cm) high, properly secured and well maintained.

* * * * *

(5) Ramps shall be well maintained.

32. Section 1917.126 is proposed to be amended by revising paragraph (b) to read as follows:

§ 1917.126 River banks.

* * * * *

(b) Where working surfaces at river banks slope so steeply that an employee could slip or fall into the water, the outer perimeter of the working surface shall be protected by posting or other portable protection such as roping off, and that employees wear a personal flotation device meeting the requirements of § 1917.95(b).

33. Section 1917.127 is proposed to be amended by revising paragraph (a)(1) introductory text and adding a table at the end of paragraph (a)(3) to read as follows:

§ 1917.127 Sanitation.

(a) *Washing and toilet facilities.* (1) Accessible washing and toilet facilities sufficient for the sanitary requirements of employees shall be readily accessible at the worksite. The number of toilet facilities shall be provided in accordance with the table at the end of paragraph (a) of this section. The facilities shall have:

* * * * *

(3) * * *

TOILET FACILITIES TABLE

No. of employees	Minimum no. of facilities
20 or less	1 toilet seat.
20 or more	1 toilet seat and 1 urinal per 40 workers.
200 or more	1 toilet seat and 1 urinal per 50 workers.

* * * * *

34. Section § 1917.151 is proposed to be amended by revising the section heading to read as follows:

§ 1917.151 Machine guarding.

(See 29 CFR part 1910, subpart O.)

* * * * *

35. Section 1917.152 is proposed to be amended by revising the section heading, the introductory text of both paragraphs (f)(1) and (f)(2) and (f)(3)(iv) to read as follows:

§ 1917.152 Welding, cutting and heating (hot work).*

(See 29 CFR 1917.2(p)).

* * * * *

(f) * * *

(1) Mechanical ventilation requirements. General mechanical ventilation or local exhaust systems shall meet the following requirements:

* * * * *

(2) Except as specified in paragraphs (f)(3)(ii) and (f)(3)(iii) of this section, when hot work is performed in a confined space:

(3) * * *

(iv) Employees performing hot work in the open air that involves any of the metals listed in paragraphs (f)(3) (i) and (ii) of this section shall be protected by respirators in accordance with the requirements of § 1910.134, and those working on beryllium-containing base or filler metals shall be protected by supplied air respirators, in accordance with the requirements of § 1910.134.

* * * * *

*The U.S. Coast Guard, at 33 CFR 126.15(c), requires prior permission of the Captain of the Port if welding or other hot work is to be carried out at a facility where dangerous cargoes as defined by 33 CFR 126.07 are located or being handled.

36. Section 1917.153 is proposed to be amended by revising the section heading to read as follows:

§ 1917.153 Spray painting.

(See 29 CFR 1917.2(p)).

37. Section 1917.156 is proposed to be amended by revising paragraph (b)(3)(iii)(D) to read as follows:

§ 1917.156 Fuel handling and storage.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(D) Leakage at valves or connections; and

* * * * *

38. Section 1917.157 is proposed to be amended by revising paragraph (n) to read as follows:

§ 1917.157 Battery charging and changing.

* * * * *

(n) Chargers shall be turned off when leads are being connected or disconnected.

* * * * *

39. Part 1918 is proposed to be revised to read as follows:

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

Subpart A—Scope and Definitions

Sec.
1918.1 Scope and applicability
1918.2 Definitions

Subpart B—Gear Certification

1918.11 Gear certification.

Subpart C—Means of Access

1918.21 Gangways and other means of access.
1918.22 Jacob's ladders.
1918.23 Access to barges and river towboats.
1918.24 Bridge plates and ramps.
1918.25 Ladders.

Subpart D—Working Surfaces

1918.31 Hatch coverings.
1918.32 Stowed cargo and temporary landing platforms.
1918.33 Deck loads.
1918.34 Other decks.
1918.35 Open hatches.
1918.36 Weather deck rails.
1918.37 Barges.
1918.38 Log rafts.

Subpart E—Opening and Closing Hatches

1918.41 Coaming clearances.
1918.42 Hatch beam and pontoon bridles.
1918.43 Handling hatch beams and covers.

Subpart F—Vessel's Cargo Handling Gear

1918.51 General requirements.
1918.52 Specific requirements.
1918.53 Cargo winches.
1918.54 Rigging gear.
1981.55 Cranes.

Subpart G—Cargo Handling Gear and Equipment Other Than Ship's Gear

1918.61 General.
1918.62 Miscellaneous auxiliary gear.
1918.63 Chutes, gravity conveyors and rollers.
1918.64 Powered conveyors.
1918.65 Mechanically powered vehicles used aboard vessels.
1918.66 Cranes and derricks other than vessel's gear.
1918.67 Notifying ships's officers before using certain equipment.
1918.68 Grounding.
1918.69 Tools.

Subpart H—Handling Cargo

1918.81 Slinging.
1918.82 Building drafts.
1918.83 Stowed cargo; tiering and breaking down.
1918.84 Bulling cargo.
1918.85 Containerized cargo operations.
1918.86 Roll-on roll-off (RO–RO) operations.
1918.87 Ship's cargo elevators.
1918.88 Log operations.
1918.89 Hazardous cargo. (See also § 1918.2(j)).

Subpart I—General Working Conditions

1918.90 Hazard communication (See § 1918.1(b)(6)).
1918.91 Housekeeping.
1918.92 Illumination.
1918.93 Hazardous atmospheres and substances. (See also § 1918.2(j)).
1918.94 Ventilation and atmospheric conditions. (See also § 1918.2 (j)).
1918.95 Sanitation.
1918.96 Longshoring operations in the vicinity of maintenance and repair work.
1918.97 First aid and lifesaving facilities.
1918.98 Personnel.

Subpart J—Personal Protective Equipment

1918.101 Eye protection.
1918.102 Respiratory protection. (See § 1918.1(b)(12)).
1918.103 Head protection.
1918.104 Foot protection.
1918.105 Other protective measures.

Appendix I to Part 1918—Cargo Gear Register and Certificates (Non-mandatory)

Appendix II to Part 1918—Tables for Selected Miscellaneous Auxiliary Gear (Non-mandatory)

Appendix III to Part 1918—Container Top Safety (Non-mandatory)

Authority: Sec. 41, Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1–90 (55 FR 9033).

Subpart A—Scope and Definitions

§ 1918.1 Scope and Applicability.

(a) The regulations of this part apply to longshoring operations and related employments aboard vessels. All cargo transfer accomplished with the use of shore-based material handling devices

shall be regulated by part 1917 of this chapter.

(b) Part 1910 of this chapter does not apply to longshoring except for the following provisions:

(1) *Toxic and hazardous substances.* Subpart Z of part 1910 applies except that the requirements of subpart Z of part 1910 do not apply when a substance or cargo is contained within a sealed, intact means of packaging or containment complying with Department of Transportation or International Maritime Organization requirements.[1]

(2) *Access to employee exposure and medical records.* Subpart C, § 1910.20;

(3) *Commercial diving operations.* Subpart T of part 1910;

(4) *Electrical.* Subpart S of part 1910; when shore-based electrical installations provide power for use aboard vessels;

(5) *Hand and Portable Powered Tools and Other Hand-Held Equipment.* Subpart P of part 1910;

(6) *Hazard Communication.* Subpart Z, § 1910.1200;

(7) *Hazardous waste operations and emergency response.* Subpart H, § 1910.120(q).

(8) *Ionizing radiation.* Subpart G, § 1910.96;

(9) *Machinery and Machine Guarding.* Subpart O, § 1910.211;

(10) *Noise.* Subpart G, § 1910.95;

(11) *Nonionizing radiation.* Subpart G, § 1910.97; and (12)

(12) *Respiratory protection.* Subpart I, § 1910.134.

§ 1918.2 Definitions.

(a) The terms *hatch beam* or "strongback" mean a portable transverse or longitudinal beam which is placed across a hatchway and acts as a bearer to support the hatch covers.

(b) The term *bulling* means the horizontal dragging of cargo across a surface with none of the weight of the cargo supported by the fall.

(c) The term *designated person* means a person who possesses specialized abilities in a specific area and is assigned by the employer to perform a specific task in the area.

(d) The term *dockboards (car and bridge plates)* mean devices for spanning short distances between, for example, two barges, which do not expose employees to falls greater than 4 feet (1.2 m).

(e) The term *employee* means any longshore worker, or other person engaged in longshoring operations or related employments other than the master, ship's officers, crew of the vessel, or any person engaged by the master to load or unload any vessel under 18 net tons.

(f) The term *employer* means a person or company that employs workers in longshoring operations or related employments, as defined herein.

(g) The term *enclosed space* means an interior space in or on a vessel, other than a confined space, that may contain or accumulate a hazardous atmosphere due to inadequate natural ventilation. Examples of enclosed spaces are holds, deep tanks and refrigerated compartments.

(h) *Fumigant* is a substance or mixture of substances, used to kill pests or prevent infestation, which is a gas or is rapidly or progressively transformed to the gaseous state, even though some nongaseous or particulate matter may remain and be dispersed in the treatment space.

(i) The term *gangway* means any ramp-like or stair-like means of access provided to enable personnel to board or leave a vessel, including accommodation ladders, gangplanks and brows.

(j) The term *hazardous cargo, materials, substance or atmosphere* means:

(1) Any substance listed in 29 CFR part 1910, subpart Z;

(2) Any material in the Hazardous Materials Table and Hazardous Materials Communications Regulations of the Department of Transportation, 49 CFR part 172;

(3) Any article not properly described by a name in the Hazardous Materials Table and Hazardous Materials Communication Regulations of the Department of Transportation, 49 CFR part 172, but which is properly classified under the definitions of those categories of dangerous articles given in 49 CFR part 173; or

(4) Any atmosphere with an oxygen content of less than 19.5 percent or greater than 23 percent.

(k) The term *intermodal container* means a reusable cargo container of rigid construction and rectangular configuration; fitted with devices permitting its ready handling, particularly its transfer from one mode of transport to another; so designed to be readily filled and emptied; intended to contain one or more articles of cargo or bulk commodities for transportation by water and one or more other transport modes. The term includes completely enclosed units, open top units, fractional height units, units incorporating liquid or gas tanks and other variations fitting into the container system. It does not include cylinders, drums, crates, cases, cartons, packages, sacks, unitized loads or any other form of packaging.

(l) The term *longshoring operations* means the loading, unloading, moving or handling of cargo, ship's stores, gear, etc., into, in, on, or out of any vessel.

(m) The term *public vessel* means a vessel owned and operated by a government and not regularly employed in merchant service.

(n) The term *ramp* means other flat surface devices for passage between levels and across openings not covered under the term "dockboards".

(o) The term *related employments* means any employments performed as an incident to or in conjunction with longshoring operations, including, but not restricted to, securing cargo, rigging, and employment as a porter, clerk, checker, or watchman.

(p) The term *Secretary* means the Secretary of Labor.

(q) The term *small trimming hatch* means a small hatch or opening, pierced in the 'tween-deck or other intermediate deck of a vessel, and intended for the trimming of dry bulk cargoes. It does not refer to the large hatchways through which cargo is normally handled.

(r) The term *vessel* includes every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water, including special purpose floating structures not primarily designed for or used as a means of transportation on water.

(s) For the purposes of §§ 1918.21, 1918.23, 1918.35, 1918.37, and 1918.43(f)(2), the term "barge" means an unpowered, flatbottomed, shallow draft vessel including river barges, scows, carfloats, and lighters. For the purposes of these sections the term does not include ship shaped or deep draft barges.

(t) For the purposes of §§ 1918.21 and 1918.23, the term "river towboat" means a shallow draft, low freeboard, self propelled vessel designed to tow river barges by pushing ahead. For purposes of these sections the term does not include other towing vessels.

(u) For the purpose of § 1918.11, the term "vessel's cargo handling gear" includes that gear which is a permanent part of the vessel's equipment and which is used for the handling of cargo other than bulk liquids. It does not include gear which is used only for handling or holding hoses, handling ship's stores or handling the gangway, or boom conveyor belt systems for the self-unloading of bulk cargo vessels. It does include all stationary or mobile cargo handling appliances, including shore-based power-operated ramps, used on shore or on board ship for suspending, raising, or lowering loads or moving them from one position to another while suspended or supported.

(v) For the purpose of § 1918.23(b), the term "Mississippi River System" includes the Mississippi River from the head of navigation to its mouth, and navigable tributaries including the Illinois Waterway, Missouri River, Ohio River, Tennessee River, Allegheny River, Cumberland River, Green River, Kanawha River, Monongahela River, and such others to which barge operations extend.

[1] The International Maritime Organization publishes International Maritime Dangerous Goods Code to aid compliance with the International legal requirements of the International Convention for the Safety of Life at Sea, 1960.

Subpart B—Gear Certification

§ 1918.11 Gear certification.

(See also § 1918.51).

(a) The employer shall not use the vessel's cargo handling gear until it has been ascertained that the vessel has a current and valid cargo gear register and certificates which in form and content are in substantial accordance with the recommendations of the International Labor Office, as set forth in Appendix I of this part, and as provided by International Labor Organization Convention No. 152, and which indicates that the cargo gear has been tested, examined and heat treated by or under the supervision of persons or organizations defined as competent to make register entries and issue certificates pursuant to paragraphs (c) and (d) of this section.

(b) Public vessels and vessels holding a valid Certificate of Inspection issued by the U.S. Coast Guard pursuant to 46 CFR part 91 are deemed to meet the requirements of paragraph (a) of this section.

(c) With respect to U.S. vessels not holding a valid Certificate of Inspection issued by the U.S. Coast Guard, persons or organizations competent to make entries in the registers and issue the certificates required by paragraph (a) of this section shall be only those persons currently accredited by (OSHA) U.S. Department of Labor, as provided in part 1919 of this chapter.

(d) With respect to vessels under foreign registry, persons or organizations competent to make entries in the registers and issue the certificates required by paragraph (a) of this section shall be:

(1) Those acceptable as such to any foreign nation;

(2) Those acceptable to the Commandant of the U.S. Coast Guard; or

(3) Those currently accredited by OSHA U.S. Department of Labor, as provided in part 1919 of this chapter.

Subpart C—Means of Access

§ 1918.21 Gangways and other means of access.

(a) The employer shall not permit employees to board or leave any vessel, except a barge or river towboat, until the following requirements have been met:

(1) Whenever practicable, a gangway of not less than 20 inches (.51 m) in width, of adequate strength, maintained in safe repair and safely secured shall be used. If a gangway is not practicable, a substantial straight ladder meeting the requirements of § 1918.25 of this subpart and extending at least 36 inches (.92 m) above the upper landing surface, and adequately secured against shifting or slipping shall be provided. When conditions are such that neither a gangway nor straight ladder can be used, a Jacob's ladder meeting the requirements of § 1918.22 may be used.

(2) Each side of such gangway, and the turntable, if used, shall have a railing with a minimum height of 33 inches (.84 m) measured perpendicularly from rail to walking surfaces at the stanchion, with a midrail. Rails shall be of wood, pipe, chain, wire, rope or materials of equivalent strength and shall be kept taut at all times. Portable stanchions supporting railings shall be so supported or secured as to prevent accidental dislodgement.

(b) The gangway shall be kept properly trimmed at all times.

(c) When a fixed flat tread accommodation ladder is used, and the angle is low enough to require employees to walk on the edge of the treads, cleated duckboards shall be laid over and secured to the ladder.

(d) When the gangway overhangs the water in such a manner that there is danger of employees falling between the ship and the dock, a net or suitable protection shall be provided to prevent employees from falling to a lower level.

(e) If the foot of the gangway is more than 1 foot (.30 m) away from the edge of the apron, the space between them shall be bridged by a firm walkway equipped with railings with a minimum height of approximately 33 inches (.84 m) with midrails on both sides.

(f) Gangways shall be kept clear of supporting bridles and other obstructions, in order to provide unobstructed passage. If, because of design, the gangway bridle cannot be moved in order to provide unobstructed passage, than the hazard shall be properly marked to alert employees of the danger.

(g) When the upper end of the means of access rests on or is flush with the top of the bulwark, substantial steps, properly secured, trimmed and equipped with at least one substantial hand rail 33 inches (.84 m) in height shall be provided between the top of the bulwark and the deck.

(h) Obstructions shall not be laid on or across the gangway.

(i) Handrails and walking surfaces of gangways shall be kept free of oil, grease, bulk cargoes or other substances that could cause an employee to slip and fall.

(j) The means of access shall be illuminated for its full length in accordance with § 1918.92.

(k) If possible, the vessel's means of access shall be located so that suspended loads do not pass over it. In any event, suspended loads shall not be passed over the means of access while employees or others are on it.

(l) Gangways on vessels inspected and certificated by the U.S. Coast Guard are deemed to meet the requirements of this section.

§ 1918.22 Jacob's ladders.

(a) Jacob's ladders shall be of the double rung or flat tread type. They shall be well maintained and properly secured.

(b) A Jacob's ladder shall either hang without slack from its lashings or be pulled up entirely.

§ 1918.23 Access to barges and river towboats.

(a) Ramps for access of vehicles to or between barges shall be:

(1) Of adequate strength for intended loads;

(2) Provided with side boards;

(3) Well maintained; and

(4) Properly secured.

(b) When employees cannot step safely to or from the wharf and a float, barge, or river towboat, either a ramp meeting the requirements of paragraph (a) of this section or a safe walkway meeting the requirements of § 1918.21(e) shall be provided. When a walkway cannot be used, a straight ladder meeting the requirements of § 1918.25 of this subpart and extending at least 36 inches (.92 m) above the upper landing surface and adequately secured against shifting or slipping shall be provided. When conditions are such that neither a walkway nor a straight ladder can be used, a Jacob's ladder meeting the requirements of § 1918.22 may be used. Exception: For barges operating on the Mississippi River System, where the employer demonstrates that these requirements cannot reasonably be met due to local conditions, other safe means of access shall be provided.

(c) When a barge, raft or log boom is being worked alongside a larger vessel,

a Jacob's ladder meeting the requirements of § 1918.22 shall be provided for each gang working alongside unless other safe means of access are provided. However, no more than two Jacob's ladders are required for any single barge, raft or log boom being worked.

(d) When longshoring operations are in progress on barges, the barges shall be securely made fast to the vessel, wharf, or dolphins.

(e) When a Jacob's ladder is used as the means of access to a barge being worked, spacers (bumpers) shall be hung between the vessel, barge, or other structure to which the barge is tied alongside, or other equally effective means shall be taken to prevent damage to the bottom rungs of the ladder.

(f) When a Jacob's ladder is being used in such a manner that there is a danger of an employee falling between the vessel, barge, or other structure (pier), a net or other equivalent protection shall be provided.

§ 1918.24 Bridge plates and ramps.

(See also § 1918.86).

(a) *Bridge and car plates (dockboards).* Bridge and car plates used afloat shall be well maintained and shall:

(1) Be strong enough to support the loads imposed on them;

(2) Be secured or equipped with devices to prevent their dislodgement;

(3) Be equipped with hand holds or other effective means to permit safe handling and;

(4) Be equipped with side boards that are at least 6 inches (.16 m) high along the space bridged.

(b) *Portable ramps.* Portable ramps used afloat shall be well maintained and shall:

(1) Be strong enough to support the loads imposed on them;

(2) Be equipped with a railing meeting the requirements of § 1918.21(a)(2), if the slope is more than 20 degrees to the horizontal or if employees could fall more than 4 feet (1.2 m);

(3) Be equipped with a slip resistant surface;

(4) Be properly secured; and

(5) Be equipped with side boards that are at least 6 inches (15.2 cm) high.

§ 1918.25 Ladders.

(a) There shall be at least one safe and accessible ladder for each gang working in a hatch. However, no more than two such ladders are required in any hatch. An effective means of gaining a handhold shall be provided at or near the head of each vertical fixed ladder cannot serve this purpose.

(b) When any fixed ladder is visibly unsafe, the employer shall identify such ladder and prohibit its use by employees.

(c) Where portable straight ladders are used, they shall be of sufficient length to extend 36 inches (.91 m) above the upper landing surface, and positively secured or held against shifting or slipping. When conditions are such that a straight ladder cannot be used, Jacob's ladders meeting the requirements of § 1918.22 may be used.

(d) When 6 inches (15.2 cm) or more of clearance does not exist in back of ladder rungs, the ladder shall be deemed "unsafe" for the purpose of this section. However, for vessels built prior to December 5, 1981, the ladder shall be deemed "unsafe" when 4 inches (10 cm) or more of clearance does not exist in back of ladder rungs. Alternate means of access (for example, a portable ladder) must be utilized.

(e) (1) Where access to or from a stowed deckload or other cargo is needed and no other safe means is available, ladders or steps of adequate strength shall be furnished, and positively secured or held against shifting or slipping while in use. Steps formed by the cargo itself are acceptable when the employer demonstrates that the nature of the cargo and the type of stowage provides equivalent safe access.

(2) Where portable straight ladders are used they shall be of sufficient length to extend at least 36 inches (.92 m) above the upper landing surface.

(f) The following standards for existing manufactured portable ladders must be met:

(1) Rungs of manufactured portable ladders obtained before [insert effective date of the Final Rule] shall be capable of supporting a 200-pound (890 N) load without deformation.

(2) Rungs shall be evenly spaced from 9 to 16½ inches (22.9 to 41.9 cm), center to center.

(3) Rungs shall be continuous members between rails. Each rung of a double-rung ladder (two side rails and a center rail) shall extend the full width of the ladder.

(4) Width between side rails at the base of the ladder shall be at least 12 inches (30 cm) for ladders 10 feet (3.05 m) or less in overall length, and shall increase at least one-fourth inch (0.6 cm) for each additional 2 feet (0.61 m) of ladder length.

(g) *Standards for manufactured portable ladders.* Portable manufactured ladders obtained after [insert effective date of the Final Rule] shall bear identification indicating that they meet the appropriate ladder construction requirements of the following standards:

(1) ANSI A14.1–1990, Safety Requirements for Portable Wood Ladders;

(2) ANSI A14.2–1990, Safety Requirements for Portable Metal Ladders;

(3) ANSI A14.5–1992, Safety Requirements for Portable Reinforced Plastic Ladders.

(h) *Standards for job-made portable ladders.* Job-made ladders shall:

(1) Have a minimum and uniform distance between rungs of 12 inches (30 cm) center to center;

(2) Be capable of supporting a 250-pound (1100 N) load without deformation; and

(3) Have a minimum width between side rails of 12 inches (30 cm) for ladders 10 feet (3.05 m) or less in height. Width between rails shall increase at least one-fourth inch (0.6 cm) for each additional 2 feet (0.61 m) of ladder length.

(i) *Maintenance and inspection.* (1) The employer shall maintain portable ladders in safe condition. Ladders with the following defects shall not be used, and shall either be tagged as unusable if kept on board, or shall be removed from the vessel:

(i) Broken, split or missing rungs, cleats or steps;

(ii) Broken or split side rails;

(iii) Missing or loose bolts, rivets or fastenings;

(iv) Defective ropes; or

(v) Any other structural defect.

(2) Ladders shall be inspected for defects prior to each day's use, and after any occurrence, such as a fall, which could damage the ladder.

(j) *Ladder usage.* (1) Ladders made by fastening rungs or devices across a single rail are prohibited.

(2) Ladders shall not be used:

(i) As guys, braces or skids; or

(ii) As platforms, runways or scaffolds.

(3) Metal and wire-reinforced ladders with wooden side rails may not be used when employees on the ladder might come into contact with energized electrical conductors.

(4) Individual sections from different multi-sectional ladders or two or more single straight ladders shall not be tied or fastened together to achieve additional length.

(5) Except for combination ladders, self-supporting ladders shall not be used as single straight ladders.

(6) Unless intended for cantilever operation, non-self-supporting ladders shall not be used to climb above the top support point.

(7) Ladders shall be securely positioned on a level and firm base.

(8) Ladders shall be fitted with slip-resistant bases or lashed in place to

prevent slipping or shifting while in use.

Subpart D—Working Surfaces

§ 1918.31 Hatch coverings.

(a) No cargo, dunnage, or other material shall be loaded or unloaded by means requiring the services of employees at any partially opened intermediate deck unless either the hatch at that deck is sufficiently covered or an adequate landing area suitable for the prevailing conditions exists. Except, that in no event shall such work be done unless the working area available for such employees extends for a distance of 10 feet (3.05 m) or more fore and aft and athwartships.

(b) Cargo shall not be landed on or handled over a covered hatch or 'tween-deck unless all hatch beams are in place under the hatch covers.

(c) Missing, broken, or poorly fitting hatch covers that would jeopardize the safety of employees shall be reported at once to the officer in charge of the vessel. Pending replacement or repairs by the vessel, work shall not be performed in the section containing the unsafe covers or in adjacent sections unless the flooring is made safe.

(d) Hatch covers and hatch beams not of uniform size shall be placed only in the hatch, deck, and section in which they fit properly.

(e) Small trimming hatches located in intermediate decks shall be securely covered or guarded while work is proceeding in the hatch in which they are located, unless they are actually in use.

§ 1918.32 Stowed cargo and temporary landing surfaces.

(a) Temporary surfaces on which loads are to be landed shall be of sufficient size and strength to permit employees to work safely.

(b) When the edge of a hatch section or of stowed cargo (excluding intermodal freight containers) is more than 8 feet (2.4 m) high and so exposed that it exposes an employee to fall hazards, the edge shall be guarded by a vertical safety net, or other means providing equal protection, to prevent an employee from falling. When the employer can demonstrate that vertical nets or other equally effective means of guarding cannot be used due to the type of cargo, cargo stowage, or other circumstances, a trapeze net shall be rigged at the top edge of the elevation or other means shall be taken to prevent injury if an employee falls. Safety net systems and their use shall comply with the appropriate provisions of the American National Standard for Personnel and Debris Nets (ANSI A10.11–1989).

(c) When two gangs are working in the same hatch on different levels, a safety net shall be rigged and securely fastened so as to prevent employees or cargo from falling.

§ 1918.33 Deck loads.

(a) Employees shall not be permitted to pass over or around deck loads unless there is a safe passage.

(b) Signalpersons shall not be permitted to walk over deck loads from rail to coaming unless there is a safe passage. If it is necessary to stand or walk at the outboard or inboard edge of the deck load having less than 24 inches (.61 cm) of bulwark, rail, coaming, or other protection exists, any signalpersons shall be provided with an equivalent means of protection against falling from the deck load.

§ 1918.34 Other decks.

(a) Cargo shall not be worked on decks that were not designed to support the load being worked.

(b) Grated decks shall be properly placed, supported, maintained and designed to support workers.

§ 1918.35 Open hatches.

Open weather deck hatches around which employees must work, which are not protected to a height of 24 inches (.61 cm) by coamings, shall be guarded by taut lines or barricades at a height of 36 to 42 inches (.92 to 1.07 m) above the deck, except on the side on which cargo is being worked. Any portable stanchions or uprights used shall be so supported or secured as to prevent accidental dislodgement.

§ 1918.36 Weather deck rails.

Removable weather deck rails shall be kept in place except when cargo operations require them to be removed, in which case they shall be replaced as soon as such cargo operations are completed.

§ 1918.37 Barges.

(a) Walking shall be prohibited along the sides of covered lighters or barges with coamings or cargo more than 5 feet (1.5 m) high unless a 3-foot (.91 m) clear walkway or a grab rail or taut handline is provided.

(b) Walking or working shall be prohibited on the decks of barges to be loaded unless the walking or working surfaces have been determined by visual inspection to be sound structurally and maintained properly. If in the course of discharging a barge and an unsound deck surface is discovered, work shall be discontinued and shall not be resumed until means have been taken to ensure a safe work surface.

§ 1918.38 Log rafts.

(See also § 1918.88.)

When an employee is working logs out of the water, walking sticks[2] (safety sticks) shall be provided as follows:

(a) They shall be planked and be no less than 24 inches (60.9 cm) wide;

(b) They shall extend along the entire length of all rafts on the offshore side of the vessel, and to the means of access to the log raft(s); and

(c) They shall be buoyant enough to keep the walking surface above the waterline when employees are walking on them.

Subpart E—Opening and Closing Hatches

§ 1918.41 Coaming clearances.

(a) *Weather deck.* If a deck load (such as lumber or other smooth sided deck cargo) over 5 feet (1.5 m) high is stowed within 3 feet (.91 m) of the hatch coaming and employees handling hatch beams and hatch covers are not protected by a coaming at least 24-inch (.61 m) high, a taut handline shall be provided along the side of the deckload. The requirements of § 1918.35 are not intended to apply in this situation.

(b) *Intermediate deck.* (1) There shall be a 3 foot (.91 m) working space between the stowed cargo and the coaming at both sides and at one end of the hatches with athwartship hatch beams, and at both ends of those hatches with fore and aft hatch beams, before intermediate deck hatch covers and hatch beams are removed or replaced by employees.

(2) The 3 foot (.91 m) clearance required by paragraph (b)(1) of this section is not required on the covered portion of a partially open hatch, nor is it required when lower decks have been filled to hatch beam height with cargo of such a nature as to provide a safe surface upon which employees may work.

(3) For purposes of paragraph (b)(1) of this section, fitted gratings which are in good condition shall be considered a part of the decking when properly placed within the 3 foot (.91 m) area.

(c) Grab rails or taut handlines shall be provided for the protection of employees handling hatch beams and hatch covers, when bulkheads, lockers, reefer compartments or large spare parts are within 3 feet (.91 m) of the coaming.

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[2] A "walking stick" is two logs bolted or otherwise secured together with two or three planks firmly attached on top that serves as a floating walking and working surface and that is used in the loading of logs onto vessels from the water.

(d) This section does not apply to hatches which are opened or closed by hydraulic or other mechanical means. However, in all cases in which the 3 foot (.91 m) clearance does not exist, means shall be taken to prevent stowed cargo which is likely to shift from falling into the hold.

§ 1918.42 Hatch beam and pontoon bridles.

(a) Hatch beam and pontoon bridles shall be:

(1) long enough to easily reach the holes, rings, or other lifting attachments on the hatch beams and pontoons;

(2) of adequate strength to safely lift the load; and

(3) properly maintained, including covering or blunting of protruding ends in wire rope splices.

(b) Bridles for lifting hatch beams shall be equipped with toggles, shackles, or hooks, or other devices of such design that they cannot become accidentally dislodged from the hatch beams with which they are used. Hooks other than those herein described may be used only when they are hooked into the standing part of the bridle. Toggles, when used, shall be at least 1 inch (2.5 cm) longer than twice the longest diameter of the holes into which they are placed.

(c) Bridles used for lifting pontoons and plugs shall have the number of legs required by the design of the pontoon or plug, and all legs shall be used. Where any use of a bridle requires fewer than the number of legs provided, idle legs shall be hung on the hook or ring, or otherwise prevented from swinging free.

(d) At least two legs of all strongback and pontoon bridles shall be equipped with a fibre lanyard at least 8 feet (2.4 m) long and in good condition. The bridle end of the lanyard shall be of chain or wire.

§ 1918.43 Handling hatch beams and covers.

Paragraphs (f)(2), (g), and (h) of this section apply only to folding, sliding, or hinged metal hatch covers or to those hatch covers handled by cranes.

(a) (1) When hatch covers or pontoons are stowed on the weather deck abreast of hatches, they shall be arranged in stable piles not closer than 8 feet (.91 m) from the hatch coaming except, when on the working side of the hatch, they are spread one high between coaming and bulwark with no space between them and with not less than a 24-inch height of hatch coaming maintained. Under no circumstances shall hatch covers or pontoons be stacked higher than the hatch coaming or bulwark on the working side of the hatch.

(2) On seagoing vessels, hatch boards or similar covers removed from the hatch beams in a section of partially opened hatch during cargo handling, cleaning or other operations, shall not be stowed on those left in place within that section.

(b) Hatch beams shall be laid on their sides, or stood on edge close together and lashed. Except that: This paragraph (b) shall not apply in cases where hatch beams are of such design that:

(1) The width of the flange is 50 percent or more of the height of the web; and

(2) The flange rests flat on the deck when the hatch beam is stood upright.

(c) Strongbacks, hatch covers, and pontoons removed from hatch openings and placed on the weather deck shall not obstruct clear fore and aft or coaming to bulwark passageways and shall be lashed or otherwise secured to prevent accidental dislodgement. Dunnage or other suitable material shall be placed under each tier, to prevent strongbacks and hatch covers from sliding, when stowed on steel decks.

(d) Hatch covers unshipped in an intermediate deck shall be placed at least 3 feet (.91 m) from the coaming or they shall be removed to another deck. Strongbacks unshipped in an intermediate deck shall not be placed closer than 6 inches (15.2 cm) from the coaming, and if placed closer than 3 feet (.91 m), they shall be secured so that they cannot be tipped or dragged into a lower compartment. If such placement or securement is not possible, strongbacks shall be removed to another deck.

(e) Any hatch beam or pontoon left in place adjacent to an open hatch section being worked shall be locked or otherwise secured, so that it cannot be accidently displaced. All portable, manually handled hatch covers, including those bound together to make a larger cover, shall be removed from any working section, and adjacent sections, unless securely lashed.

(f) (1) The roller hatch beam at the edge of the open section of the hatch shall be lashed or pinned back so that it cannot be moved toward the open section.

(2) Rolling, sectional or telescopic hatch covers of barges which open in a fore and aft direction shall be secured while in the open position against unintentional movement.

(g) Hinged or folding hatch covers normally stowed in an approximately vertical position shall be positively secured when in the upright position, unless the design of the system otherwise prohibits unintentional movement.

(h) Hatches shall not be opened or closed while employees are in the square of the hatch below.

(i) All unsecured materials such as dunnage, lashings, twist-locks, or stacking cones shall be removed from the hatch cover before the hatch cover is moved.

(j) When a hatch is to be covered, hatch covers or night tents shall be used. Any covering which only partially covers the hatch, such as alternate hatch covers or strips of dunnage, shall not be covered by a tarpaulin. Except that: A tarpaulin may be used to cover an open or partially open hatch in order to reduce dust emissions during bulk cargo loading operations, provided that employees are prevented from walking on top of the tarpaulin.

Subpart F—Vessel's Cargo Handling Gear

§ 1918.51 General requirements.

(See also § 1918.11).

(a) Neither the safe working load as specified in the cargo gear certification papers, nor any safe working load marked on the booms, shall be exceeded. Any limitations imposed by the certificating authority shall be adhered to.

(b) All components of cargo handling gear, including tent gantlines and associated rigging, shall be inspected by the employer or by a designated representative of the employer before each use and at intervals during use. Any gear which is found to be unsafe shall not be used until it is made safe.

(c) The following limitations shall apply to the use of wire rope as a part of the ship's cargo handling gear:

(1) Eye splices in wire ropes shall have at least three tucks with a whole strand of the rope and two tucks with one-half of the wire cut from each strand. Other forms of splices or connections which provide the same level of safety may be used;

(2) Except for eye splices in the ends of wires, each wire rope used in hoisting or lowering, in guying derricks, or as a topping lift, preventer, segment of a multi-part preventer, or pendant, shall consist of one continuous piece without knot or splice; and

(3) Wire rope or wire rope slings exhibiting any of the conditions specified in § 1918.62(b)(4) (i) through (vi) shall not be used.

(d) Natural and synthetic fibre rope slings exhibiting any of the conditions specified in § 1918.62(e) (1) through (7) shall not be used.

(e) Synthetic web slings exhibiting any of the conditions specified in § 1918.62(g)(2) (i) through (v) shall not be used.

(f) Chains, including slings, exhibiting any of the conditions specified in § 1918.62(h)(3)(iii), (iv), and (h)(6) shall not be used.

§ 1918.52 Specific requirements.

(a) *Preventers.* (1) When preventers are used they shall be of sufficient strength for the intended purpose and secured to the head of the boom independent of working guys except when, in the case of cast fittings, the strength of the fitting exceeds the total strength of all lines secured to it. Any tails, fittings, or other means of making the preventers fast on deck shall provide strength equal to that of the preventer itself.

(2) Wire rope clips or knots shall not be used to form eyes in, nor to join sections of, preventer guys.

(b) *Stoppers.* (1) When used, chain topping lift stoppers shall be in good condition, equipped with fibre tails, and of a length to allow not fewer than three half-hitches in the chain.

(2) When used, chain stoppers shall be shackled or otherwise secured in such a manner that their links are not bent by being passed around fittings. The point of attachment shall be of sufficient strength and so located that the stoppers are in line with the normal topping lift lead at the time the stopper is applied.

(3) When used, patent stoppers of the clamp type shall be suited to the size of the rope used. Clamps shall be in good condition and free of paint and dirt which would prevent their being drawn tight.

(c) *Falls.* (1) The end of the winch fall shall be secured to the drum by clamps, U-bolts, shackles, or some other equally strong method. Fibre rope fastenings shall not be used.

(2) Winch falls shall not be used with fewer than three turns on the winch drum.

(3) Eyes in the ends of wire rope cargo falls shall not be formed by knots and, in single part falls, shall not be formed by wire rope clips.

(4) When the design of the winch permits, the fall shall be so wound on the drum so that the cargo hook rises when the winch control lever is pulled back and lowers when the lever is pushed forward.

(d) *Heel blocks.* (1) When an employee works in the bight formed by the heel block, a preventer of at least three quarter inch (1.9 cm) diameter wire rope shall be securely rigged, or equally effective means shall be taken, to hold the block and fall in the event that the heel block attachments fail. Where physical limitations prohibit the fitting of a wire rope preventer of the required size, two turns of one-half inch (1.3 cm) diameter wire rope shall be sufficient.

(2) If the heel block is not so rigged as to prevent its falling when not under strain, it shall be secured to prevent alternate raising and dropping of the block. Except that: This requirement shall not apply when the heel block is so located as to be at least 10 feet (3.0 m) above the deck when at its lowest point.

(e) *Coaming rollers.* Portable coaming rollers shall be secured by wire preventers in addition to the regular coaming clamps.

(f) *Cargo hooks.* Cargo hooks shall be as close to the junction of the falls as the assembly permits, but in no case farther than 2 feet (.61 m) from it. Except, that this provision shall not apply when the construction of the vessel and the operation in progress are such that fall angles in excess of 120 degrees do not normally occur. Overhaul chains shall not be shortened by bolting or knotting.

§ 1918.53 Cargo winches.

(a) Moving parts of winches or other deck machinery shall be guarded.

(b) Winches shall not be used if control levers operate with excessive friction or excessive play.

(c) Double gear winches or other winches equipped with a clutch shall not be used unless a positive means of locking the gear shift is provided.

(d) There shall be no load other than the fall and cargo hook assembly on the winch when changing gears on a two gear winch.

(e) Any defect or malfunction of winches that affects safety shall be reported immediately to the officer in charge of the vessel, and the winch shall not be used until the defect or malfunction is corrected.

(f) Temporary seats and shelters for winch drivers which create a hazard to the winch operator or other employees shall not be used.

(g) Except for short handles on wheel type controls, winch drivers shall not be permitted to use winch control extension levers unless they are provided by either the ship or the employer. Such levers shall be of adequate strength and securely fastened with metal connections at the fulcrum and at the permanent control lever.

(h) Extension control levers which tend to fall of their own weight shall be counterbalanced.

(i) Winch brakes shall be monitored for performance. If winch brakes are unable to hold the load, the winch shall not be used.

(j) Winches shall not be used when one or more control points, either hoisting or lowering, is not operating properly. Employees shall not be permitted to tamper with or adjust control systems.

(k) When winches are left unattended, control levers shall be placed in the neutral position and the power shall be shut off or control levers shall be locked at the winch or the operating controls.

§ 1918.54 Rigging gear.

(a) *Guy and preventer placement.* Each guy or preventer shall be placed so as to prevent it from making contact with any other guy, preventer, or stay.

(b) *Guys.* When alternate positions for securing guys are provided, the guys shall be so placed as to produce a minimum stress without permitting the boom to jackknife.

(c) *Boom placement.* The head of the midship boom shall be spotted no farther outboard of the coaming than is necessary for control of the load.

(d) *Preventers.* (1) Preventers shall be properly secured to suitable fittings, other than those to which the guys are secured, and shall be as nearly parallel to the guys as available fittings permit.

(2) Unless the cleat is also a chock and the hauling part is led through the chock opening, the leads of preventers to cleats shall be such that the direction of the line pull of the preventer is as nearly as possible parallel to the plane of the surface on which the cleat is mounted.

(3) Guys and associated preventers shall be adjusted so as to share the load as equally as practicable where cargo operations are being conducted by burtoning. Except, that where guys are designed and intended for trimming purposes only, and the preventer is intended to perform the function of the guy, the guy shall be left slack.

(e) *Cargo falls.* Cargo falls under load shall not be permitted to chafe on any standing or other running rigging. Exception: Rigging shall not be construed to mean hatch coamings or other similar structural parts of the vessel.

(f) *Bull wire.* (1) Where a bull wire is taken to a gypsy head for the purpose of lowering or topping a boom, the bull wire shall be secured to the gypsy head by shackle or other equally strong method. Securing by fibre rope fastening will not be acceptable in meeting this requirement.

(2) When, in lowering or topping a boom, it is not possible to secure the bullwire to the gypsy head, or when the topping lift itself is taken to the gypsy head, multiple turns, of at least five shall be used.

(g) *Trimming and deckloads.* When deck loads extend above the rail and

there is less than 12 inches (30.48 cm) horizontal clearance between the edge of the deck load and the inside of the bulwark or rail, a pendant or other alternate device shall be provided to allow trimming of the gear without going overside.

§ 1918.55 Cranes.

(See also § 1919.11).

The following requirements shall apply to the use of cranes forming part of a vessel's permanent equipment.

(a) *Defects.* Cranes with a visible or known defect that affects safe operation shall not be used. Defects shall be reported immediately to the officer in charge of the vessel.

(b) *Operator's station.* (1) Good visibility shall be maintained through the cab's glass (or equivalent). Cranes with broken, cracked, or scratched glass (or equivalent) that impair operator visibility shall not be used.

(2) Clothing, tools and equipment shall be so stored as to not interfere with access, operation or the operator's view.

(c) *Cargo operations.* (1) Accessible areas within the swing radius of the body of a revolving crane or within the travel of a shipboard gantry crane shall be physically guarded during operations to prevent an employee from being caught between the body of the crane and any fixed structure, or between parts of the crane.

(2) Limit switch bypass systems shall be secured during all cargo operations.

(3) Under all operating conditions, at least three full turns of rope shall remain on ungrooved drums, and two full turns on grooved drums.

(4) Crane brakes shall be monitored for performance. If crane brakes are unable to hold the load, the crane shall not be used.

(5) Cranes shall not be used if control levers operate with excessive friction or excessive play.

(6) When cranes are equipped with power down capability, there shall be no free fall of the gear when a load is attached.

(7) When two or more cranes hoist a load in unison, a designated person shall direct the operation and instruct personnel in positioning, rigging of the gear and movements to be made.

(d) *Unattended cranes.* When cranes are left unattended between work periods, § 1918.66(b)(4)(i) through (v) shall apply.

Subpart G—Cargo Handling Gear and Equipment Other Than Ship's Gear

§ 1918.61 General.

(a) *Employer provided gear inspection.* All gear and equipment provided by the employer shall be inspected by the employer or designated person before each use and, when necessary, at intervals during its use, to ensure that it is safe. Any gear which is found upon such inspection to be unsafe shall not be used until it is made safe.

(b) *Safe working load.* (1) The safe working load of gear as specified in §§ 1918.61 through 1918.66 shall not be exceeded.

(2) All cargo handling gear provided by the employer with a safe working load greater than 5 short tons (10,000 lbs. or 4540 kg.) shall have its safe working load plainly marked on it.

(c) *Gear weight markings.* The weight shall be plainly marked on any article of stevedoring gear hoisted by ship's gear and weighing in excess of 2,000 lbs (908 kg).

(d) *Certification.* The employer shall not use any material handling device listed in paragraph (f) of this section until it has been ascertained that the device has been certificated, as evidenced by current and valid documents attesting to compliance with the requirements of paragraph (e) of this section.

(e) *Certification procedures.* The certifications required by this section shall be performed in accordance with part 1919 of this chapter, by persons then currently accredited by OSHA as provided in that part.

(f) *Special gear.* (1) Special stevedoring gear provided by the employer, the strength of which depends upon components other than commonly used stock items such as shackles, ropes, or chains, that has been purchased or fabricated after [insert date 90 days after publication of Final Rule], and has a Safe Working Load (SWL) greater than 5 short tons (10,000 lbs or 4540 kg.) shall be inspected and tested as a unit in accordance with the following table before initially being put into use:

Safe working load	Proof load
Up to 20 short tons (18.1 metric tons).	25 percent in excess.
Over 20 to 50 short tons (18.1 to 45.3 metric tons).	5 short tons in excess.
Over 50 short tons (45.3 metric tons).	10 percent in excess.

(2) Special stevedoring gear provided by the employer, the strength of which depends upon components other than commonly used stock items such as shackles, ropes, or chains, with a SWL of 5 short tons (10,000 or 4540 kg.) or less shall be inspected and tested as a unit in accordance with this section or by a designated person, in accordance with the table in § 1918.61(f)(1) before initially being put into use.

(g) Every spreader not a part of ship's gear and used for handling intermodal containers that has been purchased or fabricated after [insert date 90 days after publication of Final Rule] shall be inspected and tested to a proof load equal to 25 percent in excess of its rated capacity before being put into use. In addition, any spreader that suffers damage necessitating structural repair shall be inspected and retested after repair and before being returned to service.

(h) All cargo handling gear covered by this section with a SWL greater than 5 short tons (10,000 lbs. or 4540 kg.) shall be proof load tested in accordance with the chart in paragraph (f) of this section every four years in accordance with paragraphs (d) and (e) of this section or by a designated person.

(i) Certificates attesting to the required tests shall be available for inspection.

§ 1918.62 Miscellaneous auxiliary gear.

(a) *Routine inspection.* (1) At the completion of each use, loose gear such as slings, chains, bridles, blocks and hooks shall be so placed as to avoid damage to the gear. Loose gear shall be inspected and any defects corrected before reuse.

(2) Defective gear shall not be used. Distorted hooks, shackles or similar gear shall be discarded.

(b) *Wire rope and wire rope slings.* (1) The employer shall ascertain and adhere to the load ratings indicated on the vessel's wire rope certificates for all wire rope and wire rope slings comprising part of ship's gear.

(2) The employer shall adhere to the manufacturer's recommended ratings for wire rope and wire rope slings provided for use aboard ship, and shall have such ratings available for inspection. When the manufacturer is unable to supply such ratings, the employer shall use tables for wire rope and wire rope slings found in Appendix II to this part. A design safety factor of at least five shall be maintained for the common sizes of running wire used as falls in purchases, or in such uses as light load slings.

(3) Wire rope with a safety factor of less than five may be used only as follows:

(i) In specialized equipment, such as, but not limited to, cranes designed to be used with lesser wire rope safety factors;

(ii) In accordance with design factors in standing rigging applications; or

(iii) For heavy lifts or other purposes for which a safety factor of five is not feasible and for which the employer can

demonstrate that equivalent safety is ensured.

(4) Wire rope or wire rope slings provided by the employer and having any of the following conditions shall not be used:

(i) Ten randomly distributed broken wires in one rope lay or three or more broken wires in one strand in one rope lay;

(ii) Kinking, crushing, bird caging or other damage resulting in distortion of the wire rope structure;

(iii) Evidence of heat damage;

(iv) Excessive wear or corrosion, deformation or other defect in the wire or attachments, including cracks in attachments;

(v) Any indication of strand or wire slippage in end attachments; or

(vi) More than one broken wire in the close vicinity of a socket or swaged fitting.

(5) Protruding ends of strands in splices on slings and bridles shall be covered or blunted. Coverings shall be removable so that splices can be examined. Means used to cover or blunt ends shall not damage the wire.

(6) Where wire rope clips are used to form eyes, the employer shall adhere to the manufacturer's recommendations, which shall be available for inspection. If "U" bolt clips are used and the manufacturer's recommendations are not available, Table 1 of Appendix II to this part shall be used to determine the number and spacing of clips. "U" bolts shall be applied with the "U" section in contact with the dead end of the rope.

(7) Wire rope shall not be secured by knotting.

(8) Eyes in wire rope bridles, slings, bull wires, or in single parts used for hoisting shall not be formed by wire rope clips or knots.

(9) Eye splices in wire ropes shall have at least three tucks with a whole strand of the rope, and two tucks with one-half of the wire cut from each strand. Other forms of splices or connections which are shown to be equivalently safe may be used.

(10) Except for eye splices in the ends of wires and endless rope slings, each wire rope used in hoisting or lowering, or bulling cargo, shall consist of one continuous piece without knot or splice.

(c) *Natural fibre rope.* (1) The employer shall ascertain and adhere to the manufacturer's recommended ratings for natural fibre rope and natural fibre rope slings provided for use aboard ship, and shall have such ratings available for inspection. When the manufacturer is unable to supply such ratings, Appendix II to this part provides guidelines for fibre rope ratings.

(2) If the manufacturers recommended ratings and use recommendations are unavailable, Table 2 of Appendix II to this part provides guidelines to determine safe working loads of natural fibre rope slings comprising part of pre-slung drafts.

(3) Eye splices shall consist of at least three full tucks. Short splices shall consist of at least six tucks, three on each side of the centerline.

(d) *Synthetic rope.* (1) The employer shall adhere to the manufacturer's ratings and use recommendations for the specific synthetic fibre rope and synthetic fibre rope slings provided for use aboard ship, and shall have such ratings available for inspection. When the manufacturer is unable to supply such ratings, the employer shall use Tables 3A and B of Appendix II to this part.

(2) If the manufacturers recommended ratings and use recommendations are unavailable, Tables 3A and B of Appendix II to this part shall be used to determine the safe working load of synthetic fibre rope and of synthetic rope slings comprising part of pre-slung drafts.

(3) Unless otherwise recommended by the manufacturer, when synthetic fibre ropes are substituted for natural fibre ropes of less than 3 inches (7.62 cm) in circumference, the substitute shall be of equal size. Where substituted for natural fibre rope of 3 inches (7.62 cm) or more in circumference, the size of the synthetic rope shall be determined from the formula:

$$C = \sqrt{0.6C_s^2 + 0.4C_m^2}$$

Where C=the required circumference of the synthetic rope in inches (centimeters); C_s= the circumference to the nearest one-quarter inch (.6 cm) of a synthetic rope having a breaking strength no less than that of the size natural fibre rope that would be required by paragraph (c) of this section; and C_m= the circumference of natural fibre rope in inches (centimeters) which would be required by paragraph (c) of this section. In making each substitution, it shall be ascertained that the inherent characteristics of the synthetic-fibre are suitable for hoisting.

(e) *Removal of natural and synthetic rope from service.* Natural and synthetic rope having any of the following defects shall be removed from service:

(1) Abnormal or excessive wear including heat and chemical damage;

(2) Powdered fibre between strands;

(3) Sufficient cut or broken fibers to affect the capability of the rope;

(4) Variations in the size or roundness of strands;

(5) Discolorations other than stains not associated with rope damage;

(6) Rotting; or

(7) Distortion or other damage to attached hardware.

(f) *Thimbles.* Properly fitting thimbles shall be used when any rope is secured permanently to a ring, shackle or attachment, where practicable.

(g) *Synthetic web slings.* (1) Slings and nets or other combinations of more than one piece of synthetic webbing assembled and used as a single unit (synthetic web slings) shall not be used to hoist loads in excess of the sling's rated capacity.

(2) Synthetic web slings shall be removed from service if they exhibit any of the following defects:

(i) Acid or caustic burns;

(ii) Melting or charring of any part of the sling surface;

(iii) Snags, punctures, tears or cuts;

(iv) Broken or worn stitches;

(v) Distortion or damage to fittings; or

(vi) Display of visible warning threads or markers designed to indicate excessive wear or damage.

(3) Defective synthetic web slings removed from service shall not be returned to service unless repaired by a sling manufacturer or an entity of similar competence. Each repaired sling shall be proof tested by the repairer to twice the sling's rated capacity prior to its return to service. The employer shall retain a certificate of the proof test and make it available for inspection.

(4) Synthetic web slings provided by the employer shall only be used in accordance with the manufacturer's use recommendations, which shall be available.

(5) Fittings shall have a breaking strength at least equal to that of the sling to which they are attached and shall be free of sharp edges.

(h) *Chains and chain slings used for hoisting.* (1) The employer shall adhere to the manufacturer's recommended ratings for safe working loads for the size of wrought iron and alloy steel chains and chain slings and shall have such ratings available for inspection. When the manufacturer does not provide such ratings, the employer shall use Table 4A of Appendix II to this part to determine safe working loads for alloy steel chains and chain slings only.

(2) Proof coil steel chain, also known as common or hardware chain, and other chain not recommended by the manufacturer for slinging or hoisting, shall not be used for slinging or hoisting.

(3) (i) Sling chains, including end fastenings, shall be inspected for visible

defects before each day's use and as often as necessary during use to ensure integrity of the sling.

(ii) Thorough inspections of chains in use shall be made quarterly to detect wear, defective welds, deformation or increase in length or stretch. The month of inspection shall be indicated on each chain by color of paint on a link or by other equally effective means.

(iii) Chains shall be removed from service when maximum allowable wear, as indicated in Table 4B of Appendix II to this part, is reached at any point of a link.

(iv) Chain slings shall be removed from service when stretch has increased the length of a measured section by more than five percent; when a link is bent, twisted or otherwise damaged; or when a link has a raised scarf or defective weld.

(v) Only designated persons shall inspect chains used for slinging and hoisting.

(4) Chains shall only be repaired under qualified supervision. Links or portions of chain defective under any of the criteria of paragraph (h)(3)(iv) of this section shall be replaced with properly dimensioned links or connections of material similar to that of the original chain. Before repaired chains are returned to service, they shall be tested to the proof test load recommended by the manufacturer for the original chain. Tests shall be performed by the manufacturer or shall be certified by an agency accredited for the purpose under part 1919 of this chapter. Test certificates shall be available for inspection.

(5) (i) Wrought iron chains in constant use shall be annealed or normalized at intervals not exceeding six months. Heat treatment certificates shall be available for inspection. Alloy chains shall not be annealed.

(ii) No new part of a lifting appliance or item of loose gear shall be manufactured of wrought iron.

(6) Kinked or knotted chains shall not be used for lifting. Chains shall not be shortened by bolting, wiring or knotting. Makeshift links or fasteners such as wire, bolts or rods shall not be used.

(7) Hooks, rings, links and attachments affixed to sling chains shall have rated capacities at least equal to that of the chains to which they are attached.

(8) Chain slings shall bear identification of size, grade and rated capacity.

(i) *Shackles.* (1) If available, the manufacturer's recommended safe working loads for shackles shall not be exceeded. In the absence of the manufacturer's recommendations, Table 5 of Appendix II to this part, shall apply.

(2) Screw pin shackles provided by the employer and used aloft, except in cargo hook assemblies, shall have their pins positively secured.

(j) *Hooks other than hand hooks.* (1) The manufacturer's recommended safe working loads for hooks shall not be exceeded. Hooks other than hand hooks shall be tested in accordance with the provisions of paragraphs (a), (c) and (d) of § 1919.31 of this chapter, except, that manufacturer's test certificates indicating performance to the criteria in § 1919.31 (a), (c) and (d) of this chapter shall be acceptable.

(2) Bent or sprung hooks shall be discarded.

(3) Teeth of case hooks shall be maintained in safe condition.

(4) Jaws of patent clamp-type plate hooks shall be maintained in condition to grip plates securely.

(5) Loads shall be applied to the throat of the hook only.

(k) *Pallets.* (1) Pallets shall be made and maintained to support and carry loads being handled safely. Fastenings of reusable pallets used for hoisting shall be bolts and nuts, drive screws (helically threaded nails), annular threaded nails or fastenings of equivalent holding strength.

(2) Reusable wing or lip-type pallets shall be hoisted by bar bridles or other suitable gear and shall have an overhanging wing or lip of at least 3 inches (7.6 cm). They shall not be hoisted by wire slings alone.

(3) Loaded pallets that do not meet the requirements of this paragraph shall be hoisted only after being placed on pallets meeting such requirements, or shall be handled by other means providing equivalent safety.

(4) Bridles for handling flush end or box-type pallets shall be designed to prevent disengagement from the pallet under load.

(5) Pallets shall be stacked or placed to prevent falling, collapsing or otherwise causing a hazard under standard operating conditions.

(6) Disposable pallets intended only for one use shall not be reused for hoisting.

§ 1918.63 Chutes, gravity conveyors and rollers.

(a) Chutes shall be of adequate length and strength to support the conditions of use, and shall be free of splinters and sharp edges.

(b) When necessary for the safety of employees, chutes shall be equipped with sideboards to afford protection from falling objects.

(c) When necessary for the safety of employees, provisions shall be made for stopping objects other than bulk commodities at the delivery end of the chute.

(d) Chutes and gravity conveyor roller sections shall be firmly placed and secured to prevent displacement, shifting, or falling.

(e) Gravity conveyors shall be of sufficient strength to safely support the weight of materials placed upon them. Conveyor rollers shall be installed in a manner that prevents them from falling or jumping out of the frame.

(f) Frames shall be kept free of burrs and sharp edges.

§ 1918.64 Powered conveyors.

(a) *Emergency stop.* Readily accessible stop controls shall be provided for use in an emergency. Whenever the operation of any power conveyor requires personnel to work in the immediate vicinity of the conveyor, the conveyor controls shall not be left unattended while the conveyor is in operation.

(b) *Guarding.* All conveyor and trimmer drives which create a hazard shall be adequately guarded.

(c) *Approved for location.* Electric motors and controls on conveyors and trimmers used to handle grain and exposed to grain dust shall be of the type approved by a nationally recognized testing laboratory for use in Class II, Division I locations. (See § 1910.7 of this chapter.)

(d) *Grain trimmer control box.* Each grain trimmer shall have a control box located on the weather deck in close proximity to the spout feeding the trimmer.

(e) *Grain trimmer power cable.* Power cables between the deck control box and the grain trimmer shall be used only in continuous lengths without splice or tap between connections.

(f) *Portable conveyors.* Portable conveyors shall be stable within their operating ranges. When used at variable fixed levels, the unit shall be secured at the operating level.

(g) *Delivery and braking.* When necessary for the safety of employees, provisions shall be made for braking objects at the delivery end of the conveyor.

(h) *Electric brakes.* Conveyors using electrically released brakes shall be so constructed that the brakes cannot be released until power is applied, and that the brakes are automatically engaged if the power fails or the operating control is returned to the "stop" position.

(i) *Starting powered conveyors.* Powered conveyors shall not be started until all employees are clear of the conveyor or have been warned that the conveyor is about to start.

(j) *Loading and unloading.* The area around conveyor loading and unloading points shall be kept clear of obstructions during conveyor operations.

(k) *Lockout/tagout.* (1) Conveyors shall be stopped and their power sources locked out and tagged out during maintenance, repair, and servicing, unless power is necessary for testing or for making minor adjustments.

(2) The starting device shall be locked out and tagged out in the stop position before an attempt is made to remove the cause of a jam or overload of the conveying medium.

(l) *Safe practices.* (1) Only designated persons shall operate, repair or service powered conveyors.

(2) The employer shall direct employees to stay off operating conveyors.

(3) Conveyors shall be operated only with all overload devices, guards and safety devices in place and operable.

§ 1918.65 Mechanically powered vehicles used aboard vessels.

(a) *Applicability.* This section applies to every type of mechanically powered vehicle used for material or equipment handling aboard a vessel.

(b) *General.* (1) Modifications, such as adding counterweights that might affect the vehicle's capacity or safety, shall not be performed without either the manufacturer's prior written approval or the written approval of a professional engineer experienced with the equipment, who has consulted with the manufacturer, if available. Capacity, operation and maintenance instruction plates, tags or decals shall be changed to conform to the equipment as modified.

(2) Rated capacities, with and without removable counterweights, shall not be exceeded. Rated capacities shall be marked on the vehicle and shall be visible to the operator. The vehicle weight, with and without counterweight, shall be similarly marked.

(3) If loads are lifted by two or more trucks working in unison, the total weight shall not exceed the combined safe lifting capacity of all trucks.

(c) *Guards for fork lift trucks.* (1) Except as noted in paragraph (c)(5) of this section, fork lift trucks shall be equipped with overhead guards securely attached to the machines. The guard shall be of such design and construction as to protect the operator from boxes, cartons, packages, bagged material, and other similar individual items of cargo which may fall from the load being handled or from stowage.

(2) Overhead guards shall not obstruct the operator's view, and openings in the top of the guard shall not exceed 6 inches (15.2 cm) in one of the two directions, width or length. Larger openings are permitted if no opening allows the smallest unit of cargo being handled through the guard.

(3) Overhead guards shall be built so that failure of the vehicle's mast tilting mechanism will not displace the guard.

(4) Overhead guards shall be large enough to extend over the operator during all truck operations, including forward tilt.

(5) An overhead guard may be removed only when it would prevent a truck from entering a work space and if the operator is not exposed to low overhead obstructions in the work space.

(6) Where necessary to protect the operator, fork lift trucks shall be fitted with a vertical load backrest extension to prevent the load from hitting the mast when the mast is positioned at maximum backward tilt. For this purpose, a "load backrest extension" means a device extending vertically from the fork carriage frame to prevent raised loads from falling backward.

(d) *Guards for bulk cargo-moving vehicles.* (1) Every crawler type, rider operated, bulk cargo-moving vehicle shall be equipped with an operator's guard of such design and construction as to protect the operator, when seated, against injury from contact with a projecting overhead.

(2) Guards and their attachment points shall be so designed as to be able to withstand, without excessive deflection, a load applied horizontally at the operator's shoulder level equal to the drawbar pull of the machine.

(3) Guards shall not be required when the vehicle is used in situations in which the possibility of the seated operator coming in contact with projecting overheads does not exist.

(4) Bulk cargo-moving vehicles shall be equipped with roll-over protection of such design and construction as to minimize the possibility of the operator being crushed as a result of a roll-over or upset.

(e) *Approved vehicle.* (1) "Approved power-operated vehicle" means one listed as approved for the intended use or location by a nationally recognized testing laboratory.

(2) Approved vehicles shall bear a label or other identification indicating testing laboratory approval.

(3) When the atmosphere in an area is hazardous and the provisions of U.S. Coast Guard regulations 49 CFR 176.78 do not apply, only approved power-operated vehicles shall be used.

(f) *Maintenance.* (1) Mechanically powered vehicles shall be maintained in safe working order. Safety devices shall not be removed or made inoperative except as otherwise provided in this section. Vehicles with a fuel system leak or any other safety defect shall not be operated.

(2) Braking systems or other mechanisms used for braking shall be operable and in safe condition.

(3) Replacement parts whose function might affect operational safety shall be equivalent in strength and performance capability to the original parts which they replace.

(4) Repairs to the fuel and ignition systems of mechanically powered vehicles which involve fire hazards shall be conducted only in locations designated as safe for such repairs.

(5) Batteries on all mechanically powered vehicles shall be disconnected during repairs to the primary electrical system unless power is necessary for testing and repair. On vehicles equipped with systems capable of storing residual energy, that energy shall be safely discharged before work on the primary electrical system begins.

(6) Only designated persons shall perform maintenance and repair.

(g) *Parking brakes.* All mechanically powered vehicles purchased after [insert effective date of the Final Rule] shall be equipped with parking brakes.

(h) *Operation.* (1) Only stable and safely arranged loads within the rated capacity of the mechanically powered vehicle shall be handled.

(2) The employer shall direct drivers to ascend and descend grades slowly.

(3) If the load obstructs the forward view, the employer shall direct drivers to travel with the load trailing.

(4) Steering knobs shall not be used unless the vehicle is equipped with power steering.

(5) When mechanically powered vehicles use cargo lifting devices that have a means of engagement hidden from the operator, a means shall be provided to enable the operator to determine that the cargo has been engaged.

(6) No load on a mechanically powered vehicle shall be suspended or swung over any employee.

(7) When mechanically powered vehicles are used, provisions shall be made to ensure that the working surface can support the vehicle and load, and that hatch covers, truck plates, or other temporary surfaces cannot be dislodged by movement of the vehicle.

(8) When mechanically powered vehicles are left unattended, load-engaging means shall be fully lowered, controls neutralized, brakes set and power shut off. Wheels shall be blocked or curbed if the vehicle is on an incline.

(9) When lift trucks or other mechanically powered vehicles are being operated on open deck type barges, the edges of the barges shall be guarded by railings, sideboards, timbers, or other means sufficient to prevent vehicles from rolling overboard. When such vehicles are operated on covered lighters where door openings other than those being used are left open, means shall be taken to prevent vehicles from rolling overboard through such openings.

(10) Unauthorized personnel shall not ride on mechanically powered vehicles. A safe place to ride shall be provided when riding is authorized.

(11) An employee may be elevated by fork lift trucks only when a platform is secured to the lifting carriage or forks. The platform shall meet the following requirements:

(i) The platform shall have a railing complying with § 1917.112(c) of this chapter.

(ii) The platform shall have toeboards complying with § 1917.112(d) of this chapter, if tools or other objects could fall on employees below.

(iii) When the truck has controls which are elevated with the lifting carriage, means shall be provided for employees on the platform to shut off power to the vehicle.

(iv) Employees on the platform shall be protected from exposure to moving truck parts.

(v) The platform floor shall be skid resistant.

(vi) A truck operator shall be at the truck's controls when employees are elevated, unless the truck's controls are elevated with the lifting carriage.

(vii) While an employee is elevated the truck may be moved only to make minor placement adjustments.

§ 1918.66 Cranes and derricks other than vessel's gear.

(a) *General.* The following requirements shall apply to the use of cranes and derricks brought aboard vessels for the purpose of conducting longshoring operations. They shall not apply to cranes and derricks forming part of a vessels permanent equipment.

(b) *Certification.* Cranes and derricks shall be certificated in accordance with part 1919 of this chapter.

(2) *Posted weight.* The crane weight shall be posted on all cranes hoisted aboard vessels for temporary use.

(3) *Rating chart.* All cranes and derricks having ratings that vary with boom length, radius (outreach) or other variables shall have a durable rating chart visible to the operator, covering the complete range of the manufacturer's (or design) capacity ratings. The rating chart shall include all operating radii (outreach) for all permissible boom lengths and jib lengths, as applicable, with and without outriggers, and alternate ratings for optional equipment affecting such ratings. Precautions or warnings specified by the owner or manufacturer shall be included along with a chart.

(4) *Rated loads.* The manufacturer's (or design) rated loads for the conditions of use shall not be exceeded.

(5) *Change of rated loads.* Designated working loads shall not be increased beyond the manufacturer's ratings or original design limitations unless such increase receives the manufacturer's approval. When the manufacturer's services are not available or where the equipment is of foreign manufacture, engineering design analysis shall be performed or approved by a person accredited for certificating the equipment under part 1919 of this chapter. Engineering design analysis shall be performed by a registered professional engineer competent in the field of cranes and derricks. Any structural changes necessitated by the change in rating shall be carried out.

(6) *Radius indicator.* When the rated load varies with the boom radius, the crane or derrick shall be fitted with a boom angle or radius indicator visible to the operator.

(7) *Operator's station.* The cab, controls and mechanism of the equipment shall be so arranged that the operator has a clear view of the load or signalman, when one is used. Cab glass, when used, shall be safety plate glass or equivalent and good visibility shall be maintained through the glass. Clothing, tools, and equipment shall be stored so as not to interfere with access, operation, and the operator's view.

(8) *Counterweights or ballast.* Cranes shall be operated only with the specified type and amount of ballast or counterweights. Ballast or counterweights shall be located and secured only as provided in the manufacturer's or design specifications, which shall be available for inspection.

(9) *Outriggers.* Outriggers shall be used according to the manufacturer's specifications or design data, which shall be available for inspection. Floats, when used, shall be securely attached to the outriggers. Wood blocks or other support shall be of sufficient size to support the outrigger, free of defects that may affect safety and of sufficient width and length to prevent the crane from shifting or toppling under load.

(10) *Exhaust gases.* Engine exhaust gases shall be discharged away from the normal position of crane operating personnel.

(11) *Electrical/Guarding.* Electrical equipment shall be so located or enclosed that live parts will not be exposed to accidental contact. Designated persons may work on energized equipment only if necessary during inspection, maintenance, or repair, otherwise the equipment shall be stopped and their power sources locked out and tagged out.

(12) *Fire extinguisher.* (i) At least one portable approved or listed fire extinguisher of at least a 5–BC rating or equivalent shall be accessible in the cab of the crane or derrick.

(ii) No portable fire extinguisher using carbon tetrachloride or chlorobromomethane extinguishing agents shall be used.

(13) *Rope on drums.* At least three full turns of rope shall remain on ungrooved drums, and two turns on grooved drums, under all operating conditions. Wire rope shall be secured to drums by clamps, U-bolts, shackles or equivalent means. Fibre rope fastenings are prohibited.

(14) *Brakes.* (i) Each independent hoisting unit of a crane shall be equipped with at least one holding brake, applied directly to the motor shaft or gear train.

(ii) Each independent hoisting unit of a crane shall, in addition to the holding brake, be equipped with a controlled braking means to control lowering speeds.

(iii) Holding brakes for hoist units shall have not less than the following percentage of the rated load hoisting torque at the point where the brake is applied:

(A) 125 percent when used with a controlled braking means.

(B) 100 percent when used with a mechanically controlled braking means.

(iv) All power control braking means shall be capable of maintaining safe lowering speeds of rated loads.

(15) *Operating controls.* Crane and derrick operating controls shall be clearly marked, or a chart indicating their function shall be posted at the operator's position.

(16) *Booms.* Cranes with elevatable booms and without operable automatic limiting devices shall be provided with boom stops if boom elevation can exceed maximum design angles from the horizontal.

(17) *Foot pedals.* Foot pedals shall have a non-skid surface.

(18) *Access.* Ladders, stairways, stanchions, grab irons, foot steps or equivalent means shall be provided as necessary to ensure safe access to footwalks, cab platforms, the cab and any portion of the superstructure which employees must reach.

(b) *Operations—(1) Use of cranes together.* When two or more cranes hoist a load in unison, a designated person shall direct the operation and instruct personnel in positioning, rigging of the load and movements to be made.

(2) *Guarding of swing radius.* Accessible areas within the swing radius of the body of a revolving crane shall be physically guarded during operations to prevent an employee from being caught between the body of the crane and any fixed structure or between parts of the crane.

(3) *Prohibited usage.* (i) Equipment shall not be used in a manner that exerts sideloading stresses upon the crane or derrick boom.

(ii) No crane or derrick having a visible or known defect that may affect safe operation shall be used.

(4) *Unattended cranes.* The following steps shall be taken before leaving a crane unattended between work periods:

(i) Suspended loads, such as those hoisted by lifting magnets or clamshell buckets, shall be landed unless the ✓ storage position or maximum hoisting of the suspended device will provide equivalent safety;

(ii) Clutches shall be disengaged;

(iii) The power supply shall be shut off;

(iv) The crane shall be secured against accidental travel; and

(v) The boom shall be lowered or secured against movement.

(c) *Protection for employees being hoisted.* (1) No employee shall be hoisted by the load hoisting apparatus of a crane or derrick except on a platform meeting the following requirements:

(i) Enclosed by a railing or other means providing protection equivalent of that described in § 1917.112(c) of this chapter. If equipped with open railings, the platform shall be fitted with toe boards;

(ii) Having a safety factor of four based on ultimate strength;

(iii) Bearing a plate or permanent marking indicating maximum load rating, which shall not be exceeded, and the weight of the platform itself;

(iv) Equipped with a device to prevent access doors, when used, from opening accidentally;

(v) Equipped with overhead protection for employees on the platform if they are exposed to falling objects or overhead hazards;

(vi) Secured to the load line by means other than wedge and socket attachments, unless the free (bitter) end of the line is secured back to itself by a clamp placed as close above the wedge as possible.

(2) Except in an emergency, the hoisting mechanism of all cranes or derricks used to hoist personnel shall operate in power up and power down, with automatic brake application when not hoisting or lowering.

(3) All cranes and derricks used to hoist personnel shall be equipped with an anti-two blocking device.

(4) Variable radius booms of a crane or derrick used to hoist personnel shall be so constructed or secured as to prevent accidental boom movement.

(5) Platforms or devices used to hoist employees shall be inspected for defects before each day's use and shall be removed from service if defective.

(6) Employees being hoisted shall remain in continuous sight of and communication with the operator or signalman.

(7) Operators shall remain at the controls when employees are hoisted.

(8) Cranes shall not travel while employees are hoisted, except in emergency or in normal tier to tier transfer of employees during container operations.

(d) *Routine inspection.* (1) Designated persons shall visually inspect each crane and derrick on each day of use for defects in functional operating components and shall report any defect found to the employer. The employer shall inform the operator of the findings.

(2) A designated person shall thoroughly inspect all functional components and accessible structural features of each crane or device at monthly intervals.

(3) Any defects found during such inspections which may create a safety hazard shall be corrected before further equipment use. Repairs shall be performed only by designated persons.

(4) A record of monthly inspections shall be maintained for six months in or on the crane or derrick or at the terminal.

(e) *Protective devices.* (1) When exposed moving parts such as gears, chains and chain sprockets present a hazard to employees during crane and derrick operations, those parts shall be securely guarded.

(2) Crane hooks shall be latched or otherwise secured to prevent accidental load disengagement.

§ 1918.67 Notifying the ship's officers before using certain equipment.

(a) The employer shall notify the officer in charge of the vessel before bringing aboard ship internal combustion or electric powered tools, equipment or vehicles.

(b) The employer shall also notify the officer in charge of the vessel before using the ship's electric power for the operation of any electric tools or equipment.

§ 1918.68 Grounding.

The frames of portable electrical equipment and tools, other than double insulated tools and battery operated tools shall be grounded through a separate equipment conductor run with or enclosing the circuit conductors.

§ 1918 69 Tools.

(See Scope and Application, § 1918.1).

Subpart H—Handling Cargo

§ 1918.81 Slinging.

(a) Drafts shall be safely slung before being hoisted. Loose dunnage or debris hanging or protruding from loads shall be removed.

(b) Cargo handling bridles, such as pallet bridles, which are to remain attached to the hoisting gear while hoisting successive drafts, shall be attached by shackles, or other positive means shall be taken to prevent them from being accidentally disengaged from the cargo hook.

(c) Drafts of lumber, pipe, dunnage and other pieces, the top layer of which is not bound by the sling, shall be slung in such a manner as to prevent sliders. Double slings shall be used on unstrapped dunnage, except when, due to the size of hatch or deep tank openings, it is impractical to use them.

(d) Case hooks shall be used only with cases designed to be hoisted by these hooks.

(e) Bales of cotton, wool, cork, wood pulp, gunny bags or similar articles shall be hoisted only by straps strong enough to support the weight of the bale. At least two hooks, each in a separate strap, shall be used.

(f) Unitized loads bound by bands or straps may be hoisted by the banding or strapping only if the banding or strapping is suitable for hoisting and is strong enough to support the weight of the load.

(g) Additional means of hoisting shall be employed to ensure safe lifting of unitized loads having damaged banding or strapping.

(h) Loads requiring continuous manual guidance during handling shall be guided by guide ropes (tag lines) that are long enough to control the load.

(i) No draft shall be hoisted unless the winch or crane operator(s) can clearly see the draft itself or see the signals of a signalman in observation of the draft's movement.

(j) Intermodal containers shall be handled in accordance with § 1918.85.

(k) The employer shall require that employees stay clear of the area beneath

overhead drafts or descending lifting gear.

(l) Employees shall not be permitted to ride the hook or the load. Except that: As provided for in § 1918.85(g).

§ 1918.82 Building drafts.

(a) Drafts shall be built or means shall be taken to prevent cargo from falling from them.

(b) Buckets and tubs used in handling bulk or frozen cargo shall not be loaded above their rims.

§ 1918.83 Stowed cargo; tiering and breaking down.

(a) When necessary to protect personnel working in a hold, stowed cargo in ship's holds which is likely to shift or roll shall be secured or blocked.

(b) In breaking down stowed cargo, precautions shall be taken to prevent remaining cargo from falling.

(c) Employees trimming bulk cargo shall be checked in and out by the foreman. Before securing any reefer compartment, a check shall be made to ensure that no employee remains inside. Frequent checks shall be made to ensure the safety of any employee working alone in a tank or cargo compartment.

§ 1918.84 Bulling cargo.

(a) Bulling cargo shall be done with the bull line led directly from the heel block. However, bulling may be done from the head of the boom when the nature of the cargo and the surface over which it is dragged are such that the load cannot be stalled, or when the winch actually does not have sufficient strength, with the purchase used, to overload the boom.

(b) Snatch blocks shall be used to provide a fair lead for the bull line so as to avoid unnecessary dragging of the bull line against coamings and obstructions.

(c) Snatch blocks shall not be used with the point of the hook resting on the flange of a beam, but shall be hung from padeyes, straps, or beam clamps. Snatch blocks or straps shall not be made fast to batten cleats or other insecure fittings.

(d) Beam frame clamps shall be so secured as to prevent their slipping, falling, or being pulled from their stationary attachment.

(e) Falls led from cargo booms of vessels shall not be used to move scows, lighters or railcars.

§ 1918.85 Containerized cargo operations.

(a) *Container markings.* Every intermodal container shall be legibly and permanently marked with:

(1) The weight of the container when empty, in pounds;

(2) The maximum cargo weight the container is designed to carry, in pounds; and

(3) The sum of the weight of the container and the maximum cargo weight, in pounds.

(b) *Container weight.* No container shall be hoisted by any lifting appliance unless the following conditions have been met:

(1) The employer shall ascertain from the carrier whether a container to be hoisted is loaded or empty. Empty containers shall be identified before loading or discharge in such a manner as will inform every supervisor and foreman on the site and in charge of loading or discharging, or every crane or other hoisting equipment operator and signalman, if any, that such container is empty. Methods of identification may include cargo plans, manifests, or markings on the container.

(2) In the case of a loaded container:

(i) The actual gross weight shall be plainly marked so as to be visible to the crane or other hoisting equipment operator or signalman, or to every supervisor or foreman on site and in charge of the operation; or

(ii) The cargo stowage plan or equivalent permanently recorded display serving the same purpose, containing the actual gross weight and the serial number or other positive identification of that specific container, shall be provided to the crane or other hoisting equipment operator and signalman, if any, and to every supervisor and foreman on site and in charge of the operation.

(3) Every outbound container which is received at a marine terminal ready to load aboard a vessel without further consolidation or loading shall be weighed to obtain the actual gross weight, either at the terminal or elsewhere, before being hoisted.

(4) (i) When container weighing scales are located at a marine terminal, any outbound container with a load consolidated at that terminal shall be weighed to obtain the actual weight before being hoisted.

(ii) If the terminal has no scales, the actual gross weight may be calculated on the basis of the container's contents and the container's empty weight. The weights used in the calculation shall be posted conspicuously on the container, with the name of the person making the calculation, and the date.

(5) Open top vehicle carrying containers, and those built specifically and used solely for the carriage of compressed gases, are excepted from paragraphs (b)(3) and (b)(4) of this section.

(6) Closed dry van containers carrying vehicles are exempted from paragraph (b)(4) of this section provided that:

(i) The container carries only completely assembled vehicles and no other cargo;

(ii) The container is marked on the outside in such a manner that an employee can readily discern that the container is carrying vehicles; and

(iii) The vehicles were loaded into the container at the marine terminal.

(7) The weight of loaded inbound containers from foreign ports shall be determined by weighing, by the method of calculation described in paragraph (b)(4)(ii) of this section or by shipping documents.

(8) Any scale used within the United States to weigh containers for the purpose of the requirements of this section shall meet the accuracy standards of the state or local public authority in which the scale is located.

(c) *Overloaded containers.* No container or containers shall be hoisted if its actual gross weight exceeds the weight marked as required in paragraph (a)(3) of this section, or if it exceeds the capacity of the crane or other lifting appliance intended to be used.

(d) *Container inspection.* (1) Containers shall be inspected for any visible defects in structural members and fittings which would make the handling of such container unsafe.

(2) Any container found to have such a defect shall either be handled by a special means to assure safe handling; or shall be emptied before handling.

(e) *Suspended containers.* The employer shall direct employees to stay clear of the area beneath a suspended container.

(f) *Lifting fittings.* Containers shall be handled using lifting fittings or other arrangements suitable and intended for the purpose as set forth in paragraphs (f)(1) through (f)(3) of this section, except when damage to an intermodal container makes special means of handling necessary.

(1) Loaded intermodal containers of 20 feet (6.1 m) or more shall be hoisted as follows:

(i) When hoisted by the top fittings, the lifting forces shall be applied vertically from at least four such fittings.

(ii) When hoisted from bottom fittings, the hoisting connections shall bear on the fittings only, making no other contact with the container. The angles of the four bridle legs shall not be less than 30° to the horizontal in the case of 40 foot (12.2 m) containers; 37° in the case of 30 foot (9.1 m) containers; and 45° in the case of 20 foot (6.1 m) containers.

(iii) Lifting containers by fork lift trucks or grappling arms from above or from one side may be done only if the container is designed for this type of handling.

(iv) Other means of hoisting may be used only if the containers and hoisting means are designed for such use.

(2)(i) When using intermodal container spreaders that employ lanyards for activation and load disengagement, all possible precautions shall be taken to prevent accidental release of the load.

(ii) Intermodal container spreader twistlock systems shall be designed and used so that a suspended load cannot accidentally be released.

(g) *Safe container top access.* A safe means of access and egress shall be provided for each employee required to work atop an intermodal container. Unless ladders are used for access, such means shall comply with the requirements of § 1917.45(j) of this chapter.

(h) *Employee hoisting prohibition.* Employees shall not be hoisted on intermodal container spreaders while a load is engaged.

(i) *Portable ladder access.* When other safer means are available, portable ladders shall not be used in gaining access to container stacks more than two containers high.

(j) *Container top safety.* (1) Employees shall be protected from fall hazards [3] in the following manner:

(i) After June 2, 1997, employees shall not go on top of containers to perform work, notably coning and deconing, which can be eliminated through the proper use of positive container securing devices;

(ii) Work which requires employees to go on top of container tops shall be eliminated, to the extent feasible, through the proper use of positive container securing devices, which includes, but is not limited to, semi-automatic twist locks and cell guides;

(iii) A fall protection system meeting the requirements of paragraph (k) of this section shall be implemented to protect the following employees:

(A) Employees engaged in work on containers that is not described in paragraph (j)(1)(ii) of this section [4] that presents exposure to fall hazards; or

(B) Employees engaged in work on containers that are not being handled by container gantry cranes.

(2) Compliance with paragraph (j)(1)(ii) of this section shall be considered feasible when containers are being worked by container gantry cranes.

(3) Where the employer determines in the particular case that an employee will be exposed to a fall hazard but that the use of a fall protection system meeting the requirements of paragraph (k) of this section is not feasible [5] the employer shall alert the exposed employee about the hazards involved and instruct the employee how to minimize the hazard.

(k) *Fall protection.* When fall protection systems required by paragraph (j) of this section are employed, the following shall apply:

(1) Each fall protection system component, except anchorages, shall have fall arrest/restraint as its only use.

(2) Each fall protection system subjected to impact loading shall be immediately withdrawn from service and not used again until inspected and determined by a designated person to be undamaged and suitable for use.

(3) Each fall protection system shall be rigged to minimize free-fall distance so that the employee will not contact any lower level stowage or vessel structure.

(4) Each fall protection system adopted for use shall have an energy absorbing mechanism that will produce an arresting force on an employee of not greater than 1800 pounds (8 kN).

(5) Each fall protection systems' hardware shall be designed and utilized so as to prevent accidental disengagement.

(6) Each fall protection systems' fixed anchorages shall each be capable of sustaining a force of 5,000 (22.2 kN) pounds or be certified as capable of sustaining at least twice the potential impact load of an employee's fall. Such certification must be made by a registered professional engineer. When more than one employee is attached to an anchorage, the foregoing limits shall be multiplied by the number of employees attached.

(7) When "live" (activated) container gantry crane lifting beams or attached devices are used as anchorage points the following requirements apply:

(i) The crane shall be placed into a "slow" speed mode;

(ii) The crane shall be equipped with a remote shut-off switch, capable of stopping all crane functions, in the control of employee(s) attached to the beam; and

(iii) A visible or audible indicator shall be present to inform the same employee(s) when the remote shut-off is operational.

(8) Fall protection system components shall be certified as a unit of being capable of sustaining at least twice the potential impact load of an employee's fall. Such certification must be made by a registered professional engineer. When more than one employee is attached to an anchorage, the foregoing limits shall be multiplied by the number of employees attached.

(9) Each fall protection system shall incorporate the use of a full body harnesses.

(10) Each device, such as a safety cage, that is used to transport employee(s) by being attached to a container gantry crane spreader, shall have a secondary means of attachment in place and engaged to prevent accidental disengagement.

(11) Each fall protection system shall be inspected prior to each day's use by a designated person. Any defective components shall be removed from service.

(12) Before using any fall protection system, the employee shall be trained in the use and application limits of the equipment, proper hook-up, anchoring and tie-off techniques, methods of use, and proper methods of equipment inspection and storage.

(13) The employer shall establish and implement a procedure to safely retrieve personnel in case of a fall.

(l) *Working along unguarded edges.* Fall protection meeting the requirements of paragraph (k) of this section must be provided when container operations require employees to work along unguarded edges (other than on the top of a container), where the fall distance is greater than 8 feet (2.4 m).

§ 1918.86 Roll-on roll-off (RO-RO) operations.

(See also § 1918.24.)

(a) *Traffic control system.* An organized system of vehicular and pedestrian traffic control shall be established and maintained at each entrance/exit ramp and on ramps within the vessel as traffic flow warrants.

(b) *Ramp load limit.* Ramps shall be plainly marked with their load capacity. The marked capacity shall not be exceeded.

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[3] A fall hazard shall exist whenever employees are working within 3 feet (.9 m) of the unprotected edge of a work surface that is 10 or more feet (3 m) above the adjoining surface and twelve (12) inches (.3 m) or more, horizontally, from the adjacent surface; or weather conditions may impair vision or sound footing of workers on top of containers.

[4] Examples of work that may not be eliminated by positive container securing devices, where employees may be required to work on top of containers include, but are not limited to: installing or removing bridge clamps; hooking up or detaching overheight containers; or freeing a jammed semi-automatic twist lock.

[5] See non-mandatory Appendix III to this part for examples of situations where the use of a fall protection system may prove infeasible.

(c) *Pedestrian traffic.* Stern and side port ramps also used for pedestrian access shall meet the requirements of § 1918.21. Such ramps shall provide a physical separation between pedestrian and vehicular routes. When the design of the ramp prevents physical separation, a signalperson shall direct traffic and shall not allow concurrent use.

(d) *Ramp maintenance.* Ramps shall be properly maintained and secured.

(e) *Hazardous routes.* Prior to the start of Ro-Ro operations the employer shall ascertain any hazardous routes or areas that could be mistaken for normal drive-on/drive-off routes. Such hazardous routes shall be clearly identified and barricaded.

(f) *Air brake connections.* Each tractor shall have all air lines connected when pulling trailers equipped with air brakes and shall have the brakes tested before commencing operations.

(g) *Trailer load limits.* Flat bed and low boy trailers shall be marked with their cargo capacities and shall not be overloaded.

(h) *Cargo weights.* Cargo to be handled via a Ro-Ro ramp shall have its weight plainly marked in pounds (kilograms). Alternatively, the cargo stow plan or equivalent record containing the actual gross weight of the load may be used to determine the weight of the cargo.

(i) *Tractors.* Tractors used in Ro-Ro operations shall have:

(1) sufficient power to ascend ramp inclines safely; and

(2) sufficient braking capacity to descend ramp inclines safely.

(j) *Safe speeds.* Power driven vehicles used in Ro-Ro operations shall be operated at safe speeds compatible with prevailing conditions.

(k) *Ventilation.* Internal combustion engine driven vehicles shall be operated only where adequate ventilation exists or is provided. (Air contaminant requirements are found in § 1918.94 and part 1910, subpart Z of this chapter.)

(l) *Securing cargo.* Cargo loaded or discharged during Ro-Ro operations shall be secured to prevent sliding loads.

(m) *Authorized personnel.* Only authorized persons shall be permitted on any deck while loading or discharging operations are being conducted. Such authorized persons shall be equipped with high visibility vests (or equivalent protection).

(n) *Signalling requirement.* When a driver is maneuvering a vehicle into a stowage position while other personnel, such as lashers, are working in the adjacent vicinity:

(1) the driver shall be under the direction of a signaller; and

(2) No driver shall be signalled to advance or reverse motion while any personnel are in positions where they could be struck.

§ 1918.87 Ship's cargo elevators.

(a) *Safe working load.* The safe working loads of ship's cargo elevators shall be ascertained and adhered to.

(b) *Load distribution.* Loads shall be evenly distributed on the elevator's platform.

(c) *Elevator personnel restrictions.* Drivers of vehicles who remain at the controls of those vehicles shall be the only persons permitted to travel on the elevator's platform with the vehicle.

(d) *Open deck barricades.* During elevator operation, each opened deck which presents a fall hazard to employees shall be effectively barricaded.

§ 1918.88 Log operations.

(See also § 1918.38.)

(a) *Working in holds.* In holds where logs are being loaded, no employee shall remain in spaces for the placement of logs using dumper devices when the possibility of logs striking, rolling upon, or pinning them exists.

(b) *Footwear.* The employer shall provide employees that are working logs appropriate footwear, such as spiked shoes.

(c) *Lifelines.* When employees are working on log booms or cribs, lifelines shall be furnished and hung overside to the water's edge.

(d) *Jacob's ladder.* When a log boom is being worked, a Jacob's ladder meeting the requirements of § 1918.22 shall be provided for each gang working alongside unless other safe means of access are provided. However, no more than two Jacob's ladders are required for any single log boom being worked.

(e) *Life-ring.* When working a log boom alongside a ship, a U.S. Coast Guard approved 30 inch (76.2 cm) life-ring, with no less than 90 feet (27.4 m) of line shall be provided either on the floating unit itself or aboard the ship in the immediate vicinity of each floating unit being worked.

(f) *Rescue boat.* When employees are working on rafts or booms, a rescue boat shall be immediately available.

§ 1918.89 Hazardous cargo.

(See also § 1918.2(j).)

(a) *Employer preparations.* Before cargo handling operations begin, the employer shall ascertain whether any hazardous cargo is to be handled and shall determine the nature of the hazard. The employer shall inform employees of the nature of the hazard and any special procedures to be taken to prevent employee exposure, and shall instruct employees to stay clear of and to notify supervision of any leaks or spills.

(b) *Handling hazardous cargo.* Hazardous cargo shall be slung and secured so that neither the draft nor individual packages can fall as a result of tipping the draft or slacking of the supporting gear.

(c) *Emergency procedures.* If hazardous cargo is spilled or its packaging leaks, employees shall be removed from the affected area until the employer has ascertained the specific hazards; has provided any equipment, clothing and ventilation, and fire protection equipment necessary to eliminate or protect against the hazards; and has instructed cleanup employees in a safe method of cleaning up and disposing of a spill and disposing of leaking containers. Actual cleanup or disposal work shall be conducted under the supervision of a designated person.

Subpart I—General Working Conditions

§ 1918.90 Hazard communication.

(See § 1918.1(b)(6).)

§ 1918.91 Housekeeping.

(a) *General.* Active work areas shall be kept free of equipment and materials not in use, and clear of debris, projecting nails, strapping and other sharp objects not necessary to the work in progress.

(b) *Slippery surfaces.* The employer shall eliminate conditions causing slippery walking and working surfaces in immediate areas used by employees.

(c) *Free movement of drafts.* Dunnage shall not be placed at any location where it interferes with the free movement of drafts.

(d) *Dunnage height.* Dunnage racked against sweat battens or bulkheads shall not be used when the levels of such racks are above the safe reach of employees.

(e) *Coaming clearance.* Dunnage, hatch beams, tarpaulins or gear not in use shall be stowed no closer than 3 feet (.91 m) to the port and starboard sides of the weather deck hatch coaming.

(f) *Nails.* (1) Nails which are protruding from shoring or fencing in the immediate work areas shall be rendered harmless.

(2) Dunnage, lumber, or shoring material in which there are visibly protruding nails shall be removed from the immediate work area, or, if left in the area, the nails shall be rendered harmless.

(g) *Ice aloft.* Employees shall be protected from ice which may fall from aloft.

§ 1918.92 Illumination.

(a) *Walking and working areas.* Walking, working, and climbing areas shall be illuminated. Unless conditions described in the regulations of the U.S. Coast Guard (33 CFR 154.570) exist in the case of specific operations, illumination for cargo transfer operations shall be of an average minimum light intensity of 5-foot-candles (54 lux). Where occasional work tasks require more light than that which is consistently and permanently provided, supplemental lighting shall be used.

(b) *Intensity measurement.* The lighting intensity shall be measured at the task/working surface, in the plane in which the task/working surface is present.

(c) *Arrangement of lights.* Lights shall be arranged so that they do not shine into the eyes of winch-drivers, crane operators or hatchtenders. On Ro-Ro ships, stationary lights shall not shine directly into the eyes of drivers.

(d) *Portable lights.* Portable lights shall meet the following requirements:

(1) Portable lights shall be equipped with substantial reflectors and guards to prevent materials from coming into contact with the bulb.

(2) Flexible electric cords used with temporary lights shall be designed by the manufacturer for hard or extra-hard usage. Temporary and portable lights shall not be suspended by their electric cords unless the cords and lights are designed for this means of suspension. Connections and insulation shall be maintained in safe condition.

(3) Electric conductors and fixtures for portable lights shall be so arranged as to be free from contact with drafts, running gear, and other moving equipment.

(4) Portable cargo lights furnished by the employer for use aboard vessels shall be listed as approved for marine use by the U.S. Coast Guard or by a nationally recognized testing laboratory.

(e) *Entry into darkened areas.* Employees shall not be permitted to enter dark holds, compartments, decks or other spaces without a flashlight or other portable light. The use of matches or open flame lights is prohibited.

§ 1918.93 Hazardous atmospheres and substances.

(See § 1918.2(j).)

(a) *Purpose and scope.* This section covers areas in which the employer is aware that a hazardous atmosphere or substance may exist, except where one or more of the following sections or sub sections apply: Section 1918.89, Hazardous cargo; § 1918.94(a), Carbon monoxide; § 1918.94(b), Fumigated grains; § 1918.94(c), Fumigated tobacco; § 1918.94(d), Other fumigated cargoes; § 1918.94(e), Catch of Menhaden and similar species of fish.

(b) *Determination of hazard.* (1) When the employer is aware that a space on a vessel contains or has contained a hazardous atmosphere, a designated and appropriately equipped persons shall test the atmosphere before employee entry to determine whether a hazardous atmosphere exists.

(2) Records of results of any tests required by this section shall be maintained for at least 30 days.

(c) *Testing during ventilation.* When mechanical ventilation is used to maintain a safe atmosphere, tests shall be made by a designated person to ensure that the atmosphere is not hazardous.

(d) *Entry into hazardous atmospheres.* Only designated person shall enter hazardous atmospheres, in which case the following provisions shall apply:

(1) Persons entering a space containing a hazardous atmosphere shall be protected by respiratory and emergency protective equipment meeting the requirement of subpart J of this part;

(2) Persons entering a space containing a hazardous atmosphere shall be instructed in the nature of the hazard, precautions to be taken, and the use of protective and emergency equipment. Standby observers, similarly equipped and instructed, shall continuously monitor the activity of employees within such space;

(3) Except for emergency or rescue operations, employees shall not enter into any atmosphere which has been identified as flammable or oxygen deficient (less than 19.5% oxygen). Persons who may be required to enter flammable or oxygen deficient atmospheres in emergency operations shall be instructed in the dangers attendant to those atmospheres and instructed in the use of self-contained breathing apparatus, which shall be utilized.

(4) To prevent inadvertent employee entry into spaces that have been identified as having hazardous, flammable or oxygen deficient atmospheres, appropriate warning signs or equivalent means shall be posted at all means of access to those spaces.

(e) *Asbestos cargo leak.* When the packaging of asbestos cargo leaks, spillage shall be cleaned up by designated employees protected from the harmful effects of asbestos as required by § 1910.1001 of this chapter.

§ 1918.94 Ventilation and atmospheric conditions.

(See also § 1918.2(j).)

(a) *Ventilation with respect to carbon monoxide.* (1)(i) When internal combustion engines exhaust into a hold, intermediate deck, or any other compartment, the employer shall see that tests of the carbon monoxide content of the atmosphere are made with such frequency to ensure that dangerous concentrations do not exceed allowable limits. Such tests shall be made in the area in which employees are working by persons competent in the use of the test equipment and procedures. If operations are located in a deep tank or refrigerated compartment, the first test shall be made within one half hour of the time the engine starts. In order to determine the need for further testing, the initial test in all other cargo handling areas shall be taken no later than one hour after the time the engine starts.

(ii) The carbon monoxide content of the atmosphere in a compartment, hold, or any enclosed space shall be maintained at not more than 35 parts per million (ppm) (0.0035%) as an 8-hour time weighted average and employees shall be removed from the enclosed space if the carbon monoxide concentration exceeds 100 ppm (0.01%). The short term exposure limit in outdoors, non-enclosed spaces shall be 200 ppm (0.02%) measured over a 5 minute period.

(A) The term *time weighted average* means that for any period of time in which the concentration exceeds 35 parts per million, it shall be maintained at a corresponding amount below 35 parts per million for an equal period of time.

(B) The formula for "time weighted average" for an 8-hour work shift is as follows:

$E=(C_aT_a+C_bT_b+. \ . \ .C_nT_n)/8$

Where: E is the equivalent exposure for the working shift. C is the concentration during any period of time T where the concentration remains constant. T is the duration in hours of the exposure at the concentration C.

(iii) When both natural ventilation and the vessel's ventilation system are inadequate to keep the carbon monoxide concentration within the allowable limits, the employer shall use supplementary means to bring such concentration within allowable limits, as determined by actual monitoring.

(2) A record of the date, time, location and results of the tests required by paragraph (a)(1) of this section shall be maintained for at least 30 days after the

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work has been completed. Such records may be entered on any retrievable medium, and shall be available for inspection.

(3) The intakes of portable blowers and any exposed belt drives shall be guarded to prevent injury to employees.

(4) The frames of portable blowers shall be grounded at the source of the current by means of an equipment grounding conductor run with or enclosing the circuit conductors. When the vessel is the source of the current, the equipment grounding conductor shall be bonded to the structure of the vessel. Electric cords used shall be free from visible defects.

(b) *Fumigated grains.* (1) Before commencing to handle bulk grain in any compartment of a vessel in which employees will or may be present, the employer shall:

(i) ascertain from the elevator operator whether the grain has been or will be fumigated at the elevator; and

(ii) ascertain from the vessel's officers, agent, or other knowledgeable source whether those compartments, or any cargo within them that was loaded at a prior berth, have been treated with a fumigant or any other chemical.

(2) If such treatment has been carried out, or if there is reason to suspect that such treatment has been carried out, it shall be determined by atmospheric testing that the compartment's atmosphere is within allowable limits. (See paragraph (b)(3) of this section.)

(3) A test of the fumigant concentration in the atmosphere of the compartment shall be made after loading begins and before employees enter the compartment. Additional tests shall be made as often as necessary to ensure that hazardous concentrations do not develop.

(i) Tests for fumigant concentration shall be conducted by a designated person, who shall be thoroughly familiar with the characteristics of the fumigant being used, the correct procedure for measurement, the proper measuring equipment to be used, the manufacturer's recommendations and warnings, and the proper use of personal protective equipment employed to guard against the specific hazards.

(ii) A record of the date, time, location and results of the tests required by paragraph (b) of this section shall be maintained for at least 30 days after the work has been completed. Such records may be entered on any retrievable medium, and shall be available for inspection.

(iii) At any time the concentration in any compartment reaches the level specified as hazardous by the fumigant manufacturer or by part 1910, subpart Z of this chapter, whichever is lower, all employees shall be removed from such compartments and shall not be permitted to re-enter until such time as tests demonstrate that the atmosphere is within allowable limits.

(iv) No employee shall be permitted to enter any compartment in which grain fumigation has been carried out, or any compartment immediately adjacent to such a compartment, until it has been determined by test that the atmosphere in the compartment to be entered is within allowable limits for entry.

(v) In the event a compartment containing a hazardous or unknown concentration of fumigants must be entered for the purpose of testing the atmosphere, or for emergency purposes, each employee entering shall be protected by respiratory protective equipment in accordance with the provisions of § 1918.102, and by any protective clothing or other personal protective equipment recommended by the fumigant manufacturer for protection against the particular hazards. At least two other employees shall be stationed outside the compartment as observers, to provide rescue services in the event of an emergency. The observers shall be equipped with similar personal protective equipment.

(vi) One or more employees on duty shall be equipped and trained to provide any specific emergency treatment stipulated for the particular fumigant.

(vii) Emergency equipment required by this subparagraph shall be readily accessible wherever fumigated grains are being handled.

(4) In the event that a compartment is treated for local infestation before loading grain by a chemical other than a fumigant, the employee applying the treatment, and any other employees entering the compartment, shall be provided with and required to use any personal protective equipment which may be recommended by the manufacturer of the product to protect them against the effects of exposure.

(c) *Fumigated tobacco.* The employer shall not load tobacco until the carrier has provided written notification as to whether or not the cargo has been fumigated. If break-bulk tobacco cargo has been treated with any toxic fumigant, loading shall not commence until written warranty has been received from the fumigation facility that the aeration of the cargo has been such to reduce the concentration of the fumigant to within allowable limits. Such notification and warranty shall be maintained for at least 30 days after the loading of the tobacco has been completed, and shall be available for inspection.

(d) *Other fumigated cargoes.* Before commencing to load fumigated cargo other than the cargo specifically addressed in paragraphs (b) and (c) of this section, the employer shall ascertain that such cargo does not contain a concentration of fumigants in excess of allowable limits found in subpart Z of part 1910 of this chapter

(e) *Grain dust.* When employees are exposed to concentrations of grain dusts in excess of allowable limits found in subpart Z of part 1910 of this chapter. they shall be protected by suitable respiratory protective equipment in accordance with the requirements of § 1918.102.

(f) *Catch of Menhaden and similar species of fish.* (1) The provisions of this paragraph shall not apply in the case of vessels having and utilizing refrigerated holds for the carriage of all cargo.

(2) After a vessel has arrived at berth for discharge of menhaden, but before personnel enter the hold, and as frequently thereafter as tests indicate to be necessary, tests shall be made of the atmosphere in the vessel's hold to ensure a safe work space. The tests shall be performed for the presence of hydrogen sulfide and for oxygen deficiency.

(3) Tests required by paragraph (f)(2) of this section shall be made by designated supervisory personnel, trained and competent in the nature of potential hazards and the use of test equipment and procedures.

(4) The hydrogen sulfide content of the atmosphere in a compartment, hold, or any enclosed space shall be maintained at not more than 10 parts per million (ppm) (0.0010%) as an 8-hour time weighted average. The short term exposure limit shall be 15 ppm (0.0015%) measured over a 15 minute period. The oxygen level must be maintained to at least 19.5 percent. Employees shall not be permitted in the hold unless these conditions are met and maintained.

§ 1918.95 Sanitation.

(a) *Washing and toilet facilities.* (1) Accessible washing and toilet facilities sufficient for the sanitary requirements of employees shall be readily accessible at the worksite. The number of toilet facilities shall be provided in accordance with the table found in this section. The facilities shall have:

(i) Running water, including hot and cold or tepid water at a minimum of one accessible location (when longshoring operations are conducted at locations without permanent facilities, potable water may be provided in lieu of running water);

(ii) Soap;

(iii) Individual hand towels, clean individual sections of continuous toweling, or warm air blowers; and

(iv) Fixed or portable toilets in separate compartments with latch-equipped doors. Numbers of toilet facilities shall comply with the Toilet Facilities Table. Separate toilet facilities shall be provided for male and female employees except when toilet rooms will be occupied by only one person at a time.

(2) Washing and toilet facilities shall be regularly cleaned and maintained in good order.

TOILET FACILITIES TABLE

No. of employees	Minimum no. of facilities
20 or less	1 toilet seat.
20 or more	1 toilet seat and 1 urinal per 40 workers.
200 or more	1 toilet seat and 1 urinal per 50 workers.

(b) *Drinking water.* (1) Potable drinking water shall be accessible to employees at all times.

(2) Potable drinking water containers shall be clean, containing only water and ice, and shall be fitted with covers.

(3) Common drinking cups are prohibited.

(c) *Prohibited eating areas.* Consumption of food or beverages in areas where hazardous materials are stowed or being handled is prohibited.

(d) *Garbage and overboard discharges.* Work shall not be conducted in the immediate vicinity of uncovered garbage or in the way of overboard discharges from the vessel's sanitary lines unless employees are protected from the garbage or discharge by a baffle or splash boards.

§ 1918.96 Longshoring operations in the vicinity of maintenance and repair work.

(a) *Noise interference* (See also § 1918.1(b)(10)). Longshoring operations shall not be carried on when noise interferes with communications of warnings or instructions.

(b) *Falling objects.* Longshoring operations shall not be carried on in the hold or on deck beneath work being conducted overhead whenever such work exposes the employee to a hazard of falling objects.

(c) *Hot work.* Longshoring operations shall not be carried on where the employee is exposed to injurious light rays, hot metal, or sparks, as a result of welding or cutting.

(d) *Abrasive blasting and spray painting.* Longshoring operations shall not be carried on in the immediate vicinity of abrasive blasting or spray painting operations.

(e) *Non-ionizing radiation.* Longshoring operations shall not be carried on when there is a danger that non-ionizing radiation (electromagnetic radiation) from a vessel's radio or radar, or from radio or television transmitting towers ashore could harm employees that are involved in cargo handling operations.

§ 1918.97 First aid and lifesaving facilities.

(a) *Injury reporting.* The employer shall direct each employee to report every injury, regardless of severity, to the employer.

(b) *First aid.* A first aid kit shall be available at or near to each vessel being worked, and at least one person holding a valid first aid certificate, such as one issued by the Red Cross or other equivalent organization, shall be available to render first aid when work is in progress.

(c) *First aid kit.* First aid kits shall be weatherproof and shall contain individual sealed packages for each item that must be kept sterile. The contents of each kit shall be determined by a physician, based on the hazards anticipated at the worksite. The contents of the first aid kit shall be checked at least weekly. Expended items shall be promptly replaced.

(d) *Stretchers.* (1) There shall be available for each vessel being worked, one Stokes basket stretcher, or its equivalent, permanently equipped with bridles for attaching to the hoisting gear.

(2) Stretchers shall be kept close to vessels and shall be positioned to avoid damage.

(3) A blanket or other suitable covering shall be available.

(4) Stretchers shall have at least four sets of effective patient restraints in operable condition.

(5) Lifting bridles shall be of adequate strength, capable of lifting 1,000 pounds (454 kg) with a safety factor of five, and shall be maintained in operable condition. Lifting bridles shall be provided for making vertical patient lifts at container berths. Stretchers for vertical lifts shall have foot plates.

(6) Stretchers shall be maintained in operable condition. Struts and braces shall be inspected for damage. Wire mesh shall be secured with no burrs. Damaged stretchers shall not be used until repaired.

(e) *Life-rings.* (1) The employer shall ensure that there is in the vicinity of each vessel being worked, at least one U.S. Coast Guard approved 30 inch (76.2 cm) life-ring with no less than 90 feet (27.4 m) of line attached and at least one portable or permanent ladder which will reach from the top of the apron to the surface of the water.

(2) In addition to the provisions of paragraph (e) of this section, when working a barge, scow, raft, lighter, log boom, or carfloat alongside a ship, a U.S. Coast Guard approved 30 inch (76.2 cm) life-ring, with no less than 90 feet (27.4 m) of line shall be provided either on the floating unit itself or aboard the ship in the immediate vicinity of each floating unit being worked.

(f) *Communication.* Telephone or equivalent means of communication shall be readily available

§ 1918.98 Personnel.

(a) *Qualification of machinery operators.* (1) Only those employees determined by the employer to be competent by reason of training or experience, and who understand the signs, notices and operating instructions, and are familiar with the signal code in use, shall be permitted to operate a crane, winch, or other power operated cargo handling apparatus, or any power operated vehicle, or give signals to the operator of any hoisting apparatus. However, employees being trained and supervised by a designated person may operate such machinery and give signals to operators during training

(2) No employee known to have defective uncorrected eyesight or hearing, or to be suffering from heart disease, epilepsy, or similar ailments which may suddenly incapacitate the employee, shall be permitted to operate a crane, winch or other power operated cargo handling apparatus or a power-operated vehicle.

(b) *Supervisory accident prevention proficiency.* (1) After [insert date two years after promulgation of final standard], immediate supervisors of cargo handling operations of more than five persons shall satisfactorily complete a course in accident prevention. Employees newly assigned to supervisory duties after that date shall be required to meet the provisions of this paragraph within 90 days of such assignment.

(2) The accident prevention course shall consist of instruction suited to the particular operations involved.[6]

[6] The following are recommended topics: Safety responsibility and authority; elements of accident prevention; attitudes, leadership and motivation; hazards of longshoring, including peculiar local circumstances; hazard identification and elimination; applicable regulations; and accident investigations.

Subpart J—Personal Protective Equipment

§ 1918.101 Eye protection.

(a)(1) When employees perform work hazardous to the eyes, the employer shall provide eye protection equipment marked or labeled as meeting the manufacturing specifications of American National Standards Practice for Occupational and Educational Eye and Face Protection, ANSI Z87.1–1989, and shall require that it be used.

(2) For employees wearing corrective spectacles, eye protection equipment required by paragraph (a)(1) of this section must be of the type which can be worn over spectacles. Prescription ground safety lenses may be substituted if they provide equivalent protection.

(b) Eye protection shall be maintained in good condition.

(c) Used eye protection shall be cleaned and disinfected before issuance to another employee.

§ 1918.102 Respiratory protection.

(See § 1918.1(b)(12)).

§ 1918.103 Head protection.

(a) The employer shall require that employees exposed to impact, falling or flying objects, or electric shocks or burns wear protective hats.

(b) Protective hats shall bear identifying marks or labels indicating compliance with the manufacturing provisions of American National Standard Requirements for Protective Headwear for Industrial Workers, ANSI Z89.1–1986.

(c) Protective hats previously worn shall be cleaned and disinfected before issuance by the employer to another employee.

§ 1918.104 Foot protection.

(a) The employer shall require that employees exposed to impact, falling objects, or puncture hazards wear safety shoes, or equivalent protection.

(b) Protective shoes shall bear identifying marks or labels indicating compliance with manufacturing provisions of the American National Standard for Personal Protection—Protective Footwear ANSI Z41–1991.

§ 1918.105 Other protective measures.

(a) *Protective clothing.* (1) The employer shall provide, and shall require the wearing of special protective clothing for those employees engaged in work in which such protective clothing is necessary.

(2) When necessary, protective clothing shall be cleaned and disinfected before reissuance.

(b) *Personal flotation equipment.* (1) The employer shall provide, and shall require the wearing of personal flotation devices for those employees engaged in work in which they may fall into the water:

(i) When such employees are working in isolation; or

(ii) Where physical limitations of available working space creates a hazard of falling into the water; or

(iii) Where the work area is obstructed by cargo or other obstacles so as to prevent employees from obtaining safe footing for their work; or

(iv) When working on the deck of a barge.

(2) Personal flotation devices shall be United States Coast Guard approved Type I PFD, Type II PFD, Type III PFD, or Type V PFD, or equivalent, in accordance with 46 CFR part 160 (Coast Guard Lifesaving Equipment Specifications) and 33 CFR part 175.23 (Coast Guard table of devices equivalent to personal flotation devices).

(3) Personal flotation devices shall be maintained in safe condition and shall be considered unserviceable when damaged so as to affect buoyancy or fastening capability.

Appendix I to Part 1918—Cargo Gear Register and Certificates (Non-mandatory)

Note: This Appendix is non-mandatory and provides guidance to part 1918 to assist employers and employees in complying with the requirements of this standard, as well as to provide other helpful information. Nothing in this Appendix adds or detracts from any of the requirements of this standard.

General

The tests, examinations and inspections indicated in this register are based on the requirements of I.L.O. Convention 152 and Recommendation 160. They are intended to ensure that ships having lifting appliances are initially certified by a competent person, and to establish periodically that they continue to be in safe working order to the satisfaction of a competent person acceptable to a competent authority.

A Register of lifting appliances and items of loose gear shall be kept in a form prescribed by the competent authority, account being taken of this model recommended by the International Labour Office. This Register and related certificates shall be kept available to any person authorized by the competent authority. The Register and certificates for gear currently aboard the ship shall be preserved for at least five years after the date of the last entry.

Instruction

1. *Initial Examination and Certification*

1.1. Every lifting appliance shall be certified by a competent person before being taken into use for the first time to ensure that it is of good design and construction and of adequate strength for the purpose for which it is intended.

1.2. Before being taken into use for the first time, a competent person shall supervise and witness testing, and shall thoroughly examine every lifting appliance.

1.3. Every item of loose gear shall, before being taken into use for the first time, shall be tested, thoroughly examined and certified by a competent person, in accordance with national law or regulations.

1.4. Upon satisfactory completion of the procedures indicated above, the competent person shall complete and issue the Register of lifting appliances and attach the appropriate certificates. An entry shall be made in part I of the Register.

1.5. A rigging plan showing the arrangement of lifting appliances shall be provided. In the case of derricks and derrick cranes, the rigging should show at least the following information.

(a) the position of guys;

(b) the resultant force on blocks, guys, wire ropes and booms;

(c) the position of blocks;

(d) the identification mark of individual items; and

(e) arrangements and working range of union purchase;

2. *Periodic Examination and Re-testing*

2.1. All lifting appliances and every item of loose gear shall be thoroughly examined by a competent person at least once in every twelve months. The particulars of these thorough examinations shall be entered in part I of the Register.

2.2. Re-testing and thorough examination of all lifting appliances and every item of loose gear is to be carried out;

(a) after any substantial alteration or renewal, or after repair to any stress bearing part, and;

(b) in the case of lifting appliances, at least once in every five years.

2.3. The retesting referred to in paragraph 2.2(a) may be omitted provided the part which has been renewed or repaired is subjected by separate test, to the same stress as would be imposed on it if it had been tested in-situ during the testing of the lifting appliance.

2.4. The thorough examinations and tests referred to in paragraph 2.2. are to be entered in part I of the Register.

2.5. No new item of loose gear shall be manufactured of wrought iron. Heat treatment of any existing wrought iron components should be carried out to the satisfaction of the competent person. No heat treatment should be applied to any item of loose gear unless the treatment is in accordance with the manufacturer's instruction; to the satisfaction of the competent person. Any heat treatment and the associated examination are to be recorded by the competent person in part I of the Register.

3. *Inspections*

3.1. Regular visual inspections of every item of loose gear shall be carried out by a responsible person before use. A record of these regular inspections is to be entered in part II of the Register, but entries need only be made when the inspection has indicated a defect in the item.

4. *Certificates*

4.1. The certification forms to be used in conjunction with this Register (Form No. 1) are as follows:

(Form No. 2)—Certificate of test and thorough examination of lifting appliance.

(Form No. 2(U))—Certificate of test and thorough examination of derricks used in union purchase.

(Form No. 3)—Certificate of test and thorough examination of loose gear.

(Form No. 4)—Certificate of test and thorough examination of wire rope.

Definitions

(a) The term "competent authority" means a minister, government department, or other authority empowered to issue regulations, orders or other instructions having the force of law.

(c) The term "competent person" means a person appointed by the master of the ship or the owner of the gear to be responsible for the performance of inspections and who has sufficient knowledge and experience to undertake such inspections.

(d) The term "thorough examination" means a detailed visual examination by a competent person, supplemented if necessary by other suitable means or measures in order to arrive at a reliable conclusion as to the safety of the lifting appliance or item of loose gear examined.

(e) The term "lifting appliance" covers all stationary or mobile cargo handling appliances used on board ship for suspending, raising or lowering loads or moving them from one position to another while suspended or supported.

(g) The term "loose gear" covers any gear by means of which a load can be attached to a lifting appliance, but which does not form an integral part of the appliance or load.

THE FOLLOWING ARE SAMPLE FORMS OF CERTIFICATES AS RECOMMENDED BY THE ILO

[Part I—Thorough Examination of Lifting Appliances and Loose Gear]

Situation and description of lifting appliances and loose gear (with distinguishing numbers or marks, if any) which have been thoroughly examined. (see note 1) (1)	Certificate Nos. (2)	Examination performed (see note 2) (3)	I certify that on the date to which I have appended my signature, the gear shown in Col. (1) was thoroughly examined and no defects affected its safe working condition where found other than those shown in Col. (5) (Date and Signature) (4)	Remarks (To be dated and signed) (5)

Note 1: If all the lifting appliances are thoroughly examined on the same date it will be sufficient to enter in Col. (1) "All lifting appliances and loose gear". If not, the parts which have been thoroughly examined on the dates stated must be clearly indicated.

Note 2: The thorough examinations to be indicated in Col. (3) include:

(a) Initial.
(b) 12 monthly.
(c) 5 yearly.
(d) Repair/Damage.
(e) Other thorough examinations.

PART II.—REGULAR INSPECTIONS OF LOOSE GEAR

Situation and description of loose gear (with distinguishing numbers or marks, if any) which has been inspected. (See Note 1)	Signature and date of the responsible person carrying out the inspection	Remarks (To be dated and signed)

PART II.—REGULAR INSPECTIONS OF LOOSE GEAR—Continued

Situation and description of loose gear (with distinguishing numbers or marks, if any) which has been inspected. (See Note 1)	Signature and date of the responsible person carrying out the inspection	Remarks (To be dated and signed)

Note 1: All loose gear should be inspected before use.

Identity of National Authority or Competent Organization *Form No. 2*

Certificate No. _____
Name of Ship_____
Official Number_____
Call Sign_____
Port of Registry_____
Name of Owner_____

CERTIFICATE OF TEST AND THOROUGH EXAMINATION OF LIFTING APPLIANCES

Situation and description of lifting appliances (with distinguishing numbers or marks, if any) which have been tested and thoroughly examined (1)	Angle to the horizontal or radius at which test load applied (2)	Test load (tones) (3)	Safe working load at angle or radius shown in Col. 2 (tones) (4)

Name and address of the firm or competent person who witnessed testing and carried out through examination
I certify that on the date to which I have appended my signature, the gear shown in Col. (1) was tested and thoroughly examined and no defects or permanent deformation was found: and that the safe working load is as shown.
Date:
Place:
Signature:
Note: This certificate is the standard international form as responded by International Labour Office in accordance with ILO Convention No. 152.

Reverse of Form No. 2

Instructions

1. Every lifting appliance shall be tested with a test load which shall exceed the Safe Working Load (SWL) as follows:

SWL	Test load
Up to 20 tons	25 percent in excess.
20 to 50 tons	5 tons in excess.
Over 50 tons	10 percent in excess.

2. In the case of derrick systems, the test load shall be lifted with the ship's normal tackle with the derrick at the minimum angle to the horizontal for which the derrick system was designed (generally 15 degrees), or at such greater angle as may be agreed. The angle at which the test was made should be stated in the certificate

2.1. The SWL shown is applicable to swinging derrick systems only. When derricks are used in union purchase, the SWL (U) is to be shown on Form 2 (U).

2.2. In the case of heavy derricks, care should be taken to ensure that the appropriate stays are correctly rigged.

3. In the case of cranes, the test load is to be hoisted, slewed and luffed at slow speed. Gantry and traveling cranes together with their trolleys, where appropriate, are to be traversed and travelled over the full length of their track.

3.1. In the case of variable load-radius cranes, the tests are generally to be carried out with the appropriate test load at maximum, minimum and intermediate radii.

3.2. In the case of hydraulic cranes where limitations of pressure make it impossible to lift a test load 25 percent in excess of the safe working load, it will be sufficient to lift the greatest possible load, but in general this should not be less than 10 percent in excess of the safe working load.

4. As a general rule, tests should carried out using test loads, and no exception should be allowed in the case of initial tests. In the case of repairs/replacement or when the periodic examination calls for re-test, consideration may be given to the use of spring or hydraulic balances provided the SWL of the lifting appliance does not exceed 15 tones. Where a spring or hydraulic balance is used, it shall be calibrated and accurate to within ±2 percent and the indicator should remain constant for 5 minutes.

4.1. If the test weights are not used, this is to be indicated in Col. (3).

5. The expression "tone" shall mean a tone of 1000 kg. (2000 lbs)

6. The terms "competent person", "thorough examination", and "lifting appliance" are defined in Form No. 1.

Note: For recommendations on test procedures reference may be made to the ILO document "Safety and Health in Dock Work".

Identity of National Authority or Competent Organization *Form No. 2(U)*

Certificate No._____
Name of Ship_____
Official Number_____
Call Sign_____
Port of Registry _____

Name of Owner _____

CERTIFICATE OF TEST AND THOROUGH EXAMINATION OF DERRICKS USED IN UNION PURCHASE

Situation and description of derricks used in Union Purchase with distinguishing numbers or marks) which have been tested and thoroughly examined. (1)	Max. height of triangle plate above hatch coaming (m) or max. angle between runners (2)	Test Load (tones) (3)	Safe working load, SWL When operating in Unit Purchase (tones) (4)

Position of outboard preventer guy attachments:
(a) forward/aft* of mast _____
and (b) from ships centerline _____
Position of inboard preventer guy attachments:
(a) forward/aft* of mast _____
and (b) from ships centerline _____
*Delete as appropriate
Name and address of the firm or competent person who witnessed testing and carried out thorough examination
I certify that one the date to which I have appended my signature, the gear shown in Col. (1) was tested and thoroughly examined and no defects or permanent deformation was found: and that the safe working load is as shown.
Date:
Place:
Signature:
Note: This certificate is the standard international form as recommended by International Labour Office in accordance with ILO Convention No 152.

Reverse Form No. (U)

Instructions

1. Before being taken into use, the derricks rigged in Union Purchase shall be tested with a test load which shall exceed the Safe Working Load (SWL (U)) as follows:

SWL	Test load
Up to 20 tons	25 percent in excess.

SWL	Test load
20 to 50 tons	5 tons in excess.
Over 50 tons	10 percent in excess.

2. Tests are to be carried out at the approved maximum height of the triangle plate above the hatch coaming or at the angle between the cargo runners and with the derrick booms in their working positions, to prove the strength of deck eye plates and the Union Purchase system. These heights or angles must not exceed the values shown on the rigging plan.

3. Tests should be carried out using test loads.

4. The expression "ton" shall mean a ton of 1000 kg. (2000 lbs.)

5. The terms "competent person", "thorough examination" and "lifting appliance" are defined in Form No. 1.

Note: For recommendations on test procedures, reference may be made to the ILO document "Safety and Health in Dock Work".

Identity of National Authority or Competent Organization

Certificate No. _____
Name of Ship _____
Official Number _____
Call Sign _____
Port of Registry _____
Name of Owner _____

CERTIFICATE OF TEST AND THOROUGH EXAMINATION OF LOOSE GEAR

Distinguishing number or mark	Description of loose gear	Number tested	Date of test	Test load (tons)	Safe work load (SW) (tones)

Name and address of makers or suppliers:
Name and address of the firm or competent person who witnessed testing and carried out thorough examination.
I certify that the above items of loose gear were tested and thoroughly examined and no defects affecting their SWL were found.
Date:
Place:
Signature:
Note: This certificate is the standard international form as recommended.

Reverse Form No. 3

Instructions

1. Every item of loose gear is to be tested and thoroughly examined before being put into use for the first time and after any substantial alteration or repair to any part liable to affect its safety. The test loads to be applied shall be in accordance with the following table:

Item	Test load (tones)
Single sheave blocks (see note 1).	4 × SWL
Multi sheave blocks (see note 2):	
SWL <25 Tones	2 × SWL
25 tones <SWL ≤160 tones.	(0,933 × SWL) + 27
SWL >160 tones	1,1 × SWL
Chains, hooks, rings, shackles, swivels, etc.:	
SWL <25 tones	2 × SWL
SWL >25 tones	(1,22 ×SWL) + 20
Lifting beams, spreaders, frames and similar devices:	
SWL ≤10 tones	2 × SWL
10 tones <SWL ≤160 tones.	(1,04 × SWL) + 9,6
SWL >160 tones	1,1 × SWL

Note: 1. The SWL for single sheave block, including single sheave blocks with beckets, is to be taken as one-half of the resultant load on the head fitting.

2. The SWL of a multi-sheave block is to be taken as the resultant load on the head fitting.

NOTE: For recommendations on test procedures reference may be made to the ILO document "Safety and Health in Dock Work".

2. This form may also be used for the certification of interchangeable components of lifting appliances.

3. The expression "ton" shall mean a ton of 1000 kg. (2000 lbs)

4. The terms "competent person", "thorough examination" and "loose gear" are defined in Form No. 1.

Identity of National Authority or Competent Organization *Form No. 4*

Certificate No._____
Name of Ship_____
Official Number_____
Call Sign_____
Port of Registry _____
Name of Owner _____

CERTIFICATE OF TEST AND THOROUGH EXAMINATION OF WIRE ROPE

Name and address of maker or supplier

Nominal diameter of rope (mm)
Number of strands
Number of wires per strand
Core
Lay
Quality of wire (N/mm²)
Date of test of sample
Load at which sample broke (tones)
Safe working load of rope (tones)
Intended use

Name and address of the firm or competent person who witnessed testing and carried out thorough examination.

I certify that the above particulars are correct, and that the rope was tested and thoroughly examined and no defects affecting its SWL were found.

Date:
Place:
Signature:

NOTE: This certificate is the standard international form as recommended by the International Labour Office in accordance with ILO Convention No. 152.

Reverse Form No. 4

Instructions

1. Wire rope shall be tested by sample, a piece being tested to destruction.

2. The test procedure should be in accordance with an International or recognized National standard.

3. The SWL of the rope is to be determined by dividing the load at which the sample broke, by a coefficient of utilization, determined as follows:

Item	Coefficient
Wire rope forming part of a sling:	
SWL of the sling	5
SWL < 10 tones	10^5
10 tones < SWL ≤ 160 tones	(8,85×SWL)+1910
SWL > 160 tones	3
Wire rope as integral part of a lifting appliances:	
SWL of lifting appliance	10^4
SWL ≤ 160 tones	(8,65×SWL)+1910
SWL > 160 tones	3

Note: For recommendations on test procedures reference may be made to the ILO document "Safety and Health in Dock Work".

These coefficients should be adopted unless other requirements are specified by a National Authority.

4. The expression "ton" shall mean a ton of 1000 kg. (2000 lbs)

5. The terms "competent person", "thorough examination" and "lifting appliance" are defined in Form No. 1.

Appendix II to Part 1918—Tables for Selected Miscellaneous Auxiliary Gear

(Non-mandatory)

Note: This Appendix is non-mandatory and provides guidance to part 1918 to assist employers and employees in complying with the requirements of this standard, as well as to provide other helpful information. Nothing in this Appendix adds or detracts from any of the requirements of this standard.

TABLE 1.—WIRE ROPE CLIPS

Improved plow steel, rope Inches (CM)	Minimum number of clips: Drop forged	Minimum number of clips: Other material	Minimum spacing: Inches
½ or less (1.3)	3	4	3 (7.6)
⅝ (1.6)	3	4	3¾ (9.5)
¾ (1.9)	4	5	4½ (11.4)
⅞ (2.2)	4	5	5¼ (13.3)
1 (2.5)	5	6	6 (15.2)

TABLE 1.—WIRE ROPE CLIPS—Continued

Improved plow steel, rope Inches (CM)	Minimum number of clips: Drop forged	Minimum number of clips: Other material	Minimum spacing: Inches
1⅛ (2.7)	6	6	6¾ (17.1)
1¼ (3.2)	6	7	7½ (18.1)
1⅜ (3.5)	7	7	8½ (21.0)
1½ (3.8)	7	8	9 (22.9)

TABLE 2

Natural Fibre Rope and Rope Slings

Load Capacity in Pounds (lbs.) Safety Factor=5

Eye and Eye Sling

Basket Hitch

Angle of rope to horizontal
90 deg. 60 deg. 45 deg. 30 deg.

Rope—Diameter nominal in.	Vertical hitch	Choker hitch	Angle of rope to vertical: 0 deg.	30 deg.	45 deg.	60 deg.
½	550	250	1,100	900	750	550
9/16	700	350	1,400	1,200	1000	700
⅝	900	450	1,800	1,500	1,200	900
¾	1,100	550	2,200	1,900	1,500	1,100
13/16	1,300	650	2,600	2,300	1,800	1,300
⅞	1,500	750	3,100	2,700	2,200	1,500
1	1,800	900	3,600	3,100	2,600	1,800
1 1/16	2,100	1,100	4,200	3,600	3,000	2,100
1⅛	2,400	1,200	4,800	4,200	3,400	2,400
1¼	2,700	1,400	5,400	4,700	3,800	2,700
1 5/16	3,000	1,500	6,000	5,200	4,300	3,000
1½	3,700	1,850	7,400	6,400	5,200	3,700
1⅝	4,500	2,300	9,000	7,800	6,400	4,500
1¾	5,300	2,700	10,500	9,200	7,500	5,300
2	6,200	3,100	12,500	10,500	8,800	6,200
2⅛	7,200	3,600	14,500	12,500	10,000	7,200
2¼	8,200	4,100	16,500	14,000	11,500	8,200
2½	9,300	4,700	18,500	16,000	13,000	9,300
2⅝	10,500	5,200	21,000	18,000	14,500	10,500
Endless sling:						
½	950	500	1,900	1,700	1,400	950
9/16	1,200	600	2,500	2,200	1,800	1,200
⅝	1,600	800	3,200	2,700	2,200	1,600
¾	2,000	950	3,900	3,400	2,800	2,000
13/16	2,300	1,200	4,700	4,100	3,300	2,300
⅞	2,800	1,400	5,600	4,800	3,900	2,800
1	3,200	1,600	6,500	5,600	4,600	3,800
1 1/16	3,800	1,900	7,600	6,600	5,400	3,800
1⅛	4,300	2,200	8,600	8,600	6,100	4,300
1¼	4,900	2,400	9,700	8,400	6,900	4,900
1 5/16	5,400	2,700	11,000	9,400	7,700	5,400
1½	6,700	3,300	13,500	11,500	9,400	6,700
1⅝	8,100	4,100	16,000	14,000	11,500	8,000
1¾	9,500	4,800	19,000	16,500	13,500	9,500
2	11,000	5,600	22,500	19,500	16,000	11,000
2⅛	13,000	6,500	26,000	22,500	18,500	13,000
2¼	15,000	7,400	29,500	25,500	21,000	15,000
2½	16,500	8,400	33,500	29,000	23,500	16,500
2⅝	18,500	9,500	37,000	32,500	26,500	18,500

TABLE 3A

Polypropylene Rope and Rope Slings

Load Capacity in Pounds (lbs.) Safety Factor=6

Eye and Eye Sling

Basket Hitch

Angle of rope to horizontal

Rope—diameter nominal in.	Vertical—hitch	Choker—hitch	Angle of rope to vertical			
			0 deg.	30 deg.	45 deg.	60 deg.
1/2	650	350	1,300	1,200	950	650
9/16	800	400	1,600	1,400	1,100	800
5/8	1,000	500	2,000	1,700	1,400	1,000
3/4	1,300	700	2,700	2,300	1,900	1,300
13/16	1,600	800	2,600	2,300	2,200	1,600
7/8	1,800	900	3,100	2,700	2,600	1,800
1	2,200	1,100	3,600	3,100	3,100	2,200
1 1/16	2,500	1,300	4,200	3,600	3,600	2,500
1 1/8	2,900	1,500	4,800	4,200	4,100	2,900
1 1/4	3,300	1,700	6,700	5,800	4,700	3,300
1 5/16	3,700	1,900	7,400	6,400	5,300	3,700
1 1/2	4,700	2,400	9,400	8,100	6,700	4,700
1 5/8	5,700	2,900	11,500	9,900	8,100	5,700
1 3/4	6,800	3,400	13,500	12,000	9,600	6,800
2	8,200	4,100	16,500	14,500	11,500	8,200
2 1/8	9,700	4,800	19,500	16,500	13,500	9,700
2 1/4	11,000	5,500	22,000	19,000	15,500	11,000
2 1/2	12,500	6,300	25,500	22,000	18,000	12,500
2 5/8	14,500	7,100	28,500	24,500	20,000	14,500

TABLE 3B

Polypropylene Rope and Rope Slings

Load Capacity in Pounds (lbs.) Safety Factor = 6

Endless Sling

Basket Hitch

Angle of rope to horizontal
90 deg. 60 deg. 45 deg. 30 deg.

Angle of rope to horizontal

Rope—Diameter nominal in.	Vertical hitch	Choker hitch	Angle of rope to vertical			
			0 deg.	30 deg.	45 deg.	60 deg.
1/2	1,200	600	2,400	2,100	1,700	1,200
9/16	1,500	750	2,900	2,500	2,100	1,500
5/8	1,800	900	3,500	3,100	2,500	1,800
3/4	2,400	1,200	4,900	4,200	3,400	2,400
13/16	2,800	1,400	5,600	4,900	4,000	2,800
7/8	3,300	1,600	6,600	5,700	4,600	3,300
1	4,000	2,000	8,000	6,900	5,600	4,000
1 1/16	4,600	2,300	9,100	7,900	6,500	4,600
1 1/8	5,200	2,600	10,500	9,000	7,400	5,200
1 1/4	6,000	3,000	12,000	10,500	8,500	6,000
1 5/16	6,700	3,400	13,500	11,500	9,500	6,700
1 1/2	8,500	4,200	17,000	14,500	12,000	8,500
1 5/8	10,500	5,100	20,500	18,000	14,500	10,500
1 3/4	12,500	6,100	24,500	21,000	17,500	12,500
2	15,000	7,400	29,500	25,500	21,000	15,000
2 1/8	17,500	8,700	35,500	30,100	24,500	17,500
2 1/4	19,500	9,900	39,500	34,000	28,000	19,500
2 1/2	23,000	11,500	45,500	39,500	32,500	23,000
2 5/8	25,500	13,000	51,500	44,500	36,500	25,500

TABLE 4A.—RATED LOAD FOR GRADE 80 ALLOY STEEL CHAIN SLINGS [1]

[Chain per NACM]

Chain size nominal		Single leg sling—90 deg. to horizontal loading		Rated load double leg sling horizontal angle [2]					
				60 deg. ✓ double at 60 deg.		45 deg. ✓ double at 45 deg.		30 deg. ✓ double at 30 deg.	
in.	mm	lb	kg	lb	kg	lb	kg	lb	kg
8/32	7	3,500	1570	6,100	2700	4,900	2200	3,500	1590
2/8	10	7,100	3200	12,300	5500	10,000	4500	7,100	3200
1/2	13	12,000	5400	20,800	9400	17,000	7600	1,200	5400
5/8	16	18,000	8200	31,300	14200	25,600	11600	18,100	8200
3/4	20	28,300	12800	49,000	22300	40,000	18200	28.300	12900
7/8	22	34,200	15500	59,200	27200	48,400	22200	34,200	15700
1	26	47,700	21600	82,600	37900	67,400	31000	47,700	21900
1 1/4	32	72,300	32800	125,200	56800	102,200	46400	72,300	32800

Notes:

[1] Other grades of proof tested steel chain include Proof Coil (Grade 28), Hi-Test (Grade 43 Chain, and Transport (Grade 70) Chain. These grades are not recommended for overhead lifting and therefore are not covered by this Standard.

[2] Rating of multi-leg slings adjusted for angle of loading between the inclined leg and the horizontal plane of the load.

TABLE 4 B.—MAXIMUM ALLOWABLE WEAR AT ANY POINT OF LINK

Nominal chain or coupling link size		Maximum allowable wear of cross-sectional diameter, In.
in	mm	
8/32	7	0.037
3/8	10	0.052
1/2	13	0.060
5/8	16	0.084
3/4	20	0.105
7/8	22	0.116
1	26	0.137

TABLE 4 B.—MAXIMUM ALLOWABLE WEAR AT ANY POINT OF LINK—Continued

Nominal chain or coupling link size		Maximum allowable wear of cross-sectional diameter, In.
in	mm	
1 1/4	32	0.169

Note: For other sizes, consult chain or sling manufacturer.

TABLE 5—SAFE WORKING LOADS FOR SHACKLES

[In tons of 2,000 Pounds]

Material size (inches)	Pin diameter (inches)	Safe working load
1/4	5/8	1.4
5/8	3/4	2.2
3/4	7/8	3.2
7/8	1	4.3
1	1 1/2	5 6
1 1/2	1 1/4	6.7
1 1/4	1 3/8	8.2
1 3/8	1 1/2	10.0
1 1/2	1 5/8	11.9
1 3/4	2	16 2
2	2 1/4	21.1

WIRE ROPE TABLE—RATED LOADS FOR SINGLE LEG SLINGS 6 x 19 OR 6 x 37 CLASSIFICATION IMPROVED PLOW STEEL GRADE ROPE WITH FIBRE CORE (FC)

[Rated Loads [1] Tons (2000 lb)]

Vertical				Chocker
Rope diameter, in.	HT	MS	S	HT. MS & S
1/4	0.49	0.51	0.55	0.38
8/16	0.76	0.79	0.85	0.6
3/8	1.1	1.1	1.2	0.85
7/16	1.4	1.5	1.7	1.2
1/2	1.8	2.0	2.1	1.5
9/16	2.3	2.5	2.7	1.9
5/11	2.8	3.1	3.3	2.3
3/4	3.9	4.4	4.8	3.3
7/8	5.2	6.0	6.4	4.5
1	6.7	7.7	8.4	5.9
1 1/8	8.4	9.5	11	7.4
1 1/4	10	12	13	9.0
1 3/8	12	14	16	11
1 1/2	15	17	18	13
1 5/8	17	19	21	15
1 3/4	20	22	25	17
2	26	29	32	22

HT=Hand tucked Splice

For Hidden Tuck Splice (IWRC), use values in HT (FC) columns

MS=Mechanical Splice

S=Poured Socket or Swaged Socket

NOTES:

(1) These values are based on slings being vertical. If they are not vertical, the rated load shall be reduced If two or more slings are used, the minimum horizontal angle between the slings shall also be considered.

WIRE ROPE TABLE—RATE LOADS FOR SINGLE LEG SLINGS 6×19 OR 6×37 CLASSIFICATION IMPROVED PLOW STEEL GRADE ROPE WITH INDEPENDENT WIRE ROPE CORE (IWRC)

[Rated Loads [1], Tons (2000 lb)]

Rope diameter, in.	Vertical			Choker	Vertical basket	
	HT	MS	S	HT, MS & S	[Note 2] HT	[Note 3] MS & S
3/4	0.53	0.56	0.59	0.31	1.1	1.1
5/16	0.82	0.87	0.92	0.64	1.6	1.7
3/8	1.2	1.2	1.3	0.92	2.3	2.5
7/10	1.5	1.7	1.8	1.2	3.1	3.4
1/2	2.0	2.2	2.3	1.6	4.0	4.4
9/16	2.5	2.8	2.9	2.0	4.9	5.5
6/8	3.0	3.4	3.6	2.6	6.0	6.8
3/4	4.2	4.9	5.1	3.6	8.4	9.7
7/8	5.5	6.6	6.9	4.8	11	13
1	7.2	8.5	9.0	6.3	14	17
1 1/8	9.0	10	11	7.9	18	20
1 1/4	11	13	14	9.7	22	26
1 3/8	13	15	17	12	27	31
1 1/2	16	18	20	14	32	37
1 5/8	18	21	23	16	37	43
1 3/4	21	25	27	19	43	49
2	28	32	34	24	55	64

HT=Hand tucked Splice
For Hidden Tuck Splice (IWRC), use values in HT columns of Table 3
MS=Mechanical Splice
S=Poured Socket or Swaged Socket
Notes:
[1] These values are based on slings being vertical. If they are not vertical, the rated load shall be reduced. If two or more slings are used, the minimum horizontal angle between the slings shall also be considered.
[2] These values only apply when the D/d ratio is 15 or greater.
[3] These values only apply when the D/d ratio is 25 or greater.
D=Diameter or curvature around which the body of the sling is bent
d=Diameter of rope

WIRE ROPE TABLE—RATED LOADS FOR SINGLE LEG SLINGS 6×19 or 6×37 CLASSIFICATION EXTRA IMPROVED PLOW STEEL GRADE ROPE WITH INDEPENDENT WIRE ROPE CORE (IWRC)

[Rated Loads [1], Tons (2000 lb)]

Rope diameter, in.	Vertical		Choker	Vertical Basket [Note 2]
	MS	S	MS&S	MS&S
1/4	0.65	0.68	0.48	1.3
5/16	1.0	1.1	0.74	2.0
3/8	1.4	1.5	1.1	2.9
7/10	1.9	2.0	1.4	3.9
1/2	2.5	2.7	1.9	5.1
9/16	3.2	3.4	2.4	6.4
6/8	3.9	4.1	2.9	7.8
3/4	5.6	5.9	4.1	11
7/8	7.6	8.0	5.6	15
1	9.8	10	7.2	20
1 1/8	12	13	9.1	24
1 1/4	15	16	11	30
1 3/8	18	19	13	36
1 1/2	21	23	16	42
1 5/8	24	26	18	49
1 3/4	28	31	21	57
2	37	40	28	73

HT=Hand tucked Splice
For Hidden Tuck Splice (IWRC), use values in HT columns of Table 3
MS=Mechanical Splice
S=Poured Socket or Swaged Socket
Notes:
[1] These values are based on slings being vertical. If they are not vertical, the rated load shall be reduced. If two or more slings are used, the minimum horizontal angle between the slings shall also be considered.
[2] These values only apply when the D/d ratio is 15 or greater.

Appendix III to Part 1918—Container Top Safety (Non-mandatory)

Note: This Appendix is non-mandatory and provides guidance to part 1918 to assist employers and employees in complying with the requirements of this standard, as well as to provide other helpful information. Nothing in this Appendix adds or detracts from any of the requirements of this standard.

Due to the almost limitless physical possibilities dictated by such factors as vessel design; container type; container stowage; types of container hoisting gear, etc., there may be instances during vessel loading/discharge operations when it is not feasible to utilize container top fall protection devices. As a result, a case by case and event by event approach must be utilized in assessing the feasibility of providing such devices.

The following are examples of situations where fall protection *may* not be feasible:

- When hooking up to or disconnecting from an overheight container using "special" gear, where attaching fall protection to the cranes spreader bar is not allowed by the owner of the crane (for example a Port Authority).
- When handling containers, "in a chimney stow" on a break bulk vessel, with ships gear, when a personnel basket is not sufficient to be used as an anchorage point

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Part III

Environmental Protection Agency

40 CFR Parts 124 and 270
RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124 and 270

[FRL-4889-1]

RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today proposes to amend its regulations under the Resource Conservation and Recovery Act (RCRA) governing the permitting of hazardous waste management facilities. This proposed rule expands the opportunities for public involvement by allowing public participation at an earlier point in the permitting process for all RCRA facilities, and during key permitting milestones. This proposed rule also amends and clarifies permit modification classifications pertaining to combustion facilities. Finally, this proposed rule amends the procedures for interim status combustion facilities during the trial burn period by making the procedures more equivalent to the procedures governing permitted facilities.

DATES: Comments on this proposed rule must be submitted on or before August 1, 1994.

ADDRESSES: Written comments on this proposal should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (5305), 401 M Street SW., Washington, DC 20460. Commenters should send one original and two copies and place the docket number (F-94-PPCP-FFFFF) in the comments. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. Docket materials may be reviewed by appointment by calling (202) 260-9327. Copies of docket material may be made at no cost, with a maximum of 100 pages of material from any one regulatory docket. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline at 1-800-424-9346 (in Washington, DC, call (703) 412-9810), or Patricia Buzzell at (703) 308-8632, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

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I. Authority

These regulations are proposed under the authority of sections 2002, 3004, 3005 and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984.

II. Background

Section 3004 of the Resource Conservation and Recovery Act (RCRA), requires owners and operators of treatment, storage, and disposal facilities to comply with standards "necessary to protect human health and the environment." These standards are implemented generally through interim status standards applicable to facilities that achieve interim status under RCRA section 3005(c), and through permits that are issued by EPA or under authorized State programs. EPA continuously strives to improve the hazardous waste management standards in order to ensure protection of human health and the environment.

The role that combustion plays in hazardous waste management has changed dramatically over the last decade and a half. With the recognition that land disposal of hazardous waste could present long term pollution problems, larger use of combustion ensued. However, waste treatment alone will not totally solve the problems associated with hazardous waste disposal. Therefore, EPA decided to take a fresh look at how to achieve a fully integrated waste management program that gives source reduction its proper emphasis.[1]

To this end, on May 18, 1993, the Agency announced its Draft Strategy on Waste Minimization and Hazardous Waste Combustion. EPA issued the strategy in draft form as the starting point for the debate on what source reduction/recycling actions and regulatory changes the Agency should pursue. The Agency has been aggressive in involving all the stakeholders as part of the national dialogue on these national policy questions. In addition, since EPA and the States are partners and co-regulators in hazardous waste management, any evaluation of the role of waste minimization and hazardous waste combustion in the hazardous waste management system must be a joint federal and state effort. Thus, EPA and the States have used, and will continue to use, a joint EPA/State committee to further develop the national strategy.

In the context of a national dialogue on waste minimization and hazardous waste combustion, the Agency has identified a number of specific actions it would pursue to ensure that existing combustion facilities operate safely and without unacceptable risks to human health and the environment. These actions include:

- Aggressive use of waste minimization measures in permitting and enforcement efforts that involve generators of combustible waste, as well as incinerators and boilers and industrial furnaces (BIFs);
- Ensuring that a comprehensive risk assessment, including indirect risk, is conducted at each facility site;
- Use of omnibus permitting authority to include dioxin/furan emission limits and more stringent particulate matter standards in new permits, where necessary to protect human health and the environment; and
- Giving low management priority to permitting any new incinerator and BIF capacity, unless the new facilities would replace and be a significant improvement over existing capacity; in other words, the draft strategy makes interim status combustion facilities the highest permitting priority, in terms of processing permits, in order to bring these facilities under more comprehensive environmental controls.

In addition, the draft strategy calls for development of mechanisms to facilitate increased public participation in the permitting process. By developing such mechanisms, EPA hopes to allow the public early access to information about the facility and an opportunity to participate in permitting decisions regarding hazardous waste storage, treatment, or disposal facilities (TSDFs) that may affect their communities.

By providing citizens an enhanced opportunity to participate in facility permitting, the Agency is striving to give citizens more input into decisions about facilities that may impact their communities. This may be particularly so in low income or minority communities where the lack of this opportunity has been felt strongly. Consistent with the Agency's efforts to ensure environmental justice, EPA intends that this rulemaking will give people in such communities increased opportunity to affect RCRA permitting decisions.

The draft strategy has many components and implementing all of its aspects will take time. Today's notice is the first regulatory action that EPA has taken under the draft strategy; it addresses public participation and several improvements to the RCRA permitting program that EPA had envisioned prior to the development of the draft strategy. Specifically, EPA proposes to: (1) Expand opportunities for timely and effective public involvement in the permitting process for all types of units; (2) improve the regulations pertaining to permit modifications, specifically, to clarify combustion modification classifications; and (3) align certain interim status requirements for combustion units with the more stringent permit standards for new units, particularly with regard to trial burns. Although the Draft Waste Minimization and Combustion Strategy focuses on combustion units, many of the requirements EPA is proposing today are more encompassing and apply to all RCRA facilities.

Additional efforts are underway to continue to improve EPA's hazardous waste management standards and to implement other components of the Agency's Draft Waste Minimization and Combustion Strategy. Today's proposed rule is only one piece of an integrated and comprehensive set of regulatory, non-regulatory, and guidance materials intended to support the Agency's Draft Waste Minimization and Combustion Strategy.

EPA has taken administrative steps to address the section of the draft strategy that discusses the Agency's permit denial and appeals process. In particular, the draft strategy indicates that EPA will evaluate ways to limit the burning of hazardous waste in interim status units during the administrative appeal of a permit denial, prior to a final decision. EPA considered a number of options for implementing this aspect of the draft strategy and selected one that could be effected immediately.

The Agency issued a directive under Administrator Browner's signature, on March 16, 1994, to prioritize and expedite the review by the Environmental Appeals Board (EAB) of Federal RCRA permit denials. Under the procedures set forth in the directive, entitled Expedited Administrative Review of Appeals of RCRA Permit Denials Filed by Interim Status Hazardous Waste Combustion Facilities, the Administrator directed the EAB to take final action on any combustion permit denial no later than 90 days from the receipt of a petition for review. EPA believes that these procedures will promote the draft strategy's goal of limiting burning of waste during the potentially lengthy appeals process, during which interim status facilities whose permits were denied were entitled to continue operating under interim status, without infringing upon important rights of appeal.

III. Section by Section Analysis

A. Expanded Public Participation Requirements for All RCRA Facilities

1. Purpose of Public Involvement in Today's Rule

The purpose of this section of the proposed rule is to enhance public involvement in the RCRA permit process by improving and increasing the opportunities for public participation. The permitting agency should carry out these new opportunities concurrently with the existing permitting process. Today's proposed requirements should not delay the process.

"Public participation" is part of the process leading to a final EPA or State permit decision; it provides an opportunity for the public to express its views to the permitting authority and the applicant, and enables both to give due consideration to the public's concerns. Today's proposal will establish procedures to promote better and more timely information-sharing not only between the public and the

[1] While the Agency is committed to source reduction as its primary approach to waste management, it believes that there will continue to be a role for waste combustion, provided it is done safely and in compliance with federal regulations. Combustion is a proven waste treatment technique to address many types of wastes.

permitting agency, but among the facility applicant, EPA (or the State) and the public. In particular, the rule places new responsibilities on the permit applicant. The Agency believes that the permit applicant, who is responsible for initiating the permit process, is a key participant in the public participation process because it is the permit applicant who must interact and operate within the community.

Although this portion of today's proposal applies to all applicants for new RCRA permits, certain aspects of the proposal specifically respond to the Agency's Draft Waste Minimization and Combustion Strategy (see the Background Section of today's preamble for further discussion of the draft strategy). As noted above, one component of the draft strategy specifically calls for greater and earlier public involvement in the hazardous waste permitting process. Accordingly, EPA proposes to amend the hazardous waste regulations to provide for earlier public involvement in the permitting process and, in the case of combustion units, to ensure public involvement at the trial burn plan stage. For example, today's regulations propose specific provisions to: solicit public participation at the beginning of the permit process for all new and interim status facilities; maintain open lines of communication with the public throughout the permit process; and increase public involvement with regard to trial burn plans at combustion facilities. These provisions will provide the public an expanded role in the permitting process by promoting community participation and input at all decision-making levels. These provisions will also help the permitting authority to better address public concerns during the permitting process and foster continued community involvement after facilities are permitted. These procedures are consistent with, and in furtherance of, the congressional mandate; expressed in RCRA section 7004(b)(1), to "encourage" and "assist" public involvement in implementation of the permit program.

2. Current Public Participation Requirements in the RCRA Permit Process

Today's proposed public involvement requirements build upon the current RCRA public participation process. EPA does not intend for the proposed provisions to replace or delete the existing public participation requirements in 40 CFR part 124 and 40 CFR 270.42; these requirements form the foundation for public involvement activities during the RCRA permitting process.

Four steps make up the existing RCRA permitting decision process: (1) Receipt and review of the permit application; (2) preparation of draft permit or decision to deny; (3) public comment period; and (4) final permit decision. EPA regulations currently require public involvement activities during two of the four steps. The first step in the decision process begins when the permitting agency receives the permit application from the facility. Under the existing federal rules, no direct public involvement activities occur at this stage; however, the permitting agency begins to assemble a mailing list of appropriate government agencies and individuals, including interested members of the public, as required by § 124.10(c). The permitting agency uses the list to distribute information about meetings, hearings, and available reports and documents later in the permit process. In addition, the permitting agency may periodically publicize the existence of this list and solicit additions to it.

The second step in the permitting decision process occurs after the regulatory agency completes review of the permit application. At this point, the regulatory agency decides either to tentatively deny the permit application or to prepare a draft permit for the facility. The third step occurs once the regulatory agency makes its preliminary decision about the permit application. Under the existing regulations, the public has its first formal participation opportunities in this step. If the permitting agency prepares a draft permit, it must give a formal public notice that the draft permit is available for public review and comment. In addition, the permitting authority must formally notify the public if it plans to deny a permit application. In both cases, the permitting agency must place the notice in a major local newspaper, broadcast it over local radio stations, and send it to all persons on the mailing list. A 45-day public comment period on the draft permit or notice of intent to deny the permit follows the publication of the notice. The comment period provides the public with an opportunity to comment, in writing, on conditions contained in the draft permit or notice of intent to deny. The regulatory agency may re-open or extend the comment period if, during the comment period, it receives substantial new questions or issues concerning the draft permit decision. In addition, the public may request that the permitting agency hold a public hearing on the draft permit decision. If the regulatory agency holds a public hearing, it must give the public a 30-day advance notice of the time and place of the hearing.

The final permit decision is the fourth step in the permitting decision process. After the public comment period closes, the regulatory agency reviews and evaluates all written and oral comments and, then, issues a final permit decision. At this time, the regulatory agency must send a notice of decision, together with a written response to all significant comments, to all persons who submitted public comments or requested notice of the final permit decision (in accordance with § 124.17). The response to comments summarizes all significant comments received during the public comment period and explains how the permitting authority addressed or rejected the comments in the final permit decision. The permitting agency must place the written response to comments in the Administrative Record established at the regulatory agency.

3. Summary of Proposed Approach

a. EPA's approach to public participation. Today's amendments introduce provisions for new public notices and meetings in the permit process. Through this approach, EPA intends to open opportunities for public participation earlier in the permit process. Through earlier public involvement and improved public awareness, today's requirements will result in more meaningful and interactive public participation. At the same time, these amendments are flexible and allow permitting agencies and facilities to tailor public participation activities according to facility-specific circumstances.

By expanding public involvement opportunities, the proposed rule should streamline the permitting process, since public issues will be raised and addressed earlier in the process. At present, formal public involvement in the permitting process does not begin until the draft permit stage. By this point in the process, the permitting authority and the applicant already have discussed crucial parts of the Part B application; thus, the public often feels that most major decisions on the permit are made before public input. Under today's proposed requirements, the permitting authority will be focusing discussion and dialogue on the permit application earlier in the permitting process. EPA wishes to encourage the public to participate in these earlier and expanded opportunities for involvement, fully raising issues and concerns early so they may be evaluated and responded to. Such early and

meaningful dialogue should result in an expeditious permit decision.

The earlier public involvement opportunities proposed today allow the public the opportunity to raise issues before many decisions are made. This then allows the applicant and the permitting authority to address citizen concerns. The idea of promoting earlier public involvement in the permitting process is also consistent with recommendations put forth by the RCRA Implementation Study and a number of outside sources (e.g., the Keystone Center, environmental groups, and business trade associations).

EPA considered a variety of approaches in developing today's proposal. After careful evaluation, EPA believes that the proposed requirements will meet the Agency's goal of providing increased opportunity for public involvement. Today's proposed requirements would not, of course, preclude additional public involvement activities beyond the regulations, where appropriate on a facility-specific basis, such as alternative public outreach activities, supplementary meetings, or fact sheets. At RCRA locations, in fact, permitting agencies and facilities have implemented a variety of public involvement activities that have helped affected communities to understand and participate in permit decision-making. EPA has published a practical how-to guidance for regional permit writers and public involvement staff, entitled the RCRA Public Involvement Manual (September 1993/ EPA 530–R–93–006). In the guidance, EPA recommends public involvement activities to encourage productive public participation in a variety of community and facility situations. Additional examples of ways to expand public involvement, beyond what is required by today's proposed regulations, are included in section 5.a: General Requirements for Providing Public Notice.

Before drafting this proposal, the Agency contacted a variety of interested parties involved in public outreach activities. EPA had discussions with a range of groups, including: Public interest groups, industry, state and local government, Indian tribal representatives, trade associations, and public involvement specialists from EPA regions and Headquarters. These groups submitted valuable comments and suggestions to the Agency on how to expand and enhance public involvement. The Agency also held an informal meeting on October 13, 1993, with a small, yet diverse group of stakeholders to receive their input and to facilitate the exchange of information concerning greater opportunities for public participation. This meeting was a starting point for efforts to improve public involvement in the permitting process; EPA would like to continue these discussions beyond this proposal.

Today's rule is consistent with, and builds upon, the Agency's final Public Participation Policy, published in the **Federal Register** at 46 FR 5740, January 19, 1981. This policy established a uniform set of guidelines concerning public participation in all EPA programs. The guidelines encouraged EPA programs to provide a consistent level of public involvement during EPA activities, including State and local activities funded or delegated by EPA. The 1981 policy embodied many public comments on improving the process and outlined new steps that the Agency should take to ensure that members of the public are given earlier and better opportunities to be involved in EPA decision-making. Among other things, the policy emphasized public access to information as a critical component to successful public participation programs, and encouraged the use of a variety of outreach activities throughout the permit process so that the public can be kept up to date on matters of concern. Today's rule builds upon these policy statements and, in many cases, strengthens them through proposed regulatory language. For example, EPA is proposing regulatory requirements to provide the public with the opportunity to attend a public meeting at the outset of the permitting process. Additional public notices, including improved notification activities, are required at new points within the permit process. These proposed notices will provide information to the public at the beginning of decision-making processes so that the public will have adequate time to respond. Finally, today's rule adopts the ideas suggested by the policy on "depositories" and incorporates them into a flexible tool called the information "repository."

In a separate effort, the Agency is reviewing its regulations that impose restrictions on siting RCRA hazardous waste treatment, storage, and disposal facilities (TSDFs). The Agency's current regulations impose restrictions on siting these facilities in flood plains and seismic zones. EPA believes that there may be a need for enhanced national minimum standards as required under section 3004(o)(7) of RCRA. Consistent with Executive Order 12898 on environmental justice, EPA is reviewing existing and potential standards for siting hazardous waste TSDFs. As a part of this review, the Agency intends to look at siting TSDFs in proximity to populations and institutions such as schools, hospitals, and prisons, to determine whether there is a need to consider (and the appropriate way to do so) such factors in siting these facilities.

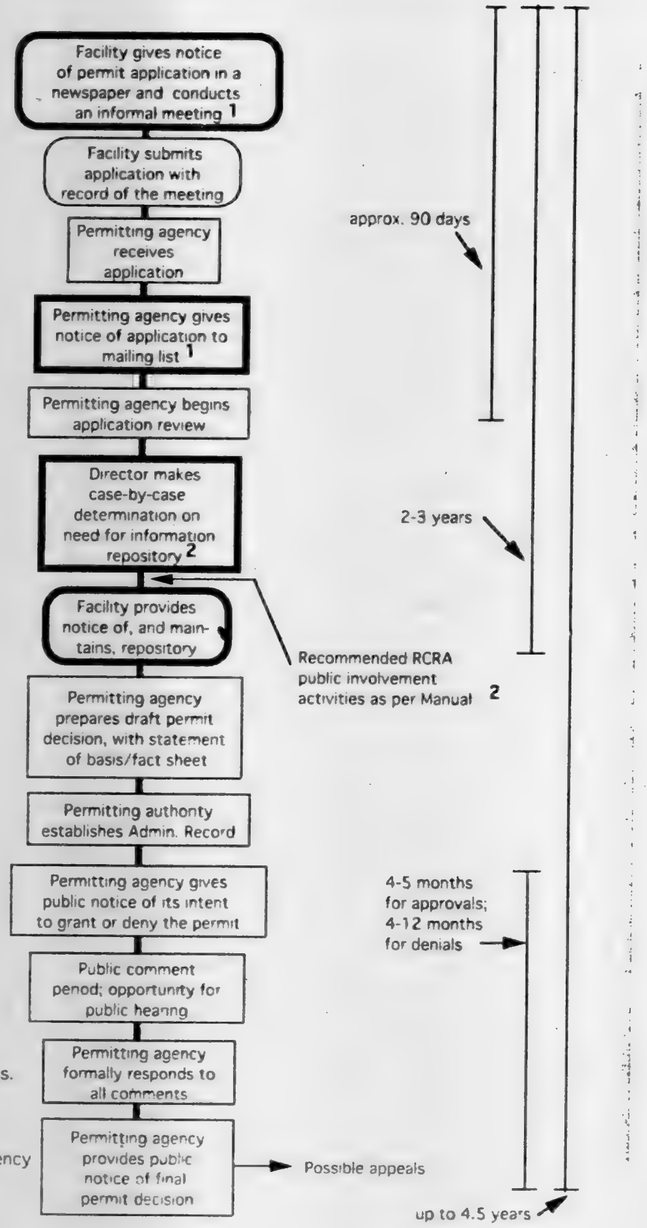
In conducting the review, EPA will recognize the appropriate role of State and local governments in land use planning and facility siting. EPA does not intend to preempt this role. Rather, it is EPA's intention to review the current procedures and requirements to identify whether any additional measures are necessary to protect human health and the environment.

b. Structure of proposal. In expanding the public involvement activities within the permit process, EPA proposes to place these requirements within 40 CFR parts 124 and 270. EPA placed the general requirements for public participation within Part 124 Subpart B—Specific Procedures Applicable to RCRA Permits. Subpart B is an already established section, which does not contain any regulations at this time. EPA proposes to place public involvement requirements within Subpart B to ensure a clear and orderly integration of new RCRA permitting requirements into part 124. Please note that other sections of this rule will address additional public involvement requirements during the trial burn phase within part 270. The flow chart shown in Figure 1 indicates the points in the permitting process where the proposed additions to public involvement activities would occur.

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FIGURE 1

Proposed RCRA Permit Process for Public Involvement



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To avoid any potential confusion, it should be noted that facilities operating under interim status would not lose this status if they do not follow the procedures the Agency is proposing in part 124 or 270. However, the permitting agency may choose to pursue an enforcement action, not connected to the termination of interim status provisions, including a requirement that the application be resubmitted or the notice be republished, if a facility fails to comply with the requirements. Similarly, for a new facility, the permitting agency's recourse would be to require that the application be resubmitted or the notice republished under the correct procedures, rather than permit denial.

c. Overview of proposed requirements. EPA first proposes that a permit applicant must give notice and hold at least one informal public meeting before submitting a RCRA permit application to EPA or the State. EPA believes this requirement will address the public concern that public involvement occurs too late in the RCRA permit process. One purpose of the meeting is to inform the affected community of the facility's proposed operations and its intent to apply for a RCRA permit in the near future. Another important purpose of the meeting is for the applicant to solicit and receive public input. EPA believes that dialogue between the applicant and the public, before the permitting process is initiated with the permitting authority, will allow the public to raise important community issues early in the process, and will promote discussion between the public and the persons seeking the permit. In this way, the public will have direct input to facility owners or operators; at the same time, facility owners or operators can gain an understanding of public expectations and attempt to resolve public issues well in advance of the draft permit. For example, facility owners or operators could address public concerns through the permit application itself, by changing the proposed design or operation of the facility, or through subsequent public interactions.

The notice and meeting also will assist in the generation of a mailing list of interested citizens. This list is a currently required mechanism used in the distribution of notices and information concerning the facility at points throughout the permit process. The permitting authority is responsible for developing a representative mailing list for public notices under 40 CFR 124.10 (see also preamble Section A.2: Current Public Participation Requirements in the RCRA Permit Process). Section 124.10 specifies the timing and content of such mailing lists. The pre-application meeting will assist the permitting authority in identifying people or organizations to include on the list so that it is complete and represents everyone who demonstrates an interest in the facility and the permit process. The permitting authority may develop the mailing list, in part, from the pre-application meeting attendance list. It has been EPA's experience that mailing lists often are not fully developed until the permitting authority issues the draft permit for public comment. Since EPA seeks to increase public participation earlier in the process, generation of a mailing list should precede such activities.

Second, EPA is proposing that the permitting authority provide public notice upon receiving a permit application. Under this provision, the permitting authority would notify the public of proposed facility operations at a much earlier stage than 40 CFR part 124 currently requires. Existing § 124.10 requires the permitting authority to provide public notice of a facility's intention to obtain a RCRA permit, but only after the permitting authority has received and reviewed the application and proposes to grant or deny the permit. Due to the volume and complexity of information contained in a permit application, this process may take several years to complete from the time a permit application is initially submitted. (See Figure 1.) For some facilities, the public has expressed a concern that critical decisions about the facility already have been made by the time the permitting authority proposes the draft permit decision. A requirement for a notice at the permit application stage would allow members of the public to review a permit application at the same time as the permitting agency and inform the agency of any concerns or comments they may have.

In addition to involving the public earlier in the RCRA permitting process, the proposed provisions will also allow the public to get an overview of the RCRA application and permitting process, and the parts played by the permitting authority and the facility owner and operator in that process. Under the proposed rule, the permit applicant conducts the pre-application meeting since it is the applicant who initiates the permit process by submitting a permit application. The permitting authority issues the notice when it receives the permit application from the facility since, at that time, EPA or the State will use its authority to begin review of the permit application.

Table 1 below summarizes the applicability of the pre-application and notice of application provisions in today's rule.

TABLE 1.—PROPOSED REQUIREMENTS FOR THE PRE-APPLICATION MEETING AND THE NOTICE OF APPLICATION

Facility stage in permit process	Facility pre-application meeting	Agency notice of application
New Facility	Yes	Yes.
Interim Status	Yes	Yes.
Permit Renewal	No	Yes.
Permit Modification	No	No.
Post-Closure Permit	No	No.

Third, the Agency is proposing a provision that will allow the Director the discretion to require the facility to establish an information repository. An information repository is a central collection of documents, which could include reports, summaries of data, studies, plans, etc., that the regulatory agency considers in evaluating the permit. The collection would be set up by the applicant in a convenient and accessible location. An information repository, similar to those required under Superfund and proposed under the RCRA Subpart S corrective action regulations of 40 CFR part 264 (see 55 FR 30798, July 27, 1990), would allow the interested public greater access to information, such as the permit application, and other material relevant to the permit decision process. To maintain flexibility in the permit process, and in recognition that information repositories may not be necessary for all facilities, the Director will use his or her discretion, based primarily on the level of public interest, in requiring a facility to establish an information repository. In situations where public interest is high, a locally established repository may benefit a community by providing convenient and timely access to important information about a local facility. If EPA or an authorized State decides to require a facility to establish a repository, it should be noted that only one repository is needed to fulfill the intent of today's proposed requirement, whether the permitting process for that facility is EPA-lead, State-lead, or joint federal-state.

4. Applicability of Public Involvement Requirements

a. Equitable public participation. The Agency believes that affected members of the community should have an equal opportunity to participate in the permitting process. EPA considers the community to be all residents in the vicinity of the facility who might be

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most affected by the facility's operations. The Agency recognizes that local communities may be composed of a diverse group of people who may not share English as a primary language. Therefore, for a notice to be effective, the Agency is requiring under proposed § 124.30 that both the facility and the permitting authority make all reasonable efforts to communicate with the various segments within the community. Multilingual public notices and fact sheets may be necessary for some communities, for example, communities that contain a significant non-English speaking population. Likewise, interpreters may need to be provided at public meetings and hearings. EPA understands that developing multilingual notices and fact sheets, and providing translators, could be difficult to implement depending on the size, composition, and diversity of the community. Also, resource constraints could be a factor when determining what is a "reasonable effort" to communicate effectively with the public. EPA would like to solicit comments on how the requirements proposed in § 124.30 could be implemented.

a.1. Agency activities dealing with environmental justice.

The Agency is placing heavy emphasis on environmental justice issues across all environmental programs. The Agency has stated repeatedly that environmental justice is one of EPA's top priorities; all offices should consider environmental justice issues during decision-making.

In December 1993, the Office of Solid Waste and Emergency Response (OSWER) established an Environmental Justice Task Force to broaden discussion of these issues and formulate short and long-term recommendations for how OSWER can integrate the Agency's environmental justice goals and objectives into all of OSWER's programs and activities. Specifically, the task force has examined ways that OSWER can better address the concerns of minority populations and low-income populations that are affected by OSWER-regulated facilities and may face disproportionately high and adverse human health or environmental effects. The task force has included representatives from all OSWER program and administrative offices, as well as other offices throughout the Agency that have an interest in OSWER's programs and activities. The task force has met with representatives from citizen groups, industry, Congress, and state and local governments to ensure that stakeholders have an opportunity to influence OSWER's environmental justice strategy. The draft recommendations emerging from OSWER's Environmental Justice Task Force are consistent with and supportive of the Agency's environmental justice goals and objectives, as well as the President's Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

The Agency believes that this rule presents significant opportunities to be responsive to environmental justice concerns in relation to specific OSWER-regulated facilities. The measures recommended in this proposed rule would help enhance the level of public participation in the permitting process and thereby provide minority populations and low-income populations with a greater voice in decision-making and a stronger opportunity to influence permit decisions early in the process. In today's proposal, the Agency would like to solicit comments on ways to incorporate environmental justice concerns into the RCRA public participation process.

In addition to public participation, some of the key environmental justice issues for the RCRA permitting program include: (1) The siting of hazardous waste facilities; (2) the manner in which EPA should respond when confronted with a challenge to a RCRA permit based on environmental justice issues; and (3) environmental justice concerns in corrective action cleanups. The Agency requests comments on these aspects of the RCRA program in order to help identify the need for additional rulemaking or policy guidance.

The Agency has also begun to focus on how EPA's programs can take account of the "cumulative risk" and "cumulative effects" associated with human exposure to multiple sources of pollution. Although the Agency does not expect to address these issues in this rulemaking, EPA would like to solicit comment on suggested methodologies and procedures for undertaking this type of analysis.

With regard to the siting of a RCRA facility, EPA has in the past focused on geological factors to be considered when siting a facility, but has not undertaken a concerted effort to address environmental justice issues associated with the siting of a hazardous waste facility. The draft final report of the OSWER Environmental Justice Task Force recommends that the Agency compile a national summary of existing State, tribal, and local government requirements for siting with regard to environmental justice. The draft report also recommends that the Agency develop guidance for State, tribal, and local governments on how to best site a hazardous waste facility in the light of environmental justice concerns. In developing this guidance, the Agency would look to existing State and local requirements and would consult with a wide range of public and private stakeholders. EPA has placed the OSWER Environmental Justice Task Force Draft Final Report, April 25, 1994, into the docket for this proposed rule. The Agency is soliciting comments on the recommendations in the draft final report, as well as on any additional steps that the Agency might wish to consider in order to respond to environmental justice concerns associated with the siting of RCRA facilities.

EPA is also interested in exploring appropriate responses when confronted with a challenge to a RCRA permit based on environmental justice concerns. This issue has arisen in the context of recent challenges under Title VI of the Civil Rights Act alleging that federal grants allocated to States to support State RCRA permit programs are being administered in a discriminatory manner. The draft report of the OSWER Environmental Justice Task Force recommends that the Agency first seek to mediate appropriate resolutions among affected citizens, the State, and the permittee. Where necessary and prudent, the task force also proposes that the Agency explore ways of using risk and/or health assessments to determine whether the affected community would face unacceptable human health or environmental effects if the permit were issued. EPA requests comment on these recommendations as well as on the relationship of Title VI to RCRA permitting and EPA's administration of state grants.

The Agency would also like to solicit comments on ways to incorporate environmental justice concerns into the RCRA corrective action program. The OSWER Environmental Justice draft task force report recommends that the Agency examine the current priority-setting method for the cleanup of RCRA corrective action sites to determine whether this system adequately addresses environmental justice concerns. The task force has also recommended that environmental justice policy governing cleanup actions at RCRA corrective action facilities be consistent with the policy implemented under the Superfund program. The Agency would like to receive responses to these proposals as well as additional options under the RCRA corrective action program.

a.2. The relationship of today's rule with Indian Policy. Currently, EPA has the responsibility for ensuring the implementation of the Subtitle C hazardous waste program on Indian lands. This includes the issuance of hazardous waste permits. However, consistent with EPA's Indian Policy of 1984, the Agency will look directly to, and work with, Tribal governments in determining the best way to implement these proposed public involvement requirements in Indian country. This Indian policy recognizes the sovereignty of Federally-recognized Tribes and commits EPA to a government-to-government relationship with these Tribes.

b. Applicability of pre-application meeting. The requirements for the pre-application meeting would pertain only to new permit applications, i.e., the initial permit applications submitted by either new or interim status facilities. Therefore, the proposed pre-application meeting requirements would not affect facilities that are submitting a permit renewal application under § 270.51 or applying for a permit modification under § 270.42. The additional requirements would not apply to cases where a facility submits a permit renewal application, since information concerning the facility would have been previously available to the public throughout the life of its operation. The facility would have completed the permit process and conducted public involvement activities, usually through the permit modification requirements. For example, the public will have had access to the administrative record for the facility, and the permitting authority already would have developed a mailing list for the facility.

Furthermore, EPA is proposing today in § 124.32(a) that the permitting authority provide public notice when a renewal application is submitted. This will provide the public an opportunity to further review the state of operations at the facility, and be aware that the previously approved permit is expiring. The current opportunities for public involvement throughout the duration of a facility's permit should be sufficient to keep the public informed of the facility's activities. No change can occur to any permit without the public, at a minimum, being notified (see § 270.42 modification procedures). EPA would like to request comments on whether these current opportunities are indeed sufficient, or whether the pre-application meeting requirements should apply to renewal permits.

Similarly, EPA does not believe the addition of a pre-application meeting requirement is necessary for requested permit modifications. A facility proposing changes to its permit must apply for a permit modification under § 270.42. Existing permit modification requirements have established public involvement procedures that must be followed by the permitting authority and the facility before the final decision. These requirements are comparable to those proposed today for permit applications submitted by new and interim status facilities. For example, significant permit modifications, called class 2 or class 3 modifications, require a public meeting at the initiation of the permit modification process to alert the public to changes the facility is proposing to make. Requiring an additional public meeting would be redundant.

EPA conducted a preliminary overview of State regulations containing public involvement requirements that could potentially overlap with today's pre-application requirements. Approximately a dozen States have siting permit regulations that contain public participation requirements, apart from RCRA requirements. The state siting requirements could overlap with the pre-application meeting requirement proposed today. For example, the two permit processes, i.e., for siting and RCRA permits, could share similar public involvement mechanisms.

EPA believes that it is important for the facility to host an informal and informational pre-application meeting with the public. This meeting should focus on the operating requirements for the permit, including (1) whether the facility should operate and (2) suggestions on how the facility should operate to protect human health and the environment. The informal atmosphere of the meeting should encourage dialogue between the public and the facility, addressing questions, such as the need for the facility, the proposed facility design, waste management practices, and safety considerations.

On the other hand, the public meetings required by State siting regulations are more formal and may be hosted by the State rather than the facility (although state siting regulations differ regarding which party is responsible for conducting the siting meeting). The focus of the siting meeting is also different than a pre-application meeting, usually examining such factors as the physical location of the proposed facility, including local land-use issues, location sensitivity and suitability.

In addition, there may be a large gap in time between the public siting meeting (for the dozen states with public involvement siting requirements) and the pre-application meeting. If a significant period of time were to elapse between the siting meeting and the actual commencement of the RCRA permitting process, then the issues raised at the siting meeting may not be fresh in the public's mind, or the public may not have the opportunity to raise new issues or potential solutions until later in the process.

Because the goals of each meeting are typically different, i.e., a decision for whether a new facility is located at a particular site versus a decision on whether a facility should operate and how a facility could operate to protect human health and the environment, EPA is not proposing today to allow siting meetings to automatically substitute for the pre-application meeting. Some of the same issues may come up in either public meeting; however, this should not deter the public from providing input at both meetings. Of course, if a State's requirements for siting meetings meet the goal of today's proposal for a facility-led pre-application meeting, particularly in terms of opening a dialogue between the applicant and the community, then they would probably fulfill authorization requirements. In this case, the State would not have to require separate pre-application meetings. Refer to Section V, State Authority, of this preamble for further information on flexibility within the State authorization process.

EPA evaluated the option of allowing State siting meetings to substitute for the pre-application meeting, and, for the reasons discussed above, decided not to include it in today's proposal. However, the Agency is requesting comments on this issue. Specifically, the Agency would like to hear comments on reasons for or against allowing State siting meetings to automatically substitute for the pre-application meeting.

c. Applicability of the public notice at permit application. The requirements for the permitting authority to provide public notice when it receives a permit application, like the pre-application meeting requirement, would not apply to permit modifications, because similar requirements already exist for both class 2 and class 3 permit modifications that would make the requirement redundant. Specifically, under § 270.42 (b)(2) and (c)(2), the permittee must send a notice of the modification request to all persons on the facility mailing list and publish the notice in a major local newspaper. The notice is required to give, among other things, the location where copies of the modification request and any supporting documents can be read and copied. EPA believes

that this requirement effectively substitutes for the public notice at application in the case of permit modifications.

Unlike the pre-application meeting requirement, the public notice requirement will apply to permit renewals. A public notice for permit renewals is appropriate because the renewal application may be significantly different from the original permit application, warranting early public involvement. For example, facilities may decide to propose major changes, such as addition of a new unit, at the time of permit renewal, separate from any modifications processed during its original permit. In this situation, the results would be an application that is new in certain key respects. The permitting authority should give the public the same notification as it would for a new permit application, even though the public may already be familiar with the general scope of operations at the facility.

In addition, since permit renewals generally occur 5 to 10 years after a facility is permitted and operating, a notice of the permit renewal alerts the public to the fact that the facility plans to continue operating. A public notice at permit renewal also would allow the public to compare changes between the initial approved permit and the permit renewal application to determine the magnitude of any proposed changes. Finally, the notice could serve as a mechanism for updating the facility mailing list, which may not contain a thorough list of people who are interested in the facility.

The requirements for the pre-application meeting and the notice at permit application would not apply to post-closure permits. Post-closure permit applications raise a narrower set of issues and a narrower range of alternatives. The public may be adequately involved through notices at the draft permit stage. Furthermore, the post-closure period does not involve the same ongoing relationship between the facility and the community as the operating period. EPA is requesting comments on whether current requirements are adequate to ensure public involvement, or whether today's proposed requirements for public notice at application submittal should apply to post-closure permits.

d. Applicability of the information repository. The information repository is a public participation tool that the permitting authority can use at any time during the permit process. As proposed, the permitting authority may require the facility to establish a repository during the permit review process for a new facility, or at any time during the life of a facility when the Director determines a repository is warranted due to significant public interest in the facility. The need for an information repository will be decided by the Director, based on decision criteria discussed elsewhere in today's preamble. It is important to have a repository requirement that the Director can adapt to different facility situations and public information needs. Thus, the Agency has allowed the Director the flexibility to decide whether and when a repository is established, for what activity, how long it must be maintained, and where it is housed.

5. Detailed Discussion on the Proposed Public Involvement Requirements

a. General considerations regarding public notices. EPA is proposing new requirements for public notice in order to address public concern that community members are sometimes unaware of hazardous waste permitting activities or that public notice about a facility comes too late in the RCRA process. EPA believes that appropriate public notice is necessary to fully inform communities and involve them in permitting decisions involving hazardous waste facilities. By appropriate public notice, the Agency means that sufficient information is provided in a timely manner to all segments of the public throughout the permit process. Towards this end, EPA is proposing additional public notices throughout the permit process. These new notices will require the permitting authority to notify the public when it reaches certain points in the permitting process (e.g., application submittal, prior to a trial burn). This provision will give the public the opportunity to become involved in the decision-making process. As a result, the public may become more informed about the various steps of the permit process and the time requirements of each step.

Similarly, a widely-distributed notice may reach interested individuals who otherwise may not have known about the opportunity to be on the facility mailing list. To address this issue, EPA is proposing requirements under § 124.31(c)(1) concerning the distribution of the public notice for the pre-application meeting. This notice will be the first activity required by the RCRA permit process; EPA believes that stronger requirements resulting in a wider initial outreach are appropriate at this juncture. EPA is not proposing that implementing agencies follow the new distribution requirements for subsequent notices. Such a requirement would be redundant since, as a result of the widely distributed notice of the pre-application meeting, the permitting authority would have a list of interested people that it could contact as part of the mailing list.

The Agency recognizes that the means by which a notice is effectively distributed is highly community-specific. The permitting authority may find any of a variety of distribution mechanisms effective, depending upon such factors as population density, geographic location, expanse, and cultural diversity of a community, when such mechanisms are used in conjunction with required notice activities. EPA has learned, through discussions with States, Regions, and outside parties (environmental and industry organizations), of a number of mechanisms for distributing notices. Facilities and agencies may voluntarily use the methods that are most practical for disseminating information throughout their community. Several of these methods that go beyond today's proposed requirements, and which may be voluntarily implemented, are discussed below:

Press releases. Permitting authorities and industry alike have used press releases to successfully alert the local community to specific activities. A press release to one paper may be picked up by other local papers with no cost to the original party. Press releases have the advantage of providing in-depth coverage of a subject in a forum that can be widely distributed within a short timeframe. 40 CFR 124.10(c) specifically cites press releases as a method that permitting authorities can use to promote public participation.

Local cable tv channels. Many communities run their own cable channels for local news and activities. This medium may be used to target a local audience, often at no charge. TV spots may be advantageous for delivering pertinent information about a hazardous waste facility directly to people at home. The permitting authorities may also use the stations to broadcast logistics for upcoming meetings.

Local community groups. The facility may enhance the distribution of information by including local community groups on the facility mailing list. Such groups may have a particular interest in hazardous waste issues and can be effective in circulating the information to a wider audience. Local religious establishments, for example, can be particularly useful in distributing information locally. Local Emergency Planning Committees (LEPCs), required under Section 301 of the Superfund Amendments and Reauthorization Act (SARA), can also be an effective group through which to disseminate notices. LEPCs are composed of representatives from a variety of groups or organizations, for example, local elected officials, law enforcement, fire fighting, health, and transportation personnel, community groups, and broadcast and print media. Facility mailing lists can include other community groups, such as professional and trade associations, planning commissions, civic leaders, and special interest groups.

b. Requirements for the pre-application meeting. EPA is proposing that the facility provide public notification of the pre-application meeting between the facility and the public. This provision would apply to all RCRA facilities that submit a Part B Permit application for the first time. The facility will have the dual responsibility of providing appropriate notice and conducting the meeting.

EPA believes that the requirements for the pre-application meeting should apply to all RCRA TSD facilities. EPA emphasizes that the pre-application meeting is meant to be flexible, informal, and informative. Owners and operators of hazardous waste facilities, including owners and operators of small businesses, should be able to meet the proposed requirements for the pre-application meeting without undue burden. EPA estimates that the costs associated with the pre-application will be small. In addition, EPA believes that this approach will benefit the facility, as well as the public, in the long run since the public will gain greater understanding of the facility's plans and responsibilities. As stated above, earlier and more meaningful public involvement could streamline the permitting process, since issues and concerns will be raised at the initial point of the process.

EPA solicits public comment on whether or not the Agency should require facilities to hold a pre-application meeting and, if so, whether the requirement should apply to all facilities, or only particular facilities, such as facilities conducting specific waste management practices, managing certain kinds of waste, or accepting off-site waste. In addition, EPA requests comment on the proposed functions of the pre-application meeting as well as comments about the notice requirements for the meeting.

b.1. Providing notice of the pre-application meeting. The Agency is proposing this requirement because EPA is concerned that the existing mechanisms for providing public notice (found in 40 CFR part 124) may not work as effectively at the pre-application stage of the permit process as they do later in the permit process. The main reason for this is that the permitting authority generally does not develop the facility mailing list by the pre-application stage; it usually develops the list after the facility submits its permit application. Consequently, there is no mailing list for the facility to utilize. These initial outreach efforts will ultimately benefit the permit process by engaging interested individuals early in the process.

EPA is proposing to require that the applicant provide notice of the pre-application meeting to the public, including EPA and appropriate units of State and local government, in three separate ways. EPA has designed these requirements to ensure effective public notice for the meeting. As proposed under § 124.31(c)(1), two of these requirements are new approaches to providing public notice and apply only to the notice for the pre-application meeting. The third is a current requirement under § 124.10(c)(2)(ii). EPA believes that since the notice for the pre-application meeting is the first public notice in the RCRA permitting process and occurs so early in the process, i.e., possibly before a mailing list is developed, these additional requirements are necessary to ensure widespread notice so that the public is appropriately informed. All of the public notice requirements for the pre-application meeting must contain the information proposed under § 124.31(c)(2).

The first requirement proposes that the facility must place the notice not only in a paper of general circulation within the community where the facility is located, as currently required, but also in newspapers that cover each jurisdiction adjacent to that community. EPA believes this approach is necessary to ensure that the facility appropriately notifies neighboring jurisdictions in the event that a facility is located near a jurisdictional boundary. In these cases, people who live near, but across the county or state line from, a hazardous waste facility that is applying for a RCRA permit may not receive notice of the activity under the present scheme because the newspaper is not in general circulation across that jurisdictional line. As a result, these people may not learn about the facility until much later in the permit process or after the facility is permitted. This initial outreach requirement would avoid such a situation. Interested persons could respond to this initial notice either by attending the pre-application meeting or by signing up for the facility mailing list. In either case, the person would be on the list for subsequent notices that comply with existing requirements in § 124.10(c)(2) (including requirements for the facility mailing list).

In some states (especially in the western part of the United States), the geographic areas covered by a host county or adjacent counties can be very large. In these cases, the requirement for the facility to give public notice in adjacent counties may not be practical or useful. Therefore, in situations where the geographic area of a host jurisdiction or adjacent jurisdictions is very large (hundreds of square miles), the newspaper notice shall cover a reasonable radius from the facility, such that all potentially affected persons have the opportunity to receive notice. EPA requests comment on how to implement this alternative notice provision in the regulations without prescribing a specific formula or approach that may not be appropriate in all circumstances.

The required newspaper notices must appear as display advertisements within the newspapers. This provision clarifies the form in which the official public notice must appear in the papers. As defined by this proposed rule, a display ad must be of sufficient size to be seen easily by the reader.

EPA intends the display ad requirement to make information about the pre-application meeting more visible within the newspaper. The display ad must be placed in a section of the newspaper that the average reader is likely to see, or in a manner that otherwise gives the general public effective notice. Currently, most public notices related to RCRA permitting appear as legal notices. However, EPA proposes to change this practice for the notice at pre-application in response to public concerns that legal notices are not widely read.

EPA encourages facilities and permit writers, if it is within their means, to apply this requirement to other notices published in the newspaper. The requirements proposed in today's rule are in no way meant to inhibit additional public involvement activities that the owner or operator or the regulatory agency could carry out voluntarily.

The second proposed mechanism for enhancing public notice of the pre-application meeting is a requirement that the facility owner or operator post a sign on the facility property displaying information about the meeting. This requirement will give clear notice of the facility location, and activity the facility is, or will be, conducting. The posted sign must show the same information as

the other notices, except for the requirement to include a facility map, which is unnecessary. The sign must be large enough so that the wording is readable from the facility boundary; it should be located where it will be visible to the public, including passers-by. The Agency encourages facilities to post similar signs within the local community, where appropriate, to encourage people to attend the pre-application meeting. In some cases, the option of posting additional signs around the community may be a cost-effective way for the facility to communicate with the public.

The third requirement is that the facility owner or operator must provide a radio broadcast announcement of the pre-application meeting. This is a current mechanism for providing public notice in § 124.10(c)(2)(ii). The Agency is including it within today's proposed requirements for the pre-application meeting in order to maintain consistency with existing public notice requirements under § 124.10.

Over the years, EPA has received many questions from authorized states and the public concerning radio announcements. Today's proposal requires a radio announcement to be broadcast from at least one local radio station serving the community, which is the same as the current part 124 regulations. As mentioned earlier in the Equitable Public Participation section, EPA considers the community to be all residents in the vicinity of the facility who might be most affected by the facility's operations.

Facilities can, of course, go beyond the minimum requirement being proposed today. EPA provides the following suggestions as guidance for those facilities interested in going beyond the proposed minimum requirements. In some rural areas, community members may listen predominantly to one station; in this case, EPA recommends that the applicant use this station as the vehicle for the notice. Some areas are part of a radio market (i.e., as defined by services such as Arbitron's Radio Market Definitions) and have competing radio stations. Where there is more than one radio station, the facility owner or operator should carefully consider the likely listeners of the radio stations in order to ensure a substantial listener audience. For example, if the facility is located within a predominately Hispanic-American community, the applicant should use the local Spanish language station as the vehicle for the notice.

Areas with many competing stations are more likely to have listener groups that may be delineated by, for instance, age, ethnicity, or income. In these situations, broadcasting the notice on several stations, or in more than one language, may be beneficial. In all cases, EPA suggests that the announcement occur at listening hours with a substantial audience, which will vary for each community as well as within listener groups. The facility may consult with radio stations and community members to determine the best times to broadcast the public notice.

The notice of the pre-application meeting is perhaps the most important of the permit notices, since it is the first notice of the permitting process for new or existing facilities. The applicant should make an attempt to ensure that all interested citizens are aware of the pre-application meeting. The new requirements proposed today—display ads, notices published across jurisdictional boundaries, and posted signs at facilities—are more likely to reach a wider audience than a single notice in the legal section of the paper.

In analyzing other approaches, such as applying the new pre-application notice requirements to all other RCRA public notices, EPA found that the requirements may become burdensome to regulatory agencies, who must publish a number of notices throughout the permitting process. (As proposed today, the facility bears the burden of the pre-application meeting requirements.) EPA's goal in proposing this approach is the efficient use of resources for effective public notice. EPA proposes a larger initial outreach effort to help establish a mailing list. By initiating a larger effort early in the process, people who desire to be put on the mailing list are included as early as possible in the permit process. The facility will conduct subsequent notices using the existing notice requirements, which have proven adequate when accompanied by a well-developed mailing list.

The Agency requests comment on the proposed requirements for public notice of the pre-application meeting. For example, EPA would like comments regarding the practicality or usefulness of these requirements and their application within the permitting process.

b.2. Conducting the pre-application meeting. Today's proposed rule requires the applicant to hold at least one informational meeting, open to all interested members of the public, before submitting a permit application. This meeting will provide earlier public involvement opportunities in the RCRA permitting process, and enable the applicant to explain facility plans and the scope of the project to the public. In addition, EPA intends this meeting to create a dialogue with the community, raise public awareness, determine public views and questions raised with respect to the facility, and provide the applicant with the opportunity to make changes to its application based on public comments. (The facility may choose to hold additional meetings to answer questions raised at the pre-application meeting.) It is appropriate for the facility to conduct the public meeting because the facility initiates the permit process and conducts business in the area. The permit applicant must give the public adequate notice, at least 30 days before the date, of the pre-application meeting.

The Agency believes that the meeting should be informal and informational. This approach is consistent with the preamble discussion of public meeting requirements for Class 3 permit modification procedures (see 53 FR 37912, September 28, 1988). However, in contrast to the requirements for Class 3 modifications, today's rule would require the facility to submit a record of the pre-application meeting, a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, to the Director. The facility must include this record as part of the permit application and, if required, the information repository. The record requirement will provide the public, especially people who are unable to attend the meeting, and the Agency with a summary of information and issues raised at the pre-application meeting. The proposed rule does not require the permitting authority to attend the meeting. The Agency believes that attendance by the permitting authority, in certain instances, may undercut one of the main purposes of the meeting, which is to open a dialogue between the facility and the community. In some cases, attendance by the permitting authority might be useful in gaining a better understanding of public perceptions and issues for a particular facility. However, it should always remain clear that it is a facility-lead meeting. EPA believes it is important for the public to understand that it is the facility's responsibility both to initiate the permit process, by submitting an application to EPA, and to inform the public of its intentions. EPA would like to solicit comments on whether the permitting agency should attend the pre-application meetings.

With regard to the nature of the public meeting, EPA intends to provide facilities with considerable latitude. Through discussions with community

relations experts from a variety of backgrounds, EPA has found that "public meeting" means many things to many people. In most cases, however, it appears that people view public meetings as being similar to public hearings. EPA would like to dispel the idea that public meetings must be similar to formal public hearings; rather, EPA encourages facilities to be creative in their approach towards conducting the pre-application meeting, in order to encourage constructive and open participation with people in the community. The facility may accomplish this goal through any of a variety of meeting formats. EPA further encourages innovation in the type of public meeting by allowing the facility to choose the medium by which it reports the record of the meeting to EPA, as long as the medium provides an adequate record of the meeting. For example, facilities may choose to tape-record discussions at the meeting or find another effective medium with which the public is comfortable.

Many guidance documents are available on how to conduct public meetings and community outreach. Among them are EPA documents Community Relations in Superfund: A Handbook (January 1992, EPA/540/R-92/009), RCRA Public Involvement Manual (September 1993, EPA 530-R-93-006), as well as publications by private interests. The applicant may wish to consult these or similar publications for appropriate guidance on how to conduct an appropriate meeting with the public.

Regardless of the guidance source, EPA believes that the facility, in meeting regulatory requirements, should also consider the following factors to conduct what EPA believes to be an appropriate and effective public meeting: first, the applicant should give special attention to process, logistics, content and trouble-shooting when preparing for a public meeting; second, the applicant should provide appropriate public notification, as required by § 124.31(c), identify all sectors of the community that the facility will potentially affect, as required by § 124.30(a), and provide outreach to interested citizens and officials. All these factors are important to ensure that the audience is representative of the community.

The facility should encourage public participation through selection of a meeting date, time, and place that are convenient to the public. The facility should select the date and time of the public meeting to correspond to times when the public is most available; this may require the facility to conduct the meeting after normal business hours. The applicant should make sure that the meeting place has adequate space and is conducive to the type of meeting that the applicant will conduct. The applicant should take care in the development of the content of the meeting to meet the requirement of "sufficient detail to allow the community to understand the nature of the operations to be conducted at the facility and the implications for human health and the environment" under proposed § 124.31(a). To meet the "sufficient detail" requirement, the applicant should have a clear meeting agenda that states the exact reasons for the meeting and the specific objectives of the meeting. The applicant shall give an overview of the facility in as much detail as possible, such as identifying the type of facility (i.e., commercial or private), the location of the facility, the general processes involved, the type of wastes generated and managed, and implementation of waste minimization and pollution control measures. In addition, the applicant should provide information about risk to the public, where available.

Finally, trouble-shooting potential problems will help the meeting to run smoothly in the event of unplanned obstacles. Trouble-shooting may involve planning for equipment failures, a shortage of parking spaces, or demonstrations, as well as locating facilities for handicapped individuals.

c. *Requirement for public notice at permit application.* Today's proposal would also require EPA or the State to publish a public notice upon receipt of a permit application. EPA proposes that the permitting authority send the notice to everyone on the mailing list. These requirements are consistent with the notice requirements under §§ 124.10 and 270.42. Unlike the proposed pre-application meeting requirement, the permitting authority must also publish this notice for permit renewals (see Section A.4: Applicability of public involvement requirements, of today's preamble discussion).

Information requirements for the public notice will give people a clear opportunity to contact the appropriate parties for questions and suggestions, sign up on the facility mailing list, and locate the appropriate documents, such as the permit application, for review. The permitting authority must provide the name and telephone number of the facility and permitting agency contacts. EPA suggests that the permitting authority designate a community affairs specialist as the appropriate contact person. The permitting authority must also provide an address to which people can send requests to be put on the facility mailing list. EPA believes that the public should have this opportunity during the permit process, and that the notice at application is a good mechanism for announcing this opportunity. Today's proposed rule requires the permitting authority to provide the notice; however, EPA would like to solicit comments on whether the permitting authority or the facility should be responsible for providing the notice at application submittal. While a person may request to be put on the mailing list at any time during the permit process, EPA intends this requirement to ensure that the permitting authority alerts the public early in the permit process. Finally, EPA is requiring the notice to include specific information about the facility operations, facility location, and the location where the public may review and copy versions of the permit application and other important documents.

EPA believes that these requirements significantly increase the opportunities for, and the effectiveness of, public participation within the permitting process. The requirement for a public notice will tell the public when an application for a permit has been received by the permitting authority. It would also provide information on where the permit application is available for review by the public and, thus, would allow interested people to begin review of the permit application at the same time as EPA or the State authority. The public would have the opportunity to review all aspects of the permit application in its initial form, before EPA or the State review the application for completeness. The public has the opportunity to make suggestions and raise issues for consideration by the permitting agency at any time during the agency's review of the permit application. Consequently, the permitting agency will receive public input earlier in the permit process as well as later, i.e., after the proposal of the draft permit. Another benefit of requiring such a notice is that it may alert the agency to facilities generating high public interest. The public notice will highlight public attention concerning a hazardous waste facility. Public interest and concerns may be expressed to the permitting authority in the form of letters, phone calls, and requests to be put on the facility mailing list. This early stage could be one potential point where the Director may choose to require the facility to establish an information repository. Furthermore, by providing

important and timely information at the beginning of the permit application review stage, the permitting authority can better inform the public about the steps of the permit process and the amount of time required for each step.

EPA believes that the public input that the permitted authority will receive early in the process will assist in the review of the permit application and result in the development of a draft permit that is responsive to community concerns. Once the permitting authority completes the draft permit, or the notice of intent to deny the permit, and proposes it to the public, then the public has the opportunity to review that decision, including any changes that occurred to the original permit application, since they will be reflected in the draft permit. These changes could include changes in response to the public comments EPA may have received during its review of the permit application.

d. Requirement for an information repository. Proposed §§ 124.33(a) and 270.30(m) would provide the Director with explicit authority to require the permit applicant or permittee, respectively, to establish and maintain an information repository. The repository would allow interested parties to: (1) Access reports, plans, findings, and other informative material relevant to the facility and the particular issues at hand; and (2) receive information on appropriate opportunities for involvement during a variety of permitting decisions. EPA expects that the Director would consider requiring a facility to establish a repository in a limited number of cases where the community expresses a high level of interest. A high level of community interest could be demonstrated, for example, in such ways as written requests from members of the public, or press coverage. However, the final decision for requiring the repository is at the Director's discretion. The Director may also specify any appropriate time period for the repository.

As provided in proposed § 124.33(b), the information repository will contain all public information that the Director determines to be relevant to public understanding of permitting activities at the facility. In general, the Director would require the facility to make available those reports or documents that provide the most relevant information about the facility and the best technical basis for decision-making. The information repository could include some of the following items: copies of the permit application, technical documents directly supporting the application, maps (i.e., sketched or copied street map) of the proposed location of the facility, notice of deficiencies (NODs), or summary reports of ground-water and air monitoring results at the facility, if such reports exist for the facility location. The repository should also contain information on how the public may participate and become involved during the permitting process. For example, EPA may contribute a fact sheet that outlines public involvement opportunities within the permit process and how to be put on the facility mailing list. Similarly, the facility may provide information in the repository on any additional public involvement activities it chooses to conduct. Examples of background material the facility may maintain in the repository include copies of relevant RCRA regulations and related information, e.g., fact sheets. The facility may exclude from the repository any material it claims to be confidential business information (CBI). Examples of CBI could include trade secrets, commercial, or financial information whose general availability could cause substantial harm to the facility's competitive position. The contents and size of the information repository may differ among sites, depending upon the reasons for setting up the repository, the permitting phase of the facility, and the site-specific characteristics of the facility.

The facility is responsible for site selection and maintenance of the information repository. The facility should place the repository at a local public library, town hall, county courthouse, community college, public health office, or another public location within reasonable distance of the facility. In instances where such a location is not feasible due to the remote location of the facility, the Director may require the facility to establish and maintain the repository at some other suitable location. In most instances, the information repository should not be at the facility. Interested communities have expressed a greater comfort level with siting the repository at a public location, instead of within facility boundaries. The repository must also be open to the public during reasonable hours or accessible by appointment. Reasonable hours could include, for example, weekend and evening hours of access (e.g., beyond normal business hours), depending, among other things, on work schedules of the interested individuals, the degree of public interest in the facility permitting activities, the convenience of the location of the repository, and the timing of public meetings or hearings. In these situations, EPA encourages facilities to select a location that already has extended hours of operation, such as a local library.

EPA encourages facilities to establish the information repository at a location that has reasonable access to a photocopy machine, if possible. Such a location would be more convenient for the people who wish to make copies of any of the materials at reasonable cost. For example, some of the public locations mentioned previously should, in most cases, have a photocopy machine on the premises. If it is not possible, the facility may want to explore other options, such as providing extra copies of documents that people can keep without charge or at reasonable cost.

In cases where physical space to house the documents is limited, a potential solution for the facility, where resources allow and capability is available at the location, is to copy documents onto microfiche or CD-ROM. Either of these possible options requires little space and would discourage document theft or vandalism.

Under § 124.33(d), the Director will specify requirements that the applicant must satisfy in informing the public of the existence of the information repository. At a minimum, the Director will require the facility owner/operator to notify individuals on the mailing list when the facility establishes the repository. The Director may also require the facility to provide public notice in a local newspaper. As a practical matter, the facility may, in some cases, choose to provide the relevant information to the permitting authority so that it may include the information in other required notices. The facility owner/operator would identify the EPA or State office contact and a facility contact person to answer questions related to the repository. EPA suggests that the permitting authority designate a community affairs specialist as the appropriate contact person.

The information repository EPA is proposing today closely resembles the repository proposed under Subpart S of the Corrective Action Rule (see 30798 FR, July 27, 1990) and is similar to the repositories established at Superfund sites under the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA). EPA's CERCLA experience has demonstrated that the public's interest in nearby hazardous waste activities is served effectively by a repository. Without a local repository, the burden falls on

citizens to locate and contact the appropriate officials who are knowledgeable about the site in Regional EPA or State offices, which could be located far from the site.

There are three major differences between the information repositories in today's proposal and the repositories included in the CERCLA program. First, Superfund requires information repositories at all sites on the National Priorities List (NPL), whereas, under today's proposal, the Director would use his or her discretion on a case-by-case basis. All communities may not desire or request every option available for public involvement. In most situations, an information repository may not be necessary and could become an unnecessary resource drain for the local community hosting the repository. Providing discretion to the Director will allow the facility and community to use their resources in the most efficient manner. In making such a determination, the Director would consider the degree of public interest (which could, for example, be demonstrated through written requests from the public to set up a repository), as well as the proposed location of the facility, the proposed types and volumes of wastes to be managed, and the type of facility. Furthermore, the Director may consider requiring information repositories at certain Class 3 modifications or at other stages within a permit where there is a high level of public interest.

The second major difference between the CERCLA and proposed RCRA repositories is that CERCLA repositories for NPL sites generally house the administrative record for CERCLA actions. Under the RCRA permitting program, and as described in proposed Subpart S, EPA Regional offices, or authorized States, maintain administrative records, which provide documentation of the basis of EPA's decisions and other parts of the record, at Regional office location. Because the RCRA permitting record is already available for public inspection at a separate location, the Agency does not believe that it is necessary to duplicate the entire administrative record for RCRA facilities at information repositories. The administrative record developed during the permitting process is often large, and could become burdensome to the Agency and the facility if it were duplicated in its entirety in an information repository. In addition, the space required to house an information repository, if it were required to be a duplicate of the administrative record, may severely limit prospective repository locations in a community.

The third major difference between the CERCLA and proposed RCRA provisions relates to the point in the waste management process when an information repository is established and maintained. Information repositories are established at NPL sites to give the public the opportunity to keep informed during the cleanup process. On the other hand, the repository proposed for certain RCRA facilities could be established by the facility at any time during the RCRA permitting process or during the life of the facility. In either case, the facility will set up the information repository to provide information to the community about the specific issues at hand. Therefore, the Director may require the facility to operate the information repository during the permit application process only or the active life of a facility, whichever best applies to the facility and the community. For new facilities, this provision means that the Director might instruct the facility to establish an information repository before construction of the facility. EPA is concerned that the information repository for a RCRA facility could become cumbersome if the Agency prescribes specific content and duration requirements in a regulation. Therefore, EPA believes that the Director should designate timeframes and details for the contents of the information repository on a case-by-case basis, in keeping with the goal of enhancing public participation in the permitting process.

The Agency chose what it believes to be the most flexible approach, that is, one that allows permitting authorities to readily respond to community demands. However, the Agency recognizes that questions may exist regarding this approach and requests comment on several aspects of the information repository. First, the Agency seeks comments on making the information repository an optional, as opposed to mandatory, tool within the permitting process. Second, EPA solicits comments on making the repository mandatory for some types of units; for example, the Agency could require all commercial facilities or facilities managing certain types of waste to establish information repositories. Third, EPA requests comments on the location of the repository and the point in the permitting process when it might be appropriate for the Director to require certain facilities to establish or terminate a repository. Fourth, the Agency seeks comments on what documents the facility should include within the repository as a minimum, and the process by which those documents are selected.

B. Permit Modification Procedures in § 270.42

1. Purpose

The main purpose of this section of the rule is to clarify the combustion modification provisions found in Appendix I of § 270.42. EPA is aware that there has been some confusion over the description of modifications listed under section L.7 of Appendix I, which covers the shakedown and trial burn phases of operation for combustion units. Through today's changes, EPA intends to make these modification classifications easier to understand and implement. Today's proposal clarifies and describes the phases of shakedown and trial burn in more detail, thus, making it easier for the facility to distinguish between modification classifications. By making it easier for a facility to select the appropriate classification for each modification activity, the proposed rule will make compliance with the modification process easier.

This section also proposes minor revisions to § 270.42(d) of the modification procedures and addresses those modification requests that are not classified in the Appendix I table of § 270.42. Today's proposal clarifies how facilities may implement and utilize the provision for other modifications in § 270.42(d).

2. Background Summary

EPA first promulgated procedures for RCRA permit modifications in 1980 as part of the initial regulations establishing the RCRA permit program. This system of modifications consisted of two types: Major and minor. Major modifications followed the same public notice and comment procedures as for permit issuance, while minor modifications required only approval by the permitting authority. "Minor modifications" were defined as any modification contained in a short list in the regulations; all other modifications were deemed "major."

EPA gained experience in implementing these procedures and decided that the Agency could improve the modifications process. One of the Agency's primary concerns was that most modifications were processed under the major modification procedures since few modifications were listed as minor. Since many less consequential permit changes and facility improvements were subject to extensive "major" modification procedures, EPA found that facilities

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were discouraged from making improvements to upgrade the facility to be more protective. At the same time, EPA and the States were diverting their resources to address minor modifications, instead of addressing modifications with greater environmental significance, or other permitting and enforcement actions. In considering how to address these concerns, EPA determined that the procedural structure needed modifying in order to classify the many activities that did not fall easily into only the major and minor categories.

EPA amended the procedures for facility-initiated permit modifications on September 28, 1988 (see 53 FR 37912). The goals of this rule were to allow for additional flexibility in processing permit modifications and to provide for an appropriate level of public involvement in the decision-making process. The main feature of these revised procedures was a system of three classes of permit modifications, ranging from Class 1 for the least significant changes to Class 3 for the most significant facility modifications.

EPA continues to believe that Agency and State permitting authorities must focus time, efforts, and resources on substantive changes to protect human health and the environment. With three classes of procedures, permitting authorities can classify modifications more accurately, according to their environmental significance, than they could under the former system. Individual examples of modifications are classified in a detailed appendix to the rule (Appendix I to § 270.42).

3. Technical Corrections

In today's rule, EPA is proposing certain technical corrections in §§ 270.42(a)(1)(ii), 270.42(b)(2), and 270.42(c)(2). One correction would change the reference for notifying appropriate units of state and local government in each of these paragraphs to § 124.10(c)(1)(x), in order to correct a typographical error. At present, these sections incorrectly reference § 124.10(c)(ix), which is the reference for notifying the facility mailing list.

EPA is also proposing to make a technical correction to § 270.42(b)(6)(i). In this paragraph, the term "notification request" should be changed to "modification request." It is clear from the preamble to the September 28, 1988 permit modification rule (see 53 FR 37916) that EPA intended that the deadline for EPA action be related to the date that the modification request is submitted to the permitting authority.

4. Unclassified Modifications

During the development of the September 1988 permit modification rule, EPA recognized that classifying all possible permit modifications under the items listed in Appendix I of § 270.42 would be impossible. Therefore, the Agency provided a procedure in § 270.42(d) to enable facilities to submit modification requests for changes that are not specifically listed in Appendix I. For these unclassified modifications, facilities must either use the Class 3 modification procedures or, alternatively, request that the Agency make a determination that the activity is either a Class 1 or 2 modification. In general, requests for a classification determination would be attached to the modification request. In making its determination whether to process the request as a Class 1, 2, modification instead of a Class 3, the Agency would consider the similarity of the specific modification to others listed in Appendix I and the criteria listed in § 270.42(d)(2).

After several years' experience, EPA has found that very few unclassified modifications have been processed using this procedure. EPA believes that both facilities and permit writers may be restricting themselves to only the classification examples that are in Appendix I. EPA is also concerned that in those cases where § 270.42(d) is used, the Class 3 modification procedure may be automatically selected, without consideration of whether the permit activity is less significant and should be reclassified to a lower category.

While EPA believes that Appendix I offers a good starting point for classifying modifications, facilities and the permitting authority should both make additional efforts to use the flexibility in § 270.42(d) when proposing modifications. Use of this flexibility will allow permit writers to better focus their efforts and resources on modification procedures that are necessary and appropriately tailored to the substantive changes proposed. Therefore, EPA believes that facilities should use the flexibility contained in § 270.42(d) when their site-specific permit changes are not listed in the Appendix I table. To address this situation, EPA is proposing to modify the wording in § 270.42(d) to clarify that unclassified modifications can be processed under Class 1 or 2 procedures, if this lower classification is more appropriate. EPA is also proposing to add a notation to Appendix I that instructs facilities to use the procedures in § 270.42(d) if a proposed modification is not listed in Appendix I.

In addition, EPA would like to clarify that the temporary authorization provision in § 270.42(e) may be used by the facility, subject to approval by the permitting authority, to implement unclassified modifications as well as classified ones. In other words, the permitting agency may grant a temporary authorization, without prior notice and comment, for activities that are necessary for facilities to respond promptly to changing conditions to be protective of human health and the environment. Temporary authorizations have a term of up to 180 days; the permitting agency may grant temporary authorizations for Class 2 or 3 modifications that meet the criteria in § 270.42(e), including compliance with the part 264 standards. Activities that will be completed before the 180 day term expires do not require a modification request. If a facility knows up front that the activity will take longer than 180 days to complete, it should submit a modification request at the same time as its request for temporary authorization.

5. Revisions to Appendix I of § 270.42

RCRA permits for new incinerators and boilers and industrial furnaces (BIFs) address four distinct phases of operation after construction. The four phases are: Shakedown, trial burn, post-trial burn operation, and final operation, which lasts for the duration of the permit. The permitting authority establishes operating conditions for each of these phases in the permit.

The shakedown phase of operation lasts from the initial start up after construction until the trial burn. The shakedown phase prepares the unit for the trial burn. During this period, possible mechanical difficulties are identified and the unit reaches operational readiness by achieving steady-state operating conditions immediately prior to the trial burn. Federal regulations limit the shakedown period to 720 hours of operation using hazardous waste feed; the permitting authority may allow one additional period of up to 720 hours with cause. Permit conditions limit operations during this period; the permit sets hazardous waste feed and other waste management practices and requires the facility to monitor certain key operational indicators.

The trial burn, which typically lasts several days, is the actual testing that the facility conducts, with permitting agency oversight, to (1) determine whether a combustion unit can meet the performance standards required by the regulations and the permit, (2) establish the final facility operating conditions for the term of the permit, and (3) provide data on which the permit authority can base a risk assessment. The trial burn plan contains the parameters for conducting a trial burn. The trial burn plan is part of the original permit for new facilities and must be approved by the permitting agency before the facility can conduct a trial burn. The facility often tests several sets of operating conditions during the trial burn. The conditions are designed in order to determine the range of operating conditions where the unit meets the performance standards. For example, the facility may set one trial burn condition to determine what the maximum hazardous waste feed can be. The trial burn demonstrates the range of operating conditions that allow the facility to comply with the performance standards. The permit writer uses the results of the trial burn to define the operating conditions that the facility will operate under during the permit term.

The post-trial burn phase starts after the trial burn and lasts an average of 3 to 9 months. The permit specifies operating conditions that apply during this phase. Federal regulations require the permittee to analyze the results of the trial burn and submit them to the Agency within 90 days of completion of the trial burn, or later if approved by the Director. Also during this period, the facility may submit, and EPA may process, a permit modification to revise the final operating conditions to reflect the results of the trial burn and any other information. This phase ends once the permitting agency and the facility complete all necessary permit modifications and the final operating conditions take effect.

The final operating conditions are effective for the life of the permit, unless the facility's permit is modified pursuant to 40 CFR 270.41 or 270.42. The permit writer bases the conditions on actual trial burn data that reflect the conditions under which the facility met the performance standards during the trial burn.

a. Structure of today's proposal. Confusion has existed, at times, over the descriptions of modifications for certain items listed in section L of Appendix I to § 270.42, which covers incinerators and BIFs; in particular, the confusion has concerned changes during the shakedown period of operation and trial burn. How to interpret these modification classifications may be unclear in certain situations. In order to avoid further confusion or potential delays in determining these classifications, the Agency is proposing to reorganize and clarify Section L.7 of Appendix I.

Currently, Appendix I of § 270.42 places items regarding the shakedown period, trial burn plan, and post-trial burn operation into the same section, i.e., section L.7. EPA believes that placing those items regarding the shakedown period in one section and items concerning the trial burn plan into another section, along with describing each item more precisely, will clarify the intent behind each description. This reorganization will make it easier to classify individual modification requests and ensure that the permitting agency processes the requests under the appropriate procedures. EPA proposes today that all modifications regarding the shakedown period will remain in section L.7. and all items regarding the trial burn will move to new section L.8. The existing section L.8. will become section L.9. An explanation of the proposed revisions to sections L.7. and L.8. of the Appendix follows.

In this proposal, Class 2 will remain the highest classification for changes to the trial burn and shakedown period permit conditions. Further, the permitting agency will continue to process many changes under the Class 1 procedures, with prior Director approval. One reason for these classifications is the short period of operation for both the shakedown and trial burn phases. The permitting authority must be in a position to respond quickly to requests for changes that are necessary to ensure thorough testing of the unit. In addition, operating conditions during the shakedown period are generally more restrictive than the final operation conditions.

b. Shakedown. Appendix I to § 270.42 currently classifies modifications addressing the shakedown period for a permitted combustion unit in items L.7. a. and b. EPA today proposes to simplify item L.7.a. by applying it only during the shakedown period and moving the references to the trial burn plan and post-trial burn operation to newly proposed section L.8. The permitting agency should not process under L.7.a. any modifications that are classified in other items in Appendix I. Today's proposed rule will not change item L.7.b., which allows the Director to authorize an additional 720 hours of operation as a Class 1 modification.

EPA also proposes to reclassify proposed item L.7.a. as a Class 1 permit modification, with prior approval of the Director. Our basis for this change is that the narrower scope and limited duration of the shakedown period means that a facility's activities would be less significant than the activities found under the existing L.7.a. One example of a modification under proposed item L.7.a. would be a change in combustion temperature to increase the unit's efficiency. The purpose of the shakedown period is to prepare the unit for the trial burn and, thus, any changes made during the shakedown period would not affect long term operation. The shakedown period can last no longer than 720 hours of operation, with only one extension possible. As stated previously, modification items related to the trial burn will now be addressed by the permitting authority under proposed section L.8.

c. Trial burn. Today, EPA is proposing to create a new section L.8. in Appendix I to address modifications to permit conditions during the trial burn. These conditions are contained in the approved trial burn plan, which is a part of the RCRA permit. EPA has structured this section to progress from changes before any trial burns are completed to those after a trial burn has been conducted, including changes made to reflect the results of a successful trial burn. The format of the new section L.8. is as follows.

EPA is proposing to revise Appendix I to address changes to the trial burn plan before the trial burn is complete (items L.8.a. and L.8.b). Under the proposed scheme, the permitting authority will consider changes to the trial burn plan a Class 2 permit modification, unless they are minor, in which case they will be Class 1, with prior Director approval. One example of a minor change would be an increase in the secondary combustion chamber temperature for a trial burn condition that is testing the destruction and removal efficiency for organic wastes. One example of a major change would be an increase in the waste feed rate. Please note that classifying changes as minor with regard to the trial burn is not a new requirement; it was previously listed under item L.7.c. However, to reflect the fact that the trial burn conditions are contained in the trial burn plan, EPA is deleting any references to "operating requirements set in the permit" from the modification table.

EPA expects that permittees may request technical changes in the trial burn plan under L.8.a. while the permitting authority is on-site immediately before, or during, the trial burn. These changes address unanticipated issues and are often necessary for effective and protective operation and testing during the trial burn. A representative of the permitting authority, usually the permit writer, is

typically at the facility during the trial burn. The Agency encourages permit writers and facilities to write trial burn plans with the flexibility to accommodate alterations during the trial burn. The permitting authority can expedite the modification process by delegating approval authority to one of its agents. The permit itself can also specify what level of permitting agency staff has authority to approve these minor changes. In deciding whether to allow such changes on-site, we encourage the permit writer to consider the criteria contained in the February 16, 1989, Trial Burn Observation Guide. Of course, the final permit conditions would limit the permittee to those conditions that met the performance standards during the trial burn.

After a facility conducts a trial burn and submits the results to the permitting agency, the facility may request another trial burn. The facility must, then, submit a new trial burn plan. EPA is proposing to revise Appendix I to clarify this situation. Item L.8.c. specifically relates to situations where the facility did not meet the performance standards set in the trial burn plan and the facility proposes another trial burn, or portions of a trial burn, at improved conditions. Item L.8.c. addresses conducting additional tests to replace one or more of the failed conditions of a trial burn. Before the facility can conduct these tests, it must revise the conditions in the trial burn plan and the permitting agency must approve the revisions through a permit modification. In general, the permitting agency will not approve the modification request to conduct another trial burn unless the facility has provided a sound technical basis, demonstrating that the revised operating conditions are likely to meet the performance standards set in the permit.

EPA is also proposing to classify item L.8.c. as a Class 2 permit modification. The Agency recognizes that this classification represents a change from the preamble language in past incinerator technical regulations. An early incinerator rule preamble states that "if compliance has not been shown and an additional trial burn is necessary, the permit may also be modified under § 122.17 [old minor permit modification language] to allow for an additional trial burn" (See 47 FR 27524, June 24, 1982). This 1982 preamble language describes a trial burn retest of a failed condition. Since 1982, EPA has gained considerable experience regarding trial burns. EPA now believes that if a facility does not meet the regulatory performance standards during the trial burn, then the public needs to be involved before the facility revises the trial burn plan and conducts another test, because the facility's failure under certain conditions may raise concerns. Therefore, EPA believes that the additional public participation requirements of the Class 2 procedures are appropriate for this item. (See proposed § 270.74(c)(7) for the analogous procedures for interim status combustion facilities.)

Furthermore, EPA is proposing to add item L.8.d to address changes to the permit conditions that are in effect during the limited period called the post-trial burn period. (These modifications would currently be addressed under item L.7.a.) Because any changes during the post-trial burn period will be limited in duration, similar to those during the shakedown period, EPA is also reclassifying post-trial burn period modifications from Class 2 to Class 1 permit modifications, with prior approval of the Director.

For the last item in this section of Appendix I, EPA is proposing to move existing item L.7.d. to L.8.e. This item describes revising the final operating conditions to reflect the results of the trial burn. Changes in the final permit should reflect the operating conditions under which the facility met the required performance standards during the trial burn. EPA does not propose changes to the wording of this item.

C. Requirements Regarding the Trial Burn

1. Purpose and Applicability

The purposes of this section of the proposed rule are (1) to make the permitting procedural requirements for interim status combustion units more equivalent to current permitting requirements for new units, particularly with regard to trial burns, and (2) to clarify some administrative permitting procedures for combustion units. In addition, this section contains proposed requirements that will provide for more public involvement opportunities, both earlier in the combustion permitting process and at key points throughout the process.

The requirements in this section apply only to combustion units at both interim status and permitted facilities.

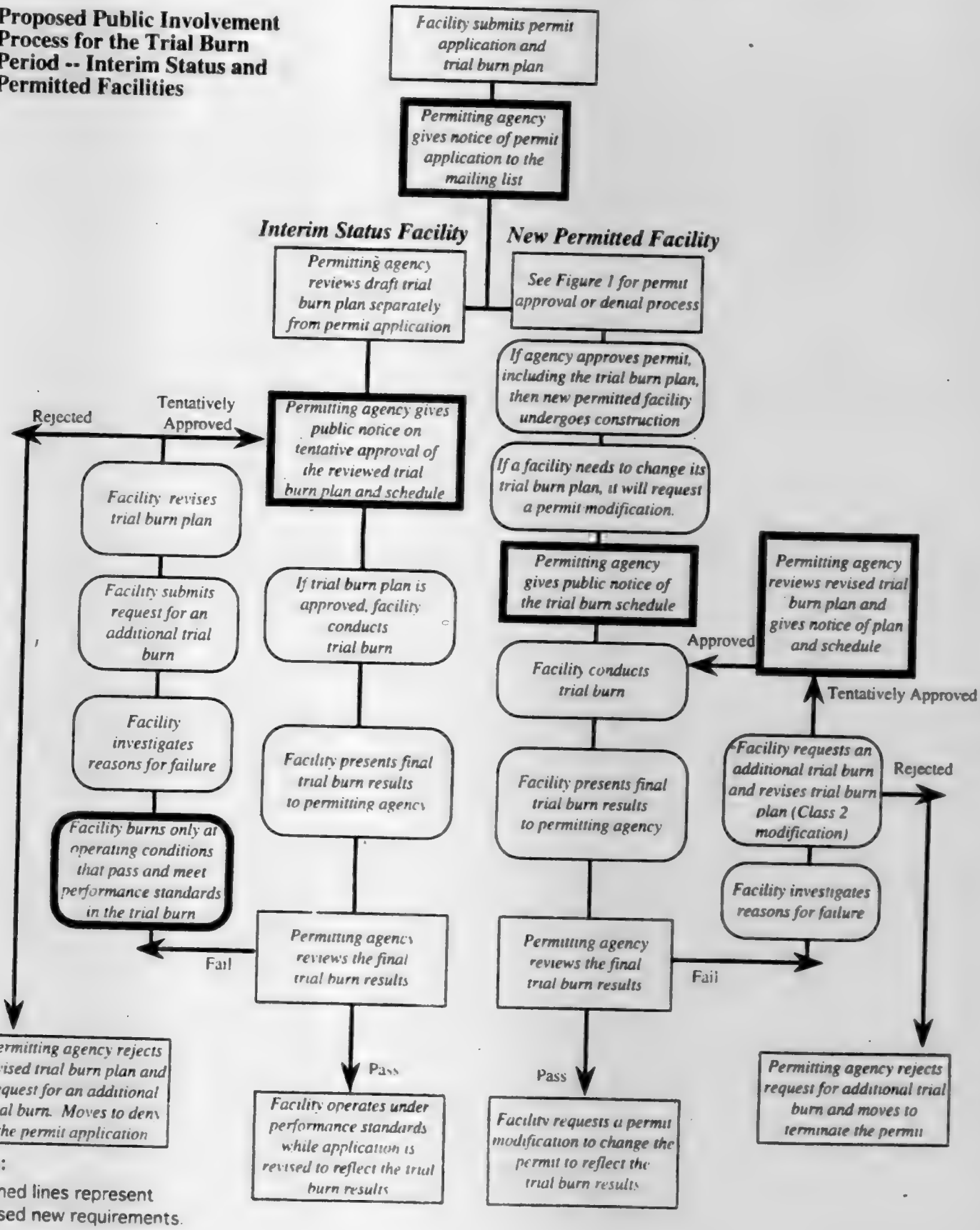
2. Summary of Proposed Approach

EPA is proposing today to create a new § 270.74, which will contain permitting procedural requirements for interim status combustion units. This proposed new section is a consolidation of §§ 270.62(d) and 270.66(g), which currently contain permitting procedural requirements for interim status incinerators and BIFs, respectively. Proposed § 270.74 is virtually identical to §§ 270.62(d) and 270.66(g), except where EPA is proposing additional permitting procedural requirements for interim status units. EPA intends the additional requirements to make the procedural requirements for interim status units more equivalent to the permitting procedural requirements for new units, and to expand public involvement opportunities during the trial burn phase. The flow chart shown in Figure 2 indicates the points in the permitting process where the proposed activities would occur. For instance, the administrative procedural changes EPA is proposing in § 270.74 will require interim status facilities to submit a trial burn plan with their initial Part B applications. Section 270.74 further states that the permitting agency must approve the trial burn plan before the facility conducts the trial burn. These proposed explicit requirements will ensure that interim status facilities conduct trial burns in accordance with approved plans, as do permitted facilities, and do not perform the trial burns before submitting their applications. In another permitting procedural change, EPA proposes to clarify the Director's authority to allow additional trial burns and to deny a permit to an interim status unit if the Director does not believe that the unit is capable of meeting performance standards.

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FIGURE 2

Proposed Public Involvement Process for the Trial Burn Period -- Interim Status and Permitted Facilities



Notes:

Darkened lines represent proposed new requirements.

⬭ denotes action by facility

▭ denotes action by permitting agency

BILLING CODE 6560-50-C

EPA is proposing a new regulatory requirement, not addressed in previous regulations, which pertains to post-trial burn conditions at interim status combustion facilities. EPA is proposing that, upon completion of the trial burn, interim status facilities must operate only under conditions that passed and were demonstrated to meet the performance standards of § 264.343 (for incinerators) or §§ 266.104 through 266.107 (for BIFs), and only if the successful trial burn data are sufficient to set all applicable operating conditions.

Concerning public involvement, the Agency is proposing additional public participation opportunities in the combustion permitting process by requiring public notices at key points in the trial burn process. The Agency would like to build on the public involvement requirements in today's proposed rule and expand them to the trial burn stage. The Agency believes that public involvement opportunities should continue beyond the initial permit application stage and throughout the permitting process. For instance, the proposed rule requires the permitting authority to give public notice of the actual trial burn for both interim status and new combustion facilities. It is important to inform the public of the pending burn and give members of the public an opportunity to participate in this later phase of the permitting process. As mentioned previously in the public involvement segment of the preamble, expanded public participation in the RCRA program and decision-making process is a high priority for the Agency.

3. Current Trial Burn Procedures

Trial burns are an important step in the permitting process for combustion facilities. There are differences in the permitting process for new and interim status combustion facilities, which stem from the original composition of the regulated community in 1980 when EPA first promulgated the RCRA Subtitle C regulations. At that time, Congress granted existing facilities interim status if they complied with notification and application requirements, so they could continue operating while pursuing a permit. Anyone proposing a new facility now had to obtain a permit prior to construction. This distinction between existing and proposed facilities led to differences in the permitting procedural requirements for combustion units. For example, existing combustion facilities that have interim status must conduct a trial burn prior to permit issuance, whereas proposed facilities must obtain a permit before they may construct the combustion unit and then conduct a trial burn.

a. Current trial burn procedures for permitted combustion facilities. The trial burn procedures for new combustion units are currently set forth in § 270.62(b) for incinerators, and § 270.66(c) for BIFs. These regulations require new hazardous waste incinerators and BIFs to submit trial burn plans with their initial Part B permit applications. The actual trial burn is conducted after: (1) The public has reviewed and commented on the permit application; (2) the permitting authority has reviewed and approved the permit application; and (3) the facility has constructed the combustion unit. The permitting authority uses the results of the trial burn to determine whether a facility can meet the applicable performance standards and, if it does, to establish the final operating conditions in the permit that enable the facility to comply with those standards.

The facility or the permitting authority must initiate changes to the trial burn plan through the permit modification procedures in §§ 270.41 through 270.42 (see Section B. Permit Modification Procedures). The permitting authority must approve any modifications before the facility can implement them. Where results of a trial burn show non-compliance with performance standards, a facility would typically be required to either: (1) revise the trial burn plan to test new conditions; or (2) submit a request to the permitting authority to modify the permit to permanently exclude the conditions that resulted in non-compliance. Both the permit review/determination process and the permit modification process have built-in opportunities for public involvement, including procedures for appealing decisions made by the permitting authority.

b. Current trial burn procedures for interim status combustion facilities. The trial burn procedures for interim status combustion units are currently in §§ 270.62(d) and 270.66(g). These requirements are not as detailed as the requirements for new combustion facilities, although it is common practice for owners/operators of interim status facilities to follow many of the requirements for new facilities. For example, the interim status regulations in §§ 270.62(d) and 270.66(g) require facilities to submit the results of the trial burn before permit issuance, but do not explicitly state that facilities must receive permitting agency approval of the trial burn plan before conducting the burn.

The procedures for interim status and new combustion facilities differ in other areas. Contrary to permitted facilities, interim status facilities do not have a permit during the trial burn stage; thus, the permit modification procedures do not apply. As a consequence, the permitting agency currently does not have the same authority to regulate post-trial burn changes by interim status facilities as it does for new combustion facilities, especially in the case of incinerators [BIFs are more highly regulated under interim status].

Unlike the requirements for new facilities, there is no opportunity for public involvement in the permitting process for interim status combustion facilities until after the facility has conducted the burn and the permitting agency issues the draft permit.

EPA believes that many of the requirements for new combustion facilities are appropriate for interim status facilities; the Agency proposes to change the regulations to apply some of these requirements specifically to interim status facilities. It is the Agency's intent, in changing the regulations, to ensure protection of human health and the environment and provide a greater opportunity for public involvement in the permitting process.

4. Discussion of Proposed Permitting Requirements for Trial Burns

EPA is proposing to consolidate the permitting procedural requirements for interim status combustion facilities by moving the incinerator and BIF interim status permitting requirements, found in §§ 270.62(d) and 270.66(g), to proposed § 270.74. In addition, EPA is proposing to amend these requirements to make them more equivalent to the permitting requirements for new combustion units. EPA believes that consolidating the permitting requirements for interim status combustion facilities and distinguishing them from the requirements for permitted facilities will simplify the interim status trial burn process.

The consolidation and movement into proposed § 270.74(a) and (b) will not change the majority of the regulatory language in the existing provisions. However, EPA is proposing additional language that will make interim status permitting procedures more consistent with new facility permitting procedures and expand the opportunities for public participation.

EPA is also revising provisions for submitting data in lieu of a trial burn, § 270.19 for incinerators and § 270.22 for BIFs, to reflect actual Agency practice. As currently written, this waiver, which the permitting agency

can grant to either permitted or interim status units, could be seen as relatively open-ended; yet, in actual practice, permitting authorities have allowed facilities to use the provisions only under a narrow range of circumstances. EPA believes that granting the waiver only under a narrow range of circumstances is appropriate for the reasons discussed below and, therefore, is proposing to revise this provision to specifically restrict application to this narrow range. This revision to the regulatory language will ensure consistency among permit writers. It could also benefit facilities in the following way. The proposed rule will make explicit the strict circumstances under which a permitting agency will grant a waiver. Once a facility knows these circumstances, it will not misuse its resources in compiling a waiver request that the permitting agency will not grant; instead, the facility can focus its resources on developing a trial burn plan.

EPA is concerned that units constructed at different locations at different times, or with slight design or operating differences, may not perform in an identical manner. For example, if the locations are at different altitudes, the differences in atmospheric pressure could affect the performance of the units. In addition, there would likely be different operators running the units at different locations; thus, the units may not be operated in an identical manner.

The Agency believes that the theory of submitting data from other units in lieu of conducting a trial burn is sound; however, sufficient data is not available to ensure that the theory could be applied to real world situations without imposing strict limitations. EPA believes that most combustion units will need to conduct trial burns in order to develop operating conditions that ensure compliance with the performance standards.

To this end, EPA is proposing today to codify EPA's current policy by making the following changes: (1) Replace "sufficiently similar" with "virtually identical"; and (2) specify that the units must be located at the same facility. The "data in lieu of" provision, therefore, would not apply to mobile treatment units when moved from site to site, since they would not be located at the same facility.

a. Submittal of trial burn plans for interim status facilities. Today's proposed rule would require interim status hazardous waste incinerators (proposed § 270.74(a)(1)) and BIFs (proposed § 270.74(b)) to submit a trial burn plan with their initial Part B permit applications. EPA believes that the trial burn plan for interim status facilities should be subject to public notice and available for review with the initial Part B application, as it is for new facilities seeking permits. EPA's objective in proposing these revisions is to involve the public much earlier in the interim status facility permitting process than current regulations require.

EPA intends that today's requirements regarding submittal of the trial burn plans for interim status facilities will: (1) Specify the point in the permit process when the facility submits the trial burn plan, which will be the same point as for new facilities; and (2) explicitly provide that interim status facilities must conduct the burn in accordance with an approved plan

Since EPA is proposing a specific point for trial burn plan submittal in the proposed rule, i.e., with the Part B application, the Agency is deleting the current provisions that refer to the trial burn plan submittal (§§ 270.62(d) and 270.66(g)).

b. Approval of trial burn plans for interim status facilities. In § 270.74(c)(1), EPA is explicitly requiring that any interim status combustion facility that seeks a permit must obtain the Director's approval of the trial burn plan before conducting the trial burn. EPA is also proposing, in § 270.74(c)(4), that the Director, after approving a trial burn plan, must specify a time period during which the facility shall conduct the burn. EPA adds this latter requirement to ensure that facilities conduct trial burns in a timely manner. The Agency believes that requiring the permitting agency's approval of interim status trial burn plans will ensure that the facilities submit plans that reflect, and the permitting authority reviews the plans in the context of, current EPA policy and guidance. EPA also believes that today's proposed requirements will ensure that, in most cases, the burns will supply adequate data and information to set permit operating conditions. This proposed requirement for interim status facilities is equivalent to the permitting procedures for new facilities seeking permits.

It should be noted, however, that unlike the procedures for new facilities, approval of the trial burn plan for interim status facilities is on a separate track from the rest of the permit application. As mentioned earlier in this preamble, a new combustion facility must receive a permit before building the combustion unit and conducting the trial burn. Review and approval of trial burn plans for these facilities is concurrent with review and approval of the entire permit application; the trial burn plan is just one of many components. However, for interim status facilities, the permitting authority does not issue the draft permit, or the notice of intent to deny the permit, until after the facility conducts the trial burn. Since facilities must conduct the burn in accordance with a plan approved by the permitting agency, it is clear that the plan must be on a separate approval track from the rest of the permit application. Furthermore, interim status facilities typically must revise their permit applications to reflect the results of the burn, so that the conditions set in the permit can be based on conditions known to ensure compliance with the performance standards.

c. Notices of trial burns. In today's proposed rulemaking, EPA is seeking to expand opportunities for public involvement during the trial burn phase of the combustion permitting process for both new and interim status facilities. EPA requests comments on whether the facility or the permitting authority should be responsible for publishing the public notices discussed in the following sections.

c.1. Permitted combustion facilities. EPA is proposing, in § 270.62(b)(6) for incinerators and § 270.66(d)(3) for BIFs, to require the Director to send a notice of the expected trial burn schedule to all persons on the mailing list and to appropriate units of State and local government. As mentioned previously in the preamble, the trial burn plan is available for public review at other points in the permitting process (e.g., at application submittal, at draft permit issuance, and at final permit determination). Thus, unlike the notice requirement for interim status facilities, explained in the section below, the notice of the trial burn schedule for permitted facilities does not refer to the trial burn plan.

EPA recognizes that, in a limited number of situations, circumstances beyond the control of the facility or the permitting authority could delay a trial burn. It is not EPA's intent, in these limited situations, to require an additional notice with a revised burn schedule.

The notice must contain the following information, specified in §§ 270.62(b)(6) or 270.66(d)(3): (1) Name and telephone number of the facility's contact person; (2) name and telephone number of the permitting authority's contact office; (3) location where the approved trial burn plan and any supporting documents are available for review; and, (4) the expected time period during which the facility is scheduled to conduct the trial burn. Including this information in the notice enables members of the public to

speak with a person who is knowledgeable about the trial burn plan, and to be aware of an imminent trial burn in their community.

c.2. Interim status combustion facilities. In § 270.74(c)(3), EPA is proposing notice requirements for interim status facilities that are similar to the requirements for permitted facilities. The proposed rule will require the Director to send a notice to all persons on the mailing list and appropriate units of State and local government, informing them of the proposed approval of the trial burn plan and the expected trial burn schedule. The Agency is requiring this notice before the permitting authority approves the plan in order to provide an additional opportunity for the public to review the final draft plan. It should be noted that, for interim status facilities, the Director's decision to approve the trial burn plan is not subject to administrative appeal.

EPA recognizes that the draft plan submitted with the initial Part B application may differ significantly from the final version that the permitting authority approves. EPA wants to ensure that the public has a chance to see the revisions prior to approval and the actual burn. EPA would like to solicit comments on whether the Agency should establish a comment period for interim status facilities prior to approving the trial burn plan, in view of the fact that, for permitted facilities, the public has an opportunity to comment on the draft trial burn plan as part of the draft permit process.

Currently, there are less public involvement opportunities for interim status facilities than there are for permitted facilities, with regard to the review of trial burn plans. As mentioned previously, for permitted facilities, the public has the opportunity to review the trial burn plan at both the application and draft permit phases before a trial burn occurs.

The notice must contain the information specified in proposed § 270.74(c)(3). The notice should include the following: (1) Name and telephone number of the facility's contact person; (2) name and telephone number of the permitting authority's contact office; (3) location where the draft trial burn plan and any supporting documentation are available for review; and (4) a schedule of activities that are required prior to permit issuance, including the date by which the Director expects to approve the plan and the expected time period during which the facility is scheduled to conduct the trial burn and submit results to the Director (refer to proposed § 270.74(c)(4)).

Including this information in the notice enables the public to speak with a person who is knowledgeable about the trial burn plan, receive or review additional information, and learn of an imminent trial burn in their community.

As stated earlier, interim status facilities will conduct the trial burn prior to permit issuance, as required by current regulations. Although the public will have an opportunity to review the trial burn plan, since it must be submitted with the initial Part B application, in accordance with today's proposed requirements in § 270.74(a) or (b), a significant amount of time may elapse before the Director approves the plan and announces the facility's expected schedule for the burn. EPA believes that it is important to inform the public of the Director's proposed approval of the trial burn plan, separate from the rest of the Part B permit application, and the anticipated time period for conducting the burn. Again, this is consistent with the Draft Combustion Strategy goal of promoting public involvement in the trial burn stage.

d. Post-trial burn period at interim status combustion facilities. In today's rule, EPA is proposing that interim status combustion facilities be subject to the performance standards of § 264.343, for incinerators, or §§ 266.104 through 266.107, for BIFs, upon completion of the trial burn. During the post-trial burn period, interim status facilities must operate only under conditions that passed and were demonstrated to meet these performance standards, and only if the successful trial burn data is sufficient to set all applicable operating conditions. EPA has provided information, in its June 1994 Guidance on Trial Burn Failures, for determining whether conditions resulted in non-compliance and under what circumstances successful data from the trial burn is sufficient to set all applicable operating conditions.

This proposal is more stringent than current regulations and practices. Currently, no regulations provide for setting post-trial burn conditions at interim status facilities. EPA believes that these proposed regulations will give the permitting agency the direct authority it needs to restrict these interim status facilities' operations to ensure that they are in compliance with the basic performance standards applicable to permitted facilities during the post-trial burn period. Establishing these requirements will ensure that interim status combustion facilities are operating in a manner that is protective of human health and the environment during the post-trial burn period.

This proposed requirement for interim status facilities is consistent with the post-trial burn requirements for permitted facilities. It is also consistent with EPA's draft model permit (September 1988), which has wording for the permitting agency to incorporate into combustion permits regarding temporary restriction of operating conditions following the trial burn.

Today's proposed rule supports and builds upon the language contained in the draft model permit. EPA is proposing that if the trial burn data for an interim status combustion facility show non-compliance with any set of the performance standards, then the facility will be required to (1) immediately cease operating under the condition(s) that resulted in non-compliance and (2) notify the Director. The facility may only continue operating if there are enough successful data from the trial burn to set all applicable operating conditions, and the facility is able to modify its design and/or limit its operating conditions to operate within the performance standards.

For example, one component in establishing a complete set of operating conditions is determining a maximum and a minimum combustion temperature. A maximum temperature is important for the metals volatilization standard; a minimum temperature is important for the destruction and removal efficiency (DRE) standard. For the sake of simplicity, this example assumes that the facility tested under only two temperature conditions, a high and low temperature, and that all other variables remained constant. By setting minimum and maximum temperature limits, the test burn can establish an operating "envelope," in other words, a range of temperatures within which the facility can operate safely in compliance with the performance standards. If the trial burn results show that the high temperature was successful, but that the low temperature was not sufficient to meet performance requirements, then there may not be enough successful data to set all applicable operating conditions. In this example, the facility would be required to stop operating.

On the other hand, following up on the above example, a facility may want to run tests over a range of temperatures in order to avoid shutdown. By running multiple temperature tests, the facility could attempt more conservative tests, as well as tests that would push the combustion unit's operating envelope. For instance, a facility may plan to conduct multiple tests to establish its minimum operating temperature. Thus, a facility may choose to test at two

temperatures, e.g., low and medium. If the trial burn results show that the low temperature could not meet the performance standards, but the medium temperature did, then enough successful data would exist to set all applicable operating conditions. In this scenario, the facility would restrict its operations to burn between the medium and the high temperature during the post-trial burn period and, thus, would continue operating within the performance standards.

EPA intends for the facility to be responsible for restricting its operations if any of the trial burn data show non-compliance with performance standards. If the facility wishes to continue operating under restricted conditions during the post-trial burn period, it must provide to the Director a description of the conditions under which it is operating, and a preliminary explanation of how the conditions were determined to be sufficient to ensure that the unit functions within the performance standards. EPA is proposing to require facilities to submit this information with the trial burn results. As currently required in §§ 270.62(b)(7) and (8) for incinerators, and 270.66(d)(3) and (4) for BIFs, facilities must submit the results of the trial burn and any data from the trial burn within 90 days of conducting the burn. As part of the proposed consolidation of the permitting procedural requirements for interim status combustion facilities, EPA has also reiterated this requirement by incorporating it, by reference, into § 270.74(c)(5).

EPA is proposing, in § 270.74(c)(6), to give the Director the discretion to further restrict operating conditions during the post-trial burn period to ensure that the unit is operated within the performance standards. The Director will make a determination on the need for further restrictions after reviewing the trial burn data and the preliminary explanation submitted by the facility within 90 days of the trial burn. The Director will inform the facility, in writing, of any operational restrictions that he or she is imposing on the facility beyond those listed by the facility in its preliminary explanation.

e. Additional trial burns. The existing permit modification procedures (§ 270.42) contain provisions to address additional trial burns at permitted combustion facilities. As mentioned previously, public involvement opportunities are built into the permit modification procedures. The procedures require the permitting authority to notify the public when any change is made to the existing permit through these procedures. Since the permit modification procedures do not apply to interim status facilities, EPA is proposing, in § 270.74(c)(7), to specify requirements for additional trial burns at interim status combustion facilities. As discussed in the previous section, if any results of a trial burn at an interim status combustion facility show non-compliance with any set of the performance standards, the facility must restrict its post-trial burn operations to conditions that passed and demonstrated compliance with performance standards. At this point, there are two potential courses of action a facility may follow. On one hand, the facility may choose to revise its Part B application to exclude those conditions. A facility that opts for this course of action is, in essence, choosing not to pursue those conditions in its final permit. For example, if the facility failed conditions relating to burning of aqueous wastes, it may decide to restrict its long-term operations by handling only non-aqueous wastes; the facility would then reflect that decision in its permit application.

Alternatively, a facility may choose to revise its trial burn plan to address the reasons for the failure and then conduct an additional burn under improved design or operating conditions. EPA believes that the majority of facilities that fail trial burn condition(s) will choose this latter course of action in order to establish permit conditions that meet their needs for long-term operation.

EPA believes that there may be a misconception that permitting authorities allow facilities to run the same conditions over and over again without making any changes. The Agency would like to remove any confusion over its policy regarding performance of additional trial burns when a test condition fails. It is important first to recognize that a facility spends a considerable amount of time and resources on the trial burn, and intends to pass the first time. An informal poll of EPA Regions showed that only a dozen additional trial burns for incinerators have occurred to date.

Furthermore, EPA has clarified, in its Guidance on Trial Burn Failures (June 1994), the circumstances under which facilities would be allowed to run additional trial burns. According to this guidance, facilities may submit a request to conduct an additional trial burn to the Director. As part of this request, the facility should demonstrate that it has investigated the reasons for the failure and describe planned substantive changes to its process. A facility should not be allowed to retest under the same design and operating conditions at which it failed. The facility should demonstrate in a revised trial burn plan that the changes to its design and/or operations are sufficient to prevent failure from reoccurring. The Director reviews, and either approves or denies, the request. The Director should not approve an additional trial burn unless the facility has demonstrated satisfactorily that the changes proposed in the revised trial burn plan are likely to meet the performance standards.

As indicated in the trial burn guidance, existing EPA policy allows for facilities to conduct additional trial burns. Current regulations, on the other hand, do not specifically address permitting procedures for interim status combustion facilities for the limited number of situations when facilities would request additional burns. Today's proposed rule establishes procedures for these situations and builds upon EPA's current policy by incorporating the circumstances described in guidance into proposed regulatory language.

Under proposed § 270.74(c)(7), interim status combustion facilities may request an additional trial burn. According to the proposed section, the facility's request for an additional trial burn must contain an explanation of the reasons for the previous trial burn failure, as well as a revised trial burn plan that has substantive changes to address the reasons for the previous failure. EPA encourages facilities that pursue this option to fulfill the above requirement by expanding the preliminary explanation that they are required to provide in order to continue operating during the post-trial burn period (as discussed in the previous section). The Agency believes that these provisions, along with the requirement that the permitting agency approve trial burn plans before the facility conducts the burn, will help ensure that facilities conduct trial burns properly and the public is informed throughout the process.

EPA believes it is important to inform the public when the permitting authority anticipates an additional trial burn. Thus, in proposed § 270.74(c)(7), the rule will require the Director to inform the people on the mailing list and appropriate units of State and local government once he or she has reviewed the revised trial burn plan and has tentatively decided to approve it. This notice will provide the public with an opportunity to review the revised plan, and see the rationale for the additional burn. EPA wants the public to be aware of the reasons why the facility believes the additional run will be successful. The Director's decision to approve a

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revised trial burn plan is not subject to administrative appeal.

f. Denial of permit application after the trial burn. There may be occasions when a combustion facility cannot demonstrate compliance with the performance standards through the trial burn, or has not demonstrated to the Director that an additional burn is likely to address the causes of the previous failure. In the case of permitted facilities, the Director may choose to terminate the permit. Existing regulations in § 270.43 provide the Director with the authority to terminate a permit for cause, following procedures set forth in part 124.

EPA would like to provide similarly clear authority to the Director in the case of interim status combustion facilities. Existing regulations in § 270.29 provide the Director with authority to deny a permit application, pursuant to procedures in part 124. In order to clarify the applicability of this provision to trial burn failure situations, EPA is proposing, in § 270.74(c)(8), to provide specific authority for the Director to deny a permit, pursuant to procedures in part 124, for an interim status combustion facility, based on the facility's inability to demonstrate compliance with the performance standards. It is not EPA's intent, in providing this authority, to imply that the Director would deny a permit automatically if the facility failed any of the trial burn plan conditions. Every facility, permitted and interim status alike, will have the option of requesting and proving that it can meet the requirements for an additional burn.

In keeping with EPA's goal of involving the public at key points in the permit process, EPA would like to reiterate that the current procedures for permit denial, set forth in part 124, include requirements for the permitting authority to notify to the public of intent to deny the permit application.

IV. Solicitation of Comments

EPA is soliciting comments on a number of items in today's proposed rule. The following is a list of the items on which EPA solicits comment in the preamble. Detailed discussions of each of the items can be found in the relevant sections of the preamble. For ease in referencing these sections, the items are briefly summarized below.

A. Expanded Public Participation

1. Equitable Public Participation

EPA is asking for comments, in section 4.a: Equitable Public Participation, on how the requirements proposed in § 124.30 could be implemented.

2. Environmental Justice

EPA is soliciting comments, in section 4.a.1: Agency activities dealing with environmental justice, on several items relating to environmental justice. For instance, EPA is interested in receiving comments on ways to incorporate environmental justice concerns into the RCRA public participation process. EPA is also requesting comments on the need for additional rulemaking or policy guidance for incorporating environmental justice into certain aspects of the RCRA permitting program, such as corrective action. The Agency is also interested in receiving comments on suggested methodologies and procedures for undertaking analysis of "cumulative risk" and "cumulative effects" associated with human exposure to multiple sources of pollution. Finally, EPA is soliciting comments on some of the recommendations developed by the OSWER Environmental Justice task force, discussed in section 4.a.1.

3. Pre-Application Meeting—Applicability

EPA is soliciting comments on the applicability of the pre-application meeting requirements in two sections. In section 4.b: Applicability of Pre-application Meeting, EPA is requesting comments on whether the pre-application meeting should apply to permit renewal applications. In section 5.b: Requirements for the Pre-application Meeting, EPA is requesting comment on whether the requirements should apply to all facilities or only to certain groups (e.g., incinerators, commercial facilities). EPA is also requesting comments on whether the permitting authority should attend the pre-application meeting.

4. Pre-Application Meeting—Possible Alternative

In section 4.b: Applicability of Pre-application Meeting, EPA is requesting comments on whether a State's public participation meeting for siting a facility should be an allowable substitute for today's proposed pre-application meeting.

5. Pre-application Meeting Notice Requirements

As discussed in section 5.b.1: Providing Notice of the Pre-application Meeting, EPA would like comments on whether these expanded notice requirements should apply to other notices during the RCRA permitting process. EPA also requests comments on how to implement the alternative notice provision in the regulations without prescribing a specific formula or approach that may not be appropriate in all circumstances.

6. Public Notice at Permit Application—Applicability

EPA is requesting comments in section 4.c: Applicability of Public Notice at Permit Application on whether today's proposed requirements should also apply to post-closure permits.

7. Public Notice at Permit Application—Responsibility

In section 5.c: Requirement for Public Notice at Permit Application, EPA is requesting comments on whether the permitting authority or the facility should be responsible for providing the public notice at application submittal.

8. Information Repository

EPA is requesting comments on the proposed information repository requirements described in section 5.d: Requirement for an Information Repository. For example, at what time during the permitting process would it be useful to have the repository be maintained or terminated? Should the repository be limited to certain types of facilities? What specific documents would the public like to see in the repository?

B. Requirements Regarding the Trial Burn

1. Notices of Trial Burns

In section 4.c: Notices of Trial Burns, EPA is requesting comments on whether the permitting authority or the facility should be responsible for providing public notices during the trial burn stage. EPA is also requesting comments, in section 5.c.2: Interim Status Combustion Facilities, on whether the Agency should establish a comment period for interim status facilities prior to approving the trial burn plan, in view of the fact that, for permitted facilities, the public has an opportunity to comment on a draft trial burn plan as part of the draft permit process.

C. Cost Estimates

In section VI. Regulatory Impact Analysis Pursuant to Executive Order 12866, EPA is asking for comments on the data and methodologies used to derive the cost estimates associated with this proposed rule.

EPA intends to consider all comments on these, and any additional, items before drafting a final rule.

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program within the state (see 40 CFR part 271 for the standards and requirements for authorization). Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized states have primary enforcement responsibility.

Prior to enactment of the Hazardous and Solid Waste Amendments (HSWA) of 1984, a state with final RCRA authorization administered its hazardous waste program entirely in lieu of the federal program. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal requirements were promulgated or enacted, the state was obligated to enact equivalent authority within specified timeframes. However, the new federal requirements did not take effect in an authorized state until the state adopted the requirements as state law.

In contrast, HSWA amended RCRA to add section 3006(g) (42 U.S.C. 6926(g)). Under section 3006(g), new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in nonauthorized states. EPA is directed by statute to implement those requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA-related provisions as state law to retain final authorization, the HSWA requirements are implemented by EPA in authorized states in the interim.

Today's proposal is promulgated pursuant to pre-HSWA authority. These provisions, therefore, would become effective as RCRA requirements in states with final authorization once the state has amended its regulations and the amended regulations are authorized by EPA. However, EPA would like to encourage States to adopt the changes proposed today expeditiously, and implement them as part of their own programs as rapidly as possible.

B. Effect on State Authorizations

The provisions of this rule are proposed under pre-HSWA authority. This section discusses the implications of the pre-HSWA authority on EPA's and the states' implementation, and the schedule for state adoption of these new requirements.

1. Pre-HSWA Provisions

a. Part 270—Hazardous Waste Permitting. The provisions of today's proposal that would affect the permitting and permit modification procedures for combustion units (BIFs and incinerators) are proposed under pre-HSWA authority. These provisions include revised §§ 270.22(a) and 270.19(d) which clarify allowable circumstances for using the "data in lieu of trial burns" in connection with permitting combustion units; proposed § 270.74, and revisions to §§ 270.62 and 270.66 for permitted units, which would add new procedures for public involvement in the trial burn planning and trial burn phases for both permitted and interim status combustion facilities, make interim status procedures more equivalent to permitted, and require interim status facilities to comply with performance standards during the post-trial burn period. In addition, the proposed amendments to the permit modification provisions of § 270.42 (to distinguish further between the shakedown and trial burn phases when modifying permitted combustion units) are also based on pre-HSWA provisions. These provisions of the proposal, since they are based on pre-HSWA authority, will apply immediately only in those states that do not have RCRA authorization. In authorized states, these requirements will not apply until the states revise their programs to adopt requirements under state law that are at least as stringent and have these new requirements approved by EPA.

b. Part 124—Public Participation Requirements. EPA desires to provide for, encourage and assist public participation. This proposed rule would establish procedures to promote better and more timely information sharing between the public, the state, EPA, and the facility applicant. The following is required under the part 124 regulations to comply with new public participation requirements: A pre-application meeting, a notice of application, and an information repository. However, these provisions, since they are based on pre-HSWA authority, will apply immediately only in those states that do not have RCRA authorization. In authorized states, these requirements will not apply until the states revise their programs to adopt requirements under state law that are at least as stringent and have these new requirements approved by EPA.

2. Procedures Applicable to Pre-HSWA Provisions

40 CFR 271.21(e) requires that states that have final authorization must modify their programs to reflect federal program changes and must subsequently submit the modifications to EPA for approval. The deadlines for state modifications are set out in § 271.21(e)(2), and depend upon the date of promulgation of final rules by EPA, announcing the program changes. For example, if a final regulation based on this proposal is promulgated by EPA before June 30, 1995, the deadline by which the states must modify their programs to adopt this regulation would be July 1, 1996 (or July 1, 1997 if a state statutory change is needed). These deadlines can be extended in certain cases (see 40 CFR 271.21(e)(3)). Once EPA approves the modifications, the state requirements become RCRA subtitle C requirements.

States with authorized RCRA programs may already have requirements similar to those proposed today. These state regulations have not been assessed against final federal regulations to determine whether they meet the tests for authorization. Thus, similar provisions of state law are not considered to be authorized RCRA requirements until they are submitted to EPA and evaluated against final EPA regulations. Of course, states may continue to administer and enforce their existing standards as a matter of state law.

States that submit their official applications for final authorization less than 12 months after the effective date of final standards are not required to include standards that are at least as stringent as these standards in their application. However, states that submit final applications for final authorization 12 months or more after the effective date of the final standards must include standards that are at least as stringent as these standards in their applications. 40 CFR 271.3 sets forth the requirements that states must meet when submitting final authorization applications. Because the proposed public participation requirements in § 270.74 represent a significant upgrade to the combustion unit permitting process, EPA strongly encourages States that have not yet adopted the BIF rule (56 FR 7134, February 21, 1991) to adopt these new public participation procedures concurrently with their BIF rules, rather than deferring their adoption to the much later deadline that would apply under the Cluster Rule to this new regulation. It should be noted that in situations where EPA retains permitting

authority for BIFs (because the State has not yet received authorization for BIFs). EPA may implement both the permitting and public involvement procedures described in today's proposed rule. In this joint permitting situation, EPA would be the responsible Agency for the BIF permitting requirements in unauthorized States that are not authorized to issue BIF permits.

EPA believes that the overall effect of this proposed regulation would increase the stringency of the RCRA permitting processes. Therefore, all authorized states will be obligated to modify their programs to adopt these requirements when they are finalized by EPA, unless their existing state programs and laws are deemed by EPA to be equivalent in effect. For those states which are obligated to modify their programs to adopt these requirements when they are finalized by EPA, § 271.21(e) deadlines for state modifications will apply accordingly.

In developing today's proposed regulations, EPA was sensitive to impacts on existing State programs. The proposed requirements may be viewed as performance objectives the Agency wants States to meet. It is not EPA's intent to restrict States from using similar activities that accomplish the same objectives. Therefore, EPA will allow latitude and room for interpretation when reviewing state modifications for adopting these regulations.

VI. Regulatory Impact Analysis pursuant to Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has determined this is a significant rule under Executive Order 12866. Pursuant to the terms of Executive Order 12866, this section of the preamble summarizes the potential economic impacts of the proposed RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures rule.

Based upon the economic impact analysis for today's proposed rule, the Agency's best estimate is that the requirements regarding expanded public participation before and during permit application would result in an incremental national annual cost of $130,000 to $380,000.

In addition, the annualized incremental national cost of the permitting requirements in today's proposed rule is estimated to be between $0 to $520,000. EPA expects that much of the effect of the permitting provisions in today's proposed rule will be to clarify and codify current practice.

Based upon the economic impact analysis for today's proposed rule, the Agency's best estimate is that the requirements of today's proposed rule would result in an incremental national annual cost of $130,000 to $900,000.

A complete discussion of the economic impact analysis is available in the regulatory docket for today's proposed rule in a report entitled "Economic Impact Analysis for the Proposed RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures Rule."

EPA requests comments on the data and methodologies used to derive the estimates described below and in the background document.

A. Cost Analysis

This section summarizes estimated costs and potential impacts of two aspects of today's proposed rule: (1) Expansion of opportunities for public involvement in the permitting process, and (2) modification of combustion unit permitting requirements. These two pieces of the proposed rule affect a different universe of facilities at different stages in the permitting process and, thus, are presented separately.

1. Expanded Public Involvement Opportunities

Most of the requirements of the expanded public involvement portion of today's proposed rule apply only to new hazardous waste treatment, storage, and disposal permit applications. With the exception of the information repository requirement (see below), the expanded public involvement requirements do not apply to post-closure permits and permit modifications.

EPA estimates that, over the next ten years, the bulk of new permit applications will be submitted by the 159 interim-status boilers and industrial furnaces (BIFs). In addition, based on information provided by the Regional permit writers, EPA estimates that an additional 53 to 127 new treatment, storage, and disposal facilities (for a total of 212 to 286 facilities) will submit permit applications over the next ten years.

Today's proposed rule includes several requirements that would result in direct costs to facilities submitting new permit applications. The analysis estimates the costs to all affected facilities of (1) Preparing a public notice announcing the intention to submit a permit application and to hold a public meeting; (2) disseminating the public notice in local newspapers and over the radio; and (3) holding a public meeting and preparing a transcript.

In addition, for communities with a non-English speaking population, the rule will require the facility to "make all reasonable efforts to communicate with the community in ways that reach all segments." Based on conversations with RCRA and Superfund Regional community relations specialists and on data about existing RCRA facilities, this analysis assumes that between 5%–30% of the facilities (11 to 86 facilities over the next ten years) will fulfill this requirement by publishing multi-lingual notices and providing an interpreter at the public meeting.

Finally, the rule will give the Director the discretion to require a facility to set up an information repository, based on the level of public interest or other factors. This requirement can apply anywhere in the permitting process, including post-closure permits, permit renewals, and permit modifications. Thus in addition to the interim status BIFs and the new facilities mentioned above, the repository requirement can apply, at the discretion of the Director, to the approximately 4,100 treatment, storage, and disposal facilities that EPA expects will undergo permit renewals, modifications, or closure over the next ten years. EPA estimates that 15–20% of the estimated 212 to 286 facilities submitting a new Part B application, and 1% of the 4,100 already-permitted facilities (73 to 98 facilities total) would be affected over the next ten years by the repository requirement in today's proposed rule.

The total cost per facility of the above requirements is approximately $5,000 to $14,000. Annualized over a ten-year period, using a 7% discount rate, the resulting national annual cost of the expanded public involvement requirements is estimated to be between $130,000 to $380,000.

2. Modification of the Permitting Process

a. Direct costs. Today's proposed rule includes two new permitting requirements that have direct cost implications for the regulated universe: (1) Changing the "data in lieu of" requirements, and (2) specifying the events that follow a trial burn failure.

Currently, interim status combustion facilities have the option of submitting "data in lieu of" a trial burn for a unit that is "sufficiently similar" to an already-permitted unit. Today's proposed rule proposes changing the requirements for "data in lieu of" by requiring the units to be "virtually identical" and to be located at the same facility.

Based on information from trial burn contractors, preparing a trial burn plan and conducting a trial burn costs about $110,000 to $550,000 per facility. Submitting "data in lieu of" a trial burn is assumed to cost approximately the same as preparing a trial burn plan, or $10,000 to $50,000. The net incremental cost of denying the "data in lieu of" option would be $100,000 to $500,000 per affected facility.

EPA estimates that between zero and eight percent (0–13 facilities total) of the interim-status BIFs could incur a cost of doing a trial burn due to this proposed rule. The resulting annual national cost is $0 to $520,000.

The low end of the affected facility universe is "zero" because, although submission of "data in lieu of" a trial burn is an option under current regulations for a facility with "sufficiently similar" units, it appears that facilities almost never exercise this option. EPA guidance on trial burns states that "although it is possible to satisfy this requirement by submitting information showing that a trial burn is not required, this is a rare occurrence * * *."[2] Neither of the trial burn contractors that were contacted was aware of a successful "data in lieu of" application. Regional permit writers knew of a few permits that were granted based on the "data in lieu of" provision, but in those cases the units were determined to be identical and, therefore, would still qualify under today's proposal. Thus it is likely that the main effect of changing the "data in lieu of" provision will be to clarify already existing practices, and to reflect more realistic situations and how EPA currently interprets this provision.

The second permitting requirement that may result in a direct cost to the regulated community is the delineation of the process following a trial burn failure. Today's proposed rule proposes that, following a trial burn failure, (1) The combustion facility must immediately restrict operation for those conditions that failed the trial burn, and (2) the combustion facility must either revise the permit application to reflect the new conditions (estimated cost $5,100), or revise the trial burn plan and rerun the trial burn (estimated cost $110,000 to $550,000).

EPA estimates that 4% of interim status combustion units (six facilities over the next twenty years) will fail a trial burn for one or more conditions. Of these, 17% (one facility) is expected to simply revise the permit application and 83% (five facilities) are expected to revise the trial burn plan and rerun the trial burn. Annualized over a ten year period, discounted at 7%, the resulting annualized national total cost of facility actions that follow a trial burn failure is $70,000 to $340,000.

Although the above costs can be attributed to today's proposed rule, EPA does not expect there to be any true incremental costs. Currently, if an interim status facility fails a trial burn, the permitting authority can deny the permit. In addition, based on conversations with EPA Regional permit writers, no permit writer would grant a permit to a facility that failed the trial burn unless the facility re-ran (and passed) the trial burn or revised the permit conditions. Thus, the incremental cost of this proposed requirement, when current practices are taken into account, is $0. The main effect of the delineation of the process that follows trial burn failures would be to clarify current permitting requirements.

In summary, the potential annualized total national cost for the permitting section of today's proposed rule is estimated to be $70,000 to $860,000. The annualized incremental cost, when current practices are taken into account, is estimated to be between $0 to $520,000. EPA expects that the main effect of the permitting provisions of today's proposed rule will be to clarify and codify current practice.

b. Other effects. In addition to the costs estimated above, the requirement that interim status combustion facilities be subject to the performance standards of § 264.342 (for incinerators) or § 266.104 through § 266.107 (for BIFs) upon completion of trial burn has the potential to impose costs due to the restricted operating conditions.

However, despite the proposed restriction following trial burn failure, operations at the affected units are not expected to cease entirely, because the proposed restriction on operations pertains only to the condition(s) that fail to meet the specifications in the trial burn plan. The unit can continue operations under a modified design and/or operating conditions that are sufficient to allow the unit to function within the performance standards. In addition, the restriction lasts only until the trial burn plan is revised and a new trial burn occurs or the permit application is modified. Therefore, EPA does not expect this provision to significantly disrupt facility operation or impose significant additional costs.

B. Summary of Benefits

The RCRA permitting program was developed to protect human health and the environment from the risks posed by the treatment, storage, and disposal of hazardous waste. By improving and clarifying the permitting process, today's proposed rule produces environmental benefits that result from a more efficient permitting process. Below is an explanation of how each of the provisions of today's rule provides benefits.

1. Expanded Public Involvement Opportunities

The main benefit of the expanded public participation requirements of today's rule is to provide more opportunities for the public to become involved early in permitting decisions regarding hazardous waste storage, treatment, and disposal facilities that may ultimately affect their communities. EPA believes these requirements will allow applicants and permitting authorities the opportunity to address public concern in making decisions about the facility and the proposed permit.

Providing the public with an expanded role in the permit process, by promoting community participation and input at all decision-making levels, also will help to foster continued community involvement after sites become permitted.

In addition, expanding public involvement opportunities should streamline the permitting process, since public issues will be raised and addressed earlier in the process. Currently, the public does not formally get involved in the permitting process until the draft permit stage. This stage occurs after the permitting agency and

[2] Guidance on Setting Permit Conditions and Reporting Trial Burn Results. US EPA January 1989

the permit applicant have discussed crucial parts of the Part B application; thus, the public feels that most major decisions on the permit have already been made at this point.

2. Modification of the Permitting Process

One benefit of the permitting provisions of today's rule is to clarify current practices and, therefore, facilitate the permitting process by making it easier to understand for the public and the regulated community.

For example, today's proposal moves § 270.62(d) and § 270.66(g), which address interim status requirements, to proposed § 270.74, where the majority of the interim status provisions are contained. The wording is essentially the same, clarifying when the facility must submit the trial burn plan and emphasizing that the permitting authority must approve the trial burn plan before the facility may conduct the trial burn. The new language structure presents the requirements chronologically and makes the regulation easier to understand.

EPA is also stating in § 270.74(c)(1) that interim status combustion facilities seeking permits must receive approval of the trial burn plan by the Director before conducting the trial burn. EPA believes that making the requirements more explicit will ensure that trial burn plans reflect EPA policy and guidance, and that the burns will be adequate to set permit operating conditions. As discussed in the cost analysis section, EPA is also proposing a revision of the provision for submitting data in lieu of a trial burn (§ 270.19 for incinerators and § 270.22 for BIFs) to reflect current practices.

By specifying that a unit must be "virtually identical" to, and at the same facility as, a permitted unit, instead of "sufficiently similar", today's rule will remove any confusion surrounding the interpretation of the "data in lieu of" option and will reflect EPA's current interpretation of this provision.

Another aspect of the permitting process that may cause confusion is the fact that, although existing EPA policy allows the facility to conduct additional trial burns, current regulations do not specifically address permitting procedures following an interim status facility trial burn failure. Today's proposed rule, by clarifying existing EPA policy, will help state what actions follow a trial burn failure.

Finally, today's proposed rule describes in more detail the phases of both shakedown and the trial burn permit modifications listed under section L.7 of Appendix I, and clarifies how a facility may implement and utilize section 270.42(d) of the modification procedures. This revision will simplify a facility's compliance with the modification process by making it easier for a facility to select the appropriate classification for the modification activity.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If the analysis identifies affected small entities, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Act are only those "businesses, organizations and governmental jurisdictions subject to regulation."

In developing the proposed regulations for expanding public involvement in the RCRA permitting process, EPA was sensitive to the needs and concerns of small businesses. Therefore, the proposed regulations describe the minimum efforts necessary to fulfill the public involvement requirements. Additional examples of activities facilities may choose to conduct are provided in the preamble, rather than incorporated into the regulatory language. EPA's intent in doing so is to provide flexibility for a facility to determine how elaborate it wishes to be in conducting public involvement activities. In addition, EPA recognizes that, in some situations, an information repository could become resource intensive for a facility or for the local community. EPA has addressed this concern by providing discretion to the Director to determine whether to require a repository, rather than requiring it for all facilities.

In regards to the burden placed on facilities that burn small quantities of hazardous waste, EPA has already provided an exemption under section 3004(q)(2)(B) of RCRA. The Agency carefully evaluated the risks posed by small quantity burning and concluded that a conditional exemption for small quantity burners should be allowed where hazardous waste combustion poses an insignificant risk. This small quantity burner exemption would therefore reduce the burden placed on small entities from the revised permitting requirements for hazardous waste combustors.

The following sub-sections summarize the potential impacts on small entities of three aspects of today's proposed rule: expanded public participation requirements, revised requirements for "data in lieu of" a trial burn, and requirements following a trial burn failure. In summary, EPA has determined that there are no significant impacts on small entities from the requirements of this proposed rule.

1. Small Entity Impacts of Expanded Public Participation Requirements

The universe of facilities affected by the public participation requirements include all facilities submitting a new part B application. In the case of the repository requirement, facilities undergoing permit modification or closure may also be affected.

Determination of which facilities that submit new part B applications might be small entities is somewhat speculative. Assuming future RCRA facilities will resemble past facilities, approximately 12% of the estimated 53 to 127 new hazardous waste treatment, storage, and disposal facilities may be "small entities."[3] In addition, 14 of the 159 interim status BIFs are owned by companies that are potentially "small entities," based on current size thresholds established by the U.S. Small Business Association.[4,5]

As mentioned in the cost analysis section, the highest total cost of the public participation requirements is estimated to be $14,000 per facility. This cost includes setting up an information repository, translating public notices, and interpreting public meetings. Annualized over ten years at a discount rate of 7%, the cost for a facility, as the high end of the cost range, would be $1,900 per year.

This $1,900 per year may have a significant impact on a small entity if it is greater than five percent of the total cost of production. Thus a facility whose total cost of production is less than $37,000 may be significantly impacted. It is highly unlikely that the cost of production would be this low for a RCRA hazardous waste facility. Total sales for "small entity" BIFs range from $1.3 million to $87.3 million for the individual facilities and $19.1 million to $513 million for the parent companies.[6]

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[3] Hazardous Waste TSDF—Regulatory Impact Analysis for Proposed RCRA Air Emission Standards, Final Review Draft, USEPA, Office of Air and Radiation, August 1989. "Small entity" was defined as a company whose uniform annual sales cutoff is equal to $3.5 million.

[4] 13 CFR part 121.

[5] Employment, sales, industry category, and parent company information was obtained from on-line searches of Dun & Bradstreet and the American Business Directory. In addition to the fourteen BIFs that were identified as potentially small entities, another four did not have enough information to make a determination.

[6] Ibid

Costs of production would presumably be in the same order of magnitude. Thus EPA has determined that there are no significant impacts on small entities from this provision of the proposed rule and that alternative regulatory approaches are not necessary.

2. Small Entity Impacts of Revised Requirements for "Data in Lieu of" a Trial Burn

The universe of facilities potentially affected by the revised requirements for "data in lieu of" a trial burn include interim-status BIFs that would have used the "data in lieu of" exemption, but because of the revised requirements of the proposed rule, would now not be allowed to do so. As mentioned above, 14 of the 159 interim status BIFs are owned by companies that are potentially "small entities."

As mentioned in the cost analysis section, the revised requirements for "data in lieu of" a trial burn have a potential direct incremental cost of $0 to $500,000 per affected facility, or an annualized cost of $0 to $47,000 per facility (over ten years at 7% discount rate, assuming costs occur in year one). The high end of the cost range would be caused by trial burn costs that are imposed due to tightening of the "data in lieu of" requirement. Because total sales for "small entity" BIFs range from $1.3 million to $87.3 million for the individual facilities and $19.1 million to $513 million for the parent companies,[7] the costs of the "data in lieu of" requirement are less than 5% of total sales for any one facility and therefore not likely to significantly impact small entities.

Furthermore, the "data in lieu of" requirement is not a new requirement, but simply a codification of current policy. Currently, this requirement can only be applied at facilities with multiple units. Such facilities are not likely to be small entities; therefore a tightening of the "data in lieu of" requirement would not affect small entities. Thus EPA does not expect the revised requirements for "data in lieu of" a trial burn to impact small entities.

3. Small Entity Impacts of Requirements Following a Trial Burn Failure

The universe of facilities potentially affected by the requirements following a trial burn failure include interim-status BIFs that fail their trial burn for one or more condition. As mentioned above, 14 of the 159 interim status BIFs are owned by companies that are potentially "small entities." As explained in the cost analysis section, EPA does not expect there to be any major incremental costs to those facilities that fail a trial burn and, therefore, does not expect the proposed rule requirements to have any significant impacts on small entities.

D. Enhancing the Intergovernmental Partnership

Executive Order 12875 on enhancing the intergovernmental partnership charges federal agencies to establish meaningful consultation and collaboration with State and local governments on matters that affect them. In most cases, State governments are the level of government that regulates hazardous waste. In developing this proposed rule, therefore, EPA has consulted with State officials. EPA had five states (representing various parts of the country, e.g., east, south, center, and west) participate in the workgroup process for this proposed rule. These states reviewed and provided feedback on the draft proposal over a period of eight months. In addition, these states participated in monthly workgroup meetings via conference call. Their participation and immediate feedback in the workgroup process added considerable value to the draft proposal.

EPA contacted additional states in an effort to receive their specific feedback on general permitting and public involvement techniques. Additionally, EPA solicited state input during a session of the 3rd Annual RCRA Public Involvement National Conference, in which 16 state representatives participated. The state participants provided numerous helpful suggestions and ideas.

In addition, the Agency utilized existing State groups, such as the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), to solicit input on the proposed rule at various stages in the development process. Also, State personnel at the Commissioner level provided input to EPA at bi-monthly meetings of the EPA-State Task Force on Hazardous Waste Management. Through early involvement in both vehicles, state representatives made valuable contributions to the regulatory development process.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1688.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M St., SW.; Washington, DC 20460, or by calling (202) 260–2740.

This collection of information is estimated to have a public reporting burden varying from 203.45 to 1,230.50 hours per response, with an average of 716.98 hours per response, and to require 34.10 hours per recordkeeper over the three year period covered by the ICR. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M St., SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal

List of Subjects

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Hazardous Waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Hazardous Waste, Reporting and recordkeeping requirements, Permit application requirements, Permit modification procedures, Waste treatment and disposal.

Dated: May 20, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, Chapter I, of the Code of Federal Regulations, is proposed to be amended as follows:

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 7401 *et seq.*

[7] Ibid.

2. Subpart B is added to read as follows:

Subpart B—Specific Procedures Applicable to RCRA Permits

Sec.
124.30 Equitable Public Participation
124.31 Public participation requirements at pre-application.
124.32 Public notice requirements at application stage
124.33 Information repository.

Subpart B—Specific Procedures Applicable to RCRA Permits

§ 124.30 Equitable public participation.

The applicant and the Director shall make all reasonable efforts when conducting public information activities, such as public briefings, meetings, hearings, and dissemination of notices and fact sheets, to ensure that all segments of the population have an equal opportunity to participate in the permitting process. Reasonable efforts include disseminating multilingual public notices and fact sheets, and providing an interpreter at public meetings and hearings, where the affected community contains a significant non-English speaking population.

§ 124.31 Public participation requirements at pre-application.

(a) Prior to the initial submission of a Part B RCRA permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities in sufficient detail to allow the community to understand the nature of the operations to be conducted at the facility and the implications for human health and the environment. The applicant shall give an overview of the facility in as much detail as possible, such as identifying the type of facility, the location of the facility, the general processes involved, the types of wastes generated and managed, and implementation of waste minimization and pollution control measures.

(b) A stenographic or electronic record shall be made of the meeting, along with a list of attendees and their addresses. The record, list of attendees, and copies of any written comments or materials submitted at the meeting, shall be submitted as part of the permit application.

(c) The applicant must provide public notice of the pre-application meeting at least 30 days prior to the meeting in a manner that is likely to reach all affected members of the community. The applicant must provide documentation of this notice in the permit application.

(1) Public notice shall be given in the following manner:

(i) The notice shall be published in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility, and in each adjacent county or jurisdiction, if applicable. In situations where the geographic area of a host jurisdiction or adjacent jurisdictions is very large (hundreds of square miles), the newspaper notice shall cover a reasonable radius from the facility. The notice must be published as a display advertisement. The advertisement shall appear in a place within the newspaper calculated to give the general public effective notice; it must be of sufficient size to be seen easily by the reader.

(ii) The applicant must post a notice on a clearly marked sign on the proposed or existing facility property. The sign should be large enough so that the wording is readable from the facility boundary. It is not necessary to display a map on the required posted sign on the facility property.

(iii) The notice must be broadcast on at least one local radio station.

(2) The notices required under paragraph (c)(1) of this section must include:

(i) The date, time, and location of the meeting.

(ii) A brief description of the purpose of the meeting.

(iii) A brief description of the facility and proposed operations, including a map (e.g., a sketched or copied street map) of the facility location. Notices sent to people on the mailing list must show the facility map on the front page of the notice.

(iv) A statement that encourages people who need special access (e.g., disabled) to participate in the meeting to provide at least a 72-hour advance notice of their needs to the facility.

(d) The requirements of this section do not apply to permit modifications under § 270.42 of this chapter, permit renewals under § 270.51 of this chapter, or applications that are submitted for the sole purpose of conducting post-closure activities at a facility.

§ 124.32 Public notice requirements at application stage.

(a) Notification at application submittal. (1) The Director shall provide public notice as cited in § 124.10(c)(1)(ix), that a Part B permit application has been submitted to the Agency, and is available for review. The requirements of this section apply to permit renewals under § 270.51 of this chapter as well as to original applications.

(2) The notice shall be published within a reasonable period of time after the application is received by the Director. The notice must include:

(i) The name and telephone number of the applicant's contact person;

(ii) The name and telephone number of the permitting agency's contact office, and a mailing address to which comments and inquiries may be directed throughout the permit review process;

(iii) An address to which people can write in order to be put on the facility mailing list;

(iv) Location where copies of the permit application and any supporting documents can be viewed and copied;

(v) Brief description of the facility and proposed operations, including a map (i.e., sketched or copied street map) of the facility location. Notices sent to people on the mailing list must show the facility map on the front page of the notice; and

(vi) The date the application was submitted.

(b) Concurrent with the notice required under § 124.32(a) of this subpart, the Director must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the permitted facility or at the permitting agency's office. For facilities establishing an information repository pursuant to proposed §§ 124.33 or 270.30(l)(12) of this chapter, the applicant shall place a copy of the permit application or modification request, and any supporting documents in the information repository.

(c) The requirements of this section do not apply to permit modifications under § 270.42 of this chapter, and/or applications that are submitted for the sole purpose of conducting post-closure activities at a facility.

§ 124.33 Information repository.

(a) At any time during the application process for a RCRA permit, the Director may require the applicant to establish and maintain an information repository The purpose of this provision is to make accessible to interested persons documents, reports and other public information developed pursuant to activities required under 40 CFR parts 124, 264, and 270. (See § 270.30(l)(12) of this chapter for similar provisions relating to the information repository during the life of a permit.)

(b) The information repository shall contain all documents, reports, data, and other information deemed sufficient by the Director for public understanding

of the plans, activities, and operations of any hazardous waste facility that is operating or seeking a permit.

(c) The information repository shall be located and maintained at a location chosen by the facility that is within reasonable distance of the facility, and within a structure with suitable public access, such as a county library, courthouse, or local government building. However, if the Director determines the location unsuitable, the Director may specify a more appropriate location. The repository shall be open to the public during reasonable hours, or accessible by appointment. The information repository shall be located to provide reasonable access to a photocopy machine or alternative means for people to obtain copies of documents at reasonable cost.

(d) The Director shall specify requirements for informing the public about the information repository. At a minimum, the Director shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

(e) Information regarding opportunities and procedures for public involvement, including the opportunity to be put on the facility mailing list, shall be made available at the repository.

(f) The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Director, unless existing State regulations require the State to maintain the information repository.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.2 is amended by adding, in alphabetical order, a definition for "Combustion unit," and by revising the definition for "Facility mailing list" to read as follows:

§ 270.2 Definitions.

* * * * *

Combustion unit means any unit that meets the definition of an incinerator, a boiler, or an industrial furnace in § 260.10 of this chapter.

* * * * *

Facility mailing list means the mailing list for a facility maintained by EPA or the State in accordance with 40 CFR 124.10(c)(1)(ix).

* * * * *

3. Section 270.19 is amended by revising paragraphs (b) and (d) to read as follows:

§ 270.19 Specific part B information requirements for incinerators.

* * * * *

(b) Submit a trial burn plan with the initial part B application including all required determinations, in accordance with §§ 270.62 or 270.74; or

* * * * *

(d) The Director shall approve a permit application for an incinerator without a trial burn if he finds that:

(1) The wastes are sufficiently similar;

(2) The incinerator units are virtually identical and are located at the same facility; and

(3) The data from other trial burns are adequate to specify (under § 264.345 of this chapter) operating conditions that will ensure that the performance standards in § 264.343 of this chapter will be met by the incinerator.

* * * * *

4. Section 270.22 is amended by revising paragraph (a)(6) to read as follows:

§ 270.22 Specific Part B information requirements for boilers and industrial furnaces burning hazardous waste.

(a) * * *

(6) *Data in lieu of a trial burn.* The owner or operator may seek a waiver from the trial burn requirements to demonstrate conformance with §§ 266.104 through 266.107 of this chapter and § 270.66 by providing the information required by § 270.66 from previous compliance testing of the device in conformance with § 266.103 of this chapter, or from compliance testing or trial or operational burns of boilers or industrial furnaces with a virtually identical design at the same facility burning similar hazardous wastes under virtually identical conditions. If data from a virtually identical device is used to support a trial burn waiver request, the design and operating information required by § 270.66 must be provided for both the virtually identical device and the device to which the data are to be applied, and a comparison of the design and operating information must be provided. The Director shall approve a permit application without a trial burn if he finds that the hazardous wastes are sufficiently similar, the devices are virtually identical in design and at the same facility, the operating conditions are virtually identical, and the data from other compliance tests, trial burns, or operational burns are adequate to specify (under § 266.102 of this chapter) operating conditions that will ensure conformance with § 266.102(c) of this chapter. In addition, the following information shall be submitted:

* * * * *

5. Section 270.30 is amended by adding paragraph (m) to read as follows:

§ 270.30 Conditions applicable to all permits.

* * * * *

(m) *Information repository.* The Director may require the permittee to establish an information repository for a permit if the Director determines that there is significant public interest in the permitted facility. The information repository will be governed by the provisions in § 124.33(b) through (f) of this chapter.

* * * * *

6. Section 270.42 is amended by revising paragraph (d)(1) to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(d) *Other modifications.* (1) In the case of modifications not explicitly listed in Appendix I of this section, the permittee may submit to the Agency a request for a determination by the Director on a Class 1, 2, or 3 modification. If the permittee requests that the modification be classified as a Class 1 or 2 modification, he or she must provide the Agency with the necessary information to support the requested classification.

* * * * *

7. Section 270.42, Appendix I is amended by redesignating item L.8. as L.9, revising item L.7, and adding a new item L.8 and note at the end of Appendix I to read as follows:

Appendix I to § 270.42—Classification of Permit Modification

Modification	Class
L. Incinerators, Boilers, and Industrial Furnaces:	

Modification	Class
. . . . .	.
7. Shakedown:	
a. Modification of permit conditions applicable during the shakedown period for determining operational readiness after construction, with prior approval of the Director	[1] 1
b. Authorization of an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with prior approval of the Director	[1] 1
8. Trial Burn:	
a. Changes in the approved trial burn plan for conducting an initial trial burn, provided the change is minor and has received the prior approval of the Director	[1] 1
b. Changes in the approved trial burn plan for conducting an initial trial burn, if the change is not minor	2
c. Changes in the approved trial burn plan to conduct additional trial burn testing under revised conditions if the unit has not met one or more conditions of a previous trial burn	2
d. Modification of permit conditions applicable during the post-trial burn period, with prior approval of the Director	[1] 1
e. Changes in the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the Director	[1] 1
. . . . .	.

[1] Class 1 modification requiring prior Agency approval.

Note: Permittees should use the procedures in 270.42(d) if a proposed modification is not listed in this Appendix.

8. In § 270.62, paragraphs (b)(6) through (10) are redesignated as paragraphs (b)(7) through (11), and new paragraph (b)(6) is added to read as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(b) * * *

(6) The Director must send a notice to all persons on the facility mailing list as specified in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as specified in 40 CFR 124.10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn.

(i) This notice must be mailed within a reasonable time period before the scheduled trial burn.

(ii) This notice must contain:

(A) Name and telephone number of applicant's contact person;

(B) Name and telephone number of the permitting authority contact office;

(C) Location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting authority.

* * * * *

9. In § 270.62, paragraph (d) is removed.

10. In § 270.66, paragraphs (d) (3) through (5) are redesignated as paragraphs (d) (4) through (6), and new paragraph (d)(3) is added to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

* * * * *

(d) * * *

(3) The Director must send a notice to all persons on the facility mailing list as specified in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as specified in 40 CFR 124.10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn.

(i) This notice must be mailed within a reasonable time period before the trial burn.

(ii) This notice must contain:

(A) Name and telephone number of applicant's contact person;

(B) Name and telephone number of the permitting authority contact office;

(C) Location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting authority.

* * * * *

11. In § 270.66, paragraph (g) is removed.

12. Section 270.74 is added to read as follows:

§ 270.74 Trial burn requirements for interim status combustion units.

(a) Submission of the trial burn plan for interim status incinerators. For the purpose of determining feasibility of compliance with the performance standards of § 264.343 and establishing adequate operating conditions under § 264.345, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan with Part B of the permit application in accordance with § 270.19(b) and 270.62(b)(2).

(1) Applicants submitting other information as specified in 270.19(c) are exempt from the requirement to conduct a trial burn if the Director approves the permit application in accordance with the criteria in § 270.19(d).

(2) Applicants submitting information under § 270.19(a) are exempt from compliance with §§ 264.343 and 264.345 of this chapter and, therefore, are exempt from the requirement to conduct a trial burn.

(b) Submission of the trial burn plan for interim status boilers and industrial furnaces. For the purpose of determining feasibility of compliance with the performance standards of §§ 266.104 through 266.107 of this chapter and establishing adequate operating conditions under § 266.102 of this chapter, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of § 266.103 of this chapter must prepare and submit a trial burn plan with Part B of the permit application in accordance with §§ 270.22(a) and 270.66(c) or submit other information in accordance with § 270.22(a)(6).

(c) At combustion facilities—approval of the trial burn plan and conducting the trial burn. (1) The applicant must receive approval for the trial burn plan by the Director before performing a trial burn.

(2) The Director shall review and make a determination on the trial burn plan in accordance with §§ 270.62(b)(3) through (b)(5) for incinerators, or § 270.66(d)(2) for boilers and industrial furnaces.

(3) The Director must send a notice to all persons on the facility mailing list as specified in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as specified in 40 CFR 124.10(c)(1)(x) announcing that the Director has reviewed the draft trial burn plan and has tentatively decided to approve it.

(i) This notice must be mailed within a reasonable time period before the trial burn.

(ii) This notice must contain:

(A) Name and telephone number of applicant's contact person;

(B) Name and telephone number of the permitting authority contact office;

(C) Location where the draft trial burn plan and any supporting documents can be viewed and copied; and

(D) A schedule of required activities prior to permit issuance, including when the permitting authority is expecting to give its approval of the plan, and the time periods during which the trial burn would be conducted.

(4) When a trial burn plan is approved, the Director will specify a time period prior to permit issuance during which the trial burn must be conducted.

(5) The applicant shall perform a trial burn in accordance with the approved trial burn plan, and must make the required determinations, submissions, and certifications in accordance with §§ 270.62(b)(6) through (b)(9) for incinerators, or §§ 270.66(d)(3) through (d)(5), and 270.66(f) for boilers and industrial furnaces. Trial burn results must be submitted prior to issuance of a draft permit.

(6) Upon completion of the trial burn combustion units must comply with the performance standards of § 264.343 of this chapter (for incinerators), or §§ 266.104 through 266.107 of this chapter (for BIFs), along with all other applicable interim status standards. Compliance shall be demonstrated and determined based on the results of the trial burn, as follows. The owner or operator may only operate the combustion unit under conditions that passed and were demonstrated to meet the performance standards, and only if the successful trial burn data is sufficient to set all applicable operating conditions during the post-trial burn period. If any results of a trial burn for a combustion unit show non-compliance with any set of performance standards, the owner or operator must immediately cease operating under the condition(s) that resulted in non-compliance, and notify the Director. In order to continue operating when results of the trial burn show non-compliance with any performance standards under any set of conditions, the owner or operator must submit to the Director, with the trial burn results a description of the conditions under which it is operating, and a preliminary explanation of how the conditions were determined to be sufficient to ensure that the unit functions within the performance standards. After reviewing the trial burn data and the preliminary demonstration submitted by the owner or operator, the Director may further restrict operating conditions as necessary to assure that the unit is operated within the performance standards.

(7) If the trial burn results indicate that any performance standards in § 264.343 of this chapter for incinerators, or §§ 266.104 through 266.107 of this chapter for boilers and industrial furnaces, have not been met the facility may submit a request to conduct an additional trial burn.

(i) The request to conduct an additional trial burn must include:

(A) An explanation of the reasons for the previous trial burn failure; and

(B) A revised trial burn plan submitted under paragraph (a) or (b) of this section which contains substantive changes to address the reasons for the previous trial burn failure.

(ii) The revised trial burn plan must be approved by the Director according to the requirements of paragraphs (c)(1) through (c)(4) of this section. The Director may approve the request to conduct an additional trial burn only if the requirements of this section have been satisfactorily met.

(iii) The Director must send a notice to all persons on the facility mailing list as specified in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as specified in 40 CFR 124.10(c)(1)(x) announcing that the Director has reviewed the draft revised trial burn plan and has tentatively decided to approve it.

(iv) This notice must be given within a reasonable time period, and in accordance with § 270.74(c)(3)(ii)(A) through (D).

(8) If the trial burn results indicate that compliance with the performance standards in § 264.343 of this chapter for incinerators, or §§ 266.104 through 266.107 of this chapter for boilers and industrial furnaces, was not achieved and thus, operating conditions cannot be developed under § 264.345 of this chapter for incinerators, or § 266.103 of this chapter for boilers and industrial furnaces, the Director may, pursuant to the procedures in Part 124 of this chapter, deny the permit application for the combustion unit.

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Part IV

Department of Agriculture

Forest Service

Recreation Residence Authorizations; Notice

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DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB06

Recreation Residence Authorizations

AGENCY: Forest Service, USDA.

ACTION: Notice, adoption of final policy.

SUMMARY: The Forest Service is adopting revised policies and procedures for administering special use permits that authorize privately owned recreation residences on National Forest System lands. This action is in response to an administrative appeal decision by the Assistant Secretary of Agriculture for Natural Resources and Environment that found that certain portions of the policy adopted on August 16, 1988, exceeded agency authority. The decision directed that those portions of the policy be stayed from implementation pending reformulation and publication of a revised policy in the **Federal Register**. In addition to adopting new provisions affected by the appeal decision, this final policy also conforms administrative provisions to revisions in the Secretary of Agriculture's Administrative Appeal regulations governing authorizations for occupancy and use of National Forest System lands, adopted after the original recreation residence policy. This final policy also clarifies the policy for determination of annual rental fees. The intended effect of this action is to administer recreation residence authorizations consistent with statutory authority.

EFFECTIVE DATE: This policy is effective June 17, 1994.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to J. Kenneth Myers, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1248.

SUPPLEMENTARY INFORMATION: On August 16, 1988, the Forest Service adopted a final policy and procedures for administering special use permits that authorize privately-owned recreation residences on national Forest System lands (53 FR 30924). The policy established a new procedure for calculating annual fees, gave direction on tenure and renewability of the permits, and described procedures to be followed when the recreation residence lot was needed for a higher public purpose.

This policy was appealed to the Secretary of Agriculture on September 15, 1988. The appellants alleged that the process by which this policy was developed was flawed because the policy exceeded statutory limitations on recreation residence use of the National Forests, and that the appellants and the public were adversely affected by the policy.

In a decision dated February 15, 1989, the Assistant Secretary of Agriculture for Natural Resources and Environment remanded the policy to the Forest Service for restudy and reformulation and stayed the implementation of certain provisions of the 1988 policy as follows: (1) Those nonrenewal provisions relating to or requiring a showing of higher public purpose where the lands occupied were deemed needed for other than recreation residences; (2) those provisions requiring automatic permit renewal 10 years prior to expiration unless nonrenewal had been established; (3) those provisions requiring the offering of "in-lieu" lots to permittees who had received notice of nonrenewal or termination; and (4) those provisions weighted against consideration of commercial uses for lots when nonrenewal of the recreation use was contemplated. Further, the decision expressed concern about other provisions of the policy, such as fee determination procedures. In addition, the Assistant Secretary required that the remaining features of the final policy be designated as interim policy pending its reformulation following all applicable process requirements.

The policy adopted August 16, 1988, was issued as direction to Forest Service personnel through amendments and interim directives to Forest Service Manual (FSM) chapters 2340 and 2720 and Forest Service Handbook (FSH) 2709.11—Special Uses Handbook. On June 1, 1989, at 54 FR 23499, the Forest Service gave notice that the direction in FSM 2340 and 2720 was to be revised, that the remaining portions of the policy were designated as interim policy in compliance with the Assistant Secretary's decision, and removed those provisions stayed by the Assistant Secretary.

On September 20, 1989, in response to the Assistant Secretary's decision, the Forest Service gave notice that it was seeking comments on an Advance Notice of Proposed Policy (54 FR 38700). A 60-day comment period was provided which was extended an additional 60 days, expiring on January 19, 1990. In this notice, the agency offered alternative approaches to those portions of the policy stayed by the Assistant Secretary's decision and asked for public advice and comment on those provisions and on the options that the agency identified to replace the current policy provisions.

The public comment received on the September 20, 1989, notice was considered in the development of a proposed reformulated policy published on October 10, 1991 (56 FR 51260). A 90-day comment period was provided for this notice which was extended an additional 60 days to March 9, 1992. This proposed policy also provided appropriate clarifying and explanatory material for those parts of the 1988 policy shown as areas of concern in the Assistant Secretary's decision.

Analysis and Response to Public Comments

The Forest Service received 7,793 comments on the October 10, 1991, notice of proposed policy. The analysis of the public comments was accomplished using standard Forest Service procedures designed to ensure an objective and systematic analysis. Information was tabulated electronically. The number and percentage of responses by category of respondents (as identified by the respondent) is as follows:

Respondent type	Number	Percentage
Permittee	4,656	60
Friend or Family of Permittee	996	12
Permittee Association	47	1
Other Organization	3	(1)
Interested Party, Not a Permittee	2,084	26
Forest Service Personnel	7	(1)
Total	7,793	100

[1] Less than 1 percent.

Comments were received from 45 States, Puerto Rico and the District of Columbia. Over 50 percent of the responses came from California which contains about 40 percent of all recreation residences. There were 312 comments received after the closing date of the notice and not considered in the analysis of comments.

Respondents comments were sorted according to the proposed policy provisions identified in the comment. They were further identified as: (1) Agreeing with the provision, (2) agreeing with the provision but with a contingency (comment), (3) disagreeing with the provision, and (4) disagreeing with the provision but with a contingency.

Of the 7,793 responses received, 6,264 (80 percent) were in the form of questionnaires developed and distributed by 2 national permittee associations. The questionnaires presented several general statements describing a premise or belief of what the content of the revised policy should be to which the respondent could either agree or disagree. For example, question 1 of the National Forest Homeowners questionnaire stated "I strongly support the policy provision that says recreation residences are a valid and important recreation use, and that it is Forest Service policy to continue them. Please leave this provision unchanged." The fourth question of the National Inholders Association questionnaire stated "Removal of recreation residences will cause emotional pain and disruption for forest permittees and their families. It will cause waste of resources. For that reason, the proposed policy of allowing removal of existing recreation residences where there is no higher use (FSM 2721.23e) is arbitrary and wasteful." The questionnaire responses were analyzed and the general views of the respondents considered during preparation of this final revised policy. These views were helpful in identifying issues of concern to permittees.

Narrative comments were attached to 704 questionnaires. In addition, 1,529 letters containing comments on specific provisions of the proposed policy were received. The total of 2,233 narrative responses, several of which provided very detailed analysis and recommendations on policy provisions, provided the most useful information in preparing the final revised policy and form the basis for the following comment analysis.

In addition to providing the questionnaire response forms to their members, the permittee associations provided narrative responses to the proposed policy. These were generally detailed analysis of the policy with the associations' recommendations for revision and improvement.

A summary of the general comments received and the agency's response to them is presented first, followed by a summary of the specific comments received and the agency's response. Specific comments are organized in the same format as found in the supplementary information to the proposed policy notice, that is, the same 7 topic headings representing the major issues addressed in the proposed policy are used. The comment analysis concludes with a discussion of the matters of concern in the Assistant Secretary's decision and the agency's response.

General Comments

Over half of the 2,233 respondents provided general comments on recreation residence use which were not directed at specific provisions of the policy. Many respondents affirmed their desire to keep their cabins, at the same location, at reasonable cost, and without continuous fear of nonrenewal of their permits. These respondents felt the agency, through the proposed policy, was abandoning support for the recreation residence program, was biased against permit holders, and was seeking to remove this use from National Forest System lands. Some respondents, however, felt the agency was biased in favor of permit holders.

Many respondents offered eloquent testimony to the significance of the cabin to their family, citing emotional ties to the site that span several generations. Others emphasized the importance of the recreation residence use to the National Forest, describing how the cabins are used by a large segment of the public for recreation, generate income to the Treasury, and contribute to the stewardship of the National Forests.

One permittee association advocated expansion of existing recreation residence tracts and establishment of new tracts. This view was based on the belief that the agency was in violation of the Civil Rights Act of 1964 by failing to make recreation residence lots available to persons of minority races, or of diverse religious, political, and sexual beliefs. On the other hand, several respondents, favored no expansion to phasing out of all recreation residence tracts.

Many respondents objected to the appeal of the August 10, 1988, policy and 270 suggested that the policy be restored in its entirety. Often, these respondents stated that the proposed policy was biased and discriminatory against cabin owners and was overly responsive to the views of those who opposed recreation residence use. A smaller number felt the proposed policy was an improvement over the 1988 policy, but that there were several flaws in the 1988 policy not addressed in the proposal, particularly that the bias in favor of permit holders, as identified in the appeal decision, had not been corrected. Eleven respondents offering general comments generally agreed with the proposed policy, that it responded to the appeal decision, was constructive and a step in the right direction.

The Forest Service recognizes that there is a divergency of opinion on recreation residence use on the National Forests. It is sympathetic to those who have enjoyed the privilege of the use for many years and who want to continue the privilege. Further, the contributions these holders make to the management and protection of the National Forests is acknowledged.

The agency also recognizes that increasing demands are being placed on the National Forests to meet a wider array of public uses. Significant new public laws have been enacted since the act authorizing privately owned recreation residences on the National Forests was enacted in 1915. These laws, particularly the National Environmental Policy Act and the National Forest Management Act of 1976, directly impact the way the agency manages public and private uses of the National Forests. Equally significant, public perceptions of how the National Forests should be managed have changed in the 75 years the recreation residence program has been in existence.

The agency, by policy adopted over 25 years ago, stopped the establishment of new recreation residence tracts. Subsequently, it stopped issuing new permits for vacant lots in already established tracts. This has fixed the number of recreation residences in existence to a current 15,600. This action was taken in response to an increasing public demand for recreation use on the National Forests in the 1960's. The rationale supporting that policy decision still applies. The agency, while recognizing the views of those respondents who seek to create new recreation residence opportunities, believes that such action would not be in the public interest. It does not propose to create tracts nor offer new permits for recreation residence use. Recreation residences are bought and sold in the private real estate market, and, as such, are available to all individuals under the laws of the States and local governments in which they are located.

The Forest Service, in responding to the administrative appeal decision, seeks a permit review and issuance process that does not show bias in favor of the recreation residence use, nor an intent by policy to remove the permitted use.

Readers are reminded that whether recreation residence use should continue to be permitted on National Forest System lands is not the issue addressed in this final policy. The Assistant Secretary's appeal decision did not challenge the appropriateness or continuation of the use. Rather, it focussed on legal flaws identified in the 1988 policy and in the process by which that policy was adopted. This final

policy responds solely to the specific provisions in the appeal decision. The agency has not revised, redirected, or otherwise changed the national guidance stated in the 1988 policy and which was not debated in the appeal decision.

Several respondents offered editing suggestions on the proposed policy. For example, the words "lot" and "site" were used interchangeably in describing the holder's permitted area. The agency agrees that use of a single term improves clarity and has used the word "lot" throughout the final policy. Also, the words "permittee" and "holder" were both used to identify the party holding the permit for the recreation residence lot. Holder is the correct term and is used throughout the final policy.

The use of terms "termination" and "revocation" in this policy, when describing the action leading to cessation of the privileges granted by the permit, have caused confusion among holders and agency field personnel alike. A recent amendment to the Manual (FSM 2705) clarified these terms and made their use consistent with regulations at 36 CFR 251. This action requires a conforming revision to the recreation residence policy. In most cases, the term "revocation" replaces the term "termination." To aid readers in understanding use of these terms in the final policy, they are defined as follows:

Revocation: The cessation of a special use authorization by action of the authorized officer prior to the end of the specified period of occupancy or use due to the holder's noncompliance with the terms of the authorization, failure to exercise the privileges granted, or for reasons that are in the interest of the general public. Revocations are appealable by the holder.

Termination: The cessation of a special use authorization by operation of law or the occurrence of a fixed or agreed-upon condition, event or time without the necessity for any decision or action by the authorized officer.

Several other editing suggestions are incorporated into the final policy.

Finally, many respondents offered comments on provisions of the policy that were not addressed in the Assistant Secretary's appeal decision. For example, several respondents objected to the provision in the permit which requires holders to "inspect the lot and adjoining areas for dangerous trees, hanging limbs, and other evidence of hazardous conditions which could affect the improvements and or pose a risk of injury to individuals." (Permit provision IV.G) This provision was in the permit adopted as part of the August 10, 1988, policy. As such it was not considered in this revision of that policy. The agency appreciates receiving these comments. They are an indication of holder concerns and will be considered as the policy is updated and kept current.

Specific Comments and Response

The October 10, 1991, **Federal Register** notice requested public comments on a proposed revision to the recreation residence policy. The material in that notice was arranged in 7 discussion topics that grouped the revisions into elements or segments of the four agency directives that bear on recreation residences. These 7 discussion topics are also used in this notice. However, the entire recreation residence policy is presented in this notice so that readers can see the revisions in the context of the complete direction.

Many of the respondents offering specific comments also asked that key provisions and phrases from one part of the policy be added to provisions elsewhere in the policy to lend emphasis or clarity to the provision. The Forest Service advises that the redundancy occurring as a result of this would be inconsistent with agency directive system policy. Readers are also advised that Forest Service direction for administering recreation residence permits, or any other type of special use authorization, does not stand alone in the agency's administrative manual or handbooks. The direction in this notice is dependent on overall direction affecting the entire special use program which appears in Federal Regulations at 36 CFR part 251, subpart B, and titles 2300 and 2700 of the Manual. In addition, other direction affecting the management of the National Forest System bears upon the recreation residence policy. In particular, direction dealing with planning for all land and resource management activity and related direction dealing with environmental analysis and compliance with the National Environmental Policy (NEPA), found at FSM 1920, and FSM 1950 and FSH 1909.15, respectively, greatly influences the direction contained in this notice. The agency has added cross-references where appropriate when a specific policy provision is guided by broader policy direction.

1. Validity of the Recreation Residence Use. The proposed direction at FSM 2347.1 set forth the basic policy on recreation residence use and continuance. The beginning paragraph of that section established that recreation residences were a valid use of National Forest System land and an important component of the overall National Forest recreation program. A clear statement of policy followed stating that the use could continue to occupy the Federal lands. The purpose of this revision was to place the recreation residence use on an equal footing with other uses when decisions involving allocation of the land were being made.

Comments. There were 738 comments received on this proposed policy. Most supported the policy statement and suggested it be strengthened. For example, several respondents suggested the following language: "Therefore, when considering nonrenewal of recreation residence permits for an alternative use be sure that the value of the alternative public use is equal to, or exceeds the value of the existing recreation use." Other respondents opposed the provision, stating that it overstated the importance of the use and that such words as "important" implied that other uses were not important. It was suggested that the word "equally" be placed before the words "valid" and "important" to provide better balance to the policy statement.

Response. The Forest Service believes that recreation residences are a valid and important use of the National Forests. Equally, it believes that existing uses should be allowed to continue. The agency recognizes that there may be rare instances when a use is not consistent with a National Forest's Land and Resource Management Plan (Forest plan), and the recreation residence use must give way to an alternative public use. However, the overall policy stated in this section is appropriate to ensure that any decision to not allow a new permit for an established use to be issued must be fair and equitable and supported by careful analysis and documentation. The Forest Service is satisfied that the policy statement in FSM 2347.1 adequately establishes the appropriateness of the recreation residence use without the need for further clarification and will adopt the language as proposed.

2. Conformity to the 1915 Term Permit Act. This topic is confined to one provision of the proposed policy. Proposed paragraph 2 of FSM 2347.03 stated: "Ensure that recreation residence use does not preclude the general public from full enjoyment of the natural, scenic, recreational, and other aspects of the National Forests as stipulated in the Act of March 4, 1915 (FSM 2701)." This provision was placed in the proposed policy to emphasize this requirement of the 1915 Act and uses words from the Act. This provision was worded similarly in the 1988 policy but placed

in a different location. The provision was moved into the policy section in the 1991 proposal to give greater emphasis to the direction and thereby respond to the appeal decision's direction to make the policy neutral.

Comment. There were 996 comments addressed to this provision of the proposed policy. The word "ensure" was the focus of nearly all of the comments. Respondents felt that use of this word, conveying certainty of action, changed the intent of the 1915 Act language and would lead Forest officers, upon determining any impact on "full enjoyment," to conclude that the permitted use should not continue. (It should be noted that "ensure" was used in the provision in the 1988 policy.) Some respondents pointed out that it would be impossible for a Forest officer to ensure compliance with the Act. Other respondents stated that the provision in the 1915 Act was not intended to discourage continuation of the use. They pointed out that the Act does not establish priority of use (recreation residence versus other public uses), thus an equality, not an hierarchy, of use is implied.

Response. The Forest Service agrees that the word "ensure" is inappropriate in this provision and that equality in the consideration of uses is required. Further, the agency finds that the location of a provision in FSM 2347.03 dealing only with recreation residences is not correct. The subject of Manual section 2347 is "Non-commercial Recreation Use," a broad category encompassing privately built and owned structures of which recreation residences are but one. Also included in this category of use are private clubs and lodges, houseboats, boat docks and wharves, and shelters. All of these non-commercial uses come under the guidance of the 1915 Act. The agency believes the guidance is appropriate but must be revised to reflect the broader scope of the FSM section. Therefore, the provision is retained but renumbered as paragraph 3 to reflect a more logical sequence of direction. The provision has been rewritten to remove "ensure" and to substitute "non-commercial recreation sites" for "recreation residences." The reference to the 1915 Act is also removed to avoid redundancy, as this Act is cited in the list of authorities under which term special use authorizations can be granted (FSM 2701).

3. Determination of Permit Renewal and Nonrenewal. The provisions of the proposed policy dealing with continuation of the recreation residence use, conversion to alternative public uses, and the analysis and decision-making process involved in these actions brought forth the largest number and most detailed comments. There were over 1,900 comments directed to these policy provisions, many of which were very detailed, and offered lengthy revisions to the proposed policy. This is to be expected as these provisions are at the core of the appeal decision and are central to the holders' concern that they will be able to continue the use. For ease of analysis, the discussion is separated into the four parts of the proposed policy that cover this topic.

a. Recreation Residence Continuance. The applicable direction is found at FSM 2347.03 and 2721.23e. The broad direction on continuation of the recreation residence use (paragraph 3, FSM 2347.03 of the proposed policy) stated: "Continue to authorize those existing facilities now occupying National Forest land under special use authorization that (a) are consistent with management direction given in the Forest Land and Resource Management Plan, (b) are at locations where the need for an alternative public purpose has not been established, (c) do not constitute a material, uncorrectable offsite hazard to National Forest resources, and (d) do not endanger the health or safety of the holder or the public." The proposed policy's guidance on the decision to reissue the permit is found at FSM 2721.23e, paragraph 1 as follows: "The Land and Resource Management Plan (Forest plan) provides direction for continuance of the recreation residence use (FSM 1920). As Forest plans are revised, recreation residence use shall be explicitly addressed in the plan through delineation of management areas and associated management area prescriptions (FSM 1920)."

Comment. There were 136 comments received on these two provisions of the proposed policy. The use of the Forest plan as the means of determining recreation residence continuance is the most significant departure the proposed policy makes from the 1988 policy. Most of the respondents were suspicious of this change, stating their concern about inconsistent or arbitrary local treatment of the residences, inability to participate in the decision-making process involving Forest plans, and the failure to use environmental analysis standards when amending or revising Forest plans.

Respondents felt that the decision process on continuance was flawed because continuance was determined by whether the use was consistent with the Forest plan. They advocated a return to the process described in the 1988 policy which stated the decision to continue the use was to be made by a separate, free-standing analysis that did not depend on the language of the Forest plan. In the proposed policy, the consistency determination in the context of recreation residences would be made on the basis of a comparison to the land and resource allocations made in the Forest plan. If land allocated to the recreation residence use was consistent, the use could continue. If not consistent, the use would be analyzed to determine if it could be made consistent or must be removed in favor of the proposed action, or alternative public use.

Other respondents described the policy provision allowing continuance of those existing facilities which ". . . are at locations where the need for an alternative public purpose has not been established" as a "Pandora's box," since there are always alternative purposes. They were concerned that the direction provided no guidelines or criteria for use in weighing alternative uses of National Forest land and thus would allow decisions which were arbitrary and capricious. The respondents asked for a definition of alternative public purpose.

Others opposed these provisions because they believed use of the phrase "continue to" biased the decision to offer a new permit.

Finally, respondents felt that the determination of whether the use should continue based on a policy promulgated by the agency's Washington Office could result in arbitrary action by individuals removed from the issue as it should be addressed. They suggested instead that each location should be viewed on its own and not be part of a nationwide policy. Conversely, some respondents felt the proposed policy left too much up to the whims of local forest officials where decisions could be made arbitrarily and capriciously without regard to national policy.

Response. The proposed policy significantly changed the 1988 policy's direction in the way recreation residence continuance decisions would be made. Making the Forest plan the foundation for the decision to continue the use is a major departure from the "analysis of continuance" process set forth in 1988 policy. Most permit holders are not familiar with the forest planning process that produces the individual National Forest Land and Resource Management plan. In fact, many indicated they were unaware that a plan encompassing all activities on the National Forest existed. Those that were aware of the planning process often did not make the link between their

permitted use and the broad guidance set forth in the plan.

The agency recognizes the significance of this departure from previous policy. However, it must be guided by statutory authority and its own implementing direction. The National Forest Management Act of 1976 requires the agency to use an integrated, interdisciplinary forest planning process to make the land and resource allocation decisions for each National Forest. Further, section 6 of the 1976 Act requires that all permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the Forest plan. Thus, recreation residence use and continuance must be brought into compliance with that direction.

Respondents' concerns that use of the Forest plan to guide permit continuance decisions or determining alternative public purposes reflects the lack of understanding of the planning process. The planning policy sets forth clear direction to involve all affected parties and the public when amending or revising a Forest plan. These requirements are emphasized in the proposed recreation residence policy which requires notification and involvement of holders and their representatives (FSM 2721.23b, paragraph 2). The agency believes that requirements that holders be involved in all actions affecting the recreation residence use are adequately covered in the policy and will not lead to inconsistent or arbitrary treatment of the use during Forest planning.

Environmental analysis is the cornerstone upon which decisions by local agency officials rest. Agency policy on environmental analysis at FSM 1950 and FSH 1909.15 is clear and detailed. Actions which affect the Forest plan, including those which implement the plan must be supported by environmental documentation. Respondents concerns that the recreation residence use will be adversely affected through a process that they are not informed of or involved in must consider this policy in its entirety and recognize that long-established agency policy would not permit this to happen.

Use of the term "alternative public purpose" in the proposed policy reflects the agency's recognition that the Assistant Secretary's appeal decision required decisions on continuance to be made in a neutral manner. The holders' desire for continued use cannot be considered superior to other public uses but must be judged in the context of the overall use of the land. The word "alternative" is intended to convey the concept of equality of use instead of superiority of one use over another. The agency recognizes that the recreation residence use must be considered equally when considering allocation of land and resources through the Forest planning process. On the other hand, it does not, indeed, it cannot, place the use at a higher level than other uses in the Forest planning process. It is the Forest planning process which defines and limits alternative public uses through allocation of land and resources. Alternative public uses can only be those which the Forest plan defines. Thus, the phrase is considered the most accurate way to portray the actions involved in recreation residence continuance and will be retained in the final policy.

The agency rejects respondents' concerns that the term "continue to" in FSM 2347.03, paragraph 1, lends bias toward renewal of the permit. The term is fully consistent with policy stating that the use is a valid use of National Forest land. Further, it is limited by the language which follows in the provision.

The agency also rejects respondents' objections to policy promulgated at the national level which cannot adequately address local conditions affecting the use, and, conversely, that such decisions should not be made by local officials. The proposed policy balances national policy on recreation residence use with a planning and decision-making process made at the individual National Forest level. This decentralized process is considered the most appropriate way to manage these Federal lands.

Therefore, the agency will adopt the language of the proposed policy at FSM 2347.03, paragraph 3 (renumbered as paragraph 2 in the final policy), and FSM 2721.23e, paragraph 1, pertaining to continuance of the use unless the use is at a location where an alternative public purpose has been established through the Forest planning process. Paragraph 1, FSM 2721.23e, has been edited for clarity and consistency with the forest planning process.

b. Use Consistent With Forest Plan

The proposed policy at FSM 2721.23e, paragraph 2, provided guidance when making decisions on continuance of the use. It stated: "Decisions to issue new recreation residence term permits following expiration of the current term permit require a determination of consistency with the current Forest plan. Make this determination by evaluating the extent to which continued recreation residence use adheres to the standards and guidelines contained in the management prescription for the appropriate management area. Address continuation of recreation residence use on a tract or group of tracts basis, not on individual sites." Subparagraph a then sets forth direction when recreation residence use was consistent with the current Forest plan. When the use was consistent with the plan, the use would continue, a new permit issued, and the decision to issue categorically excluded from environmental documentation unless "extraordinary circumstances" were present that would merit analysis of environmental effects. The procedural direction in FSH 41 23a provided detailed instructions on issuing new permits when the use was consistent with the Forest plan.

Note: The 1991 proposed policy advised that the agency was currently revising its policies and procedures for complying with NEPA and that the adoption of final NEPA policy could affect the direction contained in the proposed policy relating to environmental analysis and documentation. The final NEPA policy was adopted on September 18, 1992 (57 FR 43180), and does affect this proposed policy.

Changes in the recreation residence policy made necessary by the final NEPA policy are noted in the following discussion.

Comment. There were 771 comments directed to this provision that gives guidance where recreation residence use is consistent with the Forest plan. While respondents favored the expedited process in issuing a new permit, nearly all stated some degree of opposition to the direction. Comments focused on the requirements for environmental analysis as the basis for a decision to continue the use, particularly the requirements relating to "extraordinary circumstances." Respondents felt that recreation residences, having been in place for many years, do not cause significant environmental effects and the decision to issue a new permit should be categorically excluded from environmental documentation. Respondents also suggested that requiring environmental analysis was unnecessary, redundant, and costly. They suggested that the requirement be severely limited and each decision to prepare environmental documentation be reviewed by superior officials before being implemented.

Respondents expressed concern that extraordinary circumstances, described in the notice as including the presence of threatened or endangered species or their critical habitat, flood plains, wetlands, archaeological sites, or historic properties or areas, were present in nearly every recreation

residence tract, and thus would always trigger further environmental analysis even though the recreation residence has existed within such circumstances and without causing adverse impacts. Respondents pointed out that the fact the use was consistent with the Forest plan would be rendered meaningless because all uses would be subjected to an environmental analysis or environmental impact statement before a new permit could be issued. They felt that this requirement was too open-ended and discretionary and would allow generalities, such as open space, visual corridors, or general forest areas to be defined as extraordinary circumstances. They recommended that the presence of an assumed extraordinary circumstance should not in itself preclude continuation of the use, or create a presumption of inconsistency with the Forest plan, until analysis proves the circumstance to be truly extraordinary and continued recreation residence use a threat to the environment. One respondent suggested that extraordinary circumstances be limited to those which are new and did not exist in the period shortly before the time when a decision on continuance is to be made, and that the presence of endangered species, for example, in the area of recreation residences should not automatically trigger the preparation of an environmental analysis or impact statement.

The direction in FSH 2709.11, section 41.23a, providing procedural direction on continuing the use and issuing a new permit, brought forth comments cautioning against "useless and unnecessary EA or EIS studies." These respondents suggested that extraordinary circumstances should not automatically require preparation of environmental analyses. Other respondents suggested that the entire section 41.23a be removed since the guidance prejudges, skews and appears to bias the process.

Response. The Forest Service agrees the proposed policy and procedures applicable when recreation residence use is consistent with the Forest plan is unnecessarily complex. It also agrees that situations under which extraordinary circumstances would apply to permit continuation are too broad and need refinement. When use is consistent, the policy should provide an expedited process resulting in a new permit. The Forest plan is the means by which environmentally sensitive areas are identified and managed. The presence of extraordinary circumstances should not force additional environmental documentation unless it is clearly established that a material adverse environmental effect could result by continuing the use.

Accordingly, the agency has substantially revised the proposed policy at FSM 2721.23e, paragraph 2, and FSH 2709.11, section 41.23a. This revision recognizes the public comments and the final revised NEPA policy and procedures adopted by the agency in 1992. The NEPA policy substantially clarified previous policy for excluding actions from environmental documentation. Further, the agency has chosen to minimize its direction on environmental documentation in the final policy and guidance and instead refers to the NEPA policy found in FSH 1909.15.

Briefly, recreation residence uses that are consistent with the Forest plan will, upon expiration of the current term permit, be issued a new term permit. The environmental documentation supporting the Forest plan will, in most cases, be sufficient for documenting the decision to continue the recreation residence use.

When issuing new permits, a record of decision or decision notice and finding of no significant impact would be prepared only if the recreation residence use was not specifically approved in the Forest plan decision document. Issuance of a new permit is an implementation action of a Forest plan decision approving recreation residence use. The NEPA compliance requirement is fulfilled by the Forest plan environmental impact statement. Recreation residence use which has changed since being found consistent with the Forest plan would require further NEPA analysis and documentation. In most cases this analysis would cause the action to fall within a category of actions excluded from NEPA documentation.

An exception to the above may occur if the environmental documentation supporting the decision to continue the recreation residence use is more than 5 years old at the time of permit expiration. This requirement is set forth in the agency's Environmental Policy and Procedures Handbook (FSH 1909.15, sec. 18.03) and is based on the Council on Environmental Quality's "Forty Questions" document.

The action necessary to issue the new term permit would commence two years before permit expiration and the holder notified of the action. New permits that continue the use would contain updated clauses that reflect current Department of Agriculture regulations and other Federal, State, or county laws applicable to the area covered by the permit.

Therefore, the agency is adopting final policy as described above. This is set forth at FSM 2721.23e, paragraph 1.

c. Use Not Consistent With the Forest Plan—Project Analysis. The proposed policy at FSM 2721.23e, paragraph 2b, provided direction on action to be taken when the recreation residence use was not consistent with the Forest plan. Procedural guidance at FSH 41.23b described the procedure to follow in conducting a project analysis. The recreation residence use would be inconsistent when the lands currently authorized for recreation residence use are allocated to other public uses by the Forest plan. Continued recreation residence use would thus be inconsistent with new management prescriptions, standards and guidelines. This could occur when a Forest plan defines a management area of the National Forest for developed recreation use and an amendment to the plan changes this to threatened or endangered species habitat. The recreation residence use would then apparently be inconsistent with the new management area designation. In this case, a "project analysis" would be prepared to determine whether the use could be accommodated along with the alternative public use, or must be removed upon permit expiration.

The project analysis would identify a range of public uses consistent with the Forest plan direction, including consideration of continuing the recreation residence use, that would be compatible with the management area designation. If this analysis indicates the recreation residence use could continue, a decision would be made to issue a new permit upon expiration of the current permit. Since continuation of the use had been determined to be inconsistent with the Forest plan, the plan would have to be amended to accommodate the changed determination. If the analysis indicates that the use cannot continue, the holder would be notified that a new permit will not be issued upon expiration of the current permit. In this event, the holder would receive at least 10 years of continued occupancy from the date of notification and may be offered an alternative location, or in-lieu lot, for the use.

Comment: There were 998 comments received on this provision of the proposed policy. Many respondents were concerned that use of the Forest plan to determine whether the recreation residence use should continue was inappropriate because the plan could never focus on the specific and different issues that a proper analysis of the use demands. Others felt

that in reality the decision on recreation residences would be made in the plan and that the project analysis would only serve to verify that decision. They felt that the phrase in the provision "implement the new direction" implied that a decision had already been made. They recommended this provision be eliminated since it assumes an inconsistency prior to a finding. Instead, they recommended that new management direction be "reviewed" to emphasize that the project analysis was not a sham.

Nearly all of the respondents commenting on this provision of the proposed policy stated that the proper sequence of planning should have the project analysis prepared before the Forest plan is amended or revised and be the basis for the amendment or revision. This concern is the basis for respondents' recommendation that a determination of inconsistency be made only on the basis of a self-contained, site specific project analysis that follows all environmental analysis requirements. Respondents also expressed misgivings that the process called for in the provision conveyed a bias against the use.

These concerns can be summarized by the comment of one respondent: "The 1988 policy required a specific environmental analysis for any decisions pertaining to 'inconsistency' with the Forest plan. In the draft policy inconsistency is now decided within the Forest plan WITHOUT ANY EFFECTIVE RULES. This is just not reasonable and is unfair."

Several respondents expressed concern that recreation residence permit holders would not be involved in the actions leading to adoption of Forest plan amendments, or that their participation would not be sought until the basic decisions on land use had been made. They asked that permit holders be a part of the entire process.

Comments on the procedural guidance in FSH 41.23b for completing project analyses focused on the addition of or emphasis on the factors and considerations to be included in the analysis. Several suggested recognition of environmental, economic and social costs of removing the recreation residences. Others recommended that cost/benefit analysis of removal be included in the analysis. Several respondents suggested that the standards and guidelines for the project analysis were substantially weaker in the proposed policy than those in the 1988 policy and recommended that the earlier language be restored so that there was consistency between all National Forests. Many suggestions were received that could be used to edit and clarify the proposed guidance in FSH 41.23b.

Response: The respondents to this section of the proposed policy did so under a distinct disadvantage. The proposed policy describing Forest planning, NEPA analysis, and public involvement processes affecting the recreation residence use was based on more complete, overall guidance set forth elsewhere in the Manual and Handbooks. The proposed direction for this specific use, therefore, was supplemental to that overall guidance. Respondents were not aware of or did not have access to this overall guidance. They sought to resolve their concerns or objections by recommending more complete descriptions of the processes or clarification of procedures relating to recreation residence continuance. Thus, many of the comments summarized above could be responded to by simply stating that the concern is thoroughly treated elsewhere in FSM or FSH.

The agency is sympathetic to the respondents' dilemma. However, it disputes the contention that actions affecting recreation residences during forest planning occur without any effective rules to guide them. The rules (direction) are clear and thorough. The agency's dilemma is that its directives policy prohibits repetition and redundancy in manual and handbook material for the sake of emphasis or clarity. Direction guiding the forest planning process is found in FSM 1920.

To resolve this dilemma, the agency has placed references at appropriate places in the final policy so that local agency officials and holders are aware of overall direction that influences the specific direction on recreation residence use. And, the agency believes that respondents' concerns about forest planning, consistency determinations, and applicability of NEPA, will be resolved as holders become more knowledgeable about the forest planning and environmental analysis processes. Most respondents acknowledged that the recreation residence use should be recognized in the Forest plan. Likewise, holders should recognize that it is in their interest to be involved in the forest planning process, not only to protect their interests in their recreation residences, but to demonstrate that they are part of the National Forest community and interested in its overall management. The Forest Service believes this final policy will encourage holder participation in the forest planning process.

Agency policy on forest planning and NEPA evaluation does not allow a decision to remove recreation residences to be made by the Forest plan. The process for implementing a Forest plan, explained in FSH 1902.12, requires that any use that appears to be inconsistent with new management direction must be analyzed and evaluated before any decision is made to discontinue that use. In section 2721.23e, paragraph 1b, of the final policy, the agency has clarified this point by revising the heading to read "Use Apparently Not Consistent With the Forest Plan." This revision is intended to reinforce the point that an inconsistency determination does not result in removal of the use, only that such action is possible. A decision on removal of the use cannot be made until a project analysis is completed.

Project analysis should not precede forest planning. The overall direction contained in a Forest plan is the foundation upon which all land and resource activities of the National Forest are based. The Forest plan promotes more integrated consideration of all land and resource management activities. The direction in the proposed policy providing for project analysis following implementation of the Forest plan and identification of apparent inconsistency remains unchanged in the final policy.

Respondents' concerns that permit holders would not be involved in Forest planning is unfounded. Overall direction in FSM 1950, FSH 1909.15, and 36 CFR Part 216 requires local Forest Service officials to seek the views of the public, including holders of authorizations to use National Forest land. Further, the direction in the proposed policy at FSM 2721.23h and FSH 2709.11, section 41.23b, paragraph 1 would require local officials to involve permit holders in activities involving Forest plan amendments and revisions, implementation of plans, and project analyses. The agency believes this direction is adequate to ensure holders' awareness of any action affecting their use. Thus, the proposed policy in this regard remains unchanged in the final policy.

The guidance in section 41.23b has been selectively revised to recognize the suggestions of several respondents. The first sentence of the section has been rewritten to reflect that Forest plan amendment or revision does not necessarily make the recreation residence use inconsistent with new management direction. Rather, it reflects that continued use under the new management direction is uncertain and a site specific project analysis is required to verify the inconsistency. Paragraph 2 of this section of the proposed policy, titled "Analysis Documentation" and describing the content of the project analysis report and NEPA documentation, is revised in the final policy to require information on applicable resource conditions to be included in the report. Paragraph 3a(4), requiring a comparison of benefits and disadvantages of the proposed alternative public use and the recreation residence use, has been revised in the final policy to include consideration of the cost of removing the recreation residence.

Paragraph 4 of FSH 41.23b of the proposed policy, describing the project analysis decision and documentation, has been extensively revised to clarify the process by which a decision is reached. Three possible decisions are outlined: (1) If the project analysis results in a decision to amend the Forest plan such that continued use will not be inconsistent with the proposed alternative use, a new term permit would be issued upon permit expiration; (2) if the project analysis results in a decision to amend the Forest plan such that the recreation residence use is in some degree inconsistent with the proposed alternative use but does not conflict with it, or the proposed alternative use can accommodate some or all of the recreation residence use, appropriate modifications would be made to the current permit and new term permits for the applicable lots would be issued; or (3) if the project analysis results in a decision that the recreation residence use remains inconsistent with the Forest plan and cannot be accommodated with the proposed alternative use, a decision would be made that the recreation residences are to be removed. This revision adds a third possibility to the project analysis decision where the use is in apparent conflict but can be accommodated with the proposed use.

Paragraph 5 of FSH 41.23b, titled "Decision Notification," presents the requirements to be followed in notifying holders and other interested parties of the project analysis decision. Two items are added to those listed in the proposed policy: (1) Notification of whether in-lieu lots will or will not be made available, and (2) notification that annual fees will be adjusted during the final 10 years of use. The remainder of the paragraph has been edited for clarity.

d. Project Analysis Decision Review. The proposed policy at 2721.23e, paragraph 2c required the authorized officer to review a project analysis decision two years prior to permit expiration, if that decision was more than five years old. Handbook guidance at 41.23b, paragraph 6, described the procedure by which the project decision would be reviewed. The review would determine if changes in resource conditions required reconsideration of the decision. Holders and interested publics would be notified of the review. If the review indicated no change in resource conditions, the original decision would be implemented. If conditions had changed, a new project analysis would be made to determine use of the lot. A project analysis decision review would not be appealable.

Comment. Few respondents commented on this provision although a similar provision at FSM 2721.23a, paragraph 11, raised a concern among several respondents that the holder would not have an opportunity to be heard in this review.

Response. The project analysis decision review is intended to ensure that the actions which resulted in the decision remain applicable when the permit is about to expire since 8 to 10 years would have elapsed since the decision was made. This could prevent removal of a recreation residence when there is no longer a need for the alternative public use. The agency intends that the review be undertaken with the full knowledge and participation of the holder. It emphasizes that the direction in 2721.23e makes it clear that holder involvement in the review is required. The proposed policy is considered to be fully adequate and is adopted as final policy.

e. Permit Decision Process (Diagram). The proposed policy, in Exhibit 01, section 41.23c, presented in diagrammatic form the process described in section 41.23a and b by which a decision is reached to continue the recreation residence use or convert the use to an alternative public use.

Comment: Eight respondents identified problems with the chart. They pointed out that the process shown when a project analysis decision allows the recreation residence use to continue (even though it had been found to be inconsistent with the Forest plan), does not agree with the text describing that process. The respondents suggested that when the use is allowed to continue it should not be subject to further review and analysis. Instead, the use should be considered as consistent with the Forest plan and the decision process should move directly to issuance of a new permit. In terms of the diagram, the arrow from this box should move left to the line showing consistency with the Forest plan instead of downward to the box showing decision review.

Response: The Forest Service agrees with these respondents and has revised the diagram accordingly. Readers should recognize, however, that revisions in the direction and procedural guidance for continuance and removal of the use, discussed earlier in this notice, have also required revisions to the chart. The diagram appears in the final policy as section 41.23c.

4. Permit Issuance and Term. The proposed policy at FSM 2347.1, paragraph 3, and at FSM 2721.23a, paragraph 9, stated that permits for recreation residence use would be issued for a maximum of 20 years. Paragraph 10 of FSM 2721.23a provided direction for permit issuance following a decision to convert the lot to an alternative public use. In this event, the current term permit would be allowed to expire and a new term permit issued for up to 10 years to satisfy any additional time because of the 10-year notification requirement.

Comment: There were 224 responses to these permit issuance and term provisions. Most respondents supported the 20-year term for recreation residence use, and the 10-year notification in case of conversion to an alternative public use. A few respondents preferred 30-year permits. Others objected to the 10-year notification with continued occupancy provision and the granting of additional time beyond the originally authorized term to satisfy notification requirements, stating that the holder accepted the original term and provisions, and should not receive these favorable considerations.

Response: The Term Permit Act of March 4, 1915, authorizes terms up to 30 years. The Forest Service's long-standing policy has been to issue permits for 20-year terms, and if the use is to be terminated, the additional 10 years granted will keep the total length of the permit within the statutory limit. Also, specifying a maximum term of 20 years provides local agency officials flexibility in establishing length of terms to accommodate local needs. For example, if the official wished to have all permits on an administrative unit expire in the same year for efficiency in administration, a term of 18 years may be needed to match terms of permits issued earlier. The agency does not agree to elimination of the 10-year notification requirement or the provision providing additional occupancy when the use is to be removed. The investment in the recreation residence and the length most have been in existence make the agency's policy on notification and tenure fair and equitable. Readers are reminded that the agency does not pay a permittee for the value of the

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improvements when a permit expires under its own terms and must be removed. The agency is satisfied that a 20-year term for recreation residence term permits is appropriate and will adopt this provision in the final policy. However, to clarify that shorter terms may be dictated because of permit expiration and conversion of the lot to another public purpose, the provision is modified to reflect this exception to the 20-year term. This direction ensures compliance with the Assistant Secretary's appeal decision concerning indefinite tenure. This revised policy is also consistent with the final policy provisions requiring that decisions on continuance or removal of the use be based on the direction in the individual National Forest plan.

5. Annual Fees in Event of Nonrenewal. The proposed policy at FSH 2709.11, section 33.2, responded to the appeal decision's direction to reconsider the 1988 policy's direction for determining fees when a holder is placed on notice that a new permit will not be issued; that is, when the permit is placed on tenure. Three provisions in this section were examined in the proposed policy. The opening paragraph of this section stated that fees would be reduced 10 percent yearly during the 10-year notification period. This maintained the provision in the 1988 policy. The second provision (numbered paragraph 1) provided that in the event the decision to remove the recreation residence was reversed and the holder was given a new 20-year term permit, the Forest Service would recover all fees foregone while the permit was under notice it would not be renewed. This changed the provision in the 1988 policy which provided that 50 percent of the fees would be recovered. The third provision (numbered paragraph 2) provided that in the event of a reversed decision and a new permit was issued with a term of less than 10 years, fees foregone would not be recovered, but the fee would be reduced by 10 percent for each year the permit was under tenure notice (for example, fees for a 6-year tenure would be 60 percent of the full fee). This maintained the policy set forth in the 1988 policy provision.

Comment: There were 84 comments on these provisions of the proposed policy. Most respondents asked that the 50 percent fee recovery provision of the 1988 policy be reinstituted. They stated that the market value of the use is reduced when permits are placed on tenure, and, as the agency is required by law to charge fees based on fair market value, the 50 percent recovery is more than fair because the recovery amount should be zero. Others pointed out that the Forest Service's explanation that no precedent could be found in the private market providing for 50 percent recovery and therefore requiring full repayment of foregone fees was true because the private market would not recover foregone fees. On the other hand, several respondents asked why a holder should be entitled to reduced fees since it is not common practice in the private real estate market for a lessor to reduce rental fees when not renewing a lease, especially when the improvements must be removed by the lessee. One respondent asked whether fees for permits under tenure were subject to the same annual index adjustment as permits not under tenure.

Response: The agency decision in the 1988 policy to reduce fees when permits are placed on tenure was based on its understanding of common practice in the private real estate market. Reexamination of this question in view of the appeal decision does not provide information to contradict this earlier decision. The agency is not persuaded by respondents' statements contradicting its understanding of the private market. Therefore, the provision to reduce fees 10 percent for each year the permit is under tenure will be maintained in the final policy. (Section 33.2)

The agency based its decision to recover all fees foregone when a new 20-year permit is given for a use formerly under tenure because it could not confirm this was a common practice in the private real estate market. It also received legal advice that it had no authority to forgive fees foregone in this instance. Upon reexamination of this issue for preparation of this final policy, it again was not able to confirm that not recovering fees foregone is standard practice in the private market. Thus, the agency will keep this provision in the final policy. (Section 33.2, paragraph 1)

The agency is also maintaining the provision from the proposed policy that when holders with permits on tenure are given new permits with terms of 10 years or less past fees foregone are not recovered and fees for the new term are reduced 10 percent a year. Holders who receive an additional period of use but do not get a full 20-year term permit do not have the full value of the use and thus should not pay a full fee. This provision is adopted consistent with the provision to reduce fees when permits are placed on tenure. The second sentence of this provision has been edited to clarify its intent. (Section 33.2, paragraph 2)

Readers should note that the third paragraph in this section, describing action to be taken when holders with permits on tenure are given new permits with terms of 10 to 20 years, was not revised in the proposed policy and remains identical to the language in the 1988 policy. In this case, fees are to be recovered in full.

6. Offering of In-Lieu Lots. The appeal decision faulted language in the 1988 policy that made the offering of in-lieu lots mandatory to holders who have received notification that a new permit would not be issued or whose permits have been terminated. (FSM 2347.1,6; FSM 2721,23a,13; FSM 2721.23f; FSH 41.23c.)

As explained in the 1991 notice of proposed policy, the intent of the 1988 policy was to make the offering of in-lieu lots discretionary. It was use of the word "shall" in one sentence of the policy that conveyed the impression that offering of in-lieu lots was mandatory. In addition, however, the appeal decision expressed concern that making in-lieu lots available to holders receiving notice that their use was to be terminated or that they would not receive a new permit limited agency management discretion in determining use of National Forest land. Therefore, each of the four provisions in the 1988 policy dealing with the offering of in-lieu lots was examined. As a result, the 4 provisions dealing with in-lieu lots were revised in the proposed policy.

The overall policy on offering in-lieu lots to holders who had been notified that a new permit would not be issued or whose permit was being terminated prior to expiration (except when the termination is for noncompliance) was stated at FSM 2347.1, paragraph 6, of the proposed policy. This provision directed agency officials to determine the availability of in-lieu lots for eligible holders. It described sites available for in-lieu lot purposes as those in nonconflicting locations in established recreation residence tracts within the National Forest containing the recreation residences to be removed or in established tracts in adjacent National Forests. Lots appropriate for in-lieu purposes were undeveloped lots within or adjoining established recreation tracts not needed for other public purposes and lots formerly occupied and now vacant. This provision also directed that new recreation residence tracts could not be established for in-lieu lot purposes. This reversed the 1988 policy which stated new recreation residence tracts could be established for this purpose.

Direction in FSM 2721.23a of the proposed policy, provided that in-lieu lots could be offered when a recreation residence was destroyed or substantially damaged by flood, avalanche, or

massive earth movement and the holder was not allowed to rebuild. The 1988 policy stated that every reasonable effort should be made to offer in-lieu lots in this event.

The proposed policy in FSM 2721.23f, presented direction in cases of nonrenewal of permits and conversion of lots to alternative public purpose. It stated the lots may be offered if available and not needed for alternative public purposes. The 1988 policy provided that every reasonable effort should be made to offer the lots.

The guidance in FSH 41.23c of the proposed policy, gave detailed procedures on the offering of in-lieu lots. The offer would be made when notice was given that a new permit would not be issued. If a lot became available within 12 months of the notification it could be offered then. Priority was to be given to lots in the same recreation residence tract or an expansion of that tract. Holders would be allowed 90 days to accept the offer of an in-lieu lot and upon acceptance the lot would be reserved for that holder and a new permit issued. A fee would not be charged until construction of the improvements began. The lot reservation would expire if the holder failed to occupy the in-lieu lot on agreed upon schedule. Holders accepting offers could continue to use the current lot until the permit expired, but they should be prepared to move to the new lot 24 months prior to permit expiration. If accepted by the previous owner, the offer of an in-lieu lot would be extended to a new owner.

The proposed Handbook guidance differed in several respects from the 1988 policy. The proposed guidance limited availability of lots to those becoming available to 12 months. Tracts could not be established specifically for in-lieu lot purposes. Holders were to be given a new permit when the offer of an in-lieu lot was accepted, a new requirement. Fees were to be charged when construction began rather than when improvement of the lot began, a clarification. Holders were to be prepared to move within 24 months of permit expiration rather than when the current use was removed, also a clarification.

Comment. There were 359 responses to the in-lieu lot provisions of the proposed policy. Several respondents felt that the Assistant Secretary's appeal decision required only that the 1988 policy be changed to assure that the offering of in-lieu lots was not mandatory. Respondents overwhelmingly objected to the changes made by the proposed policy from the 1988 policy. Summarized, the respondents felt that the number of sites available for in-lieu lots available should be as large as possible and should include authority to establish new tracts for this purpose. The general belief was that a weak in-lieu lot program, when coupled with a policy of no new tracts for this purpose, would, through attrition, eventually lead to removal of all or most recreation residences. A much smaller number of respondents maintained that the offering of in-lieu lots should be discretionary and that no new tracts should be established for this purpose.

Respondents also objected to the removal of the phrase "every reasonable effort" when directing local officials to provide in-lieu lots to terminated or nonrenewal permits. They felt that this subtle change in wording reversed long-standing Forest Service policy to offer in-lieu lots in nonconflicting locations They recommended that the proposed policy be strengthened or the language of the 1988 policy be restored.

Another group of respondents felt that the proposed policy ignored the Assistant Secretary's appeal decision. They felt that any lots available for in-lieu lots should be made available instead to the general public for recreation residences. Their view was that the holder whose permit expires and is notified that a new permit will not be issued acquires no more rights to available lots than any other member of the public and should not receive any preferential treatment. Generally, this group of respondents felt the entire policy of offering of in-lieu lots should be deleted but if retained should be limited strictly to lots available within existing recreation residence tracts.

Responses to the proposed policy provision on in-lieu lot availability following destruction of the improvements by catastrophic event (FSM 2721.23a, paragraph 13) reflected a similar division of views as was found in the overall policy. Some felt allowing a holder to rebuild the improvements or to receive an in-lieu lot extends the use indefinitely and is contrary to the appeal decision. Others felt the proposed policy was not clear with regard to when rebuilding the improvements would be "consistent" with Forest plan. Several suggestions were made to clarify this provision. Many respondents commented on the inclusion of fire in the list of catastrophic events to which this provision applies. This had been suggested in the September 1989 Advance Notice of Proposed Policy. Respondents overwhelmingly opposed the listing of fire in this provision. They felt the risk of loss of the recreation residence from fire is inherent in a forest setting and thus should not be cause for permit termination.

Respondents commenting on the proposed Handbook direction at FSH 41.23c pointed out what they believed was more restrictive language than in the 1988 policy. Specifically, they cited the 12 month limit on offering an in-lieu lot, the 90-day limit on holders acceptance of the lot offer, and the requirement that occupancy of the in-lieu lot begins when construction begins.

Response. The Forest Service does not agree that the reformulation of the in-lieu lot provisions of the 1988 recreation residence policy should be limited to the question of whether the offer is mandatory or discretionary. The appeal decision questioned the policy on offering of in-lieu lots and directed that all provisions of the policy dealing with this issue be stayed from implementation and reconsidered. The agency, in its September 1991 proposed policy, modified it to respond to the appeal decision's concern that the use was being perpetuated when in-lieu lots were offered.

Under policy stated at FSM 2347.1, the agency affirms that recreation residences are a valid use of National Forest System lands and an important component of the overall National Forest recreation program. It also acknowledges that there may be circumstances, albeit very limited, where this use is not consistent with the overall management direction for the land and the recreation residence use must be converted to an alternative public use. When these circumstances occur, however, the agency believes that holders of these uses should not be subjected to the loss of the use if reasonable options are available to accommodate the use elsewhere. Thus, it is maintaining its long-established in-lieu lot provisions in the final policy.

The agency does recognize that certain provisions in the proposed policy limited the scope of the 1988 policy and has reconsidered several provisions. In FSM 2347.1, paragraph 6, the first sentence is revised to read "Although provision of an in-lieu lot is not required, make a reasonable effort to provide a lot to holders whose lots will be converted to an alternative public use and have received notification that new permits for those lots will not be issued, or who have received termination notices (except termination for noncompliance) (FSM 2721.23e)."

The agency is maintaining the provision in the proposed policy that prohibited establishment of new tracts for in-lieu lot purposes. However, the

agency points out that it is possible under the revised second sentence of this provision to expand a recreation residence tract in order to relocate the use to accommodate a change in land use. Such could happen when a river is designated as a Wild and Scenic River and recreation residences located a few feet from the riverbank are moved several hundred feet back from the river to accommodate public use along the riverbank. The third sentence of this provision is clarified to identify locations suitable for in-lieu lots to include undeveloped lands, and formerly developed and withdrawn recreation residence lots in or adjacent to established recreation residence tracts.

The proposed policy at FSM 2721.23a, paragraph 13, describing action to be taken when a recreation residence is destroyed or substantially damaged by catastrophic event, is revised to clarify when improvements could be rebuilt or the permit terminated and in-lieu lot available.

The proposed policy at FSM 2721.23f affirmed the overall in-lieu lot policy stated at FSM 2347.1, paragraph 6, in connection with the policy on continuation of recreation residence use. The language in this provision has been revised to be consistent with the overall policy.

The language at FSH 2709.11, section 41.23c of the proposed policy provides the procedural guidance for implementing the overall policy on offering in-lieu lots. Paragraph one of this section limited the availability of lots for in-lieu lot purposes to 12 months following notification of the holder that a new permit would not be offered. The agency finds that this limitation is inconsistent with the policy requiring a 10-year notification to the holder. Lots which come available during that 10-year period should be available as in-lieu lots if not otherwise needed for other public purposes. Thus, the agency has restored the language of the 1988 policy as follows: "If lots do not become available until later, offer them then." Paragraph 3 allowed the holder 90 days from the date of a joint inspection to accept the offer of an in-lieu lot. This has been clarified to require both actions—arranging a joint inspection and providing 90 days to decide. The paragraph is also clarified to require the 90 day period to occur while access to the lot is possible. Paragraph 4 required that a new permit be issued when a holder accepts the offer of an in-lieu lot. The agency recognizes that his means the holder will have two permits for recreation residence use for a limited period of time. However, this provision has been kept in the final policy to be consistent with overall special use regulations which require all users of National Forest land to have a permit.

The agency recognizes that a holder may pay annual fees on both permits if the current use is kept while the use on the in-lieu lot is being constructed. Thus, it has inserted guidance that a partial fee waiver under existing agency policy may be appropriate on the in-lieu lot.

Readers are also advised that for consistency in terminology, the word "lot" replaces the word "site" throughout the policy when referring to in-lieu locations.

7. Termination During Term of Permit. Three provisions of the proposed policy discussed actions to be taken when a recreation residence permit had to be terminated before its term expired. The overall policy at FSM 2347.1 listed four reasons for terminating a permit: (1) When it is in the public interest; (2) when there is an uncorrected breach of a permit provision; (3) when the site has been rendered unsafe by catastrophic events; and (4) when there is other cause as provided in 36 CFR 251.60. In adding this language, the proposed policy removed a provision of the 1988 policy that required termination actions to follow the same procedures established for permit continuation or nonrenewal. Termination actions would follow procedures for the four listed events, rather than for those procedures for continuance or nonrenewal as the 1988 policy provided.

Direction at FSM 2721.23a, paragraph 16, of the proposed policy reflected revisions to the overall policy, stating termination could occur only in accordance with applicable regulations and the terms and conditions of the permit. It also required the authorized officer (Forest Supervisor) to submit a proposed termination for review by the next higher official (Regional Forester) This review would only examine the adequacy of the analysis and documentation. If deficient, the proposed action would be returned to the authorized officer for correction and reconsideration. This provision also proposed use of the term "monies" in place of "appropriations" as used in the 1988 policy to describe the requirement that the Government must pay for the holders improvements if terminating a permit before expiration of its term, except when termination is the result of breach of the permit's provisions.

The proposed policy at FSM 2721.23i gave direction only for termination actions resulting from noncompliance of the terms and provisions of the permit. It required written notice to the holder and a reasonable period to correct the violation. The action could be taken only if noncompliance continues after the holder receives notice and the period allowed for correction. This provision was nearly identical to the 1988 policy.

Comment. There were 5 responses to these provisions of the proposed policy Respondents felt the phrase "in the public interest" was vague and apparently confused the phrase with direction elsewhere in the proposed policy dealing with permit expiration and alternative public use. They felt that termination should occur only when covered by the Forest plan and other alternatives to removal of the use considered. Most of the respondents agreed that termination during the permit term should occur only when funds are available to purchase the improvements. They agreed that the word "monies" is preferable to the word "appropriations." One respondent, however, felt that payment for the holder's improvements should be based on the cost of the improvements less depreciation.

Commenting on the direction in FSM 2721.23a, paragraph 16, one respondent suggested that "applicable regulations" should be specified. Most of the respondents agreed that proposed termination actions by the Forest Supervisor should be reviewed by the Regional Forester but suggested that the standards for analysis and documentation for the proposed termination should be made clear.

Response. Readers are reminded that the agency, in seeking consistency in policy terminology, has substituted the word revocation for the word termination when describing actions that end a permit before the end of the term specified in the permit. Further, the word termination is used to describe the cessation of a permit as a result of a fixed or agreed-upon event, which would include reaching the end of the term specified in the permit. With this in mind, readers are advised that revocation of the permit during its term and termination of the permit are two separate and distinct actions, each unrelated to the other. Revocation of the permit occurs when one of the four actions listed in FSM 2347.1, paragraph 5, is triggered. Revocation of the permit when in the public interest is not an action resulting from direction in the Forest plan. Rather, it results from an urgent and pressing need to reclaim the land for another public use before the action can be considered through the Forest planning process and the

procedure for considering alternative public uses can be implemented. For example, the construction or relocation of a public highway may require removal of the recreation residence because the only feasible right-of-way is on land occupied by this use. Authority to revoke a permitted use before the permit term is completed is found at 36 CFR 251.60. This citation is added to this provision in the final policy. It is the need to reclaim the land before completion of the permit term that requires the Government to pay for the improvements that must be removed.

The Forest Service recognizes that an action to revoke a permit before completion of the term must be done under a procedure that ensures fairness and equity to the holder. It has revised paragraph 5 in the final policy to clarify that revocation would occur only when there is an urgent need to use the lot and the forest planning process cannot be used.

The agency also recognizes the concern of respondents that revocation actions be reviewed by a higher agency official. However, it must point out that to maintain the integrity of its current appeal regulations it cannot permit the higher level official to review a decision before it is made. When a Forest Supervisor's decision is appealed, the Regional Forester is the reviewing officer. The language in the proposed policy on review of revocation actions will be maintained in the final policy.

The agency believes that use of the word "monies" is appropriate and will retain the term in the final policy. The agency does not agree that payment for the improvements be based on the holders cost less depreciation and will retain the method set forth in the term permit.

Readers are advised that the procedure for revoking a permit when in the public interest and when the holder is found to be in noncompliance with the permit terms is set forth in part VIII of the term permit.

Revised Special Use Permit for Recreation Residences

The Assistant Secretary's appeal decision voided certain clauses of the term special use permit used to authorize recreation residences on National Forest System lands and adopted with the 1988 policy. Holders who had been offered and accepted these permits in 1988 were notified by letter that the clauses were voided and temporarily removed from the permit and would be replaced upon adoption by the agency of a final reformulated policy. The voided permit provisions were: Part VI.C.2, part IX.B, C, D, and E, and part X.B. The October 10, 1991, notice displayed the term permit in its entirety with the affected clauses reformulated to be consistent with the revisions to the proposed policy.

There were 346 comments received on the proposed permit. Nearly all of the responses were directed to permit clauses not affected by the appeal decision. The **Federal Register** notice explained that only policy provisions, and permit clauses, affected by the appeal decision were subject to review and reformulation. Hence, only those comments directed to permit clauses affected by the adoption of the final policy were considered in this analysis. These were considered with the comments made to the corresponding parts of the policy and procedural guidance.

Permit clauses are derived from basic statutes, regulations, and policy. Thus, in reformulating the policy for administering recreation residences, the agency must also revise the permit that is derived from this policy. Changes made to the policy require corresponding changes to the permit. This has been done in the adoption of this final policy. The reformulated permit is printed in its entirety at the conclusion of this notice (Exhibit 1 to FSH 2709.11, section 54.1). Permit clauses revised as a result of the reformulation of the recreation residence policy as described in this notice are printed in italic. Readers are advised that holders of permits containing voided clauses will be sent new clauses or new permits upon adoption of this final policy. New permits will contain the revised clauses but are identical in all other respects to the permit accepted in 1988.

Revision of Dispute Resolution Provisions

The October 10, 1991, **Federal Register** notice provided information on the agency's policy to resolve disputes concerning recreation residence permit administration (located at FSM 2721.23f in the 1988 policy). It pointed out that revision of the Department of Agriculture administrative appeal regulations made on January 23, 1989 (54 FR 3342) created a conflict with the dispute resolution provisions adopted in the 1988 policy. Revision of these provisions, although not addressed in the appeal decision, was necessary.

The proposed policy at FSM 2721.23h provided direction to reduce conflict between holders and the agency by providing holders with the opportunity to participate in an issue resolution process. Proposed paragraph 1 of this policy required agency officials to consult with holders and their representatives, where practicable, before issuing written decisions on permit administration in order to reach a common understanding and agreement. Proposed paragraph 2 encouraged holder involvement in the public involvement process for Forest planning, project analysis, and the permit issuance analysis process (FSM 2721.23e). This paragraph also encouraged agency officials to meet with holders and their representatives to discuss and resolve issues prior to issuing a decision. Proposed paragraph 3 provided guidance on resolving actions that have been appealed, directing that the opportunities provided in the appeal regulations (36 CFR parts 217 and 251) be utilized by the authorized officer to resolve the appeal issues by means other than review and decision on the appeal.

The Forest Service has carefully considered the direction in the proposed policy in its preparation of this final policy and determined that it adequately conveys its intent to resolve disputes with holders on recreation residence permit administration. Therefore, it is adopting without change the direction in the proposed policy (FSM 2721.23h).

Readers are advised that further revisions to the appeal regulations occurred on April 13, 1993 (58 FR 19369). That revision encourages participation in the agency's public involvement processes by expanding opportunities for pre-decisional involvement of the public in Forest Service decisionmaking. A new part 215 was added to the regulations that would give the public opportunity to comment, prior to issuance of a final decision, on proposed actions that implement National Forest land and resource management plans. Parts 217 and 251, subpart C, of the regulations continue in effect. This final recreation residence policy at FSM 2721.23h was examined in light of the new appeal regulation and found to be consistent.

Clarification of Other Provisions of the Policy

In the February 15, 1989, appeal decision, the Assistant Secretary directed the Forest Service to clarify procedures by which annual fees are determined for recreation residence use. Specifically, the agency was required to explain its rationale in adopting 3 components of the fee system: (1) Use of the period 1978–1982 as the base period for determining current fees, (2) Use of an index, the Implicit Price Deflator-Gross National Product (IDP–GNP), to adjust fees annually to current fair

market value, and (3) Use of a factor of 5 percent applied to the appraised value to determine the annual fee.

The Supplementary Information section of the October 10, 1991, Federal Register notice containing the proposed policy provided information on these three components of the fee policy. Readers were advised that the information was to be considered as supplemental, or background, information to the direction and procedural guidance appearing in the policy at FSM 2721.23d-Fee Determination and FSH 2709.11 chapter 30, section 33, Recreation Residence Fees. The information in the notice emphasized that the agency is required to obtain fair market value for the use of the Federal lands. Fair market value is determined by appraisal or other sound business management practice, such as market analysis or competitive bid. Annual fees for recreation residences are determined by appraisal. A factor of 5 percent is applied to the appraised value to determine the annual fee.

There were 55 responses to this information, which generally supported the information presented. There was some disagreement with the use of 5 percent of appraised value to determine the annual fee, the respondents stating that the factor should be higher. Two respondents felt the Consumer Price Index (CPI) should be used instead of the IPD–GNP. Others felt the adjustment, as a national index factor, failed to recognize depressed local real estate market conditions. As a result, fees were escalating upward that should have been steady or declining.

The Forest Service believes that the information presented in the notice accurately described the rationale used to develop the fee determination procedure in the 1988 policy, and that the information reflects current agency direction and policy. Therefore, the agency is adopting the explanation presented in the notice as its response to the appeal decision's direction to present the rationale for adopting the period 1978–1982 as the annual fee base period, the use of the IPD–GNP as the annual fee adjustment factor, and the use of 5 percent applied to appraised values to determine annual fees.

Having considered the comments received in response to the October 10, 1991, notice of proposed policy and having reconsidered the 1988 recreation residence policy for consistency with applicable law and regulation, the Forest Service is adopting a revised recreation residence policy that it believes is fully responsive to the Assistant Secretary's appeal decision and to the concerns of holders and other interested parties. The full text of the recreation residence policy and procedural guidance containing the revisions described in this notice as it would appear in the Forest Service Directive System is set out at the end of this notice.

Readers are advised that the current interim recreation residence policy will no longer be in effect upon adoption of this revised policy.

Controlling Paperwork Burdens on the Public

This policy will not result in additional paperwork not already required by law or not already approved for use. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR 1320 do not apply.

Regulatory Impact

This final policy has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final policy is not subject to OMB review under Executive Order 12866.

Moreover, this final policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. Entities affected by this policy are private individuals holding authorizations to use National Forest System lands for the purpose of constructing and maintaining a recreation residence. The requirements imposed by this final policy are the minimum necessary to protect the public interest, are not administratively burdensome or costly to meet, and are well within the capability of small entities to perform.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes or instructions." Based on consideration of the comments received and the nature and scope of this final policy, the agency has determined that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Dated: April 4, 1994.

Jack Ward Thomas,

Chief

Reformulated Recreation Residence Policy and Procedures

Note: The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Manual and Handbook that are the subject of this notice are set out here. The intended audience of this direction is Forest Service employees charged with issuing and administering recreation residence use authorizations.

Forest Service Manual

Chapter 2340—Privately Provided Recreation Opportunities

2347—Non-Commercial Recreation Use. Section 2347–2347.12b set forth direction for special use authorization of privately built and owned structures on National Forest land. These structures are maintained for the use and enjoyment of holders and their guests. As recreation facilities, they are vacation sites and may not be used on a permanent basis (FSM 2721.23).

2347.03—Policy

1. Management non-commercial recreation use sites in accordance with basic recreation policy in FSM 2303 as valid and important components of the overall National Forest recreation program.

2. Continue to authorize those existing facilities now occupying National Forest land under special use authorization that (a) are consistent with management direction given in the Forest Land and Resource Management Plan (FSM 2721.23e), (b) are at locations where the need for an alternative public purpose has not been established, (c) do not constitute a material, uncorrectable offsite hazard to National Forest resources, and (d) do not endanger the health or safety of the holder or the public.

3. Manage non-commercial recreation use sites in such a way that the general public is not precluded from full enjoyment of the natural, scenic,

recreational, and other aspects of the National Forests (FSM 2701).

4. Deny applications for construction of new facilities except where they would replace similar existing facilities.

5. Deny any proposal for commercial activity at permitted, non-commercial recreation use sites.

6. Require non-commercial recreation use holders to maintain their sites to protect the natural forest environment. Do not allow construction or placement of non-authorized facilities on these sites.

2347.1—Recreation Residences. (FSM 2721.23 and FSH 2709.11.)

Recreation residences are a valid use of National Forest System lands. They are an important component of the overall National Forest recreation program and have the potential of supporting a large number of recreation person-days. They may provide special recreation experiences that might not otherwise be available. It is Forest Service policy to continue recreation residence use and to work in partnership with holders of these permits to maximize the recreational benefits of these residences.

1. Administer recreation residence special use permits to ensure proper use of the lot for family and guest recreational purposes (FSM 2347.11).

2. Do not approve any new authorizations for full-time residences, except in special situations to provide caretaker or other similar services where there is a strongly demonstrated need (FSM 2347.12). Do not approve in-lieu lots for full-time residential use.

3. Issue recreation residence term permits for a maximum of 20 years in accordance with procedures in FSM 2721.23e and FSH 2709.11, sec. 41.23.

4. Give holders at least 10 years written advance notice if a new permit will not be issued following expiration of the existing permit term (FSM 2721.23a).

5. Revoke a recreation residence permit before expiration of the term of the permit when (a) it is in the public interest, particularly when the final decision authority does not rest with the Forest Service, (b) there is an uncorrected breach of a permit provision(s) (FSM 2721.23i), (c) the site has been rendered unsafe by catastrophic events such as flood, avalanche, or massive earth movement, or (d) when there is other cause as provided in 37 CFR 251.60. Revocation in the public interest should not be undertaken unless monies are available to pay for the holder's improvements and there is an urgent need to use the lot before the action can be considered through the Forest planning process resulting in a decision to convert to an alternative public use. When revoking a permit for any cause, give as much advance notice as possible (FSM 2721.23i).

6. Although provision of an in-lieu lot is not required, make a reasonable effort to provide a lot to holders whose lots will be converted to an alternative public use and who have received notification that new permits for those lots will not be issued or who have received revocation notices (except revocation for noncompliance) (FSM 2721.23e). For this purpose, in-lieu lots must be in nonconflicting locations in or adjacent to established tracts within the National Forest containing the residences, or in or adjacent to established tracts on adjacent National Forests. Appropriate lots for consideration are undeveloped, formerly developed, and withdrawn lots in or adjacent to established recreation residence tracts and which are not needed in the foreseeable future for other public uses. Lots that are vacant because of noncompliance or other factors also may be considered as in-lieu lots. In-lieu lots should be comparable to the lots being converted to an alternative public use when possible, but authorized officials should advise holders that the Agency cannot guarantee that the available in-lieu lots will be entirely comparable. Do not establish new recreation residence tracts for in-lieu lot purposes. Offer in-lieu lots in accordance with the procedures in FSH 2709.11, sec. 41.23c.

2347.11—Preventing Unauthorized Residential Use. Prevent unauthorized full-time residential use by enforcing the terms of the special use permit. Continue to administer those recreation residences presently authorized as a principal place of residence in accordance with provisions of the special use permit. Upon transfer or sale of improvements, discontinue the residential use and authorize only recreation residence use.

2347.12—Caretaker Residences.

2347.12a—Authority. Authorize caretaker use of a recreation residence with an annual permit, Form 2700–4, under the Act of June 4, 1897. (Require applicants who currently have term permits to exchange them as a condition of obtaining the caretaker authorization.)

2347.12b—Caretaker Residence Use. The need for a caretaker residence rarely can be justified where yearlong occupancy is already authorized in the tract. The Forest Supervisor may authorize a caretaker residence in limited cases where it is demonstrated that caretaker services are needed for the security of a recreation residence tract and alternative security measures are not feasible or reasonably available. The fees for caretaker residences shall be 25 percent more than those charged for recreation residence use of a similar lot in the tract. A tract association may own caretaker residences.

1. Authorize no more than one caretaker residence per recreation residence tract unless factors such as size and layout of the tract call for more than one. The affected tract association, or if there is no association, at least 60 percent of the affected holders, must document approval of request for a caretaker residence. Require the applicants for caretaker use to document the caretaker services they will provide.

2. Do not authorize construction of a new residence for caretaker services. Issue the annual permit only for an existing residence. The permit must contain a provision that automatically terminates authorization for yearlong use in case of change in ownership.

3. Coordinate applications for caretaker residence permits with local governmental agencies to avoid creating unreasonable demands or burdens for such services as snow plowing, mail delivery, garbage pickup, school bus, or emergency services.

4. If a lot ceases to be used as a caretaker residence, issue a new term permit for recreation residence use to the holder, if qualified, or to the purchaser of the improvements.

Forest Service Manual

Chapter 2720—Special Uses Administration

2721.23—Recreation Residence. the term "recreation residence" includes only those residences that occupy planned, approved tracts or those groups established for recreation residence use. See FSM 2347 for basic policy on recreation residence use.

2721.23a—Administration. The following direction relates specifically to issuance and administration of special use permits for recreation residences. For recreation residence permits in Alaska, follow the additional requirements in section 1303(d) of the Alaska National Interest Lands Conservation Act. Administer recreation residence permits in accordance with the direction in sections 2721.23a–2721.23i and within the broad policy governing recreation residences and permitted uses set forth in FSM 2347.1 and 36 CFR 251.50.

1. Issue special use permits for recreation residence use in the name of

one individual or to a husband and wife. Upon issuance of a new permit that continues the use or amendment, revise authorizations that are not issued to an individual or to a husband and wife, so that the responsible person is identified.

2. Issue no more than one recreation residence special use permit to a single family (husband, wife, and dependent children).

3. Do not issue special use permits for recreation residence use to entities such as commercial enterprises, nonprofit organizations, business associations, corporations, partnerships, or other similar enterprises, except that a tract association may own a caretaker residence.

4. To the extent possible, issue all recreation residence permits in a tract, or in logical groups of tracts, with the same expiration date.

5. To help defray costs and provide additional recreation opportunities, a holder may obtain permission for incidental rental for specific periods. Ensure that rental use is solely for recreation purposes and does not change the character of the area or use to a commercial nature. Rental arrangements must be in writing and approved in advance by the authorized officer. The holder must remain responsible for compliance with the special use authorization.

6. Allow no more than one dwelling per lot to be built. In those cases where more than one dwelling (residence/sleeping cabin) currently occupies a single lot, allow the use to continue in accordance with the authorization. However, correct such deficiencies, if built without prior approval, upon transfer of ownership outside of the family (husband, wife and dependent children).

7. When a recreation residence is included in the settlement of an estate, issue a new special use permit for the remainder of the original permit term, updated to reflect policy and procedural changes, to the properly determined heir, if eligible. Prior to estate settlement, issue an annual renewable permit to the executor or administrator to identify responsibility for the use pending final settlement of the estate. When a recreation residence is sold, issue a new term permit to the buyer for the remainder of the original permit term, updated to reflect policy and procedural changes, if eligible.

8. Specify in the permit that the recreation residence must be occupied at least 15 days annually, the minimum acceptable period of occupancy.

9. Issue recreation residence term permits for a maximum of 20 years, except when the need for a shorter term has been determined by a project analysis in accordance with FSM 2721.23e and FSH 2709.11, chapter 40.

10. When a decision is made to convert the lot to an alternative use (2721.23e), take the following actions:

a. Notify the holder of the reasons and provide a copy of the decision documentation.

b. Allow at least 10 years of continued occupancy after notification.

c. Allow the current term permit to expire under its own terms and if the holder is entitled to additional time to satisfy the 10-year notification period, issue a new term permit for the remaining period. Clearly specify any limited tenure by including the following statement in the permit:

"This permit will expire on (insert date) and a new permit will not be issued."

d. Issue term or annual permits for additional periods as needed to allow continuation of occupancy until conversion to the alternate public use is ready to begin.

11. Before the Forest Supervisor issues a decision to convert a lot to an alternative public use, submit the proposed decision, supporting documentation and summary of public comments, to the Regional Forester for review for adequacy of the documentation and analysis. If analysis and documentation are inadequate to support the proposed decision or there is some other deficiency in the proposed decision, the Regional Forester shall instruct the Forest Supervisor to remedy the deficiencies and reconsider the proposed decision prior to making the final decision.

12. As with any resource allocation made in a Forest plan, the Forest Supervisor may reconsider a decision to continue or convert recreation residence lots to an alternative public use at any time new or changed conditions merit such reconsideration.

13. In the event a recreation residence is destroyed or substantially damaged by a catastrophic event such as a flood, avalanche, or massive earth movement, conduct and document an environmental analysis to determine whether improvements on the lot can be safely occupied in the future under Federal and State law before issuing a permit to rebuild or terminating the permit. Normally, an analysis should be completed within 6 months of such an event.

Allow rebuilding if the lot can be occupied safely and the use remains consistent with the Forest Land and Resource Management Plan. If the need for an alternative public use at the same location has been established prior to the catastrophic event, do not allow rebuilding if the improvements are more than 50 percent destroyed. If rebuilding is not authorized, in-lieu lots may be offered as provided by FSM 2347.1, paragraph 6 and FSH 2709.11, section 41.23c.

14. At the time permits are issued, advise holders that the terms of the permit require that they notify the Forest Service if they intend to sell their improvements and that they must provide a copy of the permit to a prospective purchaser before finalizing a sale. Whenever possible, the authorized officer should advise a prospective purchaser of the terms and conditions of the permit before a sale is final.

15. Do not stay a fee increase pending completion of an appeal of the fee under the administrative appeal regulations. Make any adjustments resulting from the administrative review through credit, refund, or supplemental billing.

16. During the term of a permit, terminate or revoke the use only in accordance with regulations at 36 CFR 251.60 and the terms and conditions of the permit (FSM 2347.1, para. 5). Except for revocation for noncompliance of terms of the permit, the Forest Supervisor shall submit proposed revocations, with supporting documentation and a summary of the public comments, to the Regional Forester for review prior to the Forest Supervisor's issuance of a decision. If analysis and documentation are inadequate to support the proposed decision or there is some other deficiency in the proposed decision, the Regional Forester shall instruct the Forest Supervisor to remedy the deficiencies and reconsider the proposed revocation prior to making the final decision.

2721.23b—*Applications.* Insofar as practicable, notify a new or prospective owner of the requirement to make application for the authorization to use existing improvements in accordance with 36 CFR 251.54.

2721.23c—Permit Preparation.

1. Use the Term Special Use Permit for Recreation Residence (Form FS 2700–5a, FSH 2709.11, ch. 50), to authorize recreation residences, except as specified in paragraph 2 of this section.

2. Use the Special Use Permit (Form FS–2700–4) when:

a. Conversion of the lot to a alternative public use is authorized, the conversion will be delayed, and a minimum term of continued use cannot be predicted.

b. Continuance of the recreation residence use is conditioned on the owner complying with specific Forest Service requirements before a term permit is issued.

c. The improvements are managed by a third party pending settlement of an estate, bankruptcy proceedings, or other legal action.

d. Yearlong occupancy is authorized by the Forest Supervisor, at which time the improvement ceases to be a recreation residence.

3. In either permit, identify all authorized improvements associated with recreation residence use. Do not authorize use of more than the statutory maximum of 5 acres under a term permit. Authorize community or association-owned improvements, such as water systems, by a separate special use permit (Form FS–2700–4).

2721.23d—Fee Determination. (FSH 2709.11, ch. 30.).

1. Use fair market value as determined by appraisal in determining the base annual rental fees for recreation residence lots. Redetermine the base fee at 20-year intervals.

2. Adjust the fee annually by the annual (second quarter to second quarter) change in the Implicit Price Deflator-Gross National Product (IPD–GNP).

3. Use professional appraisal standards in appraising recreation residence lots for fee determination purposes (FSH 2709.11.)

4. Where practicable, contract with private fee appraisers to perform the appraisal.

5. Require appraisers to coordinate the assignment closely with affected holders by seeking advice, cooperation, and information from the holders and local holder associations.

6. Retain only qualified appraisers. To the extent practicable, use those appraisers most knowledgeable of market conditions within the local area.

7. Before accepting any appraisal, conduct a full review of the appraisal to ensure the instructions have been followed and the assigned values are supported properly.

Forest Service Handbook 2709.11—Special Uses

Chapter 30—Fee Determination

33—Recreation Residence Fees

33.1—Base Fees and Indexing. Follow these procedures in determining the base (beginning) fee and subsequent fees under a 20-year cycle.

1. As the initial base, use the fees established in one of the years between 1978 and 1982. The first year of the fee cycle is the first year of the established fee (disregarding any phase-in that may have been provided). Adjust the full base fee forward by applying the appropriate cumulative Implicit Price Deflator-Gross National Product (IPD–GNP) adjustment factor shown in exhibit 01. New fees for 1989, established in this manner, will be phased-in over a 4-year period (1989–1992) at the rate of one-fourth of the increase each year, except that fees will not be phased-in for those permits that limit fee adjustments to 5-year intervals.

In those cases where there may not be a fee established for the 1978–1982 period, Regional Foresters are authorized, subject to concurrence of the Chief, to utilize a different starting date and to adjust the length of the fee cycle so that all permits will have a new base fee determined during the 1998–2002 period.

2. For 1990 through the last year of the fee cycle, adjust the fees on an annual basis by calculating the percentage change of the IPD–GNP index (as reported by the Bureau of Economic Analysis, Department of Commerce, in July of each year) from the second quarter of the previous year to the second quarter of the current year and applying this percentage adjustment factor to the current year's fees.

For term permits that restrict adjustments to 5-year intervals, apply the IPD index adjustments cumulatively at 5-year intervals. At the end of the current 20-year term, or earlier if agreed to by the holder, revise permits to provide for annual indexing.

3. Limit the annual fee adjustment for 1990 and thereafter to 10 percent per year when the change in the IPD–GNP index exceeds 10 percent in any one year. The index amount in excess of 10 percent will be carried over and applied to the fee for the next succeeding year in which the index factor is less than 10 percent.

4. If a new permit is to be issued (FSM 2721.23a), re-appraise the lot toward the end of the 20-year cycle. Beginning in the twenty-first year (the first year of the next fee cycle; 1998 in the case of 1978 fees), put into effect the base fee for the next 20-year cycle by applying 5 percent to the newly determined appraised market value of the lot for recreation residence purposes.

5. In those few cases where one or more additional sleeping structures (guest cabins, and so forth) have been added to a single lot, add to the current adjusted base fee an additional charge equal to 25 percent of the fee established for a single residence use of the lot or $100, whichever is greater, per structure.

EXHIBIT 01, SEC. 33.1—IPD–GNP ADJUSTMENT FACTOR BY YEAR

Base fee year	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	Cum. adj.
1978	1.101	1.092	1.095	1.067	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.771
1979	.....	1.092	1.095	1.067	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.609
1980	.....	.....	1.095	1.067	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.473
1981	.....	.....	.....	1.067	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.346
1982	.....	.....	.....	.....	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.261

(**Note:** Cum. Adj.=Cumulative Adjustment.)

The above factors for fee years 1979–1986 were taken from Table 5, Price Indexes and the Gross National Product Implicit Price Deflator, as published in the Survey of Current Business by the Department of Commerce, Bureau of Economic Analysis, February 1986. These factors represent an annual rate, based on the percent change from the first quarter to the second quarter of the indicated year. The 1987 factor of 1.026 is the percentage change in the IPD–GNP index from the second quarter of 1985 to the second quarter of 1986 as reported in the July 1986 issue of "United States Department of Commerce News," a publication by the Bureau of Economic Analysis. The IPD–GNP index for the second quarter of 1985 is 111.1. The 1988 and 1989 factors, were determined following the same procedures, using the appropriate year's publication. The factors for 1979–1989 in Exhibit 01 are shown only to illustrate how the cumulative adjustment factor used to establish the 1989 fee is determined. The factor was

determined by chain multiplying the factor for the years within the base fee year period (for 1982 this would be 1.050 × 1.032 × 1.038 × 1.033 × 1.026 × 1.028 × 1.029 = 1.261.) See exhibit 02 for examples of applications.

Exhibit 02, Sec. 33.1—Examples of Use of IPD–GNP Table

The following two examples illustrate use of the IPD–GNP adjustment factors in exhibit 01 in determining the 1989 fee:

(1) Example 1. A fee of $412 that became established in 1982 (first year in the fee cycle) would be adjusted to $520 in 1989 ($412 × 1.261). This would be the fee amount owed by a holder who does not accept the new term permit and would remain constant until the end of the five year adjustment period. If a new term permit is accepted, the fee would be phased-in, and the holder would be charged $439 for 1989, instead of the full amount.

(2) Example 2. A 1980 base year fee of $315 would be adjusted to $464 ($315 × 1.473) with the actual 1989 charge limited to $352 for a new term permit. A holder who keeps the old permit would pay the full fee of $464 in 1989.

Under both examples, factors for the years 1990 and thereafter will be determined in the same manner as the 1989 factor. Using the 1989 factor as an example, the index for the second quarter of 1987 as reported in the July 1987 Bureau publication is 117.2; the index for February 1988 in the July 1988 Bureau publication is 120.6. The percentage change in the index to be used to determine 1989 fees is 120.6 minus 117.2 divided by 117.2. Thus, 1989 fees will be 2.9 percent higher than 1988 for those permits that are indexed.

Using the above two examples, calculation of the 1990 fees for those accepting new term permits would be as follows: (A 1990 IPD–GNP adjustment factor of 1.028 is assumed.)

(1) Example 1. The full 1989 fee of $520 times the IPD–GNP index factor for 1990 of 1.028 equals $535, the full fee for 1990. The increase in the fee is $15. The amount of the 1989 fee increase to be phased-in in 1990 is $54 ($520 − $412 = $108/2 = $54). Thus, the 1990 fee to be charged is the base 1982 fee of $412 + $54 + $15 = $484.

(2) Example 2. The full 1990 fee equals $477, a fee increase of $13. The amount of the 1989 fee increase to be phased-in in 1990 is $75 ($464 − $315 = $149/2 = $75). Thus, the 1990 fee to be charged is the base 1980 fee of $315 + $75 + $13 = $403.

33.11—Fee Credits. In billing holders for fees, reduce the fee by the amount of any unused or remaining credits due holders under provisions of the Appropriations Acts for fiscal years 1983 through 1986.

33.2—Fees on Nonrenewal. When permits are placed on tenure (that is, a new special use permit will not be issued following expiration), the annual fee for the tenth year prior to the expiration date of the current permit becomes the base fee. The fee for each year during the last ten years is one-tenth of the base fee multiplied by the number of years then remaining on the permit. For example, charge a holder with nine years remaining 90 percent of the base fee; with eight years, 80 percent; and so forth.

Use the following schedule to calculate the holder's fee during the 10-year period:

Years remaining on current permit	Percent of base fee to charge
10	100
9	90
8	80
7	70
6	60
5	50
4	40
3	30
2	20
1	10

When a review of the decision to convert the lot to an alternative public use shows that changed conditions warrant continuation of the recreation residence, use the following fee determination procedures:

1. If a new 20-year term permit is issued, the Forest Service shall recover the amount of fees foregone while the previous permit was under notice that the lot would be converted to an alternative public use. Collect this amount evenly over a 10-year period in addition to the annual fee due under the new permit. The obligation runs with the lot and shall be charged to a subsequent purchaser.

The annual fee under the newly issued 20-year permit shall be the annual index adjusted fee computed as though no limit on tenure existed, plus the amount specified above until paid in full.

2. If a 20-year term permit is not issued, and the occupancy of the subject lot is to be allowed to continue for less than 10 years (that is, authorized by a new permit for a specified term), do not recover past fees. Determine the fee for a new permit of less than 10 years by computing the fee as if notice that a new permit would not be issued had not been given, reduced by the appropriate percentage for the number of years of the extension (that is, a 6-year tenure period results in a fee equal to 60 percent of the base fee).

3. If a 20-year term permit is not issued, and the occupancy of the subject lot is to be allowed to continue for more than 10 years (authorized by a new permit for a term of less than 20 years), the Forest Service shall recover fees as outlined in preceding paragraph 1, computed for the most recent 10-year period in which the term of the permit was limited.

33.3—Appraisals. Use the following process to determine the fair market value of recreation residence lots.

1. Use appraisals made by professional appraisers for determining the market value of the fee simple estate of the National Forest land underlying the lot subject to a special use permit, but without consideration as to how the authorization would or could affect the fee title of the lot (FSH 5409.12, ch. 6 for the standard contract to be used to establish fair market value of recreation residence lots).

2. In consultation with affected holders, select and appraise typical lots (rather than all individual lots) within groups that have essentially the same or similar value characteristics. Within such groupings, adjust for measurable differences between the lots. (Once properly established, typical site classifications should rarely change.)

3. Ensure appraised values are based on comparable market sales of sufficient quality and quantity that will result in the least amount of dollar adjustment to make them reflective of the subject lots' characteristics. Such characteristics include:

a. Physical differences between subject lot and the comparable sales.

b. Legal constraints imposed upon the market by governmental agencies.

c. Economic considerations evident in the local market.

d. Locational considerations of subject lot in relation to the market (sales) comparable.

e. Functional usability and utility of the lot.

f. Amenities occurring to the lot as compared with selected sales comparables.

g. Availability of improvements (such as roads, water systems, and power lines) provided by nonholder entities, including the United States. Do not adjust for improvements furnished by holders.

h. Other market forces and factors identified as having a quantifiable effect upon value.

33.31—Appraisers.

1. Select fee appraisers who hold a current certification of competence from a nationally recognized professional appraisal organization. In the case of Forest Service appraisers, use those individuals who have received adequate training through professional appraisal organizations and who have satisfactorily completed the basic courses necessary to demonstrate competence.

2. Require appraisers to sign a standard agreement that states:

a. The approved appraisal format to be used.

b. The approved standard forms to be used.

c. A full, complete, and accurate definition of the appraisal problem.

d. The standards of professional competence, ethics, and practice to which the appraiser shall adhere.

e. Those requirements of the appraisal assignment that may be imposed under (1) statutes, (2) Federal regulations, (3) Forest Service policies and procedures, and (4) situations unique to the given appraisal assignment.

3. Require appraisers to notify affected holders by mail and offer to meet with them to discuss the assignment, answer questions specific to the assignment, and seek advice, information, and cooperation from the holders and their local organizations. The appraiser must notify holders of such a meeting at least 30 days in advance of the meeting. Send notices to the address used for bills for collection. Use the notice to give the holders advance information on the appraisal assignment. At such meetings, require that the appraiser have available copies of the appraisal instructions, directions, and requirements for review by the holders. An appraisal cannot be made prior to the meeting with the holders.

33.32—Establishing Recreation Residence Lot Value.

1. Upon receipt of the appraisal report, conduct a review of the appraisal in conformance with the standards of the National Association of Review Appraisers.

2. Following review and acceptance of the appraisal, notify affected holders of Forest Service acceptance of the report. In the notification, inform holders that they and other interested parties have 45 days in which to review the appraisal. Upon request, provide copies of the report(s) and supporting documentation pursuant to the Freedom of Information Act.

3. Upon request, provide an opportunity for affected holders to obtain, at their expense, an appraisal report from an appraiser holding at least the same or similar qualifications as the one selected by the Forest Service.

a. The Forest Service shall provide holders with a copy of the standards used by the appraiser selected by the Forest Service and holders shall provide the standards to the holder-employed appraiser. The holder must require the observance of these standards, including a signed certification that ensures an understanding of the appraisal instructions and standards. Reject any appraisals that do not meet these standards.

b. Subject the holder-furnished appraisal to the same review requirements as the appraisal obtained by the Forest Service.

4. Give full and complete consideration to both appraisals. If the two appraisals disagree in value by more than 10 percent, ask the two appraisers to try and reconcile or reduce their differences. If the appraisers cannot agree, the Forest Supervisor will utilize either or both appraisals to determine the fee, unless a third appraisal is requested and accepted by the Supervisor.

5. When requested, seek a third appraisal.

a. The cost shall be shared equally by the holder and the Forest Service.

b. This appraisal must meet the same standards of the first and second appraisals. The Forest Supervisor has discretion to accept or reject the third appraisal.

Forest Service Manual

Chapter 2720—Special Uses Administration

2721.23e—Recreation Residence Continuance. See FSM 2347.1 for the general policy on recreation residence use. Follow the direction in this section and the procedures in section 41.23, FSH 2709.11 in determining whether recreation residence term permits may be issued for a new term at current sites. Exhibit 01, section 41.23c, FSH 2709.11, depicts the permit continuance process.

The Land and Resource Management Plan (Forest plan) provides direction for continuance of the recreation residence use (FSM 1920). As Forest plans are revised, availability for recreation residence use shall be explicitly addressed in the plan through delineation of management areas and associated management area prescriptions (FSM 1920).

Decisions to issue new recreation residence term permits following expiration of the current term permit require a determination of consistency with the current Forest plan. Make this determination by evaluating the extent to which continued recreation residence use adheres to the standards and guidelines which apply to the appropriate management area. Address continuation of recreation residence use on a tract or group of tracts basis, not on individual lots.

1. Use Is Consistent With Forest Plan. When recreation residence use is consistent with the Forest plan, it shall continue. If the use has been analyzed sufficiently as part of a EA or EIS completed within the 5 years prior to permit expiration, issue a new term permit upon expiration of the current term permit. Issue a record of decision or a decision notice and finding of no significant impact only if the use was not specifically approved in the appropriate decision document. If the use has changed and such change has not been analyzed sufficiently as part of a completed EA or EIS, complete the appropriate environmental analysis (FSH 1909.15). If the EA or EIS indicating the use is consistent with the Forest Plan was completed more than 5 years prior to permit expiration, additional environmental documentation is necessary (FSH 1909.15, sec. 18.03). Initiate action to issue a new term permit within 2 years prior to permit expiration.

2. Use May Not Be Consistent With Forest Plan. When the lands currently authorized for recreation residence use are allocated to alternative public uses through amendment or revision of the Forest Plan, and continued recreation residence use may be inconsistent with standards and guidelines which apply to the appropriate management area, the Forest Supervisor shall conduct a project analysis of the alternative public use(s) (FSH 1909.15). This project analysis shall consider continuation of existing recreation residence use through appropriate modification of the term permit provisions or amendment of the Forest plan to accommodate the use, or discontinuation of the use (See FSM 2347.1 for recreation residence use continuance). Decisions reached by the project analysis must comply with NEPA requirements and are subject to appeal under Department of Agriculture appeal regulations at 36 CFR part 215 and 36 CFR part 251, subpart C.

a. If the project analysis results in a decision to amend the Forest plan so that the recreation residence use may continue, modify the provisions of the current term permits as appropriate. New term permits can be issued following current permit expiration. Additional environmental documentation may be necessary (FSH 1909.15).

b. If the project analysis results in a decision to convert a lot to an alternative public use at some point in

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the future, grant the holder at least 10 years continued use from the date of the decision, unless the continued use conflicts with law and regulation, and identify the specific alternative public use(s) for which the land is being recovered. As provided by FSM 2347.1, the authorized officer may allow continued use of the lot until such time as conversion of the new use is ready to begin by issuing a new permit for the remaining period and amending the Forest plan if needed.

c. Review the project analysis decision two years prior to permit expiration to determine if there have been any changes in resource conditions that require another look at the decision. If the decision was made less than 5 years prior to permit expiration and the review shows that conditions have not changed, implement the project analysis-based decision. Affirmation of such decision is not appealable (36 CFR 251.83). If the decision was made more than 5 years from permit expiration and/or review indicates that resource conditions have changed, update the analysis to determine the proper action. Decisions arising from this new analysis are appealable.

2721.23f—In-Lieu Lots. When new permits will not be issued following expiration of the present permit, make a reasonable effort to provide an in-lieu lot, if available, at locations not needed in the foreseeable future (generally, the period covered by the Forest plan) for alternative public uses in accordance with FSM 2347.1, paragraph 6 and FSH 2709.11, section 41.23d.

2721.23g—Land Exchange. Proposals to convey recreation residence tracts into private ownership by land exchange may be considered at any time. Such proposals must be processed in accordance with the instructions in FSM 5430 applicable to all land exchanges.

2721.23h—Cooperation and Issue Resolution. Authorized officers shall strive to reduce conflict between holders and the Forest Service arising from permit administration. As necessary, specify a Forest Officer to work with the holders, their representatives, and other interested parties on specific issues.

1. Provide opportunity for holders and their representatives to participate in issue resolution. Where practicable, except where an imminent hazard or risk to health and safety or resources requires immediate action prior to issuing written decisions related to permit administration, consult and meet in person, or by telephone, with holders and their representatives to discuss any issues or concerns related to the permit and to reach a common understanding and agreement.

2. During Forest plan amendment or revision and project analysis, seek full involvement of holders and their representatives in public involvement opportunities and activities. Encourage and solicit their input and comments. Meet with holders and their representatives to discuss any issues or concerns arising in the planning and analysis processes and explore opportunities to resolve those issues prior to issuing a decision.

3. If a decision is appealed, utilize the opportunities provided in the appeal rules (36 CFR part 215, part 217 and part 251, subpart C) to discuss the appeal with the appellant(s) and intervenor(s) (and/or their representatives) together or separately to explore opportunities to resolve the issue by means other than review and decision on the appeal.

2721. 23i—Noncompliance. Give written notice and provide a reasonable opportunity for holder to correct special use permit violations before terminating the use for noncompliance with the permit conditions (36 CFR 251.60(e)). Revocation for noncompliance shall be only for a breach of a permit provision(s) that continues after notice and a reasonable opportunity for correction has been given (FSM 2347.1, para. 5).

2721.23j—Lot Restoration. On expiration of a permit which will not be reissued or revocation or termination prior to expiration (FSM 2721.23a(10), 2721.23a(16)), except for revocation in the public interest, require the holder to restore the property to a condition acceptable to the Forest Supervisor (36 CFR 251.60(j)). The holder may relinquish the improvements to the Forest Service upon approval of the Forest Supervisor. Terms and conditions for lot restoration are given in the term permit issued for recreation residences.

Forest Service Handbook 2709.11—Special Uses

Chapter 40—Special Uses Administration

41.23—Recreation Residence Use.

41.23a—Permit Continuance. When a Forest plan is amended or revised and recreation residence use remains consistent with management direction given in the Forest plan, issue a new permit to the same holder in accordance with the following:

1. Since recreation residences have been in place for many years, and experience in administering this use has shown that continuing the use does not cause significant environmental impacts, issuance of a new permit can be made without further environmental documentation (FSM 2721.23e), except when the following situations are present:

a. If the use has been analyzed sufficiently as part of an EA or EIS completed within 5 years of permit expiration, but not specifically addressed in a decision document, confirm the consistency of the use with the management direction in the Forest plan by issuing a record of decision or a decision notice and finding of no significant impact.

b. If the use has not been analyzed sufficiently as part of an EA or EIS completed within 5 years of permit expiration, complete the appropriate environmental analysis and documentation (FSH 1909.15).

c. If an EA or EIS indicating the use is consistent with the Forest plan was completed more than 5 years prior to permit expiration, additional environmental documentation may be necessary (FSH 1909.15).

d. If there are changes in the use and the changed use has been analyzed sufficiently as part of an EA or EIS completed within 5 years of permit expiration and approved in the appropriate decision document no further action is required. If the changed use has not been analyzed sufficiently as part of a completed EA or EIS and approved in the appropriate decision document, environmental documentation may be necessary. Such documentation may be accomplished by categorical exclusion (FSH 1909.15).

2. Initiate the analysis and action to issue a new permit 2 years prior to expiration of the current term permit and notify the holder of the outcome of the action.

3. Ensure the current use is in full compliance with the terms of the permit before issuing the new term permit.

4. Review and update the term permit provisions to ensure that the new permit contains those clauses necessary to comply with all current regulations of the Secretary of Agriculture and all present Federal, State, or county laws, regulations, or ordinances which are applicable to the area covered by the permit.

41.23b—*Project Analysis.* When a Forest plan is amended or revised and consistency of the existing recreation residence use with new Forest plan management direction is uncertain, conduct a site specific project analysis to verify the new direction. Recognize that an inconsistency indicated by the Forest plan is not tantamount to recreation residence removal.

Recreation residence use may continue by appropriate modification of the term permit provisions to recognize specific occupancy conditions, or by amendment of the Forest plan to accommodate the use (FSM 2721.23e.1.b).

1. Public Involvement. During the project analysis process, encourage and solicit information, comments, and involvement from holders and other interested parties. Follow Forest Service public involvement procedures, including those associated with NEPA (FSM 1620, FSH 1900.12, and FSH 1909.15). Facilitate holder involvement by timing review periods as closely as possible to the recreation residence use season.

2. Analysis Documentation. The project analysis record and appropriate NEPA compliance document must contain objective, detailed information regarding existing recreation residence use and other applicable resource conditions. The documentation must include a full range of alternatives that includes consideration for retention of some or all of the existing recreation residence use.

3. Analysis Factors and Considerations.

a. Lot use. Examine the relationship of the existing recreation residence use with the proposed alternative public use of the lot, including compatibility and conflict. Describe any current or anticipated conflicts between recreation residence use and the proposed use. Examine and describe the feasibility of other sites to meet the proposed use or how the proposed use could be provided for by modifying recreation residence use or by modifying the proposed use.

Develop a range of alternatives that:

(1) If possible, examine and describe ways to meet the proposed use without significant conflict with existing recreation residence uses and how potential conflicts can or cannot be mitigated.

(2) Examine the feasibility of common, shared, or multiple use that includes recreation residences. Also examine the feasibility of adjusting lot and tract sizes, configurations and boundaries, or relocation of lot improvements to better accommodate such use.

(3) Examine the feasibility of alternative sites for recreation residence use and for the proposed use.

(4) Compare the benefits and disadvantages of the proposed use with the benefits and disadvantages of continued recreation residence use, including economic considerations, such as the cost of removing the use.

(5) Examine the feasibility of using land exchanges to accommodate recreation residence and/or the proposed use.

B. Other Resource Impacts. Show how recreation residence occupancy is compatible or in conflict with other National Forest System resources. Consider the applicability of section 106 of the National Historic Preservation Act and other Federal and State laws which may have an effect on these resources.

c. Environmental Impacts. Discuss the environmental impacts of continued recreation residence use, together with the impacts of any improvements necessary for their continued use, compared with the impacts of the proposed use. Examine the environmental, economic, and social impacts of recreation residence use, the proposed use, and alternative public uses, particularly any necessary construction.

4. Decision Issuance and Documentation.

a. If the project analysis results in a finding that continued recreation residence use will not conflict with the proposed alternative public use, issue a decision to amend the Forest plan, and modify existing permits as appropriate. Issue new term permits for the applicable lots following permit expiration. The decision document shall summarize the conclusions regarding recreation residence use and provide a basis for the issuance of new permits.

b. If the project analysis results in a finding that (1) the recreation residence use is in some degree inconsistent with the Forest plan but that continued use does not conflict with the proposed alternative public use, or (2) that the proposed use can accommodate some or all of the recreation residence use, issue a decision to amend the Forest plan and modify existing permits as appropriate. Issue new term permits for the applicable lots following permit expiration. The decision document shall summarize the conclusions regarding continued recreation residence use and delineate, as appropriate, which permits will not be continued and which will receive new term permits.

c. If the project analysis results in a finding that recreation residence use remains inconsistent with the Forest plan and is not compatible with the proposed use, issue a decision that the recreation residences lots are to be removed and the lots converted to the proposed use.

d. In addition to other requirements specified in FSH 1909.15, the decision document shall include the following:

(1) The estimated time of conversion.

(2) The reasons the recreation residence use is or is not compatible with the proposed use.

(3) The reasons why the proposed use was chosen over others.

(4) A summary of alternatives to the conversion, including the possibility of combining or sharing use with recreation residence use; adjusting lots or locations of improvements to better accommodate common or shared uses; and alternatives suggested by affected holders and other interested members of the public.

(5) The reasons any conflict between the recreation residences and the proposed use cannot be resolved.

(6) Cost effectiveness of the proposed use.

5. Decision Notification.

a. Notify holders and any interested parties of the decision and provide copies of the project analysis, NEPA documentation, any Forest plan amendment, and decision document as soon as possible after the decision along with notice of appeal rights under 36 CFR part 217 or part 251, subpart C.

b. When lots will be converted to the proposed use and new permits will not be issued upon expiration of the present permits, provide with the decision notification:

(1) Ten years or more notice that the lots will be converted to the proposed use (FSM 2721.23a). Normally, use the same conversion date for all affected holders in a particular group or tract.

(2) Notice that the holder should refrain from making costly repairs, improvements, or expenditures except those that are necessary to protect holder and public health or safety.

(3) Notice of whether in-lieu lots will or will not be made available, although the location of those in-lieu lots may not be known until permit expiration approaches.

(4) Notice that fees will be adjusted in accordance with FSH 2709.11, section 33.2.

6. Project Analysis Decision Review. Two years prior to permit expiration (usually the 18th permit year), Forest Supervisors shall review project analysis decisions affecting those permits that are more than five years old to determine if there have been any changes in resource conditions that require reconsideration of the decision.

For all reviews, the following apply:

a. Reviews shall be objective, comprehensive, and in writing. New information, changed resource conditions, and new or changed land allocations made through the forest planning process shall be reviewed to determine if a new project analysis and/

or additional NEPA compliance is needed.

b. When initiating the review, notify affected holders and interested publics in writing and provide opportunity for involvement in accordance with Forest Service public involvement procedures.

c. If review indicates that conditions have not changed, implement the decision.

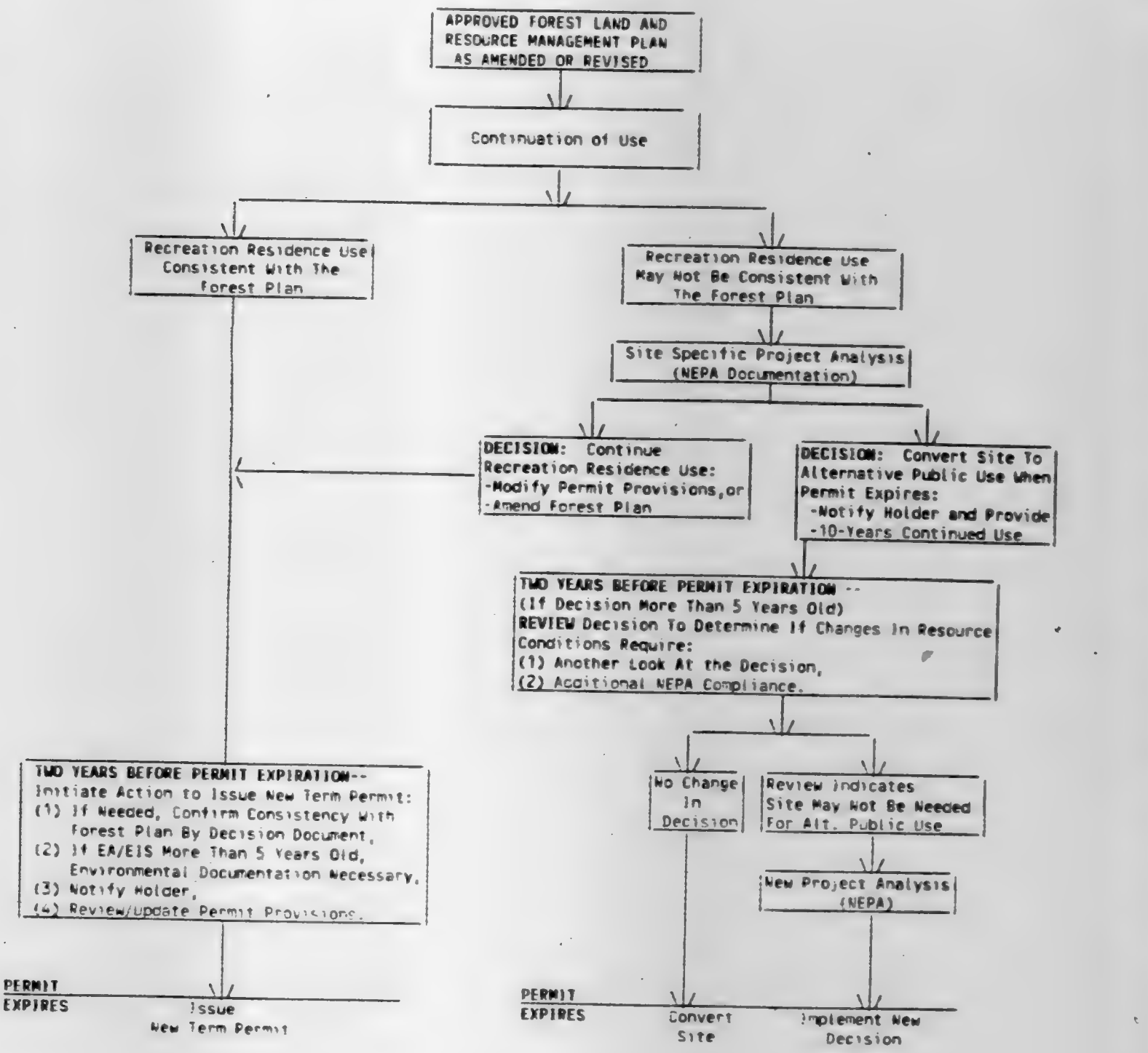
d. If review indicates that conditions have changed, initiate a new project analysis, including NEPA compliance, to determine future use of the lot(s).

e. Notify affected holders and interested publics in writing of review findings, including notice that the result of the review is not appealable (36 CFR 251.83).

41.23c—Permit Decision Process. Exhibit 01 depicts the procedure to be followed in determining whether the recreation residence authorization should be continued.

BILLING CODE 3410–11–M

EXHIBIT 01, SEC. 41.23c - PERMIT DECISION PROCESS



BILLING CODE 3410-11-C

41.23d—In-Lieu Lots. Pursuant to FSM 2347.1, paragraph 6, in-lieu lots may be offered to holders who have received notice that their permits are being revoked for reasons other than noncompliance or that a new permit will not be issued following expiration of their existing permits because the lot is needed for an alternative public use. Identify and offer in-lieu lots in accordance with FSM 2347.1, paragraph 6 and FSM 2721.23f and follow these procedures:

1. When available, offer in-lieu lots to holders at the time that notice is given that the lot will be converted to an alternative public use and a new permit will not be issued. If lots do not become available until later, offer them then.

2. Give first priority to identifying and offering in-lieu lots in the same tract or an expansion of that tract, where feasible.

3. Arrange a joint inspection of the in-lieu lot with the holder. Allow the holders 90 days from the date of the joint inspection of the in-lieu lot or 90 days from the final disposition of any appeals of the decision to convert the lot to an alternative public use, whichever is later, to accept or reject the offer. The 90-day period shall occur while access to the lot is possible.

4. When holders accept such offers, issue a new permit and reserve the offered lots. Do not charge a fee until the holder begins construction of improvements on the lot. A partial waiver of fees for the in-lieu lot may be appropriate until the improvements are actually occupied. The lot reservation will expire upon holder's failure to begin construction on the in-lieu lot on a mutually-agreed upon schedule.

5. Allow holders accepting offers to continue use of their current lots until the expiration date. Inform the holders that they should be prepared to move to the in-lieu lot during the 24 months prior to permit expiration, provided the supplemental review of the decision to convert the present lot to an alternative public use has been completed.

6. The opportunity to develop an in-lieu lot, if accepted by the previous owner, shall be extended to the new owner, if eligible, when there is a change in ownership of authorized improvements.

7. Do not offer in-lieu lots for revocation actions stemming from noncompliance with special use permit terms.

Forest Service Handbook 2709.11—Special Uses

Chapter 50—Terms and Conditions

54—Special Use Authorizations

54.1—Term Special Use Permit for Recreation Residences. Use Form FS–2700–5a with all required clauses as set forth in exhibit 01.

BILLING CODE 3410–11–M

EXHIBIT 01, SEC. 54.1--TERM SPECIAL USE PERMIT

FS-2700-5a (01/94)
OMB No. 0596-0082
Expires 06/30/96

USDA - Forest Service

TERM SPECIAL USE PERMIT
For Recreation Residences

Act of March 4, 1915, As Amended
(Ref. FSM 2710)

Holder No.	Type Site	Authority
* /	*	*
Auth. Type	**Issue Date**	**Expir. Date**
*	* / /	* / /
Location Sequence No.		**Stat. Ref.**
*		*
Latitude	**Longitude**	**LOS Case**
* - -	* - -	*

* _____ of * _____
(Holder Name) (Billing Address - 1)

* _____ * _____ * _____ * _____
(Billing Address - 2) (City) (State) (Zip Code)

(hereafter called the holder) is hereby authorized to use National Forest lands, for a recreation residence for personal recreational use on the

* _____ National Forest, subject to the provisions of this permit including items * _____ through * _____, on page(s) * _____ through * _____ This permit covers * _____ acres.

Described as: (1) Lot * _____ of the * _____ tract.
(A plat of which is on file in the office of the Forest Supervisor.)

OR (2) * _____ as shown on the attached map.
(Legal Description)

The following improvements, whether on or off the lot, are authorized in addition to the residence structure:

*

This use shall be exercised at least 15 days each year, unless otherwise authorized in writing. It shall not be used as a full-time residence to the exclusion of a home elsewhere.

THIS PERMIT IS NOT TRANSFERABLE
PURCHASERS OF IMPROVEMENTS ON SITES AUTHORIZED BY THIS PERMIT MUST SECURE A NEW PERMIT FROM THE FOREST SERVICE.

THIS PERMIT IS ACCEPTED SUBJECT TO ALL OF ITS TERMS AND CONDITIONS.

ACCEPTED: * _____ * _____
HOLDER'S NAME AND SIGNATURE DATE

APPROVED: * _____ * _____
AUTHORIZED OFFICER'S NAME AND SIGNATURE TITLE DATE

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Note: Permit clauses revised as a result of the reformulation of the recreation residence policy as described in this notice are printed in italics.

Terms and Conditions

I. Authority And Use And Term Authorized

A. This permit is issued under the authority of the Act of March 4, 1915, as amended (16 U.S.C. 497), and title 36, Code of Federal Regulations, sections 251.50–251.64. Implementing Forest Service policies are found in the Forest Service Directives System (FSM 1920, 1950, 2340, 2720; FSH 2709.11, chap. 10–50). Copies of the applicable regulations and policies will be made available to the holder at no charge upon request made to the office of the Forest Supervisor.

B. The authorized officer under this permit is the Forest Supervisor, or a delegated subordinate officer.

C. This permit authorizes only personal recreation use of a noncommercial nature by the holder, members of the holder's immediate family, and guests. Use of the permitted improvements as a principal place of residence is prohibited and shall be grounds for revocation of this permit.

D. Unless specifically provided as an added provision to this permit, this authorization is for site occupancy and does not provide for the furnishing of structures, road maintenance, water, fire protection, or any other such service by a Government agency, utility, association, or individual.

E. Termination at End of Term: This authorization will terminate on *_____. (insert date)

II. Operation and Maintenance

A. The authorized officer, after consulting with the holder, will prepare an operation and maintenance plan which shall be deemed a part of this permit. The plan will be reviewed annually and updated as deemed necessary by the authorized officer and will cover requirements for at least the following subjects:

1. Maintenance of vegetation, tree planting, and removal of dangerous trees and other unsafe conditions.
2. Maintenance of the facilities.
3. Size, placement and descriptions of signs.
4. Removal of garbage or trash.
5. Fire protection.
6. Identification of the person responsible for implementing the provisions of the plan, if other than the holder, and a list of names, addresses, and phone numbers of persons to contact in the event of an emergency.

Note: Forest Supervisors may include other provisions relating to fencing, road maintenance, boat docks, piers, boat launching ramp, water system, sewage system, incidental rental, and the Tract Association. Regional Foresters may add specific provisions that Forest Supervisors should include in the plan.

III. Improvements

A. Nothing in this permit shall be construed to imply permission to build or maintain any improvement not specifically named on the face of this permit or approved in writing by the authorized officer in the operation and maintenance plan. Improvements requiring specific approval shall include, but are not limited to: Signs, fences, name plates, mailboxes, newspaper boxes, boathouses, docks, pipelines, antennas, and storage sheds.

B. All plans for development, layout, construction, reconstruction or alteration of improvements on the lot, as well as revisions of such plans, must be prepared by a licensed engineer, architect, and/or landscape architect (in those states in which such licensing is required) or other qualified individual acceptable to the authorized officer. Such plans must be approved by the authorized officer before the commencement of any work.

IV. Responsibilities of Holder

A. The holder, in exercising the privileges granted by this permit, shall comply with all present and future regulations of the Secretary of Agriculture and all present and future federal, state, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit. However, the Forest Service assumes no responsibility for enforcing laws, regulations, ordinances and the like which are under the jurisdiction of other government bodies.

B. The holder shall exercise diligence in preventing damage to the land and property of the United States. The holder shall abide by all restrictions on fires which may be in effect within the forest at any time and take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during a closed fire season established by law or regulation without written permission from the authorized officer.

C. The holder shall protect the scenic and esthetic values of the National Forest System lands as far as possible consistent with the authorized use, during construction, operation, and maintenance of the improvements.

D. No soil, trees, or other vegetation may be removed from the National Forest System lands without prior permission from the authorized officer. Permission shall be granted specifically, or in the context of the operations and maintenance plan for the permit.

E. The holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. The holder shall fully repair and bear the expense for all damage, other than ordinary wear and tear, to National Forest lands, roads and trails caused by the holder's activities.

F. The holder assumes all risk of loss to the improvements resulting from acts of God or catastrophic events, including but not limited to, avalanches, rising waters, high winds, falling limbs or trees and other hazardous natural events. In the event the improvements authorized by this permit are destroyed or substantially damaged by acts of God or catastrophic events, the authorized officer will conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. The analysis will be provided to the holder within 6 months of the event.

G. The holder has the responsibility of inspecting the site, authorized rights-of-way, and adjoining areas for dangerous trees, hanging limbs, and other evidence of hazardous conditions which could affect the improvements and or pose a risk of injury to individuals. After securing permission from the authorized officer, the holder shall remove such hazards.

H. In case of change of permanent address or change in ownership of the recreation residence, the holder shall immediately notify the authorized officer.

V. Liabilities

A. This permit is subject to all valid existing rights and claims outstanding in third parties. The United States is not liable to the holder for the exercise of any such right or claim.

B. The holder shall hold harmless the United States from any liability from damage to life or property arising from the holder's occupancy or use of National Forest lands under this permit.

C. The holder shall be liable for any damage suffered by the United States resulting from or related to use of this permit, including damages to National Forest resources and costs of fire suppression. Without limiting available civil and criminal remedies which may be available to the United States, all timber cut, destroyed, or injured without authorization shall be paid for at stumpage rates which apply to the unauthorized cutting of timber in the State wherein the timber is located.

VI. Fees

A. Fee Requirement: This special use authorization shall require payment in advance of an annual rental fee.

B. Appraisals:

1. Appraisals to ascertain the fair market value of the *lot* will be conducted by the Forest Service at least every 20 years. The next appraisal will be implemented in *_____ (insert year).

2. Appraisals will be conducted and reviewed in a manner consistent with the Uniform Standards of Professional Appraisal Practice, from which the appraisal standards have been developed, giving accurate and careful consideration to all market forces and factors which tend to influence the value of the *lot*.

3. If dissatisfied with an appraisal utilized by the Forest Service in ascertaining the permit fee, the holder may employ another qualified appraiser at the holder's expense. The authorized officer will give full and complete consideration to both appraisals provided the holder's appraisal meets Forest Service standards. If the two appraisals disagree in value by more than 10 percent, the two appraisers will be asked to try and reconcile or reduce their differences. If the appraisers cannot agree, the Authorized Officer will utilize either or both appraisals to determine the fee. When requested by the holder, a third appraisal may be obtained with the cost shared equally by the holder and the Forest Service. This third appraisal must meet the same standards of the first and second appraisals and may or may not be accepted by the authorized officer.

C. Fee Determination:

1. The annual rental fee shall be determined by appraisal and other sound business management principles. (36 CFR 251.57(a)). The fee shall be 5 percent of the appraised fair market fee simple value of the lot for recreation residence use.

Fees will be predicated on an appraisal of the lot as a base value, and that value will be adjusted in following years by utilizing the percent of change in the Implicit Price Deflator-Gross National Product (IPD–GNP) index as of the previous June 30. A fee from a prior year will be adjusted upward or downward, as the case may be, by the percentage change in the IPD–GNP, except that the maximum annual fee adjustment shall be 10 percent when the IPD–GNP index exceeds 10 percent in any one year with the amount in excess of 10 percent carried forward to the next succeeding year where the IPD–GNP index is less than 10 percent. The base rate from which the fee is adjusted will be changed with each new appraisal of the lot, at least every 20 years.

2. If the holder has received notification that a new permit will not be issued following expiration of this permit, the annual fee in the tenth year will be taken as the base, and the fee each year during the last 10-year period will be one-tenth of the base multiplied by the number of years then remaining on the permit. If a new term permit should later be issued, the holder shall pay the United States the total amount of fees forgone, for the most recent 10-year period in which the holder has been advised that a new permit will not be issued. This amount may be paid in equal annual installments over a 10-year period in addition to those fees for existing permits. Such amounts owing will run with the property and will be charged to any subsequent purchaser of the improvements.

D. Initial Fee: The initial fee may be based on an approved Forest Service appraisal existing at the time of this permit, with the present day value calculated by applying the IPD–GNP index to the intervening years.

E. Payment Schedule: Based on the criteria stated herein, the initial payment is set at $*_____ per year and the fee is due and payable annually on *_____ (insert date). Payments will be credited on the date received by the designated collection officer or deposit location. If the due date(s) for any of the above payments or fee calculation statements fall on a nonworkday, the charges shall not apply until the close of business of the next workday. Any payments not received within 30 days of the due date shall be delinquent.

F. Interest and Penalties:

1. A fee owed the United States which is delinquent will be assessed interest based on the most current rate prescribed by the United States Department of Treasury Financial Manual (TFM–6–8020). Interest shall accrue on the delinquent fee from the date the fee payment was due and shall remain fixed during the duration of the indebtedness.

2. In addition to interest, certain processing, handling, and administrative costs will be assessed on delinquent accounts and added to the amounts due.

3. A penalty of 6 percent per year shall be assessed on any indebtedness owing for more than 90 days. This penalty charge will not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

4. When a delinquent account is partially paid or made in installments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

G. Nonpayment Constitutes Breach: Failure of the holder to make the annual payment, penalty, interest, or any other charges when due shall be grounds for termination of this authorization. However, no permit will be terminated for nonpayment of any monies owed the United States unless payment of such monies is more than 90 days in arrears.

H. Applicable Law: Delinquent fees and other charges shall be subject to all the rights and remedies afforded the United States pursuant to federal law and implementing regulations. (31 U.S.C. 3711 *et seq.*)

VII. Transfer, Sale, and Rental

A. Nontransferability: Except as provided in this section, this permit is not transferable.

B. Transferability Upon Death of the Holder:

1. If the holder of this permit is a married couple and one spouse dies, this permit will continue in force, without amendment or revision, in the name of the surviving spouse.

2. If the holder of this permit is an individual who dies during the term of this permit and there is no surviving spouse, an annual renewable permit will be issued, upon request, to the executor or administrator of the holder's estate. Upon settlement of the estate, a new permit incorporating current Forest Service policies and procedures will be issued for the remainder of the deceased holder's term to the properly designated heir(s) as shown by an order of a court, bill of sale, or other evidence to be the owner of the improvements.

C. Divestiture of Ownership: If the holder through voluntary sale, transfer, enforcement of contract, foreclosure, or other legal proceeding shall cease to be the owner of the physical improvements, this permit shall be terminated. If the person to whom title to said improvements is transferred is deemed by the authorizing officer to be qualified as a holder, then such person to whom title has been transferred will be granted a new permit. Such new permit will be for the remainder of the term of the original holder.

D. Notice to Prospective Purchasers: When considering a voluntary sale of the recreation residence, the holder shall provide a copy of this special use permit to the prospective purchaser

before finalizing the sale. The holder cannot make binding representations to the purchasers as to whether the Forest Service will reauthorize the occupancy.

E. Rental: The holder may rent or sublet the use of improvements covered under this permit only with the express written permission of the authorized officer. In the event of an authorized rental or sublet, the holder shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

VIII. Revocation

A. Revocation for Cause: This permit may be revoked for cause by the authorized officer upon breach of any of the terms and conditions of this permit or applicable law. Prior to such revocation for cause, the holder shall be given notice and provided a reasonable time—not to exceed ninety (90) days—within which to correct the breach.

B. Revocation in the Public Interest During the Permit Term:

1. This permit may be revoked during its term at the discretion of the authorized officer for reasons in the public interest. (36 CFR 251.60(b.) In the event of such revocation in the public interest, the holder shall be given one hundred and eighty (180) days' prior written notice to vacate the premises, provided that the authorized officer may prescribe a date for a shorter period in which to vacate ("prescribed vacancy date") if the public interest objective reasonably requires the lot in a shorter period of time.

2. The Forest Service and the holder agree that in the event of a revocation in the public interest, the holder shall be paid damages. Revocation in the public interest and payment of damages is subject to the availability of funds or appropriations.

a. Damages in the event of a public interest revocation shall be the lesser amount of either (1) the cost of relocation of the approved improvements to another lot which may be authorized for residential occupancy (but not including the costs of damages incidental to the relocation which are caused by the negligence of the holder or a third party), or (2) the replacement costs of the approved improvements as of the date of revocation. Replacement cost shall be determined by the Forest Service utilizing standard appraisal procedures giving full consideration to the improvement's condition, remaining economic life and location, and shall be the estimated cost to construct, at current prices, a building with utility equivalent to the building being appraised using modern materials and current standards, design and layout as of the date of revocation. If revocation in the public interest occurs after the holder has received notification that a new permit will not be issued following expiration of the current permit, then the amount of damages shall be adjusted as of the date of revocation by multiplying the replacement cost by a fraction which has as the numerator the number of full months remaining to the term of the permit prior to revocation (measured from the date of the notice of revocation) and as the denominator, the total number of months in the original term of the permit.

b. The amount of the damages determined in accordance with paragraph a. above shall be fixed by mutual agreement between the authorized officer and the holder and shall be accepted by the holder in full satisfaction of all claims against the United States under this clause: *Provided*, That if mutual agreement is not reached, the authorized officer shall determine the amount and if the holder is dissatisfied with the amount to be paid may appeal the determination in accordance with the Appeal Regulations (36 CFR 251.80) and the amount as determined on appeal shall be final and conclusive on the parties hereto: *Provided further*, That upon the payment to the holder of the amount fixed by the authorized officer, the right of the Forest Service to remove or require the removal of the improvements shall not be stayed pending final decision on appeal.

IX. Issuance of a New Permit

A. Decisions to issue a new permit or convert the permitted area to an alternative public use upon termination of this permit require a determination of consistency with the Forest Land and Resource Management Plan (Forest plan).

1. Where continued use is consistent with the Forest plan, the authorized officer shall issue a new permit, in accordance with applicable requirements for environmental documentation.

2. If, as a result of an amendment or revision of the Forest plan, the permitted area is within an area allocated to an alternative public use, the authorized officer shall conduct a site specific project analysis to determine the range and intensity of the alternative public use.

a. If the project analysis results in a finding that the use of the lot for a recreation residence may continue, the holder shall be notified in writing, this permit shall be modified as necessary, and a new term permit shall be issued following expiration of the current permit.

b. If the project analysis results in a decision that the *lot* shall be converted to an alternative public use, the holder shall be notified in writing and given at least 10 years continued occupancy. The holder shall be given a copy of the project analysis, environmental documentation, and decision document.

c. A decision resulting from a project analysis shall be reviewed two years prior to permit expiration, when that decision and supporting environmental documentation is more than 5 years old. If this review indicates that the conditions resulting in the decision are unchanged, then the decision may be implemented. If this review indicates that conditions have changed, a new project analysis shall be made to determine the proper action.

B. In issuing a new permit, the authorized officer shall include terms, conditions, and special stipulations that reflect new requirements imposed by current Federal and State land use plans, laws, regulations, or other management decisions. (36 CFR 251.64)

C. If the 10-year continued occupancy given a holder who receives notification that a new permit will not be issued would extend beyond the expiration date of the current permit, a new term permit shall be issued for the remaining portion of the 10-year period.

X. Rights and Responsibilities Upon Revocation or Notification That a New Permit Will Not Be Issued Following Termination of This Permit

A. Removal of Improvements Upon Revocation or Notification That A New Permit Will Not Be Issued Following Termination Of This Permit: At the end of the term of occupancy authorized by this permit, or upon abandonment, or revocation for cause, Act of God, catastrophic event, or in the public interest, the holder shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall return the lot to a condition approved by the authorized officer unless otherwise agreed to in writing or in this permit. If the holder fails to remove all such structures or improvements within a reasonable period—not to exceed one hundred and eighty (180) days from the date the authorization of occupancy is ended—the improvements shall become the property of the United States, but in such event, the holder remains obligated and liable for the cost of their removal and the restoration of the lot.

B. In case of revocation or notification that a new permit will not be issued following termination of this permit, except if revocation is for cause, the authorized officer may offer an in-lieu lot to the permit holder for building or relocation of improvements. Such lots will be nonconflicting locations within the National Forest containing the residence being terminated or under notification that a new permit will not be issued or at nonconflicting locations in adjacent National Forests. Any in-lieu lot offered the holder must be accepted within 90 days of the offer or within 90 days of the final disposition of an appeal on the revocation or notification that a new permit will not be issued under the Secretary of Agriculture's administrative appeal regulations, whichever is later, or this opportunity will terminate.

XI. Miscellaneous Provisions

A. This permit replaces a special use permit issued to: *_____ (Holder Name) on *_____ (Date). 19*___

B. The Forest Service reserves the right to enter upon the property to inspect for compliance with the terms of this permit. Reports on inspection for compliance will be furnished to the holder.

C. Issuance of this permit shall not be construed as an admission by the Government as to the title to any improvements. The Government disclaims any liability for the issuance of any permit in the event of disputed title.

D. If there is a conflict between the foregoing standard printed clauses and any special clauses added to the permit, the standard printed clauses shall control.

Note: Additional provisions may be added by the authorized officer to reflect local conditions.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0596–0082), Washington, DC 20503.

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federal register

Thursday
June 2, 1994

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 701, et al.
Lands Eligible for Remining; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 773, 785, 816, and 817

RIN 1029-AB74

Lands Eligible for Remining

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) proposes to amend its existing regulations in light of recently enacted changes to Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended by the Energy Policy Act of 1992. The proposed rules are intended to provide incentives for the remining and reclamation of lands eligible for expenditures under section 402(g)(4) or 404 of SMCRA.

DATES: *Written comments:* OSM will accept written comments on the proposed rule until 5 p.m., Eastern time, on August 1, 1994.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC; and in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and on dates and locations to be announced in the **Federal Register** prior to the hearings. OSM will accept requests for public hearings until 5 p.m., Eastern time, on June 23, 1994. Individuals wishing to attend, but not testify, at any hearing should contact the person identified under **FOR FURTHER INFORMATION CONTACT** before the hearing date to verify that the hearing will be held.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol Street, Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 NC, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: The addresses and times for any hearings held will be announced prior to the hearings.

Requests for public hearings: Submit requests orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Douglas J. Growitz, P.G., Office of Surface Mining Reclamation and Enforcement, room 640 NC, 1951 Constitution Avenue, NW, Washington, DC 20240; Telephone: 202-343-1507.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments: Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see **DATES**) or delivered to an address other than those listed above (see **ADDRESSES**), may not be considered or included in the Administrative Record for the final rule.

Public hearings: OSM will hold a public hearing on the proposed rule on request only. The time, date, and address for any hearing will be announced in the **Federal Register** at least 7 days prior to the hearing.

Any person interested in participating at a hearing at a particular location should inform Mr. Growitz (see **FOR FURTHER INFORMATION CONTACT**), either orally or in writing, of the desired hearing location by 5 p.m., Eastern time, on June 23, 1994. If no one has contacted Mr. Growitz to express an interest in participating in a hearing at a given location by that date, a hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. The hearing will be transcribed. To assist the transcriber and ensure an accurate record, OSM requests that each person who testifies at a hearing provide the transcriber with a written copy of his or her testimony. To assist OSM in preparing appropriate questions, OSM also requests, if possible, that each person who plans to testify submit to OSM at the address previously specified for the submission of written comments (see **ADDRESSES**) an advance copy of his or her testimony.

II. Background

The House of Representatives Report from the Committee on Interior and Insular Affairs on the Comprehensive National Energy Policy Act of 1992 (*H.R. Rep.* 474, 102 Cong., 2d Session at 85 (1992)) contains the following statements: "The [coal remining] provisions of this section seek to make coal available that otherwise would be bypassed by providing incentives for industry to extract and reprocess, in an environmentally sound manner, coal that remains in abandoned mine lands and refuse piles. Current law reclamation performance standards were devised to address surface coal mining on undisturbed lands; the unintended result is to discourage remining. Remining also serves to mitigate the health, safety, and environmental threats posed to coalfield residents from abandoned mine lands by augmenting the work done under the Abandoned Mine Reclamation Program." These statements succinctly characterize a basic and long-standing conflict associated with remining.

On October 24, 1992, the President signed into law the Energy Policy Act of 1992, Public Law 102-486, section 2503, Coal Remining, which, in part, amended Sections 510, 515(b)(20), and 701 of SMCRA in order to provide the following initiatives to encourage remining in an environmentally-sound manner: 1. The revegetation success liability period for certain remining operations has been reduced to five years in the West and two years in the East; 2. Remined lands shall remain eligible for Title IV reclamation following bond release; and 3. The permittee of a remining operation shall not be subject to subsequent permit blocking under Section 510(c) of SMCRA for any violation resulting from an unanticipated event or condition occurring on the remining site. (Section 510(c) is implemented by 30 CFR 773.15.)

III. Discussion of Proposed Rules

A. Introduction

Regarding the above-mentioned remining amendments to SMCRA which are the subject of this rulemaking, OSM sought input from environmental groups, industry, and State regulatory authorities concerning the extent to which new regulations would need to expand or clarify statutory language in order to effectively implement Congressional intent. Comments received during this outreach have been considered in developing this proposal. Other provisions in section 2503 of the Energy Policy Act prescribe specific regulatory initiatives regarding the removal or on-site reprocessing of abandoned coal refuse sites. These initiatives will be implemented under a separate rulemaking.

B. Proposed Rules

1. 30 CFR Part 701—Permanent Regulatory Program

Section 701.5, Definitions, is proposed to be amended by adding two terms defined in section 2503(c) of the Energy Policy Act. *Lands eligible for remining* would be defined as in the Energy Policy Act by reference to sections 404 and 402(g)(4) of the SMCRA. Thus, the following sites would be included under this definition: sites that were mined for coal or affected by mining activities and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws; coal sites in each State abandoned after August 3, 1977, but before the State received primacy under SMCRA and for which available bond is insufficient to provide for adequate reclamation; or coal sites where mining was completed between August 4, 1977, and November 5, 1990, and which remain unreclaimed due to the insolvency of a surety company occurring during that same period.

Unanticipated event or condition is proposes to be defined consistent with the definition contained in the Energy Policy Act to mean an event or condition at an operation on lands eligible for remining under section 404 or 402(g)(4) of SMCRA that was not contemplated by the applicable surface coal mining and reclamation permit.

2. 30 CFR Part 773—Requirements for Permits and Permit Processing

OSM proposes to amend Section 773.15, Review of Permit Applications, in two ways.

A new proposed subparagraph (c)(13) would require the regulatory authority to utilize data and analyses provided under existing permit information rules and proposed § 785.25, discussed in the next section, in order to find that the proposed permit area contains lands eligible for remining and to set a threshold beyond which conditions or events arising subsequent to permit issuance may be presumed to constitute "unanticipated events or conditions" for the purpose of applying the permit-block exclusion of proposed paragraph (f) of § 773.15.

The regulatory authority would evaluate the potential environmental and safety problems and associated analysis provided by the applicant based on a review of procedures used, supporting data and documentation, and mitigation plans. After acceptance of the estimates and findings provided by the applicant, the regulatory authority would set the threshold. The threshold which will be determined on a case-by-case basis is therefore set at permit issuance.

OSM believes the information provided by the applicant under proposed new § 785.25, which contains additional permit requirements tailored specifically to remining problems, is compatible with the development of a threshold. Two elements of proposed 785.25 are considered to be particularly well suited for this purpose: 1. The permit applicant's estimate of the maximum impacts associated with each identified potential environmental or safety problem; and 2. the permit applicant's estimate of the probability of each potential environmental or safety problem occurring. Furthermore, OSM believes that a threshold expressed quantitatively in terms of either or both of these two elements would provide the clearest guidance for operators, be easier to regulate for the regulatory authorities, and would minimize subsequent controversy and disputes between the operator and regulatory authority as to what events or conditions were indeed "unanticipated".

OSM is therefore seeking comments on three issues associated with formulating a threshold: 1. Whether either or both of the two elements described above, or some combination of the two, would provide an appropriate base for such formulation 2. methods by which the base may be expressed in quantifiable terms; and 3 whether additional guidance is needed for the regulatory authority in the final rule and what the nature of that guidance should be.

Proposed paragraph (f) would be added to implement the Energy Policy Act's section 2503(a) mandate for an exclusion from permit blocking provisions of 510(c) of SMCRA. The proposed rule would waive the permit-block provisions of paragraph (b) of § 773.15 in cases where a violation occurred at a remining site and the violation was attributed to an unanticipated event or condition. In such cases, the person holding the remining permit would not be rendered ineligible for a new permit based on the violation. Statutory authority for the permit-block exclusion would expire on September 30, 2004.

The scope of the permit-block exclusion of proposed paragraph (f) derives from the statutory term "violation resulting from an unanticipated event or condition at a surface coal mining operation." The question has arisen whether the non-payment of delinquent penalties assessed after a notice of violation or a failure-to-abate cessation order based on an "on the ground" violation resulting from an unanticipated event or condition should be covered by the Energy Policy Act exclusion. Such delinquencies, which are violations, would be covered by the exclusion if they were construed as "resulting from an unanticipated event or condition at a surface coal mining operation." OSM is seeking comments on the extent to which such violations should be covered by the exclusion in section 2503(a) of the Energy Policy Act.

Another question that might arise is whether the operator of a previously undisturbed site would be subject to permit blocking for an unabated violation on his site which originated from an unanticipated event on a nearby or adjacent remining operation. Whether or not an event or condition on an adjacent site is a violation is a fact specific inquiry and depends on whether the surface coal mining operation on the adjacent site caused or contributed to the event or condition. Therefore, if the operator of the previously undisturbed site contributed to the event or condition which originated on the remining site and that operator does not abate the violation the operator of the previously undisturbed site would be permit blocked. The proposed paragraph (f) exemption for permit blocking only relates to violations occurring on lands eligible for remining.

OSM is seeking comments on any other examples of the interplay between remining operations and adjacent surface coal mining operations that may need to be explained in the final rulemaking.

3. 30 CFR Part 785—Requirements for Permits for Special Categories of Mining

OSM proposes to add new § 785.25, Lands eligible for remining. (Sections 785.23 and 785.24 are being reserved for a separate rulemaking.) The permit requirements in proposed section 785.25 for operations on lands eligible for remining are intended to supplement information requirements in existing rules as they would apply to operations on lands eligible for remining. The types of new permit information being proposed would be required only to the extent that they are not provided under existing regulations. For example, provisions related to the determination of probably hydrologic consequences at §§ 780.21 and 784.14 of the permanent program regulations require baseline information on flow and quality of ground water and surface water and a...

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estimate of the impacts of the proposed operation on these baseline conditions such as findings on: Whether adverse impacts may occur to the hydrologic balance; whether acid-forming or toxic-forming materials are present that could contaminate surface or ground water supplies; and whether surface or ground water used for any legitimate purpose in the permit or adjacent area will be contaminated, diminished or interrupted.

The permit requirements of §§ 780.21 and 784.14 were intended to identify and control probable impacts to hydrology from coal removal associated with the first time disturbance of the land. Hence, they do not in most cases address the unique environmental or safety problems and impacts that can arise from the redisturbance of abandoned mine lands. The proposal would fill in this gap by focusing on the identification of: Potential environmental and safety problems specific to lands eligible for remining; maximum impacts that could result and the probability for the type of problem to occur; and mitigation measures to meet applicable performance standards. The purpose of these requirements is to provide the regulatory authority with a sound basis for setting a threshold beyond which conditions or events arising subsequent to permit issuance may be presumed to be unanticipated at the site. Furthermore, these requirements will help to ensure that potential environmental and safety problems commonly linked to abandoned mine land sites are not overlooked at the permitting stage and, thus, inadvertently contribute to the occurrence of unanticipated events or conditions which might result in more severe environmental or safety problems from the remining operation than may currently exist at the site.

Thus, OSM believes it is essential that all reasonable evaluations be conducted in order to identify the probability for serious environmental or safety problems to occur. While there are potential economic and environmental benefits to be gained through remining, there also exists the potential for significant environmental degradation and safety problems. For example, if a remining operation unintentionally caused a sudden discharge of water or blowout from an adjacent water-filled abandoned mine, significant quantities of acid mine discharge could be released and create severe ecological harm in the receiving streams. It is important, therefore, in granting remining permits that the applicant identify the potential environmental and safety problems associated with the site, maximum impacts associated with these problems, and the probability for each type of problem to occur. These categories of information will assist the regulatory authority in setting a threshold beyond which conditions or events arising subsequent to permit issuance may be presumed to constitute unanticipated events or conditions. In order to provide a permit applicant for a remining operation some certainty regarding the potential scope of the 510(c) permit-blocking provision, the applicant shall be expected to provide all required information related to the potential environmental and safety problems of the remining site.

OSM recognizes the difficulty of accurately predicting certain impacts such as acid mine drainage even on the basis of extensive baseline information. OSM is therefore soliciting comments on other specific information needed to be provided by the applicant that will be useful in developing a threshold for unanticipated events.

OSM is also requesting estimates on the number of hours to develop the information required by § 785.25 and is seeking suggestions on efficient and effective ways to develop this information and present it in the permit application.

4. 30 CFR Part 816—Permanent Program Performance Standards—Surface Mining Activities

OSM is proposing to amend subparagraphs (c)(2) and (c)(3) of section 816.116, Revegetation: Standards for Success. The change at (c)(2) would reduce the period of applicant responsibility for revegetation success at sites eligible for remining from five to two years in areas of more than 26.0 inches of average annual precipitation and for these sites provide that vegetative parameters for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any two years of the responsibility period. The change at (c)(3) would reduce the applicant responsibility for revegetation success from ten to five years in areas of 26.0 inches or less of annual average precipitation. The authority for these changes would expire on September 30, 2004.

5. 30 CFR Part 817—Permanent Program Performance Standards—Underground Mining Activities

OSM is proposing to amend subparagraphs (c)(2) and (c)(3) of § 817.116, Revegetation: Standards for Success. The change at (c)(2) would reduce the period of applicant responsibility for revegetation success from five to two years in areas of more than 26.0 inches of average annual precipitation, and the change at (c)(3) would reduce the applicant responsibility for revegetation success from ten to five years in areas of 26.0 inches or less of annual average precipitation. The authority for these changes would expire on September 30, 2004.

IV. Procedural Matters

Federal Paperwork Reduction Act

The collections of information contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Public reporting burden for this collection of information is estimated to average 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, room 640 NC, 1951 Constitution Ave., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1029–0040 and 1029–0041), Washington, DC 20503.

Executive Order 12778; Civil Justice Reform Certification

This proposed rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this proposed rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

To retain primacy, States have to adopt and apply standards for their regulatory programs that are no less effective than those set forth in OSM's regulations. Any State law that is inconsistent with or that would preclude implementation of the proposed regulation would be subject to preemption under section 505 of SMCRA and its implementing regulations at 30 CFR 730.11.

Section 505(b) of that act provides that any provision of State law which provides for more stringent land use and environmental controls and regulation of surface coal mining and reclamation operations than do the provisions of SMCRA or any regulations issued pursuant thereto shall not be construed to be inconsistent with SMCRA. Therefore, to the extent that the proposed regulation would provide less stringent land use and environmental controls than presently contained in State law, the proposed regulation would not preempt the State provisions and would not necessitate changes to approved State programs. A more definitive answer to this question will depend on the provisions of any final rule adopted in this rulemaking.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified?

This proposed rule modifies the implementation of SMCRA, as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this proposed rule specifies the Federal regulatory provisions that are affected by this proposed revision.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA. The purpose of this proposed rule is to establish clear and certain standards in order to implement a more effective program.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this proposed rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

Prior to any judicial challenge to the application of the rule, however, administrative procedures must be exhausted. In situations involving OSM application of the rule, applicable administrative procedures may be found at 43 CFR part 4. In situations involving State regulatory authority application of provisions equivalent to those contained in this proposed rule, applicable administrative procedures are set forth in the particular State program.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this proposed rule are set forth in 30 CFR 700.5, 701.5, 773.15 and 785.23. New definitions are located in section 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

The Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

Executive Order 12866

This proposed rule has been reviewed under Executive Order 12866.

Regulatory Flexibility Act

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et, seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities. This determination is based on the findings that the regulatory additions is the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States enterprises to compete with foreign-based enterprises in domestic or export markets.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA) of this proposed rule and has made a tentative finding that it would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a finding of no significant impact (FONSI) will be made for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see **ADDRESSES**). The EA will be completed and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal author of this proposed rule is: Douglas J. Growitz, P.G., Hydrologist, Branch of Research and Technical Standards, Office of Surface Mining Reclamation and Enforcement, room 640 NC, 1951 Constitution Avenue, NW., Washington, DC 20240, Telephone: 202–343–1507.

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 773

Reporting and recordkeeping requirements, Administrative practice and procedure, Surface mining, Underground mining.

30 CFR Part 785

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Dated: May 11, 1994.

Nancy Keir Hayes,

Acting Assistant Secretary, Land and Minerals Management.

Accordingly, OSM proposes to amend 30 CFR parts 701, 773, 785, 816 and 817 as set forth below:

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for part 701 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; Pub. L. 100–34; and Pub. L. 102–486.

2. Section 701.5 is amended by adding alphabetically definitions of "lands eligible for remining" and "unanticipated event or condition" as follows:

§ 701.5 Definitions.

* * * * *

Lands eligible for remining means those lands that would otherwise be eligible for expenditures under section 404 or under section 402(g)(4) of the Act.

* * * * *

Unanticipated event or condition as used in §§ 773.15 and 785.25 of this chapter means an event or condition at a surface coal mining operation on lands eligible for remining that was not contemplated by the applicable permit

to conduct surface coal mining operations.

* * * * *

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

3. The authority citation for part 773 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended. Pub. L. 100–34, 16 U.S.C. 470 *et seq.*; 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 661 *et seq.*; 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a 16 U.S.C. 469 *et seq.*; 16 U.S.C. 470aa *et seq* and Pub. L. 102–486

4. Section 773.15 is amended by adding new paragraphs (c)(13) and (f) to read as follows:

§ 773.15 Review of permit applications.

* * * * *

(c) * * *

(13) Based upon the data and analyses provided under parts 779, 780, 783, and 784, as applicable, and § 785.25 of this chapter, the regulatory authority has: (i) determined that the permit contains lands eligible for remining; and (ii) set a threshold beyond which conditions or events arising subsequent to permit issuance may be presumed to constitute unanticipated events or conditions for the purposes of § 773.15(f) of this chapter.

* * * * *

(f) *Lands eligible for remining.* Until September 30, 2004, the prohibitions of paragraph (b) of this section shall not apply to any violation resulting from an unanticipated event or condition at a surface coal mining and reclamation operation on lands eligible for remining under a permit held by the person making such application.

* * * * *

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

5. The authority citation for part 785 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended. Pub. L. 100–34 and Pub. L. 102–486

6. Section 785.25 is added to read as follows:

§ 785.25 Lands eligible for remining.

(a) This section applies to any person who conducts or intends to conduct a surface coal mining operation on lands eligible for remining.

(b) Any application for a permit under this section shall be made according to all requirements of this subchapter applicable to surface coal mining and reclamation operations. In addition, the application shall:

(1) To the extent not otherwise addressed in the permit application, identify potential environmental and safety problems associated with the site, the maximum degree of impact attributable to each problem, and the probability that each type of problem will occur. These problems would include but are not limited to impacts of acid mine drainage on the hydrologic balance, sudden discharges of water from adjacent water-filled mine workings, and sediment and safety issues associated with abandoned spoil.

(2) Describe mitigative measures for each potential environmental or safety problem in order to meet applicable performance standards.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS-SURFACE MINING ACTIVITIES

7. The authority citation for part 816 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended, sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257, Pub. L. 100–34, and Pub. L. 102–486.

8. Section 816.116 is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 816.116 Revegetation: Standards for success.

* * * * *

(c)(2) In areas of more than 26.0 inches of annual average precipitation the period of responsibility shall continue for a period of less than five full years, except that on lands eligible for remining, the period of responsibility (until September 30, 2004) shall be two full years. In areas with a five-year period of responsibility the vegetation parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any two years of the responsibility period, except the first year. In areas with a two-year period of responsibility the vegetative parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any two years of the responsibility period. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than 10 full years except that, on lands eligible for remining, the period of responsibility (until September 30, 2004) shall be five years. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

9. The authority citation for part 817 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended, sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257, Pub. L. 100–34, and Pub. L. 102–486.

10. Section 817.116 is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 817.116 Revegetation: Standards for success.

* * * * *

(c)(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than five full years, except that, on lands eligible for remining, the period of responsibility (until September 30, 2004) shall be two full years. In areas with a five-year period of responsibility, the vegetation parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any two years of the responsibility period, except the first year. In areas with a two-year period of responsibility, the vegetative parameters identified in paragraph (b) of this section for grazing land, pasture land, or cropland shall equal or exceed the approved success standard during the growing season of any two years of the responsibility period. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than 10 full years, except that, on lands eligible for remining, the period of responsibility (until September 30, 2004) shall be five years. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last two consecutive years of the responsibility period.

* * * * *

[FR Doc. 94-13417 Filed 6-1-94; 8:45 am]
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Part VI

Environmental Protection Agency

Sole Source Aquifer Designation of the Marrowstone Island Aquifer System, Jefferson County, Washington; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4891–2]

Sole Source Aquifer Designation of the Marrowstone Island Aquifer System, Jefferson County, WA

AGENCY: Environmental Protection Agency.

ACTION: Final Determination.

SUMMARY: The Region 10 Administrator of the Environmental Protection Agency (EPA) has determined that the Marrowstone Island Aquifer System is the sole or principal source of drinking water for the designated area, and if contaminated, would create a significant hazard to public health. This action was taken under the authority of section 1424(e) of the Safe Drinking Water Act in response to a petition submitted to EPA by the Marrowstone Island Community Association on August 27, 1991. As a result of this determination, all federal financially-assisted projects proposed in the designated area will be subject to EPA review to ensure that they do not create a significant hazard to public health.

EFFECTIVE DATE: This determination shall be promulgated for purposes of judicial review at 1 Eastern time on June 16, 1994.

ADDRESSES: The information upon which this determination is based is available to the public and may be inspected during normal business hours at the EPA Library, 10th floor, Park Place Building, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Scott E. Downey, Environmental Protection Specialist, Ground Water Section, WD–133, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, 206–553–0682.

SUPPLEMENTARY INFORMATION: This action is being taken under the authority of section 1424(e) of the Safe Drinking Water Act (42 United States Code, 300f, 300h-3(e), Pub. L. 93–523). The information upon which EPA is issuing this final determination has been summarized in the "Support Document for Sole Source Aquifer Designation of the Marrowstone Island Aquifer System", EPA 910/R–94–002.

I. Background

Section 1424(e) of the Safe Drinking Water Act states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

EPA further defines a "Sole Source Aquifer" (SSA) as one which supplies at least 50 percent of the drinking water to persons living in the area overlying the aquifer and in areas supplied by the aquifer, and if contaminated, would create a significant hazard to public health. Designations can be made for entire aquifers, hydrogeologically connected aquifers (aquifer systems), or part of an aquifer if that portion is hydrogeologically separated from the rest of the aquifer. EPA guidelines further stipulate that these areas can have no feasible alternative source(s) of drinking water of sufficient volume which could replace the aquifer, should it become contaminated.

Although EPA has the authority to initiate SSA designations, the Agency has a policy of acting only in response to petitions. Petitions may be submitted to EPA by any individual or organization and must address procedures and criteria outlined in the "Sole Source Aquifer Designation Petitioner Guidance", EPA 440/6–87–003.

EPA Region 10 received a petition from the Marrowstone Island Community Association on August 27, 1991, and after an initial review, the petition was declared complete on September 19, 1991. A more detailed technical review was completed in February of 1994. EPA's findings and basis for the proposed designation were documented and made available for public review in EPA publication 910/R–94–002.

II. Basis for Determination

The Region 10 Administrator has determined that the Marrowstone Island Aquifer System meets all applicable SSA designation criteria established through Federal statute and EPA guidance documents, as follows:

1. The Marrowstone Island Aquifer System supplies approximately 98 percent of the drinking water to persons living on the island;

2. As the principal drinking water source for the area, contamination of the Marrowstone Island Aquifer System would create a significant hazard to public health;

3. The boundary was determined in accordance with EPA guidance and is representative of an aquifer system that encompasses the entire Marrowstone Island area and includes all potable water-bearing geologic units underlying the Island;

4. There are no feasible alternative source(s) of drinking water which could replace the Marrowstone Island Aquifer System, should it become contaminated.

III. Description of the Marrowstone Island Aquifer System

Note: Some information in this section represents an unfootnoted summary from the "Support Document for Sole Source Aquifer Designation of the Marrowstone Island Aquifer System", EPA 910/R–94–002.

Marrowstone Island is an elongate island located in the northern Puget Sound area of Jefferson County, Washington, near the City of Port Townsend. The island is approximately eight miles long and one mile wide and reaches a maximum elevation of approximately 180 feet above mean sea level.

Marrowstone Island Aquifer System boundaries are representative of an aquifer system that encompasses the entire Marrowstone Island area. The aquifer system is bounded by the shorelines of Admiralty Inlet, Kilisut Harbor, and Oak Bay. A straight line boundary divides Indian Island from Marrowstone Island in the southwest corner of the Island. The vertical extent of the aquifer system at depth includes all potable water-bearing geologic units underlying the Island. Water level data indicates that all deposits underlying the Island are hydrogeologically connected.

Water quality studies have discovered elevated chloride concentrations that indicate seawater intrusion is occurring in the fresh water aquifer system underlying the Island. This intrusion of seawater is the result of increased pumping of the aquifers, which in turn, is attributable to the increase in Island population. Other potential sources of contamination include many normal rural activities, such as improper pesticide storage and use, improper disposal of used motor oil and other household hazardous wastes, and poorly-sited or maintained storm water drainage wells, animal waste storage facilities, on-site septic systems, and underground storage tanks.

Population of the Island varies by season, with the highest population occurring in the summer, and lowest in the winter. There are approximately 900 permanent residents of the Island. During a peak summer weekend, the population increases by about one-third for a total maximum population of 1300 people. There may be as few as 600 resident water users on a typical winter weekday.

Approximately 98 percent of the water consumed on the Island is ground water pumped from the aquifer system by about 400 private wells. Roughly one percent of water used on the Island is collected in rainwater collection systems and used primarily for livestock consumption and outside watering of lawns and gardens. Another one percent is obtained from Fort Flagler State Park which receives water via pipeline from a U.S. Naval Undersea Warfare Detachment facility on Indian Island. There are no physical, legal, or economically feasible alternative source(s) of drinking water that could replace the aquifer system.

IV. Project Reviews

Designation of a sole source aquifer authorizes EPA to review federal financially-assisted projects proposed within the designated area. The principal mechanism used by EPA Region 10 to identify projects for review are Memorandums of Understanding (MOUs) with federal funding agencies. These MOUs outline procedures for screening and referring projects to EPA in order to ensure that only projects which may have a significant impact to ground water quality are reviewed.

Most projects referred to EPA for review meet all federal, state, and local ground water protection standards and are approved without any additional conditions being imposed. Occasionally, site or project-specific concerns for ground water quality protection lead to specific recommendations or additional pollution prevention requirements as a condition of funding. In rare cases, federal funding has been denied when the applicant has been either unwilling or unable to modify the project.

Whenever feasible, EPA coordinates the review of proposed projects with other offices within EPA and with various federal, state, or local agencies that have a responsibility for ground water quality protection. Relevant information from such sources is given full consideration in the sole source aquifer review process. This coordination of project reviews can complement, support, and strengthen existing ground water protection mechanisms.

V. Public Comments

A public notice was issued on March 21, 1994, to request comments on the proposed designation and announce that a public hearing would be held if sufficient interest were expressed to EPA in advance. The hearing was subsequently cancelled due to a lack of interest. Only two written comments were received prior to the expiration of the public comment period on May 10, 1994. One letter was from a part-time Marrowstone Island resident who expressed support for the proposed designation. The other letter was from the president of the Marrowstone Island Community Association and also expressed support for the proposed designation. Neither party requested a public hearing.

VI. Summary

This determination affects only the Marrowstone Island Aquifer System located in the State of Washington. As a result of this determination, all federal financially-assisted projects proposed in the designated area will be subject to EPA review to ensure that they do not create a significant hazard to public health.

Dated: May 19, 1994.

Chuck Clarke,

Regional Administrator, U.S. Environmental Protection Agency, Region 10

[FR Doc. 94–13452 Filed 6–1–94; 8:45 am]

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Part VII

The President

Proclamation 6698—National Women in Agriculture Day, 1994

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Presidential Documents

Title 3—

The President

Proclamation 6698 of May 31, 1994

National Women in Agriculture Day, 1994

By the President of the United States of America

A Proclamation

Few images are more traditionally American than the vast geometric tapestry of plowed fields and lush crops that carpet our country. Since our Nation's founding, farms have defined both the topography of our land and the steadfastness of our national character. Farm families take particular pride in knowing that women—as field workers and financial managers, as mothers and homemakers—have been a vital, driving force in sustaining this essential enterprise from its beginnings.

Today, American agriculture encompasses far more than a quiet picture of pastoral beauty. Our Nation's farmers grow the food that feeds the world. Merging old-fashioned know-how with the latest innovations in production technology, farmers across the United States work to ensure that our markets are filled with low-cost, high-quality goods. With wise leadership and firm support, women in their myriad roles in our agriculture industry reflect the proud American commitment to excellence.

As we celebrate National Women in Agriculture Day 1994, we recognize new ways in which women's energy and determination are helping to keep our agricultural system strong. Whether in investigating the ecosystem of a Brazilian rain forest or in exploring new opportunities in international trade, women are working to enhance efficiency and competitiveness in American agribusiness—a mission that benefits all of the Earth's people.

With an abiding love for their families and a deep understanding of the challenges farmers face, women have urged our Nation to action in areas from environmental protection to providing health care to every one of our citizens. Their personal experiences of hard work and cooperation have made the world of American agriculture thrive. Just as important, they have demonstrated to all of us the strength of compassion and the power of perseverance. For this lesson and for the gifts of their labor we enjoy every day, our Nation's women in agriculture have our heartfelt gratitude.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 9, 1994, as "National Women in Agriculture Day." I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

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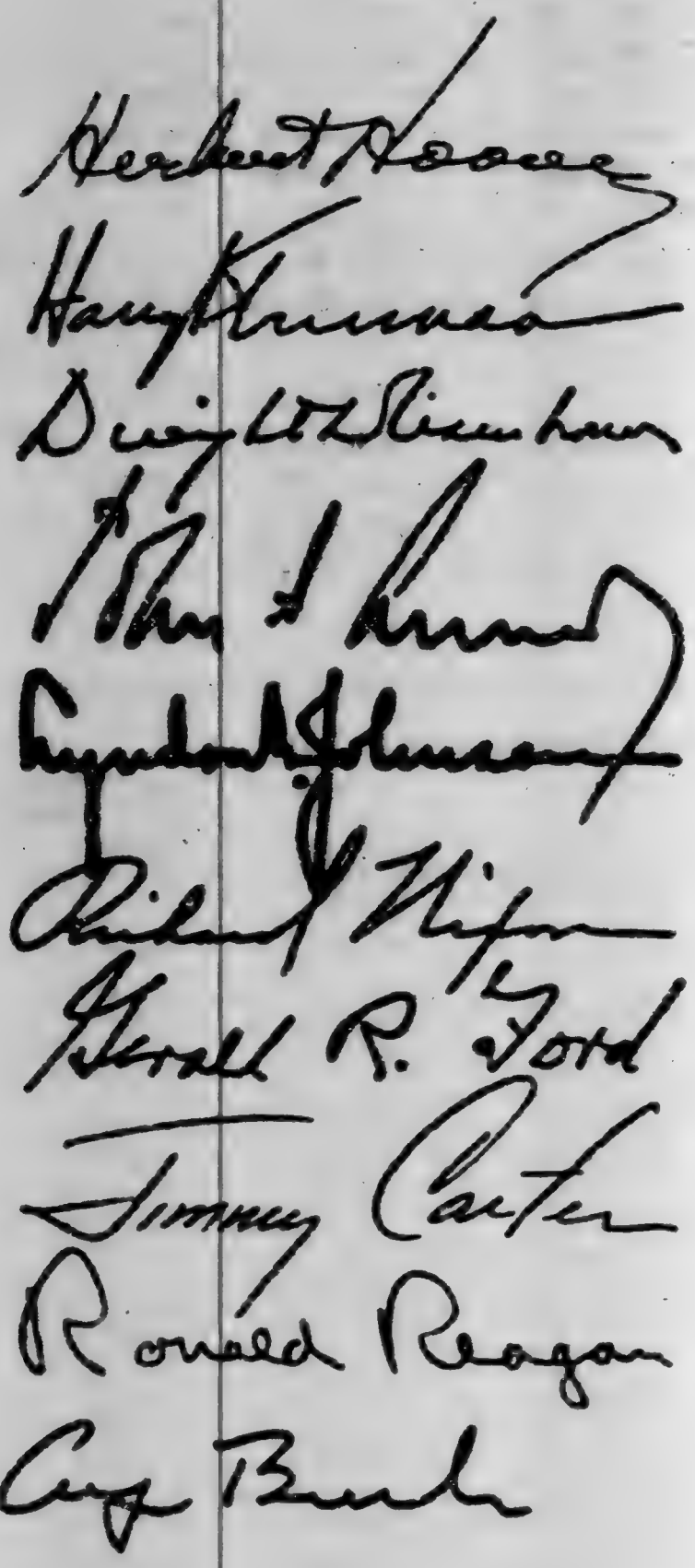
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Presidential Documents

Title 3—

The President

Presidential Determination No. 94–24 of May 16, 1994

Theater Missile Defense Cooperation With the Allies

Memorandum for the Secretary of Defense

1. Pursuant to the authority vested in me by the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, I hereby certify that the Director, Ballistic Missile Defense Organization, has formally submitted to representatives of the member nations of the North Atlantic Treaty Organization and Japan, Israel, and South Korea a proposal concerning coordination of the development and implementation of U.S. Theater Missile Defense (TMD) programs with TMD programs of our friends and allies.

2. You are authorized and directed to notify the Congress of this determination and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, May 16, 1994.

[FR Doc. 94–13691
Filed 6–1–94; 2:34 pm]
Billing code 5000–04–M

THE WHITE HOUSE,
Washington, May 16, 1994.

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–0773]

Membership of State Banking Institutions in the Federal Reserve System

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation H to allow a state member bank that meets certain conditions to invest in its premises in an amount up to 50 percent of its Tier 1 capital without obtaining specific approval. The Board believes that a general approval for a state member bank to invest an amount not exceeding 50 percent of its Tier 1 capital is appropriate for a bank that meets those conditions. This action will significantly reduce the number of applications to invest in bank premises that are filed with the Board and will thereby reduce regulatory burden.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Manley Williams, Attorney (202/736–5565), Legal Division; Richard Fabrizio, Senior Financial Analyst (202/452–3423); Beverly Evans, Supervisory Financial Analyst (202/452–2573); John Russell, Manager (202/452–2466), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Street NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 24A of the Federal Reserve Act, 12 U.S.C. 371d, requires a state member bank to obtain the approval of the Board to invest in the bank's premises if the aggregate level of direct and indirect investment in its premises will exceed the bank's capital stock account. Section 24A applies

(1) To investments in bank premises and to investments in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank,

(2) To the making of loans to or upon the security of the stock of any such corporation; and

(3) To the indebtedness incurred by any corporation that is an affiliate of the bank.

The Board is amending Regulation H to allow a state member board that meets certain conditions to invest in bank premises in an amount that exceeds its capital stock account but not exceeding 50 percent of its Tier 1 capital without obtaining specific approval for the investment. Prior to this amendment, a state member bank was required to obtain Board approval for each investment in bank premises if the aggregate investment exceeded, or would exceed, the capital stock account of the state member bank.

The Board believes that investments by a state member bank in bank premises in an amount in excess of its stock account but not exceeding 50 percent of the bank's Tier 1 capital generally do not present any significant risks to the bank if the bank is well capitalized, is rated CAMEL "1" or "2", and is not subject to any written agreement, cease and desist order, capital directive. The Board believes that a general approval for a state member bank to invest an amount not exceed 50 percent of its Tier 1 capital its appropriate for a bank that meets those conditions. This action will significantly reduce the number of applications to invest in bank premises that are filed with the Board and will thereby reduce regulatory burden. The amendment does not affect state member banks' ability to invest in bank premises, without conditions, up to the amount of their capital stock account.

Notice and Public Participation

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of this amendment because the changes relate to rules of agency organization, procedure, or practice.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment will reduce the regulatory burden for many small depository institutions by relieving them of the requirement to file an application in certain cases, and will have no effect in other cases.

List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Currency, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (Regulation H)

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 1(b), 1(g), 1(i), 78b, 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318.

2. Section 208.22 is added to subpart A read as follows:

§ 208.22 Investment in bank premises.

(a) Under Section 24A of the Federal Reserve Act, state member bank investments in bank premises or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of the bank, and loans on the security of the stock of such corporation, do not require the approval of the Board if the aggregate of all such investments and loans, together with the indebtedness incurred by any such corporation that is an affiliate of the bank (as defined in section 2 of the Banking Act of 1933, as amended, 12 U.S.C. 221a):

(1) Does not exceed the capital stock account of the bank; or

(2) Does not exceed 50 percent of the bank's Tier 1 capital and the bank:

(i) Is well capitalized as defined in § 208.33(b)(1) of this part;

(ii) Received a composite CAMEL rating of "1" or "2" as of its most recent examination by the relevant Federal

Reserve Bank or state regulatory authority; and

(iii) Is not subject to any written agreement, cease and desist order, capital directive, or prompt corrective action directive issued by the Board or a Federal Reserve Bank.

By order of the Board of Governors of the Federal Reserve System, May 25, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–13253 Filed 6–2–94; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–96; Special Conditions No. 25–ANM–85]

Special Conditions: Modified AMD/BA Falcon 50 Series Airplanes, High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for AMD/BA Falcon 50 series airplanes modified by Duncan Aviation, Inc., of Lincoln, Nebraska. These airplanes are equipped with digital electronic flight instrument systems (EFIS) that perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of the EFIS from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by these systems are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is May 24, 1994. Comments must be received on or before July 18, 1994.

ADDRESSES: Comments on these final special conditions; request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn.: Rules Docket (ANM–7), Docket No. NM–96, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked "Docket No. NM–96." Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–96." The postcard will be date stamped and returned to the commenter.

Background

On April 15, 1994, Duncan Aviation, Inc., of Lincoln, Nebraska, applied for a supplemental type certificate to modify the AMD/BA Falcon 50 series airplanes. The AMD/BA Falcon 50 is a business jet with three aft-mounted turbojet engines. The airplane can carry two pilots and 8 to 19 passengers, depending on the exit and interior configuration, and is capable of operating to an altitude of 45,000 feet. The proposed modification incorporates the installation of digital avionics consisting of an electronic flight instrument system (EFIS) that is potentially vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), Duncan Aviation, Inc., must show that the altered AMD/BA Falcon 50 series airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A46EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A46EU include the following for the AMD/BA Falcon 50 series: § 21.29 of part 21, and 14 CFR part 25, dated February 1, 1965, as amended by Amendments 25–1 through 25–34. In addition the following regulations apply to the EFIS installation: §§ 25.1303(b) and 25.1322, as amended through Amendment 25–38; and §§ 25.1309, 25.1321(a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335, as amended by Amendment 25–41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the AMD/BA Falcon 50 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground-based radio transmitters, and the growing use of sensitive electrical and electronic systems to command and control airplanes, have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the modified AMD/BA Falcon 50 series airplanes that would require that the EFIS be designed and installed to

preclude component damage and interruption of function due to the effects of HIRF.

High-Intensity Radiated Fields (HIRF)

When the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

As discussed above, these special conditions are applicable to the AMD/BA Falcon 50 series airplanes, modified by Duncan Aviation. Should Duncan Aviation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A46EU to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain unusual or novel design features on the AMD/BA Falcon 50 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified AMD/BA Falcon 50 series airplanes:

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definition applies with respect to this special condition: *Critical Function.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane. Issued in Renton, Washington, on May 24, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 94–13521 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 94–NM–08–AD; Amendment 39–8930; AD 94–12–03]

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that currently requires modification of the belly fairing structure. This amendment revises the compliance time for accomplishment of the modification. This amendment is prompted by the fact that the compliance time of the existing rule would have allowed operators of low-cycle airplanes to accomplish the modification at a time considerably later than that intended. The requirements of this amendment are intended to ensure that the structural integrity of the belly fairing structure is maintained.

DATES: Effective July 5, 1994.

The incorporation by reference of certain publications as listed in the regulations was approved previously by the Director of the Federal Register as of January 10, 1994 (58 FR 64875, December 10, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 93–24–11, Amendment 39–8760 (58 FR 64875, December 10, 1993), which is applicable to certain Airbus Model A320 series airplanes, was published in the **Federal Register** on February 2, 1994 (59 FR 4869). The action proposed to supersede AD 93–24–11 to continue to require modification of the belly fairing structure, but to revise the compliance time for accomplishing the modification. That action was prompted by the fact that the compliance time currently specified in paragraph (a) of AD 93–24–11 could allow certain operators to accomplish the modification at a time considerably later than that intended. The proposal proposed to revise the compliance time to "prior to the accumulation of 12,000 total landings on the airplane, or within 300 days after the effective date of the final rule, whichever occurs later." This compliance time will ensure that the structural integrity of the belly fairing structure is maintained in a timely manner.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

All commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 20 airplanes of U.S. registry were affected by AD 93–24–11, and will continue to be affected by this supersedure of that AD. It will take approximately 288 work hours per airplane to accomplish the actions currently required by AD 93–24–11, and that the average labor rate is $55 per work hour. Required parts will cost approximately $1,045 per airplane. Based on these figures, the current cost impact of AD 93–24–11 on U.S. operators is estimated to be $337,700, or $16, 885 per airplane.

The total cost impact figure discussed above is presented as if no operator has yet accomplished any of the requirements of AD 93–24–11 (or this supersedure of that AD). There are no foreseeable additional costs that will be imposed by this supersedure of AD 93–24–11.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8760 (58 FR 64875, December 10, 1993), and by adding a new airworthiness directive (AD), amendment 39–8930, to read as follows:

94–12–03 Airbus Industrie: Amendment 39–8930. Docket 94–NM–08–AD. Supersedes AD 93–24–11, Amendment 39–8760.

Applicability: Model A320 series airplanes, MSN 003 through 092 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the belly fairing structure, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings on the airplane, or within 300 days after January 10, 1994 (the effective date of AD 93–24–11, Amendment 39–8760), whichever occurs later: Modify the belly fairing structure in accordance with Airbus Industrie Service Bulletin A320–53–1014, dated June 25, 1992, or Revision 1, dated May 26, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch. ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Airbus Industrie Service Bulletin A320–53–1014, dated June 25, 1992, or Airbus Industrie Service Bulletin A320–53–1014, Revision 1, dated May 26, 1993. The incorporation by reference of these documents was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of January 10, 1994 (59 FR 64875, December 10, 1993). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 5, 1994.

Issued in Renton, Washington, on May 26, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13372 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–13–U

RAILROAD RETIREMENT BOARD

20 CFR Part 200

[RIN 3220–AB05]

Availability of Information to the Public

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations establishing fees to be assessed in connection with the search for records and provision of documents by the Board. The regulations provide that the fees will be based on the salaries of the employees who ordinarily perform the searches.

EFFECTIVE DATE: June 3, 1994.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 552(a) requires the promulgation of a regulation specifying the schedule of fees applicable to the processing of requests for information. These fees are to provide for the recovery of the direct costs of search, duplication, and review. The fees previously provided for in § 200.4(g)(1) no longer reflect the actual costs of processing requests for information and do not include fees for specific methods of transmittal of documents. The Board is amending its regulation to update the fees by establishing criteria for determining fees so that the fees will automatically change with changes in Federal salaries. In addition, the Board is increasing the fees found in section 200.4(g) and is adding a new paragraph to provide a charge for transmittal of documents by other than regular post.

On January 14, 1994, the Board published this rule as a proposed rule (59 FR 2317), inviting comments on or before February 14, 1994. No comments were received. The final rule differs from the proposed rule in that we have deleted specific salary amounts to be assessed for search and review and substituted therefor language that will allow these fees to rise with salary rate increases. Also the maximum computer search charge has been reduced from that in the proposed rule in accordance with more current information.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II, part 200 of the Code of Federal Regulations is amended as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552; § 200.6 also issued under 5 U.S.C. 552b; § 200.7 also issued under 31 U.S.C. 3717.

2. Section 200.4 is amended by revising paragraph (g)(1) to read as follows:

§ 200.4 Availability of information to public.

* * * * *

(g) * * *

(1) *Fee schedule.* To the extent that the following are chargeable, they are chargeable according to the following schedule:

(i) The charge for making a manual search for records shall be the salary rate, including benefits, for a GS–7, step 5 Federal employee;

(ii) The charge for reviewing documents to determine whether any portion of any located document is permitted to be withheld shall be the salary rate, including benefits, for a GS–13, step 5 Federal employee;

(iii) The charge for making photocopies of any size document shall be $.10 per copy per page;

(iv) The charge for computer-generated listings or labels shall include the direct cost to the RRB of analysis and programming, where required, plus the cost of computer operations to produce the listing or labels. The maximum computer search charge shall be $2,250.00 per hour ($37.50 per minute). Search time shall not include the time expended in analysis or programming where these operations are required.

(v) There shall be no charge for transmitting documents by regular post. The charge for all other methods of transmitting documents shall be the actual cost of transmittal.

* * * * *

Dated: May 27, 1994.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94–13522 Filed 6–2–94; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 90C–0453]

Listing of Color Additives Exempt From Certification; Synthetic Iron Oxide; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of April 7, 1994, of the final rule that appeared in the **Federal Register** of March 7, 1994 (59 FR 10578), that amended the color additive regulations to provide for the safe use of synthetic iron oxide in human food, specifically sausage casings.

DATES: Effective date confirmed: April 7, 1994.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3107.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 7, 1994 (59 FR 10578), FDA amended 21 CFR 73.200 of the color additive regulations to provide for the safe use of synthetic iron oxide as a color additive in human food, specifically sausage casings.

FDA gave interested persons until April 6, 1994, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of March 7, 1994, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), and redelegated to the Director, Center for Food Safety and Applied Nutrition, notice is given that no objections or requests for a hearing were filed in response to the March 7, 1994, final rule. Accordingly, the amendments promulgated thereby became effective April 7, 1994.

Dated: May 25, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–13587 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 346

[Docket No. 80N–0050]

RIN 0905–AA06

Anorectal Drug Products for Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule with opportunity for comments.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the monograph for over-the-counter (OTC) anorectal drug products. This amendment updates the monograph to incorporate a United States Pharmacopeia (U.S.P.) name change for an active ingredient included in the monograph. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

DATES: This final rule is effective January 1, 1995; written comments by August 17, 1994.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 3, 1990 (55 FR 31776), FDA issued a final monograph for OTC anorectal drug products (21 CFR part 346). That monograph included "Hamamelis water, 'The National Formulary XI' " as an active ingredient in § 346.18(b). "Hamamelis water" was also cited in §§ 346.50 (b)(2)(vi) and (d)(8). Because Hamamelis water had last been included in an official compendium in The National Formulary XI (Ref. 1), it was named in this manner in § 346.18(b).

In 1993 (Refs. 2 and 3), Hamamelis water was proposed for inclusion in U.S.P. XXIII, which becomes official on January 1, 1995. The proposed official name was subsequently changed from "Hamamelis water" to "Witch Hazel" (Ref. 3). To be consistent with the change in compendial status and to give manufacturers advance notice of the need for revised labeling, the agency is changing the name of the ingredient "Hamamelis water" to "witch hazel" in the final monograph for OTC anorectal drug products. These changes will occur in § 346.18(b) in the ingredient listing and in § 346.50 in the introductory text of paragraphs (b)(2)(vi) and (d)(8). These changes will become effective on January 1, 1995.

The amendment will require revised product labeling to substitute witch hazel for hamamelis water. This labeling revision represents a minor clarifying change that does not change the substance of the labeling requirements contained in the final regulations. Because sections 502 (e)(1) and (e)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352 (e)(1) and (e)(3)) require the established name of a drug to be used, any "witch hazel" drug product initially introduced or initially delivered for introduction into interstate commerce after January 1, 1995, will need to bear the new established name "witch hazel."

As noted previously, these changes make the final monograph for OTC anorectal drug products consistent with a change being implemented in the official compendium (U.S.P.). Because the name change follows from a U.S.P. change, the Commissioner has determined that notice and comment are unnecessary (5 U.S.C. 553(b); 21 CFR 10.40(e)(1)). Therefore, publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). This final rule shall become effective on January 1, 1995.

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. In this final rule, the labeling change could be implemented by manufacturers at very little cost at the next printing of labels. There are only a few manufacturers of products containing this ingredient. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency invites public comment regarding any economic impact that this rulemaking would have on the labeling of OTC drug products. Types of impact may include, but are not limited to, costs associated with relabeling. Comments regarding the impact of this final rule on OTC drug products should be accompanied by appropriate documentation. The agency will consider any comments to determine whether the regulation should subsequently be modified.

Interested persons may, on or before August 17, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Written comments on the agency's economic impact determination may be submitted on or before August 17, 1994. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

References

(1) "The National Formulary," 11th ed., Mack Publishing Co., Easton, PA, p. 158, 1960.

(2) "Pharmacopeial Forum," The United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 5266–5268, May and June 1993.

(3) "Pharmacopeial Forum," The United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 6399–6401, November and December 1993.

List of Subjects in 21 CFR Part 346

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs, 21 CFR part 346 is amended as follows:

PART 346—ANORECTAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 346 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 346.18 *Astringent active ingredients* is amended by revising paragraph (b) to read as follows:

§ 346.18 Astringent active ingredients.

* * * * *

(b) Witch hazel, 10 to 50 percent.

* * * * *

§ 346.50 [Amended]

3. Section 346.50 *Labeling of anorectal drug products* is amended in the heading of paragraph (b)(2)(vi) by removing the words "hamamelis water" and adding in their place the words "witch hazel"; and in the heading of paragraph (d)(8) by removing the words "hamamelis water" and adding in their place the words "witch hazel".

Dated: May 16, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–13592 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–01–F–M

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21 CFR Part 347

RIN 0905–AA06

[Docket No. 78N–021A]

Skin Protectant Drug Products for Over-The-Counter Human Use; Astringent Drug Products; Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule with opportunity for comments.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the monograph for over-the-counter (OTC) astringent drug products. This amendment updates the monograph to incorporate a United States Pharmacopeia (U.S.P.) name change for an active ingredient included in the monograph. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

DATES: This final rule is effective January 1, 1995; written comments by August 17, 1994.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 21, 1993 (58 FR 54458), FDA issued a final monograph for OTC astringent skin protectant drug products (21 CFR part 347, subpart A). That monograph included "Hamamelis water, U.S.P." as an active ingredient in § 347.10(c). "Hamamelis water" was also cited in §§ 347.50(b)(3) and (d)(3). The designation "U.S.P." was included in § 347.10(c) because the agency anticipated that a final compendial (U.S.P.) monograph would be established for the ingredient prior to the effective date of the final monograph for OTC astringent skin protectant drug products (58 FR 54458 at 54460). Hamamelis water had last been included in an official compendium in The National Formulary XI (Ref. 1).

In 1993 (Refs. 2 and 3), Hamamelis water was proposed for inclusion in U.S.P. XXIII, which becomes official on January 1, 1995. The proposed official name was subsequently changed from "Hamamelis water" to "Witch Hazel" (Ref. 3). To be consistent with the change in compendial status and to give manufacturers advance notice of the need for revised labeling, the agency is changing the name of the ingredient "Hamamelis water" to "witch hazel" in the final monograph for OTC astringent skin protectant drug products. These changes will occur in § 347.10(c) in the ingredient listing and in § 347.50 in the introductory text of paragraphs (b)(3), (c)(2), and (d)(3). These changes will become effective on January 1, 1995.

The amendment will require revised product labeling to substitute witch hazel for hamamelis water. This labeling revision represents a minor clarifying change that does not change the substance of the labeling requirements contained in the final regulations. Because sections 502(e)(1) and (e)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)(1) and (e)(3)) require the established name of a drug to be used, any witch hazel drug product initially introduced or initially delivered for introduction into interstate commerce after January 1, 1995, will need to bear the new established name "witch hazel."

As noted previously, these changes make the final monograph for OTC astringent skin protectant drug products consistent with a change being implemented in the official compendium (U.S.P.). Because the name change follows from a U.S.P. change, the Commissioner has determined that notice and comment are unnecessary (5 U.S.C. 553(b); 21 CFR 10.40(e)(1)). Therefore, publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). This final rule shall become effective on January 1, 1995.

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. In this final rule, the labeling change could be implemented by manufacturers at very little cost at the next printing of labels. There are only a few manufacturers of products containing this ingredient. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency invites public comment regarding any economic impact that this final rule would have on the labeling of OTC drug products. Types of impact may include, but are not limited to, costs associated with relabeling. Comments regarding the impact of this final rule on OTC drug products should be accompanied by appropriate documentation. The agency will consider any comments to determine whether the regulation should subsequently be modified.

Interested persons may, on or before August 17, 1994, submit to the Dockets Management Branch (address above) written comments regarding this final

rule. Written comments on the agency's economic impact determination may be submitted on or before August 17, 1994. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

References

(1) "The National Formulary," 11th ed., Mack Publishing Co., Easton, PA, p. 158, 1960.

(2) "Pharmacopeial Forum," The United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 5266-5268, May and June 1993.

(3) "Pharmacopeial Forum," The United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 6399-6401, November and December 1993.

List of Subjects in 21 CFR Part 347

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 347 is amended as follows:

PART 347—SKIN PROTECTANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 347 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 347.10 *Astringent active ingredients* is amended by revising paragraph (c) to read as follows:

§ 347.10 Astringent active ingredients.

* * * * *

(c) Witch hazel.

* * * * *

§ 347.50 [Amended]

3. Section 347.50 *Labeling of astringent drug products* is amended in the heading of paragraph (b)(3) by removing the words "Hamamelis water" and adding in their place the words "witch hazel"; in the heading of paragraph (c)(2) by removing the words "hamamelis water" and adding in their place the words "witch hazel"; and in the heading of paragraph (d)(3) by removing the words "hamamelis water" and adding in their place the words "witch hazel".

Dated: May 16,1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-13589 Filed 6-2-94; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Parts 510, 520, and 524

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for five new animal drug applications (NADA's) from Purina Mills, Inc., to PM Resources, Inc.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1646.

SUPPLEMENTARY INFORMATION: Purina Mills, Inc., P.O. Box 66812, St. Louis, MO 63166-6812, has informed FDA that it has transferred ownership of, and all rights and interests in, the following approved NADA's to PM Resources, Inc., 13001 St. Charles Rock Rd., Bridgeton, MO 63044:

NADA number	Ingredient	Trade name
007-076	Sulfaquinoxaline Sodium	Sulfa-Nox Liquid.
008-244	Sulfaquinoxaline Sodium	Sulfa-Nox Concentrate.
010-886	Piperazine Phosphate Monohydrate	Purina Liquid Wormer.
043-215	Famphur	Purina Grub-Kill.
092-150	Pyrantel Tartrate	Purina Horse & Colt Wormer.

Accordingly, the agency is amending the regulations in 21 CFR Parts 510.600(c)(1) and (c)(2), 520.1806(b), 520.2045(b)(2), 520.2325a(c)(2), and 524.900(c) to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520 and 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "PM Resources, Inc.," and in the table in paragraph (c)(2) by numerically adding a new entry for "060594" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
PM Resources, Inc.,13001 St. Charles Rock Rd., Bridgeton, MO 63044.	060594
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
060594	PM Resources, Inc.,13001 St. Charles Rock Rd., Bridgeton, MO 63044

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal, Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.1806 [Amended]

4. Section 520.1806 *Piperazine monohydrochloride liquid* is amended in paragraph (b) by adding "and 060594" after "017135".

§ 520.2045 [Amended]

5. Section 520.2045 *Pyrantel tartrate powder; pyrantel tartrate pellets* is amended in paragraph (b)(2) by removing "017800" and adding in its place "060594".

§ 520.2325a [Amended]

6. Section 520.2325a *Sulfaquinoxaline drinking water* is amended in paragraph (c)(2) by removing "017800" and adding in its place "060594".

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

7. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 524.900 [Amended]

8. Section 524.900 *Famphur* is amended in paragraph (c) by removing "017800" and adding in its place "060594".

Dated: May 26, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–13588 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–01–F

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Parts 220 and 222

General Provisions and Miscellaneous Provisions

AGENCY: Agency for International Development (USAID).

ACTION: Final rule.

SUMMARY: This rule removes parts 220 and 222 ("Obey regulations") from title 22 of the CFR. The Obey regulations continue in effect and are filed, together with USAID's other personnel provisions, in the agency's internal directive system, as Attachment 1B of USAID Handbook 26.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Jan Miller at 202–647–6380.

PARTS 220 AND 222—[REMOVED]

For the reasons set forth above, parts 220 and 222 are removed from title 22 of the Code of Federal Regulations.

Authority: 22 U.S.C. 2381.

Dated: May 24, 1994.

Frank Almaguer,

Deputy Assistant Administrator.

[FR Doc. 94–13548 Filed 6–2–94; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval, with two exceptions, of a program amendment submitted by Kansas as a modification to the State's permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to definitions, administrative hearing procedure, civil penalties, use of explosives, standards for revegetation success, postmining land use, and inspection and enforcement.

The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, to clarify ambiguities, and to improve operational efficiency.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning Kansas's program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Submission of Amendment

By letter dated September 14, 1993 (Administrative Record No. KS–567), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment with the intent of satisfying, in part, required program amendments at 30 CFR 916.16 (a), (b) and (c) that were placed on the Kansas program on October 7, 1988 (53 FR 39467, 39470), September 13, 1991 (56 FR 46548), and June 14, 1993 (58 FR 32847, 32855).

OSM published a notice in the September 27, 1993, **Federal Register** announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (58 FR 50302). The public comment period ended October 27, 1993. The public hearing scheduled for October 22, 1993, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns related to the Kansas Administrative Regulations (K.A.R.) 47–4–14a(c)(7), regarding intervention, K.A.R. 47–4–14a (d)(10)(D) and (d)(5)(B)(vi) regarding public hearings, K.A.R. 47–5–5a (a) and (b) regarding civil penalties, K.A.R. 47–5–5a(b)(14) regarding the definition of "violation, failure or refusal," and K.A.R. 47–15–1a(b)(21) regarding inspection and enforcement, substitution of terms.

OSM notified Kansas of these concerns by letter dated January 26, 1994 (Administrative Record No. KS–574). Kansas responded in a letter dated March 9, 1994 (Administrative Record No. KS–575), by submitting further revisions to Articles 4, 5, 6, 9, and 15 of the Kansas Administrative Regulations. On March 10, 1994 (Administrative Record No. KS–581), Kansas requested further information from OSM regarding its proposed amendment. Subsequently, Kansas again, in a letter dated March 10, 1994 (Administrative Record No. KS–576), revised its proposed amendment. OSM reopened the public comment period on March 30, 1994 (59 FR 14811). The public comment period closed on April 14, 1994.

III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, with two exceptions, that the proposed amendment as submitted by Kansas on September 14, 1993, meets the requirements of SMCRA and 30 CFR chapter VII.

1. Provisions Not Discussed

Kansas proposes certain revisions to its rules that involve minor typographical corrections and recodification. The Director finds that these proposed revisions, unless specifically discussed below, are no less effective in meeting SMCRA's requirements than the Federal regulations and is approving them.

2. Required Program Amendments

Kansas submitted proposed revisions in response to required program amendments that the Director placed on the Kansas program, codified in the Federal regulations at 30 CFR 916.16 (a), (b) and (c). The Director finds that the following proposed State regulations satisfy the required program amendments, are no less effective in meeting SMCRA's requirements than the Federal regulations indicated in each required program amendment, and is approving them (the codified required amendments at 30 CFR 916.16 are indicated in brackets): K.A.R. 47–4–14a(c)(7) by requiring that a person petitioning for leave to intervene in a proceeding need only show why his interest is or may be adversely affected rather than why his interest would be adversely affected and by requiring the presiding officer to make a decision to grant intervention based on factors listed at K.A.R. 47–4–14a(c)(7)(B)(i)–(iv) in the event subsection (7)(A)(i) or (7)(A)(ii) are not applicable [30 CFR 916.16(b)(8)]; K.A.R. 47–4–14a(c)(11) by providing that any person that fails to file a responsive pleading by the required time *may* be deemed to have waived his right to a hearing [30 CFR 916.16(b)(10)]; K.A.R. 47–4–14a (b), (d), and (d)(2)(F) by replacing the phrase "this act" with the phrase "these rules and regulations," [30 CFR 916.16(c)(2)]; K.A.R. 47–5–5a (a) and (b), (a)(8), (a)(10) and (b)(14)–(20) by replacing the identified Federal terms and citations with the appropriate State terms and citations and by providing the State address where an individual may file a petition for review [30 CFR 916.16(b)(24)]; K.A.R. 47–5–5a(b)(14) by replacing Federal terms and citations with the appropriate State terms and citations [30 CFR 916.16(b)(24)]; K.A.R. 47–5–5a(c)(7)(C) by imposing a 30-day time limit within which the Surface Mining Section must remit a refund [30 CFR 916.16(c)(3)]; K.A.R. 47–6–7(h)(2) by correcting an improper reference from K.A.R. 47–4–14a(d)(14) to K.A.R. 47–4–14a(d)(14) [30 CFR 916.16(b)(30)]; K.A.R. 47–9–1 (c)(17) and (d)(17) by modifying the adoption by reference of the Federal regulations at 30 CFR 816.61 by deleting from its adoption by reference of 30 CFR 816–817.61(c)(1) everything but the statement "all blasting operations shall be conducted under the direction of a certified blaster," [30 CFR 916.16(c)(4)]; K.A.R. 47–9–1 (c)(46) and (d)(44) by deleting paragraph (d), concerning variances for steep slope mining, from its adoption by reference of 30 CFR 816–817.133 [30 CFR 916.16(a)]; K.A.R. 47–15–1a by removing the incorrect reference to K.A.R. 47–15–5a from the section heading for K.A.R. 47–15–1a [30 CFR 916.16(c)(5)]; K.A.R. 47–15–1a(b) (6) and (9) by providing the correct counterpart State citations for the terms "43 CFR Part 4" and "43 CFR 4.1281," [30 CFR 916.16(c)(7)]; and K.A.R. 47–47–15–1a(b)(21) by requiring that informal public hearings be conducted in accordance with K.A.R. 47–4–14a [30 CFR 916.16(c)(6)].

Accordingly, the Director is removing the required program amendments as identified above from the Kansas program and as codified at 30 CFR 916.16.

3. K.A.R. 47–2–75(e)(6), Definitions

Kansas proposes to revise K.A.R. 47–2–75(e)(6) to replace the reference in the Federal regulations at 30 CFR 846.5 to section 703 of SMCRA which deals with employee protection, with a reference to Kansas Statute Annotated (K.S.A.) 75–2973 which also deals with employee protection. Kansas is submitting this revision in response to a required program amendment placed on the Kansas program at 30 CFR 916.16(c)(1).

The Director finds that Kansas' proposed amendment does not render the State provision at K.A.R. 47–2–75(e)(6) less effective in meeting SMCRA's requirements than the Federal provision at 30 CFR 846.5 and is approving it. Accordingly, the Director is removing the required program amendment at 30 CFR 916.16(c)(1).

4. K.A.R. 47–4–14a(d)(6)(E) (iii) and (iv), Notice of Administrative Hearings

Kansas proposes to revise K.A.R. 47–4–14a(d)(6)(E)(iii) and add K.A.R. 47–4–14a(d)(6)(E)(iv) so that the rules would read as follows:

(E) The state agency shall cause notice to be given to any other person entitled to notice under any other provisions of law, who has not been given notice under section (d)(6)(A), as follows:

(iii) Notice under this subsection may include all types of information provided in sections (d)(6) (A) through (D) or may consist of a brief statement indicating the subject matter, parties, time, place where the hearing will be held, locations where the general public may meet for hearings which are conducted electronically, nature of the hearing, manner in which copies of the notice to the parties may be inspected and copied, and the name and telephone number of the presiding officer.

(iv) The surface mining section shall also post notice of the hearing at their office and, where practicable, publish it in a newspaper of general circulation in the area of the mine at least seven (7) days prior to the hearing.

Kansas proposes these revisions in response to a required program amendment placed on the Kansas program at 30 CFR 916.16(b)(17) that instructed Kansas to remove the provisions that allowed for the holding of hearings by telephone or other electronic means. The required program amendment resulted from a finding published in a **Federal Register** notice dated September 13, 1991 (56 FR 46531, 46538). The finding concluded that the proposal to conduct hearings by telephone or other electronic means conflicted with existing SMCRA and State requirements for public hearings. *Id.* See also 58 FR 32850–32851 (June 14, 1993).

The proposed revision at K.A.R. 47–4–14a(d)(6)(E)(iii) insures, among other things, that the notice of an administrative hearing provided to non-parties will notify members of the general public where they may go to participate in an electronically conducted hearing. Moreover, the proposed language at K.A.R. 47–4–14a(d)(6)(E)(iv) requires the Surface Mining Section to post such notices at its office, so that members of the general public have access to one central location where they can always obtain information about upcoming hearings.

The proposed language at K.A.R. 47–4–14a(d)(6)(E)(iv) also provides that, "where practicable," the Surface Mining Section will publish the notice in a newspaper or general circulation in the area of the mine at least seven (7) days prior to the hearing. As a general rule this proposed 7-day publication notice is not inconsistent with SMCRA or the Federal rules because SMCRA does not uniformly require regulatory authorities to publish advance notice of all hearings. However, there are instances where SMCRA and other provisions of the Kansas program specifically require the regulatory authority to publish advance notice of a hearing. Moreover, in those specific instances, the regulatory authority is required to publish such notice more than seven days in advance of the hearing date. See

section 513(b) of SMCRA; 30 CFR 773.13(c)(2)(ii). See also K.A.R. 47–3–42(a)(43) (incorporating by reference 30 CFR 773.13).

The Director is approving the proposed rule at K.A.R. 47–4–14a(d)(6)(E)(iv) with the understanding that it is a general rule and that in any particular instance where a more specific rule of the Kansas program requires publication of advance notice of an administrative hearing, the more specific rule must take precedence over this proposed general rule.

The Director finds that the proposed rules at K.A.R. 47–4–14a(d)(6)(E) (iii) and (vi) are not inconsistent with SMCRA and the Federal program and is approving them. Accordingly, the Director is removing the required program amendment from the Kansas program and as codified at 30 CFR 916.16(b)(17).

5. K.A.R. 47–6–2(d) and (d)(3), Permit Revisions

Kansas proposes to modify K.A.R. 47–6–2(d) and (d)(3) by adding the word "significant" so that the rules would read:

(d) No application for a *signficant* revision shall be approved unless the applicant demonstrates and the regulatory authority finds that:

(1) the reclamation required by the state act and the regulatory program can be accomplished;

(2) applicable requirements under K.A.R. 47–3–42(a)(43) pertinent to the revision are met; and

(3) the application for *a significant* revision complies with all requirements of the state act and the regulatory program.

Prior to the proposed amendments, the State provisions at K.A.R. 47–6–2(d) and (d)(3) were substantively similar to the counterpart Federal regulation at 30 CFR 774.13(c).

The proposed revisions at K.A.R. 47–6–2–(d) and (d)(3) render the State provisions less effective in meeting SMCRA's requirements than the Federal regulation at 30 CFR 774.13(c) because, as revised, the State provisions would apply the approval criteria of K.A.R. 47–6–2(d) only to significant permit revisions. In contrast, the Federal regulations require that such approval criteria apply to *all* permit revisions. Therefore, the Director finds Kansas' proposed revisions at K.A.R. 47–6–2(d) and (d)(3) to be less effective in meeting SMCRA's requirements than the Federal regulation at 30 CFR 774.13(c) and is not approving it.

6. K.A.R. 47–9–1(c)(43) Revegetation: Standards for Success, Surface Mining Activities, and K.A.R. 47–9–1(d)(39) Revegetation: Standards for Success, Underground Mining Activities

Kansas proposes to add a subsection (3) to 30 CFR 816/817.116(A) that would read:

(3) Data being used for bond release will be submitted to the surface mining section annually. This includes data for the last augmented seeding which will start the extended liability period. The following timetable for submissions shall be followed: (i) The planting reports including soil tests shall be submitted by March 31 of the year following the year in which they were performed. (ii) The production and ground cover data shall be submitted within 30 days of the date they were sampled. Ground cover must include species identification. Raw field data may be submitted at this time to fulfill this requirement. The tabulated results will then be submitted by March 31 of the following year. (iii) All data must be clearly identified as to the bond release management area that it represents.

While the Federal regulations do not provide similar detailed requirements regarding submission of data used for bond release, as the above-quoted proposed Kansas provision, in accordance with section 505(b) of SMCRA and 30 CFR 730.11(b), the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations that are more stringent than those imposed under SMCRA and the Federal regulations. Moreover, the State regulatory authority has the discretion to impose land use and environmental controls and regulations on surface coal mining and reclamation operations for which no Federal counterpart exists. Section 505(b) of SMCRA and 30 CFR 730.11 dictate that such State provisions shall not be construed to be inconsistent with the Federal program.

Therefore, the Director is approving Kansas' proposed revisions at K.A.R. 47–9–1(c)(43) and 47–9–1(d)(39).

7. K.A.R. 47–9–1(f)(2). Special Permanent Program Performance Standards—Operations on Prime Farmlands

Kansas proposes to adopt by reference the Federal regulations at 30 CFR 823.11, including 30 CFR 823.11(a) that addresses exemptions to prime farmland performance standards and which was previously deleted from the Kansas program. Kansas expressed its desire to readopt 30 CFR 823.11(a) in its letter dated March 10, 1994.

The Federal provision at 30 CFR 823.11(a) applies to surface and underground mines alike and exempts from compliance with the special prime farmland performance standards "[c]oal preparation plants, support facilities, and roads * * * that are actively used over extended periods of time * * * where such uses affect a minimal amount of land." On October 1, 1984, the United States District Court for the District of Columbia remanded 30 CFR 823.11(a) in *In re: Permanent Surface Mining Regulation Litigation*, 21 ERC 1724, 15 ELR 20481 (D.D.C. 1984), for two reasons. First, the Court found that OSM had failed to adequately consider and discuss the basic differences between underground and surface mining operations when it applied the exemption at 30 CFR 823.11(a) to surface, as well as underground, mines. *Id.*, 21 ERC at 1734–1735. Second, the Court found that OSM had not provided enough guidance regarding the scope of the exemption:

The Secretary has provided no indication of what he considers an extended period of time or a minimum amount of land.

Id., 21 ERC at 1735.

On February 21, 1985, in response to the Court's October 1, 1984, decision, OSM suspended 30 CFR 823.11(a) insofar as the exemption therein relates to facilities used in surface, as opposed to underground, mining (50 FR 7274, 7277). With regard to facilities used in underground mining, OSM stated that the exemption at 30 CFR 823.11(a) remained applicable, but that OSM intended to propose rules to clarify the scope of the exemption. OSM did propose such rules on March 25, 1987 (52 FR 9644). However, after considering comments regarding the proposed rules, OSM determined that it lacked sufficient data to support the promulgation of a specific spatial limitation on the exemption (53 FR 40828, 40835 (October 18, 1988)). Therefore, OSM postponed rulemaking pending further study. *Id.* OSM stated that existing 30 CFR 823.11(a), as modified by the February 21, 1985, suspension notice, was to be retained in the interim. *Id.* Between the time OSM published proposed rules and later determined that final rulemaking had to be postponed to allow further study, the Court of Appeals for the District of Columbia, on January 29, 1988, affirmed the ruling of the District Court concerning the remand of 30 CFR 823.11(a). *National Wildlife Federation* v. *Hodel*, 839 F.2d 694, 722–723 (D.C. Cir. 1988).

At the present time then, 30 CFR 823.11(a) is suspended insofar as it relates to surface, as opposed to underground, mining. Therefore,

Kansas' proposal to adopt 30 CFR 823.11(a), as applied to surface mining, is inconsistent with SMCRA, as interpreted by court decisions. Moreover, with regard to underground mining, the Kansas proposal is inconsistent with SMCRA, as interpreted by court decisions, because it fails to adequately explain what is an extended period of time or a minimal amount of land. Accordingly, the Director cannot approve the proposed adoption of 30 CFR 823.11(a) at K.A.R. 47–9–1(f)(2).

IV. Public and Agency Comments

Public Comments

For a complete history of the opportunity provided for public comment on the proposed amendment, please refer to "Submission of Amendment." No public comments were received.

Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), comments were solicited from the Administrator of the Environmental Protection Agency (EPA), and various other Federal agencies with an actual or potential interest in the Kansas program.

By letter dated April 8, 1994 (Administrative Record No. KS–579), the Soil Conservation Service responded that it had no comment.

By letter dated April 12, 1994 (Administrative Record No. KS–580), the Fish and Wildlife Service responded that it had no comment.

Comments were also solicited from various State agencies but none elected to comment.

Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), concurrence was solicited from the EPA for those aspects of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act.

By letter dated November 2, 1993 (Administrative Record No. KS–571), the EPA regional office in Kansas City, Kansas responded that it did not have any comments regarding the proposed revisions.

State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation Comments (ACHP)

30 CFR 732.17(h)(4) requires that all amendments that may have an effect on historic properties be provided to the SHPO and ACHP for comment. Comments were solicited from these offices. No comments were received from either SHPO or ACHP.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by Kansas on September 14, 1993, as modified on March 9, and March 10, 1994, with two exceptions.

The Director is not approving proposed rules K.A.R. 47–6–2(d) and (d)(3), Permit revisions, as discussed in finding No. 5 and K.A.R. 47–9–1(f)(2), Special permanent program performance standards—operations on prime farmlands—applicability, as discussed in finding No. 7.

Except as noted above, the Director is approving the Kansas regulations with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 916 codifying decisions concerning the Kansas program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Kansas program, the Director will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Kansas of only such provisions.

VII. Procedural Determinations

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review).

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 27, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 916—KANSAS

1. The authority citation for part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 916.15 is amended by adding paragraph (o) as follows:

§ 916.15 Approval of regulatory program amendments.

* * * * *

(o) With the exceptions of K.A.R. 47–6–2 (d) and (d)(3), Permit revisions and K.A.R. 47–9–1(f)(2), Special permanent program performance standards—operations on prime farmlands—applicability, the following revisions to the Kansas Administrative Regulations (K.A.R.) submitted to OSM on September 14, 1993, are approved effective June 3, 1994: K.A.R. 47–2–75(e)(6), State employee protection; K.A.R. 47–4–14a(c)(7), Intervention; K.A.R. 47–4–14a(c)(11), Waiver of hearing; K.A.R. 47–4–14a (b), (d), and (d)(2)(F), Definitions, formal hearings; K.A.R. 47–4–14a(d)(6)(E) (iii) and (iv), Public hearings; K.A.R. 47–5–5a(a)(10), Individual civil penalties; K.A.R. 47–5–5a(b), (14), (15), (16), (19), and (20), Civil penalties—substitution of terms; K.A.R. 47–5–5a(c)(7)(C), Initial order of the presiding officer; K.A.R. 47–6–7(h)(2), Appeals; K.A.R. 47–9–1 (c)(17) and (d)(17), Blasting; K.A.R. 47–9–1 (c)(43) and (d)(39), Revegetation: standards for success; K.A.R. 47–9–1 (c)(46) and (d)(44), Steep slope mining; K.A.R. 47–15–1a, Inspection and enforcement, general citation; and K.A.R. 47–15–1a(b) (6), (9), and (21), Inspection and enforcement—substitution of terms.

3. Section 916.16 is amended by removing the text and revising the heading to read as follows:

§ 916.16 Required regulatory program amendments. [Reserved]

[FR Doc. 94–13503 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Department of the Treasury Circular, Public Debt Series No. 1–93]

31 CFR Part 356

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes and Bonds

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Department") is issuing in final form an amendment to 31 CFR part 356, published as a final rule on January 5, 1993 (58 FR 412). 31 CFR part 356, also referred to as the uniform offering circular, sets out terms and conditions for the sale and issue by the Department to the public of marketable book-entry Treasury bills, notes and bonds. The amendment contained herein allows for Treasury securities awarded to a submitter that is a member of a clearing corporation to be delivered to an account of the clearing corporation at a depository institution, provided the securities are for the submitter's own account and certain agreements have been executed by the parties and filed with the appropriate Federal Reserve Bank. Specifically, this change will enable a clearing corporation to net securities awarded at an auction to submitters that are its members with the when-issued and secondary market trades of such members in the same securities.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Don Hammond, Acting Director, Government Securities Regulations Staff, Bureau of the Public Debt (202) 219–3632, or Margaret Marquette, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt (202) 219–3320. (TDD for hearing impaired: (202) 219–9274.)

SUPPLEMENTARY INFORMATION:

I. Background and Analysis

Clearing corporations play an increasingly important role in the clearance and settlement of securities transactions. To date, clearing corporation involvement in the clearance and settlement of Treasury securities has been limited to the secondary market. The Department believes that including Treasury auction purchases in a multilateral netting system operated by a clearing agency registered with the Securities and Exchange Commission ("SEC") can be beneficial to the efficiency of the government securities market. For example, with respect to the book-entry system for Treasury securities, it can reduce the number of securities transfers. In addition, it can enable the clearing agency to improve its risk management by providing a more complete picture of its members' positions.

This amendment to the uniform offering circular specifies the conditions under which Federal Reserve Banks may deliver to an account of a clearing corporation at a depository institution securities awarded at auction to submitters that are members of the clearing corporation. The amendment permits only securities awarded to a submitter for its own account to be delivered through a clearing corporation. To qualify as a clearing corporation for purposes of this rule, an entity must be registered with the SEC as a clearing agency.

Currently, the only SEC-registered clearing agency that nets trades in Treasury securities is the Government Securities Clearing Corporation ("GSCC"). GSCC has proposed to net GSCC netting member auction awards of Treasury securities against their when-issued and secondary market trades in the same securities. On March 10, 1994, the SEC published the GSCC's proposed rule amendments necessary to implement the netting of the proprietary auction awards of its members (59 FR 11345). The SEC comment period ended on March 31, 1994.

This rule amends §§ 356.2, 356.11, 356.16, and 356.24 of the uniform offering circular.

Specifically, in § 356.2, the definition of the term "autocharge agreement" has been expanded to allow for an autocharge between a clearing corporation and a depository institution. In addition, the term "clearing corporation" is defined as a clearing agency, as defined by § 3 of the Securities Exchange Act of 1934, that is registered with the SEC.

The term "delivery and payment agreement" has also been added to the definitions in § 356.2. This term refers to an agreement between a submitter and a clearing corporation authorizing a Federal Reserve Bank to deliver securities awarded to a submitter to, and accept payment from, a depository institution for the clearing corporation. This new agreement is needed to authorize the delivery of securities to a clearing corporation's account rather than to the submitter's account. Any existing autocharge agreements between a submitter and a depository institution will continue to govern delivery and

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payment for submitters not taking delivery through a clearing corporation. In addition, any existing autocharge agreements will continue to govern the delivery of and payment for securities awarded to customers.

New paragraph 356.11(b)(2) makes clear that for competitive bids submitted in paper form, a submitter that is a clearing corporation member and is submitting bids for its own account and for customers must submit a separate tender for each specific delivery instruction. This requirement also applies to any other submitter instructing delivery of awarded securities to more than one account.

New paragraph 356.16(b)(2)(iii) has been added to clarify that, if awarded securities are to be delivered to an account of a clearing corporation at a depository institution, a delivery and payment agreement must be acknowledged by, and on file with, the appropriate Federal Reserve Bank prior to the submission of a tender for the securities. By entering into such an agreement, the submitter authorizes the Federal Reserve Bank to provide to the clearing corporation notice of the submitter's auction awards. Further, a clearing corporation entering into delivery and payment agreements with submitters must have an acknowledged autocharge agreement on file at the Federal Reserve Bank maintaining the accounts of the clearing corporation's agent banks. By entering into an autocharge agreement, the clearing corporation authorizes the Federal Reserve Bank to provide the depository institution whose funds account will be charged on issuance notice of certain payment related information for securities to be delivered.

Finally, paragraph 356.24(a) has been expanded to provide that, if securities are to be delivered to an account of a clearing corporation at a depository institution, notice of awards will be provided to the clearing corporation. Also, paragraph 356.24(c) has been modified to correspond to the expanded definition of autocharge agreement.

II. Special Analysis

This final rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866.

Because this rule relates to public contracts and procedures for United States securities, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

In addition, because this rule is in the public interest, expedites the handling and processing of government securities, offers a new option for delivery and payment of securities, and does not adversely affect holders of government securities, the Department has determined not to publish the rule for public comment and to make the rule effective immediately upon publication.

As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons set forth in the preamble, 31 CFR Chapter II, subchapter B, part 356, is hereby amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*

2. The heading for part 356 is revised as set forth above.

3. Section 356.2 is amended by revising the definition of "Autocharge agreement" and adding in alphabetical order the definitions of "Clearing corporation" and "Delivery and payment agreement" to read as follows:

§ 356.2 Definitions.

* * * * *

Autocharge agreement means a written agreement between a submitter and a depository institution or between a clearing corporation and a depository institution, acknowledged by a Federal Reserve Bank, which authorizes a Federal Reserve Bank to deliver securities awarded at auction to the book-entry account of the depository institution or, when authorized, to a TREASURY DIRECT account, and to charge a funds account of the depository institution for the settlement amount of the securities. (See exhibit B for a sample autocharge agreement between a submitter and a depository institution.)

* * * * *

Clearing corporation means a clearing agency as defined in Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(23)) that is registered with the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934 and the rules thereunder.

* * * * *

Delivery and payment agreement means a clearing corporation and a submitter, acknowledged by a Federal Reserve Bank, authorizing the Federal Reserve Bank, with respect to securities awarded to the submitter for its own account, to deliver such securities to, and accept payment from, a depository institution acting on behalf of the clearing corporation pursuant to an acknowledged autocharge agreement.

* * * * *

4. Section 356.11 is amended by redesignating paragraphs (b)(2) and (b)(3) as (b)(3) and (b)(4) and adding a new paragraph (b)(2) to read as follows:

§ 356.11 Submission of bids.

* * * * *

(b) * * *

(2) For competitive bids, if securities are to be delivered to more than one account, a separate paper tender must be submitted for each delivery instruction specified.

* * * * *

5. Section 356.16 is amended by revising paragraph (b)(2)(ii) and adding a new paragraph (b)(2)(iii) to read as follows:

§ 356.16 Responsibility for payment.

* * * * *

(b) * * *

(2) * * *

(ii) A submitter that chooses not to pay by charge to its funds account or a submitter that does not have a funds account must, prior to the submission of a tender, have an acknowledged autocharge agreement on file at the Federal Reserve Bank to which the tender is submitted. By submitting a tender for securities to be paid for under such autocharge agreement, the submitter authorizes the Federal Reserve Bank to provide, to the depository institution whose funds account will be charged under the agreement, notice of the total par amount of, and price to be charged for, securities awarded as a result of the submitter's tender.

(iii) In addition, a submitter that is a member of a clearing corporation may instruct that delivery and payment be made through the clearing corporation for securities awarded to the submitter for its own account, provided that the following requirements are met:

(A) The submitter must, prior to the submission of a tender for such securities, have a delivery and payment agreement with the clearing corporation acknowledged by, and on file at, the Federal Reserve Bank to which the tender is submitted. By entering into such an agreement, the submitter authorizes the Federal Reserve Bank to provide to the clearing corporation notice of the par amounts of, prices to be charged for, and total payment amounts for, securities awarded to the submitter for its own account.

(B) An autocharge agreement between the clearing corporation and the depository institution must, prior to the submission of a tender for such securities, be acknowledged by, and on file at, the Federal Reserve Bank servicing the depository institution. By entering into such an agreement, the clearing corporation authorizes the Federal Reserve Bank to which the tender is submitted to provide, to the depository institution whose funds account will be charged under the agreement, notice of the total aggregate par amount of, prices to be charged for, and total payment amounts for, securities to be delivered to the clearing corporation's designated account at the depository institution.

* * * * *

6. Section 356.24 is amended by revising paragraphs (a) and (c) to read as follows:

§ 356.24 Notice of awards; confirmations.

(a) *Notice of awards*—(1) *Notice to submitters.* Notice of awards will be provided by a Federal Reserve Bank or the Department to submitters of successful competitive bids. Submitters of noncompetitive bids will be notified only when the price to be paid by noncompetitive bidders is over par or if noncompetitive bids are not accepted in full.

(2) *Notice to clearing corporation.* If awarded securities are to be delivered pursuant to a delivery and payment agreement, notice of the awards also will be provided by a Federal Reserve Bank or the Department to the clearing corporation that is a party to such agreement.

* * * * *

(c) *Confirmation of award and settlement amount to a depository institution having an autocharge agreement with a submitter or a clearing corporation.* Not later than the day after each auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with either a submitter or a clearing corporation as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date.

* * * * *

7. The title to Exhibit B to Part 356 is revised to read as follows:

Exhibit B to Part 356. Sample Autocharge Agreement To Deliver and Charge for Securities Awarded in Department of the Treasury Auctions (Submitter and Depository Institution).

* * * * *

Dated: May 11, 1994.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 94–13621 Filed 6–1–94; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–94–006]

Special Local Regulation; Thomas Graves Memorial Fireworks Display, Lake Ontario, Port Bay, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: A special local regulation is being adopted for the Thomas Graves Memorial Fireworks Display. This event will be held on Lake Ontario, Port Bay, NY on July 3, 1994 with a rain date of July 9, 1994. This regulation will restrict general navigation on Lake Ontario, Port Bay, NY. Due to the large number of spectator vessels and the falling ash and debris from the fireworks display, this regulation is needed to provide for the safety of life, limb, and property on navigable waters during the event.

EFFECTIVE DATE: This regulation is effective from 9:30 p.m. (EDST) until 11 p.m. (EDST) on July 3, 1994 with a rain date of July 9, 1994.

FOR FURTHER INFORMATION CONTACT: William A. Thibodeau, Marine Science Technician Second Class, U.S. Coast Guard, Aids to Navigation and Waterways Management Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060, (216) 522–3990.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until May 2, 1994, and there was not sufficient time remaining to publish a proposed rule in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafter of this regulation is Scott J. Smith, Lieutenant Junior Grade, U.S. Coast Guard, Project Officer, Aids to Navigation & Waterways Management Branch and Karen E. Lloyd, Lieutenant, U.S. Coast Guard, Project Attorney, Ninth Coast Guard District Legal Office

Discussion of Regulation

The Thomas Graves Memorial Fireworks Display will be conducted on Lake Ontario, Port Bay, NY on July 3, 1994. This regulation will restrict general navigation on Lake Ontario, Port Bay Harbor, in a 500 foot zone surrounding a barge anchored at 47°17'46" North Latitude and 076°50'02" West Longitude. This event will have an unusually large concentration of spectator vessels and falling ash and debris, which could pose hazards to navigation in the area. This regulation is necessary to ensure the protection of life, limb, and property on navigable waters during this event. Any vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commanding Officer, U.S. Coast Guard Station Sodus Point, NY).

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, they are categorically excluded from further environmental documentation.

Economic Assessment and Certification

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies

and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of these regulations to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of the DOT is unnecessary.

Collection of Information

This regulation will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and Recordkeeping requirements, Waterways.

Temporary Regulation

In consideration of the foregoing: part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. A temporary section 100.35–T0906 is added to read as follows:

§ 100.35–T0906 Thomas Graves Memorial Fireworks Display, Lake Ontario, Port Bay, NY.

(a) *Regulated area.* That portion of the Lake Ontario, Port Bay Harbor, Port Bay, NY a 500 ft zone surrounding a barge anchored in position 47° 17′ 46″ North Latitude and 076° 50′ 02″ West Longitude.

(b) *Special local regulation.* This section restricts general navigation in the regulated area for the safety of spectators and participants. Any vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander.

(c) *Patrol commander.* (1) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Sodus Point, NY). The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander."

(2) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life, limb, or property.

(6) All persons in the area shall comply with the orders of the Coast Guard Patrol Commander.

(d) *Effective date.* This section becomes effective from 9:30 p.m. (EDST) until 11 p.m. (EDST) on July 3, 1994 unless otherwise terminated by the Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station Sodus Point, NY). If the date of the event is changed due to weather, this section will become effective at the same time on July 9, 1994, unless the event is cancelled. Notice of change in date or cancellation will be provided in a Broadcast Notice to Mariners.

Dated: May 18, 1994.

Rudy K. Peschel,

Read Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 94–13539 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD02–93–002

RIN 2115–AE47

Drawbridge Operation Regulations; St. Croix River, MN and WI

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: The Coast Guard is establishing a temporary rule to regulate the operation of the S36 Bridge over the St. Croix River at mile 23.4, at Stillwater. The present opening schedule has contributed to traffic delays and congestion in Stillwater. The existing regulation is being temporarily amended for the purpose of evaluating the reasonableness of proposed changes. The Coast Guard is requesting comments from interested parties throughout the evaluation period.

EFFECTIVE DATES: This temporary rule is effective from June 3, 1994 to October 15, 1994. Comments must be received on or before November 15, 1994.

ADDRESSES: Comments may be mailed to Commander (ob), Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832, Attention: docket CGD02–93–002.

Comments may also be delivered to room 2.107B at the above address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays. For information concerning comments, the telephone number is (314) 539–3724.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832, telephone (314) 539–3724.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD02–93–002), identify the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person who wants an acknowledgment of the receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. The Coast Guard may change or not implement a final rule in view of the comments.

The Coast Guard does not plan to hold another public meeting. However, persons may request a public meeting by writing to the Docket Clerk at the address under **ADDRESSES**. If the Coast Guard determines that the opportunity to make oral presentations will aid the rulemaking process, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Wanda G. Renshaw, Project Manager, and Lieutenant Commander Arn Denny, Project Attorney.

Regulatory History

On Friday, October 8, 1993, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations, St. Croix River, Minnesota and Wisconsin in the **Federal Register** (58 FR 52466). The Coast Guard received six comments on the proposal. A public meeting was requested and held on April 7, 1994, in the Stillwater Municipal Building.

For the reasons discussed below, the Coast Guard has decided to issue a temporary regulation which will allow it to evaluate the proposed changes for the remainder of the summer boating season. The Coast Guard has decided that good cause exists for making this temporary regulation effective upon publication in the **Federal Register** because, since vessel traffic falls off dramatically in the fall, early implementation will provide for an evaluation period which will include as much of the summer boating season as is possible.

Background and Purpose

The St. Croix River is heavily used by recreational craft. River excursion boats are the only known commercial navigation passing the bridge. To meet the navigational needs of these boaters, the S36 Bridge is presently required to open on signal, from May 15 through October 15, on a set schedule of hourly and half-hourly openings from 8 a.m. to 10 p.m. From October 16 through May 14 the draw will open on signal if at least 24 hours notice is given.

The Mayor of Stillwater requested that the operating schedule be amended as a means of reducing traffic congestion on the approaches to the bridge. As a result, the Coast Guard proposed a change which would permit hourly openings on weekdays from 8 a.m. to 10 p.m. and on Saturdays, Sundays and federal holidays from 8 a.m. to midnight. The draw would continue to be operated with two hours advance notice from 10 p.m. to 8 a.m. weekdays, and from midnight to 8 a.m., Saturdays, Sundays, and federal holidays.

Discussion of Comments and Changes

The Coast Guard received six comments on the Notice of Proposed Rulemaking. Three supported the proposed change citing increased bank erosion from heavy recreational traffic, air pollution from waiting vehicles, and loss of business in Stillwater due to traffic congestion and delays caused by frequent bridge openings. One, from the Minnesota Historical Society, stated that the proposed action would have no effect on the historic characteristics of the bridge, which is listed on the National Register of Historic Places. Two, a local recreational boater and the owner of a local marina, objected to the proposed change. The boater commented that traffic congestion existed in downtown Stillwater during the winter months when the bridge was not opened for river traffic. He noted that excessively long bridge openings, resulting in increased delay times to highway traffic, during the preceding boating season were caused by unusual and persistent high river levels, requiring longer span openings to accommodate vessels that could have passed under the closed span during normal water conditions. He also noted that traffic delays were exacerbated by vehicles parking on streets approaching the bridge, and that the increased use of the bridge by tractor-trailers often precluded two-way traffic on the narrow bridge. The marina owner objected to the proposal because he would lose the business of larger vessels presently moored at his facility which required bridge openings to travel downriver. He commented that the City of Stillwater had received proposals over the past several years to resolve the traffic congestion, but had not implemented any of the recommendations. He also noted that street parking in downtown Stillwater restricted traffic flow. He questioned the perceived increase in boating traffic versus highway traffic, and requested that a public meeting be held to present the facts and discuss possible solutions. That meeting was convened in Stillwater on April 7, 1994.

As a result of the public meeting and of the objections to the proposed revision, the Coast Guard requested that Minnesota Department of Transportation (MNDOT) conduct traffic studies, evaluate the results, and recommend an opening schedule that would retain an acceptable number of bridge openings and provide for peak highway traffic. Based on its evaluation of traffic counts and studies, MNDOT advised that no change was warranted by traffic conditions during weekday morning hours. Because heavy vehicular traffic arrived between 3 p.m. and 7 p.m. on weekdays, MNDOT recommended that the existing schedule be observed up to and including the 2:30 p.m. opening and that openings after 2:30 p.m. should occur at 4 p.m., 5:30 p.m., 6:30 p.m., and 7 p.m. with an opening every half hour thereafter until 10 p.m. Because heavy vehicular traffic arrived between 9 a.m. and 8 p.m. on weekends and holidays, MNDOT recommended that the existing schedule be retained, up to and including the 9 a.m. opening, and that the opening schedule be revised for one opening per hour from 9 a.m. until 8 p.m. with half-hourly openings from 8 p.m. until midnight.

The Coast Guard has decided to amend the existing regulation with a temporary rule promulgating the opening schedule recommended by MNDOT. This temporary rule will be evaluated throughout the 1994 St. Croix River boating season and comments on the revision will continue to be received through November 15, 1994. The Coast Guard decided to make the amendment under temporary rulemaking rather than under a deviation which is valid only for up to 90 days because extending the evaluation period through the remainder of the St. Croix boating season provided for a better opportunity to consider the needs of the public.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because operators of commercial vessels have indicated that they can adjust to the changes without impact on their businesses.

Small Entities

After considering the submitted comments, the Coast Guard finds that any impact on small entities, if any, is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism Assessment

The Coast Guard has analyzed this temporary rule under the principles and criteria contained in Executive Order 12612 and has determined that it does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has reviewed the environmental impact of this temporary rule and concluded that under section 2.B.2 of the NEPA Implementing Procedures, COMDTINST M16475.1B this temporary rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the human environment. A categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

For the reasons set out in the preamble, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations, as follows. This is a temporary amendment and will not appear in the Code of Federal Regulations.

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 449; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.667 paragraph (b) is temporarily revised to read as follows:

§ 117.667 St. Croix River.

* * * * *

(b) The draw of the S36 Bridge, Mile 23.4, at Stillwater, shall open on signal as follows:

(1) From May 15 through October 15, Monday through Friday, except Federal holidays, from:

(i) 8 a.m. to 11 a.m., every hour on the hour;

(ii) 11 a.m. to 2:30 p.m., every half hour;

(iii) 2:30 p.m. to 5:30 p.m., at 2:30 p.m., 4 p.m. and 5:30 p.m.;

(iv) 6:30 p.m. to 10 p.m., every half hour; and

(v) 10 p.m. to 8 a.m., upon at least two hours notice.

(2) from May 15 through October 15, Saturdays, Sundays, and federal holidays from:

(i) From 8 a.m. to 9 a.m., every half hour;

(ii) From 9 a.m. to 8 p.m., every hour on the hour;

(iii) From 8 p.m. to midnight, every half hour; and

(iv) Midnight to 8 a.m., upon at least two hours notice.

* * * * *

Dated: May 20, 1994.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 94–13541 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD05–94–031]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Core Creek, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment removes the regulations for the S.R. 101 bridge across the Atlantic Intracoastal Waterway, mile 195.8, Core Creek, North Carolina, because the swing bridge has been removed. A notice of proposed rulemaking has not been issued for this regulation because removal of the bridge eliminates the need for regulation.

EFFECTIVE DATE: These regulations become effective on July 5, 1994.

FOR FURTHER INFORMATION CONTACT:

Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Linda L. Gilliam, Project Officer, and LT Monica L. Lombardi, Project Attorney.

Background and Purpose

The swing bridge across the Atlantic Intracoastal Waterway, mile 195.8, at Core Creek, North Carolina, was replaced by a high level fixed bridge along the same alignment. The existing bridge has been removed, thereby eliminating the need for 33 CFR 117.821(b)(3). This action has no economic consequences. It merely removes regulations for a swing bridge that no longer exists.

This action necessitates redesignating the regulations listed in 33 CFR 117.821(b) (4), (5) and (6) for the drawbridges at Surf City, Wrightsville Beach, and Sunset Beach along the Atlantic Intracoastal Waterway within North Carolina.

Regulatory History

This action is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this ruling to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because the Coast Guard is removing regulations that are no longer necessary.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not raise sufficient federalism implications to warrant the preparation of a federalism assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is amending part 117 of Title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

§ 117.821 [Amended]

2. In § 117.821, paragraph (b)(3) is removed and paragraphs (b)(4), (5) and (6) are redesignated as paragraphs (b)(3), (4) and (5).

Dated: May 16, 1994.

W.T. Leland,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 94–13540 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Baltimore 94–003]

RIN 2115–AA97

Safety Zone Regulation; Hammerman Area of Gunpowder Falls State Park, Baltimore County, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a safety zone for the purpose of the third annual Maryland "Swim For Life", at the request of the Maryland "Swim for Life" Committee of Baltimore, Maryland. The "Swim for Life" event will consist of a two and a one half mile swim to be held at the Hammerman area of Gunpowder Falls State Park, Gunpowder River, Maryland. The swim will start at Hammerman area beach number five, to the Maxwell Point buoy, thence to Oliver Point buoy and thence to Hammerman area beach numbers one and two. This safety zone is necessary to control small craft and recreational vessel traffic, and to provide for the safety of life and property on U.S. navigable waters from the hazards associated with this swimming event. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation will be effective from 7 a.m. June 18, 1994 to 1 p.m. June 18, 1994 with an alternate date of June 19, 1994, encompassing the same time frame.

FOR FURTHER INFORMATION CONTACT:

Chief Warrant Officer Timothy P. Ryan, U.S. Coast Guard Marine Safety Office Baltimore, Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (410) 962–2651.

SUPPLEMENTARY INFORMATION: On April 13, 1994 a notice of proposed rulemaking was published in the **Federal Register** (59 FR 17507) requesting comments on this event. As of May 13, 1994, which was the closure of the comment period, no comments were received. Since the Coast Guard wanted to provide the public the opportunity to make comments, insufficient time was left to provide for an effective date 30 days after publication, therefore this regulation will become effective in less than 30 days from the date of publication.

Background and Purpose

In November, 1993, an application was received by U.S. Coast Guard Group Baltimore from the Maryland Swim For Life Committee, requesting a safety zone for the "Swim For Life" event. This event is to be held in the Hammerman area of Gunpowder Falls State Park, Gunpowder River, Maryland, on June 18, 1994. As part of their application, the "Swim For Life" Committee requested the Coast Guard provide control of spectator and commercial traffic during the swimming portion of the event.

Discussion of Regulations

This regulation is necessary to ensure the safety of spectator craft, recreational vessels as well as the swimmers participating in the event, and to provide for the safety of life and property on U.S. navigable waters during the event. Since the Gunpowder River will not be closed for an extended period, vessel traffic should not be severely disrupted.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Drafting Information

The drafters of this regulation are Chief Warrant Officer Timothy P. Ryan, project officer for the Captain of the Port, Baltimore, Maryland and Lieutenant Monica Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the

Small Entities

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.C. of Commandant Instruction M16475.1B, and actions to protect public safety have been determined to be categorically excluded from further environmental documentation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart F of Part 165 of Title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. In part 165 a temporary section 165.T05–019 is added to read as follows:

§ 165.T05–019 Safety Zone: Hammerman Area of the Gunpowder Falls State Park, Gunpowder State Park, Maryland.

(a) *Location.* The following area is a safety zone: All waters 500 yards either side of a line connecting the following points beginning at:

Latitude	Longitude
39°21.8'N.	76°20.4'W., thence to
39°21.6'N.	76°19.9'W., thence to
39°22.6'N.	76°20.2'W., thence to
39°21.8'N.	76°20.4'W.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(c) *General information.* The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5100. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 16 and 13.

(d) *Regulations.* (1) Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel which enters into or operates in this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

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(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(e) *Effective dates.* This section is effective from 7 a.m. June 18, 1994, to 1 p.m. June 18, 1994; the alternate day will be June 19, 1994, encompassing the same time frame; unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: May 24, 1994.

G.S. Cope,

Captain, U.S. Coast Guard Captain of the Port Baltimore, Maryland.

[FR Doc. 94–13544 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–94–039]

RIN 2115–AA97

Safety Zone; Town of Old Lyme, CT Fireworks Display

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in Long Island Sound, around the fireworks barge Walrus located approximately 1500 feet south of Sound View Beach, Old Lyme, CT on July 2, 1994. This safety zone is needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATES: This regulation is effective from 9 p.m. through 9:45 p.m. on July 2, 1994, unless extended or terminated sooner by the Captain of the Port. In case of inclement weather, this regulation will be effective on the rain date of July 3, 1994, at the same times.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.V. Skuby, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LCDR T.V. Skuby, project officer for Captain of the Port, Long Island Sound, and LCDR J. Stieb, project attorney, First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation. The Coast Guard did not receive from the sponsor the final details concerning the event's times, which is essential information for the purposes of establishing a safety zone in sufficient time to publish a NPRM. If the event, which is centered around a national holiday, were required to be postponed by publishing a NPRM, the event would be cancelled. Publishing a NPRM and delaying the event would be contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The sponsor, the Town of Old Lyme, CT has requested that a 45 minute fireworks display, launched from a floating platform, be permitted in the port of Old Lyme in the vicinity of Sound View Beach, Old Lyme, CT. This zone is required to protect the maritime community from the dangers associated with this fireworks display which is occurring over Long Island Sound. The safety zone covers all waters of Long Island Sound within a 800 foot radius of the fireworks barge Walrus.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The event will last approximately 45 minutes. The area affected by this event receives infrequent commercial traffic. Because of the short duration of the event and the extensive advisories which will be made, commercial entities will be able to adjust to any disruptions.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–039 is added to read as follows:

§ 165.T01–039 Safety Zone; Town of Old Lyme, CT Fireworks Display.

(a) *Location.* The safety zone includes all waters of Long Island Sound within a 800 foot radius of the barge Walrus, the fireworks launching platform, which will be located approximately 1500 feet south of Sound View Beach, Old Lyme, CT in approximate position 41°16'46"N, 072°16'25"W.

(b) *Effective date.* This section is effective from 9 p.m. through 9:45 p.m. on July 2, 1994, unless extended or terminated sooner by the Captain of the Port. In case of inclement weather, this section will be effective on the rain date of July 3, 1994, at the same times.

(c) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

Dated: May 23, 1994.

T.W. Allen,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 94–13542 Filed 6–2–94; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1220

RIN 3095–AA48

Agency Program Evaluations

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule more fully describes agency and NARA responsibilities as part of the records management evaluations of Federal agencies that NARA conducts on a regular basis. It discusses the authority, purpose, and scope of these evaluations and describes specific agency requirements related to the evaluation notification, the evaluation process, transmittal of the report, and preparation of action plans and regular progress reports.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at 301–713–6730 (FTS 301–713–6730) or TDD 301–713–6760.

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on December 10, 1993 (58 FR 64915) for a 30-day comment period. Subsequently, in a notice published on February 16, 1994 (59 FR 8150), NARA reopened the comment period for an additional 30-day period and announced a public meeting for agency records officers on February 28, 1994. Twenty-three written comments were received. Approximately 50 records officers attended the meeting held at the National Archives at College Park to discuss the proposed regulations. All comments received careful consideration in the development of the final rule. Following is a section-by-section discussion of the major issues raised in the public meeting and written comments.

Section by Section Analysis

Section 1220.14 General Definitions

One agency proposed changing the definition of evaluation to that included in NARA's *A Records Management Glossary*. NARA agrees and has changed the definition. In addition, language reflecting the followup aspect of an evaluation has been added.

One agency suggested that the use of "adequate and proper documentation" for consistency with current NARA regulations and published guides. This change has been made.

Section 1220.42 Agency Internal Evaluations

This requirement generated numerous comments and discussion. All comments noted that the proposed biennial evaluation of an agency's records management program would place an unnecessary burden on agencies that already have limited resources for records management. One agency pointed out that the Paperwork Reduction Act requires triennial reviews of information management programs. Other agencies commented that this proposed rule seems inconsistent with the intent of the current mandates to reinvent government and streamline government operations.

Because of the burden a biennial reporting requirement would impose on agencies this proposed requirement has been dropped. The requirement that an agency "should periodically evaluate its records management programs * * *" that was contained in the superseded regulation at § 1220.54 is retained in this regulation. NARA is developing additional guidance to aid agencies in performing self-evaluations of their records management programs.

Section 1220.50 Authority

One agency suggested that NARA should be required to estimate costs incurred by implementation of NARA evaluation report recommendations which an agency agrees to implement and that reports to Congress, OMB, or other oversight agency, should include an agency's success stories.

To the extent that NARA can identify and obtain cost information, it will be included in any reports to Congress. NARA's policy is to always include agency success stories in final evaluation reports, whether or not the reports are to be submitted to Congress.

Section 1220.52 Purpose and Scope

Three agencies suggested clarifications. Two agencies commented that NARA does not quantify the efficacy of Federal agencies efforts to make and preserve complete and accurate records but rather that NARA reviews records management programs. NARA has modified this section to indicate that evaluations assess records management programs. This more accurately describes the evaluation process as a cooperative effort.

One agency noted the misuse of "inter-agency" in describing a single agency evaluation focusing on all aspects of records management at all administrative levels. The phrase "inter-agency" has been changed to "one agency."

Section 1220.54 NARA Evaluation Process

Selection Process

Several agencies suggested changes in the selection criteria used by NARA. Suggested alternatives included conducting an evaluation only upon request; setting an evaluation cycle; and identifying agencies that have significantly changed patterns of use of Federal records centers. Attendees at the records officer meeting and the majority of written comments agreed with the criteria proposed in the notice of proposed rulemaking. This section has not been changed in the final rule.

Two agencies questioned the meaning of "perceived need" and "compliance monitoring cycle." Perceived need means NARA's knowledge of agency operations as they apply to the records management program. This includes retirement patterns of records to FRCs, the transfer of permanent records to NARA, and scheduling activities by the agency. The compliance monitoring cycle, to be developed by NARA, is a method of tracking the cyclical review of agencies.

Method of Notification

Two agencies suggested that the NARA letter of notification should specify the scope of the evaluation to enable agencies to make adequate preparations. Another agency stated that the agency head or his/her designee will determine who will carry out responsibilities stipulated in the regulations. Another agency suggested that the regulations regarding agency response exceeds NARA's authority to direct the internal operation of the agency concerning the individuals to be notified of the evaluation.

NARA agrees and made appropriate changes.

Provision of Information Prior to an Evaluation

Two agencies noted that NARA has all approved agency schedules; two

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agencies found the requirement to provide all issuances relating to records management to be onerous; one agency objected to providing a list of agency information systems not currently covered by schedules; one agency noted that contractors will have serious reservations about making records with proprietary and trade information available to NARA; and one agency objected to the tone of this section.

Becoming familiar with an agency's records management program, including the program's internal requirements, is an important preliminary step for NARA prior to beginning an evaluation. However, NARA agrees that most relevant information is available in a limited number of agency issuances and NARA does have copies of all approved agency schedules. Section 1220.54(b)(4) has been changed to reflect this.

The maintenance of a list of agency information systems is required by OMB Circular A–130, section 9(5), so providing this information to NARA should not impose an additional burden. NARA will use this list to determine which systems have not been scheduled.

36 CFR 1222.48(e) states that "All data created for Government use and delivered to, or falling under the legal control of, the Government are Federal records and shall be managed in accordance with records management legislation * * *" Records created by contractors for the agency are Federal records and as such are included in NARA's evaluation authority. NARA staff are trained to handle agency records containing sensitive information appropriately.

Section 1220.56 Evaluation Report

Report Distribution

The distribution requirements of the final report generated comments and discussion. Some agency representatives think that distribution should be limited to individuals and offices affected by findings and recommendations, while others thought the reports should be widely distributed. One agency suggested that the final report should be sent to the Agency Records Officer with a copy to the agency head.

While NARA thinks that a wide distribution of the report within an agency will help to highlight the importance of proper records management, it is appropriate that the agency determine the internal distribution of a report. The final report is issued under the signature of the Archivist of the United States and should be transmitted to his or her equivalent at the agency. Additionally, sending the report to the agency head will ensure that he or she is aware of the evaluation and this action may heighten awareness of the agency records management program at the highest level of agency management.

NARA agrees that the agency should determine the distribution of the final report within the agency. The language of the regulation has been changed to read "Distribute the final report to all concerned and appropriate persons and offices."

Reporting Deadlines and Draft Report

Agencies commented that, while the regulations specify reporting deadlines for agencies to respond to an evaluation, there is no time limit for NARA to finalize the report. One agency suggested that this section indicate that the 120-day period NARA has to provide a draft report to the agency begins following the last site visit or final exit briefing.

NARA agrees and changed the regulation to add that NARA will produce the draft report within 120 days following the last site visit or final exit briefing and that the final report will be sent to the head of the agency within 30 days after receiving agency comments on the draft report.

One agency suggested that agencies should be allowed to comment on the recommendations when commenting on the factual contents of the report. This is standard practice when reviewing an audit or evaluation report. If an agency chooses to comment on the recommendations at this stage, the comments will allow NARA to identify potential problems that may develop during the followup actions. Furthermore, such comments may clarify an agency's internal operations for NARA and allow the development of a more appropriate recommendation. The regulation has been changed accordingly.

Two agencies suggested that the provision in the current § 1220.52(b)(1) giving agencies the right to provide rationale in the action plan for not implementing a recommendation be included in the revised regulations. NARA agrees that an agency should have the right to provide rationale for not implementing a recommendation if it is unable to do so. Section 1220.58(a)(1)(ii) has been amended accordingly.

Section 1220.58 Agency Action Plans and Progress Reports

One agency requested a 120 day period after receiving the final report submitting an action plan to NARA, stating that this extension is important for agencies that are deficient in many areas. NARA thinks that 90 days is an adequate period for most agency to prepare an action plan. However, the regulation has been changed to allow for agencies to request an extension.

One agency commented extensively on NARA's proposed requirement that agencies provide individual action plans for evaluated field sites. They noted that such reports are an unauthorized interagency reporting requirement; there is no indication that NARA would analyze field action plans and provide feedback to the agency about them; and without periodic status reports, there is no value to the action plans.

The value of including individual site summaries in the final report has been proven in previous evaluations. NARA intends to continue this practice. In order to track followup actions at these individual sites, it may be necessary to request individual action plans. If this is the case, NARA will analyze them and provide feedback. The language of the regulation has been changed to reflect this intention.

One agency suggested that estimating the month and year for starting and completing each action is unrealistic: proposed quarters and years would be better. NARA agrees and has changed the regulation accordingly.

In response to a suggestion from one agency, NARA added criteria for closing recommendations to this section of the regulation.

One agency suggested that the action plan be submitted by the agency head or Designated Senior Official for Information Resources Management rather than "senior management official responsible for records and information management." We have made this change.

One agency noted that the requirement to provide the name of officials or offices specifically responsible for initiating and completing each proposed action is extensive. NARA agrees that it is appropriate for the agency to determine who will track individual recommendations. The regulation has been changed to require the agency head to designate an individual who will serve as NARA's contact for evaluation followup.

Section 1220.60 Followup Notification and Reviews

One agency suggested that reporting to Congress and/or appropriate Federal oversight agencies of evaluation findings and agency response be mandatory. Other agencies commented that reporting to Congress would be a valuable tool to use to highlight the importance of records management in agencies. The majority opinion is that NARA should send every evaluation report to Congress or the appropriate Federal oversight agency.

One agency said that NARA should be required to provide agencies with the factors by which NARA determines that an agency is not progressing in a satisfactory manner and that the agency head should be notified before NARA reports to Congress.

If NARA determines that there has been insufficient progress in fully implementing recommendations or that the agency has not corrected problems identified by NARA, then NARA will notify the head of the agency. After the head of the agency has been notified, NARA may also notify the appropriate oversight agencies or appropriate Congressional committees. Section 1220.60 has been changed accordingly.

Other Comments

In the preamble to the proposed rule, NARA asked for specific comments on NARA's selection criteria and criteria for performance measurement. Comments received on selection criteria are discussed under the heading "SELECTION PROCESS" above. Several agencies * * * commented on criteria for performance measurement. One agency suggested that "one approach would be to establish a baseline for specific functions/responsibilities via a status survey and to monitor improvement progress for those functions." Another agency suggested that a performance measurement could be "how well agencies * * * carry out recommendations without follow-up notification and reviews." Another idea is "whether violations of applicable laws or regulation * * * has been corrected timely." Other commentators suggested that NARA conduct a government-wide survey of all Federal agencies' records management programs. Such a survey would provide an initial starting point for identifying problems or regulations that are difficult to implement and enforce.

NARA plans to develop performance measurements that will help determine how effectively agencies are implementing evaluation recommendations. NARA also plans to develop measures to assess the success of its evaluation program in terms of programmatic improvements or improved work products.

Three agencies offered general comments on the evaluation process. One agency would like to see NARA conduct studies of more agencies in shorter time frames and then share the findings government-wide. This would be "more beneficial to the government and an improved use of limited NARA resources." One agency thinks the time frame (13 months) to conduct an evaluation is too excessive.

NARA will continue to conduct full evaluations of agency records management programs. Additionally, in FY95 NARA will begin conducting additional shorter and more focused evaluations.

Another agency suggested that, while NARA evaluations are similar to GSA IRM reviews, they are conducted very differently. GSA, for example, takes steps to prepare agencies for reviews by using standard scoping questionnaires and with self assessment tools that are linked to their evaluation process. GSA issues its cyclical review schedule each year so agencies know well in advance when they can expect to be reviewed and can prepare for it. Since NARA only notifies an agency 60 days before an evaluation, this can result in agencies being more surprised than prepared and the evaluation can become a negative rather than a positive experience.

We agree that earlier notification would assist agencies being evaluated, and have modified § 1220.54 (a) to provide the notice of a planned evaluation at least 180 days in advance. NARA also intends to work with the appropriate office in GSA to determine how best to coordinate the evaluation processes of both agencies.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by OMB. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1220

Archives and records.

For the reasons set forth in the preamble, part 1220 of the title 36 Code of Federal Regulations is amended as follows:

PART 1220—FEDERAL RECORDS; GENERAL

1. The authority citation for part 1220 continues to read as follows:

Authority: 44 U.S.C. 2104(a) and chs. 29 and 33.

2. In § 1220.14, the term *Evaluation* is added in alphabetical order to read:

§ 1220.14 General definitions.

* * * * *

Evaluation means the selective or comprehensive inspection, audit, or review of one or more Federal agency records management programs for effectiveness and for compliance with applicable laws and regulations. It includes recommendations for correcting or improving records management policies, procedures, and activities, and follow-up activities, including reporting on such activities, for implementing the recommendations.

* * * * *

3. Section 1220.42 is added to subpart B to read as follows:

§ 1220.42 Agency internal evaluations.

Each agency should periodically evaluate its records management programs relating to adequate and proper documentation, maintenance and use of records, and records disposition. These evaluations should determine compliance with NARA regulations in Subchapter B and assess the effectiveness of the agency's programs. Criteria for agency self-evaluations are available from NARA's Office of Records Administration, Agency Services Division (NIA).

4. Subpart C is revised to read as follows:

Subpart C—NARA Evaluation Program

Sec.

1220.50 Authority.
1220.52 Purpose and scope.
1220.54 Evaluation process.
1220.56 Evaluation report.
1220.58 Agency action plans and progress reports.
1220.60 Followup notification and reviews

Subpart C—NARA Evaluation Program

§ 1220.50 Authority.

44 U.S.C. chapter 29 vests in the Archivist of the United States the responsibility for providing guidance and assistance to Federal agencies with respect to ensuring adequate and proper documentation and proper records disposition. Sections 2904 and 2906 specifically authorize the Archivist to conduct inspections or surveys of records and records management programs and practices within and between Federal agencies and require officers and employees of agencies to cooperate fully in such inspections. Section 2904 also authorizes the Archivist to report to the appropriate oversight and appropriations committees of the Congress and the Director of OMB on the results of inspections, the responses by agencies to NARA evaluation recommendations, and estimates of the costs to the Federal government resulting from the failure to implement such recommendations.

§ 1220.52 Purpose and scope.

(a) NARA evaluations assess how effectively Federal agencies make and

preserve complete and accurate records of their organization, functions, policies, decisions, procedures, and essential transactions; and maintain an active, continuing records management program including proper records disposition. Agencies shall be evaluated for compliance with requirements in 44 U.S.C. chapters 31 and 33 and all the regulations issued thereunder in 36 CFR subchapter B.

(b) NARA evaluations may include comprehensive reviews of agency records management programs, or selective reviews focused on adequate and proper documentation, on records disposition, on the management of specific types of record media or on the management of records in particular program areas. NARA evaluations may be of one agency or may be multi-agency. These evaluations may be conducted solely within headquarters offices, only at field locations, or at a combination of field sites and headquarters.

(c) Evaluations will involve site visits by NARA; submission by NARA to the agency of a written report containing findings, analyses, and recommendations; and submission to NARA by the agency of an action plan for implementing the recommendations followed by regular progress reports. Interagency report control number 0153–NARA–AR has been assigned to the action plan and progress reports in accordance with 41 CFR subpart 201–45.6.

§ 1220.54 Evaluation process.

(a) NARA shall select Federal agencies to be evaluated on the basis of perceived need by NARA or specific request by the agency, or on the basis of a compliance monitoring cycle developed by NARA. NARA will determine the scope of the evaluation. An agency may request an evaluation of its records management program by contacting the Assistant Archivist for Records Administration; however, the final determination of agencies to be evaluated will be made by NARA. The heads of agencies will be notified in writing by the Archivist of the United States of the intent to conduct an evaluation and the scope of the evaluation at least 180 calendar days prior to initiating the evaluation.

(b) Once NARA has notified the agency, the agency head will, by the date specified in the Archivist's letter:

(1) Acknowledge in writing NARA's intention to evaluate, and provide the Archivist with the name and telephone number of the senior official with overall responsibility for records management and of a headquarters official who will work with NARA to facilitate the evaluation process;

(2) Provide written notification of the evaluation to all appropriate offices and employees and contractors potentially involved; this notification will include instructions to cooperate with NARA by setting up interviews, providing requested information, and making records available for inspection;

(3) Provide NARA with a copy of the written notification in paragraph (b)(2) of this section and with a list of names and telephone numbers of officials responsible for records management in field sites, if applicable, who will work with NARA during the evaluation;

(4) For comprehensive evaluations, provide NARA with a set of internal records management directives, orders, bulletins, or similar authoritative issuances; copies of the two most recent internal records management evaluations; and any special records-related reports. Included may be: issuances relating to adequate and proper documentation and recordkeeping requirements; personal papers; management and disposition of textual, electronic, audiovisual, cartographic and architectural, micrographic, and vital records; disaster mitigation and recovery; and any other records-related documentation requested by NARA. A subset of this documentation will be requested for more limited evaluations;

(5) Provide NARA with a current version of the agency manual(s) covering records creation, maintenance, storage, and disposition, and a list of information systems maintained as required by OMB Circular A–130, section 9a(5), and a list of offices and/or functions and activities not currently covered by schedules;

(6) Arrange for appropriate management and program officials in headquarters and, if applicable, at field sites to be briefed by NARA at the beginning and at the end of the evaluation process; and

(7) Take immediate corrective action regarding any serious problems that NARA may bring to the agency's attention during the course of the evaluation process such as the unauthorized destruction of records or the unauthorized donation or other transfer of records to non-NARA facilities.

§ 1220.56 Evaluation report.

(a) NARA will submit a draft evaluation report for factual review and comment to the agency within 120 calendar days of the last evaluation site visit or exit briefing. After receipt of agency comments, NARA will finalize the report, incorporating any changes resulting from factual errors identified by the agency. The final report will be transmitted by the Archivist to the head of the agency within 30 calendar days of receiving comments from the agency.

(b) The head of the agency will:

(1) Comment within 60 calendar days, in writing, on the contents of the draft report. If necessary, agencies can request extensions. No response from the agency within the allotted time will indicate that the agency concurs in the factual accuracy of the draft report.

(2) Review the final report and assign implementation responsibility; and

(3) Distribute the final report to all concerned and appropriate persons and offices.

§ 1220.58 Agency action plans and progress reports.

(a) *Action plans.* (1) The action plan will be submitted to NARA within 90 calendar days after the date of transmittal of the final report. If necessary, agencies can request extensions. The plan shall be submitted by the agency head or the designated senior official for information resources management. The action plan will include:

(i) The name of the senior official and the office responsible for coordinating implementation agency-wide;

(ii) The specific action(s) the agency will take to implement each evaluation report recommendation. If an agency is unable to implement a recommendation, the rationale for not acting shall be documented in the action plan;

(iii) The name of the official and office or program responsible for the overall coordination of the agency's followup actions who will be the liaison with NARA;

(iv) The estimated time needed to complete each action and the proposed quarter and year for starting and completing each action;

(v) Major milestones with dates for tracking the completion of implementation actions that are expected to extend longer than 3 years past the date of the action plan; and,

(vi) If requested by NARA, separate action plans for each field site visited, incorporating the information required by paragraphs (a)(1)(i) through (a)(1)(v) of this section.

(2) NARA will analyze the action plan(s) submitted by the agency for adequacy and effectiveness in implementing the recommendations contained in the evaluation report. NARA will provide comments to the agency on the plan(s) within 60 calendar days.

(3) The agency will revise the action plan until it is approved by NARA.

(b) *Progress reports.* (1) Once the action plan(s) has been approved by NARA, the head of the agency will submit progress reports to NARA every 6 months. The reports will include:

(i) A description of what has been accomplished on each action since the last report;

(ii) The current status of the action;

(iii) Any changes in the offices or programs responsible for over-all or specific action implementation; and,

(iv) If appropriate, explanation of any delays in implementation and revised target dates and milestones for completion of the action.

(2) The agency will continue to submit these progress reports until NARA and the agency agree all actions have been completed, NARA and the agency agree that the agency has implemented the recommendation(s) to the fullest extent possible, or NARA indicates in writing that regular progress reports are no longer required.

(3) NARA will review and comment on agency progress reports, and work closely with the agency to provide assistance in evaluation implementation.

§ 1220.60 Follow-up notification and reviews.

(a) If NARA determines that there is not substantial progress in the full implementation of evaluation recommendations or that the agency has not corrected serious problems identified in the report, the Archivist, after notifying the head of the agency, may notify Congress and appropriate Federal oversight agencies of the evaluation findings and the agency response.

(b) NARA may initiate follow-up reviews at specific offices or field sites. Results of these follow-up reviews shall be communicated to the head of the agency and, if NARA determines it to be appropriate, to Congress and Federal oversight agencies.

Dated: May 25, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–13517 Filed 6–2–94; 8:45 am]

BILLING CODE 7515–01–W

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI17–01–5761; FRL–4886–7]

Approval and Promulgation of a Small Business Technical and Environmental Compliance Assistance Program; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA approves the Michigan State Implementation Plan (SIP) revision submitted by the State of Michigan for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). The implementation plan was submitted by the State to satisfy the Federal mandate of the Clean Air Act (Act), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Act. The rationale for the approval is set forth in this notice; additional information is available at the addresses indicated below.

EFFECTIVE DATE: This action will be effective August 2, 1994 unless notice is received by July 5, 1994 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments can be mailed to Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch, United States Environmental Protection Agency, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604. Copies of the State's submittal and the EPA's technical support document are available for inspection during normal business hours at the following locations: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604, and Michigan Department of Natural Resources, Stevens T. Mason Building, P.O. Box 30028, Lansing, Michigan 48909.

A copy of this SIP revision is also available at the Office of Air and Radiation, Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Chris Campbell, USEPA (AT–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6324.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Act, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the Act requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the Federally approved SIP. In addition, the Act directs the EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the Act. In February 1992, the EPA issued "Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments" to delineate the Federal and State roles in meeting the new statutory provisions and to provide further guidance to the States on submitting acceptable SIP revisions.

In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the PROGRAM.

In order to satisfy the requirements of section 507, on November 11, 1992, January 8, 1993, and November 12, 1993, the State of Michigan submitted a Small Business Stationary Source Technical and Environmental Compliance Assistance Program as a revision to its SIP. The November 12, 1993 submittal included the Michigan Small Business Clean Air Assistance Act of 1993.

II. Analysis

1. Small Business Assistance Program

Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act.

The State has met this requirement by establishing the Air Quality Small Business Assistance Program (AQSBAP) and requiring it to develop this aspect of the SBAP. The AQSBAP outreach program will coordinate activities with existing groups that represent small businesses' interests and/or come in contact with large numbers of small businesses. As new standards and requirements are promulgated, the AQSBAP will translate the requirements into understandable terms and disseminate the information through these organizations, which include the Michigan Department of Natural Resources Air Quality Division (MDNR AQD), the Small Business Clean Air Ombudsman (SBCAO), the Michigan Department of Public Health, local emergency planning committees, trade associations, chambers of commerce, newspapers, business and trade journals, economic development groups, universities, and electronic databases. The AQSBAP will also seek participation in these organizations' conferences and meetings. In addition, the AQSBAP will develop a client tracking system to help assess program needs, and to develop small business mailing lists. To address reactive information needs, the AQSBAP will assist in operating an "800" telephone clearinghouse service which will be able to provide technical assistance. To address the program's technical resource needs, the AQSBAP will provide its own technical specialists, as well as develop mechanisms for obtaining additional technical support from appropriate Federal, State, and other organizations. The AQSBAP will also develop an air quality resource center, which will be available to the AQSBAP technical specialists.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution.

The State has met this requirement by promoting pollution prevention and offering technical assistance through the AQSBAP and several existing programs also within the Environmental Sciences Division (ESD). The AQSBAP and the Office of Waste Reduction Services will help businesses locate and take advantage of pollution prevention opportunities. The AQSBAP and the Education/Outreach program will work together in the development of fact sheets and case studies which highlight pollution prevention technologies. In addition, these programs will jointly participate in seminars and workshops. The AQSBAP will address accidental release detection and prevention by training technical specialists in these practices and technologies. General questions will be addressed by these specialists, and complex questions will be referred to the EPA's Chemical Emergency Preparedness and Prevention Office, or the Emergency Planning and Community Right-to-Know Hotline. State organizations, including the State Emergency Response Commission, the Michigan Chemical Council, the Emergency Management Division of the Michigan Department of State Police, and the Michigan Department of Public Health will also be used as resources. The outreach program described in the first requirement above will be used to distribute publications and information about upcoming workshops on accidental release prevention.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner.

The State has met this requirement by providing an "800" number and by offering individual meetings to provide one on one compliance assistance. The AQSBAP technical specialists will be able to identify applicable air quality regulations, determine whether or not a permit is needed, identify methods for achieving compliance, and explain the permitting procedures. The AQSBAP will use the outreach methods described in the first requirement above to disseminate information regarding new standards and requirements.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act. The State has met this requirement by establishing information dissemination mechanisms to ensure that small business stationary sources receive notice of their rights under the Act. The AQSBAP and the MDNR AQD will develop a fact sheet that notifies small businesses of their rights under the Act and Michigan's Air Pollution Act, and explains the legal recourse should they be notified of a violation. This information will be provided during site visits and presentations at trade association meetings, and will be uploaded on the NEWBIZ computer database. The AQSBAP will also develop and disseminate through the outreach program timely fact sheets notifying small businesses of proposed and final regulations issued under the Act that affect their businesses.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act.

The State has met this requirement by establishing information dissemination mechanisms to ensure that small business stationary sources receive notice of their obligations under new regulations. These mechanisms are the same as those listed above for notifying sources of their rights. In addition, the AQSBAP will develop and distribute a list of consultants that can provide air quality audits of small businesses. The AQSBAP will also develop a fact sheet that helps small businesses select a reputable auditor. In addition, the AQSBAP will investigate the feasibility of implementing its own voluntary audit program.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of (A) any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source.

The State has met this requirement by addressing such requests under Modification to Act 348, Part 6 Rules,

[1] A seventh requirement of Section 507(a), establishment of an Ombudsman office, is discussed in the next section.

which contains the procedures that businesses must follow in obtaining approval for such a request. Responses to requests relating to Federal standards will be coordinated with the EPA. The AQSBAP will assist small businesses in identifying these procedures.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by establishing the Small Business Clean Air Ombudsman (SBCAO) and the Office of the SBCAO within the Michigan Department of Commerce. The SBCAO is required to represent the interests of small businesses, and to assure that the goals of the AQSBAP are met. The SBCAO is required to perform many duties, including: Conducting evaluations of all aspects of the program; reviewing and commenting on requirements that impact small businesses; facilitating and promoting small business participation in rule development; disseminating information; participating and sponsoring meetings with regulatory officials, industry groups, and small business representatives; investigating and resolving complaints and disputes from small businesses against State or local air pollution control agencies; referring small businesses to the appropriate technical specialists; assisting in the preparation of small business guidance documents; assisting small businesses in locating financial assistance for compliance requirements; and studying the financial impacts of requirements on small businesses. It is expected that the Governor will be making the Ombudsman appointment by June 1994, but no later than November 1, 1994.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program.

The State has met this requirement by establishing a CAP which includes these appointments. The enabling legislation also outlines general policies and procedures for administering the CAP. As of April 1, 1994, five of the seven CAP appointments had been made. All CAP appointments will be completed by June 1994, but no later than November 1, 1994.

In addition to establishing the minimum membership of the CAP, the Act delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to the EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act;[2] (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements by requiring the CAP to meet these responsibilities. In addition, the AQSBAP and the SBCAO staff will provide support to the CAP in its efforts to carry out these responsibilities.

4. Eligibility

Section 507(c)(1) of the Act defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

Michigan's Small Business Clean Air Assistance Act similarly defines the term "small business," and expands criterion (C) to include major stationary sources which are major because of their location in a nonattainment area. To avoid discouraging businesses from seeking assistance, Michigan intends to use a flexible definition of small business when implementing the program. The type of service and the amount of resources necessary to carry out the service will dictate whether a broad or narrow eligibility definition is used. This is consistent with section 507(c)(2) of the Act.

The State of Michigan has provided for public notice and comment on grants of eligibility to sources that both do not emit more than 100 tpy of all regulated pollutants and do not meet the eligibility provisions of sections 507(c)(1) (C), (D), and (E) of the Act. In response to such a petition by a stationary source, the Director of the MDNR may define a source as a "small business." This is consistent with section 507(c)(2) of the Act.

The State of Michigan has provided for exclusion from the "small business" definition for any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the Act. The Director of the MDNR may exclude such sources after consultation with the EPA and the Small Business Administration and after providing notice and opportunity for public hearing. This provision is consistent with section 507(c)(3).

[2] Section 507(e)(1)(B) requires the CAP to report on the *compliance* of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

III. Final Rulemaking

Michigan has submitted a SIP revision implementing each of the required PROGRAM elements required by section 507 of the Act. The PROGRAM will be fully implemented by November 15, 1994.

Because the EPA considers this final rule noncontroversial and routine, we are approving it today without prior proposal. This rule will become effective on August 2, 1994. However, if we receive notice by July 5, 1994 that someone wishes to submit adverse comments, then the EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future notice will inform the general public of these tables. Under the revised tables this action remains classified as a Table 2. On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request. This request continued in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has exempted this regulatory action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By today's action, the EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved today does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Small business assistance program, Incorporation by reference.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 3, 1994.

Valdas V. Adamkus,

Regional Administrator.

For the reasons set out in the preamble, part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(94) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(94) On November 13, 1992, January 8, 1993, and November 12, 1993, the State of Michigan submitted a Small Business Stationary Source Technical and Environmental Assistance Program for incorporation in the Michigan State Implementation Plan as required by section 507 of the Clean Air Act.

(i) Incorporation by reference.

(a) Small Business Clean Air Assistance Act, Act No. 12, Public Acts of 1993, approved by the Governor on April 1, 1993, and effective upon approval.

3. Section 52.1184 is added to read as follows:

§ 52.1184 Small business stationary source technical and environmental compliance assistance program.

The Michigan program submitted on November 13, 1992, January 8, 1993, and November 12, 1993, as a requested revision to the Michigan State Implementation Plan satisfies the requirements of section 507 of the Clean Air Act Amendments of 1990.

[FR Doc. 94–13496 Filed 6–2–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7057

[AK–932–4210–06; F–88329]

Withdrawal of Public Lands for Protection of the Coldfoot Administrative Site, Visitor Centers, and Campground; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 100 acres of public lands from settlement, sale, location, or entry under the general land laws, and from location and entry under the United States mining laws, but not from mineral leasing, for a period of 20 years for the Bureau of Land Management to protect an administrative site, visitor centers, and a public campground at Coldfoot, Alaska.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Coldfoot administrative site, visitor centers, and campground:

Fairbanks Meridian (Unsurveyed)

Parcel 1 (Visitor Center)

A parcel of land lying within the W½ of sec. 15, and the E½ of sec. 16, T. 28 N., R. 12 W., the Point of Beginning being the intersection of the centerline of the Dalton Highway and the centerline of the Venetie Trail;

Thence, N. 75° W., approximately 180 feet to corner No. 1;

Thence, N. 40° E., approximately 570 feet to corner No. 2;

Thence, N. 18°30′ W., approximately 480 feet to corner No. 3;

Thence, S. 49°30′ W., approximately 1,020 feet to corner No. 4;

Thence, S. 60° E., approximately 330 feet to corner No. 5;

Thence, S. 75° E., approximately 300 feet to close at corner No. 1.

This parcel contains approximately 8.80 acres.

Parcel 2 (Visitor Center)

A parcel of land lying within the W½ of sec. 15, and the E½ of sec. 16, T. 28 N., R. 12 W., the Point of Beginning being the intersection of the centerline of the Dalton Highway and the centerline of the Venetie Trail;

Thence, S. 89° W., approximately 210 feet to corner No. 1;

Thence, N. 75° W., approximately 270 feet to corner No. 2;

Thence, N. 60° W., approximately 360 feet to corner No. 3;

Thence, S. 49°30′ W., approximately 840 feet to corner No. 4;

Thence, S. 60° E., approximately 810 feet to corner No. 5;

Thence, N. 40° E., approximately 900 feet to close at corner No. 1.

This parcel contains approximately 15 acres.

Parcel 3 (Visitor Center)

A parcel of land lying within sec. 15, T. 28 N., R. 12 W., the Point of Beginning being the intersection of the centerline of the Dalton Highway and the centerline of the Venetie Trail;

Thence, S. 77° E., approximately 100 feet to corner No. 1;

Thence, continuing S. 77° E., approximately 750 feet to corner No. 2;

Thence, N. 40° E., approximately 360 feet to corner No. 3;

Thence, N. 77° W., approximately 750 feet to corner No. 4;

Thence, S. 40° W., approximately 360 feet to close at corner No. 1;

This parcel contains approximately 4.60 acres.

Parcel 4 (Administrative Site)

A parcel of land lying within the E½ of sec. 23, and the W½ of sec. 24, T. 29 N., R. 12 W., the Point of Beginning being the intersection of the centerline of the Dalton Highway and the middle of the channel of Marion Creek within sec. 23;

Thence, N. 61°30′ E., approximately 875 feet to corner No. 1;

Thence, S. 69°06′ E., approximately 344 feet to corner No. 2;

Thence, S. 23°50′ E., approximately 429 feet to corner No. 3;

Thence, S. 62°07′ E., approximately 306 feet to corner No. 4;

Thence, S. 75°27′ E., approximately 704 feet to corner No. 5;

Thence, S. 66°11′ E., approximately 795 feet to corner No. 6;

Thence, N. 23°48′ E., approximately 480 feet to corner No. 7;

Thence, N. 66°11′ W., approximately 465 feet to corner No. 8;

Thence, N. 54°31′ W., approximately 1,880 feet to corner No. 9;

Thence, S. 36°21′ W., approximately 696 feet to close at corner No. 1.

This parcel contains approximately 35 acres.

Parcel 5 (Campground)

A parcel of land lying within the S½ of sec. 23, and the N½ of sec. 26, T. 29 N., R. 12 W., the Point of Beginning being the intersection of the centerline of the Dalton Highway and the middle of the channel of Marion Creek within sec. 23;

Thence, S. 13°30′ W., approximately 1,020 feet to corner No. 1;

Thence, S. 40°30′ E., approximately 600 feet to corner No. 2;

Thence, S. 23° E., approximately 200 feet to corner No. 3;

Thence, S. 70° E., approximately 900 feet to corner No. 4;

Thence, N. 20°30′ E., approximately 1,150 feet to corner No. 5;

Thence, N. 70° W., approximately 1,580 feet to corner No. 6;

Thence, S. 19° W., approximately 720 feet to close at corner No. 1.

This parcel contains approximately 36.60 acres.

The areas described aggregate approximately 100 acres.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 17, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–13572 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–JA–P

43 CFR Public Land Order 7058

[AZ–930–4210–06; AZA–26437]

Withdrawal of National Forest System Land for the Sears-Kay Ruin Interpretative Site; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 160 acres of National Forest System land from location and entry under the United States mining laws for 50 years for the purpose of protecting the Sears-Kay Ruins Interpretive Site. The land has been and will remain open to the mineral leasing laws and other surface uses applicable to National Forest System land authorized by the Forest Service.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–650–0509.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the capital investment and the archeological values of the Sears-Kay Ruin Interpretive Site:

Gila and Salt River Meridian

Tonto National Forest

T. 6 N., R. 5 E.,
Sec. 2, E½SW¼, E½NW¼SW¼, and E½SW¼SW¼;
Sec. 11, NE¼NW¼.

The area described contains 160 acres in Maricopa County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 17, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–13578 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–32–P

43 CFR Public Land Order 7059

[ID–943–4210–06; IDI–29260]

Withdrawal of Public Land for Big Wood River Geological Sites; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 309 acres of public lands from the mining laws only, for a period of 50 years for the Bureau of Land Management to protect the Big Wood River Geologic Sites. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–384–3162.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and

Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from location, or entry under the United States Mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect several unique Bureau of Land Management geologic sites:

That public land lying on either side of the actual center line of the Big Wood River Channel measured perpendicular to each center line segment. Segments 1 (one) and 3 (three) are 200 feet wide (100 feet on either side of channel center line). Segments 2 (two), 4 (four), 5 (five), 6 (six) and 7 (seven) are 300 feet wide (150 feet on either side of channel center line).

The following descriptions define the center line for those segments of the Big Wood River channel to be withdrawn. Any differences between these courses and the actual river center line are intended to be settled in favor of the actual channel center line location.

The point of beginning for each river segment is tied to the true point of beginning which is the corner common to Sections 32 and 33, T. 2 S., R. 18 E., Boise Meridian and Sections 4 and 5, T. 3 S., R. 18 E., Boise Meridian. All bearings and distances are approximate.

From the true point of beginning, N 88°15'51" E., 1088.05 ft. to the point of beginning of segment No. 1.

Thence:
S 43°59'19" E., 683.93 ft.;
S 69°51'30" E., 407.84 ft.;
S 13°27'17" E., 744.43 ft.;
S 88°59'17" E., 735.49 ft.;
S 22°59'45" E., 470.45 ft.;
S 08°24'20" W., 404.92 ft.;
S 55°26'40" E., 429.71 ft.;
S 23°56'56" E., 491.71 ft.;
S 27°56'04" E., 556.80 ft.;
S 27°39'57" E., 365.96 ft.;
S 38°30'53" E., 371.51 ft.;
S 21°32'11" E., 295.66 ft.;
N 83°11'03" E., 647.91 ft.;
S 71°32'45" E., 387.64 ft.;
S 05°27'59" E., 866.34 ft.;
S 23°44'04" E., 536.87 ft.;
S 49°27'34" E., 425.93 ft.;
S 13°08'00" W., 535.89 ft.;
S 15°13'25" W., 578.48 ft.;
S 30°16'31" W., 426.33 ft.;
S 28°12'50" W., 421.32 ft.; from which the true point of beginning bears N 33°58'06" W., 9349.74 feet distant.

From the true point of beginning, S 30°37'11" E., 10,442.10 feet to the point of beginning of segment No. 2.

Thence:
S 07°31'22" W., 551.58 ft.;
S 48°12'40" W., 908.45 ft.;
S 46°14'41" W., 404.50 ft.; from which the true point of beginning bears N 21°47'54" W., 11,208.77 ft. distant.

From the true point of beginning, S 20°35'09" E., 16,508.89 feet to the point of beginning of segment No. 3.

Thence:
S 07°44'43" E., 251.55 ft.;
S 03°51'33" E., 249.90 ft.; from which the true point of beginning bears N 19°55'41" W., 16,994.28 feet distant.

From the true point of beginning, S 04°35'14" E., 23,660.56 feet to the point of beginning of segment No. 4.

Thence:
S 26°37'12" E., 593.24 ft.;
S 05°23'08" W., 548.57 ft.;
S 24°30'21" W., 509.82 ft.;
S 03°43'11" E., 532.53 ft.;
S 10°22'30" W., 624.26 ft.;
S 46°42'22" E., 476.70 ft.;
S 29°45'27" E., 399.96 ft.;
S 30°54'21" E., 385.95 ft.; from which the true point of beginning bears N 04°56'39" W., 27,368.43 feet distant.

From the true point of beginning, S 08°54'35" E., 32,444.82 feet to the point of beginning of segment No. 5.

Thence:
S 84°59'22" E., 675.19 ft.;
N 74°25'54" E., 697.25 ft.;
N 65°32'30" E., 1205.49 ft.;
S 86°44'40" E., 1041.29 ft.;
S 66°51'26" E., 465.63 ft.; from which the true point of beginning bears N 15°49'05" W., 32,915.05 feet distant.

From the true point of beginning, S 16°56'04" E., 36,970.13 feet to the point of beginning of segment No. 6.

Thence:
S 28°41'46" E., 769.01 ft.;
S 08°03'39" W., 868.29 ft.;
S 44°41'51" E., 262.17 ft.;
N 81°25'25" E., 432.36 ft.;
S 05°48'32" E., 616.57 ft.;
S 30°50'46" E., 358.83 ft.;
S 13°33'15" W., 507.06 ft.;
S 07°26'41" E., 495.92 ft.;
S 11°33'16" E., 628.92 ft.; from which the true point of beginning bears N 16°50'49" W., 41,313.36 feet distant.

From the true point of beginning, S 17°38'22" E., 42,514.59 feet to the point of beginning of segment No. 7a

Thence:
S 25°19'17" W., 818.16 ft.;
S 10°38'18" E., 406.96 ft.;
S 25°26'56" E., 311.54 ft.;
S 47°35'28" W., 573.54 ft.;
S 04°35'37" W., 339.23 ft.;
S 51°35'25" W., 410.21 ft.;
S 57°21'48" W., 330.74 ft.;
S 04°27'18" W., 533.36 ft.;
S 60°20'02" W., 574.09 ft.;
S 81°02'43" W., 952.34 ft.;
S 14°13'23" W., 1005.96 ft.;
S 20°29'33" W., 744.18 ft.;
S 53°05'46" W., 514.46 ft.;
S 02°52'29" E., 607.70 ft.;
S 10°05'41" W., 583.33 ft.;
S 55°25'33" W., 658.18 ft.;
S 16°45'53" E., 462.20 ft.;
S 66°32'33" W., 527.00 ft.;
S 77°24'38" W., 692.24 ft.;
S 51°07'32" W., 471.41 ft.;
S 67°22'31" W., 508.67 ft.;
S 48°21'43" W., 783.98 ft.;
S 42°33'53" W., 582.70 ft.; from which the true point of beginning bears N 06°39'56" W., 50,181.07 feet distant.

From the true point of beginning, S 12°32'21" E., 46,124 feet to the point of beginning of segment No. 7b.

Thence:
S 12°57'51" E., 393.87 ft.;
S 49°34'36" E., 135.82 ft.;
S 17°46'05" E., 388.98 ft.;
S 02°35'03" E., 367.77 ft.;
S 65°14'45" W., 323.55 ft.;
S 42°37'11" E., 239.80 ft.;
S 18°37'34" E., 373.38 ft.;
S 60°29'42" W., 302.93 ft.;
S 41°02'32" W., 313.36 ft.;
S 54°32'06" W., 359.45 ft.;
S 68°34'28" W., 456.99 ft.;
S 11°35'07" W., 211.31 ft.;
S 13°41'48" E., 377.90 ft.;
S 08°03'06" W., 314.83 ft.;
S 54°30'46" W., 359.10 ft.;
N 77°39'24" W., 542.47 ft.;
S 80°01'31" W., 417.66 ft.;
S 38°03'01" W., 262.61 ft.;
S 78°02'02" W., 285.49 ft.;
S 66°14'09" W., 368.79 ft.;
S 08°03'06" W., 314.83 ft.;
S 19°21'03" W., 612.92 ft.;
N 44°56'06" W., 291.74 ft.;
S 48°25'32" W., 313.28 ft.;
N 32°45'55" W., 299.89 ft.;
S 81°19'19" W., 401.37 ft.; from which the true point of beginning bears N 06°39'56" W., 50,181.07 feet distant.

The areas described aggregate 309 acres in Lincoln County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 17, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94-13577 Filed 6-2-94; 8:45 am]

BILLING CODE 4310-66-M

43 CFR Public Land Order 7060

[NV-930-4210-06; N-56170]

Withdrawal of Public Land for Recreation Area; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 464.93 acres of public land from surface entry

and mining for a period of 20 yeras for the Bureau of Land Management to protect the Sacramento Pass Recreation Area in White Pine County. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6526.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Sacramento Pass Recreation Area:

Mount Diablo Meridian

T. 14 N., R. 63 E.,
Sec. 1, lots 3 and 4;
Sec. 2, lots 1 and 2
T. 15 N., R. 63 E.,
Sec. 35, SE¼;
Sec. 36, W½SW¼ and SE¼SW¼.

The area described contains 464.93 acres in White Pine County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursaunt to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 17, 1994

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–13576 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–HC–M

43 CFR Public Land Order 7062

[CO–932–4210–06; COC 021250]

Partial Revocation of Public Land Order No. 1800; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes Public Land Order No. 1800 insofar as it affects 12.07 acres of National Forest System land withdrawn for protection of a campground. The land is no longer needed for this purpose and the revocation is needed to permit disposal of the land by the Forest Service. The land is temporarily closed to mining by a Forest Service exchange proposal. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: June 20, 1994.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 1800, which withdrew National Forest System land for use as a campground, is hereby revoked insofar as it affects the following described National Forest System land:

Sixth Principal Meridian

Arapaho National Forest

T. 2 S., R. 75 W.,
Sec. 10, Suspended, Metes and Bounds description:

Beginning at corner No. 2, HES 117;
Thence S. 3° E., 24.53 chains to corner No. 3, HES 117; N. 73° E., 10.00 chains; Northwesterly with the centerline of Highway U.S. 40, 24.84 chains to the point of beginning

The area described contains 12.07 acres of National Forest System land in Grand County.

2. At 9:00 a.m. on June 20, 1994, the land described in paragraph 1 will be open to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: May 24, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–13498 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 12 and 16

[CGD 93–051]

RIN 2115–AE54

Proof of Commitment To Employ Aboard U.S. Merchant Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends its regulations covering applicants for merchant mariner's documents to eliminate the requirement that the applicant provide proof of a commitment of employment as a member of the crew of a United States merchant vessel. Because of new requirements pertaining to applicants of merchant mariner's documents, the requirement for proof of a commitment of employment is no longer necessary. This action will relieve applicants and employers of an unnecessary regulatory burden.

EFFECTIVE DATE: July 5, 1994.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mrs. Justine Bunnell, Merchant Vessel Personnel Division, at (202) 267–0238.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mrs. Justine Bunnell, Project Manager, Office of Marine Safety, Security and Environment Protection, and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On December 6, 1993, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Proof of Commitment to Employ Aboard U.S. Merchant Vessels" in the **Federal Register** (58 FR 64278). The Coast Guard received four letters commenting on the proposal. A public hearing was not requested and one was not held.

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Background and Purpose

Section 12.25–5 of title 46 of the Code of Federal Regulations requires an applicant for an original merchant mariner's document (MMD) endorsed for service in ratings for which no professional examination is required to produce satisfactory proof of a commitment of employment (letter of commitment) as a member of the crew of a United States merchant vessel. This requirement was established in 1937 as a means to ensure that those persons obtaining MMDs were actually to be employed as merchant mariners. Because no fee or renewal requirements had been associated with application for an MMD, many applying for an MMD were doing so to obtain a desirable form of identification, and had no intention of seeking employment as a merchant mariner.

On March 19, 1993, the Coast Guard published a final rule establishing user fees for services relating to marine licensing, certification of registry, and merchant mariner documentation (58 FR 15228). That rule established an issuance fee of $35 for an MMD with an additional $17 charge for an FBI criminal record check if the application is for an original MMD. As noted in the preamble of the user fee final rule, as a result of the user fee and other expenses, individuals with no intention of returning to sea may choose not to renew a license. Likewise, the user fee will deter individuals with no intention of obtaining employment as a member of the crew of a United States merchant vessel from applying for an MMD. For this reason, the Coast Guard now considers the requirement for a letter of commitment unnecessary, and the requirement is removed by this rulemaking. This final rule also makes conforming changes to 46 CFR part 16 to remove references to "commitment of employment."

Discussion of Comments and Changes

Four comments were received during the comment period. All of the comments supported the rulemaking as proposed. Therefore, no changes have been included in this final rule.

Regulatory Assessment

This final rule is not a significant regulatory action under Executive Order 12866 and, has not been reviewed by the Office of Management and Budget. It is also not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Assessment is unnecessary. This final rule will relieve applicants of the burden of obtaining a letter from a new employer evidencing the employer's commitment to hire the applicant. Employers will be relieved of the burden of supplying such letters. While the cost of obtaining and supplying such letters is considered minimal, this action will relieve industry and applicants of an unnecessary regulatory requirement.

Small Entities

This final rule will eliminate the requirement that an applicant provide proof of a commitment of employment as a member of the crew of a United States merchant vessel. The amendments will have minimal economic impact on the maritime industry. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601*et seq.*), that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to establish regulations pertaining to the issuance of merchant mariner's documents has been committed to the Secretary of Transportation by Federal statute and delegated to the Coast Guard. Documentation of merchant mariners is a matter national in application for which regulations should be of national scope to avoid unreasonably burdensome variances. Therefore, the Coast Guard intends to preempt State action addressing the same matter, although no such action is expected.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this action is categorically excluded from further environmental documentation. The amendment involves only elimination of the requirement that an applicant provide proof of a commitment of employment as a member of the crew of a United States merchant vessel prior to receiving an MMD and clearly would have no environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 12

Reporting and recordkeeping requirements, Seamen.

46 CFR Part 16

Drug testing, Marine safety, Reporting and recordkeeping requirements, Safety Transportation.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR parts 12 and 16 as follows:

PART 12—CERTIFICATION OF SEAMEN

1. The authority citation for part 12 is revised to read as follows:

Authority: 46 U.S.C. 2103, 7301, 7701, 10104; 49 CFR 1.46.

§ 12.25–5 [Removed]

2. Section 12.25–5 is removed.

PART 16—CHEMICAL TESTING

3. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

§ 16.105 [Amended]

4. In § 16.105, the definition of *Commitment of employment* is removed.

5. In § 16.210, paragraph (a) is revised to read as follows:

§ 16.210 Pre-employment testing requirements.

(a) No marine employer shall engage or employ any individual to serve as a crewmember unless the individual passes a chemical test for dangerous drugs for that employer.

* * * * *

Dated: March 24, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard; Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–13538 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 930363–4145, I.D. 012793B]

Designated Critical Habitat; Northern Right Whale

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is designating critical habitat for the northern right whale (*Eubalaena glacialis*). The designated habit includes portions of Cape Cod Bay and Stellwagen Bank, the Great South Channel (each off the coast of Massachusetts), and waters adjacent to the coasts of Georgia and the east coast of Florida. This designation provides notice to Federal agencies and the public that a listed species is dependent on these areas and features for its continued existence and that any Federal action that may affect these areas or features is subject to the consultation requirements of section 7 of the Endangered Species Act (ESA).

EFFECTIVE DATE: July 5, 1994.

ADDRESSES: Requests for copies of this rule should be addressed to the Director, Office of Protected Resources, National Marine Fisheries Service (NMFS), 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael Payne, Protected Species Management Division, NMFS, 301/713–2322; Charles Oravetz, Southeast Regional Office, NMFS, 813/893–3141; or Doug Beach, Northeast Regional Office, NMFS, 508/281–9254.

SUPPLEMENTARY INFORMATION:

Background

Right whales, *Eubalaena* spp., are the most endangered of the large whale species, brought to extremely low levels by commercial whaling. Right whales were the earliest targets of whaling and, although they have been protected world-wide from commercial whaling by international agreements since 1935, right whale populations still remain extremely depleted. The global population of right whales is comprised of two separate species, one each in both the northern and southern hemisphere, and several stocks or populations within each hemisphere. The majority of right whales occur in the southern hemisphere (the southern right whale, *E. australis*) and are considered a separate species from the right whale in the northern hemisphere (*E. glacialis*).

At least two populations of northern right whales, an eastern and a western population, occur, or have occurred, in the North Atlantic. The eastern North Atlantic population may be nearly extinct. Between 1935–1985, there were only 21 possible sightings in the eastern North Atlantic, totaling 45 individuals (Brown, 1986). Furthermore, Brown (1986) considered only five of these sightings (seven individual whales) to be confirmed. In the western North Atlantic, the known distribution and abundance of right whales indicate a "best available" population estimate of 300–350 individuals. Despite the low abundance and known anthropogenic factors affecting total mortality (Kraus, 1990), the western North Atlantic stock is the largest in the Northern Hemisphere. This population stands to benefit most from recovery actions (NMFS, 1991; Kenney, Winn and Macaulay, 1994).

Like other baleen whales, the western North Atlantic population of right whales (hereafter referred to as the northern right whale) is migratory. The known distribution and migratory pattern has been previously summarized by Kraus (1985); Winn, Price and Sorensen (1986); Gaskin (1987, 1991); and by Kraus et al. (1986). The five primary habitats used by northern right whales during their annual migration, as described by Kenney, Winn and Macaulay (1994), include the following three areas off the eastern coast of the United States: (1) A spring/early summer feeding and nursery area for a majority of the population in the Great South Channel (GSC), (2) a late winter/spring feeding and nursery area for a small portion of the population in Cape Cod Bay (CCB), and (3) a winter calving ground and nursery area in the coastal waters of the southeastern United States (SEUS); and the following two areas located in Canadian waters: (4) a summer/fall feeding and nursery area for some animals, including nearly all mother/calf pairs, in the lower Bay of Fundy; and (5) a summer/fall feeding ground, with almost exclusively mature individuals, on the southern Nova Scotian shelf.

The northern right whale was listed as endangered on June 2, 1970 (35 FR 8495). Section 9 of the ESA prohibits the taking of endangered species, and section 7 requires Federal agencies to ensure that their actions are not likely to jeopardize either threatened and endangered species. For species listed prior to 1978, when Congress required that critical habitat be designated, concurrently with the listing, critical habitat may be designated although such designation is not required. Section 4(f) of the ESA also requires the responsible agency to develop and implement a recovery plan for listed species, unless such a plan would not promote the conservation and recovery of the species. NMFS determined that a recovery plan would promote the conservation of the northern right whale. Accordingly, the Assistant Administrator for Fisheries (AA) appointed a Recovery Team consisting of experts on right whales from the private sector, academia and government. A Recovery Plan for the Northern Right Whale was approved by NMFS in December, 1991 (NMFS, 1991).

NMFS was petitioned by the Right Whale Recovery Team to designate critical habitat for the northern right whale on May 18, 1990. A **Federal Register** notice was published on July 12, 1990 (55 FR 28670), requesting information and comments on the petition. Of those agencies, organizations, and private groups that commented, most responded favorably to the designation of the three areas in the U.S. as critical habitat for the northern right whale. The comments received were considered and incorporated as appropriate by NMFS in the proposed rule to designate critical habitat for northern right whales. The proposed rule was published on May 19, 1993 (58 FR 29186), and provided for a 60-day comment period. NMFS also completed an Environmental Assesment (EA) pursuant to the National Environmental Policy Act (NEPA), to evaluate both the environmental and economic impacts of the proposed critical habitat designation. The EA resulted in a finding of no significant impact for the proposed action.

During the comment period, NMFS received several requests for public hearings on the proposed designation. Public hearings were held in Boston, MA, on August 25, 1993; in Port Canaveral, FL, on August 24, 1993; and in Brunswick, GA, on August 25, 1993 (58 FR 41454, Aug. 4, 1993). The comment period was extended until August 31, 1993, to allow commenters the opportunity to respond to concerns voiced at the public hearings. After consideration of public comments, and based on the best available scientific information, NMFS is designating critical habitat for the northern right whale as described in the proposed rule.

Definition of Critical Habitat

"Critical habitat", as defined in section 3(5)(A) of the ESA, and the term "conservation", as defined in section 3(3) of the ESA, were provided in the preamble to the proposed rule (58 FR 29186, May 19, 1993).

Essential Habitat of the Northern Right Whale

Biological information for the northern right whale can be found in the Recovery Plan (NMFS, 1991), and in recent scientific literature (Winn, Price and Sorensen, 1986; Kenney et al., 1986; Wishner et al., 1988; Mayo and Marx, 1990; Payne et al., 1990; Kraus and Kenney, 1991; Kraus et al., 1993; Kenney, Winn and Macauley, 1994). The physical and biological habitat features of the critical habitat are discussed herein.

Foraging Habitat of the Northern Right Whale

Right whales have been characterized principally as "skim" feeders (Kawamura, 1974; Nemoto and Kawamura, 1977). They subsist primarily on dense swarms of calanoid copepods, notably *Calanus finmarchicus* in the North Atlantic (Mitchell, 1975; Watkins and Schevill, 1979; Winn, Price and Sorensen, 1986; Wishner et al., 1988; Mayo and Marx, 1990; Kraus and Kenney, 1991). Northern right whales are also known to prey on other similar sized zooplankton. Two other zooplankton species preyed upon by northern right whales in CCB include *Pseudocalanus minutis* and *Centropages* spp. (Mayo and Marx, 1990). A strong positive correlation between the abundance of right whales in the southern Gulf of Maine and densities of *C. finmarchicus* has been described by Kenney et al. (1986), Wishner et al. (1988), Payne et al. (1990), and Kenney, Winn and Macauley (1994). The two recorded time intervals when right whales were most abundant in the CCB/Stellwagen Bank area (April 1970, reported by Watkins and Schevill, 1982; and during 1986, reported by Payne et al., 1990) were during periods of observed peak densities of copepods.

While the size and density of copepod patches are important to the feeding energetics of right whales, so are the relative proportions of adult copepods within each patch (Kenney et al., 1986; Wishner et al., 1988). Although the feeding ecology of right whales is likely more complex than previously thought (Mayo and Marx, 1990), dense aggregations of older, caloric-rich copepods seem to be the required characteristics for energetically successful foraging by right whales. If copepods in these caloric-rich, adult developmental stages are not available to northern right whales in sufficient densities, there may be insufficient prey available in the remaining developmental stages (independent of abundance) to provide right whales with the required energy densities (as described by Kenney et al., 1986) to meet the metabolic and reproductive demands of the right whale population in the western North Atlantic (Kenney et al., 1986; Payne et al., 1990).

Foraging Habitat: The overall spatial requirements for right whales are not well defined; however, the distribution pattern observed for northern right whales indicates that four of the five principal habitats occupied by right whales in the western North Atlantic are used for foraging, and possibly reproductive activities: The GSC, CCB, the Bay of Fundy, and the Scotian Shelf. Neither feeding nor courtship behavior has been observed along the SEUS. Scientists believe that subadult and adult baleen whales fast, or feed rarely, during the winter calving period.

Based on observed distribution patterns compared to oceanographic conditions, scientists speculate that the topographic and seasonal oceanographic characteristics of foraging areas are conducive to the dense growth of zooplankton. These high-use areas may comprise the minimal space required for normal foraging behavior that will support the northern right whale population. The Department of Fisheries and Oceans (Canada) has already designated two foraging areas as right whale sanctuaries—one in the Bay of Fundy and another on the Scotian Shelf. The remaining two foraging habitats, the GSC and CCB, are found in the United States and are included as critical habitat for the northern right whale.

Great South Channel: The GSC is a large funnel-shaped bathymetric feature at the southern extreme of the Gulf of Maine between Georges Bank and Cape Cod, MA. The GSC is one of the most used cetacean habitats off the northeastern United States (Kenney and Winn, 1986). The channel is bordered on the west by Cape Cod and Nantucket Shoals, and on the east by Georges Bank. The channel is generally deeper to the north and shallower to the south, where it narrows and rises to the continental shelf edge. To the north, the channel opens into several deepwater basins of the Gulf of Maine. The V-shaped 100-m isobath effectively delineates the steep drop-off from Nantucket Shoals and Georges Bank to the deeper basins. The average depth is about 175 m, with a maximum depth of about 200 m to the north.

The GSC becomes thermally stratified during the spring and summer months. Surface waters typically range from 3 to 17°C between winter and summer. Salinity is stable throughout the year at approximately 32–33 parts per thousand (Hopkins and Garfield, 1979). Much of the bottom is comprised of silty, sandy sediments, with finer sediments occurring in the deeper waters.

The late-winter/early spring mixing of warmer shelf waters with the cold Gulf of Maine water funneled through the channel causes a dramatic increase in faunal productivity in the area. The zooplankton fauna found in these waters are typically dominated by copepods, specifically *C. finmarchicus, P. minutus, C. typicus, C. hamatus,* and *Metridia lucens*. From the middle of winter to early summer, *C. finmarchicus* and *P. minutus* are the dominant species, which together made up between 60 and 90 percent of the samples described by Sherman et al. (1987). In late spring, *C. finmarchicus* alone makes up 60 to 70 percent of the copepod community. In the second half of the year, both species of *Centropages* dominate the waters, accounting for about 75 percent of all copepod species sampled.

The GSC right whale distribution was described by Kenney, Winn and Macaulay (1994), and the following, unless otherwise cited, is taken from that manuscript. Right whales occur in the GSC on a strictly seasonal basis—in the spring, with a peak in May. Only in 1986 and 1987 were a small number of right whales present throughout most or all of the summer. This corresponds to the atypical copepod density maxima in the GSC and southern Gulf of Maine described by Wishner et al. (1988) and Payne et al. (1990). The main area of GSC right whale distribution has been in the central basin, generally in waters deeper than 100 m. There is a persistent thermal front, which roughly parallels the V-shaped 100-m isobath typically slightly south of that isobath in 60–70 m of water. The front divides stratified waters with warmer surface temperatures to the north of the front from tidally mixed water with cooler surface temperatures over the shallower area south of the front (Wishner et al., 1988; Brown and Winn, 1989). Right whales occur in the stratified waters north of the front, and Brown and Winn (1989) showed that right whale sightings were non-randomly distributed relative to the front, but were at a median distance from it of about 11 km. Although there are variations between years, the "typical" pattern is for the

primary right whale aggregation to occur in the central to western portion of the basin. Within any one year, the general area of major aggregation is remarkably stable. A gradual southward shift in the center of distribution occurs as the season progresses.

Single-day abundance estimates for the GSC, uncorrected for animals missed while submerged, ranged up to 179 individuals (Kenney, Winn and Macauley, 1994). The total number of photographically identified northern right whales is now 319, eliminating those known to have died, but including some that have not been sighted for several years and that may be dead (Kraus et al., 1993). Therefore, it is likely that a significant proportion of the western North Atlantic right whale population uses the GSC as a feeding area each spring, aggregating to exploit exceptionally dense copepod patches. Given that not all of the 300–350 right whales are seen in U.S. shelf waters each season, it is very likely that most, if not all, of the northern right whale population use the GSC within any given season, and that every 2–3 years, the entire population of 300–350 northern right whales in the northwest Atlantic may pass through the GSC.

Cape Cod Bay: The CCB is a large embayment on the U.S. Atlantic Ocean off of the State of Massachusetts that is bounded on three sides by Cape Cod and the Massachusetts coastline from Plymouth, MA, south. To the north, CCB opens to Massachusetts Bay and the Gulf of Maine. CCB has an average depth of about 25 m, and a maximum depth of about 65 m. The deepest area of CCB is in the northern section, bordering Massachusetts Bay.

The general water flow is counter-clockwise, running from the Gulf of Maine south into the western half of CCB, over to eastern CCB, and back into the Gulf of Maine through the channel between the north end of Cape Cod (Race Point) and the southeast end of Stellwagen Bank, a submarine bank that lies just north of Cape Cod. Flow within the bay is driven by density gradients caused by freshwater river run-off from the Gulf of Maine (Franks and Anderson, 1992a, 1992b; Geyer et al., 1992) and by a predominantly westerly wind.

Thermal stratification occurs in the bay during the summer months. Surface water temperatures typically range from 0 to 19°C throughout the year. Salinity is fairly stable at around 31–32 parts per thousand. Much of the bottom is comprised of unconsolidated sediments, with finer sediments occurring in the deeper waters (Davis, 1984): In shallow areas, or where there is sufficient current, sediments tend to be coarser.

Northern right whales were "rediscovered" in the CCB in the early 1950s. Right whales have been seen in Massachusetts waters in most months (Watkins and Schevill, 1982; Schevill, Watkins and Moore, 1986; Winn, Price and Sorensen, 1986; Hamilton and Mayo, 1990). However, most sightings occurred between February and May, with peak abundance in late March (Mayo, 1993). Schevill, Watkins and Moore (1986) reported 764 sightings of right whales between 1955 and 1981 in CCB. More than 70 whales were seen in one day in 1970. Hamilton and Mayo (1990) reported 2,643 sightings of 113 individual right whales in Massachusetts waters, with a concentration in the eastern part of CCB. A number of right whales, including cow-calf pairs, remained in CCB and Massachusetts Bay during the summers of 1986 and 1987. This was attributed to atypically dense concentrations of *C. finmarchicus* in those years, and low abundances of sandlance, *Ammodytes* spp., a planktivorous finfish that also preys on copepods and may be competing with right whales for copepod prey during recent years (Payne et al., 1990).

The late-winter/early spring zooplankton fauna of CCB consists primarily of copepods, represented predominantly by two species, *Arcartia clausi* and *A. tonsa*. Samples taken in the daytime indicated greater densities of copepods at greater depths. The copepod *C. finmarchicus* is found throughout inshore CCB waters at densities of 100 individuals per cubic meter from April through June (Mayo and Marx, 1990). However, Mayo and Marx (1990) found that the density of surface zooplankton samples collected in the path of feeding right whales during mid-winter was significantly higher than for the samples taken where whales were absent (median = 3,904 organisms/m^3). The threshhold value below which feeding by northern right whales is not likely to occur in CCB is approximately 1,000 organisms/m^3 (Mayo and Marx, 1990). Although year-to-year variation in the composition of zooplankton was found, feeding right whales were associated with patches of zooplankton that were dominated by *C. finmarchicus, P. minutus, C.* spp. and by cirripede (barnacle) larvae. These authors suggested that, after arrival in CCB when prey is at a maximum (or at least at a consistently acceptable level), the whales select the densest patches of copepods (Mayo and Marx, 1990).

Calving and Nursery Habitat of Northern Right Whales

Cape Cod Bay: Schevill, Watkins and Moore (1986) reported 21 sightings of small calves in 12 of the 26 years of their CCB study, including two calves that may have been born in CCB. Therefore, the CCB may occasionally serve as a calving area, but it is more recognized for being a nursery habitat for calves that enter into the area after being born most likely in, or near, the SEUS. Mead (1986) identified Massachusetts waters as second only to the SEUS for documented right whale calf sightings. Hamilton and Mayo (1990) observed a total of 30 calves between 1979 and 1987, associated with 21 mothers. Schevill, Watkins and Moore (1986) and Hamilton and Mayo (1990) documented observations of mating behavior and nursing in CCB.

Southeast United States (SEUS): The coastal waters off Georgia and northern Florida (the area described as the SEUS) average about 30 m in depth with a maximum depth of about 60 m. The deepest waters occur along the coast of Florida, just south of Cape Canaveral. Seasonal water temperatures and salinity for this area are higher than in northern waters. This is a transition area separating subtropical from the more temperate southeastern marine communities. Large, cyclic changes in abundance and dominance of plankton species occur seasonally and annually. Annual variation may be so great that short-term monitoring studies may not be sensitive enough to assess the temporal variability of the plankton community. The recorded preferred food of the northern right whale, C. finmarchicus, does not occur in these waters, and the area is not considered a foraging area for northern right whales.

Between 1989–1992, 31 calves were observed within the SEUS, representing 76 percent of the total number of calves (n = 41) reported from the North Atlantic during that period (Kraus et al., 1993). The calving season extends from late November through early March with an observed peak in January. The 30′ blocks of latitude within the SEUS having the greatest density of adult and juvenile right whales occurred in waters from Brunswick, GA to Jacksonville Beach, FL (Kraus et al., 1993). The presence of females with calves was primarily limited to the coastal waters between 27°30′ and 32°00′N latitudes. This is consistent with distributions reported by Kraus and Kenney (1991) using historical sighting data through 1989.

Since 1980, 153 northern right whales have been individually identified from

surveys conducted in SEUS waters. This represents 48 percent of the known northern right whale population of 319 whales. During this period, 125 of the right whales observed in the SEUS have also been sexed using criteria described in Kraus et al. (1993). Of the 96 adults observed, 91 were females, one was a male, and the sex of the remaining four was not determined. These 91 females represent 74 percent of all the photo-identified females who have been reproductively active since 1980. The observed frequency of occurrence of females in the SEUS is significantly greater than the expected 1:1 sex ratio characteristic of the overall population. This demonstrates that the population is segregated by sex at this time of the year, and that the SEUS is used predominantly by females, and females with calves, although several juvenile males have also been observed in recent years. Based on the number of calves and females with calves in the SEUS since 1980, Kraus et al. (1993) consider the SEUS as the primary calving area for the population.

Environmental Correlates to Right Whale Distribution in the SEUS: Environmental features that have been correlated with the distribution of northern right whales throughout the SEUS include water depth, water temperature, and the distribution of right whale cow/calf pairs and the distance from shore to the 40-m isobath (Kraus et al., 1993).

The average water depth at sighting was 12.6 m (SD = 7.1). This shallow water preference is consistent with that recorded for southern right whales with calves (Payne, 1986). Also, the significant correlation between the distribution of northern right whales and the distance from shore of the 40-m isobath (referred to as the inner (0–20-m) and middle (20–40-m) shelf by Atkinson and Menzel, 1985) indicates that right whales in the SEUS are using the nearshore edge of the widest part of the broad shallow-water shelf characteristic of the Georgia-Florida Bight. The inner shelf is dominated by tidal currents, river inflow, and interaction with the coastal sounds. The middle shelf, which is dominated by winds, has less interaction with the coastal environment but is influenced on the outer margins by the Gulf Stream (Atkinson and Menzel, 1985). This use of the inner and nearshore-middle shelf area by right whales may provide maximum protection from the wave action that occurs over the outer margins of the shelf. Therefore, the occurrence of cow/calf pairs in coastal waters of the SEUS may be due, at least in part, to the bathymetry that affords protection from large waves and rough water. The strong winds and offshore wave activity in the winter SEUS is minimized nearshore by the relatively shallow, very long underwater shelf (extending almost 105 km offshore) (Kraus et al, 1993).

The average temperature of 30′ blocks of latitude where right whales have occurred is significantly cooler than those blocks of latitude within the SEUS where right whales were not observed (14.5°C vs. 18.5°C) (Kraus et al., 1993). The inner shelf is not affected by the Gulf Stream during the period when right whales are present; therefore sea-surface temperature decreases as one moves from the Gulf Stream towards shore. It is difficult to separate the effects of temperature from depth and proximity to shore, but sighting data indicate that northern right whales clearly prefer a band of relatively cool water (10–13°C) within the SEUS. This band is affected by the nearshore processes, including cooler freshwater runoff and discharge, as described in several chapters of Atkinson, Menzel and Bush (1985). Although little information is available on right whale physiology, it is hypothesized that the metabolic rate of the whale is affected by water temperature (Kraus and Kenney, 1991). The cooler, coastal water may provide right whales with the optimum thermal balance for calving by cooling the female at a time when offshore, Gulf stream affected warmer waters may be too warm for a female with maximum fatty layers prior to parturition and nursing. At the same time, the coastal waters may be warm enough not to cause problems for a neonate, considering that the insulating layer of a neonate for the first few weeks is minimal, as compared to the adult.

Courtship activities have been observed throughout most of the range of the northern right whale, except within the SEUS (Kraus, 1985).

Activities That May Affect Essential Habitat

Northern right whales are no longer observed in certain areas where they once were found, such as Delaware Bay, New York Bight and Long Island Sound (NMFS, 1991). The absence of right whale sightings in these areas may be due to several factors, including: Increased human activities, habitat degradation, insufficient quantities of prey due to habitat or natural alterations in the physical environment, extinction of an independent breeding group that used these areas or contraction of the species' range as the population has decreased (NMFS, 1991).

There exists a wide range of human activities that may impact the designated critical habitat for northern right whales (NMFS, 1991, 1992). Resource uses in the critical habitat areas are currently, and have been historically, dominated by vessel traffic and fisheries. Vessel activities can change whale behavior, disrupt feeding practices, disturb courtship rituals, disperse up food sources and injure or kill whales through collisions. Thirty-two percent of the known strandings of northern right whales since 1970 have been caused by human activities (Kraus, 1990; NMFS, 1992).

Vessels that operate in the areas being designated as critical habitat include recreational and commercial fishing vessels, commercial transport vessels, passenger vessels, recreational boats, whale-watching boats, research vessels and military vessels (e.g., surface ships and submarines). Helicopters and low-altitude aircraft also fly over the critical habitat. Results of human activities that occur within or near the designated critical habitat for northern right whales, and that may disrupt the essential life functions that occur there, include, but are not limited to:

1. Mortality due to collisions with large vessels: Seven percent of northern right whales identified have propeller scars from a large vessel (NMFS, 1992);

2. Entanglement and mortality due to commercial fishing activities: More than one-half of all cataloged animals have scars indicative of entanglements with fishing gear, resulting in scars, injuries, and death. Fishing nets and associated ropes may become entangled around a flipper, at the gape of the mouth, or around the tail (Kraus, 1985, 1990). Gill nets are believed to be the primary cause of scars and injuries related to fishing gear, although whales have also become entangled in drift nets and lines from lobster pots, seines and fish weirs (Kraus, 1985). Fishing practices and locations may need to be managed more closely when the fishing season overlaps with the presence of right whales.

3. Possible habitat degradation through pollution, sea bed mining, and oil and gas exploration: Exploration and development for oil, gas, phosphates, sand, gravel, and other materials on the outer continental shelf may impact northern right whale habitat through the discharge of pollutants (such as oil, drilling muds and suspended solids); noise from seismic testing, drilling and support activity; and disturbance of the environment through vessel traffic and mining rig activity. If these types of activities are proposed, their timing and location may also require special

management considerations, including the establishment and maintenance of buffer zones.

4. Pollutants may also affect phytoplankton and zooplankton populations in a way that decreases the density and abundance of specific zooplankton patches on which northern right whales feed. In addition, pollution may affect the feeding patterns and habitat use of other components of the marine ecosystem, which in turn could impact food and habitat availability for the northern right whale. Pollutants may also have direct toxic effects on the whale. Monitoring of known and potential pollution and discharge sources in this essential habitat may be necessary to insure that these sources are not affecting prey species abundance or composition, or the northern right whale's ability to gain maximum benefit from use of the area.

Turbulence associated with vessel traffic may also indirectly affect northern right whales by breaking up the dense surface zooplankton patches in certain whale feeding areas. Special vessel traffic management or restrictions may be necessary in certain areas when northern right whales are present.

5. Possible harassment due to whale-watching and other vessel activities; and

6. Possible harassment due to research activities (on permitted sites and during specified times throughout the year).

The effect of any of these activities on individual whales or on their habitat could have consequences that may impede the recovery of the northern right whale population. Therefore, special management considerations may be required to protect these areas and promote the recovery of the northern right whale. The following are some, but not necessarily all, of those activities that occur in each of the designated critical habitat areas.

Cape Cod Bay: In CCB, vessel traffic associated with the Cape Cod Canal, the Boston Harbor traffic lanes, dredging and disposal traffic, recreational boating, commercial fishing and whale-watching activities comprise the majority of the vessel activity in the immediate area. Of these, recreational boating, commercial fishing and whale-watching contribute greatly to the level of activity in the critical habitat.

Recreational boating begins with the onset of warmer months, particularly in June. Commercial fishing vessels and gear are dominated by the lobster industry, which does not typically begin its season until the middle of June. Whale-watching boats, ferries and other vessels increase activity in the area with the onset of warmer weather and the tourist season, which typically begins in May or June and ends no later than November.

Discharges from municipal, industrial and non-point sources, dredging activities, dredge spoil disposal and sewage disposal may degrade essential habitat in Massachusetts Bay/northern CCB. The cumulative effects to baleen whales (including right whales) by these activities may affect the northern right whale in Massachusetts Bay/northern CCB.

Great South Channel: In the GSC, vessel traffic and fisheries constitute the majority of activities within the critical habitat area. However, in this area, these activities are not contingent on warm weather. Shipping vessel traffic lanes for Boston Harbor are used throughout the year to import and export metal, salt, fuel and a variety of other products. Similarly, the commercially important fishing grounds on Georges Bank involve year-round vessel traffic from the mainland through right whale essential habitat to the fishing grounds. The bottom-trawl is the most dominant type of fishing gear used in this area. It is not known whether the bottom-trawl, or any other type of fishing gear, has an impact on the whales' habitat. Mesh sizes used in this area do not pose an immediate threat to the whales' planktonic food supply.

Southeast United States: Vessel traffic and fisheries are the major activities in the SEUS calving grounds. Major commercial shipping and military ports operate throughout the winter/calving area. The majority of commercial fishing vessels that use the inshore waters to harvest shrimp and other commercially important species use these and other neighboring ports as well. Recreational boating traffic is also fairly extensive.

Expected Impacts of Designating Critical Habitat

A critical habitat designation directly affects only those actions authorized, funded, or carried out by Federal agencies. Federal agencies that may be affected by critical habitat designation of these areas include, but are not necessarily limited to, the U.S. Coast Guard, Environmental Protection Agency, U.S. Army Corps of Engineers, NMFS (including the New England Fishery Management Council (NEFMC) and South Atlantic Fishery Management Council), National Ocean Service, Office of Coastal Zone Management, Minerals Management Service and the U.S. Navy. For a discussion of the expected impacts and significance of critical habitat designation, see "Significance of Designating Critical Habitat" in the proposed rule (58 FR 29187, May 19, 1993).

Consideration of Economic and Other Factors

NMFS prepared an EA on its proposed designation of critical habitat, based on the best available information, that described the environmental and economic impacts of alternative critical habitat designations. The economic impacts considered in this analysis were only those incremental economic impacts specifically resulting from a critical habitat designation, above the economic and other impacts attributable to the listing of the species, or resulting from authorities other than the ESA. Listing a species under the ESA provides significant protection to the species' habitat through the no-jeopardy standard of section 7 and, to a lesser extent, the prohibition against taking of section 9, both of which requires an analysis of harm to the species that can include impacts to habitat of the species. Therefore, the additional direct economic and other impacts resulting from the critical habitat designation are minimal. In general, the designation of critical habitat reinforces the substantive protection resulting from the listing itself.

Designation of critical habitat in these areas may result in an increase in administrative time and cost to Federal agencies that conduct, authorize or fund projects in the designated areas. However, these agencies are currently required to address habitat alteration issues in section 7 consultations, and as a result, any increase in administrative time or cost is expected to be minimal.

Designated Critical Habitat; Essential Features

NMFS, by this final rule, designates areas essential for the reproduction, rest and refuge, health, continued survival, conservation and recovery of the northern right whale population. The following areas are designated as critical habitat:

Great South Channel: The area designated as critical habitat in these waters is bounded by the following coordinates: 41°40′N/69°45′W; 41°00′N/69°05′W; 41°38′N/68°13′W; 42°10′N/68°31′W.

Cape Cod Bay: The area designated as critical habitat in these waters is bounded by the following coordinates: 42°04.8′N/70°10.0′W; 42°12′N/70°15′W; 42°12′N/70°30′W; 41°46.8′N/70°30′W; and on the south and east, by the interior shoreline of Cape Cod, MA.

Southeastern United States: The area designated as critical habitat in these waters encompasses waters between 31°15′N (approximately located at the mouth of the Altamaha River, GA) and

30°15'N (approximately Jacksonville, FL) from the shoreline out to 15 nautical miles offshore; and the waters between 30°15'N and 28°00'N (approximately Sebastian Inlet, FL) from the shoreline out to 5 nautical miles.

Modifications to this critical habitat designation may be necessary in the future as additional information becomes available.

References

Most references used in this final designation can be found in the Final Recovery Plan for Right Whales (NMFS, 1991), and in the EA. Additional references found in the preamble to this rule are available upon request (see **ADDRESSES**).

Comments and Responses

NMFS solicited information, comments and recommendations from concerned government agencies, the scientific community, industry and the general public (58 FR 29186, May 19, 1993). NMFS considered and incorporated, as appropriate, all comments received during the comment period (ending on August 31, 1993) and all comments received during public hearings on the proposed rule prior to making this final designation.

During the comment period and at the public hearings, NMFS received a total of 35 sets of comments from regional and national environmental organizations; county, state and Federal agencies; and associations representing regional commercial and sport fisheries. NMFS also received more than 50 written and oral presentations (at public hearings) regarding the proposed designation of critical habitat for northern right whales.

Comments received by NMFS generally fell into one of the following categories: (1) Those who were in favor of the designation as it was proposed; (2) those who were in favor of the proposed designation, but recommended that additional regulatory actions be taken at the time of designation to protect northern right whales; (3) those who were in favor of designating critical habitat for northern right whales, but recommended expanding the boundaries of the critical habitat; (4) those who were not in favor of the designation because it was not necessary, given the protective measures for right whales that are being implemented through section 7 of the ESA; and (5) those who were not in favor of the critical habitat designation because it may lead to further restrictions on a specified activity.

Most comments received by NMFS from private individuals, environmental organizations, and state agencies supported the critical habitat designation for northern right whales. Several commenters suggested that the proposed rule lacked clear conservation measures to ensure the recovery of the northern right whale. Many of the recommendations were duplicative of those of other commenters; therefore, individual comments were combined and addressed together below, unless otherwise specified.

Comment 1: One commenter recommended that NMFS designate a Northern Right Whale Recovery Plan Implementation Team for the coastal calving grounds off Florida and Georgia. The commenter further suggested representative agencies and organizations that might participate on this team.

Response: On August 26, 1993, NMFS convened a meeting to discuss the monitoring program that needed to be in place to protect northern right whales on their winter ground, prior to their winter arrival. During this meeting, the Southeastern U.S. Right Whale Recovery Plan Implementation Team was formed. The team consists of representatives from the Georgia Department of Natural Resources (Chairman); Florida Department of Environmental Protection; NMFS/Southeast Fisheries Center and Southeast Regional Office; U.S. Navy, Naval Air Station, Jacksonville, FL; U.S. Navy, Submarine Group, Kings Bay, GA; Georgia Ports Authority; Canaveral Port Authority; Glynn County Commission, Glynn County, GA; University of Georgia; U.S. Army Corps of Engineers (ACOE), South Atlantic Division; U.S. Environmental Protection Agency (EPA); Port of Fernandina, Fernandina, FL; and the U.S. Coast Guard.

NMFS is also coordinating the development of a Right Whale Recovery Plan Implementation Team for the Northeastern United States. Recovery Plan implementation for the northern right whale has been ongoing at some level within NMFS, Northeast Region (NER), since December 1990, and has involved agency staff and scientific experts in the area. The most recent Massachusetts Water Resources Authority outfall Biological Opinion (issued September 8, 1993), and associated conservation recommendations, are part of the recommendations and programs that have been instituted in the NER that address Right Whale Recovery Plan tasks. The Northeast Implementation Team will address the possible cumulative impacts to right whales from all activities in Massachusetts Bay.

Comment 2: Several organizations recommended that NMFS implement an early warning system, consisting of daily surveys (from December 1 through March 31) of the known wintering grounds. Several organizations also recommended that monitoring be conducted along the migratory route of this species.

Response: "Early warning systems" for right whales in the southeast United States were first developed through ESA section 7 consultations between NMFS and ACOE, Jacksonville District, as a result of dredging operations at the Navy's submarine channel at Kings Bay, GA; the Port of Fernandina, FL; the Port of Jacksonville, FL; the Naval facilities at Mayport, FL; a navigation channel at St. Augustine, FL; and numerous beach disposal projects using offshore disposal sites throughout this area. Measures to protect right whales have included daily aerial surveys at the time that the dredges are in operation during the calving season. If a right whale is seen within a 16-kilometer (k) radius of dredge and disposal areas, dredges and support vessels are required to carry an observer during daylight hours and to reduce speeds at night to reduce the likelihood of a collision with a whale. However, these precautions were only in place while the dredging operations were being conducted, not throughout the entire winter calving period. Therefore there were gaps in the aerial survey coverage, and thus in protective measures for the whales.

In December 1993, the U.S. Navy and the U.S. Coast Guard provided funding to conduct aerial surveys during the remainder of the time that the whales were in the calving area; the area of concern from the Savannah River south to approximately Jacksonville, FL, was surveyed through March 1994. The ACOE will continue to provide coverage during those periods when hopper dredges are active. Therefore, the whale sightings are passed on to appropriate agencies if a survey finds whales in or near a navigational channel, vessels are asked to proceed at minimum safe operational speeds and communicate locations of the whale so other vessels can avoid them. This procedure will continually be reviewed and revised through efforts of the Southeast Implementation Team. NMFS intends to continue cooperative efforts with the U.S. Navy, U.S. Coast Guard, the ACOE, and the implementation team to conduct daily aerial surveys throughout the calving season and to operate the early warning system to reduce the likelihood of ship strikes.

It is unlikely that right whales can be monitored throughout their range for the purpose of protecting them from ship strikes. NMFS is developing a research program that may include satellite tracking of tagged northern right whales to determine those areas (winter and summer) where right whales occur, but which are unknown at this time.

Comment 3: The following comments were made by several commenters. They all address additional activities that the commenters felt should be developed to protect right whales, or activities that should be prohibited, restricted or modified, primarily in the SEUS, to protect the whales further. These comments are addressed together.

a. Many commenters indicated that restrictions or modifications of shipping lanes and shipping practices need to be made at the time of designation. The suggested modifications or changes included the seasonal relocation of shipping lanes, a requirement that vessels entering or leaving ports adjacent to the right whale winter grounds use direct routes (perpendicular to the shoreline at the port entrance) from December 1 through March 31, restriction of shipping and vessel speeds to allow whales to avoid oncoming ships or allow ships to avoid hitting whales, and a requirement of dedicated onboard observers to maintain watch so that vessel collisions with right whales are avoided when ships are transiting through right whale wintering habitats during months when the whales occupy these habitats.

b. Several commenters recommended the development of education programs for shipping and public interests. Others suggested that NMFS provide to the shipping companies illustrated instructions (in many languages) on the importance of protecting right whales in these waters, and on safe vessel operation in the winter calving areas. They further suggested that these instructions be posted for the crews of all ships operating in U.S. waters, and that these safety measures should be enforced. It was suggested that the U.S. Coast Guard should include whale safety in its small boating course, and in required courses for commercial captains and boat operators.

c. Several commenters suggested that NMFS should define right whale critical habitat boundaries on NOAA navigational charts, and the notice of the designation and occurrence of whales need to be included seasonally in the Notice to Mariners and other publications, alerting shipping interests to the potential presence of right whales in the area at certain times.

d. Several commenters recommended that NMFS ban dredging and seabed mining in the right whale calving grounds and feeding grounds, and along the entire migratory route. Many comments supported restrictions on dredging, if necessary, to protect right whales; gas and oil exploration and the dumping of contaminated waste within the calving areas described by the critical habitat boundaries; dumping of contaminated dredge spoils and industrial waste; and the construction of submerged or emergent structures within known right whale habitats.

e. Several commenters suggested that the discharge of pollutants at the mouths of rivers that empty into the calving grounds should be monitored for possible effects on the habitat.

Response: Regarding comments 3a.–3c., the Southeastern U.S. Right Whale Recovery Plan Implementation Team (see Comment 1) formed committees to examine many of the issues discussed in the comments. Committees that were formed cover the following topics: Education/Awareness; Early Warning Surveys/Communication; Funding of Surveys; Research; and Relocation of Ocean Disposal Sites. A second meeting of the Implementation Team occurred on December 14, 1993; the following updates from each of the committees are summarized from that meeting

Education/Awareness Committee: The Canaveral Port Authority developed an endangered species pamphlet covering whales, manatees and turtles, which is being distributed regionally. As a group, the Port Authorities developed a series of posters describing the time right whales are in their waters, a phone number to contact if a whale is seen, and mention of right whale habitat. This poster is being distributed by the harbor pilots when they board a vessel for navigation.

A standard brochure on right whales in the SEUS has been developed with input from the Georgia DNR, Florida DEP, New England Aquarium and others. The brochure is designed for boaters (commercial and public), but is also to be given to ship masters by harbor pilots. The Port Authorities, U.S. Coast Guard, U.S. Navy, Georgia DNR and Florida DEP can use this brochure to increase public awareness and education. Financial support for this brochure comes from the participating agencies.

The Georgia DNR and U.S. Coast Guard developed a local Notice to Mariners about right whale calving grounds. This notice is broadcast four times daily by the U.S. Coast Guard on VHF. Broadcasts ran from December 6, 1993, through March 31, 1994. A slightly longer version is published in the local Weekly Notice to Mariners. This notice may also be published daily, along with the tides and weather, in regional newspapers. The Annual Notice to Mariners also has information on this subject.

Several press releases were issued beginning when the first right whales were sighted on December 4, 1993. A regional press release was also issued describing the implementation team, members, persons to contact if a whale is seen and other information on the need for protection of right whales in the SEUS.

The University of Georgia is surveying local groups to ensure that there is no duplication in the development of educational materials on right whales, and to provide a network to combine and coordinate efforts.

The Savannah Area Chamber of Commerce suggested that treating a sighted right whale as though it were another ship (slowing down, changing course and anchoring to avoid collisions with right whales) should be formalized for all ports in the southeast (i.e., treating right whales as vessels under the nautical rules of the road). They further stated that injury to, and interference with right whales can best be avoided by continuing the education of ship's captains, and through ongoing cooperation between the port, its pilots and the Georgia DNR.

Early Warning and Communication Committee: An early warning network has been developed with aerial surveys at the core of the network (see Comment 2). A communication flow chart has been developed to illustrate how information regarding whale sightings should be channeled between the appropriate agencies/groups. This is currently considered the best communication scheme for relaying right whale sightings from aircraft to land-based stations, and back to surface vessels. This communication network is essential to the early warning system and alerts mariners to the presence of right whales in the SEUS. Information disseminated by this system is updated daily as whales are located during the aerial surveys.

Regarding Comment 3d., many of the suggested activities may be authorized, funded or conducted by Federal agencies. The responsible Federal agency active within the range of the northern right whales is required to consult with NMFS regarding its projects and activities under section 7 of the ESA. If the activity is found likely to jeopardize the continued existence of the species, directly or through habitat degradation, reasonable and prudent alternatives would be offered that could include restrictions. Even if the activity is not likely to jeopardize the continued

existence of the species, NMFS is required to provide an incidental take statement that identifies the impact of any incidental taking of northern right whales by the action agency, and specifies reasonable and prudent measures, and terms and conditions that must be complied with, to minimize such takings. These measures may include restrictions upon the activity. In addition, private entities are prohibited from taking an endangered species pursuant to section 9 of the ESA, which may include harm to the species caused by habitat degradation. In this regard, such activities are already prohibited as a result of listing.

Regarding Comment 3., NMFS agrees that discharge of pollutants at the mouths of rivers that empty into the calving grounds should be monitored for possible effects on the habitat. A designation of critical habitat may assist Federal agencies in evaluating the potential environmental impacts of their activities on northern right whales and their critical habitat. The designation may also help focus state and private conservation and management efforts in those areas.

Comment 4: Two commenters recommended that a "distance buffer" be established around northern right whales. One recommended that a minimum approach distance of 100m to 300m should be established for all vessels around right whales.

The second commenter recommended that NMFS establish around every northern right whale, in any area designated as critical habitat, a 500m radius "protection zone," and prohibit any vessel or person from entering or knowingly remaining within this zone. The commenter further suggested that such a buffer zone is consistent with similar rules already adopted by NMFS and cited as examples the minimum distance rule for humpback whales (*Megaptera novaeangliae*) in Hawaii (50 CFR 222.31) and the 5.5 k buffer zone established around Steller sea lion (*Eumetopias jubatus*) rookeries and major haulouts in Alaska (50 CFR 226.12). The commenter continued that such protection zones for the area designated in Cape Cod Bay and Stellwagen Bank would be consistent with existing Massachusetts regulations (322 CMR 12.00 *et seq.*), which require that no one approach or remain within 500m of a right whale in state waters.

Response: In both cases, the purpose of the suggested buffer zones would be to ensure that northern right whales are undisturbed as much as possible throughout their range, and to keep vessels far enough away so that there is no danger of a collision between whales and vessels. Critical habitat designations reflect specific determinate geographical areas containing physical or biological features essential to the conservation of the species. While NMFS recognizes that the area around each whale is important, it is not appropriately the subject of a critical habitat designation. Rather, such buffer zones should be established through separate rulemaking, similar to the special prohibitions for humpback whales in Hawaii.

Comment 5: One commenter suggested that NMFS implement research and monitoring programs focused on: (1) Behavioral changes (of northern right whales) associated with the possible impacts of vessel traffic, noise and whalewatching; or (2) the effects of dredging activities and their associated vessel traffic, siltation and noise in the southeastern United States through continued observation of dredge activity and aerial surveys of right whales in and adjacent to buffer zones around dredging operations; (3) the impact of pollution on phytoplankton and zooplankton abundance—specifically the impact of the Boston Harbor effluent outfall; and (4) the effects of whalewatching activities on the northern right whale. The commenter recommended that, if necessary, NMFS promulgate regulations to mitigate the effects of these activities.

Response: In addition to the monitoring program implemented by the Southeast Implementation Team, NMFS is developing a 3–5 year research plan that will focus on research needs identified as priorities in the Northern Right Whale Recovery Plan. The current research program is the result of several meetings that occurred on April 14–15, 1992, in Silver Spring, MD; June 18, 1993, in Brunswick, GA; and July 16, 1993, in Silver Spring. These meetings established the following research priorities:

a. To determine the wintering location(s) of most northern right whales in the northwest Atlantic through the deployment of satellite tags on selected female right whale;

b. to determine daily movements within the wintering/calving area. Tagging with VHF tags in the SEUS could determine the daily movements of these animals. This information could be useful to develop a long-term monitoring program to reduce ship strikes in the SEUS;

c. to determine the unknown location of a third summering area. There are three matrilineal stocks of northern right whales recognized. One of the stocks does not visit the Bay of Fundy, but is seen in the GSC and CCB during spring, and in the SEUS in winter. Satellite tracking a tagged female from the third matriline (these have already been determined from mtDNA analyses and photoidentification) in the GSC or CCB in the spring might lead to the location of the other summer location of northern right whales in the North Atlantic.

d. to identify "bottlenecks" in the rate of recovery. The reasons for the northern right whale's low reproductive rate relative to southern hemisphere right whales are unknown. One theory is that there is too much inbreeding as a result of the extremely depleted population. The extent of inbreeding can be determined from genetic/molecular identification through mtDNA biopsy sampling and sexing using molecular techniques; and

e. to determine the best location and methods to monitor recovery of this population.

NMFS is not considering broad-based whalewatching regulations at this time, but may consider minimum approach distances specific to northern right whales as part of the recovery planning process (see Response to Comment 3).

Comment 6: One commenter stated that collisions with ships and entanglement in fishing gear may be rare from the perspective of total fishing activity and vessel traffic in the various areas. However, at least two right whales were struck and killed in the past 3 years. That means that about 2 percent (a much higher rate for calves) of the right whales known to occur in the area since late 1989 have been killed by a collision with a vessel. This percentage may underestimate the actual percentage struck during the period because many whales, including calves, have been seen with propeller scars. In the view of the commenter, this information demonstrates a significant risk from the perspective of right whales in this area, especially since the threat is concentrated on the reproductive core of the population and the calves, essential for population recovery.

The commenter recommended that NMFS expand the proposed critical habitat designation to include conservation measures that would reduce the likelihood of right whales being struck by vessels or becoming entangled in fishing gear. The commenter continued that the designation of critical habitat will serve as a warning to those who operate ships in these areas that steps must be taken to reduce the risk of collision with right whales. While finding the steps already taken by harbor pilots, ports authorities, the U.S. Navy, the U.S. Coast Guard,

ACOE and others to be encouraging, the commenter believed that more needs to be done.

Response: NMFS recognizes that the loss of each northern right whale has a measurable impact on this population. The first priority of the Southeast Implementation Team was to develop a program to reduce or eliminate ship strikes throughout the whales' wintering area.

Also, the New England Fishery Management Council (NEFMC) has restricted all commercial fishing in Gulf of Maine Groundfish Area I, which roughly covers the GSC, because of the importance of the area for haddock spawning from February 1 to May 31, since 1986. The haddock no longer spawn in that area, but NMFS and the NEFMC have recommended leaving the closure in place for all gillnet gear to protect the northern right whale, and other whale species that use that area in the spring.

NMFS will continue to focus recovery/management efforts on ways to reduce human-induced mortality as a result of ship strikes and entanglement.

Comment 7: One commenter stated that the continued availability of these areas for use by northern right whales is critical to the survival of the species. The commenter further stated that under the authority of the Massachusetts Wetlands Protection Act, Massachusetts has already designated the portion of CCB critical habitat that occurs in Massachusetts waters as "Estimated Habitat" for a State-listed wetland wildlife species. Estimated habitat, under the Code of Massachusetts Regulations (CMR), 310 CMR 10.37, is defined as the estimated geographical extent of the habitats of State-listed species for which an occurrence within the last 25 years has been accepted by the Massachusetts Natural Heritage and Endangered Species Program and incorporated into its official database.

The commenter also stated that regulations have already been promulgated by Massachusetts law to prohibit vessels from approaching within 500m of a right whale in State waters. Fishery measures that reduce the risk of entanglements of marine mammals with fixed gear such as lobster gear and gillnets have also been adopted in Massachusetts. There are moratoria on gillnet and lobster licenses, a limit on the number of lobster pots per fisherman and limits on the length of lobster pot trawls and gillnets. Further restrictions on gillnets, some to complement what the NEFMC is considering to reduce by-catch of harbor porpoise, *Phocoena phocoena*, are being considered.

The commenter believed, however, that a designation of critical habitat at the Federal level would extend comprehensive, interjurisdictional protection to the right whale, a correct approach to conserving the species. The commenter further stated that since, the proposed rule said "fishing practices and locations may require special management considerations when the timing of the fishing season and the presence of the northern right whale overlap," NMFS should work closely with Massachusetts and the NEFMC to assess the need for, and nature of, special management considerations.

Response: NMFS recognizes and appreciates the efforts of the Commonwealth of Massachusetts to protect the northern right whale. NMFS is establishing a Northeast Implementation Team for the Recovery Plan (see Response to Comment 5). It is the intent of NMFS to work closely with these teams to determine for, and effectiveness of, special management measures.

Comment 8: One Federal agency supported the proposed critical habitat designation for the northern right whale, but was concerned that NMFS would be the Federal agency listed as having management responsibilities within the boundaries of Cape Cod National Seashore.

Response: Designation of critical habitat does not create management responsibilities for NMFS, nor does it give NMFS primary jurisdiction over Federal lands included in the critical habitat designation. While a Federal agency may undertake an activity that may affect either the listed species or critical habitat, and may be required to consult with NMFS pursuant to section 7, it is the action agency that decides whether to initiate consultation. Likewise, the action agency determines whether and in what manner to proceed with the action in light of its section 7 obligations and NMFS' biological opinion (See 50 CFR 402.15). NMFS' role is advisory in nature.

For example, while NMFS has responsibility over this listed species, the National Park Service (NPS) at Cape Cod National Seashore has major responsibilities for the long-term preservation of Cape Cod's natural resources, including this federally listed endangered species. As such, the NPS at Cape Cod National Seashore has management responsibilities within the proposed area of critical habitat that overlaps with the legislative boundary of the Cape Cod National Seashore. NMFS believes that the NPS and NMFS can work together on issues pertaining to the northern right whale.

Comment 9: One commenter suggested that two of the proposed critical habitat areas violate the prohibition on habitat designation outside the jurisdiction of the United States. The proposed critical habitat designation in the GSC and portions of the SEUS exceed the 12 nautical mile territorial sea recognized by the United States.

Response: The regulations state that "critical habitat shall not be designated within foreign countries or in other areas outside of the United States jurisdiction" (50 CFR 424.12(h)). The critical habitat designation falls within the 200 mile exclusive economic zone of the United States, and therefore is not outside of U.S. jurisdiction. Furthermore, critical habitat designation may impact the activities of Federal agencies, which are defined as "all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas" (50 CFR 402.02).

Comment 10: Several commenters suggested that the northern boundary of the critical habitat, as recommended by the Recovery Team and proposed by NMFS (58 FR 29186, May 19, 1993), be extended further northward to 32° N latitude, approximately the mouth of the Savannah River. Based on data examined since the Recovery Team reviewed and recommended the critical habitat boundaries that were proposed in the critical habitat designation, the commenter stated that sightings corrected for effort (i.e., the number of right whales counted per survey mile since 1984) indicate that the number of right whales per mile of transect off St. Catherines Island, GA, was comparable to the number observed off Melbourne and Daytona Beach, FL, and greater than that off St. Augustine, FL, areas within the proposed critical habitat.

Several other commenters requested that no extension of the critical habitat include the mouth of the Savannah River be incorporated into a final designation until verified information on the presence of the right whale is publicly provided and a public hearing is held in Savannah, GA, so that the public can have an opportunity to comment. They further urged that any boundary modification be justified on firm scientific grounds, showing significant benefits to right whale recovery.

Response: NMFS believes that the most important winter/calving areas known are within the boundaries identified as critical habitat in the

proposed rule. The greatest number and highest densities of right whales have been observed in the Cape Canaveral region, with the second highest number occurring at the Georgia-Florida border. It is clear, however, that northern right whales occur outside this area, including near the mouth of the Savannah River, during the winter calving period and during their late-winter/spring migration northward.

The monitoring conducted around the mouth of the Savannah River during 1992/1993, and the near-daily monitoring conducted during the winter of 1993/1994 from Savannah south throughout the SEUS to approximately Jacksonville, FL, can be used to examine this issue. In these 2 years of monitoring near the mouth of the Savannah River (total approximately 90 days, 20 in 1992/1993 and approximately 70 thus far in 1993/1994) only four right whales have been sighted. The first sighting, on December 12, 1993, was of three whales moving south. These whales were resighted the following day near Brunswick, GA. The second and third sightings were also followed by resightings off Brunswick. In these cases, the time between resightings was only a few days, indicating that the whales were not remaining near the Savannah River but traveling through the area toward the core of the sighting distribution. Based on these data, NMFS sees no need to include the area as critical habitat at this time. NMFS recognizes that the sighting data is based on only 2 years of information, and that distributions between years can vary dramatically. NMFS will continually examine sighting data and may modify critical habitat boundaries in the future if warranted by additional sighting information.

Comment 11: One commenter suggested that there is a lack of data offered by NMFS supporting the presence of a substantial right whale population off the Cape Canaveral Florida coast (south of False Cape). The commenter cited information in the Recovery Plan for the Northern Right Whale, which indicates that only four sightings within the 5nm proposed habitat have been recorded south of the False Cape area prior to 1989, and questioned whether this is sufficient data on which to base a designation.

Response: The lack of sightings at the southern end of the designated SEUS area is explained, at least in part, by low sampling effort in that area. Sightings corrected for effort indicate that the area around Cape Canaveral may be used by right whales to a greater extent than presented by Kraus and Kenney (1991) and discussed in the Recovery Plan. The data do not support removal of the area from consideration.

Given the need to monitor and manage activities that might impact northern right whales in the area of Cape Canaveral, NMFS believes that it is appropriate to designate this area as critical habitat. The seasonal use, and extent of use, of any area will be considered during the ESA section 7 process on a case-by-case basis, but at present the area in question represents the southern limit to the only known calving area for this species, and is therefore considered critical.

Comment 12: Another Federal agency supported the proposed designation and submitted comments from the particular perspectives of the Gray's Reef National Marine Sanctuary (GRNMS) and the recently designated Stellwagen Bank National Marine Sanctuary (SBNMS).

The GRNMS lies to the north and east of the proposed critical habitat boundary in coastal Georgia; and the commenter recommended that the boundary of the proposed critical habitat be extended northward and seaward to include GRNMS. The commenter stated that Grays Reef is particularly vital to the critical habitat designation because the waters off Georgia and northern Florida serve as calving grounds for this species. The commenter also stated that personnel at GRNMS could provide additional resources for observing and monitoring these whales as part of the Sanctuary's routine operations, as well as provide substantial support to the education and outreach objectives listed in the Northern Right Whale Recovery Plan.

The commenter continued by stating that the recently designated SBNMS overlaps slightly with the proposed critical habitat area (at the northern end of CCB). The commenter felt that the proposed designation, in conjunction with the implementation of the SBNMS, would provide additional opportunities for coordinated efforts to enhance the potential for recovery of this critically endangered marine species. Also, some or all of the "special management considerations or protections" identified in the proposed designation as being potentially required to protect and promote the recovery of the northern right whale population using the Stellwagen Bank environment (i.e., vessel traffic, fishing, pollution, mining and gas exploration) are also addressed by the SBNMS management plan. With the exception of fishing, these activities are currently either regulated directly, or are listed as subject to sanctuary regulation.

Furthermore, the Marine Protection, Research and Sanctuaries Act (title III), as amended in 1992, established the requirement for consultation between the Secretary of Commerce (NOAA) and any Federal agency proposing to undertake an activity in the vicinity of a National Marine Sanctuary that may result in adverse impacts on sanctuary resources or qualities, including private activities authorized by licenses, leases or permits. Such consultation must occur prior to initiation of the proposed activity. From the perspective of administrative structure, therefore, there are opportunities for both NMFS and NMSP to coordinate their programmatic objectives.

Response: NMFS does not believe that extending the boundary of the SEUS critical habitat seaward to include the GRNMS is necessary (see Response to Comment 10). However, NMFS does agree that the Grays Reef program could provide additional monitoring of these whales, substantial support to the education and outreach objectives listed in the Northern Right Whale Recovery Plan and additional opportunities for coordinated efforts to enhance the potential for recovery of this critically endangered marine species.

Comment 13: A commenter recommended that NMFS designate Delaware Bay as critical habitat for the northern right whale, stating that Delaware Bay is habitat that is representative of the historic geographical and ecological distribution of the species.

Response: The criteria specified under 50 CFR 424.12 to be considered in designating critical habitat, and described in the preamble to the proposed designation, must consider the requirements of the species, including habitats that are representative of the historic geographical and ecological distributions of the species. Section 3(5)(A)(ii) of the ESA states that areas outside the current geographical range of a species can be designated if the Secretary determines that such areas are essential for the conservation of the species. The regulations to the ESA interpret this provision to mean that the Secretary shall designate as critical habitat areas outside the geographic area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(c)). Even where the area is presently occupied by the species, section 3(5)(c) states that, with certain exceptions determined by the Secretary, "critical habitat shall not include the entire geographic area which can be occupied by the * * * species."

Although known to have been used by right whales, it is not completely understood to what extent Delaware Bay was used, or whether this area would ever have been considered critical habitat. It is known, however, that the area is now bypassed by northern right whales during their annual movements. NMFS believes that the current high-use areas are identified in this rule, but recognizes that the areas designated represent the minimal space required by right whales to ensure population growth. Designating Delaware Bay as critical habitat would not enhance the likelihood of recovery for this species. If evidence to the contrary becomes available, critical habitat boundaries can be modified.

Comment 14: Several commenters did not oppose the designation of the critical habitat designation for the northern right whale, but were concerned with the "general" language of the proposed designation and felt there was no real need for it. Rather, they felt that a public awareness program for shipping interests is sufficient. They further expressed concern that the language of the preamble to the proposed designation stating that "habitats will be given special consideration in section 7 consultations" would become a vehicle to attack offshore dredge disposal and port expansion. The commenters requested that NMFS reconsider the need for the proposed designation as it applies to the southern coastal area, given that there is already an active task force working to prevent collisions between vessels and the northern right whale and that the other protections of the ESA still apply.

Finally, one of the commenters wanted the channel, fairways to sea lanes, disposal sites, access routes to disposal sites and nearshore berm areas in the SEUS to be excluded from the critical habitat designation. The commenter noted that these areas can be excluded if the overall benefits of exclusion outweight the benefits of designation, unless the exclusion results in the extinction of the species.

Response: Federal agencies active within the range of the northern right whales are already required to consult with NMFS regarding projects and activities that may affect the species pursuant to section 7 of the ESA. Federal agencies are required to evaluate their activities with respect to northern right whales and to consult with NMFS prior to engaging in any action that may affect the critical habitat to ensure that their actions are not likely to result in its destruction or adverse modification. Regarding the SEUS critical habitat specifically, these actions are being reviewed by the Southeast Implementation Team, through section 7 consultations and agreements already in place, and through the expanded efforts of the Implementation Team to reach the private and public sectors.

Finally, frequent travel by commercial vessels in these areas represents a considerable threat to northern right whales. Therefore, NMFS does not agree that corridors frequently traveled by vessels within the designated critical habitat should be excluded.

Comment 15: One federal agency was concerned that the proposed designation was neither appropriate nor necessary to preserve the species. The commenter felt that the current proposal merely designates areas of highest concentration of the whales and lists their characteristics, rather than considers the physical or biological features that are essential to the conservation of the species. To warrant critical habitat designation, the commenter felt that a better understanding of the species' biological and physical requirements is needed.

Response: NMFS agrees that critical habitat designation must include areas meaningful to the specie's conservation. Consequently, NMFS is not designating the northern right whale's entire range, which was suggested by several commenters, but is focusing attention on particular areas that have essential features and that may be in need of special management consistent with the ESA and implementing regulations. The section of this preamble entitled "Essential Habitat of the Northern Right Whale" has been expanded from the proposed rule to address those biological and physical features and to identify those principal constituent elements, such as feeding sites, breeding grounds and calving areas within the designated areas, that are considered essential to the northern right whale. The section in the proposed designation entitled "Need for Special Management Consideration" summarizes the justification for the designation of these three special areas.

NMFS has concluded, based on the best available scientific evidence and the biological and ecological needs of the species, that the areas in coastal and offshore waters that are being designated as critical habitat for northern right whales contain the appropriate environmental and biological characteristics required by the species to recover, and may warrant consideration of special management measures.

NMFS has also concluded that the designation of waters within the SEUS is warranted, given the geographic concentration of northern right whales during the winter/calving period, the extreme endangered status of this species, the importance of the area to the reproductive potential (recovery) of the species, the possible impacts of commercial activities on right whales that may require monitoring and the fact that this area may be in need of special management measures.

The potential for special management considerations does not necessarily mandate restriction or elimination of activities. Close monitoring of activities and additional research also constitute special management considerations. The existing information, discussed in the preamble to this final designation, supports this designation of critical habitat.

Comment 16: Another Federal agency commenter, citing the EA prepared by NMFS, stated that the direct impact of the designation affects Federal agencies and only duplicates that protection provided under the section 7 jeopardy provision. According to the commenter, the primary benefit cited for the proposed designation is increased awareness. The commenter believed that previous consultations with Federal agencies and meetings with the public have heightened awareness, and therefore, that more regulations are unnecessary. In summary, the commenter opposed the designation. However, the commenter wanted to facilitate more progressive conservation of the species and to cooperate in the development of interagency management plans to reduce impacts to the whales in high density areas. The commenter believed such measures will allow NMFS and other Federal agencies more flexibility in advancing recovery of the northern right whale.

Response: NMFS restates that, while designating critical habitat helps focus the attention of Federal agencies on the importance of a designated area for an endangered species, state and private agencies may also give special consideration toward conservation and management actions in these areas. A designation of critical habitat provides some incremental protection to northern right whales in those cases where the action may not result in a direct impact to individuals of a listed species (e.g., an action occurring within the critical area when a migratory species is not present, or when an activity is conducted outside the designated area), but may affect the critical habitat.

Finally, NMFS agrees with the commenter that a more progressive conservation program to protect this species is necessary, and that the development of interagency

management plans to reduce impacts to the whales in high density areas is the best approach. Therefore, NMFS will continue to work through the Southeast Implementation Team and through ongoing section 7 consultations to advance recovery efforts for northern right whales in these waters. NMFS appreciates the efforts that have already been made toward protecting these animals, and believes continued research and management discussions will result in a cost-effective, flexible program that will enhance the recovery of the northern right whale.

Comment 17: One commenter supported reasonable activities to protect the right whale at an acceptable cost and understood that the designation will not, in itself, impose additional regulations affecting activities within the habitat area. The commenter shared the concerns of other port operators that designation of critical habitat may lead to adoption of rules regulating the speed and routes of commercial vessels which may cause vessels to leave these ports at great economic cost to the port.

The commenter was concerned that all proposed special management measures that could impose increased costs should be adequately evaluated to assure that resulting benefits justify those costs, and that measures are implemented in the most cost-effective manner. The commenter suggested that effective alternative protection methods with significantly less cost may exist, although it did not provide specific recommendations.

This commenter has joined together with others to institute an education and information dissemination plan designed to protect the right whale. The commenter believed that this cooperative effort is the method most likely to be effective in protecting the right whale at reasonable cost in northern Florida and southern Georgia coastal waters.

Response: NMFS does not expect any additional restrictions on use of the areas as a result of this designation. Therefore, direct economic impacts associated with this designation are expected to be minimal.

NMFS agrees that there may be alternative protection methods. The possibility of such alternatives, however, does not eliminate the need to designate critical habitat. These should be brought to the attention of the Southeast Implementation Team, which can review and evaluate them.

Comment 18: One commenter was concerned about the potential effects of this designation on beach nourishment projects done in conjunction with the ACOE. Currently the commenter and the ACOE are studying the feasibility of beach nourishment at several eroding areas of the Atlantic shoreline. The commenter continued that the potential window for beach nourishment projects has already been limited by the presence of essential nesting habitat for endangered and threatened species of sea turtle. The nesting seasons runs from May 1 through October 1 of each year, limiting the timeframe for nourishment projects to the winter months.

Another Federal agency stated that any hopper dredge restrictions implemented to avoid the December through March time period of right whale calving and presence in the area would be burdensome. The commenter encouraged working out a timeframe that would allow use of a hopper dredge and take into account the winter right whale calving season and the summer period of high abundance for Kemp's ridley turtle (*Lepidochelys kempii*) and manatee (*Trichechus manatus*) in the Kings Bay area.

Response: NMFS realizes that the present dredging period was scheduled to accommodate the presence of several species of sea turtles in these waters, and also recognizes the seasonal limits for beach nourishment projects. The present seasonal restriction on dredging is an essential management measure, given the increased densities of sea turtles in coastal waters during the warmer months.

The designation of critical habitat for right whales will not affect the scheduling of this activity. NMFS does not intend to alter the present schedule through this designation, but rather will continue to require the present level of monitoring of dredging activities during winter months to reduce impacts to northern right whales. Over the years, there have been several very near misses of right whales with dredges that were avoided due, at least in part, to observer coverage on the dredges.

Comment 19: Several organizations and individuals had comments regarding commercial fishing restrictions. One commenter recommended seasonal restrictions on set-gillnet fisheries and multiple trap American lobster, *Homarus americanus*, fisheries within known right whale habitat, and felt that fines and enforcement procedures for individuals violating this and other restrictions should be mandated.

Another commenter recommended that NMFS expand the rule to include conservation measures to reduce the likelihood of right whales being struck by boats or becoming entangled in fishing gear. Specifically, the commenter recommended that NMFS prohibit the use of unattended drift and sink gillnets in all three areas being designated as critical habitat during the seasons that right whales are likely to occur in the area.

Another commenter suggested that unattended use of gillnets should be prohibited from December 1 through March 31 (the time that northern right whales are in the area), but that commercial fishing need not be restricted on the winter grounds.

NMFS also received several comments from individuals and organizations recommending against designating critical habitat because they believed it would lead to further restrictions of fishing activities. One such commenter asserted that the desigation may eventually result in the halting of recreational fishing outside Sebastian Inlet, FL, and for that reason was opposed to designating critical habitat. Another commenter felt that the designation of critical habitat would increase regulation of commercial fishing and for that reason opposed the designation.

Another commenter stated that commercial fishermen throughout the SEUS support efforts to protect the northern right whale through participating in whale sighting programs, and by radioing positions of whales to other vessels to avoid collisions. Thus, the commenter felt declaring this area as critical habitat was not necessary to avoid collisions, and may unnecessarily affect fishermen as well as other commercial activities.

Response: As stated in the proposed critical habitat designation, the only direct impact of a critical habitat designation is through the provisions of section 7 of the ESA, which applies only to those actions authorized, funded or carried out by Federal agencies. This final critical habitat designation contains no land use or fishing regulations, and will not directly affect private activities. Even where there is Federal involvement, NMFS anticipates that this final critical habitat designation, by itself, will not restrict private activities in a manner or to an extent that these activities are not already affected as a result of the listing of this species as endangered. If, in the future, NMFS determines that restrictions on human activities are necessary to protect northern right whales or their habitat, such action would be preceded by an opportunity for public review and comment.

Comment 20: One commenter stated that pollutant discharges in CCB may represent a continuous source of

degradation to essential habitats. Sewage discharges, dredging activities, dredge spoil disposal and non-point sources all contribute contaminants into this relatively shallow and extraordinarily productive environment. The commenter further stated that the Massachusetts Water Resources Authority (MWRA) is in the process of combining, upgrading and relocating its outfalls approximately 15km out into Massachusetts Bay, or roughly 40km to the north of the critical habitat boundary. The commenter felt that research should be continued and broadened to address all aspects of the species' biology, behavior and habitat requirements, as well as the specific sources of pollution that threaten to diminish the quality of the habitat for northern right whales.

The commenter stated that in CCB there is a need to establish a water quality monitoring program that focuses on endangered species and incorporates sampling of critical parameters at the appropriate spatial and temporal scales.

Response: As previously stated, NMFS is coordinating the development of a Right Whale Recovery Plan Implementation Team that will address the possible impacts to right and humpback whales from activities in Massachusetts Bay that may affect CCB (see Comment 5).

Comment 21: One Federal agency outlined those protective measures that have been developed over the years through ESA section 7 consultations with NMFS and commended the efforts of NMFS, Southeast Regional Office, in initiating discussions with EPA, Region IV, to propose moving the Kings Bay ocean dredged material disposal site closer to the navigation channel. A closer disposal site would reduce the distance traveled by hopper dredges, thereby reducing the potential for collisions with right whales.

The commenter did not anticipate additional restrictions on these activities because of the critical habitat designation.

Response: NMFS will continue to work with all Federal agencies through the section 7 consultation process on all protected species issues to ensure the continued recovery and protection of endangered and threatened species.

Classification

It has been determined that this rule is not significant for purposes of E.O. 12866.

NOAA Administrative Order 216–6 states that critical habitat designations under the ESA generally are categorically excluded from the requirements to prepare on EA or Environmental Impact Statement. However, in order to more clearly evaluate the minimal environmental and economic impacts of critical habitat designation versus the alternative of a no-critical habitat designation, NMFS has prepared an EA. Copies of the EA are available on request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: May 27, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 226 is amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. New § 226.13 is added to subpart B to read as follows:

§ 226.13 North Atlantic Ocean.

Northern Right Whale *(Eubalaena glacialis)*

(a) *Great South Channel.* The area bounded by 41°40′ N/69°45′ W; 41°00′ N/69°05′ W; 41°38′ N/68°13′ W; and 42°10′ N/68°31′ W (Figure 6 to part 226).

(b) *Cape Cod Bay, Massachusetts.* The area bounded by 42°04.8′ N/70°10′ W; 42°12′ N/70°15′ W; 42°12′ N/70°30′ W; 41°46.8′ N/70°30′ W and on the south and east by the interior shore line of Cape Cod, Massachusetts (Figure 7 to part 226).

(c) *Southeastern United States.* The coastal waters between 31°15′ N and 30°15′ N from the coast out 15 nautical miles; and the coastal waters between 30°15′ N and 28°00′ N from the coast out 5 nautical miles (Figure 8 to part 226).

3. Figures 6 through 8 are added to part 226 to read as follows:

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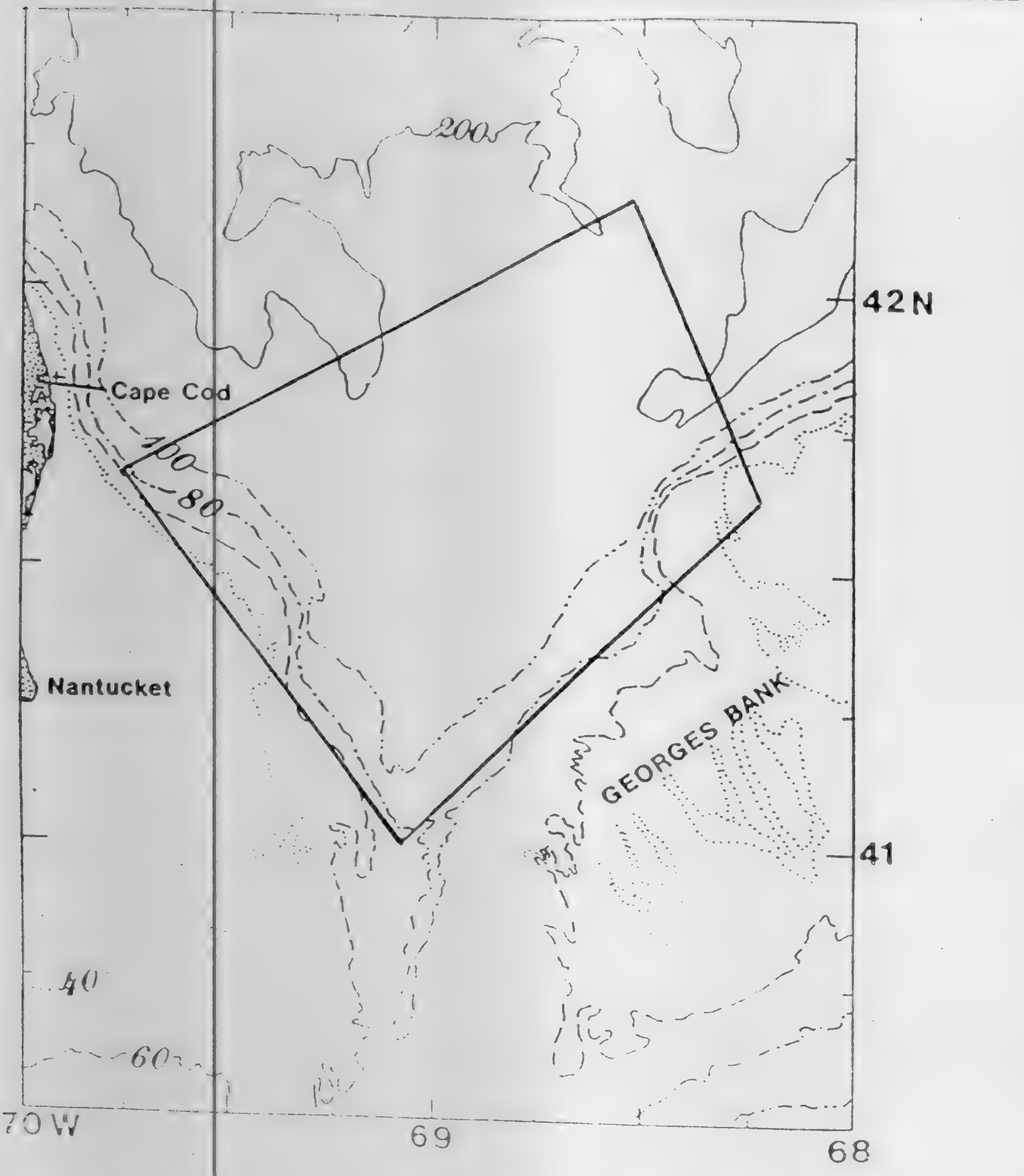


Figure 6. The area designated as critical habitat in the Great South Channel includes the area bounded by 41°40'N/69°45'W; 41°00'N/69°05'W; 41°38'N/68°13'W; and 42°10'N/68°31'W.

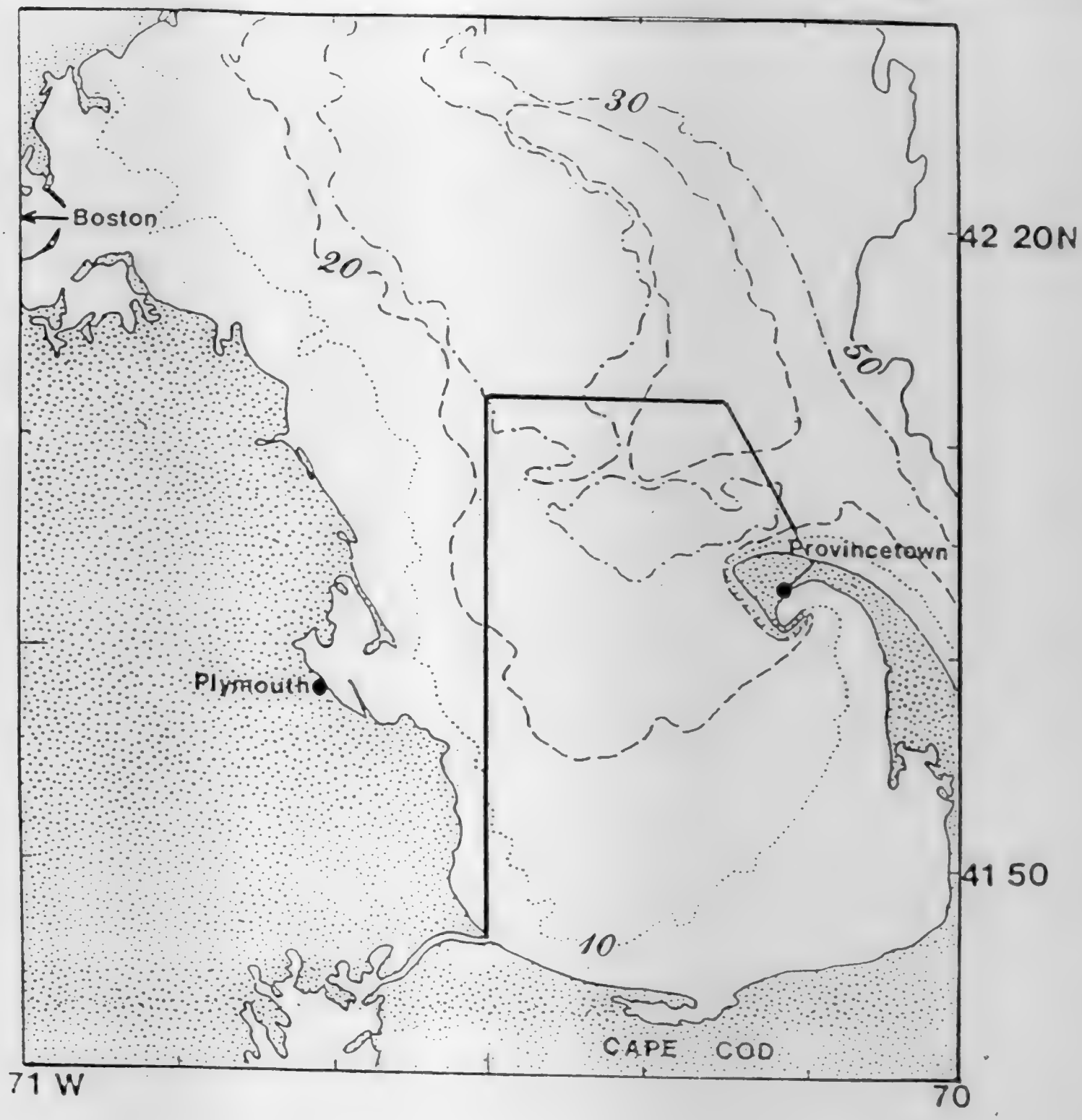


Figure 7. The area designated as critical habitat in Cape Cod Bay/Massachusetts Bay includes the area bounded by 42°04.8'N/70°10'W; 42°12'N/70°15'W; 42°12'N/70°30'W; 41°46.8'N/70°30'W; and on the south and east by the interior shore line of Cape Cod, MA.

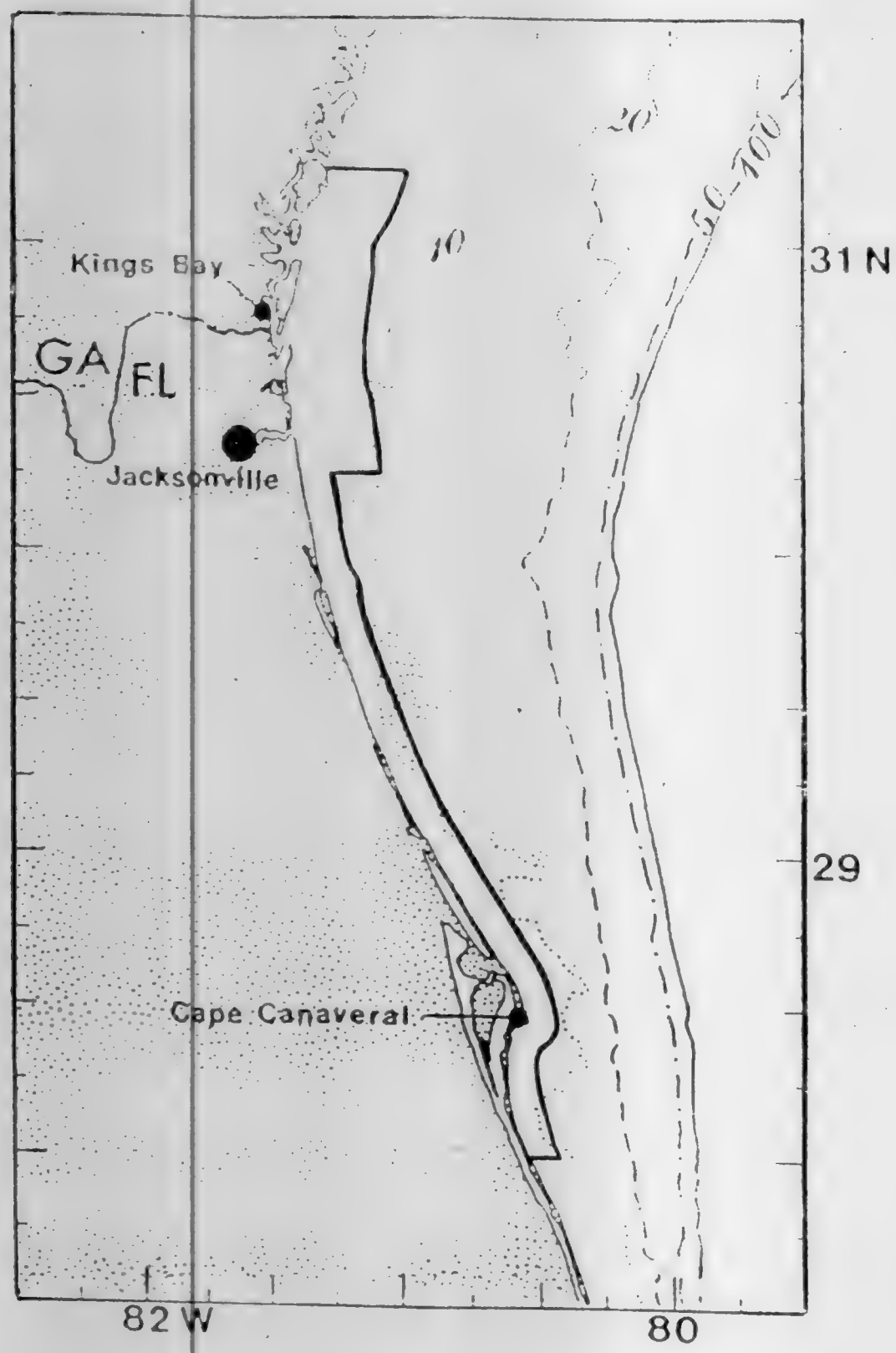


Figure 8. The area designated as critical habitat in the Southeastern United States includes waters between 31°15'N (approximately located at the mouth of the Altamaha River, GA) and 30°15'N (approximately Jacksonville, FL) from the shoreline out to 15 nautical miles offshore, and the waters between 30°15'N and 28°00'N (approximately Sebastian Inlet, FL) from the shoreline out to 5 nautical miles.

[FR Doc. 94-13500 Filed 6-2-94; 8:45 am]
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50 CFR Part 625

[Docket No. 940241–4155; I.D. 013194A]

RIN 0648–AG00

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 6 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). This amendment modifies the minimum mesh-size requirement, the schedule for establishing the annual recreational fishery management measures, and the dimensions of the fish box or tote; provides for an experimental fishery; and prohibits the use of twisted mesh and interference with observers and sea samplers. The intended effects are to minimize the effects of regulatory restrictions on industry, and to use the best available data to assess the fishery, without compromising the FMP objective to rebuild the stocks of summer flounder.

DATES: Sections 625.8(a)(6) and (a)(7), the removal of paragraph (c) of § 625.24, the redesignation of paragraphs (d) and (e) of § 625.24 as paragraphs (c) and (d), § 625.24(f), and § 625.25(d) are effective May 31, 1994. Sections 625.8(c)(9) and (e), 625.20(c), 625.24(e), and 625.28 are effective July 5, 1994.

ADDRESSES: Copies of Amendment 6, the environmental assessment, the regulatory impact review (RIR), and initial regulatory flexibility analysis (IRFA) are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Resource Policy Analyst, 508–281–9104.

SUPPLEMENTARY INFORMATION:

Background

Amendment 6 was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission and the New England and South Atlantic Fishery Management Councils. A proposed rule to implement the amendment was published in the **Federal Register** on February 23, 1994 (59 FR 8592). Copies of the amendment are available from the Council upon request (see **ADDRESSES**). The amendment revises management of the summer flounder (*Paralichthys dentatus*) fishery pursuant to the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act).

Background concerning the development of the management measures contained in Amendment 6 and the reasons they were adopted by the Council were provided in the preamble of the proposed rule and are not repeated here.

NMFS approved Amendment 6, which allows vessel operators to: (1) Carry nets with different size mesh on board their vessels; and (2) exceed the minimum-mesh seasonal summer flounder threshold amounts, as long as all nets that do not meet the minimum-mesh requirement are appropriately stowed once the threshold amounts of summer flounder are retained. Once stowed, these nets cannot be used for the remainder of the fishing trip.

NMFS is also implementing a regulation that allows the Director, Northeast Region, NMFS (Regional Director), to authorize an experimental fishery to collect management information in certain circumstances to give effect to section 9.4.2 of the FMP regarding information and data needs. The Council is particularly interested in having additional mesh studies conducted to augment the results of the mesh studies done in New York and New Jersey. However, the Council was firm in its intent that no experimental fishery should result in a quota being exceeded. This restriction maintains the integrity of the mortality reduction schedule for summer flounder, the main objective of Amendment 2.

This rule also implements a prohibition on the use of twisted mesh. Nets constructed of twisted mesh, when towed, do not conform to the minimum-mesh requirement and violate the prohibition found at § 625.8(a)(6). The addition of this prohibition conforms the summer flounder regulations with the Northeast multispecies regulations found at 50 CFR part 651. Such conformity is desirable since multispecies and summer flounder can be caught on the same fishing trip. The Council adopted another provision that is also implemented in this final rule which modifies the dimensions of the fish box or tote, referred to in § 625.25(d), to conform to those used in the Northeast multispecies regulations.

This rule revises the prohibition found at § 625.8(c)(9) to prohibit interference with a sea sampler or observer on board a vessel for any purpose, and not just for the activities under §§ 625.26 and 625.27, as currently expressed in this prohibition. Observers placed on board a vessel engaged in an experimental fishery should have the same protection afforded to other observers and sea samplers.

NMFS is also modifying the annual fishing measures schedule found at § 625.20(c). The date on which recreational fishing measures are to be published in the **Federal Register** is changed to February 15 to allow recreational fishery data from the previous year to be included in the assessment and monitoring process. The total allowable removals from the stock, which are translated into a coastwide commercial quota and a recreational harvest limit, as well as additional measures for the commercial fishery, must be published on or before October 15 of each year. This is the latest date that these measures can be announced in the form of a proposed rule or a proposed specification and still allow the states an opportunity to implement them on January 1 of each year. Marine recreational survey data, which allow the recreational harvest limit to be converted into a possession limit and a recreational fishing season, are not available until late each calendar year.

Comments and Responses

One comment in support of Amendment 6 was received during the public comment period. The commenter believed that the amendment is a vital part of the preservation of the mixed trawl fishery and will contribute to the overall safety of vessels participating in the fishery. NMFS agrees with these comments.

No negative comments were received during the public comment period.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

When this rule was proposed, the General Counsel of the Department of Commerce certified to the Small Business Administration that this rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities for the reasons set forth in the RIR prepared by the Council. A copy of the RIR may be obtained from the Council (see **ADDRESSES**). As a result, an IRFA was not prepared.

Sections 625.8(a)(6) and (a)(7), the removal of paragraph (c) of § 625.24, redesignation of paragaphs (d) and (e) of 625.24 as paragraphs (c) and (d), § 625.24(f), and § 625.25(d) are effective immediately. Sections 625.8(a)(6) and (a)(7), the removal of paragraph (c) of § 625.24, § 625.24(f), and § 625.25(d) relieve restrictions on the fishery by

allowing more than one net on board, if properly stowed, or allow varying amounts of summer flounder on board, or both, and under section 553(d)(1) of the Administrative Procedure Act (APA), are not subject to a 30-day delay in effective date. The redesignation of paragraphs (d) and (e) to paragraphs (c) and (d) in § 625.24 is not substantive and under section 553(d) is not subject to a 30-day delay in effective date.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements

Dated: May 27, 1994

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 625 is amended to read as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 625.8, paragraphs (a)(6), (a)(7), and (c)(9) are revised and a new paragraph (e) is added to read as follows:

§ 625.8 Prohibitions.

(a) * * *

(6) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 625.24, unless the nets or netting are stowed in accordance with § 625.24(f);

(7) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if fishing with an exempted net described in § 625.24, unless the nets or netting are stowed in accordance with § 625.24(f);

* * * * *

(c) * * *

(9) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, coercion or refusal of reasonable assistance to an observer or sea sampler conducting his or her duties aboard a vessel; or

* * * * *

(e) It is unlawful for any person to violate any terms of a letter authorizing experimental fishing pursuant to § 625.28 or to fail to keep such letter aboard the vessel during the time period of the experimental fishing.

3. Section 625.20, paragraph (c) is revised to read as follows:

§ 625.20 Catch quotas and other restrictions.

* * * * *

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the Council with respect to the measures necessary to assure that the applicable fishing mortality rate specified in paragraph (a) of this section is not exceeded. The Council shall review these recommendations. Based on these recommendations, and any public comment, the Council shall make recommendations to the Regional Director with respect to the measures necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action. The Regional Director will review these recommendations and any recommendations of the Commission. After such review, the Regional Director will publish in the **Federal Register** a proposed rule by October 15 to implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial fishery, and will publish in the **Federal Register** a proposed rule by February 15 to implement additional management measures for the recreational fishery, if he determines that these measures are necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded. After considering public comment on a proposed rule, the Regional Director will publish a final rule in the **Federal Register** to implement the measures necessary to assure that the fishing mortality rates specified in paragraph (a) of this section are not exceeded.

* * * * *

4. Section 625.24, is amended by removing paragraph (c), by redesignating paragraphs (d) and (e) as paragraphs (c) and (d), and by adding new paragraphs (e) and (f) to read as follows:

§ 625.24 Gear restrictions.

* * * * *

(e) *Mesh obstruction or constriction.* (1) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (d) of this section, which obstructs the meshes of the net in any manner.

(2) No person on any vessel may possess or fish with a net capable of catching summer flounder in which the bars entering or exiting the knots twist around each other.

(f) *Stowage of nets.* Otter trawl vessels retaining 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31 or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30 that are subject to the minimum mesh size may not have "available for immediate use" any net, or any piece of net, not meeting the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to one of the following specifications, and that can be shown not to have been in recent use, is considered not to be "available for immediate use":

(1) A net stowed below deck, provided:

(i) It is located below the main working deck from which the net is deployed and retrieved;

(ii) The towing wires, including the "leg" wires, are detached from the net;

(iii) It is fan-folded (flaked) and bound around its circumference.

(2) A net stowed and lashed down on deck, provided:

(i) It is fan-folded (flaked) and bound around its circumference;

(ii) It is securely fastened to the deck or rail of the vessel; and

(iii) The towing wires, including the leg wires, are detached from the net.

(3) A net that is on a reel and is covered and secured, provided:

(i) The entire surface of the net is covered with canvas or other similar material that is securely bound;

(ii) The towing wires, including the leg wires, are detached from the net; and

(iii) The codend is removed from the net and stored below deck.

(4) Nets that are secured in a manner approved by the Regional Director, provided that the Regional Director has reviewed the alternative manner of securing nets and has published that alternative in the **Federal Register**.

5. Section 625.25, paragraph (d) is revised to read as follows:

§ 625.25 Possession limit.

* * * * *

(d) Owners and operators of otter trawl vessels issued a permit under § 625.4, that fish with, or possess nets or pieces of net on board, that do not meet

the minimum mesh requirements and that are not stowed in accordance with § 625.24(f), may not retain 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30. Summer flounder on board these vessels must be stored, so as to be readily available for inspection, in standard 100-lb (45.3 kg) totes or fish boxes having a liquid capacity of 18.2 gallons (70 liters), or a volume of not more than 4,320 cubic inches (2.5 cubic feet or 70.79 cubic cm).

* * * * *

6. Section 625.28 is added to read as follows:

§ 625.28 Experimental fishery.

(a) The Regional Director, in consultation with the Executive Director of the Council, may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the summer flounder resource or fishery.

(b) The Regional Director may not grant such exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the summer flounder resource and fishery; or

(2) Cause any quota to be exceeded; or

(3) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this FMP except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

[FR Doc. 94–13518 Filed 5–31–94; 1:57 pm]
BILLING CODE 3510–22–P

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50 CFR Parts 672 and 675

[Docket No. 900833–1095; I.D. 052694E]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces Pacific halibut and red king crab bycatch rate standards for the second half of 1994. Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program. This action is necessary to implement the bycatch rate standards that must be met by individual trawl vessel operators who participate in the Alaska groundfish trawl fisheries under the incentive program. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 12:01 a.m., Alaska local time (A.l.t.), July 1, 1994, through 12 midnight, A.l.t., December 31, 1994. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., June 30, 1994.

ADDRESSES: Comments should be mailed to Ronald J. Berg, Chief, Fisheries Management Division, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel; or be delivered to 709 West 9th Street, Federal Building, room 401, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) are managed by the Secretary of Commerce according to the Fishery Management Plan (FMP) for the Groundfish Fishery of the BSAI and the FMP for Groundfish of the GOA. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act. The FMPs are implemented by regulations for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620.

Regulations at §§ 672.26 and 675.26 implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels must comply with Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and "other trawl" fisheries, and the BSAI yellowfin sole and "bottom pollock" fisheries. Vessel operators also must comply with red king crab bycatch standards specified for the BSAI yellowfin sole and "other trawl" fisheries in Bycatch Limitation Zone 1 (defined in § 675.2). The fisheries included under the incentive program are defined in regulations at §§ 672.26(b) and 675.26(b).

Regulations at §§ 672.26(c) and 675.26(c) require that halibut and red crab bycatch rate standards for each fishery monitored under the incentive program be published in the **Federal Register**. Any vessel operator whose monthly bycatch rate exceeds the bycatch rate standard is in violation of the regulations implementing the incentive program. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. For purposes of calculating vessel bycatch rates under the incentive program, the periods specified as 1994 fishing months were published in the **Federal Register** on December 15, 1993 (58 FR 65556).

Halibut and red king crab bycatch rate standards for the first half of 1994 also were published in the **Federal Register** on December 15, 1993. At its April 1994 meeting, the Council recommended bycatch rate standards for the second half of 1994. These standards are set forth in Table 1. As required by §§ 672.26(c) and 675.26(c), the Council's recommended bycatch rate standards for July 1 through December 31 are based on the following information and considerations:

1. Previous years' average observed bycatch rates;
2. Immediately preceding season's average observed bycatch rates;
3. The bycatch allowances and associated fishery closures specified under §§ 672.20(f) and 675.21;
4. Anticipated groundfish harvests;
5. Anticipated seasonal distribution of fishing effort for groundfish; and
6. Other information and criteria deemed relevant by the Director of the Alaska Region, NMFS (Regional Director).

Bycatch Rate Standards for Pacific Halibut

With the exception of the GOA "other trawl" fishery, the Council's recommended halibut bycatch rate standards for the 1994 trawl fisheries are unchanged from those implemented in 1993. The recommended 1994 standards are based largely on anticipated seasonal fishing effort for groundfish species and 1991–1994 halibut bycatch rates observed in

specified trawl fisheries. Council deliberations on seasonal bycatch rate standards assumed that directed fishing for Pacific cod by vessels using trawl gear would be closed prior to July 1 (59 FR 24361, May 11, 1994). Council deliberations also considered the August 15 opening date of the 1994 Bering Sea pollock 'B' season (§ 675.23(e)).

The recommended halibut bycatch rate standards for the BSAI yellowfin sole and "bottom pollock" fisheries approximate the average annual rates observed on trawl vessels participating in these fisheries during the past 3 years (5 kg halibut/metric ton (mt) of groundfish).

The halibut bycatch rate standard recommended for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. The recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery when halibut bycatch restrictions at §§ 672.20(f) and 675.21(c)(1) prohibit directed fishing for pollock by vessels using non-pelagic trawl gear.

The Council's recommended halibut bycatch rate standards for the BSAI "other trawl" fisheries (30 kg halibut/mt groundfish) is unchanged from 1992 and 1993. The Council recommended a 40 kg halibut/mt of groundfish bycatch rate standard for the GOA "other trawl" fishery. This bycatch rate standard was established for the first half of 1994, but is a 20 percent reduction from the standard implemented for this fishery during 1992 and 1993 (50 kg halibut/mt groundfish). The Council's action on the 1994 bycatch rate standard for the GOA "other trawl" fishery was intended to continue, to support other management measures implemented under an emergency interim rule (59 FR 6222, February 10, 1994) that was extended through August 9, 1994 (59 FR 24965, May 13, 1994). A proposed rule to implement these measures after the emergency interim rule expires was published May 4, 1994 (59 FR 23044). The interim management measures include: (1) The apportionment of the GOA trawl halibut bycatch limit between "shallow water" and "deep water" trawl fisheries, and (2) adjustment of directed fishing standards to change the way retainable bycatch amounts of groundfish species are calculated.

The bycatch rate standards recommended for the GOA and BSAI "other trawl" fisheries are based on the Council's intent to simplify the GOA and BSAI incentive program by specifying a single bycatch rate standard for the aggregate trawl fisheries that are not assigned fishery-specific bycatch rate standards under the incentive program, yet maintain the Council's objective of reducing overall halibut bycatch rates in the Alaska groundfish trawl fisheries. Observer data collected from the 1993 GOA "other trawl" fishery show third and fourth quarter halibut bycatch rates of 34 and 38 kg halibut/mt of groundfish, respectively. The first quarter rate from 1994 was lower, at 11 kg halibut/mt of groundfish. Observer data collected from the 1993 BSAI "other trawl" fishery show third and fourth quarter halibut bycatch rates of 5 and 4 kg halibut/mt of groundfish, respectively. The average first quarter rate from the 1994 BSAI "other trawl" fishery was 9 kg halibut/mt groundfish. The average bycatch rates experienced by vessels participating in the GOA and BSAI "other trawl" fisheries are lower than the Council's recommended bycatch rate standards for these fisheries. However, the Council determined that its recommended halibut bycatch rate standards for the "other trawl" fisheries would continue to provide an incentive to vessel operators to avoid unusually high bycatch rates while participating in these fisheries and contribute towards an overall reduction in halibut bycatch rates experienced in the Alaska trawl fisheries.

Bycatch Rate Standards for Red King Crab

The Council's recommended red king crab bycatch rate standard for the yellowfin sole and "other trawl" fisheries in Zone 1 of the Bering Sea subarea is 2.5 crab/mt of groundfish during the second half of 1994. This standard is the same as that recommended for 1992 and 1993 and for the first half of 1994. The justification for this standard is discussed in the December 15, 1993, publication of bycatch rate standards for the first half of 1994.

Vessels are not anticipated to participate in either the yellowfin sole or "other trawl" fisheries in Zone 1 during the second half of 1994 because of fishery closures. Directed fishing for yellowfin sole in Zone 1 by vessels using trawl gear is closed for the remainder of 1994 because the Zone 1 *C. bairdi* Tanner crab bycatch allowance specified for this fishery has been reached (59 FR 26145, May 19, 1994). Directed fishing for groundfish species included in the "other trawl" fishery (defined at § 675.26(b)(4)) also is prohibited in Zone 1 because of halibut, red king crab, or *C. bairdi* Tanner crab bycatch restrictions (rockfish, Greenland turbot, sablefish, arrowtooth flounder (59 FR 7656, February 16, 1994); rock sole and other flatfish (59 FR 10082, March 3, 1994); and Pacific cod (59 FR 23461, May 11, 1994)). Nonetheless, NMFS is publishing a red king crab bycatch rate standard for the "other trawl" fishery in Zone 1 consistent with regulations at § 675.26(c).

The Regional Director has determined that Council recommendations for bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under §§ 672.26(c) and 675.26(c). Therefore, the Regional Director concurs with the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the second half of 1994 as set forth in Table 1. These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Director, pending his consideration of the information set forth at §§ 672.26(c)(2)(v) and 675.26(c)(2)(v).

Classification

This action is taken under 50 CFR 672.26 and 675.26.

This action is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 27, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY, FOR THE SECOND HALF OF 1994 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA

Fishery	1994 bycatch rate standard during the period of July 1 through December 31
Halibut bycatch as kg of halibut/mt of allocated groundfish catch:	
BSAI Midwater pollock ..	1.0
BSAI Bottom pollock	5.0
BSAI Yellowfin sole	5.0
BSAI Other trawl	30.0
GOA Midwater pollock ..	1.0
GOA Other trawl	40.0

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY, FOR THE SECOND HALF OF 1994 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA—Continued

Fishery	1994 bycatch rate standard during the period of July 1 through December 31
Zone 1 red king crab bycatch rates (number of crab/mt of allocated groundfish):	
BSAI yellowfin sole	2.5
BSAI Other trawl	2.5

[FR Doc. 94-13491 Filed 5-31-94; 9:42 am]

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Proposed Rules

Federal Register
Vol. 59, No. 106
Friday, June 3, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 372

[Docket No. 93-165-1]

RIN 0579-AA33

National Environmental Policy Act Implementing Procedures

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to establish procedures that set forth the principles and practices the Animal and Plant Health Inspection Service will follow to comply with the National Environmental Policy Act of 1969, the Council on Environmental Quality regulations, and the U.S. Department of Agriculture regulations implementing the National Environmental Policy Act. These procedures would replace APHIS Guidelines Concerning Implementation of NEPA Procedures.

DATES: Consideration will be given only to comments received on or before July 18, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-165-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Pizel, Branch Chief, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 827, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8565.

SUPPLEMENTARY INFORMATION:

Background

The regulations of the President's Council on Environmental Quality (CEQ) implementing section 102(2) of the National Environmental Policy Act (hereinafter referred to as NEPA or the Act) are applicable to and binding on all agencies of the Federal Government. Pursuant to the CEQ implementing regulations, the Animal and Plant Health Inspection Service (APHIS) is proposing to implement procedures to ensure that its planning and decisionmaking are in accordance with the policies and purposes of NEPA. The CEQ implementing regulations direct that agencies shall include, at a minimum, procedures required by 40 CFR 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), 1507.3(b)(2), and 1508.4. APHIS' proposed procedures would supplant the APHIS Guidelines Concerning Implementation of NEPA Procedures originally published in the **Federal Register** on August 28, 1979 (44 FR 50381-50384) and corrections as published in the **Federal Register** on August 31, 1979 (44 FR 51272-51274).

The Animal and Plant Health Inspection Service

APHIS, established in 1972 (7 CFR 371.1(a)), is a regulatory and facilitative agency responsible for the protection of plant and animal health. Its mission is to protect American agriculture by providing leadership in ensuring the health, safety, and care of animals and plants, improving agricultural productivity and competitiveness, and contributing to the national economy and public health and safety. APHIS accomplishes this mission by:

1. Excluding exotic plant and animal pests and diseases and noxious weeds.
2. Detecting, monitoring, and managing plant and animal pests and diseases and noxious weeds.
3. Facilitating agricultural imports and exports.
4. Providing for pure, safe, and efficacious veterinary biologics.
5. Protecting the welfare of certain animals.
6. Controlling nuisance mammals and birds.
7. Collecting, analyzing, and disseminating information.
8. Providing scientific and technical services.

APHIS' mission is carried out under five functional areas:

Pest and disease exclusion. APHIS conducts inspection and quarantine activities at U.S. ports-of-entry to prevent the introduction of exotic animal and plant diseases and pests. APHIS also participates in inspection, survey, and control activities in foreign countries to reinforce its domestic activities.

Animal and plant health monitoring. APHIS conducts programs to assess animal and plant health and to detect endemic and exotic diseases and pests.

Pest and disease management programs. APHIS carries out or cooperates in programs to: Control and eradicate animal and plant pests and diseases; reduce losses caused by wildlife damage; provide technical assistance to State and local governments, farmer or rancher groups, foundations, and the public; and ensure compliance with interstate movement and other disease and pest control regulations within the jurisdiction of APHIS.

Animal care. APHIS conducts regulatory activities that ensure the humane treatment and care of certain animals.

Scientific and technical services. APHIS carries out other activities, including the licensing and testing of veterinary biologicals and the development of standards to ensure their safety and effectiveness, diagnostic activities for control and eradication programs, applied research for the development of methods and tools, regulatory oversight to prevent damage and reduce risk, and regulation of imports and exports of terrestrial plants under the Endangered Species Act.

APHIS conducts cooperative programs with State and local agencies and organizations and foreign countries to eradicate, manage, or prevent the movement of plant and animal diseases and pests. More than 2,500 exotic insects, plants and animal diseases, weeds, and vertebrate pests have been identified as posing a potentially serious threat to agriculture in the United States.

APHIS' inspection and regulatory programs help prevent the introduction into the United States of animal and plant pests and diseases and noxious

weeds of foreign origin and the spread of certain established animal and plant pests and diseases and noxious weeds within the country. Although limited inspection and testing activities take place in certain countries of origin, APHIS' port-of-entry inspection and quarantine are the primary line of defense against exotic pests and pathogens. However, notwithstanding these efforts, pests and pathogens occasionally are introduced into the United States.

Therefore, in order to comply with NEPA, CEQ, and U.S. Department of Agriculture regulations, we are proposing to establish regulations in 7 CFR by adding a new part 372 (§§ 372.1 through 372.10) as described below:

Section-by-Section Analysis

Purpose (Section 372.1)

This section would set forth the purpose of the procedures, namely to implement section 102(2) of NEPA by assuring early and adequate consideration of environmental factors in APHIS planning and decisionmaking and by promoting the effective, efficient integration of all relevant environmental requirements under NEPA. This strategy of early and integrated consideration of environmental factors, diligently pursued, will facilitate achieving the requirements of sections 101 and 102(1) as required by 40 CFR 1505.1(a).

Designation of Responsible APHIS Official (Section 372.2)

This section would designate the Administrator of APHIS, or an agency official to whom the Administrator may formally delegate the task, as the individual responsible for overall review of APHIS' NEPA compliance.

Information and Assistance (Section 372.3)

This section would provide that information, including the status of studies, and the availability of reference materials, as well as the informal interpretations of APHIS' NEPA procedures and other forms of assistance, will be made available upon request to: Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436-8565; FAX (301) 436-8669.

Definitions (Section 372.4)

In addition to the definitions of terms contained in CEQ's implementing regulations, which are incorporated by reference herein, this section would define four terms which are unique to these proposed regulations. As used in these procedures, the term "APHIS" means the Animal and Plant Health Inspection Service; "Decisionmaker" means the agency official responsible for executing findings of no significant impact in the environmental assessment process and the record of decision in the environmental impact statement process; "Department" means the United States Department of Agriculture (USDA); and "environmental unit" means Environmental Analysis and Documentation, which is an analytical unit in Biotechnology, Biologics, and Environmental Protection, charged with the responsibility of coordinating APHIS compliance with NEPA and other environmental laws and regulations.

Classification of Actions (Section 372.5)

This proposed section, developed in four parts, complies with the directive in CEQ's implementing regulations that agencies classify actions for purposes of the NEPA process (40 CFR 1507.3(b)(2)). The CEQ regulation call for development of "specific criteria for and identification of those typical classes of action" that (1) normally require environmental impact statements, (2) normally require environmental assessments but not necessarily environmental impact statements, (3) normally require neither environmental impact statements nor environmental assessments and are therefore categorically excluded, and (4) normally are categorically excluded but, because of extraordinary circumstances, may have significant environmental effects and require preparation of environmental documentation.

1. Actions Normally Requiring Environmental Impact Statements

An environmental impact statement (EIS) will normally be prepared for the following types of actions:

- Administrative procedures that seek to establish broad-scale, significant, impact-generating strategies, methods, or techniques (e.g., treatment options of individual large-scale aerial application of chemicals) as the means of dealing with pervasive animal and plant health issues within the purview of APHIS.

This category of action might include (1) contingency or "emergency" response strategies (comprehensive in scope)—the design of which is intended to provide solutions, generally on very short notice (thereby severely limiting subsequent consideration of alternatives by planners and decisionmakers)—to widespread outbreaks of animal and plant diseases or similar exigencies; and (2) strategic or other long-range plans that purport to adopt for future application in the context of extensive APHIS programs a preferred course of action having the potential for significant environmental impact.

- General administrative (programmatic) examination of APHIS strategies and options for dealing with issues that have important implications for the maintenance and enhancement of environmental quality.

Programmatic environmental impact statements are useful not only when dealing with exigencies of substantial proportion, but also for any substantive APHIS program as a means of effectively and efficiently integrating environmental considerations, process, and values into program planning and service delivery efforts. The type of action for which a programmatic EIS might be appropriate could include an administrative proceeding undertaken to rationalize, prioritize, and streamline—particularly from the standpoint of competing policies (e.g., environmental policies and economic development)—essential activities related to program mission and functions. Consider, for example, the scoping notice for the Veterinary Services programmatic document that was published by APHIS in the **Federal Register** on October 9, 1992 (57 FR 46533-46534).

2. Actions Normally Requiring Environmental Assessments

The preparation of program EIS's—whether or not exigent circumstances may be involved—does not relieve APHIS from taking a "hard look" at refinements to, or site-specific implementation of, program alternatives that have not been "categorically excluded." The following classes of action, which normally do not have the potential to affect significantly the quality of the human environment, will be evaluated for NEPA purposes in the context of environmental assessments (EA's), some of which may be tiered to broader programmatic EIS's:

- Policymaking and rulemaking proposals that involve program plans, techniques, methods, or other activities likely to have a consequential effect on the physical or natural environment or that may affect opportunities for the public, nongovernmental organizations, and others to influence environmental planning and decisionmaking.
- Development of program plans or similar nonexperimental approaches that seek to establish in more limited contexts impact-generating strategies, methods, or techniques as the means of dealing with animal and plant health issues within the purview of APHIS.

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Included in this class would be "action plans" designed to address proposals to remedy specific problems, including plant pest infestations, animal diseases, depredating animals, and the like. Other planning activities for which EA's normally will be prepared include substantial APHIS involvement in the efforts of USDA's Forest Service, the Department of Interior's Bureau of Land Management, States, and Indian Tribes to eradicate or control plant pests, animal diseases, or depredating or nuisance species in various districts or regions.

• Site-specific implementation of action plans and approaches mentioned in the previous paragraph of this section, except where isolated activities, introductions, or applications, as developed more fully in the following subsection entitled "Categorically Excluded Actions," are contemplated.

There are some categories of APHIS action that, while susceptible to consideration in broad programmatic impact statements undertaken pursuant to NEPA, are usually identified with more resource-specific environmental mandates and may be the subject of periodic planning and review requirements. In the process of satisfying those requirements, all operational aspects of APHIS facilities, including storage and disposal of pesticides, chemicals, and laboratory wastes, will normally be thoroughly examined. But compliance with such planning and review requirements does not satisfy NEPA, which is applicable to "adoption of formal plans * * *" (40 CFR 1508.18(b)(2)).

The following classes of action may be examined in the context of specific environmental mandates other than NEPA, but will nevertheless be analyzed within an EA in order to facilitate the NEPA decision:

• Planning, design, and construction or acquisition of major new facilities or proposals to modify substantially existing facilities.

• Disposition of laboratory waste and other hazardous or toxic materials, except as provided under subsection 3 of this section.

Biotechnology and biological control activities within APHIS' oversight authority are conducted pursuant to permits or other authorizations that may include conditions to protect the environment, the granting of exemption from regulation, or a notification procedure. These activities normally will be examined in the context of EA's crafted to the permitting processes:

• Approval and issuance of permits for the release into the environment of genetically engineered organisms and products, and the release into the environment of exotic organisms.

There is one final category of action that fits within the classification of normally requiring an EA-research and testing. Not all research and testing, however, need be subjected to the EA process. Only where research or testing either creates a likelihood of harm to the quality of the human environment or represents an irretrievable commitment to the resulting technology will EA's normally be required:

• Research or testing that will be conducted outside of a laboratory or other containment area—field trials, for example—or that reaches a stage of development (e.g., formulation of pre-marketing strategies) that forecasts an irretrievable commitment to new products or technology.

3. Categorically Excluded Actions

The CEQ implementing regulations define the term "categorical exclusion" as "a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations * * *." (40 CFR 1508.4). Environmental documents are not prepared for categorically excluded actions unless exceptional circumstances, as provided in subsection 4 below, are present. Indeed, CEQ "strongly discourages procedures that would require the preparation of additional paperwork to document that an activity has been categorically excluded" (CEQ Guidance Regarding NEPA Regulations, 48 FR 34265, July 28, 1983).

The Department has promulgated categorical exclusions of actions that are applicable to all departmental agencies whose procedures do not provide otherwise. Those categorical exclusions, codified at 7 CFR 1b.3a), are appropriate for APHIS. Other APHIS actions that qualify for categorical exclusion from the NEPA process are identified herein. Consistent with CEQ's directive, "broadly defined criteria" have been employed to "characterize types of actions that, based on APHIS' experience, do not cause significant environmental effects" (49 FR 34265, July 28, 1983).

Insofar as safeguarding environmental quality is concerned, the proper use of chemicals, pesticides, and other potentially hazardous or harmful substances, materials, and devices in the development and delivery of program goods and services is of the utmost concern to APHIS. But not every proposed use of potentially hazardous or harmful substances, materials, or devices will require application of the NEPA process. Experience suggests that the following category of actions, individually or cumulatively, will not have a significant effect on the human environment:

• Routine measures employed by the agency to pursue its mission and functions, such as identifications, inspections, surveys, sampling, testing, seizures, quarantines, removals, sanitizing, inoculations, and monitoring, including the use—according to any label instructions or other lawful requirements and consistent with standard, published program practices and precautions—of chemicals, pesticides, or other potentially hazardous or harmful substances, materials, and target-specific devices or remedies, provided that such use (1) is localized in nonurban areas to individual parcels such as farms, ranches, or nurseries, or contained (and not aerially applied or administered) in urbanized areas to discrete sites that do not cater to the general public, and is limited in terms of quantity, i.e., low- or ultra-low volume or individualized dosages and remedies; (2) will not cause contaminants to enter water bodies, including wetlands; (3) does not adversely affect any federally protected species or critical habitat; and (4) is not persistent in the environment and does not cause bioaccumulation. All circumstances delineated above (insofar as they may pertain to a particular action) must be present for any such use to be categorically excluded from the NEPA process.

Examples of actions covered by this categorical exclusion include inoculation of discrete herds of livestock, or wildlife treatment strategies undertaken in contained areas (such as a zoo, an exhibition, or an aviary); pesticide treatments applied to infested plants on a homesite; and isolated (for example, along a highway) weed control efforts.

Research and small-scale testing activities represent another category of actions that will require application of the NEPA process only in very limited contexts—essentially those described in "Actions normally requiring EA's, Research and Testing." Other statutory requirements (those contained in the Federal Insecticide, Fungicide, and Rodenticide Act, for example) may be applicable to some research and testing activities regardless of how they may be classified for NEPA purposes in these procedures. Nevertheless, categorical exclusion from the NEPA process is appropriate for the following described actions:

• Activities that are carried out in laboratories, facilities, or other areas designed to eliminate the potential for harmful environmental effects (internal or external) and to provide for lawful waste disposal.

Examples of actions covered by this categorical exclusion include: The development and/or production (including formulation, repackaging, movement, and distribution) of approved and/or licensed program material, devices, reagents, and biologics; research, testing, and development of animal repellents; and development and production of sterile insects.

The following additional categories of actions also qualify for categorical exclusion from the NEPA process:

• Routine precautionary measures, including identifications, inspections, surveys, testing, inoculating, and monitoring, of a limited scope and intensity that are designed to assure the proper care, protection, and treatment of animals.

• Rehabilitation of existing laboratories and other APHIS facilities, functional replacement of parts and equipment, and minor additions to such existing APHIS facilities.

• Agency actions including the issuance of permits, authorization to ship, or licensing involving a category of veterinary biological product which has been previously licensed, unless the product has been subsequently shown to be unsafe, or will be used at substantially higher dosage levels or for substantially different applications or circumstances than in the use for which the product was previously approved. Also, the issuance of a license, permit, or authorization to ship for field testing products that had not been previously licensed that do not contain live microorganisms or that are used only for in vitro diagnostic testing.

4. Exceptions for Categorically Excluded Actions

Whenever the decisionmaker determines that an action listed in "Categorically Excluded Actions" may have the potential to affect "significantly" the quality of the "human environment," as those terms are defined at 40 CFR 1508.27 and 1508.14, respectively, an environmental impact statement or an EA will be prepared.

Early Planning for Applicants and Non-APHIS Entities (Section 372.6)

This section is designed to satisfy the directive in the CEQ implementing regulations that agencies make provision "for cases where actions are planned by private applicants or other * * * entities before Federal involvement * * *." (40 CFR 1501.2(d)). Written instructions or guidelines outlining what is needed to comply with environmental planning and documentation requirements for all prospective applicants cannot be included in these procedures. It is the intention of APHIS ultimately to identify environmental data needs for each major APHIS program that requires analysis under these procedures and to provide for those needs as an integral part of program standards and practices. Until that goal can be attained, however, each prospective applicant needing approval for proposed activities normally requiring environmental documentation is encouraged to contact, at the earliest opportunity, APHIS' program staff, which will then coordinate with the environmental unit to design an appropriate compliance procedure tailored to the needs of the particular proposal.

Consultation (Section 372.7)

This section encourages prospective applicants and others to contact APHIS program officials to determine what types of environmental analyses or documentation, if any, need to be prepared. Early consultation is not intended to satisfy the requirements of NEPA alone. NEPA documents should incorporate, to the fullest extent possible, surveys and studies required by other environmental statutes. Implementing regulations of other primary environmental statutes, such as the Endangered Species Act, also make provision for early consultation and resolution of major issues by prospective applicants. Only by taking full advantage of opportunities for early environmental planning can APHIS, entities it regulates, the public, and others, avoid excessive costs and undue administrative delays often associated with a poorly timed environmental analysis process.

Questions regarding these procedures and their applicability to particular planning and decisionmaking situations are inevitable. No procedure, regardless of how meticulously it may have been fashioned, can anticipate every contingency. For this reason, prospective applicants, and others who may have questions concerning these procedures, their applicability, meaning, or any other problem, should not hesitate to contact program officials and consult with the environmental unit at the earliest opportunity. Responses to all such questions will be provided as quickly as possible, in most cases within a single work day of securing any necessary factual information.

Major Planning and Decision Points and Public Involvement (Section 372.8)

This section is designed to satisfy the directives in the CEQ implementing regulations that agencies (1) designate "the major decision points for APHIS' principal programs likely to have a significant effect on the human environment and (assure) that the NEPA process corresponds with them" (40 CFR 1505.1(b) (1992)); and (2) "make diligent efforts to involve the public" in NEPA-related activities (40 CFR 1506.6).

Proposed § 372.5(a) of these procedures describes actions that normally require preparation of an EIS. The narrative explanation for that section emphasizes the desirability of adopting a broad programmatic approach to NEPA compliance that corresponds with APHIS' planning and service delivery efforts. Furthermore, it is in the planning stages of policy, program, or project development where the NEPA process can most effectively and efficiently be employed in the furtherance of the Act's "pollution prevention" purpose.

Like many agencies, APHIS makes ample use of long-range planning for policy development and formulation of program strategies. Most major policies and programs are already in place. Still NEPA is applicable to ongoing activities, including policies, programs, and projects, no less than it is to new ones (40 CFR 1508.18). Thus, for purposes of rationalizing and better coordinating existing policies and program strategies consistent with NEPA, a broad programmatic approach to environmental planning is logical.

Planning is often ad hoc in nature and specific points (especially the beginning point) can seldom be anticipated, at least with respect to particular events, times, or individuals. It may also be difficult to judge at what point in the planning process a "proposal" exists for NEPA purposes.[1] The NEPA process

[1] "Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (§ 1502.5) so that the final statement may be completed in time for inclusion in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists (40 CFR 1508.23). *But see*, Executive Office of the President, Council on Environmental Quality, *Environmental Quality 1989* 21 (20th Annual Report, 1990) ("The impact statement was required to force the agencies to take

Continued

will be fully coordinated with APHIS planning. Specific decision points will be identified and communicated to the public in a notice of intent and in the context of the public scoping process.

A principal purpose of NEPA is to restore public confidence in the Federal Government's capacity to achieve important public purposes and objectives while at the same time maintaining and enhancing the quality of the environment. In furtherance of that purpose, both the Act and the CEQ implementing regulations require extensive public involvement in the preparation of necessary environmental documentation. APHIS is committed to an open and accessible NEPA process. There will be an early and open process for determining the scope of issues to be addressed in the EIS process.

A notice of intent to prepare an EIS will be published in the **Federal Register** as soon as it is determined that a proposed major Federal action has the potential to affect significantly the quality of the human environment. The notice may include a preliminary scope of environmental study. All public and other involvement in APHIS' EIS process, including the scoping process, commenting on draft documents, and participation in the preparation of any supplemental documents, will be pursuant to the CEQ implementing regulations.

Early public and other agency involvement is especially useful in the EA process where exigent circumstances (animal disease or plant pest outbreaks, for example) require rapid APHIS response. In such an event, any EA comment period would, of necessity, be extremely abbreviated. Opportunities for early public involvement in the EA process will be announced in the same fashion as the availability of EA's and findings of no significant impact, as specified in § 372.8(b)(3).

Section 1506.6 of the CEQ regulations requires agencies to involve the public and others in implementing their NEPA procedures which, according to CEQ, "includes public involvement in the preparation of EA's and findings of no significant impact. These are public 'environmental documents' under § 1506.6(b), and, therefore, agencies must give public notice of their availability" (CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 FR 18037, March 23, 1981). Notification of the availability of EA's and findings of no significant impact for proposed activities will be published in the **Federal Register**, unless it is determined that the effects of the action are primarily of local concern. Where the effects of the action are primarily of local concern, notice will normally be provided through publication of notice in a local or area newspaper of general circulation, or through the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs. Under this order, the State would act as a clearinghouse for review and public notice of the EA. *See*, the regulations implementing Executive Order 12372—Intergovernmental Review of Department of Agriculture Programs and Activities, 7 CFR part 3015, subpart V.

All environmental documents, comments received, and any underlying documents, including interagency correspondence where such correspondence transmits comments of Federal agencies on the environmental impact of proposals for which documents were prepared, will be made available to the public upon request. Materials to be made available will be provided without charge, to the extent practicable, or at a fee which is not more than the actual cost of reproducing copies required to be sent to other Federal agencies, including CEQ.

Processing and Use of Environmental Documents (Section 372.9)

This section would satisfy provisions of the CEQ regulations designed "to ensure that decisions are made in accordance with the policies and purposes of the Act" (40 CFR 1505.1).

EA's will be forwarded immediately upon completion to the decisionmaker for a determination of whether the proposed action may have significant effects on the human environment, and for the execution, as appropriate, of a finding of no significant impact or a notice of intent to prepare an EIS. At this time, the EA's will be made available consistent with the notification provisions of § 372.8 of these procedures.

Comments, if any, will be transmitted, together with any analyses and recommendations, to the APHIS decisionmaker who may then take appropriate action.

Changes to environmental assessments and findings of no significant impact which are prompted by comments, new information, or any other source, will normally be announced in the same manner as the notice of availability (except that all commenters will be mailed copies of changes directly) prior to implementing the proposed action or any alternative.

EIS's will be processed according to the CEQ regulations from inception (publication in the **Federal Register** of the notice of intent) to completion (publication of a final environmental impact statement or a supplement).

For rulemaking or adjudicatory proceedings, relevant environmental documents, comments, and responses will be part of the administrative record.

For all APHIS activity that is subject to the NEPA process, the environmental record, including comments and responses, will accompany proposals through the existing review process. The APHIS decisionmaking for each NEPA document will consider the range of alternatives discussed in environmental documents in reaching their determinations on the merits of proposed actions.

Supplementing Environmental Impact Statements (Section 372.10)

This section describes how supplemental EIS's are introduced into the administrative record.

The decision to prepare a supplemental EIS is similar to the decision to prepare an EIS in the first instance. As such, that decision turns on a myriad of factors. But once a decision to supplement an EIS is made, a notice of intent will be published in the **Federal Register**, which in effect serves to reopen the administrative record. The supplemental document will then be processed in the same fashion (exclusive of scoping) as a draft and a final statement, unless alternative procedures are approved by CEQ.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

These proposed procedures satisfy the requirement to implement CEQ's NEPA regulations and have been designed to reduce to a minimum the regulatory burden on small entities and all other individuals and organizations, public and private.

Under these circumstances, the Administrator of APHIS has determined that these procedures would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V).

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If these proposed procedures are adopted: (1) All State and local laws and regulations that are in conflict with these procedures will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

The National Environmental Policy Act

Section 372.5(b)(1) of these proposed procedures provides, in part, that an EA will normally be prepared for "rulemaking proposals that * * * may affect opportunities for the public, nongovernmental organizations, and others to influence environmental planning and decisionmaking." See, *Illinois Commerce Comm'n v. ICC*, 848 F.2d 1246, 1256 (D.C. Cir. 1988) ("it is not at all apparent that a change in procedure alone will not affect the environment—the new procedure may, for example, lessen the opportunity for environmental groups to influence the agency's final decision"). An environmental assessment, which examines opportunities for public involvement in APHIS' environmental process, has been prepared. The environmental assessment concludes essentially that public involvement in APHIS' environmental planning and decisionmaking is consistent with NEPA requirements. In the circumstances, a finding of no significant impact is appropriate.

Copies of the environmental assessment may be obtained by writing the contact for this rulemaking provided under the section heading **FOR FURTHER INFORMATION CONTACT.** Comments are invited and should be submitted to this same contact on or before the comment due date for this proposed rulemaking.

Paperwork Reduction Act

These proposed procedures contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 372

Administrative practice and procedure, Environmental assessment, Environmental impact statement, National Environmental Policy Act.

Accordingly, title 7, chapter III, of the Code of Federal Regulations is proposed to be amended by adding a new part 372, to read as follows:

PART 372—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

Sec.

372.1 Purpose.
372.2 Designation of responsible APHIS official.
372.3 Information and assistance.
372.4 Definitions.
372.5 Classification of actions.
372.6 Early planning for applicants and non-APHIS entities.
372.7 Consultation.
372.8 Major planning and decision points and public involvement.
372.9 Processing and use of environmental documents.
372.10 Supplementing environmental impact statements.

Authority: 42 U.S.C. 4321 *et seq.*; 40 CFR parts 1500–1508; 7 CFR parts 1b, 2.17, 2.51, 371.2, 371.2(m), 371.13(d), and 371.14(b).

§ 372.1 Purpose.

These procedures implement section 102(2) of the National Environmental Policy Act by assuring early and adequate consideration of environmental factors in Animal and Plant Health Inspection Service planning and decisionmaking and by promoting the effective, efficient integration of all relevant environmental requirements under the National Environmental Policy Act.

§ 372.2 Designation of responsible APHIS official.

The Administrator of APHIS, or an agency official to whom the Administrator may formally delegate the task, is responsible for overall review of APHIS' NEPA compliance.

§ 372.3 Information and assistance.

Information, including the status of studies, and the availability of reference materials, as well as the informal interpretations of APHIS' NEPA procedures and other forms of assistance, will be made available upon request to Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436–8565; FAX (301) 436–8669.

§ 372.4 Definitions.

The terminology set forth in the Council on Environmental Quality's (CEQ) implementing regulations at 40 CFR part 1508 is incorporated herein. In addition, the following terms as used in these procedures are defined as follows:

APHIS. The Animal and Plant Health Inspection Service (APHIS).

Decisionmaker. The agency official responsible for executing findings of no significant impact in the environmental assessment process and the record of decision in the environmental impact statement process.

Department. The United States Department of Agriculture (USDA).

Environmental unit. Environmental Analysis and Documentation, the analytical unit in the Biotechnology, Biologics, and Environmental Protection responsible for coordinating APHIS' compliance with the National Environmental Policy Act and other environmental laws and regulations.

§ 372.5 Classification of actions.

(a) *Actions normally requiring environmental impact statements.* An environmental impact statement will normally be prepared for the following types of actions:

(1) Administrative procedures that seek to establish broad-scale, significant, impact-generating strategies, methods, or techniques (e.g., treatment options of individual large-scale aerial application of chemicals) as the means of dealing with pervasive animal and plant health issues within the purview of APHIS. Examples of this category of actions include:

(i) Contingency or "emergency" response strategies (comprehensive in scope)—the design of which is intended to provide solutions, generally on very short notice, thereby severely limiting subsequent consideration of alternatives by planners and decisionmakers—to widespread outbreaks of animal and plant diseases or similar exigencies, and

(ii) Strategic or other long-range plans that purport to adopt for future application, in the context of extensive APHIS programs, a preferred course of action having the potential for significant environmental impact.

(2) General administrative (programmatic) examination of APHIS strategies and options for dealing with issues that have important implications for the maintenance and enhancement of environmental quality. An example of this category of actions is:

(1) An administrative proceeding undertaken to rationalize, prioritize, and streamline—particularly from the standpoint of competing policies (e.g., environmental policies and economic development)—essential activities related to program mission and functions.

(b) *Actions normally requiring environmental assessments.* Classes of actions identified below, which normally do not have the potential to

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the substantive provisions of the Act seriously and to consider the environmental policy directives of the Congress in the *formulation of agency plans and procedures*") (emphasis supplied)

affect significantly the quality of the human environment, will, for NEPA purposes, be evaluated in the context of environmental assessments.

(1) Policymaking and rulemaking proposals that involve program plans, techniques, methods, or other activities likely to have a consequential effect on the physical or natural environment or that may affect opportunities for the public, nongovernmental organizations, and others to influence environmental planning and decisionmaking.

(2) Development of program plans or similar nonexperimental approaches that seek to establish in more limited contexts impact-generating strategies, methods, or techniques as the means of dealing with animal and plant health issues within the purview of APHIS. Examples of this category of actions include:

(i) Proposals to remedy specific problems, including plant pest infestations, animal diseases, and depredating animals; and

(ii) Substantial APHIS involvement in the planning efforts of the USDA's Forest Service, the Department of the Interior's Bureau of Land Management, States, and Indian Tribes to eradicate or control plant pests, animal disease, or depredating animals.

(3) Site-specific implementation of action plans and approaches mentioned in paragraph (b)(2) of this section, except where isolated activities, introductions, or applications, as developed more fully in the following subsection entitled "Categorically Excluded Actions," are contemplated.

(4) Planning, design, and construction or acquisition of major new facilities, or proposals for substantial modifications to existing facilities.

(5) Disposition of laboratory waste and other hazardous or toxic materials, except as provided under paragraph (c) of this section.

(6) Approval and issuance of permits for:

(i) The release into the environment of genetically engineered organisms and products; and

(ii) The release into the environment of exotic organisms.

(7) Research or testing that:

(i) Will be conducted outside of a laboratory or other containment area (field trials, for example); or

(ii) Reaches a stage of development (e.g., formulation of pre-marketing strategies) that forecasts an irretrievable commitment to the resulting products or technology.

(c) *Categorically excluded actions.* The Department has promulgated categorical exclusions of actions that are applicable to all agencies whose procedures do no provide otherwise. Those categorical exclusions, codified at 7 CFR 1b.3(a), are adopted as entirely appropriate for APHIS. Other categories of APHIS actions which do not individually or cumulatively have a significant effect on the human environment and for which neither environmental assessment nor environmental impact statements will be prepared include:

(1)(i) Routine measures employed by the agency to pursue its mission and functions, such as identifications, inspections, surveys, sampling, testing, seizures, quarantines, removals, sanitizing, inoculations, and monitoring, including the use—according to any label instructions or other lawful requirements and consistent with standard, published program practices and precautions—of chemicals, pesticides, or other potentially hazardous or harmful substances, materials, and target-specific devices or remedies, provided that such use:

(A) Is localized in nonurban areas to individual parcels such as farms, ranches, or nurseries, or contained (and not aerially applied or administered) in urbanized areas to discrete sites that do not cater to the general public, and is limited in terms of quantity, i.e., low- or ultra-low volume or individualized dosages and remedies;

(B) Will not cause contaminants to enter water bodies, including wetlands;

(C) Does not adversely affect any federally protected species or critical habitat; and

(D) Is not persistent in the environment and does not cause bioaccumulation.

(ii) *All* circumstances delineated in paragraph (c)(i) (A) through (D) of this section (insofar as they may pertain to a particular action) must be affirmed for any such use to be categorically excluded from the NEPA process. Examples of this category of actions include:

(A) Inoculation of discrete herds of livestock, or wildlife treatment strategies undertaken in contained areas (such as a zoo, an exhibition, or an aviary);

(B) Pesticide treatments applied to infested plants on a homesite without contamination of water; and

(C) Isolated (for example, along a highway) weed control efforts.

(2) Activities that are carried out in laboratories, facilities, or other areas designed to eliminate the potential for harmful environmental effects—internal or external—and to provide lawful waste disposal. Examples of this category of actions include:

(i) The development and/or production (including formulation, repackaging, movement, and distribution) of approved and/or licensed program material, devices, reagents, and biologics;

(ii) Research, testing, and development of animal repellents; and

(iii) Development and production of sterile insects.

(3) Routine precautionary measures, including identifications, inspections, surveys, testing, inoculating, and monitoring of a limited scope and intensity, designed to assure the proper care, protection, and treatment of animals.

(4) Rehabilitation of existing laboratories and other APHIS facilities, functional replacement of parts and equipment, and minor additions to such existing APHIS facilities.

(5) Agency actions, including the issuance of permits, authorization to ship, or licensing involving a category of veterinary biological product which has been previously licensed, unless the product has been subsequently shown to be unsafe, or will be used at substantially higher dosage levels or for substantially different applications or circumstances than in the use for which the product was previously approved. Also, the issuance of a license, permit, or authorization to ship for field testing products that had not been previously licensed that do not contain live microorganisms or that are used only for in vitro diagnostic testing.

(d) *Exceptions for categorically excluded actions.* Whenever the decisionmaker determines that an action listed in paragraph (c) of this section may have the potential to affect "significantly" the quality of the "human environment," as those terms are defined at 40 CFR 1508.27 and 1508.14, respectively, an environmental impact statement or an environmental assessment will be prepared.

§ 372.6 Early planning for applicants and non-APHIS entities.

Each prospective applicant who anticipates the need for approval of proposed activities classified as normally requiring environmental documentation is encouraged to contact, at the earliest opportunity, APHIS' program staff, which will then coordinate with the environmental unit to design a streamlined compliance course tailored to the needs of the particular proposal.

§ 372.7 Consultation.

Prospective applicants are encouraged to contact APHIS program officials to determine what types of environmental analyses or documentation, if any, need to be prepared. Early consultation is not intended to satisfy the requirements of NEPA alone. NEPA documents will incorporate, to the fullest extent possible, surveys and studies required by other environmental statutes, such as the Endangered Species Act.

§ 372.8 Major planning and decision points and public involvement.

(a) *Major planning and decision points.* The NEPA process will be fully coordinated with APHIS planning by APHIS' environmental unit in cooperation with program personnel. Specific decision points or milestones will be identified and communicated to the public and others in a notice of intent and in the context of the public scoping process.

(b) *Public involvement.* There will be an early and open process for determining the scope of issues to be addressed during environmental analysis.

(1) A notice of intent to prepare an environmental impact statement will be published in the **Federal Register** as soon as it is determined that a proposed major Federal action has the potential to affect significantly the quality of the human environment. The notice may include a preliminary scope of environmental study. All public and other involvement in APHIS' environmental impact statement process, including the scoping process, commenting on draft documents, and participation in the preparation of any supplemental documents, will be pursuant to CEQ's implementing regulations.

(2) Early public and other agency involvement in the environmental assessment process will be invited through announcements made available in the same fashion as the environmental assessments and findings of no significant impact.

(3) Notification of the availability of environmental assessments and findings of no significant impact for proposed activities will be published in the **Federal Register**, unless it is determined that the effects of the action are primarily of local concern. Where the effects of the action are primarily of local concern, notice will normally be provided through publication in a local or area newspaper of general circulation and/or the procedures implementing Executive Order 12372, "Intergovernmental Review of Federal Programs."

(4) All environmental documents, comments received, and any underlying documents, including interagency correspondence where such correspondence transmits comments of Federal agencies on the environmental impact of proposals for which documents were prepared, will be made available to the public upon request. Materials to be made available will be provided without charge, to the extent practicable, or at a fee which is not more than the actual cost of reproducing copies required to be sent to other Federal agencies, including CEQ.

§ 372.9 Processing and use of environmental documents.

(a) Environmental assessments will be forwarded immediately upon completion to the decisionmaker for a determination of whether the proposed action may have significant effects on the quality of the human environment, and for the execution, as appropriate, of a finding of no significant impact or a notice of intent to prepare an environmental impact statement. Simultaneously, the availability of environmental assessments will be announced by publishing a notice consistent with the notification provisions of § 372.8.

(b) Comments, if any, will be transmitted, together with any analyses and recommendations, to the APHIS decisionmaker who may then take appropriate action.

(c) Changes to environmental assessments and findings of no significant impact which are prompted by comments, new information, or any other source, will normally be announced in the same manner as the notice of availability (except that all commenters will be mailed copies of changes directly) prior to implementing the proposed action or any alternative.

(d) Environmental impact statements will be processed from inception (publication of the notice of intent) to completion (publication of a final environmental impact statement or a supplement) according to the Council on Environmental Quality implementing regulations.

(e) For rulemaking or adjudicatory proceedings, relevant environmental documents, comments, and responses will be a part of the administrative record.

(f) For all APHIS activity that is subject to the NEPA process, relevant environmental documents, comments, and responses will accompany proposals through the review process.

(g) The APHIS decisionmaker for each NEPA document will consider the range of alternatives discussed in environmental documents in reaching their determinations on the merits of proposed actions.

§ 372.10 Supplementing environmental impact statements.

Once a decision to supplement an environmental impact statement is made, a notice of intent will be published. The administrative record will thereafter be open. The supplemental document will then be processed in the same fashion (exclusive of scoping) as a draft and a final statement, unless alternative procedures are approved by CEQ, and will become part of the administrative record.

Done in Washington, DC, this 26th day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–13403 Filed 6–2–94; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600, 601, and 610

[Docket No. 94N–0066]

Review of General Biologics and Licensing Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Intent to review regulations; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is conducting a review of certain general biologics and licensing regulations and is requesting public comment on these regulations. This review is intended to identify regulations that are outdated, burdensome, inefficient, or otherwise unsuitable or unnecessary from a regulatory standpoint and in need of revision. This review is part of FDA's program to periodically review existing significant regulations. A request for comments on certain regulations for blood establishments and blood products will be published elsewhere in this issue of the **Federal Register**.

DATES: Written comments by August 17 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ann Reed Gaines or Timothy W. Beth, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike,

Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 20, 1994 (59 FR 3043), FDA announced its plan to review significant regulations pursuant to Executive Order 12866, which requires all Federal agencies to develop a program for periodically reviewing existing significant regulations. Under this plan, FDA is conducting a review of the general biologics and licensing regulations in 21 CFR parts 600, 601, and 610, and is requesting public comment on these regulations.

FDA is conducting a review of these regulations to determine whether they should be revised, rescinded, or continued without change. FDA is also evaluating whether to review other regulations applicable to biological products. This request for comments is intended to assist the Center for Biologics Evaluation and Research in identifying regulations that are outdated, burdensome, inefficient, or otherwise unsuitable or unnecessary from a regulatory standpoint and in need of revision to achieve their public health goals more effectively.

Under Executive Order 12866, the Paperwork Reduction Act of 1980 (Pub. L. 96–511), and the Regulatory Flexibility Act (Pub. L. 96–354), FDA is performing this review of these existing regulations to determine whether they are unnecessary as a result of changed circumstances, duplicative, or inappropriately burdensome. This action is also intended to incorporate the scientific advances in the field, to introduce, where appropriate, increased flexibility in the regulations, and to further insure the safety, purity, and potency of biologics products by updating the regulations. This document requests public comment on these regulations.

A request for comments on the blood establishments and blood products regulations in 21 CFR parts 606, 607, 610, 640, and 660 will be published elsewhere in this issue of the **Federal Register**.

Interested persons may, on or before August 17, 1994, submit to the Dockets Management Branch (address above) written comments regarding this request. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA requests that comments include the following information in the order shown: (1) The section affected in Title 21 of the CFR; (2) a description of the change suggested, including, if appropriate, suggested changes in the text of the regulation; (3) the rationale for the change or the problem to be addressed by the change; (4) any related regulations or guidance also affected by the suggested change; (5) any pertinent background information; and (6) whether the comment includes attachments. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 26, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–13465 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Parts 606, 607, 610, 640, and 660

[Docket No. 94N–0080]

Review of Regulations for Blood Establishments and Blood Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Intent to review regulations; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is conducting a review of certain regulations for blood establishments and blood products and is requesting public comment on these regulations. This review is intended to identify regulations that are outdated, burdensome, inefficient, or otherwise unsuitable or unnecessary from a regulatory standpoint and in need of revision. This review is part of FDA's program to periodically review existing significant regulations. A request for comments on certain general biologics and licensing regulations will be published elsewhere in this issue of the **Federal Register**.

DATES: Written comments by August 17, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jean M. Olson or Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 20, 1994 (59 FR 3043), FDA announced its plan to review significant regulations pursuant to Executive Order 12866, which requires all Federal agencies to develop a program for periodically reviewing existing significant regulations. Under this plan, FDA is conducting a review of the regulations in 21 CFR parts 606, 607, 640, and 660, as well as the portions of 21 CFR part 610 that apply to blood and plasma collection establishments and blood and blood products; FDA is requesting public comment from interested parties on these regulations.

FDA is conducting a review of these regulations to determine whether they should be revised, rescinded, or continued without change. FDA is also evaluating whether to review other regulations applicable to blood products and establishments, including, but not limited to, 21 CFR parts 210 and 211. This request for comments is intended to assist the Center for Biologics Evaluation and Research in identifying regulations that are outdated, burdensome, inefficient, or otherwise unsuitable or unnecessary from a regulatory standpoint and in need of revision to achieve their public health goals more effectively.

Under Executive Order 12866, the Paperwork Reduction Act of 1980 (Pub. L. 96–511), and the Regulatory Flexibility Act (Pub. L. 96–354), FDA is performing a review of these regulations to determine whether they are unnecessary as the result of changed circumstances, duplicative, or inappropriately burdensome. This action is also intended to incorporate the scientific advances in the field, to introduce, where appropriate, increased flexibility in the regulations, and to further insure the safety, purity, and potency of blood and blood products by updating the blood regulations. This document requests information and comments on these regulations.

A request for comments on the general biologics and licensing regulations in 21 CFR parts 600, 601, and 610 will be published elsewhere in this issue of the **Federal Register**.

Interested persons may, on or before August 17, 1994, submit to the Dockets Management Branch (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA requests that comments include the following information in the order shown: (1) The section affected in Title 21 of the CFR; (2) a description of the suggested change, including, if appropriate, suggested changes in the text of the

regulation; (3) the rationale for the change or the problem to be addressed by the change; (4) any related regulations or guidance also affected by the suggested change; (5) any pertinent background information; and (6) whether the comment includes attachments. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 26, 1994

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–13466 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Kentucky Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Kentucky plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment deletes reference to the Kentucky Advisory Committee for Abandoned land Reclamation and establishes informal procedures for coordination of activities with the Rural Abandoned Mine Program (RAMP) administered by the U.S. Department of Agriculture, Soil Conservation Service (SCS). The amendment is intended to improve operational efficiency.

DATES: Written comments must be received on or before 4 p.m., E.D.T., on July 5, 1994. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on June 28, 1994. Requests to speak at the hearing must be received on or before 4 p.m., E.D.T., on June 20, 1994.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office at the address listed below.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Copies of the Kentucky plan, the proposed amendment, a listing of any scheduled hearings, and all written comments received in response to this document will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., E.D.T., excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (606) 233–2896.

Department of Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone: (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Plan

Title IV of SMCRA established an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. As enacted in 1977, lands and waters eligible for reclamation were those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there was no continuing reclamation responsibility under State or Federal law. The Abandoned Mine Land (AML) Reclamation Act of 1990 (Pub. L. 101–508, Title VI, Subtitle A, Nov. 5, 1990, effective October 1, 1991) amended SMCRA, 30 U.S.C. 1231 *et seq.*, to provide changes in the eligibility of project sites for AML expenditures. Title IV of SMCRA now provides for reclamation of certain mine sites where the mining occurred after August 3, 1977. These include interim program sites where bond forfeiture proceeds were insufficient for adequate reclamation and sites affected any time between August 4, 1977, and November 3, 1990, for which there were insufficient funds for adequate reclamation due to the insolvency of the bond surety. Title IV provides that a State with an approved AMLR program has the responsibility and primary authority to implement the program.

On May 18, 1982, the Secretary of the Interior approved the Kentucky plan. Background information on the plan including the Secretary's findings, the disposition of comments and a detailed explanation of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21435). Subsequent actions concerning the conditions of approval and amendments to the plan can be found at 30 CFR 917.21.

The Secretary adopted regulations at 30 CFR part 884 that specify the content requirements of a State reclamation plan and the criteria for plan approval. The regulations provide that a state may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope of major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures in 30 CFR 884.14 when approving or disapproving an amendment or revision.

II. Discussion of Proposed Amendment

By letter dated May 5, 1994 (Administrative Record No. K–64), Kentucky submitted a proposed amendment to revise procedures for coordinating with the RAMP, Indian, and other reclamation programs contained in Chapter 5 of the Kentucky Plan. This amendment was initiated in part due to a finding by the Kentucky Auditor of Public Accounts in the Statewide Audit for the period ended June 30, 1992, that the Division of Abandoned lands (DAL) was not operating in compliance with the Kentucky Plan. Chapter 5 of the plan establishes a "Kentucky Advisory Committee for Abandoned Mine Land Reclamation" to facilitate coordination of program activities with the RAMP program administered by the SCS. The Auditor determined that the processes established for the Advisory Committee to coordinate with RAMP were not being followed. The Advisory Committee had proven difficult to assemble, was cumbersome in operation, and had been disbanded. The proposed AMLR program amendment describes new, more informal coordination procedures. The annual meeting of the Kentucky Advisory Committee is to be replaced with an informal annual meeting between DAL and SCS staffs. During the annual meeting, SCS will present overall RAMP plans and goals, including scheduled reclamation sites, and results of past reclamation with emphasis on experience with various reclamation techniques. DAL will provide the SCS with its project proposals through the Kentucky State Clearinghouse process. SCS will provide DAL with copies of

RAMP documentation provided to OSM. Contacts between DAL and RAMP staff management will be initiated by either party on an as needed basis.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.14 and 884.15(a), OSM is seeking comment on whether the proposed amendment satisfies the applicable plan approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Kentucky plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.D.T., on June 20, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 27, 1994.

Robert J. Biggi,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–13504 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGDO1 94–037]

RIN 2115–AA97

Safety Zone; Boys Harbor Fireworks, East Hampton, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone in Three Mile Harbor, around the fireworks barges FBG 1 and FBG 2, which will be tied together and located approximately one mile south of Sammy's Beach, East Hampton, NY from 8:45 p.m. through 10 p.m. on July 16, 1994. This safety zone is needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Long Island Sound.

DATES: Comments must be received on or before July 5, 1994.

ADDRESSES: Comments may be mailed to the Captain of the Port, 120 Woodward Avenue, New Haven, CT 06512 or may be delivered to the Port Operations office at the above address between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (203) 468–4464.

The Captain of the Port maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the Port Operating office at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.V. Skuby, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGDO1 94–037) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Project Officer at the address under ADDRESSES. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are LCDR T.V. Skuby, Project Officer, Captain of the Port, Long Island Sound, and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

Background and Purpose

On March 12, 1994, the sponsor, Boys Harbor, Inc., New York, NY requested that a fireworks display be permitted in the port of East Hampton in the vicinity of Sammy's Beach, East Hampton, NY from 8:45 p.m. through 10 p.m. on July 16, 1994. The safety zone covers all waters of Three Mile Harbor within a 1200 foot radius of the fireworks barges FBG 1 and FBG 2, which will be tied together and located one mile south of Sammy's Beach, East Hampton, NY. This zone is required to protect the maritime community from the dangers and potential hazards to navigation associated with this fireworks display which is occurring over Three Mile Harbor. Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port or his on scene representative. Good cause exists for providing a comment period of less than sixty days. Providing a sixty day comment period would be contrary to the public interest since the fireworks display is for public viewing and is scheduled to occur in conjunction with the Boys Harbor, Inc. summer fund-raiser to benefit disadvantaged boys from New York City.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The Coast Guard expects the economic impact to be minimal due to the limited duration of the fireworks display, the small size of the safety zone, the low level or non existent commercial vessel traffic expected in the area during the effective time of the zone, and the broadcast of marine safety advisories the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons addressed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–037 is added to read as follows:

§ 165.T01–037 Safety Zone; Boys Harbor Fireworks, East Hampton, NY.

(a) *Location.* The safety zone includes all waters of Three Mile Harbor within a 1200 foot radius of the barges FBG 1 and FBG 2, the fireworks launching platforms, which will be tied together and located approximately one mile south of Sammy's Beach, East Hampton, NY in approximate position 41°01'05" N; 072°11'55" W.

(b) *Effective date.* This section is effective from 8:45 p.m. through 10 p.m. on July 16, 1994 unless extended or terminated sooner by the Captain of the Port. In case of inclement weather, this section will be effective on the rain date of July 17, 1994, at the same times.

(c) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

Dated: May 23, 1994.

T.W. Allen,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 94–13543 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–14–M

VOL 59 ISS 106 JE 3 994 JMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 15

RIN 1018–AC51

Importation of Exotic Wild Birds to the United States; Amendment of Final Rule Implementing the Wild Bird Conservation Act of 1992

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: On October 23, 1992 the Wild Bird Conservation Act (WBCA) was signed into law, the purposes of which include promoting the conservation of exotic birds by: Ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment during capture and transport; and assisting wild bird conservation and management programs in countries of origin. This proposal amends the final rule published by the Fish and Wildlife Service (Service) on November 16, 1993 in the **Federal Register** (58 FR 60524), which implements the prohibitions stipulated in the WBCA and provides permit requirements and procedures for some allowed exemptions. As a result of a lawsuit filed on February 15, 1994 by the Humane Society of the United States and Defenders of Wildlife, and a resultant District Court Order that a portion of the contested regulation is invalid, the Service hereby proposes to amend 50 CFR 15.11 (b) and (c). Notice of the Court Order was published in the **Federal Register** on May 24, 1994. Consistent with that Court Order, the Service announced in that **Federal Register** notice that all exotic birds listed Appendix III of The Convention on International Trade in Endangered Species (CITES) are covered by the automatic import moratorium of the WBCA, regardless of their country of origin.

DATES: The Service will consider comments and information received by July 5, 1994 in formulating its decision on this proposed rule.

ADDRESSES: Comments and information should be sent to: Director, U.S. Fish and Wildlife Service, 1849 C St. NW., 420 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, U. S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 420C, Arlington, VA 22203, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION: This rule proposes to amend 50 CFR 15.11 (b) and (c)—Prohibitions, of the final rule published in the **Federal Register**, November 16, 1993 (58 FR 60524).

In the final rule of November 16, 1993, the Service interpreted that Appendix III species are considered CITES-listed species for the purposes of these regulations only if they originate in the country that listed them in Appendix III. The Service noted that the listing of a species in Appendix III is a unilateral action by a particular CITES Party, thereby requiring CITES permits and implementation of CITES permit issuance requirements for that country only; when the species is found in countries that did not list it in Appendix III, only a certificate of origin is required, stating that it did not originate in the country that listed the species in Appendix III. Therefore, when the species is found in countries other than where listed in Appendix III, it is not subject to the same level of CITES controls, and indeed is only listed in the Appendices to assist the listing state in implementing its domestic legislation. Based on its understanding of the intent of Congress, the Service implemented a final rule whereby Appendix III species were subject to the *automatic* import prohibitions of the law, if they originated in the listing country. Otherwise, they would be subject to the *discretionary* prohibitions of the law.

The Humane Society of the United States and Defenders of Wildlife brought a civil action against the Secretary of the Interior in the United States District Court for the District of Columbia challenging that part of 50 CFR 15.11 which restricts the importation of certain Appendix III exotic birds. *Humane Society of the United States* v. *Babbitt*, Civ. No. 94–0296 (D.D.C., March 29, 1994). A hearing in the District Court took place on March 7, 1994. Plaintiffs argued that this provision, which was adopted through notice and comment procedures, violates the language of the Wild Bird Conservation Act of 1992. They sought relief to suspend or invalidate the following exception, contained in the final rule, to the prohibition on importation of birds listed in the Convention's appendices: "This paragraph (b) does not apply to an exotic bird species listed in Appendix III to the Convention that originated in a country that has not listed the species in Appendix III" (50 CFR 15.11(b)(2)). Plaintiffs argued that this provision violates the plain language of the Act, which bars the importation of "any" species listed in "any" appendix to the Convention.

On March 29, 1994 U. S. District Judge Louis F. Oberdorfer found the contested regulation to be invalid. (This Court Order was discussed in a Notice in the **Federal Register** published on May 24, 1994.) Therefore, the Service hereby proposes to amend 50 CFR 15.11 (b) and (c) to comply with the Court Order. The Service proposes that all bird species listed in CITES Appendix III, (in addition to those in Appendices I or II) wherever found, cannot be imported into the U.S. unless they are either accompanied by an import permit issued pursuant to subpart C of 50 CFR part 15, or they are included in an approved list. On March 17, 1994 the Service published in the **Federal Register** (59 FR 12784) a proposed rule that would establish those approved lists.

Effects of the Rule

The Service has determined that this proposed rule is categorically excluded under Departmental procedures in complying with the National Environmental Policy Act (NEPA). See DOI Departmental Manual, 516 DM 2, Appendix 1, ¶ 1.10. The regulations are procedural in nature, and the environmental effects are judged to be minimal, speculative, and do not lend themselves to meaningful analysis. The permits and other administrative actions authorized under the WBCA and regulations will be subject to future NEPA documentation requirements, on a case-by-case basis.

Executive Orders 12866, 12612, and 12630 and the Regulatory Flexibility Act

This proposed rule has been determined not to be significant for purposes of Executive Order 12866. This action would not be expected to have significant taking implications for U.S. citizens, as per Executive Order 12630. Any effects on small entities (importers, shippers, etc.) would likely be minor, and would in any event, be the mandatory result of the district court ruling. Future proposed rule making will establish procedures for listing of species approved for import, which may reduce any effects on small entities. No reporting requirements would be added to existing regulations. Therefore, this revision would not have a significant economic effect on a substantial number of small entities as described by the Regulatory Flexibility Act. Since the proposed rule applies to importation of live exotic birds into the United States, it does not contain any Federalism impacts as described in Executive Order

12612. The Department has certified that this proposed rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act

No new information collection requirement(s) are contained in this proposed rule for which OMB approval under 44 U.S.C. 3501 is necessary.

List of Subjects in 50 CFR Part 15

Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, part 15 of Chapter I of title 50 of the Code of Federal Regulations is proposed to be revised as follows:

PART 15—[AMENDED]

1. The authority citation for part 15 continues to read as follows:

Authority: 16 U.S.C. 4901–4916.

2. Section 15.11 of subpart B is proposed to be amended by revising paragraphs (b) and (c) to read as follows:

§ 15.11 Prohibitions.

* * * * *

(b) It is unlawful to import into the United States any exotic bird species listed in the Appendices to the Convention that is not included in the approved list of species, pursuant to subpart D of this part, except that this paragraph (b) does not apply to any exotic bird that was bred in a foreign breeding facility listed as qualifying pursuant to subpart E of this part.

(c) It is unlawful to import into the United States any exotic bird species not listed in the Appendices to the Convention that is listed in the prohibited species list, pursuant to subpart F of this part.

* * * * *

Dated: May 23, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–13556 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 671, 672, 675, and 676

[Docket No. 940556–4156; I.D. 050494B]

RIN 0648–AE62

Limited Access Management of Federal Fisheries In and Off of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement a moratorium for a temporary period on the entry of new vessels into the groundfish, crab, and halibut fisheries contained in proposed Amendment 23 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (BSAI), proposed Amendment 28 to the FMP for Groundfish of the Gulf of Alaska (GOA), proposed Amendment 4 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area, and a proposed regulatory amendment affecting the Pacific halibut fishery in the waters in and off of Alaska. The moratorium is designed as a temporary measure that is necessary to curtail increases in fishing capacity and provide industry stability while the North Pacific Fishery Management Council (Council) and the Secretary of Commerce (Secretary) prepare, review, and, if approved, implement a comprehensive management plan for these fisheries. This action is intended to promote the objectives of the Council to promote conservation and management of groundfish, crab, and halibut resources, and to further the objectives of the Northern Pacific Halibut Act of 1982 (Halibut Act) and the Magnuson Fishery Conservation and Management Act (Magnuson Act).

DATES: Comments must be received at the following address by July 15, 1994.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of proposed Amendments 23 and 28 to the BSAI and GOA groundfish FMPs, Amendment 4 to the Bering Sea and Aleutian Islands Area king and Tanner crab FMP, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for the moratorium may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: David C. Ham, Fishery Management Biologist, Alaska Region, NMFS at 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Domestic groundfish fisheries in the exclusive economic zone (EEZ) of the GOA and the BSAI are managed by the Secretary under the GOA and BSAI FMPs. The commercial harvest of king and Tanner crabs is managed under the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area. These FMPs were prepared by the Council under the Magnuson Act. The FMP for the GOA groundfish fisheries is implemented by regulations at 50 CFR parts 672 and 676, and the FMP for the BSAI groundfish fisheries is implemented by regulations at 50 CFR parts 675 and 676. The FMP for the king and Tanner crab fisheries in the BSAI is implemented by regulations at 50 CFR part 671 and by Alaska Administrative Code regulations at title 5, chapters 34 and 35. For crab, BSAI means the Bering Sea and Aleutian Islands area as defined at § 671.2, and is a slightly different area than the BSAI management area as defined for groundfish at § 675.2. General regulations that also pertain to the U.S. groundfish and crab fisheries are set out at 50 CFR part 620.

The Council does not have a FMP for halibut. The domestic fishery for halibut in and off of Alaska is managed by the International Pacific Halibut Commission (IPHC) as provided by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention), signed at Washington, DC, March 29, 1979, and the Halibut Act. The Convention and the Halibut Act authorize the respective Regional Fishery Management Councils established by the Magnuson Act to develop regulations that are in addition to, but not in conflict with, regulations adopted by the IPHC affecting the U.S. halibut fishery. Under this authority, the Council may develop for approval by the Secretary limited access policies for the Pacific halibut fishery in Convention waters in and off of Alaska. "Convention waters" means the maritime areas off the west coast of the United States and Canada as described

in Article I of the Convention (see 16 U.S.C. 773(d)). The Council acted under this authority in recommending its proposed moratorium for the halibut fishery. Regulations governing the harvesting of Pacific halibut are set out at 50 CFR parts 301 and 676.

In 1987, amid growing indications of excess harvesting capacity in the North Pacific groundfish fisheries, the Council adopted a "statement of commitment" to pursue alternative management measures that would achieve optimum yield through more rational fishing effort than exists with the current open access system. The Council identified ways to fulfill this commitment that included the development of an alternative management strategy for groundfish fisheries and the consideration of effort management in the crab and halibut fisheries.

Fishery management planning work continued in 1987 with the formation of the Future of Groundfish (FOG) Committee. The FOG Committee undertook a comprehensive examination of the groundfish, crab, and halibut fisheries off of Alaska. It concluded that problems of excess harvesting capacity and allocation conflicts would worsen under a continued open access system. The committee recommended a limited access management approach for these three fisheries.

In 1989 and 1990, the Council considered methods for implementing a moratorium that would limit access of new vessels into the groundfish, crab, and halibut fisheries. At its meeting in August 1990, the Council recommended that NMFS publish a notice in the **Federal Register** to: a. Inform the public of the Council's intention to develop measures to limit access; and b. announce a control date after which owners of vessels that had not previously participated would not be assured future access to these fisheries if a limited access system were implemented using that control date. The control date notice was published on September 5, 1990 (55 FR 36302), corrected on September 13, 1990 (55 FR 37729), and announced September 15, 1990, as the control date.

The control date notice stated that "due consideration" would be given to vessels that were under construction or under contract for purchase or construction and that had harvested or processed groundfish, crab, or halibut by January 15, 1992. In response to the delay of the 1992 trawl groundfish season from January 1, 1992, until January 20, 1992, the Council decided at its September 1991 meeting to change the final "due consideration" date to February 9, 1992.

The control date notice indicated that the Council was examining a change in the current open-access nature of the groundfish, crab, and halibut fisheries as part of a long-term solution to chronic conservation and management problems. The Council is continuing its study of long-term solutions to problems in these fisheries in its comprehensive management plan.

The moratorium is not expected to resolve the problem of excess capacity. However, the Council considers it necessary as an interim management measure to curtail increases in fishing capacity and provide temporary industry stability. While the moratorium is in effect, the Council can prepare and the Secretary can review and, if approved, implement a comprehensive management plan. The Council also determined that the moratorium would aid in the achievement of optimum yield by freezing the number of vessels allowed to participate in these fisheries and limiting increases in fishing capacity, both of which would increase economic benefits to fishermen and reduce the risk of overfishing.

Vessel Moratorium Program

The following section provides a summary of the provisions included in the motion, clarifications, and the Council's rationale for selecting those provisions. The subsequent section, "Implementation of the Moratorium," explains how the moratorium would be implemented if approved by the Secretary and includes changes proposed by NMFS to supplement the Council's proposed moratorium. The Council adopted a moratorium by approving a motion at its June 1992 meeting, with clarification in August 1992 and January 1993.

Section 304(a)(1)(D) of the Magnuson Act, as amended, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the FMP amendments and regulations. At this time, the Secretary has not determined that the FMP amendments these regulations would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making final determinations, will take into account the data, views, and comments received during the comment period.

Provisions Contained in the Council's Motions

1. Moratorium Fisheries

The proposed moratorium fisheries would be: a. All groundfish fisheries managed under the GOA FMP; b. all groundfish fisheries managed under the BSAI FMP; c. all crab fisheries managed under the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI; and d. the commercial Pacific halibut fishery conducted in the waters in and off of the State of Alaska (State).

2. Affected Sectors of the Industry

The moratorium would apply only to catcher vessels and catcher-processor vessels participating in one or more of the moratorium fisheries. The Council designed the moratorium to stem the growth in harvesting capacity. It determined that restricting motherships, tendering vessels, and other support vessels would not accomplish this goal.

3. Qualifying Period

A vessel could be used to participate in any of the moratorium fisheries during the moratorium, if a reported landing in one of the moratorium fisheries was made from that vessel between January 1, 1980, and February 9, 1992. Such a vessel would be called a "qualifying vessel."

The Council determined that a date earlier than January 1, 1980, would have increased the size of the fleet eligible to participate during the moratorium period and placed a greater weight on past participation. A date later than January 1, 1980, would have restricted the size of the fleet eligible to participate during the moratorium period only to current or very recent participants.

The Council selected February 9, 1992, as the ending date for the qualifying period instead of the announced control date of September 15, 1990, with its "due consideration" requirements. Determining which vessels should be allowed to participate during the moratorium under "due consideration" would have required extensive review of documents submitted by the vessel owners and investigation as to whether the documents proved that vessels were qualifying vessels under the "due consideration" criteria. The Council deemed the submission and review of documents as too burdensome and expensive to implement. By selecting February 9, 1992, the Council included all vessels that were under "due consideration" without having to make any findings concerning construction or vessels under contract.

The qualifying period adopted by the Council would allow approximately 13,500 vessels to be eligible to participate in the moratorium fisheries during the moratorium. Substantially fewer vessels participate in any one year. In 1991, only about 4,500 vessels participated in the moratorium fisheries. NMFS particularly requests public comment on the effect of this qualifying period on the objectives of the moratorium.

4. Minimum Qualifying Poundage

The Council did not require landing of a specific minimum poundage from a moratorium fishery. A qualifying vessel would be one that made a reported landing from a moratorium fishery during the qualifying period. The Council reasoned that basing moratorium eligibility on landing a minimum amount from a moratorium fishery would become allocative among different segments of the industry and should be addressed in the comprehensive management plan.

5. Duration of Moratorium

The moratorium would be in effect for no longer than 3 years from the date of implementation. The proposed FMP amendment language states that the Council may extend the moratorium for up to 2 years if a permanent limited access program is imminent. This provides flexibility in the duration of the moratorium if progress is made on a permanent limited access program, but does not unnecessarily prolong the moratorium in the absence of further progress on the underlying overcapitalization problem. If no further action is taken concerning a limited access program during the moratorium, the moratorium would expire, because its justification would no longer be valid.

6. Crossovers

The Council determined that a qualifying vessel would be allowed to participate in all moratorium fisheries during the moratorium, even if the vessel had a reported landing from only one moratorium fishery. The Council reasoned that restrictions on the ability to crossover into other moratorium fisheries would constrain a fisherman's flexibility during the moratorium and would be allocative among different sectors of the industry. The Council determined that crossover restrictions would be addressed under the comprehensive management plan.

Crossovers during the moratorium could result in the entry of groundfish and halibut vessels into the crab fisheries, halibut vessels into the groundfish fisheries, and crab pot vessels into the groundfish fisheries. NMFS particularly requests public comment on crossovers, because crossover ability could have the potential to increase the harvesting capacity in the groundfish and crab fisheries, thwarting the goals of the moratorium.

7. Transfer of Moratorium Qualification

"Moratorium qualification" is proposed for all qualifying vessels. Moratorium qualification could be transferred if two requirements were satisfied. First, the vessel transferring moratorium qualification would no longer be eligible to participate in any of the moratorium fisheries for the remainder of the moratorium unless that vessel subsequently received transferred moratorium qualification from another vessel. Second, if moratorium qualification were transferred to another vessel, a vessel length restriction would apply to the receiving vessel. The latter restriction, known as the "20 percent rule", would restrict vessels that are equal to, or less than, 125 ft (38.1 m) length overall (LOA) from increasing LOA by more than 20 percent, or 125 ft (38.1 m), whichever is less. Vessels over 125 ft (38.1 m) LOA would not be allowed to increase LOA during the moratorium. The LOA of a vessel, as defined at §§ 672.2 and 675.2, means the horizontal distance, rounded to the nearest foot (.33 m) between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments. For example, the owner of a vessel that is 100 ft (30.5 m) LOA could transfer that vessel's moratorium qualification to a vessel that is 120 ft (36.6 m) LOA or less. The 100-ft (30.5 m) LOA vessel would not be able to participate in any of the moratorium fisheries for the duration of the moratorium because it does not have moratorium qualification. The 100-ft (30.5 m) vessel would be able to participate if it received transferred moratorium qualification from a vessel that was 83 ft (25.3 m) LOA or longer.

The Council did not select a date before which the transfer of moratorium qualification would not be allowed. Recognizing that a market in moratorium qualification had developed, the Council determined that moratorium qualification would rest with the qualifying vessel unless otherwise specified by legal agreement. The Council also determined that the transfer of moratorium qualification would not result in a transfer of the vessel's catch history.

8. Replacement of Vessel

Until the moratorium expires, the owner of a vessel with moratorium qualification would be able to replace that vessel with a vessel that does not have moratorium qualification as long as two requirements were satisfied. First, the replaced vessel would no longer be eligible to participate in any of the moratorium fisheries for the remainder of the moratorium, unless that vessel subsequently received transferred moratorium qualification from another vessel. Second, any increase in LOA through vessel replacement, sequential vessel replacements, or combined replacement and reconstruction would be limited by the 20 percent rule. The Council deemed the vessel replacement provision as necessary to facilitate the normal and on-going vessel replacement activities undertaken by vessel owners in response to financial, economic, and efficiency incentives.

9. Reconstruction of Vessel

A qualifying vessel that is reconstructed would have to comply with certain restrictions in LOA to remain eligible to participate in any of the moratorium fisheries. The proposed restrictions are: a. If vessel reconstruction were completed before June 24, 1992, any increase in LOA resulting from that reconstruction would be unrestricted; additional reconstruction would be allowed after June 24, 1992, subject to the 20 percent rule. b. If reconstruction were started before June 24, 1992, but not completed by that date, any increase in LOA resulting from that reconstruction would be unrestricted, but no more increases in LOA would be allowed during the moratorium. c. If reconstruction were started on or after June 24, 1992, any increase in LOA resulting from that reconstruction would be subject to the 20 percent rule.

The Council determined that it was important to allow increases in vessel LOA through reconstruction to provide for enhanced safety and stability, or to allow for the installation of processing equipment. However, the Council determined that reconstruction should not allow unlimited increases in LOA or the objectives of the moratorium would be compromised. The Council chose to limit LOA as a measure of fishing capacity, because it believed LOA was unambiguous, easily determined, and difficult to circumvent. To account equitably for actions already taken by vessel owners, restrictions on increases in LOA would be applicable only to changes that occurred after June 24,

1992, which was the day the Council adopted the 20 percent rule and the public became aware of this Council action through the June 24th Council meeting.

10. Replacement of Lost or Destroyed Vessel

Any qualifying vessel that is lost or destroyed during the moratorium could be replaced by a non-qualifying vessel. Any qualifying vessel that was lost or destroyed on or after January 1, 1989, until the date of moratorium implementation could be replaced with a non-qualifying vessel. However, the replacement vessel would be required to make a landing from a moratorium fishery within 2 years of the moratorium implementation date. A qualifying vessel lost or destroyed before January 1, 1989, could not be replaced. A vessel that replaced a lost or destroyed vessel would be subject to the 20 percent rule, and the replaced vessel would become a non-qualifying vessel unless that vessel subsequently received transferred moratorium qualification.

The Council included this provision to make allowance for a vessel lost or destroyed before and during the moratorium. The January 1, 1989, date was selected because the Council determined that an owner of a vessel lost or destroyed prior to 1989 is likely to have received insurance claims, and already obtained a replacement vessel.

11. Salvage of Lost or Destroyed Vessel

A qualifying vessel that was lost or destroyed on or after January 1, 1989, may be salvaged and remain a qualifying vessel. The Council chose this date because the owner of a vessel lost or destroyed prior to 1989 is likely to have received insurance claims, and already have obtained a replacement vessel.

However, the Council created an exception for a qualifying vessel that was lost or destroyed before January 1, 1989. It could be salvaged and remain moratorium eligible if: a. The salvage operations began by June 24, 1992; and b. the salvaged vessel makes a landing from a moratorium fishery within 2 years of the date of implementation of the moratorium.

The provision to allow the salvage of a vessel before January 1, 1989, was added at the Council's August 1992 meeting based on public testimony received at that meeting. The Council chose June 24, 1992, because that was the date the Council approved the motion on the moratorium. The Council required such a salvaged vessel to make a landing within 2 years of the moratorium implementation date to ensure that the vessel was participating in a moratorium fishery.

12. Exemptions to the Moratorium

The Council included three exemptions to the moratorium. First, a vessel that participates in moratorium fisheries in the GOA that does not exceed 26 ft (7.9 m) LOA, and a vessel that participates in moratorium fisheries in the BSAI that does not exceed 32 ft (9.8 m) LOA would be exempt, providing such vessel lengths are not increased beyond these LOA limits. The Council provided these exemptions because, according to the EA/RIR/IRFA, vessels less than 36 ft (11 m) LOA in the BSAI and GOA were responsible for less than 1 percent of the moratorium fisheries landings and comprised approximately 65 percent of the fleet of qualified vessels in 1991. Eliminating the smaller vessels from the moratorium would lessen the burden on small vessel owners, while not compromising the goals of the moratorium. The limit was set at 26 ft (7.9 m) LOA or less in the GOA because vessels of this size represent the typical skiff fleet. In the BSAI, 32 ft (9.8 m) LOA represents the historical length restriction imposed on vessels participating in the Bristol Bay drift gillnet salmon fishery.

Second, a newly constructed vessel that was constructed pursuant to an approved Community Development Plan (CDP) under provisions of 50 CFR parts 675 and 676 would be exempted if: a. It were constructed solely for the purpose of furthering the goals of a CDP; b. it were a specialized vessel designed and equipped to meet the needs of a community or group of communities that have specific and unique operating requirements; and c. it were 125 ft (38.1 m) LOA or less. Such a vessel could participate in Community Development Quota (CDQ) and non-CDQ fisheries during the moratorium subject to other regulatory provisions. Such a vessel would lose its exempt status and would be restricted from participating in any of the moratorium fisheries, if it were transferred to a non-CDQ entity during the moratorium, unless the vessel subsequently received transferred moratorium qualification.

Third, a halibut or sablefish fixed gear vessel operating under the provisions of the Individual Fishery Quota (IFQ) program would be exempted from the vessel moratorium, as it affects directed halibut and sablefish operations. The Secretary approved the IFQ program for the halibut and sablefish fixed gear fishery on January 29, 1993 (58 FR 59375, November 9, 1993). A non-qualifying vessel that is harvesting IFQ halibut or sablefish would not be able to participate in any other directed moratorium fishery, but would be permitted to retain moratorium species other than halibut and sablefish in amounts up to 20 percent of the amount of halibut and sablefish on board.

13. Appeals

The Council's preferred alternative provides for an administrative appeal of an initial denial of a vessel permit or license. The intent of the Council, in recommending the opportunity for an administrative appeal, was to allow for an administrative solution to contested eligibility without the expense of a court proceeding. The Council determined that most appeals under the moratorium would be resolved through the examination of records. In the event that review of an appeal would require more than a review of the records and application of the regulations and would benefit from industry expertise, the Council recommended establishment of an adjudication or appeals board to review the appeals.

Implementation of the Moratorium

If approved by the Secretary, the moratorium would be effective for 3 years from its implementation date, as recommended by the Council. If approved, NMFS intends to implement the moratorium on January 1, 1995, through December 31, 1997.

Permit Requirements

Under the moratorium, NMFS is proposing that only a vessel that is issued a permit would be able to participate in the moratorium fisheries. Currently, an owner of a vessel harvesting halibut in the waters in and off of Alaska must obtain a vessel license from the IPHC, a groundfish harvesting, processing or support vessel in Federal waters off of Alaska must obtain a vessel permit from NMFS, and a king or Tanner crab harvesting, processing, or support vessel in Federal and State waters must obtain a vessel permit from the State.

Under the moratorium, a vessel owner would continue to apply to the IPHC for a halibut vessel license, and to NMFS for a groundfish vessel permit. Since the State does not have authority to impose a moratorium on vessels, NMFS also would require a crab harvesting, processing, or support vessel participating in the crab fisheries in the Federal waters of the BSAI to obtain a Federal vessel permit. The State would continue to require a State vessel permit to participate in crab fisheries in State waters, and the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI would continue to defer much of

the management of the fishery to the State.

An owner of a support vessel that intends to participate in the moratorium fisheries from January 1, 1995, through December 31, 1997, would have to apply for and receive a permit, but would not be subject to the moratorium eligibility requirements.

Permits and licenses issued under the moratorium would remain harvesting privileges and the Secretary would have the authority to amend or revoke the moratorium and any harvesting privileges thereunder, if required for conservation of the resources.

Eligibility Requirements

As previously discussed, a vessel would be eligible to receive a permit or license if it has moratorium qualification and if its LOA does not exceed the applicable length restrictions. NMFS is proposing to implement the Council's length increase restrictions, or the 20 percent rule, by requiring the LOA of a vessel to be no greater than 1.2 times the "original qualifying length" of the qualifying vessel. This calculation results in a "maximum LOA" that the vessel may not exceed during the moratorium. The original qualifying length would be the registered length of a qualifying vessel that appears on the most recently submitted application prior to June 24, 1992, for U.S. Coast Guard Certificate of Documentation, or State documentation if the vessel is not required to have U.S. Coast Guard Documentation. For vessels with an original qualifying length of less than or equal to 104 ft (31.7 m), the maximum LOA would be 1.2 times the original qualifying length. For vessels with an original qualifying length greater than 104 ft (31.7 m) but less than or equal to 125 ft (38.1 m), the maximum LOA would be 125 ft (38.1 m). For vessels with an original qualifying length greater than 125 ft (38.1 m), the maximum LOA would be the original qualifying length. Vessels that satisfy both moratorium conditions would be "eligible vessels."

Vessel Reconstruction

Vessel reconstruction means an adjustment in the LOA of a qualifying vessel. NMFS proposes that the maximum LOA for a qualifying vessel that is 125 ft (38.1 m) LOA or less could be adjusted through reconstruction and the vessel would remain an eligible vessel under the following three conditions. First, if vessel reconstruction were completed on or before June 24, 1992, the LOA of the reconstructed vessel would become the new original qualifying length of the vessel. The new original qualifying length then would be used to calculate maximum LOA as described above under "Eligibility Requirements." Second, if vessel reconstruction were started before June 24, 1992, but not finished by that date, the LOA of the reconstructed vessel would become the new maximum LOA for the vessel. No further increase in LOA would be permitted during the moratorium. Third, if vessel reconstruction were started on or after June 24, 1992, the maximum LOA would not be adjusted during the moratorium, and any increases in LOA as a result of reconstruction would have to be less than or equal to the maximum LOA for the vessel. Vessel reconstruction would begin and end with the start and completion of the physical modification of the vessel. The determination of any adjustment in maximum LOA for reconstructed vessels would have to be approved by NMFS and be based on documentation supplied to NMFS that verifies the beginning and ending dates of vessel reconstruction. NMFS proposes that acceptable documentation of the beginning and ending dates of reconstruction would be limited to a notarized affidavit signed by the vessel owner and the owner/manager of the shipyard that specifies the beginning and ending dates of the reconstruction. NMFS particularly requests comments from the public on this proposed method for documenting the beginning and ending dates of vessel reconstruction.

Transfer of Moratorium Qualification

Moratorium qualification would be transferable from a vessel to another vessel or person, or from a person to another person or vessel. Any transfer of moratorium qualification by a vessel would make that vessel ineligible. For the purposes of implementing the moratorium, vessel replacement would be considered a transferral of moratorium qualification. Additionally, to establish transfer of moratorium qualification by legal agreement, NMFS proposes that a written contract must exist that documents the transfer and includes certain information as proposed in § 676.3(b)(1)(i).

NMFS would determine the maximum LOA for each qualifying vessel prior to the implementation of the moratorium. When the moratorium qualification of a qualifying vessel is transferred to another vessel or person, the maximum LOA of the qualifying vessel also would be transferred to the vessel or person receiving the moratorium qualification. Maximum LOA would remain attached to a specific moratorium qualification regardless of how many times that moratorium qualification was transferred. If moratorium qualification is transferred to a smaller vessel, that smaller vessel would retain the maximum LOA of the qualifying vessel.

Definition of Vessel Length

The Council intended that the limitations on increases in vessel length be based on the LOA of the vessel. The current LOA of a vessel can be measured as it is defined in §§ 672.2 and 675.2, but complete records of the historical LOA of vessels during the qualifying period are not available for calculating the maximum LOA as proposed by NMFS. Various methods for measuring vessel length were used on vessel permit and license forms during the qualifying period by NMFS, the State, IPHC, and the U.S. Coast Guard (USCG). For example, several different methods of measuring "registered length" were used, and an undefined vessel "length" was used in addition to LOA. NMFS proposes, for purposes of the moratorium, that historical LOA equal the registered length listed on the most recently submitted application prior to June 24, 1992, for U.S. Coast Guard Certificate of Documentation to provide a single source of data for most original qualifying vessels. A vessel under 32 ft (9.8 m) LOA that does not have USCG documentation may use vessel length as specified in State registration.

A difficulty with the NMFS proposal is that the USCG registered length is sometimes less than actual LOA. This may cause a problem for a vessel that already has increased its length using actual historical LOA according to the Council's recommendations, resulting in an increase that exceeds the maximum LOA. Consequently, the vessel would be an ineligible vessel. Also, a vessel that has not yet increased its length according to the Council's 20 percent limit would not be able to increase its length as much as would be allowed if historical LOA were used instead of historical registered length. NMFS particularly requests comment from the public on this subject.

Replacement or Salvage of a Lost or Destroyed Vessel

If a vessel owner submits an application to NMFS for the replacement or salvage of a lost or destroyed vessel, NMFS proposes to determine whether a vessel is lost or destroyed by consulting the U.S. Coast Guard Report of Marine Casualty, form 2692. If NMFS determines that a vessel is lost or destroyed, a vessel owner

would then be required to submit documentation that satisfies the Council's requirements for eligibility of a replacement or salvaged vessel. These proposed information requirements are specified in § 676.3(b)(3)(iii).

Permit Issuance Procedure

For purposes of the moratorium, NMFS would prepare a database that contains each vessel that made a qualifying landing during the qualifying period. The database also would include information concerning ownership and vessel length derived from permit and license data. The database would be used by NMFS for determining eligible vessels. NMFS proposes the following vessel permit and license issuance procedure.

Groundfish

A vessel owner that intends to harvest groundfish in the GOA and BSAI from January 1, 1995, through December 31, 1997, would have to submit to the Director of the Alaska Region, NMFS (Regional Director), a written application for a groundfish vessel permit. An applicant would be issued a permit if: a. The vessel owner submitted a completed vessel permit application; b. the vessel made a qualifying landing during the qualifying period or submitted a completed moratorium qualification transfer application with the vessel permit application; and c. the LOA of the vessel did not exceed the maximum LOA for that vessel. If the vessel reconstruction provisions at § 676.3(b)(2) apply, a vessel owner also should submit a completed vessel reconstruction application with the vessel permit application. All permits issued by NMFS would list the maximum LOA applicable for that vessel and for any vessel to which the moratorium qualification is transferred.

If a vessel owner applies to NMFS for a groundfish vessel permit, and NMFS determines that the vessel is an ineligible vessel, the vessel owner would be notified in writing by NMFS that a vessel permit would not be issued. The applicant could appeal the initial decision within 45 days of issuance of the written notification according to the appeal procedures described below. Although each GOA and BSAI groundfish vessel would have to apply for and obtain a vessel permit from NMFS, only catcher vessels and catcher/processor vessels would be required to be eligible vessels.

Crab

A vessel owner that intends to fish for king and Tanner crab in the Federal waters of the BSAI from January 1, 1995, through December 31, 1997, would have to submit to the Regional Director a written application for a Federal crab vessel permit in addition to any permit required by the State. The application and issuance procedure, and the appeals procedure for crab vessel permits would be the same as for groundfish. Although all vessels operating in crab fisheries in the BSAI would have to apply for and obtain a vessel permit from NMFS, only catcher vessels and catcher/processor vessels would be required to be eligible vessels.

Halibut

A vessel owner that intends to harvest halibut from January 1, 1995, through December 31, 1997, in the waters in and off Alaska would have to apply for a vessel license from the IPHC. Upon receipt of a written vessel license application, the IPHC would compare the information submitted by the applicant with the NMFS database of eligible vessels. An unrestricted vessel license would be issued if: a. The vessel owner were to submit a completed vessel license application to the IPHC; b. the vessel made a qualifying landing during the qualifying period; and c. the LOA of the vessel did not exceed the maximum LOA. Each unrestricted vessel license issued by the IPHC would list the maximum LOA applicable for the vessel and for any vessel to which the moratorium qualification is transferred.

If a vessel owner applies to the IPHC for a halibut vessel license but the information on the application does not correspond to the information in the NMFS database, the IPHC would issue a restricted vessel license, applicable only for IPHC management areas 2A or 2B which are in and off British Columbia, Canada, and the States of California, Oregon, and Washington. At this point, the vessel owner would have the option of submitting additional written information regarding eligibility to NMFS within 45 days of issuance of the restricted vessel license. NMFS would review the additional information and issue a written decision as to whether an unrestricted halibut license would be issued. If NMFS initially determines that the vessel is eligible, NMFS would amend the database and inform the IPHC that the vessel is eligible and an unrestricted vessel license could be issued to the vessel owner. If NMFS initially determines that a restricted halibut license would be issued, the applicant may appeal the decision to the Regional Director within 45 days of issuance of the written notification from NMFS according to the appeal procedures described below.

Although vessels operating in the halibut fisheries in the waters in and off of Alaska would have to apply for and obtain a vessel license from the IPHC, only catcher vessels and catcher/processor vessels would be required to be eligible vessels.

Vessels Used in the IFQ Sablefish and Halibut Fixed Gear Fisheries

A vessel operating under the provisions of the halibut and sablefish fixed gear IFQ program would be exempted from the vessel moratorium as it affects directed halibut and sablefish operations. To implement this exemption, an owner of a vessel used in the IFQ sablefish and halibut fixed gear fisheries from January 1, 1995, through December 31, 1997, would have to submit to the Regional Director a written application for a groundfish and crab vessel permit. A vessel permit would be issued if the vessel owner submits a completed application to NMFS as required by §§ 671.4, 672.4, or § 675.4. The type of permit issued would be based on the eligibility of the vessel under the moratorium.

An eligible vessel used in the IFQ sablefish and halibut fixed gear fisheries would be issued an unrestricted groundfish and crab vessel permit. A vessel that is issued an unrestricted groundfish and crab vessel permit may retain amounts of other moratorium species subject to applicable directed fishing standards.

An ineligible vessel used in the IFQ sablefish and halibut fixed gear fisheries would be issued a restricted groundfish and crab vessel permit. A vessel that is issued a restricted groundfish and crab vessel permit would not be able to retain an aggregate amount of moratorium species other than sablefish and halibut in round weight equivalents in excess of 20 percent of the aggregate amount of sablefish and halibut in round weight equivalents on board.

Letter of Authorization

If a vessel owner submits a complete application for a vessel permit or license, and NMFS preliminarily determines that a vessel is an ineligible vessel, NMFS would send a Letter of Authorization to a vessel owner authorizing a vessel to harvest moratorium species. A Letter of Authorization would allow a vessel owner who applies for a moratorium vessel permit or license to continue operating his vessel until NMFS makes a decision regarding its moratorium qualification.

NMFS would send a Letter of Authorization to the vessel owner within 30 days of receipt of the application, if NMFS has not issued a written initial decision to the vessel owner regarding his vessel's qualification. This Letter of Authorization would be in effect until superseded or rescinded by the Regional Director.

If a vessel owner files a notice of appeal with the Regional Director, NMFS would send a Letter of Authorization to the vessel owner within 30 days of the filing of the appeal with NMFS, pending issuance of a written final decision to the vessel owner on the appeal. This Letter of Authorization would expire 30 days after the Regional Director issues a written final decision on the appeal.

Appeals Procedure

NMFS proposes the following appeals procedure to implement the Council's appeal provisions. A vessel owner may appeal the initial denial of a groundfish and crab vessel permit, the issuance of a restricted halibut vessel license, or the issuance of a restricted groundfish and crab vessel permit to the Regional Director within 45 days of issuance of written notice from NMFS or the IPHC. The Regional Director would decide the appeal on a review of the records submitted, and issue a written decision on the appeal. If the Regional Director were to determine that in deciding the appeal, his decision would benefit from industry input, the Regional Director would forward the appeal to the Appeals Board. NMFS proposes that the Appeals Board would be a committee of the Council comprised of three appointed Council Advisory Panel members. The Appeals Board would meet publicly to discuss the appeal. After receiving the Appeals Board's recommendation from the Council, the Regional Director would consider the recommendation and issue a written decision on the appeal. The Regional Director's decision would constitute the final agency action upon which the applicant would be able to file suit in U.S. District Court.

Notice of a proposed rule that would govern appeals of determinations made for the IFQ program was published on February 9, 1994 (59 FR 5979). Public comment is particularly requested on using the same appeals procedure for the IFQ and moratorium programs.

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule, if adopted, could have a significant economic impact on a substantial number of small entities. Based on the EA/RIR/IRFA for the moratorium, total participation in the moratorium fisheries for a given year is influenced by the annual rate of entrance and exit of vessels. Although new entrants averaged nearly 900 vessels annually over the period from 1977 through 1991, total participation increased only 180 vessels per year, on average, because 500 to 1,000 vessels exited the fisheries annually.

Vessel participation data for 1992 have become available since this analysis was performed. The source of these data are the State of Alaska fish ticket, NMFS groundfish vessel permit, weekly production report, and catch estimate databases.

In 1991, 2,227 vessels fished in Alaska Federal groundfish fisheries, and in 1992, 2,341 vessels fished, for an increase in 1992 of 114 vessels. Approximately half (46 vessels) of this increase is due to vessels less than 60 ft (18.3 m) LOA. Such vessels normally do not make a significant contribution to the overall landings of groundfish. In addition, vessels less than 26 ft (7.9 m) LOA in the GOA and those less than 32 ft (9.8 m) LOA in the BSAI area would be exempt from the moratorium. After subtracting such small vessels and considering only those newly permitted vessels that made recorded groundfish landings in 1992, only about 27 vessels apparently entered the groundfish fishery in 1992 for the first time, and would not be eligible to fish under the moratorium. With respect to halibut, about 156 "new" vessels made landings for the first time in 1992 (some of these had groundfish and crab landings records also). With respect to BSAI crab, eight "new" vessels made landings for the first time in 1992. Therefore, a total of about 191 vessels apparently entered the groundfish, halibut, and crab fisheries for the first time in 1992 and may not be eligible for a license if the moratorium is approved and implemented as proposed.

The number of "new" vessels that entered these fisheries in 1993 and 1994 is unknown because individual vessel catch data are still preliminary. Assuming that roughly the same number of "new" vessels entered these fisheries in 1993 and 1994 as entered in 1992 probably is unrealistic. The Council's moratorium decision occurred midway through 1992. Most fishermen decide whether to enter a fishery at the beginning of the year. Public knowledge of the Council's action after June 1992 probably had a negative effect on a decision to enter a "new" vessel in 1993 or 1994. According to the NMFS vessel permit database, about 447 Federal groundfish vessel permits were issued between February 9, 1992, and March 21, 1994, that had never before obtained a groundfish vessel permit. However, the majority of these "new" vessel permits likely were issued to halibut longline vessels, which would be exempt from the moratorium when the halibut IFQ program is fully implemented in 1995. In addition, some unknown number of these "new" groundfish vessel permits were never used to actually harvest and land groundfish, and others were issued to small vessels that would be exempt from the moratorium. For the reasons described above, the number is likely more than 35, but less than 100, based on the available data and knowledge of the fisheries. A copy of the EA/RIR/IRFA may be obtained (see **ADDRESSES**).

This rule involves collection-of-information requirements subject to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) that have been submitted to the Office of Management and Budget for approval. Public reporting burden for each year of this collection is estimated to average 0.5 hours per response for completing each of the six information collection requests, except for the crab permit application, which is .33 burden hours per response. The six information collection requests and the estimated number of annual responses are: 1. Crab vessel permit applications, 400; 2. applications for transfer of moratorium qualification, 715; 3. applications for vessel reconstruction, 143; 4. transfer of a lost or destroyed vessel's moratorium qualification, 36; 5. salvage of lost or destroyed vessels, 36; and 6. applications for appeal, 358. These reporting burdens include the time for reviewing the instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

This proposed rule is exempt from prepublication review for purposes of E.O. 12866.

List of Subjects in 50 CFR Parts 671, 672, 675, and 676

Fisheries, Recordkeeping and reporting requirements.

Dated: May 27, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 671, 672, 675, and 676 are proposed to be amended to read as follows:

PART 671—KING AND TANNER CRAB FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS

1. The authority citation for 50 CFR part 671 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 671.2 is amended by adding the definitions for "King crab" and "Tanner crab" as follows:

§ 671.2 Definitions.

* * * * *

King crab means red king crab, *Paralithodes camtschatica;* blue king crab, *P. platypus;* or brown (or golden) king crab, *Lithodes aequispina.*

* * * * *

Tanner crab means *Chionoecetes bairdi;* or snow crab, *C. opilio.*

3. Subpart A is amended by adding § 671.3 to read as follows:

§ 671.3 Relation to other laws.

(a) *Foreign fishing.* Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at 50 CFR 611.92. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands Management Area are set forth at 50 CFR 611.93.

(b) *King and Tanner crab.* Regulations governing the conservation and management of king and Tanner crab are also found in Alaska Administrative Code regulations at Title 5, Chapters 34 and 35.

(c) *Halibut fishing.* Regulations governing the conservation and management of Pacific halibut are set forth at 50 CFR parts 301 and 676.

(d) *Domestic fishing for groundfish.* Regulations governing the conservation and management of groundfish in the EEZ of the Gulf of Alaska and in the Bering Sea and Aleutian Islands Management Area are set forth at 50 CFR parts 620, 672, 675, and 676.

(e) *Limited access.* Regulations governing access to commercial fishery resources are set forth at 50 CFR part 676.

(f) *Marine mammals.* Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth at 50 CFR 216.24 and part 229.

4. Subpart A is amended by adding § 671.4 to read as follows:

§ 671.4 Permits.

This section is effective [DATE 30 DAYS FROM DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], through December 31, 1997, unless otherwise specified.

(a) *General*—(1) Effective from January 1, 1995, through December 31, 1997. No vessel of the United States may fish for king or Tanner crab in the Bering Sea and Aleutian Islands Area without first obtaining a permit issued under this part. Such permits shall be issued without charge.

(2) *Issuance of Permits for 1995, 1996, and 1997.* Permits issued under this section shall be issued in accordance with the moratorium provisions at 50 CFR 676.3.

(b) *Application.* A vessel owner may obtain a vessel permit required under paragraph (a) of this section by submitting a written application to the Regional Director containing the following information:

(1) The vessel owner's name, mailing address, and telephone number;

(2) The name of the vessel;

(3) The vessel's U.S. Coast Guard documentation number or State registration number;

(4) The home port of the vessel;

(5) The type of fishing gear to be used;

(6) The length and net tonnage of the vessel;

(7) The hull color of the vessel;

(8) The names of all operators and/or lessees of the vessel;

(9) Whether the vessel is to be used in crab harvesting, in which case the type of fishing gear to be used must be specified; or for processing or support operations, including the receipt of crab from U.S. vessels at sea; and

(10) The signature of the applicant.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, and subpart A of 50 CFR part 676, upon receipt of a properly completed application, the Regional Director will issue a permit to the vessel. An application that includes the above information will be deemed complete.

(2) Upon receipt of an incomplete or improperly completed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 10 days following the date of notification, the application shall be considered abandoned.

(d) *Notification of change.* A vessel owner that has applied for and received a permit under this section must give written notification of any change in the information provided under paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(e) *Duration.* A permit will continue in full force and effect through December 31 of the year for which it was issued, or until it is revoked, suspended, or modified under part 621 (Civil Procedures) or subpart A of part 676.

(f) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit that has been intentionally altered, erased, or mutilated shall be invalid.

(g) *Transfer.* Permits issued under this part are not transferable or assignable. A permit shall be valid only for the vessel for which it is issued.

(h) *Inspection.* Any permit issued under this part must be carried aboard the vessel whenever the vessel is fishing for crab. The permit shall be presented for inspection upon request of any authorized officer.

(i) *Sanctions.* Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

PART 672—GROUNDFISH OF THE GULF OF ALASKA

5. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. Section 672.3(f) is added to read as follows:

§ 672.3 Relation to other laws.

* * * * *

(f) *Crab fishing.* This paragraph (f) is effective from [date 30 days from date of publication of final rule in the **Federal Register**], through December 31, 1997 Regulations governing the conservation and management of king and Tanner crab in the Bering Sea and Aleutian Islands Area are set forth at 50 CFR parts 671 and 676.

7. Section 672.4(a) is revised to read as follows:

§ 672.4 Permits.

(a) *General.* (1) No vessel of the United States may fish for groundfish in the Gulf of Alaska without first obtaining a permit issued under this part. Such permits shall be issued without charge.

(2) *Issuance of Permits for 1995, 1996, and 1997.* This paragraph (a)(2) is effective from [date 30 days after date of publication of final rule in the **Federal Register**], through December 31, 1997. Permits issued under this section for the 1995, 1996, and 1997 fishing years shall

be issued in accordance with the moratorium provisions at 50 CFR 676.3.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA

8. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

9. Section 675.3(f) is added to read as follows:

§ 675.3 Relation to other laws.

* * * * *

(f) *Crab fishing.* This paragraph (f) is effective from [date 30 days from date of publication of final rule in the **Federal Register**], through December 31, 1997. Regulations governing the conservation and management of king and Tanner crab in the Bering Sea and Aleutian Islands Area are set forth at 50 CFR parts 671 and 676.

10. Section 675.4(a) is revised to read as follows:

§ 675.4 Permits.

(a) *General.* (1) No vessel of the United States may fish for groundfish in the Bering Sea and Aleutian Islands management area without first obtaining a permit issued under this part. Such permits shall be issued without charge.

(2) *Issuance of Permits During 1995, 1996, and 1997.* This paragraph (a)(2) is effective from [date 30 days after date of publication of final rule in the **Federal Register**], through December 31, 1997. Permits issued under this section for the 1995, 1996, and 1997 fishing years shall be issued in accordance with the moratorium provisions at 50 CFR 676.3.

* * * * *

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

11. The authority citation for part 676 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

12. Subpart A is amended by adding §§ 676.1 through 676.7 to read as follows:

Subpart A—Moratorium on Entry

Sec.
676.1 Purpose and scope.
676.2 Definitions.
676.3 Issuance of vessel permits.
676.4 Exemptions.
676.5 Permit issuance procedure.
676.6 Appeals.
676.7 Prohibitions.

§ 676.1 Purpose and scope.

This section is effective from [date 30 days after date of publication of the final rule in the **Federal Register**], through December 31, 1997.

(a) Subpart A of this part implements the moratorium program developed by the North Pacific Fishery Management Council and approved by the Secretary of Commerce.

(b) Regulations in subpart A govern:

(1) The issuance of Federal vessel permits for regulating participation in the commercial fisheries for groundfish in that portion of the Gulf of Alaska and Bering Sea and Aleutian Islands management area over which the United States exercises exclusive fishery management authority;

(2) The issuance of Federal vessel permits for regulating participation in the commercial fisheries for king or Tanner crab in that portion of the Bering Sea and Aleutian Islands area over which the United States exercises exclusive fishery management authority; and

(3) The issuance of International Pacific Halibut Commission vessel licenses for regulating participation in the commercial fisheries for Pacific halibut in Convention waters as described in 50 CFR part 301 that are in and off the State of Alaska.

§ 676.2 Definitions.

This section is effective from [date 30 days after date of publication of the final rule in the **Federal Register**], through December 31, 1997. In addition to the definitions in the Magnuson Act and in 50 CFR parts 301, 620, 671, 672, and 675, the terms in subpart A of 50 CFR part 676 have the following meanings:

Appeals Board means a North Pacific Fishery Management Council adjudication board comprised of three North Pacific Fishery Management Council Advisory Panel members appointed by the North Pacific Fishery Management Council.

Eligible vessel means a vessel that has moratorium qualification and has an LOA that is less than or equal to the maximum LOA.

Harvest or harvesting means any activity, other than scientific research conducted by a scientific research vessel, that involves the catching or taking of fish, the attempted catching or taking of fish, or any other activity that can reasonably be expected to result in the catching or taking of fish.

Legal landing means any amount of a moratorium species that was harvested and landed in compliance with State and Federal regulations in existence at the time of the landing.

Letter of authorization means a letter from NMFS to a vessel owner authorizing a vessel to make a legal landing of any moratorium species during the moratorium pending an initial written decision by NMFS on a vessel permit or license application or pending a final written decision by the Regional Director on an appeal.

LOA means length overall as defined at §§ 672.2 and 675.2.

Lost or destroyed vessel means a vessel that has been sunk at sea or been destroyed by fire or other type of physical damage and is listed on the U.S. Coast Guard Report of Marine Casualty, form 2692.

Maximum LOA means a length overall assigned by NMFS for each original qualifying vessel that represents the greatest LOA to which a vessel may increase and continue to participate in the moratorium fisheries during the moratorium. For a vessel with an original qualifying length less than or equal to 104 feet (31.7 meters), the maximum LOA is 1.2 times the original qualifying length. For a vessel with an original qualifying length greater than 104 feet (31.7 meters) and equal to or less than 125 feet (38.1 meters), the maximum LOA is 125 feet (38.1 meters). For a vessel with an original qualifying length greater than 125 feet (38.1 meters), the maximum LOA is the original qualifying length.

Moratorium qualification means the privilege of a vessel to fish for moratorium species during the moratorium if the vessel made a qualifying landing. Moratorium qualification may be transferred to another vessel or person.

Moratorium species means Pacific halibut harvested from Convention waters as described in 50 CFR part 301 that are in and off the State of Alaska; groundfish species harvested from the Gulf of Alaska management area as specified in accordance with 50 CFR 672.20(c)(1); groundfish species harvested from the Bering Sea and Aleutian Islands management area as specified in accordance with 50 CFR 675.20(a)(7); and king or Tanner crab harvested from the Bering Sea and Aleutian Islands area.

Original qualifying length means the registered length of an original qualifying vessel that appears on the most recently submitted application for U.S. Coast Guard Certificate of Documentation prior to June 24, 1992, or State of Alaska documentation if the vessel is not required to and does not have a U.S. Coast Guard Certificate of Documentation.

Original qualifying vessel means a U.S. vessel that made a qualifying landing.

Person means any individual who is a citizen of the United States or any corporation, partnership, association, or

other entity (or their successor in interest), whether or not organized or existing under the laws of any state, that is a United States citizen.

Qualifying landing means the legal landing of any amount of a moratorium species during the qualifying period.

Qualifying period means the period of time from January 1, 1980, through February 9, 1992.

Vessel reconstruction means an adjustment in the LOA of a vessel. Vessel reconstruction begins and ends with the start and completion of the physical modification of the vessel.

§ 676.3 Issuance of vessel permits.

This section is effective from [date 30 days from date of publication of final rule in the **Federal Register**], through December 31, 1997.

(a) *Applicability.* Except for the exemptions to the vessel moratorium listed in § 676.4, the moratorium applies to all catcher vessels and catcher/processor vessels that apply for the following permits or licenses:

(1) To commercially harvest king or Tanner crab in the Bering Sea and Aleutian Islands area under 50 CFR 671.4;

(2) To harvest groundfish of the Gulf of Alaska management area under 50 CFR 672.4;

(3) To harvest groundfish of the Bering Sea and Aleutian Islands management area under 50 CFR 675.4; and

(4) To commercially harvest Pacific halibut from Convention waters that are in and off the State of Alaska under 50 CFR part 301.

(b) *Eligibility criteria.* In order for a vessel to receive a vessel permit or license during the moratorium, the vessel must have made a qualifying landing, and the maximum LOA for the vessel must be greater than or equal to the LOA of the vessel.

(1) *Transfer of moratorium qualification.* Moratorium qualification may be transferred from a vessel to another vessel or to a person, or from a person to another person or to a vessel. The maximum LOA for the vessel must be transferred with the moratorium qualification. The transfer of moratorium qualification will be authorized under the following conditions:

(i) The owner of the moratorium qualification must submit a written application to NMFS for the transfer of moratorium qualification that must include a copy of a written contract that contains the following information:

(A) Names and addresses of all persons taking part in the transfer;

(B) Vessel names, U.S. Coast Guard identification numbers of any vessels taking part in the transfer, and the LOA of all vessels taking part in the transfer;

(C) A statement describing the transfer of the moratorium qualification; and

(D) Signatures and dates when signed by all persons taking part in the transfer.

(ii) The vessel transferring moratorium qualification must surrender to NMFS all valid permits or licenses to harvest moratorium species and the vessel must not harvest any moratorium species for the remainder of the moratorium unless the vessel subsequently receives moratorium qualification from another vessel;

(iii) NMFS must give written approval to a vessel owner of any transfer of the moratorium qualification prior to receipt by the vessel of moratorium qualification and any harvesting of moratorium species.

(iv) NMFS must give written approval to a person that has received the transfer of moratorium qualification before the transfer will be authorized.

(2) *Adjustment to maximum LOA through reconstruction.* The maximum LOA for a vessel may be adjusted through vessel reconstruction under the following conditions:

(i) If vessel reconstruction was completed before June 24, 1992, the LOA of the reconstructed vessel will be the new original qualifying length for the vessel, from which a new maximum LOA will be calculated for the reconstructed vessel.

(ii) If vessel reconstruction began before June 24, 1992, but was not completed by that date, the LOA resulting from the reconstruction is the new maximum LOA and no further adjustment in maximum LOA is permitted for the duration of the moratorium.

(iii) If vessel reconstruction was started on or after June 24, 1992, the maximum LOA may not be adjusted.

(iv) Maximum LOA for vessels over 125 feet (38.1 meters) LOA cannot be increased through reconstruction.

(v) NMFS must give written approval to the vessel owner of an adjustment in the maximum LOA due to vessel reconstruction. A vessel owner must receive written approval and a permit or license with the new maximum LOA prior to harvesting any moratorium species. In order to adjust the maximum LOA for a vessel, the vessel owner must submit to NMFS an application for adjustment of the maximum LOA that includes the following information:

(A) Name and address of vessel owner(s);

(B) Vessel name and U.S. Coast Guard vessel identification number;

(C) Written contracts or written agreements with the boatyard or shipyard concerning the vessel reconstruction;

(D) An affidavit signed by the vessel owner(s) and the owner/manager of the company performing the vessel reconstruction that states the beginning and ending dates of reconstruction; and

(E) An affidavit signed by the vessel owner that lists the new LOA of the vessel.

(3) *Lost or destroyed vessel.* A lost or destroyed vessel may transfer its moratorium qualification or be salvaged under the following conditions:

(i) *Transfer of the Moratorium Qualification of a Lost or Destroyed Vessel.* (A) An eligible vessel that is lost or destroyed between January 1, 1995, through December 31, 1997, may transfer its moratorium qualification to another vessel or person as specified in paragraph (b)(1) of this section.

(B) An eligible vessel that was lost or destroyed on or after January 1, 1989, through December 31, 1994, may transfer its moratorium qualification to another vessel or person as specified in paragraph (b)(1) of this section, but the vessel receiving the transferred moratorium qualification must make a legal landing of a moratorium species by December 31, 1996, to remain an eligible vessel.

(C) An eligible vessel that was lost or destroyed before January 1, 1989, cannot transfer its moratorium qualification to another vessel or person.

(ii) *Salvage of a lost or destroyed vessel.* (A) An eligible vessel that was lost or destroyed on or after January 1, 1989, may be salvaged and remain an eligible vessel.

(B) An eligible vessel that was lost or destroyed before January 1, 1989, may be salvaged and remain an eligible vessel only if salvage operations began on or before June 24, 1992, and the vessel makes a legal landing of a moratorium species by December 31, 1996.

(iii) *Application.* A vessel owner must submit an application to NMFS for transfer of moratorium qualification from a lost or destroyed vessel and for the salvage of a lost or destroyed vessel. NMFS must give written approval before any such transfer of moratorium qualification or salvage prior to harvesting moratorium species.

(A) The application for the transfer of moratorium qualification from a vessel that was lost or destroyed from January 1, 1995, through December 31, 1997, must include a copy of the U.S. Coast Guard form 2692, Report of Marine Casualty, and a completed application for the transfer of moratorium qualification as specified in paragraph (b)(1) of this section.

(B) The application for the transfer of moratorium qualification from a vessel that was lost or destroyed during the period January 1, 1989, through December 31, 1994, must include a copy of the U.S. Coast Guard form 2692, Report of Marine Casualty, and a completed application for the transfer of moratorium qualification as specified in paragraph (b)(1) of this section. The vessel owner must show an Alaska State fish ticket to NMFS proving that a landing of a moratorium species was made by December 31, 1996, for the vessel to remain eligible.

(C) The application for the salvage of a vessel lost or destroyed on or after January 1, 1989, must include a copy of the U.S. Coast Guard form 2692, Report of Marine Casualty.

(D) The application for the salvage of a vessel lost or destroyed before January 1, 1989, must include a copy of the U.S. Coast Guard form 2692, Report of Marine Casualty. The vessel owner must show an Alaska State fish ticket to NMFS proving that a landing of a moratorium species was made by December 31, 1996, for the vessel to remain eligible.

§ 676.4 Exemptions.

Effective from January 1, 1995, through December 31, 1997; the following vessels are not subject to the moratorium and may continue to fish during the moratorium in accordance with parts 301, 671, 672, and 675.

(a) A vessel other than a catcher vessel or catcher-processing vessel.

(b) A catcher vessel or catcher/processor vessel that harvests a moratorium species in the Gulf of Alaska and does not exceed 26 feet (7.9 meters) LOA.

(c) A catcher vessel or catcher processor vessel that harvests a moratorium species in the Bering Sea and Aleutian Islands management area and does not exceed 32 feet (9.8 meters) LOA.

(d) A catcher vessel or catcher/processor vessel that meets all the following criteria:

(1) The vessel is a new vessel that is constructed for and used by a Community Development Plan, approved by the Secretary as part of the Community Development Quota programs under §§ 675.27 and 676.24;

(2) The vessel is designed and equipped to meet specific needs that are described in the Community Development Plan; and

(3) The vessel does not exceed 125 feet (38.1 meters) LOA.

(e) An ineligible catcher vessel or catcher/processor vessel that is engaged in the IFQ sablefish and halibut fixed gear fisheries in accordance with regulations at subpart B of 50 CFR part 676 that retains an aggregate amount of moratorium species other than sablefish and halibut in round weight equivalents less than 20 percent of the aggregate amount of sablefish and halibut in round weight equivalents on board.

§ 676.5 Permit issuance procedure.

This section is effective from [Date 30 days from date of publication of final rule in the **Federal Register**], through December 31, 1997.

(a) *Groundfish permits.* (1) A vessel owner that intends to harvest Gulf of Alaska or Bering Sea and Aleutian Islands management area groundfish from January 1, 1995, through December 31, 1997, must apply for and be issued a moratorium vessel permit from NMFS. An application for a vessel permit can be obtained from NOAA/NMFS, Alaska Enforcement Division, P.O. Box 21767, Juneau, Alaska 99802–1767. A vessel permit will be issued if:

(i) The vessel owner submits a complete vessel permit application to NMFS as required by §§ 672.4 and 675.4;

(ii) The vessel has made a qualifying landing or submits a complete moratorium qualification transfer application with the vessel permit application; and

(iii) The LOA of the vessel, which is specified on the permit application, does not exceed the maximum LOA for that vessel. If the vessel reconstruction provisions at § 676.3(b)(2) apply, a vessel owner also should submit a complete vessel reconstruction application with the vessel permit application. All permits issued by NMFS will list the maximum LOA applicable for that vessel and for any vessel to which the moratorium qualification is transferred.

(2) If NMFS determines that the vessel is not an eligible vessel, the vessel owner will be notified in writing by NMFS that a vessel permit will not be issued and the reasons therefor. If NMFS denies an application for a vessel permit, the applicant may appeal the initial decision within 45 days of issuance of the denial in accordance with the appeal procedures set forth at § 676.6.

(b) *Crab permits.* (1) A vessel owner that intends to harvest king and Tanner crab fisheries in Federal waters of the Bering Sea and Aleutian Islands Area from January 1, 1995, through December 31, 1997, must apply for and be issued a crab moratorium vessel permit from NMFS. An application for a vessel permit can be obtained from NOAA/NMFS, Alaska Enforcement Division, P.O. Box 21767, Juneau, Alaska 99802–1767. A vessel permit will be issued if:

(i) The vessel owner submits a complete vessel permit application to NMFS as required by § 671.4;

(ii) The vessel has made a qualifying landing or submits a complete moratorium qualification transfer application with the vessel permit application; and

(iii) The LOA of the vessel that is specified on the permit application does not exceed the maximum LOA for that vessel. If the vessel reconstruction provisions at § 676.3(b)(2) apply, a vessel owner also should submit a complete vessel reconstruction application with the vessel permit application. A permit issued by NMFS will list the maximum LOA for that vessel and for any vessel to which the moratorium qualification is transferred.

(2) If NMFS determines that the vessel is not an eligible vessel, the vessel owner will be notified in writing by NMFS that a vessel permit will not be issued and the reasons therefor. If NMFS denies an application for a vessel permit, the applicant may appeal the initial decision within 45 days of issuance of the denial in accordance with the appeals section at § 676.6.

(c) *Halibut Licenses.* (1) A vessel owner that intends to harvest halibut in waters in and off the State of Alaska from January 1, 1995, through December 31, 1997, must apply for and be issued an unrestricted vessel license from the International Pacific Halibut Commission. An unrestricted vessel license will be issued if:

(i) The vessel owner submits a complete vessel license application to the International Pacific Halibut Commission as required by part 301,

(ii) The vessel has made a qualifying landing; and

(iii) The LOA of the vessel specified on the license application does not exceed the maximum LOA. An unrestricted vessel license issued by the International Pacific Halibut Commission will list the maximum LOA for that vessel and for any vessel to which the moratorium qualification is transferred.

(2) If the IPHC determines that the vessel does not satisfy the requirements of (c)(1) of this section, the vessel owner will be issued a restricted vessel license applicable only for International Pacific Halibut Commission management area 2A or 2B. If the applicant is issued a restricted vessel license, the applicant may submit additional information to NMFS within 45 days of issuance of the restricted license. NMFS will review the additional information submitted and notify the vessel owner in writing

whether an unrestricted vessel license will be issued. If NMFS determines that an unrestricted vessel license should be issued, NMFS will instruct the IPHC to issue an unrestricted vessel license to the vessel owner. If NMFS determines that an unrestricted vessel license should not be issued, and the reasons therefor, the vessel owner may appeal the initial decision within 45 days of issuance of the denial in accordance with the appeal procedures set forth at § 676.6.

(d) *Vessel used in the IFQ sablefish and halibut fixed gear fisheries.* An owner of a vessel used in the IFQ sablefish and halibut fixed gear fisheries from January 1, 1995, through December 31, 1997, must apply for a groundfish and crab vessel permit. A vessel permit will be issued if the vessel owner submits a complete application to NMFS as required by §§ 671.4, 672.4, or 675.4. The type of permit issued will be based upon the eligibility of the vessel under the moratorium as follows:

(1) *Eligible vessel.* A vessel used in the IFQ sablefish and halibut fixed gear fisheries that is an eligible vessel under the moratorium will be issued an unrestricted groundfish and crab vessel permit. A vessel that is issued an unrestricted groundfish and crab vessel permit may retain amounts of moratorium species other than sablefish and halibut subject to applicable directed fishing standards.

(2) *Ineligible vessel.* A vessel used in the IFQ sablefish and halibut fixed gear fisheries that is an ineligible vessel under the moratorium will be issued a restricted groundfish and crab vessel permit. A vessel that is issued a restricted groundfish and crab vessel permit must not retain an aggregate amount of moratorium species other than sablefish and halibut in round weight equivalents greater than 20 percent of the aggregate amount sablefish and halibut in round weight equivalents on board.

(e) *Letter of authorization*—(1) *Vessel permit or license application.* If a vessel owner submits a complete application for a vessel permit or license as specified in §§ 671.4, 672.4 and 675.4, and 50 CFR part 301, NMFS will send a letter of authorization to the vessel owner if NMFS has not issued a written initial decision to the vessel owner on the permit or license application within 30 days of receipt of the application by NMFS. The letter of authorization will expire 75 days after NMFS issues an initial written decision to the vessel owner on the permit or license application.

(2) *Filing notice of appeal.* If a vessel owner files a notice of appeal with the Regional Director as specified in § 676.6, NMFS will send a letter of authorization to the vessel owner if NMFS has not issued a written final decision to the vessel owner on the appeal within 30 days of the filing of the notice of appeal with NMFS. The letter of authorization will expire 30 days after the Regional Director issues a written final decision on the appeal.

§ 676.6 Appeals.

This section is effective from [date 30 days after date of publication of final rule in the **Federal Register**], through December 31, 1997. A vessel owner may file a notice of appeal with the Regional Director within 45 days of the issuance of an initial decision by NMFS that a groundfish and crab vessel permit will not be issued, a restricted halibut license will be issued, or that a restricted groundfish and crab vessel permit will be issued. The notice of appeal must be accompanied by a statement in support of the position of the owner, along with all supporting data and information. The Regional Director will review the records used to make the initial decision and the information submitted with the appeal.

(a) If, during his review, the Regional Director determines that a decision can be made based on a review of the records submitted, the Regional Director will issue a written decision that will be the final administrative decision of the U.S. Department of Commerce.

(b) If, during his review, the Regional Director determines that his decision would benefit from industry expertise beyond that available from a review of the records, then the Regional Director will forward the appeal to the Appeals Board for a recommendation. Subject to Federal and State of Alaska confidentiality regulations, the Appeals Board will review the records used to make the initial decision and the information submitted with the appeal at a public meeting and make a recommendation on the appeal. After receiving the Appeals Board's recommendation from the Council, the Regional Director will consider the recommendation and issue a written decision on the appeal based on his findings and state the reasons for his decision. The decision of the Regional Director is the final administrative decision of the U.S. Department of Commerce.

§ 676.7 Prohibitions.

Effective from January 1, 1995, through December 31, 1997, it is unlawful for a person to:

(a) Submit false or inaccurate information on a vessel permit application;

(b) Harvest a moratorium species with a vessel that has a LOA greater than the maximum LOA for the vessel;

(c) Harvest a moratorium species with a vessel that has received an unauthorized transfer of moratorium qualification;

(d) Fish for sablefish or halibut with IFQ from a vessel with a restricted groundfish and crab vessel permit and retain an aggregate amount of moratorium species other than sablefish and halibut in round weight equivalents greater than 20 percent of the aggregate amount sablefish and halibut in round weight equivalents on board; and

(e) Violate any other provision of subpart A of 50 CFR part 676.

[FR Doc. 94–13469 Filed 5–31–94; 9:18 am]
BILLING CODE 3510–22–P

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50 CFR Chapter II

[Docket No. 940558–4158; I.D. 052394B]

West Coast Salmon Fisheries; Disaster Relief

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) has declared that a natural fishery resource disaster exists in the ocean salmon fisheries off the coasts of Washington, Oregon, and California, due to extremely low stock abundances of chinook and coho salmon. To alleviate economic hardship, NMFS intends to make grants available to eligible industry participants. NMFS is requesting written comments, in particular from the fishing industry, Indian tribes, and state fisheries agencies, regarding appropriate limitations, terms, and conditions it should use in providing the proposed assistance to persons engaged in commercial fisheries for uninsured losses resulting from the salmon fisheries resource disaster.

DATES: Comments must be received by August 2, 1994.

ADDRESSES: Comments should be sent to Bruce Morehead, Office of Trade and Industry Services, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Bruce Morehead, 301/713–2358.

SUPPLEMENTARY INFORMATION:

Background

Although West Coast salmon stocks experience annual fluctuations in abundance, stock abundances in the last few years have been exceptionally low. The ocean salmon fisheries off the coasts of Washington, Oregon, and California are dependent almost entirely on chinook and coho salmon. For chinook salmon, ocean catches fell from a high of 2,121,999 fish in 1988 to a record low of 444,000 in 1992, an almost 80 percent decline in abundance in only 4 years. The 1993 ocean catch of 532,999 chinook was also very low relative to historical averages. For coho, the decline has been even more dramatic, with an ocean catch of 5,334,255 fish in 1976 falling to a record low catch of only 292,000 in 1993—a 95 percent decline. In 1994, the abundances of many coho stocks are expected to be the lowest on record, and are not expected to meet spawning escapement goals, even without any ocean salmon fishing. Most chinook stock abundances also are predicted to be at very low, even record low, levels of abundance.

Salmon fisheries in the ocean waters off Washington and northern Oregon are closed in 1994. Remaining salmon fisheries in the ocean waters off central and southern Oregon and California are at reduced levels and are closed to fishing for coho. It is predicted that 1994 ocean salmon landings will amount to only 289,000 chinook and zero coho. Although fishing seasons for inside (non-ocean) fisheries have not been completely finalized, they are expected to be the most restrictive ever imposed in many areas.

Despite increasingly stringent management measures enacted in recent years to protect these salmon stocks, they have reached a critical stage of depletion, due in part to environmental conditions unfavorable to salmon survival that include: (1) An extended drought in California; (2) less than normal snowpack throughout the western United States; (3) drought followed by extensive flooding in the State of Washington; (4) and an extreme El Niño ocean warming event during 1992–1993, which is believed to have been responsible for extremely poor salmon survival.

Impacts on the Industry

The Pacific Fishery Management Council estimated that, as late as 1988, there were about 5,300 commercial salmon troll vessels fishing off the West Coast, compared to about 2,300 vessels in 1992—a decline of 57 percent over that period. NMFS' Northwest Region conducted an analysis of economic models that suggest that the 1992 West Coast salmon industry involved 8,400 full-time work years. However, much of the employment is part time, so that the total number of individuals impacted by this resource disaster is much greater. Commercial salmon fishermen earned $33.8 million, while marine recreational anglers spent $79.5 million fishing for West Coast salmon in 1992. In 1992, 140 West Coast processing plants processed 72 million pounds (32.7 million kg) of finished salmon products, worth approximately $170 million. These plants employ over 2,000 people for the processing of salmon and other West Coast fish.

Proposed Agency Action

For the reasons set out above, the Secretary has declared that a natural fishery resource disaster exists under section 308(d) of the Interjurisdictional Fisheries Act of 1986 (IFA), as amended (16 U.S.C. 4107). The Secretary has asked the President to transmit to Congress a request for $12 million to assist those persons affected by the West Coast salmon fisheries disaster.

The IFA authorizes the Secretary to award grants to "persons" (defined as individuals, corporations, partnerships, trusts, associations, or other nongovernmental entities) engaged in commercial fisheries impacted by a natural fishery resource disaster, with the following conditions:

1. Eligibility for a grant shall be limited to any person that has less than $2 million in gross revenues annually, as determined by the Secretary.

2. A person may receive a grant under this subsection for up to 75 percent of any uninsured commercial fishery loss resulting from the fishery resource disaster (to the extent that such losses have not been compensated by other Federal and state programs), but shall receive no more than $100,000 in the aggregate for all such losses suffered as a result of the disaster.

NMFS intends to develop specific implementing regulations governing the award of the proposed grants. Section 308(d) of the IFA requires the Secretary to establish appropriate limitations, terms, and conditions for awarding grants, including provisions specifying the means by which an applicant must demonstrate claimed losses and limiting the aggregate amounts that may be paid to persons affiliated with each other or under common ownership. Such limitations, terms, and conditions are to be established after there has been notice and opportunity for public comment.

NMFS is seeking comments from the fishing industry regarding the design of an assistance program that will alleviate economic hardship, including a program that would reduce future levels of fishing effort for resources covered under the Disaster Declaration. NMFS is considering compensating fishermen who relinquish their state fishing permits for the lost value of their permits as a result of the fishery resource disaster. Given the pivotal role of the States of California, Oregon, and Washington in regulating the coastal salmon fisheries, NMFS would need to work closely with these states in designing an effective program. Although government entities are not eligible under the statute to receive assistance, NMFS also is requesting comments from Indian tribes, state fisheries agencies, and any other interested parties. Specific comments and recommendations are requested on the following questions:

1. What would be appropriate goals for the program? How might salmon abundance be increased through this program?

2. Should there be additional eligibility criteria, within statutory constraints, to receive a grant?

3. NOAA is considering soliciting applications from non-governmental partnerships, trusts, and associations of fishermen in order to administer significant numbers of awards; do such associations exist?

4. If fishing permits are relinquished, how can their future reissuance be handled by the states?

5. What should be the basis for the valuation of the permits, and should inactive permits be valuated differently?

6. What would be appropriate documentation to determine the extent of uninsured losses?

7. What should be the starting and ending dates of the disaster period for purposes of awarding grants, and what factors should the Secretary consider in determining these dates?

Classification

This advance notice of proposed rulemaking has been determined to be not significant for purposes of E.O. 12866.

Dated: May 27, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94-13490 Filed 5-31-94; 9:42 am]

BILLING CODE 3510-22-P

Notices

Federal Register
Vol. 59, No. 106
Friday, June 3, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Judicial Review

AGENCY: Committee on Judicial Review.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Judicial Review of the Administrative Conference of the United States.

DATES: Thursday, June 16, 1994, at 10 a.m.

ADDRESSES: Office of the Chairman, Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Candace Fowler, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Judicial Review will meet for further discussion of a study by Professor Howard Fenton of procedures at the U.S. Foreign-Trade Zones Board. The Committee may also discuss a study in progress on choice of forum in government contract bid protest proceedings.

Attendance at the meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The chairman of the committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: May 31, 1994.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 94–13658 Filed 6–2–94; 8:45 am]

BILLING CODE 6110–01–W

BIPARTISAN COMMISSION ON ENTITLEMENT AND TAX REFORM

Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the Bipartisan Commission on Entitlement and Tax Reform will hold a meeting on Friday, June 24, 1994, from 1 p.m. to 4 p.m. in Washington, DC. The exact location will not be determined until the week of June 14, 1994. Please call 202–224–2300 for the specific location.

The meeting of the Commission shall be open to the public. The proposed agenda includes discussion on the long-term budget picture.

Records shall be kept of all Commission proceedings and shall be available for public inspection in room 825 of the Hart Senate Office Building, 120 Constitution Avenue NE., Washington, DC 20510.

J. Robert Kerrey,

Chairman.

John C. Danforth,

Vice-Chairman.

[FR Doc. 94–13459 Filed 6–2–94; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of American Indian and Alaska Native Government Administrative Records.

Form Number(s): AIANAR.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 188 hours.

Number of Respondents: 569.

Avg Hours Per Response: 20 minutes.

Needs and Uses: The Census Bureau plans to conduct the Survey of American Indian and Alaska Native Government Administrative Records as part of a program of research and development (R&D) to assist in formulating policy and design options for the Year 2000 Decennial Census. A major part of this R&D is the investigation of the potential of administrative records to improve coverage in the census. The use of American Indian and Alaska Native government administrative records has the potential to improve coverage by reducing the coverage differential on reservations and trust lands and improving coverage in Alaska Native villages. All Federally-recognized tribal governments will be contacted to provide information about their administrative records. The records themselves will not be obtained as part of the survey. Data collection for this survey will be conducted under contract by Westat, Inc. Information gathered in this survey will help to determine whether administrative records held by tribal governments would be effective in improving coverage in the Year 2000 Decennial Census.

Affected Public: State or local governments.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 31, 1994.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–13570 Filed 6–2–94; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the

provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census

Title: 1995 Census Test – Prelist.

Form Number(s): DC–101A, DC–101B, DC–169.

Agency Approval Number: None

Type of Request: New collection

Burden: 1,340 hours.

Number of Respondents: 52,000.

Avg Hours Per Response: 1.5 minutes.

Needs and Uses: The Census Bureau is planning to test various methods for address list compilation and update in conjunction with the 1995 Census Test. The Census Bureau uses two primary methods to create and update its address files: precanvass and prelist. In the urban test areas, the Census Bureau will create a Master Address File (MAF) by extracting addresses from the Census Bureau's 1990 Address Control File (ACF) and updating the extract using the United States Postal Service Delivery Sequence File. Then the Census Bureau will update the address list during the precanvass operation. For the rural test sites, the Census Bureau will create an address file through a prelist operation; the address list will be used in the subsequent update/leave operation to deliver the census questionnaires. During prelist, census enumerators canvass an area and list all housing units within the assigned area. The prelist operation is designed to identify and collect complete physical location address, mailing address, and name of householder for all living quarters. This will enable an enumerator to return to the living quarters to update the address and to deliver a questionnaire during the update/leave operation. It will also provide the information needed to conduct the local government review of the census address list.

Affected Public: Individuals or households.

Frequency: One–time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 27, 1994

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–13565 Filed 6–2–94; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: National Training Survey

Form Number(s): NTS–1.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 2,033 hours.

Number of Respondents: 6,400 will receive an introductory letter. 3,000 of those will be contacted for an interview.

Avg Hours Per Response: 35 minutes including the letter.

Needs and Uses: The Bureau of the Census plans to conduct the National Training Survey (NTS) for the Center for Educational Quality of the Workforce (EQW), a group of social scientists funded by the National Center for Education Statistics to study the workplace in America. The NTS will provide unique information on employer–provided training by identifying relationships between the training and economic characteristics of the establishment. The EQW will incorporate the results of this survey into a larger five–year examination of the American workplace and will coordinate its efforts with similar studies and groups in other countries and with the World Bank. This examination will provide planners and policy–makers in government and the private sector with information on how our workforce compares and competes with other countries in South America and the Far East. The Census Bureau will also study ways of incorporating establishment data gathered in the NTS into our Longitudinal Research Database.

Affected Public: Businesses or other for–profit organizations.

Frequency: One–time only.

Respondent's Obligation: Voluntary

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 27, 1994

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–13566 Filed 6–2–94; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Congressional Committees.

Form Number(s): 628, 628L.

Agency Approval Number: None

Type of Request: New collection

Burden: 21 hours.

Number of Respondents: 242.

Avg Hours Per Response: 5 minutes.

Needs and Uses: In October 1993, the Census Bureau, with approval from OMB, surveyed all members of Congress to determine how we can better meet their needs for Census Bureau data. We are requesting OMB clearance to conduct a similar survey of Congressional committees/subcommittees. The survey will identify which committees/subcommittees use our data, which do not want any census data, and which would like a briefing on how to use Census Bureau data. This information is needed to determine how the Census Bureau can revise and improve the current program it uses to disseminate data to committees/subcommittees of Congress. This information will enable us to provide committees/subcommittees of Congress only the data for which they have a specific need, and will reduce the amount of data currently being sent that is not being used.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 31, 1994.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–13564 Filed 6–2–94; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey – November 1994 Voting and Registration Supplement.

Form Number(s): Voting and registration items included with CPS automated instrument.

Agency Approval Number: 0607–0466.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 1,140 hours.

Number of Respondents: 57,000.

Avg Hours Per Response: 1.2 minutes.

Needs and Uses: The November Voting and Registration Supplement to the Current Population Survey (CPS) is collected once every two years. Data are collected on voter and nonvoter behavior and correlated with demographic characteristics. We will collect this data as part of the November 1994 CPS through a series of supplemental items which will be part of the automated CPS instrument. The supplement yields statistics on voter and nonvoter characteristics and current voter trends which are useful for election officials who formulate policies relating to the voting and registration process. These data enable policymakers to keep up–to–date with issues such as changes in voter participation based on such characteristics as age, sex, race, ethnicity, and educational attainment. Data are used by colleges, political party committees, research groups, and other private organizations.

Affected Public: Individuals or households.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 26, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–13460 Filed 6–2–94; 8:45 am]

BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[Docket 22–94]

Proposed Foreign-Trade Zone—Palm Beach County, FL; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Palm Beach County Department of Airports, on behalf of the Board of Commissioners of the County of Palm Beach, Florida, requesting authority to establish a general-purpose foreign-trade zone at sites in Palm Beach County, within the West Palm Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 23, 1994. The applicant is authorized to make the proposal under Section 288.36, Florida Statutes Annotated (1991).

The proposed zone would be the second general-purpose zone in the West Palm Beach Customs port of entry area. The existing zone, FTZ 135, is located at the Port of Palm Beach (Grantee: Port of Palm Beach, Board Order 348, 52 FR 9903, 3/27/87).

The proposed foreign-trade zone would consist of sites (306 acres) at the Palm Beach International Airport and at the new North Palm Beach County Airport, both located in Palm Beach County, Florida. *Site 1* (24 acres) is at the Palm Beach International Airport, and includes the Air Cargo Facility (Site 1a-3 acres); a proposed air cargo facility (Site 1b-5 acres); and a future industrial park type site (Site 1c-16 acres). *Site 2* (282 acres-3 parcels) is at the North Palm Beach County Airport, Beeline Highway and Route 786. The sites are owned by Palm Beach County.

The application contains evidence of the need for additional zone services in the Palm Beach County area. Several firms have indicated an interest in using zone procedures within the proposed project for warehousing/distribution of such items as electronic components, peripherals of data processing machines, lock components and ceramic tile. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10-8-91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on June 23, 1994, at 9 a.m., in the Thomas McCaddy Room, 12th Floor Governmental Center, 301 N. Olive Avenue, West Palm Beach, Florida.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 2, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 17, 1994).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, 4 East Port Road, Suite 104, Riviera Beach, Florida 33404.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, N.W., Washington, DC 20230.

Dated: May 25, 1994

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–13568 Filed 6–2–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–201–802]

Preliminary Results of Antidumping Duty Administrative Review Gray Portland Cement and Clinker From Mexico

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of this merchandise to the United States during the period August 1, 1992, through July 31, 1993, and one firm, CEMEX, S.A. The results of this review indicate the existence of dumping margins for the period.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler, Officer of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1757.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1992, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 41239) a notice of "Opportunity to Request Administrative Review" for the August 1, 1992, through July 31, 1993, period of review (POR) of the antidumping duty order on gray portland cement and clinker from Mexico (55 FR 35371, August 29, 1990). In accordance with 19 CFR 353.22, CEMEX, S.A. (CEMEX) and the petitioners, the Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement and the National Cement Co. of California, Inc., requested a review. On September 30, 1993, the Department published a notice of "Initiation of Antidumping Review" for CEMEX (58 FR 51053). Thus, the Department is now conducting a review of this respondent pursuant to section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29, and cement clinker is currently classifiable under number 2523.10. Gray portland cement has also been entered under number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and U.S. Customs Service (the Customs Service) purposes only. The written description remains dispositive as to the scope of the product coverage.

Best Information Available

On October 14, 1993, we sent CEMEX a standard antidumping questionnaire which instructed CEMEX to report U.S. sales and home market sales of such or similar merchandise.

In a letter dated November 16, 1993, CEMEX requested that it be excused from reporting home market sales of Type I cement, merchandise similar but not identical to Type II and Type V cement. CEMEX noted that during the POR it had sold only Type II and Type V cement in the United States, and stated that it had sufficient home market sales of these types of cement in the home market for a fair value comparison. CEMEX argued that, in accordance with statutory requirements and the Department's practice, fair value comparisons should, wherever possible, be based upon sales of identical merchandise, and therefore there was no need to report home market sales of Type I cement.

In a letter dated November 29, 1993, we denied CEMEX's request. We noted that in the second administrative review, covering the period August 1, 1991, through July 31, 1992, we had found that CEMEX's home market sales of Type II and Type V cement had not been made in the ordinary course of trade and we had disregarded those sales for comparison purposes. We noted that, given such a finding in a previous review, it was possible that a similar situation might exist with regard to home market sales of Type II and Type V cement in the instant review. We therefore required CEMEX to report home market sales of Type I cement.

On January 10, 1994, CEMEX responded to our standard questionnaire. In its response, CEMEX did not provide the required information regarding home market sales of Type I cement. Rather, CEMEX argued that in its view its home market sales of Type II and Type V cement had always been made in the ordinary course of trade, and constituted sufficient basis for a fair value comparison.

On February 4, 1994, we issued a supplementary questionnaire to CEMEX that, among other things, reiterated the requirement that CEMEX report its home market sales of Type I cement. We emphasized that these sales relevant to CEMEX's claim that its home market sales of Type II and Type V cement had been made in the ordinary course of trade during the period of the third review. We noted in the cover letter that lack or incompleteness of response might result in our relying on best information available (BIA).

On March 1, 1994, CEMEX responded to our supplementary questionnaire. Again, CEMEX failed to report its home market sales of Type I cement. CEMEX reiterated its contention that its sales of identical merchandise satisfied all statutory criteria for use in calculating foreign market value (FMV). CEMEX argued that there was not yet any evidence on the record of the instant review to refute this contention, and that it was not incumbent on CEMEX to establish that its home market sales of Type II and Type V cement were made in the ordinary course of trade CEMEX stated that, given its position it was not willing to incur the expense necessary to provide complete Type I cement sales data.

Given the Department's finding that home market sales of Type II and Type V cement were made outside the ordinary course of trade in the period of the second review, we have been concerned about the possibility that CEMEX's home market sales of type II and Type V cement might also have been made outside the ordinary course of trade during the instant POR.

Section 773(a)(1)(A) of the Tariff Act and section 353.46(a) of the Department's regulations provide that FMV shall be based on the price at which "such or similar merchandise" is sold in the exporting country in the "ordinary course of trade for home consumption". Section 771(15) of the Tariff Act defines "ordinary course of trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind" (see also 19 CFR 353.46(b)).

In the previous review, *i.e.*, the second review, where CEMEX reported home market sales of Type I, Type II, Type V cement, petitioners made an

allegation that CEMEX's have market sales of Type II and Type V cement were outside the ordinary course of trade. In the final results of the second review we compared CEMEX's home market sales of Type II and Type V cement with sales of similar merchandise (namely, Type I cement) within the same class or kind.

Based on this comparison and on other factors raised by petitioners, we concluded in the second review that CEMEX's home market sales of Type II and Type V cement were not made in the ordinary course of trade, and we did not use them for the purposes of calculating FMV (See Gray Portland Cement and Clinker for Mexico: Final Results of Antidumping Duty Administrative Review: 58 FR 47253 (September 8, 1993)).

Based on this finding, we believe that it is necessary to compare Type II and Type V cement sales with Type I cement sales to determine whether the same conditions existed during the instant review, *i.e.*, the third review. However, after several requests for information, CEMEX has not reported Type I cement sales data that would permit such a comparison.

Preliminary Results of Review

While CEMEX argues that it is not incumbent upon it to provide the Type I cement sales data, its refusal to provide essential information has prevented the Department from determining whether home market sales of Type II and Type V cement were sold in the ordinary course of trade. Therefore, we must resort to the use of BIA, is accordance with section 776(c) of the Traffic Act. For a detailed analysis of this issue, see the Memorandum from the Office Director to the Deputy Assistant Secretary for Compliance, dated May 18, 1994, which is on file in room B–099 of the Department's main building.

As for the choice of BIA, we note that we have an established "two-tier" system:

1. When a company refuses to cooperate with the Department or otherwise significantly impedes the proceedings, we use as BIA the higher of (a) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less than fair value investigation (LTFV) or prior administrative review or (b) the highest rate found in this review for any firm for the same class or kind merchandise in the same country of origin.

2. When a company substantially cooperated with our request for information, but failed to provide the information requested in a timely manner or in the form required, we use as BIA the higher of (a) the highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review, or (b) the highest calculated rate in this review for any firm for the class or kind of merchandise from the same country of origin.

See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, *et. al.*; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360, 28379 (June 24, 1992). In this case, we are using first-tier BIA because CEMEX was uncooperative. The BIA rate is the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the LTFV investigation, *i.e.*, CEMEX's rate of 60.33 percent (55 FR 29244, July 18, 1990). Thus, as a result of our review, we preliminarily determine the dumping margin for CEMEX for the period August 1, 1992, through July 31, 1993, to be 60.33 percent.

Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 37 days after the date of publication of this notice.

Within 10 days of the date of publication of this notice, interested parties to this proceeding may request a disclosure and/or a hearing. The hearing, if requested, will take place no later than 44 days after publication of this notice. Persons interested in attending the hearing should ascertain with the Department the date and time of the hearing.

The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate determined in the final results of review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 59.91 percent, as explained below.

On May 25, 1993, the CIT in Floral Trade Council v. United States, 822 F. Supp. 766 (CIT 1993), and Federal-Mogul v. United States, 839 F. Supp. 864 (CIT 1993), determined that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for this order will be 59.91 percent, which was the "all others" rate established in the final notice of the LTFV investigation by the Department (55 FR 29244, July 18, 1990).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 26, 1994.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 94–13567 Filed 6–2–94; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 040594D]

Marine Mammals; Gray Whale Research and Monitoring Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of report availability and request for comments.

SUMMARY: On January 7, 1993, NMFS made a determination that the eastern North Pacific (California) stock of gray whale (*Eschrictius robustus*) had recovered and should be removed from the List of Endangered and Threatened Wildlife (List) under the Endangered Species Act (ESA). Section 4(g) requires NMFS to implement a system to monitor the status, for at least 5 years, of any species that has recovered and is removed from the List. This notice announces the availability of the draft Gray Whale Research and Monitoring Plan (Plan), that was prepared under section 4(g) of the ESA, for review and comment.

DATES: Comments on the Plan must be postmarked by August 2, 1994.

ADDRESSES: Send comments on the Plan to William W. Fox, Jr., Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910–3226. A copy of the Plan is available from this address or by telephoning the individual listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, 301/713–2055.

SUPPLEMENTARY INFORMATION:

NMFS issued a proposed determination on November 22, 1991 (56 FR 58869) that the California population of gray whales should be removed from the List. After a 104-day comment period, NMFS issued a final determination on January 7, 1993 (58 FR 3121).

Under section 4(a) of the ESA, NMFS has the responsibility to monitor the status of the California gray whale for a period of at least 5 years following delisting. The purpose of monitoring populations following delisting is to evaluate the validity of the status determination used in the delisting process and to determine whether the status of the population has deteriorated within a 5-year period subsequent to delisting. If at any time during this period NMFS finds that the species' well-being is at risk, the ESA (section 4(b)(7)) requires NMFS to issue emergency protective regulations to ensure the conservation of the species.

NMFS is making available for comment its proposed Plan. The Plan was developed by the staff of the National Marine Mammal Laboratory in coordination with the NMFS Gray Whale Monitoring Task Group, which is composed of scientists and managers who have specific responsibilities for coordinating activities involving gray whales. The Task Group was asked to develop a plan, monitor research activities after the plan is implemented, and also to serve as a quick response advisory team in the event of any catastrophic event affecting gray whales.

The following research is recommended for the first 5-year monitoring plan, in order of priority:

(1) Estimation of abundance from biennial surveys (or other appropriate sampling period) during the southbound migration;

(2) Estimation of calf production during the northbound migration;

(3) Determination of potential biases in methods used to estimate abundance and calf production;

(4) Determination of trends in pregnancy rates from animals taken in any subsistence harvests that may be conducted by Russia on behalf of its natives in Siberian Arctic;

(5) Estimation of the number of animals killed in any subsistence harvests that may be conducted by Russia on behalf of its natives in Siberian Arctic;

(6) Use of Bayesian synthesis to evaluate current status of the population;

(7) Determination of the degree to which anthropogenic factors (e.g., chemical contaminants, marine noise) may compromise the viability of this population (including its habitat).

Dated: May 25, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–13499 Filed 6–2–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 5, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 27, 1993, March 25 and April 8, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 68398, 59 FR 14155 and 16798) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-

O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Cord Assembly, Elastic,
4020–01–072–4558.
Frame, Picture,
7105–00–052–8689.
Original and Duplicate Microfiche, Program 1566–S, 7690–00–NSH–0018.
(Requirements for the Wright-Patterson Air Force Base, Ohio)

Services

Janitorial/Custodial, Basewide, Fort Sheridan, Illinois.
Janitorial/Custodial, HQ, U.S. Strategic Command, Buildings 500, 501, 502, 515, 522, 591 and 597, Offutt AFB, Nebraska.
Janitorial/Custodial, U.S. Army Reserve Center, 2513–15 Gravel Road, Fort Worth, Texas.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–13553 Filed 6–2–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 5, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Janitorial/Custodial, Bureau of Land Management, Las Vegas District Office, Las Vegas, Nevada.
NPA: Opportunity Village Association for Retarded Citizens, Las Vegas, Nevada.
Janitorial/Custodial, Philadelphia Naval Base, Buildings 1, 4 and 100, Philadelphia, Pennsylvania.
NPA: Elwyn, Inc., Elwyn, Pennsylvania.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–13554 Filed 6–2–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 5, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.
2. The action will result in authorizing small entities to furnish the commodities to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to Procurement List for production by the nonprofit agency listed:

Cup, Plastic,
7350–00–761–7467,
7350–00–914–5088,
7350–00–914–5089.
NPA: Oklahoma League for the Blind Oklahoma City, Oklahoma.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–13555 Filed 6–2–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Solid Waste Management Facility, Andersen AFB, Guam; Notice of Availability Draft Environmental Impact Statement

The United States Air Force announces the availability of a Draft Environmental Impact Statement for the construction of a new solid waste management facility at Andersen Air Force Base, Guam. The new facility will provide for recycling, composting, and disposal of asbestos, rubble (hardfill), and municipal solid waste. The purpose of the proposed action is to manage the solid waste generated by Andersen AFB (12,000 tons per year) after the existing on-base unlined landfill reaches capacity in approximately 2 years. The preferred alternative for municipal solid waste disposal is vertical expansion of the existing landfill. The proposed action is considered an interim measure, designed not to exceed 10 years, to accommodate Air Force needs until an island-wide solid waste management system can be implemented; however, the proposed action does have the capability for limited extension in the event that an island-wide system does not become available at the end of 10 years. Specifically, it is proposed that a new landfill be constructed on top of the existing one in such a manner that the liner system for the new facility will serve as a cap for the old facility. Provisions will be made for the collection, removal, and treatment of leachate, and for groundwater monitoring. Other alternatives considered include: a new landfill constructed at one of seven alternate sites on Andersen AFB, use of the Government of Guam Ordot Landfill, use of a proposed Government of Guam waste-to-energy facility, future use of an island-wide Government of Guam and Department of Defense landfill, incineration on base, use of the Navy landfill at the Apra Harbor Complex, and no action.

Two major environmental issues affect the selection of a preferred alternative. First, the majority of Andersen Air Force Base overlies the Northern Guam Lens, which has been designated a sole source aquifer under the Safe Drinking Water Act. The Guam Environmental Protection Agency has established a groundwater protection zone that constrains activities in areas overlying the aquifer or serving as recharge zones. Second, the forested area along the cliffline on the east, north, and west boundaries of Andersen Air Force Base is habitat for endangered species. The primary endangered species of concern are the Mariana crow and the Mariana fruit bat. The principal threat to these species is predation on eggs and young by an introduced species, the brown tree snake. The proposed action includes engineering controls (a double liner with leachate collection, removal, and treatment) to minimize the likelihood of impacts to the aquifer. Furthermore, by capping the existing landfill, the proposed action will reduce the production of leachate from previously landfilled materials. Potential effects on the biota, and endangered species in particular, are unlikely because the proposed action will take place at a site that is already disturbed and has minimal habitat value.

The United States Air Force invites comments and suggestions from all interested parties on the findings of the Environmental Impact Statement, and has tentatively scheduled a public hearing for May 1994. Notice of the exact time and place of the hearing will be published in the news media. If concerned persons are not able to attend the public hearing, written comments and suggestions will be accepted. To ensure that the Air Force will have sufficient time to fully consider public contributions, written comments must be received no later than forty-five (45) days from the publication of today's notice. Comments or requests for further information concerning this Environmental Impact Statement should be addressed to Mr. Roy N. Tsutsui, Chief, Environmental Flight, Andersen AFB, Guam, 633 CES/CEV, Bldg. 18001, Unit 14007, APO, AP 96543–4007; Phone: (671) 366–2101.

List of Subjects

Environmental Protection, Environmental Impact Statement, U.S. Air Force, Anderson AFB, Guam, Notice of Availability, Solid waste.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–13525 Filed 6–2–94; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Notice of Closed Meeting, Armed Forces Epidemiological Board

AGENCY: Armed Forces Epidemiological Board, DOD.

ACTION: Notice of closed meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 8 July 1994.

Time: 0730–1630.

Place: Fort Detrick, Maryland.

Proposed Agenda: Medical Aspects of Chemical Defense.

Portions of this meeting will be closed to the public in accordance with section 552b(c) of title 5 U.S.C., specifically subparagraph (1) thereof and title 5 U.S.C., appendix 1, subsection 10(d). Should additional information be desired, please contact the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041–3258, telephone 756–8012.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–13523 Filed 6–2–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 21–23 June 1994.

Time of Meeting: 0900–1700.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Summer Study Team on "Technical Architecture for C4I" will meet in the Pentagon to hear selected briefings on Architecture and Standards. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–13524 Filed 6–2–94; 8:45 am]

BILLING CODE 3710–08–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 94–1]

Improved Schedule for Remediation in the Defense Nuclear Facilities Complex

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of

Energy pursuant to 42 U.S.C. 2286a concerning improved schedule for remediation in the defense nuclear facilities complex. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before July 5, 1994.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole C. Morgan, at the address above or telephone (202) 208–6400.

Dated: May 31, 1994.

John T. Conway,

Chairman.

Improved Schedule for Remediation in the Defense Nuclear Facilities Complex

The halt in production of nuclear weapons and materials to be used in nuclear weapons froze the manufacturing pipeline in a state that, for safety reasons, should not be allowed to persist unremediated. The Board has concluded from observations and discussions with others that imminent hazards could arise within two to three years unless certain problems are corrected.

We are especially concerned about specific liquids and solids containing fissile materials and other radioactive substances in spent fuel storage pools, reactor basins, reprocessing canyons, processing lines, and various buildings once used for processing and weapons manufacture.

It is not clear at this juncture how fissile materials produced for defense purposes will eventually be dealt with long term. What is clear is that the extant fissile materials and related materials require treatment on an accelerated basis to convert them to forms more suitable for safe interim storage.

The Board is especially concerned about the following situations:

- Several large tanks in the F-Canyon at the Savannah River Site contain tens of thousands of gallons of solutions of plutonium and trans-plutonium isotopes. The trans-plutonium solutions remain from californium-252 products; they include highly radioactive isotopes of americium and curium. These tanks, their appendages, and vital support systems are old, subject to deterioration, prone to leakage, and are not seismically qualified. If an earthquake or other accident were to breach the tanks, F-Canyon would become so contaminated that cleanup would be practically impossible. Containment of the radioactive material under such circumstances would be highly uncertain.
- The K-East Basin at the Hanford Site contains hundreds of tons of deteriorating irradiated nuclear fuel from the N-Reactor. This fuel has been heavily corroded during its long period of storage under water, and the bottom of the basin is now covered by a thick deposit of sludge containing antinide compounds and fission products. The basin is near the Columbia River. It has leaked on several occasions, is likely to leak again, and has design and construction defects that make it seismically unsafe.
- The 603 Basin at the Idaho National Engineering Laboratory (INEL) contains deteriorating irradiated reactor fuel from a number of sources. This basin also contains sludge from corrosion of the reactor fuel. The seismic competence of the 603 Basin is not established.
- Processing canyons and reactor basins at the Savannah River Site contain large amounts of deteriorating irradiated reactor fuel stored under conditions similar to those at the 603 Basin at INEL.
- There are thousands of containers of plutonium-bearing liquids and solids at the Rocky Flats Plant, the Hanford Site, the Savannah River Site, and the Los Alamos National Laboratory. These materials were in the nuclear-weapons-manufacturing pipeline when manufacturing ended. Large quantities of plutonium solutions are stored in deteriorating tanks, piping, and plastic bottles. Thousands of containers at the Rocky Flats Plant hold miscellaneous plutonium-bearing materials classed as "residuals", some of which are chemically unstable. Many of the containers of plutonium metal also contain plastic and, in some at the Rocky Flats Plant, the plastic is believed to be in intimate contact with the plutonium. It is well known that plutonium in contact with plastic can cause formation of hydrogen gas and pyrophoric plutonium compounds leading to a high probability of plutonium fires.

We note that removal of fissile materials from the 603 Basin at INEL has begun. We are also following the plans for remedying several of the other situations listed. In general these plans are at an early stage. In addition, we are aware of steps DOE has taken to assess spent fuel inventories and vulnerabilities. We also note that a number of environmental assessments are being conducted in relation to the situations we have listed above. Finally, we note that a draft DOE Standard has been prepared for methods to be used in safe storage of plutonium metal and plutonium oxide.

These actions notwithstanding, the Board is concerned about the slow pace of remediation. The Board believes that additional delays in stabilizing these materials will be accompanied by further deterioration of safety and unnecessary increased risks to workers and the public.

Therefore the Board recommends:

(1) That an integrated program plan be formulated on a high priority basis, to convert within two to three years the materials addressed in the specific recommendations below, to forms or conditions suitable for safe interim storage. This plan should recognize that remediation will require a systems engineering approach, involving integration of facilities and capabilities at a number of sites, and will require attention to limiting worker exposure and minimizing generation of additional waste and emission of effluents to the environment. The plan should include a provision that, within a reasonable period of time (such as eight years), all storage of plutonium metal and oxide should be in conformance with the draft DOE Standard on storage of plutonium now being made final.

(2) That a research program be established to fill any gaps in the information base needed for choosing among the alternate processes to be used in safe conversion of various types of fissile materials to optimal forms for safe interim storage and the longer term disposition. Development this research program should be addressed in the program plan called for by (1) above.

(3) That preparations be expedited to process the dissolved plutonium and trans-plutonium isotopes in tanks in the F-Canyon at the Savannah River Site into forms safer for interim storage. The Board considers this problem to be especially urgent.

(4) That preparations be expedited to repackage the plutonium metal that is in contact with, or in proximity to, plastic and to eliminate the associated existing hazard in any other way that is feasible and reliable. Storage of plutonium materials generated through this remediation process should be such that containers need not be opened again for additional treatment for a reasonably long time.

(5) That preparations be expedited to process the containers of possibly unstable residues at the Rocky Flats Plant and to convert constituent

plutonium to a form suitable for safe interim storage.

(6) That preparations be expedited to process the deteriorating irradiated reactor fuel stored in basins at the Savannah River Site into a form suitable for safe interim storage until an option for ultimate disposition is selected.

(7) That the program be accelerated to place the deteriorating reactor fuel in the K-East Basin at the Hanford Site in a stable configuration for interim storage until an option for ultimate disposition is chosen. This program needs to be directed toward storage methods that will minimize further deterioration.

(8) That those facilities that may be needed for future handling and treatment of the materials in question be maintained in a usable state. Candidate facilities include, among others, the F- and H-Canyon and the FB- and HB-Lines at the Savannah River Site, some plutonium-handling glovebox lines among those at the Rocky Flats Plant, the Los Alamos National Laboratory, and the Hanford Site, and certain facilities necessary to support a uranium handling capability at the Y-12 Plant at the Oak Ridge Site.

(9) Expedited preparations to accomplish actions in items (3) through (7) above should take into account the need to meet the requirements for operational readiness in accordance with DOE Order 5480.31.

John T. Conway,

Chairman.

[FR Doc. 94-13509 Filed 6-2-94; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by May 31, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708-8196.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. .

The Acting Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, *e.g.*, expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: May 27, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Emergency
Title: Report of Financial Need and Certification for the Jacob K. Javits Fellows Program
Abstract: The Report is designed to collect required information from institutions of higher education regarding graduate participants of the Jacob K. Javits Fellows Program. The data collected is required in order that continued funding may be requested for the fellows.
Additional Information: The U.S. Department of Education has requested an emergency review and approval from the Office of Management and Budget. The Department's requested approval date is May 31, 1994. This collection requirement expires on May 31, 1994. If this happens, the Department would have no legal means of collecting the information from institutions in which the successful applicants plan to enroll, and therefore would not be able to obligate the funds appropriated for this purpose in FY 1994.
Frequency: One time
Affected Public: Individuals or households; Non-profit institutions
Reporting Burden:
Responses: 100
Burden Hours: 500
Recordkeeping Burden:
Recordkeepers: 500
Burden Hours: 500

[FR Doc. 94-13485 Filed 6-2-94; 8:45 am]

BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91-435-012, et al.]

DC Tie, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 26, 1994.

Take notice that the following filings have been made with the Commission:

1. DC Tie, Inc.

[Docket No. ER91-435-012]

Take notice that on May 14, 1994, DC Tie, Inc. (DC Tie) filed certain information as required by the Commission's July 11, 1991 letter order in Docket No. ER91-435-000. Copies of DC Tie's informational filing are on file with the Commission and are available for public inspection.

2. Eastern Power Distribution Inc.

[Docket No. ER94-964-001]

Take notice that on May 5, 1994, Eastern Power Distribution (EPD) tendered for filing with the Federal Energy Regulatory Commission (Commission) revised F.E.R.C. Electric Rate Schedule No. 1, which tariff sheets are attached as Appendix A.

The attached tariff sheet is submitted in compliance with the Commission's April 5, 1994 order which required EPD to file a revised rate schedule which codifies that no sale may be made pursuant to the rate schedule to any entity controlled by, under common control with, or controlling Eastern Power Distribution.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Company

[Docket No. ER94–996–000]

Take notice that on May 17, 1994, Southern California Edison Company tendered for filing supplemental information to its February 28, 1994 filing in the above-referenced docket.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Minnesota)

[Docket No. ER94–1046–000]

Take notice that on April 28, 1994, Northern States Power Company (Minnesota) tendered an Amendment to Supplement No. 52 to the Connection Agreement between Northern States Power Company (Minnesota) and the Cooperative Power Association.

NSP submits this Amendment to clarify that the requested effective date of this agreement is May 15, 1994. NSP requests waiver of the Commission's Notice Requirements under Part 35 so the Agreement may be effective as of the date requested.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER94–1060–000]

Take notice that on May 19, 1994, Florida Power Corporation (FPC) tendered for filing supplemental information to its March 18, 1994 filing in the above-referenced docket.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket No. ER94–1134–000]

Take notice that PacifiCorp, on May 23, 1994, tendered for filing an amendment to its filing of the Letter Agreement dated February 16, 1994 between PacifiCorp and Idaho Power Company.

PacifiCorp requests that a waiver of prior notice be granted to its filing.

Copies of this filing were supplied to Idaho Power Company, the Idaho Public Utilities Commission and the Public Utility Commission of Oregon.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Co.

[Docket No. ER94–1137–000]

Take notice that on May 20, 1994, Arizona Public Service Company (APS) tendered for filing proposed Amendment No. 1 to the Capacity Sale Agreement between Citizens Utilities Company (Citizens) and APS in response to Staff's recommendations in this docket.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Alabama Power Co.

[Docket No. ER94–1158–000]

Take notice that on May 19, 1994, Alabama Power Company submitted supplemental information in this docket.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corp.

[Docket No. ER94–1245–000]

Take notice that Florida Power Corporation (Florida Power) on May 11, 1994, tendered for filing a Third Amendment between Florida Power Corporation and Seminole Electric Cooperative, Inc. for Supplemental Retail Service, Transmission and Distribution Service and Load Following Service. The Third Amendment provides for Florida Power to sell and Seminole Electric Cooperative, Inc. (Seminole) to buy all interruptible resale service required by a member system of Seminole for new interruptible loads locating within the member system service territory within Hardee County, Florida.

Florida Power requests that the rate change be permitted to become effective sixty days after its submission for filing.

Comment date: June 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13475 Filed 6–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER93–299–001, et al.]

Florida Power Corp., et al.; Electric Rate and Corporate Regulation Filings

May 25, 1994.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corp.

[Docket No. ER93–299–001]

Take notice that on May 13, 1994, Florida Power Corporation (FPC) tendered for filing its Compliance Refund Report in the above-reference docket.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Power & Light Co.

[Docket No. ER94–945–000]

Take notice that on May 23, 1994, Pennsylvania Power & Light Company (PP&L), tendered for filing supplemental material relating to the above docket.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Co.

[Docket No. ER94–1269–000]

Take notice that on May 17, 1994, Boston Edison Company (Edison) filed a letter agreement between itself and thirteen Massachusetts municipal electric systems extending the deadline for the Municipals' submission of objections to Edison's 1992 bills for services rendered under each municipal system's Pilgrim power purchase contract in 1992. The letter agreement extends that deadline from May 19, 1994 until June 20, 1994. The letter agreement makes no other changes to the rates, terms and conditions of the affected Pilgrim contracts.

Edison states that it has served copies of this filing upon each of the affected customers and upon the three other Pilgrim power purchasers; Reading Municipal Light Department, Montaup Electric Company and Commonwealth Electric Company; as well as the Massachusetts Department of Public Utilities.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Otter Tail Power Co.

[Docket No. ER94–1270–000]

Take notice that on May 18, 1994, Otter Tail Power Company (Otter Tail) tendered for filing an agreement between Otter Tail and Manitoba Hydro Electric Board (MHEB). Otter Tail states that the Agreements are for the sale of capacity and energy from MHEB to Otter Tail for the months of May through October for 1995 and 1996.

Otter Tail requests the Commission to allow this schedule to become effective on May 1, 1995.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Co. of New York, Inc.

[Docket No. ER94–1271–000]

Take notice that on May 17, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement with Niagara Mohawk Power Corporation (NiMo) to provide for the sale of excess energy and capacity. The agreement provides for sales of excess energy and capacity to be made subject to cost based ceiling rates. The ceiling rate for energy that Con Edison sells is 110 percent of the highest incremental energy cost on Con Edison's system and the ceiling rate for capacity that Con Edison sells is $26.00 per megawatt hour.

Con Edison states that a copy of this filing has been served by mail upon NiMo.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Citizens Utilities Co.

[Docket No. ER94–1272–000]

Take notice that on May 18, 1994, Citizens Utilities Company (Citizens), tendered for filing an Agreement whereby Citizens provided Emergency Transmission Service to the Village of Swanton, Vermont, Electric Light Department (Swanton) on May 15, 1994, during a recently-scheduled outage of the Vermont Electric Power Company (VELCO). VELCO currently provides transmission service to Swanton. Citizens states that a copy of its filing was served on Swanton and the Vermont Public Service Board.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. West Texas Utilities Co.

[Docket No. ER94–1273–000]

Take notice that on May 18, 1994, West Texas Utilities Company (WTU) tendered for filing two Letter Agreements between WTU and the City of Coleman, Texas (Coleman). Pursuant to the Letter Agreements, WTU has agreed to make additional energy available to Coleman during the on-peak hours of the summer months of 1994, pursuant to a Supplemental Sales Agreement between WTU and Coleman, previously filed with the Commission. WTU has also agreed to extend the availability of additional energy during on-peak hours for the summer months of all future years in which the Supplemental Sales Agreement is in effect.

WTU requests waiver of the notice requirements in order that the Letter Agreement may become effective as of June 1, 1994.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Co.

[Docket No. ER94–1274–000]

Take notice that on May 18, 1994, Arizona Public Service Company (APS) tendered for filing revised Exhibit A to the Wholesale Power Supplement Agreement (Agreement) between APS and the United States of America, Bureau of Indian Affairs on behalf of the San Carlos Indian Irrigation Project (SCIP) (APS-FERC Rate Schedule No. 201).

Current rate levels are unaffected, revenue levels for the 12 months immediately after the requested effective date are unchanged from those currently on file with the Commission, and no other significant change in service to this or any other customer results from the revision proposed herein. No new or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on SCIP and the Arizona Corporation Commission.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Midwest Power Systems Inc.

[Docket No. ER94–1276–000]

Take notice that on May 19, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing an annual rate revision of the Transmission Service Fee. On October 23, 1992, FERC accepted for filing and designated Rate Schedule FERC No. 65 for the Transmission Service Agreement (Agreement) between MPSI and Cedar Falls Utilities (CFU). This Agreement provides transmission service to CFU for its share of power and energy from the George Neal Generating Station Unit No. 4 to CFU's system. Section 2 of the Agreement provides that the transmission service fee shall be reviewed and adjusted annually, if necessary.

MPSI respectfully requests a waiver of the Commission's rules so that the Transmission Service Fee may be approved retroactive to January 1, 1994.

MPSI states that copies of this filing were served on Cedar Falls Utilities and the Iowa Utilities Board.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Midwest Power Systems Inc.

[Docket No. ER94–1277–000]

Take notice that on May 19, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing an annual rate revision of the Transmission Service Fee. On October 23, 1992, FERC accepted for filing and designated Rate Schedule FERC No. 38 for the Transmission Service Agreement (Agreement) between MPSI and Cedar Falls Utilities (CFU). This Agreement provides transmission service to CFU for its share of power and energy from the Council Bluffs Energy Center Unit No. 3 to CFU's system. Exhibit B of the Agreement provides that the transmission service fee shall be reviewed and adjusted annually, if necessary.

MPSI respectfully requests a waiver of the Commission's rules so that the Transmission Service Fee may be approved retroactive to January 1, 1994.

MPSI states that copies of this filing were served on Cedar Falls Utilities Board.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Midwest Power Systems Inc.

[Docket No. ER94–1278–000]

Take notice that on May 19, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing a biennial rate revision of the Facilities Charge. On July 20, 1992, FERC accepted for filing (Docket No. ER91–684–000) and designated Rate Schedule FERC No. 112 for the Interconnection and Interchange Agreement (Agreement) between Nebraska Public Power District (NPPD) and Iowa Public Service Company (IPS) n/k/a Midwest Power Systems Inc. (MPSI). Docket No. ER92–784–000, approved by the Commission on October 23, 1992, redesignated IPS FERC No. 112 as MPSI Rate Schedule FERC No. 66. This Agreement reflects a transmission interconnection between the two systems. NPPD will pay MPSI a facilities charge based on transmission line investment. Amendment 2 of the Agreement provides that the facilities charge shall be reviewed and adjusted biennally.

MPSI respectfully requests a waiver of the Commission's rules so that the Transmission Facilities Charge may be approved retroactive to January 1, 1994.

MPSI states that copies of this filing were served on NPPD and the Iowa Utilities Board.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Rochester Gas and Electric Corp.

[Docket No. ER94–1279–000]

Take notice that on May 19, 1994, Rochester Gas and Electric Corporation (RG&E), tendered for filing a proposed Power Sales Tariff in order to make available for sale or exchange, surplus capacity and/or energy at negotiated rates that will be no higher than RG&E's cost of service.

A copy of the filing was served on the Public Service Commission of the State of New York.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Pennsylvania Power Company

[Docket No. ER94–1280–000]

Take notice that on May 20, 1994, Pennsylvania Power Company (Penn Power) pursuant to 18 CFR § 35.13 tendered for filing two proposed changes in its FPC Electric Service Tariffs Nos. 30, 31, 32, 33 and 34 to the Pennsylvania boroughs (Boroughs) of New Wilmington, Wampum, Zelienople, Ellwood City and Grove City, respectively. The first change is an increase in the Energy Cost Rate (ECR or Rider II) from $.002689/kWh to $.002767/kWh April 7, 1994. The second change is a revision to the language in Rider II to include the accounting treatment of sulfur dioxide emission allowance transactions. The revenue effect of the first change is to increase annual revenues from the municipal resale class by approximately $10,891.77 or 0.14%. The second change has no effect on rates at this time.

The five municipal resale customers served by Penn Power entered into settlement agreements effective as of September 1, 1984. These agreements provide that these customers will be charged applicable retail rates as may be in effect during the terms of the agreements. Changes in rates were agreed to become effective as to these resale customers simultaneously with changes approved by the Pennsylvania Public Utility Commission (Pa.PUC). The proposed changes have been implemented as to Penn Power's retail customers pursuant to Pa.PUC orders and regulations. These settlement agreements were approved by the Federal Regulatory Commission through a Secretarial letter dated December 14, 1984 in Docket Nos. ER77–277–007 and ER81–779–000. Waivers of certain filing requirements have been requested to implement the rate changes in accordance with the settlement agreements.

Copies of the filing were served upon Penn Power's jurisdictional customers and the Pa.PUC.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Carolina Power & Light Company

[Docket No. ER94–1282–000]

Take notice that on May 20, 1994, Carolina Power & Light Company (CP&L), tendered for filing with the Commission the changes outlined below to its agreements with Brunswick EMC, Cartaret-Craven EMC, and Tideland EMC.

1. *Brunswick EMC—Chadbourn-Peakcock 115 kV*—Increase in metered voltage from 69 kV to 115 kV.
2. *Cartaret-Craven EMC—Laurel Road 115 kV*—Installation of a new point of delivery.
3. *Tideland EMC—Edwards 230 kV*—Increase in delivery voltage from 115 kV to 230 kV.

The Company requests that the notice period be waived and that these supplements be made effective coincident with the effective dates set forth in the respective Exhibit A's.

A copy of this filing has been sent to the affected parties, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corp.

[Docket No. ER94–1283–000]

Take notice that on May 20, 1994, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 175, an agreement between Niagara Mohawk and Indeck Energy Services of Corinth, Inc. (Indeck).

Rate Schedule No. 175 provides or the wheeling of certain loads by Niagara Mohawk to Consolidated Edison Company as New York, Inc. generated by Indeck. the proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes that the revisions be effective on September 1, 1994.

Copies of this filing were served upon the following:

Public Service Commission, State of New York, Three Empire State Plaza. Albany, NY 12223, and

Indeck Energy Services of Corinth, Inc., 1130 Lake Cook Road, Suite 300, Buffalo Grove, Ill 60089

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Central Hudson Gas & Electric Corp.

[Docket No. ER94–1284–000]

Take notice that Central Hudson Gas and Electric Corporation (Central Hudson) on May 20, 1994, tendered for filing its development of actual costs for 1992 and 1993 related to transmission service provided from the Roseton Generating Plant to Consolidated Edison Company of New York, Inc. (Con Edison) and Niagara Mohawk Power Corporation (Niagara Mohawk) in accordance with the provisions of its Rate Schedule FERC No. 42.

The actual costs for 1992 amounted to $1.0118 per MW, -day to Con Edison and $3,5434 per MW, -day to Niagara Mohawk and are the basis on which charges for 1993 have been estimated. The actual costs for 1993 amounted to $0.9921 per MW, -day to Con Edison and $3,6915 per MW, - day to Niagara Mohawk and are the basis on which charges for 1994 have been estimated.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR § 35.11 of the Regulations to permit charges to become effective January 1, 1994 as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison, Niagara Mohawk and the State of New York Public Service Commission.

Comment date: June 8, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13474 Filed 6–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–93–000]

KN Interstate Gas Transmission Company; Informal Settlement Conference

May 27, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, June 2, 1994, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of discussing settlement in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Lorna J. Hadlock at (202) 208–0737 or Donald Williams at (202) 208–0743.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13477 Filed 6–2–94; 8:45 am]

BILLING CODE 6717–01–M

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

[Docket No. RP94–191–001]

May 27, 1994.

Take notice that on May 24, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sub. Original Sheet No. 237E, with a proposed effective date of April 1, 1994.

National states that the proposed tariff sheet is filed to correct a typographical error on Original Sheet No. 237E, Third Revised Volume No. 1, filed in the above-captioned proceeding and accepted by the Commission on April 18, 1994.

National further states that copies of this filing were served upon the company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protest should be filed on or before June 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13480 Filed 6–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–106–002]

Pacific Gas Transmission Company; Proposed Changes in FERC Gas Tariff

May 27, 1944.

Take notice that on May 25, 1994, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Substitute First Revised Sheet No. 127, with an effective date of November 1, 1993.

PGT states that the purpose of this filing is to correct a typographical error in First Revised Sheet No. 127, which was filed on February 14, 1994 in compliance with the Commission's February 1, 1994, Order in this proceeding.

PGT states that a copy of its filing is being served on the affected customer, interested state regulatory agencies, and the parties of record.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13478 Filed 6–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP83–58–021 and TM94–3–7–002]

Southern Natural Gas Company; Proposed Changes in FERC Gas Tariff

May 27, 1994.

Take notice that on May 25, 1994, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised sheets:

First Substitute Third Revised Sheet No. 4B.06 (effective May 1, 1992)
First Substitute Fourth Revised Sheet No. 4B.06 (effective May 1, 1993)

Southern states that the above-referenced tariff sheets are being filed with proposed effective dates of May 1, 1992 and May 1, 1993, in compliance with the Federal Energy Regulatory Commission (Commission) order dated April 28, 1994 in Docket No. TM94–3–7–000 and the Stipulation and Agreement (Stipulation) in Docket No. RP83–58–000, et al., as approved by the Commission's March 23, 1989 order. These sheets reflect a revised take-or-pay allocation to Atlanta Gas Light Company (Atlanta) resulting from the direct connection of Arcadian Corporation (Arcadian) to Southern's pipeline system.

Southern states that copies of the filing were served on the affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (Section 385.211). All such protests should be filed on or before June 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13476 Filed 6–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–125–005]

Texas Gas Transmission Corporation; Filing of Supplemental Material

May 27, 1994.

Take notice that on May 25, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing

supplemental supporting schedules and working papers in Docket No. RP94–125, *et al.*

Texas Gas states that the filing is being made to comply with various Commission Orders in Docket Nos. RP94–125 and RS92–24.

Texas Gas states that copies of the supplemental schedules and working papers are being mailed to Texas Gas' affected jurisdictional customers, interested state commissions, and those appearing on the RP94–125 service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 6, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–13479 Filed 6–2–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4711–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 16, 1994 Through May 20, 1994 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 08, 1994 (59 FR 16807).

Final EISs

ERP No. F–COE–E32192–NC

Wilmington Harbor Channel Widening and Navigation Improvement, Cape Fear River, Port of Wilmington, New Hanover and Brunswick Counties, NC.

Summary: EPA had environmental concerns with the potential adverse impacts associated with the explosives to be used in channel excavation.

ERP No. F–COE–F35041–OH

Cleveland Harbor Navigation Channels Maintenance, Confined Disposal Facility (Site 10B 15 Year) Construction and Use, Lake Erie, Cuyahoga River, Cuyahoga County, OH.

Summary: EPA had environmental concerns with impacts to water quality, recreation and sediment loading.

ERP No. F–COE–G35019–LA

Gulf of Mexico Waters Oyster Shell Dredging Project, COE Section 10 and 404 Permits, East Cote Blanche and Atchafalaya Bays, Terrebonne and St. Mary Parishes, LA.

Summary: EPA's concerns have been adequately addressed in the final EIS.

Dated: May 31, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–13559 Filed 6–2–94; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4711–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 260–5076 or (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed May 23, 1994 Through May 27, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940196, Draft EIS, FHW, WI–13 Marshfield Regional Mobility Study for Transportation Improvements, Funding and COE Section 404 Permit, City of Marshfield, Wood and Marathon Counties, WI, Due: July 19, 1994, Contact: Richard C. Madrzak (608) 264–5968.

EIS No. 940197, Draft EIS, AFS, ID, Packsaddle Timber Sale and Road Construction Project, Implementation, Idaho Panhandle National Forest, Sandpoint Ranger District, Bonner County, ID, Due: July 18, 1994, Contact: Joni Urbanski (208) 263–5111

EIS No. 940198, Final EIS, FHW, NY, NY–9A Reconstruction Project, Battery Place to 59th Street along the western edge of Manhattan, Funding and Approval of Permits, New York County, NY, Due: July 05, 1994, Contact: Harold J. Brown (518) 472–3616.

EIS No. 940199, Final EIS, AFS, UT, WY, North Slope Oil and Gas Leasing, Application for Permit to Drill, High Uinta Mountain, Evanston and Mountain View Ranger District, Wasatch-Cache National Forest and Flaming Gorge District, Ashley National Forest, Intermountain Region, Summit and Daggett Counties, UT and Uinta County, WY, Due: July 05, 1994, Contact: Barry Burkhardt (801) 524–5030.

EIS No. 940200, Final EIS, FHW, CA, CA–41 Improvements, Elkhorn Avenue to North Avenue, Funding, Fresno County, CA, Due: July 05, 1994, Contact: Leonard E. Brown (916) 551–1307.

EIS No. 940201, Final EIS, FTA, NJ, Boonton Line/Montclair Branch Rail Lines Corridor Improvements, Funding, Hudson, Morris, Sussex, Essex and Passaic Counties, NJ, Due: July 05, 1994, Contact: Letitia Thompson (212) 264–8162.

EIS No. 940202, Draft EIS, FHW, PA, I–81 Interchange Project, Construction, Funding and COE Section 404 Permit, Borough of Chambersburg, Franklin County, PA, Due: July 18, 1994, Contact: Manual A. Marks (717) 782–4422.

EIS No. 940203, Final EIS, USN, NC, Camp Lejeune Marine Corps Base, Wastewater Treatment System Upgrading, Construction and Operation, NPDES, COE Section 10 and 404 Permits, Onslow County, NC, Due: July 05, 1994, Contact: Pam Anderson (804) 445–2334.

Amended Notices

EIS No. 940118, Revised Draft EIS, FRC, NB, Kingsley Dam Project (FERC. No. 1417) and North Platte/Keystone Diversion Dam (FERC. No. 1835) Hydroelectric Project, Updated Information, Application for Licenses, Near the Confluence of the North/South Platters, Keith, Lincoln, Garden, Dawson and Grasper Counties, NB, Due: June 30, 1994, Contact: J. Ronald McKitrick (202) 219–2783.

Published FR 04–08–94—Review period extended.

EIS No. 940161, Draft EIS, FHW, VA, VA–37 Highway Transportation Improvement, Construction from VA–37/I–81/US–11 (south) to VA–37/US–11 (north), Funding and COE Section 404 Permit, City of Winchester, Frederick County, VA, Due: July 31, 1994, Contact: James M. Tumlin (804) 771–2371. Published FR 05–06–94—Review period extended.

Dated: May 31, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94–13560 Filed 6–2–94; 8:45 am]

BILLING CODE 6560–50–U–M

[FRL–4891–6]

Science Advisory Board Notification of Public Advisory Committee Meeting(s) Open Meeting(s)

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office.

(1) Radiation Environmental Futures Subcommittee Telcconference—June 20, 1994

The Radiation Environmental Futures Subcommittee (REFS) of the Science Advisory Board's (SAB's) Radiation Advisory Committee (RAC), will conduct a teleconference meeting on Monday, June 20, 1994, from 11 a.m. to 1 p.m. eastern time. In this teleconference meeting, the REFS intends to concur on technical edits to its draft report on review of the topic of radiation environmental futures. The Subcommittee is working toward preparing a draft Subcommittee consensus document. The current working draft is not available to the Agency or the public. The teleconference meeting is open to the public and teleconference lines will be assigned on a first come basis. The latest public meetings to discuss this topic were held on May 4–6, 1994 (see 59 FR 16809–16811 Friday, April 8, 1994).

Any member of the public wishing further information, such as a proposed agenda on the meeting, should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Diana L. Pozun, Staff Secretary; Science Advisory Board (1400–F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; by telephone at (202) 260–6552, FAX at (202) 260–7118, or via the Internet at POZUN.DIANA@EPAMAIL.EPA.GOV. Members of the public who wish to make a brief oral presentation at the teleconference should contact Dr. Kooyoomjian no later than June 15, 1994 in order to have time reserved on the agenda. In general, each individual or group making an oral presentation will be limited to a total time of three minutes. Written comments received by the SAB by June 10, 1994 may be mailed to the SAB's REFS prior to the meeting; comments received after that date will be provided to the REFS as logistics allow. Written comments of any length (at least 35 copies) should be provided to the Committee no later than June 15, 1994.

(2) Ecological Processes and Effects Committee—June 22–23, 1994

The Ecological Processes and Effects Committee (EPEC) of the Science Advisory Board (SAB) will meet on June 22–23, 1994, at the Old Colony Inn, 625 First Street, Alexandria, VA 22314, telephone (703) 548–6300. The meeting will begin both days at 8:30 a.m. and end no later than 5 p.m. on June 22 and no later than 1 p.m. on June 23.

The Committee will receive updates from various Subcommittees, review any available Subcommittee reports, and continue work on a draft report on forecasting future environmental issues as part of the Environmental Futures Project. For more information on the Environmental Futures Project, see 59 FR 16811 Friday, April 8, 1994. The Committee will also engage in a consultation with Agency staff on the development of saltwater dissolved oxygen criteria.

Single copies of the briefing materials provided to the Committee for the consultation on saltwater dissolved oxygen criteria may be obtained from Amy Leaberry, Health and Ecological Criteria Division (4304), Office of Science and Technology, USEPA, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–0658. Copies of these documents are NOT available from the Science Advisory Board Staff. Members of the public desiring additional information about the meeting, including an agenda, should contact Ms. Mary Winston, Staff Secretary, Science Advisory Board (1400F), US EPA, 401 M Street, SW., Washington DC 20460, by telephone at (202) 260–6552, fax at (202) 260–7118, or via The INTERNET at: WINSTON.MARY@EPAMAIL.EPA.GOV.

Anyone wishing to make an oral presentation at the meeting should contact Stephanie Sanzone, Designated Federal Officer for EPEC, by 4 p.m. on June 15, 1994. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 25 copies of the presentation and 25 copies of the visual aids used at the meeting are to be given to Ms. Sanzone no later than the time of the presentation for distribution to the Committee and the interested public. See below for additional information on providing comments to the SAB.

(3) Radiation Environmental Futures Subcommittee (REFS) Meeting—July 11, 1994

The Radiation Environmental Futures Subcommittee (REFS) of the Science Advisory Board's (SAB's) Radiation Advisory Committee (RAC), will conduct a meeting on Monday, July 11, 1994, from 9 a.m. to 5 p.m. at the Courtyard Marriott Hotel, 2899 Jefferson Davis Highway, Arlington, VA 22202 (tel. 703–549–3434). In this meeting, the REFS intends to finalize technical edits to its draft report on review of the topic of radiation environmental futures. The Subcommittee is working toward preparing a draft Subcommittee consensus document. The current working draft is not available to the Agency or the public. This topic is also to be considered at a teleconference meeting on June 20 (see announcement above).

Any member of the public wishing further information, such as a proposed agenda on the meeting, should contact Dr. K. Jack Kooyoomjian, Designated Federal Officer, or Mrs. Diana L. Pozun, Staff Secretary; Science Advisory Board (1400–F), U.S. Environmental Protection Agency; 401 M Street, SW, Washington, DC 20460, by telephone at (202) 260–6552, FAX at (202) 260–7118, or via the Internet at POZUN.DIANA@EPAMAIL.EPA.GOV. Members of the public who wish to make a brief oral presentation at the meeting should contact Dr. Kooyoomjian no later than July 6, 1994 in order to have time reserved on the agenda. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments received by the SAB by June 30, 1994 may be mailed to the SAB's REFS prior to the meeting; comments received after that date will be provided to the REFS as logistics allow. Written comments of any length (at least 35 copies) should be provided to the Committee no later than July 6, 1994.

(4) Radiation Advisory Committee Meeting—July 12–13, 1994

The Science Advisory Board's (SAB's) Radiation Advisory Committee (RAC), will conduct a meeting on Tuesday, July 12, 1994 and Wednesday, July 13, 1994. On July 12, 1994, the meeting will begin at 9 a.m. and adjourn at approximately 5:45 p.m. On July 13, 1994, the meeting will begin at 8:30 a.m. and adjourn no later than 5 p.m. The meeting will be held at the Courtyard Marriott Hotel, 2899 Jefferson Davis Highway, Arlington, VA 22202 (tel. 703–549–3434). In this meeting, the RAC intends to go to closure on the Radiation Environmental Futures Draft Report, the Radon Science Initiative Report, and the RAC Retrospective Report. Should the RAC not go to closure on any of these topics, it is likely that a teleconference will be advertised and held some time on each topic following this meeting. The public is advised that the Radiation Environmental Futures Report and the RAC Retrospective Report are not yet available to the public. Earlier drafts of the Radon Science Initiative Report were released to the public, and the document is currently undergoing revision. Other topics at the meeting should include a continuing discussion on Cleanup Standards, planning for an upcoming review on EMF and Carcinogenicity, briefings or consultations from the Office of Radiation and Indoor Air (ORIA) staff on Low Level Waste Research and other topics as time permits. The RAC will also discuss briefly the anticipated Fiscal Year 1995 review topics. The latest public meeting of the RAC was held on May 5 and 6, 1994 (See 59 FR 16809–16811, Friday, April 8, 1994).

Any member of the public wishing further information, such as a proposed agenda of the meeting, should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Diana L. Pozun, Staff Secretary; Science Advisory Board (1400–F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, by telephone at (202) 260–6552, FAX at (202) 260–7118, or via the Internet at POZUN.DIANA@EPAMAIL.EPA.GOV. Members of the public who wish to make a brief oral presentation at the meeting should contact Dr. Kooyoomjian no later than July 6, 1994 in order to have time reserved on the agenda. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments received by the SAB by June 30, 1994 may be mailed to the SAB's RAC prior to the meeting; comments received after that date will be provided to the RAC as logistics allow. Written comments of any length (at least 35 copies) should be provided to the Committee no later than July 6, 1994.

Environmental Futures Committee

The Environmental Futures Committee (EFC) of the Science Advisory Board (SAB) will conduct a public meeting on July 13, 1994 at the Gangplank Restaurant, Water Street SE., Washington, DC 20460.

The Environmental Futures Committee (EFC) was formed by the SAB at the request of Administrator Browner to assist the Agency in anticipating environmental problems, issues and opportunities. The charge to this Committee includes: developing a procedure for short and long-term forecasting of natural and anthropogenic developments which may affect environmental quality and its protection; develop detailed examinations procedures and apply them to some future developments; and draw implications from the examinations of future developments and recommend actions for EPA to address them. At these meetings, the EFC will receive briefings on Futures issues; discuss the overall progress of the project (including tracking the activities of the SAB Standing Committees that are involved in the project); and begin to outline its draft report.

These meetings are open to the public, but seating is limited and available on a first come basis. Any member of the public wishing further information concerning the meetings or who wishes to submit oral or written comments (at least 35 copies) should contact one of the Designated Federal Officials, Dr. Edward Bender, Science Advisory Board (Mail Code 1400F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; telephone (202) 260–2562; FAX (202) 260–7118, or via the Internet at BENDER.EDWARD@EPAMAIL.EPA.GOV.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 25 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: May 24, 1994.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 94–13563 Filed 6–2–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4891]

Science Advisory Board Clean Air Scientific Advisory Committee Review of a Draft Revised Air Quality Criteria for Ozone and Related Photochemical Oxidants

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will conduct a meeting on July 20 and 21, 1994. The Committee will examine the four-volume draft document, Revised Air Quality Criteria for Ozone and Related Photochemical Oxidants (EPA/600/AP–93/004a,b,c,d). The purpose of the meeting is to assess the scientific and technical adequacy of the document to serve as a basis for the Agency's proposed National Ambient Air Quality Standards for ozone. The meeting will be held at the Guest Quarters Suites Hotel, 2515 Meridian Parkway, Durham, NC 27713. The telephone number is 919/361–4660, their fax is 929/361–2256. The sessions will begin on July 20 at 8:30 a.m. and end no later than 5 p.m. on July 21.

The meeting is open to the public, although seating is limited. Any member of the public wishing further information concerning the meeting should contact Mr. Randall C. Bond, Designated Federal Official, Clean Air Scientific Advisory Committee at 202/260–8414. Those individuals requiring a copy of the Agenda should contact Ms. Janice Cuevas at the same number or by way of INTERNET at JONES.Janice@EPAMAIL.EPA.GOV. Members of the public wishing to make comments at the sessions should provide those comments to Mr. Bond no later than July 6, 1994. His address is U.S. Environmental Protection Agency, Science Advisory Board (1400), 401 M Street, SW., Washington, DC 20460. Comments will be limited to five minutes and the Clean Air Scientific Advisory Committee and Science Advisory Board staff expect that such items will not be repetitive of previously submitted material.

On Monday, January 30, 1994, EPA announced in the **Federal Register** (59 FR 4278) the availability for public comment of the subject external review draft EPA document (EPA/600/AP–93/004 a,b,c,d) to be reviewed at the upcoming July 20–21 CASAC Public

Meeting. To obtain copies of the draft document, interested parties should contact the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7562; FAX (513) 569–7566; and request the external review draft of "Air Quality Criteria for Ozone and Related Photochemical Oxidants". Please provide your name, mailing address, and the EPA document number, EPA/600/AP–93/004a–d.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found in The Annual Report of the Staff Director which is available by contacting Lori Gross at 202/260–8414 or by way of INTERNET at GROSS.Lori@EPAMAIL.EPA.GOV

Dated: May 13, 1994.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 94–13562 Filed 6–2–94; 8:45 am]

BILLING CODE 6560–50–P–M

[OPP–50784; FRL–4778–7]

Issuance of an Amendment/Extension of an Experimental Use Permit for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency

ACTION: Notice.

SUMMARY: On April 5, 1994, EPA issued an amendment/extension for Experimental Use Permit (524–EUP–73) to Monsanto Company to conduct field testing of a transgenic plant pesticide. The first EUP on this organism was issued April 10, 1992. The Agency has determined that this may be of national or regional significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before July 5, 1994.

ADDRESSES: Comments in triplicate, must bear the docket control number OPP–50784 and be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked, will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–305–7690).

SUPPLEMENTARY INFORMATION: The Monsanto Company experimental use program proposes to assess the effectiveness of six different versions of delta-endotoxin when expressed in several varieties of cotton and to introduce the delta-endotoxin genes into other cotton cultivars. An extension of the experimental use permit was granted May 18, 1993. An additional amendment was granted December 1993, for the purposes of adding two sites in Puerto Rico. The purpose of this amendment/extension is to conduct an additional 12 experiments on 120 sites in 15 states (four additional states to include Florida, Maryland, Missouri, and Virginia) and the territory of Puerto Rico. Total transgenic B.t.k. cotton plantings at all sites combined will not exceed 1,665 acres. Cotton lines for the additional sites contain the plasmid vectors PV–GHBKO3, PV–GHBKO4, and PV–GHBKO7.

EPA's scientific staff has evaluated the potential for adverse effects on nontarget species and the environment as a result of this EUP amendment. According to Monsanto, the B.t.k. delta-endotoxin is expected to occur in roots, stems, leaves, bolls and seeds of the cotton plant; the NPT II marker enzyme is expected to occur in stems and seeds. Neither protein was detected by Monsanto in the pollen, nectar or lint of the genetically-engineered cotton plants. The Agency does not foresee any human health risks or effects resulting from the proposed field tests because there will be minimal human exposure.

Several microbial pesticides containing nonengineered B.t.k. proteins have been registered over the last few years for which extensive avian, aquatic, and beneficial insect testing has failed to demonstrate any significant toxicity to these nontarget organisms. Monsanto, however, is using a truncated form of delta-endotoxin in three of its seven genetically-engineered cotton plants; it is possible that the truncated forms of B.t.k. proteins may affect a greater range of organisms than the full-length, nonengineered B.t.k. proteins present in wettable powder or oil flowable microbial pesticide formulations. This is not a concern, however, due to the limited exposure for nontarget organisms with the EUP amendment.

Because the field tests will be conducted in areas of the States where no known population of endangered lepidopteran species exist, no risk is expected as a result of the additional sites. In addition, because of the low exposure due the limited acreage and duration of the EUP, EPA feels that there will not be a situation warranting a formal review under the Endangered Species Act for any endangered mammals, birds, invertebrates, plants, or aquatic species.

Comments on this EUP amendment should be submitted by July 5, 1994.

Lists of Subjects

Environmental protection.

Dated: May 18, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–13557 Filed 6–2–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC 94–01, Auction No. 1]

Auction Notice and Filing Requirements for Ten Nationwide Licenses for Personal Communications Services in the 900 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Notice, erratum.

SUMMARY: This erratum corrects the May 23, 1994, Public Notice published on May 31, 1994 (59 FR 28097) regarding filing requirements applicable to small businesses bidding at auction for nationwide narrowband Personal Communications Service (PCS) licenses. The erratum is necessary because the original Public Notice incorrectly stated that qualified small businesses were eligible for installment financing on these licenses. The intended effect of this action is to clarify that such financing is not available to these small businesses.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Jackie Chorney, (202) 418–2030.

SUPPLEMENTARY INFORMATION: This is a summary of the erratum to Public Notice, Report No. AUC 94–01, released May 23, 1994. The full text of the erratum is available during normal business hours in room 833–B, 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

SYNOPSIS OF ERRATUM: No winning bidder, including small businesses, will be allowed to pay the balance due for any narrowband nationwide PCS license acquired at auction with installment payments.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–13462 Filed 6–2–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

The Bank Holding Company, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 27, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. The Bank Holding Company, Griffin, Georgia; to acquire 100 percent of the voting shares of First Community Bank of Henry County, McDonough, Georgia.

2. Regions Financial Corporation, formerly First Alabama Bancshares, Inc., Birmingham, Alabama, to acquire 100 percent of the voting shares of BNR Bancshares, Inc., New Roads, Louisiana, and thereby indirectly acquire Bank of New Roads, New Roads, Louisiana.

3. Regions Financial Corporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of First Community Bancshares, Inc., Rome, Georgia, and thereby indirectly acquire First Rome Bank, Rome, Georgia.

4. Washington/Wilkes Holding Company, Washington, Georgia; to acquire 100 percent of the voting shares of The Peoples Bank, Crawfordville, Georgia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Wintrust Investments, Inc., Lake Forest, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of North Shore Community Bank & Trust Company, Wilmette, Illinois, a *de novo* bank.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Arvest Bank Group, Inc., Bentonville, Arkansas; to merge with First Bancshares, Inc., Bartlesville, Oklahoma, and thereby indirectly acquire WestStar Bank, Bartlesville, Oklahoma, and WestStar Bank, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, May 27, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–13486 Filed 6–2–94; 8:45 am]

BILLING CODE 6210–01–F

The Bank of Montreal; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1994

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Bank of Montreal, Montreal, Canada; The Bank of Nova Scotia, Toronto, Canada; Barclays PLC, London, United Kingdom; Barclays Bank PLC, London, United Kingdom; CS Holding, Zurich, Switzerland; Deutsche Bank AG, Frankfurt, Germany; The Fuji Bank, Limited, Tokyo, Japan; HSBC Holdings, PLC, London, United Kingdom; HSBC Holdings B.V., Amsterdam, Netherlands; Marine Midland Banks, Inc., Buffalo, New York; The Long-Term Credit Bank of Japan, Limited, Tokyo, Japan; The Nippon Credit Bank, Ltd., Tokyo, Japan; and The Sanwa Bank Limited, Osaka, Japan; to acquire Government Pricing Information System, Inc., New York, New York, a joint venture, and thereby engage in

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data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 27, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13487 Filed 6-2-94; 8:45 am]

BILLING CODE 6210-01-F

Carolina First Corporation; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 22, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Carolina First Corporation, Greenville, South Carolina; to engage *de novo* through its subsidiary, Landwood Ridge Limited Partnership, Greenville, South Carolina, in constructing and operating an affordable housing project for elderly persons pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Greenville County, South Carolina.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Peotone Bancorp, Inc., Peotone, Illinois; to engage *de novo* in providing data processing services to its subsidiary banks and to five unaffiliated financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

2. Southwest Bancorp, Inc., Worth, Illinois; to engage *de novo* in providing data processing services to its subsidiary banks and to five unaffiliated financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 27, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13488 Filed 6-2-94; 8:45 am]

BILLING CODE 6210-01-F

The Summit Bancorporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Summit Bancorporation, Chatham, New Jersey; to acquire all of the voting shares of Crestmont Financial Corporation, Edison, New Jersey, and thereby indirectly acquire Crestmont Federal Savings and Loan Association, Edison, New Jersey, and thereby engage in operating a savings association pursuant to § 225.25(b)(9); and Crestmont Insurance Agency, Edison, New Jersey, and thereby engage in the sale as agent or broker of insurance designed to repay the principal amount of credit extended in the event of death, disability or involuntary unemployment of the borrower pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. Immediately subsequent to the acquisition, Crestmont Financial Corporation will be merged with and into The Summit Bancorporation and Crestmont Federal Savings and Loan Association will be converted, through a series of intermediate steps, into a New Jersey-chartered savings bank and then into a New Jersey-chartered commercial bank that will then be merged with and into The Summit Bancorporation's subsidiary bank, Summit Bank, Chatham, New Jersey. Accordingly, The Summit Bancorporation has also applied under section 3(a)(3) of the Bank Holding Company Act to acquire the interim New Jersey-chartered savings and commercial banks. As an alternative, under certain circumstances, The Summit Bancorporation will exercise an option to acquire up to 19.9 percent of the shares of Crestmont Financial Corporation.

Board of Governors of the Federal Reserve System, May 27, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13489 Filed 6-2-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Intent To Prepare Environmental Impact Statement for New Federal Courthouse in Savannah, GA

Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C.A. 4321 to 4370d), and the Council on Environmental Quality Regulations (40 CFR 1500–1508), as implemented by General Services Administration (GSA) Order PBS P 1095.4B, GSA announces its intent to prepare an Environmental Impact Statement (EIS) for the siting and construction of a new Federal Courthouse within the Central Business Area (CBA) of Savannah, Georgia.

The EIS will examine the short and long term impacts from constructing and operating a New Courthouse in the Savannah CBA, on the natural and human environments. This includes but is not limited to impacts on historic and cultural resources, traffic and parking, and socioeconomics (including the impacts on local businesses and neighborhoods). The EIS will also examine measures to mitigate unavoidable adverse impacts of the proposed action. Concurrent with NEPA implementation, GSA will also implement its consultation requirements under Section 106 (36 CFR 800) of the National Historic Preservation Act of 1966 (16 U.S.C. 470), regarding the impacts on historic properties as a result of undertaking the proposed action. GSA is very much aware of the potential for adverse affects on historic resources as a result of proposed action, and will make every effort to identify and take into account such affects when siting this project.

The New Courthouse will house 331 employees in an approximately 250,000 gross square foot structure that will meet the 10-year space requirements of the US Courts. The project will contain five courtrooms, and office space for Court-related agencies, as well as space for GSA and the Postal Service. This information is presented only as a summary of the project's space requirements: GSA has not designed the facility even in concept. Design of the facility will not begin until after a site has been selected and procured. The site itself will not be procured until after the EIS and the NEPA process is completed.

Although a specific site has not yet been determined, there are two important locational considerations for this project. First, Executive Order 12072 (16 AUG 1978, 43 FR 36869) requires Federal agencies to give primary consideration to the CBA when acquiring space in an urban area unless the Federal agency has operational needs requiring it to locate outside the CBA. The purpose of this Executive Order is to encourage the location of Federal facilities where they will serve to strengthen the nation's cities and to make them attractive places to live and work. In this case, the Court has no need to locate outside of the CBA.

Second, the Court does have an operational need that would be best served if the New Courthouse is located adjacent to the existing Federal Building-Courthouse at 125 Bull Street. This location would considerably reduce the security risk, as well as the administrative and operational inefficiencies of "splitting" the Courts, by minimizing the distance between two locations. An adjacent location is strongly preferred by the Courts and GSA; however, it is a preference only, and does not preclude consideration of an alternative CBA site.

As part of NEPA and Section 106 implementation, GSA is actively seeking public input into the decision-making process, including the identification of issues to be examined in the EIS, and the identification of "reasonable" alternatives to the proposed action. Reasonable, in this case, means that the alternative must still satisfy GSA's basic project goals. These goals are to satisfy the Courts' operational requirements, and house its 10-year space requirement, in a cost-effective manner, in Government-owned space.

GSA has tentatively identified the following alternatives, some of which may not be technically feasible, to be examined in the EIS:

- "No Action," that is, undertake no new construction.
- Construction adjacent to the existing Federal Building-Courthouse at one of the following potential locations:

—On a parcel bounded by State, Bull, Broughton, and Whitaker Streets (preferred alternative).

—On a parcel bounded by York, Bull, Oglethorpe, and Whitaker Streets.

—On a parcel bounded by Broughton, Barnard, State, and Whitaker Streets.

—On a parcel bounded by State, Barnard, York, and Whitaker Streets.

—On a parcel bounded by Barnard, York, Whitaker, and Oglethorpe Streets.

- Identification and consideration of other feasible sites that will satisfy the stated goals of the project in the CBA will be determined through the scoping process and by Solicitation for Offers by GSA.

As part of the public scoping process, you are encouraged to contact GSA in writing at the following address with your concerns and comments regarding the proposed project: Mr. Philip Youngberg, Regional Environmental Officer—4PL, 401 West Peachtree Street, NW., Suite 2500, Atlanta, GA 30365–2550; or FAX your comments to Mr. Youngberg at 404–331–7169. Comments should be postmarked no later than July 5, 1994.

GSA also intends to conduct a Public Scoping Meeting to solicit verbal comments, and address general questions concerning the project, NEPA, and Section 106. A Notice of this meeting and all subsequent public meetings conducted by GSA for this project will appear in the Savannah News-Press at lest two weeks prior to the meeting date. Notices announcing the availability and review periods for the Draft EIS and Final EIS will also be published in the Savannah News-Press. Persons and organizations on the mailing list will be notified of all meetings and publications by mail. Persons who would like to be added to the mailing list should write or call GSA at the address or phone number listed in this notice.

Dated: May 19, 1994

Judith M. Cobb,

Director, Planning Staff (4PL).

[FR Doc. 94–13536 Filed 6–2–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Requests for Nominations of Members of Clinical Practice; Guideline Panel on Acute Myocardial Infarction

The Agency for Health Care Policy and Research (AHCPR) has announced a request for proposals and intends to award a contract to a non-profit organization to develop a clinical practice guideline and to develop related medical review criteria, standards of quality, and performance measures for Acute Myocardial Infarction. The contractor will establish

a panel of health care experts and consumers to assist in developing a clinical practice guideline on Acute Myocardial Infarction and to assist in developing medical review criteria, standards of quality, and performance measures. The AHCPR, on behalf of the contractor, invites nominations of qualified individuals to serve as chairperson(s) and members of the panel.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (See 42 U.S.C. 299–299c-6 and 1320b-12.) The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102–410), enacted on October 13, 1992, extended the authorization of AHCPR and amended certain provisions related to the development of clinical practice guidelines. In keeping with its legislative mandates, AHCPR is arranging for the development, periodic review, and updating of clinically relevant guidelines that may be used by physicians, other health care practitioners, educators, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed. Medical review criteria, standards of quality, and performance measures are then developed based on the guidelines produced.

Section 912 of the Act (42 U.S.C. 299b-1(b)), as amended by Public Law 102–410, requires that the guidelines:

1. Be based on the best available research and professional judgment;
2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;
3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care;
4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and
5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 913 of the Act (42 U.S.C. 299b-2) describes two mechanisms through which AHCPR can arrange for development of guidelines: 1. Panels of qualified experts and health care consumers may be convened; and 2. Contracts may be awarded to public and private non-profit organizations. The AHCPR has elected to use the contract process for development of a clinical practice guideline on Acute Myocardial Infarction.

Section 914 of the Act (42 U.S.C. 299b-3(a)), as amended by Public Law 102–410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;
2. Improve methods of diagnosis, treatment, and clinical management, and thereby benefit a significant number of individuals;
3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act, the AHCPR Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

Panel Nominations

The panel that will assist the contractor in developing the clinical practice guideline on Acute Myocardial Infarction will consist of two co-chairpersons and ten to fifteen other members. The work will be divided into two phases. Phase I is development of the clinical practice guideline. Phase II is development of medical review criteria, standards of quality, and performance measures based on the guideline.

The role of the panel members is to assist the contractor to: develop a decisionmaking process; determine the focus of the guideline and the questions to be addressed; advise and monitor the review and analysis of the scientific literature; consider and advise on principal health care issues; monitor and provide counsel on development of medical review criteria, standards of quality, and performance measures; and review and approve the interim and final drafts of the different versions of the guideline. The co-chairpersons will provide leadership in carrying out these roles.

To assist in identifying members for the panel, AHCPR is requesting recommendations from a broad range of interested individuals and organizations, including physicians representing primary care and relevant specialties, physicians' assistants, nurses, nurse practitioners, pharmacists, allied health and other health care practitioners, health care institutions, and consumers with pertinent experience or information. In making panel selections, AHCPR, will maintain, to the extent possible, a balance of individuals selected from academic settings and individuals selected without full-time academic appointments. At least two members of this panel shall be individuals who do not derive their primary source of revenue directly from the performance of procedures discussed in this guideline. Some participants in the guideline process (panel members, consultants, peer or pilot reviewers) should have expertise in epidemiology, health services research, or health economics, and familiarity with the clinical condition being studied. To the extent possible, the panel should have appropriate representation in terms of gender, minority populations, and geographic areas of the United States.

The AHCPR is especially interested in receiving nominations of individuals with: (1) Experience in developing and/or commitment to developing clinical guidelines, medical review criteria, standards of quality, and performance measures; (2) relevant training and clinical experience; (3) relevant experience in basic and/or clinical research in acute myocardial infarction, including publication of relevant peer-reviewed articles; (4) demonstrated interest in quality of care, medical outcomes, and medical effectiveness; (5) knowledge of the epidemiology of acute myocardial infarction; (6) experience in health services research or health economics, with expertise in the area of acute myocardial infarction; and (7) personal experience of acute myocardial infarction, either as a patient, family member, or friend of a patient, or as a person who actively works with consumer groups interested in acute myocardial infarction. The AHCPR encourages nominations of women and individuals who are members of minority population groups. Nominees should have no substantial financial interests or professional affiliations that would significantly jeopardize the integrity of the guideline development process or the final products.

This notice requests nominations of qualified individuals to serve on the panel as members or as co-chairpersons. The functions of the panel co-chairpersons are critical to the process of developing guidelines. Co-chairpersons provide leadership regarding methodology, literature review, panel deliberations, and preparation of the final products. Nominations for co-chairpersons should take into consideration the criteria specified below, which AHCPR will use in approving final selections:

- Relevant training and clinical experience;
- Demonstrated interest in quality assurance and research on the clinical condition(s) under consideration and the related treatment of the condition(s), including publication of relevant peer-reviewed articles;
- Commitment to the need to produce clinical practice guidelines;
- Recognition in the field with a record of leadership in relevant activities;
- Broad public health view of the utility of particular procedures or clinical services;
- Demonstrated capacity to respond to consumer concerns;
- Prior experience in developing guidelines for the clinical condition in question; and
- No substantial financial interests or professional affiliations that would significantly impair the scientific integrity of the guidelines or final products.

Subsequent to approval by AHCPR, the contractor will appoint the panel co-chairpersons. After the panel co-chairpersons have been appointed, nominations for members of the panel will be reviewed by the contractor and the co-chairpersons, prior to proposing panel members to AHCPR. Following AHCPR review and approval of proposed members' qualifications, review of the overall composition of the panel to ensure representation of a range of expertise and experience, and review of potential conflict of interest, the contractor will appoint panel members.

Nominations should indicate whether the individual is being recommended to serve on the panel as a co-chairperson or as a member. Each nomination must include two copies of the individual's curriculum vitae or resume, and two copies of a letter of nomination with a statement of the rationale for the specific nomination.

To be considered, nominations must be received by July 15, 1994 at the following address: Francis Chesley, Project Officer, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Boulevard, Suite 310, Rockville, MD 20852, Phone: (301) 594–4015, Fax: (301) 594–4027.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Program Note, "Clinical Practice Guideline Development," dated August 1993. This document describes AHCPR's activities with respect to clinical practice guidelines, including the process and criteria for selecting panels. This document may be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call Toll-Free: 1–800–358–9295.

Information may also be obtained by contacting Carole Hudgings, Ph.D., Acting Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Blvd, Suite 310, Rockville, MD. 20852. Information about this contract, RFP No. 282–94–2013, may be obtained from Patrick Joy, Division of Acquisition Management, Government Acquisition Branch, room 5–101, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857, (301)443–8826.

Requests for copies of the contract solicitation may be transmitted by facsimile to 301–443–3238.

Dated: May 24, 1994.

J. Jarrett Clinton,

Administrator.

[FR Doc. 94–13464 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–90–P

Agency for Toxic Substances and Disease Registry

[Program Announcement Number 444]

Health Studies Related to the National Exposure Registry

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement/grant program to conduct health studies of trichloroethylene (TCE)-exposed subpopulations that comprise the TCE Subregistry of the National Exposure Registry. The studies will address health conditions identified by ATSDR as potential health conditions associated with environmental exposure to TCE, with emphasis on neurotoxic disorders. The recipient will utilize the National Exposure Registry Trichloroethylene (TCE) Subregistry database in designing and executing these studies.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section Where to Obtain Additional Information.)

Authority: This program is authorized under sections 104(i)(1)(E),(7), and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, (42 U.S.C. 9604 (i)(1)(E),(7), and (15)).

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American People.

Eligible Applicants

Eligible applicants are the official public health agencies of States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments. State organizations, including State universities, State colleges, and State research institutions, must establish that they meet their respective State's legislature definition of a State entity or political subdivision to be considered an eligible applicant.

Availability of Funds

Approximately $1,000,000 is available in FY 1994 to fund 3–5 new and competing awards. It is expected that the average award will be $200,000, ranging from $100,000 to $300,000. It is expected that the awards will begin on or about September 30, 1994, and will be made for a 12-month budget period within a project period of up to 3 years.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this announcement is to solicit scientific proposals designed

to study the occurrence of/and risk factors for specified health outcomes for persons who have had documented environmental exposure to TCE through drinking or using contaminated water. The study population will include all, or a subset, of the TCE Subregistry registrants. These studies will increase the knowledge base, and hence improve the ability of public health programs to address potential public health problems related to exposure to hazardous substances.

Several research topics were suggested based on the analysis of the TCE Subregistry baseline data. The topics are to be considered suggestions and not limitations. These topics are:

—Hearing, speech impairment in subpopulation exposed at ≤10 years of age (neurological disorders)
—Cardiac problems (possibly congenital) in subpopulation exposed at ≤10 years of age
—Diabetes
—Hypertension/stroke/heart problems in adult subpopulation

Program Requirements

The TCE baseline data and documentation are available on CD-ROM (4.75 inch disc) which is accessed using the Statistical Export and Tabulation System (SETS), data format ISO 9660. This can be run on a fully IBM-compatible microcomputer 286/386/486 with 640K of memory, three megabytes of free space on a hard drive, an operating system of MS-DOS 3.1 or higher and a fully installed CD-Rom reader.

Applicants must propose studies which will address one or more of the following areas of investigation:

A. Evaluate the occurrence of adverse health effects in the identified population. This will include the evaluation of the incidence or prevalence of a disease, disease symptoms, self-reported health concerns, or biological markers of disease, susceptibility, or exposure (see Purpose section for the specific disease outcomes specified).

B. Identify risk factors for adverse health effects in the identified populations. This will include hypothesis generating cohort or case-control studies on potentially impacted populations to identify linkages between exposure and adverse health effects and those risk factors which may be impacted by prevention actions. (See Purpose section for a listing of the adverse health effects of concern.)

C. Develop methods to diagnose adverse health effects (see Purpose section for the adverse health effects of concern) in populations. This will include medical research to evaluate currently available biological tests (biomarkers) and disease occurrence in potentially impacted populations.

ATSDR will provide financial assistance to applicants in designing and executing analytic epidemiologic studies to explore the relationship between exposure to hazardous substances and the occurrence of, and risk factors for, environmental exposure to TCE through drinking and using contaminated water, using all or a subset of the TCE Subregistry registrants.

Applicants must specify the type of award for which they are applying, either grant or cooperative agreement. These two types of Federal assistance are explained below.

A. Grants

In a grant, the applicant will be required to conduct the proposed study without substantial programmatic involvement by ATSDR. Grantees must meet the following requirements: The application should be presented in a manner that demonstrates the applicant's ability to address the environmental health problems.

The applicant's protocol should contain consent forms and questionnaires, baseline morbidity and mortality information, procedures for collecting biologic and environmental specimens and for conducting laboratory analysis and evaluation of the test results of biologic specimens, statistical and epidemiologic analysis of the study information, and a description of the safeguards for protecting the confidentiality of individuals on whom data are collected.

By comparison, the activities of the recipient and the ATSDR for a cooperative agreement are described in paragraph B.

B. Cooperative Agreements

In a cooperative agreement, ATSDR will assist the collaborator in conducting the study. The application should be presented in a manner that demonstrates the applicant's ability to address the health problem in a collaborative manner with the funding agency. In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under 1., below and ATSDR shall be responsible for conducting activities under 2., below:

1. Recipient Activities

a. Recipient will design, develop, and implement a protocol to conduct the necessary study of exposed individuals.

b. Recipient is required to provide proof, by citation of State code or regulation or other State pronouncement given the authority of law, that medical information obtained pursuant to the agreement, which pertains to an individual and is therefore considered confidential, will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

c. If study requires knowledge of registrant personal identifiers, recipient will develop a mechanism, working through ATSDR, for interaction with the affected community to obtain necessary permission for the release of this information to the recipient.

2. ATSDR Activities

a. ATSDR will assist in developing the study.

b. ATSDR will provide epidemiologic and other technical assistance in both the planning and implementation phases of the field work called for under the study protocol.

c. ATSDR will provide consultation and assist in monitoring the collection and handling of information and the sampling and testing activities.

d. ATSDR will participate in the statistical and epidemiologic analysis.

e. ATSDR will collaborate in interpreting the study findings.

f. ATSDR will assist (act as the intermediary) in obtaining registrant permission for the release to the recipient of personal information.

g. ATSDR will conduct technical and peer review.

Evaluation Criteria

Applications will be reviewed and evaluated for scientific and technical merit according to the following criteria:

A. Scientific and Technical Review Criteria of New Applications

1. Appropriateness and Knowledge of Study Design—25%

The extent to which the applicant's proposal addresses: (a) Rationale for the proposed study design; (b) the identification of a target (exposed/diseased) population; (c) the identification of an appropriate comparison group; (d) a consideration of sample size; (e) a plan for exposure assessment and/or a plan for evaluating adverse health outcomes; and (f) a detailed plan for analysis of the data.

2. Proposed Study—25%

The adequacy of the proposal relevant to: (a) The study purpose, objectives, and rationale; (b) the quality of program objectives in terms of specificity, measurability, and feasibility; (c) the

specificity and feasibility of the applicant's timetable for implementing program activities and timely completion of the study; and (d) the likelihood of the applicant agency completing proposed program activities and attaining proposed objectives based on the thoroughness and clarity of the overall program.

3. Relationship to Initiative—15%

The extent to which the application addresses the areas of investigation outlined by ATSDR.

4. Quality of Data Collection—15%

The extent to which: (a) The study ascertains the information necessary to meet the objectives, including (but not limited to) information on pathways of exposure, confounding factors, and biomedical testing; (b) the quality control and quality assurance of questionnaire data are provided, including (but not limited to) interviewer training and consistency checks of data; (c) the laboratory tests (if applicable) are sensitive and specific for the analyte or disease outcome of interest; and d) the quality control, quality assurance, precision and accuracy of information for the proposed tests are provided and acceptable.

5. Applicant Capability and Coordination Efforts—10%

The extent to which the proposal has described: (a) The capability of the applicant's administrative structure to foster successful scientific and administrative management of a study; (b) the capability of the applicant to demonstrate an appropriate plan for interaction with the community; and (c) the suitability of facilities and equipment available or to be purchased for the project.

6. Program Personnel—10%

The extent to which the proposed program staff is qualified and appropriate, and the time allocated for them to accomplish program activities is adequate.

7. Program Budget—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement/grant funds.

B. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

1. Satisfactory progress has been made in meeting project objectives;

2. Objectives for the new budget period are realistic, specific, and measurable;

3. Proposed changes in described long-term objectives, methods of operation, need for grant support, and/or evaluation procedures will lead to achievement of project objectives; and

4. The budget request is clearly justified and consistent with the intended use of grant funds.

Executive Order 12372

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, GA 30305, no later than 60 days after the application deadline. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.) The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305. This should be done no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

A. Protection of Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulation, 45 CFR part 46, regarding the protection of human subjects. Assurances must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any Native American community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

B. Cost Recovery

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, provides for the recovery of costs incurred for health assessments and health effects studies at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated cost including indirect cost, as appropriate for the site. The recipient would also maintain documentation that describes the site-specific actions taken with respect to the site, e.g., contracts, work assignments, progress reports, and other documents that describe the work performed at a site. The recipient will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of ten (10) years after submission of a final Financial Status Report (FSR), unless there is a litigation,

claim, negotiation, audit or other action involving the specific site, then the records will be maintained until resolution of all issues on the specific site.

C. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and that are funded by the cooperative agreement mechanism will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

D. Disclosure

Recipient is required to provide proof by way of citation to State code or regulation or other State pronouncement given the authority of law, that medical information obtained pursuant to the agreement, pertaining to an individual, and therefore considered confidential, will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

E. Third Party Agreements

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the grantee and the third party. The written agreement shall at a minimum:

1. State or incorporate by reference all applicable requirements imposed on the contractors under the grant by the terms of the grant, including requirements concerning technical review (ATSDR selected reviewers), release of data, ownership of data, and the arrangement for copyright when publications, data or other copyrightable works are developed under or in the course of work under a PHS grant supported project or activity.

2. State that any copyrighted or copyrightable works shall be subject to a royalty-free, nonexclusive, and irrevocable license to the Government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal Government purposes.

3. State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under a grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the Government's right in that work.

4. State the activities to be performed, the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

5. The written agreement required shall not relieve the grantee of any part of its responsibility or accountability to PHS under the grant. The agreement shall, therefore, retain sufficient rights and control to the grantee to enable it to fulfill this responsibility and accountability.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, GA 30305, on or before July 21, 1994. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

Additional information on application procedures, copies of application forms, other material, and business management assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6797. Programmatic assistance may be obtained from Dr. Jeffrey A. Lybarger, Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–31, Atlanta, GA 30333, telephone (404) 639–6200.

The complete technical report "National Exposure Registry Trichloroethylene (TCE) Subregistry Baseline Technical Report" is available through NTIS (# PB93–209187), May 1993. A summary of the technical report, the "Registrants Report", and a copy of the questionnaire used to collect the data is available through ATSDR (request by calling Dr. JeAnne Burg, telephone (404) 639–6202.

Please refer to Announcement Number 444 when requesting information and submitting an application.

Potential Applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 27, 1994.

Claire V. Broome,

Acting Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–13505 Filed 6–2–94; 8:45 am]

BILLING CODE 4163–70–P

Agency for Toxic Substances and Disease Registry

[Announcement 431]

Surveillance of Hazardous Substances Emergency Events

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement program to conduct surveillance of hazardous substances emergency events. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Surveillance and Data Systems and Environmental Health. (To order a copy of "Healthy People 2000," see the section Where To Obtain Additional Information.)

Authority

This program is authorized in sections 104(i)(1)(E) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604 (i)(1)(E) and (15)).

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants are the official public health departments of the States or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Availability of Funds

Approximately $1,000,000 is available in FY 1994 to fund approximately 15 awards. It is expected that the average new award will be $70,000 ranging from $60,000 to $80,000 per award. It is expected that the awards will begin on or about September 30, 1994, with a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Grantees currently funded under ATSDR's Program Announcement 207 can apply and, if successful, the current award would roll over into this one (competitive renewal) for a project period of 5 years. If a current grantee applies under this competitive renewal announcement and is unsuccessful, it would not jeopardize the current award; ATSDR will honor the current awards through the expiration of the project period, subject to satisfactory progress and the availability of funds. If a current grantee should choose not to apply for this competitive renewal, ATSDR will honor the current award through the expiration of the project period, subject to satisfactory progress and the availability of funds.

Use of Funds

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies, and services. Equipment may be purchased with cooperative agreement funds; however, justification must be provided which should include a cost comparison of purchase versus lease options. All purchased equipment must be compatible with ATSDR equipment and shall be returned to ATSDR at the completion of the project.

Purpose

The primary purpose of this cooperative agreement program is to assist State health departments in developing a state-based surveillance system for monitoring hazardous substances emergency events to allow the State health department to better understand the public health impact of hazardous substances emergencies.

The objectives of the surveillance system are to:

1. Describe the distribution of hazardous substances emergencies within individual States;
2. Describe the type and cause of morbidity and mortality experienced by employees, first responders, and the general public as a result of selected hazardous substances emergencies;
3. Analyze and describe risk factors associated with the morbidity and mortality; and
4. Develop and propose strategies to reduce subsequent morbidity and mortality when comparable events occur in the future.

Program Requirements

All Hazardous Substances Emergency Event Surveillance (HSEES) will be performed in accordance with the methodology provided in the HSEES protocol. The protocol was developed to meet the objectives outlined under Purpose. A copy of the protocol will be provided in the application kit. For purposes of this program, the following criteria define an emergency event:

1. An uncontrolled or illegal release or threatened release of one or more hazardous substances (**NOTE:** The substances that are actually released or threatened to be released include all hazardous substances *except* petroleum products), and
2. The quantity of the hazardous substances which are released, or are threatened to be released, need (or would need) to be removed, cleaned up, or neutralized according to Federal, State, or local law; or
3. There is only a threatened release of hazardous substances, but this threat leads to an action (e.g., an evacuation) that can potentially impact the health of employees, responders, or the general public. This action makes the event eligible for inclusion into the surveillance system, even though the hazardous substances are not released.

A hazardous substance includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through the food chain, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring; except that the term "hazardous substance" does not include petroleum products, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a "hazardous substance."

To achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and ATSDR will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Develop a mechanism that ensures that the State health department is notified of hazardous substances emergency events in a timely fashion. This should include negotiating formal or informal agreements with all State agencies that are normally notified when hazardous substances emergencies have occurred. These State agencies should include, but not be limited to, State police, fire departments, environmental agencies, and various offices of emergency government.
2. Investigate the emergency event by gathering and entering the information obtained from all sources into the HSEES tracking system. Sources may include, but not be limited to, those agencies mentioned in A.1., and other relevant Federal, State, local, and private agencies in keeping with the surveillance protocol.
3. Establish and maintain appropriate procedures to ensure the timely gathering and entering the information into a database as prescribed by the HSEES protocol.

B. ATSDR Activities

1. Assist recipients in acquiring appropriate information for performance of HSEES and evaluating the completeness and quality of relevant information.
2. Provide prototype information gathering instrument.
3. Assist recipients in establishing and maintaining appropriate and timely schedules for the HSEES surveillance process.
4. Assist recipients in selecting training that will be useful in maintaining the surveillance system.

5. Analyze environmental and/or biological results for specific situations in which ATSDR has concerns.

6. Evaluate the overall performance of recipient's adherence to the surveillance protocol.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Review Criteria for States New to HSEES

1. *Appropriateness and Knowledge of Surveillance System—25%*

Demonstrate a need for such a surveillance system within their State. Additionally, the applicant should demonstrate an understanding of the needs, limitations, and experience with surveillance systems as a means of assessing the impact of hazardous substances on public health.

2. *Proposed Methodology—25%*

Applicant must demonstrate experience in, or an ability to develop, implement, maintain, and evaluate surveillance systems in accordance with the HSEES Protocol.

3. *Capability and Coordination Efforts—20%*

Demonstrate the ability to develop, maintain, or expand a formal or an informal working relationship with agencies outside of the State health departments that receive notifications of hazardous substances emergencies. This is necessary to assure that State health departments are notified of all hazardous substances emergencies.

4. *Quality of Information Collection—20%*

Applicant should describe experience in collaborative projects for which the agency has had the responsibility collecting information in a consistent format. Examples include surveillance projects, surveys, and prospective or retrospective hypothesis-testing studies. The timely submission of data for analysis is critical in ensuring the success of this surveillance. Accordingly, the applicant must demonstrate experience in, or the ability to collect, enter, and transfer data on a timely basis.

5. *Program Personnel—10%*

Demonstrate that the proposed program staff is qualified and appropriate, and the time allocated for them to accomplish program activities is adequate. With limited funds available, the applicant must demonstrate that an infrastructure exists within the health department that will allow for full participation in the surveillance system with partial ATSDR financial support. Such in-kind support can include existing support staff, technical staff (e.g., epidemiologist, data management staff, environmental health scientists, emergency response personnel, computer specialists), and computer hardware.

6. *Program Budget—(Not scored)*

Budget must be reasonable, clearly justified, and consistent with intended use of cooperative agreement funds.

B. Review Criteria for States with Existing HSEES

1. *Appropriateness and Knowledge of Surveillance System—25%*

Applicant must demonstrate experience in collecting emergency event surveillance information within the State. This should include, but not be limited to, an assessment of the extent of hazardous substances emergencies and/or the morbidity and mortality associated with these events. Additionally, the applicant should demonstrate an understanding of the needs, limitations, and experience with surveillance systems as a means of assessing the impact of hazardous substances on public health.

2. *Proposed Methodology—25%*

Applicant must demonstrate experience in HSEES. This should include the development, implementation, and evaluation of an HSEES system in accordance with the surveillance Protocol.

3. *Capability and Coordination Efforts—20%*

Applicant must demonstrate the ability to develop, maintain, or expand a formal or an informal working relationship with agencies outside of the State health departments that receive notifications of hazardous substances emergencies. This is necessary to assure that State health departments are notified of all hazardous substances emergencies.

4. *Quality of Information Collection—20%*

Applicant should describe previous experience in HSEES systems, including collecting information for which the organization is responsible in a consistent format. Of critical importance to the success of the surveillance project is the timely submission of data for analysis. The applicant *must* demonstrate experience in, or the ability to collect, enter, and transfer data on a timely basis.

5. *Program Personnel—10%*

Demonstrate that the proposed program staff is qualified and appropriate, and the time allocated for them to accomplish program activities is adequate. With limited funds available, the applicant must demonstrate that an infrastructure exists within the health department that will allow for full participation in the surveillance system with partial ATSDR financial support. Such in-kind support can include existing support staff, technical staff (e.g., epidemiologist, data management staff, environmental health scientists, emergency response personnel), and computer hardware.

6. *Program Budget—(Not scored)*

Budget must be reasonable, clearly justified, and consistent with intended use of cooperative agreement funds.

C. Review of Noncompeting Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

1. Satisfactory progress has been made in meeting project objectives;

2. Objectives for the new budget period are realistic, specific, and measurable;

3. Proposed changes in described long-term objectives, methods of operation, need for cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives; and

4. The budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

Funding Priorities

Applicants must demonstrate the abilities described earlier in the Program Requirements section of this announcement. Priority will be given for the following:

1. Geographic distribution across the entire United States.

2. Representation from both agricultural and industrial States.

3. Electronic data management/transfer capabilities, and in-kind technical support.

Public Comments are not being solicited regarding the funding priority because time does not permit solicitation and review prior to the funding date.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC) as early

as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs including their names, addresses, and telephone numbers is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 60 days after the application deadline. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mail Stop E–13, Atlanta, Georgia 30305. This should be done no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" for tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

Paperwork Reduction Act

Projects that involve collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB clearance has been obtained for the Hazardous Substances Emergency Events Data Collection Form OMB Number 0923–008, expiration date June 30, 1995.

Application Submission Deadline

The original and two copies of the application (PHS Form 5161–1) should be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mail Stop E–13, Atlanta, Georgia 30305, on or before July 21, 1994. By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.

A. Deadline

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. Late Applications

Applications that do not meet the criteria in A.1. or A.2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mail Stop E–13, Atlanta, Georgia 30305, telephone (404) 842–6797. Programmatic assistance may be obtained from Dr. Wendy Kaye, Chief, Epidemiology and Surveillance Branch, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–31, Atlanta, Georgia 30333, telephone (404) 639–6203.

Please refer to Announcement Number 431 when requesting information and submitting an application.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 27, 1994.

Claire V. Broome,

Acting Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 94–13492 Filed 6–2–94; 8:45 am]

BILLING CODE 4163–70–P

Centers for Disease Control and Prevention

[CDC–#471]

Announcement of Cooperative Agreement to National Association of People With AIDS (NAPWA)

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a sole source cooperative agreement program with the National Association of People With AIDS (NAPWA) to continue the human immunodeficiency virus (HIV) prevention and education programs and technical assistance being provided to HIV infected and affected persons and the organizations that serve them. Approximately $350,000 is available in FY 1994 to support this project. It is expected that the award will be made on or about September 25, 1994, for a 12-month budget period within a 5-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

The purpose of this cooperative agreement is to assist, collaboratively with NAPWA, in strengthening effective HIV/AIDS prevention education programs at all levels throughout the United States and its territories; to prevent HIV transmission and effect, maintain, measure, and evaluate behavioral change among individuals whose behavior places them at risk of HIV infection; to increase access to prevention and early intervention services for HIV-infected persons in order to reduce risks of further transmission and to maintain the health of asymptomatic clients; and to increase collaboration and support among agencies, organizations, groups, and constituencies providing HIV prevention services.

CDC will collaborate in providing consultation and technical assistance in planning, operating, and evaluating program activities. Specifically, CDC will work with NAPWA to: (1) Facilitate collaboration with State and local health departments and other national and

community organizations to reach persons most at risk for HIV infection; (2) assist in the identification of HIV prevention education programs, policies, practices, and procedures that have been demonstrated to be effective; (3) facilitate efforts in the provision of technical assistance and training to organizations that are involved in HIV prevention community planning; (4) assist with the development of plans to evaluate all program activities and to interpret evaluation findings.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS). (To order a copy of "Healthy People 2000," see the Section entitled "Where to Obtain Additional Information.")

Authority

This program is authorized under the Public Health Service Act, section 301(a), (42 U.S.C. 241(a)), as amended; and Section 317(a), (42 U.S.C. 247b(a)), as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicant

Assistance will be provided only to the National Association of People with AIDS (NAPWA) for the continued support of this project. No other applications are solicited or will be accepted.

Eligibility is limited to NAPWA because it is the only organization incorporated by people with HIV/AIDS, provides HIV prevention technical assistance and education for infected and affected people, and serves as a national prevention and education resource to all communities affected by HIV/AIDS. No other organization has this unique role, credibility, and established rapport with affected communities and the public at large, or the necessary national HIV program experience to effectively carry out the activities of this program.

Executive Order 12372 Review

The application is not subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.939, HIV Prevention Activities—Non-Governmental Organizations.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement 471 and contact Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 321, Mailstop E–15, Atlanta, Georgia 30305, telephone (404) 842–6817.

Programmatic technical assistance may be obtained from Janet Cleveland, Division of STD/HIV Prevention, National Center for Prevention Services, Centers for Disease Control and Prevention (CDC), Mailstop E-O2, Atlanta, Georgia 30333, telephone (404) 639–8360.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Summary" may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 27, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13493 Filed 6–2–94; 8:45 am]

BILLING CODE 4163–18–P

[CDC–464]

Announcement of a Cooperative Agreement to the World Health Organization

Summary

The Centers for Disease Control and Prevention (CDC), announces the availability of funds for fiscal year (FY) 1994 for a sole source cooperative agreement with the World Health Organization (WHO) to conduct polio surveillance, provide technical assistance in developing a laboratory network, provide programmatic assistance to carry out operational and applied research, and to provide oral polio vaccine for supplemental immunization activities for the global initiative to eradicate polio by the year 2000. Approximately $1.2 to $1.6 million will be available in FY 1994 to support this project. It is expected the award will begin on July 1, 1994, for a 12-month budget period within a 3-year project period. The funding estimate is subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

The purpose of this cooperative agreement is to support the polio eradication initiative by providing technical, laboratory, programmatic consultants, operational and applied research, oral polio vaccine, and other services, as needed, to the governments of polio endemic countries. Specific activities should be in the areas of polio surveillance to define and assess the polio endemic countries, including surveillance for acute flaccid paralysis, development of a laboratory network for poliovirus isolation in developing countries, and assistance to foreign governments in planning and implementing national immunization days and other polio eradication activities.

CDC will collaborate by providing (1) technical assistance to WHO in support of activities implemented under this agreement; (2) programmatic support to national governments for planning, implementing, and evaluating polio eradication activities; (3) technical training, support, and consultation to expert staff hired by WHO to assist in the polio eradication initiative; (4) expertise for the surveillance to assess, define, and prioritize the assistance needs of polio endemic countries and assist in the development of a laboratory network for poliovirus isolation in developing countries; and (5) other technical assistance in support of this project, as needed.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of "Healthy People 2000," see the Section "Where To Obtain Additional Information.")

Authority

This program is authorized under sections 301 and 307 of the Public Health Service Act, as amended, 42 U.S.C. 241 and 242*l*, and section 104 of the Foreign Assistance Act of 1961, 22 U.S.C. 2151b.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission of promoting the protection and advancement of an individual's physical and mental health.

Eligible Applicant

Eligibility for assistance is limited to the World Health Organization for this project. No other applications are solicited. The program announcement and application kit have been sent to WHO.

WHO is the most appropriate and qualified agency to conduct the activities under this cooperative agreement because:

A. WHO has the lead responsibility among the United Nations organizations for implementing the World Health Assembly resolution of 1988 calling for the global eradication of polio by the year 2000. WHO is the only organization with a worldwide mandate for the control and prevention of vaccine preventable diseases.

B. The proposed program is strongly supportive of and directly related to the achievement of WHO and CDC/National Immunization Program objectives for the control and prevention of vaccine preventable diseases.

C. WHO, together with UNICEF, the Pan American Health Organization, Rotary International, and CDC, is a member of the Polio Eradication Network, an organization formed to increase support and visibility for the polio eradication initiative.

Executive Order 12372 Review

The application is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 93.185, Immunization Research, Demonstration, Public Information, and Education; Training, and Clinical Skills Improvement Projects.

Other Requirements

Human Subjects

If any of the proposed projects involve research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement 464 and contact Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–09, Atlanta, GA 30305, telephone (404) 842–6880.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Summary" may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 27, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13494 Filed 6–2–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Drug Discovery Subcommittee Meeting of the National Task Force on Aids Drug Development

Date, time, and place. June 21, 1994, 8:30 a.m., Parklawn Bldg., conference rm. I, 5600 Fishers Lane, Rockville, MD 20857.

Type of meeting and contact person Open subcommittee discussion, 8:30 a.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; Jean H. Mckay, Office of AIDS and Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0104.

General functions of the subcommittee. The National Task Force on AIDS Drug Development identifies any barriers and provides creative options for the rapid development and evaluation of treatments for HIV infection and its sequelae. It also advises on issues related to such barriers and provides options for the elimination of these barriers.

Open subcommittee discussion. The subcommittee will present, hear, and discuss issues on the barriers to AIDS drug discovery from the perspective of the subcommittee members, members of the Federal Government, and the public.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Task Force. Those desiring to make formal presentations should notify the contact person before June 7, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 27, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–13468 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0194]

Apothecon, et al.; Withdrawal of Approval of Six Abbreviated Antibiotic Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of six abbreviated antibiotic applications (AADA's). The holders of the AADA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION: The holders of the AADA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

AADA No.	Drug	Applicant
61–911.	Kanamycin Sulfate Capsules, U.S.P. 500 miligrams (mg).	Apothecon, P.O. Box 4500, Princeton, NJ 08543–4500.
61–981.	Neomycin and Polymyxin B Sulfates and Bacitracin Ointment, U.S.P.	Clay-Park Labs, Inc., 1700 Bathgate Ave., Bronx, NY 10457.
62–271	Cloxacillin Sodium Capsules, USP, 250 mg.	Apothecon.
62–688.	Sterile Cefazolin Sodium, U.S.P.	Fujisawa USA, Inc., Three Parkway North, 3d floor, Deerfield, IL 60015–2548.
62–957.	Erythromycin Topical Solution, USP, 2%.	Barre-National, Inc., 333 Cassell Dr., suite 3500, Baltimore, MD 21224.
63–010.	Nystatin and Triamcinolone Acetonide Cream, USP.	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the AADA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective July 5, 1994.

Dated: May 24, 1994.

Murray M. Lumpkin,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 94–13593 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–01–P

Health Resources and Services Administration

RIN: 0905–ZA65

Program Announcement and Proposed Project Requirements and Review Criteria for Grants for Chiropractic Demonstration Projects for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1994 grants for Chiropractic Demonstration Projects under the authority of section 782, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992. Comments are invited on the proposed project requirements and review criteria.

Approximately $730,000 will be available in FY 1994 for this program. It is anticipated that $730,000 will be available to support 3 to 4 competing awards averaging $182,500 to 243,333.

Purpose

Section 782 of the Public Health Service Act authorizes the Secretary to carry out demonstration projects in

which chiropractors and physicians collaborate to identify and provide effective treatment for spinal and lower-back conditions.

The period of Federal support will not exceed 3 years.

Eligibility

Entities eligible to apply for these grants are public or private nonprofit schools, colleges, and universities of chiropractic. Each applicant must enter into a formal agreement as necessary to ensure that a school of allopathic or osteopathic medicine will participate in the project.

Proposed Project Requirements

The following project requirements are proposed:

1. The project must address the identification and treatment of spinal and/or lower-back conditions.

2. The project must represent collaborative efforts between schools of chiropractic and schools of allopathic or osteopathic medicine.

3. Each project must include a strong research protocol which will result in a significant expansion of documented research in the area addressed and which is suitable for publication in refereed health professions journals, including research-oriented publications.

4. The project must include an explicit strategy for case-finding and a strategy for making direct comparisons to other forms of treatment. The results must be generalizable to patients cared for in clinical practices addressing spinal and/or lower-back conditions.

5. Whenever feasible, minorities and women should be included in study populations so that research findings can be of benefit to all persons at risk of the disease, disorder, or condition under study.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Proposed Review Criteria

It is proposed that the review of applications will take into consideration the following criteria and the quality of the supporting documentation for:

(1) The strength of the rationale for the project;

(2) The quality and clarity of the objectives to be achieved in relation to the stated statutory purposes of the program and the potential of the project for meeting them;

(3) The strength of the applicant's institutional background in chiropractic training and research;

(4) The competency of all faculty, both chiropractic and allopathic or osteopathic medicine, to be involved in the project, including past experience in chiropractic and/or chiropractic research and allopathic or osteopathic research;

(5) The proposed methodology to be used in carrying out the goals and objectives of the project, including those pertaining to research and its outcomes;

(6) The appropriateness of timelines to be used in achieving the project's goals and objectives;

(7) The strength of the proposed evaluation methodology to be used in evaluating the accomplishments of the project, including those pertinent to research;

(8) The strength of the evidence of the applicant institution's commitment, including letters of support, to carrying out the project successfully and the institutional commitment of the allopathic or osteopathic school of medicine collaborating in the project;

(9) The suitability and availability of all proposed facilities and resources to be used in carrying out the project;

(10) The appropriateness of the proposed budget and fiscal plan for carrying out the project and the administrative and management capability of the applicant to implement the project in a cost-effective manner; and

(11) The documentation, terms, and specificity of a formal agreement with a school of allopathic or osteopathic medicine for its collaboration in carrying out the goals, objectives, and evaluation of the project.

The peer review group which reviews applications for this program will include no fewer than two, and no more than three, chiropractors.

Additional Information

Interested persons are invited to comment on the proposed project requirements and review criteria. The comment period is 30 days. All comments received on or before July 5, 1994 will be considered before the final project requirements and review criteria are established. Written comments should be addressed to: Mr. Neil Sampson, Director, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Brenda Selser, Grants Management Branch, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443–6960 FAX: (301) 443–6343 Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Mr. Fred Paavola, Program Officer, Associated Health Professions Branch, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–02, 5600 Fishers Lane, Rockville, Maryland 20857; telephone : (301) 443–6763 FAX: (301) 443–1164.

The standard application form PHS 398, Competing Training Grant Application and General Instructions will be used for this program. This form has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0925–0001

The deadline date for receipt of applications is July 8, 1994. Applications will be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program, Chiropractic Demonstration Projects, is listed at 93.212 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: May 12, 1994.

John H. Kelso,

Acting Administrator.

[FR Doc. 94–13571 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Consensus Development Conference on Optimal Calcium Intake

Notice is hereby given of the NIH Consensus Development Conference on "Optimal Calcium Intake," which will be held June 6–8, 1994, in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the National Institute of Arthritis and Musculoskeletal and Skin Diseases and the NIH Office of Medical Applications of Research. The conference begins at 8:30 a.m. on June 6 and 7 and at 9 a.m. on June 8.

Over the past decade, both the general public and scientists have been exposed to a great deal of literature about the value of ensuring an adequate calcium intake throughout life. A number of articles in the medical literature have addressed the role of calcium intake in the prevention of disorders including osteoporosis and other bone diseases, colon cancer, and high blood pressure (hypertension) including preeclampsia, a hypertensive disorder of pregnancy. Results of one recent study indicated that high calcium intake can decrease the risk of kidney stones—a somewhat surprising conclusion since high dietary calcium intake had been strongly suspected to increase the risk of kidney stones.

Osteoporosis affects more than 25 million people in the United States and is the major underlying cause of bone fractures in postmenopausal women and the elderly. Two important factors that influence whether osteoporosis occurs are the peak bone density (or bone mass) attained in early life (by about age 30) and the rate at which bones is lost in later life. Calcium intake is thought to help build denser, stronger bones in early life and to slow the rate of bone loss with age.

Results from several studies reported in the recent medical literature suggest that increased calcium intake is beneficial for bone health in people in different age groups, from children to the very elderly. The results of this research and studies on other diseases indicate that the optimal level of calcium intake may be greater than the amount consumed by a majority of the American people. This conference will discuss and thoroughly evaluate the information available on calcium intake and disease prevention.

Optimal calcium intake may vary according to the disease being considered, and may also vary according to a person's age, sex, and ethnicity. Optimal calcium intake may be achieved by diet, calcium supplements, or calcium-fortified foods, or by various combinations of these. In addition, various cofactors play a role in achieving optimal calcium intake. These include both factors such as vitamin D, which is needed for optimal calcium absorption, and factors that can negatively influence calcium availability, such as certain medications or foods. The purpose of this NIH consensus conference is to evaluate the available data on optimal calcium intake and health status. Conference participants will include specialists in many different fields, including osteoporosis and bone health, oncology, hypertension, human nutrition, and food fortification and labeling, as well as representatives from the public.

After 1½ days of presentations and audience discussion, an independent, non-Federal consensus panel will weigh the scientific evidence and write a draft statement in response to the following key questions:

- What is the optimal amount of calcium intake?
- What are the important cofactors for achieving optimal calcium intake?
- What are the risk factors associated with different levels of calcium intake?
- What are the best ways to attain optimal calcium intake?
- What public health strategies are available and needed to implement optimal calcium intake?
- What are the recommendations for future research on calcium?

On the final day of the meeting, the consensus panel chairman will read the draft statement to the conference audience and invite comments and questions.

Advance information on the conference program and conference registration materials may be obtained from: Ann Besignano, Technical Resources, Inc., 3202 Tower Oaks Blvd., suite 200, Rockville, Maryland 20852, (301) 770–3153.

The consensus statement will be submitted for publication in professional journals and other publications. In addition, the consensus statement will be available beginning June 8, 1994, from the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: May 20, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 94–13483 Filed 6–2–94; 8:45 am]

BILLING CODE 4140–01–M

Meeting of Panel/Request for Public Comment

The fifth, and probably final, meeting of the National Institutes of Health (NIH) Human Embryo Research Panel will be held June 21–22 from 9 a.m. to 5 p.m. each day at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland. The Panel is a group of special consultants to the Advisory Committee to the Director (ACD), NIH, established to recommend guidelines for Federal funding of research involving the *ex utero* human embryo resulting from *in vitro* fertilization or other sources. At the June meeting, the Panel will work toward the resolution of outstanding issues and review a draft report of its findings and conclusions.

Background

Research involving the *ex utero* human embryo has many potential scientific and therapeutic benefits. Among the most direct and immediate possible gains are the treatment of infertility and the advancement of preimplantation diagnosis of genetic and chromosomal abnormalities. Other research focusing on the processes of fertilization and implantation could clarify the causes of infertility. Studies of normal and abnormal early embryonic development could enhance understanding of the causes of pregnancy loss, birth defects, and the mechanisms of uncontrolled cell growth that occur in cancer. Other research efforts could be applied to the development of novel contraceptives. In the longer term, research on embryonic stem cells could have therapeutic applications in a broad range of areas, including bone marrow transplantation, repair of damaged tissues, and treatment of degenerative diseases of the nervous and muscular systems.

The NIH has received a number of applications for support of research involving the *ex utero* human embryo as well as research involving parthenogenesis (the initiation of development of an ovum without sperm). Before proceeding with the consideration of specific human embryo research proposals for funding, the NIH must address the profound moral and ethical issues raised by the use of human embryos in research and develop guidelines to govern the review and conduct of Federally-funded research. The Human Embryo Research Panel was established to assist the NIH in this effort. The Panel's charge is to consider various areas of research involving the *ex utero* human embryo and provide advice as to those areas it views to be acceptable for Federal funding, areas that warrant additional review, and areas that are unacceptable for Federal support. For those areas of research considered acceptable for Federal funding, the Panel will recommend specific guidelines for the review and conduct of this research. Issues related to human germ-line gene modification are not within the Panel's purview. The Panel's final report will be presented to the ACD for review.

During part of its first and second meeting, the Panel reviewed the wide range of scientific and human health benefits that could result from governmental support of research involving the *ex utero* human embryo. At the third meeting, Panel deliberations focused on issues related to the moral status of the human embryo and acceptability of areas of *ex utero* human embryo research; ethically acceptable sources of human embryos and oocytes, including informed consent requirements, issues raised by compensation of sperm/egg providers, and concerns regarding commercialization; and, appropriate mechanisms/levels of review of research proposals involving the *ex utero* human embryo. The fourth meeting of the Panel was devoted to the consideration of a preliminary draft of proposed guidelines.

Public Comment Process

The NIH continues to seek public comment on these and other issues raised by Federal funding of human embryo research and encourages interested individuals and organizations to share with the Panel their views and perspectives on these important matters. Those who wish to submit written comments of any length should forward these to Steven Muller, Ph.D., Chair, NIH Human Embryo Research Panel, c/o National Institutes of Health, 9000 Rockville Pike, Building #1, room 218, Bethesda, Maryland 20892.

Each meeting of the Panel has also provided an opportunity for interested individuals and organizations to make brief oral presentations to the Panel. To register to make an oral statement before the Panel, individuals and organizations should contact Ms. Peggy Schnoor at the NIH by telephoning 301–496–1454 or by sending a facsimile message to 301–402–0280 or 301–402–1759. Oral statements must not exceed five minutes in length, and a copy of the remarks should be forwarded to the above address one week in advance of the scheduled presentation date. Opportunities to present statements are limited and will be determined by the order in which requests are received.

The NIH will endeavor to provide seating for all members of the public who wish to attend the meetings. To ensure that adequate seating is available for the public, individuals interested in attending the meeting are asked to notify the NIH by using the telephone or facsimile numbers listed above. Individuals who require special accommodations are also asked to contact Ms. Schnoor at the above number. General questions about the Panel or future meetings should also be directed to Ms. Schnoor.

Dated: May 20, 1994.

Ruth L. Kirschstein, M.D.,

Deputy Director, NIH.

[FR Doc. 94–13484 Filed 6–2–94; 8:45 am]

BILLING CODE 4140–01–P

Public Health Service

Notice Regarding Section 602 of the Veterans Health Care Act of 1992 Inclusion of Outpatient Hospital Facilities

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: Section 602 of Public Law 102–585, the "Veterans Health Care Act of 1992" (the "Act"), enacted section 340B of the Public Health Service Act ("PHS Act"), "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement (the "Agreement") with the Secretary, Department of Health and Human Services, in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed the amount determined under a statutory formula.

Section 340B(a)(4) lists the entities eligible to receive discount outpatient drug pricing (*i.e.*, certain disproportionate share hospitals (DSHs) and PHS grantees). The definition of a disproportionate share hospital found in section 340B(a)(4)(L) provides criteria to determine which such hospitals are eligible to participate in the program. However, the definition does not include criteria to determine which outpatient facilities (including off-site or satellite clinics) working in conjunction with the eligible hospital would be considered part of the hospital for purposes of eligibility for section 340B drug discounts. The Office of Drug Pricing, which administers this program with PHS, is proposing certain procedures to determine which outpatient hospital facilities are included as part of an eligible disproportionate share hospital.

DATES: The public is invited to submit comments on the proposed procedures by July 5, 1994. Subject to consideration of the comments submitted, the Department intends to publish a final notice regarding these procedures.

ADDRESSES: Submit comments to Ms. Alvarez at the address listed below.

FOR FURTHER INFORMATION CONTACT: Marsha Alvarez, R. Ph., Chief Pharmacy Officer, Attn: Drug Pricing Program, Bureau of Primary Health Care, East West Towers rm. 10–3A1, Bethesda, MD 20814, Tel: (301) 594–4354.

SUPPLEMENTARY INFORMATION: Section 340B(a)(4) of the PHS Act lists the various groups of entities eligible to receive the section 340B discount pricing. Section 340B(a)(4)(L)[1] describes

[1] Section 340B(a)(4)(L) of the PHS Act describes a covered entity—

"A subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act) [or a section 1396www(d)(3)(B)] that—[i] is owned or operated by a unit of State or local government, or is a public or private non-profit corporation which is formally granted governmental powers by a unit of State or local government, or is a private non-profit hospital which has a contract with a State or local government to provide health care services to low-income individuals who are not entitled to benefits under title XVIII of the Social Security Act [or

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a subset of "hospitals" as defined in section 1886(d)(1)(B) of the Social Security Act as eligible to participate in the program. Because section 1886 addresses Medicare payment for hospital inpatient services only, the scope of the term "hospital" has been limited to the hospital inpatient services. However, section 340B deals exclusively with outpatient drugs. Although Congress clearly intended that this narrow definition be used to identify Medicare disproportionate share hospitals which are eligible for section 340B drug discounts, we do not believe it is reasonable to use this same definition to limit where the section 340B outpatient drug can be used. Some disproportionate share hospitals offer outpatient services in off-site or satellite outpatient facilities. Further, the movement of nonprofit hospitals in recent years has been to reorganize and offer a variety of services other than traditional inpatient hospital services through separate divisions, lines of business, or entities. Therefore, for purposes of section 340B drug discounts, a more inclusive interpretation of "hospital" is needed.

The Office of Drug Pricing Program is proposing to recognize as part of an eligible DSH outpatient facilities (including off-site and satellite clinics) which meet the following standard:

The outpatient facility is considered an integral part of the "hospital" and therefore eligible for section 340B drug discounts if it is a reimbursable facility included on the hospital's Medicare cost report.

For example, if a hospital with one Medicare provider number meets the disproportionate share criteria and this hospital has associated outpatient clinics whose costs are listed on the Medicare cost report, these clinics would also be eligible for section 340B drug discounts. However, free-standing clinics of the hospital that submit their own cost reports using a different Medicare number (not under the single hospital Medicare provider number) would not be eligible for this benefit.

This test, using the single Medicare provider number, is proposed for three reasons. First, Congress referred to section 1886 of the Social Security Act, part of the Medicare statute, for the definition of a DSH in section 340B(a)(4)(L) of the PHS Act. We believe, therefore, that it is reasonable to utilize existing Medicare rules to determine eligibility for the drug discount program. The proposed Medicare cost report test was developed by Medicare officials and is used, in part, to determine whether a facility is part of a hospital. If an outpatient facility does not share in the hospital cost report, it is properly viewed as an independent, free-standing facility.

Second, the relative administrative burden of the proposed test (*i.e.*, obtaining sufficient documentation to verify the inclusion of these off-site facilities) should be minimal. Hospitals seeking Medicare reimbursement are required to submit annual cost reports including all hospital units (*e.g.*, on site and off-site clinics); therefore, the information necessary to determine facility eligibility is available and needs no further analysis by the Office of Drug Pricing.

Third, the test incorporates criteria (*i.e.*, the Medicare cost report) that form an independent and objective basis upon which to determine eligibility. Therefore, this test should provide fair and easy administration.

If DSHs have difficulty accessing PHS pricing for eligible outpatient clinics, they should contact the Office of Drug Pricing (not HCFA) for assistance. If manufacturers have questions concerning the eligibility of certain DSH outpatient clinics, they should also contact the Office of Drug Pricing for a determination of eligibility.

Dated: May 27, 1994.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

[FR Doc. 94-13463 Filed 6-2-94; 8:45 am]

BILLING CODE 4160-15-P

U.S.C.A. section 1395, *et seq.*] or eligible for assistance under the State plan under this title; (ii) for the most recent cost reporting period that ended before the calendar quarter involved, had a disproportionate share adjustment percentage (as determined under section 1886(d)(5)(F) of the Social Security Act) [42 U.S.C.A. section 1395ww(d)(5)(F)] greater than 11.75 percent or was described in section 1886(d)(5)(F)(iii)(I) of such Act [42 U.S.C.A. 1395ww (d)(5)(F)(i)(I)]; and (iii) does not obtain covered outpatient drugs through a group purchasing organization or other group purchasing arrangement."

The Health Care Financing Administration (HCFA) submitted to the Office of Drug Pricing a list of hospitals that met the first two requirements (*i.e.*, 340B(a)(4)(L)(i) and (ii)). HCFA will update this list periodically.

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, Room 13-A-54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443-6014.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, suite 21, Nashville, TN 37211, 615-331-5300.

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800-541-4931/205-263-5745.

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817-282-2257.

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703-802-6900.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, suite 250, Las Vegas, NV 89119-5412, 702-733-7866.

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787.

Baptist Medical Center—Toxicology Laboratory, 9601 I-630, Exit 7, Little Rock, AR 72205-7299, 501-227-2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414-355-4444/800-877-7016.

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617-547-8900.

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810.

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310-215-6020.

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-6917.

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263/800-833-3984.

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263.

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800-876-3652/417-836-3093.

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137-3054, (Outside OH) 800-338-0166/(Inside OH) 800-362-8913 (formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.).

Damon/MetPath, 8300 Esters Blvd., suite 900, Irving, TX 75063, 214-929-0535 (formerly: Damon Clinical Laboratories).

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38-H, Great Lakes, IL 60088-5223, 708-688-2045/708-688-4171.

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511-2597, 804-444-8089 ext. 317.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, GA 31604, 912-244-4468.

Drug Labs of Texas, 15201 I-10 East, suite 125, Channelview, TX 77530, 713-457-3784.

DrugProof, Division of Laboratory of Pathology of Seattle, Inc., 1229 Madison St., suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800-898-0180/206-386-2672 (formerly: Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215-674-9310.

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, suite 308, Pompano Beach, FL 33062, 305-946-4324.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 601-236-2609 (moved 6/16/93).

EXPRESSLAB, INC., 405 Alderson Street, Schofield, WI 54476, 800-627-8200 (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group).

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608-267-6267.

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800-725-3784/915-563-3300 (formerly: Harrison & Associates Forensic Laboratories).

HealthCare/MetPath, 24451 Telegraph Road, Southfield, MI 48034, Inside MI: 800-328-4142/Outside MI: 800-225-9414 (formerly: HealthCare/Preferred Laboratories).

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, suite 354, Houston, TX 77030, 713-793-6080.

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, OH 45229, 513-569-2051.

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504-392-7961.

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715-389-3734/800-222-5835.

Med-Chek/Damon, 4900 Perry Highway, Pittsburgh, PA 15229, 412-931-7200 (formerly: Med-Chek Laboratories, Inc.).

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901-795-1515.

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Avenue, Toledo, OH 43699-0008, 419-381-5213.

Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414-476-3400.

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800-832-3244/612-636-7466.

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317-929-3587.

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800-752-1835/309-671-5199.

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708-595-3888.

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201-393-5000.

Metropolitan Reference Laboratories, Inc., 2320 Schuetz Road, St. Louis MO 63146, 800-288-7293.

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410-536-1485 (formerly: Maryland Medical Laboratory, Inc.).

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800-749-3784 (formerly: Med Arts Lab).

National Health Laboratories Incorporated, 5601 Oberlin Drive, suite 100, San Diego, CA 92121, 619-455-1221.

National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103-6710, Outside NC: 919-760-4620/800-334-8627/Inside NC: 800-642-0894.

National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016-2843, 908-272-2511.

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, suite A-15, Nashville, TN 37217, 615-360-3992/800-800-4522.

National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703-742-3100.

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800-251-9492.

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805-322-4250.

Nichols Institute Substance Abuse Testing (NISAT), 7470-A Mission Valley Road, San Diego, CA 92108-4406, 800-446-4728/619-686-3200, (formerly: Nichols Institute).

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3361.

Occupational Toxicology Laboratories, Inc., 2002 20th Street, suite 204A, Kenner, LA 70062, 504-465-0751.

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440-0972, 503-687-2134.

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400.
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352.
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177.
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294, (formerly: Harris Medical Laboratory).
Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627, (formerly: Physicians Reference Laboratory Toxicology Laboratory).
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272.
Precision Analytical Laboratories, Inc., 13300 Blanco Road, suite #150, San Antonio, TX 78216, 210–493–3211.
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378.
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400.
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286.
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986.
Saint Joseph Hospital Toxicology Laboratory, 601 N. 30th Street, Omaha, NE 68131–2197, 402–449–4940.
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788.
S.E.D. Medical Laboratories, 500 Walter NE, suite 500, Albuquerque, NM 87102, 505–848–8800.
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472.
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520.
SmithKline Beecham Clinical Laboratories, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006, (formerly: Doctors & Physicians Laboratory).
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205, (formerly: SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010, (formerly: International Toxicology Laboratories).
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447, (formerly: SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (formerly: SmithKline Bio-Science Laboratories).
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176.
Southwest Laboratories, 2727 W. Baseline Road, suite 6, Tempe, AZ 85283, 602–438–8507.
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052.
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, suite 208, Columbia, MO 65203, 314–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260.
TOXWORX Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; moved 12/21/92).
UNILAB, 18408 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory).

No laboratories withdrew from the Program in May.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–13551 Filed 6–2–94; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–86]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Barbara Richards, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing and speech impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with Sections 2905 and 2906 of the National Defense Authorization Act for Fiscal Year 1994, P.L. 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess of surplus Federal property. This Notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88–2508–OG (D.D.C.).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, that if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60 day period, these properties will no longer be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Buildings and properties

available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commence the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties available for use to assist the homeless pursuant to Section 501 of the Stewart B. McKinney Homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Barbara Richards at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **FEDERAL REGISTER**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW., Rm. 4133, Washington, DC 20314–1000; (202) 272–0520; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5569; (These are not toll-free numbers).

Correction: On April 1, 1994, at 59 FR 15420, property Numbers 219330315–219330317, Army Wherry Family Housing, Stewart Gardens, New York, inadvertently published for off-site use only. The properties are for on-site use and are scheduled to be vacated in the Spring of 1996. The properties include 23 residential apartment buildings, 5 detached garages, and 30 storage sheds.

Dated: May 27, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 06/03/94

Suitable/Available Properties

Buildings (by State)

Arkansas

818 (Capehart) Family Housing
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210040
Status: Pryor Amendment
Base closure number of Units: 818
Comment: 2,522 to 3,008 sq. ft., 1 story duplexes, wood w/brick veneer fronts, attached carports and storage sheds, playground, 2, 3 & 4 bedroom units.

10 (Capehart) SF Housing
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210041
Status: Pryor Amendment
Base closure number of Units: 10
Comment: 1,898 to 2,522 sq. ft., 1 story wood w/brick veneer fronts, playground, 4 & 5 bedrooms.

100 (Appropriated) Family Hsg.
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210042
Status: Pryor Amendment
Base closure number of Units: 100
Comment: 5,839 sq. ft., 2 story wood w/brick veneer fronts, 4-plex housing bldgs., playground, 4 bedrooms.

13 Security Related Facilities
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210044
Status: Pryor Amendment
Base closure number of Units: 13
Comment: 30 to 2,400 sq. ft., 1 story metal, concrete block or wood frame, includes traffic checkhouses, kennels, guard towers, alert shelter.

26 Office/Admin. Buildings
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210045
Status: Pryor Amendment
Base closure number of Units: 26
Comment: 188 to 49,000 sq. ft., concrete block, metal, shingle or masonry frame, 1 and 2 story, a few needs rehab.

8 Indoor Recreation Facilities
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210046
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 5,411 to 30,627 sq. ft., 1 story, concrete block, masonry or metal/brick frame.

Bldg. 701A/B
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210048
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 3,414 sq. ft., 1 story duplex, wood/brick veneer, most recent use—temporary living facility.

Bldg. 702
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210049
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 22,655 sq. ft., 2 story wood frame most recent use—billeting.

Bldg. 703
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210050
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 3,414 sq. ft., 1 story duplex, wood frame, most recent use—temporary living facility.

Bldg. 704
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210051
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 3,414 sq. ft., 1 story duplex, wood frame, most recent use—temporary living facility.

Bldg. 608, Dormitory
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210052
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 41,000 sq. ft., 2 story brick masonry frame.

Bldg. 609, Dormitory
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210053
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 41,000 sq. ft., 2 story brick masonry frame, heat/air cond. originates from bldg. 617.

Bldg. 619, Dormitory
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000

Landholding Agency: Air Force—BC
Property Number: 199210054
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 41,000 sq. ft., 2 story brick masonry frame, heat/air cond. originates from bldg. 617.

Bldg. 620, Dormitory
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210055
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 41,000 sq. ft., 2 story brick masonry frame.

36 Warehouses/Multi-use Bldgs.
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210056
Status: Pryor Amendment
Base closure number of Units: 36
Comment: 64 to 45,960 sq. ft., 1 and 2 story, metal, concrete block, shingle, wood, plywood frame.

Bldg. 650, Hospital Facility
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210057
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 54,089 sq. ft., 1 story concrete block frame, most recent use—composite medical.

Bldg. 234, Hospital Facility
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210058
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 5,249 sq. ft., 1 story concrete block frame, most recent use—dental clinic.

Bldg. 436, Hospital Facility
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210059
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 1,084 sq. ft., 1 story concrete block frame, most recent use—animal clinic.

Bldg. 502, Child Care Center
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210060
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 3,007 sq. ft., 1 story concrete block frame.

Bldg. 527, Child Care Center
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210061
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 2,098 sq ft., 1 story hadite block frame.

Bldg. 558, Child Care Center
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210062
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 8,365 sq. ft., 1 story brick frame.

Bldg. 160
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210063
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 4,299 sq. ft., 1 story enamel porcelain panels, most recent use—exchange service station.

Bldg. 552
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210064
Status: Pryor Amendment
Base closure number of Units: 1
Comment: 32,925 sq. ft., 1 story concrete block, most recent use—exchange sales store.

Bldg. 560
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210065
Status: Pryor Amendment
Base closure: Number of Units: 1
Comment: 3,370 sq. ft., 1 story wood frame, most recent use—base packaging store.

9 Airfield Related Bldgs.
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210066
Status: Pryor Amendment
Base closure: Number of Units: 9
Comment: 96 to 49,000 sq. ft., shingle, metal or concrete block frame.

3 Vehicle Maintenance Fac.
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210068
Status: Pryor Amendment
Base closure: Number of Units: 3
Comment: 2,032 to 29,350 sq. ft., metal frame, 1 story.

33 Fuels/Related Storage Fac.
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210069
Status: Pryor Amendment
Base closure: Number of Units: 33
Comment: Steel, fiberglass or porcelain type, most recent use—storage.

4 Hazardous Storage Bldgs.
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210070
Status: Pryor Amendment
Base closure: Number of Units: 4
Comment: 96 to 3,000 sq. ft., 1 story metal frame.

10 Munitions Facilities
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210071
Status: Pryor Amendment
Base closure: Number of Units: 10
Comment: 412 to 4,864 sq. ft., concrete block frame, most recent use—storage igloos.

Bldg. 435
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210072
Status: Pryor Amendment
Base closure: Number of Units: 1
Comment: 3,195 sq. ft., 1 story concrete block, most recent use—cold storage.

Bldg. 556
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210073
Status: Pryor Amendment
Base closure: Number of Units: 1
Comment: 38,575 sq. ft., 1 story concrete block/metal frame, most recent use—commissary.

Bldg. 100, Fire Station
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210074
Status: Pryor Amendment
Base closure: Number of Units: 1
Comment: 15,717 sq. ft., concrete masonry/asbestos cement shingles.

Bldg. 525, Chapel
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210075
Status: Pryor Amendment
Base closure: Number of Units: 1
Comment: 17,602 sq. ft., 1 story frame with brick veneer.

Bldg. 805
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210076
Status: Pryor Amendment
Base closure: Number of Units: 1
Comment: 4,200 sq. ft., 1 story brick and metal panel, most recent use—precision measurement equipment lab.

Bldg. 150
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210077
Status: Pryor Amendment
Base closure: Number of Units: 1
Comment: 3,775 sq. ft., 1 story concrete block, most recent use—audio-visual photo lab.

Bldg. 517
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210078
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 2367 sq. ft., 1 story concrete block, most recent use bank, lease restrictions

California

15 Office/Admin. Buildings

Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210022
Status: Pryor Amendment
Base closure Number of Units: 15
Comment: 1, 2 and 3-story buildings. presence of asbestos.

9 Recreation Facilities
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210023
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: Recreation facilities including theater, gym, library, bowling alley, arts and crafts/youth centers, etc., presence of asbestos.

12 Maint. & Engineering Bldgs.
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210025
Status: Pryor Amendment
Base closure Number of Units: 12
Comment: 1-story structures including storage, shop and maintenance buildings, presence of asbestos.

6 Training Buildings
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210026
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 1 to 2-story concrete, wood and metal classroom/education bldgs., presence of asbestos.

5 Store & Service Buildings
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210027
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 1-story stores, service station, exchange and cold storage bldgs., presence of asbestos.

18 Storage Buildings
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210032
Status: Pryor Amendment
Base closure Number of Units: 18
Comment: 1-story, metal, steel, wood and concrete storage bldgs. or sheds. presence of asbestos.

9 Warehouses
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210033
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: 1 to 2-story warehouses. presence of asbestos.

2 Vehicle Shops
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210034
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 1-story concrete block or steel shops, presence of asbestos.

5 Hazardous Storage Buildings
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210038
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 1-story metal storage structures.

314 Family Housing
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420038
Status: Pryor Amendment
Base closure Number of Units: 314
Comment: Various sq. ft., 2, 4, 6 and 8-unit bldgs., totalling 1,444 dwelling units, wood or wood/stucco frame, possible asbestos.

36 Dormitory Style Buildings
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420039
Status: Pryor Amendment
Base closure Number of Units: 36
Comment: Various sq. ft., wood or concrete frame, 1 and 2 story, possible asbestos, includes dorms, lodges, quarters or lounges.

23 Office/Admin Buildings
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420040
Status: Pryor Amendment
Base closure Number of Units: 23
Comment: 200–56,600 sq. ft., one story wood or concrete block structures, possible asbestos.

15 Recreational Buildings
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420041
Status: Pryor Amendment
Base closure Number of Units: 15
Comment: 288–23,000 sq. ft., one story wood or concrete structures, possible asbestos, includes rec. centers, theater, gym, bowling centers, youth centers, pool, bathhouses.

4 Training Facilities
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420042
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: Various sq. ft., one story wood or concrete structures, possible asbestos.

6 Stores/Services
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420043
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: Various sq. ft., one story wood or concrete structures, possible asbestos

5 Warehouses
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420044
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 1124–70,000 sq. ft., one story wood or concrete structures, possible asbestos.

18 Maintenance/Engineer Facs.
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420045
Status: Pryor Amendment
Base closure Number of Units: 18
Comment: 200–17,000 sq. ft., one story wood or concrete structures, possible asbestos.

6 Miscellaneous Buildings
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420046
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 3038–19,000 sq. ft., one story wood or concrete structures, possible asbestos, includes child care centers, mess & dining halls.

Bldg. 1155
George Air Force Base
George AFB Co: San Bernardino CA 92394–5000
Landholding Agency: Air Force—BC
Property Number: 199420047
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 147,000 sq. ft., 3 story concrete block structure, possible asbestos, most recent use—hospital.

8 Utility Support Facilities
Hamilton Army Airfield
Novato Co: Marin CA 94949–
Landholding Agency: COE - BC
Property Number: 329420002
Status: Pryor Amendment
Base closure Number of Units: 8
Comment: 67 to 2,454 sq. ft., metal or concrete frame, subject to periodic flooding, located on airfield, incs. pump stations, generator, electric power stations sched to be vacated 9/95

2 Shops
Hamilton Army Airfield
Novato Co: Marin CA 94949–
Landholding Agency: COE - BC
Property Number: 329420003
Status: Pryor Amendment
Base closure Number of Units: 2
Comment: 4,020 and 8,836 sq. ft., presence of asbestos, located adjacent to airfield, subject to periodic flooding, inc. bldgs. 94 & 140, needs rehab, scheduled to be vacated 9/95

5 Storage Facilities
Hamilton Army Airfield
Novato Co: Marin CA 94949–
Landholding Agency: COE - BC
Property Number: 329420004

Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 464 to 14,960 sq. ft., inc. bldgs. 26, 82, 84, 87 & 90, some need repairs, pres. of asbestos, subject to periodic flooding, located adjacent to airfield, sched to be vacated 9/95.

Bldg. 86
Hamilton Army Airfield
Novato Co: Marin CA 94949–
Landholding Agency: COE - BC
Property Number: 329420005
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 68,811 sq. ft., 2 story, pres. of asbestos, adjacent to airfield, subject to periodic flooding, most recent use—maintenance facility, scheduled to be vacated 9/95.

Bldg. 92
Hamilton Army Airfield
Novato Co: Marin CA 94949–
Landholding Agency: COE—BC
Property Number: 329420006
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 4,000 sq. ft., metal frame, needs rehab, adjacent to airfield, subject to periodic flooding, most recent use—emergency response station, scheduled to be vacated 9/95.

Bldg. 138
Hamilton Army Airfield
Novato Co: Marin CA 94949–
Landholding Agency: COE—BC
Property Number: 329420007
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 15,393 sq. ft., wood frame, needs rehab, pres. of asbestos, subject to periodic flooding, most recent use—readiness crew bldg., scheduled to be vacated 9/95.

600 Units - Housing
Roosevelt Terrace Military Family Housing
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94590–
Location: Sears Point Rd., Sacramento St., & Selfridge St.
Landholding Agency: Navy Base Close
Property Number: 789420018
Status: Pryor Amendment
Base closure Number of Units: 600
Comment: 50 houses with 12 units each totaling 600 units, 5,130 sq. ft. each, 2-story concrete, scheduled to be vacated 10/94.

Bldg. 51A.
Roosevelt Terrace Military Family Housing
Mare Island Naval Shipyard
Vallejo Co: Solano CA 94590–
Location: Sears Point Rd., Sacramento St., & Selfridge St.
Landholding Agency: Navy Base Close
Property Number: 789420019
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 1,200 sq. ft., 1-story, metal frame, most recent use convenience store, scheduled to be vacated 10/94.

Colorado

13 Dormitories
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320010
Status: Pryor Amendment
Base closure Number of Units: 13
Comment: 4,382 to 188,923 sq. ft., brick or wood frame, 1, 2, or 3 story, poss. asbestos, some need rehab, incs. dorm housing, motels, ofcrs qtrs., hotel hsg., sched to be vacated 9/30/94.

6 Recreational Facilities
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320013
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: Brick, wood or cinderblock frame, some need rehab, possible asbestos, includes bowling alleys, swimming pools, museums, scheduled to be vacated 9/30/94.

15 Administration Bldgs.
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320014
Status: Pryor Amendment
Base closure Number of Units: 15
Comment: 1,143 to 300,000 sq. ft., wood, brick, metal or cinderblock frame, possible asbestos, some need rehab, incs. hdqtrs. bldgs., admin services, etc., sched. to be vacated 9/30/94.

6 Training Facilities
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320015
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 1,026 to 97,442 sq. ft., brick, metal or cinderblock frame, 1 to 4 story, scheduled to be vacated 9/30/94.

9 Commercial Bldgs.
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320016
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: 64 to 84,860 sq. ft., 1 & 2 story, some need rehab, possible asbestos, includes stores, gas station bldgs., chapels, scheduled to be vacated 9/30/94.

20 Industrial Facilities
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320017
Status: Pryor Amendment
Base closure Number of Units: 20
Comment: 757 to 37,832 sq. ft., metal, brick, wood or cinderblock, poss. asbestos, some need rehab, incs. vehicle maint., training aid, industrial bldgs., sched to be vacated 9/30/94.

36 Storage/Warehouses
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320018
Status: Pryor Amendment
Base closure Number of Units: 36
Comment: 169 to 50,363 sq. ft., wood, brick, metal or cinderblock frame, some need rehab, possible asbestos, scheduled to be vacated 9/30/94, inc. covered storage facilities.

Florida

3 Administrative/Support Bldgs
Naval Training Center
Area "C"
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420033
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 224 to 54,916 sq. ft., 1 story, incs. shipping/receiving fac, laundry and policy security, scheduled to be vacated 7/98.

18 Warehouses/Storage Facs.
Naval Training Center
Area "C"
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420034
Status: Pryor Amendment
Base closure Number of Units: 18
Comment: 800 to 9,963 sq. ft., 1 story, incs. cold storage, disposal scrap facilities, NTSC warehouses, scheduled to be vacated 7/98.

53 Family Housing/Multiplex
Naval Training Center
McCoy Annex
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420035
Status: Pryor Amendment
Base closure Number of Units: 53
Comment: Various sq. ft., 2 story, 711 series, scheduled to be vacated 10/98.

10 Operational/Admin Bldgs.
Naval Training Center
McCoy Annex
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420036
Status: Pryor Amendment
Base closure Number of Units: 10
Comment: 240 to 15,506 sq. ft., 1–2 story, incs. library/credit union, recruiters offices, hdqtrs. bldg., warehouse, admin offices, scheduled to be vacated 10/95.

11 Maintenance/Motor Pool Facs
Naval Training Center
McCoy Annex
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420039
Status: Pryor Amendment
Base closure Number of Units: 11
Comment: 100 to 3,312 sq. ft., 1–2 story, includes motor pool shops, storage, pest control facility, grounds maintenance, scheduled to be vacated 10/95.

34 Medical/Community Support
Naval Training Center
McCoy Annex
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420040
Status: Pryor Amendment
Base closure Number of Units: 34

Comment: Various sq. ft., 1–2 story, includes lodges, hobby shops, youth centers, gym, commissary, beauty/barber fac., child care center, theater, etc., scheduled to be vacated 10/95.

6 Barracks/Support Buildings
Naval Training Center
McCoy Annex
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420041
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 374 to 11,734 sq. ft., 1–2 story, includes barracks, public works bldg., storage, emergency service shop, scheduled to be vacated 10/95.

359 Capehart Duplex Housing
Naval Training Center
McCoy Annex
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420042
Status: Pryor Amendment
Base closure Number of Units: 359
Comment: Various sq. ft., permanent structures, 711 series, scheduled to be vacated 10/95

8 Buildings - 600 Series
Naval Training Center
Herndon Annex
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420043
Status: Pryor Amendment
Base closure Number of Units: 8
Comment: 1,960 to 80,210 sq. ft., 1–2 story, includes bldgs. 310 & 441, research lab, warehouse and administrative bldgs., scheduled to be vacated 3/95

72 Barracks
Naval Training Center
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420044
Status: Pryor Amendment
Base closure Number of Units: 72
Comment: 2,121 to 10,9000 sq. ft., 1 & 3 story, includes enlisted quarters, recruitment barracks, laundry, billeting office, galleys, scheduled to be vacated 10/96

5 Housing/Housing Support
Naval Training Center
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420045
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 2,121 to 2,524 sq. ft., 1 story, includes living quarters, wives club, 711 & 714 Series, scheduled to be vacated 10/98

75 Personnel/Community Support
Naval Training Center
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420046
Status: Pryor Amendment
Base closure Number of Units: 75
Comment: Various sq. ft., 1–2 story, includes gate houses, reception center, bowling alley, hobby shops, credit union, picnic shelters, equipment storage, scheduled to be vacated 10/98. Bldgs. scheduled to be vacated 7/95 are: 202, 204, 206, 210, 212, 216, 218, 220, 222, 224, 226, 228, 232, 234, 238, 250, 251, 2541.

22 Administration Buildings
Naval Training Center
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420047
Status: Pryor Amendment
Base closure Number of Units: 22
Comment: 448 to 19,223 sq. ft., 1 story, includes ADP facility, MWR offices, post office, personnel safety, NFFE union, NTC hdqtrs., scheduled to be vacated 10/98

20 Operational Trng/Fuel Facs
Naval Training Center
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420048
Status: Pryor Amendment
Base closure Number of Units: 20
Comment: 128 to 160,500 sq. ft., 1–3 story, incs. fuel stations, photo lab, trng bldgs, conference facility, fireman apprentice training, nuclear field school, sched. to be vacated 10/96. Bldgs. sched. to be vacated 7/95 are: 200, 230, 255, 229, 306, 2816 & 2817. Bldgs. sched to be vacated 10/96 are 303 & 4304

10 Maintenance Facilities
Naval Training Center
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420049
Status: Pryor Amendment
Base closure Number of Units: 10
Comment: 166 to 32,292 sq. ft., 1 story, includes paint storage, public works shed & warehouse, locksmith & pest control facilities, scheduled to be vacated 10/95

6 Storage/Medical Buildings
Naval Training Center
Orlando Co: Orange FL 32813–5005
Landholding Agency: Navy Base Close
Property Number: 789420050
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 200 to 79,220 sq. ft., 1 & 3 story, incs. vet clinic, dental clinic, dispensary/dental clinic, etc., scheduled to be vacated 10/98. Bldg. 73 to be vacated 7/95.

Illinois

Training Facility
Chanute Air Force Base
Rantoul Co: Champaign IL 61365
Landholding Agency: Air Force—BC
Property Number: 199210046
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: Building known as Smith Hall possible asbestos

Louisiana

Bldg. 500
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210092
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 13,658 sq. ft., 1 story masonry frame, presence of asbestos, most recent use—fire facility

Bldg. 1801, Chapel
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210093
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 11,484 sq. ft., 1 story masonry frame.

36 Airfield Related Facilities
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210091
Status: Pryor Amendment
Base closure Number of Units: 36
Comment: 240 to 79,537 sq. ft., 1 and 2 story block, metal, wood, concrete or masonry frame, presence of asbestos

20 Shops and Maintenance
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210090
Status: Pryor Amendment
Base closure Number of Units: 20
Comment: 228 to 34,176 sq. ft., 1 story, block metal or steel frame, presence of asbestos

38 Storage/Warehouses
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210089
Status: Pryor Amendment
Base closure Number of Units: 38
Comment: 225 to 60,960 sq. ft., 1 story, wood block, metal, brick or concrete frame presence of asbestos

6 Business/Commercial Bldgs
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210088
Status: Pryor Amendment
Base closure Number of Units: 6
Comment: 1,925 to 34,326 sq. ft., masonry frame, possible asbestos.

3 Hospital Related Facilities
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210087
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 1,128 to 108,155 sq. ft., metal or masonry frame, presence of asbestos, 1 and 3 story

14 Education/Training Bldgs
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210086
Status: Pryor Amendment
Base closure Number of Units: 14
Comment: 740 to 45,716 sq. ft., wood or masonry frame, presence of asbestos, 1 and 2 story

14 Dorms/Dining Rooms
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210085
Status: Pryor Amendment
Base closure Number of Units: 14
Comment: 3,902 to 25,715 sq. ft., brick or masonry frame, presence of asbestos, 1, 2 and 3 story.

18 Recreation Facilities

England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210083
Status: Pryor Amendment
Base closure Number of Units: 18
Comment: 347 to 23,294 sq. ft., 1 and 2 story, most recent use—gym, theater, riding stables, bowling, swim bathhouse, presence of asbestos.

3 Office/Admin. Buildings
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210082
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 1,744 to 8,700 sq. ft., 1 and 2 story, wood, brick, block or masonry frame, presence of asbestos.

201 (Capehart) Family Housing
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210081
Status: Pryor Amendment
Base closure Number of Units: 201
Comment: 1,190 to 2,616 sq. ft., 1 story family residences, wood or masonry frame.

93 (Appropriated) Family Hsg.
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210080
Status: Pryor Amendment
Base closure Number of Units: 93
Comment: 2,054 to 6,701 sq. ft., 1 and 2 story family residences, masonry frame.

New York

43 Single Houses
Niagara Family Housing Facility
Niagara Falls Co: Niagara NY 14304–1122
Landholding Agency: Navy Base Close
Property Number: 789420015
Status: Pryor Amendment
Base closure Number of Units: 43
Comment: 43 houses, 1,160 sq. ft. to 1,610 sq. ft., 3 to 4 bedrooms, scheduled to be vacated 9/95.

70 Units—Duplex Housing
Niagara Family Housing Facility
Niagara Falls Co: Niagara NY 14304–1122
Landholding Agency: Navy Base Close
Property Number: 789420016
Status: Pryor Amendment
Base closure Number of Units: 70
Comment: 70 units of duplex housing, 1,160 sq. ft. to 1,610 sq. ft., 3 to 4 bedrooms, scheduled to be vacated 9/95

Texas

9 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210108
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: 1,203 sq. ft., 1-story wood frame residences.

51 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210109
Status: Pryor Amendment
Base closure Number of Units: 51
Comment: 1,204 sq. ft., 1-story wood frame residences.

56 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210110
Status: Pryor Amendment
Base closure Number of Units: 56
Comment: 1,209 sq. ft., 1-story wood frame residences.

11 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210111
Status: Pryor Amendment
Base closure Number of Units: 11
Comment: 1,348 sq. ft., 1-story wood frame residences.

21 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210112
Status: Pryor Amendment
Base closure Number of Units: 21
Comment: 1,387 sq. ft., 1-story wood frame residences.

49 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210113
Status: Pryor Amendment
Base closure Number of Units: 49
Comment: 1,397 sq. ft., 1-story wood frame residences.

19 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210114
Status: Pryor Amendment
Base closure Number of Units: 19
Comment: 1,489 sq. ft., 1-story wood frame residences.

33 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210115
Status: Pryor Amendment
Base closure Number of Units: 33
Comment: 1,493 sq. ft., 1-story wood frame residences.

17 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210116
Status: Pryor Amendment
Base closure Number of Units: 17
Comment: 1,581 sq. ft., 1-story wood frame residences.

9 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210117
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: 1,655 sq. ft., 1-story wood frame residences.

10 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210118
Status: Pryor Amendment
Base closure Number of Units: 10
Comment: 2,450 sq. ft., 1-story concrete residences.

9 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210119
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: 2,450 sq. ft., 1-story concrete residences.

5 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210120
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 5,601 sq. ft., 2-story concrete residences.

12 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210121
Status: Pryor Amendment
Base closure Number of Units: 12
Comment: 5,601 sq. ft., 2-story concrete residences.

41 Military Family Housing
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210122
Status: Pryor Amendment
Base closure Number of Units: 41
Comment: 1-story brick and wood residences

Child Care Facility
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210125
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: Concrete block or brick structure, 1–2 story.

5 Recreation Facilities
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force–BC
Property Number: 199210126
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: Concrete block, brick or wood structures, incs. golf course clubhouse, 3 maintenance bldgs. and stables.

15 Hazard. Stor./Igloo Bldgs.
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force–BC
Property Number: 199210137
Status: Pryor Amendment
Base closure Number of Units: 15
Comment: Four metal & concrete block hazardous storage bldgs., and 11 concrete storage igloos.

9 Family Houses
Dallas Naval Air Station
Main Street
Duncanville Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420020
Status: Pryor Amendment
Base closure Number of Units: 9
Comment: 1254–1550 sq. ft., 2 to 3 bedrooms, wood frame, possible asbestos/radon, scheduled to be vacated 10/95.

5 Housing/Dining Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420021
Status: Pryor Amendment
Base closure Number of Units: 5
Comment: 12,975–48872 sq. ft., 1 to 3-story, troop facilities, shallow pier foundation, presence of asbestos, scheduled to be vacated 10/95.

13 Administrative Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420022
Status: Pryor Amendment
Base closure Number of Units: 13
Comment: 288–18,899 sq. ft., 1 to 2-story, presence of asbestos, scheduled to be vacated 10/95.

18 Comm. Support Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420023
Status: Pryor Amendment
Base closure Number of Units: 18
Comment: 30–43,428 sq. ft., including child care center, stores, gym, credit union, and chapel, presence of asbestos, scheduled to be vacated 10/95.

11 Training Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420024
Status: Pryor Amendment
Base closure Number of Units: 11
Comment: 2340–59,802 sq. ft., including classrooms, shallow pier foundation, presence of asbestos, scheduled to be vacated 10/95.

Bldg. 13
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420025
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 8,109 sq. ft., photo lab/credit union, shallow pier foundation presence of asbestos, scheduled to be vacated 10/95.

Bldg. 37—Fuel Dispensing
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420026
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 640 sq. ft., 1-story frame, most recent use office/storage presence of asbestos, scheduled to be vacated 10/95.

Bldg. 9—Medical Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420027
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 26,322 sq. ft., 1-story wood, most recent use—examination rooms and office, shallow pier foundation, presence of asbestos, scheduled to be vacated 10/95.

Bldgs. 129, 197, 211, 216
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420028
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 80–960 sq. ft., most recent use—office and storage, scheduled to be vacated 10/95.

4 Aviation Maint. Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420029
Status: Pryor Amendment
Base closure Number of Units: 4
Comment: 1,380–79,596 sq. ft., including hangars, presence of asbestos, scheduled to be vacated 10/95.

7 Storage Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420030
Status: Pryor Amendment
Base closure Number of Units: 7
Comment: 48–35,820 sq. ft., including warehouses and underground storage, limited utilities, presence of asbestos, scheduled to be vacated 10/95.

18 Maint/Production Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420031
Status: Pryor Amendment
Base closure Number of Units: 18
Comment: 216–12,423 sq. ft., including maintenance shops and storage, presence of asbestos, scheduled to be vacated 10/95.

3 Utilities Suppt. Facilities
Dallas Naval Air Station
8100 West Jefferson
Dallas Co: Dallas TX 75211–9501
Landholding Agency: Navy Base Close
Property Number: 789420032
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: 540–2,196 sq. ft., including water support facilities, presence of asbestos, scheduled to be vacated 10/95.

Land (by State)

Arkansas

20 Outdoor Recreation Areas
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210047
Status: Pryor Amendment
Base closure Number of Units: 20
Comment: Concrete or grassy areas, most recent use—swimming pools, golf courses, ball fields.

Land
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210079
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 1,962 acres, restrictive agricultural lease.

California

Land
Mather Air Force Base
Mather Co: Sacramento CA 95655–5000
Landholding Agency: Air Force—BC
Property Number: 199210039
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: 200 acres of vacant land.

Seaside Blvd. Parcel (Site 6)
Long Beach Naval Station
725 N. Seaside Avenue
Los Angeles Co: Los Angeles CA
Landholding Agency: Navy Base Close
Property Number: 789420013
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: Five mixed use facs. on 14.3 acres facs. include admin., storage and weighing facilities, any scheduled clean-up plans to be determined upon completion of site eval., sched. to be vacated 6/94.

Ocean Blvd. Parcel (Site 6)
Long Beach Naval Station
Long Beach Co: Los Angeles CA
Landholding Agency: Navy Base Close
Property Number: 789420014
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: Two structs. on 2.7 acres, applies bldg./rec. pav. for battl. unit, .25 acre easement granted to City, environmental cleanup to be deter. upon completion of site evaluation, sched. to be vacated 6/94

Colorado

15 Community/Recreation Facs.
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320012
Status: Pryor Amendment
Base closure Number of Units: 15
Comment: Includes playgrounds, running track, soccer, baseball & softball fields, tennis & basketball courts, scheduled to be vacated 9/30/94.

Louisiana

25 Land, Airfield, Runways
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC

Property Number: 199210094
Status: Pryor Amendment
Base closure Number of Units: 25
Comment: 10 to 398,099 sq. yds., concrete or bituminous.

10 Recreation Areas
England Air Force Base
Alexandria, LA, Rapides, Zip: 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210084
Status: Pryor Amendment
Base closure Number of Units: 10
Comment: 1 to 92 acres, most recent use—ball fields, golf course.

New York

Land—10 acres
Niagara Family Housing Facility
Niagara Falls Co: Niagara NY 14304–1122
Landholding Agency: Navy Base Close
Property Number: 789420017
Status: Pryor Amendment
Base closure Number of Units: 1
Comment: Includes ball diamond, maintenance bldg., and common lawn and several playground areas, scheduled to be vacated 9/95.

Texas

3 Recreation Areas
Carswell Air Force Base
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Air Force—BC
Property Number: 199210127
Status: Pryor Amendment
Base closure Number of Units: 3
Comment: Three parcels including 176 acre golf course, .22 acre family camp, and 25 acre grazing land.

Unsuitable Properties

Buildings (by State)

Arkansas

23 (Capehart) Family Housing
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210043
Status: Pryor Amendment
Base closure Number of Units: 23
Reason: Other
Comment: Structural deficiencies

3 Detached Latrines
Eaker Air Force Base
Blytheville Co: Mississippi AR 72317–5000
Landholding Agency: Air Force—BC
Property Number: 199210067
Status: Pryor Amendment
Base closure Number of Units: 3
Reason: Other
Comment: Detached Latrines.

California

35 Hazardous/Munitions Bldgs
George Air Force Base
George AFB Co: San Bernardino CA 22394–5000
Landholding Agency: Air Force—BC
Property Number: 199420048
Status: Pryor Amendment
Base closure Number of Units: 35
Reason: Within 2,000 ft. of flammable or explosive material.

19 Fuel Facilities
George Air Force Base
George AFB Co: San Bernardino CA 22394–5000
Landholding Agency: Air Force—BC
Property Number: 199420049
Status: Pryor Amendment
Base closure Number of Units: 19
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 283
Naval Air Station, Alameda
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420037
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Bldg. 301
Naval Air Station, Alameda
Alameda Co: Alameda CA 94501–
Landholding Agency: Navy Base Close
Property Number: 789420038
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Colorado

2 Dorms (Bldgs. 410 & 414)
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320011
Status: Pryor Amendment
Base closure Number of Units: 2
Reason: Extensive deterioration.

5 Hazardous Storage Facilities
Lowry Air Force Base
East 6th Ave. & Quebec Street
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320020
Status: Pryor Amendment
Base closure Number of Units: 5
Reason: Extensive deterioration.

Bldg. 291—Warehouse
Lowry Air Force Base
Denver Co: Denver CO 80230–5000
Landholding Agency: Air Force—BC
Property Number: 199320021
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Extensive deterioration.

Louisiana

14 Fuel Storage Containers
England Air Force Base
Alexandria Co: Rapides LA 71311–5000
Landholding Agency: Air Force—BC
Property Number: 199210095
Status: Pryor Amendment
Base closure Number of Units: 14
Reason: Other
Comment: Hazardous storage containers.

Land (by State)

California

Land
Hamilton Army Airfield
Novato Co: Marin CA 94949–
Landholding Agency: COE - BC
Property Number: 329420001
Status: Pryor Amendment
Base closure Number of Units: 1
Reason: Within airport runway clear zone.

[FR Doc. 94–13470 Filed 6–2–94; 8:45 am]
BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–943–4210–06; GP4–181; OR–47431]

Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 954.97 acres of public lands out of Federal ownership. This action will also open 162.69 acres of 477 acres of reconveyed lands to surface entry and 277 acres to mining and mineral leasing. Of these lands, 160 acres have been and continue to be open to mining, subject to Section 24 of the Federal Power Act and provisions of 43 CFR 3730, and 40 acres have been and continue to be open to mining and 200 acres to mineral leasing. Of the lands reconveyed, 264.31 acres fall within the withdrawal boundary of the Grande Ronde Wild and Scenic River and remain closed to surface entry.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7170.

SUPPLEMENTARY INFORMATION:

1. Under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, patents have been issued transferring 954.97 acres in Wallowa County, Oregon from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 5 N., R. 43 E.,
Sec. 3, N½NW¼NE¼NE¼ of Lot 1.
NW¼NE¼NW¼NE¼,
N½NW¼NW¼NE¼,
SW¼NW¼NW¼NE¼ of Lot 2.
SE¼NW¼, NE¼SW¼, and that part of the Lot 3 and the SW¼NW¼, lying south and east of the Grande Ronde River.
T. 6 N., R. 43 E.,
Sec. 23, S½NE¼, Excepting therefrom a parcel of land lying within the S½NE¼ of said Sec. 23, deeded to Wallowa County, in Book 59 of Deeds, page 349;
Sec. 24, SW¼NW¼;
Sec. 34, SE¼NE¼, NE¼SE¼, N½SE¼SE¼, SW¼SE¼SE¼, and that part of the SW¼NE¼, SE¼SW¼, and W½SE¼ lying south and east of the Grande Ronde River;
Sec. 35, N½NW¼NW¼SW¼ and SW¼NW¼NW¼SW¼.

The areas described aggregate 477.00 acres in Wallowa County.

3. The lands lying within one-quarter mile of the river in the following described lands, are included in the withdrawal for the Grande Ronde Wild and Scenic River and will remain closed to surface entry:

Willamette Meridian

T. 5 N., R. 43 E.,
Sec. 3, that part of Lot 3 and N½S½NW¼ lying south and east of the Grande Ronde River.
T. 6 N., R. 43 E.,
Sec. 23, S½NE¼, Excepting therefrom a parcel of land lying within the S½NE¼ of said Sec. 23, deeded to Wallowa County, in Book 59 of Deeds, page 349;
Sec. 24, SW¼NW¼;
Sec. 34, that portion of the S½NE¼, SE¼SW¼, W½SE¼, and E½NE¼SE¼ lying south and east of the Grande Ronde River.

4. At 8:30 a.m., on July 11, 1994, the lands described in paragraph 2, except as provided in paragraph 3, will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and segregation of record, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on July 11, 1994, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

5. At 8:30 a.m., on July 11, 1994, the following described lands will be opened to location and entry under the United States mining laws, subject to provisions of existing withdrawals. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

Willamette Meridian

T. 5 N., R. 43 E.,
Sec. 3, N½NW¼NE¼NE¼ of Lot 1.
NW¼NE¼NW¼NE¼,
N½NW¼NW¼NE¼,
SW¼NW¼NW¼NE¼ of Lot 2.
S½NW¼, NE¼SW¼, and that part of Lot 3 and the SW¼NW¼, lying outside of the one-quarter mile Grande Ronde Wild and Scenic River withdrawal boundary, south and east of the Grande Ronde River.
T. 6 N., R. 43 E.,
Sec. 34, N½SE¼SE¼, SW¼SE¼SE¼, and that part of the W½SE¼ lying outside of the one-quarter mile Grande Ronde Wild and Scenic River withdrawal boundary, south and east of the Grande Ronde River;
Sec. 35, N½NW¼NW¼SW¼ and SW¼NW¼NW¼SW¼.

6. At 8:30 a.m., on July 11, 1994, the lands in paragraph 5 will be opened to applications and offers under the mineral leasing laws.

Dated: May 26, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–13584 Filed 6–2–94; 8:45 am]
BILLING CODE 4310–33–P

[(Montana) MT–068–4210–04; M82474]

Notice of Realty Action: Exchange of Public and Private Lands in Fergus County

AGENCY: Bureau of Land Management, Lewistown District Office.

ACTION: Designation of public lands in Fergus County, Montana, for transfer out of Federal ownership in exchange for lands owned by CR Kendall.

SUMMARY: BLM proposes to exchange fragmented public lands with low resource values to CR Kendall in order to acquire a block of lands with timber resources and wildlife habitat values.

The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Principal Meridian Montana

T. 18 N., R. 18 E.
Sec. 29: Lots 1, 2, 5, 7, 8
Sec. 31: Lots 8, 9, 16, 18, 19, 25
Sec. 32: Lots 2, 3, 4
containing 149.76 acres

These lands are segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregation effect will terminate upon issuance of patent, upon publication in the **Federal Register** of termination of the segregation, or five years from the date of this publication, whichever comes first.

In exchange for these lands, the United States will acquire the following described lands from CR Kendall:

Principal Meridian Montana

T. 18 N., R. 18 E.
MS 6366—Abbey Lode
MS 6727—Extension Lode
MS 6728—Keno Lode
34.38 acres
MS 8470—Arizona Lode
MS 8471—Fox Lode
MS 8472—Mason Lode
MS 8473—Placer Lode
MS 8474—Legal Tender Lode
94.86 acres
containing 129.24 acres

Final determination on disposal will await completion of an environmental assessment. Upon completion of the environmental assessment, a Notice of Realty Action shall be published specifying the public lands being disposed of and the private lands being acquired.

DATES: July 18, 1994, interested parties may submit comments to the Bureau of Land Management, Lewistown District Manager, P.O. Box 1160, Lewistown MT, 59457.

SUPPLEMENTARY INFORMATION: Detailed information concerning this exchange is available at the Lewistown District Office.

Dated: May 23, 1994

David L. Mari,

District Manager.

[FR Doc. 94–13579 Filed 6–2–94; 8:45 am]
BILLING CODE 4310–DN–P

[NV–930–4210–05; N–58090]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management.

ACTION: Non-Competitive Sale of Public Lands in Clark County, Nevada.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of Public Law 94–579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 43 U.S.C. 1719).

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E., M.D.M.
Sec. 27: N½SE¼NW¼SE¼,
NW¼SW¼NE¼SW¼,
SE¼NW¼NW¼SW¼,
NW¼NW¼NW¼SW¼.
containing 12.50 acres, more or less

This parcel of land, situated in Clark County is being offered as a direct sale to the City of Las Vegas.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest

In the event of a sale, conveyance of the available mineral interests will

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occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests. The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals and will be subject to:

1. An easement for roads, public utilities and flood control purposes in accordance with the transportation plan for the City of Las Vegas.

2. Those rights for road purposes which have been granted to the City of Las Vegas by Permit No. 37142 under the Act of October 21, 1976 (43 U.S.C. 1719).

3. Those rights for sewage and drainage purposes which have been granted to the City of Las Vegas by Permit No. 41255 under the Act of October 21, 1976 (43 U.S.C. 1719).

4. Those rights for natural gas line purposes which have been granted to the Southwest Gas Corporation by Permit No. 48328 under the February 25, 1920 (30 U.S.C. 185 Sec. 28).

5. Those rights for water line purposes which have been granted to the Las Vegas Water District by Permit No. 48185 under the Act of October 21, 1976 (43 U.S.C. 1719).

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94–579, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register.**

Dated: May 23, 1994.

Colin P. Christenson,

Acting District Manager, Las Vegas, NV.

[FR Doc. 94–13558 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–HC–M

[UT–050–4210–05; UTU–9669]

Utah: Recreation and Public Purposes (R&PP) Act Classification, Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public lands in Wayne County, Utah have been examined and found suitable for classification for lease to Wayne County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Wayne County proposes to use the lands for a temporary landfill. This action is necessary to provide for solid waste disposal needs on an interim basis while a permanent site is being required.

Salt Lake Meridian, Utah

T. 27 S., R. 3 E.
Sec. 10, NE¼NW¼SW¼
containing 10 acres more or less

The lands are conveniently located and are physically adapted for the proposed use.

The proposed use of the land for the intended purpose will not have serious adverse effects on the property.

The lands are not needed for Federal or State purposes and lease of the land is consistent with current BLM land use planning, local county plans and programs and would be in the public interest.

The lease will be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. The landfill shall be operated in accordance with applicable Federal and State regulations governing solid waste disposal.

3. All valid existing rights documented on the official public land records at the time of lease issuance.

4. A right-of-way for ditches and canals constructed by the authority of the United States.

5. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

6. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available at the office of Bureau of Land Management, 150 East 900 North, Richfield, Utah, 84701.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease or classification of the lands to the District Manager, Richfield District, 150 East 900 North, Richfield, Utah 84701.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a temporary landfill. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or used of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not related to the suitability of the land for a temporary landfill.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register.**

Dated: May 20, 1994.

Jerry Goodman,

District Manager.

[FR Doc. 94–13574 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–DQ–M

[OR–120–94–6332–01; GP4–176]

Recreation Site Stay-Limits, Overnight Use Closures, and Supplementary Rules; Coos Bay District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of camping stay limitations, other restrictions and closures for specific recreation sites on public lands administered by the Bureau of Land Management's Coos Bay District, Oregon.

SUMMARY: This notice supplements the established order, **Federal Register**/volume 59, No. 50/Tuesday, March 15, 1994, which generally limits camping stays on BLM-administered public lands and recreation sites within the Coos Bay District, Oregon, to 14 days in any 28-day period. Further, this camping stay limit, closures and supplementary rules notice describes site specific discrepancies or exceptions to the established order as follows:

Loon Lake Recreation Site, Lots 14 and 15 comprising 78.86 acres, more or less, in Section 2, T. 23 S., R. 11 W., Willamette Meridian.

1. Camping Length-of-Stay—During the period July 1 to August 31 in any one year, persons or parties camping at Loon Lake Recreation Site will be allowed to stay for no more than 14 days; this total may be reached through a number of separate visits or through 14 days of continuous occupation.

2. Pets In Day Use Area—With the exception of Seeing Eye dogs, no pets or other domestic animals shall be allowed in the Loon Lake Day Use area under any circumstances. The day use area includes the developed picnic grounds, beach, swimming area and boat ramp located south of the day use parking lots. Elsewhere in the recreation site, pets must be physically restrained at all times.

Sixes River Recreation Site, comprising 120 acres, more or less, in Section 12 (N1/2SW1/4 and NW1/4SE1/4), T. 32 S., R. 14 W., Willamette Meridian.

1. Camping Length-of-Stay—Persons may camp or occupy a site in Sixes River Recreation Site for a period of not more than 14 days in any 90 consecutive day period; the 14 days may be reached through a number of separate visits or through 14 days of continuous occupation.

Overnight Closures

Overnight camping or occupancy shall be prohibited in the following designated and proposed recreation sites:

Smith River Log Dump, Lot 10 comprising 5.77 acres, more or less, in Section 31, T. 20 S., R. 10 W., Willamette Meridian.

Big Tree Recreation Site, comprising 18 acres more or less, S1/2 of Lot 8 in Section 18, T. 27 S., R. 10 W., Willamette Meridian.

For purposes of this notice, camping is defined as the erection and use of tents or shelters of natural or synthetic material, preparing a sleeping bag or bedding material for use, mooring a vessel, or parking a vehicle or trailer for the apparent purpose of occupancy. Occupancy is defined as the taking, maintaining or holding possession of a camp or residence on public land, either by personal presence or leaving property at a location.

EFFECTIVE DATE: June 17, 1994.

FOR FURTHER INFORMATION CONTACT: Dennis Turowski, Outdoor Recreation Planner, Bureau of Land Management, Coos Bay District, 1300 Airport Lane, North Bend, Oregon 97459, (503) 756–0100.

SUPPLEMENTARY INFORMATION: These site specific camping stay limits and day-use restrictions are being established to assist the Bureau in: preventing persons from camping for excessively long periods, thereby denying recreation opportunities to others; and minimizing unacceptable sanitary conditions and other resource impacts.

Authority for these supplementary rules is contained in CFR title 43, Chapter II part 8360, subparts 8364.1 and 8365.1–2(a). Violations of the supplementary rules under authority of 43 CFR 8365.1–2 are subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: May 26, 1994

Mel Chase,

District Manager, Coos Bay.

[FR Doc. 94–13583 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–33–P

[OR–014–94–4410–02; G4–177]

Extension of Public Comment Period; Draft Upper Klamath Basin Resource Management Plan/Environmental Impact Statement

AGENCY: Bureau of Land Management, DOI.

ACTION: Extension of public comment period for the Draft Upper Klamath Basin Resource Management Plan/Environmental Impact Statement.

SUMMARY: The Bureau of Land Management is extending the public comment period for the Draft Upper Klamath Basin Resource Management Plan/Environmental Impact Statement. The comment period has been extended eighteen days to June 17, 1994.

DATES: Comments must be postmarked by June 17, 1994.

ADDRESSES: Comments should be directed to: A. Barron Bail, Bureau of Land Management, Klamath Falls Resource Area, 2795 Anderson Avenue, Building #25, Klamath Falls, Oregon 97603. Comments may be faxed to (503) 884–2097.

FOR FURTHER INFORMATION CONTACT: A. Barron Bail, Bureau of Land Management, Klamath Falls Resource Area, 2795 Anderson Avenue, Building #25, Klamath Falls, Oregon 97603, (503) 883–6916, ext. 4101.

Terry H. Sodorff,

District Manager, Acting.

[FR Doc. 94–13581 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–33–P

[ID–942–04–4C6A–02]

Idaho: Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., May 25, 1994.

The plat representing the dependent resurvey of Lot 6 in section 1, Township 4 North, Range 17 East, Boise Meridian, Idaho, Group No. 885, was accepted May 20, 1994.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: May 25, 1994.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94–13594 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–GG–M

[ID–942–04–406A–02]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., May 25, 1994.

The plat, in 2 sheets, representing the dependent resurvey of portions of the south and west boundaries, subdivisional lines, and the adjusted 1904 meander lines of the right and left

banks of the South Fork of the Boise River, the subdivision of section 30, and the survey of certain lots in section 30, Township 2 North, Range 10 East, Boise Meridian, Idaho, Group No. 830, was accepted May 13, 1994.

This survey was executed to meet certain administrative needs of the U.S.D.A. Forest Service.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: May 25, 1994

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 94-13575 Filed 6-2-94; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-930-4210-06; AZA-23060]

Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 2,335.21 acres of public land to protect the unique habitat of the federally-listed endangered Nichol's Turk's Head Cactus. This notice closes the land for up to 2 years from settlement, sale, entry or location under the general land laws and the mining laws. The land will remain open to mineral leasing and discretionary uses as approved by the authorized officer. The withdrawal will be made subject to valid existing rights.

DATES: Comments and requests for a meeting must be received on or before September 1, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 North 7th Street, Phoenix, Arizona 85014, or P.O. Box 16563, Phoenix, Arizona 85011-6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, 602-650-0509.

SUPPLEMENTARY INFORMATION: On May 4, 1994, a petition was approved allowing BLM to file the subject withdrawal proposal. This action will withdraw land within the Waterman Mountains Area of Critical Environmental Concern (ACEC). The withdrawal will protect 1 of only 2 known locations in the United States of the Nichol's Turk's Head Cactus. It will protect the species from surface disturbing activities and potential destruction. This proposal is in compliance with existing plans for protection of the species.

In 1979, the U.S. Fish and Wildlife Service listed the cactus as endangered and completed the Recovery Plan for the species in 1986. The BLM has since completed the Phoenix Resource Management Plan in which the recommendation is to pursue withdrawal of the ACEC resulting in protection of this critical habitat. Lands proposed for withdrawal are located in Pima County and are legally described as follows:

Gila and Salt River Meridian

T. 12 S., R. 9 E.,
- sec. 29, lots 3 and 4, S½NW¼, N½SW¼ N½SW¼SW¼, SE¼SW¼, SE¼;
- sec. 30, lots 1-5 incl., lot 9, that portion of lot 10 lying outside of mineral entry patents, lot 11, S½NE¼, SE¼NW¼ E½NE¼SW¼, N½N½SE¼, SE¼NE¼SE¼, SW¼NW¼SE¼ SW¼SE¼SE¼;
- sec. 31, lots 3 and 4, those portions of lots 4 and 8 lying outside of mineral entry patents, NW¼NE¼NE¼, SE¼NE¼NE¼, N½NW¼NE¼ SW¼NW¼NE¼, NW¼SW¼NE¼ S½S½NE¼, NE¼SE¼NE¼, SE¼NW¼, E½SW¼, SE¼
- sec. 32, MS 3885;
- sec. 33, N½NW¼, N½SW¼NW¼ SE¼NW¼, N½NE¼SW¼, S½S½SW¼, W½W½SE¼.

T. 13 S., R. 9 E.,
- sec. 5, W½SW¼SW¼;
- sec. 6, lots 1-7 incl., S½NE¼, SE¼NW¼ E½SW¼, SE¼.

The areas described aggregate 2,335.21 acres of public land in Pima County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposal must submit a written request to the Arizona State Director within 90 days from the date of publication of this notice. Upon a determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date.

Dated: May 18, 1994.

Herman L. Kast,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 94-13582 Filed 6-2-94; 8:45 am]

BILLING CODE 4310-32-P

Fish and Wildlife Service

Record of Decision on Gull Hazard Reduction Program for John F. Kennedy International Airport

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control (ADC) and the Port Authority of New York and New Jersey (PA) have applied for permits to take migratory birds, including several species of gulls at John F. Kennedy International Airport (JFKIA). The Lead Agency for this Final Environmental Impact Statement (FEIS) is the ADC. The U.S. Fish and Wildlife Service (Service) is a cooperating agency with jurisdiction by law and actively participated in the scoping, drafting and reviewing of the Draft Environmental Impact Statement (DEIS) and the FEIS. Pursuant to the Council on Environmental Quality Regulations (§ 1506.3, title 40 CFR) for Implementing Provisions of the National Environmental Policy Act (NEPA), and the Department of Interior, Departmental Manual at 516 DM 1.1-6.6, the Service adopts the above FEIS as prepared by the U.S. Department of Agriculture. The Service used the information and analyses in the DEIS and FEIS to make its own, independent Record of Decision (ROD) for this project. Based on its independent evaluation and review, the Service has selected an alternative similar to the Integrated Management Program, Department of the Interior Policy (IMP/DOI) as its preferred alternative (FEIS, pp. 6-7 to 6-9). The conditions contained in the IMP/DOI are designed to minimize environmental harms and constitute an enforceable monitoring and enforcement program.

Background

JFKIA is one of three major airports in the New York Metropolitan Region, servicing approximately 28 million passengers per year. It is located at the

eastern end of Jamaica Bay, immediately adjacent to the Jamaica Bay National Wildlife Refuge, which is part of Gateway National Recreation Area (GNRA) [administered by the National Park Service (NPS)]. The interaction of birds and aircraft at JFKIA is a serious problem, creating significant hazards to human safety, as well as causing financial losses due to aircraft destruction, equipment damage, runway closures, and associated personnel costs. The proximity of the airport and wildlife refuge in a coastal location has contributed to an unusually high incidence of bird strikes at JFKIA. As early as 1975, a Service study concluded that gulls (herring, ring-billed and great black-backed) constituted the principal bird hazard at JFKIA. This problem was severely exacerbated by the establishment and rapid growth of a breeding colony of laughing gulls on the salt marsh islands in Jamaica Bay located at the southeast end of Runway 22R/4L. As the colony grew from 15 pairs in 1979 to more than 7,000 pairs in 1990, the number of laughing gulls involved in bird strikes increased from 2 to as many as 187 per year, and the percentage of bird strikes involving laughing gulls increased from less than 2 percent to approximately 50 percent. Other gulls accounted for approximately 25 percent of JFKIA's bird strikes. The 58 other bird species together (1979–93) have accounted for approximately 23 percent of the air strikes and 25 percent of the damage delays.

Throughout the 1960's, 1970's and 1980's, the PA and Federal, New York State and New York City natural resource management agencies have conducted activities to evaluate, control, and monitor JFKIA's bird strike hazard. These activities have included, but are not limited to the following: Experimental laughing gull egg-oiling project; international panel review; ecological studies; non-lethal harassment programs; and interim shooting programs. Despite implementation by the PA of a multi-faceted bird hazard reduction program and closure of nearby landfills, strikes by laughing gulls continued to increase. In response to the increase, a temporary, on-airport gull hazard reduction program was conducted by the ADC unit of the U.S. Department of Agriculture from 1991 through 1993. Between May and August of each year, gulls entering JFKIA airspace were shot. ADC biologists killed 14,191 laughing gulls in 1991, 11,847 in 1992, and about 6,500 in 1993. By the third year, this program reduced the number of bird strikes involving laughing gulls by more than 90 percent in the late 1980's.

In 1992, the concern for potential cumulative impacts associated with the shooting program demonstrated the need to explore issues involved in reduction of the hazards of gull/aircraft interaction at JFKIA. Consequently, the preparation of this Environmental Impact Statement (EIS) was initiated to explore all reasonable alternatives that might be implemented to reduce the number of gull/aircraft collisions at JFKIA in an effective, safe, environmentally sound manner that is in compliance with all applicable laws and regulations.

The EIS process, including early public participation, began in late 1992. The Notice of Intent to prepare the DEIS was published in the December 4, 1992 **Federal Register**. At that time, the Service became a cooperating agency. One scoping meeting and one public meeting were held at JFKIA. The Notice of Availability of the DEIS was published in the February 11, 1994 **Federal Register**. Prior to the release of the DEIS for public review, the Service reviewed several preliminary drafts. The comment period of the DEIS ended April 25, 1994, however, comments were accepted through April 28, 1994. The Service reviewed and commented on a preliminary FEIS, and all substantive comments were incorporated into the FEIS released to public. The Notice of Availability of the FEIS appeared in the May 6, 1994 **Federal Register**. The Environmental Protection Agency granted a 16-day waiver in the 30-day comment period for the FEIS on April 29, 1994.

The Preferred Alternative

The Service's Preferred Alternative closely resembles the IMP/DOI policy, which is set forth in pages 6.6 through 6.9 of the FEIS. The Preferred Alternative contains more specific actions and time frames than are found in the FEIS discussion of the IMP, which appears on page 6–11. These more specific time frames are discussed below in the subsection entitled "Service Actions" within the "Findings and Decisions" portion of the ROD.

ADC's Proposed IMP in the FEIS identifies 6 elements. The Service has direct regulatory control or influence on 4 of these 6 elements. These specific elements are (1) continued development of JFKIA's on-airport program, (2) on-airport shooting of gulls, (3) laughing gull nest/egg destruction in Jamaica Bay, and (4) on-colony shooting of adult laughing gulls. The Service has no regulatory control or influence on (1) reduction of off-airport attractants and (2) display of gull models to harass gulls.

The IMP/DOI has been split into 2 separate categories. Category 1 elements address management actions off the GNRA and Category 2 elements address management actions on the GNRA.

Implementation of Category 1 elements will begin immediately, with all components monitored continuously by the Bird Control Unit (BCU) and evaluated at least annually by the Bird Hazard Task Force (BHTF). Category 1 activities would be continued until the annual reviews of these programs by the BCU and BHTF demonstrate that either Category 1 activities are no longer needed or that additional management is required. The BHTF will suggest improvements to this program, recommend additional research and monitoring needs and establish criteria to be used for initiation of Category 2 measures. The FEIS states that the National Park Service (NPS) will initiate steps to satisfy legislative and procedural requirements, as well as management review for on-colony elements (Category 2) whenever it is demonstrated that off-colony elements (Category 1) are ineffective. If initiation of Category 2 actions are justified, the NPS must define actions, analyze impacts and document decisions in the context of legal authorities and management policies in further NEPA analysis and documentation.

1. Category 1 actions include continued development of JFKIA's on-airport program, reduction of off-airport attractants, and the on-airport shooting of gulls.

a. Continued development of JFKIA's on-airport program with emphasis upon improvements to the BCU and the BHTF.

(1) Enhance the professional capability of the BCU

(2) Establish in-house capability within the BCU to assess and monitor effectiveness of control programs on target species.

(3) Prepare written plans for vegetation, insect control, solid waste, water management and other on-airport issues that address bird hazard management.

(4) Reorganize the BHTF to assist as an independent review body.

These above improvements will, by themselves, likely result in marginal reduction in gull-aircraft interactions. However, their implementation will improve the decisionmaking and evaluation process and provide a mechanism for determination of when Category 2 elements need to be considered, while having low environmental impacts (FEIS 5.5 and

6.2.2). The Service Actions within the Preferred Alternative are presented in the Findings and Decisions section. These Actions explain what improvements to the JFKIA on-airport program will be implemented and when these Actions will be implemented.

b. Reduction of off-airport attractants (FEIS 5.4.2.4. and 6.2.1).

As the FEIS states at page 6–4, reduction of off-airport attractants can be achieved provided cooperation of outside agencies can be obtained. Implementation of this program will likely result in a low reduction in gull-aircraft interactions. However, considering the absence of substantial environmental impacts, it was included as support to other Category 1 elements.

c. Continue on-airport shooting of gulls (FEIS 5.7 and 6.3.2).

Among on-airport lethal alternatives, only shooting is considered a feasible and effective option. Its environmental impacts are relatively low, as long as not more than approximately 14,500 laughing gulls are shot annually (according to ADC in the FEIS, p. 5-42). The on-airport shooting program could affect local and New York State laughing gull populations, unless another nesting colony is established in the State. Computer simulations indicate regional populations would not be impacted by an on-airport shooting program restricted to this level.

The impact of the on-airport shooting program on herring, great black-backed and ringbilled gull populations has been minimal, *e.g.* the numbers of these species shot were 508, 128, and 59, respectively, in 1991; 1,338, 150 and 131 in 1992; and 554, 121, and 169 in 1993. Local, regional and national populations of these gull species would not be adversely impacted by the on-airport shooting.

2. Category 2 elements include laughing gull nest/egg destruction in Jamaica Bay (FEIS 5.6.1.2.1 and 6.3.1), on-colony shooting of laughing gulls (FEIS 5.6.2.2. and 6.3.1), and display of synthetic gull models to harass gulls (FEIS 5.4.2.3 and 6.2.1).

If the potential risk to the flying public has been shown not to be reduced to acceptable levels as determined by the BHTF, the NPS will implement Category 2 control elements within the colony. On-colony actions will be proposed only after it has been judged that Category 1 actions have not been effective in reducing bird-aircraft interactions at JFKIA. The FEIS states that if initiation of Category 2 elements are justified, the NPS must define those actions, analyze those impacts and document its decision in the context of its legal authorities and its management policies and NEPA.

Other Alternatives Considered

Four alternatives, including the proposed action, were considered in the FEIS.

Alternative II. This alternative is the No-Action Alternative (FEIS 6.1), which involves the continuation of JFKIA's on-airport program (vegetation management, water management, insect control, sanitation management, and BCU programs), without further expansion, and does not include the intensive on-airport shooting program that was conducted during the 1991–93 period. The No-Action Alternative will not sufficiently reduce the gull hazard or address the issue of public safety for the 28 million passengers that use JFKIA each year. Because it is not effective, the No-Action Alternative is not considered for implementation.

Alternative III. This alternative involves implementation of a nonlethal gull hazard control program (FEIS 6.2). Off the airport, it addresses nesting habitat modification, discouraging use of the laughing gull colony site through harassment, and reduction of off-airport attractants. On JFKIA, it addresses expansion of the JFKIA on-airport control program. Overall, this alternative was not selected due to substantial adverse environmental impacts. However, elements of this alternative were included in the Preferred Alternative.

Of the on-colony habitat modification elements of this alternative, all these elements were considered to present unacceptable environmental impacts, which cannot be substantially mitigated and are therefore not considered for selection as preferred alternatives. Those elements included marsh devegetation through moving, herbicide, burning and excavation.

The only on-colony harassment element was display of synthetic models representing dead gulls. Although this element would not create substantial adverse ecological environmental impacts it is only moderately effective in reducing the gull hazard. The display of gull models were included as a Category 2 element of the IMP/DOI.

The reduction of off-airport attractants can be achieved provided cooperation of outside agencies can be obtained. The effectiveness in reducing gull/aircraft interactions is moderate to low and the environmental impacts of this element is very low. This element was included as a Category 1 element of the IMP/DOI.

The only on-airport element was the expansion of the existing on-airport program (Section 1.a. of the Preferred Alternative). The expansion of the existing on-airport program was not considered as a preferred alternative by itself, because it had a low level of effectiveness. However, this element was included as a Category 1 element of the IMP/DOI.

Alternative IV. This alternative involves implementation of a lethal gull hazard control program (FEIS 6.3). Off the airport, it addresses population reduction of the laughing gull colony, including nest/egg destruction or oiling eggs, and population reduction of adults. On JFKIA, it addresses shooting and avicide application.

Several on-colony elements were considered. These elements included physical destruction of nests and eggs, oiling eggs, toxicant application to nesting adults, shooting of adults on the colony site, and introduction of predators to the nesting colony. None were considered effective enough individually to warrant consideration as a preferred alternative. However, shooting of adult gulls from blinds, and egg and nest destruction were included as Category 2 elements of the IMP/DOI.

Among JFKIA elements, only shooting was a feasible and effective option. The environmental impacts of this element for laughing gulls was low, as long as not more than 14,500 are shot annually Populations of herring, great black-backed and ring-billed gulls would not be affected by this program. This alternative was included as a Category 1 element of the IMP/DOI.

Alternative methods. Twelve methods for gull hazard management on JFKIA were examined as possible alternatives to the IMP/BOI. These include planting laughing gull breeding areas with shrubs (FEIS 3.3.1.2), landform alteration by filling marsh (FEIS 3.3.1.3.1), landform alteration by physical obstruction (monofilament, cordage, or wire barriers) (FEIS 3.3.1.3.3), harassment of breeding laughing gulls by falconry (FEIS 3.3.2.1), harassment of breeding laughing gulls by dogs (FEIS 3.3.2.2), harassment of breeding laughing gulls by acoustics (FEIS 3.3.2.3), harassment of breeding laughing gulls by deterrent display of dead gulls (FEIS 3.3.2.4), harassment of breeding laughing gulls by radio-controlled model airplanes (FEIS 3.3.2.5), alteration of airport operations (numbers of aircraft using JFKIA, daily distribution of aircraft using JFKIA and types of aircraft using JFKIA) (FEIS 3.4.2.1), alteration of runway use patterns (FEIS 3.4.2.2), research and development into aircraft engineering to reduce air strikes (FEIS 3.4.3.2), and bird tracking and warning devices (FEIS 3.4.3.4). It was concluded that none of these alternatives would be

effective in the control of the gull hazard at JFKIA.

Minimization of Impacts and Public Concerns

The Preferred Alternative incorporates a variety of measures to minimize the adverse environmental, social and economic impacts as described in the FEIS. Improvements to the bird hazard management program at JFKIA will permit the continuous monitoring and evaluation of this program. The Preferred Alternative significantly reduces the threat of bird/aircraft interactions at JFKIA for the 28 million travelers using that airport yearly through the implementation of the IMP/DOI. The IMP/DOI includes improvement of the on-airport management program and data collected for the evaluation of the on-airport and off-airport management programs. Specific measures to minimize impacts of and public concerns about the proposed action are identified in the Findings and Decision section of this document

Service Authority

Statutory authority for the Service's actions is as follows:

Migratory birds listed in treaties with Great Britain (Canada), Mexico, Japan, and the former Soviet Union are protected and activities involving them are regulated in the United States by the Migratory Bird Treaty Act. The Secretary of the Interior under 16 United States Code (U.S.C.) Sections 703–712 has responsibility for management of those migratory birds, including the issuance of permits to take those birds. Criteria for issuance of Special Purpose permits is further defined by regulations found in Title 50 CFR part 21.

Specifically, 16 U.S.C. 704 provides:

"Subject to the provisions and in order to carry out the purposes of the conventions, the Secretary * * * is authorized and directed from time to time, having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds, to determine, when, to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow, * * * taking * * * of any such bird * * *".

Generally, all species of gulls are listed in the treaties and further identified in 50 CFR 10.13, List of Migratory Birds. Prohibited activities involving these listed migratory birds are more clearly identified in 50 CFR 21.11 which provides: "No person shall take * * * any migratory bird * * * except as permitted under the terms of a valid permit * * *".

The regulations then provide for issuance of permits for general standardized activities (import/export, banding and marking, scientific collecting, taxidermy, waterfowl sale and disposal, and falconry activities) utilizing standard form permits. They also provide for issuance of Special Purpose permits which authorize otherwise prohibited activities involving migratory birds, not otherwise covered by the standard form permits, when: "* * * an applicant * * * submits a written application containing the general information and certification required by part 13 [50 CFR 13] and makes a sufficient showing of * * * compelling justification." (50 CFR 21.27)

These Special Purpose Permit regulations give the Service broad authorities to address human safety issues at JFKIA. The Preferred Alternative is compatible with all conventions and treaties and the Service Actions identified within this Preferred Alternative are compatible with the intent of these conventions, treaties, and associated regulations. The compelling justification for these Service Actions is the issue of human safety at JFKIA.

Service Actions

On May 24, 1994 the Federal Aviation Authority (FAA) made a declaration "* * * that in the opinion of the Federal Aviation Authority an 'urgent situation' exists at JFK which requires emergency actions which are necessary on a limited and temporary basis for the protection of life, health, and property or natural resources." As of this time, there is no effective short-term alternative to address the public safety risk presented by gulls within JFKIA airspace, except to permit limited shooting of gulls at the airport. As is explained below, the Service intends to permit shooting to proceed in May 1994, subject to certain permit conditions.

1994 Actions. The Service will issue Special Purpose Permits to ADC to permit the 1994 shooting program and to PA to permit the 1994 BCU program. Both permits will be non-renewable and ADC's permit will expire on August 20, 1994, by which time the peak of laughing gull strikes can reasonably be expected to have diminished. The PA's permit will expire on October 1, 1994, as is discussed in greater detail below. Non-renewable means that activity ends when the permit expires, and another permit must be issued before the activity can be continued (Title 50 CFR 13.22).

The Service will take this action on the ADC permit, in consideration of the FAA's determination of a need for emergency actions at JFKIA and the information presented in the FEIS concerning the hazards presented by gulls at JFKIA. The Service will issue the ADC permit, after the Service has concurred with documentation provided by ADC that the number of birds flying into JFKIA airspace present a hazard to aircraft.

The Service will condition the PA permit to authorize PA personnel to (1) kill non-endangered and non-threatened species of migratory birds, except eagles and all species of gulls, as provided by 50 CFR 21.41 (c)(2), when they are creating or about to create a hazard to aircraft; (2) all carcasses collected under this permit must be donated to a public/scientific institution or destroyed by burial/incineration; and (3) maintain records as required per 50 CFR 13.46. This gull restriction in the PA permit is based upon a State of New York limitation. The Service will condition the ADC permit to authorize ADC personnel to (1) kill no more than 14,500 laughing gulls, 1,500 herring, 200 great black-backed and 200 ring-billed gulls, when found flying into JFKIA airspace and creating a hazard to aircraft, using shotguns with steel shot; (2) all specimens collected under this permit must be donated to a public/scientific institution or destroyed by burial/incineration; and (3) maintain records as required per 50 CFR 13.46. The validity of both permits is also conditioned upon strict observance of all applicable foreign, state, local or other Federal law.

The restrictions placed upon the take of herring, black-backed, and ring-billed gulls under the 1994 ADC permit reflect approximate past performance under the 1991–93 permits, because these takes have been demonstrated to have no impacts on local, state, or regional populations (FEIS, pp. 3–92 to 3–93). The restriction for shooting no more than 14,500 laughing gulls for the 1994 ADC permit is based on the results of population modeling (FEIS pp. 3–4 to 3–9 and p. 5–42) which suggests that the current Massachusetts/New York/New Jersey population could sustain a maximum annual loss of approximately 14,500 birds to shooting every year.

The Service will entertain an application from the PA for a Special Use Permit to support the activities of their BCU for the remainder of 1994 provided that they have agreed to the improvements to the BCU, BHTF and JFKIA management programs and the schedule for these improvements to be completed on or before September 15,

1994. The Service will monitor the compliance of the PA to implementation of these improvements. Future permits will not be issued if improvements are not implemented according to the implementation schedule.

Consistent with IMP/DOI policy to enhance the professional capability of the BCU and to establish capability within the BCU to assess and monitor the effectiveness of control programs on target species, the Service has determined that the PA must fundamentally change the staff, functions and size of the existing BCU to insure that the BCU's capabilities and functions are improved prior to any application by the ADC or the PA for any permit for 1995. The Service has determined that the time frames set forth in Section 6.4.3.2 are inadequate. Therefore the Service has determined that the following measures shall be implemented by the dates set forth below:

1. Enhance the professional capability of the BCU.

The PA will hire a person trained in ornithology, or wildlife biology, or in a related field as the supervisor for the BCU by August 1, 1994. This supervisor will be trained to the Master of Science level in either ornithology or wildlife biology and will be capable of developing and evaluating the bird hazard management program at JFKIA and developing monitoring programs for birds in the JFKIA area.

The PA must apply to the Service for the October 1994 BCU permit by September 15, 1994, and should indicate in the application how it has complied with hiring the BCU supervisory biologist (#1 above) and the reorganization of the BHTF. With this application the PA may include its assessment of the BCU's personnel capabilities and expertise. This assessment, if provided, should address needs for increases in staff size, changes in professional capabilities of staff, and training. It should also identify BCU equipment and support requirements, as well as document how the BCU will conduct the collection of biological field data, surveys and monitoring programs described in the IMP/DOI and this document.

2. Reorganize the BHTF to assist as an independent review body.

The PA will reorganize the BHTF to serve as an advisory committee to the Port Authority for the evaluation of the BCU program and the gull shooting program by August 1, 1994. The BHTF will suggest improvements to this program, recommend additional research and monitoring needs and establish criteria to be used for initiation of Category 2 measures. The agencies currently composing the BHTF would remain. The chairmanship would be rotated on an annual basis; however, the Service would chair the task force during this reorganization period.

On May 17, 1994, the Port Authority provided the Service with a letter indicating significant disagreement concerning those measures needed to implement the IMP/DOI. The Service wants a competent, professional, fully-staffed BCU in place before the Spring of 1995. Based upon the Service's evaluation of the current capabilities of the BCU and the improvements required to implement the IMP/DOI, the Service has identified additional organizational improvements. The Service will evaluate subsequent requests for special permits in light of the PA's implementation of the tasks set forth above, the measures described below, advice from the BHTF, and any other information submitted by the PA. Additional measures to improve the capabilities of the BCU include the following:

1. Additional enhancement of the professional capability of the BCU.

The PA will increase staff size for the BCU to 10 permanent, full-time members by November 1, 1994. All BCU employees will be qualified to consistently and accurately collect biological field data and to conduct surveys and monitoring programs with the minimum professional training of a Bachelors of Science or equivalent substantive course work and field experience. The BCU will include at least one person trained in entomology and pesticides.

The PA will provide sufficient equipment and vehicles to support the improved BCU by November 15, 1994. This includes equipment to disperse water following rain storms, pyrotechnics, speaker systems in all vehicles, firearms, and safety equipment.

The PA will train and authorize all BCU employees to conduct all harassment methods, including the firing of firearms for lethal and non-lethal harassment by November 15, 1994. This includes the development of a training plan for all employees.

The BCU staff requires 7 people to perform its bird harassment responsibilities (1 supervisor, 2 employees per shift, 2 shifts per day, 7 days a week). In order to incresae the capability of the BCU, the Service has determined that three additional people are required, as well as improving the professional training and capabilities of the BCU and assuring that the BCU is adequately equipped to do its job.

2. Establish in-house capability within the BCU to assess and monitor effectiveness of control programs on target species.

On or before January 31, 1995, the PA will develop and implement monitoring programs to assess the following:

(1) Evaluation of the effectiveness of the gull shooting program and JFKIA's bird hazard management program;

(2) Identification of criteria that could be used to determine when a gull shooting program should begin or end;

(3) Identification of criteria, with the involvement of the BHTF, that could be used to determine when Category 1 elements have become ineffective;

(4) Evaluation of off-airport attractants that encourage gulls to fly through JFKIA airspace; and

(5) Continuing evaluation of potential on-airport attractants.

3. Prepare written plans for vegetation, insect control, solid waste, water management and other on-airport issues that address bird hazard management.

The PA will produce written management plans for vegetation, insect, water, and solid waste management on JFKIA by December 29, 1994. These plans will document the existing programs and the overall management strategies for these programs.

The Service has determined that these written plans are needed as part of the Service's monitoring and enforcement program for this permit. The PA has actively addressed these management issues on JFKIA, as documented in FEIS (Section 3.2); however, poor documentation for these programs makes interpretation and monitoring impossible at this time.

4. As a part of the effort to develop data on bird species contributing to hazards at JFKIA and to a determination of when Category 2 measures may be appropriate, the NPS is committed to participating in seasonal surveys in 1994 to monitor gull populations and distribution in the Jamaica Bay area and will provide these data to the BCU and BHTF.

1995 Actions. For the 1994–95 period, the Service will monitor the above described implementation schedule and will not consider applications for Special Purpose Permits for either the PA or ADC in 1995, unless all of the above specified improvements are implemented according to the above schedule or unless a deviation from these conditions has been expressly permitted by the Service.

The Service has ascertained that these specific improvements are needed under the IMP/DOI element dealing

with continued development of JFKIA's on-airport program. The Service has determined that these programs are needed to support the Service's monitoring and enforcement program for this permit. These improvements will, by themselves, likely result in a marginal reduction in gull-aircraft interactions. However, their implementation will improve the decision-making and evaluation process, and will provide a mechanism for determination of when Category 2 elements need to be considered. In addition, the NPS has committed to participate in seasonal surveys in 1995 to monitor gull populations and distribution in the Jamaica Bay area, as part of this program, and will provide these data to the BCU and BHTF to support this monitoring and enforcement program.

1996 Actions. In 1996 and subsequent years, the Service will review data collected by the BCU and recommendations made by the BHTF, as part of the annual review process for issuance of Special Purpose Permits. These future permit decisions and any restrictions placed upon future permits will be guided by this improved data collection and analysis system implemented by the PA for JFKIA in 1994.

Findings and Decisions

Having reviewed and considered the FEIS for the gull hazard management program at JFKIA and the public comments thereon, the Service finds as follows:

1. The requirements of NEPA and implementing regulations have been satisfied; and

2. Consistent with social, economic, programmatic and environmental considerations from among the reasonable alternative thereto, the Preferred Action alternative with the Service's conditions described above is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects discussed in the FEIS; and,

3. Consistent with the social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the EIS process will be minimized or avoided by incorporating as conditions those mitigative measures identified in the Preferred Alternative in the FEIS and its supporting appendices; and,

4. The limitations on the numbers of gulls which may be taken under this permit are compatible with the terms of the Migratory Bird Conventions and are made with due regard to their distribution, abdundance, breeding habits, and migratory patterns; and

5. The ADC and the PA have made a sufficient showing of compelling justification for these permits; and

6. All improvements to the BCU, BHTF, and JFKIA management programs, as specified in above in the Service Actions section during the term of each permit are hereby adopted as part of this finding and will be used to guide future migratory bird permit decisions.

Having made the above findings, the Service has decided to proceed with implementation of the Preferred Alternative with the above conditions.

This Record of Decision will serve as the written facts and conclusions relied on in reaching this decision. This Record of Decision was approved by the Regional Director of the Service on May 25, 1994.

Dated: May 25, 1994.

Ronald E. Lambertson,

Regional Director.

[FR Doc. 94-13530 Filed 6-2-94; 8:45 am]

BILLING CODE 4310-55-M

Notice of Availability of the Joint Draft Environmental Assessment and Draft Restoration Plan for the John Day River Acid Spill

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service, Oregon Department of Fish and Wildlife, and the Confederated Tribes of the Umatilla Indian Reservation (hereafter known as the Trustees) announce the availability of the Joint Draft Environmental Assessment and Draft Restoration Plan for the John Day River Acid Spill (DEA/Plan) for public review. The Trustees are proposing to restore natural resources injured as a result of the 1990 John Day River acid spill. Public comments are invited pursuant to applicable National Environmental Policy Act regulations and Department of the Interior Natural Resource Damage Assessment regulations.

DATES: Written comments are requested and will be accepted until July 5, 1994.

ADDRESSES: Requests for copies of the DEA/Plan may be sent to: U.S. Fish and Wildlife Service, Ecological Services, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266-1325.

Written comments or material regarding the DEA/Plan should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Russell D. Peterson, Field Supervisor, U.S. Fish and Wildlife Service, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon 97266-1325, (Attention: Environmental Contaminants Program).

Interested parties may also call (503) 231-6179 for further information.

SUPPLEMENTARY INFORMATION: On February 8, 1990, a tanker truck owned and operated by Thatcher Trucking Company of Salt Lake City, Utah skidded off Highway 395 and rolled down an embankment into the North Fork of the John Day River in north-central Oregon. An estimated 3,500 gallons, or 33,500 pounds, of hydrochloric acid was discharged into the river and flowed downstream at an approximate rate of one mile per hour.

The spill drastically changed the pH of the river water resulting in extensive mortality and injury to fish resources. An estimated 98,000 to 145,000 fish were destroyed, including 4,000 anadromous fish, 300 bull trout, and 9,500 Pacific lampery. Additionally, 50 percent of the chinook salmon alevins were estimated to have been killed. Aquatic mammals, waterfowl, and endangered species, which utilize the John Day River Basin, may also have been directly or indirectly impacted by the spill.

In 1992, the United States of America, State of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation settled claims for natural resource damages associated with the 1990 John Day River acid spill. The claims were settled by consent decree under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended. The consent decree established a $275,000 Trust Fund for use only for restoration, replacement, or acquisition of equivalent resources injured by the spill.

A Restoration Committee, comprised of a representative from each Trustee, was established to review and select restoration actions. The following strategies and alternatives were developed by the Restoration Committee: (1) Permanent Protection—land acquisition and perpetual easements, leases, or covenants; (2) Temporary Protection—easements, leases, or management rights; (3) Habitat Enhancement—riparian habitat restoration, instream habitat improvement measures, and watershed improvement measures; (4) Combined Protection and Enhancement—all alternatives previously listed; and (5) No Action—unmitigated action.

In order to maximize recovery of injured resources, the Restoration

Committee selected the Combined Protection and Enhancement Strategy. In selecting this strategy, the Trustees emphasis on the selection of restoration projects was on Permanent Protection followed by Temporary Protection and then Habitat Enhancement projects. Selected projects include the following; land acquisition, permanent easements, riparian habitat protection, riparian habitat restoration, instream habitat enhancement, erosion control, and watershed restoration. These projects are outlined in the DEA/Plan and would be implemented on the North Fork, Middle Fork, and other tributaries of the John Day River. The primary criteria for the selection of projects was based on the project's potential to restore resources injured by this spill. The Restoration Committee is also actively seeking matching funds for restoration projects in order to enhance selected projects or implement additional projects. Potential cost-share organizations include the U.S. Forest Service, the Oregon Department of Fish and Wildlife, the Nature Conservancy, and the Bonneville Power Administration, among others.

Interested members of the public are invited to review and comment on the DEA/Plan and to provide additional alternatives and projects. Copies of the DEA/Plan are available for review at the U.S. Fish and Wildlife Service's Ecological Services Field Office (2600 S.E. 98th Avenue, suite 100, Portland, Oregon), the Oregon Department of Fish and Wildlife's John Day District Office (305 North Canyon Boulevard, Canyon City, Oregon), and the Grant County Library (507 South Canyon Boulevard, John Day, Oregon). Copies of the DEA/Plan may be obtained at the aforementioned U.S. Fish and Wildlife Service Office. All written comments will be considered and addressed in the final agency determination.

Dated: May 23, 1994.

Marvin Plenert,

Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 94–13531 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability of the Draft Environmental Assessment and Land Protection Plan Proposed Establishment of Key Cave National Wildlife Refuge Lauderdale County, Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of the Draft Environmental Assessment and Land Protection Plan for the Proposed Establishment of Key Cave National Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, proposes to establish a national wildlife refuge in the vicinity of Lauderdale County, Alabama. The purpose of the proposed refuge is to protect and manage up to 2,300 acres of land to ensure the biological integrity of Key Cave, which has been designated by the Service as critical habitat for the endangered Alabama cavefish and as a priority one maternity cave for the endangered gray bat. A Draft Environmental Assessment and Land Protection Plan for the proposed refuge has been developed by Service biologists in coordination with the Tennessee Valley authority, the State of Alabama, the Soil Conservation Service, The Conservation Fund, the Wildlife Enhancement Council, and Monsanto, Inc. The assessment considers the biological, environmental, and socioeconomic effects of establishing the refuge. The assessment also evaluates three alternative actions and their potential impacts on the environment. Written comments or recommendations concerning the proposal are welcomed and should be sent to the address below.

DATES: Land acquisition planning for the project is currently underway. The draft assessment and land protection plan will be available to the public for review and comment on June 13, 1994. Written comments must be received no later than July 29, 1994, to be considered.

ADDRESSES: Comments and requests for copies of the assessment and further information should be addressed to Mr. Charles R. Danner, Chief, Branch of Project Development, Office of Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345.

SUPPLEMENTARY INFORMATION: The primary objective of the proposed Key Cave National Wildlife Refuge are to (1) protect habitat for threatened and endangered species, (2) promote habitat for threatened and endangered species, (2) promote habitat for a natural diversity of wildlife, (3) enhance habitat for nongame migratory birds, and (4) provide opportunities for compatible outdoor recreation and environmental education and interpretation.

The proposed refuge area is located in northwest Alabama, about 5 miles southwest of Florence, the county seat and largest city in Lauderdale County. The cave lies on the northern shore of Pickwick Lake in a limestone karst area that contains numerous sinkholes and several underground cave systems. The area's sinkholes form an integral part of the groundwater recharge to the caves.

The proposed refuge would consist of about 1,500 acres of land acquired in fee title, with an additional 800 acres of sinkholes in the cave's recharge area protected through conservation easements with willing landowners.

The major wildlife values are the two endangered species which inhabit Key Cave: the Alabama cavefish (*Speoplatyrhinus poulsom*) and the gray bat (*Myotis grisescens*). Key Cave is used as a summer maternity cave by the gray bat. Because of its highly specific habitat and roost requirements, fewer than 5 percent of the available caves in the animal's range are suitable for gray bat occupation. The flightless young bats roost in Key Cave from late May to mid-July, and thousands could die from a single human disturbance or act of vandalism.

The Alabama cavefish has been found to exist only in Key Cave. Just nine specimens are known to exist in scientific collections. No other populations of this species are known. Based on its apparent distribution, the number of specimens collected, and the number of individuals observed, this small fish appears to be the rarest of American cavefish and one of the rarest of all freshwater fish. Its habitat in Key Cave is threatened by human disturbance, groundwater degradation. alternations in the area's drainage and hydrologic patterns, lowered groundwater levels, and diminished organic matter inputs.

Both the Gray Bat Recovery Plan and the Alabama Cavefish Recovery Plan identify land acquisition as the primary means for protecting Key Cave, and both list that protection as a priority one task. Because the proposed Key Cave refuge is identified as critical habitat for the Alabama cavefish and as a priority one maternity cave for the gray bat, land acquisition would be sought under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543).

Dated: May 19, 1994.

John R. Eadie,

Acting Regional Director.

[FR Doc. 94–13529 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability of the Technical/Agency Draft Recovery Plan for Large-flowered Skullcap for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a technical/agency draft recovery plan for large-flowered skullcap. Large-flowered skullcap (*Scutellaria montana* Chapman) is an herbaceous representative of the mint family (Lamiaceae), with known populations in northern Georgia and southeastern Tennessee. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the technical/agency draft recovery plan must be received on or before August 2, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the technical/agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (Telephone 704/665–1195). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff at the address and telephone number shown above (Ext. 229).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Based upon available information concerning the range, biology, and threats to its continued survival, it is not yet possible to determine if or when full recovery of the large-flowered skullcap is possible. Accordingly, this draft recovery plan outlines a mechanism that provides for the protection and maintenance of all known populations, with emphasis on determining autecological factors necessary to manage the species. In 1986 the taxon was listed as endangered by the Service. At that time there were seven populations known in Georgia and three in Tennessee. The taxon was threatened by habitat loss to timbering or development. Over 90 percent of the 7,000 individual plants known in 1986 occurred at only two sites, neither of which was completely protected from known threats. Currently, large-flowered skullcap is known to occur in two counties in Tennessee and four counties in Georgia, within a limited area of the Ridge and Valley and Cumberland Plateau provinces. There are 17 extant populations (12 in Tennessee and 5 in Georgia) that vary greatly in size. Comments and information provided during this review will be used in preparing the final recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f)

Dated: May 26, 1994.

Brian P. Cole,

Field Supervisor.

[FR Doc. 94–13533 Filed 6–2–94; 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability of the Agency Draft Recovery Plan for Leafy Prairie Clover for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of an agency draft recovery plan for the leafy prairie clover (*Dalea foliosa*). This rare perennial herb has declined by over 45 percent from historic occurrences. Currently there are 21 known populations in three States—Alabama (2), Illinois (3), and Tennessee (16). The species grows on cedar glades or shallow-soiled prairies. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the agency draft recovery plan must be received on or before August 2, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (Telephone 704/665–1195). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Currie at the address and telephone number shown above (Ext. 224).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

(Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is leafy prairie clover (*Dalea foliosa*). Recovery actions for the species will occur on limestone cedar glades in Bedford, Davidson, Marshall, Maury, Rutherford, Williamson, and Wilson Counties, Tennessee; Lawrence and Morgan Counties, Alabama; and shallow-soiled prairies in Will County, Illinois. Specific recovery actions that need to be implemented include: (1) The identification and prioritization of protection, management, and restoration needs; (2) the development of preserve designs and implementation of protection plans for significant sties; (3) the development and implementation of management plans, enhancement of existing populations, and establishment of new populations; and (4) the development and implementation of population monitoring, demographic, and life history studies.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 26, 1994

Brian P. Cole,

Field Supervisor

[FR Doc. 94-13534 Filed 6-2-94; 8:45 am]

BILLING CODE 4310-55-M

Meetings: Klamath River Basin Fisheries Task Force

AGENCY: Fish and Wildlife Service, Interior.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 1 p.m. to 6 p.m. on Wednesday, June 22, and from 8 a.m. to 5 p.m. on Thursday, June 23, 1994.

PLACE: The meeting will be held at the Miner's Inn Convention Center, 122 East Miner Street, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Donald A. Iverson, Project Leader, U.S Fish and Wildlife Service, P.O. Box 1006, Yreka, California 96097-1006, telephone (916) 842-5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). The Task Force will meet to recommend projects for funding through Federal and State fishery restoration grants in the 1995 fiscal year, decide on a procedure for public review of a third draft of a restoration plan amendment dealing with the upper Klamath basin, and consider how to implement restoration plan policies dealing with Klamath River flows.

Dated: May 25, 1994

Thomas J. Dwyer,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94-13532 Filed 6-2-94; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf, Central and Western Gulf of Mexico Natural Gas and Oil Lease Sales 152 and 155

AGENCY: Minerals Management Service, Interior.

ACTION: availability of the proposed notices of sale.

Gulf of Mexico Outer Continental Shelf (OCS); Notice of Availability of the Proposed Notices of Sale for proposed Natural Gas and Oil Lease Sale 152 in the Central Gulf of Mexico, and proposed Natural Gas and Oil Lease Sale 155 in the Western Gulf of Mexico This Notice of Availability is published pursuant to 30 CFR 256.29(c), as a matter of information to the public.

With regard to natural gas and oil leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notices of Sale.

The proposed Notices of Sale for proposed Sales 152 and 155 may be obtained by written request to the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, or by telephone at (504) 736-2519.

The final Notices of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for early 1995 for proposed Sale 152, and mid-1995 for proposed Sale 155.

Dated: May 23, 1994.

Tom Fry,

Director, Minerals Management Service.

[FR Doc. 94-13507 Filed 6-2-94; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-406 (Sub-No. 1X)]

Central Kansas Railway, Inc.—Abandonment Exemption—in Kay and Grant Counties, OK, and Harper County, KS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Central Kansas Railway, Inc., of a 48-mile line of railroad in Kay and Grant Counties, OK, and Harper County, KS, subject to standard labor protective conditions and an environmental condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 3, 1994. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by June 13, 1994. Petitions to stay must be filed by June 13, 1994. Requests for a public use condition conforming to 49 CFR 1152.28(a)(2) and petitions to reopen must be filed by June 23, 1994.

ADDRESSES: Send pleadings, referring to Docket No. AB-406 (Sub-No. 1X), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representatives: Louis E. Gitomer, Taylor, Morell & Gitomer, 919 18th Street, NW., Suite 210, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-5610. [TDD for the hearing impaired: (202) 927-5721.]

[1] See Exempt. of Rail Abandonment -Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927-5721.]

Decided: May 20, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-13512 Filed 6-2-94; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 High Performance Composites Cooperative Arrangement

Notice is hereby given that, on April 6, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), BDM Federal Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a cooperative arrangement known as the "Agreement for the Establishment of a Cooperative Arrangement for Development of High Performance Composites" (the "HPC"). The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are BDM Federal, Inc., McLean, VA; General Electric Company, acting through General Electric Aircraft Engines, Evendale, OH; and United Technologies Corporation, acting through Pratt & Whitney, Government Engines and Space Propulsion, Hartford, CT. The purpose of the project is to pursue a research program sponsored by the Advanced Research Projects Agency into low cost, high performance ceramic matrix and metal composites for objectives are to avoid inefficient duplication of effort and expense, improve general scientific knowledge in this area by answering fundamental questions, and accelerate the development of this technology. To meet these objectives, the Partnership will collect, exchange, and analyze research information regarding this technology; conduct tests and develop basic engineering techniques for use in proof of theories and concepts in the relevant topics; and perform further acts allowed by the Act that would advance the Partnership's objectives in this area.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94-13545 Filed 6-2-94; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Natural Gas Vehicle Technology Partnership

Notice is hereby given that, on May 3, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), General Motors Corporation filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a cooperative research project entitled "Natural Gas Vehicle Technology Partnership". The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the parties to the project are Chrysler Corporation, Highland Park, MI; Ford Motor Company, Dearborn, MI; and General Motors Corporation, Detroit, MI. The parties intend to identify opportunities for joining aspects of their independent research and development efforts pertaining to natural gas technology with respect to automotive systems. At least initially, the parties will concentrate their investigations on natural gas storage techniques. The objectives are to avoid inefficient duplication of effort and expense, improve general scientific knowledge in this area by answering fundamental questions, and accelerate the development of this technology. To meet these objectives, the Partnership will collect, exchange, and analyze research information regarding this technology; conduct tests and develop basic engineering techniques for use in proof of theories and concepts in the relevant topics; and perform further acts allowed by the Act that would advance the Partnership's objectives in this area.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94-13546 Filed 6-2-94; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions, shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 27th day of May 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–13439 Filed 6–2–94; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement for a Study of Growth and Diversity in Folk and Traditional Arts

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for a study of the Growth and Diversity in Folk and Traditional Arts in the United States and its Territories. The project will result in a report, or series of reports, that will advance public knowledge and understanding of the complexity of the folk and traditional arts in America, including an examination of its art forms, artists, audiences, and arts organizations; the growth in the quantity of this activity in the last 15 years; and an overview of how this activity is supported through public arts agencies and through folk and traditional arts organizations themselves. It is anticipated that the project will entail ten case studies; identification, compilation, and analysis of secondary data on cultural and ethnic diversity; and interviews with Folk and Traditional Arts Organizations. Those interested in receiving the Solicitation package should reference Program Solicitation PS 94–10 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program solicitation PS 94–10 is scheduled for release approximately June 17, 1994 with proposals due August 15, 1994.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave. NW., Washington, DC 20560 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 94–13528 Filed 6–2–94; 8:45 am]

BILLING CODE 7537–01–M

International Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

L. 92–463), as amended, notice is hereby given that a meeting of the International Advisory Panel (Residencies and Fellowships Visual Arts Prescreening Section) to the National Council on the Arts will be held on June 28–29, 1994. The panel will meet from 9 a.m. to 5:30 p.m. in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: May 26, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–13527 Filed 6–2–94; 8:45 am]

BILLING CODE 7537–01–M

Presenting and Commissioning Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Dance on Tour Section) to the National Council on the Arts will be held on June 15–16, 1994. The panel will meet from 8:30 a.m. to 5:30 p.m. in room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 8:30 a.m. to 4:30 p.m. on June 15 for orientation, presentations and a discussion of the assessment report and from 4 p.m. to 5:30 p.m. on June 16 for a policy and guidelines discussion.

The remaining portions of this meeting from 4:30 p.m. to 5:30 p.m. on June 15 and from 8:30 a.m. to 4 p.m. on June 16 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: May 24, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–13526 Filed 6–2–94; 8:45 am]

BILLING CODE 7537–01–M

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' meeting scheduled for 16 June 1994 has been cancelled. The next meeting is scheduled for 28 July 1994 at 10 a.m. in the Commission's offices in the Pension Building, suite 312, Judiciary Square, 441 F Street NW, Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 24 May 1994.

Charles H. Atherton,

Secretary.

[FR Doc. 94–13549 Filed 6–2–94; 8:45 am]

BILLING CODE 6330–01–M

NATIONAL INDIAN GAMING COMMISSION

Notice of Approval of Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice of approval of class III gaming ordinances.

SUMMARY: The purpose of this notice is to inform the public of class III gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

FOR FURTHER INFORMATION CONTACT: Susan Carletta at (202) 632–7003 ext. 34, or by facsimile at (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (the Commission). Section 2710 of the IGRA authorizes the Commission to approve class II and class III tribal gaming ordinances. Section 2710(d)(2)(B) of the IGRA as implemented by 25 CFR 522.8 (58 FR 5811 (January 22, 1993)), requires the Commission to publish, in the **Federal Register**, approved class III gaming ordinances.

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in an unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Also, the Commission will make copies of approved class III ordinances available to the public upon request. Requests can be made in writing to: National Indian Gaming Commission, 1850 M St., NW., suite 250, Washington, DC 20036.

The Chairman has approved tribal gaming ordinances authorizing class III gaming for the following Indian tribes:

Big Valley Rancheria of Pomo Indians
Confederated Tribes of the Umatilla Indian Reservation
Crow Creek Sioux Tribe
Elem Indian Colony
Jicarilla Apache Tribe
Kickapoo Traditional Tribe of Texas
Lac Vieux Desert Band of Lake Superior Chippewa Indians
Moapa Band of Paiutes
Rosebud Sioux Tribe
Temecula Band of Luiseno Mission Indians
Turtle Mountain Band of Chippewa Indians
Wisconsin Winnebago Nation

Anthony J. Hope,

Chairman.

[FR Doc. 94–13481 Filed 6–2–94; 8:45 am]

BILLING CODE 7565–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communication Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical & Communication Systems.

Date and Time: June 21, 1994, 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 365, Arlington, Virginia 22230.

Contact Person: Dr. Albert B. Harvey, Program Director, ECS, Room 675, National Science Foundation, 4201 Wilson Blvd.

Telephone: 703/306–1339.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: May 27, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–13511 Filed 6–2–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Graduate Education and Research Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Graduate Education and Research Development.

Date and Time: June 15–17, 1994; 8:30 a.m. to 5 p.m.

Place: State Plaza Hotel, 2117 E Street, North West, Washington, DC 20037

Type of Meeting: Closed.

Contact Person: Roosevelt Y. Johnson, Program Director, 4201 Wilson Boulevard, room 907, Arlington, VA 22230 Telephone: (703) 306–1696.

Purpose of Mtg: To provide advice and recommendations concerning proposals submitted to the Graduate Research Traineeships Program (GRT).

Agenda: Review and evaluate GRT proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 27, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–13510 Filed 6–2–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Patriots Point Development Authority; U.S. Maritime Administration; N.S. SAVANNAH; Environmental Assessment and Finding of no Significant Impact Regarding License Amendment

[Docket No. 50–238]

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to the Amended Facility License No. NS–1 issued to the Patriots Point Development Authority (PPDA) and the U.S. Maritime Administration (MARAD) for possession but not operation of the nuclear reactor facility aboard the *N.S. Savannah*.

Environmental Assessment

Identification of Proposed Action

By application dated May 19, 1994, as supplemented by letters dated May 24, and May 25, 1994, PPDA and MARAD requested authorization to (1) delete the PPDA as a co-licensee; allow relocation of the *N.S. Savannah* to the James River Reserve Fleet (JRRF), (2) change responsibility for the performance of radiological health physics coverage, surveillance and response to the U.S. Army Center for Public Works, Humphries Engineering Center, (3) change the composition of the Review and Audit Committee to be consistent with the deletion of PPDA as a co-licensee, and (4) make other minor changes and discontinue public access to the facility. PPDA has decided to discontinue use of the ship as a museum exhibit and return the ship to MARAD, which has retained ownership. The ship was removed from the PPDA pier on May 24, 1994, under the existing license. The ship will be towed to Baltimore, Maryland, for drydock repairs, also under the existing license. The ship will then be relocated to the JRRF, near Fort Eustis, Virginia for long term storage.

Need for Proposed Action

The proposed action is needed in order to remove the PPDA as co-licensee, to relocate the *N.S. Savannah* to the JRRF, near Fort Eustis, Virginia, for long term storage following repairs in drydock, and to change Technical Specifications consistent with these changes in licensee and location.

Environmental Impact of the Proposed Action

The potential environmental impact associated with this action is the relocation of the ship to the JRRF for long term storage.

With regard to potential radiological impacts, twenty two years ago, the reactor was defueled, the control rods were disengaged from their mechanisms, primary system pump rotors were removed from the pumps and other physical changes were performed to make the reactor permanently inoperable. Core internals and primary system piping and components are entombed within the heavily shielded containment vessel which is sealed. No additional radioactivity will be produced, and the existing residual radioactivity will continue to decrease by radioactive decay. From 1981 until 1993, the ship was open to the public as a museum with no measurable radiation exposure to any member of the public. To prevent public access to potential contaminated or radiation areas in the ship, these areas will continue to be sealed and security for the ship will be maintained at the JRRF effectively similar to that in place at the PPDA pier.

In the unlikely event that radioactive waste is produced on the ship, all waste will be removed, packaged, and shipped offsite, or released in accordance with radiological control procedures that are in place and implemented to ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR part 20 and are as low as reasonably achievable (ALARA).

Based on the review of the proposed activities associated with the license amendment for the *N.S. Savannah*, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite.

and no significant increase in individual or cumulative occupational or population radiation exposure. Accordingly, the Commission concludes that the proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, after leaving drydock, the *N.S. Savannah* will be towed to the JRRF using established navigation channels. It will be located within the existing boundary of the Reserve Fleet in the James River. No extensive preparation to the site will be required for the *N.S. Savannah*. It is intended to moor the *N.S. Savannah* alongside the decommissioned U.S. Army Corps of Engineers MH–1A Floating Nuclear Power Barge Sturgis.

The staff has determined that the proposed activities will not result in any significant impacts on air, water, land, or biota in the area or have any other significant non-radiological environmental impact.

Based on the above, the Commission concludes that there are no significant environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Actions

Since the Commission concluded that there are no significant environmental impacts that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative to the proposed amendment request would be to deny the request. This denial would force the PPDA to remain as a co-licensee and the ship to be returned to the PPDA pier. However, the PPDA returned the ship to the MARAD in accordance with the charter agreement and the authorizing legislation (Pub. L. 96–311, August 28, 1980).

Alternative Use of Resources

No alternatives appear that will have different or lesser effect on the use of available resources.

Agencies and Persons Consulted

The NRC staff consulted the U.S. Coast Guard, and the States of South Carolina and Virginia in reviewing the request from the licensees.

Finding Of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. The Commission concludes that the proposed action will not have a significant effect on the quality of the human environment for the reasons set out above.

For detailed information with respect to this proposed action, see the application for amendment dated May 19, 1994, as supplemented by letters dated May 24, and May 25, 1994. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, 27th day of May 1994.

For The Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 94–13502 Filed 6–2–94; 8:45 am]

BILLING CODE 7590–01–M

Pacific Gas & Electric Co.; Withdrawal of amendment to Facility Operating License

[Docket Nos. 50–275 & 50–323]

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Pacific Gas and Electric Company (the licensee) to withdraw its February 4, 1992, application for an amendment to Facility Operating License Nos. DPR–80 and DPR–82, issued to the licensee for operation of the Diablo Canyon Nuclear Power Plant Unit Nos. 1 and 2, located in San Luis Obispo County, California. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on April 1, 1992 (57 FR 11112).

The purpose of the licensee's amendment request was: To revise Technical Specification 3/4.5.1 to increase the accumulator allowed outage time (AOT) from 1 hour to 8 hours for reasons other than a closed isolation valve; to revise the Action Statement to be consistent with the Applicability Statement by replacing the requirement to be in Hot Shutdown with a requirement to place the plant in Hot Standby with pressurized pressure less than or equal to 1000 psig; to revise the frequency of Surveillance 4.5.1.2 for the accumulator pressure and water level channels from 31 days to 92 days; and to revise the surveillance from a Channel Functional Test to an Analog Channel Operational Test.

Subsequently, the licensee informed the staff that the amendment is no longer requested. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendment dated February 4, 1992, and (2) the staff's letters dated April 29, 1994, and May 26, 1994.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland this 26th day of May 1994.

For the Nuclear Regulatory Commission.

L. Mark Padovan,

Acting Project Manager, Project Directorate IV–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–13501 Filed 6–2–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Clearance of a New Information Collection, Form RI 95–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a new information collection. Form RI 94–7, Death Benefit Payment Rollover Election Form (FERS), provides FERS surviving spouses and surviving former spouses with the means to elect payment of FERS rollover-eligible benefits directly or to an IRA.

There are estimated to be 700 respondents for RI 94–7. It takes approximately 60 minutes to complete RI 94–7. The combined annual burden is 700 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Daniel A. Green, Retirement and Insurance Group, FERS Division, U.S. Office of Personnel Management, 1900 E. Street, NW, room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis and Design, (202) 606–0623.

U.S. Office of Personnel Management

Lorraine A. Green,

Deputy Director

[FR Doc. 94–13461 Filed 6–2–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34129 ; File No. SR–Amex–91–31]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Addition of Options Series at 2½ Point Strike Price Intervals for Major Market Index Options

May 27, 1994

On November 27, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to alter its strike price policy in order to introduce near-the-money [3] options series on the XMI at 2½-point strike (exercise) price intervals.[4]

Notice of the proposal was published for comment and appeared in the **Federal Register** on January 15, 1993.[5] No Comments were received on the proposed rule change.

In 1983, when the Exchange began trading index options, options series were introduced in 5-point strike price intervals for index values up to 200 and 10-point increments for index values above 200. Subsequently, the Exchange obtained Commission approval to list index options with 5-point strike price intervals when the value of the relevant index is above 200.[6] The Amex continues to follow this policy for all of the Exchange's index options with expirations up to one year; for longer-term index options, the Exchange may have strike price intervals as wide as 25 or 50 points.

The Amex proposes to amend its strike price policy to allow the Exchange to list near-the-money options on the XMI at 2½-point strike price intervals. The Amex has found that the current policy of 5-point strike intervals frequently results in in-the-money options that are often "too costly" and out-of-the money options that yield too little premium to attract uncovered or covered writers. The Amex believes that the proposal to narrow strike price intervals by increasing the number of available near-the-money strike prices will enable customers to more finely tailor their options positions to achieve their intended investment objectives. In addition, the Amex believes that providing customers with greater opportunities and flexibility will further enhance the depth and liquidity of the Amex's index options markets.

The Amex also believes, in connection with the reduction of the XMI to one-half its previous value,[7] that the addition of 2½-point strike intervals for near-the-money options will satisfy requests by investors to maintain the pre-split "Index-to-strike price ratio" (*e.g.*, from a 640 Index value with 5-point strike price intervals to a 320 Index value with 2½-point strike price intervals).

The Amex believes that the proposal will not result in a proliferation of strike prices since the 2½-point intervals will only be added to surround the XMI's current Index value. For this purpose, 2½ point strikes would only be added 10 points above or below the current Index value.[8] In addition, the Amex represents that listing near-the-money XMI options series at 2½ point price intervals will not adversely impact the capacity of OPRA or market information vendors. In this regard, the Amex notes that the OPRA system was upgraded in early November 1992 to accommodate up to 300 messages per second ("MPS"). The Exchange believes that this capacity is more than sufficient to accommodate the requirements of all OPRA participants, including the proposed 2½ point strike prices for the XMI, since the recent peaks in message traffic for all OPRA participants combined have been in the range of 100–125 MPS. In addition, the Amex believes that the additional options series necessitated by the proposed 2½ point strike prices for the XMI will have no impact on the ability of vendors to receive and process data.[9]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[10] Specifically, the Commission believes that the proposed listing of 2½ point strike price intervals for near-the-money XMI options will provide investors with more flexibility in the trading of XMI options, thereby protecting investors and furthering the public interest by allowing investors to establish XMI options positions that are better tailored to meet their investment objectives.

The Commission also believes that the Amex's proposal strikes a reasonable balance between the Exchange's need to accommodate the needs of investors and the need to avoid the excessive proliferation of options series. Specifically, the Commission believes that by limiting the number of additional strikes to within 10 points above or below the current Index value, the Amex's proposal permits a fairly small absolute increase in the number of XMI strikes that may be outstanding at any one time. Further, the Commission notes that the proposal sets the maximum permissible number of additional 2½ point strikes; the Amex retains discretion to list fewer strike prices than allowed.

In addition, the Commission notes that the Amex has represented that there is customer interest in 2½ strikes for near-the-money XMI options. Specifically, the Exchange has stated that the existing 5-point strike intervals frequently result in in-the-money options that are "too costly" and out-of-the money options that yield too little premium to attract uncovered or covered writers. Moreover, the Amex believes that the proposed 2½ point strike intervals will satisfy requests by investors to maintain the pre-split "Index-to-strike price ratio" of the XMI. In light of the investor interest in the

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] The Amex amended its proposal to define "near-the-money" as a strike price within 10 points above or below the current value of the Major Market Index ("XMI" or "Index"). Thus, if the XMI is at 310, the proposal would allow the Exchange to list 2½ point strikes between the range of 290 to 310. *See* Letter from Ellen T. Kander, Special Counsel, Derivative Securities, Amex, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation ("Division"), Commission, dated March 4, 1993 ("March 4, 1993 Letter").

[4] On December 8, 1992, the Amex amended its filing to include a memorandum from Charles H. Faurot, Amex, to Howard Baker, Amex, dated December 2, 1992, which discusses the ability of the Options Price Reporting Authority ("OPRA") and market information vendors to accommodate the additional strike prices provided for under the proposal ("OPRA Capacity Statement"). *See* Letter from Ellen Kander, Special Counsel, Derivative Securities, Amex, to Thomas Gira, Branch Chief, Options Regulation, Division, Commission, dated December 8, 1992.

[5] See Securities Exchange Act Release No. 31710 January 8, 1993), 58 FR 4720

[6] See Securities Exchange Act Release No. 21644 (January 9, 1985), 50 FR 2360 (order approving File No. SR–Amex–84–31).

[7] See Securities Exchange Act Release No. 29798 (October 8, 1991), 56 FR 51976 (order approving File No. SR–Amex–91–18).

[8] See March 4, 1993 Letter, *supra* note 4

[9] See OPRA Capacity Statement, *supra* note 4.

[10] 15 U.S.C. 78f(6)(5) (1982).

2½ price strikes, and the proposal's limit on the number of strikes the Amex may list, the Commission believes that the proposal should provide the Amex with the flexibility to list additional strike prices in near-the-money XMI options in response to genuine customer interest and, at the same time, appropriately limit the number of XMI options series that may be outstanding at any one time. Finally, based on representations from OPRA,[11] the Commission is satisfied that the Amex and OPRA will have adequate computer processing capacity to accommodate the trading and quote dissemination demands of the additional strike prices that may be listed under the proposal.

In summary, the Commission believes that the benefits to be derived from the proposal in accommodating the needs and objectives of investors outweigh the possible adverse effects on market liquidity due to the dispersion of trading interest in more XMI options series. In making this determination, the Commission notes that the change is limited to near-the-money series in XMI options only. Nevertheless, the Commission expects the Amex to monitor additional strikes added under this proposal to ensure that there are no detrimental effects on the market for XMI options.

It is therefore ordered, pursuant to section 19 (b) (2) of the Act,[12] that the proposed rule change (File No. SR-Amex-91-31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13472 Filed 6–2–94; 8:45 am]

BILLING CODE 8010–01–M

[11] See OPRA Capacity Statement, *supra* note 4.

[12] 15 U.S.C. 78s(b) (2) (1982).

[13] 17 CFR 200.30-3 (a) (12) (1993).

[Release No. 34–34127; File No. SR–CBOE–94–01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Submission of Options Transaction Data for Trade Recording and Price Reporting Purposes

May 27, 1994.

On January 22, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposal to amend CBOE Rule 6.51, "Reporting Duties," Interpretation and Policy .01, to allow members to submit options transaction data to the Exchange for trade recording and price reporting purposes through an electronic data storage medium approved by the Exchange.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 33730 (March 8, 1994), 59 FR 11814. No comments were received on the proposed rule change.

Currently, CBOE Rule 6.51, Interpretation and Policy .01, requires both the buyer and the seller in a transaction to record on a card or ticket information concerning the transaction, including the buyer's or seller's assigned broker initial code and his clearing firm (if a market maker), the symbol of the underlying security, the type, expiration month and exercise price of the option contract, the transaction price, the number of contract units comprising the transaction, the time of the transaction, the name of the contra clearing firm member and the assigned broker initial code of the contra member. Under Interpretation and Policy .01, this information constitutes the "transaction record." The CBOE proposes to amend Interpretation and Policy .01 to allow members to submit options transaction data to the Exchange for trade recording and price reporting purposes through an electronic data storage medium approved by the Exchange.

Under current CBOE Rule 6.51, Interpretation and Policy .01, buyers and sellers must submit transaction data in paper form only, either on a trade ticket or transaction card. The CBOE believes that in today's market and operations technology environment, that limitation is unduly restrictive, and some CBOE members have requested the opportunity to submit transaction record data by means of electronic data transmission. Submission in that form would enable those members to enjoy the efficiency of reporting trades and prices to the CBOE through the same automated medium they use to report that information to their clearing firms. Accordingly, the CBOE seeks authority to approve particular electronic media in addition to paper that CBOE members may use for trade recording and price reporting purposes.

In administering the proposed rule change, the CBOE states that the Exchange will from time to time identify particular electronic media and formats acceptable for use under Exchange Rule 6.51 based on members' needs, and will inform members about acceptable media and formats through appropriate circulars. The CBOE expects to identify as acceptable only those electronic media that involve secure and tested technology.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to facilitate cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, consistent with the protection of investors and the public interest.

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b)(5) and section 17A(a)(1)(A) of the Act.[4] Specifically, the Commission believes that the CBOE's proposal will provide buyers and sellers on the CBOE with an efficient and accurate means of recording options transactions and submitting price reporting information to the CBOE with an efficient and accurate means of recording options transactions and submitting price reporting information to the CBOE while preserving the CBOE's ability to create necessary and reliable audit trail information. The Commission believes that the electronic submission of transaction data should help to ensure the accuracy of the CBOE's audit trails by reducing the possibility of human error.[5] In turn, the audit trail information should help the CBOE to enforce compliance by its members with the federal securities laws and the CBOE's rules, thereby increasing the CBOE's ability to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and protect investors and the public interest, consistent with

[1] 15 U.S.C. 78(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] On April 12, 1994, the CBOE submitted a letter clarifying that the proposal would allow buyers and sellers to submit transaction information through an electronic data storage medium acceptable to the Exchange and allow them to provide the information required for price reporting through an electronic data transmission link approved by the CBOE. *See* letter from Michael L. Meyer, Schiff Hardin & Waite, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation ("Division"), Commission, dated April 8, 1994.

[4] 15 U.S.C 78f and 78q–1 (1982).

[5] Telephone conversation between Barbara Casey, CBOE, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, on April 22, 1994.

section 6(b)(5) of the Act. Moreover, the Commission finds that the proposal is consistent with section 17A(a)(1)(A) of the Act because it is designed to promote the prompt and accurate clearance and settlement of securities transactions.

In addition, the CBOE has represented that it will approve only those electronic media that involve secure and tested technology for submitting options transaction data under CBOE Rule 6.51. The Commission expects the CBOE to notify the Commission of any changes in the technology approved by the Exchange for submitting options transaction data.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[6] that the proposed rule change (SR–CBOE–94–01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13471 Filed 6–2–94; 8:45am]

BILLING CODE 8010–01–M

[Release No. 34–34128; File No. SR–CBOE–94–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Modification of Fees for Failure to Observe OEX RAES Requirements

May 27, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 1, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, CBOE Rule 24.17, "RAES Eligibility in OEX," establishes eligibility standards under which individuals, member organizations, and joint accounts may participate in the CBOE's Retail Automatic Execution System ("RAES") for Standard & Poor's 100 Index ("OEX") options. The CBOE proposes to amend CBOE Rule 24.17(a)(iii) to provide that an individual required to sign onto RAES immediately prior to expiration may apply to the OEX Floor Procedure Committee ("OFPC") for prospective relief from the log-on requirements during a particular expiration cycle. The CBOE also proposes to delete paragraph (iv), which states, among other things, that a member's failure to meet his RAES obligations will disqualify him from signing onto RAES for such time period as the OFPC determines. In addition, the CBOE proposes to replace the current $500.00 fee for failing to comply with CBOE rule 24.17's log-on and log-off requirements with the following fee schedule: (1) A fee of $100.00 for one to three failures within one calendar year; (2) a fee of $250.00 for four to six failures within one calendar year; and (3) a fee of $500.00 for seven or more failures within one calendar year. Finally, the CBOE proposes to assess a fee for any joint account member or nominee of a member organization who has logged onto RAES and later terminates participation on RAES at any time prior to the next succeeding expiration date, unless the member participates in another OEX RAES account or terminates his membership with the Exchange.

The text of the proposal is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE states that the purpose of the proposed rule change is to eliminate the automatic disqualification provisions in CBOE Rule 24.17 and to reduce the fees now required of members under that rule for failure to observe the rule's log-on and log-off requirements. In addition, the proposal makes certain editorial changes to clarify CBOE Rule 24.17 without affecting its substance.

In May 1993, Exchange Rule 24.17 was amended to establish, among other things, more rigorous log-on and log-off requirements for participants in OEX RAES.[1] For example, group members who previously were logged on automatically by the Exchange must now log on at their own initiative each time they enter the trading crowd. Likewise, members who previously were not required to log off the system each time they left the trading crowd must now do so.

In view of such additional log-on and log-off requirements, the Exchange believes that the $500.00 fees currently due from members who do not log on or log off as required are excessive. The proposed rule change therefore establishes a new graduated fee schedule, under which the fee amount will increase in relation to the number of times within any one calendar year that a member does not log on or log off as required. Specifically, during each calendar year, a $100.00 fee will be due for each of the first three times that a member fails to observe the log-on or log-off requirements; a $250.00 fee will be due for each of the fourth through sixth such times; and a $500.00 fee will be due for all subsequent times. In addition, the CBOE proposes to assess a $500.00 fee on any member participating in a joint account or nominee account held by a member organization if the member logs onto OEX RAES but thereafter terminates participation prior to the next succeeding expiration date without either joining another OEX RAES account or terminating membership on the Exchange.

Members who fail to observe CBOE Rule 24.17 can be subject to a variety of sanctions.[2] The CBOE states that the

[6] 15 U.S.C. 78s(b)(2) 1982).

[7] 17 CFR 200.30–3(a)(12) (1993).

[1] See Securities Exchange Act Release No. 32248 (April 30, 1993), 58 FR 27596 ("RAES Fee Approval Order").

[2] Under CBOE Rule 24.17(b)(iv), the OFPC may bar, restrict, or condition a joint account's participation in RAES if any member fails to meet the OEX market maker requirements. Under CBOE rule 24.17(c)(vi), the OFPC may bar, restrict, or condition a member organization's participation in RAES if any nominee on RAES in OEX fails to meet the OEX market maker requirements. CBOE Rule 24.17(e)(ii) provides several sanctions for failures to comply with the requirements of CBOE Rule 24.17 including disciplinary action under, among others, CBOE Rule 6.20, "Admission to and Conduct on the Trading Floor," and Chapter XVII, "Discipline," of the CBOE's rules. In addition, the OFPC may take remedial action, including suspension of a member's eligibility for participation on RAES and other remedies appropriate under Chapter VII

(Continued

fees suggested in the proposed rule change, like the fees imposed currently under CBOE Rule 24.17, do not constitute disciplinary action. Nevertheless, the review procedures in Chapter XIX, "Hearings and Review," of the Exchange's rules will be available with respect to the assessment of the proposed fees. Under those procedures, a member may seek verification of fees charged by the Exchange. If the member is not satisfied with the verification of fees, he may request a hearing before a panel of three or more members of the Exchange's Appeals Committee. At the hearing the appellant may be represented by counsel and may cross-examine witnesses.[3]

In addition, the decision of the Exchange's Appeals Committee panel is subject to review by the Board of Directors of the Exchange on the Board's own motion, on the written request of the appellant, or at the request of the Exchange's President or the relevant Exchange Committee Chairman. The review must be conducted by the Board or by a Board Committee consisting of at least three Directors (other than Directors who sat on the Appeals Committee in the matter). An appellant has an opportunity to address issues raised specifically by the Board or the Committee, and in addition may submit oral or written arguments if the Board so allows in its discretion.[4]

The CBOE states that in a related context the Commission has noted the appropriateness of fees like those proposed herein, particularly when coupled with appeal rights. Specifically, in approving a CBOE proposal that included procedures for contesting the fees assessed for delayed submission of trade data, the Commission stated that "Although such formalized procedures are unusual for challenging fee assessments, they actually make the imposition of the fee fairer by allowing members to challenge erroneous fee charges. Moreover, these procedures are reasonably designed to afford a member assessed a fee the opportunity to challenge the veracity of the assessments."[5]

The Exchange believes that the proposed fee schedule is appropriate and equitable given the additional requirements imposed on participants in OEX RAES in the RAES Fee Approval Order. Furthermore, to ensure that all members are treated alike under the RAES Fee Approval Order, the Exchange will apply the revised fee schedule retroactively from April 30, 1993, the effective date of the RAES Fee Approval Order.

The proposal also deletes the automatic disqualification provisions that appear in current CBOE Rules 24.17(a)(iv), (b)(vii), and (c)(viii). The CBOE believes these deletions are appropriate in view of the new requirements imposed under the RAES Fee Approval Order and the fee structure imposed hereunder.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5), in particular, in that it is designed to allocate reasonable dues, fees and charges among CBOE members and to promote the efficiency and effectiveness of the CBOE's automatic execution system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 24, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-13473 Filed 6-2-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-26058]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 27, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 20, 1994 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/

"Market Makers, Trading Crowds, and Modified Trading Systems," of the CBOE's rules.

[3] See CBOE Rules 19.3, "Procedure Following Applications for Hearing," and 19.4, "Hearing."

[4] See CBOE Rule 19.5, "Review."

[5] See Securities Exchange Act Release No. 30001 (November 26, 1991), 56 FR 63529 (order approving File No. SR-CBOE-90-06).

or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–7932)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, its wholly owned nonutility subsidiary companies, Southern Electric International, Inc. ("SEI"), 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338 and Southern Company Services, Inc. ("SCS"), 64 Perimeter Center East, Atlanta, Georgia 30346, and Southern's operating electric utility subsidiary companies Southern Nuclear Operating Company, 42 Inverness Center Parkway, Birmingham, Alabama 36242, Alabama Power Company, 600 Piedmont Avenue NE., Atlanta, Georgia 30308; Mississippi Power Company, 2992 West Beach, Gulfport, Mississippi 39501; Georgia Power Company, 333 Piedmont Avenue NE., Atlanta, Georgia 30308; Gulf Power Company, 500 Bayfront Parkway, Pensacola, Florida 32501; and Savannah Electric and Power Company ("Savannah"), 600 Bay Street East, Savannah, Georgia 31401 ("Operating Companies"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 13(b), 32 and 33 of the Act and Rules 43, 45, 46, 53, 54, 86, 87, 90 and 91 thereunder.

By Commission order dated October 20, 1987 (HCAR No. 24476) ("1987 Order"), SEI was authorized to engage in the design, development, construction, ownership and operation of cogeneration and independent power facilities within and outside the United States. SEI also provides technical services to industrial and commercial concerns, unaffiliated utilities and foreign governments in both domestic and international markets, and markets intellectual property acquired or created by Southern system companies to unaffiliated third parties in accordance with Commission orders dated July 17, 1981 and December 18, 1981 (HCAR Nos. 22132 and 22315A) ("Original Orders").[1]

As a part of a plan to reorganize various non-utility businesses of Southern and its subsidiaries along functional lines, Southern and SEI propose in this application-declaration to amend and restate SEI's existing financing and operational authority. SEI, SCS and the Operating Companies also propose to enter into intrasystem service agreements pursuant to which such companies may render services and sell goods to "exempt wholesale generators," or "EWGs," as defined in Section 32 of the Act, and "foreign utility companies," or "FUCOs," as defined in Section 33, as well as to associate companies that own qualifying facilities ("QFs") as defined under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), or other facilities that SEI may hereafter be authorized to acquire.

Southern and SEI have adopted a plan of reorganization pursuant to which SEI proposes to organize and acquire all of the stock of a newly organized Delaware corporation ("Newco") in exchange for certain assets of SEI consisting primarily of rights under certain existing consulting agreements with third parties and accounts receivable associated therewith, which will be assigned to Newco; computers; office equipment and furniture; and interests in certain software programs and other proprietary technology. Newco will also assume certain liabilities of SEI including accounts payable, accrued pension and retirement costs associated with employees to be transferred to Newco, and certain loss reserves under existing contracts. Immediately thereafter, the shares of Newco will be distributed to Southern as a dividend distribution, and Newco and Development will be merged pursuant to a plan adopted under applicable state law.

SEI and Southern propose to relinquish the authority granted by the Commission in the Original Orders and the 1987 Order upon the effective date of the Commission's order relating to this application-declaration and to the application of Southern and Development, except with respect to any contracts and investments that are entered into or made by SEI prior to the effective date of such orders in reliance upon and in accordance with the Original Orders or the 1987 Order.

SEI proposes to continue to engage in preliminary project development activities ("Development Activities") relating to the potential acquisition and ownership of independent power facilities, including QFs and facilities to be owned or operated by EWGs and FUCOs, and other power production facilities located within the service territories of the Operating Companies or the service territories of other members of the Southeastern Electric Reliability Council, together with facilities and equipment that are ancillary to the foregoing, such as may be used for fuel production, conversion, handling and/or storage; electrical transmission; and energy management, recovery and efficiency (hereinafter referred to collectively as "Projects"). With the exception noted below, in any case in which SEI's Development Activities culminate in a proposal to acquire the securities of or other interest in any EWG or EUCO, it is intended that Southern, rather than SEI, would consummate the acquisition in an exempt transaction pursuant to section 32 or 33 of the Act, as applicable, subject to complying with all rules and regulations promulgated thereunder. Any acquisition by Southern or SEI of an interest in any other type of Project, and any related financing, would be the subject of separate filings with this Commission.

SEI requests authority to acquire the stock of and provide needed working capital to one or more foreign subsidiaries through which SEI would conduct its project Development Activities. SEI represents that in no case will any such subsidiary, directly or indirectly, acquire, own or operate any significant assets or facilities, other than a bank account, leased office space and related office equipment, issue or acquire any securities, other than common shares issued to SEI, or provide services or sell goods to any associate company. The sole function of any such subsidiary would be to engage in Development Activities on behalf of SEI in a foreign country or countries whose laws would subject SEI to significant restrictions or penalties if SEI were itself to maintain a legal presence in any such country. The capitalization of any such subsidiaries is expected to be less than $50,000.

SEI also proposes to render project development, engineering, design, construction and construction management, operating, fuel management, maintenance and power plant overhaul, and other similar kinds of managerial and technical services to both affiliated Project entities and to non-affiliated developers, operators and owners of independent power projects and foreign and domestic utility systems. SEI proposes to render such services utilizing its own work force, and personnel and other resources of SCS and the Operating Companies obtained pursuant to service agreements ("Service Agreements") as described below. SEI also proposes that in conjunction with providing services to non-affiliates, it may enter into separate agreements to sell or license intellectual property it has created or acquired from

[1] In a related proceeding (see File No. 70–8173), Southern proposes to restate the operational and financing authority of The Southern Development and Investment Group, Inc. ("Development"), also a wholly owned nonutility subsidiary of Southern. It is proposed that Development will succeed to certain of SEI's consulting activities (generally, consulting activities that are not related to domestic power generation or foreign generation, transmission, or distribution), and to SEI's licensing of intellectual property, among other business activities.

non-affiliates in connection with its authorized business activities.

All services rendered by SEI to non-affiliates will be based upon the fair market value thereof. SEI also proposes to provide such services and sell goods to any Project entity that is an associate company (including but not limited to any EWG, FUCO, or QF) at fair market prices, and requests an exemption pursuant to section 13(b) from the requirements of rules 90 and 91 as applicable to such transactions in any case in which any one or more of the following circumstances shall obtain:

1. Such Project entity derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

2. Such Project entity is an EWG which sells electricity at market-based rates which have been approved by FERC or the appropriate state public utility commission, or a QF which sells electricity at the purchaser's "avoided cost" determined in accordance with the regulations under PURPA, or sells electricity at rates negotiated at arms'-length with large industrial or commercial customers purchasing such electricity for their own use and not for resale;

3. Such Project entity sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that: (i) the purchaser of such electricity is not an associate company of SEI within the Southern system, and (ii) the terms and conditions (including price) of the contract pursuant to which SEI agrees to provide such services or goods have been expressly approved by the holders of a majority of the equity interests of such Project entity other than Southern or any associate company of Southern.

SEI owns the exclusive rights to a proprietary computer-based remote generator dispatch and control program, known as "Standby Capacity Network" ("SCN"). The SCN program enables a utility company remotely to access the capacity associated with stand-by or emergency generators owned by its large customers, such as hospitals, factories, and office buildings and operate the generators in parallel with its own grid. An SCN program could be implemented pursuant to a contract between a utility and SEI under which SEI would agree to install certain equipment (primarily controls) incorporating its proprietary software program and interconnection equipment and to act as the utility's agent in operating, maintaining and fueling the customer's standby generator. Under such an arrangement, SEI would be compensated by the utility. SEI would not seek to acquire any interest in the customer's generating equipment, and would not take title to the electricity generated. SEI would retain all right, title and interest to the proprietary software used in SCN.

SEI proposes to market the SCN program to both affiliated and unaffiliated utilities and/or their respective customers. The program and related services would be sold to unaffiliated parties at prices to be negotiated based upon the fair market value thereof. As currently required under the terms of the Original Orders, SEI will make the proprietary technology incorporated into the SCN program available to the Operating Companies without charge (except for the actual expenses incurred by SEI in making such program available). If an Operating Company requests SEI to provide any related service, e g., software support, training of Operating Company personnel, maintenance of the customer's equipment, or the like, SEI would be the associate company for the costs of such services, determined in accordance with rules 90 and 91.

Under the Original Orders, SEI has entered into Service Agreements with SCS and each of the Operating Companies (other than Savannah, which was not then a subsidiary of Southern) pursuant to which personnel and other resources of SCS and the Operating Companies may be made available to SEI, upon request, to support SEI in connection with its authorized activities. Under these agreements, SEI is obligated to reimburse SCS or an Operating Company, as the case may be, for the cost of such services, determined in accordance with Rules 9 and 91. The cost of services provided by an Operating Company to SEI includes all direct charges and certain indirect costs, such as pension costs, insurance, payroll taxes, and payments to employee benefits plans, and a portion of the administrative and general expenses of the Operating Company.

The existing Service Agreements also obligate SEI to make any new intellectual or proprietary property, processes, programs, computer or other data bases, support services, training and other facilities and techniques developed in the course of SEI's business available for utilization by other Southern system companies without charge, except for the actual expenses incurred in making the same available, to the extent that SEI has or retains proprietary rights therein. Under the Service Agreements, SEI has a reciprocal right to receive such intellectual property from SCS and the Operating Companies without charge, except for the actual expenses incurred in making the same available.

SCS and the Operating Companies propose to continue to render services and provide other resources to SEI in connection with SEI's authorized activities in accordance with the existing Service Agreements, as amended, to reflect the changes to SEI's authorized business activities and to comply with the Commission's rules relating to the rendering of services or sale of goods directly by SEI or indirectly by the Operating Companies and SCS to EWGs and FUCOs in which Southern holds an interest.

SCS and the Operating Companies will not, without requesting the further approval of the Commission, render any services or sell any goods directly or indirectly to any EWG or FUCO in which Southern holds an interest, except pursuant to the Service Agreements, as herein proposed to be amended.

Southern proposes to invest in SEI up to an aggregate of $250,000,000 from time to time through December 31, 1998, in addition to any investments in SEI that Southern shall have made pursuant to previous authorizations, including but not limited to the 1987 Order, prior to the effective date of the order in this proceeding. It is proposed that such additional investments may take the form of any combination of cash capital contributions to SEI, loans to SEI by Southern, and loans to SEI by one or more lenders other than Southern that are guaranteed by Southern.

SEI proposes to issue promissory notes ("Notes") from time to time through December 31, 1998 to Southern or to lenders other than Southern which have been guaranteed by Southern, provided that the sum of the aggregate principal amount of Notes at any time outstanding and Southern's additional investments in SEI shall not exceed $250 million. The Notes would have maturities no later than December 31, 2003, and would bear interest at a rate of not more than 3% over the prime rate at the bank to be designated by Southern in the case of Notes issued to lenders other than Southern, and a rate of not more than the prime rate in the case of Notes issued to Southern. In connection with any sale of Notes to lenders other than Southern, a commitment fee may be paid in an amount not greater than ½ of 1% of the principal amount of the Note. It is anticipated that any such Notes may be guaranteed by Southern as to principal, premium, if any, and interest. It is further proposed that the Notes issued to Southern may, at the option of Southern, be converted to

capital contributions to SEI through Southern's forgiveness of the debt (including any accrued interest) represented thereby.

Southern also proposes, from time to time, to guarantee or act as indemnitor of commercial sureties required to support bid bonds and performance and other obligations (other than securities or other financial instruments) issued or undertaken by SEI in connection with its authorized activities.

It is therefore proposed that Southern may (i) provide such guarantees of, and similar provisions and arrangements concerning, the performance and undertaking of other obligations by SEI (or any subsidiary of SEI), or of any Project entity (including but not limited, to EWGs and FUCOs) in which Southern holds a direct or indirect interest, and of other obligations relating to SEI's authorized activities, and (ii) provide such indemnifications of and with respect to persons acting as surety on bonds or other obligations on behalf of such companies, in an aggregate amount outstanding at any one time of $800,000,000 through December 31, 2003; provided, that any guarantees or indemnifications outstanding at December 31, 2003 shall continue until expiration or termination in accordance with their terms; and provided further that the aggregate amount of such authorized guarantees or indemnifications of sureties shall be reduced dollar for dollar by any similar guarantees or indemnifications of sureties made or incurred by Southern pursuant to authority requested in File No. 70–8173 in connection with the business activities of Development.

As a further limitation to the foregoing, Southern states that the aggregate maximum amount of its exposure at any one time under all performance guarantees or indemnification or similar arrangements entered into on behalf of subsidiary companies that are EWGs or FUCOs shall not exceed $250,000,000, and that such amount shall be treated as part of Southern's "aggregate investment" in all such entities for purposes of rule 53(a). Southern proposes to negotiate specific guarantees and similar provisions and arrangements with third parties, and indemnifications of sureties, as the need to do so arises, without further Commission authorization.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13515 Filed 6–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20321; 811–5827]

Templeton Tax Free Trust; Notice of Application

May 27, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Templeton Tax Free Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 31, 1994, and amended on May 20, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 22, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secetary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 700 Central Avenue, St. Petersburg, Florida 33701–3628.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 942–0583, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, an open-end non-diversified management investment company, is organized as a business trust under the laws of the Commonwealth of Massachusetts. On July 19, 1989, applicant filed a notification of registration on Form N–8A under section 8(a) of the Act, and a registration statement on Form N–1A under section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on September 15, 1989, and the public offering of applicant's shares commenced on that date.

2. At a meeting held on February 27, 1993, applicant's board of trustees approved agreements and plans of reorganization providing for the transfer of all of the assets of applicant's two series to two other investment companies. These agreements provided for the transfer of all of the assets of (1) Templeton Insured Tax Free Fund ("Templeton Insured") to Franklin Insured Tax-Free Income Fund ("Franklin Insured"), a series of Franklin Tax-Free Trust, in exchange for shares of Franklin Insured, and (2) Templeton Tax Free Money Fund ("Templeton Money") to Franklin Tax-Exempt Money Fund ("Franklin Money") in exchange for shares of Franklin Money.

3. The trustees determined that the proposed reorganizations were in the best interests of the shareholders of each series because they would permit shareholders to pursue their investment goals in larger funds, which would have enhanced ability to effect portfolio transactions on more favorable terms and should have greater investment flexibility. The trustees also decided that the reorganizations would enable shareholders to obtain the benefits of economies of scale.

4. Templeton Global Bond Managers ("Templeton Global"), a division of Templeton Investment Counsel, Inc. ("TICI"), is the investment adviser for Templeton Insured and Templeton Money. Franklin Advisers, Inc. is the investment adviser for Franklin Insured and Franklin Money. TICI and Franklin Advisers, Inc. are wholly owned subsidiaries of Franklin Resources, Inc. Accordingly, Templeton Insured and Franklin Insured, and Templeton Money and Franklin Money, may be deemed to be affiliated persons by reason of being under the control of investment advisers that are themselves under common control. Applicant therefore relied on the exemption provided by rule 17a–8 under the Act to effect the transaction.[1] Consequently,

[1] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers. The staff of the Division of Investment Management has stated that it would not recommend that the Commission take enforcement action under section 17(a) of the Act if investment companies that are affiliated persons solely by reason of having investment advisers that are under common control rely on rule 17a–8. See

the trustees determined, in accordance with rule 17a–8, that the purchase of the assets of the two series by Franklin Insured and Franklin Money was in the best interests of the shareholders of the series, and that such purchases would not result in any dilution to the interests of the existing shareholders of the series.

5. A registration statement on Form N–14 was filed with the SEC on May 28, 1993, and the proxy statement/prospectus contained therein was furnished to applicant's shareholders on or about July 15, 1993. The holders of a majority of the outstanding voting shares of each of Templeton Insured and Templeton Money approved agreements and plans of reorganization with Franklin Insured and Franklin Money, respectively, at a special meeting of shareholders held on August 27, 1993.

6. On August 27, 1993, there were 18,793,312 shares with a net asset value of $1 per share of Templeton Money. On that date, Franklin Money acquired all of the assets of Templeton Money in exchange for shares of Franklin Money. The number of full and fractional shares that were exchanged for the assets of Templeton Money was determined by dividing the net asset value per share of Templeton Money as of that date by the net asset value per share of Franklin Money. The result was then multiplied by the number of outstanding shares of Templeton Money. Immediately following the acquisition, Templeton Money dissolved and distributed the shares of Franklin Money *pro rata* to its shareholders of record.

7. On August 27, 1993, there were 2,773,418 shares with a net asset value of $11.7566 per share of Templeton Insured, which had aggregate net assets of $32,605,919. On that date, Templeton Insured distributed to its shareholders $.085 per share of net investment income and $.03 per share of net realized capital gains. Shortly thereafter, Franklin Insured acquired all of the assets of Templeton Insured in exchange for shares of Franklin Insured. The number of full and fractional shares of Franklin Insured that were exchanged for the assets of Templeton Insured was determined by dividing the net asset value per share of Templeton Insured as of that date by the net asset value per share of Franklin Insured. The result was then multiplied by the number of outstanding shares of Templeton Insured. Immediately following the acquisition, Templeton Insured dissolved and distributed the shares of Franklin Insured *pro rata* to its shareholders of record.

8. The expenses attributable to the acquisition of Templeton Insured by Franklin Insured, including printing and mailing costs for proxy statements and related documents, amounted to $12,565.77. Templeton Global, Franklin Advisers, Inc., Templeton Insured, and Franklin Insured each paid one quarter of this amount. The expenses attributable to the acquisition of Templeton Money by Franklin Money, including printing and mailing costs for proxy statements and related documents, amounted to $16,860.82. Templeton Global, Franklin Advisers, Inc., Templeton Money, and Franklin Money each paid one quarter of this amount.

9. At the time of the application, applicant had no shareholders, assets, or liabilities, nor was it a party to any litigation or administrative proceedings. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

10. Applicant intends to file a certificate of dissolution in accordance with the laws of the Commonwealth of Massachusetts.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13516 Filed 6–2–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Commuter Fitness Determination of Dolphin Express Airlines, Inc. D/B/A Dolphin Airlines

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 94–5–39, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Dolphin Express Airlines, Inc. d/b/a Dolphin Airlines is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

DATES: Persons wishing to file objections should do so no later than June 6, 1994.

ADDRESSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determinations should file their responses with the Air Carrier Fitness Division, X–56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: May 27, 1994.

Robert S. Goldner,

Special Counsel to the Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–13508 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–62–P–M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Traffic Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the FAA's Aviation Rulemaking Advisory Committee on air traffic issues.

DATES: The meeting will be held on June 15, 1994, at 9:30 a.m.

ADDRESS: The meeting will be held at the National Business Aircraft Association, 1200 18th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Air Traffic Rules and Procedures Service, Federal Aviation Administration, telephone: 202–267–8783.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee on air traffic issues to be held at 9:30 a.m., Wednesday, June 15, 1994, at the National Business Aircraft Association, 1200 18th Street, NW., Washington, DC. The agenda for this meeting will include briefings on:

- Special visual flight rules operations;
- Mode S Study; and
- Status of the Unmanned Air Vehicle Working Group

Attendance is open to the interested public but will be limited to the space available. The public may present written statements to the committee at any time by providing 30 copies to the Assistant Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC., on May 27, 1994.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee on Air Traffic Issues.

[FR Doc. 94–13519 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Arcata/Eureka Airport (ACV), Arcata, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use revenue from a PFC at Arcata/Eureka Airport (ACV) under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 Pub. Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 5, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009 or San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John Murray, Public Works Director, County of Humboldt at the following address: 1106 Second Street, Eureka, California 95501. Air carriers and foreign air carriers may submit copies of written comments previously provided to the county of Humboldt under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, room 210, Burlingame, CA 94010–1303, Telephone: (415) 876–2805. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Arcata/Eureka Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 20, 1994, the FAA determined that the application to impose and use a PFC submitted by the County of Humboldt was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 26, 1994.

The following is a brief overview of the application.

Level of proposed PFC: $3.00.

Proposed charge effective date: August 2, 1994.

Proposed charge expiration date: August 30, 1996.

Total estimated PFC revenue: $384,500.00.

Brief description of the proposed projects: Matching funds for Arcata Projects 3–06–0010–15 & 3–06–0010–16 to cover Runway 24–32 resurfacing project, Kjer Road Property Acquisition at Arcata for Runway Protection Zone, Arcata Airport Fire Hydrant System Replacement and Arcata Airport Building Demolition; Murray Field Rehabilitation of Runway 11–29, Taxiways & Aprons, Construct Access Road, Fence Access Road & Parking Lot and Install Emergency Generator; Rohnerville Emergency Generator Replacement; and, Humboldt County Airport Master Plans & Airport Layout Plans Update.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Humboldt, CA.

Issued in Hawthorne, California, on May 20, 1994.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western Pacific Region.

[FR Doc. 94–13520 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

[Preemption Determination No. PD–7(R); Docket No. PDA–12(R)]

Maryland Certification Requirements for Transporters of Oil or Controlled Hazardous Substances

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Administrative determination of Preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

APPLICANT: Chemical Waste Transportation Institute and National Tank Truck Carriers, Inc.

STATE LAWS AFFECTED: Code of Maryland Regulations 26.10.01.16.D and 26.13.04.01.F.

APPLICABLE FEDERAL REQUIREMENTS: Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 et seq., and the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180.

MODE AFFECTED: Highway.

SUMMARY: Maryland regulations requiring certification of operators of motor vehicles loading or unloading oil or "controlled hazardous substances" in Maryland are preempted by 49 App. U.S.C. 1811(a)(2) as they apply to operators of vehicles transporting hazardous materials not domiciled in Maryland. These requirements are stricter than operator training requirements promulgated under the HMTA, and therefore are obstacles to accomplishing the full purposes and objectives of the HMTA. As applied to operators domiciled in Maryland, the requirements are not preempted.

FOR FURTHER INFORMATION CONTACT: Charles B. Heltman, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590–0001, telephone number (202) 366–4400.

SUPPLEMENTARY INFORMATION:

I. Application for Preemption Determination

On April 19, 1993, the Chemical Waste Transportation Institute (CWTI) and the National Tank Truck Carriers,

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e.g., Capitol Mutual Funds and Nations Fund Trust (pub. avail. Feb. 24, 1994).

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Inc. (NTTC) jointly applied for a determination of preemption pursuant to 49 CFR 107.203. The CWTI/NTTC application seeks an administrative determination that the HMTA preempts State of Maryland certification requirements for operators of vehicles loading or unloading oil or "controlled hazardous substances" in Maryland.

On May 19, 1993, RSPA published a Public Notice and Invitation to Comment, providing for comments until June 23, 1993, and rebuttal comments until August 29, 1993. 58 FR 29322. Eight transporters of oil, hazardous waste or hazardous materials, one transporter association and one environmental services firm submitted comments supporting preemption of one or both sets of certification requirements. The Maryland Department of the Environment, Waste Management Administration (MDE), submitted comments opposing preemption of the requirements for operators of oil transport vehicles, but took no position on the requirements for operators of controlled hazardous substance transport vehicles. The Commonwealth of Massachusetts, Department of Environmental Protection, Division of Hazardous Materials (MassDEP), submitted comments opposing preemption in part. CWTI/NTTC submitted rebuttal comments responding to those of MDE and MassDEP.

A. Maryland Requirements for Operator Certification

The two provisions of Maryland law for which CWTI/NTTC request a determination of preemption impose certification requirements on operators of motor vehicles used to transport oil or "controlled hazardous substances."

1. Oil Transporter's Certificate

The first certification requirement for which CWTI/NTTC seek a finding of preemption is Code of Maryland Regulations (COMAR) 26.10.01.16.D. This regulation, issued pursuant to general statutory authority in Environment Article § 4–403, Annotated Code Maryland, prescribes that "[a] vehicle used in the transport or transfer of oil shall be operated by a driver possessing a valid Oil Vehicle Operator's Certificate" issued by MDE. Read in conjunction with COMAR 26.10.01.17.A, the requirement applies only to operators of oil cargo tank vehicles. Further, it applies only to vehicles into which oil is loaded, or from which it is unloaded, in Maryland; it does not apply to operators of vehicles that simply pass through the State. COMAR 26.10.01.17.B. The certificate is issued "after the driver has completed an examination and has obtained a passing grade indicating his knowledge of the procedures employed for the safe handling of oil, oil spill control measures and oil spill reporting requirements." COMAR 26.10.01.17.A(2). The operator must carry the certificate whenever engaged in the transfer or transport of oil. COMAR 26.10.01.17.A(4).

An operator must preregister for the examination, which is given at five in-state locations and at out-of-state business locations as approved by MDE. There is no fee for the examination or the certificate. The certificate is valid for five years.

2. Controlled Hazardous Substance Transporter's Certificate

The second certification requirement for which a finding of preemption is sought is COMAR 26.13.04.01.F(1). This provision, enacted pursuant to Environment Article § 7–252(b), Annotated Code of Maryland, states:

> A person may not transport any CHS [controlled hazardous substance] from any source in the State or to any CHS facility in the State unless a driver certificate has been issued for the vehicle driver.

A "controlled hazardous substance" (CHS) is

(1) Any hazardous substance that [MDE] identifies as a controlled hazardous substance under th[e] subtitle; or

(2) Low-level nuclear waste.

Env't Article § 7–201(b), Ann. Code Md. The term includes all materials designated by the U.S. Environmental Protection Agency as hazardous waste under the Resource Conservation and Recovery Act (RCRA), 40 U.S.C. §§ 6901 et seq. Env't Article § 7–201(m)(2). Although the definition of CHS is broader, CWTI/NTTC states, and MDE does not contest, that Maryland applies the certification requirement only to transporters of RCRA hazardous waste. See also COMAR 26.13.04.01.A(1) ("These regulations establish standards which apply to persons transporting hazardous waste within the State.").

The certificate is issued on evidence of "satisfactory completion of an approved training program," COMAR 26.13.04.01.F(3)(c), which must cover:

(a) Training in the requirements necessary to transport hazardous waste. Emphasis should be placed on the ability to verify proper DOT shipping names, hazard class and EPA waste codes. Special attention should be directed to the Maryland Hazardous Waste Manifest, other state manifest requirements, and the proper disbursement of manifest copies.

(b) Training in the required labeling and marking of all containers of 110 gallons or less.

(c) Training in Placarding. All drivers of vehicles transporting hazardous waste shall be able to appropriately placard their truck according to the DOT regulations under COMAR 11.16.01 (49 CFR 172 Subpart F).

(d) Training in the Federal Motor Carrier Safety Administration [sic] regulations including proper maintenance of a driver's daily log.

(e) Training in emergency procedures to follow in case of an accident or spill.

(f) Training in Maryland's hazardous waste regulations and law.

COMAR 26.13.04.01.F(4). The regulations further stipulate that a training program instructor must successfully have completed an approved instruction training program or must have five years of experience in the trucking industry, with at least two years of involvement in safe driving activities or training. COMAR 26.13.04.01.F(5). MDE may require from an operator "satisfactory completion of an approved written examination." COMAR 26.13.04.01.F(6).

The certificate must be carried in the vehicle during transportation of CHS. COMAR 26.13.04.01.F(3)(b). It is valid for three years, subject to payment of an annual $20 fee. COMAR 26.13.04.01.F(2),(3)(a).

B. Hazardous Materials To Which Maryland Requirements Apply

As summarized above, the Maryland certification requirements apply to operators of motor vehicles transporting hazardous waste and cargo tank vehicles transporting oil when those vehicles are loaded or unloaded within the State of Maryland.

An oil is a hazardous material subject to the HMTA and HMR if it meets the criteria of any HMR hazard class. Most oils that are designated as hazardous materials are designated because they meet criteria for flammability, 49 CFR 173.120(a), or combustibility, 49 CFR 173.120(b). If an oil is not flammable or combustible, does not meet the criteria for any other hazard class, and is not among a small number of individually specified hazardous materials, 49 CFR 172.101(b)(1), it is not a designated hazardous material. Numerous oils, such as lubricating and vegetable oils, are not ordinarily designated hazardous materials.

Accordingly, the Maryland oil cargo tank operator certification requirement applies to the transport of both oils that are hazardous materials and those that are not. Operator certification requirements for the transport of oils that are not hazardous materials are not subject to preemption by the HMTA. This preemption determination pertains to the oil cargo tank operator certification requirement only as it applies to the transport of oils that are hazardous materials.

In addition, the HMR do not apply to the highway transportation of oil by an intrastate carrier if that oil is not a hazardous waste, hazardous substance, flammable cryogenic liquid or marine pollutant. 49 CFR 171.1(a)(3); but see 58 FR 36920 (July 9, 1993), correction at 58 FR 38111 (July 15, 1993)(notice of rulemaking proposing to extend the HMR to intrastate highway carriage). Accordingly, this preemption determination does not apply to the transportation by intrastate highway carriers of oil not in the categories enumerated in 49 CFR 171.1(a)(3).

The Maryland statute under which the CHS vehicle operator certification requirement is enacted defines CHS broadly, to include RCRA hazardous waste, low-level nuclear waste and any other substance determined by MDE to be injurious to plant, animal or aquatic life. Env't Article § 7–201(b), Ann. Code Md. As noted above, however, the certification requirement is applied only to operators of vehicles transporting RCRA hazardous waste. Thus, hereafter the CHS vehicle certification requirement will be referred to as the hazardous waste vehicle operator certification requirement.

RCRA hazardous waste, as designated pursuant to 42 U.S.C. 6921 by the Administrator of the U.S. Environmental Protection Agency (EPA), is a hazardous material under the HMR. 49 CFR 171.8 ("Hazardous material") (as amended at 55 FR 52930, 52935 (Nov. 5, 1992)); see also 49 CFR 171.3(a) ("No person may offer for transportation or transport a hazardous waste * * * in interstate or intrastate commerce except in accordance with the requirements of [the HMR]."). Both interstate and intrastate hazardous waste transporters are subject to the HMR. 49 CFR 171.1(a).

In the preemption analysis that follows, the Maryland certification requirements are compared to HMTA requirements under the "dual compliance" and "obstacle" tests of 49 App. U.S.C. 1811(a). See Section II, below. For purposes of the dual compliance test, the hazardous waste vehicle operator certification requirement is considered as written. The obstacle test, however, looks at the requirement "as applied or enforced." 49 App. U.S.C. 1811(a)(2). Therefore under this test, the requirement is considered only as it is applied to the transportation of RCRA hazardous waste.

C. HMTA Training and Certification Requirements for Motor Vehicle Operators

General training requirements for persons packaging, offering or transporting hazardous materials are found in the HMR at 49 CFR 172.700–.704. These requirements apply to "hazmat employees," which term includes, among others, those who "[o]perate[ ] a vehicle used to transport hazardous materials." 49 CFR 172.702(b), 171.8 ("Hazmat employee") Each "hazmat employee" must receive, at least every two years, three types of training: (1) Training to provide general familiarity with the HMR and a general ability to recognize and identify hazardous materials consistent with HMR standards; (2) training specific to the hazardous material functions the employee performs; and (3) training in workplace safety and emergency response. 49 CFR 172.704(a). Required training is not further specified; instead, the regulations contemplate that hazmat employees will be trained in a manner best suited to the hazardous materials transportation functions they perform. See 57 FR 20944, 20949 (May 15, 1992)(preamble to final rule enacting 49 CFR 172.700–.704).

In addition, operators of motor vehicles transporting hazardous materials must be trained in accordance with modal-specific requirements of 49 CFR 177.816. Training subjects include vehicle inspection and operation requirements pertaining to attendance, parking, smoking, routing and incident reporting; and loading and unloading. 49 CFR 177.816(a). Cargo tank operators must receive specialized training on tank emergency control features, special vehicle handling characteristics, tank loading and unloading, properties and hazards of materials transported, and tank retest and inspection requirements. 49 CFR 177.816(b). Under section 177.816, operators must be trained in applicable requirements of parts 383, 387 and 390 through 399 of the Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR parts 350–399.

Part 383 specifies requirements for obtaining a Commercial Driver's License (CDL), including requirements for the tank vehicle endorsement. 49 CFR 383.119, and the hazardous materials endorsement, 49 CFR 383.121. Section 177.816(c) provides that the training requirements of sections 177.816(a) and (b) may be satisfied by compliance with the CDL requirements for the tank vehicle or hazardous materials endorsement. Sections 390.3(e)(2) and 392.1 together require operator training in all aspects of the FMCSR. They are incorporated into the HMR as well by 49 CFR 177.804, as they apply to interstate operators of motor vehicles transporting hazardous materials.

Both 49 CFR 172.704(d) and 49 CFR 177.816 require that training documentation be retained. 49 CFR 172.702(d) requires that an employer test its employees. No provision of the HMR, however, requires that evidence of training be submitted to, or that operators be tested or certified by, a governmental body. A vehicle operator may comply with 49 CFR 177.816 by passing an examination and obtaining the CDL with a tank vehicle or hazardous materials endorsement. 49 CFR 177.816(c)(1).

Nonetheless, this is an alternative means of complying with the regulation and is not required.

II. Preemption Under the HMTA

The HMTA was enacted in 1975 to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. It "replace[d] a patchwork of state and federal laws and regulations concerning hazardous materials with a scheme of uniform, national regulations." *Southern Pac. Transp. Co. v. Public Serv. Comm'n*, 909 F.2d 352, 353 (9th Cir. 1990).

As enacted in 1975, the HMTA preempted "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the HMTA], or in a regulation issued under [the HMTA]." HMTA, Pub. L. 93–633, § 112(a), 88 Stat. 2161 (1975). Congress intended this provision "to preclude a multiplicity of State regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1192, 93d Cong., 2d Sess. 37 (1974).

Thereafter, DOT's Materials Transportation Bureau (MTB), predecessor of RSPA's Office of Hazardous Materials Safety, implemented HMTA preemption through the issuance of inconsistency rulings. Inconsistency rulings, while advisory in nature, were "an alternative to litigation for a determination of the relationship of Federal and State or local requirements" and also a possible "basis for an application [for] a waiver of preemption pursuant to section 112(b) of the HMTA." Inconsistency Ruling No. 2 (IR–2), 44 FR 75566, 76657 (Dec. 20, 1979).

In the 1990 amendments to the HMTA, Pub. L. 101–615 (Nov. 16, 199[illegible]

preemption under the HMTA was strengthened on the basis of the following Congressional findings:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

49 App. U.S.C. 1801 note. In amending the HMTA, Congress affirmed that "uniformity was the linchpin" of the statute. Colorado Pub. Util. Comm'n v. Harmon, 951 F.2d 1571, 1576 (10th Cir 1991). Unless a waiver of preemption is granted by DOT, the HMTA as amended explicitly preempts "any requirement of a State or political subdivision thereof or Indian tribe" not "otherwise authorized by Federal law" if

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of [the HMTA] or of any regulation issued under [the HMTA] is not possible,

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA], or

(3) It is preempted under section 105(a)(4) [49 App. U.S.C. § 1804(a)(4), concerning "covered subjects"] or section 105(b) [49 U.S.C. § 1804(b), concerning highway routing requirements].

49 App. U.S.C. 1811(a).

The first two paragraphs codify the "dual compliance" and "obstacle" criteria that RSPA had applied in issuing inconsistency rulings prior to the 1990 amendments to the HMTA. These criteria derive from U.S. Supreme Court preemption decisions. *E.g., Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Hines* v. *Davidowitz*, 312 U.S. 52 (1941).

The third paragraph, 49 App. U.S.C. 1811(a)(3), in conjunction with 49 App. U.S.C. 1804(a)(4), specifies five "covered subject" areas in which a non-Federal requirements are given particular scrutiny:

(i) The designation, description, and classification of hazardous materials.

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In these areas, a non-Federal requirement that is "not otherwise authorized by Federal law" is preempted unless it is "substantively the same" as the HMTA or HMR requirement. 49 App. U.S.C. 1811(a). To be "substantively the same," the non-Federal requirement must "conform[] in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted." 49 CFR 107.202(d).

A more limited preemption test, independent of 49 App. U.S.C. 1811(a), applies when the non-Federal requirement is being compared to FMCSR provisions incorporated into the HMR through 49 CFR 177.804. RSPA has declared that in enacting 49 CFR 177.804, it did not intend to change the preemptive effect of those FMCSR provisions incorporated. See IR–22, 52 FR 46574 (Dec. 8, 1987). The preemptive effect of FMCSR training requirements, 49 CFR 390.3(e)(2) and 392.1, is set forth at 49 CFR 390.9:

Except as otherwise specifically indicated, subchapter B of this chapter [49 CFR Parts 350–399] is not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the person subject thereto.

This standard essentially is the "dual compliance" standard. See IR–32, 55 FR 36736, 36741 (Sept. 6, 1990). Any FMSCR provision incorporated into the HMR solely through 49 CFR 177.804 therefore preempts a State or local requirement "only if compliance with both is impossible." IR–32, 55 FR at 36741.

In place of the prior process for issuing advisory inconsistency rulings, the HMTA authorizes any directly affected person to apply to the Secretary of Transportation for a preemption determination with respect to a requirement of a State, political subdivision or Indian tribe. 49 App. U.S.C. 1811(c)(1). Preemption determinations under authority of the HMTA address preemption only by the HMTA, and not by the Commerce Clause of the Constitution or federal statutes other than the HMTA. Other statutes may be relevant to determining HMTA preemption, for instance in establishing whether a non-Federal requirement is "otherwise authorized by Federal law." 49 App. U.S.C. 1804(a)(4)(A).

The Secretary of Transportation has delegated to RSPA the authority to make preemption determinations, except for those concerning highway routing, which are delegated to the Federal Highway Administration. 49 CFR 1.53(b). Under RSPA's regulations, preemption determinations are issued by RSPA's Associate Administrator for Hazardous Materials Safety. 49 CFR 107.209(a). If the HMTA preempts a requirement of a State, a political subdivision of a State or an Indian tribe, that jurisdiction may apply for a waiver of preemption under 49 CFR 107.215 through 107.227. A waiver may be granted if the Associate Administrator finds that the non-Federal requirement affords the public a level of safety equal to or greater than that afforded by the HMR, and that it does not unreasonably burden commerce. Alternatively, the jurisdiction may petition under 49 CFR 106.31 for adoption of a uniform Federal rule.

Preemption determinations under the HMTA are consistent with the principles and policy set forth in Executive Order No. 12,612 ("Federalism"), 52 FR 41685 (Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. The HMTA contains an express preemption provision, implemented through RSPA regulations.

III. The CWTI/NTTC Application and Public Comment

A. The CWTI/NTTC Application

The CWTI/NTTC application asserts that the Maryland driver certification requirements duplicate and conflict with Federal standards. It observes that 49 CFR Part 383 of the FMCSR requires a driver to have a CDL with a cargo tank endorsement when operating a cargo tank, and a CDL with a hazardous materials endorsement when

transporting hazardous materials. It notes that the HMR do not impose training certification requirements beyond the employer's duty, set forth at 49 CFR 172.704(d)(5), to maintain training records.

Citing 49 CFR 172.701, CWTI/NTTC object to the requirement that operators not domiciled in Maryland be certified. This regulation authorizes a State to impose training requirements more strict than HMR requirements only on motor vehicle operators domiciled in that State. They refer to the preamble to the final rule enacting 49 CFR 172.700-.704, 57 FR 20944, 20947 (May 15, 1992), which states that 49 CFR 172.701 reflects RSPA's recognition of the "traditional regulation by States of their own resident drivers * * * through drivers' licensing requirements and procedures." CWTI/NTTC appear to argue that RSPA intended to preserve State authority to regulate its own drivers only when that authority is exercised by the State agency traditionally responsible for driver licensing. If section 172.701 is read in this way, CWTI/NTTC imply, it would authorize regulation only by the Maryland Motor Vehicle Administration, the agency that issues the CDL, and not by MDE.

The CWTI/NTTC application maintains that the Maryland requirements violate both the "dual compliance" test and the "obstacle" test under 49 App. U.S.C. 1811(a). The "dual compliance" test, CWTI/NTTC assert, is violated in two respects:

1. A driver cannot comply with both the Maryland requirements and 49 CFR 383.21(a), which prohibits a commercial motor vehicle operator from having more than one driver's license at any time.

2. A non-domiciled driver cannot comply with both the Maryland requirements and 49 CFR 172.701(b), which prohibits the application of State training requirements stricter than those of the HMR to non-domiciled drivers.

According to CWTI/NTTC, the Maryland requirements also are "obstacles" to accomplishing the purposes of the HMR because transporters' burden of complying with paperwork and training requirements of a potentially large number of States, particularly burdens of pre-registering for and attending State-administered tests, would be significant. CWTI/NTTC also suggest that the certification requirements for hazardous waste transporters should be reviewed under 49 CFR 171.3(c), which strictly limits the ability of States to regulate hazardous waste differently than do the HMR.

Finally, CWTI/NTTC assert that the Maryland requirements are not "otherwise authorized by Federal law." See 49 App. U.S.C. 1811(a).

B. Comments Supporting Preemption

RSPA has received comments supporting preemption of one or both operator certification requirements from ten additional parties, including one oil transporter, one hazardous materials transporter, six hazardous waste transporters, an environmental services firm and the Hazardous Materials Advisory Council (HMAC), an association representing the hazardous materials transportation industry.

With respect to Maryland's oil cargo tank operator certification, COMAR 26.10.01.16.D, Amoco Oil Company, Nortru, Inc., Heritage Transport, Inc. and Laidlaw Environmental Services Inc. share the view of CWTI/NTTC that the Maryland requirements duplicate the HMR and the CDL hazardous materials endorsement. Nortru asks how changes in Federal requirements would be incorporated into the substantive requirements of Maryland's certification process. Amoco, Nortru and Heritage Transport emphasize the administrative burden that could result from a determination that Maryland's certification requirements were not preempted. They assert that these burdens, multiplied by the number of States imposing separate requirements, would include paperwork burdens, the difficulty of maintaining a current knowledge of changing State requirements, and lost business opportunities and delays from failing to obtain certifications before entering Maryland. Nortru and HMAC join CWTI/NTTC in citing 49 CFR 172.701(a), which allows a State to impose training requirements more strict than those of the HMR only on drivers domiciled in that State.

Regarding Maryland's hazardous waste vehicle operator certification, COMAR 26.13.04.01.F, commenters' arguments mirror those for the oil cargo tank operator certification. Nortru, Environmental Transport, Inc., McCutcheon Enterprises, Inc., Dart Trucking Company, Inc., Heritage Transport, Laidlaw and Custom Environmental Transport, Inc. charge that the certification duplicates the HMR and the CDL hazardous materials endorsement. Nortru, Environmental Transport and Custom Environmental Transport assert that the certification requirement fails to address how changes in Federal requirements will affect the validity of existing certificates, or how such changes are to be incorporated into revised training programs. Nortru, Environmental Transport, McCutcheon, Heritage Transport, Custom Environmental Transport and Eldredge, Inc. claim administrative burdens similar to those claimed for the oil cargo tank operator certification. Nortru and HMAC, again, point to the 49 CFR 172.701(a) prohibition on imposing requirements stricter than the HMR on non-domiciled drivers. HMAC argues that this conflict results in a violation of the dual compliance test. Eldredge and Dart Trucking, concurring with CWTI/NTTC assert that the 49 CFR 383.21 prohibition against multiple licenses makes dual compliance impossible.

C. Comments Opposing Preemption

MDE has filed comments opposing preemption of the oil cargo tank operator certification requirement. It takes no position on preemption of the hazardous waste vehicle operator certification requirement.

MDE does not agree that the oil cargo tank operator certification requirement violates the 49 CFR 383.21 prohibition against multiple licenses. It maintains that the driver's certification is directed to ensuring not the safe transport of oil but its safe transfer, and that the certificate is not a driver's license within the meaning of 49 CFR 383.21. It argues that the Maryland oil cargo tank operator certification program is consistent with the training scheme of 49 CFR 172.700-.704, which sets a performance standard but does not stipulate specific training elements. In particular, it points to 49 CFR 172.702(c), which encourages training by "public sources." In addition, it notes correctly that the CDL hazardous materials endorsement is required only for the transport of placarded shipments, and that not all oil movements require placards. (For example, oil that is a hazardous waste but that does not meet the criteria for any other hazard class, is a Class 9 hazardous material not required to be placarded. 49 CFR 172.504(f)(9).) Transportation of non-placarded oil therefore does not require a hazmat endorsement and accordingly, MDE concludes, there is no duplication of CDL requirements.

Finally, MDE argues that the oil cargo tank operator certification requirement is "otherwise authorized by Federal law," and thus protected from preemption under 49 App. U.S.C. 1811(a). It finds this authority under sections 102 and 104 of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1252(a) and 1254(a)(1). According to MDE, these sections empower States to institute training

requirements directed to preventing and reducing water pollution. MDE also states that EPA approved Maryland's underground storage tank program under the Resource Conservation and Recovery Act (RCRA) Subtitle I, 42 U.S.C. 6991 et seq., in part on the basis of the existence of the certification requirement.

MassDEP asserts that a State's ability to require documentation of driver training is fundamental to effectively regulating hazardous waste transporters. It also refers to ongoing proceedings under 49 App. U.S.C. 1819, under which a working group, formed in part of State representatives, has recommended uniform forms and procedures for State registration and permitting of hazardous materials transporters. The recommendations have been transmitted to the Secretary of Transportation, and may form the basis for Department of Transportation regulations. MassDEP suggests that a determination that the Maryland requirement to document training is preempted would undermine both State regulatory efforts and the working group process. It requests that preemption be considered only to the extent that Maryland requires non-domiciled operators to come into the State for certification.

C. Rebuttal Comments

In rebuttal, CWTI/NTTC reiterate their contention that the Maryland requirements violate both the 49 CFR 172.701(a) prohibition on the application of stricter State training requirements to non-domiciled drivers and the "one driver/one license" rule of 49 CFR 383.21(a). They concur with Northu. Environmental Transport Group and Custom Environmental Transport that delays inherent in the certification process will cause lost business opportunities.

IV. Discussion

The Maryland regulations under examination concern driver training and certification, and maintenance of training records. None of these is a "covered subject" listed in 49 App. U.S.C. 1804(a)(4)(B). Accordingly, the "substantively the same" preemption standard of 49 App. U.S.C. 1804(a)(4)(A) and 1811(a)(3) does not apply. Rather, the Maryland regulations are preempted if:

(1) compliance with both the State * * * requirement and any requirement of [the HMTA or the HMR] is not possible [or]

(2) the State * * * requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA or the HMR].

49 App. U.S.C. 1811(a). Both standards, the "dual compliance" and the "obstacle" standard, are employed to determine the preemptive effect of 49 CFR 172.700-.704 and 177.816. In considering the preemptive effect of 49 CFR 390.3(e)(2) and 392.1, however, only the dual compliance test applies. As discussed in section II, above, these provisions, due to their incorporation into the HMR through 49 CFR 177.804, have a narrower preemptive effect than do other HMR provisions.

A. The "Dual Compliance" Test

HMR training requirements for motor vehicle operators appear at 49 CFR 172.700-.704 and 177.816 and, through incorporation, at 49 CFR 390.3(e)(2) and 392.1. Each of these requirements specifies training in aspects of motor vehicle operation when hazardous materials are being transported. Sections 172.702(d), 172.704 and 177.816 require that operators be tested and records of training be maintained. To the extent that the Maryland regulations impose training requirements different from those of the HMR, they are additive. Neither CWTI/NTTC nor any other commenter has suggested that an operator cannot comply with both HMR training requirements and the applicable Maryland certification requirements.

CWTI/NTTC and other commenters do assert, however, that transporters cannot comply with both the Maryland requirements and certain other HMR provisions, namely 49 CFR 172.701 and 383.21(a). The arguments advanced, however, are not persuasive.

Section 172.701 prohibits States from imposing on non-domiciled operators training requirements stricter than those of the HMR. The fact that the regulation is a prohibition on what a State may do means that it cannot create a dual compliance problem for an operator. The dual compliance standard ensures that the regulated community is not put in the position where a non-Federal jurisdiction commands it to do an act that the HMR forbid, or, conversely, where the HMR require an act that the non-Federal jurisdiction forbids. For example, a transporter could not comply with a State requirement to placard a vehicle not carrying hazardous materials without violating 49 App. U.S.C. 1804(e)(2) and 49 CFR 171.2(f)(2), which prohibit representing that a hazardous material is present in a motor vehicle when it is not. See also 49 CFR 171.502(a). Because 49 CFR 172.701 is addressed solely to the State as a regulator, it imposes no duty on an operator, and an operator could not be found in violation of it. As discussed below, 49 CFR 172.701 is relevant to whether the Maryland requirements are an "obstacle" to accomplishing the purposes of the HMTA. It does not, however, present a dual compliance problem.

Section 383.21(a) provides that no operator of a commercial motor vehicle "shall at any time have more than one driver's license." Whether compliance with both this regulation and the Maryland certification requirement is impossible hinges on whether the Maryland operator's certificate is a "driver's license" within the meaning of the regulation. The short answer to the claim, however, is that it is not within the scope of HMTA preemption. Part 383, unlike Parts 390 through 397 of the FMCSR, is not incorporated into the HMR. See 49 CFR 177.804. Accordingly, Part 383 is not a regulation "issued under" the HMTA within the meaning of 49 App. U.S.C. 1811(a)(1), and cannot be the basis for a determination of preemption under the statute.

B. The "Obstacle" Test

While neither operator certification requirement fails the dual compliance test, either requirement nevertheless is preempted if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of the HMTA. Colorado Pub. Util. Comm'n v. Harmon, 951 F.2d at 1580. The "full purposes and objectives" of the HMTA are, foremost, furthering safe hazardous materials transportation and establishing a uniform system of regulation that, by reducing confusion and promoting compliance, contributes to enhanced safety.

As noted in section I.B, above, we consider the oil cargo tank operator certification requirement only as it applies to transportation of oil that is a hazardous material under the HMTA. The HMTA does not preempt Maryland's application of the regulation to the transportation of oil that is not a designated hazardous material. In addition, in determining whether the certification requirements are an "obstacle," we consider them "as enforced and applied." 49 App. U.S.C. 1811(a)(2). Therefore, we consider the hazardous waste vehicle operator certification requirement with respect to the transportation of RCRA-designated hazardous waste only. See section I.B, above.

When a non-Federal requirement differs from the HMR, RSPA must determine whether that difference is an obstacle to the statutory purposes and objectives. The degree to which a

requirement may differ from the HMR before it becomes an obstacle depends on the subject matter of the requirement. With respect to certain areas identified in the HMTA, namely, the "covered subjects" of 49 App. U.S.C. 1804(a)(4)(B), uniformity is paramount and no material deviation is permitted. 49 App. U.S.C. 1811(a). In other areas, RSPA must determine the necessary degree of uniformity in light of existing statutory and regulatory language.

In the area of training, the HMR already have established the extent to which States may regulate differently. Under 49 CFR 172.701, a State may impose training requirements more strict than those of the HMR only if those requirements:

(a) Do not conflict with the training requirements in [49 CFR part 172, Subpart H and part 177]; and

(b) Apply only to drivers domiciled in that State.

The authority granted to States to impose stricter requirements on their domiciled operators "recognizes the traditional regulation by States of their own resident drivers." 57 FR at 20947. It recognizes as well that were States permitted to impose stricter requirements on non-resident operators, operators potentially would be subject to numerous sets of training requirements, with resulting confusion, cost and paperwork burdens. The Federal regulation "represents an appropriate balancing of the interests of the States and the transportation industry." 57 FR at 20947. Cf. IR–26, 54 FR 16314, 16322 (Apr. 21, 1989)(considering preemption of State training requirements before promulgation of 49 CFR 172.701).

The 49 CFR 172.701 limitation on State regulatory authority over non-domiciled operators pertains only to State "training requirements." The term "training," as defined at 49 CFR 172.700(b), means:

A systematic program that ensures a hazmat employee has familiarity with the general provisions of [the HMR], is able to recognize and identify hazardous materials, has knowledge of specific requirements of [the HMR] applicable to functions performed by the employee, and has knowledge of emergency response information, self-protection measures and accident prevention methods and procedures.

The two Maryland regulations, see section I.A, above, require that operators of motor vehicles transporting regulated materials, including hazardous materials, pass an examination. The examination is to ensure that the driver is trained in procedures for identifying and marking regulated materials for transportation, safely transporting regulated materials and instituting emergency procedures in the event of a spill. The regulations stipulate the required areas of training, provide for an examination to demonstrate training in those areas, and authorize issuance of a driver's certificate to identify those who satisfactorily have been trained. These are elements of a "systematic program" of "training requirements." Accordingly, the Maryland regulations, as they apply to those transporting hazardous materials, are subject to 49 CFR 172.701.

Both COMAR 26.10.01.16.D, the oil cargo tank operator certification, and COMAR 26.13.04.01.F, the hazardous waste vehicle operator certification, are stricter than the HMR. The HMR impose general and function-specific training requirements on all hazmat employees. Under 49 CFR 177.816, motor vehicle operators in particular are required to be trained in an exhaustive number of areas related to the safe transportation of hazardous materials in motor vehicles. In addition, a hazmat employer must provide for "appropriate" testing of its employees. 49 CFR 172.702(d). Unlike the Maryland regulations, however, the HMR do not condition motor vehicle operation on passing an examination administered by a governmental body Cf. Colorado Pub. Util. Comm'n v. Harmon, 951 F.2d at 1581 (requirement to submit proof of training goes beyond HMR). In addition, COMAR 26.13.04.01.F requires hazardous waste transporters to be trained in specific areas that the HMR do not, namely, in hazardous waste transportation requirements specific to Maryland laws and regulations. The HMR do not limit the means by which a hazmat employer may train a driver, provided that training meets the standard of 49 CFR 172.700(b). Conversely, training received by the operator of a vehicle transporting hazardous waste does not comply with COMAR 26.13.04.01.F unless the instructor meets the experience requirements set forth at COMAR 26.13.04.01.F(5).

MDE suggests that the training requirements are not an obstacle to accomplishing the purposes of the HMTA because of 49 CFR 172.702(c), which states: "Training may be provided by the hazmat employer or other public or private sources." This section, however, simply encourages hazmat employers, in training their employees, to make use of any resources, public or private, that offer training meeting the requirements of the regulations. See 57 FR at 20949–50. It does not authorize States or other non-Federal entities to impose additional training obligations.

Determining the extent to which State training requirements may differ from those in the HMR before they become an obstacle to accomplishing the purposes of the HMTA is a balancing of the State's interest in ensuring the competence of drivers within its jurisdiction against the cost and administrative burdens on transporters and the confusion, reduced compliance and decreased safety that may result from a multiplicity of potentially conflicting requirements. RSPA already has performed that balancing, and the result is codified in 49 CFR 172.701. Because COMAR 26.10.01.16.D and COMAR 26.13.04.01.F are stricter than HMR training requirements, they violate 49 CFR 172.701 to the extent they apply to operators not domiciled in Maryland. Therefore, as applied to non-domiciled operators, each Maryland requirement is an obstacle to accomplishing the full objectives and purposes of the HMTA, and is preempted. As applied to operators domiciled in Maryland, COMAR 26.10.01.16.D and COMAR 26.13.04.01.F are not preempted.

V. "Otherwise Authorized by Federal Law"

The HMTA does not preempt a non-Federal requirement that is "otherwise authorized by Federal law." 49 App. U.S.C. 1811(a). MDE asserts that its oil cargo tank operator certification requirement is authorized by sections 102 and 104 of the FWPCA, 33 U.S.C. 1252(a) and 1254(a)(1), and RCRA Subtitle I, 42 U.S.C. 6991 et seq.

The FWPCA sections cited by MDE do not support its argument. In relevant part, these read as follows:

The [EPA] Administrator shall, after careful investigation, and in cooperation with other Federal agencies, State water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs for preventing, reducing, or eliminating the pollution of the navigable waters and ground waters and improving the sanitary condition of surface and underground waters. 33 U.S.C. 1252(a).

The [EPA] Administrator shall establish national programs for the prevention, reduction, and elimination of pollution and as part of such programs shall—

(1) in cooperation with other Federal, State, and local agencies, conduct and promote the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution.

33 U.S.C. 1254(a)(1).

By their clear terms, these statutes delegate general authority to the EPA Administrator to develop programs and undertake research to protect surface and groundwater quality. While the Administrator is directed to cooperate with the States in doing so, no regulatory authority is conferred on the States. MDE argues as well that RCRA Subtitle I, regulating underground oil storage tanks, authorizes the oil cargo tank operator certification requirement of COMAR 26.10.01.16.D. Although Subtitle I regulates underground storage tank systems, MDE states, "it is the vehicle operator who transfers the product into and out of these systems." According to MDE, "EPA's approval of the State of Maryland's underground storage tank (UST) program was in part based on its oil vehicle operator's certification requirements for the safe transfer of oil." The elements that a State UST program must contain to qualify for EPA approval are set forth at 42 U.S.C. 6991c(a); these elements are elaborated in EPA regulations at 40 CFR part 281. The elements do not include, and the regulations do not mention, regulation of oil transporters. MDE submits no evidence that Maryland's certification requirement was necessary for EPA approval of the State's UST program.

RCRA Subtitle I, at 42 U.S.C. 6991g, provides:

> Nothing in this subtitle shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subtitle.

See also 40 CFR 281.12(a)(3). The fact that Subtitle I does not prohibit a State from imposing more stringent regulations does not protect those regulations from preemption under the HMTA. Indeed, 40 CFR 281.12(a)(3)(ii) states:

> Where an approved state program has a greater scope of coverage than required by federal law, the additional coverage is not part of the federally-approved program.

See also PD–1, 57 FR 58848, 58855 (Dec. 11, 1992) (ruling similarly on nearly identical language in RCRA Subtitle C, 42 U.S.C. 6929).

In summary, the Maryland oil cargo tank operator certification requirement is not "otherwise authorized by Federal law" within the meaning of 49 App. U.S.C. 1811(a).

VI. Ruling

For the reasons set forth above, RSPA finds that 49 App. U.S.C. 1811(a)(2) preempts Maryland regulations COMAR 26.10.01.16.D and COMAR 26.13.04.01.F, requiring certification of operators of motor vehicles loading or unloading hazardous materials in Maryland, as they apply to vehicle operators not domiciled in Maryland. Specifically, these requirements are stricter than Federal operator training requirements and therefore are obstacles to accomplishing the full purposes and objectives of the HMTA. As applied to vehicle operators domiciled in Maryland, the requirements are not preempted.

VII. Petition for Reconsideration/ Judicial Review

In accordance with 49 CFR 107.211(a), "[a]ny person aggrieved" by RSPA's decision on the NTTC/CWTI application may file a petition for reconsideration within 20 days of service of the decision. Any party to this proceeding may seek review of RSPA's decision "by the appropriate district court of the United States * * * within 60 days after such decision becomes final." 49 App. U.S.C. 1811(e).

This decision will become RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 App. U.S.C. 1811(e).

If a petition for reconsideration is filed within 20 days of service, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will constitute final agency action. 49 CFR 107.211(d).

Issued in Washington, DC on May 24, 1994.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 94–13326 Filed 6–2–94; 8:45 am]

BILLING CODE 4910–60–P

Sunshine Act Meetings

Federal Register

Vol. 59, No. 106

Friday, June 3, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:49 a.m. on Tuesday, May 31, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to an assistance agreement with an insured bank.

Matters relating to Corporation's corporate and supervisory activities.

Recommendation concerning an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4) (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 - 17th Street, NW., Washington, DC.

Dated: May 31, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94-13656 Filed 6-1-94; 12:35 pm]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, June 8, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 1, 1994

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13638 Filed 6-1-94; 12:34 pm]

BILLING CODE 6210-01-P

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Corrections

Federal Register
Vol. 59, No. 106
Friday, June 3, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018-AB43

Subsistence Management Regulations for Federal Public Lands in Alaska, Subpart C—Board Determinations

Correction

In rule document 94-12955 beginning on page 27462 in the issue of Friday May 27, 1994, make the following correction:

§ ___.24 [Corrected]

On page 27463, in the third column, in the amendment to § ___.24(a)(2), the entry for the table at the bottom of the page should have read as set forth below:

Area	Species	Determination
Kuskokwim area	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiak, Akiachak, and Platinum

* * * * *

BILLING CODE 1505-01-D



Friday
June 3, 1994

Part II

Department of Agriculture

Rural Electrification Administration

7 CFR Part 1726

Electric System Construction Policies and Procedures; Proposed Rule

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1726

RIN 0572–AA47

Electric System Construction Policies and Procedures

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend its regulation on Electric System Construction Policies and Procedures. This action will contain the policies and the procedures applicable to REA electric borrowers when purchasing materials and equipment, and when constructing system facilities by contract or force account. These policies and procedures are currently contained in seven REA bulletins. The changes that are being proposed pertain to REA approval of contracts, subcontracts and amendments to contracts; documentation of contracting activity by REA borrowers; procurement procedures to be used by REA borrowers; and closeout procedures for construction contracts.

DATES: Written comments must be received by REA, or bear a postmark or equivalent, no later than August 2, 1994.

ADDRESSES: Submit written comments to Archie W. Cain, Director, Electric Staff Division, Rural Electrification Administration, room 1246–S, U.S. Department of Agriculture, Washington, DC 20250–1500. REA requires a signed original and 3 copies of all comments (§ 1700.30(e)). Comments will be made available for public inspection at room 2234 South Building between 8:30 a.m. and 5 p.m. on official work days (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Mr. Fred J. Gatchell, Deputy Director, Electric Staff Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone (202) 720–1398.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Regulatory Flexibility Act Certification

This action does not fall within the scope of the Regulatory Flexibility Act.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of the Act, the information collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for review. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone (202) 720–3238.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA loans and loan guarantees from coverage under this order.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule will not: (1) Preempt any State or local laws, regulations or policies; (2) Have any retroactive effect; and (3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Background

Pursuant to the Rural Electrification Act of 1936, as amended (the RE Act) (7 U.S.C. 901 *et seq.*), the Rural Electrification Administration (REA) proposes to amend 7 CFR chapter XVII, by revising part 1726, Electric System Construction Policies and Procedures. This revised part will contain the policies and the procedures applicable to REA borrowers and contractors when purchasing materials and equipment and constructing electric system facilities by contract or force account (the REA borrower's own construction crews).

These policies and the procedures implement certain provisions of the REA standard form of loan documents regarding the borrower's purchase of materials and equipment and the construction of its electric system by contract or force account. In order to facilitate the programmatic interests of the RE Act, and, in order to assure that loans made or guaranteed by REA are adequately secured, REA, as a secured lender, has established certain standards and specifications for materials, equipment, and the construction of electric systems. The use of standard forms and procurement procedures helps assure REA that: (1) appropriate standards and specifications are maintained; (2) REA's loan security is not adversely affected; and (3) loan and loan guarantee funds are used effectively and for the intended purposes.

The current policies and procedures that will be affected are set forth in REA Bulletin 40–6, Construction Methods and Purchase of Materials and Equipment; REA Bulletin 40–8, Construction Specifications, Drawings and Contract Forms for Distribution, Transmission and Generation Facilities; REA Bulletin 81–6, Closeout Procedures and Documents for Contract Construction of Distribution and Transmission Facilities; REA Bulletin 85–1, Closeout Procedures and Documents for the Contract Construction of Generating Facilities and Associated Buildings; REA Bulletin 86–1, Closeout Procedures and Documents for the Construction of Buildings Other than Generating Plants; and REA Bulletin 86–3, Headquarters Facilities for Electric Borrowers. The current policies and procedures will be changed and updated by this proposal.

The major substantive proposed changes are as follows:

(a) This proposal applies to procurement and construction for all projects which will or may be financed, in whole or in part, with loans made or guaranteed by REA. REA Bulletin 40–6 currently contains the requirements for all procurement and construction, regardless of the source of funds.

(b) This proposal would eliminate the current requirement that REA approve subcontracts. (Subcontracts for generating projects are already exempt from REA approval.)

(c) This proposal would change the dollar thresholds that determine which procurement procedure is to be used for a project.

(d) This proposal would raise the dollar thresholds that determine whether REA approval of a contract is required and eliminate the requirement of REA approval of certain contract amendments.

(e) This proposal would eliminate the requirement of REA approval of borrowers' contracts for headquarters facilities.

(f) This proposal would add procedures for procurement of communication and control facilities.

(g) This proposal would simplify the procedures for the closeout of construction contracts by reducing the number of forms to be submitted to REA.

(h) This proposal would revise the REA standard contract forms. The major changes in the contract forms would be as follows:

(1) Change the forms to reflect the changes listed above.

(2) Change the insurance and bonding dollar limits as outlined in 7 CFR part 1788.

(3) Change the forms to require prequalification of all bidders.

(4) Change the interest rate on overdue accounts.

(5) Change the "Buy American" provision to include Mexico and Canada in accordance with the North American Free Trade Agreement Implementation Act of December 8, 1993, Public Law 103–182.

(6) Change the indemnification clause (also called "hold harmless clause") to reflect REA's current policy.

(7) Incorporate certain technical changes relating to wood treating and right-of-way clearing chemicals.

In order to reduce printing cost and volume, the forms to be included in this part are condensed, especially the tables. Also, several forms refer to guide drawings, which do not contain requirements, and, hence, will not be included. It is intended that once the forms are finalized, REA will reformat these forms similar to their current configuration (including the tables and drawings) and make them available in that format either from REA or for purchase from the Government Printing Office. See proposed § 1726.300 for a list of the standard forms of electric contracts and where each may be obtained.

List of Subjects in 7 CFR Part 1726

Electric power, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

In view of the above, REA proposes to amend 7 CFR chapter XVII by revising part 1726 to read as follows:

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

Subpart A—General

Sec.

1726.1–1726.9 [Reserved]
1726.10 Introduction.
1726.11 Purpose.
1726.12 Applicability.
1726.13 Waivers.
1726.14 Definitions.
1726.15 "Buy American"
1726.16 Debarment and suspension
1726.17 Restrictions on lobbying.
1726.18 Preloan contracting.
1726.19 Use of competitive procurement.
1726.20 Standards and specifications
1726.21 New materials.
1726.22 Methods of construction
1726.23 Qualification of bidders
1726.24 Written contracts.
1726.25 Subcontracts.
1726.26 Payment to contractor for material delivered.
1726.27–1726.34 [Reserved]
1726.35 Submission of documents to REA
1726.36 Documents subject to REA approval.
1726.37–1726.49 [Reserved]

Subpart B—Distribution Facilities

1726.50 Distribution line materials and equipment.
1726.51 Distribution line construction
1726.52–1726.74 [Reserved]

Subpart C—Substation and Transmission Facilities

1726.75 General.
1726.76 Substation and transmission line materials and equipment.
1726.77 Substation and transmission line construction.
1726.78–1726.124 [Reserved]

Subpart D—Generation Facilities

1726.125 Generating plant facilities
1726.126–1726.149 [Reserved]

Subpart E—Buildings

1726.150 Headquarters buildings
1726.151–1726.174 [Reserved]

Subpart F—General Plant

1726.175 General plant materials.
1726.176 Communications and control facilities.
1726.176–1726.199 [Reserved]

Subpart G—Procurement Procedures

1726.200 General requirements.
1726.201 Formal competitive bidding.
1726.202 Informal competitive bidding.
1726.203 Multiparty negotiation.
1726.204 Multiparty unit price quotations.
1726.205 Multiparty lump sum quotations.
1726.206–1726.249 [Reserved]

Subpart H—Modifications to REA Standard Contract Forms

1726.250 General.
1726.251 Prior approved contract modification related to price escalation on generation contracts.
1726.252 Prior approved contract modification related to liability for special and consequential damages.
1726.253 Prior approved contract modification related to alternative bid provision for payment to contractor for bulk purchase of materials.
1726.254 Prior approved contract modifications related to REA approval of contracts and amendments.
1726.255–1726.299 [Reserved]

Subpart I—REA Standard Forms

1726.300 List of REA standard contracting forms for electric systems.
1726.301 Use of printed forms.
1726.302 REA approved forms of contract.
1726.303 Interest on overdue accounts.
1726.304–1726.309 [Reserved]
1726.310 Contractor's bond, REA Form 168b.
1726.311 Contractor's bond, REA Form 168c.
1726.312 Construction contract amendment, REA Form 180.
1726.313 Certificate of completion, contract construction for buildings, REA Form 181.
1726.314 Certificate of completion, contract construction, REA Form 187
1726.315 Equipment contract, REA Form 198.
1726.316–1726.319 [Reserved]
1726.320 Construction contract, generating, REA Form 200.
1726.321 Right-of-way clearing contract, REA Form 201.
1726.322 Transmission system right-of-way clearing contract, REA Form 203.
1726.323 Certificate (Buy America), REA Form 213.
1726.324 Waiver and release of lien, REA Form 224.
1726.325 Certificate of contractor, REA Form 231.
1726.326 Construction or equipment contract amendment, REA Form 238.
1726.327 Material receipt, REA Form 251.
1726.328 Construction inventory (for labor and material contract), REA Form 254.
1726.329 Contract to construction buildings, REA Form 257
1726.330 [Reserved]
1726.331 Bid bond, REA Form 307
1726.332–1726.339 [Reserved]
1726.340 Substation and switching station erection contract, REA Form 764.
1726.341 Electric system communications and control equipment contract, REA Form 786.
1726.342 Distribution line extension construction contract (labor and materials), REA Form 790.
1726.343 Distribution line extension construction contract (labor only), REA Form 792.
1726.344 [Reserved]

1726.345 Certificate of constructor and indemnity agreement (line extensions). REA Form 792b.
1726.346 Supplemental contract for additional project, REA Form 792c.
1726.347–1726.349 [Reserved]
1726.350 Construction contract amendment for payment, REA Form 800.
1726.351 Electric system construction contract (labor and materials), REA Form 830
1726.352 Electric transmission construction contract (labor and materials), REA Form 831.
1726.353–1726.399 [Reserved]

Subpart J—Contract Closeout

1726.400 Final contract amendment.
1726.401 Material contract closeout.
1726.402 Equipment contract closeout.
1726.403 Project construction contract closeout.
1726.404 Non-project construction contract closeout.
1726.405 Inventory of work orders (REA Form 219).

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

Subpart A—General

§§ 1726.1–1726.9 [Reserved]

§ 1726.10 Introduction

The policies, procedures and requirements included in this part are intended to implement provisions of the standard form of loan documents between the Rural Electrification Administration (REA) and its electric borrowers. Unless prior written approval is received from REA, borrowers are required to comply with REA's policies and procedures as a condition to REA providing financial assistance for the construction and improvement of electric facilities. Requirements for REA approval of plans and specifications are contained in part 1724 of this chapter.

§ 1726.11 Purpose.

Each borrower is responsible for the planning, design, construction, operation and maintenance of its electric system. REA, as a secured lender, has a legitimate interest in accomplishing REA's programmatic objectives, and in assuring that the costs of construction, materials, and equipment are reasonable and economical and that the property securing the loans is constructed adequately to serve the purposes for which it is intended.

§ 1726.12 Applicability.

The requirements of this part apply to the procurement of materials and equipment for use by electric borrowers in their electric systems and to the construction of their electric systems if such materials, equipment, and construction will or may be financed, in whole or in part, with loans made or guaranteed by REA. In order for general fund expenditures for procurement or construction to be eligible for reimbursement from loan funds, in addition to other requirements of this chapter, the borrower must demonstrate to the satisfaction of REA that the procedures required by this part were followed.

§ 1726.13 Waivers.

The Administrator may waive, for good cause on a case by case basis, certain requirements and procedures of this part. REA reserves the right, as a condition of providing financial assistance, to require any borrower to make any specification, contract, or contract amendment subject to the approval of the Administrator. The Administrator may, on a case by case basis, waive certain requirements of this part for major storm damage repair work.

§ 1726.14 Definitions.

Terms used in this part have the meanings set forth in 7 CFR 1710.2. References to specific REA forms and other REA documents, and to specific sections or lines of such forms and documents, shall include the corresponding forms, documents, sections and lines in any subsequent revisions of these forms and documents. In addition to the terms defined in 7 CFR 1710.2, the following terms have the following meanings for the purposes of this part:

Approval of proposed construction means REA approval of a construction work plan or other appropriate engineering study and REA approval, for purposes of system financing, of the completion of all appropriate requirements of part 1794 of this chapter.

Architect means a registered or licensed person employed by the borrower to provide architectural services for a project and duly authorized assistants and representatives.

Bona fide bid means a bid which is submitted by a contractor on the borrower's list of qualified bidders for the specific contract, prior to bid opening.

"Buy American" certificate means a certification that the contractor has complied with the "Buy American" requirement (see § 1726.15).

Competitive procurement means procurement of goods or services based on the lowest evaluated bid for similar products or services when three or more bids are received.

Construction unit means a specifically defined portion of a construction project containing materials, labor, or both, for purposes of bidding and payment.

Contracting committee means the committee consisting of three to five members representing the borrower's management and board of directors and the engineer. The contracting committee represents the borrower during contract clarification discussions or negotiations.

Engineer means a registered or licensed person employed by the borrower to provide engineering services for a project and duly authorized assistants and representatives.

Equipment means a major component of an electric system, *e.g.*, a substation transformer, heat exchanger or a transmission structure.

Financial assistance means loans or grants made or guaranteed by REA, or lien accommodations or lien subordinations granted and approved by REA.

Force account construction means construction performed by the borrower's employees.

Formal competitive bidding means the competitive procurement procedure wherein bidders submit sealed proposals for furnishing the goods or services stipulated in the specification. Bids are publicly opened and read at a predetermined time and place. If a contract is awarded, it must be to the lowest evaluated responsive bidder (see § 1726.201).

Goods or services means materials, equipment, or construction, or any combination thereof.

Informal competitive bidding means the competitive procurement procedure which provides for private opening of bids and allows clarifying discussions between the contracting committee and the bidders. During the clarifying discussions any exceptions to the bid documents must be eliminated, or the bid rejected, so that the contract is awarded to the lowest evaluated responsive bidder (see § 1726.202).

Material means miscellaneous hardware which is combined with equipment to form an electric system, *e.g.*, poles, insulators, or conductors.

Minor error or irregularity means a defect or variation in a bid that is a matter of form and not of substance. Errors or irregularities are "minor" if they can be corrected or waived without being prejudicial to other bidders and when they do not affect the price, quantity, quality, or timeliness of construction.

Minor modification or improvement means a project where the construction

contract is less than $50,000, exclusive of the cost of owner furnished materials.

Multiparty lump sum quotations means the procurement of goods or services on a lump sum basis, based on the lowest evaluated offering, when three or more offers are received (see § 1726.205).

Multiparty negotiation means the procurement procedure where three or more bids are received and provides for negotiations between the contracting committee and each bidder to determine the bid which is in the borrower's best interest (see § 1726.203).

Multiparty unit price quotations means the procurement of goods or services on a unit price basis, based on the lowest evaluated offering, when three or more offers are received (see § 1726.204).

Net Utility Plant (NUP) means part C, Line 5 of REA Form 7 for distribution borrowers or section B, Line 5 of REA Form 12a for power supply borrowers.

Owner furnished materials means materials or equipment or both supplied by the borrower for installation by the contractor.

REA approval means written approval by the Administrator or a representative with delegated authority. REA approval must be in writing, except in emergency situations where REA approval may be given over the telephone followed by a confirming letter.

Responsive bid means a bid with no exceptions or non-minor errors or irregularities on any technical requirement or in the contract terms and conditions.

Unit prices means individual prices for specific construction units defined in accordance with REA approved units specified in REA standard contract forms.

§ 1726.15 "Buy American".

The borrower must ensure that all materials and equipment financed with loans made or guaranteed by REA complies with the "Buy American" provisions of the Rural Electrification Act of 1938 (7 U.S.C. 901 *et seq.*). When a "Buy American" certificate is required by this part, this must be on REA Form 213.

§ 1726.16 Debarment and suspension.

Borrowers are required to comply with certain requirements on debarment and suspension in connection with procurement activities as set forth in part 3017 of this title, particularly with respect to lower tier transactions, *e.g.*, procurement contracts for goods or services.

§ 1726.17 Restrictions on lobbying.

Borrowers are required to comply with certain restrictions and requirements in connection with procurement activities as set forth in part 3018 of this title.

§ 1726.18 Preloan contracting.

Borrowers must consult with REA prior to entering into any contract for material, equipment or construction if a construction work plan, loan or loan guarantee for the proposed work has not been approved. While the REA staff will work with the borrower in such circumstances, nothing contained in this part is to be construed as authorizing borrowers to enter into any contract before the availability of funds has been ascertained by the borrower and all the requirements of part 1794 of this chapter, Environmental Policies and Procedures for Electric and Telephone Borrowers, have been fulfilled.

§ 1726.19 Use of competitive procurement.

REA borrowers' procurement is not subject to the provisions of the Federal Aquisition Regulation (48 CFR chapter 1); however, since borrowers receive the benefit of Federal financial assistance, borrowers must use competitive procurement to the greatest extent practical. The borrower must use competitive procurement for obtaining all goods or services when a REA loan or loan guarantee is involved except:

(a) As specifically provided for in subparts B through F of this part; or

(b) A waiver is granted.

§ 1726.20 Standards and specifications.

All materials and equipment must meet the minimum requirements of all applicable REA standards and specifications. (See part 1728, Electric Standards and Specifications for Materials and Construction, of this chapter.)

§ 1726.21 New materials.

The borrower shall purchase only new materials and equipment unless otherwise approved by REA, on a case by case basis, prior to the purchase.

§ 1726.22 Methods of construction.

The borrower is responsible for determining whether construction will be by contract or force account. If construction is by contract, the borrower must determine whether materials will be supplied by the contractor or will be furnished by the borrower. REA reserves the right to require contract construction in lieu of force account construction on a case by case basis.

§ 1726.23 Qualification of bidders.

(a) *Qualified bidder list (QBL).* The borrower shall, with the advice of its engineer, review the qualifications of prospective bidders for contract construction and for material and equipment procurement, and select those firms qualified for inclusion on the borrower's list of qualified bidders for each contract. (See also § 1726.16 and § 1726.17.) A bid may not be solicited from a prospective bidder or opened by the borrower unless that bidder has been determined to be a qualified bidder for the contract. When preparing the QBL, in addition to the actual experience of the borrower, if any, in dealing with a prospective bidder, the borrower may solicit information from that bidder or from other parties with firsthand experience regarding the firm's capabilities and experience.

(b) *Conflict of interest.* If there is a relationship between the borrower or engineer and a prospective bidder which might cause the borrower or engineer to have or appear to have a conflict of interest, that prospective bidder shall not be included on the QBL unless the engineer discloses the nature of the relationship to the borrower. In the case of the borrower, if its employees or directors have a relationship with a prospective bidder, the prospective bidder shall not be included on the qualified bidders list unless the nature of the relationship is disclosed to the board of directors, and the board of directors specifically approves the inclusion of that bidder in light of the potential for a conflict of interest.

§ 1726.24 Written contracts.

(a) *General.* Procurement of goods or services must be by written contract or purchase orders. The borrower shall use an REA Approved Form of Contract for such contracts where required by subparts B through F of this part.

(b) *Amendments to contracts.*—(1) *Contract forms.* The borrower must use REA Form 180, Construction Contract Amendment, for any change or addition in a distribution line construction contract. The borrower must use REA Form 238, Construction or Equipment Contract Amendment, for any change or addition in any other contract for construction, or for materials or equipment.

(2) *Special considerations.* Each time an amendment to a construction contract is executed, the borrower must ensure that contractor's bond is adequate, that all necessary licenses and permits have been obtained, and that any environmental requirements

associated with the proposed construction have been met.

(3) *Amendment approval requirements.* The borrower must make a contract amendment subject to REA approval if either of the following exist:

(i) The amendment alters the terms and conditions of the REA Approved Form of Contract; or

(ii) The underlying contract was made subject to REA approval and the total amended contract price exceeds 120 percent of the original contract price (excluding any escalation provision contained in the contract).

(4) If neither of the above two conditions exist, the contract amendment is not subject to REA approval and need not be submitted to REA unless specifically requested by REA on a case by case basis.

§ 1726.25 Subcontracts.

The contractor or supplier may use REA Form 282, Subcontract, for subcontracts on construction, material or equipment contracts. Subcontracts are not subject to REA approval and need not be submitted to REA unless specifically requested by REA on a case by case basis.

§ 1726.26 Payment to contractor for material delivered.

When construction is performed under a labor and materials contract, the contractor is responsible for ensuring that sufficient equipment and materials are on hand at the construction site to allow construction to continue to completion in an orderly and expeditious manner. However, under certain circumstances beyond the control of the contractor, it may be necessary to halt construction for an extended period.

(a) *Conditions.* When for reasons which are beyond the control and not the fault of the contractor it becomes necessary to suspend construction for such an extended period (usually over 30 days), the owner may, at the request of the contractor, consider an amendment to a construction contract providing for the payment to the contractor of 90 percent of the invoice cost to the contractor of the equipment or materials delivered to the project site but not installed, provided the contractor warrants that such materials or equipment are:

(1) Actually on the site of the project and will remain there until installed in the project.

(2) In conformance with the contract specifications and not in excess of the quantity required for the project.

(3) Properly stored and protected from weather, theft, and hazards.

(4) Capable of being easily inventoried as to the original quantity and each month as to the remaining quantity.

(b) *Form of request.* Requests by contractors for this type of amendment to construction contracts must be submitted by the contractor to the borrower on REA Form 800, Construction Contract Amendment for Payment. The requests must be prepared in triplicate, and each copy signed by an authorized agent of the surety.

(c) *Approval of request.* If the borrower agrees to the request, the borrower will sign all three copies in the space provided, and, if the underlying contract was made subject to REA approval, the borrower will forward all copies to REA for approval.

(d) *Payments.* Payments made under this section are to be made within thirty days after the final approval of the REA Form 800, Construction Contract Amendment for Payment, provided that the contractor has submitted the proper releases of liens from the supplier covering such equipment and materials. After construction has resumed, as the contractor is paid for monthly estimates of assembly units installed, a deduction must be made equal to the invoice cost of equipment and materials included in such estimates of assembly units installed and for which payment has been made to the contractor pursuant to the REA Form 800.

§§ 1726.27–1726.34 [Reserved]

§ 1726.35 Submission of documents to REA.

(a) *Where to send documents.* Documents required to be submitted to REA under this part are to be sent to the office of the borrower's respective REA Regional Director, the Power Supply Division Director, or such other office of REA as designated by REA (see part 1700 of this chapter.)

(b) *Borrower certification.* When a borrower certification is required by this part, it must made be by the borrower's manager unless the board of directors specifically authorizes another person to make the required certification. In such case, a certified copy of the specific authorizing resolution must accompany the document or be on file with REA.

(c) *Contracts requiring REA approval.* The borrower shall submit to REA three copies of each contract that is subject to REA approval under subparts B through F of this part. At least one copy of each contract must be an original signed in ink (i.e., no facsimile signature). Each contract submittal must be accompanied by:

(1) A bid tabulation and evaluation and, if applicable, a written recommendation of the architect or engineer.

(2) For awards made under the informal competitive bidding procedure or the multiparty negotiation procedure, a written recommendation and certification of the contracting committee (See §§ 1726.202 and 1726.203).

(3) Three copies of an executed contractor's bond on REA approved bond forms as required in the contract form (at least one copy of which must be an original signed in ink), proof of insurance coverage where required in the contract form, and one copy of the bid bond or facsimile of the certified check.

(4) A certification by the borrower or chairperson of the contracting committee, as applicable, that the appropriate bidding procedures were followed as required by this part.

(5) A certified copy of the board resolution awarding the contract.

(6) Evidence of clear title to the site for substations and headquarters construction contracts, if not previously submitted.

(d) *Contract amendments requiring REA approval.* The borrower must submit to REA three copies of each contract amendment (at least one copy of which must be an original signed in ink) which is subject to REA approval under § 1726.24(b). Each contract amendment submittal to REA must be accompanied by:

(1) A certified copy of the board resolution approving the amendment; and

(2) A bond extension, where necessary.

(e) *Encumbrance of loan or loan guarantee funds.* (1) For contracts subject to REA approval, the submittals required under § 1726.35(c) will initiate REA action to encumber loan or loan guarantee funds for such contracts.

(2) For contracts not subject to REA approval (except for generation projects), loan or loan guarantee funds will normally be encumbered using REA Form 219, Inventory of Work Orders, after closeout of the contracts. In cases where the borrower can show good cause for a need for immediate cash, the borrower may request encumbrance of loan or loan guarantee funds based on submittal of a copy of the executed contract, providing it meets all applicable REA requirements.

(3) For generation project contracts not subject to REA approval, the borrower must submit to REA the following documentation:

(i) A brief description of the scope of the contract, including contract identification (name, number, etc.);

(ii) Contract date;
(iii) Contractor's name;
(iv) Contract amount;
(v) Bidding procedure used;
(vi) Borrower certification that:
(A) The board of directors approved the contract;
(B) The bidding procedures and contract award for each contract were in conformance with the requirements of Part 1726, Electric System Construction Policies and Procedures;
(C) The terms and conditions of the REA approved form of contract have not been altered;
(D) If REA has approved plans and specifications for the contract, the contract was awarded on the basis of those plans and specifications; and
(E) No restriction has been placed on the borrower's right to assign the contract to REA or its successors.

(4) *Contract amendments.* (i) For amendments subject to REA approval, the submittals required under § 1726.35(c) will initiate REA action to encumber loan or loan guarantee funds for contract amendments requiring REA approval.

(ii) For amendments not subject to REA approval (except generation projects), loan or loan guarantee funds will normally be encumbered using REA Form 219, Inventory of Work Orders, after closeout of the contracts. In cases where the borrower can justify a need for immediate cash, the borrower may request encumbrance of loan or loan guarantee funds based on submittal of a copy of the executed amendment, providing it meets all applicable REA requirements.

(iii) For each generation project contract amendment not subject to REA approval, the borrower must submit to REA the following information and documentation:
(A) The contract name and number;
(B) The amendment number;
(C) The amendment date;
(D) The dollar amount of the increase or the decrease of the amendment;
(E) Borrower certification that:
(1) The amendment was approved in accordance with the policy of the board of directors (the borrower must ensure that REA has a certified copy of the board resolution establishing such policy);
(2) The terms and conditions of the REA approved form of contract has not been altered;
(3) No restriction has been placed on the borrower's right to assign the contract to REA or its successors.

§ 1726.36 Documents subject to REA approval.

Unless otherwise indicated, the borrower shall make all contracts and amendments that are subject to REA approval effective only upon REA approval.

§§ 1726.37–1726.49 [Reserved]

Subpart B—Distribution Facilities

§ 1726.50 Distribution line materials and equipment.

(a) *Contract forms.* (1) The borrower shall use REA Form 198, Equipment Contract, for purchases of equipment where the total cost of the contract is in excess of $500,000.

(2) The borrower may, in its discretion, use REA Form 173, Materials Contract, REA Form 198, Equipment Contract, or a purchase order for purchases of equipment of less than $500,000 and for all materials.

(b) *Standards and specifications.* Distribution line materials and equipment must meet the minimum requirements of REA standards as determined in accordance with the provisions of part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction. The borrower must obtain REA approval prior to purchasing any unlisted distribution line material or equipment of the types listed in accordance with the provisions of part 1728 of this chapter.

(c) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs for the purchase of material and equipment to be used in distribution line construction.

(d) *Contract approval.* Contracts for purchases of distribution line materials and equipment are not subject to REA approval and need not be submitted to REA unless specifically requested by REA on a case by case basis.

§ 1726.51 Distribution line construction.

(a) *Contract forms.* The borrower must use REA Form 201, 790, 792, or 830, as outlined in this paragraph (a), for distribution line construction, except for minor modifications or improvements.

(1) The borrower may use REA Form 790, Distribution Line Extension Construction Contract (Labor and Materials), or REA Form 792, Distribution Line Extension Construction Contract (Labor only) under the following circumstances:

(i) For contracts for which the borrower supplies all materials and equipment; or

(ii) For non-site specific construction contracts accounted for under the work order procedure; or

(iii) If neither paragraph (a)(1)(i) or (a)(1)(ii) of this section are applicable, the borrower may use REA Form 790 or 792 for contracts, up to a cumulative total of $250,000 or one percent of Net Utility Plant, whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment.

(2) The borrower must use REA Form 830, Electric System Construction Contract (Labor and Materials), for all other distribution line construction. Where distribution lines are being constructed incidental to transmission line construction, the borrower must use REA Form 831, Electric Transmission Construction Contract.

(3) The borrower must use REA Form 201, Right-of-Way Clearing Contract, for new distribution line construction right-of-way clearing when done separately from work performed under REA Form 830.

(b) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts for up to a cumulative total of $250,000 or one percent of NUP, whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment. In addition, a borrower may use Multiparty Unit Price Quotations to award contracts for up to a cumulative total of $350,000 or 1.5 percent of NUP, whichever is greater, per calendar year of distribution line construction, exclusive of the cost of owner furnished materials and equipment. The borrower shall use formal competitive bidding for all other distribution line contract construction.

(c) *Contract approval.* Contracts for distribution line construction are not subject to REA approval and need not be submitted to REA unless specifically requested by REA on a case by case basis.

§§ 1726.52–1726.74 [Reserved]

Subpart C—Substation and Transmission Facilities

§ 1726.75 General.

As used in this part, "substations" includes substations, switching stations, metering points, and similar facilities.

§ 1726.76 Substation and transmission line materials and equipment.

(a) *Contract forms.* (1) The borrower must use REA Form 198, Equipment Contract, for purchases of equipment where the total cost of the contract is in excess of $500,000.

(2) The borrower may, in its discretion, use REA Form 173, Materials Contract, REA Form 198, Equipment Contract, or a purchase order for

purchases of equipment of less than $500,000 and for all materials.

(b) *Standards and specifications.* Substation and transmission line materials and equipment must meet the minimum requirements of REA standards as determined in accordance with the provisions of part 1728 of this chapter, Electric Standards and Specifications for Materials and Construction. The borrower must obtain REA approval prior to the purchasing of any unlisted substation or transmission line material or equipment of the types listed in accordance with the provisions of part 1728 of this chapter.

(c) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs for purchase of material and equipment to be used in substation and transmission line construction.

(d) *Contract approval.* Contracts for purchases of substation and transmission line materials and equipment are not subject to REA approval and need not be submitted to REA unless specifically requested by REA on a case by case basis.

§ 1726.77 Substation and transmission line construction.

(a) *Contract forms.* (1) The borrower must use REA Form 764, Substation Erection Contract, for construction of substations, except for minor modifications or improvements. The borrower must use REA Form 831 Electric Transmission Construction Contract for projects where substations are incidental to transmission line construction and are to be constructed under the same contract.

(2) The borrower must use REA Form 831, Electric Transmission Construction Contract, for construction of transmission lines (except for minor modifications or improvements).

(b) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts not requiring REA approval for up to a cumulative total of $250,000 or one percent of NUP (not to exceed $2,000,000), whichever is greater, per calendar year of substation and transmission line construction, exclusive of the cost of owner furnished materials and equipment. The borrower shall use formal competitive bidding for all other contract construction, including all contracts requiring REA approval.

(c) *Contract approval.* Individual contracts in excess of $250,000 or one percent of NUP (not to exceed $500,000), whichever is greater exclusive of the cost of owner furnished materials and equipment, are subject to REA approval.

§§ 1726.78–1726.124 [Reserved]

Subpart D—Generation Facilities

§ 1726.125 Generating plant facilities.

This section covers the construction of all portions of a generating plant, including plant buildings and the generator step-up transformer. Generally, the transmission switchyard will be covered under this section during initial construction of the plant. Subpart C of this part covers subsequent modifications to transmission switchyards. Office buildings, warehouses, and equipment service type buildings are covered under subpart E of this part.

(a) *Contract forms.* (1) The borrower must use REA Form 198, Equipment Contract, for the purchase of generating plant equipment in excess of $1,500,000 and for any generating plant equipment contract requiring REA approval.

(2) The borrower must use REA Form 200, Construction Contract—Generating, for construction of generating projects estimated to cost in excess of $1,500,000 and for any generating project construction contract requiring REA approval.

(3) The borrower may, in its discretion, use other contract or purchase order forms for those contracts estimated to cost less than $1,500,000 and do not require REA approval.

(b) *Plans and specifications.* The borrower shall obtain REA approval of the plans and specifications for generating plant equipment prior to issuing invitations to bid for a contract subject to REA approval as determined under this subpart, and for any contract for generating plant equipment or construction which the project engineer estimates will cost in excess of $1,500,000 or requires REA approval. Plans and specifications for other equipment and construction contracts do not require REA approval and need not be submitted to REA unless specifically requested by REA on a case by case basis.

(c) *Procurement procedures.* If the estimated cost of the contract exceeds $1,500,000 or if the contract requires REA approval, the borrower must use formal or informal competitive bidding to award the contract. Where formal or informal competitive bidding is not applicable, or does not result in a responsive bid, multiparty negotiation may be used only after REA approval is obtained.

(d) *Contract approval.* During the early stages of generating plant design or project design, REA will, in consultation with the borrower and its consulting engineer, identify the specific contracts which require REA approval based on information supplied in the plant design manual. The following are typical contracts for each type of generating project which will require REA approval. Although engineering services are not covered by this part, they are listed in this paragraph (d) to emphasize that REA approval is required for all generating station engineering service contracts. For types of projects not shown, such as nuclear and alternate energy projects, REA will identify the specific contracts which will require REA approval on a case by case basis.

(1) *Fossil generating stations.* Engineering services, steam generator, turbine generator, flue gas desulfurization system, particulate removal system, electric wiring and control systems, mechanical equipment installation (including turbine installation and plant piping), power plant building (foundation and superstructure), site preparation, coal unloading and handling facilities, main step-up substation, cooling towers, and dams or reservoirs.

(2) *Diesel and combustion turbine plants.* Engineering services, prime mover and generator, building (foundation and superstructure), and electrical control systems.

(3) *Hydro installations.* Engineering services, turbine/generator, civil works and powerhouse construction, electrical control system, and mechanical installation.

§§ 1726.126–1726.149 [Reserved]

Subpart E—Buildings

§ 1726.150 Headquarters buildings.

This section includes office buildings, warehouses, and equipment service type buildings. Generating plant buildings are covered under subpart D of this part.

(a) *Contract forms.* The borrower must use REA Form 257, Contract to Construct Buildings, for all contracts for construction of new headquarters facilities, and additions to, or modifications of existing headquarters facilities (except for minor modifications or improvements). Nonstandard forms or REA Form 257 with substantial alterations must be submitted to REA for approval of the form prior to issuing invitations to bids on that form.

(b) *Procurement procedures.* A borrower may use Multiparty Lump Sum Quotations to award contracts for up to a cumulative total of $250,000 or one percent of NUP (not to exceed

$1,000,000), whichever is greater, per calendar year of headquarters construction. The borrower must use formal competitive bidding for all other headquarters contract construction.

(c) *Contract approval.* Contracts for headquarters construction are not subject to REA approval and need not be submitted to REA unless specifically requested by REA on a case by case basis.

§§ 1726.151–1726.174 [Reserved]

Subpart F—General Plant

§ 1726.175 General plant materials.

This section covers items such as office furniture and equipment; transportation equipment and accessories, including mobile radio systems, stores and shop equipment, laboratory equipment, tools and test equipment.

(a) *Contract forms.* The borrower may, in its discretion, use REA Form 173, Material Contract, REA Form 198, Equipment Contract, or a purchase order.

(b) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs for purchase of general plant material and equipment.

(c) *Contract approval.* Contracts for the purchase of general plant items are not subject to REA approval and need not be submitted to REA unless specifically requested by REA on a case by case basis.

§ 1726.176 Communications and control facilities.

This section covers the purchase of microwave and power line carrier communications systems, load control, and supervisory control and data acquisition (SCADA) systems. Mobile radio systems are covered as general plant materials in § 1726.175.

(a) *Power line carrier systems.* Power line carrier equipment will frequently be purchased as part of a substation and will be included in the complete substation plans and specifications.

When purchased in this manner, the requirements of subpart C of this part, Substation and Transmission Facilities, will apply. If obtained under a contract for only a power line carrier system, the requirements of paragraph (b) of this section apply.

(b) *Load control systems, communications systems, and SCADA systems.*—(1) *Contract forms.* The borrower must use REA Form 786, Electric System Communication and Control Equipment Contract.

(2) *Procurement procedures.* It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts not requiring REA approval for up to a cumulative total of $250,000 or one percent of NUP (not to exceed $2,000,000), whichever is greater, per calendar year of communications and control facilities construction, exclusive of the cost of owner furnished materials and equipment. The borrower must use multiparty negotiation for all other communications and control facilities contract construction, including all contracts requiring REA approval.

(3) *Contract approval.* Individual contracts in excess of $250,000 or one percent of NUP (not to exceed $500,000), whichever is greater, are subject to REA approval.

§§ 1726.176–1726.199 [Reserved]

Subpart G—Procurement Procedures

§ 1726.200 General requirements.

The borrower must use the procedures described in this subpart where such procedures are required under subparts B through F of this part. The borrower must ensure that arrangements prior to announcement of the award of the contract are such that all bidders are treated fairly and no bidder is given an unfair advantage over other bidders.

§ 1726.201 Formal competitive bidding.

The borrower must use the following procedure for Formal Competitive Bidding:

(a) *Selection of qualified bidders.* The borrower, on advice of the engineer, will compile a list of qualified bidders for each proposed contract. The borrower will send invitations to bid only to persons or organizations on its QBL for the specific project (see § 1726.23).

(b) *Invitations to bid.* The borrower, acting through its engineer, is responsible for sending out invitations to prospective bidders, informing them of scheduled bid openings and taking any other action necessary to procure full, free and competitive bidding. The borrower should send out a sufficient number of invitations in order to assure adequate competition and so that at least three bids will be received. Subject to the foregoing criteria, the determination of how many and which bidders will be permitted to bid will be the responsibility of the borrower.

(c) *Evaluation basis.* Any factors, other than lowest dollar amount of the bid, which are to be considered in evaluating the proposals of qualified bidders (*e.g.*, power consumption, losses, etc.) must be stated in the "Notice and Instructions to Bidders." The borrower will, if applicable, include the relative weight assigned to each such factor and the way in which each factor will be applied.

(d) *Handling of bids received.* The borrower or the engineer, as applicable, will indicate, in writing, the date and time of receipt by the borrower or the engineer on the outside envelope of each bid and all letters and other transmittals amending or modifying the bids. Any bid received at the designated location after the time specified must be returned to the bidder unopened.

(e) *Bid openings.* Bid openings are generally conducted by the engineer in the presence of bidders and a representative of the borrower and the borrower's attorney. Each bona fide bid must be opened publicly and reviewed for any irregularities, errors, or exceptions. It must be verified that any addendum or supplement to the specification has been acknowledged by the bidder. The adequacy of bid bonds or certified checks must be verified at this time.

(f) *Conditions affecting acceptability of bids.* The borrower must take the following specified action if any of the following exist:

(1) *Fewer than three bona fide bids received.* If fewer than three bona fide bids are received for the contract project, the borrower must obtain REA concurrence prior to awarding the contract. The borrower may, however, elect to return all bids unopened, make changes in the specification or the qualified bidders list or both and invite new bids.

(2) *Significant error or ambiguity in the specification.* If a significant error or ambiguity in the specification is found which could result in the bidders having varying interpretations of the requirements of the bid, the borrower must either issue an addendum to each prospective bidder correcting the error or ambiguity before bids are received, or reject all bids and correct the specification. If a significant error or ambiguity in the specification is discovered after the bids are opened, the borrower must reject all bids, correct the specification and invite new bids.

(3) *Minor errors or omissions in the specification.* If minor errors or omissions in the specification are found, the borrower must issue an addendum to each prospective bidder correcting the error or omission prior to opening any bids. After bid opening, the error or omission must be corrected following the award of the contract.

(4) *Minor errors or irregularities in bid.* The borrower may waive minor errors or irregularities in any bid, if the borrower determines that such minor errors or irregularities were made

through inadvertence. Any such minor errors or irregularities so waived must be corrected on the bid in which they occur prior to the acceptance thereof by the borrower.

(5) *Non-minor error or irregularity in bid.* If a bid contains a non-minor error or irregularity, the bid must be rejected and the bid price must not be disclosed.

(6) *Unbalanced bid.* If a bid contains disproportionate prices between labor and materials or between various construction units, the borrower may reject the bid.

(7) *No acceptable price quoted.* If none of the bidders quote an acceptable price, the borrower may reject all bids.

(g) *Evaluating bids.* The borrower, acting through the engineer, must conduct the evaluation of bids on the basis of the criteria set out in the "Notice and Instructions to Bidders." The contract, if awarded, must be awarded to the bidder with the lowest evaluated responsive bid.

(h) *Announcement of bids.* If possible, the borrower will announce bids at the bid opening. However, where extensive evaluation is required, the borrower may elect to adjourn and make formal written announcement to all bidders at a later time. Any discrepancy in a rejected bid must be indicated in the bid announcement.

(i) *Award of contract.* Upon completion of the bid evaluations and based upon the findings and recommendations of the borrower's management and engineer, the borrower's board of directors will either:

(1) Resolve to award the contract to the lowest evaluated responsive bidder; or

(2) Reject all bids.

(j) *Certification by the borrower and its engineer.* The borrower shall certify and the engineer shall certify as follows: "The procedures for formal competitive bidding, as described in 7 CFR 1726.201, were followed in awarding this contract." The certification executed by and on behalf of the borrower and its engineer shall be submitted to REA in writing where required by subpart A of this part.

§ 1726.202 Informal competitive bidding.

Informal competitive bidding is limited to major equipment purchases and generation facilities. The borrower must use the following procedure for informal competitive bidding:

(a) *Selection of qualified bidders.* The borrower, on advice of its engineer, will compile a list of qualified bidders for each proposed contract. The borrower will send invitations to bid only to persons or organizations on its qualified bidder list for the specific project (see § 1726.23).

(b) *Invitations to bid.* The borrower, acting through the engineer, is responsible for sending out invitations to prospective bidders, informing them of scheduled bid openings and any other action necessary to procure full, free and competitive bidding. In any event, however, sufficient invitations need to be sent out to assure adequate competition and that at least three bids will be received. Subject to the criteria in the preceding sentence, the determination of how many and which bidders will be permitted to bid will be the responsibility of the borrower.

(c) *Notice and instructions to bidders.* The borrower must indicate in the "Notice and Instructions to Bidders" section of the bid documents that bids will be opened privately. The borrower may elect to conduct clarifying discussions with the bidders. If such clarifying discussions are held, at least the three apparent low evaluated bidders must be given an equal opportunity to resolve any questions related to the substance of the bidder's proposal and to arrive at a final price for a responsive bid.

(d) *Evaluation basis.* Any factors, other than lowest dollar amount of the bid, which are to be considered in evaluating the proposals of qualified bidders (*e.g.*, power consumption, losses, etc.) must be stated in the "Notice and Instructions to Bidders." The borrower will, if applicable, include the relative weight assigned to each such factor and the way in which each factor will be applied.

(e) *Handling of bids received.* The borrower or the engineer, as applicable, will indicate, in writing, the date and time of receipt by the borrower or the engineer on the outside envelope of each bid and all letters and other transmittals amending or modifying the bids. Any bid received at the designated location after the time specified must be returned to the bidder unopened.

(f) *Bid opening.* The contracting committee will conduct the bid opening in private. The contracting committee will open each bona fide bid which has been received prior to the deadline, and review it for any irregularities, errors, or exceptions. It must be verified that any addendum to the specification has been acknowledged by each bidder. The adequacy of bid bonds or certified checks must also be verified.

(g) *Conditions affecting acceptability of bids.* The borrower must take the following specified action if any of the following exist:

(1) *Fewer than three bona fide bids received.* If fewer than three bona fide bids are received for the contract project, the borrower must obtain REA concurrence prior to awarding the contract. The borrower may, however, elect to return all bids unopened, make changes in the specification or the qualified bidders list or both and invite new bids.

(2) *Significant error or ambiguity in the specification.* If a significant error or ambiguity in the specification is found which could result in the bidders having varying interpretations of the requirements of the bid, the borrower must either issue an addendum to each prospective bidder correcting the error or ambiguity before bids are received, or reject all bids and correct the specification. If a significant error or ambiguity in the specification is discovered after the bids are opened, the borrower must reject all bids, correct the specification and invite new bids.

(h) *Clarification of proposals.* The contracting committee may elect not to hold any clarifying discussions and recommend awarding the contract to the low responsive bidder. Otherwise, the contracting committee must give at least each of the three apparent lowest evaluated bidders an equal opportunity to attend discussions for the purpose of resolving questions regarding the specification and contract terms and to arrive at a final price. Neither prices of other bids nor relative ranking of any bidder are to be revealed under any circumstances. Upon completion of the clarifying discussions, the contracting committee will determine the lowest evaluated responsive bid. If no bids are responsive after the contracting committee has completed clarifying discussions, no contract award can be made under the informal bidding procedure.

(i) *Award of the contract.* Upon completion of the bid evaluations, the contracting committee will promptly report all findings and recommendations to the borrower's board of directors. The board will either:

(1) Resolve to award the contract to the lowest evaluated responsive bidder; or

(2) Reject all bids.

(j) *Certifications by the contracting committee.* The chairperson of the contracting committee shall certify as follows: "The procedures for informal competitive bidding as described in 7 CFR 1726.202 were followed in awarding this contract." The certification executed by the chairperson of the contracting committee shall be submitted to REA in writing where required by subpart A of this part.

§ 1726.203 Multiparty negotiation.

Multiparty negotiation may only be used where permitted under subpart F of this part or where prior REA approval has been obtained. The borrower must use the following procedure for multiparty negotiation:

(a) *Selection of qualified bidders.* The borrower, on advice of its engineer, will compile a list of qualified bidders for each proposed contract. The borrower will send invitations to bid only to persons or organizations on its qualified bidder list for the specific project (see § 1726.23).

(b) *Invitations to bid.* The borrower, acting through the engineer, is responsible for sending out invitations to prospective bidders, informing them of scheduled bid openings and any other action necessary to procure full, free and competitive bidding. In any event, however, sufficient invitations need to be sent out to assure adequate competition and so that at least three bids will be received. Subject to the criteria in the preceding sentence, the determination of how many and which bidders will be permitted to bid will be the responsibility of the borrower.

(c) *Notice and instructions to bidders.* The borrower must indicate in the "Notice and Instructions to Bidders" section of the bid documents that bids will be opened privately. The borrower may elect to conduct clarifying discussions with the bidders. If such clarifying discussions are held, at least the three apparent low evaluated bidders must be given an equal opportunity to resolve any questions related to the substance of the bidder's proposal and to arrive at a final price.

(d) *Evaluation basis.* Any factors, other than lowest dollar amount of the bid, which are to be considered in evaluating the proposals of qualified bidders (*e.g.*, power consumption, losses, etc.) must be stated in the "Notice and Instructions to Bidders." The borrower will, if applicable, include the relative weight assigned to each such factor and the way in which each factor will be applied.

(e) *Handling of bids received.* The borrower or the engineer, as applicable, will indicate, in writing, the date and time of receipt by the borrower or the engineer on the outside envelope of each bid and all letters and other transmittals amending or modifying the bids. Any bid received at the designated location after the time specified must be returned to the bidder unopened.

(f) *Bid opening.* The contracting committee will conduct the bid opening in private. The contracting committee will open each bona fide bid which has been received prior to the deadline, and review it for any irregularities, errors, or exceptions. It must be verified that any addendum to the specification has been acknowledged by each bidder. The adequacy of bid bonds or certified checks must also be verified.

(g) *Conditions affecting acceptability of bids.* The borrower must take the following specified action if any of the following exist:

(1) *Fewer than three bona fide bids received.* If fewer than three bona fide bids are received for the contract project, the borrower must obtain REA concurrence prior to awarding the contract. The borrower may, however, elect to return all bids unopened, make changes in the specification or the qualified bidders list or both and invite new bids.

(2) *Significant error or ambiguity in the specification.* If a significant error or ambiguity in the specification is found which could result in the bidders having varying interpretations of the requirements of the bid, the borrower must either issue an addendum to each prospective bidder correcting the error or ambiguity before bids are received, or reject all bids and correct the specification. If a significant error or ambiguity in the specification is discovered after the bids are opened, the borrower must reject all bids, correct the specification and invite new bids.

(h) *Negotiations.* The contracting committee may elect not to hold any negotiations and recommend award of the contract. Otherwise, the contracting committee must give at least each of the three apparent lowest evaluated bidders an equal opportunity to attend negotiations for the purpose of resolving questions regarding the specification and contract terms and to arrive at a final price. Neither prices of other bids nor relative ranking of any bidder are to be revealed under any circumstances. Upon completion of the negotiations, the contracting committee will determine the bid that is in the borrower's best interest.

(i) *Award of the contract.* Upon completion of the bid evaluations, the contracting committee will promptly report all findings and recommendations to the borrower's board of directors. The board will either:

(1) Resolve to award the contract to the lowest evaluated responsive bidder; or

(2) Reject all bids.

(j) *Certifications by the contracting committee.* The chairperson of the contracting committee shall certify as follows: "The procedures for informal competitive bidding as described in 7 CFR 1726.203 were followed in awarding this contract." The certification executed by the chairperson of the contracting committee shall be submitted to REA in writing where required by subpart A of this part.

§ 1726.204 Multiparty unit price quotations.

The borrower or its engineer must contact at least three suppliers or contractors and, on the basis of written unit price quotations, select the supplier or contractor based on the lowest evaluated cost.

§ 1726.205 Multiparty lump sum quotations.

The borrower or its engineer must contact at least three suppliers or contractors and, on the basis of written lump sum quotations, select the supplier or contractor based on the lowest evaluated cost.

§§ 1726.206–1726.249 [Reserved]

Subpart H—Modifications to REA Standard Contract Forms

§ 1726.250 General.

REA provides standard contract forms for procurement of materials, equipment, and construction, for contract amendments and subcontracts, and various related forms for use by REA borrowers. See § 1726.300 for a listing of these forms and how to obtain them. The standard contract forms shall be used by the borrowers in accordance with the provisions of this part. REA will give prior approval to certain modifications to these forms without changing the applicable requirements for REA approval. Such approved modifications are set forth in this subpart. These are the only modifications given prior REA approval.

§ 1726.251 Prior approved contract modification related to price escalation on generation contracts.

(a) *General.* Where the borrower encounters reluctance among manufacturers, suppliers, and contractors to bid a firm price on equipment, materials or construction of generation facilities, modifications may be made in the REA standard form of contracts. These modifications if applicable, may include, as an alternative to the standard form, provisions for adjusting a base price either upward or downward as determined by changes in specified indexes between the time of the bid and the time the work is performed or materials are procured by the contractor for such work. A large number of labor and materials indexes are published monthly by the Bureau of Labor

Statistics (BLS). The borrower, on the advice of its engineer, will select the indexes for the particular item to be used in the price adjustment clause. Suppliers' corporate indexes may not be used. Labor and materials indexes are reported in the BLS's monthly publications entitled "Employment and Earnings" and "Producer Prices and Price Indexes." These publications may be ordered through the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, telephone (202) 720–3238, or any of the BLS regional offices.

(b) *Material and equipment contracts.* The approved provisions needed to reflect the modifications to provide for price escalation in the material or equipment contract forms for generation facilities are as follows:

(1) Insert new paragraphs in the Notice and Instructions to Bidders as follows:

"Proposals are invited on the basis of firm prices (or prices with a stated maximum percentage escalation) or on the basis of nonfirm prices to be adjusted as provided for below or on both bases. The owner may award the contract on either basis.

Nonfirm prices. The prices are subject to adjustment upward or downward based on change in the Bureau of Labor Statistics labor and material indexes.

A proportion of _____ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent labor cost and shall be adjusted based on changes in the Bureau of Labor Statistics, Average Hourly Earnings Rate—_____ [the borrower will enter the appropriate BLS index] from the month in which the bids are opened to the month in which the labor is incorporated in the equipment or materials. The adjustment for labor costs shall be obtained by applying the percentage of increase or decrease in such index, calculated to the nearest one-tenth of one percent, to the percentage of the contract prices deemed to represent labor costs. A portion of _____ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent material costs and shall be adjusted based on changes in the Bureau of Labor Statistics, material index _____ [the borrower will enter the appropriate BLS index] for the period and in a manner similar to the labor cost adjustment."

(2) Insert the following in the contract documents under the "Proposal" section:

"Firm Price $_____
Nonfirm Price $_____"

(3) For generating plant equipment that uses a large quantity of insulating oil, the borrower may insert the following in the contract documents under the "Proposal" section:

"The price for insulating oil shall be adjusted upward or downward based on the change in the Bureau of Labor Statistics Refined Petroleum Rate (057) from the month in which the bids are opened to the month in which the oil is purchased by the equipment supplier. Contracts shall be evaluated based on an estimated cost of _____ cents per gallon [the borrower will enter the appropriate cost] for oil. Such adjustment, if any, shall not change the contract amount for purpose of applying any other adjustments to the contract prices."

(c) *Construction contracts.* The approved provisions needed to reflect the modifications to provide for price escalation in the construction contract forms for generation facilities are as follows:

(1) Insert new paragraphs in the "Notice and Instructions" to Bidders as follows:

"Proposals are invited on the basis of firm prices (or prices with a stated maximum percentage escalation) or on the basis of nonfirm prices to be adjusted as provided for below or on both bases. The owner may award the contract on either basis."

Nonfirm Prices—The prices are subject to adjustment upward or downward based on changes in the Bureau of Labor Statistics labor and material indexes.

A proportion of _____ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent shop labor costs and shall be adjusted based on changes in the Bureau of Labor Statistics, Average Hourly Earnings Rate _____ [the borrower will enter the appropriate BLS index] from the month in which bids are opened to the month in which the work is accomplished. The adjustment for shop labor costs shall be obtained by applying the percentage increase or decrease in such index, to the percentage of each partial payment deemed to represent shop labor costs. A portion of _____ percent [the borrower will enter the appropriate percentage amount] of the contract prices shall be deemed to represent material costs and shall be adjusted based on changes in the Bureau of Labor Statistics, Producer Price Index, _____ [the borrower will enter the appropriate BLS index] for the period and in a manner similar to the shop labor costs adjustment. A portion of _____ percent [the borrower will enter the appropriate percentage amount] of the contract price shall be deemed to represent field labor costs and shall be adjusted based on changes in the Bureau of Labor Statistics, Average Hourly Earnings Rate _____ [the borrower will enter the appropriate BLS index], for the period and in a manner similar to the shop labor costs adjustment."

(2) Insert the following in the contract documents under the "Proposal" section:

"Firm Price $_____
Nonfirm Price $_____"

§ 1726.252 Prior approved contract modification related to liability for special and consequential damages.

This section applies only to major equipment purchases and generation contracts. Where the borrower anticipates difficulty in obtaining responsive bids on REA standard contract forms due to a lack of limitation with respect to special and consequential damages, and where the borrower believes that such a modification will encourage competition through the receipt of an alternative bid which limits the bidder's liability for special and consequential damages, the borrower may make the following approved phrase modifications in the REA standard contract form on which the borrower solicits bids:

(a) Insert new paragraphs in the "Notice and Instructions to Bidders" as follows:

"Proposals are invited on the basis of alternative Liability Clauses Numbers 1 and 2. The owner will determine on which Liability Clause basis the award will be made. Any other liability clauses in the proposal or any other modifications will be considered not responsive and unacceptable. These Liability Clauses are defined as follows:

Liability Clause Number 1. This will include unmodified all of the standard terms and conditions of the form of contract furnished by the owner and attached hereto.

Liability Clause Number 2. This will include the following paragraph, in addition to all of the standard terms and conditions, otherwise unmodified, of the form of contract furnished by the owner and attached hereto:

Except for the seller's willful delay or refusal to perform the contract in accordance with its terms, the seller's liability for special or consequential damages on account of breach of this contract shall not exceed in total an amount equal to _____ percent [the borrower will insert an appropriate percentage between 0 and 100 percent, inclusive] of the contract price.'"

(b) Insert the following in the contract documents under the "Proposal" section:

"Price $ (Based on Liability Clause 1)

Price $(Based on Liability Clause 2)
"

(c) Insert the following in the acceptance section of the standard contract form:

"This contract is based on Liability Clause Number _____."

§ 1726.253 Prior approved contract modification related to alternative bid provision for payment to contractor for bulk purchase of materials.

When construction is to be performed over an extended period of time, but large quantities of material are to be purchased by the contractor at the beginning of the project (e.g., cable for URD installations), the borrower may allow alternative bids providing for

payment to the contractor of 90 percent of the cost of such materials within 30 days of delivery of those materials at the job site. The borrower will retain the right to award the contract with or without the alternative payment provision , however, but the contract still must be awarded on the basis of the lowest evaluated responsive bid for the alternative accepted. REA Form 800, Construction Contract Amendment for Payment, must be used by the contractor to obtain payment from the borrower if this alternative is accepted, and the conditions of § 1726.27 (a)(1) through (a)(4) and the payment terms of § 1726.27(d) will also apply to this section.

§ 1726.254 Prior approved contract modifications related to REA approval of contracts and amendments.

It will be necessary for borrowers to make certain modifications to various REA contract forms to implement the provisions of this part. These modifications indicate that certain provisions related to REA approval are not applicable under specified circumstances. The modifications are as follows:

(a) *REA Form 173 Materials Contract.* No modifications.

(b) *REA Form 180 Construction Contract Amendment.* No modifications.

(c) *REA Form 198 Equipment Contract.* For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) Change section 5(e) of the "Equipment Contract" to read as follows:

"(e) Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto provided, however, the Seller shall not assign this contract or any part hereof without approval in writing of the Purchaser, and further the Seller shall not enter into any contract with any person, firm or corporation for the performance of the Seller's obligations hereunder, or any part thereof, without the approval in writing of the Purchaser."

(2) Delete Section 5(f) of the "Equipment Contract."

(d) *REA Form 200 Construction Contract—Generating.* For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) *Contractor's Proposal, Article II, Section 3(a), Sentence 2.* Delete the words "and the Administrator."

(2) *Contractor's Proposal, Article II, Section 3(d), Sentence 2.* Delete the words "and approved by the Administrator[1]" and the associated footnote.

(3) *Contractor's Proposal, Article VI, Section 7.* Change to read as follows:

"Nonassignment of Contract. Except as provided in Section 8 of this Article, the Bidder will not assign this Contract, or any interest in any funds that may become due hereunder, or enter into any contract with any person, firm or corporation, for the performance of the Bidder's obligations hereunder, or any part hereof without the approval in writing of the Owner and the Surety or Sureties, if any."

(4) *Contractor's Proposal, Article VI.* Delete Section 10.

(5) *Acceptance.* Delete the words "Subject to the approval of the Administrator."

(e) *REA Form 201 Right-of-Way Clearing Contract.* No modifications.

(f) *REA Form 203 Transmission System Right-of-Way Clearing Contract.* For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows.

(1) *Notice and Instructions to Bidders, Section 8.* Delete the words "and such acceptance has been approved by the Administrator."

(2) *Contractor's Proposal, Article II, Section 1(a).* Replace the word "Administrator" with the word "Owner" in two places in the referenced section.

(3) *Contractor's Proposal, Article II, Section 3(d), Sentence 1.* Delete the words "and with the approval of the Administrator[1]" and the associated footnote.

(4) *Contractor's Proposal, Article II, Section 3(d), Sentence 3.* Delete the words "and approved by the Administrator[2]" and the associated footnote.

(5) *Contractor's Proposal, Article III, Section 1.* Delete the words "and the Administrator" in five places in the referenced section.

(6) *Contractor's Proposal, Article III, Section 1(b).* Replace the word "Administrator" with the word "Owner."

(7) *Contractor's Proposal, Article III, Section 1(e).* Replace the word "Administrator" with the word "Owner."

(8) *Contractor's Proposal, Article VI, Section 1(d).* Delete the words "and the Administrator."

(9) *Contractor's Proposal, Article VI.* Delete Section 10.

(10) *Acceptance.* Delete the words "Subject to the approval of the Administrator."

(g) *REA Form 238 Construction or Equipment Contract Amendment.* If the contract amendment does not require REA approval, in accordance with § 1726.24(b), the borrower may delete from REA Form 238 the following sentence:

"(The Administrator of REA is hereby authorized to approve this amendment either in whole or in part and to delete such items as do not meet his approval.)"

(h) *REA Form 257 Contract to Construct Buildings.* No modifications

(i) *REA Form 282 Subcontracts.* The applicable modifications are as follows:

(1) *Section 6, line 3.* Delete the words "and the Administrator of the Rural Electrification Administration (hereinafter called the Administrator)."

(2) *Section 7, line 2.* Change Section 7, line 2 to read as follows:

"approved in writing by the Owner and the Surety, if any; provided, * * *"

(3) *Section 7, line 3.* Delete the words "and the Administrator."

(j) *REA Form 764 Substation and Switching Station Erection Contract.* For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) *Notice and Instructions to Bidders, Section 10.* Delete the words "and such acceptance has been approved by the Administrator."

(2) *Contractor's Proposal, Article II, Section 1.a.* Replace the word "Administrator" with the word "Owner" in two places in the referenced section.

(3) *Contractor's Proposal, Article II, Section 1.d, Sentence 1.* Delete the words "and with the approval of the Administrator[1]" and the associated footnote.

(4) *Contractor's Proposal, Article II, Section 1.d, Sentence 2.* Delete the words "and approved by the Administrator[2]" and the associated footnote.

(5) *Contractor's Proposal, Article III, Section 1.* Delete the words "and the Administrator" in five places in the referenced section.

(6) *Contractor's Proposal, Article III, Section 1.b.* Replace the word "Administrator" with the word "Owner."

(7) *Contractor's Proposal, Article III, Section 1.e.* Replace the word "Administrator" with the word "Owner."

(8) *Contractor's Proposal, Article VI, Section 1.e.* Delete the words "and the Administrator."

(9) *Contractor's Proposal, Article VI* Delete Section 10.

(10) *Acceptance.* Delete the words "Subject to the approval of the Administrator."

(k) *REA Form 786 Electric System Communications and Control Equipment Contract (including installation).* For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) *Article I, Section 2.* Delete the words "subject to the approval of the Administrator [1]" and "and approved by the Administrator [2]" and the associated footnotes.

(2) *Article II, Section 1, Sentence 2.* Replace the word "Administrator" with "Purchaser."

(3) *Article II, Section 5.* Delete the words "subject to the approval of the Administrator [3]" and "subject to the approval of the Administrator [4]" and the associated footnotes.

(4) *Article III, Section 2, Sentence 3.* Replace the words "if the Administrator shall so approve" with the words "if the Purchaser shall so approve."

(5) *Article VI.* Delete Section 7.

(6) *Acceptance.* Delete the words "Subject to the approval of the Administrator."

(l) *REA Form 790 Distribution Line Extension Construction Contract (Labor and Materials).* No modifications.

(m) *REA Form 792 Distribution Line Extension Construction Contract (Labor Only).* No modifications.

(n) *REA Form 800 Construction Contract Amendment for Payment.* No modifications.

(o) *REA Form 830 Electric System Construction Contract.* No modifications.

(p) *REA Form 831 Electric Transmission Construction Contract.* For contracts NOT requiring approval of the Administrator (in accordance with subparts B through F of this part) the applicable modifications are as follows:

(1) *Notice and Instructions to Bidders, Section 10.* Delete the words "and such acceptance has been approved by the Administrator."

(2) *Contractor's Proposal, Article II, Section 1.d.* Delete the words "with the approval of the Administrator [1]" and "and approved by the Administrator [2]" and the associated footnotes.

(3) *Contractor's Proposal, Article II, Section 4.a.* Delete the words "and approved by the Administrator [3]" and the associated footnote.

(4) *Contractor's Proposal, Article III, Section 1.a, Sentence 4.* Delete the words "and the Administrator."

(5) *Contractor's Proposal, Article III, Section 1.b.* Replace the word "Administrator" with the word "Owner."

(6) *Contractor's Proposal, Article III, Section 1.c.* Delete the words "and the Administrator" in four places in the referenced section.

(7) *Contractor's Proposal, Article III, Section 1.e.* Replace the word "Administrator" with the word "Owner."

(8) *Contractor's Proposal, Article VI, Section 1.e.* Delete the words "and the Administrator."

(9) *Contractor's Proposal, Article VI.* Delete Section 11.

(10) *Acceptance.* Delete the words "Subject to the approval of the Administrator."

§§ 1726.255—1726.299 [Reserved]

Subpart I—REA Standard Forms

§ 1726.300 List of REA standard contracting forms for electric systems.

The following is a list of the current REA standard contracting forms that REA has prepared for use by electric borrowers when purchasing materials and equipment and constructing facilities with an REA loan or loan guarantee. Copies of the contract forms are available from the sources indicated in the listing. A notice of any change in these contract forms will be published in the **Federal Register**.

REA ELECTRIC PROGRAM STANDARD CONTRACT FORMS

REA Form No.	Issue date	Title	Purpose	Source of copies [1]
168b	3–62	Contractor's bond	Used in REA Forms 200, 203, 764, 790, 830 & 831	In respective contract form.
168c	4–79	Contractor's bond (less than $1 million).	In lieu of REA Form 168b, used when contractor's surety has accepted a small business administration guarantee.	REA.
172	9–58	Certificate of Inspection Contract Construction.	Used to notify REA that construction is ready for inspection.	REA.
173	3–55	Materials contract	Used for distribution, transmission, and general plant material purchases.	REA.
180	8–66	Construction Contract Amendment.	Used to amend distribution line construction contracts.	REA.
181	4–72	Certificate of Completion Contract Construction for Buildings.	Used for the closeout of REA Form 257	REA.
187	3–66	Certificate of Completion Contract Construction.	Used in REA Forms 200, 830, and 831	In respective contract form.
198	3–73	Equipment Contract	Used for equipment purchases.	REA.
200	9–72	Construction Contract-Generating.	Used for generating plant construction or for the furnishing and installation of major items of equipment.	REA.
201	7–72	Right-of-Way Clearing Contract.	Used for distribution right-of-way clearing work which is to be performed separate from line construction.	REA.
203	3–72	Transmission System Right-of-Way Clearing Contract.	Used for transmission line right-of-way clearing work which is to be performed separate from line construction.	REA.
213	8–52	Certificate ("Buy American").	Used to document compliance with the "Buy American" requirement.	REA.
219	10–88	Inventory of Work Orders	Used to encumber funds	REA.
224	3–55	Waiver and Release of Lien.	Used in REA Forms 200, 203, 764, 830, and 831	In respective contract form.
231	4–72	Certificate of Contractor.	Used in REA Forms 200, 203, 764, 830, and 831	In respective contract form.

REA ELECTRIC PROGRAM STANDARD CONTRACT FORMS—Continued

REA Form No.	Issue date	Title	Purpose	Source of copies [1]
238	4–72	Construction or Equipment Contract Amendment.	Used to amend contracts except for distribution line construction contracts.	REA.
251	5–53	Material Receipt	Used in REA Forms 764, 830, and 831	In respective contract form.
254	3–67	Construction Inventory	Used with the closeout of REA Forms 203, 764, 830, and 831.	REA.
257	3–73	Contract to Construct Buildings.	Used to construct headquarter buildings, generating plant buildings and other structure construction.	GPO.[2]
257a	10–69	Contractor's bond	Used in REA Form 257	In contract form.
270	7–70	Equal Opportunity Addendum.	Addendum to contracts not having current equal opportunity provisions.	REA.
274	6–81	Bidder's Qualifications	Used to document Bidder's Qualifications	REA.
282	11–53	Subcontract	Used for subcontracting	REA.
307	4–60	Bid Bond	Used In REA Forms 200, 203, 257, 764, 830 and 831.	In respective contract form.
458	3–55	Material Contract	Used to obtain generating plant material and equipment purchases over $10,000, not requiring acceptance tests at the project site.	REA.
764	8–72	Substation and Switching Station Erection Contract.	Used to construct substations and switching stations.	REA.
786	3–72	Electric System Communications and Control Equipment Contract.	Used for delivery and installation of equipment for system communications.	REA.
790	5–70	Distribution Line Extension Construction Contract (labor & materials).	Used for limited distribution construction accounted for under work order procedure.	GPO.[2]
792	5–70	Distribution Line Extension Construction Contract (labor only).	Used for limited distribution construction accounted for under work order procedure.	GPO.[2]
792a	10–62	Contractor's Bond	Used in REA Forms 201 and 792	In respective contract form.
792b	2–72	Certificate of Construction and Indemnity Agreement.	Used in REA Forms 201, 790, and 792	In respective contract form.
792c	5–70	Supplemental Contract for Additional Project.	Used in REA Forms 201, 790, and 792	In respective contract form.
800	6–81	Construction Contract Amendment for Payment.	Used for payment for materials delivered	REA
830	8–72	Electric System Construction Contract (labor & material).	Used for distribution and/or transmission project construction.	GPO.[2]
831	2–73	Electric Transmission Construction Contract (labor & material).	Used for transmission project construction	GPO.[2]

NOTES: 1. A single copy of the form will be furnished by REA upon request. Additional copies may be duplicated or reproduced. Requests for copies should be sent to: Director, Administrative Services Division, U.S. Department of Agriculture, Rural Electrification Administration, Washington, DC 20250.

2. Requests for copies should be submitted to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone orders may also be placed, using Mastercard or Visa, by calling (202) 783–3238.

§ 1726.301 Use of printed forms.

If a REA contract form is required by this part, the borrower shall use the form in the format available from REA or GPO (photocopying or other exact reproduction is acceptable.) The contract forms are not to be retyped, changed, modified or altered in any manner not specifically authorized in this part or approved by REA in writing. Any modifications approved by REA must be clearly shown so to indicate that such are different from the standard form.

§ 1726.302 REA approved forms of contract.

If a specific REA contract form is required by a particular section of this part, the borrower shall use that form without changes or modifications or alterations unless, prior to issuing the bid package to bidders, REA has specifically approved any such changes to that form for that borrower. Any proposed changes shall not relieve the contractor or the borrower of the basic responsibilities required by the standard REA contract form, and, shall not alter any terms and conditions required by law. Changes permitted or required by subpart H of this part or by part 1788, REA Fidelity and Insurance Requirements for Electric and Telephone Borrowers, of this chapter are approved by REA under the circumstances indicated.

§ 1726.303 Interest on overdue accounts.

Certain REA contract forms contain a provision concerning payment of interest on overdue accounts. Prior to issuing the invitation to bidders, the borrower must insert an interest rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such

invitation to bid is issued. If no prime rate is published on that date, the last such rate published prior to that date must be used. The rate must not, however, exceed the maximum rate allowed by any applicable state law.

§§ 1726.304—1726.309 [Reserved]

§ 1726.310 Contractor's bond, REA Form 168b.

The bond form in this section shall be used when a Contractor's Bond is required by REA Forms 200, 201, 203, 257, 764, 786, 790, 792, 830, or 831 unless the contractor's surety has accepted a Small Business Administration guarantee and the contract is for one million dollars or less.

Contractor's Bond

1. Know all men that we, _____, as Principal, and _____, as Surety, are held and firmly bound unto _____ (hereinafter called the "Owner") and unto the United States of America (hereinafter called the "Government") and unto all persons, firms and corporations who or which may furnish materials for or perform labor on a Rural Electrification Administration Project known as Project _____ and to their successors and assigns, in the penal sum of _____ dollars ($_____), as hereinafter set forth and for the payment of which sum well and truly to be made we bind ourselves, our executors, administrators, successors and assigns jointly and severally by these presents. Said Project is described in a certain construction contract (hereinafter called the "Construction Contract") between the Owner and the Principal, dated _____, 19____, pursuant and subject to a certain loan contract (hereinafter called the "Loan Contract") between the Owner and the Government, acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator").

2. The condition of this obligation is such that if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of the Construction Contract and any amendments thereto, whether such amendments are for additions, decreases, or changes in materials, their quantity, kind or price, labor costs, mileage, routing or any other purpose whatsoever, and whether such amendments are made with or without notice to the Surety, and shall fully indemnify and save harmless the Owner and the Government from all costs and damages which they, or either of them, shall suffer or incur by reason of any failure so to do, and shall fully reimburse and repay the Owner and the Government for all outlay and expense which they, or either of them shall incur in making good any such failure of performance on the part of the Principal, and shall promptly make payment to all persons working on or supplying labor or materials for use in the construction of the Project contemplated in the Construction Contract and any amendments thereto, in respect of such labor or materials furnished and used therein, to the full extent thereof, and in respect of such labor or materials furnished but not so used, to the extent of the quantities estimated in the Construction Contract and any amendments thereto to be required for the construction of the Project, and shall well and truly reimburse the Owner and the Government, as their respective interests may appear, for any excess in cost of construction of said Project over the cost of such construction as provided in the Construction Contract and any amendments thereto, occasioned by any default of the Principal under the Construction Contract and any amendments thereto, then this obligation shall be null and void, but otherwise shall remain in full force and effect.

3. It is expressly agreed that this bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon any amendment to the Construction Contract, so as to bind the Principal and the Surety to the full and faithful performance of the Construction Contract as so amended, provided only that the total amount of all increases in the cost of construction shall not exceed 20 percent of the amount of the maximum price set forth in the Construction Contract. The term "Amendment," wherever used in this bond, and whether referring to this bond, the Construction Contract or the Loan Contract shall include any alteration, addition, extension, modification, amendment, rescission, waiver, release or annulment, of any character whatsoever.

4. It is expressly agreed that any amendment which may be made by agreement or otherwise between the Principal and the Owner in the terms, provisions, covenants and conditions of the Construction Contract, or in the terms, provisions, covenants and conditions of the Loan Contract (including, without limitation, the granting by the Administrator to the Owner of any extension of time for the performance of the obligations of the Owner under the Loan Contract or the granting by the Administrator or the Owner to the Principal of any extension of time for the performance of the obligations of the Principal under the Construction Contract, or the failure or refusal of the Administrator or the Owner to take any action, proceeding or step to enforce any remedy or exercise any right under either the Construction Contract or the Loan Contract, or the taking of any action, proceeding or step by the Administrator or the Owner, acting in good faith upon the belief that the same is permitted by the provisions of the Construction Contract or the Loan Contract) shall not in any way release the Principal and the Surety, or either of them or their respective executors, administrators, successors or assigns, from liability hereunder. The Surety hereby acknowledges receipt of notice of any amendment, indulgence or forbearance, made, granted or permitted.

5. This bond is made for the benefit of all persons, firms and corporations who or which may furnish any materials or perform any labor for or on account of the construction to be performed under the Construction Contract and any amendments thereto, and they, and each of them, are hereby made obligees hereunder with the same force and effect as if their names were written herein as such, and they and each of them may sue hereon.

In witness whereof, the undersigned have caused this instrument to be executed and their respective corporate seals to be affixed and attested by their duly authorized representatives this _____ day of _____, 19____.

Principal _____ (Seal)
By _____
Attest: _____ Secretary
Surety _____ (Seal)
By _____
Attest: _____ Secretary
_____ Address of Surety's Home Office
By _____ Resident Agent of Surety

Signatures: The Contractor's Bond must be signed with the full name of the Contractor. If the Contractor is a partnership the Contractor's Bond must be signed in the partnership name by a partner. If the Contractor is a corporation the Contractor's Bond must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the corporation. A typewritten copy of all such names and signatures shall be appended.

Power of Attorney: The Contractor's Bond must be accompanied by a power of attorney authorizing execution on behalf of the Surety and, in jurisdictions so requiring should be countersigned by a duly authorized resident agent of the Surety.

[End of clause]

§ 1726.311 Contractor's bond, REA Form 168c.

The bond form in this section shall be used when a Contractor's Bond is required by REA Form 200, 201, 203, 257, 764, 786, 790, 792, 830, or 831 and the contractor's surety has accepted a Small Business Administration guarantee and the contract is for one million dollars or less.

Contractor's Bond

(Use only when contract is less than $1 million and Surety has accepted an SBA (Small Business Administration) Guarantee)

1. Know all men that we, _____, as Principal, and _____, as Surety, are held and firmly bound unto _____ (hereinafter called the "Owner") and unto the United States of America (hereinafter called the "Government") and unto all persons, firms and corporations who or which may furnish materials for or perform labor on a Rural Electrification Administration Project known as Project _____ and to their successors and assigns, in the penal sum of _____ dollars ($_____), as hereinafter set forth and for the payment of which sum well and truly to be made we bind ourselves, our executors, administrators, successors and assigns jointly and severally by these presents. Said Project is described in a certain construction contract (hereinafter called the "Construction Contract") between the Owner and the Principal, dated _____, 19____, pursuant and subject to a certain loan contract (hereinafter called the "Loan Contract") between the Owner and the Government, acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator").

2. The condition of this obligation is such that if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of the Construction Contract and any amendments thereto, whether such amendments are for additions, decreases, or changes in materials, their quantity, kind or price, labor costs, mileage, routing or any other purpose whatsoever, and whether such amendments are made with or without notice to the Surety, and shall fully indemnify and save harmless the Owner and the Government from all costs and damages which they, or either of them, shall suffer or incur by reason of any failure so to do, and shall fully reimburse and repay the Owner and the Government for all outlay and expense which they, or either of them shall incur in making good any such failure of performance on the part of the Principal, and shall promptly make payment to all persons working on or supplying labor or materials for use in the construction of the Project contemplated in the Construction Contract and any amendments thereto, in respect of such labor or materials furnished and used therein, to the full extent thereof, and in respect of such labor or materials furnished but not so used, to the extent of the quantities estimated in the Construction Contract and any amendments thereto to be required for the construction of the Project, and shall well and truly reimburse the Owner and the Government, as their respective interests may appear, for any excess in cost of construction of said Project over the cost of such construction as provided in the Construction Contract and any amendments thereto, occasioned by any default of the Principal under the Construction Contract and any amendments thereto, then this obligation shall be null and void, but otherwise shall remain in full force and effect.

3. Provided, that the liability of the Principal and Surety hereunder to the Government shall be subject to the same limitations and defenses as may be available to them against a claim hereunder by the Owner, provided, however, that the Government may, at its option, perform any obligations of the Owner required by the contract.

4. It is expressly agreed that this bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon any amendment to the Construction Contract, so as to bind the Principal and the Surety to the full and faithful performance of the Construction Contract as so amended, provided only that the total amount of all increases in the cost of construction shall not exceed 20 percent of the amount of the maximum price set forth in the Construction Contract. The term "Amendment," wherever used in this bond, and whether referring to this bond, the Construction Contract or the Loan Contract shall include any alteration, addition extension, modification, amendment rescission, waiver, release or annulment, of any character whatsoever.

5. It is expressly agreed that any amendment which may be made by agreement or otherwise between the Principal and the Owner in the terms provisions, covenants and conditions of the Construction Contract, or in the terms, provisions, covenants and conditions of the Loan Contract (including, without limitation the granting by the Administrator to the Owner of any extension of time for the performance of the obligations of the Owner under the Loan Contract or the granting by the Administrator or the Owner to the Principal of any extension of time for the performance of the obligations of the Principal under the Construction Contract, or the failure or refusal of the Administrator or the Owner to take any action, proceeding or step to enforce any remedy or exercise any right under either the Construction Contract or the Loan Contract, or the taking of any action, proceeding or step by the Administrator or the Owner, acting in good faith upon the belief that the same is permitted by the provisions of the Construction Contract or the Loan Contract) shall not in any way release the Principal and the Surety, or either of them or their respective executors, administrators, successors or assigns, from liability hereunder. The Surety hereby acknowledges receipt of notice of any amendment, indulgence or forbearance, made, granted or permitted.

6. This bond is made for the benefit of all persons, firms and corporations who or which may furnish any materials or perform any labor for or on account of the construction to be performed under the Construction Contract and any amendments thereto. Provided, that beneficiaries or claimants hereunder shall be limited to the subcontractors, and persons, firms and corporations having a direct contract with the Principal or its subcontractors.

7. Provided, further, that no suit or action shall be commenced hereunder by any person, firm, or corporation who performed work or labor or who furnished materials for the project: (a) Unless such person, firm, or corporation, other one having a direct contract with the Principal (or with the Government in the event the Government is performing the obligation of the Owner), shall have given detailed written notice of claim to: The Principal, and the Owner, within ninety (90) days after such person, firm, or corporation did or performed the last of the work or labor, or furnished the last of the materials for which such claim is made (b) After the expiration of one (1) year following the date on which Principal ceased work on said contract, it being understood, however, that if any limitation embodied in the Bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to equal to the minimum period of limitation permitted by such law

In witness whereof, the undersigned have caused this instrument to be executed and their respective corporate seals to be affixed and attested by their duly authorized representatives this _____ day of _____, 19_____

Principal _____ (Seal)
By _____
Attest: _____ Secretary
Surety _____ (Seal)
By _____
Attest: _____ Secretary
_____ Address of Surety's Home Office
By _____ Resident Agent of Surety

Signatures: The Contractor's Bond must be signed with the full name of the Contractor. If the Contractor is a partnership the Contractor's Bond must be signed in the partnership name by a partner. If the Contractor is a corporation the Contractor's Bond must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the corporation. A typewritten copy of all such names and signatures shall be appended.

Power of Attorney: The Contractor's Bond must be accompanied by a power of attorney authorizing execution on behalf of the Surety and, in jurisdictions so requiring should be countersigned by a duly authorized resident agent of the Surety.

[End of clause]

§ 1726.312 Construction contract amendment, REA Form 180.

The amendment form in this section shall be used when required by this part.

Construction Contract Amendment

Instructions—Submit 3 copies of this form & 3 copies of all attachments.

To Administrator Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250

1. Project Designation _____
2. Amendment No. _____
3. Date _____
4. Details of changes are tabulated on sheet _____ to _____ attached and are part of this amendment.
5. The following changes in Construction Contract Number _____ dated _____, 19_____ are hereby submitted for your approval.
6. Data pertinent to the original contract and amendments including this amendment are as follows (decrease to be preceded by (−) minus sign):

Consumers	Miles	Signed	Potential	Price
Original Contract:				
Amendment No. 1				
Amendment No. 2				

Consumers	Miles	Signed	Potential	Price
Amendment No. 3				
Amendment No. 4				
Amendment No. 5				
Amendment No. 6				
Total With This Amendment.				

7. Changes in materials furnished by Owner: This amendment provides for an increase/decrease of $_____ in the amount of materials furnished by Owner. The details of changes in items, quantities, or prices are tabulated on sheet _____ to ___ attached and made a part hereof.

8. Bond extension attached ___ Yes ___ No

9. The construction period will be changed _____ days.

10. New counties (if any) _____

11. Description and reason for change _____

This amendment providing for an increase/decrease of $_____ in the amount of said construction contract is submitted pursuant to the provisions thereof and pursuant to the loan contract between the United States of America and the undersigned borrower. You are hereby authorized to approve this amendment either in whole or in part and to delete such items as do not meet with your approval. To the extent the items hereof are approved by you the construction contract shall be amended.

Accepted

_____ Contractor

By _____ President-Owner-Partner

(Strike out inapplicable title. If signed by other than above, power of attorney should be attached or on file with REA.)

_____ Date

_____ Owner

By _____ President-Board of Directors

_____ Date

Approved

_____ Date

_____ Engineer for the Borrower

Details of Contract Amendment

Item No. _____

Assembly Unit Designation _____

Quantity Previously Approved _____

Net Change Number Of Units _____

Contract Amended To Read (Show quantities and prices as revised by this amendment):

Number of Units _____

Unit Price:

Labor _____

Material _____

Total _____

Total Price _____

Total Increase Price _____

Total Decrease _____

Totals _____

Net Total _____

[End of Clause]

§ 1726.313 Certificate of completion, contract construction for buildings, REA Form 181.

The closeout form in this section shall be used when required by this part.

Certificate Of Completion; Contract Construction For Buildings

_____ (Project Designation)

I, the undersigned Architect of the above-designated Rural Electrification Administration Project, hereby certify that:

1. The construction provided for pursuant to Construction Contract No. _____ dated _____ 19____, including all approved amendments (hereinafter called the "Project"), between _____ ("Owner") and _____ ("Contractor") has been completed as of _____ 19____, and is in all respects in strict compliance with the provisions of the Loan Contract and the Construction Contract, including the Plans and Specifications and all modifications thereto.

2. To the best of my knowledge, payment in full has been made to all persons who have furnished labor for the Project.

3. The Contractor has, to the best of my knowledge, obtained valid releases of lien from all Manufacturers, materialmen, and subcontractors that furnished materials or services or both which were employed by the Contractor in the performance of the Construction Contract, and that such releases have been delivered to the Owner.

4. All defects in workmanship and materials reported during the period of construction of the Project have been corrected.

5. The final Contract Price of the Project as completed is _____ dollars ($_____).

_____ Date

_____ Representative of Architect

_____ Title

ACCEPTANCE

_____ Date

_____ Representative of Contractor

_____ Title

_____ Date

_____ Name of Owner

_____ President, Board of Directors

[End of Clause]

§ 1726.314 Certificate of completion, contract construction, REA Form 187.

The closeout form in this section shall be used when required by this part.

Certificate Of Completion; Contract Construction

To: Administrator
Rural Electrification Administration
U.S. Department of Agriculture, Washington, DC 20250

_____ (Project Designation)

I, the undersigned Engineer of the above-designated Rural Electrification Administration Project do hereby certify that:

1. The construction provided for pursuant to Construction Contract No. _____ dated _____ 19____, including all approved amendments (hereinafter called the "Project"), between _____ ("Owner") and _____ ("Contractor") has been completed as of _____ 19____, and is in all respects in strict compliance with the provisions of the Loan Contract and the Construction Contract, including all Plans, specifications, maps, and drawings and all modifications thereof.

2. Payment in full has been made to all persons who have furnished labor for the Project.

3. The Contractor has obtained valid releases of lien from all persons, firms and/or corporations furnishing materials, supplies, and appliances which were employed by the Contractor in the performance of the Construction Contract, and that such releases have been delivered by the Contractor to the Owner.

4. The Final Inventory attached hereto and made a part hereof is a complete and accurate summary of all units of construction in the Project and of all work performed in accordance with the Construction Contract.

5. The staking sheets and tabulation of staking sheets upon which the Final Inventory is based show the accurate location, number, and kind of all units of construction of the project and show all work performed in accordance with the Construction Contract.

6. All defects in workmanship and materials reported during the period of construction of the Project have been corrected.

7. The total cost of the Project as completed is _____ dollars ($_____). The Project consists of facilities shown on the Statement of Construction which is true and correct and which is attached hereto and made a part hereof.

Dated this ___ day of _____, 19__.

_____ Name of Engineer

By _____

_____ Title

_____ Date

Approved as to Items 1 and 6 above:

_____ REA Field Engineer

We, the undersigned Owner and Contractor, do hereby certify that:

1. The Project has been completed in accordance with the provisions of the Construction Contract, dated _____ 19____, provided, however, that acceptance of the Project by the Owner shall not be deemed to relieve the Contractor of its obligations contained in the Construction Contract with respect to defective workmanship or, materials discovered within one year after the date of completion.

2. The Final Inventory attached hereto and made a part hereof is a complete and accurate summary of all units of construction in the Project and of work performed in accordance with the Construction Contract.

_____ Owner

By _____ President

_____ Date

_____ Name of Contractor

By _____

_____ Title

_____ Date

[End of Clause]

§ 1726.315 Equipment contract, REA Form 198.

The contract form in this section shall be used when required by this part.

Equipment Contract

Notice and Instructions to Bidders

1. Sealed proposals for the furnishing and delivery f.o.b. _____ of equipment for the _____ (hereinafter called the "Owner") which is to be part of the project known as _____ will be received by the Owner on or before _____ o'clock, _____ M., _____ 19_____, at _____ at which time and place the proposals will be publicly opened and read. Any proposal received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. The Plans and Specifications, together with all necessary forms and other documents for bidders may be obtained from the Owner or from the Engineer, _____ at the latter's office at _____. The Plans and Specifications may be examined at the office of the Owner or at the office of the Engineer. A copy of the loan contract (if the Project is to be financed in whole or in part, pursuant to a loan contract) between the Owner and the United States of America acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator") and of the loan contract between the Owner and any other lender, may be examined at the office of the Owner.

3. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewriter. No alterations or interlineations will be permitted, unless made before submission and initialed and dated.

4. Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the Plans and Specifications and forms of Equipment Contract on file with the Secretary of the Owner and with the Engineer, and all other matters, including transportation facilities, that may affect the cost and the time of completion of the work.

5. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

6. In estimating the lowest cost to the Owner as one of the factors in deciding the award of the Contract, the Owner will consider, in addition to the price quoted in the Proposals, the following: _____.

7. The Contract, when executed, shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent, or employee of the Owner or by any other person.

8. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the execution of any contract which may be awarded thereon.

9. The Owner reserves the right to reject any or all Proposals.

_____ Owner

By _____

_____ Date

Proposal

To: _____ (hereinafter called the "Owner".)

1. The undersigned (hereinafter called the "Bidder") hereby proposes to furnish and deliver the equipment (hereinafter called the "Equipment") described in the Plans and Specifications attached hereto and made a part hereof for the following prices: Item _____.

2. The prices of Equipment set forth herein shall include the cost of delivery to _____. Such delivery shall be made within _____ days after the receipt of the written order of the Owner.

3. This Proposal is made pursuant to the provisions of the Notice and Instructions to Bidders, if any shall be attached hereto, and the Bidder agrees to the terms and conditions thereof.

4. The Bidder warrants the accuracy of all statements contained in the Bidder's Qualifications, if any shall be submitted, and agrees that the Owner shall rely upon such accuracy as a condition of the Contract in the event that this Proposal is accepted.

5. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any other person or persons bidding for the same work.

6. The Bidder agrees that, in the event this Proposal is accepted, it will execute a Contract in the form attached hereto.

7. The Bidder warrants that the Equipment will conform to the performance data and guarantees which are attached hereto and by this reference made a part hereof.

8. If, in submitting this Proposal, the Bidder has made any change in the form of Proposal or Contract furnished by the Owner, the Bidder understands that the Owner and the Administrator may evaluate the effect of such change as they see fit or they may exclude the Proposal from consideration in determining the award of the Contract.

9. The Bidder represents that:

It has _____, does not have _____, 100 or more employees, and if it has, that it has ___ ___, has not _____, furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

10. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.

The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

_____ Name of Bidder

_____ Address of Bidder

By _____

_____ Title of Officer

_____ Date

Equipment Contract

AGREEMENT made _____ 19_ between _____ (hereinafter called the "Purchaser") and _____ (hereinafter called the "Seller"), a corporation organized and existing under the laws of the State of _____.

Whereas, the Purchaser desires to purchase and the Seller desires to sell the equipment described herein for the project financed in part or whole by a loan to the Purchaser from

the United States of America, acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator") which project is designated

Now Therefore, in consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

Section 1—Acceptance of Proposal

(a) The Purchaser accepts the Proposal which is attached hereto and by this reference made a part hereof, and the parties hereto agree that the Seller shall sell and deliver to the Purchaser and the Purchaser shall purchase and receive from the Seller the equipment (hereinafter called the "Equipment") described in the Proposal upon the terms and conditions herein stated.

(b) The prices set forth in the Proposal include the cost of delivery to

(c) The prices set forth in the Proposal do not include any sums which are or may be payable by the Seller on account of taxes imposed by any taxing authority upon the sale, purchase or use of the Equipment. If any such tax is applicable to the sale, purchase or use of the Equipment hereunder, the amount thereof shall be added to the purchase price and paid by the Purchaser.

Section 2—Delivery

The Seller shall deliver the Equipment within _____ days after receipt of the written order or orders of the Purchaser. The time for delivery shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without the fault of the Seller, including, but not limited to, acts of God, fires, strikes, and floods.

Section 3—Payment

Upon the shipment of any Equipment hereunder, the Seller shall submit to the Purchaser a detailed statement of the Equipment shipped. The Purchaser shall, upon receipt of the Equipment, pay the Seller ninety percent (90%) of the contract price of the Equipment. When the Equipment has been installed, placed in satisfactory operation, tested and accepted by the Purchaser, the Purchaser shall make final payments therefor to the Seller: provided, however, such final payment shall be made not later than one-hundred eighty (180) days after delivery of the Equipment, unless such acceptance by the Purchaser shall be withheld because of the fault of the Seller.

Section 4—Defective Material and Workmanship

(a) All Equipment furnished hereunder shall be subject to the inspection, tests, and approval of the Purchaser and the Administrator and the Seller shall furnish all information required concerning the nature or source of any Equipment and provide adequate facilities for testing and inspecting the Equipment at the plant of the Seller.

(b) The Equipment furnished hereunder shall become the property of the Purchaser upon delivery, provided, however, that the Purchaser or the Administrator, within one year after delivery or within the period for which the Equipment is guaranteed, whichever is longer, may reject any Equipment which does not comply with the Specifications attached hereto and made a part hereof or with the guarantees, if any, of the Seller and the manufacturer. Upon any such rejection, the Seller shall repair or replace such defective Equipment within a reasonable time after notice in writing from the Purchaser and in the event of failure by the Seller so to do, the Purchaser may make such replacement and the cost and expense thereof shall be paid by and recoverable from the Seller.

Section 5—Miscellaneous

(a) All manufacturers' guarantees of Equipment, if any, shall be transferred and assigned to the Purchaser upon delivery of any Equipment and before final payment is made for such Equipment. Such guarantees shall be in addition to those required of the Seller by other provisions of this Contract.

(b) The Seller shall hold harmless and indemnify the Purchaser from any and all claims, suits, and proceedings for infringement of any patent or patents covering Equipment purchased hereunder.

(c) In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada: provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Seller agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

(d) During the performance of this contract, the Seller agrees as follows:

(1) The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Seller will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Seller's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Seller will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Seller's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Seller may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Seller will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Seller will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Seller may request the United States to enter into such litigation to protect the interest of the United States.

(e) Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto provided, however, that the Seller shall not assign this contract or any part hereof without approval in writing of the Purchaser and the Administrator, and further that the Seller shall not enter into any contract with any person, firm or corporation for the performance of the Seller's obligations hereunder, or any part thereof, without the approval in writing of the Purchaser.

(f) This contract shall become effective only upon approval by the Administrator. Neither this contract nor any provision thereof shall be modified, amended, rescinded, waived, or terminated without the approval in writing of the Administrator. Amendments executed on REA Form 238 are not subject to approval of the Administrator, except that when a contract amendment along with all previous amendments to this contract cause the total amended contract price to exceed 120 percent of the original contract price, as stated in the Seller's proposal and accepted by the Owner, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

In Witness Whereof,[1] the parties hereto have caused this contract to be signed in their respective corporate names by their presidents and their corporate seals to be hereunto affixed and attested by their secretaries, all as of the day and year first above written.

_____ Purchaser
By _____ President
Attest: _____ Secretary
_____ Seller
By _____ President
Attest: _____ Secretary

[1] When Seller is a corporation this section of agreement to be used.)

In Witness Whereof,[2] the Purchaser has caused this contract to be signed in its corporate name by its President and its corporate seal to be hereunto affixed and attested by its Secretary, and the Seller has (have) set his (their) hand(s), all as of the day and year first above written.

_____ Purchaser
By _____ President
Attest: _____ Secretary
_____ Seller
_____ Name
_____ Title

[2] When Seller is an individual or partnership this section of agreement to be used. If a partnership—all partners shall sign.

[End of clause]

§§ 1726.316—1726.319 [Reserved]

§ 1726.320 Construction contract, generating, REA Form 200.

The contract form in this section shall be used when required by this part.

Construction Contract—Generating

Notice and Instructions to Bidders

1. Sealed proposals for the furnishing, delivery and installation of equipment and materials for the electric generating plant of _____ (hereinafter called the "Owner") which is to be part of the system known as _____ will be received by the Owner on or before _____ o'clock ____ M., _____, 19___, at _____, at which time and place the proposals will be publicly opened and read. Any proposal received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. Obtaining and Transferring Documents. The Plans and Specifications together with all necessary forms and other documents for bidders may be obtained from the Owner or from the Engineer, _____, at the latter's office at _____ upon the payment of $_____, all of which will be refunded to each bona fide bidder within ten days after the bid opening. The Plans and Specifications may be examined at the office of the Owner or at the office of the Engineer. A copy of the Loan Contract (if the Project is to be financed, in whole or in part, pursuant to a loan contract) between the Owner and the United States of America acting through The Administrator of the Rural Electrification Administration (hereinafter called the "Administrator"), and of the Loan Contract between the Owner and any other lender may be examined at the office of the Owner. Each set of documents will have a serial number, given by the Engineer, and the number of each set with the name of the purchaser will be recorded by the Engineer. Bids will be accepted only from the original purchasers.

3. Manner of Submitting Proposals. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number, if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission and initialed and dated.

4. Familiarity with Conditions. Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Plans and Specifications. Construction Drawings and forms of Contractor's Proposal and Acceptance, and Contractor's Bond on file with the Owner and with the Engineer, and shall become informed as to the location and nature of the proposed construction, the ecological and environmental criteria to be followed, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project, general local conditions and all other matters that may affect the cost and the time of completion of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors, and the so-called "Kick-Back" Statute (48 Stat. 948) and regulations issued pursuant thereto.

5. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

6. The Time for Completion of the Project shall be as specified by the Engineer in the Proposal.

7. Bid Bond. Each Proposal must be accompanied by a Bid Bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such Bid Bond or check in consideration of the Owner's receiving and considering such Proposal, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.

8. Contractor's Bond. The successful Bidder will be required to execute two additional counterparts of the Proposal and for a Contract in excess of $100,000, to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties in a penal sum not less than the Contract price.

9. Failure to Furnish Contractor's Bond. Should the successful Bidder fail or refuse to execute such counterparts of the Proposal or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project. The term "successful Bidder" shall be deemed to include any Bidder whose proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts of the proposal or to furnish a satisfactory Contractor's Bond (where required.)

10. Factors in Deciding the Award of the Contract. In estimating the lowest cost to the Owner as one of the factors in deciding the award of the Contract, the Owner will consider, in addition to the prices quoted in the Proposals, the following: _____.

11. Contract is Entire Agreement. The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

12. Minor Irregularities. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal prior to the acceptance thereof by the Owner.

13. Bid Rejection. The Owner reserves the right to reject any or all Proposals.

14. Definition of Terms. The terms "Administrator", "Engineer", "Supervisor",

"Project", "Completion of Construction" and "Completion of the Project," as used throughout this Contract, shall be as defined in Article VI, Section 1 of the Contractor's Proposal.

15 The Owner Represents:

(a) If by provisions of the Contractor's Proposal the Owner shall have undertaken to furnish any materials for the construction of the Project, such materials are on hand at locations specified or if such materials are not on hand they will be made available to the successful Bidder at the locations specified before the time such materials are required for construction.

(b) All funds necessary for prompt payment for the construction of the Project will be available. If the Owner shall fail to comply with any of the undertakings contained in the foregoing representations or if any of such representations shall be incorrect, the Bidder will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representations, provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion, and provided, further, that such extension, if any, of the time of the completion shall be the sole remedy of the Bidder for the Owner's failure, because of conditions beyond the control and without the fault of the Owner, to furnish materials in accordance with subparagraph a, hereof.

_____ Owner

By _____

_____, 19____

Contractor's Proposal

To Furnish, Deliver and Install Equipment and Materials TO: _____ (hereinafter called the "Owner")

ARTICLE I—GENERAL

Section 1. Offer to Furnish, Deliver and Install. The undersigned (hereinafter called the "Bidder") hereby proposes to furnish, deliver and install the materials, supplies and equipment (hereinafter called the "Project") described in the plans, specifications and drawings (hereinafter called the "Specifications") attached hereto and made a part hereof, financed in part or whole by a loan to the Owner by the United States of America, acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator") and designated _____.

Section 2. Familiarity with Conditions. The Bidder has made a careful examination of the site of the Project and of the Plans and Specifications, Construction Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities and the kind of facilities required before and during the construction of the Project, and has become acquainted with the labor conditions, the ecological and environmental criteria to be followed, state and local laws and regulations which would affect work on the proposed construction.

Section 3. License. The Bidder warrants that a Contractor's License is _____, is not _____, required, and if required, it possesses Contractor's License No. _____ of the State of _____, in which the Project is located and said license expires on _____, 19____.

Section 4. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.

Section 5. The Bidder warrants that it possesses adequate financial resources and agrees that in the event this Proposal is accepted and a Contractor's Bond is required, it will furnish a Contractor's Bond in the form attached hereto, in a penal sum not less than the maximum Contract Price, with a surety or sureties listed by the United States Treasury Department as Acceptable Sureties.

In the event that the surety or sureties on the performance bond delivered to the Owner contemporaneously with the execution of the Contract or on any bond or bonds delivered in substitution thereof or in addition thereto shall at any time become unsatisfactory to the Owner or the Administrator, the Bidder agrees to deliver to the Owner another or an additional bond. The Bidder understands, that, if in submitting this Proposal, the Bidder has made any change in the form of Proposal furnished by the Owner, that the Owner and the Administrator may evaluate the effect of such change as they see fit or they may exclude the Proposal from consideration in determining the award of the contract.

ARTICLE II—CONSTRUCTION

Section 1. Bid Price. The Bidder will construct the Project for the following sum:

Base Bid _____ Dollars ($ _____)
Alternate No. 1 _____ Dollars ($ _____)
Alternate No. 2 _____ Dollars ($ _____)

Section 2. Taxes. The price quoted herein includes all amounts which the Bidder estimates will be payable by the Bidder or the Owner on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies or equipment or services or labor of installation to be incorporated in the Project. The Bidder will pay all such taxes and will furnish to appropriate taxing authorities any required information and reports pertaining thereto.

Section 3. Time and Manner of Construction.

(a) The time of Completion of Construction of the Project is of the essence of this Contract. The Bidder will commence the work within _____ calendar days after the Owner shall have given the Bidder written notice to commence construction, will prosecute diligently and complete such construction to the satisfaction of the Owner and the Administrator within _____ calendar days after giving of such notice.

(b) The time of Completion of Construction shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without fault of the Bidder, including Acts of God, fires, strikes, floods, inability to obtain materials, changes in the Specifications as herein provided and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however, that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

(c) In the sequence of construction, the Owner, acting through the Engineer, shall have the right to direct the Bidder to perform any part or parts of the work which is to be performed at the site of the Project before any other part or parts, of such work and the Bidder agrees to comply with all such directions. The Bidder shall comply with all other reasonable directions of the Owner.

(d) The Owner, acting through the Engineer, may from time to time during the progress of the construction of the Project make such changes, additions to or subtractions from the Plans and Specifications and sequence of construction provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefor to the Owner within ten (10) days after any such change is made. If the cost of the Project to the Bidder to make the change shall be increased or decreased, the contract price shall be amended by an amount equal to the reasonable cost hereof in accordance with a construction amendment signed by the Owner and the Bidder and approved by the Administrator,[1] but no claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition. The reasonable cost of any increase or decrease in the contract price covered by contract amendment as outlined above, in the absence of other mutual agreement, shall be computed on the basis of the direct cost of materials, f.o.b. the site of the Project, plus the direct cost of labor necessary to incorporate such materials into the Project (including actual cost of payroll taxes and insurance, not to exceed ten percent of payroll cost of labor), plus _____ percent of the direct cost of materials and labor. Labor costs shall be limited to the direct costs for workmen and foremen. Costs for profit and overhead for subcontractors, if any, Bidder's main office overhead, job office overhead and superintendence shall not be included.

Section 4. The Bidder agrees that in the event this Proposal is accepted it will make

[1] As long as the total price of this contract including all amendments is less than 120 percent of the original contract price as stated in the acceptance hereto, amendments executed on RE\ Form 238 are not subject to the approval of the Administrator. Whenever an amendment to this contract causes the total amended contract to exceed 120 percent of the original contract price, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

available for use in connection with the proposed construction all necessary tools and equipment and qualified superintendents and foremen.

Section 5. Supervision and Inspection.

a. The Bidder will give sufficient supervision to the work, using its best skill and attention. The Bidder will carefully study and compare all drawings, specifications and other instructions and will at once report to the Owner any error, inconsistency or omission which it may discover. The Bidder shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Bidder shall also employ, in connection with the construction of the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Bidder.

b. The Owner reserves the right to require the removal from the Project of any employee of the Bidder if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner or the Supervisor, if any, shall have the right to require the Bidder to increase the number of its employees and to increase or change the amount or kinds of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner or Supervisor; but the failure of the Owner or Supervisor to give any such directions shall not relieve the Bidder of its obligations to complete the work within the time and in the manner specified in this Proposal.

c. The manner of construction of the Project, and all materials and equipment used therein, shall be subject to the inspection, tests and approval of the Owner and the Administrator, and the Bidder shall furnish all information required by the Owner or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the Project. The Owner and the Administrator shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Bidder and of any subcontractor, relevant to the construction of the Project. The Bidder shall provide all reasonable facilities necessary for such inspection and tests and shall maintain an office at the site of the Project, with telephone service where obtainable and at least one office employee to whom directions and instructions of the Owner may be delivered.

Delivery of such directions or instructions in writing to the employee of the Bidder at such office shall constitute delivery to the Bidder. The Bidder shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by the Owner, when any other inspection is made.

d. In the event that the Owner through its Engineer, or the Administrator, shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Bidder and the Bidder's Surety or Sureties, if any, to have an inspection made by an engineer approved by the Owner and the Administrator for the purpose of determining the exact nature, extent and location of such defects.

e. The Engineer may recommend to the Owner that the Bidder suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Bidder to comply with any of the provisions of the Contract: Provided, however, that the Bidder shall not suspend work pursuant to this provision without written authority from the Owner so to do. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Bidder to comply with any of the provisions of this Contract. In the event that work is suspended by the Bidder with the consent of the Owner, the Bidder before resuming work shall give the Owner at least twenty-four (24) hours notice thereof in writing.

Section 6. Defective Materials and Workmanship.

a. The acceptance of any materials, equipment or any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, including the installation and removal thereof, by and at the expense of the Bidder. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Bidder at the Bidder's expense. The Bidder shall not be entitled to any payment hereunder so long as any defective materials, equipment, or workmanship in respect to the Project, of which the Bidder shall have had notice, shall not have been replaced or remedied, as the case may be.

b. Notwithstanding the acceptance of workmanship, materials, supplies or equipment, or the giving of any certificate with respect to the completion of the work, if during the construction or within one year after such completion, or within such longer period as the Project or any part thereof may be guaranteed by other provisions of the Contract or the Specifications, the workmanship, materials, supplies or equipment shall be found to be defective or not in conformity with the requirements of the Specifications, the Bidder shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice of the existence thereof shall have been given to the Bidder by the Owner. In event of failure by the Bidder so to do, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case may be, and in such event the Bidder shall pay to the Owner the cost and expense thereof.

ARTICLE III—PAYMENTS AND RELEASE OF LIENS

Section 1. Payments to Bidder

a. Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Bidder for construction accomplished during the preceding calendar month on the basis of estimates thereof certified to by the Bidder and approved by the Engineer and by the Owner solely for the purpose of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials; and provided further, that in estimating the amount of construction accomplished, consideration shall be given only to equipment and materials incorporated into the Project and equipment and materials delivered to the site in accordance with approved shipping schedule. Only ninety percent (90%) of each such estimate approved during the construction of the Project shall be paid by the Owner to the Bidder prior to Completion of the Project. Upon completion by the Bidder of the construction of the Project, the Engineer shall inspect the work performed hereunder and if he shall find the work acceptable and all provisions hereunder fully performed, he shall so certify to the Owner and shall certify the balance found to be due the Bidder.

The Certificate of Completion, Contract Construction, REA Form 187, a copy of which is attached hereto, after it has been signed by the Engineer and certified to by the Owner and the Bidder shall thereupon be submitted to the Administrator for his approval and when such approval has been given, the Owner shall make payment to the Bidder of all unpaid amounts to which the Bidder shall be entitled hereunder unless withheld because of the fault of the Bidder.

b. Interest at the rate of _____ percent (_____%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due the Bidder commencing fifteen (15) days after the due date: Provided that the delay in payment beyond the due date is not caused by any condition within the control of the Bidder. The due date for purposes of such monthly payment shall be the fifteenth day of each calendar month provided (1) the Bidder on or before the fifth day of such month shall have submitted its certification of construction completed during the preceding month, and (2) the Owner on or before the fifteenth day of such month shall have approved such certification. If, for any reasons not due to the Bidder's fault, such approval shall not have been given on or before the fifteenth day of such month, the due date for purposes of this subsection "b" shall be the fifteenth day of such month notwithstanding the absence of the approval of the certification.

c. No payments shall be due while the Bidder is in default in respect of any of the provisions of this Proposal and the Owner may withhold from the Bidder the amount of any claim by a third party against either the

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*The Owner shall insert a rate equal to the "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

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Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Proposal.

Section 2. Release of Liens and Certificate of Contractor. (See Sample REA Form 224, Waiver and Release of Lien, and sample REA Form 231, Certificate of Contractor.) Upon the completion by the Bidder of the construction of the Project but prior to the payment to the Bidder of any amount in excess of ninety percent (90%) of the total cost of construction, the Bidder shall deliver to the Owner, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto, from all manufacturers, materialmen, and subcontractors furnishing services or materials for the Project and a certificate in the form attached hereto to the effect that all labor used on or for the project has been paid and that all such releases have been submitted to the Owner for approval.

Section 3. Payments to Materialmen and Subcontractors. The Bidder shall pay each materialman, and each subcontractor, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Bidder for and on account of materials furnished or construction performed by each materialman or each subcontractor.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE BIDDER

Section 1. Protection to Persons and Property. The Bidder shall at all times exercise reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, unless such instructions are incompatible with Federal, State or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

(a) The Bidder shall at all times keep the premises free from accumulations of waste materials or rubbish caused by his employees or work, and at the completion of the work he shall remove all rubbish from and about the Project and all his tools, scaffolding and surplus materials and shall leave his work "broom clean". The Bidder shall dispose of waste material by burying it on the work site or in a manner approved by local authorities, but shall not dispose of any waste materials or rubbish by open burning. The Bidder shall provide chemical sanitary facilities which may be required in compliance with applicable local, State and Federal laws or regulations.

(b) The Bidder will perform the work in such a manner as to maximize preservation of aesthetics and conservation of natural resources, and minimize marring and scarring of the landscape, erosion of soils and oil spillage. There will be no depositing of trash in streams or waterways. Herbicides, other chemicals or their containers will not be deposited in or near streams or waterways.

(c) The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control, in whole or in part as hereinafter provided, shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection therewith and the materials, supplies and equipment to be used therein shall be borne by the Bidder, except risk of loss or of damage to materials or equipment furnished for or used in connection with the Project by the Owner. Bidder or any subcontractor, caused by fire, lightning, wind damage, explosion, riot or civil commotion, aircraft and other vehicles, and smoke damage (against which perils the Owner will maintain insurance, hereinafter called "Builder's Risk Insurance"). The Bidder will make good and fully repair all injuries and damages to the Project, or any portion thereof under the control of the Bidder by reason of any act of God, or any other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence, except damage covered by the Owner's Builder's Risk Insurance.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

(d) The Bidder shall submit to the Owner monthly reports in duplicate of all accidents giving such data as may be prescribed by the Engineer.

(e) Upon violation by the Bidder of any of the provisions of this section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do, the Owner may correct such violation at the Bidder's expense: Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

Section 2. Insurance. The Bidder shall take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1.million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form. The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Bidder shall be

transferred and assigned to the Owner prior to the time the Bidder receives final payment.

Section 4. Delivery of Possession and Control to Owner. Upon written request of the Owner, the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to the Owner, the risks and obligations of the Bidder as set forth in Article IV, Section 1c hereof with respect to such portion so delivered to the Owner shall be terminated; Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials and workmanship as contained in Article II, Section 6 hereof.

ARTICLE V—REMEDIES

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the Surety or Sureties, if any, upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof satisfactory to both the Owner and the Administrator shall be made by the Bidder or its Surety or Sureties, if any, the Owner may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its Surety or Sureties, if any, shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies equipment, appliances, and plant belonging to the Bidder or any of its subcontractors which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third parties in connection with this Contract and for such purpose the Bidder does hereby assign transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Enforcement of Remedies by Administrator. The Administrator may on behalf of the Owner exercise any right or enforce any remedy which the Owner may exercise hereunder.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Administrator shall be cumulative and shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election.

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions.

a. The term *Administrator* shall mean the Administrator of the Rural Electrification Administration of the United States of America and his duly authorized representatives or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

b. The term *Engineer* shall mean the engineer employed by the Owner, with the approval of the Administrator, to provide engineering services for the Project, and said Engineer's duly authorized assistants and representatives.

c. The term *Supervisor* shall mean the person, if any, appointed by the Administrator as the representative of the Government under the provisions of the Loan Contract providing for such appointment in special cases. The term is limited to such special representative of the Government, if any, who is responsible exclusively to the Administrator and does not refer to the Manager or any other person employed by the Owner and responsible to it.

d. The term *Completion of Construction* shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of Releases of Liens and Certificate of Contractor under Article III, Section 2 hereof. The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion, signed by the Engineer and approved in writing by the Owner and the Administrator, shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

Section 2. Purchase of Materials. The Bidder shall purchase all materials, supplies and equipment outright and not subject to any conditional sales agreements, bailment lease or other agreement reserving unto the seller any right, title or interest therein. All materials, supplies and equipment shall be new and shall become the property of the Owner when erected in place or when the Owner shall have made any payment to the Bidder in respect of such materials whichever shall occur first.

Section 3. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured as the case may be, in the United States, Mexico, or Canada, provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Bidder agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 4. Patent Infringement. The Bidder shall save harmless and indemnify the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 5. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 USC Section 287 and 1001, as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental Agencies having jurisdiction in the premises.

Section 6. Equal Opportunity Provisions.

(a) Bidder's Representations

The Bidder represents that:

It has ____, does not have ____, 100 or more employees, and if it has, that it has ____, has not ____ furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin;

(3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 7. Nonassignment of Contract. Except as provided in Section 8 of this Article, the Bidder will not assign this Contract, or any interest in any funds that may become due hereunder, or enter into any contract with any person, firm or corporation, for the performance of the Bidder's obligations hereunder, or any part hereof without the approval in writing of the Owner, the Surety or Sureties, if any, and the Administrator.

Section 8. Subcontracts. The Bidder shall not enter into any subcontract or subcontracts with any person, firm or corporation for the performance of the Bidder's obligation hereunder in any aggregate amount in excess of 40% of the Bidder's obligations (to be calculated on the basis of the total contract price) nor shall the Bidder enter into any subcontract in excess of $20,000, without the approval in writing of the Owner and of the Surety or Sureties, if any, on any bond furnished by the Bidder for the faithful performance of the Bidder's obligations hereunder. If the Bidder shall enter into a subcontract with any subcontractor for the performance of any part of this Contract, the Bidder shall be as fully responsible to the Owner and the Administrator for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it.

Section 9. Contractor. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor

Section 10. Approval of the Administrator. The acceptance of this Proposal by the Owner shall not create a contract unless such acceptance shall be approved in writing by the Administrator within sixty (60) days after the date set for the opening of proposals.

(Bidder)
By _____ (President)
_____ (Title)
_____ (Address)
Attest:
_____ (Secretary)
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Acceptance

Subject to the approval of the Administrator, the Owner, _____, hereby accepts the Proposal of the above-named Bidder for the construction of the Project therein described for the Base Bid of $_____ and
Alternate No. 1 $_____
Alternate No. 2 $_____
The total contract price is $ ___
_____ (Owner)
By _____ President ,
Attest:
_____ (Secretary)
_____ Date of Contract
[End of clause]

§ 1726.321 Right-of-way clearing contract, REA Form 201.

The contract form in this section shall be used when required by this part. This form refers to guide drawings, which do not contain requirements, and, hence, are not included in this part. The guide drawings are included in the printed form available from REA (See § 1726.300.).

Right-of-Way Clearing Contract

Contractor's Proposal

(Proposal shall be submitted in ink or typewritten)
To: _____ (Hereinafter called the "Owner")

ARTICLE I—GENERAL

Section 1. Offer to Clear. The undersigned (hereinafter called the "Contractor") hereby proposes to furnish all materials, equipment, machinery, tools, labor, transportation and other means required to clear rights-of-way for the rural electric system bearing the REA Designation _____ in strict accordance with the Specifications and Drawings therefor, attached hereto and made a part hereof, for the prices hereinafter stated.

Section 2. Description of Project. The Project will consist of approximately _____ miles of right-of-way clearing. The Project is located in _____ counties in the State of _____.

Section 3. Description of Contract. The Description of Units, Specifications, Drawings and Plans attached hereto and made a part hereof, together with the Proposal and Acceptance constitute the Contract. The Plans consisting of maps and plan and profile sheets if transmission clearing is included, showing the number and types of right-of-way units that are to be cleared, along with other special drawings are identified as follows:

Section 4. Familiarity with Conditions. The Contractor warrants that it has made careful examination of the site of the Project and of the Specifications, Drawings, and form of Contractors' Bond attached hereto, and has

become informed as to the location and nature of the proposed work, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required for undertaking and completing the Project, and has become acquainted with the labor conditions, state and local laws and regulations which would affect the proposed work.

Section 5. License. The Contractor warrants that a Contractor's License is ___, is not ____, required, and if required, it possesses Contractor's license number _____ for the State of _____ in which the Project is located and said license expires on _____, 19____.

Section 6. Contractor's Bond. If the estimated cost of the clearing of a Section shall exceed $100,000, the Contractor agrees to furnish, prior to the commencement of work on such Section, a bond in the penal sum of not less than the estimated cost of the Section in the form attached hereto with a Surety or Sureties listed by the United States Treasury Department as acceptable sureties. In the event that the Surety or Sureties on the performance bond delivered to the Owner shall at any time become unsatisfactory to the Owner, the Contractor agrees to deliver to the Owner another or an additional bond.

Section 7. Taxes. The unit prices for Right-of-Way Clearing Units in this Proposal include any sums which are or may be payable by the Contractor on account of taxes imposed by any taxing authority on payments for materials furnished or services performed by the Contractor under the terms of this Contract.

ARTICLE II—CONSTRUCTION

Section 1. Time and Manner of Work.

(a) The Contractor agrees to commence work on the Project on a date (hereinafter called the "Commencement Date") which shall be determined by the Owner after its acceptance of this Proposal, but in no event will the Commencement Date be later than _____ calendar days after date of acceptance of this Proposal. The Contractor further agrees to prosecute diligently and to complete clearing in strict accordance with the Specifications and Drawings within _____ (_____) calendar days (excluding Sundays) after Commencement Date.

(b) The time for Completion of Clearing shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Contractor, including acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however, that no such extension of time for completion shall be granted the Contractor unless within ten (10) days after the happening of any event relied upon by the Contractor for such an extension of time the Contractor shall have made a request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

(c) The sequence of construction shall be as set forth below, the numbers or names being the designations of extensions or areas (hereinafter called the "Sections") corresponding to the numbers or names shown on the maps attached hereto, or if no Sections are set forth below, the sequence of construction shall be as determined by the Contractor subject to the approval of the Owner.

(d) The Owner may from time to time during the progress of the work on the Project make such changes in, additions to or subtractions from the Specifications, Drawings and sequence of work provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the work to be done shall require an extension of time, a reasonable extension will be granted if the Contractor shall make a written request therefor to the Owner within ten (10) days after any such change is made. And provided further, that if the cost to the Contractor of completion of the Project shall be materially increased by any such change or addition, the Owner shall pay the Contractor for the reasonable cost thereof in accordance with a Contract Amendment signed by the Owner and the Contractor, but no claim for additional compensation for any such change or addition will be considered unless the Contractor shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

(e) The Contractor will not perform any work hereunder on Sundays unless there is urgent need for such Sunday work and the Owner consents thereto in writing. The time for completion specified in subsection (a) of this Section 1 shall not be affected in any way by inclusion of this subsection by the Owner's consent or lack of consent to Sunday work hereunder.

Section 2. Environmental Protection. The Contractor shall perform work in such a manner as to maximize preservation of beauty, conservation of natural resources, and minimize marring and scarring of the landscape and silting of streams. The Contractor shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures. The Contractor shall follow, under the general direction of the Engineer, the criteria relating to environmental protection as specified herein by the Engineer.

Section 3. Supervision and Inspection.

(a) The Contractor shall cause the work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where work is being carried on. The Contractor shall also employ in connection with the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Contractor.

(b) The Owner reserves the right to require the removal from the Project of any employee of the Contractor if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner The Owner shall have the right to require the Contractor to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner; but the failure of the Owner to give any such directions shall not relieve the Contractor of its obligations to complete the work within the time and in the manner specified in this Proposal.

(c) The manner of performance of the work and all equipment used therein, shall be subject to the inspection and approval of the Owner. The Owner shall have the right to inspect all payrolls and other data and records of the Contractor relevant to the work. The Contractor will provide all reasonable facilities necessary for such inspection. The Contractor shall have an authorized agent accompany the inspector when final inspection is made and, if requested by the Owner, when any other inspection is made.

(d) In the event that the Owner shall determine that the work contains or may contain numerous defects, it shall be the duty of the Contractor and the Contractor's Surety or Sureties to have an inspection made by an engineer approved by the Owner for the purpose of determining the exact nature, extent and location of such defects.

(e) The Engineer may recommend to the Owner that the Contractor suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Contractor to comply with any of the provisions of the Contract: Provided, however, that the Contractor shall not suspend work pursuant to this provision without written authority from the Owner so to do. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Contractor to comply with any of the provisions of this Contract. In the event that work is suspended by the Contractor with the consent of the Owner, the Contractor before resuming work shall give the Owner at least twenty-four (24) hours' notice thereof in writing.

Section 4. Unsuitable Workmanship. The acceptance of any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such workmanship shall be found to be unsuitable. Workmanship found unsuitable before final acceptance of the work shall be remedied, by and at the expense of the Contractor. The Contractor shall not be entitled to any payment hereunder so long as any unsuitable workmanship in respect to the Project, of which the Contractor shall have had notice, shall not have been remedied

ARTICLE III—PAYMENT

Section 1. Payments to Contractor.

(a) Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Contractor for work

accomplished during the preceding calendar month on the basis of a statement of completed clearing units furnished and certified to by the Contractor and approved by the Owner solely for the purposes of payment: Provided, however, that such approval by the Owner shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such statement approved during the clearing of a Section shall be paid by the Owner to the Contractor prior to completion of the Section. Upon completion by the Contractor of the clearing of a Section, the Contractor shall prepare a Final Inventory of the Section showing the total number and character of clearing units and shall deliver to the Owner a Certificate of Contractor and Indemnity Agreement in the form attached hereto, showing the total cost of the work performed and stating (1) that all persons who have furnished labor in connection with the Project and subcontractors who have furnished services for the Project have been paid in full and (2) that the Contractor shall hold the Owner harmless against any liens arising out of the Contractor's performance hereunder which may have been or may be filed against the Owner. Upon the approval of such certificate, the Owner shall make payment to the Contractor of all amounts to which the Contractor shall be entitled thereunder which shall not have been paid.

(b) The Contractor shall be paid on the basis of the number of clearing units actually completed at the direction of the Owner shown by the Final Inventory: Provided, however, that the total cost shall not exceed the total contract price for the Project as set forth in the Acceptance, unless such excess shall have been approved in writing by the Owner.

(c) No payment shall be due while the Contractor is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Contractor the amount of any claim by a third party against either the Contractor or the Owner based upon an alleged failure of the Contractor to perform the work hereunder in accordance with the provisions of the Contract.

(d) If no Sections are designated in Article II, Section 1 (c) the term "Section" shall mean for purposes of this subsection (a) and Article IV, Section 3 (b) only, a part of the Project as designated by the Owner which represents at least twenty-five percent (25%) of the total contract price as stated in the Acceptance.

(e) Interest at the rate of _____ percent (_____%) per annum shall be paid by the Owner to the Contractor on all unpaid balances due on monthly statements, commencing fifteen (15) days after the due date; provided the delay in payment beyond the due date is not caused by any condition within the control of the Contractor. The due date for purposes of such monthly payment shall be the fifteenth day of each calendar month provided (1) the Contractor on or before the fifth day of such month shall have submitted its certification of right-of-way clearing units completed during the preceding month and (2) the Owner on or before the fifteenth day of such month shall have approved such certification. If for reasons not due to the Contractor's fault, such approval shall not have been given on or before the fifteenth day of such month, the due date for purposes of this subsection (e) shall be the fifteenth day of such month notwithstanding the absence of the approval of the certification.

(f) Interest at the rate of _____ percent (_____%) per annum shall be paid by the Owner to the Contractor on the final payment for the Project or any completed Section thereof, commencing fifteen (15) days after the due date. The due date for purposes of such final payment shall be the date of approval by the Owner of the Final Inventory and receipt of the Certificate of Contractor and Indemnity Agreement as conditions precedent to the making of final payment.

Section 2. Payments to Subcontractors. The Contractor shall pay each subcontractor, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Contractor for and on account of services performed by each subcontractor.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE CONTRACTOR

Section 1. Protection to Persons and Property. The Contractor shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, state, and municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, state, or municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

(a) The Contractor shall so conduct work on the Project as to cause the least possible obstruction of public highways.

(b) The Contractor shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances, and regulations or by local conditions.

(c) The Contractor shall do all things necessary or expedient to properly protect any and all parallel, converging, and intersecting lines, joint line poles, highways, and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways, or other property are damaged in the course of work on the Project the Contractor shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

(d) Where the right-of-way of the Project traverses cultivated lands, the Contractor shall limit the movement of his crews and equipment so as to cause as little damage as possible to crops, orchards, or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during work on the project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. The Contractor shall not be responsible for loss of or damage to crops, orchards, or property (other than livestock) on the right-of-way necessarily incident to work on the Project and not caused by negligence or inefficient operation of the Contractor. The Contractor shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by work on the Project. The right-of-way for purposes of this said section shall consist of an area extending _____ feet on both sides of the center line of the poles along the route of the Project lines, plus such area reasonably required by the Contractor for access to the route of the Project lines from public roads to carry on the work.

(e) The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided, shall be under the charge and control of the Contractor and during such period of control by the Contractor all risks in connection with the work on the Project and the materials to be used therein shall be borne by the Contractor. The Contractor shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Contractor by reason of an act of God or other casualty or cause whether or not the same shall have occurred by reason of the Contractor's negligence.

(i) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Contractor's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Contractor's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Contractor, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Contractor liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Contractor, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Contractor shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Contractor does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Contractor.

(iii) Contractor shall provide to Owner's satisfaction evidence of Contractor's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

(f) Any and all excess earth, rock, debris, underbrush, and other useless material shall be removed by the Contractor from the site of the Project as rapidly as practicable as the work progresses. The Contractor shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures.

(g) Upon violation by the Contractor of any provisions of this section, after written notice of such violation given to the Contractor by the Owner, the Contractor shall immediately correct such violation. Upon failure of the Contractor so to do the Owner may correct such violation at the Contractor's expense.

(h) The Contractor shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

(i) The Contractor shall not proceed with the cutting of trees or clearing of right-of-way without notification from the Owner that proper authorization has been received from the owner of the property and the Contractor shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on his land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

Section 2. Insurance. The Contractor shall take out and maintain throughout the period of this Agreement the following minimum amounts of insurance:

(a) Worker's compensation and employer's liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million each occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Delivery of Possession and Control to the Owner.

(a) Upon written request of the Owner, the Contractor shall deliver to the Owner full possession and control of any portion of the Project provided the Contractor shall have been paid at least ninety percent (90%) of the cost of the work of such portion. Upon such delivery of possession and control to the Owner, the risks and obligations of the Contractor as set forth in Section 1(e) of this Article IV with respect to such portion so delivered to the Owner, shall be terminated: Provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to unsuitable workmanship as specified in Article II, Section 4.

(b) Where the construction of a Section as hereinbefore defined in Article II, Section 1(c) and Article III, Section 1(d) shall have been completed by the Contractor, the Owner agrees, after receipt of a written request from the Contractor, to accept delivery of possession and control of such Section upon having inspected the Section and having found the work acceptable. Upon such delivery of the possession and control of any such Section to the Owner, the risk and obligations of the Contractor as set forth in Article IV, Section 1(e) hereof with respect to such Section so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to unsuitable workmanship as specified in Article II, Section 4 hereof.

Section 4. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Contractor shall be transferred and assigned to the Owner prior to the time the Contractor receives final payment for any Section.

ARTICLE V—REMEDIES

Section 1. Completion on Contractor's Default. If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety, if any, a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor and the Surety, if any, such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner shall be made, the Owner may take over the work on the Project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor, and the Contractor shall be liable to the Owner for any cost or expense in excess of the contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the Project, any materials, tools, supplies, equipment, appliance, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims, or demands which the Contractor may have against third persons in connection with this Proposal and for such purpose the Contractor does hereby assign, transfer, and set over unto the Owner all such rights, claims, and demands.

Section 2. Liquidated Damages. The time of the Completion of Clearing is of the essence of the Contract. Should the Contractor neglect, refuse or fail to complete the clearing within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such monies which may be then due, or which may become due and payable to the Contractor the sum of _____ dollars (_____) per day for each and every day that such work is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Contractor is insufficient to pay in full any such liquidated damages, the Contractor shall pay to the Owner the amount necessary to effect such payment in full: Provided, however, that the Owner shall promptly notify the Contractor in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provision of Section 2 of this Article shall be the exclusive measure of damages for failure by the Contractor to complete the clearing within the time herein agreed upon.

The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions.

(a) The term *Engineer* shall mean the engineer employed by the Owner to provide engineering services for the Project and said Engineer's duly authorized assistants and representatives. The term "Engineer" will mean "Owner" if no engineer is employed by the Owner to provide engineering services.

(b) The term *Completion of Clearing* shall mean full performance by the Contractor of the Contractor's obligations under the Contract and all amendments and revisions thereof except the Contractor's obligations in respect of furnishing (1) the "Certificate of Contractor and Indemnity Agreement" and (2) the Final Inventory both referred to in Article III, Section 1 hereof.

(c) The term *Completion* shall mean full performance by the Contractor of the Contractor's obligations under the Contract and all amendments and revisions thereof relating to any Section of the Project or to the Project.

Section 2. Patent Infringement. The Contractor shall save harmless and indemnify the owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 3. Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Contractor.

Section 4. Compliance with Statutes and Regulations. The Contractor will comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Contractor acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. 286, 287, 1001, as amended. The Contractor understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of governmental agencies having jurisdiction in the premises.

Section 5. Equal Opportunity Provisions.

(a) Contractor's Representations.

The Contractor represents that

It has ____, does not have____, 100 or more employees, and if it has, that it has ___, has not____, furnished the Equal Employment Opportunity—Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Contractor agrees that it will obtain, prior to the award of any subcontractor for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100. The Contractor agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Contractor will file such report, as required by law, and notify, the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Contractor agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 6. Franchises and Rights-of-way. The Contractor will be under no obligation to obtain or assist in obtaining any franchises, authorizations, permits, or approvals required to be obtained by the Owner from Federal, state, county, municipal or other authority; any rights-of-way over private lands; or any agreements between the Owner and third parties with respect to the construction and operation of the Project.

Section 7. Nonassignment of Contract. The Contractor shall not assign the Contract effected by an acceptance of this Proposal or any part thereof or enter into any contract with any person, firm or corporation for the performance of the Contractor's obligations thereunder, or any part thereof, without the approval in writing of the Owner.

Section 8. Extension to Successors and Assigns. Each and all of the covenants and agreements contained in the Contract effected by the acceptance of the Proposal shall extend to and be binding upon the successors and assigns of the parties thereto.

(Contractor)
By _____ (President)
(Address)
ATTEST: _____ (Secretary)
Date of Proposal _____

This Proposal must be signed with the full name of the Contractor. If the Contractor is a partnership, the Proposal must be signed in the partnership name by a partner. If the Contractor is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Description of Units

Right-of-Way Clearing Units:

R1–10. The unit is 1,000 feet in length and 10 feet in width (to be measured on one side of the pole line) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up of the width specified on one side of the line of poles carrying primary conductors. This unit does not include clearing or trimming associated with secondaries or services which is included with conductor units. The length of actual clearing shall be measured in a straight line parallel to the horizontal line between stakes and across the maximum dimension of foliage cleared projected to the ground line. All trees and underbrush across the width of the right-of-way, as designated by the Engineer shall be considered to be grouped together as a single length in measuring the total length of clearing. Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000, shall give the number of 1,000-foot R1–10 units of clearing. This unit includes the removal or topping, at the option of the Contractor; of danger trees outside of the right-of-way when so designated by the Engineer. (Danger trees are defined as dead or leaning trees which, in falling, will affect the operation of the line.) The Contractor shall not remove or trim shade, fruit or ornamental trees unless so directed by the Engineer.

R1–20. This unit is identical with R1–10 except that width is 20 feet (to be measured 10 feet on each side of the pole line).

R1–30. This unit is identical with R1–10 except that width is 30 feet (to be measured 15 feet on each side of the pole line).

R1–40. This unit is identical with R1–10 except that width is 40 feet (to be measured 20 feet on each side of the pole line).

RC1–10, RC1–20, RC1–30, RC1–40. These units are identical to the respective R1 units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

TM–12. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of pole line or centerline of structures) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line poles carrying conductors. (See Detail A, Drawing TM–12–2A). The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A). All trees and underbrush across the width of the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A). Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000 shall give the number of TM–12 units of clearing. The Contractor shall not remove or trim shade, fruit or ornamental trees unless so directed by the Engineer in writing.

TM–12 (1). This unit is identical with TM–12, except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (to be measured _____ (_____) feet on each side of the pole line or centerline of structures) (See Detail D, Drawing TM–12–2A.)

TMC–12, TMC–12 (1). These units are identical to the respective TM units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

TM–13. The unit, for purpose of quoting, is 1,000 feet in length of clearing off the right-of-way. The Engineer will select those trees of the right-of-way that he deems to be a hazard to the line and will designate them to the Contractor in writing as danger trees. When so designated, the Contractor shall remove or top such trees at his option except that the Contractor shall trim and not remove shade, fruit or ornamental trees unless otherwise directed by the Engineer in writing (See Drawings TM–12–2A and TM–13 for examples of danger trees).

The measurement of length of right-of-way to be cleared shall be considered as a straight line parallel to the horizontal line between poles or centerline of structures, such measurement of length to be based on maximum dimension of foliage (not trunk) projected to the ground line (See Details E, F, G, and H, Drawing TM–12–2A). Dead trees having no foliage shall be measured across the maximum dimension and multiplied by two. (See Detail F, Drawing TM–12–2A). Each tree so removed shall be added together to determine the total length of clearing. All length thus arrived at, added together and divided by 1,000 shall give the number of TM–13 units (Example: Details E, F, G, and H, Drawing TM–12–2A, total .1 of a TM–13 unit).

TM–14. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of right-of-way center line) of actual clearing of right-of-way. Trees and underbrush should be cleared from the ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide "undulating" boundaries. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the access road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A). All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A). Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–14 (1). This unit is identical with TM–14 except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A).

TM–15. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of the right-of-way center line) of actual clearing of the right-of-way. Trees and underbrush should be cleared from ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide a "feathered" appearance in the right-of-way. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the access road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to ground line. (See Detail B, Drawing TM–12–2A). All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A). Spaces along the right-of-way, in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–15 (1). This unit is identical to TM–15 except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A).

Additional Requirements. (When specifying units denote type of disposal A or B).

A. Trees, brush, branches and refuse shall, without delay be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used).

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (Describe)

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly.

and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Engineer but in no case shall it be required to be less than _____ (_____) feet. Brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads ditches, drains, etc.
4. Other (Describe)

Specifications

In preparing the right-of-way, trees shall be removed, underbrush cleared and trees trimmed so that the right-of-way shall be clear from the ground up or as specified. Trees fronting each side of the right-of-way shall be trimmed symmetrically unless otherwise directed by the Engineer. Dead trees beyond the right of-way which would strike the line in falling shall be removed. Leaning trees beyond the right-of-way which would strike the line in falling and which would require topping if not removed may be removed or topped at the direction of the Engineer.

Where RC or TMC units are specified, the right-of-way shall be cleared in accordance with the instructions in the preceding paragraph and in addition, all stumps one-half inch in diameter and larger shall be sprayed as specified by the Engineer.

Right-of-Way Units

DISTRIBUTION CLEARING UNITS

Unit No.	No. of Units	Unit Price	Extended Price

Total _____

TRANSMISSION CLEARING UNITS

Unit No.	No. of Units	Unit Price	Extended Price

Total _____
Total Distribution and Transmission _____

Acceptance

The Owner hereby accepts the foregoing Proposal of the Contractor, _____ for the following:

Total Distribution Clearing: $_____
Total Transmission Clearing: $_____
The total contract price is $_____

_____ Owner
By _____ President
_____ Secretary
_____ Date of Contract

[End of clause]

§ 1726.322 Transmission system right-of-way clearing contract, REA Form 203.

The contract form in this section shall be used when required by this part. This form refers to guide drawings, which do not contain requirements, and, hence, are not included in this part. The guide drawings are included in the printed form available from REA (See § 1726.300.)

Transmission System Right-of-Way Clearing Contract

Notice and Instructions to Bidders

1. Sealed proposals for the clearing of underbrush and trees from right-of-way, including the supply of necessary labor and equipment, of a rural electric system of _____ (hereinafter called the "Owner") bearing the REA Designation _____ will be received by the Owner on or before _____ o'clock ____ M., _____ 19_____, at its office at _____ at which time and place the proposals will be publicly opened and read. Any proposal received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. Description of Project. The Project will consist of approximately: _____ miles of right-of-way clearing. The Project is located in _____ Counties in the State of _____.

3. Obtaining and Transferring Documents. All necessary forms and other documents for bidders may be obtained from the Owner, or from the Engineer _____ at the latter's office at _____. A copy of the Loan Contract (if the Project is to be financed in whole or in part, pursuant to a Loan Contract) between the Owner and the United States of America acting through the Administrator of the Rural Electrification Administration (hereinafter called the Administrator), and any other lender's contract may be examined at the office of the Owner. Each set of documents will have a serial number, given by the Engineer, and the number of each set with the name of the recipient will be recorded by the Engineer. Bids will be accepted only from the original recipient.

4. Manner of Submitting Proposals. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated.

5. Familiarity with Conditions. Prior to the submission of the Proposal the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Specifications, Drawings, and forms of Contractor's Proposal and Contractor's Bond on file with the Secretary of the Owner and with the Engineer, and shall become informed as to the location and nature of the proposed work, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors, and the so-called "Kick-back Statute" (48 Stat. 948) and regulations issued pursuant thereto.

6. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

7. The time for Completion of the Project shall be as specified by the Engineer in the Proposal.

8. Bid Bond. Each Proposal must be accompanied by a bid bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such bid bond or check in consideration of the Owner's receiving and considering such Proposals said Proposal shall be firm and binding upon each such Bidder and such bid bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposals is not one of the three low Proposals, the bid bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.

9. Contractor's Bond. The successful Bidder will be required to execute two additional counterparts of the Proposal and for a Contract in excess of $100,000, to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.

10. Failure to Furnish Contractor's Bond. Should the successful Bidder fail or refuse to execute such counterparts or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the bid bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal to retain from the proceeds of the certified check, the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project. The term "successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts or to furnish a satisfactory Contractor's Bond (where required.)

11. Contract is Entire Agreement. The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties hereto and the Bidder shall not claim any

modification thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

12. Minor Irregularities. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the acceptance thereof by the Owner.

13. Bid Rejection. The Owner reserves the right to reject any or all Proposals.

14. Definition of Terms. The terms "Administrator," "Engineer," "Supervisor," "Project," "Completion of Construction" and "Completion of the Project" as used throughout this Contract shall be as defined in Article VI, Section 1, of the Contractor's Proposal.

15. The Owner represents:

a. All easements and rights-of-way, except as shown on maps included in the Specifications, have been obtained from the Owners of the properties across which the project is to be carried out (including tenants who may reasonably be expected to object to such clearing). The remaining easements and rights-of-way, if any, will be obtained as required to avoid delay in construction.

b. Prompt payment for the work to be done will be made with funds pursuant to the Loan Contract, or with funds otherwise available to the Owner.

If the Owner shall fail to comply with any of the undertakings contained in the foregoing representations or if any such representations shall be incorrect, the Bidder will be entitled to extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representation; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing.

_____ Owner
By _____
_____, 19_____

Contractor's Proposal

(Proposal shall be submitted in ink or typewritten).

To: _____ (Hereinafter called the "Owner").

ARTICLE I—GENERAL

Section 1. Offer to Clear. The undersigned (hereinafter called the "Bidder") hereby proposes to furnish all materials, equipment, machinery, tools, labor, transportation and other means required to clear rights-of-way for rural electric system bearing the REA Designation _____ in strict accordance with the Specifications and Drawings therefor, attached hereto and made a part hereof, for the prices hereinafter stated.

Section 2. Description of Contract. The Notice and Instructions to Bidders and Specifications attached hereto and made a part hereof, together with the Proposal and Acceptance constitute the contract. The Specifications consisting of maps, plan and profile sheets showing the number and types of right-of-way units that are to be cleared for each parcel, along with other special drawings are identified as follows: _____.

Section 3. Familiarity with Conditions. The Bidder has made a careful examination of the site of the Project and of the Specifications, Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed work, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required for undertaking and completing the Project, and has become acquainted with the labor conditions, state and local laws and regulations which would affect the proposed work.

Section 4. License. The Bidder warrants that a Contractor's License is _____, is not _____, required, and if required, it possesses Contractor's license number _____ for the State of _____ in which the Project is located and said license expires on _____, 19_____.

Section 5. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.

Section 6. The Bidder warrants that it possesses adequate financial resources and agrees that in the event this Proposal is accepted and a Contractor's Bond is required, it will furnish a Contractor's Bond in the form attached hereto, in a penal sum not less than the maximum Contractor price, with a surety or sureties listed by the United States Treasury Department as Acceptable Sureties.

In the event that the surety or sureties on the performance bond delivered to the Owner contemporaneously with the execution of the Contract or on any bond or bonds delivered in substitution therefor or in addition thereto shall at any time become unsatisfactory to the Owner or the Administrator, the Bidder agrees to deliver to the Owner another or an additional bond.

ARTICLE II—CONSTRUCTION

Section 1.—Time and Manner of Work

(a) Bidder agrees to commence work on the Project on a date (hereinafter called the "Commencement Date") which shall be determined by the Engineer after notice in writing of approval of the Contract by the Administrator, but in no event will the Commencement Date be later than _____ calendar days after date of approval of the Contract by the Administrator. The Bidder further agrees to prosecute diligently and to complete construction in strict accordance with the Specifications and Drawings within _____ (_____) calendar days (excluding Sundays) after Commencement Date.

(b) The time for Completion of Clearing shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Bidder, including Acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided however, that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omission of the Owner, shall result in any liability on the part of the Owner.

(c) The sequence of construction shall be as set forth below, the numbers or names being the designations of extensions or areas (hereinafter called the "Sections") corresponding to the numbers or names shown on the maps attached hereto, or if no Sections are set forth below, the sequence of construction shall be as determined by the Bidder, subject to the approval of the Engineer. _____

(d) The Owner, acting through the Engineer and with the approval of the Administrator[1], may from time to time during the progress of the work on the Project make such changes in additions to or subtractions from the Specifications, Drawings, and sequence of construction provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefor to the Owner within ten (10) days after any such change is made. And provided further, that if the cost to the Bidder of construction of the Project shall be materially increased by any such change or addition, the Owner shall pay the Bidder for the reasonable cost thereof in accordance with a Contract Amendment signed by the Owner and the Bidder and approved by the Administrator[2], but no claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

(e) The Bidder will not perform any work hereunder on Sundays unless there is urgent need for such Sunday work and the Owner consents thereto in writing. The time for completion specified in subsection (a) of this Section 1 shall not be affected in any way by inclusion of this subsection nor by the Owner's consent or lack of consent to Sunday work hereunder.

Section 2.—Environmental Protection

The Bidder shall perform work in such a manner as to maximize preservation of beauty, conservation of natural resources, and minimize marring and scarring of the landscape and silting of streams. There should be no deposition of trash in streams

[1] As long as the total price of this contract including all amendments is less than 120 percent of the original contract price as stated in the acceptance hereto, amendments executed on REA Form 238 are not subject to the approval of the Administrator. Whenever an amendment to this contract causes the total amended contract to exceed 120 percent of the original contract price, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

[2] See Footnote 1.

or waterways. Herbicides, other chemicals or their containers should not be deposited in or near streams, waterways or pastures. The Bidder will be required to follow, under the general direction of the engineer, the criteria relating to environmental protection as specified herein by the engineer.

Section 3.—Supervision and Inspection

(a) The Bidder shall cause the work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where work is being carried on. The Bidder shall also employ in connection with the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Bidder.

(b) The Owner reserves the right to require the removal from the Project of any employee of the Bidder if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner or the Supervisor, if any, shall have the right to require the Bidder to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner or Supervisor; but the failure of the Owner or Supervisor to give any such directions shall not relieve the Bidder of its obligations to complete the work within the time and in the manner specified in this proposal.

(c) The manner of carrying out the Project, and all materials and equipment used therein, shall be subject to the inspection, tests and approval of the Owner and the Administrator, and the Bidder shall furnish all information required by the Owner or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the Project. The Owner and the Administrator shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Bidder and of any subcontractor, relevant to the Project. The Bidder shall provide all reasonable facilities necessary for such inspection and tests and shall maintain an office at the site of the Project with telephone service where obtainable and at least one office employee to whom directions and instructions of the Owner may be delivered. Delivery of such directions or instructions in writing to the employee of the Bidder at such office shall constitute delivery to the Bidder. The Bidder shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by the Owner, when any other inspection is made.

(d) In the event that the Owner, or the Administrator, shall determine that the work contains or may contain numerous defects, it shall be the duty of the Bidder and the Bidder's Surety or Sureties, if any, to have an inspection made by an engineer approved by the Owner and the Administrator for the purpose of determining the exact nature, extent and location of such defects.

(e) The Engineer may recommend to the Owner that the Bidder suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Bidder to comply with any of the provisions of the Contract: Provided, however, that the Bidder shall not suspend work pursuant to this provision without written authority from the Owner to do so. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Bidder to comply with any of the provisions of this Contract. In the event that work is suspended by the Bidder with the consent of the Owner, the Bidder before resuming work shall give the Owner at least twenty-four (24) hours notice thereof in writing.

Section 4.—Unsuitable Workmanship

The acceptance of any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such workmanship shall be found to be unsuitable. Workmanship found unsuitable before final acceptance of the work shall be remedied, by and at the expense of the Bidder. The Bidder shall not be entitled to any payment hereunder so long as any unsuitable workmanship in respect to the Project, of which the Bidder shall have had notice, shall not have been remedied.

ARTICLE III—PAYMENTS AND RELEASE OF LIENS

Section 1.—Payments to Bidder

(a) Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Bidder for work accomplished during the preceding calendar month on the basis of completed rights-of-way clearing units furnished and certified to by the Bidder, recommended by the Engineer and approved by the Owner solely for the purposes of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate shall be paid by the Owner to the Bidder prior to Completion of the Project: Provided, however, that at any time after work, which, in the sole determination of the Engineer, amounts to fifty percent (50%) of the maximum contract price has been completed, the Owner may elect, in lieu of paying ninety percent (90%) of each such subsequent estimate, to pay each such subsequent estimate in full. Upon completion by the Bidder of the Project, the Engineer will prepare a Final Inventory of the Project showing the total number and character of rights-of-way clearing units and, after checking such inventory with the Bidder, will certify it to the Owner, together with a certificate of the total cost of the construction performed. Upon the approval of such certificates by the Owner and the Administrator, the Owner shall make payment to the Bidder of all amounts to which the Bidder shall be entitled thereunder which shall not have been paid: Provided, however, that such final payments shall be made not later than ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, unless withheld because of the fault of the Bidder.

(b) The Bidder shall be paid on the basis of the number of rights-of-way clearing units actually completed at the direction of the Owner shown by the inventory based on the staking sheets or structure lists; Provided, however, that the total cost shall not exceed the maximum contract price for the construction of the Project as set forth in the Acceptance, unless such excess shall have been approved in writing by the Administrator.

(c) Notwithstanding the provisions of Section 1(a) above, the Bidder may, by giving written notice thereof to the Owner elect to receive payment in full for any Section of the Project upon:

(1) Completion of such Section as certified by the Engineer and approved by the Owner and the Administrator;

(2) Submission to the Owner and the Administrator of the releases of lien and the certificate referred to in Section 2 hereof;

(3) Approval by the Owner and the Administrator of the inventory in respect of such Section; and

(4) Submission to the Owner and the Administrator of the consent in writing by the Surety or Sureties, if any, on the Contractor's Bond to payment in full for such Section prior to Completion of Project.

If no Sections are designated in Article II, Section 1(c), the term "Section" shall mean for purposes of this subsection (a) and Article IV, Section 3(b) only, a part of the Project as designated by the Owner which represents at least twenty-five percent (25%) of the maximum Contract price as stated in Article III, Section 1.

(d) Interest at the rate of _____ percent [3] (_____%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date; provided the delay in payment beyond the due date is not caused by any condition within the control of the Bidder. The due date for purposes of such monthly payment shall be the fifteenth day of each calendar month provided: (1) The Bidder on or before the fifth day of such month shall have submitted its certification of rights-of-way clearing units completed during the preceding month and (2) the Owner on or before the fifteenth day of such month shall have approved such certification. If, for reasons not due to the Bidder's fault, such approval shall not have been given on or before the fifteenth day of such month, the due date for purposes of this subsection (d) shall be the fifteenth day of such month notwithstanding the absence of the approval of the certification.

(e) Interest at the rate of _____ percent [4] (_____%) per annum shall be paid by the Owner to the Bidder on the final payment for the Project or any completed Section thereof, commencing fifteen (15) days after the due date. The due date for purposes of such final payment shall be the date of approval by the

[3] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

[4] See Footnote 3.

Administrator of all of the documents requiring such approval, as a condition precedent to the making of final payment, or ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, whichever date is earlier.

(f) No payment shall be due while the Bidder is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Contract.

Section 2.—Release of Liens and Certificate of Contractor

(See sample REA Form 224, Waiver and Release of Lien and sample REA Form 231, Certificate of Contractor.) Upon the Completion of Clearing by the Bidder (or any Section thereof if the Bidder shall elect to receive payment in full for any section when completed as provided above) but prior to final payment to the Bidder the Bidder shall deliver to the Owner, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto from all manufacturers, materialmen, and subcontractors furnishing services or materials for the Project or such Section and a certificate in the form attached hereto to the effect that all labor used on or for the Project or such Section has been paid and that all such releases have been submitted to the Owner for approval.

Section 3.—Payments to Subcontractors

The Bidder shall pay each subcontractor, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Bidder for and on account of work performed by each subcontractor.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE BIDDER

Section 1.—Protection to Persons and Property

The Bidder shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

(a) The Bidder shall at no time and under no circumstances cause or permit any employee of the Bidder to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Notice and Instructions to Bidders.

(b) The Bidder shall so conduct the construction of the Project as to cause the least possible obstruction of Public highways.

(c) The Bidder shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.

(d) The Bidder shall do all things necessary or expedient to properly protect any and all parallel, converging and intersecting lines, joint line poles, highways and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways or other property are damaged in the course of the construction of the Project, the Bidder shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

(e) Where the right-of-way of the Project traverses cultivated lands, the Bidder shall limit the movement of its crews and equipment so as to cause as little damage as possible to crops, orchards or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during the construction of the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. The Bidder shall not be responsible for loss of or damage to crops, orchards or property (other than livestock) on the right-of-way necessarily incident to the construction of the Project and not caused by negligence or inefficient operation of the Bidder. The Bidder shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by the construction of the Project. The right-of-way for purposes of this said section shall consist of area extending _____ feet on both sides of the center line of the poles along the route of the Project lines, plus such area reasonably required by the Bidder for access to the route of the Project lines from Public roads to carry on construction activities.

(f) The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control in whole or in part as hereinafter provided shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Bidder. The Bidder shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Bidder by reason of any Act of God or other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

(g) Any and all excess earth, rock, debris, underbrush and other useless material shall be removed by the Bidder from the site of the Project as rapidly as practicable as the work progresses. There should be no disposition of trash in streams or waterways. Herbicides, other chemicals or their containers should not be deposited in or near streams, waterways or pastures.

(h) Upon violation by the Bidder of any of the provisions of this section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do the Owner may correct such violation at the Bidder's expense: Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

(i) The Bidder shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

(j) The Bidder shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the Owner that proper authorization has been received from the owner of the property, and the Bidder shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on its land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

Section 2. Insurance

The Bidder shall take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3.—Delivery of Possession and Control to Owner

(a) Upon written request of the Owner the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1 (f) hereof with respect to such portion of the Project so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials and workmanship as contained in Article II, Section 4 hereof.

(b) Where the construction of a Section as hereinbefore defined in Article II, Section 1 (c) and Article III, Section 1 (c) shall have been completed by the Bidder, the Owner agrees, after receipt of a written request from the Bidder, to accept delivery of possession and control of such Section upon the issuance by the Engineer of a written statement that the Section has been inspected and found acceptable by the Engineer. Upon such delivery of the possession and control of any such Section to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1 (f) hereof with respect to such Section so delivered to the Owner shall be terminated; Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials or workmanship as contained in Article II, Section 4 hereof.

Section 4. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Bidder shall be transferred and assigned to the Owner prior to the time the Bidder receives final payment.

ARTICLE V—REMEDIES

Section 1. Completion of Bidder's Default. If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the Surety or Sureties, if any, upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof satisfactory to both the Owner and the Administrator shall be made by the Bidder or its Surety or Sureties if any, the Owner may take over the Project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its Surety or Sureties if any, shall be liable to the Owner for any cost or expense in excess of the contract price occasioned thereby. In such event the Owner may take possession, of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third persons in connection with this contract and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Liquidated Damages. The time of the Completion of the Project is of the essence of the Contract. Should the Bidder neglect, refuse or fail to complete the Project within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder the sum of _____ dollars (_____) per day for each and every day that such construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full; Provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provision of Section 2 of this Article shall be the exclusive measure of damages for failure by the Bidder to complete the Project within the time herein agreed upon.

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions.

(a) The term *Administrator* shall mean the Administrator of the Rural Electrification Administration of the United States of America and his duly authorized representatives or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

(b) The term *Engineer* shall mean the engineer employed by the Owner with the approval of the Administrator, to provide engineering services for the Project and said Engineer's duly authorized assistants and representatives

(c) The term *Supervisor* shall mean the person, if any, appointed by the Administrator as the representative of the Government under the provisions of the Loan Contract providing for such appointment in special cases. The term is limited to such special representative of the Government, if any, who is responsible exclusively to the Administrator and does not refer to the Manager or any other person employed by the Owner and responsible to it.

(d) The term *Completion of Clearing* shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of (1) Releases of liens and Certificate of Contractor under Article III, Section 2 hereof, (2) the inventory referred to in Article III, Section 1 hereof, and (3) other final documents. The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion signed by the Engineer and approved in writing by the Owner and the Administrator, shall be the sole and conclusive evidence as to the date of Completion of Clearing.

Section 2. Patent Infringement. The Bidder shall save harmless and indemnity the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 3. Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Bidder.

Section 4. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. Sections 286, 287 and 1001 as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental Agencies leaving jurisdiction in the premises.

Section 5. Equal Opportunity Provisions

(a) Bidder's Representations

The Bidder represents that:

It has ____, does not have ____, 100 or more employees, and if it has, that it has ____, has not ____, furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts of federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 6. Franchises and Rights-of-Way. The Bidder shall be under no obligation to obtain or assist in obtaining: Any franchises; authorizations, permits or approvals required to be obtained by the Owner from Federal, State, County, Municipal or other authorities; any rights-of-way over private lands; or any agreements between the Owner and third parties with respect to the construction and operation of the Project.

Section 7. Nonassignment of Contract. The Bidder shall perform directly and without subcontracting not-less than twenty-five per centum (25%) of the construction of the Project, to be calculated on the basis of the total contract price. The Bidder shall not assign the contract effected by an acceptance of this proposal or any interest in any funds that may be due or become due hereunder or enter into contract with any person, firm or corporation for the performance of the Bidder's obligations hereunder or any part thereof, without the approval in writing of the Owner and of the Surety or Sureties, if any, on any bond furnished by the Bidder for the faithful performance of the Bidder's obligation hereunder. If the Bidder, with the consent of the Owner and any Surety or Sureties, if any, on the Contractor's Bond or Bonds, shall enter into a subcontract with any subcontractor for the performance of any part of this contract, the Bidder shall be as fully responsible to the Owner and the Government for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it.

Section 8. Extension to Successors and Assigns. Each and all of the covenants and Agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto.

Section 9. Contractor. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

Section 10. Approval by the Administrator No acceptance of this Proposal shall become

effective until approval in writing of the Administrator; Provided, however that no obligations shall arise hereunder unless such approval is given within sixty (60) days from the date of acceptance by the Owner.

_____ (Bidder)
By _____ (President)
_____ (Address)
Attest: _____ (Secretary)
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the Corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Description of Units

TM–12. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of pole line or centerline of structures) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line of poles carrying conductors (See Detail A, Drawing TM–12–2A.) The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A.) All trees and underbrush across the width of the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All lengths thus arrived at, added together and divided by 1,000 shall give the number of TM–12 units of clearing. The Bidder shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Engineer in writing.

TM–12 (1). This unit is identical with TM–12, except the full width of the right-of-way to be cleared shall be _____ feet wide (to be measured _____ (_____) feet on each side of the pole line or centerline of structures) (See Detail D, Drawing TM–12–2A.)

TM–13. The unit, for purpose of quoting, is 1,000 feet in length of clearing off the right-of-way. The Engineer will select those trees off the right-of-way that he deems to be a hazard to the line and will designate them to the Bidder in writing as danger trees. When so designated, the Bidder shall remove or top such trees at his option except that the Bidder shall trim and not remove shade, fruit or ornamental trees unless otherwise directed by the Engineer in writing (See Drawings TM–12–2A and TM–13 for examples of danger trees.)

The measurement of length of right-of-way to be cleared shall be considered as a straight line parallel to the horizontal line between poles or centerline of structures, such measurement of length to be based on maximum dimension of foliage (not trunk) projected to the ground line (See Details E, F, G and H, Drawing TM–12–2A.) Dead trees having no foliage shall be measured across the maximum dimension and multiplied by two. (See Detail F, Drawing TM–12–2A.) Each tree so removed shall be added together to determine the total length of clearing. All lengths thus arrived at, added together and divided by 1,000 shall give the number of TM–13 units (Example: Details E, F, G and H, Drawing TM–12–2A, total 0.10 of a TM–13 unit.)

TMC–12, TMC–12 (1). These units are identical to the respective TM units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

TM–14. The unit is 1,000 feet in length and ___ (_____) feet in width (to be measured _____ (_____) feet on one side of right-of-way center line) of actual clearing of right-of-way. Trees and underbrush should be cleared from the ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide "undulating" boundaries. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the service road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A.)

All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–14 (1). This unit is identical with TM–14 except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A.)

TM–15. The unit is 1,000 feet in length and ___ (_____) feet in width (to be measured _____ (_____) feet on one side of the right-of way center line) of actual clearing of the right-of-way.

Trees and underbrush should be cleared from ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide a "feathered" appearance in the right-of-way. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the service road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to ground line (See Detail B, Drawing TM–12–2A). All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A).

Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–15 (1). This unit is identical to TM–15 except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A).

Additional Requirements. (When Specifying TM units denote type of disposal A or B).

A. Trees, brush, branches and refuse shall, without delay, be disposed of by such of the following methods as an Engineer will direct (Engineer to strike out methods not to be used).

1. Burned
2. Piled on one side of right-of-way.
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads ditches, drains, etc.
4. Other (Describe) _____.

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Engineer but in no case shall it be required to be less than ___ (___) feet. Brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used).

1. Burned.
2. Piled on one side of right-of-way.
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (Describe) _____.

TRANSMISSION RIGHT-OF-WAY UNITS

Unit No	No. of units	Unit price	Extended price
Total			

Acceptance

Subject to the approval of the Administrator, the Owner hereby accepts the foregoing Proposal of the Bidder, ___ for the construction of the following:

The total contract price is $ _____

Owner
By ___ President
_____ Secretary
___ Date of Contract

Specifications

In preparing the right-of-way, trees shall be removed, underbrush cleared, and trees trimmed so that the right-of-way shall be clear from the ground up as specified in the Proposal. Trees fronting each side of the right-of-way shall be trimmed symmetrically unless otherwise directed by the Engineer. Dead trees beyond the right-of-way which would strike the line in falling shall be removed. Leaning trees beyond the right-of-way which would strike the line in falling and which would require topping if not removed may be removed or topped at the direction of the Engineer.

Where TMC–12, TMC–12–(1) units are specified, the right-of-way shall be cleared in

accordance with the instructions in the preceding paragraph and in addition, all stumps one-half inch in diameter and larger shall be sprayed as specified by the Engineer.

[End of clause]

§ 1726.323 Certificate (Buy America), REA Form 213.

The closeout form in this section shall be used when required by this part.

Certificate

With respect to compliance with the second paragraph of the Rural Electrification Act of 1938, being Title IV of the Work Relief and Public Works Appropriation Act of 1938 (Public Resolution No. 122, 75th Congress, approved June 21, 1938).

Rural Electrification Administration
Project _____.

The undersigned, being the _____[1], in a certain contract No. _____ dated _____, 19__[1], between the undersigned and _____[2], does hereby certify that in the performance of the said contract there have been used or furnished no unmanufactured articles, materials or supplies which have not been mined or produced in the United States, Mexico, or Canada and no manufactured articles, materials or supplies which have not been manufactured in the United States, Mexico, or Canada substantially all from articles, materials or supplies mined, produced or manufactured, as the case may be in the United States, Mexico, or Canada, except to the extent that compliance with the second paragraph of the Rural Electrification Act of 1938, being Title IV of the Work Relief and Public Works Appropriation Act of 1938 (Public Resolution No. 122, 75th Congress, approved June 22, 1938) has been waived by the Administrator of the Rural Electrification Administration.

By _____
Date _____, 19 ____
[End of clause]

§ 1726.324 Waiver and release of lien, REA Form 224.

The closeout form in this section shall be used when required by this part.

Waiver and Release of Lien

Whereas the undersigned, _____ (name of manufacturer, materialman or subcontractor) has furnished to _____ (name of contractor) the following: _____ (kind of material and services furnished) for use in the construction of a Project belonging to _____ (name of borrower) and designated by the Rural Electrification Administration as _____ (REA project designation)

Now, Therefore, the undersigned, (name of manufacturer, materialman or subcontractor) for and in consideration of $ _____ and other good and valuable consideration, the receipt whereof is hereby acknowledged, do(es) hereby waive and release any and all liens, or right to or claim of lien, on the above described project and premises, under any law, common or statutory, on account of labor or materials, or both, heretofore or hereafter furnished by the undersigned to or for the account of said _____ (name of contractor) for said project.

Given under my(our) hand(s) and seal(s) this _____ day of _____, 19_____.

_____ Name of manufacturer, materialman or subcontractor

By _____ President, vice president, partner or owner, or, if signed by other than one of the foregoing, accompanied by power of attorney signed by one of the foregoing in favor of the signer. (Use designation applicable.)

[End of clause]

§ 1726.325 Certificate of contractor, REA Form 231.

The closeout form in this section shall be used when required by this part.

Certificate of Contractor

_____ certifies that he is the _____ (Title of Office) of _____ (Name of Contractor), the Contractor, in a Construction Contract No. _____ dated _____, 19_____, entered into between the Contractor and _____ (Name of Borrower) the Owner, for the construction of a Project, which bears the Rural Electrification Administration Project Designation _____ and that he is authorized to and does make this certification on behalf of said Contractor in order to induce the Owner to make payment to the Contractor, in accordance with the provisions of said Construction Contract.

Undersigned further says that all persons who have furnished labor in connection with said construction have been paid in full, that the names of manufacturers, materialmen and subcontractors that furnished material or services or both in connection with such construction and the kind or kinds of material or services or both so furnished are:

Name _____
Kind of Material and Service _____
and that the releases of liens executed by all such manufacturers, materialmen and subcontractors have been furnished the Owner.

Date _____
Signature _____
[End of clause]

§ 1726.326 Construction or equipment contract amendment, REA Form 238.

The amendment form in this section shall be used when required by this part.

Construction or Equipment Contract Amendment

Project Designation _____
Date _____
Amendment No. ____
Contract No. _____
Bond extension attached ____ Yes ____ No
Delivery or Completion Date: Original _____
As Amended _____

Instructions: 1. The Architect-Engineer shall submit three (3) copies of this form for each contract which has been approved by REA, to the Owner. 2. The Owner will submit the three (3) copies of this form to REA for approval.

Reasons for, and details and description of the amendment _____ (If additional space is needed, use reverse or separate sheet)

A summary of the original contract price and amendments thereto, including this amendment, follows: (Amendments which decreased the price are preceded by a (−) minus sign).

Original Contract Price, $_____
Amendment Number 1, $_____
Amendment Number 2, $_____
Amendment Number 3, $_____
Amendment Number 4, $_____
Amendment Number 5, $_____
Amendment Number 6, $_____
Amendment Number 7, $_____
Amendment Number 8, $_____
Amended Contract Price, $_____

This amendment, providing for an increase of $_____ / decrease of $_____ in the contract price is submitted pursuant to the provisions of said contract. (The Administrator of REA is hereby authorized to approve this amendment either in whole or in part and to delete such items as do not meet his approval). To the extent the items hereof are approved the contract shall be amended.

Accepted
_____ Contractor
By _____ President-Owner-Partner (Strike out inapplicable title. If signed by other than above, power of attorney should be attached or on file with REA.)
_____ Date
Owner
By _____ President-Board of Directors
_____ Date
Approved
_____ Architect-engineer
_____ Date

Item No.	Reasons for and Description of Contract Amendment No.	Labor or Installation[1]	Material or Equipment[1]	Total
	Net Total			

[1] Changes in Cost (decrease preceded by (−) minus sign.) To be filled in when applicable.

[End of clause]

§ 1726.327 Material receipt, REA Form 251.

The receipt form in this section shall be used when a Material Receipt is required by REA Form 764, 830, or 831

Materials Receipt

Instructions: Prepare three (3) copies. Forward original to Owner, one copy to Contractor and one copy to Engineer.

Date _____

[1] Insert "Contractor," "Subcontractor," "Seller" or "Materialman," as the case may be.

[2] Insert the name of the REA Borrower

Item[1]		Quantity	Description of Item	Manufacturer and Catalog Number	Unit Price	Extended Price
Total						

Notes: 1. Item corresponds with item in list of materials in construction drawings.

Received by _____
For:
_____Contractor
_____Owner
[End of clause]

§ 1726.328 Construction inventory (for labor and material contract), REA Form 254.

The closeout form in this section shall be used when required by this part.

Construction Inventory (For Labor and Material Contract)

Date _____
Project Designation _____
Borrower _____
Engineer _____
Contractor _____

Amount Payable to Contractor

A. Total Cost of Standard New And Conversion Assembly Units Installed (Total No. 6, REA Form 254a) $_____

B. Cost To Remove "I" Units (Total No. 7, REA Form 254a) $_____

C. Amount To Be Credited To Contractor For Materials Removed From Existing Facilities And Returned (Total No. 14, REA Form 254b) $_____

Subtotal $_____
Deduct:

D. Amount Chargeable To Contractor For Materials In Assembly Units Removed (Total No. 9, REA Form 254a) $_____

E. Net Amount Of Owner-Furnished Materials (Total No. 24 REA Form 254c) $_____

F. Net Amount Due Contractor (In making final payment to Contractor, the net amount due the Contractor, as shown by this Certification, will be reduced by the sums, if any, due the Owner for liquidated damages, payment made to date, or other sums which the Owner has the right to retain under the terms of the Contract, and signature by all parties does not preclude the retention by the Owner of such amounts.) $_____

Certificate of Engineer

I certify that to the best of my knowledge and belief the attached final inventory correctly shows the total number and character of assembly units installed and removed by the Contractor and that the net amount of $_____ due the Contractor, as shown above, is true and correct.

Engineer _____
By _____
Date _____

Acceptance by Owner

Owner _____
By _____ President
Date _____

Acceptance by Contractor

Firm _____
By _____
Date _____

Instructions

(See REA Bulletin 1767B–3, Preparation and Use of REA Form 254, for additional instructions.)

The Engineer will prepare 5 copies of REA Form 254 and 254a, also 5 copies of Forms 254b and 254c when applicable. Original and 1 copy to be forwarded to REA, 1 copy to Contractor, 1 copy to Owner, and 1 copy to be retained by Engineer.

Calculation of amount payable to Contractor will employ data taken from Nos 1 through 25, REA Forms 254, 254a, 254b, 254c. The amounts to be inserted opposite Items A, B, C, D, and E on REA Form 254 are indicated in the texts of those items. Nos 1 through 17, Forms 254a and 254b: (Form 254b is required only when "I" removal units are included in the Contract.)

No.—Source of Information

1 and 2—From tabulation of staking sheets.[1]
3 and 4—From Contract
5—No. 3 plus No. 4.
6—No. 1 multiplied by No. 5
7—No. 1 multiplied by No. 3 (for "I" units only).
8—From Table C of Contract
9—No. 1 multiplied by No. 8 for "I" removal units only. (Table C relates solely to "I" units.)
10, 11, and 12—From Engineer's and Owner's records.
13—From Table D in Contract
14—No. 12 multiplied by No. 13
15—From Engineer's records. (Quantities shall be listed opposite the appropriate material items described in No. 11.)
16—From individual stock record card for each material item listed.
17—No. 15 multiplied by No. 16.

Data shown on Form 254c to be presented under the following headings, as appropriate

PART I—MATERIAL ITEMS INCLUDED IN LISTS SET FORTH IN CONSTRUCTION CONTRACT

PART II—OTHER MATERIAL ITEMS FURNISHED BY OWNER

Nos. 18 through 25: (Form 254c is required only when there are owner-furnished materials.)

No.—Source of Information

18 and 19—From Contract and Material Receipts.

20—From charge-out and credit tickets covering materials issued to and returned by the Contractor.[2]
21—From average unit costs on charge-out and credit tickets relating to this construction, such costs in turn being taken from the average unit costs reflected by the stock record cards for the applicable period.
22—No. 20 multiplied by No. 21.
23—For Part I, from the unit prices specified in the Contract in the "List of Owner's Materials on Hand" or the "List of Materials Ordered by Owner But Not Delivered."
For Part II, from the actual unit costs to Owner—the same as used in No. 21
24—No. 20 multiplied by No. 23.
25—No. 24 minus No. 22. (If a minus quantity, enter in parentheses.)

See 7 CFR 1726, Electric System Construction Policies and Procedures, for instructions regarding distribution of the completed form.

Reference should be made to REA Bulletin 1767B–3, Preparation and Use of REA Form 254, for instruction in accounting for all contract costs, including the retirement of units removed by the Contractor and the unitization by record units of costs of construction assemblies installed by the Contractor.

REA Form 254a
Assembly Units:
1. Quantity _____
2. Standard (N—New, H—Conversion,)—Removal) _____ Due to Contractor for Units Installed, Converted, and Removed
3. Labor (Unit Price) _____
4. Material Unit Price (Except I Units) _____
5. Total Unit Price (No. 3 + No. 4) (Except I Units) _____
6. Cost of Construction (No. 1 x No. 5 (Except I Units) _____
7. Cost to Remove "I" Units (No. 1 x No. 3) _____

Amount Chargeable to Contractor for Materials in Assemblies Removed.
8. Unit Values (Table C in Contract)
9. Total (No. 1 x No. 8) _____
Total (No. 6) _____
Total (No. 7) _____
Total (No. 9) _____
REA Form 254b

[1] Standard units will be listed first, followed by new units and conversion units, in that order, with all "I" removal units being listed last.

[2] The quantities shown in No. 20 should agree with Materials Receipts (REA Form 251) prepared in connection with the contact. The types of items of material and the quantity of any item of material listed under Part I of the tabulation should be limited to the type of items and should not exceed the quantity of any item of material specified in the construction contract in the "List of Owner's Materials on Hand" or the "List of Materials Ordered by Owner But Not Delivered." Any additional items of material or excess quantities over the items specified in such lists are to be shown under Part II of the tabulation.

Summary and Classification Of Materials Returned to Owner by Contractor from "I" Removal Units.

Amounts to be Credited to Contractor for Materials Returned.

10. Item Designation _____
11. Description of Material _____
12. Quantity _____
13. Item Value—Table D in Contract _____
14 Total Credit to Contractor (No. 12 x No. 13) _____

Returned Materials Declared Reusable by Engineer.

15. Quantity of Items _____
16. Stock Card Item Price _____
17 Salvage Value (No. 15 x No. 16) _____
Total (No. 14) _____
Total (No. 17) _____
REA Form 254c

Tabulation of Net Amount of Materials Furnished by Owner.

18. Item Designation _____
19. Description of Material _____
20. Quantity _____

Actual Cost to Owner.

21. Unit Cost _____
22. Extended Cost (No. 20 x No. 21) _____

Amount Chargeable to Contractor at Contract Price.

23. Unit Cost _____
24. Extended Cost (No. 20 x No. 23) _____
25. Excess of No. 24 over No. 22 _____
Total (No. 22) _____
Total (No. 24) _____
Total (No. 25) _____
[End of clause]

§ 1726.329 Contract to construction buildings, REA Form 257.

The contract form in this section shall be used when required by this part.

Contract to Construct Buildings

Notice and Instructions to Bidders

1. Proposals: Sealed proposals for the construction, including the furnishing of all materials, machinery, labor and equipment, water, heat, utilities, transportation, and other means necessary for construction of the building(s) listed below (hereinafter called the "Project") to be financed _____ not to be financed _____ pursuant to a loan contract between _____ (hereinafter called the "Owner") and the United States of America, by the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator") and designated as Project _____ will be received by the Owner on or before _____ o'clock _____ M _____ Time, _____, 19___, at its office located at _____ at which time and place the proposals will be publicly opened and read. The Rural Telephone Bank may also be a party to the loan contract.

Name or Kind of Building _____
Location _____

2. Obtaining Documents: The Plans and Specifications together with all other necessary forms and documents for bidders may be secured from _____ at _____ upon payment of _____ Dollars ($_____) which payment will be refunded to each bona fide bidder within ten (10) days after the bid opening. Additional sets of Plans and Specifications may be obtained upon payment of _____ Dollars ($_____) which payment will not be subject to refund. The Plans and Specifications may be examined at the office of _____: A copy of the loan contract may also be examined at the office of the Owner.

3. Manner of Submitting Proposals: Proposals and all supporting documents required to be attached thereto must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope, addressed to the Owner. The name and address of the Bidder, its license number, if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the proposal is submitted. Proposals must be filled in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated.

4. Familiarity With Conditions: Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Plans and Specifications, forms of Construction Proposal and Acceptance, and Contractor's Bond on file with the Secretary of the Owner and shall become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of the soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project, general local conditions, and all other matters that may affect the cost and the time of completion of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors and the so-called "Kick-Back" Statute (48 Stat. 948) and regulations issued pursuant thereto.

5. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

6. Time of Completion of Construction: The time of completion of construction of the Project shall be as specified by the Architect in the Proposal.

7. Bid Bond: Each proposal must be accompanied by a bid bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder shall agree, provided its proposal is one of the three low proposals, that by filing its proposal together with such bid bond or check in consideration of the Owner's receiving and considering such proposal, said proposal shall be firm and binding upon each such Bidder and such bid bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond (or Builder's Risk Policy) is furnished by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of proposals, whichever period shall be the shorter. If such proposal is not one of the three low proposals, the bid bond or check will be returned in each instance within a period of ten (10) days to the respective Bidder.

8. Contractor's Bond or Builder's Risk Policy: The successful Bidder will be required to execute two additional counterparts of the Proposal and to furnish:

(a) For contracts in amounts in excess of $100,000, a Contractor's Bond in the form attached to the Proposal with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.

(b) For contracts in amounts of $100,000 or less, either a Contractor's Bond or a Builder's Risk Policy, whichever the Owner has specified below: (Check One)

_____ Contractor's Bond
_____ Builder's Risk Policy

9. Failure to Furnish Contractor's Bond or Builder's Risk Policy: Should the successful Bidder fail or refuse to furnish a Contractor's Bond (or Builder's Risk Policy) satisfactory to the Owner within fifteen (15) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check the difference between the amount of the Proposal and such larger amounts for which the Owner may in good faith contract with another party to construct the Project. The term "successful Bidder" shall be deemed to include any Bidder whose proposal is accepted after another Bidder has previously refused or has failed to furnish a satisfactory Contractor's Bond (or Builder's Risk Policy).

10. Contract Is Entire Agreement: The contract, effected by acceptance of the Proposal, shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

11. Minor Irregularities: The Owner reserves the right to waive minor irregularities or minor errors in the Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal prior to its acceptance by the Owner.

12. Rejection of Proposals: The Owner reserves the right to reject any or all proposals.

13. Discrepancies: Where a discrepancy appears between the sum of the Base Bids of each building and the Total Base Bid, the correct addition of the Base Bid price for each building shall control.

14. The Owner Represents:

(a) If by provisions of the Proposal, the Owner shall have undertaken to furnish any materials for the construction of the Project, such materials are on hand at locations which may be determined by the bidders' inquiry of the Architect, or if such materials are not on hand, they will be made available by the Owner to the successful Bidder before the time such materials are required for incorporation into the Project.

(b) Title to the property on which the Project is to be constructed has been obtained.

(c) All funds necessary for prompt payment of the construction of the Project will be available.

If the Owner should fail to comply with any of the undertakings contained in the foregoing representations or if any such representations shall be incorrect, the Bidder will be entitled to an extension of the time of completion of Construction for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representations; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing, and provided further that such extension, if any, of the time of completion shall be the sole remedy of the Bidder for the Owner's failure to comply with any of the foregoing representations.

____ Owner
By _
Dated ____

Proposal

To: _____ (hereinafter called the "Owner"). The undersigned (hereinafter called the "Bidder") proposes to construct the building(s) listed in Section 1 of Article I (hereinafter called the "Project"), financed _____, not to be financed _____, in whole or in part by a loan to the Owner by the United States of America, by the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator"), or by loans to the Owner by the United States of America and by the Rural Telephone Bank, designated _____, and to receive and install such materials and equipment as may hereinafter be specified to be furnished by the Owner, and to furnish all other materials, machinery, and equipment, water, heat, utilities, transportation and other means required to construct the Project in accordance with the plans and specifications (hereinafter called the "Plans and Specifications"), prepared by _____ (hereinafter called the "Architect") and dated _____, 19_____, and approved by the Rural Electrification Administration on _____, 19_____, and by this reference made a part hereof. The Bidder has made a careful examination of the site(s) on which the Project is to be constructed, has become informed as to the kind of facilities required before and during the construction of the Project and has become acquainted with the labor conditions which would affect the work.

The Bidder agrees that if his bid is accepted, the following terms shall govern.

ARTICLE I—AMOUNT OF PROPOSAL

Section 1. Bid Price: The Bidder will construct the Project for the following sum:

Name or Kind and Location of Building _____
Base Bid _____
Total of Bid $_____
Alternate Bid No. 1 (add) (deduct) $__
Alternate Bid No. 2 (add) (deduct) $__
Alternate Bid No. 3 (add) (deduct) $__
Alternate Bid No. 4 (add) (deduct) $__

Section 2. Taxes: The price quoted herein includes all amounts which the Bidder estimates will be payable by the Bidder or the Owner on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies or equipment or services or labor of installation to be incorporated in the Project. The Bidder will pay all such taxes and will furnish to appropriate taxing authorities any required information and reports pertaining thereto.

ARTICLE II—CONSTRUCTION

Section 1. Time of Construction:

(a) The Bidder, after notification in writing of approval of the Construction Contract by the Administrator, if approval of the Administrator is required, will commence construction of the Project within _____ (_____) calendar days after the Owner shall have given the Bidder written notice to commence construction which notice shall be given:

(1) Not later than _____ (_____) calendar days after approval of the Construction Contract by the Administrator, if approval of the Administrator is required.

(2) On a date to be determined by the Owner. (The Architect will cross out the inapplicable statement (1) or (2) above before requesting bids.)

(b) The Bidder will prosecute diligently and complete construction of the Project in strict accordance with the Plans and Specifications and directions of the Architect within _____ (_____) calendar days after the expiration of the time specified to commence construction.

(c) The time for Completion of Construction herein set forth shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Bidder, including acts of God, fires, floods, direction by the Architect to cease construction during periods when in the judgment of the Architect it is impractical to perform any operation of construction and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible, provided, however, that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefor in writing to the Owner and, provided further, that no delay in such time of completion or in the progress of the work which results from any of the above causes or from any changes in construction which may be made pursuant to Subsection (d) of this Section shall result in any liability on the part of the Owner.

(d) The Owner, acting through the Architect and with the approval of the Administrator, if approval of the Administrator is required, may from time to time during the progress of construction make revisions in the Project. If the revision is such as to require an extension in the time of construction, a reasonable extension shall be granted if the Bidder shall make a written request therefor to the Owner prior to the commencement of work in connection with such revision. If the cost of the Project to the Bidder to make revision shall be increased or decreased, the contract price shall be amended by an amount equivalent to the reasonable cost thereof by a Construction Contract Amendment signed by the Owner and the Bidder, and approved by the Administrator, if approval of the Administrator is required; but no claim for additional compensation for any revision will be considered unless the Bidder shall have made a written request therefore to the Owner prior to the commencement of work in connection with such revision. The reasonable cost of any increase or decrease in the contract amendment as outlined above, in the absence of any other mutual agreement shall be computed on the basis of the direct cost of materials, F.O.B. the site of the Project, plus the direct cost of labor necessary to incorporate such materials into the Project (including actual cost of payroll taxes and insurance) plus twenty-five percent (25%) of the direct cost of materials and labor. Labor cost shall be limited to the direct costs for workmen and foremen. Costs for Bidder's main office overhead, job office overhead and superintendence shall not be included.

Section 2. Supervision: The Bidder will give sufficient supervision to the work, using his best skill and attention. He will carefully study and compare all drawings, specifications and other instructions, and report at once to the architect any error, inconsistency or omission which he may discover. The Bidder will make available during construction a competent superintendent and any necessary assistants, all satisfactory to the architect. The superintendent shall not be changed except with the consent of the Architect unless the superintendent proves to be unsatisfactory to the Bidder and ceases to be his employ. The superintendent shall represent the Bidder in his absence and all directions given to him shall be as binding as if given to the Bidder. When requested, such directions shall be confirmed in writing.

Section 3. Shop Drawings: The Bidder, after reviewing, will submit to the Architect, with such promptness as to cause no delay in the work two copies of all shop or setting drawings and schedules required for the work of the various trades, and the Architect shall pass on them with reasonable promptness, requesting corrections required thereto to be made. The Bidder will make any corrections required and file with the Architect three corrected copies and furnish such other copies as may be needed. The Architect's approval of such drawings or schedules shall not relieve the Bidder of responsibility for deviations from the Plans and Specifications. The Bidder will keep one copy of the contract documents on the site, in good order, available to the Architect. All drawings and specifications will be returned to the Architect upon completion of construction.

Section 4. Samples: The Bidder will furnish for approval, all samples as directed by the Architect, and will perform the work in accordance with such approved samples.

Section 5. Inspection and Tests: The manner of construction of the Project and all materials and equipment used or to be used therein shall be subject to the inspection, tests and approval of the Architect and the Administrator, and the Bidder will furnish all information required by the Architect or the Administrator concerning the nature or source of materials. The Owner and the Administrator shall have the right to inspect all records of the Bidder and of any subcontractor relevant to the work. The Bidder will make available at the site of the Project, telephone service where obtainable, the payroll, invoices of material and other data and records of the Bidder relevant to the work. The Bidder will provide all reasonable facilities necessary for such inspection and tests. If the specifications, the Architect's instructions, laws, ordinances or any public authorities require any work to be specially tested or approved, the Bidder will give the Architect timely notice of its readiness for observation by the Architect or inspection by an authority other than the Architect, and if the inspection is by such other authority, of the date fixed for such inspection, testing or approval. The Bidder will bear all costs of such inspections, tests and approvals unless otherwise provided, obtain required certificates and deliver them to the Architect. Observations by the Architect shall be promptly made, and where practicable at the source of supply. If any work should be covered without approval or consent of the Architect, it must, if required by the Architect, be uncovered for examination at the Bidder's expense. Re-examination of questioned work may be ordered by the Architect and if so ordered the work must be uncovered by the Bidder. If such work be found in accordance with the contract documents the Owner shall pay the cost of re-examination and replacement. If such work be found not in accordance with the contract documents the Bidder will pay such cost.

Section 6. Employees: The Bidder will at all times enforce strict discipline and good order among his employees and shall not employ any unfit person or anyone not skilled in the task assigned him. The Architect and the Owner shall have the right to require the removal from the Project of any employee of the Bidder or subcontractor if in their judgment such removal shall be necessary to protect the interest of the Owner.

Section 7. Defective Workmanship and Materials: Notwithstanding the acceptance of workmanship, materials (except owner-furnished materials) or equipment or the giving of any certificate with respect to the Completion of Construction, if during the construction or within one year after such completion, or within such longer period as the Project or any part thereof may be guaranteed by other provisions of this Proposal, the workmanship, materials or equipment shall be found to be defective or not in conformity with the requirements of the Plans and Specifications, the Bidder will remedy or replace such workmanship, materials or equipment within thirty (30) days after written notice of the failure of the Bidder to conform with the applicable provisions of the contract documents shall have been given to the Bidder by the Owner.

ARTICLE III—PAYMENT AND RELEASES OF LIENS

Section 1. Payments to Bidder:

(a) On or before the fifth (5) day of each Calendar Month, the Bidder will make application for payment, and the Owner, on or before the fifteenth (15) day of such month, shall make partial payment to the Bidder for construction accomplished during the preceding Calendar Month and partial payment for materials not incorporated in the Project. The payment shall be made on the basis of a schedule of values and receipts or other vouchers, submitted by the Bidder to, and approved by, the Architect, showing payments for labor and materials, payments to subcontractors, and such other evidence of the Bidder's right to payment for construction accomplished, and bills of sale or such other procedure as will establish the Owner's title to materials not incorporated in the Project but delivered and suitably stored on the site or at any other location agreed upon in writing by the Owner. Approval by the Architect of the application for payment is solely for the purposes of payment and shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate of the cost for construction accomplished and approved and fifty percent (50%) of the cost of materials not incorporated in the Project shall be paid by the Owner to the Bidder prior to Completion of Construction. The Bidder will, before the first application, submit to the Architect, a schedule of values of the various parts of the work, including quantities, aggregating the total contract price, divided so as to assist in determining the accuracy of payments to subcontractors and of the applications for payment.

(b) Upon Completion of Construction, the Architect shall inspect the Project, and if he shall find the work acceptable and all provisions hereunder fully performed, he shall furnish the Owner two copies of a Certificate of Completion, on forms satisfactory to the Administrator, and shall certify thereon the final Contract Price. The Certificate of Completion shall show thereon the Acceptance of the Contractor. Upon acceptance of the Certificate of Completion by the Owner, the Owner shall make final payment to the Bidder of all unpaid amounts to which the Bidder shall be entitled hereunder, except that, for contracts requiring approval of the Administrator, the Owner shall submit one copy of the Certificate of Completion to the Administrator for approval. Upon notice of approval by the Administrator, the Owner shall make final payment to the Bidder.

(c) Interest at the rate of ____ percent [1] (____ %) per annum shall be paid by the Owner to the Bidder on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date, provided the delay in payment beyond the due date is not caused by any condition within control of the Bidder. The due date for purposes of such monthly payment shall be the fifteenth (15th) day of each Calendar Month provided (1) the Bidder on or before the fifth (5th) day of such month shall have submitted its certified estimate of construction completed during the preceding month and (2) the Architect on or before the fifteenth (15th) day of such month shall have approved such certification. If, for reasons not due to the Bidder's fault, such approval of the Architect shall not have been given on or before the fifteenth (15th) day of such month, the due date for purposes of this Subsection shall be the fifteenth (15th) day of such month notwithstanding the absence of the Architect's approval of the certification.

(d) Interest at the rate of ____ percent [2] (____%) shall be paid by the Owner to the Bidder on the final payment commencing fifteen (15) days after the due date. The due date for the purposes of such final payment shall be sixty (60) days after the date of certification by the Architect in the Certificate of Completion or the date of approval by the Administrator of the Certificate of Completion when approval thereof is required by the Administrator.

(e) No payments shall be due while the Bidder is in default in respect of any of the provisions of this Proposal, and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Proposal.

Section 2. Release of Liens: Upon Completion of Construction of the Project, but prior to the payment to the Bidder of any amount withheld in accordance with Section 1, (a) of Article III, the Bidder shall furnish the Owner, on forms satisfactory to the Administrator releases of all liens, and of all rights to claim any lien from manufacturers, materialmen and subcontractors who have furnished materials or services for the construction of the Project, and a Certificate of Contractor on a form satisfactory to the Administrator, to the effect that all labor used on or for the Project has been paid and that all such releases have been submitted to the Owner.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE BIDDER

Section 1. Protection to Persons and Property: The Bidder will, at all times, take all reasonable precautions for the safety of employees on the Project, and of the public and all other persons who may be affected thereby, and will comply with all applicable provisions of Federal, State and Municipal safety laws and building and construction codes.

The Bidder will protect from loss or damage all materials and equipment to be incorporated in the Project, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, paved surfaces, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Bidder will provide and maintain guard lights, watchman or other protection for persons and property, and physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the

[1] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

[2] See Footnote 1.

Associated General Contractors of America, unless such instructions are incompatible with or less strict than those of any public authority having jurisdiction thereon, or instructions of the Architect.

The following provisions shall not limit the generality of the above requirements:

(a) The Bidder will at all times, keep the premises free from accumulation of waste material or rubbish caused by his employees or work, and at the completion of construction he will remove all rubbish from and about the Project, and all his tools, scaffolding and surplus materials and will leave his work "broom clean."

(b) The Project from its commencement to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided, will be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection therewith and the materials to be used therein will be borne by the Bidder. The Bidder will make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Bidder, by reason of any act of God or other casualty or cause, whether or not the same shall have occurred by reason of the Bidder's negligence.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

(c) The Bidder will confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits, or directions of the Architect, and shall not unreasonably encumber the premises with his materials.

(d) The Bidder will not load or permit any of the structure to be loaded with a weight that will endanger its safety.

(e) The Bidder will submit to the Owner, monthly reports in duplicate of all accidents giving such data as may be prescribed by the Architect.

(f) Upon violation by the Bidder of any of the provisions of this section, the Bidder will, after written notice of such violation given to the Bidder by the Architect or the Owner, immediately correct such violation. Upon failure of the Bidder so to do, the Owner may correct such violation at the Bidder's expense; provided, however, that the Owner may, if it deems necessary or advisable, correct such violation at the Bidder's expense without such prior notices to the Bidder.

(g) The Bidder will be responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the construction of the Project.

Section 2. Insurance. The Bidder shall take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days' prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Purchase of Materials: The Bidder will purchase all materials (except owner-furnished materials) and supplies outright and not subject to any conditional sales agreements, bailment lease or other agreement reserving unto the seller any right title or interest therein. All materials and supplies shall become the property of the Owner when erected in place or at such earlier time as the parties may agree pursuant to Section 1(a) of Article III. Unless otherwise specified, all materials shall be new.

Section 4. Assignment of Guarantees: The Bidder will obtain from manufacturers, materialmen, and subcontractors and furnish to the Owner all guarantees and will transfer or assign to the Owner such guarantees as run in favor of the Bidder, prior to the time the Bidder receives final payment. The guarantees shall be in addition to and not limited by any other provisions of the contract documents, guarantee or remedy required by law.

Section 5. Royalties and Patent Infringement: The Bidder will pay all royalties and license fees, and will hold harmless and indemnify the Owner from any and all claims, suits, and proceedings for the infringement of any patent or patents covering any equipment, materials, supplies or construction methods used in the work.

Section 6. Compliance with Statutes and Regulations: The Bidder will comply with all applicable statutes, ordinances, rules and regulations pertaining to the work. The Bidder acknowledges that it is familiar with The Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48.Stat. 948), and all regulations issued pursuant thereto, and 18 U.S.C. §§ 287, 1001 as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental agencies having jurisdiction in the premises.

Section 7. Delivery of Possession and Control to Owner: Upon written request of the Owner, the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least 90 percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of such portion of the Project to the Owner, the risks and obligations of the Bidder as set forth in Section 1(b), Article IV hereof with respect to such portion so delivered to the Owner shall be terminated; provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective workmanship or materials as provided in Section 7, Article II.

Section 8. Occupancy Before Completion: Exception as provided in Section 7, the Owner shall not occupy any portion of the Project prior to the time of completion without the written approval of the Bidder. It is agreed that such occupancy of any such portion of the Project will not constitute acceptance of workmanship or materials used in construction of the Project as provided in Section 7, Article II, and that such occupancy will not relieve the Bidder from his obligation to complete any part of the Project in compliance with the contract. The Owner agrees to permit the Bidder to fulfill the requirements of the contract in accordance with instructions issued to the Bidder by the Architect upon occupancy by the Owner.

ARTICLE V—REMEDIES

Section 1. Liquidated Damages: The time of Completion of Construction of the Project is of the essence of this Contract. Should the Bidder neglect, refuse or fail to complete construction within the time herein agreed upon, after giving effect to extensions of time, if any herein provided for, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due or which may become due and payable to the Bidder, the sum of _____ Dollars ($_____) per day of each and every day that such construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty. If the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full; provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deduced or claimed as liquidated damages was computed.

Section 2. Completion on Bidder's Default: If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the surety or sureties upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder, such default shall be corrected or arrangements for the correction thereof, satisfactory to both the Owner and the Administrator, shall be made by the Bidder or its Surety or Sureties, the Owner may take over the construction of the Project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Bidder and the Bidder and its Surety or Sureties shall be liable to the Owner for any cost or expense in excess of the contract price occasioned thereby. Sureties shall be liable to the Owner for any cost or expense in excess of the contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third persons in connection with this Proposal and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 3. Cumulative Remedies: Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: provided, however, that the provisions of Section 1 of this Article V shall be the exclusive measure of damages for failure by the Bidder to complete the construction of the Project within the time herein agreed upon.

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions:

(a) The term *Administrator* shall mean the Administrator of the Rural Electrification Administration of the United States of America and his duly authorized representatives or any other person in whom or authority in which may be vested in the duties and functions which the Administrator is now authorized by law to perform.

(b) The term *Architect* shall mean the person or organization employed by the Owner to provide architectural services for the Project, and the Architect's duly authorized assistants and representatives. If an Architect is not employed, the term shall apply to the duly authorized agent of the Owner.

(c) The term *Completion of Construction* shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of (1) Releases of Liens and Certificate of Contractor under Article III, Section 2 hereof, and (2) other final documents. The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The date of signature by the Architect of the Certificate of Completion shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Bidder agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3. Bond or Builder's Risk Policy:

(a) The Bidder will furnish to the Owner for a contract in an amount in excess of $100,000, a bond in a penal sum not less than the Total Contract Price and in the form attached hereto and with a Surety or Sureties listed by the United States Treasury Department as Acceptable Sureties.

(b) The Bidder will furnish to the Owner for a contract in an amount of $100,000 or less, a Builder's Risk Policy or a bond like that required in the preceding paragraph, whichever the Owner has specified under Paragraph 8 of the Notice and Instructions to Bidders. The Builder's Risk Policy shall be on a completed value form, effective from the date equipment or materials is first delivered to the building site, and shall name both the Owner and the Contractor as insureds. The policy shall insure against loss by fire or lightning and the named perils in the extended coverage endorsement. The amount of coverage shall not be less than the replacement value of the property constructed, including all materials to be used in the construction and stored at the site or at any other location whether furnished by the Owner or the Contractor. When directed, the Bidder shall furnish evidence of compliance with these requirements. The evidence shall be in the form of a certificate of insurance by the insurance company and shall include a provision that no change in or cancellation of the policy shall be made without prior written notice to the Owner and the Administrator.

Section 4. Subcontracts and Nonassignment:

(a) Within ten (10) days after acceptance of the Proposal by the Owner and before awarding any subcontracts, the Bidder will notify the Architect, Owner and Surety in writing, of the names of the subcontractors proposed for the principal parts of the work, and will not enter into any subcontract for such work if written objection thereto is received from the Architect, Owner, Surety or Sureties within fifteen (15) days after receipt of such notice. The Bidder will be as fully responsible to the Owner and the Administrator for the acts and omissions of each subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it. The Bidder will not subcontract on aggregate amount in excess of sixty-five percent (65%) of its obligations, (to be calculated on the basis of the Total Contract Price) without approval of the Architect, Owner, and Surety or Sureties on any bond furnished by the Bidder for the faithful performance of the Bidder's obligations hereunder. Nothing contained in the Construction Contract shall create any contractual relation between any subcontractor and the Owner.

(b) The Bidder will not assign the contract effected by the acceptance of this Proposal or

any part thereof without approval in writing of the Owner, Surety or Sureties, and the Administrator if the Construction Contract was approved by the Administrator.

Section 5. Equal Opportunity Provisions:

(a) Bidder's Representations.

The Bidder represents that:

It has ____, does not have ____, 100 or more employees, and if it has, that it has ____, has not ____, furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such actions shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontract or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As use in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 6. License: The Bidder warrants that a Contractor's License is ____, is not ____, required, and if required, it possesses Contractor's License No. _____ for the State of _____ in which the Project is located, and said license expires on _____, 19____.

Section 7. Extension to Successors and Assigns: Each and all of the covenants and agreements contained in the contract effected by the Acceptance of this Proposal shall extend to and be binding upon the successors and assigns of the parties thereto.

Section 8. Description of Contract: The Notice and Instructions to Bidders, the Proposal, the Acceptance, the Contractor's Bond or Builder's Risk Policy, the Plans and Specifications and all amendments or revisions thereto constitute the Construction Contract.

Section 9. Contractor: Upon acceptance of this Proposal the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

Section 10. Approval by the Administrator: No acceptance of a Proposal for a contract upon which approval of the Administrator is required shall become effective until the contract has been approved by the Administrator; provided that no obligation shall arise hereunder unless such approval is given within sixty (60) days after the date set for the opening of the proposals. The acceptance of a Proposal for a contract upon which approval of the Administrator is not required shall become effective the date of acceptance by the Owner.

_____ Bidder
By _____ President
_____ Address
Attest: _____ Secretary
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Acceptance

Subject to the approval of the Administrator, if approval of the Administrator is required, the Owner hereby accepts the Proposal of _____ for the construction of the Project therein described for the:

Base Bid of _____ and alternate bids as follows (Show plus or minus):
Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.
Alternate bid No. _____, $_____.
The Total Contract Price is $_____

_____ Owner
By _____ President
Attest: _____ Secretary
Dated ___

[End of clause]

§ 1726.330 [Reserved]

§ 1726.331 Bid bond, REA Form 307.

The bond form in this section shall be used when a Bid Bond is required by REA Form 200, 203, 257, 764, 830, or 831.

Bid Bond

1. Know all men that we, _____, as Principal, and _____, as Surety, are held and firmly bound unto _____ (hereafter called the "Owner") in the penal sum of ten percent (10%) of the amount of the bid referred to in paragraph 2 below, but not to exceed _____ dollars ($_____), as hereinafter set forth and for the payment of which sum well and truly to be made we bind ourselves, our executors, administrators, successors and assigns, jointly and severally, by these presents:

2. Whereas, the Principal has submitted a bid to the Owner for the construction of the Rural Electrification Administration Project known as Project _____.

3. Now, therefore, the condition of this obligation is such that if the Owner shall accept the bid of the Principal, and

(a) the Principal shall execute such contract documents, if any, as may be required by the terms of the bid and give such Contractor's Bond or Bonds for the performance of the contract and for the prompt payment of labor and material furnished for the Project as may be specified in the bid, or

(b) in the event of the failure of the Principal to execute such contract documents, if any, and give such Contractor's Bond or Bonds, if the Principal shall pay to the Owner the difference, not to exceed the penal sum hereof, between the amount specified in the bid and such larger amount for which the Owner may in good faith contract with another party to construct the Project, then this obligation shall be void, otherwise to remain in full force and effect.

In witness whereof, the undersigned have caused this instrument to be executed and their respective corporate seals to be affixed and attested by their duly authorized representatives this ____ day of 19____.

Principal _____ (Seal)
By _____
Title _____
Attest: _____ (Secretary)
Surety _____ (Seal)
By _____
Title _____
Attest: _____ (Secretary)

[End of clause]

§§ 1726.332–1726.339 [Reserved]

§ 1726.340 Substation and switching station erection contract, REA Form 764.

The contract form in this section shall be used when required by this part.

Substation and Switching Station Erection Contract

Notice and Instructions to Bidders

1. Sealed proposals for the construction, including the supply of necessary labor, materials and equipment, of a rural electric project of _____ (hereinafter called the "Owner") to be known as Project _____ will be received by the Owner on or before ____ o'clock ____ M., 19____, at its office at _____, at which time and place the proposals will be publicly opened and read. Any proposal received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. Description of Project: The Project will consist of the following Substations and other Major Facilities:

Name _____ KVA _____
Voltage _____
Name _____ KVA _____
Voltage _____
Name _____ KVA _____
Voltage _____

The Project is located in ____ Counties, in the State of _____ all as more fully described in the Plans, Specifications for Construction, Construction Drawings and Contractor's Proposal therefore hereinafter referred to.

3. Owner Furnished Materials. The unit prices in the Contractor's Proposal should include provisions for Owner Furnished Materials since as stated in Article I, Section 3 of the Contractor's Proposal, the value of the Owner Furnished Materials, if any, will be deducted from payments to the Bidder for completed Construction Units.

4. Obtaining and Transferring Documents. The Plans, Specifications for Construction and Construction Drawings together with all necessary forms and other documents for bidders may be obtained from the Owner, or from the Engineer _____ at the latter's office at _____ upon payment of ten dollars ($10), which payment will not be subject to refund. The Plans, Specifications for Construction and Construction Drawings may be examined at the office of the Owner or at the office of the Engineer. A copy of the Loan Contract (if the Project is to be financed in whole or in part, pursuant to a Loan Contract) between the Owner and the United States of America acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator") and of the loan contract between the Owner and any other lender may be examined at the office of the Owner. Each set of Plans, Specifications for Construction and Construction Drawings will have a serial number, given by the Engineer, and the number of each set with the name of the Purchaser will be recorded by the Engineer. Bids will be accepted only from the original purchasers.

5. Manner of Submitting Proposals. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in, in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated.

6. Familiarity with Conditions. Prior to the submission of the Proposal the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Plans, Specifications for Construction, Construction Drawings, and forms of Contractor's Proposal and Contractor's Bond on file with the Secretary of the Owner and with the Engineer, and shall become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project, general local conditions and all other matters that may affect the cost and the time of completion of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors, and the so-called "Kickback Statute" (48 Stat. 948) and regulations issued pursuant thereto.

7. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

8. Alternate Designs. The Owner reserves the right to confine its consideration of the several bids to one type of design regardless of alternate types of design which may be specified in the Plans and Specifications for Construction and offered in the Proposals.

9. The time for Completion of Construction of the Project shall be as specified by the Engineer in the Proposal.

10. Bid Bond. Each Proposal must be accompanied by a Bid Bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such Bid Bond or check in consideration of the Owner's receiving and considering such Proposal, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.

11. Contractor's Bond. The successful Bidder will be required to execute two additional counterparts of the Proposal and, for a Contract in excess of $100,000, to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.

12. Failure to Furnish Contractor's Bond. Should the successful Bidder fail or refuse to

execute such counterparts or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the bid bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project. The term "successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts or to furnish a satisfactory Contractor's Bond (where required.)

13. Contract is Entire Agreement. The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

14. Minor Irregularities. The Owner reserves the right to waive minor irregularities or minor errors in any Propose, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the acceptance thereof by the Owner.

15. Rejection of Bids. The Owner reserves the right to reject any or all Proposals. The attention of Bidders is specially called to the desirability of a proper balance between prices for labor and materials and between the total prices for the respective Construction Units. Lack of such balance may be considered as a reason for rejecting a Proposal.

16. Discrepancy in Unit Prices. Where the unit prices in the Contractor's Proposal are separated into three columns designated as "Labor," "Materials" and "Labor and Materials," and where a discrepancy appears between the sum shown in the "Labor and Materials" column and the correct addition of the sums appearing in the "Labor" column and the "Materials" column, the correct addition of the sums appearing in the "Labor" column and the "Materials" column shall control.

17. Bidding and Acceptance. If the Project includes more than one substation, bidders may bid on one or more substations. The Owner may award (1) a contract for all of the substations on the basis of the low total bid or, (2) separate contracts for one or more substations based on the low bids for the respective substations.

18. Definition of Terms. The terms "Administrator," "Engineer," "Supervisor," "Project," "Completion of Construction" and "Completion of the Project" as used throughout this Contract shall be as defined in Article VI, Section 1, of the Contractor's Proposal.

19. The Owner represents:

a. If by provisions of the Contractor's Proposal the Owner shall have undertaken to furnish any materials for the construction of the Project, such materials are on hand at locations specified or if such materials are not on hand they will be made available by the Owner to the successful Bidder at the locations specified before the time such materials are required for construction.

b. Title to the property on which the Project is to be constructed has been obtained.

c. All funds necessary for prompt payment for the construction of the Project will be available.

If the Owner shall fail to comply with any of the undertakings contained in the foregoing representations or if any of such representations shall be incorrect, the Bidder will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representation; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing, and provided further that such extension, if any, of the time of completion shall be the sole remedy of the Bidder for the Owner's failure, because of conditions beyond the control and without the fault of the Owner, to furnish materials in accordance with subparagraph a. hereof.

_____ Owner

By _____

_____, 19__

Contractor's Proposal

(Proposal shall be submitted in ink or typewritten)

To: _____ (Hereinafter called the "Owner")

ARTICLE I—GENERAL

Section 1. Offer to Construct. The undersigned (hereinafter called the "Bidder") hereby proposes to receive and install such materials and equipment as may hereinafter be specified to be furnished by the Owner, and to furnish all other materials and equipment, all machinery, tools, labor transportation and other means required to construct the rural electric project _____ in strict accordance with the Plans, Specifications for Construction and Construction Drawings for the prices hereinafter stated.

Section 2. Materials and Equipment. The Bidder agrees to furnish and use in the construction of the Project under this Proposal, in the event the Proposal is accepted, only such materials and equipment as are included in the current "List of Materials Acceptable for Use on Systems of REA Electrification Borrowers," including revisions adopted prior to the Bid Opening.

Section 3. Owner-Furnished Materials. The Bidder understands and agrees that, if this Proposal is accepted, the Owner will furnish to the Bidder the material set forth in the attached "List of Owner's Materials on Hand" (see page 10) and the Bidder will give a receipt (see page 12) therefore in writing to the Owner. The Bidder, further, will on behalf of the Owner accept delivery of such of the materials set forth in the attached "List of Materials Ordered by Owner but Not Delivered" (see page 11) as may be subsequently delivered and will promptly forward to the Owner for payment the supplier's invoice, together with the Bidder's receipt in writing for such materials. The materials referred to are on hand at, or will be delivered to, the locations specified in the Lists and the Bidder will use such materials in constructing the Project.

The value of the completed Construction Units certified by the Bidder each month pursuant to Article III, Section 1.a of this Proposal shall be reduced by an amount equal to the value of the materials installed by the Bidder during the preceding month which have been furnished by the Owner or the delivery of which has been accepted by the Bidder on behalf of the Owner. Only ninety percent (90%) of the remainder shall be paid prior to the Completion of the Project. The value of such materials shall be computed on the basis of the unit prices stated in the Lists. Materials, if any, not required for the Project, which have been furnished to the Bidder by the Owner or delivery of which has been accepted by the Bidder on behalf of the Owner, shall be returned to the Owner by the Bidder upon Completion of Construction of the Project. The value of all materials not installed in the Project nor returned to the Owner shall be deducted from the final payment to the Bidder.

The Owner shall not be obligated to furnish materials in excess of the quantities, size, kind and type set forth in the attached Lists. If the Owner furnishes, and the Bidder accepts, materials in excess thereof, the values of such excess materials shall be their actual cost as stated by the Owner.

Information on the shipping schedules of materials on the "List of Materials Ordered by Owner But Not Delivered" will be furnished to the Bidder as necessary during progress of the work. Upon delivery the Bidder shall promptly receive, unload, transport and handle all materials and equipment on the "List of Materials Ordered by Owner But Not Delivered" at its expense and shall be responsible for demurrage, if any.

Section 4. Purchase of Materials Not Furnished by Owner. The Bidder will purchase all materials and equipment (other than owner-furnished materials) outright and not subject to any conditional sales agreements, bailment, lease or other agreement reserving unto the seller any right, title or interest therein. All such materials and equipment shall become the property of the Owner when erected in place.

Section 5. Proposal on Unit Basis. The Bidder understands and agrees that the various Construction Units on which bids are made are defined by symbols and descriptions in this Proposal, that all said bids are on a unit basis, and that the Owner may specify any number or combination of Construction Units that the Owner may deem necessary for the construction of the Project. Separate Construction Units are designated for each different arrangement which may be used in the construction of the Project. This

Proposal is based on a consideration of each unit in place and includes only the materials listed on the corresponding Construction Drawings or description of unit where no drawing exists.

Section 6. Familiarity with Conditions. The Bidder has made a careful examination of the site of the Project to be constructed and of the Plans, Specifications for Construction Construction Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required before and during the construction of the Project, and has become acquainted with the labor conditions, state and local laws and regulations which would affect work on the proposed construction

Section 7. License. The Bidder warrants that a Contractor's License is _____, is not _____, required, and if required, it possesses Contractor's License No. _____ for the State of _____ in which the Project is located and said license expires on _____, 19___

Section 8. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work

Section 9. The Bidder warrants that it possesses adequate financial resources and agrees that in the event this Proposal is accepted and a Contractor's Bond is required it will furnish a Contractor's Bond in the form attached hereto, in a penal sum not less than the maximum Contract price, with a surety or sureties listed by the United States Treasury Department as Acceptable Sureties

In the event that the surety or sureties on the performance bond delivered to the Owner contemporaneously with the execution of the Contractor on any bond or bonds delivered in substitution therefor or in addition thereto shall at any time become unsatisfactory to the Owner or the Administrator, the Bidder agrees to deliver to the Owner another or an additional bond.

Section 10. Taxes. The unit prices for Construction Units in this Proposal include provisions for the payment of all monies which will be payable by the Bidder or the Owner in connection with the construction of the Project on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies and equipment, or services or labor of installation thereof, to be incorporated in the Project as part of such Construction Units. The Bidder agrees to pay all such taxes, except taxes upon the sale, purchase or use of owner-furnished materials and it is understood that, as to owner-furnished materials, the values stated in the attached "List of Owner's Materials on Hand" and "List of Materials Ordered by Owner But Not Delivered" include taxes upon the sale, purchase or use of owner-furnished materials, if applicable. The Bidder will furnish to the appropriate taxing authorities all required information and reports pertaining to the Project, except as to the owner-furnished materials.

Section 11. Changes in Quantities. The Bidder understands and agrees that the quantities called for in this Proposal are approximate, and that the total number of units upon which payment shall be made shall be as set forth in the inventory. If the Owner changes the quantity of any unit or units specified in this Proposal by more than 15%, and the materials cost to the Bidder is increased thereby to an extent which would not be adequately compensated by application of the unit prices in this Proposal to the revised quantity of such unit or units, such change, to the extent of the quantities of such units in excess of such 15%, shall be regarded as a change in the construction within the meaning of Article II, Section 1(d) of this Proposal.

LIST OF OWNER'S MATERIALS ON HAND

Item[1]	Description of material	Catalog No.	Quantity	Unit price	Extended price

Above Materials are Located at:

[1] Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units

LIST OF MATERIALS ORDERED BY OWNER BUT NOT DELIVERED

Item[1]	Supplier name and address	Scheduled delivery date	Description of material	Catalog No	Quantity	Unit price	Extended price

Above Material to be Delivered to:

[1] Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

ARTICLE II—CONSTRUCTION

Section 1. Time and Manner of Construction.

a. The Bidder agrees to commence construction of the Project on a date (hereinafter called the "Commencement Date") which shall be determined by the Engineer after notice in writing of approval of the Contract by the Administrator and notice in writing from the Bidder that the Bidder has sufficient materials to warrant commencement and continuation of construction, but in no event will the Commencement Date be later than _____ calendar days after date of approval of the Contract by the Administrator. The Bidder further agrees to prosecute diligently and to complete construction in strict accordance with the Plans, Specifications for Construction and Construction Drawings within _____ (_____) calendar days (excluding Sundays) after Commencement Date: Provided, however, that the Bidder will not be required to perform any construction on such days when in the judgment of the Engineer snow, rain, or wind, or the results of snow, rain, or frost make it impracticable to perform any operation of construction and to the extent of the time lost due to the conditions described herein and approved in writing by the Engineer, the time of completion set out above will be extended if the Bidder makes a written request therefor to the Owner as provided in subsection b of this Section 1.

b. The time for Completion of Construction shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Bidder, including acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however, that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefore in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes, except acts or omissions of the Owner shall result in any liability on the part of the Owner.

c. The sequence of construction shall be as set forth below, the numbers or names being the designations of substations or other major facilities (hereinafter called the "Stations")

corresponding to the numbers or names shown on the maps attached hereto, or if no Stations are set forth below, the sequence of construction shall be as determined by the Bidder, subject to the approval of the Engineer.

d. The Owner, acting through the Engineer and with the approval of the Administrator,[1] may from time to time during the progress of the construction of the Project make such changes, additions to or subtractions from the Plans, Specifications for Construction, Construction Drawings, List of Materials and sequence of construction provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefor to the Owner within ten (10) days after any such change is made. And provided further, that if the cost to the Bidder of construction of the Project shall be materially increased by any such change or addition, the Owner shall pay the Bidder for the reasonable cost thereof in accordance with a Construction Contract Amendment signed by the Owner and the Bidder and approved by the Administrator,[2] but no claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

e. The Bidder will not perform any work hereunder on Sundays unless there is urgent need for such Sunday work and the Owner consents thereto in writing. The time for completion specified in subsection a of this Section 1 shall not be affected in any way by inclusion of this subsection nor by the Owner's consent or lack of consent to Sunday work hereunder.

Section 2. Environmental Protection. The Bidder shall perform work in such a manner as to maximize preservation of beauty, conservation of natural resources and minimize marring and scarring of the landscape and silting of streams. The Bidder shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures. The Bidder shall follow, under the general direction of the Engineer, the criteria relating to environmental protection as specified herein by the Engineer.

Section 3. The Bidder agrees that in the event this Proposal is accepted it will make available for use in connection with the proposed construction all necessary tools and equipment and qualified superintendents and foremen.

Section 4. Changes in Construction. The Bidder agrees to make changes in construction previously installed in the Project by the Bidder as required by the Owner. The compensation for such changes shall be as agreed upon in writing by the Bidder and the Owner prior to commencement of work in connection with such changes.

No payment shall be made to the Bidder for materials or labor involved in correcting errors or omissions on the part of the Bidder which result in construction not in accordance with the Plans and Specifications for Construction.

Section 5. Construction Not in Proposal. The Bidder also agrees that when it is necessary to construct units not shown in the Proposal it will construct such units for a price arrived at as follows:

a. The cost of materials shall be determined by the invoices.

b. The cost of labor shall be the reasonable cost thereof, as agreed upon by the Owner and Bidder prior to the commencement of work.

Section 6. Supervision and Inspection.

a. The Bidder shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Bidder shall also employ, in connection with the construction of the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Bidder.

b. The Owner reserves the right to require the removal from the Project of any employee of the Bidder if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner or the Supervisor, if any, shall have the right to require the Bidder to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner or Supervisor; but the failure of the Owner or Supervisor to give any such directions shall not relieve the Bidder of its obligations to complete the work within the time and in the manner specified in this Proposal.

c. The manner of construction of the Project, and all materials and equipment used therein, shall be subject to the inspection, tests and approval of the Owner and the Administrator, and the Bidder shall furnish all information required by the Owner or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the Project. The Owner and the Administrator shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Bidder and of any subcontractor, relevant to the construction of the Project. The Bidder shall provide all reasonable facilities necessary for such inspection and tests. The Bidder shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by the owner, when any other inspection is made.

d. In the event that the Owner, or the Administrator, shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Bidder and the Bidder's Surety or Sureties, if any, to have an inspection made by an engineer approved by the Owner and the Administrator for the purpose of determining the exact nature, extent and location of such defects.

e. The Engineer may recommend to the Owner that the Bidder suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Bidder to comply with any of the provisions of the Contract: Provided, however, that the Bidder shall not suspend work pursuant to this provision without written authority from the Owner so to do. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Bidder to comply with any of the provisions of this Contract. In the event that work is suspended by the Bidder with the consent of the Owner, the Bidder before resuming work shall give the Owner at least twenty-four (24) hours notice thereof in writing.

Section 7. Defective Materials and Workmanship.

a. The acceptance of any materials, equipment (except owner-furnished materials) or any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, by and at the expense of the Bidder. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Bidder at the Bidder's expense. The Bidder shall not be entitled to any payment hereunder so long as any defective materials, equipment or workmanship in respect to the Project, of which the Bidder shall have had notice, shall not have been replaced or remedied, as the case may be.

b. Notwithstanding any certificate which may have been given by the Owner or the Engineer, if any materials, equipment (except owner-furnished materials) or any workmanship which does not comply with the requirements of this Contract shall be discovered within one (1) year after Completion of Construction of the Project, the Bidder shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice in writing of the existence thereof shall have been given by the Owner. If the Bidder shall be called upon to replace any defective materials or equipment or to remedy defective workmanship as herein provided, the Owner, if so requested by the Bidder shall deenergize that portion of the Project involved in such work. In the event of failure by the Bidder so to do, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case maybe, and in such event the Bidder shall pay to the Owner the cost and expense thereof.

ARTICLE III—PAYMENTS AND RELEASE OF LIENS

Section 1. Payments to Bidder.

a. Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Bidder for construction accomplished during the preceding calendar month on the basis of completed Construction Units furnished and certified to by the Bidder, recommended by the Engineer, and approved by the Owner solely for the purposes of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of the Project shall be paid by the Owner to the Bidder prior to Completion of the Project: Provided, however, that at any time after work, which, in the sole determination of the Engineer, amounts to fifty percent (50%) of the maximum Contract price has been completed, the Owner may elect, in lieu of paying ninety percent (90%) of each such subsequent estimate, to pay each such subsequent estimate in full. Upon completion by the Bidder of the construction of the Project, the Engineer will prepare an inventory of the Project showing the total number and character of Construction Units and, after checking such inventory with the Bidder, will certify it to the Owner together with a certificate of the total cost of the construction performed. Upon the approval of such certificates by the Owner and the Administrator, the Owner shall make payment to the Bidder of all amounts to which the Bidder shall be entitled thereunder which shall not have been paid, provided, however, that such final payment shall be made not later than ninety (90) days after the date of Completion of Construction of the Project as specified in the Certificate of Completion, unless withheld because of the fault of the Bidder.

b. The Bidder shall be paid on the basis of the number of Construction Units actually installed at the direction of the Owner shown by the inventory: Provided, however, that the total cost shall not exceed the maximum Contract price for the construction of the Project as set forth in the Acceptance, unless such excess shall have been approved in writing by the Administrator.

c. Notwithstanding the provisions of Section 1a above, the Bidder may, by giving written notice thereof to the Owner, elect to receive payment in full for any Station of the Project upon:

(1) Completion of construction of such Station as certified by the Engineer and approved by the Owner and the Administrator;

(2) Submission to the Owner and the Administrator of the releases of lien and the certificate referred to in Section 2 hereof;

(3) Approval by the Owner and the Administrator of the inventory in respect of such Station; and

(4) Submission to the Owner and the Administrator of the consent in writing by the Surety or Sureties, if any, on the Contractor's Bond to payment in full for such Station prior to Completion of the Project.

d. Interest at the rate of ____ percent[3] (____%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date; provided the delay in payment beyond the due date is not caused by any condition within the control of the Bidder. The due date for purposes of such monthly payment shall be the fifteenth day of each calendar month provided (1) the Bidder on or before the fifth day of such month shall have submitted its certification of Construction Units completed during the preceding month and (2) the Owner on or before the fifteenth day of such month shall have approved such certification. If, for reasons not due to the Bidder's fault, such approval shall not have been given on or before the fifteenth day of such month, the due date for purposes of this subsection d shall be the fifteenth day of such month notwithstanding the absence of the approval of the certification.

e. Interest at the rate of ____ percent[4] (____%) per annum shall be paid by the Owner to the Bidder on the final payment for the Project or any completed Station thereof, commencing fifteen (15) days after the due date. The due date for purposes of such final payment shall be the date of approval by the Administrator of all of the documents requiring such approval, as a condition precedent to the making of final payment, or ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, whichever date is earlier.

f. No payment shall be due while the Bidder is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Contract.

Section 2. Release of Liens and Certificate of Contractor. (See sample REA Form 224, Waiver and Release of Lien and sample REA Form 231, Certificate of Contractor.) Upon the completion by the Bidder of the construction of the Project (or any Station thereof if the Bidder shall elect to receive payment in full for any Station when completed as provided above) but prior to final payment to the Bidder, the Bidder shall deliver to the Owner, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto from all manufacturers, materialmen, and subcontractors furnishing services or materials for the Project or such Station and a certificate in the form attached hereto to the effect that all labor used on or for the Project or such Station has been paid and that all such releases have been submitted to the Owner for approval.

Section 3. Payments to Materialmen and Subcontractors. The Bidder shall pay each materialman and each subcontractor, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Bidder for and on account of materials furnished or construction performed by each materialman or each subcontractor.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE BIDDER

Section 1. Protection to Persons and Property. The Bidder shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

a. The Bidder shall at no time and under no circumstances cause or permit any employee of the Bidder to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Notice and Instructions to Bidders.

b. The Bidder shall so conduct the construction of the Project as to cause the least possible obstruction of public highways.

c. The Bidder shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.

d. Temporary water, light, power and other utility service shall be arranged for by the Bidder for construction purposes at its own expense.

e. The Bidder shall do all things necessary or expedient to properly protect any and all adjacent lines, highways and any and all property of others from damage, and in the event that any such lines, highways or other property are damaged in the course of construction of the Project, the Bidder shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

f. The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Bidder. The Bidder shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Bidder by reason of any act of God or other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.

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[1] As long as the total price of this contract including all amendments is less than 120 percent of the original contract price as stated in the acceptance hereto, amendments executed on REA Form 238 are not subject to the approval of the Administrator. Whenever an amendment to this contract causes the total amended contract to exceed 120 percent of the original contract price, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

[2] See Footnote 1

[3] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

[4] See Footnote 3.

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(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

g. Any and all excess earth, rock, debris, underbrush and other useless material shall be removed by the Bidder from the site of the Project as rapidly as practicable as the work progresses.

h. Upon violation by the Bidder of any of the provisions of this Section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do, the Owner may correct such violation at the Bidder's expense: Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

i. The Bidder shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

Section 2. Insurance. The Bidder shall take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Delivery of Possession and Control to Owner.

a. Upon written request of the Owner the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1f hereof with respect to such portion of the Project so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials and workmanship as contained in Article II, Section 6 hereof.

b. Where the construction of a Station as hereinbefore defined in Article II, Section lc and Article III, Section lc shall have been completed by the Bidder, the Owner agrees, after receipt of a written request from the Bidder, to accept delivery of possession and control of such Station upon the issuance by the Engineer of a written statement that the Station has been inspected and found acceptable by the Engineer. Upon such delivery of the possession and control of any such Station to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section lf hereof with respect to such Station so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials or workmanship as contained in Article II, Section 6 hereof.

Section 4. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Bidder shall be transferred and assigned to the Owner prior to the time the Bidder receives final payment.

ARTICLE V—REMEDIES

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the Surety or Sureties, if any, upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof satisfactory to both the Owner and the Administrator shall be made by the Bidder or its Surety or Sureties, if any, the Owner may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its Surety or Sureties, if any, shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third persons in connection with this Contract and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Liquidated Damages. The time of the Completion of Construction of the Project is of the essence of the Contract. Should the bidder neglect, refuse or fail to complete the construction within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder the sum of _____ dollars (_____) per day for each and every day that such construction is delayed on its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder, shall pay to the Owner the amount necessary to effect such payment in full: Provided, however, that the owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provisions of Section 2 of this Article shall be the exclusive measure of damages for failure by the Bidder to complete the construction of the Project within the time herein agreed upon.

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions.

a. The term *Administrator* shall mean the Administrator of the Rural Electrification Administration of the United States of America and his duly authorized representatives or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

b. The term *Engineer* shall mean the engineer employed by the Owner, with the approval of the Administrator, to provide engineering services for the Project, and said Engineer's duly authorized assistants and representatives.

c. The term *Supervisor* shall mean the person, if any, appointed by the Administrator as the representative of the Government under the provisions of the Loan Contract providing for such appointment in special cases. The term is limited to such special representative of the Government, if any, who is responsible exclusively to the Administrator and does not refer to the Manager or any other person employed by the Owner and responsible to it.

d. The term *Project* shall mean the substations or other major facilities described in the Plans, Specifications for Construction, and Construction Drawings.

e. The term *Completion of Construction* shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of (1) Releases of Liens and Certificate of Contractor under Article III, Section 2 hereof, (2) the inventory referred to in Article III, Section I hereof, and (3) other final documents. The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion, signed by the Engineer and approved in writing by the Owner and the Administrator, shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Seller agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3. Patent Infringement. The Bidder shall save harmless and indemnify the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 4. Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Bidder.

Section 5. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. §§ 287, 1001, as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental Agencies having jurisdiction in the premises.

Section 6. Equal Opportunity Provisions.

a. Bidder's Representations.

The Bidder represents that:

It has _____, does not have _____, 100 or more employees, and if it has, that it has _____, has not _____, furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

b. Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Bidder will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor or as otherwise provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontractor purchase order as the administering agency

may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

c. Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting room, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 7. Franchises. The Bidder shall be under no obligation to obtain or assist in obtaining: Any franchises, authorizations, permits or approvals required to be obtained by the Owner from Federal, State, County, Municipal or other authorities; or any agreements between the Owner and third parties with respect to any matters incident to the construction and operation of the Project.

Section 8. Nonassignment of Contract. The Bidder shall perform directly and without subcontracting not less than twenty-five per centum (25%) of the construction of the Project, to be calculated on the basis of the total Contract price. The Bidder shall not assign the Contract effected by an acceptance of this Proposal or any interest in any funds that may be due or become due hereunder or enter into any contract with any person, firm or corporation for the performance of the Bidder's obligations hereunder or any part thereof, without the approval in writing of the Owner and of the Surety and Sureties, if any, on any bond furnished by the Bidder for the faithful performance of the Bidder's obligations hereunder. If the Bidder, with the consent of the Owner and any Surety or Sureties on the Contractor's Bond or Bonds, shall enter into a subcontract with any subcontractor for the performance of any part of this Contract, the Bidder shall be as fully responsible to the Owner and the Government for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it.

Section 9. Extension to Successors and Assigns. Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto.

Section 10. Contractor. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

Section 11. Approval by the Administrator. No acceptance of this Proposal shall become effective until approved in writing by the Administrator: Provided, however, that no obligations shall arise hereunder unless such approval is given within forty-five (45) days from the date of acceptance by the Owner.

_____ (Bidder)
By _____ (President)
_____ (Address)
ATTEST: _____ (Secretary)
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Specifications for Construction

Section 1. Scope of Work. The work covered by this Proposal embraces the complete construction of one or more substations or other major facilities as specified in the Acceptance, any omissions or discrepancies notwithstanding. All material furnished by the Bidder shall be new and in conformance with the Specifications for Construction. All construction work shall be done in a thorough and workmanlike manner in accordance with the Plans, Specifications for Construction and Construction Drawings. Deviations from the Plans, Specifications for Construction, and Construction Drawings shall not be permitted except upon the written permission of the Owner given with the approval of the Administrator.

This contract does not include _____ which is to be done by others.

Section 2. Materials. It is the intent of these specifications that insofar as materials required are included in the Rural Electrification Administration "List of Materials Acceptable for use on Systems of REA Electrification Borrowers," such materials only shall be used. In the event that any materials are required beyond the scope of the "List of Materials Acceptable for use on Systems of REA Electrification Borrowers," specifications for such materials will be included on the drawings or in a supplement to these specifications.

Section 3. Drawings. The Drawings and Specifications collectively, show the specifications of the material and equipment shown thereon, and include schedules of conduit, cable and other items not readily ascertained from the picture drawings. Such schedules show the quantities, sizes, types and other pertinent information; method of installation, and construction details are indicated clearly. The drawings and specifications in the attached List of Drawings are made a part of these contract Specifications.

Section 4. Description of Construction Units. Each Construction Unit consists of a complete installation of the designated portion of a substation or switching station as specified on the drawings, together with connections to associated equipment. Each Construction Unit represents all labor and material including necessary accessories completely installed and tested in satisfactory operation. Full identification of each Construction Unit and all necessary specifications of the installation shall be shown on the drawings.

Items of material in each Construction Unit shall be of the designated size, rating, type, voltage, or other specification in accordance with the drawings. The bill of material drawing for each station should contain adequate identification of the Construction Units under which the material is to be installed and should show what items of material may be partly or entirely found in the lists of owner-furnished materials.

All items of equipment, unless otherwise specified, are mounted on a structure which shall be a Construction Unit of Group A. Each Construction Unit shall be designated by the letter of the Group to which it belongs and an identifying number. The same item of equipment shall carry the same Construction Unit designation in all the stations. Items of equipment designated by the same Construction Unit in one station shall be of only one kind as to voltage, type and other specifications. The bid sheet for each station shall be prepared separately from other stations and shall contain all unit prices for Construction Units contained in the station. It is intended that in all cases the "Name and Description of Construction Unit" column of the Bid Sheets shall contain sufficient information to identify the Construction Unit.

Additional description to one or more of the Groups may be provided by the Engineer if deemed necessary to clarify the intent of these Specifications for Construction.

Group A. Structures. A Construction Unit consists of a structure, or structures, with bus supports including insulators and fittings, buses, conductors and overhead ground wires to adjacent structures within the station, grounding material to connect equipment with the ground bus, and associated material including mounting brackets, supports for equipment, clamps and connectors, all as specified in the drawings.

Group B. Three-Pole Group Operated Air Break Switches. A Construction Unit consists of one 3-pole group operated air break switch with all accessories and operating mechanisms as specified in the drawings.

Group C. Lightning Arresters. A Construction Unit consists of one single-phase lightning arrester.

Group D. Single Pole Disconnecting Switches. A Construction Unit consists of one single pole disconnecting or by-pass switch as specified in the drawings. If a fuse disconnect switch is specified, the fuse is included with the switch.

Group E. Oil Circuit Breakers. A Construction Unit consists of one complete three-phase power circuit breaker complete with supporting frame and control cabinet, unless shown otherwise in the drawings, mounted as specified in the drawings.

Group F. Oil Circuit Reclosers. A Construction Unit consists of a complete single-phase or three-phase oil circuit recloser as specified in the drawings.

Group G. Meters, Relays and Instrument Transformers. A Construction Unit consists of one meter, relay, potential transformer or current transformer.

Group H. Transformers. A Construction Unit consists of one power transformer or one station service transformer either single-phase or three-phase as specified in the drawings.

Group I. Voltage Regulators. A Construction Unit consists of one single-phase or three-phase voltage regulator as specified in the drawings.

Group J. Communications and Supervisory Control Equipment. A Construction Unit consists of carrier current equipment, microwave, or other types of communications and supervisory control equipment as specified in the drawings.

Group K. Conduit and Cable. A Construction Unit consists of the wire, cable, conduit and accessories necessary to complete the installation of equipment in accordance with the specifications and drawings, where such installation has not been included in other Groups.

Group L. Foundations. A Construction Unit consists of concrete footings and foundations except for the fence, as specified in the drawings.

Group M. Site Preparation. A Construction Unit consists of clearing, grading, drainage work, and surfacing, as specified in the drawings.

Group N. Fence. A Construction Unit consists of the complete installation of the fence, gates, etc., as specified in the drawings.

Group O. Station Grounding. A Construction Unit consists of the complete ground bus including ground rods, grounding mats or platforms, except as otherwise provided in other Groups, with connections to structures, equipment, and fence as specified in the drawings.

Group P. Building. A Construction Unit consists of a control building or cabinet, on a foundation of Group L and the facilities and equipment installed therein as specified in the drawings, except as otherwise provided in other Groups. Other Groups. The Engineer shall specify such additional Groups as may be necessary for the completion of the Project. Description of these Groups shall be provided by an addition to this Section of the Specifications for Construction.

_____ STATION CONSTRUCTION UNITS

Unit No. _____
Name and Description of Construction Unit
_____
No. of Units _____
Unit Prices
Labor _____
Materials _____
Labor and Materials _____
Extended Price—Labor and Materials
_____
Total Price _____

Acceptance

Subject to the approval of the Administrator, the Owner hereby accepts the foregoing Proposal of the Bidder, _____ for the construction of the following substations or other major facilities:

_____ Substation, $_____
_____ $_____
The total contract price is $_____
_____ Owner
By _____ President
_____ Secretary
_____ Date of Contract

[End of clause]

§ 1726.341 Electric system communications and control equipment contract, REA Form 786.

The contract form in this section shall be used when required by this part.

Electric System Communications and Control Equipment Contract (Including Installation)

Proposal to Furnish, Deliver, and Install Equipment and Materials

To: _____ (hereinafter called the "Purchaser")

The undersigned (hereinafter called the "Seller") hereby proposes to furnish, deliver, install, align and test the equipment and materials, (hereinafter called the "Equipment") described in the plans, specifications and drawings (hereinafter called the "Specifications") attached hereto identified as _____ and made a part hereof, and other Attachments identified as _____ and made a part hereof, for the electric system designated _____, financed in whole or in part by a loan to the Purchaser by the United States of America, acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator").

The Seller has become informed as to the location and characteristics of the proposed Equipment and the facilities over which the Equipment is to perform, has become informed as to the kind of facilities required before and during the delivery and installation of the Equipment and has become acquainted with the labor conditions which would affect the work as well as the ecological and environmental criteria to be followed.

The Seller agrees that if its Proposal is accepted the following terms and conditions shall govern.

If, in submitting this Proposal, the Seller has made any change in the form of Proposal furnished by the Purchaser, the Seller understands that the Purchaser and the Administrator may evaluate the effect of such change as they see fit or they may exclude the Proposal from consideration.

ARTICLE I

Section 1. Proposal Price. The Seller will furnish, deliver, install, align and test the Equipment described in the Specifications for the following sum:

Total Contract Price $_____
Delivery time is _____ calendar days.
Completion time is _____ calendar days.

A detailed price breakdown by locations, showing equipment pricing and installation pricing, is given in the Attachment identified as _____ and made a part hereof.

Section 2. Changes. The Purchaser, subject to the approval of the Administrator,[1] may from time to time during the performance of the work make such changes, additions to or subtractions from the Specification's which are part of the Proposal as conditions may warrant; provided, however, that, if any change in the work shall require an extension of time, a reasonable extension will be granted if the Seller shall make a written request therefor to the purchaser within ten (10) days after any such change is made and, provided further, that, if the cost to the Seller shall be increased or decreased by any such change or addition, the contract price shall be increased or decreased by the reasonable cost thereof, in accordance with a contract amendment signed by the Purchaser and the Seller and approved by the Administrator,[2] but no claim for additional compensation for any such change or addition will be considered unless the Seller shall have made a written request therefor to the Purchaser prior to the commencement of work in connection with such change or addition.

Section 3. Taxes. The prices herein set forth do not include any sums which are or may be payable by the Seller or the Purchaser on account of taxes imposed by any taxing authority upon the sale, purchase or use of the Equipment or labor of installation. If any such tax is applicable, the amount thereof shall be stated separately and added to the Proposal price and paid by the Purchaser.

ARTICLE II—DELIVERY AND INSTALLATION

Section 1. Time of Completion. The time of delivery of the Equipment and of completion of the work is of the essence of this Contract. The seller will deliver the Equipment within the number of calendar days specified in Article I, Section 1, after the Administrator shall have approved this contract in writing and will prosecute diligently and complete the work within the number of calendar days specified in Article I, Section 1, after such approval. The time for such delivery and completion shall be

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[1] As long as the total price of this contract including all amendments is less than 120 percent of the original contract price as stated in the acceptance hereto, amendments executed on REA Form 238 are not subject to the approval of the Administrator. Whenever an amendment to this contract causes the total amended contract to exceed 120 percent of the original contract price, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

[2] See Footnote 1.

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extended for the period of any reasonable delay due exclusively to causes beyond the control and without the fault of the Seller, including, but not limited to, acts of God, fires, strikes, floods, changes in the Specifications as herein provided, and acts or omissions of the Purchaser with respect to matters for which the Purchaser is solely responsible; provided, however, that no delay in such time for delivery or completion of the work or in the progress of the work shall result in any liability on the part of the Purchaser, and provided further that any claim for extension of time shall be adjusted at the time any such delay occurs or any such change is made.

Section 2. Supervision and Inspection. The Seller will give adequate supervision to the work. He will carefully study and compare all drawings, specifications, and other instructions and will at once report to the Purchaser any error, inconsistency or omission which he may discover. The Seller will keep on his work during its progress a competent superintendent and any necessary assistants, all satisfactory to the Purchaser. The Superintendent shall represent the Seller in his absence and all directions given to him shall be as binding as if given to the Seller. When requested, such directions shall be confirmed in writing.

Section 3. The Purchaser will make available during installation a competent representative to coordinate installation activities with the Seller.

Section 4. Alignment, Inspection and Tests. The Seller shall adjust and align the Equipment to perform in accordance with the Specifications and furnish in writing to the Purchaser data to show the state of adjustment of the Equipment. Immediately upon completion of the installation and alignment of the Equipment the Seller shall provide the necessary test equipment and perform the inspections and tests specified in the Specifications under the direct supervision of the Purchaser or its Engineer. A competent representative of the Purchaser or his Engineer will be available to supervise and witness these tests immediately upon completion of installation and alignment by the Seller and to determine for the purchaser that the performance of the equipment meets the Specifications. Such determination, however, shall not preclude subsequent rejection pursuant to Section 7 of this Article II. The Seller shall furnish in writing to the Purchaser the results of all tests. All Equipment furnished hereunder shall be subject to the inspection, tests, and approval of the Purchaser and the Administrator. The Purchaser and the Administrator shall have the right to inspect all records of the Seller and of any subcontractor relevant to the installation work. The Seller shall provide all reasonable facilities necessary for such inspection and tests.

Section 5. If as a result of the tests and measurements set forth in Section 4 above, the Performance Specifications of the Equipment cannot be met due to inaccuracies, or inadequacies in the system data provided in the Specifications, the Purchaser and Seller shall determine what corrective measures are necessary and whether these corrections shall be made by the Purchaser or the Seller.

If it is determined that the Seller shall make the corrections, the Purchaser will reimburse the Seller pursuant to a contract amendment, subject to the approval of the Administrator[3], for such reasonable additional expenses for the corrections, realignment and retesting the Seller is required to perform pursuant to this amendment.

Where it is determined that the Purchaser will make the corrections, the Purchaser will reimburse the Seller pursuant to a contract amendment, subject to the approval of the Administrator[4], for such reasonable additional expenses for realignment and retesting the Seller is required to perform pursuant to this amendment, including, if necessary, the added expense of returning to the project, where necessary, for reperforming alignment and testing.

Section 6. Employees. The Purchaser shall have the right to require the removal from the work of any employee of the Seller if in the judgment of the Purchaser such removal shall be necessary in order to protect the interest of the Purchaser.

Section 7. Defective Workmanship and Materials. Notwithstanding the acceptance of workmanship, materials or equipment or the giving of any certificate with respect to the Completion of the Work, if during performance hereunder or within one year after completion or within such longer period as the Equipment or any part thereof may be guaranteed by the Seller and Manufacturer, the workmanship, materials or equipment, except as may be otherwise provided in the Specifications, shall be found to be defective or not in conformity with the Specifications, the Seller shall remedy or replace at its expense such workmanship, materials or equipment within thirty (30) days after notice of the existence thereof shall have been given to the Seller by the Purchaser.

ARTICLE III—PAYMENTS AND RELEASES OF LIENS

Section 1. Payment to Seller.

(a) The Purchaser shall pay the Seller upon the basis of estimates by the Seller recommended by the supervising engineer, if any, and approved by the Purchaser of the work completed, the following percentages of the price of the equipment for each location set forth in Article I, Section 1, as and if revised: 45% when 50% of the equipment for each location has been delivered at the site of the Project; 90% when all the equipment for each location has been delivered at the site of the Project.

(b) Upon completion of installation of the equipment for each location, the Purchaser shall pay the Seller 90% of the Total price for such location.

(c) Upon Completion of the Installation of the Equipment, but prior to the payment to the Seller of any amount in excess of ninety percent (90%) of the Total Contract Price, the supervising engineer, if any, of the Purchaser or the Purchaser shall inspect the work performed hereunder and if the work shall be found acceptable and all provisions hereunder fully performed, the supervising engineer, if any, of the Purchaser shall certify as to that fact and as to the amount of the balance found to be due to the Seller. Upon acceptance by the Purchaser, the Purchaser shall pay to the Seller all unpaid amounts to which the Seller shall be entitled hereunder; provided, however, such final payments shall be made not later than 120 days after completion of the work, unless such acceptance by the Purchaser shall be withheld because of the fault of the Seller.

Section 2. Release of Liens. Upon the Completion of the Installation of the Equipment by the Seller, but prior to the payment to the Seller of any amount in excess of ninety percent (90%) of the Total Contract Price, the Seller will deliver to the Purchaser, in duplicate, releases of all liens and of rights to claim any lien from manufacturers, materialmen and subcontractors who have furnished materials or services for the work and a certificate by the Seller in a form approved by the Administrator, to the effect that all labor has been paid and that all such releases have been submitted to the Purchaser for approval.

In lieu of releases of liens, and if the Administrator shall so approve, the Seller may deliver to the Purchaser, in duplicate, (1) a certificate, in a form approved by the Administrator, that all manufacturers, materialmen and subcontractors who have furnished materials or services for the Project have been paid in full, and (2) an agreement to hold the Purchaser harmless against any liens arising out of the Seller's performance hereunder which may have been or may be filed against the Purchaser.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE SELLER

Section 1. Protection to Persons and Property. At all times when Equipment is being delivered and installed the Seller will exercise reasonable precautions for the safety of employees on the work and of the public, and will comply with all applicable provisions of Federal, State and Municipal safety laws and building and construction codes. All machine and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America, unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

(a) The Seller will at all times keep the premises free from accumulations of waste material or rubbish caused by his employees or work, and at the completion of the work he will remove all rubbish and all his tools, scaffolding and surplus materials and will leave his work "broom clean."

(b) The Seller will perform work in such manner as to maximize preservation of aesthetics and conservation of natural resources, and minimize marring and scarring of the landscape and silting of streams. There will be no depositing of trash in streams or waterways. Herbicides, other chemicals or their containers will not be deposited in or near streams, waterways or pastures. The Seller will follow, under the general direction of the Purchaser, the

[3] See Footnote 1

[4] See Footnote 1.

criteria relating to environmental protection as specified herein by the Purchaser.

(c) The work, from its commencement to completion, or to such earlier date or dates when the Purchaser may take possession and control, shall be under the charge and control of the Seller and during such period of control by the Seller all risks in connection therewith and the materials to be used therein, whether owned by the Seller or Purchaser, shall be borne by the Seller. The Seller will make good and fully repair all injuries and damages to the work or any portion thereof under the control of the Seller by reasons of any act of God, or any other casualty or cause whether or not the same shall have occurred by reason of the Seller's negligence.

(i) To the maximum extent permitted by law, Seller shall defend, indemnify, and hold harmless Purchaser and Purchaser's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Seller's employees) and loss, damage to or destruction of Purchaser's property or the property of any other person or entity (including but not limited to Seller's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Seller, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Seller liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Purchaser.

(ii) To the maximum extent permitted by law, Seller shall defend, indemnify, and hold harmless Purchaser and Purchaser's directors, officers, and employees from all liens and claims filed or asserted against Purchaser, its directors, officers, and employees, or Purchaser's property or facilities, for services performed or materials or equipment furnished by Seller, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Seller shall promptly discharge or remove any such lien or claim by bonding, payment or otherwise and shall notify Purchaser promptly when it has done so. If Seller does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Purchaser shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Seller.

(iii) Seller shall provide to Purchaser's satisfaction evidence of Seller's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

(d) Monthly reports of all accidents will be promptly submitted by the Seller, giving such data as may be prescribed by the Purchaser.

Section 2. Delivery of Possession and Control to Purchaser. Upon written request of the Purchaser, the Seller shall deliver to the Purchaser full possession and control of any completed location included in the work, provided the Seller shall have been paid at least 90% of such Total Location Price. Upon such delivery of the possession and control of any such location to the Purchaser, the risks and obligations of the Seller, as set forth in Article IV, Section 1(b) hereof, with respect to such location shall be terminated provided however, that nothing herein contained shall relieve the Seller of any liability with respect to defective workmanship or materials as specified in Article II, Section 7, hereof.

Section 3. Insurance. The Seller shall take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million per occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsections "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Seller shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 4. Purchase of Materials. The Seller shall purchase all materials and supplies outright and not subject to any conditional sales agreements, bailment lease or other agreement reserving unto the Seller any right title or interest therein. Materials and Supplies shall become the property of the Purchaser as the Purchaser makes payments therefor to the Seller in accordance with Article III, Section 1(a). Unless otherwise specified, all materials shall be new.

Section 5. Assignment of Guarantees. All guaranties of materials and workmanship running in favor of the Seller shall be transferred and assigned to the Purchaser on completion of the work and at such time as the Seller receives final payment.

Section 6. Patent Infringement. The Seller shall hold harmless and indemnify the Purchaser from any and all claims, suits, and proceedings for the infringement of any patent or patents covering any equipment materials, supplies, or installation methods used in the work. The Seller shall, at its own cost (and Purchaser agrees to permit Seller to do so) defend any suits which may be instituted by any party against the Seller for alleged infringement of patents relating to the Seller's performance hereunder.

Section 7. Compliance with Statutes and Regulations. The Seller shall comply with all applicable statutes, ordinances, rules and regulations pertaining to the work. The Seller acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statutes (48 Stat. 948), and all regulations issued pursuant thereto, and 18 U.S.C. §§ 287,1001 as amended and the Seller agrees to comply with the provisions of all of such statutes and regulations.

ARTICLE V—REMEDIES

Section 1. Completion on Seller's Default: If default shall be made by the Seller or by any subcontractor in the performance of any of the work hereunder, the Purchaser, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Seller and the Surety or sureties upon the Seller's Bond or Bonds, if any, a written notice requiring the Seller to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Seller such default shall be corrected or arrangements for the correction thereof, satisfactory to both the Purchaser and the Administrator, shall be made by the Seller or its surety or sureties, the Purchaser may take over the performance of the Seller's obligations hereunder and prosecute the same to completion by contract or otherwise for the account and at the expense of the Seller, and the Seller and its surety or sureties shall be liable to the Purchaser for any cost or expense in excess of the contract price occasioned thereby. In such event, the purchaser may take possession of and utilize, in completing the work, any tools, supplies, equipment, appliances and plant belonging to the Seller which may be situated at the site of the installation work. The Purchaser, in such contingency, may exercise any rights, claims or demands which the Seller may have against third persons in connection herewith and for such purpose the Seller does hereby assign, transfer and set over unto the Purchaser all such rights, claims and demands

Section 2. Enforcement of Remedies by Administrator. The Administrator may on behalf of the Purchaser exercise any right or enforce any remedy which the Purchaser may exercise or enforce hereunder.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Purchaser or the Administrator shall be cumulative and shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election.

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions.

(a) The contract documents shall consist of the Proposal and Acceptance, the Contractor's Bond and the Specifications.

(b) The term "Completion of Installation" shall mean full performance by the Seller of the Seller's obligations under the Contract and all amendments and revisions thereof, except that it shall not include the final acceptance tests nor performance of the Seller's obligations in respect of (i) releases of liens and Certificate of Seller under Article III, Section 2 hereof, (ii) other final documents. The term "Completion of the Work" shall mean full performance by the Seller of the Seller's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion signed by the supervising engineer and approved by the Purchaser or signed by the Purchaser, if the Purchaser shall not employ an Engineer, and approved in writing by the Administrator within a reasonable time after completion shall be conclusive evidence as to the fact of completion and the date thereof.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Seller agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3. Equal Opportunity Provisions.

(a) Seller's Representations.

The Seller represents that. It has ___, does not have ___, 100 or more employees, and if it has, that it has ___, has not ___ furnished the Equal Employment Opportunity—Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Seller agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Seller agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000 the Seller will file such report, as required by law, and notify the Purchaser in writing of such filing prior to the Purchaser's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this Contract, the Seller agrees as follows:

(1) The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited, to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Seller will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Seller's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Seller will furnish all information and reports required by Executive Order 11246 of September 21, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Seller's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part, and the Seller may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Seller will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Seller will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Seller may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Seller certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Seller certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Seller agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting room, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Seller agrees that (except where it has obtained identical certificates from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 4. Bond. The Seller will furnish to the Purchaser, for a contract in excess of $100,000 a bond in a penal sum not less than the Proposal price and in the form attached hereto and with a Surety or Suretics listed by the United States Treasury Department as acceptable Sureties.

Section 5. License. The Seller shall comply with all applicable construction codes.

(a) The Seller warrants that he possesses contractor's license number _____ issued to him by the State of _____ in which the work is located, and said license expires on _____, 19__.

(b) The Seller warrants that no license is required in the State in which the work is located.

(Cross out that subsection which does not apply.)

Section 6. Nonassignment of Contract. The Seller will not assign the Contract effected by acceptance of this Proposal, or any part thereof, or enter into any contract with any person, firm or corporation, for the performance of the Seller's obligations hereunder or any part hereof, without the approval in writing of the Purchaser and the Surety or Sureties on the Contractor's Bond or Bonds, if any; provided, however, the Seller may subcontract the whole or any part of the installation work to be performed at the installation site (as distinguished from furnishing and delivery of equipment and materials). If the Seller, with the consent of the Purchaser and the Surety or Sureties on the Contractor's Bond or Bonds, if any, shall enter into any subcontract with any subcontractor for the Performance of any part of the installation work to be performed at the installation site, the Seller shall be as fully responsible to the Purchaser and the United States of America for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Seller would be for its own acts and omissions and those of persons directly employed by it.

Section 7. Approval of the Administrator. The acceptance of this Proposal by the Purchaser shall not create a contract unless such acceptance shall be approved in writing by the Administrator within ninety (90) days after the date of the Proposal.

_____ Seller

By _____

_____ Title

Date of Proposal _____

(If executed by one other than President, Vice-President, a partner or the individual owner, a power of attorney authorizing execution should accompany this proposal.)

Acceptance

Subject to the approval of the Administrator, the Purchaser hereby accepts the Proposal of _____ (Dated _____) for the Equipment herein described for the Total Base Price of $_____ and the following options for:

Spare Parts $_____
Maintenance Tools $_____
Test Equipment $_____
Other Options: (Describe) $_____
TOTAL CONTRACT PRICE $_____

_____ Purchaser

By _____ President

ATTEST _____ Secretary

Date of Acceptance _____

[End of clause]

§ 1726.342 Distribution line extension construction contract (labor and materials), REA Form 790.

The contract form in this section shall be used when required by this part.

Distribution Line Extension Construction Contract (Labor and Materials)

Proposal

To: (hereinafter called the "Owner").

ARTICLE I—GENERAL

Section 1—Offer to Construct. The undersigned (hereinafter called the "Contractor") hereby proposes to furnish labor, materials, and equipment for, and construct for the prices hereinafter stated, the rural electric project _____, 19_____ Line Extensions (hereinafter called "Project") in strict accordance with the Plans, Specifications, and Construction Drawings hereinafter referred to. The Contractor understands and agrees that the Project will consist of line extensions and additions and line changes or similar work usually associated with overhead or underground distribution system improvement or extension work all located within the area served or ultimately to be served by the Owner and that the exact location and scope of individual sections of the Project (hereinafter called "Sections") will be made known to the Contractor from time to time as provided in Article II, Section 1 hereof; and provided, however, that the Contractor shall not be obligated to start construction of any Section unless the cost of construction of the Section computed on the unit prices of this Proposal shall amount to at least _____ dollars ($ _____) and provided further that the Owner shall be obligated to release to the Contractor for construction at least one Section pursuant to the provisions of this Proposal.

Section 2—Additional Projects. From time to time the owner and the Contractor may enter into negotiations for the performance of work at prices which may differ from those in the Proposal (such work being hereinafter called "Additional Projects"). Except as may otherwise be agreed upon in writing by the Owner and the Contractor at the time the supplemental contract for the Additional Project is negotiated, the provisions of the Contract for the Project shall apply.

Section 3—Proposal on Unit Basis. The Contractor understands and agrees that the various Construction Units considered in this Proposal are defined by symbols and descriptions in this Proposal, that the Proposal is made on a unit basis, and that the Owner may specify, as provided in Article II, Section 1 hereof, any number or combination of Construction Units which the Owner may deem necessary for the construction of the Project. If kinds of Construction Units for which prices are not established in this Proposal are necessary for the construction of the Project, the prices of such additional Units shall be as agreed upon in writing by the Owner and the Contractor prior to the time of installation.

The unit labor prices herein set forth are applicable to work performed on unenergized lines. Such unit labor prices shall be increased by _____ (_____) percent for all units installed on energized lines in accordance with instructions of the Owner as provided in Article II, Section 1g.

Section 4—Description of Contract. The Specifications and Construction Drawings set forth in:

REA Form 804, Specifications and Drawings for 7.2/12.5 kV Line Construction;

REA Form 803, Specifications and Drawings for 14.4/24.9 kV Line Construction;

REA Form 806, Specifications and Drawings for Underground Electric Distribution;

as applicable, which by this reference are incorporated herein, together with the Plans, Proposal and Acceptance constitute the Contract. The Plans, consisting of maps and special drawings, and approved modifications in standard specifications are attached hereto and identified as follows:

_____

Section 5—Familiarity with Conditions. The Contractor acknowledges that it has made a careful examination of the site of the Project and of the Plans, Specifications and Construction Drawings, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of equipment, tools, and other facilities required before and during the construction of the Project and has become acquainted with the availability status of materials and with the labor conditions which would affect work on the Project.

Section 6—License. The Contractor warrants that a Contractor's license is _____ is not _____ required, and if required, it possesses Contractor's License No. _____ for the State of _____ in which the Project is located, and said license expires on _____, 19_____.

Section 7—Contractor's Resources. The Contractor warrants that it possesses adequate financial resources for the performance of the work covered by this Proposal and that it will provide necessary tools and equipment and a qualified superintendent and other employees.

Section 8—Changes in Construction. The Contractor agrees to make such changes in construction previously installed in the Project by the Contractor as required by the Owner on the following basis:

The cost of labor shall be the reasonable cost thereof as agreed upon by the Contractor and the Owner but in no event shall it exceed two (2) times the labor price quoted in the Proposal for the installation of the unit to be changed. Such compensation shall be in lieu of any other payment for the installation and removal of the original unit but shall not include the cost of the installation, if any, of a new or replacing unit, payment for which shall be made at the unit price as quoted in the Proposal. No payment shall be made to the contractor for correcting errors or omissions on the part of the Contractor which result in construction not in accordance with the Plans and Specifications.

Section 9—Materials and Equipment. The Contractor agrees to furnish and use in the construction of the Project under this Proposal, only such materials and equipment as are included on the current "List of Materials Acceptable for Use on Systems of REA Electrification Borrowers," including revisions adopted prior to construction.

The Contractor further agrees to furnish and use guy wire with ASTM Class _ _____ (Owner to insert A or B) zinc coating.

All leads on equipment such as transformers, reclosers, etc., shall be of #6 minimum copper conductivity using _____ (Owner to insert stranded soft drawn copper or aluminum alloy) conductor.

All conductor ties on insulators shall be of the materials and methods shown in the following Type Guide Drawings _____ (Owner to insert appropriate drawing numbers.)

Ground rods and butt-type grounding plates shall be _____. (Owner to insert galvanized steel or copper.)

Underground primary cables shall have _____ coated copper neutral. (Owner to insert round or flat.)

The Contractor further agrees to furnish poles, crossarms, and other timber products, of which the physical characteristics, method of treatment, type of preservative, instructions on inspection and general procedure shall be in accordance with REA standards and requirements.

Crossarms shall be _____ (Owner to insert Douglas Fir or Southern Yellow Pine), treated with _____ (Owner to insert type of preservative.)

The Contractor agrees that the prices for poles, crossarms, and other timber products set forth herein shall include the cost of preservative treatment and inspection or insured warranty. The Contractor further agrees to obtain from the supplier inspection and treatment reports or insured warranties, for checking against the delivery timber, and to submit such reports or warranties to the Owner as one of the prerequisites to monthly and final payments.

Section 10—Owner-Furnished Materials.

a. The Contractor understands and agrees that the Owner may, with approval of the Contractor, furnish to the Contractor some of the materials and equipment required for construction of the Project, (hereinafter called "Owner-Furnished Materials"). The quantity, type, and value of Owner-Furnished Materials for each Section shall be as agreed upon by the Contractor and Owner prior to the start of construction of each Section of the Project. The Owner shall make such materials and equipment available to the Contractor as provided in Article II, Section 1, b, and the Contractor will give to the Owner a receipt in such form as the Owner shall approve.

b. The value of the completed Construction Units certified to by the Contractor each month pursuant to Article III, Section 1, a, of this Proposal shall be reduced by an amount equal to the value of the Owner-Furnished Materials installed by the Contractor during the preceding month. Only ninety percent (90%) of the remainder shall be paid prior to the Completion of the Section. Owner-Furnished Materials, if any, not required for the Section, shall be returned to the Owner by the Contractor upon Completion of Construction of the Section. The value of all Owner-Furnished Materials not installed in the Section of the Project or returned to the Owner shall be deducted from the final payment to the Contractor for the Section.

Section 11—References to Materials. The references in this Proposal to "Materials", except in Article IV, Section 1.f, shall be understood to mean only materials to be furnished by the Contractor.

Section 12—Taxes. The unit prices for Construction Units in this Proposal include provisions for the payment of all monies which will be payable by the Contractor or the Owner in connection with construction of the Project on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies or equipment to be incorporated in the Project as part of such Construction Units. The Contractor agrees to pay all such taxes except on Owner-Furnished Materials and it is understood that, as to Owner-Furnished Materials, the values as agreed to by the Owner and Contractor for such materials include such taxes, if applicable. The Contractor will furnish to the appropriate taxing authorities all required information and reports pertaining to materials used on construction of the Project except as to Owner-Furnished Materials.

ARTICLE II—CONSTRUCTION

Section 1—Time and Manner of Work. The Contractor agrees to be prepared to commence the construction of the Project within fifteen (15) calendar days after written notice by the Owner of the acceptance of the Proposal. The Contractor agrees to commence construction of a Section within _____ (_____) days after receipt in writing from the Owner of the following:

a. Location and number of the various Construction Units required for construction of the Section (hereinafter called the "Staking Sheets").

b. Itemized list including appropriate Unit prices, of the Owner-Furnished Materials to be used in the construction of the Section and an authorization by the Owner for the Contractor to obtain such materials from the Owner's warehouse located at _____.

c. A schedule showing the rate at which construction of the Section shall proceed and the total number of calendar days (excluding Sundays) to be allowed for completion; provided, however, that the required completion time for any Section shall not be less than _____ (_____) days or _____ (_____) days per mile of line, whichever is the greater, which days shall be calendar days (excluding Sundays). The time of the completion of the Section is of the essence of the contract to be effected by acceptance of this Proposal.

d. A statement that all required easements and rights-of-way have been obtained from the owners of the properties across which the Section is to be constructed (including tenants who may reasonably be expected to object to such construction).

e. A statement that all necessary staking has been completed.

f. A statement that all necessary funds for prompt payment for the construction of the Section will be available.

g. Specific instruction as to location and extent of work to be performed on energized lines, if any.

The Contractor will not be required to dig holes, set poles, install anchors, install underground conduit, perform any plowing for the installation of underground cable, or dig trenches if there are more than six (6) inches of frost in the ground nor to perform any construction on such days when in the judgement of the Owner snow, rain, or wind, or the results of snow, rain, or frost make it impracticable to perform any operation of construction; provided further that the Contractor will not perform any plowing for the installation of underground cable on public roads or highways if there are more than two (2) inches of frost in the ground. To the extent of the time lost due to the conditions described herein and approved in writing by the Owner, the time of completion set out above will be extended. The time for completion shall be extended for a period of any reasonable delay (other than a delay resulting from the failure of the Contractor to secure sufficient labor) which is due exclusively to causes beyond the control and without the fault of the Contractor including acts of God, fires, floods, inability to obtain materials, direction of the Owner to cease construction as herein provided, and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however, that no such extension of time for completion shall be granted the Contractor unless within ten (10) days after the happening of any event relied upon by the Contractor for such an extension of time the Contractor shall have made a request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

Section 2—Changes in Plans, Specifications and Drawings. The Owner may, from time to time during the progress of the construction of the Project, make such changes in, additions to, or subtractions from the Plans, Specifications, and Construction Drawings as conditions may warrant: Provided, however, that if the cost to the Contractor shall be materially increased by any such change or addition, the Owner shall pay the Contractor for the reasonable cost thereof in accordance with a construction contract amendment signed by the Owner and the Contractor, but no claim for additional compensation for any such change or addition will be considered unless the Contractor shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

Section 3—Supervision and Inspection.

a. The Contractor shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Contractor shall also employ, in connection with the construction of the Project, capable, experienced, and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent by the Owner shall be binding upon the Contractor.

b. The Owner reserves the right to require the removal from the Project of any employee

of the Contractor if in the judgement of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner shall have the right to require the Contractor to increase the number of his employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner; but the failure of the Owner to give any such directions shall not relieve the Contractor of his obligations to complete the work within the time and in the manner specified in this Proposal.

c. The manner of construction of the Project and all materials and equipment used therein, shall be subject to the inspection, tests, and approval of the Owner. The Owner shall have the right to inspect all payrolls and other data and records of the Contractor relevant to the work. The Contractor will provide all reasonable facilities necessary for such inspection and tests. The Contractor shall have an authorized agent accompany the inspector when final inspection is made and, if requested by the Owner, when any other inspection is made.

d. In the event that the Owner shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Contractor, if requested by the Owner, to have an inspection made by an engineer approved by the Owner for the purpose of determining the exact nature, extent, and location of such defects.

Section 4—Defective Materials and Workmanship.

a. The acceptance of any materials, equipment (except owner-furnished materials) or any workmanship by the Owner shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, by and at the expense of the Contractor. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Contractor at the Contractor's expense. The Contractor shall not be entitled to any payment hereunder so long as any defective materials, equipment or workmanship in respect to the Project, of which the Contractor shall have had notice, shall not have been replaced or remedied, as the case may be.

b. Notwithstanding any certificate which may have been given by the Owner, if any materials, equipment (except owner-furnished materials) or any workmanship which does not comply with the requirements of this Contract shall be discovered within one (1) year after Completion of Construction of the Project, the Contractor shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice in writing of the existence thereof shall have been given by the Owner. If the Contractor shall be called upon to replace any defective materials or equipment or to remedy defective workmanship as herein provided, the Owner, if so requested by the Contractor shall deenergize that section of the Project involved in such work. In the event of failure by the Contractor to do so, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case may be, and in such event the Contractor shall pay to the Owner the cost and expense thereof.

Section 5—Materials Removed. The Contractor will return to the Owner or reuse in the construction of other assembly units all materials removed from the lines under Section H—Conversion Assembly Units and Section I—Removal Assembly Units. Upon completion of each Section of the Project the Contractor will return to the Owner all materials, including usable materials as well as scrap, furnished by the Owner in excess of those required for the construction of the Section as determined from the Final Inventory approved by the Owner. The Contractor will reimburse the Owner at the current invoice cost to the Owner for loss and for breakage through Contractor's negligence of materials furnished by the Owner to the Contractor and for materials removed from the lines by the Contractor

Section 6—Term of Contract. It is understood and agreed that, notwithstanding any other provisions of this Contract, the Contractor will not be required to commence any construction after the expiration of one year following acceptance of this Proposal by the Owner.

ARTICLE III—PAYMENT

Section 1—Payments to Contractor.

a. Within the first fifteen (15), days of each calendar month, the Owner shall make partial payment to the Contractor for construction accomplished during the preceding calendar month on the basis of completed Construction Units furnished and certified to by the Contractor and approved by the Owner solely for the purpose of payment: Provided, however, that such approval by the Owner shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of a Section shall be paid by the Owner to the Contractor prior to completion of the Section. Upon completion by the Contractor of the construction of a Section, the Contractor will prepare a Final Inventory of the Section showing the total number and character of Construction Units and, will certify it to the Owner together with a certificate of the total cost of the construction performed. Upon the approval of such certificates, the Owner shall make payment to the Contractor of all amounts to which the Contractor shall be entitled thereunder which shall not have been paid.

b. The Contractor shall be paid on the basis of the number of Construction Units actually installed at the direction of the Owner, as shown by the Inventory based on the Staking Sheets: Provided, however, that the total cost shall not exceed the maximum Contract price for the construction of the Project, unless such excess shall have been approved in writing by the Owner. It is understood and agreed that this maximum Contract price is _____ dollars ($_____ _). It is also agreed that the Contractor shall not be entitled to any claim for damages on account of any reasonable additions to or subtractions from the Project, or of any delay occasioned thereby, or of any changes in the routing of the lines.

c. No payment shall be due while the Contractor is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Contractor the amount of any claim by a third party against either the Contractor the Owner based upon an alleged failure of the Contractor to perform the work hereunder in accordance with the provisions of this Contract.

Section 2—Certificate of Contractor and Indemnity Agreement—Line Extensions. Upon the completion of Construction of any Section of the Project but prior to payment to the Contractor of any amount in excess of 90 percent (90%) of the total cost of all Construction Units comprising the completed Section, the Contractor shall deliver to the Owner in the form attached hereto, (1) a certificate that all persons who have furnished labor in connection with the Project and all manufacturers, materialmen, and subcontractors who have furnished materials or services for the Project have been paid in full, and (2) an agreement to hold the Owner harmless against any liens arising out of the Contractor's performance hereunder which may have been or may be filed against the Owner.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE CONTRACTOR

Section 1—Protection to Persons and Property. The Contractor shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

a. The Contractor shall at no time and under no circumstances cause or permit any employee of the Contractor to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in accordance with Article II, Section 1, subsection g.

b. The Contractor shall so conduct the construction of the Project as to cause the least possible obstruction of public highways.

c. The Contractor shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances, and regulations or by local conditions.

d. The Contractor shall do all things necessary or expedient to protect properly any and all parallel, converging, and intersecting lines, joint line poles, highways, and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways, or other property are damaged in the course of the construction

of the Project, the Contractor shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

e. Where the right-of-way of the Project traverses cultivated lands, the Contractor shall limit the movement of his crews and equipment so as to cause as little damage as possible to crops, orchards, or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during the construction of the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. Except as otherwise provided in the descriptions of underground plowing and trenching assembly units, the Contractor shall not be responsible for loss of or damage to crops, orchards, or property (other than livestock on the right-of-way necessarily incident to the construction of the Project and not caused by negligence or inefficient operation of the Contractor. The Contractor shall be responsible for all other loss of or damage to crops, orchards, or property whether on or off the right-of-way, and for all loss of or damage to livestock caused by the construction of the Project.

f. The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Contractor and during such period of control by the Contractor all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Contractor. The Contractor shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Contractor by reason of any Act of God or other casualty or cause whether or not the same shall have occurred by reason of the Contractor's negligence.

(i) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors officers, and employees from all claims causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Contractor's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Contractor's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Contractor, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Contractor liable for any injury, death, loss, damage or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Contractor, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Contractor shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Contractor does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Contractor.

(iii) Contractor shall provide to Owner's satisfaction evidence of Contractor's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

g. Any and all excess earth, rock, debris, underbrush, and other useless material shall be removed by the Contractor from the site of the Project as rapidly as practicable as the work progresses.

h. Upon violation by the Contractor of any provisions of this section, after written notice of such violation given to the Contractor by the Owner, the Contractor shall immediately correct such violation. Upon failure of the Contractor to do so the Owner may correct such violation at the Contractor's expense.

i. The Contractor shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

j. The Contractor shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the Owner that proper authorization has been received from the owner of the property, and the Contractor shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on his land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

Section 2—Insurance. The Bidder shall take out and maintain throughout the period of this Agreement the following types and minimum amounts of insurance:

a. Workers' compensation and employer's liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million each occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy of policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3—Bond. If the estimated cost of the construction of a Section shall exceed $100,000, the Contractor agrees to furnish prior to the commencement of such construction, a bond in the penal sum not less than the estimated cost of such section in the form attached hereto with a Surety or Sureties listed by the United States Treasury Department as acceptable sureties. In the event that the Surety or Sureties on the performance bond delivered to the Owner shall at any time become unsatisfactory to the Owner, the Contractor agrees to deliver to the Owner another or an additional bond.

Section 4—Delivery of Possession and Control to the Owner. Upon written request of the Owner, the Contractor will deliver to the Owner full possession and control of any portion of the Project provided the Contractor shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of possession and control to the Owner, the risks and obligations of the Contractor as set forth in Section 1f of this Article IV with respect to such portion so delivered to the Owner, shall be terminated; Provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to defective workmanship as specified in Article II, Section 4.

Section 5—Purchase of Materials. The Contractor shall purchase all materials and supplies outright and not subject to any conditional sales agreement, bailment lease or other agreement reserving to the seller any right, title, or interest therein. All materials and supplies shall become the property of the Owner when erected in place.

Section 6—Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Contractor shall be transferred and assigned to the Owner on Completion of Construction and at such times as the Contractor receives final payment

ARTICLE V—REMEDIES

Section 1—Completion on Contractor's Default. If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety, if any, a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor and the Surety, if any, such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner shall be made, the Owner may take over the construction of the Project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor, and the Contractor shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliance, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims, or demands which the Contractor may have against third persons in connection with this Proposal and for such purpose the Contractor does hereby assign, transfer, and set over unto the Owner all such rights, claims, and demands.

ARTICLE VI—MISCELLANEOUS

Section 1—Patent Infringement. The Contractor will save harmless and indemnify the Owner from any and all claims, suits, and proceedings for the infringement of any patent or patents covering any equipment used in the work.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Contractor agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3—Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Contractor.

Section 4—Compliance with Statutes and Regulations. The Contractor will comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Contractor acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. 287,1001, as amended. The Contractor understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental agencies having jurisdiction in the premises.

Section 5. Equal Opportunity Provisions.

a. Contractor's Representations.

The Contractor represents that:

It has ____, does not have ____, 100 or more employees, and if it has, that it has ____, has not ____, furnished the Equal Employment Opportunity—Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964. The Contractor agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Contractor agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Contractor will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

b. Equal Opportunity Clause. During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Contractor will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

c. Certificate of Nonsegregated Facilities. The Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other

storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Contractor agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 6—Franchises and Rights-of-way. The Contractor will be under no obligation to obtain or assist in obtaining any franchises authorizations, permits, or approvals required to be obtained by the Owner from Federal, State, County, municipal or other authority; any rights-of-way over private lands or any agreements between the Owner and third parties with respect to the joint use of poles, crossings or any other matter incident to the construction and operation of the Project.

Section 7—Nonassignment of Contract. The Contractor will not assign the Contract effected by an acceptance of this Proposal or any part thereof or enter into any contract with any person, firm or corporation for the performance of the Contractor's obligations thereunder, or any part thereof, without the approval in writing of the Owner.

Section 8—Definitions.

a. The term *Owner* shall also include an engineer employed by the Owner, or a firm or engineer retained by the Owner, and designated by the Owner to act in that capacity. The Contractor will be notified in writing by the Owner of those designated to act for the Owner at the time of acceptance of this Proposal.

b. The term *Completion of Construction* shall mean full performance by the Contractor of the Contractor's obligations under the contract and all amendments and revisions thereof relating to any Section of the Project or to the Project except the Contractor's obligations in respect of (i) Certificate of Contractor and Indemnity Agreement—Line Extensions under Article III, Section 2 hereof and (ii) the Final Inventory referred to in Article III, Section 3a hereof.

c. The term *Completion* shall mean full performance by the Contractor of the Contractor's obligations under the Contract and all amendments and revisions thereof relating to any Section of the Project or to the Project.

Section 9—Extension to Successors and Assigns. Each and all of the covenants and agreements contained in the Contract effected by the acceptance of the Proposal shall extend to and be binding upon the successors and assigns of the parties hereto.

_____ (Contractor)
By _____ (President)
_____ (Address)
Attest _____ (Secretary)
_____ Date of Proposal

This Proposal must be signed with the full name of the Contractor. If the Contractor is a partnership, the Proposal must be signed in the partnership name by a partner. If the Contractor is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Construction Units—New Construction

Section 1—Pole Units

A pole unit consists of one pole in place. It does not include pole-top assembly unit or other parts attached to the pole. The first two digits indicate the length of the pole; the third digit shows the classification per A.S.A. (Example: 25–6 means a pole 25 feet long, class 6.)

Species of Timber: _____

Kind of Preservative: (Check one)

1. Creosote ____; 2. Pentachlorophenol ____
3. Copper Naphthenate ____;
4. Waterborne preservative—CCA ____ ACZA ____

Method of Treatment: (Check one)

1. Pressure ____, 2. Thermal process. ____

Pole Plan Under Which the Poles are to be Furnished: (Check one)

1. Insured Warranted ____, 2. Independently Inspected ____; 3. Quality Assured ____; 4. Either Insured Warranted Independently Inspected, or Quality Assured ____

(Owner to complete above.)

Unit No.	Unit price		
	Labor	Materials	Labor and materials

Section A—Single Phase Pole Top Assembly Units

Section B—V Phase Pole Top Assembly Units

A pole top assembly unit consists of the hardware, crossarms, and their appurtenances, insulators, etc., except the wire, required to support the primary conductors. It does not include the pole. Crossarm pins include 2x2x1/8 inch washer, nut, and locknut.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
A			
B			

Section C—Three Phase Pole Top Assembly Units

A pole top assembly unit consists of the hardware, crossarms, and their appurtenances, insulators, etc., except the wire, required to support the primary conductors. It does not include the pole. Crossarm pins include 2x2x3/4 inch washer, nut, and locknut.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
C			

Section D—Conductor Assembly Units

A conductor assembly unit consists of 1,000 feet of conductor or cable for primaries, secondaries or services, and includes tie wires, sleeves for splicing, connectors, and armor rods with clips or armor wire where necessary. Tree trimming necessary for installing services and secondaries on poles not carrying primary line is included with the conductor assembly unit and shall be performed in accordance with the directions of the Owner. The service shall be connected to the secondary or transformer and 2 feet of conductor or cable shall be left for connecting to the consumer's service entrance. In computing the compensation to the Contractor for conductor assembly units only the horizontal distance between conductor supports or pole stakes shall be used. The conductor or cable sizes and types listed are the manufacturer's designation.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
D			

Section E—Guy Assembly Units

A guy assembly unit consists of the hardware and wire, and guy insulator where necessary. An overhead guy assembly consists of an overhead guy, a pole, and a down guy, each of which is listed separately. Guy guards are designated separately.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
E			

Section F—Anchor Assembly Units

An anchor assembly unit consists of the anchor with rod complete, ready for attaching the guy wire.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
F			

Section G—Transformer Assembly Units

A transformer assembly unit consists of the transformer, its protective equipment, and its hardware and leads with their connectors and supporting insulators and pins. This unit does not include the pole top, secondary service, or grounding assemblies.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
G			

Section J—Secondary Assembly Units

A secondary assembly unit consists of the hardware, insulators, etc., to support the secondary conductors or cable. It does not include the secondary conductor or cable, or any hardware, insulators, etc., required to support service conductors or cable.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
J			

Section K—Service Assembly Units

A service assembly unit consists of the hardware, insulators, etc., required to support the service conductors or cable. It does not include the service conductor or cable, or any hardware, insulators, etc., required to support secondary conductors or cable.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
K			

Section M—Miscellaneous Assembly Units

A miscellaneous assembly unit consists of an additional unit needed in the Project for new line construction but not otherwise listed in the Proposal. This section includes grounding assemblies consisting of the conductor, ground rod, grounding plate, connectors and clamps as shown on the respective drawings for the various types. It also includes fuse cutouts, reclosers, sectionalizers, switches, capacitors, regulators, metering and other assembly units.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
M			

Section R—Right-of-Way Clearing Units

R1–10. The unit is 1,000 feet in length and 10 feet in width (to be measured on one side of the pole line) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line of poles carrying primary conductors of the width specified. This unit does not include clearing or trimming associated with secondaries or services which is included with conductor units. The length of actual clearing shall be measured in a straight line parallel to the horizontal line between stakes and across the maximum dimension of foliage cleared projected to the ground line. All trees and underbrush across the width of the right-of-way, as designated by the Owner, shall be considered to be grouped together as a single length in measuring the total length of clearing. Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000, shall give the number of 1,000-foot R1–10 units of clearing. This unit includes the removal or topping, at the option of the Contractor, of danger trees outside of the right-of-way when so designated by the Owner. (Danger trees are defined as dead or leaning trees which, in falling, will affect the operation of the line.) The Contractor shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Owner.

R1–20. This unit is identical with R1–10 except that width is 20 feet (to be measured 10 feet on each side of the pole line).

R1–30. This unit is identical with R1–10 except that width is 30 feet (to be measured 15 feet on each side of the pole line).

R1–40. This unit is identical with R1–10 except that width is 40 feet (to be measured 20 feet on each side of the pole line).

RC1–10, RC1–20, RC1–30, RC1–40. These units are identical to the respective R1 units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

Additional Requirements (When specifying R1 units denote type of disposal (A or B).)

A. Trees, brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Owner will direct (Owner to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly, and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Owner but in no case shall it be required to be less than _____ (_____) feet. Brush, branches, and refuse shall, without delay, be disposed of by such of the following methods as the Owner will direct (Owner to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____

Unit No.	Unit price		
	Labor	Materials	Labor and materials
R	.....		

Section S—Substation Assembly Units

A substation assembly unit consists of the complete substation ready for connection of the line conductors, as shown on the substation drawings attached.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
S			

Section UD—Underground Cable Assembly Units

An underground cable assembly unit consists of 1,000 feet of cable for underground primaries, secondaries or services. It does not include the conduit, plowing, trenching and backfilling, or the termination of the primary cable which are provided for in other assembly units. It includes the termination, connection and sealing of secondary and service cables and conductors as shown in the specifications and construction drawings, and all primary, secondary and service cable splices (buried cable may be spliced only when and where permitted by the Owner.[1,2]) In computing the compensation to the Contractor for underground cable assembly units, only the distance between stakes, paralleling the cable shall be used. The number of units so computed will include all cable installed in place in all specified trenches, risers, conduits, crossings, manholes, transformers, terminal housings and meter boxes.[3] The conductor or cables listed are the manufacturer's designation of types, size, voltage rating and material. The Contractor and the Owner shall jointly perform cable acceptance tests on installed cable in accordance with the specifications using test equipment furnished by the _____. (Owner to insert Owner or Contractor).

Unit No.	Unit price		
	Labor	Materials	Labor and materials
UD			

Section UG—Underground Transformer Assembly Units

An underground transformer assembly unit consists of the transformer, its housing, warning sign, switches, over-current protective devices, grounding loop, and hardware and leads with their connectors and supporting insulators installed in place. This unit includes the cable terminations but does not include lightning arresters, fault indicators, ground rods or trenching. For submersible transformers, it includes the cable terminations, the enclosure and cover.

_____

[1] _____ Owner check here if primary splices are permitted:

[2] _____ Owner check here if secondary and service splices are permitted.

[3] _____ Owner check here if 12 feet of service conductor is to be left as a coil three feet from the building with ends capped instead of connection to meter box.

drainable material (when specified [4]), and the excavation when required. For pad-mount transformers, it does not include the pad, site preparation, drainable material, backfilling or compaction which are included in the pad assembly units.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
UG			

Section UK—Underground Secondary and Service Assembly Units

An underground secondary and service assembly unit consists of secondary or service cable terminal housing mounted in place. It includes the power pedestal, stake (when required), mounting hardware, warning sign, directional marker, housing identification marking, and the cable identification tags. It does not include the cable terminations, ground rod, or pad, when required

Unit No.	Unit price		
	Labor	Materials	Labor and materials
UK			

Section UM—Miscellaneous Underground Assembly Units

A miscellaneous underground assembly unit consists of an additional unit needed in the Project for new construction but not otherwise listed in the Proposal. This section includes the miscellaneous assembly units as shown on the respective underground construction drawings. Where miscellaneous units consist of or include a primary cable termination, the unit includes the preparation of the cable to accommodate the termination, the stress cone and the connection of the cable to the terminal equipment. Pad assembly units are in this section and include the site preparation, bedding, drainable material when specified, cable slot, backfilling, tamping and the pad, in place.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
UM			

Section UR—Underground Excavation Assembly Units

UR1–S (D) Plowing Assembly Unit, Soil—Consists of one (1) lineal foot of plowing in soil, measured parallel to the surface of the ground, to a specified depth (D), in inches, including the compacting, except as specifically provided for in other units. This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged during the plowing of the cable, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the slot. **Note:** Where in the judgment of the Owner greater than normal difficulty will be involved in plowing because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T". This will be applicable only in those areas predesignated by the Owner on the detail maps herein. All plowing outside of the predesignated area on the map, regardless of the difficulty in placement actually experienced, will be inventoried as the regular UR1–S (D) units. If field conditions show the existence of rock to prevent the placing of the cable in soil to the depth required in the specifications the Owner may specify UR2–R units. Where more than one cable is to be installed in the slot, the UR1–S unit designation should be modified by a suffix corresponding to the number of cables installed. For example, UR1–S (D)3c for 3 cables plowed at one time.

UR2–S (D&W) Trenching Assembly Unit, Soil—Consists of one (1) lineal foot of trenching in soil, measure parallel to the surface of the ground, to a specified depth (D) and width (W), in inches, including the excavation, and backfilling and compacting. This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the slot. **Note:** Where in the judgement of the Owner greater than normal difficulty will be involved in trenching because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T". This will be applicable only in those areas predesignated by the Owner on the detail maps herein. Where more than one cable is to be installed in the trench, the regular UR2–S unit designation should be modified by a suffix corresponding to the construction drawing for the type of cable placement desired.

UR2–R (D&W) Trenching Assembly Unit, Rock—Consists of one (1) lineal foot of trenching in rock, measured parallel to the surface of the ground, to specified depth (D) and width (W), in inches, including the excavation, and backfilling and compacting to place cable to the depth specified in the Specifications. This unit will be specified by the Owner only when field conditions at the site show the existence of rock at a depth preventing the placing of the cable in soil to the depths required in the Specifications. This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the trench or cable bedding assembly units when required.

UR–3 Cable Bedding Assembly Unit—Consists of one (1) lineal foot of a two-inch bed of clean and or soil placed in the trench under the cable and a four-inch layer of clean sand or soil backfill over the cable to the width of the trench.

Note: The exact location and number of units shall be determined by the Owner after the trenches are open in those areas where rock or other conditions make special bedding necessary.

UR–4a Pavement Assembly Unit, Asphalt—Consists of the labor and material necessary to remove and restore one (1) lineal foot of asphalt pavement, measured along the route of the cable, including any trenching necessary to place the cable at the required depth. All work shall be performed in accordance with the requirements of state or local authorities.

UR–4c Pavement Assembly Unit, Concrete—Consists of the labor and material necessary to remove and restore one (1) lineal foot of concrete pavement, measured along the route of the cable, including any trenching necessary to place the cable at the required depth. All work shall be performed in accordance with the requirements of state or local authorities.

UR–5 ( ) Underground Pipe Crossing Assembly Unit—Consists of one (1) lineal foot of steel pipe, of the inside diameter, in inches, specified in the last digit of the assembly unit designation, installed in place. This unit includes the pushing of pipe and any excavation, backfilling and tamping necessary for the installation of the pipe. The pipe will be installed at the depth specified by the Owner. Underground cable installed in the pipe is not included in this unit.

UR–6 Underground Nonpipe Crossing Assembly Unit—Consists of the labor in providing a hole in soil one (1) foot in length of a diameter sufficient to accommodate the cable to be installed therein. The depth of the hole below the surface of the ground shall be specified by the Owner. This unit includes any excavation, backfilling and tamping necessary for the installation. This unit may be used where the permanent installation of a steel pipe under the UR–5 unit is not required. Underground cable installed in the hole is not included in this unit.

Unit No.	Unit price		
	Labor	Materials	Labor and materials
UR			

Construction Units—Line Changes

The general heading of Line Changes applies to the changing of existing lines or portions thereof from their existing phasing, wire size, and type to new phasing, wire size, and type and the removal of existing lines or portions thereof and replacing with new lines in close proximity thereto. In general line

[4] _____Owner check here if drainable material is specified.

changes involve three types of assembly units as follows:

Section H—Conversion assembly units;
Section I—Removal assembly units;
Section N—New construction assembly units on existing lines or in replacing lines.

The assembly units that are included in Sections H, I, and N are defined by symbols and descriptions which follow together with the applicable descriptions included under New Construction. Where the descriptions are not correct or sufficiently explicit, or when special units are not covered by Construction Drawings, descriptions have been provided by the Owner in the respective sections.

Work included in these sections shall be performed under a schedule of deenergization and operating procedures as set forth by the Owner at the time of release of any Section involving work on existing lines. The Contractor will so plan and perform its work that it will be possible to safely reenergize all lines involved at the expiration of the time limits set up in the schedule to resume service to all consumers being served prior to deenergization. Prior to commencement of work each day on lines to be deenergized, and upon completion of work each day on such lines, the Contractor will notify the Owner thereof in writing or in such other manner as the circumstances permit.

Section H—Conversion Assembly Units

Conversion assembly units are pole-top assemblies and cover the furnishing of all labor and additional materials for changing an existing assembly unit to a new assembly unit, utilizing certain items of materials of the existing assembly unit on poles to be left in place. Any materials removed from the existing assembly units which are not required in the construction of the conversion assembly unit are to be reused by the Contractor in the construction of other assembly units, or returned to Owner's warehouse, as directed by the Owner.

Conversion assembly units are specified by the prefix H with the new construction assembly unit designation shown first and the existing assembly unit designation shown last. For example, an H B1–A1 signifies the conversion of an existing A1 assembly unit to a B1 assembly unit (as was defined in the description of construction assembly units). In this instance the Contractor utilizes the existing pintype insulator, single upset bolt and neutral spool and furnishes the additional crossarm, crossarm pins, braces, machine bolt, carriage bolts, lag screw, and insulator required for the new unit. The Contractor transports the pole-top pin and two machine bolts to the warehouse or uses them on the Project as directed by the Owner.

The Conversion assembly units also include the furnishing of all labor and materials in the transferring, resagging and retying of conductors from one position on the pole to a different position on the pole where such transfers are required. Where replacement of conductor is required, the existing conductor will be removed under Section I and the new conductor installed under Section N. Where replacement of a pole is required, the existing pole and pole-top assembly will be removed under Section I and the new pole and pole-top assembly will be installed according to Section N and no H units will be involved.

Conversion assemblies are listed in three subsections for converting pole-top assemblies from single to V phase, single to three phase, and V to three phase. The following descriptions apply to only those conversion units not sufficiently explicit:

Unit	Description

Subsection H (B–A) 1 Phase to V Phase

Unit No.	Unit price		
	Labor	Materials	Labor and materials
H			

SUBSECTION H (C–A) 1 PHASE TO 3 PHASE

Unit No.	Unit price		
	Labor	Materials	Labor and materials
H			

SUBSECTION H (C–B) V PHASE TO 3 PHASE

Unit No.	Unit price		
	Labor	Materials	Labor and materials
H			

Section I—Removal Assembly Units

Removal assembly units cover the furnishing of all labor for the removal of existing units of construction from existing lines, disassembling into material items, and all labor and transportation for the returning of all materials to the warehouse of the Owner in an orderly manner or transporting elsewhere to the site of the Project for reuse in the prosecution of this Contract as directed by the Owner. All materials removed remain the property of the Owner. The provisions for Owner-Furnished materials in the Proposal shall apply if such materials are reused for construction of the Project.

The unit removal prices shall include all materials and labor required to reinstall in accordance with specifications any conductors temporarily detached. The Contractor will reinstall at his own expense any other units removed by him for his own convenience.

The removal units are specified by the prefix I and followed by the assembly unit designation of existing assembly unit to be removed. For example, an I–A1 signifies the removal of an A1 assembly unit. The following special notes apply to specific removal units:

a. Poles. All poles of the same height, regardless of pole class, are designated by the same unit. Thus an I–30-foot pole signifies the removal of a 30-foot pole of any class. The Contractor is not required under this unit to remove from the pole any ground wire or pole numbering attached to the pole. This unit includes the refilling and tamping of holes in a workmanlike manner unless they are to be reused.

b. Pole-top Assemblies. The unit of removal of pole-top assemblies includes, in addition to the removal of the assembly itself, any necessary handling, resagging, and retying of conductors in those cases where an existing pole-top assembly will be removed and replaced by a new pole-top assembly and where any existing conductor is to be reused.

The unit of removal of pole-top assemblies also includes any holding or handling of mainline or tap conductors at tap lines, angles, and deadends where such is involved, and the reinstalling of such conductor in accordance with the specifications; for example, an I–A5–4 will include the disconnection of the tap conductors, snubbing off the tap line at the nearest practical point and the reconnection and resagging of these tap conductors if necessary to the new tap assembly when installed. The new unit of construction, however, will be specified separately in Section N.

c. Conductor. The conductor removal unit covers the removal of 1,000 feet of conductor or cable and reeling or coiling it in a workmanlike manner in such a way that it can be reused by the Contractor or the Owner. The Owner will furnish to the Contractor reels if it is to be returned to the Owner's warehouse on reels. The removal unit for each size of conductor or cable is shown by the prefix I followed by D and the conductor or cable type; thus an I–D 6ACWC signifies the removal unit for 1,000 feet of 6 A Copperweld-copper conductor.

d. Guys. All guys regardless of length, type of attachment, or size of guy strand are specified by the same unit; thus an I–E signifies the removal of any guy.

e. Anchors. Only anchor rods are to be removed by the Contractor in anchor removal units. The anchors will be left in the ground; thus an I–F signifies the removal of any anchor rod. If the rod cannot be unscrewed, the end of the rod shall either be cut off or bent down so that the rod will be at least 18 inches below ground.

f. Transformers. The unit for removal of transformer assembly units is divided into two sections, (1) Conventional Transformer Assembly, and (2) Self-protected Transformer Assembly. Only one unit is specified for each type, and all sizes of transformers from 1 to 15 kVA within each group will be covered by the same unit. "Self-protected" refers to transformers where all protective equipment is mounted on or within the transformer. "Conventional" refers to transformers where protective equipment is mounted separately from the transformer. The unit is designated by the prefix I followed by the description of the unit to be removed; thus I–G Conventional signifies the removal of a conventional transformer assembly for any size transformer from 1 to 15 kVA.

g. Secondary Units. The unit for removal of secondary assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of secondary conductor or cables where existing secondary conductor or cable is to be reused.

In addition, the unit for removal of the secondary assembly includes the handling or holding of any conductor at tap lines where such is involved, and the reinstalling of such tap conductor in accordance with the specifications.

h. Service Unit. The unit for removal of service assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of service conductor or cable where existing service conductor or cable is to be reused.

The following descriptions apply only to those removal units not sufficiently explicit:

Unit	Description

Unit No.	Unit labor price
I	

Section N—New Assembly Units

The purpose of this section is to list complete new units of construction where such units are to be added to existing lines or installed in replacing lines.

The units as covered by this section are the same as the units described in Construction Units—New Construction, except that these units are prefixed by the letter N.

For example, an N40–6 unit covers the furnishing of all material and labor for the installation of a 40–6 pole either in an existing distribution line being operated by the Owner or in a new line being constructed to replace an existing distribution line being operated by the Owner.

The following descriptions apply only to those new units not sufficiently explicit:

Unit	Description

Unit No.	Unit price		
	Labor	Materials	Labor and materials
N			

Acceptance

The undersigned hereby accepts the foregoing Proposal of _____, dated _____, to construct the rural electric Project _____ 19___ Line Extensions.

___ (Owner)

By

___ (President)

___ Secretary

Date of Contract

[End of clause]

§ 1726.343 Distribution line extension construction contract (labor only), REA Form 792.

The contract form in this section shall be used when required by this part.

Distribution Line Extension Construction Contract (Labor Only)

Proposal

To: _____ (hereinafter called the "Owner").

Article I—General

Section 1—Offer to Construct. The undersigned (hereinafter called the "Contractor") hereby proposes to construct for the prices hereinafter stated, with materials furnished by the Owner, the rural electric project _____ 19 ____ Line Extensions (hereinafter called "Project") in strict accordance with the Plans, Specifications, and Construction Drawings hereinafter referred to. The Contractor understands and agrees that the Project will consist of line extensions and additions and line changes or similar work usually associated with overhead or underground distribution system improvement or extension work all located within the area served or ultimately to be served by the Owner and that the exact location and scope of individual sections of the Project (hereinafter called "Sections") will be made known to the Contractor from time to time as provided in Article II, Section 1 hereof; and provided, however, that the Contractor shall not be obligated to start construction of any Section unless the cost of construction of the Section computed on the unit prices of this Proposal shall amount to at least _____ dollars ($ _____) and provided further that the Owner shall be obligated to release to the Contractor for construction at least one Section pursuant to the provisions of this Proposal.

Section 2—Additional Projects. From time to time the Owner and the Contractor may enter into negotiations for the performance of work at labor prices which may differ from those in the Proposal (such work being hereinafter called "Additional Projects"). Except as may otherwise be agreed upon in writing by the Owner and the Contractor at the time the supplemental contract for the Additional Project is negotiated, the provisions of the Contract for the Project shall apply.

Section 3—Proposal on Unit Basis. The Contractor understands and agrees that the various Construction Units considered in this Proposal are defined by symbols and descriptions in this Proposal, that the Proposal is made on a unit basis, and that the Owner may specify, as provided in Article II, Section 1 hereof, any number or combination of Construction Units which the Owner, may deem necessary for the construction of the Project. If kinds of Construction Units for which prices are not established in this Proposal are necessary for the construction of the Project, the prices of such additional Units shall be as agreed upon in writing by the Owner and the Contractor prior to the time of installation. The unit prices herein set forth are applicable to work performed on unenergized lines. Such unit prices shall be increased by _____ (_____) percent for all units installed on energized lines in accordance with instructions of the Owner, as provided in Article II, Section 1g.

Section 4—Description of Contract. The Specifications and Construction Drawings set forth in:

REA Form 804, Specifications and Drawings for 7.2/12.5 kV Line Construction;

REA Form 803, Specifications and Drawings for 14.4/24.9 kV Line Construction;

REA Form 806, Specifications and Drawings for Underground Electric Distribution;

as applicable, which by this reference are incorporated herein, together with the Plans, Proposal and Acceptance constitute the Contract. The Plans, consisting of maps and special drawings, and approved modifications in standard specifications are attached hereto and identified as follows:

_____

Section 5—Familiarity with Conditions. The Contractor acknowledges that it has made a careful examination of the site of the Project and of the Plans, Specifications and Construction Drawings, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of equipment, tools, and other facilities required before and during the construction of the Project and has become acquainted with the availability status of materials to be furnished by the Owner and with the labor conditions which would affect work on the Project.

Section 6—License. The Contractor warrants that a Contractor's license is _____ is not _____ required, and if required, it possesses Contractor's License No. _____ for the State of _____ in which the Project is located, and said license expires on _____, 19____.

Section 7—Contractor's Resources. The Contractor warrants that it possesses adequate financial resources for the performance of the work covered by this Proposal and that it will provide necessary tools and equipment and a qualified superintendent and other employees.

Section 8—Changes in Construction. The Contractor agrees to make such changes in construction previously installed in the Project by the Contractor as required by the Owner on the following basis:

The cost of labor shall be the reasonable cost thereof as agreed upon by the Contractor and the Owner but in no event shall it exceed two (2) times the labor price quoted in the Proposal for the installation of the unit to be changed. Such compensation shall be in lieu of any other payment for the installation and removal of the original unit but shall not include the cost of the installation, if any, of a new or replacing unit, payment for which shall be made at the unit price as quoted in the Proposal.

No payment shall be made to the Contractor for correcting errors or omissions on the part of the Contractor which result in construction not in accordance with the Plans and Specifications.

Article II—Construction

Section 1—Time and Manner of Work. The Contractor agrees to be prepared to commence the construction of the Project within fifteen (15) calendar days after written notice by the Owner of acceptance of the Proposal. The Contractor agrees to commence construction of a Section within _____ (_____) days after receipt in writing from the Owner of the following:

a. Location and number of the various Construction Units required for construction of the Section (hereinafter called the "Staking Sheets").

b. Itemized list of the materials required for the construction of the Section and an authorization by the Owner for the Contractor to obtain such materials from the Owner's warehouse located at _____.

c. A schedule showing the rate at which construction of the Section shall proceed and the total number of calendar days (excluding Sundays) to be allowed for completion; provided, however, that the required completion time for any Section shall not be less than _____ (_____) days or _____ (_____) days per mile of line, whichever is the greater, which days shall be calendar days (excluding Sundays). The time of the completion of the Section is of the essence of the contract to be effected by acceptance of this Proposal.

d. A statement that all required easements and rights-of-way have been obtained from the owners of the properties across which the Section is to be constructed (including tenants who may reasonably be expected to object to such construction).

e. A statement that all necessary staking has been completed.

f. A statement that all necessary funds for prompt payment for the construction of the Section will be available.

g. Specific instruction as to location and extent of work to be performed on energized lines, if any.

The Contractor will not be required to dig holes, set poles, install anchors, install underground conduit, perform any plowing for the installation of underground cable, or dig trenches if there are more than six (6) inches of frost in the ground nor to perform any construction on such days when in the judgment of the Owner snow, rain, or wind or the results of snow, rain, or frost make it impracticable to perform any operations of construction; provided further that the contractor will not perform any plowing for the installation of underground cable on public roads or highways if there are more than two (2) inches of frost in the ground. To the extent of the time lost due to the conditions described herein and approved in writing by the Owner, the time of completion set out above will be extended. The time for completion shall be extended for a period of any reasonable delay (other than a delay resulting from the failure of the Contractor to secure sufficient labor) which is due exclusively to causes beyond the control and without the fault of the Contractor including acts of God, fires, floods, inability to obtain materials, direction of the Owner to cease construction as herein provided, and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however, that no such extension of time for completion shall be granted the Contractor unless within ten (10) days after the happening of any event relied upon by the Contractor for such an extension of time the Contractor shall have made a written request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes, except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

Section 2—Changes in Plans, Specifications and Drawings. The Owner may, from time to time during the progress of the construction of the Project, make such changes in, additions to, or subtractions from the Plans, Specifications, and Construction Drawings as conditions may warrant: Provided, however, that if the cost to the Contractor shall be materially increased by any such change or addition, the Owner shall pay the Contractor for the reasonable cost thereof in accordance with a construction contract amendment signed by the Owner and the Contractor, but no claim for additional compensation for any such change or addition will be considered unless the Contractor shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

Section 3—Supervision and Inspection.

a. The Contractor shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Contractor shall also employ, in connection with the construction of the Project, capable, experienced, and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent by the Owner shall be binding upon the Contractor.

b. The Owner reserves the right to require the removal from the Project of any employee of the Contractor if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner shall have the right to require the Contractor to increase the number of his employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner, but the failure of the Owner to give any such directions shall not relieve the Contractor of his obligations to complete the work within the time and in the manner specified in this Proposal.

c. The manner of performance of the work, and all equipment used therein, shall be subject to the inspection, tests, and approval of the Owner. The Owner shall have the right to inspect all payrolls and other data and records of the Contractor relevant to the work. The Contractor will provide all reasonable facilities necessary for such inspection and tests. The Contractor shall have an authorized agent accompany the inspector when final inspection is made and, if requested by the Owner, when any other inspection is made.

d. In the event that the Owner shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Contractor, if requested by the Owner, to have an inspection made by an engineer approved by the Owner for the purpose of determining the exact nature, extent, and location of such defects.

Section 4—Defective Workmanship. The acceptance of any workmanship by the Owner shall not preclude the subsequent rejection thereof if such workmanship shall be found to be defective after installation, and any such workmanship found defective before final acceptance of the work or within one (1) year after completion shall be remedied or replaced, as the case may be, by and at the expense of the Contractor. In the event of failure by the Contractor so to do, the Owner may remedy such defective workmanship and in such event the Contractor shall pay to the Owner the cost and expense thereof. The Contractor shall not be entitled to any payment hereunder so long as any defective workmanship, in respect of the Project, of which the Contractor shall have had notice, shall not have been remedied or replaced, as the case may be.

Section 5—Materials. At or prior to the commencement of construction of each Section, the Owner shall make available to the Contractor all materials for such Section which the Owner has on hand, and from time to time as such additional deliveries of materials, if any, are received by the Owner, the Owner shall make such materials available to the Contractor: Provided, however, that the Contractor or his authorized representative will give to the Owner a receipt in such form as the Owner shall approve for all materials furnished by the Owner to the Contractor. The Contractor will return to the Owner or reuse in the construction of other assembly units all materials removed from the lines under Section H—Conversion Assembly Units and Section I—Removal Assembly Units. Upon completion of each Section of the Project the Contractor will return to the Owner all materials, including usable materials as well as scrap, furnished by the Owner in excess of those required for the construction of the Section as determined from the Final Inventory approved by the Owner. The Contractor will reimburse the Owner at the current invoice cost to the Owner for loss and for breakage through Contractor's negligence of materials furnished by the Owner to the Contractor and for materials removed from the lines by the Contractor.

Section 6—Term of Contract. It is understood and agreed that, notwithstanding any other provisions of this Contract, the Contractor will not be required to commence any construction after the expiration of 1 year following acceptance of this Proposal by the Owner.

ARTICLE III—PAYMENT

Section 1—Payments to Contractor

a. Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Contractor for construction accomplished during the preceding calendar month on the basis of

completed Construction Units furnished and certified to by the Contractor and approved by the Owner solely for the purpose of payment: Provided, however, that such approval by the Owner shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of a Section shall be paid by the Owner to the Contractor prior to completion of the Section. Upon completion by the Contractor of the construction of a Section, the Contractor will prepare a Final Inventory of the Section showing the total number and character of Construction Units and, will certify it to the Owner together with a certificate of the total cost of the construction performed. Upon the approval of such certificates, the Owner shall make payment to the Contractor of all amounts to which the Contractor shall be entitled thereunder which shall not have been paid.

b. The Contractor shall be paid on the basis of the number of Construction Units actually installed at the direction of the Owner, as shown by the Inventory based on the Staking Sheets: Provided, however, that the total cost shall not exceed the maximum Contract price for the construction of the Project, unless such excess shall have been approved in writing by the Owner. It is understood and agreed that this maximum Contract price is _____ dollars ($_____). It is also agreed that the Contractor shall not be entitled to any claim for damages on account of any reasonable additions to or subtractions from the Project, or of any delay occasioned thereby, or of any changes in the routing of the lines.

c. No payment shall be due while the Contractor is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Contractor the amount of any claim by a third party against either the Contractor or the Owner based upon an alleged failure of the Contractor to perform the work hereunder in accordance with the provisions of this Contract.

Section 2—Certificate of Contractor and Indemnity Agreement—Line Extensions. Upon the Completion of Construction of any Section of the Project but prior to payment to the Contractor of any amount in excess of ninety percent (90%) of the total cost of all Construction Units comprising the completed Section, the Contractor shall deliver to the Owner in the form attached hereto, (1) a certificate that all persons who have furnished labor in connection with the Project and subcontractors who have furnished services for the Project have been paid in full, and (2) an agreement to hold the Owner harmless against any liens arising out of the Contractor's performance hereunder which may have been or may be filed against the Owner.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE CONTRACTOR

Section 1. Protection to Persons and Property. The Contractor shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

a. The Contractor shall at no time and under no circumstances cause or permit any employee of the Contractor to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in accordance with Article II. Section 1, subsection g.

b. The Contractor shall so conduct the construction of the Project as to cause the least possible obstruction of public highways.

c. The Contractor shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances, and regulations or by local conditions.

d. The Contractor shall do all things necessary or expedient to protect properly any and all parallel, converging, and intersecting lines, joint line poles, highways and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways, or other property are damaged in the course of the construction of the Project the Contractor shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

e. Where the right-of-way of the Project traverses cultivated lands, the Contractor shall limit the movement of his crews and equipment so as to cause as little damage as possible to crops, orchards, or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during the construction of the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. Except as otherwise provided in the descriptions of underground plowing and trenching assembly units, the Contractor shall not be responsible for loss of or damage to crops, orchards, or property (other than livestock) on the right-of-way necessarily incident to the construction of the Project and not caused by negligence or inefficient operation of the Contractor. The Contractor shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by the construction of the Project.

f. The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Contractor and during such period of control by the Contractor all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Contractor. The Contractor shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Contractor by reason of any act of God or other casualty or cause whether or not the same shall have occurred by reason of the Contractor's negligence.

(i) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Contractor's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Contractor's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Contractor, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Contractor liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner and Owner's directors officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Contractor, its subcontractors and suppliers of any tier, and from all losses demands, and causes of action arising out of any such lien or claim. Contractor shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Contractor does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Contractor.

(iii) Contractor shall provide to Owner's satisfaction evidence of Contractor's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company

g. Any and all excess earth, rock, debris, underbrush, and other useless material shall be removed by the Contractor from the site of the Project as rapidly as practicable as the work progresses.

h. Upon violation by the Contractor of any provisions of this section, after written notice of such violation given to the Contractor by the Owner, the Contractor shall immediately correct such violation. Upon failure of the Contractor so to do the Owner may correct such violation at the Contractor's expense.

i. The Contractor shall submit to the Owner monthly reports in duplicate of all accidents giving such data as may be prescribed by the Owner.

j. The Contractor shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the Owner that proper authorization has been received

from the owner of the property, and the Contractor shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on his land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

Section 2—Insurance. The Bidder shall take out and maintain throughout the period of this Agreement the following types and minimum amounts of insurance:

a. Workers' compensation and employer's liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million each occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy of policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3—Bond. If the estimated cost of the construction of a Section shall exceed $100,000, the Contractor agrees to furnish prior to the commencement of such construction, a bond in the penal sum not less than the estimated cost of such Section in the form attached hereto with a Surety or Sureties listed by the United States Treasury Department as acceptable sureties. In the event that the Surety or Sureties on the performance bond delivered to the Owner shall at any time become unsatisfactory to the Owner, the Contractor agrees to deliver to the Owner another or an additional bond.

Section 4—Delivery of Possession and Control to the Owner. Upon written request of the Owner, the Contractor will deliver to the Owner full possession and control of any portion of the Project provided the Contractor shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of possession and control to the Owner, the risks and obligations of the Contractor as set forth in Section 1f of this Article IV with respect to such portion so delivered to the Owner, shall be terminated. Provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to defective workmanship as specified in Article 11, Section 4.

ARTICLE V—REMEDIES

Section 1—Completion on Contractor's Default. If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety, if any, a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor and the Surety, if any, such default shall be corrected or arrangements for the correction thereof satisfactory to the Owner shall be made, the Owner may take over the construction of the Project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor, and the Contractor shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliance, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims, or demands which the Contractor may have against third persons in connection with this Proposal and for such purpose the Contractor does hereby assign, transfer, and set over unto the Owner all such rights, claims, and demands.

ARTICLE VI—MISCELLANEOUS

Section 1—Patent Infringement. The Contractor will save harmless and indemnify the Owner from any and all claims, suits, and proceedings for the infringement of any patent or patents covering any equipment used in the work.

Section 2—Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Contractor.

Section 3—Compliance with Statutes and Regulations. The Contractor will comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Contractor acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. 287, 1001, as amended. The Contractor understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental agencies having jurisdiction in the premises.

Section 4. Equal Opportunity Provisions

a. Contractor's Representations.

The Contractor represents that: It has _____, does not have _____, 100 or more employees, and if it has, that it has _____, has not _____, furnished the Equal Employment Opportunity—Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Contractor agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Contractor agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Contractor will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

b. Equal Opportunity Clause. During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders

(6) In the event of the Contractor's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24,1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Contractor will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

c. Certificate of Nonsegregated Facilities The Contractor certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Contractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Contractor agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 5—Franchises and Rights-of-way The Contractor will be under no obligation to obtain or assist in obtaining any franchises, authorizations, permits, or approvals required to be obtained by the Owner from Federal, State, County, Municipal or other authority; any rights-of-way over private lands or any agreements between the Owner and third parties with respect to the joint use of poles, crossing or any other matter incident to the construction and operation of the Project.

Section 6—Nonassignment of Contract. The Contractor will not assign the Contract effected by an acceptance of this Proposal or any part thereof or enter into any contract with any person, firm or corporation for the performance of the Contractor's obligations thereunder, or any part thereof, without the approval in writing of the Owner

Section 7—Definitions.

a. The term *Owner* shall also include an engineer employed by the Owner, or a firm or engineer retained by the Owner, and designated by the Owner to act in that capacity. The Contractor will be notified in writing by the Owner of those designated to act for the Owner at the time of acceptance of this Proposal

b. The term *Completion of Construction* shall mean full performance by the Contractor of the Contractor's obligations under the contract and all amendments and revisions thereof relating to any Section of the Project or to the Project except the Contractor's obligations in respect of (i) Certificate of Contractor and Indemnity Agreement—Line Extensions under Article III, section 2 hereof and (ii) the Final Inventory referred to in Article III, Section 7a hereof.

c. The term *Completion* shall mean full performance by the Contractor of the Contractor's obligations under the Contract and all amendments and revisions thereof relating to any Section of the Project or to the Project.

Section 8—Extension to Successors and Assigns. Each and all of the covenants and agreements contained in the Contract effected by the acceptance of the Proposal shall extend to and be binding upon the successors and assigns of the parties thereto

_____ (Contractor)
By _____ (President)
_____ (Address)
ATTEST: _____ (Secretary)
_____ Date of Proposal

This Proposal must be signed with the full name of the Contractor. If the Contractor is a partnership, the Proposal must be signed in the partnership name by a partner. If the Contractor is a corporation the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Construction Units—New Construction

SECTION 1—POLE UNITS

A pole unit consists of the installation of one pole. The first two digits indicate the length of the pole; the third digit shows the classification per A.S.A. (Example 25–6 means a pole 25 feet long, class 6.)

Unit No	Unit labor price

POLE TOP ASSEMBLY UNITS

A pole top assembly unit consists of the installation of the hardware, crossarms and their appurtenances, insulators, etc., except tie wire, required to support the primary conductors.

SECTION A—1 PHASE

Unit No	Unit labor price

SECTION B—V PHASE

Unit No.	Unit labor price

SECTION C—3 PHASE

Unit No.	Unit labor price

SECTION D—CONDUCTOR

A conductor assembly unit consists of the installation of 1,000 feet of conductor or cable for primaries, secondaries or services. Tree trimming necessary for installing services and secondaries on poles not carrying primary line is included with the conductor assembly unit and shall be performed in accordance with the directions of the Owner. The service shall be connected to the secondary or transformer and 2 feet of conductor or cable shall be left for connecting to the consumer's service entrance. In computing the compensation to the Contractor for conductor assembly units only the horizontal distance between conductor supports or pole stales shall be used. The conductor or cable sizes and types listed are the manufacturer's designation

Unit No.	Unit labor price

SECTION E—GUY ASSEMBLY UNITS

A guy assembly unit consists of the installation of the hardware and wire, and guy insulator where necessary. An overhead guy assembly unit does not include the associated pole and down guy, each of which is listed separately. Guy guards are designated separately.

Unit No.	Unit labor price

SECTION F—ANCHOR ASSEMBLY UNITS

An anchor assembly unit consists of the installation of an anchor with rod complete, ready for attaching the guy wire.

Unit No.	Unit labor price

SECTION G—TRANSFORMER ASSEMBLY UNITS

A transformer assembly unit consists of the installation of the transformer, its protective equipment and its hardware and leads with their connectors and supporting insulators and pins. This unit does not include the installation of the pole top, secondary, service, or grounding assemblies

Unit No.	Unit labor price

SECTION J—SECONDARY ASSEMBLY UNITS

A secondary assembly unit consists of the installation of the hardware, insulators, etc., to support the secondary conductor or cable. It does not include the installation of the secondary conductor or cable, or of any hardware, insulators, etc., required to support service conductors or cable.

Unit No.	Unit labor price

SECTION K—SERVICE ASSEMBLY UNITS

A service assembly unit consists of the installation of the hardware, insulators, etc. to support the service conductors or cable. It does not include the installation of the service conductor or cable, or of any hardware, insulators etc. required to support secondary conductors or cable.

Unit No.	Unit labor price

SECTION M—MISCELLANEOUS ASSEMBLY UNITS

A miscellaneous assembly unit consists of the installation of an additional unit needed in the Project for new line construction but not otherwise listed in the Proposal. This section includes the installation of grounding assemblies, fuse cutouts, reclosers, sectionalizers, switches, capacitors, regulators, metering and other assembly units.

Unit No.	Unit labor price

SECTION R—RIGHT-OF-WAY CLEARING UNITS

R1–10. The unit is 1,000 feet in length and 10 feet in width (to be measured on one side of the pole line) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line of poles carrying primary conductors.

This unit does not include clearing or trimming associated with secondaries or services which is included with conductor units. The length of actual clearing shall be measured in a straight line parallel to the horizontal line between stakes and across the maximum dimension of foliage cleared projected to the ground line. All trees and underbrush across the width of the right-of-ways as designated by the Owner shall be considered to be grouped together as a single length in measuring the total length of clearing. Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000, shall give the number of 1,000-foot R1–10 units of clearing. This unit includes the removal or topping, at the option of the Contractor, of danger trees outside of the right-of-way when so designated by the Owner. (Danger trees are defined as dead or leaning trees which, in falling, will affect the operation of the line.) The Contractor shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Owner.

R1–20. This unit is identical with R1–10 except that width is 20 feet (to be measured 10 feet on each side of the pole line).

R1–30. This unit is identical with R1–10 except that width is 30 feet (to be measured 15 feet on each side of the pole line).

R1–40. This unit is identical with R1–10 except that width is 40 feet (to be measured 20 feet on each side of the pole line).

RC1–10, RC1–20, RC1–30, RC1–40. These units are identical to the respective R1 units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

Additional Requirements (When specifying R1 units denote type of disposal (A or B).)

A. Trees, brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Owner will direct (Owner to strike out methods not to be used):

1. Burned.
2. Piled on one side of right-of-way.
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____.

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly, and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Owner but in no case shall it be required to be less than (_____) feet. Brush, branches, and refuse shall, without delay, be disposed of by such of the following methods as the Owner will direct (Owner to strike out methods not to be used):

1. Burned.
2. Piled on one side of right-of-way.
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____.

Unit No.	Unit labor price

SECTION S—SUBSTATION ASSEMBLY UNITS

A substation assembly unit consists of the complete substation ready for connection of the line conductors, as shown on the substation drawings attached.

Unit No.	Unit labor price

SECTION UD—UNDERGROUND CABLE ASSEMBLY UNITS

An underground cable assembly unit consists of the installation of 1,000 feet of cable for underground primaries, secondaries or services. It does not include the plowing, trenching and backfilling, or the termination of the primary cable which are provided for in other assembly units. It includes the labor for the termination, connection and sealing of secondary and service cables and conductors as shown in the specifications and construction drawings, and the labor for making all primary, secondary and service cable splices (buried cable may be spliced only when and where permitted by the Owner [1,2].) In computing the compensation to the Contractor for underground cable assembly units, only the distance between stakes, paralleling the cable shall be used. The number of units so computed includes all installation of cable in all specified trenches, risers, conduits, crossings, manholes, transformers, terminal housings and meter boxes.[3] The conductor or cables

[1] _____ Owner check here if primary splices are permitted.

[2] _____ Owner check here if secondary and service splices are permitted.

[3] _____ Owner check here if 12 feet of service conductor is to be left as a coil 3 feet from the building with ends capped instead of connection to meter box

listed are the manufacturer's designation of types, size, voltage rating and material. The Contractor and the Owner shall jointly perform cable acceptance tests on installed cable in accordance with the specifications using test equipment furnished by the _____ (Owner to insert Owner or Contractor).

Unit No.	Unit labor price

SECTION UG—UNDERGROUND TRANSFORMER ASSEMBLY UNITS

An underground transformer assembly unit consists of the installation of the transformer, its housing, warning sign, switches, over-current protective devices, grounding loop, and its hardware and leads with their connectors and supporting insulators. This unit also includes the installation of primary cable terminations but not of lightning arresters, fault indicators or ground rods, nor does it include any trenching. For pad-mount transformers, it does not include installation of the pad, drainable material, backfilling, compaction, or site preparation which are included in the pad assembly units. For submersible transformers it includes the installation of cable terminations of the enclosure and cover, of drainable material (when specified) [4] and the excavation.

Unit No.	Unit labor price

SECTION UK—UNDERGROUND SECONDARY AND SERVICE ASSEMBLY UNITS

An underground secondary and service assembly unit consists of the installation of the secondary or service cable terminal housing. It includes the installation of the power pedestal, stake (when required), mounting hardware, warning sign, directional marker, housing identification marking, and the cable identification tags. It does not include the installation of the cable terminations, ground rod, or pad, when required.

Unit No.	Unit labor price

SECTION UM—MISCELLANEOUS UNDERGROUND ASSEMBLY UNITS

A miscellaneous underground assembly unit consists of the installation of an additional unit needed in the Project for new construction, but not otherwise listed in the Proposal. This section includes the installation of the miscellaneous assembly units as shown on the respective underground construction drawings. Where miscellaneous units consist of or include the installation of a primary cable termination, the unit includes the preparation of the cable to accommodate the termination, the installation of the stress cone, and the connection of the cable to the terminal equipment. Pad assembly units are in this section and include the installation of the bedding, drainable material (when specified), cable slot, and site preparation, backfilling and tamping.

Unit No.	Unit labor price

SECTION UR—UNDERGROUND EXCAVATION ASSEMBLY UNITS

UR1–S (D) Plowing Assembly Unit, Soil—Consists of one (1) lineal foot of plowing in soil, measured parallel to the surface of the ground, to a specified depth (D), in inches, including the compacting, except as specifically provided for in other units. This unit includes all labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged during the plowing of the cable, except as specifically provided for in other units. **Note:** Where in the judgment of the Owner greater than normal difficulty will be involved in plowing because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T". This will be applicable only in those areas predesignated by the Owner on the detail maps herein. All plowing outside of the predesignated area on the map, regardless of the difficulty in placement actually experienced, will be inventoried as the regular UR1–S (D) units. If field conditions show the existence of rock to prevent the placing of the cable in soil to the depth required in the specifications the Owner may specify UR2–R units. Where more than one cable is to be installed in the slot, the UR1–S unit designation should be modified by a suffix corresponding to the number of cables installed. For example, UR1–S (D) 3c for 3 cables plowed at one time.

UR2–S (D&W) Trenching Assembly Unit, Soil—Consists of one (1) lineal foot of trenching in soil, measured parallel to the surface of the ground, to a specified depth (D) and width (W), in inches, including the excavation, and backfilling and compacting. This unit includes all labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. **Note:** Where in the judgment of the Owner greater than normal difficulty will be involved in trenching because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T". This will be applicable only in those areas predesignated by the Owner on the detail maps herein. Where more than one cable is to be installed in the trench, the regular UR2–S unit designation should be modified by a suffix corresponding to the construction drawing for the type of cable placement desired.

UR2–R (D&W) Trenching Assembly Unit, Rock—Consists of one (1) lineal foot of trenching in rock, measured parallel to the surface of the ground, to specified depth (D) and width (W), in inches, including the excavation, and backfilling and compacting to place cable to the depth specified in the Specifications. This unit will be specified by the Owner only when field conditions at the site show the existence of rock at a depth preventing the placing of the cable in soil to the depths required in the Specifications. This unit includes all labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the trench or cable bedding assembly units, when required.

UR–3 Cable Bedding Assembly Unit—Consists of the installation of one (1) lineal foot of a 2-inch bed of clean sand or soil placed in the trench under the cable and a 4-inch layer of clean sand or soil backfill over the cable to the width of the trench.

Note: The exact location and number of units shall be determined by the Owner after the trenches are open in those areas where rock or other conditions make special bedding necessary.

UR–4a Pavement Assembly Unit, Asphalt—Consists of the labor necessary to remove and restore one (1) lineal foot of asphalt pavement, measured along the route of the cable, including any trenching necessary to place the cable at the required depth. All work shall be performed in accordance with the requirements of State or local authorities.

UR–4c Pavement Assembly Unit, Concrete—Consists of the labor necessary to remove and restore one (1) lineal foot of concrete pavement, measured along the route of the cable, including any trenching necessary to place the cable at the required depth. All work shall be performed in accordance with the requirements of State or local authorities.

UR–5 ( ) Underground Pipe Crossing Assembly Unit—Consists of the installation of one (1) lineal foot of steel pipe, of the inside diameter, in inches, specified in the last digit of the assembly unit designation, installed in place. This unit includes the pushing of pipe and any excavation, backfilling and tamping necessary for the installation of the pipe. The pipe will be installed at the depth specified by the Owner. The installation of underground cable in the pipe is not included in this unit.

UR–6 Underground Nonpipe Crossing Assembly Unit—Consists of the labor in providing a hole in soil one (1) foot in length of a diameter sufficient to accommodate the cable to be installed therein. The depth of the hole below the surface of the ground shall be specified by the Owner. This unit includes any excavation, backfilling and tamping necessary for the installation. This unit may

[4] _____ Owner check here if drainable material is specified.

be used where the permanent installation of a steel pipe under the UR–5 unit is not required. The installation of underground cable in the pipe is not included in this unit.

Unit No.	Unit labor price

Construction Units—Line Changes

The general heading of Line Changes applies to the changing of existing lines or portions thereof from their existing phasing, wire size, and type to new phasing, wire size, and type and the removal of existing lines or portions thereof and replacing with new lines in close proximity thereto. In general line changes involve three types of assembly units as follows:

Section H—Conversion assembly units;

Section I—Removal assembly units;

Section N—New construction assembly units on existing lines or in replacing lines.

The assembly units that are included in Sections H, I, and N are defined by symbols and descriptions which follow together with the applicable descriptions included under New Construction. Where the descriptions are not correct or sufficiently explicit, or when special units are not covered by Construction Drawings, descriptions have been provided by the Owner in the respective sections.

Work included in these sections shall be performed under a schedule of deenergization and operating procedures as set forth by the Owner at the time of release of any Section involving work on existing lines. The Contractor will so plan and perform its work that it will be possible to safely reenergize all lines involved at the expiration of the time limits set up in the schedule to resume service to all consumers being served prior to deenergization. Prior to commencement of work each day on lines to be deenergized, and upon completion of work each day on such lines, the Contractor will notify the Owner thereof in writing or in such other manner as the circumstances permit.

SECTION H—CONVERSION ASSEMBLY UNITS

Conversion assembly units are pole-top assemblies and cover the furnishing of all labor for changing an existing assembly unit to a new assembly unit, utilizing certain items of materials of the existing assembly unit on poles to be left in place. Any materials removed from the existing assembly units which are not required in the construction of the conversion assembly unit are to be reused by the Contractor in the construction of other assembly units, or returned to Owner's warehouse, as directed by the Owner.

Conversion assembly units are specified by the prefix H with the new construction assembly unit designation shown first and the existing assembly unit designation shown last. For example, an H B1–A1 signifies the conversion of an existing A1 assembly unit to a B1 assembly unit (as was defined in the description of construction assembly units). In this instance the Contractor utilizes the existing pin-type insulator, single upset bolt and neutral spool and installs the additional crossarm, crossarm pins, braces, machine bolt, carriage bolts, lag screw, and insulator supplied by the Owner required for the new unit. The Contractor transports the pole-top pin and two machine bolts to the warehouse or uses them on the Project as directed by the Owner.

The Conversion assembly units also include the furnishing of all labor in the transferring, resagging and retying of conductors from one position on the pole to a different position on the pole where such transfers are required. Where replacement of conductor is required, the existing conductor will be removed under section I and the new conductor installed under section N. Where replacement of a pole is required, the existing pole and pole-top assembly will be removed under section I and the new pole and pole-top assembly will be installed according to section N and no H units will be involved.

Conversion assemblies are listed in three subsections for converting pole-top assemblies from single to V phase, single to three phase, and V to three phase. The following descriptions apply to only those conversion units not sufficiently explicit:

Unit	Description

Subsection H (B–A) 1 Phase to V Phase

Unit No.	Unit labor price

Subsection H (C–A) 1 Phase to 3 Phase

Unit No.	Unit labor price

Subsection H (C–B) V Phase to 3 Phase

Unit No.	Unit labor price

SECTION I—REMOVAL ASSEMBLY UNITS

Removal assembly units cover the furnishing of all labor for the removal of existing units of construction from existing lines, disassembling into material items, and all labor and transportation for the returning of all materials to the warehouse of the Owner in an orderly manner or transporting elsewhere to the site of the Project for reuse in the prosecution of this Contract as directed by the Owner.

The unit removal prices shall include all labor required to reinstall in accordance with specifications any conductors temporarily detached. The Contractor will reinstall at his own expense any other units removed by him for his own convenience. The removal units are specified by the prefix I and followed by the assembly unit designation of existing assembly unit to be removed. For example, an I–A1 signifies the removal of an A1 assembly unit. The following special notes apply to specific removal units:

a. Poles. All poles of the same height, regardless of pole class, are designated by the same unit. Thus an I–30-foot pole signifies the removal of a 30-foot pole of any class. The Contractor is not required under this unit to remove from the pole any ground wire or pole numbering attached to the pole. This unit includes the refilling and tamping of holes in a workmanlike manner unless they are to be reused.

b. Pole-top assemblies. The unit of removal of pole-top assemblies includes, in addition to the removal of the assembly itself, any necessary handling, resagging, and retying of conductors in those cases where an existing pole-top assembly will be removed and replaced by a new pole-top assembly and where any existing conductor is to be reused.

The unit of removal of pole-top assemblies also includes any holding or handling of mainline or tap conductors at tap lines, angles, and deadends where such is involved, and the reinstalling of such conductor in accordance with the Specifications; for example, an I–A5–4 will include the disconnection of the tap conductors, snubbing off the tap line at the nearest practical point and the reconnection and resagging of these tap conductors if necessary to the new tap assembly when installed. The new unit of construction, however, will be specified separately in Section N.

c. Conductor. The conductor removal unit covers the removal of 1,000 feet of conductor or cable and reeling or coiling it in a workmanlike manner in such a way that it can be reused by the Contractor or the Owner. The Owner will furnish to the Contractor reels if it is to be returned to the Owner's warehouse on reels. The removal unit for each size of conductor or cable is shown by the prefix I followed by D and the conductor or cable type; thus an I–D 6ACWC signifies the removal unit for 1,000 feet of 6 A Copperweld-copper conductor.

d. Guys. All guys regardless of length, type of attachment, or size of guy strand are specified by the same unit; thus an I–E signifies the removal of any guy.

e. Anchors. Only anchor rods are to be removed by the Contractor in anchor removal units. The anchors will be left in the ground; thus an I–F signifies the removal of any anchor rod. If the rod cannot be unscrewed, the end of the rod shall either be cut off or bent down so that the rod will be at least 18 inches below ground.

f. Transformers. The unit for removal of transformer assembly units is divided into two sections, (1) Conventional Transformer Assembly, and (2) Self-protected Transformer Assembly. Only one unit is specified for each type, and all sizes of transformers from 1 to 15 kVA within each group will be covered by the same unit. "Self-protected" refers to transformers where all protective equipment is mounted on or within the transformer. "Conventional" refers to transformers where protective equipment is mounted separately from the transformer. The unit is designated by the prefix I followed by the description of the unit to be removed; thus, I–G Conventional signifies the removal of a

conventional transformer assembly for any size transformer from 1 to 15 kVA.

g. Secondary units. The unit for removal of secondary assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of secondary conductor or cables where existing secondary conductor or cable is to be reused.

In addition, the unit for removal of the secondary assembly includes the handling or holding of any conductor at tap lines where such is involved, and the reinstalling of such tap conductor in accordance with the Specifications.

h. Service unit. The unit for removal of service assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of service conductor or cable where existing service conductor or cable is to be reused.

The following descriptions apply only to those removal units not sufficiently explicit:

Unit	Description
Unit No.	Unit labor price

SECTION N—NEW ASSEMBLY UNITS

The purpose of this section is to list complete new units of construction where such units are to be added to existing lines or installed in replacing lines.

The units as covered by this section are the same as the units described in Construction Units—New Construction, except that these units are prefixed by the letter N.

For example, an N40–6 unit covers the furnishing of all labor for the installation of a 40–6 pole either in an existing distribution line being operated by the Owner or in a new line being constructed to replace an existing distribution line being operated by the Owner.

The following descriptions apply only to those new units not sufficiently explicit:

Unit	Description
Unit No.	Unit labor price

Acceptance

The undersigned hereby accepts the foregoing Proposal of ___, dated ___, to construct the rural electric Project Line Extensions. 19

(Owner)

By _ __ President

Secretary

Date of Contract

[End of clause]

§ 1726.344 [Reserved].

§ 1726.345 Certificate of contractor and indemnity agreement (line extensions), REA Form 792b.

The closeout form in this section shall be used when required by this part.

Certificate of Contractor and Indemnity Agreement (Line Extensions)

_____, certifies that he is the _____ (title or designation), of _____ (name of contractor), the Contractor, in a contract dated _____ 19_____ entered into between the Contractor and _____ (name of REA Borrower) _____, the Owner, for the construction of a rural electric Project (hereinafter referred to as Project), which bears the Project Designation _____ 19_____ Line Extensions, and that he is authorized to and does make this Certificate and Indemnity Agreement on behalf of said Contractor in order to induce the Owner to make payment to the Contractor, in accordance with the provisions of the said contract.

Undersigned further says that all persons who have furnished labor in connection with the Section of the Project represented by the Final Inventory dated _____, in the amount of $_____, have been paid in full; that all manufacturers, materialmen and subcontractors which furnished any materials or services, or both, for the said Section of the Project have been paid in full; that no lien has been filed against the Project and no person has any right to claim any lien against the Project.

Undersigned further says that if the Owner pays the Contractor the contract price for the said Section of the Project the Contractor will indemnify and hold harmless and does hereby undertake and agree to indemnity and hold harmless the Owner from any claim or lien arising out of the negligence or other fault of the Contractor in respect of the performance of the contract which may have been or may be filed against the Owner.

_____ Signature of Contractor (President, Vice-President, Partner or Owner, or, if signed by other than one of foregoing. Power of Attorney signed by one of the foregoing should be attached. Indicate applicable designation.)

[End of clause]

§ 1726.346 Supplemental contract for additional project, REA Form 792c.

The form in this section shall be used when required by REA Form 201, 790, or 792.

Supplemental Contract for Additional Project

Date _____

TO: _____ Contractor

Pursuant to Article I, Section 2 of the Contractor's Proposal dated _____, for the rural electric Project _____, we request that you construct Additional Project No. _____, consisting of approximately the following system improvement and line extension work:

The Additional Project is to be constructed in accordance with all of the provisions of the Contractor's Proposal, except:

1. The time for completion of the Additional Project shall be _____.

2. The prices for Construction Units for the Additional Project are attached.

Please indicate your acceptance of the foregoing by signing below, return two signed copies and retain one copy.

Sincerely,

_____ Owner

By _____ President, Vice President (strike out inapplicable designation.)

ACCEPTANCE:

_____ Contractor

By _____ President, Vice President, Partner (strike out inapplicable designation.)

Date _____

[End of clause]

§§ 1726.347—1726.349 [Reserved].

§ 1726.350 Construction contract amendment for payment, REA Form 800.

The amendment form in this section shall be used when required by this part.

Construction Contract Amendment for Payment

DATE: _____

_____ (Owner)

_____ (Address)

Project: _____

You are requested to amend the Construction Contract between the undersigned Contractor and you, as Owner, dated _____ for the above Project, so that, notwithstanding any provision of the Construction Contract to the contrary, the Owner shall make payment to the Contractor of ninety (90%) percent of the invoice cost to the Contractor of the following equipment or materials delivered to the site of the Project but not installed:

Item of equipment or materials	No. of items	Invoice price		
		Per item	Extended price	
			Total	90%

Total Amount of Amendment _____

A. The Contractor warrants that the above equipment and materials are:

1. Actually on the site of the Project and will remain thereon until installed in the Project.

2. To be incorporated into the Project not sooner than sixty (60) days after the date of this request.

3. In conformance with specifications and not in excess of the quantity required for the Project.

4. Properly stored and protected from weather, theft and other hazards.

5. Capable of being easily inventoried as to the original quantity as well as the quantity remaining each month.

B. The Contractor agrees to furnish to the Owner releases of liens properly executed by

suppliers for the delivered equipment and materials upon which payment is being made.

C. If the Owner accepts and the Administrator approves this Amendment, the Owner agrees to make payment to the Contractor within thirty (30) days after such approval by the Administrator, provided the Contractor shall have theretofore furnished to the Owner the releases of liens required pursuant to Section B of this Amendment. There shall be deducted, on account of such payment, from any amount which may be due the Contractor pursuant to estimates computed in accordance with the provisions of Article III, section 1 (a) of the Construction Contract an amount equal to the invoice cost to the Contractor of equipment and materials paid for pursuant to this Amendment and installed by the Contractor during the period to which the estimate relates.

D. Upon the making of payment hereunder, the title to the equipment and materials in respect of which payment is made shall pass to the Owner, but the risk of loss shall be borne by the Contractor until completion of construction as provided in Article IV, Section I of the Construction Contract.

Sincerely yours,

Contractor: _____

By: _____

Agreed to: _____ (Surety)

By: _____ (Attorney in Fact)

Date: _____

Accepted subject to the approval of the Administrator:

Owner: _____

By: _____ (President)

Date: _____

[End of clause]

§ 1726.351 Electric system construction contract (labor and materials), REA Form 830.

The contract form in this section shall be used when required by this part. This form refers to guide drawings, which do not contain requirements, and, hence, are not included in this part. The guide drawings are included in the printed form available from GPO (See § 1726.300.).

Electric System Construction Contract (Labor and Materials)

Notice And Instructions To Bidders

1. Sealed proposals for the construction, including the supply of necessary labor, materials and equipment, of a rural electric project of _____ (hereinafter called the "Owner") to be known as _____ Project will be received by the Owner on or before _____ o'clock _____ M., _____, 19_____, at its office at _____ at which time and place the proposals will be publicly opened and read. Any proposals received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. Description of Project: The Project will consist of approximately:

Overhead Distribution Line Construction

_____ miles of _____ kV Single Phase Lines

_____ miles of _____ kV V-Phase Lines

_____ miles of _____ kV Three-Phase Lines

_____ miles of secondary on secondary poles

_____ miles of services for _____ consumers

Underground Distribution Facilities

_____ miles of _____ kV Single-Phase Construction

_____ miles of _____ kV V-Phase Construction

_____ miles of _____ kV Three-Phase Construction

_____ miles of _____ Volt Secondary and Service

Construction for _____ Consumers.

Distribution Line Changes, Conversion, and Removal

_____ miles of _____

Transmission Line Construction

_____ miles _____ kV; _____ miles _____ kV

_____ miles _____ kV underbuild

Substations and Other Major Facilities

_____ kVA _____ Voltage

_____ Name

This Project is located in _____ Counties, in the State(s) of _____ all as more fully described in the Plans, Specifications, Construction Drawings, and Contractor's Proposal therefore hereinafter referred to.

3. Work on energized lines. Unless stated below all construction work including attachments to existing poles and line changes, is to be done with the line deenergized. The hours during which existing lines will be deenergized are shown in the Contractor's Proposal. Approximately _____ miles of the line changes are to be made with the lines energized and such lines are in the following locations or areas: _____ and are more fully described in the Plans, Specifications, and Contractor's Proposal. For work in these locations the Bidder must provide personnel capable of working on energized lines. All such work shall be performed to meet at least the safety rules and regulations prescribed by the Owner for its own employees including the use of rubber gloves, hot sticks and associated protective equipment, a copy of which rules and regulations may be examined at the office of the Owner.

4. Owner-furnished materials. The unit prices in the Contractor's Proposal should include provisions for Owner-Furnished Materials since as stated in Article I, Section 3 of the Contractor's Proposal, the value of the Owner-Furnished Materials, if any, will be deducted from payments to the Bidder for completed Construction Units.

5. Obtaining and transferring documents. The Plans, Specifications and Construction Drawings, together with all necessary forms and other documents for bidders may be obtained from the Owner, or from the Engineer _____ at the latter's office at _____ upon the payment of ten dollars ($10), which payment will not be subject to refund. The Plans, Specifications, and Construction Drawings may be examined at the office of the Owner or at the office of the Engineer. A copy of the Loan Contract (if the Project is to be financed, in whole or in part, pursuant to a loan contract) between the Owner and the United States of America acting through the Administrator of the Rural Electrification Administration and of the loan contract between the Owner and any other lender may be examined at the office of the Owner. Each set of Plans, Specifications and Construction Drawings will have a serial number, given by the Engineer, and the number of each set with the name of the purchaser will be recorded by the Engineer. Bids will be accepted only from the original purchaser.

6. Manner of submitting proposals. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated.

7. Familiarity with conditions. Prior to the submission of the Proposal the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Plans, Specifications, Construction Drawings, and forms of Contractor's Proposal and Contractor's Bond on file with the Secretary of the Owner and with the Engineer, and shall become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project, general local conditions and all other matters that may affect the cost and time of completion of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors, and the so-called "Kick-Back Statute" (48 State. 948) and regulations issued pursuant thereto.

8. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

9. Alternate designs. The Owner reserves the right to confine its consideration of the several bids to one type of design regardless of alternate types of design which may be specified in the Plans and Specifications and offered in the Proposals.

10. Proposals for distribution and transmission facilities. If the Project includes both distribution and transmission facilities, bidders shall bid on both of the facilities and the Owner will evaluate the Proposals on the basis of low total bid for both facilities.

11. The Time for Completion of Construction of the Project shall be as specified by the Engineer in the Proposal.

12. Bid bond. Each Proposal must be accompanied by a Bid Bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each

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Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such Bid Bond or check in consideration of the Owner's receiving and considering such Proposals, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.

13. Contractor's bond. The successful Bidder will be required to execute two additional counterparts of the Proposal and, for a Contract in excess of $100,000, to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.

14. Failure to furnish contractor's bond. Should the successful Bidder fail or refuse to execute such counterparts or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check, the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project. The term "Successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts or to furnish a satisfactory Contractor's Bond (where required.)

15. Contract is entire agreement. The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modifications thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

16. Minor irregularities. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the acceptance thereof by the Owner.

17. Balanced bid. The Owner reserves the right to reject any or all Proposals. The attention of Bidders is specially called to the desirability of a proper balance between prices for labor and materials and between the total prices for the respective Construction Units. Lack of such balance may be considered as a reason for rejecting a Proposal.

18. Discrepancy in unit prices. Where the unit prices in the Contractor's Proposal are separated into three columns designated as "Labor," "Materials," and "Labor and Materials," and where a discrepancy appears between the sum shown in the "Labor and Materials" column and the correct addition of the sums appearing in the "Labor" column and the "Materials" column, the correct addition of the sums appearing in the "Labor" column and the "Materials" column shall control.

19. Definition of terms. The terms *Administrator, Engineer, Supervisor, Project, Completion of Construction,* and *Completion of the Project* as used throughout this Contract shall be as defined in Article VI, Section 1, of the Contractor's Proposal.

20. The owner represents:

a. If by provisions of the Contractor's Proposal the Owner shall have undertaken to furnish any materials for the construction of the Project, such materials are on hand at locations specified or if such materials are not on hand they will be made available by the Owner to the successful Bidder at the locations specified before the time such materials are required for construction.

b. All easements and rights-of-way, except as shown on maps included in the Plans and Specifications, have been obtained from the owners of the properties across which the Project is to be constructed (including tenants who may reasonably be expected to object to such construction). The remaining easements and rights-of-way, if any, will be obtained as required to avoid delay in construction.

c. All staking, except as shown on the maps included in the Plans and Specifications, has been completed and sufficient staking crews will be available to maintain stakes at all times in advance of construction.

d. Where underground distribution construction is required, permission has been obtained from state and local highway and road authorities to install underground distribution power facilities and set pedestals, if any, on the highway and road right-of-way in the Project area. Notwithstanding such permission granted to the Owner, each Bidder is responsible for ascertaining that the equipment, methods of construction, and repair proposed to be used on the Project will meet all requirements of public authorities having jurisdiction over highway and road right-of-way. The successful Bidder will be required to furnish proof satisfactory to the Owner of compliance with this requirement. If required by highway or road authorities, the successful Bidder will furnish to such authorities a bond or meet other guaranty requirements to assure the prompt repair of all damages to highways and roads and their associated rights-of-way caused by the Bidder during construction of the Project. This requirement is in addition to and independent of the Contractor's Bond required under this Contract. The acceptance of a bid from any Bidder is not to be construed as approval of the Bidder's equipment or proposed construction methods by or on behalf of the highway and road authorities. Bidders may obtain information concerning the requirements of highway and road authorities by communicating with the following _____.

e. All funds necessary for prompt payment for the construction of the Project will be available.

If the Owner shall fail to comply with any of the undertakings contained in the foregoing representation or if any of such representations shall be incorrect, the Bidder will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representation; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing; provided, however, that such extension, if any, of the time of completion shall be the sole remedy of the Bidder for the Owner's failure, because of conditions beyond the control and without the fault of the Owner, to furnish materials in accordance with subparagraph a. above.

Owner _____

By _____

_____, 19____

Contractor's Proposal

(Proposal shall be submitted in ink or typewritten)

To: _____ (hereinafter called the "Owner")

Article I—General

Section 1. Offer to Construct. The undersigned (hereinafter called the "Bidder") hereby proposes to receive and install such materials and equipment as may hereinafter be specified to be furnished by the Owner, and to furnish all other materials and equipment, all machinery, tools, labor, transportation and other means required to construct the rural electric project _____ in strict accordance with the Plans, Specifications and Construction Drawings for the prices hereinafter stated.

The total length of the project lines shall be determined by taking the sum of all straight horizontal span distances between pole stakes or from center to center of poles, or centerline of structures, carrying conductors, plus the length of service drops, if any, measured horizontally from center of last pole to the point of attachment to the consumer's building.

Section 2. Materials and Equipment. The Bidder agrees to furnish and use in the construction of the Project under this Proposal, in the event the Proposal is accepted, only such "fully listed" and "conditionally listed" materials and equipment as are included in the current "List of Materials Acceptable for Use on Systems of REA Electrification Borrowers," including revisions adopted prior to the Bid Opening. The use of "conditionally listed" materials and equipment requires prior consent by the Owner or Engineer.

For distribution lines, the Bidder further agrees to furnish and use guy wire with ASTM Class _____ (Engineer to insert A or B) zinc coating.

All leads on equipment such as transformers, reclosers, etc., shall be of #6 minimum copper conductivity using _____ (Engineer to insert standard soft drawn copper or aluminum alloy) conductor. All conductor ties on insulators shall be of the materials and methods shown in the following Tying Guide Drawings: _____ (Engineer to insert appropriate drawing numbers).

Ground rods and butt-type pole grounding plates shall be _____ (Engineer to insert galvanized steel or copper).

Underground primary cable shall have _____ coated copper neutral (Engineer to insert round or flat).

For transmission lines, the Bidder further agrees to furnish and use guy wire, overhead ground wire, and pole ground wire with ASTM Class ___ (Engineer to insert A, B, or C) zinc coating. Guy wire shall be the same size and grade as the overhead ground wire. Where overhead ground wire is not specified, the guy wire shall be _____ size, _____ grade.

The Bidder further agrees to furnish and use poles, crossarms, and other timber products, of which the physical characteristics, method of treatment, type of preservative, instructions on inspection and general procedure shall be in accordance with REA standards and requirements.

Crossarms shall be _____ (Engineer to insert Douglas fir or Southern Yellow Pine), treated with _____ (Engineer to insert type of preservative.)

The Bidder agrees that the prices for poles, crossarms, and other timber products set forth herein shall include the cost of preservative treatment and inspection, insured warranty, or quality assurance. The Bidder further agrees to obtain from the supplier inspection and treatment reports or insured warranties, for checking against the delivered timber, and to submit such reports or warranties to the Owner as one of the prerequisites to monthly and final payments.

Section 3. Owner-Furnished Materials. The Bidder understands and agrees that, if this Proposal is accepted, the Owner will furnish to the Bidder the material set forth in the attached "List of Owner's Materials on Hand" (see page ____) and the Bidder will give a receipt (see page ____) therefore in writing to the Owner. The Bidder, further, will on behalf on the Owner accept delivery of such of the materials set forth in the attached "List of Materials Ordered by Owner but Not Delivered" (see page ____) as may be subsequently delivered and will promptly forward to the Owner for payment the supplier's invoice, together with the Bidder's receipt in writing for such materials. The materials referred to are on hand at, or will be delivered to, the locations specified in the List and the Bidder will use such materials in constructing the Project.

The value of the completed Construction Units certified by the Bidder each month pursuant to Article III, Section 1.a of the Proposal shall be reduced by an amount equal to the value of the materials installed by the Bidder during the preceding month which have been furnished by the Owner or the delivery of which has been accepted by the Bidder on behalf of the Owner. Only ninety percent (90%) of the remainder shall be paid prior to the Completion of the Project. The value of such materials shall be computed on the basis of the unit prices stated in the Lists. Materials, if any, not required for the Project, which have been furnished to the Bidder by the Owner or delivery of which has been accepted by the Bidder on behalf of the Owner, shall be returned to the Owner by the Bidder upon completion of construction of the Project. The value of all materials not installed in the Project nor returned to the Owner shall be deducted from the final payment to the Bidder.

The Owner shall not be obligated to furnish materials in excess of the quantities, size, kind and type set forth in the attached Lists. If the Owner furnishes, and the Bidder accepts, materials in excess thereof, the values of such excess materials shall be their actual cost as stated by the Owner.

Information on the shipping schedules of materials on the "List of Materials Ordered by Owner But Not Delivered" will be furnished to the Bidder as necessary during progress of the work.

Upon delivery the Bidder shall promptly receive, unload, transport and handle all materials and equipment on the "List of Materials Ordered by Owner But Not Delivered" at its expense and shall be responsible for demurrage, if any.

Section 4. Purchase of Materials Not Furnished By Owner. The Bidder will purchase all materials and equipment (other than Owner-furnished materials) outright and not subject to any conditional sales agreements, bailment, lease or other agreement reserving unto the seller any right, title or interest therein.

Section 5. Proposal on Unit Basis. The Bidder understands and agrees that the various Construction Units on which bids are made are defined by symbols and descriptions in this Proposal, that all said bids are on a unit basis, and that the Owner may specify any number or combination of Construction Units that the Owner may deem necessary for the construction of the Project. Separate Construction Units are designated for each different arrangement which may be used in the construction of the Project. This Proposal is based on a consideration of each unit in place and includes only the materials listed on the corresponding Construction Drawings or description of unit where no drawing exists.

Section 6. Description of Contract. The notice and Instructions to Bidders and Plans attached hereto and made a part hereof, and the Specifications and Construction Drawings set forth in:

REA Bulletin 50–3, Specifications and Drawings for 12.5/7.2 kV Line Construction;

REA Form 803, Specifications and Drawings for 14.4/24.9 kV Line Construction;

REA Form 806, Specifications and Drawings for Underground Electric Distribution;

REA Bulletin 50–2, REA Specifications T–805A, Electric Transmission Specifications and Drawings, 34.5 kV through 69 kV;

REA Bulletin 50–1, REA Specification T–805B, Electric Transmission Specifications and Drawings for 115 kV through 230 kV;

as applicable, which by this reference are incorporated herein, together with the Proposal and Acceptance constitute the Contract. The Plans, consisting of maps and special drawings, and approved modifications in standard specifications are attached hereto and identified as follows:

_____.

Section 7. Familiarity with Conditions. The Bidder has made a careful examination of the site of the Project to be constructed and of the Plans, Specifications, Construction Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required before and during the construction of the Project, and has become acquainted with the labor conditions, state and local laws, and regulations which would affect work on the proposed construction.

Section 8. License. The Bidder warrants that a Contractor's License is ____ is not required, and if required it posses Contractor's License No. _____ for the State of _____ in which the Project is located and said license expires on _____, 19____.

Section 9. Warranty of Good Faith. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.

Section 10. Warranty of Financial Resources. The Bidder warrants that it possesses adequate financial resources and agrees that in the event this Proposal is accepted and a Contractor's Bond is required, it will furnish a Contractor's Bond in the form attached hereto, in a penal sum not less than the maximum Contract price, with a surety or sureties listed by the United States Department of Treasury as Acceptance Sureties.

In the event that the surety or sureties on the performance bond delivered to the Owner contemporaneously with the execution of the Contract or on any bond or bonds delivered in substitution thereof or in addition thereto shall at any time become unsatisfactory to the Owner or the Administrator, the Bidder agrees to deliver to the Owner another or an additional bond.

Section 11. Taxes. The unit prices for Construction Units in this Proposal include provisions for the payment of all monies which will be payable by the Bidder or the Owner in connection with the construction of the Project on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies and equipment, or services or labor of installation thereof, to be incorporated in the Project as part of such Construction Units. The Bidder agrees to pay all such taxes, except taxes upon the sale, purchase or use of owner-furnished materials and it is understood that, as to owner-furnished materials, the values stated in the attached "List of Owner's Materials on Hand" and "List of Materials Ordered by Owner But Not Delivered" include taxes upon the sale, purchase or use of owner-furnished materials, if applicable. The Bidder will furnish to the appropriate taxing

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authorities all required information and reports pertaining to the Project, except as to the Owner-furnished materials.

Section 12. Changes in Quantities. The Bidder understands and agrees that the quantities called for in this Proposal are approximate, and that the total number of units upon which payment shall be made shall be as set forth in the inventory. If the Owner changes the quantity of any unit or units specified in this Proposal by more than fifteen percent (15%) and the materials cost to the Bidder is increased thereby to an extent which would not be adequately compensated by application of the unit prices in this Proposal to the revised quantity of such unit or units, such change, to the extent of the quantities of such units in excess of such fifteen percent (15%) shall be regarded as a change in the construction within the meaning of Article II, Section 1(d) of this proposal.

LIST OF OWNER'S MATERIALS ON HAND

Item[1]	Description of material	Catalog No.	Quantity	Unit price	Extended price
Above Materials are Located at:					

[1] Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

LIST OF MATERIALS ORDERED BY OWNER BUT NOT DELIVERED

Item[1]	Supplier name and address	Scheduled delivery date	Description of material	Catalog No.	Quantity	Unit price	Extended price
Above Material to be Delivered to:							

[1] Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

Article II—Construction

Section 1. Time and Manner of Construction

a. The Bidder agrees to commence construction of the Project on a date (hereinafter called the "Commencement Date") which shall be determined by the Engineer after notice in writing from the Bidder that the Bidder has sufficient materials to warrant commencement and continuation of construction, but in no event will the Commencement Date be later than _____ calendar days after date of approval of the Contract by the Administrator. The Bidder further agrees to prosecute diligently and to complete construction in strict accordance with the Plans, Specifications and Construction Drawings within _____ (_____) calendar days (excluding Sundays) after Commencement Date: Provided, however, that the Bidder will not be required to dig holes, set poles, install anchors, install underground conduit, perform any plowing for the installation of underground cable, or dig trenches if there are more than six (6) inches of frost on the ground nor to perform any construction on such days when in the judgment of the Engineer snow, rain, or wind, or the results of snow, rain, or frost make it impracticable to perform any operation of construction; provided further that the Bidder will not be required to perform any plowing for the installation of underground cable on public roads or highways if there are more than two (2) inches of frost in the ground. To the extent of the time lost due to the conditions described herein and approved in writing by the Engineer, the time of completion set out above will be extended if the Bidder makes a written request therefore to the Owner as provided in subsection b of this Section 1.

b. The time for Completion of Construction shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Bidder, including Acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefore in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

c. The sequence of construction shall be as set forth below, the number or names being the designations of extensions or areas (hereinafter called the "Sections") corresponding to the numbers or names shown on the maps attached hereto, or if no Sections are set forth below, the sequence of construction shall be as determined by the Bidder, subject to the approval of the Engineer. _____

d. The Owner, acting through the Engineer may from time to time during the progress of the construction of the Project make such changes, additions or subtractions from the Plans, Specifications, Construction Drawings, List of Materials and sequence of construction provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefore to the Owner within (10) days after any such change is made. And provided further, that if the cost to the Bidder of construction of the project shall be materially increased by any such change or addition, the Owner shall pay the Bidder for the reasonable cost thereof in accordance with a Construction Contract Amendment signed by the Owner and the Bidder, but no claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefore to the Owner prior to the commencement of work in connection with such change or addition.

e. The Bidder will not perform any work hereunder on Sundays unless there is urgent need for such Sunday work and the Owner consents thereto in writing. The time for completion specified in subsection a of this Section 1 shall not be affected in any way by inclusion of this subsection nor by the Owner's consent or lack of consent to Sunday work hereunder.

Section 2. Environmental Protection. The Bidder shall perform work in such a manner as to maximize preservation of beauty, consideration of natural resources and minimize marring and scarring of the landscape and silting of streams. The Bidder shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures. The Bidder shall follow the criteria relating to environmental protection as specified herein by the Engineer.

Section 3. Tools, Equipment, and Qualified Personnel. The Bidder agrees that in the event this Proposal is accepted it will make available for use in connection with the proposed construction all necessary tools and equipment and qualified superintendents and foremen.

Section 4. Changes in Construction. The Bidder agrees to make such changes in construction previously erected in the Project by the Bidder as required by the Owner for prices arrived at as follows:

a. For substations and other units where only a portion of the complete unit is affected by the change, the compensation for such change shall be as agreed upon in writing by the Bidder and the Owner prior to the commencement of work in connection with such change.

b. For all other units, the compensation for such change shall be the reasonable cost thereof as agreed upon by the Bidder and the Owner, but in no event shall it exceed two (2) times the labor price quoted in the Proposal for the installation of the unit to be changed. Such compensation shall be in lieu of any other payment for the installation and removal of the original unit. (If a new or replacing unit is installed, payment for such new or replacing unit shall be made as shown in the final inventory.)

No payment shall be made to the Bidder for materials or labor involved in correcting errors or omissions on the part of the Bidder which result in construction not in accordance with the Plans and Specifications.

Section 5. Construction Not in Proposal. The Bidder also agrees that when it is necessary to construct units not shown in the Proposal it will construct such units for a price arrived at as follows:

a. The cost of materials shall be determined by the invoices.

b. The cost of labor shall be the reasonable cost thereof, but in no event shall it exceed an amount determined by calculating the ratio of the total labor costs to the total material costs in the section of the Proposal involved, and multiplying the cost of materials for the unit in question by this ratio: Provided, however, that in respect of sections H, M, and N, the ratio shall be calculated for only those units of the section which are similar to the new unit for which a price is to be determined.

Section 6. Supervision and Inspection.

a. The Bidder shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Bidder shall also employ, in connection with the construction of the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Bidder.

b. The Owner reserves the right to require the removal from the Project of any employee of the Bidder if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner or the Supervisor, if any, shall have the right to require the Bidder to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner or Supervisor; but the failure of the Owner or Supervisor to give any such directions shall not relieve the Bidder of its obligations to complete the work within the time and in the manner specified in this Proposal.

c. The construction of the Project and all materials and equipment used therein, shall be subject to the inspection, tests, and acceptance by the Owner and the Administrator and the Bidder shall furnish all information required by the Owner or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the Project. The Owner and the Administrator shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Bidder and of any subcontractor, relevant to the construction of the Project. The Bidder shall provide all reasonable facilities necessary for such inspection and tests and shall maintain an office at the site of the Project, with telephone service where obtainable and at least one office employee to whom directions and instructions of the Owner may be delivered. Delivery of such directions or instructions in writing to the employee of the Bidder at such office shall constitute delivery to the Bidder. The Bidder shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by the Owner, when any other inspection is made.

d. In the event that the Owner, or the Administrator, shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Bidder and the Bidder's Surety or Sureties, if any, to have an inspection made by an engineer approved by the Owner for the purpose of determining the exact nature, extent and location of such defects.

e. The Engineer may recommend to the Owner that the Bidder suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for satisfactory prosecution of the work or because of the failure of the Bidder to comply with any of the provisions of the Contract: Provided, however, that the Bidder shall not suspend work pursuant to this provision without written authority from the Owner so to do. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Bidder to comply with any of the provisions of this Contract. In the event that work is suspended by the Bidder with the consent of the Owner, the Bidder before resuming work shall give the Owner at least twenty-four (24) hours notice thereof in writing.

Section 7. Defective Materials and Workmanship.

a. The acceptance of any materials, equipment (except Owner-furnished materials) or any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, by and at the expense of the Bidder. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Bidder at the Bidder's expense. The Bidder shall not be entitled to any payment hereunder so long as any defective materials, equipment or workmanship in respect to the Project, of which the Bidder shall have had notice, shall not have been replaced or remedied, as the case may be.

b. Notwithstanding any certificate which may have been given by the Owner or the Engineer, if any materials, equipment (except Owner-furnished materials) or any workmanship which does not comply with the requirements of this Contract shall be discovered within one (1) year after Completion of Construction of the Project, the Bidder shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice in writing of the existence thereof shall have been given by the Owner. If the Bidder shall be called upon to replace any defective materials or equipment or to remedy defective workmanship as herein provided, the Owner, if so requested by the Bidder shall deenergize that section of the Project involved in such work. In the event of failure by the Bidder so to do, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case may be, and in such event the Bidder shall pay to the Owner the cost and expense thereof.

ARTICLE III—PAYMENTS AND RELEASE OF LIENS

Section 1. Payments to Bidder

a. Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Bidder for construction accomplished during the preceding calendar month on the basis of completed Construction Units furnished and certified to by the Bidder, recommended by the Engineer and approved by the Owner solely for the purposes of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of the Project shall be paid by the Owner to the Bidder prior to Completion of the Project: Provided, however, that at any time after work, which, in the sole determination of the Engineer, amounts to fifty percent (50%) of the maximum Contract price has been completed, the Owner may elect, in lieu of paying ninety percent (90%) of each such subsequent estimate, to pay each such subsequent estimate in full. Upon completion by the Bidder of the construction of the Project, the Engineer will prepare an inventory of the Project showing the total number and character of Construction Units and, after checking such inventory with the Bidder, will certify it to the Owner. Upon the approval by the Owner and the Administrator of a Certificate of Completion—Contract Construction, REA Form 187, showing the total cost of the construction performed, the Owner shall make payment to the bidder of all amounts

to which the Bidder shall be entitled thereunder which shall not have been paid: Provided, however, that such final payment shall be made not later than ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, unless withheld because of the fault of the Bidder.

b. The Bidder shall be paid on the basis of the number of Construction Units actually installed at the direction of the Owner shown by the inventory based on the staking sheets or structure lists; Provided, however, that the total cost shall not exceed the maximum Contract price for the construction of the Project as set forth in the Acceptance plus the costs of any additional change orders, unless such excess shall have been approved in writing by the Owner.

c. Notwithstanding the provisions of Section 1.a above, the Bidder may, by giving written notice thereof to the Owner, elect to receive payment in full for any Section of the Project upon:

(1) completion of such Section as certified by the Engineer and approved by the Owner;

(2) submission to the Owner of the releases of lien and the certificate referred to in Section 2 hereof;

(3) approval by the Owner of the inventory in respect of such Section; and

(4) submission to the Owner and the Administrator of the consent in writing by the Surety or Sureties, if any, on the Contractor's Bond to payment in full for such Section prior to Completion of the Project.

If no Sections are designated in Article II, section 1c, the term *Section* shall mean for purposes of this subsection c and Article IV, section 3b only, a part of the Project as designated by the Owner which represents at least twenty-five percent (25%) of the maximum Contract price as stated in Article III, Section 1, and which is capable of being energized and operated by the Owner.

d. Interest at the rate of ____ percent [1] (____%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date: provided the delay in payment beyond the due date is not ceused by any condition within the control of the Bidder. The due date for purposes of such monthly payment or interest on all unpaid balances shall be the fifteenth (15) day of each calendar month provided (1) the Bidder on or before the fifth (5) day of such month shall have submitted its certification of Construction Units completed during the preceding month and (2) the Owner on or before the fifteenth (15) day of such month shall have approved such certification. If, for reasons not due to the Bidder's fault, such approval shall not have been given on or before the fifteenth (15) day of such month, the due date for purposes of this subsection d shall be the fifteenth (15) day of such month notwithstanding the absence of the approval of the certification.

e. Interest at the rate of ____ percent [2] (____%) per annum shall be paid by the Owner to the Bidder on the final payment for the Project or any completed Section thereof, commencing fifteen (15) days after the due date. The due date for purposes of such final payment or interest on all unpaid balances shall be the date of approval by the Owner of all of the documents requiring such approval, as a condition precedent to the making of final payment, or ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, whichever date is earlier.

f. No payment shall be due while the Bidder is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Contract.

Section 2. Release of Liens and Certificate of Contractor. (See REA Form 224, Waiver and Release of Lien and REA Form 231, Certificate of Contractor). Upon the completion by the Bidder of the construction of the Project (or any Section thereof if the Bidder shall elect to receive payment in full for any Section when completed as provided above) but prior to final payment to the Bidder, the Bidder shall deliver to the Owner, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto from all manufacturers, material suppliers, and subcontractors furnishing services or materials for the Project or such Section and a certificate in the form attached hereto to the effect that all labor used on or for the Project or such section has been paid and that all such releases have been submitted to the Owner.

Section 3. Payments to Material Suppliers and Subcontractors. The Bidder shall pay each material supplier, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Bidder for and on account of materials furnished or construction performed by each material supplier or each subcontractor.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE BIDDER

Section 1. Protection to Persons and Property. The Bidder shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

a. The Bidder shall at no time and under no circumstances cause or permit any employee of the Bidder to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Notice and Instructions to Bidders.

b. The Bidder shall so conduct the construction of the Project as to cause the least possible obstruction of public highways.

c. The Bidder shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.

d. The Bidder shall do all things necessary or expedient to properly protect any and all parallel, converging and intersecting lines, joint line poles, highways and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways or other property are damaged in the course of the construction of the Project the Bidder shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

e. Where the right-of-way of the Project traverses cultivated lands, the Bidder shall limit the movement of its crews and equipment so as to cause as little damage as possible to crops, orchards or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during the construction of the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. Except as otherwise provided in the descriptions of underground plowing and trenching assembly units, the Bidder shall not be responsible for loss of or damage to crops, orchards or property (other than livestock) on the right-of-way necessarily incident to the construction of the Project and not caused by negligence or inefficient operation of the Bidder. The Bidder shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by the construction of the Project. The right-of-way for purposes of this said section shall consist of an area extending _____ feet on both sides of the center line of the poles along the route of the Project lines, plus such area reasonably required by the Bidder for access to the route of the Project lines from Public roads to carry on construction activities.

f. The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Bidder. The Bidder shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Bidder by reason of any act of God or other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

g. Any and all excess earth, rock, debris, underbrush and other useless materials shall be removed by the Bidder from the site of the Project as rapidly as practicable as the work progresses.

h. Upon violation by the Bidder of any of the provisions of this section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do the Owner may correct such violation at the Bidder's expense: Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

i. The Bidder shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

j. The Bidder shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the Owner that proper authorization has been received from the owner of the property, and the Bidder shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on its land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

k. The Bidder will furnish, prior to the commencement of underground distribution construction, proof, satisfactory to the Owner, of compliance with requirements of highway and road authorities having jurisdiction, including without limitation, the furnishing of a bond or other guaranty, and approval by such authorities of the equipment and methods of construction and repair to be used by the Bidder.

Section 2. Insurance. The Bidder shall take out and maintain throughout the period of this Agreement the following types and minimum amounts of insurance:

a. Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million each occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form. The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Delivery of Possession and Control to Owner.

a. Upon written request of the Owner the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1f hereof with respect to such portion of the Project so delivered to the Owner shall be terminated; Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials and workmanship as contained in Article II, Section 6 hereof.

b. Where the construction of a Section as hereinbefore defined in Article II, Section 1c and Article III, Section 1c shall have been completed by the Bidder, the Owner agrees, after receipt of a written request from the Bidder, to accept delivery of possession and control of such Section upon the issuance by the Engineer of a written statement that the Section has been inspected and found acceptable by the Engineer. Upon such delivery of the possession and control of any such Section to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1f hereof with respect to such Section so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials or workmanship as contained in Article II, Section 6 hereof.

Section 4. Energizing the Project.

a. Prior to Completion of the Project the Owner, upon written notice to the Bidder may test the construction thereof by temporarily energizing any portion or portions thereof. During the period of such test the portion or portions of the Project so energized shall be considered as within the possession and control of the Owner and governed by the provisions of Section 3 of this Article. Upon written notice to the Bidder by the Owner of the completion of such test and upon deenergizing the lines involved therein said portion or portions of the Project shall be considered as returned to the possession and control of the Bidder unless the Owner shall elect to continue possession and control in the manner provided in Section 3 of this Article.

b. The Owner shall have the right to energize permanently any portion or portions of the Project delivered to its possession and control pursuant to the provisions of Section 3 of this Article.

Section 5. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Bidder shall be transferred and assigned to the Owner prior to the time the Bidder receives final payment.

ARTICLE V—REMEDIES

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the Surety or Sureties, if any, upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof satisfactory to both the Owner and the Administrator shall be made by the Bidder or

[1] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued.

[2] See Footnote 1.

its Surety or Sureties, if any, the Owner may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its Surety or Sureties, if any, shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third persons in connection with this Contract and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Liquidated Damages. The time of the Completion of Construction of the Project is of the essence of the Contract. Should the Bidder neglect, refuse or fail to complete the construction within the time herein agreed upon, after giving effect to extensions of time if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder the sum of _____ dollars (_____) per day for each and every day that such construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full: Provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provisions of Section 2 of this Article shall be the exclusive measure of damages for failure by the Bidder to complete the construction of the Project within the time herein agreed upon.

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions.

a. The term *Administrator* shall mean the Administrator of the Rural Electrification Administration of the United States of America and his duly authorized representative or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

b. The term *Engineer* shall mean the Engineer employed by the Owner, to provide engineering services for the Project and said Engineer's duly authorized assistants and representatives.

c. The term *Supervisor* shall mean the person, if any, appointed by the Administrator as the representative of the Government under the provisions of the Loan Contract providing for such appointment in special cases. The term is limited to such special representative of the Government, if any, who is responsible exclusively to the Administrator and does not refer to the Manager or any other person employed by the Owner and responsible to it.

d. The term *Project* shall mean the rural electric system, or portion thereof, described in the Plans and Specifications, Construction Drawings.

e. The term *Completion of Construction* shall mean full performance by the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of (1) Releases of Liens and Certificate of Contractor under Article III, section 2 hereof, (2) the inventory referred to in Article III, section 1 hereof, and (3) other final documents. The term *Completion of the Project* shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion, signed by the Engineer and approved in writing by the Owner, shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico, or Canada: provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Seller agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3. Patent Infringement. The Bidder shall hold harmless and indemnify the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 4. Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Bidder.

Section 5. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. 287, 1001, as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental Agencies having jurisdiction in the premises.

Section 6. Equal Opportunity Provisions.

(a) Bidder's Representations.

The Bidder represents that:

It has _____, does not have _____, 100 or more employees, and if it has, that it has _____, has not _____ furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(b) Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering egency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

(c) Certificate of Nonsegregated Facilities. The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term *segregated facilities* means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 7. Franchises and Rights-of-Way. The Bidder shall be under no obligation to obtain or assist in obtaining: Any franchises, authorizations, permits or approvals required to be obtained by the Owner from Federal, State, County, Municipal or other authorities; any rights-of-way over private lands; or any agreements between the Owner and third parties with respect to the joint use of poles, crossings, or other matter incident to the construction and operation of the Project.

Section 8. Nonassignment of Contract. The Bidder shall perform directly and without subcontracting not less than twenty-five percent (25%) of the construction of the Project, to be calculated on the basis of the total Contract price. The Bidder shall not assign the Contract effected by an acceptance of this Proposal or any interest in any funds that may be due or become due hereunder or enter into any contract with any person, firm or corporation for the performance of the Bidder's obligations hereunder or any part thereof, without the approval in writing of the Owner and of the Surety or Sureties, if any, on any bond furnished by the Bidder for the faithful performance of the Bidder's obligations hereunder. If the Bidder, with the consent of the Owner and any Surety or Sureties on the Contractor's Bond or Bonds, shall enter into a subcontract with any subcontractor for the performance of any part of this Contract, the Bidder shall be as fully responsible to the Owner and the Government for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it.

Section 9. Extension to Successors and Assigns. Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto.

Section 10. Contractor. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

_____ (Bidder)
By _____ (President)
_____ (Address)
ATTEST: _____ (Secretary)
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Distribution Construction Units—New Construction

Section 1—Pole Units

A pole unit consists of one pole in place. It does not include pole-top assembly unit or other parts attached to the pole. The first two digits indicate the length of the pole; the third digit shows the classification per ANSI (Example: 35–5 means a pole 35 feet long, class 5.)

Species of Timber: _____

Kind of Preservative: (Check one)

1. Creosote ____; 2. Pentachlorophenol ____; 3. Copper Naphthenate ____; 4. Waterborne preservative–CCA ____ ACZA ____

Method of Treatment: (Check one)

1. Pressure _____; 2. Thermal Process _____

Pole Plan Under Which the Poles are to be Furnished: (Check one)

1. Insured Warranted ____; 2. Independently Inspected ____; 3. Quality Assured ____; 4. Either Insured Warranted, Independently Inspected, or Quality Assured ____

(Engineer to complete above)

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	

Total, Section 1—_____

Section A—Single Phase Pole Top Assembly Units

A pole top assembly unit consists of the hardware, crossarms, and their appurtenances, insulators, etc., except tie wire, required to support the primary conductors. It does not include the pole. Crossarm pins include washer, nut, and locknut.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	

Total, Section A—_____

Section B—V Phase Pole Top Assembly Units

A pole top assembly units consists of the hardware, crossarms, and their appurtenances, insulators, etc., except tie wire, required to support the primary conductors. It does not include the pole. Crossarm pins include washer, nut, and locknut.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	

Total, Section B—_____

Section C—Three Phase Pole Top Assembly Units

A pole top assembly unit consists of the hardware, crossarms, and their appurtenances, insulators, etc., except tie wire, required to support the primary conductors. It does not include the pole. Crossarm pins include washer, nut, and locknut.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	

Total, Section C—_____

Section D—Conductor Assembly Units

A conductor assembly unit consists of 1,000 feet of conductor or cable for primaries, secondaries or services, and includes tie wires, sleeves for splicing, connectors, and armor rods with clips or armor wire where necessary.

Tree trimming necessary for installing services and secondaries on poles not carrying primary line is included with the conductor assembly unit and shall be performed in accordance with the directions of the Engineer. The service shall be connected to the secondary or transformer and 2 feet of conductor or cable shall be left for connecting to the consumer's service entrance. In computing the compensation to the Bidder for conductor assembly units only the horizontal distance between conductor supports or pole stakes shall be used. The conductor or cable sizes and types listed are the manufacturer's designation.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
D					

Total, Section D—_____

Section E—Guy Assembly Units

A guy assembly unit consists of the hardware and wire, and guy insulator where necessary. An overhead guy assembly consists of an overhead guy, a pole, and a down guy, each of which is listed separately. Guy markers are designated separately.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
E					

Total, Section E—_____

Section F—Anchor Assembly Units

An anchor assembly unit consists of the anchor with rod complete, ready for attaching the guy wire.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
F					

Total, Section F—_____

Section G—Transformer Assembly Units

A transformer assembly units consists of the transformer, its protective equipment, and its hardware and leads with their connectors and supporting insulators and pins. This units does not include the pole top, secondary, service, or grounding assemblies.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	

Total, Section G—_____

Section J—Secondary Assembly Units

A secondary assembly unit consists of the hardware, insulators, etc., to support the secondary conductors or cable. It does not include the secondary conductor or cable, or any hardware, insulators, etc. required to support service conductors or cable.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
J					

Total, Section J—_____

Section K—Service Assembly Units

A service assembly unit consists of the hardware, insulators, etc., required to support the service conductors or cable. It does not include the service conductor or cable, or any hardware, insulators, etc., required to support secondary conductors or cable.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
K					

Total, Section K—_____

Section M—Miscellaneous Assembly Units

A miscellaneous assembly unit consists of an additional unit needed in the Project for new line construction but not otherwise listed in the Proposal. This section includes grounding assemblies consisting of the conductor, ground rod, grounding plate, connectors and clamps as shown on the respective drawings for the various types. It also includes fuse cutouts, reclosers, sectionalizers, switches capacitors, regulators, metering and other assembly units.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
M					

Total, Section M—_____

Section R—Right-of-Way Clearing Units

R1–10. The unit is 1,000 feet in length and 10 feet in width (to be measured on one side of the pole line) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line of poles carrying primary conductors of the width specified. This unit does not include clearing or trimming associated with secondaries or services which is included with conductor units. The segmental length of actual clearing shall be measured in a straight line parallel to the transmission centerline using the maximum dimension of foliage cleared and projected to the ground line. All trees and underbrush across this width of the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing. Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000, shall give the number of 1,000-foot R1–10 units of clearing. This unit includes the removal or topping, at the option of the Bidder, of danger trees outside of the right-of-way when so designated by the Engineer. (Danger trees are defined as dead or leaning trees which, in falling, will affect the operation of the line.) The Bidder shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Engineer.

R1–20. This unit is identical with R1–10 except that the width is 20 feet (to be measured 10 feet on each side of the pole line).

R1–30. This unit is identical with R1–10 except that the width is 30 feet (to be measured 15 feet on each side of the pole line).

R1–40. This unit is identical with R1–10 except that width is 40 feet (to be measured 20 feet on each side of the pole line). RC1–10, RC1–20, RC1–30, RC1–40. These units are identical to the respective R1 units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

Additional Requirements (When specifying R1 units denote type of disposal (A or B).)

A. Trees, brush, branches and refuse shall, without delay, be disposed of by one of the following methods as the Engineer will direct (Engineer to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly, and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Engineer but in no case shall it be required to be less than _____ (_____) feet. Brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____

Unit No.	Number of units	Unit Price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
R					

Total, Section R—_____

Section UD—Underground Cable Assembly Units

An underground cable assembly unit consists of 1,000 feet of cable for underground primaries, secondaries or services. It does not include the conduit, plowing, trenching and backfilling, or the termination of the primary cable which are provided for in other assembly units. It includes the termination, connection and sealing of secondary and service cables and conductors as shown in the specifications and construction drawings, and all primary, secondary and service cable splices (buried cable may be spliced only when and where permitted by the Owner[3 4].) In computing the compensation to the Bidder for underground cable assembly units, only the distance between stakes, paralleling the cable shall be used. The number of units so computed will include all cable installed in place in all specified trenches, risers, conduits, crossings, manholes, transformers, terminal housings and meter boxes.[5] The conductor or cables listed are the manufacturer's designation of types, size, voltage rating and material. The Bidder and the Owner shall jointly perform cable acceptance tests on installed cable in accordance with the specifications using test equipment furnished by the _____. (Engineer to insert Owner or Bidder).

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
UD					

Total, Section UD—_____

Section UG—Underground Transformer Assembly Units

An underground transformer assembly unit consists of the transformer, its housing, warning sign, switches, over-current protective devices, grounding loop, and hardware and leads with their connectors and supporting insulators installed in place. This unit includes the cable terminations but does not include lightning arresters, fault indicators, ground rods or trenching.

For submersible transformers, it includes the cable terminations, the enclosure and cover, drainable material (when specified),[6] and the excavation when required. For pad-mount transformers, it does not include the pad, site preparation, drainable material, backfilling or compaction which are included in the pad assembly units.

Unit No.	Number of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
UG					

Total, Section UG— _____

SECTION UK—UNDERGROUND SECONDARY AND SERVICE ASSEMBLY UNITS

An underground secondary and service assembly unit consists of secondary or service cable terminal housing mounted in place. It includes the power pedestal, stake (when required), mounting hardware, warning sign, directional marker, housing identification marking and the cable identification tags. It does not include the cable terminations, ground rod, or pad, when required.

Unit No.	Number of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
UK					

Total, Section UK— _____

SECTION UM—MISCELLANEOUS UNDERGROUND ASSEMBLY UNITS

A miscellaneous underground assembly unit consists of an additional unit needed in the Project for new construction but not otherwise listed in the Proposal. This section includes the miscellaneous assembly units as shown on the respective underground construction drawings. Where miscellaneous units consist of or include a primary cable termination, the unit includes the preparation of the cable to accommodate the termination, the stress cone and the connection of the cable to the terminal equipment. Pad assembly units are in this section and include the site preparation, bedding, drainable material when specified, cable slot, backfilling, tamping and the pad in place.

[3] _____ Engineer check here if primary splices are permitted.

[4] _____ Engineer check here if secondary and service splices are permitted.

[5] _____ Engineer check here if 12 feet of service conductor is to be left as a coil 3 feet from the building with ends capped instead of connection to meter box.

[6] _____ Engineer check here if drainable material is specified.

Unit No.	Number of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Llabor & materials	
UM					

Total, Section UM— _____

SECTION UR—UNDERGROUND EXCAVATION ASSEMBLY UNITS

UR 1–S(d) Plowing Assembly Unit, Soil—Consists of one (1) lineal foot of plowing in soil, measured parallel to the surface of the ground, to a specified depth (D), in inches, including the compacting, except as specifically provided for in other units. This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged during the plowing of the cable, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the slot. **Note:** Where in the judgment of the Owner greater than normal difficulty will be involved in plowing because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T". This will be applicable only in those areas predesignated by the Owner on the detail maps herein. All plowing outside of the predesignated area on the map, regardless of the difficulty in placement actually experienced, will be inventoried as the regular UR 1–S(D) units. If field conditions show the existence of rock to prevent the placing of the cable in soil to the depth required in the specifications, the Owner may specify UR 2–R units. Where more than one cable is to be installed in the slot, the UR1–S unit designation should be modified by a suffix corresponding to the number of cables installed. *Example:* UR1–S(D) 3c for 3 cables plowed at one time.

UR 2–S(D&W) Trenching Assembly Unit, Soil—Consists of one (1) lineal foot of trenching in soil, measured parallel to the surface of the ground, to a specified depth (D) and width (W), in inches, including the excavation, and backfilling and compacting.

This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, under- ground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the trench or cable bedding assembly units, when required.

Note: Where in the judgment of the Owner greater than normal difficulty will be involved in trenching because of the presence of underground facilities of other utilities, this unit will be suffixed by the letter "T". This will be applicable only in those areas predesignated by the Owner on the detail maps herein. Where more than one cable is to be installed in the trench, the regular UR 2–S unit designation should be modified by a suffix corresponding to the construction drawing for the type of cable placement desired.

UR 2–R (D&W) Trenching Assembly Unit, Rock—Consists of one (1) lineal foot of trenching in rock, measured parallel to the surface of the ground, to specified depth (D) and width(W), in inches, including the excavation, and backfilling and compacting to place cable to the depth specified in the Specifications. This unit will be specified by the Owner only when field conditions at the site show the existence of rock at a depth preventing the placing of the cable in soil to the depths required in the Specifications. This unit includes all material and labor required in the repair and/or replacement of streets, roads, drives, fences, lawns, shrubbery, watermains, pipes, pipelines and contents, underground power and telephone facilities, buried sewerage and drainage facilities, and any other property damaged by the trenching, except as specifically provided for in other units. This unit does not include underground cable facilities installed in the trench or cable bedding assembly units, when required.

UR–3 Cable Bedding Assembly Unit—Consists of one (1) lineal foot of a 2-inch bed of clean sand or soil placed in the trench under the cable and a 4-inch layer of clean sand or soil backfill over the cable to the width of the trench. *Note:* The exact location and number of units shall be determined by the Owner after the trenches are open in those areas where rock or other conditions make special bedding necessary.

UR–4a Pavement Assembly Unit, Asphalt—Consists of the labor and material necessary to remove and restore one (1) lineal foot of asphalt pavement, measured along the route of the cable. All work shall be performed in accordance with the requirements of state or local authorities. Any trenching which may be necessary is included in this unit.

UR–4c Pavement Assembly Unit, Concrete—Consists of the labor and material necessary to remove and restore one (1) lineal foot of concrete pavement, measured along the route of the cable. All work shall be performed in accordance with the requirements of state or local authorities. Any trenching which may be necessary is included in this unit.

UR–5 Underground Pipe Crossing Assembly Unit—Consists of one (1) lineal foot of steel pipe, of the inside diameter, in inches, specified in the last digit of the assembly unit designation, installed in place. This unit includes the pushing of pipe and any excavation, backfilling and tamping necessary for the installation of the pipe. The pipe will be installed at the depth specified by the Owner. Underground cable installed in the pipe is not included in this unit.

UR–6 Underground Nonpipe Crossing Assembly Unit—Consists of the labor in providing a hole in soil one (1) foot in length of a diameter sufficient to accommodate the cable to be installed therein. The depth of the hole below the surface of the ground shall be specified by the Owner. This unit includes any excavation, backfilling and tamping necessary for the installation. This unit may be used where the permanent installation of a steel pipe under the UR–5 unit is not required. Underground cable installed in the hole is not included in this unit.

Unit No.	Number of units	Unit price			
		Labor	Materials	Labor & materials	Extended price—labor & materials
UR					

Total, Section UR—_____

Distribution Construction Units—Line Changes

The general heading of Line Changes applies to the changing of existing lines or portion thereof from their existing phasing, wire size, and type to new phasing, wire size, and type and the removal of existing lines or portion thereof and replacing with new lines in close proximity thereto. In general line changes involve three types of assembly units as follows:

Section H—Conversion assembly units;

Section I—Removal assembly units;

Section N—New construction assembly units on existing lines or in replacing lines.

The assembly units that are included in Section H, I, and N are defined by symbols and descriptions which follow together with the applicable descriptions included under New construction. Where the descriptions are not correct or sufficiently explicit, or when special units are not covered by Construction Drawings, descriptions have been provided by the Engineer in the respective sections.

Work included in these sections shall be performed under the schedule as set forth below:

SCHEDULE OF DEENERGIZATION OF EXISTING DISTRIBUTION LINES UNDER WHICH WORK UNDER SECTIONS H, I, AND N SHALL BE PERFORMED

Line Section (to be designated by point to point description on detail map)	Hours and days of week when lines will be deenergized to permit line changes

The Bidder will so plan and perform its work on the above lines that it will be possible for the Owner to safely reenergize all lines involved at the expiration of the time limits set up in the above schedule to resume service to all consumers being served prior to deenergization. Prior to commencement of work each day on lines to be deenergized, the Bidder will notify the Owner in writing thereof, designating the lines to be deenergized and upon receipt of such notice, the Owner will deenergize such lines. Upon completion of work each day on such deenergized lines, the Bidder will notify the Owner thereof in writing or in such other manner as the circumstances permit designating the lines to be reenergized and stating that such lines may be safely reenergized and upon receipt of such notice, the Owner will reenergize such lines

SECTION H—CONVERSION ASSEMBLY UNITS

Conversion assembly units are pole-top assemblies and cover the furnishing of all labor and additional materials for changing an existing assembly unit to a new assembly unit, utilizing certain items of materials of the existing assembly unit on poles to be left in place. The unit prices for materials should include only additional material that is required to complete the new unit, less suitable allowance for material removed.

Any materials removed from the existing assembly units which are not required in the construction of the conversion assembly unit become the property of the Bidder and may, with the permission of the Engineer, be reused by the Bidder in the construction of other assembly units called for in the Construction Contract. Conversion assembly units are specified by the prefix H with the new construction assembly unit designation shown first and the existing assembly unit designation shown last. For example, a H B1–A1 signifies the conversion of an existing A1 assembly unit to a B1 assembly unit (as was defined in the description of construction assembly units). In this instance the Bidder utilizes the existing pin-type insulator, single upset bolt and neutral spool in the construction of the new assembly unit. The Bidder furnishes the additional crossarm, crossarm pins, braces, machine bolt, carriage bolts, lag screw, and insulator required for the new unit. The Bidder takes possession of the pole-top pin and two machine bolts and with the permission of the Engineer may reuse these elsewhere in the construction of the Project. The Bidder will not be held accountable to the Owner for the materials he so acquires.

The Conversion assembly units also include the furnishing of all labor and materials in the transferring, resagging and retying of conductors from one position on the pole to a different position on the pole where such transfers are required. Where replacement of conductor is required, the existing conductor will be removed under section I and the new conductor installed under section N. Where replacement of a pole is required, the existing pole and pole-top assembly will be removed under section I and the new pole and pole-top assembly will be installed according to section N and no H units will be involved.

Conversion assemblies are listed in three subsections for converting pole-top assemblies from single to V phase, single to three phase, and V to three phase. The following descriptions apply to only those units not sufficiently explicit.

Unit	Description
H	

SECTION H—CONVERSION ASSEMBLY UNITS

Subsection H (B–A) 1 Phase to V Phase

Unit No.	Number of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
H					

Total, Subsection H (B–A)—

SECTION H—CONVERSION ASSEMBLY UNITS

Subsection H (C–A) 1 Phase to 3 Phase

Unit No.	Number of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
H					

Total, Subsection H (C–A)—

SECTION H—CONVERSION ASSEMBLY UNITS

Subsection H (C–B) V Phase to 3 Phase

Unit No.	Number of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
H					

Total, Subsection H (C–B)—
Total, Subsection H (B–A)—
Total, Subsection H (C–A)—
Total, Section H—_____

SECTION I—REMOVAL ASSEMBLY UNITS

Removal assembly units cover the furnishing of all labor for the removal of existing units of construction from existing lines, disassembling into material items, and all labor and transportation for the returning of all materials to the warehouse of the Owner in an orderly manner or transporting elsewhere to the site of the Project for reuse in the prosecution of this Contract as approved by the Engineer.

The Bidder will be charged by the Owner for the full value of all materials removed under this section at the value shown in Table C. Such charges will be placed against the Bidder as units are removed and the value will be deducted from the total value of installed assembly units for determination of the work accomplished for purposes of monthly progress payments to the Bidder.

Of the materials listed in Table C to be removed from existing lines, certain materials will be reused in the construction of the Project. Such materials to be reused are listed in Table C–1. Materials other than those listed in Table C–1 shall, if not damaged in handling, be returned to the Owner for full credit at the values shown in

Table D. The Bidder will be allowed full credit for all material items, other than those listed in Table C–1, returned to the Owner which, in the opinion of the Engineer, were not damaged by the Bidder in removal and handling even though the materials may not be reusable for reasons of obsolescence or deterioration. Such credits shall be allowed the Bidder as materials are returned to the Owner's warehouse and shall be added to the total value of installed assembly units for determination of the work accomplished for purposes of monthly progress payments to the Bidder.

The unit removal prices shall include all material and labor required to reinstall in accordance with specifications any conductors temporarily detached. The Bidder will reinstall at his own expense any other units removed by him for his own convenience.

The removal units are specified by the prefix I and followed by the assembly unit designation of existing assembly unit to be removed. For example, an I–A1 signifies the removal of an A1 assembly unit. The following special notes apply to specific removal units: _____.

a. Poles. All poles of the same height, regardless of pole class, are designated by the same unit. Thus an I–30-foot pole signifies the removal of a 30-foot pole of any class. The Bidder is not required under this unit to remove from the pole any ground wire or pole numbering attached to the pole. This unit includes the refilling and tamping of holes in a workmanlike manner unless they are to be reused.

b. Pole-Top Assemblies. The unit of removal of pole-top assemblies includes, in addition to the removal of the assembly itself, any necessary handling, resagging, and retying of conductors in those cases where an existing pole-top assembly will be removed and replaced by a new pole-top assembly and where any existing conductor is to be reused.

The unit of removal of pole-top assemblies also includes any holding or handling of mainline or tap conductors at tap lines, angles, and deadends where such is involved, and reinstalling of such conductor in accordance with the specifications; for example, an I–A5–4 will include the disconnection of the tap conductors, snubbing off the tap line at the nearest practical point and the reconnection and resagging of these tap conductors if necessary to the new tap assembly when installed. The new unit of construction, however, will be specified separately in Section N.

c. Conductor. The conductor removal unit covers the removal of 1,000 feet of conductor or cable and reeling or coiling it in a workmanlike manner in such a way that it can be reused by the Bidder or the Owner. The Owner will furnish to the Bidder reels if it is to be returned to the Owner's warehouse on reels. The Bidder will retain possession of all jumpers, tie wire, armor rods, connectors, and other conductor accessories removed. These items will not be returned to the Owner. The removal unit for each size of conductor or cable is shown by the prefix I followed by D and the conductor or cable type; thus an I–D–6ACWC signifies the removal unit for 1,000 feet of 6A Copperweld-copper conductor.

d. Guys. All guys regardless of length, type of attachment, or size of guy strand are specified by the same unit; thus an I–E signifies the removal of any guy.

e. Anchors. Only anchor rods are to be removed by the Bidder in anchor removal units. The anchor will be left in the ground; thus an I–F signifies the removal of any anchor rod. If the rod cannot be unscrewed, the end of the rod shall either be cut off or bent down so that the rod will be at least 18 inches below ground.

f. Transformers. The unit for removal of transformer assembly units is divided into two sections, (1) Conventional Transformer Assembly, and (2) Self-Protected Transformer Assembly. Only one unit is specified for each type, and all sizes of transformers from 1 to 25 kVA within each group will be covered by the same unit. "Self-protected" refers to transformers where all protective equipment is mounted on or within the transformer. "Conventional" refers to transformers where protective equipment is mounted separately from the transformer. The unit is designated by the prefix I followed by the description of the unit to be removed; thus IG Conventional signifies the removal of a conventional transformer assembly for any size transformer from 1 to 25 kVA.

g. Secondary units. The unit for removal of secondary assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of secondary conductor or cables where existing secondary conductor or cable is to be reused.

In addition, the unit for removal of the secondary assembly includes the handling or holding of any conductor at tap lines where such is involved, and the reinstalling of such tap conductor in accordance with the specifications.

h. Service unit. The unit for removal of service assemblies includes, in addition to the removal of the assembly itself, all necessary handling such as untying, resagging, and retying of service conductor or cable where existing service conductor or cable is to be reused.

The following descriptions apply only to those removal units not sufficiently explicit:

Unit	Description

Unit No.	Number of units	Labor	
		Unit price	Extended price

Total, Section I—_____

TABLE C.—UNIT MATERIAL VALUES OF I UNITS CHARGEABLE TO BIDDER

Unit No.	Number of units	Unit material value [1]	Extended price

Notes: 1. Unit values are based on item values from Table D.

TABLE C–1.—MATERIAL ITEMS TO BE REUSED

REA item letter designation [1]	Description of material item	No. of Items

Notes: 1. See "List of Materials Acceptable for Use on Systems of REA Electrification Borrowers."

TABLE D.—VALUES OF MATERIAL ITEMS CREDITABLE TO BIDDER

REA item letter designation [1]	Description of material item	Item value

Notes: 1. See "List of Materials Acceptable for Use on Systems of REA Electrification Borrowers."

SECTION N—NEW ASSEMBLY UNITS

The purpose of this section is to list complete new units of construction where such units are to be added to existing lines or installed in replacing lines.

The units as covered by this section are the same as the units described in Distribution Construction Units—New Construction, except that these units are prefixed by the letter N. For example, an N40–6 unit covers the furnishing of all material and labor for the installation of a 40–6 pole either in an existing distribution line being operated by the Owner or in a new line being constructed to replace an existing distribution line being operated by the Owner.

The following descriptions apply only to those new units not sufficiently explicit.

Unit	Description

SECTION N—NEW ASSEMBLY UNITS

Unit No.	Number of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
N					

Total, Section N— ____

Proposal Summary

Recapitulation of Sections

New Construction

Overhead
Section—1 _____ S__
Section—A _____ __
Section—B _____ __
Section—C _____ __
Section—D _____ __
Section—E _____ __
Section—F _____ __
Section—G _____ __
Section—J _____ __
Section—K _____ __
Section—M _____ __
Section—R _____ __
Total Overhead _____
Underground
Section—UD __ __ S
Section—UG _____ _____
Section—UK _____ _____
Section—UM _____ __
Section—UR _____ __
Total Underground _____
Total New Construction S_____
Line Changes
Section—H _____ S _____
Section—I _____ _____
Section—N _____ _____
Total Line Changes S _____
Total Distribution Line Construction S _____

Transmission Construction Units

SECTION 1—POLE UNITS

A pole unit consists of one pole in place. It does not include pole-top assembly unit or other parts attached to the pole. The first two digits indicate the length of the pole; the third digit shows the classification per ANSI (Example: 60–3 means a pole 60 feet long, class 3.)

Species of Timber: _____

Kind of Preservative: (Check one)

1. Creosote ____; 2. Pentachlorophenol ____; 3. Copper Naphthenate ____; 4. Waterborne preservative—CCA ____ ACZA __

Method of Treatment: (Check one)

1. Pressure _____: 2. Thermal Process _____

Pole Plan Under Which the Poles are to be Furnished: (Check one)

1. Insured Warranted ____: 2. Independently Inspected ____; 3. Quality Assured ____; 4. Either Insured Warranted, Independently Inspected, or Quality Assured ____

(Engineer to complete above)

Unit No.	Number of units	Unit price			Extended price—labor & materials
		Labor	Materials	Labor & materials	

Total, Section 1— ___

SECTION 2—POLE TOP ASSEMBLY UNITS

A pole top assembly unit consists of the hardware, crossarms and their appurtenances, insulators, etc., except tie wire, required to support the power conductors and overhead ground wire. It does not include the pole, the downlead, and butt coil, which are separate units.

Unit No.	Number of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	
TH					
TP					
TS					
TSS					
TSZ					

Total, Section 2 ___

SECTION 3—CONDUCTOR ASSEMBLY UNITS

A conductor assembly unit consists of 1,000 feet of a single conductor or overhead ground wire, and includes tie wire, sleeves for splicing, and armor rods with clips or armor wire where necessary. The length of conductor or overhead ground wire shall be determined by taking the sum of all straight horizontal span distances between pole stakes or from center to center of the poles carrying the conductors. The conductor sizes and types listed are the manufacturer's designation.

Unit No.	Number of units	Unit Price			Extended price—labor & materials
		Labor	Materials	Labor & materials	

Total, Section 3 _____

As provided for in the specifications, prior to beginning of work the Bidder will furnish the Engineer the following data on tension equipment:

Diameter Bull Wheel _____ in.
Diameter Groove ____ in.
Conductor Bending Radius ____ in.
Thickness of Neoprene at Bottom of Groove ____ in.
Stringing Sheave Diameter: Tangent ____ in., Large Angle ____ in.

SECTION 4—GUY ASSEMBLY UNITS (TG UNITS)

A guy assembly unit consists of the hardware and wire. Guy guards are designated separately.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
TG–1 TG–2 TG–3 TG–4 TG–5					

Total, Section 4—

Section 5—Anchor Assembly Units

An anchor assembly unit consists of the anchor with rod or rods, complete, ready for attaching the guy wire

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
TA–1–5 TA–1–8 TA–3					

Total, Section 5—

Section 6—Miscellaneous Assembly Units

A miscellaneous assembly unit consists of an additional unit needed in the Project for line construction but not otherwise listed in the Proposal.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
TM					

Total, Section 6— __

Section 7—Right-of-Way Clearing Units

TM–12. The unit is 1,000 feet in length and ___ (_____) feet in width (to be measured _____ (_____) feet on one side of pole line or centerline of structures) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line of poles carrying conductors. (See Detail A, Drawing TM–12–2A.) The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to the ground line. (See Detail B, Drawing TM–12–2A.) All trees and underbrush across the width of the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing. (See Detail C, Drawing TM–12–2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All length thus arrived at, added together and divided by 1,000 shall give the number of 1,000-foot TM–12 units of clearing. The Bidder shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Engineer in writing.

TM–12 (1). This unit is identical with TM–12, except the full width of the right-of-way to be cleared shall be ___ (_____) feet wide (to be measured _____ (_____) feet on each side of the pole line or centerline of structures). (See Detail D, Drawing TM–12–2A.)

TMC–12, TMC–12 (1). These units are identical to the respective TM units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

TM–13. The unit, for purpose of quoting, is 1,000 feet in length of clearing off the right-of-way. The Engineer will select those trees off the right-of-way that he deems to be a hazard to the line and will designate them to the Bidder in writing as danger trees. When so designated, the Bidder shall remove or top such trees at his option except that the Bidder shall trim and not remove shade, fruit, or ornamental trees unless otherwise directed by the Engineer in writing. (See Drawings TM–12–2A and TM–13 for examples of danger trees.)

The measurement of the length of clearing off the right-of-way shall be considered as a straight line parallel to the horizontal line between poles or centerline of structures, such measurement of length to be based on maximum dimension of foliage (not trunk) projected to the ground line. (See Details E, F, G, and H, Drawing TM–12–2A.) Dead trees having no foliage shall be measured across the maximum dimension and multiplied by two. (See Detail F, Drawing TM–12–2A.) Each tree so removed shall be added together to determine the total length of clearing. All length thus arrived at, added together and divided by 1,000, shall give the number of TM–13 units. (Example: Details E, F, G, and H, Drawing TM–12–2A, total .1 of a TM–13 unit.)

TM–14. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of right-of-way centerline) of actual clearing of right-of-way. Trees and underbrush should be cleared from the ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide "undulating" boundaries. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the access road

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A.) All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–14 (1). This unit is identical with TM–14 except the full width of the right-of-way to be cleared shall be _____ (_____) feet in width (to be measured _____ (_____) feet wide (See Detail D, Drawing TM–12–2A.)

TM–15. The unit is 1,000 feet in length and ( ) feet in width (to be measured

_____ (_____) feet on one side of the right-of-way centerline) of actual clearing of the right-of-way. Trees and underbrush should be cleared from ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide a "feathered" appearance in the right-of-way. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the access road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to ground line (See Detail B, Drawing TM–12–2A). All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A). Spaces along the right-of-way which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–15 (1). This unit is identical to TM–15 except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A).

Additional Requirements (When specifying TM units denote type of disposal (A or B).)

A. Trees, brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Engineer but in no case shall it be required to be less than _____ (_____) feet. Brush, branches, and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used):

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (describe) _____

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	

Total, Section 6—_____

Proposal Summary

Recapitulation of Sections:

Section—1 _____ $_____
Section—2$ _____ $_____
Section—3 _____ $_____
Section—4 _____ $_____
Section—5 _____ $_____
Section—6 _____ $_____
Section—7 _____ $_____

Total Transmission Line Construction

_____

Section 8—Substation Assembly Units

Description of Construction Units. Each Construction Unit consists of a complete installation of the designated portion of a substation as specified on the drawings, together with connections to associated equipment. Each Construction Unit represents all labor and material including necessary accessories completely installed and tested in satisfactory operation. Full identification of each Construction Unit and all necessary specifications of the installation is shown on the drawings. Items of material in each Construction Unit shall be of the designated size, rating, type, voltage, or other specification in accordance with the drawings. The bill of material drawing for each substation shows the identification of the Construction Units under which the material is to be installed and shows which items of material may be partly or entirely found on the lists of Owner-furnished materials.

All items of equipment, unless otherwise specified, are mounted on a structure which shall be a Construction Unit of Group A.

Each Construction Unit is designated by the letter of the Group to which it belongs and an identifying number. The same item of equipment carries the same Construction Unit designation in all the substations. Items of equipment designated by the same Construction Unit in one substation are of only one kind as to voltage, type and other specifications. The tabulation of Construction units for each substation is separate and contains all units necessary for construction of that substation.

Group A. Structures. A Construction Unit consists of a structure, or structures, with bus supports including insulators and fittings, buses, conductors and overhead ground wires to adjacent structures within the substation, grounding material to connect equipment with the ground bus, and associated material including mounting brackets, supports for equipment, clamps and connectors, all as specified in the drawings.

Group B. Three-pole group operated air break switches. A Construction Unit consists of one 3-pole group operated air break switch with all accessories and operating mechanisms as specified in the drawings.

Group C. Lightning arresters. A Construction Unit consists of one single arrester.

Group D. Single pole disconnecting switches. A Construction Unit consists of one single pole disconnecting or by-pass switch as specified in the drawings. If a fuse disconnect switch is specified, the fuse is included with the switch.

Group E. Oil circuit breakers. A Construction Unit consists of one complete three-phase power circuit breaker complete with supporting frame and control cabinet, unless shown otherwise in the drawings, mounted as specified in the drawings.

Group F. Oil circuit reclosers. A Construction Unit consists of a complete single-phase or three phase oil circuit recloser as specified in the drawings.

Group G. Meters, relays and instrument transformers. A Construction Unit consists of one meter, relay potential transformer or current transformer.

Group H. Transformers. A Construction Unit consists of one power transformer or one station service transformer either single-phase or three-phase as specified in the drawings.

Group I. Voltage regulators. A Construction Unit consists of one single-phase or three-phase voltage regulator as specified in the drawings.

Group J. Communications and supervisory control equipment. A Construction Unit consists of carrier current equipment, microwave, or other types of communications and supervisory control equipment as specified in the drawings.

Group K. Conduit and cable. A Construction Unit consists of the wire, cable, conduit and accessories necessary to complete the installation of equipment in accordance with the specifications and drawings, where such installation has not been included in other Groups.

Group L. Foundations. A Construction Unit consists of concrete footings and foundations except for the fence, as specified in the drawings.

Group M. Site preparation. A Construction Unit consists of clearing, grading, drainage work, and surfacing, as specified in the drawings.

Group N. Fence. A Construction Unit consists of the complete installation of the fence, gates, etc., as specified in the drawings.

Group O. Station grounding. A Construction Unit consists of the complete ground bus including ground rods, grounding mats or platforms, except as otherwise provided in other Groups, with connections to structures, equipment, and fence as specified in the drawings.

Group P. Building. A Construction Unit consists of a control building or cabinet, on a foundation of Group L and the facilities and equipment installed therein as specified in the drawings, except as otherwise provided in other Groups.

Other Groups. The Engineer shall specify such additional Groups as may be necessary for the completion of the Project. Descriptio[n] of these Groups shall be provided by an addition to this section of the Specifications for Construction.

_____ Station Construction Units

Unit No. _____
Name and Description of Construction Unit

_____

No. of Units _____
Unit Prices
Labor _____
Materials _____
Labor and Materials _____
Extended Price—Labor and Materials

_____

Total Price _____

Proposal Summary

_____ Substation $_____
_____ Substation _____
_____ Substation _____
_____ Switching Station
_____ Switching Station
Total Station Construction $_____

Proposal Recapitulation

Distribution line construction $ _____
Transmission line construction _____
Substation and Switching Station Construction _____
Total $_____

Acceptance

The Owner hereby accepts the foregoing Proposal of the Bidder, _____ for the construction of the following:

Distribution Construction Units: Sections:

_____

Transmission Construction Units: Sections:

_____

Substation and Switching Station Construction: Stations (name):

_____

Owner
By _____ President
_____ Secretary
_____ Date of Contract

[End of clause]

§ 1726.352 Electric transmission construction contract (labor and materials), REA Form 831.

The contract form in this section shall be used when required by this part. This form refers to guide drawings, which do not contain requirements, and, hence, are not included in this part. The guide drawings are included in the printed form available from GPO (See § 1726.300.).

Electric Transmission Construction Contract (Labor and Materials)

Notice and Instructions to Bidders

1. Sealed proposals for the construction, including the supply of necessary labor, materials and equipment, of a rural electric project of _____ (hereinafter called the "Owner") to be known as Project will be received by the Owner on or before _____ o'clock ____ M., _____, 19____ at its office at _____ at which time and place the proposals will be publicly opened and read. Any proposal received subsequent to the time specified will be promptly returned to the Bidder unopened.

2. Description of Project: The Project will consist of approximately:

Transmission Line Construction

_____ miles _____ kV; _____ miles _____ kV _____ kV; _____ miles _____ kV underbuild

Substations and Other Major Facilities

_____ kVA _____ Voltage _____ Name

The Project is located in _____ Counties, in the State of _____ all as more fully described in the Plans, Specifications, Construction Drawings and Contractor's Proposal therefore hereinafter referred to.

3. Owner furnished materials. The unit prices in the Contractor's Proposal shall include provisions for Owner Furnished Materials since as stated in Article 1, Section 3 of the Contractor's Proposal, the value of the Owner Furnished Materials, if any, will be deducted from payments to the Bidder for completed Construction Units.

4. Obtaining and transferring documents. The Plans, Specifications and Construction Drawings together with all necessary forms and other documents for bidders may be obtained from the Owner, or from the Engineer, _____ at the latter's office at _____ upon the payment of ten dollars ($10), which payment will not be subject to refund. The Plans, Specifications and Construction Drawings may be examined at the office of the Owner or at the office of the Engineer. A copy of the Loan Contract (if the Project is to be financed, in whole or in part, pursuant to a loan contract) between the Owner and the United States of America acting through the Administrator of the Rural Electrification Administration (hereinafter called the Administrator) and of the loan contract between the Owner and any other lender may be examined at the office of the Owner. Each set of Plans, Specifications and Construction Drawings will have a serial number, given by the Engineer, and the number of each set with the name of the Purchaser will be recorded by the Engineer. Bids will be accepted only from the original purchaser.

5. Manner of submitting proposals. Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number if a license is required by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be filled in in ink or typewritten. No alterations or interlineations will be permitted, unless made before submission, and initialed and dated.

6. Familiarity with conditions. Prior to the submission of the Proposal the Bidder shall make and shall be deemed to have made a careful examination of the site of the Project and of the Plans, Specifications, Construction Drawings, and forms of Contractor's Proposal and Contractor's Bond on file with the Secretary of the Owner and with the Engineer, and shall become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the construction of the Project, general local conditions and all other matters that may affect the cost and the time of completion of the Project. Bidders will be required to comply with all applicable statutes, regulations, etc., including those pertaining to the licensing of contractors, and the so-called "Kick-back Statute" (48 Stat. 948) and regulations issued pursuant thereto.

7. Proposals will be accepted only from those prequalified bidders invited by the Owner to submit a proposal.

8. Alternate designs. The Owner reserves the right to confine its consideration of the several bids to one type of design regardless of alternate types of design which may be specified in the Plans and Specifications and offered in the Proposals.

9. The Time for Completion of Construction of the Project shall be as specified by the Engineer in the Proposal.

10. Bid bond. Each Proposal must be accompanied by a Bid Bond in the form attached or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of the three low Proposals, that, by filing its Proposal together with such Bid Bond or check in consideration of the owner's receiving and considering such Proposals, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory Contractor's Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned in each instance within a period of ten (10) days to the Bidder furnishing same.

11. Contractor's bond. The successful Bidder will be required to execute two additional counterparts of the Proposal and, for a Contract in excess of $100,000, to furnish a Contractor's Bond in triplicate in the form attached hereto with sureties listed by the United States Treasury Department as Acceptable Sureties, in a penal sum not less than the contract price.

12. Failure to furnish contractor's bond. Should the successful Bidder fail or refuse to execute such counterparts or to furnish a Contractor's Bond (where required) within ten (10) days after written notification of the acceptance of the Proposal by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check, the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project. The term "Successful Bidder"

shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the counterparts or to furnish a satisfactory Contractor's Bond (where required.)

13. Contract is entire agreement. The Contract to be effected by the acceptance of the Proposal shall be deemed to include the entire agreement between the parties thereto, and the Bidder shall not claim any modification thereof resulting from any representation or promise made at any time by any officer, agent or employee of the Owner or by any other person.

14. Minor irregularities. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the acceptance thereof by the Owner.

15. Balanced bid. The Owner reserves the right to reject any or all Proposals. The attention of Bidders is specially called to the desirability of a proper balance between prices for labor and materials and between the total prices for the respective Construction Units. Lack of such balance may be considered as a reason for rejecting a Proposal.

16. Discrepancy in unit prices. Where the unit prices in the Contractor's Proposal are separated into three columns designated as "Labor," "Materials" and "Labor and Materials," and where a discrepancy appears between the sum shown in the "Labor and Materials" column and the correct addition of the sums appearing in the "Labor" column and the "Materials" column, the correct addition of the sums appearing in the "Labor" column and the "Materials" column shall control.

17. Definition of terms. The terms *Administrator, Engineer, Supervisor, Project, Completion of Construction* and *Completion of the Project* as used throughout this Contract shall be as defined in Article VI, section 1, of the Contractor's Proposal.

18. The Owner Represents:

a. If by provisions of the Contractor's Proposal the Owner shall have undertaken to furnish any materials for the construction of the Project, such materials are on hand at locations specified or if such materials are not on hand they will be made available by the Owner to the successful Bidder at the locations specified before the time such materials are required for construction.

b. All easements and rights-of-way, except as shown on maps included in the Plans and Specifications, have been obtained from the owners of the properties across which the Project is to be constructed (including tenants who may reasonably be expected to object to such construction). The remaining easements and rights-of-way, if any, will be obtained as required to avoid delay in construction.

c. All staking, except as shown on the maps included in the Plans and Specifications, has been completed and sufficient staking crews will be available to maintain stakes at all times in advance of construction.

d. Prompt payment for the construction of the Project will be made with funds pursuant to the Loan Contract, or with funds otherwise available to the Owner.

If the Owner shall fail to comply with any of the undertakings contained in the foregoing representations or if any of such representations shall be incorrect, the Bidder will be entitled to an extension of time of completion for a period equal to the delay, if any, caused by the failure of the Owner to comply with such undertakings or by any such incorrect representation; provided the Bidder shall have promptly notified the Owner in writing of its desire to extend the time of completion in accordance with the foregoing; provided, however, that such extension, if any, of the time and completion shall be the sole remedy of the Bidder for the Owner's failure, because of conditions beyond the control and without the fault of the Owner, to furnish materials in accordance with subparagraph a hereof.

_____ Owner

By _____

_____, 19____

Contractor's Proposal

(Proposal shall be submitted in ink or typewritten)

To: _____ (Hereinafter called the "Owner")

ARTICLE I—GENERAL

Section 1. Offer to Construct. The undersigned (hereinafter called the "Bidder") hereby proposes to receive and install such materials and equipment as may hereinafter be specified to be furnished by the Owner, and to furnish all other materials and equipment, all machinery, tools, labor, transportation and other means required to construct the rural electric project _____ in strict accordance with the Plans, Specifications and Construction Drawings therefor, attached hereto and made a part hereof, for the prices hereinafter stated.

The total length of the project lines shall be determined by taking the sum of all straight horizontal span distances between pole stakes or from center to center of poles, or centerline of structures, carrying conductors.

Section 2. Materials and Equipment. The Bidder agrees to furnish and use in the construction of the Project under this Proposal, in the event the Proposal is accepted, only such materials and equipment as are included in the current "List of Materials Acceptable for Use on Systems of REA Electrification Borrowers," including revisions adopted prior to the Bid Opening.

The Bidder further agrees to furnish:

	Type	Size	Galvanizing class
Overhead ground wire	.....	.....	.....
Guy wire	.....	.....	.....
Structure ground wire	.....	.....	.....

(Engineer to insert Type, Size and Galvanizing Class as appropriate)

The Bidder further agrees to furnish and use poles, crossarms, and other timber products, of which the physical characteristics, method of treatment, type of preservative, instructions on inspection and general procedure shall be in accordance with REA standards and requirements.

Crossarms shall be _____ (Engineer to insert Douglas Fir or Southern Yellow Pine), treated with _____ (Engineer to insert type of preservative.)

Section 3. Owner-Furnished Materials. The Bidder understands and agrees that, if this Proposal is accepted, the Owner will furnish to the Bidder the material set forth in the attached "List of Owner's Materials on Hand" (see page ____) and the Bidder will give a receipt (see page ____) therefor in writing to the Owner. The Bidder, further, will on behalf of the Owner accept delivery of such of the materials set forth in the attached "List of Materials Ordered by Owner but Not Delivered" (see page ____) as may be subsequently delivered and will promptly forward to the Owner for payment the supplier's invoice, together with the Bidder's receipt in writing for such materials. The materials referred to are on hand at, or will be delivered to, the locations specified in the Lists and the Bidder will use such materials in constructing the Project.

The value of the completed Construction Units certified by the Bidder each month pursuant to Article III, section 1(a) of this Proposal shall be reduced by an amount equal to the value of the materials installed by the Bidder during the preceding month which have been furnished by the Owner or the delivery of which has been accepted by the Bidder on behalf of the Owner. Only ninety percent (90%) of the remainder shall be paid prior to the Completion of the Project. The value of such materials shall be computed on the basis of the unit prices stated in the Lists. Materials, if any, not required for the Project, which have been furnished to the Bidder by the Owner or delivery of which has been accepted by the Bidder on behalf of the Owner, shall be returned to the Owner by the Bidder upon completion of construction of the Project. The value of all materials not installed in the Project nor returned to the Owner shall be deducted from the final payment to the Bidder.

The Owner shall not be obligated to furnish materials in excess of the quantities, size, kind and type set forth in the attached Lists. If the Owner furnished, and the Bidder accepts, materials in excess therefor, the values of such excess materials shall be their actual cost as stated by the Owner.

Information on the shipping schedules of materials on the "List of Materials Ordered by Owner But Not Delivered" will be furnished to the Bidder as necessary during progress of the work. Upon delivery the Bidder shall promptly receive, unload, transport and handle all materials and equipment on the "List of Materials Ordered by Owner But Not Delivered" at its expense and shall be responsible for demurrage, if any.

Section 4. Purchase of Materials Not Furnished by Owner. The Bidder will

purchase all materials and equipment (other than owner-furnished materials) outright and not subject to any conditional sales agreements, bailment, lease or other agreement reserving unto the seller any right, title or interest therein. All such materials and equipment shall become the property of the Owner when erected in place.

Section 5. Proposal on Unit Basis. The Bidder understands and agrees that the various Construction Units on which bids are made are defined by symbols and descriptions in this Proposal, that all said bids are on a unit basis, and that the Owner may specify any number or combination of Construction Units that the Owner may deem necessary for the construction of the Project. Separate Construction Units are designated for each different arrangement which may be used in the construction of the Project. This Proposal is based on a consideration of each unit in place and includes only the materials listed on the corresponding Construction Drawings or description of unit where no drawing exists.

Section 6. Description of Contract. The Notice and Instructions to Bidders and Plans attached hereto and made a part hereof, and the Specifications and Construction Drawings set forth in the Electric Transmission Specifications & Drawings, REA Form 805, as applicable, together with the Proposal and Acceptance constitute the Contract. The plans, consisting of maps and special drawings, are identified as follows:

_____.

Section 7. Familiarity with Conditions. The Bidder has made a careful examination of the site of the Project to be constructed and of the Plans, Specifications, Construction Drawings, and form of Contractor's Bond attached hereto, and has become informed as to the location and nature of the proposed construction, the transportation facilities, the kind and character of soil and terrain to be encountered, and the kind of facilities required before and during the construction of the Project, and has become acquainted with the labor conditions, state and local laws and regulations which would affect work on the proposed construction.

Section 8. License. The Bidder warrants that a Contractor's License is _____ is not _____ required, and if required it possesses Contractor's License No. _____ for the State of _____ in which the Project is located and said license expires on _____, 19___.

Section 9. The Bidder warrants that this Proposal is made in good faith and without collusion or connection with any person or persons bidding for the same work.

Section 10. The Bidder warrants that it possesses adequate financial resources and agrees that in the event this Proposal is accepted and a Contractor's Bond is required, it will furnish a Contractor's Bond in the form attached hereto, in a penal sum not less than the maximum Contractor price, with a surety or sureties listed by the United States Treasury Department as Acceptance Sureties.

In the event that the surety or sureties on the performance bond delivered to the Owner contemporaneously with the execution of the Contract or on any bond or bonds delivered in substitution therefor or in addition thereto shall at any time become unsatisfactory to the Owner or the Administrator, the Bidder agrees to deliver to the Owner another or an additional bond.

Section 11. Taxes. The unit prices for Construction Units in this Proposal include provisions for the payment of all monies which will be payable by the Bidder or the Owner in connection with the construction of the Project on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies and equipment, or services or labor of installation thereof, to be incorporated in the Project as part of such Construction Units. The Bidder agrees to pay all such taxes, except taxes upon the sale, purchase or use of owner-furnished materials and it is understood that, as to owner-furnished materials, the values stated in the attached "List of Owner's Materials on Hand" and "List of Materials Ordered by Owner But Not Delivered" include taxes upon the sale, purchase or use of owner-furnished materials, if applicable. The Bidder will furnish to the appropriate taxing authorities all required information and reports pertaining to the Project, except as to the owner-furnished materials.

Section 12. Changes in Quantities. The Bidder understands and agrees that the quantities called for in this Proposal are approximate, and that the total number of units upon which payment shall be made shall be as set forth in the Inventory. If the Owner changes the quantity of any Assembly Unit or Assembly Units specified in this Proposal by more than 15%, and the materials cost to the Bidder is increased thereby to an extent which would not be adequately compensated by application of the unit prices in this Proposal to the revised quantity of such unit or units, such change, to the extent of the quantities of such units in excess of such 15%, shall be regarded as a change in the construction within the meaning of Article II, Section 1(d) of this proposal.

Section 13. Description of Contract. The Notice and Instructions to Bidders, Plans, Specifications for Construction and Construction Drawings, all attached hereto and made a part hereof together with the Proposal and Acceptance constitute the contract. The Plans and Construction Drawings are identified as follows: _____

List of owner's materials on hand

Item[1]	Description of material	Catalog No.	Quantity	Unit price	Extended price

Above materials are located at:

NOTES: 1. Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

List of materials ordered by owner but not delivered

Item[1]	Supplier name and address	Scheduled delivery date	Description of material	Catalog No.	Quantity	Unit price	Extended price

Above material to be delivered to:

NOTES: 1. Item corresponds with item in list of materials in construction drawings. Under Article I, Section 3, the value of these materials will be deducted from payments to the Bidder for completed Construction Units.

ARTICLE II—CONSTRUCTION

Section 1. Time and Manner of Construction

a. The Bidder agrees to commence construction of the Project on a date (hereinafter called the "Commencement Date") which shall be determined by the Engineer after notice in writing of approval of the Contract by the Administrator and notice in writing from the Bidder that the Bidder has sufficient materials to warrant commencement and continuation of construction, but in no event will the Commencement Date be later than _____ calendar days after date of approval of the Contract by the Administrator. The Bidder further agrees to prosecute diligently and to complete construction in strict accordance with the Plans, Specifications and Construction Drawings within _____ (_____) calendar days (excluding Sundays) after Commencement Date: Provided, however, that the Bidder will not be required to dig holes, set poles or install anchors if there are more than six (6) inches of frost in the ground nor to perform any construction on such days when in the judgment of the Engineer snow, rain, or wind, or the results of snow, rain, or frost make it impracticable to perform any

operation of construction and to the extent of the time lost due to the conditions described herein and approved in writing by the Engineer, the time of completion set out above will be extended if the Bidder makes a written request therefor to the Owner as provided in subsection b of this section 1.

b. The time for Completion of Construction shall be extended for the period of any reasonable delay which is due exclusively to causes beyond the control and without the fault of the Bidder, including Acts of God, fires, floods, inability to obtain materials and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible: Provided, however, that no such extension of time for completion shall be granted the Bidder unless within ten (10) days after the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefor in writing to the Owner, and provided further that no delay in such time of completion or in the progress of the work which results from any of the above causes except acts or omissions of the Owner, shall result in any liability on the part of the Owner.

c. The sequence of construction shall be as set forth below, the numbers or names being the designations of extensions or areas (hereinafter called the "Sections") corresponding to the numbers or names shown on the maps attached hereto, or if no Sections are set forth below, the sequence of construction shall be as determined by the Bidder, subject to the approval of the Engineer. _____

d. The Owner, acting through the Engineer and with the approval of the Administrator,[1] may from time to time during the progress of the construction of the Project make such changes in, additions to or subtractions from the Plans, Specifications, Construction Drawings, List of Materials and sequence of construction provided for in the previous paragraph which are part of the Contractor's Proposal as conditions may warrant: Provided, however, that if any change in the construction to be done shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefor to the Owner within ten (10) days after any such change is made. And provided further, that if the cost to the Bidder of construction of the Project shall be materially increased by any such change or addition the Owner shall pay the Bidder for the reasonable cost thereof in accordance with a Construction Contract Amendment signed by the Owner and the Bidder and approved by the Administrator,[2] but no claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition.

e. The Bidder will not perform any work hereunder on Sundays unless there is urgent need for such Sunday work and the Owner consents thereto in writing. The time for completion specified in subsection a of this Section 1 shall not be affected in any way by inclusion of this subsection nor by the Owner's consent or lack of consent to Sunday work hereunder.

Section 2. Environmental Protection. The Bidder shall perform work in such a manner as to maximize preservation of beauty, conservation of natural resources and minimize marring and scarring of the landscape and silting of streams. The Bidder shall not deposit trash in streams or waterways, and shall not deposit herbicides or other chemicals or their containers in or near streams, waterways or pastures. The Bidder shall follow, under the general direction of the Engineer, the criteria relating to environmental protection as specified herein by the Engineer.

Section 3. The Bidder agrees that in the event this Proposal is accepted it will make available for use in connection with the proposed construction all necessary tools and equipment and qualified superintendents and foremen.

Section 4. Changes in Construction. The Bidder agrees to make such changes in construction previously installed in the Project by the Bidder as required by the Owner for prices arrived at as follows:

a. For substations and other units where only a portion of the complete unit is affected by the change, the compensation for such change shall be as agreed upon in writing by the Bidder and the Owner and approved by the Administrator[3] prior to the commencement of work in connection with such change.

b. For all other units, the compensation for such change shall be the reasonable cost thereof as agreed upon in writing by the Bidder and the Owner prior to the commencement of work in connection with such change, but in no event shall it exceed two (2) times the labor price quoted in the Proposal for the installation of the unit to be changed. Such compensation shall be in lieu of any other payment for the installation and removal of the original unit. (If a new or replacing unit is installed, payment for such new or replacing unit shall be made as shown in the final inventory.)

No payment shall be made to the Bidder for materials or labor involved in correcting errors or omissions on the part of the Bidder which result in construction not in accordance with the Plans and Specifications.

Section 5. Construction Not in Proposal. The Bidder also agrees that when it is necessary to construct units not shown in the Proposal it will construct such units for a price arrived at as follows:

a. The cost of materials shall be determined by the invoices.

b. The cost of labor shall be the reasonable cost thereof, but in no event shall it exceed an amount determined by calculating the ratio of the total labor costs to the total material costs in the section of the Proposal involved, and multiplying the cost of materials for the unit in question by this ratio.

Section 6. Supervision and Inspection

a. The Bidder shall cause the construction work on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction is being carried on. The Bidder shall also employ, in connection with the construction of the Project, capable, experienced and reliable foremen and such skilled workmen as may be required for the various classes of work to be performed. Directions and instructions given to the Superintendent shall be binding upon the Bidder.

b. The Owner reserves the right to require the removal from the Project of any employee of the Bidder if in the judgment of the Owner such removal shall be necessary in order to protect the interest of the Owner. The Owner or the Supervisor, if any, shall have the right to require the Bidder to increase the number of its employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to the Owner or Supervisor; but the failure of the Owner or Supervisor to give any such directions shall not relieve the Bidder of its obligations to complete the work within the time and in the manner specified in this Proposal.

c. The manner of construction of the Project, and all materials and equipment used therein, shall be subject to the inspection, tests and approval of the Owner and the Administrator, and the Bidder shall furnish all information required by the Owner or by the Administrator concerning the nature or source of any materials incorporated or to be incorporated in the Project. The Owner and the Administrator shall have the right to inspect all payrolls, invoices of materials, and other data and records of the Bidder and of any subcontractor, relevant to the construction of the Project. The Bidder shall provide all reasonable facilities necessary for such inspection and tests and shall maintain an office at the site of the Project, with telephone service where obtainable and at least one office employee to whom directions and instructions of the Owner may be delivered. Delivery of such directions or instructions in writing to the employee of the Bidder at such office shall constitute delivery to the Bidder. The Bidder shall have an authorized agent accompany the Engineer when final inspection is made and, if requested by the Owner, when any other inspection is made.

d. In the event that the Owner, or the Administrator, shall determine that the construction contains or may contain numerous defects, it shall be the duty of the Bidder and the Bidder's Surety or Sureties, if any, to have an inspection made by an engineer approved by the Owner and the Administrator for the purpose of determining the exact nature, extent and location of such defects.

e. The Engineer may recommend to the Owner that the Bidder suspend the work wholly or in part for such period or periods as the Engineer may deem necessary due to unsuitable weather or such other conditions as are considered unfavorable for the satisfactory prosecution of the work or because of the failure of the Bidder to comply with any of the provisions of the Contract: Provided, however, that the Bidder shall not suspend work pursuant to this provision without written authority from the Owner to do so. The time of completion hereinabove set forth shall be increased by the number of days of any such suspension, except when such suspension is due to the failure of the Bidder to comply with any of the provisions of this Contract. In the event that work is suspended by the Bidder with the consent of the Owner, the Bidder before resuming work shall give the Owner at least twenty-four (24) hours notice thereof in writing.

Section 7. Defective Materials and Workmanship

a. The acceptance of any materials, equipment (except owner furnished materials) or any workmanship by the Owner or the Engineer shall not preclude the subsequent rejection thereof if such materials, equipment, or workmanship shall be found to be defective after delivery or installation, and any such materials, equipment or workmanship found defective before final acceptance of the construction shall be replaced or remedied, as the case may be, by and at the expense of the Bidder. Any such condemned material or equipment shall be immediately removed from the site of the Project by the Bidder at the Bidder's expense. The Bidder shall not be entitled to any payment hereunder so long as any defective materials, equipment or workmanship in respect to the Project, of which the Bidder shall have had notice, shall not have been replaced or remedied, as the case may be.

b. Notwithstanding any certificate which may have been given by the Owner or the Engineer, if any materials, equipment (except owner-furnished materials) or any workmanship which does not comply with the requirements of this Contract shall be discovered within one (1) year after Completion of Construction of the Project, the Bidder shall replace such defective materials or equipment or remedy any such defective workmanship within thirty (30) days after notice in writing of the existence thereof shall have been given by the Owner. If the Bidder shall be called upon to replace any defective materials or equipment or to remedy defective workmanship as herein provided, the Owner, if so requested by the Bidder shall deenergize that section of the Project involved in such work. In the event of failure by the Bidder to do so, the Owner may replace such defective materials or equipment or remedy such defective workmanship, as the case may be, and in such event the Bidder shall pay to the Owner the cost and expense thereof.

ARTICLE III—PAYMENTS AND RELEASE OF LIENS

Section 1. Payments to Bidder

a. Within the first fifteen (15) days of each calendar month, the Owner shall make partial payment to the Bidder for construction accomplished during the preceding calendar month on the basis of completed Assembly Units furnished and certified to by the Bidder, recommended by the Engineer and approved by the Owner solely for the purposes of payment: Provided, however, that such approval shall not be deemed approval of the workmanship or materials. Only ninety percent (90%) of each such estimate approved during the construction of the Project shall be paid by the Owner to the Bidder prior to Completion of the Project: Provided, however, that at any time after work, which, in the sole determination of the Engineer, amounts to fifty percent (50%) of the Maximum Contract Price has been completed, the Owner may elect, in lieu of paying ninety percent (90%) of each such subsequent estimate, to pay each such subsequent estimate in full. Upon completion by the Bidder of the construction of the Project, the Engineer will prepare a Final Inventory of the Project showing the total number and character of Assembly Units and, after checking such Inventory with the Bidder, will certify it to the Owner, together with a certificate of the total cost of the construction performed. Upon the approval of such certificates by the Owner and the Administrator, the Owner shall make payment to the Bidder of all amounts to which the Bidder shall be entitled thereunder which shall not have been paid: Provided, however, that such final payment shall be made not later than ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, unless withheld because of the fault of the Bidder.

b. The Bidder shall be paid on the basis of the number of Construction Units actually installed at the direction of the Owner shown by the inventory based on the staking sheets or structure lists; Provided, however, that the total cost shall not exceed the maximum Contract price for the construction of the Project as set forth in the Acceptance, unless such excess shall have been approved in writing by the Administrator.

c. Notwithstanding the provisions of Section 1a above, the Bidder may, by giving written notice thereof to the Owner, elect to receive payment in full for any Section of the Project upon:

(1) completion of construction of such Section as certified by the Engineer and approved by the Owner and the Administrator;

(2) submission to the Owner and the Administrator of the releases of lien and the certificate referred to in Section 2 hereof;

(3) approval by the Owner and the Administrator of the inventory in respect of such section; and

(4) submission to the Owner and the Administrator of the consent in writing by the Surety or Sureties, if any, on the Contractor's Bond to payment in full for such Section prior to Completion of the Project.

If no sections are designated in Article II, section 1c, the term *Section* shall mean for purposes of this subsection c and Article IV, Section 3b only, a part of the Project as designated by the Owner which represents at least twenty-five percent (25%) of the maximum Contract price as stated in Article III, Section 1, and which is capable of being energized and operated by the Owner.

d. Interest at the rate of _____ percent[4] (_____%) per annum shall be paid by the Owner to the Bidder on all unpaid balances due on monthly estimates, commencing fifteen (15) days after the due date; provided the delay in payment beyond the due date is not caused by any condition within the control of the Bidder. The due date for purposes of such monthly payment shall be the fifteenth day of each calendar month provided (1) the Bidder on or before the fifth day of such month shall have submitted its certification of Construction Units completed during the preceding month and (2) the Owner on or before the fifteenth day of such month shall have approved such certification. If, for reasons not due to the Bidder's fault, such approval shall not have been given on or before the fifteenth day of such month, the due date for purposes of this subsection d shall be the fifteenth day of such month notwithstanding the absence of the approval of the certification.

e. Interest at the rate of _____ percent[5] (_____%) per annum shall be paid by the Owner to the Bidder on the final payment for the Project or any completed Section thereof, commencing fifteen (15) days after the due date. The due date for purposes of such final payment shall be the date of approval by the Administrator of all of the documents requiring such approval, as a condition precedent to the making of final payment, or ninety (90) days after the date of Completion of Construction of the Project, as specified in the Certificate of Completion, whichever date is earlier.

f. No payment shall be due while the Bidder is in default in respect of any of the provisions of this Contract and the Owner may withhold from the Bidder the amount of any claim by a third party against either the Bidder or the Owner based upon an alleged failure of the Bidder to perform the work hereunder in accordance with the provisions of this Contract.

Section 2. Release of Liens and Certificate of Contractor. (See sample REA Form 224, Waiver and Release of Lien and sample REA Form 231, Certificate of Contractor.) Upon the completion by the Bidder of the Project (or any Section thereof if the Bidder shall elect to receive payment in full for any Section when completed as provided above) but prior to final payment to the Bidder, the Bidder shall deliver to the Owner, in duplicate, releases of all liens and of rights to claim any lien, in the form attached hereto from all manufacturers, materialmen, and subcontractors furnishing services or materials for the Project or such Section and

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[1] As long as the total price of this contract including all amendments is less than 120 percent of the original contract price as stated in the acceptance hereto, amendments executed on REA Form 238 are not subject to the approval of the Administrator. Whenever an amendment to this contract causes the total amended contract to exceed 120 percent of the original contract price, that amendment and all subsequent amendments to this contract shall be made subject to the approval of the Administrator.

[2] See Footnote 1.

[3] See Footnote 1.

[4] The Owner shall insert a rate equal to the lowest "Prime Rate" listed in the "Money Rates" section of the Wall Street Journal on the date such invitation to bid is issued

[5] See Footnote 4.

a certificate in the form attached hereto to the effect that all labor used on or for the Project or such Section has been paid and that all such releases have been submitted to the Owner for approval.

Section 3. Payments to Materialmen and Subcontractors. The Bidder shall pay each materialman, and each subcontractor, if any, within five (5) days after receipt of any payment from the Owner, the amount thereof allowed the Bidder for and on account of materials furnished or construction performed by each materialman or each subcontractor.

ARTICLE IV—PARTICULAR UNDERTAKINGS OF THE BIDDER

Section 1. Protection to Persons and Property. The Bidder shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes, as well as the safety rules and regulations of the Owner. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements.

a. The Bidder shall at no time and under no circumstances cause or permit any employee of the Bidder to perform any work upon energized lines, or upon poles carrying energized lines, unless otherwise specified in the Notice and Instructions to Bidders.

b. The Bidder shall so conduct the construction of the Project as to cause the least possible obstruction of public highways.

c. The Bidder shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.

d. The Bidder shall do all things necessary or expedient to properly protect any and all parallel, converging and intersecting lines, joint line poles, highways and any and all property of others from damage, and in the event that any such parallel, converging and intersecting lines, joint line poles, highways or other property are damaged in the course of the construction of the Project the Bidder shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.

e. Where the right-of-way of the Project traverses cultivated lands, the Bidder shall limit the movement of its crews and equipment so as to cause as little damage as possible to crops, orchards or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during the construction of the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. The Bidder shall not be responsible for loss of or damage to crops, orchards or property (other than livestock) on the right-of-way necessarily incident to the construction of the Project and not caused by negligence or inefficient operation of the Bidder. The Bidder shall be responsible for all other loss of or damage to crops, orchards, or property, whether on or off the right-of-way, and for all loss of or damage to livestock caused by the construction of the Project. The right-of-way for purposes of this said section shall consist of an area extending _____ feet on both sides of the center line of the poles along the route of the Project lines, plus such area reasonably required by the Bidder for access to the route of the Project lines from Public roads to carry on construction activities.

f. The Project, from the commencement of work to completion, or to such earlier date or dates when the Owner may take possession and control in whole or in part as hereinafter provided shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection with the construction of the Project and the materials to be used therein shall be borne by the Bidder. The Bidder shall make good and fully repair all injuries and damages to the Project or any portion thereof under the control of the Bidder by reason of any Act of God or other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence.

(i) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to Bidder's employees) and loss, damage to or destruction of Owner's property or the property of any other person or entity (including but not limited to Bidder's property) in any manner arising out of or connected with the Contract, or the materials or equipment supplied or services performed by Bidder, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making Bidder liable for any injury, death, loss, damage, or destruction caused by the sole negligence of Owner.

(ii) To the maximum extent permitted by law, Bidder shall defend, indemnify, and hold harmless Owner and Owner's directors, officers, and employees from all liens and claims filed or asserted against Owner, its directors, officers, and employees, or Owner's property or facilities, for services performed or materials or equipment furnished by Bidder, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. Bidder shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify Owner promptly when it has done so. If Bidder does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, Owner shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due Bidder.

(iii) Bidder shall provide to Owner's satisfaction evidence of Bidder's ability to comply with the indemnification provisions of subparagraphs i and ii above, which evidence may include but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

g. Any and all excess earth, rock, debris, underbrush and other useless material shall be removed by the Bidder from the site of the Project as rapidly as practicable as the work progresses.

h. Upon violation by the Bidder of any of the provisions of this Section, after written notice of such violation given to the Bidder by the Engineer or the Owner, the Bidder shall immediately correct such violation. Upon failure of the Bidder so to do the Owner may correct such violation at the Bidder's expense:

Provided, however, that the Owner may, if it deems it necessary or advisable, correct such violation at the Bidder's expense without such prior notice to the Bidder.

i. The Bidder shall submit to the Owner monthly reports in duplicate of all accidents, giving such data as may be prescribed by the Owner.

j. The Bidder shall not proceed with the cutting of trees or clearing of right-of-way without written notification from the owner that proper authorization has been received from the owner of the property, and the Bidder shall promptly notify the Owner whenever any landowner objects to the trimming or felling of any trees or the performance of any other work on its land in connection with the Project and shall obtain the consent in writing of the Owner before proceeding in any such case.

Section 2. Insurance. The Bidder shall take out and maintain throughout the period of this Agreement the following types and minimum amounts of insurance:

a. Workers' compensation and employers' liability insurance as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

b. Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than $1 million each occurrence, limits for property damage of not less than $1 million for each occurrence, and $1 million aggregate for accidents during the policy period. A single limit of $1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or polices of insurance, primary and excess including umbrella or catastrophe form.

c. Automobile liability insurance on all motor vehicles used in connection with this contract, whether owned, nonowned, or hired, shall have limits for bodily injury or death of not less than $1 million per person and $1 million for each occurrence, and property damage limits of $1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

The Owner shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in subsection "b" and "c" of this Section. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price.

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Bidder shall furnish the Owner a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to the Owner of any cancellation or material change in the insurance.

Section 3. Delivery of Possession and Control to Owner.

a. Upon written request of the Owner the Bidder shall deliver to the Owner full possession and control of any portion of the Project provided the Bidder shall have been paid at least ninety percent (90%) of the cost of construction of such portion. Upon such delivery of the possession and control of any portion of the Project to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1f hereof with respect to such portion of the Project so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials and workmanship as contained in Article II, Section 6 hereof.

b. Where the construction of a Section as hereinbefore defined in Article II, Section 1c and Article III, Section 1c shall have been completed by the Bidder, the Owner agrees, after receipt of a written request from the Bidder, to accept delivery of possession and control of such Section upon the issuance by the Engineer of a written statement that the Section has been inspected and found acceptable by the Engineer. Upon such delivery of the possession and control of any such Section to the Owner, the risk and obligations of the Bidder as set forth in Article IV, Section 1f hereof with respect to such Section so delivered to the Owner shall be terminated: Provided, however, that nothing herein contained shall relieve the Bidder of any liability with respect to defective materials or workmanship as contained in Article II, Section 6 hereof.

Section 4. Energizing the Project.

a. Prior to Completion of the Project the Owner, upon written notice to the Bidder, may test the construction thereof by temporarily energizing any portion or portions thereof. During the period of such test the portion or portions of the Project so energized shall be considered as within the possession and control of the Owner and governed by the provisions of Section 3 of this Article. Upon written notice to the Bidder by the Owner of the completion of such test and upon deenergizing the lines involved therein said portion, or portions of the Project shall be considered as returned to the possession and control of the Bidder unless the Owner shall elect to continue possession and control in the manner provided in Section 3 of this Article.

b. The Owner shall have the right to energize permanently any portion or portions of the Project delivered to its possession and control pursuant to the provisions of Section 3 of this Article.

Section 5. Assignment of Guarantees. All guarantees of materials and workmanship running in favor of the Bidder shall be transferred and assigned to the Owner prior to the time the Bidder receives final payment.

ARTICLE V—REMEDIES

Section 1. Completion on Bidder's Default. If default shall be made by the Bidder or by any subcontractor in the performance of any of the terms of this Proposal, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the Surety or Sureties, if any, upon the Contractor's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof satisfactory to both the Owner and the Administrator shall be made by the Bidder or its Surety or Sureties, if any, the Owner may take over the construction of the Project and prosecute the same to completion by Contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its Surety or Sureties, if any, shall be liable to the Owner for any cost or expense in excess of the Contract price occasioned thereby. In such event the Owner may take possession of and utilize, in completing the construction of the Project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Bidder or any of its subcontractors, which may be situated at the site of the Project. The Owner in such contingency may exercise any rights, claims or demands which the Bidder may have against third persons in connection with this Contract and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

Section 2. Liquidated Damages. The time of the Completion of Construction of the Project is of the essence of the Contract. Should the Bidder neglect, refuse or fail to complete the construction within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder the sum of _____ dollars (_____) per day for each and every day that such construction is delayed in its completion beyond the specified time, as liquidated damages and not as a penalty; if the amount due and to become due from the Owner to the Bidder is insufficient to pay in full any such liquidated damages, the Bidder shall pay to the Owner the amount necessary to effect such payment in full; Provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount retained, deducted or claimed as liquidated damages was computed.

Section 3. Cumulative Remedies. Every right or remedy herein conferred upon or reserved to the Owner or the Government or the Administrator shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election: Provided, however, that the provisions of Section 2 of this Article shall be the exclusive measure of damages for failure by the Bidder to complete the construction of the Project within the time herein agreed upon.

ARTICLE VI—MISCELLANEOUS

Section 1. Definitions.

a. The term *Administrator* shall mean the Administrator of the Rural Electrification Administration of the United States of America and his duly authorized representatives or any other person in whom or authority in which may be vested the duties and functions which the Administrator is now authorized by law to perform.

b. The term *Engineer* shall mean the engineer employed by the Owner, with the approval of the Administrator, to provide engineering services for the Project and said Engineer's duly authorized assistants and representatives.

c. The term *Supervisor* shall mean the person, if any, appointed by the Administrator as the representative of the Government under the provisions of the Loan Contract providing for such appointment in special cases. The term is limited to such special representative of the Government, if any, who is responsible exclusively to the Administrator and does not refer to the Manager or any other person employed by the Owner and responsible to it.

d. The term *Project* shall mean the rural electric system, or portion thereof, described in the Plans and Specifications, Construction Drawings and maps attached hereto.

e. The term *Completion of Construction* shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof except the Bidder's obligations in respect of (1) Releases of Liens and Certificate of Contractor under Article III, section 2 hereof, (2) the inventory referred to in Article III, section 1 hereof, and (3) other final documents. The term *Completion of the Project* shall mean full performance by the Bidder of the Bidder's obligations under the Contract and all amendments and revisions thereof. The Certificate of Completion, signed by the Engineer and approved in writing by the Owner and the Administrator, shall be the sole and conclusive evidence as to the date of Completion of Construction and as to the fact of Completion of the Project.

Section 2. Materials and Supplies. In the performance of this contract there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States.

Mexico, or Canada; provided that other articles, materials, or supplies may be used in the event and to the extent that the Administrator shall expressly in writing authorize such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Seller agrees to submit to the Purchaser such certificates with respect to compliance with the foregoing provision as the Administrator from time to time may require.

Section 3. Patent Infringement. The Bidder shall save harmless and indemnify the Owner from any and all claims, suits and proceedings for the infringement of any patent or patents covering any materials or equipment used in construction of the Project.

Section 4: Permits for Explosives. All permits necessary for the handling or use of dynamite or other explosives in connection with the construction of the Project shall be obtained by and at the expense of the Bidder.

Section 5. Compliance with Statutes and Regulations. The Bidder shall comply with all applicable statutes, ordinances, rules and regulations pertaining to the work. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called *Kick-Back* Statute thereto, and 18 U.S.C. §§ 287, 1001, as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of Governmental Agencies having jurisdiction in the premises.

Section 6. Equal Opportunity Provisions.

a. Bidder's Representations.

The Bidder represents that:

It has _____, does not have _____, 100 or more employees, and if it has, that it has _____, has not _____, furnished the Equal Employment Opportunity-Employers Information Report EEO–1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

The Bidder agrees that it will obtain, prior to the award of any subcontract for more than $10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this Contract will amount to more than $10,000, the Bidder will file such report, as required by law, and notify the owner in writing of such filing prior to the Owner's acceptance of this Proposal.

b. Equal Opportunity Clause. During the performance of this Contract, the Bidder agrees as follows:

(1) The Bidder will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Bidder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to; the following: Employment, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Bidder agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) The Bidder will, in all solicitations or advertisements for employees placed by or on behalf of the Bidder, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Bidder will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Bidder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Bidder will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Bidder will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Bidder's noncompliance with the Equal Opportunity Clause of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part, and the Bidder may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

(7) The Bidder will include this Equal Opportunity Clause in every subcontract or purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Bidder will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event Bidder becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Bidder may request the United States to enter into such litigation to protect the interests of the United States.

c. Certificate of Nonsegregated Facilities The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Section 7. Franchises and Rights-of-Way. The Bidder shall be under no obligation to obtain or assist in obtaining: Any franchises, authorizations, permits or approvals required to be obtained by the Owner from Federal, State, County, Municipal or other authorities; any rights-of-way over private lands; or any agreements between the Owner and third parties with respect to the joint use of poles, crossings, or other matter incident to the construction and operation of the Project.

Section 8. Nonassignment of Contract. The Bidder shall perform directly and without subcontracting not less than twenty-five per centum (25%) of the construction of the Project, to be calculated on the basis of the total Contract price. The Bidder shall not assign the Contract effected by an acceptance of this Proposal or any interest in any funds that may be due or become due hereunder or enter into any contract with any person, firm or corporation for the performance of the Bidder's obligations hereunder or any part thereof, without the approval in writing of the Owner and of the Surety or Sureties, if any, on any bond furnished by the Bidder for the faithful performance of the Bidder's obligations hereunder. If the Bidder, with the consent of the Owner and any Surety or Sureties on the Contractor's Bond or Bonds, shall enter into a subcontract with any subcontractor for the performance of any part of this Contract, the Bidder shall be as fully responsible to the Owner and the Government for the acts and omissions of such subcontractor and of persons employed by such subcontractor as the Bidder would be for its own acts and omissions and those of persons directly employed by it.

Section 9. Extension to Successors and Assigns. Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto.

Section 10. Contractor. Upon acceptance of this Proposal, the successful Bidder shall be the Contractor and all references in the Proposal to the Bidder shall apply to the Contractor.

Section 11. Approval by the Administrator. No acceptance of this Proposal shall become effective until approval in writing of the Administrator: Provided, however, that no obligations shall arise hereunder unless such approval is given within forty-five (45) days from the date of acceptance by the Owner.

_____ (Bidder)
By _____ (President)
_____ (Address)
Attest: _____ (Secretary)
Date _____

The Proposal must be signed with the full name of the Bidder. If the Bidder is a partnership, the Proposal must be signed in the partnership name by a partner. If the Bidder is a corporation, the Proposal must be signed in the corporate name by a duly authorized officer and the corporate seal affixed and attested by the Secretary of the Corporation.

Transmission Construction Units

Section 1—Pole Units

A pole unit consists of one pole in place. It does not include pole-top assembly unit or other parts attached to the pole. The first two digits indicate the length of the pole; the third digit shows the classification per A.S.A. (Example: 45–3 means a pole 45 feet long, class 3.)

Species of Timber: _____

Kind of Preservative: (Check one)

1. Creosote ____; 2. Pentachlorophenol ____; 3. Copper Naphthenate ____; 4. Waterborne preservative—CCA ____ ACZA ____

Method of Treatment: (Check one)

1. Pressure ____; 2. Thermal process: ____

Pole Plan Under Which the Poles are to be Furnished: (Check one)

1. Insured Warranted ____; 2. Independently Inspected ____; 3. Quality Assured ____; 4. Either Insured Warranted, Independently Inspected, or Quality Assured ____

(Engineer to complete above)

Unit No.	Number of units	Unit price		Labor and materials	Extended price— labor and materials
		Labor	Materials		

Total, Section 1— _____.

Section 2—Pole-Top Assembly Units

A pole-top assembly unit consists of the hardware, crossarms and their appurtenances, insulators, etc., except tie wire, required to support the power conductors and overhead ground wire. It does not include the pole, the downlead, and butt coil, which are separate units.

Unit No.	Number of units	Unit price			Extended price— labor and materials
		Labor	Materials	Labor and materials	
TH					
TP					
TS					
TSS					
TSZ					
TUS–1					
TUS–2					

Total, Section 2— _____

Section 3—Conductor Assembly Units

A conductor assembly unit consists of 1,000 feet of a single conductor or overhead ground wire, and includes tie wire, sleeves for splicing, and armor rods with clips or armor wire where necessary. The length of conductor or overhead ground wire shall be determined by taking the sum of all straight horizontal span distances between pole stakes or from center to center of the poles carrying the conductors. The conductor sizes and types listed are the manufacturer's designation.

_____ Tension Stringing (Engineer check when required.)

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	

Total, Section 3— _____

As provided for in the specifications, prior to beginning of work the Bidder will furnish the Engineer the following data on tension equipment:

Diameter Bull Wheel _____ in
Diameter Groove _____ in.
Conductor Bending Radius _____ in
Thickness of Neoprene at Bottom of Groove _____ in.
Stringing Sheave Diameter: Tangent _____ in., Large Angle _____ in.

Section 4—Guy Assembly Units

A guy assembly unit consists of the hardware and wire. Guy guards are designated separately.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
TG–1 TG–2 TG–3 TG–4 TG–5					

Total, Section 4— _____

Section 5—Anchor Assembly Units

An anchor assembly unit consists of the anchor with rod or rods, complete, ready for attaching the guy wire.

Unit No.	Number of units	Unit price			Extended price— labor and materials
		Labor	Materials	Labor and materials	
TA–1–5 TA–1–8 TA–3					

Total, Section 5— _____

Section 6—Miscellaneous Assembly Units

A miscellaneous assembly unit consists of an additional unit needed in the Project for line construction but not otherwise listed in the Proposal.

Unit No.	Number of units	Unit price			Extended price—labor and materials
		Labor	Materials	Labor and materials	
TM					

Total, Section 6— _____

Section 7—Right-of-Way Clearing Units

TM–12. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured _____ (_____) feet on one side of pole line or centerline of structures) of actual clearing of right-of-way. This includes clearing of underbrush, tree removal, and such tree trimming as is required so that the right-of-way, except for tree stumps which shall not exceed _____ in height, shall be clear from the ground up on one side of the line of poles carrying conductors (See Detail A, Drawing TM–12–2A.) The length of actual clearing shall be measured in a straight line, parallel to the horizontal line between poles or centerline of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A.) All trees and underbrush across the width of the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement. All lengths thus arrived at, added together and divided by 1,000 shall give the number of TM–12 units of clearing. The Bidder shall not remove or trim shade, fruit, or ornamental trees unless so directed by the Engineer in writing.

TM–12 (1). This unit is identical with TM–12, except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (to be measured _____ (_____) feet on each side of the pole line or centerline of structures) (See Detail D, Drawing TM–12–2A.)

TM–13. The unit, for purpose of quoting, is 1,000 feet in length of clearing off the right-of-way. The Engineer will select those trees off the right-of-way that he deems to be a hazard to the line and will designate them to the Bidder in writing as danger trees. When so designated, the Bidder shall remove or top such trees at his option except that the Bidder shall trim and not remove shade, fruit or ornamental trees unless otherwise directed by the Engineer in writing (See Drawings TM–12–2A and TM–13 for examples of danger trees.)

The measurement of length of right-of-way to be cleared shall be considered as a straight line parallel to the horizontal line between poles or centerline of structures, such measurement of length to be based on maximum dimension of foliage (not trunk) projected to the ground line (See Details E, F, G and H, Drawing TM–12–2A.) Dead trees having no foliage shall be measured across the maximum dimension and multiplied by two. (See Detail F, Drawing TM–12–2A.) Each tree so removed shall be added together to determine the total length of clearing. All lengths thus arrived at, added together and divided by 1,000 shall give the number of TM–13 units (Example: Details E, F, G and H, Drawing TM–12–2A, total 0.10 of a TM–13 unit.)

TMC–12, TMC–12 (1). These units are identical to the respective TM units except that chemical treatment of stumps is required in addition to the clearing of underbrush, tree removal and tree trimming.

TM–14. The unit is 1,000 feet in length and _____ (_____) feet in width (to be measured feet on one side of right-of-way center line) of actual clearing of right-of-way. Trees and underbrush should be cleared from the ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide "undulating" boundaries. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the service road. The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to the ground line (See Detail B, Drawing TM–12–2A.) All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A.) Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–14 (1). This unit is identical with TM–14 except the full width of the right-of-way to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A).

TM–15. The unit is 1,000 feet in length and _____ feet in width (to be measured _____ (_____) feet on one side of the right-of-way center line) of actual clearing of the right-of-way. Trees and underbrush should be cleared from ground up within 10 feet of any structure location. The Engineer will mark the trees and brush to be cleared to provide a "feathered" appearance in the right-of-way. Low growing trees and brush are to be left in the right-of-way to the extent it will not be hazardous to the line or will not interfere with the service road.

The length of actual clearing shall be measured in a straight line parallel to the horizontal line between poles or center line of structures and across the maximum dimension of foliage cleared projected to ground line (See Detail B, Drawing TM–12–2A). All trees and underbrush cleared across the right-of-way shall be considered to be grouped together as a single length in measuring the total length of clearing (See Detail C, Drawing TM–12–2A). Spaces along the right-of-way in which no trees are to be removed or trimmed or underbrush cleared shall be omitted from the total measurement.

TM–15 (1). This unit is identical to TM–15 except the full width of the right-of-way, to be cleared shall be _____ (_____) feet wide (See Detail D, Drawing TM–12–2A).

Additional Requirements. (When specifying TM units denote type of disposal A or B).

A. Trees, brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used).

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (Describe) _____

B. Trees that are felled shall be cut to commercial wood lengths, stacked neatly and left on the right-of-way for the landowner. Commercial wood length means the length designated by the Engineer but in no case shall it be required to be less than _____ (_____) feet. Brush, branches and refuse shall, without delay, be disposed of by such of the following methods as the Engineer will direct (Engineer to strike out methods not to be used).

1. Burned
2. Piled on one side of right-of-way
3. Roller chopped and left on right-of-way in such a manner as not to obstruct roads, ditches, drains, etc.
4. Other (Describe) _____

TRANSMISSION RIGHT-OF-WAY UNIT

Unit No.	Number of units	Unit price			Extended price—Labor and materials
		Labor	Materials	Labor and materials	

Total Section 7— _____

Section 8—Substation Assembly Units

Description of Construction Units. Each Construction Unit consists of a complete installation of the designated portion of a substation as specified on the drawings, together with connections to associated equipment. Each Construction Unit represents all labor and material including necessary accessories completely installed and tested in satisfactory operation. Full identification of each Construction Unit and all necessary specifications of the installation is shown on the drawings.

Items of material in each Construction Unit shall be of the designated size, rating, type, voltage, or other specification in accordance with the drawings. The bill of material drawing for each substation shows the identification of the Construction Units under which the material is to be installed and shows which items of material may be partly or entirely found in the lists of owner-furnished materials.

All items of equipment, unless otherwise specified, are mounted on a structure which shall be a Construction Unit of Group A. Each Construction Unit is designated by the letter of the Group to which it belongs and an identifying number. The same item of equipment carries the same Construction Unit designation in all the substations. Items of equipment designated by the same Construction Unit in one substation are of only one kind as to voltage, type and other specifications.

The tabulation of construction units for each substation is separate and contains all units necessary for construction of that substation.

Group A. Structures. A Construction Unit consists of a structure, or structures, with bus supports including insulators and fittings, buses, conductors and overhead ground wires to adjacent structures within the substation, grounding material to connect equipment with the ground bus, and associated material including mounting brackets, supports for equipment, clamps and connectors, all as specified in the drawings.

Group B. Three-pole group operated air break switches. A Construction Unit consists of one 3-pole group operated air break switch with all accessories and operating mechanisms as specified in the drawings.

Group C. Lightning arresters. A Construction Unit consists of one single-phase lightning arrester.

Group D. Single pole disconnecting switches. A Construction Unit consists of one single pole disconnecting or by-pass switch as specified in the drawings. If a fuse disconnect switch is specified, the fuse is included with the switch.

Group E. Oil Circuit Breakers. A Construction Unit consists of one complete three-phase power circuit breaker complete with supporting frame and control cabinet, unless shown otherwise in the drawings, mounted as specified in the drawings.

Group F. Oil circuit reclosers. A Construction Unit consists of a complete single-phase or three-phase oil circuit recloser as specified in the drawings.

Group G. Meters, relays and instrument transformers. A Construction Unit consists of one meter, relay, potential transformer or current transformer.

Group H. Transformers. A Construction Unit consists of one power transformer or one station service transformer either single-phase or three-phase as specified in the drawings.

Group I. Voltage regulators. A Construction Unit consists of one single-phase or three-phase voltage regulator as specified in the drawings.

Group J. Communications and supervisory control equipment. A Construction Unit consists of carrier current equipment, microwave, or other types of communications and supervisory control equipment as specified in the drawings.

Group K. Conduit and cable. A Construction Unit consists of the wire, cable, conduit and accessories necessary to complete the installation of equipment in accordance with the specifications and drawings, where such installation has not been included in other Groups.

Group L. foundations. A Construction Unit consists of concrete footings and foundations except for the fence, as specified in the drawings.

Group M. Site preparation. A Construction Unit consists of clearing, grading, drainage work, and surfacing, as specified in the drawings.

Group N. Fence. A Construction Unit consists of the complete installation of the fence, gates, etc., as specified in the drawings.

Group O. Station grounding. A Construction Unit consists of the complete ground bus including ground rods, grounding mats or platforms, except as otherwise provided in other Groups, with connections to structures, equipment, and fence as specified in the drawings.

Group P building. A Construction Unit consists of a control building or cabinet, on a foundation of Group L and the facilities and equipment installed therein as specified in the drawings, except as otherwise provided in other Groups.

Other Groups. The Engineer shall specify such additional Groups as may be necessary for the completion of the Project. Description of these Groups shall be provided by an addition to this Section of the Specifications for Construction.

_____ Station Construction Units
Unit No. _____

Name and Description of Construction Unit

_____

No. of Units _____

Unit Prices

Labor _____
Materials _____
Labor and Materials _____
Extended Price—Labor and Materials

_____

Total Price _____

Proposal Summary

Recapitulation of Sections

Section—1 _____ $_____
Section—2 _____ $_____
Section—3 _____ $_____
Section—4 _____ $_____
Section—5 _____ $_____
Section—6 _____ $_____
Section—7 _____ $_____
Section—8 _____ $_____
Total _____ $_____

Acceptance

Subject to the approval of the Administrator, the Owner hereby accepts the foregoing Proposal of the Bidder, _____ for the construction of the following:
Transmission Construction Units: Sections:

_____

The total contract price is $ _____
_____ Owner
By _____ President
_____ Secretary
_____ Date of Contract

[End of Clause]

§§ 1726.353–1726.399 [Reserved].

Subpart J—Contract Closeout

§ 1726.400 Final contract amendment.

As needed, a final contract amendment will be prepared and processed in accordance with § 1726.24(b) prior to or in conjunction with the closeout of the contract.

§ 1726.401 Material contract closeout.

This section is applicable to contracts executed on REA Form 173.

(a) *Delivery inspection.* The borrower, acting through the engineer, will verify that all materials are delivered in proper quantities, in good condition, and in compliance with applicable specifications.

(b) *Closeout documents.* The borrower, acting through its engineer, will obtain from the supplier a "Buy American" certificate, REA Form 213, any manufacturer's guarantee(s) and, if applicable, a copy of REA Form 224, Waiver and Release of Lien. Closeout documents for materials contracts need not be submitted to REA unless specifically requested by REA on a case by case basis.

(c) *Final payment.* Upon completion of the actions required under paragraphs (a) and (b) of this section, the borrower shall make final payment to the supplier in accordance with the provisions of the material contract or purchase order.

§ 1726.402 Equipment contract closeout.

This section is applicable to contracts executed on REA Form 198.

(a) *Final inspection and testing of equipment.* The borrower, acting through its engineer, will perform the final inspection and testing of equipment as appropriate for the specific equipment. The borrower, acting through its engineer, will schedule such inspection and testing at a time mutually agreeable to the borrower, engineer, and the supplier or manufacturer. Within thirty (30) days after completion of the inspection and testing, the borrower, acting through its engineer, will prepare a report of the inspection and testing, obtain a copy of the report from the engineer, and submit a copy to the supplier or manufacturer. This report must include a detailed description of the methods of conducting the test(s), observed data, comparison of guaranteed and actual performance, and recommendations concerning acceptance. The borrower will obtain from the engineer a written certification stating that the equipment has been installed, placed in satisfactory operation and tested, and meets the contract requirements. Where more than one-hundred and eighty (180) days have elapsed since the delivery of the equipment and the equipment has not been installed or tested, the contract may be closed out upon certification by the engineer that the equipment has been inspected and appears to be in accordance with the contract requirements.

(b) *Closeout documents.* (1) The borrower, acting through its engineer, will obtain the following executed documents:

(i) Certification by the project engineer in accordance with paragraph (a) of this section.

(ii) All guarantees or warranties.

(iii) A "Buy American" certificate from the supplier or manufacturer.

(2) Closeout documents for materials contracts need not be submitted to REA unless specifically requested by REA.

(c) *Final payment.* Upon completion of the actions required under paragraphs (a) and (b) of this section, the borrower will make final payment to the supplier or manufacturer in accordance with the provisions of the equipment contract.

§ 1726.403 Project construction contract closeout.

This section is applicable to contracts executed on REA Forms 200, 203, 257, 764, 786, 830, and 831.

(a) *Final test of equipment supplied under a construction contract.* If equipment is supplied under a construction contract, the borrower, acting through its architect or engineer, will perform the final inspection and testing of equipment as appropriate for the specific equipment. The borrower, acting through its architect or engineer, will schedule such inspection and testing at a time mutually agreeable to the borrower, architect or engineer, and the contractor. Within thirty (30) days after completion of the inspection and testing, the borrower, acting through its architect or engineer, will prepare a report of the inspection and testing, obtain a copy of the report from its architect or engineer, and submit a copy to the contractor. This report must include a detailed description of the methods of conducting the test(s), observed data, comparison of guaranteed and actual performance, and recommendations concerning acceptance. The borrower will obtain from its architect or engineer a written certification stating that the equipment has been installed, placed in satisfactory operation and tested, and meets the contract requirements. Where more than one-hundred and eighty (180) days have elapsed since the delivery of the equipment and the equipment has not been installed or tested, the contract may be closed out upon certification by its architect or engineer that the equipment has been inspected and appears to be in accordance with the contract requirements.

(b) *Final inspection of construction.* The borrower will require the contractor to notify the architect or engineer when construction is complete. The borrower, acting through the architect or engineer, will schedule such final inspection at a time mutually agreeable to the borrower, architect or engineer, contractor, and the respective REA General Field Representative (GFR), if the GFR has notified the borrower or its architect or engineer of a desire to observe the final inspection. The borrower, acting through its architect or engineer, will perform a final inspection of the construction and notify the contractor of any required changes or corrections.

(c) *Closeout documents.* (1) Upon satisfactory completion of construction (including all changes and corrections by the contractor), the borrower, acting through its architect or engineer, will obtain executed copies of the following documents:

(i) REA Form 181, Certificate of Completion, Contract Construction for Buildings (for contracts executed on REA Form 257), or REA Form 187, Certificate of Completion, Contract Construction (for contracts executed on all other forms under this section).

(ii) REA Form 213, "Buy American" certificate.

(iii) REA Form 224, Waiver and Release of Lien, from each manufacturer, supplier, and contractor which has furnished material or services or both in connection with the construction.

(iv) REA Form 231, Certificate of Contractor.

(v) REA Form 254, Construction Inventory, including all supporting documents, such as REA Forms 254a–c and construction change orders, for contracts executed on REA Forms 203, 764, 830 or 831.

(vi) Certification by the project architect or engineer in accordance with § 1726.403(a), if applicable.

(vii) Final design documents, as outlined in part 1724 of this chapter.

(2) *Distribution of closeout documents.* (i) The borrower will retain one copy of each of the documents identified in paragraph (c)(1) of this section in accordance with applicable REA requirements regarding retention of records.

(ii) For contracts subject to REA approval, the borrower will submit the following closeout documents for REA approval (through the GFR except for generation projects):

(A) REA Form 181, Certificate of Completion, Contract Construction for Buildings (for contracts executed on REA Form 257), or REA Form 187, Certificate of Completion, Contract Construction (for contracts executed on all other forms under this section).

(B) REA Form 231, Certificate of Contractor.

(C) REA Form 254, Construction Inventory, including all supporting documents, such as REA Forms 254a–c and construction change orders, for contracts executed on REA Forms 203, 764, or 831.

(iii) For contracts not subject to REA approval, the closeout is not subject to REA approval. The borrower will send one copy of REA Form 181 or REA Form 187 (as applicable) to REA for information prior to or in conjunction with the applicable REA Form 219, Inventory of Work Orders. The remaining closeout documents need not be sent to REA unless specifically requested by REA.

(d) *Final payment.* (1) The borrower will make final payment to the contractor upon completion of approval of all closeout documents by the parties to the contract, in accordance with the terms of the construction contract.

(2)(i) Upon receipt of final payment by the contractor, the borrower will obtain from the contractor a certification of receipt of final payment in the following form:

"The undersigned acknowledges receipt of the final contract payment of $_____ as satisfaction in full of all claims of the undersigned under the construction contract between the undersigned and _____ (borrower), dated as amended, and as complete performance by the latter of all obligations to be performed by it pursuant thereto. The total amount received under this contract is shown above."

(ii) The certification in paragraph (d)(2)(i) of this section is to be executed for the contractor by: the sole owner, a partner, or an officer of the corporation. Where this certification is executed for the corporation by a person other than the president, a certified copy of the authorization from the corporate board must be included with the certification. This certification is not a replacement for itemized invoices.

§ 1726.404 Non-project construction contract closeout.

This section is applicable to contracts executed on REA Forms 201, 790, and 792.

(a) *Final test of equipment supplied under a construction contract.* If equipment is supplied under a construction contract, the borrower, acting through its engineer, will perform the final inspection and testing of equipment as appropriate for the specific equipment. The borrower, acting through its engineer, will schedule such inspection and testing at a time mutually agreeable to the borrower, its engineer, and the contractor. Within thirty (30) days after completion of the inspection and testing, the borrower, acting through its engineer, will prepare a report of the inspection and testing, obtain a copy of the report from its engineer, and submit a copy to the contractor. This report must include a detailed description of the methods of conducting the test(s), observed data, comparison of guaranteed and actual performance, and recommendations concerning acceptance. The borrower will obtain from the engineer a written certification stating that the equipment has been installed, placed in satisfactory operation and tested, and meets the contract requirements. Where more than one-hundred and eighty (180) days have elapsed since the delivery of the equipment and the equipment has not been installed or tested, the contract may be closed out upon certification by the engineer that the equipment has been inspected and appears to be in accordance with the contract requirements.

(b) *Final inspection of construction.* The borrower will require the contractor to notify its engineer when construction of a section of the project is complete. The borrower, acting through engineer, will schedule such final inspection at a time mutually agreeable to the borrower, its engineer, contractor, and the respective GFR, if the GFR has notified the borrower or its engineer of a desire to observe the final inspection. The borrower, acting through its engineer, will perform a final inspection of the construction of that section of the project and notify the contractor of any required changes or corrections.

(c) *Closeout documents.* (1) Upon satisfactory completion of construction of a section of the project (including all changes and corrections by the contractor), the borrower, acting through its engineer, will obtain executed copies of the following documents:

(i) REA Form 792b, Certificate of Contractor and Indemnity Agreement

(ii) REA Form 213, "Buy American" certificate.

(iii) Certification by the project engineer in accordance with paragraph (a) of this section, if applicable.

(iv) Final design documents, as outlined in part 1724 of this chapter.

(2) *Distribution of closeout documents.* (i) The borrower will retain one copy of each of the documents identified in paragraph (c)(1) of this section in accordance with applicable REA requirements regarding retention of records.

(ii) For contracts not subject to REA approval, the closeout is not subject to REA approval and the closeout documents need not be sent to REA unless specifically requested by REA.

§ 1726.405 Inventory of work orders (REA Form 219).

Upon completion of the contract closeout, the borrower shall complete REA Form 219, Inventory of Work Orders, in accordance with part 1717, Post-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans, of this chapter.

Dated: April 20, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–11541 Filed 6–2–94; 8:45 am]

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Part III

Department of Agriculture

Forest Service

36 CFR Part 242

Department of the Interior

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska; 1994–1995

Subsistence Taking of Fish and Wildlife Regulations; Final Rule

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AB43

Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1994–1995 Subsistence Taking of Fish and Wildlife Regulations

AGENCY: Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for seasons, bag limits, methods, and means related to taking of wildlife for subsistence uses during the 1994–1995 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. This rulemaking replaces the wildlife regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1993–1994 Subsistence Taking of Fish and Wildlife Regulations", which expire on June 30, 1994.

EFFECTIVE DATES: This rule becomes effective on July 1, 1994, and remains effective through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Richard S. Pospahala, Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Norman R. Howse, Assistant Director Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628, telephone (907) 586–8890.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability which are consistent with ANILCA, and which provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute, and therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with subparts A, B, and C of these regulations, a Federal Subsistence Board (Board) was established to administer the Federal subsistence management program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies have participated in development of regulations for subparts A, B, and C, and the annual subpart D regulations. All Board members have reviewed this final rule and agree with its substance. Because this final rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

On June 1, 1993, the 1993–1994 Seasons and Bag Limits for Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (58 FR 31252–31295). That rulemaking amended subpart D of 36 CFR part 242 and 50 CFR part 100.

Over the course of the 1993–1994 regulatory year, the Board executed 6 special actions on the 1993–1994 subpart D regulations. Two of those actions were emergency or temporary closures enacted to protect the continued viability of particular wildlife populations or herds. The Board also established season dates for Federal subsistence hunts for moose in Unit 18, caribou in Unit 12, and muskox in Unit 26.

Proposed subpart D regulations for the 1994–1995 seasons and bag limits, and methods and means were published on September 2, 1993, in the **Federal Register** (58 FR 46678–46706). A 60-day comment period providing for public review of the proposed rule was advertised by mail, radio, and newspaper. Subsequent to that 60-day review period, the Board prepared a booklet describing all proposals for change to subpart D. The public then had an additional 60 days in which to comment on the proposals for changes to the regulations. The Federal Subsistence Regional Advisory Councils (Regional Councils) met in regional centers, received public comments, and formulated recommendations to the Board on proposals for their respective regions. These final regulations reflect Board review and consideration of Regional Council recommendations and public comments submitted to the Board.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Public Lands in Alaska, 36 CFR 242.11 (1992) and 50 CFR 100.11 (1992), and for the purposes identified therein, Alaska has been divided into ten subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. Presently, the Councils are composed of no fewer than seven and no more than thirteen members who are residents of the region and are knowledgeable of local subsistence concerns. Charters for these councils were approved and signed by former Secretary of the Interior Lujan on January 19, 1993.

The Regional Council appointments were made with due consideration of adequate geographical, cultural, and user diversity within each region. As specified in the Council charters, initial appointments were staggered from one to three years. Subsequent appointments will carry 3-year terms. Appointment terms expire on December 2 of the appropriate year. Secretary of the Interior Babbitt made the appointments

to the Regional Councils on August 11, 1993. The Regional Councils have a substantial role in helping residents of the region review the proposed rule and make comments on it. Following publication of the proposed rule, each Council conducted public meetings to develop regulation proposals. The Regional Councils also conducted a second round of meetings to develop their recommendations on the proposals. The Council Chairs or Vice-Chairs then represented their Council at the Board meeting in April 1994.

Applicability of Subparts A, B, and C

Subparts A, B, and C of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.24 and 36 CFR 100.1 to 100.24, remain effective and apply to this proposed rule for subpart D. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 100.4 apply to regulations found in this subpart. The identified sections include definitions for the following terms:

Federal lands which "means lands and waters and interests therein title to which is in the United States"; and

public land or *public lands* which "mean lands situated in Alaska which are Federal lands, except—

(1) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal Law;

(2) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) lands referred to in Section 19(b) of the Alaska Native Claims Settlement Act."

Navigable Waters

At this time, Federal subsistence management program regulations apply to all non-navigable waters located on public lands and to navigable waters located on the public lands identified at 50 CFR 100.3(b) and 36 CFR 242.3(b) of the Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964) published May 29, 1992. Nothing in these regulations is intended to enlarge or diminish the authority of the Departments to manage submerged lands, title to which is held by the United States.

Subsistence Taking of Fish and Shellfish Regulations

This proposed rule contains no subsistence fishing or shellfish taking provisions. The Board intends to propose to the Secretaries that the regulatory year governing subsistence fish and shellfish taking activities be changed from the June 1–July 30 annual cycle to a January 1–December 31 cycle. Such a change may provide more consistency during those months when fish and shellfish are most commonly harvested. The current subsistence fish/shellfish regulations will be addressed in a separate interim rule as soon as possible. The interim rule will likely extend the current regulations until litigation appeals are concluded or the agency is directed to issue revised rules, whichever occurs first.

Summary of Comments (Proposals)

On September 2, 1993, the proposed rule for Subsistence Management Regulations for Public Lands in Alaska—Subpart D, 1994–1995 was published in the **Federal Register** (58 FR 46678–46706). During the 60-day period to suggest changes for the 1994–1995 regulatory year, the Regional Councils held their initial meetings in conjunction with public hearings on the 1994–1995 subpart D regulation proposed rule. Meetings were held in Sitka, Barrow, Bethel, Kotzebue, Fairbanks, Kodiak, Nome, Anchorage, Naknek, and McGrath. The meetings were used to initiate the Regional Council system and to assist in the development of suggested changes to the 1994–1995 subpart D proposed rule.

A total of 107 proposals for 1994–1995 subpart D regulations was received. Of those, 88 were within the scope of the Board's authority under subpart D. Most of the proposals which were not accepted involved requests for changes in customary and traditional use determinations found in subpart C of the Federal subsistence management program regulations. Other proposals which were not considered requested delegation of Board authorities that could not be relinquished to nongovernment entities, or requested application of hunting or fishing regulations to non-Federal lands or waters. One proposal questioned the entire framework of the Federal Subsistence Management Program, one requested regulations for waterfowl, and another proposed inclusion of a non-rural Native group within the program.

On November 15, 1993, a booklet describing the 88 proposals was distributed to the public with notice that the Board would accept public comments on these 88 proposals through January 14, 1994. After the public comment period, the Regional Councils held meetings in regional centers to obtain local input on specific proposals affecting each region. Of the 88 proposals, the Board acted on 79 during a public meeting, April 11–15, 1994. The remaining proposals were withdrawn by their proponent prior to the Board meeting or during the meeting.

Analysis of Proposals Rejected by the Board

The Board did not adopt five proposals requesting relief on method and means restrictions. Of the five proposals, four were related to the use of designated hunters to harvest wildlife for others, especially the elderly or incapacitated. The Board recognized that the taking of resources by a few hunters in a community and the sharing of the harvest is a cultural tradition throughout Alaska. The Board in rejecting these proposals directed the staff to work with the Regional Councils to develop proposed regulations for the 1995–96 regulatory year that address the situation on a State-wide basis. One proposal requested liberalization of same day airborne trapping of wolves and other furbearers. Seven of the Regional Councils recommended rejection of this proposal because the use of airplanes to shoot furbearers does not constitute a customary and traditional use. Three Regional Councils supported the proposal. Following the recommendation supplied by seven Regional Councils, the Board rejected this proposal.

Seven proposals to change existing seasons were rejected by the Board because approval of the action was not biologically justified or would unnecessarily restrict existing subsistence uses. All seven were either not acted upon by the respective Regional Council because of other pending proposals or were recommended for rejection.

Two proposals to alter existing subsistence moose hunting regulations for Unit 1(B) were rejected by the Board. These proposals requested removing antler restrictions in the Stikine River area. The Regional Council recommended rejecting these proposals, and the Board followed the Regional Council's recommendation denying these proposals due to the declining moose population and concern regarding future harvest.

The Board addressed a proposal to open a moose hunt in Unit 3, but found insufficient customary and traditional use information to warrant

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establishment of a moose season without going through a process for making a customary and traditional use determination.

The Board addressed two proposals to modify the deer season in Unit 4. In addressing these proposals, the Board adopted another proposal supported by the Regional Council that better addressed the opportunity for both subsistence and non-subsistence hunters.

Five proposals requesting establishment of seasons for caribou and moose on the Kenai Peninsula (Units 7 and 15) were deferred, as recommended by the relevant Regional Council, until customary and traditional uses of those species could be comprehensively evaluated. In the interim, the Board's past action prevents adoption of any new subsistence seasons on the Kenai Peninsula until the full review of customary and traditional uses is completed.

One proposal was submitted to open Federal lands in Units 11 and 13 to nonsubsistence uses. The Regional Council recommended that the Board reject this proposal because of potential adverse impacts on a declining wolverine population. The Board agreed with the Regional Council and rejected the proposal.

One proposal to close Federal lands to non-subsistence uses was considered as three separate proposals to allow a more detailed examination of each area requested for closure. All three were rejected: two were deferred at the request of the Regional Council to allow for more study, and the third was deferred because administrative changes may resolve perceived conflicts. In the third area, uses will also be closely monitored and will be reviewed during the next regulatory cycle.

Three proposals dealt with the reestablishment of a special Lime Village Management Area, a revision in the harvest system from a community to an individual system, and the establishment of a State permit system. After considerable deliberation, with the support of the Lime Village community and Regional Council, and with acceptance of ADF&G, the Board rejected all three, retaining the present subsistence regulations for the area and emphasizing a community harvest reporting system.

Two proposals dealing with moose in Unit 19(A) and 21(E) were deferred until the next Board meeting because an adjacent, affected Regional Council had not had the opportunity to make recommendations on the proposals.

Two proposals on Dall Sheep in Units 23 and 26, proposing boundary adjustments and horn curl restrictions, were rejected based on Regional Council recommendations that the additional curl restrictions would adversely impact subsistence uses. The boundary modifications were handled in another proposal.

To assure the continued viability of the Chisana caribou herd, the Board rejected a proposal calling for a continued subsistence season on the herd. The Regional Council had recommended that the Board take such action.

The Board rejected two proposals that were adequately addressed in other proposals. This was done in concurrence with Regional Council recommendations.

One proposal raised the issue of the amount of land in a given area that is necessary to justify establishment of Federal subsistence regulations. Because there exists no established policy regarding the minimum acreage or Federal/State land ratios at which Federal authority should be exercised, the Board followed the Regional Council's advice and rejected this proposal.

Analysis of Proposals Adopted by the Board

All of the adopted proposals were recommended for adoption by the respective Regional Councils and were based on meeting customary and traditional harvest practices or protecting wildlife populations. Detailed information relating to justification on each proposal may be found in the transcripts for the Board meeting, available for review at the Office of Subsistence Management at the address listed previously.

- Throughout the document, minor editorial revisions were made to simplify wording or reduce redundancy.
- The Board adopted one proposal that had Statewide impacts. This proposal modified and in many areas aligned seasons or harvest limits on wolves to correspond with State regulations. The Board generally adopted the Regional Council recommendations that in some regions modified the proposed season dates.
- Modifications were made to provide for the harvest of moose for the Nuchalawoyya Potlatch and for the Kaltag/Nulato Stickdance that the Board had approved at an earlier meeting but had not yet been incorporated in the regulations.

Southeast Region

Six proposals affecting the Southeast Region were acted on by the Board and have resulted in changes to regulations found in § ____.25. The following Board actions affect the Southeast Region and have been incorporated in this final rule:

- Modified boundaries to provide a consistent description with ADF&G within a portion of Unit 4.
- Deleted the prohibition against the taking of ungulates from a boat in Unit 4.
- Eliminated the public lands closure for deer in Unit 4.
- Closed the marten, mink, and weasel trapping season on Chichagof Island to protect the viability of the marten population.
- Changed the brown bear harvest limit in Unit 5 to one bear every year with no sealing requirements but with some harvest reporting requirements.
- Established a community harvest in Unit 5(A) for the take of up to 10 moose for ceremonial uses.

Southcentral Region

The Board evaluated and acted upon one proposal affecting the Southcentral Region. Resulting changes in the regulations are contained in § ____.25.

- Lengthened the beaver trapping season in Unit 13, providing uniformity with State seasons.

Kodiak/Aleutians Region

The Board evaluated and acted upon two proposals affecting the Kodiak/Aleutians Region. Resulting changes in the regulations are contained in § ____.25.

- Closed the caribou season in Unit 9(D) and 10 (Unimak Island) due to rapid population declines.
- Modified boundaries to provide a consistent description with ADF&G within a portion of Unit 8.

Bristol Bay Region

Nine proposals affecting the Bristol Bay Region were acted on by the Board and resulted in changes to regulations contained in § ____.25. As a result of Board actions, the following changes are incorporated into this final rule:

- Extended the beaver trapping season in Unit 9(B) and 17 and allowed for the use of firearms in the later part of the season in Unit 9(B).
- Changed the brown bear harvest limit for residents of Nondalton to a bear every year and modified the reporting requirements.
- Extended the caribou season in Units 9(B), 17(B), and 17(C) and increased the harvest limit.
- Provided for the take of moose for ceremonial potlatches for Nondalton residents.
- Lengthened the moose season in Unit 9(B) and eliminated a permit requirement for moose harvest in Unit 9(C).
- Opened a limited hunt for caribou on the Nushagak Peninsula in Units 17(A) and 17(C).

Yukon-Kuskokwim Region

Three proposals affecting the Yukon-Kuskokwim Region were acted on by the Board and have changed Subpart D regulations found in § ____.25. The following actions affect the Yukon-Kuskokwim Region and are incorporated into this final rule:

- Opened a moose season in the lower Yukon River Area of Unit 18.
- Extended the moose season in Unit 18 to accommodate local customary and traditional use patterns.
- Increased the harvest limit for wolves in Unit 18.

Western Interior Region

The Board acted on three proposals affecting the Western Interior Region resulting in changes to Subpart D regulations in § ____.25. The following board actions affect the Western Interior Region and are included in this final rule:

- Modified restrictions on use of firearms in the Dalton Highway Corridor Management Area. This clarification will reduce confusion during future hunts.
- Changed the moose season in Units 21(D) and realigned boundaries and seasons in Unit 24 to more closely match those of the State and reduce confusion.
- Allowed the incidental take of Arctic fox while trapping for red fox.

Seward Peninsular Region

The Board evaluated and acted upon two proposals affecting the Seaward Peninsula Region resulting in changes to Subpart D regulations in § ____.25. The following Board actions affect the Seward Peninsular Region and are included in this final rule:

- Shortened the antlerless moose season in Unit 22(D) to protect a declining population.
- Allowed the use of snowmachines to take moose and caribou in Unit 22. Harassment of wildlife, such as herding or driving, remains prohibited.

Northwest Arctic Region

The Board acted on three proposals for the Northwest Arctic Region resulting in changes to Subpart D regulations in § ____.25. The following Board actions affect the Northwest Artic Region and are included in this final rule:

- Modified moose regulations in Unit 23 to change boundaries and seasons. The Board's action may aid recovery of the declining moose population in this portion of Unit 23.
- Corrected a boundary description and permit requirement error for sheep in Unit 230

Eastern Interior Region

The Board acted on eight proposals which affect the Eastern Interior Region resulting in changes to Subpart D regulations in § ____.25. The following Board actions affect the Eastern Interior Region and are included in this final rule:

- Modified restrictions on use of firearms in the Dalton Highway Corridor Management Area. This clarification will reduce confusion during future hunts.
- Reworded the requirements on snare size for trapping wolves in Units 12 and 20(E).
- Closed some Federal lands in Unit 12 to protect the Chisana caribou herd, revised regulations for Units 20(E) and 25(C) to protest the Fortymile caribou herd, and revised the area descriptions and caribou seasons in Units 20(F) and 25(C).
- Modified the Unit 25(D) (West) moose regulation to remove the requirement for "antlered" bull, modified the season dates for moose within Unit 25(D) (West), and authorized a four brow tine option to the antler restriction in Unit 20(A).
- Eliminated the permit requirement for moose in Unit 25(A) within the Dalton Highway Corridor Management Area.
- Aligned the trapping season with the State season, allowing greater harvest opportunity and reducing confusion.

North Slope Region

The Board acted on four proposals which affect North Slope Region resulting in change to Subpart D regulations in § ____.25. The following Board actions affect the North Slope Region and are included in this final rule:

- Modified restrictions on use of firearms in the Dalton Highway Corridor Management Area. This clarification will reduce confusion during future hunts.
- Extended an aircraft use restriction in a portion of Unit 26(A) and extended the moose season in a portion of Unit 26(A).
- Allowed the use of boats and snowmachines to take caribou in Unit 26 and the use of rimfire cartridges to take swimming caribou in Unit 26. Harassment of wildlife, such as herding or driving, remains prohibited.
- Lengthened the muskox season in Unit 26(C).

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the decision made by the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964 published May 29, 1992) implements the Federal Subsistence Management Program and includes a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance With Section 810 of ANICLA

The intent of all Federal subsistence regulations is to provide opportunities for subsistence uses subject to the limitation of protecting healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810

analysis determination appears in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, including the annual process for setting hunting and fishing regulations, would have some local impacts on subsistence uses, but would not constitute a significant restriction of subsistence uses under the "may significantly restrict" standard.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to the use of public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075.

Public reporting burden for this form is estimated to average .1382 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1016–0075), Washington, DC 20903. Additionally, information collection requirements may be imposed if the Regional Councils and Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

This rule was not subject to Office of Management and Budget review under E.O. 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments of the Interior and Agriculture have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

Drafting Information

These regulations were drafted under the guidance of Richard S. Pospahala, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Thomas H. Boyd, Alaska State Office, Bureau of Land Management; John Hiscock, Alaska Regional Office, National Park Service; John Borbridge, Alaska Area Office, Bureau of Indian Affairs; and Norman Howse, USDA, Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public Lands, Reporting and record keeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public Lands, Reporting and record keeping requirements, Wildlife.

Words of Issuance

For the reasons set out in the preamble, Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, are amended as set forth below.

PART ____—SUBSISTENCE MANAGEMENT REGULATIONS FOR FEDERAL PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. In Subpart D of 36 CFR Part 242 & 50 CFR Part 100, § ____.25 is revised to read as follows:

Subpart D—Subsistence Taking of Fish and Wildlife

§ ____.25 Subsistence taking of wildlife.

Subpart D—Subsistence Taking of Fish and Wildlife

§ ____.25 Subsistence taking of wildlife.

(a) *Definitions.* The following definitions shall apply to all regulations contained in this section.

ADF&G means the Alaska Department of Fish and Game.

Aircraft means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Antler means one or more solid, horn-like appendages protruding from the head of a caribou, deer, or moose.

Antlered means any caribou, deer, or moose having at least one visible antler.

Antlerless means any caribou, deer, or moose not having visible antlers attached to the skull.

Bear means black bear, or brown or grizzly bear.

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow, or any bow equipped with a mechanical device that holds arrows at full draw.

Broadhead means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Buck means any male deer.

Bull means any male moose, caribou, or musk oxen.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Designated hunter means a Federally qualified, licensed hunter who may take all or a portion of another Federally qualified, licensed hunter's harvest limit(s) only under situations approved by the Board.

Edible meat means the breast meat of ptarmigan and grouse, and, those parts of black bear, brown and grizzly bear, caribou, deer, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption which are: the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (elbow), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, . . . *edible meat* of species listed above does not include: meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera.

Fifty-inch (50-inch) moose means a bull moose with an antler spread of 50 inches or more.

Full curl horn means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf or wolverine.

Grouse collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse and sharp-tailed grouse.

Hare or hares collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

Harvest limit means the number of any one species permitted to be taken by any one person in a Unit or portion of a Unit in which the taking occurs.

Highway means the driveable surface of any constructed road.

Household means that group of people residing in the same residence.

Hunting means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

Marmot collectively refers to all species of marmot that occur in Alaska including the hoary marmot, Alaska marmot, and the woodchuck.

Motorized vehicle means a motor-driven land, air or water conveyance.

Open season means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

Otter means river or land otter only, excluding sea otter.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance which is toxic, or poisonous upon contact or ingestion.

Possession means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

Ptarmigan collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

Ram means a male Dall sheep.

Registration permit means a permit which authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order applications are received and/or are based on priorities as determined by 50 CFR 100.17 and 36 CFR 242.17.

Sealing means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; *sealing* includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing, or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a male Dall sheep, the tip of which has grown through seven-eighths (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide, pelt or fur means any tanned or untanned external covering of an animal's body, excluding bear. The skin, hide, fur or pelt of a bear shall mean the entire external covering with claws attached.

Spike-fork moose means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

Take or *taking* means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Tine or *antler point* refers to any point on an antler, the length of which is greater than its width and is at least one inch.

Transportation means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

Trapping means the taking of furbearers within established trapping seasons and with a required trapping license.

Unclassified wildlife or unclassified species means all species of animals not otherwise classified by the definitions herein, or regulated under other Federal law as listed in § ____.25(i).

Ungulate means any species of hoofed mammal, including deer, caribou, moose, mountain goat, Dall sheep, and musk oxen.

Unit means one of the 26 geographical areas in the State of Alaska known as Game Management Units, or GMU, and collectively listed in § ____.25 as Units.

Wildlife means any hare (rabbit), ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Wildlife may be taken for subsistence uses by any method, except as prohibited below or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this regulation. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by these regulations is prohibited.

(1) Except for special provisions found at § ____.25(k) (1) through (26), the following methods and means of taking wildlife for subsistence uses are prohibited:

(i) Shooting from, on, or across a highway;

(ii) Using any poison;

(iii) Using a helicopter in any manner, including transportation of individuals, equipment or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life threatening situation;

(iv) Taking wildlife from a motorized vehicle, except from a motor-driven boat if the motor has been completely shut off, and the boat's progress from the motor's power has ceased;

(v) Using a motorized vehicle to drive, herd, or molest wildlife;

(vi) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves or wolverine, except that—

(A) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine.

(B) A muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, moose, musk oxen and mountain goat;

(viii) Using or being aided by use of a pit, fire, artificial light, radio

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communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, conventional steel trap with a jaw spread over nine inches, or conibear style trap with a jaw spread over 11 inches;

(ix) Using a snare, except that an individual in possession of a valid hunting license may use snares to take unclassified wildlife, ptarmigan, grouse, or hares; and, individuals in possession of a valid trapping license may use snares to take furbearers;

(x) Using a trap to take ungulates or bear;

(xi) Using hooks to physically snag, impale or otherwise take wildlife; however, hooks may be used as a trap drag;

(xii) Using a crossbow in any area restricted to hunting by bow and arrow only to take ungulates, bear, wolf or wolverine;

(xiii) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting a ⅞-inch wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least one ounce (437.5 grains);

(xiv) Using bait for taking ungulates, bear, wolf, or wolverine: except, bait may be used to take wolves and wolverine with a trapping license, and, bait may be used to take black bears with a hunting license as authorized in Unit-specific regulations at § ____.25(k)(1) through (26). Baiting of black bears is subject to the following restrictions:

(A) No person may establish a black bear bait station unless he or she first registers the site with ADF&G;

(B) A person using bait shall clearly mark the site with a sign reading "black bear bait station" that also displays the person's hunting license number and ADF&G assigned number;

(C) Only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and wildlife may be used for bait;

(D) No person may use bait within one-quarter mile of a publicly maintained road or trail;

(E) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground or developed recreational facility;

(F) A person using bait shall remove litter and equipment from the bait station site when hunting is completed;

(G) No person may give or receive remuneration for the use of a bait station, including barter or exchange of goods;

(h) No person may have more than two bait stations with bait present at any one time;

(xv) Taking swimming ungulates, bear, wolves or wolverine;

(xvi) Taking or assisting in the taking of ungulates, bear, wolves, wolverine, or other furbearers before 3:00 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft); however, this restriction does not apply to subsistence taking of deer;

(xvii) Taking a bear cub or a sow accompanied by cub(s).

(2) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(3) The following methods and means of trapping furbearers, for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at § ____.25(b)(1):

(i) Disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) Disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that firearms may be used in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(iv) Taking otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same Unit;

(v) Using a net or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation, or by landing within one mile of a beaver trap or set used by the transported person;

(vii) Taking or assisting in the taking of furbearers by firearm before 3 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare;

(c) *Possession and transportation of wildlife.*

(1) Except as specified in § ____.25(c)(3)(ii) or (c)(4), or as otherwise provided, no person may take a species of wildlife in any Unit, or portion of a Unit, if that person's total statewide take of that species has already been obtained under Federal and State regulations in other Units, or portions of other Units.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to § ____.6(f)(3), an animal taken by an individual as part of a community harvest limit counts toward that individual's harvest limit for that species taken under Federal or State regulations for areas outside of the community harvest area.

(3) *Individual harvest limits.*

(i) Harvest limits authorized by § ____.25 and bag limits established in State regulations may not be accumulated.

(ii) Wildlife taken by a designated hunter for another person pursuant to § ____.6(f)(2), counts toward the individual harvest limit of the person for whom the wildlife is taken.

(4) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a harvest limit for a particular species under a trapping season may take additional animals under the harvest limit specified for a hunting season or vice versa.

(5) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of one brown/grizzly bear per year counts against a one brown/grizzly bear every four regulatory years harvest limit in other Units; an individual may not take more than one brown/grizzly bear in a regulatory year.

(6) A harvest limit applies to the number of animals that can be taken during a regulatory year; however, harvest limits of grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(7) Unless otherwise provided, any person who gives or receives wildlife shall furnish, upon a request made by a Federal or State agent, a signed statement describing the following: names and addresses of persons who gave and received wildlife, the time and place that the wildlife was taken, and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take wildlife on his or her behalf in accordance with § ____.6, the permit shall be furnished in place of a signed statement.

(8) A rural Alaska resident who has been designated to take wildlife on behalf of another rural Alaska resident in accordance with § ____.6, shall promptly deliver the wildlife to that rural Alaska resident.

(9) No person may possess, transport, give, receive or barter wildlife that was taken in violation of Federal or State statutes or a regulation promulated thereunder.

(10) *Evidence of sex and identity.*

(i) If subsistence take of Dall sheep is restricted to a ram, no person may possess or transport a harvest sheep unless both horns accompany the animal.

(ii) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, no person may possess or transport the carcass of an animal taken in that area unless sufficient portion of the external sex organs remain attached to indicate conclusively the sex of the animal; however, § ____.25(c)(10)(ii) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose harvest limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, § ____.25(c)(10)(iii) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be sorted or consumed.

(d) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker, when and where the animal was taken. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required; in all cases, any identification equipment must be returned to the ADF&G or to an agency identified on such equipment.

(e) *Sealing of bear skins and skulls.*

(1) Sealing requirements for bear shall apply to brown bears taken in all Units, except as specified below, and black bears of all color phases taken in Units 1–6, 11–14, 16, and 20.

(2) No person may possess or transport from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in the Western Alaska Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) need not be sealed unless removed from the area.

(3) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision shall not apply to brown bears taken within the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) which are not removed from the Management Area or Unit.

(i) In areas where sealing is required by Federal regulations, no person may possess or transport the hide of a bear which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in the Western Alaska Brown Bear Management Area is removed from the area, it must first be sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iii) If the skin or skull of a bear taken in the Northwestern Alaska Brown Bear Management Area is removed from the area, it must be first be sealed by an ADF&G representative in Barrow, Fairbanks, Galena, or Kotzebue; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iv) If the skin or skull of a bear taken in Unit 5 is removed from the area, it must first be sealed by an ADF&G representative in Yakutat; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(v) If the skin or skull of a bear taken in Unit 9(B) is removed from the area, it must first be sealed by an ADF&G representative in Port Alsworth or King Salmon; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(4) No person may falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(f) *Sealing of beaver, lynx, marten, otter, wolf, and wolverine.* No person may possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13(E), and 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the state, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State regulations.

(g) A person who takes a species listed in § ____.25(f) but who is unable to present the skin in person, must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in § ____.25(f).

(h) *Utilization of wildlife.* (1) No person may use wildlife as food for a dog or furbearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse and ptarmigan; however, the breast meat of grouse and ptarmigan may not be used as animal food or bait;

(iv) Unclassified wildlife.

(2) A person taking wildlife for subsistence shall salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in the Western and Northwestern Alaska Brown Bear Management Areas and Units 5 and 9(B) need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares (rabbits), marmots, beaver, muskrats, or unclassified wildlife.

(3) Failure to salvage edible meat of ungulates, bear, or grouse and ptarmigan is prohibited.

(4) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested wildlife, unanticipated weather conditions, or unavoidable loss to another animal.

(i) The regulations found in § ____.25 do not apply to the subsistence taking and use of wildlife regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 927, 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or any amendments to these Acts. The taking and use of wildlife, covered by these Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(j) Rural residents, non-rural residents, and nonresidents not specifically prohibited by Federal regulations from hunting or trapping on public lands in an area, may hunt or trap on public lands in accordance with the appropriate State regulations.

(k) *Unit regulations.* Subsistence taking of unclassified wildlife, all squirrel species, and marmots is allowed in all Units, without harvest limits, for the period of July 1–June 30. Subsistence taking of wildlife outside established Unit seasons, or in excess of the established Unit harvest limits, is prohibited unless otherwise modified by subsequent regulation. Taking of wildlife under State regulations on public lands is permitted, except as otherwise restricted at § ____.25(k)(1) through (26). Additional Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at § ____.25(k)(1) through (26).

(1) Unit 1. Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistance uses;

(B) Unit 1(A)—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1(B)—the Anan Creek drainage is closed to the taking of black bear;

(D) Unit 1(C):

(*1*) The area within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area, is closed to hunting;

(*2*) The area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier, is closed to the taking of mountain goat;

(vi) In Unit 1(C), Juneau area, the trapping of furbearers for subsistence uses is prohibited on the following public lands:

(A) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(C) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(D) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail.

(vii) Unit-specific regulations;

(A) Bait may be used to hunt black bear in Units 1(A), 1(B), and 1(D) between April 5 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1–June 30.
Brown Bear:	
1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31. Mar. 15–May 31.
Deer:	
Unit 1(A)—4 antlered deer.	Aug. 1–Dec. 31.
Unit 1(B)—2 antlered deer.	Aug. 1–Dec. 31.
Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31.	Aug. 1–Dec. 31.
Goat:	
Unit 1(A)—Revillagigedo Island only.	No open season.
Unit 1(B)—that portion north of the Bradfield Canal and the North Fork of the Bradfield River. 1 goat by State registration permit only; that portion between LeConte Bay and the North Fork of Bradfield River/Canal will require a Federal registration permit for the taking of a second goat; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(B)—that portion south of Bradfield Canal, East of Ernest Sound, west of Anan Creek/Anan Lake/Boulder Lake drainage, and north of Frosty Creek. Public lands are closed to goat hunting.	No open season.
Unit 1(A) and Unit 1(B)—Remainder—2 goats by State registration permit only.	Aug. 1–Dec. 31.
Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River—1 goat by State registration permit only.	Oct. 1–Nov. 30.

Harvest limits	Open season
Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier, and all drainages of the Chilkat Range south of the Endicott River.	No open season.
Remainder of Unit 1(C)—1 goat by State registration permit only.	Aug. 1–Nov. 30.
Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15–Nov. 30.
Unit 1(D)—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad.	No open season.
Remainder of Unit 1(D)—1 goat by State registration permit only.	Aug. 1–Dec. 31.
Moose:	
Unit 1(A)—1 antlered bull.	Sept. 15–Oct. 15.
Unit 1(B)—south and east of LeConte Bay and Glacier—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by Federal registration permit only. Public lands within the Stikine River drainage are closed to the taking of moose, except in accordance with these regulations by qualified rural residents during seasons identified above.	Sept. 15–Oct. 15.
Remainder of Unit 1(B).	No open season.
Unit 1(C)—excluding drainages of Berners Bay—1 antlered bull by State registration permit only.	Sept. 15–Oct. 15.
Unit 1(D)	No open season.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1–May 15.
Trapping:	
Beaver:	
Unit 1 (A), (B), and (C)—No limit.	Dec. 1–May 15.
Coyote:	
No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Marten:	
No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
No limit	Dec. 1–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Dec. 1–Feb. 15.
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(2) Unit 2. Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the western most point on Warren Island.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

(ii) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1–June 30.
Deer:	
4 antlered deer	Aug. 1–Dec. 31
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1–May 15
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1–May 15.
Trapping:	
Beaver:	
No limit	Dec. 1–May 15.
Coyote:	
No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Marten:	
No limit	Dec. 1–Feb. 15
Mink and Weasel:	
No limit	Dec. 1–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Dec. 1–Feb. 15
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30

(3) Unit 3.

(i) Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground is closed to the taking of ungulates, bear, wolves and wolverine;

(B) The Petersburg Creek drainage on Kupreanof Island is closed to the taking of black bears;

(C) Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on each side of Blind Slough.

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from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the blind Slough bridge, are closed to all hunting.

(iii) Unit-specific regulations:

[A] Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1–June 30.
Deer:	
Unit 3—Mitkof Island, Woewodski Island, Butterworth Islands, and that portion of Kupreanof Island which includes Lindenburg Peninsula east of the Portage Bay/Duncan Canal Portage—1 antlered deer by State registration permit only; however, the city limits of Petersburg and Kupreanof are closed to hunting.	Oct. 15–Oct. 31.
Remainder of Unit 3—2 antlered deer.	Aug. 1—Nov. 30
Moose:	
Unit 3—Mitkof and Wrangell Islands—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler by State registration permit only.	Oct. 1–Oct. 15.
Remainder of Unit 3	No open season.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver:	
Unit 3–Mitkof Island	Dec. 1–Apr. 15.
No limit.	
Unit 3—except Mitkof Island	Dec. 1–May 15.
No limit.	
Coyote:	
No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Marten:	
No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
No limit	Dec. 1–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Dec. 1–Feb. 15.
Wolf:	
No limit	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(4) Unit 4.

(i) Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands, is closed to the taking of bears;

(B) The Salt Lake Bay Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay, is closed to the taking of bears;

(C) Port Althorp (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock), is closed to the taking of brown bears;

(D) Northeast Chichagof Controlled Use Area (NECCUA) consisting of all portions of Unit 4 on Chichagof Island north of Tenakee Inlet and east of the drainage divide from the northwest point of Gull Cove to Port Frederick Portage, including all drainages into Port Frederick and Mud Bay, is closed to the use of any motorized land vehicle for brown bear hunting, or for the taking of marten, mink, or weasel.

(iii) Unit-specific regulations:

(A) Boats may not be used to take bear, wolves, or wolverine, except for persons certified as disabled.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Brown Bear:	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136° 21′ W. long.), to Rodgers Point (57° 35′ N. lat., 135° 33′ W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57° 34′ N. lat., 135° 25′ W. long.), to the entrance of Gut Bay (56° 44′ N. lat. 134° 38′ W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31. Mar. 15–May 31.
Unit 4—that portion in the Northeast Chichagof Controlled Use Area—1 bear every four regulatory years by State registration permit only.	Mar. 15–May 20.
Remainder of Unit 4—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31. Mar. 15–May 20.
Deer:	
6 deer; however, antlerless deer may be taken only from Sept. 15–Jan 31.	Aug. 1–Jan. 31
Goat:	
1 goat by State registration permit only.	Aug. 1–Dec. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr. 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15.

Harvest limits	Open season
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 1.–May 15.
Trapping:	
Beaver:	
Unit 4—that portion east of Chatham Strait—No limit.	Dec. 1–May 15.
Remainder of Unit 4	No open season.
Coyote:	
No limit	Dec 1–Feb. 15
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1–Feb. 15.
Lynx:	
No limit	Dec. 1–Feb. 15.
Marten:	
Unit 4—Chichagof Island.	No open season
Remainder of Unit 4—No limit.	Dec. 1–Feb. 15.
Mink and Weasel:	
Unit 4—Chichagof Island.	No open season.
Remainder of Unit 4—No limit.	Dec. 1–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15
Otter:	
No limit	Dec 1–Feb. 15
Wolf:	
No limit.	Nov. 10–Apr. 30.
Wolverine:	
No limit	Nov. 10–Apr. 30.

(5) Unit 5.

(i) Unit 5 consists of all Gulf of Alaska drainages an islands between Cape Fairweather and the center line of Icy Bay including the Guyot Hills;

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5;

(ii) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

(C) Unit 5 is open to brown bear hunting by Federal registration permit in lieu of a resident tag; no resident tag is required for taking a brown bear in Unit 5, provided that the hunter has obtained a Federal registration permit prior to hunting.

(D) The taking by residents of Unit 5(A) of up to 10 moose per regulatory year in Unit 5(A), except Nunatak Bench, is allowed for ceremonial potlatches and other ceremonial uses, under the terms of a Federal registration permit. Moose may be taken from August 1 through December 31. Permits will be issued to individuals only at the request of a local organization. This 10 moose limit is not cumulative with any potlatch moose permitted by the State.

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1–June 30.
Brown Bear:	
1 bear by Federal registration permit only.	Sept. 1–May 31
Deer:	
Unit 5(A)—1 buck	Nov. 1–Nov. 30.
Unit 5(B)	No open season.
Goat:	
1 goat by State registration permit only.	Aug. 1–Dec. 31
Moose:	
Unit 5(A), except Nunatak Bench—1 antlered bull by State registration permit only. The season will be closed when 60 antlered bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 antlered bulls have been taken in that area. From Oct. 15–Oct. 21, public lands will be closed to taking of moose, except by rural Alaska residents of Unit 5(A).	Oct. 15–Nov. 15.
Unit 5(B)—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5(B).	Sept. 1–Dec 15.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept 1–Apr. 30.
Lynx:	
2 lynx	Dec. 1–Feb. 15.
Wolf:	
5 wolves	Aug. 1–Apr 30.
Wolverine:	
1 wolverine	Nov. 10–Feb. 15
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1–May 15
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1–May 15.
Trapping	
Beaver:	
No limit	Nov. 10–May 15
Coyote:	
No limit	Dec. 1–Feb. 15
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Dec. 1–Feb. 15
Lynx:	
No limit	Dec. 1–Feb. 15
Marten:	
No limit	Nov. 10–Feb. 15
Mink and Weasel:	
No limit	Nov. 10–Feb. 15.
Muskrat:	
No limit	Dec. 1–Feb. 15.
Otter:	
No limit	Nov. 10–Feb. 15
Wolf:	
No limit	Nov. 10–Apr. 30
Wolverine:	
No limit	Nov. 10–Apr. 30.

(6) Unit 6.

(i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages;

(A) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6(D) consists of the remainder of Unit 6;

(ii) For the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Goat Mountain goat observation area, which consists of that portion of Unit 6(B) bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River, is closed to the taking of mountain goat;

(B) The Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River, is closed to the taking of mountain goat.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights.

Harvest limits	Open season
Hunting:	
Black Bear.	
1 bear	Sept. 1–June 30
Deer:	
4 deer; however, antlerless deer may be taken only from Nov. 1–Dec. 31	Aug. 1–Dec. 31.
Goats:	
Unit 6 (A), (B)—1 goat by State registration permit only.	Aug. 20–Jan. 31
Unit 6(C)	No open season
Unit 6(D) (subareas RG242, RG243, RG224, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only. In each of the Unit 6(D) subareas, goat seasons will be closed when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG243—2 goats, RG224—2 goats, RG249—2 goats, RG266—4 goats, RG252—1 goat	Aug. 20–Jan. 31
Unit 6(D) (subarea RG245)—The taking of goats is prohibited on all public lands	No open season
Coyote:	
Unit 6 (A) and (D)—2 coyotes.	Sept. 1–Apr. 30
Unit 6(B)—No limit	July 1–June 30
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit.	July 1–June 30.
Remainder of Unit 6(C)—No limit.	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1–Feb. 15
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Dec. 15–Jan. 15
Wolf.	
5 wolves	Aug. 10–Apr. 30
Wolverine:	
1 wolverine	Sept. 1–Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1–May 15
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1–May 15
Trapping:	
Beaver:	
Trapping—20 beaver per season.	Dec. 1–Mar. 31
Coyote:	
Unit 6 (A), (B) and (D)—No limit.	Nov. 10–Mar. 31
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit.	Nov. 10–Apr. 30
Remainder of Unit 6(C)—No limit.	Nov. 10–Mar. 31
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28
Lynx:	
No limit	Dec. 15–Jan. 15
Marten:	
No limit	Nov. 10–Jan. 31
Mink and Weasel:	
No limit	Nov. 10–Jan. 31
Muskrat:	
No limit	Nov. 10–June 10.
Otter	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31
Wolverine:	
No limit	Nov. 10–Feb. 28

(7) Unit 7.

(i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Kenai Fjords National Park is closed to all subsistence uses;

(B) The Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek and Byron Glacier, is closed to hunting; however, grouse, ptarmigan, hares, and squirrels may be hunted with shotguns after September 1.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15; except Resurrection Creek and its tributaries.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
Unit 7–3 bears	July 1–June 30.
Coyote:	
No limit	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Wolf:	
Unit 7—that portion within the Kenai National Wildlife Refuge—2 wolves.	Aug. 10–Apr. 30.
Unit 7—Remainder—5 wolves.	Aug. 10–Apr. 30
Wolverine:	
1 wolverine	Sept. 1–Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Mar. 31
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10–Mar. 31
Trapping:	
Beaver:	
20 Beaver per season.	Dec. 1–Mar. 31
Coyote:	
No limit	Nov. 10–Feb. 28
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28
Marten:	
No limit	Nov. 10–Jan. 31
Mink and Weasel:	
No limit	Nov. 10–Jan. 31
Muskrat:	
No limit	Nov. 10–May 15.

Harvest limits	Open season
Otter:	
No limit	Nov. 10–Feb. 28.
Wolf:	
No limit	Nov. 10–Feb. 28.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(8) Unit 8. Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

(i) A firearm may be used to take beaver with a trapping license in Unit 8 from Nov. 10–Apr. 30.

(ii) [Reserved].

Harvest limits	Open season
Hunting:	
Deer:	
Unit 8—that portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57° 52′ N. lat., 152° 58′ W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to the mouth at Elbow Creek, and adjacent small islands in Chiniak Bay—1 deer; however, antlerless deer may be taken only from Oct. 25–Oct. 31.	Aug. 1–Oct. 31.
Unit 8—that portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of the south-western most arm of Ugak Bay—5 deer; however, anterless deer may be taken only from Oct. 1—Dec. 31.	Aug. 1–Dec. 31.
Remainder of Unit 8—5 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31; no more than 1 antlerless deer may be taken from Oct. 1–Nov. 30.	Aug. 1–Dec. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Mar. 31.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug 10–Apr. 30.
Trapping:	
Beaver:	
30 beaver per season.	Nov. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov 10–Mar. 31.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Jan. 31.

(9) Unit 9.

(i) Unit 9 consists of the Alaska Peninsula and adjacent islands including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9(B) consists of the Kvichak River drainage;

(C) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9(E) consists of the remainder of Unit 9;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Katmai National Park is closed to all subsistence uses;

(B) The use of motorized vehicles, excluding aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts, is prohibited from Aug. 1–Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9(C) within the Naknek River drainage upstream from and including the King Salmon Creek drainage; however, this restriction does not apply to a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek.

(C) A firearm may be used to take beaver in Unit 9(B) under a trapping license from April 1–May 31.

(D) Unit 9(B) (Nondalton residents only) is open to brown bear hunting by Federal registration permit in lieu of a resident tag; no resident tag is required for taking a brown bear in Unit 9(B), provided that the hunter has obtained a Federal registration permit prior to hunting.

(E) The taking by residents of Nondalton of up to 6 bull moose per regulatory year in Unit 9(B) is allowed for ceremonial potlatches, under the terms of a Federal permit. Bull moose may be taken from July 1 through June 30. Permits will be issued to individuals only at the request of a local organization. This 6 moose limit is not cumulative with that permitted for potlatches by the State.

Harvest limits	Open season
Hunting:	
Black Bear	
3 bears	July 1–June 30.
Brown Bear:	
Unit 9(B)—Rural residents of Nondalton only—1 bear by Federal registration permit only.	Oct. 1–Oct 21. May 10–May 25
Unit 9(B)—1 bear every four regulatory years.	Oct. 1–Oct. 21 (odd years only); May 10–May 25 (even years only)
Unit 9(E)—1 bear by Federal registration permit only.	Oct. 1–Dec. 31. May 10–May 25
Caribou:	

Harvest limits	Open season
Unit 9(A) and (C)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30.	Aug. 10–Mar. 31.
Unit 9(B)—5 caribou; however no more than 2 may be bulls.	Aug. 1–Apr. 15.
Unit 9(D)	No open season
Unit 9(E)—that portion south of Seal Cape on the Pacific side of the Alaska Peninsula divide—4 caribou; only bulls may be taken between July 1 and Aug. 9.	July 1–Apr. 30.
Remainder of Unit 9(E)—4 caribou.	Aug. 10–Apr. 30
Sheep:	
1 ram with 7/8 curl horn.	Aug. 10–Sept. 20.
Moose:	
Unit 9(A)—1 antlered bull	Sept. 1–Sept. 15.
Unit 9(B)—1 antlered bull.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the north—1 antlered bull.	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the south—1 antlered bull. However, during the December hunt, antlerless moose may be taken by Federal registration permit only. The antlerless season will be closed when 5 antlerless moose have been taken. Public lands are closed during December for the hunting of moose, except by eligible rural Alaska residents during seasons identified above.	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Remainder of Unit 9(C)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31.	Sept. 1–Sept. 15 Dec. 1–Dec. 31.
Unit 9(E)—1 antlered bull	Sept. 1–Sept. 20 Dec. 1–Dec. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White):	
No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 10–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharptailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 9(B)—40 beaver per season; however, no more than 20 may be taken between Apr. 1–May 31.	Jan. 1–May 31
Remainder of Unit 9—40 beaver per season.	Jan. 1–Mar. 31.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White):	
No limit	Nov. 10–Feb. 28
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28
Lynx:	
No limit	Nov. 10–Feb. 28.
Marten:	
No limit	Nov. 10–Feb. 28.
Mink and Weasel:	
No limit	Nov. 10–Feb. 28.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar 31
Wolverine:	
No limit	Nov. 10–Feb. 28.

(10) Unit 10.

(i) Unit 10 consists of the Aleutian Islands, Unimak Island and the Pribilof Islands;

(ii) On Otter Island in the Pribilof Islands the taking of any wildlife species for subsistence uses is prohibited.

Harvest limits	Open season
Hunting:	
Caribou	
Unit 10—Unimak Island only.	No open season.
Remainder of Unit 10—No limit.	July 1–June 30.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
No limit	July 1–June 30
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Mink and Weasel:	
No limit	Nov. 10–Feb. 28.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Feb. 28.

(11) Unit 11. Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved].

(ii) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Caribou	No open season.
Sheep:	
1 sheep	Aug. 10–Sept. 20.
Moose:	
1 antlered bull	Aug. 25–Sept. 20
Coyote:	
2 coyotes	Sept. 1–Apr. 30.

Harvest limits	Open season
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Dec. 15–Jan. 15.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Jan. 31.
Public lands are closed to the taking of wolverine except by eligible rural Alaska residents during seasons identified above	
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Mar. 31
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10–Mar. 31.
Trapping:	
Beaver:	
30 beaver per season.	Nov. 10–Apr. 30
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov 10–Feb. 28
Lynx:	
No limit	Dec. 15–Jan. 15.
Marten:	
No limit	Nov. 10–Jan. 31
Mink and Weasel:	
No limit	Nov. 10–Jan. 31
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
On limit	Nov. 10–Mar. 31.
Wolf	
No limit	Nov. 10–Mar. 31.
Wolverine:	
2 wolverine	Nov. 10–Jan. 31.
Public lands are closed to the taking of wolverine except by eligible rural Alaska residents during seasons identified above	

(12) Unit 12. Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Unit 12 during April and October with a steel trap, or with a snare using cable smaller than 3/32 inch diameter, is prohibited.

(ii) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Caribou:	
Unit 12—that portion west of the Nabesna River within the drainages of Jack Creek, Platinum Creek, and Totschunda Creek—The taking of caribou is prohibited on public lands.	No open season
Unit 12—that portion lying east of the Nabesna River and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—The taking of caribou is prohibited on public lands.	No open season
Remainder of Unit 12—1 bull.	Sept. 1–Sept. 20
1 bull caribou may be taken by a Federal registration permit during a winter season to be announced for the rural Alaska residents of Tetlin and Northway only.	Winter season to be announced by the Board
Moose:	
Unit 12—that portion drained by the Tanana, Nabesna, and Chisana Rivers east of the Tetlin Reservation boundary and north of the Winter Trail from Pickerel Lake to the Canadian border—1 antlered bull.	Sept. 1–Sept 15 Nov. 20–Nov. 30.
Unit 12—that portion lying east of the Nabesna River and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull.	Sept. 1–Sept. 30
Unit 12—Remainder—1 antlered bull	Sept. 1–Sept. 15
Coyote:	
2 coyotes	Sept. 1–Apr. 30

Harvest limits	Open season
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30
Lynx:	
2 lynx	Nov 1–Jan. 31
Wolf:	
5 wolves	Aug 10–Apr. 30
Wolverine:	
1 wolverine	Sept 1–Mar. 31
Grouse (Spruce, Blue, Ruffed and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Mar. 31
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30
Trapping:	
Beaver:	
15 beaver per season.	Nov 1–Apr. 15
Coyote:	
No limit	Nov 1–Feb. 28
Fox, Red (including Cross, Black and Silver Phrases):	
No limit	Nov 1–Feb. 28
Lynx:	
No limit	Dec. 1–Jan. 31
Marten:	
No limit	Nov. 1–Feb. 28
Mink and Weasel:	
No limit	Nov 1–Feb. 28
Muskrat:	
No limit	Sept. 20–June 10
Otter:	
No limit	Nov 1–Apr. 15
Wolf:	
No limit	Oct. 1–Apr. 30.
Wolverine:	
No limit	Nov. 1–Feb. 28

(13) Unit 13.

(i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with

the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13;

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence. Subsistence uses as authorized by § ____.25(k)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) Use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) Except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Board, the use of motorized vehicles for subsistence hunting, is prohibited in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Caribou:	
2 caribou by Federal registration permit only. Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	Aug. 10–Sept. 20 Jan. 5–Mar. 31
Sheep:	
Unit 13—excluding Unit 13(D) and the Tok and Delta Management Areas—1 ram with ⅞ curl horn.	Aug. 10–Sept. 20
Moose:	
1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household.	Aug. 25–Sept. 20
Coyote:	
2 coyotes	Sept. 1–Apr. 30
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30
Lynx:	
2 lynx	Dec. 15–Jan. 15.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Jan. 31
Public lands are closed to the taking of wolverine, except by eligible rural Alaska residents during seasons identified above	
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Mar. 31
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10–Mar. 31
Trapping:	
Beaver:	
30 beaver per season.	Oct. 10–Apr. 30.
Coyote:	
No limit	Nov. 10–Mar. 31
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx:	

Harvest limits	Open season
No limit	Dec. 15–Jan. 15.
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
2 wolverine	Nov 10–Jan. 31
Public lands are closed to the taking of wolverine, except by eligible rural Alaska residents during seasons identified above	

(14) Unit 14.

(i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River:

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A);

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Fort Richardson Management Area, consisting of the Fort Richardson Military Reservation, is restricted to the subsistence taking of ungulates, bear, wolves, or wolverine by permit only;

(B) The Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek is closed to subsistence taking of wildlife for subsistence uses.

(iii) Unit-specific regulations:

(A) In Unit 14(A), bait may be used to hunt black bear between April 15 and May 25;

(B) In Unit 14(B), bait may be used to hunt black bear between April 15 and May 31.

Harvest limits	Open season
Hunting:	
Black Bear:	
Unit 14(A) and (C)—1 bear.	July 1–June 30.
Brown Bear:	
Unit 14(A)—1 bear every four regulatory years.	Sept. 15–Oct. 10 May 1–May 25.
Coyote:	
Unit 14(A) and (C)—2 coyotes.	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 14—2 foxes	Nov. 1–Feb. 15
Hare (Snowshoe and Tundra):	
Unit 14(A)—5 hares per day.	July 1–June 30.
Unit 14(C)—5 hares per day.	Sept. 8–Apr. 30.
Lynx:	
2 lynx	Dec. 15–Jan 15
Wolf:	
5 wolves	Aug. 10–Apr. 30
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 14(A)—15 per day, 30 in possession.	Aug. 10–Mar. 31
Unit 14(C)—5 per day, 10 in possession.	Sept. 8–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 14(A)—10 per day, 20 in possession.	Aug. 10–Mar. 31
Unit 14(C)—10 per day, 20 in possession.	Sept. 8–Mar. 31.
Remainder of Unit 14—20 per day, 40 in possession.	Aug. 10–Mar 31.
Trapping:	
Beaver:	
Unit 14(A)—30 beaver per season.	Nov. 10–Apr. 30
Unit 14(C)—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season.	Dec. 1–Apr. 15.
Coyote:	
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28
Fox, Red (including Cross, Black and Silver Phases):	
Unit 14(A)—No limit	Nov. 10–Feb. 28.
Unit 14(C)—1 fox	Nov. 10–Feb. 28
Lynx:	
No limit	Dec. 15–Jan. 15
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–May 15.
Otter:	
Unit 14(A)—No limit	Nov. 10–Mar. 31
Unit 14(C)—No limit	Nov. 10–Feb. 28
Wolf:	
Unit 14(A)—No limit	Nov. 10–Mar. 31.
Unit 14(C)—No limit	Nov. 10–Feb. 28
Wolverine:	
No limit	Nov. 10–Feb. 28

(15) Unit 15.

(i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet and Turnagain Arm from Gore Point to the point where longitude line 150° 00′ W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary:

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15;

(ii) The Skilak Loop Management Area, which consists of that portion of Unit 15(A) bounded by a line beginning at the eastern most junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its western most junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning, is closed to the taking of wildlife, except that grouse and

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ptarmigan may be taken only from October 1–March 1 by bow and arrow only;

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) The Skilak Loop Wildlife Management Area is closed to subsistence trapping of furbearers;

(C) That portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier is closed to the trapping of marten;

(D) Taking a red fox in Unit 15 by any means other than a steel trap or snare is prohibited.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Coyote:	
No limit	Sept. 1–Apr. 30.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Wolf:	
Unit 15—that portion within the Kenai National Wildlife Refuge—2 Wolves.	Aug. 10–Apr. 30.
Unit 15—Remainder—5 Wolves.	Aug. 10–Apr. 30.
Wolverine:	
1 Wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 15 (A) and (B)—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Unit 15(C)—20 per day, 40 in possession.	Aug. 10–Dec. 31.
Unit 15(C)—5 per day, 10 in possession.	Jan. 1–Mar 31.
Trapping:	
Beaver:	
20 Beaver per season.	Dec. 1–Mar. 31.
Coyote:	
No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
1 Fox	Nov. 10–Feb. 28.
Marten:	
Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River and Skilak Glacier.	No open season.
Remainder of Unit 15—No limit.	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–May 15.
Otter:	
Unit 15 (A), (B)—No limit.	Nov. 10–Jan. 31.
Unit 15(C)—No limit	Nov. 10–Feb. 28.
Wolf:	
No limit	Nov. 10–Feb. 28.
Wolverine:	
Unit 15 (B) and (C)—No limit.	Nov. 10–Feb. 28.

(16) Unit 16.

(i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16;

(ii) The Mount McKinley National Park, as it existed prior to December 2, 1980, is closed to subsistence uses. Subsistence uses as authorized by §____.25(k)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Caribou:	
1 caribou	Aug. 10–Oct. 31.
Moose:	
Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 antlered bull.	Sept. 1–Sept. 15.
Remainder of Unit 16(B)—1 moose; however, antlerless moose may be taken only from Sept. 25–Sept. 30 and from Dec. 1–Feb. 28 by Federal registration permit only.	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Coyote:	
2 coyotes	Sept. 1–Apr. 30
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Dec. 15–Jan. 15.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Mar 31.
Trapping:	
Beaver:	
30 beaver per season.	Nov. 10–Apr. 30.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28
Lynx	
No limit	Dec. 15–Jan. 15
Marten:	
No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10
Otter:	
No limit	Nov. 10–Mar. 31
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine.	
No limit	Nov. 10–Feb. 28

(17) Unit 17.

(i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including Hagemeister Island and the Walrus Islands:

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legally permitted hunting camps, the Upper Mulchatna Controlled Use Area consisting of Unit 17(B), is closed from Aug. 1–Nov. 1 to the use of any motorized vehicle for hunting ungulates, bear, wolves and wolverine, including transportation of hunters and parts of ungulates, bear, wolves or wolverine;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(a), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 17(A) and that portion of Unit 17(B) draining into the Nuyakuk Lake and Tikchick Lake—1 bear	Sept. 1–May 31.
Remainder of Unit 17(B)—1 bear every four regulatory years	Sept. 20–Oct. 10. May 10–May 25.
Unit 17 (C)—1 bear every four regulatory years	Sept. 10–Oct. 10. Apr. 10–May 25.
Caribou:	
Unit 17 (A) and (C)—that portion of 17(A) and (C) consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—1 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark's Point, and Ekuk during seasons identified above	Jan. 1–Mar. 31.
Unit 17 (B) and (C)—that portion of 17(C) east of the Nushagak River—5 caribou; however, no more than 2 caribou may be bulls	Aug. 1–Apr. 15.
Sheep:	
1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 17(B)—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 antlered bull	Sept. 1–Sept. 20.
Remainder of Unit 17(B)—1 antlered bull; however, during the period Aug. 20—Aug. 31 bull moose may be taken by State registration permit only	Aug. 20–Sept. 20. Dec. 1–Dec. 31.
Unit 17(C)—that portion that includes the Iowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 antlered bull; however, during the period Aug. 20–Aug. 31 bull moose may be taken by State registration permit only	Aug. 20–Sept. 15.
Remainder of Unit 17(C)—1 antlered bull; however, during the period Aug. 20–Aug. 31 bull moose may be taken by State registration permit only	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox Arctic (Blue and White Phase):	
No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 10–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30
Trapping:	
Beaver:	
Unit 17(A)—20 beaver per season	Jan. 1–Feb. 28.
Unit 17 (B) and (C)—20 beaver per season	Jan. 1–Feb. 28
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx:	
No limit	Nov. 10–Feb. 28.
Marten:	
No limit	Nov. 10–Feb. 28
Mink and Weasel:	
No limit	Nov. 10–Feb. 28.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Feb. 28

(18) Unit 18.

(i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages

flowing into a Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Kalskag Controlled Use Area which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag is closed to the use of aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) A firearm may be used to take beaver under a trapping license in Unit 18 from Apr. 1–Jun. 10.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
1 bear	Sept. 1–May 31.
Caribou:	
Unit 18—that portion south of the Yukon River—Kilbuck caribou herd; rural Alaska residents domiciled in Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaaskiak, Napakiak, Kasigiuk, Atmauthluak, Nunapitchuk, Tuntutuliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills, only. A Federal registration permit is required. The number of permits available for these hunts will be determined at a later date. The taking of caribou will be prohibited when a total Unit harvest of 130 bulls has been reached in either or both hunts administered by the Board or ADF&G.	Dec. 15–Jan. 9. Feb. 23–Mar. 15.
Remainder of Unit 18	No open season.
Moose:	
Unit 18—that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of, but not including, the Andreafsky River drainage; and those portions contained in the Kanektok and Goodness drainages—1 antlered bull.	Aug. 25–Sept. 25. Winter season to be announced.
Remainder of Unit 18—1 antlered moose. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28..	Sept. 5–Sept. 25.
Public lands in Unit 18 are closed to the hunting of moose, except by rural Alaska residents of Unit 18 and Upper Kalskag during seasons identified above.	
Coyote:	
2 coyotes	Sept. 1–Apr. 30
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra)::	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 10–Mar. 31
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar 31.
Grouse (Spruce, Blue, Ruffed, and sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10–May 30.
Trapping:	
Beaver:	
No limit	Nov. 1–June 10.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Mar. 31.
Lynx:	
No limit	Nov. 10–Mar. 31
Marten:	
No limit	Nov. 10–Mar. 31.
Mink and Weasel:	
No limit	Nov. 10–Jan. 31.
Muskrat:	
No limit	Nov. 10–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 10–Mar. 31.

(19) Unit 19.

(i) Unit 19 consists of the Kuskokwim River drainage upstream from Lower Kalskag:

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.25 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by § ____.25(k)(19) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) The Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152°50′ W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf bench mark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area;

(C) The Western Alaska Brown Bear Management Area, which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 19 (A) and (B) that portion which is downstream of and including the Aniak River drainage—1 bear.	Sept. 1–May 31.
Remainder of Unit 19 (A), (B), and (D)—1 bear every four regulatory years.	Sept. 10–May 25.
Caribou:	
Unit 19(A) north of Kuskokwim River—1 caribou.	Aug. 10–Sept. 30. Nov. 1–Feb. 28.
Unit 19(A) south of the Kuskokwim River, and Unit 19(B) (excluding rural Alaska residents of Lime Village)—4 caribou.	Aug. 10–Mar. 31.
Unit 19(C)—1 caribou	Aug. 10–Oct. 10.
Unit 19(D) south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou.	Aug. 10–Sept. 30. Nov. 1–Jan. 31.
Remainder of Unit 19(D)—1 caribou.	Aug. 10–Sept. 30.
Unit 19—Rural Alaska residents domiciled in Lime Village only; no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1–Aug. 9. Reporting will be by a community reporting system.	July 1–June 30.
Sheep:	
1 ram with 7/8 curl	Aug. 10–Sept. 20.
Moose:	
Unit 19—Rural Alaska residents of Lime Village only—No individual harvest limit, but a village harvest quota of 40 moose (including those taken under the State Tier II system); either sex. Reporting will be by a community reporting system.	July 1–June 30.
Unit 19(A)—1 moose; however, antlerless moose may be taken only from Jan. 1–Jan. 10 and Feb. 1–Feb. 5.	Sept. 5–Sept. 25. Jan. 1–Jan. 10. Feb. 1–Feb. 5.
Unit 19(B)—1 antlered bull.	Sept. 1–Sept. 30.
Unit 19(C)—1 antlered bull.	Sept. 1–Oct. 10.
Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1–Sept. 30.
Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull.	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Remainder of Unit 19(D)—1 antlered bull.	Sept. 1–Sept. 30. Dec. 1–Dec. 15.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	

Harvest limits	Open season
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
No limit	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Mar. 31.
Lynx:	
No limit	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Mar. 31.
Wolverine:	
No limit	Nov. 1–Mar. 31.

(20) Unit 20.

(i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River:

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by § ____.25(k)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) Use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as provided below. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(D) The Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway, is closed to the use of any motorized vehicle for hunting from August 5–September 20; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) The Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning, is open to moose hunting by permit only;

(F) The Fairbanks Management Area, which consists of the Goldstream subdivision 0SE ¼ SE ¼, Section 28 and Section 33, Township 2 North, Range 1 West, Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between

Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning, is open to moose hunting by bow and arrow only;

(G) The Ferry Trail Management Area, which consists of that portion of Unit 20(A) bounded on the north by the Rex Trail; on the west by the east bank of the Nenana River from its intersection with the Rex Trail south to the divide forming the north boundary of the Lignite Creek drainage; on the south by that divide easterly and southerly to the headwaters of Sanderson Creek at Usibelli Peak, then along a southwesterly line to the confluence of Healy Creek and Coal Creek, then upstream easterly along the south bank of Healy Creek to the north fork of Healy Creek, then along the north fork of Healy Creek to its headwaters; on the east by a straight line from the headwaters of Healy Creek to the headwaters of Dexter Creek, then along Dexter Creek to the Totatlanika River, then down the east bank of the Totatlanika River to the Rex Trail is open to caribou hunting by permit only.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Unit 20(E) during April and October with a steel trap, or with a snare using cable smaller than 3/32 inch diameter, is prohibited;

(C) The taking of up to three moose per regulatory year by the residents of Unit 20 and 21 is allowed for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 20—except Unit 20(E)—1 bear every four regulatory years.	Sept. 1–May 31.
Caribou:	
Unit 20(E)—1 bull by Federal registration permit only; the season will close when a harvest quota for the Fortymile herd has been reached. The harvest quota will be determined by the Board after consultation with ADF&G and announced before the season opening.	Aug. 10–Sept. 30. Dec. 1–Feb. 28.
Unit 20(F)—Tozitna River drainage—1 caribou; however, only bull caribou may be taken Aug. 10–Sept. 30.	Aug. 10–Sept. 30 Nov. 26–Dec. 10. Mar. 1–Mar. 15.
Unit 20(F)—south of the Yukon River.	No open season.
Remainder of Unit 20(F)—1 bull.	Aug. 10–Sept. 30.
Moose:	
Unit 20(A)—the Ferry Trail Management Area—1 bull with spike-fork or 50-inch antlers or antlers with 4 or more brow tines on one side.	Sept. 1–Sept. 20.
Remainder of Unit 20(A)—1 antlered bull.	Sept. 1–Sept. 20.
Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only.	Sept. 1–Sept. 20 Jan. 10–Feb. 28
Unit 20(B)—the drainage of the Middle Fork of the Chena River and the portion of the Salcha River Drainage upstream from and including Goose Creek—1 antlered bull.	Sept. 1–Sept. 20
Remainder of Unit 20(B)—1 antlered bull.	Sept. 1–Sept. 20
Unit 20(C)—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30
Unit 20(E)—that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 antlered bull.	Sept. 1–Sept. 15.
Remainder of Unit 20(E)—that portion draining into the Yukon River upstream from and including the Charley River drainage to and including the Boundary Creek drainages and the Taylor Highway from mile 145 to Eagle—1 antlered bull.	Sept. 5–Sept. 25
Unit 20(F)—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only.	Sept. 1–Sept. 25
Remainder of Unit 20(F)—1 antlered bull.	Sept. 1–Sept. 25
Coyote:	
2 coyotes	Sept. 1–Apr. 30
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30
Lynx:	
Unit 20(E)—2 lynx	Nov. 1–Jan. 31
Remainder of Unit 20—2 lynx.	Dec. 1–Jan. 31
Wolf:	
10 wolves	Aug. 10–Apr. 30
Wolverine:	
1 wolverine	Sept. 1–Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 in possession are sharp-tailed grouse.	Aug. 25–Mar. 31
Unit 20—Remainder—15 per day, 30 in possession.	Aug. 10–Mar. 31.

Harvest limits	Open season
Ptarmigan (Rock, Willow, and Whitetailed):	
Unit 20—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Unit 20—Remainder—20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 20(A), 20(B), Unit 20(C), Unit 20(E), and 20(D)—that portion draining into the north bank of the Tanana River, including the islands in the Tanana River—25 beaver.	Nov. 1–Apr. 15.
Remainder of Unit 20(D)—15 beaver.	Feb. 1–Apr. 15.
Unit 20(F)—50 beaver.	Nov. 1–Apr. 15.
Coyote:	
Unit 20(E)—No limit	Nov. 1–Feb. 28.
Remainder Unit 20—No limit.	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
Unit 20—No limit	Dec. 1–Jan. 31.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
Unit 20(E)—No limit	Sept. 20–June 10.
Remainder of Unit 20—No Limit.	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
Unit 20(E)—No limit	Oct. 1–Apr. 30.
Remainder of Unit 20—No limit.	Nov. 1–Mar. 31.
Wolverine:	
No limit	Nov. 1–Feb. 28.

(21) Unit 21.

(i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including the Tozitna River drainage on the north bank, and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River upstream and including from the Dulbi River drainage:

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon river drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek:

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to, but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57′ N. lat., 156°41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stranstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Idatarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) A firearm may be used to take beaver with a trapping license in Unit 21(E) from Apr. 1–June 1.

(C) The taking of up to three moose per regulatory year by the residents of Unit 20 and 21 is allowed for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State.

(D) The taking of up to three mooses per regulatory year by the residents of Unit 21 is allowed for the celebration known as the Kaltag/Nulato Stickdance, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Kaltag or Nulato. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
1 bear every four regulatory years.	Sept. 1–May 31.
Caribou:	
Unit 23 (A), (B), (C), and (E)—1 caribou.	Aug. 10–Sept. 30.

Harvest limits	Open season
Unit 21(D)—North of the Yukon River and east of the Koyukuk River 1 caribou; however, 2 additional caribou may be taken during a winter season to be announced.	Aug. 10–Sept. 30. Winter season to be announced.
Unit 21(D)—Remainder (Western Arctic Caribou herd)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Moose:	
Unit 21(A)—1 antlered bull.	Sept. 5–Sept. 30. Nov. 1–Nov. 30.
Unit 21(B) and (C)—1 antlered bull.	Sept. 5–Sept. 25
Unit 21(D)—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Feb. 1–Feb. 5; moose may not be taken within one-half mile of the Yukon River during the February season.	Sept. 5–Sept. 25. Feb. 1–Feb. 5.
Unit 21(E)—1 moose; however, only antlered bulls may be taken from Sept. 5–Sept. 25.	Sept. 5–Sept. 25. Feb. 1–Feb. 10.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30
Lynx:	
2 lynx	Nov. 1–Feb. 28
Wolf:	
5 wolves	Aug. 10–Apr. 30
Wolverine:	
1 wolverine	Sept. 1–Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30
Trapping:	
Beaver:	
Unit 21(E)—No Limit	Nov. 1–June 1
Remainder of Unit 21—No Limit.	Nov. 1–Apr. 15
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
No limit	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Mar. 31.
Wolverine:	
No limit	Nov. 1–Mar. 31.

(22) Unit 22.

(i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) Unit-specific regulations;

(A) A firearm may be used to take beaver with a trapping license in Unit 22 during the established seasons.

(B) Snowmachines may be used to take caribou and moose in Unit 22 during established seasons; however, shooting from a snowmachine in motion is prohibited.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 22(C)—1 bear every four regulatory years.	Sept. 1–Oct. 31. May 10–May 25.
Remainder of Unit 22—1 bear every four regulatory years.	Sept. 1–Oct. 31 Apr. 15—May 25
Caribou:	
Unit 22 (A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30
Moose:	
Unit 22(A)—1 antlered bull.	Aug. 1–Sept. 30 Dec. 1–Jan. 31
Unit 22(B)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(C)—1 antlered bull.	Sept. 1–Sept. 14
Unit 22(D)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31
Unit 22(E)—1 moose; no person may take a cow accompanied by a calf.	Aug. 1–Mar. 31
Coyote:	
2 coyotes	Sept. 1–Apr. 30
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes	Nov. 1–Apr. 15
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30
Lynx:	
2 lynx	Nov. 1–Apr. 15
Wolf:	
No limit	Aug. 10–Apr. 30
Wolverine:	
1 wolverine	Sept. 1–Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30
Trapping:	
Beaver:	
Unit 22 (A) and (B)—50 beaver.	Nov. 1–June 10

Harvest limits	Open season
Unit 22 (C), (D), and (E)—50 beaver.	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
Lynx:	
No limit	Nov. 1–Apr. 15.
Marten:	
No limit	Nov. 1–Apr. 15.
Mink and Weasel:	
No limit	Nov. 1–Jan. 31.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Apr. 15.
Wolverine:	
No limit	Nov. 1–Apr. 15.

(23) Unit 23.

(i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Noatak Controlled Use Area, which consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Kugururok River, and extending easterly along the Noatak River to the mouth of Sapun Creek, is closed for the period August 20–September 20 to the use of aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species;

(B) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A) is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting; aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) Motor-driven boats or snowmachines may be used to take caribou; however, shooting from a snowmachine in motion is prohibited.

(B) Swimming caribou may be taken with a firearm using rimfire cartridges;

(C) A firearm may be used to take beaver with a trapping license in all of Unit 23 from Nov. 1—Jun. 10.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 23—except the Baldwin Peninsula north of the Arctic Circle—1 bear.	Sept. 1–May 31.
Remainder of Unit 23—1 bear every four regulatory years.	Sept. 1–Oct. 10. Apr. 15–May 25.
Caribou:	
5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Sheep:	
Unit 23—that portion south and east of the Noatak River, and west of the Cutler and Redstone Rivers (excluding the upper Noatak River Canyon/Sekuiak Bluffs), and including the Igichuk Hills (that area west of the Noatak River and south of Noatak Village, 1 ram with 7/8 curl horn or larger. A State registration permit is required. A harvest quota will be announced before the permit hunt.	Aug. 10–Sept. 20.
Unit 23—that portion south and east of the Noatak River, and west of the Cutler and Redstone Rivers (excluding the upper Noatak River Canyon/Sekuiak Bluffs), and including the Igichuk Hills (that area west of the Noatak River and south of Noatak Village, 1 sheep. A State registration permit is required. The hunt will be closed when 30 sheep have been taken. From Oct. 1–Apr. 30, public lands will be closed to the taking of sheep, except by rural Alaska residents of Unit 23 living north of the Arctic Circle.	Oct. 1–Apr. 30.
Remainder of Unit 23—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20
Remainder of Unit 23—1 sheep.	Oct. 1–Apr. 30
Moose:	
Unit 23—that portion north and west of and including the Singoalik River drainage, and all lands draining into the Kukpuk and Ipewik Rivers—1 moose; no person may take a cow accompanied by a calf	July 1–Mar. 31.
Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1–Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1–Sept. 15 Oct. 1–Mar. 31
Remainder of Unit 23—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30
Fox, Red (including Cross, Black and Silver Phases):	

Harvest limits	Open season
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Dec. 1–Jan. 15.
Wolf:	
5 wolves	Nov. 10–Mar. 31.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 23—the Kobuk and Selawik River drainages—50 beaver.	Nov. 1–June 10.
Remainder of Unit 23—30 beaver.	Nov. 1–June 10.
Coyote:	
No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
Lynx:	
3 lynx	Dec. 1–Jan. 15.
Marten:	
No limit	Nov. 1–Apr. 15.
Mink and Weasel:	
No limit	Nov. 1–Jan. 31.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 10–Mar. 31.
Wolverine:	
No limit	Nov. 1–Apr. 15.

(24) Unit 24.

(i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(B) The Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettle's Field VOR, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57′ N. lat., 156°41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek, then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(D) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 24—that portion west of the Dalton Highway Corridor Management Area—1 bear.	Sept. 1–May 31.
Remainder of Unit 24—1 bear every four regulatory years.	Sept. 1–May 31.
Caribou:	
Unit 24—the Kanuti River drainage upstream from Kanuti, Chalatna Creek, the Fish Creek drainage (including Bonanza Creek)—1 bull.	Aug. 10–Sept. 30.
Remainder of Unit 24—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Sheep:	
Unit 24—that portion within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.

Harvest limits	Open season
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Remainder of Unit 24—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20
Moose:	
Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, antlerless moose, may be taken only from Sept. 21–Sept. 25, Dec. 1–Dec. 10, and Mar. 1–Mar. 10.	Sept. 5–Sept. 25. Dec. 1–Dec. 10. Mar. 1–Mar. 10.
Unit 24—that portion that includes the John River drainage within the Gates of the Arctic National Park—1 moose.	Aug. 1–Dec. 31.
Unit 24—all drainages to the north of the Koyukuk River upstream from and including the Alatna River to and including the North Fork of the Koyukuk River, except that portion of the John River within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Sept. 25. Mar. 1–Mar. 10.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 antlered bull by Federal registration permit only.	Aug. 25–Sept. 25.
Remainder of Unit 24—1 antlered bull. Public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by eligible rural Alaska residents during seasons identified above.	Aug. 25–Sept. 25.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Feb. 28.
Wolf:	
5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharptailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
No limit	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
No limit	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Mar. 31.
Wolverine:	
No limit	Nov. 1–Mar. 31.

(25) Unit 25.

(i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(B) The Arctic Village Sheep Management Area, which encompasses approximately 567,680 acres north and west of Arctic Village. The area consists of that portion of Unit 25(A) which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Cane Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary located directly south of Little Njoo Mountain; the boundary leaves the river and continues upstream along this unnamed tributary, northwesterly, for approximately 6

miles where the stream forks into two roughly equal drainages; the boundary follows the eastern most fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 20 miles along the divide to an unnamed peak, elevation 6,460, located north of the most southerly major fork of the headwaters of Cane Creek; then the boundary continues due south 1.5 miles to the high point of a saddle, then down the headwaters tributary to Cane Creek and down the creek to the confluence of Cane Creek and the East Fork Chandalar. Sheep hunting in this area is restricted to residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik.

(iii) Unit-specific regulations:

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Caribou:	
Unit 25(A), (B), and the remainder of Unit 25(D)—10 caribou; however, no more than 5 caribou may be transported from these units per regulatory year.	July 1–Apr. 30.
Unit 25(C)—that portion south and east of the Steese Highway—1 bull by Federal registration permit only; the season will close when a harvest quota for the Fortymile herd has been reached. The harvest quota will be determined by the Board after consultation with ADF&G and announced before the season opening.	Aug. 10–Sept. 30, Dec. 1–Feb. 28.
25(C)—that portion north and west of the Steese Highway—1 caribou; however, only bull caribou may be taken during the Aug. 10–Sept. 20 season. During the winter season, caribou may be taken only with a Federal registration permit.	Aug. 10–Sept. 20. Feb. 15–Mar. 15.
Unit 25(D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long.—1 bull.	Aug. 10–Sept. 30.
Sheep:	
Unit 25(A)—that portion within the Dalton Highway Corridor Management Area—3 sheep by Federal registration permit only; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger.	Oct. 1–Apr. 30. Aug. 10–Sept. 20.
Unit 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik during seasons identified above.	Aug. 10–Apr. 30.
Remainder of Unit 25(A)—3 sheep by Federal registration permit only.	Aug. 10–Apr. 30.
Moose:	
Unit 25(A)—1 antlered bull.	Aug. 25–Sept. 25. Dec. 1–Dec. 10.
Unit 25(B)—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull.	Aug. 25–Sept. 30. Dec. 1–Dec. 10.
Remainder of Unit 25(B)—1 antlered bull.	Aug. 25–Sept. 25. Dec. 1–Dec 15.
Unit 25(C)—1 antlered bull.	Sept. 1–Sept. 15.
Unit 25(D)(West)—that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 bull by a Federal registration permit. Alternate permits allowing for designated hunters are available to qualified applicants who reside in Beaver, Birch Creek, or Stevens Village. Moose hunting on public land in this portion of Unit 25(D)(West) is closed at all times except for residents of Beaver, Birch Creek and Stevens Village during seasons identified above. The moose season will be closed when 30 antlered moose have been harvested in the entirety of Unit 25(D)(West).	Aug. 25–Feb. 28.
Remainder of Unit 25(D)—1 antlered moose.	Aug. 25–Sept. 25. Dec. 1–Dec. 20.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct 1.	Sept. 1–Mar. 15.

Harvest limits	Open season
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
Unit 25(C)—2 lynx	Dec. 1–Jan. 31.
Remainder of Unit 25—2 lynx.	Nov. 1–Feb. 28.
Wolf:	
Unit 25(A)—No limit	Aug. 10–Apr. 30.
Remainder of Unit 25—10 wolves.	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 25(C)—25 per day, 30 in possession.	Aug. 10–Mar. 31.
Remainder of Unit 25—15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and Whitetailed):	
Unit 25(C)—those portions within 5 miles of Route 6 (Steese Highway)—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Remainder of Unit 25—20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Beaver:	
Unit 25(C)—25 beaver.	Nov. 1–Apr. 15.
Remainder of Unit 25—50 beaver.	Nov. 1–Apr. 15.
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
Unit 25(C)—No limit	Dec. 1–Jan. 31.
Remainder of Unit 25—No limit.	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Mar. 31.
Wolverine:	
Unit 25(C)—No limit	Nov. 1–Feb 28.
Remainder of Unit 25—No limit.	Nov. 1–Mar. 31.

(26) Unit 26.

(i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border including the Firth River drainage within Alaska:

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Unit 26(A) Controlled Use Area, which consists of Unit 26(A), is closed to the use of aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose from Aug. 1—Aug. 31 and from Jan. 1—Mar. 31. No hunter may take or transport a moose, or part of a moose in Unit 26(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled service to this area, nor does it apply to transportation by aircraft to or between publicly owned airports;

(B) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as follows: The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area. The use of firearms within the Corridor is authorized only for the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor;

(C) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) Motor-driven boats and snowmachines may be used to take caribou; however, shooting from a snowmachine in motion is prohibited.

(B) Swimming caribou may be taken with a firearm using rimfire cartridges;

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 26(A)—1 bear	Sept. 1–May 31.
Remainder of Unit 26—1 bear every four regulatory years.	Sept. 1–May 31
Caribou:	
Unit 26(A)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Unit 26(B)—5 caribou; however, cow caribou may be taken only from Oct. 1–Apr. 30.	July 1–June 30.
Unit 26(C)—10 caribou; however, not more than 5 caribou may be transported from Unit 26(C) per regulatory year.	July 1–Apr. 30.
Sheep:	
Unit 26(A)—those portions within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Remainder of Unit 26(A) and (B)—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.

Harvest limits	Open season
Unit 26(C)—3 sheep per regulatory year; the Aug. 10–Sept. 20. Oct. 1–Apr. 30. season is restricted to 1 ram with 7/8 curl horn or larger. A Federal registration permit is required for the Oct. 1–Apr. 30 season. Kaktovik residents may harvest sheep in accordance with a Federal community harvest strategy for Unit 26(C) which provides for take of up to two harvest limits of 3 sheep by designated hunter.	
Moose:	
Unit 26(A)—that portion of the Colville River drainage upstream from and including the Chandalar River drainage—1 moose; however, no person may take a cow accompanied by a calf.	Aug. 1–Mar. 31
Remainder of Unit 26(A)—1 moose; however, no person may take a cow accompanied by a calf.	Aug. 1–Dec. 31
Unit 26(B)—that portion within two miles of the Dalton Highway.	No open season.
Unit 26((B) Remainder and (C)—1 moose.	Aug. 1–Dec. 31
Musk Oxen:	
Unit 26(C)—1 bull by Federal registration permit only; up to 10 permits may be issued to rural Alaska residents of the village of Kaktovik only. Public lands are closed to the taking of musk oxen, except by rural Alaska residents of the village of Kaktovik during seasons identified above.	Oct. 1–Nov. 15. Mar. 1–Mar. 31.
Coyote:	
2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 26(A) and (B)—10 foxes, however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Unit 26(C)—10 foxes.	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Apr. 15.
Wolf:	
10 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping:	
Coyote:	
No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Apr. 15.
Lynx:	
No limit	Nov. 1–Apr. 15.
Marten:	
No limit	Nov. 1–Apr. 15.
Mink and Weasel:	
No limit	Nov. 1–Jan. 31.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Apr. 30.
Wolverine:	
No limit	Nov. 1–Apr. 15.

Dated: May 13, 1994.

Ronald B. McCoy,

Interim Chair, Federal Subsistence Board.

Robert W. Williams,

Acting Regional Forester, USDA-Forest Service.

[FR Doc. 94-13223 Filed 5-26-94; 12:19 pm]

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Federal Register

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Part IV

National Credit Union Administration

12 CFR Part 701

Organization and Operation of Federal Credit Unions; Rule

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operation of Federal Credit Unions

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final Interpretive Ruling and Policy Statement 94–1—Chartering and Field of Membership Policy (IRPS 94–1).

SUMMARY: This final interpretive ruling and policy statement ("IRPS") is the result of NCUA's policy of reevaluating all its regulations periodically to determine whether change is warranted. The NCUA Board approved publication of a proposed IRPS on chartering and field of membership after its July 15, 1993 open meeting; the public ultimately was given 180 days to submit comments. This final IRPS 94–1 reflects a full evaluation of those comments; substantial changes as outlined below were made to the proposal. This IRPS 94–1 replaces IRPS 89–1.

The NCUA is also issuing a final amendment to update Part 701.1 of its Rules and Regulations entitled "Organization and Operations of Federal Credit Unions".

EFFECTIVE DATE: July 5, 1994.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: H. Allen Carver, Regional Director, National Credit Union Administration, (404) 396–4042, 7000 Central Parkway, Suite 1600, Atlanta, Georgia 30328.

SUPPLEMENTARY INFORMATION:

Background

I. The Proposed IRPS

On July 28, 1993, the NCUA Board published a proposed interpretive rule and policy statement (IRPS) updating chartering and field of membership policies, and also published a proposed amendment to Section 701.1 of the NCUA Rules and Regulations (12 CFR 701.1), to reference the updated IRPS. The proposal was issued with a 90 day comment period that was extended by the NCUA Board for an additional 90 days due to a public request. The proposed IRPS was designed: (1) To update policies on low-income credit unions; (2) to streamline the charter application process; (3) to address credit unions undergoing corporate and military unit restructuring; (4) to clarify NCUA policy on the "operational area" requirement for select group expansions; and (5) to make certain other minor or technical changes to modify or clarify NCUA policy.

The Board also requested specific comment on the following issues: (1) Whether NCUA should permit credit union chartering and field of membership expansions based on associational groups formed for the sole purpose of making credit union service available to low-income persons, such as is now permitted for existing credit unions seeking to extend service to senior citizens; (2) Whether NCUA should permit occupational, associational, and multiple group federal credit unions to add to their fields of membership communities satisfying the "low-income credit union" definition found in Part 701.32 of NCUA's Rules and Regulations; (3) Whether there should be special procedures for permitting select group expansions "in the public interest;" and (4) Whether NCUA should establish a streamlining "file and serve" procedure for select group expansions of fewer than 50 potential members.

II. Summary of Comments Received

One hundred and thirty-nine public comment letters were received. Comments were received from seventy-eight federal credit unions, six state chartered credit unions, one state regulator, thirteen state credit union leagues, seven national credit union trade organizations, and two individuals.

The Board also received comments from thirty-two banks and banking associations. Briefly summarized, the bank commenters argued that federal credit unions are permitted to expand only within a single common bond, and that federal credit unions should be subject to tax like banks. The NCUA Board, in currently ongoing litigation, has repeatedly stated its disagreement with banking organizations' position on various matters regarding field of membership issues. The question of taxation has been decided by Congress and the President.

In general, the credit union commenters partially supporting or opposed to the proposal argued that NCUA should go even further in liberalizing chartering and field of membership policy. For example, the vast majority of commenters favored deleting operational area requirements altogether for select group amendments. Though the credit union community's desire for more flexibility in accepting new members is understandable, the NCUA Board is unwilling to make the significant changes suggested in operating rules that have served the community well for so long. The Board, in the final IRPS, has adopted a more conservative approach to change.

At the same time, the Board has noted the continuing decline in the number of credit unions and the lack of new chartering activity in recent years. The final IRPS makes significant changes to existing policy to encourage new chartering activity, particularly in low-income areas.

THE ISSUES AND NCUA BOARD DECISIONS

I. Field of Membership Changes To Promote Service to Low-Income Persons

A. Comments in General

The Board's suggestions for significantly liberalizing field of membership policy to encourage service to low-income persons by any sector of the credit union movement generated a great deal of interest.

The first suggestion was to permit credit union chartering and field of membership expansion based on associational groups formed for the sole purpose of making credit union service available to low-income persons, much as is now permitted for existing credit unions seeking to extend service to senior citizens. Nineteen commenters approved of this proposal as a proper method to increase financial services to low-income individuals. However, one association commenter stated that in the case of a low-income credit union, it would oppose a low-income "association" seeking to align with such a non low-income credit union if the association's constituents were already eligible for membership in an existing low-income credit union, unless the latter did not object. This commenter asked whether it was NCUA's intent that the individuals of this associational group themselves be low-income or simply have a stated interest in making services available to low-income persons. This commenter also asked what method of income documentation NCUA would require for the association and whether all of the proposed members would have to qualify as low-income or simply a majority. Four commenters opposed this proposal as unnecessary.

The Board also requested comment on a proposal to permit occupational, associational, and multiple group federal credit unions to add to their fields of membership communities satisfying the "low-income credit union" definition of Part 701.32 of NCUA's Regulations. Thirty commenters approved of this proposal. Most of these commenters believed that

it would allow healthy credit unions to help low-income individuals. Two commenters stated that in many cases credit unions are the only financial institutions that are willing to work with low-income individuals in an effort to promote fiscal responsibility. Two commenters believed there was reason to limit this proposal to non-community credit unions. These commenters believed there may be instances when it would be appropriate for a community credit union to serve a non-contiguous low-income community. Furthermore, these commenters suggested that any credit union wishing to serve a low-income group or community should include in its business plan details on how it will serve the group and periodically review how successful its efforts have been.

Eight commenters opposed the proposal. Three commenters believed there would be a potential for the credit union to "cherry pick" low-income neighborhoods without truly being dedicated to its development.

Two commenters suggested that the credit union maintain separate accounting records for the low-income addition, and at a later date, if the low-income addition was successful, it could be spun off and stand on its own. One commenter suggested that "persons participating in programs to alleviate poverty or distress" in a designated community also be considered an acceptable group for additions. Five commenters suggested it might be possible to charter new community development credit unions that would immediately operate under the agency's conservatorship policies—perhaps for a minimum period of three years. The commenters also suggested that under NCUA's broad conservatorship powers, NCUA could hire the services of a nearby existing credit union under a management contract to operate the new credit union.

One commenter stated that minimum requirements should be instituted for any non-low-income credit unions seeking permission to enter a low-income area to ensure that the community will be adequately served. One commenter suggested that a non low-income credit union be required to provide status reports on its service to such a low-income group. One commenter recommended that no expansion should be granted unless it could be demonstrated that there would be no adverse material impact on existing low-income credit unions in the area, or groups in the process of chartering a low-income credit union. One commenter stated that before an expansion was granted, the federal credit union should be required to perform a study of the credit and depository needs of the low-income group.

One commenter supported using the existing limited income designation criteria as defined by NCUA to allow existing religious-based credit unions to grant access to credit union service in their immediate financially underserved communities. One commenter recommended allowing minority chambers of commerce or other associations of minority and economically disadvantaged business people, along with their respective employees, to qualify for charters.

B. NCUA Board Decision

The Board agrees that low-income persons need expanded credit union service. To ensure that all possible means of accomplishing this end can be used, the final IRPS:

- Permits chartering associational low-income federal credit unions, where the association is organized solely for the purpose of providing credit union service to low-income persons.
- Permits a low-income federal credit union, whether associational or community based, to include in its charter, occupational, associational, and community common bond groups without regard to location. The credit union will have to monitor such additions to its base common bond, however, to ensure that the credit union remains qualified for a low-income credit union designation.
- Permits a federal credit union of any type—occupational, associational, community, or multiple group—to include low-income groups in its field of membership, without regard to the groups' location, either by forming an association which is organized solely for the purpose of providing such service or by including a community group which could be the basis for chartering a low-income credit union.

The Board shares some commenters' concerns that this policy change may be used to "cherry pick" by meeting the credit needs of a relatively well-off portion of a low-income community while leaving those most in need of service with nothing. The Board will institute special reporting requirements and special examination procedures for any credit union including a low-income group in its field of membership to ensure that adequate credit union services are provided to *all* persons in the community.

The Board sees no limitation in the Federal Credit Union Act preventing this policy change. While true that NCUA has generally refrained from combining community-based common bonds with occupational and associational common bonds, the reason for that limitation has been a concern for the safe and sound development of credit unions. The language of Section 109 of the Federal Credit Union Act, 12 U.S.C. 1759, which states "Federal credit union membership shall be limited to groups having a common bond of occupation or association or to groups within a well-defined neighborhood, community, or rural district," does not require segregation of community groups from other kinds of common bonds. The difference in wording for community based common bond seems to have arisen from the fact that the bond was more difficult to describe adequately. The "or" between the "common bond" provisions and the community description is no different from the "or" between "occupation" and "association", which the Board has long concluded permits combining occupational and associational common bonds in a single federal credit union, and which is consistent with the words' common usage.

Moreover, in IRPS 89–1, the Board described all three groupings—occupational, associational, and community—as "common bonds" without distinction, and in the case of distress mergers permitted intermingling of all three common bond types.

Finally, there is nothing in the evident purposes of the Act which suggests that community groups are necessarily to be treated differently from other common bonds. Functionally, all three common bonds perform an identical role—to help maintain in credit union members the sense of belonging and ownership that is so crucial to credit union success.

Other commenter suggestions—such as providing assurances that existing low-income credit unions are not overlapped and extending the agency's conservatorship power to help start low-income credit unions—can be implemented under existing policy where appropriate.

II. Other Issues Relating to Low-Income Federal Credit Unions

A. Comments

Four commenters approved of updating low-income credit union polices based on the revised regulatory definition. Two commenters believed that low-income credit unions should have access to the CDCU Revolving Loan Program immediately upon beginning operation. One commenter suggested that community groups be

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able to seek a preliminary determination of a low-income designation before final submission of a charter package.

One commenter urged that associational groups proposing to start low-income credit unions not be required to demonstrate voting, dues-paying membership structures because, among other things, it would hurt church based associational groups.

B. NCUA Board Decision

The Board agrees with these suggestions. The final IRPS:

- Updates the provisions on low-income credit unions to reflect recent changes in the Rules and Regulations
- Eliminates the voting and dues-paying requirements for recognition of an associational common bond
- Provides for preliminary review of the low-income designation.

Part 705 of the NCUA Rules and Regulations (12 CFR 705.0 *et seq.*) currently provides qualifying newly chartered credit unions with immediate access to the CDCU Revolving Loan Fund.

III. Streamlining the Process for New Charter Applications

A. Comments

Six commenters approved the streamlining process for new charter applications. Four commenters believed that the amount of time that passes between the day a potential credit union submits a charter application to NCUA for approval and the day the application is actually approved or denied was acceptable. Two commenters believed the time frame for chartering was unacceptably lengthly. One commenter suggested that an acknowledgment of receipt of the chartering application "be sent to the organizers in a timely fashion" preferably within 10 days.

One commenter stated that it would facilitate chartering if groups were able to obtain tentative approval of their fields of membership early in the process. This commenter also believed that early submission of NCUA 4012 may also speed the process.

The proposal stated that the subscribers should be responsible for paying the cost of credit reports and background checks when applying for a credit union charter. Seven commenters agreed with this provision. Nine commenters believed that the subscribers should not be responsible for paying the cost of credit reports and background checks when applying for a new charter. Two commenters recommended that NCUA articulate the standards relied upon in disqualifying credit union organizers.

B. NCUA Board Decision

The NCUA Board agrees with these suggestions and is hopeful that the result of all the changes made will be a significant increase in new federal chartering activity. Small, vibrant credit unions, serving their members on a first-name basis and willing to take reasonable credit risks based on personal knowledge of their members' character, are a vital part of the credit union movement. Many credit unions which used to fill this niche have through their success grown to the point where credit union management can no longer make these personal judgments on each individual member. A new generation of small credit unions is needed to fill that void, particularly in the many poor inner-city and rural areas where credit needs are now largely unmet.

The final IRPS provides:

- That charter applicants will receive acknowledgment of the application's receipt in 10 business days
- That tentative field of membership approval will be given early in the process
- That early submission of NCUA 4012 will be encouraged
- That the cost of credit reports and background checks will be borne by NCUA

The NCUA Board does not believe, however, that it would be productive to establish many other absolute standards and guidelines. Each application is to some extent unique and may require somewhat different procedures and time frames. The Board believes these are best left to be worked out between the prospective credit union officials and NCUA staff.

IV. Distress Situations Caused by Dramatic Changes in Economic Conditions Within a Federal Credit Union's Field of Membership

A. Comments

The proposal would have permitted an associational, occupational, or multiple group credit union converting to a community charter as a result of significant corporate or military restructurings to maintain service to groups in its field of membership prior to conversion and to add other groups within the credit union's operational area after the conversion, but for only so long as needed to ensure the credit union's continued viability. A group consisting of all NCUA Regional Directors and the Director of Examination and Insurance would vote to determine the necessity of allowing the converting credit union to maintain the select employee groups. Eighteen commenters favored the proposal.

Four commenters believed this authority should be expanded to all community charters where continued viability is threatened by a major employer's restructuring. These commenters believed there was no reason to treat a "converting to" community charter any different from existing community charters when in both cases the threat is viability caused by similar events.

Though many commenters suggested abandoning the operational area requirement altogether (see "'Public Interest' Addition Comments" below), one in particular urged that it at least be abandoned in distress situations. Eight commenters opposed the proposal. Two commenters stated that military credit unions should not be granted community charters except in rare cases where an isolated base is the community. These commenters believed that in a heavily populated area where there are many other credit unions already serving select groups, this proposal would grant an unfair advantage to military credit unions. Six commenters approved the special administrative approval procedure but nine objected to it.

B. NCUA Board Decision

The Board is persuaded that federal credit unions of all types need additional flexibility when faced with distress situations such as significant corporate or military restructuring. The final IRPS:

- Permits federal credit unions of all types—occupational, associational, multiple group, and community—to apply for designation as a "distressed federal credit union" and to do so regardless of whether they are converting to community charter
- Permits federal credit unions with such designations to add occupational and associational groups to their fields of membership regardless of location.

As an added assurance that the process is administered consistently and proper guidance is given, the NCUA Board will reserve to itself, at least initially, the authority to grant "distressed credit union" designations. The Board believes that, with this added requirement, there will be adequate controls in place to prevent abuse: There will be a comprehensive review by the NCUA Board prior to initial designation; groups must request service in order to be added to a distressed credit union's field of membership; the regional director must approve all expansion requests; and normal overlap procedures will apply.

V. Common Bond Issues

A. Occupational Common Bonds

1. Comments

The proposal suggested only slight modifications of current policy. It stated that a proposed federal credit union whose primary sponsor is a particular corporation may include the employees of that corporation who work at another location, employees of the corporation who are paid from or are supervised from the headquarters location, such as sales persons or sales agents who work at a number of locations, employees of a division or majority-owned subsidiary of the parent company regardless of location, and employees of a related company (such as a person working regularly for an enterprise under contract and possessing a strong dependency relationship with the sponsoring enterprise). Each group to be served (e.g., majority-owned subsidiaries, contractors) was to be separately listed.

One commenter objected to the proposal that each group to be served must be separately listed. This commenter suggested that NCUA be more lenient. Another commenter requested that if an occupational credit union furnished evidence of its parent company's preference for one credit union, that credit union should be allowed to describe its field of membership to include the parent and all other companies under common control. One commenter stated that the components of a field of membership definition should be limited to legal entities.

One commenter stated that the Chartering Manual does not state procedures necessary for a credit union to keep its existing membership, if a company or a division has been sold. This commenter believes that if a company or division is sold to a company which has a credit union, then the original credit union loses the field of membership after the sale; otherwise, service should be allowed to continue.

2. NCUA Board Decision

The NCUA Board agrees that the wording of this portion of IRPS 89–1 pertaining to business relationships is in need of some revision. The final IRPS has been rewritten to provide more clarity. However, the Board does not see a need to broaden the occupational common bond definition in general at this time.

The Board does believe, however, that it is a disservice to cut off service to groups which are divested from a sponsoring firm. The final IRPS permitted continued service if the group desires it.

Finally, it is clear that some in the credit union community have misunderstood why the NCUA Board proposed requiring listing of subsidiary entities included in a common bond. The agency is in the process of establishing a field of membership database for internal monitoring of overlaps. Federal credit union listing of all subgroups would greatly enhance the reliability and overall usefulness of the database. But the NCUA Board sees no need to impose this requirement on a federal credit union which finds that process overly burdensome, and the final IRPS has deleted this portion of the proposal. Such a credit union should understand, however, that if a specific group is not mentioned in its charter, and the group in good faith states in a request for service from another credit union that it does not have credit union service available (as often happens with new subsidiaries of sponsoring groups), an overlap may inadvertently be permitted without full consideration for the overlapped credit union's interests. If the overlap is discovered after the other credit union has begun service, it is likely that, in the interests of the group and the other credit union, NCUA will permit the overlap to continue.

B. Associational Common Bonds

1. Comments

The proposal clarified that a federal credit union seeking to include an association in its field of membership may only include natural persons who pay dues and have voting rights or hold office in the association. Eight commenters supported this change. Twenty-one commenters opposed the proposal. In general, these commenters believed that not all natural person associations require a member to pay dues. A few commenters stated that the proposal would harm church associations that have members that do not pay dues. Four commenters stated the proposal would harm low-income cooperatives. One commenter stated that the collection of dues for an associational group may be entirely irrelevant to the group's purpose or mission. One commenter stated that this requirement can not be reasonably monitored by a federal credit union

The proposal also clarified that a federal credit union's field of membership has to be updated and approved by NCUA when an association changed its bylaws to modify the scope of those eligible for membership. Six commenters approved of this clarification. One commenter stated that without this limitation an associational credit union would be allowed to change to an open field of membership. Thirteen commenters disapproved of the clarification. Six of these commenters believed that if an association changed its bylaws frequently it could cause an administrative nightmare for the credit union and NCUA if the charter had to be amended every time the bylaws changed. One commenter believed the main concern should be whether the association in question was a viable functioning organization. This commenter believed that an association with membership qualification requirements, bylaws and meetings should be defined as a functioning organization.

The proposal removed the requirement that students must join the credit union prior to family members becoming eligible. Five commenters agreed with this change.

One commenter stated that the final IRPS should be modified to allow for inclusion of an entire association in a federal credit union at a higher level if that level provided broad based services which were not available at a lower level.

2. NCUA Board Decision

The NCUA Board agrees that the dues-paying and voting rights requirements of the proposal could be unfair to some bona fide associations. The final IRPS lists these elements as factors to be considered, not as requirements.

The Board has also attempted to clarify in the final IRPS the ambiguities noted by some of the commenters.

The Board does not agree, however that it should alter its present policy in favor of service to associations at the lowest possible level, or that it is appropriate to allow associations to modify portions of their bylaws which dramatically change the make-up of membership without agency review. The final IRPS maintains these provisions as in the proposal.

VI. Select Group Addition Issues

A. Comments

A number of comments were received on the various proposed changes to NCUA's select group addition policy. They are best discussed as a group.

1. "Public Interest" Addition Comments

The Board requested comment on a limited "public interest" procedure by which NCUA might approve a federal credit union expansion to include a group outside the operational area of a

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home or branch office, if such action was in the interest of making quality credit union service available to all eligible groups who wish to have it, and if doing so would not have a significant adverse effect on the safe and sound operations of credit unions. Any federal credit union seeking such an expansion would need to provide certain documentation, including a summary of the views of each credit union with a home or branch office within a 25 mile radius as to whether each has agreed to inclusion of the group in the applying credit union's field of membership, and if the credit union refused, the reasons for the refusal.

Thirty commenters supported the concept of the "public interest" proposal. These commenters generally believed that the proposal would provide more people with credit union service. However, most of these commenters believed the proposal's operational area requirement was unnecessary. Furthermore, sixteen commenters stated that the proposal's documentation requirements were so onerous that it would discourage most credit unions from trying to use the procedure. Six commenters opposed this proposal.

One commenter believed that the only use for the "public interest" procedure should be to provide an exception to the rules for credit unions experiencing a loss of members due to some extraordinary circumstances, such as a base closing or a corporate restructuring. This commenter believed the test for a "public interest" procedure should be based on: (1) The demand for credit union service; (2) the capability of the credit union to provide services; and (3) the level of membership necessary to sustain the affected credit union.

2. "Operational Area" Comments

NCUA has traditionally focused multiple group field of membership additions around the "operational area" of a home or branch office. This policy was designed to ensure a satisfactory level of commitment and service to the groups included in the field of membership, while also minimizing instances of overlap and deterring territorial stakeouts by overly aggressive credit unions. However, in response to new technologies and innovations, the proposal clarified operational area requirements. The first clarification was that for purposes of a field of membership expansion the "standard" operational area will be considered an area within a 25 mile radius of a home or branch office, but that this standard may be extended for rural areas. Six commenters believed the proposed operational area was reasonable and approve of it. Four other commenters agreed in general with the definition but believed that there should be more leeway for rural areas.

Forty-one commenters objected to the 25 mile operational area as outdated in light of current technology. Thirty-seven commenters stated there should not be any operational area. They believed that direct deposit, automated teller service, and service-by-phone, in many cases, has eliminated the need for physical access to a branch. Five commenters believed operational area should just be one of many factors to be considered in a field of membership expansion.

A few of the commenters stated that a progressive approach to the expansion of services is one based on functionality, not geography. They believed a functional approach should be based on the capacity and willingness to serve matched with a demand for those services. One commenter suggested that the determination of the operational area of a credit union should be based on whether the credit union can reasonably be expected to deliver adequate credit union service to the area. This commenter suggested that NCUA approve a field of membership expansion request if: (1) There is a clear demand for the credit union's services; (2) the credit union is capable of providing the services; and (3) other credit unions in the area are not already providing the service. Twelve commenters stated that any credit union should have the option to add select employee groups to its field of membership (without regard to operational area) if it has the financial resources to do so and there is no overlap.

3. "Shared Facilities" Comments

The proposal stated that "shared facilities" and "shared service centers" were specifically to be excluded from consideration as either a "home" or "branch" office for purposes of meeting NCUA's operational area requirement, except in unusual circumstances—e.g., where a credit union is converting an existing home or branch office to a "shared facility." Nine commenters believed this to be a reasonable position and agreed with the clarification. One commenter stated that this position would ultimately help service centers prosper and control predatory concerns from credit unions not participating in shared service center programs.

Seven commenters opposed the clarification. Several commenters believed the proposal would force some credit unions into unnecessary expenditures for "brick and mortar" facilities. Some commenters suggested that field of membership expansions be allowed around a shared branch if the credit union has a material (20%) stake in the facility. They believed shared branches were tantamount to a credit union's own property.

4. "Branch" Comments

The proposal stated that a facility which was directly and solely owned by, leased by or donated by a credit union and had credit union employees regularly on site who accept payment on shares and disburse loans was clearly a home or branch office. One commenter objected to the requirement that a branch office have a paid employee working in it. This commenter believed this section needed to be modified to include credit union volunteers.

One commenter believed that in order to facilitate growth among credit unions, NCUA should reconsider its position that "the addition of a new select group alone is not enough to justify a proposed home or branch office."

One commenter believed the definition of branches should be expanded to more closely identify and define the difference between an "open branch" and a "closed branch." This commenter stated that an open branch should be identified as one where members from any company or group could have free access and that a closed branch should be identified as one that is located within a sponsor's facility that is accessible only to employees of that group. This commenter believed that taking on additional small employee groups using a close branch as the base in determining the 25 mile radius should not be permitted.

B. NCUA Board Decision

The NCUA Board is not prepared to jettison the "operational area" limitation or to make substantial changes in how that limitation is defined. The requirement has served credit unions well and remains vital. Some of the wording in the final IRPS has been changed to make the concept more adaptable to the variety of credit union service outlets, however. "Home or branch office" has been changed to "service facility," for example, and the requirement to have an "employee" on site has been changed to "representative" to accommodate the possibility of volunteers.

However, the final IRPS does not include provisions for a "public interest" field of membership expansion. Moreover, the Board does not believe that technology has reached the point where access to a facility where business can be transacted by interaction with another person is unimportant. Therefore, the operational area requirement will continue to be linked to the credit union's ability to provide service by such means. Finally, the Board cannot, without substantially more experience, allow "shared service centers" and other similar kinds of group service arrangements to be considered "service facilities" for select group expansion purposes; the effects of such a change are too unclear at this point. The final IRPS therefore excludes from the definition of a "shared facility" locations at which service is provided to a significant number of different credit unions' members.

VII. Community Charters

A. Comments

Two commenters believed the proposal did not address the concerns of community credit unions. The proposal clarified that a community credit union's operational (service) area was to be defined by its boundaries. Four commenters agreed with this clarification. Four commenters believed that the authority to add new groups outside community boundaries should be extended to all community charters where continued viability is threatened by a major corporate or military restructuring. These commenters believed there was no reason to treat a "converting to" community charter any differently from existing community charters when in both cases the threat is viability caused by similar events. Eight commenters believed any community credit union should have the option to add select employee groups to its field of membership if it has the financial ability to do so and NCUA determines that no other credit union in the area could serve the group. Four commenters suggested allowing community credit unions to merge with multiple group or associational credit unions while still continuing to serve the former fields of membership of both credit unions.

Four commenters believed NCUA should provide for the chartering of community credit unions in two non adjacent communities. These commenters believed the granting of community charter status in one area should not prevent the credit union from continuing to serve and admit new members from existing select employee groups in a second area, or obtaining a dual community charter.

One commenter believed NCUA should make it easier to expand geographic boundaries of community credit unions by eliminating the requirement of showing a "commingling of the two communities." This commenter believed this requirement was no longer realistic because electronic transactions have taken over in the marketplace.

B. NCUA Board Decision

The Board believes the final policy statement addresses the needs of community charters. In response to the advent of new technologies in communication and the evolving character of communities, the Board has slightly revised the definition of a community common bond. A community charter must continue to be limited to "a well-defined neighborhood, community, or rural district." However, a community will be defined as a single, well-defined area where residents interact. To meet this definition, the Board has established the following common bond requirements for a community charter: the geographic area's boundaries must be clearly defined; and the applicant for a new charter or an expansion must establish that the area is recognized as a "distinct neighborhood, community or rural district." This new policy eliminates the commingling requirement while still requiring the members to interact. The final policy also clarifies that the community credit union's operational (service) area is defined by its boundaries.

As stated earlier, community credit unions may also apply for a designation as a "distressed federal credit union" and to do so regardless of whether they are converting to a community charter. These credit unions, as well as low-income community credit unions, may add select employee groups outside their operational area to their fields of membership as long as they have the financial ability to serve the group. After the credit union community has some experience with this policy, the Board will assess the wisdom of extending this option to all community credit unions.

VIII. Overlap Issues

A. Comments

The proposal clarified that NCUA may exclude from overlap protection state chartered credit unions with a field of membership so broadly defined as to include virtually everyone in a wide area. Four commenters agreed with this clarification. However, many commenters addressed other overlap issues. Two commenters supported the requirement that credit unions involved in overlap situations first attempt to resolve related issues among themselves before turning to NCUA. Three commenters stated that field of membership policy was overly liberal and permits numerous overlaps which hurt small credit unions. Eight commenters stated that overlaps between credit unions should be liberally permitted.

Four commenters believed NCUA should include a definition of the term "incidental overlap" as a further aid to the credit union community. One commenter believed the term should be defined as 3% of the potential membership of the credit union being overlapped. One commenter stated that overlaps are incidental if they do not create questions of viability for the credit union affected by the overlap.

The proposal stated that an overlap may be justified if the original credit union failed to provide quality service to the group. One commenter suggested that the Board define "quality service" and reexamine its position regarding the absence of "specialized service as not being a justification for an overlap." Seven other commenters also believed that the term "quality service" needed to be defined. They believed the term was very subjective: Did it mean the number of services, hours open, or the attitude of workers? A few of these commenters believed the lack of a definition has hurt small credit unions.

One commenter supported NCUA's intent to provide overlap protection for any type of charter if there are significant safety and soundness concerns. This commenter would expand this to include a low-income service impact test: A credit union should be protected from overlaps which would impair its ability to effectively serve low-income members of the community.

The proposal also stated that in special cases exclusionary language should be used to limit the membership eligibility of widely dispersed employees or associations. One commenter disagreed with this limitation. This commenter believed that if there was a legitimate common bond, such as a single employer or association, and no credit union was serving the group, then exclusionary language was not necessary.

B. NCUA Board Decision

The final IRPS contains the provision in the proposal removing from overlap consideration broadly based state chartered credit unions, which parallels how the agency approaches broadly based federal charters. As to most of the remaining comments, the Board disagrees with many of the suggestions. The Agency's long-standing policy is working well. The vast majority of all overlaps are consented to by the

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overlapped credit union. The remainder are resolved in a way which makes the [illegible] account. The Board continues to believe it needs flexibility in this area. The [illegible] Final IRPS does not define "incidental overlap" or "quality service."

However, the Board agrees that experience with exclusionary clauses has not been entirely satisfactory. This entire section has been rewritten in the final IRPS in the hope of limiting their use to the few situations where they are truly warranted and effective.

IX. Documentation Issues

A. Comments

The proposal attempted to streamline documentation requirements. Five commenters stated that the documentation requirements in the proposal were not burdensome. Ten commenters disagreed. Many of these commenters also believed that financial statements were unnecessary in light of periodic call reports and examinations. Four commenters believed that financial statements should not be necessary for field of membership expansions.

Two commenters noted that, for a field of membership expansion, the proposal required documentation from groups "on the group's letterhead stationery and signed by an official representative to the group." The commenters believed this has generally been interpreted to mean an officer of the employer. These commenters believed that NCUA should be flexible and recognize that not all groups are represented by the employer or have an "official" representative. They suggested that the IRPS allow the regions to accept other documentation or certification.

B. NCUA Board Decision

The NCUA Board agrees that in the vast majority of cases regional staff have sufficient financial information available to make a determination as to the economic advisability of the proposed charter change. The [illegible] requirement to submit financial statements with a charter change request has been deleted. If a regional office needs additional information it may ask for it. The NCUA Board also agrees that the requirement for letterhead stationery can be relaxed. With regard to the requirement that an "official representative" of the group sign the letter requesting service, the Board does not believe a change in the wording is needed, but will ensure that the regional offices are instructed to be more flexible in applying the term to specific situations.

X. The Proposed "File and Serve" Procedure

A. Comments

The proposal requested comment on a "File and Serve" select group expansion procedure. It was envisioned that the procedure would permit CAMEL code 1 and 2 credit unions to begin providing service to small groups—50 persons or fewer was suggested—prior to formal NCUA approval of the expansion. Thirty-six commenters favored the procedure. These commenters believed it would allow credit unions to timely serve new groups. However, some commenters suggested an increase in the number of potential members that could be added using the procedure. One commenter inquired whether the number included family members. Four commenters recommended NCUA issue guidelines on what to do if the expansion is subsequently denied by the Region.

Eighteen commenters objected to the "File and Serve" proposal. The reasons were varied. Nine commenters stated there were no procedures for what would happen if the expansion was denied by the Region and that it would be an administrative nightmare if a denial occurred. Eight commenters believed this proposal was not justified since regulatory delay in approving expansion requests was not a problem. Six commenters believed that there would be more conflicts arising from both intentional and unintentional overlaps. Five commenters stated that regulatory approval distinguishes credit unions from banks.

Three commenters suggested any CAMEL code 1, 2 and 3 credit unions be permitted to use the file and serve procedure. One commenter suggested that NCUA implement an alternative procedure by which CAMEL code 1 and 2 credit unions should be given preference by NCUA in reviewing field of membership expansions. Two commenters specifically objected to the procedure's being tied to a CAMEL rating. Four commenters recommended that all credit unions should be able to use the file and serve procedure. One of these commenters suggested NCUA could then restrict the file and serve authority on a case-by-case basis for any credit union it had concerns about. One commenter recommended adding a requirement that the filing credit union have to state that there was no overlap or existing eligibility for membership in another credit union for the group to be served.

B. NCUA Board Decision

Many of the commenters' suggestions have been incorporated into the final IRPS. The new policy will permit well operated federal credit unions in good standing with NCUA to apply for charter amendments which authorize the credit unions to make use of a streamlined process for adding small occupational groups currently without credit union service. The initial maximum number of persons in a group to be added under this procedure has been set initially by the NCUA Board at 100. The Board may be resolution adjust that number from time to time as appropriate.

XI. Other Procedures for Reviewing Field of Membership Addition Requests

A. Comments

The proposal sought to clarify the mechanics of requesting additions to a federal credit union's field of membership. Four commenters believed that the approval time on select employee group additions was excessive. Another commenter stated that the field of membership expansion procedure was burdensome and should be streamlined. Two commenters supported NCUA's goal of approving or denying field of membership expansion requests within the "10 business day or less" time frame.

One commenter stated that, in regard to charter amendments, once NCUA approves one, the board of directors of the credit union should not subsequently have to adopt it to make it effective.

Two commenters stated that pre-notification of a proposed field of membership expansion in another credit union's operating area should be a common courtesy. Three commenters believed the final IRPS should provide at a minimum for some form of publication and hearings or period of comment relative to an expansion of any credit union's field of membership.

B. NCUA Board Decision

The NCUA Board believes that a ten business-day turnaround for field of membership amendment requests is reasonable. All regions have automated the review process so that this time frame should be exceeded only in extraordinary cases. The Board strongly believes, however, that a federal credit union's board needs to be involved in the process—after all, the board is responsible for the institution's overall direction and control. There are adequate procedures a federal credit union can put in place to ensure that needed board oversight can be maintained without delaying initiation of service to a group.

The Board also disagrees that a public notice procedure should be implemented. The overlap procedures now in place provide adequate safeguards.

XII. Federalism Concerns

A. Comments

The proposal would permit state-chartered credit unions that are converting to a federal charter and that had an established history of being able to serve multiple groups outside of its operational area to continue to serve these groups without regard to the operational area requirements normally applicable to new federal multiple group charters. Three commenters supported the change but suggested that the concept of operational area be discarded in favor of non-geographic criteria. One commenter opposed relaxing the rules for converting state charters.

B. NCUA Board Decision

The Board believes that, with respect to converting state charters, where the commitment to the group and the ability to provide quality service have been demonstrated, there is no need to impose the operational area requirement. The final IRPS maintains this portion of the proposal. Moreover, the IRPS establishes the same flexibility for an occupational, associational, and multiple group federal credit union converting to a community charter.

XIII. Miscellaneous Matters

A. Staff Leasing

1. Comments

The proposal attempted to clarify NCUA's policy on staff leasing arrangements. The proposal stated that where the requirements of existing policy were met, the employees leased to a firm listed in a federal credit union's field of membership might be added as a common bond expansion. Where those requirements were not met, the elements of a select group expansion to serve employees of the leasing company had to be met. When a leasing company was to be included in a credit union's field of membership, the company had to identify each client and work location served by the leasing company.

Four commenters favored the leasing clarification. Five commenters disapproved of the clarification. These commenters believed that the requirement for specific delineation of each separate company that was a client of the employee leasing firm was both impractical and impossible from an operational standpoint.

2. NCUA Board Decision

On reconsideration, it is evident that general policy can be adequately adapted to the leasing company situation. Therefore, this portion has been deleted from the final IRPS.

B. Spin-offs, Mergers, and Purchase and Assumptions

1. Comments

The proposal clarified NCUA's policy on mergers, spin-offs and purchase and assumptions. Four commenters approved of the update on spin-offs. Three of these commenters specifically approved of the voting requirements for a spin-off. Seven commenters approved of the revised merger section. Three commenters approved of the provision to allow a merged state credit union's field of membership to be served by the continuing federal credit union even if the inclusion of this field of membership would otherwise be restricted under NCUA guidelines.

One commenter disapproved of the merger policy. This commenter believed that by applying an operational area condition to distress mergers, NCUA is limiting its own range of action. This commenter further stated that a suitable merger candidate may not be located within the operational area of a distressed credit union and that it seemed wasteful to wait for emergency conditions to evolve and moot the operational area issue.

One commenter suggested that NCUA should be able to put a credit union for which it is seeking a merger partner into temporary conservatorship, which would allow public notification and bidding from interested credit unions. In addition, this commenter stated that current merger procedures were left to the discretion of each regional office and suggested NCUA give serious consideration to standardizing procedures which would give all credit unions an opportunity to bid.

Four commenters suggested allowing community credit unions to merge with occupational, associational, or multiple group credit unions while still continuing to serve the former fields of membership of both credit unions. Two commenters requested that with respect to mergers, the final IRPS should clarify that when a state chartered credit union is merged into a federal credit union, the federal credit union would be allowed to retain the merged state chartered credit union's select employee groups, regardless of operational area, in order to assure the vitality of the federa credit union after the merger. Another commenter agreed with this suggestion and would expand it to all mergers, including mergers between federal credit unions.

2. NCUA Board Decision

The NCUA Board agrees that operational area limitations should not be an obstacle to merger of credit unions in distress situations, and believes this was Congress' intent in giving NCUA emergency merger authority. The Board has therefore interpreted Section 205(h) of the Federal Credit Union Act (12 U.S.C. 1785(h)) to permit authorizing as emergency mergers what have become known since IRPS 89–1 as distress mergers.

For the reasons stated earlier, however, the Board does not believe that the operational area limitation should be discarded entirely or that exercise of NCUA's conservatorship authority should become a standard part of the merger process.

C. Removal of Groups

1. Comments

The proposal clarified NCUA's policy on the removal of groups from a federal credit union's field of membership. Four commenters agreed with the clarification. One of these commenters suggested allowing the removal of a group when it does not respond to a federal credit union's repeated attempts to contact them.

2. NCUA Board Decision

The final IRPS incorporates this suggested change.

D. School Systems

1. Comments

The proposal clarified that employees of different school systems and different government units do not have the same primary sponsor. Therefore, the addition of the employees of a particular school district by a federal credit union serving employees of an adjoining school district would have to be done under the select group addition procedures. Three commenters concurred with this clarification. Two commenters disagreed with this proposal. They believed that school employees in different school districts may share the same common bond and they should be added under the common bond procedure.

2. NCUA Board Decision

The final IRPS deletes discussion of school systems. They will be analyzed under general common bond policy. In

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the vast majority of cases, different school systems will be considered different common bonds.

E. Industrial Parks

1. Comments

The proposal suggested modifying existing policy to permit field of membership expansions to include all employees of office complexes, industrial parks, shopping centers and similar establishments upon request from the leasing agent or similar authoritative figure. No overlap protection would be given to the expanding credit union and exclusionary clauses would be used to prevent injury to those credit unions serving a portion of these employees. Sixteen commenters favored this proposal. One commenter believed NCUA needs to identify other contacts beside the leasing agent.

Three commenters opposed this modification. One commenter stated that if NCUA adopted this modification, it should ensure that no overlap protection was given to the expanding credit union and that exclusionary language was incorporated into the bylaws of the expanding credit union to prevent possible injury to other credit unions which served the same employees. One commenter stated that this modification would cause numerous overlaps in fields of memberships.

2. NCUA Board Decision

The Board has decided to adopt this proposal with a modification. Although the proposal stated that exclusionary clauses would be used to protect overlapped credit unions, the Board believes that the member, in such cases, should have the ability to use the credit union which best serves his/her needs. In many cases it might be the industrial park type credit union that is more attractive to the individual. Therefore, in general, no overlap protection will be given to the credit union with the industrial park or similar complex in its charter. However, the regional director may, for safety and soundness reasons, provide overlap protection or require exclusionary clauses to prevent significant economic injury to other credit unions serving a portion of these employees.

Although NCUA has not specifically identified parties other than the complex leasing agent or owner, the final IRPS provides sufficient flexibility in this matter.

F. Outside Vendors

1. Comments

The proposal provided guidance on the safety and soundness concerns NCUA had with a credit union using outside parties, insurance agents and car dealers, among others, to recommend select group expansions. Three commenters approved of this addition. One commenter stated that this guidance should be expanded to include discussion of indirect lending.

2. NCUA Board Decision

The final IRPS includes the discussion on outside vendors and has been expanded to include indirect lending.

G. Approval of Officials

1. Comments

The proposal clarified that NCUA must approve all prospective officials and management personnel of a newly chartered credit union during the first two years. A few comments opposed this provision.

2. NCUA Board Decision

The Board has adopted the proposal in the final IRPS since the requirement is statutory; the reason for its inclusion in the IRPS is to be a reminder to credit union officials.

H. Appeal Rights

1. Comments

The proposal clarified the appeal rights for new charters and for those credit unions denied requests for a field of membership amendment, spin-offs and mergers. Eight commenters supported the appeal procedure. Nine commenters believed the appeal procedure was insufficient. Four of these commenters requested that appeals be sent directly to the central office and bypass the region. One commenter questioned whether central office staff would act independently of the regional director. One commenter stated the proposal was unclear on what rights of appeal an overlapped credit union had involving the field of membership of another credit union.

The appeal process in the proposal did not include a provision for oral argument. Six commenters agreed that oral argument before the Board was unnecessary. Fourteen commenters disagreed.

One commenter suggested the proposal clarify that a resubmission or additional information for consideration to the Regional Director within 90 days of a denial should be considered a new request for purposes of the appeal time limit. Furthermore, the commenter stated, if the resubmission was denied, the credit union should then have another 60 days to appeal.

2. NCUA Board Decision

The Board is currently undertaking a complete review of its appeal process. The final IRPS makes the agency's standard appeal process applicable.

I. Professional Organizations

1. Comments

The proposal included language to minimize potential conflicts of interest when adding certain professional organizations to the field of membership of a federal credit union. Four commenters concurred with the guidance provided when adding a professional organization to a field of membership.

2. NCUA Board Decision

The final IRPS includes this portion of the proposal.

J. Corporate Federal Credit Unions

1. Comments

The proposal clarified that corporate credit union chartering and field of membership issues were handled by the Office of Examination and Insurance. Four commenters agreed with the proposed change.

2. NCUA Board Decision

The final IRPS includes this portion of the proposal.

K. Appendix C—Type of Membership Classification System

1. Comments

One commenter stated the classification was fixed at the time of chartering and it was his understanding that it never changed. Furthermore, in recognition that the membership composition of a credit union can undergo substantial change over time, this commenter suggested a procedure be created to provide classification changes. Otherwise, this commenter believed classification related data would become increasingly flawed.

2. NCUA Board Decision

Since the coding is used for internal analytical purposes, Appendix C has been deleted from the final IRPS. As a note, the codes are changed periodically by NCUA staff.

L. Format of the Manual

1. Comments

One commenter was concerned with the terminology "field of membership

expansion." This commenter believed that all changes in the field of membership were not for the purpose of expansion and some field of membership "modifications" were based on considerations other than the mere decision of a credit union to expand. This commenter recommended replacing the term "expansion" with "modification." Two commenters believed the manual should be reorganized so it would be more accessible to the user.

2. NCUA Board Decision

The Board agrees that not all field of membership changes are expansions and therefore has replaced the term "expansion" with the term "amendment." The format of the proposed IRPS has been modified substantially in the final version. Additionally, the IRPS, when put in the form of a manual, will be indexed to make it easier to use.

Regulatory Procedures

Regulatory Flexibility Act

As was noted in the proposed IRPS, the NCUA Board has determined that changes to NCUA policy resulting from adoption of the IRPS will not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). The changes in the final IRPS clarify existing policy rather than create new restrictions. Therefore, a regulatory flexibility analysis has not been performed.

Paperwork Reduction Act

Paperwork requirement should decrease under the final IRPS. The information collection requirements contained in the IRPS have been submitted to the Office of Management and Budget (OMB) for approval. OMB is in the process of reviewing these requirements. A notice of OMB approval will be published in the **Federal Register** upon its receipt. Any comments regarding collection requirement should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503; Attn.: Gary Waxman.

Executive Order

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final IRPS makes no significant changes with respect to state credit unions and, therefore, will not materially affect state interests.

List of Subjects in 12 CFR Part 701

Chartering, Conversions, Credit Union, Field of Membership Addition, Mergers by the National Credit Union Administration Board on May 12, 1994.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 701, supersedes 89–1 and establishes the following IRPS 94–1 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and 1798.

2. Section 701.1 is revised as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration practice and procedure concerning chartering field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 94–1—Chartering and Field of Membership Policy (IRPS 94–1). The IRPS is incorporated into this regulation.

3. IRPS 89–1 is superseded by the following IRPS 94–1:

[Note: The following ruling will not appear in the Code of Federal Regulations.]

CHAPTER 1—FEDERAL CREDIT UNION CHARTERING

I—Goals of NCUA Chartering Policy

NCUA's chartering policies are directed toward achieving three goals:

- to uphold the provisions of the Federal Credit Union Act concerning granting federal charters
- to promote credit union safety and soundness
- to make quality credit union service available to all eligible groups who wish to have it.

NCUA may grant a charter to any group or combination of groups desiring credit union service where it finds:

- the group or groups possess an appropriate common bond;
- the subscribers are of good character and are fit to represent the group; and
- establishment of the credit union is economically advisable—i.e., it will be a viable institution and its chartering will not materially affect the interests of other credit unions or the credit union system.

Generally, these are the only criteria NCUA will look to. In unusual circumstances, however, NCUA may consider other factors, such as other federal law or public policy, in deciding if a charter should be approved.

II—Common Bond

Congress, in the Federal Credit Union Act, has recognized three types of federal credit union common bonds—occupational, associational, and community. A federal credit union may also consist of a combination of occupational, associational, and, in certain limited circumstances, community groups. For example, NCUA may charter a federal credit union consisting of employees of a local school district and members of a church group.

The Federal Credit Union Act and NCUA recognize that individual groups have their own common bond. All of the groups belonging to one particular credit union included in Section 5 of the credit union's charter make up the credit union's field of membership. If the charter is granted, the federal credit union will only be able to grant loans and provide services to persons within the groups defined in the field of membership.

If a federal credit union later wishes to add persons to its field of membership, it must comply with the procedures set forth in Chapter 2.

II.A—Occupational Common Bonds

II.A.1—General

A federal credit union may include a single occupational common bond regardless of location, any and all persons who share that common bond. NCUA permits a person's membership in an occupational common bond to be established in a number of ways:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of an occupational common bond of employees of the entity.
- Employment in a corporation or other legal entity with an ownership interest in or by another legal entity makes that person part of an occupational common bond of employees of the two entities.
- Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company) makes that person part of an occupational common bond of employees of the two entities.

A proposed federal credit union must supply documentation from as many authorized representatives as are needed

to establish that all persons to be included in a single occupational common bond are in fact linked in one of the ways described above.

An occupational common bond must include a geographic definitions, e.g., "employees, officials, and persons who work regularly under contract in Miami, Florida for ABC Corporation or any of these majority-owned subsidiaries. * * *" Other acceptable geographic definitions are: "employees of * * * who are paid from * * *" or "employees of * * * who are supervised from * * *" To the maximum extent possible, setting geographic definitions by changeable corporate or division boundary—e.g., "employees of Federal Reserve District 6"—is to be avoided.

So that NCUA may monitor any potential field of membership overlaps, each group to be served (e.g., employees of subsidiaries, franchisees, and contractors) may be separately listed.

The employer may also be included in this common bond—e.g., "ABC Corporation and its subsidiaries." The employer group will be defined in the last clause describing the field of membership.

II.A.2—Sample Occupational Fields of Membership

Some examples of occupational group definitions are:

- "Employees of the Scott Manufacturing Company who work in Chester, Pennsylvania. * * *" (common bond—same employer)
- "Employees and elected and appointed officials of municipal government in Parma, Ohio. * * *" (common bond—same employer)
- "Employees of Johnson Soap Company and its majority-owned subsidiary, Johnson Toothpaste Company, who work in Augusta and Portland, Maine. * * *" (common bond—parent and majority-owned subsidiary company)
- "Personnel of fleet units of the U.S. Navy home ported at Mayport, Florida. * * *" (common bond—same employer)
- "Department of Defense civilian and U.S. Army personnel who work or are stationed at, or are attached or assigned to Fort Belvoir, Virginia, or those who are retired from, or their dependents or dependent survivors who are eligible by law or regulation to receive and are receiving benefits or services from, that military installation. * * *" (common bond—same employer)
- "Employees of those contractors who work regularly at U.S. Naval Shipyard in Bremerton, Washington. * * *" (common bond—employees of contractors)
- "Employees, doctors, medical staff, technicians, medical and nursing students who work at Boston Medical Center at the locations stated: * * *" (common bond—same employer)
- "Employees and teachers who work for the School District Number 3 in Austin, Texas * * *." (common bond—same employer)
- "Employees of the JKL Employee Leasing Company who are paid from Lake Charles, Louisiana * * *." (common bond—same employer)
- "Employees of JKL, Inc. and STU, Inc. working for the XYZ Joint Venture Company in Los Gatos, California * * *."

Some examples of insufficiently defined occupational groups are:

- "Employees of engineering firms in Seattle, Washington." (Not the same occupational common bond, since various firms compete against one another; names of firms must be stated; however, may be the basis for a multiple group charter.)
- "Persons employed or working in Chicago, Illinois." (No common bond; names of firms must be stated.)
- "Persons working in the entertainment industry in California." (No occupational common bond, since firms compete against one another; names of firms must be stated.)

II.B—Associational Common Bonds

II.B.1—General

A federal credit union may include in its field of membership, regardless of location, all members of a recognized association.

NCUA limits this common bond to groups consisting primarily of individuals (natural persons) who participate in activities developing common loyalties, mutual benefits, and mutual interests. Except for student, church, and similar groups, all associational common bonds will include a definition of the group that may be served based on the effective date of the association's charter and bylaws and a geographic limitation. Therefore, with the exceptions noted above, applicants for an associationally-based federal credit union charter must provide a copy of the association's charter and bylaws.

Qualifying associational groups must hold meetings open to all natural person members at least once a year, must sponsor other activities which clearly demonstrate that the members of the group meet and interact regularly to accomplish the objectives of the association, and must have an authoritative definition of who is eligible for membership—usually, this will be the association's charter and bylaws.

In determining whether a group satisfies the common bond requirement for a federal credit union charter, NCUA will consider the totality of the circumstances—such as whether members pay dues, have voting rights, and hold office, whether the group maintains a membership list, the clarity of the associational group's definition and compactness of its membership, and the frequency of meetings and the interaction of members. A support group, whose members are continually changing, may not meet the criteria.

NCUA's focus with respect to chartering associational federal credit unions will be on the group's natural person members. In certain instances, however, NCUA will also allow non-natural persons (e.g., corporate sponsors, entities participating in programs to alleviate poverty and distress, or organizations of members) to be eligible for membership. It is not necessary that every non-natural person member of the group be a recognized legal entity; NCUA will consider such groups on a case-by-case basis.

Student groups—for example, parent-teacher organizations, alumni associations, and students in a trade school or other curriculum—and church groups constitute associational common bonds and may qualify for a federal credit union charter. Since such groups usually do not have a formal association charter, there is no requirement for these groups to provide a charter or bylaws.

Homeowners associations, tenant groups, electric co-ops, consumer groups and other groups of persons having an "interest in" a particular cause and certain consumer cooperatives may be eligible to receive a federal charter. However, they must make a strong showing of common activities which clearly demonstrate that the group meets and interacts regularly to accomplish the objectives of the association. Furthermore, they must provide clear evidence of economic viability.

Newly-organized associations must make a similar strong showing of common activities. Experience has shown that a new group's efforts are best focused on solidifying member interest before attempting to offer credit union service.

The associational sponsor itself may also be included in the field of membership—e.g., "ABC Association"—and will be shown in the last clause of the field of membership.

II.B.2—Subsequent Changes to Association's Bylaws

If the association's membership or geographical definitions in its charter and bylaws are changed subsequent to the effective state dated in the field of membership, the credit union must submit the revised charter or bylaws for NCUA's consideration prior to serving members of the association added as a result of the change. This type of field of membership amendment will require following select group amendment procedures discussed in Chapter 2.

II.B.3—Widely Dispersed Associational Charters

NCUA policy is to charter associational federal credit unions at the lowest organizational level which is economically feasible. NCUA will grant associational charters with widely dispersed memberships only where clearly demonstrated to be in the best interests of the association's members and the credit union community, and only after scrutinizing the adequacy of the applicant's common bond and the economic advisability of a more compact field of membership. NCUA, in its discretion, may require that the proposed field of membership be narrowed before granting a new charter. Amendment to include a larger portion of the association's members may be allowed at a later time, if appropriate.

Also, as with any widely dispersed group, overlap issues are likely to arise, either at the time of or subsequent to chartering. NCUA will consider the effect that granting a charter with such a group in its field of membership would have on any number of existing credit unions. In addition, an associational credit union with a widely dispersed membership may expect overlaps, particularly at the local level, to be granted to other credit unions in the future.

In recognition of these unique circumstances, NCUA follows a separate internal procedure for associational charter applications for associations with proposed fields of membership of 500 or more persons which cross NCUA regional boundaries. NCUA's Director of Examination and Insurance and all NCUA regional directors with any of the association's members located in their region must vote on the charter application. A majority vote is required for approvals. Tie votes are referred directly to the NCUA Board for decision.

II.B.4—Limits of Associational Common Bond

Except for retiree clubs and low-income groups (discussed below), associations formed primarily to obtain a federal credit union charter do not have a sufficient associational common bond. Similarly, associations based on a client-customer relationship—for example, an insurance company and its customers or a buyer's club and its members—do not have a sufficient associational common bond.

The common bond extends only to the association's members. The employees of a member of a local chamber of commerce, for example, do not have a sufficiently close tie to the association to be included. A proposal to include these persons among those to be served by the federal credit union may be considered as a multiple-group charter application. In such cases, letters of support and request for service must be provided from each separate entity.

II.B.5—Sample Associational Fields of Membership

Some examples of associational group definitions are:

- Regular members of Locals 10 and 13, IBEW, Miami, Florida, who qualify for membership in accordance with their charter and bylaws in effect on May 20, 1994."
- "Members of the Hoosier Farm Bureau who live or work in Grant, Logan, or Lee Counties of Indiana, who qualify for membership in accordance with its charter and bylaws in effect on March 7, 1994."
- "Members of the First Baptist Church in Topeka, Kansas."
- "Members of the Shalom Congregation in Chevy Chase, Maryland."
- "Regular members of the Corporate Executives Association, located in Westchester, New York, who live or work in Westchester, Rockland, and Suffolk Counties in New York, who qualify for membership in accordance with its charter and bylaws in effect on December 1, 1994."
- "Members of the Northern Michigan Electric Co-op located in Marquette, Michigan."
- "Members of the ABC Association living or working in New York, New York, who qualify for membership in accordance with its charter and bylaws in effect on January 21, 1994." Some examples of insufficiently defined associational group definitions are:
- "Members of military service clubs in the State of New Mexico." (No single associational tie; specific clubs and locations must be named; may be considered as multiple group.)
- "Veterans of U.S. military service." (Group is too broadly defined; no formal association of all members of the group.)

Some examples of unacceptable associational common bonds are:

- "Members of ABC Buyers Club." (An interest in purchasing does not meet associational standards.)
- "Customers of ABC Insurance Company." (Policyholders or customer/client relationships do not meet associational standards.)

II.C—Community Common Bonds

II.C.1—General

Congress requires that a credit union charter based on a tie to a specific geographic location be limited to "a well-defined neighborhood, community, or rural district." NCUA policy is to limit the community to a single, geographically well-defined area where residents interact.

NCUA recognizes three types of affinity on which a community common bond can be based—persons who live in, persons who worship in, and persons who work in the community. Businesses and other legal entities within the community boundaries may also qualify for membership. Given the diversity of community characteristics throughout the country and NCUA's goal of making credit union service available to all eligible groups who want to have it, NCUA has established the following common bond requirements for community charters:

- The geographic area's boundaries must be clearly defined; and
- The charter applicant must establish that the area is recognized as a distinct "neighborhood, community or rural district."

II.C.2—Special Documentation Requirements

Information to support that the area chosen represents one well-defined area, distinguishable from the immediate surrounding areas, includes:

- political jurisdictions
- major trade areas (shopping patterns)
- traffic flows
- shared/common facilities (for example, educational, medical, police and fire protection, school district, water, etc.)
- organizations/clubs whose membership is made up exclusively of persons within the area
- newspapers or other periodicals published for and about the area
- census tracts
- common characteristics and background of residents (for example, income, religious beliefs, primary ethnic groups, similarity of occupations, household types, primary age group, etc.)

- history of area
- in general, what distinguishes the chosen area and its residents to be distinguishable from the immediate surrounding areas and residents—some examples are old, well established ethnic neighborhoods, planned communities and small/rural towns

The following information must be provided to support a need for a community credit union:

- a list of credit unions presently in area
- a list of other financial institutions (for example, banks, savings and loan associations) that service the area

Necessary written documentation (for example, letters, surveys, studies, pledges, petitions) reflecting support for the application for or the conversion to a community credit union is as follows:

- For the residents of the area:
- Approximate number contacted.
- Number in favor of the credit union.
- Number against the credit union.
- Number who will join the credit union.
- Number who have pledged initial and/or systematic savings and amount of pledges.
- For the employers:
- Number of area employers and number of employees.
- Number contacted.
- Number in favor of the credit union.
- Number against the credit union.
- Number willing to provide payroll deductions to the credit union.
- Number willing to provide other type(s) of support to the credit union.
- For organizations (including churches):
- Number in areas and number of members.
- Number contacted.
- Number in favor of the credit union.
- Number against the credit union.
- Number willing to provide some type of support to the credit union, i.e., advertising facilities, etc.
- letters of support from area civic leaders.

If the community is also a recognized legal entity, it may comprise or be included in the field of membership—for example, "DEF Township, Kansas" or "GHI County, Minnesota."

II.C.3—Community Service Area

The service area of a community federal credit union is the area defined in its charter, usually with north, east, south, and west boundaries.

II.C.4—Sample Community Fields of Membership

Some examples of community common bond definitions are:

- "Persons who live or work in, and businesses located in the area of XYZ City bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west."
- "Persons who live or work in Green County, Maine. . . ."
- "Persons who live, worship or work in and businesses and other legal entities located in Independent School District No. 1, DuPage County, Illinois. . . ."
- "Persons who live or work within a twenty mile radius of the main post office in Walnut, Illinois. . . ." (Rural areas only.)

Some examples of insufficiently defined community common bond definitions are:

- "Persons who live or work within and businesses located within a ten-mile radius of Washington, DC." (Not a recognized neighborhood, community, or rural district.)
- "Persons who live or work in the industrial section of New York, New York." (Not a recognized neighborhood, community, or rural district.)

II.D—Multiple Occupational/ Associational Common Bonds

II.D.1—General

NCUA may charter a federal credit union to serve a combination of distinct, definable occupational and/or associational common bonds. For a common bond which will constitute a majority of the federal credit union's field of membership, the requirements for occupational and associational fields of membership apply. Any other group constituting an occupational or associational common bond to be included within the federal credit union's field of membership must be within what will be the credit union's operational area.

A proposed federal credit union's operational area is the area which, as determined by NCUA in its sole discretion, may reasonably be served by the service facilities that will be accessible by the groups to be included in the field of membership when the credit union begins operation. A credit union's service facility is a place where, also as determined by NCUA in its sole discretion: (1) Shares are accepted for members' accounts; (2) loan applications are accepted or loans are disbursed; (3) a member can deal directly with a credit union representative; and (4) the service provided is clearly associated with that particular credit union. An automated teller machine or similar device is not a federal credit union service facility. Similarly, a branch or service center shared by a number of credit unions is not a service facility for purposes of this Chapter.

Any members of a group who will have access to one of a proposed federal credit union's service facilities may be included in the field of membership. In addition, the group as a whole will be considered to be within a proposed credit union's operational area when:

- A majority of the group's members live, work, or gather regularly within the operational area;
- The group's headquarters is located within the operational area; or
- The group's "paid from" or "supervised from" location is within the operational area.

The following special additional requirements pertaining to multiple group applications must be satisfied before NCUA will grant such a charter:

- Each group to be included in the proposed field of membership of the federal credit union must have its own occupational or associational common bond.
- Except for employee groups in the same industrial park, shopping center or similar facility, each group must individually request inclusion in the proposed federal credit union's charter.
- The proposed federal credit union's business plan must show that the credit union will possess the financial resources and management capability to provide quality credit union service to each group.
- The proposed federal credit union must show that, when it begins operations, each group to be added will be within the operational area of a service facility to which the group will have access.

II.D.2—Sample Multiple Group Field of Membership

An example of a multiple group field of membership is: "The field of membership of this federal credit union shall be limited to the following:

1. Employees of Dupont Corporation who work in Wilmington, Delaware;
2. Partners and employees of Smith & Jones, Attorney at Law, who work in Wilmington, Delaware;
3. Members of the GHI Association who live in Wilmington, Delaware, and qualify for membership in accordance with its charter and bylaws in effect on December 31, 1994.

II.D.3—Additional Documentation

For multiple group charters, NCUA will need the following, in addition to what is required for new charters generally:

- For each group seeking to be included in the proposed federal credit union's field of membership, the credit

union must provide a letter from the group, on the group's letterhead stationery and signed by an official representative of the group wherever possible, or if that is not possible, such other documentation or certification as the regional director may, in his or her discretion, deem appropriate, containing this information:

- The fact that the group wants to obtain service from the proposed federal credit union, the kind of service it desires and the credit union has agreed to provide, and the extent to which the group supports the credit union—e.g., by providing access to its employees or members via payroll deduction, by permitting use of employee or members' newsletter, etc.
- The number of employees or members in the group.
- The proximity to the proposed federal credit union's closest service facility.
- The name of any credit union to which the group currently has access.
- The group's headquarters location and all other work locations the credit union is proposing to serve.
- If the group is eligible for membership in another credit union, documentation must be provided to support inclusion of the group under the standards set forth in the "Overlaps" section of this chapter.

II.E—Other Persons Sharing Common Bond

A number of persons by virtue of their close relationship to a common bond group may be included, at the charter applicant's option, in the field of membership. These include the following:

- "Spouses of persons who died while within the field of membership of this credit union."
- "Employees of this credit union."
- "Persons retired as pensioners or annuitants from the above employment."
- Members of their immediate families."
- "Volunteers."
- "Organizations of such persons."

"Members of their immediate families" may be generally defined as deemed appropriate by a federal credit union when including this group among those to be served. To be made effective, however, the federal credit union's board of directors must approve the definition by resolution, and include it in Article XVIII, Section 2, of its by-laws. NCUA approval is not necessary.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or church.

Under Article II, Section 5, of NCUA's Standard Bylaws, if a member leaves the field of membership, standard member services are terminated. However, the board of directors may, by resolution, set forth the circumstances under which a member may maintain membership. This option is commonly referred to as the "once a member, always a member" bylaw provision. NCUA approval is not necessary here, either.

III—Subscribers

Federal credit unions are organized by persons who donate time and resources and are responsible for determining the interest, commitment, and advisability of forming a federal credit union. The organization of federal credit union takes considerable planning and dedication in order to ensure the success of the new credit union.

Persons interested in organizing a federal credit union should contact the NCUA regional office serving the state in which the credit union will be organized or one of the trade associations. Lists of NCUA offices and trade associations are shown in the appendices. NCUA will provide information to groups interested in pursuing a federal charter and will assist them in contacting an organizer.

A credit union organizer may be a trade association representative or a person with training and experience in chartering new federal credit unions. The functions of the organizer are to provide direction, guidance, and advice on the chartering process. The organizer also provides the group with information about a credit union's functions and purpose as well as technical assistance in preparing and submitting the charter application. Close communication and cooperation between the organizer and the group members are critical to the chartering process.

The Federal Credit Union Act requires that seven or more natural persons—the "subscribers"—must present to NCUA for approval a sworn organization certificate stating at a minimum:

- The name of the proposed federal credit union.
- The location of the proposed federal credit union and the territory in which it will operate.
- The names and addresses of the subscribers to the certificate and the number of shares subscribed by each.
- The initial par value of the shares.
- The detailed proposed field of membership.
- The term of the existence of the corporation, which may be perpetual.
- The fact that the certificate is made to enable such persons to avail themselves of the advantages of the Federal Credit Union Act.

False statements on the organization certificate may be grounds for federal criminal prosecution.

IV—Economic Advisability

IV.A—Viability

IV.A.1—General

Before chartering a federal credit union, NCUA must be assured that the institution will be viable and that it will not materially affect existing state or federal credit unions. This economic advisability inquiry has become especially important since 1970, when Congress assigned NCUA the obligation to establish a fund insuring credit union members' shares and to preserve that fund.

NCUA will conduct an independent on-site investigation of each charter application to assure itself that the proposed credit union can be successful. In general, the success of any credit union depends on: (a) the depth of the members' support; (b) the character and fitness of management; and (c) present and projected market conditions.

IV.A.2—Proposed Management's Character and Fitness

The Federal Credit Union Act requires NCUA to satisfy itself as to the "general character and fitness" of the subscribers. In addition, prospective officials and employees will be the subject of credit and background investigations. The investigation reports must demonstrate their ability to effectively handle financial matters.

NCUA also needs assurance that the management team will have the requisite skills—particularly in leadership and accounting—and the commitment to dedicate the time and effort needed to make the proposed federal credit union a success.

IV.A.3—Member Support

While NCUA has not set a minimum size field of membership for chartering a federal credit union, experience has shown that a credit union with under 500 potential members generally is unlikely to succeed. Therefore, a charter applicant with a proposed field of membership of under 500 will have to demonstrate convincing support for the credit union. For example, a small occupational group must demonstrate a commitment for significant long-term support from the employer.

The group's size is meaningful only if members participate in the credit union. The charter applicant must show that a substantial percentage of the group's

members will join the credit union and use its services. Survey results must be based, at a minimum, on a sampling of 250 potential members. In particular instances, especially where the common bond is broadly defined or newly established, NCUA may require a larger sampling.

IV.A.4—Present and Future Market Conditions—Business Plan

IV.A.4.a—General

The ability to compete in the marketplace and to adapt to changing market conditions is key to the survival of any enterprise, and a crucial part of that is the ability to plan well. NCUA, therefore, requires an applicant to submit a business plan based on realistic and supportable projections and assumptions, including, as a minimum, these elements:

- Mission statement.
- Analysis of market conditions—economic prospects for the group, availability of financial services from other credit unions, banks, and savings and loans.
- Summary of survey results.
- Financial services needed/desired.
- Financial services to be provided.
- How/when services are to be implemented.
- Staffing of credit union and credentials of key employees.
- Physical facility—office, equipment.
- Type of recordkeeping system, including consideration of a data processing system.
- Budget for 1st and 2nd year.
- Semiannual pro forma financial statements for 1st and 2nd year, including assumptions—e.g., loan and dividend rates.
- Goals for number of members.
- Goals for operating independently
- Source of funds to pay expenses during initial months of operation.
- Written policies (shares, lending, investments, funds management, capital accumulation, dividends).
- Goals for shares and loans.
- Plan for continuity—directors, committee members.
- Evidence of sponsor commitment if subsidies are critical to success of the federal credit union—evidence may be in the form of letters, contracts, or any other such document on which the proposed federal credit union can substantiate its projects.

NCUA expects that the subscribers and proposed officials will understand and support the business plan submitted.

IV.A.4.b—Special Requirements for Community Credit Unions

Community credit unions are frequently more susceptible to competition from other local financial institutions and generally do not have substantial support from any single sponsoring company or association. Also, the lack of payroll deduction creates special challenges in the development of savings promotion programs and in the collection of loans. Therefore, it is essential for the group to develop a detailed and practical business plan for at least the first three years of operation. The business plan should contain, but not necessarily be limited to, the following:

- Analysis of market area—geographic, demographic, employment, income, housing, and economic data.
- Service/market strategy—financial and other services to be provided, new member/share/loan promotion policies and procedures and income generation strategy.
- Organizational/management plan—qualification and planned training of officials/employees, operating facilities to include office space/equipment and supplies, accounting system, safeguarding of assets, insurance coverage, etc.
- Financial plan—sources and application of funds statements and pro forma balance sheet and income/expense statements and assumptions.

IV.B—Effects on Other Credit Unions—Overlaps

(This discussion pertains to new and existing charters.)

IV.B.1—Overlaps In General

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. General policy requires that every reasonable effort be made to avoid an overlap. Ideally, a group of persons should be included in the field of membership of only one credit union.

New credit unions are obligated to investigate the possibility of an overlap prior to submitting an application for a new charter by surveying the prospective field of membership.

When a potential overlap situation does arise, officials of the involved credit unions must attempt to work the problem out between or among themselves. In the case of a new federal credit union applying for or converting to a community field of membership, the applicant will generally be required to contact only those credit unions with a service facility within the community boundary. Other credit unions serving select groups within the proposed area will not ordinarily be contacted or afforded overlap protection unless a significant portion of their field of membership is affected. If the matter is resolved informally, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible, an application for a new charter may still be submitted, but must also include information regarding the overlap and document attempts at informal resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

When resolution of the issue is not possible, and other circumstances warrant, an overlap may be permitted. Among the circumstances which may justify an overlap are:

- Failure of the original credit union to provide quality service.
- Limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time.
- Incidental overlap—the group of persons in question is so small as to have no material effect on the original credit union.

In reviewing the overlap, the regional director will consider the nature of the issue, efforts made to resolve the matter, financial effect on the overlapped credit union, the desires of the group(s), the desire of the sponsor organization, the opinion of the state credit union supervisor and other interested parties, as applicable, and the best interests of the affected group and the credit union members involved.

Potential overlaps of a state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. However, where a state credit union's field of membership is so general as to include virtually everyone in a wide area, NCUA may exclude any state credit union from overlap protection altogether just as it would with a federal credit union with a broadly defined field of membership. Prior to making that decision, the regional director will consult the credit union and the state regulator. Any decision by the regional director will be provided in writing to the credit union and the state regulator.

Generally, NCUA will permit federal credit unions serving occupational groups to overlap associational and community charters. However, should the proposed overlap pose significant safety and soundness concerns, NCUA may provide overlap protection for any type charter. For example, labor union

groups constitute an associational common bond, and while some labor unions serve members who work regularly for several employers, others have members who work for only one employer. In these latter cases, overlap protection may be provided if a substantial portion of the company's employees are served by the credit union.

Some situations may not justify approval of a requested overlap. For example, if the requesting credit union offers certain specialized services not offered by the original credit union (such as credit cards, ATMs, and IRAs), the extra services alone may not justify the overlap. Also, proximity, by itself, may not warrant approval of an overlap. A federal credit union in Chicago, Illinois, may not have a convincing argument, based on geography alone, that a select group also located in Chicago would be better served by it than by the select group's headquarters credit union located in Dallas, Texas.

From an overlap prevention perspective, new charter applicants and every occupational or associational group which comes before the regional director for affiliation with an existing federal credit union must advise in writing whether the group is included within the field of membership of any other credit union. This requirement will alert the regional director to possible overlap situations before they occur. Most potential field of membership conflicts can be avoided in this way. If cases do arise where the assurance given to a regional director concerning unavailability of credit union service turns out later to be inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

IV.B.2—Overlap Issues as a Result of Organizational Restructuring

A federal credit union's field of membership will always be governed by the group descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of a group described in Section 5. Where acquisitions are made which add a new wholly-owned or majority-owned subsidiary, the group cannot be served until the subsidiary is included in the field of membership.

Overlaps may occur as a result of restructuring of the parent organization. Credit unions affected by organizational restructuring are required first to attempt to resolve overlap issues among themselves. Once the affected credit unions reach agreement, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve.

In addition, credit unions must submit to NCUA correspondence from the parent organization explaining the restructuring and providing information regarding the new organizational structure. To help in future monitoring of overlaps, the organizational structure should identify divisions and subsidiaries and the location and number of employees at each location.

Overlaps may also occur as a result of the parent organization's merger. NCUA's general policy of avoiding overlaps applies to those resulting from corporate mergers as well. Affected credit unions must make every reasonable effort to identify up front and address the overlap issue raised by parent corporation mergers and must attempt to resolve any differences among themselves. In those rare cases which require NCUA's intervention, all attempts to resolve the issues must be fully documented by the affected credit unions.

Affected credit unions should consider consolidation (merger) of institutions as a possible alternative to dividing up the field of membership, particularly if safety and soundness concerns exist or future viability is in question. A federal credit union which has a broad based field of membership generally has a better chance of survival when a sponsor restructures or closes.

While neutral, NCUA will make the final decision regarding field of membership amendments, taking into account the credit unions' agreements, safety and soundness concerns, the desires of the members, the significance of the overlap and other relevant issues.

NCUA will be flexible when working with credit unions affected by parent corporation mergers and divestitures. Where no other credit union service is available and the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

"Employees of XYZ Corporation, formerly a subsidiary of ABC, Incorporated, located in Charleston, South Carolina. . . ."

IV.B.3—Overlaps-Exclusionary Clauses

This discussion pertains to new and existing charters.)

Where two credit unions agree and/or NCUA has determined that an overlap should be avoided, this decision may need to be memorialized in a federal credit union's charter through an exclusionary clause. Examples of exclusionary wording are:

- Persons who work for Hilo Sugar Company, except those who work in or are paid from or are supervised from San Francisco, California.
- Persons who work for the ABC Co., except those employed by the XYZ Division as of June 30, 1994.
- Persons who work for the ABC Co., except those who were members of the XYZ Federal Credit Union as of June 30, 1994.

Exclusionary clauses are very difficult for credit unions and NCUA to monitor properly. To minimize this difficulty, NCUA generally does not require federal credit unions to apply exclusionary clauses to persons eligible for membership in another credit union simply because they are one of the "other persons sharing common bond" listed in Section II.E of this Chapter.

Moreover, if phrased improperly or used in situations for which they are not suited, exclusionary clauses can be ineffective or create obvious inequities—one spouse may be eligible for membership in a federal credit union while the other may not; one employee may be eligible for credit union service while the person working next to him or her may not. For this reason, exclusionary clauses are rarely if ever appropriate for inclusion in a community charter's field of membership as a way to resolve overlap concerns.

One example of an appropriate use of an exclusionary clause may be where there is a merger of two corporations served by two credit unions which will continue to serve their groups as they had prior to their sponsors' consolidation. Addition of an exclusionary clause to the field of membership of one or both of the credit unions may be the best way to clarify the division of service responsibility within the new corporate entity.

When an exclusionary clause is included in a federal credit union's field of membership, NCUA will strive to define as precisely as possible

- The identity of the group to be excluded;
- Whether the exclusion is to apply to the entire group or only to those who are actually members of another credit union; and
- Whether the exclusion is to apply only to the current members of the group or to future members as well.

V—Special Situations

There are some instances where, because of overriding policy, special common bond rules apply. To ensure quality service to as many low-income and senior citizens as possible, NCUA has established broader common bond

rules for federal credit unions seeking to serve those groups. Further, to expedite service to groups in industrial parks, shopping centers, and similar areas, the documentation requirements for federal credit unions seeking to serve these groups have been simplified. Finally, to ensure consistency throughout the credit union movement, NCUA has centralized decision making for the corporate credit union program in the Central Office.

V.A—Low-Income Credit Union Groups

V.A.1—General

A low-income credit union is defined in Part 701.32 of the NCUA Rules and Regulations as one where a majority of its members either earn less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics, or whose annual income falls at or below 80 percent of the median household income for the nation. In documenting its low-income membership, a credit union that serves a geographical area where a majority of residents fall at or below the annual income standard is presumed to be serving predominantly low-income members.

A credit union designated by NCUA as serving predominantly low-income members has greater flexibility in accepting non member deposits insured by the National Credit Union Share Insurance Fund. It also may participate in special funding programs such as the Community Development Revolving Loan Program for Credit Unions if it is involved in the stimulation of economic development and community revitalization efforts. A credit union participating in the revolving loan program is also eligible for technical assistance. The requirements for participation in the revolving loan program are set forth in Part 705 of NCUA's Regulations. Only operating credit unions are eligible for participation in the revolving loan program.

A federal credit union charter applicant meeting the definition of a low-income credit union should forward a separate request for low-income designation, along with appropriate documentation, at the time the charter application is submitted. A charter applicant's low-income designation will be based on its primary field of membership and not on its actual members as is the practice for operating credit unions. In most cases, if the credit union qualifies, NCUA will grant the charter and low-income designation simultaneously.

A low-income federal credit union charter applicant may contract with a third party to assist in the chartering process. Even after the charter is granted, a low-income credit union may contract with a third party to provide necessary management services. Such contracts should be for a duration of one year subject to renewal. However, within three years of commencement of operations, the credit union should no longer require such services.

V.A.2—Special Common Bond Rules for Low-Income Federal Credit Unions

Generally, a low-income credit union is chartered as a community or associational credit union. A low-income credit union that has a community common bond may include the following language in its field of membership:

"Persons who live in [the target area]; persons who regularly work, worship, perform volunteer services, or participate in associations headquartered in [the target area]; persons participating in programs to alleviate poverty or distress which are located in [the target area]; incorporated and unincorporated organizations located in [the target area] or maintaining a facility in [the target area]; and organizations of such persons."

In recognition of the special efforts needed to help make credit union service available to persons in low-income communities, NCUA permits credit union chartering and field of membership amendments based on associational groups formed for the sole purpose of making credit union service available to low-income persons. The association must be defined so that all its members will meet the low-income definition of Part 701.32 of NCUA's Regulations. The association, in documenting its low-income membership, may use the same types of documentation as is currently permitted for determining whether a community is low-income under Part 701.32 of NCUA's Regulations.

In addition, a proposed low-income community or associationally based federal credit union may include in its field of membership, without regard to location, another group constituting an occupational, associational or community common bond. Except for the operational area requirements, the proposed credit union must meet all the requisites for including the group in its charter. Moreover, the proposed credit union must take care to ensure that it will continue to meet the requirements for low-income status.

V.A.3—Special Common Bond Rules for Other Federal Credit Unions Seeking to Serve Low-Income Persons

In the interest of making credit union service available to persons in low-income communities, NCUA also permits any occupational, associational, multiple group, or community federal credit union to include in its field of membership, without regard to location, communities and associational groups satisfying the low-income definition of Part 701.32 of NCUA's Regulations. The associational group may be formed for the sole purpose of providing eligibility for federal credit union service, but must comprise only persons meeting NCUA's low-income definition.

The federal credit union adding the low-income community or association must document that the community or association meets the low income definition in Part 701.32 of NCUA's Regulations, just as is required for a designated low-income credit union. A federal credit union adding such a community or association, however, would not be able to receive the benefits, such as expanded use of non member deposits and access to the Community Development Revolving Loan Program for Credit Unions, offered to low-income credit unions.

A federal credit union that desires to include a low-income community or association in its field of membership must first develop a business plan specifying how it will serve the entire low-income community. The business plan, at a minimum, must identify the credit and depository needs of the low-income community or association and detail how the credit union plans to serve those needs. The credit union will be expected regularly to review the business plan as well as loan penetration rates in the community to determine if the community is being adequately served. NCUA will require periodic service status reports on its service to the low-income community and may review the credit union's service to low-income persons during examinations.

V.B—Retiree and Senior Citizen Groups

Special common bond rules also apply for providing service to retiree and senior citizen groups. It is NCUA policy to encourage federal credit unions to bring credit union service to senior citizens (aged 50 and over) and retired persons. To help in this effort, federal credit unions may form associations of such persons for the sole purpose of providing eligibility for credit union service. Except for the minimum age requirement of 50, the

definition of a senior citizen is left to the credit union's discretion. Moreover, the only documentation requirement for including such an association in a federal credit union's charter is a written request from the credit union; no request from the group or copy of the association's charter or bylaws will be needed. In all other respects, however, the requirements for including an association in a federal credit union's field of membership apply, including those relating to the credit union's operational area.

V.C—Employees at Industrial Parks, Shopping Centers, and Similar Areas

A federal charter may include in its field of membership persons working in a particular industrial park, shopping mall, office complex, or similar development either through a community or multiple group charter.

If the multiple group option is selected, NCUA permits the credit union to satisfy the requirement for a request from each of the groups through a request by the complex owner, leasing agent, or similar responsible official. The complex owner, leasing agent or similar official must provide information regarding credit union service available to any segment of the proposed select group amendment or proposed federal credit union. It is up to the applicant credit union to investigate whether credit union service is already available to any segment of the select group amendment or proposed charter.

In general, exclusionary clauses will not be used to protect any overlapped credit union. However, in those cases where each employee group in the complex has not specifically requested credit union service, NCUA may exercise broad discretion in addressing overlaps with other credit unions and any request from a group to be removed from the field of membership.

The following or similar wording will be used to define groups added under this procedure: "Employees who regularly work in the Plaza Mall, New Orleans, Louisiana"

If the community option is selected, the industrial park, shopping center, or office complex must meet the standards for community charters.

V.D—Corporate Federal Credit Unions

A corporate credit union is defined as one that:

- is operated primarily for the purpose of serving other credit unions,
- is designated by the NCUA as a corporate credit union, and
- limits natural person members to the minimum required by state or federal law to charter and operate the credit union.

Corporate credit unions operate under and are governed by standards different from those applicable to natural person credit unions. These standards are set forth in part 704 of NCUA's Regulations.

Supervision of corporate credit unions is the responsibility of NCUA's Office of Examination and Insurance. All applications for federal corporate charters as well as requested changes to section 5 of the charter of existing corporate federal credit unions should be directed to that office.

VI—Name Selection

It is the responsibility of the federal credit union organizers to ensure that the federal credit union applicant's name or federal credit union name change does not constitute an infringement on the name of any corporation in their trade area. This responsibility also includes researching any service marks or trademarks used by any other credit union in their trade area. NCUA will ensure, to the greatest extent possible, that the credit union's name:

- is not already being officially used by another federal credit union;
- will not be confused with NCUA or another federal or state agency, or with another federal credit union; and
- does not include inappropriate language.

The last three words in the name of every credit union chartered by NCUA must be "Federal Credit Union."

VII—Steps To Take To Organize a Federal Credit Union

VII.A—Getting Started

Following the guidance contained throughout this policy, the organizers should submit the proposed field of membership to NCUA early in the process for written tentative approval.

Once the field of membership has been tentatively approved, and the organizer is satisfied the application has merit, the organizers should conduct a preliminary organizational meeting to elect seven to ten persons to serve as subscribers. The subscribers should locate willing individuals capable of serving on the board of directors, credit committee, supervisory committee, and as chief operating officer/manager of the proposed credit union.

The organizers and subscribers should arrange for any meetings necessary to develop the business plan discussed in section IV.A.4 of this chapter and to complete the documentation for submittal to NCUA. Each of the required documents is discussed more fully later in this chapter.

The organizers and subcribers must apply for insurance of member accounts. The Certificate of Resolutions (NCUA 9501) will be executed by the prospective chief executive officer and recording officer. Following action on this issue, the prospective chief executive officer and chief financial officer will execute the Application and Agreements for Insurance of Accounts (NCUA 9500). These documents should be provided to NCUA as part of the charter application.

The organizers and subscribers should also complete an NCUA 4012, Report of Official or Employee, for each prospective board member, credit and supervisory committee member, and employee. The NCUA 4012s should be submitted to NCUA as early as possible to enable the necessary credit reports and background checks to be obtained well in advance of the anticipated charter date. NCUA will pay the direct costs of acquiring such credit and background checks.

Subsequent organizational meetings may be held to discuss the progress of the charter investigation, to announce the proposed slate of officials, and to respond to any questions posed at the meeting.

If NCUA approves the charter application, the subscribers, as their final duty, will elect the board of directors and credit committee of the proposed federal credit union. The new board of directors will then appoint the supervisory committee.

VII.B—Support for Charter Application

VII.B.1—General

As discussed previously in this chapter, applicants for federal credit union charters must, at a minimum, provide evidence that:

- the group constitutes a recognized common bond;
- the subscribers, prospective officials and employees are of good character; and
- the establishment of the credit union is economically feasible.

In addition, the Federal Credit Union Act requires applicants to submit a sworn organization certificate setting forth seven criteria (see section entitled "Subscribers" earlier in this chapter). In order to process the application and capture all required information, NCUA has developed certain chartering forms to assist organizers. See Appendix D for the necessary blank forms.

VII.B.2—Federal Credit Union Investigation Report, NCUA 4001

Applications for new federal credit unions will be submitted on NCUA

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4001. (State-chartered credit unions applying for conversion to federal charter will use NCUA 4000. See chapter 3 for a full discussion.) The organizer is required to certify the information and recommend approval or disapproval, based on the investigation of the request. Instructions and guidance for completing the form are provided on the form's reverse. Associational charter applicants must include a statement of their membership criteria (normally the group's charter or bylaws) and current financial statements on the associational sponsor.

VII.B.3—Report of Official and Employee, NCUA 4012

This form documents general background information of each official and employee of the proposed federal credit union. Each official must complete and sign this form. The organizers must review each of the NCUA 4012s for elements—criminal convictions, indictments, etc.—that would prevent the prospective official or employee from serving in an official capacity. Further, such factors as past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

VII.B.4—Organization Certificate, NCUA 4008

This document establishes the seven criteria required of subscribers by the Federal Credit Union Act and is signed by the subscribers and notarized. This document should be executed in duplicate. During his or her on-site contact, the NCUA staff member assigned to the case will assist in the proper completion of this document.

VII.B.5—Certification of Resolutions, NCUA 9501

This document certifies that the board of directors of the proposed federal credit union has resolved to apply for insurance of member accounts and has authorized the chief executive officer and chief financial officer to execute the Application and Agreements for Insurance of Accounts. This form must be signed by both the chief executive officer and recording officer of the proposed federal credit union.

VII.B.6—Application and Agreements for Insurance of Accounts, NCUA 9500

This document contains the agreements with which federal credit unions must comply in order to obtain National Credit Union Share Insurance Fund (NCUSIF) coverage of member accounts. The document must be completed and signed by both the chief executive officer and chief financial officer. Each prospective federal credit union must qualify for federal share insurance.

VIII—NCUA Review

VIII.A—General

As discussed previously, NCUA may provide tentative approval of the proposed federal credit union's field of membership. Additionally, credit and background investigations may be conducted concurrently by NCUA with other work being performed by the organizers and subscribers to reduce the likelihood of delays in the chartering process.

Once NCUA receives a complete charter application package, an acknowledgment of receipt will be sent to the organizers within 10 business days of receipt, and a staff member will be assigned to perform an on-site contact with the proposed officials and others having an interest in the proposed federal credit union. NCUA will make every effort to process the application expeditiously.

The staff member will review the application package and verify its accuracy and reasonableness. The staff member will inquire into the financial management experience, suitability and commitment of the proposed officials' and make an assessment of economic advisability. The staff member will also assist the subscribers in the proper completion of the Organization Certificate, NCUA 4008. By assisting in the completion of the Organization Certificate, the staff member may, without indicating his or her endorsement of the charter application, expedite the process.

The staff member will thoroughly analyze the prospective credit union's business plan for realistic projections, attainable goals, and time commitment. Any concerns will be reviewed with the organizers and discussed with the prospective credit union's officials.

The staff member will then make a recommendation to the regional director regarding the charter application. His or her recommendation may include specific provisions to be included in a Letter of Understanding and Agreement. In most cases, NCUA will require the prospective federal credit union's officials to enter into an agreement not to engage in certain activities. The agreement is for a limited term—usually two to four years. A sample Letter of Understanding and Agreement is attached in Appendix B.

VIII.B—Regional Director Approval

Once approved, the board of directors of the newly formed federal credit union will receive a signed charter and bylaws from the regional director. Additionally, the officials will be advised of the name and mailing address of the examiner who has been assigned responsibility for supervising and examining the credit union.

Generally, the examiner will contact the credit union officials shortly after approval of the charter in order to arrange for the initial examination (usually within the first six months of operation). Assistance in commencing operations is generally available through the various trade organizations listed in Appendix F.

VIII.C—Regional Director Disapproval

Where a regional director disapproves any application, in whole or in part, under this Chapter, the organizers will be informed in writing of the specific reasons for the action. Where applicable, the regional director will provide information concerning options or suggestions that they could consider for gaining approval or otherwise acquiring credit union service.

The letter of denial will include the procedure for and other information on the group's right to appeal the decision.

VIII.D—Appeal of Regional Director Decision

The procedures for filing an appeal of any actions taken by NCUA regional directors will be followed. If not included with the denial notice, a copy of these procedures may be obtained from the regional director who made the decision.

The prospective group may submit substantive new and additional information to the regional director for reconsideration. In these cases, the request will not be considered as an appeal but as a request for reconsideration by the regional director. If the request is again denied, the group may proceed with the appeal process.

IX—Future Supervision

Once NCUA has granted a charter to a new federal credit union, an examiner will be assigned to supervise the credit union.

The examiner will be responsible for monitoring the progress of the credit union and ensuring it gets off to a good start. The examiner will also monitor compliance with the terms of the Letter of Understanding and Agreement. Typically, the examiner will require copies of monthly board minutes and financial statements.

Each federal credit union is examined regularly by NCUA to determine that it remains in compliance with law and regulation and to determine that it does

not pose undue risk to the National Credit Union Share Insurance Fund.

The Federal Credit Union Act requires all newly chartered credit unions, up to two years after the charter anniversary date, to obtain NCUA approval prior to appointment of any board member, any credit or supervisory committee member, or any senior executive officer. Part 701.14 of the NCUA Regulations sets forth the notice and application requirements. If NCUA issues a Notice of Disapproval, the newly chartered credit union is prohibited from making the change. NCUA may disapprove an individual serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by or associated with the credit union.

CHAPTER 2—AMENDMENTS TO THE FIELD OF MEMBERSHIP

I—Introduction

As stated in Chapter 1, Section 5 of every federal credit union's charter defines the groups the credit union is legally entitled to serve. There are a number of instances in which Section 5 may need to be changed. On each of these occasions, the federal credit union must obtain approval from NCUA before amending its charter.

First, a group not included in a federal credit union's charter may wish to be served by that credit union. This may occur through agreement between the group and the credit union directly, or through a merger, purchase and assumption (P&A), or spin-off. Second, a federal credit union may wish to change its common bond entirely—from an occupational to a community credit union, for example, or vice versa. Third, which is discussed in Chapter 3, a state-chartered credit union may wish to convert to a federal charter. (The board of membership of a federal credit union converting to a state charter is determined under applicable state law, except to the extent that the credit union seeks to continue to be federally insured and the proposed new field of membership would adversely affect the safe and sound operation of the institution.) Finally, a federal credit union may wish to remove a group from its field of membership—for example, through agreement with the group or a spin-off.

NCUA's goals with respect to amendments of federal credit union charters are the same as for including groups in the charters of new federal credit unions. The Agency's analysis, therefore, is also similar, though adapted for the different circumstances to which the rules apply—primarily the fact that the federal credit union is in existence and has a history of service that can be evaluated.

The three issues NCUA must evaluate in deciding whether to approve a change in a federal credit union's field of membership are:

- whether the change satisfies NCUA's common bond requirements;
- whether the interests of the groups to be added are demonstrated; and
- whether the change is economically advisable.

II—Additions Through Direct Agreement With a Group

The most common type of addition to a federal credit union's field of membership is through agreement with the group itself. The requirements are similar to those for including a group in a federal credit union's charter initially.

II.A—Common Bond Requirement

II.A.1—Additions to Fields of Membership of Occupational, Associational, and Multiple Occupational/Associational Federal Credit Unions

As with new multiple occupational/associational federal credit unions, occupational and associational groups may be added to occupational, associational, and multiple occupational/associational federal credit unions in two ways. If the group is part of an occupational or associational common bond which constitutes a majority of the federal credit union's field of membership, the group may be added regardless of location. These are commonly called "common bond additions." For any other occupational or associational common bond, the group must be within the credit union's operational area. These are commonly called "select group additions."

The requirements for common bond additions are identical to the definition of occupational and associational common bond. [illegible] union's initial field of membership, please refer to Section I.A and II.B of Chapter 1 for guidance. The requirements for select groups additions are similar to those set forth in Section II.D of Chapter 1 for inclusion of other associational and occupational groups in a multiple group federal credit union's field of membership initially, with this exception: The credit union may add groups within the operational areas of one of its planned service facilities if:

- The planned facility begins operation shortly after the group is added; and
- The current field of members/potential constitutes a significant portion of the total field of membership to be served initially by the proposed facility.

Although the addition of a new select group alone is not enough to justify a planned service facility, it is permissible to include new groups as partial justification for such a facility.

Moreover, in the case of a planned facility, NCUA may, in its discretion, require financial projections and/or a business plan supporting amendments around that service facility in order to determine the economic feasibility and to address any safety and soundness concerns of the amendment.

II.A.2—Additions to the Common Bond of a Community Federal Credit Union

Community federal credit unions, except those designated low-income or distressed, may expand their fields of membership only by redefining their boundaries. There must be interaction among persons who live or work within the proposed well-defined neighborhood, community or rural district. The burden of proof for existence of the common bond is placed upon the applicant credit union.

In the majority of cases where community credit unions are asking to expand their areas of service, and in all cases where a conversion to a community charter is proposed, an NCUA staff member will make a documented on-site evaluation of the proposal. The staff member will prepare a separate analysis of the proposed amendment, independent of the credit union's application. Following completion of the on-site eva[illegible] regional office review of the [illegible] member's report, [illegible] will act on the proposal. Certain expansions require NCUA Board [illegible]

[illegible]

The special rules for credit unions serving low-income persons, serving retirees and senior citizens over 50 years old, and serving employees at industrial parks, shopping centers and similar facilities apply equally to field of membership additions. However, there are two special situations unique to existing federal credit unions: (1) corporate restructurings and (2) plant closings, and other kinds of distress to a substantial portion of a credit union's membership

II.A.3.b—Corporate Restructuring

If an occupational or associational group within a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event which requires a change to the credit union's field of membership if the credit union is to continue to provide service. NCUA will permit a credit union to add to its field of membership a sold or spun off group to which it has been providing service, without regard to location, if the group requests continued service, documented by a letter from an official representative, on the group's letterhead where possible.

II.A.3.c—Distress Situations

If a major group within the field of membership of any federal credit union—whether occupational, associational, community or multiple group—suffers a severe economic reversal—e.g., a plant or base closing—one option for the credit union may be to diversify its field of membership by adding groups desiring to be served. If economically advisable, NCUA may facilitate the credit union's diversification efforts, to the extent and only until the credit union's viability is assured, by allowing the credit union to add occupational and associational groups without regard to location. To obtain this authorization, the credit union must submit a request for designation as a distressed credit union to its regional director.

The decision will be based on the totality of the circumstances, including the severity of the economic problem, whether offsetting gains from the expansion of other groups currently in its field of membership are reasonably foreseeable, the availability of other groups able to be served, the likely cost the credit union will incur in reorienting itself to serve those groups, the competitive environment it is operating in, the effect on other credit unions, and the availability of alternatives such as merger. Prior to making a determination on this issue, NCUA may request such additional information, including a business plan, as may be appropriate.

II.B—Interests of the Group to be Added

Of primary concern to NCUA is that quality credit union service be provided to all groups served by a federal credit union. Therefore, with respect to each field of membership addition, NCUA requires documentation from each group to be added stating that it desires service from the applying credit union.

II.C—Economic Advisability

Prior to granting a field of membership addition, NCUA will examine the amendment's likely effect on the credit union's operations and financial condition and its likely effect on other credit unions. Most of the information needed for analyzing the effect of adding a particular group will already be available to NCUA through the examination and call reports; generally, nothing more will be needed. However, in particular cases, a regional director may ask for additional information prior to making a decision. With respect to a proposed addition's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section IV.A.2 of Chapter 1 apply here as well.

II.D—Documentation Required

The documentation needed for community charter additions will vary substantially depending on the circumstances, and has been described in general terms above. For common bond and select group additions, which constitute the bulk of amendment requests, the procedures are more standardized. A federal credit union requesting such a change must submit a formal written request, using the Application for Field of Membership Amendment form shown in Appendix D, or its equivalent, to the appropriate NCUA regional director. The request must be signed by an authorized credit union representative.

The Application for Field of Membership Amendment form must be accompanied by the following:

- A letter signed by an official representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery—regional directors may, at their discretion, however, accept such other documentation or certification as they deem appropriate. This letter must indicate:
- that the group wants to be added to the applicant federal credit union's field of membership;
- whether the group presently has any credit union service available;
- the number of persons currently included within the group to be added and their locations; and
- in the case of a select group addition, the group's proximity to one of the credit union's service facilities to which the group has access.
- If the group is eligible for membership in any other credit union documentation must be provided to support inclusion of the group under the standards set forth in Section IV.B of Chapter 1.
- If the group to be included is an associational group, the credit union must, where required as established in Chapter 1, also provide a copy of the group's charter and bylaws defining the group's purpose, membership classes, and geographical area.

III—Additions Through Consolidation With Another Credit Union

NCUA supports credit unions desiring to remain a separate entity. However, there are three other ways a federal credit union can expand its field of membership, two of which result in a credit union's ceasing to exist—by taking in the field of membership of another credit union through a merger or a purchase and assumption (P&A), or by taking a portion of a continuing credit union's field of membership through a spin-off. Spin-offs are discussed in Section VI of this Chapter.

III.A—Mergers

Generally, the standards applicable to field of membership amendments apply to mergers where the continuing credit union is a federal charter. In particular where the merging credit union is state chartered, the field of membership rules applicable to a credit union converting to a federal charter apply. However, there are some differences:

- As to a merger involving a common bond addition, the requirements to provide a request for credit union service from the corporate, associational, or other unit to be added is not required, since the unit already has credit union service.
- As to a merger involving a select group addition:
- For the same reason, the requirement for a letter from each group included in the credit union's field of membership is not required.
- Where a state credit union is merging into a federal credit union, the operational area requirement may be waived on a proper showing that the state credit union will continue to be able to provide quality credit union service to its current field of membership as a federal credit union. Upon merging, the state credit union's field of membership will be worded to conform to the NCUA standards set forth in Chapter 1. Any subsequent field of membership amendments must comply with applicable amendment procedures.
- As to a merger of a community credit union into a federal credit union of any type, the continuing credit union may be permitted to continue to provide service to the merging credit union's members of record as of the merger date where the operational area requirement

is satisfied. Except in the case of an emergency merger, the continuing federal credit union can obtain only the members of record of the merging community credit union.

Where both credit unions are community charters, the continuing credit union is a federal credit, and the criteria for expanding the service area of a community federal credit union (as discussed previously in this Chapter) are satisfied, the entire field of membership of the merging credit union may be added to the continuing federal credit union's charter.

Mergers must be approved by all affected NCUA regional directors, and, as applicable, the state regulators.

III.B—Emergency Mergers

A specifically designated emergency merger may be approved by NCUA without regard to field of membership or other legal constraints. An emergency merger involved NCUA's direct intervention. The credit union to be merged must either be insolvent or will likely become insolvent within 12 months and NCUA must determine that:

- an emergency requiring expeditious action exists
- other alternatives are not reasonably available
- the public interest would best be served by approving the merger

In an emergency merger situation, NCUA takes an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any field of membership restrictions and without changing the character of the continuing federal credit union for future amendments. Under this authority, therefore, a federal credit union may take into its field of membership a group defined by a community or associational common bond permitted under state law, regardless of whether that common bond definition could be approved under the Federal Credit Union Act.

III.C—Purchase and Assumptions (P&A's)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a purchase and assumption (P&A).

A P&A has limited application because the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership along with specified loans, shares and certain other designated assets and liabilities, without regard to field of membership amendment restrictions and without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

P&A's involving federally insured state credit unions in different NCUA regions must be approved by all affected regional directors and, as applicable, the state regulators.

IV—Field of Membership Conversions

A community federal credit union may convert to an occupational, associational, or multiple group credit union, and an occupational, associational, or multiple group credit union may convert to a community credit union. In any case, a change to the credit union's field membership will be necessary.

IV.A—Conversion to Occupational, Associational, or Multiple Group Federal Credit Union

A community federal credit union converting to an occupational, associational, or multiple group field of membership must meet the common bond and economic advisability requirements applicable to the type of charter which it seeks conversion to.

IV.B—Conversion to Community Charter

An existing occupational, associational or multiple group federal credit union may apply to convert to a community charter. In most cases, groups currently in the credit union's field of membership but outside the new community credit union's boundaries may be included in the new community charter.

In order to support a case for a conversion to community charter, the applicant federal credit union must develop a detailed business plan incorporating the following data:

- Current financial statements, including the income statement and a summary of loan delinquency.
- A map or maps showing both the existing and proposed boundaries for the field of membership.
- A written description of the area of community service for the proposed community credit union.
- The most current population figures for the existing and proposed boundaries.
- The source of the population information; census data are considered the most authoritative; the greater the population of the proposed area, the greater justification necessary to support the existence of the "community" and interaction among its residents.
- Evidence in the form of surveys or letters from official representatives of prominent groups located in the area to be added showing that the persons who live, work, or worship in the area are interested in affiliating with the applicant credit union.
- Evidence that the proposed area is a "community" as defined in "Community Common Bond" in Chapter 1.
- Information concerning the availability of financial services to the residents of the new area.
- A list of credit unions with a home or branch office in the proposed area. (If present credit union service to the residents of the new area is adequate, there may be no basis for the proposed conversion.)
- The attitude of current credit union sponsors and existing credit union members toward the proposed conversion.
- The anticipated financial impact on the credit union in terms of need for additional employees and fixed assets.

V—Removal of Groups From the Field of Membership

Credit unions may request removal of a group from its field of membership for various reasons.

The most common reasons for this type amendment are:

- The group is within the overlapping field of membership of two credit unions and one wishes to discontinue service
- The federal credit union cannot continue to provide adequate service to the group.
- The group has ceased to exist.
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support.
- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. Membership may continue for those who are already members if the credit union has adopted the "once a member, always a member" bylaw provision.

VI—Spin-Offs

A "spin-off" occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares and capital of a credit union, are transferred to a new or existing credit union. A spin-off is unique in that one credit union has a field of membership addition and the other has a removal.

If the spin-off goes to a new federal charter, the requirements of Chapter 1 apply. (See that chapter for discussion of the field of membership and documentation requirements for new federal charters.) If it goes to an existing federal charter, the requirements of Chapter 2 apply.

Spin-offs involving federally insured state credit unions in different NCUA regions must be approved by all affected regional directors and the state regulators, as applicable.

The request for approval of a spin-off must be supported with a plan that addresses, as a minimum:

- Why the spin-off is being requested.
- What part of the field of membership is to be spun-off.
- Whether the affected credit unions have a common sponsor or are located within the same operational area.
- Which assets, liabilities, shares and capital are to be transferred.
- The financial impact of the spin-off will have on the affected credit unions.
- The ability of the acquiring credit union to effectively serve the new members.
- The proposed spin-off date.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers—see Part 708 of the NCUA Regulations—except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. Voting requirements for federally insured state credit unions are governed by state statute.

VII—Professional Conflicts

It is important for a credit union, as well as professional organizations such as accounting firms, law firms, real estate title insurance firms and appraisal firms, to avoid the appearance of impropriety when the credit union contracts with a professional organization for services. This is even more critical if the professional organization and/or its employees are members of the credit union.

When a professional organization is added to a federal credit union's field of membership, the credit union should notify the professional organization of certain provisions. The following notice is intended to ensure that decisions made by a credit union and the professional organizations serving the credit union are independent of any loan decisions or deposit activities:

"Please be advised that with respect to the addition of the employees of [professional organization] to the [FCU], any lending, deposit and/or other credit union services involving this group's members must avoid any appearance of impropriety and must follow the ethical standards of the profession."

VIII—Procedures for Amending the Field of Membership

VIII.A—General

All requests for approval to amend a federal charter must be submitted to the appropriate regional director. In normal cases, the regional director will make a decision on the request within 10 business days. If a decision cannot be made within that time, the regional director will notify the credit union within the 10-business-day period.

To streamline the process further, NCUA has instituted two additional procedures—a limited preapproval process and a procedure for easing the workload when making substantial charter changes as with mergers and charter conversions.

VIII.B—Streamlined Expansion Procedure (SEP) for Small Occupational Groups

In keeping with the goals of NCUA chartering policy to provide service to all eligible groups desiring credit union service, well operated federal credit unions except those designated as "distressed" may take advantage of the SEP for adding occupational groups to their fields of membership.

To use this procedure, the federal credit union's board of directors must first apply to their respective NCUA regional director for a charter amendment. The charter amendment request must be signed by the presiding officer of the board of directors.

The following is a sample amendment for permitting a federal credit union to use the SEP authority:

Groups of persons with occupational common bonds which are located within 25 miles of one of the credit union's service facilities, which have provided a written request for service to the credit union, which do not presently have credit union service available, and which have no more members in the group than the maximum number established by the NCUA Board for additions under this provision: Provided, however, that the National Credit Union Administration may permanently or temporarily revoke the power to add groups under this provision upon a finding, in the Agency's discretion, that permitting additions under this provision are not in the best interests of the credit union, its members, or the National Credit Union Share Insurance Fund.

Once NCUA has approved the amendment and the credit union board has adopted it, the SEP authority may be implemented. The charter amendment permits approved federal credit unions to immediately begin serving employee groups meeting criteria set forth in this section. Under this procedure, there is no formal NCUA action necessary on each group being added.

The maximum number of persons for each group of employees which may be added under SEP will be established by the NCUA Board from time to time. The number will be based on potential primary members—that is, the persons sharing the basic occupational affinity to each sponsor group; family members and other derivative members are not included in the SEP limit. Several groups may be simultaneously added using these procedures; however, the maximum number of persons for each group must fall within the SEP limit.

The SEP does not apply to associational groups since NCUA must review membership requirements and geographical area prior to these groups' being added to a field of membership. The procedure also does not apply to community charter expansions because of the more individualized analysis required.

The following SEP steps and documentation requirements must be adhered to:

- The federal credit union must complete, for each group to be added, an Application for Field of Membership Amendment form shown in Appendix D
- The federal credit union must obtain a letter, on the group's letterhead where possible, signed by an official representative identified by title, requesting credit union service and stating that the group does not have any other credit union service available from any source
- The group must be located within 25 miles of one of the federal credit union's service facilities
- The group must indicate the number of potential members—the number of employees—seeking service

- The federal credit union must maintain the above documentation permanently with its charter
- The federal credit union must maintain a control log of groups added to its field of membership under the SEP procedure. The control log must include the date the group obtained service, the name and location of the sponsor group, the number of potential primary members added, the number of miles to the nearest main or branch office, the federal credit union board of director's approval of the group and the date approved. See Appendix D for a sample control log.
- The groups added under SEP must be reported to the federal credit union's board at the next regular board meeting and made a part of the meeting minutes
- The control log and other SEP documentation must be made available to NCUA upon request

The regional director may from time to time request service status reports on groups added under SEP. It is advisable to use some method, such as a sponsor prefix added to the member account number, to readily access data for such groups.

Should a federal credit union fail to provide quality credit union service, as determined by the group's members or employees, to a group added under SEP, NCUA may subsequently permit dual membership with another credit union.

Should a federal credit union fail to follow the above procedures or deteriorate financially or operationally, NCUA, at its discretion, may revoke the SEP privilege.

VIII.C—Block Additions

When a state credit union is converting to a federal charter or when a credit union is being merged into a federal credit union, large blocks of select groups frequently are added to a credit union's field of membership. In such cases, the federal credit union whose field of membership is being revised should consult directly with the appropriate regional office early in the process to ensure the efficient treatment of such revisions and to avoid misunderstandings.

Therefore, when a block of 50 or more new groups is being added to a credit union's field of membership at any one time, NCUA may require that a list of the groups and their locations be provided on a computer diskette. Director coordination with the appropriate NCUA regional office will ensure the compatibility of hardware and software.

VIII.D—Regional Director's Decision

Except for those field of membership amendments resulting from use of the SEP, all such amendment requests will be reviewed by regional office staff in order to ensure conformance to NCUA policy, are properly documented, and do not cause significantly harmful or unreasonable overlap with the fields of membership of existing credit unions.

NCUA understands and appreciates the importance of timely processing of well-supported amendment requests. Therefore, NCUA has established a goal of ten business days from the date of receipt in the regional office for processing of a routine, complete amendment request. A fully documented request, including the Application for Field of Membership Amendment, that fulfills all of the criteria discussed in this manual and does not require written or telephone follow-up will normally be processed within this time.

In some cases, an on-site review by NCUA staff may be required by the regional director before acting on a proposed amendment. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan.

The condition of the requesting credit union will be considered in every instance. The economic feasibility of expanding the field of membership of a credit union with serious financial or operational problems must be carefully considered if the safety and soundness of the credit union is to be preserved.

In most cases, field of membership amendments will only be approved for credit unions which are operating satisfactorily. If a federal credit union is having difficulty providing good service to its current membership, it may have even more difficulty serving an enlarged field of membership. In some cases, expanding the field of membership of a struggling credit union may do more harm than good. A struggling credit union's resources need to be focused on current problems. Placing an additional strain on these resources by increasing the field of membership may also increase the credit union's problems.

VIII.E—Regional Director Approval

If the requested amendment is approved by the regional director, the credit union will be furnished a formal, updated Section 5 of its charter which restates the field of membership, including the requested amendment. After action by the board of directors, the form should be promptly filed with the credit union's official charter and bylaws.

VIII.F—Regional Director Disapproval

Where a regional director disapproves any application, in whole or in part, under this chapter, the applicant will be informed in writing of the specific reasons for the action. Where applicable, the regional director will provide information concerning options or suggestions that could be considered for gaining approval.

The denial letter will include the procedure for and other information on the credit union's right to appeal the decision.

VIII.G—Appeal of Regional Director Decision

The procedures for filing an appeal of any actions taken by NCUA regional directors will be followed. If not included with the denial notice, a copy of these procedures may be obtained from the regional director who made the decision.

The prospective group may submit substantive new and additional information to the regional director for reconsideration. In these cases, the request will not be considered as an appeal but as a request for reconsideration by the regional director. If the request is again denied, the group may proceed with the appeal process.

IX—Service Status Reports

Federal credit unions which frequently add select groups to their fields of membership should be prepared to furnish a written summary of the results of their efforts to bring service to the employees or members of the select groups.

The regional directors will periodically request that such federal credit unions submit service status reports to NCUA showing, at a minimum, the number of primary potential members of each select group added and the number of persons from each select group who have actually enrolled as credit union members.

These service status reports can be enlarged to require information concerning aggregate share and loan activity by select group or participation in other credit union services.

In any event, federal credit unions using the select group amendment method should implement an information gathering system early in their amendment/diversification program to track their progress in providing service to the potential members of their select groups.

This information will help the credit union to operate more efficiently and

will give management the data necessary to make decisions about marketing strategy, new promotions, implementation of new services, etc.

The service status reports will enable NCUA to determine which federal credit unions are serving newly added groups, as well as any federal credit unions that are not serving new groups.

If the NCUA determines that a federal credit union is not adequately serving new groups, the regional director may restrict further amendments and permit the groups not being adequately served to be overlapped with another federal credit union or remove the select group(s) not being served from Section 5 of the credit union charter

CHAPTER 3—CHARTER CONVERSIONS

I—Introduction

A charter conversion is a change in the jurisdictional authority under which a credit union operates. A credit union's charter is the instrument granted to the institution by the state or federal government.

Federal credit unions receive their charters from NCUA and are subject to its supervision, examination, and regulation; they are incorporated under federal law.

State-chartered credit unions are incorporated in a particular state, receiving their charter from the state agency responsible for credit unions and subject to the state's regulator. If the state-chartered credit union's deposits are federally insured it will also fall under NCUA's jurisdiction.

A federal credit union's power and authority are derived from the Federal Credit Union Act and NCUA Rules and Regulations. State-chartered credit unions are governed by state law and regulation.

There are two types of charter conversions—federal charter to state charter, and state charter to federal charter. Although common bond is not an issue from NCUA's standpoint in the case of a federal to state charter conversion, the procedures and forms relevant to such a conversion have been included.

II—Conversion of a State Credit Union to a Federal Credit Union

II.A—General Requirements

Any state-chartered credit union may apply to convert to a federal credit union. In order to do so, it must:

- Comply with state law regarding conversion;
- File proof of compliance with NCUA;
- File the required conversion application, proposed federal credit union organization certificate and other documents with NCUA;
- Comply with the requirements of the Federal Credit Union Act, e.g., common bond and reserve requirements; and
- be granted a charter by NCUA.

Conversions are treated the same as any initial application for a federal charter, including mandatory on-site examination by NCUA. NCUA will also consult with the appropriate state authority regarding the credit union's current condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter application.

Generally, a converting state credit union's field of membership must conform to NCUA chartering policy. However, if a converting credit union can demonstrate that it has been effectively serving groups outside what would have been its operational area if it had been a federal credit union, the regional director, in his or her discretion, may permit continued service to these groups after conversion. Every reasonable effort will be made to phrase the field of membership similar to the presentations in Chapters 1 and 2 with individually listed groups and their locations. In any case, subsequent changes must conform to NCUA amendment policy in effect at that time.

II.B.—Submission of Conversion Proposal to NCUA

The following actions are to be taken before submitting a conversion proposal:

- The credit union board must approve a proposal for conversion.
- The Application to Convert (NCUA 4401) must be completed. Its purpose is to provide the regional director with information on the present operating policies and financial condition of the credit union and the reasons why the conversion is desired. A continuation sheet may be used if space on the form is inadequate. Particular attention should be given to answering the question on the reasons for conversion. These reasons should be stated in specific terms, not as generalities.
- The application must be accompanied by all required attachments including the following:
- Written evidence that the state regulator is either in agreement with the conversion proposal or, if not in agreement, the reasons therefor.
- The Application for Insurance of Accounts (NCUA 9600) in the case of a state credit union that is not federally insured.
- The Application and Agreements for Insurance of Accounts (NCUA 9500)
- The Federal Credit Union Investigation Report, Conversion of State Charter to Federal Charter (NCUA 4000).
- The most current financial report and delinquent loan schedule.
- The Organization Certificate (NCUA 4008). Only Part (3) and the signature/notary section of page 4 should be completed and, where applicable signed by the credit union officials. The NCUA regional office will complete the other sections of this document.

II.C—NCUA Consideration of Application to Convert

II.C.1—Review by the Regional Director

The application will be reviewed to determine that it is complete and that the proposal is in compliance with Section 125 of the Federal Credit Union Act. This review will include a determination that the state credit union's field of membership is in compliance with NCUA's chartering policies. The regional director may make further investigation into the proposal and may require the submission of additional information to support the request to convert. At this point, NCUA will conduct an on-site review of the credit union.

II.C.2—On-Site Review

NCUA will examine the books and records of the credit union on-site. Non-federally insured credit unions will be assessed an insurance application fee.

II.C.3—Approval by the Regional Director and Conditions to the Approval

The conversion will be approved by the regional director if it is in compliance with Section 125 of the Federal Credit Union Act and meets the criteria for federal insurance. Where applicable, the regional director will specify any special conditions that the credit union must meet in order to convert a federal charter, including changes to the credit union's field of membership in order to conform to NCUA's chartering policies. Some of these conditions may be set forth in a Letter of Understanding and Agreement ("LUA"), which requires the signature of the officials and the regional director.

II.C.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the conversion.

II.D—Action by Board of Directors

II.D.1—General

Upon being informed of the regional director's approval, the board must:

- Comply with all requirements of the state regulator that will enable the credit union to convert to a federal charter and cease being a state credit union;
- Obtain a letter or official statement from the state regulator certifying that the credit union has met all of the state requirements and will cease to be a state credit union upon its receiving a federal charter. A copy of this document must be submitted to the regional director;
- Obtain a letter from the share insurer, if applicable, certifying that the credit union has met all withdrawal requirements. A copy of this document must be submitted to the regional director.
- Submit a statement of the action taken to comply with any conditions imposed by the regional director in the approval of the conversion proposal and, if applicable, submit the signed LUA

II.D.2—Application for a Federal Charter

When the regional director has received evidence that the board has completed the actions described above, the federal charter and new Certificate of Insurance will be issued.

The credit union may then complete the conversion as discussed in the following section. Denials are appealable. (See Chapter 1, section VIII.D.)

II.E—Completion of the Conversion

II.E.1—Effective Date of Conversion

The date on which the regional director approves the Organization Certificate and the Application and Agreements for Insurance of Accounts is the date on which the credit union becomes a federal credit union. The regional director will notify the credit union and the state regulator of the date of the conversion.

II.E.2—Assumption of Assets and Liabilities

As of the effective date: the federal credit union will be the owner of all of the assets and will be responsible for all of the liabilities and share accounts of the state credit union.

II.E.3—Board of Directors' Meeting

Upon receipt of its federal charter, the board will hold its first meeting as a federal credit union. At this meeting, the board will transact such business as is necessary to complete the conversion as approved and to operate the credit union in accordance with the requirements of the Federal Credit Union Act and NCUA Rules and Regulations. Actions to be taken at this meeting include:

- Change of the credit union's name on all records, accounts, investments and other documents evidencing assets or liabilities of the credit union;
- Changes to the credit union's books and records:
- As of the commencement of business, the accounting system, records, and forms must conform to the standard established by NCUA;
- New journal and cash record and general ledger records should be set up. The general ledger accounts for the state credit union will be posted through the effective date of the conversion, and the new balances will be transferred to the new general ledger accounts of the federal credit union;
- The income and expense accounts of the state credit union will not be closed unless the conversion is at the close of an accounting period or is required by the state regulator; and
- The individual share and loan ledger accounts used by the state credit union may continue to be used.

The federal credit union's name will be properly reflected on these accounts

II.E 4—Reports to NCUA

Within 10 business days after commencement of operations, the recently converted federal credit union must submit to the regional director the following:

- Report of Officials (NCUA 4501).
- Financial and Statistical Reports, (Forms FCU 109A, 109B, and 109F, or their equivalent) as of the commencement of business of the federal credit union.

III—Conversion of a Federal Credit Union to a State Credit Union

III.A—General Requirements

Any federal credit union may apply to convert to a state credit union. In order to do so, it must:

- Notify NCUA prior to commencing the process to convert to a state charter and state the reason(s) for the conversion;
- Comply with the requirements of Section 125 of the Federal Credit Union Act that enable it to convert to a state credit union and to cease being a federal credit union; and
- Comply with applicable state law and the requirements of the state regulator.

Particular attention should be given to answering the question on the reasons for conversion. These reasons should be stated in specific terms, not as generalities.

III.B—Special Provisions Regarding Federal Share Insurance

If the federal credit union wants to continue federal share insurance after the conversion to a state credit union, it must submit an Application for Insurance of Accounts (NCUA 9600) to the regional director at the time it requests approval of the conversion proposal. The regional director has the authority to approve or disapprove the Application.

If the converting federal credit union does not want to continue federal share insurance or if its application for continued insurance is denied, insurance will cease in accordance with the provisions of Section 206 of the Federal Credit Union Act.

If, upon its conversion to a state credit union, the federal credit union will be terminating its federal share insurance or converting from federal to non federal share insurance, it must comply with the membership notice and voting procedures set forth in Section 206 of the Federal Credit Union Act and Part 708 of NCUA's Rules and Regulations

Where the state credit union will be non federally insured, federal insurance ceases on the effective date of the charter conversion. If it will be otherwise uninsured, then federal insurance will cease one year after the date of conversion subject to the restrictions in Section 206(d)(1) of the Federal Credit Union Act. In either case, the state credit union will be entitled to a refund of the federal credit union's NCUSIF capitalization deposit and any unused portion of the federal insurance premium after the final date on which any of its shares are federally insured.

The NCUA Board reserves the right to delay the refund of the capitalization deposit for up to one year if it determines that payment would jeopardize the NCUSIF.

III.C—Submission of Conversion Proposal to NCUA

Upon approval of a proposition for conversion by a majority vote of the board of directors at a meeting held in accordance with the federal credit union's bylaws, the conversion proposal will be submitted to the regional director and will include:

- A current financial report;
- A current delinquent loan schedule;
- An explanation and appropriate documents relative to any changes in insurance of member accounts;
- A resolution of the board of directors;

- A proposed Notice of Special Meeting of the Members (NCUA 4221);
- A copy of the ballot to be sent to members (NCUA 4506);
- Evidence that the state regulator is in agreement with the conversion proposal; and
- A statement of reasons supporting the request to convert.

III.D—Approval of Proposal to Convert

III.D.1—Review by the Regional Director

The proposal will be reviewed to determine that it is complete and is in compliance with Section 125 of the Federal Credit Union Act. The regional director may make further investigations into the proposal and require the submission of additional information to support the request.

III.D.2—Conditions to the Approval

The regional director will specify any special conditions that the credit union must meet in order to proceed with the conversion.

III.D.3—Approval by the Regional Director

The proposal will be approved by the regional director if it is in compliance with Section 125 and, in the case where the state credit union will no longer be federally insured, the notice and voting requirements of Section 206 of the Federal Credit Union Act.

III.D.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the proposal.

III.E—Approval of Proposal by Members

Upon approval of the proposal by the regional director, the following actions will be taken by the board of directors:

- The proposal must be submitted to the members for approval and a date set for a vote on the proposal. The proposal may be acted on at the annual meeting, at a special meeting for that purpose, or by written ballot to be filed by the date set for the vote.
- Members must be given advance notice (NCUA 4221) of the meeting at which the proposal is to be submitted in accordance with the provisions of the Federal Credit Union Bylaws (Article V). The notice shall:
- Specify the purpose, time and place of the meeting;
- Include a brief and accurate statement of the reasons for and against the proposed conversion, including any effects it could have upon share holdings, insurance of member accounts, and the policies and practices of the credit union;
- Inform the members that they have the right to vote on the proposal at the meeting, or by written ballot to be filed not later than the date and time announced for the annual meeting, or at the special meeting called for that purpose;
- Be accompanied by a Ballot for Conversion Proposal (NCUA 4506); and
- State in bold face type that the issue will be decided by a majority of members who vote.
- A copy of the notice of the meeting shall be delivered to the regional director at the same time that it is delivered to the members.
- The proposed conversion must be approved by a majority of all of the members who vote on the proposal, a quorum being present, in order for the credit union to proceed further with the proposition. Ballots cast by members who did not attend the meeting but who submitted their ballots in accordance with instructions above will be counted with votes cast at the meeting. In order to have a suitable record of the vote, the voting at the meeting should be by written ballot as well.
- The board of directors shall, within 10 days, certify the results of the membership vote to the regional director. The statement shall be verified by affidavits of the Chief Executive Officer and the Recording Officer on NCUA 4505.

III.F—Compliance With State Laws

If the proposition for conversion is approved by a majority of all members who voted, the board of directors should then:

- Ensure that all requirements of state law and the state regulator have been accommodated;
- Ensure that the state charter or the license has been received within 90 days from the date the members approved the proposal to convert;
- Ensure that the regional director is kept informed as to progress toward conversion and of any material delay or of substantial difficulties which may be encountered.

If the conversion cannot be completed within the 90-day period, the regional director should be informed of the reasons for the delay.

III.G—Completion of Conversion

In order for the conversion to be completed, the following steps are necessary:

- The board of directors will submit a copy of the state charter to the regional director within 10 days of its receipt. This will be accompanied by the federal charter and the federal insurance certificate. A copy of the financial reports (FCU 109A and 109B) as of the preceding month-end should be submitted at this time.
- The regional director will notify the credit union and the state regulator is writing of the receipt of evidence that the credit union has been authorized to operate as a state credit union.
- The credit union shall cease to be a federal credit union as of the effective date of the state charter.
- If the regional director finds a material deviation from the provisions that would invalidate any steps taken in the conversion, the credit union and the state regulator shall be promptly notified in writing. This notice may be either before or after the copy of the state charter is filed with the regional director. The notice will inform the credit union as to the nature of the adverse findings. The conversion will not be effected and completed until the improper actions and steps have been corrected.
- Upon ceasing to be a federal credit union, the credit union shall no longer be subject to any of the provisions of the Federal Credit Union Act, except as may apply if federal share insurance coverage is continued. The successor state credit union shall be immediately vested with all of the assets and shall continue to be responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place. Operation of the credit union from this point will be in accordance with the requirements of state law and the state regulator.
- If the regional director is satisfied that the conversion has been accomplished in accordance with the approved proposal, the federal charter will be canceled.
- There is no federal requirement for closing the records of the federal credit union at the time of conversion or for the manner in which the records shall be maintained thereafter. The converting credit union is advised to contact the state regulator for applicable state requirements. The credit union shall neither use the words "Federal Credit Union" in its name nor represent itself in any manner as being a federal credit union.
- If the state credit union is to be federally insured, the regional director will issue a new insurance certificate.

Appendix A—Glossary

These definitions apply only for use with this Manual. Definitions are not intended to be all inclusive or comprehensive. This Manual, the Federal Credit Union Act, and NCUA

Rules and Regulations as well as state laws may be used for further reference.

Appeal—The right of a credit union or charter applicant to request reconsideration of an unfavorable NCUA decision to a higher authority.

Associational common bond—An Association resulting from membership in an organization, participation in whose activities develops common loyalties, mutual benefits and mutual interests. The association should hold regular meetings and sponsor other activities that provide for contact among members.

Associational credit union—A credit union whose field of membership consists primarily of persons who are members of one or more related associational groups.

Business plan—Plan submitted by a charter applicant or existing federal credit union addressing the economic viability of a proposed charter or field of membership addition.

Charter—The document which authorizes or combination of groups to operate as a credit union and defines the fundamental limits of its operating authority, generally including the persons the credit union is permitted to accept for membership. Charters are issued by the National Credit Union Administration for federal credit unions and by the designated state chartering authority for credit unions organized under the laws of that state.

Commond bond—The characteristic or combination of characteristics which distinguishes a particular group of persons from the general public. There are only three common bonds which can serve as a basis for a group's forming or being included in a federal credit union: employment by the same enterprise ("occupational common bond"), membership in the same association ("associational common bond"), and residence, employment, or religious affiliation in the same geographic area ("community common bond").

Community common bond—Residence or employment of persons and businesses and other legal entities located within the same well-defined neighborhood, community or rural district.

Community credit union—A credit union whose field of membership consists of persons who live or work in the same well-defined neighborhood, community, or rural district.

Conversion—The process of changing from a federal to a state or state to federal credit union charter.

Credit union—A member-owned, not-for-profit cooperative financial institution formed to permit those in the field of membership specified in the charter to save, borrow, and obtain related financial services. Federal credit unions are chartered as corporations pursuant to the Federal Credit Union Act.

Economic viability—An overall evaluation of the credit applicant's ability to operate successfully.

Emergency merger—Pursuant to Section 205(h) of the Federal Credit Union Act, authority of NCUA to merge two credit unions without regard to field of membership policy.

Exclusionary clause—A limitation, written in a credit union's charter, which precludes the credit union from serving a portion of a group otherwise included in its field of membership. Exclusionary clauses are used to prevent certain overlaps of fields of membership between credit unions.

Federal share insurance—Insurance coverage provided by the National Credit Union Share Insurance Fund and administered by the National Credit Union Administration. Coverage is provided for qualified accounts in all federal credit unions and participating state credit unions.

Field of membership—The persons (persons may include organizations and other legal entities) a credit union is permitted to accept for membership. A federal credit union's field of membership, set forth in Section 5 of its charter, may be made up entirely of a single group, related groups with one common bond, or of unrelated groups each having its own common bond.

Letter of understanding and agreement—Agreement between NCUA and federal credit union officials not to engage in certain activities and/or to establish reasonable operational goals. These are normally entered into with new charter applicants, and occasionally with credit unions granted significant charter amendments and/or for a limited time.

Merger—Absorption by one credit union of all of the assets, liabilities and equity of another credit union. Mergers must be approved by the National Credit Union Administration and by the appropriate state regulator whenever a state credit union is involved.

Multiple group credit union—A credit union whose field of membership consists of groups of persons, each group with its own common bond. The groups may be occupation, associational, or a combination thereof and do not need to share a common bond or be in any way related to one another.

Occupational common bond—Employment in the same enterprise. "Employment" includes long term contractual arrangements which are the practical equivalent of regular employment.

Occupational credit union—A credit union whose field of membership consists primarily of persons employed in the same enterprise.

Operational area—The region which, as determined by NCUA in its discretion, may reasonably be served by one of a credit union's service facilities.

Overlap—The situation which results when a group is eligible for membership in more than one credit union.

Potential membership—Persons eligible to become primary members of a federal credit union.

Primary members—Members sharing the basic occupational, associational or community affinity to the field of membership.

Purchase and assumption—Purchase of all or a part of the assets of and assumption of all or a part of the liabilities of one credit union by another credit union. The purchased and assumed credit union must first be placed into involuntary liquidation.

Select group—An occupational or associational group with its own common bond.

Secondary or derivative members—Members included in the field of membership by virtue of their close relationship to a common bond group (e.g., immediate family members, employees of the credit union, etc.).

Service facility—A facility staffed by a credit union representative which accepts share deposit and accepts loan applications or disburses loans. An ATM or similar device is not a federal credit union service facility. Similarly, a branch or service center shared by a number of credit unions is not a service facility for purposes of meeting the operational area requirements of non common bond expansions.

Service status report—Periodic written statements made by federal credit unions to NCUA summarizing the results of efforts to bring service to employees or members of sub[illegible]

Subscribers—For a federal credit union, at least seven individuals who sign the charter application and [illegible] at least one share.

Appendix B—Letter of Understanding and Agreement

To the Board of Directors and Other Officials

_____ Federal Credit Union

Since the purposes of credit unions are to promote thrift and to make funds available for loans to credit union members for provident and productive purposes, and since newly chartered

credit unions do not generally have sufficient reserves to cover large losses on loans or meet unduly large liquidity requirements. Federal insurance coverage of member accounts under the National Credit Union Share Insurance Fund will be granted to the above named credit union subject to the conditions listed in this Letter of Understanding and Agreement and in the Organization Certificate and Application and Agreements for Insurance of Accounts. These terms are listed below and are subject to acceptance by authorized credit union officials.

1. The credit union will refrain from soliciting or accepting brokered fund deposits from any source without the prior written approval of the Regional Director.

2. The credit union will refrain from the making of large loans, that is, loans in excess of 5 percent of unimpaired capital and surplus, to any one member or group of members without the prior written approval of the Regional Director.

3. The credit union will not establish or invest in a Credit Union Service Organization (CUSO) without the prior written approval of the Regional Director.

4. The credit union will not enter into any insurance programs whereby the credit union member finances the payment of insurance premiums through loans from the credit union.

5. Any special insurance plan/program, that is, insurance other than usual and normal surety bonding or casualty or liability or loan protection and life savings insurance coverage, which the credit union officials intend to undertake, will be submitted to the Regional Director of the National Credit Union Administration for written approval prior to the officials committing the credit union thereto.

6. The credit union will prepare and mail to the district examiner financial and statistical reports as required by the Federal Credit Union Act and Bylaws by the 20th of each month following that for which the report is prepared.

7. As the credit union's officials gain experience and the credit union achieves target levels of growth and profitability, the above terms and conditions may be renegotiated by the two parties.

We, the undersigned officials of the _____ Federal Credit Union, as authorized by the board of directors, acknowledge receipt of and agree to the attached Letter of Understanding and Agreement dated _____ 19____.

This Letter of Understanding and Agreement has been voluntarily entered into with the National Credit Union Administration. We agree to comply with all terms and conditions expressed in this Letter of Understanding and Agreement.

Should the NCUA Board determine that these terms and conditions have not been complied with or that the board of directors or other officials have not conducted the affairs of the credit union in a sound and prudent manner, the NCUA Board may terminate insurance coverage of the credit union. If actions by the officials, in violation of this Letter of Understanding and Agreement, cause the credit union to become insolvent, the officials assume such personal liability as may result from their actions.

The term of this Letter of Understanding and Agreement shall be for the period of at least 24 months from the date the credit union is insured. This Letter of Understanding and Agreement may, at the option of the Regional Director, be extended for an additional 24 months at the end of the initial term of this agreement.

Dated this _____ day of 19____.

NATIONAL CREDIT UNION ADMINISTRATION BOARD ON BEHALF OF THE NATIONAL CREDIT UNION SHARE INSURANCE FUND

_____
Regional Director

_____ Federal Credit Union
By:

_____
Chief Executive Officer Date

_____
Chief Financial Officer Date

_____
Secretary Date

Appendix C—NCUA Offices

CENTRAL OFFICE
1775 Duke Street
Alexandria, VA 22314–3428
Commercial: 703–518–6300

REGION I—Albany
9 Washington Square
Washington Avenue Extension
Albany, NY 12205–3512
Commercial: 518–464–4150
FAX: 518–464–4195
Connecticut
Maine
Massachusetts
New Hampshire
New York
Rhode Island
Vermont

REGION II—Capital
1775 Duke Street, Suite 4206
Alexandria, VA 22314–3437
Commercial: 703–838–0301
FAX: 703–838–0571
Delaware
District of Columbia
Maryland
New Jersey
Pennsylvania
Virginia
West Virginia

REGION III—Atlanta
7000 Central Parkway, Suite 1600
Atlanta, GA 30328–4598
Commercial: 404–396–4042
FAX: 404–698–3211
Alabama
Arkansas
Florida
Georgia
Kentucky
Louisiana
Mississippi
North Carolina
Puerto Rico
South Carolina
Tennessee
Virgin Islands

REGION IV—Chicago
4225 Naperville Road, Suite 125
Lisle, IL 60532–3658
Commercial: 708–245–1000
FAX: 708–245–1046
Illinois
Indiana
Michigan
Missouri
Ohio
Wisconsin

REGION V—Austin
4807 Spicewood Springs Road, Suite 2200
Austin, TX 78759–8490
Commercial: 512–482–4500
FAX: 512–482–4511
Arizona
Colorado
Iowa
Kansas
Minnesota
Nebraska
New Mexico
North Dakota
Oklahoma
South Dakota
Texas
Utah
Wyoming

REGION VI—Pacific
2300 Clayton Road, Suite 1350
Concord, CA 94520–2467
Commercial: 510–825–6122
FAX: 510–486–3729
Alaska
American Samoa
California
Guam
Hawaii
Idaho
Montana
Nevada
Oregon
Washington

Appendix D—NCUA Forms

NCUA4000—Conversion of State Charter to a Federal Charter—FCU Investigation Report
NCUA4001—FCU Investigation Report
NCUA9500—Application and Agreement for Insurance of Accounts
NCUA9501—Certification of Resolutions
NCUA4008—Charter
NCUA4009—Approval of Organization Certificate & Certification of Insurance
NCUA4012—Report of Official & Agreement to Serve
NCUA4401—Application To Convert from a State Credit Union to an FCU

NCUA4221—Notice of Meeting of Members
NCUA4505—Affidavit
NCUA4506—Ballot for Conversion Proposal
NCUA9600—Information to be Provided in Support of the Application of a State Credit Union for Insurance of Accounts
NCUA4015—Application for Field of Membership Amendment
NCUA4016—Streamlined Expansion Procedure (SEP) Control Log

BILLING CODE 7535–01–M

OMB No. 3133-0015
Expiration 9-30-92

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to

National Credit Union Administration
Administrative Office
1776 G Street, NW
Washington, D.C. 20456

and to: Office of Management and Budget
Paperwork Reduction Project (3133-0015)
Washington, D.C. 20503

Conversion of State Charter to Federal Charter

FEDERAL CREDIT UNION INVESTIGATION REPORT
(NOTE TO ORGANIZER)

This report must be filled in completely and submitted with the other completed forms listed on page 2 under "SUBMITTAL OF CHARTER APPLICATION." Please refer to page 2 for instructions in completing this report.

A. INFORMATION FOR CHARTER AND BYLAWS

1 Proposed name _____ Federal Credit Union
Second choice of name _____ Federal Credit Union

2 Contact Person _____ Bus. Tel. No./Area Code _____ Res. Tel. No./Area Code _____
Address _____

3 The credit union will maintain its office at _____
(City) (County) (State) (Zip)

4 Permanent mailing address of credit union _____

5 Define proposed field of membership (Attach a copy of current state charter/field of membership) _____

6 The board will have (an odd number, 5 to 15) ____ members; the credit committee (an odd number, 3 to 7) ____ members; the supervisory committee (3 to 5) ____ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. CHARACTER AND FITNESS OF SUBSCRIBERS
(Please type or print)

7 List of the subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signatures on the organization certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of his/her knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.

Signature _____, Organizer
Organizer's address _____
_____

NCUA 4000

INSTRUCTIONS

A. INFORMATION FOR CHARTER AND BYLAWS

The subscriber should select a name for the proposed credit union, desirably a short one. Although it need not fully describe the group, the name should not be misleading. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal credit union is described in the field of membership, item 4. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area in which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 1 of the *"Chartering and Field of Membership Manual."*

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and addresses of the subscribers should be recorded legibly and completely in item 20 of this report. It is from this information that the Administration prepares section 3 of the charter.

The names of the subscribers must be **IDENTICAL** to their signatures on the Organization Certificate

C. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008 - two notarized originals. At least seven, *but no more than ten persons,* must sign both copies of the organization certificate. Signatures on both copies must be identical. The person administering the oath must not be one of the subscribers. The oath on both copies of the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;

2. Report of Official and Agreement to Serve, NCUA 4012 - one original for each board member, credit committee member, and supervisory committee member;

3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;

4. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan.

FEDERAL CREDIT UNION INVESTIGATION REPORT

(Note to Organizer) This report form must be filled in completely and submitted with the other completed forms listed on page 8 under "Submittal of Charter Application." Please refer to page 7 for instructions in completing this report.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed name _____ Federal Credit Union
   Second choice _____ Federal Credit Union

2. Contact Person _____ Business Tel. _____
   Address _____ Residence Tel. _____

3. The credit union will maintain its offices at _____
   (City, State, County, Zip Code)
   _____

3a. Proposed permanent mailing address of credit union _____
   _____

4. Define proposed field of membership _____
   _____
   _____
   _____
   _____
   _____

5. The board will have (an odd number, 5 to 15) _____ members; the credit committee will have (an odd number, 3 to 7) _____ members; the supervisory committee will have (3 to 5) _____ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

(Attach a separate sheet if space available is not adequate)

GENERAL INFORMATION

1. Potential membership _____ .
   NOTE: Number of employees for occupational, active members for associational (or families for religious groups), or population per most recent census for community-type fields of membership.

2. Potential interest (survey results).
   NOTE: Sample must consist of a minimum of 250 potential members. Copy of survey form(s) utilized should be attached.
   Number of people surveyed _____ .
   Number of people responding to survey _____ .
   Number of people pledging an initial deposit _____ .
   Total dollars pledged $ _____ .
   Number pledging systematic savings _____ .
   Total dollars pledged (per month) $ _____ .

3. Number of persons attending the charter-organization meeting _____ .

4. Are officials of the sponsor favorable toward the proposal to organize a credit union? _____ .
   NOTE: Attach letters of support from company officials (occupational-type); association officials (associational-type); business, civic, or other community organizations (community-type).

For Paperwork Reduction Act Notice, see page 7.

5. What facilities and assistance, if any, will the sponsor provide?

_____ Office Space (Describe)
_____ Office Supplies
_____ Payroll deductions
_____ Funding for start-up costs, if so $ _____
_____ Other (Describe)

6. Is credit union service now available to any members of the group? _____
If so, explain the nature and approximate extent of overlapping of such service with the field of membership proposed in this application, i.e., employees who are labor union members eligible for membership in another credit union on an associational basis; labor union members who are eligible for credit union membership on an occupational basis; community residents who are eligible for credit union membership in occupational or associational credit unions located within the proposed boundaries. _____

7. What potential difficulties do you detect in the elected officials carrying out their management responsibilities or in the FCU achieving its stated objectives? _____

NOTE TO ORGANIZER: The officials' projected goals for share growth must be recorded in the business plan.

8. What provisions have been made to overcome potential difficulties? _____

Dates of planned contacts by organizer to determine progress and to assist the group

_____ (Date) _____ (Date) _____ (Date)

(Rev 2/89) NCUA 4001 PAGE -

SPECIFIC INFORMATION - OCCUPATIONAL CHARTER APPLICANTS

9. How long has the sponsor company been in existence? _____.

10. What was the highest number of employees during the past three years? _____; Lowest number during the past three years _____. If a large variance, please explain, _____

11. Are there any contemplated changes in the corporate structure of the company? _____. If yes, explain _____

12. Have there been any significant changes in the corporate structure in the past three years? _____. If yes, please explain _____

13. Are there any negotiations now in progress between management and labor that could lead to work stoppages? _____. If yes, please explain _____

14. If the credit union cannot operate on the employer's property, explain how the credit union will be able to transact business effectively with the members. _____

15. If the employees to be served by the credit union work in more than one location or city, identify each location with the corresponding number of employees working at each. _____

16. Are there other employees of the company who are not being included in the proposed field of membership? _____. If so, give the number and location of the other employees and explain why a credit union is being proposed for this group only. _____

SPECIFIC INFORMATION - ASSOCIATIONAL CHARTER APPLICANTS

17. State the purpose and goals of the organization sponsoring this charter. _____

18. List the types of activities and their frequency, which the organization sponsors that provide contact among the members and from which common loyalties, mutual benefits, and mutual interests are developed. _____

19. In what year was the organization established? _____ Is it incorporated? _____. Where is the headquarters located? _____

20. Give statistics as to trends in membership during the last five years. _____

21. What is the frequency of members' meetings? _____. Average attendance _____. Dues required _____.

22. State the geographic territory where members reside. _____

23. Except for religious and labor union groups, obtain a copy of the current bylaws, the constitution or articles of incorporation, and recent financial statements, i.e. balance sheet, and income and expense statement. Submit these documents with this application.

24. If the bylaws, constitution or articles of incorporation provides for more than one type of membership and if all classes of membership are to be included in the credit union's field of membership, provide justification for the inclusion of other than "regular" members. _____

25. For labor union group only, complete a through c:

a. State the number of labor union members at each place of employment. _____

b. State the total number of employees, whether union members or not, working at each place of employment. Give a breakdown of union versus nonunion employees. _____

c. What has been done toward organizing a credit union on an employee basis? Discuss fully. _____

SPECIFIC INFORMATION - COMMUNITY CHARTER APPLICANTS

26. List the factors or conditions which make this residential unit a logical group for credit union operation. _____

27. If the area to be served by the credit union is adjacent to any major metropolitan area, explain why it is not considered a part of such metropolitan area. _____

28. Which business, civic, or other community organizations support the proposed credit union? List and show the support pledged including the names and titles of officials who were contacted. Obtain and attach letters of support from these individuals. _____

29. Provide a map which clearly outlines the credit union's proposed community boundaries.

30. Are there currently any state or federal credit unions operating within the proposed community boundaries? _____. If so, provide a list of the credit union's names and mailing addresses.

31. List any other financial institutions, i.e. banks, savings and loan associations, etc., located within the proposed community boundaries.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

1. List of subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signatures on the organization certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

2. Are all of the subscribers within the field of membership? _____. Do they appear to be fairly representative of the group described in the definition of the field of membership? _____. If not, explain _____

3. Does your investigation indicate that the subscribers are persons of good character? _____. If not, explain _____

4. From your investigation, is it your judgment that the directors and committee members are persons of good character, and that they have the ability and determination to operate a credit union satisfactorily? _____. If not, explain _____

5. Does it appear that there are any factions within the group which may render smooth and efficient credit union operations difficult? _____. If so, explain _____

6. Is there any indication that the proposed credit union would be used for selfish gain by any person or group of persons within the group to be served? _____.

7. Is an application for a State charter now pending? _____.

8. Has the group ever had a credit union? _____. If so, when did it liquidate or merge? _____.

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of their knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.
Signature _____, Organizer
Organizer's Address _____

Telephone No. _____ Date _____

OMB No. 3133-0015
Expiration 9-30-92

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

National Credit Union Administration
Administrative Office
1776 G Street, NW
Washington, D.C. 20456

and to: Office of Management and Budget
Paperwork Reduction Project (3133-0015)
Washington, D.C. 20503

INSTRUCTIONS

A. INFORMATION FOR CHARTER AND BYLAWS

The subscriber should select a name for the proposed credit union, desirably a short one. Although it need not fully describe the group, the name should not be misleading. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal credit union is described in the field of membership, item 4. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area in which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 1 of the *"Chartering and Field of Membership Manual."*

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

This section of the report contains information on:

1. The size and compactness of the group;
2. The nature of the common bond;
3. The attitude of the:
   a. (if occupational based field of membership) management of the sponsor organization;
   b. (if associational based field of membership) officers of the sponsor association;
   c. (if community based field of membership) community leaders and/or officers of prominent associations or organizations in the area to be served;
4. The facilities available for credit union operations;
5. The availability of existing credit union service, and
6. Other facts to support a potential for successful operation.

This section of the report should contain information on the management, association or civic leaders contacted that intend to support or utilize the credit union. In those cases where certain persons in the area are opposed to the credit union, the organizer should point out the factors which indicate that the group will be able to overcome this handicap.

Clerical assistance at least during the first few months of operation, payroll deductions, and office space are desirable aids in the development of a credit union. Plans for overcoming any obstacles to effective operation such as lack of office space or scattered field of membership should be described briefly. If more space is needed than that provided, a separate sheet may be used.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and addresses of the subscribers should be recorded legibly and completely in item 20 of this report. It is from this information that the Administration prepares section 3 of the charter.

The names of the subscribers must be IDENTICAL to their signatures on the Organization Certificate.

D. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008 - two notarized originals. At least seven, *but no more than ten persons*, must sign both copies of the organization certificate. Signatures on both copies must be identical. The person administering the oath must not be one of the subscribers. The oath on both copies of the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law.
2. Report of Official and Agreement to Serve, NCUA 4012 - one original for each board member, credit committee member, and supervisory committee member;
3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;
4. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan.

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS

Date

TO The National Credit Union Administration Board (Board)

The proposed _____ Federal Credit Union,

_____
(Mailing Address)

_____
(City) (State) (Zip Code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To pay the reasonable cost of such examinations as the Board may deem necessary in connection with determining the eligibility of the application for insurance.

2. To permit and pay the reasonable cost of such examinations as in the judgment of the Board may from time to time be necessary for the protection of the fund and of other insured credit unions.

3. To permit the Board to have access to any information or report with respect to any examination made by or for any public regulatory authority and furnish such additional information with respect thereto as the Board may require.

4. To provide protection and indemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates.

5. To maintain such regular reserves as may be required by Section 116 of the Federal Credit Union Act.

6. To maintain such special reserves as the Board, by regulation or in special cases, may require for protecting the interest of members.

7. Not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Board.

8. To pay and maintain the capitalization deposit required by Title II of the Federal Credit Union Act.

9. To pay the premium charges for insurance imposed by Title II of the Federal Credit Union Act.

10. To comply with the requirements of Title II of the Federal Credit Union Act and of regulations prescribed by the Board pursuant thereto.

11. To permit the Board to have access to all records and information concerning the affairs of the credit union and to furnish such information pertinent thereto that the Board may require.

12. To comply with Title 18 of the United States Code and other pertinent Federal statutes as they may exist or may be hereafter promulgated or amended.

We, the undersigned, certify to the correctness of the information submitted. In support of this application the undersigned submit the Schedules described below:

Schedule No.	Title

We, the undersigned, further certify that to the best of our knowledge and belief no proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or a breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any proposed or future officer commits a criminal offense.

_____ _____
Chief Executive Officer Chief Financial Officer

Note: A willfully false certification is a criminal offense. U.S. Code, Title 18, Sec. 1001.

NCUA 9500

CERTIFICATION OF RESOLUTIONS

_____ FEDERAL CREDIT UNION (PROPOSED)

We certify that we are the duly elected and qualified chief executive officer and recording officer of the above-named proposed Federal credit union and that at the charter-organization meeting the board of directors passed the following resolution and recorded it in its minutes:

"Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it further resolved that the president and treasurer be authorized and directed to execute the Application and Agreements for Insurance of Accounts as prescribed by the Board and any other papers and documents required in connection therewith; to pay all expenses and do all other things necessary or proper to secure and continue in force such insurance."

_____
Chief Executive Officer

_____
Recording Officer, Board of Directors

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NATIONAL CREDIT UNION ADMINISTRATION

FEDERAL CREDIT UNION

(A corporation chartered under the laws of the United States)

CHARTER NO. _____

NCUA 4008
1

ORGANIZATION CERTIFICATE

_____ FEDERAL CREDIT UNION

Charter No. _____

TO NATIONAL CREDIT UNION ADMINISTRATION:

We, the undersigned, do hereby associate ourselves as a Federal credit union for the purposes indicated in and in accordance with the provisions of the Federal Credit Union Act, (12 U.S.C. 1751 et seq.). We hereby request approval of this organization certificate; we hereby apply for insurance of member accounts; we agree to comply with the requirements of said Act, with the terms of this organization certificate and with all laws, rules, and regulations now or hereafter applicable to Federal credit unions.

(1) The name of this credit union shall be _____

_____ Federal Credit Union.

(2) This credit union will maintain its office and will operate in the territory described in the field of membership.

NCUA 4008
2

(3) The names and addresses of the subscribers to this certificate and the number of shares subscribed by each are as follows:

NAME	ADDRESS	SHARES

(4) The par value of the shares of this credit union will be as stated in the bylaws.

(5) The field of membership shall be limited to those having the following common bond:

(6) The term of this credit union's existence shall be perpetual: Provided, however, that upon the finding that this credit union is bankrupt or insolvent or has violated any provision of this organization certificate, of the bylaws, of the Federal Credit Union Act including any amendments thereto or thereof, or of any regulations issued thereunder, this organization certificate may be suspended or revoked under the provisions of Section 120 (b) of the Federal Credit Union Act.

(7) This certificate is made to enable the undersigned to avail themselves of the advantages of said Act.

(8) The management of this credit union, the conduct of its affairs, and the powers, duties, and privileges of its directors, officers, committees and membership shall be set forth in the approved bylaws and any approved amendments thereto or thereof.

IN WITNESS WHEREOF we[1] have hereunto subscribed our names this

day of _____, 19__.

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Subscribed before me, an officer competent to administer oaths, at _____
CITY/STATE

this _____ day of _____,

19__.

Signed _____

Title _____
(Notary public or other competent officer)

[1] At least seven signers, none of whom should administer the oath

APPROVAL OF ORGANIZATION CERTIFICATE AND CERTIFICATION OF INSURANCE

Pursuant to the provisions of the Federal Credit Union Act (12 U.S.C. 1751 et. seq.), the foregoing organization certificate and insurance of member accounts of _____ _____ Federal Credit Union are approved this _____ day of _____, 19__.

_____
ROGER W. JEPSEN
CHAIRMAN

NATIONAL CREDIT UNION ADMINISTRATION

NCUA 4009

REPORT OF OFFICIAL AND AGREEMENT TO SERVE

TO: **NATIONAL CREDIT UNION ADMINISTRATION**
(Type or Print)

Proposed _____ Federal Credit Union

Name ☐ Mr. ☐ Ms. ☐ Mrs. ☐ Miss _____ (Last / First / Middle)

Title of Newly Elected/Appointed Credit Union Position _____

Maiden Name (If Different From Above) _____

Address (Res.) _____ (Street / City / State / Zip Code)

Phone + Area Code _____ (Residence) _____ (Business)

Place of Birth _____ (City/State) Date of Birth _____

Employer _____ Social Security Number _____

Type of Business _____

Number of years with present employer _____ Your position title _____

Education background (circle highest grade completed)

1 2 3 4 5 6 7 8 9 10 11 12 (Grade and High School)

1 2 3 4 ( ) (College) MAJOR FIELD OF STUDY _____

Other training or experience _____

Are you willing to accept the position of trust for which you have been selected and to remain in office until such time as a qualified successor is found? ☐ Yes ☐ No

Have you been informed as to the general duties and responsibilities of an official of the proposed Federal credit union and are you willing to devote the time necessary to familiarize yourself with and to perform your duties? ☐ Yes ☐ No

Estimated number of hours per month you will be able to donate as a volunteer _____.

IF THE ANSWER IS YES TO THE FOLLOWING QUESTION, PLEASE PROVIDE INFORMATION AS INSTRUCTED ON REVERSE SIDE OF THIS FORM:

Have you ever been convicted of any CRIMINAL OFFENSE involving dishonesty or a breach of trust? ☐ Yes ☐ No

To facilitate the process of obtaining a credit and background check, please provide the following:

1. Any other names which you have used _____, and,
2. Previous address, (if your address changed over the past 2 years). _____
3. Name of Spouse _____

READ THE FOLLOWING CAREFULLY BEFORE SIGNING

CERTIFICATION AND AGREEMENT TO SERVE:

I certify that the information provided on this form is true and correct. Further, I, the undersigned, having been duly designated to occupy the position(s) indicated above, do hereby agree to serve in the above-stated office(s) of this proposed credit union until the first annual meeting held in accordance with the Federal Credit Union Act and the bylaws of this credit union and until the election of my successor(s). I further pledge to carry out the duties and responsibilities commensurate with said office(s) as promulgated by the Federal Credit Union Act and the bylaws of this credit union. I have read the Privacy Act Notice on the reverse side of this form.

_____ Date _____ Signature _____ Witness

NCUA 4012 PAGE 1

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PRIVACY ACT NOTICE

The Privacy Act of 1974 (Public Law 93-579) requires that you be advised as to the legal authority, purpose and uses of the information solicited by this form. Pursuant to Sections 104 and 205(d) of the Federal Credit Union Act, the information in this form is requested for the purpose of completing the investigation required for a new Federal credit union. The information in this form will be primarily used in considering the soundness of the management for the proposed Federal credit union. However, this form may be disclosed to any of the following sources: a congressional office in response to your inquiry to that office, an appropriate Federal, state or local authority in the investigation or enforcement of a statute or regulation; or employees of a Federal agency for audit purposes. Failure to complete this form or omission of any item of information, **except** for disclosure of your social security number, may result in a delay in the process for chartering the proposed Federal credit union. In accordance with Section 792.36 of NCUA's regulations, you are not required to furnish your social security number on this form. Your social security number, if voluntarily provided, will be used to more easily verify the information required by this form. No penalty will result to you as a management official or to the chartering of the proposed Federal credit union if you do not provide your social security number.

Further information needed if answer to CRIMINAL OFFENSE question on reverse side of form was YES.

CRIMINAL OFFENSE

Nature of offense _____

_____

Date of occurrence _____ Date of conviction _____

Sentence conferred _____

_____

(Attach a separate sheet if space provided is not adequate)

CRIMINAL OFFENSE GUIDELINES

The Federal Credit Union Act, Subchapter II, section 205(d), requires that, "Except with the written consent of the Administrator, no person shall serve as director, officer, committee member, or employee of an insured credit union who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or breach of trust." To assist the Administrator in making a determination of the fitness of a person who is selected to serve and who the organizer believes is qualified to serve as an official, the specific information above will need to be furnished.

If the Board believes that, in view of the facts presented and the date of the offense, they can give their consent to the appointment they will so advise that person in writing. If on the other hand, the Board believes after careful consideration that they cannot in good conscience give their written consent to the appointment they will contact the organizer and ask that another person be selected for the position. The person selected will have to complete a Report of Official and Agreement to Serve.

An indication of whether the bonding company would agree to provide coverage should be included if the person is to serve as treasurer. Bonding company agrees to provide coverage ☐ Yes ☐ No

APPLICATION TO CONVERT FROM A STATE TO A FEDERAL CREDIT UNION

The _____ Credit Union of _____ (city), _____ (State), incorporated under the laws of the State of _____ on _____, 19___, by decision of its board of directors, hereby makes application to the National Credit Union Administration to convert to a Federal credit union.

1. Field of membership of State-chartered credit union. (Use exact wording of charter, articles of incorporation or bylaws, as amended to date.)

_____

_____

_____

_____

_____

2. Is proposed Federal charter to cover same field of membership? Yes ☐ No ☐ If answer is "No," explain fully:

_____

_____

_____

_____

3. Standard financial and statistical reports as of _____, 19___, or comparable forms of reports, certified correct by the treasurer and verified by the affidavit of the president or vice-president, are attached.

4. A schedule of delinquent loans classified 2 to 6 months, 6 to 12 months, and 12 months and over delinquent is attached. (As a minimum, schedule should include for each delinquent loan: loan date, last payment date, unpaid balance, security, and comment on collectibility.)

5. The following policies on loans to members are currently in effect in this credit union:

a. Interest rates on loans: _____

_____

b. Charges incident to making loans which are passed on to borrowers: _____

_____

c. Maturity limits: _____

_____

_____

d. Unsecured loan limit: _____

_____

e. Secured loan limit: _____

_____

f. Types of security accepted: _____

_____

g. Requirements of amortization (Repayment requirements) _____

_____

6. Attached is a list of unsecured loans in excess of the amounts stipulated in the Act. (For each loan show account number, original amount, terms, and unpaid balance.)

7. Attached is a list of loans with maturities in excess of periods stipulated in the Act and the NCUA Rules and Regulations. (For each loan show account number, original amount, terms, unpaid balance, and security.)

8. Types of accounts which members are required or are permitted to maintain: Share ☐ Deposit ☐ Other ☐ (describe): _____

9. Describe any real estate owned by credit union, including a list of its current market value: _____

10. Describe and list any investments which are outside of the investment powers of Federal credit unions (Refer to Section 107(7), Federal Credit Union Act): _____

11. Names and locations of any depository institutions in which the credit union deposits its funds but which are beyond the purview of deposit powers authorized by Section 107(8) of the Federal Credit Union Act. _____

12. Describe any services rendered to or on behalf of members or of the public, other than accepting and maintaining accounts of members and making loans to members: _____

13. Describe what you propose to do about any policies, procedures, assets or liabilities which do not comply with the Federal Credit Union Act: _____

14. Give specific reasons as to why you desire to convert to a Federal credit union. _____

We hereby authorize the National Credit Union Administration to examine our books and our records and agree to pay an examination fee in accordance with Section 701.6 of the National Credit Union Administration Rules and Regulations.

We, the undersigned _____, Chief Executive Officer and _____, Chief Financial Officer of the _____ Credit Union of _____, State of _____, certify: That we are the duly elected Chief Executive Officer and the Chief Financial Officer, respectively, of said credit union; that the statements made in this Application to Convert from a State to a Federal Credit Union and the schedules attached hereto are true, complete, and correct to the best of our knowledge and belief and are made in good faith

_____
TITLE:
(CHIEF EXECUTIVE OFFICER)

_____
TITLE:
(CHIEF FINANCIAL OFFICER)

NCUA 4401

NOTICE OF MEETING OF THE MEMBERS

_____ FEDERAL CREDIT UNION

_____ _____
(City) (State)

THIS PROPOSITION WILL BE DECIDED BY A MAJORITY OF THE MEMBERS WHO VOTE

Notice is hereby given that a meeting of the members of _____ Federal Credit Union, _____, _____ has been called and will be held at _____ on _____, 19___, at _____ o'clock, ___ M. for the purpose of considering and voting upon the following resolution:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and that its operation under Federal charter be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union be and are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to a State-chartered credit union"

The board of directors of this credit union has given careful consideration to the advantages and the disadvantages of the proposed conversion and believes it to be in the best interest of the members for the following reasons: _____

The proposed conversion would result in the following disadvantages or adverse changes in services and benefits to the members of the credit union: _____

NCUA 4221

The board of directors recommends that the members approve the proposal to convert to a State charter.

The members' accounts will ☐ will not ☐ continue to be insured by the National Credit Union Share Insurance Fund.

Attached is your ballot. You are urged to bring your ballot to the meeting and to cast your vote after hearing the discussion of the proposal. If you cannot attend the meeting, you are urged to mark your vote, date and sign your ballot, have it postmarked no later than the date and the time announced for the meeting of the members, and mail it to the following address:

_____

_____

_____

BY ORDER OF THE BOARD OF DIRECTORS

_____

TITLE:
(CHIEF EXECUTIVE OFFICER)

_____

TITLE:
(CHIEF RECORDING OFFICER)

Issued _____
(Date)

NCUA 4221

AFFIDAVIT

PROOF OF RESULTS OF MEMBERSHIP VOTE ON PROPOSED CONVERSION

We, the undersigned _____ president/vice president and _____ secretary of the _____ Federal Credit Union, hereby swear or affirm as follows:

1. That the conversion proposal as set forth in the attached Notice of Meeting of the Members was fully explained to the members present at said meeting of members.

2. That on the date of the said meeting of members there were _____ members of this credit union qualified to vote; _____ members were present at said meeting; of those members present, _____ members voted in favor of the conversion and _____ members voted against the conversion; of those members not present at the meeting but who filed ballots, _____ members voted in favor of the conversion and _____ members voted against the conversion; and that, without duplication of the votes of any member, a total of _____ members voted in favor of the conversion and _____ members voted against the conversion.

3. That the action of the members of this credit union at said meeting is fully and completely recorded in the minutes of said meeting and all ballots cast by the members on the question of conversion, either at the meeting or by delivery to the credit union, are on file with the secretary of this credit union.

_____
TITLE:
(CHIEF EXECUTIVE OFFICER)

_____
TITLE:
(CHIEF RECORDING OFFICER)

_____
Federal Credit Union

Subscribed before me, an officer competent to administer oaths, at _____

_____, this _____ day of _____, 19___.

Signed _____

(SEAL)

Title _____
(Notary Public or other competent officer)

My Commission Expires _____, 19___

NCUA 4585

BALLOT FOR CONVERSION PROPOSAL

I have read the notice concerning the meeting of the members of the _____ Federal Credit Union called for _____, 19___, to consider and to vote upon the following proposition:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____, and operation under Federal Charter Number _____ be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union be and are hereby authorized and directed to do all things necessary to effect and complete the conversion of this credit union from a Federal to a State-chartered credit union."

✔ I hereby cast my vote on the proposition: (Place an X in the square opposite the appropriate statement.)

I vote for the conversion ☐

I vote against the conversion ☐

_____ (Account Number)

_____ (Signature of Member)

Date _____

NCUA 4506

OMB No. 3133
Expiration 9-30-92

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

National Credit Union Administration
Administrative Office
1776 G Street, NW
Washington, D.C. 20456

and to: Office of Management and Budget
Paperwork Reduction Project (3133-)
Washington, D.C. 20503

INFORMATION TO BE PROVIDED IN SUPPORT OF THE APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

_____ Credit Union

1. Show below the location of the credit union's books and records.

_____
(Street Address)

_____
(City) (State) (Zip) (Telephone)

2. Show the date (month, day, year) in which the credit union was chartered. _____ 19 ____
3. Attach a copy of the credit union's field of membership as shown in the charter, articles of incorporation and/or bylaws, as amended to date. Please identify it as the first schedule in the consecutive number sequence, as discussed in the instructions. Schedule No. _____
4. Potential membership (total number of persons who could be served, including present members). _____
5. Describe type activity sponsor organization is engaged in. (See instructions pertaining to Item No. 5.)

_____

_____

_____

6. Does the credit union operate under standard bylaws provided by the State Supervisory Authority? Yes ☐ (Stop) No ☐ (Complete a.)
   a. Attach a copy of the current official bylaws under which the credit union operated. Schedule No. _____
7. Is the credit union under any administrative restraints by the State Supervisory Authority? Yes ☐ (Complete a.) No ☐ (Stop)
   a. Explain fully on an attached schedule. Schedule No. _____
8. Attach a copy of the latest State supervisory authority examination report or attach a copy of the latest certified public accountant's report if made in lieu of a State supervisory authority examination. Copies of any correspondence from the State supervisory authority which accompanied the examination report should also be included.
9. Attach copies of the Balance Sheet and of the Statement of Income and Expense (or Financial and Statistical Report) for the month-end preceding the date of this application and for the same month of the preceding year. Schedule Nos. _____ . (Identify current year statement with (a) after schedule no. and previous year with (b).)
10. Reserves
    a. Show below the requirements of the State law and/or your bylaws for transfer of earnings to reserves (either monthly or at the end of each accounting period).

11. Delinquent Loans and Charged-off Loans
    a. Attach a copy of the delinquent loan list as of the month-end preceding the date of this application. See instructions pertaining to Item No. 11a. Schedule No. _____ .

b. List below the requested information on delinquent loans for the last four calendar quarters preceding the date of the application (March 31, June 30, September 30 and December 31). Also show total share and loan balances for all members for same period.

(a) *Other Delinquent Categories	(b) Delinquent Categories	Date _____	Date _____	Date _____	Date _____
	2 mos. to less than 6 mos.	$	$	$	$
	6 mos. to less than 12 mos.	$	$	$	$
	12 mos. and over	$	$	$	$
	Totals				
	Share Balances	$	$	$	$
	Loan Balances	$	$	$	$

*See instructions pertaining to Item No. 11 b

c. List below the requested information on loans charged off during the last three years and the current year. List total of all reserves both revocable and irrevocable for the same period as (balance at year-end or current period).

	19 _____	19 _____	19 _____	Current Yr. to Date _____ 19 ____	*Totals Since Organization
Total Charged Off					
Total Recovered					
Net Charged Off					
Total of all Reserves					

*If this information is available

12. Does the credit union have any unrecorded or contingent liabilities (including pending law suits or civil actions)? Yes ☐ (Complete a.) No ☐ (Stop)
a. List on a schedule the complete description of such liabilities, including amounts, status of the items, and a description of the circumstances creating the liabilities or contingent liabilities. Schedule No. _____

13. Do any asset accounts (other than loans to members, investments and real estate) have actual values less than the book values shown on the Balance Sheet? Yes ☐ (Complete a.) No ☐ (Stop)
a. List on a separate schedule a description of such assets, showing at least the following information: account number, description of item, book value and actual value. Schedule No. _____

14. List below or on an attached schedule any investments or real estate as discussed in the instructions pertaining to Item No. 14. Schedule No. _____ Attach a copy of the credit union's current investment policies. Investments/Loans to Credit Union Service Organization (CUSO) should be listed separately on page 6.

Description of Item	Current Market Value	Current Book Value
_____	$ _____	$ _____
_____	$ _____	$ _____
_____	$ _____	$ _____

15 Individual Share and Loan Ledgers.

a. Were the totals of the trial balance tapes of the individual share and loan ledgers in agreement with the balances of the respective general ledger control accounts as of the month-end preceding the date of this application? Yes ☐ (Stop) No ☐ (Complete b.)

b. What are the differences as of the month end preceding the date of this application?

	Shares	Loans
Balances in General Ledger	$ _____	$ _____
Totals of the trial balance of the individual ledgers	$ _____	$ _____
Differences	$ _____	$ _____

16 Supervisory Committee:

a. What is the effective date of the last complete comprehensive annual audit performed by the supervisory committee? Effective Date _____

(1) If the effective date of the annual audit is not within the last 18 months what is the supervisory committee's target date for completion of a comprehensive audit? Date _____

b. Show the effective date of the supervisory committee's last controlled verification of all members' accounts: Effective Date _____

(1) If all members' accounts have not been verified under controlled conditions during the last two years what is the supervisory committee's target date for completion of the verification program? Date _____

c. If it is necessary to complete either 16 a(1) or 16 b(1), please describe the directors' plans for seeing that the target dates are met. (Discuss below or on an attached schedule.) Schedule No. _____

17 Surety Bond. List below the credit union's surety bond coverage.

a. Name of carrier _____

b. Standard form number of the bond (i.e. 23, 576, 577, 578, 581, 582 CU-1, other) _____

c. Basic amount of coverage $ _____

d. Bond premium paid to (date) _____

e. What is the amount of coverage required by State law or your bylaws? _____

f. Riders to the bond (list below) (i.e., faithful performance, forgery, misplacement, etc.)

18. Credit Union Services

Does the credit union render any services to or perform any functions on behalf of the members, non-members, organizations, or the public other than the usual savings and loan services for members? Yes ☐ (Complete a.) No ☐ (Stop)

a. Attach a schedule describing each activity in full. Schedule No. _____

19. Does the credit union know of any adverse economic condition that is affecting or will affect its present or future operation or that of the sponsor organization? Yes ☐ (Complete a.) No ☐ (Stop)

a. Attach a schedule describing the condition and its possible effect on the credit union's future. Schedule No. _____.

20 To the best of the credit union's knowledge and belief, has any director, officer, committee member, or employee been convicted of any criminal offense involving dishonesty or breach of trust? Yes ☐ (Complete a.) No ☐ (Stop)

a. Attach a statement describing the circumstances. Schedule No. _____.

21. Lending policies and practices:

a. Complete (on page 4) showing the present policies and practices on loans to members

b. Complete page 5 in accordance with the instructions pertaining to Item No. 21 b.

LENDING POLICIES AND PRACTICES

	Maximum Loan Amount	Maximum Period of Repayment	Required Amount of Downpayment (Equity)
1. *Credit Union Policies and Practices*			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
(1) New Auto Collateral			
(2) Used Auto Collateral			
(3) Real Estate			
(a) First Mortgage			
(b) Second Mortgage			
(4) Comakers			
(5) Others (describe)			
c. Loans to Organizations			
d. Loans to Director, Officers, or Committee Members			
2. *State Credit Union Law, Bylaws*			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
c. Loans to Directors, Officers, or Committee Members			

List below or on an attached page, any additional policies, including the interest rates applied to members' loans and the method of assessing and accounting for interest income, i.e.; add-on, discount or unpaid balance.

SCHEDULE OF LARGEST LOANS

Complete this form as discussed in the instructions pertaining to item 21 b

Account No.	Unpaid Loan Balance	Repayment Period (No. Months)	Status of Repayment		Appraised Collateral Value*	Description of Collateral
			Current	Delinquent (No. Months)		
	$				$	

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CREDIT UNION SERVICE ORGANIZATION (CUSO)

1. Name of CUSO _____

2. Date of CUSO's Organization _____
(Date of obtaining charter from State)

3. Type of organization (circle one):

a. General Partnership
b. Limited Partnership
c. Joint Ownership
d Corporation

4. Owners of CUSO (list name, charter number if FCU, and percentage of ownership, if possible).

Name - Charter Number (if FCU)	%	Name - Charter Number (if FCU)	%
a. _____	_____	_____	_____
b. _____	_____	_____	_____

(Continue on reverse side if additional space is required)

5. Capitalization (list investors and amount of investment in CUSO).

Name - Charter Number (if FCU)	Amount	Name - Charter Number (if FCU)	Amount
a. _____	_____	_____	_____
b _____	_____	_____	_____

(Continue on reverse side if additional space is required)

6. List all known services which are being offered by the CUSO (be as specific as possible).

_____

_____

_____

7. Comments (include all other pertinent information, if applicable, not previously discussed).

_____

_____

_____

8. Attach latest Financial and Statistical Report of CUSO, if available.

INSTRUCTIONS FOR COMPLETION OF APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

The application and all supporting documents should be prepared, photocopied, and submitted in accordance with the procedures outlined in the letter that transmitted these instructions. Additional schedules may be included if deemed appropriate.

All items should be completed. If the answer given to a question is followed by the word "Stop," proceed to the next numbered question. If, however, the answer given is followed by instructions, the additional parts of that question should be completed before going on to the next question.

When page 1 specifies that a schedule should be prepared and attached, please assign a schedule number in consecutive order, starting with number one. Please show the schedule number at the top right-hand corner of the schedule.

Some of the items are self-explanatory and require no special instructions. Other items, however, need special explanations, definitions, and instructions for completion. These are listed below, identified by the same item numbers as appear in Exhibit A.

Item No. 5: Show whether the sponsor organization is associational, occupational or residential. If occupational, please show the specific products or services produced.

Item No. 10: Reserves: The term "reserve" in Exhibit A means that account, or accounts, which represents segregated portions of earnings as provided by the law, bylaws, and/or the credit union's management for the absorption of losses relating to loans to members. (These accounts are usually called Regular Reserve, Reserve for Bad Debts, Guarantee Reserve, Guarantee Fund, Special Reserve for Losses, and Allowance for Loan Losses)

Item No. 11 a: The delinquent loan list requested should include, for each delinquent loan, the account number of the borrower, date of loan, original amount of loan, unpaid balance, date of last payment of principal, excluding transfers from pledged shares, collateral, and comments regarding the collectibility of each loan in the categories 6 months to less than 12 months and 12 months and over. Payments of interest only should be so identified.

For the purpose of this application, loan delinquency will be determined on the basis of the borrowers' payments in relation to the terms of the notes, as follows:

If a loan is in arrears by two monthly payments plus any part of the third payment, the loan is 2 months delinquent and, therefore, the entire unpaid balance is shown in the 2 months to less than 6 months category. A loan in arrears a total of 6 monthly payments plus any part of the seventh payment would be 6 months delinquent and the entire unpaid balance shown in the 6 months to less than 12 months category. A loan in arrears a total of 12 monthly payments plus any part of the thirteenth payment would be 12 months delinquent and the entire unpaid balance shown in the 12 months and over category.

Item No. 11 b: the schedule provided for the delinquent loan information is set up in delinquency categories of 2 months to less than 6 months, 6 months to less than 12 months, and 12 months and over. Credit unions that compute delinquency using categories other than shown in column (b) may use these other categories and show them in column (a). Credit unions using column (a) need not show the delinquencies in the column (b) categories. It is not necessary to report on loans which are delinquent less than 2 months.

Adverse Trends: If items 8, 9, or 11 indicate adverse trends such as significant decreases in shares, loans or reserves, increases in loan delinquency or loan charge-offs, or unresolved serious exceptions shown in the State examination report the credit union may attach an explanation and identify it as "Explanation of Adverse Trends or Unresolved Examination Exceptions" and assign it a schedule number.

Item No. 14: This item need be completed only if the credit union owns any of the following:

A. Investments in U.S. Government securities guaranteed as to principal and interest or Federal Agency securities, the market value of which is now less than the book value.

B. Real estate other than that used entirely for the credit union's own office(s).

C. Other investments of any type except:

1. Loans to other credit unions.
2. Certificates of, or accounts in, federally insured savings and loan associations.
3. Certificates of deposit in National or State banks
4. Deposits or accounts in State central credit unions
5. Common trust investments with International Credit Union Services Corporation (ICUS).

If corporate bonds are listed, please show maturity date, rate of interest on bonds and current yield rate.

If stocks are listed, please show number of shares and bid price.

Please identify the source of the market valuation information and the date of such information.

Item No. 21 b: The largest loans to members should be shown on page 5. In selecting the loans for this Exhibit, list the largest outstanding unpaid loan balance and proceed in descending order by dollar amount until the number specified

below has been shown. The number of such loans to be listed will be determined as follows:

If your credit union has the following no. of outstanding loans	You should list the following no. of the largest unpaid balances
Under 100	5
100 to 199	10
200 to 299	15
300 to 399	20
400 or more	25

If any of the above loans are delinquent, please show the number of months delinquent in the appropriate "Status of Repayment" column.

Page 5: Complete page 6 for each investment/loan to a Credit Union Service Organization (CUSO).

TERMINATION OF INSURANCE

Should the credit union, after obtaining insurance of member accounts, desire to terminate its insured status, this could be accomplished by complying with the provisions of Section 206(a), (c) and (d) of Title II of the Federal Credit Union Act. This action would require approval by a vote of the majority of the members, and ninety days written notice of the proposed termination date to NCUA. Member accounts would continue to be insured for one year following termination of insurance and the insurance premium would be paid during that period. After termination of insurance, the credit union shall give prompt and reasonable notice to all members whose accounts are insured that it has ceased to be an insured credit union.

Sections 206(a)(2) and 206(d)(2) and (3) of the Act provide that an insured credit union may also terminate its insurance by converting from its status as an insured credit union under the Act to insurence from a corporation authorized and duly licensed to insure member accounts. In this event, approval is required by a majority of all the directors and by affirmative vote of a majority of the members voting, provided that at least 20 percent of the members have voted on the proposition. Under this provision for termination, insurance of member accounts would cease as of the date of termination.

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS STATE CHARTERED CREDIT UNION

Date _____

TO: The National Credit Union Administration Board

The _____ Credit Union,

Insurance Certificate Number _____ (if applicable)

_____ (mailing address) _____ (city) (state) (zip code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To permit and pay the cost of such examinations as the NCUA Board deems necessary for the protection of the interests of the National Credit Union Share Insurance Fund;

2. To permit the Board to have access to all records and information concerning the affairs of the credit union, including any information or report related to an examination made by or for any other regulating authority, and to furnish such records, information, and reports upon request of the NCUA Board;

3. To possess such fidelity coverage and such coverage against burglary, robbery, and other losses as is required by Parts 701.20 and 741 of NCUA's regulations;

4. To meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on Federal credit unions by Section 116 of the Federal Credit Union Act and Parts 702 of NCUA's regulations, and to maintain such special reserves as the NCUA Board may by regulation or on a case-by-case basis determine are necessary to protect the interests of members. Any waivers of the statutory reserve or full and fair disclosure requirements or any direct charges to the statutory reserve other than loss loans must have the prior written approval of the NCUA Board. In addition, corporate credit unions shall be subject to the reserve requirements specified in Part 704 of NCUA's regulations;

5. Not to issue or have outstanding any account or security the form of which has not been approved by the NCUA Board, except accounts authorized by state law for state credit unions;

6. To maintain the deposit and pay the insurance premium charges imposed as a condition of insurance pursuant to Title II (Share Insurance) of the Federal Credit Union Act;

7. To comply with the requirements of Title II (Share Insurance) of the Federal Credit Union Act and of regulations prescribed by the NCUA Board pursuant thereto; and

8. For any investments other than loans to members and obligations or securities expressly authorized in Title I of the Federal Credit Union Act, as amended to establish now and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When, as of the end of any dividend period, the amount in the Investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

9. When a state-chartered credit union is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units, such nonmember accounts shall be identified as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union will advise any present nonmember share and deposit holders by letter that their accounts are not insured by the National Credit Union Share Insurance. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

10. In the event a state-chartered credit union chooses to terminate its status as a federally-insured credit union, then it shall meet the requirements imposed by Sections 206(a)(1) and 206(c) of the Federal Credit Union Act and Part 741 6 of NCUA's regulations

11. In the event a state-chartered credit union chooses to convert from federal insurance to some other insurance from a corporation authorized and duly licensed to insure member accounts, then it shall meet the requirements imposed by Sections 206(a)(2), 206(c), 206(d)(2), and 206(d)(3) of the Federal Credit Union Act

In support of this application we submit pages 1-6 and Schedules described below:

Schedule No.	Title

CERTIFICATIONS AND RESOLUTIONS

We, the undersigned, certify that we are the duly elected and qualified presiding officer and recording officer of the credit union and that at a properly called regular or special meeting of its board of directors, at which a quorum was present, the following resolutions were passed and recorded in its minutes:

We, the undersigned, certify to the correctness of the information submitted.

Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it resolved that the presiding officer and recording officer be authorized and directed to execute the Application and Agreement for Insurance of Accounts as prescribed by the NCUA Board and any other papers and documents required in connection therewith and to pay all expenses and do all such other things necessary or proper to secure and continue in force such insurance.

We, further certify that to the best of our knowledge and belief no existing or proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any existing, proposed, or future officer, committee member or employee is indicted for such an offense.

(Signature) Presiding Officer, Board of Directors

(Print or type Presiding Officer's Name)

(Signature) Recording Officer, Board of Directors

(Print or type Recording Officer's Name)

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT

(Attach a separate application for each group included in your request for expansion.)

1. Name and address of credit union: _____

_____

2. Name of group association to be added: _____

_____

(If Association, include Charter Bylaws.)

Description of business:

_____

Address: _____

_____

3. Total number of potential employees/members to be added: _____

Sponsor's headquarters location: _____

If relevant, work and/or paid from location: also indicate the number of employees at each location:

_____

_____

_____

4. Distance to nearest credit union service facility group has access to: _____

Address of the nearest service facility group has access to: _____

_____

5. Is the group eligible for membership in any other credit union? NO____ YES_____

If yes, give the name and location of the other servicing credit union. Also include, if applicable, a letter of release from the overlapped credit union. _____

6. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. _____

The regional director may request other documentation appropriate to the situation. This may include current financial statements, branch office financial statements, or other data.

Other comments:

Name and title of credit union board-authorized representative

_____

(e.g., Credit Union Manager/President/CEO-Please print or type)

Signature _____ _____

(Date)

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SEP CONTROL LOG

Date credit union received SEP charter amendment:_____

Date Service Started	Date Approved by Board	Board Certification (Authorized Signature)	Name and Location (City, ST) of Sponsor Group	Distance to Nearest CU Branch	Number of Employees/Primary Potential Members	

Control Page Number_____

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Appendix E—Use of Outside Agents to Solicit Field of Membership Amendments and Members

Purpose

This appendix addresses the National Credit Union Administration's (NCUA) experience with credit unions and arrangements whereby agents outside the organization of the credit union solicit credit union membership in conjunction with the sale of products or services. This section also provides guidelines for these arrangements.

While these guidelines are not mandated by federal law or regulation, they do represent what the NCUA considers to be safe and sound policies and procedures to protect the credit union's assets. Since state laws vary, the guidance may not address every area. Thus, each credit union considering such ventures should obtain a written legal opinion from its counsel, as well as financial counseling from its normal sources.

Background

As credit unions continue to grow and expand their fields of membership to select groups, there has been an increased interest by vendors in mutually beneficial relationships. These business dealings involve the vendor selling services or products and may also include the credit union's financing the sale of items. Generally, such arrangements operate as follows:

- The vendor contacts select group sponsors providing information on the credit union and the insurance or other product to be offered. Alternatively, credit unions may initiate relationships, typically with an automobile dealer, to finance autos. This is commonly called "indirect lending".
- The vendor assists the sponsor in requesting inclusion in the credit union's field of membership. With an indirect lending arrangement, the vendor may have the purchaser prepare a membership application and promptly submits the application, usually by a fax, to the credit union.
- After the field of membership amendment is approved by NCUA or the state regulator, the vendor arranges to meet with employees. In the case of individual membership applications, approval or denial by the credit union's membership officer is required prior to consideration of lending activity. Under no circumstances may a credit union provide membership services conditioned upon subsequent action approving membership.
- The vendor represents the credit union to the employees and enrolls them into membership in accordance with appropriate laws, regulations, and bylaws.
- The vendor explains the products or services being marketed and enrolls the employee in a program or plan. In the case of insurance plans, policies are typically paid by periodic installments, and frequently in one lump sum.
- The vendor arranges for payroll deductions to the credit union. If the employee has an insurance policy or some other plan with periodic installments, generally, the credit union's deduction is increased and arrangements are made for the credit union to forward the appropriate amount to the vendor's company.

These arrangements have been beneficial to some credit unions and vendors. The credit union receives a service—solicitation of members—free of charge. Membership increases and the credit union grows. The vendor has a marketing tool to complement its marketing program. Additionally, in the case of insurance vendors, if the credit union distributes the premiums or other payments directly to the vendor's company, the vendor's paperwork is greatly reduced.

Safety and Soundness Issues

NCUA's experience in these arrangements has shown that potential risk to the credit union exists unless prior planning and internal controls are in place. NCUA has liquidated or taken administrative action in a number of credit unions in recent years when these controls were absent. Some unsafe and unsound practices are described below:

- The credit union did not investigate the vendor's or the vendor's company's reputation, financial soundness, or the authority to do business in the state where the credit union operated. In those cases where NCUA liquidated the credit unions, the companies or firms were of the fly-by-night variety, out to obtain quick profits in short periods of time. Dealing with well established and reputable firms is important if problems arise to member complaints. Additionally, in the event of suits against the company or firm, adequate financial standing can often mitigate the credit union's losses.
- The credit union did not review the programs or products offered to "its" new members. In several instances, the policies were life insurance policies or annuity contracts which called for annual premiums (normally paid by installments) over long periods of time—20 to 30 years. While normal for such contracts, they generally called for limited reimbursement in the event of cancellation, for instance 20 percent reimbursement, if canceled before one year, 45 percent, two years, 55 percent, three years, etc. Many members who enrolled in these contracts did not understand the terms. When they subsequently canceled the policy and received only a 20 percent return, they held the credit union responsible. While the credit union had no legal obligation, it presented public relation problems which could have been avoided.
- The credit union was unfamiliar with the sales techniques used by the vendor to enroll members into the credit union and in the vendor's programs. In the liquidated credit unions mentioned above, unethical methods were used to sign unsophisticated members. It was not uncommon to have them just sign blank forms which included a membership card, payroll deduction authorization, insurance policy, and a loan application and the first year's premium or other payment.
- The credit union did not provide written instructions to the vendor on procedures to enroll members. Thus the vendor contacted groups which the credit union was ill-equipped to serve.
- The credit union authorized the vendor to approve loans en masse to cover first year fees or insurance premiums. NCUA considers this an unsafe and unsound practice which will result in appropriate administrative action. In several liquidated credit unions which had arrangements with insurance vendors, employees were enrolled in the credit union, received a loan to pay the first year's premium and authorized payroll deductions.

The reason the insurance agency proceeded in this manner was to be reimbursed immediately by the carrier for new policies. Such reimbursement ranged from 85 to 105 percent of the first year's premium. Thus an agency that enrolled just 100 new members for $500 per year insurance contracts could have received $42,500 to $52,500 in fees. This desire to obtain reimbursement clouded the vendor's objectivity and resulted in members having unwanted policies, which they generally canceled. At a minimum, since the policy holder received only 20 percent return on the policy, the credit union had a public relations problem collecting its exposed 80 percent. At the worst, the credit union had a loss loan.

- The credit union failed to obtain proper payroll deduction authorizations and authority to remit fees or insurance premiums to the company. In several cases, payroll deduction for all members, even those who chose not to enroll in the vendor's program, were sent to the company first. The company then sent the unauthorized fee or premium deductions to the credit union. This procedure exposed the credit union to misappropriation of funds by the company, to a potential surety problem, and to an uninsured status until the funds were received in the credit union.
- In another case, a vendor contracted with a credit union to assist credit union members select, locate, and negotiate the purchase or lease of automobiles. Members paid a fee to the vendor during the closing transactions. The vendor also provided marketing assistance to attract select employee groups into the credit union. The vendor was alleged to have falsified and concealed material facts and to have aided prospective credit union members in falsifying credit information to the credit union in attempts to obtain credit. In some cases the prospective member obtained possession of the automobile prior to being accepted as a member and in other cases prior to being approved for the financing. Other operational issues that have led to abuses are the following:

(1) The dealer directly accepting the borrower's payments.

(2) The dealer making payments on behalf of the borrower potentially disguising past due accounts.

(3) The borrower/purchaser applying for the title potentially resulting in an improperly recorded lien.

(4) The dealer financing the down payment thus allowing the borrower to have no stake in the collateral.

(5) The credit union permitting or initiating overdrafts in the vendor reserve or holdback accounts. (Sometimes the credit union requires deposits from the dealer to be held by the credit union to better assure good faith performance by the vendor.)

(6) The credit union placing full reliance on the dealer for credit checks.

(7) Financing indirect loans that are out of the credit union's normal trade area.

(8) The dealer adds costs to the purchase price, such as insurance, warranties, and taxes, thus leaving the borrower with no equity in the car, and the lender with an undercollateralized loan.

(9) Dealers generate a large volume of loans in an attempt to overwhelm credit union staff in hopes that the weaker loans will be approved. (There are instances where dealers resubmit previously denied loans during peak periods in attempts to get them approved.)

(10) The dealer inflates the purchase price or the trade in values, resulting in undercollateralized loans.

(11) An increased potential for making loans to persons who are not eligible to be credit union members exists because of dealer involvement.

(12) By allowing the dealer to negotiate the contract, including interest rates, there is a possibility of inequity among members.

In many instances, the prospective credit union member was pressured to solicit his employer for inclusion into the credit union's field of membership. In certain of these instances, the employer group had existing credit union affiliation with another credit union. In certain other instances, the vendor indicated the prospective member was affiliated with a legitimate group in the credit union's field of membership, when, in fact, the person was not employed by the group. The vendor failed to properly complete required documentation for loans and lease agreements. In some cases the vendor indicated excessively high annual mileage limits in lease agreements.

Recommended Investigative Procedures

Before entering into an agreement with a vendor acting as the credit union's agent in soliciting membership, a federally insured credit union should thoroughly investigate the impact of this action on its financial operations and condition; determine its legal liabilities; clearly define its moral responsibilities; and assure proper control of these activities. The following steps are recommended:

- Thoroughly investigate the financial condition of all corporations, partnerships or other entities involved in the activities. Obtain and review financial statements and credit reports, such as Dun and Bradstreet, on each entity. Consider the need for appropriate bonding by each company.
- Review the organizational structure and reputation of each entity. Included in the review should be a certification that each entity is authorized to do business in the state where the credit union is authorized to do business.
- Review and approve the contracts or policies to be offered. Since members may hold the credit union morally responsible for problems which may occur, the officials should consider the impact of each contract or policy on its public relations with members.
- Determine through a written legal opinion that all forms, documents and procedures used by the credit union to obtain membership, payroll deductions or to transfer funds to a vendor are legal and protect the credit union.
- Ascertain the credit union's liability under the Holder in Due Course rule.
- Determine the type of recourse agreement (full recourse, limited recourse or without recourse) that the credit union will enter into with the vendor.
- Develop cash flow and budget projections showing the effect of increased membership on the credit union's financial condition and ability to serve new members.
- Track by individual vendor, loans, loan delinquency and loan losses for each financing derived from the indirect lending relationship.
- Develop procedures to monitor the activities of vendors as discussed below under Agreements.
- Develop brochures and handouts to be presented to potential members. Among these should be a disclaimer that the credit union does not endorse the products or services and that the vendor can make no commitments regarding membership approval or the granting of loans. Other materials to be presented are discretionary by the credit union.
- Obtain written confirmation from surety that such activities are bondable.
- Ensure the individual in charge of indirect lending is experienced with indirect financing or contacts another credit union with experience in this type of lending.
- Start slow, utilizing only one or two reputable new car dealerships.

Agreements

All arrangements with a vendor should be in writing and reviewed by credit union legal counsel. Such agreements should include, but not be limited to, the following:

- Scope of the vendor's authority to contact sponsors, such as limits on sponsor's assets, number of employees/potential members, financial condition organizational structure, geographical location, and sponsor stability in the area.
- Procedures for the vendor to follow in contacting sponsors. These should require the vendor to present any product or service as separate and distinct from credit union membership and to state that inclusion in the field of membership is subject to regulatory approval. There should be absolute indication that the credit union is not endorsing any product or services marketed by the vendor.
- Procedures for vendors to follow once a sponsor is included in the credit union's field of membership.
- Procedures for automobile dealers to follow when shopping sales contracts to lenders.
- Understanding and agreements on fees or points paid to automobile dealers.

- Agreement that products or services to be offered and materials, brochures and handouts to be presented by the vendor are to be approved, in advance, by the credit union.
- Agreement that all approved brochures and handouts of the credit union will be distributed.
- Agreement that credit union representatives may accompany the vendor on contacts with sponsors and on membership enrollments.
- Agreement that the credit union may disqualify any vendor or vendor's representative from representing the credit union. Generally such an agreement will include a preliminary approval process as well as monitoring standards to include necessary credit union training.
- Procedures for auditing indirect lending activities with the dealer.
- Any other standard contractual agreements necessary to contract law.

Summary

Credit unions and vendors can engage in mutually beneficial contractual agreements provided that adequate planning and internal controls are instituted. Credit unions engaging in these activities should plan, direct, and control these activities in a safe and sound manner.

Appendix F—Trade Associations

Credit Union National Association (CUNA), P.O. Box 431, Madison, WI 53701, 608–231–4000

National Association of Federal Credit Unions (NAFCU), 3138 N. 10th Street, Suite 300, Arlington, VA 22201, 703–522–4770

National Association of State Credit Union Supervisors (NASCUS), 1901 North Fort Myer Drive, Suite 201, Arlington, VA 22209, 703–528–8351

National Federation of Community Development Credit Unions (NFCDCU), 120 Wall Street, 10th Floor, New York, NY 10005–3902, 212–809–1850

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Part V

Department of Education

National Institute on Disability and Rehabilitation Services; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1995

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133F, 84.133G, 84.133N, and 84.133P]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1995

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR) this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goals. National Education Goal 6 states: By the Year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

The statute requires that each applicant for a grant demonstrate how its proposed activities address the needs of individuals from minority backgrounds who have disabilities.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

Research Fellowships—34 CFR Part 356.

Field Initiated Research—34 CFR Parts 350 and 357.

Special Projects and Demonstrations for Spinal Cord Injuries—34 CFR Parts 350 and 359.

Research Training and Career Development Program—34 CFR Parts 350 and 360.

Program Title: Rehabilitation Research Fellowships.

CFDA Number: 84.133F.

Purpose: The purpose of this program is to build research capacity by providing support to highly qualified individuals to perform research on the rehabilitation of disabled persons.

Selection Criteria: The Secretary evaluates applications for fellowships according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of NIDRR.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

ELIGIBLE APPLICANTS: Individuals only are eligible to apply for research fellowships under this program.

Program Authority: 29 U.S.C. 761a(d).

APPLICATION NOTICE FOR FISCAL YEAR 1995

[Research Fellowships, CFDA No. 84.133F]

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Research Fellowships	11/15/94	10	$40,000	12

Program Title: Field-Initiated Research.

CFDA Number: 84.133G.

Purpose: This program is designed to encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to improve the lives of individuals with disabilities, and to support research and demonstration, development, or knowledge dissemination projects as described in program regulations that address important activities not supported by Institute-funded research or that complement that research in a promising way.

Invitational Priorities: The Secretary is particularly interested in applications that address one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are:

(1) Investigations of the unique rehabilitation-related needs of individuals with disabilities from minority backgrounds.

(2) Investigations or demonstrations of innovative services for individuals with disabilities from minority backgrounds.

APPLICATION NOTICE FOR FISCAL YEAR 1995

[Field-Initiated Research, CFDA No. 84.133G]

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Field-Initiated Research	11/1/94	20	$125,000	36

Selection Criteria: The Secretary uses the following criteria to evaluate an application under this program:

(a) *Importance of the problem.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed project addresses a problem that is significant to persons with disabilities or to those who provide services to them; and

(2) The proposed project is likely to produce new and useful knowledge, techniques, or devices that will develop or disseminate solutions to problems confronting persons with disabilities.

(b) *Design of the project.* (45 points)

(1) The Secretary reviews each application for a research and demonstration project to determine the extent to which—

(i) The review of the literature is appropriate and indicates familiarity with the relevant current research;

(ii) The research hypotheses are theoretically sound and based on current knowledge;

(iii) The sample populations are adequate and appropriately selected;

(iv) The data collection instruments and methods are appropriate and likely to be successful;

(v) The data analysis measures are appropriate; and

(vi) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses.

(2) The Secretary reviews each application for a knowledge dissemination project to determine the extent to which—

(i) The need for the information has been demonstrated;

(ii) The target populations are appropriately specified;

(iii) The dissemination methods are appropriate to the target population;

(iv) The materials for dissemination are prepared in media accessible to the target population;

(v) There are adequate means of documenting and evaluating the effectiveness of the dissemination activity.

(3) The Secretary reviews each application for a development project to determine the extent to which—

(i) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(ii) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(iii) Devices or techniques will be developed and tested in an appropriate environment;

(iv) The applicant considers the cost-effectiveness and usefulness of the device or technique to be developed for persons with disabilities; and

(v) The applicant discusses the potential for commercial or private manufacture, marketing, and distribution of the product.

(c) *Personnel.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The key personnel have adequate training and experience in the required discipline to conduct the proposed activities;

(2) The allotment of staff time is adequate to accomplish the proposed activities; and

(3) The applicant ensures that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Management and Evaluation.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) The resources of the applicant are adequate, appropriate, and accessible to individuals with disabilities;

(2) The proposed budget is adequate and appropriate for the activities to be carried out;

(3) There is a plan, appropriate to the type of field-initiated project, to evaluate the effectiveness of the project in accomplishing its goals and objectives;

(4) The applicant provides a plan of operations, appropriate to the type of field-initiated project, indicating that it will achieve the project objectives in a timely and effective manner; and

(5) Appropriate collaboration with other agencies is assured.

Eligible Applicants: Public and private organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

Program Title: Special Projects and Demonstrations for Spinal Cord Injuries.

CFDA Number: 84.133N

Purpose: The Special Projects and Demonstrations for Spinal Cord Injuries program provides assistance to establish innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, and other rehabilitation services to meet the wide range of needs of individuals with spinal cord injuries. As described more fully in 34 CFR 359.11, recipients of awards under this program must establish a multidisciplinary service system, demonstrate and evaluate both the services and the costs and benefits of those services, establish a research environment within the system, demonstrate and evaluate the application of improved methods and equipment, demonstrate methods of community outreach and education, and participate as directed by the Secretary in national studies of the benefits of a spinal cord injury service system.

Invitational Priorities: The Secretary is particularly interested in applications that address one of the following invitational priorities within the scope of model demonstration systems for SCI. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are to address one or more of the following problems within the research, demonstration, services, or data collection aspects of the model SCI system project.

(1) Violence-related spinal cord injuries;

(2) Techniques to maximize the benefits of interactions with independent living programs to achieve community reintegration;

(3) Substance abuse among individuals with SCI;

(4) Disability and rehabilitation-related problems of persons with SCI from minority backgrounds;

(5) The role of families and personal advocacy in successful community reintegration; and

(6) Techniques to facilitate the adoption of the SCI systems model of care into regular health care delivery practices.

Selection Criteria: The Secretary uses the following criteria to evaluate an application under this model SCI Systems program.

(a) *Project Design (20 points).* The Secretary reviews each application to determine to what degree—

(1) There is a clear description of how the objectives of the project relate to the purpose of the program;

(2) The research is likely to produce new and useful information;

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target population;

(5) The research hypotheses are sound; and

(6) The research methodology is sound in the sample design and selection, the data collection plan, the measurement instruments, and the data analysis plan.

(b) *Service Comprehensiveness (20 points).* The Secretary reviews each application to determine to what degree—

(1) The services to be provided within the project are comprehensive in scope and include emergency medical services, intensive and acute medical care, rehabilitation management, psychosocial and community reintegration, and follow up;

(2) A broad range of vocational and other rehabilitation services will be available to persons with severe disabilities within the project; and

(3) Services will be coordinated with those services provided by other appropriate community resources.

(c) *Plan of Operation (15 Points).* The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Persons with disabilities; and

(iv) The elderly.

(d) *Quality of Key Personnel (10 points).* The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training or experience, or both, in spinal cord injury care and rehabilitation and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature or methods, or both;

(3) All the disciplines necessary to establish the multidisciplinary system described in Section 359.11(a) are effectively represented;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Persons with disabilities; and

(iv) The elderly.

(e) *Adequacy of Resources (10) points.* The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative and other necessary support is evident.

(f) *Budget/Cost Effectiveness (10 points).* The Secretary reviews each application to determine to what degree—

(1) The budget for the project is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project; and

(3) The budget for subcontracts (if required) is detailed and appropriate).

(g) *Dissemination/Utilization (5 points).* The Secretary reviews each application to determine to what degree—

(1) There is a clear defined plan for dissemination and utilization of project findings;

(2) The research results are likely to become available to others working in the field;

(3) The means to disseminate and promote utilization by others are defined; and

(4) The utilization approach is likely to address the defined need.

(h) *Evaluation Plan (10 points).* The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

Eligible Applicants: Public and other nonprofit agencies and organizations are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

Application Notice for Fiscal Year 1995

[Special Projects and Demonstrations for Spinal Cord Injuries, CFDA No. 84.133N]

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Special Projects and Demonstrations for Spinal Cord Injuries	10/14/94	8–13	$230,000–375,000	60

Program Title: Research Training and Career Development Program

CFDA Number: 84.133P

Purpose: The purpose of this program is to expand capability in the field of rehabilitation research by supporting projects that provide advanced training in rehabilitation research. These projects provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience, including experience in management or basic science research, in fields pertinent to rehabilitation, in order to qualify those individuals to conduct independent research on problems related to disability and rehabilitation.

Invitational Priorities: The Secretary is particularly interested in applications that address one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are:

1. Training individuals with disabilities in advanced research in disability and rehabilitation-related fields.

2. Training individuals with disabilities from minority backgrounds in advanced disability and rehabilitation research.

Selection Criteria: The Secretary uses the following criteria to evaluate applications under this program.

(a) *Importance and potential contribution.* (20 points) The Secretary reviews each application to determine to what degree—

(1) The applicant is responsive to any priority established under § 360.32;

(2) The applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to provide training to a trainee population in which there is a need for more qualified researchers; such as clinicians in rural areas, or clinicians who are directly experienced with underserved populations; and

(3) The applicant is likely to make a significant increase in the number of trained rehabilitation researchers.

(b) *Quality of proposed training program.* (40 points) The Secretary reviews each application to determine to what degree—

(l) The applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees;

(2) The proposed didactic and classroom training programs emphasize scientific methodology, are multidisciplinary, comprehensive, and appropriate to the level of the trainees, and are likely to produce qualified independent researchers;

(3) The quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to produce highly qualified researchers;

(4) The type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in research on meaningful topics at an advanced level, are likely to develop individuals with the capacity to perform independent research; and

(5) The opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(c) *Personnel and resources committed to the project.* (30 points) The Secretary evaluates each application to determine to what degree—

(l) The activities of the project will be implemented by sufficient and qualified staff who are outstanding scientists in the field;

(2) The project director and other key staff are experienced in the delivery of advanced research training as well as knowledgeable about the methodology and literature of pertinent subject areas;

(3) All required disciplines are effectively included; and

(4) The applicant possesses the appropriate facilities, laboratories, and access to clinical populations and organizations representing persons with disabilities to support the conduct of advanced clinical rehabilitation research.

(d) *Management and operating plans.* (10 points) The Secretary evaluates each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) There is an effective plan for collaboration with other institutions of higher education and organizations whose participation is necessary to ensure effective classroom and clinical research training;

(3) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, gender, age or handicapping condition;

(4) The applicant has provided an adequate plan for the use of facilities, resources, supplies and equipment;

(5) The budget for the project is reasonable and adequate to support the proposed activities; and

(6) The applicant provides an appropriate plan for the evaluation of all phases of the project.

Eligible Applicants: Institutions of higher education are eligible to receive awards under this program

Program Authority: 29 U.S.C. 762(a)(4)

Application Notice for Fiscal Year 1995

[Research Training and Career Development Program, CFDA No. 84.133P]

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Research Training and Career Development Program	10/03/94	3	$150,000	36

Instructions For Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention:

(CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 424A) and instructions.

PART III: Application Narrative. Additional Materials.

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

(Note: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Dianne Villines, U.S. Department of Education, Room 3417 Switzer Building, 400 Maryland Avenue, SW., Washington, DC 20202–2704. Telephone: (202) 205–5450. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Authority: 29 U.S.C. 760–762

Dated: May 31, 1994

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. Can I get an extension of the due date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What should be included in the application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What format should be used for the application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I submit applications to more than one NIDRR program competition or more than one application to a program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the allowable indirect cost rate?

The limits on indirect costs vary according to the program and the type of application.

Applicants in the FIR and SCI grants programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate. Applicants for projects in the Research Training and Career Development program are limited to an indirect rate of 8 percent. There are no indirect charges permitted in the Fellowship program.

6. Can profitmaking businesses apply for grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can individuals apply for grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR staff advise me whether my project is of interest to NIDRR or likely to be funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How do I assure that my application will be referred to the most appropriate panel for review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How soon after submitting my application can I find out if it will be funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I call NIDRR to find out if my application is being funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. Will all approved applications be funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

OMB Approval No 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT (enter appropriate letter on box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (Specify)

_____

9. NAME OF FEDERAL AGENCY

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.)

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$		$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
13. Federal	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year)

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Research Fellowships (CFDA No. 84.133F) 34 CFR Part 356.

Field-Initiated Research (CFDA No. 84.133G) 34 CFR Parts 350 and 357.

Special Projects and Demonstrations for Spinal Cord Injuries (CFDA No. 84.133N) 34 CFR Part 359.

Research Training and Career Development Program (CFDA No. 84.133P) 34 CFR Part 360.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification, and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89, ED Form GCS-003, (REV. (12/88), ED 80-0010, 5/90, and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable.* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*
(attach Continuation Sheet(s) SF-LLL-A, if necessary)	
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*	
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
[illegible]

Reporting Entity: _____ Page _____ of _____

[FR Doc. 94-13513 Filed 6-2-94; 8:45 am]
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Standard Form - LLL-A

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Federal Register

Friday
June 3, 1994

Part VI

Department of Justice

Civil Rights Division

The American With Disabilities Act Technical Assistance Grants to Promote Voluntary Compliance With the Act; Notice

DEPARTMENT OF JUSTICE

Civil Rights Division, Public Access Section

The Americans With Disabilities Act Technical Assistance Grants To Promote Voluntary Compliance With the Act

AGENCY: Public Access Section, Civil Rights Division, U.S. Department of Justice.

ACTION: Notice of availability of funds and of solicitation for grant applications.

PURPOSE: The Public Access Section of the Civil Rights Division, United States Department of Justice (DOJ), announces the availability of up to $2.25 million to develop and implement projects to inform and educate covered entities and individuals with disabilities about their responsibilities and rights under title II and title III of the Americans with Disabilities Act of 1990 (ADA) and to facilitate voluntary compliance with titles II and III of the Act and the Department's implementing regulations. The term "covered entities" refers to businesses, commercial properties, institutions, State or local governments or their agencies, and other organizations or enterprises that have responsibilities under title II or title III of the ADA.

Grants will be awarded to selected applicants who propose cost-effective and efficient methods of educating entities and individuals with responsibilities and rights under the ADA as well as professionals, such as practicing architects, attorneys, building contractors and others, who provide services to these groups and may assist them in understanding and complying with the requirements of the Act. The primary objective of this program is to encourage and facilitate voluntary compliance with titles II and III of the ADA and the Department's implementing regulations. Only submissions that propose projects of national scope or significance will be considered.

In fiscal year 1994, the Department is seeking grant applications in the following six (6) priority areas:

(1) Dissemination of ADA informational materials to architects and other design professionals at the local, State, and regional level;

(2) Dissemination of ADA informational materials to building contractors, construction tradespeople, building inspectors and plan reviewers at the local, State, and regional level;

(3) ADA education for state and local historic preservation offices, committees, boards and zoning and code officials involved in historic preservation decisions;

(4) ADA education for staff of legal services offices, legal aid societies, and public interest law centers;

(5) ADA education and pilot project for professional mediators;

(6) "The ADA: Civil Rights Law" educational audiovisual materials.

Projects must propose to conduct activities under the grant that have been specifically tailored to meet the particular needs of the targeted audience. Detailed information regarding these specific priorities may be found in the *Program Priorities* section of this solicitation.

Although the Department has identified the above priorities for grant awards during FY 1994, other meritorious projects offering innovative methods of providing ADA Technical Assistance are eligible for consideration. In order to be considered, projects must have a clear statement of need and have national scope or significance.

The Department anticipates that grants will be awarded in amounts ranging from $85,000 to $200,000.

FOR FURTHER INFORMATION CONTACT: Ruth Hall Lusher, ADA Technical Assistance Program Manager, Public Access Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035–6738. 1–800–514–0301 (Voice) or 1–800–514–0383 (TTY). This notice and other related information, with the exception of standard forms, are available in alternate formats, e.g., large print, braille, audiotape, and computer disk. With the exception of standard forms, this information may also be accessed through the Civil Rights Division's electronic bulletin board at (202) 514–6193.

Background and Program Description

On January 26, 1992, the major provisions of titles II and III of the Americans with Disabilities Act (ADA) went into effect. The ADA provides legal protection to individuals with disabilities in the areas of public accommodations, commercial facilities, State and local government services, transportation, and employment. Title III prohibits discrimination on the basis of disability in a broad range of public accommodations, commercial facilities and certain transportation services. Title II prohibits discrimination on the basis of disability in State and local government programs and services, including transportation, and State and local government employment. The employment (title I) and transportation (title II, Subpart B) provisions of the ADA are regulated by other Federal agencies and are not the subject of this Notice.

Section 506 of the ADA requires that the Department of Justice render technical assistance to entities and individuals that have responsibilities or rights under title II (subtitle A, State and local government services) and title III (public accommodations and commercial facilities) of the ADA.

Pursuant to this requirement, the Department provides a variety of ADA-related services and information, including:

—A telephone information service (for voice and TTY callers) through which members of the public may obtain recorded information and place orders for ADA materials 24 hours/day and may discuss questions they have about the ADA with information specialists during certain business hours. This service has recently been converted to a toll-free "1–800" number and the number of hours of staffed service has been expanded;

—A speaker's bureau through which organizations can arrange to have ADA experts from the Civil Rights Division speak on a variety of ADA issues; and

—Distribution of written materials, including the Department's regulations implementing titles II and III, technical assistance manuals for titles II and III, an ADA Questions and Answers booklet, and other reference materials. These materials are available in standard print, large print, braille, audiotape, and computer disk. They may also be obtained through the Civil Rights Division's electronic bulletin board.

Under section 506(d) of the Act, the Department has authority to award grants to individuals and non-profit entities for the purpose of supplementing the Department's technical assistance efforts. The Technical Assistance Grant Program is designed to develop and implement cost-effective and efficient strategies to disseminate information about the responsibilities and rights of covered entities and individuals under titles II and III of the ADA, with the goal of fostering understanding of, and facilitating voluntary compliance with, the ADA nationwide.

This grant program is designed specifically to increase the level of knowledge of the ADA in order to ultimately increase the level of voluntary compliance with the ADA. The program is not intended to fund or support site-specific compliance implementation (e.g., funding to make

specific facilities more accessible). Nor is it intended to fund or support inspections, reviews, or tests to determine whether an entity is meeting its compliance obligations. Proposals to conduct projects of these sorts will not be considered.

Since the initiation of the grant program in 1991, the Department has awarded grants to 30 non-profit organizations. The recipients have included a wide range of groups, and the types of projects previously funded include: Projects to develop and disseminate educational materials, including detailed manuals, brochures and videotapes, to explain the regulations and how to comply with the ADA; projects to disseminate existing information to targeted audiences; projects to develop and conduct ADA training programs and seminars; projects to operate telephone information lines to answer various questions about the provisions of the ADA; and projects to develop and incorporate ADA materials into professional educational curricula and programs.

Grantee projects have targeted various audiences of persons with responsibilities under title III or title II of the ADA, persons with disabilities with rights under the ADA, and persons who, because of their areas of professional or technical expertise, provide services that may assist these groups in understanding and complying with the requirements of the Act.

Title III projects have been directed toward educating owners and operators of restaurants and bars, hotels and motels, retail stores, grocery stores, professional offices, recreation and fitness centers, museums and other places of collection, travel and tour agents, hospitals and health care providers, service providers for elderly persons, day care centers, small shops and stores, and large commercial properties.

Title II projects have worked toward educating mayors and governing bodies of U.S. cities with populations over 30,000 and towns with populations under 10,000, law enforcement agencies, 911/emergency response operators, state courts, state social service agencies, public libraries, and persons involved in testing for licensure and certification purposes.

While some projects have focused on educating people with disabilities about their rights under titles II and III of the ADA, others have educated covered entities with responsibilities under the ADA on how to accommodate people with different kinds of disabilities, such as people with mobility impairments, manual impairments, hearing impairments, speech impairments, vision impairments, seizure disorders, mental retardation, mental illness, and people with cognitive, developmental, or learning disabilities.

Other projects have been directed toward persons who can assist others in complying with the ADA, including professors and students in architecture, interior design, industrial design, and landscape architecture schools and programs; state and local building code officials; disability advocates; librarians; and community mediators. Several grant recipients have directed technical assistance toward persons who speak Spanish and other non-English languages.

Some effective strategies used by grantees have been to integrate ADA Technical Assistance materials into established programs and the creation of an innovative project conducted on a statewide basis, that can be studied and replicated by others nationally. For example, the Police Executive Research Forum is creating a set of materials, with some material specifically developed to be integrated into police academy training and others for use in on-the-job roll-call training. The set of materials includes a series of modules on protecting the rights of persons with seizure disorders, speech and hearing impairments, and mental illness. The Chief Officers of State Library Agencies is creating a single source collection of ADA materials that will be available to the public nationwide through their local libraries. The National Association of Towns and Townships is producing ADA materials to train regional and state ADA technical assistance providers to assist them in educating officials from small towns with fewer than 10,000 residents on how to comply with the ADA.

The American Association of Retired Persons will create materials and conduct training sessions throughout the country to educate older persons with disabilities about their rights under the ADA. The results of a South Carolina project, which partners different State agencies and a state-based advocacy organization for persons with mental illness to examine and correct ways in which social service and public benefit programs discriminate against persons with mental illness, will be disseminated nationwide.

A description of all projects, including a list of materials that have been or are being produced by grant recipients, may be obtained by calling 1–800–514–0301 (Voice) or 1–800–514–0383 (TTY) or the electronic bulletin board at (202) 514–6193.

Applicants should be aware that the Department does not fund projects to research or resolve issues that are outside the scope of the Department's current ADA regulations and court interpretations. For example, the Department would not fund a project concerning the design of accessible physical environments for children because standards have not yet been adopted by the Department in this area.

Only proposals to conduct projects of national scope or significance will be considered. For example, a professional or trade association at the national level that proposes to target educational information to its membership nationwide might be funded. A local or state trade association with no national affiliation or reach would not be funded, unless the local or state group could adequately demonstrate its ability to draw national attention to, and participation in, its project.

The Department is particularly interested in receiving proposals that: specifically address how members of minority communities will be included within the population targeted by the applicant for receipt of technical assistance; reflect an ability to begin project activities in an expedited manner; utilize materials already developed by Federal agencies and their grantees or contractors; represent joint ventures between organizations that represent persons with disabilities and organizations that provide services that may assist covered entities in their compliance efforts; and engage national membership organizations in supporting the project's objectives.

Eligible Applicants. This grant competition is open to individuals and to non-profit organizations, including trade and professional associations or their subsidiaries, organizations representing State and local governments or their employees, other organizations representing entities covered by the ADA, State and local government agencies, and national and local organizations representing persons with disabilities.

Grant Period and Award Amount. The period of performance will be twelve months from the date of the grant award. A total of $2.25 million is available for this technical assistance grant program; it is anticipated that grants will be awarded in amounts ranging from $85,000 to $200,000. However, the estimated funding level in this notice does not bind the Department of Justice to make any awards or to any specific number of awards or funding levels.

Application Deadline. Applications must be received by the close of

business (5:30 p.m. EST) on August 2, 1994 at the Public Access Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, or 1425 New York Ave., NW., room 4039, Washington, DC 20035–6738. Applications may not be sent by Fax. Applications received after 5:30 p.m. on August 2, 1994 will not be considered for award, even if the application was postmarked before that date. Incomplete applications will not be considered for award. In order to be considered complete, an original and two copies of the application packet described in the *Application Requirements* section must be submitted

Program Priorities

Since the inception of the ADA Technical Assistance Grant Program in 1991, the Department has funded over 30 projects, with the primary focus being to educate entities and individuals with responsibilities and rights under titles II and III of the ADA Many of the audiences targeted have been those with title III responsibilities, including owners and operators of retail stores, supermarkets, hotels and motels, day care centers, and health care and other service providers. Projects directed toward educating those with obligations under title II have included law enforcement agencies, state court systems, 911/emergency response operators, city and town governing bodies, and publicly funded hospitals and other health care services. Targeted audiences have also included people with disabilities with rights under titles II and/or III.

As the purpose of the Grant Program is to promote and facilitate voluntary compliance with the ADA, the Department believes that it is necessary to identify, educate and work with professionals at the local, State, and regional level who, because of their professional or technical expertise, provide services to the above audiences and may assist them in understanding and complying with the requirements of the Act. For this reason, the Department has expressed a particular interest in receiving proposals that target this specific audience in the following six priority areas:

Priority 1: Dissemination of ADA informational materials to architects and other design professionals at the local, State, and regional level. Architects and other design professionals play an essential role in ensuring that newly constructed facilities and additions or alterations to existing facilities are designed and built in accordance with the ADA Standards for Accessible Design. Businessos, State and local governments, service agencies and other ADA covered entities rely on the knowledge and expertise of the architect; they expect that the professional will design a building or facility that will meet a myriad of needs, one of which is compliance with the ADA Standards for Accessible Design.

With access to educational materials and services, architects and design professionals at the local level can help business owners comply with the ADA and reduce claims of discrimination by people with disabilities based on inaccessible facilities or elements. Since the enactment of the ADA, a wealth of educational material on complying with the accessible design requirements has been developed by Federal agencies to be used by entities and individuals with responsibilities and rights under the ADA and professionals who may provide services that will assist these groups in understanding and complying with the requirements of the Act. Examples of such information include the Department of Justice's *ADA Standards for Accessible Design*, and titles II and III *Technical Assistance Manuals*; the Access Board's *ADA Accessibility Guidelines Checklist* and various *Technical Assistance Bulletins* (addressing accessibility topics such as detectable warnings, visual alarms, TTYs, slip-resistant surfaces and using ADAAG). Other materials have been produced through federally funded grant programs and examples include DOJ funded projects such as the American Hotel and Motel Association's *Accommodating All Guests* compliance manual, the Food Marketing Institute's *ADA Starter Kit for Supermarkets* and the *ADA Compliance Manual for Supermarkets*, and the National Restaurant Association's *ADA: Answers for Foodservice Operators* compliance manual and *A Warm Welcome* videotape on compliance for the food service industry. Examples of grants funded through the National Institute on Disability and Rehabilitation Research (NIDRR) include numerous *ADA Design Tech Sheets* (illustrated technical materials addressing such topics as signage, areas of rescue assistance, accessible route, ATMs, curb ramps, ground and floor surfaces, etc.), and the *Title II Action Guide for State and Local Governments*.

The Government has also created a variety of informational services, such as the Department of Justice's toll-free ADA Information Line, through which individuals can speak directly with an ADA Specialist, or access recorded information about the requirements of the ADA 24 hours a day. Information about the ADA may also be downloaded through the Department's Electronic Bulletin Board. Similar services are available through other Federal agencies

Despite the existence of these materials, many of which are available free of charge from the Department and other Federal agencies, many professionals at the local level are unaware of their availability and continue to design and build facilities that do not comply with the ADA Standards for Accessible Design.

The goal of Priority 1 is to develop a nationwide system to inform architects and design professionals about the ADA and the availability of these informational materials and services to ensure dissemination of existing ADA materials to practicing architects and other design professionals at the local level. The project should utilize existing channels, such as professional and trade organizations, trade publications, meetings, and electronic media to inform as wide an audience of design professionals as possible of the availability of informational materials and services and to assist with dissemination. In establishing this system, the project should seek to establish links between existing Federal information resources and private dissemination channels and implement an approach through which the Department can continue to disseminate new materials to targeted audiences, as they are developed, on an on-going, long-term basis following the conclusion of the grant period. Types of mechanisms that could be used to accomplish this might include the development of articles for publication in trade journals, the distribution of sample or resource packets to architectural libraries, the presentation of information about the ADA and the availability of Federal resources and materials through computer networks and electronic media, etc.

Priority 1 is an ADA informational materials dissemination project for architects and design professionals at the local, State, and regional levels that shall include the following major components:

—Identify and compile specific materials that have been or are being developed by the Department of Justice, its grant recipients, the National Institute on Disability and Rehabilitation Research's grant recipients, the Architectural and Transportation Barriers Compliance Board and other Federal agencies as appropriate that the applicant intends to publicize to the targeted populations;

—Identify professional and trade organizations that serve architects and design professionals that have regional, state and local affiliations through which information and materials could be disseminated;
—Identify professional and trade journals and other publications through which the availability of materials can be publicized at the local, State, and regional levels;
—Establish size of target audience and state explicitly the number of people expected to be served in the course of the project's activities;
—Specify how the project will reach all parts of the targeted audience, including professionals serving racial and ethnic minority communities;
—Develop a plan to effectively publicize and disseminate the availability of material available from Federal agencies and their grantees, utilizing, to the extent possible, existing dissemination mechanisms for architects and design professionals including professional and trade journals, regional and national conferences, etc. Such a plan should ensure that the dissemination of materials will continue after the grant period has ended;
—Develop, reproduce and disseminate marketing materials such as pamphlets, flyers, articles, ad slicks or other products necessary to inform architects and design professionals of the availability of ADA materials;
—Create articles on the requirements of the ADA for publication in media appropriate to target audience;
—Coordinate with the Department to ensure that future new or updated materials will continue to be disseminated to professionals at the local level following the conclusion of the grant period;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience.

Priority 2: Dissemination of ADA informational materials to building contractors, construction tradespeople, building inspectors and plan reviewers at the local, State, and regional levels. Building contractors, construction tradespeople, building inspectors and plan reviewers play an essential role in ensuring that new construction, additions, and alterations are accessible. Many smaller projects, particularly alterations, are accomplished by contractors and tradespeople without the use of architects or other design professionals. Business owners, State and local governments, service agencies and other ADA covered entities rely on the knowledge and expertise of builders to meet a myriad of needs, one of which is compliance with the ADA Standards for Accessible Design; and contractors and tradespeople rely on building inspectors and plan reviewers for advice and assistance in understanding and applying these rules.

With access to educational materials and services, building contractors and skilled construction tradespeople at the local level can help business owners comply with the ADA and reduce claims of discrimination by people with disabilities based on inaccessible facilities or elements. Since the enactment of the ADA, a wealth of educational material on complying with the accessible design requirements has been developed by Federal agencies for use by entities and individuals with responsibilities and rights under the ADA and professionals who may provide services that will assist these groups in understanding and complying with the requirements of the Act. Examples of such information include the Department of Justice's ADA Standards for Accessible Design, and title II and III Technical Assistance Manuals; the Access Board's ADA Accessibility Guidelines Checklist and various Technical Assistance Bulletins (addressing accessibility topics such as detectable warnings, visual alarms, TTYs, slip-resistant surfaces and using ADAAG). Other materials have been produced through federally funded grant programs and examples include DOJ funded projects such as the American Hotel and Motel Association's Accommodating All Guests compliance manual, the Food Marketing Institute's ADA Starter Kit for Supermarkets and the ADA Compliance Manual for Supermarkets, and the National Restaurant Association's ADA: Answers for Foodservice Operators compliance manual and A Warm Welcome videotape on compliance for the food service industry. Examples of grants funded through the National Institute on Disability and Rehabilitation Research (NIDRR) include numerous ADA Design Tech Sheets (illustrated technical materials addressing such topics as signage, areas of rescue assistance, accessible route, ATMs, curb ramps, ground and floor surfaces, etc.), and the Title II Action Guide for State and Local Governments.

The Government has also created a variety of informational services, such as the Department of Justice's toll-free ADA Information Line, through which individuals can speak directly with an ADA Specialist or access recorded information about the requirements of the ADA 24 hours a day. Information about the ADA may also be downloaded through the Department's Electronic Bulletin Board. Similar services are available through other Federal agencies.

Despite the existence of these materials, many of which are available free of charge from the Department of Justice and other Federal agencies, many individuals at the local level are unaware of their availability and continue to build or alter facilities that do not comply with the ADA Standards for Accessible Design.

The goal of Priority 2 is to develop a nationwide system to inform building contractors, construction tradespeople, building inspectors and plan reviewers about the ADA and the availability of these informational materials and services to ensure the dissemination of existing ADA materials to contractors and others at the local level. The project should utilize existing channels, such as trade organizations, trade publications, meetings, and electronic media to inform as wide an audience of contractors and others as possible of the availability of the material and to assist with dissemination. In establishing this system, the project should seek to establish links between existing Federal information resources and private dissemination channels and implement an approach through which the Department can continue to disseminate new materials, as they are developed, on an on-going, long-term basis following the conclusion of the grant period. Types of mechanisms that could be used to accomplish this might include the development of articles for publication in trade journals, the distribution of sample or resource packets to libraries serving the target population, the presentation of information about the ADA and the availability of Federal resources and materials, and making the same available through computer networks and other electronic media.

Priority 2 is an ADA informational materials dissemination project for building contractors, construction tradespeople and others at the local, State, and regional level that shall include the following major components:

—Identify and compile specific materials that have been or are being developed by the Department of Justice, its grant recipients, the National Institute on Disability and Rehabilitation Research's grant recipients, the Architectural and Transportation Barriers Compliance

Board and other Federal agencies as appropriate that the applicant intends to publicize to the populations to be served by the project;
—Identify professional and trade organizations serving the targeted population with regional, State and local affiliations through which information and materials could be disseminated;
—Identify professional and trade journals and other publications through which the availability of materials can be publicized at the local, State, and regional level;
—Establish size of target audience and state explicitly the number of people expected to be served in the course of the project's activities;
—Specify how the project will reach all parts of the targeted audience, including racial and ethnic minority communities;
—Develop a plan to effectively publicize and disseminate the availability of material available from Federal resources and their grantees utilizing, to the extent possible, existing dissemination mechanisms for the targeted population including professional and trade journals, regional and national conferences, etc.;

Such a plan should ensure that dissemination will continue after the grant period has ended;
—Develop, reproduce and disseminate marketing materials such as pamphlets, flyers, articles, ad slicks or other products necessary to inform the targeted population of the availability of ADA materials;
—Create articles on the requirements of the ADA for publication in media appropriate to target audience;
—Coordinate with the Department to ensure that future new or updated materials will continue to be disseminated to the targeted population at the local level following the conclusion of the grant period;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience.

Priority 3: ADA education for State and local historic preservation offices, historic preservation committees and boards, and local zoning and code officials involved in historic preservation decisions. Staff and officials of State and local historic preservation offices, members of historic preservation committees and boards, and local zoning and code officials involved in historic preservation decisions need guidance on effective methods of complying with the ADA without destroying the historic nature of the facility or element. While some educational materials currently exist, the need for these audiences to learn about and understand how to implement practical solutions remains paramount.

The goal of Priority 3 is to undertake a nationwide effort to educate State and local historic preservation offices, historic preservation committees and boards, and zoning and code officials involved in historic preservation decisions on the requirements of the ADA and how to maintain the integrity of the historic property while providing accessibility as required under the ADA that promotes independence and dignity. Projects of this type should focus specifically on providing practical solutions to access problems faced by historic properties. Projects to develop and disseminate educational materials, to develop and conduct training using existing materials, or to develop materials and conduct training will be considered.

Priority 3 is an ADA education project for historic preservation officials that shall include the following major components:
—Develop educational materials that focus on solutions to access problems specific to properties such as historic museums, historic buildings housing public accommodations and those housing State and local government programs. The materials shall illustrate how people with disabilities use the built environment and how the provisions of the ADA Standards for Accessible Design can be effectively used to provide mainstream access without destroying the historic significance of the building or facility;
—Establish size of target audience and state explicitly the number of people expected to be served in the course of the project's activities;
—Identify and coordinate with established professional organizations, such as the National Trust for Historic Preservation, the National Conference of State Historical Preservation Officers, and State Historical Commissions, etc., through which information and materials could be disseminated;
—Specify how the project will reach all parts of the targeted audience, including racial and ethnic minority communities;
—Utilize existing federally approved materials to the maximum extent possible;
—Develop and implement a strategy to disseminate the materials nationally, coordinating with other state and national historic preservation organizations as appropriate;
—If the project includes a training component, identify topics to be covered and the rationale for selecting those topics and develop and implement a plan to select trainers;
—If the project includes training, a minimum of five regional sessions should be held. Criteria to be used to select the training locations should be carefully thought out and described in the applicant's proposal;
—Develop and implement a strategy to publicize information about the ADA and the availability of materials and training sessions nationally through organizations, print and electronic media;
—Create articles on the requirements of the ADA for publication in media appropriate to target audience;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience.

Priority 4: ADA education for staff of legal services offices, legal aid societies, and public interest law centers. For a person with a disability, access to technical assistance and good legal advice about the ADA is severely limited by the lack of public interest lawyers trained in the requirements of the ADA. The right to legal advice and their right to file private lawsuits is a critical component of the ADA.

According to the latest census data, over 20% of the 12.9 million people of working age reporting the presence of a work disability have family incomes below the Federal poverty threshold. Because of this, people with disabilities are consistently being referred to public interest law centers, legal services offices, and legal aid societies for affordable legal assistance, and yet the vast majority of staff at those offices have not been even minimally trained on the requirements of the ADA. For the high percentage of individuals with disabilities who rely on low-cost or free legal services, it is critical to the successful implementation of the ADA that these lawyers receive training on the ADA.

The goal of Priority 4 is to develop and conduct a nationwide training program for staff and boards of legal services offices, legal aid societies, and public interest law centers about titles II and III of the ADA.

Priority 4 is an ADA project to educate legal services, legal aid societies and public interest law centers that shall include the following major components:

—Develop and conduct a minimum of five regional ADA training seminars;
—Establish size of target audience and state explicitly the number of people expected to be served in the course of the project's activities;
—Specify how the project will reach all parts of the targeted audience, including legal groups serving racial and ethnic minority communities;
—Develop innovative approaches to reach the widest possible audience with funds available;
—Identify and select for training staff and board members of public interest law centers, legal services groups, and legal aid societies from throughout the United States. The following factors should be considered in the selection process: geographical representation from the 50 states; representation from urban, suburban, and rural areas; representation from legal groups serving citizens with minority backgrounds;
—Develop a plan for publicizing the availability of the training, using, to the extent possible, existing dissemination mechanisms for legal services and public interest law centers including publications, professional journals, local, state, and national meetings, etc.;
—Develop training materials and activities appropriate to public interest lawyers, utilizing existing federally approved materials to the maximum extent possible;
—Provide training to selected staff and board members of public interest law centers, legal aid societies, and legal services groups on title II and title III of the ADA and on recent policy developments;
—Create articles on the requirements of the ADA for publication in media appropriate to target audience;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience.

Priority 5: ADA education and pilot project for professional mediators. The ADA encourages the use of means other than litigation to resolve ADA disputes. Professional mediators provide an alternative forum for complainants and respondents to resolve their misunderstandings or disagreements about the ADA's requirements. Effective use of professional mediators trained to mediate ADA cases can help bring about compliance with the ADA, while saving both parties from the high costs, delays, and inconveniences often associated with litigation.

The goal of Priority 5 is to train a select number of professional mediators nationwide about title III of the ADA, refer title III cases to these mediators for mediation, monitor the outcome of mediation efforts, and evaluate and disseminate the evaluation of the project to mediators and other interested parties nationwide, so that the project can be effectively replicated in other areas of the country.

Priority 5 is an ADA education and pilot project for professional mediators that shall include the following major components:

—Work with and through one or more national organizations representing professional mediators to assist in publicizing the project to mediators who may participate in the project, as well as to assist in disseminating the final evaluation of the project to mediators and other interested parties nationwide;
—Establish size of target audience and state explicitly the number of people expected to be served in the course of the project's activities;
—Specify how the project will reach all parts of the targeted audience, including mediators serving racial and ethnic minority communities;
—Develop criteria to be used to select the mediators to participate in the project;
—Develop and implement an ADA training program and provide follow-up technical assistance to the participating mediators;
—Develop and implement a plan for referring cases to the participating mediators and for monitoring the status of the mediators' ADA project-related caseloads;
—Provide mediation for a specified number of cases, at no cost to the disputing parties, within nine months after the completion of training;
—Create articles on the requirements of the ADA for publication in media appropriate to target audience;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience;
—Develop a plan for disseminating the training materials nationwide.

Priority 6: "The ADA: Civil Rights Law" educational videotape. Lack of recognition that the ADA is a civil rights law, long held myths and stereotypes, and ignorance about the attitudinal and physical discrimination that people with disabilities face in their daily lives—not being able to enter the building to attend a child's school play; not being allowed to play on a sports team or participate in the town meeting; not being able to order a hamburger, drop off dry cleaning, or to rent a car—are thought to be major impediments to voluntary compliance with the ADA.

The goal of Priority 6 is to produce and disseminate educational audiovisual materials illustrating discrimination, stereotypes and attitudinal barriers encountered by people with disabilities. The goal of this project is to identify the ADA as a civil rights law, distinct from a "benefit program", with the same historical background and battles associated with other types of civil rights legislation. The project will draw comparisons between discrimination encountered by people with disabilities and other protected classes of individuals and the historical struggle people with disabilities and others faced to gain the right to equality. Finally, the project will focus on the impact that complying with the ADA can have on changing stereotypes, eliminating barriers, and increasing access to goods, services, and activities.

Educating the public about the abilities of people with disabilities to function well in an accessible environment and dispelling oft held myths and stereotypes can lead to increased voluntary compliance with the ADA. Materials developed in this project shall portray persons with disabilities in a positive manner and will be used to increase the general public's awareness of disability, accessibility and the ADA and its historical place in the development of civil rights legislation. The project should also strive to increase the level of communication between covered entities, people with disabilities, and providers of consultation services.

Priority 6 is an ADA educational audiovisual project that shall include the following major components:

—Create and disseminate broadcast quality educational videotapes, identifying the ADA as a civil rights law with protection for people with disabilities parallel to that provided under other civil rights legislation;
—Edit to provide videotapes of varying lengths, suitable for use in a variety of broadcast situations (e.g., short segments to be used to promote the videotape or on magazine type

programs, longer segments for viewing by audiences attending a meeting, etc.);
—Identify target audience and state explicitly the number of people expected to be served in the course of the project's activities;
—Specify how the project will reach all parts of the targeted audience, including racial and ethnic minority communities;
—Identify types of attitudinal and physical discrimination that prevent people with disabilities from gaining equal opportunity and possible methods to eliminate discrimination;
—Illustrate the increased independence persons with disabilities experience when barriers are removed;
—Identify and select professional, civic and business organizations to disseminate the video through their local, state and regional affiliations;
—Identify and select public and cable television networks to air and disseminate copies of the videotape for local, regional, and national viewing;
—Develop and implement a strategy for disseminating the video to selected organizations;
—Develop a plan to publicize the project and the product nationally through print and electronic media;
—Create articles on the requirements of the ADA for publication in media appropriate to target audience;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience;
—Develop a plan to disseminate the results of the project.

Other Meritorious Projects. The Department also seeks grant applications involving other meritorious projects that offer innovative methods of providing ADA Technical Assistance to entities and individuals with rights and responsibilities under the ADA and professionals who provide services to these groups and may assist them in understanding and complying with the ADA. Only those projects with a clear statement of need and of national scope or significance will be considered. Other Meritorious Projects shall include the following major components:
—Statement of need. Applicants should indicate why their project is needed and how they have determined that the issues or topics they intend to address are, in fact, the issues or topics that will best serve the needs of the population for whom the project has been designed. Some populations, for example, may need to be made aware of the ADA and be provided with basic information, while others may be familiar with the basic legal requirements, but need information on how to translate the legal standards into concrete, practical solutions for achieving compliance. Others may need in-depth education on specific aspects of the law;
—Description of the target audience by describing such factors as geographic scope, type of population (type of business, type of governmental unit, type of disability, type of professional service offered), or other relevant characteristics. Applicants should also state explicitly the number of people expected to be served in the course of the project's activities;
—Specify how the project will reach all parts of the targeted audience, including racial and ethnic minority communities;
—Provide a statement of goals and objectives of the project. Applicants should describe in concrete terms what is to be accomplished during the project period. The anticipated impact on voluntary compliance efforts should also be clearly articulated;
—Develop a plan to disseminate the materials or results of the project nationwide;
—Work with and through established organizations, where possible, to reach the largest segment of the population possible;
—Utilize existing Federally-approved materials to the maximum extent possible;
—Develop a plan to evaluate the effectiveness of the project and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience.

Selection Criteria

Applicants will be evaluated in each of the following four selection criteria areas for a total of 100 points:

Project Strategy and Plan of Action (50 Points)

Applicants must demonstrate a thorough understanding of the grant proposal priority, including the background, intended audience and intended approach. Applicants applying under the Other Meritorious Project category must demonstrate an in-depth knowledge of the target audience and their specific needs. Project goals and expected outcomes should be clearly articulated. Clarity, quality, and appropriateness of the plans, methodologies, and procedures to achieve the goals listed in the application will be carefully considered. Plan of action must be sound and well-reasoned, with evidence of the ability to implement plan immediately and complete the project in a timely manner. Applicants must demonstrate the ability to produce and/or disseminate information and materials within the period of performance. Project strategy must include a clear plan for objectively evaluating the effectiveness of the project, as described in the *General Requirements for Grant Recipients* section of this solicitation.

Staff Capability (25 Points)

Applicants must provide evidence of qualified personnel with particular experience in the areas addressed in the application. The application must contain necessary position descriptions, resumes, and assurances of availability of staff (existing and contract staff) with appropriate competencies and experience. Duties outlined for grant-funded positions must be clearly appropriate to the scope of the work being carried out under the project.

Organizational Capability and Management Plan (20 Points)

Applicants must demonstrate the ability to effectively reach and work with the targeted audience and offer evidence of proven organizational ability to provide high quality results utilizing appropriate key personnel. Applications must include a management plan that provides evidence of project control by management, efficient and timely use of staff and other resources, and effective quality control mechanisms.

Resources/Facilities/Equipment (5 Points)

Applicants must demonstrate the availability and appropriateness of resources (other than personnel), physical facilities, and equipment proposed to be used to carry out the project.

General Requirements for Grant Recipients

The following general grant program requirements should be considered by each applicant in developing both its project timeline and budget. Successful applicants must adhere to all conditions as specified; any deviation from the requirements in this section must be negotiated with DOJ.

Grantee Orientation and Coordination. Grantees are expected to coordinate their project activities, where appropriate, with other Federally sponsored ADA technical assistance activities, including those of the Department of Justice (DOJ), the National Institute on Disability and Rehabilitation Research (NIDRR), the Architectural and Transportation Barriers Compliance Board (ATBCB), the Equal Employment Opportunity Commission (EEOC) and their grantees. The purpose of this coordination is to avoid duplication of effort, to utilize materials already developed by Federal agencies and grant recipients, and to otherwise refer to and take advantage of ADA resources that have already been developed. Additionally, successful applicants will receive an orientation that will familiarize them with projects being undertaken by other successful applicants. Thereafter, 1994 grantees will be expected to exchange information and provide support to each other where appropriate.

Evaluation. One goal of this grant program is to determine which education, information dissemination, and compliance assistance strategies are most effective in reaching as many persons as possible in the targeted population with information that serves their particular needs. It is therefore essential that each project describe reliable and objective criteria to evaluate the effectiveness of the project at the conclusion of the period of performance and to provide this information to the Department.

Post-Award Monitoring. The Department intends to provide grant recipients with the maximum amount of post-award guidance and technical assistance possible within budget and staff constraints. Within approximately one month of the grant award, the Department will conduct a one-day training session on the ADA and grant management procedures. Each grant recipient will be invited to send two staff persons to this training session. Funds for travel to Washington, D.C. for this training should be included in the proposed grant budget. Applicants are also advised that DOJ staff will make periodic site visits to provide grant recipients with guidance and technical assistance and to monitor the progress of the grant. The Office of Justice Programs (OJP), a component of the Department of Justice, will provide financial management and other services in support of the Public Access Section in the administration of this program. Applicants are advised that copies of the quarterly progress reports sent to OJP must also be sent to the Public Access Section.

DOJ Review of Grantee Materials. All materials used or developed by grant recipients must be approved by DOJ in advance of use. Applicants should anticipate careful review of any newly developed materials by the Department to ensure that the materials are legally accurate and should allow ample time in their proposed project schedules for this review.

Particular attention should be paid to budgetary and staffing needs to ensure that materials to be disseminated will reach the targeted population in a timely manner during the grant period.

Availability of Existing DOJ Materials. Publications that are currently available free of charge from the Department of Justice (DOJ) will be provided to the grantee as resources permit. If an applicant intends to disseminate materials of a nature similar to materials produced by previous DOJ grant recipients or recipients of grants from other Federal agencies, including the National Institute on Disability and Rehabilitation Research, it should coordinate such requests with the Department. In general, funds for the reproduction of such materials should be included in the proposed grant budget.

Copyrights. Grant recipients are free to copyright any materials they develop, if they so choose, and may continue to reproduce and distribute such materials after the grant period is over. Applicants should be aware that DOJ retains the right to reproduce their materials and to disseminate them to the public at its will, without payment of royalties to the grantee.

Program Income. Grantee recipients may charge for grant-related activities and products (e.g., materials developed and disseminated, workshop or training registration fees), as long as all income derived from such activities and products is added to funds committed to the grant and its activities. Specifically, this program income (gross income earned by the grantee, during the funding period, as a direct result of the grant award or its activities) must be used for purposes that further eligible program objectives (e.g., obtaining equipment or other assets required for the program). Program income may not be used to support or further a grantee's general organization, its programs or its services.

Consultative Services. Applicants who offer consultative services for a fee to assist covered entities in complying with their ADA responsibilities or who provide legal representation services for free or for a fee to, or on behalf of, persons with disabilities should include a statement briefly describing the services provided.

Alternate Formats (Print and Audiovisual). All materials produced in standard print must also be produced in large print, in Braille, and on audiotape in proportion to anticipated demand by persons with vision impairments in the targeted population(s). Audiotapes of lengthy materials must be voice- or tone-indexed.

All copies of any videotapes produced must either be open-captioned or closed-captioned for persons with hearing impairments. If videotapes contain significant visual action, some of the closed-captioned tapes must be audio-described for persons with vision impairments.

Effective Communication and Accessibility Requirements. If applicants propose to charge a fee for the materials they produce and disseminate, they must charge the same fee for alternate formats as for standard formats.

Applicants who plan to list a voice telephone number on correspondence or promotional materials concerning the grant activities, or on materials produced under the grant, must also list a TTY telephone number. Applicants who do not have a TTY may include the cost of purchasing one in the proposed project budget.

Applicants who plan to use an automated telephone information system to respond to voice calls concerning grant activities must provide comparable service for TTY users. The cost of establishing an automated TTY information system may not be included in the proposed project budget.

All grant activities must be held in accessible facilities and must be available in formats accessible to individuals with communication disabilities.

Materials to be Provided to DOJ. One thousand standard print copies, 100 audiotape copies, 100 large print copies, and 50 Braille copies of each publication produced under the grant must be provided to DOJ.

One one-inch NCSC standard fully mixed and open-captioned edited master videotape, 25 other copies, and, where appropriate, 15 audiodescribed copies of each videotape produced under the grant must be provided to DOJ for use by the Federal government.

A copy of the final text of each document or videotape script produced must be provided to DOJ on computer disk in ASCII or Wordperfect.

Funds for the reproduction of the above materials should be included in the proposed grant budget.

Application Requirements

Under Section 506(d) of the Americans with Disabilities Act, the

Department is authorized to award grants to individuals and non-profit organizations to supplement its technical assistance efforts. All applicants must submit, in the order given, an original and two copies of the following information.

1. A signed SF 424 and SF 424A (Rev 4/88) application form.

2. A one-page Abstract that summarizes the goals of the project, the nature and size of the population(s) to be reached through the project, and the project strategy; Applicants should state explicitly the number of people expected to be served in the course of the project's activities. Depending on the nature of the project, this may be indicated by the number of copies of print materials to be developed and disseminated, the number of people expected to be trained, the number of people expected to view audiovisual materials, or other appropriate indicators of the scale of the project.

3. A Project Strategy and Plan of Action (maximum length 15 pages) that

—Addresses each major component identified in the grant priorities specific to the project for which applicant is applying;

—Describes all major activities, events, and/or products that are planned;

—Provides a detailed plan for evaluating the effectiveness of the project, and how the proposed evaluation criteria will indicate to what degree the project succeeded in meeting its stated objectives and reaching the targeted audience; and

—Provides a description of the applicant's plan for coordinating project activities with other Federal ADA programs and their grantees.

4. A Management Plan that includes a timeline for completion of all project objectives, activities, events, and products.

5. A Budget Narrative required by the SF 424 (Rev. 4/88), which includes the basis for all costs presented in the budget.

6. A brief statement identifying the facilities, equipment, and other resources available for carrying out the project.

7. Job descriptions for positions that are proposed to be funded under the grant.

8. Resumes or qualifications of the key individuals who will fill the grant positions, including consultants, if any (maximum length 3 pages each).

9. Letters of commitment from organizations that will be involved in the project, if any.

10. A certification regarding lobbying, debarment, suspension, other responsibility matters, and drug-free workplace requirements, OJP Form 4061/6.

11. A disclosure of lobbying activities, SF LLL.

(Please Note: Non-profit applicants who have not previously received Federal financial assistance from the Department of Justice may also be required to submit a disclosure of financial capability statement or other documentation prior to the grant award)

Dated: May 25, 1994.

Deval L. Patrick,

Assistant Attorney General, Civil Rights Division.

[FR Doc. 94-13514 Filed 6-2-94; 8:45 am]

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Federal Register

Friday
June 3, 1994

Part VII

Department of Commerce

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Notice of Open Meeting

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Notice of Open Meeting

AGENCY: National Telecommunications and Information Administration (NTIA)

ACTION: Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of a NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services for the Council.

AUTHORITY: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993.

DATES: The meeting will be held on Monday, June 20, 1994, from 8:30 a.m. until 4:30 p.m.

ADDRESSES: The meeting will take place at the Weyerhaeuser Auditorium in the Landmark Center, 75 West 5th Street, St Paul, Minnesota 55102.

FOR FURTHER INFORMATION CONTACT: Ms Sarah Maloney (or Ms. Alison Andrews, alternate), Designated Federal Officer for the Advisory Council on the NII and Chief, Policy Coordination Division at the National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, room 4892; 14th Street and Constitution Avenue, NW.; Washington, DC 20230 Telephone: 202–482–1835; Fax: 202–482–0979; E-mail: nii@ntia.doc.gov

SUPPLEMENTARY INFORMATION: Future meetings of the Advisory Council on the National Information Infrastructure are planned on: September 13, 1994, October 19, 1994, December 6, 1994, January 26, 1995, February 22, 1995, April 12, 1995, June 14, 1995, August 15, 1995, October 11, 1995, December 13, 1995.

AGENDA:

1. *Opening Remarks by the Co-Chairs (Delano Lewis, Ed McCracken)*
2. *Meetings of Three Mega-Projects (separate rooms)*

Members assigned to each of the three projects will meet together. The projects are:

Vision and Goals Driven by Specific Applications
Access to the NII
Privacy, Security, and Intellectual Property

3. *Reports and Discussion on Mega-Projects*
4. *Intellectual Property Report and Discussion*
5. *Council Discussion*
6. *Application Demonstrations*
7. *Public Questions and Answers*
8. *Adjourn*

PUBLIC PARTICIPATION: The Council meeting, including the individual Mega-Project meetings, will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Alison Andrews at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meeting. Comments should be submitted through electronic mail to nii@ntia.doc.gov, info@niiac.org, or to the Designated Federal Officer at the address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Council meetings may be obtained through the NTIA Gopher/Bulletin Board System over the Internet at iitf.doc.gov, at 202–501–1920 or 202–482–1199, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, room 4892, 14th Street and Constitution Avenue NW.; Washington, DC 20230; Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 94–13620 Filed 6–1–94; 8:45 am]

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Federal Register

Friday
June 3, 1994

Part VIII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 341

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 89P-0040]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC Antitussive Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the final monograph for over-the-counter (OTC) antitussive drug products to include the ingredients diphenhydramine citrate and diphenhydramine hydrochloride. OTC antitussive drug products are used to relieve cough. This final rule addresses only single-ingredient antitussive drug products containing one of these ingredients. In a future issue of the **Federal Register**, the agency will propose to amend the tentative final monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products to address combination cough-cold drug products containing diphenhydramine citrate or diphenhydramine hydrochloride. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 12, 1987 (52 FR 30042), FDA issued a final monograph for OTC antitussive drug products in part 341 (21 CFR part 341) that lists in § 341.14 (21 CFR 341.14) the active ingredients that are generally recognized as safe and effective for use in these products. Diphenhydramine citrate and diphenhydramine hydrochloride were not included in § 341.14 at that time. Subsequently, two manufacturers petitioned the agency to amend the final monograph for OTC antitussive drug products to include diphenhydramine citrate and diphenhydramine hydrochloride as monograph active ingredients (Refs. 1 and 2). The petitions are on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

In the **Federal Register** of December 9, 1992 (57 FR 58378), the agency discussed these petitions and proposed that diphenhydramine citrate and diphenhydramine hydrochloride be generally recognized as safe and effective for OTC antitussive use. The agency previously determined that diphenhydramine citrate is bioequivalent and therapeutically equivalent to diphenhydramine hydrochloride (54 FR 6814 at 6824, February 14, 1989). The agency proposed specific warnings and directions for these ingredients for OTC antitussive use. The agency advised in its proposed rule (57 FR 58378 at 58380) that any final rule resulting from this proposed rule would be effective 12 months after the final rule's date of publication in the **Federal Register**.

The agency invited written comments by February 8, 1993, on the proposed rule and the agency's economic impact determination for the proposal. In response to the proposed rule, the agency received two comments from manufacturers. Copies of the comments are on public display in the Dockets Management Branch (address above).

References

(1) Comment No. CP2, Docket No. 89P-0040, Dockets Management Branch.

(2) Comment No. CP3, Docket No. 89P-0040, Dockets Management Branch.

II. The Agency's Conclusions on the Comments

1. Two comments requested that the agency's proposed OTC antitussive dosage for diphenhydramine hydrochloride (25 milligrams (mg) every 4 hours (h), not to exceed 150 mg in 24 h) be expanded to a range of 25 to 50 mg every 4 to 6 h, not to exceed 300 mg in 24 h. One of the comments also requested a corresponding expansion of the OTC antitussive dosage for diphenhydramine citrate, i.e., a dosage of 38 to 76 mg every 4 to 6 h, not to exceed 456 mg in 24 h.

To support an expanded dosage range for antitussive use, one of the comments provided pharmacokinetic data for diphenhydramine hydrochloride dosed at 25 mg every 4 h and 50 mg every 6 h. The data included the following steady state concentrations (C_{ss}), minimum concentrations at steady state ($C_{ss\ min}$), and maximum concentrations at steady state ($C_{ss\ max}$) in nanograms/milliliter (ng/mL) for both dosages; and the areas under the curve (AUC) for both dosages in ng x h/mL:

Diphenhydramine Hydrochloride Pharmacokinetic Data

	($C_{ss\ max}$)	($C_{ss\ min}$)	(C_{ss})	(AUC)
25 mg every 4 h	55 ng/mL	27.5 ng/mL	40 ng/mL	160 ng x h/mL
50 mg every 6 h	85 ng/mL	30 ng/mL	52 ng/mL	312 ng x h/mL

The comment pointed out that the two $C_{ss\ max}$ concentrations are comparable. The comment stated that the 50 mg every 6 h dosing regimen is as efficacious as the 25 mg every 4 h regimen because the 50 mg dose does not fall below the minimum effective concentration. The comment added that further substantiation is provided by the C_{ss} and AUC data, which fall within the minimum effective concentration levels.

The other comment stated that the potential for conflict between the different dosages for antitussive and antihistamine use of diphenhydramine would be eliminated by accepting the broader antihistamine dosage (e.g., for diphenhydramine hydrochloride, 25 to 50 mg every 4 to 6 h, not to exceed 300 mg in 24 h) for products intended for both uses. The comment added that this approach would reduce the potential for consumer confusion. The comment argued that it would not be in the consumer's interest to establish a lower dose for diphenhydramine in products that will not meet consumer expectations of the antihistamine effect. The comment contended that, based on the established safety of diphenhydramine citrate and diphenhydramine hydrochloride for both antitussive and antihistamine use, monograph status for four uses, and potential use for more than one

indication in a cough-cold product, the broader dosage range (e.g., for diphenhydramine hydrochloride, 25 to 50 mg every 4 to 6 h) should be permitted to provide maximum effectiveness. Both comments concluded that diphenhydramine hydrochloride has been found safe for a variety of OTC uses at dosages of 25 to 50 mg every 4 to 6 h and, thus, safety is not an issue at this dosage range.

In the **Federal Register** of September 9, 1976 (41 FR 38312 at 38341), the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products based its 25 mg every 4 h recommendation for diphenhydramine hydrochloride for antitussive use on data demonstrating effectiveness and acceptable tolerability at this dosage. All approved applications for diphenhydramine hydrochloride as an OTC antitussive are for a dosage of 25 mg every 4 h, based on supporting clinical data. No clinical data have been received by the agency to support the safety or increased effectiveness of higher dosages of diphenhydramine hydrochloride or diphenhydramine citrate for OTC antitussive use either under the OTC drug review or an approved application. One comment submitted pharmacokinetic data concerning diphenhydramine at both the 25 mg every 4 h dose and the 50 mg every 6 h dose showing that C_{ss} min for both regimens were similar. It is therefore likely that dosing at 50 mg every 6 h is effective. That regimen, however, produces higher $C_{ss\ max}$ and almost twice the drug exposure, with increased potential adverse effects such as sedation, but with no evidence of greater effectiveness than the every 4 h regimen. In conclusion, the agency cannot consider to be generally recognized as safe and effective an antitussive dosage (25 to 50 mg every 4 to 6 h for diphenhydramine hydrochloride) that is not supported by clinical data. Therefore, based on the Panel's recommended dosage and the approved application labeling for OTC antitussive drug products containing diphenhydramine hydrochloride, the agency is establishing the monograph antitussive dosage of diphenhydramine hydrochloride as follows:

Adults and children 12 years of age and over: oral dosage is 25 milligrams every 4 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 milligrams every 4 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

The monograph antitussive dosage of diphenhydramine citrate is as follows:

Adults and children 12 years of age and over: oral dosage is 38 milligrams every 4 hours, not to exceed 228 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 19 milligrams every 4 hours, not to exceed 114 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

With respect to the comment's discussion of a single ingredient drug product containing diphenhydramine for concurrent use as both an antihistamine and an antitussive, this issue will be addressed in an amendment to the OTC cough-cold combinations tentative final monograph in a future issue of the **Federal Register**.

2. One comment discussed "multiuse" labeling of OTC drug products that contain diphenhydramine. The comment described this as labeling a product with some or all of the proven pharmacologic activities of the drug whether or not the conditions to be treated are related. As an example, the comment stated that a product containing diphenhydramine could be labeled for both antitussive and antihistamine use. If this occurred, the statement of identity could be expressed as "cough suppressant/antihistamine." The comment stated that the product's labeling could describe each use separately under the product's "Indications," with accompanying warnings and directions for both uses. The comment contended that there is no legal restriction that prevents "multiuse" labeling whether or not the conditions to be treated are related. The comment discussed several aspects of "multiuse" labeling.

This final rule addresses only single-ingredient diphenhydramine citrate and diphenhydramine hydrochloride drug products for antitussive use. The agency acknowledges that "multiuse" labeling is possible for products containing diphenhydramine but is not aware of any such products having been or currently being in the marketplace. The agency intends to address "multiuse" labeling in a future issue of the **Federal Register** in an amendment to the tentative final monograph for OTC cough-cold combination drug products. The agency will discuss: (1) Concurrent use of diphenhydramine as an antitussive and as an antihistamine for concurrent symptoms, and (2) different uses of diphenhydramine with separate full labeling for different, nonconcurrent symptoms. Manufacturers may not introduce diphenhydramine products having "multiuse" labeling into the OTC marketplace until the agency's proposal on how this should be done appears in a future issue of the **Federal Register**.

3. One comment contended that an agency statement in the proposed rule appeared to be inconsistent with the agency's general provisions and administrative procedures for marketing OTC combination drug products under 21 CFR 330.13(b)(2) and Compliance Policy Guide 7132b.16. The agency statement said: "Until the agency amends the tentative final monograph for OTC cough-cold combination drug products, no cough-cold combination drug product containing diphenhydramine citrate or diphenhydramine hydrochloride labeled for antitussive use can be marketed OTC unless it is the subject of an approved NDA or ANDA" (57 FR 58378 at 58380). The comment stated that, because FDA recognizes diphenhydramine as both an OTC antihistamine and an OTC antitussive, marketing of diphenhydramine for both claims in combination drug products should be allowed under the provisions of the tentative final monograph for OTC cough-cold combination drug products. The comment listed a number of examples where an antitussive can be combined with an antihistamine and stated that diphenhydramine should be able to perform both functions in the product. The comment contended that this approach should be acceptable provided that all of the labeled uses are for Category I combinations.

This final rule does not address combination drug products containing diphenhydramine citrate or diphenhydramine hydrochloride as an antitussive active ingredient. There are a number of issues that need to be resolved before diphenhydramine can be used to perform both functions (antitussive and antihistamine) in a single product. These include, among others, a difference in the monograph directions for use (amount of drug to be taken and time interval for taking the drug) and different warnings related to the individual uses. The agency intends to discuss these matters in a future issue of the **Federal Register**, as noted above. At this time, the agency reaffirms its position stated above that any OTC cough-cold combination drug product containing diphenhydramine citrate or diphenhydramine hydrochloride labeled for antitussive use can only be marketed if it is the subject of an approved application.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking. FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs

agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Currently marketed OTC single ingredient diphenhydramine drug products already meet the conditions of the final monograph. Other manufacturers will be able to enter the OTC marketplace without having to obtain an approved application. Accordingly, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 341

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 341 is amended as follows:

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 341.14 is amended by adding new paragraphs (a)(5) and (a)(6) to read as follows:

§ 341.14 Antitussive active ingredients.

* * * * *

(a) * * *

(5) Diphenhydramine citrate.

(6) Diphenhydramine hydrochloride.

* * * * *

3. Section 341.74 is amended by adding new paragraphs (c)(4)(vii), (c)(4)(viii), (c)(4)(ix), (d)(1)(iv), and (d)(1)(v) to read as follows:

§ 341.74 Labeling of antitussive drug products.

* * * * *

(c) * * *

(4) * * *

(vii) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.14(a)(5) and (a)(6).* "May cause excitability especially in children."

(viii) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.14(a)(5) and (a)(6) when labeled only for children under 12 years of age*—(A) "Do not give this product to children who have a breathing problem such as chronic bronchitis, or who have glaucoma, without first consulting the child's doctor."

(B) "May cause marked drowsiness. Sedatives and tranquilizers may increase the drowsiness effect. Do not give this product to children who are taking sedatives or tranquilizers, without first consulting the child's doctor."

(ix) *For products containing diphenhydramine citrate or diphenhydramine hydrochloride identified in § 341.14(a)(5) and (a)(6) when labeled for use in adults and children under 12 years of age*—(A) "Do not take this product, unless directed by a doctor, if you have a breathing problem such as emphysema or chronic bronchitis, or if you have glaucoma or difficulty in urination due to enlargement of the prostate gland."

(B) "May cause marked drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor. Use caution when driving a motor vehicle or operating machinery."

* * * * *

(d) * * *

(1) * * *

(iv) *For products containing diphenhydramine citrate identified in § 341.14(a)(5).* "Adults and children 12 years of age and over: oral dosage is 38 milligrams every 4 hours, not to exceed 228 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 19 milligrams every 4 hours, not to exceed 114 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor."

(v) *For products containing diphenhydramine hydrochloride identified in § 341.14(a)(6).* "Adults and children 12 years of age and over: oral dosage is 25 milligrams every 4 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 milligrams every 4 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor."

* * * * *

4. Section 341.90 is amended by adding new paragraphs (r) and (s) to read as follows:

§ 341.90 Professional labeling.

* * * * *

(r) *For products containing diphenhydramine citrate identified in § 341.14(a)(5).* "Children 2 to under 6 years of age: oral dosage is 9.5 milligrams every 4 hours, not to exceed 57 milligrams in 24 hours."

(s) *For products containing diphenhydramine hydrochloride identified in § 341.14(a)(6).* "Children 2 to under 6 years of age: oral dosage is 6.25 milligrams every 4 hours, not to exceed 37.5 milligrams in 24 hours."

Dated: May 16, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-13586 Filed 6-2-94; 8:45 am]

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Federal Register

Friday
June 3, 1994

Part IX

Department of Commerce

International Trade Administration

Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order and Correction; Notices

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-806]

Steel Wire Rope from Mexico; Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order

AGENCY: Import Administration/ International Trade Administration/ Department of Commerce.

ACTION: Notice of affirmative preliminary determination of circumvention of antidumping duty order.

SUMMARY: On May 26, 1993, the Department of Commerce received an allegation of circumvention of the antidumping duty order on steel wire rope from Mexico. Pursuant to that allegation, the Department of Commerce initiated a circumvention inquiry on September 17, 1993, which was published in the **Federal Register** on September 27, 1993 (58 FR 50349).

The Department of Commerce has conducted that inquiry and preliminarily determines that imports into the United States of steel wire strand from Mexico, which are assembled in the United States into steel wire rope for sale in the United States, are circumventing the antidumping duty order on steel wire rope from Mexico within the meaning of section 781(a) of the Tariff Act of 1930, as amended, and 19 CFR 353.29(e). Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra Yacura or Thomas Prosser at (202) 482-5253, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1993, the Department of Commerce (the Department) received a petition filed by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee) requesting an investigation to determine whether imports of steel wire strand (also known as stranded wire or strand) are circumventing the antidumping duty order on steel wire rope from Mexico (58 FR 16173, March 25, 1993) within the meaning of section 781(a) of the Tariff Act of 1930, as amended (the Tariff Act). Subsequent submissions from the Committee, addressing deficiencies in the original request, were received on August 13, August 18, and August 20, 1993. On April 11, 1994, the Committee submitted copies of the Census Bureau data that it had summarized in earlier submissions. On September 27, 1993, the Department published in the **Federal Register** a Notice of Initiation of Anticircumvention Inquiry; Steel Wire Rope from Mexico (58 FR 50349). The inquiry covers the period from October 1, 1992 to September 30, 1993.

On November 19, 1993, the Department issued a questionnaire to Grupo Camesa S.A. de C.V. (Grupo Camesa) and its United States affiliate, Camesa Inc. (collectively, Camesa). Camesa responded to the questionnaire on December 20, 1993. The Department determined that this submission was deficient and issued a supplemental questionnaire on January 31, 1994. The Department received a response to the supplemental questionnaire on February 16, 1994. On March 15, 1994, the Committee submitted comments with respect to Camesa's responses.

Scope of Antidumping Duty Order

The product covered by the order is steel wire rope, which is defined in the Department's antidumping duty order on steel wire rope from Mexico as: "ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of plated wire."

During the period of this inquiry (POI), such merchandise was classifiable under subheadings 7312.10.9030, 7312.10.9060, and 7312.10.9090 of the Harmonized Tariff Schedule (HTS). HTS subheadings are provided for convenience and for Customs purposes. The Department's written description of the scope of the order remains dispositive.

Scope of the Anticircumvention Inquiry

Products subject to the circumvention inquiry are entries of strand, which are defined as stranded wire having a lay or twist of not more than 1 revolution for a length equal to the strand diameter multiplied by 8.5. During the POI, such merchandise was classifiable under subheading 7312.10.3020 of the HTS. The HTS subheading is provided for convenience and for Customs purposes. The Department's written description of the scope of the inquiry remains dispositive.

Nature of the Circumvention Inquiry

Section 781(a)(1) of the Tariff Act provides that if:

(A) A product sold in the United States is of the same class or kind as merchandise that is the subject of an order, and

(B) Such product sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies, and

(C) The difference between the value of such product sold in the United States and the value of the imported parts and components referred to in (B) above is small, the Department, after taking into account any advice provided by the U.S. International Trade Commission (ITC), may include within the scope of such order the imported parts or components referred to in paragraph (B) above that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect. Section 781(a)(2) of the Tariff Act further provides that, in determining whether to include parts or components in an antidumping duty order, the Department shall take into account such factors as (A) pattern of trade; (B) whether the manufacturer or exporter of the parts or components is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order applies, and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after the issuance of such order.

I. Statutory Criteria

(A) Class or Kind of Merchandise

In this inquiry, the merchandise completed at Camesa Inc.'s Rosenberg, Texas, facility and sold in the United States is steel wire rope. As the antidumping duty order encompasses "ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of plated wire," the steel wire rope sold in the United States is of the same class or kind of merchandise as that subject to the antidumping duty order on steel wire rope from Mexico.

(B) Parts/Components Produced in the Country to Which the Order Applies

The component of wire rope being imported is defined as stranded wire having a lay or twist of not more than 1 revolution for a length equal to the strand diameter multiplied by 8.5. This strand is produced by Grupo Camesa in Mexico, imported into the United States for closure into steel wire rope at the

Camesa Inc. facility at Rosenberg, Texas, and subsequently sold in the United States by Camesa Inc.

(C) Difference in Value

In this anticircumvention inquiry, we attempted to base our analysis of the difference in value on both a quantitative analysis of the value of the finishing process in the United States, and a qualitative analysis of the nature of the processing performed in the United States. This approach is consistent with our analysis in previous anti-circumvention inquiries. See, e.g., Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Affirmative Final Determination of Circumvention of Antidumping Duty Order, 59 FR 15155 (March 31, 1994).

Generally, in an anticircumvention inquiry, a quantitative analysis is based on a comparison of the value between the finished product sold in the United States and the value of the component imported from the country to which the order applies. See, e.g., Granular Polytetrafluoroethylene Resin from Italy, Preliminary Affirmative Determination of Circumvention of Antidumping Duty Order, 57 FR 43218 (September 18, 1992). However, in order to make an effective comparison, the Department must ascertain that it is using the appropriate value for the imported component. To that end, we provided the respondent with three options for demonstrating that the price of the wire strand imported by Camesa Inc. from Grupo Camesa represented a valid market price for use in our difference-in-value calculation. The options were as follows: (1) Sales prices for strand sold to unrelated parties in the home market and largest third country market; (2) purchase prices paid to unrelated suppliers in Mexico by Grupo Camesa for strand; or (3) monthly weighted-average manufacturing costs for strand sold to Camesa Inc. during the POI. In order for us to ascertain the value of the completed merchandise sold in the United States, we also requested that Camesa provide cost data relevant to the production of steel wire rope in the United States.

Camesa, however, failed to provide any of the requested information. Instead, Camesa provided a single price quotation from a supplier in a third country. Camesa's failure to provide the requested information prevented the Department from determining whether the difference between the value of the steel wire rope sold in the United States and the value of the strand produced in Mexico is small. Accordingly, the Department is required to rely on the best information available (BIA), pursuant to section 776(c) of the Tariff Act, to make the determination.

In deciding what to use as BIA, the Department's regulations at 19 CFR 353.37(b) state that the Department may take into account whether a party refuses to provide requested information. Thus, the Department may determine, on a case-by-case basis, what constitutes BIA.

Because Camesa refused to provide the requested information, as BIA, we preliminarily determine that the quantitative difference between the value of the finished steel wire rope sold in the United States and the value of the strand produced in Mexico is small. This eliminates the need for the Department's qualitative analysis of the nature of the processing Camesa Inc. performed in the United States. However, we note that the result of a qualitative analysis supports the BIA assumption that the difference between the value of the imported strand and the value of the finished rope is small, as discussed below.

According to the description of the manufacturing process provided by the ITC in its final affirmative determination of injury (as discussed in the following paragraphs) concerning imports of steel wire rope from Argentina and Mexico (see Steel Wire Rope from Argentina and Mexico, Determinations of the Commission in Investigations Nos. 731–TA–457 and 479 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations, August 1991, pages A17–A21), the manufacturing process for steel wire rope consists of three major steps: (1) Drawing rod into wire, (2) stranding wire, and (3) closing strands into rope. Camesa Inc. performs only the closing process in the United States.

In the first step, steel wire rod is heat treated (called patenting), coated, cleaned, and reduced to a smaller diameter through a series of dies to wire. Depending on the amount of reduction during drawing (called the draft), the wire may also undergo patenting and re-drawing to a smaller diameter.

In the second step, strands are formed in a single operation from individual wires laid about a core so that all wires in a strand can move in unison to distribute load and bending stresses equally. This is achieved with "tubular" or "planetary" stranding machines. Strand used for making wire rope is generally lubricated as the wires move into the stranding die. After emerging from the stranding die, the strand is frequently "postformed," a process that involves passing the strand through a series of straightening rollers in order to remove excessive twist. The strand may be die-formed or flattened, or coated at this point.

The third step, the finishing operation, is called "closing" and is accomplished on a tubular or planetary closer, operating in a manner similar to tubular or planetary stranders. Spools or bobbins of strand are placed in cradles in the closer to dispense simultaneously all strands of a sufficient length needed to make a single rope without a splice. The closing die presses the strands together, forming the rope.

Based on the above description of the manufacturing process for steel wire rope, we preliminarily determine that the finishing operation performed by Camesa Inc. in the United States represents a minor portion of the manufacturing process of steel wire rope, and adds minor value when compared to the production of the wire strand, as alleged by the petitioner in its anticircumvention inquiry request.

The Department has determined, based on BIA, that the quantitative difference between the value of the steel wire rope sold in the United States and the value of the wire strand produced in Mexico is small. Though not necessary for this conclusion, the Department further notes that a qualitative analysis of the manufacturing process for steel wire rope demonstrates that the finishing operation performed by Camesa Inc. represents a minor portion of the manufacturing process of steel wire rope. Therefore, we preliminarily determine that the difference between the value of the strand produced in Mexico and the value of the wire rope sold in the United States is small within the meaning of section 781(a) of the Tariff Act.

II. Factors

In accordance with section 781(a)(2) of the Tariff Act, the Department considered the following factors in determining whether to include strand within the order: (A) The pattern of trade, (B) whether the manufacturer or exporter of the parts or components is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order applies, and (C) whether imports into the United States of the parts or components produced in such foreign country have increased after the issuance of such order

(A) Pattern of Trade

Generally, the Department considers circumvention to be more likely when

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the imports of the merchandise subject to the order have decreased. To evaluate the pattern of trade in this case, we examined the timing and quantities of exports of steel wire rope from Mexico to the United States during the POI. We also examined the timing and quantities of Camesa's imports into the United States of steel wire rope produced by Grupo Camesa in Mexico.

U.S. Census Bureau (Census Bureau) statistics indicate that, during the nine months prior to the POI, steel wire rope imports from Mexico to the United States averaged 316.44 net tons per month. However, during the first half of the POI, imports of steel wire rope from Mexico dropped to an average of ten net tons per month. Census Bureau statistics for the second half of the POI were not available.

Although Camesa imported steel wire rope from Mexico to the United States prior to the POI, Camesa had no such imports of steel wire rope during the POI. Thus, the pattern of trade of imports of merchandise subject to the order indicates that circumvention may have occurred during the POI.

(B) Relationship

Generally, the Department considers circumvention to be more likely when the manufacturer/exporter of the parts or components is related to the party completing or assembling merchandise in the United States using such imported parts or components. See, e.g., Granular Polytetrafluoroethylene Resin from Italy, Final Affirmative Determination of Circumvention of Antidumping Duty Order, 58 FR 26100 (April 30, 1993).

Camesa Inc., which imports the strand at issue and finishes it into steel wire rope in the United States, is a wholly-owned subsidiary of Grupo Camesa, the Mexican manufacturer and exporter of the strand (see Camesa submission of December 20, 1993, page one). Since all of Camesa Inc.'s purchases of strand during the POI were from Grupo Camesa, these purchases are from a related party within the meaning of section 773(e)(4) of the Tariff Act. Accordingly, the relationship between Grupo Camesa and Camesa Inc. would make it more likely that circumvention of the antidumping duty order may have occurred during the POI.

(C) Increase in Imports of Components

Generally, the Department considers circumvention to be more likely when imports of parts and components which are used in the production of merchandise subject to the order have increased after issuance of the antidumping duty order. The Department reviewed Camesa's imports of strand after the issuance of the order, and compared these imports to those prior to the order.

We note that Camesa's imports steadily increased after issuance of the order through the end of the POI (see Camesa submission of December 20, 1993, Attachment Five). This pattern of imports of strand from Mexico indicates that circumvention of the order on steel wire rope may have occurred during the POI.

Affirmative Preliminary Determination of Circumvention

After consideration of all the factors discussed above, the Department preliminarily determines that circumvention of the antidumping duty order on steel wire rope from Mexico has occurred within the meaning of section 781(a) of the Tariff Act.

We base this determination on the following: First, the merchandise finished at Camesa Inc. and sold in the United States is of the same class or kind of merchandise as that covered by the order and is completed from merchandise produced in the order country. Second, on the basis of BIA, the Department preliminarily determines that the difference between the value of the steel wire rope sold in the United States and the value of the strand used in the production of steel wire rope is small within the meaning of section 781(a) of the Tariff Act. Third, Camesa's imports into the United States of strand from Mexico increased during the POI, while Camesa's imports into the United States of wire rope from Mexico ceased after the Department issued the affirmative preliminary determination of sales at less than fair value of steel wire rope from Mexico. Finally, Camesa Inc. is a wholly-owned subsidiary of Grupo Camesa. Thus, the pattern of trade, relationship between Grupo Camesa and Camesa Inc., and level of imports into the United States support a finding of circumvention of the antidumping duty order.

Based on this affirmative preliminary determination of circumvention, we have preliminarily determined that strand, as defined above, falls within the scope of the antidumping duty order on steel wire rope from Mexico, pursuant to section 781(a)(1) of the Tariff Act.

Suspension of Liquidation

In accordance with section 773(d) of Tariff Act, the Department is directing the U.S. Customs Service to suspend liquidation of all entries of stranded wire from Mexico having a lay or twist of not more than 1 revolution for a length equal to the strand diameter multiplied by 8.5, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

The merchandise subject to suspension of liquidation is wire strand of the kind used in the production of steel wire rope, as defined in the "Scope of the Anticircumvention Inquiry" section of this notice. The U.S. Customs Service shall require a cash deposit or posting of bond in the amount of 111.68 percent. This suspension of liquidation will remain in effect until further notice.

Notification of the International Trade Commission

The Department, consistent with section 781(e) of the Tariff Act, will notify the ITC of this preliminary determination to include the merchandise subject to this inquiry within the antidumping duty order on steel wire rope from Mexico. Pursuant to section 781(e) of the Tariff Act, the ITC may request consultations concerning the Department's proposed inclusion of the subject merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, the ITC may provide written advice to the Department. In such a case, the ITC will have 60 days to provide written advice to the Department.

Public Comment

Interested parties may request disclosure within 5 days of the date of publication of this determination, and may request a hearing within 10 days of publication. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to comments, limited to issues raised in those briefs or comments, may be filed no later than 37 days after publication of this notice. Any hearing, if requested, will be held 44 days after publication of this notice. The Department will publish the final determination with respect to the circumvention inquiry, including the results of its analysis of any written comments.

This preliminary affirmative circumvention determination is in accordance with section 781(a) of the Tariff Act and 19 CFR 353.29(e).

Dated: May 19, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-12798 Filed 5-24-94; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-806]

Steel Wire Rope From Mexico; Correction to Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order

AGENCY: Import Administration/ International Trade Administration/ Department of Commerce.

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra Yacura or Thomas Prosser at (202) 482-5253, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

CORRECTION: In the notice of affirmative preliminary determination of circumvention of the antidumping duty order on steel wire rope from Mexico published elsewhere in this issue of the **Federal Register**, the Department of Commerce (the Department) incorrectly stated under the "Suspension of Liquidation" section that:

The U.S. Customs Service shall require a cash deposit or bond posted thereof in the amount of 111.68 percent.

In accordance with 19 CFR 353.29(f) in the event of an affirmative preliminary determination under section 353.29, the Department will instruct the Customs Service to require a cash deposit. There is no provision for the posting of bonds. Therefore, the sentence should not have included the phrase "or bond posted thereof." The correct sentence should read as follows:

The U.S. Customs Service shall require a cash deposit in the amount of 111.68 percent.

This notice is published pursuant to section 7(i)(a) of the Tariff Act and 19 CFR 353.29(i).

Dated: May 19, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-12799 Filed 5-24-94; 8:45 am]

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Part X

Department of the Interior

Bureau of Indian Affairs

Power Rate Adjustment: Mission Valley Power Utility, MT; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Power Rate Adjustment: Mission Valley Power Utility, MT

ACTION: Notice.

SUMMARY: This notice increases the cost of electric power to customers of Mission Valley Power (MVP), the entity operating the power facility of the Flathead Indian Irrigation Project of the Flathead Reservation. The Bureau of Indian Affairs (BIA) has been informed that the Montana Power Company (MPC), which sells electric power to MVP, has raised its wholesale power rates by 3.0%. The MPC increase, which went into effect on September 1, 1993, is based on adjustments in the Consumer Price Index pursuant to the Federal Energy Regulatory Commission license for MPC's Kerr Dam Hydroelectric Facility. Accordingly, the BIA is adjusting the local retail power rates charged by MVP to reflect the increased cost of purchased power.

DATES: MVP will adjust its rates to account for increased power costs, effective on June 3, 1994.

ADDRESSES: Bureau of Indian Affairs, Attention: Stanley Speaks, Area Director, Portland Area Office, 911 NE. 11th Avenue, Portland, Oregon 97232–4169.

FOR FURTHER INFORMATION CONTACT: Bureau of Indian Affairs; Attention: Stanley Speaks, Area Director, Portland Area Office, 911 NE. 11th Avenue, Portland, Oregon 97232–4169, (503) 231–6702; or Bill Rauch, General Manager, Mission Valley Power, P.O. Box 890, Polson, Montana 59860–0890, (406) 833–5361, or 1–800–823–3758 (In-State Watts).

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 7, 1946, c. 802, section 3 (60 Stat. 895; 25 U.S.C. 385c.); the Act of May 25, 1948 (62 Stat. 269); and the Act of December 23, 1981, section 112 (95 Stat. 1404). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Department Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

The Notice increasing the MVP rate was published on September 15, 1993 (58 FR 48426). The affected public and interested parties were provided the opportunity to submit written comments during the 30-day period subsequent to September 15, 1993. No comments were received during this comment period.

This adjustment is the result of an increase in the electric power rates charged by MPC, one of three sources of electric power marketed by MVP. Pursuant to the Federal Energy Regulatory Commission license for the Kerr Dam Hydroelectric Facility, MPC is allowed to adjust its electric power rates annually based on the Consumer Price Index. On August 3, 1993, MPC announced the rate increase of 3.0 percent, effective September 1, 1993. The following table illustrates CPI–U increases, mill/kwh increases, and the financial impact of the new retail rates on the various rate classes.

CHANGES TO RETAIL RATES BY RATE CLASSES

Rate class	Present	New	Increase charge
Residential:			
Basic charge	$11.00/mo	$11.00/mo	None.
(Includes KWH)	127 kwh	127 kwh	None.
Energy charge	$0.04709	$0.04719	$0.000010
#2 General:			
Basic charge	$11.00	$11.00	None
(Includes KWH)	109 kwh	109 kwh	None.
Energy charge	$0.05495	$0.05505	$0.000010
Irrigation:			
Horsepower charge (/HP)	$10.84/HP	$10.84/HP	None.
Energy charge	$0.03590	$0.03600	$0.00010
Small and large commercial:			
Basic charge	None	None	None
Minimum charge	$38.00	$38.00	None.
Demand charge	4.34	4.34	None.
Energy charge:			
First 18,000 KWH	0.04255	0.04264	$0.00009.
Over 18,000 KWH	0.03538	0.03547	$0.00009.

FUTURE ACTION: Notice of the final retail rate, along with the Table illustrating the rate increases and their impact on retail rates, will be published in local newspapers within the MVP service area. A household mailer to each MVP customer will detail the specific rate impacts per rate class.

Regulatory Analysis

Executive Order 12866

In accordance with the criteria of Executive Order 12866, the Department of the Interior has determined that this rule is not major and does not require a regulatory impact analysis.

Paperwork Reduction Action

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment under section (2)(C) of the National Environmental Policy Act of 1969 (hereinafter NEPA), 42 U.S.C. 4332(2)(C), and is categorically excluded from the NEPA process pursuant to Part 516 Department Manual, Chapter 2, appendix 1(1.5)

Authorship Statement

The principal author of this rule is Stanley Speaks, Area Director, Bureau of Indian Affairs, Portland Area Office, 911 NE. 11th Avenue, Portland, Oregon 97232–4169.

For the reasons set forth in the preamble, the rates charged for electric

power by the Mission Valley Power Utility are to be increased as set forth above.

List of Subjects

Indians, Electric power.

Dated: May 6, 1994.

John W. Tippeconnic,

Acting Assistant Secretary—Indian Affairs.

Ada E. Deer,

Acting for Assistant Secretary—Indian Affairs.

[FR Doc. 94-13242 Filed 6-2-94; 8:45 am]

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 94–047–1]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of New York from a modified accredited State to an accredited-free State. We have determined that New York meets the criteria for designation as an accredited-free State.

DATES: Interim rule effective on June 6, 1994. Consideration will be given only to comments received on or before August 5, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94–047–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Stenseng, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8715.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The tuberculosis regulations, contained in 9 CFR part 77 (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis are eligible for interstate movement without restriction if those cattle or bison are moved from jurisdictions designated as accredited-free States or modified accredited States. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from jurisdictions designated as nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which is part of the regulations via incorporation by reference in part 77. A State must have no findings of tuberculosis in any cattle or bison in the State for at least 5 years in order to be designated as an accredited-free State.

Before publication of this interim rule, New York was designated in § 77.1 of the regulations as a modified accredited State. However, New York now meets the requirements for designation as an accredited-free State. Therefore, we are amending the regulations by removing New York from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted, as New York currently meets the criteria for designation as an accredited-free State. This action provides prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

There are approximately 21,000 cattle herds in New York, with a total of about 1,560,000 cattle. An estimated 90 percent of these herds are owned by small entities. Changing the status of New York may affect the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended]

2. In § 77.1, in the definition for *Modified accredited state*, paragraph (2) is amended by removing "New York,"

§ 77.1 [Amended]

3. In § 77.1, in the definition for *Accredited-free states*, paragraph (2) is amended by adding "New York," immediately after "New Jersey,".

Done in Washington, DC, this 31st day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–13652 Filed 6–3–94; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 92

[Docket No. 94–032–1]

Importation of Brushtail Possums and Hedgehogs From New Zealand

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the animal importation regulations to prohibit the importation of brushtail possums and hedgehogs from New Zealand. This action is necessary to prevent the introduction of tuberculous animals into the United States. The intended effect is to protect domestic livestock from this disease.

DATES: Interim rule effective May 31, 1994. Consideration will be given only to comments received on or before August 5, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94–032–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import and Export, Veterinary Services, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) prohibit or restrict the importation into the United States of certain animals and birds to prevent the introduction of communicable livestock and poultry diseases, including bovine tuberculosis.

Bovine tuberculosis is a serious communicable disease of cattle, bison, and other species, including humans, caused by *Mycobacterium bovis*. Bovine tuberculosis (referred to below as TB) causes weight loss, general debilitation, and sometimes death. This disease manifests itself as lung disease or draining, nonhealing abscesses, or both. It is generally transmitted by breathing in respiratory excretions from infected animals or drinking infected milk from infected animals.

New Zealand has reported that TB is endemic in the brushtail possum (*Trichosurus vulpecula*). These possums are a constant source of disease for the domestic livestock population of New Zealand. Based upon information received from the New Zealand Ministry of Agriculture and Fisheries and information available in scientific literature, we recently prepared a risk assessment regarding the importation of brushtail possums from New Zealand into the United States. This risk assessment indicates that 45.8 percent (range 7.2 percent to 67.4 percent) of consignments of imported brushtail possums (generally imported in 4 consignments of 12 animals each) would contain 1 or more possums infected with *Mycobacterium bovis*. Additionally, there is no recognized test for detecting TB in brushtail possums. These factors present a significant risk that TB-infected brushtail possums from New Zealand could be imported into the United States.

Because hedgehogs from New Zealand occupy the same habitat and geographical areas as the brushtail possums, there is some risk that hedgehogs could contract TB from TB-infected possums. Also, as with the brushtail possums, there is no recognized test for detecting TB in hedgehogs. These factors present an unacceptable risk that TB-infected hedgehogs from New Zealand could be imported into the United States.

There have been a number of importations of brushtail possums and hedgehogs from New Zealand into the United States. Both these animals could likely survive and thrive in the wild in much of the United States. If infected with *Mycobacterium bovis* and allowed to roam freely, these animals could disseminate the TB organism over range and pasture land. Consuming grass contaminated with the TB organism by TB-infected brushtail possums is the major mode of TB infection in cattle in New Zealand. To prevent a similar situation in the United States, we are amending the regulations by adding a new subpart G to prohibit the importation of brushtail possums and hedgehogs from New Zealand into the United States.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of TB into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive

and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule prohibits the importation of brushtail possums and hedgehogs from New Zealand into the United States. These animals are imported as pets, for animal exhibitions, and for petting zoos.

Regulating the importation of certain animals that pose a disease risk to livestock in the United States is a continuing program. Discontinuing the importation of brushtail possums and hedgehogs from New Zealand will have no significant cost impacts, but it will produce a benefit by helping to protect domestic livestock from this disease.

The incidence of TB in domestic cattle remains relatively small; however, it has increased slightly in the past several years. Most of the incidences have occurred in States that share a border with Mexico. Mexican-origin cattle accounted for 83 percent of all TB lesions disclosed at slaughter in 1992. There are very few cases of TB in the rest of the country.

The inventory of all cattle and calves in the United States is estimated at 101.7 million head, with an estimated value of almost $67 billion. Nationwide, there are approximately 1.2 million operations with cattle and calves, according to USDA data.

The economic impact on the domestic cattle industry if TB-infected brushtail possums and hedgehogs from New Zealand were imported into the United States would be severe. The annual costs in New Zealand for possum damage (for example, damage to the environment and bovine TB attributable to the brushtail possum), disease surveillance, control and research probably exceed $20 million.

According to the Fish and Wildlife Service, there are probably two known importers of brushtail possums and hedgehogs from New Zealand. These importers would be considered small entities under the Small Business Administration criteria. Although the Fish and Wildlife Service could not provide data on the actual number of imported brushtail possums and hedgehogs imported from New Zealand into the United States by these importers, the Service has stated that these animals represent a very small percent of the total number of animals imported into the United States by these importers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In part 92, a new subpart G is added to read as follows:

Subpart G—Hedgehogs and Possums

Sec.
92.700 Definitions.
92.701 Prohibition

Subpart G—Hedgehogs and Possums

§ 92.700 Definitions.

Wherever in this subpart the following terms are used, unless the context otherwise requires, they shall be construed, respectively, to mean:

Brushtail possum. Vulpine phalangers (*Trichosurus vulpecula*) of the family Phalangeridae.

Hedgehog. All members of the family Erinaceidae.

United States. All of the States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

§ 92.701 Prohibition.

No brushtail possum or hedgehog from New Zealand shall be imported into the United States.

Done in Washington, DC, this 31st day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–13651 Filed 6–3–94; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AE67

Informal Hearing Procedures for Materials Licensing Adjudications

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to provide that persons requesting a hearing in certain materials license proceedings must file their requests within 30 days of receiving actual notice of the pendency of the license application, or, if the person does not learn about the application until it has been granted, within 30 days of receiving actual notice of the grant of the application. No hearing requests filed more than 180 days after the grant of the application will be entertained. The amendment applies only to materials licensing actions which are not of sufficient importance to warrant notice in the **Federal Register**. The rule change eliminates an ambiguous provision in the Commission's current regulations and serves to ensure that hearing requests are filed as promptly as possible, in order to promote the timely identification and resolution of problems with or objections to proposed licensing actions.

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Peter G. Crane, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–504–1634.

SUPPLEMENTARY INFORMATION:

Background

The Commission's rules governing informal hearing procedures of

adjudications on materials licenses are set forth in subpart L to part 2. When the rules do not require the Commission to publish notice of all proposed licensing actions, the requirements for requesting a hearing are tied to the date on which a requester receives actual notice of such actions.

Prior to this rule change, the regulation stated that if **Federal Register** notice of an action is not published, then a request for a hearing must be filed within "the earlier of—(i) Thirty (30) days after the requestor receives actual notice of a pending application or an agency action granting an application; or (ii) One hundred and eighty (180) days after agency action granting an application."

In August, 1992, the presiding officer in a materials licensing proceeding was faced with a case in which a requester with actual notice of a license application filed in 1989 waited to ask for a hearing until the NRC granted the application, three and a half years later. The licensee and the NRC staff objected that the request should have been filed within 30 days of the requester's receiving actual notice of the application. (In other words, they were arguing that the rule was meant to allow persons to file within 30 days of receiving actual notice of the grant of an application only if they were unaware until then of the pendency of the application.) The requester responded that the regulation contained no such implicit condition, and instead gave requesters a choice: Either they could file within 30 days of receiving actual notice of the application, or they could wait until the grant of the application and then file within 30 days of learning of the agency's action.

The presiding officer sustained the requester's position. He observed that the NRC staff and the licensee were in effect arguing that the regulation should be read as though it required the request to be filed at the earliest of three events: 30 days after receipt of actual notice of the filing of the application, 30 days after receipt of actual notice of the grant of the application; and 180 days after the grant of the application. He added that the Statement of Considerations accompanying the rule had referred to requests for hearing being timely if filed within 30 days of a requester's receiving actual notice "of a licensing action." The presiding officer offered a possible rationale for the two separate windows of opportunity: a potential requester, hopeful that an application might not be approved, would not have to file a hearing request until the grant of the application eliminated doubt as to the NRC's intent.

The Commission did not disturb the presiding officer's ruling, but it directed the staff to prepare a proposed rule that would make clear that requesters are indeed required to file at the earliest of the three events described above. Such a notice was published in the **Federal Register** on September 29, 1993, at 58 FR 50858.

Analysis of Public Comments

Two comments were received on the proposed rule, but neither one was directed to the actual subject of the rulemaking, i.e., whether the NRC should continue to allow someone with actual knowledge of an application to wait for that application to be granted before requesting a hearing.

1. Comment of Kerr-McGee Corporation

The first comment, from Kerr-McGee Corporation, endorsed the proposed rule, but noted that the new language "seemingly leaves the door open for filing of requests for hearing almost at will." Kerr-McGee asserted that the rule is hinged on when the requester "receives actual notice," an "ambiguous" term that "is not related to the time an actual amendment application is filed."

The response to this comment is that the NRC's proposed rule was directed to a specific and narrow issue—whether a potential requester with actual notice of an application should be able to delay filing a hearing request until the application is granted. The notice did not contemplate revising the rule to change the concept of making the receipt of actual notice the basis of the time for filing a hearing request.

2. Comment of Ohio Citizens for Responsible Energy (OCRE)

The second comment was from Ohio Citizens for Responsible Energy (OCRE), which objected to the portion of the regulation that bars petitions filed more than 180 days after the NRC's grant of an application. OCRE asserted that it was conceivable that someone would not learn of a licensing action until after the passage of 180 days, and would by then, through no fault of his or her own, have lost all opportunity to request a hearing.

OCRE's point, like Kerr-McGee's, goes beyond the scope of the quite narrow change that the NRC proposed. The Commission's notice made clear that the issue to be resolved was whether potential requesters with actual notice of an application for a particular licensing action were intended to have two bites at the apple, or should instead be required to file for a hearing at their earliest opportunity. The concept of a 180-day cutoff was never identified as being subject to reconsideration by the Commission.

Having considered the comments received, and finding that neither of them suggests a flaw in the specific correction proposed in the rule, the Commission has determined that the following final rule should be promulgated.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0136.

Regulatory Analysis

The Nuclear Regulatory Commission prepared a brief regulatory analysis for the proposed rule. Neither of the commenters having discussed the regulatory analysis, the Commission has not considered it necessary to prepare a separate analysis of the final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule sets forth the time frame within which a person other than an applicant must file a request for a hearing in a licensing proceeding held under the informal procedures set forth in 10 CFR part 2, subpart L. The rule does not impose any obligations on regulated entities that may fall within the definition of "small entities" as set forth in section 601(3) of the Regulatory Flexibility Act, or within the definition of "small business" as found in section 3 of the Small Business Act, 15 U.S.C. 632, or within the small business size standards contained in 13 CFR part 121.

Backfit Analysis

This rule does not involve any new provisions which would impose backfits as defined in 10 CFR 50.109(a)(1). Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.104 also issued under sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 182, 186, 234, 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b *et seq.*).

2. In § 2.1205, paragraph (c) introductory text is republished and paragraph (c)(2) is revised to read as follows:

§ 2.1205 Request for a hearing; petition for leave to intervene.

* * * * *

(c) A person other than an applicant shall file a request for a hearing within—

* * * * * *

(2) If a **Federal Register** notice is not published in accordance with paragraph (c)(1), the earliest of—

(i) Thirty (30) days after the requester receives actual notice of a pending application, or

(ii) Thirty (30) days after the requester receives actual notice of an agency action granting an application in whole or in part, or

(iii) One hundred and eighty (180) days after agency action granting an application in whole or in part.

* * * * *

Dated at Rockville, Maryland, this 31st day of May 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–13630 Filed 6–3–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ASW–41]

Establishment of Class E Airspace: Texarkana, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Texarkana, AR. Controlled airspace to the surface is needed during the hours that the control tower is closed. This action is intended to provide adequate Class E airspace for instrument flight rule (IFR) operations during the hours that the control tower is closed.

EFFECTIVE DATE: 0901 u.t.c., August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Gregory L. Juro, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5591.

SUPPLEMENTARY INFORMATION:

History

On December 3, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Texarkana, AR, was published in the **Federal Register** (58 FR 63903). Controlled airspace to the surface is needed during the hours that the control tower is closed. The proposal was to establish Class E airspace to contain IFR operations during the hours that the control tower is closed.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Other than editorial changes, this amendment is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1994). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Texarkana, AR. Controlled airspace to the surface is needed for IFR operations during the hours that the control tower is closed.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g), 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002: Class E Airspace areas designated as a surface area for an airport.

* * * * *

ASW AR E2 Texarkana AR [New]

Texarkana Regional-Webb Field, AR
(Lat. 33°27'13" N., long. 93°59'28" W.)

That airspace within a 4.2-mile radius of Texarkana Regional-Webb Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on May 19, 1994.

Thomas C. Brown,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–13694 Filed 6–3–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ASO–5]

Establishment of Class E Airspace; Somerville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Somerville, Tennessee. A Non-Directional Beacon (NDB) Runway 18 Standard Instrument Approach Procedure (SIAP) for the Fayette County Airport has recently been developed. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain Instrument Flight Rule (IFR) operations at the airport. The operating status of the airport will change from Visual Flight Rule (VFR) to include IFR operations concurrent with publication of the SIAP. The area will be depicted on aeronautical charts to provide a reference for pilots.

EFFECTIVE DATE: 0901 u.t.c., August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Wade T. Carpenter, Jr., Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On March 31, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Somerville, Tennessee. A Non-Directional Beacon (NDB) Runway 18 Standard Instrument Approach Procedure (SIAP) was developed for the Fayette County Airport at Somerville, Tennessee (59 FR 15136). The proposal was to add controlled airspace extending upward from 700 feet above the surface to contain IFR operations in controlled airspace and to change the operating status of the airport from VFR operations to include IFR operations concurrent with the publication of the SIAP. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration (FAA). No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. This amendment is the same as that proposed in the notice. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations established Class E airspace at Somerville, Tennessee, to provide controlled airspace from 700 feet above the surface for aircraft executing an NDB SIAP into the Fayette County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO TN E5 Somerville, TN [New]

Fayette County Airport, TN
(Lat. 35°12'22" N, long. 89°23'40" W.)

That airspace extending upward from 700 feet above the surface of the earth within a 7-mile radius of the Fayette County Airport.

* * * * *

Issued in College Park, Georgia, on May 24, 1994.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–13695 Filed 6–3–94; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1252, 1254, and 1260

RIN 3095–AA53

Public Use of Records and Donated Historical Materials

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is updating and clarifying its regulations relating to public use of records and donated historical materials that have been transferred to NARA. Most of the changes in this regulation merely clarify existing practices and will have no significant impact upon the public. Changes in research room rules, such as requiring a picture identification when applying for a research card and prohibiting ink pens and chewing gum in rooms where original records are present, are intended to provide greater protection for the historically valuable holdings of NARA.

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard on 301–713–6730 or TDD 301–713–6760.

SUPPLEMENTARY INFORMATION: As stated in its proposed rule published on October 22, 1993 (58 FR 54540), NARA is making some minimal changes in research room rules. We received three comments to these proposed rule changes. The three comments were received from customers who use the regional archives. Since many researchers in the regions travel long distances, they felt the proposed 3-hour limit and "first come first served" policy for use of microfilm readers would create a "hardship" to their research. Currently, some regional archives allow reservations of microfilm readers and impose time limits on use that reflect local demand for the equipment. NARA is amending this rule to give the regional archive directors the discretion to modify this new rule in a way that benefits the users of their facility.

In § 1254.26, we have made two additional nonsubstantive changes. We updated the title, Reference Services Branch Chief, to reflect a reorganization of the unit responsible for the research rooms. The revised title is Director, User Services Division. We have also clarified the procedure in § 1254.26(a) concerning permission for research privileges for students under the age of 16 to state explicitly that prospective student researchers are encouraged to contact the National Archives in advance of their visit to determine their eligibility to do research. This reminder should particularly assist out-of-town and foreign students in making their research plans.

Since all the records from the Pickett Street facility have moved to the new NARA facility in College Park, Maryland (National Archives at College Park), all references to the Pickett Street facility have been changed to National Archives at College Park. In addition, a reference has been added to self-service copiers in National Archives at College Park for the records transferred from the National Archives Building and the Washington National Records Center. Because this change affects only the location of records, and not any conditions on their use, and because the location of the records was the subject of a separate rule making upon which public comment was invited (59 FR 6899), these changes are being made final without prior notice of proposed rule making.

This final rule contains two information collections, application for researcher identification cards and request to microfilm records, for which OMB approval has been received. This is not a significant regulation under Executive Order 12866 and has not been reviewed by OMB. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of Subjects

36 CFR Part 1252

Archives and records.

36 CFR Part 1254

Archives and records, Confidential business information, Freedom of information, Micrographics, Reporting and recordkeeping requirements.

36 CFR Part 1260

Archives and records, Classified information.

For the reasons set forth in the preamble under 44 U.S.C. 2104(a), chapter XII of title 36 of the Code of Federal Regulations is amended as follows:

PART 1252—PUBLIC USE OF RECORDS, DONATED HISTORICAL MATERIALS, AND FACILITIES; GENERAL

1. The authority citation for part 1252 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. Section 1252.1 is revised to read as follows:

§ 1252.1 Scope.

This subchapter prescribes rules and procedures governing the public use of records and donated historical materials in the custody of the National Archives and Records Administration (NARA). Except for part 1250, this subchapter does not apply to current operating records of NARA. This subchapter also prescribes rules and procedures governing the public use of certain NARA facilities.

3. In § 1252.2, the definitions of *Director, Federal records center, Federal records center records, Records,* and *Researcher* are revised; the definition of *Archives* is removed; and the definitions of *Archives or archival records, Documents, Nixon Presidential historical materials* and *Presidential records* are added in alphabetical order to read as follows:

§ 1252.2 Definitions.

* * * * *

Archives or archival records mean Federal records that have been determined by NARA to have sufficient historical or other value to warrant their continued preservation by the U.S. Government, and have been transferred to the National Archives of the United States.

Director means the head of a Presidential library, the head of a Presidential Materials Staff, the head of a NARA division, branch, archival center, or unit responsible for servicing archival records, the head of a regional archives, or the head of a Federal records center.

Documents mean, for purposes of part 1254 of this chapter, archives, FRC records, donated historical materials, Nixon Presidential historical materials, and Presidential records, regardless of the media on which they are contained. Document form may include paper, microforms, photographs, sound recordings, motion pictures, maps, drawings, and electronic files.

* * * * *

Federal records center includes the Washington National Records Center, the National Personnel Records Center, and the Federal records centers listed in § 1253.6 of this chapter.

Federal records center records (FRC records) mean records which, pending their transfer to the National Archives of the United States or their disposition in any other manner authorized by law, have been transferred to a Federal records center operated by NARA.

Nixon Presidential historical materials has the meaning specified in § 1275.16 of this chapter.

Presidential records has the meaning specified in § 1270.14 of this chapter.

Records mean records or microfilm copies of records transferred to NARA under 44 U.S.C. 2107 and 3103; namely, archives and Federal records center records as the terms are defined in § 1252.2. The term *records* does not include current operating records of NARA, the public availability of which is governed by part 1250 of this chapter, or donated historical materials as defined in this section.

Researcher means a person who has been granted access to original documents or copies of documents.

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

4. The authority citation for part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101-2118, 5 U.S.C. 552, and E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

5. Part 1254 is amended by removing the terms "record" and "records" or "Records" in the following sections and adding in their place the terms "document" and "documents" or "Documents" respectively.

a. Replace "record" with "document" in:

Sec.
1254.27(f)(2)
1254.98(c)

b. Replace "records" or "Records" with "documents" or "Documents" in:

Sec.
1254.1(a)
1254.1(d)
1254.2(a)
1254.2(c)
1254.2(d)
1254.4(a) wherever it appears
1254.4(b)
1254.4(d) wherever it appears
1254.8(c)
1254.18 wherever it appears
1254.20(b)
1254.26(e)(2)
1254.27(c)(2)
1254.27(f)(2)
1254.27(f)(4)
1254.27(f)(5)
1254.70(a)
1254.71(c)(1)
1254.71(c)(2) wherever it appears
1254.71(c)(3) wherever it appears
1254.71(d) introductory text wherever it appears
1254.71(d)(2) wherever it appears
1254.71(d)(4)
1254.71(d)(5)
1254.92(c)(1) introductory text
1254.94(b) whenever it appears
1254.94(f) introductory text
1254.94(f)(3)
1254.94(g) introductory text
1254.94(g)(1)
1254.94(g)(2)
1254.94(g)(3)
1254.94(g)(4)
1254.94(g)(5) wherever it appears
1254.94(g)(6) wherever it appears
1254.94(h)
1254.94(i) wherever it appears
1254.96(a) introductory text wherever it appears
1254.96(a)(1)
1254.96(a)(2)
1254.96(a)(3)
1254.96(a)(5)
1254.96(b)
1254.98(a)
1254.98(d)
1254.100(b) wherever it appears
1254.100(c)
1254.100(d)
1254.102(d)

6. Section 1254.1 is amended by revising paragraphs (b) and (e) to read as follows:

§ 1254.1 General provisions.

* * * * *

(b) Original documents will not normally be made available when microfilm copies or other alternative copies of the documents are available.

* * * * *

(e) Requests received in the normal course of reference service that do not specifically cite the Freedom of Information Act (5 U.S.C. 552) are not considered requests made under the act. Requests under the act must follow the procedure set forth in subpart C or subpart D of this part.

* * * * *

7. Section 1254.2 is amended by revising the section heading and paragraph (b) to read as follows:

§ 1254.2 Location of documents and hours of use.

* * * * *

(b) The locations and hours of operation (expressed in local time) of the depositories administered by the National Archives and Records Administration are shown in part 1253 of this chapter.

* * * * *

8. Section 1254.4 is amended by revising paragraph (c) to read as follows:

§ 1254.4 Research procedures.

* * * * *

(c) Researchers who wish to use documents not on microfilm in a depository where the microfilm research room is separate from textual research rooms, must complete a researcher identification application form and provide the information needed to decide which documents can be made available. Researchers who wish to use only microfilm documents in a depository where the microfilm research room is not separate from textual research rooms must also comply with this paragraph. Applicants must show identification containing a picture or physical description of the applicant, e.g., a driver's license or school identification card. Exceptions to this requirement must be approved by the director. If applying for access to large quantities of documents or to documents that are especially fragile or valuable, the researcher may be required to furnish additional information about personal or professional qualifications or to furnish additional reasons why access is required. The collection of information contained in this paragraph has been approved by the Office of Management and Budget with the control number 3095–0016.

* * * * *

§ 1254.8 [Amended]

9. In § 1254.8, paragraph (c) is amended by removing the term "National Archives Field Archives Branch" and adding the term "Regional Archives."

10. Section 1254.10 is revised to read as follows:

§ 1254.10 Registration.

Researchers must register each day they enter a research facility, furnishing the information asked on the registration sheet and may be asked to provide additional personal identification.

11. Section 1254.12 is revised to read as follows:

§ 1254.12 Researcher's responsibility for documents.

(a) The research room attendant may limit the quantity of documents delivered to a researcher at one time. The researcher must sign for the documents received and may be required to show his/her researcher identification card. The researcher is responsible for the proper handling of and prevention of damage to all documents delivered to him/her until he/she returns them. When the researcher is finished using the documents, the documents must be returned to the research room attendant. The reference service slip that accompanies the documents to the research room must not be removed. If asked to do so, the researcher must return documents as much as 15 minutes before closing time. Before leaving a research room, even for a short time, a researcher must notify the research room attendant and place all documents in their proper containers.

(b) When microfilm is available on a self-service basis, research room attendants will assist researchers in identifying research sources on microfilm and provide information concerning how to locate and retrieve the roll(s) of film containing the information of interest. The researcher is responsible for retrieving and examining the roll(s). Unless a researcher requires assistance in learning how to operate microfilm reading equipment, the researcher is expected to install the microfilm on the reader. Unless otherwise permitted, a researcher is limited to one roll of microfilm at a time. After using each roll, the researcher is responsible for refiling the roll of microfilm in the location from which it was removed, unless instructed otherwise.

(c) Researchers are responsible for complying with provisions of the Copyright Act (Title 17, United States Code) which governs the making and use of electrostatic copies or other reproductions of copyrighted materials.

12. Section 1254.14 is revised to read as follows:

§ 1254.14 Restrictions on using microfilm readers.

(a) Use of the microfilm readers in the National Archives Building will be on a first-come, first-served basis. When other researchers are waiting to use a microfilm reader, a 3-hour limit may be placed on using a reader. After 3 hours of machine use, the researcher may sign the waiting list for an additional 3-hour period.

(b) The number of researchers in the microfilm research room in the National Archives Building will be limited, for fire safety reasons, to those researchers assigned a microfilm reader.

(c) Directors of regional archives may permit reservations for use of microfilm readers and set time limits on use to meet local circumstances. Rules for use will be posted in the research room.

13. Section 1254.16 is revised to read as follows:

§ 1254.16 Prevention of damage to documents.

(a) Researchers must exercise all possible care to prevent damage to documents.

(b) Documents may not be used at a desk where there is food or liquid or where an ink pen is being used. Only pencils may be used in research rooms where original documents are used.

(c) Documents must not be leaned on, written on, folded anew, traced, or handled in any way likely to cause damage.

(d) Documents must be identified for reproduction only with a paper tab provided by NARA. Documents may not be fastened with paper clips or rubber bands.

(e) Microfilm must be carefully removed from and returned to the proper microfilm boxes. Care must be taken loading and unloading microfilm from microfilm readers. Damaged microfilm must be reported to the research room attendant as soon as it is discovered.

(f) Exceptionally valuable or fragile documents may be used only under the conditions specified by the research room attendant.

§ 1254.22 [Redesignated as § 1254.17]

14. Section 1254.22 is redesignated as § 1254.17 and revised to read as follows:

§ 1254.17 Keeping documents in order.

A researcher must keep unbound documents in the order in which they are delivered to him/her. Documents that appear to be in disorder must not be rearranged by the researcher; but must be referred to the research room attendant. Researchers may use only one folder at a time. Researchers are not allowed to remove documents from more than one container at a time. Researchers should bring to the attention of the research room attendant microfilm put in the wrong box or file cabinet.

15. In § 1254.20, paragraph (a) is revised to read as follows:

§ 1254.20 Conduct.

(a) *Regulations.* Researchers are subject to the provisions of part 1280 of this chapter and to all rules and regulations issued and posted or distributed by a facility director supplementing subpart B of this part, including rules on the use of NARA equipment. Eating, drinking, and chewing gum in a research room are prohibited. Smoking is prohibited except in designated smoking areas. Loud talking and other activities likely to disturb other researchers are also prohibited. Persons desiring to use typewriters, computers, sound recording devices, or similar equipment must work in areas designated by the research room attendant.

* * * * *

16. The section heading of § 1254.26 and paragraphs (a), (b), (d), (f), and (h)(1) are revised to read as follows:

§ 1254.26 Additional rules for use of certain research rooms in NARA facilities in the Washington, DC, area.

(a) Admission to research rooms in the National Archives Building, the Washington National Records Center, and the National Archives at College Park facility at which original documents are made available is limited to individuals examining and/or copying documents and other materials in the custody of the National Archives and Records Administration. Children under the age of 16 will not be admitted to these research rooms unless they have been granted research privileges or are granted an exception to this provision to view specific documents that a parent or other accompanying adult researcher is using. The exception will be granted by the Director of the User Services Division for a child who is able to read and who will be closely supervised by the adult researcher while in the research room. Normally, such a child will be admitted only for the short period required to view the documents. Unless otherwise permitted, children under the age of 16 who have been granted special permission to accompany an adult using records may not actively participate in research activities, e.g., removing, copying, or refiling documents. Students under the age of 16 who wish to perform research on original documents must apply in person to the Director of the User Services Division and present a letter of reference from a teacher. Such students may contact the National Archives by phone or letter in advance of their visit to discuss their eligibility for research privileges. Students under the age of 16 who have been granted research privileges will be required to be accompanied in the research room by an adult with similar privileges, unless the Director of the User Services Division specifically waives this requirement with respect to individual researchers.

(b) The procedures in paragraphs (c) through (g) of this section apply to all research rooms in the National Archives Building (except the Microfilm Research Room); the Suitland Research Room in the Washington National Records Center; and the research rooms in the National Archives at College Park. These procedures are in addition to the procedures specified elsewhere in this part.

* * * * *

(d) Researchers must present a valid researcher identification card to the guard or research room attendant on entering the room. All researchers are required to sign each day the research room registration sheet at the entrance to the research room. Researchers will

also record the time they leave the research room at the end of the visit for that day. Researchers are not required to sign in or out when leaving the area temporarily.

* * * * *

(f) NARA will furnish to researchers, without charge, pencils and specially marked lined and unlined notepaper and notecards, for use in the research rooms. Pencils and unused notepaper and notecards should be returned to the research room attendant at the end of the day.

* * * * *

(h) * * *

(1) Use of NARA viewing and listening equipment in the research room is provided on a first-come-first-served basis. When others are waiting to use the equipment, a three-hour limit may be imposed on the use of the equipment.

* * * * *

17. Section 1254.27 is amended by revising the section heading, by removing from paragraph (a) the title "National Archives field branch" and adding in its place the title "regional archives," by revising paragraph (b), by removing from paragraphs (c)(2) and (c)(3) the title "chief of the branch administering the research room" and adding in its place the title "director," and by revising the introductory text of paragraph (f) and paragraphs (f)(3) and (f)(6) to read as follows:

§ 1254.27 Additional rules for use of certain research rooms in Federal records centers, regional archives, and Presidential libraries.

* * * * *

(b) Researchers must present a valid researcher identification card to the guard or research room attendant on entering the room. All researchers are required to sign each day the research room registration sheet at the entrance to the research room. Where instructed to do so, researchers also sign out when leaving the research room for the day. Researchers are not required to sign in or out when leaving the area temporarily or at the end of the day.

* * * * *

(f) Researchers may use NARA self-service copiers or authorized personal paper-to-paper copiers to copy documents in accordance with NARA document handling instructions and after review of the documents by the research room attendant to determine their suitability for copying. The director or the senior archivist on duty in the research room will review the determination of suitability if requested by the researcher. The following types of documents are not suitable for copying on a self-service or personal copier:

* * * * *

(3) Documents larger than the glass copy plate of the copier;

* * * * *

(6) Documents which, in the judgement of the research room attendant, are in poor physical condition or which may be subject to possible damage if copied.

18. Section 1254.35 is added to read as follows:

§ 1254.35 Presidential records and Nixon Presidential materials.

Access to Presidential records transferred to NARA is governed by 36 CFR part 1270. Access to the Nixon Presidential materials is governed by 36 CFR part 1275.

19. Section 1254.36 is revised to read as follows:

§ 1254.36 Donated historical materials.

The public use of donated historical materials is subject to restrictions on their use and availability as stated in writing by the donors or depositors of such materials and other restrictions imposed by statute. (Researchers are encouraged to confer with the appropriate director or reference staff member on any question of copyright.) In addition, use is subject to all conditions specified by the Archivist of the United States for purposes of archival preservation.

20. Section 1254.40 is revised to read as follows:

§ 1254.40 Access to national security information.

(a) Declassification of and public access to national security information and material, hereinafter referred to as "classified information" or collectively termed "information" is governed by Executive Order 12356 of April 2, 1982 (3 CFR, 1982 Comp., p. 166), the implementing Information Security Oversight Office Directive Number 1 of June 22, 1982 (47 FR 27836, June 25, 1982) and the Freedom of Information Act (5 U.S.C. 552).

(b) Public access to documents declassified in accordance with this regulation may be restricted or denied for other reasons under the provisions of 5 U.S.C. 552(b) for accessioned agency records; 36 CFR 1254.36 for donated historical materials; 44 U.S.C. 2201 *et seq.* and 36 CFR part 1270 for Presidential records; and 44 U.S.C. 2111 note and 36 CFR part 1275 for Nixon Presidential materials.

§ 1254.42 [Redesignated as § 1260.2]

21. Section 1254.42 is redesignated as § 1260.2 in subchapter D of this chapter.

22. In § 1254.48, paragraphs (a) and (c) are revised to read as follows:

§ 1254.48 Access by historical researchers and former Presidential appointees.

(a) Access to classified information may be granted to U.S. citizens who are engaged in historical research projects or who previously occupied policy-making positions to which they were appointed by the President. Persons desiring permission to examine material under this special historical researcher/Presidential appointees access program should contact NARA at least 4 months before they desire access to the materials to permit time for the responsible agencies to process the requests for access. NARA will inform requesters of the agencies to which they will have to apply for permission to examine classified information, including classified information originated by the White House or classified information in the custody of the National Archives which was originated by a defunct agency.

* * * * *

(c) To protect against the possibility of unauthorized access to restricted documents, a director may issue instructions supplementing the research room rules provided in subpart B.

23. Section 1254.50 is revised to read as follows:

§ 1254.50 Fees.

NARA will charge requesters for copies of declassified documents according to the fees listed in § 1258.12 of this chapter.

24. In § 1254.70, paragraph (b) is revised to read as follows:

§ 1254.70 NARA copying services.

* * * * *

(b) In order to preserve the original documents, documents which are available on microfilm or other alternate copy will not be copied by other means as long as a legible copy (electrostatic, photographic, or microfilm) can be made from the microfilm.

25. In § 1254.71, paragraphs (a), (b)(1), (b)(2)(i), (d)(3), (d)(6), (f), and (g)(1) are revised to read as follows:

§ 1254.71 Researcher use of the self-service card-operated copiers in the National Archives Building, the Washington National Records Center and the National Archives at College Park.

(a) *General.* Self-service card-operated copiers are located in research rooms in the National Archives Building, the Suitland Research Room in the

Washington National Records Center, and the National Archives at College Park. Other copiers set aside for use by reservation are located in designated research areas. Procedures for use are outlined in paragraphs (b) through (g) of this section.

(b) * * *

(1) Copiers located in research rooms in the National Archives Building, the Suitland Research Room in the Washington National Records Center, and the National Archives at College Park may be used until 15 minutes prior to closing of the research room. There is a five-minute time limit on these copiers when others are waiting to use the copier. Researchers using microfilm reader-printers may be limited to three copies when others are waiting to use the machine. Researchers wishing to copy large quantities of documents should see a staff member in the research room to reserve a copier for an extended time period.

(2) * * *

(i) A copier may be reserved for one hour at a time in the textual research room in the National Archives Building and the National Archives at College Park and for one-half hour at a time in the Microfilm Research Room in the National Archives Building and in the Suitland Research Room in the Washington National Records Center. Another appointment may be reserved after completing the scheduled appointment. The appointment may be forfeited if the researcher does not arrive within 10 minutes after the scheduled time

* * * * *

(d) * * *

(3) Documents larger than the glass copy plate of the copier;

* * * * *

(6) Documents which, in the judgement of the research room attendant, are in poor physical condition or which may be subject to possible damage if copied.

(f) *Purchasing debitcards for copiers.* Researchers may use cash to purchase a debitcard from a vending machine during the hours that self-service copiers are in operation. Additionally, debitcards may be purchased with cash, check, money order, credit card, or funds from an active deposit account from the Cashier's Office located in room G–1 of the National Archives Building between the hours of 8:45 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. During the evening and weekend hours, the research room supervisor can make change for $20 or less. The debitcard will, when inserted into the copier, enable the user to make copies, for the appropriate fee, up to the value on the debitcard. Researchers may add value to the debitcard by using the vending machine. The fee for self-service copies is found in § 1258.12 of this chapter.

(g) * * *

(1) To obtain a refund of any unused amount on a debitcard, a researcher must bring the debitcard to the Cashier's Office in room G–1 of the National Archives Building. Cash refunds for debitcards are currently limited to $20.00 or less. Refunds due for more than $20.00 are currently paid by U.S. Treasury check in approximately 6–8 weeks. Refunds due on debitcards obtained using credit cards will be made by issuing a credit of the refund amount to the credit card. Refunds due on debitcards obtained using funds from a deposit account will be made by crediting the refund to the deposit account.

* * * * *

26. Section 1254.72 is revised to read as follows:

§ 1254.72 Information about documents.

(a) Upon request, overall information pertaining to holdings or about specific documents will be furnished, provided that the time required to furnish the information is not excessive, and provided that the information is not restricted (see subpart C and subpart D).

(b) When so specified by a director, requests must be made on prescribed forms. Such forms will be approved by OMB as information collections and will bear the approved control number.

27. Section 1254.74 is revised to read as follows:

§ 1254.74 Information from documents.

Normally, information contained in the documents will be furnished in the form of photocopies of the documents, subject to the provisions of § 1254.70. NARA will certify facts and make administrative determinations on the basis of archives, or of FRC records when appropriate officials of other agencies have authorized NARA to do so. Such certifications and determinations will be authenticated by the seal of NARA, the National Archives of the United States, or the transferring agency, as appropriate.

28. Section 1254.76 is revised to read as follows:

§ 1254.76 Certification of copies.

The responsible director, or any of his or her superiors, the Director of the Federal Register, and their designees are authorized to certify copies of documents as true copies.

29. Section 1254.90 is amended by revising paragraph (a) to read as follows:

§ 1254.90 General.

(a) This subpart establishes rules and procedures governing the use of privately owned microfilm equipment to film archival records and donated historical materials in the National Archives Building, the Washington National Records Center, the regional archives, and the Presidential libraries

* * * * *

30. Section 1254.92 is amended by revising the section heading and paragraph (a), redesignating paragraphs (c)(5), (c)(5)(i), (c)(5)(ii), and (c)(6) as paragraphs (d), (d)(1), (d)(2), and (e), respectively, and revising redesignated paragraph (d)(2) to read as follows:

§ 1254.92 Requests to microfilm records and donated historical materials.

(a) Requests to microfilm archival records or donated historical materials (except donated historical materials under the control of the Office of Presidential Libraries) in the National Archives Building, the Washington National Records Center, or the regional archives must be made in writing to the Assistant Archivist for the National Archives (NN), NARA, Washington, DC 20408. Requests to microfilm records or donated historical materials in a Presidential library or donated historical materials in the National Archives Building under the control of the Office of Presidential Libraries must be made in writing to the Assistant Archivist for Presidential Libraries (NL), NARA, Washington, DC 20408. OMB control number 3095–0017 has been assigned to the information collection contained in this section.

* * * * *

(d) * * *

(2) If the original documents are donated historical materials, the requester must agree to include on the film this statement: "The documents reproduced in this publication are donated historical materials from (name of donor) in the custody of the (name of Presidential library or National Archives). The National Archives administers them in accordance with the requirements of the donor's deed of gift and the U.S. Copyright Law, Title 17, U.S.C.".

* * * * *

§ 1254.96 [Amended]

31. In section 1254.96, the word "evluation" in paragraph (a) is corrected to read "evaluation."

PART 1260—DECLASSIFICATION OF AND PUBLIC ACCESS TO NATIONAL SECURITY INFORMATION

32. The authority citation for part 1260 continues to read as follows:

Authority: 44 U.S.C. 2104(a); Executive Order 123356 of April 2, 1982 (3 CFR 1982 Comp., p. 166).

§ 1260.2 [Redesignated from 1254.42]

33. Section 1260.2 is redesignated from § 1254.42 of this chapter.

Dated: May 27, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–13636 Filed 6–3–94; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–4892–5]

National Emission Standards for Hazardous Air Pollutants for Source Category: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Determination of MACT "Floor"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 31, 1992, the EPA proposed standards to regulate the emissions of certain organic hazardous air pollutants from synthetic organic chemical manufacturing industry (SOCMI) production processes and seven other processes which are part of major sources under section 112 of the Clean Air Act as amended in 1990 (the Act). This rulemaking is commonly called the Hazardous Organic NESHAP or the HON. In the final action regarding the December 31, 1992 proposal, which was signed on February 28, 1994, and published in the **Federal Register** on April 22, 1994, EPA deferred taking final action regarding provisions applicable to medium storage vessels due to the need to resolve an issue of statutory interpretation of section 112(d)(3)(A) of the Act. On March 9, 1994, EPA reopened the comment period to request additional comment on the appropriate interpretation of this statutory provision and the effect of that interpretation on the appropriate control requirements for medium storage vessels at facilities subject to the HON.

This action announces EPA's final decision regarding the interpretation of Clean Air Act section 112(d)(3)(A) for purposes of the HON and the final decision regarding control provisions applicable to medium storage vessels in SOCMI facilities subject to the HON. The decision announced in this action regarding the interpretation of Clean Air Act section 112(d)(3)(A) for purposes of the HON will be presumptively followed in subsequent MACT rulemakings, but it will not be binding. Although EPA believes that Congress intended one interpretation—referred to as the "Higher Floor Interpretation"—in Clean Air Act section 112(d)(3)(A), EPA also believes that the Agency retains discretion in important respects in setting Floors for MACT standards. EPA intends to exercise its discretion, within the statutory framework, to promulgate MACT standards that best serve the public interest.

EFFECTIVE DATE: June 6, 1994.

See **SUPPLEMENTARY INFORMATION** section concerning judicial review.

ADDRESSES: *Dockets.* The following dockets contain supporting information used in developing the proposed provisions. Docket Number A–90–19 contains general information used to characterize emissions and control costs for the industry and Docket A–90–21 contains information on storage vessels. These dockets are available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M1500, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: On technical issues, Dr. Janet S. Meyer, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5254. For further information on the legal issue addressed in this notice, contact Michael S. Winer, Assistant General Counsel, Air and Radiation Division (2344), Office of General Counsel, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone number (202) 260–7606.

SUPPLEMENTARY INFORMATION:

Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this document is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the CAA, the requirements that are subject to today's document may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Public Comment: Approximately 55 comment letters were received in response to the March 9, 1994 (59 FR 11018) reopening of the comment period. The majority of these letters were from industries or industrial trade associations, arguing in favor of the less stringent "Lower Floor Interpretation." Environmental groups, State or local governments and labor unions argued almost uniformly in favor of the more stringent "Higher Floor Interpretation." The EPA considered all public comments in framing the final policy for MACT floor determination and in selection of the requirements for medium storage vessels. The major issues raised by the comments are addressed in this preamble. The EPA's responses to all the comments can be found in docket A–90–19, Subcategory VI–B.

I. Summary of Decision on MACT Floor Determination

This section describes EPA's decision with respect to the interpretation of Clean Air Act section 112(d)(3)(A) for purposes of this rulemaking. As set forth in more detail below, EPA believes that one of the interpretations of section 112(d)(3)(A)—referred to as the "Higher Floor Interpretation"—is the better and more natural reading of the statutory language.

A. Background

Section 112(d)(3) of the Clean Air Act provides that Emissions standards promulgated under this subsection for existing sources * * * shall not be less stringent * * * than—

(A) The average emission limitation achieved by the best performing 12 percent of existing sources * * * 42 U.S.C. section 7412(d)(3). Existing sources for which the Administrator lacks emissions information and those that have recently achieved LAER are excluded from consideration. Id. (For categories or subcategories with fewer than 30 sources, standards may not be less stringent than "the average emission limitation achieved by the best performing 5 sources." CAA section 112(d)(3)(B)). The minimum level of stringency defined by this language has come to be known as the MACT Floor.

In the March 9, 1994 **Federal Register**, EPA published a notice soliciting comment on "the appropriate interpretation of" section 112(d)(3)(A). Two interpretations of section

112(d)(3)(A) were discussed. Under the first, referred to as the "Higher Floor Interpretation," EPA would look at emission limitations achieved by each of the best performing 12 percent of existing sources, and average those limitations. "Average" would be interpreted to mean a measure of central tendency such as the arithmetic mean or median. (The arithmetic mean of a set of measurements is the sum of the measurements divided by the number of measurements in the set. The median is the value in a set of measurements below and above which there are an equal number of values, when the measurements are arranged in order of magnitude).

Under the second, "Lower Floor Interpretation," EPA would look at the average emission limits achieved by each of the best performing 12 percent of existing sources, and take the lowest. This second interpretation groups the words "average emission limitation" into a single phrase, and asks what "average emission limitation" (accounting for variability over time, or between different pollutants being emitted from a facility) is "achieved by" all members of the best performing 12 percent.

B. EPA's Interpretation of Section 112(d)(3)(A)

The EPA believes that the "Higher Floor Interpretation" is a better reading of Clean Air Act section 112(d)(3)(A) than the "Lower Floor Interpretation." This conclusion is based on a review of the statute, legislative history and comments received in response to EPA's March 9 notice.

1. The Statutory Language

Section 112(d)(3)(A) requires that standards be no less stringent than "* * * the average emission limitation achieved by the best performing 12 percent of existing sources * * *". The EPA believes that the most natural and straightforward reading of this language would have EPA first determine the emission limitations achieved by sources within the best performing 12 percent, and then average those limitations. This is the method described above as the "Higher Floor Interpretation."

The EPA believes that if Congress had intended the Lower Floor Interpretation, language other than that actually used in section 112(d)(3)(A) would have been far more natural. For example, Congress could easily have expressed the Lower Floor Interpretation by requiring standards to be no less stringent than "the emission limitation achieved by all sources within the best performing 12 percent." Similarly, Congress could have required standards to be no less stringent than "the average emission limitation achieved by the worst performing member of the best performing 12 percent," or "the emission limitation (averaged over time to take account of variability in the effectiveness of control) achieved by all sources within the best performing 12 percent." Any of such phrases would have been a more natural way to convey the Lower Floor Interpretation than the language Congress chose. However, the actual language of section 112(d)(3)(A) provides, in straightforward fashion, that standards may be no less stringent than the "average emission limitation achieved by the best performing 12 percent * * *". To glean the Lower Floor Interpretation from this language is a strain; words and concepts not set forth in the statute must be added or inferred.

The language of section 112(d)(3)(B) makes this point even clearer. That section requires that standards for existing sources in categories or subcategories with fewer than 30 sources be no less stringent than

> The average emission limitation achieved by the best performing 5 sources * * *

42 U.S.C. 7412(d)(3)(B). If an interpretation parallel to the Lower Floor Interpretation were intended, it would have been more natural for this provision to read "the emission limitation achieved by the 5th best performing source."

2. The Legislative History

The legislative history lends strong support to the view that, in passing section 112(d)(3)(A), Congress intended the Higher Floor Interpretation.

On the House side, the language that would eventually become section 112(d)(3)(A) was offered as a compromise amendment by Rep. Dingell on the House Floor on May 23, 1990. (The language of the amendment was identical to section 112(d)(3)(A) as ultimately enacted into law; only the numbers were different). Rep. Dingell yielded time to Rep. Collins "for purposes of explaining the amendment." Legislative History of 1990 CAA Amendments at 2896. In doing so, Rep. Collins noted that she had originally supported slightly more stringent numbers than those included in the amendment, and that under her original proposal

> The average of emissions from the 10 percent cleanest sources would be the MACT standard. In cases where there are less than 30 sources in a category or subcategory, the average of the 3 cleanest sources would determine the standard.

Id. She went on to explain that under the compromise amendment introduced by Rep. Dingell

> MACT for existing stationary sources would be the average of the best 15 [percent] of technologies within each category or subcategory. For categories or subcategories where there are less than 30 sources, the standard is based on the average emissions from the best performing 5 sources.

Legislative History of 1990 CAA Amendments at 2897.

Rep. Collins' formulations are consistent with the Higher Floor Interpretation, not the Lower. The "average of the 3 cleanest sources" cannot mean, as the Lower Floor Interpretation would require, the level of control achieved by all three of the "cleanest sources." Nor can the "average of the best 15 [percent] of technologies" mean a technology as good as that used by all sources within the top 15 percent.

Another discussion of section 112(d)(3) is similar. On October 27, 1990, Sen. Durenberger (a principal supporter of the Clean Air Act Amendments) explained the provision on the Senate floor. His explanation was as follows:

> The standard may not be less stringent than the average of the emission levels achieved by the best performing 12 percent of the existing sources within the category* * * The Administrator is to exclude from the calculation of the average of top 12 percent any source which met the following conditions* * *

Legislative History of 1990 CAA Amendments at 870 (Cong. Rec. S16929—Oct. 27, 1990). The second sentence of Sen. Durenberger's statement, in particular, is inconsistent with the Lower Floor Interpretation. Sen. Durenberger makes clear that the "average" called for in the statute is of the "top 12 percent," not the emission limitations achieved over time at each individual source.

No legislative history was found that supports the Lower Floor Interpretation. The EPA believes that the legislative history indicates that individual legislators—including those central to the drafting of section 112(d)(3)—understood the word "average" to mean that once the emission limitations achieved by the best performers in a category had been determined, those results should be averaged. This is the method of the Higher Floor Interpretation, not the Lower.

3. Issues Raised in Public Comment

a. *Arguments Concerning the Statutory Language.*

(i) *Plain Meaning of the Statute.* Several commenters argued that the meaning of the statute was plain on its face and that Congress clearly intended the Higher Floor Interpretation. These commenters argued that when section 112(d)(3)(A) is read as a whole in its most natural way, the Congressional intent in favor of the Higher Floor Interpretation is clear. They argued that if Congress had intended the Lower Floor Interpretation, it would have used different language in the statute.

The EPA agrees with these comments. As set forth in greater detail above, EPA believes the plain statutory language strongly favors the Higher Floor Interpretation.

(ii) *Congress' Failure to Use the Words "of the".* Several commenters argued that if Congress had meant the Higher Floor Interpretation, it would have added the words "of the" to the statute, so that section 112(d)(3)(A) would read "the average *of the* emission limitations achieved by the best performing 12 percent." These commenters saw the absence of the words "of the" in the statute as evidence that Congress intended the Lower Floor Interpretation.

The EPA agrees that the statute would be more clear if Congress had used the words "of the," but disagrees with the conclusion drawn by these commenters for two reasons. First, standard English usage often permits dropping the prepositions "of the" without changing the meaning of a phrase. (For example, "the biggest mountain in North America" has the same meaning as "the biggest of the mountains in North America." "Best singer in the band" has the same meaning as "best of the singers in the band.") The same cannot be said, however, for the various phrases and concepts that must be read into section 112(d)(3)(A) in order to arrive at the Lower Floor Interpretation. Phrases like "the worst performing member of..." or "averaged over time..." simply are not dropped as part of standard English. Their absence from section 112(d)(3)(A)—unlike the absence of the words "of the"—must be considered significant in interpreting the provision.

Second, although the words "of the" do not appear in section 112(d)(3)(A), they were used by key legislators in summarizing that section prior to passage of the 1990 Clean Air Act Amendments. As noted above, when Sen. Durenberger (a principal supporter of the Clean Air Act Amendments) spoke on the Senate floor on October 27, 1990, he explained section 112(d)(3)(A) as follows:

> The standard may not be less stringent than the average *of the* emission levels achieved by the best performing 12 percent of the existing sources within the category* * *

Legislative History of 1990 CAA Amendments at 870 (Cong. Rec. S16929—Oct. 27, 1990) (emphasis added). As also noted above, when Rep. Collins introduced the provision in the House, she described it as follows:

> The average of emissions from the 10 percent cleanest sources would be the MACT standard. In cases where there are less than 30 sources in a category or subcategory, the average *of the* 3 cleanest sources would determine the standard.

Legislative History of 1990 CAA Amendments at 2896 (emphasis added) (describing a provision with identical language but different numbers than the one ultimately enacted into law).

In EPA's view, the fact that Congress did not use the words "of the" in section 112(d)(3)(A) is fully consistent with standard English. However, the fact that key legislators did use these words in describing the provision to their colleagues, in combination with the failure of those legislators to use the phrases on which the Lower Floor Interpretation depends, provides a strong indication that Congress intended the Higher Floor Interpretation in enacting section 112(d)(3)(A).

(iii) *Purpose of the Word "Average".* Several commenters argued that the word "average" in section 112(d)(3)(A) should be read to require averaging not of emissions from different sources within the top 12 percent, but instead of emissions from individual sources at different times, or from different emission points, or made up of different HAP. The EPA does not agree that the word "average" in section 112(d)(3)(A) can reasonably be read to serve this purpose. First, such a reading is difficult, if not impossible, to reconcile with the provision of section 112(d)(3) establishing a "floor" for new sources. Under those provisions, new source standards may not be less stringent than

> The emission control that is achieved in practice by the best controlled similar source.

42 U.S.C. 7412(d)(3). Notably, Congress did not use the word "average" in this provision. If the word "average" in section 112(d)(3)(A) was intended to refer to averages across time, or between emission points, or among different HAP, then Congress must have intended that such averaging would take place for existing source standards, but not for new source standards. There is no reason to believe Congress intended this implausible result.

There is a much more likely explanation: That to the extent Congress contemplated that averaging across time, or between emission points, or among HAP would play a role in either existing or new source MACT standards, it considered the terms "emission limitation" and "emission control" fully adequate to reflect that fact. In EPA's air program, emission limitations have routinely been expressed in terms of averages across time, for example, without any special statutory direction or authority. There is no reason to believe that Congress would have thought that special instructions were needed to ensure that EPA continued this practice, and even less reason to believe Congress would have thought special instructions were needed with respect to existing source standards, but not new source standards.

Furthermore, the legislative history of section 112 casts doubt on the interpretation of the word "average" offered by these commenters. When Congress comprehensively revised section 112 in the Clean Air Act Amendments of 1990, it based the revisions in substantial part on the Clean Water Act's effluent guidelines program. (See, e.g., Remarks of Sen. Durenberger, Cong. Rec. S516 (January 30, 1990) ("* * * this approach to regulation of toxic air pollutants is not without precedent. A program very similar to the one I have just described has already been implemented under the Clean Water Act").) Under that program, certain limits (known as "BPT limits") have long been based on the "average of the best" performance at existing facilities. (See generally Remarks of Sen. Muskie, Legislative History of Federal Water Pollution Control Act of 1972 at 169–70 ("The Administrator should establish the range of 'best practicable' levels based upon the average of the best existing performance by plants of various sizes, ages and unit processes.")) In determining "average of the best" under the Clean Water Act, EPA has historically identified the best performers in an industrial category, and then averaged their performances. This methodology is consistent with the Higher Floor Interpretation and not the Lower.

(iv) *Proximity of the Word "Average" to the Words "Emission Limitation".* Several commenters argued that the proximity of the word "average" to the words "emission limitation" suggests that "average" modifies "emission limitation," and not the entire phrase following those words. The EPA does not agree with this argument. In English, adjectives often modify not only the noun immediately following, but an entire phrase. In the phrase "the biggest mountain in North America climbed by members of the Washington, D.C. Climbing Club," for example, the adjective "biggest" modifies the entire remainder of the phrase. There is no reason to conclude that the word "average" in section 112(d)(3)(A) plays a different role.

(v) *Use of the Words "Achieved By".* Several commenters argued that the use of the words "achieved by" in the statute indicates that *all* sources within the top 12 percent must be achieving the emission limitations used to set the MACT Floor.

The EPA does not agree with this argument. The EPA believes the argument depends both on inferring the presence of the word "all" in section 112(d)(3)(A), and (as discussed above) on ignoring, or incorrectly construing, the meaning of the word "average." Section 112(d)(3)(A) simply does not say "the emission limitation achieved by all sources within the best performing 12 percent* * *". Congress' use of the words "achieved by" cannot reasonably be stretched to accomplish such a rewriting of the statute.

b. *Arguments Concerning Structure of the Statute.* Several commenters argued that elements of the statute's structure support the Lower Floor Interpretation. For example, some commenters argued that the Lower Floor Interpretation best reflects EPA's authority to consider cost and other factors in setting standards more stringent than MACT Floor. Other commenters argued that the Lower Floor Interpretation best reflects the distinction between existing source MACT and new source MACT.

The EPA does not agree with these arguments. In fact, the Higher Floor Interpretation fully preserves both of these structural elements of the statute. With the Higher Floor Interpretation, just as with the Lower, EPA still has authority to establish existing source standards more stringent than the Floor based on enumerated criteria. With the Higher Floor Interpretation, just as with the Lower, there is still a distinction between the Floor for existing sources and the level of control required for new sources. (Under section 112(d)(3), standards for new sources must be at least as stringent as "the emission control that is achieved in practice by the best controlled similar source"). The fact that there may be "less distance" to travel above the Floor with the Higher Floor Interpretation does not establish an inconsistency between that interpretation and other parts of the statute, nor does it mean that the interpretation is flawed in any way.

Furthermore, structural arguments tend to favor the Higher Floor Interpretation more strongly than the Lower. Section 112 was passed in its current form to ensure quick and dramatic reductions in air toxics emissions. Congress was frustrated with the slow pace of toxics control prior to 1990, and many members in part blamed EPA for weak controls. See, e.g., H. Comm. Rep. 101–490 at 150–54, 322–23; S. Rpt. 101–228 at 128–33. The structure and purpose of section 112 as a whole indicates that section 112(d)(3)(A) was intended to establish a stringent minimum level of control for hazardous air pollutants.

c. *Additional Arguments.* Several commenters argued that the Higher Floor Interpretation would require EPA to set MACT Floors that failed to correspond to real-world control technologies.

The EPA does not agree with this argument. The EPA believes that the argument depends upon a flawed premise: That the word "average" can only mean "arithmetic mean." In fact, there are a number of conventional methods for determining the average of a data set, including the median. Congress did not mandate a particular method of determining "average" or central tendency in section 112(d)(3)(A), and the choice of methodology—whether median, mean, or some other measure—can often change the results markedly. For example, if the five facilities that make up the top 12 percent of a source category are achieving reductions equal to 99 percent, 98 percent, 95 percent, 94 percent and 93 percent, EPA need not set the MACT Floor equal to the arithmetic mean of these values, which is 95.8 percent. Using the Higher Floor Interpretation, EPA could set the MACT Floor equal the median of these values, which is 95 percent.

This discussion responds to the most significant comments on legal issues received in response to the March 9, 1994 **Federal Register** document. Other comments on legal issues are addressed in item number VI–B–61 in docket A–90–19.

C. Conclusion

The EPA believes that Congress spoke with clarity in section 112(d)(3)(A) of the Clean Air Act. That provision—requiring standards to be no less stringent than "the average emission limitation achieved by the best performing 12 percent of existing sources"—lends little support for an interpretation under which standards might be set at the emission limitation achieved by the worst performing member of the best performing 12 percent of existing sources. The legislative history offers no support for such an interpretation, and indeed points strongly in the opposite direction. The EPA believes that the Higher Floor Interpretation represents the best reading of the statutory language.

II. Discretion in Setting Floors for MACT Standards

In today's notice, EPA announces its conclusion that Congress intended the Higher Floor Interpretation. The effect of this decision, however, is not to identify any particular number (e.g. the 94th percentile) as the Floor for all MACT standards. EPA retains discretion in important respects in setting Floors for MACT standards, and intends to exercise its discretion, within the statutory framework, to promulgate MACT standards that best serve the public interest.

EPA believes the Agency retains substantial discretion, within the statutory framework, to set MACT Floors at appropriate levels. For example, because Congress did not define the term "average" in section 112(d)(3), or in the legislative history, it implicitly delegated the authority to EPA to do so. The choice of methodology—whether mean, median, mode, or some other measure—can often change the results. (The mean of a set of measurements is the sum of the measurements divided by the number of measurements in the set. The median is the value in a set of measurements below and above which there are an equal number of values, when the measurements are arranged in order of magnitude. The mode is the value that occurs most often in a set of measurements). As some commenters noted, the "average of the best performing 12%" corresponds to the 94th percentile when the word "average" is construed to be the "median." If, however, "average" is construed to be the "arithmetic mean" or "mode," a different result may obtain. EPA construes the word "average" in section 112(d)(3) to authorize the Agency to use any reasonable method, in a particular factual context, of determining the central tendency of a data set. In addition, EPA has discretion to use its best engineering judgment in collecting and analyzing the data, and in assessing the data's comprehensiveness, accuracy and variability, in order to determine which sources achieve the best emission reductions. EPA also has discretion in determining how to analyze the data, and thus in determining the appropriate "average" in each category or subcategory.

There are other important ways that EPA retains discretion in setting MACT floors. For example, Congress authorized EPA to subcategorize source categories based on classes, types and sizes of sources, which will result in different Floors for different subcategories. CAA section 112(d)(1). Using this authority, EPA can tailor standards to certain characteristics of particular emission units and sources. EPA retains flexibility, for example, to conclude that the production processes used at particular sources in the relevant category are sufficiently different from processes used at other sources in the same category to justify the creation of a new subcategory.

These examples are not meant to be exhaustive. EPA has only begun the process of setting MACT standards. As EPA gains experience in setting MACT Floors, other issues may arise that will require EPA to exercise its discretion in determining, for each case, what represents the average emission limitation achieved by the best performing 12% of existing sources (or the best performing five sources, in categories or subcategories with fewer than 30 sources).

III. Precedential Impact of Today's Determination

In its March 9, 1994 document, EPA stated that "the MACT floor decision * * * in this rulemaking will have broad precedential effect, and will be presumptively followed in subsequent MACT rulemakings." 59 FR 11018. Several commenters objected this statement, arguing that the issue of how best to interpret section 112(d)(3)(A) should have been addressed in a separate, generally applicable rulemaking.

The EPA wishes to emphasize that, although today's decision concerning the interpretation of Clean Air Act section 112(d)(3) for purposes of the HON will be precedential for future rulemakings, it will not be binding. Specifically, EPA will fully consider all comments on individual MACT standards, including those regarding the proper interpretation of the language in sec. 112(d)(3)(A), received on or before the close of the comment periods for those standards.

IV. Application of MACT Floor Decision to Medium Storage Vessels at Facilities Subject to the HON

As described in the March 9, 1994 **Federal Register** reopening the comment period, EPA requested comment on whether the control requirements for medium storage vessels previously proposed by EPA would be appropriate in the event those proposed controls were to be determined to be more stringent than the floor. Only four commenters addressed the question of the appropriate controls requirement for medium storage vessels and provided rationale for their opinions. Of these commenters, only one submitted information which purported to represent control information for SOCMI storage vessels. This information was reviewed and found to not provide any information on control performance and to represent storage vessels associated with non-SOCMI processes (i.e., other source categories) as well as SOCMI processes. Therefore, the submitted information could not be used to revise the database. The EPA review of this information is contained in item VI–B–62 in docket A–90–19. This section of the preamble, therefore, only presents the basis for the final decision on control requirements for medium sized storage vessels.

For medium vessels, about 8 percent of the vessels are controlled with either a 90-percent efficient control device or an IFR or EFR with a continuous seal. All of the controlled medium-sized vessels contained liquids with vapor pressures of 13.1 kPa (1.9 psia). Because the arithmetic mean characteristics of the top 12 percent of the medium vessels would not represent the performance of any known technology, the EPA used the median as the average for these vessels. Thus, for medium-sized storage vessels, the floor determined by the average characteristics of the top 12 percent of the sources would require control of vessels storing liquids with vapor pressures of 13.1 kPa (1.9 psia) by either a 90-percent efficient control device or an IFR or EFR with a continuous seal.

In selection of the control provisions for medium-sized storage vessels, EPA considered the regulatory alternatives that were presented in the April 22, 1994 **Federal Register** document. These alternatives reflected a combination of: (1) The floor control for medium-sized storage vessels, which at the time of proposal, were equipped with the floor controls and (2) the proposed control provisions for medium-sized storage vessels which were equipped with no control or less efficient controls than the performance of the revised floor component for the source-wide floor. The EPA did not develop a regulatory alternative corresponding to application of the revised floor control level to all storage vessels. Such an alternative would have essentially the same control costs as the proposed control provisions, but would result in a lower emission reduction. Because the floor control would represent a less economically efficient option and would add to the complexity of the rule, this option was not formally evaluated.

For medium storage vessels at existing sources, control at the regulatory alternative used to represent the floor control was estimated to cost $2.4 million/yr and to result in an emission reduction of 370 Mg/yr (110 tons/yr). The regulatory option for control level beyond the floor component is estimated to further reduce emissions by less than 100 Mg/yr (110 tons/yr) at an additional cost of $4 million/yr, or $48,000/Mg for each additional Mg of emission reduction. Due to the relatively high incremental costs and low emission reductions of this alternative, the EPA believes that the control level for the medium storage vessels component of the source-wide floor represented the maximum reduction achievable considering cost and other impacts.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) (Section 307(d)(7)(A)).

B. Paperwork Reduction Act

The information collection requirements of these provisions in this rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by the EPA (ICR No. 1414.02), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW., (2136), Washington, DC 20460, or by calling (202) 260–2740. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

The reporting and recordkeeping burden of the information collection requirements of the provisions for medium sized storage vessels are included in the estimate of the overall reporting burden, which is presented in ICR No. 1414.02. The information collection requirements for the entire rule has an estimated annual reporting

burden averaging 1,400 hours per response, and an estimated annual recordkeeping burden averaging 5,400 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, EPA, 401 M Street, SW., (Mail code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Executive Order 12866

This final action regarding provisions applicable to medium sized storage vessels in facilities subject to the HON has been reviewed in accordance with Executive Order 12866. Under the terms of the Order, the Administrator has assessed the potential costs and benefits of the regulatory action. The methods for and results of these cost and benefit analyses are described in the HON's Regulatory Impact Analysis (RIA). The RIA was included in the HON docket at proposal, and thus it was made available for public comment.

Executive Order 12866 also requires that the record for "significant" rules include an assessment of the potentially effective and reasonably feasible alternatives to the planned action. The potentially effective and reasonably feasible alternatives to the control requirements in the HON were also analyzed as part of the rule development process. The methods for and results of these analyses are described in the HON's Background Information Document (BID). The BID was included in the HON docket at proposal, and thus it was also available for public comment. In addition, many of the alternative requirements considered by the Administrator were described in the preamble for the HON proposal.

The potential costs associated with selection of the final provisions are primarily the result of statutory requirements. All elements of the cost that are not directly attributable to statutory requirements were deemed appropriate because the Administrator determined that they were necessary for administering this program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of this rule, the Administrator has determined that the benefits justify the costs.

The Administrator has also determined that this regulatory action does not unduly interfere with State, local and tribal governments in the exercise of their governmental functions.

D. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the EPA to consider potential impacts of Federal regulations on small business entities. If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Regulatory impacts are considered significant if any of the following criteria are met: (1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or (4) regulatory requirements are likely to result in closures of small entities.

The potential costs of the requirements for medium sized storage vessels were considered as part of the economic impact analysis for the entire regulation. The assessment of the economic impacts of the overall regulation were presented in the April 22, 1994 **Federal Register** (59 FR 19449). Therefore, the addition of the final provisions to the standard does not alter the conclusion that the standard is not expected to have a significant economic impact on a substantial number of small firms.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule will not have an economic impact on small entities because no additional costs will be incurred.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 27, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: Sections 101, 112, 114, 116, and 301 of the Clean Air Act (42 U.S.C. 7401, *et seq.*, as amended by Pub. L. 101–549, 104 Stat. 2399).

Subpart G—National Emission Standards for Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry Process Vents, Storage Vessels, Transfer Operations, and Wastewater

2. Table 5 of the appendix to subpart G is revised to read as follows:

TABLE 5.—GROUP 1 STORAGE VESSELS AT EXISTING SOURCES

Vessel capacity (cubic meters)	Vapor Pressure [1] (kilopascals)
75 ≤ capacity <151	≥13.1
151 ≤ capacity	≥5.2

[1] Maximum true vapor pressure of total organic HAP at storage temperature.

[FR Doc. 94–13666 Filed 6–3–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 281

[FRL–4893–2]

Kansas; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Kansas' application for final approval.

SUMMARY: The State of Kansas has applied for final approval of its underground storage tank (UST) program under subtitle I of the Resource Conservation and Recover Act (RCRA) The Environmental Protection Agency (EPA) has reviewed Kansas' application and has reached a final determination that Kansas' underground storage tank program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of Kansas to operate its program.

EFFECTIVE DATE: Final approval for Kansas shall be effective at 1 p.m. eastern time on July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Lee Daniels, Coordinator, Underground Storage Tank Section, EPA Region 7, 726 Minnesota Ave., Kansas City, Kansas,.66101. Phone: (913) 551–7651

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state UST programs to operate in the state in lieu of the Federal UST program. To qualify for final authorization, a state's program must: (1) Be "no less stringent" than the Federal program in leak detection, maintaining records, release reporting, corrective action, tank closure, financial responsibility, new tank standards and the notification requirements of section 9004(a)(8) of RCRA, 42 U.S.C. 6991c(a)(8); and (2) provide for adequate enforcement (Section 9004(a) of RCRA, 42 U.S.C. 6991c(a)).

On September 1, 1994, Kansas submitted an application for "complete" program approval which includes regulation of both petroleum and hazardous substance tanks. Kansas also regulates heating oil tanks with the exception of tanks used to store heating oil for consumptive use at a single family residence. However, this part of the Kansas program is broader in scope than the Federal program and is not included in this final approval. On March 2, 1994, EPA published a tentative decision announcing its intent to grant Kansas final approval. Further background on the tentative decision to grant approval appears at 59 FR 9950, March 2, 1994.

Along with the tentative determination, EPA announced the availability of the application for public comment. Also, EPA provided notice that a public hearing would be provided only if significant public interest on substantive issues was shown. EPA received no comments on the application and no request for a public hearing, therefore, a public hearing was not held.

B. Decision

I conclude that the State of Kansas' application for final approval meets all the statutory and regulatory requirements established by subtitle I of RCRA. Accordingly, Kansas is granted final approval to operate its UST program. The State of Kansas now has the responsibility for managing all regulated UST facilities within its borders and carrying out all aspects of the UST program except with regard to Indian lands, where EPA will retain and otherwise exercise regulatory authority. Kansas also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA, 42 U.S.C. 6991d, and to take enforcement actions under section 9006 of RCRA, 42 U.S.C. 6991e.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. This approval effectively suspends the applicability of certain Federal regulations in favor of Kansas' program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the state. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This action is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6974(b), and 6991c.

Dated: April 29, 1994.

William Rice,

Acting Regional Administrator.

[FR Doc. 94–13665 Filed 6–3–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50612A; FRL–4750–3]

RIN 2070–AB27

Aromatic Amino Ether; Withdrawal of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rule.

SUMMARY: EPA is withdrawing a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance generically described as an aromatic amino ether which was the subject of premanufacture notice (PMN) P–90–1840. EPA initially published this SNUR using direct final rulemaking procedures. EPA received critical comments on this rule. Therefore, the Agency is withdrawing this rule, as required under the Expedited SNUR rulemaking process (40 CFR part 721 subpart D). In a separate notice of proposed rulemaking published elsewhere in today's issue of the **Federal Register**, EPA is proposing a SNUR for this substance with a 30–day comment period.

EFFECTIVE DATE: This action is effective on June 6, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 4, 1993 (58 FR 51684), EPA issued several direct final SNURs including a SNUR for the substance described generically as aromatic amino ether, PMN P–90–1840. As described in 40 CFR 721.160, EPA is withdrawing the rule issued for P–90–1840 under direct final rulemaking procedures because the Agency received adverse comments. As required by § 721.160(a)(3)(iii), EPA is proposing the rule published elsewhere in today's issue of the **Federal Register**. For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721 subpart D and 54 FR 31314 (July 27, 1989). The record for the direct final SNUR for this substance which is being withdrawn by this rule was established at OPPTS–50612. That record includes information considered by the Agency in developing this rule, and includes the adverse comments to which the Agency has responded with this notice of withdrawal. The docket control number for the withdrawal is OPPTS–50612A. For details refer to the proposal published elsewhere in today's issue of the **Federal Register**. The relevent portions of the original docket for the direct final SNUR are being incorporated under OPPTS–50612B, which is established for the proposed rule.

A public version of the record, without any confidential business information (CBI), is available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, from 12 noon to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. E–G102, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 24, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.3390 [Removed]

2. By removing § 721.3390.

[FR Doc. 94–13680 Filed 6–3–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50601C; FRL–4746–7]

Fluorene Substituted Aromatic Amine; Modification of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is modifying a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a fluorene substituted aromatic amine based on a modification to the TSCA section 5(e) consent order regulating that chemical substance.

EFFECTIVE DATE: The effective date of this rule is July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 23, 1992 (57 FR 44050), EPA issued a SNUR establishing significant new uses for fluorene substituted aromatic amine (P–91–43). Because of the modification to the consent order for this substance, EPA is modifying this SNUR.

I. Background

The Agency proposed the modification of the SNUR for this substance in the **Federal Register** of July 28, 1993 (58 FR 40397). The background and reasons for the modification of the SNUR are set forth in the preamble to the proposed modification. The Agency received no public comment concerning the proposed modification. As a result EPA is modifying this SNUR.

II. Rationale for Modification of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health and environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the potential risks of the chemical substance. Specifically, EPA concluded that dermal and respiratory protection, hazard communication requirements, limiting uses to industrial uses only, a production volume limit, and a prohibition against releases to surface waters were necessary to control the potential unreasonable risks of the substance. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. In light of data received for an analogous substance which indicates that the PMN substance is not expected to cause retinopathy, the submitter petitioned, and EPA determined, that the requirement that labels and Material Safety Data Sheets (MSDSs) indicate that the PMN substance may cause blindness and that eye protection should be worn when handling the substance was no longer appropriate and hence, was unnecessary to protect human health. The section 5(e) order modification eliminated that labeling and MSDS requirement based on the finding of no retinopathy effects. The modification of SNUR provisions for the substance designated herein is consistent with the modification of the section 5(e) order.

III. Rulemaking Record

The record for the rule which EPA is modifying was established at OPPTS–50601. This record includes information considered by the Agency in developing this rule and includes the modification to the consent order to which the Agency has responded with this proposal.

IV. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 24, 1994

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. In § 721.3764 by revising paragraph (a)(2)(ii) to read as follows:

§ 721.3764 Fluorene substituted aromatic amine.

(a) * * *

(2) * * *

(ii) *Hazard communication program* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(ii), and (g)(5).

* * * * *

[FR Doc. 94-13678 Filed 6-3-94; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 721

[OPPTS-50585E; FRL-4649-8]

Amide of Polyamine and Organic Acid; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for amide of polyamine and organic acid based on receipt of new data. The data indicate that for purposes of section 5 of TSCA the substance will not present an unreasonable risk of injury to health.

EFFECTIVE DATE: The effective date of this rule is July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 28, 1990 (55 FR 39892), EPA issued a SNUR establishing significant new uses for amide of polyamine and organic acid (P-89-1062). Because of additional data EPA has received for this substance, EPA is revoking this SNUR.

I. Background

The Agency proposed the revocation of the SNUR for this substance in the **Federal Register** of May 7, 1993 (58 FR 27255). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comment concerning the proposed revocation. As a result EPA is revoking this SNUR.

II. Objectives and Rationale of Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and that the substance is expected to be produced in substantial quantities and there may be significant or substantial environmental exposure. EPA identified the tests necessary to evaluate the risks of the substance. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter, and a SNUR was promulgated. The consent order required the PMN submitter to perform toxicity testing on the chemical substance.

EPA reviewed testing conducted by the PMN submitter pursuant to the consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is revoking SNUR provisions for this chemical substance. EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Rulemaking Record

The record for the rule which EPA is revoking was established at OPPTS-50585 (P-89-1062). This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this revocation.

IV. Regulatory Assessment Requirements

EPA is revoking the requirements of this rule. Any costs or burdens associated with this rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 24, 1994

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.6180 [Removed]

2. By removing § 721.6180.

[FR Doc. 94-13679 Filed 6-3-94; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 721

[OPPTS-50575D; FRL-4649-9]

Adipic Acid, Polymer with 1,4-Cyclohexanedimethanol, Dipropylene Glycol, Alkanepolyol, Substituted Alkanolamines, and Carbomonocyclic Dicarboxylic Acid; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for adipic acid, polymer with 1,4-cyclohexanedimethanol, dipropylene glycol, alkanepolyol, substituted alkanolamines, and carbomonocyclic dicarboxylic acid based on receipt of new data. The data indicate that the substance will not present an unreasonable risk to health

EFFECTIVE DATE: The effective date of this rule is July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 24, 1990 (55 FR 17376), EPA issued a SNUR establishing significant new uses for adipic acid, polymer with 1,4-cyclohexanedimethanol, dipropylene glycol, alkanepolyol, substituted alkanolamines, and carbomonocyclic dicarboxylic acid (P–89–653). Because of additional data EPA has received for this substance, EPA is revoking this SNUR.

I. Background

The Agency proposed the revocation of the SNUR for this substance in the **Federal Register** of May 5, 1993 (58 FR 26727). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comment concerning the proposed revocation. As a result, EPA is revoking this SNUR.

II. Objectives and Rationale of Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and that the substance is expected to be produced in substantial quantities and there may be significant or substantial environmental exposure. EPA identified the tests necessary to evaluate the risks of the substance. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter pursuant to the 5(e) consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is revoking SNUR provisions for this chemical substance. EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

III. Rulemaking Record

The record for the rule which EPA is revoking was established at OPPTS–50575 (P–89–653). This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this revocation.

IV. Regulatory Assessment Requirements

EPA is revoking the requirements of this rule. Any costs or burdens associated with this rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 25, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.6600 [Removed]

2. By removing § 721.6600.

[FR Doc. 94–13683 Filed 6–3–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 1720, 2070, 2510, and 8350

[WO–260–4212–02–24 1A; Circular No. 2656]

RIN 1004–AB93

Homesteading; Designation of Areas and Sites; Programs and Objectives

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This administrative final rule removes Bureau of Land Management (BLM) regulations on programs and objectives, designation of areas and sites, homesteads, and established areas from the Code of Federal Regulations. These regulations are obsolete either because their authorities have expired or been repealed, or they have been superseded by other regulations or supplanted by BLM Manual provisions.

EFFECTIVE DATE: June 6, 1994.

ADDRESSES: Inquiries and suggestions should be sent to: Director (260), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jim Paugh, (307) 775–6306.

SUPPLEMENTARY INFORMATION: Parts 1720, 2070, 2510, and subpart 8352 of title 43 of the Code of Federal Regulations are being removed in this administrative final rule. In some instances, the statutory authorities prompting a part either have been repealed or have expired. In other cases, the provisions of a part have been superseded by other regulations or replaced by BLM Manual provisions.

Part 1720, which is being removed by this rule, lists policies pertaining to the disposal and management of the public lands as managed by BLM before the enactment of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1700 *et seq.* These pre-FLPMA policies were based, to a considerable extent, on the Classification and Multiple Use Act, which expired according to its own terms on December 23, 1970. The BLM's post-FLPMA management and disposal policies now are reflected not only in FLPMA, but also in BLM's land use planning regulations, along with its other management- or disposal-related regulations, and its manualized instructions to BLM personnel. The BLM's Manual is open to public inspection. See 43 CFR 2.3.

Part 2510 pertains to the homestead laws that were repealed on October 21, 1976 (as to Alaska, October 21, 1986), by FLPMA. Because homestead entries no longer can be made with regard to the public lands of the United States, the regulations in this part are no longer needed.

Part 2070 and subpart 8352 were used to designate areas and sites. The types of designations referred to in these provisions have all been superseded by designations created in FLPMA and other laws. Such designations include areas of critical environmental concern, covered in 43 CFR part 1600; national conservation areas and national recreation areas, covered in various specific resource management regulations; wilderness, covered in part 8560; and national trails and rivers, covered in part 8350.

Because this final rule is an administrative action to remove obsolete provisions, it has been determined that it has no impacts on the public. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and 553(d)(3) that notice and public procedure thereon are unnecessary and that this rule may take effect upon publication.

The principal author of this final rule is Jim Paugh of the BLM Wyoming State Office, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

Because this final rule is a purely administrative regulatory action having no effects upon the public or the environment, it has been determined that the rule is categorically excluded from review under section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. No private property rights would be affected by a rule that merely removes obsolete regulations no longer governing activities on the public lands. The Department therefore certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Removing obsolete regulations that no longer govern activities on the public lands will have no economic effect whatsoever.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects

43 CFR Part 1720

Forests and forest products, Grazing lands, Natural resources, Public lands, Public lands-mineral resources, Public lands-sale, Recreation and recreation areas, Watersheds, Wilderness areas, Wildlife.

43 CFR Part 2070

Natural resources, Public lands, Public lands-classification, Recreation and recreation areas.

43 CFR Part 2510

Homesteads, Irrigation, Reclamation.

43 CFR Part 8350

National Trails System, National Wild and Scenic Rivers System, Penalties, Public lands.

For the reasons stated in the preamble, and under the authority of section 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740), chapter II, subtitle B, title 43 of the Code of Federal Regulations, is amended as set forth below:

PART 1720—[REMOVED]

1. Part 1720 is removed.

PART 2070—[REMOVED]

2. Part 2070 is removed.

PART 2510—[REMOVED]

3. Part 2510 is removed.

PART 8350—[AMENDED]

4. The authority citation for 43 CFR part 8350 continues to read as follows:

Authority: 16 U.S.C. 1241, 16 U.S.C. 1271, 43 U.S.C. 1701 *et seq.*

5. Part 8350 is amended by removing subpart 8352, consisting of sections 8352.0–1, 8352.0–2, 8352.0–5, 8352.0–6, 8352.1, 8352.2, 8352.3, and 8352.4.

Dated: May 11, 1994

Nancy Keir Hayes,

Assistant Secretary of the Interior

[FR Doc. 94–13595 Filed 6–3–94; 8:45 am]

BILLING CODE 4310–84–P

43 CFR Public Land Order 7056

[AK–932–4210–06; AA–16807]

Partial Revocation of Executive Order No. 4257 Dated June 27, 1925; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order insofar as it affects approximately 54.47 acres of National Forest System land and 8.91 acres of public land withdrawn for use by the Coast Guard, Department of Transportation, for the Woronkofski Point Lighthouse. The land is no longer needed for the purpose for which it was withdrawn. This action will also open the land within the Forest to such forms of disposition as may by law be made of National Forest System land. The land has been and will continue to be subject to the Tongass National Forest reservation. Upon revocation, the public land will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

EFFECTIVE DATE: June 6, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Executive Order No. 4257 dated June 27, 1925, which withdrew National Forest System land and public land for lighthouse purposes, is hereby revoked insofar as it affects the following described land:

Copper River Meridian

Tongass National Forest

A parcel of land located within secs. 5 and 6 of T. 63 S., R. 83 E., described as U.S. Survey No. 1712, excluding the following parcel:

Beginning at a point which is S 87°21'00.6" E., 309.65 feet from U.S.L.M. No 1712, at approximate latitude 56°26'00" N., longitude 132°30'30" W;

Thence S. 23°20'04" W., 219.26 feet;
Thence N. 68°00'42.2" W., 163.49 feet;
Thence N. 58°17'00" W., 69.30 feet;
Thence N. 25°03'00" W., 56.10 feet;
Thence N. 20°08'00" W., 42.24 feet;
Thence N. 39°08'00" E., 50.16 feet;
Thence S. 79°08'00" E., 257.40 feet

Thence N. 66°00'00" E., 56.10 feet to the point of beginning, containing approximately 1 acre.

The area described, less the excluded parcel, contains approximately 54.47 acres of National Forest System land and 8.91 acres of public land, for a total of approximately 63.38 acres.

2. At 10 a.m. on July 6, 1994, the National Forest System land described above will be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

At 10 a.m. on July 6, 1994, the public land described above will be opened to location and entry under the United States mining laws for metalliferous minerals, pursuant to the term of 30 U.S.C. 49(a) (1988), subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable laws. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 17, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–13580 Filed 6–3–94; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 931235–4107; I.D. 052694A]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of this inseason action pursuant to IPHC regulations approved by the United States Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: May 17, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, telephone 907-586-7221; Gary Smith, telephone 206-526-6140; or Donald McCaughran, telephone 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America (58 FR 17791, April 6, 1993). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1994 Halibut Landing Report No. 2

First Oregon Sport Season to Close May 20.

The preliminary catch estimate for the 1994 sport halibut fishery between Cape Falcon (latitude 45°46'00"N) and the California border (latitude 42°00'00"N) indicates the 53,641 pound (24.3 mt) catch limit will be reached on May 20. Therefore, the sport halibut fishery in this area will close at 11:59 p.m. on May 20.

Sport fishing for Pacific halibut will re-open May 21 through August 5, 7 days a week, only in the area inside the 30-fathom curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600 from Cape Falcon to the California border, or until 2,716 pounds (1.2 mt) are estimated to have been taken and the season is closed by the Commission, whichever occurs first. The daily bag limit remains two halibut per person, one with a minimum overall size limit of 32 inches (81 cm) and the second with a minimum overall size limit of 50 inches (127 cm).

Dated: May 31, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Mangement, National Marine Fisheries Service.

[FR Doc. 94–13702 Filed 6–3–94; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 625

[Docket No. 940262–4963; I.D. 052494C]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of commercial quota transfer.

SUMMARY: NMFS announces that the States of Connecticut, Maryland, North Carolina, and the Commonwealth of Virginia are transferring various amounts of commercial summer flounder quota to the State of Delaware. The public is advised that the quota adjustments have been made, and is informed of the revised commercial quota for each state involved.

EFFECTIVE DATE: June 1, 1994.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, 508–281–9101.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery are found at 50 CFR part 625. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 625.20.

The commercial quota for summer flounder for the 1994 calendar year set equal to 16,005,560 lb (7.3 million kg) and the allocations to each state were published March 7, 1994 (59 FR 10586). NMFS issued a notification that the commercial quota available to the State of Delaware for 1994 had been harvested, effective March 30, 1994 (59 FR 15863, April 5, 1994). The 1994 quotas for several states were adjusted for overages occurring in 1993, as required under § 625.20(d)(2), on May 25, 1994. The quotas after adjustments for overages in 1993 for the states affected by this action were: Delaware, −1,359 lb (−616 kg); Maryland, 324,117 lb (147,018 kg); North Carolina, 4,369,775 lb (1,982,117 kg); and Virginia, 3,242,354 lb (1,470,722 kg). Since Connecticut's quota was not exceeded in 1993, its 1994 quota of 361,258 lb (163,866 kg) did not need adjustment for overages prior to this action.

The final rule implementing Amendment 5 to the FMP was published December 17, 1993 (58 FR 65936), and allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast

Region, NMFS (Regional Director), to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1) in the evaluation of requests for quota transfers or combinations.

Section 625.20(3) further states that a state may not submit a request to transfer or combine quota if a request to which it is party is pending before the Regional Director. While Delaware is the recipient of the four transfers, each request to transfer quota was presented separately by each state, and therefore considered individually by the Regional Director. Publication as one notification is efficient and convenient for reference.

Connecticut, Maryland, North Carolina, and Virginia have agreed to transfer 96 lb (44 kg), 1,000 lb (454 kg), 2,782 lb (1,262 kg), and 2,162 lb (981 kg), respectively, of their commercial quotas to Delaware. The Regional Director has determined that the criteria set forth in § 625.20(f) have been met, and publishes this notification of quota transfers. The revised quotas for the calendar year 1994 are: Connecticut, 361,162 lb (163,822 kg); Delaware, 4,681 lb (2,123 kg); Maryland, 323,117 lb (146,565 kg); North Carolina, 4,366,993 lb (1,980,855 kg) and Virginia, 3,240,192 lb (1,469,742 kg).

Because current landings estimates indicate that the Delaware inshore fishery has harvested the quota made available through these transfers, no quota is currently available for landings in that State. Federally permitted vessels may not land summer flounder in the State of Delaware.

This action does not alter any of the conclusions reached in the Environmental Impact Statement prepared for Amendment 2 to the FMP regarding the effects of summer flounder fishing activity on the human environment. Amendment 2 established procedures for setting an annual coastwide commercial quota for summer flounder and a formula for determining commercial quotas for each state. The quota transfer provision was established by Amendment 5 to the FMP and the environmental assessment prepared for Amendment 5 found that the action had no significant impact on the environment. Under § 6.02b.3(b)(i)(aa) of NOAA Administrative Order 216–6, this action is categorically excluded from the requirement to prepare additional environmental analyses. This is a routine administrative action that reallocates commercial quotas within the scope of previously published environmental analyses.

Classification

This action is required by 50 CFR part 625 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 31, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–13657 Filed 6–1–94; 2:24 pm]

BILLING CODE 3510–22–P

50 CFR Part 672

[Docket No. 931199–4042; I.D. 060194A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 61 (between 159° and 170° W. long.) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 2, 1994, until 12 noon, A.l.t., July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The second quarterly allowance of pollock TAC in Statistical Area 61 is 5,037 metric tons (mt), as established by the 1994 final specifications (59 FR 7647, February 16, 1994) and modified in accordance with § 672.20(a)(2)(iv).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1994 second quarterly allowance of pollock TAC in Statistical Area 61 soon will be reached. The Regional Director established a directed fishing allowance of 4,400 mt, and has set aside the remaining 637 mt as bycatch to support other anticipated groundfish fisheries.

The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 61 is prohibited, effective from 12 noon, A.l.t., June 2, 1994, until 12 noon, A.l.t., July 1, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 1, 1994.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-13726 Filed 6-1-94; 4:16 pm]

BILLING CODE 3510–22–F

50 CFR Part 675

[Docket No. 931100–4043; I.D. 060194B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of sablefish by persons using trawl gear in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands (BSAI) management area. NMFS is requiring that catches of sablefish by these persons in the BS be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the share of the sablefish total allowable catch (TAC) assigned to trawl gear in the BS has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 1, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.24(c)(1)(i), the share of the sablefish TAC assigned to trawl gear in the BS was established by the final 1994 initial specifications of groundfish (59 FR 7656, February 16, 1994) as 230 metric tons.

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.24(d)(2), that the share of the sablefish TAC assigned to trawl gear in the BS has been reached. Therefore, NMFS is requiring that further catches of sablefish by persons using trawl gear in the BS be treated as prohibited species in accordance with § 675.20(c)(3), effective from 12 noon, A.l.t., June 1, 1994, until 12 midnight, A.l.t., December 31, 1994.

Classification

This action is taken under § 675.24 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 1, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–13725 Filed 6–1–94; 4:16 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 107
Monday, June 6, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-94-13]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received by August 5, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on May 31, 1994

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 26633
Petitioner: Messrs. Jack W. Tunstill, Richard H. Low, and Wayne Witt
Regulations Affected: 14 CFR 61.95
Description of Rulechange Sought: To amend § 61.95(a)(1) of the FAR which requires student pilots to receive both ground and flight instruction in the specific terminal control area for which solo flight is authorized. The petitioners propose that a student pilot who has met the requirements of § 61.95 for either the Tampa or Orlando TCA's be allowed to operate in both TCA's
Petitioner's Reason for the Request: *Denial, May 17, 1994.*

[FR Doc. 94-13699 Filed 6-3-94; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 94-NM-43-AD]

Airworthiness Directives; Aerospatiale Model ATR42-200 and -300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Model ATR42-200 and -300 series airplanes. This proposal would require a one-time dye penetrant inspection to detect cracking in certain hinge pins of the nose landing gear (NLG), and replacement of cracked pins with crack-free pins. This proposal is prompted by reports of cracking of certain hinge pins in the NLG. The actions specified by the proposed AD are intended to prevent collapse of the NLG due to cracking of the hinge pins.

DATES: Comments must be received by July 18, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-43-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1187; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-43-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-43-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42-200 and -300 series airplanes. The DGAC advises that cracking has been found on the hinge pins during routine overhaul of the nose landing gear (NLG) on Model ATR42-200 and -300 series airplanes. The cause for this cracking has been attributed to improper heat treatment during manufacture of the hinge pins. The defective pins have been isolated to those manufactured by Nardi having part number D56867 and serial numbers beginning with the letter "N." This condition, if not corrected, could result in collapse of the NLG due to cracking of the hinge pins.

Avions de Transport Regional has issued Service Bulletin ATR42-32-0064, dated January 17, 1994, that describes procedures for a one-time dye penetrant inspection to detect cracking in certain hinge pins of the NLG, and replacement of cracked pins with crack-free pins. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 94-005-055(B), dated January 5, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time dye penetrant inspection to detect cracking in certain hinge pins in the NLG, and replacement of cracked pins with crack-free pins. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 128 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $42,240, or $330 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 94-NM-43-AD.

Applicability: Model ATR42-200 and -300 series airplanes equipped with hinge pins installed at the nose landing gear (NLG) that are manufactured by Nardi, have part number D56867, and have serial numbers beginning with the letter "N"; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the NLG due to cracking of the hinge pins, accomplish the following:

(a) Prior to the accumulation of 10,000 total landings or within 1,000 landings after the effective date of this AD, whichever occurs later, perform a dye penetrant inspection to detect cracking in the hinge pins on the NLG in accordance with Avions de Transport Regional Service Bulletin ATR42-32-0064 dated January 17, 1994.

(1) If no cracking is found, prior to further flight, reinstall that hinge pin in accordance with the service bulletin.

(2) If cracking is found, prior to further flight, install a new hinge pin or a pin that has been previously inspected and found to be crack-free, in accordance with the service bulletin.

(b) As of the effective date of this AD, no hinge pin manufactured by Nardi having part number D56867 and any serial number beginning with the letter "N," shall be installed on the NLG of any airplane, unless that pin has been previously inspected and has been found to be crack-free, in accordance with Avions de Transport Regional Service Bulletin ATR42-32-0064, dated January 17, 1994.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch ANM-113.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 31, 1994

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 94-13628 Filed 6-3-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 89-NM-205-AD]

Airworthiness Directives; Aerospatiale Model ATR 42, et al.; Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to various smaller transport category airplanes certificated for operation with a main deck Class B cargo compartment. That action would have required either the conversion of all main deck Class B cargo compartments to the Class C configuration; or the use of flame penetration-resistant containers with smoke detection and fire extinguishing systems to carry all cargo; or the accomplishment of certain operational and equipment changes and design modifications to maximize cargo fire detection and control. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data and is undertaking alternative rulemaking action. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to add a new airworthiness directive (AD), applicable to various smaller transport category airplanes certificated for operation with a main deck Class B cargo compartment, was published in the **Federal Register** on September 5, 1990 (55 FR 36284). The proposed rule would have required either the conversion of all main deck Class B cargo compartments to a Class C configuration; or the use of flame penetration-resistant containers with smoke detection and fire extinguishing systems to carry all cargo; or the accomplishment of certain operational and equipment changes and design modifications to maximize cargo fire detection and control. That action was prompted by a report of an uncontained fire in a main deck cargo compartment on a transport category airplane. The proposed actions were intended to prevent an uncontrolled cargo fire that could cause extensive damage to the systems and structure of the airplane.

Since the issuance of that NPRM, the FAA has received additional data and has initiated other rulemaking activity, which has caused it to reconsider its previous position on this rulemaking action.

The FAA received over 128 comments and suggestions to the proposal, including ones from affected operators, aircraft manufacturers, industry representatives, and civil aviation authorities from around the world. The general nature of almost all of the comments received was in disagreement with the issuance of the proposed rule.

One commenter requests that further action on this AD be postponed until the proposed actions have been carefully coordinated with the aviation authorities of the countries controlling the type certificates of the applicable aircraft. The FAA notes that, during the development of this proposal, it apprised foreign civil airworthiness authorities (FCAA) of the planned actions. The FAA has given due consideration to the comments and recommendations that were received from each of these FCAA's.

Many commenters question the justification for the proposed rule and request that it be withdrawn. Five commenters question the FAA's method of requiring change via an AD. Several commenters consider that the proposed rule fails to meet the regulatory requirements of § 39.1 ("Airworthiness Directives; Applicability") of the Federal Aviation Regulations (14 CFR 39.1); these commenters contend that the FAA has not established that the unsafe condition is likely to exist or develop on the affected airplanes. One commenter points out that a review of the FAA's Service Difficulty Reports (SDR) failed to disclose any problem with regard to detection, access to, or control of smoke or fires in baggage compartments of airplanes of the type and size affected by the proposal. One of these commenters points out that there is no service history to suggest that compartments of this size [under 400 cubic feet] have been or are likely to be a fire hazard. Four commenters consider that the FAA's intent in proposing the AD should instead be addressed either as a change to affected operators' Operation Specifications or as a change to part 121 ("Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and commercial Operators of Large Aircraft") of the Federal Aviation Regulations (14 CFR part 121).

The FAA agrees with certain observations made by these commenters. The FAA has conducted a review the SDR's as well as the United Kingdom Civil Airworthiness Authority's (CAA) World Airline Accident Summary and found no reports of incidents or accidents caused by fire in the Class B cargo compartment of transport airplanes addressed by this notice. The historical data that was reviewed indicates only that there has not been a cargo compartment fire in the size of airplanes specified in the notice. However, the lack of incidents of fire does not establish that the Class B compartment, as defined in the existing certification regulations, has appropriate safeguards if a fire were to occur. It is this aspect that the proposed rule was meant to address.

Some commenters state that the smaller cargo compartments of the airplanes affected by this proposed AD are different from the larger compartments on the airplanes that are affected by AD 93-07-15, amendment 39-8547 (58 FR 21243, April 20, 1993), since those compartments contain pallets and/or containers. One commenter states that the smaller cargo compartments used in commuter service have not been established to be similar, from the standpoint of safety, to main deck Class B compartments of larger transports; therefore, any action to address fire safety should concentrate on large "Combi" cargo compartments, as in AD 93-07-15. Another commenter considers that the fire detection problems that may exist on jumbo-jet airplanes do not have any relevance for smaller airplanes. Another commenter states that the hazard of carrying large pallets/containers in increasingly large "Combi" compartments is the issue to be addressed, not the size of the compartment itself.

The FAA disagrees that the smaller cargo compartments are not similar, with regard to fire safety, to the larger compartments containing pallets or containers. On the smaller transport airplanes, cargo and luggage are loaded in a manner such that smoke detection and access may be inhibited if the fire is deep-seated (buried in the cargo), much the same as in a container or pallet on a larger transport airplane. Further, the FAA has observed, and one commenter to the notice admitted, that in many instances, some operators of the smaller transport airplanes load the airplane's cargo compartments in such a manner that there is no place to displace the cargo within the compartment in order to get at a fire. This presents a two-fold hazard:

1. The fire cannot be accessed and continues to burn; and

2. If cargo is removed from the cargo compartment, passengers could be exposed to fire, toxic smoke, and fumes; this situation is unsafe and contrary to the concept and rule requirements of the Class B cargo compartment.

Four commenters provide information concerning the economic effects of the proposed AD. One of these commenters, an operator, states that it has had a long-term investment in its combi operations; however, if the rule is issued, any further "Combi" operations would be cost-prohibitive for this operator. This would force the operator to raise passenger ticket prices, and resort to less frequent all-passenger or all-cargo flights. Another commenter states that the proposed requirements of the rule would have a devastating effect on service to remote communities that have no alternative means of transport available. Another commenter states that it would cost up to $200,000 per airplane to accomplish the requirement to convert the cargo compartment to a Class C configuration; this would be a great economic burden for small operators. Another commenter estimated that the requirements of the proposed rule would cost 10% of its annual gross revenues.

In light of these comments and other information provided, the FAA must continue to consider the following aspects relevant to this rulemaking action:

1. A service history indicating that there has not been a fire in the Class B cargo compartments of the size of aircraft addressed by the proposed rule; and

2. Cargo loading practices on the smaller transport category airplanes that may inhibit smoke detection and negate access requirements of the Class B cargo compartment.

Because of the potentially catastrophic consequences of fire in Class B cargo compartments and the impossibility of eliminating the potential for such fires, the FAA cannot conclude that the existing Class B compartments do not present an unsafe condition. However, this condition is a result of flaws in the underlying design standards for these compartments, and correcting those flaws may have significant economic and operational consequences. For these reasons, the FAA has concluded that issuance of an AD to address this condition is not warranted at this time.

The FAA now considers that a change to part 25 ("Airworthiness Standards: Transport Category Airplanes") of the FAR (14 CFR part 25) and to the relevant operating regulations of the FAR to address these issues is more appropriate and will allow further public participation in the rulemaking process.

In 1989, just prior to the time that the notice was published, a subgroup of the Department of Transportation Task Force on FAA Reform recommended that a Standing Advisory Committee for Rulemaking be established. The Secretary of Transportation approved this recommendation, and the Aviation Rulemaking Advisory Committee (ARAC) was chartered in 1991. The purpose of the committee is to provide advice and recommendations to the FAA concerning the full range of the FAA's rulemaking activity with respect to safety-related issues. The expected benefits of ARAC are to take advantage of the industry technical expertise and experience, to resolve controversies in an open forum, to resolve issues before formal rulemaking, and to broaden public participation in the process.

The FAA has asked ARAC to consider 70 rulemaking issues, one of which is rulemaking relative to the Class B cargo compartment. A "Class B Cargo Compartment Harmonization Working Group" was established recently to formulate and harmonize an international position on amended requirements for the Class B cargo compartment as installed on transport category airplanes. In its deliberations, ARAC currently is considering the safety issues related to the Class B cargo compartment, appropriate rule requirements, necessary rule changes, estimated costs, and comments and advice from the aviation industry.

In light of this other on-going rulemaking activity, the FAA hereby withdraws the proposed AD.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 89-NM-205-AD, published in the **Federal Register** on September 5, 1990 (55 FR 36284), is withdrawn.

Issued in Renton, Washington, on May 31, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-13629 Filed 6-3-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 71

[Airspace Docket No. 94-ASO-6]

Proposed Establishment of Class D Airspace: Robins AFB, GA, Proposed Amendment of Class D Airspace and Establishment of Class E Airspace: Middle Georgia Regional Airport, Macon, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a new and independent Class D airspace at Robins AFB, Georgia. Robins AFB has a full time air traffic control tower. This notice further proposes to amend Class D airspace at Middle Georgia Regional Airport, Macon, Georgia, by removing Robins AFB from the Macon, Georgia, Class D description. This notice also proposes to establish Class E airspace at Middle Georgia Regional Airport, Macon, Georgia, when the associated control tower is closed. The intended effect of this action is to clarify when two-way communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when the Middle Georgia Regional Airport control tower is closed.

DATES: Comments must be received on or before: July 5, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 94-ASO-6, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 305-5200.

FOR FURTHER INFORMATION CONTACT: Wade Carpenter, Airspace Section, System Management Branch, Air Traffic

Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ASO–6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 530, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a new independent Class D airspace at Robins AFB, Georgia. Additionally, the FAA is proposing to amend Class D airspace and establish Class E airspace at Middle Georgia Regional Airport, Macon, Georgia. Prior to Airspace Reclassification an Airport Traffic Area (ATA) and a control zone existed at these airports. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the terms "airport traffic area" and "control zones," replacing them with the designation "Class D airspace". Robins AFB was incorporated in the Class D airspace for Middle Georgia Regional Airport, Macon, Georgia. Robins AFB has a full time control tower. However, the Macon Radar Approach Control/Tower, which controls aircraft for the Middle Georgia Regional Airport, is part-time. The intended effect of this proposal is to amend the Class D airspace at Middle Georgia Regional Airport by removing Robins AFB from the Macon, Georgia Class D Airspace and designation. This notice also proposes to establish Class E surface airspace at the Middle Georgia Regional Airport, Macon, Georgia, to provide adequate controlled airspace for instrument approach procedures when the Macon Radar Approach Control/Tower is closed.

The coordinates for this airspace docket are based on North American Datum 83. Designations for Class D and Class E airspace are published respectively in paragraphs 5000 and 6002 of FAA Order 7400.9A dated June 17, 1993 and effective September 16, 1993 which is incorporated by reference in CFR 71.1 effective September 16, 1993. The Class D and E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine modifications are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO GA D Robins AFB, GA [New]

Robins AFB, GA
(Lat. 32°38'25" N., long. 83°35'31" W.)
Macon, Middle Georgia Regional Airport, GA
(Lat. 32°41'35" N., long. 83°38'58" W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 5.5-mile radius of Robins AFB, excluding the portion of a line connecting the 2 points of intersection within a 4.1-mile radius circle centered on the Middle Georgia Regional Airport, Macon, Georgia

* * * * *

ASO GA D MACON, GA [Amended]

Macon, Middle Georgia Regional Airport, GA
(Lat. 32°41'35" N., long. 83°38'58" W.)
Robins AFB, GA
(Lat. 32°38'25" N., long. 83°35'31" W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.1-mile radius of Middle Georgia Regional Airport, excluding the portion south of a line connecting the 2 points of intersection within a 5.5-mile radius circle centered on the Robins AFB Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ASO GA E2 MACON, GA [New]

Macon, Middle Georgia Regional Airport, GA
(Lat. 32°41'35" N., long. 83°38'58" W.)
Robins AFB, GA
(Lat. 32°38'25" N., long. 83°35'; 31" W.)

That airspace extending upward from the surface within a 4.1-mile radius of Middle Georgia Regional Airport, excluding the portion south of a line connecting the 2 points of intersection within a 5.5-mile radius circle centered on the Robins AFB Airport. The Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on May 13, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 94–13696 Filed 6–3–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AGL–4]

Proposed Class E Airspace Modification; Freeport, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM), which proposed to modify the Class E airspace near Freeport, IL, to accommodate a new Nondirectional Beacon (NDB) Runway 06 Standard Instrument Approach Procedure (SIAP) and a new Localizer (LOC) Runway 24 SIAP to Albertus Airport, Freeport, IL. The NPRM is being withdrawn since it is a duplicate of another regulation airspace action that was published in the **Federal Register** on April 6, 1994.

DATES: This withdrawal is effective June 6, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On March 29, 1994, a notice of proposed rulemaking was published in the **Federal Register** to modify the Class E airspace near Freeport, IL, to accommodate a new NDB Runway 06 SIAP and a new LOC Runway 24 SIAP to Albertus Airport, Freeport, IL (59 FR 14573). No comments were received. However, the NPRM is being withdrawn since it is a duplicate of another regulatory airspace action that was published in the **Federal Register** on April 6, 1994.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 94–AGL–4, as published in the **Federal Register** on March 29, 1994 (59 FR 14573), is hereby withdrawn.

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Des Plaines, IL on May 23, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–13697 Filed 6–3–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AGL–2]

Proposed Class E Airspace Establishment; Savanna, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM), which proposed to establish Class E airspace near Savanna, IL, to accommodate a new Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME–A) instrument approach procedure to Tri-Township Airport, Savanna, IL. The NPRM is being withdrawn since it is a duplicate of another regulatory airspace action that was published in the **Federal Register** on April 6, 1994.

DATES: This withdrawal is effective June 6, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

The Proposed Rule

On March 29, 1994, a Notice of Proposed Rulemaking was published in the **Federal Register** to establish Class E airspace near Savanna, IL, to accommodate a new VOR/DME–A instrument approach procedure to Tri-Township Airport, Savanna, IL (59 FR 14578). No comments were received. However, the NPRM is being withdrawn since it is a duplicate of another regulatory airspace action that was published in the **Federal Register** on April 6, 1994.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of Proposed Rule.

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 94–AGL–2, as published in the **Federal Register** on March 29, 1994 (59 FR 14578), is hereby withdrawn.

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Des Plaines, Illinois on May 23, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–13698 Filed 6–3–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 6, 8, 10 and 11

[Notice No. 796; Re: Notice No. 794]

RIN 1512–AB10

Unfair Trade Practices Under the Federal Alcohol Administration Act; Extension of Comment Period and Correction (93F–003P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Proposed rule; extension of comment period and correction.

SUMMARY: In Notice No. 794 (59 FR 21698), published in the **Federal Register** on April 26, 1994, the Bureau of Alcohol, Tobacco and Firearms (ATF) proposed changes to the trade practice regulations under the Federal Alcohol Administration (FAA) Act on tied-house, exclusive outlets, commercial bribery, and consignment sales. ATF is extending the comment period to allow persons who intended to comment additional time to submit such comments. This notice also makes an editorial correction to the text of the proposed regulations as described in the supplementary information below.

DATES: Written comments must be received by July 27, 1994.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, PO Box

20221, Washington, DC 20091–0221; Notice No. 794.

FOR FURTHER INFORMATION CONTACT: Marjorie Ruhf, Wine and Beer Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On April 26, 1994, ATF published a notice of proposed rulemaking, Notice No. 794 (59 FR 21698) in the **Federal Register**. In the notice, ATF proposed to amend trade practice regulations in 27 CFR parts 6 (Tied-House), 8 (Exclusive Outlet), 10 (Commercial Bribery) and 11 (Consignment Sales) by adding standards for enforcing the "exclusion" element where appropriate and by revising other regulations as the result of an agency review and an industry petition. At this time, no final decision has been made on whether to hold public hearings and ATF continues to reserve that decision.

Extension of Comment Period

In order to allow interested persons to comment fully, the comment period, originally scheduled to close on June 27, 1994, will be extended until July 27, 1994. All written comments received will be considered in the development of a decision on this matter. Comments that provide the factual basis supporting the views or suggestions presented will be particularly helpful in developing a reasoned regulatory decision on this matter.

Correction

In notice no. 794, (93F–003P), beginning on page 21698 of the issue of Tuesday, April 26, 1994, make the following correction:

On page 21712, in the third column, Paragraph 55, the table of contents entry for section 10.54 read, "Criteria for determining retailer independence." This should be changed to read, "Criteria for determining trade buyer independence."

Drafting Information

The principal author of this document is Marjorie Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 6

Advertising, Alcohol and alcoholic beverages, Antitrust, Credit and trade practices.

27 CFR Part 8

Alcohol and alcoholic beverages, Antitrust, and Trade practices.

27 CFR Part 10

Alcohol and alcoholic beverages, Antitrust, and Trade practices.

27 CFR Part 11

Alcohol and alcoholic beverages, Antitrust, and Trade practices.

Authority

This notice is issued under the authority of 27 U.S.C. 205.

Approved: May 27, 1994.

Daniel R. Black,

Acting Director.

[FR Doc. 94–13600 Filed 6–3–94; 8:45 am]

BILLING CODE 4810–31–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–4891–8]

National Emission Standards for Hazardous Air Pollutants for Source Categories: Aerospace Manufacturing and Rework

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standards would limit emissions of hazardous air pollutants (HAP) from new and existing commercial, civil, and military aerospace original equipment manufacturing (OEM) and rework facilities that are major sources of HAP emissions. A major source is defined in section 112(a) of the Clean Air Act as amended in 1990 (Act) as a source that emits, or has the potential to emit, considering controls, 10 tons per year (tpy) or more of any individual HAP or 25 tpy or more of any combination of HAP. The proposed standards implement section 112(d) of the Act, which requires the Administrator to regulate emissions of the HAP listed in section 112(b) of the Act. Many of these pollutants are emitted from cleaning, primer, topcoat, depainting, and chemical milling maskant operations. These operations are being covered in the proposed rule. The intent of the proposed rule is to protect the public health by requiring new and existing major sources to control HAP emissions to the level attainable by the maximum achievable control technology (MACT). The EPA is also proposing Method 309 with the standards. Method 309 would be used to determine the rolling material balance period for carbon adsorbers.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

DATES: *Comments:* Comments must be received on or before August 5, 1994.

ADDRESSES: *Comments:* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), ATTN: Docket No. A–92–20, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. *Public Hearing:* If anyone contacts the EPA requesting a public hearing, the hearing will be held at the EPA Office of Administration Auditorium in Research Triangle Park, North Carolina. Persons wishing to present oral testimony must contact Ms. Julia Latta, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578 by July 1, 1994.

Background Information Document: The background information document (BID) may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "National Emission Standards for Hazardous Air Pollutants for Source Categories: Aerospace Manufacturing and Rework—Background Information for Proposed Standards," EPA–453/R–94–036a.

Docket: Docket No. A–92–20, containing supporting information used in developing the proposed rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room 1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed rule, contact Ms. Vickie Boothe at (919) 541–0164, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background
II. Summary of the Proposed Rule
  A. Applicability
  B. Proposed Standards for Affected Sources
  C. Compliance Dates
  D. Compliance Extensions
  E. Compliance Testing and Monitoring
  F. Recordkeeping and Reporting Requirements
III. Summary of Environmental, Energy, and Economic Impacts of the Proposed Rule
  A. Emission Reductions
  B. Secondary Environmental Impacts
  C. Energy Impacts
  D. Cost Impacts
  E. Economic Impacts
IV. Process Descriptions and Control Technologies
  A. Process Descriptions
  B. Control Techniques
V. Rationale for the Proposed Rule
  A. Regulatory Development Process for NESHAP
  B. Determining Maximum Achievable Control Technology (MACT) "Floors"
  C. Selection of Pollutants and Source Category(ies)
  D. Selection of Emission Points Covered by the Proposed Rule
  E. Selection of the Basis for the Proposed Rule
  F. Selection of the Format of the Proposed Rule
  G. Selection of Emission Test Methods and Monitoring Requirements
  H. Selection of Recordkeeping and Reporting Requirements
  I. Selection of Compliance Deadlines
  J. Operating Permit Program
  K. Solicitation of Comments
VI. Administrative Requirements
  A. Public Hearing
  B. Docket
  C. Executive Order 12866
  D. Paperwork Reduction Act
  E. Regulatory Flexibility Act
  F. Clean Air Act Section 117
  G. Regulatory Review
VII. Statutory Authority

The proposed regulatory text is not included in this **Federal Register** notice, but is available in Docket No. A–92–20 or by written or telephone request from the Air and Radiation Docket and Information Center (see ADDRESSES). This notice with the proposed regulatory language is also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on TTN is needed, call the HELP line at (919) 541–5384.

I. Background

The Act requires, under section 112, that EPA evaluate and control emissions of HAP. The control of HAP is to be achieved through promulgation of emission standards under sections 112(d) and (f) for categories of sources that emit HAP. Pursuant to section 112(c) of the Act, EPA published in the **Federal Register** the initial list of source categories that emit HAP on July 16, 1992 (57 FR 31576). This list includes major and area sources of HAP that the EPA intends to regulate before November of the year 2000.

For the purposes of the proposed rule, aerospace industries refers to all facilities that manufacture aerospace vehicles or components and all facilities that rework (including repair) these aerospace vehicles or components. Aerospace vehicle or component is defined as any fabricated part, processed part, assembly of parts, or completed unit of any aircraft including, but not limited to, airplanes, helicopters, missiles, rockets, and space vehicles.

Section 183(b)(3) of the Act requires the Administrator to issue control techniques guidelines (CTG) for volatile organic compound (VOC) emissions from aerospace coatings and solvents to such levels as the Administrator determines are achievable through adoption of best available control measures (BACM). The EPA is required to take into account the applicable requirements of section 112 in developing the guidelines.

The organic HAP emissions limitations described in the remainder of this notice also address the VOC emissions from aerospace coatings and solvents. Thus, the control techniques evaluated for the MACT standard are also applicable to VOC emissions.

The EPA traditionally issues a draft CTG containing recommended control levels for public comment. Rather than issue a separate draft CTG in this case, the EPA is using this notice to request public comment on a draft BACM, which is the same as the proposed MACT for coatings and solvents. Comments received on the proposed MACT rule will also be considered in formulating a final BACM.

The information described here will also serve to provide guidance to the States for developing VOC rules to meet other Clean Air Act requirements.

Certain low-usage coatings were not addressed in the NESHAP. These coatings are adhesives, sealants, and 30 specialty coatings which represent less than 6 percent of the total HAP emissions from the industry. Also, the EPA data analyses indicate that the MACT floor for these coatings would be no control. The EPA is requesting public comment on the need for a separate CTG providing guidance for the control of these coatings.

II. Summary of the Proposed Rule

Table 1 provides an overview of the proposed rule, including applicability; the standards for each affected source; test methods and procedures; and monitoring, recordkeeping, and reporting requirements.

TABLE 1. SUMMARY OF SUBPART GG OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES

Affected source	Requirement	Description
Aerospace Facilities	Applicability: General Information.	This rule applies to facilities engaged in original equipment manufacture and rework of aerospace components and assemblies and that are major sources as defined in 40 CFR part 63. Specific operations are covered by the rule. (63.741)
	Estimated Number of Facilities.	Over 2,800 facilities are expected to be affected by the rule. Applicable SIC codes include 3720, 3721, 3724, 3728, 3760, 3761, 3764, 3765, and 4581.
	Permit Requirements	1. Major sources required to obtain operating permit in State where facility is located according to procedures in 40 CFR part 70 and applicable State regulations (63.741(d))
All Affected Sources	Standards	1. Comply with §§63.4 through §63.6 of the General Provisions of 40 CFR part 63, Subpart A.[1] (63.743(a))
		2. Submit an operation and maintenance plan. (63.743(b))
		3. Obtain approval to use control device not listed in this subpart. (63.743(c))
		4. Wastes subject to RCRA are exempt from the waste storage and handling requirements of this subpart. (63.741(e))

TABLE 1. SUMMARY OF SUBPART GG OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES—Continued

Affected source	Requirement	Description
	Compliance Dates	As provided for in the General Provisions,[2] within 3 years after the effective date for existing sources and no later than the standards' effective date or upon startup, as appropriate, for new and reconstructed sources. (63.749(a))
	Test Methods and Procedures.	See individual affected sources. Also, comply with §63.7 of the General Provisions. (63.750(q))
	Monitoring Requirements ..	See individual affected sources. Also, generally same as in §63.8(f) and (g) of the General Provisions. (63.751(e) and (f))
	Recordkeeping Requirements.	Comply with §63.10 of the General Provisions.[3] (63.752(a))
	Reporting Requirements ...	1. Comply with §§63.9 and 63.10 of the General Provisions.[4] (63.753(a)(1) and (3))
		2. Operating permit application can be used for initial notification. (63.753(a)(2))
Cleaning Operations	Standards	Housekeeping measures for all cleaning operations at a facility subject to this subpart. Measures address placing solvent laden cloth or paper in closed containers, storing fresh and used cleaning solvent in closed containers, and minimizing losses during handling and transfer. (63.744(a))
	Test Methods and Procedures.	None.
	Monitoring Requirements ..	None.
	Recordkeeping Requirements.	The name, HAP content of each cleaning solvent, and supporting documentation (63.752(b)(1))
	Reporting Requirements ...	*Semiannual*
		1. New cleaning solvents that contain no HAP. (63.753(b)(1)(i))
		2. Discontinued cleaning solvents. (63.753(b)(1)(ii))
Hand-Wipe Cleaning Operations.	Standards	1. Except for spray gun cleaning, all hand-wipe cleaning solvent must meet either a composition requirement or have a vapor pressure less than 45 mm Hg. (63.744(b))
		2. List of cleaning operations exempt from composition and vapor pressure requirements. (63.744(e))
	Test Methods and Procedures	1. Composition determination through manufacturer's data. (63.750(a))
		2. Vapor pressure determination through readily available sources if single component; ASTM E 260–85 for multiple component solvents. (63.750(b))
	Monitoring Requirements ..	For enclosed spray gun cleaners, visual inspection for leaks at least once per month (63.751(a))
	Recordkeeping Requirements.	1. If complying with composition requirements, name, data/calculations, and annual volumes. (63.752(b)(2))
		2. If complying as result of vapor pressure, name, vapor pressure, data/calculations/test results, and monthly volumes. (63.752(b)(3))
		3. For "non-compliant" cleaning solvents used in exempt operations, daily volumes by operation, and parts/assemblies cleaned. (63.752(b)(4))
	Reporting Requirements ...	*Semiannual*
		1. Noncompliant solvent usage. (63.753(b)(1)(iii))
		2. New solvents and vapor pressure or composition. (63.753(b)(1)(iv))
		Annual
		3. Everything is in compliance. (63.753(b)(2))
Spray Gun Cleaning	Standards	1. Use one of four specified techniques or an equivalent. (63.744(c))
		2. For enclosed spray gun cleaners, repair as soon as practicable, but within 15 days (63.744(c)(1)(ii))
	Test Methods and Procedures.	None.
	Monitoring Requirements ..	None.
	Recordkeeping Requirements.	Record all leaks, including source identification and dates leaks found and repaired. (63.752(b)(5))
	Reporting Requirements ...	*Semiannual*
		1. Noncompliant spray gun cleaner used. (63.753(b)(1)(v))
		2. Leaks of enclosed spray gun cleaners not repaired within 15 days of detection. (63.753(b)(1)(vi))
		Annual
		3. Everything is in compliance. (63.753(b)(2))
Flush Cleaning	Standards	Operating procedures specify emptying into enclosed container or collection system or equivalent. (63.744(d))
	Test Methods and Procedures.	None.
	Monitoring Requirements ..	None.
	Recordkeeping Requirements.	None.
	Reporting Requirements ...	*Annual*
		Everything is in compliance. (63.753(b)(2))
Primer and Topcoat Application Operations.	Standards	*Uncontrolled Primers*
		1. Organic HAP content limit: 350 grams/liter (2.9 lbs/gallon)(less water) as applied (63.745(b)(1))

TABLE 1. SUMMARY OF SUBPART GG OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES—Continued

Affected source	Requirement	Description
		2. VOC content limit: 350 grams/liter (2.9 lbs/gallon) (less water and exempt solvents) as applied. (63.745(b)(2))
		Uncontrolled Topcoats
		3. Organic HAP content limit: 420 grams/liter (3.5 lbs/gallon)(less water) as applied. (63.745(b)(3))
		4. VOC content limit: 420 grams/liter (3.5 lbs/gallon) (less water and exempt solvents) (63.745(b)(4))
		Uncontrolled Primers and Topcoats
		5. Primers and topcoats can achieve compliance through: (1) being below limit in themselves or (2) average with compliant primers. (63.745(d))
		6. Primers and topcoats cannot be averaged together. Controlled and uncontrolled coatings cannot be averaged together. (63.745(d)(2)(ii) and (d)(2)(iii))
		Controlled Primers and Topcoats
		7. If control device is used, must be designed to capture and control all emissions from the application operation and must achieve an overall control efficiency of at least 81%. (63.745(c))
		All Primers and Topcoats
		8. Specific application techniques must be used. If alternative is sought, can only be used if emissions are less than or equal to HVLP or electrostatic spray application techniques as demonstrated under actual production conditions. (63.745(e)(1))
		9. All application equipment must be operated according to manufacturer's specifications. (63.745(e)(2))
		10. Exemptions from 8 above provided for certain situations. (63.745(e)(3))
		11. Operating requirements for the application of primers that contain inorganic HAP, including control with either particulate filters or waterwash and shutdown if pressure falls outside manufacturer's specified operating limits. (63.745(f)(1) through (4))
		12. Exemptions from 11 provided for certain application operations. (63.745(f)(5))
	Performance Test Periods and Tests	1. Test Periods For compliant coatings: each 30-day period. For "averaged" coatings: each 24-hour period. For "controlled" coatings, non-carbon adsorber: three 1-hour runs. For "controlled" coatings, carbon adsorber: each rolling period. (63.749(d)(1))
		2. Performance tests. Initial performance test for all control devices to demonstrate compliance with overall control efficiency requirement. (63.749(d)(2))
	Test Methods and Procedures	1. Organic HAP level determination procedures. (63.750(c) and (d))
		2. VOC level determination procedures. (63.750(e) and (f))
		3. Overall control efficiency of carbon adsorber determined using mass balance calculation in 40 CFR 60.433; for other control devices, determine capture efficiency and destruction efficiency. For capture efficiency, use Procedure T in Appendix B to 40 CFR 52.741 for total enclosures and 40 CFR 52.741(a)(4)(iii) procedures for all other enclosures. (63.750(g) and (h))
		4. For alternative application methods, first determine emission levels for initial 90-day period using only HVLP or electrostatic. Then use alternative application method for period of time necessary to coat equivalent amount of parts with same coatings. Alternative application method may be used when emissions generated during the test period are less than or equal to the emissions generated during the initial 90-day period. Dried film thickness must be within specification for initial 90-day period. (63.750(i))
	Monitoring Requirements	1. Temperature sensors with continuous recorders for incinerators, and install, calibrate, maintain, and operate temperature monitors according to manufacturer's specifications. (63.751(b))
		2. Continuously monitor pressure drop across filter or waterwash. (63.751(c))
	Recordkeeping Requirements	1. Name and organic HAP and VOC contents for all primers and topcoats (63.752(c)(1))
		2. For "compliant" coatings, organic HAP and VOC contents as applied, data/calculations used to determine them, and monthly usage. (63.752(c)(2))
		3. For "averaged" coatings, daily values of HAP and VOC contents (H_a and G_a) and data calculations used to calculate H_a and G_a. (63.752(c)(3))
		4. For "controlled" coatings (incinerator), overall control efficiency and incinerator temperature(s). (63.752(c)(4))
		5. For "controlled" coatings (carbon adsorber), overall control efficiency and length of rolling period and all supporting data/calculations. (63.752(c)(5))
		6. Pressure drop across filters/waterwash once per shift, and acceptable limits. (63.752(d))
	Reporting Requirements	*Semiannual*
		1. All instances where organic HAP/VOC levels were exceeded. (63.753(c)(1)(i) and (ii))
		2. Control device exceedances (out-of-compliance). (63.753(c)(1) (iii), (iv) and (v))
		3. Periods when operation not immediately shut down due to pressure drop being outside limits. (63.753(c)(1)(vi))
		4. New control devices. (63.753(c)(1)(vii))

TABLE 1. SUMMARY OF SUBPART GG OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES—Continued

Affected source	Requirement	Description
		Annual
		5. Number of times the pressure drop limits were exceeded. (63.753(c)(2))
		6. Everything is in compliance. (63.753(c)(2))
Depainting Operations	Applicability	Applies to the entire aerospace vehicle. Does not apply to parts or units normally removed. Wings and stabilizers always covered. (63.746(a))
	Standards	1. Unless exempted, no organic HAP are to be emitted from depainting operations. (63.746 (b)(1), (b)(3))
		2. Requirement to minimize HAP during periods of non-chemical based equipment malfunction. (63.746(b)(2))
		3. Use of organic HAP-containing strippers for spot stripping and decal removal limited to 26 gallons per aircraft per year for commercial aircraft and 50 gallons per aircraft per year for military aircraft. (63.746(c))
		4. Operating requirements for depainting operations generating airborne inorganic HAP, including control with particulate filters that are at least 99% efficient. (63.746(d))
	Performance Test Periods and Tests.	1. For no organic HAP emissions: each 24-hour period. (63.749(f)(1))
		2. For spot stripping and decal removal usage limits: each calendar year (63.749(f)(1))
		3. Initial performance test to demonstrate compliance with percent reduction efficiency requirement for particulate filters. (63.749(f)(2))
	Test Methods and Procedures.	1. Use manufacturer's data (or approved alternative) to determine organic HAP content. (63.750(j))
		2. Procedures provided for determining gallons of HAP containing stripper used for aircraft. (63.750(k))
		3. Use EPA Method 5 to determine particulate filter control efficiency. (63.750(l))
	Monitoring Requirements	Continuously monitor pressure drop across filter. (63.751(d))
	Recordkeeping Requirements.	1. Name, organic HAP content and supporting documentation, and monthly volume of all organic HAP-containing chemical strippers. (63.752(e)(1))
		2. List of parts/assemblies normally removed. (63.752(e)(2))
		3. For non-chemical based equipment, name and type, and malfunction information including dates, description, and alternative methods used. (63.752(e)(3))
		4. For spot stripping and decal removal, annual volume used, annual average volume per aircraft, and all data/calculations used to calculate volume per aircraft (63.752(e)(4))
		5. The pressure drop across the filter once per shift, pressure drop limits specified by manufacturers, and control efficiency including test results/data/calculations (63.752(e)(5))
	Reporting Requirements	*Semiannual*
		1. Emission of organic HAP from nonexempted depainting operations. (63.753(d)(1)(i))
		2. New and reformulated chemical strippers and HAP contents. (63.753(d)(1) (ii), (iii) and (iv))
		3. New non-chemical based depainting techniques. (63.753(d)(1)(v))
		4. Malfunction information on non-chemical based techniques including dates, description, and alternative methods used. (63.753(d)(1)(vi))
		5. Periods when operation not immediately shut down due to pressure drop being outside limits. (63.753(d)(1)(vii))
		6. List of new/discontinued aircraft models and, for new models, list of parts normally removed for depainting. (63.753(d)(1)(viii))
		Annual
		7. Exceedances of average annual volume limits for spot stripping and decal removal. (63.753(d)(2)(i))
		8. Everything is in compliance. (63.753(d)(2)(ii))
		9. Number of times the pressure drop limits were exceeded. (63.753(d)(2)(iii))
Chemical Milling Maskant Application Operations.	Applicability	Applies only to operations using Type II chemical milling etchants (63.747(a))
	Standards	*Uncontrolled Maskants*
		1. Organic HAP emissions: ≤160 grams/liter (1.3 lbs/gallon) (less water) as applied. (63.747(c)(1))
		2. VOC emissions: ≤160 grams/liter (1.3 lbs/gallon) (less water and exempt solvents) as applied. (63.747(c)(2))
		3. Maskants can achieve compliance through: (1) being below limits by themselves or (2) averaging with compliant maskants. (63.747(e))
		4. Both controlled and uncontrolled maskants cannot be averaged together.
		Controlled Maskants
		5. If control device is used, must be designed to capture and control all emissions from maskant operation and must achieve an overall control efficiency of at least 81%. (63.747(d))

TABLE 1. SUMMARY OF SUBPART GG OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES—Continued

Affected source	Requirement	Description
	Performance Test Periods and Tests	1. Test Periods. For compliant maskants: each 30-day period. For "averaged" maskants: each 24-hour period. For "controlled" coatings, carbon adsorber: each rolling period. For "controlled" coatings, non-carbon adsorber: three 1-hour runs. (63.749(g)(1))
		2. Initial performance test required for all control devices to demonstrate compliance with overall control efficiency requirement. (63.749(g)(2))
	Test Methods and Procedures.	Procedures provided essentially identical to those for primers and topcoats for organic HAP and VOC content levels. Use of Method 309 for determining rolling period for carbon adsorber. (63.750(m)–(p))
	Monitoring Requirements .	Same as for primers and topcoats if incinerators are used.
	Recordkeeping Requirements.	Same as for primers and topcoats. (63.752(f))
	Reporting Requirements ..	*Semiannual*
		1. Exceedances of organic HAP/VOC levels. (63.753(e)(1)(i) and (ii))
		2. Control device exceedances (out of compliance). (63.753(e)(1)(iii))
		3. New maskants. (63.753(e)(1)(iv))
		4. New control devices. (63.753(e)(1)(v))
		Annual
		5. Everything is in compliance. (63.753(e)(2))
Waste Handling and Storage Operations.	Applicability . . .	Wastes that are subject to RCRA are exempt from the requirements of this subpart. (63.741(e))
	Standards	Unless subject to RCRA, work practice requirements to minimize spills during handling and transfer and storage in close containers. (63.748)
	Test Methods and Procedures.	None.
	Monitoring Requirements ..	None.
	Recordkeeping Requirements.	Identification of each waste stream, whether or not it is subject to RCRA, and supporting documentation. (63.752(g))
	Reporting Requirements ...	*Semiannual*
		1. Any change in RCRA status of waste stream, any new waste stream, and its RCRA status. (63.753(f)(1))
		Annual
		2. No new waste streams and no change in RCRA status of existing waste streams. (63.753(f)(2))

[1] The EPA promulgated regulations for subpart A of 40 CFR 63, which were published in the **Federal Register** on March 16, 1994 at 59 FR 12408.
[2] Ibid. [3] Ibid. [4] Ibid.

A. Applicability

1. Description of the Source Category

The proposed rule would apply to each aerospace manufacturing and rework facility that is a major source, as defined under section 112(a) of the Act. A major source is one that emits or has the potential to emit, considering controls, 9.1 megagrams per year (Mg/yr) (10 tpy) or more of any hazardous air pollutant or 22.7 Mg/yr (25 tpy) or more of any combination of hazardous air pollutants for all activities conducted at the facility. An aerospace facility is defined as a facility that produces in any amount an aerospace vehicle or component, or a facility that reworks (or repairs) these vehicles or components. Aerospace operations at any major source that conduct both aerospace and non-aerospace work would be subject to the proposed standards, regardless of the relative proportion of aerospace and non-aerospace work at the facility.

While the proposed rule applies only to major sources, the EPA requests comment on whether all or some of its requirements should be applied to non-major sources. The Agency solicits available information from state and local air pollution control agencies and others on the nature, number and location of non-major aerospace facilities, the quantities and types of hazardous air pollutants they emit, the impact of these emissions on health and the environment, and the extent to which these emissions already are controlled. Comments also are requested on the economic and other impacts that would result from applying requirements of the proposed rule to these smaller sources.

In general, aerospace facilities are covered by the SIC codes listed in Table 2. However, facilities classified under other SIC codes may be subject to the proposed standards if the facility meets the definition of a major source and the definition of an aerospace facility.

Based on information obtained through the Federal Aviation Administration and the U.S. Department of Commerce—Bureau of the Census, there are an estimated 2,869 aerospace facilities that will be subject to the proposed standards. Of this number, 1,395 manufacture or rework commercial products, and 1,474 manufacture or rework military products. The combined HAP emissions from these facilities are estimated to be over 189,000 Mg/yr (208,000 tpy).

In addition to these facilities, there are numerous subcontractors that manufacture or rework aerospace vehicles or components. The subcontractors may work directly for the

TABLE 2.—Aerospace Manufacturing SIC Codes

SIC Code	Description
3720	Aircraft and Parts.
3721	Aircraft.
3724	Aircraft Engines and Engine Parts.
3728	Aircraft Parts and Equipment.
3760	Guided Missiles, Space Vehicles, and Parts.
3761	Guided Missiles and Space Vehicles.
3764	Space Propulsion Units and Parts.

TABLE 2.—Aerospace Manufacturing SIC Codes—Continued

SIC Code	Description
3769	Space Vehicle Equipment.
	Aerospace Rework SIC Code
4581	Airports, Flying Fields, and Services.

OEM or rework facilities, or indirectly through first line subcontractors. Since many of these subcontractors perform various types of work, they are often classified under non-aerospace SIC codes. Consequently, an estimate of the number of subcontractors cannot be made. One company alone, however, employs the services of over 5,000 subcontractors.

2. Affected Sources

The proposed rule would limit organic HAP emissions from the following sources at aerospace facilities: cleaning operation, primer application operation, topcoat application operation, depainting operation, chemical milling maskant application operation, and the handling and storage of waste. The proposed rule would also limit inorganic HAP emissions from primer, topcoat, and depainting operations.

Organic HAP emissions from primer, topcoat, and chemical milling maskant application operations occur from the evaporation of the solvent contained in the coatings. These emissions occur during the application of the coatings on aerospace vehicles or parts, which may take place in large open areas, such as hangars, or in partially or fully enclosed spaces, such as within spray booths.

Organic HAP emissions from cleaning and depainting operations occur from the evaporation of the volatile portion of the cleaning solvents or chemical strippers. Cleaning emissions are nearly always fugitive in nature and occur at essentially every processing step. Emissions from depainting are typically fugitive in nature since the operation is carried out within a large hangar or in open tanks.

Organic HAP emissions from waste occur from evaporation of the volatile portion of the waste while it is being handled or stored. These emissions are fugitive in nature, occurring from each waste container.

Inorganic HAP emissions from primer and topcoat application operations occur during the application of the primer or topcoat. These inorganic HAP emissions are paint particulates, commonly referred to as "overspray," that do not adhere to the surface being coated. Like the organic HAP emissions from the operations, the emissions of the inorganic HAP occur in large open areas, such as hangars, or in partially or fully enclosed spaces, such as within spray booths.

Inorganic HAP emissions from depainting operations occur from most non-chemical methods, such as plastic media blasting, used to strip an aerospace vehicle. (Chemical stripping techniques do not release inorganic HAP.) These emissions occur as particulates generated during the blasting process. The operation is typically carried out within a large hangar equipped with a ventilation system and particulate filtration device (e.g., a baghouse). The inorganic HAP that are released from the depainting operations are primarily found in the paint being stripped, although some stripping media may contain trace amounts of inorganic HAP.

B. Proposed Standards for Affected Sources

In addition to the standards for affected sources as discussed below, the proposed rule contains general standards. The general standards stipulate that all affected sources subject to the proposed rule are also subject to, as appropriate, § 63.4, § 63.5, and § 63.6 of subpart A of 40 CFR part 63.[1] However, certain time frames specified in these sections have been changed in the proposed rule as follows:

(1) All affected sources shall submit any request for an extension of compliance not later than 12 months before the affected source's compliance date regardless of whether sources are included in emissions averaging or not, rather than not later than 18 months before the affected source's compliance date for sources that are including emission points in an emissions average as provided for in § 63.6(i)(4)(i)(B),

(2) The Administrator (or the State with an approved permit program) will notify the owner or operator in writing of his/her intention to deny approval of a request for an extension of compliance submitted under either § 63.6(i)(4) or (i)(5) within 60 calendar days after receipt of sufficient information to evaluate the request, rather than notifying the owner of his/her approval or intention to deny approval of a request for an extension of compliance within 30 calendar days as provided for in § 63.6(i)(12)(i) and § 63.6(i)(13)(i). In addition, if the Administrator does not notify the owner or operator in writing of his/her intention to deny approval within 60 calendar days after receipt of sufficient information to evaluate a request for an extension of compliance, then the request shall be considered approved,

(3) The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application submitted under § 63.6(i)(4)(ii) (that is, whether the application contains sufficient information to make a determination) within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted, rather than 15 calendar days as provided for in § 63.6(i)(13)(i). In addition, if the Administrator does not notify the owner or operator in writing of the status of his/her application within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted, then the information in the application or the supplementary information is to be considered sufficient upon which to make a determination,

(4) Each owner or operator is to be provided 30 calendar days to present additional information to the Administrator after he/she is notified of the intended denial of a compliance extension request submitted under either § 63.6(i)(4) or § 63.6(i)(5), rather than 15 calendar days as provided for in § 63.6(1)(12)(iii)(B) and § 63.6(i)(13)(iii)(B),

(5) Each owner or operator who has submitted an extension request application under § 63.6(i)(5) is to be provided 30 calendar days to present additional information or arguments to the Administrator after he/she is notified that the application is not complete, rather than 15 calendar days as provided for in § 63.6(i)(13)(ii), and

(6) A final determination to deny any request for an extension submitted under either § 63.6(i)(4) or § 63.6(i)(5) will be made within 60 calendar days after presentation of additional information or argument (if the application is complete), or within 60 calendar days after the final date specified for the presentation if no presentation is made, rather than 30 calendar days as provided for in § 63.6(i)(12)(iv) and § 63.6(i)(13)(iv).

In addition, the proposed rule requires each owner or operator who uses a control device or equipment to control HAP emissions to prepare an operation and maintenance plan in accordance with § 63.6 of subpart A of

[1] The EPA promulgated regulations for subpart A of 40 CFR part 63, which were published in the **Federal Register** on March 16, 1994 at 59 FR 12408.

40 CFR part 63.[2] In addition to the information required in § 63.6, the proposed rule requires that the owner or operator of the control device or equipment include the following information: (1) The operation and maintenance criteria for each air pollution control device or equipment, including a standardized checklist to document the operation and maintenance of the equipment; (2) a systematic procedure for identifying malfunctions and for reporting them immediately to supervisory personnel; and (3) procedures to be followed to ensure that equipment or process malfunctions due to poor maintenance or other preventable conditions do not occur.

The general standards also state that an owner or operator who uses an air pollution control device or equipment not listed in the proposed rule must submit to the Administrator for approval a description of the device, test data verifying the performance of the device or equipment for HAP and/or VOC emissions, appropriate operating parameters that would be monitored to establish compliance with the proposed standards, and a copy of the inspection and maintenance plan required under § 63.6 of 40 CFR part 63.

Finally, § 63.6(g) of subpart A of 40 CFR part 63 allows an owner or operator of an affected source to use alternative means of compliance. This allows the development and use of new technology not known or not demonstrated at the time the rule was promulgated.

The affected sources for the proposed standards are defined as follows: (1) Each cleaning operation (all hand-wipe cleaning operations constitute an affected source, each spray gun cleaning operation constitutes an affected source, and all flush cleaning operations constitute an affected source); (2) each primer application operation, which includes all primer applications at the facility; (3) each topcoat application operation, which includes all topcoat applications at the facility; (4) each depainting operation, which includes all depainting of the outer surface of aerospace vehicles at the facility; (5) each chemical milling maskant application operation, which includes all chemical milling maskant applications at the facility for subsequent use in Type II chemical milling etchants; and (6) each waste storage and handling operation, which includes all waste handling and storage at the facility.

The proposed standards also specify that HAP-containing waste that is subject to the provisions of RCRA would not be subject to the waste handling and storage requirements of the proposed standards. The EPA included this provision so that the proposed standards would not require less strict handling and storage of waste than the RCRA requirements.

The following paragraphs summarize the proposed standards for each affected source.

1. Cleaning Operation

The proposed standards for the cleaning operation, including those specific to hand-wipe, spray gun, and flush cleaning operations, would apply to all new and existing affected sources. The proposed standards would require that all fresh and spent cleaning solvents be stored in closed containers and that solvent-laden cloth, paper, or other material be placed in bags or other closed containers immediately after use. The bags or containers would be required to be kept closed at all times (except when depositing or removing material) and of such design so as to contain the vapors of the cleaning solvent. In addition, the proposed standards would require the owner or operator to implement handling and transfer procedures to minimize spills during filling and transferring the cleaning solvent to or from enclosed systems, vats, waste containers, and other cleaning operation equipment that holds or stores fresh or spent cleaning solvents. The above requirements are known collectively as housekeeping measures.

The proposed standards for the hand-wipe cleaning operation would require the use of a cleaning solvent that conforms to the approved composition list detailed in Table 3 or a cleaning solvent that has a vapor pressure less than or equal to 45 millimeters of mercury (mm Hg) at 20°C (24.1 in. H_2O at 68°F).

TABLE 3.—COMPOSITION REQUIREMENTS FOR APPROVED CLEANING SOLVENTS

Cleaning solvent type	Composition requirements
Aqueous	Cleaning solvents in which water is the primary ingredient (≥80 percent of solvent as applied must be water). Aqueous solvents must be non-flammable, non-combustible, and 100 percent soluble in water. Detergents, surfactants, and bioenzyme mixtures and nutrients may be combined with the water along with a variety of additives such as organic solvents (e.g., high boiling point alcohols), builders, saponifiers, inhibitors, emulsifiers, pH buffers, and antifoaming agents.
Hydrocarbon-Based	Cleaners that are composed of a mixture of hydrocarbons and oxygenated hydrocarbons and have a maximum vapor pressure of 7 mm Hg at 20°C (3.75 in. H_2O at 68°F). These cleaners also contain no HAP or ozone depleting compounds.

The EPA is proposing a work practice standard for the cleaning of spray guns at all new and existing affected sources. The proposed rule would require all spray guns to be cleaned by one or more of the following methods (or their equivalent): (1) Use of an enclosed spray gun cleaning system that is kept closed when not in use, (2) nonatomized discharge of solvent into a waste container that is kept closed when not in use, (3) disassembly of the spray gun and cleaning in a vat that is kept closed when not in use, and (4) atomized spray into a waste container that is fitted with a device designed to capture atomized solvent emissions. In addition, the EPA is proposing that leaks from enclosed spray gun cleaners be repaired as soon as practicable but no later than 15 days from when the leak is first discovered. The EPA is also proposing a work practice standard for the flush cleaning of parts, assemblies, and components of a coating unit. Under the proposed rule, each time a part, assembly, or component of a coating unit (with the exception of spray guns) is flush cleaned, the spent cleaning solvent would be emptied into an enclosed container or collection system that is kept closed when not in use.

The following cleaning operations, which would still be required to comply with the proposed housekeeping requirements, would be exempt from the proposed cleaning solvent composition and vapor pressure requirements:

[2] Ibid.

(1) Cleaning during the manufacture, assembly, installation, or testing of components of breathing oxygen systems that are exposed to the breathing oxygen,

(2) Cleaning during the manufacture, assembly, installation, or testing of parts, subassemblies, or assemblies that are exposed to strong oxidizers or reducers (e.g., nitrogen tetroxide, liquid oxygen, hydrazine),

(3) Cleaning and surface activation prior to adhesive bonding,

(4) Cleaning of electronics and assemblies containing electronics,

(5) Cleaning of aircraft fluid systems that are exposed to the fluid,

(6) Cleaning of fuel cells, fuel tanks, and limited access spaces,

(7) Surface cleaning of solar cells, coated optics, and thermal control surfaces,

(8) Cleaning during fabrication, assembly, installation, and maintenance of upholstery, curtains, carpet, and other textile materials used on the interior of the aircraft,

(9) Cleaning of metallic and non-metallic materials used in honeycomb cores during the manufacture of these cores, and cleaning of the completed cores used in the manufacture of aerospace vehicles or components,

(10) Cleaning of polycarbonate substrates, and

(11) Cleaning and solvent usage associated with production, research, development, quality control, and laboratory testing.

2. Primer and Topcoat Application Operations

The proposed standards for primer and topcoat application operations would be the same for all new and existing affected sources. Standards are being proposed to limit organic and inorganic HAP emissions from these operations.

a. *Organic HAP and VOC emissions.* The standards being proposed would limit the organic HAP emissions from primer application operations to an equivalent organic HAP content level of 350 grams of organic HAP per liter (2.9 pounds per gallon (lb/gal)) of primer (less water) as applied, and from topcoat application operations to an equivalent organic HAP content level of 420 grams of organic HAP per liter (3.5 lb/gal) of topcoat (less water) as applied. In addition to the organic HAP limits, the proposed standards would limit VOC emissions from primer application operations to an equivalent VOC content level of 350 grams of VOC per liter (2.9 lb/gal) of primer (less water and exempt solvents) as applied, and from topcoat application operations to an equivalent VOC content level of 420 grams of VOC per liter (3.5 lb/gal) of topcoat (less water and exempt solvents) as applied. Equivalent organic HAP and VOC content level means the calculated organic HAP (or VOC) content of coatings that when multiplied by the usage of the coatings yields the amount of organic HAP (or VOC) actually emitted to the atmosphere by the use of the coatings. Exempt solvents are those organic compounds that have been determined by the EPA to have negligible photochemical reactivity.

The EPA has received information indicating that the organic HAP and VOC content limits for topcoats do not represent demonstrated technology for exterior commercial topcoats. Consequently, the EPA is soliciting comments on whether a separate category should be developed for exterior commercial topcoats with HAP and VOC content levels higher than the proposed levels for topcoats. These comments should provide a technical justification for a higher limit, including why currently available commercial topcoats cannot be used by all sources.

Sources would be allowed to comply with the proposed organic HAP and VOC content levels by one or both of the following means: (1) Use coatings that individually comply with the organic HAP and VOC levels or (2) use any combination of uncontrolled coatings such that the daily volume-weighted average organic HAP and VOC contents of these coatings comply with the organic HAP and VOC levels for that category (averaging of primers and topcoats together is prohibited). Averaging between uncontrolled coatings and controlled coatings is prohibited under the proposed rule.

Instead of complying with the proposed organic HAP and VOC content levels through compliant coatings or averaging, the proposed standards allow the use of control devices provided each control device used for the control of organic HAP or VOC emissions from primer or topcoat application operations has an overall control efficiency, taking into account capture and removal efficiency, of greater than or equal to 81 percent. In addition, except for incidental emissions that may escape from the capture system, the control device cannot be used to control only a portion of emissions from a coating operation.

Compliance with the proposed organic HAP and VOC content level standards would be shown on a monthly basis for compliant coatings, and on a daily basis for coatings complying by averaging. Compliance for control devices other than carbon adsorbers would be shown on a continuous basis based on a specific operating parameter or parameters, such as temperature for incinerators. When a carbon adsorber is used to comply with the proposed standard, compliance with the 81 percent overall control efficiency requirement must be demonstrated for each rolling material balance period. The length of the rolling period will vary from source to source and is determined by the procedure specified in proposed Method 309 in the proposed rule. The minimum rolling period is one day, and the maximum rolling period is 30 days.

The EPA is also proposing an equipment standard for the application of primers and topcoats. The proposed standard would require the use of flow coat, roll coat, brush coat, dip coat, electrostatic attraction, or high volume low pressure (HVLP) spray guns other than for the exemptions listed below. All application equipment would be required to be operated and maintained according to manufacturer's specifications at all times.

The EPA is proposing to allow other application equipment that is demonstrated to achieve emission levels equivalent to HVLP or electrostatic spray guns. Compliance must be demonstrated by comparing the emissions generated by the alternative application method to the emissions generated by HVLP or electrostatic application methods under actual production conditions. The alternative method must generate emissions less than or equal to that generated by HVLP or electrostatic spray methods.

During the alternative application method test period, the owner or operator must ensure that the coating dried film thickness is equivalent to that applied during the initial 90-day test period. This is required to ensure that the owner or operator does not bias the test results by applying an excessive amount of coating during the initial 90-day period and applying a minimal amount of coating during the alternative application method test period. The EPA is requesting comments on whether the requirements of the proposed standards are sufficient to ensure that this situation does not occur. Specifically, comments should address whether detailed recordkeeping should also be required in order to determine that equivalent dried film thicknesses were applied.

The EPA is proposing to exempt the following situations and operations from the proposed equipment standards for the application of primers and topcoats, although whatever application equipment is used would still be

required to be operated and maintained according to manufacturers specifications at all times: (1) Any situation that normally requires the use of an extension on the spray gun to properly reach limited access spaces, (2) the application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and cannot be applied by any of the specified application techniques, (3) the application of coatings that normally have a dried film thickness of less than 0.0005 inch and cannot be applied by any of the specified application techniques, (4) the use of airbrush application methods for stenciling, lettering, and other identification markings, and (5) touchup and repair operations.

b. *Inorganic HAP emissions.* The standards being proposed for inorganic HAP emissions from primer and topcoat application operations would apply to those operations that spray apply coatings that contain inorganic HAP (usually chromium, cadmium, and selenium). Such operations would be required to be performed in a booth or hangar in which the air flow is directed across the part or assembly being coated and exhausted through one or more outlets. This air stream would be required to pass through either dry particulate filters or a waterwash system to remove the particulates before exhausting to the atmosphere. In addition, the pressure drop across the filter or waterwash would have to be continuously monitored. If the pressure drop moves outside of the limits specified by the manufacturer to maintain proper performance of the dry particulate filters or waterwash system, then the operation must be shut down immediately and corrective action taken. The process cannot resume until the pressure drop is returned to the limits specified by the manufacturer.

The EPA is requesting comments on whether pressure drop is an appropriate parameter on which to make continuous compliance determinations with the inorganic HAP emission standards. The possibility exists that different filter or waterwash manufacturers may specify different pressure drop limits for products with essentially the same performance. Since the proposed standards rely on pressure drop as the basis for making compliance determinations, such a difference would result in different requirements from one facility to another. Thus, the EPA is requesting comments specifically on whether a standardized pressure drop limit can be established, or if another operating parameter exists on which to make compliance determinations that would be consistent and enforceable for all types and brands of filters and waterwash systems.

If pressure drop is selected as the parameter to be used to determine continuous compliance, then a violation of the standards could occur under one of the following conditions: (1) Whenever the pressure drop moves outside the limits specified by the manufacturer or (2) when the pressure drop is found to be outside the specified limits when monitored and recorded once per operating shift. As the proposed rule is currently written, a violation would occur in the latter situation. The EPA is requesting comments on which of these options, or another option, is most appropriate.

The EPA is proposing to exempt the following list of operations from the proposed standards for inorganic HAP emissions from primer and topcoat application operations:

(1) Touch-up of scratched surfaces or damaged paint,

(2) Hole daubing for fasteners,

(3) Touch-up of trimmed edges,

(4) Coating prior to joining dissimilar metal components,

(5) Stencil operations performed by brush or air brush,

(6) Section joining, and

(7) Touch-up of bushings and other similar components.

1. Depainting Operation

Standards are being proposed for both organic HAP emissions and inorganic HAP emissions from depainting. With the exception of the proposed standards for spot stripping and decal removal, as discussed below, the standards being proposed for depainting would be the same for all new and existing affected sources. The proposed standards would apply only to the depainting of the outer surface of entire aerospace vehicles, including the fuselage, wings, and horizontal and vertical stabilizers of the aircraft, and the outer casing and stabilizers of missiles and rockets. Standards for the depainting of parts, subassemblies, radomes, and parts normally removed from the completed vehicle before depainting are not being proposed at this time. However, wings and stabilizers would always be required to comply.

a. *Organic HAP emissions.* The proposed standards would require that there be no organic HAP emissions from the depainting operation. These standards could be achieved through the use of (1) chemical strippers that contain no organic HAP or (2) media blasting equipment, high intensity ultraviolet light blasting, or any other non-chemical depainting technique. However, the proposed rule would allow the use of organic HAP-containing chemical stripper for spot stripping and decal removal. The proposed rule would limit this use of organic HAP-containing chemical stripper to an average of 26 gallons per aircraft for commercial aircraft and 50 gallons per aircraft for military aircraft, calculated on an annual basis.

Non-chemical-based depainting equipment would be required to be operated and maintained according to manufacturer's specifications. During any period of malfunction, the owner or operator would be allowed to use a substitute material to depaint the vehicles. Unless the substitute material does not contain any organic HAP, the substitute material would not be allowed to be used for more than 14 consecutive days.

The proposed rule does not contain an annual limit on the number of days a source may use HAP-containing chemical strippers during periods of malfunction of non-chemical-based depainting equipment. The EPA is requesting comments on whether an annual limit should be imposed and, if so, technical justification for the number of days specified by the limit.

b. *Inorganic HAP emissions.* The proposed rule for inorganic HAP emissions would apply to those depainting methods (typically blasting methods) that generate airborne particulate emissions, such as dust and paint particles, that contain inorganic HAP. The proposed standards would require that the depainting operation be carried out in an enclosed hangar and that any air stream removed from the depainting area be directed through a particulate filter (e.g., panel-type filter or baghouse) before exhausting to the atmosphere. This filtration system must have a particulate removal efficiency greater than or equal to 99 percent, and the pressure drop across the filter must be continuously monitored. If the pressure drop moves outside of these limits as recorded each operational shift, then the operation must immediately be shut down and corrective action taken. The process cannot resume until the pressure drop is within the limits specified by the manufacturer.

As described above for primer and topcoat application operations, the EPA is requesting comments concerning the appropriateness of using pressure drop to make compliance determinations and what action should be taken when the pressure drop moves outside of the specified limits.

4. Chemical Milling Maskant Application Operation

The proposed standards for the chemical milling maskant application operation would be the same for all new and existing affected sources and applies only to those operations utilizing a Type II chemical milling etchant. The proposed standards would limit organic HAP emissions to an equivalent organic HAP content level of 160 grams of organic HAP per liter (1.3 lb/gal) of chemical milling maskant (less water) as applied, and limit the VOC emissions to an equivalent VOC content level of 160 grams of VOC per liter (1.3 lb/gal) of chemical milling maskant (less water and exempt solvents) as applied. Alternatively, as for primer and topcoat application operations, control devices that achieve an overall control efficiency of at least 81 percent and control all emissions (except for incidental emissions) may be used.

Compliance with the organic HAP and VOC content level standards would be allowed using one or both of the following means: (1) Use chemical milling maskants that individually comply with the organic HAP and VOC content levels or (2) use any combination of chemical milling maskants such that the daily volume-weighted average organic HAP and VOC content levels of these chemical milling maskants used in the chemical milling maskant operation comply with the organic HAP and VOC content levels. Averaging uncontrolled chemical milling maskants with controlled chemical milling maskants, however, is prohibited under the proposed rule.

Compliance with the proposed organic HAP and VOC content level standards would be shown on a monthly basis for compliant chemical milling maskants and on a daily basis for chemical milling maskants complying by averaging. Compliance for control devices other than carbon adsorbers would be shown on a continuous basis based on a specific operating parameter or parameters, such as temperature for incinerators. When a carbon adsorber is used to comply with the proposed standard, compliance with the 81 percent overall control efficiency requirement must be demonstrated for each rolling material balance period. The length of the rolling period will vary from source to source and is determined by the procedure specified in proposed Method 309 in the proposed rule. The minimum rolling period is one day, and the maximum rolling period is 30 days.

5. Handling and Storage of Waste

The proposed standards for handling and storage of waste would be the same for all new and existing facilities. The proposed rule would require that the handling and transfer of HAP-containing waste to or from containers, tanks, vats, vessels, or piping systems be conducted in such a manner that minimizes spills. In addition, all HAP-containing waste would be stored in closed containers.

C. Compliance Dates

The proposed rule would require all existing sources to comply no later than three years after the effective date of the standards. In addition, the proposed rule adopts the compliance dates specified in § 63.6(b) and § 63.6(c) of the General Provisions, 40 CFR part 63, subpart A.[3]

D. Compliance Extensions

During development of the aerospace national emission standards for hazardous air pollutants (NESHAP), the EPA received comments from the regulated community regarding the process that would be used to comply with the rule and certain difficulties that were anticipated, particularly with the facilities' selection and approval of product substitutions for coatings and hand-wipe cleaning solvents. Because of the large number of product substitutions that may have to undergo testing and qualification at each facility, some facilities may need to request a compliance extension.

Section 63.6(i) of 40 CFR part 63 provides the requirements for requesting an extension of compliance with a relevant standard established under part 63.[4] Specifically, § 63.6(i)(4) allows the issuance of a permit granting an extension of up to one year to comply with the standard, if such additional period is necessary for the installation of controls. Section 63.6(i)(4)(i)(B) requires requests for compliance extensions to be submitted no later than 12 months before the affected source's compliance date.

The EPA is seeking comment on the significance of the potential difficulties of complying with the proposed aerospace NESHAP in the allotted 3 years (or 4 years if the one-year extension described above is applied for and approved). In addition, the EPA is seeking comment regarding how these difficulties can be addressed within the confines of the statutory requirements of sections 112(d) and 112(i) of the Act. Specifically, the EPA is seeking comment on what types of activities, such as technical assistance, can be provided to assist sources attempting to come into compliance with the aerospace NESHAP.

E. Compliance Testing and Monitoring

In addition to the specific testing and monitoring requirements specified below for each affected source, the proposed rule adopts the testing requirements specified in § 63.7 of the General Provisions, 40 CFR part 63, subpart A.[5]

1. Test Methods and Procedures

a. *Cleaning operation.* For multi-component cleaning solvents, compliance with the proposed vapor pressure specifications would be determined using E 260–85 to quantify the amount of each organic compound in the cleaning solvent. The vapor pressure of each organic compound would be determined from the manufacturer's data, standard engineering reference texts, or other equivalent methods. The total composite vapor pressure would then be calculated by summing the partial vapor pressure of each component according to Raoult's Law.

For single component cleaning solvents, the EPA is proposing that vapor pressure data supplied by the manufacturer of the cleaning solvent, standard engineering reference texts, or other equivalent methods be used for compliance determinations.

Owners or operators seeking to comply with the cleaning solvent approved composition list would have to show compliance using data supplied by the manufacturer of the cleaning solvent. The data must identify all components of the cleaning solvent and demonstrate that one of the approved composition definitions is met.

b. *Primer and topcoat application operations.* As noted earlier, the proposed standards for organic HAP and VOC emissions would require compliance with an equivalent organic HAP content level (pounds of organic HAP per gallon of coating (less water) as applied) and an equivalent VOC content level (pounds of VOC per gallon of coating (less water and exempt solvents) as applied) for primers and for topcoats. Compliance with these organic HAP and VOC content levels may be accomplished by using compliant coatings, averaging between compliant and non-compliant coatings, control devices, or any combination of these methods. In addition, the proposed standards would require the use of

[3] Ibid.
[4] Ibid.
[5] Ibid.

certain application techniques for the application of primers and topcoats.

Test methods and procedures have been identified for compliance with the organic HAP and VOC content levels. No test methods or procedures have been identified for the application equipment requirements; however, a test method has been identified for the qualification of alternative application methods.

Method 24 in appendix A to 40 CFR part 60 would be used to determine the VOC content of each primer and topcoat as applied. Alternatively, manufacturer's data may be used to determine the VOC content of these coatings. However, in the event of any inconsistency between manufacturer's data and Method 24 test results, the Method 24 test results will take precedence.

The facility may rely on manufacturer's data to determine the organic HAP content level of each coating. The total organic HAP weight fraction and density of each coating as received would be determined using the manufacturer's data. The volume of each primer and topcoat used would be determined using company records. If diluent solvents or other ingredients are added to a primer or topcoat prior to application, then the total organic HAP and VOC weight fractions, density, and volume must be adjusted appropriately to account for such additions. These values would be required for each 24-hour period; however, only changes in formulation would require re-determination of total organic HAP and VOC weight fractions and density.

The proposed standards would then require the owner or operator to calculate the volume-weighted average mass of both VOC and organic HAP in coatings emitted per volume of coating (less water and exempt solvents for VOC; less water for HAP) as applied. This calculation would be performed for each 24-hour period.

If an owner or operator is seeking to comply by using compliant coatings, the owner or operator would need to determine the organic HAP content (less water as applied) and VOC content (less water and exempt solvents as applied). If no changes in formulation as applied occurred, then a re-calculation of the organic HAP and VOC content levels would not be required. Where compliant coatings are used, the proposed rule would require the determination of the organic HAP content using manufacturer's data and VOC content using Method 24 or manufacturer's data.

If a control device is used, the proposed standards require the owner or operator to conduct an initial performance test to demonstrate compliance with the overall control efficiency requirement of at least 81 percent. The percent reduction achieved by a control device may be determined based either on total organic compounds (TOC) minus methane and ethane or on total organic HAP.

For a carbon adsorber, the overall control efficiency would be determined using a mass balance. The mass balance calculation would be made every rolling period (the length of the rolling period will vary from facility to facility and will range from 1 to 30 days).

For control devices other than carbon adsorbers, the overall control efficiency would be based on capture efficiency and destruction efficiency. Capture efficiency would be determined based on the procedure specified in § 52.741(a)(4)(iii) of 40 CFR subpart O, unless the operation is performed within a total enclosure. An enclosure that meets the requirements of a total enclosure as specified in § 52.741, appendix B, Procedure T of 40 CFR subpart O would have a capture efficiency of 100 percent.

The destruction efficiency of a control device other than a carbon adsorber would be determined using the following methods. Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, would be used for selection of the sampling sites, and the gas volumetric flow rate would be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate. Method 18 of 40 CFR part 60, appendix A, would then be used to measure either TOC minus methane and ethane or total organic HAP at the inlet and outlet of the control device. Also, any other test methods or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, may be used.

The proposed standards would also allow the use of alternative application methods provided that they generate organic HAP and VOC emissions less than or equal to the emissions generated by HVLP or electrostatic spray guns. The emission levels of the alternative application method must be determined under actual production conditions. This test would first involve determining the organic HAP and VOC emissions for the 90-day period immediately preceding the implementation of the alternative application method. During this initial 90-day period, only HVLP or electrostatic spray guns would be used. The alternative method would then be used on actual production parts or assemblies for a period of time sufficient to coat an equivalent amount of parts and assemblies as coated in the initial 90-day period. Coatings used during the test period must be the same as those used during the initial 90-day period. In addition, the dried film thickness must be equivalent to that applied during the initial 90-day period.

The organic HAP and VOC emissions for the period of time where the alternative method was used would then be calculated. Where the organic HAP and VOC emissions after implementation of the alternative method are less than or equal to the emissions for the initial 90-day period, the alternative application method is in compliance.

The South Coast Air Quality Management District (SCAQMD), in conjunction with the California Air Resources Board (CARB), is currently developing a test protocol to measure the transfer efficiency of spray application equipment. This test protocol would represent an alternative method of qualifying application equipment for use under the proposed standards. Since this test protocol is still under development, the EPA is requesting comments from those familiar with this test protocol or any other transfer efficiency laboratory test method concerning the ability of these procedures to accurately and repeatedly measure the transfer efficiency of spray application equipment. In addition, the EPA is requesting comments on other methods that may be used to measure the transfer efficiency of spray application equipment.

c. *Depainting.* For the organic HAP emissions portion of the proposed standards for depainting, the only test method or procedure that would be required is the determination of the organic HAP content of each chemical stripper. The proposed standards would require the use of information supplied by the manufacturer to determine the organic HAP content. If the organic HAP content of the chemical stripper cannot be determined from manufacturer's data, then the owner or operator would submit an alternative procedure for determining the organic HAP content for approval by the Administrator.

For the annual limit on the gallons of organic HAP-containing chemical stripper used for spot stripping and decal removal, the total annual volume as applied of organic HAP-containing chemical stripper and the number of aircraft depainted would be determined from company records. The proposed standards would then require the owner or operator to calculate the gallons of organic HAP-containing chemical

stripper used per aircraft. This calculation would be performed for each annual period.

The proposed standards require inorganic HAP emissions from depainting operations to be reduced by 99 percent using particulate filters such as baghouses, cartridge filters, or dry filter media. The EPA is proposing the use of Method 5 in appendix A to 40 CFR part 60 to determine removal efficiency. The proposed standards would require retesting whenever the particulate filter or supplier of the filter media changes, or whenever modifications are made to the emission collection system.

d. *Chemical Milling Maskants.* The same basic test methods and procedures identified for primer and topcoat application operations are also being proposed for chemical milling maskants, requiring the determination of total organic HAP weight fraction, density, and volume of chemical milling maskants as applied. Simpler procedures are being proposed, as for primer and topcoat application operations, to demonstrate compliance where only compliant chemical milling maskants are being used.

As for primer and topcoat application operations, any control device, including a carbon adsorber, used to control emissions from chemical milling maskant application operations must have an overall control efficiency of at least 81 percent and must control, except for incidental emissions, all of the emissions from the maskant operation. Test methods that would be used to determine the overall control efficiency are identical to those given previously for primer and topcoat application operations.

e. *Handling and storage of waste.* No test methods are being proposed.

2. Monitoring Requirements

Monitoring is required by the proposed standards to determine whether a source is in continuous compliance. This can be accomplished by continuously measuring site-specific operating parameters, the values of which are established by the owner or operator during the initial compliance test. The operating parameter value is defined as the minimum or maximum value established for a control device or process parameter that, if achieved by itself or in combination with other operating parameter values, determines that an owner or operator is complying with the applicable emission limitation or standards. This type of enhanced monitoring would be required for those emission points for which the standards are expressed as a percent control. In addition, the owner or operator is expected to install and operate the equipment properly. For owners or operators complying with the proposed standards for spray gun cleaning through the use of enclosed spray gun cleaners, compliance would be demonstrated through recordkeeping (see section II.F).

The proposed rule would require temperature to be monitored, using a continuous recorder, for incinerators. For catalytic incinerators, temperature monitors would be placed immediately before and after the catalyst bed. For other incinerators, the temperature monitor would be placed in the firebox or in the ductwork immediately downstream of the firebox and before any substantial heat exchange occurs. All monitoring equipment would be installed, calibrated, maintained, and operated according to manufacturer's specifications.

Section 63.6(g) of 40 CFR part 63, subpart A, allows an owner or operator of an affected source to request the use of alternative methods of emission reduction for complying with design, equipment, work practice, or operational emission standards, or combination thereof, established under this part.[6] Under the proposed rule, an owner or operator of an affected source may also use control devices other than those specifically identified in the proposed rule as a means for achieving compliance with any portion of the rule. If devices other than those identified are used, the proposed standards would require the owner or operator to submit the parameters to be monitored to the Administrator for approval.

The proposed standards would require each owner or operator to establish a range of values for each of these monitored parameters during the initial performance test. As long as the control device is operated within the established ranges, the proposed emission standards are considered to be met. Consequently, exceedances of these parameters would be considered a violation of the standards since operating the control device outside of the parameters may reduce the efficiency of the control device.

a. *Cleaning operations.* The proposed rule would require enclosed spray gun cleaners to be visually inspected at least once per month for leaks. The inspections would occur while the enclosed cleaner is in operation.

b. *Primer and topcoat application operations.* Where an incinerator or other control device is used to control organic HAP and VOC emissions from primer and topcoat application operations, the monitoring requirements specified above would be required.

For control of inorganic HAP emissions from primer and topcoat application operations, the proposed standards would require that the pressure drop across the particulate filters or waterwash be monitored on a continuous basis.

c. *Depainting.* No monitoring requirements for organic HAP emissions are being proposed. For inorganic HAP emissions, continuous monitoring of the pressure drop across the filter, as for primers and topcoats, is being proposed.

d. *Chemical milling maskant application operations.* Where a control device is used to control organic HAP and VOC emissions from chemical milling maskant application operations, the monitoring requirements specified above would be required.

e. *Handling and storage of waste.* No monitoring requirements are being proposed.

F. Recordkeeping and Reporting Requirements

The proposed rule proposes to adopt the requirements contained in § 63.9 (a) through (e) and § 63.9 (h) through (j) and § 63.10 (a), (b), (d), and (f) of 40 CFR part 63, subpart A.[7] The proposed rule, however, contains additional or clarifying elements and changes certain time periods allowed for submitting or responding to certain reports and requests required in § 63.10. These elements and changes are summarized below for each of the operations for which standards are being proposed.

1. Recordkeeping Requirements

a. *Cleaning operations.* For each cleaning solvent used at the facility, the proposed rule would require a record of the name of the cleaning solvent and documentation that shows the organic HAP constituents of the cleaning solvent. For each cleaning solvent used in hand-wipe cleaning operations that conforms to the approved composition list, the records that would be maintained are the name of each cleaning solvent, documentation demonstrating compliance to the approved composition list, and annual purchasing records showing the annual volume purchased of each. For each cleaning solvent used in hand-wipe cleaning operations that does not conform to the approved composition list but does conform to the vapor pressure requirement, the information required to be recorded would be the name of each cleaning solvent, the

[6] Ibid.

[7] Ibid.

monthly usage of the cleaning solvent at each operation, the composite vapor pressure, the manufacturer's data sheets or other documentation of the vapor pressure, and any test reports and calculations performed to determine the composite vapor pressure.

For cleaning solvents that do not conform to either the composition or vapor pressure requirements and are used for the exempt cleaning operations, daily records must be maintained of the name and volume of each cleaning solvent at each operation at which it is used, and the parts, assemblies, or subassemblies cleaned at these operations.

In addition, a record of all leaks from spray gun cleaners would be kept, including source identification, the date that the leak was discovered, and the date that the leak was repaired.

b. *Primer and topcoat application operations.* For all primers and topcoats used at the facility, records must be maintained of the name of each primer and topcoat and its organic HAP and VOC content as received. In addition, the EPA is proposing different levels of recordkeeping requirements depending on how the organic HAP and VOC content levels are met. For primers or topcoats that are individually compliant with the organic HAP and VOC content limits, records would be required of the organic HAP and VOC content as applied, all data, calculations, and test results (including Method 24 results taken during an enforcement inspection) used in determining the organic HAP and VOC contents as applied, and the monthly usage of each coating formulation within each coating category.

If averaging among compliant and non-compliant coatings is used to achieve compliance, then the proposed standards would require that up-to-date records of daily volume-weighted average mass of organic HAP and VOC contained in the coatings as applied be maintained. This information would include all data and calculations used in determining these daily values, such as manufacturer's data certifying the organic HAP content of each coating as applied and Method 24 test results (including those taken during an enforcement inspection) or manufacturer's data that show the VOC content as applied.

If a control device is used to comply with the organic HAP or VOC content limit for primers or topcoats, up-to-date records must be kept on the control device. Each owner or operator would be required to keep records of the equipment monitoring parameter measurements specified in the proposed rule. For an incinerator other than a catalytic incinerator, continuous records must be maintained of the firebox temperature (or temperature in the ductwork immediately downstream of the firebox). For a catalytic incinerator, continuous records must be maintained of the gas stream temperature immediately before and after the catalyst bed. For both types of incinerators, records must be maintained of the overall control efficiency and all test results, data, and calculations used in determining the overall control efficiency.

For carbon adsorbers, records must be maintained of the overall control efficiency, all test results, data, and calculations used in determining the overall control efficiency, and the length of the rolling material balance period and all of its supporting data and calculations used to determine the rolling period.

For inorganic HAP emissions from primer and topcoat application operations, either particulate filters or waterwash spray booths would be used to achieve compliance. Records must be maintained of the manufacturer's recommended limits for the pressure drop and readings of the pressure drop across the filters or waterwash that are taken once each shift during which the coating processes are in operation.

c. *Depainting operation.* Each owner or operator of a depainting operation would be required to keep up-to-date records of the name of each chemical stripper used, the organic HAP content of each stripper and its supporting documentation, and the monthly volume usage of each chemical stripper that contains organic HAP.

For non-chemical depainting methods, such as media blasting, owners and operators would be required to maintain records of the type of non-chemical-based equipment used and a description of any malfunctions that occur. If a malfunction occurs, the information to be kept would be the dates the malfunction occurred and was corrected, the methods used to depaint the aerospace vehicles during the malfunction, and the dates that these methods were begun and discontinued.

The proposed standards for depainting contains exemptions for parts stripping, spot stripping, and decal removal, each of which requires certain records to be maintained. For parts stripping, records must be maintained for each model of aerospace vehicle of the parts normally removed from the vehicle. For spot stripping and decal removal, annual records must be maintained of the number of aircraft stripped, the volume of organic HAP-containing chemical stripper used for spot stripping and decal removal, the average number of gallons of organic HAP-containing stripper used per aircraft, and all supporting data and calculations.

For inorganic HAP emissions from depainting operations, either particulate filters or baghouses (equipped with either bag or cartridge filter media) would be used to achieve compliance. Records must be maintained of the filter manufacturer's recommended pressure drop limits and the readings of the pressure drop across the filter taken once each shift during which the depainting process is in operation. Also, records must be maintained of the particulate control efficiency of each filter and all test results, data, and calculations used to determine the control efficiency.

d. *Chemical milling maskant application operation.* The EPA is proposing different levels of recordkeeping requirements depending on how the organic HAP and VOC content levels are being met. For chemical milling maskants that are individually compliant with the organic HAP and VOC content levels, records of the volume-weighted average masses of organic HAP and VOC emitted as applied must be kept. In addition, all data and calculations used to determine these values and the monthly volume of each chemical milling maskant formulation used each month must be maintained.

If averaging among compliant and non-compliant chemical milling maskants is used to achieve compliance, then the proposed standards would require that up-to-date records of daily volume-weighted average mass of organic HAP and VOC contained in the chemical milling maskants as applied be maintained. This information would include all data and calculations used in determining these daily values, such as formulation data and Method 24 test results.

As for primer and topcoat application operations, if a control device is used, up-to-date records must be kept on the control device. Each owner or operator would be required to keep records of the equipment monitoring parameter measurements specified in the proposed rule. For an incinerator other than a catalytic incinerator, continuous records must be maintained of the firebox temperature (or temperature in the ductwork immediately downstream of the firebox). For a catalytic incinerator, continuous records must be maintained of the gas stream temperature immediately before and after the catalyst bed. For both types of

incinerators, records must be maintained of the overall control efficiency and all test results, data, and calculations used in determining the overall control efficiency.

For carbon adsorbers, records must be maintained of the overall control efficiency, all test results, data, and calculations used in determining the overall control efficiency, and the length of the rolling material balance period and all of its supporting data and calculations used to determine the rolling period.

e. *Handling and storage of waste.* Each owner or operator would be required under the proposed standards to keep an up-to-date record of each waste stream generated at the facility, identification of which wastes are subject to RCRA and which are not, and documentation supporting those determinations.

2. Reporting Requirements

The proposed rule would require four basic types of reports: (1) Initial notification, (2) notification of compliance status, (3) periodic reports, and (4) other reports. In addition, the proposed rule would require that the results of any performance test required under § 63.7 of the General Provisions to 40 CFR part 63, subpart A, be reported no later than 30 days after the completion of the test.* A permit application as required under 40 CFR part 70 may be used in lieu of the initial notification provided the same information is contained in the permit application as required for the initial notification.

As stated above, the proposed standards adopt the reporting requirements contained in § 63.9(a) through § 63.9(e) and § 63.9(g) through § 63.9(j) and 63.10 (a), (b), (d), and (f) of 40 CFR part 63, subpart A. However, the time period allowed for the Administrator to notify the owner or operator in writing of approval or disapproval of the request for an adjustment to a particular time period or postmark deadline submitted under § 63.9(i) has been changed to within 30 calendar days of receiving sufficient information to evaluate the request, rather than 15 calendar days as provided for in § 63.9(i)(3).

Sections 40 CFR 63.9 and 63.10 of the General Provisions identify the type of generic information to be included in the initial notification, notification of compliance status, and other reports and, therefore, this information is not repeated in this preamble. The following paragraphs summarize the additional information specific to the aerospace rule that should be included in the notification of compliance status and the type of information to be included in the periodic reports.

a. *Cleaning operation.* The notification of compliance status should include an identification of each cleaning solvent used at the facility, a description of the procedures to be used to ensure that bags and containers are kept closed when not in use and that cleaning solvents are stored in closed containers, the name of each cleaning solvent that does not conform to the approved composition list, and the vapor pressure test results of each.

Specific to spray gun cleaning, the notification of compliance status should also contain a detailed description of all methods used to clean spray guns and an explanation as to how each cleaning method complies with the proposed standards.

Information to be included in the semiannual report covers all noncompliance situations such as using a hand-wipe cleaning solvent that does not conform to the approved composition list or vapor pressure requirements used in a non-exempt operation. In addition, the semiannual report includes information on new cleaning solvents used for hand-wipe cleaning in the previous six months, as well as previously reported cleaning solvents no longer in use. The information to be provided is a list of any new cleaning solvents used in the previous six months, a list of new non-HAP cleaning solvents, if any, used, and, for new cleaning solvents used in hand-wipe cleaning operations, the composite vapor pressure of each.

If the cleaning operation has been in compliance for the annual period, then an annual report would be required occurring every 12 months from the date of the initial report stating that the cleaning operation has been in compliance with the applicable standards.

b. *Primer, topcoat, and chemical milling maskant application operations.* For primer, topcoat, and chemical milling maskant application operations, the notification of compliance status should identify the combination of compliant coatings, averaging, and control devices that were used to demonstrate that the facility was in compliance, and, for control devices, what operating parameters were identified for continuous monitoring in order to ensure continuous compliance with the proposed standards.

Owners and operators complying with the organic HAP and VOC content levels for primer, topcoat, and chemical milling maskant application operations would be required to report each exceedance of the organic HAP or VOC content level, as well as any time a primer or topcoat application operation was not immediately shut down when the pressure drop across the filters or waterwash was out of range. These reports would be submitted on a semiannual basis.

If control devices are used, semiannual reports would be required that contain information on all days when the average values of the parameters required to be monitored were outside the ranges established in the operating permit.

For incinerators, this would be whenever each 3-hour average temperature was below the average temperature established during the most recent performance test during which compliance was demonstrated.

If no exceedances occur, each owner and operator would submit annual statements indicating that each affected facility has been in compliance. The annual reports for primer and topcoat application operations would also identify the number of times, if any, the pressure drop limits for each filter or waterwash system were exceeded.

c. *Depainting operation.* The notification of compliance status for depainting operations should identify each chemical stripper used at the facility to depaint aerospace vehicles and the organic HAP content of each. Each chemical stripper that contains organic HAP and is used for decal removal, depainting of parts, and spot stripping would also be identified. In addition, the types of non-chemical depainting methods and techniques used at the facility and the manufacturer's recommended pressure drop across the filters for the particulate removal system, if applicable, would be identified. Finally, each owner or operator would be required to describe the depainting methods to be used during periods of malfunction of the non-chemical depainting methods.

Information to be included in the semiannual report would include the name of any new chemical strippers used during the previous six months and the organic HAP content of each. For each chemical stripper used for depainting operations that undergoes reformulation, its organic HAP content after reformulation would be submitted with the semiannual report. The report would also be required if the owner or operator used any new non-chemical depainting technique at the facility since the initial report or any subsequent semiannual report. The semiannual report would be required to

* Ibid.

identify each 24-hour period where organic HAP were emitted from the depainting operation except from the exempt operations, any periods of malfunction of non-chemical depainting methods and techniques, and any periods where the non-chemical depainting operation was not immediately shut down when the pressure drop across the filters was out of range. For each malfunction that occurs, the following information would be reported: (1) The piece of equipment that malfunctioned, (2) the date the malfunction occurred and the date it was corrected, (3) a description of the malfunction, (4) the alternate methods used to depaint the aerospace vehicles during the malfunction period, and (5) the dates that these methods were begun and discontinued.

Finally, the semiannual report would be required to identify all changes in the type of aircraft depainted at the facility and to identify the parts normally removed for depainting separate from the aircraft for each new type of aircraft depainted.

For spot stripping and decal removal, an annual report would be required whenever the average volume per aircraft of organic HAP-containing chemical strippers used exceeds the limits specified in the proposed rule for the annual period.

If the depainting operation has been in compliance for the annual period, then an annual report would be required every 12 months from the date of the initial report stating that the depainting operation has been in compliance with the applicable standards. This annual report would also detail how many times the pressure drop limits for each filter system were exceeded and report when the calculated annual average volume of organic HAP-containing strippers used per aircraft for spot stripping and decal removal exceeded the applicable limits.

d. *Handling and storage of waste.* The notification of compliance status would identify each waste stream and identify whether it is RCRA or non-RCRA regulated. The notification would also include a description of the procedures to be used to ensure that spills are minimized during handling and transfer operations. Also included would be the procedures to be used to ensure that waste is stored in closed containers.

Semiannual reports are required to identify any waste stream whose RCRA or non-RCRA classification has changed. The semiannual report would also identify any new waste streams and whether each is RCRA or non-RCRA regulated. An annual report would be required if no changes occurred in the RCRA status to the existing waste streams and if no new waste streams were generated.

III. Summary of Environmental, Energy, and Economic Impacts of the Proposed Standards

A. Emission Reductions

1. Existing Facilities

For the existing aerospace OEM and rework facilities (approximately 2,869 facilities in the base year 1991), the nationwide baseline HAP emissions are estimated to be 189,000 Mg/yr (208,000 tpy). Implementation of the proposed regulation would reduce these emissions by approximately 112,600 Mg/yr (123,700 tpy), or 59 percent.

2. New Facilities

For the aerospace industry, no net growth is expected over the next five years; therefore, no net emission reduction due to new facilities is anticipated during this period.

B. Secondary Environmental Impacts

Secondary environmental impacts are considered to be any air, water, or solid waste impacts, positive or negative, associated with the implementation of the proposed standards. These impacts are exclusive of the direct air emission reductions discussed in the previous section. All of the impacts discussed below reflect the maximum increase or decrease, as appropriate, that would occur if all of the affected sources converted to the control option described.

Some product reformulations that may be used to comply with the proposed standards for hand-wipe cleaning, primers, and topcoats may contain organic HAP or VOC not present in the original product. In these cases, different organic HAP or VOC may be emitted as a result of the proposed rule, but the overall level of these compounds that are emitted will decrease. Chemical strippers that do not contain organic HAP used for depainting may result in increased VOC emissions when used to replace methylene chloride-based chemical strippers (methylene chloride is a HAP, but not a VOC).

There is a potential for an impact on water quality resulting from some of the prescribed control measures. Under baseline conditions for chemical milling maskant operations, no wastewater is generated; however, some of the sources may install a carbon adsorber to control solvent emissions. If all affected sources use carbon adsorbers, the amount of water needed to create regenerating steam for these systems, which will add to the wastewater burden from these sources, is estimated to be 447 million gallons per year nationwide. For depainting operations, there are two options available for meeting the proposed rule, both of which will result in a decrease in the amount of wastewater generated compared to baseline, which is 251 million gallons per year. The decrease in wastewater nationwide is estimated to be 251 million gallons and 86 million gallons if all affected sources use dry media blasting or chemical strippers that do not contain organic HAP, respectively.

Sources installing a carbon adsorption system on their chemical milling maskant operations would generate additional solid waste due to the necessity of periodically disposing of spent activated carbon. If all affected sources use carbon adsorbers, this added nationwide solid waste burden is estimated to be 4,500 tons per year, compared to the baseline of 21,200 tons per year. Rework facilities that presently use a methylene chloride-based paint stripper must dispose of 3,469 tons per year of paint/solvent sludge created by depainting. A total conversion to dry media paint removal would produce an increase in the amount of solid waste composed of dry paint chips and spent blasting media. This increase in solid waste is estimated to be 13,280 tons per year on a nationwide basis. The proposed standards for the control of inorganic HAP emissions from primer and topcoat application operations would result in the increase in solid waste generation from the disposal of used dry filter media. The increased solid waste burden is estimated to be 640 tons per year, compared to the baseline solid waste generation of 3,540 tons per year.

C. Energy Impacts

Some of the control measures proposed for aerospace manufacturing and rework operations would lead to increases in energy consumption. Both of the control options for chemical milling maskant operations, operation of a carbon adsorber or conversion to waterborne chemical milling maskant, would involve increased electricity usage (waterborne chemical milling maskants must be cured at elevated temperatures). The total additional energy needed if all affected sources operate new carbon adsorbers is estimated to be 1.7 billion kilowatt-hours (kWh) per year, and the energy increase for all affected sources to operate new curing ovens for waterborne chemical milling maskants is estimated at 324,700 kWh per year. Baseline energy consumption for chemical milling maskant operations is

considered to be negligible since the use of solvent-based chemical milling maskants does not directly require the use of electricity.

The dry media paint removal systems that would be installed at rework facilities consume additional energy compared to the solvent stripping method. Baseline energy consumption for solvent stripping is considered to be negligible since the use of these strippers does not directly require the use of electricity. The increase in energy consumption involved in operating dry media blasting systems is estimated to be 51 million kWh per year. The use of chemical strippers that do not contain organic HAP is essentially the same as the baseline solvent stripping operation; therefore, no energy impact will result from their use.

The proposed standards for the control of inorganic HAP emissions from primer and topcoat application operations would require some facilities to install additional spray booths. These spray booths, whether equipped with dry filters or waterwash, will increase the energy consumption of the affected sources. This increase in energy consumption is estimated to be 5.9 million kWh per year, compared to the baseline energy consumption of 117.4 million kWh per year.

D. Cost Impacts

The total capital and annualized control costs (1992 dollars), including recovery credits, attributable to compliance with the proposed standards have been estimated for both existing and new facilities. The following two subsections summarize the results of this cost analysis.

1. Existing Facilities

a. *Capital costs.* Capital costs would be incurred with the implementation of control measures for chemical milling maskants (both solvent-based chemical milling maskants with a carbon adsorber and waterborne chemical milling maskants), dry media blasting for depainting, spray gun cleaning, and control of HAP emissions from primer, topcoat, and depainting operations. With the exception of dry media blasting for depainting, the nationwide capital costs listed below represent the maximum costs that would be incurred assuming that all facilities implemented the specific control option. For dry media blasting, it is not reasonable to assume that all commercial and military rework facilities (a total of 2,026 facilities) depaint the outer surface of aerospace vehicles. Therefore, it was assumed that only 5 percent of the small and medium size rework facilities and all of the large rework facilities perform outer surface depainting.

For carbon adsorbers used in conjunction with solvent-based chemical milling maskants, the nationwide capital cost is estimated to be $500 million, and for waterborne chemical milling maskants it is estimated to be $289 million. The implementation of dry media blasting systems for depainting would require a nationwide capital cost of $61 million. It should be noted that other control measures exist for depainting other than dry media blasting, such as chemical strippers that do not contain organic HAP, that require no capital investment. Selection of chemical strippers that do not contain organic HAP by all affected sources instead of dry media blasting would decrease the total nationwide capital investment by approximately 10 percent. The proposed rule would also require capital costs for high transfer efficiency application equipment and spray gun cleaning equipment totalling $130 million and $10 million, respectively. The control of inorganic HAP emissions from primer and topcoat application operations would require the installation of spray booths and filter systems at a capital cost of $13 million.

Total nationwide capital costs range from $503 million to $714 million, depending on which chemical milling maskant control option is used.

b. *Annual costs.* All of the control options will result in some annual costs being incurred by the affected sources. However, the annualized cost figures presented below reflect the net cost to implement the control options after taking into account the costs that would have been incurred for baseline. This net cost (MACT cost minus baseline cost) resulted in net annual savings for primers, topcoats, and high transfer efficiency application methods; spray gun cleaning; and the use of chemical strippers that do not contain organic HAP. All other options resulted in net annual costs to the affected sources. The net cost (or savings) for all control options reflects the maximum cost (or savings) that would be incurred assuming all affected sources implemented the specific control option.

Only one cost analysis was completed for primers, topcoats, and high transfer efficiency application methods due to the interrelationship between these operations. For example, high transfer efficiency application methods will result in a lower volume of primers and topcoats being applied. In addition, the organic HAP and VOC limits on primers and topcoats will, due to higher solids content, also result in a lower volume of the coatings being applied. The reduction in coating usage due to the lower organic HAP and VOC content had to be taken into account first, then the reduction in coating usage due to high transfer efficiency application methods was applied to this reduced coating volume to obtain the true overall reduction in coating usage. After factoring in the annualized cost of the coating equipment, the analysis showed a nationwide savings of $71 million for commercial sources and $18 million for military sources.

The savings for primers, topcoats, and high transfer efficiency application methods are due primarily to labor savings that would result from the reduced volume of coatings to be applied. For example, if it would have taken 15 gallons of primer under baseline conditions to coat an aircraft and only 12 gallons under MACT conditions, then the cost analysis assumes a labor savings for the 3 gallons of primer that were not applied. The EPA has received some evidence, however, that the labor stays the same or may even increase with the use of high transfer efficiency application methods (specifically HVLP spray guns). The EPA requests comments from facilities that have converted from conventional spray guns to HVLP spray guns regarding the labor hours per gallon of coating applied for each application method.

For spray gun cleaning, the proposed standards would result in a nationwide savings of approximately $56 million. This is due primarily to reduced solvent usage and associated spent solvent disposal.

The use of chemical strippers that do not contain organic HAP would result in a nationwide savings of approximately $2 million. While the cost of non-HAP strippers is generally higher than the cost of conventional strippers, this cost is offset by the reduced disposal costs incurred with non-HAP strippers. Since non-HAP strippers do not contain methylene chloride, they can typically be treated on-site. This eliminates the disposal costs incurred with the conventional strippers, which are typically shipped off-site for disposal.

Nationwide annual costs are estimated to be $14 million for hand-wipe and flush cleaning, $111 million for waterborne chemical milling maskants, $2 million for inorganic HAP emissions from primer and topcoat application operations, and $0.3 million for inorganic HAP emissions from blast depainting operations.

Total nationwide costs, taking into account both the savings and costs

detailed above, are estimated to be a savings of $20 million.

Sources subject to the proposed rule would be required to perform certain monitoring, recordkeeping, and reporting tasks. These information collection requirements will create a burden on the affected sources in terms of resources needed to comply with these requirements (see section VI.D.). The total nationwide costs of the manpower requirements to complete these tasks are estimated to be $36.7 million.

Total nationwide costs are estimated to be $16.7 million, which is the sum of the annualized costs (a total nationwide savings of $20 million) and the costs due to monitoring, recordkeeping, and reporting requirements (a total nationwide cost of $36.7 million).

2. New Facilities

For the aerospace industry, no net growth is expected over the next five years; therefore, no net costs (or savings) due to new facilities are anticipated during this period.

E. Economic Impacts

Due to the low total compliance costs associated with the proposed regulation, the discussion of the economic impacts is presented in a qualitative manner. The low costs of the proposed regulation are in a large part due to cost savings expected to be achieved by some model plants. The economic impact analysis discussed in a qualitative manner the primary impacts (the direction of price and output changes in the aerospace industry), as well as secondary impacts (the direction of changes in the demands for inputs such as coatings) associated with the proposed regulation.

Cost estimates indicate that the total annual compliance costs are approximately $16.7 million. In 1990, revenue for this industry equalled approximately $118.9 billion. Using revenue data as a proxy for production costs, the costs of the proposed regulation are only 0.01 percent of the total production costs for the industry. This increase in production cost is expected to have minimal impact on the current prices and outputs of the aerospace industry.

Secondary impacts refer to changes in factor demand by all aerospace producers. For example, while the primary impact of the regulation on spray gun cleaning is a decrease in the cost of performing this task, the actual cause of the decrease in the cost is a reduction in the use of methyl ethyl ketone and other solvents. Although compliance with the proposed regulation is expected to reduce consumption of coatings and solvents in general and, therefore, negatively impact the producers of these products, compliance with the proposed regulation is also expected to increase product substitution so that demand for non-HAP strippers, waterborne maskants, and low vapor pressure solvents will increase. Lack of economic data on a product-specific basis prevents quantification of the indicated impacts.

IV. Process Descriptions and Control Technologies

A. Process Descriptions

Aerospace manufacturing and rework operations consist of the following basic operations: Chemical milling maskant application, chemical milling, adhesive bonding, cleaning (e.g., hand-wipe, spray equipment, and flush), metal finishing, electrodeposition, coating application (e.g., primers, topcoats, sealants, and specialty coatings), depainting, and composite processing. In addition, most aerospace manufacturing and rework facilities generate waste and wastewater, and some facilities have storage tanks for hand-wipe cleaning solvents. An aerospace facility may conduct all of these processes in its operations, such as an OEM facility that produces the entire aircraft. However, an aerospace facility may conduct only a subset of these operations, such as a facility that produces a single component or assembly, or a facility that provides a service such as chemical milling.

1. Chemical Milling Maskant Application and Chemical Milling

Chemical milling uses etchant solutions to reduce the thickness of selected areas of metal parts in order to reduce weight. The process is typically used when the size or shape of the part precludes mechanical milling or when chemical milling is advantageous due to shorter processing time or its batch capability.

Chemical milling maskants are typically rubber- or polymeric-based coatings applied to an entire part or subassembly by brushing, dipping, spraying, or flow coating. After the chemical milling maskant is cured, it is removed from selected areas of the part where metal is to be removed during the chemical milling process. The chemical milling maskant remaining on the part protects those areas from the etchant solution. Chemical milling maskants typically contain either a toluene/xylene mixture or perchloroethylene as its solvent constituents.

Organic HAP emissions occur through evaporation of the solvent as the chemical milling maskant is applied and while it cures.

2. Adhesive Bonding (Adhesives and Adhesive Bonding Primers)

Adhesive bonding involves the joining together of two or more metal parts, such as the parts of a honeycomb core. This process is typically performed when the joints being formed are essential to the structural integrity of the aircraft. The surfaces to be bonded are first coated with an adhesive bonding primer to promote adhesion and protect from subsequent corrosion. Structural adhesives are applied as either a thin film or as a paste, and can be oven cured or cured in an autoclave. Organic HAP emissions occur from the evaporation of solvents contained in the adhesive bonding primer and adhesive during their application, as well as during the curing step.

3. Cleaning Operations

a. *Hand-wipe and flush cleaning.* Aerospace components are cleaned frequently during manufacturing to remove contaminants such as dirt, grease, and oil, and to prepare the components for the next operation. Cleaning is typically performed by a hand wiping process using a wide variety of cleaning solvents. Assemblies and parts with concealed or inaccessible areas may be flush cleaned by pouring the cleaning solvent over or into the part. The cleaning solvent is then drained from the part and the procedure is repeated as many times as necessary to ensure the required cleanliness.

Organic HAP emissions from hand-wipe and flush cleaning operations occur from the evaporation of cleaning solvents during the cleaning process, including evaporation of the solvent from open containers and from solvent-soaked cloth and paper. Organic HAP emissions also occur from storage tanks used to store cleaning solvents.

b. *Spray gun cleaning.* Spray guns and other components of coating units must be cleaned when switching from one coating to another and when they are not going to be immediately reused. The cleaning of spray guns can be performed either manually or with enclosed spray gun cleaners. Manual cleaning involves disassembling the gun and placing the parts in a vat containing an appropriate cleaning solvent. The residual paint is brushed or wiped off the parts. After reassembling, the cleaning solvent may be sprayed through the gun for a final cleaning.

Enclosed spray gun cleaners are self-contained units that pump the cleaning

solvent through the gun within a closed chamber. After the cleaning cycle is complete, the guns are removed from the chamber and typically undergo some manual cleaning to remove coating residue from areas not exposed to the cleaning solvent, such as the seals under the atomizing cap.

Organic HAP emissions from spray gun cleaning occur from the evaporation of cleaning solvents during the cleaning cycle, such as while hand cleaning the guns in an open vat. Organic HAP emissions also occur from enclosed spray gun cleaners when they are opened to remove the guns.

4. Metal Finishing and Electrodeposition

Metal finishing processes are used to prepare the surface of a part for better adhesion, improved surface hardness, and improved corrosion resistance. Typical metal finishing operations include conversion coating, anodizing, desmutting, descaling, and any operation that chemically affects the surface layer of a part.

Electrodeposition, or metal plating, is an additive process for metal substrates in which another metal layer is added to the substrate in order to enhance corrosion and wear resistance necessary for the successful performance of the component. The two types of electrodeposition typically used are electroplating and plasma arc spraying.

HAP emissions from metal finishing operations occur in the form of gases or vapors that evaporate from the surface of processing solutions. Evaporation of solution also occurs from the parts as they are removed from the processing tanks.

5. Coating Application

A coating is a material that is applied to the surface of a part to form a decorative or functional solid film. The most common coatings are the broad categories of non-specialized primers and topcoats. There are also numerous specialty coatings ranging from temporary protective coatings to radiation effect coatings designed to shield aircraft from radar detection.

Coatings are applied to aerospace vehicles and components using several methods of application. The methods most commonly used are spraying, brushing, rolling, flow coating, and dipping. Spray application systems include conventional air spray, airless spray, air-assisted airless, electrostatic, and high volume low pressure (HVLP) spray. These latter two methods are generally accepted as having better transfer efficiency than other spraying methods and are gaining increased use as a means of using less coating and, hence, reducing emissions.

Nearly all aerospace coatings contain a mixture of organic solvents. Organic HAP emissions from coating application occur from the evaporation of the solvents during mixing, application, and drying. Inorganic HAP emissions of metal compounds (e.g., chromium and cadmium) also occur from overspray, which is exhausted from spray booths or paint spray hangars.

6. Depainting

The depainting operation involves the removal of coatings from the outer surface of aircraft. The two basic depainting methods are chemical depainting and blast depainting. Chemical depainting agents are applied to the aircraft, allowed to degrade the coating, and then scraped or washed off with the coating residue. Blast depainting methods utilize a media such as plastic, wheat starch, carbon dioxide, or high pressure water to remove coatings by physically abrading the coatings from the surface of the aircraft.

Organic HAP emissions from chemical depainting occur from evaporation of the solvents in the stripping solution. The amount of emissions from the process is directly related to the surface area being stripped, the type and thickness of coating to be removed, and the effectiveness of the stripper. Inorganic HAP emissions occur from the various blast depainting methods. The inorganic HAP are contained in the coatings being removed (trace amounts of inorganic HAP may also be found in some blast media) and are emitted as particulates.

7. Composite Processing

Composite processing consists of seven basic operations: Layup, thermal forming, debulking, curing, break-out, compression molding, and injection molding. Layup is the process of assembling the layers of the composite structure by positioning composite material in a mold and impregnating the material with a resin. Thermal forming is the process of forming the layup in a mold, which usually takes place in an autoclave. During the thermal forming process, debulking also may occur, which is the simultaneous application of low-level heat and pressure to the composite structure to force out excess resin, trapped air, vapor, and volatiles from between the layers of the composite structure. The curing step, which is the process of changing the resin into a solid material through a polymerization reaction, also occurs in the autoclave. After curing and removal from the autoclave, the break-out process removes the composite structure from the molds or curing fixtures.

Two other methods of forming composite structures are compression molding and injection molding. Compression molding is the process of filling one half of a mold with a molding compound, closing the mold, and applying heat and pressure until the material is cured. Injection molding uses a closed mold, where the molding compound is injected into the mold maintained under pressure, and then cured by applying heat.

Organic HAP emissions from composite processing occur from volatilization of a small portion of the solvent components during curing, because the majority of these solvents are consumed in the curing reaction of the resin.

8. Wastewater

Nearly every aerospace manufacturing and rework operation has the potential to generate wastewater. For example, metal finishing operations use water to rinse parts after each processing step. These rinse steps are typically carried out in large tanks with either a continuous or intermittent water flow. The wastewater generated is usually treated to some extent at the facility then discharged.

HAP emissions from wastewater result from the evaporation of volatile components in the water. Evaporation may occur in open trenches, storage tanks, and treatment operations.

9. Handling and Storage of Waste

Waste is produced primarily from cleaning, coating, and depainting operations. Cleaning operations produce solvent laden cloth and paper and spent solvent which can emit organic HAP from the evaporation of the solvents. Coating operations produce waste paint and waste solvent thinner that also emit organic HAP through evaporation. Depainting operations can produce either a liquid or solid waste stream depending on the type of process used. Chemical depainting processes produce a liquid sludge that consists of the stripper solution and paint residue. Emissions occur from the evaporation of the solvent from the stripper solution. Blast depainting processes produce a solid waste stream that consists of paint chips and spent blasting media. Emissions do not directly occur from this waste stream, although particulate emissions are generated during the blasting process.

10. Storage of Hand-Wipe Cleaning Solvents

Many large aerospace facilities use storage tanks for hand-wipe cleaning solvents. According to data obtained through responses to EPA questionnaires under section 114 of the Act (section 114 questionnaires), these tanks are primarily above ground, fixed-roof type ranging in size from 350 to 6800 gallons in size. Emissions from these tanks occur from evaporation of the cleaning solvents, as well as breathing and working losses.

B. Control Techniques

The principal techniques used by the aerospace industry to control organic HAP emissions are preventative measures and control devices. For the control of inorganic emissions, control devices such as filters and waterwash are used. Preventative measures are any action, product modification, process modification, or equipment change designed to eliminate or reduce the generation of emissions. Control devices do not prevent the generation of emissions, but rather capture or destroy the emissions generated by a source.

Preventative measures are usually the most desirable method to reduce emissions since they eliminate or reduce the actual generation of pollutants. Typically, the emission reduction is obtained using less energy and producing less waste than using a control device to achieve the same emission reductions. Preventative measures used by the industry are: (1) Product reformulations that replace products containing high levels of HAP and VOC with products containing less HAP and VOC or that eliminate the HAP or VOC content completely, such as chemical strippers that contain no organic HAP for depainting; (2) product reformulations, such as higher solids content coatings, that reduce the amount of the HAP- and VOC-containing product used; (3) equipment changes that result in emission reductions, such as replacing conventional spray guns with HVLP spray guns; and (4) work practice standards, such as housekeeping.

Control devices are typically used where product reformulation is not feasible or where the concentration of the exhaust stream is sufficiently high to warrant their use. Control devices may destroy the HAP and VOC, as with an incinerator, or capture the HAP and VOC, as with a carbon adsorber. Often, the compounds captured by a control device can be recovered for reuse. Control devices in predominant use by the industry for the reduction of organic HAP emissions are: (1) Carbon adsorbers, (2) incinerators, and (3) ultraviolet oxidation. Activated carbon fiber adsorbents to concentrate VOC emissions are frequently used in conjunction with incinerators. For inorganic HAP particulate emissions, reduction is achieved predominantly through the use of filtration devices.

1. Preventative Measures

a. *Product reformulation.* HAP and VOC emissions may be controlled by replacing products containing high concentrations of HAP and VOC with ones that have reduced or eliminated HAP and VOC entirely. Each individual facility must evaluate the ability of the new product to maintain standards of quality and performance. In addition, the potential overall environmental benefit of the reformulated products must be carefully evaluated.

(1) *Product reformulation—coatings.* Product reformulations for coatings can be generally classified as waterborne, higher solids, powder, and self-priming topcoats. Each category is discussed below.

(a) *Waterborne coatings.* Waterborne coatings utilize a resin system that is dispersible in water. A portion of the organic solvent is then replaced with water. The organic solvent may be 5 to 40 percent by weight of the waterborne coating, compared to a conventional organic solvent-based coating containing as much as 80 percent by weight solvent.

In addition to the lower solvent content, waterborne coatings have other advantages over solvent-based coatings. Less overspray and improved spray transfer efficiency may be achieved with waterborne coatings than with conventional coatings that utilize solvents with a density less than that of water. Additionally, because of the reduced solvent content, waterborne coatings may be less toxic and present a reduced fire hazard.

Waterborne coatings have limitations such as requiring spray guns with specific materials of construction, protection from freezing, and better control of temperature and humidity during application. In addition, waterborne coatings generally require longer drying times, are more sensitive to substrate material and cleanliness, and have lower salt spray resistance.

(b) *Higher solids.* Higher solids coatings are solvent-based coating formulations that have been modified to lower the solvent-to-solids ratio. The coatings usually contain 50 to 65 percent by volume solids, compared to conventional solvent-based coatings that may contain up to 40 percent by volume solids. The increased solids content gives greater surface area coverage per gallon of coating, which reduces the total volume of coating required. Consequently, solvent emissions are also reduced when higher solids coatings are used to apply the same volume of solids that are applied with a conventional solvent-based coating.

Higher solids coatings generally have higher viscosities and longer drying times than conventional solvent-based coatings. The higher viscosity tends to make spray application more difficult because it is harder to control gloss and film thickness, and may require the coating to be heated before application. Higher solids coatings typically are not used as dip coatings due to the difficulty in maintaining a uniform dispersion of solids in the dip tank.

(c) *Powder.* Powder coatings are a class of coatings applied electrostatically in dry form and then baked to cure. The coatings consist of fine, dry particles of paint solids. During the curing step, the particles fuse to create a continuous film. Use of powder coatings requires that the substrate must be able to withstand the high temperatures (typically greater than 131 °C (250 °F) and frequently greater than 177 °C (350 °F)) necessary to cure the paint.

The major advantage of using powder coatings is greatly reduced solvent emissions. The lack of a solvent base also reduces fire hazard, toxicity, and the make-up air requirements of the spray booth.

Powder coatings must be applied electrostatically, so they cannot be used on non-conductive parts such as composites. Other reported disadvantages of powder coatings are the difficulty in obtaining a high quality appearance, production must be shut down for color changes, the powder must remain dry at all times prior to application, and higher energy costs. As noted above, the high curing temperatures of powder coatings precludes their use on temperature sensitive substrates.

(d) *Self-priming topcoats.* Self-priming topcoats eliminate the need to apply a primer coat between the substrate and the topcoat. Self-priming topcoats have the adhesion and corrosion characteristics of a conventional primer and the environmental resistance and functional fluid resistance of a conventional topcoat. These coatings also eliminate the need for chrome-containing primers.

(2) *Product reformulation—hand-wipe cleaning solvents.* Product reformulations for hand-wipe cleaning that are prevalent in the aerospace

industry can be classified as aqueous, hydrocarbon-based, and non-chemical. Each category is discussed below:

(a) *Aqueous.* Aqueous cleaners contain at least 80 percent water, are non-flammable and non-combustible, and are completely soluble in water. Other components may include corrosion inhibitors, alkalinity builders, organic surfactants, and bioenzyme mixtures and nutrients depending on the desired soil removal properties. Aqueous cleaners have been used in non-critical areas where strict cleanliness requirements do not have to be met, or where there are no confined spaces that may trap residues of the cleaner.

(b) *Hydrocarbon-Based.* Hydrocarbon-based cleaners are nonsemi-aqueous cleaners that are composed of a mixture of hydrocarbons and oxygenated hydrocarbons. These cleaners have a maximum vapor pressure of 7 mm Hg at 20 °C (3.75 in. H_2O at 68 °F) and contain no HAP or ozone depleting compounds.

(c) *Non-chemical.* Several aerospace facilities have demonstrated the viability of using non-chemical methods such as dry media blasting for cleaning operations. These methods are typically used to remove dry, scale-like deposits such as carbon residue on engine components. Dry media blasting can usually be used only on components that can withstand the force of blasting without deformation.

b. *Equipment changes.* The aerospace industry has implemented several equipment changes that directly reduce the level of HAP emissions. While there are equipment changes that affect emissions from every process, the three changes predominantly used in the industry are high transfer efficiency spray guns, enclosed spray gun cleaners, and proportional paint mixers. Each of these equipment changes are discussed below.

(1) *High transfer efficiency spray guns.* Emissions from spray coating operations can be reduced through the use of spraying systems with higher transfer efficiency than conventional spray guns. Transfer efficiency, expressed as a percentage, can be defined as the ratio of coating solids actually applied to the surface of the component being coated to the amount of solids released from the spray gun. Spraying systems with a higher transfer efficiency can coat the same surface area using less coating. Therefore, the HAP emissions resulting from the use of this equipment are reduced compared to applying the same coating with conventional spray equipment.

High volume low pressure (HVLP) and electrostatic spraying systems are the primary high efficiency spray methods used by the industry. HVLP spray guns use high volumes (10 to 25 standard cubic feet per minute (scfm)) of low pressure (2 to 10 pounds per square inch gauge (psig)) air to deliver the paint. The lower air pressure creates a lower particle speed, resulting in a more controlled spray pattern with less overspray and bounce back from the substrate. With electrostatic spray systems, atomized particles of coating acquire an electric charge as they pass through a high voltage field at the end of the spray nozzle. This electric charge causes the particles to be attracted to the parts being painted, which are electrically grounded.

(2) *Enclosed spray gun cleaners.* Spray guns are typically cleaned at the end of every job, as well as between color changes. Manual cleaning of spray guns involves disassembling the gun and placing the parts in a tray containing an appropriate cleaning solvent. The residual paint is brushed or wiped off the parts, then the cleaning solvent is sprayed through the gun after it is reassembled. Enclosed spray gun cleaners, however, are completely enclosed units that spray the cleaning solvent through and over the spray gun. The enclosed unit eliminates most of the exposure of the cleaning solvent to the air, thereby greatly reducing the organic HAP emissions from evaporation.

(3) *Proportional paint mixers.* The majority of coatings used in the aerospace industry are multi-component mixtures, consisting of a base component and one or more catalyst components. The components must be thoroughly mixed in the proper ratio immediately before application. When this mixing is performed manually, a greater volume of coating is mixed than will actually be used to ensure that there is enough coating available to complete the job. In contrast, proportional paint mixers pump each component of the coating directly to the spray gun, where it is mixed and immediately applied. This results in reduced coating waste and, consequently, reduced emissions.

c. *Work practice standards.* Work practice standards are changes in the method of operation that do not affect the products used in the process or the process itself, but result in a reduction in emissions. The aerospace industry has implemented work practice standards programs for housekeeping measures and managed chemical distribution systems.

Emissions of organic HAP compounds, particularly solvents, can be reduced by limiting both the amount of the material exposed to the atmosphere and the length of the exposure. The emission reductions can be achieved by implementing housekeeping measures whereby solvent-soaked cloth or paper used for hand-wipe cleaning are placed into bags or containers that are kept closed. This eliminates the continual evaporation of the solvent from the cloth or paper when they are not in use. The bags or containers can then be collected and disposed in such a manner (e.g., by incineration) to eliminate any further solvent emissions.

Managed chemical distribution systems centralize the distribution of solvents and coatings and control the amount of these materials allowed to be used for a particular task. In this way, waste solvent and coatings are reduced, and emissions from these waste materials are reduced.

2. Control Devices

a. *Carbon adsorbers.* Adsorption systems are used to remove organic compounds from gas streams when strict limits on the outlet concentration must be met, or when recovery of the compound is desired. Adsorption is effective on inlet concentrations ranging from a few parts per billion to several thousand parts per million, and a flow rate of several hundred to several hundred thousand cubic feet per minute. Carbon adsorbers typically have a removal efficiency of 95 to 99 percent.

Once the carbon reaches saturation, it can be removed from the adsorber vessel and disposed or regenerated. The carbon can also be regenerated with steam within the adsorber vessel. This option readily allows for the recovery of the organic compounds for recycling.

b. *Incinerators.* Two basic types of incinerators, thermal and catalytic, are used in the aerospace industry to remove organic contaminants. Each type is discussed below.

(1) *Thermal incinerators.* Thermal incinerators can be generally used on air streams with a wide concentration range of organics. These control devices have minimal dependence on the characteristics of the organic contaminants, so they can be used to control a wide variety of emission streams. Thermal incinerators can achieve removal efficiencies of 98 percent and higher.

The basic operation of thermal incinerators involves raising the inlet air stream to the incineration temperature of the contaminants and maintaining the temperature for a specific residence time. The waste heat content of the incinerator exhaust stream is used to preheat the inlet air stream. An

auxiliary fuel is then typically required to raise the air stream temperature to the incineration temperature.

(2) *Catalytic incinerators.* Catalytic incinerators are similar to thermal incinerators except that they use a catalyst (a substance that accelerates the rate of oxidation without undergoing a chemical change itself) to assist in the oxidation of organic compounds to carbon dioxide and water. These incinerators are typically used for air streams with a low concentration of organics. The removal efficiency of catalytic incinerators can be as high as 98 percent.

c. *Ultraviolet oxidation.* An ultraviolet light oxidation (UVOX) system has been developed as an abatement device for air streams with low concentrations of organic compounds. The air stream passes through particulate filters, then enters a reactor where it is exposed to ultraviolet light which initiates the oxidation of the organics. Ozone and other oxygen-based oxidants are injected into the reactor to react with the organics in the air stream to begin the oxidation of organics into carbon dioxide and water. A typical removal efficiency for UVOX is reported to be 95 percent.

d. *Activated carbon fiber adsorbent.* Another technology has been developed to control low concentration organic compound emissions (e.g., paint spray booths). This technology utilizes an activated carbon fiber adsorbent to initially capture the organic emissions, the concentration of which is too low to be removed by a control device such as an incinerator. The adsorbent system consists of a honeycomb structure element made of activated carbon fiber paper in corrugated form. This structure adsorbs the organics in the exhaust stream. As the activated carbon structure becomes saturated, the organics are desorbed using hot air. This concentrated air stream can then be sent to an incinerator or other control device. The portion of the activated carbon structure that was regenerated then begins the adsorption cycle again.

e. *Catalyst-coated filter media.* Low concentration organic emissions (e.g., paint spray booths) can be controlled through the use of a catalyst-coated filter media. The catalyst material is impregnated onto the fibers of a dry filter which can then be used wherever conventional dry filters are used. The catalyst material, unlike activated carbon, permanently binds the organic material into its crystalline matrix so that it will not later desorb. In addition to the coated filters, the catalyst material can be used in a granular form to control emissions.

f. *Filtration systems for inorganic HAP particulate emissions.* Coating operations and blast depainting operations emit inorganic HAP in the form of particulates. For coating operations, panel-type dry particulate filters and waterwash spray booths are used to control these emissions. For blast depainting operations, panel-type dry particulate filters are also used, as well as baghouses.

The dry filters and baghouses capture particulates by trapping them as they try to pass through the small passages in the filter media. The efficiency of the filter media is a function of the particle size, size of the passages in the filter media, air flow through and pressure drop across the filter media, and physical characteristics of the particle.

Waterwash spray booths capture particles by forcing the air stream to pass through a spray or curtain of water. The particles are trapped by the water and eventually collect as a sludge in the sump of the spray booth.

V. Rationale for the Proposed Rule

A. Regulatory Development Process for NESHAP

During development of a NESHAP, the EPA collects information about the industry, including information on emission source characteristics, control technologies, data from HAP emission tests at well-controlled facilities, and information on the cost, energy, and other environmental impacts of emission control techniques. The EPA uses this information in the development of possible regulatory approaches.

If the source category contains major sources, then a MACT standard is required. Section 112(d)(3) of the Act defines the minimum stringency requirements of the MACT standard for new and existing sources. This level of control is referred to as the MACT "floor," which needs to be determined as a starting point for developing the regulatory alternatives.

Once the floor has been determined for new and existing sources for a category or subcategory, the Administrator must set MACT standards that are no less stringent than the floor level. Such standards must then be met by all sources within the category or subcategory. However, in establishing standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory (section 112(d)(1) of the Act). Thus, for example, the Administrator could establish two classes of sources within a category or subcategory based on size and establish a different emission standard for each class as long as each standard is at least as stringent as the floor. The Act also contains provisions for regulating area sources. However, except for certain recordkeeping requirements contained in the General Provisions, these are not relevant to the proposed standards for aerospace sources, which apply only to major sources.

The next step in establishing a MACT standard is the development and analysis of regulatory alternatives. First, information about the industry is analyzed to develop model plant populations for projecting national impacts, including HAP emission reduction levels, costs, and energy and secondary environmental impacts. Several regulatory alternatives (which may be different levels of emission control, different applicability criteria, or both, and one of which is the MACT floor) are then evaluated to determine the most appropriate regulatory alternative to reflect the MACT level.

In addition, although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. Section 112(h) of the Act provides that if it is not feasible to prescribe or enforce an emission standard, then a design, equipment, work practice, or operational standard may be established. For example, in some cases source testing may be impossible or at least not practicable due to technological and economic limitations.

In the EPA's decision-making process, the regulatory alternatives considered for new versus existing sources may be different and each alternative must be technically achievable. In selecting a regulatory alternative to represent MACT, the EPA considers the achievable reduction in HAP emissions (and possibly other pollutants that are co-controlled), the cost of control, and economic, energy, and other nonair quality health and environmental impacts. The overall objective is the achievement of the maximum degree of emission reduction without unreasonable economic or other impacts.

The selected regulatory alternative is then translated into a proposed regulation. The regulation implementing the MACT decision typically includes sections addressing applicability, standards, test methods and compliance demonstration, monitoring, reporting, and recordkeeping. The preamble to the proposed regulation, published in the **Federal Register**, provides an explanation of the rationale for the decision. The public is invited to comment on the proposed regulation

during the public comment period. Following an evaluation of these comments, the EPA reaches a decision and promulgates the final standards.

B. Determining Maximum Achievable Control Technology (MACT) "Floors"

Once the EPA has identified the specific major source categories or subcategories that it intends to regulate under section 112, MACT standards are set at a level at least as stringent as the "floor." Congress has provided directives to guide the EPA in the process of determining the regulatory floor.

Congress specified that the EPA must establish standards which require "the maximum degree of reduction in emissions of the hazardous air pollutants * * * that the Administrator * * * determines is achievable * * *" (section 112(d)(2) of the Act). In addition, Congress limited the Agency's discretion by defining the minimum baseline (floor) at which standards may be set, as follows:

(1) For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator," and

(2) For existing sources, the standards "may be less stringent than standards for new sources * * * but shall not be less stringent, and may be more stringent than: (A) the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information) * * * or (B) the average emission limitation achieved by the best performing 5 sources * * * for categories or subcategories * * * with fewer than 30 sources" (section 112(d)(3) of the Act).

C. Selection of Pollutants and Source Category(ies)

Section 112(b) of the Act lists the HAP to be regulated with standards established under section 112. Section 112(d), as amended, requires the EPA to promulgate emission standards for each category or subcategory of major sources and area sources of the HAP listed in section 112(b). For the purpose of developing these standards, the EPA may distinguish among classes, types, and sizes of sources within a category or subcategory. The NESHAP are to be developed to control HAP emissions from both new and existing sources pursuant to section 112(c) of the Act.

The initial source category list (57 FR 31576, July 16, 1992), required by section 112(c) of the Act, identifies source categories for which NESHAP are to be established. This list includes all major source categories of HAP known to the EPA at this time, and all area source categories for which a finding of adverse effects warranting regulation has been made.

The source category list identifies "surface coating processes—aerospace industries" as a source category because it contains major sources emitting at least 10 tons of any one HAP or more than 25 tons of any combination of HAP annually.

The aerospace industry encompasses original equipment manufacturers of commercial, civil, and military (including space) aerospace vehicles. In addition, rework facilities, which repair and repaint aerospace vehicles, constitute a major portion of the industry. There are also many subcontractors providing support to the industry, especially to the OEM's, who subcontract out various portions of the work. These subcontractors may engage in many of the processes found at OEM or rework facilities, or in just a few. Further, subcontractors may conduct operations for non-aerospace industries at facilities at which they conduct aerospace operations.

For the purposes of this rule, the EPA has defined the source category as consisting of all facilities engaged in the manufacture or rework of any aerospace vehicle or component. This includes all OEM's, rework facilities, and subcontractors. The EPA decided to include subcontractors in the proposed rule because they perform substantial amounts of work, much of which could otherwise be carried out at an OEM or rework facility and which is virtually indistinguishable from processes at the OEM or rework facility. However, if the subcontractors' facilities are not major sources, they would not be subject to the proposed standards.

Early in the development of the proposed standards, the EPA developed model plants to correspond to the basic structure of the industry—commercial and military segments, each having OEM and rework facilities—with the intent of developing subcategories for standards development, if necessary. On the basis of the information provided, however, the EPA has found that, with one exception for depainting operations, there is no need to distinguish among these segments for the processes for which standards are being proposed under the proposed rule.

D. Selection of Emission Points Covered by the Proposed Rule

The proposed rule would limit organic HAP emissions from the following basic aerospace operations: cleaning, primer application, topcoat application, depainting, chemical milling maskant application, and the handling and storage of waste. The proposed rule would apply to all organic HAP emission points within these operations located within aerospace manufacturing or rework facilities that are major sources. In addition, the proposed rule would require control of emissions from these operations if they are performed in any of the operations for which standards are not being proposed. For example, hand-wipe cleaning operations are performed at several stages within composite processing operations. The hand-wipe cleaning operation, a process covered by the proposed standard, would be subject to the standard, regardless of where in the facility it occurred.

Standards are being proposed for inorganic HAP emissions from primer application, topcoat application, and depainting operations.

A discussion of the rationale for including or excluding in this proposed rule the basic processes listed in Section V.A. is presented below.

1. Operations for Which Standards Are Being Proposed

a. *Organic HAP emissions.* As noted above, the EPA is proposing organic HAP emission standards for cleaning, primer application, topcoat application, depainting, and chemical milling maskant application, and the handling and storage of waste. Together, these operations are estimated to account for approximately 94 percent of the organic HAP emissions from the industry—cleaning, 87.5 percent; primers and topcoats, 2.1 percent; depainting, 2.6 percent; and chemical milling maskants, 1.5 percent.

Based on the information obtained from the section 114 questionnaires and meetings with the industry, there are many readily available techniques to achieve substantial emission reductions in each of these operations. For example, many chemical milling maskant operations were reported as using either solvent-based chemical milling maskants with control devices or waterborne chemical milling maskants. With regard to cleaning operations, many product reformulations are available for hand-wipe cleaning, and there are several equipment and work practice standards for spray gun cleaning that reduce organic HAP emissions. While methylene chloride chemical stripping is the prevalent method for depainting aerospace vehicles, many facilities are using non-HAP alternatives. These alternatives are being used by both commercial and military facilities to reduce emissions from depainting operations. Sufficient data exist for establishing MACT based on non-HAP alternatives for both commercial and military depainting operations. Therefore, these processes are included in the proposed rule. Section 114 questionnaire data and the existence of State and local regulations identify the use of high transfer efficiency spray guns in the aerospace industry. Adequate information exists for establishing MACT for the method of application of primers and topcoats and for limiting the organic HAP content of the coatings. Based on section 114 questionnaire data, nearly all facilities employ housekeeping measures to control emissions from waste storage. Sufficient data exist, therefore, to establish MACT.

In summary, based upon their relative contribution to overall organic HAP emissions and the use of demonstrated emission control technologies and techniques to achieve emission reduction, the EPA selected these operations for regulation.

b. *Inorganic HAP emissions.* The EPA is proposing inorganic HAP emission standards for primer application, topcoat application, and depainting operations. Based on section 114 questionnaire responses, there are readily available techniques that are used extensively in the industry to control these emissions. While the inorganic HAP emissions do not represent a large percentage of overall emissions from the industry, the emissions represent potential threats to health because of the highly toxic nature of the inorganic HAP (e.g., chromium and cadmium). For these reasons, the EPA selected these operations for regulation.

2. Excluded Operations

The EPA is not proposing standards for four non-coating related operations—chemical milling, metal finishing, electrodeposition, and composite processing—and for four coating-related operations—adhesives, adhesive bonding primers, sealants, and specialty coatings.

Organic HAP emissions were reported from all four of the non-coating related processes. Emissions from these four operations account for less than 1 percent of the total organic HAP emissions from aerospace facilities. Most of the organic HAP emissions from these operations are due to emissions from the use of cleaning solvents, which are being proposed for regulation under the proposed rule. The EPA has determined that requiring control of the remaining organic HAP emissions is not feasible because no demonstrated control measures could be identified. Therefore, the EPA is proposing no further control for organic HAP emissions from these four operations other than what would be achieved by the proposed standards for cleaning solvents.

The four coating-related operations—adhesives, adhesive bonding primers, sealants, and specialty coatings—are similar in many ways to primers and topcoats, for which organic HAP emission standards are being proposed. These four coating-related operations account for relatively small amounts of organic HAP emissions, and the coatings tend to be very specialized. Subcategorization can be significant, especially for specialty coatings, resulting in lower potential emission reductions. Many of the coatings in these four operations (e.g., sealants and adhesives) are already being applied using high transfer techniques, including hand application. This results in little opportunity for emission reduction through improved transfer efficiency. For spray applied sealants, there is also little opportunity to use higher transfer efficiency equipment because the viscosity of these sealants requires the use of high pressure, conventional spray guns. In terms of potential emission reduction from lower organic HAP content coatings, virtually no organic HAP content data were available to categorize these coatings. The time necessary to gather the data would have significantly delayed this proposed rule. For all of these reasons, standards are not being proposed for these operations.

Wastewater and storage tanks emit relatively small amounts of HAP and, according to the section 114 questionnaire responses, no aerospace facilities used any means to control these emissions. The EPA then considered the option of requiring applicable controls used in other industries on these types of sources. These control measures were evaluated and found to be too costly when compared to the emission reductions that would be achieved (approximately $126,000 per ton of HAP emissions reduction for storage tanks).

Other requirements in the standards may result in a direct reduction of emissions from wastewater and storage tanks. For example, the depainting standards may eliminate the majority of the estimated 152 million gallons of HAP-containing chemical stripper usage if the majority of sources use media blasting methods. This stripper is typically treated in wastewater treatment systems after use. Also, the hand-wipe cleaning standards will virtually eliminate the storage tanks for organic HAP-containing solvents since the use of these solvents will be significantly reduced. For these reasons the EPA is not proposing to regulate HAP emissions from wastewater and storage tanks in the proposed rule.

E. Selection of the Basis for the Proposed Rule

Section 112 of the Act defines a major source as any stationary source that emits 9.1 Mg/yr (10 tpy) or more of any one HAP or 22.7 Mg/yr (25 tpy) or more of total HAP. The Act states that new major sources must achieve the maximum achievable control technology (MACT), which is the level of emission control already achieved in practice by the best controlled similar source. The Act further states that emission standards promulgated for existing sources may be less stringent than standards for new sources; however, standards for existing sources must not be less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources.

For all operations being covered by the proposed rule, the EPA has determined that, taking into account cost, nonair quality health and environmental impacts, and energy impacts, MACT is equal to the MACT floors for both existing and new sources. In addition, MACT for new sources was found to be equal to MACT for existing sources. The EPA has determined that no further emission reductions can be achieved for new sources through the use of demonstrated technology than the level of reduction represented by MACT for existing sources.

To evaluate the regulatory alternatives, model plants were developed based on market segment (commercial or military), work type (OEM or rework), and size (small, medium, or large). These characteristics were examined to determine whether any technological justification existed to differentiate the proposed standards by market segment, work type, or size. Based on this examination, the EPA has determined that, other than one exception under the depainting standards, there is no justification for differentiating between these characteristics. For example, rework facilities are required to conform to OEM specifications, which dictate the processes and coatings that can be used. Consequently, rework facilities do not typically incorporate technology that is not used by the OEM's. Also, no

compelling reasons were identified as to why a facility of one size could not incorporate the technology used by a facility of another size.

1. Cleaning Operations

According to data obtained from the Bureau of the Census, approximately 25 percent of facilities with aerospace manufacturing SIC codes are located in California. Based on information provided by four California districts—SCAQMD, Imperial County Air Pollution Control District (APCD), Ventura County APCD, and San Diego APCD—virtually all of the California facilities are located in these districts, and more than half are located in the SCAQMD alone. Based on this information, more than 12 percent of the total number of sources are, then, subject to the rules in these four districts.

Consequently, the regulations in these four districts (i.e., SCAQMD Rule 1124, Imperial County APCD Rule 425, Ventura County APCD Rule 74.13, and San Diego APCD Rule 67.9) were examined to determine the emission limitations in these districts. These regulations specify vapor pressure limits and housekeeping measures for hand-wipe cleaning solvents. The EPA then investigated to determine if the regulations resulted in California facilities emitting less HAP from this process than facilities outside of California. Based on the section 114 questionnaire responses, California facilities emitted approximately 48 percent less HAP than non-California facilities in ozone nonattainment areas for hand-wipe cleaning operations. These emissions were calculated on a pounds of HAP emitted per employee basis, using the total number of employees at the facilities (the number of employees for hand-wipe cleaning only was not available). The conclusion made from these data was that the California regulations are an effective means of producing permanent and quantifiable emission reductions, and that the sources subject to these regulations are the best-performing sources in this source category. Since these sources also comprise more than 12 percent of the sources in the category, the MACT floor was based on their control levels.

It was impossible to distinguish the separate effects of housekeeping and vapor pressure limits on the emission rates from hand-wipe cleaning operations. Consequently, both were assumed to be necessary to achieve the calculated emission reductions. While one cannot "average" housekeeping measures, based on common aspects among the four rules, housekeeping measures of maintaining closed containers for the storage of fresh solvent, spent solvent, and solvent-soaked cloth and paper were established as one part of the MACT floor.

The second part of the MACT floor for hand-wipe cleaning is a vapor pressure limitation on the solvents being used. The SCAQMD, the San Diego AQMD, and the Imperial County APCD specify a maximum vapor pressure of 45 mm Hg at 20 °C. Ventura County APCD specifies 25 mm Hg at 20 °C. However, the EPA believes that it is inappropriate to give equal weight to the Ventura rule in determining the MACT floor because this district contains only three aerospace facilities compared to the hundreds located in the South Coast and San Diego districts. Furthermore, industry comments suggested that these three facilities are not representative of the industry and do not constitute a similar source as required by the Act. The EPA did, however, consider a weighted average vapor pressure limitation, but the vapor pressure value obtained did not correspond to any demonstrated technology. Since more than half, and possibly as much as 90 percent, of the aerospace facilities in California are located in the South Coast district, the EPA has determined that the 45 mm Hg vapor pressure is more representative of the "average" limitation on cleaning solvents among the best performing facilities and represents the MACT floor for both new and existing sources. More stringent levels (e.g., a weighted average vapor pressure value) were not considered to be achievable by all sources. Therefore, the EPA has selected the 45 mm Hg at 20 °C (24.1 in. H_2O at 68 °F) as the basis for the standards for hand-wipe cleaning solvents.

Information collected on cleaning solvents also showed that some hand-wipe cleaning solvents have both a very low vapor pressure and a very low evaporation rate. Available data indicate that low evaporation rates also contribute to minimizing emissions. These cleaning solvents are demonstrated technology for limited applications and their use would reduce organic HAP emissions as much as or more than the proposed vapor pressure limit. Therefore, the EPA is proposing to encourage their use by including an approved composition list for cleaning solvents in the proposed rule. The EPA welcomes comments on this list and proposals for adding to the list before final promulgation of the rule.

Based on data provided by aerospace facilities in response to the section 114 questionnaires, spray guns used to apply coatings are cleaned either manually or in enclosed gun cleaners. Based on information obtained during plant visits, enclosed gun cleaners are demonstrated to reduce emissions.

Each of the 61 facilities that reported a spray gun cleaning method was classified as to whether the spray guns were cleaned manually or with an enclosed cleaner. Eighteen of the 61 facilities (29 percent) reported using enclosed gun cleaners; therefore, enclosed gun cleaners were considered to represent the MACT floor level of control. The EPA also received information from the industry on the use of cleaning methods other than enclosed gun cleaners. After review of this information, the EPA determined that adequate technical justification was presented to show that the alternate cleaning methods were as effective as enclosed spray gun cleaners in controlling organic HAP emissions. Consequently, in addition to enclosed spray gun cleaners, the EPA is proposing to allow the use of: (1) Unatomized discharge of solvent into a waste container that is kept closed when not in use, (2) hand cleaning in a vat that is kept closed when not in use, and (3) the use of atomized spray into a waste container fitted with a device designed to capture atomized solvent emissions.

Based on information received from the responses to the section 114 questionnaires, plant visits, and industry meetings, the EPA learned that there are certain cleaning operations for which low VOC, low HAP, or low vapor pressure cleaning solvents do not have widespread use that would constitute a demonstrated technology. The EPA, therefore, is proposing to exempt these cleaning operations from the requirements to use cleaning solvents that conform to the approved composition list and the proposed vapor pressure limit of 45 mm Hg at 20 °C (24.1 in. H_2O at 68 °F). These operations are listed in § 63.744(e) of the proposed rule.

The use of cleaning solvents that conform to the approved composition list is not yet demonstrated for the proposed exempt cleaning operations. However, there are many new cleaning solvents being developed, some of which are very close to being used within the industry for some of these proposed exempt cleaning operations. To encourage the use of available compliant cleaning solvents and the ones being developed, the EPA considered imposing a limit on the annual usage of non-compliant cleaning solvents for exempt operations.

However, no data were available for use in establishing this limit.

2. Primer and Topcoat Application Operations

As noted above, over 12 percent of the aerospace industry is located in four districts in California. The SCAQMD, Ventura County APCD, Imperial County APCD, and Sacramento Metropolitan AQMD rules all require high transfer efficiency coating application methods. The application methods specified in these rules were adopted as the MACT floor. The specified methods are electrostatic application, flow coat application, dip coat application, roll coating, brush coating, and HVLP spraying.

The EPA recognizes that there may be other application methods that achieve a level of emissions equivalent to the application methods allowed in the proposed rule. Therefore, the EPA is requesting comments identifying these other application methods. These comments should include test data demonstrating that, in actual production conditions, the application method achieves a level of emissions at least equivalent to the level of emissions achieved by HVLP or electrostatic spray application methods. The EPA will review these comments and, where adequate technical justification exists, amend the list of approved application methods.

The EPA also examined whether or not there are demonstrated low organic HAP content primers or topcoats that could be used in conjunction with high transfer application methods to establish the MACT floor to reduce emissions. To this end, the EPA examined State and local regulations and the data obtained through the section 114 responses.

State and local regulations for aerospace coatings use VOC content as the means of regulating coating emissions. Consequently, no directed effort has been made to control the organic HAP content of these coatings. Data on coating VOC content are readily available from both the coating manufacturers and the coating users, but no comprehensive data exist for coating organic HAP content.

The data obtained from the section 114 responses showed that the organic HAP content varies widely and randomly with the VOC content. This is not surprising since, as noted above, there have been efforts to limit only the VOC content in the coatings and not the organic HAP content. However, the data show that the organic HAP content is typically 50 percent less than the VOC content. Where the organic HAP content was higher than the VOC content, the EPA found that this was the result of the use of exempt solvents (those solvents determined by the EPA to have negligible photochemical reactivity) that are also organic HAP.

There are a number of chemicals commonly found in coatings that are not on the list of 189 HAP (section 112(b) of the Act) including methyl amylketone (2-heptanone), cyclohexanone, and isopropyl alcohol. Currently, the EPA does not have adequate health data to determine the relative toxicity of these organic HAP substitutes and, therefore, does not want to establish a requirement that would encourage their use as substitutes in coatings. Since these potential substitutes are also VOC, the proposed standards would limit both organic HAP and VOC content, rather than organic HAP only. The effect of this dual limit will be to reduce the total amount of organic emissions from coating operations, eliminate the use of the few very high organic HAP content primers and topcoats, and establish a cap on the organic HAP content of primers and topcoats that will be developed in the future.

The organic HAP and VOC limits were determined by ranking the facilities that reported usage of primers or topcoats from the lowest to the highest weighted average VOC content of all primers or topcoats used at the facility. The weighted average VOC content that represented the average of the best 12 percent was selected as the VOC limit. This value was 350 g/l (2.9 lb/gal) for primers and 420 g/l (3.5 lb/gal) for topcoats. As discussed earlier, the limited data available to the EPA indicate that organic HAP content is typically lower than VOC content. However, no reasonable limit could be identified. Therefore, the EPA is proposing an organic HAP content limit at the same level as for VOC. The proposed limits for organic HAP are, therefore, 350 g/l (2.9 lb/gal) for primers and 420 g/l (3.5 lb/gal) for topcoats.

The section 114 questionnaire responses showed that the inorganic HAP emissions from nearly all primer and topcoat application operations were controlled by dry particulate filters or waterwash spray booths. Since no other technology was identified that can be used to control inorganic HAP emissions, the use of filters and waterwash was adopted as the MACT floor.

3. Depainting Operation

The information obtained on depainting operations showed the pervasive use of organic HAP-containing chemical strippers to remove paint. However, information was also obtained showing that many aerospace depainting operations are using alternative methods that do not utilize organic HAP, including organic HAP-free chemical strippers and dry media blasting techniques. The information also showed that not all commercial aerospace vehicles are fully coated. In these instances, the amount of organic HAP emissions from depainting is less than it would be if the same vehicle were fully coated.

The quantity of organic HAP emissions from depainting operations at several commercial rework facilities was readily available. However, very limited emissions data were obtained through the section 114 questionnaire responses for military aircraft depainting operations. The EPA considered several parameters to establish which facilities were the best performing ones. The most simple method would be to determine the pounds of organic HAP emissions per aircraft. This would not, however, take into account the difference in outer surface area from one model of aircraft to another and, hence, the difference in stripper volume required for each aircraft. Another basis would be to determine the organic HAP emissions per square foot of outer surface area actually painted. This method would not distinguish between the total emissions for stripping an aircraft that has only a portion of the outer surface area painted, and the total emissions for stripping the same aircraft with the entire outer surface area painted. Therefore, both methods were rejected.

Another basis for determining the best performing operations relates the pounds of organic HAP emissions to the total outer surface area of the aircraft. This effectively takes into account the effectiveness of all methods used to depaint aerospace vehicles and distinguishes the lower emissions achieved when only a portion of the outer surface area is painted from the emissions when a larger portion is painted. However, insufficient data were obtained through the section 114 questionnaire responses to develop an emission rate for military aircraft depainting operations.

A fourth consideration was to identify the basic techniques being used and rank them according to their relative effectiveness in reducing organic HAP emissions. The EPA elected to use this as the measure for identifying the best performing facilities. The different depainting techniques were also evaluated as to their applicability throughout the industry.

Three basic depainting techniques are used by the facilities for which the EPA

has information: Methylene chloride based chemical strippers, chemical strippers that contain no organic HAP, and blasting methods. (Although blasting methods are very effective in reducing and essentially eliminating organic HAP emissions from depainting operations, they do produce particulate inorganic HAP emissions. However, these emissions are typically well-controlled with particulate filters, which are almost always integral to the blasting systems. In addition, the proposed standards would require such control on inorganic HAP emissions, as discussed in section II.B. of this preamble.)

Based on section 114 questionnaires, site visits, and information provided by the industry, the EPA has information on depainting methods at 20 facilities. Of these facilities, 14 were identified as using either a blasting method (i.e., wheat starch or plastic media) or chemical strippers that contain no organic HAP.

The EPA then determined the aircraft models being stripped at each of these 14 facilities. This analysis showed that military fighters and transports, military and commercial helicopters, civil aircraft, and nearly all models of commercial airliners are currently being stripped with one or more of these non-HAP methods. Given the wide applicability of these processes throughout the industry, the EPA determined the MACT floor to be equivalent to the use of either media blasting or chemical strippers that do not contain organic HAP.

This analysis also showed, however, that some organic HAP emissions from depainting still occurred at facilities using blast methods or chemical strippers that contain no organic HAP. This is due to the fact that certain parts (e.g., wing flaps, engine nacelles, and radomes) are removed from the aircraft and depainted separately. This is primarily due to the fragile nature or specific depainting needs of these parts. Due to the wide range of parts removed and the inconsistency in the type of parts removed from one model of aircraft to another, the applicability of using blast techniques or chemical strippers that contain no organic HAP on these parts could not be determined. Consequently, these parts are exempted from the proposed standards.

In addition, the EPA determined that a small portion of the aircraft cannot be stripped with blasting methods. For example, some areas of the aircraft are masked to prevent intrusion of the blast media. The edge of the masking will often cover coated areas and, thus, prevent the blasting media from removing the coating from these areas. This coating must then be removed (referred to as spot stripping), usually with an organic HAP-containing chemical stripper. Another example of spot stripping is the removal of coatings from a small area of the outer surface of the aircraft in order to perform testing and inspection of the bare metal. Also, blasting methods may have difficulty removing some decals. Consequently, organic HAP solvents may be used to soften or remove these decals. For these reasons, exemptions for spot stripping and decal removal are necessary in order to allow the use of blast depainting methods to meet the proposed standards.

The EPA did, however, seek to limit the amount of organic HAP-containing chemical strippers used for radome, parts and spot stripping and decal removal. Data provided in the section 114 questionnaire responses were used to establish the amount of stripper used for these operations. Data were not available for radome and parts depainting; however, usage of chemical strippers for spot stripping and decal removal was available from commercial airlines for a limited number of aircraft types. Since information was not available for all aircraft types, the stripper usage for the largest commercial aircraft was used as the basis for the usage exemption.

The usage information was, however, limited to commercial aircraft. Military sources within the aerospace industry provided additional data to the EPA that established a technical justification for a higher usage limitation for military aircraft. This information was used as the basis for the usage limitation for spot stripping and decal removal for military aircraft.

The section 114 questionnaire responses showed that all facilities (7 respondents) that use media blasting to depaint use either dry particulate filters or baghouses to control particulate emissions from blast depainting methods. While electrostatic precipitators were identified as a possible control technology, the cost of the precipitators was believed to be considerably higher than the filtration methods already in use. Therefore, particulate filters and baghouses were used as the basis for developing the MACT floor for operations that use media blasting.

4. Chemical Milling Maskant Application Operation

Not all aerospace facilities perform chemical milling maskant operations. Of those responding to the section 114 request, twelve reported chemical milling operations. To identify the best performing twelve percent of the sources, the emission rate for each source was calculated by dividing the organic HAP emissions by the total usage of chemical milling maskants to obtain pounds of organic HAP emitted per gallon of chemical milling maskant (less water) as applied. The emissions value took into account control measures such as carbon adsorbers or waterborne chemical milling maskants. The sources were then ranked from the lowest emission rate to the highest.

For this operation, the best performing 12 percent of the sources is represented by the two sources with the lowest emission rates. One of these sources utilized a carbon adsorber to abate the emissions from a solvent-based chemical milling maskant. The other source utilized a waterborne chemical milling maskant with no abatement. Each of these two facilities had the same organic HAP emission rate of 1.3 lb/gal. Therefore, this was selected to represent the MACT floor.

5. Handling and Storage of Waste

Based on the section 114 questionnaire responses, 181 non-wastewater waste streams were reported. Every stream was controlled by housekeeping measures such as keeping the waste material in closed drums. Thus, housekeeping measures were established as the MACT floor for handling and storage of waste.

While no data were available for the effect on emissions from the housekeeping measures, it is expected that emissions will be reduced based on the data from California facilities for keeping cleaning solvents in closed containers. Consequently, housekeeping measures were used as the basis for the proposed standard.

In addition, existing RCRA regulations govern handling and storage practices for certain types of wastes. Since the EPA did not want to create a situation where possible conflicts with the RCRA regulations could arise, the proposed rule exempts wastes covered under the RCRA regulations.

F. Selection of the Format of the Proposed Rule

Several formats could be used to implement the control techniques selected as the basis for the proposed standards. Section 112(d) of the Act requires that emission standards for control of HAP be prescribed unless, in the judgment of the Administrator, it is not feasible to prescribe or enforce emission standards. Section 112(h) of the Act defines two conditions under which it is not feasible to prescribe or

to enforce emission standards. These conditions are: (1) If the HAP cannot be emitted through a conveyance device or (2) if the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations. If emission standards are not feasible to prescribe or enforce, then the Administrator may instead promulgate equipment, work practice, design or operational standards, or a combination thereof.

1. Cleaning Operation

The cleaning operation for which the EPA is proposing standards emits a variety of organic HAP. For many of these organic HAP, emission measurement methods either do not exist or would be very expensive to implement. In addition, the nature of some cleaning operations (e.g., hand-wipe cleaning) makes collection through a conveyance device difficult if not impossible. Therefore, the EPA determined that emission standards are not feasible for these operations.

The EPA then considered design, equipment, work practice, and operational standards for these operations. The EPA examined the California regulations, which had been determined to represent the floor level of control, to identify the specific types of measures adopted for hand-wipe cleaning, flush cleaning, and spray gun cleaning. An analysis by the EPA of the aerospace facilities' data showed that facilities subject to the California requirements emitted approximately 48 percent less organic HAP from their operations than non-California operations in ozone nonattainment areas. The EPA concluded that the formats of the California regulations are effective in providing quantifiable and achievable emission reductions. Therefore, the same formats are being proposed for the NESHAP as follows: (1) For hand-wipe cleaning operations, use of solvents that conform to the approved composition list or vapor pressure limits, and housekeeping measures, (2) for spray gun cleaning, an equipment standard and housekeeping measures, and (3) for flush cleaning, housekeeping measures.

The EPA is also proposing standards to limit the organic HAP emissions that may occur from leaks from enclosed spray gun cleaners. A format based on emission limits was not possible, since there were no data to determine the emissions from leaks. Also, no design, equipment, or work practice standards were identified that would prevent leaks from occurring. Consequently, the EPA determined that the only format that would ensure a minimum of organic HAP emissions from leaks was an operational standard that required leaks to be repaired within a certain amount of time.

2. Primer and Topcoat Application Operations

The formats selected by the EPA for the proposed organic HAP emission limits for primer and topcoat application operations are: (1) A limitation on both the VOC and organic HAP content, (2) a percent reduction and performance standard for control devices, and (3) an equipment standard for the application of primers and topcoats.

The EPA considered a format based on actual emissions from the primer and topcoat application operations. However, the EPA has information that many larger facilities have several hundred spray booths in which primer or topcoat application operations could take place. Monitoring of that many individual emission sources would not be feasible for either the facility or for enforcement of the standards by the EPA or state agencies. In addition, actual emissions would have to be linked to the production rate and the product produced at the facility. The EPA does not have adequate data to quantify emissions based on production or the product produced. Therefore, the EPA rejected this format.

The EPA then considered a limitation on the organic HAP and VOC content (mass of organic HAP and VOC per unit volume) of coating as applied. This format would essentially impose an emission limitation on each source, but allow flexibility in the manner of compliance. Each source would have the choice of using compliant coatings and averaging between compliant and non-compliant coatings. This format will reduce the amount of total organics, is easily enforced with Method 24 for VOC content and manufacturer's data for organic HAP content, and will cap the total amount of organic HAP that a primer or topcoat can contain.

The EPA is also allowing the use of control devices to reduce organic HAP and VOC emissions from primer and topcoat application operations. The format of the standards must ensure that as much of the emissions as practicable are being controlled. The EPA chose a format that specifies the overall control efficiency (capture efficiency multiplied by the removal efficiency) because overall control efficiency is the best representation of the control effectiveness of control devices. It is also easily enforceable since the EPA has published test methods for both capture and removal efficiency.

The EPA is proposing to set an equipment standard to reduce HAP emissions from the application of primers and topcoats. This format requires the use of certain specified coating application equipment or coating methods that result in higher transfer efficiencies than conventional spray equipment, thus reducing emissions. This format allows facilities the flexibility to choose the method of application most appropriate to the coating and substrate being coated.

The EPA first considered the data presented in the section 114 questionnaire responses to determine the format of the standards for inorganic HAP emissions from primers and topcoats. The level of control (expressed as a percentage) of dry particulate filters and waterwash spray booths was reported in the section 114 questionnaire responses. However, the basis for the reported control efficiency was primarily engineering judgement and manufacturer's data, which could not be verified through standardized testing. While the Act specifies that emission standards be developed whenever possible, the EPA determined that the available data were not of sufficient quality to develop such a standard.

The EPA then considered an equipment standard that described physical characteristics of high efficiency particulate filters and waterwash systems. However, due to the number of different filter and waterwash systems and variety of designs available, no concise description could be developed.

The EPA then developed a format that specified that all primer and topcoat application operations must be conducted in a ventilated booth or hangar equipped with filters or waterwash systems. The selection of the actual filters and waterwash systems would be left to the individual facilities.

3. Depainting Operation

The demonstrated technologies for depainting that represent the best performing 12 percent of sources are blast methods (e.g., plastic media and wheat starch blasting) and chemical strippers that contain no organic HAP. The EPA considered an operational format for the proposed standards that would require one of these methods to be used. However, many other alternative depainting methods are under development that have the potential to reduce organic HAP emissions as effectively as blasting or chemical strippers that contain no

organic HAP. The EPA did not want to limit the development of these alternative depainting methods, so the operational format was rejected.

The EPA then considered the level of organic HAP emissions from blasting, chemical strippers that contain no organic HAP, and other alternative depainting methods. With the exception of spot, decal, radome, and parts depainting, all of these methods have the potential to emit no organic HAP. The EPA, therefore, chose an emission standard format that specifies no organic HAP emissions from depainting, with exemptions for spot, decal, radome, and parts depainting. This format would allow the currently demonstrated depainting methods, as well as alternative methods that may be developed in the future.

While spot stripping and decal removal have been exempted from the proposed standards, the EPA, in selecting the format of the exemption, intends to limit the use of organic HAP-containing stripper to the lowest amount necessary. The EPA selected a limitation on the annual average amount (in gallons) of organic HAP-containing stripper used per aircraft.

The format for the proposed standards for inorganic HAP emissions from depainting operations was developed from the section 114 questionnaire responses. The seven facilities that reported blast depainting operations were ranked according to control efficiency of the filtration methods (particulate filters or baghouses) used to control particulate emissions. The best performing 12 percent of these sources are represented by the one facility with the highest control efficiency. This facility achieved a reported control efficiency of 99 percent and was chosen to represent the MACT floor.

The control efficiency data reported in the section 114 questionnaire responses consisted of engineering judgement estimates and information obtained from the filter manufacturers. No test data were reported. Due to this lack of quantifiable test data, the EPA is requesting comments on whether the 99 percent level of control represents the demonstrated level of technology for the control of particulate emissions from blast depainting. These comments should contain a technical justification, including test data where possible, for any recommended level of control.

4. Chemical Milling Maskant Application Operation

An emission limitation based on the mass of organic HAP and VOC per unit volume applied was selected for chemical milling maskants. There are essentially two means of complying with the proposed standards: (1) Solvent-based chemical milling maskant with a carbon adsorber to reduce emissions or (2) a waterborne chemical milling maskant with an organic HAP content equal to or less than the proposed standard. This format allows facilities to choose either method (or develop an equivalent method) without giving preference to either solvent-based or waterborne chemical milling maskants.

5. Handling and Storage of Waste

The rationale for the format of the proposed standards for handling and storage of waste is essentially the same as that for housekeeping measures for cleaning solvents. Since no data were available to establish an emission limitation and control equipment was not technically feasible, a work practice format requiring housekeeping measures was selected as the most appropriate means of reducing emissions.

G. Selection of Emission Test Methods and Monitoring Requirements

1. Emission Test Methods

In addition to the specific test methods described below for each affected source, the proposed rule adopts the provisions specified in § 63.7 of the General Provisions, 40 CFR part 63, subpart A.[9]

a. *Cleaning operation.* For hand-wipe cleaning, the proposed standards would allow owners or operators to use either a cleaning solvent that conforms to an approved composition list or a cleaning solvent with a vapor pressure less than or equal to 45 mm Hg. Procedures are, therefore, necessary for determining whether a cleaning solvent conforms to the approved composition list or meets the vapor pressure limitation.

The other portion of the proposed standards for cleaning operations (including spray gun cleaning) includes housekeeping measures, equipment standards, or work practice standards, for which no test methods or procedures are required to demonstrate compliance.

Those facilities that use cleaning solvents that conform to the approved composition list would have to demonstrate how the solvents comply. The EPA is proposing that data supplied by the manufacturer of the cleaning solvent be used to show compliance. The data must show all components of the cleaning solvent and demonstrate that one of the approved composition definitions is met.

To determine the composite vapor pressure of a cleaning solvent, the EPA is proposing that for single-component cleaning solvents data supplied by the manufacturer or from standard engineering reference texts be used. This information is readily available and, for single component cleaning solvents, should be readily acceptable.

For multi-component cleaning solvents, it is necessary to determine the composite vapor pressure of the cleaning solvent. This requires determining the amount of each organic compound in the cleaning solvent and each one's vapor pressure. Once these are known, then a procedure to combine the information must be followed to calculate the composite vapor pressure.

The EPA is proposing that gas chromatographic analysis, following the procedures outlined in E 260–85, be used to quantify the amount of each organic compound. The vapor pressure of each organic compound would then be determined, again, either by the manufacturer's data or from standard engineering reference texts, as discussed above. For combining these data to calculate the composite vapor pressure, the EPA is proposing that the blend be assumed to be an ideal solution where Raoult's law applies. While more accurate methods are available, the cost and time to conduct those methods and the small gain in accuracy are not justifiable when compared to the ease of calculating composite vapor pressure assuming an ideal solution where Raoult's law applies. Further, the composite vapor pressure of any blend changes with the conditions under which it is applied. This normal variability would cause some cleaning solvents to meet the composite vapor limit under certain conditions, but not others, if the vapor pressure test methods were used instead of the calculation.

b. *Primer and topcoat application operations.* One part of the proposed standards for primer and topcoat application operations requires the use of specified high transfer efficiency application equipment, or equivalent.

As long as this equipment is installed, operated, and maintained according to manufacturer's specifications, it should perform with high transfer efficiency. Therefore, the EPA is not proposing any test methods or procedures for this part of the primer and topcoat standards.

Owners or operators who want to use application equipment other than that specified in the proposed rule must demonstrate that it is equivalent in reducing organic HAP and VOC emissions. To make an equivalency determination, the owner or operator must demonstrate that the organic HAP and VOC emissions generated by the

[9] Ibid

alternative method are equal to or less than the emissions generated by HVLP or electrostatic spray guns under the actual production conditions in which the alternative method is intended to be used. This level of emissions is equivalent to the emissions demonstrated by California facilities that are subject to similar rules.

Before implementing the alternative application method, the facility must determine the organic HAP and VOC emissions that were generated by the process over the 90-day period immediately preceding the implementation of the alternative application method. During this initial 90-day period, only HVLP or electrostatic spray guns could be used. These emissions would be compared to the organic HAP and VOC emissions generated by the same process using the alternative application method to coat an equivalent amount of parts and assemblies as coated during the initial 90-day period using identical coatings. The organic HAP and VOC emissions generated during the use of the alternative application method must be equal to or less than the emissions generated during the initial 90-day period.

In determining compliance with the organic HAP and VOC content levels, an owner or operator would have the flexibility to use compliant coatings or to average uncontrolled compliant and non-compliant coatings. (Averaging between primers and topcoats would not be allowed, nor would averaging between controlled and uncontrolled coatings.) Test methods and procedures are, therefore, necessary to determine the organic HAP and VOC content of each primer and topcoat as applied.

The EPA is proposing that Method 24 be used for determining the VOC content. This is a long-standing method for such determinations. Sources may, at their discretion, use manufacturer's data for determining the VOC content rather than Method 24. However, if there is found to be a difference in the VOC content as determined from the manufacturer's data and that determined using Method 24, then the value obtained using Method 24 will always take precedence in compliance determinations. Since there are no generally available methods for testing organic HAP content, the EPA is proposing that the organic HAP content level be determined by each facility based on the formulation of each coating. The formulation data would be supplied to the facility by the coating manufacturer. This would reduce the burden to the industry and promote consistent identification of the total organic HAP content among all users. Several coating manufacturers have indicated to the EPA that they are willing to supply such information.

As noted above, the proposed standards would require the organic HAP contents to be determined on a "less water as applied" basis and VOC contents on a "less water and exempt solvents as applied" basis. Thus, unless the coating is applied as received, procedures must be adopted to change "as received" organic HAP and VOC content levels to "as applied" levels. This could be accomplished by analyzing a sample of the coating as applied using Method 24 or through a calculation. The calculations to do this are well known and established (see A Guideline for Surface Coating Calculations, EPA–340/1–86–016, July 1986) and, thus, the EPA did not consider it necessary to include the basic calculation formulas in the proposed rule. A determination of what is added to the coating before it is applied must be made so that the "as applied" levels can be calculated. The EPA is proposing that each owner or operator make such determinations on the basis of records kept at the facility. These are records that will be required by the proposed rule and will be readily available to the owner or operator for making the necessary calculations. The pertinent information (i.e., density, organic HAP content, and VOC content) of the additives would be based on manufacturer supplied information. If that information is not available, then the owner or operator would be required to develop a procedure for determining the missing information for approval by the Administrator.

Since the proposed standards for organic HAP and VOC content levels would allow each owner or operator to average organic HAP or VOC content levels across uncontrolled primers and across uncontrolled topcoats, the procedures provide the necessary formulas to calculate the volume-weighted average organic HAP or VOC across all primers or topcoats. For compliant coatings, the EPA is proposing less complicated procedures for demonstrating compliance. This is appropriate because each coating by itself as applied meets the organic HAP (or VOC) content level, and daily calculations of the volume-weighted average HAP and VOC content as applied are not necessary. The proposed rule does, however, require monthly determination of usage and HAP and VOC content as applied.

If control devices (e.g., incinerators, carbon adsorbers) are used, the proposed standards require them to achieve an overall control efficiency of at least 81 percent. For control devices other than carbon adsorbers, it is necessary, therefore, to identify the capture efficiency of the capture system, the destruction efficiency of the control device, and, where feasible, operational parameters that would be monitored to ensure continuous compliance. The proposed standards also include provisions for determining the capture and removal efficiencies. The test methods and procedures being proposed for determining the capture and removal efficiencies are those that are typical for control devices.

The EPA is proposing that capture efficiency be determined by one of two methods depending on whether the capture system is totally enclosed or not. A total enclosure would be verified according to the provisions specified in § 52.741, appendix B, Procedure T of 40 CFR part 52 (and, thus would have a capture efficiency of 100 percent). The capture efficiency of all other systems would be determined according to the procedures specified in § 52.741(a)(4)(iii) of 40 CFR part 52.

The EPA is proposing that the removal efficiency of a control device be determined based on three runs, each run lasting one hour. For control of organic compounds, Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, would be used for selection of the sampling sites, and the gas volumetric flow rate would be determined using Methods 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate. Method 18 of 40 CFR part 60, appendix A, would then be used to measure either TOC minus methane and ethane or total organic HAP. Alternatively, any other test method or data that has been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, may be used.

Where a carbon adsorber is used, the EPA is proposing to use a mass balance procedure for determining the overall control efficiency. The proposed rule contains procedures as specified in 40 CFR 60.433 for using a mass balance approach that would calculate the amount of organic HAP and VOC applied and the amount recovered. This information would then be used to calculate the overall control efficiency of the carbon adsorber.

In addition, Method 309 is being proposed for determining the number of consecutive 24-hour periods in the rolling material balance period for carbon adsorbers.

Each owner or operator using a control device would be required to conduct an initial performance test. For

control devices other than carbon adsorbers, this test would consist of 3 one-hour runs. For carbon adsorbers, the test would span the number of days specified for the rolling material balance period as calculated by proposed Method 309. In addition, it is necessary to establish, during the initial performance test, operating parameters that would be continuously monitored in order to show continuous compliance. For incinerators other than catalytic incinerators, the operating parameter would be the firebox temperature. For catalytic incinerators, the operating parameters would be the temperature of the gas stream immediately before and after the catalyst bed. No operating parameters are required to be monitored on carbon adsorbers since the material balance calculations provide a continuous check of proper operation.

c. *Depainting operation.* The proposed standards for the depainting of aerospace vehicles requires, in part, no organic HAP emissions, which will be achieved through the use of chemical strippers that do not contain any organic HAP or the use of non-chemical depainting methods or techniques. Since all of the known non-chemical depainting methods/techniques do not contain any organic HAP, the only test method or procedures needed are those associated with determining whether a chemical stripper contains any organic HAP. For the reasons noted earlier under the discussion on test methods for primers and topcoats, the EPA is proposing that the organic HAP content be determined based on information supplied by the manufacturer of the chemical stripper.

In order to demonstrate compliance with the organic HAP-containing chemical stripper usage limitation for spot stripping and decal removal, the source must calculate an average annual usage per aircraft. Since there is only one method to calculate this average (i.e., dividing the total gallons of organic HAP-containing chemical stripper used for spot stripping and decal removal by the number of aircraft stripped), the EPA is proposing to use this method to determine compliance. The information needed for this calculation would be obtained from company records.

Particulate inorganic HAP emissions are generated by blast depainting methods. Therefore, the EPA is proposing that Method 5 of 40 CFR part 60, appendix A, be used to determine the control efficiency of particulate filtration systems used on this process.

d. *Chemical milling maskant application operation.* The proposed standards for chemical milling maskants limits the organic HAP content to the equivalent of 160 grams per liter (1.3 pounds/gallon) less water as applied and limits the VOC content to the equivalent of 160 grams per liter (1.3 pounds per gallon) less water and exempt solvents as applied. In determining compliance with the organic HAP and VOC content levels, an owner or operator would have the flexibility to use compliant chemical milling maskants or averaging uncontrolled compliant and non-compliant maskants. As for primers and topcoats, averaging uncontrolled and controlled chemical milling maskants together would be prohibited. Test methods and procedures are, therefore, necessary to determine the organic HAP and VOC content of each chemical milling maskant as applied. If control devices are used, it is also necessary to determine the overall control efficiency of the control device. The test methods selected and the rationale for the selection are identical to those presented above for primers and topcoats.

e. *Handling and Storage of Waste.* For those wastes subject to the proposed rule, no test methods or procedures are required to demonstrate compliance with the proposed housekeeping measures.

2. Monitoring Requirements

In accordance with paragraph (a)(3) to section 114 of the Act, enhanced monitoring of stationary sources is required to determine the compliance status of the sources, and whether compliance is continuous or intermittent. For affected sources complying with the proposed standards through the use of control devices, initial compliance is determined through the initial compliance test, and ongoing compliance through continuous monitoring. The EPA has proposed the parameters to be monitored for certain types of control devices now used in the industry. The values of these parameters that correspond to compliance with the proposed standards are set by the owner or operator during the initial compliance test. If future monitoring indicates that control equipment is operating outside of the range of values established during the initial performance test, then the owner or operator is out of compliance with the proposed standards, except as specified for malfunctions in § 63.6(e)(3) of 40 CFR part 63, subpart A.[10]

a. *Cleaning operation.* For cleaning operations, the only portion of the standards for which monitoring requirements are being proposed is for enclosed spray gun cleaner systems. These systems are stationary sources that have the potential to emit organic HAP from around ill-fitting or worn seals or from leaking pumps or piping connections. The effectiveness of these systems thus depends on their being "vapor-tight" and that there are no leaks from the pumps or piping of these systems. Therefore, the EPA is proposing that such systems be visually inspected for leaks. Since most of the systems are used to clean paint spray guns, leaks would be easily spotted by visual inspection as the result of solvent or paint residue escaping around the source of the leak. The EPA does not believe that monitoring with leak detection equipment would provide a significant increase, if any, in the detection of leaks from these systems. Therefore, the EPA is proposing to require visual inspection only.

The EPA then considered how frequently the enclosed cleaners should be inspected. The EPA considered daily, weekly, monthly, and yearly frequencies. The nature of the systems being inspected is not expected to result in sudden failure, but rather failure due to wear and tear. Thus, the EPA considered it unnecessary to require daily or even weekly inspection. On the other hand, one year was considered too long for a leak to go unrepaired. Therefore, the proposed standards would require a monthly inspection of the systems. The EPA believes that this is a reasonable period between inspections, without overburdening the industry and not allowing leaks to go unrepaired for an extended period of time.

Similarly, the proposed work practice and equipment standards require that containers used to store solvents and solvent laden cloth and paper be closed when not in operation. The EPA could not identify any operating parameter that would monitor whether this was being done. Nor could the EPA identify a parameter to monitor when atomized cleaning is used. The proposed standards require the use of a device designed to capture the atomized solvent emissions. No monitoring parameters were identified to indicate periods when the device may not be functioning or when it may have been removed. Rather, the determination would be made during enforcement inspections as to whether the proper procedures were being followed.

b. *Primer, topcoat, and chemical milling maskant application operations.* The proposed monitoring requirements for primer, topcoat, and chemical milling maskant application operations

[10] Ibid

concern the operation of control devices that may be used in demonstrating compliance with the organic HAP content levels. For control devices, the parameters to be monitored are those that have been typically used in other standards. For example, where catalytic incinerators are used to control organic HAP and VOC emissions, the proposed standards require that the temperature of the air stream be monitored immediately before and after the catalyst bed. The rationale for selecting the various control device parameters in this proposed rule is long standing, and for more information see the proposal notice for the SOCMI reactor processes NSPS (55 FR 26966 through 26969, June 29, 1990). The EPA is, therefore, simply proposing to adopt the same monitoring parameters as have been required for previous standards.

For inorganic HAP emissions from primers and topcoats, the proposed standards would require the use of particulate filters or waterwash systems. Two parameters were identified that could be monitored that directly relate to the performance of the system—air flow and pressure drop. The proposed rule, however, would require monitoring of only the pressure drop across the filter or waterwash since the air flow is directly related to the pressure drop. Monitoring of both parameters was considered to be redundant.

c. *Depainting operation.* The nature of the proposed standards for depainting operations is such that no meaningful monitoring requirement was identified for the proposed organic HAP emission standards. The organic HAP content (less water as applied) of the chemical strippers used must be calculated or determined. But once identified, there are no requirements concerning their application.

The rationale for the pressure drop monitoring requirements proposed for inorganic HAP emissions from depainting operations is identical to that for primers and topcoats.

d. *Handling and storage of waste.* For those wastes subject to the proposed rule, the EPA could not identify any operating parameters that would monitor whether housekeeping measures were being performed. Therefore, no monitoring requirements are being proposed.

H. Selection of Recordkeeping and Reporting Requirements

1. Recordkeeping

In addition to the specific recordkeeping requirements described below for each affected source, the proposed rule adopts the provisions specified in § 63.10 (a), (b), (d), and (f) of the General Provisions, 40 CFR part 63, subpart A.[11] These were the only paragraphs from § 63.10 that were considered to be applicable to the proposed rule.

a. *Cleaning operation.* The proposed standards for hand-wipe cleaning operations require cleaning solvents to be used that either comply with the approved composition list or have a composite vapor pressure less than or equal to 45 mm Hg at 20 °C (24.1 in. H_2O at 68 °F). In order to determine whether these requirements are being complied with, it is necessary to keep data on the cleaning solvents being used in these operations. Therefore, the EPA is proposing that each owner or operator keep for each cleaning solvent used at the facility, a record of the name of the cleaning solvent and documentation that shows the organic HAP content and organic HAP constituents. In addition, the EPA is proposing the following records for specific cleaning operations be kept.

For each cleaning solvent used in hand-wipe cleaning operations that conforms to the approved composition list, the records that would be maintained are the name of each cleaning solvent, documentation demonstrating compliance to the approved composition list, and annual purchasing records showing the annual volume purchased of each. For each cleaning solvent used in hand-wipe cleaning operations that does not conform to the approved composition list, but does conform to the vapor pressure requirement, the information required to be recorded would be the name of each cleaning solvent, the monthly usage of the cleaning solvent at each operation, the composite vapor pressure, the manufacturer's data sheets or other documentation of the vapor pressure, and any test reports and calculations performed to determine the composite vapor pressure (in order to assess compliance with the vapor pressure limit).

The proposed standards would allow certain hand-wipe cleaning operations to be exempt; that is, cleaning solvents that do not comply with the approved composition requirements or with vapor pressure greater than 45 mm Hg at 20 °C (24.1 in. H_2O at 68 °F) can be used for these exempt cleaning operations. Therefore, affected facilities will have both compliant and non-compliant cleaning solvents in use. The EPA, therefore, believes it is necessary to ensure that cleaning solvents with vapor pressures greater than 45 mm Hg at 20 °C (24.1 in. H_2O at 68 °F) are only used for the exempted cleaning operations. To this end, the EPA is proposing that each owner or operator keep daily records of the name and volume of each cleaning solvent used in each exempt hand-wipe cleaning operation, as well as the parts, assemblies, or subassemblies on which it is used. The EPA is requiring daily recordkeeping for these non-compliant solvents so that adequate records exist to determine that the solvents are used only in the exempt operations.

The EPA is also proposing that records be kept of each leak found when visually inspecting enclosed spray gun systems. These records would consist of source identification, the date of discovery of the leak, and the date of repair in order to ensure that repairs are completed within 15 days as required by the proposed standard.

For those portions of the cleaning operation standards that require containers to be closed when not in use, the EPA is not proposing any recordkeeping requirements. Nor is the EPA proposing any recordkeeping requirements for the cleaning of spray guns (other than for enclosed spray gun cleaners) or flush cleaning.

b. *Primer and topcoat application operations.* For all primer and topcoat application operations, regardless of which methods are used to comply with the proposed standards, the EPA is proposing that each owner or operator keep records of the name of each coating and its organic HAP and VOC content as received. In addition, the EPA is proposing different levels of recordkeeping requirements depending on how the organic HAP and VOC content levels are being met. If an owner or operator is using compliant coatings to meet the organic HAP or VOC content levels, the EPA is proposing that the owner or operator keep records that identify for each coating (primer, topcoat) used each calendar month, the volume of each coating formulation used each month, the masses of organic HAP and VOC emitted per unit volume as applied, and the manufacturer's data, calculations, and test results (including Method 24 results taken during an enforcement inspection) used to determine organic HAP and VOC content of each as applied. Daily records are not necessary since, if the coatings are compliant, the emissions from the coatings will not exceed the emission limitation in the proposed standards on a daily basis. Monthly records, however, are necessary to maintain a check that compliance is being maintained.

[11] Ibid

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If an owner or operator elects to meet the organic HAP or VOC content level by averaging, the EPA is proposing that records of the daily volume-weighted average organic HAP and VOC contents for primers and topcoats be kept as well as all of the data and calculations used to calculate these values. This would include the volume, organic HAP content as applied, and VOC content as applied of each coating. This level of information is required for an inspector to determine whether the facility was in compliance and whether the proper data and calculations were being used.

If a control device is used, each owner or operator would be required to keep a record (or, where allowed in the proposed standards, daily averages) of the various control device operating parameters being monitored. Since for some control devices compliance with the proposed standards is dependent on the control device being operated properly, these records are necessary to determine compliance. Specifically, a source would be out of compliance if the recorded parameters were out of range. As noted earlier, for incinerators, this would be continuous records of the operating temperature(s), while no operating parameters are required for carbon adsorbers. Thus, the EPA is requiring these records for compliance determinations.

The recordkeeping requirements for inorganic HAP emissions from primers and topcoats, which require recording of the pressure drop across the filters or waterwash once per shift during which coating operations occur, were included to provide a means of obtaining data that can be used to verify that the pressure drop limits are not being exceeded. The records can also be used by the facility to determine when preventative maintenance should be performed on the filter or waterwash system. The proposed rule would also require that the log include the pressure drop operating range as specified by the manufacturer so that the compliance information is readily available at all times.

c. *Depainting operation.* For compliance with the standard of no organic HAP emissions through the use of chemical strippers that contain no organic HAP, the minimum records identified were the name of each chemical stripper used in depainting operations, the organic HAP content of each stripper, and its supporting documentation.

The proposed standards contain an exemption for spot stripping and decal removal that is based on an annual average volume of organic HAP-containing stripper per aircraft. To ensure that this exemption is being complied with, the EPA is proposing that the owner or operator of an affected source record these annual averages. Consequently, records must be maintained of the number of aircraft depainted, the volume of organic HAP-containing stripper used for spot stripping and decal removal, the average number of gallons of organic HAP-containing chemical stripper used per aircraft, and all supporting data and calculations.

Similarly, the proposed standards have an exemption for radomes and parts depainting. While radomes are self-evident, the parts normally removed are not. Therefore, the EPA is proposing that each owner or operator keep an up-to-date list of all aircraft depainted at the facility and a list of all parts normally removed prior to depainting from each aircraft model.

The EPA believes that it is necessary to ensure that, if a depainting facility uses organic HAP-containing chemical strippers, they only be used on spot stripping, decal removal, radomes and parts. Tracking the daily use of the organic HAP-containing chemical strippers by volume would indicate whether or not these strippers are being used on the aircraft body. The amount of stripper required to depaint an aircraft body is substantially higher than for the exempted operations. Therefore, an accounting of stripper usage is necessary to ensure organic HAP-containing stripper is not being used on the aircraft body. The EPA considered requiring records of the usage of both strippers that contain organic HAP and those that do not contain organic HAP be maintained. However, the EPA believes that requiring records of both types of stripper usage would be overly burdensome to the industry and that adequate accounting would be obtained from the usage of organic HAP-containing chemical stripper. In addition, records of the usage of organic HAP-containing strippers are already being required for spot stripping and decal removal. Consequently, the EPA is proposing that records be kept only of the organic HAP-containing chemical stripper usage.

Daily recordkeeping of the usage of these strippers was considered to be unnecessary since the intent of the records is to show long-term trends. Annual records, on the other hand, would require too long of a period to establish these trends. Consequently, the EPA is requiring monthly records of the organic HAP-containing stripper usage.

Whenever non-chemical depainting techniques are being used, the proposed standards would require that during periods of malfunction, alternate depainting methods be used for no more than 14 consecutive days unless the alternative method contains no organic HAP. In order to determine compliance with these requirements, records must be kept on the dates the malfunction occurred and was corrected, the methods used to depaint the aerospace vehicles during the malfunction, and the dates that these methods were begun and discontinued.

For inorganic HAP emissions, records of the daily pressure drop readings are necessary to ensure that the requirements of the proposed standards are being met. The rationale for this requirement is identical to that presented for primers and topcoats. In addition, records must be maintained of the manufacturer's recommended pressure drop limits, the particulate filter control efficiency, and all test results, data, and calculations used in determining the control efficiency so that compliance determinations can be made.

d. *Chemical milling maskant operation.* For the organic HAP and VOC content levels, the EPA is proposing different levels of recordkeeping requirements depending on how the organic HAP and VOC content levels are being met. The selection of and rationale for these recordkeeping requirements are identical to those presented above for primers and topcoats. In addition, where carbon adsorbers are used to control organic HAP and VOC emissions from chemical milling maskants, the same recordkeeping requirements as discussed for primer and topcoat application operations are being proposed, and the rationale is the same.

e. *Handling and storage of waste.* Since the proposed standards would exempt RCRA wastes, it is necessary to identify which wastes are subject to RCRA and which are subject to the proposed rule. Therefore, the EPA is proposing that each owner or operator keep an up-to-date list of which wastes are subject to RCRA requirements and which are subject to the proposed rule, and to keep on file the documentation supporting these determinations.

The EPA received a comment requesting that records be maintained of the quantity and type of solvents stored and disposed, as well as the disposal facility (if applicable). The purpose of these records would be to ensure that the wastes are not improperly disposed since the wastes may not be RCRA listed wastes (and, thus, not subject to applicable RCRA recordkeeping requirements). The EPA is requesting additional comments concerning the addition of these recordkeeping requirements. The comments should address whether there are any wastes that contain HAP that are not subject to RCRA and, if so, whether the recordkeeping requirements under these standards should apply to all affected waste streams or only non-RCRA listed waste streams. In addition, the comments should address what burden these requirements would impose.

2. Reporting Requirements

In addition to the specific reporting requirements described below for each affected source, the proposed rule adopts the provisions specified in § 63.9(a) through § 63.9(e) and § 63.9(h) through § 63.9(j) and § 63.10 (a), (b), (d), and (f) of the General Provisions, 40 CFR part 63, subpart A.[12] However, certain time periods specified in these sections were changed as detailed in Section II.F of this preamble. These time periods were changed in order to provide additional time for the EPA to review requests for changes to time periods for submittal of reports and for owners or operators to respond to EPA requests. These were the only paragraphs from these sections (i.e., § 63.9 and § 63.10) that were considered to be applicable to the proposed rule.

The proposed rule would require an owner or operator to submit the following four types of reports:

(1) Initial notification,
(2) Notification of compliance status,
(3) Periodic reports, and
(4) Other reports.

The purpose and contents of each of these reports are described in this section. The wording of the proposed rule requires all reports to be submitted to the "Administrator." The term Administrator refers either to the Administrator of the EPA, an EPA regional office, a state agency, or another authority that has been delegated the authority to implement this rule. In most cases, reports will be sent to state agencies. Addresses are provided in the General Provisions of 40 CFR part 63, subpart A.[13]

Records of reported information and other information necessary to document compliance with the regulation are required to be kept for 5 years. Per the General Provisions, the 2 most recent years must be kept on-site; the other 3 years may be kept off-site. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

a. *Initial Notification.* The proposed standards would require owners or operators who are subject to this subpart to submit an initial notification. As outlined in the General Provisions, 40 CFR 63.9, this report serves two basic purposes: (1) Notifies the EPA that an existing facility is subject to the proposed standards and (2) notifies the EPA of the construction of a new facility.[14] A respondent must also report any facility modifications as defined in § 63.5. This report will establish an early dialogue between the source and the regulatory agency, allowing both to plan for compliance activities. The notice is due no later than 12 months before the final compliance date as specified in the proposed standards. Under the proposed rule, the initial notification is not required from any source that has submitted a permit application under title V of the Act, provided that the permit application has been submitted by the same due dates as for the initial notification and that the state to which the permit application has been submitted has a permit program in place and has received delegation of authority from the EPA.

As called for by the General Provisions, each owner or operator of an affected source would be required to submit a start-up, shut-down, and malfunction plan. This plan would be submitted with the initial notification.

b. *Notification of Compliance Status.* As adopted through the General Provisions, owners or operators who are subject to this subpart would be required to submit a notification of compliance status. This report contains the information necessary to demonstrate that compliance has been achieved, such as the results of performance tests, Method 24 tests, and design analyses, as well as the methods that will be used for determining continuing compliance as outlined in the General Provisions, 40 CFR 63.9.[15] Another type of information to be included in the notification of compliance status is the specific range of each monitored parameter for each affected source, the rationale for why this range indicates compliance with the emission standard, and whether each source has operated within its designated operating parameters. The report would be due within 150 days after the final compliance date as specified in the General Provisions.

Although not specified in the proposed rule, a description of information specific to the aerospace industry that should be contained in the initial compliance notification for each of the affected sources was presented earlier in this preamble (see Section II.B.2, Reporting Requirements). The information presented in that section is not necessarily exhaustive.

c. *Periodic Reports.* The EPA is proposing to adopt a standard basis for submitting periodic reports for each of the operations for which standards are being proposed. Semiannual reports would be required whenever an operation was found to be in non-compliance or whenever a monitored parameter exceeded its value. For example, for a primer application operation where averaging is used, a semiannual report would be triggered for any daily period covered by the semiannual report in which the daily primer volume-weighted average organic HAP content limit was exceeded.

Semiannual reports would also be required whenever a change occurred at a facility that might affect a source's compliance status or that introduces a new element to the operation that was required to be reported in the notification of compliance status. For example, reformulation of a chemical milling maskant may change the organic HAP content of the maskant. If the HAP content increases, then the owner or operator may have to average different or additional chemical milling maskants together, or add a control device in order to maintain compliance. This change in compliance status would trigger a semiannual report.

For operations that did not experience any exceedances or changes, the EPA is proposing that annual reports be submitted to this effect. In addition, annual reports are required where compliance is determined on an annual basis and exceedances of these annual limits occur.

The EPA is proposing to adopt the above schedule of reporting because it provides a fair balance between the need to know certain information in a timely fashion and reduces the burden to industry and provides consistency within this regulation. The following paragraphs discuss in more detail the specific types of information to be included in these various periodic reports. The information being requested is that which the EPA believes is necessary in the enforcement of the proposed rule.

(1) *Cleaning Operation.* Periods of non-compliance would be transmitted to the EPA in a semiannual report. An example of non-compliance for hand-wipe cleaning is the use of a cleaning solvent with a vapor pressure greater than 45 mm Hg (24.1 in. H_2O at 68 °F)

[12] Ibid.
[13] Ibid.
[14] Ibid.
[15] Ibid.

and does not conform to the approved composition list in a nonexempt cleaning operation. In addition, any instance where a leaking enclosed spray gun cleaner is not repaired within 15 days would be considered an instance of non-compliance that would trigger a semiannual report.

The EPA is also proposing a semiannual reporting requirement if changes, such as the use of new cleaning solvents, previously reported cleaning solvents no longer in use, or new cleaning techniques for spray guns, are made to the cleaning operations at the facility. Where a new or reformulated cleaning solvent is used, the semiannual report would include documentation of its vapor pressure or documentation that it conforms to the approved composition list.

If the cleaning operation has been in compliance for the annual period, then an annual report would be required occurring every 12 months from the date of the initial report stating that the cleaning operation has been in compliance with the applicable standards.

(2) *Primer, topcoat, and chemical milling maskant application operations.* A semiannual report would be required whenever an exceedance of organic HAP or VOC content levels occurred, as well as any time a primer or topcoat application operation was not immediately shut down when the pressure drop across the filters or waterwash was out of range. Where control devices are used to comply with the organic HAP or VOC content levels, the EPA is also proposing to require semiannual reporting whenever a monitored parameter falls outside its appropriate range. Such situations indicate noncompliance with the proposed standards.

If no exceedances occur, each owner and operator would submit annual statements indicating that each affected facility has been in compliance. The annual reports for primer and topcoat operations would also identify the number of times, if any, the pressure drop limits for each filter or waterwash system were exceeded.

(3) *Depainting Operations.* If new non-chemical depainting techniques are introduced to the facility since the filing of the notification of compliance status or any subsequent semiannual report, the EPA is proposing semiannual reports to identify these techniques. The semiannual report would be required to identify any period of malfunction of non-chemical depainting methods and techniques and any period where the non-chemical depainting operation was not immediately shut down when the pressure drop across the filters was out of range.

For periods of malfunction of non-chemical depainting methods, semiannual reports would be required that identify the method or technique that malfunctioned, the date that the malfunction occurred and was corrected, a description of the malfunction, the alternative method(s) used for depainting during the period of malfunction, and the date(s) that the methods were begun and discontinued. This information is necessary so that adequate documentation is available to ascertain whether malfunctions were repaired within the 15 day limit.

In addition, the facility would be required to report on a semiannual basis any new chemical strippers or changes to existing formulations and the organic HAP content of each. A semiannual report would also be required for each 24-hour period where organic HAP were emitted from the depainting operation, other than from spot, radome, or parts stripping or decal removal.

Finally, the semiannual report would be required to identify all changes in the type of aircraft depainted at the facility and to identify the parts normally removed for depainting separate from the aircraft for each new type of aircraft depainted. This is important because of the exemption being proposed for radomes and parts that are normally removed prior to depainting the aircraft.

If the depainting operation has been in compliance for the annual period, then an annual report would be required stating that the depainting operation has been in compliance with the applicable standards. An annual report would also be required whenever the calculated annual average volume of organic HAP-containing strippers used per aircraft for spot stripping and decal removal exceeded the applicable limits. The annual report would also report the number of times the pressure drop across the particulate filters used for the control of inorganic HAP emissions from non-chemical depainting operations exceeded the limits specified by the manufacturer.

(4) *Handling and storage of waste.* As discussed earlier, since an exemption exists for RCRA-regulated wastes, it is important to know which wastes are subject to RCRA and which are not. Since facilities undergo change over time, it is possible that these designations may change. Further, new waste streams may be created. Therefore, semiannual reports are being proposed to track changes in the RCRA status of existing wastes and new wastes. An annual report would be required if no changes occurred in the RCRA status to the existing waste streams and if no new waste streams were generated.

d. *Other Reports.* The only "other reports" in the proposed rule are those that are required under the General Provisions, subpart A of 40 CFR part 63.[16] Of particular note is the report required in response to periods of startup, shutdown, and malfunction. When the procedures used during such periods are completely consistent with the plan, a report stating such is to be delivered or postmarked by the thirtieth (30th) day following the end of each calendar half. If the procedures are not completely consistent with the plan, an owner or operator is to report the actions taken within 2 working days after commencing actions inconsistent with the plan, followed by a letter within 7 working days after the end of the event. The EPA is proposing that for non-chemical depainting malfunctions only, that the owner or operator report any plan inconsistency for dealing with the malfunction within 24 hours after the inconsistent depainting technique is actually utilized. This is different from "after the end of the event" because owners or operators may be able to adjust their depainting schedule to accommodate the time to repair a malfunction without the need to implement their malfunction plan.

I. Selection of Compliance Deadlines

The EPA proposes to allow affected sources the following time periods after promulgation for compliance, as provided for in section 112(i) of the Act. All sources, whether uncontrolled or having in place control systems or measures requiring upgrading to meet the new rule, would be required to reach full compliance within 3 years after promulgation of the rule. In addition, all affected sources must comply with the compliance dates specified in § 63.6 (b) and (c) of the General Provisions, 40 CFR part 63, subpart A.[17]

The EPA considered requiring earlier compliance to some parts of the proposed standards. However, comments received from state agencies indicated that there would be far less burden enforcing the standards if there was a single compliance date. Multiple compliance dates would make it difficult for agencies in states with numerous sources to keep track of which standards applied to each facility and when compliance would have to begin.

[16] Ibid.
[17] Ibid

The EPA recognizes the need for the full three-year period for facilities to come into compliance due to the nature of testing and qualification necessary for sources such as hand-wipe cleaning solvents, primers, topcoats, and chemical milling maskants. For all these reasons, the EPA is proposing that all sources be allowed up to three years after the date of promulgation of the rule to achieve compliance.

The EPA is requesting comments, however, concerning alternative compliance dates for certain pollution prevention and housekeeping measures. Specifically, the EPA is considering a compliance date of 90 days after the effective date of the proposed standards for the cleaning operation housekeeping measures in § 63.744(a) of the proposed rule, the use of enclosed containers for flush cleaning solvents in § 63.744(d), and the provisions for handling and storage of waste in § 63.748. The EPA is also considering a compliance date of 180 days after the effective date of the proposed standards for the spray gun cleaning provisions in § 63.744(c).

J. Operating Permit Program

Under 40 CFR part 70, all major sources of HAP will be required to obtain an operating permit. Emission limits, monitoring, and reporting and recordkeeping requirements are typically scattered among numerous provisions of State implementation plans (SIP's) or Federal regulations. As discussed in the rule for the operating permit program, this new permit program would include in a single document all of the requirements that pertain to a single source. Once a state's permit program has been approved, each aerospace facility that is a major source within that state must apply for and obtain an operating permit. If the state wherein the aerospace facility is located does not have an approved permitting program, the owner or operator of an aerospace facility must submit a part 71 permit application if requested under 40 CFR part 71.

K. Solicitation of Comments

The Administrator welcomes comments from interested persons on any aspect of the proposed standards, and on any statement in the preamble or the referenced supporting documents

The proposed standards were developed on the basis of information available. The Administrator is specifically requesting factual information that may support either the approach taken in the proposed standards or an alternate approach. To receive proper consideration, documentation or data should be provided.

VI. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the Act. Persons wishing to make an oral presentation on the proposed standards for aerospace manufacturing and rework should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air and Radiation Docket and Information Center address given in the **ADDRESSES** section of this preamble, and should refer to Docket No. A–92–20.

A verbatim transcript of the hearing and any written statements will be available for public inspection and copying during normal working hours at the EPA's Air and Radiation Docket and Information Center in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the Act).

C. Executive Order 12866

Under Executive Order 12866 (58 FR 61736 (October 4, 1993)), the EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribunal governments or communities,

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency,

(3) Materially affect the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has made the determination that this action is not a "significant regulatory action" within the meaning of the Executive Order. For this reason, this action was not submitted to OMB for review.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1687.01) and a copy may be obtained from Ms. Sandy Farmer, Information Policy Branch, EPA, 401 M St., SW, (2136), Washington, DC 20460 or by calling (202) 260–2740.

The public reporting burden for this collection of information is estimated to average 366 hours per respondent for the first year after the date of promulgation of the rule, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for the EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the EPA to consider potential impacts of proposed regulations on small "entities." Since the proposed rule applies only to major sources as defined in section 112(a) of the Act, the EPA certifies that there would not be a significant impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis is not required.

F. Clean Air Act Section 117

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator welcomes comment on all aspects of the proposed regulation, including health, economic, technological, or other aspects.

G. Regulatory Review

In accordance with sections 112(d)(6) and 112(f)(2) of the Act, this regulation will be reviewed within 8 years from the date of promulgation. This review may include an assessment of such factors as evaluation of the residual health risk, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Air pollution control, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

VII. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended; 42 U.S.C., 7401, 7412, 7414, 7416, and 7601.

Dated: May 25, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–13561 Filed 6–3–94; 8:45 am]

BILLING CODE 6560–01–P

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40 CFR Part 372

[OPPTS–400085; FRL–4765–8]

Copper Monochlorophthalocyanine Pigment; Toxic Chemical Release Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant a petition to delete Color Index (C.I.) Pigment Blue 15:1 from the "copper compounds" category of the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). C.I. Pigment Blue 15:1 is a mixture of C.I. Pigment Blue 15 (copper phthalocyanine) and copper monochlorophthalocyanine. C.I. Pigment Blue 15 has already been deleted from the chemical category "copper compounds"; therefore, the Agency is treating this petition as a request to remove copper monochlorophthalocyanine from the chemical category "copper compounds." This proposed rule is based on EPA's belief that the copper ion from copper monochlorophthalocyanine will not become available. In addition, EPA requests comment on the alternative of exempting all copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine or chlorine from the reporting requirements under the "copper compounds" category in EPCRA section 313.

DATES: Written comments on this proposed rule should be received by EPA on or before August 5, 1994.

ADDRESSES: Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE–B607, 401 M St., SW., Washington, DC 20460. Comments should include the document control number for this proposal, OPPTS–400085.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, 202–260–9592, for specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This proposed rule is issued under section 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). When enacted, section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added and deleted chemicals from the original statutory list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition has been denied.

II. Description of Petition

On March 5, 1993, the Agency received a petition from the Color Pigments Manufacturers Association (CPMA) to delete Color Index (C.I.) Pigment Blue 15:1 from the chemical category "copper compounds" subject to EPCRA reporting requirements. C.I. Pigment Blue 15:1 is a mixture of C.I. Pigment Blue 15 (copper phthalocyanine) and copper monochlorophthalocyanine. C.I. Pigment Blue 15 has already been deleted from the chemical category "copper compounds" (56 FR 23650); therefore, the Agency is treating this petition as a request to remove copper monochlorophthalocyanine from the chemical category "copper compounds."

The copper monochlorophthalocyanine pigment, which is the subject of this petition, exists as two isomers. One isomer is substituted with a single chlorine atom at the 1-position. The second isomer is substituted with a single chlorine atom at the 2-position. The copper monochlorophthalocyanine pigment is described by three CAS numbers. CAS number 15975–60–7 describes the copper 1-chlorophthalocyanine pigment. CAS number 147–13–7 describes the copper 2-chlorophthalocyanine pigment. CAS number 12239–87–1 describes the copper monochlorophthalocyanine pigment with the position of a single

chlorine atom unspecified. EPA is proposing to delete both isomers and hence all three CAS numbers from the copper compounds category.

In the statement of policy and guidance on the metal compound categories of section 313 of EPCRA (56 FR 23703, May 23, 1991), EPA articulated the view that the toxicity of a metal-containing compound that dissociates or reacts to generate the metal ion can be expressed as a function of the toxicity induced by the intact species and the availability of the metal ion. Therefore, the degree of dissociation, bioaccumulation, and the level at which toxicity is induced by the metal ion will be considered in making any delisting decision under EPCRA section 313. Thus, for petitions to exempt individual metal-containing compounds from the reporting requirements under EPCRA section 313, EPA has decided to base its decisions on the evaluation of all chemical and biological processes that may lead to metal ion availability as well as on the toxicity of the intact species. These decisions will continue to be based on information provided by the petitioner, Agency documents, and available literature. EPCRA section 313(d)(3) requires EPA to determine that none of the criteria in EPCRA section 313(d)(2) are met before a chemical may be deleted from the EPCRA section 313 list. Under the policy for metal compound categories, this means that the effects induced by both a metal ion and the intact species described by the metal compound category must be considered in light of the EPCRA section 313(d)(2) criteria. The effects induced by each metal ion described by the metal compound categories meet the criteria under EPCRA section 313(d)(2). To delete a metal compound from the EPCRA section 313 list, EPA must conclude that the metal ion will not become available at a level that can be expected to induce toxicity of a type described in EPCRA section 313(d)(2), and that the intact species does not meet the criteria of EPCRA section 313(d)(2). Accordingly, EPA will generally deny petitions to delete chemicals if: (1) The intact species meets the EPCRA section 313(d)(2) criteria, (2) the chemical will dissociate or react to generate the metal ion at levels which can reasonably be anticipated to cause adverse effects as described in EPCRA section 313(d)(2), or (3) EPA does not possess and the petitioners failed to provide information to properly characterize the metal ion availability.

III. Technical Review

The Agency has previously addressed the transformation processes that may generate copper ion from copper phthalocyanine compounds in its review of a petition to delete three copper phthalocyanine pigments (Pigment Blue 15, copper phthalocyanine; Pigment Green 7, copper poly(14)chlorophthalocyanine; and Pigment Green 36, copper hexabromodecachlorophthalocyanine) from EPCRA section 313 reporting requirements. These three copper phthalocyanine pigments were deleted from EPCRA section 313 on May 23, 1991 (56 FR 23650), because copper ion could not reasonably be expected to become available from these pigments and because there was no indication from the available data that the intact pigments could reasonably be anticipated to cause acute, chronic, or environmental toxicity. No data on the specific copper monochlorophthalocyanine compounds which are the subject of this petition were found. However, in its analysis of the three previously deleted compounds, the Agency used data on both brominated/chlorinated copper phthalocyanine and copper phthalocyanine. This information was selected because Pigment Blue 15, Pigment Green 7, and Pigment Green 36 ranged in degree of bromination/chlorination from zero (Pigment Blue 15) to 100 percent (Pigment Green 36). The transformation potential of many organic compounds is dependent, in part, on the number of bromine or chlorine atoms present in the molecule. Although there are exceptions, generally, the more highly brominated or chlorinated an organic compound is, the less likely it is to undergo biotic or abiotic transformations. Once the transformation potential for copper phthalocyanine pigments at the extremes of the range of possible bromination/chlorination had been assessed, the transformation potential for those copper phthalocyanine pigments with bromination/chlorination greater than zero and less than 100 percent, including copper monochlorophthalocyanine, could be inferred. The transformation processes reviewed included, hydrolysis, photolysis, abiotic and biotic aerobic degradation, abiotic and biotic anaerobic degradation, bioavailability of the ion when the compounds are ingested or inhaled, and bioaccumulation. The following discussion summarizes the information reviewed.

1. *Copper ion* (Refs. 2 and 7). Copper is recognized as an essential element. It is essential to a number of normal physiological processes including erythropoiesis, connective tissue metabolism, bone development, and nervous system function. The National Academy of Sciences' recommended daily allowance (RDA) for adults is 2.0 to 3.0 milligrams (mg) copper/day. Copper is also used as a hematinic (to stimulate red blood cell production) in adults at a dose of 3.8 to 7.6 mg/day.

a. *Human health effects.* Copper poisoning has been demonstrated in animals and identified in humans. The liver is the main storage depot for copper, and hepatic damage is associated with the accumulation of high levels of copper. Hepatic toxicity is characterized by hepatocellular necrosis, regenerative activity, and cirrhosis. Kidney necrosis and elevated levels of serum copper occur only after the liver begins to accumulate high levels of copper. These elevated serum copper levels can progress to sudden hemolytic anemia and jaundice.

The types of neurological effects associated with copper poisoning can include demyelination and cerebral degeneration. These effects are thought to be related to defects in catecholamine metabolism. Alterations in brain neurotransmitter systems have been observed in rats following intraperitoneal injections of 2 milligrams/kilogram/day (mg/kg/day) for 21 days. There are two groups that are at a particularly increased risk from copper exposure. These include individuals with Wilson's disease, which is an inborn error in copper metabolism. The metabolic error in Wilson's disease allows copper to accumulate in the liver, brain, kidney, and cornea, causing hemolytic anemia, neurological abnormalities, and corneal opacity. In addition, individuals with glucose-6-phosphate dehydrogenase deficiencies may also be at greater risk of experiencing toxic effects from copper exposure.

Copper is classified in EPA's Group D (insufficient data) for carcinogenic potential. Copper is generally negative in mutagenicity bioassays. Oral bioassays using copper were negative; subcutaneous injection of copper compounds has been reported to induce tumor formation in one sex and strain of mice.

The maximum contaminant level (MCL) established for copper under the Safe Drinking Water Act is 1.3 milligrams/liter (mg/L) (3.6 mg/day).

b. *Ecological effects.* Copper is very toxic to aquatic life. It is sometimes used as a biocide to control undesirable

aquatic plants. EPA has issued Water Quality Criteria for copper to protect aquatic life. The acute criterion in fresh water at a hardness of 50 mg/L is 9.2 micrograms/liter (ug/L). The chronic criterion in fresh water is 6.5 ug/L at a hardness of 50 mg/L. In salt water at a hardness of 50 mg/L, the acute criterion is 2.9 ug/L. At a hardness of 100 mg/L, the freshwater acute criterion is 18 ug/L, the freshwater chronic criterion is 12 ug/L, and the salt water acute criterion is 2.9 ug/L.

2. *Availability of copper ion.* The copper monochlorophthalocyanine pigments are expected to be extremely stable to chemically and biologically induced transformations.

a. *Thermal stability.* Based on their structural analogy to other copper phthalocyanine pigments, copper monochlorophthalocyanine pigments are expected to be extremely stable thermally. Copper phthalocyanine pigments only begin to show signs of decomposition at temperatures above 500 °C (Ref. 6).

b. *Hydrolysis.* Copper phthalocyanine pigments have very low solubilities in water and are not expected to dissociate or hydrolyze in water under environmental conditions. Hydrolysis of copper phthalocyanine pigments does not occur in basic and nonoxidizing acidic media (Ref. 3). By structural analogy to copper phthalocyanine pigments for which data are available, hydrolysis of the copper monochlorophthalocyanine pigments is not expected to be a significant environmental transformation process.

c. *Photolysis.* Based on studies carried out to determine the light fastness of structurally similar copper phthalocyanine pigments, it appears that photolysis of copper monochlorophthalocyanine pigments with resultant release of copper ion will not occur (Ref. 4).

d. *Abiotic oxidation.* Data indicate that under ambient environmental conditions, abiotic oxidation of copper phthalocyanine pigments does not occur. More rigorous conditions are required to effect the oxidation of copper phthalocyanine pigments and subsequent release of copper ion. These pigments can be chemically oxidized to yield phthalimides and copper nitrate by boiling in dilute nitric acid (Ref. 3). Oxidation of the pigments can also occur by treatment with ceric sulfate in dilute sulfuric acid at 25 °C, or by reaction with potassium permanganate (Ref. 1). Because rigorous conditions are required to oxidize copper phthalocyanine pigments, abiotic oxidation of copper monochlorophthalocyanine pigments under ambient environmental conditions is not likely to occur.

e. *Microbial transformations.* No data on the anaerobic or aerobic biodegradability of the copper monochlorophthalocyanine pigments were found. However, based on their extremely low solubility in water, their large cross-sectional diameter, and, with the exception of the chlorine, the lack of substituent groups associated with facile primary degradation, copper monochlorophthalocyanine pigments are expected to be very resistant to degradation processes (Ref. 5).

f. *Bioavailability.* On the basis of molecular weight, extremely low solubility in water, and data from subchronic toxicity tests on other copper phthalocyanine pigments (Ref. 7), copper monochlorophthalocyanine is not expected to be appreciably absorbed by any route of exposure or metabolized to yield copper ion.

g. *Bioaccumulation.* Because copper ion does not appear to be available from the copper phthalocyanine pigments, bioaccumulation of copper ion is not a concern for copper monochlorophthalocyanine pigments.

h. *Summary.* By virtue of their structural analogy to other copper phthalocyanine pigments, EPA believes that the availability of copper ion from the copper monochlorophthalocyanine pigments by hydrolysis, photolysis, and aerobic and anaerobic transformations is negligible. Copper ion is not expected to be bioavailable from the copper monochlorophthalocyanine pigments. The copper monochlorophthalocyanine pigments are not expected to be appreciably absorbed by any route of exposure or metabolized to yield the copper ion.

3. *Manufacturing, use, and release.* Phthalocyanine blue pigments, such as copper monochlorophthalocyanine, are generally manufactured using one of two methods. Copper monochlorophthalocyanine is manufactured by a phthalonitrile baking process or a solvent process. The phthalonitrile baking process yields a range of 70 to 85 percent of product. The solvent process is more popular and yields a purer form with a yield of 85 to 95 percent of product. Following the synthesis the crude product is isolated. Finishing of the crude pigment can involve any of a number of processes such as dissolution in acid followed by controlled precipitation, intensive milling with urea and sulfuric acid, milling with sodium chloride, or milling with sodium chloride and solvent.

Copper monochlorophthlocyanine is often used in combination with other colorants. The primary uses of copper monochlorophthalocyanine mixtures are as colorants for coatings, paints, printing inks, and plastics.

The EPCRA section 313 reported releases of copper from three facilities which were identified as manufacturers of copper monochlorophthalocyanine were 2,354 pounds in 1990 and 491 pounds for 1991. Facilities that process or use copper monochlorophthalocyanine pigment could not be identified and therefore releases from these facilities could not be estimated.

IV. Explanation for Proposed Action To Delete Copper Monochlorophthalocyanine

EPA is granting the petition and proposing to delete copper monochlorophthalocyanine from the copper compounds category of the EPCRA section 313 list of toxic chemicals. As stated in Unit II. of this preamble, petitions for delisting a member of a metal compound category will be denied unless EPA can conclude that the intact species does not meet the criteria of section 313(d)(2) and the metal ion will not be available at a level that can reasonably be anticipated to induce toxicity. This decision to propose to delist copper monochlorophthalocyanine is based on EPA's belief that: (1) The intact species does not meet the EPCRA section 313(d) criteria and (2) the copper ion from copper monochlorophthalocyanine will not become available.

After reviewing the petition and available information, EPA has concluded that copper monochlorophthalocyanine is not known to cause or cannot reasonably be anticipated to cause acute or chronic toxicity in humans or adverse effects in the environment, and thus does not meet the criteria of EPCRA section 313(d)(2).

V. Request for Public Comment

EPA requests public comment on this proposed rule to delete copper monochlorophthalocyanine from the category "copper compounds" on the EPCRA section 313 list of toxic chemicals. In addition, EPA requests comment on the alternative of exempting all copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine or chlorine from the reporting requirements under the "copper compounds" category on the EPCRA section 313 list. As stated in Unit III. of this preamble, EPA has previously reviewed brominated/chlorinated copper phthalocyanine compounds as well as the parent compound, copper

phthalocyanine, and believes that its conclusions regarding the availability of soluble copper from these compounds apply to all copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine or chlorine. Comments should be submitted to the address listed under the ADDRESSES unit. All comments must be received by EPA on or before August 5, 1994.

VI. Rulemaking Record

The record supporting this proposed rule is contained in docket number OPPTS–400085. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from noon to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

VII. References

(1) Dent, C.E., Linstead, R.P., and Lowe, A.R., Journal of the Chemical Society 1033–1039 (1934).

(2) IRIS. 1992. Integrated Risk Information System. U.S. Environmental Protection Agency, Washington, DC.

(3) Lever, A.B.P. "The Phthalocyanines." In: Handbook of Pigments J. Wiley and Sons, New York, NY (1975):27-114.

(4) USEPA, OPTS, EED. Memorandum from D. Lynch to J. Rovinski, ETD entitled "Exposure Report for Copper Phthalocyanine Petition," dated October 7, 1988.

(5) USEPA, OPTS, EED. Memorandum from D. Lynch to M. Doa, ETD entitled "Anaerobic Biodegradation of Copper Phthalocyanine Pigments," dated October 5, 1990.

(6) USEPA, OPTS, ETD. Memorandum from R. Raksphal to K. Moss, ETD entitled "Section 313(e) Petition on Three Phthalocyanine Pigments," dated June 28, 1988.

(7) USEPA, OPTS, HERD. Memorandum and attachments from L. Randecker to R. Kent, HERD entitled "Petition to Delist Three Copper Phthalocyanine Pigments," dated October 3, 1988.

(8) USEPA, OPPT, EETD. Darling, D., "Chemistry Report for the Proposed Deletion of Monochlorophthalocyanine Blue (C.I. Pigment 15:2) from the EPCRA Section 313 List of Toxic Chemicals," dated February 9, 1994.

(9) USEPA, OPPT, EETD. "Economic Analysis of the Proposed Deletion of Monochlorophthalocyanine Blue from the EPCRA Section 313 List of Toxic Chemicals," dated January 19, 1994.

(10) USEPA, OPPT, EETD. Memorandum from J. Jon to D. Lynch, EETD entitled "Engineering Report for Monochlorophtalocyanine Blue," dated February 2, 1994.

VIII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Section 3(f) of the Order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not "significant" and therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by the proposed rule. Because the proposed rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

C. Paperwork Reduction Act

This proposed rule does not have any information collection requirements subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: May 23, 1994.

Lynn R. Goldman,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.65 [Amended]

2. In § 372.65(c) by adding the following language to the copper compounds listing "(except copper monochlorophthalocyanine known by the following CAS numbers 15975–60–7, 147–13–7, and 12239–87–1)."

[FR Doc. 94–13677 Filed 6–3–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50612B; FRL–4750–4]

RIN 2070–AB27

Aromatic Amino Ether; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described generically as an aromatic amino ether which is the subject of premanufacture notice (PMN) P–90–1840 and which is subject to a TSCA section 5(e) consent order issued by EPA. This proposal would require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: Written comments must be received by EPA by July 6, 1994.

ADDRESSES: Each comment must bear the docket control number OPPTS–50612B. All comments should be sent in triplicate to: TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–201, 401 M St., SW., Washington, DC 20460. All comments which are claimed confidential must be clearly marked as

such. Three additional sanitized copies of any comments containing confidential business information (CBI) must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of P–90–1840 for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354), and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Background

EPA published a direct final SNUR for the chemical substance, which was the subject of PMN P–90–1840 and a TSCA section 5(e) consent order issued by EPA, in the **Federal Register** of October 4, 1993 (58 FR 51672). EPA received adverse comments following publication for this chemical substance. Therefore, as required by § 721.160, the final SNUR for P–90–1840 is being withdrawn elsewhere in this issue of the **Federal Register** and this proposed rule on the substance is being issued.

EPA is not soliciting and will not respond to comments on any of the other SNURs that were published in the October 4, 1993, **Federal Register** because those rules became final effective rules on December 3, 1993, or are being withdrawn and proposed in a separate action. The supporting rationale and background to this proposal are more fully set out in the preamble to the direct final SNUR for this substance and in the preamble to EPA's first direct final SNURs published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the proposal and on the basis for significant new use designations including provisions for developing test data.

IV. Substance Subject to This Rule

EPA is proposing significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721.

PMN Number P–90–1840

Chemical name: (generic) Aromatic amino ether.
CAS number: Not available.
Effective date of section 5(e) consent order: November 5, 1992.
Basis for section 5(e) consent order: The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concern: The PMN substance and similar chemicals have been shown to cause mutagenicity, carcinogenicity, neurotoxicity (retinopathy), hepatotoxicity, reproductive effects, and aquatic toxicity at concentrations as low as 1 ppb (part per billion) in test animals.
Recommended testing: A 90–day subchronic rodent study (oral or inhalation route) with special attention given to hepatotoxicity, histopathological exam of the male and female reproductive organs, and retinopathy is needed to help characterize the neurotoxic, hepatotoxic, and reproductive effects of the PMN substance. The 90–day study must also include for each treatment group a satellite group of exposed animals to be retained for an additional 90–day recovery period to evaluate the possible reversibility of retinopathy. Light and electron microscopy should be utilized to examine the ocular tissue (40 CFR 798.2650, modified). A 2–year two-species bioassay (40 CFR 798.3300) is also necessary to characterize the carcinogenic potential of the PMN substance. The consent order contains two production volume limits. The PMN submitter has agreed not to exceed the first production limit without performing the 90–day subchronic study. The PMN submitter has also agreed not to exceed the second, higher production volume limit without performing the 2–year, two-species bioassay. In addition, an early life stage toxicity study (40 CFR 797.1600), a *Daphnia* chronic toxicity study (40 CFR 797.1330), an algal acute toxicity study (40 CFR 797.1050), and a coupled units test (40 CFR 796.3300) would characterize the potential aquatic toxicity effects.
CFR citation: 40 CFR 721.3390.

V. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. Because this SNUR was first published on October 4, 1993, as a direct final rule, that date will serve as the date after which uses will be considered to be new uses. If uses which had commenced

between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses regulated through this SNUR after October 4, 1993, will have to cease any such activity before the effective date of the rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VI. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance at the time of the direct final rule. The analysis is unchanged for the substance in this proposed rule. The Agency's complete economic analysis is available in the public record for this proposed rule (OPPTS–50612B).

VII. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

VIII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50612B). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation.

A public version of the record, without any CBI, is available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, from 12 noon to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. E–G102, 401 M St., SW., Washington, DC 20460.

IX. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's prioritities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this proposed rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this proposed rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by the rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2131), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposed rule.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 24, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.1640 to subpart E to read as follows:

§ 721.1640 Aromatic amino ether.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aromatic amino ether (PMN P–90–1840) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply once the substance has been incorporated into a final product with residual monomer 50 ppm (parts per million) by weight.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i), (a)(6)(i), (b)(concentration set at 0.1 percent), and (c). The demonstration of an impervious barrier for gloves required under paragraph (a)(3) of this section will require testing of the gloves as follows. There must be no permeation of the PMN substance greater than 2 ppm after 8 h of testing in accordance with the American Society for Testing and Materials (ASTM) F739 "Standard Test Method for Resistance of Protective Clothing Materials to Permeation By Liquids and Gases" and ASTM F1194 "Guide for Documenting the Results of Chemical Permeation Testing of Protective Clothing Materials." The employer must submit all test data to the Agency and must receive the Agency's written approval of the test results for each type of glove tested prior to use of such gloves. Gloves may not be used for a time period longer than they are actually tested and must be replaced at the end of the work shift. As an alternative to the respiratory requirements in this section, manufacturers, importers, and processors may use the new chemical exposure limits provisions, including sampling and analytical methods which have previously been approved by EPA for this substance, found in the 5(e) consent order for this substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4), and (g)(5). The following additional statements shall appear on each label and MSDS as required by this paragraph: This substance may cause liver damage. This substance may cause retinopathy.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 1 ppb). When calculating the surface water concentrations according to the instructions in § 721.91(a)(4), the statement that the amount of the substance that will be released will be calculated before the substance enters control technology does not apply. Instead, if the waste stream containing the PMN substance will be treated before release, the amount of the PMN substance reasonably likely to be removed from the waste stream by treatment may be subtracted in calculating the number of kilograms released. No more than 45 percent removal efficiency may be attributed to such treatment.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified under § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) Determining whether a specific use is subject to this section. The provisions of § 721.1725(b)(1) apply to this section.

[FR Doc. 94–13681 Filed 6–3–94; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50575E; FRL–4745–8]

Substituted Ethylenediamine, Methyl Sulfate Quaternized; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for substituted ethylenediamine, methyl sulfate quaternized, based on receipt of new data. The data indicate that for purposes of TSCA section 5, the substance will not present an unreasonable risk to the environment.

DATES: Written comments must be received by EPA by July 6, 1994.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50575. Unit III. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 24, 1990 (55 FR 17376), EPA issued a SNUR establishing significant new uses for substituted ethylenediamine, methyl sulfate quaternized. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Proposed Revocation

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substance is contained in the rulemaking record referenced below in Unit IV. of this preamble.

PMN Number P–89–650

Chemical name: (generic) Substituted ethylenediamine, methyl sulfate quaternized.

CAS number: Not available.

Effective date of revocation of section 5(e) consent order: July 28, 1993.

Basis for revocation of section 5(e) consent order: The order was revoked based on test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA has sufficient information to

determine, for purposes of TSCA section 5, that the manufacture, processing, distribution in commerce, use, or disposal of the PMN substance will not present an unreasonable risk to the environment. Accordingly, EPA has determined that further regulation under section 5(e) is not warranted at this time.

Toxicity testing results: Algal toxicity study: 96–h EC50 = 320.0 mg/L
Daphnid acute toxicity study: 48–h NEC = 390.0 mg/L
Fish acute toxicity study: 96–h NOEC = 1,000.0 mg/L
CFR citation: 40 CFR 721.3580.

II. Objectives and Rationale for Proposed Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the environmental effects of the substance, and that the substance is expected to be produced in substantial quantities and there may be significant or substantial environmental exposure. EPA identified the tests necessary to make a reasoned evaluation of the risks posed by the substance to the environment. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter pursuant to the consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the environmental effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and consequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS–50575 (P–89–650). This record includes information considered by the Agency in developing the rule and includes the test data that formed the basis for this proposal.

V. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of the rule. Any costs or burdens associated with the rule will be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 25, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.3580 [Removed]

2. By removing § 721.3580.

[FR Doc. 94–13682 Filed 6–3–94; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 40 and 154

[CGD 82–058]

Safety Standards for Self-Propelled Vessels Carrying Bulk Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations concerning safety standards for self-propelled vessels carrying bulk liquefied gases. These amendments are necessary because the International Maritime Organization (IMO) Code on which many of these regulations are based has been amended. This proposal would make the changes necessary to align these regulations with the IMO Code and to clarify certain provisions in the existing regulations.

DATES: Comments must be received on or before August 5, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council, (G–LRA/3406) (CGD 82–058), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters between 8 a.m., Monday through Friday, except Federal holidays.

A copy of the material listed in "Incorporation by Reference" of this preamble is available for inspection at room 1218, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas J. Felleisen, Hazardous Materials Branch, Office of Marine Safety, Security and Environmental Protection, (202) 267–1217.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested persons to participate in this

rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 82–058) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that two copies of all comments and attachments be submitted in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plan no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coat Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Dafting Information

The principal persons involved in drafting this document are Mr. Thomas J. Felleisen, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Background and Purpose

On November 12, 1975, the Inter-Governmental Maritime Consultative Organization (now the International Maritime Organization or IMO) adopted the "Code for Construction and Equipment of Ships Carring Liquefied Gases in Bulk" (Gas Carrier Code), Resolution, A.328 (IX) without amendments. Coast Guard regulations based on this code were put into effect May 3, 1979 (44 25986). Since 1975, the Gas Carrier Code has been amended four times: April 19, 1978 (see Maritime Safety Committee (MSC) XXXVIII/22), May 8, 1979 (see MSC XL/26), May 20, 1980 (see MSC/Cir. 284), and June 14, 1983 (see MSC/Cir. 356).

IMO's amendments to the Gas Carrier Code include corrections and clarifications, incorporation of standards for new or novel containment systems, improvement of the carriage requirements for several of the more hazardous cargoes, expansion of the list of chemicals to which the code applies, and revisions to align the Gas Carrier Code with the "International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk" (IBC) and the "International Code for the Construction and Equipment of Ships Carrying Liquefield Gases in Bulk" (IGC).

These amendments were developed by the IMO Subcommittee on Bulk Chemicals, the body responsible for maintenance of the Code. The Coast Guard actively participated in the development of these changes to the Gas Carrier Code by submitting position papers when the amendments were proposed. This rulemaking would revise the Coast Guard regulations in 46 CFR part 154 to reflect these amendments.

One of the most notable revisions would be the inclusion of standards for internal insulation tanks in new §§ 154.454 through 154.458, as well as in several existing sections. These standards would be included in order to bring the U.S. regulations for liquefied gas vessels in line with the Gas Carrier Code.

Part 154 would be revised to include carriage requirements for seven cargoes previously regulated only under 46 CFR part 153. The cargoes are diethly ether, a mixture of ethylene oxide and propylene oxide containing not more than 30% ethylene oxide, isoprene, isopropylamine, monoethyamine, propylene oxide, vinyl ethyl ether, and vinylidene chloride. These cargoes are being added in order to bring the U.S. regulations for liquefied gas vessels in line with the Gas Carrier Code.

Several sections of part 154 would be revised to clarify misinterpreted provisions. These are in §§ 154.630, 154.901, 154.1831, 154.1832, and 154.1834. See "Section-by-Section Discussion of Proposed Changes" for the details of each clarification.

Section-by-Section Discussion of Proposed Changes

The following is a section by section explanation of the proposed changes.

1. 46 CFR part 40 would be removed. See the discussion in this section of the preamble on § 154.1745.

2. Existing § 154.1, Incorporation by reference, would be moved to new § 154.8 and revised to conform to current formatting practices.

3. The following sections would be revised to include requirements from the amended Gas Carrier Code applicable to internal insulation tanks: §§ 154.7, 154.235, 154.350, 154.454 through 154.459, 154.468, 154.615, and 154.902.

4. The following sections would be revised to update references to other sections of this chapter and to incorporated material and to correct spelling errors: §§ 154.12, 154.15, 154.151, 154.174, 154.176, 154.188, 154.195, 154.420, 154.439, 154.440, 154.448, 154.471, 154,1005, 154.1020, 154.1115, 154.1135, 154.1735, 154.1800, 154.1803, and 154.1820.

5. Section 154.19 would be revised to refer to the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk and to correct the date on the Gas Carrier Code for Existing Ships. The correct date is 1976.

6. Section 154.170 would be revised in accordance with an amendment to the Gas Carrier Code which sets the design temperature of the primary and secondary cargo tank barriers. Also, paragraph (a) would be revised to comply with present procedures for incorporating material by reference.

7. Table 1 (§ 154.172) would be revised to align it with the Gas Carrier Code by including higher tensile steel grades AH, DH, and EH for vessels designed for prolonged exposure to low service temperatures. The revisions to this table also would allow the use of grade A steel for design temperatures of down to −5 °C for thicknesses of up to 15mm. The reference in the table to an American Bureau of Shipping (ABS) standard would be updated.

8. Section 154.300 would be revised to allow category A machinery spaces, for example spaces for bow thruster machinery, to be located forward of hold spaces if specially approved by the Commandant (G–MTH).

9. Section 154.315 would be revised to allow the Coast Guard to accept arrangements where the cargo pump room or cargo compressor room is located outside of the cargo area, as "cargo area" is defined in § 154.7, if the limits of the cargo area are extended to include the cargo pump or compressor room and the areas below those spaces. The Coast Guard has accepted these arrangements in the past, but only on a case by case basis. In granting those acceptances, the Coast Guard used the same criteria that is contained in the amendments to the Gas Carrier Code which this notice proposes to adopt. Proposed § 154.315 continues to exceed the Gas Carrier Code in that the Gas Carrier Code allows cargo pump and compressor rooms to be located below the weather deck. The Coast Guard takes the position that locating the cargo pump and cargo compressor rooms on the weather deck reduces the likelihood of permitting vapor accumulation in those rooms. Of course, such arrangements would be considered under the provisions of § 154.32 on equivalents. This is consistent with the amendments to the Gas Carrier Code which require special approval for

specified locations of the cargo pump and cargo compressor rooms.

Section 154.315 also would be revised to require that personnel wearing protective clothing have complete access to cargo pump and compressor rooms and are able to operate all valves necessary for cargo handling.

10. Section 154.320 would be revised to align it with the Gas Carrier Code by specifying allowable openings for cargo control stations not having access to accommodation, service, or control spaces.

11. Section 154.330 would be revised to align it with the Gas Carrier Code by allowing less stringent requirements for openings to accommodation, service, or control spaces on vessels dedicated to cargoes which are neither toxic nor flammable.

12. Section 154.340 would be revised to clarify what is considered to be an acceptable access to gas-dangerous spaces, such as duct keels and ballast compartments, and also to clarify that entry into fuel oil tanks must not be necessary in order to perform inspections of the inner hull in the cargo area. These revisions correspond to amendments made to the Gas Carrier Code.

13. Section 154.345 would be revised to make it clear when airlocks are required. The proposal also would prohibit essential electrical equipment which is non-explosion proof from being in a space protected by an airlock. This is necessary because non-explosion proof electrical equipment in such a space must be automatically deenergized upon pressure loss in the space.

14. Section 154.350 would be revised, as was the Gas Carrier Code, to waive the requirement for liquid leak detection for certain spaces in internal insulation cargo containment systems, provided that those spaces are completely filled with approved insulation.

15. Section 154.407 would be revised to designate the liquid height as "Z_B" and to clarify that the definition of Z_B does not include small tank domes which are not considered part of the accepted total volume of the cargo tank. This amendment is consistent with the Gas Carrier Code.

16. As discussed earlier, §§ 154.454 through 154.458 would be added to address the use of internal insulation tanks, as allowed by the amended Gas Carrier Code. The design of each of these tanks would be required to be approved by the Coast Guard.

17. As stated earlier, table 3 in § 154.459 would be revised to include requirements for internal insulation tanks.

18. Under § 154.468, information on certain properties of the insulation material used in internal insulation tanks would be required to be submitted to the Coast Guard for approval. These properties were added to the list of insulation properties required to be tested for internal insulation tanks under the Gas Carrier Code.

19. Section 154.519 would be revised to clarify that any cargo piping component capable of being isolated in the liquid full condition must be fitted with a relief valve.

20. Section 154.522 would be revised in accordance with the amended Gas Carrier Code to allow relaxations approved by the Commandant (G–MTH) of the minimum design temperature of open ended piping inside cargo tanks.

21. The table in § 154.610 would be revised to raise the required test temperature for material in the thickness range of 30 to 40mm from −40 °C to −20 °C, in accordance with the amended Gas Carrier Code.

22. Section 154.630 would be revised to clarify that the minimum yield strength used in the specified calculations must be the yield strength of the aluminum alloy in the annealed condition. This section currently makes reference only to the minimum tensile strength.

23. Section 154.901 would be revised to clearly state that the cargo tank atmosphere is never permitted to be in the flammable range. It is necessary to prevent a flammable atmosphere from developing on a liquefied gas vessel because there are no requirements prohibiting sources of ignition from being present. These vessels are designed and operated based on the assumption that a flammable atmosphere will never be present.

24. Section 154.1110 would be revised to include storerooms containing high fire risk items in the area to be protected by the water spray system and to clarify that each area listed is required to be covered by at least two jets of water. These amendments are in line with the amended Gas Carrier Code.

25. Section 154.1115 would be revised to include guidance for determining the required capacity of the water spray systems. This revision is based on amendments to the Gas Carrier Code.

26. Section 154.1320 would be revised to indicate that the pressure referred to is the design vapor pressure and not the MARVS. This was also clarified in the amendments to the Gas Carrier Code.

27. New § 154.1327 would provide a formula for determining the maximum acceptable shutdown time once the emergency shutdown valve is activated. This maximum would represent the time until the tank becomes liquid full. This is consistent with amendments to the Gas Carrier Code.

28. Section 154.1343 would be added to require the installation of detectors, as required in the amended Gas Carrier Code, for determining when a leak has occurred in the primary barrier. The detectors need only indicate that there is a leak. They need not be able to pinpoint that leak.

29. Existing § 154.1400 would be revised and §§ 154.1401 and 154.1402 added to clearly indicate the required safety equipment for all vessels and the additional equipment required for vessels carrying flammable and toxic cargoes. These revisions correspond to amendments to the Gas Carrier Code.

30. Section 154.1405 would be revised, as was the Gas Carrier Code, to clearly indicate that respiratory and eye protection equipment intended for use as emergency escape equipment be so marked and never be used for fire fighting or cargo handling. This section also would prohibit the use of filter-type respiratory equipment.

31. Section 154.1705 would be updated to include requirements for cargoes added to bring these regulations in line with the Gas Carrier Code.

32. Section 154.1718 would be added to require that cargo spaces with submerged electric cargo pumps be inerted when any of the sever high vapor pressure cargoes are carried. This is required by the amended Gas Carrier Code.

33. Section 154.1720 would be updated to include the new cargoes for which indirect refrigeration is required. This is based on amendments to the Gas Carrier Code.

34. Sections 154.1721 through 154.1724 would be added to include requirements for separate piping systems for toxic products, flame screens on vent outlets, cargo tank quantity limitations, and vapor return connections. These requirements are based on the amended Gas Carrier Code.

35. Section 154.1745 would be revised to include all of the requirements from 46 CFR part 40 for vinyl chloride transfer operations. Existing § 154.1745 references part 40, but there is no reason to have part 40's requirements contained in a separate part. As part 50 addresses only vinyl chloride, this proposal would remove all of part 40 and transfer its requirements to part 154.

36. Section 154.1760 would be revised to address the problem of stress

corrosion cracking as it is addressed in the Gas Carrier Code.

37. Section 154.1765 would be added to set forth the requirements for the carriage of diethyl ether and vinyl ethyl ether in accordance with the amended Gas Carrier Code.

38. New §§ 154.1770 and 154.1775 would be added to set forth the requirements for the carriage of propylene oxide and mixtures of ethylene oxide and propylene oxide which contain no more than 30% ethylene oxide by weight. These requirements are consistent with the amended Gas Carrier Code.

39. Section 154.1818 would be revised to add new products to the list of products which may be carried if the shipper certifies that they are inhibited. This revision is in accordance with the amended Gas Carrier Code.

40. Section 154.1831 would be revised to list the qualifications of the person in charge of cargo transfer operations. Section 155.710 of 33 CFR, as referenced in proposed paragraph (a), was amended by a separate Coast Guard rulemaking (CGD 86–034; "Hazardous Materials Pollution Prevention") applying § 155.710 to hazardous materials transfers as well as to oil transfers.

41. Section 154.1832 would be added to clarify the necessary separation of cargo containment systems for incompatible cargoes. This section is being proposed to ensure that incompatible cargoes are not allowed to come in contact with each other on the vessel.

42. Section 154.1834 would be revised to clarify the responsibilities of the person in charge of cargo transfer operations to ensure that the proper piping is used and to ensure that cargo vapors are properly handled.

43. Section 154.1850 would be revised to focus attention on the special problems caused by the gas absorbing qualities of internal insulation materials. This is in accordance with the amended Gas Carrier Code.

44. Section 154.1870 would be revised to update the list of cargoes which are prohibited from being transferred via bow or stern loading piping. This revision is based on the amendments to the Gas Carrier Code.

45. Section 154.7 and the table 4 following existing § 154.1812 would be revised to include the minimum requirements for the new cargoes added in accordance with the amended Gas Carrier Code and to update existing requirements and references.

Incorporation by Reference

The following material would be incorporated by reference in § 154.8:

American Bureau of Shipping (ABS) Rules for Building and Classing Steel Vessels, 1992.

American National Standards Institute (ANSI) Z87.1–1989 Practice for Occupational and Educational Eye and Face Protection, 1989.

ANSI Z89.1–1986 Protective Headwear for Workers, 1986.

American Society for Testing and Materials (ASTM) A 20/A 20M–92a Standard Specifications for General Requirements for Steel Plates for Pressure Vessels, 1992.

ASTM F1017–92 Standard Specification for Flashlights on Vessels, 1992.

International Maritime Organization (IMO) Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1975, as amended (1983 edition).

IMO Code for Existing Ships Carrying Liquefied Gases in Bulk, 1976.

IMO International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1983.

IMO Medical First Aid Guide for Use in Accidents Involving Dangerous Goods.

IMO Resolution A.328, Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1975.

Underwriters Laboratories, Inc. (UL) No. 783, Standard for Electric Flashlights and Lanterns for Use in Hazardous (Classified) Locations, 1993.

Copies of the material are available for inspection where indicated under **ADDRESSES.** Copies of the material are available from the sources listed in § 154.8.

Before publishing a final, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget. It is not significant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraphs 10e of the DOT regulatory policies and procedures is unnecessary.

These proposed regulations would apply only to "new gas vessels", as the term is defined in § 154.7. No currently operating "new gas vessels" would be affected. There are presently no U.S. flag "new gas vessels", and currently operating foreign "new gas vessels" already meet the similar requirements of the Gas Carrier Code.

The impact of this proposal on U.S. flag vessels constructed in the future is also anticipated to be minimal, because the major part of this proposal allows for the carriage of cargoes previously required to be carried on chemical tankers and for the addition of an alternative, less expensive, cargo containment system.

As stated above, the impact on foreign flag vessels built in the future will continue to be minimal because these vessels will already comply with the requirements of the Gas Carrier Code.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 501 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

These proposals would apply only to liquefied gas vessels, all of which are large in size and owned by large corporations.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection-of-information requirements in the following section: § 154.15. The following particulars apply:

DOT No: 2115.

OMB Control No: 2115–0113.

Administration: U.S. Coast Guard.

Title: Safety Standards for Self-Propelled Vessels Carrying Bulk Liquefied Gases.

Need for Information: To prevent the uncontrolled release of cargo by liquefied gas carriers.

Proposed Use of Information: To verify compliance with safety regulations.

Frequency of Response: 1 per respondent per year.

Burden Estimate: 10 hours per year.

Respondents: Designers of cargo containment systems; eight worldwide

Form(s): No specific forms. Information supplied from existing plans and drawings used for designing a cargo containment system.

Average Burden Per Respondent: 10 hours per year.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES**.

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contain in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. There is no environmental impact associated with these expanded safety requirements. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 40

Cargo vessels, Hazardous materials transportation, Marine safety, Occupational safety and health, Seamen, Vinyl chloride.

46 CFR Part 154

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR parts 40, and 154 as follows:

PART 40—[REMOVED AND RESERVED]

1. Part 40 is removed and reserved.

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

2. The authority citation for part 154 continues to read as follows:

Authority: 46 U.S.C. 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 154.1 [Removed]

3. Section 154.1, Incorporation by reference, is removed.

4. In § 154.7, revise the section heading, and the introductory text and paragraph (a) of the definition for "Gas-dangerous space"; remove from the list under the definitions of "Flammable cargoes" and "Toxic cargoes" the word "Ethylamine"; add, in alphabetical order, to the list under "Flammable cargoes", the cargoes "Diethyl ether", "Propylene oxide-ethylene oxide mixture", "Isoprene", "Isopropylamine", "Monoethylamine", "Propylene oxide", "Vinyl ethyl ether", and "Vinylidene chloride"; add, in alphabetical order, to the list under "Toxic cargoes", the cargoes "Diethyl ether", "Propylene oxide-ethylene oxide mixture", "Isopropylamine", "Monoethylamine", "Propylene oxide", "Vinyl ethyl ether", and "Vinylidene chloride"; and add definitions for the words "Boil-off gas", "Category A machinery space", "Internal insulation tank", "Membrane", and "Oil fuel unit" to read as follows:

§ 154.7 Definitions and abbreviations.

* * * * *

Boil-off gas means the vapor produced by cargo evaporation at ambient temperatures of 45 °C still air and 32 °C still water.

* * * * *

Category A machinery space means Category A machinery space as defined in § 30.10–6a of this chapter.

* * * * *

Gas-dangerous space means a space where gas may be present and includes the following spaces:

(a) A space in the cargo area which is not arranged or equipped in a manner to ensure that the space's atmosphere is maintained at all times in a gas-safe condition.

* * * * *

Internal insulation tank means a non-self supporting cargo tank consisting of thermal insulation materials which contribute to cargo containment and which are supported by the structure of the adjacent inner hull or of an independent tank.

* * * * *

Membrane means a non-self supporting metallic, nonmetallic or composite material that is liquid tight and no thicker than 10 mm (0.394 in).

* * * * *

Oil fuel unit means a unit as defined in § 30.10–48a of this chapter.

* * * * *

5. Section 154.8 is added to read as follows:

§ 154.8 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register**, and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC, and at U.S. Coast Guard, Marine Technical and Hazardous Materials Division, room 1218, 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

American Bureau of Shipping (ABS):
Two World Trade Center, 106th Floor, New York, NY 10048. Rules for Building and Classing Steel Vessels, 1992 ..... 154.170; 154.172; 154.174; 154.176; 154.188; 154.195; 154.420; 154.421; 154.439; 154.440.

American National Standards Institute (ANSI):	
1430 Broadway, New York, NY 10018.	
ANSI Z87.1–1989, Practice for Occupational and Educational Eye and Face Protection, 1989	154.1400; 154.1401; 154.1402.
ANSI Z89.1–86, Protective Headwear for Workers, 1986	154.1400; 154.1401; 154.1402.
American Society for Testing and Materials (ASTM):	
1916 Race Street, Philadelphia, PA 19103.	
A 20/A 20M–92a, Standard Specification for General Requirements for Steel Plates for Pressure Vessels, 1992.	154.610.
ASTM F 1014–92, Standard Specification for Flashlights on Vessels, 1992	154.1400.
International Maritime Organization:	
4 Albert Embankment, London SE1 75R, U.K.	
Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1975, as amended (1983 edition).	154.19.
Code for Existing Ships Carrying Liquefied Gases in Bulk, 1976	154.19; 154.24.
International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1983.	154.19.
Medical First Aid Guide for Use in Accidents Involving Dangerous Goods	154.1435; 154.1440.
Resolution A. 328, Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1975.	154.24.
Underwriters Laboratories, Inc.:	
333 Pfingsten Rd., Northbrook, IL 60062.	
UL No. 783 Standard for Electric Flashlights and Lanterns for Use in Hazardous (Classified) Locations, 1993.	154.1400; 154.1401; 154.1402.

6. In § 154.12, paragraphs (e)(2), (4), (7), and (26) are revised to read as follows:

§ 154.12 Existing gas vessel: Endorsements and requirements.

* * * * *

(e) * * *

(2) Section 154.320 (b) and (d).

* * * * *

(4) Section 154.340(e).

* * * * *

(7) Section 154.519(b)(2).

* * * * *

(26) Sections 154.1110 through 154.1130, except §§ 154.1115(c), 154.1120(b), and 154.1125 (c) and (f).

* * * * *

7. In § 154.15, paragraph (b)(1) is revised to read as follows:

§ 154.15 U.S. flag vessel; Endorsement application.

* * * * *

(b) * * *

(1) Calculations for hull design required by part 172, subpart G, of this chapter;

* * * * *

8. In § 154.19, paragraph (a) is revised to read as follows:

§ 154.19 U.S. flag vessel: IMO certificate issuance.

(a) The Coast Guard Officer in Charge, Marine Inspection, issues an IMO Certificate to a U.S. flag vessel, when requested by the owner or representative, if the vessel meets the requirements of this part and—

(1) For a gas vessel the construction of which began on or after July 1, 1986, meets the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk;

(2) For a gas vessel contracted for construction on or after October 31, 1976 and constructed before July 1, 1986, meets the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1975, as amended (1983 edition); or

(3) For a gas vessel constructed before October 31, 1976, meets the Code for Existing Ships Carrying Liquefied Gases in Bulk.

* * * * *

Subpart B [Amended]

9. The heading to subpart B is revised to read "Subpart B—Inspections"

§ 154.151 [Amended]

10. In § 154.151(c) introductory text, remove "§ 154.5(b)" and add, in its place, "§ 154.22(b)".

11. In § 154.170, in paragraph (a), remove the words after "material standards" and add, in their place, the words "in Rules for Building and Classing Steel Vessels"; and revise paragraphs (b)(3)(ii) and (b)(3)(iii) to read as follows:

§ 154.170 Outer hull steel plating.

* * * * *

(b) * * *

(3) * * *

(ii) For cargo containment systems with secondary barriers, the temperature of the secondary barrier is the cargo boiling temperature at atmospheric pressure; and

(iii) For cargo containment systems without secondary barriers, the temperature of the primary barrier is the cargo carriage temperature.

12. Following § 154.172, by revising table 1 to read as follows:

§ 154.172 Contiguous steel hull structure.

* * * * *

TABLE 1.—MINIMUM TEMPERATURE, THICKNESS, AND STEEL GRADES IN CONTIGUOUS HULL STRUCTURES

Minimum temperature (°C)	Maximum thickness (mm) for steel grades						
	A	B	D	3	AH	DH	EH
0 and above	"Rules for Building and Classing Steel Vessels"						
−5 and below −0	15	25	30	50	25	45	50
−10 and below −5	X	20	25	50	20	40	50
−20 and below −10	X	X	20	50	X	30	50
−30 and below −20	X	X	X	40	X	20	40
Below −30	In accordance with § 154.615 of this part						

"X" means steel grade is not used.

§§ 154.174, 154.176, 154.188, and 154.195 [Amended]

13. In §§ 154.174(a), 154.176(a), 154.188, and 154.195(b), remove the words "of the American Bureau of Shipping published in "Rules for Building and Classing Steel Vessels ", 1981" and add, in their place, the words "in Rules for Building and Classing Steel Vessels".

14. In § 154.235, redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

§ 154.235 Cargo tank location.

* * * * *

(d) In vessels having internal insulation tanks, the extent of damage must be measured to the supporting tank plating.

* * * * *

15. In § 154.300, redesignate the introductory text and paragraphs (a), (b), and (c) as paragraphs (a), (a)(1), (a)(2), and (a)(3), respectively, and add a new paragraph (b) to read as follows:

§ 154.300 Segregation of hold spaces from other spaces.

* * * * *

(b) Hold spaces must be located forward of Category A machinery spaces, unless specially approved by the Commandant (G–MTH).

16. In § 154.315, revise paragraph (a); redesignate paragraph (b) as paragraph (f); and add new paragraphs (b), (c), (d), (e), (g), and (h) to read as follows:

§ 154.315 Cargo pump and cargo compressor rooms.

(a) Cargo pump rooms and cargo compressor rooms must be located above the weather deck.

(b) Cargo pump rooms and cargo compressor rooms must be located between the after end of the aftermost hold space and the forward end of the forwardmost hold space, unless otherwise permitted by the Commandant (G–MTH).

(c) When cargo compressor rooms are permitted under paragraph (b) of this section to be located at the after end of the aftermost hold space or at the forward end of the forwardmost hold space, the limits of the cargo area must be extended to include the cargo pump rooms and the cargo compressor rooms for the full beam and depth of the ship.

(d) Where the limits of the cargo area are extended under paragraph (c) of this section, the bulkhead which separates the cargo pump rooms or cargo compressor rooms from accommodation, service, or control spaces or Category A machinery spaces must be located so as to prevent gas from entering these spaces through a single failure of a bulkhead.

(e) For the purposes of fire protection, cargo compressor rooms are treated as cargo pump rooms.

(f) * * *

(g) Cargo pump rooms and cargo compressor rooms must be arranged to allow unrestricted access by personnel wearing protective clothing and, in the event of injury, to allow unconscious personnel to be removed.

(h) All valves necessary for cargo handling must be readily accessible to personnel wearing protective clothing

17. In § 154.320, redesignate paragraph (c) as paragraph (d) and add a new paragraph (c) to read as follows:

§ 154.320 Cargo control stations.

* * * * *

(c) If a cargo control station has no access to an accommodation, service or control space, the openings from the cargo area must comply with § 154.345.

* * * * *

18. In § 154.330, paragraph (g) is added to read as follows:

§ 154.330 Openings to accommodation, service, or control spaces.

* * * * *

(g) Vessels dedicated to cargoes which are neither toxic nor flammable may have openings to accommodation, service, or control spaces which do not meet the requirements of paragraphs (a) through (f) of this section, if specially approved by the Commandant (G–MTH).

19. In § 154.340, revise the introductory text of paragraph (b); redesignate paragraphs (c), (d), (e), and (f), as paragraphs (d), (e), (f), and (g), respectively; revise redesignated paragraph (f); and add a new paragraph (c) to read as follows:

§ 154.340 Access to tanks and spaces in the cargo area.

* * * * *

(b) Each access into or through a void space or other gas-dangerous space in the cargo area, except for spaces separated by a single gastight boundary from a hold or a space with a secondary barrier, must — * * *.

(c) Spaces separated by a single gastight boundary from a hold or a space with a secondary barrier must be provided with either a direct access from the weather deck or an indirect access from the weather deck which does not include an enclosed gas-safe space.

* * * * *

(f) The inner hull in the cargo area must be accessible for inspection from at least one side without the removal of any fixed structure or fitting. If a visual inspection is possible only at the outer face of the inner hull, the inner hull must not be a fuel oil tank boundary wall.

* * * * *

20. In § 154.345, revise paragraph (a) and add paragraph (d) to read as follows:

§ 154.345 Air locks.

(a) Access through doors, gas tight or otherwise, is not permitted from a gas-safe space to a gas-dangerous space; except that, access to service spaces forward of the cargo area through air locks, under this section, which open on the weatherdeck, may be permitted when accommodation spaces are aft.

* * * * *

(d) Emergency fire pumps and non-explosion proof electrical equipment for maneuvering, anchoring, or mooring the vessel must not be located in spaces protected by air locks.

21. In § 154.350, revise the section heading; redesignate paragraph (d) as paragraph (e); add new paragraphs (d) and (f); and revise redesignated paragraph (e) to read as follows:

§ 154.350 Bilge, ballast, and fuel oil systems in the cargo area.

* * * * *

(d) For internal insulation tanks, paragraphs (a), (b), and (c) of this section do not apply to the following spaces, provided that the spaces are completely filled with insulation approved under § 154.467:

(1) Interbarrier spaces.

(2) Spaces between the secondary barrier and the inner hull.

(3) Spaces between the secondary barrier and independent tank structures.

(e) Spaces in the cargo containment portion of the vessel, except ballast spaces and gas-safe spaces, must not connect to pumps in the main machinery space. Pump vents must not be open to machinery spaces.

(f) Duct keels may be connected to pumps in the machinery space if—

(1) The connections are led directly to the pumps;

(2) The discharge from the pumps is led directly overboard; and

(3) There are no valves or manifolds in either line which could connect the line from the duct keel to lines serving gas-safe spaces.

22. In § 154.407(a), remove "Z^5" wherever it appears and add, in its place, "Z_B" and revise the definition of "Z_B" to read as follows:

§ 154.407 Cargo tank internal pressure head.

(a) * * *

"Z_B" = largest liquid height (m) above the point where the pressure is to be

determined in the β direction (see figure 2). Small tank domes not considered to be part of the accepted total volume of the cargo tank need not be considered when determining "Z_a";

* * * * *

§§ 154.420 and 154.439 [Amended]

23. In § 154.420(a) and § 154.439 introductory text, remove the words "of the American Bureau of Shipping published in "Rules for Building and Classing Steel Vessels", 1981" and add, in their place, the words "in Rules for Building and Classing Steel Vessels."

§ 154.421 [Amended]

24. In § 154.421, remove ", 1981".

25. In § 154.440, paragraph (c) is revised to read as follows:

§ 154.440 Allowable stress.

* * * * *

(c) For an internal pressure head that meets § 154.439(a), tank plating must meet the deep tank standards in Rules for Building and Classing Steel Vessels.

§ 154.448 [Amended]

26. In § 154.448(b), remove the word "its" before the word "support".

27. Before the undesignated heading "SECONDARY BARRIER", add a new undesignated heading and §§ 154.454 through 154.458 to read as follows:

Internal Insulation Tanks

§ 154.454 General.

(a) The design of an internal insulation tank and its supporting hull structure or independent tank structure must be specially approved by the Commandant (G–MTH).

(b) Internal insulation tanks must be made of materials that withstand the combined strains calculated under § 154.457(a).

§ 154.455 Design vapor pressure.

The design vapor pressure (P^o) of an internal insulation tank must not exceed 25.4 kPa gauge (3.55 psig). For internal insulation tanks supported by the hull structure, the Commandant (G–MTH) may specially approve a P^o between 24.5 kPa gauge (3.55 psig) and 69 kPa gauge (10 psig). For internal insulation tanks supported by independent tank structures, the Commandant (G–MTH) may specifically approve a P^o greater than 69 kPa gauge (10 psig).

§ 154.456 Internal insulation tank system design.

An internal insulation tank must be designed for the following:

(a) Any static and dynamic loads with respect to—

(1) Fatigue failure;

(2) Crack propagation from both free and supported surfaces;

(3) Adhesive and cohesive strength;

(4) Compressive, tensile, and sheer strength; and

(5) Water ballast in spaces adjacent to the inner hull forming the supporting structure of the internal insulation tank.

(b) Combined strains from static, dynamic, and thermal loads.

(c) Compatibility of the tank insulation material with the deflections of the vessel's inner hull or independent tank structures.

§ 154.457 Calculations.

The tank design load calculations for an internal insulation tank must include the following:

(a) The combined strains from static, dynamic, and thermal loads.

(b) The response of the internal insulation tank, its cargo, its supporting structures, and any ballast adjacent to the supporting structure of the internal insulation tank to the vessel motion and acceleration under worst weather conditions. Calculations for a similar vessel may be submitted to meet the requirements of this paragraph.

(c) Plastic deformation and fatigue life resulting from static and dynamic loads in the insulation and in the supporting hull structure or independent tank structure.

§ 154.458 Model test.

(a) A test must be performed to determine whether the primary and secondary barriers of an internal insulation tank, including corners, joints, pump mounts, piping penetrations, and other critical areas, are capable of withstanding the combined strains from the static, dynamic, and thermal loads calculated under § 154.457(a).

(b) Combined tension and fatigue tests must be performed to evaluate crack behavior of the insulation material in the event a through crack develops in the inner hull or independent tank structure.

(c) Analyzed data from the tests under paragraphs (a) and (b) of this section must be submitted to the Commandant (G–MTH) for acceptance.

28. In § 154.459, add a new entry and new footnotes to table 3 to read as follows:

§ 154.459 General.

* * * * *

TABLE 3.—SECONDARY BARRIERS FOR TANKS

Tank type	Cargo temperature (T) at atmospheric pressure		
	T≥−10°C(14°F)	T<−10°C(14°F)≥−55°C(−67°F)	T<−55°C(−67°F)
. . . . .			
Internal insulation:			
Type 1[2]	do	Complete secondary barrier	Complete secondary barrier.
Type 2[3]	do	Complete secondary barrier is incorporated.	Complete secondary barrier is incorporated.
. . . . .			

[2] Type 1 tanks are tanks in which insulation or a combination of the insulation and one or more liners* function as a primary barrier. The inner hull or independent tank structure functions as the secondary barrier when required.

[3] Type 2 tanks are tanks in which the insulation or a combination of the insulation and one or more liners* function as both the primary and secondary barrier, and where these barriers are clearly distinguishable.

*A liner, as used in footnotes 2 and 3, means a thin, non-self supporting metallic, nonmetallic or composite material which forms part of an internal insulation tank in order to enhance its fracture resistance or other mechanical properties. A liner differs from a membrane in that a liner is not intended by itself to function as a liquid barrier.

29. Before the undesignated heading "SUPPORT SYSTEM", add § 154.464 to read as follows:

§ 154.468 Submission of insulation information for internal insulation tanks.

(a) In addition to the information required in § 154.467, information on the following properties of the insulation materials which contribute to cargo containment in internal insulation tanks must be submitted to the Commandant (G–MTH) for special approval:

(1) Bonding (adhesive and cohesive strength).

(2) Resistance to cargo pressure.

(3) Fatigue and crack propagation.

(4) Compatibility with cargo constituencies and with any other agency normally expected to come in contact with the insulation.

(5) Gas desorbing.

(b) The influence of the presence of water and water pressure on the insulation properties must be taken into account.

(c) The properties listed in paragraph (a) of this section must be—

(1) Obtained after simulation of aging and thermal cycling; and

(2) Tested for in the temperature range between the expected maximum temperature in service and 5 °C (8 °F) below the minimum design temperature, but no lower than −196 °C (−321 °F).

30. Section 154.471(a)(3) is revised to read as follows:

§ 154.471 Design criteria.

(a) * * *

(3) To withstand a collision force, in the forward direction, equal to at least one-half of the weight of the cargo tank and cargo and, in the aft direction, equal to at least one-quarter of the weight of the cargo tank and cargo; and

* * * * *

31. In § 154.519, paragraph (c) is added to read as follows:

§ 154.519 Piping relief valves.

* * * * *

(c) All pipelines or components which may be isolated in a liquid full condition must have a relief valve.

32. In § 154.522(a), revise the introductory test to read as follows:

§ 154.522 Materials for piping.

(a) The materials for piping systems must meet § 154.625 for the minimum design temperature of the piping; except that, the material for open-ended vent piping, open-ended piping inside the cargo tanks (excluding discharge piping), and all piping inside membrane and semimembrane tanks may be specially approved by the Commandant (G–MTH) if—

* * * * *

33. In § 154.610, in paragraph (c), remove "ASTM A–20–75" and add, in its place, "ASTM A 20/A 20 M–83" and, in paragraph (i), revise the table to read as follows:

§ 154.610 Design temperature not colder than 0 °C (32 °F)

* * * * *

(i) * * *

Material thickness	Test temperature
t ≤ 20 mm (0.788 in.)	0 °C (32 °F)
20 < t ≤ 40 mm (1.576 in.)	−20 °C (−4 °F)

34. In § 154.615, designate the text as paragraph (a) and add a new paragraph (b) to read as follows:

§ 154.615 Design temperature below 0 °C (32 °F) and down to −55 °C (−67 °F).

* * * * *

(b) Insulation materials forming a secondary barrier must be approved under § 154.468.

35. In § 154.630, paragraph (b) is revised to read as follows:

§ 154.630 Cargo tank material.

* * * * *

(b) For aluminum alloy cargo tanks with welded connections, the minimum yield strength (σ_Y) and the minimum tensile strength (σ_B) for the calculations under §§ 154.440, 154.447, and 154.450 must be the minimum respective value of the alloy in an annealed condition.

* * * * *

36. In § 154.901(c), add a sentence at the end of the paragraph to read as follows:

§ 154.901 Atmospheric control within cargo tanks and cargo piping systems.

* * * * *

(c) * * *. No flammable mixture is permitted at any time within the cargo tank.

* * * * *

37. In § 154.902, paragraph (e) is added to read as follows:

§ 154.902 Atmospheric control within hold and interbarrier spaces.

* * * * *

(e) For internal insulation tanks, atmospheric control is not required for interbarrier spaces and spaces between the secondary barrier and the inner hull or independent tank structures which are completely filled with insulation approved under § 154.468.

38. In § 154.1005, paragraphs (c) and (d) are revised to read as follows:

§ 154.1005 Equipment approval.

* * * * *

(c) Electrical equipment that is required to be intrinsically safe under § 154.1010 must comply with § 111.105–11 of this chapter.

(d) Electrical equipment that is required to be explosion proof under § 154.1010 must comply with § 111.105–9 of this chapter.

§ 154.1020 [Amended]

39. In § 154.1020, remove "§ 154.230(a)" and add, in its place "§ 154.200".

40. In § 154.1110, redesignate the introductory text and paragraphs (a) through (h) as paragraphs (a) and (a)(1) through (a)(8), respectively; revise redesignated paragraphs (a)(6) and (a)(7); and add paragraphs (b) and (c) to read as follows:

§ 154.1110 Areas protected by system.

(a) * * *

(6) Each boundary facing the cargo area of each superstructure that contains storerooms containing high fire risk items or accommodation, service, or control spaces;

(7) Each boundary facing the cargo area of each deckhouse that contains storerooms containing high fire risk items or accommodation, service, or control spaces; and

* * * * *

(b) Every area under paragraph (a) of this section also must be covered by at least two jets of water from the fire main system.

(c) Boundaries of unmanned forecastle structures not containing high fire risk items or equipment do not require water spray protection.

41. In § 154.1115, redesignate paragraph (b) as paragraph (c); add a new paragraph (b); and revise redesignated paragraph (c) to read as follows:

§ 154.1115 Discharge.

* * * * *

(b) For structures not having clearly defined horizontal or vertical surfaces, the capacity of the water spray system must be determined by the greater of the following:

(1) The projected horizontal surface multiplied by 10,000 cm^3/m^2/min (0.25 gpm/$ft.^2$).

(2) The actual surface multiplied by 4,000 cm^3/m^2/min (0.10 gpm/$ft.^2$).

(c) The water spray protection under § 154.1110 (a)(4) and (a)(5) must cover an area in a horizontal plane extending at least 0.5 m (19 in.) in each direction from the pipes, fittings, and valves or must cover the area of the drip tray, whichever is greater.

42. In § 154.1135, paragraphs (d)(1) and (d)(2) are revised to read as follows:

§ 154.1135 Pumps.

* * * * *

(d) * * *

(1) The areas of §§ 154.1110 (a)(6) through (a)(8) and 154.1115(c); and

(2) The largest section that includes the required protection under § 154.1110(a)(1), (a)(2), and (a)(3).

43. In § 154.1320, paragraph (a)(1) is revised to read as follows:

§ 154.1320 Sighting ports, tubular gauge glasses, and flat plate type gauge glasses.

(a) * * *

(1) The tank has a design vapor pressure that is less than 69 kPa gauge (10 psig);

* * * * *

44. Section 154.1327 is added to read as follows:

§ 154.1327 Valve closing time.

(a) The closing time (i.e. the time from shutdown signal initiation to complete valve closure) of valves under § 154.1325 must not be greater than—

$$\frac{3600U}{LR} \text{ seconds}$$

U=ullage volume at operating signal level m^3.

LR=maximum loading rate agreed on m^3/h.

(b) The loading rate must be adjusted to limit the surge pressure on valve closure to an acceptable level.

45. Section 154.1343 is added to read as follows:

§ 154.1343 Leak detection.

(a) All cargo containment systems requiring a secondary barrier must be provided with permanently installed instrumentation to detect—

(1) Failure of the primary barrier to be liquid tight at any location; or

(2) Contact of liquid cargo with the secondary barrier at any location.

(b) The instrumentation required in paragraph (a) of this section must be the appropriate gas detection equipment under § 154.1345 and need not be capable of detecting the exact location of the leak.

46. Section 154.1400 is revised to read as follows:

§ 154.1400 Safety equipment; All vessels.

(a) Instead of the equipment under § 35.30–20 of this chapter, each vessel must have two fireman's outfits and two sets of personnel safety equipment on board.

(b) Each fireman's outfit must consist of the following:

(1) A pressure-demand, open circuit, self-contained breathing apparatus approved by the Mining Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH), and having at a minimum a 30 minute air supply and a full facepiece.

(2) A steel-cored lifeline.

(3) A three-cell, explosion proof flashlight manufactured to UL No. 783–79 with an Underwriters' Laboratories label for Class I, Division 1, and the Electrical Hazard Group listed in table 4 of this part for each cargo carried.

(4) A fire axe.

(5) A helmet that meets ANSI Z89.1–86.

(6) A set of boots and gloves that are made of rubber or other electrically non-conductive material.

(7) A set of goggles that meets ANSI Z87.179.

(8) An outfit that protects the skin from scalding steam and the heat of fire and that has a water resistant outer surface.

(c) Each set of personnel safety equipment must consist of the following:

(1) A pressure-demand, open circuit, self-contained breathing apparatus approved by the Mining Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH), and having at a minimum a 30 minute air supply and a full facepiece.

(2) A steel-cored lifeline.

(3) A three-cell, explosion proof flashlight manufactured to UL No. 783–79 with an Underwriters' Laboratories label for Class I, Division 1, and the Electrical Hazard Group listed in table 4 of this part for each cargo carried.

(4) A helmet that meets ANSI Z89.1–86.

(5) A set of boots and gloves that are made of rubber or other electrically non-conductive material.

(6) A set of goggles that meets ANSI Z87.179.

(7) A chemically protective outfit that protects the wearer from the particular personnel hazards presented by the cargo vapor.

(d) Each vessel must have a spare air supply consisting of at least one of the following:

(1) One fully-charged air cylinder unit for each self-contained breathing apparatus required under paragraph (b) or (c) of this section, each air cylinder unit having at least a thirty minute supply of air with—

(i) An air compressor capable of supplying high pressure air of the proper purity for recharging the cylinders; and

(ii) A charging manifold capable of recharging two air cylinder units simultaneously.

(2) Ten fully-charged air cylinder units, each with at least a thirty minute supply of air.

(3) A low pressure-supplied air line system with—

(i) Hose connections compatible with the self-contained breathing apparatus;

(ii) Sufficient high pressure air capacity to supply, through pressure reduction devices, low pressure air to two persons for at least one hour; and

(iii) An air compressor capable of supplying high pressure air of the purity for recharging the self-contained breathing apparatus and all fixed air bottles, if any.

47. Section 154.1401 is added to as follows:

§ 154.1401 Safety equipment: Vessels carrying flammable cargoes.

(a) Each vessel that has a cargo capacity of from 2,000 m^3 through 5,000 m^3 and that is carrying a cargo designated with an "I" or "I&T" in the "Vapor detection" column of table 4 of this part must have the safety equipment required under § 154.1400 and two additional fireman's outfits as described in § 154.1400(b).

(b) Each vessel that has a cargo capacity of 5,000 m^3 or more and that is carrying a cargo designated with an "I" or "I&T" in the "Vapor detection" column of table 4 this part must have the safety equipment required under § 154.1400 and three additional fireman's outfits as described in § 154.1400(b).

48. Section 154.1402 is added to read as follows:

§ 154.1402 Safety equipment: Vessels carrying toxic cargoes.

(a) Each vessel that has a cargo capacity of greater than 2,000 m^3 and that is carrying a cargo designated with an "T" in the "Vapor Detection" column of table 4 of this part must have the safety equipment required under § 154.1400 and, in addition, must have the following:

(1) Two sets of personnel safety equipment as described in § 154.1400(c).

(2) One spare fully-charged air cylinder unit for each breathing apparatus required under paragraph (a)(1) of this section.

(b) Each vessel that has a cargo capacity of greater than 2,000 m^3 and that is carrying a cargo designated with an "I&T" in the "Vapor detection" column of table 4 of this part must have the safety equipment required under §§ 154.1400 and 154.1401. In addition, the vessel must have the following:

(1) One fully-charged air cylinder unit for each breathing apparatus required under § 154.1401.

(2) Two chemical protective outfits that protect the wearer from the particular personnel hazards presented by the cargo vapor.

49. Section 154.1405 is revised to read as follows:

§ 154.1405 Respiratory and eye protection.

(a) When table 4 of this part references this section, a vessel carrying the listed cargo must have—

(1) Respiratory protection and eye protection equipment for each person on board that protects the person from the cargo vapor for at least five minutes; and

(2) Two additional sets of respiratory protection and eye protection equipment that are stowed in the wheel house and protect the wearer from the cargo vapor for at least five minutes.

(b) The equipment in paragraph (a) of this section must be used for emergency escape purposes only and must be marked to indicate that it is not suitable for, and must not be used for, fire fighting or cargo handling.

(c) Filter type respiratory protection equipment is unacceptable for the purposes of this section.

50. Section 154.1705 is revised to read as follows:

§ 154.1705 Independent tank.

(a) The following cargoes must be carried in an independent tank:

(1) Diethyl ether.

(2) Monoethylamine.

(3) Propylene oxide.

(4) Vinyl ethyl ether

(b) The following cargoes must be carried in an independent tank type C that meets § 154.701(a):

(1) Ethylene oxide.

(2) Methyl bromide.

(3) Sulfur dioxide.

51. Section 154.1718 is added to read as follows:

§ 154.1718 Submerged electric cargo pumps.

The vapor space of cargo tanks equipped with submerged electric cargo pumps must be inerted to a positive pressure before loading, during carriage, and during unloading of high vapor pressure flammable liquids.

52. Section 154.1720 is revised to read as follows:

§ 154.1720 Indirect refrigeration.

A refrigeration system that is used to cool acetaldehyde, ethylene oxide, methyl bromide, propylene oxide, mixtures of propylene oxide/ethylene oxide, or sulfur dioxide must be an indirect refrigeration system that does not use vapor compression.

53. Sections 154.1721 through 154.1724 are added to read as follows:

§ 154.1721 Piping systems for toxic products.

The cargo piping, vent piping, and refrigeration equipment of a cargo tank carrying isopropylamine or monoethylamine must be completely separate from all other piping systems on the vessel.

§ 154.1722 Flame screens on vent outlets.

When table 4 of this part refers to this section, the vent outlets need not comply with § 154.805(c) but must meet either of the following:

(a) Be provided with a flame screen that—

(1) Meets § 30.10–25 of this chapter;

(2) Is readily renewable; and

(3) Is designed and installed so as to prevent blockage by freezing cargo vapors or by icing in bad weather.

(b) Have a device approved by the Commandant (G–MTH) to prevent the passage of flame

§ 154.1723 Maximum allowable quantity of cargo per tank.

When table 4 of this part refers to this section, no person may operate a tankship that carries a cargo tank containing in excess of 3,000 m^3 (105,923 ft^3) of the listed cargo.

§ 154.1724 Vapor return connections.

When table 4 of this part refers to this section, connections for returning the expelled gases ashore during loading must be provided.

§ 154.1735 [Amended]

54. In § 154.1735(b)(2)(ii), remove the word "guage" and add, in its place, the word "gauge".

55. Section 154.1745 is revised to read as follows:

§ 154.1745 Vinyl chloride: Transfer operations.

(a) The person in charge of a vinyl chloride transfer operation shall ensure that the following are complied with during that operation:

(1) Cargo vapors are returned to the cargo tank or shore disposition for reclamation or destruction.

(2) Continuous monitoring for vinyl chloride vapor leaks is conducted. Fixed or portable instrumentation may be used to ensure that personnel are not exposed to vinyl chloride vapor concentrations in excess of 1 ppm averaged over any eight hour period or 5 ppm averaged over any period not exceeding 15 minutes. The method of monitoring and measurement must have an accuracy (with a confidence level of 95%) of not less than plus or minus 50% from 0.25 ppm through 0.5 ppm, plus or minus 35% from over 0.5 ppm through 1.0 ppm, and plus or minus 25% over 1.0 ppm.

(3) The cargo transfer operation is discontinued or corrective action is initiated by the person in charge to minimize personnel exposure whenever a vinyl chloride vapor concentration in excess of 1 ppm is detected. If the vinyl chloride concentration exceeds 5 ppm for over 15 minutes, action to reduce the leak may be continued only if each person in the area of the leak uses a respirator which meets the following:

(i) The respirator must be approved by the Mine Safety and Health Administration (MSHA) under 30 CFR part 11. When filter elements are used, they must include approval for vinyl chloride.

(ii) An electrically powered respirator also must meet the electrical engineering requirements in subchapter J of this chapter for the electrical hazard class and group listed in table 4 of this part.

(4) Those portions of the cargo line that would be open to the atmosphere after piping is disconnected are free of vinyl chloride liquid and that the vinyl chloride vapor concentration in the area of the vinyl chloride piping disconnect points is not greater than 5 ppm.

(5) Any restricted gauge fitted on a tank containing vinyl chloride is locked or sealed so that the gauge cannot be used.

(6) A restricted gauge is not used as a means of verifying the reading obtained by the closed gauge or as a means of sampling.

(b) The words "Cancer Suspect Agent" must be added to the warning sign, as required by § 154.1830(f).

(c) Signs bearing the legend "CANCER SUSPECT AGENT IN THIS AREA—PROTECTIVE EQUIPMENT REQUIRED—AUTHORIZED PERSONNEL ONLY" must be posted whenever hazardous operations, such as tank cleaning, are in progress.

(d) When vinyl chloride transfer operations are conducted, the vessel must be designated as a regulated area and access must be limited to authorized persons. A daily roster of persons authorized to enter the regulated area must be maintained on the vessel.

(e) Personnel engaged in hazardous operations, such as tank cleaning, must be provided with, and required to wear and use, respirators under paragraph (a)(3) of this section. Also, protective garments capable of preventing skin contact with liquid vinyl chloride must be provided. The garments must be clean and dry for

56. In § 154.1760 [illegible] to the text as paragraph (a) and [illegible] paragraph (b) to read as follows:

§ 154.1760 Liquid [illegible]

* * * * *

(b) For pressure vessels and pipelines made of carbon-manganese steel, the oxygen content of the vapor space must

be reduced to the minimum level practicable before the introduction of liquid ammonia at temperatures of greater than −20 °C (−4 °F).

57. Sections 154.1765, 154.1770, and 154.1775 are added to read as follows:

§ 154.1765 Diethyl ether; vinyl ethyl ether.

(a) Diethyl ether and vinyl ethyl ether cargoes must be discharged by deepwell pumps or by hydraulically operated submerged pumps.

(b) When a diethyl ether or vinyl ethyl ether cargo is carried in independent tanks type C, inert gas displacement may be used to discharge the cargo if the cargo system is designed for the expected pressure.

§ 154.1770 Propylene oxide and mixtures of propylene oxide and ethylene oxide containing not more than 30% ethylene oxide by weight: Requirements for carriage.

(a) Vessels carrying propylene oxide or a mixture of propylene oxide and ethylene oxide containing not more than 30% ethylene oxide by weight must meet the following:

(1) Acetylene must not be present in the propylene oxide or the mixture of propylene oxide and ethylene oxide.

(2) Cargo piping, vent piping, refrigeration equipment, and inert gas supply lines must be completely separate from piping systems for all other tanks, including empty tanks and cargo compressors. If the piping systems are not separate, they may be made separate by removing spool pieces, valves, and other pipe sections and installing blank flanges.

(3) Valves, flanges, fittings, and accessory equipment must be made of steel, stainless steel, or other material specially approved by the Commandant (G–MTH).

(4) Valve disk faces, seats, and other wearing parts of valves must be made of stainless steel containing not less than 11% chromium.

(5) Gaskets must be constructed of spirally wound stainless steel with teflon or other material specially approved by the Commandant (G–MTH). Gaskets made of neoprene or natural rubber, asbestos or asbestos mixed with other materials, or materials containing oxides of magnesium must not be used in propylene oxide containment systems.

(6) Cargo piping must not have threaded joints.

(7) The vessel must have an exterior water spray system under § 154.1105 that protects the above deck cargo piping.

(8) The vessel must have a nitrogen inerting system or on board nitrogen gas storage system capable of maintaining for a period of thirty days at an oxygen level of 2% or less, an inert atmosphere in the vapor space of a tank carrying these cargoes.

(b) Cargo tanks carrying propylene oxide which have a design vapor pressure of less than 0.6 Bar gauge (8.5 psig) and cargo tanks carrying mixtures of propylene oxide and ethylene oxide containing not more than 30% ethylene oxide by weight which have a design vapor pressure of less than 1.2 Bar gauge (17.1 psig) must have a refrigeration system that maintains the product at a temperature below the reference temperature under § 154.1844(b).

(c) Cargo tanks in which the product is to be carried must meet the following:

(1) Be constructed of steel or stainless steel.

(2) For independent tanks of type C, have pressure relief valves settings that are—

(i) Not less than 0.2 Bar gauge (2.8 psig);

(ii) For propylene oxide, not more than 7.0 Bar guage (99.6 psig); and

(iii) For propylene oxide and ethylene oxide mixtures, not more than 5.3 Bar guage (75.4 psig).

(3) Have an automatic nitrogen make-up system that provides a padding of nitrogen and that does not allow the tank pressure to fall below 0.07 Bar guage (1.0 psig) in the event of a decrease in cargo temperature. Sufficient nitrogen of commercially pure quality must be available to satisfy this requirement. This requirement for automatic pressure control may be satisfied by a battery of nitrogen bottles connected to the cargo tank by a pressure reduction valve.

(4) Be thoroughly cleaned, including washing or purging of associated piping, before other cargoes may be carried.

§ 154.1775 Propylene oxide and mixtures of propylene oxide and ethylene oxide containing not more than 30% ethylene oxide by weight: Transfer operations.

(a) Propylene oxide and mixtures of propylene oxide and ethylene oxide containing not more than 30% ethylene oxide by weight may be transported only in accordance with cargo handling plans which have been approved by the Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC). A separate cargo handling plan for each loading arrangement must be prepared which shows the entire piping system and the location of all blank flanges installed under § 154.1770(a)(2). A copy of each approved cargo handling plan must be kept on board the vessel. The IMO Certificate must be endorsed to include reference to the approved cargo handling plans.

(b) Before loading the product, a person acceptable to the Captain of the Port must perform the following:

(1) Certify in writing that the piping separation under § 154.1770(a)(2) has been achieved. This certification must be kept on board the vessel.

(2) Fit a wire and seal to each connection between a blank flange and a pipeline flange to ensure that the blank flange is not inadvertently removed.

(c) A list of the maximum allowable tank filling limits for each cargo tank, at each of the planned loading temperatures and at the maximum reference temperature, must be prepared and submitted to the Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC) for approval. A copy of the approved list must be kept on board the vessel.

(d) The master shall ensure that, before the product is loaded into a cargo tank—

(1) The tank is thoroughly clean, dry, and free from rust;

(2) The hold spaces are inerted with an inert gas that meets § 154.1710(b)(1); and

(3) The cargo tank vapor space is tested to ensure that the oxygen concentration is 2% (by volume) or less.

(e) Cargo hoses used for the transfer of these products must be marked "FOR ALKYLENE OXIDE TRANSFER ONLY".

(f) Filling and discharge piping must extend to within 100mm (4 in) of the bottom of the tank or any sump pit.

(g) Venting of the cargo tanks to the atmosphere must not occur during loading or discharge. A vapor return to shore may be used during loading provided that the vapor return system connected to a containment system for the product is separate from all other containment systems.

(h) The pressure in the cargo tank must be maintained above 0.07 Bar guage (1.0 psig) during discharge operations.

(i) The cargo must be discharged by deepwell pumps, hydraulically operated submerged pumps, or inert gas displacement.

(j) Cargo pumps must be arranged to ensure that, if the discharge from the pump is turned off or otherwise blocked, there will not be a significant increase in the temperature of the cargo.

(k) Before disconnecting the lines connecting to the shore facility, the pressure in liquid and vapor lines must be relieved through valves installed at the loading header. Liquid and vapor from the lines must not be discharged to the atmosphere.

58. Section 154.1800 is revised to read as follows:

§ 154.1800 Operating requirements under part 35 of this chapter.

Each vessel must operate in accordance with part 35 of this chapter, except for § 35.30–20 of this chapter.

59. In § 154.1803, paragraph (b) is revised to read as follows:

§ 154.1803 Expiration of Certificates of Compliance.

* * * * *

(b) If a vessel's IMO Certificate expires or otherwise becomes invalid, the vessel's Certificate of Compliance becomes invalid for the carriage of cargoes listed in table 4 of this part or authorized by special approval under § 154.30. To maintain the validity of the Certificate of Compliance, the vessel's owner must submit a copy of the revised or reissued IMO Certificate to the Commanding Officer, U.S. Coast Guard Marine Safety Center (G–MSC).

60. Section 154.1818, paragraph (a) is revised to read as follows:

§ 154.1818 Certification of inhibition.

(a) Except as provided in § 154.1740(b), no person may operate a vessel carrying butadiene, isoprene, vinyl chloride, vinyl ethyl ether, or vinylidene chloride without carrying in the wheelhouse written certification from the shipper that the product is inhibited.

* * * * *

§ 154.1820 [Amended]

61. In § 154.1820 introductory text, remove the word "wheelhoue" and add, in its place, the word "wheelhouse".

62. Section 154.1831 is revised to read as follows:

§ 154.1831 Person in charge of cargo transfer operations.

(a) The master of a U.S. flag vessel shall ensure that cargo transfer operations are supervised by a person designated as a person in charge of cargo transfer operations under 33 CFR 155.710(a)(1).

(b) The master of a foreign flag vessel shall ensure that the cargo transfer operations are supervised by a person who—

(1) Holds a valid document issued by the flag nation which authorizes that person to serve as a person in charge of cargo transfer operations on board the vessel that is transferring cargo;

(2) Is designated as a person in charge of cargo transfer operations by the master;

(3) Is readily able to communicate in English, either directly or through an interpreter, with the person in charge of cargo transfer at the transfer facility; and

(4) Has studied and understands the responsibilities described in this subchapter.

63. Section 154.1832 is added to read as follows:

§ 154.1832 Incompatible cargo.

(a) The person in charge of cargo transfer operations under § 154.1831 may not authorize the loading of incompatible cargoes under part 150 of this chapter, unless the cargo containment systems meet the following:

(1) Are separated by—

(i) Cofferdams, other than spaces between primary and secondary barriers;

(ii) Empty tanks;

(iii) Tanks containing mutually compatible cargoes;

(iv) Pipe tunnels; or

(v) Void spaces.

(2) Have separate cargo piping and venting systems.

(b) The person in charge of cargo transfer operations may not authorize the loading into a tank of a cargo that is incompatible under part 150 of this chapter with residue left in the tank from a previous cargo.

64. Section 154.1834 is revised to read as follows:

§ 154.1834 Cargo transfer piping.

The person in charge of cargo transfer operations under § 154.1831 shall ensure that—

(a) Cargo is transferred to or from a cargo tank only through the vessel's cargo piping system; and

(b) All cargo vapor or cargo tank inert gas displaced by the cargo loading operation is—

(1) Managed on board the vessel to eliminate atmospheric venting; or

(2) Returned to shore through the vapor return connections under § 154.1724, if the transfer terminal has vapor return equipment capable of handling the vapor from the cargo tank.

65. In § 154.1850, paragraph (d) is added to read as follows:

§ 154.1850 Entering cargo handling spaces.

* * * * * *

(d) Before permitting hot work near internal insulation tanks, the gas absorbing and desorbing characteristics of the tank insulation material must be taken into consideration.

66. In § 154.1870(d), revise the list of chemicals to read as follows:

§ 154.1870 Bow and stern loading.

* * * * * *

(d) * * *

(1) Acetaldehyde.
(2) Ammonia, anhydrous.
(3) Diethyl ether.
(4) Dimethylamine.
(5) Ethyl chloride.
(6) Isopropylamine.
(7) Methyl chloride.
(8) Monethylamine.
(9) Propylene oxide.
(10) Vinyl chloride.
(11) Viny ethyl ether.
(12) Vinylidene chloride.

67. Following § 154.1872, revise table 4 and its footnotes to read as follows:

§ 154.1872 Cargo emergency jettisoning.

* * * * *

TABLE 4.—SUMMARY OF MINIMUM REQUIREMENTS

Cargo name[1,2]	Ship type	Independent tank type C required	Control of cargo tank vapor space	Vapor detection[3]	Gauging[4]	Electrical hazard class and group[5]	Special requirements in part 154
Acetaldehyde	IIG/IIPG		Inert	I & T	C	1–C	1401, 1402, 1410, 1710, 1720, 1870.
Ammonia, anhydrous	IIG/IIPG			T	C	1–D	1402, 1405, 1410, 1702 (b), (c) & (e), 1760, 1870.
Butadiene	IIG/IIPG		Inert	I	R	1–B	1401, 1702 (b), (d) & (f), 1710, 1750, 1818.
Butane	IIG/IIPG			I	R	1–D	1401.
Butylene	IIG/IIPG			I	R	1–D	1401.
Diethyl ether[6]	IIG/IIPG		Inert	I & T	C	1–C	1401, 1405, 1410, 1702(b), 1705(a), 1710, 1722–1724, 1765, 1870(d).

TABLE 4.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name[1 2]	Ship type	Independent tank type C required	Control of cargo tank vapor space	Vapor detection[3]	Gauging[4]	Electrical hazard class and group[5]	Special requirements in part 154
Dimethylamine	IIG/IIPG			I	C	1–C	1401, 1402, 1405, 1410, 1702 (b), (c) & (e), 1870.
Ethane	IIG			I	R	1–D	1401.
Ethyl chloride	IIG/IIPG			I & T	R	1–D	1401, 1402, 1870.
Ethylene	IIG			I	R	1–C	1401.
Ethylene oxide	IG	Yes	Inert	I & T	C	1–B	660(b)(3), 1401, 1402, 1405, 1410, 1702 (b), (d) & (f), 1705(b), 1710, 1720, 1725, 1730, 1870 (a) & (b).
Isoprene[6]	IIG/IIPG			I	R	1–D	1401, 1410, 1718, 1722, 1724, 1728, 1818.
Isopropylamine[6]	IIG/IIPG			I & T	C	1–D	1401, 1405, 1702 (b) & (c), 1718, 1721, 1722, 1723, 1724, 1870(d).
Methane (LNG)	IIG			I	C	1–D	703–709, 1401, 1854.
Methyl acetylene-propadiene mixture.	IIG/IIPG			I	R	1–C	1401, 1735.
Methyl bromide	IG	Yes		T	C	1–D	660(b)(3), 1345 (c) & (d), 1402, 1405, 1410, 1702 (a) & (d), 1705(b), 1720, 1870 (a) & (b).
Methyl chloride	IIG/IIPG			I & T	C	1–D	1401, 1402, 1702(a), 1870.
Monoethylamine[6]	IIG/IIPG			I & T	C	1–D	1401, 1402, 1405, 1702 (b) & (c), 1718, 1721, 1722, 1723, 1724, 1870(d).
Nitrogen	IIIG			O	C		1755.
Propane	IIG/IIPG			I	R	1–D	1401.
Propylene	IIG/IIPG			I	R	1–D	1401.
Propylene oxide[6]	IIG/IIPG		Inert	I & T	C	1–B	1401, 1402, 1410, 1705(a), 1710, 1720, 1722, 1723, 1724, 1770, 1775, 1870(d).
Propylene oxide and ethylene oxide mixture (30% w/w ethylene oxide)[6].	IIG/IIPG		Inert	I & T	C	1–B	1401, 1402, 1410, 1705(a), 1710, 1720, 1722, 1723, 1724, 1770, 1775, 1870(d).
Refrigerant gases	IIIG				R		None.
Sulfur dioxide	IG	Yes	Dry	T	C		660(b)(3), 1345 (c) & (d), 1401, 1402, 1405, 1410, 1705(b), 1715, 1720, 1870 (a) & (b).
Vinyl chloride	IIG/IIPG			I & T	C	1–D	1401, 1405, 1410, 1702 (a), (b), (d) & (f), 1710, 1740, 1745, 1750, 1818, 1830(f), 1870.
Vinyl ethyl et	IIG/IIPG		Inert	I & T	C		1401, 1402, 1405, 1410, 1705(a), 1710, 1722, 1723, 1724, 1765, 1818, 1870(d).
Vinylidene cl	IIG/IIPG		Inert	I & T	R	1–D	1401, 1402, 1405, 1410, 1710, 1722, 1723, 1724, 1818, 1870(d).

[1] Refrigera ses include non-toxic, non-flammable gases, such as dichlorodifluoromethane, dichloromonofluoromethane, dichlorotetra ane, monochlorodifluoromethene, monochlortetrafluoroethane, and monochlortrifluoromethane.
[2] Unless or specified, a cargo may be shipped under these requirements when it contains up to 5% total acetylene.
[3] As used in olumn, "I" stands for flammable vapor detection, "T" stands for toxic vapor detection, and "O" stands for oxygen detection. See §§ 154.1 ough 154.1360.
[4] As used i olumn, "C" stands for closed gauging and "R" stands for restricted gauging. See § 154.1300.
[5] The desig s used in this column are from the National Electrical Code.
[6] This carg is covered also by part 153 of this chapter.

Dated: Ap 94.

A.E. Henn,

Rear Admira Coast Guard, Chief, Office of Marine Sa curity and Environmental Protection.

[FR Doc. 94– Filed 6–3–94; 8:45 am]

BILLING CODE M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–285, RM–8376]

Radio Broadcasting Services; Alamo, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission dismisses the petition filed by Keith E. Lamonica requesting the allotment of Channel 228A to Alamo, Nevada, as the community's first local aural transmission service. See 58 FR 62319, November 26, 1993. Neither the petitioner nor any other party filed

comments reiterating an intention to apply for the channel, if allotted.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–285, adopted May 23, 1994, and released June 1, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–13631 Filed 6–3–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–281, RM–8370]

Radio Broadcasting Services; Austin, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission dismisses the petition filed by Keith E. Lamonica requesting the allotment of Channel 259A to Austin, Nevada, as the community's first local aural transmission service. See 58 FR 62319, November 26, 1993. Neither the petitioner nor any other party filed comments reiterating an intention to apply for the channel, if allotted.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–281, adopted May 23, 1994, and released June 1, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–13632 Filed 6–3–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–280, RM–8369]

Radio Broadcasting Services; Lund, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission dismisses the petition filed by Keith E. Lamonica requesting the allotment of Channel 264A to Lund, Nevada, as the community's first local and aural transmission service. See 58 FR 62320, November 26, 1993. Neither the petitioner nor any other party filed comments reiterating an intention to apply for the channel, if allotted.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–280, adopted May 23, 1994, and released June 1, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–13633 Filed 6–3–94; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 59, No. 107
Monday, June 6, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No 94–055–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under FOR FURTHER INFORMATION CONTACT.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
94–126–01	DNA Plant Technology Corporation	05–09–94	Pepper plants genetically engineered to express reduced levels of the enzyme β–1,4 endoglucanase.	California.
94–129–01	Rutgers University	05–03–94	Eggplant plants genetically engineered to express a gene from *Bacillus thuringiensis* (Bt) for resistance to coleopteran insects.	New Jersey.

Done at Washington, DC, this 31st day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–13653 Filed 6–3–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service, Modernization Transition Committee

TIME AND DATE: June 22, 1994 from 8 a.m.–12 noon and 1–4 p.m.; and June 23, 1994 from 9 a.m.–12 noon and 1–2:30 p.m. The Committee will tour the Forecast Systems Laboratory on June 23.

PLACE: The meeting on June 22, 1994 will be held at the Holiday Inn, Boulder, Colorado, Breckenridge Room, 800 28th Street, Boulder, Colorado 80303.

STATUS: The meeting will be open to the public. Approximately 30 seats will be available on a first-come first-served basis for the public on June 22.

On June 22, 1994 the last hour will be set aside for oral comments from the public. Persons wishing to speak during the public comment period must register on a sign-up sheet a they enter the meeting.

MATTERS TO BE CONSIDERED: This meeting will include: (1) A report by Norman Hoffman, Meteorologist-In-Charge of WSFO San Francisco, in response to recommendations on the proposed relocation certification made by the Committee at the March meeting; (2) review of public comments received as a result of publication of the proposed relocation certification in the Federal Register and NWS responses to the public comments; (3) completion of consultation with the Committee on the final relocation certification; (4) a progress report by the NWS on issues identified by the Committee during consultation on the FY95 National Implementation Plan; and (5) an informational briefing by the FAA on the ASOS program and automation certification.

CONTACT PERSON FOR MORE INFORMATION: Mr. Senator Raygor, National Weather Service, Wx211, 1325 East-West Highway, SSMC2, Silver Spring, MD 20910, telephone: (301) 713–0391.

Dated: May 31, 1994.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Service.

[FR Doc. 94–3602 Filed 6–3–94; 8:45 am]

BILLING CODE 3510–12–M

Patent and Trademark Office

Meeting of the Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATES: The Public Advisory Committee for Trademark Affairs will meet from 10 a.m. until 4 p.m. on June 14, 1994.

PLACE: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, room 912, Arlington, Virginia.

STATUS; The meeting will be open to public observation; seating will be available for the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

MATTERS TO BE CONSIDERED: The agenda for the meeting is as follows:

(1) Finance
(2) Automation
(3) Strategic Planning
(4) Current Trademark Office Practice Issues
(5) International Trademark Law

CONTACT PERSON FOR MORE INFORMATION: For further information, contact Lynne Beresford, Office of the Assistant Commissioner for Trademarks, Building CPK2, room 910, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 305–9464.

Dated: May 26, 1994.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 94–13655 Filed 6–3–94; 8:45 am]

BILLING CODE 3510–16–M

Change of Address for Trademark Applications and Trademark Related Papers

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: Commencing July 5, 1994, trademark applications and other trademark-related mail, except for trademark-related documents sent to the Assignment Branch for recordation and requests for certified copies of trademark documents, should be addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

DATES: This new address will be effective July 5, 1994.

FOR FURTHER INFORMATION CONTACT: Lynne G. Beresford at (703) 305–9464 or by mail marked to her attention and addressed to: Assistant Commissioner for Trademarks, Washington, DC 20231. After July 5, 1994, mail should be addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

SUPPLEMENTAL INFORMATION: As part of its emphasis on better service for trademark applicants and registrants, the responsibility for receiving, opening and routing of trademark mail is being transferred to the Assistant Commissioner for Trademarks. In order to more efficiently process the mail, the Assistant Commissioner has determined that trademark-related mail, except for trademark-related documents sent to the Assignment Branch for recordation and requests for certified copies of trademark application and registration documents, should be sent directly to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513, which is the location of the Trademark Operation. Having mail sent directly to that address should speed up processing and reduce the amount of lost or misrouted mail. The mail room at the South Tower Building will begin to receive and process mail on July 5, 1994. For a period after July 5, 1994, the Patent and Trademark Office (Office) will receive trademark-related mail at both the old address, Commissioner of Patents and Trademarks, Washington, DC 20231, and at the new address, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia, 22205–3513. The Office is currently preparing a notice of proposed rule-making to formally change the address for trademark-related papers. The Office will continue to maintain the following special boxes, Box Trademark Application, Box ITU, Box AAU, and Box 5, for expedited processing and distribution of specific types of documents. The Office encourages the continued use of these boxes with the new address.

People may continue to file both patent and trademark-related papers directly at the Attorneys' Window located in room 1B03 of Crystal Plaza Building 2, Arlington, Virginia.

Sections 1.8 and 1.10 of title 2 of section 37 of the Code of Federal Regulations are waived, to the extent that, on or after July 5, 1994, a certificate of mailing under §§ 1.8 or 1.10, for trademark applications and other trademark-related mail, except for trademark-related documents sent to the Assignment Branch for recordation and requests for certified copies of trademark application and registration documents, may be addressed either to the Commissioner of Patents and Trademarks, Washington, DC 20231, or to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia, 22202–3513. Patent-related mail should continue to be sent to: Commissioner of Patents and Trademarks, Washington, DC 20231.

Authority: 35 U.S.C. 6, 15 U.S.C. 1123

Dated: May 26, 1994.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 94–13654 Filed 6–3–94; 8:45 am]

BILLING CODE 3510–16–M

DEPARTMENT OF DEFENSE

Office of the Secretary

AGENCY: Department of Defense, Advisory Board on the Investigative Capability of the Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Advisory Board on the Investigative Capability of the Department of Defense. The purpose of the meeting is to discuss the progress of the study and further courses of action. This meeting is open to the public.

DATE AND TIME: June 9, 1994, from 8:30 a.m.–5 p.m.

ADDRESSES: 1700 N. Moore Street, suite 1425, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: E. Vaughn Dunnigan, Deputy Staff Director, Advisory Board on the Investigative Capability of the Department of Defense, 1700 N. Moore Street, suite 1420, Arlington, VA 22209; telephone (703) 696–6055.

May 31, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–13598 Filed 6–3–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Justification for Acceptance of an Unsolicited Application

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.14, it intends to award on a noncompetitive basis a Cooperative Agreement to the African Electrification Foundation. The purpose of this program is to develop a partnership with Historically Black Colleges and Universities (HBCU's) to collaborate in strengthening the electric power system infrastructure in Africa. This cooperative agreement will help ensure that minority businesses and educational institutions are afforded an opportunity to expand their participation in the commercial application of energy-related technologies and enhance their competitiveness. Eligibility for this award is restricted to the African Electrification Foundation.

FOR FURTHER INFORMATION CONTACT: Rufus H. Smith, M–5, U.S. Department of Energy, Oak Ridge, Tennessee 37830, (615) 576–4968.

Issued in Oak Ridge, Tennessee, on May 24, 1994.

Peter D. Dayton,

Director, Procurement & Contracts Division, Oak Ridge Operations Office.

[FR Doc. 94–13686 Filed 6–3–94; 8:45 am]

BILLING CODE 6450–01–M

Noncompetitive Award of Financial Assistance Pacific Northwest and Alaska Bioenergy Program—State Grants

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Golden Field Office, through the Seattle Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.7(b)(2), it intends to award grants to: Alaska Department of Community and Regional Affairs, Energy Division; Idaho Department of Water Resources, Energy Division; Montana Department of Natural Resources and Conservation, Energy Division; Oregon Department of Energy; and Washington State Energy Office. The awards represent a continuation of DOE funded research, development, and demonstration of bioenergy-related technologies. Public Law 97–88 provides the statutory authority for the proposed award.

SUPPLEMENTARY INFORMATION: Through the agencies identified above, the states of Alaska, Idaho, Montana, Oregon and Washington have been engaged in encouraging the development of bioenergy technologies for at least the last eleven years and have made successful advances to:

(1) Produce cost-shared projects,

(2) establish regional bioenergy committees,

(3) Interact with trade and professional associations,

(4) Provide technical assistance to developers and utilities,

(5) Produce targeted information, and

(6) Implement regulatory incentives or reduce regulatory and environmental barriers which promote the development of bioenergy technologies.

Research, development, and demonstration activities occurring under these grant agreement will provide needed data and information to DOE and the bioenergy industry. This helps remove barriers to the utilization of bioenergy technologies.

Therefore, these financial assistance applications are being accepted because the work to be funded is necessary to continue activities presently being supported by DOE and the work will enhance the public benefit. DOE knows of no other entities within respective state boundaries which are conducting these activities in the near or distant future. The project period for the grant agreements is expected to begin in July 1994 for a five year period. DOE plans to provide funding in the amount of $475,000 for each state for this project period (State in-kind match equals $125,000 and U.S. DOE funds equal $350,000).

FOR FURTHER INFORMATION CONTACT:

Jeffrey James, U.S. Department of Energy, Seattle Support Office, 800 Fifth Avenue, Suite 3950, Seattle, WA 98104, (206) 553–2079.

Department of Energy, Golden Field Office, Noncompetitive Award of Financial Assistance, Pacific Northwest and Alaska Bionenergy Program—State Grants.

Issued in Golden, Colorado on May 24, 1994.

Dated: May 24, 1994.

John W. Meeker,

Chief, Procurement Team, GO.

[FR Doc. 94–13687 Filed 6–3–94; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection (a DOE component, which term includes the Federal Energy Regulatory Commission (FERC));

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, e.g., new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number of respondents per report period;

(10) An estimate of the number of responses per-respondent annually;

(11) An estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before July 6, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Norma White, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Ms. White may be telephoned at (202) 254–5327.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–580
3. 1902–0137
4. Interrogatory on Fuel and Energy Purchase Practices
5. Revision
6. Biennially
7. Mandatory
8. Businesses or other for-profit
9. 67 respondents
10. 1 response
11. 90 hours per response
12. 6030 hours
13. The information is needed to comply with the requirements of Section 205(f)(2) of the Federal Power Act for a review "not less frequently than every two years" of practices * * * to insure efficient use of resources.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, May 27, 1994.

Yvonne M. Bishop,

Director, Statistical Standards; Energy Information Administration.

[FR Doc. 94–13688 Filed 6–3–94; 8:45 am]

BILLING CODE 6450–01–P

Clearance of Form EIA–858, "Uranium Industry Annual Survey"

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of proposed changes to form.

SUMMARY: Under its continuing effort to reduce paperwork and reporting burden for respondents (as required by the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. 3501 et seq.), the Energy Information Administration (EIA) conducts a consultation program to provide the general public and other Federal agencies an opportunity to comment on its continuing and newly proposed survey forms. This program helps to assure that: (a) Data can be reported by respondents in the requested format; (b) burden of reporting is minimized; (c) survey forms are clearly understood; and (d) the impact of collection requirements on respondents can be accurately assessed. Currently, EIA is soliciting comments concerning proposed changes to Form EIA–858, "Uranium Industry Annual Survey," for the collection of 1994 data.

DATES: Written comments must be submitted July 6, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should, as soon as possible, advise the EIA contact listed below of your intention to provide comments.

FOR FURTHER INFORMATION CONTACT: Luther Smith, Energy Information Administration, EI–522; U.S. Department of Energy; Washington, DC 20585; Phone (202) 254–5565. Requests for additional information or copies of the form and instructions should be directed to Luther Smith.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy (DOE) Organization Act (Public Law 95–91), the Energy Information Administration is conducting a comprehensive energy data and information program to collect, evaluate, assemble, and analyze periodic data and information on the domestic uranium industry and economic and statistical information related to the adequacy of domestic uranium resources and production capability to meet the Nation's near- and longer-term future needs. The information collected is used by the Energy Information Administration to fulfill its monitoring and data dissemination functions as mandated by the Congress.

Data collected on these forms provide a comprehensive statistical characterization of the domestic uranium industry in these areas: (a) Uranium exploration, mining, reserves, uranium concentrate production, and employment related to those activities, and (b) uranium marketing activities, inventory status, imports and exports, enrichment feed deliveries, purchases of enrichment services, and use of unirradiated uranium in new fuel assemblies. Published data from these surveys are used by the Congress, Federal and State agencies, the uranium and electric-utility industries, and the general public. National and State level data are published in the EIA reports "World Nuclear Capacity and Fuel Cycle Requirements," "Uranium Purchases Report," "Uranium Industry Annual," and the "Annual Energy Review."

II. Current Actions

Summary of Changes

In the December 7, 1993, Federal Register notice (58 FR 64399), the EIA proposed that 1994 data on uranium contracts (Item 1, Schedule B, annual Form EIA–858) would be collected on a new quarterly survey form, Schedule M. Under this proposal also, the collection of 1994 data under Schedule A and under Items 2–7 of Schedule B, Form EIA–858, would have been done annually.

After review of comments received in response to the Federal Register notice, the EIA has decided not to implement the proposed new Schedule M for 1994. Instead, the technical suggestions for improving the Form EIA–858 survey provided in the comments will be used, where applicable, to revise the annual Schedule B as described below.

For the EIA–858 survey for 1994, the EIA also has dropped the proposed new criteria that would have expanded the number of data elements that would be releasable. The "Provisions for Confidentiality" declaration on the 1994 Form EIA–858 will remain the same as it was on the 1993 Form EIA–858.

In the December 7, 1993, Federal Register notice, the EIA also proposed to use a one-page survey, Form EIA–851, to collect quarterly data on uranium concentrate production for 1994. The EIA has decided not to pursue at this time implementation of a formal survey form for the EIA–851 collection. Instead, the current mode of monthly reporting of uranium concentrate production data through collection of internal company production reports and phone surveys will be continued. The production data collected under the EIA–851 survey will continue to be treated as confidential.

Detailed Description of Changes

Form EIA–858: On the 1994 Form EIA–858, Schedule B data items have been reordered (compared with the 1993 Form EIA–858) as described in the following table:

NUMBERING OF SCHEDULE B DATA ITEMS, FORM EIA–858

1993 (Current)		1994 (Change)	
Item No.	Item title	Item No.	Item title
1	Contract	1	Contract.
2	Inventories	2	Inventories.
3	Inventory policy	3	Inventory policy.
4	Actual enrichment feed deliveries ...	4	Unirradiated new assemblies loaded.
5	Projected feed deliveries ...	5	Actual enrichment feed deliveries.
6	Unirradiated new assemblies loaded	6	Projected feed deliveries.
7	Enrichment services purchased by utilities ..	7	Now Item 1.J, under "Contract".

On the 1993 Form EIA–858 (left-hand column above), Items 1 and 6 (now Item 4) will be modified as described below. Items 2, 3, 4 (now Item 5), and Item 5 (now Item 6) of Schedule B will continue to be collected without modifications. Item 7, "Enrichment Services Purchased by Utilities," on the 1993 Schedule B will be incorporated under Item 1.J, "Utility Purchases of Enrichment Services," on the 1994 Schedule B.

For Item 1 (Contract)

Item 1 will be modified as explained under "a" through "h" below:

a. A check off box will be added to Item 1.B to identify contracts that have been renegotiated based on price-related issues.

b. Item 1.C will be a new item to collect information on the term-of-delivery arrangement specified in a contract: i.e., Whether the respondent classifies the reported contract as having a "spot," short-term," "medium-term," or a "long-term" delivery period.

c. Item 1.D, "Transaction Type," will provide separate check off boxes to indicate whether uranium materials were sent or received under an Exchange transaction.

d. Item 1.E will display a listing of applicable country identification codes from which respondents can choose to report the country or countries of origin and/or destination for deliveries of natural uranium and the country of enrichment services for enriched uranium. An "Other" space will be provided for respondents to write in a country name and its identification code not listed under item 1.E.

e. Item 1.F will be designed to collect data on individual quantities of delivered uranium and the type of material delivered, its price, delivery date (DD/MM), whether the material was imported or exported, and country of origin. For deliveries of enriched uranium product (EUP), the quantity will be reported as kilograms of uranium (KgU). The transaction tails assay, the product assay, and the feed assay also will be reported to allow the EIA to calculate the natural uranium feed component quantity as equivalent U_3O_8 for each delivered quantity. For EUP, the country of enrichment will be reported instead of the country of uranium origin. For deliveries of both natural uranium and EUP, forecast for firm and optional deliveries will be requested for a five-year forward period.

f. Reporting the contract pricing mechanism under Item 1.H will be simplified to: (a) Request respondents to report whether a pricing arrangement under a market-price related contract specifies a "floor price" or a "no floor price"; (b) add a check off box to capture "spot-market price" pricing arrangements; and (c) allow pricing arrangements other than for "market-price related" and "contract price" to be reported as "Other" and briefly described in the space provided.

g. Under Item 1.I, respondents will be requested to briefly describe the options that are allowed under the contract for the seller and/or the buyer (purchaser).

h. Utility purchases of enrichment services (formerly Item 7 of Schedule B) will be reported under Item 1.J in order to collect the reporting of all utility contracting activities under Item 1. This new format will permit the respondent to report individual quantities of separative work units (SWU) purchased by a utility by the date of delivery, seller's name, and the country of enrichment origin.

For Item 6 (Unirradiated New Fuel Assemblies Loaded into the Reactor)

The data element title will be changed to make clear the data being requested, which is the quantity of uranium used in unirradiated, new fuel assemblies loaded into a reactor(s) during the survey year.

III. Request for Comments

Prospective respondents and other interested parties should comment on these proposed changes. The following general guidelines are provided to assist in the preparation of responses.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions provided in the instructions?

C. Can data be submitted in accordance with the response period specified in the instructions?

D. Will the estimated burden of reporting for the Form EIA–858 survey, currently 25 hours per response, be reduced or increased due to the proposed form changes.

E. Will the estimated cost of completing the form, including the direct and indirect costs associated with the data collection, be reduced or increased as a result of these changes? Direct costs should include all costs, such as administrative costs, directly attributable to providing the requested information.

F. How can the revised Form EIA–858, Schedules A and B, be improved?

G. Do you know of another Federal, State, or local agency that collects similar data? If so, specify the agency, the data element(s), and the means of collection.

H. What definitions does your company use for: spot, short-term, medium-term, and/or long-term contracts?

As a potential data user:

A. Will these changes improve the usefulness of the data?

B. Can you use data at the levels of detail indicated on the Form EIA–858?

C. For what purposes do you use the data? Please be specific.

D. How could the form be improved to better meet your specific needs?

E. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths

F. What data should be published that are not now being published? Please specifically address any data publication issues as they might relate to changes in the survey form and/or the data collected.

The EIA also is interested in receiving comments from persons regarding their views on the need for the information contained in the survey Form EIA–858.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of these forms changes. The comments also will become a matter of public record.

Statutory Authority

Sections 5(a), 5(b), 13(b), and 52 of Public Law 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), 790a. and section 205. Public Law 95–91, Department of Energy Organization Act, 42 U.S.C. 7135.

Issued in Washington, DC, May 25, 1994

John Gross,

Acting Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 94–13689 Filed 6–3–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER94–289–000, et al.]

Midwest Power Systems Inc., et al.; Electric Rate and Corporate Regulation Filings

May 27, 1994.

Take notice that the following filings have been made with the Commission:

1. Midwest Power Systems, Inc.

[Docket No. ER94–289–000]

Take notice that on May 23, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing Amendment No. 3 to the filing of a Peaking Capacity Sales Agreement (Agreement) dated June 6, 1991, between Corn Belt Power Cooperative (Corn Belt) and Iowa Public Service Company, n/k/a MPSI. This Agreement's principle purpose is to establish terms for MPSI to purchase capacity and energy from Corn Belt from June 1, 1994, through September 30, 2000. Paragraph 12 of the Agreement allows for MPSI to set capacity and energy to Corn Belt, at Corn Belt's sole option, in the months of October and November to each respective year.

Amendment No. 3 contains additional support data and information.

MPSI requests a waiver of § 35.3 of the commission's regulations so that the Peaking Capacity Sales Agreement be approved effective June 1, 1994. Midwest Power respectfully requests an abbreviated notice of filing of approximately ten days.

MPSI states that copies of this filing were served on Corn Belt and the Iowa Utilities Board.

Comment date: June 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket Nos. ER94–1213–000, ER94–1214–000, ER94–1215–000, ER94–1216–000, ER94–1217–000, ER94–1218–000, ER94–1219–000, and ER94–1220–000]

Take notice that on May 23, 1994 Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a letter requesting a waiver of the 60-day prior notice requirement for the above-listed dockets and an amendment to four of the above-listed dockets (ER94–1213–000, ER94–1214–000, ER94–1217–000, and ER94–1220–000). The initial filings provided for an increase in the monthly charge for the transmission of power and energy pursuant to the following Rate Schedules:

Docket No.	Rate schedule	Person receiving service
ER94–1213–000	60	Power Authority of the State of New York ("Power Authority")(Brookhaven).
ER94–1214–000	78	Power Authority (LI MDAs).
ER94–1215–000	102	Power Authority (EDP).
ER94–1216–000	117	Long Island Lighting Company (LILCO) (Y–50).
ER94–1217–000	81	Power Authority (LI Municipals).
ER94–1218–000	105	Orange & Rockland Utilities, Inc. ("O&R").
ER94–1219–000	94	LILCO (Gilboal).
ER94–1220–000	66	Power Authority (Grumman).

Con Edison states that a copy of this filing has been served by mail upon the Authority, LILCO, O&R, and the Villages of Freeport, Greenport, and Rockville Centre.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER94–1275–000]

Take notice that on May 19, 1994, New England Power Company (NEP), tendered for filing a revised service agreement under NEP's FERC Electric Tariff Original Volume No. 4. The revision would permit the addition of a delivery point for service to the West Boylston (Mass.) Municipal Lighting Plant.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. The Montana Power Company

[Docket No. ER94–1285–000]

Take notice that on May 20, 1994, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a supplement to Rate Schedule FERC No. 188 (a Transmission Agreement between The Montana Power Company and Puget Sound Power & Light Company, dated July 30, 1971). Montana requests that the Commission grant a waiver of the 60-day prior notice requirement pursuant to 18 CFR 35.11.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Western Resources, Inc.

[Docket No. ER94–1286–000]

Take notice that on May 20, 1994, Western Resources, Inc. (Western Resources) tendered for filing Transmission Service Agreements (Agreements) between Western Resources and each of the following Kansas cities: Fredonia, Mulvane, Neodesha and Winfield. Under the Agreements, Western Resources will make transmission service available for the delivery of power and energy to each of the cities. This service will be subject to the terms and conditions in Service Schedule FT (Firm Wholesale Transmission Service) in Western Resources' FERC Electric Tariff, Volume No. 1, filed March 31, 1994. This filing is proposed to become effective June 1, 1994.

Copies of this filing were served upon Fredonia, Mulvane, Neodesha, Winfield and the Kansas Corporation Commission.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Western Regional Transmission Association

[Docket No. ER94–1288–000]

Take notice that on May 20, 1994, PacifiCorp, the California Municipal Utilities Association and the

Independent Energy Producers tendered for filing in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, a Governing Agreement on behalf of the Western Regional Transmission Association.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Rayburn Country Electric Cooperative, Inc.

[Docket No. ER94–1290–000]

Take notice that on May 20, 1994, Rayburn Country Electric Cooperative, Inc. (Rayburn Electric), tendered for filing proposed changes to its FERC Electric Service Tariff, Rate Schedule WP–S. Rayburn Electric proposes to replace its current Rate Schedule WP–S with a new Rate Schedule WP–2 for the purpose of implementing a uniform, system-wide rate for sales to its members, both under the jurisdiction of the FERC and the Public Utility Commission of Texas (PUCT).[1] The proposed rate changes are projected to increase revenues from jurisdictional sales and service by $413,672 (or 3.18 percent) from the existing FERC rate and decrease revenues by $7,223 (or 0.01 percent) from the existing PUCT rate based upon the 12 month period ending December 31, 1994.

The purpose of the proposed rate change is to permit Rayburn Electric to charge a common, blended rate for service to all of its distribution members, thereby avoiding a disparity of rates and spreading savings resulting from a transaction with the Southwestern Electric Power Company among all of its members.

Copies of the filing were served upon Rayburn Electric's customers and the PUCT.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Long Island Lighting Company

[Docket No. ER94–1291–000]

Take notice that on May 23, 1994, Long Island Lighting Company (LILCO), tendered for filing a 1994 Summer Banking Agreement between LILCO and New York Power Authority (NYPA) and a Summer 1994 Operating Agreement between LILCO and the Village of Rockville Centre (Rockville Centre).

The two agreements facilitate the delivery of up to 26 megawatts of NYPA power to Rockville Centre during the 1994 Summer period (May 1, 1994 to October 31, 1994). LILCO has requested an effective date of May 1, 1994, or, alternatively, an effective date as of one day after the date of its filing of the two agreements with the Commission. LILCO also requests that the agreements be permitted to terminate as of October 31, 1994.

Copies of this filing have been served by LILCO on NYPA, Rockville Centre, and the New York State Public Service Commission.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Orange and Rockland Utilities, Inc.

[Docket No. ER94–1292–000]

Take notice that on May 23, 1994, Orange and Rockland Utilities, Inc., (Orange and Rockland) tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988, in Docket No. ER88–112–000, an executed Service Agreement between Orange and Rockland and Guild Molders, Inc.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Orange and Rockland Utilities, Inc.

[Docket No. ER94–1293–000]

Take notice that on May 23, 1994, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988, in Docket No. ER88–112–000, an executed Service Agreement between Orange and Rockland and Becton Dickinson.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Electric and Gas Company

[Docket No. ER94–1294–000]

Take notice that on May 23, 1994, Public Service Electric and Gas Company (PSE&G), tendered for filing an initial Rate Schedule to provide fully interruptible transmission service to for deliveries of non-firm wholesale electrical power and associated energy output utilizing the PSE&G bulk power transmission system.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Company

[Docket No. ER94–1295–000]

Take notice that on May 24, 1994, Portland General Electric Company (PGE), tendered for filing service agreements under FERC Electric Tariff, Original Volume No. 1 (PGE–1) with Enron Power Marketing, Inc. and Electric Clearinghouse, Inc. Copies of the filing have been served on the parties included in the distribution list defined in the filing letter.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. The Montana Power Company

[Docket No. ER94–1296–000]

Take notice that on May 24, 1994, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a Form of Service Agreement with Rainbow Energy Marketing Corporation (Rainbow) under FERC Electric Tariff, Second Revised Volume No. 1 (M–1 Tariff), as well as a revised Index of Purchasers under said Tariff and a Certificate of Concurrence from Rainbow.

A copy of the filing was served upon Rainbow.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Black Creek Hydro, Inc.

[Docket No. ER94–1297–000]

Take notice that on May 24, 1994, Black Creek Hydro, Inc. (Black Creek), tendered for filing its proposed initial Rate Schedule FERC No. 1.

The proposed initial Rate Schedule No. 1 would allow Black Creek to charge non-cost-based negotiated rates for sales of power from its Black Creek hydroelectric facility located in King County, Washington.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Florida Power & Light Company

[Docket No. ER94–1298–000]

Take notice that on May 24, 1994, Florida Power & Light Company (FPL) filed with the Commission the Specified Transmission Facilities Modification Agreement between Florida Power & Light Company and Seminole Electric Cooperative, Inc. (SEC) (the Agreement). FPL states that the Agreement provides the terms and conditions applicable to the modification of certain FPL transmission facilities necessary for SEC to assume a direct service obligation at those delivery points. In addition, FPL seeks to modify one attachment and terminate three exhibits applicable to those delivery points which are attached to and part of the Aggregate Billing Partial Requirements Service Agreement between Florida Power & Light Company and Seminole Electric

[1] Rayburn Electric filed the same Rate Schedule WP–2 with the Public Utility Commission of Texas on May 16, 1994.

Cooperative, Inc. FPL requests that the Agreement and the terminations become effective on May 25, 1994.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Central Hudson Gas & Electric Corporation

[Docket No. ER94–1299–000]

Take notice that on May 20, 1994, Central Hudson Gas and Electric Corporation (Central Hudson), tendered for filing its development of actual costs for 1992 and 1993 related to substation service provided to Consolidated Edison Company of New York, Inc. (Con Edison) in accordance with the provisions of its Rate Schedule FERC No. 43.

Central Hudson indicates that the actual cost amounted to $247,568 for 1992 and $239,490 for 1993; 1993's actual cost will be the basis on which estimated charges for 1994 will be billed.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit charges to become effective January 1, 1994, as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison and the State of New York Public Service Commission.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Northwestern Public Service Company

[Docket No. ES94–28–000]

Take notice that on May 20, 1994, Northwestern Public Service Company filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $25 million of short-term debt securities from time to time over a two-year period immediately following the date of the Commission's approval of the application.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. Temple-Inland Forest Products Corporation

[Docket No. QF84–389–001]

On May 20, 1994, Temple-Inland Forest Products Corporation tendered for filing a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of the facility. No determination has been made that the submittal constitutes a complete filing.

The prior notice of application for recertification of a qualifying facility published in 59 **Federal Register** 14,157 (1994) on March 25, 1994, was erroneously issued under Docket No. QF94–76–000. The correct designation should have been Docket No. QF84–389–001.

Comment date: June 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13619 Filed 6–3–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 349–029]

Alabama Power Co.; Availability of Environmental Assessment

May 31, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Office of Hydropower Licensing has revised the application for Martin Dam Project, located on the Tallapoosa River, in Elmore, Coosa, and Tallapoosa Counties, Alabama, and has prepared an Environmental Assessment (EA) of the proposed revised recreation plan. The Commission staff concluded that approval of the application for the revised recreation plan, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 349–029 to all comments. For further information, please contact Dan Hayes at (202) 219–2660.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13613 Filed 6–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11264]

Turbine Industries, Inc.; Availability of Final Environmental Assessment

May 31, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Coolemee Hydroelectric Project located on the South Yadkin River in the Town of Coolemee, Davie County, North Carolina, and has prepared a Final Environmental Assessment (FEA) for the proposed project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13612 Filed 6–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–570–000]

Equitrans, Inc.; Request Under Blanket Authorization

May 31, 1994.

Take notice that on May 26, 1994 Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275,

filed in Docket No. CP94–570–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install a delivery tap under Equitrans' blanket certificate issued in Docket No. CP83–508–000 and transferred to Equitrans in Docket No. CP86–676–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans proposes to install one delivery tap in the City of Coal Center, Pennsylvania to provide gas transportation service to Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable). Equitrans projects the quantity of gas to be delivered through the delivery tap will be approximately 1 Mcf on a peak day. Equitrans states it will charge Equitable the applicable transportation rate contained in Equitrans' tariff on file with and approved by the Commission.

Equitrans further states that the 1 Mcf per day of peak service will not impact Equitrans' peak day and annual deliveries. Equitrans also states that it has sufficient capacity to accomplish the deliveries without detriment to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13614 Filed 6–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–38–000]

Transcontinental Gas Pipe Line Corp.; Report of Refunds

May 31, 1994.

Take notice that on May 2, 1994, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds in accordance with section 4 of Transco's Rate Schedule LSS showing refunds made to its LSS customers resulting from the Commission's order issued December 30, 1993, in National Fuel's Docket Nos. RP92–73–000 and RS92–21–000, *et al.*

Transco states that on April 25, 1994, it refunded $19,027.64, including interest, to its LSS customers for the referenced National Fuel refund for the period August 1, 1993 through November 30, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13616 Filed 6–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–39–000]

Transcontinental Gas Pipe Line Corp.; Report of Refunds

May 31, 1994.

Take notice that on May 2, 1994, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds in accordance with section 4 of Transco's Rate Schedule SS–2 showing refunds made to its SS–2 customers resulting from the Commission's order issued December 30, 1993, in National Fuel's Docket Nos. RP92–73–000 and RS92–21–000, *et al.*

Transco states that on April 25, 1994, it refunded $32,843.71, including interest, to its SS–2 customers for the referenced National Fuel refund for the period August 1, 1993 through November 30, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13615 Filed 6–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–37–000]

Transcontinental Gas Pipe Line Corporation; Report of Refunds

May 31, 1994.

Take notice that on May 2, 1994, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds in accordance with § 8.01 (i) of Transco's NIPPs–SE Rate Schedule x–314, x–315, x–316, x–317, x–318, and x–324 showing refunds made to its NPSE customers resulting from the Commission's order issued December 30, 1993, in National Fuel's Docket Nos. RP92–73–000 and RS92–21–000, et al.

Transco states that on April 25, 1994, it refunded $124,365.68, including interest, to its NPSE customers for the referenced National Fuel refund for the period August 1, 1993 through November 30, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13617 Filed 6–3–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–181–000]

Williams Natural Gas Company; Further Conference

May 31, 1994.

By this notice, the technical conference previously scheduled for Monday, June 20, 1994, (59 FR 27273, May 26, 1994), in the above-docket, has been rescheduled for Tuesday, June 28, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13618 Filed 6–3–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 94–35–NG]

Alberta Resources Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Alberta Resources Inc. blanket authorization to import and export up to a combined total of 50 billion cubic feet (Bcf) of natural gas from and to Canada over a two-year term beginning on the date of first import or export.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 13, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–13659 Filed 6–3–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–20–NG]

CU Energy Marketing, Inc.; Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CU Energy Marketing, Inc. authorization to import up to 200 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery after June 16, 1994.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on May 17, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–13660 Filed 6–3–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–14–NG]

Distrigas of Massachusetts Corp.; Blanket Authorization To Export Natural Gas, Including Liquefied Natural Gas, to Canada

AGENCY: Office of Fossil Energy, DOE

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Distrigas of Massachusetts Corporation authorization to export to Canada up to 20 Bcf of natural gas, including liquefied natural gas (LNG). The term of the authorization is for a period of two years beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on May 17, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–13661 Filed 6–3–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–39–NG]

Meridian Oil Transportation Inc.; Order Granting Blanket Authorization To Export Natural Gas, Including Liquefied Natural Gas, to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Meridian Oil Transportation Inc. blanket authorization to export up to 54 Bcf of natural gas, including liquefied natural gas, to Mexico over a period of two years beginning on the date of first delivery after May 31, 1994.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 17, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–13662 Filed 6–3–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $144,864.85, plus accrued interest, in refined petroleum overcharges obtained by the DOE under the terms of a Remedial Order issued to N. C. Ginther Company, Case No. LEF–0060. The OHA has determined that the funds will be distributed in accordance with the provisions of 10 CFR Part 205, Subpart V and 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act (PODRA).

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW. Washington, DC 20585 (202) 586–6602.

DATES AND ADDRESSES: Applications for Refund must be filed in duplicate, addressed to N. C. Ginther Company Special Refund Proceeding and sent to:

Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW. Washington, DC 20585. Applications should display a prominent reference to the Case Number LEF–0060 and be postmarked on or before November 30, 1994.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $144,864.85 plus accrued interest, obtained by the DOE under the terms of a Consent Order that the DOE issued to N. C. Ginther Company on March 25, 1983. The Consent Order resolved all civil and administrative claims and disputes between N. C. Ginther Company and the DOE.

The OHA has determined to distribute the Consent Order fund in a two stage refund proceeding. Purchasers of propane, butane, and natural gasoline from N. C. Ginther Company will have an opportunity to submit refund applications in the first stage. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of propane, butane, and natural gasoline which they purchased from N. C. Ginther Company.

In the event that money remains after all first stage claims have been disposed of, the remaining funds will be disbursed in accordance with the provisions of 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA).

Applications for Refund must be postmarked on or before November 30, 1994. Instructions for the completion of refund applications are set forth in Section IV of the Decision that immediately follows this notice. Applications should be sent to the address listed at the beginning of this notice.

Unless labelled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington DC 20585.

Dated: May 31, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of The Department of Energy

Implementation of Special Refund Procedures

Name of Petitioner: N. C. Ginther Company
Date of Filing: July 20, 1993
Case Number: LEF–0060

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

In this Decision and Order, we consider a Petition for Implementation of Special Refund Procedures filed by the ERA on July 20, 1993, for funds obtained due to alleged pricing violations in the sale of propane, butane, and natural gasoline (natural gas liquids products). The funds at issue in that Petition were obtained through settlement of DOE enforcement proceedings involving N. C. Ginther Company (Ginther), pursuant to 10 CFR part 205, subpart V. The present Decision will set forth final procedures for the distribution of these funds to qualified purchasers of Ginther's natural gas liquids (NGL) products.

I. Background

During the period covered by the Consent Order (September 1, 1973, through March 31, 1977), Ginther was a "gas plant operator" (as defined in 10 CFR 212.162) and its sales were subject to DOE price regulations. Accordingly, Ginther was subject to the DOE Mandatory Petroleum Price Regulations. An ERA audit of Ginther's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR part 212 subparts E and K, in specified transactions during the period September 1, 1973, through March 31, 1977 (the consent order period).[1] Consequently, the ERA issued a Notice of Probable Violation (NOPV) to Ginther on December 31, 1980, alleging pricing violations in the sale of propane, butane, and natural gasoline during the audit period. On March 25, 1983, Ginther and the DOE entered into a Consent Order. The Consent Order refers to the ERA's allegations of regulatory violations. It also includes Ginther's denials that any such violations occurred.

As a result of the Consent Order, there is a total of $144,864.85, plus accrued interest, available for restitution. This Decision concerns the distribution of all funds in the Ginther escrow account.

II. The Proposed Decision and Order

On April 14, 1994, the OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the alleged violation amount obtained from Ginther. 59 FR 19005 (April 21, 1994). The OHA tentatively outlined procedures under which purchasers of Ginther's NGL products could apply for refunds. In order to permit applicants to make refund claims without incurring disproportionate costs as well as to allow the OHA to equitably and efficiently consider those claims, we set forth a number of presumptions pertaining to refund procedures.

First, we presumed that the alleged refined product overcharges were spread evenly over all of Ginther's sales of NGL products during the Consent Order period. We therefore proposed that an applicant's potential refund generally should be computed by multiplying the per-gallon refund amount by the number of gallons of Ginther's NGL products that the claimant purchased during the Consent Order period. The resulting figure is referred to as the claimant's "volumetric share" of the Ginther Consent Order funds. Because an applicant may have been overcharged by more than the volumetric amount, we proposed that an applicant could rebut the volumetric refund presumption by showing that it sustained a greater amount of the overcharge.

Because it is potentially difficult, time-consuming, and expensive to demonstrate that one was forced to absorb any overcharges from Ginther, we proposed to adopt a number of presumptions concerning injury. We proposed that resellers and retailers claiming refunds of $5,000 or less, end-users, agricultural cooperatives, and certain types of regulated firms would be presumed injured by Ginther's alleged overcharges. We proposed that refiners, resellers, and retailers seeking refunds greater than $5,000 could receive a maximum of $20,000 based upon 40 percent of their volumetric

[1] Ginther owned all or a portion of four gas processing plants for various lengths of time during the audit period. In addition, Ginther owned and operated Ginther Energy Marketing Company and A & V Gas Service, Inc. In accordance with the definition of a firm in 10 CFR 212.31, the four gas processing plants, Ginther Energy Marketing Company, and A & V Gas Service, Inc., constitute one firm and were regarded as such by ERA in the audit. Notice of Probable Violation issued to N. C. Ginther dated December 31, 1980.

share without having to prove injury. We also proposed to presume that claimants who made only spot purchases from Ginther were not injured and must rebut that presumption to receive a refund. We stated that applicants not covered by one of the injury presumptions would be required to demonstrate that they were forced to absorb any overcharge by Ginther in order to receive their full volumetric shares of the Ginther Consent Order funds.

Finally, we proposed that any money remaining after all Ginther refund claims are analyzed should be disbursed as indirect restitution in accordance with the provisions of the Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. §§ 4501–4507 (1988).

The PDO provided a period of 30 days from the date of publication in the **Federal Register** in which comments could be filed regarding the tentative refund process. More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the Ginther settlement funds. Consequently, the procedures will be adopted as proposed.

III. Refund Procedures

A. Eligibility for Refund

As indicated above, the Consent Order resolved all civil and administrative claims between DOE and Ginther. Accordingly, to the extent that is possible, the Ginther Consent Order amount of $144,864.85, plus accrued interest, will be distributed to purchasers of covered Ginther NGL products who can show that they were injured by Ginther's pricing practices during the period September 1, 1973, through March 31, 1977.

B. Calculation of Refund Amount

We are adopting a volumetric method to apportion the Ginther escrow account. Under this volumetric refund approach, a claimant's allocable share of the refined products pool is equal to the number of gallons of covered products purchased during the Consent Order period times a per gallon refund amount. We will derive the volumetric figure (per gallon refund amount) by dividing the $144,864.85 received from Ginther by the total volume of NGL products sold by the firm during the regulatory period, 25,312,920 gallons. This yields a volumetric refund amount of $.0057 per gallon, exclusive of interest. This method is based upon the presumption that the alleged overcharges were spread equally over all gallons of NGL products sold by Ginther during the regulatory period. *E.g., American Pac. Int'l, Inc.*, 14 DOE ¶ 85,158, at 88,293 (1986).[2]

Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of covered products that it purchased from Ginther during the period September 1, 1973, through March 31, 1977, multiplied by the per gallon volumetric amount for this proceeding. Accordingly, each claimant will be required to establish, by documentation or reasonable estimation, the volume of products that it purchased during this period. In addition, each successful claimant will receive a pro rata portion of the interest that has accrued on the Ginther funds since the date of remittance. As in previous cases, we will establish a minimum amount of $15 for refund claims. *E.g., Uban Oil Co.*, 9 DOE ¶ 82,541, at 85,225 (1982). Accordingly, an applicant must have purchased at least 2,544 gallons of NGL products from Ginther in order for its claim to be considered.

C. Showing of Injury

Each claimant will be required to document its purchases of covered products from Ginther during the Consent Order period. In addition, in order to receive a refund, an applicant generally must demonstrate through the submission of detailed evidence that it did not pass on the alleged overcharges to its customers. See, *e.g., Office of Enforcement*, 8 DOE ¶ 82,597, at 85,396–97 (1981) (*Vickers*).

However, as we have done in many prior refund cases, we will adopt a number of presumptions regarding injury for claimants in each category listed below. These presumptions are intended to ease what would be a time-consuming and potentially expensive process if an applicant were forced to demonstrate that they absorbed the alleged overcharges.

1. End-Users

In accordance with prior Subpart V proceedings, we are adopting the presumption that an end-user or ultimate consumer of Ginther NGL products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the consent order. See, *e.g., Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069, at 88,209 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. Id. Therefore, end-users of Ginther NGL products need only document their purchase volumes from Ginther during the consent order period to make a sufficient showing that they were injured by the alleged overcharges.

2. Regulated Firms and Cooperatives

In order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, *i.e.*, a public utility, or an agricultural cooperative which is required by its charter to pass through cost savings to its member purchasers, need only submit documentation of purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or a cooperative will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund. See *Marathon*, 14 DOE at 88,514–15. This requirement is based upon the presumption that, with respect to a regulated firm, any overcharge would have been routinely passed through to its customers. Similarly, any refunds received should be passed through to its customers. With respect to a cooperative, in general, the cooperative agreement which controls its business operations would ensure that the alleged overcharges, and similarly refunds, would be passed

[2] Nevertheless, we realize that the impact on an individual claimant may have been greater than the volumetric amount. Therefore, the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. *E.g., Standard Oil Co./Army and Air Force Exchange Serv.*, 12 DOE ¶ 85,015 (1984). Such an application will be granted only if an applicant makes a persuasive showing that: (1) it was "overcharged" by a specific amount, (2) it sustained a disproportionate share of Ginther's alleged overcharges, and (3) it was injured by those overcharges. See *MCO Holdings, Inc., MGPC, Inc./Little America Refining Co.*, 19 DOE ¶ 85,560 (1989); *Marathon Petroleum Co./Red Diamond Oil Co.*, 19 DOE ¶ 85,543 (1989); *Getty Oil Co./Atchison, Topeka & Santa Fe Railroad Co.*, 18 DOE ¶ 85,107 (1988). To the extent that a claimant makes this showing, it will receive a refund above the volumetric refund level. In computing the appropriate refunds of this type, we will prorate the refund amount by the ratio of the Ginther Consent order amount as compared to the aggregate overcharge amount alleged by the ERA. *Amtel, Inc./Whitco, Inc.*, 19 DOE ¶ 85,319 (1989) (*Amtel/Whitco*).

through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.[3]

3. Refiners, Resellers, and Retailers

a. *Small claims presumption.* We will adopt a "small claims" presumption that resellers requesting relatively small refunds were injured by the alleged overcharges. Under the small claims presumption, a refiner, reseller, or retailer seeking a refund of $5,000 or less, exclusive of interest, will not be required to submit evidence of injury beyond documentation of the volume of Ginther products it purchased during the consent order period. See *TOGCO*, 12 DOE at 88,210. This presumption is based on the fact that there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; for small claims the expense might even exceed the potential refund. Consequently, failure to allow simplified refund procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable because it allows the OHA to process the large number of routine refund claims in an efficient manner.[4]

b. *Mid-Level Claim Presumption.* In addition, a refiner, reseller, or retailer claimant whose allocable share of the refund pool exceeds $5,000, excluding interest, may elect to receive as its refund either $5,000 or 40 percent of its allocable share, up to $20,000,[5] whichever is larger.[6] The use of this presumption reflects our conviction that these larger, mid-level claimants were likely to have experienced some injury as a result of the alleged overcharges. See *Marathon*, 14 DOE at 88,515. We are adopting a 40 percent presumptive level of injury for all mid-level claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Ginther NGL products during the consent order period in order to be eligible to receive a refund of 40 percent of its total allocable share, up to $20,000, or $5,000, whichever is greater.[7]

c. *Spot purchasers.* We are adopting a rebuttable presumption that a reseller that made only spot purchases from Ginther did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers generally had considerable discretion as to the timing and market in which they made their purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. See, *e.g.*, *Vickers*, 8 DOE at 85,396–97. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Ginther.[8]

D. Allocation Claims

We may also receive claims based upon Ginther's alleged failure to furnish products that it was obliged to supply under the DOE allocation regulations that became effective in January 1974 See 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in subpart V implementation cases such as *Office of Special Counsel*, 10 DOE ¶ 85,048, at 88,220 (1982), and refund application cases such as *Mobil Oil Corp./Reynolds Indus., Inc.*, 17 DOE ¶ 85,608 (1988); *Marathon Petroleum Co./Research Fuels, Inc.*, 19 DOE ¶ 85,575 (1989) (*Marathon/RFI*), *aff'd sub nom. Research Fuels, Inc.* v. *DOE*, No. CA3–89–2983G (N.D. Tex. 1990), *aff'd*, 977 F.2d 601 (Temp. Emer. Ct. App. 1992). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish NGL products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Ginther may have had to the alleged allocation violation. See *Marathon/RFI*, 19 DOE ¶ 85,575. In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than Ginther. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the portion of the Ginther consent order amount that the agency attributed to allocation violations in general and to the specific allocation violation alleged by the claimants. Finally, since the Ginther consent order fund is less than Ginther's potential liability in the proceedings, we will pro rate those allocation refunds that would otherwise be disproportionately large in relation to the consent order fund. *Cf. Amtel/Whitco*, 19 DOE ¶ 85,319.

E. Distribution of Funds Remaining After First Stage

In the event that money remains after all refund claims from the Ginther funds have been analyzed, the remaining funds in that account will be disbursed as indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in subpart V proceedings and make those funds available to state governments for use in energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Ginther consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

[3] A cooperative's purchases of Ginther products which were resold to non-members will be treated in a manner consistent with purchases made by other resellers. See *Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc.*, 19 DOE ¶ 85,215 (1989).

[4] In order to qualify for a refund under the small claims presumption, a refiner, reseller or retailer must have purchased less than 877,280 gallons of Ginther products during the consent order period. However, an applicant, who has purchased more than 877,280 gallons of Ginther products during the consent order period, may elect to limit its refund to the small claims presumption.

[5] In most prior proceedings, we have used a $50,000 mid-level claim presumption. However, due to the small size of the Ginther consent order fund and the rather small volumetric figure, this amount would be impractical.

[6] That is, claimants who purchased more than 877,281 gallons of Ginther products during the consent order period (mid-level claimants) may elect to utilize this presumption.

[7] A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the alleged overcharges, or that it is eligible for a refund of less than the applicable presumption-level refund, may not then be eligible for a presumption-based refund. Instead, such a claimant may receive a refund which reflects the level of injury established in its application. No refund will be approved if its submission indicates that it was not injured as a result of its purchases from Ginther. See *Exxon*, 17 DOE at 89,150 n.10.

[8] In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that: (1) They made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases and (2) they were forced by market conditions to resell the product at a loss.

IV. General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased NGL products sold by Ginther during the period September 1, 1973, through March 31, 1977. There is no specific application form that must be used. However, the following information should be included in all Applications for Refund:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is a corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check.[9] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names.

(2) If the applicant's firm is owned by another company, or owns other companies, a list of those companies' names, addresses, and descriptions of their relationship to the applicant's firm.

(3) A brief description of the claimant's business and the manner in which it used the petroleum products listed on its application.

(4) A monthly schedule of the applicant's purchases of NGL products that it purchased from Ginther during the Consent Order period. The applicant must indicate the name of its supplier and the delivery location. The applicant should indicate the source of its volume information. Monthly schedules should be based upon actual, contemporaneous business records. If such records are not available, the applicant may submit estimates provided that those estimates are reasonable and the estimation methodology is explained in detail.

(5) If the applicant was an indirect purchaser, it should submit the name, address, and telephone number of its immediate supplier and indicate why it believes that the NGL products was originally sold by Ginther.

(6) A statement whether the applicant or a related firm has filed, or authorized any individual to file on its behalf, any other Application for Refund in the Ginther proceeding, and if so, the circumstances surrounding that filing or authorization.

(7) A statement whether the applicant was in any way affiliated with Ginther. If so, the applicant should explain the nature of the affiliation.

(8) If the applicant is a reseller, retailer, or refiner whose volumetric share exceeds $5,000, it must indicate whether it elects to receive its maximum refund under the presumptions of injury. If it does not elect a presumption of injury, it must submit a detailed showing that it was injured by Ginther's pricing practices.

(9) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along.

(10) A statement whether there has been any change in the ownership of the entity that purchased the covered Ginther products at any time during or after the refund period. If so, the name and address of the current (or former) owner should be provided.

(11) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

I swear (or affirm) that this is the only refund Application filed on behalf of this applicant in the N.C. Ginther Company special refund proceeding and that the information contained in this Application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this Application is subject to public disclosure. I have enclosed a duplicate of this entire Application which will be placed in the OHA Public Reference Room.

We also invite each applicant to submit copies of no more than five contemporaneous invoices or other proofs of purchase showing that it purchased NGL products from Ginther. While this information is not required of refund applicants, it may well expedite the processing of the refund application.

All applications should be either typed or printed and clearly labeled "N.C. Ginther Company Application for Refund." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be sent to: N.C. Ginther Company Refund Proceeding, Case No. LEF–0060, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

The filing deadline is November 30, 1994.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by N.C. Ginther Company pursuant to the Consent Order finalized on March 25, 1983, may now be filed.

(2) All Applications submitted pursuant to Paragraph (1) above must be filed in duplicate and postmarked no later than November 30, 1994.

Dated: May 31, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–13692 Filed 6–3–94; 8:45 am]

BILLING CODE 6450–01–P

[9] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 C.F.R. part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the OHA.

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Noticé of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $870,000, plus accrued interest, in alleged crude oil overcharges obtained by the DOE under the terms of a Consent Order entered into with Dane Energy Company, Case No. LEF–0122. The OHA has tentatively determined that the funds obtained through this Consent Order, plus accrued interest, will be distributed in accordance with

the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges.

DATES AND ADDRESSES: Comments must be filed in duplicate on or before July 6, 1994, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to case number LEF–0122.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8018.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $870,000, plus accrued interest, obtained by the DOE under the terms of a Consent Order entered into with Dane Energy Company on December 16, 1993. The funds were paid towards the settlement of alleged violations of the DOE price and allocation regulations involving the sale of crude oil during the period December 1978 through December 1980.

The OHA has proposed to distribute the Consent Order funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided between the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the degree to which they can demonstrate injury.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: May 31, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Dane Energy Company
Date of Filing: April 8, 1994
Case Number: LEF–0122

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations

In this Decision and Order, we consider a Petition for Implementation of Special Refund Procedures filed by the ERA on April 8, 1994, for crude oil overcharge funds. The funds at issue in this petition were obtained from Dane Energy Company (Dane). This Office issued a Remedial Order to Dane finding violations of the crude oil pricing regulations during the period December 1978 through December 1980. *Dane Energy Co.*, 22 DOE ¶ 83,007 (1992). That Order required Dane to remit $8,361,227.88 to the DOE. Believing that it serves the public interest for DOE to compromise its claims against Dane on an ability-to-pay basis where, as here, the financial status of the covered party can be satisfactorily determined, DOE agreed to enter into a Consent Order, whereby Dane agreed to remit $870,000. The DOE received $870,000 on April 8, 1993. This Decision and Order establishes the OHA's procedures to distribute those funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement subpart V procedures with respect to the monies received from Dane and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the SMRP). The SMRP, issued as a result of a court-approved Settlement Agreement *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. 1986), *reprinted in* 6 Fed. Energy Guidelines ¶ 90,501 (the Stripper Well Agreement), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the SMRP, the OHA issued an Order that announced its intention to apply the Modified Policy in all subpart V proceedings involving alleged crude oil violations. Order Implementing the Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings. The OHA then issued a Notice analyzing the numerous comments and setting forth generalized procedures to assist claimants that file refund applications for crude oil monies under the subpart V regulations. 52 FR 11737 (April 10, 1987) (the April 10 Notice).

The OHA has applied these procedures in numerous cases since the April 10 Notice, *e.g.*, *New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988) (*New York Petroleum*); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various States filed a Motion with the Kansas District Court, claiming that the OHA violated the Stripper Well Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan.

1987), *aff'd*, 857 F. 2d 1481 (Temp. Emer. Ct. App. 1988). On August 17, 1987, Judge Theis issued an Opinion and Order denying the States' Motion in its entirety. The court concluded that the Stripper Well Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id* at 1323. The court also ruled that, as specified in the April 10 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id*. at 1323–24.

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 10 Notice to the crude oil subpart V proceeding that is the subject of the present determination. As noted above, $870,000 of an alleged crude oil violation is covered by this proposed Decision. We have decided to reserve the full twenty percent of the alleged crude oil violation amount, or $174,000, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *E.g., Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes of covered products and prove that they were injured as a result of the alleged violations. Generally, a covered product is any product that was either covered by the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. §§ 751–760, or if the product was purchased from a crude oil refinery or originated in a crude oil refinery. See *Great Salt Lake Minerals & Chem. Corp.*, 23 DOE ¶ 88,118, at 88,305 (1993). Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *E.g., A. Tarricone, Inc.*, 15 DOE ¶ 85,495, at 88,893–96 (1987). However, the end-user presumption of injury can be rebutted by evidence which establishes that the specific end-user in question was not injured by the crude oil overcharges. *E.g., Berry Holding Co.*, 16 DOE ¶ 85,405, at 88,797 (1987). If an interested party submits evidence that is sufficient to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. *E.g., New York Petroleum*, 18 DOE at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the *Report by the Office of Hearings and Appeals to the United States District Court for the District of Kansas, In Re: The Department of Energy Stripper Well Exemption Litigation, reprinted in* 6 Fed. Energy Guidelines ¶ 90,507 (1986). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. *Mid-America Dairyman, Inc. v. Herrington*, 878 F. 2d 1448 (Temp. Emer. Ct. App. 1989); accord *Boise Cascade Corp.*, 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($870,000) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *E.g., Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. That previously filed application will be deemed to be filed in all crude oil proceedings as the procedures are finalized. The DOE has established June 30, 1994, as the final deadline for filing an Application for Refund from the crude oil funds. See 58 F.R. 26,318 (May 3, 1993). It is the policy of the DOE to pay all crude oil refund claims filed within this deadline at the rate of $0.0008 per gallon. However, while we anticipate that applicants that filed their claims within the original June 30, 1988 deadline will receive a supplemental refund payment, we will decide in the future whether claimants that filed later Applications should receive additional refunds. *E.g., Seneca Oil Co.*, 21 DOE ¶ 85,327 (1991) Notice of any additional amounts available in the future will be published in the **Federal Register**.

B. Payments to the States and Federal Government

Under the terms of the SMRP, we propose that the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision, or $696,000, should be disbursed in equal shares to the states and federal government for indirect restitution. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It Is Therefore Ordered That: The refund amount remitted to the Department of Energy by Dane Energy Company pursuant to the Consent Order executed on April 8, 1993 will be distributed in accordance with the foregoing Decision.

[FR Doc. 94–13693 Filed 6–3–94; 8:45 am]

BILLING CODE 6450–01–P

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy announces proposed procedures for the disbursement of $56,149.35 (plus accrued interest) that Telum, Inc. remitted to the DOE pursuant to a Consent Order entered into by the DOE and Telum. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATES AND ADDRESSES: Comments must be filed in duplicate on or before July 6, 1994 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585. All comments should conspicuously display a reference to Case Number LEF–0114.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Andrew W. Beckwith, Staff Analyst, Office of Hearings and Appeals, 1000 Independence Avenue, SW.,

Washington, DC 20585, (202) 586–2860 (Dugan), (202) 586–4921 (Beckwith).

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies that have been remitted by Telum, Inc. to the DOE to settle possible pricing violations with respect to its sale of middle distillates. The DOE is currently holding $56,149.35 in an interest-bearing escrow account pending distribution.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of the publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: May 31, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy, Implementation of Special Refund Procedures

Name of Firm: Telum, Inc.
Date of Filing: October 7, 1993.
Case Number: LEF–0114.

May 31, 1994.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR part 205, subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 7, 1993. The petition requests that OHA formulate and implement procedures for the distribution of funds received pursuant to a consent order entered into by the DOE and Telum, Inc. (Telum).

I. Background

Telum was a "reseller-retailer" of "covered products" as those terms were defined in 6 CFR 150.352 and 10 CFR 212.31. Therefore, Telum was required to price middle distillate fuel in accordance with the price rule of the Mandatory Petroleum Price Regulations set forth at 10 CFR part 212, subpart F, and antecedent regulations at 6 CFR part 150, subpart L. As a result of an audit, the ERA alleged that Telum and entities under Telum's direction violated the price regulations in sales of middle distillate fuel to Salt River Project (Salt River) during a five month period from December 1, 1973, through April 30, 1974 (the audit period).[1] The auditors determined that during this period Telum made sales of middle distillates to Salt River at prices in excess of the maximum lawful selling price (MLSP) permitted by the regulations. Consequently, the ERA issued a Proposed Remedial Order (PRO) to Telum on May 28, 1980, alleging pricing violations in the sale of middle distillate fuel to Salt River. After revising its selection of the "nearest comparable outlet" with regard to the "new market" determination under 10 CFR 212.111(b), the ERA issued an Amended PRO on September 15, 1986, alleging that Telum had overcharged Salt River in its sales of middle distillate fuel in the amount of $357,587. On April 7, 1988, that Amended PRO was remanded by OHA to the ERA, for a new determination regarding Telum's nearest comparable outlet and a recalculation of MLSPs and any overcharges in sales to Salt River. Telum, Inc., 17 DOE ¶ 83,010 (1988).

The ERA did not issue a second Amended PRO. Instead, on May 30, 1990, the DOE entered into a consent order (No. 820H00020Z) with Telum to resolve all administrative and civil claims related to Telum's compliance with the Federal petroleum price and allocation regulations in its resale transactions of petroleum products during the period December 1, 1973 through April 30, 1974. Specifically, Telum agreed to remit $60,000, plus interest, to the DOE for deposit in an interest-bearing escrow account. Telum has remitted $56,149.35 to the DOE, consisting of $51,626.18 toward payment of the $60,000 principal amount due and $4,523.17 toward payment of interest due on principal. The DOE has authorized a write-off of the remainder of the amount due for reasons of uncollectability. Telum is no longer in business, and Earl K. Cook, the former president of Telum, has indicated that he is unable to pay the remainder of the amount due. As of March 31, 1994, $9,028.85 in interest had accrued in the DOE escrow account on the amount paid by Telum.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205, subpart V. It is the DOE policy to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of consent orders, see Office of Enforcement, 9 DOE ¶ 82,553 (1982); Office of Enforcement, 9 DOE ¶ 82,508 (1981); Office of Enforcement, 8 DOE ¶ 82,597 (1981). After reviewing the record in the present case, we have concluded that a subpart V proceeding is an appropriate mechanism for distributing the Telum consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

A. Refund Claimant

Insofar as possible, the consent order fund should be distributed to customers of Telum who were injured by the alleged overcharges. Salt River, the only Telum customer who made purchases during the consent order period that were covered by the PRO and Amended PRO, is the only Telum customer we have identified as likely to have been injured by the alleged overcharges. Although we recognize that the Telum consent order covers all sales of "covered products" by Telum for the period December 1, 1973 through April 30, 1974, the ERA audit files, the PRO, and the Amended PRO are all based only on sales by Telum to Salt River. The consent order, while lacking in specificity, was clearly arrived at in order to settle this one outstanding enforcement issue. We are thus able to use the information contained in the audit files for guidance as to the identity of Telum's injured customer and the extent of the alleged overcharges, as we have done in some prior refund proceedings. See, e.g., Howard Oil Co., 15 DOE ¶ 85,072 (1986). Consequently, we propose to establish a claims procedure in which Salt River may

[1] Telum was incorporated as Bonus Oil Company on August 13, 1968. Bonus Oil Company's name was changed to Telum, Inc. effective December 3, 1974. For the purposes of this Decision, we will refer to the firm only as Telum.

The other entities under Telum's direction, as listed in the consent order, are: Industrial Fuels, Inc., an Arizona Corporation, and Giraud Corporation, a Utah corporation.

apply for a refund of the entire consent order fund. Limiting the universe of applicants to Salt River allows us to fashion a refund plan that will correspond most closely to the alleged overcharges settled by the consent order. See Consumers Oil Co., 13 DOE ¶ 85,226 (1985); Marion Corp., 12 DOE ¶ 85,014 (1984).

In prior refund proceedings, in order to receive a full refund, claimants whose prices for goods and services are regulated by a governmental body, e.g., a public utility, have not been required to provide a detailed showing of injury. See, e.g., Dorchester Gas Corp., 14 DOE ¶ 85,240 at 88,451 (1986). Instead, regulated firms have been required to (i) certify that they will pass any refund received through to their customers, (ii) provide us with a full explanation of how they plan to accomplish the restitution, and (iii) certify that they will notify the appropriate regulatory body of the receipt of the refund. Id. This requirement is based on the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers. Similarly, any refunds received should be passed through to its customers.

We have been informed by Salt River that the nature of its business is that of a municipal public power utility whose rates for electricity are set by a publicly-elected Board of Directors (i.e., a governmental body). See Memorandum of April 29, 1994 Telephone Conversation between John Egan Spokesperson for Salt River, and Andrew Beckwith, OHA Staff Analyst. We have determined, therefore, that Salt River is a regulated firm as that category is defined above. See City of Lubbock, 18 DOE ¶ 85,116 (1988). Accordingly, we propose that Salt River, as a regulated firm, need not make a showing that it was injured by the alleged overcharges. However, Salt River will be required to comply with the stipulations outlined above that are incumbent upon regulated firms when submitting an Application for Refund.

B. Calculation of Refund Amount

As stated above, the ERA audit files identify Salt River as the Telum customer injured by the alleged overcharges that were the subject of the consent order. We propose to pay the entire amount of the consent order fund to Salt River as a refund for the alleged overcharges. In addition, Salt River will receive all of the interest that has accrued on the consent order fund.

IV. Conclusion

Salt River should not file a refund application in this proceeding until the issuance of a final Decision and Order. Detailed procedures for filing an application will be provided in the final Decision and Order. Before disposing of any of the funds received as a result of the Telum consent order, we intend to publicize the distribution process and to provide an opportunity for any affected party to submit comments. All comments must be filed within 30 days of the publication of this Proposed Decision in the **Federal Register**. In addition to publishing copies of the proposed and final Decisions in the **Federal Register**, copies of both will be provided to Salt River.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Telum, Inc. pursuant to Consent Order No. 82CH00020Z, finalized on May 30, 1990, will be distributed in accordance with the foregoing Decision.

[FR Doc. 94–13690 Filed 6–3–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

Gulf of Mexico Program Management Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Management Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Management Committee will hold a meeting at the Omni Royal Orleans Hotel, 621 St. Louis Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Management Committee of the Gulf of Mexico Program will be held on June 29, 1994, at the Omni Royal Orleans Hotel, 621 St. Louis Street, New Orleans, LA. The committee will meet from 8:30 a.m. to 4:30 p.m. on June 29. Agenda items will include: Report on Mega-Meeting; Process of Selection and Funding of FY95 Action Item Projects; Committee Action on Business/Industry Presentation on Interaction with GMP; Issue Committee Co-Chair Representation; and Status Reports on Federal Interagency Summit Meeting, Strategic Planning Initiative, and GMP Symposium.

The meeting is open to the public.

Douglas A. Lipka,

Acting Director, Gulf of Mexico Program.

[FR Doc. 94–13669 Filed 6–3–94; 8:45 am]

BILLING CODE 6560–50–M

[PF–599; FRL–4870–3]

Miles, Inc., Agricultural Division; Amended Pesticide Petition for Tebuconazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from Miles, Inc., the filing of an amendment to pesticide petition (PP) 9F3724 proposing to establish tolerances for residues of the fungicide tebuconazole (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on the raw agricultural commodities peanuts at 0.1 part per million (ppm) and peanut hulls at 4.0 ppm.

ADDRESSES: By mail, submit written comments, identified by the document control number [PF-599], to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed exept in accordance with procedures set forth on 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Steve Robbins, Acting Product Manager (PM 21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis

Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: EPA has received from Miles, Inc., Agricultural Division (formerly Mobay Corp., Agricultural Chemicals Division), P.O. Box 4913, Kansas City, MO 64120-0013, an amendment to the notice of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petition (PP) 9F3724, which appeared in the **Federal Register** of March 23, 1989 (54 FR 12009). The original petition proposed to amend 40 CFR part 180 by establishing tolerances for the fungicide (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on the commodities barley grain at 2.0 ppm, barley grain forage at 5.0 ppm, barley straw at 5.0 ppm, grapes at 2.0 ppm, grass, seed cleanings (including hulls) at 25.0 ppm, grass, seed straw (including chaff) at 30.0 ppm, peanuts at 0.05 ppm, peanut hulls at 3.5 ppm, peanut hay at 50.0 ppm, raisins at 3.0 ppm, wheat grain at 0.40 ppm, wheat grain forage at 4.5 ppm, and wheat straw at 19.0 ppm.

Miles, Inc., has amended the petition to propose amending 40 CFR part 180 by establishing a regulation to permit the residues of the fungicide (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on peanuts at 0.1 ppm and peanut hulls at 4.0 ppm. The proposed analytical method for determining residues is high-performance liquid chromatography.

In previous amendments to the cited pesticide petition, requested by Miles, Inc., all commodities other than peanuts and peanuts hulls (peanut hay, barley grain, barley grain forage, barley straw, grapes, grass seed cleanings including hulls, grass seed straw including chaff, raisins, wheat grain, wheat grain forage, and wheat straw) were withdrawn.

Authority: 7 U.S.C. 346a and 371.

Dated: May 26, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-13673 Filed 6-3-94; 8:45 am]

BILLING CODE 6560-60-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted To Office Of Management And Budget For Review

May 31, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3221 NEOB, Washington, DC 20503, (202) 395-3561.

OMB Number: 3060-0059
Title: Statement Regarding the Importation of Radio Frequency Devices Capable of Causing Harmful Interference
Form Number: FCC Porm 740
Action: Extension of currently approved collection
Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses)
Frequency of Response: On occasion reporting requirement
Estimated Annual Burden: 496,500 responses; .037 hours average burden per response; 18,371 hours total annual burden
Needs and Uses: FCC Form 740 declaration is submitted to the Commission and U.S. Customs Service upon importation of radio frequency (RF) devices.

The information collection describes devices being imported that may be harmful to authorized radio frequencies so that the FCC, with the assistance of Customs, can carry out this responsibility. Examples of RF devices include: Microwave ovens; virtually any product containing a computer microprocessor, computers and computer peripherals, telephones with memory or other advanced features, video cameras and recorders, transmitters and transceivers, most receivers including television receivers, electronic musical instruments, video games, and radio remote control toys. Rule changes in 1990 reduced the number and types of devices for which the import declaration is required. Those rule changes also has led to the use of electronic submission of the required information. Because of the effect of the change to electronic filing, the number of paper forms submitted annually has dropped by an estimated sixty percent. The information continues to be used by FCC to ensure that radio frequency devices imported into the United States and its customs territory comply with applicable FCC Rules and Regulations. Information is necessary to FCC/FOB Enforcement Division, FCC Laboratory and U.S. Customs. Purpose is to keep non-compliant devices from being distributed to the general public thereby reducing the potential for harmful interference being caused to authorized communications. When a violation is discovered, the FCC can issue a fine or request Customs to issue redelivery notice to the importer. If the importer does not redeliver the RF device to Customs, the importer is subject to fines imposed by the U.S. Customs Service.

OMB Number: 3060-0073
Title: Application for and Certification of Overtime Service Involving Inspection of Ship Radio Equipment
Form Number: FCC Form 808
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: On occasion reporting requirement
Estimated Annual Burden: 200 responses; .084 hours average burden per response; 17 hours total annual burden
Needs and Uses: FCC Form 808 is used to request an overtime inspection of compulsory shipboard radio equipment, pursuant to section 4(f)(3) of the Communications Act of 1934, as amended, and FCC Rules and Regulations, 47 CFR 80.59(e). The information requested certifies that the overtime service was requested and performed. If this form were not completed, the U.S. Government would not be reimbursed for the overtime money paid to the employee

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 94-13634 Filed 6-3-94; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget For Review

June 3, 1994.

The Federal Communications Commission has submitted the

following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commissions' copy contractor International Transcription Service, Inc. 2100 M. Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Tim Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–7231.

Please note: The Commission has requested emergency review of this item by June 3, 1994, under the provisions of 5 CFR 1320.18.

OMB Number: None.

Title: FCC Rate Regulation Impact Survey.

Action: New collection.

Respondents: Business or other for-profit.

Frequency of Response: Other: One-time survey.

Estimated Annual Burden: 100 respondents, 25 responses each, 2500 total responses; 1 hour average burden per response; 2500 hours total annual burden.

Needs and Uses: Section 623 of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("Cable-Act") required the Commission to establish rules to govern rate regulation of cable services offered by cable systems that are not subject to effective competition. On 2/22/94, the Commission adopted revised cable rate regulations in a Second Order on reconsideration, Fourth Report and Order and Fifth Notice of Proposed Rulemaking MM Docket No. 92–266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, wherein we revised rules to implement section 623, subscriber rate regulation. The new rules became effective on May 15, 1994, and, pursuant to §§ 76.932 and 76.964 of the rules, cable systems must give subscribers 30 days notice of any proposed rate change or restructuring made by the cable system. In connection with these orders, the Commission will conduct a survey on the impact of these new rate regulations. The purpose of this survey is to determine the effect of our regulations on the rates for regulated cable services since the 5/15/94 effective date. This survey will be addressed to the largest 100 multiple system operators. Surveying the largest multiple system operators will permit a review of rate practices under our revised regulations of cable operators providing a majority of cable service in the United States. The consequences of not conducting this survey will impair our ability to assess whether our rate regulations have been effective. Respondents will be requested to submit copies of documentation which verifies subscriber notification, via facsimile, and respond to both written and telephone inquiries by FCC staff. Any responses may be made by telephone or in written format via facsimile, upon request by Bureau staff.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–13795 Filed 6–3–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–002744–077.

Title: West Coast of South America Agreement.

Parties:

A.P. Moller-Maersk Line,
Compania Chilena de Navigacion Interoceania, S.A.,
Compania Sud Americana de Vapores, S.A.,
Crowley American Transport, Inc.,
Flota Merchante Grancolombiana, S.A.,
Lykes Bros. Steamship Co., Inc.,
Nedlloyde Linjen, B.V.,
Sea-Land Service, Inc.,
South Pacific Shipping Company Ltd.

Synopsis: The proposed amendment would revise the Agreement's voting provisions and would establish a new rule regarding distribution of, and liability for, liquidated damages under service contracts. It would also permit Principals of the Conference to agree on exceptions to certain basic Agreement provisions regarding service contracts. The parties have requested a shortened review period.

Agreement No.: 203–011453.

Title: Southern Africa/Oceania Agreement.

Parties:

Safbank Line, Ltd.

Mediterranean Shipping Co., S.A.

Synopsis: The proposed Agreement would authorize the parties to establish a slot charter, sailing, revenue sharing and cooperative working arrangement in the trades between the United States and Australia, New Zealand, including other islands of Oceania, and South Africa.

Agreement No.: 202–011454.

Title: U.S.A./Oceania Agreement.

Parties:

Safbank Line, Ltd.

Mediterranean Shipping Co., S.A.

Synopsis: The proposed Agreement would authorize the parties to establish a ratemaking arrangement in the trades between the United States and Australia, New Zealand and other islands of Oceania.

By Order of the Federal Maritime Commission.

Dated: May 31, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–13611 Filed 6–3–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice; Correction.

SUMMARY: This notice corrects a notice published in the **Federal Register** on May 19, 1994, on page 26228 (FR Doc. 94-12192). In the dates caption, "May 20, 1994" is corrected to read "June 17, 1994."

Board of Governors of the Federal Reserve System, May 31, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-13641 Filed 6-3-94; 8:45 am]

BILLING CODE 6210-01-F

Citicorp, New York, New York; Request for an Exemption from Tying Provisions

Citicorp, New York, New York (Citicorp), has requested, pursuant to section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. § 1971 *et seq.*) (Section 106(b)), that the Board grant an exemption to permit any subsidiary of Citicorp to vary the consideration charged for mortgage loans based upon the condition or requirement that the customer obtain a loan, discount, deposit, or trust service from an affiliate.

Section 106(b) permits a bank to fix or vary the consideration for extending credit or furnishing services on condition or requirement that a customer also obtain a traditional banking product (loan, discount, deposit or trust service) from that bank. However, Section 106(b) prohibits a bank from engaging in these same activities on condition that the customer obtain any additional credit or services from any affiliate. The Board may, by regulation or order, grant exceptions that are not contrary to the purposes of the section.

Citicorp contends that its request is consistent with the purposes of Section 106(b) because it is not anticompetitive. Citicorp argues that the market for mortgage loans is national in scope and highly competitive. In this regard, Citicorp asserts that it does not have sufficient market power in any relevant market to restrain competition and that the highly competitive mortgage lending market prevents any mortgage lender from having sufficient market power to restrain competition in the market or force a consumer to purchase a product on uncompetitive terms.

Further, Citicorp argues that its proposal is not anticompetitive because customers would not be required either directly or indirectly to accept one product in order to obtain another product. In this regard, Citicorp states that all products would be available separately at separate prices and the prices of products would be kept competitive through normal market forces. Citicorp also claims that customers would be free to choose to purchase combined or separate services from Citicorp affiliates or from competitors. Finally, Citicorp contends that the proposal would promote competition and provide public benefits in the form of reduced costs and better service.

Notice of Citicorp's request is published solely in order to seek the views of interested persons on the issues presented by the request and does not represent a determination by the Board that the request meets or is likely to meet the standards of Section 106(b). The request may be inspected at the offices of the Board of Governors.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary of the Board of Governors of the Federal Reserve System, Washington, DC 20551 not later than July 5, 1994.

Board of Governors of the Federal Reserve System, May 31, 1994.

Jennifer J. Johnson

Associate Secretary of the Board

[FR Doc. 94-13642 Filed 6-3-94; 8:45 am]

BILLING CODE 6210-01-F

Elton B. Stephens Charitable Lead Annuity Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 27, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Elton B. Stephens Charitable Lead Annuity Trust, James F. Stephens, Elton B. Stephens, Jr., Jane S. Comer, and Dell S. Brooke, as Trustees, to retain 36.6 percent of the voting shares of Alabama Bancorp, Birmingham, Alabama, and thereby indirectly acquire Highland Bank, Birmingham, Alabama.

B. Federal Reserve Bank of Kansas City (Stephen E. McBride, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Ellen L. Munter, Coleridge, Nebraska; to acquire an additional 17.04 percent of the voting shares of Gray Bancorp, Coleridge, Nebraska, for a total of 67.90 percent, and thereby indirectly acquire Coleridge National Bank, Coleridge, Nebraska.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Howard Earl Rachofsky, Dallas, Texas; to acquire an additional 0.44 percent of the voting shares of ROSB Bancorp, Inc., Red Oak, Texas, for a total of 25.15 percent, and thereby indirectly acquire The Red Oak State Bank, Red Oak, Texas.

Board of Governors of the Federal Reserve System, May 31, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13643 Filed 6-3-94; 8:45 am]

BILLING CODE 6210-01-F

First Commonwealth Financial Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the

reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Commonwealth Financial Corporation, Indiana, Pennsylvania; to merge with United National Bancorporation, Chambersburg, Pennsylvania, and thereby indirectly acquire Unitas National Bank, Chambersburg, Pennsylvania.

In connection with this application, Applicant also proposes to acquire Unitas Mortgage Corporation, Carlisle, Pennsylvania, and thereby engage in mortgage banking activities, including the making or acquiring, for its own account or for the account of others, loans and other extensions of credit secured by real estate pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 31, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13644 Filed 6-3-94; 8:45 am]

BILLING CODE 6210-01-F

J.P. Morgan & Co. Incorporated, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 20, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. J.P. Morgan & Co. Incorporated, New York, New York; to make a $100,000 investment in the non-voting preferred stocks of Big City Forest, Inc., Bronx, New York, and to facilitate bridge financing for Big City Forest, Inc., a corporation designed primarily to promote community welfare, such as the economic rehabilitation and development of low income areas pursuant to § 225.25(b)(6) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire First Insurance Agency of Detroit Lakes, Inc., Detroit Lakes, Minnesota, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y. These activities will be conducted in Detroit Lakes, Minnesota.

Board of Governors of the Federal Reserve System, May 31, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13645 Filed 6-3-94; 8:45 am]

BILLING CODE 6210-01-F

Mellon Bank Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 30, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mellon Bank Corporation, Pittsburgh, Pennsylvania; to acquire 100 percent of the voting shares of Glendale Bancorporation, Voorhees Township, New Jersey, and thereby indirectly acquire Glendale Bank of Pennsylvania, and Glendale National Bank of New Jersey, Voorhees Township, New Jersey.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Allied Bankshares, Inc., Thomson, Georgia; to acquire 100 percent of the voting shares of Citizens Bank & Trust, Evans, Georgia.

2. Allied Bankshares, Inc., Thomson, Georgia; to merge with Jefferson Bancshares, Inc., Louisville, Georgia, and thereby indirectly acquire Bank of Jefferson County, Louisville, Georgia.

3. Synovus Financial Corp., Columbus, Georgia; Synovus Financial Corp. of Alabama, Jasper, Alabama; and TB&C Bancshares, Inc., Columbus, Georgia; to merge with State Bancshares, Inc., Enterprise, Alabama, and thereby indirectly acquire Coffee County Bank, Enterprise, Alabama.

Board of Governors of the Federal Reserve System, May 31, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13646 Filed 6-3-94; 8:45 am]

BILLING CODE 6210-01-F

Shawmut National Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Shawmut National Corporation, Hartford, Connecticut; to engage *de novo* through its subsidiary, Shawmut Investment Advisers, Inc., Boston, Massachusetts, in providing portfolio investment advice and management for institutional and employee benefit account customers; providing investment advisory services to, and management of accounts supervised by SNC's subsidiary banks; serving as investment advisor to an investment company or companies that may be organized by Applicant, or any of SNC's subsidiaries; providing portfolio investment advice or management to a limited number of personal trust or investment management agency customers; and furnishing general economic information and advice, general economic statistical forecasting services and industry and company studies to the foregoing parties pursuant to § 225.25(b)(4)(ii), (iii), (iv) and (v) of the Board's Regulation Y. These activities will be conducted in the Western Hemisphere.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio; to engage *de novo* through its subsidiary, Croghan & Associates, Inc., Boulder, Colorado, d.b.a. System One, in collection agency activities pursuant to § 225.25(b)(23) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 31, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13647 Filed 6-3-94; 8:45 am]

BILLING CODE 6210-01-F

Trans Financial Bancorp, Inc.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Trans Financial Bancorp, Inc., Bowling Green, Kentucky; to engage *de novo* through a nonbanking subsidiary, Trans Financial Investment Services, Inc., Nashville, Tennessee, in securities brokerage services pursuant to §§ 225.25(b)(15) and (b)(4) of the Board's Regulation Y, and in buying and selling securities on the order of investors as "riskless principal." *Cardinal Bancshares, Inc.*, 80 Federal Reserve Bulletin 447 (1994).

Board of Governors of the Federal Reserve System, May 31, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13648 Filed 6-3-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement No. 478]

National Institute for Occupational Safety and Health; Implementing Lead-Based Paint Abatement Training for Workers and Supervisors

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a grant program to provide training for workers and supervisors engaged or expected to be engaged in lead-based paint abatement work.

The Public Health Service (PHS) is committed to achieving the health

promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION).

Authority: This program is authorized under section 22(g) of the Occupational Safety and Health Act (29 U.S.C. 671(g)), as amended by section 1033 of Pub. L. 102–550, the Housing and Community Development Act of 1992.

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Only non-profit organizations (including colleges and universities, joint labor-management trust funds, States, and non-profit government employee organizations) who have experience in the implementation and operation of health and safety training for lead-based paint abatement workers and supervisors will be considered for funding.

For the purposes of this notice, the term "lead-based paint abatement activity" means activities engaged in by workers that include the removal, disposal, handling, and transportation of lead-based paint and materials containing lead-based paint from public and private dwellings, public and commercial buildings, bridges and other structures or superstructures where lead-based paint presents or may present an unreasonable risk to health and safety of the environment.

Grants made under this program shall be awarded only to those organizations that fund at least 30% of their lead-based paint training programs from non-Federal sources excluding in-kind contributions.

In-kind contributions are defined as the value of a non-cash contribution to meet a recipient's cost-sharing requirement. An in-kind contribution may consist of charges for real property and equipment, or the value of goods and services, directly benefiting the NIOSH-funded project.

The above stipulations are mandated by section 22(g) of the Occupational Safety and Health Act (29 U.S.C. 671(g)), as amended.

Availability of Funds

Approximately $500,000 is available in FY 1994 to fund approximately four awards. It is expected that the average award will be $125,000, ranging from $100,000 to $150,000. The awards will begin on or about September 30, 1994, for a 12-month budget period within a project period of up to four years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of these awards is to ensure that lead-based paint abatement workers and supervisors receive adequate training and education concerning the health and safety issues of working with and abating lead-based paint.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities as follows:

1. Develop and conduct a four-year training program for workers and supervisors involved or expected to be involved in lead-based paint abatement activity.

2. Identify and select regions and populations for training, based on a list of criteria determined by the applicant.

3. Designate specific levels of training, amount of training, and number of trainees to be trained each year. Course materials utilized will be those which meet the most up-to-date Federal (EPA/HUD) requirements.

4. Evaluate the effectiveness of such training.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Program Experience (35%)

a. Experience in the development and delivery of adult-education courses with emphasis on training individuals with limited educational experience.

b. Experience in the delivery of health and safety course material to individuals with limited English language skills.

c. Demonstrated ability to target the worker population.

d. Demonstrated experience with hands-on training systems.

2. Lead-Based Paint Abatement Worker Course Experience (35%)

a. Experience in the delivery of courses to lead-based paint abatement workers.

b. Demonstrated experience in the implementation and operation of health and safety training for lead-based paint abatement workers.

c. Qualifications of key personnel.

3. Project Management, Planning, and Evaluation (30%)

a. Ability of the applicant to provide appropriate program staff and a management plan for the project, including designation of a qualified program administrator.

b. Ability to provide space, equipment, staff time, and other resources required to perform the applicant's responsibilities in the project.

c. The number of courses to be offered, the number of training sites to be used, and the number of workers expected to be trained during the project period.

d. The methods to be used in evaluating the effectiveness of the training.

4. Budget (Not Scored)

The budget will be evaluated to the extent it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for this program is 93.197.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, GA 30305, on or before August 1, 1994.

1. Deadline: Applications will be considered to have met the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement Number 478. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road NE., room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6630.

Programmatic technical assistance is available from Price Connor, Ph.D, Grants Program Officer, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, room 3053, Mailstop D–30, Atlanta, GA 30333, telephone (404) 639–3343.

Please refer to Announcement Number 478 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 27, 1994.

Richard A. Lemen, Ph.D.,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13624 Filed 6–3–94; 8:45 am]

BILLING CODE 4163–19–P

Food and Drug Administration

[Docket No. 94N–0195]

Adria Laboratories, et al.; Withdrawal of Approval of 15 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 15 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA no.	Drug	Applicant
17–959	Fluorouracil Injection,U.S.P., 50 milligrams (mg)/milliliter (mL)	Adria Laboratories, P.O. Box 16529, Columbus, OH 43216–6529.
18–419	Furosemide Tablets, U.S.P., 20 mg, 40 mg, and 80 mg	Warner Chilcott Laboratories, 201 Tabor Rd., Morris Plain, NJ 07950.
18–420	Furosemide Injection, U.S.P., 10 mg/mL	Do.
18–670	Furosemide Injection, U.S.P., 10 mg/mL	Wyeth-Ayerst Laboratories, P.O. Box 8299, Philadelphia, PA 19101–1245.
18–690	Indomethacin Capsules, U.S.P., 25 mg and 50 mg	Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11552.
19–106	Hydrocortisone Butyrate Ointment 0.1%	Galderma Laboratories, Inc., 3000 Alta Mesa Blvd., suite 300, P.O. Box 331329, Fort Worth, TX 76163.
72–398	Sulfamethoxazole and Trimethoprim Oral Suspension, U.S.P., 200 mg/40 mg per 5 mL	Barre-National, Inc., 333 Cassell Dr., suite 3500, Baltimore, MD 21224.
85–191	Hydrocortisone Cream, U.S.P., 1%	Lemmon Co., 650 Cathill Rd., Sellersville, PA 18960.
85–214	Sterile Hydrocortisone, Acetate Suspension, U.S.P., 50 mg/mL	Steris Laboratories, Inc., 620 North 51st Ave., Phoenix, AZ 85043–4705.
86–001	Theophylline Syrup, 80–2 mg/15 mL	Barre-National, Inc.
87–161	Dipyridamole Tablets, U.S.P., 75 mg	Chelsea Laboratories, Inc.
88–449	Fluocinolone Acetonide, Topical Solution, U.S.P., 0.01%	Pharmafair, Inc., 110 Kennedy Dr., Hauppauge, NY 11788.
88–475	Glycopyrrolate Injection, U.S.P., 0.2 mg/mL	Fujisawa USA, Inc., Parkway North Center, Three Parkway North, Deerfield, IL 60015–2548.
88–606	Acetic Acid 2% and Aluminum Acetate Otic Solution	Pharmafair, Inc.
89–223	Theophylline Elixir, 80 mg/15 mL	Barre-National, Inc.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective July 6, 1994.

Dated: May 24, 1994.

Murray M. Lumpkin,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 94–13711 Filed 6–3–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Center for Research Resources; Meeting of the Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities, National Center for Research Resources (NCRR), National Institutes of Health (NIH).

This meeting will be open to the public, as indicated below, during which time there will be discussions on administrative matters such as the report of the Director, NCRR, and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date of Meeting: June 15–17, 1994.

Place of Meeting: The Bethesda Ramada Hotel and Conference Center, 8400 Wisconsin Avenue, Bethesda, Maryland 20892.

Open: June 15, 7:30 p.m. until recess.

Closed: June 16, 8:30 a.m. until adjournment.

Ms. Maureen Mylander, Information Officer, NCRR, Westwood Building, room 850, NIH, Bethesda, Maryland 20892, (301) 594–7938, will provide a summary of the meeting and a roster of the Board members upon request. Dr. Mary Ann Sestili, Scientific Administrative Reviewer, Office of Review, Westwood Building, room 10A15, NCRR, NIH, Bethesda, Maryland 20892, (301) 594–7902, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Sestili in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of newly appointed members.

(Catalog of Federal Domestic Assistance Program No. 93.214 Extramural Research Facilities Construction Projects)

Dated: May 31, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–13601 Filed 6–3–94; 8:45 am]

BILLING CODE 4140–01–M

Administration on Aging

White House Conference on Aging; Program Announcement No. WHCoA 94–2; Availability of Funds and Request for Applications for Mini-Conferences

AGENCY: White House Conference on Aging, AoA, HHS.

ACTION: Extension of deadline for submission of applications.

SUMMARY: Due to extenuating circumstances, the White House Conference on Aging (WHCoA) is extending the deadline date for submission of applications for mini-conferences.

DATES: The deadline date for the submission of applications of June 6, 1994 is extended to June 27, 1994.

ADDRESSES: Application receipt point: Department of Health and Human Services; Administration on Aging, Office of Administration and Management, 330 Independence Avenue, SW., room 4644, Washington, DC 20201, Attn: WHCoA–94–2.

FOR FURTHER INFORMATION CONTACT: For programmatic information, contact Judy Satine, Department of Health and Human Services, White House Conference on Aging, 501 School Street, SW., 8th Floor, Washington, DC 20024, telephone (202) 245–7826. For grant technical information, contact Margaret Tolson, AoA, see address above, telephone (202) 401–0838.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

[FR Doc. 94–13782 Filed 6–3–94; 8:45 am]

BILLING CODE 4130–02–M

Office of Community Services

Potential Reallotment of Funds for FY 1993 Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, Administration for Children and Families, (ACF), Department of Health and Human Services.

ACTION: Preliminary determination concerning funds available for reallotment.

SUMMARY: Notice is hearby given that a preliminary determination has been made that FY 1993 Low Income Home Energy Assistance Program (LIHEAP) funds are available for reallotment. Section 2607(b)(1) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621 *et. seq.*), as amended, requires that if the Secretary of the Department of Health and Human Services determines that, as of September 1 of any fiscal year, an amount allotted to a grantee for any fiscal year will not be used by that grantee during the fiscal year, the Secretary must notify the grantee and publish a notice in the **Federal Register** that such funds may be reallotted. As the Secretary's designee, I have determined that a total of $22,591 of FY 1993 funds may be available for reallotment. I have based that determination on reports from the United Tribes of Kansas and Southeast Nebraska, Inc. (Kansas), Seldovia Village Tribe (Alaska) and the Aroostock Band of Micmacs (Maine) which were submitted to the Office of Community Services as required by 45 CFR 96.81.

The statute allows grantees who have funds unobligated at the end of a fiscal year to request that they be allowed to carry over up to 10 percent of their allotments to the next fiscal year. Funds in excess of this amount must be returned to HHS and are subject to reallotment to other grantees under section 2607(b)(1) of the LIHEAP statute. All of the amounts described in this notice were reported as unobligated funds in excess of the amount that the three tribes named above could carry over to FY 1994.

The United Tribes of Kansas and Southeast Nebraska, Inc. were notified by certified mail that $2,384 of its FY 1993 LIHEAP funds may be reallotted. The Seldovia Village Tribe was notified by certified mail that $5,117 of their FY 1993 LIHEAP funds may be reallotted. The Aroostock Band of Micmacs was notified by certified mail that $15,090 of its FY 1993 LIHEAP funds may be reallotted. In accordance with section 2607(b)(3), the Chief Executive Officer of each of these tribes has 30 days from the date of the letters to submit comments to me. That 30 day period will expire June 16, 1994. After considering any comments submitted, I will notify the Chief Executive Officer of my decision and will publish my decision in the **Federal Register**. If

funds are reallotted, they will be allocated in accordance with section 2604 and will be treated as an amount appropriated for FY 1994.

FOR FURTHER INFORMATION CONTACT: Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade SW., Washington, DC 20447; telephone (202) 401–9351.

Dated: May 25, 1994.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 94–13597 Filed 6–3–94; 8:45 am]

BILLING CODE 4184–01–P

Public Health Service

Notice Regarding Section 602 of the Veterans Health Care Act of 1992 Inclusion of Outpatient Hospital Facilities

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: Section 602 of Public Law 102–585, the "Veterans Health Care Act of 1992" (the "Act"), enacted section 340B of the Public Health Service Act ("PHS Act"), "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement (the "Agreement") with the Secretary, Department of Health and Human Services, in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed the amount determined under a statutory formula.

Section 340B(a)(4) lists the entities eligible to receive discount outpatient drug pricing (i.e., certain disproportionate share hospitals (DSHs) and PHS grantees). The definition of a disproportionate share hospital found in section 340B(a)(4)(L) provides criteria to determine which such hospitals are eligible to participate in the program. However, the definition does not include criteria to determine which outpatient facilities (including off-site or satellite clinics) working in conjunction with the eligible hospital would be considered part of the hospital for purposes of eligibility for section 340B drug discounts. The Office of Drug Pricing, which administers this program with PHS, is proposing certain procedures to determine which outpatient hospital facilities are included as part of an eligible disproportionate share hospital.

DATES: The public is invited to submit comments on the proposed procedures by July 6, 1994. Subject to consideration of the comments submitted, the Department intends to publish a final notice regarding these procedures.

ADDRESSES: Submit comments to Ms. Alvarez at the address listed below.

FOR FURTHER INFORMATION CONTACT: Marsha Alvarez, R. Ph., Director, Office of Drug Pricing, Bureau of Primary Health Care, 4350 East West Highway, West Towers, 10th Floor, Bethesda, MD 20814, Tel: (301) 594–4354.

SUPPLEMENTARY INFORMATION: Section 340B(a)(4) of the PHS Act lists the various groups of entities eligible to receive the section 340B discount pricing. Section 340B(a)(4)(L)[1] describes a subset of "hospitals" as defined in section 1886(d)(1)(B) of the Social Security Act as eligible to participate in the program. Because section 1886 addresses Medicare payment for hospital inpatient services only, the scope of the term "hospital" has been limited to the hospital inpatient services. However, section 340B deals exclusively with outpatient drugs. Although Congress clearly intended that this narrow definition be used to identify Medicare disproportionate share hospitals which are eligible for section 340B drug discounts, we do not believe it is reasonable to use this same definition to limit where the section 340B outpatient drug can be used. Some disproportionate share hospitals offer outpatient services in off-site or satellite outpatient facilities. Further, the movement of nonprofit hospitals in recent years has been to reorganize and offer a variety of services other than traditional inpatient hospital services through separate divisions, lines of business, or entities. Therefore, for purposes of section 340B drug discounts, a more inclusive interpretation of "hospital" is needed.

The Office of Drug Pricing Program is proposing to recognize as part of an eligible DSH outpatient facilities (including off-site and satellite clinics) which meet the following standard:

> The outpatient facility is considered an integral part of the "hospital" and therefore eligible for section 340B drug discounts if it is a reimbursable facility included on the hospital's Medicare cost report.

For example, if a hospital with one Medicare provider number meets the disproportionate share criteria and this hospital has associated outpatient clinics whose costs are listed on the Medicare cost report, these clinics would also be eligible for section 340B drug discounts. However, free-standing clinics of the hospital that submit their own cost reports using a different Medicare number (not under the single hospital Medicare provider number) would not be eligible for this benefit.

This test, using the single Medicare provider number, is proposed for three reasons. First, Congress referred to section 1886 of the Social Security Act, part of the Medicare statute, for the definition of a DSH in section 340B(a)(4)(L) of the PHS Act. We believe, therefore, that it is reasonable to utilize existing Medicare rules to determine eligibility for the drug discount program. The proposed Medicare cost report test was developed by Medicare officials and is used, in part, to determine whether a facility is part of a hospital. If an outpatient facility does not share in the hospital cost report, it is properly viewed as an independent, free-standing facility.

Second, the relative administrative burden of the proposed test (i.e., obtaining sufficient documentation to verify the inclusion of these off-site facilities) should be minimal. Hospitals seeking Medicare reimbursement are required to submit annual cost reports including all hospital units (e.g., on site and off-site clinics); therefore, the information necessary to determine facility eligibility is available and needs no further analysis by the Office of Drug Pricing.

Third, the test incorporates criteria (i.e., the Medicare cost report) that form an independent and objective basis upon which to determine eligibility. Therefore, this test should provide fair and easy administration.

If DSHs have difficulty accessing PHS pricing for eligible outpatient clinics,

[1] Section 340B(a)(4)(L) of the PHS Act defines as a covered entity—"A subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act) [42 U.S.C. 1396ww(d)(1)(B)] that—(i) is owned or operated by a unit of State or local government, is a public or private non-profit corporation which is formally granted governmental powers by a unit of State or local government, or is a private non-profit hospital which has a contract with a State or local government to provide health care services to low income individuals who are not entitled to benefits under title XVIII of the Social Security Act [42 U.S.C.A. section 1395 et seq.] or eligible for assistance under the State plan under this title; (ii) for the most recent cost reporting period that ended before the calendar quarter involved, had a disproportionate share adjustment percentage (as determined under section 1886(d)(5)(F) of the Social Security Act) [42 U.S.C.A. 1395ww(d)(5)(F)] greater than 11.75 percent or was described in section 1886(d)(5)(F)(i)(II) of such Act [42 U.S.C.A. 1395ww (d)(5)(F)(i)(II)]; and (iii) does not obtain covered outpatient drugs through a group purchasing organization or other group purchasing arrangement."

The Health Care Financing Administration (HCFA) submitted to the Office of Drug Pricing a list of hospitals that met the first two requirements (i.e., 340B(a)(4)(L)(i) and (ii)). HCFA will update this list periodically.

they should contact the Office of Drug Pricing (not HCFA) for assistance. If manufacturers have questions concerning the eligibility of certain DSH outpatient clinics, they should also contact the Office of Drug Pricing for a determination of eligibility.

Dated: May 27, 1994.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

[FR Doc. 94–13712 Filed 6–3–94; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–94–4210–05; G4–180]

Withdrawal of Public Lands From Sale Offering

AGENCY: Bureau of Land Management, Interior, Lakeview District.

ACTION: Withdrawal of Sale Parcels OR 36285 and OR 49389 from Public Sale Offering.

Notice is given that sale parcels OR 36285 and OR 49389, previously published for public sale offering in the **Federal Register** April 11, 1986, Vol. 51, No. 70, page 12573 and July 22, 1993, Vol. 58, No. 139, pages 39225 and 39226, respectively, are hereby withdrawn from sale.

The subject parcels were advertised for public sale by notice in the above **Federal Register** volumes pursuant to section 203 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2750, 43 U.S.C. 1713) and have not sold. These parcels will be reconsidered for future public sale offering upon public request only.

Scott R. Florence,

Manager, Lakeview Resource Area.

[FR Doc. 94–13635 Filed 6–3–94; 8:45 am]

BILLING CODE 4310–33–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC–206]

Revision to Accounting and Reporting Requirements for Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Notice of reopening and request for comments.

SUMMARY: The Commission adopted the Annual Report Form M–2 (Form M–2) for class II motor carriers of property, as set forth below. The purpose of this notice is to give interested parties an opportunity to comment on the new form.

DATES: Comments are due on July 6, 1994. Replies are due August 5, 1994.

ADDRESSES: Send an original and 15 copies, if possible, of comments and replies referring to Ex Parte No. MC–206 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Brian A. Holmes or Leonard J. Blistein, (202) 927–5740. (TTD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: By decision in Ex Parte No. MC–206, Revision to Accounting and Reporting Requirements for Motor Carriers of Property, 9 I.C.C.2d 1268 (1994), and published at 59 FR 5110 (2–3–94) (Final Rule), we adopted a new and separate annual report form for class II motor carriers of property, designated as Annual Report Form M–2.

In our Final Rule, we retained class II annual reporting at a reduced level of detail as compared to the old Annual Report Form M. Before adoption of the Final Rule, no opportunity for public comment on the content of the Form M–2 was provided. For this reason, we are reopening this proceeding on our own motion to provide such an opportunity.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

We conclude that implementation of our action to seek comments will not have a significant impact on a substantial number of small entities. Form M–2 was adopted previously. This notice only affords interested persons an opportunity to offer comments.

The Form M–2 contained in this notice will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (5 CFR 1320). Interested persons may direct comments concerning the paperwork burden and burden estimates of the Form M–2 to the OMB and ICC by addressing them to:

Office of Management & Budget, Office of Information and Regulatory Affairs, Desk Officer for ICC (Forms 3120–), Washington, DC 20503.

Interstate Commerce Commission, ATTN: Information Resource Management Forms, Clearance Officer, Room 4136, Washington, DC 20423.

We conclude that implementation of our action to seek comments will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

Decided: May 25, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–13701 Filed 6–3–94; 8:45 am]

BILLING CODE 7035–01–M

Form M–2

Class II
Motor Carriers of Property and Household Goods
Approved by: OMB
3120–xxxx
Expires 12/31/97

Annual Report

Motor Carrier No.

Name of Company

Doing Business As

Present Address

City

State Zip Telephone No.

to the Interstate Commerce Commission for the period ending December ___, 1994

Notice

1. Three copies of this Annual Report shall be completed. Two of the copies must be filed with the Office of Economic and Environmental Analysis, Interstate Commerce Commission, Washington, DC 20423, by March 31 of each year, and one copy retained by the carrier.

2. Instructions for completion of each line of the schedules are contained in the schedules.

3. Every inquiry must be definitely answered. Where the word "none" truly and completely states the fact, it should be given as the answer. If any inquiry is inapplicable, the words "not applicable" should be used.

4. Wherever the space provided in the schedules is insufficient to permit a full and complete statement of the requested information, inserts should be prepared and appropriately identified by the number of the schedule.

5. All entries should be made in a permanent black ink or typed. Those of

a contrary character must be indicated in parenthesis. Items of an unusual character must be indicated by appropriate symbols and explained in footnotes.

6. Throughout this report the "year" means the year covered by the report, whether a calendar year or a 13-period accounting year; the "start of the year" means the beginning of the first business day of the year in question; the "close of the year" means the last business day of the year in question. In case the report is made for a shorter period than 1 year, the "start of the year" means the first day of the period; and the "close of the year" means the last day of the period. All items/accounts are to be in conformance with Generally Accepted Accounting Principles (GAAP).

7. Money items, throughout the annual report form should be shown in whole dollars.

8. Place MC Number and year on each page as shown.

Table of Contents

General Information & Certification
Schedule 100—Balance Sheet
Schedule 200—Income Statement
Schedule 300—Revenue Equipment Owned and Leased
Schedule 400—Type of Carrier

General Information

1. Officer, Owner, or Partner to whom correspondence is to be addressed:

(Name)

(Title)

2. Filing status
Corporation____
Corporation Sub-S____
Partnership____
Individual (Sole Proprietorship)____

3. Type of Authority
Certificate____
Permit____
Both____

4. Accounting records are maintained at:

Address

City State Zip

Certification

I hereby certify that this report was prepared by me or under my supervision, that I have examined it, and that the items herein reported on the basis of my knowledge are correctly shown.

Your Name

Signature

Title

Date

ICC Auth. No. Year 19

SCHEDULE 100—BALANCE SHEET

Line No.	Item	Instructions	Balance close of year	Balance start of year
		ASSETS		
1	Current Assets	All current assets. (Cash, cash equivalents, accounts and notes receivable, materials and supplies, and any other assets that are not considered long-term.).		
2	Carrier Operating Property.	The undepreciated value of all tangible operating property.		
3	Less Accumulated Depreciation.	The total of accumulated depreciation for the tangible property shown in Line 2.		
4	Net Carrier Operating Property.	Line 2 minus Line 3.		
5	Total Intangible Property.	Intangible assets.		
6	Other Assets	All other long-term assets such as non-operating property (net of depreciation), long-term notes and accounts receivable, receivables from affiliates, deferred income tax debits, and other deferred debts.		
7	TOTAL ASSETS	Line 1 plus Line 4 plus Line 5 plus Line 6.		
		LIABILITIES		
8	Current Liabilities	All current liabilities. (Accounts and Notes receivable, the portion of long-term debt due within one year, and any other liabilities payable within one year).		
9	Long-Term Debt	All debt due after one year. Includes all types of bonds, mortgages, notes, etc. outstanding, with more than one year of payments remaining.		
10	Other Long-Term Liabilities.	Includes deferred tax credits and any other deferred credits or liabilities of more than one year duration.		
11	TOTAL LIABILITIES	Sum of Lines 8 through 10.		
12	TOTAL EQUITY/CAPITAL.	Line 7 minus Line 11.		
13	TOTAL LIABILITIES AND EQUITY.	Line 11 plus Line 12.		

ICC Auth. No.

SCHEDULE 200—INCOME STATEMENT

Line No.	Item	Instructions	Amount for current year
1	Freight Revenue—Intercity Common Carrier.	All general freight revenues derived from common carriage of freight on an intercity basis. Excludes any contract carriage, household goods, or local traffic revenues.	
2	Freight Revenue—Intercity Contract Carrier.	All general freight revenues derived from contract carriage of freight on an intercity basis. Excludes any common carriage, household goods, or local traffic revenues.	
3	Household Goods Carrier Operating Revenue.	All intercity common and contract carriage derived from the movement of household goods.	
4	All Other Operating Revenue.	Includes all local carriage, as well as any other operating revenue not shown in lines 1, 2, and 3.	
5	TOTAL OPERATING REVENUE.	Sum of Lines 1 through Line 4.	
6	Carrier Operating Expenses.	All operating expenses related to operations other than those associated with the movement of household goods.	
7	Household Goods Carrier Operating Expenses.	All operating expenses associated with the movement of household goods.	
8	TOTAL OPERATING EXPENSES.	Line 6 plus Line 7.	
9	NET CARRIER OPERATING INCOME.	Line 5 minus Line 8.	
10	Total Other Income (Expense).	The net of all other revenues and expenses from non-carrier operations. If negative, show in ( ).	
11	Ordinary Income Before Taxes.	Line 9 plus Line 10.	
12	Total Provision for Income Tax.	All paid and deferred income taxes, less any applicable investment tax credits.	
13	Ordinary Income (Loss) After Taxes.	Line 11 minus Line 12.	
14	Extraordinary Income (Loss) (Net of Taxes).	Any after-tax extraordinary income or losses.	
15	NET INCOME (LOSS).	Line 13 plus Line 14.	

ICC Auth. No. Year 19

SCHEDULE 300—REVENUE EQUIPMENT OWNED AND LEASED

Line No.	Description (a)	Instructions (b)	No. units @ beginning of year (c)	No. units required during year (d)	No. units retired/disposed of during year (e)	No. units @ end of year (f)
1	Trucks—Owned	Trucks actually owned by carrier				
2	Trucks—Leased	Trucks leased, both with and without drivers				
3	Truck Tractors—Owned.	Tractors actually owned by carrier				
4	Truck Tractors—Leased.	Tractors leased, both with and without drivers				
5	Van Trailers & Semis.	Both short and long van trailers and semis, including refers, tankers, etc				
6	Other Revenue Equipment.	All other revenue equipment used in carrier operations				

Instructions for Columns
Column (c) List the number of each type of unit owned or leased at the beginning of the year.
Column (d) List the number of each type of unit acquired by ownership or lease during the year.
Column (e) List the number of each type of unit retired or disposed of by ownership or lease during the year.
Column (f) List the number of each type of unit owned or leased at the end of the year.

SCHEDULE 400.—TYPE OF CARRIER

This schedule will be used to classify motor carriers.

Indicate which type of carriage (general freight, household goods, or specific commodities) makes up the majority of your revenues.
If you are a specific commodity carrier, indicate which type.
All commodities not classified as household goods or specific commodities should be considered as general freight.
COMMODITY REVENUE GROUP
General Freight
Household Goods
Specific Commodities (Note)
(Note) OTHER SPECIFIC COMMODITIES (x) Major Commodities that apply
[ ] Heavy Equipment
[ ] Liquid Petroleum Products
[ ] Refrigerated Liquid Products
[ ] Refrigerated Solid Products
[ ] Dump Trucking
[ ] Agricultural Commodities
[ ] Motor Vehicles
[ ] Armored Truck Service
[ ] Building Material
[ ] Film Associated Commodities
[ ] Forest Products
[ ] Mine Ore Not Including Coal
[ ] Retail Store Delivery Service
[ ] Explosives Or Dangerous Material
Other (Specify) _____

[FR Doc. 94–13701 Filed 6–3–94; 8:45 am]
BILLING CODE 7035–01–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Conference Room A of the Office of Director of Practice, suite 600, 801 Pennsylvania Avenue, NW., Washington, DC, on Monday and Tuesday, June 27 and 28, 1994, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in title 29 U.S. Code, section 1242(a)(1)(B) and to review the May 1994 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 1994 pension actuarial examination and the May 1995 basic actuarial examinations will be discussed. In addition, establishing examination guidelines and credit for unanswered questions on the examinations will be addressed

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the may 1994 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1:30 p.m. on June 27 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. This portion of the meeting will be open to the public as space is available. Time permitting, after discussion of the program, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they proposed to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than June 11, 1994, to Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220 or by facsimile transmission to 202–376–1420.

Dated: May 27, 1994.

Leslie S. Shapiro,

Advisory Committee Management Officer Joint Board for the Enrollment of Actuaries.

[FR Doc. 94–13495 Filed 6–3–94; 8:45 am]
BILLING CODE 4810–25–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. CONSOL of Kentucky, Inc.

[Docket No. M–94–60–C]

CONSOL of Kentucky, Inc., 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler system; arrangement of sprinklers) to its Jones Fork Mine (I.D. No. 15–17496) located in Knott County, Kentucky. The petitioner proposes to use a single overhead pipe system with ½ inch orifice automatic sprinklers located on 10 feet centers to cover 50 feet of fire-resistant belt or 150 feet of non-fire-resistant belt with actuation temperatures between 200 and 230 degrees fahrenheit with water pressure equal to or greater than 10 psi. The petitioner states that the sprinklers would be located 10 feet apart so that the discharge of water will extend over the belt drive, belt take-up, electrical

control, and gear reducing unit. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Cyprus Emerald Resources Corporation

[Docket No. M–94–61–C]

Cyprus Emerald Resources Corporation, 9100 East Mineral Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Emerald Mine No. 1 (I.D. No. 36–05466) located in Greene County, Pennsylvania. The petitioner proposes to use a non-permissible submersible pump in the longwall bleeder sump near the No. 2 bleeder shaft for dewatering the sump and to provide unrestricted airflow into the return shaft. The petitioner states that task training will be provided for all selected mine electricians who will perform electrical work on these pumps; and that the surface pump control and power circuits will be examined monthly. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Air Products and Chemicals, Inc.

[Docket No. M–94–62–C]

Air Products and Chemicals, Inc., 600 Grant Street, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 77.213 (draw-off tunnel escapeways) to its Cambria Cogeneration Facility (I.D. No. 36–08276) located in Cambria County, Pennsylvania. The petitioner proposes to have an escapeway not less than 30 inches in diameter from the tunnel within 24 feet of the tail roller at the closed end of the tunnel; to install a cable type heat detection system set at 140 degrees fahrenheit in the enclosed portion of the tunnel; to install heat activated sprinklers in the tunnel; to install a CO monitoring sensor in the tunnel near the tail roller to activate a visual alarm in the tail roller area and in the Main and Fuel Handling Control rooms when a level of 30 ppm is reached; and to install a pull cord throughout the tunnel to stop the belt. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. Misty Mountain Mining, Inc.

[Docket No. M–94–63–C]

Misty Mountain Mining, Inc., P.O. Box 517, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its Mine No. 2 (I.D. No. 15–17314) located in Knox County, Kentucky. The petitioner proposes to monitor continuously with a hand-held deck-mounted methane and oxygen detector instead of using a methane monitoring system on permissible three-wheel tractors with drag bottom buckets. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Bell County Coal Corporation

[Docket No. M–94–64–C]

Bell County Coal Corporation, P.O. Box 758, Middlesboro, Kentucky 40965 has filed a petition to modify the application of 30 CFR 75.360(b)(6) (preshift examination) to its Stone Mine No. 2 (I.D. No. 15–09568) located in Bell County, Kentucky. The petitioner proposes to establish evaluation points to monitor the air in areas that were mined prior to the date new ventilation regulations went into effect. The petitioner asserts that the proposed alternative method would not jeopardize the safety of the miners at Stone Mine.

6. Tilden Magnetite Partnership

[Docket No. M–94–29–M]

Tilden Magnetite Partnership, P.O. Box 2000, Ishpeming, Michigan 49849 has filed a petition to modify the application of 30 CFR 56/57.18010 (first aid training) to its Tilden Mine (I.D. No. 20–00422) located in Marquette County, Michigan. The petitioner requests that the standard be modified to include Michigan State Certified Emergency Medical Technicians and First Responders as equivalent to "selected supervisors" for the purpose of determining adequate coverage of trained first aid personnel. The petitioner states that modification of the standard would allow for the inclusion of those employees that have had advanced training and are currently licensed as Emergency Medical Technicians or First Responders to be considered as part of the total number of trained first aid personnel and is not meant to preclude the necessity of training additional members of the work force in standard first aid methods to assure adequate coverage on all shifts. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. General Chemical Corporation

[Docket No. M–94–30–M]

General Chemical Corporation, Green River Soda Ash Operations, P.O. Box 551, Green River, Wyoming 82935–0551 has filed a petition to modify the application of 30 CFR 57.22305 (approved equipment III Mines) to its General Chemical Mine (I.D. No. 48–00155) located in Sweetwater County, Wyoming. The petitioner proposes to use Motorola Radio's P200, Model #H43RFU7160BN, 2.5–5 watts for communication purposes while riding the #5 shaft emergency escape hoist for inspection purposes or when necessary to utilize this hoist in an emergency. The petitioner states that the use of radios would allow personnel in the five-man bullet type hoist to have direct communication with the hoistman or a shaft hand that will bell signals to the hoistman; and that when using the radios in the shaft, methane would be continuously monitored and when 0.5 percent or more of methane is found, use of the radios would be suspended until the methane level was below 0.5 percent. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Mitsubishi Cement Corporation

[Docket No. M–94–31–M]

Mitsubishi Cement Corporation, 5808 State Hwy. 18, Lucerne Valley, California 92356 has filed a petition to modify the application of 30 CFR 57.13020 (use of compressed air) to its Cushenbury Plant (I.D. No. 04–00157) located in San Bernardino County, California. The petitioner proposes to establish blow-off stations at various places in the plant where employees can clean their clothes with compressed air. This compressed air would have an OSHA-approved nozzle with pressure no greater than 2–6 psi at normal average line pressure. The petitioner proposes to install tamper-proof airline regulators at each station to ensure that primary operating air pressure is consistent; and to post rules for employees to follow when using compressed air to clean their clothes. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Cominco Alaska Incorporated

[Docket No. M–94–32–M]

Cominco Alaska Incorporated, P.O. Box 1230, Kotzebue, Alaska 99752 has filed a petition to modify the application of 30 CFR 56.6306(b)

(loading and blasting) to its Red Dog Mine (I.D. No. 50–01545) located in Northwest Arctic, Alaska. The petitioner proposes to charge blast holes immediately after the drill has completed drilling a blasthole and has moved to the next hole location. The petitioner asserts that the proposed alternate method would enhance the safety of the miners at Red Dog Mine.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 6, 1994. Copies of these petitions are available for inspection at that address.

Dated: June 1, 1994.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94–13685 Filed 6–3–94; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board; Meeting

AGENCY: Natinal Institute for Literacy Advisory Board, National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: June 22, 1994, 10 a.m. to 4 p.m.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Sharyn M. Abbott, Acting Executive Officer, National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006. Telephone (202) 632–1500.

SUPPLEMENTARY INFORMATION: The Board is established under section 384 of the Adult Education Act, as amended by title I of Public Law 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships.

The Board will meet in Washington, DC on June 22, 1994, from 10 a.m. to 4 p.m. The meeting of the Board is open to the public. The agenda includes discussions of planned program activities.

Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW, suite 200, Washington, DC 20006 from 8:30 a.m. to 5 p.m.

Dated: June 1, 1994.

Andrew J. Hartman,

Executive Director, National Institute for Literacy.

[FR Doc. 94–13640 Filed 6–3–94; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and time: June 30 and July 1, 1994, 8:30 am to 5 pm.

Place: Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of meeting: Part-Open.

Contact person: Dr. Machi F. Dilworth, Program Director, Integrative Plant Biology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1422.

Minutes: May be obtained from the contact person listed above.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate NASA/NSF Joint Program in Plant Biology as part of the selection process for awards. OPEN SESSION: June 30, 1994, noon to 1:00 pm—To discuss research trends and opportunities in NASA/NSF Joint Programs in Plant Biology.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–13703 Filed 6–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Civil and Mechanical Systems.

Date and time: June 27–28, 1994; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Conference Room 320.

Contact person: Dr. Devendra P. Garg, Program Director, Dynamic Systems and Control, Telephone: (703) 306–1361.

Types of meetings: Closed.

Purpose of meeting: To provide advice and recommendations concerning unsolicited proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Division of Civil and Mechanical Systems as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–13704 Filed 6–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical & Communication Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communication Systems.

Date and time: June 23–24, 8 am–5 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room 530, Arlington, Virginia 22230.

Contact person: Dr. George Lea, Program Director, Computational Engineering, ECS, Room 675, National Science Foundation, 4201 Wilson Blvd.

Telephone: 703/306–1339

Type of meeting: Closed.

Purpose of meeting: To review concept papers submitted to NSF for possible later proposal submissions (National Challenge Groups—Fiscal Year 1994).

Agenda: To review and evaluate concept papers submitted under a IITA–94 National Challenge Group for financial support.

Reason for closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: June 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–13705 Filed 6–3–94; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunities in Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (CEOSE) (1173).

Date and time: June 23, 1994; 8:30 a.m.–5 p.m. (Open); June 24, 1994; 8:30 a.m.–12 Noon (Open).

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact person: Wanda E. Ward, Executive Secretary, CEOSE, National Science Foundation, 4201 Wilson Boulevard, Room 805, Arlington, VA 22230. Telephone: (703) 306–1604.

Summary minutes: May be obtained from the Executive Secretary at the above address.

Purpose of meeting: To discuss NSF strategic planning activities, the NSF equal opportunity task force report, human resource development national policy issues, and to review issues about and assessments of participation rates of all segments of society in science and engineering.

Agenda: June 23: 8:30 a.m. to 12 Noon—Discussion of NSF strategic planning and human resources development national policy issues: 1:30 p.m. to 5 p.m.—Discussion of issues about the participation rates of all segments of society in science and engineering and the equal opportunity task force report; 5 p.m.—Recess; June 24: 8:30 a.m. to 12 Noon—Review of assessments of participation rates of all segments of society in science and engineering; future directions.

Dated: June 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–13706 Filed 6–3–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Special Emphasis Panel in Geosciences

Date and Time: June 27, 1994, 9 a.m. to 5 p.m.

Place: UNIDATA Program Office, 3300 Mitchell Lane, Suite 170, Boulder, Colorado 80301.

Type of Meeting: Closed.

Contact Person: Dr. Cliff Jacobs, UNIDATA Program Director, ATM, Rm. 775, National Science Foundation, 4201 Blvd., Arlington, Virginia 22230. Telephone: (703) 306–1521.

Purpose of Meeting: Review of equipment proposals submitted to the National Science Foundation in support of the university-based UNIDATA program.

Agenda: Review and evaluate university sponsored UNIDATA proposals.

Reason for Closing: The materials being reviewed include information of a proprietary or confidential nature, including technical information; financial data; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government Sunshine Act.

Dated: June 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–13707 Filed 6–3–94; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34125; File No. SR–Amex–93–41]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Limitation of Exchange Liability for Negligent Conduct

May 27, 1994.

On December 23, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to limit the Exchange's liability in connection with its administration of proprietary indexes and products. Notice of the proposed rule change appeared in the **Federal Register** on April 1, 1994.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

The Exchange currently has listed for trading, or has received approval to trade, options on several broad-based and narrow-based stock indexes.[4] The Exchange represents that there is a great deal of work involved in the daily calculation and dissemination of these index values and while much of this work is automated, a substantial amount of manual input is still required. Human error, such as incorrectly inputting a symbol or index value, overlooking a corporate action, or inaccurately reporting the number of outstanding shares of a component of an index, can occur during the manual input of data which exposes the Exchange to potential liability. As options on more new indexes are introduced, the chances for human error increase, thus exposing the Exchange to an even greater risk of liability.

Currently, Amex Rules 902C and 1003 disclaim Exchange liability regarding the calculation or dissemination of any index value, and in the creation, redemption, and trading of Portfolio Depositary Receipts, respectively. These disclaimers cover errors, omissions, and delays resulting from any conduct beyond the reasonable control of the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 33817 (March 25, 1994), 59 FR 15466 (April 1, 1994).

[4] Examples of the broad-based indexes include the Eurotop 100, Institutional, Major Market, and S&P MidCap 400 Indexes. Example of the narrow-based indexes include the Biotechnology, Broker/Dealer, Natural Gas, and Retail Indexes.

Exchange, and include acts of God, power or systems failure, or any error, omission, or delay in the reported price of an underlying security. The Exchange believes, however, that these disclaimer provisions are arguably ambiguous with respect to whether the Exchange remains potentially liable for damages caused by any human error or omission by an Exchange employee in connection with the performance of the Exchange's index responsibilities.

In view of the increased potential for Exchange liability as a result of the Exchange's expanding role in the administration of new proprietary indexes and products, the Amex wishes to make clear that in addition to the areas specified in Rules 902C and 1003, the Exchange also disclaims liability for negligent conduct. The Exchange represents that the Amex, as well as other self-regulatory organizations, currently disclaim liability for negligent conduct associated with the dissemination of their market data to vendors, as well as generally in connection with the use of their facilities, except as they otherwise provide. The exchange believes that it is inappropriate for exchanges to bear the risks and liabilities associated with the use of such information and facilities. In the area of index administration, the Exchange represents that Standard & Poor's and all the other major index providers likewise routinely disclaim liability for any negligent conduct.[5] Additionally, the New York Stock Exchange ("NYSE") has a rule which is substantively similar to the Exchange's proposed rule change.[6] Finally, the Exchange acknowledges that Rules 902C and 1003 cannot be relied upon by the Exchange to limit its liability to non-members or for any intentional or negligent violation of federal securities laws.[7]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[8] Specifically, the Commission finds that the proposed rule change provides the Exchange with virtually the same protection from liability available to the New York Stock Exchange pursuant to NYSE Rule 702(b). Additionally, because the Amex represents that the proposed rule change cannot be used to limit its liability to non-members arising from negligent conduct or for any intentional or negligent violation of federal securities laws,[9] the Commission believes that the proposal may serve to facilitate transactions in securities, while also protecting investors and the public interest. Specifically, entities such as the Amex may be encouraged to continue to calculate and disseminate index values so that derivative products based on these indexes, which are found to provide hedging or other economic functions, will remain available to investors.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–93–41), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13608 Filed 6–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34133; File No. SR–Amex–94–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc.; Relating to Amendments to its Listing Fees

May 31, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 72s(b)(1), notice is hereby given that on May 3, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to reduce the maximum fee applicable to original listings of stock issues. The fee is proposed to be amended as follows:[1]

§ 140. Original Listing Fees

Stock Issues	
Less than 1 million shares	$5,000
1+ – 2 million shares	10,000
2+ – 3 million shares	15,000
3+ – 4 million shares	17,500
4+ – 5 million shares	20,000
5+ – 6 million shares	22,500
6+ – 7 million shares	25,000
7+ – 8 million shares	27,500
8+ – 9 million shares	30,000
9+ – 10 million shares	32,500
10+ – 15 million shares	37,500
15+ million shares	45,000
[15+ – 25 million shares	47,500
25+ – 50 million shares	72,500
50+ – 75 million shares	97,500
75+ – 100 million shares	122,500
All Shares over 100 million	– 1/10 cents per share (no maximum)]

In addition to the above per-share fee, there is a one-time charge of $5,000 for companies that do not have a stock or warrant issue listed on the Exchange. (The one-time charge of $5,000 does not apply to any company which previously paid the one-time charge in connection with the listing of a debt issue.)

[There is no maximum fee applicable to original listings of stock and warrant issues, except] *I* [i]n the case of non-U.S. companies listed on foreign stock exchanges[.], [For such issues,] the fee, including the one-time charge, will be 50% of the rates set forth above, with a maximum fee of [$30,000] $25,000. Where the original listing of more than one class of stock is included in the same application, the fee is based on the aggregate number of shares of all such classes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the fee increase and discussed any comments it received on the fee increase. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[5] See e.g., Chicago Board Options Exchange, Inc. Rule 24.14.

[6] See NYSE Rule 702(b).

[7] See Letter from Bruce Ferguson, Associate General Counsel, Legal & Regulatory Policy, Amex, to Brad Ritter, Attorney, Office of Derivatives and Equity Oversight, Division of Market Regulation, Commission, dated March 21, 1994.

[8] 15 U.S.C. 78f(b)(5) (1988).

[9] See supra note 7.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1993).

[1] With respect to the following schedule, italicizing indicates new material and brackets indicate material to be deleted.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

When an issuer applies for listing on the Exchange, an original listing fee is levied on the company based on the total number of shares to be listed. Currently, the fee ranges from $5,000 for new listings of less than one million shares to more than $122;500 for listings of greater than 100 million shares. In addition, each issuer which does not already have securities listed on the Exchange is assessed a one-time charge of $5,000. Listing fees for non-U.S. issuers listed on foreign stock exchanges are currently 50% of the rates for U.S. companies, including the one-time charge, with maximum of $30,000.

Based upon discussions with prospect companies, the Exchange believes that each year several large companies elect not to list on the Amex because the expense of the Exchange's listing fee can become significant at the upper end of the scale.

The Exchange is therefore proposing to amend section 140 of its Company Guide to provide that the maximum fee applicable to the original listing of stock issues is $50,000, inclusive of the one-time charge of $5,000. To be consistent, the Exchange is proposed to reduce the maximum listing fee for non-U.S. issuers already listed on a foreign exchange from $30,000 to $25,000.

The Exchange notes that Nasdaq/NMS original listing fees are roughly comparable to the Exchange's current fees, although their fees are already capped at $50,000 (also inclusive of a $5,000 one-time fee for new listings).[2]

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will remove or lessen an existing burden on competition in that it proposes to reduce an existing difference between the Exchange's original listing fees and those charged by Nasdaq.

[2] See NASD Manual, part IV, paragraph 1814(A)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed fee increase that are filed with the Commission, and all written communications relating to the proposed fee increase between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–12 and should be submitted by June 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13684 Filed 6–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34126; File No. SR–CBOE–93–47]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Temporary Suspensions of Trading in Options

May 27, 1994.

On October 20, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to provide limited authority to Post Directors, Order Book Officials ("OBOs"), and under certain circumstances, Designated Primary Market-Makers ("DPMs"), to suspend trading in a class of options for a limited period of time. Notice of the proposal appeared in the **Federal Register** on November 9, 1993.[3] No comment letters were received on the proposed rule change. On April 11, 1994, the CBOE filed Amendment No. 1 to the proposed rule change.[4] This order approves the Exchange's proposal, as amended.

The CBOE proposes to amend Rule 6.3 ("Trading Halts") to authorize, with respect to a particular class of options, the Post Director[5] or OBO to suspend trading in the options class for a period of time not to exceed five minutes whenever trading in the underlying security is halted. This limited authority may be exercised only if the trading halt in the underlying security is evidenced by an "ST" symbol (for an exchange-listed security) or an "H" (for a National Market security traded through the NASDAQ system) appearing on the class display screen that displays current market information for the underlying security, or if such trading halt is otherwise verified by the senior

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 33131 (November 2, 1993), 58 FR 59500 (November 9, 1993).

[4] Amendment No. 1: (1) Clarifies that only one five minute suspension of trading is authorized pursuant to the proposal; (2) defines who is a "Post Director;" and (3) deletes the DPM as one of the persons authorized to impose a temporary suspension of trading. See Letter from Michael L Meyer, Schiff Hardin & Waite, to Michael Walinskas, Branch Chief, Office of Derivatives and Equity Oversight, Division of Market Regulation, Commission, dated April 8, 1994 ("Amendment No 1").

[5] A Post Director is an Exchange employee at a trading post whose function is to assist the OBO and the DPM at each station at the post. *Id*

person in charge of the Exchange's Control Room. The proposed rule change applies only in the circumstance where there has been a trading halt in an underlying security, and has no application to "circuit breaker" trading halts under Rule 6.3A.

Concurrently with any suspension of trading pursuant to the proposed rule change, the responsible Post Director or OBO shall turn off the Retail Automatic Execution System applicable to the affected options class or classes. Additionally, the Post Director or OBO shall disseminate the designation 998–999 on the Exchange's quote reporting system, which indicates the option is not trading on the CBOE.

Prior to the expiration of any temporary suspension imposed pursuant to the proposed rule change, the responsible Post Director or OBO is required to notify two Floor Officials in order to obtain a determination by them whether a trading halt in the effected options class should be declared under Rule 6.3(a). If the two Floor Officials determine not to halt trading, immediately following such determination it shall be announced to the crowd and trading (or a rotation in the option) shall in no event resume more than five minutes after the temporary suspension of trading was implemented. The Post Director or OBO may only invoke a single five minute suspension of trading pursuant to the proposed rule change.[6]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5),[7] in that it is designed to protect the mechanism of a free and open market and to protect investors and the public interest. Specifically, the Commission finds that the proposal will protect investors and the public interest by enabling Post Directors and OBOs to temporarily suspend options trading promptly in response to verified trading halts in underlying securities. Pursuant to the current version of Rule 6.3(a), Floor Officials have the authority to halt trading in any options class for a period not in excess of two consecutive business days if trading in the underlying security has been halted in the primary market. The proposed rule change, therefore, merely bridges the gap that currently exists between the time that trading in an underlying security is halted and the time it takes for the Floor Officials to impose a trading halt in the related options class pursuant to their authority under Rule 6.3(a). Additionally, a temporary trading suspension pursuant to the proposed rule change can only be invoked once during a single occurrence of a halt in trading in the underlying security. If two Floor Officials determine not to institute a trading halt pursuant to Rule 6.3(a), or if a decision is not made by two Floor Officials within the five minute period, trading in the options class will immediately resume and will continue unless two Floor Officials subsequently independently decide to invoke a trading halt pursuant to Rule 6.3(a). Accordingly, the Commission finds that the proposed rule change protects investors and the public interest by providing a means for an immediate trading halt in those circumstances where Floor Officials would be likely to impose a trading halt pursuant to Rule 6.3(a). Moreover, because the conditions under which the five minute halt can be invoked are specific and objective, the Commission does not expect that the rule change will increase the likelihood of abuse in the implementation of trading halts.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 removes the DPM as one of the persons authorized to impose a temporary suspension of trading. Because the DPM performs market making functions, in addition to having the responsibilities of an OBO, the Commission believes it would be inappropriate for a DPM to be able to suspend trading in a class of options for any period of time. Amendment No. 1 also makes certain clarifications to the proposed rule language. The Commission believes that these clarifications will minimize any potential for confusion as to the application of the rule. As a result, the Commission believes that good cause exists for approving Amendment No. 1 on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File Number SR–CBOE–93–47 and should be submitted by June 27, 1994.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–CBOE–93–47) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13606 Filed 6–3–94; 8:45 am]

BILLING CODE 8010–01–M

[6] *Id.*

[7] 15 U.S.C. 78f(b)(5) (1988).

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34124; File No. SR–CBOE–93–36]

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Regular and Long-Term Index Options on the S&P/Barra Growth Index and the S&P/Barra Value Index

May 27, 1994.

I. Introduction

On September 9, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to provide for the listing and trading of regular and long-term index options on the S&P/Barra Growth Index ("Growth Index") and the S&P/Barra Value Index ("Value Index") (each individually an "Index," and collectively the "Indexes"). The proposed rule change was published for comment in the **Federal Register** on

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

November 19, 1993.[3] No comment letters were received on the proposed rule change. On May 25, 1994, the CBOE filed Amendment No. 1 to the proposed rule change.[4] This order approves the Exchange's proposal, as amended.

II. Description of Proposal

A. General

The CBOE proposes to trade options on the Growth and Value Indexes, stock indexes calculated by Standard & Poor's ("S&P") (or its designee) and maintained by Barra, Inc. ("Barra") pursuant to a license agreement between Barra and S&P. The CBOE also proposes to list long-term options ("Index LEAPS") on either the full-value of each Index or reduced-value Growth and Value Indexes that will be computed at one-tenth of the value of the respective Indexes. Index LEAPS on the Growth and Value Indexes will trade independent of and in additional to regular options on the Indexes traded on the Exchange, however, as discussed below, position and exercise limits of Index LEAPS and regular options on the Indexes will be aggregated.

B. Composition and Maintenance of the Index

The Indexes are constructed by sorting the stocks in the S&P 500 Index on the basis of their book-to-price ratios as determined by Barra twice per year, based on end-of-day information on November 30 and May 31. Starting with the company with the highest book-to-price ratio, companies are added to the Value Index until that Index contains 50% of the market capitalization of the S&P 500 Index. The Growth Index is composed of the remaining companies in the S&P 500 Index. The partition of the S&P 500 Index using November 30 information becomes effective as of January 1 of the following year; the partition of the S&P 500 Index using May 31 information becomes effective July 1 of the same year.

Based on the last partition of the S&P 500 Index, effective January 1, 1994, the Value Index is currently composed of 310 securities. As of the close of trading on May 3, 1994, the Value Index was valued at 71.65. The market capitalizations of the individual stocks in the Value Index ranged from a high of $76.05 billion to a low of $97.23 million, with the mean and median being $5.27 billion and $2.96 billion, respectively. The market capitalization of all the stocks in the Value Index was $1.63 trillion. The total number of shares outstanding for the stocks in the Value Index ranged from a high of 1.24 billion shares to a low of 8.94 million shares. The price per share of the stocks in the Value Index on that date ranged from a high of $146.13 to a low of $4.00. Lastly, no one stock comprised more than 4.65% of the Value Index's total value and the percentage weighting of the five largest issues in the Value Index accounted for 15.19% of the Index's value. The percentage weighting of the lowest weighted stock was 0.01% of the Index and the percentage weighting of the five smallest issues in the Index accounted for 0.05% of the Value Index's value.

Based on the last partition of the S&P 500 Index, effective January 1, 1994, the Growth Index is currently composed of the 190 S&P 500 Index securities not included in the Value Index. As of the close of trading on May 3, 1994, the Growth Index was valued at 60.47. The market capitalizations of the individual stocks in the Growth Index ranged from a high of $82.09 billion to a low of $506.63 million, with the mean and median being $8.43 billion and $4.28 billion, respectively. The market capitalization of all the stocks in the Growth Index was $1.60 trillion. The total number of shares outstanding for the stocks in the Growth Index ranged from a high of 2.30 billion shares to a low of 14.46 million shares. The price per share of the stocks in the Growth Index on that date ranged from a high of $736.00 to a low of $4.50. Lastly, no one stock comprised more than 5.12% of the Growth Index's total value and the percentage weighting of the five largest issues in the Growth Index accounted for 19.47% of the Index's value. The percentage weighting of the lowest weighted stock was 0.03 % of the Growth Index and the percentage weighting of the five smallest issues in the Index accounted for 0.19% of the Index's value.

C. Calculation of the Index

Like the S&P 500 Index, the Indexes will be capitalization-weighted, and the methodology used to calculate their value is identical to the methodology used to calculate the value of the S&P 500 Index. The level of each Index is calculated as follows:

$$\text{Index Level} = \frac{\text{Current Market Value}}{\text{Adjusted Base Period Market Value}} \times 10$$

$$\text{Adjusted Base Period Market Value} = \frac{\text{Current Market Value After Adjustments}}{\text{Current Market Value Before Adjustments}} \times \text{Previous Base Period Market Value}$$

The numeric value of each Index was established at 10 as of the close of the market on December 31, 1974.

The Indexes are calculated continuously by S&P or its designee, and their values will be disseminated by the Options Price Reporting Authority ("OPRA") no less often than every fifteen seconds. S&P will also calculate the exercise settlement value for each expiring series of Value Index options and Growth Index options, and will make these values available to CBOE for use by the Options Clearing Corporation ("OCC") in effecting settlement of exercises and assignments of the options.

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[3] See Securities Exchange Act Release No. 33192 (November 12, 1993), 58 FR 61117 (November 19, 1993).

[4] In Amendment No. 1, the CBOE proposes to: (1) Establish position limits for options on the Growth and Value Indexes of 125,000 contracts on the same side of the market, with no more than 75,000 contracts in the series with the nearest expiration month; (2) establish 225,000 contracts on the same side of the market as the maximum position size that will be eligible for treatment under the Exchange's hedge exemption rule provisions; and (3) aggregate positions in Growth Index options and Value Index options for purposes of position and exercise limits, including applicable hedge exemptions. Additionally, Amendment No. 1 amends proposed Interpretation .01(a)(v) and (vi) to Rule 24.9 to provide that the strike intervals between Growth Index and Value Index options will be no less than $2.50 only if the strike prices are less than $200. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Attorney, Office of Derivatives and Equity Oversight, Division of Market Regulation, Commission, dated May 25, 1994 ("Amendment No. 1").

The values of the Indexes, for purposes of settling outstanding options on the Growth and Value Indexes upon expiration, will be calculated based upon the regular way opening sale prices for each of the Indexes' component stocks on the last trading day prior to expiration.[5] Once all of the component stocks have opened, the value of each Index will be determined and that value will be used as the final settlement value for expiring options contracts on that Index. If any of the component stocks do not open for trading on the last trading day before expiration, then the last reported sale price of such security will be used in any case where that security does not trade on that day.[6]

D. Contract Specifications

The proposed options on the Indexes will be cash-settled, European-style options.[7] Standard options trading hours (9:30 a.m. to 4:15 p.m. New York time) will apply to the contracts. The multiplier for each Index will be 100. The strike price interval will be $2.50 for Index options with strike prices of less than $200.[8] The Exchange intends to list up to three near-term calendar months and three additional calendar months at three month intervals.[9] As described in more detail below, the Exchange also intends to list Index LEAPS on each Index that will expire 12 to 36 months from the date of their issuance.

Options on each Index (including full-value and reduced-value Index LEAPS) will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Because options on the Indexes will settle based upon the opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).[10]

E. Listing of Long-Term Options on the Full-Value or Reduced-Value Growth and Value Indexes

The Exchange may list Index LEAPS on the Growth and Value Indexes that expire 12 to 36 months from date of issuance on either the full-value of the Growth and Value Indexes or reduced-values of the Indexes that will be computed at one-tenth the value of the full-value Indexes.[11] The current and closing values for reduced-value Index LEAPS on the Indexes will be computed by dividing the value of the full-value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, a Growth Index value of 60.54 would be 6.05 for the Growth Index LEAPS and 60.56 would become 6.06. The reduced-value Index LEAPS on the Indexes will have a European-style exercise and will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. The strike price interval for the reduced-value Index LEAPS will be no less than $2.50.[12]

The same Exchange rules which are applicable to the trading of full-value Index LEAPS on the Indexes will be applicable to the trading of reduced-value Index LEAPS on the Indexes. For example, both full-value and reduced-value Index LEAPS may expire from 12 to 36 months from the date of issuance, and there may be up to six expiration months beyond one year to expiration. Moreover, full-value or reduced-value Index LEAPS on either Index may be issued at six month intervals and new strike prices will either be near or bracketing the current value of each Index. Strike price interval, bid/ask differential, and continuity rules will not apply to the trading of the full-value or reduced-value Index LEAPS on the Indexes until their time to expiration is less than 12 months.[13] Lastly, Index LEAPS series on each Index may be added when the value of the underlying Index increases or decreases by ten to fifteen percent.[14]

F. Position and Exercise Limits, Margin Requirements, and Trading Halts

Position limits for the options (including Index LEAPS) on the Growth and Value Indexes will be set at no more than 125,000 contracts on the same side of the market, provided that no more than 75,000 of such contracts are in series in the nearest expiration month, and further provided that options positions in the Indexes will be aggregated.[15] Exercise limits will be set at the same level as position limits.[16] For purposes of calculating applicable position and exercise limits, positions in reduced-value options on the Growth and Value Indexes will be aggregated with each other and with positions in the full-value Index options. For these purposes, ten reduced-value contracts will equal one full-value contract for purposes of aggregating these positions. Also, CBOE hedge exemption provisions will apply to options and Index LEAPS on both Indexes.[17]

Exchange rules applicable to options on the Growth and Value Indexes will be identical to the rules applicable to other broad-based index options for purposes of trading rotations, halts, and suspensions,[18] and margin treatment.[19]

G. Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Index options and Index LEAPS on the Growth and Value Indexes. These procedures include complete access to trading activity in the underlying securities.

H. Disclaimer

The CBOE has agreed with S&P to revise the disclaimer of liability on behalf of S&P that is currently in the Exchange's rules so that it covers Barra as well as S&P, and the growth Index and Value Index. The disclaimer would provide that S&P, Barra, and all of their affiliates do not make any warranties as to the results obtained from the Growth and Value Indexes, any opening, intra-day or closing value therefore, any related data, or any errors or delays in calculating or disseminating the value of either Index, in connection with the trading of option contracts based on the Indexes.[20]

III. Commission Findings and Conclusions

The Commission has reviewed the proposal to list and trade options and full-value and reduced-value Index LEAPS on the Growth and Value Indexes. As discussed below, the Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Indexes are broad-based, the proposed options are designed to reduce the potential for manipulation, and the proposal to list and trade options and Index LEAPS on the Growth and Value Indexes is consistent with the CBOE's obligation to promote investor protection.[21]

The Commission finds that the trading of options on the Indexes, including full-value and reduced-value Index LEAPS, will permit investors to participate in the price movements of the securities on which the respective Indexes are based. Further, trading of options on each Index will allow investors holding positions in some or all of the securities underlying that Index to hedge the risks associated with their portfolios. Accordingly, the Commission, believes options on the Growth and Value Indexes will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of the securities contained in this partition of the S&P 500 Index. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of options on the Growth and Value Indexes will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.[22]

The trading of options on the Growth and Value Indexes, including the trading of full-value and reduced-value Index LEAPS, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the DBOE has addressed these concerns adequately.

A. Index Design and Structure

The Commission finds that the Indexes are broad-based indexes,[23] and thus it is appropriate to permit Exchange rules applicable to the trading of broad-based index options to apply to options on the Indexes, including Index LEAPS. Specifically, the Commission believes the Indexes are broad-based because they (1) are a partition of the S&P 500 Index, which is a broad-based index on which options have been approved for trading since 1983,[24] and (2) reflect a substantial segment of the U.S. equities market.

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the component stocks of each Index significantly minimize the potential for manipulation of either Index. First, the Indexes collectively represent and consist of the common stock values of 500 actively traded U.S. companies. Second, no one particular stock or group of stocks dominates either Index. Specifically, as of May 3, 1994, no one stock comprised more than 4.65% of the Value Index's total value or 5.12% of the Growth Index's total value, and the percentage weighting of the five largest issues in the Indexes accounted for 15.19% of the Value Index's value and 19.47% of the Growth Index's value. Third, the market capitalizations of the stocks in the Indexes are very large. Specifically, the market capitalizations (1) for the Value Index ranged from a high of $76.05 billion to a low of $97.23 million as of May 3, 1994, with the mean and median being $5.27 billion and $2.96 billion, respectively, and (2) for the Growth Index ranged from a high of $82.09 billion to a low of $506.63 million as of that date, with the mean and median being $8.43 billion and $4.28 billion, respectively. Fifth, each Index is comprised of stocks representing a diverse group of industries, including, among others, pharmaceuticals, communications, entertainment, various consumer and computer products and services. Sixth, an overwhelming proportion of the component stocks in each Index currently are eligible for options trading.[25] Finally, the Commission believes that, as discussed below, existing mechanisms to monitor trading activity in those securities will help deter as well as detect illegal trading activity involving options on the Indexes.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options on the Growth and Value Indexes (including full-value and reduced-value Index LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things: that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the options and Index LEAPS on the Growth and Value Indexes will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in options and Index LEAPS on the Indexes.

C. Surveillance

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchanges trading the stocks underlying the derivative product is an important measure for the surveillance of the derivatives and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses.

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[5] See CBOE Rule 24.9(a)(4).

[6] *Id.*

[7] A European-style option can be exercised only during a specified period before the option expires.

[8] See Amendment No. 1, *supra* note 4.

[9] See CBOE Rule 24.9(a)(2).

[10] See *supra* notes 5 and 6.

[11] See CBOE Rule 24.9(b).

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] See Amendment No. 1, *supra* note 4.

[16] See CBOE Rule 24.5.

[17] See CBOE Rule 24.4(a); Interpretation .01 to Rule 24.4; and Amendment No. 1, *supra* note 4.

[18] See CBOE Rule 24.7.

[19] See CBOE Rule 24.11.

[20] See CBOE Rule 24.14.

[21] The CBOE is a member of the Intermarket Surveillance Group ("ISG"), which was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990. The Commission understands that the ISG Agreement, as amended, covers investigations and inquiries regarding trading activity in options on the Indexes and component securities of the Indexes.

[22] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Growth and Value Indexes will provide investors with a hedging vehicle that should reflect the overall movement of securities contained in the Indexes.

[23] The reduced-value Growth and Value Indexes, which are composed of the same components as the Growth and Value Indexes, respectively, and calculated by dividing the full-value Index values by 10, are identical to the full-value Growth and Value Indexes.

[24] See Securities Exchange Act Release No. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983).

[25] The CBOE's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. See CBOE Rule 5.3, Interpretation .01.

thereby making the stock index product less readily susceptible to manipulation.[26] In this regard, the New York Stock Exchange, the American Stock Exchange, and the National Association of Securities Dealers, Inc. Automated Quotation system ("NASDAQ"), which currently are the primary markets for all of the component securities in the Indexes, are members of the ISG, which provides for the exchange of all necessary surveillance information.[27]

D. Market Impact

The Commission believes that the listing and trading on the CBOE of options on the Growth and Value Indexes, including full-value and reduced-value Index LEAPS, will not adversely impact the underlying securities markets.[28] First, as described above, the Indexes are broad-based and each is presently comprised of at least 190 stocks with no one stock dominating either Index. Second, as noted above, the stocks contained in the Indexes have large capitalizations and are actively traded. Third, the proposed position and exercise limits, coupled with the requirement that positions in both Indexes be aggregated, will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the OCC just like any other standardized option traded in the United States. Fifth, existing CBOE stock index options rules and surveillance procedures will apply to options on the Growth and Value Indexes.

Lastly, the Commission believes that settling expiring options on the Growth and Value Indexes (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing expiring index options for exercise settlement purposes based on opening prices rather than closing prices may help reduce adverse effects on the securities underlying options on the Indexes.[29]

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 maintains the proposed options position limits on the Indexes but requires that positions in options on the Indexes (including Index LEAPS) be aggregated for purposes of position and exercise limits. As stated above, the Commission believes that these position and exercise limits have the effect of minimizing the potential for market manipulation and other adverse impacts on the market for the securities underlying the Indexes as a result of the trading of options on the Indexes. Amendment No. 1 also clarifies that strike intervals of $2.50 will only be used for strike prices of less than $200 for full-value options and Index LEAPS on the Indexes. This amendment merely conforms the proposal to existing CBOE rules.[30] As a result, the Commission believes that good cause exists for approving Amendment No. 1 on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions, should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File Number SR–CBOE–93–36 and should be submitted by June 27, 1994.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[31], that the proposed rule change (SR–CBOE–93–36) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13603 Filed 6–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34132; File No. SR–CBOE–93–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading Options on the Israeli Index

May 31, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 8, 1993, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed Amendment No. 1 to the proposed rule change on April 29, 1994, and Amendment No. 2 on May 12, 1994.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[26] See Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[27] See *supra* note 21.

[28] In addition, the CBOE has represented that the CBOE and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to support those new series of index options that would result from the introduction of options and LEAPS on the Growth and Value Indexes. See letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated January 4, 1993 and memorandum from Joe Corrigan, Executive Director, OPRA, to Eileen Smith, CBOE, dated January 4, 1993.

[29] See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[30] See CBOE Rule 24.9, Interpretation and Policy .01(a).

[31] 15 U.S.C. 78s(b)(2) (1988).

[32] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] Amendment No. 2, which supersedes Amendment No. 1, proposes to: (1) reduce the number of components of the proposed Israeli Index ("Index") from 20 to 15; (2) require that the Index be maintained such that at least 85% of the Index, by weight, and at least 80% of the number of components of the Index be eligible for standardized options trading pursuant to CBOE Rule 5.3; (3) classify the Index as a narrow-based index for purposes of CBOE's rules; (4) provide position and exercise limits of 7,500 contracts on the same side of the market for Index options pursuant to CBOE Rule 24.4A; and (5) provide that the Exchange shall submit a proposed rule change pursuant to Section 19 of the Act and Rule 19b–4 thereunder prior to increasing the number of components of the Index to greater than 20 or fewer than 10. *See* Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Attorney, Office of Derivatives and Exchange Oversight, Division of Market Regulation, Commission, dated May 12, 1994 ("Amendment No. 2").

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As provided in Exchange Rule 24.2, "Designation of the Index,"[4] the CBOE proposes to list for trading options on the Israeli Index ("Index"). The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style[5] index options on the Israeli Index ("Index"). The Index will initially consist of fourteen stocks issued by Israeli companies, and one American Depositary Receipt ("ADR")[6] overlying an Israeli company.[7] According to the Exchange, no proxy for the performance of the Israeli economy is currently available in the U.S. derivative markets. Therefore, the Exchange believes, options on the Index will provide investors with a low-cost means of participating in the performance of the Israeli economy or to hedge against the risk of investing in that economy.

Index Design

One of the components of the Index currently trades on the New York Stock Exchange and fourteen (including one ADR representing 11.37% of the weight of the Index as of March 31, 1994) currently are National Market securities traded through the facilities of the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ"). The 14 non–ADR components of the Index are listed for trading only in the United States, and for the ADR component, more than 50% of the combined world-wide trading volume for the ADR and the underlying security occurs in the U.S. through NASDAQ.[8] Accordingly, the Exchange believes that options on the Index should not raise the types of surveillance concerns that may be raised by options on an index of non-U.S. traded stocks.

As of March 31, 1994, the securities comprising the Index ranged in market capitalization from a low of $124.11 million to a high of $2.08 billion. The average capitalization as of that date was $566.83 million. The component accounting for the largest percentage of the total weighting of the Index on that date was Elbit Ltd. (13.12%), while the smallest was Biotechnology General Corp. (1.92%).

Calculation

The Index is price-weighted and reflects changes in the prices of the component stocks relative to the base date of January 2, 1992. The Index value is calculated by summing the prices of the component securities and then dividing by a divisor that yielded an index value of 100.00 as of that date.

The Index will be calculated by CBOE or its designee on a real-time basis using last-sale prices and will be disseminated every 15 seconds by the Exchange. If a component stock of the Index is not currently being traded, the most recent price at which the stock traded will be used in the Index calculation.

Maintenance

The Index will be maintained by the Exchange. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, spin-offs, certain rights issuances, and mergers and acquisitions.

The Exchange states that the Index will be reviewed on approximately a monthly basis by the CBOE staff. The Exchange may change the composition of the Index at any time or from time to time to reflect the changes affecting the components of the Index or the Israeli economy generally. If it becomes necessary to remove a stock from the Index (generally due to a takeover or merger), every effort will be made to add to the Index an Israeli stock that is traded in the U.S. and not in Israel (According to the Exchange, there are currently 46 Israeli stocks trading in the United States, of which five are also traded in Israel.) In such circumstances CBOE will take into account the capitalization, liquidity, volatility, and name recognition of the proposed replacement stock. The Exchange will most likely maintain fifteen stocks in the Index at all times.[9]

Long-Term Index Options

In addition to Index options on the full-value of the Index, the Exchange also proposes to list long-term Index option series ("LEAPS") as provided in CBOE Rule 24.9, and reduced-value Index LEAPS for which the underlying value would be computed at one-tenth (1/10th) of the value of the Index. The current and closing index value of any such reduced-value Index LEAPS will after such initial computation, be rounded to the nearest one-hundredth. Other than the reduced value, all other specifications and calculations for the reduced-value Index LEAPS will remain the same.

Exercise and Settlement

Index options will have European-style exercise and will be "A.M.-settled index options" within the meaning of the rules in Chapter XXIV of the Exchange's rules.[10] The CBOE proposes to amend Rule 24.9 to refer specifically to Israeli Index options. The Exchange states that the proposed Index options would expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

Exchange Rules Applicable

Except as modified in the proposal, the Rules in Chapter XXIV of the

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[4] Exchange Rule 24.2 provides, in part, that the Commission must approve a particular index upon which options are traded.

[5] European-style options can only be exercised during a specified period before the options expire.

[6] An American Depositary Receipt is a negotiable receipt which is issued by a depositary, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the ADRs, at a custodian bank in the foreign issuer's home country.

[7] The component securities of the Index are: Biotechnology General Corp.; Comverse Technology Inc.; Fourth Dimension Software Ltd.; ECI Telecom Ltd.; Elbit Ltd.; Elron Electronic Industries Ltd.; Geotek Industries Inc.; IIS Intelligent Information Systems Ltd.; Lannet Data Communications Ltd.; Orbotech Ltd.; Scitex Corp. Ltd.; Sapiens International Corp.; Tadiran Ltd.; Teva Pharmaceutical Industries Ltd. (ADR); and Teledata Communication Ltd.

[8] *See* Amendment No. 2, *supra* note 3.

[9] The Exchange will notify the Commission of changes in the number of components in the Index. Prior to increasing the number of components of the Index to more than 20 or decreasing the number of components to less than 10, the Exchange will be required to submit a rule filing pursuant to Section 19 of the Act and Rule 19b–4 thereunder. *Id.*

[10] Under CBOE Rule 24.9, A.M.-settled index options are settled based on an index value derived from opening prices on the last day of trading prior to expiration.

Exchange's rules regarding narrow-based or industry indexes will be applicable to Index options. Index option contracts based on the Israeli Index will be subject to position limits on 7,500 contracts on the same side of the market pursuant to CBOE Rule 24.4A. For purposes of position and exercise limits Index LEAPS will be aggregated with Index options on a one for one basis. Under the proposal, ten reduced-value Index LEAPS contracts will equal one full-value Index option or Index LEAPS for purposes of aggregating positions. The Exchange represents that it has the necessary systems capacity to support new options series that would result from the introduction of Israeli Index options and Index LEAPS.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act, in general, and furthers the objectives of section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

[11] 15 U.S.C. 78f(b)(5) (1988).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE.

All submissions should refer to File No. SR–CBOE–93–55 and should be submitted by June 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13604 Filed 6–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34131; File No. SR–PSE–93–26]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 to a Proposed Rule Change Relating to the Size of Orders Eligible for Entry in the Auto-Ex System

May 27, 1994.

On October 15, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit the PSE's Options Floor Trading Committee ("OFTC") to increase, in one or more classes of multiply-traded equity options, the size of orders eligible for entry into the PSE's Automatic Execution System ("Auto-Ex") to the extent necessary to match the size of orders eligible for entry into any other exchange's automated execution system.[3] Notice of the proposed rule change appeared in the **Federal Register** on December 22, 1993.[4] No comments were received on the proposed rule change. The PSE subsequently filed Amendments Nos. 1 and 2 to the proposed rule change on December 21, 1993, Amendment No. 3 on March 28, 1994, and Amendment No. 4 on May 25, 1994.[5] This order approves the proposal, as amended.

The PSE proposal adds Commentary .01 to PSE Rule 6.87(a) relating to the operation of Auto-Ex in equity options. Interpretation .01 would permit the OFTC to increase, in one or more classes of multiply-traded equity options, the size of orders eligible for entry into Auto-Ex to the extent that other options exchanges permit such larger-size orders in multiply-traded equity options of the same class or classes to be entered into their own automated execution systems.[6] The proposal further provides that any such increase in the order eligibility size will be conditioned on PSE's filing the specific terms of the increase for immediate effectiveness under section 19(b)(3)(A) of the Act. The proposal requires that the PSE include in any such filing, representations that Auto-Ex has the capacity to accommodate the increase in the order eligibility size. Such representations shall cover systems capacity as well as the market-making capacity of market-makers participating in Auto-Ex.[7] Any

[12] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] Under Auto-Ex, eligible small public customer market or marketable limit orders are routed through the system and automatically executed at the prevailing market quote. Currently, Auto-Ex applies to orders of 10 contracts or less.

[4] See Securities Exchange Act Release No. 33340 (December 15, 1993), 58 FR 67887 (December 22, 1993).

[5] Amendment Nos. 1, 2, and 3, contained various changes to the proposed rule change as originally filed; however, these changes were withdrawn and superseded by Amendment No. 4 to the proposed rule change. See Letter from Michael Pierson, Senior Attorney, PSE, to Brad Ritter, Attorney, Office of Derivatives and Equity Oversight, Division of Market Regulation, Commission, dated May 25, 1994 ("Amendment No. 4"). In Amendment No. 4, the PSE also proposes to adopt Rule 6.87(c) which would provide that firms entering orders for execution on Auto-Ex may not divide them up in order to make their parts eligible for entry into Auto-Ex.

[6] Any proposed increase that is initiated by the PSE and not made in response to matching an increase effectuated by another market would have to be filed pursuant to sections 19(b)(1) or 19(b)(2) of the Act.

[7] The PSE represents that it has more than adequate market-making capacity to handle any reasonably expected increase in orders. Telephone conversation between Michael Pierson, Senior Attorney, Market Regulation, PSE, and Brad Ritte

proposed increase that is initiated by the PSE and not made in response to matching an increase effectuated by another market would have to be filed with the Commission for review under section 19(b) of the Act.

Finally, the proposal would add Rule 6.87(c) which would prohibit the splitting of orders for purposes of making the parts eligible for entry into Auto-Ex. The Exchange believes this is necessary in order to comply with the purpose behind the Auto-Ex system which is to allow for the execution of small customer orders. Additionally, when large orders are split and then routed through Auto-Ex, market makers do not have the opportunity to adjust their markets to reflect the order flow. Finally, the PSE believes that this provision is consistent with the rule adopted by the Chicago Board Options Exchange ("CBOE") regarding orders routed through its Retail Automatic Execution System ("RAES").[8]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and 11A.[9] Specifically, the Commission notes that the proposed rule change is substantively identical to a proposal recently approved by the Commission relating to RAES at the CBOE.[10] The Commission believes that the rationale supporting approval of the CBOE proposal applies equally to the PSE's proposed rule change. In particular, the Commission continues to believe that the development and implementation of the Auto-Ex system provides for more efficient handling and reporting of orders in PSE equity options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time.

Further, the Commission believes that providing the PSE with an efficient method by which to increase Auto-Ex order size eligibility to match another market's increase is consistent with sections 6(b)(5) and 11A(a)(1)(C) of the Act in that it facilitates transactions in securities and promotes fair competition among options markets by enhancing the benefits available to investors of a multiple trading environment. The Commission also believes that the proposal adequately protects investors and the public interest by conditioning the increase in order size eligibility on the PSE's filing with the Commission, under section 19(b)(3)(A) of the Act, of the specific terms of the increase. The Commission believes that requiring the PSE to provide it with such a filing will provide sufficient opportunity for the Commission to determine whether the PSE has adequate system and market maker capacity to accommodate the proposed increase and request appropriate modification of the increase if necessary. Finally, the Commission notes that the PSE has represented that Auto-Ex currently has adequate system and market-maker capacity to accommodate any reasonably anticipated increase in order size eligibility.[11]

Amendment No. 4 provides that orders may not be split for purposes of making the parts eligible for entry into Auto-Ex. The Commission agrees with the Exchange that this is necessary in order to assure compliance with the purpose of Auto-Ex, which is to allow for a more efficient method of executing small market and limit orders.[12] Additionally, the rule change proposed in Amendment No. 4 is consistent with CBOE Rule 6.8(a)(i), which the Commission previously approved.[13]

The Commission finds good cause for approving Amendment No. 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.[14] For the reasons stated above, the Commission believes it is consistent with section 6(b)(5) of the Act to approve Amendment No. 4 to the PSE's proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PSE–93–26 and should be submitted by June 27, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change (SR–PSE–93–26) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 94–13607 Filed 6–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34130; File No. SR–Phlx–94–01]

Self-Regulatory Organizations, Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc Relating to the Listing and Trading of Options on the Phlx Phone Index

May 27, 1994

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 3, 1994 the Philadelphia Stock Exchange, Inc ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Phlx.[1] The Commission

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Attorney, Office of Derivatives Regulation, Division of Market Regulation, SEC, on March 15, 1994.

[8] See CBOE Rule 6.8(a)(i).

[9] 15 U.S.C. 78f and 78k–1 (1988).

[10] See Securities Exchange Act Release No. 32956 (September 24, 1993), 58 FR 51893 (October 5, 1993).

[11] See supra note 7.

[12] See Securities Exchange Act Release No. 32703 (July 30, 1993), 58 FR 42117, (August 6, 1993).

[13] See Securities Exchange Act Release No. 28411 (September 6, 1990), 55 FR 37784 (September 13, 1990).

[14] As noted previously, Amendment No. 3 withdraws and supersedes Amendment Nos. 1, 2 and 3. See Amendment No. 4, *supra* note 5.

[15] 15 U.S.C. 78s(b)(2) (1988).

[16] 17 CFR 200.30–3(a)(12) (1994).

[1] On February 18, 1994, the Phlx amended the proposal: (1) To provide that the Index will be updated during the trading day at least once every 15 seconds, rather than once every minute, (2) to provide that the exercise prices will be set at five point Index intervals rather than 2.5 point Index intervals as stated in the original filing, (3) to specify that the expiration cycle applicable to options on the Index will be three expiration months from the March, June, September, December cycle plus two additional near-term months, (4) to clarify the Exchange's obligations with respect to delisting and replacing components of the Index, (5) to clarify that all of the proposed Index's component stocks are, and any future replacement or added component securities will be, traded either on NASDAQ National Market, the New York Stock Exchange ("NYSE"), or the American Stock Exchange (non-ECM); and (6) to clarify that all of the current Index component stocks have overlying exchange traded options on them. See Letter from Michele R. Weisbaum, Associate General Counsel

is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 under the Act, proposes to list and trade options on the Phlx Phone Index ("Index"), an index developed by the Phlx and comprised of eight common stocks representing the companies created as a result of the divestiture of the American Telephone & Telegraph Co. ("AT&T") in 1983, as well as AT&T itself.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to list for trading an American-style option on the Index. The Index, which is comprised of the common stocks of the eight companies created as a result of the divestiture of AT&T in 1983, includes the seven regional telephone companies spun off from AT&T as well as AT&T. AT&T and the spun-off regional telephone companies represent some of the largest and most widely-held U.S. common stocks. If at any time the number of stocks comprising the Index increases to more than ten or decreases to less than eight, the Exchange will submit a filing to the Commission pursuant to Rule 19b–4 under the Act prior to opening any new option series on the Index.

The Phlx believes that there is a need for an index option that represents solely AT&T and its spun-off regional telephone companies. In this regard, the Phlx states that there is a significant segment of the investing community that avidly follows these companies. The Phlx believes that the Index, therefore, would fill a current market void by creating a pure U.S. telephone industry index that would not be diluted with other telecommunications stocks.

The Index will be calculated using a capitalization-weighting methodology. The value of the Index was set to equal 200 on December 1, 1993. The formula for calculating the Index value is as follows:

$$\text{Current Index Value} = \frac{\text{Total Capitalization}}{\text{Divisor}}$$

Where:

Total Capitalization = Sum of Market Values (price x shares outstanding) for all component securities

Divisor = The number which, when divided from the total capitalization when the Index was initially calculated (on December 1, 1993), yielded an Index value of 200

The Index divisor will be adjusted for changes in the capitalization of any of the component securities resulting from mergers, acquisitions, delistings, substitutions, and other like corporate events. The formula for adjusting the divisor is as follows:

Adjustments in the value of the Index which are necessitated by the addition and/or deletion of an issue from the Index are made by adding and/or subtracting the market value (price x shares outstanding) of the relevant issues.

The Index value will be updated dynamically and disseminated at least once every 15 seconds during the trading day. The Phlx has retained Bridge Data, Inc. to compute the value of the Index. Pursuant to Phlx Rule 1100A, updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority. The Index value also will be available on broker/dealer interrogation devices to subscribers of the option information.

$$\text{Divisor} = \frac{\text{Total Capitalization (as result of adjustments)}}{\text{Index Value}}$$

In accordance with Phlx Rule 1009A, if any change in the nature of any stock in the Index occurs as a result of delisting, merger, acquisition, or otherwise, the Exchange will take appropriate steps to delete this stock from the Index and replace it with another stock which the Exchange believes would be compatible with the intended market character of the Index.

Index options will be traded pursuant to the current Phlx rules governing the trading of index options, particularly Phlx Rules 1000A through 1103A, and generally, Phlx Rules 1000 through 1070.

Index options will be "A.M.-settled index options" and will expire on the Saturday following the third Friday of the expiration month, and the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

The Phlx proposes to employ position and exercise limits pursuant to Phlx Rule 1001A(b)(i) and 1002A, respectively.[2] Exercise price intervals will be set initially at five point intervals, and additional exercise prices will be added in accordance with Phlx Rule 1101A(a).

The Phlx will trade consecutive and cycle month series pursuant to Phlx Rule 1101A. Specifically, there will be three expiration months from the March, June, September, December cycle plus two additional near-term months so that the three nearest-term months always will be available.

All of the component securities in the Index currently are eligible to have, and do have, overlying exchange traded options on them. The Exchange

Phlx, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated February 16, 1994 ("Amendment No. 1"). On February 24, 1994, the Phlx amended the proposal to change the name of the Index from the Phlx Baby Bell Index to the Phlx Phone Index. *See* Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, Staff Attorney, Division of Market Regulation, SEC, dated February 24, 1994 ("Amendment No. 2"). On April 6, 1994, the Phlx amended the proposal to represent that the Phlx will submit a Rule 19b–4 filing to the Commission prior to opening any new series of options on the Index for trading if at any time less than 90 percent of the component securities, by weight, are eligible for exchange options tradings, or if at any time the number of stocks in the Index increases to more then ten or decreases to less than eight. *See* Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated March 3, 1994 ("Amendment No. 3"). On April 11, 1994, the Phlx amended the proposal: (1) To change the manner in which the current Index value would be calculated; (2) to represent that the surveillance procedures currently used to monitor trading in each of the Exchange's other index options, which include having complete access to trading activity in the underlying securities comprising the Index (all of which are traded on the NYSE), also will be used to monitor trading in options on the Index; (3) to provide that the Intermarket Surveillance Group Agreement dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index; and (4) to confirm that the trading hours for the Index will be 9:30 a.m. to 4:10 p.m. (New York time). *See* Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Thomas McManus, Esq., Division of Market Regulation, SEC, dated April 7, 1994 ("Amendment No. 4").

[2] Because, as of March 11, 1994, AT&T represented 31.15 percent of the Index, the position and exercise limits applicable to options on the Index are 5,500 contracts, respectively. *See* Phlx Rules 1001A(b)(i) and 1002A.

represents that, if at any time less than 90 percent of the component securities, by weight, are eligible for options trading, the Exchange will submit a filing to the Commission pursuant to Rule 19b–4 under the Act prior to opening any new series of options on the Index.

The Exchange represents that surveillance procedures currently used to monitor trading in each of the Exchange's other index options also will be used to monitor trading in options on the Index. These procedures include having complete access to trading activity in the underlying securities comprising the Index, all of which are traded on the NYSE. In addition, the Exchange represents that the Intermarket Surveillance Group Agreement dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.

The exchange believes that the proposed rule change is consistent with Section 6 of the Act in general, and with Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary,Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–94–01 and should be submitted by June 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13605 Filed 6–3–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2721]

Maine, Declaration of Disaster Loan Area (Amendment #1)

The above-numbered Declaration is hereby amended, effective May 19, 1994, to establish the incident period for this disaster as beginning on April 15, 1994 and continuing through May 9, 1994.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 12, 1994 and for economic injury the deadline is February 14, 1995.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 31, 1994.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–13708 Filed 6–3–94; 8:45 am]

BILLING CODE 8025–01–M

[3] 17 CFR 200.30–3(a)(12) (1993).

[Declaration of Disaster Loan Area #2712]

Tennessee, Declaration of Disaster Loan Area (Amendment #2)

The above-numbered Declaration is hereby amended, effective May 25, 1994, to include McMinn County in the State of Tennessee as a disaster area as a result of damages caused by extensive rainfall and flash flooding which occurred March 25 through April 3, 1994.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Roane, Tennessee, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is June 13, 1994 and for economic injury the deadline is January 17, 1995.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 31, 1994.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–13709 Filed 6–3–94; 8:45 am]

BILLING CODE 8025–01–M

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Order of the United States District Court for the District of Columbia, dated January 26, 1994, the United States Small Business Administration hereby revokes the license of Housing Capital Corporation, a District of Columbia corporation, to function as a small business investment company under the Small Business Investment Company License No. 03/03–0119, issued to Housing Capital Corporation on September 3, 1975, and said license is hereby declared null and void as of May 26, 1994.

Dated: May 26, 1994.

Darryl Hairston,

Deputy Associate Administrator for Investment.

[FR Doc. 94–13710 Filed 6–3–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended May 27, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49570.
Date filed: May 24, 1994.
Parties: Members of the International Air Transport Association.
Subject: TC12 Telex Mail Vote 686.
Proposed Effective Date: July 1, 1994.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 94–13649 Filed 6–3–94; 8:45 am]
BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 27, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49571.
Date filed: May 24, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 7, 1994.
Description: Application of Continental Micronesia, Inc., pursuant to section 401 of the Act and subpart Q of the regulations, applies for an amendment to its certificate of public convenience and necessity for Route 171, authorizing Continental Micronesia to provide scheduled foreign air transportation of persons, property and mail between Honolulu and Osaka, Japan. Continental Micronesia also requests the right to combine this authority with its authority in other markets to the extent permitted by applicable bilateral agreements.

Docket Number: 49573.
Date filed: May 26, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 22, 1994.
Description: Application of USAir, Inc., pursuant to section 401 of the Act and subpart Q of the regulations, applies for a five-year renewal of its certificate of public convenience and necessity for Route 575 authorizing USAir to engage in scheduled foreign air transportation of persons, property and mail between Philadelphia, Pennsylvania and the coterminal points Montreal, Canada and Toronto, Canada.

Docket Number: 49575.
Date filed: May 26, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 23, 1994.
Description: Application of Tower Air, Inc., pursuant to section 401 of the Act and subpart Q of the regulations, requests authority to operate scheduled passenger, property, and mail air service between New York, N.Y. and London, England (to be served through Stansted Airport).

Docket Number: 49577.
Date filed: May 27, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 24, 1994.
Description: Application of American International Airways, Inc., pursuant to section 401 of the Act and subpart Q of the regulations, applies for certificate authority to conduct scheduled foreign air transportation of property and mail between a point or points in the United States, via intermediate points, and a point or points in the following countries: Costa Rica, Venezuela, Colombia, Hong Kong, Taiwan, Australia and New Zealand and beyond, pursuant to the route descriptions and any conditions and restrictions contained in the relevant bilateral agreements.

Docket Number: 49578.
Date filed: May 27, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 24, 1994.
Description: Application of Helivia, S.A., pursuant to section 402 of the Act and subpart Q of the regulations, seeks a foreign air carrier permit for authority to conduct non-scheduled foreign air transportation of property and mail between a point or points in Ecuador, on the one hand, and Miami, Florida, on the other hand, via intermediate points.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 94–13650 Filed 6–3–94; 8:45 am]
BILLING CODE 4910–62–P

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS–109, implemented by Regulation ER–1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 94–3–54, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning June 1, 1994, we have projected non-fuel costs based on the year ended December 31, 1993 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 94–5–41 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic	1.0936
Western Hemisphere	1.1079
Pacific	1.5627

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation: May 27, 1994.

Robert S. Goldner,
Special Counsel to the Acting Assistant Secretary for Aviation and International Affairs.
[FR Doc. 94–13622 Filed 6–3–94; 8:45 am]
BILLING CODE 4910–62–P

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 94–3–50 established the currently effective two-month SFFL applicable through May 31, 1994.

In establishing the SFFL for the two-month period beginning June 1, 1994, we have projected non-fuel costs based on the year ended December 31, 1993

data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 94–5–40 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.2979
Latin America	1.3199
Pacific	2.0040
Canada	1.4164

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation: May 27, 1994.

Robert S. Goldner,

Special Counsel to the Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–13623 Filed 6–3–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

[Summary Notice No. PE–94–21]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 27, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 31, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26178.
Petitioner: Continental Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.358.
Description of Relief Sought/ Disposition: To extend the December 31, 1995, compliance date permitted in Exemption No. 5256 for installation of required windshear equipment in its aircraft in order to develop, certificate, and implement predictive windshear devices in lieu of installing existing reactive systems.

Docket No.: 27608.
Petitioner: Delta Air Line, Inc.
Sections of the FAR Affected: 14 CFR 25.813(e) and 121.310(f)(5).
Description of Relief Sought/ Disposition: To amend existing Exemption 5413, which permits the installation of a door between passenger compartments on the McDonnell Douglas MD–11 airplane, to permit the same installation on five different interior configurations of the MD–11.

Docket No.: 27616.
Petitioner: Wright Air Services, Inc.
Sections of the FAR Affected: 14 CFR 135.181(a)(1).
Description of Relief Sought: To permit Wright Air Services, Inc., to operate a single-engine aircraft, the Cessna 208B Grand Caravan, while carrying passengers in instrument flight rule (IFR) conditions for compensation or hire.

Docket No.: 27671.
Petitioner: Boeing Commercial Airplane Group.
Sections of the FAR Affected: 14 CFR 21.195(d)(2).
Description of Relief Sought: Would authorize Boeing to obtain an Experimental Airworthiness Certificate on all models of transport category aircraft, for the purpose of market survey, with less than 5 flight hours on the aircraft.

Docket No.: 27691.
Petitioner: Cessna Aircraft Company.
Sections of the FAR Affected: 14 CFR 91.609(e).
Description of Relief Sought/ Disposition: To permit Cessna Aircraft Company to operate Cessna Model 525 CitationJet airplanes without an installed cockpit voice recorder during demonstration flights conducted by Cessna personnel.

Docket No.: 27696.
Petitioner: Atlantic Aero, Inc. & Mid-Atlantic Freight, Inc.
Sections of the FAR Affected: 14 CFR 135.181(a)(1).
Description of Relief Sought: To permit Atlantic Aero, Inc., and Mid Atlantic Freight, Inc., to conduct passenger carrying operations under part 135, in over-the-top and in instrument flight rule conditions, in a single engine Cessna C208/208B airplane.

Docket No.: 27702.
Petitioner: Gee Bee, Inc.
Sections of the FAR Affected: 14 CFR 45.22(b)(1)(ii).
Description of Relief Sought/ Disposition: To allow Gee Bee, Inc., to utilize the registration number NR2101 on an airplane certificated in the experimental category, instead of NX2101.

Dispositions of Petitions

Docket No.: 15590.
Petitioner: Embry-riddle Aeronautical University.
Sections of the FAR Affected: 14 CFR Appendixes A, C, D, F, and H of part 141.
Description of Relief Sought/ Disposition: To allow ERAU to train certain of its students to a performance standards without meeting the prescribed minimum flight time requirements.

GRANT, May 18, 1994, Exemption No. 2329J

Docket No.: 23653.
Petitioner: University of North Dakota.
Sections of the FAR Affected: 14 CFR Appendixes A, C, D, F, and H of part 141.
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 3825, which allows the University of North Dakota to graduate students who have been trained to a specific performance level rather than the minimum flight time requirements of part 141.

GRANT, May 20, 1994, Exemption No. 3825G

Docket No.: 25242.

Petitioner: Experimental Aircraft Association.

Sections of the FAR Affected: 14 CFR 61.58(c) and 91.5.

Description of Relief Sought: To extend the termination date of Exemption No. 4941, which allows members of the Experimental Aircraft Association to continue to complete a training course in lieu of a pilot proficiency check.

GRANT, May 13, 1994, Exemption No. 4941C

Docket No.: 26160.

Petitioner: Massachusetts Institute of Technology.

Sections of the FAR Affected: 14 CFR 91.319(c).

Description of Relief Sought: To extend the termination date of Exemption No. 5210, which permits the Massachusetts Institute of Technology to operate five aircraft having experimental airworthiness certificates in a congested airway or over densely populated areas.

GRANT, May 19, 1994, Exemption No. 5210B

Docket No.: 26515.

Petitioner: ERA Helicopters.

Sections of the FAR Affected: 14 CFR 43.3(a) and 135.443(b)(3).

Description of Relief Sought/ Disposition: To allow ERA's helicopter flight crews to perform any daily checks, or checks occurring at intervals of 10 or fewer hours, as called out in the manufacturers' Service Bulletins or FAA Airworthiness Directives.

DENIAL, May 18, 1994, Exemption No. 5898

Docket No.: 26636.

Petitioner: Carson City Sheriff's Department.

Sections of the FAR Affected: 14 CFR 61.116.

Description of Relief Sought: To extend the termination date of Exemption No. 5416, which would permit members of the Carson City Sheriff's Aero Squadron to be reimbursed for fuel, oil, and maintenance expenses while performing official duties invoking the use of member-provided aircraft on authorized search and location missions for the Carson City Sheriff's Department.

PARTIAL GRANT, May 17, 1994, Exemption No. 5416A

Docket No.: 26696.

Petitioner: Ryan International Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.503(b) and 121.511(a).

Description of Relief Sought: To extend the termination date of Exemption No. 5461, which permits Ryan's pilots and flight engineers to complete certain west coast to east coast transcontinental flight sequences with B–727 aircraft before being provided with at least 16 hours of rest, provided crewmembers satisfy the requirements of § 121.505(a) subject to conditions and limitations.

GRANT, May 17, 1994, Exemption No. 5461A

Docket No.: 27434.

Petitioner: General Electric Aircraft Engines.

Sections of the FAR Affected: 14 CFR 21.325(b)(1).

Description of Relief Sought/ Disposition: To allow three export airworthiness approvals to be issued for Class I products (engines) at the Airbus Industries RIE facility in Toulouse, France.

GRANT, May 20, 1994, Exemption No. 5900

Docket No.: 27589.

Petitioner: ABX Air, Inc.

Sections of the FAR Affected: 14 CFR 121.305(j) and 121.343(c).

Description of Relief Sought/ Disposition: To permit ABX to operate 11YS–11 aircraft after October 17, 1994, that are not equipped with a third gyroscopic bank-and-pitch indicator (third artificial horizon) and after May 26, 1994, that are not equipped with an approved flight recorder that utilizes a digital method to record 11 aircraft performance parameters.

DENIAL, May 17, 1994, Exemption No. 5897

Docket No.: 27609.

Petitioner: M. Shannon & Associates.

Sections of the FAR Affected: 14 CFR 91.9(a) and 91.531(a) (1) and (2).

Description of Relief Sought: To permit operators of Cessna Citation 500 models (for Serial Nos. 0001 through 0349 only) to be operated by one pilot without a second in command (SIC).

GRANT, May 18, 1994, Exemption No. 5899

Docket No.: 27659.

Petitioner: Mid Pacific Air Corporation.

Sections of the FAR Affected: 14 CFR 121.343(c).

Description of Relief Sought: To allow Mid Pacific Air Corporation to continue operating until December 20, 1994, its YS–11 aircraft that may not be fitted by May 26, 1994, with digital flight data recorders capable of simultaneously recording at least 11 flight parameters.

DENIAL, April 29, 1994, Exemption No. 5869

Docket No.: 27689.

Petitioner: Roesch Aviation, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit RAI to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.

GRANT, May 19, 1994, Exemption No. 5901

[FR Doc. 94–13700 Filed 6–3–94; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

Approval of Applicant as Trustee

Notice is hereby given that First Interstate Bank of Nevada, N.A., with offices at 3800 Howard Hughes Parkway, suite 1500, Las Vegas, Nevada 89109, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR part 221.

Dated: May 26, 1994.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 94–13599 Filed 6–3–94; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

May 25, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0180.

Form Number: None.

Type of Review: Extension.

Title: (MA)-Minimum Security Devices and Procedures; Criminal Referral Form; Bank Secrecy Act Procedures (12 CFR Part 21).

Description: These records and reports are needed to promote and monitor bank security and to ensure bank safety. The information is used by banks, the OCC, and other agencies for bank security and law enforcement purposes. National banks are the affected public.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 3,600.

Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.

Frequency of Response: On occasion, annually.

Estimated Total Reporting/ Recordkeeping Burden: 33,700 hours.

Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer

[FR Doc. 94–13609 Filed 6–3–94; 8:45 am]

BILLING CODE: 4810–33–P–M

Public Information Collection Requirements Submitted to OMB for Review

May 27, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Departmental Offices/Executive Office for Asset Forfeiture

OMB Number: New.

Form Number: TD F 92–22.46.

Type of Review: New Collection.

Title: Request for Transfer of Property Seized/Forfeited by a Treasury Agency.

Description: The form is necessary for the application for receipt of seized assets by Federal, State, and local Law Enforcement agencies and Program Management.

Respondents: State or local governments, Federal agencies or employees.

Estimated Number of Respondents/ Recordkeepers: 577.

Estimated Burden Hours Per Response/Recordkeeper: 1 hour.

Frequency of Response: Other (one submission per requested asset sharing)

Estimated Total Reporting/ Recordkeeping Burden: 4,670 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer

[FR Doc. 94–13610 Filed 6–3–94; 8:45 am]

BILLING CODE 4810–25–P–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 107
Monday, June 6, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10 a.m. June 20, 1994.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the May 16, 1994, Board meeting.
2. Thrift savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit report entitled "Executive Summary of Fiscal Year 1993 Federal Agency Fiduciary Compliance Reviews."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: June 1, 1994

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94–13749 Filed 6–1–94; 5:03 pm]

BILLING CODE 6760–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–94–19; Emergency Notice]

TIME AND DATE: Tuesday, June 7, 1994 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTER TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List
4. Inv. No. 731–TA–652 (Final) (Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands)—briefing and vote.
5. Outstanding action jacket:

1. ID–94–011; Inv. No. 332–351 (Monitoring of U.S. Imports of Peppers).

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Dated: June 1, 1994

Donna R. Koehnke,

Secretary

[FR Doc. 94–13754 Filed 6–2–94; 9:47 am]

BILLING CODE 7020–02–P

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors' Meeting

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, June 22, 1994, at 10 a.m.

ADDRESSES: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: May 31, 1994.

Lester M. Hunkele III,

Executive Director.

[FR Doc. 94–13827 Filed 6–2–94; 3:44 pm]

BILLING CODE 7630–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 6, 1994.

A closed meeting will be held on Thursday, June 9, 1994, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, June 9, 1994, at 10 a.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Carrie Dwyer (202) 942–0100.

Dated: June 2, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13830 Filed 6–02–94; 4:05 pm]

BILLING CODE 8010–01–M

Federal Register

Monday
June 6, 1994

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 42, et al.

Technical and Conforming Amendments to the Displacement, Relocation Assistance and Real Property Acquisition Regulations for HUD and HUD-Assisted Programs; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 42, 215, 221, 236, 510, 850, 880, 881, 882, 883, 884, 900, and 941

[Docket No. R–94–1366; FR–2357–F–01]

RIN 2501–AB69

Technical and Conforming Amendments to the Displacement, Relocation Assistance and Real Property Acquisition Regulations for HUD and HUD-Assisted Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises a number of the Department's regulations covering programs subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended by the Uniform Relocation Act Amendments of 1987 (1987 Amendments), to conform these regulations to these authorities and to the government-wide URA implementing regulations at 49 CFR part 24.

EFFECTIVE DATE: July 6, 1994.

FOR FURTHER INFORMATION CONTACT: H.J. Huecker, Director, or Mel Geffner, Deputy Director, Relocation and Real Estate Division, room 7174, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708–0336. Hearing- or speech-impaired persons may call the TDD number—(202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and have been assigned OMB Control Number 2506–0121.

I. Statutory and Regulatory Background

The Uniform Relocation Act Amendments of 1987 (Title IV, Pub. L. 100–17, April 2, 1987) (1987 Amendments) amended the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).

Principal among the 1987 Amendments is an expanded definition of the term "displaced person" to include any person who has moved or moved his personal property "as a direct result of rehabilitation or demolition" or privately undertaken acquisition.

Under the revised definition, an "unlawful occupant" or a person occupying a displacement dwelling "for the purpose of obtaining assistance," or a short-term renter who begins occupancy of the property with knowledge of its acquisition for a project that involves displacement, is not a "displaced person." (Section 402, 1987 Amendments.)

In section 402(e) of the 1987 Amendments, the term "comparable replacement dwelling" is defined, in part, as a dwelling that is adequate, decent, safe, and sanitary, functionally equivalent and generally in as desirable a location as the location of the displaced person's dwelling. Also added by section 402(e) is a definition of the term "displacing agency", which means "any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person."

Section 405 of the 1987 Amendments added a new paragraph 4 to section 202(a) of the URA to provide a maximum reestablishment payment of $10,000 for a displaced farm, nonprofit organization, or small business. Section 202(c) of the URA also was amended to change the range of the fixed payment that is available as an alternative to a payment for actual reasonable moving and related expenses. The new fixed payment ranges from $1,000 to $20,000. The former payment ranged from $2,500 to $10,000.

Section 406 of the 1987 Amendments amended section 203(a) of the URA to increase the maximum payment under section 203 from $15,000 to $22,500 with respect to replacement housing for a homeowner, and under section 204, amended by section 407 of the 1987 Amendments, the maximum payment was increased to $5,250 for a renter. However, when such amounts are not sufficient to provide a comparable replacement dwelling as required by section 205(c)(3), agencies must provide additional or alternative assistance to the displaced person. Such additional or alternative assistance is authorized under section 206 (amended by section 409 of the 1987 Amendments).

Section 412 of the Amendments authorized the lead agency (Department of Transportation (DOT)) to issue, with the active participation of HUD and other Federal agencies, regulations to implement the URA. On March 2, 1989, DOT issued a government-wide final rule (see 54 FR 8912) to follow an interim rule issued by that agency on December 17, 1987 (see 52 FR 47994). On February 19, 1988 (53 FR 4964), HUD published an interim rule advising that it would make effective as of April 2, 1989 "all the rule changes necessary to implement amendments" to the URA. (Section 418 of the 1987 Amendments mandated that the amendments take effect no later than April 2, 1989.)

II. Public Comment on Interim HUD Rule

HUD received only one comment in response to the interim rule. The comment concerned the fact that HUD did not join with DOT and certain other Federal agencies in the December 17, 1987 DOT interim final rule that implemented several of the 1987 Amendments. The commenter thought that HUD's delay would result in lower replacement housing payments for displaced persons.

The DOT interim rule did not increase the amount of replacement housing assistance to be provided to a person displaced from a dwelling. The URA "common rule" jointly published in the **Federal Register** (51 FR 7000) by HUD and 16 other Federal agencies on February 27, 1986, set forth an open-ended "make whole" standard as the basis for determining the amount of replacement housing assistance to be provided to displaced persons.

Under the "make whole" approach, the displacing agency must provide assistance sufficient to enable the displaced person to purchase or rent (for a 42-month period) a comparable replacement dwelling, irrespective of the payment limits under section 203 (raised to $22,500 from $15,000) or section 204 (raised to $5,250 from $4,000) of the URA.

Given the open-ended "make whole" approach to providing replacement housing assistance under the "common rule" and subsequent DOT interim and final rules, the sole impact of the DOT interim rule on the provision of replacement housing assistance was the reduction of rental assistance payments by 12.5 percent (caused by reducing the period of assistance from 48 to 42 months).

Section 407 of the 1987 Amendments requires that URA rental assistance payments to lower income persons "take into account such person's income." This change, implemented in the DOT final rule (but not in the DOT interim rule) substantially increased the amount of replacement housing assistance to very low-income persons. During the period between implementation of the DOT interim and final rule, URA replacement housing payments to tenants were higher under

the now removed HUD URA rule at 24 CFR part 42 than under the DOT interim rule.

III. Public Comment on Proposed Section 8 Project-Based Certificate Program Rule

On February 24, 1993, HUD published proposed relocation requirements (58 FR 11319) for the Section 8 Project-Based Certificate Program (PBC). The requirements were published with a proposed rule to conform Section 8 tenant-based rental certificate and rental voucher rules. The proposed PBC relocation policies were similar to those followed in other HUD-assisted programs. Three comments were received.

The first comment addressed the current PBC requirement that prohibits the displacement of any residential tenant of a unit to be assisted under the PBC Program. On February 24, 1993, HUD proposed revising this policy to conform it to the standard applicable to other HUD-assisted programs. That standard allows displacement, provided it is consistent with the other goals and objectives of the program, and property owners take all reasonable steps to minimize it. One commenter opposed this proposal, stating that the current regulation works well to prevent displacement and, in extreme cases, can be waived.

HUD believes that the current PBC displacement prohibition eliminates many projects where the failure to carry out timely rehabilitation leads to property deterioration that ultimately increases displacement—displacement without assistance to those forced to relocate. Under the proposed rule, persons displaced by rehabilitation for an assisted project would receive relocation assistance at URA levels, obtaining standard housing at a cost that is usually lower than what they had been paying for substandard housing. Accordingly, HUD did not adopt the comment, and the final rule reflects the "minimize displacement" standard that is followed in other HUD programs and described in the proposed rule. Also, it is noted that a public housing agency or Indian housing authority (HA) could opt to provide a unit selection preference for units where the rehabilitation will not result in the displacement of a family.

The second comment addressed PBC relocation policy regarding "partially-assisted buildings." The term "partially-assisted" is used to describe a building in which some, but not all, of the units will be "assisted" with a project-based subsidy upon completion of the rehabilitation. Under the current PBC policy, only the occupants of units to be assisted under the section 8 HAP contract are protected by the URA. HUD proposed revising this policy to conform it to policy in other HUD-assisted rehabilitation programs where the tenants in all rehabilitated units in the building are protected, whether or not the units they occupy will receive a PBC subsidy.

One commenter opposed the application of URA protections to occupants of non-assisted units in a partially-assisted building. The commenter was concerned about the cost and indicated that the policy would subsidize discrimination because families who don't want to live with assisted families would "grab a pot of money and move." This observation reflects a misunderstanding of the proposed rule. A tenant who is offered the opportunity to occupy the property upon completion of the rehabilitation under reasonable terms and conditions is not entitled to relocation assistance if he or she elects to relocate. Given the limited amount of rehabilitation (and relocation) that can be supported with PBC subsidies, HUD does not anticipate significant displacement under the PBC program and, therefore, does not expect significant relocation costs under the program. More importantly, those costs which do occur as a result of a project should not be borne by the tenant. Accordingly, HUD did not adopt this comment.

The third commenter asked that § 882.712(g)(3), which allows an HA to request HUD's determination as to whether a displacement is or would be covered by the regulations, should include a requirement for a 30-day response time by HUD. HUD will endeavor to respond to all HA requests as quickly as practicable and certainly within 30 days after all relevant information is received. A regulatory requirement for a 30-day HUD response time would not be meaningful, however, because HUD's failure to respond within that period could not serve as a basis for the HA to conclude that the person was not eligible for relocation assistance.

The final rule is similar to the proposed rule. As with other HUD-assisted programs, in-place tenants, who will not be displaced from the building/complex, must be provided a written notice, which offers the opportunity to lease a unit in the building/complex under reasonable terms and conditions after the rehabilitation has been completed. As described in § 882.712(g)(1)(iii)(A), such reasonable terms and conditions include a post-rehabilitation rent that does not exceed the greater of: (1) The rent charged prior to the agreement, or (2) an affordable rent based on the tenant's income.

Such reasonable terms and conditions also include reimbursement for reasonable out-of-pocket expenses incurred by an in-place tenant who is required to relocate temporarily or to move permanently to another unit in the building/complex so the rehabilitation can be carried out. If these conditions are not met and the in-place tenant moves permanently from the building/complex, the tenant will be considered to have been displaced by the project and to be entitled to relocation assistance at URA levels.

IV. This Final Rule

This rule is being issued to conform existing HUD program regulations to the DOT final rule at 49 CFR part 24. This rule does not reissue the DOT rule, but, for the benefit of HUD program users, adds definitions or descriptions that are peculiar to HUD's programs. Also, the rule does not change any of the environmental program requirements or the compliance requirements of 24 CFR parts 50 and 58. Users are urged to consult the DOT final rule (49 CFR part 24) for a more detailed description of, and guidance for, all matters relating to displacement covered by the URA.

As indicated in the interim rule published by this agency on February 19, 1988, and now adopted by this rule, parts 42 and 43 have been removed, except that § 42.1 (the only section in 24 CFR part 42) remains as a guide-post to readers. It advises readers to consult the DOT rule at 49 CFR part 24 for the regulations implementing the URA and the 1987 Amendments.

Certain terms, although treated in the DOT rule, are nonetheless defined, where appropriate, in the several parts of this rule. See, for example, the definitions contained in this rule for the terms "displaced person" and "initiation of negotiations." (These terms are defined in the DOT rule at 49 CFR 24.2(g) and 49 CFR 24.2(k), respectively.) The terms "displaced person" and "initiation of negotiations" are defined in this rule in order to cover circumstances unique to HUD's programs.

Economic Displacement, Temporary Relocation and Moves Within Project

In some areas, HUD program regulations reflect policy determinations which go beyond the letter of the URA. The URA and the regulations at 49 CFR part 24 do not directly create eligibility for relocation assistance (as a "displaced person") for a tenant-occupant who is permitted to remain in the property but moves from the property because he or

she cannot afford the rent charged upon completion of a project (economic displacement); who is required to relocate temporarily, but not permanently, while the project is underway; or who must move permanently to other space in the building/complex.

Therefore, to protect such tenant-occupants, these program regulations provide that a tenant who moves permanently because the terms and conditions of continued occupancy, temporary relocation, or relocation within the building/complex are unreasonable will qualify as a "displaced person" who is entitled to relocation assistance at levels identical to those required in 49 CFR part 24.

For purposes of determining whether the economic displacement of a tenant has occurred, these regulations establish as "reasonable," a rent/utility charge that does not exceed the greater of: (1) A specified share of the person's income (e.g., 30 percent of income); or (2) the tenant's old monthly rent and estimated average monthly utility costs. A tenant who is required to pay a higher cost upon completion of the project may elect to remain in the project or move permanently and obtain relocation assistance at URA levels.

The revisions to the various program regulations made by this rule reflect basic HUD policy. The HUD URA rule at 24 CFR part 42 (now superseded) contained similar policies, as do regulations covering other HUD-assisted programs (e.g., the Community Development Block Grant (CDBG) Program regulations at 24 CFR part 570).

Minimizing Displacement

Because of statutory requirements (not superseded by the URA) governing some of HUD's programs, this rule provides, where necessary, that grantees minimize displacement. See, e.g., 24 CFR 510.52(a). This standard HUD policy urges grantees, consistent with the goals and objectives of the HUD program, to assure that they take reasonable steps to minimize direct and indirect displacement as a result of a project. For example, if feasible, residential occupants of buildings to be rehabilitated must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary and affordable dwelling unit in the building/complex following completion of the project. No comparable provision is to be found in the DOT rule. That rule's purpose is to implement the URA.

Other Matters

Environmental Review

At the time of publication of the interim rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the initial finding of no significant impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule revises existing regulations to comport with recent legislation that treats individuals and businesses more favorably.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule ensures that families that are affected by displacement activity receive adequate assistance with respect to their relocation.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The rule's major effects are on individuals and businesses. States or their political subdivisions are affected by this rule only to the extent that they act as grantees of Federal funds, disbursing these funds to the ultimate recipients—businesses and individuals.

This rule was listed as Item 1535 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20436) pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.134, 14.146, 14.156, 14.219, 14.221, 14.225, and 14.227.

List of Subjects

24 CFR Part 42

Administrative practice and procedure, Grant programs, Loan programs, Manufactured homes, Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements.

24 CFR Part 215

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 510

Lead poisoning, Loan programs—housing and community development, Relocation assistance, Reporting and recordkeeping requirements, Social security, Urban renewal.

24 CFR Part 850

Grant programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 900

Grant programs—housing and community development, Rent subsidies.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

For the reasons set out in the preamble, the Department amends 24 CFR parts 42, 215, 221, 236, 510, 850, 880, 881, 882, 883, 884, 900, and 941, as follows:

1–2. 24 CFR part 42 is revised to read as follows:

PART 42—DISPLACEMENT, RELOCATION ASSISTANCE, AND REAL PROPERTY ACQUISITION FOR HUD AND HUD-ASSISTED PROGRAMS

Authority: 42 U.S.C. 3535(d) and 4601.

§ 42.1 Applicable rules.

HUD-assisted programs and projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended (URA) (42 U.S.C. 4601 note) and implementing regulations issued by the Department of Transportation at 49 CFR part 24. Applicable program regulations contain additional relocation provisions.

PART 215—RENT SUPPLEMENT PAYMENTS

3. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 1701s; 42 U.S.C. 3535(d).

4. A new § 215.80 is added to read as follows:

§ 215.80 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily to permit rehabilitation or other work for a project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing, any increase in monthly rent/utility costs, and incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such persons also shall be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the Owner's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the Owner. A person who is dissatisfied with the Owner's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of Owner.* (1) The Owner shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that the Owner will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The Owner shall ensure such compliance notwithstanding any third party's contractual obligation to the Owner to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. The cost of relocation assistance also may be paid from funds available from other sources.

(3) The Owner shall maintain records in sufficient detail to demonstrate compliance with these provisions. The Owner shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term "*displaced person*" means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the Owner's execution of the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the amount approved by HUD;

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex, permanently, after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(iv) Any person, including a person who moves before the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition, if the Owner or HUD determines that the displacement resulted directly from rehabilitation, demolition or acquisition for the assisted project.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the execution of the agreement covering the rehabilitation, demolition or acquisition and, before signing a lease and commencing occupancy, received written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition of the project.

(3) The Owner may ask HUD, at any time, to determine whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of private-owner rehabilitation, demolition, or acquisition of the real property, the term *initiation of negotiations* means the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121)

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

5. The authority citation for part 221 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715*l*; 42 U.S.C. 3535(d); sec. 221.544(a)(3) is also issued under 12 U.S.C. 1707(3).

6. A new § 221.795 is added to read as follows:

§ 221.795 Displacement—below market interest rate mortgages.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily to permit rehabilitation or other work for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing, any increase in monthly rent/utility costs and any incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the Owner's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the Owner. A person who is dissatisfied with the Owner's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of Owner.* (1) The Owner shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that the Owner will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The Owner shall ensure such compliance notwithstanding any third party's contractual obligation to the Owner to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid with funds available from other sources.

(3) The Owner shall maintain records in sufficient detail to demonstrate compliance with these provisions. The Owner shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/

complex, permanently, after the Owner executes the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the amount approved by HUD;

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex, permanently, after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(iv) Any person, including a person who moves before the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition, if the Owner or HUD determines that the displacement resulted directly from rehabilitation, demolition or acquisition for the assisted project.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the execution of the agreement covering the rehabilitation, demolition or acquisition and, before signing a lease and commencing occupancy, received written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The Owner may ask HUD, at any time, to determine whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term *initiation of negotiations* means the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121)

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

7. The authority citation for part 236 continues to read as follows;

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

8. A new subpart F consisting of § 236.1001 is added, to read as follows:

Subpart F—Uniform Relocation Assistance

§ 236.1001 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, mortgagors shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily to permit rehabilitation or other work for the assisted project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs, and any incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the mortgagor's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the mortgagor. A person who is dissatisfied with the mortgagor's determination on his or her appeal may submit a written request for review of the determination to the HUD Field Office.

(f) *Responsibility of mortgagor.* (1) The mortgagor shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part

24, and the requirements of this section. The mortgagor shall ensure such compliance notwithstanding any third party's contractual obligation to the mortgagor to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs may also be paid for with funds available from other sources.

(3) The mortgagor shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The mortgagor shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the mortgagor executes the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the amount approved by HUD;

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(iv) Any person, including a person who moves before the mortgagor's execution of the agreement covering the rehabilitation, demolition, or acquisition, if the mortgagor or HUD determines that the displacement resulted directly from rehabilitation, demolition or acquisition for the assisted project.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the execution of the agreement covering the rehabilitation, demolition or acquisition and, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(3) The mortgagor may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the mortgagor's execution of the agreement covering the rehabilitation, demolition or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121)

PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

9. The authority citation for part 510 is revised to read as follows:

Authority: 42 U.S.C. 1452b, 3535(d). Sec. 510.106 is also issued under 42 U.S.C. 3543.

10. Section 510.52 is revised to read as follows:

§ 510.52 Displacement and relocation.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the local processing agency must assure that it has taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs and any incidental costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation:

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (h) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655), implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Application of residential antidisplacement and relocation assistance plan requirements.* If CDBG or HOME funds are used to pay any part of the cost of the rehabilitation activities, as defined in 24 CFR 570.202(b), the project is subject to the regulations at 24 CFR part 43.

(f) *Appeals.* A person who disagrees with the local processing agency's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the local processing agency. A person who is dissatisfied with the local processing agency's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(g) *Responsibility of local processing agency.* (1) The local processing agency shall certify that it will comply (i.e., provide assurance of compliance as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding the property owner's contractual obligation to the local processing agency to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such costs may also be paid for with funds available from other sources.

(3) The local processing agency must maintain records in sufficient detail to demonstrate compliance with these provisions. The local processing agency is required to maintain data on the race, ethnic, gender and disability status of displaced persons.

(h) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person that moves permanently from the real property after receiving a notice from the local processing agency or property owner that requires such move, if the move occurs on or after the date that the property owner (or persons in control of the site) submits the application to the local processing agency for a loan that is later approved;

(ii) Any person, including a person who moves before submission of the application for a loan to the local processing agency, if the local processing agency or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after execution of the loan agreement, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before execution of the agreement and estimated average monthly utility costs; or

(B) 30 percent of gross household income; or

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex, permanently, after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provisions of paragraph (g) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the local processing agency determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application for the loan and before signing a lease and commencing occupancy, the person was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The property owner or local processing agency may request, at any time, a HUD determination of whether a displacement is or would be covered by this section.

(i) *Definition of initiation of negotiations.* For purposes of determining the formula for computing a replacement housing payment to be provided to a displaced residential tenant, the term *initiation of negotiations* means the execution of the loan agreement between the property owner and HUD.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121)

PART 850—HOUSING DEVELOPMENT GRANTS

11. The authority citation for part 850 is revised to read as follows:

Authority: 42 U.S.C. 1437o, 3535(d).

12. A new § 850.34 is added to read as follows:

§ 850.34 Tenant assistance, displacement, relocation, and acquisition.

(a) *General policies.* The grantee shall:

(1) Ensure that the rehabilitation will not cause the displacement of any very low-income household by a household that is not a very low-income household.

(2) Consistent with the other goals and objectives of this part, minimize the displacement of persons as a result of a project assisted under this part.

(3) Administer all phases of the Housing Development Grant Program, including the selection of projects and the provision of notices, counseling, referrals, other advisory services and relocation payments, in a manner that does not result in discrimination because of race, color, religion, sex, age, disability, familial status or national origin.

(4) Adopt and make public a written tenant assistance policy (TAP) that describes the assistance that will be provided to tenants who reside in the project and which includes a statement of nondiscrimination policy consistent with paragraph (a)(3) of this section. The TAP shall comply with the provisions of this section. Each tenant in the project shall be provided a copy of the TAP and advised of the impact of the project on him or her. For privately owned projects, such notice shall be given immediately after submission of the application by the Owner of the property, or earlier. For publicly owned projects, such notice shall be given immediately after the firm project commitment (defined in § 850.3), or earlier.

(b) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(c) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Appeals.* A person who disagrees with the grantee's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the grantee. A person who is dissatisfied with the grantee's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(e) *Responsibility of grantee.* (1) The grantee shall certify that it will comply (i.e., provide assurance of compliance, as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The grantee shall ensure such compliance notwithstanding any third party's (e.g., the property owner's) contractual obligation to the grantee to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance also may be paid for with funds available from other sources.

(3) The grantee must maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The grantee shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(f) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person that moves permanently from the real property after receiving a notice requiring such move, if the move occurs on or after:

(A) If the notice is provided by the property owner, the date that the property owner (or person in control of the site) submits a request for assistance to the grantee that is later approved and funded;

(B) If the notice is provided by the grantee, the date of the firm project commitment to a specific local project.

(ii) Any person, including a person who moves before the date described in paragraph (f)(1)(i) of this section that HUD or the grantee determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the firm project commitment, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before execution of the agreement and estimated average monthly utility costs; or

(B) 30 percent of gross household income; or

(iv) A tenant-occupant of a dwelling, who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(C) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable; or

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the grantee determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the Owner's submission of the request for assistance and, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person will not qualify as a "displaced person" (or for any

assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) The grantee determines that the person was not displaced as a direct result of rehabilitation, acquisition, or demolition for the project, and the HUD Field Office concurs in that determination.

(3) The grantee may ask HUD, at any time, to determine whether a specific displacement is or would be covered by this section.

(g) *Definition of initiation of negotiations.* For purposes of determining the formula for computing a replacement housing payment and issuing related notices, the term *initiation of negotiations* means the firm project commitment to a specific local project as defined in § 850.3.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121)

§ 850.35 [Amended]

13. In § 850.35, paragraph (d) is removed and reserved.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

14. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

15. Section 880.209 is revised to read as follows:

§ 880.209 Displacement, relocation, and real property acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing, any increase in monthly rent/utility costs and any incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation, and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 360119), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the PHA's or private owner's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's or private-owner's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of PHA/Owner.* (1) The private-owner, (in the case of a private-owner/HUD project or a private-owner/PHA project) or the PHA (in the case of a PHA-owner/HUD project) shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The private-Owner or PHA, as appropriate, shall ensure such compliance notwithstanding any third party's contractual obligation to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. The cost of relocation assistance may also be paid for with funds available from other sources.

(3) The Owner shall maintain records in sufficient detail to demonstrate compliance with these provisions. The Owner shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the Owner executes the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) the tenant's monthly rent before execution of the agreement and estimated average monthly utility costs: or

(B) 30 percent of gross household income; or

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after execution of the agreement covering the rehabilitation, demolition, or acquisition and, before signing a lease and commencing occupancy, was provided written notice of the project, its potential impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The PHA or private owner may request, at any time, a HUD determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing a replacement housing payment to be provided to a person displaced as a direct result of rehabilitation, demolition, or non-State agency acquisition of the real property, the term *initiation of negotiations* means the execution of the agreement covering the rehabilitation, demolition or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

16. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

17. Section 881.209 is revised to read as follows:

§ 881.209 Displacement, relocation, and real property acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs and incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary temporary housing made available;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(iv) The provisions of paragraph (b)(i) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 360119), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of Owner.* (1) The Owner shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that he or she will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the Owner to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. The cost of relocation assistance also may be paid with funds available from other sources. The Owner shall maintain records in sufficient detail to demonstrate compliance with these provisions.

(3) The Owner shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the Owner executes the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) the tenant's monthly rent before execution of the agreement and

estimated average monthly utility costs; or

(B) 30 percent of gross household income; or

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violations of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition, and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "*displaced person*" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The Owner may request, at any time, a HUD determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing a replacement housing payment to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term *initiation of negotiations* means the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121)

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

18. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d). In addition, Subpart H is also issued under 42 U.S.C. 11361 and 11401.

19. Section 882.406 is revised to read as follows:

§ 882.406 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* (1) Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part. To the extent feasible, residential tenants shall be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the project upon its completion.

(2) Whenever a building/complex is rehabilitated and some, but not all, of the rehabilitated units will be assisted upon completion of the rehabilitation, the relocation requirements described in this section cover the occupants of each rehabilitated unit, whether or not Section 8 assistance will be provided for the unit.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the project upon its completion; and

(iv) The assistance required under paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 360119), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of PHA.* (1) The PHA shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the PHA to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in

the same manner and to the same extent as other project costs. Such costs also may be paid for with local public funds or funds available from other sources. The cost of PHA advisory services for temporary relocation of tenants may be paid from preliminary administrative funds.

(3) The PHA shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The PHA shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person who moves permanently from the real property after receiving a notice from the owner requiring such move, if the move occurs on or after the date of the submission to the PHA of the Owner proposal that is later approved;

(ii) A person, including a person who moves permanently before the submission of the Owner proposal to the PHA, if the PHA or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the execution of the Agreement between the Owner and the PHA, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before execution of the agreement and estimated average monthly utility costs; or

(B) 30 percent of gross household income; or

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "*displaced person*" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the preliminary proposal (or application, if there is no preliminary proposal) and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "*displaced person*" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The PHA may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing a replacement housing payment to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term *initiation of negotiations* means the execution of the Agreement between the Owner and the PHA.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

20. Section 882.712 is revised to read as follows:

§ 882.712 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* (1) Consistent with the other goals and objectives of this subpart, an owner must assure that it has taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a rehabilitation project assisted under this subpart.

(2) Whenever a building/complex is rehabilitated and some, but not all, of the rehabilitated units will be assisted upon completion of the rehabilitation, the relocation requirements described in this section cover the occupants of each rehabilitated unit, whether or not section 8 assistance will be provided for the unit.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent/utility costs;

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;

(iii) The terms under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the project upon completion of the project; and

(iv) The assistance required under paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "*displaced person*" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24. A "*displaced person*" shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 3600–3620), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority is located in an area of minority concentration, such person must also be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office responsible for administering the URA requirements in the jurisdiction.

(f) *Responsibility of PHA.* (1) The PHA must provide assurance of compliance as required by 49 CFR part 24 that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the PHA to comply with these provisions.

(2) The cost of required relocation assistance may be paid for by the owner, or with local public funds, or with funds available from other sources. The cost of PHA advisory services for temporary relocation of tenants may be paid from preliminary fees or ongoing administrative fees.

(3) The PHA must maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The PHA must maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person who moves permanently from the real property after receiving a notice from the Owner requiring such move, if the move occurs on or after the date of the submission of the Owner application to the PHA;

(ii) A person, including a person who moves permanently before the submission of the Owner application to the PHA, if the PHA or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after execution of the Agreement between the Owner and the PHA, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before execution of the agreement and estimated average monthly utility costs; or

(B) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit and any increased housing costs; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the rehabilitation or construction, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the Owner application to the PHA and, before signing a lease and commencing occupancy, was provided written notice of the Owner application, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) if the Owner application is approved;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The PHA may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing a replacement housing payment to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term *initiation of negotiations* means the execution of the Agreement between the Owner and the PHA.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

21. In § 882.720, paragraph (b)(3)(v) is revised to read as follows:

§ 882.720 PHA unit selection policy.

* * * * *

(b) * * *

(3) * * *

(v) A statement identifying:

(A) The number of persons (families, individuals, businesses, and nonprofit organizations) occupying the property on the date of the submission of the application;

(B) The number of persons to be displaced, temporarily relocated, or moved permanently within the building or complex;

(C) The estimated cost of relocation payments and services, and the source of funding; and

(D) The organization(s) that will carry out the relocation activities;

* * * * *

§ 882.721 [Amended]

22. In § 882.721, paragraph (c) is amended by removing the phrase "can be rehabilitated without causing displacement of residential tenants from units to be assisted (see § 882.712);".

23. In § 882.803, paragraph (d), introductory text, is revised to read as follows:

§ 882.803 Project eligibility and other requirements.

* * * * *

(d) *Relocation.* A project assisted under this subpart H is subject to the requirements of § 882.810.

* * * * *

24. A new § 882.810 is added to read as follows:

§ 882.810 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* (1) Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(2) Whenever a building/complex is rehabilitated and some, but not all, of the rehabilitated units will be assisted upon completion of the rehabilitation, the relocation requirements described in this section cover the occupants of each rehabilitated unit, whether or not Section 8 assistance will be provided for the unit.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing, any increase in monthly rent/utility costs, and incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the project upon completion of the rehabilitation, and

(iv) The assistance required under paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19) and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of PHA.* (1) The PHA shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section and shall ensure such compliance notwithstanding any third party's contractual obligation to the PHA to comply with these provisions.

(2) The cost of required assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid for with local public funds or funds available from other sources. The cost of PHA advisory services for temporary relocation of tenants to be assisted under the program also may be paid from preliminary administrative funds.

(3) The PHA shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The PHA shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person that moves permanently from the real property after receiving notice requiring such move, if the move occurs on or after the date the Owner submits to the PHA the Owner proposal that is later approved;

(ii) Any person, including a person who moves from the property before the date the Owner submits the proposal to the PHA, if the PHA or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the "initiation of negotiations" (see paragraph (h) of this section), if the move occurs before the tenant is provided a written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon its completion. Such reasonable terms and conditions shall include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before the "initiation of negotiations" and estimated average monthly utility costs; or

(B) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(iv) A tenant-occupant of a dwelling, who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the building/complex, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (d)(7)(i) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the preliminary proposal (or application, if there is no preliminary proposal), and, before signing a lease and commencing occupancy, received written notice of the project and its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The PHA may request, at any time, HUD to determine whether a displacement is or would be covered by paragraph (d)(7) of this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of private-owner rehabilitation or demolition of the real property, the term *initiation of negotiations* means the execution of the Agreement between the Owner and the PHA.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121)

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

25. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

26. Section 883.311 is revised to read as follows:

§ 883.311 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs, and any incidental expenses;

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation, and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the Agency's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the Agency. A person who is dissatisfied with the Agency's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of Agency.* (1) The Agency shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the Agency to comply.

(2) The cost of relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs, however, may be paid from local funds or funds available from other sources.

(3) The Agency shall maintain records in sufficient detail to demonstrate compliance with these provisions. The Agency shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after execution of the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before execution of the agreement and estimated average monthly utility costs; or

(B) 30 percent of gross household income; or

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provision of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the proposal to HUD and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(3) The Agency may request, at any time, a HUD determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of private-owner rehabilitation, demolition, or acquisition of the real property, the term *initiation of negotiations* means the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121)

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

27. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

28. Section 884.112 is revised to read as follows:

§ 884.112 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs, and any incidental expenses;

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation, and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person shall be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of Owner/PHA.* (1) The private-owner (in the case of a Private-Owner project or a Private-Owner/PHA project) or the PHA (in the case of a PHA-Owner Project) shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section and shall ensure such compliance notwithstanding any third party's contractual obligation to the Owner or the PHA to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs may also be paid for with funds available from other sources.

(3) The Owner shall maintain records in sufficient detail to demonstrate compliance with these provisions. The Owner and the PHA shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property,

permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after execution of the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before execution of the agreement and estimated average monthly utility costs; or

(B) 30 percent of gross household income; or

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provision of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the proposal to HUD and, before signing a lease and commencing occupancy, was provided written notice of the project and its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(3) The PHA or private owner may request, at any time, a HUD determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the Owner's execution of the agreement covering the rehabilitation, demolition or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121)

PART 900—SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM— NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

29. The authority citation for part 900 is revised to read as follows:

Authority: 42 U.S.C. 1410(b) and 3535(d).

30. A new § 900.105 is added, to read as follows:

§ 900.105 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Local Housing Authorities and Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs and incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the Local Housing Authority's (LHA's) determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person eligible, may file a written appeal of that determination with the LHA. A person who is dissatisfied with the LHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of LHA.* (1) The Local Housing Authority (LHA) shall certify that it will comply (i.e., provide assurance of compliance as required by 49 CFR part 24) with the URA, the

regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the LHA to comply with these provisions.

(2) The cost of required assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid for with funds available from other sources.

(3) The LHA shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section and include data indicating the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the Owner's execution of the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before execution of the agreement and estimated average monthly utility costs; or

(B) 30 percent of gross household income; or

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(iv) Any person, including a person who moves before the owner's execution of the agreement covering the rehabilitation, demolition, or acquisition, if the Owner, the LHA or HUD determines that the displacement resulted directly from rehabilitation, demolition or acquisition for the assisted project.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the LHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the execution of the agreement covering the rehabilitation, demolition, or acquisition, and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The Owner or LHA may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of private-owner rehabilitation, demolition, or acquisition of the real property, the term *initiation of negotiations* means the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

PART 941—PUBLIC HOUSING DEVELOPMENT

31. The authority citation for part 941 continues to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g, and 3535(d).

32. Section 941.207 is revised to read as follows:

§ 941.207 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the PHA shall assure that it has taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* Only residential tenants who are eligible under 24 CFR 913.103 and who meet the PHA standards for tenancy established pursuant to 24 CFR 960.204 will be permitted to continue in occupancy. Any residential tenant who (though not required to move permanently) must relocate temporarily (e.g., to permit rehabilitation or major reconstruction) shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs and incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary housing to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (h) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as

amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements in 49 CFR part 24, subpart B. With respect to the Turnkey method of development (see 24 CFR 941.102(b)), 49 CFR 24.101(a) (1) and (2) apply to the PHA/developer and developer/owner transactions, respectively.

(e) *Notices.* (1) As soon as possible after the date described in paragraph (h)(1)(i) of this section, the PHA shall issue a general information notice (described in 49 CFR 24.203(a)) to each occupant of the property.

(2) At the time of the initiation of negotiations (defined in paragraph (i) of this section), the PHA shall issue an appropriate written notice to each person occupying the property. Those to be displaced shall be issued a notice of eligibility for relocation assistance. (This notice may be combined with the 90-day notice under 49 CFR 24.203(c).) Tenants (eligible under 24 CFR 913.103 and the standards for tenancy established in accordance with 24 CFR 960.204) who will not be displaced shall be issued a notice offering the tenant the opportunity to enter into a lease to continue in occupancy of the property under reasonable terms and conditions. (Also, see paragraph (h)(1)(iii) of this section.)

(f) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(g) *Responsibility of PHA.* (1) The PHA shall certify (i.e., provide assurance of compliance, as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the PHA to comply. The certification in the PHA's "Resolution in Support of Public Housing Project" that the PHA will comply with all the requirements of 24 CFR part 941 shall constitute the PHA's certification of compliance with the URA, the implementing regulations at 49 CFR part 24, and this section.

(2) The cost of required assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs may also be paid from funds available from other sources.

(3) The PHA must maintain records in sufficient detail to demonstrate compliance with this section, including data indicating the race, ethnic, gender and disability status of displaced persons.

(h) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person who moves permanently from the real property after receiving a notice from the PHA or property owner that requires such move, if the move occurs on or after:

(A) For conventional or acquisition projects, the date of approval by HUD of the PHA proposal incorporating the site, or for scattered sites, the date HUD approves the applicable site;

(B) For turnkey projects, the date the PHA proposal is submitted to HUD; or

(C) For major reconstruction of obsolete public housing projects, the date the PHA issues the invitation for bids for the project;

(ii) Any person, including a person who moves before the date described in paragraph (h)(1)(i) of this section, that the PHA or HUD determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project; or

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the "initiation of negotiations," (defined in paragraph (i) of this section), if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the amount determined in accordance with 24 CFR 913.107; or

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provisions of paragraph (h)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the date described in paragraph (h)(1)(i) of this section, but before commencing occupancy, received written notice of the project, its possible impact on the person (e.g., that the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The PHA may, at any time, ask HUD to determine whether a displacement is or would be covered by this section.

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(i) *Definition of initiation of negotiations.* For purposes of this section, the term "initiation of negotiations" means:

(1) For conventional or acquisition projects:

(i) Where the PHA purchases the real property through an arm's-length transaction (as described in 49 CFR 24.101(a)(1)), the seller's acceptance of the PHA's written offer to purchase the property (i.e., the seller's execution of form HUD–51971–II), provided the PHA later purchases the property; or such other date, as may be determined by the PHA with the approval of the HUD Field Office; or

(ii) Where the PHA's purchase of the real property does not qualify as an arm's-length transaction under 49 CFR 24.101(a)(1), the delivery of the initial written purchase offer from the PHA to the Owner of the property (i.e., the PHA executed form HUD–51971–II). However, if the PHA issues a notice of intent to acquire the property, and a person moves after that notice, but before the initial written purchase offer, the "initiation of negotiations" is the actual move of the person from the property;

(2) For turnkey projects, HUD Field Office approval of the PHA's proposal incorporating the developer's proposal, provided the contract of sale is later executed; or

(3) For major reconstruction of obsolete projects, the PHA's issuance of the invitation for bids for the project.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121)

Dated: May 23, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–13405 Filed 6–3–94; 8:45 am]

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federal register

Monday
June 6, 1994

Part III

Department of Labor

Mine Safety and Health Administration

Department of Health and Human Services

Centers for Disease Control and Prevention

Mine Shift Atmospheric Conditions; Respirable Dust Sample and Coal Mine Respirable Dust Standard Noncompliance Determinations; Notices

DEPARTMENT OF LABOR

Mine Safety and Health Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Shift Atmospheric Conditions; Respirable Dust Sample

AGENCIES: Mine Safety and Health Administration, Labor. National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice of public hearing.

SUMMARY: The Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) will hold a joint public hearing to receive comments on the February 18, 1994, (59 FR 8357) notice addressing the joint finding by the Secretary of Labor and the Secretary of Health and Human Services that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be measured accurately over a single shift. This hearing is being held pursuant to section 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act). The hearing will be held in Morgantown, West Virginia.

This notice should be read in conjunction with the notice on noncompliance determinations published separately by MSHA today elsewhere in the **Federal Register**.

DATES: All requests to make oral presentations for the record should be submitted at least 5 days before the hearing date. Immediately before the hearing, any unalloted time will be made available to persons making late requests. The public hearing will be held on Wednesday, July 6, 1994. The hearing will be held from 9 a.m. to 12 p.m.

ADDRESSES: The hearing will be held at the following location: Department of Energy, Morgantown Energy Technology Center (METC), room 51–C, 3610 Collins Ferry Road, Morgantown, West Virginia 26507–0880.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On February 18, 1994, the Secretary of Labor and the Secretary of Health and Human Services jointly published a notice in the **Federal Register** (59 FR 8357) announcing a new finding that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift in accordance with section 202(f)(2) of the Federal Mine Safety and Health Act of 1977. Based on this finding, the Secretaries are proposing to rescind the finding issued on July 17, 1971, and affirmed on February 23, 1972, which is discussed below.

Concurrently, MSHA published a notice in the **Federal Register** (59 FR 8356) announcing its intention to use both single, full-shift respirable dust measurements, and the average of multiple, full-shift respirable dust samples, to determine noncompliance and issue citations for violations of the respirable dust standard under the MSHA coal mine respirable dust program.

The comment periods for these notices were scheduled to close on April 19, 1994, but, in response to requests from the mining community for additional time in which to prepare their comments, MSHA extended the comment period to May 20, 1994 (59 FR 16958).

The purpose of the public hearing is to receive relevant comments and to answer questions concerning the notices. The hearing will be conducted in an informal manner by a panel of MSHA and NIOSH officials. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

The hearing will begin with an opening statement from MSHA and NIOSH, followed by an opportunity for members of the public to make oral presentations. The hearing panel will be available to address relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. In the interests of conducting a productive hearing, MSHA and NIOSH will schedule speakers in a manner that allows all points of view to be heard as effectively as possible.

Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. Copies of the hearing transcripts will be made available to the public for review.

MSHA and NIOSH will also accept for the record additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA or NIOSH will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until August 5, 1994.

Issues

Rescission of Joint 1971/1972 Finding

Comments received to date have reflected some confusion over the MSHA and NIOSH decision to rescind the 1971 Notice of Finding which was affirmed in 1972. On July 17, 1971, a Notice of Finding under section 202(f)(2) of the Mine Act was published by the Secretaries of the Interior and Health, Education, and Welfare (36 FR 13286, July 17, 1971). This finding was based on an analysis of mine operator dust sample results from 2,179 working sections in compliance with the dust standard. Specifically, the average concentration of all 10 full-shift samples submitted from each working section under the regulations in effect at the time (referred to as "basic samples") "* * * was compared with the average of the two most recently submitted samples * * *, then to the three most recently submitted samples, then to the four most recently submitted samples, etc."

In discussing the results of these comparisons, the Secretaries stated that "* * * the average of the two most recently submitted samples of respirable dust was statistically equivalent to the average concentration of the current basic samples for each working section in only 9.6 percent of the comparisons." The finding concluded that "[a] single shift measurement of respirable dust would not, after applying valid statistical techniques to such measurement, accurately represent the atmospheric conditions to which the miner is continuously exposed."

MSHA and NIOSH have concluded that the statistical analysis and the 1971 Finding itself were not germane to the Congressional intent as stated in section 202(f) of the Mine Act. On examination, it can be seen that the conclusion reached in the notice is not consistent with the title of the notice. Specifically, the title of the notice published in 1971 and affirmed in 1972 states the following: "Notice of Finding That Single Shift Measurements of Respirable Dust Will Not Accurately Represent Atmospheric Conditions During Such Shift". The conclusion reached in the notice states that: "* * * a single shift measurement would not, after applying valid statistical techniques, accurately represent the atmospheric conditions to which the miner is continuously exposed". Section 202(f) specifies a finding focused on the "atmospheric conditions on such shift," not the "atmospheric conditions during which the miner is continuously exposed." The analysis did not address the accuracy of a single full-shift measurement in representing atmospheric conditions during the shift on which it was taken. Therefore, the 1971/1972 finding does not establish that a single-shift measurement is invalid.

NIOSH and MSHA request additional comments on their decision to rescind the joint 1971/1972 finding and issue a new finding.

Accuracy of Single Full-Shift Measurements

The proposed joint finding is based on NIOSH and MSHA's position that a sample taken in accordance with the provisions of 30 CFR parts 70, 71, and 90 accurately represents the full-shift, average atmospheric dust concentration at the location where the sample is collected. These regulatory provisions were designed to assure that measurements taken with approved sampling devices in a prescribed manner would meet a level of accuracy acceptable to the Secretaries. Some commenters suggested that the joint finding was invalid because NIOSH and MSHA had no evidence that a single shift sample would accurately measure atmospheric conditions as required by section 202(f).

MSHA and NIOSH request further comments and data from the mining community concerning the accuracy of a single, full-shift respirable coal dust measurement.

Dated: May 27, 1994.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Dated: May 31, 1994.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 94–13664 Filed 6–3–94; 8:45 am]

BILLING CODE 4570–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Coal Mine Respirable Dust Standard Noncompliance Determinations

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearing.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold a public hearing to receive public comments on the February 18, 1994, (59 FR 8356) notice proposing the use of single, full-shift respirable dust measurements to determine noncompliance under the MSHA coal mine respirable dust program. This hearing is being held pursuant to section 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act). The hearing will be held in Morgantown, West Virginia.

This notice should be read in conjunction with the joint notice published elsewhere in today's **Federal Register** by the Department of Labor and the Department of Health and Human Services.

DATES: All requests to make oral presentations for the record should be submitted at least 5 days before the hearing date. Immediately before the hearing, any unalloted time will be made available to persons making late requests. The public hearing will be held on Wednesday, July 6, 1994, from 1 p.m. to 6 p.m.

ADDRESSES: The hearing will be held at the following location: Department of Energy, Morgantown Energy Technology Center (METC), room 51–C, 3610 Collins Ferry Road, Morgantown, West Virginia 26507–0880.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On February 18, 1994, MSHA published a notice in the **Federal Register** (59 FR 8356) announcing its intention to use both single, full-shift respirable dust measurements and the average of multiple, full-shift respirable dust samples to determine noncompliance and issue citations for violations of the respirable dust standard under the MSHA coal mine respirable dust program.

Concurrently, the Secretary of Labor and the Secretary of Health and Human Services jointly published a notice in the **Federal Register** (59 FR 8357) announcing a new finding that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift in accordance with section 202(f)(2) of the Federal Mine Safety and Health Act of 1977. Based on this finding, the Secretaries are proposing to rescind the finding issued on July 17, 1971, and affirmed on February 23, 1972, described in the accompanying notice elsewhere in today's **Federal Register**.

The comment periods for these notices were scheduled to close on April 19, 1994, but, in response to requests from the mining community for additional time in which to prepare their comments, MSHA extended the comment period to May 20, 1994 (59 FR 16958).

The purpose of the public hearing is to receive relevant comments and to answer questions concerning the notices. This hearing will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

The hearing will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. The hearing panel will be available to address relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. In the interests of conducting a productive hearing, MSHA will schedule speakers in a manner that allows all points of view to be heard as effectively as possible.

Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. Copies of the hearing transcripts will be made available to the public for review.

MSHA will also accept for the record additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until August 5, 1994.

Issues

To date MSHA has received comments from the mining industry on two major issues. The first major issue reflects differing interpretations of section 202(b) of the Mine Act. Some commenters assume the respirable coal mine dust standard applies to a long-term average concentration of coal dust. Consequently, they concluded that noncompliance determinations must take shift-to-shift variability into account. Other commenters maintain that the respirable coal dust standard applies to the coal dust concentration averaged over a single shift. They concluded, therefore, that MSHA is authorized to issue a citation whenever the dust standard is exceeded on a single shift, with no allowance made for any shift-to-shift variability.

The second major issue involves use of the Values Table, specified in the February 18, 1994, notice, for making noncompliance determinations with respect to the respirable coal mine dust standard. Several commenters objected to the principle of citing for noncompliance only when noncompliance is indicated at a high confidence level, claiming that doing so would effectively result in an increase in the permissible exposure. Other commenters contended that the proposed values at which a citation would be issued do not sufficiently account for all sources of measurement uncertainty. MSHA specifically solicits additional comments and data from the mining community on the appropriate values at which a citation should be issued.

MSHA also requests comments and data from the mining community concerning the following:

1. The impact on mine environmental respirable dust levels of using the proposed values for noncompliance determinations;

2. Whether the proposed citation criteria, involving use of both single samples and the average of multiple samples, will reduce the incidence of overexposures on individual shifts; and

3. Other approaches that could be utilized to detect when the average concentration of respirable dust in the mine environment is not being maintained below the applicable standard during each shift.

Dated: May 27, 1994

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 94–13663 Filed 6–3–94; 8:45 am]

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H.R. 2139/P.L. 103–262

To authorize appropriations for the National Historical Publications and Records Commission for fiscal years 1994, 1995, 1996, and 1997. (May 31, 1994; 108 Stat. 706; 1 page)

S. 1654/P.L. 103–263

To make certain technical corrections. (May 31, 1994; 108 Stat. 707; 3 pages)

S.J. Res. 179/P.L. 103–264

To designate the week of June 12 through 19, 1994, as "National Men's Health Week". (May 31, 1994; 108 Stat. 710; 2 pages)

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CFR CHECKLIST

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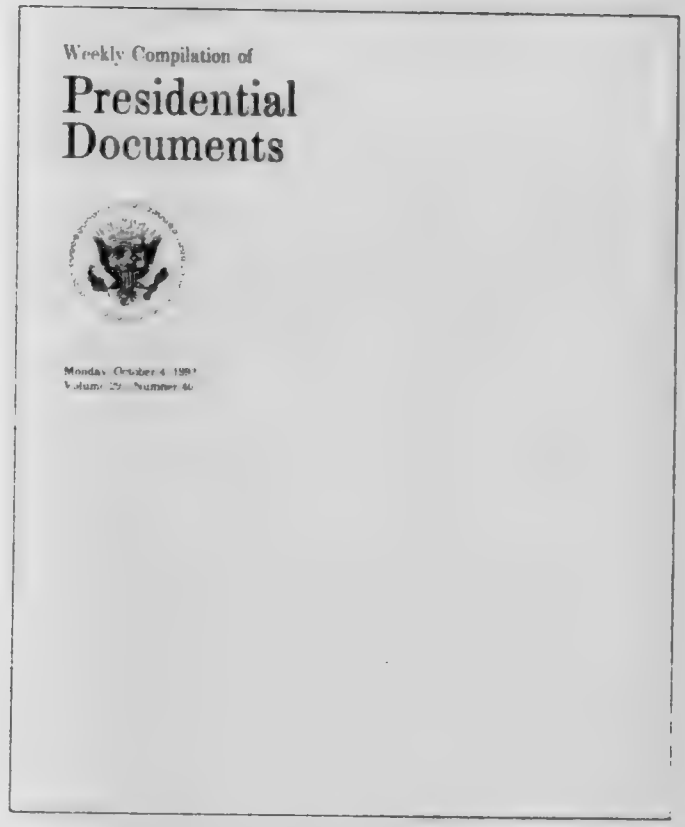
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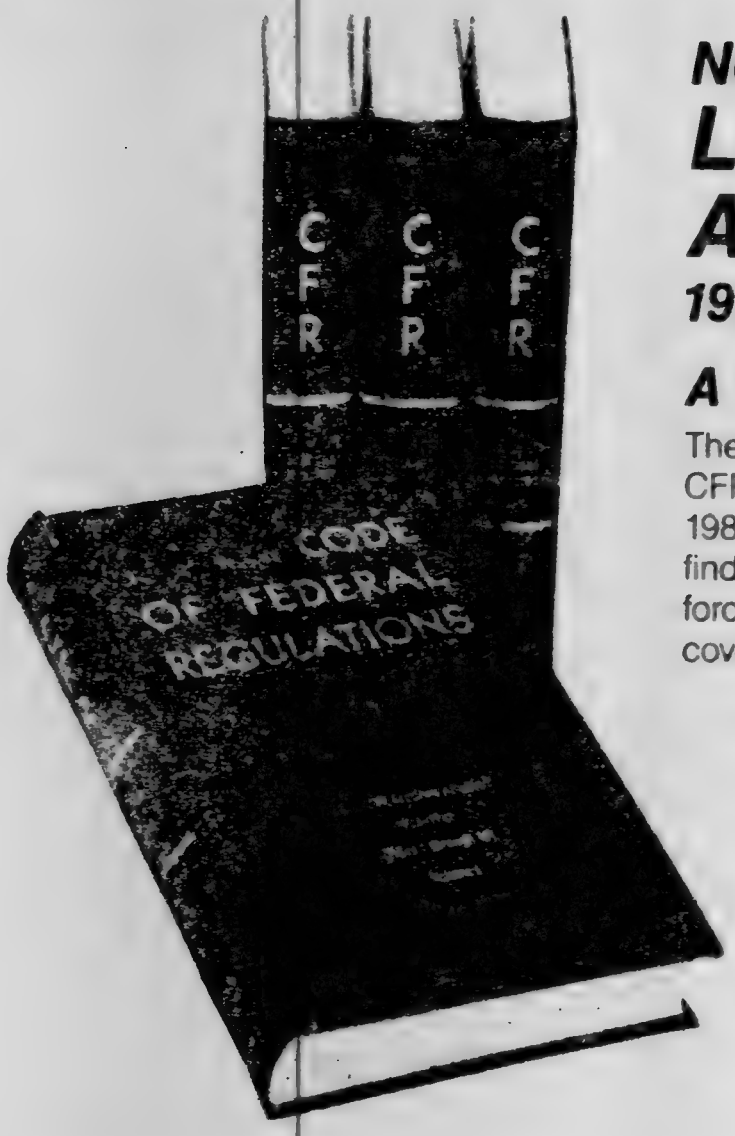
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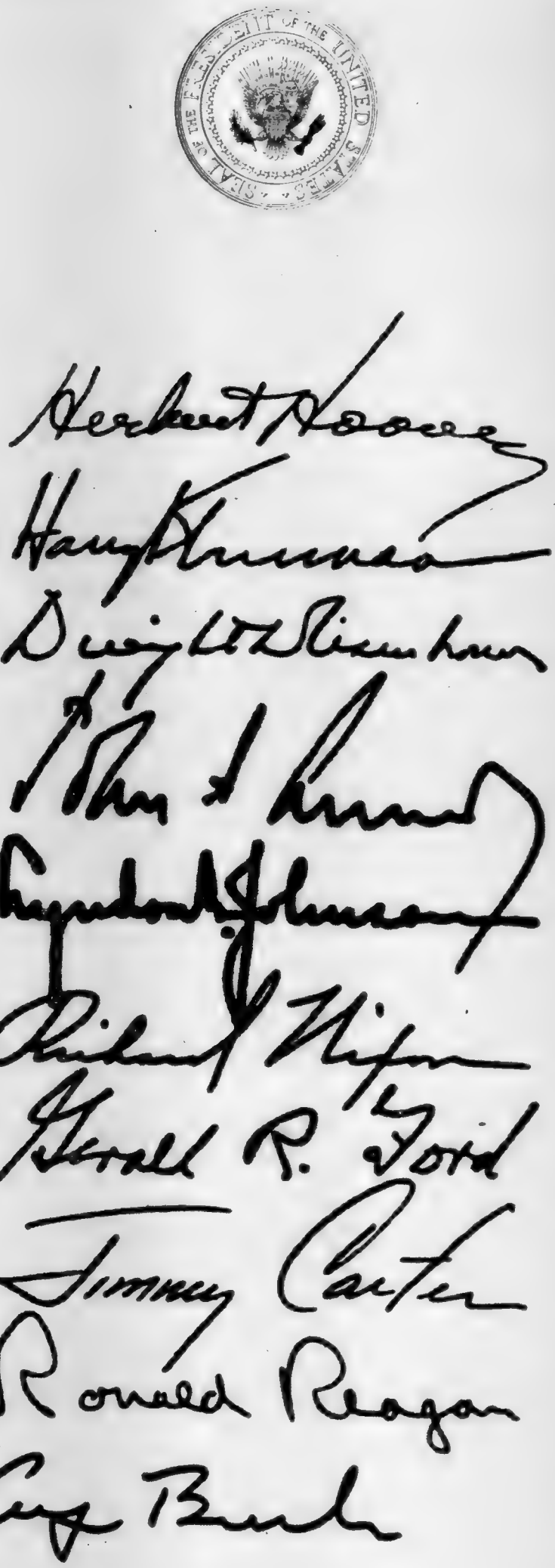
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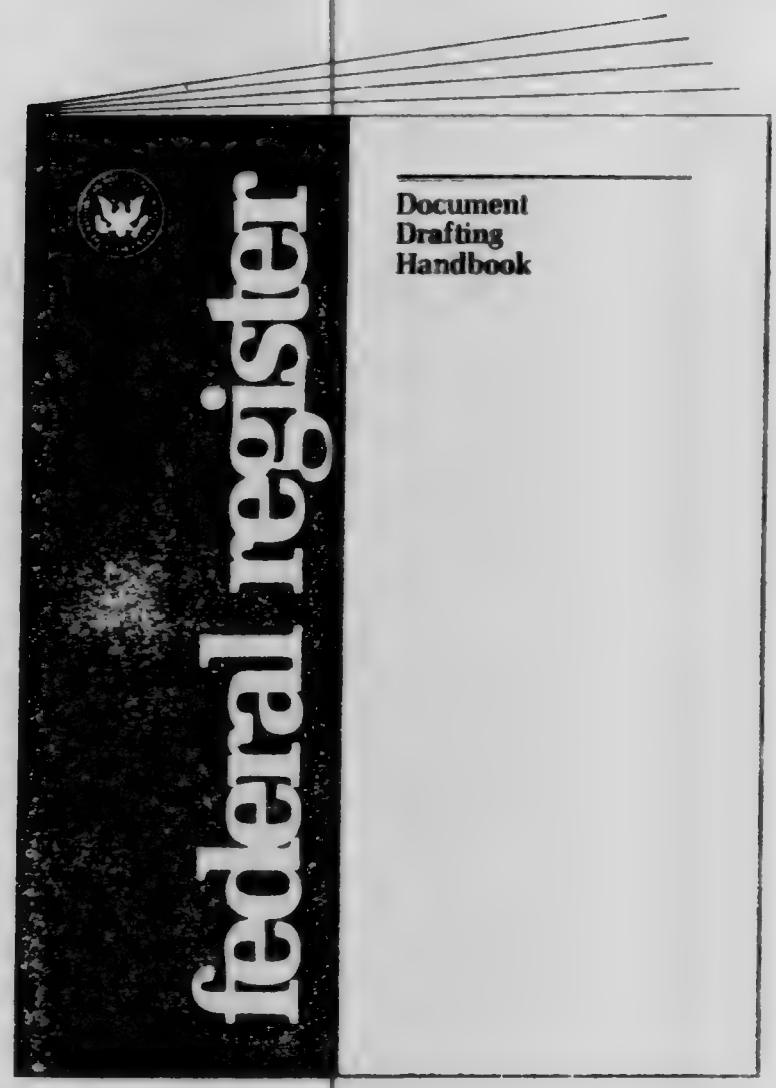
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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 59, No. 108
Tuesday, June 7, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AF59

Separate Maintenance Allowance for Duty at Johnston Island

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is adopting as final the interim regulations authorizing payment of a separate maintenance allowance to Federal civilian employees assigned to Johnston Island, a nonforeign post of duty dedicated to chemical weapon storage and disposal facilities. A separate maintenance allowance assists an employee in meeting some of the additional expenses of maintaining a spouse and/or dependents elsewhere who would normally reside with the employee. The final regulations provide for determining which employees are eligible for the separate maintenance allowance, which relatives qualify as dependents, the method of payment, and the payment amounts.

EFFECTIVE DATE: The final regulations are effective on July 7, 1994.

FOR FURTHER INFORMATION CONTACT: Roger M. Knadle, (202) 606–2858.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) published an interim rule on October 4, 1993 (58 FR 51565). The 30-day public comment period ended on November 3, 1993. No comments were received on the interim rule; therefore, OPM is adopting as final the interim rule implementing section 1092 of Public Law 102–190, December 5, 1991 (the National Defense Authorization Act for Fiscal Years 1992 and 1993). Section 1092 amended chapter 59 of title 5, United States Code, by adding section 5942a to provide a separate maintenance allowance to assist an employee assigned to Johnston Island to meet the additional expenses of maintaining a spouse and/or dependents elsewhere who would normally reside with the employee. On November 16, 1992, this regulatory authority was delegated to OPM by Executive Order 12822.

The final regulations provide procedures and rules under which the head of the agency may determine eligibility for a separate maintenance allowance and the appropriate payment amount. The regulations define: (1) Dependents, (2) the annual rate to be paid to an employee according to the number of his or her dependents, (3) the method of payment, and (4) the responsibilities of the agencies and OPM.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities since they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management
Lorraine A. Green,
Deputy Director.

Accordingly, the interim rule adding subpart D to 5 CFR part 591, published at 58 FR 51565 on October 4, 1993, is adopted as a final rule without change.

[FR Doc. 94–13746 Filed 6–6–94; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–05; Amendment 39–8908; AD 94–10–01]

Airworthiness Directives; Hartzell Propeller Inc. HC–E4 Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Hartzell Propeller Inc. Model HC–E4A–3A/E10950() composite bladed propellers installed on but not limited to Beech Model 1900D aircraft. This action requires installation of new propeller blade pitch change knob twelve point flange head attachment bolts, new preload plates, and new propeller blade pitch change knob brackets. This amendment is prompted by reports of 15 propeller blade pitch change knob screw failures found during routine maintenance. The actions specified in this AD are intended to prevent a severe propeller vibration in flight and possible loss of propeller pitch control.

DATES: Effective June 22, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 22, 1994.

Comments for inclusion in the Rules Docket must be received on or before August 8, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–05, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634; telephone (513) 778–4200, fax (513) 778–4391. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, room 232, Des Plaines, IL 60018; telephone (708) 294–7130, fax (708) 294–7834.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) received reports of 15 propeller blade pitch change knob screw failures found during routine maintenance on Hartzell Propeller Inc. Model HC–E4A–3A/E10950() composite bladed propellers installed on but not limited to Beech Model 1900D aircraft. The FAA also received pilot reports of vibration and

unusual propeller noise, and additional reports of several incidents when the propeller would not go completely into the feather position after engine shutdown on the ground. Investigation into these incidents revealed a failed screw head had lodged in the internal pitch change mechanism. Investigation further reveals that the screws failed due to high cycle fatigue. This condition, if not corrected, could result in a severe propeller vibration in flight and possible loss of propeller pitch control.

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. Alert Service Bulletin (ASB) No. A190, dated January 17, 1994, that describes procedures for installation of new propeller blade pitch change knob twelve point flange head attachment bolts to replace the countersunk screws currently used, new preload plates, and new propeller blade pitch change knob brackets.

Since an unsafe condition has been identified that is likely to exist or develop on other Hartzell Propeller Inc. Model HC–E4A–3A/E10950() composite bladed propellers of the same type design, this airworthiness directive (AD) is being issued to prevent a severe propeller vibration in flight and possible loss of propeller pitch control. This AD requires installation of a design change to the propeller pitch change knob attachment. This installation consists of new propeller blade pitch change knob twelve point flange head attachment bolts to replace the countersunk screws currently used, new preload plates, and new propeller blade pitch change knob brackets. Propellers with serial numbers HJ199 and greater are excluded from this AD, as the propellers were modified during manufacturing. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–05." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–10–01 Hartzell Propeller Inc.: Amendment 39–8908. Docket 94–ANE–05

Applicability: Hartzell Propeller Inc. Model HC–E4A–3A/E10950() propellers, except propellers with serial numbers HJ199 and greater, installed on but not limited to Beech Model 1900D aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent severe propeller vibration in flight and possible loss of propeller pitch control, accomplish the following:

(a) Install new propeller blade pitch change knob twelve point flange head attachment bolts to replace the countersunk screws currently used, new preload plates, and new propeller blade pitch change knob brackets, in accordance with Hartzell Propeller Inc. Alert Service Bulletin (ASB) No. A190, dated January 17, 1994, as follows:

(1) For propellers with 800 or more hours time in service (TIS) since new on the effective date of this airworthiness directive (AD), or 800 or more hours TIS since the new pitch change knob screws were last installed in accordance with Hartzell Propeller Inc ASB No. A184, dated July 19, 1993, or Hartzell Propeller Inc. ASB No. A184(A), dated December 2, 1993, install within 50 hours TIS after the effective date of this AD.

(2) For propellers with less than 800 hours TIS since new on the effective date of this AD, or less than 800 hours TIS since the new pitch change knob screws were last installed in accordance with Hartzell Propeller Inc. ASB No. 184, dated July 19, 1993, or Hartzell Propeller Inc. ASB No. A184(A), dated December 2, 1993, install prior to exceeding the later of:

(i) 850 hours TIS since new; or

(ii) 850 hours TIS since the new pitch change knob screws were last installed in accordance with Hartzell Propeller Inc. ASB No. 184, dated July 19, 1993, or Hartzell Propeller Inc. ASB No. A184(A), dated December 2, 1993;

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with the following service document:

Document No.	Pages	Date
Hartzell Propeller Inc. ASB No. A190.	1–4	January 12, 1994.
Total pages.	4	

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634; telephone (513) 778–4200, fax (513) 778–4391. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 22, 1994.

Issued in Burlington, Massachusetts, on May 24, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–13233 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–202–AD; Amendment 39–8925; AD 94–11–09]

Airworthiness Directives; Beech Aircraft Corporation Model 400A and 400T Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400A and 400T airplanes, that requires inspection to detect damage of the wire harness in the wheel well of the main landing gear (MLG), and modification, if necessary. This amendment is prompted by reports of damage to wire harnesses due to abrasion. The actions specified by this AD are intended to prevent loss of control of the fuel supply to the engine or loss of control of the retraction/extension system for the MLG and MLG door.

DATES: Effective July 7, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–115W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Beech Model 400A and 400T airplanes was published in the **Federal Register** on February 9, 1994 (59 FR 5965). That action proposed to require inspection to detect damage of the wire harness in the wheel well of the main landing gear (MLG), and modification, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 59 Model 400A and 400T airplanes of the affected design in the worldwide fleet. The FAA estimates that 46 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,060, or $110 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety. Adoption of the Amendment.

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–11–09 Beech: Amendment 39–8925. Docket 93–NM–202–AD.

Applicability: Model 400A airplanes having serial numbers RK–1 through RK–41 inclusive, and Model 400T airplanes having serial numbers TT–2 through TT–19 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously

To prevent loss of control of the fuel supply to the engine or loss of control of the retraction/extension system for the main landing gear (MLG) and MLG door, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, perform a general visual inspection to detect damage of the wire harness in the wheel well of the MLG in accordance with Beechcraft Service Bulletin 2479, Revision 1, dated November 1993.

(1) If no damage is found, no further action is required by this AD.

(2) If damage is found, prior to further flight, modify the wiring in accordance with the service bulletin.

Note 1: This service bulletin references Chapter 20–00 of the Aircraft Maintenance Manual and Air Force Technical Order P/N T.O. 1–1A–14 for further service information regarding procedures for modification (removal and splicing) of the wiring.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and modification shall be done in accordance with Beechcraft Service Bulletin 2479, Revision 1, dated November 1993. (NOTE: The issue date of Revision 1 is indicated only on the title page; no other page of the document is dated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, Commercial Service Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 7, 1994

Issued in Renton, Washington, on May 25, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13234 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–226–AD; Amendment 39–8926; AD 94–11–10]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes Equipped With BFGoodrich Evacuation Door Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that requires modification of certain evacuation door slides. This amendment is prompted by a report that, during flight crew training, the toe end of the slide lane tore. The actions specified by this AD are intended to prevent damage to the slide, which could render the slide unusable, contribute to injury of passengers on the slide, and delay or impede the evacuation of passengers during an emergency.

DATES: Effective July 7, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, Department 7916, Phoenix, Arizona 85040. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5338; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300 series airplanes was published in the **Federal Register** on February 9, 1994 (59 FR 5964). That action proposed to require modification of certain evacuation door slides.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Currently there are no Airbus Industrie Model A300 series airplanes equipped with BFGoodrich evacuation door slides on the U.S. register. However, should an affected airplane be imported and placed on the U.S. Register in the future, the FAA estimates that it will take approximately 6.2 work hours per slide to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by BFGoodrich at no cost to the operators. Based on these figures, the total cost impact of the AD would be $341 per slide.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-11-10 Airbus Industrie: Amendment 39-8926, Docket 93-NM-226-AD.

Applicability: Model A300 series airplanes, equipped with BFGoodrich evacuation slides having part numbers (P/N) 7A1299-001 and 7A1299-002, certificated in any category.

Note 1: The requirements of this AD are not applicable to Airbus Model A310, A300-600, or A320 series airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent tearing of the toe end of the slide, which could render the slide unusable, contribute to injury of passengers on the slide, and could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 3 months after the effective date of this AD, modify the evacuation door slides having P/N's 7A1299-001 and 7A1299-002, in accordance with BFGoodrich Alert Service Bulletin 7A1299-25A274, dated December 15, 1993

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), ANM-100L, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with BFGoodrich Alert Service Bulletin 7A1299-25A274, dated December 15, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, Department 7916, Phoenix, Arizona 85040. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 7, 1994.

Issued in Renton, Washington, on May 25, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-13235 Filed 6-6-94; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 93-NM-199-AD; Amendment 39-8924; AD 94-11-08]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires modification of the aileron drive quadrant support structure. This amendment is prompted by results of a stress analysis check, which revealed that the factor of safety of the aileron drive quadrant support structure on Model 4101 airplanes does not meet the tail-to-wind gust load design case strength requirements specified in the Federal Aviation Regulations. The actions specified by this AD are intended to prevent cracking of the support structure, which could result in reduced controllability of the airplane.

DATES: Effective July 7, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 7, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Jetstream 4101 airplanes was published in the **Federal Register** on February 4, 1994 (59 FR 5359). That action proposed to require modification of the aileron drive quadrant support structure below the flight compartment floor.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,400, or $1,100 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-11-08 Jetstream Aircraft Limited: Amendment 39-8924. Docket 93-NM-199-AD.

Applicability: Model 4101 airplanes; constructors numbers 41004 through 41018 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 3 months after the effective date of this AD, modify the aileron drive quadrant support structure below the flight compartment floor in accordance with Jetstream Service Bulletin J41-53-011, dated October 15, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Jetstream Service Bulletin J41-53-011, dated October 15, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 7, 1994.

Issued in Renton, Washington, on May 25, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-13237 Filed 6-6-94; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8543]

RIN 1545-AS60

Exhaustion of Administrative Remedies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains the final regulations relating to the circumstances in which a party shall be deemed to have exhausted the administrative remedies available within the Internal Revenue Service for purposes of the recovery of court costs and certain fees in a civil tax proceeding brought in a court of the United States (including the Tax Court and the Court of Federal Claims). These regulations differ from the final regulations previously issued under section 7430, which were effective for civil tax proceedings commenced after February 28, 1983, and before January 1, 1986, and addressed the exhaustion of administrative remedies requirement for recovery of litigation costs incurred by taxpayers with respect to a court proceeding in connection with the determination, collection, or refund of any tax, interest, or penalty. Portions of the final regulations previously issued under section 7430 were held to be invalid by the United States Tax Court in *Minahan* v. Commissioner, 88 T.C. 492 (1987). This regulation does not contain those provisions of the previous final regulation found to be invalid.

DATES: The final regulations are effective June 7, 1994, and apply to court proceedings described in section 7430 filed in a court of the United States (including the Tax Court and the Court of Federal Claims) after May 7, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas D. Moffitt of the Office of Assistant Chief Counsel (Field Service), Internal Revenue Service, (202) 622-7900 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Proposed amendments to the Income Tax Regulations (26 CFR part 301) under section 7430 of the Internal Revenue Code (the Code) were published in the **Federal Register** on May 8, 1992 (57 FR 19828 [IA-003-89, 1992-1 C.B. 1100]). The amendments were issued under the authority contained in section 7805 of the Code.

One public comment was received concerning these regulations. After consideration of the public comment received, the proposed regulations are adopted, as revised by this Treasury decision.

Explanation of Regulatory Provisions

In general, under section 7430 of the Code, a prevailing party may recover the reasonable litigation costs incurred in a civil proceeding if the proceeding relates to the determination, collection or refund of any tax, interest or penalty under the Internal Revenue Code and the party has exhausted all the administrative remedies related to that party's tax matter. These final regulations provide information concerning the circumstances in which a party's administrative remedies shall be deemed to have been exhausted. In general, administrative remedies are deemed to have been exhausted if the party has requested (and if granted, participated in) an Appeals office conference on the party's tax matter prior to filing an action in a court of the United States (including the Tax Court and the Court of Federal Claims). A party has participated in an Appeals office conference if the party has disclosed all relevant information regarding the matter to the Appeals office. In the case of the revocation of a determination that an organization is described in section 501(c)(3), a party must complete the procedures set forth in section 7428 and in regulations, rules and revenue procedures thereunder to exhaust its administrative remedies. Where no administrative procedure

covering a party's tax matter allows the party to request an Appeals office conference, the party's administrative remedies will not be deemed to have been exhausted unless the party has filed a written claim for relief with the district director having jurisdiction over the tax matter and allowed the district director a reasonable period of time to act on the claim. A party is not required to pursue its administrative remedies if the Internal Revenue Service has notified the party in writing that such pursuit is unnecessary, has not given the party an opportunity to request an Appeals office conference before sending a statutory notice of deficiency, or has failed to grant the party an Appeals office conference with respect to a claim for refund within six months of the filing of such claim for refund. A party must participate in an Appeals office conference during either the deficiency procedures or the refund procedures with respect to the tax matter, but is not required to participate during both procedures. Thus, if a party participated in an Appeals office conference with respect to a tax matter prior to the issuance of the statutory notice of deficiency, the party does not need to request an Appeals office conference after filing a claim for refund with respect to the same tax matter.

Comments on the Proposed Regulations

One public comment objected to, and requested deletion of, the requirement that a party request (and if granted, participate in) an Appeals office conference on the party's tax matter prior to filing an action in a court of the United States (including the Tax Court and the Court of Federal Claims). This suggestion was not adopted in the final regulations because conferences with Appeals have historically been a fundamental method for providing administrative remedies to taxpayers who do not agree with the Internal Revenue Service. Such remedies are pivotal to the effort to resolve issues promptly, efficiently, fairly and without resort to litigation. In order to avoid costly litigation consistent with the legislative intent and to encourage usage of this process to resolve disputes, the regulations require taxpayers, in order to be deemed to have exhausted their administrative remedies, to pursue such remedies with the Appeals office, if available, prior to instituting litigation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Thomas D. Moffitt, Office of Assistant Chief Counsel (Field Service), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements, State taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7430–1 is revised to read as follows:

§ 301.7430–1 Exhaustion of administrative remedies.

(a) *In general.* Section 7430(b)(1) provides that a court shall not award reasonable litigation costs in any civil tax proceeding under section 7430(a) unless the court determines that the prevailing party has exhausted the administrative remedies available to the party within the Internal Revenue Service. This section sets forth the circumstances in which such administrative remedies shall be deemed to have been exhausted.

(b) *Requirements*—(1) *In general.* A party has not exhausted the administrative remedies available within the Internal Revenue Service with respect to any tax matter for which an Appeals office conference is available under §§ 601.105 and 601.106 of this chapter (other than a tax matter described in paragraph (c) of this section) unless—

(i) The party, prior to filing a petition in the Tax Court or a civil action for refund in a court of the United States (including the Court of Federal Claims), participates, either in person or through a qualified representative described in § 601.502 of this chapter, in an Appeals office conference; or

(ii) If no Appeals office conference is granted, the party, prior to the issuance of a statutory notice in the case of a petition in the Tax Court or the issuance of a notice of disallowance in the case of a civil action for refund in a court of the United States (including the Court of Federal Claims)—

(A) Requests an Appeals office conference in accordance with §§ 601.105 and 601.106 of this chapter; and

(B) Files a written protest if a written protest is required to obtain an Appeals office conference.

(2) *Participates.* For purposes of this section, a party or qualified representative of the party described in § 601.502 of this chapter participates in an Appeals office conference if the party or qualified representative discloses to the Appeals office all relevant information regarding the party's tax matter to the extent such information and its relevance were known or should have been known to the party or qualified representative at the time of such conference.

(3) *Tax matter.* For purposes of this section, "tax matter" means a matter in connection with the determination, collection or refund of any tax, interest, penalty, addition to tax or additional amount under the Internal Revenue Code.

(c) *Revocation of a determination that an organization is described in section 501(c)(3).* A party has not exhausted the administrative remedies available within the Internal Revenue Service with respect to a revocation of a determination that it is an organization described in section 501(c)(3) unless, prior to filing a declaratory judgment action under section 7428, the party has exhausted its administrative remedies in accordance with section 7428, and any regulations, rules, and revenue procedures thereunder.

(d) *Actions involving summonses, levies, liens, jeopardy and termination assessments, etc.* (1) A party has not exhausted the administrative remedies available within the Internal Revenue Service with respect to a matter other than one to which paragraph (b) or (c) of this section applies (including summonses, levies, liens, and jeopardy and termination assessments) unless, prior to filing an action in a court of the United States (including the Tax Court and the Court of Federal Claims)—

(i) The party submits to the district director of the district having jurisdiction over the dispute a written claim for relief reciting facts and circumstances sufficient to show the

nature of the relief requested and that the party is entitled to such relief; and

(ii) The district director has denied the claim for relief in writing or failed to act on the claim within a reasonable period after such claim is received by the district director.

(2) For purposes of this paragraph (d)(2), a reasonable period is—

(i) The 5-day period preceding the filing of a petition to quash an administrative summons issued under section 7609;

(ii) The 5-day period preceding the filing of a wrongful levy action in which a demand for the return of property is made;

(iii) The period expressly provided for administrative review of the party's claim by an applicable provision of the Internal Revenue Code that expressly provides for the pursuit of administrative remedies (such as the 16-day period provided under section 7429(b)(1)(B) relating to review of jeopardy assessment procedures); or

(iv) The 60-day period following receipt of the claim for relief in all other cases.

(e) *Exception to requirement that party pursue administrative remedies.* If the conditions set forth in paragraph (e)(1), (e)(2), (e)(3), or (e)(4) of this section are satisfied, a party's administrative remedies within the Internal Revenue Service shall be deemed to have been exhausted for purposes of section 7430.

(1) The Internal Revenue Service notifies the party in writing that the pursuit of administrative remedies in accordance with paragraphs (b), (c), and (d) of this section is unnecessary.

(2) In the case of a petition in the Tax Court—

(i) The party did not receive a notice of proposed deficiency (30-day letter) prior to the issuance of the statutory notice and the failure to receive such notice was not due to actions of the party (such as a failure to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter); and

(ii) The party does not refuse to participate in an Appeals office conference while the case is in docketed status.

(3) In the case of a civil action for refund involving a tax matter other than a tax matter described in paragraph (e)(4) of this section, the party—

(i) Participates in an Appeals office conference with respect to the tax matter prior to issuance of a statutory notice of deficiency with respect to such tax matter; or

(ii) Did not receive written notification that an Appeals office conference was available prior to issuance of a notice of disallowance and the failure to receive such a notification was not due to the actions of the party (such as the failure to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter); or

(iii) Did not receive either written or oral notification that an Appeals office conference had been granted within six months from the date of the filing of the claim for refund and the failure to receive such notice was not due to actions of the party (such as the failure to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter).

(4) In the case of a civil action for refund involving a tax matter under sections 6703 or 6694—

(i) The party did not receive a notice of proposed disallowance prior to issuance of a notice of disallowance and the failure to receive such notice was not due to actions of the party (such as the failure to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter); or

(ii) During the six-month period following the day on which the party's claim for refund is filed, the party's claim for refund is not denied, and the Internal Revenue Service has failed to process the claim with due diligence.

(f) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. Taxpayer A exchanges property held for investment for similar property and claims that the gain on the exchange is not recognized under section 1031. The Internal Revenue Service conducts a field examination and determines that there has not been a like-kind exchange. No agreement is reached on the matter and a notice of proposed deficiency (30-day letter) is sent to A. A does not file a request for an Appeals office conference. A pays the amount of the proposed deficiency and files a claim for refund. A notice of proposed disallowance is issued by the Internal Revenue Service. A does not request an Appeals office conference and, instead, files a civil action for refund in a United States District Court. A has not exhausted the administrative remedies available within the Internal Revenue Service.

Example 2. Assume the same facts as in *Example 1* except that, after receiving the notice of proposed deficiency (30-day letter), A files a request for an Appeals office conference. No agreement is reached at the conference. A pays the amount of the proposed deficiency and files a claim for refund. A notice of proposed disallowance is issued by the Internal Revenue Service. A does not request an Appeals office conference and files a civil action for refund in a United States District Court. A has exhausted the administrative remedies available within the Internal Revenue Service.

Example 3. Assume the same facts as in *Example 1* except A first requests an Appeals office conference after A's receipt of the notice of proposed disallowance. A is granted an Appeals office conference and A participates in such conference. A has exhausted the administrative remedies available within the Internal Revenue Service.

Example 4. Taxpayer B receives a notice of proposed deficiency (30-day letter) after completion of a field examination. B provided to the Internal Revenue Service during the examination all relevant information under the taxpayer's control and all relevant legal arguments supporting the taxpayer's position. B properly requests an Appeals office conference. The Appeals office, to obtain an additional period of time to consider the tax matter, requests that B sign Form 872 to extend the time for an assessment of tax, but B declines. Appeals then denies the request for a conference and issues a notice of deficiency. B has exhausted the administrative remedies available within the Internal Revenue Service.

Example 5. Taxpayer C receives a notice of proposed deficiency (30-day letter) and a written statement that C need not file a written protest or request an Appeals office conference since a conference will not be granted. C files a petition in the Tax Court after receiving the statutory notice of deficiency. C's administrative remedies within the Internal Revenue Service are deemed to have been exhausted.

Example 6. On January 2, the Internal Revenue Service serves a summons issued under section 7609 on third-party recordkeeper D to produce records of taxpayer E. On January 5, notice of the summons is given to E. The last day on which E may file a petition in a court of the United States to quash the summons is January 25. Thereafter, E files a written claim for relief with the district director having jurisdiction over the matter together with a copy of the summons. The claim and copy are received by the district director on January 20. On January 25, E files a petition to quash the summons. E has exhausted the administrative remedies available within the Internal Revenue Service.

Example 7. A notice of Federal tax lien is filed in County M on March 3, in the name of F. On April 2, F pays the entire liability thereby satisfying the lien. On May 2, F files a written claim with the district director having jurisdiction over the tax matter demanding a certificate of release of lien. Thereafter, F provides the district director with a copy of the notice of Federal tax lien and a copy of the canceled check in satisfaction of the lien, which are received by the district director on May 15. F's claim is deemed to have been filed on May 15. Accordingly, F must wait until after July 14 (60 days following the filing of the claim for relief on May 15) to commence an action, in order to have exhausted the administrative remedies available within the Internal Revenue Service.

Example 8. A revenue officer seizes an automobile to effect collection of G's liability on January 10. On January 22, H submits a written claim to the district director having jurisdiction over the tax matter claiming that H purchased the automobile from G for an adequate consideration before the tax lien against G arose, and demands immediate return of the automobile. A copy of the title certificate and H's canceled check are submitted with the claim. The claim is received by the district director on January 25. On January 30, H brings a wrongful levy action. H has exhausted the administrative remedies available within the Internal Revenue Service.

Example 9. The Internal Revenue Service issues a revenue ruling which holds that ear piercing does not affect a function or structure of the body within the meaning of section 213 and therefore is not deductible. Taxpayer I deducts the costs of ear piercing and, following an examination, receives a notice of proposed deficiency (30-day letter) disallowing the treatment of such costs. Because of the revenue ruling, I believes a conference would not aid in the resolution of the tax dispute. Accordingly, I does not request an Appeals office conference. After receiving a statutory notice of deficiency, I files a petition in the Tax Court. I has not exhausted the administrative remedies available within the Internal Revenue Service. The issuance of a revenue ruling covering the same fact situation but taking a contrary position does not constitute notification by the Internal Revenue Service to I that the pursuit of administrative remedies is unnecessary. Similarly, the issuance to I of a private letter ruling or technical advice does not constitute notification by the Internal Revenue Service that the pursuit of administrative remedies is unnecessary.

Example 10. Taxpayer J is assessed a penalty under section 6701 for aiding in the understatement of the tax liability of another person. J pays 15% of the penalty in accordance with section 6703 and files a claim for refund on June 15. J is not issued a notice of proposed disallowance and thus cannot participate in an Appeals office conference within six months of the filing of the claim for refund. J brings an action on December 23. J has exhausted the administrative remedies available within the Internal Revenue Service.

Example 11. Taxpayer K receives a notice of proposed deficiency (30-day letter) and neither requests nor participates in an Appeals office conference. The Service then issues a statutory notice of deficiency (90-day letter). Upon receiving the statutory notice, and after filing a petition with the Tax Court, K requests an Appeals office conference. K has not exhausted the administrative remedies available within the Internal Revenue Service because the request for an Appeals office conference was made after the issuance of the statutory notice.

(g) *Effective date.* This section applies to court proceedings described in section 7430 filed in a court of the United States (including the Tax Court after May 7, 1992.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: May 9, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94-12827 Filed 6-6-94; 8:45 am]

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26 CFR Parts 301 and 602

[TD 8542]

RIN 1545-AN02

Recovery of Reasonable Administrative Costs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains the final regulations relating to the recovery of reasonable administrative costs incurred by taxpayers in connection with an administrative proceeding within the Internal Revenue Service. Changes to the applicable law were made by section 6239(a) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Pub. L. No. 100-647, 102 Stat. 3342). These regulations affect all taxpayers involved in an administrative proceeding within the Internal Revenue Service, and provide guidance regarding the definition of reasonable administrative costs and the period within which the costs must be incurred in order to be recoverable. These regulations also set forth the requirements and procedures for the recovery of such costs, and the definitions of prevailing party, administrative proceeding and administrative proceeding date. A table of contents to the regulations under section 7430 is provided in § 301.7430-0.

DATES: Sections 301.7430-0 and 301.7430-2 through 301.7430-6, except for § 301.7430-2(c)(5), are effective June 7, 1994, and apply to claims for reasonable administrative costs filed with the Internal Revenue Service after December 23, 1992, with respect to costs incurred in administrative proceedings commenced after November 10, 1988. Section 301.7430-2(c)(5) is effective March 23, 1993. The amendment to part 602 is effective June 7, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas D. Moffitt of the Office of Assistant Chief Counsel (Field Service), Internal Revenue Service, (202) 622-7900 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1356. The estimated average annual burden per respondent is 120 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

Proposed additions to the Income Tax Regulations (26 CFR Part 301) under section 7430 of the Internal Revenue Code (the Code) were published in the **Federal Register** on December 23, 1992 (57 FR 61020 [IA-003-89, 1993-1 C.B. 789]). These proposed additions were issued under the authority contained in section 7805 of the Code. A summary of the proposed additions is contained in the preamble that was published with the proposed additions.

Changes to the Proposed Regulations

No changes have been made to the proposed regulations. One public comment objected to the failure of the regulations to provide for the recovery of amounts expended by taxpayers during the examination of their returns. As section 7430 does not provide for such awards, this suggestion was not adopted. After consideration of the public comment received, the proposed regulations are adopted as revised by this Treasury decision.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small

Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Thomas D. Moffitt, Office of Assistant Chief Counsel (Field Service), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Sections 301.7430–0 and 301.7430–2 through 301.7430–6 are added to read as follows:

§ 301.7430–0 Table of contents.

This section lists the captions that appear in §§ 301.7430–1 through 301.7430–6.

§ 301.7430–1 Exhaustion of administrative remedies.

(a) In general.
(b) Requirements.
(1) In general.
(2) Participates.
(3) Tax matter.
(c) Revocation of a determination that an organization is described in section 501(c)(3).
(d) Actions involving summonses, levies, liens, jeopardy and termination assessments, etc.
(e) Exception to requirement that party pursue administrative remedies.
(f) Examples.
(g) Effective date.

§ 301.7430–2 Requirements and procedures for recovery of reasonable administrative costs.

(a) Introduction.
(b) Requirements for recovery.
(1) Determination by the Internal Revenue Service.
(i) Jurisdiction.
(ii) Administrative proceeding.
(iii) Administrative proceeding date.
(iv) Reasonable administrative costs.
(v) Prevailing party.
(vi) Not unreasonably protracted.
(vii) Procedural requirements.
(2) Determination by court.
(c) Procedure for recovering reasonable administrative costs.
(1) In general.
(2) Where request must be filed.
(3) Contents of request.
(i) Statements.
(ii) Affidavit or affidavits.
(iii) Documentation and information.
(4) Form of request.
(5) Period for requesting costs from the Internal Revenue Service.
(6) Notice.
(7) Appeal to Tax Court.
(d) Unreasonable protraction of administrative proceeding.
(e) Examples.

§ 301.7430–3 Administrative proceeding and administrative proceeding date.

(a) Administrative proceeding.
(b) Collection action.
(c) Administrative proceeding date.
(1) General rule.
(2) Notice of the decision of the Internal Revenue Service Office of Appeals.
(3) Notice of deficiency.
(d) Examples.

§ 301.7430–4 Reasonable administrative costs.

(a) In general.
(b) Costs described.
(1) In general.
(2) Representative and specially qualified representative.
(i) Representative.
(ii) Specially qualified representative.
(3) Limitation on fees for a representative.
(i) In general.
(ii) Cost of living adjustment.
(iii) Special factor adjustment.
(c) Certain costs excluded.
(1) Costs not incurred in an administrative proceeding.
(2) Costs incurred in an administrative proceeding but not reasonable.
(i) In general.
(ii) Special rule for expert witness' fees on issue of prevailing market rates.
(3) Litigation costs.
(4) Examples.

§ 301.7430–5 Prevailing party.

(a) In general.
(b) Position of the Internal Revenue Service.
(c) Substantially justified.
(1) In general.
(2) Exception.
(d) Amount in controversy.
(e) Most significant issue or set of issues presented.
(f) Net worth and size limitations.
(1) Individuals and estates.
(2) Others.
(3) Special rule for charitable organizations and certain cooperatives.
(g) Determination of prevailing party.
(h) Examples.

§ 301.7430–6 Effective date.

§ 301.7430–2 Requirements and procedures for recovery of reasonable administrative costs.

(a) *Introduction.* Section 7430(a)(1) provides for the recovery, under certain circumstances, of reasonable administrative costs incurred in connection with an administrative proceeding before the Internal Revenue Service. Paragraph (b) of this section lists the requirements that a taxpayer must meet to be entitled to an award of reasonable administrative costs.

(b) *Requirements for recovery*—(1) *Determination by the Internal Revenue Service.* The Internal Revenue Service will grant a taxpayer's request for recovery of reasonable administrative costs incurred in connection with an administrative proceeding under section 7430 and this section only if—

(i) *Jurisdiction.* The underlying substantive issues or the issue of reasonable administrative costs are not, and have never been, before any court of the United States (including the Tax Court or United States Court of Federal Claims) with jurisdiction over those issues;

(ii) *Administrative proceeding.* The costs were incurred in connection with an administrative proceeding as defined in § 301.7430–3(a);

(iii) *Administrative proceeding date.* The costs were incurred on or after the administrative proceeding date as defined in § 301.7430–3(c);

(iv) *Reasonable administrative costs.* The costs were reasonable administrative costs as defined in § 301.7430–4;

(v) *Prevailing party.* The taxpayer is a prevailing party as defined in § 301.7430–5;

(vi) *Not unreasonably protracted.* The administrative proceeding was not unreasonably protracted by the taxpayer as discussed in paragraph (d) of this section; and

(vii) *Procedural requirements.* The taxpayer follows the procedures set forth in paragraph (c) of this section.

(2) *Determination by court.* Although the Internal Revenue Service will not grant a request for reasonable administrative costs where the requirements of paragraph (b)(1)(i) of this section are not met, a taxpayer may file a claim for reasonable administrative costs with the court with jurisdiction over the judicial proceeding. The court may award the taxpayer reasonable administrative costs under section 7430(a). Under section 7430(c)(4)(B)(ii), where the final determination with respect to the tax, interest, or penalty at issue is made by

a court, the court determines whether the taxpayer qualifies as a prevailing party. Thus, where the requirements of paragraph (b)(1)(i) of this section are not met, the taxpayer's only possibility of obtaining an award of reasonable administrative costs is to obtain an award of such costs from the court. In the event the court awards reasonable administrative costs, it may also award litigation costs for the reasonable costs of pursuing the claim for reasonable administrative costs, provided the requirements under section 7430 regarding an award of reasonable administrative costs are satisfied with respect to such costs. A claim filed with the court should be made in accordance with the rules of the court.

(c) *Procedure for recovering reasonable administrative costs*—(1) *In general.* The Internal Revenue Service will not award administrative costs under section 7430 unless the taxpayer files a written request to recover reasonable administrative costs in accordance with the provisions of this section.

(2) *Where request must be filed.* A request required by paragraph (c)(1) of this section must be filed with the Internal Revenue Service personnel who have jurisdiction over the tax matter underlying the claim for the costs. However, if those persons are unknown to the taxpayer making the request, the taxpayer may send the request to the District Director for the district that considered the underlying matter.

(3) *Contents of request.* The request must be in writing and must contain the following statements, affidavits, documentation, and information with regard to the taxpayer's administrative proceeding:

(i) *Statements.* (A) A statement that the underlying substantive issues or the issue of reasonable administrative costs are not, and have never been, before any court of the United States (including the Tax Court or United States Court of Federal Claims) with jurisdiction over those issues;

(B) A clear and concise statement of the reasons why the taxpayer alleges that the position of the Internal Revenue Service in the administrative proceeding was not substantially justified;

(C) A statement sufficient to demonstrate that the taxpayer has substantially prevailed as to the amount in controversy or with respect to the most significant issue or set of issues presented in the proceeding;

(D) A statement that the taxpayer has not unreasonably protracted the portion of the administrative proceeding for which the taxpayer is requesting costs; and

(E) A statement supported by a detailed affidavit executed by the taxpayer or the taxpayer's representative that sets forth the nature and amount of each specific item of reasonable administrative costs for which the taxpayer is seeking recovery.

(ii) *Affidavit or affidavits.* (A) An affidavit executed by the taxpayer stating that the taxpayer meets the net worth and size limitations of § 301.7430–5(f);

(B) An affidavit supporting the statement described in paragraph (c)(3)(i)(E) of this section; and

(C) If more than $75 per hour, as adjusted by an increase in the cost of living as set forth in § 301.7430–4(b)(3), is claimed for the fees of a representative in connection with the administrative proceeding, then an affidavit that specialized skills and distinctive knowledge as described in that section were necessary in the representation of the taxpayer in the proceeding and that there is a limited availability of representatives possessing such skills and knowledge as described in that section, or an affidavit that another special factor is applicable.

(iii) *Documentation and information.* (A) A copy of the billing records of the representative for the requested fees; and

(B) An address at which the taxpayer wishes to receive notice of the determination of the Internal Revenue Service with regard to the request for reasonable administrative costs.

(4) *Form of Request.* No specific form is required for the request other than one which satisfies the requirements of paragraph (c)(3) of this section. Where practicable the required statements may be included in a single document. Similarly, where practicable, the required affidavits may be combined in a single affidavit to the extent they are to be executed by the same person.

(5) *Period for requesting costs from the Internal Revenue Service.* To recover reasonable administrative costs pursuant to section 7430 and this section, the taxpayer must file a request for costs no later than 90 days after the date the final decision of the Internal Revenue Service with respect to all tax, additions to tax and penalties at issue in the administrative proceeding is mailed, or otherwise furnished, to the taxpayer. The final decision of the Internal Revenue Service for purposes of this section is the document which resolves the tax liability of the taxpayer with regard to all tax, additions to tax and penalties at issue in the administrative proceeding (such as a Form 870 or closing agreement), or a notice of assessment for that liability (such as the notice and demand under section 6303), whichever is earlier mailed, or otherwise furnished, to the taxpayer. For purposes of this section, if the 90th day falls on a Saturday, Sunday, or a legal holiday, the 90-day period shall end on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term legal holiday means a legal holiday in the District of Columbia. If the request for costs is to be filed with the Internal Revenue Service at an office of the Internal Revenue Service located outside the District of Columbia but within an internal revenue district, the term legal holiday also means a Statewide legal holiday in the State where such office is located.

(6) *Notice.* The Internal Revenue Service is authorized, but not required, to notify the taxpayer of its decision to grant or deny (in whole or in part) an award for reasonable administrative costs under section 7430 and this section by certified mail or registered mail. If the Internal Revenue Service does not respond on the merits to a request by the taxpayer for an award of reasonable administrative costs filed under paragraph (c)(1) of this section within 6 months after such request is filed, the Internal Revenue Service's failure to respond may be considered by the taxpayer as a decision of the Internal Revenue Service denying an award for reasonable administrative costs.

(7) *Appeal to Tax Court.* A taxpayer may appeal a decision by the Internal Revenue Service denying (in whole or in part) a request for reasonable administrative costs under section 7430 and this section by filing a petition for reasonable administrative costs with the Tax Court. The petition must be in accordance with the Tax Court's Rules of Practice and Procedure and must be filed with the Tax Court after the Internal Revenue Service denies (in whole or in part) the taxpayer's request for reasonable administrative costs.

(d) *Unreasonable protraction of administrative proceeding.* An award of reasonable administrative costs will not be made where the taxpayer unreasonably protracted the administrative proceeding. However, a taxpayer that unreasonably protracted only a portion of the administrative proceeding, but not other portions of the administrative proceeding, may recover reasonable administrative costs for the portion(s) of the administrative proceeding that the taxpayer did not unreasonably protract, if the requirements of paragraph (b)(1) of this section are otherwise satisfied.

(e) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Taxpayer A receives a notice of proposed deficiency (30-day letter). A requests and is granted Appeals office consideration. Appeals requests that A submit certain documents as substantiation for the tax matters at issue. Although A complies with this request, the information is misdirected and not considered by Appeals. Appeals then issues a notice of deficiency. A does not file a petition with the Tax Court. After receiving the notice of deficiency, A convinces Appeals that the notice of deficiency is incorrect and that A owes no tax. Appeals then closes the case showing a zero deficiency and mails A a notice to this effect. Assuming that the other requirements of this section are satisfied, A may recover reasonable administrative costs incurred after the date of the notice of deficiency (the administrative proceeding date). To recover these costs, A must file a request for costs with the Appeals office personnel who settled A's tax matter, or if that person is unknown to A, with the District Director of the district which considered the underlying matter, within 90 days after the date of mailing of the Office of Appeals' final decision that A owes no tax.

Example 2. Assume the same facts as in *Example 1*, except that after receipt of the notice of deficiency, A meets with an Appeals officer, but no agreement is reached on the tax matters at issue. A then files a petition with the Tax Court and prevails. Since the underlying tax issues have been determined by a court, the Internal Revenue Service will not grant a request for recovery of the reasonable administrative costs incurred by A. To recover reasonable administrative costs, A must file a claim with the Tax Court as prescribed under the Tax Court's Rules of Practice and Procedure.

§ 301.7430–3 Administrative proceeding and administrative proceeding date.

(a) *Administrative proceeding.* For purposes of section 7430, an administrative proceeding generally means any procedure or other action before the Internal Revenue Service that is commenced after November 10, 1988. However, an administrative proceeding does not include—

(1) Proceedings involving matters of general application, including hearings on regulations, comments on forms, or proceedings involving revenue rulings or revenue procedures;

(2) Proceedings involving requests for private letter rulings or similar determinations;

(3) Proceedings involving technical advice memoranda, except those submitted after the administrative proceeding date (as defined in paragraph (c) of this section); and

(4) Proceedings in connection with collection actions (as defined in paragraph (b) of this section), including proceedings under sections 7432 or 7433.

(b) *Collection action.* A collection action generally includes any action taken by the Internal Revenue Service to collect a tax (or any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax) or any action taken by a taxpayer in response to the Internal Revenue Service's act or failure to act in connection with the collection of a tax (including any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax). For example, a collection action for purposes of section 7430 and this section includes any action taken by the Internal Revenue Service under Chapter 64 of Subtitle F to collect a tax. Collection actions also include those actions taken by a taxpayer to remedy the Internal Revenue Service's failure to release a lien under section 6325 and to remedy any unauthorized collection action as defined by section 7433. However, an action or procedure directly relating to a claim for refund filed with the Service Center's Collection Branch or District Director's Collection Division after payment of an assessed tax is not a collection action.

(c) *Administrative proceeding date—*

(1) *General rule.* For purposes of section 7430 and the regulations thereunder, the term administrative proceeding date means the earlier of—

(i) The date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals; or

(ii) The date of the notice of deficiency.

(2) *Notice of the decision of the Internal Revenue Service Office of Appeals.* For purposes of section 7430 and the regulations thereunder, a notice of the decision of the Internal Revenue Service Office of Appeals is the final written document, mailed or delivered to the taxpayer, that is signed by an individual in the Office of Appeals who has been delegated the authority to settle the dispute on behalf of the Commissioner, and states or indicates that the notice is the final determination of the entire case. A notice of claim disallowance issued by the Office of Appeals is a notice of the decision of the Internal Revenue Service Office of Appeals. Solely for purposes of determining the administrative proceeding date, a notice of deficiency issued by the Office of Appeals is not a notice of the decision of the Internal Revenue Service Office of Appeals.

(3) *Notice of deficiency.* A notice of deficiency is a notice described in section 6212(a), including a notice rescinded pursuant to section 6212(d). For purposes of determining reasonable administrative costs under section 7430 and the regulations thereunder, a notice of final partnership administrative adjustment described in section 6223(a)(2) will be treated as a notice of deficiency. A notice of final S corporation administrative adjustment issued pursuant to section 6223(a)(2) as made applicable to subchapter S items by section 6244 will also be treated as a notice of deficiency.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Taxpayer A receives a notice of proposed deficiency (30-day letter). A files a request for and is granted an Appeals office conference. At the conference, an agreement is reached on the tax matters at issue. A cannot recover any costs because they were not incurred on or after the administrative proceeding date, which is the earlier of the date of receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or the date of the notice of deficiency.

Example 2. Taxpayer B receives a notice of proposed deficiency (30-day letter). B pays the amount of the proposed deficiency and files a claim for refund. B's claim is disallowed and a notice of proposed disallowance is issued by the District Director. B does not request an Appeals office conference and the District Director issues a notice of claim disallowance. B then files suit in a United States District Court. B cannot recover reasonable administrative costs because, although the District Director issued a notice of claim disallowance, the Internal Revenue Service did not issue either a notice of decision of the Internal Revenue Service Office of Appeals or a notice of deficiency.

Example 3. Assume the same facts as in *Example 2*, except that after B files a claim for refund and receives the notice of proposed disallowance, B requests and is granted Appeals office consideration. No agreement is reached with Appeals and the Office of Appeals issues a notice of claim disallowance. B does not file suit in District Court but instead contacts the Appeals office to attempt to reverse the decision. B convinces the Appeals officer that the notice of claim disallowance is in error. The Appeals officer then abates the assessment. Because a notice of claim disallowance issued by Appeals is a notice of the decision of the Internal Revenue Service Office of Appeals, B may recover reasonable administrative costs incurred on or after the receipt of the notice of claim disallowance (the administrative proceeding date), but only if the other requirements of section 7430 and the regulations thereunder are satisfied. B cannot recover the costs incurred prior to receipt of the notice of claim disallowance because they were incurred before the administrative proceeding date.

Example 4. Taxpayer C receives a notice of proposed deficiency (30-day letter). C files a request for and is granted an Appeals office conference. At the Appeals conference no

agreement is reached on the tax matters at issue. The Office of Appeals then issues a notice of deficiency. Upon receiving the notice of deficiency C does not file a petition with the Tax Court. Instead, C pays the deficiency and files a claim for refund. The claim for refund is considered by the Internal Revenue Service and the District Director issues a notice of proposed disallowance. C requests and is granted Appeals office consideration. C convinces Appeals that C's claim is correct and Appeals allows C's claim. C may recover reasonable administrative costs incurred on or after the date of the notice of deficiency (the administrative proceeding date), but only if the other requirements of section 7430 and the regulations thereunder are satisfied.

Example 5. Taxpayer D receives a District Director's Collection Division (Collection) proposed assessment of trust fund taxes (Trust Fund Recovery Penalty) pursuant to section 6672. D requests and is granted Appeals office consideration. Upon consideration, Appeals upholds D's position. D cannot recover reasonable administrative costs because the costs were not incurred on or after the administrative proceeding date.

Example 6. Taxpayer E files an individual income tax return showing a balance due. No payment is made with the return and the Internal Revenue Service assesses the amount shown on the return. The Internal Revenue Service issues a notice and demand for tax pursuant to section 6303. E contacts the Collection Division (Collection) regarding E's outstanding liability. No agreement is reached with respect to the timing of E's payment, and Collection issues a notice of intent to levy pursuant to section 6331(d). Prior to the levy, E enters into an installment agreement with Collection. The costs that E incurred in connection with the notice and demand were not incurred in an administrative proceeding, but rather in a collection action. Accordingly, E may not recover those costs as reasonable administrative costs under section 7430 and the regulations thereunder.

Example 7. Taxpayer F receives a District Director's Collection Division (Collection) proposed assessment of trust fund taxes (Trust Fund Recovery Penalty) pursuant to section 6672. F requests and is granted Appeals office consideration. Appeals considers the issues and decides to uphold Collection's recommended assessment. Appeals notifies F of this decision in writing. Collection then assesses the tax. Pursuant to section 6672(b), within 30 days after the notice and demand is made, F pays the minimum amount required to commence a court proceeding, files a claim for refund, and furnishes the required bond. Collection then considers and disallows the claim. Appeals then reconsiders the claim and reverses its original position, thus upholding F's position. Appeals then abates the assessment. F may recover reasonable administrative costs incurred after the receipt of the original decision of Appeals (the administrative proceeding date) that Appeals was upholding Collection's recommended assessment, but only if the other requirements of section 7430 and the regulations thereunder are satisfied. F cannot recover costs that are attributable to any procedure or other action before Collection prior to filing F's administrative claim for refund.

§ 301.7430–4 Reasonable administrative costs.

(a) *In general.* For purposes of section 7430 and the regulations thereunder, reasonable administrative costs are any costs described in paragraph (b) of this section that are incurred in connection with an administrative proceeding (as defined in § 301.7430–3(a)) and incurred on or after the administrative proceeding date (as defined in § 301.7430–3(c)).

(b) *Costs described*—(1) *In general.* The costs described in this paragraph are the reasonable and necessary amount of costs incurred by the taxpayer to present the taxpayer's position with respect to the merits of the tax controversy or the recovery of reasonable administrative costs. These costs include—

(i) Any administrative fees or similar charges imposed by the Internal Revenue Service;

(ii) Reasonable expenses of expert witnesses;

(iii) Reasonable costs of any study, analysis, engineering report, test or project that is necessary for, and incurred in preparation of, the taxpayer's case; and

(iv) Reasonable fees paid or incurred for the services of a representative (as defined in paragraph (b)(2) of this section) in connection with the administrative proceeding.

(2) *Representative and specially qualified representative*—(i) *Representative.* A representative is a person compensated for services rendered in connection with the administrative proceeding, who is authorized to practice before the Internal Revenue Service or the Tax Court.

(ii) *Specially qualified representative.* For purposes of paragraphs (b)(3)(iii) and (c)(2)(ii) of this section, a specially qualified representative is a representative (as defined in paragraph (b)(2)(i) of this section) possessing a distinctive knowledge or a unique and specialized skill that is necessary to adequately represent the taxpayer in the proceeding. Examples of a unique and specialized skill or distinctive knowledge would be an identifiable practice specialty such as patent law or knowledge of a foreign law or language where such specialty or knowledge is necessary to adequately represent the taxpayer in the proceeding. For purposes of this paragraph, neither knowledge of tax law nor experience in representing taxpayers before the Internal Revenue Service is considered distinctive knowledge or a unique and specialized skill. An extraordinary level of general representational knowledge and ability that is useful in all proceedings is not considered, in and of itself, distinctive knowledge or a unique and specialized skill. Specially qualified representatives also do not include those who have a distinctive knowledge of the underlying subject matter of the controversy in circumstances where such distinctive knowledge could reasonably be supplied through the use of an expert, or could readily be obtained through literature pertaining to the subject.

(3) *Limitation on fees for a representative*—(i) *In general.* Except as otherwise provided in this section, fees described in paragraph (b)(1)(iv) of this section that are recoverable under section 7430 and the regulations thereunder as reasonable administrative costs may not exceed $75 per hour increased by a cost of living adjustment (and if appropriate, a special factor adjustment).

(ii) *Cost of living adjustment*—(A) *In general.* The Internal Revenue Service will make a cost of living adjustment to the $75 per hour limit by using the Consumer Price Index of All-Urban Consumers (CPI–U) published by the Department of Labor, Bureau of Labor Statistics and referenced in Internal Revenue Code section 1(f)(5). If the CPI–U is no longer published, a comparable index will be used, and any reference in this section to the CPI–U will be considered to refer to such comparable index.

(B) *Percentage adjustment.* For purposes of paragraph (b)(3)(ii)(A) of this section, the base year for determining the cost of living adjustment is the calendar year 1986. The cost of living adjustment for fees incurred in any calendar year subsequent to 1986 is the percentage (if any) by which the yearly average CPI–U for the calendar year immediately prior to the year in which the fees are incurred exceeds the January CPI–U for the calendar year 1986.

(iii) *Special factor adjustment*—(A) *In general.* If the presence of a special factor is demonstrated by the taxpayer, the amount reimbursable is the amount of reasonable fees paid or incurred by the taxpayer in connection with the proceeding for the services of a representative as defined in paragraph (b)(2)(i) of this section.

(B) *Special factor.* A special factor is a factor, other than an increase in the cost of living, which justifies an increase in the $75 per hour limitation

of section 7430(c)(1)(B)(iii). The novelty and difficulty of the issues, the undesirability of the case, the work and the ability of counsel, the results obtained, and customary fees and awards in other cases, are factors applicable to a broad spectrum of litigation and do not constitute special factors for the purpose of increasing the $75 per hour limitation. The limited availability of a specially qualified representative for the proceeding does constitute a special factor justifying an increase in the $75 per hour limitation.

(C) *Limited availability.* Unless disputed by the Internal Revenue Service, limited availability of a specially qualified representative is established by demonstrating that a specially qualified representative for the proceeding is not available at the $75 per hour rate (as adjusted for an increase in the cost of living). Initially, this showing may be made by submission of an affidavit signed by the taxpayer or by the taxpayer's counsel, that in a case similar to the taxpayer's, a specially qualified representative that practices within a reasonable distance from the taxpayer's principal residence or principal office would normally charge a client similar to the taxpayer at a rate in excess of this amount. If the Internal Revenue Service challenges this initial showing, the taxpayer may submit additional evidence to establish the limited availability of a specially qualified representative at the rate specified above.

(D) *Example.* The provisions of this section are illustrated by the following example:

Example. Taxpayer A is represented by B, a CPA and attorney with an LL.M. Degree in Taxation with Highest Honors and who regularly handles cases dealing with TEFRA partnership issues. B represents A in an administrative proceeding involving TEFRA partnership issues and subject to the provisions of this section. Assuming the taxpayer qualifies for an award of reasonable administrative costs by meeting the requirements of section 7430, the amount of the award attributable to the fees of B may not exceed the $75 per hour limitation (as adjusted for the cost of living), absent a special factor. Under these facts alone, B is not a specially qualified representative since even extraordinary knowledge of the tax laws does not constitute distinctive knowledge or a unique and specialized skill constituting a special factor.

(c) *Certain costs excluded*—(1) *Costs not incurred in an administrative proceeding.* Costs that are not reasonable administrative costs for purposes of section 7430 include any costs incurred in connection with a proceeding that is not an administrative proceeding within the meaning of § 301.7430–3.

(2) *Costs incurred in an administrative proceeding but not reasonable*—(i) *In general.* Costs incurred in an administrative proceeding that are incurred on or after the administrative proceeding date, and that are otherwise described in paragraph (b) of this section, are not recoverable unless they are reasonable in both nature and amount. For example, costs normally included in the hourly rate of the representative by the custom and usage of the representative's profession, when billed separately, are not recoverable separate and apart from the representative's hourly rate. Such costs typically include costs such as secretarial and overhead expenses. In contrast, costs which are normally billed separately may be reasonable administrative costs that may be recoverable in addition to the representative's hourly rate. Therefore, necessary costs incurred for travel; expedited mail delivery; messenger service; expenses while on travel; long distance telephone calls; and necessary copying fees imposed by the Internal Revenue Service, any court, bank or other third party, when normally billed separately from the representative's hourly rate, may be reasonable administrative costs.

(ii) *Special Rule for Expert Witness' Fees on Issue of Prevailing Market Rates.* Under paragraph (b)(3)(iii)(C) of this section, the taxpayer may initially establish a limited availability of specially qualified representatives for the proceeding by submission of an affidavit signed by the taxpayer or by the taxpayer's representative. The Internal Revenue Service may endeavor to rebut the affidavit submitted on this issue by demonstrating either that a specially qualified representative was not necessary to represent the taxpayer in the proceeding, that the taxpayer's representative is not a specially qualified representative or that the prevailing rate for specially qualified representatives does not exceed $75 per hour (as adjusted for an increase in the cost of living). Unless the Internal Revenue Service endeavors to demonstrate that the prevailing rate for specially qualified representatives does not exceed $75 per hour (as adjusted for an increase in the cost of living), fees for expert witnesses used to establish prevailing market rates are not included in the term reasonable administrative costs.

(3) *Litigation costs.* Litigation costs are not reasonable administrative costs because they are not incurred in connection with an administrative proceeding. Litigation costs include—

(i) Costs incurred in connection with the preparation and filing of a petition with the United States Tax Court or in connection with the commencement of any other court proceeding; and

(ii) Costs incurred after the filing of a petition with the United States Tax Court or after the commencement of any other court proceeding.

(4) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Taxpayer A receives a notice of proposed deficiency (30-day letter). A files a request for and is granted an Appeals office conference. At the conference no agreement is reached on the tax matters at issue. The Internal Revenue Service then issues a notice of deficiency. Upon receiving the notice of deficiency, A discontinues A's administrative efforts and files a petition with the Tax Court. A's costs incurred in connection with the preparation and filing of a petition with the Tax Court are litigation costs and not reasonable administrative costs. Furthermore, A's costs incurred before the administrative proceeding date (date of the notice of deficiency as set forth in § 301.7430–3(c)(3)), are not reasonable administrative costs.

Example 2. Assume the same facts as in *Example 1* except that after A receives the notice of deficiency, A recontacts Appeals. Again, A's costs incurred before the administrative proceeding date, the date of the notice of deficiency as set forth in § 301.7430–3(c)(3), are not reasonable administrative costs. A's costs incurred in recontacting and working with Appeals after the issuance of the notice of deficiency, and up to and including the time of filing of the petition, are reasonable administrative costs. A's costs incurred in connection with the filing of a petition with the Tax Court are not reasonable administrative costs because those costs are litigation costs. Similarly, A's costs incurred after the filing of the petition are not reasonable administrative costs, as those are litigation costs.

§ 301.7430–5 Prevailing party.

(a) *In general.* For purposes of an award of reasonable administrative costs under section 7430, a taxpayer is a prevailing party only if the taxpayer—

(1) Establishes that the position of the Internal Revenue Service was not substantially justified;

(2) Substantially prevails as to the amount in controversy or with respect to the most significant issue or set of issues presented; and

(3) Satisfies the net worth and size limitations referenced in paragraph (f) of this section.

(b) *Position of the Internal Revenue Service.* The position of the Internal Revenue Service in an administrative proceeding is the position taken by the Internal Revenue Service as of the administrative proceeding date (as

defined in § 301.7430–3(c)) or any date thereafter.

(c) *Substantially justified*—(1) *In general.* The position of the Internal Revenue Service is substantially justified if it has a reasonable basis in both fact and law. A significant factor in determining whether the position of the Internal Revenue Service is substantially justified as of a given date is whether, on or before that date, the taxpayer has presented all relevant information under the taxpayer's control and relevant legal arguments supporting the taxpayer's position to the appropriate Internal Revenue Service personnel. The appropriate Internal Revenue Service personnel are personnel responsible for reviewing the information or arguments, or personnel who would transfer the information or arguments in the normal course of procedure and administration to the personnel who are responsible.

(2) *Exception.* If the position of the Internal Revenue Service was substantially justified with respect to some issues in the proceeding and not substantially justified with respect to the remaining issues, any award of reasonable administrative costs to the taxpayer may be limited to only reasonable administrative costs attributable to those issues with respect to which the position of the Internal Revenue Service was not substantially justified. If the position of the Internal Revenue Service was substantially justified for only a portion of the period of the proceeding and not substantially justified for the remaining portion of the proceeding, any award of reasonable administrative costs to the taxpayer may be limited to only reasonable administrative costs attributable to that portion during which the position of the Internal Revenue Service was not substantially justified. Where an award of reasonable administrative costs is limited to that portion of the administrative proceeding during which the position of the Internal Revenue Service was not substantially justified, whether the position of the Internal Revenue Service was substantially justified is determined as of the date any cost is incurred.

(d) *Amount in controversy.* The amount in controversy shall include the amount in issue as of the administrative proceeding date as increased by any amounts subsequently placed in issue by any party. The amount in controversy is determined without increasing or reducing the amount in controversy for amounts of loss, deduction, or credit carried over from years not in issue.

(e) *Most significant issue or set of issues presented.* Where the taxpayer has not substantially prevailed with respect to the amount in controversy the taxpayer may nonetheless be a prevailing party if the taxpayer substantially prevails with respect to the most significant issue or set of issues presented. The issues presented include those raised as of the administrative proceeding date and those raised subsequently. Only in a multiple issue proceeding can a most significant issue or set of issues presented exist. However, not all multiple issue proceedings contain a most significant issue or set of issues presented. An issue or set of issues constitutes the most significant issue or set of issues presented if, despite involving a lesser dollar amount in the proceeding than the other issue or issues, it objectively represents the most significant issue or set of issues for the taxpayer or the Internal Revenue Service. This may occur because of the effect of the issue or set of issues on other transactions or other taxable years of the taxpayer or related parties.

(f) *Net worth and size limitations*—(1) *Individuals and estates.* An individual taxpayer or an estate meets the net worth and size limitations of this paragraph if, on the administrative proceeding date, the taxpayer's net worth does not exceed two million dollars. For this purpose, individuals filing a joint return shall be treated as 1 taxpayer, except in the case of a spouse relieved of liability under section 6013(e).

(2) *Others.* A taxpayer that is an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization (other than an organization described in paragraph (f)(3) of this section) meets the net worth and size limitations of this paragraph if, as of the administrative proceeding date—

(i) The taxpayer's net worth does not exceed seven million dollars; and

(ii) The taxpayer does not have more than 500 employees.

(3) *Special rule for charitable organizations and certain cooperatives.* An organization described in Internal Revenue Code section 501(c)(3) exempt from taxation under Internal Revenue Code section 501(a), or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a) (as in effect on October 22, 1986), meets the net worth and size limitations of this paragraph if, as of the administrative proceeding date, the organization or cooperative association does not have more than 500 employees.

(g) *Determination of prevailing party.* If the final decision with respect to the tax, interest, or penalty is made at the administrative level, the determination of whether a taxpayer is a prevailing party shall be made by agreement of the parties, or absent such agreement, by the Internal Revenue Service. See § 301.7430–2(c)(7) regarding the right to appeal the decision of the Internal Revenue Service denying (in whole or in part) a request for reasonable administrative costs to the Tax Court.

(h) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. The Internal Revenue Service, in the conduct of a correspondence examination of taxpayer A's individual income tax return, requests substantiation from A of claimed medical expenses. A does not respond to the request and the Service Center issues a notice of deficiency. After receiving the notice of deficiency, A presents sufficient information and arguments to convince a revenue agent that the notice of deficiency is incorrect and that A owes no tax. The revenue agent then closes the case showing no deficiency. Although A incurred costs after the issuance of the notice of deficiency, A is unable to recover these costs because, as of the date these costs were incurred, A had not presented relevant information under A's control and relevant legal arguments supporting A's position to the appropriate Internal Revenue Service personnel. Accordingly, the position of the Internal Revenue Service was substantially justified at the time the costs were incurred.

Example 2. In the purchase of an ongoing business, taxpayer B obtains from the previous owner of the business a covenant not to compete for a period of five years. On audit of B's individual income tax return for the year in which the business is acquired, the Internal Revenue Service challenges the basis assigned to the covenant not to compete and a deduction taken as a business expense for a seminar attended by B. Both parties agree that the covenant not to compete is amortizable over a period of five years. However, the Internal Revenue Service asserts that the proper basis of the covenant is $2X while the taxpayer asserts the basis is $4X. Thus, under the Internal Revenue Service's position, B is entitled to a deduction of two-fifths $X in the year under audit and for each of the subsequent four years. B's position, however, would result in a deduction of four-fifths $X for the year under audit and each of the subsequent four years. The deduction for the seminar attended by B was reported on the return in question in the amount of $X. The Internal Revenue Service's position is that the deduction for the seminar should be disallowed entirely. In the notice of deficiency, the Internal Revenue Service determines adjustments of two-fifths $X (the difference between the Internal Revenue Service's position of two-fifths $X and the reported four-fifths $X) regarding the basis of the covenant not to compete, and $X resulting from the disallowance of the

seminar expense. Thus, of the two adjustments determined for the year under audit, that attributable to the disallowance of the seminar is larger than that attributable to the covenant not to compete. However, due to the impact on the next succeeding four years, the covenant not to compete adjustment is objectively the most significant issue to both B and the Internal Revenue Service.

Example 3. The Collection Branch of a Service Center of the Internal Revenue Service determines in the matching process of various Forms 1099 and W–2 that taxpayer C has not filed an individual income tax return. The Internal Revenue Service sends notices to C requesting that C file an income tax return. C does not file a return, so the Service Center's Collection Branch prepares a substitute for return pursuant to section 6020(b). The calculation is sent to C requesting that C either sign the return pursuant to section 6020(a) or file a tax return prepared by C. C does not respond to the Internal Revenue Service's request and the Service Center's Collection Branch issues a notice of deficiency based on information in its possession. C does not file a petition with the Tax Court and does not pay the asserted deficiency. The Internal Revenue Service then assesses the tax shown on the notice of deficiency and issues a notice and demand for tax pursuant to section 6303. After receiving notice and demand, C contacts the Collection Branch and convinces Collection to stay the collection process because C does not owe any taxes. The Collection Branch recommends that the Examination Division examine the tax liability and make an adjustment to income. The Examination Division then redetermines the tax and abates the assessment due to information and arguments presented by C at that time. The costs C incurred before the Collection Branch are incurred in connection with an action taken by the Internal Revenue Service to collect a tax. Therefore, these costs are incurred with respect to a collection action and not an administrative proceeding. Accordingly, they are not recoverable as reasonable administrative costs. Costs incurred before the Examination Division are reasonable administrative costs; however, C may not recover any reasonable administrative costs with respect to the proceeding before the Examination Division because, as of the date the costs were incurred, C had not previously presented all relevant information under C's control and all relevant legal arguments supporting C's position to the Collection Branch or Examination Division personnel (the appropriate Internal Revenue Service personnel under § 301.7430–5(c)), and thus, the position of the Internal Revenue Service was substantially justified based upon the information it had.

§ 301.7430–6 Effective date.

Sections 301.7430–0, and 301.7430–2 through 301.7430–6, other than § 301.7430–2(c)(5), apply to claims for reasonable administrative costs filed with the Internal Revenue Service after December 23, 1992, with respect to costs incurred in administrative proceedings commenced after November 10, 1988. Section 301.7430–2(c)(5) is effective March 23, 1993.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by adding the entry "301.7430–2(c) . . . . 1545–1356" in numerical order in the table.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: May 9, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–12828 Filed 6–6–94; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 70

[T.D. ATF–358]

RIN 1512–AB27

Clarification of Periods of Interest With Respect to Certain Overpayments (T92–122)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision amends 27 CFR 70.92, in Part 70, Procedure and Administration. The amendments clarify the period during which interest is allowed on taxpayer overpayments which are credited against other liabilities of the same taxpayer for interest and certain additions to the tax. The amendments are necessary as a result of changes to the law made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Deficit Reduction Act of 1984. The regulations affect all taxpayers who have overpayments credited against underpayments.

EFFECTIVE DATE: These regulations are effective on June 7, 1994.

FOR FURTHER INFORMATION CONTACT: Jackie White of the Tax Compliance Branch, (202) 927–8220, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 ((202) 927–8220).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the regulations on Procedure and Administration (27 CFR part 70) under § 6611 of the Internal Revenue Code of 1986 (IRC) to clarify the period during which interest is allowed on overpayments that are credited against a taxpayer's liability for interest and certain additions to the tax. The amendments will conform the regulations to § 344 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248, 96 Stat. 635), and § 158 of the Deficit Reduction Act of 1984 (DEFRA) (Pub. L. 98–369, 98 Stat. 696).

The Internal Revenue Service (IRS) applies § 6611 to the taxes it administers and enforces. The IRS published a notice of proposed rulemaking in the **Federal Register** on August 25, 1992 (57 FR 38457), and Treasury Decision 8524 (59 FR 10075) was published in the **Federal Register** on March 3, 1994, adopting final rules implementing the TEFRA and DEFRA amendments. ATF believes these regulations are equally applicable to its tax collection activities and is adopting such regulations.

Interest on Overpayments That Are Credited Against Interest on Underpayments

Section 6611(a) of the IRC provides that interest shall be allowed and paid on any overpayment in respect of any internal revenue tax at the overpayment rate established under § 6621.

Under § 6402(a), the Secretary may credit any overpayment (including any interest allowed thereon) against any liability imposed on the taxpayer under the IRC. Under § 6611(b)(1), interest is allowed on an overpayment that is so credited from the date of the overpayment to the due date of the taxpayer's liability against which the overpayment is credited. For purposes of this interest computation, a definition of the term "due date" is provided in § 70.92(d) of the regulations.

Generally, § 6601(f) provides that once an overpayment is credited to satisfy a taxpayer's liability, interest no longer accrues on that liability. Section 344 of TEFRA added § 6622 of the IRC, which requires interest imposed by the IRC to be compounded daily. The effect of § 6601(f) on the compounding requirement of § 6622 is that once an overpayment is credited to satisfy the taxpayer's liability for interest, that credit cuts off any further compounding of the interest (i.e., interest no longer accrues on the taxpayer's interest

liability against which the credit has been made).

Similarly, it is appropriate that no interest liability to the taxpayer accrues on the overpayment once the overpayment is credited to satisfy the taxpayer's liability for interest. Thus, the regulations amend § 70.92(d)(2)(iii) to clarify that interest ceases to accrue on any portion of an overpayment that is credited against the taxpayer's liability for interest.

Interest on Overpayments That Are Credited Against Certain Additions to the Tax

Prior to DEFRA, interest only accrued on additions to the tax from the date of notice and demand, and then only if not paid within 10 days from the date of notice and demand. In § 158 of DEFRA, Congress added § 6601(e)(2)(B) to the IRC, requiring taxpayers to pay interest on certain additions to tax from the due date of the relevant return (including any extensions) until the addition to the tax is paid. The number of additions to the tax that bear interest from the due date of the return was increased by Congress in 1988 and again in 1989. This regulation amends § 70.92(d)(2)(iv) to clarify that interest ceases to accrue on any portion of an overpayment that is credited against certain additions to the tax for any period after the due date of the return (including extensions) to which the addition to the tax relates.

Prior Regulations Obsolete

When ATF assumed responsibility for the collection and enforcement of taxes imposed under Subtitle E of the IRC, it patterned many of its procedural regulations upon those already promulgated by the IRS. *See, e.g.*, T.D. ATF–301, 55 Fed. Reg. 47608 (November 14, 1990); T.D. ATF–251, 52 Fed. Reg. 19314 (May 22, 1987). However, since enactment of § 6622 of the IRC in TEFRA and § 6601(e)(2)(B) in DEFRA, the prior regulations regarding interest and certain additions to tax have been obsolete. Accordingly, ATF has been computing interest consistent with the statutory changes and these regulatory amendments acknowledge existing agency practice.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. A copy of this final rule has been submitted to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business, pursuant to 26 U.S.C. 7805(f).

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because (1) it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the Presidents priorities, or the principles set forth in Executive Order 12866.

Administrative Procedures Act

Because this final rule merely adopts existing IRS procedural regulations regarding overpayment interest, it is found to be unnecessary to issue this Treasury decision for notice and public procedure pursuant to 5 U.S.C. 553(b) or subject to the effective date limitation in 5 U.S.C. 553(d).

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. No. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because it does not impose any new recordkeeping or reporting requirements.

Drafting Information

The principal author of this document is Jackie White of the Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Bankruptcy, Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

Authority and Issuance

Title 27 CFR is amended as follows:

PART 70—[AMENDED]

Paragraph 1. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

Para. 2. Section 70.92 is amended by revising paragraphs (d)(2)(iii) and (d)(2)(iv) to read as follows:

§ 70.92 Interest on overpayments.

* * * * *

(d) * * *

(2) * * *

(iii) *Interest.* In the case of a credit against interest that accrues for any period ending prior to January 1, 1983, the due date is the earlier of the date of assessment of such interest or December 31, 1982. In the case of a credit against interest that accrues from any period beginning on or after December 31, 1982, such interest is due as it economically accrues on a daily basis, rather than when it is assessed.

(iv) *Additional amount, addition to the tax, or assessable penalty.* In the case of a credit against an additional amount, addition to the tax, or assessable penalty, the due date is the earlier of the date of assessment or the date from which such amount would bear interest if not satisfied by payment or credit.

* * * * *

Signed: May 11, 1994.

Daniel R. Black,

Acting Director.

Approved: May 19, 1994.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–13742 Filed 6–6–94; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 251

[DoD Directive 4175.1]

Sale of Government-Furnished Equipment or Material and Services to U.S. Companies

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense hereby removes 32 CFR part 251 concerning the sale of Government-furnished equipment. This part has served the purpose for which it was intended and is no longer valid.

EFFECTIVE DATE: June 7, 1994.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Correspondence and Directives Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155.

List of Subjects in 32 CFR Part 251

Arms and munitions, Exports, Government property.

PART 251—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 251 is removed.

Dated: June 2, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–13779 Filed 6–6–94, 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–94–046]

RIN 2115–AA97

Safety Zone; Branford, CT 350th Fireworks Celebration

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in Branford Harbor, around the fireworks barge GT 1000 located approximately 1200 feet southwest of Parker Memorial Park, Branford, CT, on July 1, 1994. This safety zone is needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATES: This regulation is effective from 9:15 p.m. through 10 p.m. on July 1, 1994, unless extended or terminated sooner by the Captain of the Port. In case of inclement weather, this regulation will be effective on the rain dates of July 9 or 10, 1994, at the same times.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander T.V. Skuby, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LCDR T.V. Skuby, project officer for Captain of the Port, Long Island Sound, and LCDR J. Stieb, project attorney, First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation. The Coast Guard did not receive from the sponsor the final details concerning the event's exact location, which is essential information for the purposes of establishing a safety zone in sufficient time to publish a NPRM. If the event, which is centered around a national holiday and the Town of Branford's 350th birthday, were required to be postponed by publishing a NPRM, the event would be cancelled. Publishing a NPRM and delaying the event would be contrary to the public interest since the fireworks display is for the benefit of the public.

Background and Purpose

The sponsor, The Town of Branford and American Legion Post 83, Branford, CT has requested that a 45 minute fireworks display, launched from a floating platform, be permitted in the port of Branford in the vicinity of Parker Memorial Park, Branford, CT. This zone is required to protect the maritime community from the dangers associated with this fireworks display which is occurring over Branford Harbor. The safety zone covers all waters of Branford Harbor within a 1200 foot radius of the fireworks barge GT 1000.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary

The event will last approximately 45 minutes. The area affected by this event receives infrequent commercial traffic Because of the short duration of the event and the extensive advisories which will be made, commercial entities will be able to adjust to any disruptions.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–046 is added to read as follows:

§ 165.T01–046 Safety zone; Branford, CT 350th Fireworks Celebration.

(a) *Location.* The safety zone includes all waters of Branford Harbor within a 1200 foot radius of the barge GT 1000, the fireworks launching platform, which will be located approximately 1200 feet southwest of Parker Memorial Park in approximate position 41°15′32″ N, 072°49′35″ W.

(b) *Effective date.* This section is effective from 9:15 p.m. through 10 p.m. on July 1, 1994, unless extended or terminated sooner by the Captain of the Port. In case of inclement weather, this section will be effective on the rain dates of July 9 or 10, 1994, at the same times.

(c) *Regulations.* The general regulations covering safety zones contained in section 165.23 of this part apply.

Dated: May 24, 1994.

T.W. Allen,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 94–13800 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–94–048]

RIN 2115–AA97

Safety Zone; Sippican Harbor, MA Fireworks Display

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Sippican Harbor, Marion, MA, during the Marion Fourth of July fireworks display. The safety zone will cover the area of Sippican Harbor along the Silver Shell Beach shoreline out to 400 yards east of the shoreline. The safety zone is necessary to protect pleasure craft and personnel aboard these vessels from injury due to potential hazards associated with the fireworks.

EFFECTIVE DATES: This regulation is effective between the hours of 8 p.m. and 10 p.m. on July 4, 1994. In the event of inclement weather, the regulation will be in effect on the rain date of July 5, 1994 at the same times.

FOR FURTHER INFORMATION CONTACT: LT Eric Washburn, Marine Safety Field Office Cape Cod, (508) 968–6556.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document at LT E. A. Washburn, Project Manager, and LCDR J. D. Stieb, Project Counsel, First District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Due to the date when this office received the application, there was not sufficient time to publish proposed rules in advance of the event. Publishing a NPRM and delaying the event would be contrary to public interest since the fireworks display is for public viewing and is intended to celebrate the 4th of July holiday weekend.

Background and Purpose

On July 4, 1994, the town of Marion, Massachusetts, plans to sponsor a Fourth of July Fireworks display between the hours of 9 p.m. and 10 p.m. The fireworks will be launched from a site on Silver Shell Beach and will project onto the waters of Sippican Harbor. Approximately 200 spectator boats are expected to attend this event.

A safety zone is needed to prohibit spectator vessels from transiting or anchoring in the area of Sippican Harbor over which the fireworks will be launched. The Coast Guard will establish this safety zone from the shoreline of Silver Shell Beach (north end of safety zone is buoy C "7" and runs south to Sprague's Cove), extending eastward 400 yards into Sippican Harbor, between the hours of 8 p.m. and 10 p.m. on July 4, 1994. In the event of inclement weather, the rain date will be July 5, 1994 at the same times.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies of DOT is unnecessary. These regulations will be in effect for only a short period, specifically for two hours on one day. The entities most likely to be affected are pleasure craft wishing to view the fireworks from the water. These vessels will still be able to view the fireworks from the water but will be required to do so at a distance more than 400 yards from the shoreline, which will not cause them undue hardship. The effect on commercial traffic is negligible due to the minimal amount of commercial vessel traffic in that area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominate in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal

and concludes that under § 2.B.2.C of Commandant Instruction M16475.1B, this proposal is an action to protect public safety and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary section 165.T01–048 is added to read as follows:

§ 165.T01–048 Safety Zone: Sippican Harbor, MA. Fireworks Display.

(a) *Location.* The following area is a safety zone: All waters of Sippican Harbor, MA, from the shoreline of Silver Shell Beach (north end of safety zone is buoy C "7" and runs south to Sprague's Cove), extending eastward 400 yards into Sippican Harbor.

(b) *Effective dates.* This section becomes effective at 8 p.m. on July 4, 1994. It terminates at 10 p.m. on July 4, 1994, unless terminated sooner by the Captain of the Port. In the event of inclement weather, the section will be in effect on the rain date of July 5, 1994 at the same times.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply.

Dated: May 24, 1994

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 94–13801 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–94–052]

RIN 2115–AA97

Safety Zone; Onset, MA Fire Department Centennial Celebration

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Onset Harbor, Onset, MA, on July 9, 1994 during the Onset Fire Department Centennial Celebration. While this safety zone is in effect, no vessel traffic will be allowed into or out of Sunset Cove. This safety zone is necessary to protect pleasure craft and personnel aboard these vessels from injury due to potential hazards associated with the fireworks.

EFFECTIVE DATES: This regulation is effective between the hours of 9 p.m. and 10 p.m. on July 9, 1994. In the event of inclement weather, the regulation will be in effect on the rain date of July 10, 1994 at the same times.

FOR FURTHER INFORMATION CONTACT: LT Eric Washburn, Marine Safety Field Office Cape Cod, (508) 968–6556.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LT E. A. Washburn, Project Manager, and LCDR J. D. Stieb, Project Counsel, First District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Due to the date when this office received the application, there was not sufficient time to publish proposed rules in advance of the event. Publishing a NPRM and delaying the event would be contrary to the public interest since the fireworks display is for the centenial celebration of this weekend.

Background and Purpose

On July 9, 1994, the town of Onset, Massachusetts, plans to sponsor a Onset Fire Works Centennial Celebration between the hours of 9 p.m. and 10 p.m. Approximately 200 spectator boats are expected to attend this event.

A safety zone is needed to prohibit spectator vessels from transiting or anchoring in the area over which the fireworks will be launched. The safety zone will include all waters from the Shell Point Beach south to buoy C "1" then southwest to a danger buoy at position 41 degrees 44.13' North and 70 degrees 39.83' West then northwest to the mouth of Sunset Cove, between the hours of 9 p.m. and 10 p.m. on July 9, 1994. While this safety zone is in effect, no vessel traffic will be allowed into or out of Sunset Cove.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies of DOT is unnecessary. These regulations will be in effect for only a short period, specifically for one hour on one day. The entities most likely to be affected are pleasure craft wishing to view the fireworks from the water. These vessels will still be able to view the fireworks from the water but will be required to do so at a distance more than 300 yards from the staging area, which will not cause them undue hardship. The effect on commercial traffic is negligible due to the minimal amount of commercial vessel traffic in that area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominate in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C 3501).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concludes that under § 2.B.2.C of Commandant Instruction M16475.1B, this proposal is an action to protect public safety and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

Part 165—[AMENDED]

1 The authority citation for part 165 continues to read as follows:

Authority: 33 U S.C. 1231, 50 U S.C. 191, 33 CFR 1.05–1(g), 6.04–1 6.04–6 and 160.5, 49 CFR 1 46.

2. A temporary section 165 T01–052 is added to read as follows:

§ 165.T01–052 Safety Zone: Onset, MA. Fire Department Centennial.

Celebration

(a) *Location.* The following area is a safety zone· LL WATERS OF Onset Harbor, MA., from the Shell Point Beach south to buoy C "1" then southwest to a danger buoy at position 41 degrees 44.13′ North and 70 degrees 39.83′ West then northwest to the mouth of Sunset Cove.

(b) *Effective Dates.* This section becomes effective at 9 p.m. on July 9, 1994. It terminates at 10 p.m. on July 9, 1994, unless terminated sooner by the Captain of the Port. In the event of inclement weather, this section will be in effect on the rain date of July 10, 1994 at the same times.

(c) *Regulations.*

(1) While this safety zone is in effect, no vessel traffic will be allowed into or out of Sunset Cove unless authorized by the COTP or the COTP representative on-scene.

(2) The general regulations governing safety zones contained in 33 CFR 165.23 apply

Dated: May 24, 1994.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 94–13802 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–94–049]

RIN 2115–AA97

Safety Zone; Onset, MA Fireworks Display

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Onset Harbor, Onset, MA, on July 2, 1994 during the Onset Fire Department Centennial display. While this safety zone is in effect, no vessel traffic will be allowed into or out of Sunset Cove. This safety zone is necessary to protect pleasure craft and personnel aboard these vessels from injury due to potential hazards associated with the fireworks.

EFFECTIVE DATES: This regulation is effective between the hours of 9 p.m. and 10 p.m. on July 2, 1994. In the event of inclement weather, the regulation will be in effect on the rain date of July 3, 1994 at the same times.

FOR FURTHER INFORMATION CONTACT: LT Eric Washburn, Marine Safety Field Office Cape Cod, (508) 968–6556.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LT E.A. Washburn, Project Manager, and LCDR J.D. Stieb, Project Counsel, First District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Due to the date when this office received the application, there was not sufficient time to publish proposed rules in advance of the event. Publishing a NPRM and delaying the event would be contrary to the public interest since the fireworks display is for the celebration of the Fourth of July holiday weekend.

Background and Purpose

On July 2, 1994, the town of Onset, Massachusetts, plans to sponsor an Onset Fire Department Centennial Fireworks display between the hours of 9 p.m. and 10 p.m. The fireworks will be launched from shore at the town beach on Shell Point. Approximately 200 spectator boats are expected to attend this event.

A safety zone is needed to prohibit spectator vessels from transiting or anchoring in the area over which the fireworks will be launched. The safety zone will include all waters from the Shell Point Beach south to buoy C "1" then southwest to a danger buoy at position 41 degrees 44.13′ North and 70 degrees 39.83′ West then northwest to the mouth of Sunset Cove, between the hours of 9 p.m.and 10 p.m. on July 2, 1994. While this safety zone is in effect, no vessel traffic will be allowed into or out of Sunset Cove.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies of DOT is unnecessary. These regulations will be in effect for only a short period, specifically for one hour on one day The entities most likely to be affected are pleasure craft wishing to view the fireworks from the water. These vessels will still be able to view the fireworks from the water but will be required to do so at a distance more than 300 yards from the staging area, which will not cause them undue hardship. The effect on commercial traffic is negligible due to the minimal amount of commercial vessel traffic in that area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the

Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concludes that under § 2.B.2.C of Commandant Instruction M16475.1B, this proposal is an action to protect public safety and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231, 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary section 165.T01–049 is added to read as follows:

§ 165.T01–049 Safety Zone: Onset, MA. Fireworks Display.

(a) *Location.* The following area is a safety zone: All waters of Onset Harbor, MA., from the Shell Point Beach south to buoy C "1" then southwest to a danger buoy at position 41 degrees 44.13' North and 70 degrees 39.83' West then northwest to the mouth of Sunset Cove.

(b) *Effective date.* This section becomes effective at 9 p.m. on July 2, 1994. It terminates at 10 p.m. on July 2, 1994, unless terminated sooner or by the Captain of the Port. In the event of inclement weather, this section will be in effect on the rain date of July 3, 1994 at the same times.

(c) *Regulations.*

(1) While this safety zone is in effect, no vessel traffic will be allowed into or out of Sunset Cove unless authorized by the COTP or the COTP representative on-scene.

(2) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

Dated: May 24, 1994.

H.D. Robinson,

Captain, U. S. Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 94–13803 Filed 6–6–94, 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 946

Addition of the Delegate of the Chief Postal Inspector for Disposition of Abandoned Property

AGENCY: United States Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends Postal Service regulations by making clear that the Chief Postal Inspector can delegate the authority to dispose of abandoned property.

EFFECTIVE DATE: June 7, 1994.

FOR FURTHER INFORMATION CONTACT: Postal Inspector-Attorney Frederick I. Rosenberg, (202) 268–5477.

SUPPLEMENTARY INFORMATION: Postal Service regulations concerning the disposition of stolen mail matter and property acquired by the Postal Inspection Service for use as evidence are published in title 39 of the Code of Federal Regulations (CFR) as part 946. Section 946.11, disposition of property declared abandoned, is amended to authorize the Chief Postal Inspector to delegate authority to approve the sharing of property declared abandoned with federal, state, or local law enforcement agencies. This will make section 946.11 consistent with the other sections of part 946.

List of Subjects in 39 CFR Part 946

Claims, Law enforcement, Postal Service.

Accordingly, 39 CFR part 946 is amended as set forth below:

PART 946—RULES OF PROCEDURE RELATING TO THE DISPOSITION OF STOLEN MAIL MATTER AND PROPERTY ACQUIRED BY THE POSTAL INSPECTION SERVICE FOR USE AS EVIDENCE

1. The authority citation for part 946 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401 (2), (5), (8), 404(a)(7), 2003, 3001

2. Section 946.11 is revised to read as follows:

§ 946.11 Disposition of property declared abandoned.

Property declared abandoned, including cash, and proceeds from the sale of property subject to this part may be shared by the Postal Inspection Service with federal, state, or local law enforcement agencies. Unless the Chief Postal Inspector determines that cash or the proceeds of the sale of the abandoned property are to be shared with other law enforcement agencies, such cash or proceeds shall be deposited in the Postal Service Fund established by 39 U.S.C. 2003. The authority to make this determination may be delegated by the Chief Postal Inspector

Stanley F. Mires,

Chief Counsel, Legislative Division

[FR Doc. 94–13724 Filed 6–6–94, 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 270

[FRL–4892–3]

Extension of Date for Submission of Part A Permit Applications for Facilities Managing Ash From Waste-to-Energy Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of permit application deadline.

SUMMARY: In *City of Chicago v Environmental Defense Fund, Inc.*, No 92–1639 (___ U.S. ___, decided May 2, 1994), the Supreme Court held that ash generated by certain municipal waste-to-energy facilities that burn household wastes alone or in combination with nonhazardous wastes from industrial and commercial sources is not exempt from regulation as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). When the decision takes effect, persons who generate such ash will need to determine whether it is a hazardous waste under Subtitle C of RCRA. Ash that is hazardous will need to be managed in compliance with all applicable hazardous waste regulations

In response to the Court's decision, EPA is today announcing that there has been substantial confusion as to when the owners and operators of facilities managing such ash were required to file applications for RCRA hazardous waste permits. EPA is exercising its authority under 40 CFR 270.10(e)(2) to extend the deadline for filing permit applications

EPA also is announcing today that it considers ash from these combustion facilities to be a newly identified waste for purposes of the land disposal restrictions under sections 3004(d)-(m) of RCRA. Current land disposal restrictions do not apply. Rather, the Agency has a duty to promulgate ash-specific restrictions 6 months from the date of today's document. All other hazardous waste regulations will apply to hazardous ash when the decision takes effect.

EFFECTIVE DATE: June 7, 1994.

ADDRESSES: Docket Clerk, OSW (OS–305), Docket No. F–94–XAPN-FFFFF, U.S Environmental Protection Agency Headquarters, 401 M Street SW., Washington, D.C. 20460. The public docket is located in M2616 at EPA Headquarters and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 260–9327. Copies cost $0.15/page. Charges under $25.00 are waived.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, (800) 424–9346, TDD (800) 553–7672 (hearing impaired); in the Washington, DC metropolitan area the number is (703) 920–9810, TDD (703) 486–3323.

For more detailed information on specific aspects of this Notice, contact Scott Ellinger, Office of Solid Waste (5306), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–1099.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background
  A. Overview
  B. Nature of Ash From Waste-To-Energy Facilities
III. Extension of Permit Deadline Due to Substantial Confusion
  A. Permit Requirements and Deadline Extensions
  B. Regulatory History of Waste-To-Energy Ash
  C. Findings
IV. Land Disposal Restrictions
V. Other Subtitle C Requirements
VI. State Authorization and Implementation
  A. Permit Deadline Extension
  B. Land Disposal Restrictions
VII. Good Cause Finding
VIII. Regulatory Requirements
  A. Executive Order 12866
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act

I. Authority

These actions interpreting the hazardous waste regulations in 40 CFR parts 260–271 are being taken under the authority of sections 2002, 3004, 3005 and 3006 of the Solid Waste Disposal Act of 1970 as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6924, 6925, and 6926).

II. Background

A. Overview

On May 2, 1994 the Supreme Court issued an opinion interpreting Section 3001(i) of the Resource Conservation and Recovery Act (RCRA), 42 USC 6921(i). *City of Chicago* v. *EDF*, No. 92–1639 (___ U.S. ___, decided May 2, 1994). The Court held that this provision does not exempt ash generated at resource recovery facilities burning household wastes and nonhazardous commercial wastes (hereafter "waste-to-energy facilities") from the hazardous waste requirements of Subtitle C of RCRA. The Court also held that Section 3001(i) terminated a 1980 regulatory exemption for ash generated at waste-to-energy facilities that burn only household wastes. The opinion requires EPA to revise its prior position that both types of ash were exempt from hazardous waste regulation. It abruptly ends nearly a decade of controversy over the regulatory status of ash from these facilities.

As a result of this decision, ash from waste-to-energy facilities has the same status as other solid wastes. Persons who generate such wastes must determine whether that waste is a hazardous waste under EPA's hazardous waste identification rules at 40 CFR part 261. Since EPA has not listed ash as a hazardous waste, generators must determine whether ash exhibits any of the characteristics of hazardous waste at 40 CFR 261.21–.24. Ash that exhibits a characteristic must be managed in compliance with Subtitle C requirements.

As explained below, the regulatory status of ash has been the subject of confusion for several years. EPA's action today responds by giving owners and operators of facilities that manage ash that is determined to be characteristically hazardous a reasonable opportunity to obtain interim status by applying for a RCRA hazardous waste permit. Without this opportunity, persons managing hazardous ash would be out of compliance with RCRA's permit requirements and face potentially significant civil and criminal penalties.

In this notice EPA is also announcing that it will consider ash that is characteristically hazardous to be a "newly identified" waste under the land disposal restrictions. EPA needs time to determine what treatment standards would be appropriate. By considering such ash to be a newly identified waste under the land disposal restrictions, EPA will have an opportunity to evaluate the efficacy of the existing standards and, if necessary, develop new ash-specific standards.

EPA notes that all other applicable Subtitle C regulations will apply to ash on the date that the Court's decision takes effect. See the discussion of state authorization below for assistance in determining when the Court's decision will affect particular facilities. The Agency interprets the Court's decision to cut-off the exemption for waste management at waste-to-energy facilities at the point that ash is generated. Subsequent management of hazardous ash on-site is subject to regulation under Subtitle C.

B. Nature of Ash From Waste-to-Energy Facilities

Combustion of municipal solid waste, particularly through waste-to-energy facilities, can be an important component of a local government's waste management practices. As of 1990, approximately 196 million tons of municipal solid waste were generated annually in the U.S., 16 percent of which (32 million tons) was combusted. The states with the greatest municipal waste combustion capacity are Florida, New York and Massachusetts. There are approximately 150 municipal waste combustors in the U.S., 80 percent of which are waste-to-energy facilities. The remaining 20 percent incinerate waste without recovering energy.

Approximately 25 percent (by weight) of the waste that is combusted remains as ash, amounting to around eight million tons of municipal waste combustor ash generated annually. Generally, these combustion facilities generate two basic types of ash—bottom ash and air pollution control residuals; commonly referred to as "fly ash." Bottom ash collects at the bottom of the combustion unit and comprises approximately 75–80% of the total ash. Fly ash collects in the air pollution control devices that "clean" the gases produced during the combustion of the waste and comprises around 20–25% of the total. Based on several analytical studies, fly ash generally contains the highest concentrations of inorganic chemical constituents.

Studies also show that ash (usually fly ash) has sometimes exhibited EPA's

Toxicity Characteristic ("TC"). Typically, ash that "fails" the TC leaches lead or cadmium above levels of concern. Because a number of factors can influence whether ash passes or fails the TC (e.g., the nature of the incoming waste stream, the type of combustion unit, the nature of the air pollution control device and the ash sampling location), EPA cannot predict an overall failure rate for ash from municipal waste combustors.

III. Extension of Permit Deadline Due to Substantial Confusion

A. Permit Requirements and Deadline Extensions

RCRA requires any person treating, storing or disposing of hazardous waste to obtain a permit or a pre-permit authorization called "interim status." Section 3005; 40 CFR 270.1(b). To qualify for interim status a facility must meet criteria set out in RCRA section 3005(e), which include filing a permit application.

When EPA promulgates RCRA rules subjecting a new group of facilities to hazardous waste permitting requirements, the permit regulations provide 6 months for the filing of part A of the permit application. 40 CFR 270.10 (e). EPA routinely publishes in the **Federal Register** the specific permit deadline for persons regulated by the new rules. See 270.10 (e), note. Section 270.10(e)(2) provides that EPA can extend the date for permit applications by **Federal Register** notice if it finds that there has been "substantial confusion" as to whether the owner or operator was required to file a permit application and the confusion was due to ambiguities in EPA's regulations. For the reasons explained below, EPA today is exercising its discretion to extend the submission dates for part A permit applications for facilities treating, storing and disposing of ash from waste-to-energy facilities that exhibits a characteristic of hazardous waste.

B. Regulatory History of Waste-to-Energy Ash

In 1980, EPA promulgated a rule exempting household wastes from all RCRA requirements for hazardous wastes. 40 CFR 261.4(b)(1). EPA interpreted this exemption to extend to residuals from the treatment of household wastes, including ash from the combustion of household wastes. The exemption, however, did not address ash from the combustion of household wastes combined with nonhazardous commercial and industrial wastes.

In 1984 Congress added to RCRA a new Section 3001(i), entitled "Clarification of Household Waste Exemption." This provision addressed waste-to-energy facilities burning household wastes and nonhazardous commercial and industrial wastes to produce energy. In July 1985, EPA promulgated a rule that codified this provision. In the preamble accompanying this rule, EPA announced that it interpreted the statute and the rule to exempt the facilities—but not their ash—from Subtitle C, 50 FR 28702, 28725–26 (July 15, 1985). EPA did not publish any statement informing owners of facilities managing ash of any deadline for obtaining RCRA permits.

In the late 1980's, various EPA officials began taking the position that Section 3001(i) could be interpreted to exempt ash from Subtitle C. They also expressed the opinion that ash could be managed safely in nonhazardous waste disposal facilities. The Environmental Defense Fund (EDF) filed citizen suits in two separate U.S. District Courts to enforce the 1985 interpretation of the statute against two specific waste-to-energy facilities. *EDF* v. *City of Chicago*, 727 F. Supp. 419 (N.D. Ill. 1989); *EDF* v. *Wheelabrator Technologies, Inc.*, 725 F. Supp. 758 (S.D.N.Y. 1989). Both courts held that Section 3001(i) exempted ash. On appeal, the Second Circuit ruled in favor of the exemption, but the Seventh Circuit reversed, finding that the statute did not exempt ash. *EDF* v. *City of Chicago*, 948 F.2d 345 (7th Cir. 1991); *EDF* v. *Wheelabrator Technologies, Inc.*, 931 F.2d 211 (2d Cir. 1991), cert. denied 112 S.Ct. 453 (1991). The City of Chicago, which operated the facility adversely affected by the 7th Circuit's decision, appealed to the Supreme Court.

Also in the late 1980's, Congress considered a number of bills that would have explicitly exempted ash from Subtitle C requirements. In November 1990, Congress enacted an uncodified amendment to the Clean Air Act prohibiting EPA from regulating ash as a hazardous waste under Section 3001 of RCRA for a period of two years. Clean Air Act Amendments of 1990, Pub.L. No. 101–549, 104 Stat. 2399.

In response to these events, a number of states authorized to implement Subtitle C programs in lieu of EPA began treating ash from waste-to-energy facilities as exempt. Some interpreted their own regulations virtually identical to Section 3001(i). Others promulgated specific ash exemptions. Many of these specific exemptions were accompanied by detailed regulations for the management of ash as a nonhazardous waste. Consistent with the evolving federal position on the regulation of ash, EPA took no action affecting these state programs.

Finally, in September 1992, just before the expiration of the Clean Air Act ash "moratorium," EPA Administrator William Reilly signed a memorandum announcing that the Agency now interpreted Section 3001(i) to exempt ash from waste-to-energy facilities burning household wastes and nonhazardous wastes from Subtitle C requirements. This memorandum also announced that EPA believed that ash could be disposed of safely in landfills meeting new standards for municipal solid waste facilities promulgated in 1991 and codified at 40 CFR part 258

C. Findings

EPA finds that the events above have created substantial confusion about the status of ash under the rule EPA wrote to codify the exemption in Section 3001(i). Although EPA's 1980 and 1985 preambles indicated that there was no exemption for ash from combined sources, later events suggested that ash was not regulated. Persons may have relied on the two District Court decisions, the 1990 ash moratorium, or the 1992 Reilly memorandum to conclude that Section 30Q1(i) and 40 CFR 261.4(b)(2) were ambiguous about the status of ash from combined sources. They could quite reasonably have concluded that they could manage ash from combined sources without obtaining hazardous waste permits. If EPA did not act to extend the Part A deadline, however, these facilities would be unable to obtain interim status because the Court's action is not a statutory or regulatory change establishing a new period for obtaining interim status under RCRA section 3005(e). Such facilities would have to cease handling hazardous ash until EPA took final action on their completed permit applications—a process that typically takes several years.

Section 270.10(e)(2) was written to prevent such harsh results. EPA is today invoking its authority to provide a reasonable opportunity for persons managing combined ash to satisfy RCRA's permitting requirements. Applying the substantial confusion approach to facilities managing this ash is consistent with previous precedents See, e.g., 52 FR 34779–81 (Sept. 15, 1987) (notice of substantial confusion for big city cement kilns).

Persons handling ash from the combustion of 100% household waste could have relied with even greater justification on the Agency's 1980 interpretation of the household waste

exemption to handle such waste without a hazardous waste permit. They are also entitled to an opportunity to satisfy the permit requirement. Since they are becoming subject to Subtitle C without the enactment of a statute or the promulgation of a rule, they do not technically qualify for the normal 6 months provided for persons newly subject to Subtitle C regulation. See section 40 CFR 270.10(e)(1). Section 270.10(e)(1)(ii), which provides 30 days for filing a Part A after a facility "first becomes subject to the [Subtitle C] standards" could apply to these facilities. EPA, however, interprets this provision to apply to facilities whose own actions subject them to Subtitle C rather than to facilities affected by regulatory events. (An example would be a generator that exceeded the small quantity generator monthly waste generation limit.) See generally 45 FR 76630, 76633 (November 19, 1980). Consequently, EPA believes the "substantial confusion" approach is also appropriate for persons who manage 100% household waste. Moreover, it reduces confusion by establishing a single deadline for both types of ash from waste-to-energy facilities.

Accordingly, EPA today establishes that facilities that are handling hazardous ash from waste-to-energy facilities that wish to continue to do so may file Part A applications anytime before December 7, 1994. See the discussion of state authorization below for guidance on where to request and submit an application.

Another statutory requirement for obtaining interim status is the filing of any notification required under section 3010(a) of RCRA. Under section 3010, EPA may require all persons that handle hazardous wastes—including generators and transporters—to notify EPA of the location of their activities within 90 days of the promulgation of a new rule identifying additional characteristics or listing a waste. This provision does not literally apply because EPA is not promulgating or revising a rule. However, failure to satisfy it could cloud a facility's claim that it obtained interim status. In order to prevent this result, EPA is exercising its discretion to waive filing of section 3010 notifications by facilities managing ash from resource recovery facilities. EPA notes that persons who manage ash will be required to obtain EPA identification numbers in the near future. This process will furnish the information that the notifications would have provided.

IV. Land Disposal Restrictions

The RCRA land disposal restrictions (LDRs) prohibit land disposal of hazardous wastes unless those wastes are first treated to substantially reduce toxicity or mobility of the hazardous constituents in the wastes so as to minimize threats to human health and the environment. RCRA sections 3004 (d), (e), (g), (m). The restrictions specify dates on which particular groups of wastes are prohibited from land disposal unless they are treated. RCRA sections 3004 (d), (e), (g). For wastes which are "newly identified or listed" after November 8, 1984, EPA must promulgate treatment standards within 6 months of the date of identification or listing. RCRA section 3004(g)(4).

On June 1, 1990, EPA promulgated treatment standards for constituents in wastes identified as hazardous under the "EP toxicity" characteristic, the predecessor to the current TC. 55 FR 22520. The treatment standards for metal constituents are levels identical to the EP toxicity standards themselves. 40 CFR 268.41. (EPA notes that it must revise these standards under *Chemical Waste Management, Inc. v. EPA*, 976 F.2d 2 (D.C. Cir. 1992) (the "Third Third" decision).) Persons generating wastes that fail the current TC test must determine whether their TC wastes exceed these EP levels, and, if they do, comply with the treatment standards.

EPA, however, believes that ash from waste-to-energy facilities is "newly identified" for purposes of the land disposal restrictions. Although technically ash would be identified as hazardous under the existing TC rather than a new characteristic rule, the Supreme Court's decision is bringing ash into the Subtitle C system for the first time (for ash from 100% household waste) or returning it to the system after a period of uncertainty and actual legislative exemption (for ash from combined sources).

EPA dealt with a similar situation in a 1990 LDR rule. In that notice, EPA interpreted section 3004(g)(4) for mineral processing wastes brought into RCRA by a decision of the U.S. Court of Appeals for the District of Columbia Circuit holding that EPA had improperly considered them to be exempt from Subtitle C under the statute's "Bevill amendment". (The mineral processing wastes also sometimes exceed the TC and EP toxicity levels for metals.) In that notice, EPA explained that section 3004(g)(4) is ambiguous as to whether it applies to wastes brought into the system after 1984 due to regulatory reinterpretation. See 55 FR 22667 (June 1, 1990). EPA determined that it was preferable to read section 3004(g)(4) to include such wastes because that reading was more consistent with the policy goals that prompted Congress to establish a separate schedule for new wastes in the first place: the need to study such wastes separately to set appropriate treatment standards, and the established priority of subjecting older wastes to the land ban first. *Id.*

EPA also noted that, before it developed specific treatment standards for the newly-identified mineral processing wastes, the wastes could be regulated under existing treatment standards for EP toxicity metals. EPA determined that it would not be appropriate to apply those treatment standards, however, because it had not analyzed and tested the wastes to determine whether those standards would meet the statuary requirements of reduced toxicity and mobility. *Id.*

Ash from 100% household waste clearly fits this precedent. It, too, is being regulated under Subtitle C for the first time as the result of a court decision narrowing an Agency interpretation of an existing Subtitle C exemption. Further, as explained in more detail below, EPA needs to determine whether exiting EP toxicity treatment standards will meet land treatment standard requirements for this ash. Accordingly, EPA interprets section 3004(g)(4) to apply to this ash. EPA will not apply the current treatment standards for the EP toxicity characteristic to ash which is identified as hazardous under the TC. Section 3004(g)(4) will require EPA to promulgate treatment standards for this ash within 6 months of the date of this notice.

Ash from combined sources is not entering Subtitle C jurisdiction for the first time—it was not exempt under EPA's original household waste exemption, and was not originally viewed as exempt under section 3001(i). Nevertheless, EPA believes that it would be appropriate and consistent with the goals of the LDRs to view it as a newly identified waste under section 3004(g)(4). Section 3004(g)(4) is ambiguous as to wastes reentering Subtitle C after several years of confusion and two years of clear statutory exemption. Moreover, EPA has not studied ash to determine what treatment standards would meet the requirements of Section 3004(m) of RCRA, and in fact is reviewing what the appropriate treatment standards are for all of the wastes with metal constituents exhibiting the Toxicity Characteristic. 58 FR 48116 (Sept. 14, 1993). Congress priority scheme for land disposal restrictions directs EPA to promulgate standards for post-1984 wastes in chronological order. If EPA were required to immediately determine

whether the current EP toxicity standards for ash were appropriate, it would have to postpone work on treatment standards for new listings and a new characteristic promulgated several years prior to the *City of Chicago* decision. Additionally, EPA needs time to determine whether current treatment standards are appropriate for ash.

For these reasons, EPA will also consider ash from combined sources to be newly identified for purposes of the land disposal restrictions. Furthermore, it will not apply the existing treatment standards for EP toxicity. As a result of this decision, Section 3004(g)(4) requires EPA to promulgate treatment standards for combined ash within 6 months of the date of this notice.

V. Other Subtitle C Requirements

EPA is not extending compliance dates for any other aspect of the hazardous waste regulations. Facilities generating, transporting, or treating, storing or disposing of hazardous ash must, as a matter of federal law, comply with the substantive requirements of 40 CFR parts 260–270 on the effective date of the Court's decision. (See the discussion of state authorization below to determine when the decision takes effect under authorized state RCRA programs.) EPA reminds generators, transporters and treatment, storage and disposal facilities that they must promptly obtain EPA identification numbers. See, e.g., 40 CFR 262.12. EPA intends to issue an implementation strategy in the near future that will provide additional information on complying with other RCRA requirements.

To facilitate compliance with Subtitle C, EPA has developed draft guidance for the sampling of ash from waste-to-energy facilities. EPA has already released this draft. Interested parties may obtain a copy by calling the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424–9346, TDD (800) 553–7672 (hearing impaired); in the Washington, DC metropolitan area, the number is (703) 920–9810, TDD (703) 486–3323. EPA soon will publish a separate **Federal Register** notice requesting comment on the draft.

EPA notes that by following certain waste management practices, some facilities may not need interim status or a RCRA permit. For example, under federal regulations, generators of hazardous ash may accumulate and treat ash onsite in tanks or containers for up to 90 days without obtaining hazardous waste permits under 40 CFR 262.34. See also 51 FR 10186 (May 24, 1986.)

VI. State Authorization and Implementation

A. Permit Deadline Extension

1. General Principles

Section 3006(b) of RCRA allows states to obtain authorization to implement state hazardous waste programs in lieu of federal law. To obtain authorization, a state must show that its program is equivalent to the Federal program. EPA interprets this requirement to mean that state laws and rules must be no less stringent than federal requirements. Section 3009, however, expressly allows states the option of establishing more stringent requirements.

Forty-eight states and territories are now authorized for all of the RCRA requirements established prior to November 1984 (the RCRA "base program"). In these states, the state's definition of hazardous waste—including any exemptions—operates in lieu of the federal definition. Changes to the federal definition do not automatically revise independently promulgated state regulations. Rather, the states are required to revise their programs and submit the revisions to EPA for approval. The revision does not take effect under federal law until EPA approves the revision. As explained below, in a few of these states, the Court's decision may not take effect on its federal law effective date. EPA believes that there are very few states in this category.

Where the Court's decision does eliminate an exemption for ash, the hazardous waste characteristic most likely to apply to ash is the TC as determined by the Toxicity Characteristic Leaching Procedure ("TCLP") promulgated by EPA in 1990. This rule was promulgated under one of the Hazardous and Solid Waste Amendments of 1984 ("HSWA"). Section 3006(g) provides that rules promulgated under HSWA take effect in all states at the same time, displacing state rules unless the state rules are more stringent. EPA implements the new HSWA rule until the state adopts an equivalent provision, submits it to EPA, and obtains EPA approval. 50 FR 28728–30. (July 15, 1985). The TC and TCLP displaced the 1980 EP toxicity characteristic and leaching procedure. The EP, however, also remains in effect as a matter of state law in many states.

Sixteen states are now authorized for the TC and TCLP (see list in Table 1). EPA continues to implement the TC and the TCLP in the remaining states. EPA takes the position that, where it implements the TC, it uses federal permitting procedures. Consequently, EPA will implement the permit deadline extension announced today in all states where it implements the TC. Owners and operators in those states would file Part A applications with EPA Regional Offices. (See list in Table 2.) Where a state has been authorized to implement the TC, however, state permit procedures are in effect. Today's deadline extension is not in effect in those states. Moreover, since the extension makes permit requirements less stringent, states are not required to adopt equivalent extensions. If any of these states chooses to provide equivalent relief, owners and operators would file permit applications with the state agency.

To summarize, in order to determine the impact of today's action, persons handling ash must determine (1) the impact of the Court's decision on the RCRA program in each state (primarily an issue of whether a state's base program contains an *authorized* exemption for ash) and (2) whether the entity authorized to implement the TC and TCLP has extended its permit deadline.

2. Application of Principles: Status of Court Decision and Permit Exemption in Individual States

a. Unauthorized states. In the eight states and territories where EPA implements all portions of the RCRA program (see Table 1 for a list of these states and territories), including the base program, the Court's decision will eliminate EPA's interpretative ash exemption on the opinion's effective date. Since EPA implements the TC, the permit deadline extension will take effect today. Owners and operators of facilities who wish to obtain interim status to manage hazardous ash may file Part A applications with EPA Regional Offices. (See list in Table 2.)

b. Authorized states. The issues in authorized states are very complex. Table 3 summarizes the status of the decision and the permit deadline for major categories of states. This text presents a few explanatory notes.

Table 1.—List of States and Territories Without RCRA Subtitle C Base Program Authorization

Wyoming
Hawaii
Alaska
Iowa
Puerto Rico
Virgin Islands
American Samoa
Northern Mariana Islands

List of States and Territories Authorized for the Toxicity Characteristic

Alabama
Florida
Georgia
Kentucky
Mississippi
North Carolina
South Carolina
Tennessee
Minnesota
Arkansas
Texas
Arizona
California
Guam
Nevada
Idaho

Table 2.—U.S. EPA Regional Contacts for the Part A Permit Application

U.S. EPA Region 1, RCRA Support Section, JFK Federal Building, Boston, MA 02203–2211, (617) 573–5750, CT, ME, MA, NH, RI, VT

U.S. EPA Region 2, Air and Waste Management Division, Hazardous Waste Facilities Branch, 26 Federal Plaza, room 1037, New York, NY 10278, (212) 264–0504, NJ, NY, PR, VI

U.S. EPA Region 3, RCRA Programs Branch (3HW50), 841 Chestnut Street, Philadelphia, PA 19107, (215) 597–8116 (PA, DC), (215) 597–3884 (VA, WV, DE, MD), DE, DC, MD, PA, VA, WV

U.S. EPA Region 4, Hazardous Waste Management Division, RCRA Permitting Section, 345 Courtland Street, NE, Atlanta, GA 30365, (404) 347–3433, AL, FL, GA, KY, MS, NC, SC, TN

U.S. EPA Region 5, RCRA Activities, P.O. Box A3587, Chicago, IL 60690 (Call State Offices), IL, IN, MI, MN, OH, WI

U.S. EPA Region 6, Hazardous Waste Management Division, First Interstate Bank Tower, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733, (214) 655–8541, AR, LA, NM, OK, TX

U.S. EPA Region 7, RCRA Branch, Permitting Section, 726 Minnesota Avenue, Attn: WSTM/RCRA/PRMT, Kansas City, KS 66101, (913) 551–7654, IA, KN, MO, NE

U.S. EPA Region 8, Hazardous Waste Management Division, 999 18th Street, Suite 500, Denver, CO 80202–2405, (303) 294–1361, CO, MT, ND, SD, UT, WY

U.S. EPA Region 9, Hazardous Waste Management Division, Attn: H–2–3, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–2098, AZ, CA, HI, NV, AS, GU, No. Mariana Is.

U.S. EPA Region 10, Waste Management Branch, HW–105, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–0151, AK, ID, OR, WA

TABLE 3.—PERMIT DEADLINE: IMPLEMENTATION IN AUTHORIZED STATES

State has no ash exemption	State has unauthorized ash exemption	State has authorized ash exemption
TC Authorization: EPA [1]		
1. Court decision in effect	1. Court decision in effect	1. Decision may not be in effect (state law issue).
2. No deadline extension needed	2. Deadline extension in effect	2. Deadline extension not in effect. EPA will extend deadline when it approves program revision.
3. No state program revision needed	3. State must revise state law and inform EPA informally. 4. Owners/operators file notifications and Part A's with EPA Regional Office.	3. State must revise program and submit for review under 40 CFR 271.21(e)(2)(ii). 4. Owners/operators file notifications and Part A's with EPA Regional office.
TC Authorization: State		
1. Court decision in effect	1. Court decision in effect	1. Decision may not be in effect (state law issue).
2. No deadline extension needed	2. Deadline extension not in effect. State may provide equivalent relief.	2. Deadline extension not in effect. State may provide equivalent relief when it eliminates exemption.
3. No state program revision needed	3. State must revise state law and inform EPA informally. 4. Owner/operators file with State if State grants relief.	3. State must revise program and submit for review under 40 CFR 271.21(e)(2)(ii). 4. Owner/operators file with State if State grants relief.

[1] Note: EP toxicity characteristic may still be in effect under state law. States that have ash exemptions may determine whether they want to provide similar relief for EP permitting deadline.

(i) States with no ash exemption.

Since states may maintain more stringent RCRA programs, some states may never have exempted ash from hazardous waste requirements. The *City of Chicago* decision has no impact in these states. No permit deadline extensions are needed.

(ii) States with unauthorized ash exemptions.

EPA knows that, during the years of confusion over the status of ash, some states exempted ash from their Subtitle C programs. Most of these states, however, did not submit these provisions to EPA for authorization reviews. Although they arguably may have made the state programs less stringent than the federal program, EPA would have taken no action to force the states to eliminate them.

(A) Effect of court's decision.

Some of these states adopted provisions resembling 3001(i) and interpreted them to exempt ash. Whether the *City of Chicago* decision requires these states to abandon these interpretations is an issue of state law that can be answered authoritatively only by state officials.

Other states promulgated rules under their solid waste authorities that established ash-specific management standards that implicitly—or explicitly—transferred ash management from their hazardous waste programs to their solid waste programs. The status of these provisions is again an issue of state law.

(B) Effect of today's deadline extension.

Since the state never obtained authorization for its exemption for ash, its authorized program still regulates ash as a hazardous waste. The regulated

community, however, could have been confused about the status of ash, so the relief provided by the deadline extension would be appropriate. Whether or not the extension is in effect, however, depends on which entity is authorized to implement the TC. As explained above, where EPA implements the TC, it will apply today's notice. Where states implement the TC, today's notice cannot operate to revise state permit rules. The state would need to determine whether it wanted to provide equivalent relief.

(C) Requirements for program revision.

As a result of the court's decision, states with unauthorized ash exemptions now have state law requirements that are less stringent than the federal Subtitle C program. EPA is today notifying those states that they must revise their laws and regulations to eliminate the less stringent provisions. Although EPA is not today initiating any withdrawals of state programs, it advises states to take timely action to eliminate their ash exemptions. Since these provisions are not part of states' authorized RCRA programs, no Subtitle C program revisions will be necessary. Rather, EPA advises states to notify Regional Offices informally by letter when they have eliminated their exemptions.

(D) Where to file Part A applications.

Where EPA implements the TC, owners and operators must file Part A applications with the appropriate EPA Regional Office.

Where a state that is authorized to implement the TC decides to extend the filing deadline, owners and operators must file with the state hazardous waste agency.

(iii) States with authorized ash exemptions.

EPA may have authorized a few ash exemptions during the late 1980's and early 1990's. EPA has not found any such authorization during a limited review prior to the publication of this emergency notice. Consequently, EPA believes that there are very few states in this category. Nevertheless, in case such states exist, EPA is explaining their obligations.

(A) Effect of court decision.

Whether or not the decision affected the state law or rule that EPA authorized is a state law issue. State officials will need to make that determination. If a state determines that its state provision is still in effect, both the state law and the authorized RCRA program will continue to exempt ash until such time as the state revises its program and obtains EPA approval for its revision.

(B) Effect of today's permit deadline extension.

If ash is still exempt under both state law and the authorized program, no permits are currently required. Today's filing date extension would not take effect. As explained in (D.) below, in some cases EPA will announce an extension when it approves a revision eliminating an ash exemption.

(C) State program revisions.

Where ash exemptions remain in effect, state programs will be less stringent than the federal program. Formal state program revisions, including notice and comment rulemaking, will be required under 40 CFR 271.21(e)(2)(ii). The deadline for these revisions will be July 1, 1995 under 40 CFR 271.21(e)(2)(ii). An additional year is available where states must make statutory changes. 40 CFR 271.21(e)(2)(v).

(D) Where to file Part A applications.

At the time that the state receives EPA authorization for the revision that eliminates its ash exemption, if EPA is still implementing the TC, it will make a finding of substantial confusion and extend the Part A deadline for that state. Owners and operators desiring interim status will need to file applications with the appropriate EPA Regional Office. EPA will not be able to provide this relief where a state is authorized to implement the TC. Those states must determine whether they want to extend permit deadlines. If they do, owners and operators wishing to obtain interim status will need to file applications with the appropriate state agency.

B. Land Disposal Restrictions

The LDRs are HSWA rules initially implemented by EPA. Moreover, EPA has established that it will not delegate its authority to set treatment standards to states. EPA views determinations linked to the need for and scope of treatment standards as similarly nondelegable. This includes today's interpretation that ash from waste-to-energy facilities is a newly identified waste under section 3004(g)(4). This interpretation is effective in all states, including those authorized to implement the delegable portions of the land disposal restrictions.

VII. Good Cause Finding

Section 270.10(e)(2) does not require notice and comment rulemaking for substantial confusion notices. Rather, it simply requires EPA to publish a "notice" in the **Federal Register**. To the extent that this notice is a rulemaking for the purposes of section 553 of the Administrative Procedure Act (APA), EPA believes that it has "good cause" under section 553(b)(3)(B) of the APA to extend the permit application deadline without prior notice and opportunity for comment. First, EPA believes that its determination regarding the existence of regulatory confusion is an "interpretative rule" for which notice and comment is not required under section 553(b)(3)(A) of the APA. It clarifies and explains existing law rather than creating new duties. Moreover, the establishment of a due date for Part A permit applications is a procedural rule also exempt from notice and comment under section 553(b)(3)(A) of the APA. The effect of establishing this new date is that EPA will not take enforcement action for operation without a RCRA permit against a facility that submits its application in compliance with this notice and that meets the other conditions of RCRA section 3005(e). Finally, EPA views the issues of whether confusion existed and whether it was "substantial" as subjects on which comment would not be useful and would not serve the public interest.

EPA's findings concerning the land disposal restrictions are also "interpretative rules" exempt from notice and comment requirements. They provide EPA's views on the scope of section 3004(g)(4) of RCRA. Moreover, EPA would have good cause to eliminate notice and comment even if these determinations are regarded as legislative rules. The land disposal restrictions would take effect for ash approximately 25 days after the Court issued its opinion. It would be impossible for facilities managing ash to come into compliance with the restrictions in that short time. See 55 FR 22521 (June 1, 1990) (Third Third LDR rule—EPA provides 90 days for persons managing wastes subject to new treatment standards to come into compliance.) The Court's decision thus creates an emergency justifying use of the "good cause" exemption under section 553(b)(3)(B) of the APA.

VIII. Regulatory Requirements

A. Executive Order 12866

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it involves novel policy issues arising out of legal mandates. However, OMB waived review of this action.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C 601 *et seq.*) requires the Agency to prepare and make available for public comment, a regulatory flexibility analysis that describes the impact of a

proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The ruling of the Supreme Court in *City of Chicago* v. *Environmental Defense Fund, Inc.* will result in additional costs for waste management facilities and some of those costs will be borne by small entities. The Agency does not have estimates of those costs. Today's rule extends the date by which affected facilities must submit a Part A permit application. This action will lower the costs to small entities that will have to comply with the Court's ruling. Therefore, pursuant to 5 U.S.C. 605b, I certify that this regulation will not have a substantial impact on small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2050–0009; 2050–0120; 2050–0028; 2050–0034; 2050–0039; 2050–0035 ; 2050–0024.

This collection of information has an estimated average burden per respondent as stated below:

OMB No.	Title	New respondents	Average burden (hours)	Total additional burden (hours)
2050–0009	Part B Permit Application	6	242	1457
2050–0120	General Facility Standards	6	91	547
2050–0028	Notification (for EPA ID)	62	4.35	270
2050–0034	Part A Permit Application	68	72	4903
2050–0039	Hazardous Waste Manifest	12	1.8	22
2050–0035	Generator Standards	62	1.1	68
2050–0024	Biennial Report	62	20	1240

These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Dated: May 27, 1994.

Carol M. Browner,

Administrator

[FR Doc. 94–13668 Filed 6–6–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–121; Amdt. 195–51]

RIN 2137–AB 46

Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule provides that operators may not transport a hazardous liquid in a steel interstate pipeline constructed before January 8, 1971, a steel interstate offshore gathering line constructed before August 1, 1977, or a steel intrastate pipeline constructed before October 21, 1985, unless the pipeline has been pressure tested hydrostatically according to current standards or operates at 80 percent or less of a qualified prior test or operating pressure. In addition, this final rule creates a comparable requirement for carbon dioxide pipelines constructed before July 12, 1991, except for production field distribution lines in rural areas. The purpose of this final rule is to ensure that the affected pipelines have an adequate safety margin between their maximum operating pressure and test pressure. This safety margin is essential to prevention of particular kinds of pipeline accidents.

EFFECTIVE DATES: The changes to part 195, except § 195.306(b), take effect July 7, 1994. The final rule under § 195.306(b) takes effect August 8, 1994, unless RSPA receives, by July 7, 1994, comments that illustrate that disallowing the use of petroleum as a test medium for pressure testing required by this rulemaking is not in the public interest. Upon receipt of such comments, RSPA will publish a document in the **Federal Register** withdrawing the final rule under § 195.306(b).

ADDRESSES: Written comments must be submitted in duplicate and mailed or hand-delivered to the Dockets Unit, room 8421, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Identify the docket and amendment number stated in the heading of this notice. Comments will become part of this docket and will be available for inspection or copying in room 8421 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow, (202) 366–2392, regarding the subject matter of this final rule document, or Dockets Unit (202) 366–4453, for copies of this final rule document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

Any steel pipeline may contain hidden physical defects that result from the manufacture or transportation of pipe and from pipeline construction. Over the operational life of the pipeline, new physical defects can be created by external forces acting on the pipeline. When a physical defect is large enough, it can cause the pipeline to fail during operation. Also, during pipeline operation, internal or environmental stresses can cause smaller defects to grow and become large enough to cause the pipeline to fail.

Adequate pressure testing can disclose hidden physical defects in a pipeline. Pressure testing involves raising a pipeline's internal pressure above its maximum operating pressure (MOP) for a time sufficient for leaks to develop from defects. A test that is adequate in pressure level and duration will disclose physical defects that are large enough to cause pipeline failure

during operation. In addition, an adequate pressure test will provide a proven margin of safety against failure during operation from the growth of defects.

Line pipe research has demonstrated that 125 percent of MOP is the minimum test level adequate to protect hazardous liquid pipelines against failure in operation from physical defects. A pressure test at this level for a sufficient duration provides a 25 percent proven margin of safety against failures caused by the growth of physical defects.

Under § 195.302, new steel pipelines must be pressure tested to provide at least a 25 percent proven margin of safety. Hazardous liquid pipelines must be pressure tested hydrostatically, but carbon dioxide pipelines may be tested pneumatically, using inert gas or carbon dioxide as the test medium (see § 195.306). Portions of existing steel pipelines that are replaced, relocated, or otherwise changed are also subject to this pressure testing requirement. The requirement became effective as follows for pipelines subject to part 195: January 8, 1971, for interstate pipelines transporting hazardous liquid (35 FR 17183); August 1, 1977, for interstate offshore gathering lines transporting hazardous liquid (41 FR 34039); October 21, 1985, for intrastate pipelines transporting hazardous liquid (50 FR 15895); and July 12, 1991, for pipelines transporting carbon dioxide in a supercritical state (56 FR 26922).

Section 195.302 also requires that certain older pipelines transporting highly volatile liquids (HVL) must have at least a 25 percent proven margin of safety. These pipelines are onshore steel interstate pipelines constructed before January 8, 1971, and onshore steel intrastate pipelines constructed before October 21, 1985. If an older HVL pipeline has not been hydrostatically tested to part 195 standards, § 195.302(b) permits operators to provide the proven margin of safety either by hydrostatic testing or by establishing the pipeline's MOP under § 195.406(a)(5) at 80 percent or less of a qualified prior test or operating pressure. Establishing MOP under § 195.406(a)(5) and hydrostatic testing to part 195 standards provide equivalent proven margins of safety.

Apart from these older HVL pipelines, the 25 percent proven margin-of-safety requirement does not apply to older pipelines constructed before the dates (stated above) the pressure testing requirement went into effect for new pipelines. Consequently, many older pipelines subject to part 195 are not operated with a minimum 25 percent proven margin of safety. It was not common industry practice to test to at least 125 percent of MOP or to test to that pressure level for a sufficient duration.

Notice of Proposed Rulemaking

Older pipelines that do not have a minimum 25 percent proven margin of safety are more susceptible to failures from defect growth in service than pipelines that meet the part 195 pressure testing requirements. They are also more susceptible to faihure from defect growth during instances of overpressure permitted by § 195.406(b). This increased potential for failure is prevalent in pipelines made of pre-1970 electric resistance welded (ERW) pipe.

RSPA's pipeline accident statistics show the benefits of requiring older pipelines to have a minimum 25 percent proven margin of safety. September 15, 1985, was the date by which onshore interstate pipelines constructed before January 8, 1971, that transport HVL had to have a minimum 25 percent proven margin of safety. By that date these pipelines had to have been pressure tested hydrostatically to part 195 requirements or operated at 80 percent or less of a qualified prior test or operating pressure. To learn the effect of the 25-percent-safety-margin requirement, RSPA compared the period for which accident data were available before the requirement was adopted with the period from September 15, 1985, through December 31, 1989. Onshore HVL interstate pipelines had a 68 percent lower rate of failure from material defects and corrosion during the latter period. RSPA attributed this dramatic drop in failure rate to the 25-percent-safety-margin requirement imposed on the older onshore HVL interstate pipelines. In addition, RSPA concluded that operators could achieve a comparable reduction in failure rate on all other older pipelines subject to part 195 that lack an adequate proven margin of safety.

To bring about this reduction in failure rate, RSPA published a Notice of Proposed Rulemaking (NPRM) (Docket PS–121; 56 FR 23538, May 22, 1991) on testing older pipelines. The notice proposed to extend the part 195 requirement for a proven margin of safety to all pipelines that are covered by part 195 but excepted from the testing standards in subpart E of part 195. These pipelines are (1) hazardous liquid steel interstate pipelines constructed before January 8, 1971, other than onshore HVL pipelines; (2) hazardous liquid steel interstate offshore gathering lines constructed before August 1, 1977; (3) hazardous liquid steel intrastate pipelines constructed before October 21, 1985, other than onshore HVL pipelines; and (4) carbon dioxide steel pipelines constructed before July 12, 1991.

In the NPRM, RSPA also discussed the unique safety problems with longitudinal seams on ERW pipe manufactured before 1970. RSPA proposed that operators give pipelines with a predominance of pre-1970 ERW pipe priority in scheduling tests. Under this proposal, testing of pipelines known to have more than 50 percent (by mileage) of pre-1970 ERW pipe would have to be completed within 4.5 years after a final rule is published.

Thirteen persons submitted written comments on the NPRM: 11 pipeline operators, the American Petroleum Institute (API), and the U.S. Department of the Interior (DOI). A discussion of the significant comments and their disposition in development of the final rules follows.

General Comments

Most commenters discussed specific problems they anticipated in carrying out the rulemaking proposals, without objecting to them outright. DOI favored adoption of the proposals, especially for offshore pipelines. One commenter, a major operator of hazardous liquid pipelines, clearly supported the proposed rules. A few other operators hedged their apparent agreement with the proposals by suggesting RSPA allow smart pigs as a substitute for pressure testing or MOP reduction, an issue discussed separately below. Another operator asserted that RSPA should require pressure testing or MOP reduction only where risk is heightened by factors such as adverse leak or corrosion history, environmental sensitivity, or high population. Only two operators strongly objected to the proposals. But, they aimed their remarks at carbon dioxide pipelines, and as discussed below, the final rule addresses their concerns. By and large, RSPA believes the commenters supported the objective of the notice concerning older untested or inadequately tested hazardous liquid pipelines.

Limiting the application of the proposed rules to older pipelines that have an increased risk of failure or that are near environmentally sensitive areas or a large number of people does not sufficiently address safety concerns. The problem of the growth of defects is common among all pipelines regulated by part 195. It is not limited to pipelines that are in a worrisome condition or a high risk location. For such problems, RSPA believes that all pipelines should

provide a basic level of protection. The proposals in the NPRM were consistent with this view. They would assure that older pipelines provide at least the same basic level of protection against the growth of defects as newer pipelines must provide. Also, limiting the proposed rules to pipelines that involve some added element of risk would leave many miles of older pipelines without adequate protection against failures caused by the growth of defects. RSPA strongly believes these potential failures and preventable damages should not go unchecked.

Pump Stations and Tank Farms

API and two operators argued that the proposed rules should not apply to pump stations, tank farms, or tank farm delivery facilities. They said compliance would be an extremely time-consuming task because of the many fittings, valves, tanks, and instrumentation. API also suggested the benefits would be questionable since most accidents, as described in the NPRM, occur on pipeline rights-of-way.

Part 195 has limited application at tank farms. In general, it applies to only receiving and reinjection lines, to tanks used as breakout tanks, and to facilities associated with breakout tanks.

Although the job of testing pump station and breakout tank facilities may be time-consuming, it is crucial to ensure public safety and protect the environment. Population has encroached on the older pump stations and tank farms since their construction, increasing their threat to public safety. Also, slow leaks at tank farms have polluted ground water and endangered neighborhoods.

In considering the issue of pump stations and tank farms, RSPA examined the existing rule in § 195.302 regarding the testing of older onshore HVL pipelines. Except for tank farm facilities to which the rule does not apply, § 195.302 does not exclude any of the facilities the commenters suggested RSPA exclude from the present rulemaking. RSPA believes non-HVL facilities should not be treated differently. Leaks at non-HVL hazardous liquid facilities can have fire and pollution consequences. Also, even minor accidents at breakout tanks in tank farms have the potential to become uncontrollable emergencies because of proximity to other large volume hazardous liquid storage tanks. Therefore, RSPA has adopted the final rule as proposed concerning pump stations and breakout tanks. The demands of testing these facilities should be mitigated, however, by the compliance deadlines, which are discussed next.

Compliance Deadlines

RSPA proposed a deadline of 1 year after publication of the final rule for operators to plan and schedule testing or to reduce MOPs. RSPA also proposed a deadline of 4.5 years after publication of the final rule for testing all pipelines with more than 50 percent pre-1970 ERW pipe, and for testing at least 50 percent of all other pipelines. Finally, RSPA proposed that operators complete all testing within 7.5 years after publication of the final rule.

One operator argued that RSPA should allow operators to use the entire test period to plan testing or to reduce MOPs. This commenter said that planning for testing or reduction in MOP would involve complicated analyses that would take longer than 1 year. The commenter also said any plan may need to be changed because of unforeseen operational problems that may arise during the test period.

RSPA proposed a 1-year deadline to assure that operators start their testing program early in the test period. Early planning is necessary to minimize unexpected delays and assure that operators complete testing within the time allowed. Also, RSPA assumed that when operators plan to reduce MOP, the reduction could be done without lengthy preparations. Further, RSPA strongly believes any MOP reduction should be done early in the program to lessen the continuing risk to the public. If unforeseen testing or operational problems arise during the test period, an operator could modify its initial testing plan and schedule as needed to resolve those problems. Of course, any modified plan or schedule would still have to provide for completion of testing before the applicable deadline.

The proposed 1-year deadline for MOP reduction or planning and scheduling testing was the same amount of time that § 195.302 allowed for similar activities on the older onshore HVL pipelines. However, the process will involve more mileage than it did for onshore HVL pipelines. Also, RSPA expects operators will need further planning to maintain the product-supply requirements of their customers. Therefore, RSPA has extended the proposed planning and scheduling deadline to 1.5 years in the final rule.

Another operator thought the proposed test period for pre-1970 ERW pipelines was unfair to operators who have many of these pipelines. These operators would not be able to spread costs and impacts on operations over as much time as other operators. This commenter suggested that an equitable approach would be to require that operators give pre-1970 ERW pipelines priority in testing over the full test period.

RSPA proposed a shorter test period for the pre-1970 ERW pipelines because these pipelines have unique safety problems. The unique problems cause pre-1970 ERW pipelines to have a greater potential for failure than other older pipelines. Since pre-1970 ERW pipelines pose a greater risk, requiring operators to test them sooner than other older pipelines is critical to safety.

API declared that the proposed testing periods would create an undue hardship on consumers and the pipeline industry. It suggested RSPA lengthen the period to 10 years for all older pipelines, with testing priorities based on risk. Operators and shippers need the additional time, API said, so the nation's pipeline network can adapt to the impact of the testing program on the market. The operators and shippers would use the time to arrange alternative transportation and to prevent regional supply disruptions.

Using similar reasoning, two operators also urged us to allow more time for testing. One operator thought a reasonable period would be 7 years for pre-1970 ERW pipelines, and 10 years for the others. The other operator thought the periods should be 5 and 10 years, respectively.

RSPA, too, is concerned about the potential adverse impact on the nation's fuel supplies that could result from testing thousands of miles of pipelines. Aside from the substantial planning that must be done before testing, many operators will need time to obtain waste water disposal permits from various jurisdictions. Operators will need time to prepare pipeline systems for testing and to arrange for personnel and equipment to conduct the tests.

System changes and actual testing must be coordinated with product-supply operations to minimize the impact on refineries, distributors, and users of the transported products. Also, operators need time to assure that testing is done safely, with the least environmental risk, and in accordance with applicable Federal and State regulations. However, RSPA weighed these time demands in deciding upon the compliance deadlines proposed in the NPRM. None of the commenters who addressed the compliance-time issue substantiated their opinions that more time should be allowed. Although it is admittedly difficult to predict how much time is appropriate, the comments do not convince us that there are too many pre-1970 ERW pipelines to test in

4.5 years or that a decade is needed to complete testing of all other pipelines. Therefore, the final rule adopts the testing deadlines as proposed.

RSPA has not adopted API's suggestion to allow 10 years for all older pipelines, with priorities based on risk, because the unique problems of pre-1970 ERW pipelines demand correction sooner. Also, considering the mileage involved, the potential savings from reusing test water, and the need to minimize market impacts, API's suggestion would further complicate the development of test schedules. Still, the final rule does provide operators flexibility in planning and scheduling tests. When feasible, operators could use this flexibility to select pipelines for testing according to leak history or other risk factors. RSPA encourages such testing priorities provided all required testing is completed within the periods allowed.

Charts or Logs

Two operators commenting on proposed § 195.406(a)(5) asked us not to limit allowable documentation of prior tests or operating pressures to recording charts or logs. They said the industry has never had to keep these charts and logs for older pipelines, and many have been lost. They suggested that the final rule allow alternative documentation, such as construction specifications, pipeline completion reports, and affidavits from responsible people.

Considering the importance of a minimum 25 percent proven margin of safety to the integrity of pipelines, public safety cannot tolerate doubts about whether a pipeline has been adequately tested. Only recording charts or logs made at the time of prior testing or operations show with certainty that the minimum margin exists for the pipeline concerned. Alternative documentation, including specifications, reports, or affidavits, is less probative. Such evidence leaves some room for doubt because it does not result directly from pipeline testing or operation. Although recording charts and logs may no longer be available for some older pipelines, RSPA does not believe a lack of proper records justifies allowing a lesser level of proof for a matter so serious as pipeline integrity. Therefore, the final rule allows only recording charts or logs to document a prior test or operating pressure.

Another operator was concerned that the documentation available for use under the proposed revision of § 195.406(a)(5) may not meet existing § 195.310. For example, the operator said calibration data may not be available. Section 195.310 specifies the records operators must keep for each pressure test required by subpart E of part 195. Section 195.310 does not affect the documentation required by existing § 195.406(a)(5), and would not affect documentation under the proposed revision of § 195.406(a)(5). Thus, operators need not have documentation under final § 195.406(a)(5) in the same detail as § 195.310 requires.

Permits for Disposal of Test Water

When existing petroleum pipelines are pressure tested hydrostatically, the testing process introduces hydrocarbons into the test water. If test water picks up unacceptable quantities of hydrocarbons, the National Pollutant Discharge Elimination System (NPDES) governs its discharge into the environment. (See 40 CFR parts 122–124.) The NPDES is a regulatory program administered by the U.S. Environmental Protection Agency (EPA) in cooperation with qualified State agencies under the Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. 1251 *et seq.*).

Several commenters were concerned that the procedure of obtaining NPDES permits from State agencies and EPA for treatment and disposal of test water could significantly delay testing. This potential for delay probably would be limited to areas where operators do not transport test water to refineries for treatment and discharge, or do not store it for use in subsequent tests. Although none of the commenters estimated the time that would be needed to secure the NPDES permits, RSPA has considered this potential for delay in setting deadlines for compliance.

Two operators and API suggested that RSPA somehow help the industry in obtaining from EPA a general NPDES permit for the disposal of treated test water. They also requested our assistance in obtaining a general waiver of the EPA requirement to measure the toxicity of test water. API said these actions would provide flexibility for efficient scheduling and implementation of testing.

EPA has procedures for issuing permits and waivers under its NPDES program. EPA's decisions on applications for permits and waivers depend on facts known to the industry. Under these circumstances, RSPA believes an operator is the appropriate party to apply for permits or waivers.

To hasten the process, RSPA will notify EPA of this final rule. RSPA will urge that agency to give prompt attention to requests for NPDES permits involving disposal of test water used to comply with the final rule. RSPA will also ask EPA to request its cooperating State agencies to give prompt attention to requests for permits and waivers.

Smart Pig Alternative

Several operators and API recommended that the final rule allow the use of smart pigs (internal inspection devices) as an alternative to pressure testing for all pipelines, except the pre-1970 ERW pipelines. Two of these operators said pigging is superior to pressure testing because it shows where potential problems lie. Two operators thought pigging is better at finding corrosion problems, particularly deep isolated pits that may survive a pressure test. One operator and API argued that smart pigs could alleviate potential disruptions of service and many environmental and scheduling problems.

Despite the capabilities of smart pigs, RSPA knows of no evidence that they can provide satisfactory long-term protection against the growth of defects. Only a minimum 25 percent proven margin of safety between MOP and a previous test or operating pressure is generally recognized as able to provide this protection.

Various manufacturers have significantly improved the data collection and recording capabilities of smart pigs. The ability of trained personnel to interpret recorded pig data has also improved. Yet smart pigs still cannot detect as many pipeline defects that could grow to failure during operation as can an adequate pressure test. Longitudinal defects, like cracks in a longitudinal weld seam, are particularly resistant to detection by smart pigs. More important, an adequate pressure test provides a basis for safe operation, with a proven margin of safety against the growth of defects that survive the test. Smart pigs cannot provide such a margin of safety. Thus, they are not an adequate substitute for pressure testing in achieving the objectives of this rulemaking proceeding.

Carbon Dioxide Pipelines

Two operators argued that RSPA should not adopt the proposed rules for older carbon dioxide pipelines, particularly production field distribution lines. They offered various reasons to exempt carbon dioxide pipelines:

- Carbon dioxide is non-polluting.
- The pipelines are relatively new, having been constructed in the 1980s.
- The pipelines have been pressure tested hydrostatically, but perhaps not to part 195 standards.

- The failure data used as a basis for the proposed rules did not include carbon dioxide pipelines.
- After hydrostatic pressure testing, carbon dioxide pipelines must be dehydrated, an expensive process that is not applicable to hazardous liquid pipelines.
- Pneumatic testing with carbon dioxide or inert gas poses a greater risk than hydrostatic testing because of the high pressures at which supercritical carbon dioxide pipelines operate.
- The alternative of MOP reduction would dramatically reduce enhanced oil recovery rates.

As for carbon dioxide distribution lines, the two operators said these pipelines generally are smaller than transmission lines, and only affect isolated areas in oil production fields. The commenters said pressure testing of carbon dioxide distribution systems would seriously disrupt oil field operations. One of these operators said that over 50 separate tests may be needed to minimize disruption, depending on the layout of the distribution system.

In view of these comments, RSPA has reviewed both the need to apply the proposed rules to carbon dioxide pipelines and the burden of compliance. Carbon dioxide pipelines have not been subject to part 195 long enough for us to develop an accident history for them. Still, because of their similarity to hazardous liquid pipelines, untested or inadequately tested carbon dioxide pipelines can fail in service from the growth of physical defects, whatever the pipeline's age. Although carbon dioxide is non-polluting and nonflammable, any failure that releases large quantities of carbon dioxide would expose nearby persons to the risk of suffocation.

This risk is less, however, for production field distribution lines that transport carbon dioxide than for transmission lines that transport carbon dioxide. Compared to transmission lines, which move large volumes of carbon dioxide over long distances, individual pipelines in a production field distribution system carry smaller volumes over localized areas. Normally these areas are rural. In addition, the burden of compliance would be greater for field distribution systems than for transmission lines. Testing field distribution systems could disrupt oil production and require a multiplicity of tests to minimize that disruption. RSPA believes this combination of decreased risk and increased burden of compliance justifies excluding from the final rule production field distribution lines that are in a rural area. As defined in § 195.2, the term "rural area" means "outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, or community development."

In the final rules, § 195.302(b)(2)(ii) reflects our decision to exclude older carbon dioxide field distribution lines in rural areas from the 25-percent-safety-margin requirement. Consistent with the present pressure testing requirement, any portion of these older lines that is replaced, relocated, or otherwise changed on or after July 12, 1991, or any older line converted to carbon dioxide service under § 195.5 would have to be pressure tested to at least 1.25 times its MOP.

Test Pressure

In the NPRM, RSPA proposed to redesignate existing § 195.302(c), concerning the level and duration of test pressure, as new § 195.303. RSPA received no comments on this proposal, and has adopted it as final. However, the term "hydrostatic test" is replaced by "pressure test" because under existing requirements, carbon dioxide pipelines may be pressure tested either pneumatically or hydrostatically.

Test Medium

In most cases, operators must use water as the hydrostatic test medium for hazardous liquid pipelines (§ 195.306(a)). However, under specified conditions, onshore pipelines may be tested with petroleum that does not vaporize rapidly (§ 195.306(b)).

This exception allowing operators to use petroleum as the test medium was established when only newly constructed pipelines were subject to hydrostatic testing under part 195. Newly constructed pipelines are less likely to rupture during a hydrostatic test than pipelines that have been in operation for a number of years and never tested or inadequately tested. Therefore, RSPA is concerned that if existing pipelines subject to testing under the final rule were tested with petroleum, operators would not be able to contain all the petroleum that would spill from ruptures. To preclude this outcome, RSPA has revised § 195.306(b) to prohibit the use of petroleum as a test medium in pressure testing pipelines to meet the final rule.

Although RSPA's NPRM did not propose to limit the use of petroleum, the NPRM asked operators to estimate the pipeline mileage they would test with petroleum to learn the extent to which operators might use petroleum instead of water as the test medium. Only four operators responded, and the answers ranged from none to practically none. Based on this information and RSPA's experience in administering the hydrostatic testing rules of part 195, disallowing the use of petroleum as a test medium under the final rule should not significantly affect the burden of compliance with the rule.

Although RSPA believes this action is within the scope of the NPRM, because we did not specifically propose it, § 195.306(b) will be effective August 8, 1994, unless by July 7, 1994, RSPA receives comments that illustrate that this final rule is not in the public interest. Upon receipt of such comments, RSPA will withdraw § 195.306(b) before the effective date by simultaneously publishing two subsequent documents. One document will withdraw this section of the final rule. The other will announce a proposal to disallow the use of petroleum as a test medium for pressure testing required by this rulemaking and establish a new comment period. If RSPA does not receive comments that illustrate that § 195.306(b) is not in the public interest, RSPA will publish a notice advising that § 195.306(b) will be effective on August 8, 1994.

Advisory Committee Review

RSPA presented a draft of the NPRM to the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) for its consideration at a meeting in Washington, DC on September 14, 1988. THLPSSC is RSPA's statutory advisory committee for hazardous liquid pipeline safety. It is comprised of 15 members, representing industry, government, and the public, who are technically qualified to evaluate liquid pipeline safety.

THLPSSC's discussion of the draft centered on cost of compliance; problems of compliance, such as waste water disposal; and the smart-pig alternative. THLPSSC voted not to support the draft NPRM primarily because RSPA had not yet demonstrated that the proposed rules were cost beneficial.

At a meeting on September 14, 1989, RSPA updated THLPSSC on the status of the draft NPRM. Committee members discussed many issues, including product supply to customers, disposal of test water, and the time needed for compliance. Although no vote was taken, THLPSSC members representing industry indicated agreement with the need to test the older untested or inadequately tested pipelines.

RSPA has decided to adopt final rules in this proceeding despite THLPSSC's negative vote in 1988. RSPA did so because THLPSSC's primary concern

...was that the rules be cost beneficial, and ...al regulatory evaluation supports that conclusion. Also, RSPA has ...ressed THLPSSC's other concerns ...where in this preamble in response ...milar concerns raised by ...mmenters. The THLPSSC's report ... 1988 and 1989 meetings are ...ilable in the dock...

...ing

Wording of Final Rules

...e final rules are worded differently ...n the proposed rules. However, other ...n the substantive changes discussed ...bove, the changes in wording are for ...terial or clarification purposes. In ...veral existing rules, the word "hydrostatic" or "hydrostatically" is ...placed by "pressure," because under subpart E carbon dioxide pipelines may ...e pressure tested either hydrostatically ...r pneumatically. Also, the title of subpart E is changed from "Hydrostatic Testing" to "Pressure Testing." In §§ 195.304(b)(1) and (2), the word "hydrostatically" is not changed to "pressure," because these rules concern factory testing of components, not post-construction pipeline testing.

Paperwork Reduction Act

This final rule incrementally increases the current information collection burden under § 195.310. Section 195.310 requires operators to keep certain records of each test required by subpart E of part 195 for as long as the tested facility is in use. The Office of Management and Budget (OMB) has approved this increased burden under the Paperwork Reduction Act of 1980, as amended (44 U.S.C. chap. 35). The OMB approval number is 2137–0047.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is a significant regulatory action under Executive Order 12866. Therefore, it was reviewed by the Office of Management and Budget. In addition, the final rule is significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979) because it involves a substantial change in regulations affecting certain existing pipelines.

Several operators and API suggested revisions to the draft "Economic Evaluation" RSPA prepared in support of the NPRM. Also, some of these commenters and others responded to our specific requests in the NPRM for information to aid us in assessing the impact of the final rule. How RSPA dealt with these comments is discussed in the final regulatory evaluation, a copy of which is in the docket. The final regulatory evaluation shows net benefits resulting from the final rule.

Regulatory Flexibility Act

Based on the facts available about the anticipated impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the action will not have a significant economic impact on a substantial number of small entities, because few, if any, small entities operate pipelines subject to part 195.

...12612

This rulemaking action will not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612 (52 FR 41685), RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

National Environmental Policy Act

RSPA has analyzed this action for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and has determined that this action would not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact are in the docket.

List of Subjects in 49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends part 195 of title 49 of the Code of Federal Regulations as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2001 *et seq.*; 49 U.S.C. 5101 *et seq.*

Subpart E—[Amended]

2. The title of subpart E is revised to read as follows: "Subpart E—Pressure Testing".

3. Section 195.300 is revised to read as follows:

§ 195.300 Scope.

This subpart prescribes minimum requirements for the pressure testing of steel pipelines. However, this subpart does not apply to the movement of pipe under § 195.424.

4. Section 195.302 is revised to read as follows:

§ 195.302 General requirements.

(a) Except as otherwise provided in this section and in § 195.304(b), no operator may operate a pipeline unless it has been pressure tested under this subpart without leakage. In addition, no operator may return to service a segment of pipeline that has been replaced, relocated, or otherwise changed until it has been pressure tested under this subpart without leakage.

(b) Except for pipelines converted under § 195.5, the following pipelines may be operated without pressure testing under this subpart:

(1) Any hazardous liquid pipeline ... maximum operating pressure ... § 195.406(a)(5);

(2) An interstate pipeline constructed before January 8, 1971;

(3) An interstate offshore gathering line constructed before August 1, 1977;

(4) An interstate pipeline constructed before October 21, 1985;

(5) Any carbon dioxide pipeline constructed before July 12, 1991, that—

(i) Has its maximum operating pressure established under § 195.406(a)(5); or

(ii) Is located in a rural area as part of a production field distribution system.

(c) Except for onshore pipelines that transport HVL, the following compliance deadlines apply to pipelines under paragraphs (b)(1) and (b)(2)(i) of this section that have not been pressure tested under this subpart:

(1) Before December 7, 1995, for each pipeline each operator shall—

(i) Plan and schedule testing according to this paragraph; or

(ii) Establish the pipeline's maximum operating pressure under § 195.406(a)(5).

(2) For pipelines scheduled for testing, each operator shall—

(i) Before December 7, 1998, pressure ...

(A) Each pipeline identified by name, symbol, or otherwise that existing records show contains more than 50 percent by mileage of electric resistance welded pipe manufactured before 1970, and

(B) At least 50 percent of the mileage of all other pipelines; and

(ii) Before December 7, 2001, pressure test the remainder of the pipeline mileage.

5. Section 195.303 is added to read as follows:

§ 195.303 Test pressure.

The test pressure for each pressure test conducted under this subpart must be maintained throughout the part of the

system being tested for at least 4 continuous hours at a pressure equal to 125 percent, or more, of the maximum operating pressure and, in the case of a pipeline that is not visually inspected for leakage during the test, for at least an additional 4 continuous hours at a pressure equal to 110 percent, or more of the maximum operating pressure

§ 195.304 [Amended]

6. In § 195.304, in paragraph (a), the word "hydrostatic" is removed and the word "pressure" is added in its place; and in the introductory text of paragraph (b), the word "hydrostatically" is removed and the word "pressure" is added in its place

7. The introductory text of § 195.306(b) is revised to read as follows

§ 195.306 Test medium.

* * * * *

(b) Except for offshore pipelines and pipelines to be tested under § 195.302(c), liquid petroleum that does not vaporize rapidly may be used as the test medium if--

* * * * *

§ 195.308 [Amended]

8. In § 195.308, the word "hydrostatically" is removed and the word "pressure" is added in its place.

§ 195.310 [Amended]

9. In § 195.310(a), the word "hydrostatic" is removed and the word "pressure" is added in its place.

10. In § 195.406, in paragraph (a)(3), the word "hydrostatically" is removed and the word "pressure" is added in its place; and paragraph (a)(5) is revised to read as follows:

§ 195.406 Maximum operating pressure

(a) * * *

(5) For pipelines under §§ 195.302(b)(1) and (b)(2)(i) that have not been pressure tested under subpart E of this part, 80 percent of the test pressure or highest operating pressure to which the pipeline was subjected for 4 or more continuous hours that can be demonstrated by recording charts or logs made at the time the test or operations were conducted.

* * * * *

Issued in Washington, DC, on May 27, 1994.

Ana Sol Gutiérrez,

Acting Administrator, RSPA

[FR Doc. 94-13806 Filed 6-6-94, 8:45 am]

BILLING CODE 4910-60-P

Proposed Rules

Federal Register
Vol. 59, No. 108
[illegible], June 7, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

8 CFR Parts 1, 3, 103, 208, and 242

[AG Order No. 1878–94]

Executive Office for Immigration Review; Motions and Appeals in Immigration Proceedings

AGENCY: Department of Justice

ACTION: Proposed rule.

SUMMARY: This proposed rule amends Executive Office for Immigration Review regulations concerning motion and appeal practice in immigration proceedings. The rule is being promulgated to implement the directives of section 545 of the Immigration Act of 1990 ("IMMACT"). Both time and number limitations on motions to reopen proceedings or to reconsider decisions have been proposed in accordance with section 545(d) of IMMACT, and will reflect the intent of Congress to streamline the deportation proceedings of aliens in the United States.

DATES: Written comments must be received on or before August 8, 1994.

ADDRESSES: Please submit written comments to Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION: Section 545 of the Immigration Act of 1990, Public Law 101–649 (8 U.S.C. 1252b), modifies both substantive and procedural aspects of motion and appeal practice in immigration proceedings. Under the proposed rule, a party may file only one motion to reopen proceedings, and one motion to reconsider a decision of an Immigration Judge, the Board of Immigration Appeals ("Board"), or a Service Officer. A motion to reopen proceedings must be filed within 20 days of the final administrative decision or within 20 days of the effective date of the final rule, whichever is later. A motion to reconsider a decision must also be filed within 20 days of the decision or within 20 days of the effective date of the final rule, whichever is later. Under the proposed rule, provisions concerning motions to reopen or reconsider have been condensed into one section under 8 CFR 3.2. A new § 3.8 will concern fees.

The Board has previously addressed issues relating to the effect of an alien's loss of lawful permanent resident status on a motion to reopen proceedings to apply for or to further pursue an application for relief under section 212(c) of the Act. See *e.g., Matter of Cerna*, Interim Decision 3161 (BIA 1991) and *Matter of Lok*, 18 I&N Dec. 101 (BIA 1981), *aff'd on other grounds, Lok* v *INS*, 681 F.2d 107 (2d Cir. 1982). These decisions have recently been the subject of litigation and conflicting court rulings. Subject to all of the other requirements pertaining to motions to reopen, the proposed rule will permit reopening of proceedings to consider or further consider an application for relief under section 212(c) of the Act if the alien demonstrates that he or she was statutorily eligible for such relief prior to the entry of the administratively final order of deportation or exclusion.

There are several exceptions to these general rules, as required by section 242B(c)(3) of the Act, 8 U.S.C. 1252b(c)(3). An alien who is ordered deported *in absentia* who can demonstrate that his or her failure to appear was due to exceptional circumstances may file a motion to reopen the proceedings within 180 days of the final order. An alien who is ordered deported *in absentia* without receiving notice of the proceedings, if notice was required, or who was in federal or state custody at the time of the proceedings and could not appear, may file a motion to reopen without regard to the above time limitations. The filing of a motion to reopen proceedings or a motion to reconsider a decision will not serve to stay the execution of any decision, unless the motion is filed by an alien who was ordered deported *in absentia*, pursuant to 8 CFR 3.23(b)(5). As in the past, an alien who files an asylum claim that arises after the initiation of deportation proceedings against the alien where the claim is based upon an alleged change in circumstances in the country of the alien's nationality may move to reopen the proceedings at any time.

When a party appeals a decision, the notice of appeal must meaningfully identify the reasons for the appeal in order to avoid summary dismissal. The notice must indicate whether the party will be filing a brief and whether the party desires oral argument before the Board. An appellant will be provided 30 days in which to file a brief unless the alien concerned is detained, in which case the appellant will be given 14 days to file a brief. The Immigration Judge or Service Officer may specify a shorter time in which to file a brief, but only the Board may extend the time for filing, and then only up to a total of 90 days, for good cause shown. An appeal may be withdrawn by either party. In the event the alien concerned leaves the United States after taking an appeal but prior to a decision, the appeal will be deemed withdrawn. An appeal will not be permitted when an order of deportation or exclusion has been entered *in absentia*.

The rule more clearly outlines when the notice of appeal should be filed with the Immigration and Naturalization Service and when the notice of appeal should be filed with the Office of the Immigration Judge. The proposed rule also replaces the reference to discontinued Form I–290A with reference to the currently used Form EOIR–26 for filing an appeal from a decision of an immigration judge and Form EOIR–29 for filing an appeal from a decision of a district director. The proposed change will eliminate the requirement that the notice of appeal be filed in triplicate. Parties will still be required to file the original notice of appeal with the office having administrative control over the record of proceeding and serve a copy of the notice of appeal on the opposing party. The proposed rule will clarify that a notice of appeal will not be considered filed until the notice is actually received in the office having administrative control over the record of proceeding.

The rule clarifies that the period for filing a Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) is extended from 10 to 13 days where the

decision of the Immigration Judge is served by mail. The proposed change will clearly define the event that commences the running of the period for filing an appeal and will reiterate which form should be used to file an appeal and where to file the form. These proposed changes will help unify practice and procedure throughout the country and will restrict the ability of parties to reopen or continue proceedings indefinitely. These goals are consistent with the directives of section 545 of IMMACT (8 U.S.C. 1252b).

This rule is promulgated as a proposed regulation to allow for comments prior to implementation.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule was not reviewed by the Office of Management and Budget pursuant to Executive Order No. 12866. In addition, this rule does not have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

List of Subjects

6 CFR Part 1

Administrative practice and procedure, Aliens.

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 242

Administrative practice and procedure, Aliens.

Accordingly, title 8, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—DEFINITIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 66 Stat. 173; 8 U.S.C. 1101; 28 U.S.C. 509, 510; 5 U.S.C. 301.

2. Section 1.1 is amended by adding a new paragraph (p) to read as follows:

§ 1.1 Definitions.

* * * * *

(p) The term *lawfully admitted for permanent residence* means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Such status terminates upon entry of a final administrative order of exclusion or deportation.

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

3. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; Sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

4. Section 3.1 is amended by revising paragraphs (b)(1), (b)(2), and (c) to read as follows:

§ 3.1 General Authorities.

* * * * *

(b) * * *

(1) Decisions of Immigration Judges in exclusion cases, as provided in part 236 of this chapter, except that no appeal shall lie from an order of exclusion entered *in absentia*.

(2) Decisions of Immigration Judges in deportation cases, as provided in part 242 of this chapter, except that no appeal shall lie from an order of deportation entered *in absentia*, nor shall an appeal lie from an order of an Immigration Judge under § 244.1 of this chapter granting voluntary departure within a period of at least 30 days, if the sole ground of appeal is that a greater period of departure time should have been fixed.

* * * * *

(c) *Jurisdiction by certification.* The Commissioner, or any other duly authorized officer of the Service, any Immigration Judge, or the Board may in any case arising under paragraph (b) of this section require certification of such case to the Board. The Board in its discretion may review any such case by certification without regard to the provisions of § 3.7 of this chapter if it determines that the parties have already been given a fair opportunity to make representations before the Board regarding the case, including the opportunity to request oral regiment and to submit a brief.

* * * * *

5. Section 3.2 is revised to read as follows:

§ 3.2 Reopening or reconsideration.

(a) *General.* The Board may at any time reopen or reconsider on its own motion any case in which it has rendered a decision. A request to reopen or reconsider any case in which a decision has been made by the Board, which request is made by the Commissioner or any other duly authorized officer of the Service, or by the party affected by the decision, must be in the form of a written motion to the Board. The decision to grant or deny a motion to reopen or reconsider is within the discretion of the Board, subject to the restrictions of this section. The Board has discretion to deny a motion to reopen even if the party moving has made out a *prima facie* case for relief.

(b) *Motion to reconsider.* A motion to reconsider a decision must be filed within 20 days after the mailing of the decision or the stating of the oral decision for which reconsideration is being sought, or within 20 days of the effective date of the final rule, whichever is later. When service of the decision is made by mail, 3 days shall be added to the period prescribed for filing of the motion. A party may file only one motion to reconsider any given decision and may not seek reconsideration of a decision denying a previous motion to reconsider. A motion to reconsider shall state the reasons for the motion and shall be supported by pertinent authority. A motion to reconsider a decision rendered by an Immigration Judge or Service Officer that is pending when an appeal is filed with the Board, or that is filed subsequent to the filing with the Board of an appeal from the decision sought to be reconsidered, shall be deemed a motion to remand the decision for further proceedings before the Immigration Judge or the Service Officer from whose decision the appeal was taken. Such motion, which shall be consolidated with and considered by the Board in connection with any appeal to the Board, is subject to the time and numerical limitations of this paragraph.

(c) *Motion to reopen.* (1) A motion to reopen proceedings shall state the new facts that will be proven at a hearing to be held if the motion is granted, and shall be supported by affidavits or other evidentiary material. A motion to reopen proceedings for the purpose of submitting an application for relief must be accompanied by the appropriate application for relief and all supporting documentation. A motion to reopen proceedings shall not be granted unless it appears to the Board that evidence sought to be offered is material and was

not available and could not have been discovered or presented at the former hearing; nor shall any motion to reopen for the purpose of affording the alien an opportunity to apply for any form of discretionary relief be granted if it appears that the alien's right to apply for such relief was fully explained to him or her and an opportunity to apply therefor was afforded at the former hearing, unless the relief is sought on the basis of circumstances that have arisen subsequent to the hearing. Subject to the other requirements and restrictions of this section, a motion to reopen proceedings for consideration or further consideration of an application for relief under section 212(c) of the Act may be granted if the alien demonstrates that he or she was statutorily eligible for such relief prior to the entry of the administratively final order of deportation.

(2) Except as provided in paragraph (c)(3), a party may file only one motion to reopen proceedings and that motion must be filed not later than 20 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened, or within 20 days of the effective date of the final rule, whichever is later.

(3) The time and numerical limitations set forth in paragraph (c)(2) shall not apply to a motion to reopen proceedings:

(i) Filed pursuant to the provisions of § 3.23(b)(5) of this part.

(ii) To apply or reapply for asylum, or withholding of deportation, based on changed circumstances arising subsequent to the commencement of proceedings in the country of nationality or in the country to which deportation has been ordered, or

(iii) Agreed upon by all parties and jointly filed.

(4) A motion to reopen a decision rendered by an Immigration Judge or Service Officer that is pending when an appeal is filed, or that is filed subsequent to the filing of an appeal to the Board from the proceedings sought to be reopened, shall be deemed a motion to remand for further proceedings before the Immigration Judge or the Service Officer from whose decision the appeal was taken. Such motion, which shall be consolidated with, and considered by the Board in connection with, the appeal to the Board, is subject to the requirements set forth in paragraph (c)(1) and the time and numerical limitations set forth in paragraph (c)(2).

(d) *Departure or deportation.* A motion to reopen or a motion to reconsider shall not be made by or on behalf of a person who is the subject of deportation or exclusion proceedings subsequent to his or her departure from the United States. Any departure from the United States, including the deportation of a person who is the subject of deportation or exclusion proceedings, occurring after the filing of a motion to reopen or a motion to reconsider, shall constitute a withdrawal of such motion.

(e) *Judicial proceedings.* Motions to reopen or reconsider shall state whether the validity of the deportation order has been or is the subject of any judicial proceeding and, if so, the nature and date thereof, the court in which such proceeding took place or is pending, and its result or status. In any case in which a deportation order is in effect, any motion to reopen or reconsider such order shall include a statement by or on behalf of the moving party declaring whether the subject of the deportation order is also the subject of any pending criminal proceeding under section 242(e) of the Act, and, if so, the current status of that proceeding. If a motion to reopen or reconsider seeks discretionary relief, the motion shall include a statement by or on behalf of the moving party declaring whether the alien for whose relief the motion is being filed is subject to any pending criminal prosecution and, if so, the nature and current status of that prosecution.

(f) *Stay of deportation.* Except where a motion is filed pursuant to the provisions of § 3.23(b)(5) of this part, the filing of a motion to reopen or a motion to reconsider shall not stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the Board, the Immigration Judge, or an authorized officer of the Service.

(g) *Distribution of motion papers.* A motion to reopen to a motion to reconsider a decision of the Board pertaining to proceedings before an Immigration Judge shall be filed with the Office of the Immigration Judge having administrative control over the record of proceeding. A motion to reopen or a motion to reconsider a decision of the Board pertaining to a matter initially adjudicated by an officer of the Service shall be filed with the officer of the Service having administrative control over the record of proceeding; provided, however, that when a motion to reopen or a motion to reconsider is made by the Commissioner or any other duly authorized officer of the Service in proceedings in which the Service has administrative control over the record of proceedings, the record of proceedings in the case and the motion shall be filed directly with the Board. In all cases, the motion shall include proof of service on the opposing party and all attachments. The moving party may only file a brief if it is included with the motion. The opposing party shall have ten days from the date of service of the motion to submit a brief in opposition to the motion, which shall be filed with the Office where the motion was filed, along with proof of service of a copy of the brief on the opposing party. The Board, in its discretion, may extend the time within which such brief is to be submitted. A motion shall be deemed unopposed unless a timely response is made.

(h) *Oral argument.* A request for oral argument, if desired, shall be incorporated in the motion to reopen or reconsider. The Board in its discretion may grant or deny requests for oral argument.

(i) *Ruling on motion.* Rulings upon motions to reopen or motions to reconsider shall be by written order. If the order directs a reopening and further proceedings are necessary, the record shall be returned to the Office of the Immigration Judge or the officer of the Service having administrative control over the place where the reopened proceedings are to be conducted. If the motion to reconsider is granted, the decision upon such reconsideration shall affirm, modify, or reverse the original decision made in the case.

6. Section 3.3 is revised to read as follows:

§ 3.3 Notice of appeal.

(a) A party affected by a decision who is entitled under this chapter to appeal to the Board shall be given notice of his or her right to appeal. An appeal of a decision of an Immigration Judge shall be taken by filing a Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) with the Office of the Immigration Judge having administrative control over the record of proceeding, within the time specified in the governing sections of this chapter. An appeal of a decision of a Service Officer shall be taken by filing a Notice of Appeal to the Board of Immigration Appeals of Decision of District Director (Form EOIR–29) with the office of the Service having administrative control over the record of proceeding, within the time specified in the governing sections of this chapter. A notice of appeal of a decision of an Immigration Judge is not considered to be filed until the Form EOIR–26 is actually received in the appropriate Office of the Immigration Judge and the fee provisions of § 3.8 of this part are satisfied. A notice of appeal of a

decision of a district director is not considered to be filed until the Form EOIR–29 is actually received in the appropriate office of the Service and the fee provisions of § 3.8 of this part are satisfied. The certification of a case as provided in this part shall not relieve the party affected from compliance with the provisions of this section in the event that he or she is entitled, and desires, to appeal from an initial decision, nor shall it serve to extend the time specified in the applicable parts of this chapter for the taking of an appeal. Departure from the United States of a person in deportation proceedings prior to the taking of an appeal from a decision in his or her case shall constitute a waiver of his or her right to appeal.

(b) *Items to be included in the Notice of Appeal.* The party taking the appeal must meaningfully identify the reasons for the appeal in the notice of appeal in order to avoid summary dismissal pursuant to § 3.1(d)(1–a)(i) of this part. The statement on the notice of appeal must specifically identify the findings of fact, the conclusions of law, or both, that are being challenged. If a question of law is presented, supporting authority must be cited. If the dispute is over the findings of fact, the specific facts contested must be identified. Where the appeal concerns discretionary relief, the appellant must state whether the alleged error relates to statutory grounds of eligibility or to the exercise of discretion and must identify the specific factual and legal finding or findings that are being challenged. In addition, the statement of the reasons for appeal must be set forth with sufficient clarity and specificity that the Board may address the appeal without first reviewing the record and constructing the arguments. The appellant must also indicate in the notice of appeal whether he or she desires oral argument before the Board and whether he or she will be filing a separate written brief or statement in support of the appeal.

(c) *Briefs.* Briefs in support of or in opposition to an appeal shall be filed with the Office of the Immigration Judge or, where the appeal is from a decision of a Service Officer, with the officer of the Service having administrative control over the case. If the alien concerned is not detained, the appellant shall be provided 30 days in which to file a brief unless a shorter period is specified by the Immigration Judge or by the Service Officer from whose decision the appeal is taken. If the alien concerned is detained, the appellant shall be provided 14 days in which to file a brief, unless a shorter period is specified by the Immigration Judge or by the Service Officer from whose decision the appeal is taken. The appellee shall have the same period of time in which to file a reply brief that was initially granted to the appellant to file his or her brief. The time to file a reply brief commences from the date upon which the appellant's brief was due, as originally set or extended by the Board, or the date upon which such brief was filed, whichever is earlier. The Board, upon motion, may extend the period for filing a brief or a reply brief for up to 90 days for good cause shown and may authorize the filing of briefs directly with it. If, in its discretion, the Board determines that the interests of justice would be served thereby, it may consider a brief filed out of time in its adjudication of an appeal. All briefs and motions regarding the filing of briefs shall include proof of service of the brief or motion on the opposing party.

7. Section 3.4 is revised to read as follows:

§ 3.4 Withdrawal of appeal.

In any case in which an appeal has been taken, the party taking the appeal may file a written withdrawal thereof with the office at which the notice of appeal was filed. If the record in the case has not been forwarded to the Board on appeal in accordance with § 3.5 of this part, the decision made in the case shall be final to the same extent as if no appeal had been taken. If the record has been forwarded on appeal, the withdrawal of the appeal shall be forwarded to the Board and, if no decision in the case has been made on the appeal, the record shall be returned and the initial decision shall be final to the same extent as if no appeal had been taken. If a decision on the appeal shall have been made by the Board in the case, further action shall be taken in accordance therewith. Departure from the United States of a person who is the subject of deportation proceedings subsequent to the taking of an appeal but prior to a decision thereon shall constitute a withdrawal of the appeal and the initial decision in the case shall be final to the same extent as though no appeal had been taken.

8. Section 3.5 is revised to read as follows:

§ 3.5 Forwarding of record on appeal.

If an appeal is taken from a decision, as provided in this chapter, the entire record of proceeding shall be forwarded to the Board by the office having administrative jurisdiction over the case upon timely receipt of the briefs of the parties, or upon expiration of the time allowed for the submission of such briefs. After an appeal to the Board has been filed, a district director or regional service center director need not forward such appeal to the Board, but may reopen and reconsider any decision made by the director, if the director's new decision will grant the benefit that has been requested in the appeal, provided that the director's new decision must be served on the appealing party within 45 days of receipt of any briefs or upon expiration of the time allowed for the submission of any briefs. If the director's new decision is not served within these time limits or the appealing party does not agree that the new decision disposes of the matter, the record of proceeding shall be immediately forwarded to the Board.

9. Section 3.6 is revised to read as follows:

§ 3.6 Stay of execution of decision.

(a) Except as provided under § 242.2(d) of this chapter and paragraph (b) of this section, the decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed, nor shall such decision be executed while an appeal is pending or while a case is before the Board by way of certification.

(b) The provisions of paragraph (a) of this section shall not apply to an order of an Immigration Judge under § 3.23 or § 242.22 of this chapter denying a motion to reopen or reconsider or to stay deportation, except where such order expressly grants a stay or where the motion was filed pursuant to the provisions of § 3.23(b)(5). The Board may, in its discretion, stay deportation while an appeal is pending from any such order if no stay has been granted by the Immigration Judge or a Service officer.

10. Section 3.7 is revised to read as follows:

§ 3.7 Notice of certification.

Whenever, in accordance with the provisions of § 3.1(c) of this part, a case is required to be certified to the Board, the alien or other party affected shall be given notice of certification. An Immigration Judge or Service Officer may certify a case only after an initial decision has been made and before an appeal has been taken. If it is known at the time the initial decision is rendered that the case will be certified, the notice of certification shall be included in such decision and no further notice of certification shall be required. If it is not known until after the initial decision is

rendered that the case will be certified, the office of the Service or Office of the Immigration Judge having administrative control over the record of proceeding shall cause a Notice of Certification to be served upon the parties. In either case, the notice shall inform the parties that the case is required to be certified to the Board and that they have the right to make representations before the Board, including the making of a request for oral argument and the submission of a brief. If either party desires to submit a brief, it shall be submitted to the office of the Service or Office of the Immigration Judge having administrative control over the record of proceeding for transmittal to the Board within the time prescribed in § 3.3(c) of this part. The case shall be certified and forwarded to the Board by the office of the Service or Office of the Immigration Judge having administrative jurisdiction over the case upon receipt of the brief, or upon the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief. The Board in its discretion may elect to accept for review or not accept for review any such certified case. If the Board declines to accept a certified case for review, the underlying decision shall become final on the date of the Board's declination.

11. Section 3.3 is revised to read as follows:

§ 3.8 Fees.

Except as otherwise provided in this section, a notice of appeal or motion filed under this subpart by any person other than an officer of the Service relating to a proceeding held before an Immigration Judge shall be accompanied by evidence that the specified fee has been remitted in accordance with the applicable provisions of §§ 3.5(c) and 103.7 of this chapter. Except as otherwise provided in this section, a notice of appeal or motion filed under this subpart by any person other than an officer of the Service relating to a matter involving an adjudication by an officer of the Service shall be accompanied by the specified fee and remitted in accordance with the applicable provisions of § 103.7 of this chapter. In any case in which an alien or other party affected is unable to pay the fee fixed for an appeal or a motion, he or she shall file with the notice of appeal or the motion his or her affidavit or unsworn declaration, made pursuant to 28 U.S.C. 1746, stating the nature of the motion or appeal and his or her belief that he or she is entitled to redress. Such document shall also establish his or her inability to pay the required fee, and shall request permission to prosecute the appeal or motion without payment of such fee. When such a document is filed with the officer of the Service or the Immigration Judge from whose decision the appeal is taken or with respect to whose decision the motion is addressed, such Service Officer or Immigration Judge shall, if he or she believes that the appeal or motion is not taken or made in good faith, certify in writing his or her reasons for such belief for consideration by the Board. The Board may, in its discretion, authorize the prosecution of any appeal or motion without payment of the required fee.

12. Section 3.23 is amended by revising paragraph (b) to read as follows:

§ 3.23 Motions.

* * * * *

(b) *Reopening/Reconsideration.* (1) The Immigration Judge may upon his or her own motion, or upon motion of the trail attorney or the alien, reopen or reconsider any case in which he or she has made a decision, unless jurisdiction in the case is vested in the Board of Immigration Appeals under part 3 of this chapter. Motions to reopen or reconsider a decision of the Immigration Judge must be filed with the Office of the Immigration Judge having administrative control over the record of proceeding. Such motions shall comply with applicable provisions of 8 CFR 208.4, 208.19, and 242.22. The Immigration Judge may set and extend time limits for replies to motions to reopen or reconsider. A motion shall be deemed unopposed unless timely response is made. A motion to reconsider shall state the reasons for the motion and shall be supported by pertinent authority. Any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents. A motion to reopen will not be granted unless the Immigration Judge is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing; nor will any motion to reopen for the purpose of providing the alien an opportunity to apply for any form of discretionary relief be granted if the alien's rights to make such application were fully explained to him or her by the Immigration Judge and he or she was afforded an opportunity to do so at the hearing, unless circumstances have arisen thereafter on the basis of which the request is being made. Subject to the other requirements and restrictions of this section, a motion to reopen proceedings for consideration or further consideration of an application for relief under section 212(c) of the Act may be granted if the alien demonstrates that he or she was statutorily eligible for such relief prior to the entry of the administratively final order of deportation.

(2) A motion to reconsider must be filed within 20 days after the date on which the decision for which reconsideration is being sought was rendered, or within 20 days of the effective date of the final rule, whichever is later. A party may file only one motion to reconsider any given decision and may not seek reconsideration of a decision denying a previous motion to reconsider.

(3) Except as provided in paragraph (b)(4), a party may file only one motion to reopen proceedings and that motion must be filed not later than 20 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened, or within 20 days of the effective date of the final rule, whichever is later.

(4) The time and numerical limitations set forth in paragraph (b)(3) shall not apply to a motion to reopen filed pursuant to the provisions of paragraph (b)(5), or to a motion to reopen proceedings to apply or reapply for asylum or for withholding of deportation based on changed circumstances, which arise subsequent to the commencement of proceedings, in the country of nationality or in the country to which deportation has been ordered, or to a motion to reopen agreed upon by all parties and jointly filed.

(5) A motion to reopen deportation proceedings to rescind an order of deportation entered *in absentia* must be filed:

(i) Within 180 days after the date of the order of deportation. The motion must demonstrate that the failure to appear was because of exceptional circumstances beyond the control of the alien (such as serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances); or

(ii) At any time if the alien demonstrates that the alien did not receive notice in accordance with subsection 242B(a)(2) of the Act, 8 U.S.C. 1252b(a)(2), and notice was required pursuant to such subsection; or the alien demonstrates that the alien was in Federal or State custody and did not appear through no fault of the alien.

(6) When requested in conjunction with a motion to reopen or a motion to reconsider, the Immigration Judge may stay the execution of a final order of

deportation or exclusion. The filing of a motion to reopen pursuant to the provisions of paragraph (b)(5) shall stay the deportation of the alien pending decision on the motion and the adjudication of any properly filed administrative appeal.

13. Section 3.38 is amended by revising paragraph (b) to read as follows:

§ 3.38 Appeals.

* * * * *

(b) The Notice of Appeals to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) shall be filed with the Office of the Immigration Judge having administrative control over the record of proceeding within 10 calendar days after the Immigration Judge has rendered an oral decision on the record or within 10 calendar days after a written decision has been served in person to the parties. Where the decision of the Immigration Judge is served by mail, the Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) shall be filed with the Office of the Immigration Judge having administrative control over the record of proceeding within 13 calendar days after the date the decision is mailed. If the final date for filing falls on a Saturday, Sunday, or legal holiday, this appeal time shall be extended to the next business day. A notice of appeals may not be filed by any party who has waived appeal.

* * * * *

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

14. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 166; 8 CFR part 2

§ 103.5 [Amended]

15. Section 103.5 paragraph (a)(1)(i) is amended by revising the phrase "part 242" to read "parts 3 and 242"

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

16. The authority citation for part 208 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1158; 1226, 1252, 1252 note, 1252b, 1253, and 1283.

17. Section 208.19 paragraph (a) is revised to read as follows:

§ 208.19 Motion to reopen or reconsider.

(a) A proceeding in which asylum or withholding of deportation was denied may be reopened or a decision from such a proceeding reconsidered for proper cause upon motion pursuant to the requirements of 8 CFR 3.2, 3.23, 103.5, and 242.22 where applicable.

* * * * *

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

18. The authority citation for part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362, 8 CFR part 2.

19. Section 242.21 paragraph (a) is revised to read as follows:

§ 242.21 Appeals.

(a) Pursuant to part 3 of this chapter, an appeal shall lie from a decision of an Immigration Judge to the Board of Immigration Appeals, except that no appeal shall lie from an order of deportation or exclusion entered *in absentia*. The procedures regarding the filing of a Notice of Appeal (Form EOIR–26), fees, and briefs are set forth in §§ 3.3, 3.31, and 3.38 of this chapter. An appeal may be summarily dismissed if it comes within the provisions of § 3.1(d)(1–a) of this chapter.

* * * * *

20. Section 242.22 is amended by revising the first sentence and by adding a sentence at the end, to read as follows:

§ 242.22 Reopening or reconsideration.

Motions to reopen or reconsider are subject to the requirements and limitations set forth in § 3.23 of this chapter. * * * The filing of a motion to reopen pursuant to the provisions of § 3.23(b)(5) of this chapter shall stay the deportation of the alien pending the disposition of the motion and the adjudication of any properly filed administrative appeal.

Dated: May 25, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–13547 Filed 6–6–94; 8:45 am]

BILLING CODE 4531–28–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–26–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, and –40 Series Airplanes, KC–10A (Military) Airplanes, and Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 and MD–11 series airplanes. This proposal would require the installation of retainers and supports at the lateral control mixer bracket on the center of the wing rear spar of the airplane. This proposal is prompted by an analysis conducted by the manufacturer, which revealed that failure of a lateral control mixer bracket could result in uncommanded deployment of the spoiler. The actions specified by the proposed AD are intended to prevent inadvertent asymmetric deployment of the spoiler, which may lead to reduced controllability of the airplane.

DATES: Comments must be received by August 1, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–26–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Department L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los

Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5324; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-26-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-26-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

A recent analysis conducted by the manufacturer revealed that the potential exists for uncommanded spoiler extension due to failure, for any reason, of a lateral control mixer bracket on Model MD-11 series airplanes. The FAA has reviewed the results of this analysis and has determined that failure of the lateral control mixer bracket could result in uncommanded deployment of the spoiler on Model DC-10-10, -15, -30, and -40 series airplanes, and KC-10A (military) airplanes, as well as on Model MD-11 series airplanes, since the brackets are designed similarly on these airplanes. This condition, if not corrected, could result in inadvertent asymmetric deployment of the spoiler, which may lead to reduced controllability of the airplane.

The FAA has reviewed and approved McDonnell Douglas DC-10 Service Bulletin 27-222 (for Model DC-10-10, -15, -30, and -40 series airplanes and KC-10A (military) airplanes), and MD-11 Service Bulletin 27-34 (for Model MD-11 series airplanes), both dated November 1, 1993, that describe procedures for installation of retainers and supports at the lateral control mixer bracket on the center of the wing rear spar of the airplane. This installation will minimize the possibility for [illegible] extension of the spoiler in the event of bracket failure or separation from the airplane structure. Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require installation of retainers and supports at the lateral control mixer bracket on the center of the wing rear spar of the airplane. The actions would be required to be accomplished in accordance with the applicable service bulletin described previously.

There are approximately 427 Model DC-10-10, -15, -30, and -40 series airplanes and KC-10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 241 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $6,497 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators of DC-10 series airplanes is estimated to be $1,605,542 or $6,662 per airplane.

There are approximately 114 Model MD-11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $6,497 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators of Model MD-11 series airplanes is estimated to be $306,452, or $6,662 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866, (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 94-NM-26-AD.

Applicability: Model DC-10-10, -15, -30, and -40 series airplanes and KC-10A (military) airplanes, as listed in McDonnell Douglas DC-10 Service Bulletin 27-222, dated November 1, 1993; and Model MD-11 series airplanes, as listed in McDonnell Douglas MD-11 Service Bulletin 27-34 dated November 1, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent asymmetric deployment of the spoiler, which may lead to reduced controllability of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, install retainers and supports at the lateral control right- and left-hand mixer bracket on the center of the wing rear spar of the airplane in accordance with McDonnell Douglas DC–10 Service Bulletin 27–222, dated November 1, 1993 (for Model DC–10–10, –15, –30, and –40 series airplanes and KC–10A (military) airplanes); or McDonnell Douglas MD–11 Service Bulletin 27–34, dated November 1, 1993 (for Model MD–11 series airplanes); as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 1, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13755 Filed 6–6–94, 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–34140; File No. S7–17–94]

RIN 3235–AG15

Proposed Rule Changes of Self Regulatory Organizations; Annual Filing of Amendments to Registration Statements of National Securities Exchanges, Securities Associations, and Reports of the Municipal Securities Rulemaking Board

AGENCY: Securities and Exchange Commission

ACTION: Proposed rulemaking

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing to amend Rule 19b–4 and Form 19b–4, the rule and form that set forth the procedures for the filing by self-regulatory organizations ("SROs") of proposed rule changes under the Securities Exchange Act of 1934. The amendments would expand the scope of those proposed rule changes that may become effective under Section 19(b)(3)(A) of the Act. The proposed amendments are intended to expedite and streamline the process through which proposed rule changes are filed and become effective. The Commission also is proposing to amend the rules and forms applicable to the annual filing of amendments to registration statements of national securities exchanges, securities associations, and reports of the Municipal Securities Rulemaking Board, to streamline those requirements.

DATES: Comments should be received on or before August 8, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–17–94. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, or Andrew S. Margolin, Attorney, at (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 7–10, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background on SRO Rule Filings

A. Statutory Framework for Filing of Proposed Rule Changes

Section 19(b)(1) [1] of the Securities Exchange Act of 1934 [2] ("Exchange Act" or "Act") requires a self-regulatory organization [3] to file with the Commission its proposed rule changes.[4] accompanied by a concise general statement of the basis and purpose of the proposed rule change. Once a proposed rule change has been filed, the Commission is required to publish notice of it and provide an opportunity for public comment. The proposed rule change may not take effect unless it is approved by the Commission or is otherwise permitted to become effective under Section 19(b) of the Act.[5]

Section 19(b)(2) of the Act [6] sets forth the standards and time periods for Commission action either to approve a proposed rule change or to institute and conclude a proceeding to determine whether a proposed rule change should be disapproved. Generally, the Commission must either approve the proposed rule change or institute disapproval proceedings within 35 days of the publication of notice of the filing or within such longer period if the Commission finds appropriate or to which the SRO consents. The Commission must approve a proposed rule change if it finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the SRO proposing the rule change. If the Commission does not make that finding, it must institute proceedings to determine whether to disapprove the proposed rule change. The Commission also may approve a proposed rule change on an accelerated basis prior to 30 days after publication of the notice if the Commission finds good cause for so doing and publishes its reasons for so finding.[7]

Section 19(b)(3) of the Act [8] provides that, in certain circumstances, a proposed rule change may become effective without the notice and approval procedures required by Section 19(b)(2). Paragraph (A) of Section 19(b)(3) permits certain types of proposed rule changes to take effect in this manner if appropriately designated by the SRO as within the following categories: (1) Constituting a stated

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] Section 3(a)(26) of the Act, 15 U.S.C. § 78c(a)(26), defines the term "self-regulatory organization" to mean any national securities exchange, registered securities association, registered clearing agency, and, for purposes of Section 19(b) and other limited purposes, the Municipal Securities Rulemaking Board ("MSRB").

[4] Section 19(b)(1) of the Act defines the term "proposed rule change" to mean "any proposed rule or rule change in addition to, or deletion from, the rules of [a] self-regulatory organization." In turn, Sections 3(a)(27) and 3(a)(28) of the Act provide, essentially, that the term "rules of a self-regulatory organization" means (i) the rules of the MSRB and the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of any other SRO and (ii) such stated policies, practices, and interpretations of an SRO (other than the MSRB) as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules. The Commission has exercised this rule-making authority in paragraph (b) of Rule 19b–4 under the Act, which defines the term "stated policy, practice, or interpretation." *See* discussion, *infra*, at note 9.

[5] *See generally* Senate Comm. on Banking, Housing & Urb. Affs., *Report to Accompany S. 249, Securities Acts Amendments of 1975*, S. Rep. No. 94–75, 94th Cong., 1st Sess. 22–38 (March Print 1975) ("Senate Report"), *excerpted in*, [1975] U.S. Code Cong. & Ad. News 179, 200–15 (excerpt on "Self Regulation and SEC Oversight"); Note, *Informal Bargaining Process: An Analysis of the SEC's Regulation of the New York Stock Exchange*, 80 Yale L.J. 801 (1971).

[6] 15 U.S.C. 78s(b)(2).

[7] Section 19(b)(2)(B), 15 U.S.C. 78s(b)(2)(B).

[8] 15 U.S.C. 78s(b)(3).

policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO;[9] (2) establishing or changing a due, fee, or other charge imposed by the SRO;[10] or (3) concerned solely with the administration of the SRO. Section 19(b)(3)(A)(iii) also gives the Commission the authority to expand by rule the scope of proposed rule changes that may become effective under Section 19(b)(3)(A) if the Commission determines that the expansion is consistent with the public interest and the purposes of Section 19(b). Rule 19b–4(e) implements the authority of Section 19(b)(3)(A) by detailing further the scope of proposed rule changes that may be filed under Section 19(b)(3)(A). The rule tracks those categories enumerated in Section 19(b)(3)(A) mentioned above and also includes a category adopted in 1980 relating to registered clearing agencies.[11]

C. The Market 2000 Report

In its Market 2000 Report ("Report"), the Commission's Division of Market Regulation ("Division") committed to working with the SROs to streamline the review of proposed rule changes.[12] The Division noted in the Report that SROs have argued that the process for the filing, review, and approval of proposed rule changes is too lengthy and hampers the efforts of the SROs to provide prompt, flexible, and innovative order entry and trading services to their members and the investing public.[13] The Division agreed that the rule review process should be expedited for routine procedural and administrative modifications to existing order-entry and trading systems, but noted that modifications that would restrict access, burden competition, or modify provisions or procedures designed for the protection of investors should continue to be considered after the applicable notice and comment period under Section 19(b)(2).[14] The Report also indicated that the Division would consider other types of proposed rule changes that could be subject to an expedited review process.

II. Expanding the Scope of Proposed Rule Changes Filed Under Section 19(b)(3)(A)

A. Systems Changes

Pursuant to authority in Section 19(b)(3)(A)(iii) of the Act, and consistent with recommendations made in the Market 2000 Report, the Commission proposes to amend Rule 19b–4 and the instructions to Form 19b–4 by expanding the scope of proposed rule changes that may become effective under Section 19(b)(3)(A). In particular, routine procedural and administrative modifications to existing order-entry and trading systems would become eligible for filing under this provision.

The Commission believes that proposed modifications to existing systems that are operational in nature are not likely to raise the policy concerns that warrant the full notice and comment procedures of Section 19(b)(2).[15] Accordingly, the Commission proposes to expand the category of rule filings that are eligible for filing under Section 19(b)(3)(A) to include systems changes that do not significantly affect the protection of investors or the public interest, do not impose any significant burden on competition, and do not have the effect of limiting access to or availability of the system.

Under the amendment, a proposed rule change that, for example, would increase marginally the maximum number of shares per order that could be executed through an SRO's small order routing and execution system may be eligible to become effective upon filing.[16] Another example would be a proposed rule change expanding the number of series or classes eligible for options routing and execution systems.

In contrast, a proposed rule change involving a systems change that would affect the surveillance or oversight capabilities of the SRO or other appropriate regulatory authority would not be properly filed under Section 19(b)(3)(A). Such a rule change could directly impair the protection of investors and thus should be filed under Section 19(b)(2). Another example of a proposed rule change that would not be eligible for filing under Section 19(b)(3)(A) is one that would make mandatory the use of a particular order-entry or trading system by members. Because such a rule change could impose burdens on competition, it should be filed for consideration under the more comprehensive procedures of Section 19(b)(2). Similarly, it would be inappropriate to permit a proposed rule change to become effective immediately if it could have the effect of limiting the access to or availability of the system to members or investors.

B. Other Noncontroversial Rule Filings After Prior Notice to the Commission

The Commission also proposes to amend Rule 19b–4 and the instructions to Form 19b–4, pursuant to authority in Section 19(b)(3)(A)(iii) of the Exchange Act, to expand the scope of proposed rule changes that may become effective under Section 19(b)(3)(A) to include certain noncontroversial filings, if the proposed rule change, by its terms, does not become operative for 30 days after the date of publication of the notice of filing or such shorter time as the Commission may designate.[17] For these

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[9] Rule 19b–4(b) defines the term "stated policy, practice or interpretation" to mean generally any material aspect of the operation of the facilities of the SRO or any statement made available to the membership, participants, or specified persons thereof, or changes in any such statement, concerning any stated policy, practice or interpretation with respect to rights and obligations of persons or the meaning, administration, or enforcement of an existing rule. 17 CFR 240.19b–4(b).

[10] The Commission has stated that as a matter of general policy, a proposed rule change of an SRO, other than the MSRB, that establishes or changes a due, fee, or other charge applicable to a non-member or non-participant should be filed under Section 19(b)(2) for full notice and comment. *See* Securities Exchange Act Release No. 17256 (October 9, 1980), 45 FR 71980 (October 31, 1980) at 71976.

[11] The 1980 amendment, which is similar to the amendments proposed today, expanded the category of filings that qualify to take effect under Section 19(b)(3)(A) to include those proposed rule changes that relate to mechanical or operational details of existing clearing agency services and thus are similar to "solely administrative" rules. The adopting release stated that the Commission was not expanding the category at that time to include rule changes of SROs other than registered clearing agencies, but that it could become appropriate to do so as other SROs developed more varied and complex services. *Id.* at note 51.

[12] SEC, Division of Market Regulation, *Market 2000: An Examination of Current Equity Market Developments* VI–10 (Jan. 1994).

[13] *See* Letter from Thomas M. O'Donnell, Chairman and Mark E. Lackritz, President, Securities Industry Association, to Jonathan G. Katz, Secretary, SEC (July 1, 1993); Letter from James E. Buck, Senior Vice President and Secretary, New York Stock Exchange, to Jonathan G. Katz, Secretary, SEC (November 24, 1992).

[14] Market 2000 Report at VI–10.

[15] The Commission's Automated Review Policy II ("ARP II") sets forth the Commission's views on, among other things, the circumstances under which an SRO is expected to notify the Commission of expected changes to its automated systems. As indicated in greater detail therein, the Commission believes that an SRO should provide notification of certain systems changes not only to inform the Commission for purposes of ARP II, but also to help determine whether the systems change would require a filing under Rule 19b–4. Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490.

[16] In a 1981 letter to the exchanges and the NASD, the staff of the Commission's Division of Market Regulation took the position that rule changes relating to small-order systems should be filed under Section 19(b)(2). *See, e.g.*, Letter from Richard T. Chase, Assistant Director, SEC, to Frank Wilson, Executive Vice President, NASD (February 4, 1981). It adopted, the proposed amendments in the release will supersede the staff's position to the extent of any conflict.

[17] This 30 day provision resembles a 1979 proposal by the Commission that featured a 60 day post-filing operation date which was never adopted. SROs objected primarily because the 60 day provision, when combined with a 30 day pre-filing circulation period among members, did not provide sufficient incentive to forego filing the proposed rule change under Section 19(b)(2). The Commission believes that today's proposal addresses these concerns. *See* Securities Exchange Act Release No. 15838 (May 18, 1979), 44 FR 30924;

filings, SROs also would be required to provide written notice to the Commission five business days prior to the filing.[18] Filing this type of proposed rule change under Section 19(b)(3)(A) should allow SROs to implement these rule changes more quickly than if they were filed under Section 19(b)(2).

This new provision only would apply to those proposed rule changes that are properly designated by the SRO as not significantly affecting the protection of investors and not imposing any significant burden on competition. For purposes of meeting this requirement, the impact or burden of a proposed rule change would be significant if, in the view of the Commission staff or industry participants, the change would require more than a cursory analysis to determine whether the impact or burden was necessary or appropriate under the Exchange Act. Proposed rule changes meeting these criteria generally are less likely to engender adverse comments or require the degree of review attendant with more controversial filings.

For example, a proposed rule change that adds an existing rule to an SRO's minor rule violation plan, that is objective in nature, such as a reporting obligation, and that does not involve a violation of the federal securities laws or the rules thereunder, could be properly filed under this provision. Another example would be a proposed rule change permitting the transmission of data to or from the SRO by computer interface or other electronic means. A proposed rule change, however, that would reduce public representation in the administration of the affairs of an SRO or that would amend the procedures for arbitration or disciplinary proceedings would not be a proper candidate to become effective under Section 19(b)(3)(A). These types of filings implicate basic policy considerations with respect to the protection of investors, and should be filed under Section 19(b)(2) to allow for more careful scrutiny.

Under this new provision, the SRO would have to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the filing date.[19] The Commission expects that such notices will be brief and informal and often will be transmitted by facsimile. This prior notice would give Commission staff an opportunity to discuss with the SRO whether there exists an adequate basis upon which the proposed rule change may properly qualify under this provision. Furthermore, the notice could elicit guidance from Commission staff to help the SRO identify those aspects of a proposed rule change that the Commission deems important. This should help the SRO articulate in its subsequent filing the purpose and effects of the proposed rule change, which in turn should further facilitate and expedite the filing process.[20]

The requirement that a proposed rule change filed in this manner cannot, by its terms, become operative prior to 30 days after the date of publication of the notice of filing would provide a meaningful opportunity for public comment prior to the rule's operation. This would allow the Commission, if necessary, to abrogate the rule change before it became operative in the least disruptive manner possible, if the proposed rule change was determined to be inconsistent with the requirements of the Exchange Act and the rules and regulations thereunder. This 30-day requirement, however, could be shortened or waived by the Commission if consistent with the protection of investors and the public interest.

The Commission notes that it presently has the authority under Section 19(b)(3)(C)[21] of the Act to abrogate summarily within sixty days of filing any proposed rule change that becomes effective under Section 19(b)(3)(A). If the proposals to expand the scope of proposed rule changes that may become effective under Section 19(b)(3)(A) are adopted, however, the Commission intends to revise its rules to delegate this abrogation authority to the Director of the Division. This would be necessary to facilitate an expected increase in the volume of proposed rule changes that would be filed under Section 19(b)(3)(A).

C. Submission of Form 19b–4 on Paper and on Computer Diskette

During the past five years, the staff of the Commission has acted on over 2,000 SRO rule filings. In addition to submitting a proposed rule change on Form 19b–4, the SRO is responsible for preparing and attaching an exhibit to the form containing the complete notice of the proposed rule change for publication in the **Federal Register**. Staff of the Commission may amend or supplement this notice in preparing it for publication. If and when the proposed rule change is approved, staff also prepares an approval order for similar publication. Thus significant staff resources are devoted to processing these filings and preparing them for publication.

The Commission therefore is encouraging SROs to submit certain portions of all filings on computer diskette in an appropriate wordprocessing format. This only would apply to Form 19b–4 and the notice for publication (Exhibit 1 to Form 19b–4). The paper version of these documents would continue to be required, but the electronic version would provide a more efficient way for Commission staff to review and prepare the initial notice for publication in the **Federal Register**.

D. Miscellaneous Amendments to Form 19b–4

The Commission also is proposing to reduce the number of copies of Form 19b–4 and Exhibit 1 that SROs must submit, from twelve to eight, including the manually signed original. The Commission also is correcting miscellaneous outdated references contained in Form 19b–4 with respect to the Commission's address and appropriate offices within the Division to which filings of proposed rule changes should be directed.

III. Background on Annual Filing of Amendments to Registration Statements of National Securities Exchanges, Securities Associations, and Reports of the Municipal Securities Rulemaking Board

Section 5 of the Exchange Act[22] generally prohibits securities transactions on a national securities exchange unless the exchange is registered with the Commission pursuant to Section 6 of the Act.[23]

Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906.

[18] For every clearing agency for which the Commission is not the appropriate regulatory agency, this notice also would be filed with the appropriate regulatory agency for the clearing agency as required by Section 17(c)(1) of the Exchange Act, 15 U.S.C. 78q(c)(1). Consistent with the requirements of that section, the Commission also would expect the MSRB to file such notices with each agency enumerated in Section 3(a)(34)(A) of the Exchange Act, 15 U.S.C. 78c(a)(34)(A).

[19] This notice would be directed to the appropriate Division staff responsible for reviewing that SRO's filings of proposed rule changes. The Commission intends to place this notice in a public file. *See* Exchange Act Section 23(a)(3), 15 U.S.C. 78w(a)(3).

[20] The Commission emphasizes that SROs should take extreme care in assuring that all filings express the information necessary for the Commission's review. Any filings that fail to comply with the requirements of Form 19b–4 may be returned to the SRO and will be deemed not to have been filed with the Commission.

[21] 15 U.S.C. 78s(b)(3)(C).

[22] 15 U.S.C. 78e.

[23] 15 U.S.C. 78f.

Section 6 sets forth the conditions for exchange registration and requires that an exchange file an application for registration under Rule 6a–1 under the Act.[24] That rule requires an applicant for registration, or for exemption from registration, to file an application on Form 1,[25] together with accompanying exhibits containing, among other things, the rules of the exchange, its financial statements, and its various forms, schedules, and membership lists.

Pursuant to Rule 6a–2, a registered or exempted exchange generally must update its registration annually by filing amendments on Form 1–A to reflect any changes in specified information contained in the registration statement of the exchange or its accompanying exhibits that were not previously reported in an amendment.[26] The Commission adopted amendments in 1983 to permit exchanges to update exhibits containing the constitution, by-laws, and rules of the exchange and its affiliates only once every three years.[27] The Commission believes that it can streamline the requirement to file annual amendments for certain exhibits to exchange registration. This information is either publicly available, becomes available to the Commission through other means, or is not useful enough to justify the burden placed on the exchanges in collecting and filing it with the Commission each year. The Commission notes that for certain of these exhibits, Exchange Act rules will continue to require national securities exchanges to provide the Commission with prompt notification after any action that renders those exhibits inaccurate.[28] In addition, Rule 17a–1 will continue to require exchanges to maintain and preserve for prescribed periods all documents and other records made or received by it in the course of its business and in the conduct of its self-regulatory activity, and upon request of any representative of the Commission, to promptly furnish such documents.[29]

For the same reasons, the Commission proposes to amend the analogous rules and forms applicable to national securities associations (namely, the National Association of Securities Dealers, Inc. ("NASD")) [30] and the MSRB. The NASD has similar requirements to update and file certain information annually, although the form used for this purpose differs significantly from that used for exchanges.[31] For example, the registration and amendment forms used by the NASD are organized along the lines of rule categories, whereas the format for exchanges focuses on exhibits and lists. The MSRB also has an annual reporting requirement.[32] The Commission believes that it would be appropriate to streamline the reporting requirements for these SROs as well, and to the extent the reports concern matters analagous to those applicable to exchanges, to conform them with the requirements for exchanges.

IV. Description of Proposal To Amend Requirements for the Annual Filing of Amendments to Registration Statements of National Securities Exchanges, Securities Associations, and Reports of the Municipal Securities Rulemaking Board

As described above, Rule 6a–2 of the Exchange Act requires an exchange to update and file annually certain amendments to its registration with the Commission. Exchanges submit these filings on Form 1–A by referencing the appropriate exhibit to the exchange registration being amended. Because the Commission believes that this is unnecessary for much of this information, the Commission is proposing amendments to Rule 6a–2 that would eliminate or reduce this annual filing requirement for the following: Exhibit B (forms pertaining to application for membership and approval as a person associated with a member); Exhibit C (forms of financial statements, reports, or questionnaires relating to financial responsibility); Exhibit D (documents comprising listing applications including agreements required in connection therewith, and a schedule of listing fees); Exhibit I (list of all individual members and related information); Exhibit J (certain information related to a list of all member organizations of the exchange); and Exhibit K (schedule of securities listed on the exchange). For all the remaining exhibits, with the exception of Exhibits E and F, which concern financial statements,[33] exchanges would have the option, in lieu of the annual filing, to publish or cooperate in the publication of this information on an annual or more frequent basis, and to certify to the accuracy of the information. Exchanges would have the further option of keeping the information in Exhibits A(1), A(2), A(3), L, and M up to date, and certifying that the information is up to date and available to the Commission and the public upon request.[34] In addition, the Commission is proposing to add the date of election to membership, if available, as an item to be filed by exchanges annually under Exhibit J. This is necessary to enable the Commission to monitor the obligation of broker-dealers to be a member of an SRO.[35] It also will help the Commission to designate an appropriate examining authority for each broker-dealer.[36]

The Commission also is proposing to make corresponding changes, where applicable, to the requirements for the NASD and MSRB. Thus, the requirement to file certain information annually would be streamlined, and the reporting requirements for the NASD and the MSRB would be conformed, where appropriate, to the requirements for the exchanges. In addition, similar to the proposal for exchanges discussed above, for certain information, these SROs would have the option, in lieu of an annual filing, of identifying the publication in which this information is available or keeping such information up to date and making it available to the Commission and the public. The Commission is requesting specific comment on these proposals.

V. Conclusion and Request for Comments

The Commission believes that the proposals described above, if adopted,

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[24] 17 CFR 240.6a–1.

[25] 17 CFR 249.1.

[26] Exchange Act Rule 6a-2, 17 CFR 240.6a–2.

[27] The Commission found the annual submission of these exhibits to be unnecessary, particularly because Section 19(b) of the Exchange Act requires exchanges to submit all proposed rule changes to the Commission. Securities Exchange Act Release No. 19814 (May 26, 1983), 48 FR 24663.

[28] Rule 6a–3 requires each exchange to notify the Commission within 10 days after any action that renders inaccurate its registration statement or any exhibit except exhibits E, F, L and M. 17 CFR 240.6a–3.

[29] 15 U.S.C. 78q(a)(1); 17 CFR 240.17a–1

[30] Currently, the NASD is the only national securities association registered with the Commission.

[31] *See* Exchange Act Rule 15Aj–1, 17 CFR 240.15Aj–1; Form X–15AJ–2, 17 CFR 249.803

[32] *See* Exchange Act Rule 17a–21, 17 CFR 240.17a–21.

[33] The annual filing requirement for these exhibits would be retained because they are necessary to enable the Commission to comply with Section 23(b) of the Exchange Act, 15 U.S.C. 78w(b). That section requires the Commission to include in its report to Congress each year a statement and analysis of the expenses and operations of each SRO.

[34] Exhibit A(1) contains the constitution, articles of incorporation, by-laws, and rules of the exchange; Exhibit A(2) contains written rulings, settled practices, and interpretations not contained in A(1); Exhibit A(3) contains the constitution, articles of incorporation, by-laws, and rules of each affiliate or subsidiary of the exchange; Exhibit L contains a schedule of securities admitted to unlisted trading practices; and Exhibit M contains a schedule of unregistered securities admitted to trading on the exchange which are exempt from registration.

[35] Section 15(b)(8) of the Exchange Act, 15 U.S.C. 78o(b)(8).

[36] The Securities Investor Protection Act of 1970 contemplates a designated examining authority for broker-dealers. 15 U.S.C. 78aaa *et seq.*

would expedite and streamline the process through which SROs file proposed rule changes with the Commission.[37] The proposals also would streamline the requirements to file amendments to registration statements of national securities exchanges, securities associations, and reports of the Municipal Securities Rulemaking Board. The Commission requests comment on each of these proposals. The Commission requests specific comment on the amendments to the annual filing requirements for securities exchanges, securities associations, and the MSRB, with a view toward maintaining comparable requirements for all SROs.

VI. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a) of the Exchange Act [38] requires the Commission, in adopting rules under the Exchange Act, to consider the impact on competition of those rules, if any, and to balance that impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission preliminarily is of the view that adoption of the proposed amendments to Rule 19b–4, Form 19b–4, and Rule 6a–2 would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission requests comment, however, on any competitive burdens that might result from adoption of these amendments.

In addition, Section 3(a) of the Regulatory Flexibility Act ("RFA") [39] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed amendments on small entities unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[40] Rule 19b–4 and Form 19b–4 apply only to SROs. Rule 6a–2 applies only to national securities exchanges. Furthermore, the proposed amendments are intended to streamline a process to which these SROs already are subject. The Chairman has certified that the proposed amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

Statutory Basis and Text of Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Paragraph (a)(1) of § 240.6a–2 is amended by removing ", or in Exhibits B, C and D," and "and Exhibits B, C and D".

3. Revise paragraph (a)(3) of § 240.6a–2 to read as follows:

§ 240.6a–2 Periodic amendments to registration statements or exemption statements of exchanges.

(a) * * *

(3) Complete Exhibits G, H, J, L and M, except that Exhibit J need only contain the name, principle place of business, and, if available, the date of election to membership for each member organization. The information contained in these exhibits shall be up to date as of the latest practicable date within 3 months of the date on which the annual amendment is filed. If a national securities exchange publishes or cooperates in the publication of the information required in these exhibits on an annual or more frequent basis, in lieu of filing such an exhibit a national securities exchange may:

(i) Identify the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price thereof; and

(ii) Certify to the accuracy of such information as of its date. If a national securities exchange keeps the information required in Exhibits L and M up to date and makes it available to the Commission and the public on request, in lieu of filing such an exhibit a national securities exchange may certify that the information is kept up to date and is available to the Commission and the public upon request.

* * * * *

4. Section 240.6a–2 is amended by revising paragraph (b) to read as follows:

§ 240.6a–2 Periodic amendments to registration statements or exemption statements of exchanges.

* * * * *

(b) Unless exempted pursuant to paragraph (c) of this rule, on or before June 30, 1983, and every three years thereafter each exchange registered as a national securities exchange shall file complete Exhibits A(1), A(2) and A(3) to its registration statement. The information contained in these exhibits shall be up to date as of the latest practicable date within 3 months of the date on which these exhibits are filed. If a national securities exchange publishes or cooperates in the publication of the information required in these exhibits on an annual or more frequent basis, in lieu of filing such an exhibit a national securities exchange may:

(1) Identify the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price thereof; and

(2) Certify to the accuracy of such information as of its date. If a national securities exchange keeps the information required in these exhibits up to date and makes it available to the Commission and the public on request, in lieu of filing such an exhibit a national securities exchange may certify that the information is kept up to date and is available to the Commission and the public upon request.

* * * * *

5. Paragraph (e) of § 240.19b–4 is revised to read as follows:

§ 240.19b–4 Filings with respect to proposed rule changes by self-regulatory organizations.

* * * * *

(e) A proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act if properly designated by the self-regulatory organization as:

(1) Constituting a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule;

(2) Establishing or changing a due, fee, or other charge;

(3) Concerned solely with the administration of the self-regulatory organization;

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[37] These amendments may affect clearing agencies for which the Commission is not the appropriate regulatory agency as defined in Section 3(a)(34) of the Exchange Act, 15 U.S.C. 78c(a)(34). Therefore, in accordance with Section 17A(d)(3)(A)(i) of the Exchange Act, 15 U.S.C. 78q–1(d)(3)(A)(i), at least 15 days before this announcement, the Commission consulted and requested the views of the Board of Governors of the Federal Reserve System.

[38] 15 U.S.C. 78w(a)(2).

[39] 5 U.S.C. 603(a).

[40] 5 U.S.C. 605(b).

(4) Effecting a change in an existing service of a registered clearing agency that:

(i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible; and

(ii) Does not significantly affect the respective rights or obligations of the clearing agency or persons using the service;

(5) Effecting a change in an existing order-entry or trading system of a self-regulatory organization that:

(i) Does not significantly affect the protection of investors or the public interest;

(ii) Does not impose any significant burden on competition; and

(iii) Does not have the effect of limiting the access to or availability of the system; or

(6) Effecting a change that:

(i) Does not significantly affect the protection of investors or the public interest;

(ii) Does not impose any significant burden on competition; and

(iii) By its terms, does not become operative for 30 days after the date of publication of the notice of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

* * * * *

PART 249—FORM, SECURITIES EXCHANGE ACT OF 1934

6. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

7. By revising the first sentence of instruction F of the general instructions of Form 19b–4 (§ 249.819) to read as follows, and by removing the asterisk contained therein along with its accompanying footnote.

Note: Form 19b–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form 19b–4

* * * * *

General Instructions

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F. Signature and Filing of the Completed Form

Eight copies of Form 19b–4, eight copies of Exhibit 1, four copies of Exhibits 2 and 3, and two copies of Exhibit 4 shall be filed with, in the case of filings by securities exchanges, the Assistant Director for Derivatives and Exchange Oversight, in the case of filings by securities associations or the Municipal Securities Rulemaking Board, the Assistant Director for NMS and OTC, and in the case of filings by clearing agencies, the Assistant Director for Securities Processing, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. * * *

* * * * *

8. Item 7 of the information to be included in the completed form of Form 19b–4 (§ 249.819) is amended by removing the word "or" from the end of paragraph (b)(iii) and adding paragraphs (b)(v) and (b)(vi) to read as follows:

Note: Form 19b–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form 19b–4

* * * * *

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

* * * * *

(v) Effects a change in an existing order-entry or trading system of a self-regulatory organization that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) does not have the effect of limiting the access to or availability of the system, or (vi) effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms does not become operative for 30 days after the date of publication of the notice of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

* * * * *

9. Section IV of Exhibit 1 of Form 19b–4 (§ 249.819) is amended by removing "500 North Capitol Street," and adding in its place "450 Fifth Street, NW.," and removing "1100 L Street NW.," and adding in its place "450 Fifth Street, NW.,"

Dated: June 1, 1994

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 94–13732 Filed 6–6–94; 8:45 am]

BILLING CODE 8010–01–P

17 CFR Parts 240 and 249

[Release No. 34–34139; File No. S7–16–94]

RIN 3235–AG11

Exemptive Relief and Simplification of Filing Requirements for Debt Securities To Be Listed on a National Securities Exchange; Solicitation of Comment Concerning Reporting by Issuers of Debt Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing a new rule and proposing to amend its rules under the Securities Exchange Act of 1934 to reduce existing regulatory distinctions between debt securities listed on a national securities exchange and those traded in the over-the-counter market. The Commission also is proposing to simplify registration procedures under the Securities Exchange Act of 1934 for listed debt securities. The proposals would: exempt listed debt securities from restrictions on borrowing and the proxy rules; provide for the automatic effectiveness of a Form 8–A registration statement for listed debt securities; and eliminate the filing fee associated with the Form 8–A registration statement for listed debt. Comment also is being requested as to whether it is advisable to extend reporting requirements to issuers of debt securities that are traded in the over-the-counter market under certain circumstances where the issuer is not otherwise subject to periodic reporting requirements.

DATES: Comments should be received on or before August 8, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Comment letters should refer to File No. S7–16–94. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: With regard to the proposed exemption from restrictions on borrowing, Beth A. Stekler, at (202) 942–0190, Branch of Exchange Regulation, Division of Market Regulation; with regard to issues relating to the proxy rules, Form 8–A, or reporting, Joseph P. Babits, at (202) 942–2910, Office of Disclosure Policy, Division of Corporation Finance; Securities and Exchange Commission

(Mail Stops 5–1 and 3–12, respectively), 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Under the Securities Exchange Act of 1934 ("Exchange Act"),[1] the Commission is publishing for comment proposed new Rule 3a12–11 and revisions to Rules 12b–7,[2] 12d1–2,[3] and Form 8–A.[4] The proposed rule and amendments are intended to provide regulatory relief to issuers listing debt securities on a national securities exchange.

I. Discussion of Proposals

A. *Introduction and Summary*

Section 12 of the Exchange Act[5] requires all securities listed on a national securities exchange to be registered under the Exchange Act.[6] Registration subjects the securities, whether debt or equity, to a number of regulatory provisions, including restrictions on borrowing,[7] periodic reporting by the issuer,[8] and proxy regulation.[9] In contrast, debt securities traded in the over-the-counter ("OTC") market are not required to be registered under the Exchange Act,[10] and, therefore, such securities are not subject to the restrictions on borrowing or proxy regulation. These regulatory distinctions may have unnecessarily and unintentionally affected the structure and development of the debt markets.

The New York Stock Exchange ("NYSE") has advised the Commission that the additional regulatory requirements imposed on listed debt securities create significant disincentives for issuers to list their debt on the national securities exchanges and urged that exemptive action be taken to eliminate this disparity. To address this disparate regulatory treatment between listed and OTC-traded debt, the Commission is proposing to exempt listed debt securities from the borrowing restrictions and proxy rules under the Exchange Act. Listed debt securities, however, would remain subject to the registration and reporting requirements. The Commission also is proposing to simplify the registration process by providing for the immediate effectiveness of Form 8–A registration statements pertaining to the listing of debt securities on a national securities exchange and eliminating the filing fee associated with the form.

In addition to these proposals to ease the regulatory obligations resulting from listing debt securities, the Commission also is considering whether additional informational requirements should be imposed on issuers of OTC-traded debt securities. Accordingly, as discussed below, the Commission is requesting comment on the benefits of periodic reporting requirements with respect to issuers of debt securities and on whether it is advisable to extend those requirements to issuers of debt securities that are traded in the OTC market, comparable to the requirements applicable to issuers that list their debt securities on a national securities exchange.

B. *Exemption From the Borrowing Restrictions of the Exchange Act*

In the aftermath of the 1929 market crash, Congress enacted the Exchange Act to regulate, among other matters, the extension of credit in the securities markets.[11] Along with margin provisions,[12] Congress placed a restriction on the ability of broker-dealers to borrow, in the ordinary course of business, using exchange-traded securities as collateral. Under Section 8(a) of the Exchange Act,[13] a broker-dealer can pledge a listed security, other than an exempted security, only to certain lenders: a member bank of the Federal Reserve System; a non-member bank that has filed with the Federal Reserve Board an agreement to comply with those provisions of the federal securities and banking laws that apply to member banks; or another broker-dealer if such a loan is permissible under the rules and regulations of the Federal Reserve Board.[14] As noted above, Section 8(a) specifically excludes exempted securities from these restrictions on borrowing. Under Section 3(a)(12) of the Exchange Act,[15] the term "exempted securities" includes such securities as the Commission may exempt from the operation of any one or more provisions of the Exchange Act.

In 1968, when Congress extended many of the margin provisions (i.e., Section 7(a)) to securities traded exclusively in the OTC market,[16] Congress placed no comparable restriction on the ability of broker-dealers to borrow against OTC securities.[17] As a result, a broker-dealer can use bonds that are not listed on an exchange to secure financing from any lender, whether or not that lender falls within the statutorily enumerated categories.

Since that time, various market participants have voiced concerns that Section 8(a) is overly restrictive and competitively unfair.[18] According to these participants, broker-dealers' discretion in financing their positions is unduly constrained once a debt security is traded on an exchange. In addition, at least one national securities exchange has been informed by its members that the members may advise an issuer against listing bonds due to the restrictions in Section 8(a).[19]

Given the developments in the OTC market since Congress took action in the 1960s, the current structure of the bond market and the nature of debt financing, the differential treatment of exchange-listed and OTC-traded debt securities does not appear to be warranted. In today's highly competitive market environment, the current regulatory scheme may detract unfairly from broker dealers' ability to finance their positions, and from the national

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[1] 15 U.S.C. 78a *et seq.*

[2] 17 CFR 240.12b–7.

[3] 17 CFR 240.12d1–2

[4] 17 CFR 249.208a.

[5] 15 U.S.C. 78*l*.

[6] Section 12(a) of the Exchange Act [15 U.S.C. 78*l*(a)] prevents any member, broker or dealer from effecting any transaction in any security listed on a national securities exchange unless the security is registered pursuant to Section 12(b) of the Exchange Act [15 U.S.C. 78*l*(b)].

[7] Section 8(a) of the Exchange Act [15 U.S.C. 78h(a)].

[8] Section 13(a) of the Exchange Act [15 U.S.C. 78m(a)].

[9] Section 14(a), (b), and (c) of the Exchange Act [15 U.S.C. 78n(a), (b), and (c)].

[10] See Section 12(g) of the Exchange Act [15 U.S.C. 78*l*(g)], which only requires registration of equity securities.

[11] *See, e.g.*, 78 Cong. Rec. 8386–96 (Senate debate rejecting an amendment to prohibit, rather than regulate, margin transactions).

[12] In particular, Section 7(a) of the Exchange Act [15 U.S.C. 78g] authorized the Board of Governors of the Federal Reserve System ("Federal Reserve Board") to prescribe rules and regulations with respect to the amount of credit that may be initially extended and subsequently maintained on any security traded on a national securities exchange.

[13] 15 U.S.C. 78h(a).

[14] For example, Regulation T [17 CFR 220.1 *et seq.*] authorizes a broker-dealer to clear or finance transactions for a specialist's proprietary account. *See* 12 CFR 220.12(b).

[15] 15 U.S.C. 78c(a)(12).

[16] 1968 Amendments to the Securities Exchange Act of 1934, Pub. L. No. 90–437, 82 Stat. 452 (1968).

[17] Congress did not amend Section 8(a) as it amended Section 7(a), to extend that provision to securities traded exclusively in the OTC market. Congress, however, did not repeal Section 8(a) for listed securities.

[18] *See, e.g.*, letter from Donald J. Solodar, Executive Vice President, Fixed Income, Options & Administration, New York Stock Exchange ("NYSE"), to Brandon Becker, Director, Division of Market Regulation, SEC, and Linda C. Quinn, Director, Division of Corporation Finance, SEC, dated July 19, 1993 ("NYSE letter"); letter from Marc E. Lackritz, President, Securities Industry Association ("SIA"), to William W. Wiles, Secretary, Federal Reserve Board, dated December 23, 1992 ("SIA letter").

[19] *See* NYSE letter, *supra* note 18.

securities exchanges' ability to obtain debt listings.[20]

The Commission is proposing to exempt[21] exchange-traded debt securities from the borrowing restrictions of Section 8(a).[22] The proposed exemption to the restrictions on borrowing would eliminate one competitive barrier to the exchange trading of debt securities. Specifically, to the extent that the restrictions of Section 8(a) may encourage underwriters and investment bankers to recommend against debt securities being listed, the proposed exemption would eliminate that impediment to the listing of debt securities on a national securities exchange.

Moreover, the exemption from the restrictions on borrowing could provide certain benefits to the financial system. Under this proposal, a broker-dealer borrowing against a listed debt security could choose among prospective lenders based solely upon the terms of the financing that they offer. For instance, the exemption would make it possible for a broker-dealer to enter into a repurchase agreement with a non-bank institutional investor. This flexibility should help broker-dealers obtain financing at the lowest available cost.

For purposes of the proposed rule, the term "debt security" would include any security that is not an "equity security" as defined by the Exchange Act and the rules thereunder.[23] Comment is solicited as to whether, in lieu of the proposed definition, the term "debt security" should be more specifically defined. For example, should the term "debt security" be defined as: "(1) A note, bond, debenture or evidence of indebtedness; (2) a certificate of interest or participation in any such note, bond, debenture or evidence of indebtedness; or (3) a temporary certificate for, or guarantee of, any such note, bond, debenture, evidence of indebtedness or certificate; but shall not include an 'equity security' as defined in Section 3(a)(11) of the Act and Rule 3a11–1 thereunder"?[24] Comment also is solicited as to whether hybrid debt securities should be treated as debt securities for purposes of Rule 3a12–11.

The Commission requests commenters to address the scope of the proposed exemption as well as its merits. Are there any categories of listed debt securities that should remain subject to the borrowing restrictions? Interested persons may also wish to comment on how exempting exchange-traded debt securities from Section 8(a) restrictions would affect investor protection in the debt market, including whether the purposes behind the Exchange Act's credit provisions would be frustrated as a result. Interested persons may also wish to comment on the proposed rule's impact on the transparency and liquidity of the market for debt securities.

C. Exemption From Compliance With the Proxy Rules

A second provision of the proposed rule would exempt debt securities listed on a national securities exchange from proxy regulation.[25] By proposing to exempt debt listed on a national securities exchange from the proxy rules, the Commission seeks to address the disparate application of the proxy rules between listed debt securities and debt securities traded in the OTC market. The proxy rules principally apply to equity securities, since most debt securities are not listed on a national securities exchange and thus not subject to the proxy rules.[26]

In 1963, the Commission submitted a report to Congress that set forth its recommendations as to the scope of regulation needed for the OTC market.[27] These recommendations led to the adoption of Section 12(g) in 1964. The Commission concluded that proxy regulation should not be required with respect to debt securities since Section 14 was designed to protect shareholders and the solicitation of proxies was "rarely [a] problem[ ] related to debt securities and, then, most probably in insolvency cases when other protections were available."[28] Today, solicitations of debtholders subject to the proxy rules continue to be infrequent, with only 18 such solicitations having occurred between 1990 and 1993 with respect to NYSE-listed issuers.[29]

In the context of listed debt, the proxy rules, for the most part, cover solicitations to modify the terms of a trust indenture. Given the strictures already imposed by the indenture contract, as well as the Trust Indenture Act, comment is solicited as to whether the benefits to debtholders from the application of the proxy rules to debt securities listed on a national securities exchange outweigh the costs to the issuers in complying with the proxy rules in connection with proxy or consent solicitations.[30] If the proxy rules provide important protections with respect to publicly-traded debt securities that should be preserved, does the need for these protections derive from the listing of the security on a national securities exchange or rather because it is traded in the public debt markets? If the latter is the case, should

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[20] The Commission notes that, at this time, most secondary trading in debt securities (including listed debt securities) takes place in the OTC market; exchange trading of corporate bonds currently accounts for a relatively small percentage of the daily trading volume in such securities and is often in "odd-lot" size. United States Securities and Exchange Commission, Division of Market Regulation, *The Corporate Bond Markets: Structure, Pricing and Trading* 1, 13 (January 1992). Although these circumstances may change if the relief proposed herein is granted, the Commission recognizes that it places a competitive burden on exchange markets to subject them to more restrictive regulation than the OTC market, which is, in this case, the primary market for the trading of debt securities.

[21] Section 3(a)(12) of the Exchange Act.

[22] Proposed Rule 3a12–11(a) would exempt debt securities that are traded on a national securities exchange from the restrictions on borrowing of Section 8(a) of the Exchange Act. A broker-dealer who extends credit on that collateral would continue to be required to comply with the applicable rules and regulations of the Federal Reserve Board, including Regulation T [17 CFR 220.1 *et seq*].

[23] Proposed Rule 3a12–11(c). The term "equity security" is defined in Section 3(a)(11) [15 U.S.C. 78c(a)(11)] and Rule 3a11–1 [17 CFR 240.3a11–1] thereunder. Equity securities would include, among other items, stock or similar security, certificates of interest or participation in any profit sharing agreement, voting trust certificate or certificate of deposit for any equity security, limited partnership interest, any security that is convertible, with or without consideration, into an equity security or any warrant or right to subscribe or purchase an equity security.

[24] This definition is modeled after Section 304(a)(1) of the Trust Indenture Act of 1939, ("Trust Indenture Act") [15 U.S.C. 77ddd(a)(1)].

[25] Proposed Rule 3a12–11(b) would exempt listed debt securities from the proxy, shareholder communications, and information statement rules under Sections 14(a), 14(b), and 14(c) of the Exchange Act. The term "debt securities" would be defined in the same manner as in the exemption from the restrictions on borrowing. *See* proposed Rule 3a12–11(c).

[26] The OTC market is the principal trading market for debt (*see* n.20). Of the more than 13,000 publicly traded domestic corporate bond issues in 1989 fewer than 20% (2,135 on the NYSE and 280 on the American Stock Exchange ("AMEX") were listed on the NYSE and AMEX. *See* Colleton, "Bondholder Communications—The Missing Link in High Yield Debt," Hill and Knowlton, Inc. at 17 (August 1990) Similarly, less than 20% of the total face amount of corporate debt securities outstanding is listed on the NYSE. *See* New York Stock Exchange, Inc., Fact Book 54 (1993); Board of Governors of the Federal Reserve System, Flow of Funds Account L.213 (March 9, 1994).

[27] *Report of Special Study of Securities Markets* ("1963 Special Study") U.S. Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. pt. 3, 34 (1963)

[28] *Id.* at 34.

[29] *See* letter from Fred Siesel of NYSE to David Sirignano of the Division of Corporation Finance dated May 12, 1994.

[30] When Congress first began to consider the need for 12(g), an earlier version of Senate Bill 1168 would have subjected issuers with more than $1 million of debt securities outstanding to registration and the proxy rules. The Senate Committee on Banking and Currency, however, "recognized that debt security holders are normally better protected, from a financial standpoint, by the fixed dollar obligation in the debt contract than are holders of equity securities, and hence eliminated the debt security test from the provisions of the bill." S. Rep. No. 700, 85th Cong., 1 Sess. 6 (1957)

the Commission seek to extend the proxy rules to all publicly-traded debt securities, similar to the treatment of equity securities under Section 12(g) of the Exchange Act? Comment also is solicited as to whether an issuer's solicitation of holders of debt securities listed on a national securities exchange should remain subject to the antifraud proscriptions of Rule 14a–9[31] and/or the rules adopted under Section 14 of the Exchange Act to facilitate the transmission of proxy and consent materials to beneficial owners,[32] even if exempted from other proxy regulation. Finally, is the application of the proxy rules currently part of the expectations of the parties negotiating an indenture agreement, or of investors purchasing a listed debt security? If so, should the proposed exemption be prospective in nature and thus inapplicable to classes of debt listed before the effective date of the exemption?

D. Automatic Effectiveness of Form 8–A and Elimination of Filing Fee

The Commission proposes to reduce or eliminate some of the procedural costs of listing debt on a national securities exchange, both through rulemaking and through practical modifications to filing procedures.[33] Currently, Form 8–A registration statements must be declared effective by the staff, pursuant to delegated authority, which necessitates coordination among the issuer, its counsel, the Commission staff, and the national securities exchange. A rule change is proposed to provide for the automatic effectiveness of registration statements on Form 8–A, including amendments, that pertain only to the listing of debt securities on a national securities exchange.[34] In the case where debt securities of the class being registered were concurrently being registered under the Securities Act, the Form 8–A would become effective simultaneously with the effectiveness of the related Securities Act registration statement if certification by the national securities exchange had been received by the Commission on or before the effectiveness of the related Securities Act registration statement. If, however, that class of debt securities was not concurrently being registered under the Securities Act, then the Form 8–A would become effective upon filing if certification by the exchange had been received by the Commission on or before the filing of the form.[35]

In addition, the Commission proposes to eliminate the $250 filing fee for registering a class of debt securities on Form 8–A.[36] Form 8–A would be revised to add two new boxes, one of which the issuer would check to signify it is a debt registration requiring no fee and that the Form 8–A: (1) Is to be effective automatically upon filing, as no debt securities of the class being registered on the form are being registered concurrently under the Securities Act; or (2) is to be effective simultaneously with the effectiveness of a related Securities Act registration statement. Comment is solicited as to whether these proposed amendments address the procedural and timing concerns of issuers listing debt securities on a national securities exchange.

E. Reporting

Today's proposals do not exempt listed debt securities from registration and reporting under the Exchange Act. Companies that list their debt securities for trading in the public market will still have to provide annual, quarterly, and current reports. This raises the question as to the need for similar requirements for issuers with substantial amounts of debt securities traded in the OTC market.

When Congress amended the Exchange Act in 1964 to add Section 12(g), it extended registration to the OTC market for the first time. However, the 1964 amendments focused exclusively on issuers of equity securities. No comparable provision was provided for debt securities that are traded in the OTC market. This difference in regulatory treatment was not based on a policy decision that current financial information is not important to the market. Rather, the decision appears to have been based, at least in part, on the nature of the debt securities market in 1963. At that time, it was considered unnecessary to extend registration to debt securities trading in the OTC market, as it appeared that a company that had a significant amount of debt securities outstanding would probably meet the Section 12(g) threshold with respect to its equity securities.[37]

Specifically, in its 1963 Special Study, the Commission cited the results of a questionnaire it used in, among other matters, determining whether debtholders independently needed the protections of Section 13, 14, and 16 of the Exchange Act.[38] The questionnaire sought information about outstanding debt securities, face dollar amount, and number of holders. While acknowledging the small number of respondents to the questionnaire, the Commission found that of 218 issuers that responded, only 58 would not have incurred a reporting obligation.[39] Of these issuers, 45% had less than $250,000 face amount of debt securities outstanding, 60% less than $500,000 outstanding, and 76% less than $1,000,000.[40] The Commission concluded that the proposed Section 12(g) equity threshold would make financial reports publicly available to a

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[31] 17 CFR 240.14a–9.

[32] Rules 14a–13 [17 CFR 240.14a–13], 14b–1 [17 CFR 240.14b–1], and 14b–2 [17 CFR 240.14b–2].

[33] The Commission will accept the filing of a combined Form 8–A and NYSE Listing Application on behalf of any issuer listing debt securities on the NYSE. The combined Form 8–A/Listing Application will include all the current disclosure requirements of Form 8–A and the listing application requirements of NYSE. The NYSE intends to assist its listed companies by filing the combined Form 8–A/Listing Application with the Commission on behalf of the issuer and as its agent. The issuer, however, may choose to file the Form 8–A itself. Regardless of whether the issuer or the national securities exchange files the Form 8–A/Listing Application, the issuer is solely responsible for the filing and its contents.

National securities exchange representatives wishing to use a similar procedure should contact Joseph P. Babits at (202) 942–2910. National securities exchanges that intend to use a combined Form 8–A/Listing Application that will become effective upon filing must confirm that the combined Form has been in fact filed with the Commission prior to the commencement of trading in the class of securities.

A national securities exchange using such a procedure may wish to make Form 8–A filings with the Commission in paper, whether or not the registrant is subject to mandated electronic filing via the Electronic Data Gathering, Analysis, and Retrieval system (EDGAR). Accordingly, the Division of Corporation Finance will consider requests for a continuing hardship exemption pursuant to Rule 202 of Regulation S–T [17 CFR 232.202] from any national securities exchange filing Forms 8–A on behalf of electronic filers.

[34] Proposed amendments to Rule 12d1–2 and Instruction A of Form 8–A. Forms 8–A that register both debt and equity securities would not be encompassed by the proposed amendments.

[35] If an issuer elects to file the Form 8–A (or Form 8–A/Listing Application) itself, it must ensure that the Commission has received certification from the exchange on or before the date of filing the Form if automatic effectiveness is requested, or, if concurrent effectiveness is requested, on or before the Securities Act registration statement has been declared effective. An issuer may contact the Office of Quality Control at (202) 942–8970 (ext. 4475) to verify that certification has been received by the Commission.

To the extent that multiple debt issues are being registered on a single Form 8–A, then certification for each issue must be received by the Commission prior to effectiveness. Where a Form 8–A relates to debt securities to be listed on multiple national securities exchanges (e.g., the NYSE and the Boston Stock Exchange), then certifications must be received by the Commission from each exchange prior to effectiveness.

[36] Proposed amendment to Rule 12b–7.

[37] 1963 Special Study, *supra* note 27, at n.55.

[38] *Id.*

[39] Publicly available financial information would have been available for 160 issuers that would have met the proposed Section 12(g) threshold requiring registration of their equity securities. *Id.*

[40] *Id.*

large majority of debtholders. Furthermore, the aggregate sums lent by issuers that would not be subject to any reporting obligation tended to be modest. Thus, the 1963 Special Study recommended to Congress that Section 12(g) not apply to debt securities.[41]

In the 1980s, the issuance of debt securities in both private placements and public offerings began to increase dramatically.[42] In addition, the increasing use of leveraged buyouts that concentrated equity ownership below Section 12(g) thresholds resulted in a number of companies with significant outstanding debt securities that are not reporting companies. Concerns have been expressed about the lack of information being available to the market regarding the issuers of some of these securities.[43] In the case of privately placed debt securities traded in the OTC market, no registration or periodic reporting under the Exchange Act is required. Section 15(d) of the Exchange Act[44] requires reporting by issuers that make a registered offering of equity or debt securities, but permits companies to suspend their reporting obligations after one year when a class of securities are held by fewer than 300 record holders.

As applied, most issuances of debt securities are viewed as separate classes of debt. Therefore, it is not uncommon for a company that sells registered debt securities not to have a 15(d) reporting obligation after its first year. While there may be more than 300 holders of record for all the registered debt of a company, it is not uncommon that there are fewer than 300 holders of record for any one issue.

The staff of the Division of Corporation Finance recently examined information on companies that had more than 5 million dollars of debt securities outstanding to determine whether the companies were reporting with the Commission. The staff concluded that there are at least 200 non-reporting issuers, with over $47 billion of debt securities outstanding.[45] It appears appropriate to determine whether the nature and size of the debt market has sufficiently changed since the 1960s such that continuous reporting by issuers with significant amount of debt securities may now be warranted.

Comment is solicited as to whether it is now desirable for the Commission to adopt rules or exercise definitional authority under the Exchange Act or Trust Indenture Act to increase the number of issuers with debt securities traded in the OTC market that would be subject to periodic reporting. For example, are periodic reports needed for companies that have issued debt securities but subsequently suspended their reporting obligations pursuant to Section 15(d) of the Exchange Act? Comment also is solicited as to whether, even in the absence of a registered offering, an issuer of debt securities should be subject to an Exchange Act reporting obligation, similar to the provisions governing the registration of equity under Section 12(g) of the Exchange Act.

If such reporting obligations are needed, should the thresholds be based upon the total dollar amount of debt securities outstanding, the number of record or beneficial holders, and/or other criteria? If the number of holders, comment is solicited as to the appropriate threshold number of holders (i.e., 300, 500, or some greater or lesser number)? Comment is solicited as to how the number of holders should be calculated for these purposes.[46] Comment also is solicited as to whether the total amount of registered debt securities outstanding of an issuer should be viewed as one class in determining whether the threshold is met.

II. Request for Comment

Any interested persons wishing to submit written comments on the proposed rules and amendments, as well as any other matters that might have an impact on the proposals set forth in the release are requested to do so. Comments are requested on the impact of the proposals on issuers, debtholders, broker-dealers, and others. The Commission also requests comment on whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.[47]

III. Cost-Benefit Analysis

To assist the Commission in its evaluation of the costs and benefits that may result from the proposals, commenters are requested to provide views and data relating to any costs and benefits associated with these proposals. The proposals are expected to decrease the net costs to issuers associated with listing debt securities on a national securities exchange, without materially diminishing the benefits to investors. Among other matters, the proposals would exempt the class of debt securities from the restrictions on borrowing and the proxy rules.

The costs to investors associated with these proposed rules and revisions are minimal. Currently, an issuer is not required to register debt securities under the Exchange Act in order for those securities to be traded in the OTC market. By reducing the regulatory costs of listing debt on a national securities exchange, it is expected that more issuers will list such securities and thus register under the Exchange Act.

IV. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603 for the proposed rule and amendments to Rule 12b–7, 12d1–2, and Form 8–A. The analysis notes that the proposals are expected to reduce regulatory costs for small entities.

As discussed more fully in the analysis, the proposed changes would affect persons that are small entities, as defined by the Commission's rules. The exemptions provided by Rule 3a12–11 and revisions to Rules 12b–7, 12d1–2, and Form 8–A are expected to decrease the compliance burdens of small entities.

Commenters are encouraged to comment on any aspect of the analysis. Such comments will be considered in

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[41] *Id.* The Commission also noted that Section 314(a)(1) [15 U.S.C. 77nnn(a)(1)] of "[t]he Trust Indenture Act of 1939 gave the Commission power to require companies which qualify indentures under it, but are not otherwise under a statutory duty to report under the provisions of Sections 13 and 15(d) of the Exchange Act, to comply with such of the reporting requirements of section 13 as the Commission might prescribe." 1963 Special Study, *supra* note 27, at 6.

[42] Federal Reserve Bulletin, Vol. 68.12–79.3 (December 1982–March 1993).

[43] *See generally*, Jereski, "None of Your Business," *Forbes* (April 29, 1991) at 68; Norris, "Market Place—When Companies Conceal the Facts," *The New York Times* (September 14, 1990); Jereski, "Now You See the Junk, Now You Don't," *Business Week* (April 2, 1990) at 40; Colloton, *supra* note 26.

See also, Harris Trust and Savings Bank et al. v. *E–II Holdings, Inc.*, (N.D. Ill. No. 89 C 203) *Fed. Sec. L. Rep.* [CCH] par. 94,917 at 95,057 (September 5, 1989). The court held that absent specific provisions in the indenture, Section 314(a) of the Trust Indenture Act would not compel production of financial and other information by the non-reporting company to its trustees.

[44] 15 U.S.C. 78o(d).

[45] The staff believes that these statistics are understated since non-reporting companies often consider their financial and operating information proprietary.

[46] Where securities have been issued in book-entry form and held by the Depository Trust Company ("DTC"), the staff has taken the position that DTC participants should be included in the calculation of the total number of record holders. *See, CFAC Remic Trust 1989–A* (available March 30, 1990).

[47] 15 U.S.C. 78w(a).

the preparation of the Final Regulatory Flexibility Analysis if the proposed rule and amendments are adopted. A copy of the analysis may be obtained by contacting Joseph P. Babits, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

V. Statutory Basis for Rules

New Rule 3a12–11 and all amendments are being proposed pursuant to Exchange Act Sections 3(a)(12),[48] 9,[49] 10,[50] 12,[51] 14,[52] and 23, as amended.

List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended in part as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77sss, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By adding § 240.3a12–11 to read as follows:

§ 240.3a12–11 Exemption from Sections 8(a), 14(a), 14(b), and 14(c) for debt securities listed on a national securities exchange.

(a) Debt securities that are listed for trading on a national securities exchange shall be exempt from the restrictions on borrowing of Section 8(a) of the Act (15 U.S.C. 78h(a)).

(b) Debt securities registered pursuant to the provisions of Section 12(b) of the Act (15 U.S.C. 78*l*(b)) shall be exempt from Sections 14(a), 14(b), and 14(c) of the Act (15 U.S.C. 78n(a), (b), and (c)).

(c) For purposes of this section, *debt securities* is defined to mean any securities that are not "equity securities" as defined in Section 3(a)(11) of the Act (15 U.S.C. 78c(a)(11)) and § 240.3a11–1 thereunder.

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[48] 15 U.S.C. 78c(a)(12).
[49] 15 U.S.C. 78i.
[50] 15 U.S.C. 78j.
[51] 15 U.S.C. 78*l*.
[52] 15 U.S.C. 78n.
[53] 15 U.S.C. 78w.

3. By adding a sentence to the end of § 240.12b–7 to read as follows:

§ 240.12b–7 Filing fee.

* * * No fee, however, shall be paid to the Commission for the registration of debt securities, as defined in § 240.3a12–11(c), on Form 8–A (17 CFR 249.208a) pursuant to Section 12(b) of the Act (15 U.S.C. 78*l*(b)).

4. By revising the section heading, designating the existing text as paragraph (a), and adding paragraph (b) to § 240.12d1–2 to read as follows:

§ 240.12d1–2 Effectiveness of registration.

(a) * * *

(b) A registration statement on Form 8–A (17 CFR 249.208a) that only pertains to the listing of a class or classes of debt securities, as defined in § 240.3a12–11(c), on a national securities exchange for which certification has been received by the Commission shall become effective upon filing with the Commission, in the case of a class of debt securities not concurrently being registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"); and otherwise, upon the effectiveness of a concurrent Securities Act registration statement to which the debt securities relate.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

6. By amending § 249.208a by adding paragraph (c) to read as follows:

§ 249.208a Form 8–A, for registration of certain classes of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.

* * * * *

(c) If this form is used *only* for the registration of a class of debt securities as defined in Rule 3a12–11(c) and certification from the national securities exchange has been received by the Commission, it shall become effective either:

(1) Upon filing with the Commission in the case of a class of debt securities not concurrently being registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act"); or

(2) Upon the effectiveness of a concurrent Securities Act registration statement to which the debt securities relate.

7. By amending Form 8–A (§ 249.208a) by adding two check boxes to the cover page immediately before "Securities to be registered pursuant to Section 12(g) of the Act," and by adding paragraph (c) to General Instruction A to read as follows:

Note: The text of Form 8–A does not and the amendments will not appear in the Code of Federal Regulations.

Form 8–A—For Registration of Certain Classes of Securities Pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934

* * * * *

If this Form relates to the registration of a class of debt securities and is to become effective upon filing pursuant to General Instruction A.(c)(1), please check the following box. [ ]

If this Form relates to the registration of a class of debt securities and is to become effective simultaneously with the effectiveness of a concurrent registration statement under the Securities Act of 1933 pursuant to General Instruction A.(c)(2), please check the following box. [ ]

* * * * *

GENERAL INSTRUCTIONS

A. Rules as to Use of Form 8–A

* * * * *

(c) If this form is used *only* for the registration of a class of debt securities as defined in Rule 3a12–11(c) (17 CFR 240.3a12–11(c)) and certification from the national securities exchange has been received by the Commission, it shall become effective

(1) Upon filing with the Commission, in the case of a class of debt securities not concurrently being registered under the Securities Act of 1933 (15 U.S.C. 78a *et seq.*) ("Securities Act"); or

(2) Simultaneously with the effectiveness of a concurrent Securities Act registration statement to which the debt securities relate. See Rule 12d1–2(b) (17 CFR 240.12d1–2(b)).

By the Commission.

Dated: June 1, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13717 Filed 6–6–94; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–94–017]

RIN 2115–AE46

Special Local Regulations for Marine Events; Atlantic Ocean, Ocean City, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish permanent special local regulations for the Ocean City Offshore Grand Prix held annually in the Atlantic

Ocean off Ocean City. The effect of these regulations will be to restrict general navigation in the regulated area for the safety of spectators and participants. These regulations are needed to provide for the safety of life, limb, and property on the navigable waters during the event.

DATES: Comments must be received on or before August 8, 1994.

ADDRESSES: Comments should be mailed or hand carried to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments will be available for inspection and copying in room 209 of this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05–94–017) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulations

The United States Offshore Racing Association annually sponsors the Ocean City Offshore Grand Prix. Each year the United States Offshore Racing Association requests that the Coast Guard provide control of spectator and commercial traffic within the regulated area, as part of their application. Since this is a regular, yearly event, the Coast Guard proposes to develop a special local regulation. Specifically the Coast Guard seeks to regulate the waterways surrounding the race course. The course runs from Ocean City Inlet to Maryland Beach. To provide for the safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area. A temporary spectator anchorage area will be established for what is expected to be a large spectator fleet. Coast Guard patrol vessels will be positioned at Ocean City Inlet to direct vessels around the regulated area, or to the temporary spectator anchorage area. The sponsor usually provides 29 vessels to assist the Coast Guard and local government agencies in patrolling the event. Medical vessels will display flourescent orange placards, and patrol boats will display flourescent green placards.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation will only be in effect for several hours, one day a year, and the impact on routine navigation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). It is anticipated that the impact of this proposal on non-participating small entities will actually benefit their business due to the increase in local tourism. The Coast Guard will certify under 5 U.S.C. 605(b), that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposed rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it is anticipated that this proposed rulemaking will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment Assessment

This proposed rulemaking has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with § 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket, and is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is proposed to be amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.517 is added to read as follows:

§ 100.517 Atlantic Ocean, Ocean City, Maryland

(a) *Definition.* (1) *Regulated area.* The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 38°25′42″ North, longitude 75°05′06″ West; thence east southeast to latitude 38°25′30″ North, longitude 75°02′12″ West; thence south southwest parallel to the Ocean City shoreline to latitude 38°19′12″ North, longitude 75°03′48″ West; thence west northwest to the shoreline at latitude 38°19′30″ North, longitude 75°05′00″ West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander will

be a commissioned, warrant, or petty officer who will be designated by the Commander, Coast Guard Group Baltimore.

(b) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of this section but may not block a navigable channel.

(c) *Effective period.* The Commander, Fifth Coast Guard District will publish a notice in the **Federal Register** and the Fifth Coast Guard District Local Notice to Mariners that announces the times and dates that this section is in effect.

Dated: April 13, 1994.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander Fifth Coast Guard District.

[FR Doc. 94-13804 Filed 6-6-94; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD07-93-026]

RIN 2115-AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT

ACTION: Notice of proposed rulemaking

SUMMARY: The Coast Guard proposes to limit the number of openings of the East Sunrise Boulevard Drawbridge, mile 1062.6 at Fort Lauderdale during certain periods. This proposal is being made to relieve highway congestion created by back-to-back bridge openings while still meeting the reasonable needs of navigation.

DATES: Comments must be received on or before August 8, 1994.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131-3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. For information concerning comments, the telephone number is 305-536-4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Brodie Rich, Project Manager at (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD07-93-026] and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Brodie Rich at the address under "**ADDRESSES**". The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Brodie Rich, Project Manager and LT J. M. Losego, Project Counsel.

Background and Purpose

This new drawbridge presently opens on signal. Congressman E. Clay Shaw, Jr. requested that the Coast Guard conduct a study to determine whether scheduled openings would improve traffic conditions in the area. The bridge owner (Florida Department of Transportation) recommended hour and half-hour openings on weekdays and 20-minute openings on weekends during the season to reduce traffic delays. A Coast Guard evaluation of the proposal concluded that the very light highway traffic levels for this six-laned roadway and the frequency of bridge openings did not justify the proposed opening schedules. However, in order to eliminate back-to-back openings during the tourist season which create traffic congestion, a 15-minute opening schedule appears to be warranted.

Discussion of Proposed Amendments

The Coast Guard tested a 15-minute opening schedule between 10 a.m. and 6 p.m. daily from December 1, 1993 through January 30, 1994, pursuant to a published Notice of Deviation (58 FR 65063, December 16, 1993). No comments were received in response to the Notice of Deviation. The results of the test indicated traffic backups created by back-to-back openings were reduced. The proposed rule would allow for a 15 minute opening schedule to cover the period from 10 a.m. to 6 p.m. daily during the season (November 15th through May 15th).

This schedule should eliminate back to-back openings and help to reduce traffic delays without unreasonably impacting navigation.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT (44 FR 11040, February 26, 1979) is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Since tugs with tows are exempt from this proposal, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b)

that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.g(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261 is amended by adding a new paragraph (gg) to read as follows:

§ 117.261 Atlantic intracoastal waterway.

* * * * *

(gg) The draw of the East Sunrise Boulevard drawbridge (SR 838), mile 1062.6, at Fort Lauderdale shall open on signal; except that from November 15 to May 15, from 10 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour.

* * * * *

Dated: May 18, 1994.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 94–13798 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD07–94–051]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard proposes to change regulations governing the operation of the Hillsboro Boulevard (SR 810) drawbridge, mile 1050.0 at Deerfield Beach, Florida, by permitting the draw to remain closed for a longer period of time during the winter season. This proposal is being made to relieve highway congestion created by bridge openings while still meeting the reasonable needs of navigation.

DATES: Comments must be received on or before August 8, 1994.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131–3050, or may be delivered to Room 406 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. For information concerning comments, the telephone number is 305–536–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rule making. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Brodie Rich, Project Manager at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rule making by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rule making (CGD07–94–051) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. Comments regarding the potential impact of this proposal on the safety of navigation are particularly solicited.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Brodie Rich at the address under ADDRESSES. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rule making, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Brodie Rich, Project Manager, and LT. J. M. Losego, Project Counsel.

Background and Purpose

This drawbridge presently opens on signal, except that from October 1 through May 31, from 7 a.m. to 6 p.m., the draw opens only on the hour, quarter-hour, half-hour and three-quarter hour. Mayor Sussman requested that the Coast Guard change the operating regulations to provide for hour and half-hour drawbridge openings. The bridge owner (Florida Department of Transportation) recommended a change to a 20-minute opening schedule during the season to reduce traffic delays.

A Coast Guard analysis of highway traffic and bridge opening data provided by the bridge owner and four on-site investigations of the waterway holding conditions and local traffic patterns which were concluded on May 5, 1994, established that the highway traffic levels for this four-laned roadway and the frequency of bridge openings did not justify the proposed hour/half-hour opening schedule. However, in order to reduce drawbridge openings and periodic traffic congestion during the tourist season, a 20-minute opening schedule appears to be warranted.

Discussion of Proposed Amendments

The proposed rule would allow for a 20-minute opening schedule to cover the period from 7 a.m. to 6 p.m. daily during the season (October 1st through May 31st).

This schedule would reduce the number of bridge openings and help to reduce highway traffic delays. The Coast Guard has a continuing concern for the safety of navigation while vessels are waiting for a bridge opening. As noted

in the "Coast Pilot", the Hillsboro Drainage Canal immediately north of the bridge creates strong cross currents in the Intracoastal Waterway channel during certain tidal conditions. These currents could cause a vessel to strike the northeast fender system if a mariner is unaware of the local currents or if the vessel is underpowered and had to come about in the stream. Mariners are encouraged to comment on this navigational safety issue.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT (44 FR 11040; February 26, 1979) is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Since tugs with tows are exempt from this proposal, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.g(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261 is amended by revising paragraph (bb) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway.

* * * * *

(bb) The draw of the Hillsboro Boulevard drawbridge (SR 810), mile 1050.0, at Deerfield Beach shall open on signal; except that from October 1 to May 31, from 7 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: May 18, 1994.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 94–13799 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO–610–4111–02–24 1A]

RIN 1004–AB22

Onshore Oil and Gas Operations, Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 5, Measurement of Gas; Public Meeting and Reopening of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; reopening of comment period and notice of meeting.

SUMMARY: A proposed rule to revise existing Onshore Oil and Gas Order No. 5, Measurement of Gas, was published in the **Federal Register** on January 6, 1994 (59 FR 718), with a 60-day comment period expiring March 7, 1994. The comment period subsequently was reopened for an additional 30 days expiring April 18, 1994 (59 FR 12570). The comment period is being reopened to accommodate responses to statements that may be made at a public meeting requested by some of those who commented on the proposed rule.

DATES: A public meeting on the proposed revision of the Order will be held Tuesday, June 28, 1994, from 8:30 a.m. to 4:00 p.m. Comments in response to statements made at the meeting or on the proposed rule should be received no later than July 8, 1994. Comments received after this date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: The meeting will be held in the 9th floor conference room at the office of the Rocky Mountain Oil and Gas Association, 1775 Sherman Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Lonny Bagley at (406) 255–2847.

SUPPLEMENTARY INFORMATION: The sole purpose of the meeting announced in this notice will be to allow those who commented on the proposed rule an opportunity to explain in greater detail the rationale for their comments and for any other interested parties to express their relevant concerns to members of the Order No. 5 Committee. Thus, the meeting will not be for the purpose of decisionmaking by consensus regarding the final language of any provision of the Order.

Due to space limitations, it is requested that no more than two representatives of each interested party attend the meeting.

Dated: June 1, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–13760 Filed 6–6–94; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–41, RM–8443]

Radio Broadcasting Services; Cordova, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of New Century Radio, Inc., licensee of Station WFFN (FM), Cordova, Alabama, seeking the substitution of Channel 237A for Channel 223A at Cordova and modification of its authorization accordingly. Coordinates for this proposal are 33–49–01 and 87–11–55.

As the petitioner's modification proposal seeks an equivalent channel substitution, we will not accept competing expressions of interest.

DATES: Comments must be filed on or before July 22, 1994, and reply comments on or before August 1, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Erwin G. Krasnow, Esq., Verner, Liipfert, Bernhard, McPherson and Hand, 901–15th Street, NW., suite 700, Washington, DC 20005–2301.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–211, adopted April 29, 1994, and released May 31, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–13713 Filed 6–6–94, 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 59, No. 108
Tuesday, June 7, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Science and Education National Research Initiative Advisory Committee

Notice is hereby given that the Secretary of Agriculture will reestablish the Science and Education National Research Initiative Advisory Committee. This Committee will advise the Secretary of Agriculture with respect to areas of agricultural research to be supported, priorities to be adopted, and procedures to be followed in implementing programs of research grants to be awarded competitively through the National Research Initiative Competitive Grants Program.

This Committee will meet annually in Washington, D.C. Duties of this Committee are to advise the Secretary on competitive grant policies for the Agency, examine needs as related to on-going programs, provide an overview of research needs in areas considered for U.S. Department of Agriculture competitive grants, assess program progress and recommend resource shifts, and advise on ways to improve guidelines and evaluation procedures.

It has been determined that the reestablishment of this Advisory Committee is in the public interest in connection with the work of the U.S. Department of Agriculture.

Done at Washington, DC., this 27 day of May 1994.

Wardell C. Townsend, Jr.,

Assistant Secretary for Administration.

[FR Doc. 94–13790 Filed 6–6–94; 8:45 am]

BILLING CODE 3410–22–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget: Expedited Review Requested

DOC has submitted to the Office of Management and Budget (OMB) for "expedited" clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration
Title: Commerce Trade Fair Privatization Application
Agency Form Number: ITA–4234P
OMB Approval Number: None
Type of Request: New Collection—EXPEDITED REVIEW
Burden: 50 Respondents; 600 burden hours; average hours per response—12 hours
Needs and Uses: This collection will be used in evaluating and selecting applicants qualified to assume organization and management of U.S. pavilions in overseas trade fairs previously managed by the Department of Commerce
Affected Public: Business and other for profit and non-profit entities in the United States
Frequency: On occasion
Respondent's Obligation: Required to obtain a benefit
OMB Desk Officer: Don Arbuckle, (202) 395–7340.

A copy of the Application is published below. Any questions can be directed to Gerald Taché, DOC Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 1, 1994.

Gerald Taché,

Departmental Clearance Officer, Office of Management and Organization.

FORM ITA–4134P

OMB No. 0625– Expires:_____

Public reporting burden for this collection of information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Reports Clearance Officer, International Trade Administration, Room 4001, U.S. Department of Commerce, Washington, D.C. 20230 *and* to the Office of Information and regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0625–), Washington DC 20503.

Commerce Trade Fair Privatization Application

[Name of Applicant] hereby applies for Certification to promote, recruit and manage a U.S. Pavilion or exhibitor group at the following overseas trade event. In connection with this application, the following information is submitted:

1. Name of event.
2. Date and location of event.
3. Name, business and mailing address of the Applicant.
4. Contact name, title and telephone and fax numbers.
5. The event's major industry or product themes.
6. Name of overseas event organizer or authority ("overseas fair authority").
7. Name, title, address and telephone and fax numbers of the overseas fair authority's principal contact.
8. A detailed description of the Applicant's experience in trade fair and pavilion management. Please cite specific examples of successful recruitment of a minimum of 20 U.S. exhibitors for domestic and/or international trade shows with the same industry theme(s) as the show for which Certification is sought. (International trade show experience is preferred).
9. A detailed description of the Applicant's ability to provide personnel resources sufficient to plan, implement, and organize a successful U.S. pavilion or exhibitor group and the capability to provide exhibition and sundry trade services to exhibitors.
10. A detailed description of the promotional campaign to be conducted by the Applicant to attract exhibitors of U.S. products. Please cite specific steps organizer will take to target and recruit small, medium-sized and new-to-market firms.

11. A detailed description of the promotional campaign to be conducted by the Applicant to attract importers, distributors, agents, buyers and end-users to the event.

12. Net area for exhibit space for U.S. pavilion or group of U.S. exhibitors. Please include satisfactory documentation, in English, from the overseas fair authority of a lease or an option to lease the necessary exhibition space if selected as the organizer of a U.S. pavilion within one or more of the venue's halls, and a letter indicating the Applicant's acceptance of the terms, if selected. If unable to provide the above documentation, please explain why you are unable to do so. (Note: Certification will be withdrawn and the $1,500 contribution forfeited if this documentation is not received within 30 days of notification of selection.)

13. Which (if any) of the Applicant's services and responsibilities will be contracted out to another party.

14. The Applicant's proposed fee schedule in U.S. dollars, including the amount to be charged for "turnkey" booths and for raw exhibit space, the basic services to be included in these fees, and any fees for additional services to be provided.

15. Specific support services, including expert staff support, to be requested of Commerce.

[Name of Applicant] agrees to abide by the attached Conditions of Participation, which are incorporated into this application by reference and are expressly made a part hereof. We certify that the information contained in this application is true and correct to the best of our knowledge and will inform Commerce promptly of any material changes. We understand that our non-refundable $1,500 contribution is due not more than 14 days after receipt of notice of our selection. We also understand that, if we fail to recruit the minimum number of firms for, or withdraw from, the event, we may be deemed ineligible for future Commerce support for the event in subsequent years.

Applicant Signature

Printed Name/Title

Date

Approved by the Department of Commerce

Signature

Title

Date

[FR Doc. 94–13768 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–25–M

Bureau of Export Administration

Electronics Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Electronics Technical Advisory Committee will be held June 30, 1994, 9 a.m., Herbert C. Hoover Building, room 1617–M2, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to electronics equipment or technology.

Agenda

General Sessions

1. Opening remarks and introductions.
2. Presentations by the public.
3. Discussion of export control issues.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials or comments at least one week before the meeting to the address listed below:

Ms. Lee Ann Carpenter, TAC Unit/OAS/EA Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: June 1, 1994

Betty Ferrell,

Director, Technical Advisory Committee Unit

[FR Doc. 94–13719 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

Docket A(32b1)–2–94

Foreign-Trade Zone 50—Long Beach, CA, Request for Export Manufacturing Authority, J.M. William & Company, Inc., (Poly/Cotton Bed Linens)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Long Beach, California, grantee of FTZ 50, requesting authority on behalf of the J.M. William & Company, Inc., to manufacture textile bed linens under zone procedures for export within FTZ 50. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 20, 1994.

The company plans to manufacture bed sheet sets, comforters and pillows. The primary input is woven polyester/cotton fabric (HTSUS 5513(14).41. duty rate: 17%), which is sourced from abroad (primarily from China). Additional foreign materials that may be used in the future include woven fabric of artificial/synthetic fibers, sewing thread, and nonwoven fill. The application indicates that zone procedures would be used only for export manufacturing activity.

The company would export all products made with foreign fabric and other foreign textile mill products admitted to the zone. Zone procedures would exempt it from U.S. quota requirements and Customs duty payments on the foreign items.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address

below. The closing period for their receipt is [30 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 10-day period (to [40 days from date of publication]).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

Dated: May 27, 1994

John J. Da Ponte, Jr.,

Executive Secretary

[FR Doc. 94–13720 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request in accordance with section 353.22 or 355.22 of the Commerce Regulations (19 CFR 353.22/355.22 (1993)), that the Department of Commerce (the Department) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than June 30, 1994, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods.

	Period
Antidumping duty proceedings	
Belgium: Sugar (A–423–077)	06/01/93–05/31/94
Canada: Oil country tubular goods (A–122–506)	06/01/93–05/31/94
Canada: Red raspberries (A–122–401)	06/01/93–05/31/94
France: Large power transformers (A–427–030)	06/01/93–05/31/94
France: Sugar (A–427–078)	06/01/93–05/31/94
Germany: Barium carbonate (A–428–061)	06/01/93–05/31/94
Germany: High-tenacity rayon filament yarn (A–428–810)	06/01/93–05/31/94
Germany: Industrial belts and components and parts thereof, whether cured or uncured (A–423–803)	06/01/93–05/31/94
Germany: Sugar (A–428–082)	06/01/93–05/31/94
Italy: Large power transformers (A–475–031)	06/01/93–05/31/94
Italy: Industrial belts and components and parts thereof, whether cured or uncured (A–475–802)	06/01/93–05/31/94
Japan: Nitrile rubber (A–588–706)	06/01/93–05/31/94
Japan: Fishnetting of man-made fibers (A–588–029)	06/01/93–05/31/94
Japan: Forklift trucks (A–588–703)	06/01/93–05/31/94
Japan: Industrial belts and components and parts thereof, whether cured or uncured (A–583–207)	06/01/93–05/31/94
Japan: Large power transformers (A–588–032)	06/01/93–05/31/94
Japan: PET film (A–588–814)	06/01/93–05/31/94
New Zealand: Fresh kiwifruit (A–614–801)	06/01/93–05/31/94
Romania: Tapered roller bearings and parts thereof, finished or unfinished (A–485–602)	06/01/93–05/31/94
Russia: Ferrosilicon (A–821–804)	06/01/93–05/31/94
Singapore: Industrial belts and components and parts thereof, whether cured or uncured (A–559–802)	06/01/93–05/31/94
Sweden: Stainless steel plate (A–401–040)	06/01/93–05/31/94
Taiwan: Carbon steel plate (A–583–080)	06/01/93–05/31/94
Taiwan: Fireplace mesh panels (A–583–003)	06/01/93–05/31/94
Taiwan: Oil country tubular goods (A–583–505)	06/01/93–05/31/94
Taiwan: Stainless steel butt-weld pipe fittings (A–583–816)	06/01/93–05/31/94
Taiwan: Certain helical spring lock washers (A–583–820)	06/01/93–05/31/94
The Hungarian People's Republic: Tapered roller bearings and parts thereof, finished or unfinished (A–437–601)	10/28/92–09/30/94
The People's Republic of China: Sparklers (A–570–506)	11/25/92–05/31/94
The People's Republic of China: Tapered roller bearings and parts thereof, finished or unfinished (A–570–601)	06/01/93–05/31/94
The People's Republic of China: Silicon metal (A–570–806)	06/01/93–05/31/94
The Republic of Korea: PET film (A–580–807)	06/01/93–05/31/94
Venezuela: Ferrosilicon (A–307–807)	06/01/93–05/31/94
Countervailing Duty Proceedings	
None.	

In accordance with sections 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks

parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: John Kugelman, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by June 30, 1994.

If the Department does not receive, by June 30, 1994, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 1, 1994

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance

[FR Doc. 94-13812 Filed 6-6-94; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-834, A-549-810]

Initiation of Antidumping Duty Investigations: Disposable Pocket Lighters From the People's Republic of China and Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 7, 1994.

FOR FURTHER INFORMATION CONTACT: Vincent Kane (202) 482-2815 for the People's Republic of China (PRC); or David Boyland (202) 482-0588 for Thailand, Office of Countervailing Investigations, Important Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230

INITIATION OF INVESTIGATIONS:

The Petition

On May 9, 1994, we received a petition in proper form filed by the BIC Corporation ("petitioner"), the sole U.S Producer of disposable pocket lighters Petitioner filed supplements to the petition on May 23 and 24, 1994.

In accordance with 19 CFR 353.12, petitioner alleges that imports of disposable pocket lighters from the PRC and Thailand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that such imports are materially injuring, or threatening material injury to, a U.S industry.

Petitioner states that it has standing to file the petition because the BIC Corporation is an interested party, as defined under section 771(9)(C) of the Act, and it is the sole domestic producer of disposable pocket lighters. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the assistant Secretary for Import Administration

Scope of Investigations

The Products covered by these investigations are disposable pocket lighters, whether or not liquefied hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees fahrenheit (24 degrees celsius) exceeds a gage pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Refillable, disposable pocket lighters would be imported under subheading 9613.20.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written descriptions of the scope of these proceedings are dispositive.

United States Price and Foreign Market Value—The People's Republic of China

Petitioner based United States Price ("USP") on a 1994 sale made on a packed, c.i.f., duty-paid, delivered basis to a U.S. purchaser of disposable pocket lighters from the PRC. Petitioner deducted ocean freight, marine insurance, commission, harbor maintenance fee, and customs processing fee from this price to arrive at an f.o.b. value for the imports.

Petitioner contends that the foreign market value ("FMV") of disposable pocket lighters subject to this investigation must be determined in accordance with section 773(c) of the Act, which concerns non-market economy ("MNE") countries. The Department has determined the PRC to be an NME, within the meaning of section 771(18)(A) of the Act, in previous cases (see e.g., Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the PRC, May 31, 1994 (59 FR 28053)). In accordance with 771(18)(C) of the Act, that determination continues to apply for purposes of this initiation.

In the course of this investigation parties will have the opportunity to address this NME determination and provide relevant information and argument on this issue. In addition, parties will have the opportunity in this investigation to submit comments on whether FMV should be based on prices or costs in the PRC consistent with section 773(c)(1)(B) of the Act (see Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Chrome-Plated Lug Nuts from the People's Republic of China, 57 FR 15052 (April 24, 1992)).

In this case, petitioner provided two alternative approaches for determining FMV. In the first approach, in accordance with section 773(c) of the Act, petitioner attempted to base FMV on the NME producers' factors of production valued in a market economy country at a comparable level of economic development. Petitioner, however, was unable to obtain information on the factors of production in the PRC. Therefore, petitioner used its own factors of production.

In valuing the factors or production, petitioner used India and Pakistan as surrogate countries. For purposes of this invitation, we have accepted India and Pakistan as surrogates because their economies are at a level of development comparable to the PRC's. (See Memorandum to David L. Binder, Director-Division II, Office of Antidumping Investigations from David P. Mueller, Director, Office of Policy, dated August 1993, regarding non market economy status and surrogate country selection, on file in Room B-099 of the Department of Commerce.) Also, there is evidence on the record that India is a producer of comparable merchandise, as required by section 773(c)(4) of the Act. When cost information was not available in either of these countries, petitioner valued the factor using its own costs.

In accordance with section 773(c)(1)(B) of the Act, petitioner's FMV consisted of the sum of values assigned to materials, labor, energy, and overhead. Petitioner adjusted certain factor values for inflation. Pursuant to section 773(c)(1) of the Act petitioner added to the labor and material costs, and general expenses, the statutory minimum of eight percent for profit.

In making its allegation of sales at less than fair value based on the factors of

production methodology, petitioner relied extensively on U.S. costs for valuing the factors. Although the Department has accepted similar allegations in past antidumping investigations against the PRC, we prefer that the NME producers' factors be used and that they be valued in a comparable market economy, which is a significant producer of the merchandise. In response to our concern in this regard, petitioner provided a secondary basis for determining FMV, using prices from a market economy country.

Section 773(c)(2) of the Act provides that FMV may be based on the prices at which comparable merchandise produced in a market economy country is sold in other countries, including the United States. In accordance with section 773(c)(2) of the Act, petitioner provided information on the prices at which disposable pocket lighters from the Philippines are being sold for export to the United States. For purposes of this initiation, we have accepted the Philippines as a surrogate country, because its economy is at a level of development comparable to the PRC's. (See memoradnum to David L. Binder, Director-Division II, Office of Antidumping Investigations from David P. Mueller, Director, Office of Policy, dated December 4, 1991, regarding non-market economy status and surrogate country selection, on file in Room B-099 of the Department of Commerce.) There is also evidence on the record that the Philippines is a producer of comparable merchandise, as required by section 773(c)(4) of the Act. Because the Philippine import price was on an f.o.b. basis, petitioner made no adjustments to this price.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that disposable pocket lighters from the PRC are being, or are likely to be, sold at less than fair value. The comparison of USP and FMV in the petition indicates a margin of 332.43 percent when FMV is based on factor values and a margin of 197.85 percent when FMV is based on Philippine export prices. If it becomes necessary at a later date to consider the petition as a source of best information available (BIA), we may review these calculation bases.

Thailand

Petitioner was unable to obtain actual sales price information on which to base USP. Petitioner, therefore, based USP on the customs value of imports from Thailand, as reported in the Department of Commerce IM–146 import statistics. No adjustments were made to these prices, because they were reported on an f.o.b. basis.

Petitioner also was unable to obtain actual prices for sales in Thailand or for export to third countries. Accordingly, petitioner based FMV on its own costs adjusted for known differences between the costs of petitioner and Thai producers.

Fair Value Comparison

Based on the data provided by the petitioner, there is reason to believe that disposable pocket lighters from Thailand are being, or are likely to be, sold at less than fair value. Further, a comparison of USP and FMV in the petition indicates a margin of 172.78 percent. If it becomes necessary at a later date to consider the petition as a source of BIA, we may review these calculation bases.

Initiation of Investigations

We have examined the petition on disposable pocket lighters and have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of disposable pocket lighters from the PRC and Thailand are being, or are likely to be, sold in the United States at less than fair value.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of these actions, and we have done so.

Preliminary Determination by the ITC

The ITC will determine by June 21, 1994, whether there is a reasonable indication that imports of disposable pocket lighters from the PRC and Thailand are causing material injury, or threaten to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigations being terminated; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: May 31, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–13721 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–DS–M

Revocation of Antidumping Finding

AGENCY: International Trade Administration/Import Administration; Department of Commerce.

ACTION: Notice of revocation of antidumping finding.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping finding on tuners from Japan because as a result of no interest by interested parties.

EFFECTIVE DATE: June 7, 1994.

FOR FURTHER INFORMATION CONTACT: Sam Moore or Michael Panfeld, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) [illegible].

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1979, the Department published in the **Federal Register** (58 FR 68393) its notice of intent to revoke the antidumping finding on tuners from Japan (December 12, 1979).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping finding to each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided 30 days to submit their comments.

Scope of the Finding

Imports covered by the revocation are shipments of tuners from Japan. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 8529.90.10 and 8529.90.50. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for four consecutive review periods (19 CFR 353.25(d)(4)(i)) and when no domestic interested party objects to revocation.

In this case, we received no request for review for five consecutive review periods. Furthermore, no domestic interested party has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping finding on tuners from Japan is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR 353.25(d)(4)(iii).

This revocation applies to all unliquidated entries of tuners from

Japan entered, or withdrawn from warehouse, for consumption on or after December 1, 1993. Entries made during the period December 1, 1992, through November 30, 1993, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 1993, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 353.25(d).

Dated: May 27, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94-13811 Filed 6-6-94; 8:45 am]

BILLING CODE 3510-DS-M

Determination Not To Revoke Countervailing Duty Orders

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty orders.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty orders listed below

EFFECTIVE DATE: June 7, 1994.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Mercedes Fitchett, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 9727) its intent to revoke the countervailing duty orders listed below. Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month.

We received timely objections from domestic interested parties to our intent to revoke these countervailing duty orders. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the orders.

This determination is in accordance with 19 CFR 355.25(d)(4).

Countervailing duty orders	Effective date
Chile: Standard carnations (C-337-601).	03/19/87 52 FR 8635
France: Brass sheet and strip (C-427-603).	03/06/87 52 FR 6996
Iran: Raw in-shell pistachios (C-507-501).	03/11/86 51 FR 8344
Israel: Oil country tubular goods (C-508-601).	03/06/87 52 FR 6999
New Zealand: Carbon steel wire rod (C-614-504).	03/07/86 51 FR 7971
Turkey: Welded carbon steel pipes and tubes (C-489-502).	03/07/86 51 FR 7984
Turkey: Welded carbon steel line pipe (C-489-502).	03/07/86 51 FR 7984

Dated: May 31, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94-13809 Filed 6-6-94; 8:45 am]

BILLING CODE 3510-DS-P

(C-475-812)

Countervailing Duty Order: Grain-Oriented Electrical Steel From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: June 7, 1994.

FOR FURTHER INFORMATION CONTACT: Annika L. O'Hara or David R. Boyland, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-4198 or 482-0588, respectively.

Countervailing Duty Order

In accordance with section 705(a) of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. section 1671d(a)), on April 11, 1994, the Department of Commerce ("the Department") made its final determination that manufacturers, producers or exporters in Italy of grain-oriented electrical steel receive benefits which constitute subsidies within the meaning of the countervailing duty law (59 FR 18357, April 18, 1994). On May 27, 1994, in accordance with section 705(d) of the Act, the U.S. International Trade Commission ("ITC") notified the Department of its final affirmative determination that imports of grain-oriented electrical steel from Italy are materially injuring a U.S. industry.

Therefore, pursuant to section 706(a)(1) of the Act (19 U.S.C. section 1671e(a)(1)), the Department hereby directs U.S. Customs officers to assess a countervailing duty equal to the amount of the estimated net subsidy on all entries of grain-oriented electrical steel from Italy. This countervailing duty will be assessed on all unliquidated entries of grain-oriented electrical steel from Italy which were entered, or withdrawn from warehouse, for consumption, on or after February 1, 1994, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register**.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit duties on this merchandise, a cash deposit of 24.42 percent *ad valorem* for all entries of grain-oriented electrical steel from Italy

This determination constitutes a countervailing duty order with respect to grain-oriented electrical steel from Italy pursuant to section 706 of the Act (19 U.S.C. section 1671e). Interested parties may contact the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Order

The product covered by this order is grain-oriented silicon electrical steel, which is a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.56 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States ("HTS") under item numbers 7225.10.0030, 7226.10.1030, 7226.10.5015, and 7226.10.5065. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. section 1675(a)(1)), the Department will publish during the anniversary month of the publication of this order, notice that an interested party, as defined in section 771(9) of the Act (19 U.S.C. section 1677(9)) and 19 CFR 355.2(i), may request, in accordance with 19 CFR 355.22, that the Department conduct an administrative

review of this order. For further information regarding administrative review procedures, contact Barbara E. Tillman, Office of Countervailing Compliance, at (202) 482–2786.

This notice is published in accordance with section 706 of the Act (19 U.S.C. section 1671e) and 19 CFR 355.21.

Dated: May 27, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–13722 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–811]

Notice of Initiation of Countervailing Duty Investigation: Disposable Pocket Lighters From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 7, 1994.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Graham or Kristin M. Heim, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Washington, D.C. 20230; (202) 482–4105 or 482–3798, respectively.

The Petition

On May 9, 1994, we received a petition in proper form filed by the BIC Corporation on behalf of the United States disposable pocket lighter ("disposable lighters") industry. In accordance with 19 CFR 355.12, petitioner alleges that manufacturers, producers, or exporters of the subject merchandise in Thailand receive benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Injury Test

Although Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, the merchandise being investigated is non-dutiable under the Generalized System of Preferences and Thailand is a contracting party to the General Agreement on Tariffs and Trade. Therefore, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Thailand materially injure, or threaten material injury to, a U.S. industry.

Standing

Petitioner has stated that it is an interested party, as defined in section 771(9)(C) of the Act, and that it has filed the petition on behalf of the U.S. industry producing disposable lighters. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, such party should file a written notification with the Assistant Secretary for Import Administration, in accordance with 19 CFR 355.31.

Exclusion Requests

Under the Department's regulations, any producer or reseller seeking exclusion from a potential countervailing duty order must submit its request for exclusion within 30 days of the date of publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 355.14.

Scope of Investigation

The products covered by this investigation are disposable pocket lighters, whether or not refillable, whose fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees fahrenheit (24 degrees celsius) exceeds a gage pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Refillable, disposable pocket lighters would be imported under subheading 9613.20.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written descriptions of the scope of this proceeding is dispositive.

Initiation of Investigation

The Department has examined the petition on disposable lighters from Thailand and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702 of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers or exporters of disposable lighters receive countervailable bounties or grants. The following programs are included in our investigation.

1. *Industrial Estates/Export Processing Zones*
2. *Preferential Short-term Loans Under the Export Packing Credit Program*
3. *Tax and Duty Exemptions Under the Investment Promotion Act*
4. *Tax Certificates for Exporters*
5. *Rediscount of Industrial Bills*
6. *International Trade Promotion Fund*

This notice is published pursuant to section 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: May 31, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–13807 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration, Commerce.

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 94–00002.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Frederick Pogorzelski doing business as the Russian Business Center ("RBC"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1993).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous

Description of Certified Conduct

Export Trade

1. Products

All Products.

2. Services

All Services.

3. Export Trade Facilitation Services (as They Relate to the Export of Products and Services)

Export Trade Facilitation Services including professional services in the areas of government relations, foreign

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trade and business protocol, marketing, marketing research, negotiations, joint ventures, shipping, export management, advertising, documentation, insurance and financing, trade show exhibitions, organizational development, management strategies and transfer of technology.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. To engage in Export Trade in the Export Markets, as an Export Intermediary, RBC may:

a. Provide and/or arrange for the provisions of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities;

c. Enter into exclusive export sales agreements with Suppliers for the export of Products and/or Services for sale in the Export Markets; such agreements may prohibit Suppliers from exporting independently of RBC;

d. Enter into exclusive agreements with distributors in the Export Markets.

e. Establish the price of Products and/or Services for sale in the Export Markets;

f. Allocate export orders among its Suppliers; and

g. Enter into contracts for shipping

2. RBC and individual Suppliers may regularly exchange information on a one-on-one basis regarding inventories and near-term production schedules in order that the availability of supplies for export can be determined and effectively coordinated by RBC with its distributors in the Export Markets

3. RBC may require any Supplier wishing to terminate its export sales agreement to give RBC six months written notice. RBC may require a former Supplier not to sell through foreign distributors with whom RBC deals for a period of two years following termination.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Supplier" means a person who produces, provides, or sells a Product and/or Service.

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230

Dated: June 1, 1994.

W. Dawn Busby,

Director, Office of Export Trading, Company Affairs

[FR Doc. 94-13805 Filed 6-6-94; 8:45 am]

BILLING CODE 3510-DR-P

Revocation of Antidumping Duty Orders

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of revocation of antidumping duty orders.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping duty orders on staple machines and staples from Sweden because they are no longer of any interest to domestic interested parties.

EFFECTIVE DATE: June 7, 1994.

FOR FURTHER INFORMATION CONTACT: Lisa Raisner or Michael Panfeld, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482-5253.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1993, the Department published in the **Federal Register** (58 FR 68392) its notice of intent to revoke the antidumping duty orders on staple machines and staples from Sweden (December 20, 1983).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke these antidumping duty orders to each domestic interested party on the service list. Domestic interested parties who might object to these revocations were provided 30 days to submit their comments

Scope of the Orders

Imports covered by these revocations are shipments of staple machines and staples from Sweden. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 8305.20.00 and 8422.30.90. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

The Department may revoke an antidumping duty order if the Secretary concludes that the duty order is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for four consecutive review periods (19 CFR 352.25(d)(4)(i)) and when no domestic interested party objects to revocation

In this case, we received no request for review for five consecutive review periods. Furthermore, no domestic interested party has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty orders on staple machines and staples from Sweden are no longer of any interest to interested parties. Accordingly, we are revoking these antidumping duty orders in accordance with 19 CFR 353.25(d)(4)(iii).

These revocations apply to all unliquidated entries of staple machines and staples from Sweden entered, or withdrawn from warehouse, for consumption on or after December 1, 1993. Entries made during the period December 1, 1992, through November 30, 1993, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 1, 1993, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries This notice is in accordance with 19 CFR 353.25(d).

Dated: May 27, 1994

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance

[FR Doc. 94-13811 Filed 6-6-94; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94-051. *Applicant:* University of Maryland, Institute for Plasma Research, College Park, MD 20742. *Instrument:* Glass Tubes with Coated Tin Oxide Thin Film Inside. *Manufacturer:* Beijing Vacuum Electronics Institute, China. *Intended Use:* The instrument will be used for studies of a glass tube coated with thin film of resistive material inside. An electron beam passing through such a tube is subject to longitudinal instability. The instrument measures the spacial growth rate of the instability and allows study of the beam quality deterioration. In addition, the instrument will be used in the course "Theory and Design of Charged Particle Beams" to train Ph.D's. *Application Accepted by Commissioner of Customs.* April 19, 1994.

Docket Number: 94-052. *Applicant.* The University of Texas Health Science Center, Medical School Building, 6431 Fannin Street, Houston, TX 77030. *Instrument:* Manipulators, Ball Joints, and Magnetic Stands. *Manufacturer:* Narishige, Japan. *Intended Use:* The instrument will be used for studies of the marine mollusc, *Tritonio dionedea.* During these studies: (1) the clamps will be used for positioning of a fiber optic light source and positioning a meta barrier between microelectrodes, (2) the ball joints will be used to hold a suction apparatus and hold a fine thermistor for measurement of the bath temperature and (3) the magnetic bases will be used for securing the clamps. *Application Accepted by Commissioner of Customs* April 19, 1994.

Docket Number: 94-053. *Applicant:* University of Alabama at Birmingham, 1675 University Blvd., Birmingham, AL 35249. *Instrument:* Mass Spectrometer, Model Optima. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to analyze biological samples for deuterium and oxygen-18 enrichment in experiments conducted to understand the role of energy expenditure and physical activity in weight gain using several models of weight gain. The instrument will also be used for educational purposes by training Ph.D students, postdoctoral research fellows, clinical nutrition fellows, and other faculty in the techniques of isotope ratio mass spectrometry and doubly labeled water. *Application Accepted by Commissioner of Customs:* April 19, 1994.

Docket Number: 94-058. *Applicant:* US EPA, EMSL Cincinnati, 26 Martin Luther King Dr, Cincinnati, OH 45268. *Instrument:* Electrothermal Vaporization Unit and Interface Upgrade. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used to evaluate background or inherent metal concentrations in environmental samples (river, estuarine and open ocean), where it is difficult to access the impact of trace metal pollution because of the dilution. Experiments will focus on collecting data that will determine the appropriate analytical configuration to be used in determining the analyte for environmental monitoring. *Application Accepted by Commissioner of Customs.* April 26, 1994.

Docket Number: 94-059. *Applicant:* Louisiana Tech University, Institute for Micromanufacturing, Corner of Arizona & College Street, Ruston, LA 71272. *Instrument:* Deep X-ray Lithography Scanner. *Manufacturer:* Jenotik, GmbH, Germany. *Intended Use:* The instrument will be used to study deep x-ray lithography using PMMA resists in order to develop the necessary processes for fabrication of microstructures using x-ray radiation. *Application Accepted by Commissioner of Customs:* April 29, 1994.

Docket Number: 94-060. *Applicant* Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. *Instrument:* Triaxial Deformation Apparatus for testing rocks at high temperature and pressure. *Manufacturer:* Paterson Instruments Pty, Ltd., Australia. *Intended Use:* The instrument will be used for research in earth sciences for measuring a variety of physical properties in rocks 7-15 mm in diameter, up to 40 mm in length, at 1400°C and with confining pressures and pore fluid pressure independently maintained up to 700 MPa. Specific research projects include:

(1) Quantitative Observation of the Micromechanics of the Brittle-Ductile Transition in Rocks,

(2) Brittle-Ductile Transition in Serpentinite and Peridotite Rocks,

(3) Permeability Changes in Silicate Rocks,

(4) Effects of Deformation on Ar Retention in Minerals and

(5) Strength Variations Along Faults with Fluids.

Application Accepted by Commissioner of Customs: April 29, 1994.

Docket Number: 94-061. *Applicant* Saint Louis University, Department of Earth & Atmospheric Sciences, 3507 Laclede Avenue, St. Louis, MO 63103 *Instrument:* Two Seismometers, Model STS-2. *Manufacturer:* G. Streckeisen, Switzerland. *Intended Use:* The instruments will be used for continuous monitoring of earthquake activity in the central United States and around the world. Experiments will be conducted to record earthquakes and to deduce from those recordings the source characteristics of those earthquakes and to study the properties of the earth through which seismic waves pass. In addition, the instruments will be used in the course GEO-A472: Seismological Instrumentation in which students will learn about the operation of seismograph systems in order to understand the data they produce. *Application Accepted by Commissioner of Customs:* May 4, 1994.

Docket Number: 94-062. *Applicant* Rutgers University, Marine Science Bldg., P.O. Box 231, Cook Campus, New Brunswick, NJ 08903-0231. *Instrument* Fluorometer, Model Aquatracka. *Manufacturer:* Chelsea Instruments, Ltd., United Kingdom. *Intended Use:* The instrument will be used for spatial and temporal surveys of microscopic algae in the coastal waters off New Jersey. These surveys will then be related to human impact on these waters resulting from pollution and other lacerations of the ecosystem. *Application Accepted by Commissioner of Customs:* May 4, 1994.

Docket Number: 94-063. *Applicant* Regents of the University of California, Berkeley, Center for Environmental Design Research, 390 Wurster Hall, Berkeley, Ca. 94720. *Instrument:* Segmented Thermal Manikin. *Manufacturer:* Thermal Insulation Laboratory, Denmark. *Intended Use:* The instrument will be used in the study of energy, thermal comfort, and environmental control in buildings. There will be immediate use in two ongoing research projects investigating new energy efficient technologies and control strategies for maintaining comfortable and high quality indoor environments. *Application Accepted by Commissioner of Customs:* May 9, 1994

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94-13808 Filed 6-6-94; 8:45 am]

BILLING CODE 3510-DS-F

Minority Business Development Agency

Bakersfield, CA; Business Development Center Applications

AGENCY: Minority Business Development Agency

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from November 1, 1994, to October 31 1995, is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, clients fees, in-kind contributions or combinations thereof. The MBDC will operate in the Bakersfield, California Geographic Service Area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is July 18, 1994.

Applications must be postmarked on or before July 18, 1994.

The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744-3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, July 1, 1994 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, Regional Director San Francisco Regional Office at 415/744-3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640-0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development Center.

(Catalog of Federal Domestic Assistance)

Dated: June 1, 1994

Melda Cabrera,

Regional Director, San Francisco Regional Office.

[FR Doc. 94–13777 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–21–M

Salinas, CA: Business Development Center Applications

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from November 1, 1994, to October 31, 1995, is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, clients fees, in-kind contributions or combinations thereof. The MBDC will operate in the Salinas, California Geographic Service Area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities

DATES: The closing date for applications is July 18, 1994. Applications must be postmarked on or before July 18, 1994 The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744–3001

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, July 1, 1994 at 10 a.m.

FOR FURTHER INFORMATION CONTACT:

Melda Cabrera, Regional Director, San Francisco Regional Office at 415/744–3001

SUPPLEMENTARY INFORMATION:

Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflected claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provide in 18 U.S.C. 1001

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

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Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development Center.

(Catalog of Federal Domestic Assistance)

Dated: June 1, 1994.

Melda Cabrera,

Regional Director, San Francisco Regional Office.

[FR Doc. 94–13778 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 060194C]

South Atlantic Fishery Management Council; Public Meetings and Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings and public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings on June 20–24, 1994, at the Hawk's Cay Resort on Marker 61, Marathon, FL; telephone: (305) 743–7000.

A public scoping meeting will be held on June 20, at 1:30 p.m., to solicit comments on possible amendments to the current spiny lobster regulations. Following the scoping meeting, the Council's Spiny Lobster Advisory Panel will meet to discuss whether an amendment should be drafted for public hearings.

The Council will hold a public hearing at 6:30 p.m. regarding proposed fishing regulations for the Florida Keys National Marine Sanctuary. The Council is scheduled to approve the proposed regulations during full Council session on June 23.

On June 21, the Council's Snapper-Grouper Committee will meet from 8:30 a.m. until 3:30 p.m. A public scoping meeting will be held at 1:30 p.m. to solicit input on various issues relating to the snapper-grouper fishery, such as: Gray triggerfish size limit and bag limits for hogfish and cubera snapper, in Florida only; prohibition of the sale of bag-limit caught greater amberjack in Monroe County, FL; multi-day bag limits; and prohibition of possession of fish traps in South Atlantic Federal waters.

In addition, public scoping meetings will be held at 3:45 p.m. on controlled access options for Atlantic Spanish mackerel and Amendment 8 to the Coastal Migratory Pelagics (Mackerels) FMP. Some items in Amendment 8 include: Commercial trip limits for Atlantic king mackerel; federal dealer permits for coastal pelagics; a fixed boundary between Gulf and South Atlantic stocks of king mackerel; alternative requirements for obtaining a coastal pelagics permit; etc.

The Council's Finance Committee will meet on June 22, from 8:30 a.m. until 10 a.m. A public scoping meeting will be held at 10:00 a.m. regarding live rock aquaculture and changes to the Coral and Coral Reefs FMP. Following the public scoping meeting, the Council's Habitat Committee will meet also to discuss these issues.

On June 23, at 8:30 a.m., the Council will hold a public scoping meeting to decide whether to proceed with developing management measures for the rock shrimp fishery.

The full Council will meet on June 23, at 10:45 a.m. until 5 p.m. A public hearing will be held at 1:30 p.m. on the Gulf of Mexico Fishery Management Council's Amendment 2 to the Coral and Coral Reefs Plan. The full Council will reconvene on June 24, from 8:30 a.m. until 12 p.m.

A detailed agenda of the meeting will be available on June 6.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council; One Southpark Circle, Suite 306; Charleston, SC 29407–4699; telephone: (803) 571–4366.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carrie Knight at above address by June 13.

Dated: June 1, 1994.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–13727 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Poland

June 1, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 8, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 433 and 443 are being increased by application of swing, reducing the limit for Category 410 to account for the increases. Also, the limit for Category 443 is being recredited for carryforward not used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 61680, published on November 22, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 1, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 16, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Poland and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on June 8, 1994, you are directed to amend the directive dated November 16, 1993 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Poland:

Category	Adjusted twelve-month limit [1]
410	2,455,913 square meters.
433	19,271 dozen.
443	217,215 numbers

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–13718 Filed 6–6–94; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Application for Renewal of Rural Youth Service Demonstration, Governor's Innovative and Employer-Based Retiree Volunteer Programs

AGENCY: Corporation for National and Community Service.

ACTION: Notice of funds availability.

SUMMARY: The Corporation for National and Community Service announces the availability of up to $1,200,000 for fiscal year 1994 to renew grants for innovative and demonstration programs. Only entities that received a grant from the former Commission on National and Community Service under subtitle E of the National and Community Service Act of 1990 (as in existence prior to amendments made by the National and Community Service Trust Act of 1993) are eligible to apply. The Corporation expects to issue a separate Notice of Funds availability in the fourth quarter of fiscal year 1994 inviting new proposals for innovative and demonstration programs.

DATES: Applications must be received no later that 6 p.m., Eastern Daylight

Savings Time, on June 15, 1994, to be eligible.

ADDRESS: Application materials may be obtained by contacting: Special Programs, Corporation for National and Community Service, 1100 Vermont Avenue, NW., Washington, DC 20525; (202) 606–5000, extension 155.

FOR FURTHER INFORMATION CONTACT: Peg Rosenberry and Michael Robbins at the Corporation for National and Community Service; (202) 606–5000, extensions 124 or 155.

Dated: May 26, 1994.

Catherine Milton,

Vice President and Director of National and Community Service Programs.

[FR Doc. 94–13797 Filed 6–6–94; 8:45 am]

BILLING CODE 6820–BA–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title; Applicable Form; and OMB Control Number: Air Force Reserve Officer Training Corps (AFROTC) Scholarship Nomination; AFROTC Form 36; OMB Control Number 0701–0103.

Type of Request: Reinstatement.

Number of Respondents: 2,000.

Responses per Respondent: 1.

Annual Response: 2,000.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 1,000.

Needs and Uses: The information collected hereby, is required of applicants for scholarships to the AFROTC program. It is used by the Scholarship Selection Board in evaluating the applicant's competitiveness for an AFROTC Scholarship award.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: June 2, 1994.

Particia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–13781 Filed 6–6–94; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title: Application for Employment with a Foreign Government.

Type of Request: Existing collection in use without an OMB Control Number.

Number of Respondents: 141.

Responses for Respondent 1.

Annual Responses: 141.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 141.

Needs and Uses: The information collected hereby, is required in making approval determinations regarding foreign government employment in compliance with title 37, United States Code, section 908. Air Force retirees and eligible Reserve members are considered members of the Armed Forces when applying for employment with a foreign government, and require approval by the Secretaries of State and Air Force before accepting employment with a foreign government.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: June 2, 1994

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 94–13780 Filed 6–6–94; 8:45 am]

BILLING CODE 5000–04–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Resolution of Potential Conflict of Interest

The Defense Nuclear Facilities Safety Board (Board) has identified and resolved a potential conflict of interest situation related to its contractor, Mr. Duane C. Sewell. This Notice satisfies the requirements of 10 CFR 1706.8(e) with respect to publication in the **Federal Register**. Under the Board's Organizational and Consultant Conflicts of Interests Regulations, 10 CFR part 1706 (OCI Regulations), an organizational or consultant conflict of interest (OCI) means that because of other past, present or future planned activities or relationships, a contractor or consultant is unable, or potentially unable, to render impartial assistance or advice to the Board, or the objectivity of such offeror or contractor in performing work for the Board is or might be otherwise impaired, or such offeror or contractor has or would have an unfair competitive advantage. While the OCI Regulations provide that contracts shall generally not be awarded to an organization where the Board has determined that an actual or potential OCI exists and cannot be avoided, the Board may waive this requirement in certain circumstances.

The Board's mission is to provide advice and recommendations to the Department of Energy (DOE) regarding public health and safety matters related to DOE's defense nuclear facilities. This includes the review and evaluation of the content and implementation of health and safety standards including DOE orders, rules, and other safety requirements, relating to the design, construction, operation, and decommissioning of DOE defense nuclear facilities. In late 1991, Congress amended the Board's enabling Act, broadening the Board's jurisdiction over defense nuclear facilities to include the assembly, disassembly, and testing of weapons. With this increase in responsibility, the Board revised its priorities to include reviews of

additional facilities, including principally the Pantex Plant, Nevada Test Site (NTS), the weapons design laboratories, and additional facilities at Oak Ridge Y–12 Plant.

Two matters of immediate concern to the Board were the safety of ongoing weapons disassembly operations and maintenance of the capability to safely conduct nuclear testing operations. While the DOE had been engaged in these activities for decades, significant changes in the national security posture resulted in shifts in emphasis within DOE. Unprecedented numbers of simultaneous nuclear weapon retirements strained DOE's capabilities to develop and implement safe and well-engineered procedures. A Congressionally-mandated and Presidentially-extended nuclear testing moratorium removed the primary mechanism (*i.e.*, an active, on going testing program) by which the capability to execute tests safely was exercised and ensured. At the same time, the weapons programs at the nuclear weapons laboratories were losing skilled and experienced personnel due to retirement, downsizing, and reassignments. This combination of issues required the Board to increase its attention, and with it the number of associated reviews, at both Pantex and the NTS. Further, the Board recognized that it needed individuals with expertise in multiple technical disciplines, not previously required, to effectively meet the challenges and responsibilities of its new authority. These technical disciplines included conventional and nuclear explosive technology and safety, nuclear materials handling and storage, criticality safety, and nuclear weapons assembly, disassembly, storage and testing.

While the Board initiated an employee recruitment effort for individuals with formal training and experience in weapons related disciplines, it also recognized a need for technical assistance from outside experts who have direct relevant experience in this area. The Board identified Mr. Duane C. Sewell as an individual with the requisite knowledge and experience needed to provide the Board with immediate assistance in the weapons area. Specifically, Mr. Sewell can and will provide the Board with expertise in strategic safety issues associated with defense nuclear facilities involved in the assembly, disassembly, and testing of nuclear weapons, as well as assistance in the planning and performance of the Board's oversight functions at such facilities. The scope of work will be limited to those operations associated with production, dismantlement/disposition, safe handling, testing, and storage of nuclear weapons, nuclear explosive devices, and nuclear weapons components, and the nuclear and hazardous materials used in these items. A major portion of Mr. Sewell's effort will be directed toward assisting the Board in understanding the existing and needed involvement of the DOE weapons design laboratories in these activities, and evaluating the sufficiency of current and proposed efforts. He is not expected to become involved, however, in detailed technical reviews of operations at defense nuclear facilities.

During a routine preaward review, Mr. Sewell informed the Board of a potential conflict of interest situation arising from his current and past association with DOE and its weapons program. Mr. Sewell's involvement with this nation's nuclear weapons development activities dates back to 1941, when he joined the Manhattan Project. He has been associated with Lawrence Livermore National Laboratory (LLNL or the Laboratory) since it was established in 1952 and has held positions of increasing authority and responsibility, including Deputy Director. Although he retired from LLNL in July 1993, the Regents of the University of California (the operator of LLNL) awarded Mr. Sewell the title of Deputy Director Emeritus and provided him with an office and secretary at the Laboratory. Since that time, he has been using the office of LLNL approximately twice a week. While the time spent at LLNL is his own, and without pay, he occasionally provides advice to individuals who are currently directly involved in Laboratory activities at Pantex regarding the disassembly of nuclear weapons designed by LLNL. Additionally, for the year prior to his retirement, Mr. Sewell was directly involved with Laboratory activities regarding Pantex, and he attended meetings in May 1993 with the management and operating contractor of that facility to discuss weapons disassembly procedures.

Consequently, the Board had concerns regarding actual or potential conflicts of interest based primarily on two issues. First, would Mr. Sewell's continuing relationship with LLNL as Deputy Director Emeritus affect his ability to provide impartial assistance or advice to the Board. Second, would Mr. Sewell be placed in a situation as a consultant to the Board where he would be reviewing his own work on weapons-related matters conducted within a few years of his retirement.

The Board reviewed this situation and concluded that, even if the circumstances could give rise to a potential conflict of interest situation, it is nonetheless in the best interests of the Government to have Mr. Sewell provide this support for the reasons described below. Mr. Sewell's comprehensive knowledge of weapons development and assembly procedures, gained through approximately fifty years of direct experience, is invaluable to the Board in its health and safety reviews of weapons disassembly and related activities and thus is vital to the Board program. His experience includes the initial organization of the LLNL weapon testing operations in the early 1950's, and serving as Chairman of the Nevada Test Site Planning Board, Deputy Director of LLNL in 1973, and Assistant Secretary for Defense Programs of DOE from 1978 to 1981. In the last position, he was responsible for DOE defense programs, which included: Research, development, testing, production, and maintenance of all nuclear warheads; defense nuclear materials production, safeguard and security of all DOE materials and operations; and international security affairs related to nuclear matters. Furthermore, the Board recognized that it is unlikely that the work to be performed by Mr. Sewell could be satisfactorily performed by anyone whose experience and affiliations would not give rise to a conflict-of-interest question. That is because the individuals who have the requisite expertise in this area could only have obtained such expertise through previous or current employment or consulting relationship with one or more of the weapons designs laboratories. The pertinent experience of other qualified individuals would therefore likely raise similar conflicts questions.

The Board also examined Mr. Sewell's current relationship with LLNL and the University of California. As noted above, LLNL provides him with an office and clerical support, but the value of those services is unlikely to be large enough to affect his objectivity in his work for the Board. Also, although Mr. Sewell does not receive any compensation from LLNL currently, he does participate in the University of California Retirement Plan and a related savings plan and defined-contribution plan maintained by the University of California. However, he has informed the Board that the pension from the University of California is vested, and the amount paid calculated according to fixed formulas, and that his payments from the other plans depend on the

levels of prior contributions and ongoing investment returns rather than on the financial condition of the University of California. The possibility that he could use his work for the Board in the weapons complex to affect the ability of the University of California to make the vested pension payments to him is remote. Accordingly, the Board concluded that Mr. Sewell's financial interest in the University of California and his current LLNL privileges are not so substantial as to be likely to affect the integrity of his services in advising the Board on DNFSB matters, including, without limitation, any matters affecting LLNL, Los Alamos National Laboratory, or NTS.

Finally, as the Board is required under its OCI Regulations, where reasonably possible, to initiate measures which attempt to mitigate an OCI, Mr Sewell and the Board agreed to the following restrictions during contract performance. The Board will not task Mr. Sewell to review issues which would involve the direct assessment of LLNL program activities at LLNL, Pantex, or elsewhere in the complex. In fact, as noted above, since Mr. Sewell will assist the Board on strategic safety issues, he is not expected to be involved in any assessments of specific program activities. Also, the efforts of Mr. Sewell will be overseen by experienced technical staff of the Board to ensure that all of his resultant work products are impartial and contain full support for any findings and recommendations issued thereunder. Further, Mr Sewell will not use the clerical support made available to him by LLNL in his work for the Board and he will avoid any discussions with LLNL employees regarding the work of the Board. Mr Sewell has agreed to all of these restrictions.

Accordingly, on the basis of the determination described above and pursuant to the applicable provisions of 10 CFR part 1706, the Chairman of the Board granted a waiver of any conflicts of interests (and the pertinent provisions of the OCI Regulations) with the Board's contract with Mr. Duane C. Sewell that might arise out of his previous or existing relationship with LLNL.

Dated: May 31, 1994

Kenneth M. Pusateri,

General Manager.

[FR Doc. 94-13745 Filed 6-6-94; 8:45 am]

BILLING CODE 6802-KD-M

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics; Meeting

AGENCY: Advisory Council on Education Statistics, Education.

ACTION: Teleconference.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this teleconference is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to participate.

DATE AND TIME: June 17, 1994 at 2 p.m

ADDRESSES: 555 New Jersey Avenue, NW., room 400F, Washington, DC 20208

FOR FURTHER INFORMATION CONTACT: Barbara Marenus, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, room 400J, Washington, DC 20208-7575, telephone: (202) 219-1839.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics (ACES) is established under Section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93-380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. The teleconference call with Council members is open to the public.

The proposed agenda includes the following:

- Discussion of suggested areas for future deliberation by ACES: (1) Boundary between research and statistics; (2) NCES statistics to measure the National Education Goals; (3) The future of NCES's data collection activities; and (4) The use of judgementally derived standards in reporting data.
- Discussion of operating practices that the Council can use to facilitate its work.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., room 400A, Washington, DC 20208-7575.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94-13723 Filed 6-6-94; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Region VII State Energy Offices; Alternative Fuels/Vehicles and Transportation Initiatives; Solicitation of Grant Applications

AGENCY: U.S. Department of Energy

ACTION: Notice of Availability of Financial Assistance Solicitation.

SUMMARY: This document announces the issuance of a Program Solicitation No. PS-KCSO-94001 by the Department of Energy, Kansas City Support Office (KCSO). The solicitation invites grant applications from State Energy Offices located in Federal Region VII (Iowa, Kansas, Missouri & Nebraska) for funding of a project in each state to support Alternative Fuels/Vehicles and transportation initiatives.

DATES: Applications must be received no later than June 30, 1994.

ADDRESSES: Department of Energy, Kansas City Support Office, 911 Walnut, 14th floor, Kansas City, Missouri 64106.

DATES: Applications must be received no later than June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Benjamin D. Watson, (816) 426-4770 or John E. Stacy, Technology Marketing Division (816) 426-5182.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Energy, Kansas City Support Office (KCSO) is making $60,000 in funding available ($15,000 maximum each state) for use to cover expenses associated with transportation and alternative fuels/vehicles activities and initiatives in each of the four states of Region VII (Iowa, Kansas, Missouri & Nebraska).

II. Eligible Grantee

Eligible grantees are the State Energy Office agencies designated by the Governor of each state that operate energy conservation grants and programs serviced by the DOE-KCSO (Iowa, Kansas, Missouri and Nebraska).

III. Eligible Activities

The grant issued pursuant to this Notice is limited to coverage of direct or indirect costs associated with the activities associated with transportation

or alternative fuels. Suggested activities are: Peer exchanges of personnel; travel expenses associated with meetings or conferences; CLEAN CITIES marketing and promotions; or alternative fuels marketing and promotions.

Application Procedures

The program solicitation and grant applications have been provided to each State Energy Office grantee in the KCSO regional area and must be received no later than June 15, 1994. Application content and any evaluation criteria are set forth in the Program Solicitation.

It is anticipated that the grant awards will be issued by July 30, 1994.

Issued in Golden, Colorado, on May 5, 1994.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 94–13419 Filed 6–6–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 2019–017, et al.]

Hydroelectric Applications [Pacific Gas & Electric Company, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* New License (Tendered Notice).

b. *Project No.:* 2019–017.

c. *Date Filed:* May 3, 1994.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Utica.

f. *Location:* On the North Fork Stanislaus River, Silver Creek, Mill Creek, and Angels Creek in Alpine, Calaveras, and Toulumne Counties, California.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:*

Shan Bhattacharya, Manager, Hydro Generation Department, Pacific Gas and Electric Company, 201 Mission Street, room 1012, P.O. Box 770000, Mail P10A, San Francisco, CA 94177, (415) 973–4603.

Annette Faraglia, Attorney, Law Department, Pacific Gas and Electric Company, 77 Beale Street, room 3051, P.O. Box 7442, San Francisco, CA 94120–7442, (415) 973–7145.

Kathryn M. Petersen, License Coordinator, Pacific Gas and Electric Company, 201 Mission Street, room 1012, P.O. Box 770000, Mail P10A, San Francisco, CA 94177, (415) 973–4054.

i. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.

j. *Description of Project:* The existing project consists of: (1) Three storage reservoirs (Lake Alpine, Union Reservoir, and Utica Reservoir) with a combined storage capacity of 9,581 acre-feet; (2) the Mill Creek Tap; (3) the 0.7-mile-long Upper Utica Conduit; (4) Hunters Reservoir with a usable storage capacity of 253 acre-feet; (5) the 13.4-mile-long Lower Utica Conduit; (6) Murphys Forebay; (7) a 4,048-foot-long penstock; (8) Murphys Powerhouse with an installed capacity of 3.6 MW; (9) Murphys Afterbay; and (10) other appurtenances.

k. Under 18 CFR 4.32 (b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

2a. *Type of Application:* Surrender of License.

b. *Project No.:* 9656–017.

c. *Date Filed:* May 6, 1994.

d. *Applicant:* Marble Creek Hydro, Inc.

e. *Name of Project:* Marble Creek.

f. *Location:* Marble Creek, Shoshone County, Idaho, near Wallace.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William F Davis, Potlatch Corporation, P.O. Box 1016, Lewiston, ID 83501, (208) 799–1706.

i. *FERC Contact:* Mr. Mark R. Hooper, (202) 219–2680.

j. *Comment Date:* July 14, 1994.

k. *Description of Application:* The licensee states that its project is no longer economically feasible.

l. *This Notice Also Consists of the Following Standard Paragraphs:* B, C1, and D2.

3a. *Type of Application:* Surrender of Exemption (5MW or less).

b. *Project No.:* 10556–006.

c. *Date Filed:* April 11, 1994.

d. *Applicant:* Kenneth M. Grover

e. *Name of Project:* Tuck Tape Hydroelectric Project.

f. *Location:* On Fishkill Creek in Dutchess County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Kenneth M. Grover, GSA International Hydropower, P.O. Box 536, Croton Falls, NY 10519, (914) 277–8000.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

j. *Comment Date:* July 11, 1994.

k. *Description of the Proposed Action.* The proposed project would have consisted of an existing 135-foot-long, 14-foot-high quarried stone and concrete dam on the Fishkill River in Duchess County, New York. There has been no land-disturbing activity at the site.

l. *This Notice Also Consists of the Following Standard Paragraphs:* B, C, and D2.

4a. *Type of Application:* Major License.

b. *Project No.:* 10855–002.

c. *Date Filed:* May 2, 1994.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Dead River Project.

f. *Location:* on the Dead River in Marquette County, Michigan.

g. *Filed Pursuant To:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Clarence R Fisher, President, Upper Peninsula Power Company, P.O. Box 130, 600 Lakeshore Drive, Houghton, MI 49931–0130, (906) 487–5000.

i. *FERC Contact:* Robert Bell (202) 219–2806.

j. *Comment Date:* 60 days from the filing date in paragraph C. (July 1, 1994)

k. *Description of Project:* The constructed project consists of the following developments:

Silver Lake Dam Development

(1) An existing 1,500-foot-long, 30-foot-high earth embankment Dam; (2) an existing 100-foot-long, 7.7-foot-high concrete ogee crest spillway; (3) an existing 1,491-foot-long, 34-foot-high concrete gravity outlet structure; (4) four existing earthen saddle dikes: (a) 200-foot-long, 5-foot-high dike 1; (b) 370-foot-long, 7-foot-high dike 2; (c) 170-foot-long, 6-foot-high dike 3; (d) 290-foot-long, 5-foot-high dike 4; (4) an existing reservoir having a surface area of 1,464 acres with a storage capacity of 33,513 acre-feet, and a normal water surface elevation of 1,486.25 feet NGVD. There is no generation proposed at this development.

Hoist Dam Development

(1) An existing 4,602-foot-long concrete gravity Hoist Dam with sections varying in height from 6 to 63 feet; (2) an existing reservoir having a surface area of 3,202 acres with a storage capacity of 46,998 acre-feet, and normal water surface elevation of 1,347.5 feet NGVD; (3) an existing intake structure, (4) an existing 342-foot-long, 9-foot-wide, 10-foot-high tunnel; (5) an existing 193-foot-long, 7-foot-diameter

riveted steel penstock; (6) an existing powerhouse containing 3 generating units with a total installed capacity of 4,425 MW; (7) an existing tailrace; (8) an existing 33-kV transmission line; and (9) appurtenant facilities. The estimated average annual generation is 15,643 MWh.

McClure Dam Development

(1) An existing 1,874-foot-long, earth embankment and concrete gravity McClure Dam varying in height from 22 to 51.4 feet; (2) an existing reservoir having a surface area of 95.9 acres with a storage capacity of 1,870 acre-feet, and normal water surface elevation of 1,196.4 feet NGVD; (3) an existing intake structure; (4) an existing 13,302-foot-long, 7-foot-diameter steel, wood, and concrete pipeline; (5) an existing 40 foot-high, 30-foot-diameter concrete surge tank; (6) an existing powerhouse containing 2 generating units with a total installed capacity of 9,863 MW; (7) an existing tailrace; (8) an existing 33-kV transmission line; and (9) appurtenant facilities. The estimated average annual generation is 48,452 MWh.

l. With this notice, we are initiating consultation with the Michigan State Historic Preservation Officer (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to 18 CFR 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

5a. *Type of Application:* License (Tendered Notice).

b. *Project No.:* 11477–000

c. *Date Filed:* May 5, 1994.

d. *Applicant:* Northern California Power Agency.

e. *Name of Project:* Utica

f. *Location:* On the North Fork Stanislaus River, Silver Creek, Mill Creek, and Angels Creek in Alpine, Calaveras, and Tuolumne Counties, California.

g. *Filed Pursuant To:* Federal Power Act, 16 USC 791(a)–825(r)

h. *Competing Application:* Project No. 2019–017, filed May 3, 1994

i. *Applicant Contact:* Hari Modi, Manager, Hydroelectric Project, Development, Regulatory Compliance and Licensing, Northern California Power Agency, 180 Cirby Way, Roseville, CA 95678, (916) 781–3636.

j. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.

k. *Description of Project:* The existing project consists of: (1) Three storage reservoirs (Lake Alpine, Union Reservoir, and Utica Reservoir) with a combined storage capacity of 9,581 acre-feet; (2) the Mill Creek Tap; (3) the 0.7-mile-long Upper Utica Conduit; (4) Hunters Reservoir with a usable storage capacity of 253 acre-feet; (5) the 13.4-mile-long Lower Utica Conduit; (6) Murphys Forebay; (7) a 4,048-foot-long penstock; (8) Murphys Powerhouse with an installed capacity of 3.6 MW; (9) Murphys Afterbay; and (10) other appurtenances.

The applicant proposes to direct a substantial portion of the water now delivered into the Upper Utica Conduit via the Mill Creek Tap into the Collierville Powerhouse, through the Collierville Tunnel. Both the tunnel and the Collierville Powerhouse are licensed under Project No. 2409 to the Calaveras County Water District.

l. Under 18 CFR 4.32 (b)(7) of the Commission's regulations if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

6a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11480–000

c. *Date Filed:* May 11, 1994

d. *Applicant:* InterMountain Energy, Inc.

e. *Name of Project: Upper Reynolds Creek Water Power Project.*

f. *Location:* Partially within the Tongas National Forest, on Reynolds Creek, near the village of Hydaburg, in Alaska: T75S, R83E; T76S, R84E; and T77S, R85E.

g. *Filed Pursuant To:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jack Goldwasser, InterMountain Energy, Inc., P.O. Box 421, Cave Junction, OR 97523 (503) 592–2187.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* August 5, 1994

k. *Description of Project:* The applicant is exploring two alternatives for the proposed project. The first alternative would consist of: (1) Sea Alaska's existing Mellen Lake; (2) a 10 foot-high concrete dam raising the surface elevation of that lake about 8 feet; (3) a 2,600-foot-long, 48-inch-diameter steel penstock; (4) a powerhouse containing an unspecified number of generating units with a total installed capacity of 2,000 kW; and (5) a tailrace returning water to Reynolds Creek.

The second alternative would consist of: (1) the Haida Corporation's existing Summit Lake; (2) a 10-foot-high concrete dam raising the surface elevation of that lake about 8 feet; (3) a 2,600-foot-long, 48-inch-diameter steel penstock; (4) a powerhouse containing an unspecified number of generating units with a total installed capacity of 1,500 kW; and (5) a tailrace returning water to Reynolds Creek.

Both alternatives would also include a 10-mile-long transmission line interconnecting with an existing Alaska Power and Telephone distribution system and other appurtenant facilities.

No new access roads will be needed to conduct the studies.

l. *This Notice Also Consists of the Following Standard Paragraphs:* A5, A7, A9, A10, B, C, and D2.

7a. Type of Application: Major License.

b. *Project No.:* 11162–000.

c. *Date Filed:* April 29, 1994

d. *Applicant:* Wisconsin Power & Light Company.

e. *Name of Project:* Prairie du Sac Hydroelectric Project.

f. *Location:* On the Wisconsin River Sauk and Columbia Counties, Wisconsin.

g. *Filed Pursuant To:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Norman E. Boys, Wisconsin Power & Light Company, P.O. Box 192, 222 West Washington Avenue, Madison, WI 53701–0192, (608) 252–3311.

i. *FERC Contact:* Mary C. Golato (202) 219–2804

j. *Due Date.* June 28, 1994.

k. *Description of Project:* The project, which is currently operating, consist of the following facilities: (1) An existing 1,775-foot-long earth dike; (2) an existing 1,010- foot-long concrete spillway with 41 gates; (3) an existing navigation lock; (4) an existing powerhouse containing eight turbine-generator units having a total installed capacity of approximately 29 megawatts; (5) an existing short dike; (6) an existing impoundment having an estimated normal surface area of 9,180 acres; and (7) two existing 69-kilovolt transmission lines extending 400 feet, and (8) appurtenant facilities. The owner of the dam is Wisconsin Power & Light Company. The applicant estimates that the average annual

generation would be 151,800 megawatthours, and the estimated cost of the project is $940,314.

l. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to 18 CFR 4.32(b)(7) of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must 60 days from the issuance date of this notice file a request for a study with the Commission not later than and serve a copy of the request on the applicant.

Standard Paragraphs

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file aa motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

Dated: May 31, 1994

Lois D. Cashell,

Secretary.

[FR Doc. 94-13748 Filed 6-6-94; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4890-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 7, 1994

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides, and Toxic Substances

Title: Training Verification Program for Implementation of the Revised Federal Work Protection Standards. (ICR No: 0277.09; OMB No: 2070-0060). This is a request for the approval of revised burden hours for requirements under

Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The current approval expires on February 28, 1995.

Abstract: On August 21, 1992, EPA issued final regulations revising its Worker Protection Standards (WPS) for agricultural pesticides (40 CFR part 170 and 40 CFR part 156, subpart K). The revised regulations strengthen the requirements for the protection of agricultural workers and pesticide handlers from hazards of pesticides used on farms, on forests, in nurseries and in greenhouses. The regulations require that each agricultural worker and pesticide handler be trained in pesticide safety to reduce the risk of pesticide poisoning and other injuries.

The WPS specified what safety information must be provided to workers and handlers; the WPS also provides for the issuance of EPA-approved WPS training certificates upon completion of training. This certification process allows employers to verify that workers and handlers have received WPS safety training. However, to relieve agricultural employers from the responsibilities of retraining migrant workers and handlers, the EPA offers a Training Verification Program (TVP) that involves the issuance of training verification cards. The TVP is optional for states; a state that wants to participate will submit an agreement form to the EPA and will request the number of verification cards it needs to implement the program. While this does not place any additional burden on the states, the TVP does require trainers to create and maintain records of rosters containing the names of the trainees. The upward revision in burden hours requested in this ICR reflects these trainer requirements under the TVP.

The Agency will use the additional information for verification purposes and to provide a mechanism to standardize the worker pesticide safety training program across the agricultural industry.

Burden statement: The public burden for this collection of information is estimated to average 10 minutes per respondent to prepare a roster, and 5 minutes per respondent to file a roster annually. This estimate includes the time to review instructions and review the collection of information.

Respondents: Trainers of agricultural workers and pesticide handlers.

Estimated No. of Respondents: 10,000.

Estimated No. of Responses per Respondent: 10.

Estimated Total Annual Burden on Respondents: 24,990 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 1, 1994

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–13785 Filed 6–6–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL 4893–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1671.01; Fishing Sinker—TSCA Section 6; was approved 05/09/94; OMB No. 2070–0135; expires 05/31/97. This collection supports the proposed rule.

EPA ICR No., 1285.04; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks; was approved 05/09/94; OMB No. 2060–0132; expires 05/31/97.

EPA ICR No. 1000.05; Polychlorinated Biphenyls (PCB's): Use in Electrical Equipment and Transformers; was approved 04/29/94; OMB No. 2070–0003; expires 04/30/97.

EPA ICR No. 1365.03; Asbestos-Containing Materials in Schools Rule, Revised Model Accreditation Plan; was approved 04/29/94; OMB No. 2070–0091; expires 12/31/94. This collection amends the existing clearance.

EPA ICR No. 1072.04; NSPS for Recordkeeping and Reporting Requirements for Lead-Acid Battery Manufacturing—Subpart KK; was approved 04/21/94; OMB No. 2060–0081; expires 04/30/97.

EPA ICR No. 1093.04. NSPS for the Surface Coating of Plastic Parts for Business Machines—Subpart TTT; was approved 04/21/94; OMB No. 2060–0162; expires 04/30/97.

EPA ICR No. 1060.07; NSPS for Electric ARC Furnaces and Argon-Oxygen Decarburization Vessels, Information Requirements—Subparts AA and AAA; was approved 04/21/94; OMB No. 2060–0038 expires 04/30/97.

EPA ICR No. 1160.04; NSPS for Wool Fiberglass Insulation Manufacturing, Information Requirements—Subpart PPP; was approved 04/21/94; OMB No. 2060–0114 expires 04/30/97.

EPA ICR No. 1157.04; NSPS for Flexible Vinyl and Urethane Coating and Printing, Information Requirements—Subpart FFF; was approved 04/21/94; OMB No. 2060–0073; expires 04/30/97.

EPA ICR No. 1648.01; Equivalent Emission Limitations under the Clean Air Act—Section 112(J); was approved 08/31/93; OMB No. 2060–0266; expires 08/31/96.

EPA ICR No. 1249.04; Requirements for Certified Applicators using 1080 Collars; was approved 05/12/94; OMB No. 2070–0074; expires 05/31/97.

EPA ICR No. 0783.24; Control of Air Pollution from Motor Vehicle Engines Evaporative Emission Regulation; was approved 05/09/94; OMB No. 2060–0104; expires 06/30/95. This collection supports an amendment to existing OMB No. 2060–0104.

OMB Disapprovals

EPA ICR No. 1682.01; California Federal Implementation Plans (FIPS) for Sacramento, Ventura, and South Coast under the Clean Air Act Section 110(C, Recordkeeping and Reporting Requirements; was disapproved 04/22/94. This collection supports the proposed rule.

EPA ICR No. 1678.01; NESHAP for Magnetic Tape Manufacturing Operations, Reporting and Recordkeeping Requirements; was disapproved 05/04/94. This collection supports the proposed rule.

Dated: June 1, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–13786 Filed 6–6–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4894–1]

SAPP Battery Company Site: Proposed Deminimis Settlement Agreements

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed deminimis settlements.

SUMMARY: Under section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Sapp Battery Company Site, Jackson County, Florida, with fifteen parties: Alabama Steel Supply, Inc., Tieco Gulf Coast, Inc., Valdosta Wrecking Co., Inc., Big 10 Tires Stores, Inc., Bonnie Plant Farm, City of Auburn, Alabama, City of Opelika, Alabama, Discount Auto Parts Stores, Leon Iron & Metal, Lockheed Aeronautical Systems, Fade Auto Parts, Graham-Noles (G&N) Auto Parts Service, Headland Auto Parts, Inc., Midway Auto Parts, and Megahee-Speight Co. EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate the proposed settlements are inappropriate, improper or inadequate. Copies of the proposed settlements are available from: Ms. Carolyn McCall, Cost Recovery Specialist, Cost Recovery Section, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347–5059 X6178.

Written comments may be submitted to the person above by thirty days from the date of publication.

Dated: May 27, 1994.

Richard D. Green,

Acting Director, Waste Management Division

[FR Doc. 94–13788 Filed 6–6–94; 8:45 am]

BILLING CODE 6560–50–M

Office of Research and Development

[FRL–4893–4]

Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another equivalent method for the determination of lead in suspended particulate matter collected from ambient air. The new designated method is identified as follows:

EQL–0694–096, "Determination of Lead Concentration in Ambient Particulate Matter by Inductively Coupled Argon Plasma Optical Emission spectrometry (State of West Virginia)."

The applicant's request for an equivalent method determination for the above method was received on March 28, 1994.

This method has been tested by the applicant, the State of West Virginia, in accordance with the test procedures prescribed in 40 CFR part 53. After reviewing the results of these tests, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

This method uses the sampling procedure specified in the reference method for the determination of lead in suspended particulate matter collected from ambient air (43 FR 46258). Lead in the particulate matter is solubilized by extraction with a mixture of nitric acid and hydrochloric acid, facilitated by heat and ultrasonication. The lead content of the sample is analyzed by a Thermo Jarrel Ash AtomScan 16 inductively coupled argon plasma optical emission spectrometer using the 220.3 nm lead emission line and instrument conditions optimized by the user laboratory. Technical questions concerning the method should be directed to the State of West Virginia, Department of Commerce, Labor and Environmental Resources, Division of Environmental Protection, Office of Air Quality, 1558 Washington Street East, Charleston, West Virginia 25311–2599.

As a designated equivalent method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes the method must be used in strict accordance with the procedures and specifications provided in the method description. States or other agencies using inductively coupled argon plasma optical emission spectrometric methods that employ procedures and specifications significantly different from those in this method must seek approval for their particular method under the provisions of § 2.8 of Appendix C to 40 CFR Part 58 (Modification of Methods by Users) or may seek designation of such methods as equivalent methods under the provisions of 40 CFR part 53.

Additional information concerning this action may be obtained from Frank F. McElroy, Methods Research and Development Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2622.

Carl Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 94–13787 Filed 6–6–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632–6934.

Federal Communications Commission

OMB Control No.: 3060–0604.

Title: Implementation of Section 309(j) of the Communications Act, Competitive Bidding, Third Report and Order—PP Docket No. 93–253.

Forms: FCC 401 (as modified), 489, 490, 405, 430, 854.

Expiration Date: 05/31/97.

Estimated Annual Burden: 40,654 total hours; .50–20 hours per response.

Description: On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 added Section 309(j) to the Communications Act of 1934, as amended, 47 U.S.C. Sections 151–713 Section 309(j) gives the Commission express authority to employ competitive bidding procedures to choose among mutually exclusive applications for initial licenses. The Commission's March 8, 1994 Second Report and Order established general rules and procedures and a broad menu of competitive bidding methods to be used for all auctionable services. The Third Report and Order establishes service-specific rules for competitive bidding on licenses to be awarded for Personal Communications Services in the 900 MHz band ("narrowband PCS"). Generally, the Commission followed

the payment and procedural rules adopted in the Second Report and Order in conducting narrowband PCS auctions, but made minor changes to adjust the requirements to the characteristics of the narrowband PCS service. In addition, procedural and processing rules for the narrowband PCS service based on part 22 of the Commission's rules were adopted. Applicants are required to file certain information so that the Commission can determine whether the applicants are legally, technically and financially qualified to be licensed. Affected public are any member of the public who wants to become a licensee.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-13714 Filed 6-6-94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee on Violence Against Women of the Injury Research Grant Review Committee and the Injury Research Grant Review Committee: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee and committee meetings.

Name: Subcommittee on Violence Against Women of the Injury Research Grant Review Committee (IRGRC).

Times and dates: 6 p.m.-9 p.m., June 22, 1994; 8 a.m.-5 p.m., June 23, 1994.

Status: Closed to the public.

Purpose: The subcommittee advises the IRGRC on the technical and scientific merit of injury prevention research grant applications on violence against women.

Matters to be discussed: The subcommittee will review applications in response to Program Announcement 409.

Name: Injury Research Grant Review Committee.

Times and dates: 7 p.m.-9:30 p.m., June 23, 1994; 8 a.m.-3:30 p.m., June 24, 1994.

Status: Open: 7 p.m.-8:30 p.m., June 23, 1994. Closed: 8:30 p.m., June 23, 1994, through 3:30 p.m., June 24, 1994.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary of Health, and the Director of CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of injury control research and demonstration projects and injury prevention research centers.

Matters to be discussed: Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of grant applications.

Place of both meetings: Atlanta Marriott Marquis, 265 Peachtree Center Avenue, Atlanta, Georgia 30303.

Beginning at 6 p.m., June 22, through 5 p.m., June 23, the Subcommittee on Violence Against Women of the IRGRC will meet and from 8:30 p.m., June 23, through 3:30 p.m., June 24, the IRGRC will meet to conduct a review of grant applications. These portions of the meetings will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Acting Associate Director for Policy Coordination, CDC, pursuant to Public Law 92-463.

Agenda items are subject to change as priorities dictate.

Contact person for more information: Richard W. Sattin, M.D., Executive Secretary, IRGRC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, Mailstop K58, Atlanta, Georgia 30341-3724, telephone 404/488-4580.

Dated: June 1, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-13759 Filed 6-6-94; 8:45 am]

BILLING CODE 4163-18-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements concerning Systems Performance Review (SPR); *Form No.:* HCFA-R-86; *Use:* The Systems Performance Review (SPR) is a vehicle used to evaluate State Medicare Management Information Systems (MMIS) to determine whether or not a State system satisfies the functional requirements and statistical levels of output relating to accuracy and timeliness; *Frequency:* Not applicable; *Respondents:* State and Local government; *Estimated Number of Recordkeepers:* 22; *Average Hours Per Recordkeeper:* 2000; *Total Estimated Burden Hours: 44,000.*

Additional Information or Comments: Call the Reports Clearance Office on (410) 966-5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Dated: May 18, 1994.

John A. Streb,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94-13550 Filed 6-6-94; 8:45 am].

BILLING CODE 4120-03-M

Health Resources and Services Administration

Healthy Schools, Healthy Communities Pre-Application Technical Assistance Workshop

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Notice of pre-application technical assistance workshop.

SUMMARY: The Health Resources and Services Administration will hold a pre-application technical assistance workshop for prospective applicants for the Healthy Schools, Healthy Communities grant programs. Both the school-based health services and health education/promotion grant program and the staff development grant program will be discussed. The grants will be awarded under section 340(s) of the Public Health Service (PHS) Act, 42 U.S.C. 256 and under section 501(a)(2) of the Social Security Act, 42 U.S.C. 701(a)(2). A notice of availability of funds for the Healthy Schools, Healthy Communities programs was published in the **Federal Register** at 59, FR 24171 on May 10, 1994.

Eligible applicants for the school-based health services and health education/promotion program are community-based primary health care providers. Eligible health care providers are community-based public or nonprofit private entities that have a history of providing primary health services to a substantial number of homeless, at-risk, or medically underserved children and youth in the community, e.g., health care for the homeless centers, community and migrant health centers, local health

departments, public housing primary care centers, and children's hospitals.

Eligible applicants for the staff development program are State health agencies or public and private nonprofit institutions of higher learning.

PURPOSE: The purpose of the technical assistance workshop is to disseminate relevant information and review program expectations. Prospective applicants will have an opportunity to review the program guidance and receive technical assistance pertaining to writing and implementing grant applications for the school-based health services and health education/promotion program and the staff development program under the Healthy Schools, Healthy Communities Initiative.

CONTACT: Anyone interested in attending the meeting should reserve a place at the meeting by contacting Sarah Baily, Division of Programs for Special Populations, Bureau of Primary Health Care, 4350 East-West Highway, 9th Floor, Bethesda, Maryland, 20814. Telephone: (301) 594–4472, fax: (301) 594–4989. Costs of attending the meeting are to be borne by prospective applicants.

DATE AND TIME: June 15, 1994, 9 a.m. to 4 p.m.

PLACE: Ramada Hotel O'Hare, 6600 North Manheim Road, Rosemont, Illinois 60018, (708) 827–5131.

Dated: June 2, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–13761 Filed 6–6–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Psychobiology, Behavior, and Neuroscience Review Committee, National Institute of Mental Health, which was published in the Federal Register on May 12, (59 FR 24708).

This committee was to have convened at 9 a.m. on June 9 at the Crowne Plaza Holiday Inn in Rockville, Maryland. The location has been changed to the Sheraton Washington Hotel, 2660 Woodley Road, Washington, DC 20008.

Dated: June 2, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH

[FR Doc. 94–13925 Filed 6–6–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Name of SEP: Behavioral and Neurosciences.

Date: June 9, 1994

Time: 2 p.m.

Place: Georgetown Holiday Inn, Washington, D.C..

Contact Person: Dr. Anita Sostek, Scientific Review Administrator, 5333 Westbard Avenue, room 319C, Bethesda, MD 20892, (301) 594–7358.

Purpose/Agenda: To review individual grant applications.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 1, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94–13837 Filed 6–6–94; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Privacy Act of 1974; Computer Matching Programs: SSA and the Department of Education

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Computer Matching Programs to comply with Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: This notice announces a computer matching program that SSA will conduct that is subject to the requirements of Pub. L. 100–503. The purpose of this publication is to meet the publication requirements of Pub. L. 100–503.

DATES: We will file a report of the subject SSA matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget. The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by writing to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews at the address above.

SUPPLEMENTARY INFORMATION:

A. General

Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of Pub. L. 101–508, the Computer Matching and Privacy Protection Amendments of 1990, further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, and local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the match;

(2) Notify applicants and beneficiaries that their records are subject to matching;

(3) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments;

(4) Furnish detailed reports about matching programs to Congress and the Office of Management and Budget; and

(5) Establish a Data Integrity Board that must approve match agreements.

B. SSA Computer Matches Subject to Pub. L. 100–503

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended. Below is a brief description followed by a detailed notice of a match that SSA will be conducting as of April 1994 or later.

SSA Matching With Department of Education (ED)

Purpose: To ensure that the requirements of title IV, section 484(q), of the Higher Education Act of 1965 (HEA) are met. Computerized access to SSA master files of Social Security number (SSN) holders enables ED to ensure that the SSN of an applicant for assistance under title IV of the HEA is valid at the time of the application. Applicant records will be matched against SSA's Numident Index Record File.

Dated: May 26, 1994.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Program, Social Security Administration (SSA) Numident Index Record File Matching With the Department of Education (ED)

A. Participating Agencies

SSA and ED.

B. Purpose of the Matching Program

Section 484(q) of the Higher Education Act of 1965 (HEA), requires ED to verify the Social Security numbers (SSNs) of applicants for assistance under title IV of that Act.

The purpose of this matching program is to enable ED to verify applicants SSNs.

C. Authority for Conducting the Matching Program

Section 484(q) of the HEA; Section 1106(a) of the Social Security Act.

D. Categories of Records and Individuals Covered by the Match

ED will submit for validation SSNs and other identifying information for applicants for assistance from its Central Processing Systems files. The SSA Numident contains the SSN and identifying information for all SSN holders.

E. Inclusive Dates of the Match

The matching program shall become effective 40 days after a copy of the agreement, as approved by the Data Integrity Boards, is sent to Congress and the Office of Management and Budget (OMB) (or later if OMB objects to some or all of the agreement), or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

[FR Doc. 94–13814 Filed 6–6–94; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–94–3755; FR–3622–N–02]

NOFA for Fair Housing Initiatives Program; FY 1994 Competitive Solicitation Technical Correction

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of funding availability (NOFA)—Technical correction.

SUMMARY: This notice makes technical corrections to the FY 1994 FHIP NOFA published on May 16, 1994 (59 FR 25532).

DATES: The application due date is specified in the application kit. However, applicants will be given at least 60 days from the original NOFA publication date, until July 15, 1994, to submit their applications. Applications will be accepted if they are received on or before the application due date, or are received within 7 days after the application due date, but with a U.S. postmark or receipt from a private commercial delivery service (such as, Federal Express or DHL) that is dated on or before the application due date.

ADDRESSES: To obtain a copy of the application kit, please write the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850 or call the toll free number 1–800–343–3442. Please also contact this number if information concerning this NOFA is needed in an accessible format.

FOR FURTHER INFORMATION CONTACT: Jacquelyn J. Shelton, Director, Office of Fair Housing Assistance and Voluntary Programs, room 5234, 451 Seventh Street SW., Washington, DC 20410–2000. Telephone number (202) 708–0800. A telecommunications device (TDD) for hearing and speech impaired persons is available at (202) 708–0455. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Fiscal Year (FY) 1994 Fair Housing Initiatives Program (FHIP) Notice of Funding Availability (NOFA) published on May 16, 1994 (59 FR 25532) contained two errors that are being corrected in this notice. The first correction concerns the amount of funding available. The total amount listed as available, $14,881,000, is corrected to read $18,481,000. The additional $3.6 million reflects the determination that $2 million to be used for the second year of two-year FY 1993 Private Enforcement Initiative awards, and $1.6 million to be used for the second year of two-year FY 1993 Fair Housing Organizations Initiative awards, will be funded out of FY 1995 funds. This is because the second year of funding is subject to not only the availability of funds, but to an annual performance review. The amounts of funding under these two Initiatives are corrected accordingly.

In addition, the sequence of eligible activities under the Private Enforcement Initiative is also corrected.

Accordingly, the following corrections are made in FR Doc. 94–11762 to the NOFA titled, "NOFA for Fair Housing Initiatives Program; FY 1994 Competitive Solicitation", published on May 16, 1994 (59 FR 25532):

1. On page 25532, the **SUMMARY** paragraph, which appears in the first column, is revised to read as follows:

SUMMARY: This NOFA announces the availability of up to $18,481,000 of 1994 Fiscal Year (FY) funding for the Fair Housing Initiatives Program (FHIP). This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, selection criteria, how to apply for funding, and how selections will be made.

2. On page 25533, paragraph I.(b), which appears in the first and second columns, is revised to read as follows:

(b) Allocation Amounts

For FY 1994, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (approved October 28, 1993, Pub. L 103–124), (94 App. Act) appropriated $20,481,000 for the FHIP program. Of this amount, $2,000,000 of Private Enforcement Initiative funds will be made available for special projects to be announced in a separate NOFA. The remaining $18,481,000 is being made available on a competitive basis to eligible organizations that submit timely

applications and are selected in response to this NOFA. The funding selections will be made on the basis of criteria for eligibility, factors for award, and completeness of budget information. The Department retains the right to shift funds between FHIP Initiatives, listed below, within statutorily prescribed limitations. The amounts included in this NOFA are subject to change based on fund availability. The total amount available under this NOFA will be divided among the four FHIP Initiatives as follows:

(1) *Administrative Enforcement Initiative.* The amount of $1.5 million in FY 1994 funds is available under this NOFA for the Administrative Enforcement Initiative.

(2) *Education and Outreach Initiative.* The amount of $3 million in FY 1994 funds is available under this NOFA for the Education and Outreach Initiative. Of this amount, $1.5 million is available for national programs, of which $200,000 is designated for Fair Housing Month activities. Of the remaining $1.5 million, $1 million is available for regional and local programs, and $500,000 is for community-based programs.

(3) *Private Enforcement Initiative.* The amount of $6,981,000 in FY 1994 funds is available under this NOFA for the Private Enforcement Initiative. Of this amount, $3,981,000 will be available for two-year projects, with the commitment of second year funding, in an amount not to exceed the first year's funding, subject to annual appropriations and annual performance reviews. The remaining $3 million is for one-year projects.

(4) *Fair Housing Organizations Initiative.* This NOFA makes $7 million in FY 1994 funds available for activities under the Fair Housing Organizations Initiative. Of this amount, $3.3 million in FY 1994 funds is available for the purpose of the continued development of existing organizations under the Fair Housing Organizations Initiative. The remaining $3.7 million will be available for two-year projects for the purpose of establishing new organizations, with the commitment of second year funding subject to annual appropriations and annual performance reviews.

3. On page 25535, paragraph I.(c)(3)(ii), which appears in the first and second columns, is revised to read as follows:

(ii) *Eligible activities.* Applications are solicited for one- and two-year project proposals as described in 24 CFR 125.403 and in this NOFA. Applications may designate up to 10% of requested funds to promote awareness of the services provided by the project, but such promotion must be necessary for the successful implementation of the project. Project applications may involve:

(A) Discovering and providing remedies for discrimination in the public and private real estate markets and real estate-related transactions, including, but not limited to, the making or purchasing of loans, the provision of other financial assistance for sales or rentals of housing, including insurance redlining and appraisal practices, and housing advertising;

(B) Conducting investigations of systemic housing discrimination for further enforcement processing by State or local agencies, or for referral to private attorneys or to HUD and the Department of Justice;

(C) Professionally conducting testing of other investigative support for administrative and judicial enforcement;

(D) Linking fair housing organizations regionally in enforcement activities designed to combat broader housing market discriminatory practices;

(E) Establishing effective means of meeting legal expenses in support of litigation of fair housing cases;

(F) Testing and other investigative activities, including building the capacity for housing investigative activities in unserved or underserved areas;

(G) Building the capacity to investigative, through testing and other investigative methods, housing discrimination complaints covering all protected classes, including persons with mental and physical disabilities;

(H) Carrying out special projects, including the development of prototypes to respond to new or sophisticated forms of discrimination against persons protected under title VIII, such as in the areas of independent living and architectural barriers;

(I) Providing funds for the costs and expenses of litigation, including expert witness fees.

Dated: May 31, 1994.

Paul Williams,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity

[FR Doc. 94-13730 Filed 6-6-94; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Nomination for National Indian Gaming Commission

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*) provides for appointment by the Secretary of the Interior of two associate members of the National Indian Gaming Commission after public notice and an opportunity for comment. Notice is hereby given of the proposed appointment of Lacy H. Thornburg as an associate member of the Commission.

DATES: Comments must be received by July 7, 1994.

ADDRESSES: Comments should be addressed to: Sharon D. Eller, Director of Personnel, Department of the Interior, 1849 C Street, NW., suite 5459, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sharon D. Eller, (202) 208-6702 (not a toll free number).

SUPPLEMENTARY INFORMATION: Section 5(a) of the Indian Gaming Regulatory Act (25 U.S.C. 2704(a)) establishes a three-member National Indian Gaming Commission within the Department of the Interior. The Act provides that the Chairman of the Commission is to be appointed by the President with the advice and consent of the Senate. The two associate members of the Commission are to be appointed by the Secretary of the Interior (24 U.S.C. 2704(b)(1)). The Act provides that the Secretary shall publish notice of nominations for the associate member positions in the **Federal Register** and provide an opportunity for public comment (24 U.S.C. 2704(b)(2)(B)).

Notice is hereby given of the proposed appointment of the following individual to be an associate member of the Commission for a term of three years:

Lacy H. Thornburg. Mr. Thornburg served as Attorney General of the State of North Carolina from 1985–1993. Prior to his election, Mr. Thornburg was a Superior Court Judge on North Carolina's Trial Court of General Jurisdiction from 1967–1983. He served three terms as a Member of the North Carolina House of Representatives from 1961–1966. Prior to his election to the House, he served as a Staff Member for Congressman David Hall from 1959–1960 and practiced law in Sylva, North Carolina from 1954–1967. His professional activities have included a term as Chairman of the North Carolina 4-H Ambassador Steering Committee, terms as a Member of the Boards of Visitors of Peace College, Davidson College and the North Carolina Central School of Law, Co-Chair of the Law Enforcement Coordinating Committee, membership on the North Carolina Council of State, membership on the Indian Affairs Committee of the National Association of Attorneys

General and service on the Governor's Crime Commission. Mr. Thornburg holds a Bachelor of Arts from the University of North Carolina, Chapel Hill (1951) and a Juris Doctor from the University of North Carolina School of Law (1954).

Persons wishing to comment on this proposed appointment may submit written comments to the address identified above. Comments must be received by the date indicated above which is 30 days from the date of the publication of this notice.

Dated: May 31, 1994.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 94–13728 Filed 6–6–94; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Land Management

[WO–260–4210–01]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone number 202–395–7340.

Title: Right-of-Way Cost Recovery Procedures, 43 CFR part 2808.

Abstract: Respondents supply identifying information and data on monetary value of the rights and privileges sought by the applicant, costs incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant, and public services provided which are necessary to determine who may be entitled to a set-off against reimbursement of costs to the government.

Bureau Form Number: None Required.

Frequency: Once.

Description of Respondents: Right-of-way applicants for which the authorized officer determines that the Bureau's application processing activities will require gathering of original data to comply with the National Environmental Policy Act and other statutes, and three or more field examinations.

Annual Responses: 17.

Annual Burden Hours: 850.

Bureau Clearance Officer (Alternate): Marsha Harley, 202–452–5014.

Dated: April 13, 1994.

J. David Almand,

Acting Deputy Assistant Director.

[FR Doc. 94–13717 Filed 6–6–94; 8:45 am]

BILLING CODE 4310–84–M

[OR–93–6332–5; GP4–186]

Establishment of Supplementary Rules; Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of establishment of supplementary rules.

SUMMARY: The Eugene District, Bureau of Land Management, hereby establishes supplementary rules for use of those public lands included in the Row River Trail and adjoining facilities in the South Valley Resource Area, Eugene District, Lane County, Oregon. These supplementary rules are intended to protect public land facilities and provide for public safety for the Row River Trail, a rails-to-trails conversion project near the city of Cottage Grove, Oregon. The BLM is accepting the donation of the former railroad as a non-motorized trail from Willamette Industries, Inc., as partial settlement of a debt owed to the United States. Upon acceptance of the trail and associated properties by the United States, the donated land will be available for public use. These rules are designed to reduce the potential for damage to the trail by unauthorized motor vehicle traffic and to enhance the safety of trail visitors and neighboring residents. A "Notice of proposed establishment of supplementary rules" was published in the **Federal Register** on April 22, 1994 (59 FR 19204) and provided for a thirty day comment period that ended May 23, 1994. Four letters were received, containing two substantive comments. One comment objected to the prohibition against the possession of firearms on the trail. The writer felt that a prohibition against discharge of firearms would be sufficient and that visitors should be allowed to carry firearms for self-defense. It was decided to retain the restriction against weapons, including firearms, to reduce the potential for misunderstanding of rules by trail users and to help protect people both on and off the trail from accidental injury. Another comment objected to the prohibition against motorized vehicles on the grounds that this would exclude disabled visitors from using all-terrain vehicles or motorized wheelchairs on the trail. The rule does allow use of motorized vehicles authorized by BLM, which could include disabled visitor's motorized wheelchairs or specialty all-terrain vehicles on a case-by-case basis. Each situation would need to be evaluated with regard to the potential for such use to damage the trail or the surrounding environment.

ADDRESSES: Comments should be sent to Terry Hueth, South Valley Area Manager, Eugene District Office, P.O. Box 10226, Eugene, Oregon 97440–2226.

FOR FURTHER INFORMATION CONTACT: Joe Williams, 503–683–6600.

SUPPLEMENTARY INFORMATION: Authority for the establishment of these supplemental rules is contained in 43 CFR 8365.1–6. A map showing the location of the lands subject to the supplementary rules is available in the Eugene District Office. Upon acceptance of title to the subject lands, the Eugene District will prepare a Recreation Area Management Plan for the Row River Trail with opportunity for public involvement. After completion of the plan, the supplementary rules will be reviewed and revised, if appropriate, to conform to the provisions of the final plan.

DATES: These supplementary rules will become effective upon publication in the **Federal Register**, unless title to the former Oregon Pacific & Eastern Railroad lands and other lands on or adjoining the Row River Trail has not yet been accepted by the United States, in which case the supplementary rules will become effective upon the date of acceptance of title by the United States.

For the reasons set forth in the preamble, the Eugene District, Bureau of Land Management, establishes supplementary rules for the Row River Trail and adjoining facilities as follows:

1. Use or operation of motor vehicles is prohibited on the trail and on adjoining public lands except on those roads and parking areas specifically constructed for motor vehicle use. Motor vehicles being used by duly authorized emergency response personnel, including police, ambulance and fire suppression, as well as BLM vehicles engaged in official duties and other vehicles authorized by BLM, are excepted.

2. Possession, use and/or discharge of any weapons, including firearms, air guns, slingshots, or other projectile

launching devices, on or across the trail and associated facilities is prohibited.

3. Use and/or occupancy (including leaving personal property unattended) of the trail and trailhead facilities between one half hour after sunset to one-half hour before sunrise is prohibited without a special permission of the authorized officer.

4. Glass containers and alcoholic beverages are prohibited on the trail and adjoining facilities.

5. Campfires or other open flame fires are prohibited throughout the trail and associated facilities. Charcoal cooking fires will be allowed in fire receptacles if and when they are provided in picnic areas.

6. No person shall, unless otherwise authorized, bring any animal onto the trail or adjoining public lands unless such animal is on a leash not longer than six feet and secured to a fixed object or under control of a person, or is otherwise physically restricted at all times.

Date of Issue: June 1, 1994

Judy Ellen Nelson,

District Manager.

[FR Doc. 94-13756 Filed 6-6-94; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of a Joint Application for an Incidental Take Permit Involving San Joaquin Kit Fox, Blunt-Nosed Leopard Lizard, Tipton Kangaroo Rat, and Giant Kangaroo Rat by the City of Bakersfield and the County of Kern, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The City of Bakersfield and the County of Kern (co-applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act). The permit application and accompanying Metropolitan Bakersfield Habitat Conservation Plan (HCP) cover a 408-square mile area of Metropolitan Bakersfield. The HCP would result in incidental take of several federally listed endangered or threatened animal species presently occupying the conservation plan area. The Service announces the availability of an Environmental Assessment (EA), HCP, application for incidental take, and Implementing Agreement (IA). This notice is provided pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on these documents should be received on or before July 7, 1994.

ADDRESSES: Persons wishing to review these documents may obtain a copy by writing to the Service's Sacramento Field Office (SFO). Documents will be available by written request for public inspection, by appointment, during normal business hours at the SFO. Written data or comments concerning the documents should be submitted to the SFO. Please reference permit number PRT-786634 in your comments. Address comments or questions to: Field Supervisor, Sacramento Field Office, U.S. Department of the Interior, Fish and Wildlife Service, 2800 Cottage Way, room E-1823, Sacramento, California 95825-1846 (Telephone: 916-978-4866).

FOR FURTHER INFORMATION CONTACT: Mr. Peter Cross at the Service's Sacramento Field Office.

SUPPLEMENTARY INFORMATION: The Service must determine that the criteria identified in section 10(a)(2)(B) of the Act have been met in order to issue an incidental take permit under section 10(a)(2)(B). The criteria are: (1) The taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of taking; (3) the applicant will ensure that adequate funding for the plan will be provided and procedures are available to deal with unforeseen circumstances; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) other measures which may be necessary, if any, are met. The public is invited to comment on the applicability of those criteria to this permit application.

Background

Existing conflicts among federally protected species and urban development have prompted City of Bakersfield (City) and County of Kern (County) to pursue an HCP and incidental take permit pursuant to section 10(a)(1)(B) of the Act. The HCP is designed to offset impacts resulting from loss of habitat incurred through land use development activities in the Metropolitan Bakersfield area. The goal of the HCP is to acquire, preserve, and enhance native habitats which support endangered and threatened species and other species of concern, while allowing urban development to proceed within the Metropolitan Bakersfield area. The area covered by the HCP contains land within the jurisdiction of the City and County. The HCP is the product of a 7-year planning process involving the city, county, representatives of the environmental community and the building industry, and the California Department of Fish and Game (CDFG).

The HCP will result in incidental take of several endangered and threatened species within the 408-square mile area of Metropolitan Bakersfield. The Federal permit would make this take lawful so long as it is in accordance with the conditions of the permit as described in the HCP and its IA. The permit issued would cover the species formally listed by the Service at the time of issuance. Other species of concern could be added by amendment in the event that they are subsequently listed as an endangered species or threatened species. The section 10(a)(1)(B) permit would permit the incidental take of the following listed species: San Joaquin kit fox, blunt-nosed leopard lizard, Tipton kangaroo rat, and giant kangaroo rat.

The HCP addresses the following species of concern and listed plants, in addition to the federally protected species which will be covered by the plan: Short-nosed kangaroo rat, San Joaquin antelope squirrel, San Joaquin pocket mouse, Bakersfield saltbush, Slough thistle, recurved larkspur, Tulare pseudobahia, striped adobe lily, Bakersfield cactus, California jewel flower, San Joaquin wooly-threads, Hoover's wooly-star and Kern mallow.

The federally listed species are scattered generally throughout the open, non-urbanized lands of the Metropolitan Bakersfield area. According to biological surveys conducted for the HCP and surveys conducted by others since 1960, several of the species of concern may no longer occur in the area. the San Joaquin kit fox is the most widespread of the species of concern and is most frequently affected by urbanization in the HCP area. High potential for impact and the need for large preserves make the kit for a natural focus for the HCP.

Much of the area is in intensive agriculture, but retains value for kit fox in prey and even for dens in berms, near water impoundments, and on fallow land. Urbanization of agricultural land will result in a take of species, loss of habitat, and intensification of population related take (e.g., road kills). The natural lands of the area have greater species value and represent more viable long-term habitat.

The HCP describes a method of collecting funds for the acquisition and/or enhancement of natural lands and restorable lands for purpsoes of preserves. Areas targeted for acquisition have been identified for conservation by the Service and CDFG as part of the

Biological Framework for Natural Lands and Endangered Species in the southern San Joaquin Valley. The HCP also provided for the minimization of take within the developed area.

The HCP addresses two categories of land: (1) Natural land, meaning land generally in grazing and with original soil and topography intact, and (2) open land, which includes natural land as well as agriculture and all other non-urban land in the area. Urbanization of either category would pay the same mitigation fee, but the two are distinguished for the purposes of environmental assessment and permit monitoring.

The HCP provides for: 1. Acquisition and management of a minimum of 3 acres of significant value endangered species habitat for every 1 acre of "natural" land developed within the HCP area, or acquisition and management of 1 acre of significant value endangered species habitat for every 1 acre of "open" land developed within the HCP area, whichever is greater.

2. Land acquisition outside of the HCP area with consideration to pre-approved acquisition areas identified by CDFG.

3. Acquisition and management of between 500 and 1,000 acres of land in the northeast portion of the study area for the primary purpose of preserving the Bakersfield cactus.

4. Acquisition and management of land, as feasible, adjacent to the Kern Water Bank project on the west side of I–5, south of Panama Lane.

5. Pursuit of cooperative agreements for restoring and enhancing land, as feasible, within the Kern Water Bank project area and provide funding as appropriate.

6. Limited relocation or displacement of individuals in areas affected by development as a means of reducing direct take of endangered species.

The HCP will be implemented under the terms of the section 10(a)(1)(B) permit issued by the Service and the IA. The permit is requested for a period of 20 years, or until urban development permits are issued for 15,200 acres of natural lands or 43,000 acres of open lands. The HCP has three categories of participation.

1. The Service as a permitter and advisor to the Implementation Trust (Trust);

2. City and County as permittees and trustees; and

3. Other implementing entities such as The Nature Conservancy and CDFG as preserve development coordinators.

The City and County will be the primary entities responsible for administering the institutional elements of the HCP in their respective jurisdictions.

Administration of the HCP involves the following categories: (1) Local mitigation fee collection and fund management, (2) management of State and Federal funding, if applicable, (3) preserve selection and acquisition, (4) preserve management, (5) land restoration and enhancement and species monitoring, (6) annual report and preparation, and (7) enforcement.

The HCP program relies on the formation of a Trust which would be in charge of making major preserve acquisition decisions and for administering the plan. The Trust will comprise representatives from the City and County as trustees, the Service, CDFG, and a member of the public as mandatory advisors. Specific preserve management plans would be developed later and carried out by each individual preserve management entity. The mitigation funds collected by the City and County will be deposited into a trust fund and would be administered by the Trust. The Trust will meet as necessary to carry out the HCP. The Trust will be responsible for reporting to the Service as to the status of enhancement.

The HCP program will be funded through the collection of a one time mitigation fee paid on all new construction taking place within the conservation plan area. The fee is $1,240 per gross acre for all new construction on previously undeveloped land, payable at the time building permits are issued. The fee is set in 1993 dollars and will be adjusted annually for inflation. Upon payment of this fee and receipt of City or County project approval, a development permit applicant would become a sub-permittee and would be allowed the incidental take of species in accordance with Federal endangered species laws.

The fee is based on per acre estimated costs of, (1) $600 for land, (2) $100 for fencing and improvement, (3) $300 for management and enhancement, and (4) $250 for program administration. The amount of mitigation fees collected will depend on the rate of growth in the HCP area. At current growth rates, fees will generate funding for acquisition and management or roughly 700 acres per year. State and Federal conservation funds will be sought to augment local funds for land acquisition.

The HCP applies to the entire conservation plan area (2010 General Plan), but the requested section 10(a)(1)(B) permit would only allow take in the area outside of the primary flood plain of the Kern River and lands within the Kern Water Bank. The Kern River is excluded to assure that an open corridor can be maintained between the foothills to the northeast and the San Joaquin Hills Valley floor to the west. Kern Water Bank lands are under the jurisdiction of the State of California.

The HCP addresses lands converted primarily to urban uses as permitted by the City or County. Activities which may result in a take, but which are not subject to approval by the City or County, will not be authorized by the proposed permit. Thus, impact on natural lands from oil extraction or agriculture are not subject to the permit, although some types of ancillary oil and agricultural facilities that are subject to City or County permits would be covered. Activities not covered by the permit would have to comply separately with Federal requirements.

Although the permit covers a large area, the take of threatened or endangered species will only occur where actual urban growth occurs. The area designated for urban uses (including all low density residential categories) in the 2010 General Plan covers roughly 74.5 square miles (47,600 acres) of undeveloped or open land. Of this, 22.25 square miles (14,200) acres is natural land, which currently supports populations of the species of concern, and 52.25 square miles (33,400 acres) of other open lands, primarily intensive agriculture. Full build-out of the 2010 General Plan would double the size of Bakersfield, but full build-out is not expected to occur within the proposed 20-year life of the permit. Realistic projections indicate a loss of open lands at a rate of roughly 1 square miles per year, which is assumed to be divided proportionately between natural and other open lands. At that rate, a loss of some 20 square miles of open land, including some 7 square miles of natural land, will take place over the life of the permit. Even though actual growth and impact may vary, the mitigation program is designed to be self-regulating, even a major increase in growth could be accommodated by the proposed HCP program.

The actual extent and location of Metropolitan Bakersfield growth cannot be exactly predicted, and the HCP must therefore rely on the ongoing preservation actions of the Trust. Permit compliance will be met by maintaining adequate enhancement levels. There are two tests that the Trust must meet: (1) 1 acre of enhancement for each acre of open land urbanized, or (2) 3 acres enhanced for each acre of natural land urbanized, whichever is greater. The accounting will be done quarterly and

annually, but will reflect cumulative urbanization commencing at the beginning of the permit period. Management plans for habitat areas will require approval from the Service

The EA examines a range of alternatives pertaining to preserve strategy. The no-action alternative, meaning that the City and County would not obtain a section 10(a)(1)(B) permit, would leave much of the Metropolitan Bakersfield area in conflict with the Act and potentially subject to civil and criminal penalties. The Service could only enforce the Act on a case-by-case basis and significant impact on endangered species could still occur through piece meal reduction of habitat, cumulative indirect impact of growth, and lack of enhancement to offset past impacts. No action would lead to significant impairment of growth in Metropolitan Bakersfield, along with gradual, significant deterioration in the status of endangered species. Other alternatives examined include five other preserve strategies and mandatory relocation as additional mitigation

Dated: May 31, 1994

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 94–13757 Filed 6–6–94, 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability of a Draft Recovery Plan for the Endangered and Threatened Fishes of the Rio Yaqui for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for endangered and threatened fishes of the Rio Yaqui. Four species are included in the recovery plan: Yaqui catfish (*Ictalurus pricei*), and beautiful shiner (*Cyprinella formosa*), both listed by the Service as threatened species on August 31, 1984 (49 FR 34494); Yaqui chub (*Gila purpurea*), listed by the Service as endangered on August 31, 1984 (49 FR 34494); and Yaqui topminnow (*Poeciliopsis occidentalis sonoriensis*), listed by the Service as endangered on March 11, 1967 (32 FR 4001). Historically, the headwaters of the Rio Yaqui that occur in the United States may not have provided sufficient habitat for large populations of the Yaqui catfish, however the other three species were widely distributed throughout the upper reaches of the Rio Yaqui system. Loss of habitat, plus competition and predation from nonnative fish threaten the continued survival of these fish within the United States. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 8, 1994, to receive consideration by the Service

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Refuge Manager, San Bernardino National Wildlife, 1408 10th Street, Douglas, Arizona 85607. Comments and materials regarding the plan should be addressed to the Refuge Manager. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cobble, Refuge Manager, (602) 364–2104 or at the above address

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site-specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires development of recovery plans for listed species unless such a plan would not promote conservation of a particular species. Section 4(f) of the Act, as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan preparation. The Service considers all information during a public comment prior to approval of each new or revised recovery plan. The Service and other Federal agencies also take these comments into account in the course of implementing approved recovery plans

Loss of habitat and competition with, and or predations from, nonnative fish are threats to the continued survival of the listed fish of the Rio Yaqui. In addition, the Yaqui catfish hybridizes with channel catfish (*Ictalurus punctatus*) thereby encountering an additional threat. The recovery plan addresses protection of existing populations, restoration of depleted populations, and protection and restoration of habitat as elements that must be achieved if the species is to survive in the wild. The recovery plan also recognizes the need to work with Mexican Government and Mexican biologists to conserve habitat and fish populations that occur in Mexico Expansion of these species into historic habitat in Mexico will need to be accomplished before delisting of these species can occur.

The plan will be finalized and approved following incorporation of comments and materials received during this comment period

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f)

Dated: May 27, 1994

John G. Rogers,

Regional Director

[FR Doc. 94–13758 Filed 6–6–94, 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Indiana Dunes National Lakeshore, IN

AGENCY: National Park Service, Interior

ACTION: Indiana Dunes National Lakeshore Revision of Lakeshore Boundary.

The Act of October 18, 1976, 90 Stat 2532, 2533, 16 U.S.C. 460 u–19, following notice to Congress as provided therein, which has been satisfied, authorizes the United States to accept title to any lands, or interests in lands, located outside the boundaries of the Lakeshore which any private person, organization, or public or private corporation may offer to donate to the United States, if the Secretary finds that such lands would make a significant contribution to the purposes for which the Lakeshore was established; and he shall administer such lands as part of the Lakeshore following this publication. Landsource, Inc. on behalf of Midwest Division of National Steel

Corporation, has offered to donate 51.47 acres of land for incorporation into the Lakeshore. The tract of land being donated is in Porter County, Indiana. The lands are principally composed of oak savannah of a similar composition to the Inland Marsh unit of the Lakeshore which it adjoins. It includes significant habitat for the federally listed endangered Karner Blue Butterfly. The tract also affords recreational opportunities for the visiting public. It is considered that the recreational opportunities offered by this property, along with the biological resources on this 51.47 acres, will make a significant contribution to the Lakeshore. The specific lands proposed for addition are described as follows:

A tract of land situate in Section 3, Township 36 North, Range 7 West, Second Principal Meridian, Porter County, Indiana, described as follows:

Parcel 1

That part of the Northwest Quarter of the fractional Northeast Quarter of Section 3, Township 36 North, Range 7 West, of the Second Principal Meridian, Porter County, Indiana, lying South of lands conveyed to the United States of America by deed dated August 7, 1978, and recorded in Deed Record 312, Page 455, in the office of the Recorder of Porter County, Indiana, containing 25.06 acres, more or less.

Parcel 2

That part of the Southwest Quarter of the Northeast Quarter of Section 3, Township 36 North, Range 7 West, of the Second Principal Meridian in Porter County, Indiana, lying North of the Northern Indiana Public Service Company power line right-of-way as shown in Deed Record [illegible], Page 256, and as amended in Deed Record 293, Page 82, which records are in the Office of the Recorder of Porter County, Indiana, containing 26.41 acres, more or less. The above described tract contains 51.47 acres, more or less.

Therefore, notice is hereby given that in accordance with the Act of October 18, 1976, the boundary of the Indiana Dunes National Lakeshore is revised as described above, and as shown on Indiana Dunes National Lakeshore Segment Map 09. The map is on file and available for inspection in the Office of the National Park Service, Department of the Interior; the Office of the Midwest Region, National Park Service; and the Office of the Superintendent, Indiana Dunes National Lakeshore.

Dated: March 21, 1994.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 94–13750 Filed 6–6–94; 8:45 am]

BILLING CODE 4310–70–M

Public Comment on Sample Prospectus and Related Guidelines

AGENCY: National Park Service, Interior.

ACTION: Notice and Public Comment on Sample Prospectus and Related Guidelines.

SUMMARY: In the **Federal Register** of March 17, 1994 [59 FR 12622], the National Park Service proposed a sample prospectus and related guidelines for public comment. The sample prospectus language will replace the existing prospectus language and certain chapters of the Concession Guideline previously used by the National Park Service.

As originally announced, public comments were to be accepted through May 16, 1994. This notice extends the comment period by approximately thirty days, until June 17, 1994.

DATES: Written comments on the proposed prospectus language will be accepted through June 17, 1994.

ADDRESSES: Comments should be addressed to: Director, National Park Service, Washington, D.C. 20013–7127.

FOR FURTHER INFORMATION CONTACT: Wendy Mann of the National Park Service Concessions Division at the address given above; telephone (202) 343–1561.

Dated: May 18, 1994.

Michael Finley,

Acting Associate Director, Operations, National Park Service.

[FR Doc. 94–13751 Filed 6–6–94; 8:45 am]

BILLING CODE 4310–70–M

National Preservation Technology and Training Board: Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the National Preservation Technology and Training Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that the National Preservation Technology and Training Board will meet on June 22 and 23, 1994, in Atlanta, Georgia. The Board was established by Congress to provide leadership, policy advice, and professional oversight to the National Center for Preservation Technology and Training, as required under the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).

The Board will meet on June 22, 1994, in the Swan House at the Atlanta History Center, 3101 Andrews Drive NW, Atlanta. On June 23, the Board will meet in the President's Suite A at the Student Success Center, Georgia Institute of Technology, 119 Uncle Heine Way, Atlanta. Matters to be discussed will include, priorities for research and training, and filling the position of executive director of the National Center for Preservation Technology and Training.

Wednesday, June 22, the meeting will start at 12:30 pm ending at 5:00 pm, and on Thursday it will be held from 10:00 am until 12:00 noon. Meetings will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Elizabeth A. Lyon, Chair, National Preservation Technology and Training Board, Office of Historic Preservation, Department of Natural Resources, 1252 Floyd Towers East, 205 Butler Street, SE, Atlanta, Georgia 30334.

Persons wishing more information concerning this meeting, or who wish to submit written statements, may do so by contacting Mr. E. Blaine Cliver, Acting Executive Director, National Center for Preservation Technology and Training, Preservation Assistance Division, P.O. Box 37127, Washington, DC 20013–7127, telephone: (202) 343–9573. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Preservation Assistance Division, Suite 200, 800 North Capitol Street, Washington, DC.

Dated: June 25, 1994.

E. Blaine Cliver,

Acting Executive Director, National Center for Preservation, Technology and Training.

[FR Doc. 94–13753 Filed 6–6–94; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 28, 1994. Pursuant to § 60.13 of 36 CFR part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–

7127. Written comments should be submitted by June 22, 1994.

Beth M. Boland,

Acting Chief of Registration, National Register.

FLORIDA

Lake County

Ferran Park and the Alice McClelland Memorial Bandshell, Jct. of Ferran Park Rd and Orange Ave., Eustis, 94000625

Monroe County

Thompson Fish House, Turtle Cannery and Kraals, 200 Margaret St., Key West, 94000633

Santa Rosa County

Florida State Road No. 1, Roughly, three sections E of Milton, parallel to US 90, between Marquis Bayou and Harold, Milton vicinity, 94000626

IDAHO

Benewah County

Heyburn State Park CCC District, Roughly, along ID 5 and W along Chatcolet Lake, Chatcolet vicinity, 94000632

Boundary County

Spokane & International Railroad Construction Camp, E of US 95 along the Spokane & International RR tracks, 2 mi. S of the US—Canadian border, Eastport vicinity, 94000630

Canyon County

Houlder, Ellen, Farm, Arena Valley Rd. (Rt 2) W of Wilder, Wilder vicinity, 94000631

Latah County

Hotel Bovill, 602 Park St. (ID 3), Bovill, 94000629

MAINE

Cumberland County

Union Church, US 302 S side, 0.1 mi. W of jct. with ME 11/114, Naples, 94000638

Knox County

Finnish Congregational Church and Parsonage, ME 131 E side, 0.9 mi. S of jct. with US 1, South Thomaston vicinity, 94000639

Oxford County

Long, Zadoc, Free Library (Maine Public Libraries), ME 117 S side, at jct. with ME 140, Buckfield, 94000636

Oxford Congregational Church and Cemetery, King St. E side, 0.2 mi. N of jct. with ME 121, Oxford, 94000637

MISSISSIPPI

Adams County

Patterson, Charles, House, 506 S. Union St., Natchez, 94000645

Attala County

Thompson School, Ethel—McCool Rd. E of Ethel, Ethel vicinity, 94000647

Clarke County

Shubuta Baptist Church (Clarke County MPS), Eucutta St. at jct. with US 45, Shubuta, 94000641

Coahoma County

Alcazar Hotel, New, 127 Third St., Clarksdale, 94000646

Kemper County

Perkins House, Murphy Hardy Rd. NW of jct. with MS 493, DeKalb vicinity, 94000643

Lee County

Stewart—Anderson House (Tupelo MPS), 433 N. Church St., Tupelo, 94000644

Lowndes County

Rosedale, 1523 Ninth St. S., Columbus, 94000642

OHIO

Cuyahoga County

Lower Prospect—Huron Historic District (Lower Prospect—Huron District MPS), Seven blocks in downtown centered around jct. of Prospect Ave., Huron Rd. and E 9th St., Cleveland, 94000640

TEXAS

Bexar County

Blue Star Street Industrial Historic District, 1432 S. Alamo St., San Antonio, 94000627

Harris County

Isabella Court, 3909—3917 S. Main St., Houston, 94000628

VERMONT

Orange County

Tunbridge Village Historic District, Roughly, along VT 110 and adjacent rds. including Town Rd. 45 and Spring and Stafford Rds., Tunbridge, 94000635

WISCONSIN

Chippewa County

Bridge Street Commercial Historic District, Roughly, Bridge St. from Columbia to Spring Sts., Chippewa Falls, 94000648

Racine County

Wilmanor Apartments, 1419—1429 W. Sixth St. and 253—255 N. Memorial Dr., Racine, 94000649

Vilas County

Eagle River Stadium, 4149 WI 70, Eagle River, 94000650

[FR Doc. 94–13752 Filed 6–6–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32322]

Vaughan Railroad Company—Construction Exemption—Nicholas and Fayette Counties, WV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of availability of environmental assessment.

SUMMARY: By decision served November 4, 1993 in this proceeding, the Commission granted, subject to environmental review, Vaughan Railroad Company's petition for exemption from the requirements of 49 U.S.C. 10901 for the construction and operation over two railroad segments—a 8.8 mile railroad extension and a 0.4 mile connecting track in Nicholas and Fayette Counties, West Virginia. The effective date of the decision was postponed until completion of the Commission's environmental review and further decision. The Commission has prepared its environmental assessment which concludes that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources. The Commission will consider any comments to the conclusions reached in the environmental assessment before rendering a final decision in this proceeding.

DATES: Written comments must be filed by July 1, 1994.

ADDRESSES: Send an original and 10 copies of comments referring to Finance Docket No. 31680 to: (1) Section of Environmental Review, Room 3219, Interstate Commerce Commission, Washington, DC 20423, and one copy of the comments to: (2) Petitioner's representative: Thomas W. Wilcox; 1275 K Street NW.; suite 850; Washington, DC 20005–4078.

FOR FURTHER INFORMATION CONTACT: John J. O'Connell (202) 927–6215 or Elaine K. Kaiser, Section Chief (202) 927–6248. (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Copies of the Environmental Assessment may be obtained from the Section of Environmental Analysis, room 3219, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 927–6245. Assistance for the hearing impaired is available through TDD Services at (202) 927–5721.

By the Commission, Milan P. Yager, Director, Office of Economic and Environmental Analysis.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–13769 Filed 6–6–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1662–94; AG Order No. 1885–94]

RIN 1115–AC30

Designation of Rwanda Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: Under section 244A of the Immigration and Nationality Act, as amended (8 U.S.C. 1254a) ("the Act"), the Attorney General is authorized to grant Temporary Protected Status (TPS) in the United States to eligible nationals of designated foreign states, or to eligible aliens who have no nationality and who last habitually resided in a designated state, upon a finding that such states are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions. This notice by the Attorney General designates Rwanda pursuant to section 244A(b) of the Act.

EFFECTIVE DATES: This designation is effective on June 7, 1994 and will remain in effect until June 6, 1995.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., room 3214, Washington, DC 20536, telephone (202) 514–5014.

Notice of Designation of Rwanda Under Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act, as amended, (8 U.S.C. 1254a), I find, after consultation with the appropriate agencies of the Government, that: (a) There exists an ongoing armed conflict in Rwanda and that a return of aliens who are nationals of Rwanda, and aliens having no nationality who last habitually resided in Rwanda, would pose a serious threat to their personal safety as a result of the armed conflict in that nation; (b) there exist extraordinary and temporary conditions in Rwanda that prevent aliens who are nationals of Rwanda, and aliens having no nationality who last habitually resided in Rwanda, from returning to Rwanda in safety; and (c) permitting nationals of Rwanda, and aliens having no nationality who last habitually resided in Rwanda, to remain temporarily in the United States is not contrary to the national interest of the United States. Accordingly, it is ordered as follows:

(1) Rwanda is designated under section 244A(b) of the Act. Nationals of Rwanda, and aliens having no nationality who last habitually resided in Rwanda, and who have been "continuously physically present" and have "continuously resided in the United States" since June 7, 1994 may apply for Temporary Protected Status within the registration period which begins on June 7, 1994 and ends on June 6, 1995.

(2) I estimate that there are no more than 500 nationals of Rwanda and aliens having no nationality who last habitually resided in Rwanda, who are currently in nonimmigrant or unlawful status, eligible for Temporary Protected Status.

(3) Except as specifically provided in this notice, applications for Temporary Protected Status by nationals of Rwanda, and aliens having no nationality who last habitually resided in Rwanda, must be filed pursuant to the provisions of 8 CFR part 240. Aliens who wish to apply for TPS must file an Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, during the registration period, which begins on June 7, 1994 and will remain in effect until June 6, 1995.

(4) A fee of fifty dollars ($50) will be charged for each Application for Temporary Protected Status, Form I–821, filed during the registration period.

(5) The fee prescribed in 8 CFR 103.7(b)(1), now set at sixty dollars ($60), will be charged for each Application for Employment Authorization, Form I–765, filed by an alien requesting employment authorization. An alien who does not seek employment authorization must nevertheless file Form I–765, together with Form I–821, for informational purposes, but in such cases Form I–765 will be without fee.

(6) Pursuant to section 244A(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before June 6, 1995 the designation of Rwanda under the Temporary Protected Status program to determine whether the conditions for designation continue to exist. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. If there is an extension of designation, late initial registration for Temporary Protected Status shall only be allowed pursuant to the requirements of 8 CFR 240.2(f)(2) which was published as an interim rule in the **Federal Register** on November 5, 1993, at 58 FR 58935–58938.

(7) Information concerning the Temporary Protected Status program for nationals of Rwanda, and aliens having no nationality who last habitually resided in Rwanda, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: June 1, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–13796 Filed 6–6–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V–93–1]

Envirosafe Services, Inc.; Variance Applications, etc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Grant of Variance.

SUMMARY: This notice announces the grant of a permanent variance to Envirosafe Services, Inc. from the standard that prescribes procedures to be used in draining and flushing combustible/flammable liquids (29 CFR 1910.106[b][2][viii][*f*]).

DATES: The effective date of the variance is June 7, 1994.

FOR FURTHER INFORMATION CONTACT:

Hank Woodcock, Acting Director, Office of Variance Determination, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–7065

or the following OSHA Regional and Area Offices:

U.S. Department of Labor—OSHA, 1111 Third Avenue, suite 715, Seattle, Washington, 98101–3212

U.S. Department of Labor—OSHA, 3050 N. Lakeharbor Lane, suite 134, Boise, Idaho 83703.

SUPPLEMENTARY INFORMATION:

I. Background

Envirosafe Services, Inc. (*i.e.*, "Envirosafe" or "applicant"), 200 Welsh Road, Horsham, Pennsylvania 19044, has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970. The address of the place of employment affected by this application is:

Envirosafe Services of Idaho, Inc., Highway #78, Missile Base Road, Grand View, Idaho 83624.

Envirosafe states that its employees are being provided with employment and a place of employment as safe and healthful as required by 29 CFR 1910.106(b)(2)(viii)(*f*) (*i.e.*, "the

standard"), which specifies the procedures to be used in draining and flushing combustible and flammable liquids; Envirosafe, therefore, requests a permanent variance from this standard under 29 U.S.C. 655 and 29 CFR 1905.11.

The **Federal Register** notice of September 28, 1993 (58 FR 50568) informed the public that OSHA has received the applicant's variance application. This notice invited interested persons, including affected employers and employees, to submit written comments, data, views and arguments regarding the variance requested. In addition, affected employers and employees were notified of their right to request a hearing on the variance application. No comments or requests for a hearing were received in response to this notification.

II. Facts

The applicant operates a commercial storage and chemical-waste landfill facility for disposal of polychlorinated biphenyls (PCBs). Transformers and other articles containing PCBs received at the facility must be drained and flushed, and the flushed liquid placed into storage tanks. According to the applicant, two of its employees drain transformers containing PCB-contaminated oil into one of the two 10,000-gallon outside tanks. The transformers then are filled with diesel fuel and allowed to sit approximately 18 hours. The diesel fuel subsequently is drained into one of the two outside tanks previously mentioned. It is during this draining and flushing operation that the filling and emptying connections controlled under the subject standard are made and broken. These draining and flushing operations occur within the processing and storage building, as opposed to outside the building as required by the standard. As a result of these draining and flushing operations, a conflict exists between OSHA's requirement 29 CFR 1910.106(b)(viii)(*f*) and Environmental Protection Agency (EPA) requirements specified under 40 CFR 761.65(b)(1) concerning the draining and flushing of combustible/flammable liquids. Specifically, the EPA requires that processing and storage facilities for PCBs be located inside enclosed structures to avoid exposure to weather, with specially-designed steel floors to properly drain spills, while OSHA requires that transfer of combustible/flammable liquids—diesel fuel in this case—be accomplished outside enclosed structures.

Outside storage tanks used to store the flushed liquid are provided with a continuously-welded steel secondary containment unit that is 30 feet in diameter and 3 feet, 6 inches high. The tanks also are placed on 2-inch x 1/14-inch heavy-duty welded steel grating to allow immediate identification of any leaks from the tank bottom. The secondary containment structure has the capacity to hold 100 percent of the volume of the largest tank within its perimeter plus the volume of water that would be added from a 24-hour rainfall totalling 1.75 inches.

Auxiliary equipment (*e.g.*, pumps and pipelines systems serving the tanks) also is above ground and subject to daily visual inspections. All pumps and disconnect units are within the processing/storage building (the "processing building"), which has a welded steel floor for containment.

For security purposes, the facility is located within a fenced, controlled area. The main entry gate to the facility is open during operating hours; during these hours, a security officer is posted at this gate to preclude unauthorized entry. During nonoperating hours, the main entry gate is locked and a security officer is posted at this gate; this security officer also makes periodic patrols of the facility during nonoperating hours. The remaining six gates to the facility are normally locked with a key lock during both operating and nonoperating hours; keys to these locks are contained in a sealed (*i.e.*, "break") box next to each of these gates. During emergency events (*e.g.*, fire or explosion), evacuees will break the seals to these boxes, remove the keys, and unlock the gates to effect emergency egress from the facility. Access to the tank area is controlled, and only authorized personnel are permitted to enter the area. The tanks (including tank valves and connections), associated equipment building, and surrounding area are inspected by designated inspector/supervisors for spills, structural integrity/damage, proper grounding, the presence of sparks and open flames/other ignition sources, accessibility and proper space segregation between tanks, and notation of liquids in the tanks; these inspection procedures are required as part of the facility's Operating Permit issued by the EPA. These inspections are conducted daily during regular operating periods.

Instead of complying with the standard, the applicant contends that specific safety procedures and engineering provisions used during the draining and flushing operations will provide protection equal to, or better than, the standard. These procedures and provisions are discussed below.

1. Operators are supervised during the transfer of PCBs or ignitable materials.

2. Waste-handling (*i.e.*, draining and flushing) areas are clearly marked with warning signs and routinely inspected (at least once daily during regular operating periods) by designated inspectors/supervisors to assure that hazardous concentrations of vapors generated by combustible/flammable liquids are not permitted to accumulate in a waste-handling area when ignition sources are present. No meters are used to monitor diesel fuel vapors in waste-handling areas because the vapor pressure of diesel fuel (*i.e.*, 0.4 mm Hg @ 68°F) is too low to register on commercially-available gas meters or the photometric meters (*i.e.*, HNu units) used normally to monitor volatile vapors.

3. Smoking is prohibited inside the processing building.

4. Hot work permits are required prior to any activity that may generate a source of ignition. Draining and flushing operations do not take place when a work permit is issued for repairs in the processing area.

5. During loading/unloading operations, transportation vehicles containing ignitable substances are secured to prevent movement, and grounded to reduce the potential for static discharge.

6. No ignitable wastes are processed in uncontrolled areas.

7. All pumps, hoses, and connections are checked by system operators for leaks and ruptures prior to operation, and at least once daily during regular operating hours by designated inspectors/supervisors.

8. Direct ventilation is provided during these draining and flushing operations by a wall-mounted exhaust fan located adjacent to the processing area. This fan circulates air at 12,000 cubic feet per minute (*i.e.*, 18 air changes per hour), thereby preventing accumulation of diesel fuel vapors inside the building.

9. The processing building is ventilated by roof-mounted turbine vents.

10. All tanks containing ignitable wastes meet American Society for Testing and Materials specifications for ignitables, and are grounded to prevent sparking and potential ignition. For these tanks, discharge valves are fitted with fusible links that close in case of a fire emergency.

11. Procedures have been established to minimize, contain, and expeditiously remove any liquid spills (containing PCBs, ignitable liquids, or combinations thereof) that may occur within the facility. In addition, daily inspections for spills are conducted during regular operating periods by designated

inspectors/supervisors (including monitoring tank volumes for undocumented reductions); all hoses, connections, and valves are inspected by systems operators prior to initiating an operation. Leaking drums are placed in overpack drums. The processing system is provided with a series of interlocks to prevent liquid spills.

Spill-removal procedures vary according to the size of the spill. If the spill is small, the hazardous liquid should be removed using designated sorbents and containers available in the processing area. During removal, the following safety precautions must be observed: Contact with the spilled material is to be avoided; unnecessary personnel must leave the area; protective equipment (descibed below in paragraph 14) must be worn; the area must be ventilated; personnel and equipment must be decontaminated thoroughly following exposure (eyewashes and bodywashes are available in the processing area for this purpose); and technical advice should be sought if necessary. Large spills should be contained using diking materials available in the processing areas. Safety precautions prescribed for controlling small spills should be used in large-spill situations as well. Where there is a high potential for spills, work is performed within diked or curbed areas. If the spilled material escapes, downstream authorities must be notified. A detailed Contingency Plan for managing spills may be obtained from Envirosafe at the address listed above in the first paragraph under I. Background.

12. The storage tank volume is checked prior to pumping ignitable liquids into the tank to assure that there is adequate volume to receive these liquids.

13. Tanks are checked to assure that the proper tanks are being filled with flushed liquid.

14. Personnel involved in draining and flushing operations receive specific, documented training for conducting these operations as prescribed by appendix 3 ("Training Plan/section 17, PCB Personnel Training Program"), volume I of the EPA's "Final Approval for Disposal and Commercial Storage of Polychlorinated Biphenyls" (hereafter, the "EPA approval document"). This training includes emergency procedures for the general workforce (*e.g.*, recognizing alarms, notifying designated authorities of the emergency, egressing from the facility), and specialized training for members of the fire bridgade in controlling and suppressing explosions/fires. (Members of the fire brigade are volunteers from among Envirosafe's local employees; these employees leave their regular jobs to respond to emergencies.) The EPA issued this approval document under Permit Number IDD073114654, September 20, 1991. Copies of training plans, including training plans for emergency procedures used by the general workforce and the fire brigade, may be obtained from Envirosafe at the address listed above in the first paragraph under I. Background.

During emergency events involving PCB contamination, emergency personnel are required to wear chemical-protective clothing (*i.e.*, polyethylene-coated coveralls, pvc or composite-rubber gloves, and full-face, fitted respirators).

Every employee at the facility has access to either the internal telephone system or a two-way radio that can be used to communicate the occurrence of a fire or explosion to the Emergency Coordinator located in the supervisor's trailer at the north end of the facility site. The Emergency Coordinator determines the correct emergency response, and initiates this emergency response by manually activating the appropriate combination of falcon horns, sirens, and/or alarm horn/strobe-light sets. Using predetermined routes, all nonessential employees are evacuated from the immediate fire/explosion area to designated assembly areas outside the facility gates. Only authorized (and predesignated) employees are allowed to remain in the fire/explosion area. During regular operating hours, the fire brigade is available onsite to control the emergency event. During nonoperating hours, the employee who discovers the emergency, usually the security officer, notifies the Emergency Coordinator; after determining the appropriate response, the Emergency Coordinator telephones members of the fire brigade at their homes and directs them to report to the Envirosafe facility. After the emergency event has been controlled, the decision to reenter the facility can be made only by the Emergency Coordinator; prior to reentry, a tally is made of employees, contract personnel, and visitors.

All employees receive emergency training drills semi-annually, during which they practice emergency evacuations. If a power outage occurs during an emergency event, emergency equipment requiring electricity can be operated either through batteries (*e.g.*, two-way radios) or auxiliary power. Copies of the Emergency Evacuation Plan covering these activities may be obtained from Envirosafe at the address listed above in the first paragraph under "I. Background."

15. To respond to serious emergency events (*i.e.*, fires and explosions), a fire brigade consisting of specially-trained Envirosafe employees is available during operating hours. Pursuant to the Training Plan mentioned in the preceding section, members of the fire brigade are trained not only in fire brigade procedures and safety, but in first aid and CPR.

Every employee at the facility receives the following onsite emergency training: Procedures for locating, using, inspecting, repairing, and replacing facility emergency and monitoring equipment; emergency communication procedures and alarm system operation; proper responses to fires, explosions, and spill incidents (*i.e.*, procedures for containing, controlling, and mitigating spills); and evacuation procedures. At least two employees on duty during regular operating hours are trained in first-aid and CPR.

As described in Table G–4 of Appendix 5 to the EPA approval document, the fire brigade is trained to use dry chemicals or carbon dioxide on small fires, and standard firefighting agents (*i.e.*, foam and high-pressure water) on large fires. The fire brigade is available at the facility during normal operating hours (and on standby status at home during nonoperating hours), and is equipped with a fire truck carrying a foam unit, high-pressure water applicator, and water supply. A storage tank has been installed at the facility to supply a maximum of 16,000 gallons of water during fire emergencies. Employees in the processing building are trained to operate Class ABC 20-pound fire extinguishers, while members of the fire brigade also are trained in the use of 125-pound Class BC fire extinguishers located outside this building.

The applicant states that it is providing its employees with employment and a place of employment at least as safe and healthful as required by 29 CFR 1910.106(b)(2)(viii)(*f*) by using engineering techniques and operational procedures to prevent the accumulation of vapors generated from the transfer of combustible/flammable liquids used in its processing operations and by controlling ignition sources at these transfer sites.

III. Decision

The applicant has requested from OSHA a variance from the provisions of 29 CFR 1910.106(b)(2)(viii)(*f*). This standard requires that filling and emptying connections that are made and broken during the transfer of combustible/flammable liquids shall be located outside the buildings at a location free from any source of ignition and not less than 5 feet away from any building opening. Such connection shall be closed and liquid-tight when not in use. The connection shall be properly identified. This standard assures worker safety by preventing fires and explosions that may occur during transfer operations involving combustible/flammable liquids. This purpose is accomplished by: Providing sufficient ventilation at combustible/flammable liquid transfer sites to prevent concentrations of vapor-air mixtures (resulting from spilled liquids) from exceeding one-fourth of the lower flammable limit defined under 29 CFR 1910.106(a)(31); and prohibiting sources at the transfer sites that could ignite these vapor-air mixtures. Due to a conflict between the OSHA and EPA standards, as discussed above under section II, the applicant's filling and emptying connections are made and broken inside the building compared to outside the building as required under the OSHA standard.

To assure maximum employee protection during flushing and draining operations, the applicant has implemented specific procedures to assure that the above OSHA standard will be met or exceeded. These procedures include: Providing supervision of employees during the transfer of PCBs or ignitable materials; inspecting draining and flushing areas daily to assure that ignition sources are not present; forbidding waste-handling operations that may generate sources of ignitions from occurring when hot work permits are issued for repairs; prohibiting smoking in the process building; providing a large-capacity fan and several roof-mounted turbine vents to prevent the accumulation of diesel fuel vapors inside the building; securing and grounding transportation vehicles to prevent movement and potential static discharge; minimizing, containing, and expeditiously removing any PCB ignitable liquids spills; continuously inspecting drums, hoses, and connections; wearing appropriate protective clothing and respirators when controlling liquid spills; and training general employees and inhouse fire brigade personnel in pertinent emergency procedures.

OSHA has determined that the applicant, by using the above-mentioned operational procedures and engineering techniques, will provide employment and a place of employment as safe and healthful as required under 29 CFR 1910.106(b)(2)(viii)(*f*) in preventing the accumulation of hazardous vapors generated from combustible/flammable liquids used in its processing operations, and controlling ignition sources at the transfer sites.

Moreover, in the event of a fire or an explosion, every employee at the facility can notify the Emergency Coordinator by either the internal telephone system or a two-way radio. Upon notification of a fire or explosion, the Emergency Coordinator manually activates the appropriate alarms. All employees, except trained fire brigade members, are evacuated. This emergency training program conforms with OSHA's policy to allow fire brigades under conditions in which training, organization, and planning are adequate to assure employee safety and health.

On the basis of the variance application and supporting data, OSHA has determined that the specific safety procedures used by the applicant during the draining and flushing operations will provide employee protection equal to, or better than, the level of protection required under 29 CFR 1910.106(b)(2)(viii)(*f*). Therefore, based on the record discussed above, OSHA finds that compliance with the terms of the Order set out below will provide employment, and a place of employment, that are as safe and healthful as would be provided if the applicant complied with 29 CFR 1910.106(b)(2)(viii)(*f*).

IV. Order

Pursuant to section 6(d) of the Occupational Safety and Health Act of 1970, the Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR part 1905, it is ordered that Envirosafe Services, Inc., is authorized to implement the following conditions in lieu of complying with the provisions in 29 CFR 19(b)(2)(viii)(*f*).

1. All employees involved in the draining and flushing operations shall receive specific, onsite, and documented training as discussed in Envirosafe's Emergency Evacuation Plan at least once annually. The general workforce shall be trained in emergency procedures, including recognition and operation of emergency alarms, procedures for notifying designated authorities of an emergency, operation of emergency communication equipment, evacuation procedures, containing and controlling spills, fire drills, and fire suppression techniques and procedures (*i.e.*, procedures for locating, using, inspecting, repairing and replacing facility emergency and monitoring equipment, including Class ABC 20-pound fire extinguishers).

2. Members of the fire brigade shall receive specialized training in controlling and suppressing explosions/fires, including using dry chemicals and carbon dioxide on small fires, and standard firefighting agents (*i.e.*, foam and high-pressure water) on large fires; they shall demonstrate proficiency in operating Class ABC 20-pound fire extinguishers and Class BC 125-pound fire extinguishers. The fire brigade shall be equipped with a fire truck carrying a foam unit, high-pressure water applicator, and water supply. A 16,000-gallon storage tank shall be installed and maintained at the facility to supply water during fire emergencies. Additionally, all fire brigade members shall be trained in first aid and CPR.

3. A continuing education program shall be conducted at least annually for members of the fire brigade by a person or persons qualified by experience or special training in current fire-fighting techniques.

4. All employees in the processing building shall receive emergency training drills semi-annually, including practice in emergency evacuations.

5. All employees shall be instructed in the procedures of the Emergency Evacuation Plan immediately upon being hired.

6. At least two employees on duty during regular operating hours, and who are not members of the fire brigade, must be trained in first aid and CPR.

7. Every employee shall have access to either the internal telephone system or a two-way radio to report fires/explosions to the Emergency Coordinator.

8. All emergency equipment requiring electricity shall be capable of operating via batteries or auxiliary power should regular electrical service be disrupted during an emergency involving fire/explosion.

9. During emergencies involving PCB contamination, emergency personnel shall be provided with the appropriate personal protective clothing and equipment (*i.e.*, chemical-protective clothing such as polyethylene-coated coveralls, pvc or composite-rubber gloves, and full-face fitted respirators).

10. All operators shall be supervised during the transfer of PCBs or ignitable materials.

11. All waste-handling (*i.e.*, draining and flushing) areas shall be properly marked by readily visible warning signs stating that "Only authorized employees are allowed in the tank areas, and in the draining and flushing areas."

12. The draining and flushing area shall be inspected for flammable/combustible fuel spills and leaks at least once daily during regular operating

periods by designated inspectors/supervisors to prevent the accumulation of hazardous concentrations of vapors generated by combustible/flammable liquids.

13. Smoking shall be prohibited inside the processing building. "No smoking" signs shall be displayed conspicuously throughout the processing building.

14. All emergency exits shall be properly marked by readily visible signs.

15. Hot-work permits shall be issued to prohibit draining and flushing operations in the processing building during operations that may generate a source of ignition.

16. Draining and flushing operations shall not take place in the processing building when a hot work permit is issued for repairs in that building.

17. No ignitable waste shall be processed in uncontrolled areas and, during loading and unloading operations, transportation vehicles containing ignitable substances shall be secured to prevent movement and grounded to reduce the potential for static discharge.

18. All pumps, hoses, valves, and connections shall be checked by system operators for leaks and ruptures prior to initiating each draining and flushing operation, and at least once daily by designated inspectors/supervisors during regular operating hours.

19. Leaking drums shall be placed in overpack drums.

20. Direct ventilation of the processing building shall be provided during the draining and flushing operations by a wall-mounted exhaust fan located adjacent to the processing area. This fan shall circulate air at 12,000 cubic feet per minute (*i.e.*, 18 air changes per hour), and shall be capable of operating under auxiliary electric power.

21. The processing building shall be vented by roof-mounted turbine vents.

22. The processing system shall be provided with a series of interlocks to prevent liquid spills.

23. Inspectors/supervisors shall inspect the processing building and tank areas for spills on a daily basis.

24. A detailed Contingency Plan for managing spills shall be available at the facility. This Plan shall consist of written procedures established to minimize, contain, mitigate, and expeditiously remove liquid spills (containing PCBs, ignitable liquids, and combinations thereof) that may occur in the facility. These written procedures shall be posted near areas where spills are likely to occur, and all employees are to receive documented training annually on these procedures.

25. All spills shall be cleaned immediately. Small spills shall be removed by using designated sorbents and containers. Large spills shall be contained using diking materials if necessary. Work shall be performed in diked/curbed areas where the potential for spills is high.

26. During spill removal, the following safety procedures shall be observed.

a. Contact with the spilled material shall be avoided;

b. Unnecessary personnel shall leave the area;

c. Appropriate protective equipment (described under Condition 9 above) shall be worn;

d. The area shall be ventilated;

e. Personnel exposed in any manner to the spilled material shall be decontaminated thoroughly using eyewashes and bodywashes available in the processing area; this decontamination shall occur immediately following spill removal; and

f. Technical advice shall be obtained as necessary.

27. Authorities shall be notified if the spilled material escapes downstream.

28. All tanks containing ignitable waste shall meet American Society for Testing and Materials specifications for ignitables, and shall be grounded to prevent sparking and potential ignition. These tanks shall be fitted with discharge valves with fusible links that close in case of a fire emergency.

29. Storage tanks shall be adequately maintained; these tanks shall be checked prior to pumping ignitable liquids into the tanks to assure that there is ample space to accommodate the liquid, and that the proper tanks are being filled with flushed liquids.

Upon receipt of this order, Envirosafe Services, Inc. shall give affected employees notice of the terms contained herein using the same means required to inform them of the variance application.

This order shall become effective on June 7, 1994, and shall remain in effect until modified or revoked in accordance with section 6(d) of the Occupational Safety and Health Act of 1970.

Signed at Washington, DC, this 23d day of May 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 94–13716 Filed 6–6–94; 8.45 am]

BILLING CODE 4510–26–M

Office of Federal Contract Compliance Programs

Commonwealth Aluminum Corporation Reinstatement

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of Court Order Staying the Debarment Commonwealth Aluminum Corporation.

SUMMARY: A previous notice in the **Federal Register**, appearing on May 27, 1994, at Vol. 59 No. 102, 59 FR 27581, advised of the court-ordered stay of debarment of Commonwealth Aluminum Corporation (hereafter "Commonwealth Aluminum"), as an eligible bidder on Government contracts and subcontracts or other modifications of any existing Government contracts or subcontracts, and further advised that a copy of the Order would be published as soon as possible.

FOR FURTHER INFORMATION CONTACT: Annie Blackwell, Director Program Policy, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Ave., NW., room C–3325, Washington, DC 20210 (202–219–9430).

SUPPLEMENTARY INFORMATION: A copy of the Order dated May 19, 1994, issued by Judge Jennifer Coffman of the U.S. District Court for the Western District of Kentucky, in *Commonwealth Aluminum Corp.* v. *Reich*, Case No. 94–0071–O(C), is attached hereto.

Signed the 31st day of May 1994, Washington, DC.

Shirley J. Wilcher,

Deputy Assistant Secretary for Federal Contract Compliance Programs.

United States District Court, Western District of Kentucky, Owensboro, Division

Commonwealth Aluminum Corporation, Plaintiff v. *United States of America; United States Department of Labor; Employment Standards Administration; Office of Federal Contract Compliance Programs; Robert B. Reich, Secretary, United States Department of Labor; Bernard E. Anderson, Assistant Secretary, Employment Standards Administration; Shirley J. Wilcher, Deputy Assistant Secretary, Office of Federal Contract Compliance Programs*, Defendants. Case No. 94–0071–O(C); filed: May 23, 1994

Findings of Fact, Conclusions of Law Preliminary Injunction and Stay

Pursuant to 5 U.S.C. 705 of the Administrative Procedure Act and F.R.C.P. 65, plaintiff, Commonwealth Aluminum Corporation ("Commonwealth") moves the Court to stay the effectiveness of the Final Order and Decision issued by John R. Fraser,

Acting Assistant Secretary for Employment Standards in the matter styled *Office of Federal Contract Compliance Programs, United States Department of Labor, Plaintiff,* v. *Commonwealth Aluminum, formerly Martin-Marietta Aluminum of Kentucky, Inc., Defendant,* Case No. 82–OFC–6 pending judicial review of that decision by this Court. The Court has considered the entire record herein including the affidavits submitted by plaintiff in support of its application. Now, therefore, the Court makes the following findings of fact, conclusions of law, and enters the following Preliminary Injunction and Stay of Agency Action

Findings of Fact and Conclusions of Law

Commonwealth is the corporate successor to Martin-Marietta Aluminum of Kentucky, Inc. On or about September 3, 1982, defendant, Office of Federal Contract Compliance Programs, United States Department of Labor ("OFCCP") filed an administrative complaint against Commonwealth alleging that Commonwealth had violated provisions of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793, et seq., and the regulations promulgated thereunder, in connection with its hiring practices at its aluminum plant in Lewisport, Hancock County, Kentucky.

After the close of pleadings and discovery, the issues raised by the Administrative Complaint were tried before Administrative Law Judge Daniel J. Roketenetz on June 24, 1985 through June 27, 1985. Judge Roketenetz issued a Recommended Decision and Order on June 26, 1986. In his Recommended Decision and Order, Administrative Law Judge Roketenetz recommended dismissal of OFCCP's Administrative Complaint in its entirety. OFCCP took exception to the Recommended Decision and Order of Administrative Law Judge Roketenetz. The parties briefed the exceptions to the Assistant Secretary for Employment Standards

The Acting Assistant Secretary for Employment Standards, United States Department of Labor, issued a Final Decision and Order in Case No. 82–OFC–6 on or about February 10, 1994 The Acting Assistant Secretary for Employment Standards has ruled that Commonwealth violated § 503 of the Rehabilitation Act of 1973. Concomitantly, the Acting Assistant Secretary has ordered that Commonwealth give five of the complainants in the proceedings offers of employment within sixty days of Commonwealth's receipt of the Order, and has ordered retroactive seniority and other benefits. In addition, the Acting Assistant Secretary has ordered that Commonwealth will be ineligible for the award of any government contracts or subcontracts and will be ineligible for extensions or other modifications of any existing government contracts or subcontracts if it does not comply with the other components of his Order.

Commonwealth owns and operates and aluminum plant located near Lewisport in Hancock County, Kentucky. The plaintiff produces aluminum in sheet form which it sells and distributes to various customers. Employees who work in production and maintenance are members of the Local 7325, United Steel Workers of America and are hourly personnel. All complainants involved herein sought jobs in the production or maintenance area within the plant. Between 1980 and today, Commonwealth has had government contracts with a total value of $4,500,622.48. Commonwealth has had no direct government contracts since 1990. Commonwealth has one government subcontract which, when fulfilled, will have a total value of $4,805,129.40.

OFCCP debarred Commonwealth as a government contractor and on April 29, 1994, OFCCP published a notice of Commonwealth's debarment in the Federal Register. Such debarment notice appears at 59 Federal Register 22178

The parties have advised the Court of the balancing factors under the *Celebrezze* case and several other Sixth Circuit cases with respect to temporary injunctions. The factors are: Likelihood of success, irreparable harm, public interest and looking at the harm to everyone. The Court will address each of those, albeit fairly briefly

With regard to the likelihood of success, the Court does not believe that there can be an automatic knee jerk reaction in every case where the Department of Labor reverses the ALJ The Court understand that, at this stage its responsibility is to facially address the merits. However, the mere reversal of an Administrative Law Judge alone is not necessarily enough. Nonetheless, the Administrative Law judge has had the opportunity to see the witnesses, review documents, and measure credibility. In this particular case, Commonwealth has shown a likelihood of success because it has already won once in front of an Administrative Law Judge and in light of the other factors which the Court will address. The Court does not credit the concern of the plaintiffs that there has not been any allegation that the individual complainants would have been employed to do government contract work.

The issue of irreparable harm is the most intriguing for the Court. The Court has done its own research in addition to the research furnished by the parties. There are no controlling cases. Several are persuasive, including *Firestone Tire & Rubber Co* v. *Marshall,* 23 FEP Cases 527 (E.D. Tex 1980), that debarment constitutes irreparable harm. The Court disagrees with that conclusion. In the Court's opinion, the proper analysis is to examine the harm of compliance and not the harm of non-compliance There are several reasons for the Court's conclusion. One reason is that there are cases that are persuasive and while not exactly on point, indicate that the courts in various factual settings were looking to the cost of compliance rather than the cost of non-compliance. Those cases are *Ledbetter* v. *Baldwin,* 479 U.S. 1309 (1986), *Ruiz* v. *Estelle,* 650 F.2d 555, at 573 (5th Cir. 1981); and *Petroleum Exploration, Inc.* v. *Public Service Commission,* 304 U.S. 209 (1938). In *Petroleum Exploration,* the petroleum company argued that it was being forced to choose between complying with an agency order on the one hand, which would require a high expenditure of money, or on the other hand non-compliance, which would subject it to harsh penalties. In that particular situation, the Supreme Court states "the necessity to expend for the investigation or to take the risk for non-compliance does not justify the injunction. It is not the sort of irreparable injury against which equity protects." *Id.* at 221 *Petroleum Exploration* does not instruct courts to look at the cost of compliance, but it does begin to hint at that concept Another case the Court found persuasive was *Southern Ohio Coal Co.* v. *Office of Surface Mining Reclamation and Enforcement, Dept. of the Interior,* 831 F.Supp. 1324 (S.D. Oh. 1993), *rev'd on other grounds,* 1994 U.S. App., Lexis 6813, April 8, 1994. In that particular case, the district court assessed the threat of irreparable injury based on compliance rather than on non compliance

The Court also finds persuasive the case that was cited on the day of the temporary restraining order hearing, *Uniroyal, Inc.* v. *Marshall,* 20 FEP cases 446 (D.C. Cir. 1979). While *Uniroyal* does not explicitly state the standard, the Court of Appeals clearly considered the cost of avoiding debarment and not the cost that would be due to the debarment itself. In this Court's opinion, explicit in the balancing test is the rule that you consider the cost of compliance.

All of the foregoing cases are persuasive and are one reason the Court believes that the proper measure is the cost of compliance with the Department of Labor's ruling. The principal reason the Court is considering cost of compliance as the measure of harm is that this Court should not encourage non-compliance with the Department of Labor order. There cannot be an automatic reaction in every case where an order of debarment has issued or is about to issue. If debarment constituted irreparable harm, every debarment could be enjoined and the Court does not believe that is a good rationale.

The Court notes that the meaning of the order is less than clear and this is reinforced by the footnotes addressing the meaning of the order which appear in the defendants' response and plaintiff's reply filed herein. In that connection, the Court found persuasive *Wisconsin Gas Co.* v. *F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir. 1985), cited by both parties, which held that the proper focus is upon *recoverable* monetary loss. In this case, plaintiffs cannot sue the government or the individuals so in the Court's opinion, there would be no recoverable monetary loss.

The Court noted to the parties that if OFCCP agreed that Commonwealth must only offer the next available job and if the Department of Labor or if OFCCP agreed that Commonwealth could withdraw those offers, or if they had already become full blown employment situations, if the OFCCP would agree that those employees could be let go if Commonwealth won here, then there would not be an irreparable harm because you would have the Uniroyal situation. In *Uniroyal* the D.C. Circuit ruled that once the documents requested were produced, if Uniroyal won on the appeal, the documents would be returned and stricken from the record. In that connection, the Court is attempting to create a Uniroyal situation here, if it exists, so that in this particular situation there would not be any irreparable harm.

In response to the Court's request that the parties confer, OFCCP placed on the record herein the statement that such are precisely the terms presented to Commonwealth. In contrast, Commonwealth asserts that even such an arrangement does not protect it from liability to the individual employees. This exchange, which occurred after the Court announced its decision, persuades the Court that Commonwealth is irreparably harmed, since OFCCP lacks the requisite ability to shield Commonwealth from all liability in the event Commonwealth extends offers of employment and later succeeds here. These facts, therefore, are not parallel to those which existed in *Uniroyal*.

Going on to the third element, public interest, and the fourth, harm to others. The Court has heard testimony concerning Commonwealth being a new company with a different approach. The Court has also heard testimony concerning administrative delay. There is a legitimate public interest in wanting employers to offer employment opportunities to everyone regardless of disability, regardless of age, gender, race, all of those factors. If this heightens the public interest, then it also heightens the government's responsibility. If there is a high government responsibility, then waiting seven or eight years to render an opinion frustrates the purposes of the Rehabilitation Act. In the Court's opinion, the government has acted, if not unconscionably, perhaps unfairly. Therefore, in the Court's opinion, the public interest—if it does swing over to the side of the government at the outset—swings back because of the administrative delay that has occurred here. Whether this case is considered on an expedited basis or not, there is no further harm to the government. There is some value in the employer being able to rely on its understanding that at some point a proceeding is ended. It is not reasonable to wait seven years and come in and do something and then expect immediate compliance.

As far as harm to any third parties, the employees who are still in the work force are working now. To the extent that Commonwealth should lose this case on its merits, those employees can gain monetary relief, and that will be satisfactory. The Court will not hear a claim about the public agency's harm to it because of the delay that has been involved here.

Preliminary Injunction and Order

Based upon the foregoing Findings and Conclusions, it is *Ordered and Adjudged* as follows:

1. Defendants, their officers, agents, employees, attorneys, and representatives, are immediately enjoined and restrained, directly and indirectly, whether alone or in concert with others, until further orders of this Court, from doing any of the following:

a. Seeking, attempting to seek, or taking any affirmative steps to enforce that portion of the February 10, 1994 Order of the Acting Assistant Secretary for Employment Standards which requires Commonwealth to make offers of employment to Gregory Gray, Wilda Matthis, Kenneth Sherrard, William Zellers, and Thomas Marshall, or from seeking to enforce that portion of the Order which grants relief in favor of Robert Etnire.

b. Seeking, attempting to seek, or taking any affirmative steps to enforce or place into effect that portion of the February 10, 1994 Order of the Acting Assistant Secretary for Employment Standards which, under certain conditions, makes Commonwealth ineligible for the award of any government contracts or subcontracts and makes Commonwealth ineligible for extensions or other modifications of any existing government contracts or subcontracts.

2. The Final Decision and Order of the Acting Assistant Secretary for Employment Standards, United States Department of Labor, dated February 10, 1994, in the matter of *Office of Federal Contract Compliance Programs, United States Department of Labor, Plaintiff* v. *Commonwealth Aluminum formerly Martin-Marietta Aluminum of Kentucky, Inc., Defendant*, Case No. 82–OFC–6, shall be, and it is hereby, stayed and such stay shall remain in full force and effect until such time as this Court specifically orders otherwise.

3. Within three business days of the date hereof, defendants shall furnish the Court and Commonwealth with a full and complete written listing of all agencies, contractors, or others, to whom notice of Commonwealth's debarment was sent by defendants.

4. Within five business days of the date hereof, defendants shall send written notification to all agencies, contractors, any third parties identified pursuant to paragraph 3 hereof, and the **Federal Register**, that the effect of Commonwealth's debarment has been stayed by the United States District Court for the Western District of Kentucky, Owensboro Division, pending the appeal by Commonwealth of the Decision which resulted in the debarment order which notification shall include a complete copy of this Temporary Injunction.

5. No security shall be required in connection with this Order.

So Ordered effective as of May 19, 1994, at 6:20 p.m.

Jennifer B. Coffman,

Judge, United States District Court, Western District of Kentucky.

[FR Doc. 94–13715 Filed 6–6–94; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–031]

NASA Advisory Council, NASA/NIH Advisory Committee on Biomedical and Behavioral Research; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, NASA/NIH Advisory Committee on Biomedical and Behavioral Research.

DATES: June 16, 1994, 9 a.m. to 5 p.m.; and June 17, 1994, 9 a.m. to 12:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Program Review Center, 9th Floor, room 9H40, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Arnauld E. Nicogossian, Code U, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0215.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Friday, June 17, 1994, from 11:30 a.m. to 12:30 p.m. in accordance with 5 U.S.C. 522b(c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Committee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Update of NASA Programs
—Report on NASA/NIH Activities
—Update on Telemedicine Program
—Update on International Space Station Alpha and Russian Program
—Committee Recommendations/Future Planning

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 1, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 94–13767 Filed 6–6–94; 8:45 am]

BILLING CODE 7510–01–M

[Notice 94–030]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Life and Biomedical Sciences and Applications Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 94–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Life and Biomedical Sciences and Applications Advisory Subcommittee.

DATES: June 14, 1994, 8:30 a.m. to 5 p.m.; and June 15, 1994, 8:30 a.m. to 4 p.m.

ADDRESSES: Bionetics Conference Room, suite 340, 250 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald J. White, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2147.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Wednesday, June 15, 1994, from 1:30 p.m. to 2:30 p.m. in accordance with 5 U.S.C. 522b(c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Subcommittee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Introductions
—Overview of Office of Life & Microgravity Sciences and Applications
—Programs and Activities of the Life and Biomedical Sciences and Applications Division
—Related Activities of the Aerospace Medicine & Occupational Health Division and Microgravity Sciences & Applications Divisions
—Space Station Centrifuge Facility Background & Issues
—Subcommittee Activities and Strategy Discussion

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 1, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 94–13766 Filed 6–6–94; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. Type of submission, (new, revision, or extension): Revision.

2. The title of the information collection:

NRC Form 171, "Paper to Paper Duplication Request"
NRC Form 171A, "Multi-Media Duplication Request"
NRC Form 171B, "Microform to Paper Request"

3. The form number if applicable: NRC Forms 171, 171A and 171B.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Individuals or companies requesting copies to be made by reproduction.

6. An estimate of the number of annual responses: 18,300.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 1,208 hours (18,300 forms x .066 hr/form) or about 4 minutes per individual.

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: These forms are utilized by individual members of the public to request reproduction of publicly available documents in NRC's Headquarters Public Document Room (PDR). Copies of the form are utilized by the reproduction contractor to accompany order and then discard.

Copies of the submittal may be inspected or obtained for a fee from the

NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer Troy Hillier, Office of Information and Regulatory Affairs [illegible] NRC], Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–5895.

[illegible] at Rockville, Maryland, this [illegible] day of May 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–13762 Filed 6–6–94; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified as DG–6002, "Establishing Quality Assurance Programs for the Manufacture and Distribution of Sealed Sources and Devices Containing Byproduct Material," and is intended for Division 6, "Products." DG–6002 is being developed to provide guidance acceptable to the NRC staff on the essential elements needed to develop, establish, and maintain a quality assurance program for the manufacture and distribution of sealed sources and devices.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. The draft guide has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by August 12, 1994.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 20th day of May 1994.

For the Nuclear Regulatory Commission.

Lloyd J. Donnelly,

Director, Financial Management, Procurement, and Administration Staff, Office of Nuclear Regulatory Research.

[FR Doc. 94–13764 Filed 6–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8724–MLA; ASLBP No. 94–695–03–MLA]

Chemetron Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the presiding officer to conduct the hearing in the event that an informal adjudicatory hearing is ordered in the following Materials License Amendment proceeding.

Chemetron Corporation (Bert Avenue, Harvard Avenue and McGean-Rohco Sites, Newburgh Heights and Cuyahoga Heights, Ohio), Source Material License No. SUB–1357.

The Presiding Officer is being designated pursuant to 10 CFR 2.1207 of the Commission's Regulations, 'Informal Hearing Procedures for Materials Licensing Adjudications,' published in the **Federal Register**, 54 FR 8269 (1989). This action is in response to a request for a hearing submitted by Chris Trepal on behalf of Earth Day Coalition. The petitioner requests a hearing on a notice published by the Office of Nuclear Material Safety and Safeguards, dated April 4, 1994, entitled 'Consideration of Amendment to Chemetron Corporation License and Opportunity for Hearing (59 FR 17124, April 11, 1994).

The presiding officer in this proceeding is Administrative Judge James P. Gleason.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Jerry R. Kline to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Gleason and Judge Kline in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge James P. Gleason, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge Jerry R. Kline, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 31st day of May 1994.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94–13773 Filed 6–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–21 issued to Northeast Nuclear Energy Company (NNECO) for operation of Millstone Nuclear Power Station, Unit 1, located in New London County, Connecticut.

The proposed amendment adds a new section to Technical Specification Section 6.17 and would require that

procedures be in place to provide for monitoring and sampling of emergency service water (ESW) discharge flow during accident conditions when a positive differential pressure cannot be maintained between ESW and low pressure coolant injection (LPCI) in the LPCI heat exchangers.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed change in accordance with 10CFR50.92 and concluded that the change does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed change does not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change does not affect the probability of any previously evaluated accidents because the proposed change only affects postaccident operation. The consequences of an accident are possibly affected by the change since LPCI/torus fluid could enter the ESW system, and ultimately Long Island Sound, if a positive differential pressure is not maintained in the LPCI heat exchangers. There is not a significant increase in the probability of adverse consequences however, since a passive failure of the LPCI heat exchangers tubes would be required.

Additionally, at Millstone Unit No. 1, the heat exchangers are only used for occasional torus cooling during the warmer months of the year. As such, they experience very little use. In addition, eddy current testing and shell side pressurization demonstrate tube integrity each refueling outage. During operation, quarterly surveillance testing of the LPCI system will identify if any leakage occurs.

Monitoring of the ESW discharge will allow timely detection of any radiological leakage. If a release is detected, the appropriate actions will be taken as the situation requires. Actions could include the isolation of one heat exchanger, the throttling of ESW to restore the positive differential pressure with LPCI, or continued operation with the leakage monitored.

Therefore, the proposed change does not involve a significant increase in the probability or consequence of a previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

This change only affects the use of the ESW system under postaccident conditions. The LPCI system will continue to function as credited in the accident analyses. No other systems or components are affected by this proposed Technical Specification change. Therefore, this change cannot create a new or different kind of accident.

3. Involve a significant reduction in the margin of safety

This proposed Technical Specification does not affect normal LPCI operation for torus cooling. This Specification establishes controls which ensure that an unmonitored release does not occur, even if the positive differential pressure does not exist in the LPCI heat exchanger due to the throttling of LPCI.

Removal of the differential pressure by itself does not promote failure of the LPCI heat exchanger. For a release to occur, the heat exchanger has to fail by an independent method. Both heat exchangers will be eddy current tested each refueling outage to ensure integrity. Also, routine surveillance of the torus water would detect any leakage in the heat exchangers during the operating cycle. These measures provide confidence that the integrity of the heat exchangers will exist at the time of the postulated accident.

The period of time when ESW pressure may be lower than LPCI pressure is limited to several days. Considering the integrity of the heat exchangers, it is very unlikely that they would develop a leak during this period.

Although unlikely, if a leak were to develop, it will be detected by the monitoring and sampling. Survey monitoring would be initiated prior to loss of positive differential pressure. Sampling ensures that any release lower than the sensitivity of the survey meter would also be detected and quantified. The quantity of the release can be estimated by assuming that any measured release existed continuously from the time that the positive differential pressure was lost.

Although not relied upon for maintaining system integrity, the positive differential pressure does provide an additional layer of defense in depth. In some accident scenarios, it may be replaced by a monitoring and sampling program. If a release is detected, appropriate action will be taken as the situation requires. Considering the small likelihood of a release, the small consequences of such a release, and the compensatory measures available, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North 11555 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 7, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for

Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide, when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 27, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 1st day of June 1994.

For the Nuclear Regulatory Commission.

James W. Andersen,

Acting Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–13763 Filed 6–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 55–30662–EA; IA–94–007; ASLBP No. 94–694–05–EA]

In the Matter of Kenneth G. Pierce, Shorewood, IL; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

In the Matter of Kenneth G. Pierce, Shorewood, IL, License No. OP–30277–02, Enforcement Action IA–94–007

This Board is being established pursuant to the request of Kenneth G. Pierce (Licensee), Nuclear Station Operator (NSO) who held Reactor Operator's License No. OP–30277–02. Mr. Pierce was employed by the Commonwealth Edison Company

(CECo) from April 30, 1979 until CECo terminated his employment on December 2, 1993, which terminated his license. Mr. Phillips requests a hearing regarding an Order issued by the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, dated April 21, 1994, entitled "Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)" (59 FR 22693, May 2, 1994). The Order prohibits Mr. Pierce from participation in any respect in any NRC-licensed activities for three years.

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 31st day of May 1994.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94–13772 Filed 6–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–08681–MLA–3; ASLBP No. 94–693–02–MLA–3]

UMETCO Minerals Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the presiding officer to conduct the hearing in the event that an informal adjudicatory hearing is ordered in the following Materials Licensing proceeding.

In the matter of UMETCO Minerals Corporation, P.O. Box 1029, Grand Junction, Colorado 81502, Source Materials License No. SUA–1358.

The Presiding Officer is being designated pursuant to 10 CFR 2.1207 of the Commission's Regulations, "Informal Hearing Procedures for Materials Licensing Adjudications," published in the **Federal Register**, 54 FR 8269 (1989).

This action is in response to a request for a hearing submitted by Norman Begay, P.O. Box 1138, Blanding, UT 84511. Mr. Begay requests a hearing on the amendment of UMETCO Minerals Corporation's source material license to allow receipt and disposal of materials from the Department of Energy's Monticello Tailings Project. Notice of the amendment request was published in the **Federal Register** at 59 FR 18426 (April 18, 1994).

The presiding officer in this proceeding is Administrative Judge James P. Gleason.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Thomas D. Murphy to assist the Presiding Officer in taking evidence and in preparing a suitable record for review

All correspondence, documents and other materials shall be filed with Judge Gleason and Judge Murphy in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge James P. Gleason, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge Thomas D. Murphy, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 31st day of May 1994.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94–13771 Filed 6–6–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of Standard Form 2808

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Standard Form 2808, Designation of Beneficiary (CSRS), is used by persons covered under the Civil Service Retirement System to designate a beneficiary to receive the lump sum payment due from the Civil Service Retirement and Disability Fund in the event of their death.

Approximately 2,000 SF 2808 forms are completed annually. It takes approximately 15 minutes to complete the form. The total annual burden is 500 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street NW., room 3349, Washington, DC 20415;

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis & Design Section, (202) 606–0623.

U.S. Office of Personnel Management

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–13747 Filed 6–6–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34142; File No. SR–CHX–93–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Stock Exchange, Inc. To Define Members' Rights and Obligations More Precisely

June 1, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 19, 1993, as subsequently amended on December 29, 1993,[1] and May 5, 1994,[2]

[1] See Amendment No. 1 to SR–CHX–93–31 Amendment No. 1 added a subsection (c) to proposed Rule 18 of Article I of the Exchange's Rules relating to suits against the Exchange.

[2] See letter from George T. Simon, Foley & Lardner, to Sharon Lawson, Assistant Director,

the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX submits the following proposed rule change which would amend (i) Article IX to add a new short sale rule; (ii) Article VII, Rules 2, 3, 4, and 5, to add a new summary suspension rule and procedure; (iii) Article XVII, Rule 4, Article VII, Rule 5(d), Article VI, Rule 8, and Article XII, Rules 3 and 6, to add a standard of review; (iv) Article I, Rules 17 and 18, to add provisions relating to suits against the Exchange and its employees; and (v) Article VIII, Rule 12 to make conduct inconsistent with the maintenance of fair and orderly markets or the protection of investors a violation of Exchange Rules.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filling with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule filing is to amend various Exchange Rules which, collectively, define members' rights and obligations more precisely and give the Exchange more flexibility and protection in dealing with violations of Exchange Rules.

First, with respect to short sales, currently if a member enters into a contract to sell stock, as a general matter he must believe at that time that he will be able to perform. If he has no intention of performing (*i.e.*, delivering stock on settlement date), then entering into the contract is both fraudulent and a violation of just and equitable principles of trade. In furtherance of this, the Exchange's proposed rule requires that prior to effecting a short sale, members make arrangements to borrow the security or obtain other assurances that delivery can be made on settlement date. Consistent with other exchanges' short sale rules, the new rule provides an exception for bona fide market making activities.[3] However, in order to use the exception, the burden is on the specialist, market maker or odd-lot dealer to show that the sale was indeed part of bona fide market making activities. In addition, as a monitoring tool, the new short sale rule requires a specialist, market maker or odd-lot dealer to notify the Exchange whenever he accumulates a position (long or short) in a security that is greater than or equal to 5% of the outstanding public float of the security.

The Exchange also proposes to add new rules under Article VII to give the President of the Exchange greater flexibility and a greater ability to take summary action against a member if the President has reasonable grounds to believe that the member is in violation of, and will continue to violate Exchange Rules. This expands the President's ability to take summary action, which currently applies primarily to situations where the member has financial or operational difficulties. Under the proposed rules, the summary action could include a suspension, or a limitation on the member's activities or a limitation on the member's access to Exchange services. Because of the summary nature of the action that will be permitted by the proposed rules, the Exchange's proposed rules also contain provisions for an expedited appeal, requiring, among other things, that the appeal be heard within ten (10) days.[4]

The proposed rules also adopt a formal standard of review for the hearing of appeals. Currently, there is no articulated standard of review contained in the Exchange's rules. The standard in the proposed rules prohibits an appeal panel from overturning the fact finder's decision if the factual conclusions in that decision are supported by substantial evidence and if the decision itself is not arbitrary, capricious or an abuse of discretion.

The proposed rules also add provisions relating to Exchange liability and suits filed against the Exchange and its employees. Current Exchange rules limit liability against the Exchange as a result of a member's use or enjoyment of the Exchange facilities.[5] The rules of MBS Clearing Corporation limit its liability to members to a broader extent.[6] The proposed rules limit the liability of the Exchange to its members to situations where the Exchange has acted willfully or with gross negligence.[7]

The possibility of this type of suit against individual staff members of the Exchange when they are acting on Exchange business makes it impossible for such persons to perform their duties. The proposed rule also prohibits a member form suing any officer, director, employee or agent of the Exchange or any of its subsidiaries or any other Exchange official, if such person is acting on Exchange business or business of any of its subsidiaries. This proposed rule does not, however, prohibit a member from suing the Exchange as a result of the actions of these individuals; rather, it merely prohibits suits against the persons in his or her individual capacity.[8]

Division, dated April 27, 1994. Amendment No. 2 made several substantive changes to the proposed rule change and added a proposed rule change to Article VIII, Rule 12 to make conduct inconsistent with the maintenance of fair and orderly markets or the protection of investors a violation of Exchange Rules.

[3] See, e.g., New York Stock Exchange Rule 440C.10, Interpretation 01 (Short Sales).

[4] The proposed rule provides that the President, within two business days of taking summary action, furnish the member with a written statement setting forth the reasons and specific grounds that constitute the basis for the action. The proposed rule also provides that the member affected may make a request for an appeal by filing a written notice of appeal with the Secretary of the Exchange within five days after notification of the President's action. Appeals filed under the proposed rule must be considered and decided by a panel appointed by the Board, composed of three members of the Board, within ten days. After consideration of the appeal, the panel, by majority vote, affirms, reverses, or modifies the action upon which the appeal was made. All decisions of the panel are final.

[5] See Article X, section 2 of the CHX's Constitution.

[6] See Article V, Rule 6, section 1 of the MSB Clearing Corporation's By-Laws limits the Corporation's liability to situations where it has acted willfully or with gross negligence.

[7] The Commission notes that the proposed rule purports to limit the liability of the Exchange to third parties, as well as to Exchange members. The following is the text of the proposed rule:

The Exchange shall use its best efforts to perform its duties and responsibilities in the manner specified in the Rules but shall have no liability to any member or any third party for any loss, cost, expense, damage or liability for nonperformance or misperformance of such duties and responsibilities, except to the extent that it is attributable to the willful misconduct, gross negligence, bad faith, or fraudulent or criminal acts of the Exchange or its officers, employees or agents.

[8] The following is the text of the proposed rule:

No member or member organization shall institute a lawsuit or any other type of legal proceeding against any officer, director, employee

In addition, the proposed rule adds a provision that requires a member who fails to prevail in a legal proceeding instituted by that member against CHX or other specified parties[9] to pay all reasonable expenses, including attorneys' fees, incurred by CHX in defense of such proceeding. This requirement to pay CHX's expenses, however, is only triggered if CHX's expenses exceed twenty thousand dollars ($20,000). This will minimize the impact of this new rule for small members that pursue claims against CHX but do not prevail at an early stage. When in place, the rule will serve to discourage frivolous and harassment-type suits against CHX.

Finally, the Exchange proposes to amend Article VIII to make conduct inconsistent with the maintenance of a fair and orderly market or the protection of investors a violation of Exchange Rules.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-93-31 and should be submitted by June 28, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-13776 Filed 6-6-94; 8:45 am]

BILLING CODE 8010-01-M

[9] or agent of the Exchange or any of its subsidiaries or any other Exchange official, if such person is acting on Exchange business or business of any of its subsidiaries except for as violation of the federal securities laws and except, with respect to Governors of the Exchange to the extent inconsistent with the Exchange's Certificate of Incorporation.

[9] The proposed rule would apply to legal proceeding instituted by members against the Exchange or any of its officers, directors, committee members, employees or agents, and specifically would not apply to internal disciplinary actions or committee actions.

[Release No. 34-34138; File No. SR-CBOE-93-44]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating To Issuance of Regulatory Circular Relating to Floor Brokerage Practices

June 1, 1994.

On October 20, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposal to issue to its membership a Regulatory Circular ("1993 Circular") relating to certain floor brokerage practices.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33155 (November 4, 1993), 58 FR 59763. No comments were received on the proposed rule change.

The CBOE states that the 1993 Circular is designed to assist floor brokers in understanding their responsibilities under the CBOE's Rules, the Act, and the Commission's regulations. On June 19, 1986, the CBOE issued a Regulatory Circular ("1986 Circular") which describes, among other things, the steps that should be taken when a floor broker proposes to "leg in" a multi-part order or to cross customer orders pursuant to CBOE Rule 6.74, "'Crossing' Orders." In addition, the 1986 Circular sets forth procedures to be followed when there has been a "print-through"[3] on a limit order or an order is not otherwise executed due to a floor broker's error.

The 1993 Circular restates and expands upon the subjects discussed in the 1986 Circular. For example, the 1993 Circular provides a more detailed discussion of recordkeeping requirements, restates the procedures applicable to a print-through on a limit order, and makes clear that, except as otherwise specified, a floor broker is not permitted to fill the customer order from his error account if doing so would reduce or liquidate a position in the broker's error account.

Similarly, the 1986 Circular explains that the CBOE's Rules do not prohibit the "legging" of multi-part orders as long as the executing floor broker remains in compliance with the CBOE's rules concerning the use of due diligence in the execution of customer orders and the separation of market

[1] 15 U.S.C. 78s(b)(1) (1982)

[2] 17 CFR 240.19b-4 (1993)

[3] A "print through" occurs when a trade is effected in the crowd at a price that is better than the price at which a customer order should have been represented by a floor broker in the trading crowd. The 1993 Circular states that if a broker discovers a print-through during trading hours that a better price is available at the time the customer order should be filled at the better price. If the better price is no longer available, then the floor broker is responsible at the original limit price and may either execute the order at the available better price and give the customer a "different check" or fill the order out of his error account, provided it does not reduce or liquidate a position in the error account. If the print-through is discovered outside trading hours and the customer requires a fill as of that trade date, the floor broker may fill the customer's order at the limit price from his error account. If the print-through occurs on the opening, the customer is generally entitled to the number of contracts which print through at the opening price. If a better price than the opening price is available when the error is discovered, the customer order should be filled at the better price.

maker and floor broker functions. The 1993 Circular expands upon the treatment of this subject by setting forth specific procedures that are to be followed when a floor broker discovers that he is unable to complete the execution of a multi-part order.[4]

The 1993 Circular also provides guidance to floor brokers with respect to subjects that were not covered in the 1986 Circular. These subjects include the priority of customer orders in a floor broker's "deck," the "stopping" of customer orders, and trading in securities underlying options traded by a floor broker. Specifically, with regard to a floor broker's "deck," the 1993 Circular states that under Exchange Rule 6.73, a floor broker's agency business takes priority over trades for his error account and that a floor broker must determine the priority of agency orders entered simultaneously with him. The 1993 Circular also states that a floor broker must use due diligence to execute those orders at the best available price or prices. With regard to the "stopping" of customer orders, the 1993 Circular states that it is improper for a floor broker to "stop" or guarantee an execution to a customer order he is holding from his error account or deck because by doing so he is acting as a market maker and is in violation of CBOE Rule 8.8. The 1993 Circular notes that it is not a violation of CBOE Rule 8.8 for a floor broker to cross a public customer order with a facilitation order in accordance with the provisions of CBOE Rule 6.74(b), "'Crossing' Orders."

Finally, with regard to the trading of underlying securities, the 1993 Circular states that the CBOE's rules do not prohibit a floor broker from entering into transactions on other exchanges for his personal account in financial instruments underlying or related to the classes at the station where he acts as a floor broker. Because trading in the underlying financial instrument could be perceived as a conflict of interest, the Equity and Index Floor Procedure Committees strongly advise against it. The 1993 Circular states that it would be a violation of the CBOE's rules for a floor broker to enter into transactions in an underlying or related financial instrument based on information concerning a customer option order which he holds.

The CBOE states that the 1993 Circular is designed to provide guidance to floor brokers regarding the Exchange's interpretation of applicable CBOE Rules, the Act, and Commission regulations. The CBOE states that the 1993 Circular is not intended to be a comprehensive discussion of the named subjects, but is designed to supplement existing Exchange rules and Interpretations and Policies relating thereto for the purpose of providing CBOE members with authoritative guidance regarding the Exchange's interpretation of its rules, the Act, and Commission regulations in certain specific contexts.

The CBOE believes that the proposed 1993 Circular is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it will provide guidance to CBOE members regarding the obligations of floor brokers under CBOE rules, the Act, and Commission regulations, and is thereby designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

The Commission finds that the proposed 1993 Circular is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) in that the 1993 Circular is designed to promote just and equitable principles of trade and to protect investors and the public interest.[5] Specifically, the Commission believes that the 1993 Circular should help to provide floor brokers with a clear explanation of certain of their obligations under the Act, the Commission's regulations, and the CBOE's rules, thereby helping to ensure the maintenance of fair and orderly markets. The Commission believes that the 1993 Circular should facilitate the execution of customer orders at the best available prices by providing guidance with regard to print-throughs and orders executed erroneously, and by stating that floor brokers representing customer orders have a fiduciary obligation to their clients to execute their orders on the CBOE floor at the best available prices. The 1993 Circular also notes that a floor broker's due diligence in handling an order includes the floor broker's insuring that all market or marketable limit orders are constantly represented in the crowd either by himself or by another floor broker for as long as the order is active.

In addition, the Commission believes that the 1993 Circular should help to ensure the integrity and fairness of the CBOE's markets by advising members of restrictions on floor brokers' activities. Specifically, the 1993 Circular notes that the CBOE's rules prohibit a member from trading as a market maker with respect to option contracts traded at a particular station on the same day that the member is acting as a floor broker at that station. The 1993 Circular also contains provisions designed to ensure that floor brokers do not engage in abusive or illegal trading. In this regard, the 1993 Circular makes clear that it is a violation of the CBOE's rules for a floor broker to enter into transactions in an underlying or related financial instrument based on information concerning a customer option order which he holds.[6]

Finally, the Commission believes that it is beneficial for the CBOE to codify in a circular existing Exchange policies and procedures regarding floor broker activity. The Commission believes that the 1993 Circular will make it easier for floor brokers to understand and have access to relevant policies and procedures with respect to their obligations as floor brokers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[7] that the proposed rule change (SR–CBOE–93–44) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

[FR Doc. 94–13733 Filed 6–6–94, 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34141; File No. SR–MSE–93–9]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Proposed Amendments to Its Arbitration Rules

June 1, 1994

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 26, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") (on the date that the proposal was filed, the CHX was named the "Midwest Stock Exchange" or "MSE") filed with the Securities and Exchange Commission ("Commission"

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[4] Specifically, the 1993 Circular states that if a floor broker determines that he is unable to complete an order he has legged he must either: (1) Offer the executed leg to the customer; (2) liquidate the leg in open outcry and then offer the trade, regardless of whether it is a profit or loss, to the customer; or (3) execute the remaining leg(s) of the order at the available market in open outcry and give the customer a difference check. In addition, the 1993 Circular notes that a floor broker may not provide an execution on the unexecuted portion of the order from his error account; by doing so he is acting as a market maker.

[5] 15 U.S.C. 78f(b)(5) (1984).

[6] Such transactions would also be inconsistent with the Act.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30–3(a)(12) (1993).

or "SEC") the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. On March 31, 1994, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[1] On June 1, 1994, the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its arbitration rules as set out in Rule 24 of Article VIII in order to have them conform more closely with the Uniform Code of Arbitration developed by the Securities Industry Conference on Arbitration ("SICA").[3]

In addition to the conforming changes to Rule 24, the Exchange also proposes to make other changes to Rule 24 as well as changes to Rule 23, Article VIII (Arbitration of Member Disputes), as set forth in the purpose section of this rule filing.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to bring the Exchange's arbitration rules more closely in line with SICA's Uniform Code of Arbitration (the "Uniform Code" or "Code"). To that end, the Exchange is proposing several conforming changes to its arbitration rules and is also proposing other changes which will facilitate the administration of the CHX arbitration forum in general.

The Exchange is also redesignating most of the section references to Rule 24 in order to conform its rule reference to SICA's Uniform Code.

The CHX is proposing to add a provision (CHX Rule 24, Section 1(c)) to its arbitration rules providing that class actions will not be eligible for submission to arbitration. However, an individual may pursue a claim in arbitration if class certification is denied; the case is decertified; the customer is excluded from the class; or the customer elects not to participate in the putative or certified class action or has complied with other court prescribed conditions for withdrawal. The Exchange is amending Section 33 of Rule 24 (redesignated as Section 31) requiring the addition of a provision to pre-dispute arbitration agreements regarding the ineligibility of class actions for arbitration.[5]

Rule 24, Section 1 adds Interpretation and Policy .01 which addresses an existing Exchange policy regarding the determination whether to accept a claim for arbitration at the Exchange. The Exchange's policy is to accept a claim for arbitration if the Exchange is the Designated Examining Authority ("DEA") of the Respondent member or if the enforcement of the applicable rules has not been ceded to another self-regulatory organization ("SRO") pursuant to its Rule 17d–2 Agreement.[6] In other cases, the Exchange may decline the use of its arbitration facilities if the nexus between the dispute and the Exchange is minimal.

The Exchange considers claims submitted to the arbitration department on a case-by-case basis and examines the policy described above in determining whether a claim will be accepted. Under the Exchange's policy, the only discretion on whether the Exchange will accept a claim for arbitration occurs when the Exchange is not the DEA for the Respondent member and the enforcement of a particular rule has not been ceded to another SRO pursuant to Rule 17d–2. In this event, as stated above, the Exchange may reject the claim for arbitration if the nexus between the dispute and the Exchange is minimal. This can be demonstrated by the following example. Suppose a Respondent member firm was a member of the New York Stock Exchange, Inc. ("NYSE"), National Association of Securities Dealers, Inc. ("NASD"), and the CHX, and the NYSE was the firm's DEA. Suppose that the dispute involved alleged NASD sales practice violations covering 150 transactions. Suppose further that out of those 150 transactions, only two were executed on the CHX. In that event, the Exchange would most likely decline the use of its arbitration facilities based on minimal contacts that the dispute had with the Exchange.

The Exchange believes that the policy places fair limitations upon the responsibility of the Exchange to make its arbitration facilities available by requiring that the underlying dispute have some minimal nexus (or contacts) to the Exchange.

Rule 24, Section 1 also adds interpretation and policy .02 which extends jurisdiction over former members and member organizations for controversies which had their genesis during the period in which the former member was an Exchange member.[7]

Rule 24, Section 2(c) (Simplified Arbitration) amends the fee

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[1] See letter from David T. Rusoff, Attorney, Foley & Lardner, to Sandra Sciole, Special Counsel, SEC, dated March 30, 1994.

[2] See letter from David T. Rusoff, Attorney, Foley & Lardner, to Sandra Sciole, Special Counsel, SEC, dated May 31, 1994. Amendment No. 2 made certain changes to Interpretation and Policy .01 and .02 to Rule 24.

[3] SICA is comprised of a representative from each self-regulatory organization ("SRO") that administers an arbitration program, a representative of the securities industry, and four representatives of the public. The SROs that administer an arbitration program are the New York Stock Exchange, American Stock Exchange, Boston Stock Exchange, Cincinnati Stock Exchange, CHX, Pacific Stock Exchange, Philadelphia Stock Exchange, the Chicago Board Options Exchange, the National Association of Securities Dealers, and the Municipal Securities Rulemaking Board.

[4] The text of the proposed rule change was attached to the filing as Exhibit A. Copies of the proposal are available at the Commission as well as at the CHX.

[5] Rule 24, Section 31, Paragraph 5 is proposed to state that all agreements shall include a statement that "no person shall bring a punitive or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action, who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until (i) the class certification is denied, or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein."

[6] Pursuant to Rule 17d–2 under the Act, any two or more SROs may file with the Commission a plan for allocating among the SROs the responsibility to receive regulatory reports from persons who are members or participants of more than one of such SROs to examine such persons for compliance or to enforce compliance by such persons, with specified provisions of the Act, the rules and regulations thereunder, and the rules of such SROs or to carry out other specified regulatory functions with respect to such persons. See 17 CFR 240.17d-2 (1994).

[7] Proposed Interpretation and Policy .02 to Rule 24, Section 1 states that for purposes of this Rule and Rule 23 under Article VIII, the terms "member," "member organization," "associated person" and an "employee of a member," shall be deemed to encompass those persons and entities who were Exchange members or persons associated with a member at the time the circumstances occurred which gave rise to the controversy.

requirements for simplified arbitrations (cases not exceeding a dollar amount of $10,000).[8] The proposed fee schedule for simplified arbitrations and regular arbitrations is set out in Section 32 (redesignated as Section 30).

Rule 24, Section 2(h) provides a mechanism for resolving pre-hearing matters in a simplified proceeding. This change codifies the applicability of the discovery procedures set forth in Section 14 (redesignated as Section 20) to simplified arbitrations.

Rule 24, Section 8(a)(2)(iv) will classify individuals who are registered under the Commodities Exchange Act or are members of a registered futures association or any commodities exchange as being from these securities industry for purposes of classification of arbitrators.

Rule 24, Section 10 is amended to clarify the time limitations applicable to a party wishing to utilize a peremptory challenge.

Rule 24, Section 14(c)(5) is proposed to be amended to state that the Director of Arbitration may extend any time period in this section (whether such be denominated as a Claim, Answer, Counterclaim, Cross-Claim, Reply, or Third-Party pleading).

Rule 24, Section 13(d) is proposed to be amended to clarify the rule with respect to joinder and consolidation. It also authorizes the Director of Arbitration to make preliminary determinations in cases where issues concerning joinder and consolidation are in dispute. However, all further determinations with respect to joinder and consolidation will remain with the arbitration panel.[9]

Rule 24, Section 19 (redesignated as Section 18) requires a party requesting an adjournment to deposit a fee, not to exceed $1,000, upon making the request. If granted, the arbitrators may waive the deposit or, in their award, order the deposit.[10]

Rule 24, Section 24 (redesignated as Section 22) clarifies that arbitrators are empowered to take appropriate action, which can include the assessment of fees or costs, preclusion of documents

[illegible] party's Response, the Director of Arbitration would be authorized to determine [illegible] whether such parties should proceed in the same [illegible] arbitrations. Such determination would be [illegible] subsequent to the filing of [illegible] pleadings. The Director of Arbitration [illegible] to determine [illegible] whether claims filed separately are related, and [illegible] be authorized to consolidate such claims for hearing and award purposes.

Section 13(d)(1) is proposed to state that all persons may join in one action as Claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence or series of transactions or occurrences and if any questions of law or fact common to all these Claimants will arise in the action. All persons may be joined in one action as respondents if there is asserted against them jointly or severally any right to relief in, out of the same transaction, occurrence, or series of transactions or occurrences and if any questions of law or fact common to all respondents will arise in the action. A Claimant or respondent need not assert rights to or defend against all the relief demanded. Judgment may be given for one or more of the claimants according to their respective rights to relief, and against one or more respondents according to their respective liabilities.

Rule 24, Section 14 is proposed to be amended to state that the time and place for the initial hearing shall be determined by the Director of Arbitration, and each hearing thereafter, by the arbitrators. Notice of the time and place for the initial hearing shall be given at least eight (8) business days prior to the date fixed for the hearing by personal service, registered, or certified mail to all of the parties unless the parties shall, by their mutual consent, waive the notice provisions of this section. Notice for each hearing, thereafter, shall be given as the arbitrators may determine. Attendance at a hearing waives notice thereof.

Section 18(b) is proposed to be amended to state that a party requesting an adjournment after the arbitrators have been appointed shall, if such adjournment is granted, deposit a hearing session deposit of ten fees for the first adjournment and twice the initial deposit fees, not to exceed $1,000, for a second or subsequent adjournment requested by that party. The arbitrators may waive the deposit of fees but in their awards may direct the return of the adjournment fee.

or witnesses, and making disciplinary referrals in order to obtain compliance with all rulings by the arbitrators.[11]

Rule 24, Section 28 (redesignated as Section 26) requires parties filing amended pleadings to serve such different pleading on all other parties. This change relieves the Director of Arbitration from the requirement to serve such pleading.[12]

Rule 24, Section 30 (redesignated as Section 28) sets forth the requirement that all monetary awards be paid within 30 days of receipt unless a motion to vacate has been filed with the court. Additionally, the section mandates that interest accrue from the date of the award, until paid, if the award is not paid within 30 days; or the motion to vacate is unsuccessful, or as specified by the arbitrators. Interest shall be assessed at the prevailing legal rate in the state where the award is rendered or at a rate set by the arbitrator(s). This change will encourage the prompt payment of awards.[13]

Rule 24, Section 32 (redesignated as Section 30) amends the current fee schedule in place at the CHX and conforms its fee schedule to those of the other SROs. The CHX proposes to adopt the following Schedule of Fees:[14]

[8] Rule 24, Section 2(c) is proposed to state that the Claimant shall pay a filing fee and remit a hearing deposit as specified in Section 30 of this Rule upon filing the Submission Agreement. The final disposition of the sum shall be determined by the arbitrator. The proposal would also amend Section 2(d) to state that the costs to the Claimant under either proceeding shall in no event exceed the total amount specified in Section 30 of this Rule.

[9] In addition, the Exchange proposes to amend Section 13(d) to state that in cases where there are multiple Claimants, Respondents or Third

[10] Proposed Section 22 to Rule 24 provides: "The arbitrator(s) shall be empowered to interpret and determine the applicability of all provisions under this Rule and to take appropriate action to obtain compliance with any ruling by the arbitrator(s). Such interpretations and actions to obtain compliance shall be final and not subject to appeal."

[11] As amended, Rule 24, Section 30 is proposed to state, in part, that the party filing a new or different pleading shall serve on all other parties a copy of the new or different pleading in accordance with the provisions set forth in Section 12(b). The arbitrators may, within ten business days from the receipt of service, file responses to the pleadings with the Director of Arbitration in accordance with Section 14(b).

[12] Rule 24, Section 28 is proposed to be amended to include Paragraphs (1) and (g). Rule 24, Section 28(f) is proposed to state that awards shall be made publicly available; provided, however, that in cases of a customer party to the arbitration will not be publicly available if he or she so requests it.

[13] With respect to the following Schedule of Fees, [illegible] indicates new material.

SCHEDULE OF FEES—PUBLIC CUSTOMER CLAIMANT

Amount in dispute	Filing fee	Paper	Hearing deposit	
			1 Arb.*	3 Arb
$1,000 or less	$15	$15	*$15	
$1,001–$2,500	25	25	*25	
$2,501–$5,000	50	75	*100	
$5,001–$10,000	75	75	*200	
$10,001–$30,000	100		300	$400
$30,001–$50,000	120		300	400
$50,001–$100,000	150		300	500
$100,001–$500,000	200		300	750
$500,001–$5,000,000	250		300	1,000
Over $5,000,000	300		300	1,500

*The 1 Arbitrator column also sets forth the forum fees for pre-hearing conferences with a single arbitrator

INDUSTRY CLAIMANT*

Amount in dispute	Filing fee	Paper	Hearing deposit	
			1 Arb.	3 Arb
$1,000 or less	$500	$75	*$300	
$1,001–$2,500	500	75	*300	
$2,501–$5,000	500	75	*300	
$5,001–$10,000	500	75	*300	
$10,001–$30,000	500		300	$600
$30,001–$50,000	500		300	600
$50,001–$100,000	500		300	600
$100,001–$500,000	500		300	750
$500,001–$5,000,000	500		300	1,000
Over $5,000,000	500		300	1,500

*This is the fee schedule for claims submitted by members or member organizations, against public customers, registered representatives or non-members other than public customers, and for claims submitted by registered representatives or non-members other than public customers against members or member organizations or non-members. The one arbitrator column also sets forth the forum fee for pre-hearing conferences with a single arbitrator

MEMBER CONTROVERSIES

Amount in dispute	Filing fee	Pre-hearing conference	Hearing deposit
$10,000 or less	$100	$150	$200
$10,001 to $100,000	200	300	750
$100,001 or more	300	500	1,000

Finally, CHX Rule 23 is being amended to clarify that members must arbitrate controversies unless the parties agree to bring a matter before the Exchange's Floor Procedure Committee.[15] The rule also provides that the Floor Procedure Committee may appoint an arbitrator if a member party fails to do so after due notice.[16]

[15] The Committee on Floor Procedure has general supervision of the conduct and dealings on the Floor of the Exchange and recommends for adoption by the Exchange Committee such rules and regulations as may be necessary for the convenient and orderly transaction of business of the Floor of the Exchange. The Committee has the power to enforce such rules and regulations by recommending staff investigations for violations thereof, in accordance with the procedure provided in Article XII. See CHX Article IV, Rule 3.

[16] CHX Rule 23(a) would be amended to state that any controversy between parties who are members, member organizations or their nominees or associated persons which arises out of the Exchange business of such parties shall be submitted to arbitration, through the Director of Arbitration, to an Arbitration Panel composed of members of the Committee on Floor Procedure, unless non-members are also parties to the controversy. If non-members are also parties to such controversies, the arbitrator shall be appointed in accordance with Section 8 of Rule 24 under this Article unless the non-members consent to arbitration before an arbitration panel selected by parties as provided in this Rule. However, controversies shall be resolved by the Committee on Floor Procedure if the parties to such controversies agree to be bound by the decision of the Committee on Floor Procedure. Rules otherwise to govern operation by the Committee on Floor Procedure. The rules and procedures applicable to arbitrations which are set forth in Rule 24 do not apply to controversies which are to be resolved by the Committee on Floor Procedure.

(2) *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5), in particular in that it is designed to promote just and equitable principles of trade and protect investors and the public interest by improving the administration of an impartial forum for the resolution of disputes relating to the securities industry.

B. Self Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments were received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period as (i) the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the CHX. All submissions should refer to the file number SR–MSE–93–9 and should be submitted by June 28, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-13734 Filed 6-6-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–34134; File No. SR–GSCC 94–2]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Comparison and Netting of Non-Member Trades

May 31, 1994

On March 28, 1994, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change that will allow GSCC to continue to offer comparison and netting services for trades which have been submitted to GSCC by netting members on behalf of non-member executing firms. On April 25, 1994, the Commission published notice of the proposed rule change in the **Federal Register** to solicit comment from interested persons.[2] No comments were received. This order permanently approves the proposal.

I. Description

On December 13, 1991, the Commission approved, on a temporary basis through December 31, 1992, a rule change authorizing GSCC to implement a non-member, "executing firm" information feature as an enhancement to its comparison service.[3] On December 23, 1992, the Commission extended its temporary approval of the executing firm feature until June 30, 1994.[4] The proposed rule change allows GSCC netting members to submit trading activity of non-members to GSCC. The proposal effectively expands the scope of trades eligible for GSCC's comparison and netting systems by allowing GSCC to identify, compare, and net trades where one or both sides to the transaction are non-members that have entered into clearing or correspondent arrangements with a GSCC member. The proposal will not result in GSCC's interacting directly with non-members.

Prior to its first submission on behalf of a non-member ("executing firm"), the GSCC member ("submitting member") must provide notice to GSCC of each executing firm on whose behalf the submitting member intends to act. The submitting member must indicate whether the executing firm's trades are to be compared and netted, or compared only. The submitting member's obligations to GSCC with respect to the non-member trade are the same as if the submitting member had executed the trade. Therefore, if the submitting member permits non-member trades to be included in GSCC's netting system, such member's margin and clearing fund deposits will be calculated based on its trades and non-member trades submitted to the netting system. The submitting member also will be required to complete delivery, receipt, and payment on netted trades of executing firms.

A submitting member would submit trades to GSCC on behalf of an executing firm that it clears for by indicating to the comparison system: (1) The name of the executing party associated with the member; and (2) the name of the executing party associated with the contra-party member. In general, for a comparison to be generated by GSCC, there must be an exact match of all required match data,[5] except for the contract value for which GSCC may set a tolerance on a systemwide basis. In order to minimize the number of uncompared trades that this system could initiate, GSCC in some instances may permit comparison even if certain fields do not match. If the identity of the executing firm does not match, GSCC may still compare a trade based on a match of submitting members. If the submitting party for the contra-party executing firm is incorrectly identified, GSCC may compare the trade if it has received notice from a GSCC member that it wishes to be deemed the appropriate submitting party for such executing firm. If data on a trade submitted against a member does not compare, but would compare if matched against data submitted by an affiliate of such member, GSCC may compare the transaction as if the member had submitted the trade against the affiliate.[6] If a trade is submitted without identifying an executing party, GSCC will compare the trade as if there is no executing party for that side of the trade. GSCC would, if requested, translate a member's internal contra-participant identifiers to a valid GSCC member identifying number.[7]

II. Discussion

Section 17A(b)(3)(F) of the Act provides that the rules of a clearing agency must promote the prompt and accurate clearance and settlement of securities transactions and remove impediments to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. By accepting

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 33887 (April 8, 1994), 59 FR 19743.

[3] Securities Exchange Act Release No. 30078 (December 13, 1991), 56 FR 66110.

[4] Securities Exchange Act Release No. 31651 (December 23, 1992), 57 FR 62586.

[5] The required items that must match are participant/contra participant, par value, CUSIP number, buy versus sell indication, trade date, settlement date, final money or yield and commission, and executing firm/contra executing firm.

[6] Prior to this comparison, GSCC must have received notice from the two parties stating that they are affiliates and that each wishes to be presumed to be the correct contra-party to a side of a trade submitted with the other as contra-party.

[7] This would assist GSCC members that, for operational reasons, have more than one contra trading account set up for a given member.

non-member trades into GSCC's comparison system, a greater number of trades are included in the national clearance and settlement system. These trades are given the benefit of a centralized clearance and settlement system.

In the initial approval order,[8] the Commission stated that GSCC should encourage its members to be more accurate in the data they submit in order to reduce; and eventually eliminate, the need for GSCC to substitute or supplement data on behalf of members. The Commission also stated that GSCC should track the identity of the submitting member and the executing firm in order to identify by type of match each trade involving a non-member. The Commission stated that the tracking should provide a basis for GSCC to test the accuracy of member input. Finally, the Commission requested that GSCC provide on a quarterly basis during the temporary approval period data concerning GSCC's comparison rates.

GSCC reports that since January of this year, the rate of successfully compared trades executed by non-member firms was 63%.[9] This figure is down slightly from the 69% figure reported to the Commission for the third quarter of 1992.[10] In order to increase the comparison rate, GSCC issues a report each month to members indicating the comparison rate for member trades and for non-member trades.[11] GSCC will counsel firms that have low comparison rates for non-member trades.

Currently, twelve firms act as submitting members for a total of 271 non-member executing firms. This is a substantial increase from December 1992, when four firms acted as submitting members, for a total of fifty-eight non-members. GSCC should continue to attract more firms that provide a correspondent clearing service.

The Commission believes that GSCC should be able to deem a trade as compared when both sides of the trade do not agree as to the executing firm information.[12] GSCC structured the proposal in this manner to facilitate the successful comparison of trades because not all GSCC members' internal systems are equipped to accommodate additional information fields. The Commission believes that as participation in the executing firm program grows, the exceptions to the requirements for a matched trade will help bolster the percentage of successfully compared trades.

GSCC has had more than two years experience in administering the program. To date, GSCC has not experienced any operational or other problems with regard to the executing firm feature. While the Commission believes that GSCC should continue to work to improve the comparison rate, the Commission also believes that GSCC has demonstrated sufficient expertise to warrant permanent approval of this rule filing.

III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–GSCC–94–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13735 Filed 6–6–94; 8:45 am]

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[8] Securities Exchange Act Release No. 30078 (December 13, 1991), 56 FR 66110.

[9] During this same period, forty trades for non-members have been submitted each day on average. Telephone conversation between Jeffrey Ingber, General Counsel, GSCC and Christine Sibille, Attorney, Commission (April 8, 1994).

[10] See Securities Exchange Act Release No. 31651 (December 23, 1992), 57 FR 62586.

[11] Telephone conversation between Jeffrey Ingber, General Counsel, GSCC and Christine Sibille, Attorney, Commission (April 11, 1994).

[12] Other clearing agencies have programs which allow trades to compare even though certain items do not precisely match. Securities Exchange Act Release Nos. 31352 (October 23, 1992), 57 FR 49728 (MBSCC's Comparison and Clearing System); and 32747 (August 13, 1993), 58 FR 44530 (NSCC's Fixed Income Transaction System).

[Release No. 34–34143; File No. SR–NASD–94–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Subscriber Charge for Expanded Last Sale Information

June 1, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 2, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. On May 25, 1994, the NASD filed Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] See letter from Michael Kulczak, Associate General Counsel, NASD, to Elizabeth L. Prout, Staff Attorney, Commission, dated May 25, 1994. Amendment No. 1 corrects a clerical error in the text of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to section 19(b)(1) of the Act, the following is the full text of a proposed rule change to authorize implementation of an increase in the fee charged by The Nasdaq Stock Market, Inc. ("Nasdaq") to access the last sale information which it collects, processes, and distributes through vendors and to incorporate the amended fee into part VIII, section A.5 of Schedule D to the NASD By-Laws. (New language is italics and deletions are in brackets.)

A. System Services

* * * * *

5. [NASDAQ] Last Sale Information

a. The charge to be paid by the subscriber for each terminal receiving [NASDAQ] Last Sale Information through a vendor shall be determined by the total number of securities classified by the Corporation (i) as designated securities under parts *X*[XII] and *XI*[XIII] and (ii) those classified as OTC Equity Securities under part XII of Schedule D to the NASD By-Laws. The following schedule of charges shall apply to the receipt of last sale information for such securities.

No. of [Designated] Securities	Charge per terminal per month
250 or less	$2 50
251 to 500	5 00
501 to 1,000	7 50
1001 or more	9 75
	*[9 00]

[*On March 13, 1992, the Association's Board of Governors voted to increase the charge from $7.50 to $9.00 based on existing authorization from the Securities and Exchange Commission to levy a maximum charge of $10.00/terminal/month for receipt of last sale information on more than 1,000 designated securities.]

b. The rate for each month shall be determined by the total number of designated securities and OTC Equity Securities at the start of business on the first day of that month.

The NASD requests the Commission to find good cause, pursuant to Section

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19(b)(2) of the Act,[3] for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The NASD and Nasdaq believe that accelerated approval is appropriate because: (1) The instant fee increase to $9.75/terminal/month is below the $10 maximum originally approved by the Commission in 1982 for subscribers to access the Last Sale information on more than 1,000 reportable securities;[4] (2) the increase of $.75/terminal/month will entitle vendors' subscribers to access real-time last sale data on substantially more securities, approximately 20,000 issues classified as OTC Equity Securities (hereinafter referred to as "OTC equities");[5] (3) the amount of the increase is reasonable in light of (i) the number of additional reportable issues, (ii) their relative share volume in comparison to the volume being reported in Nasdaq-listed securities, and (iii) the amount of additional data that must be collected, processed, and distributed to support the expanded Last Sale Service; (4) the expanded data has been available to vendors' subscribers since April 4, 1994 at no additional charge; and (5) the next bi-monthly billing cycle for Last Sale Service begins on June 1, 1994 and the increased fee will be applied prospectively.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has proposed summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This rule change is designed to effect an increase of $.75/terminal/month for receipt of an expanded Last Sale Service that now includes real-time transaction reports in OTC equities. Last Sale Service is provided to the subscribers of authorized vendors who redistribute last sale information pursuant to an agreement with Nasdaq.

The actual distribution of last sale information that includes trade reports on OTC equities commenced on April 4, 1994. Access to this expanded stream of last sale information is now provided to all subscribers who had been receiving last sale information on Nasdaq-listed securities. The proposed fee increase will apply prospectively to all such subscribers, starting June 1, 1994.[6] In sum, a bundled last sale service—covering all Nasdaq-listed securities and all domestic OTC equities—will be provided to vendors' subscribers for a single monthly charge of $9.75/terminal.

The instant filing also includes technical changes in the language of the present fee schedule to indicate (i) changes in the numbering of other parts of Schedule D and (ii) expansion of the Last Sale Service offering to include reportable OTC equities. These changes are necessary to update the service description contained in the published fee schedule.

2. Statutory Basis

The NASD and Nasdaq believe that the proposed rule change is consistent with the requirements of Section 15A(b)(5) of the Act.[7] Section 15A(b)(5) specifies that the rules of a national securities association shall provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers and other persons using any facility or system that the Association operates or controls. The proposed increase of $.75/terminal/month represents an 8.3% increase over the prevailing rate. This increase is designed to offset the developmental and operating costs associated with extending real-time trade reporting to a large universe of OTC equities, numbering more than 20,000 securities. This universe includes approximately 4,200 OTC equities that are quoted in the OTC Bulletin Board Service ("OTCBB"). In terms of reported share volume for the month ending January 31, 1994, share volume attributable to OTC equities quoted in the OTCBB equaled 8.4% of share volume in Nasdaq-listed securities; the comparable figure for OTC equities not quoted in the OTCBB was approximately 11% of Nasdaq share volume. Accordingly, the NASD and Nasdaq believe that the proposed 8.4% increase in the last sale charge is reasonable in relation to the expanded base of reportable securities and the relative share volume in those issues for which last sale data will be collected, processed and disseminated. Lastly, the amended fee remains below the $10/terminal/month maximum that the Commission previously approved when real-time trade reporting commenced for Nasdaq-listed securities.

B. Self-Regulatory Organization's Statement on the Burden on Competition

The NASD and Nasdaq believe that this proposal will not create any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SD–NASD–94–26 and should be submitted by June 28, 1994.

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[3] 15 U.S.C. 78s(b)(2) (1988).

[4] See Securities Exchange Act Release No. 19108 (October 6, 1982). The Commission notes that the approval order permitted a maximum charge of $10.00 per month per subscriber terminal for the receipt of over 1,000 Nasdaq "National Market System" (currently called "Nasdaq/National Market") securities. Currently, of the total number of securities for which last sale reports are available to subscribers, 3,599 are Nasdaq/National Market securities. Conversation between Michael Kulczak, NASD, with Elizabeth Prout, Commission, on May 31, 1994.

[5] OTC equities comprise the universe of equity securities that are (i) not listed on Nasdaq and (ii) not qualified as "reported securities" for purposes of the National Market System plans governing the collection and dissemination of transaction data. Pursuant to Part XII of Schedule D to the NASD By-Laws, NASD members are required to report their transactions in OTC equities within 90 seconds of execution for regulatory purposes as well as for dissemination through vendor channels.

[6] Last Sale subscribers are billed bi-monthly in advance; the next billing cycle begins on June 1, 1994.

[7] 15 U.S.C. 78o–3(b)(5) (1988)

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(5), which specifies that the rules of a national securities association provided for the equitable allocation of reasonable dues, fees, and any other charges among members and issuers and other persons using any facility or system which the association operates or controls. As discussed above, the present proposal sets subscribers fees at $9.75 per terminal which is below the $10.00 terminal ceiling that the Commission, in 1982, found to be reasonable for subscriber access to last sale reports for over 1,000 Nasdaq/National Market securities. The Commission believes that the present proposal is consistent with the 1982 order because subscribers now may access last sales reports in over 20,000 securities, which nearly 4000 are Nasdaq/National Market securities.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission increase is consistent with the 1982 order. The Commission also believes that accelerated approval of the present proposal is appropriate because, since April 4, 1994, subscribers have been receiving last sale information at no additional charge in the expanded universe of securities that recently became subject to last sale reporting requirements.

It Is Therefore Ordered, pursuant to section 19(b)(2)[8] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13775 Filed 6–6–94; 8:45 am]

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[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34136; File No. SR–NYSE–89–17]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change Relating to Trades One or Two Points Away From the Last Sale and To Stop Orders

May 31, 1994.

I. Introduction

On July 12, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rules 79A.30 and 123A.40. On March 15, 1993, the NYSE submitted Amendment No. 1 to the rule filing.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 28202 (July 13, 1990), 55 FR 29696 (July 20, 1990). No comments were received on the proposal.

II. Description of the Proposal

Currently, all transactions made at one point or more away from the last previous sale when such previous sale is under $20 per share, or at two points or more away from the last previous sale when such previous sale is at $20 per share or over, may not be published on the tape without the prior approval of a Floor Official.[4] The rule change to NYSE Rule 79A.30 will permit a Floor Governor, during unusual market conditions, to change the two point parameter requiring Floor Official approval for a particular security when the last previous sale for such security occurs at $100 per share or more. The special price parameter will apply only for the trading day it was approved, but may be re-confirmed by the Floor Governor for subsequent trading sessions for the particular security on a day-by-day basis. Once a Floor Governor has established a special price parameter, a Floor Official must approve the publication on the tape of any trade that exceeds such parameter, except when Floor Governor approval is required under Rule 123A.40, as discussed below. Changes to the two point parameter must be reported to the Exchange's Market Surveillance Division by the Floor Governor.

NYSE Rule 123A.40 prohibits a specialist from trading for his own account in a stock in which he is registered if the trade would result in electing any stop order on his book, unless (i) his bid or offer has the effect of bettering the market, (ii) a Floor Official approves the transaction, and (iii) the stop order is guaranteed to be executed at the same price as the electing sale.[5] While the above requirements would remain for transactions where the specialist's bid or offer results in the election of a stop order, under the proposal a specialist would be permitted to participate in a trade solely for the purpose of facilitating the completion of an order at a single price where the depth of the current public bid or offer (which would not be the specialist's bid or offer) is not sufficient to do so, without guaranteeing the execution price of any stop orders elected by the transaction and without obtaining Floor Official approval for each transaction. The proposal, however, requires a specialist to obtain the approval of a Floor Governor rather than a floor official as currently required, prior to engaging in a transaction for his own account at the electing sale price if a stop order will be elected (pursuant to the rule's conditions) and executed at a price outside the price parameters provided in NYSE Rule 79A.40.[6]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act. In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] Amendment No. 1 limited the proposed change to NYSE Rule 79A.30 to securities trading at $100 or over.

[4] See NYSE Rule 79A.40.

[5] Stop orders are orders which convert into market or limit orders once the price specified in the order is reached in the market. A stop order on an over-the-counter market order, it will be executed at the next best market price, which may not be the stop order ("electing") price.

[6] See *supra* note 4 and accompanying text. Should the two point price parameter provided in Rule 79A.40 be change for securities traded at $100 or over pursuant to the change to Rule 79A.30, the approved herein, that temporary price parameter will be the determining point for floor governor approval pursuant to Rule 123A.40.

[7] 15 U.S.C. 78f(b), (1988).

manipulative acts, and, in general, to protect investors and the public.

The Commission believes that the rule change to NYSE Rule 79A.30 to permit a Floor Governor to change the two point parameter for transactions in securities trading at $100 or over, is consistent with Section 6(b)(5) of the Act in that it will facilitate trading during unusual market conditions. The Commission believes that the rule change may help to minimize the possibility of delays in reporting trades to the Tape during highly volatile trading days by eliminating the need to obtain Floor Official approval for certain trades of higher priced securities.

Furthermore, because Floor Official approval is required for each transaction to be executed outside of the price parameters once a Floor Governor approves a change, the Commission believes that the rule change provides appropriate Exchange oversight of trades away from the last sale of a security, which will help to ensure that specialists satisfy their market making responsibilities during unusual market conditions.[8] In addition, all changes in the two point parameter will be reported to the exchange's Market Surveillance Division by the Floor Governor, thereby providing Exchange oversight of the Floor Governor's decision. The Commission further believes requiring that the decision to change the two point price parameter be made by a Floor Governor on a day-by-day basis will emphasize the intent that the two point parameter be changed only in unusual circumstances.[9]

The Commission believes the rule change to NYSE Rule 123A.40 to permit specialists to participate in transactions which result in the election of stop orders without guaranteeing the execution price of the stop orders is consistent with Section 6(b)(5) of the Act in that it will benefit investors by facilitating single-price executions of orders. Currently, when a market order arrives at a specialist's post and the depth of the current bid or offer is not sufficient to provide a single-price execution of the order, the specialist cannot participate in the transaction if a stop order would be elected without guaranteeing the price of the stop order and obtaining Floor Official approval. When the specialist does not participate, the market order is partially executed against the best bid or offer, and partially executed against any elected stop orders and limit orders on the specialist's book, usually at different prices. The rule change allows the specialist to participate in such transactions without guaranteeing the price of any elected stop orders or obtaining Floor Official approval, and thereby makes it more likely that specialists will provide investors with single-price execution of their orders.

While the Commission views the prohibition on specialist participation in the election of stop orders as helpful in guarding against the potential for abuse,[10] we recognize that certain benefits can accrue from permitting limited specialist participation under the conditions set forth in the rule to facilitate single price executions. Specifically, unlike the situation where the specialist enters his own bid or offer, when a specialist participates in the execution of a customer's market order under the proposed rule, he will not be setting the price of the transaction that elects the stop orders. Rather, the price will be determined by another market participant, independent of any price-setting determination by the specialist. The Commission therefore believes that allowing specialists to facilitate single-price execution of market orders through passive participation will not negatively affect the execution of stop orders elected by the transactions, and does not present the opportunity for abuses that may be present were the specialist is actively setting the price through his own proprietary bids or offers.[11]

The Commission further believes that the rule change requiring Floor Governor approval for any transactions which will result in the execution of an elected stop order outside the one or two point parameters contained in NYSE Rule 79A.30, or any temporary parameters established by a Floor Governor during unusual market conditions pursuant thereto, will provide increased scrutiny of gap-executions of stop orders and thereby benefit investors consistent with section 6(b)(5) of the Act. The Commission notes that under Rule 79A.30, Floor Official approval is needed for transactions effected outside the price parameters contained therein, but that under Rule 123A.40, Floor Governor approval is necessary for the execution of stop orders outside the price parameters of Rule, 79A.30 when the stop orders are elected by a transaction in which a specialist participated. The Commission believes this increased Exchange oversight of specialists' proprietary activity will provide investors with additional protection against potential trading abuses related to the execution of stop orders.

The Commission finds good cause for approving Amendment No. 1 to the rule change prior to the thirtieth day after publication of notice of filing thereof. Amendment No. 1 added language to the rule change that limits Floor Governor changes to the price parameters provide in NYSE Rule 97A.30 to securities traded at $100 per share or over.[12] The NYSE's proposed rule change was published in the **Federal Register** for the full statutory period and no comments were received.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspecting and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–89–17 and should be submitted by June 28, 1994.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–89–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13737 Filed 6–6–94; 8:45 am]

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[8] Under Section 11 of the Act, 15 U.S.C. 78k, specialists have the responsibility to act as dealers "insofar as necessary" to maintain fair and orderly markets, which includes tempering sudden price movements and keeping any general price movements orderly. See Division of Market Regulation, October 1987 Market Break Report at 3–4.

[9] This rule change is intended to apply only to intra-day trading, and will not affect opening transactions. See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Howard Kramer, Assistant Director, Division of Market Regulation, dated June 12, 1990. The Exchange states that it has a "long-standing policy of requiring Floor Official approval for the opening trades in any stock transaction that will result in a price change of " " " two points or more away from a last sale of $20 or more." *Id.*

[10] The provision of Rule 123A.40 that requires specialists to guarantee the price of elected stop orders and requires floor official approval when a specialist elects stop orders through his own bid or offer are intended to address, in part, the situation where a specialist has an accumulation of stop orders and desires to "clean up the book." This can be accomplished by the specialist entering a bid, for example, that elects all of the stop sell orders at the lowest stop order price, or by electing stop sell orders in a series of descending prices until the lowest order is reached. The specialist could use these stop order election processes to drive the share price down to an artificially low level in order to obtain cheap stock at the expense of the public customers. The potential for this type of abuse is not present, however, where a customer market order sets the trading price and incidentally elects stop orders of which the customer was unaware.

[11] See *id.*

[12] As originally filed, the proposed rule change would have allowed Floor Governors to change the price parameters in NYSE Rule 79A.30 for all securities.

[13] See Securities Exchange Act Release No. 28202 (July 13, 1990), 55 FR 29696 (July 20, 1990).

[Release No. 34–34135; File No. SR–NYSE–93–17]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change To Amend Exchange Rule 96 to Permit Floor Professionals Who Have a Listed Option Position in a Stock To Initiate an On-Floor Proprietary Trade in That Stock

May 31, 1994.

On March 15, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 96 to permit NYSE Floor professionals who have a listed option position in a stock to initiate an on-Floor proprietary trade in that stock.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33642 (February 18, 1994), 59 FR 9506 (February 28, 1994). No comments were received on the proposal. This order approves the proposed rule change.

Exchange Rule 96 currently prohibits a member registered as a Competitive Trader[3] or Registered Competitive Market Maker ("RCMM")[4] from initiating, while on the Floor of the Exchange, the purchase or sale, for his own account or his member organization's account, of any stock in which he has an option position or in which he knows that his member organization has an option position. Competitive Traders and RCMMs are not subject to any direct limitation on their trading of options; however, once an NYSE Floor professional acquires an option position, he must effect subsequent proprietary transactions in the underlying stock pursuant to an off-Floor order.[5] At present, Rule 96 applies to all options, including those traded on a national securities exchange ("listed options") and those traded over-the-counter ("OTC options").[6]

The NYSE proposes to remove the prohibition in Rule 96 as to listed options. As a result, a Competitive Trader or RCMM with a listed option position in a stock will be permitted to initiate an on-Floor proprietary trade in that stock. In contrast, an NYSE Floor professional with an OTC option position in the same stock will continue to be subject to Rule 96's restrictions.

The Exchange states that the statutory bases for the proposed rule change are Sections 6(b)(5), 6(b)(8) and 11A(a)(1)(c)(ii) of the Act. According to the NYSE, by removing the prohibition on Competitive Traders and RCMMs initiating proprietary transactions on the Floor in a stock where they have a listed option position in such stock, and thereby permitting such members to add to the depth and liquidity of the Exchange market in situations where they may not currently do so, the proposed rule change will have the effect of "facilitating transactions in securities" and will "perfect the mechanism of a free and open market," as called for in Section 6(b)(5).

The NYSE also believes that, to the extent that the proposed rule change permits Floor professionals to initiate transactions on a more equal regulatory footing with other securities professionals, the proposed rule change is designed to eliminate unfair discrimination between brokers or dealers, as called for in Section 6(b)(5); to remove a burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as called for in Section 6(b)(8); and to promote fair competition among brokers and dealers, as called for in Section 11A(a)(1)(C)(ii).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)[7] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

In light of the changes in market structure that have taken place since Rule 96 was adopted, the Commission believes that the benefits of the NYSE proposal outweigh any burdens it may impose. Specifically, the Commission has concluded that the proposed rule change should enhance the quality of the NYSE market. The NYSE established the membership categories of Competitive Trader and RCMM to provide a means by which NYSE members could, under certain conditions, add depth and liquidity to the market by initiating proprietary transactions on the Floor of the Exchange.[8] The Commission, however, notes that Rule 96 may frustrate that purpose,[9] to the extent it may be unnecessarily restrictive given the risks posed by Competitive Traders' and RCMMs' dealings in stocks in which

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[1] 15 U.S.C. 78s(b)(2) (1988).

[2] 17 CFR 200.30–3(a)(12) (1993).

[3] 15 U.S.C. 78s(b)(1) (1988).

[4] 17 CFR 240.19b–4 (1991).

[5] A Competitive Trader is an NYSE member who is authorized to initiate proprietary transactions on the Floor of the Exchange but who may not register as a specialist, odd-lot dealer or Registered Competitive Market Maker. See NYSE rules 111 & 112. Competitive Traders must pursue trades that comply with the requirements of, 11a(1)(C) of the Act. See also SEC Rule 11a1–1(T). In addition, the NYSE requires that 75 percent of a Competitive Trader's monthly transactions must be stabilizing transactions under the broadest. See NYSE Rule 112(d).

[6] A RCMM is an NYSE member who is authorized to initiate proprietary transactions on the Floor of the Exchange. See NYSE Rule 107. See also SEC Rule 11a1–5. RCMMs are not subject to the same tick-test as Competitive Traders, however, they must comply with a complex series of rules about the price at which they can trade and the size of those trades. See NYSE Rule 107. Unlike Competitive Traders, RCMMs have an affirmative obligation to maintain a fair and orderly market. See NYSE Rule 107(B)(4).

[7] The terms "on-Floor" and "off-Floor" are defined in NYSE Rule 112.20.

[8] As used herein, the term "OTC option" means "conventional option." Art. III, Rule 33(gg) of the National Association of Securities Dealers' Rules of Fair Practice defines a conventional option as any option contract not issued, or subject to issuance, by the Options Clearing Corporation.

[9] 15 U.S.C. 78f(b) (1994).

[10] For further discussion of the Competitive Trader and RCMM pilot *supra*, notes 3–4.

[11] The NYSE argues that the ability of a Competitive Trader or RCMM with an option position to trade the underlying stock pursuant to an off-Floor order may not be meaningful, given how these Floor professionals routinely conduct their business. If so, there could be a disincentive for any NYSE member who participates in the options market (or who is associated with a member organization that participates in the options market) to be active as a Competitive Trader or RCMM.

they (or their member organization) have an option position.[10]

After careful review, the Commission believes that the NYSE proposal may reduce the current disincentive for members, especially options market participants and their associated persons, to act as a Competitive Trader or RCMM given Rule 96's restrictions.[11] For instance, NYSE members currently serving as Competitive Traders and RCMMs could initiate proprietary Floor Trades in situations where they presently cannot do so; moreover, other members might be encouraged to serve in that capacity. In the Commission's view, an increase in the capital committed to such supplemental market making activities could improve the depth and liquidity of the NYSE market, particularly in times of market stress.

Furthermore, the Commission is satisfied that the NYSE proposal contains adequate safeguards to protect investors in the securities markets. In this respect, the Commission notes that a comprehensive regulatory framework has been developed for the trading of listed securities, including listed options.[12] For example, in 1983, an Intermarket Surveillance Group ("ISG") was formed to coordinate more effectively surveillance and information sharing arrangements between the stock and options markets.[13] Using procedures developed in that forum, among other things, the national securities exchanges identify and investigate stock and/or options transactions that, based on certain parameters, raise manipulative concerns. The Commission believes that this regulatory scheme, including NYSE monitoring and surveillance of amended Rule 96, should be sufficient to detect and deter intermarket manipulation and other fraudulent or abusive practices.

Specifically, the NYSE has informed the Commission that the Exchange will increase the frequency of its examination of the trading activity of Competitive Traders and RCMMs. The Commission expects that NYSE staff will utilize such information as part of its on-going efforts to ensure compliance with the Act, the rules and regulations thereunder and Exchange rules. In this respect, the Exchange has assured the Commission that, if a transaction raises concerns about intermarket manipulation, NYSE staff, with the cooperation of the options exchanges where appropriate, will conduct a thorough examination of all the relevant facts. Accordingly, the Commission believes that the NYSE's monitoring and surveillance of Rule 96, as amended, will aid the Exchange in detecting any trading abuses.

More generally, the Commission agrees with the Exchange that, independent of Rule 96, other NYSE rules, which the NYSE will continue to monitor for compliance, should help to keep Floor professionals from being in a position where they can engage in trading abuses. As examples, the NYSE cites the yielding requirement imposed on certain on-Floor orders for a member's own account,[14] and the conditions placed on when a Competitive Trader or RCMM can initiate a proprietary Floor trade.[15] Further, Competitive Traders and RCMMs, like other NYSE members, are subject to the prohibition on frontrunning of block transactions.[16]

Finally, the Commission notes that, Competitive Traders and RCMMs currently are not prohibited from trading in stocks in which they have an existing option position. Such transactions, however, must be initiated off-Floor. To the extent that the amended rule will permit such transactions to be initiated on-Floor, NYSE surveillance should detect and deter any trading abuses derived from informational advantages. In sum, the Commission believes that the proposed rule change should not materially affect the NYSE's ability to address the regulatory concerns raised by Floor professionals' intermarket trading activity.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSE–93–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13736 Filed 6–6–94, 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20325; 812–8494]

Lehman Brothers Institutional Funds Group Trust, et al.; Application

May 31, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Lehman Brothers Institutional Funds Group Trust and Lehman Brothers Funds, including the series thereof, on behalf of themselves and any other investment companies existing or created in the future for which the Advisers (as defined below) or persons controlling, controlled by, or under common control with the Advisers serves or may serve in the future as investment adviser (the "Funds"); and Lehman Brother Global Asset Management, Ltd. and Lehman Brothers Global Asset Management Inc. (the "Advisers").[1]

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) to exempt the Funds from sections 17(a) and 17(e)(2).

SUMMARY OF APPLICATIONS: Applicants seek an order to permit the Funds to engage in certain transactions in U.S. government securities, repurchase agreements, tax-exempt obligations, and taxable obligations with banks (and their affiliated persons) that are remote affiliates of the Funds.

FILING DATE: The application was filed on July 19, 1993, and amended on January 14, 1994, April 13, 1994, and May 31, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by

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[10] For further discussion of the risks of such activity and the safeguards contained in the NYSE proposal, *see infra*, notes 12–15 and accompanying text.

[11] See *supra*, note 9 and accompanying text.

[12] Listed options are standardized contracts traded in an open auction market environment. Exchange-traded options are subject, among other things, to real-time quotation and last-sale reporting; anti-fraud provisions; and minimum criteria for initial and continued listing. Transactions in listed options become part of the integrated audit trail. In contrast, OTC options are individualized contracts that are negotiated between the counterparties. There is minimal, if any, public disclosure and a relatively illiquid secondary trading market.

[13] The full members of the ISG are the American Stock Exchange; the Boston Stock Exchange; the Chicago Board Options Exchange; the Chicago Stock Exchange; the National Association of Securities Dealers; the NYSE; the Pacific Stock Exchange; and the Philadelphia Stock Exchange.

[14] Under NYSE Rule 108, an on-Floor order placed by a member to establish or increase a position in the member's proprietary account is not entitled to priority, or precedence based on size, over an off-Floor order placed by a public customer.

[15] See *supra*, notes 3–4.

[16] See NYSE Rule 122.20(d) and Information Memorandum 89–53 (November 27, 1989).

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1993).

[1] All existing investment companies that presently intend to rely on the requested order have been named as applicants. Other existing companies will be covered by the order if they propose to engage in the proposed transactions described in the application.

mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 27, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Lehman Brothers Institutional Funds Group Trust, one Exchange Place, Boston, Massachusetts 02109. Lehman Brothers Global Asset Management, Ltd., Two Broadgate, London EC2M 7HA, England. Lehman Brothers Funds and Lehman Brothers Global Asset Management Inc., 200 Vesey Street, New York, New York 10285.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is a registered open-end management investment company that is authorized to issue shares in series. The existing series of the Funds are money market funds. One of the Funds and the series thereof are designed exclusively for institutional investors, particularly banks seeking investment of assets on behalf of fiduciary or trust accounts. Lehman Brothers Global Asset Management Inc. serves as investment adviser to the Funds.

2. The number of outstanding shares of each Fund can fluctuate significantly, even on a daily basis, particularly for those sold to institutions. From time to time, the number of shares held of record by a bank in a master account for its agency or fiduciary accounts could exceed 5% of a Fund's outstanding voting shares. In that case, the Fund would become an Affiliated person of the bank and the prohibitions of section 17 would apply.

3. Applicants seek an exemption from sections 17(a) and 17(e)(1) to permit the Funds to engage in certain transactions with "Affiliated Banks." For purposes of this application, "Affiliated Banks" are banks, bank holding companies, or affiliated persons thereof that are affiliated persons of the Funds *solely* because they: (a) Directly or indirectly own, control, or hold with the power to vote 5% of the outstanding voting securities of any of the Funds; or (b) act as investment adviser to any of the Funds.

4. The exemption from section 17(a) would permit the Funds to purchase both long and short-term U.S. government securities from Affiliated Banks that act as primary dealers in these securities.[2] The exemption from section 17(a) also would permit a Fund to enter into repurchase agreement transactions with, or purchase short-term obligations issued by, an Affiliated Bank, provided that all such securities meet the credit standards set forth in condition 1 below ("Qualified Securities"). The exemption from section 17(e)(1) would permit an Affiliated Bank, acting as an agent for any Fund in connection with the purchase or sale of U.S. government securities or tax-exempt obligations, to accept compensation that would be permitted a broker under the limitations of section 17(e)(2).

5. Primary dealers in U.S. government securities are dealers that are permitted to deal directly with the Federal Reserve Bank of New York. In purchasing and selling U.S. government securities, it is critical that the Funds obtain prompt execution of their transactions at a competitive cost. Each primary dealer is a major factor in the U.S. government securities market. If the Fund cannot trade with one or more primary dealers, the Funds may be deprived of the most favorable price and execution as against other dealers.

6. Applicants believe that the elimination of even a few major banks from the universe of money market instrument issuers and dealers with whom the Funds may do business would have a noticeable impact on portfolio management flexibility. Each issuer of Qualified Securities contributes to the depth and liquidity of the market for short-term obligations.

7. Commercial banks are important factors in the municipal bond dealer community, particularly in the general obligation area. The municipal bond market is more disparate, much less structured, and considerably less liquid than the market for money market instruments. As a result, much greater reliance is placed on the dealer community to keep portfolio managers apprised of, and to supply the Funds with, suitable issues of municipal securities, as well as to assist in the disposition of portfolio securities.

8. The Funds' board of directors, trustees, or managing general partners will be responsible for adopting and monitoring appropriate methods to ensure that the price and terms of transactions in U.S. government securities and Qualified Securities will be reasonable and fair to participating Funds. In evaluating the fairness and reasonableness of transactions in U.S. government securities, a Fund or its investment adviser will obtain and document competitive quotations from at least one other dealer. In evaluating the fairness and reasonableness of transactions in Qualified Securities, applicants may use a matrix pricing system to assess the price offered by the Affiliated Bank relative to market transactions involving comparable securities.[3]

Applicants' Analysis

1. Section 2(a)(3) defines an "affiliated person" of another person as, among other persons: (a) Any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (c) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (d) any officer,director, partner, copartner, or employee of such other person; and (e) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof.

2. By virtue of section 2(a)(3), if a bank owns, controls, or holds with the power to vote more than 5% of the outstanding shares of a Fund, that bank is an affiliated person of the Fund. Any person who is an affiliated person of a registered investment company also may be deemed to be an affiliated person of an affiliated person of each other registered investment company which has a common investment adviser, or investment advisers which are affiliated persons of each other, or common directors or common officers, or a combination of the foregoing because such investment companies may be deemed to be under common

[2] As used in the application, the term U.S. government securities are securities that are guaranteed as to payment of principal and interest by the U.S. government or its agencies or instrumentalities.

[3] A matrix pricing system uses market data from transactions involving securities having comparable ratings, credit quality, maturity, collateral, amortization and other relevant terms to evaluate the price of a security.

control. Accordingly, a bank, bank holding company, or affiliated person thereof that is deemed to be an affiliated person of one Fund may be deemed to be an affiliated person of an affiliated person of all the other Funds.

3. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such registered investment company or to purchase from such registered investment company any security or other property. The operation of these provisions could prohibit all of the Funds from engaging in a variety of transactions with a wide range of banks, bank holding companies, and affiliated persons thereof.

4. Applicants believe that a bank, bank holding company, or affiliated person thereof that is affiliated with a Fund solely because it owns, holds, or controls 5% or more of the Fund's outstanding voting securities and/or acts as investment adviser to a different Fund, although an "affiliated person" of the Fund, or an "affiliated person of an affiliated person" of the Fund, within the meaning of section 2(a)(3) of the Act, is unlikely to possess the power to influence improperly the Fund with respect to purchases or sales by the Fund of securities from or to an Affiliated Bank. As a condition to the order, no Fund will engage in transactions with any Affiliated Bank which serves as investment adviser or sponsor to that Fund, controls or is under common control with the investment adviser or sponsor, or otherwise controls such Fund within the meaning of section 2(a)(9). Applicants believe that permitting transactions only with remote affiliates precludes the possibility of any overreaching by an Affiliated Bank and thus eliminates the concerns that section 17(a) was designed to address.

5. Section 17(e)(1) prohibits an affiliated person of a registered investment company, or an affiliated person thereof, from accepting any compensation for acting as an agent for the investment company unless it is in the course of such person's business as an underwriter or broker. Section 17(e)(2) provides that an affiliated person of a registered investment company, or an affiliated person thereof, acting as a broker or underwriter for the registered investment company may accept a limited commission or fee for conducting such transactions. Because banks are specifically excluded from the definition of broker in section 2(a)(6), however, they are unable to accept compensation under section 17(e) for acting as an agent for an affiliated investment company.

6. Applicants believe that the execution of transactions through Affiliated Banks as agents is appropriate for a number of reasons. First, any such transactions will comply with section 17(e)(2), assuring that the compensation received is fair and reasonable. Second, granting the relief merely would put an Affiliated Bank in the same position as any other affiliated person of a Fund that happened to meet the definition of broker. Finally, the use of Affiliated Banks promotes investment flexibility by expanding the range of entities available for execution of securities transactions.

Applicants' Conditions

1. The Funds will engage in transactions with Affiliated Banks only in U.S. government securities or Qualified Securities, For purposes hereof, the term Qualified Securities is defined to mean:

(a) For obligations which are "short-term" securities within the meaning of rule 2a–7 under the Act, each such security shall constitute an "Eligible Security" within the meaning of rule 2a–7; provided, that in the case of Unrated Securities (as defined in rule 2a–7(a)(20)), in addition to the requirements of rule 2a–7 applicable to such Unrated Securities, all determinations with respect to comparability of such securities to rated securities are also reviewed and approved at least quarterly by a majority of a Fund's board of directors/ trustees who are not interested persons of the Fund.

(b) For obligations which are "long-term" securities within the meaning of rule 2a–7, each such security (or another long-term security of the same issuer having comparable priority and security to such obligation) shall have been rated by a nationally-recognized statistical rating organization ("NRSRO") in one of the four highest rating categories for long-term obligations; or, if the security and issuer have not been rated by any NRSRO, are determined by a Fund's investment adviser to be comparable in credit quality to a security carrying a long-term rating in one of such four highest rating categories of a NRSRO, and such determination is reviewed and approved at least quarterly by a majority of such Fund's board of directors/ trustees who are not interested persons of the Fund. In addition, if a Fund proposes to invest in a security that at the time of issuance was a long-term security but that has a remaining maturity of 397 calendar days or less, then the issuer of such security shall have received a rating from a NRSRO, with respect to a class of short-term securities that is comparable in priority and security to the long-term security, in one of the two highest rating categories. If the issuer has not received such a rating with regard to comparable short-term securities, then a long-term security with a remaining maturity of less than 397 calendar days is not eligible unless it has a long-term rating from a NRSRO within the two highest rating categories.

(c) Any repurchase agreements will be "collateralized fully" within the meaning of rule 2a–7.

(d) For obligations subject to unconditional, irrevocable credit enhancement (including, without limitation, a guarantee, letter of credit, or put), the Funds may rely upon the NRSRO ratings of the provider of such credit enhancement to determine whether the obligation satisfies the requirements of subparagraphs (a) and (b) above. Such obligations shall be treated as rated securities to the extent that the credit enhancement is of comparable priority and security to the rated obligations of the provider of such credit enhancement.

2. No Fund will engage in transactions with an Affiliated Bank that exercises a controlling influence over that Fund (and "controlling influence" shall be deemed to include, but is not limited to, directly or indirectly, owning, controlling or holding more than 25% of the outstanding voting securities of the Fund). Further, no Fund will engage in a transaction in Qualified Securities with an Affiliated Bank that is an investment adviser or sponsor to that Fund, or an Affiliated Bank controlling, controlled by, or under common control with such investment adviser or sponsor. No Fund will purchase obligations of any Affiliated Bank (other than repurchase agreements) if, as a result, more than 5% of that Fund's total assets would be invested in obligations of that Affiliated Bank.

3. Each Fund: (a) Will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 8; and (b) will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person on the other side of the

transaction, the terms of the purchase or sale transaction, and the information or material upon which the determinations described below were made.

4. The security to be purchased or sold by a Fund will be consistent with the investment objectives and policies of that Fund as recited in the registration statement relating to the Fund, and will be consistent with the interests of the Fund and its shareholders. Further, the security to be purchased or sold by that Fund must be comparable in terms of quality, yield, and maturity to other similar securities that are appropriate for the Fund and that are being purchased or sold during a comparable period of time.

5. The terms of the transactions will be reasonable and fair to the shareholders of a Fund and will not involve overreaching of the Fund or its shareholders on the part of any person concerned. In considering whether the price to be paid or received for the security is reasonable and fair, the price of the security will be analyzed with respect to comparable transactions involving similar securities being purchased or sold during a comparable period of time. In making this analysis, the board of directors/trustees may rely on a matrix pricing system which they believe properly assists them in determining the value of the securities pursuant to section 2(a)(41)(ii) of the Act.

6. Before any transaction in U.S. government securities may be conducted pursuant to the exemption the Fund involved or its investment adviser must obtain such information as they deem necessary to determine that the price to be paid or received for the security is at least as favorable as that from other sources. The Fund or its investment adviser must obtain and document competitive quotations from at least two other dealers with respect to the specific proposed U.S. government securities transaction, except that if quotations are unavailable from two such dealers, only one other competitive quotation is required. With respect to prospective purchases of U.S. government securities, these dealers must be those who have securities of the categories and the type desired in their inventories and who are in a position to quote favorable prices with respect thereto. With respect to the prospective disposition of U.S. government securities, these dealers must be those who, in the experience of the Fund and its investment adviser, are in a position to quote favorable prices.

7. The commission, fee spread, or other remuneration to be received by the Affiliated Bank as dealer will be reasonable and fair compared to the commission, fee, spread, or other remuneration received by other brokers or dealers in connection with comparable transactions involving similar securities being purchased or sold during a comparable period of time but in no event will such fee, commission, spread or other remuneration exceed that which is stated in section 17(e)(2) of the Act.

8. The board of directors/trustees of each of the Funds: (a) Will adopt procedures, pursuant to which transactions may be effected for the Funds, which are reasonably designed to provide that the conditions in the foregoing paragraphs and the requirements of Investment Company Act Release No. 13005 (Feb. 2, 1983) have been compiled with; (b) will make and approve such changes as deemed necessary; and (c) will determine no less frequently than quarterly that such transactions made during the preceding quarter were effected in compliance with such procedures. These procedures will also be approved by a majority of the non-interested members of each board of directors/trustees. The investment adviser to each Fund will implement these procedures and make decisions necessary to meet these conditions, subject to the direction and control of the board of directors/trustees of the relevant Fund.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-13738 Filed 6-6-94; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 20325, 812-8860]

Princor Blue Chip Fund, Inc., et al.; Application

May 31, 1994

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Princor Blue Chip Fund, Inc.; Princor Bond Fund, Inc.; Princor Capital Accumulation Fund, Inc.; Princor Cash Management Fund, Inc.; Princor Emerging Growth Fund, Inc.; Princor Government Securities Income Fund, Inc.; Princor Growth Fund, Inc.; Princor High Yield Fund, Inc.; Princor Managed Fund, Inc.; Princor Tax-Exempt Bond Fund, Inc.; Princor Tax-Exempt Cash Management Fund, Inc.; Princor Utilities Fund, Inc.; and Princor World Fund, Inc. (collectively, the "Funds"); Princor Financial Services Corporation (the "Distributor"); and Princor Management Corporation (the "Adviser"); on behalf of the Funds and any other open-end management investment companies that may in the future become a member of the same "group of investment companies" as that term is defined in rule 11a-3 under the Act.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act, and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order that would permit the Funds to issue multiple classes of shares representing interests in the same portfolio of securities, assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares, and waive the CDSC in certain instances.

FILING DATE: The application was filed on February 28, 1994, and amended on April 21, 1994 and May 27, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 27, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o The Principal Financial Group, Des Moines, Iowa 50392.

FOR FURTHER INFORMATION CONTACT: Mary Duffy, Staff Attorney, at (202) 942-0705, or Barry D. Miller, Senior Special Counsel, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is a Maryland corporation that is registered under the Act as an open-end, management

investment company. Two of the Funds (the "Money Market Funds") are offered to the public at net asset value with no sales charge. The other Funds (the "Load Funds") are offered to the public at net asset value plus a sales charge. Each Load Fund has adopted a distribution plan (the "Distribution Plan") under rule 12b–1 under the Act, which permits each Load Fund to pay the Distributor up to 0.25% of that Fund's average daily net assist value on an annual basis.

2. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as the investment adviser of each of the Funds. The Adviser is a wholly-owned subsidiary of the Distributor. The Distributor is an indirect, wholly-owned subsidiary of Principal Mutual Life Insurance Company. The Distributor, a registered broker-dealer, serves as the principal underwriter for each of the Funds.

3. Applicants seek to implement multi-class distribution arrangements (the "Multi-Class System") for each of the Funds. Under the Multi-Class System, each Fund will issue two classes of shares. All shares outstanding as of the time of implemention of the Multi-Class System will be designated as "Class A" shares. The offering price of Class A shares of a Load Fund purchased in amounts of less than $1 million will be net asset value plus a front-end sales charge. Class A shares of the Load Funds will be subject to the Distribution Plan currently in effect, as modified to accommodate the mutli-class structure. Class A shares of the Money Market Funds will be sold at net asset value, and will not be subject to a Distribution Plan.

4. Under the Multi-Class System, each Fund will create an additional class of shares designated as "Class B" shares. Class B shares will be subject to a Distribution Plan fee of 1% of average daily net assets on an annual basis, of which up to 0.25% will be paid to dealers' registered representatives as a service fee. The remainder of the Distribution Plan fee on Class B shares will be used primarily to reimburse the Distributor for commissions paid to dealers and registered representatives in connection with sales of Class B shares. Class B shares of the Money Market Funds can be acquired only through exchanges for Class B shares of other Funds.

5. Class B shares also will be subject to a CDSC of up to 4% for a period of six years. The amount of any CDSC imposed upon a redemption of Class B shares will be computed as a percentage of the lesser of the value of the redeemed shares at the time of purchase or their value at redemption. The holding period and amount of the CDSC, and the magnitude of the purchases to which it applies are each subject to change. No CDSC will be imposed on Class B shares: (a) Purchased with reinvested income dividends or capital gains distributions, (b) purchased more than six years prior to the date of the redemption, or (c) acquired through an exchange for other Class B shares, if the exchanged Class B shares would not have been assessed a CDSC upon redemption.

6. Applicants proposed to waive any CDSC that otherwise would be applicable to a redemption of Class B shares in connection with shares redeemed: (a) Due to the death or disability, as defined in the Internal Revenue Code (the "Code"), of a shareholder; (b) from retirement plans to satisfy minimum distribution rules under the Code; (c) to pay surrender charges; (d) to pay retirement plan fees; (e) involuntarily from small balance accounts (values of less than $300); (f) through a systematic withdrawal plan that permits 10% of the value of a shareholder's Class B shares of a particular Fund on January 1 of each year to be withdrawn automatically in equal monthly installments throughout the year without payment of the otherwise applicable CDSC; or (g) from a retirement plan to assure the plan complies with section 401(k) and 401(m) of the Code.

7. Class A shares of the Load Funds will be sold with no sales charge to persons who reinvest, within 60 days, the proceeds of redemptions of Class B shares of the Load Funds on which the CDSC was waived because of the death or disability of the original shareholder.

8. Any Class B shares purchased will convert automatically to Class A shares seven years after the end of the month of the date of their purchase. At the same time, a *pro rata* portion of all shares purchased through reinvestment of dividends and distributions will convert into Class A shares, with that portion determined by the ratio that the shareholder's Class B shares converting into Class A shares bears to the shareholder's total Class B shares not acquired through dividends and distributions. The conversion of Class B shares into Class A shares will be subject to the availability of an opinion of counsel or Internal Revenue Service private letter ruling to the effect that the conversion does not constitute a taxable event.

9. Exchanges for shares of another Fund generally will be permitted only for shares of the same class. However, to facilitate automatic exchanges used by some investors to effect a dollar-cost averaging strategy, Class B shares of the Load Funds may be acquired in exchange for Class A shares of Princor Cash Management Fund, Inc. that were purchased without payment of a sales load. All exchanges will comply with rule 11a–3 under the Act.

10. Under the Multi-Class System, all expenses incurred by a Fund will be allocated among the classes of shares of such Fund based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect the Distribution Plan expenses (if any) and any expenses attributable to the class as set forth in condition 1 below ("Class Expenses"). Expenses allocated to a particular class of shares of a Fund will be borne on a proportionate basis by each outstanding share of that class.

11. From time to time, a Fund may create additional classes of shares of beneficial interest, the terms of which may differ from the classes described herein only in the following respects: (a) Each new class of shares might have a different designation; (b) the impact of the disproportionate payments made under a Distribution Plan; (c) each new class of shares will hold any voting rights as to matters exclusively affecting that class, except as provided in condition 14 below; (d) each new class of shares will bear Class Expenses specifically attributable to the particular class; (e) each new class of shares will have different exchange privileges; and (f) certain classes may have a conversion feature. Applicants also may charge different sales loads on different classes of shares.

12. Applicants will comply with applicable portions of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD"), including in particular the portions of Rule 26 that relate to sales loads, asset based sales charges and service fees.

Applicants' Legal Analysis

1. Section 18 is designed to prohibit material differences among the rights of shareholders in a fund, including abuses resulting from complex capital structures (such as excessive leverage, conflicts of interest among classes, and investor confusion), and discriminatory shareholder voting provisions. Applicants request an exemptive order to the extent that the proposed Multi Class System might be deemed to result in a "senior security" within the meaning of section 18(g) of the Act, and thus be prohibited by section 18(f)(1), and violate the equal voting provisions of the Act.

2. Applicants assert that the Multi-Class System would present none of the abuses addressed by section 18. No leverage would result from the issuance or purchase of different classes of shares. Mutuality of risk would be preserved, and each class of Fund shares would be redeemable at all times. No class of shares of a Fund would have any distribution or liquidation preference with respect to particular assets, and no class would be protected by any reserve or other account. Investors would not be given misleading impressions about the safety or risk of any class of shares, because the similarities and differences of the classes of shares would be disclosed in the prospectuses and statements of additional information describing the Funds.

3. Applicants also request an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c-1 thereunder to the extent necessary to permit the Funds to assess a CDSC on certain redemptions of shares and to waive the CDSC in certain instances.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each class of shares of a Fund will represent interests in the same portfolio of investments of that Fund and will be identical in all respects, except as set forth below. The only differences among the classes of shares of the same Fund will relate solely to: (a) The designation of each class of shares of a Fund; (b) the impact of the disproportionate payments made under the Distribution Plan; (c) different Class Expenses for each class of shares, which are limited to: (i) Transfer agency fees identified by the transfer agent of the Funds as being attributable to a specific class, (ii) blue sky registration fees incurred with respect to a class of shares; (iii) SEC registration fees incurred with respect to a class of shares; (iv) the expenses of administrative personnel and services as required to provide services to the shareholders of a specific class; (v) litigation or other legal expenses, or audit or other accounting expenses relating solely to one class of shares; (vi) directors' fees incurred as a result of issues relating to one class of shares; and (vii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a given class; (d) the voting rights as to matters exclusively affecting one class of shares (*e.g.*, the adoption, amendment or termination of a Distribution Plan) except as provided in condition 14 below; (e) different exchange privileges; and (f) certain classes may have a conversion feature. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares will not be so allocated unless and until approved by the SEC pursuant to an amended order.

2. The directors of the Funds, including a majority of the independent directors, will approve the creation and issuance of any new classes of shares in their respective Funds. The minutes of the meetings of the directors of each of the Funds regarding the deliberations of the directors with respect to the approvals necessary to add or change a class of shares will reflect in detail the reason for the directors' determination that such an addition or change is in the best interests of the Funds and their respective shareholders.

3. On an ongoing basis, the directors of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares offered by each Fund. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Adviser and the Distributor, at their own cost, will remedy such a conflict up to and including establishing one or more new registered management investment companies.

4. The directors of the Funds will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures under any distribution or servicing plan, in compliance with paragraph (b)(3)(ii) of rule 12b–1 under the Act, as amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify the Distribution Plan fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the directors to justify any fee charged to shareholders of that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

5. Dividends paid by a Fund regarding its various classes of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Distribution Plan fee payments relating to each respective class of shares will be borne exclusively by that class, and any Class Expenses attributable solely to one class will be borne exclusively by that class.

6. The methodology and procedures for calculating the net asset value and dividends and distributions of multiple classes, and the proper allocation of expenses among them has been reviewed by an expert (the "Expert"), who has rendered a report to applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon that review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to those reports, following a request by a Fund (which each Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to a Fund for those work papers by a senior member of the SEC's Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation," and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness," as defined and described in Statement of Auditing Standards No. 70 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

7. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares, and the proper allocation of expenses among the various classes of shares, and this representation has been concurred with by the initial report referred to in

condition 6 above, and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 6 above. Applicants will take immediate corrective action if this representation is not concurred in by the Expert or an appropriate substitute Expert.

8. The prospectus of each Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different levels of compensation with respect to one particular class of shares over another in the Fund.

9. The Distributor will adopt compliance standards for determining when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to conform to those standards.

10. The conditions pursuant to which the exemptive order is granted, and the duties and responsibilities of the directors of the Funds with respect to the various classes of shares will be set forth in guidelines that will be furnished to the directors.

11. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in each of its prospectuses regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of the Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it also will disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will present each class of shares separately.

12. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Fund may make pursuant to Distribution Plans in reliance on the exemptive order.

13. Any class of shares with a conversion feature ("Purchase Class") will convert into another class ("Target Class") of shares on the basis of the relative net assets of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

14. If a Fund implements any amendment to the Distribution Plan or other plan adopted under rule 12b–1 (or, if presented to shareholders, adopts or implements any amendment of a "non-rule 12b–1" shareholder services plan) that would increase materially the amount that may be borne by a Target Class under the plan, then Purchase Class shares will stop converting into shares of that Target Class, unless Purchase Class shareholders, voting separately as a class, approve the amendment. The directors shall take any action necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to Target Class shares as they existed prior to implementation of the amendment, no later than the date those Purchase Class shares were scheduled to convert into Target Class shares. If deemed advisable by the directors to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class") of shares, identical to existing Purchase Class shares in all material respects, except that the new Purchase Class will convert into the New Target Class. The New Target Class and New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the directors reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of the New Target Class or New Purchase Class shares shall be borne solely by the Adviser and the Distributor. Purchase Class shares sold after the implementation of the amendment may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of that plan to the Purchase Class are disclosed in an effective registration statement.

15. The initial determination of the class expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of directors of the Funds, including a majority of the independent directors. Any person authorized to direct the allocation and disposition of monies paid or payable by the Funds to meet class expenses shall provide to the board of directors and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which those expenditures were made.

16. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, as that rule is currently stated in Investment Company Act Release No. 16619 (Nov. 2, 1988), and as it may be reproposed, adopted, or modified in the future.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13739 Filed 6–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20324; File No. 812–8904]

Western-Southern Life Assurance Company, et al.

May 31, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Western-Southern Life Assurance Company ("Western Southern"), Western-Southern Life Assurance Company Separate Account I (the "Account") and Interactive Financial Solutions, Inc. ("Interactive") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting them to deduct a daily charge from the assets of the Account for mortality and expense risks in connection with the offering of certain variable annuity contracts.

FILING DATE: The application was filed on March 27, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on June 25, 1994 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Donald J. Wuebbling, Vice President and General Counsel, Western & Southern Life Insurance Company, 400 Broadway, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Attorney, or Wendell M. Faria, Deputy Chief, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application, the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Western Southern, a stock life insurance company organized under Ohio law, is a wholly owned subsidiary of the Western and Southern Life Insurance Company, a mutual life insurance company also organized under Ohio law. Western Southern serves as the sponsor and the depositor of the Account.

2. The Account, established by Western Southern on July 27, 1992 as a separate investment account of Western Southern under Ohio law, will be used to support certain variable annuity contracts (the "Contracts") and for other lawful purposes. The Account is registered with the Commission under the 1940 Act as a unit investment trust. The application incorporates by reference the registration statement, currently on file with the Commission (File No. 33–76582), for the Account.

3. Interactive, a wholly owned subsidiary of IFS Financial Services, Inc. ("IFS Financial"), is the distribution of the Contracts. IFS Financial is a wholly owned subsidiary of Western Southern. Interactive is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc.

4. The Contracts are flexible payment, tax-deferred variable annuities available to both individual investors and group plans on either a nonqualified ("Nonqualified Contract") or qualified ("Qualified Contract") basis. Qualified Contracts qualify for favorable federal income tax treatment under Sections 401, 403 or 408 of the Internal Revenue Code of 1986, as amended.

5. Nonqualified Contracts require a minimum initial purchase payment of $2000. Qualified Contracts require a minimum initial purchase payment of $1000. Subsequent purchase payments under both types of Contracts may be made at any time and must be at least $100. Maximum cumulative total of all purchase payments under any Contract may not exceed $500,000 without the prior approval of Western Southern. Purchase payments may be allocated to the Account, to the general account (the "Fixed Account") of Western Southern, or, to a combination of the Account and the Fixed Account.

6. The Account has seven subaccounts, each of which invest in shares of an investment portfolio of either The IFS Variable Insurance Trust (the "IFS Trust") or The Select Advisers Portfolio (the "SA Trust"). The IFS Trust, a no load open-end diversified investment management company organized as a Massachusetts business trust, consists of five portfolios available through the subaccounts for investment of funds allocated by Contract owners to the Account. The SA Trust, a no load open-end diversified investment management company organized as a business trust, has two portfolios available for investment by Contract owners.

7. The Contracts permit transfers among the subaccounts of the Account and between the Account and the Fixed Account. There is currently no charge for transfers although Western Southern reserves the right to impose such a charge in the future.

8. Western Southern reserves the right to impose a deduction for premium taxes when the applicable jurisdiction imposes the tax liability. The application states that the applicable premium taxes depend upon the Contract owner's then current place of residence and generally range from 0 to 3% of purchase payments or of the amount annuitized. Applicants state that Western Southern will not make a profit on premium taxes.

9. Applicants impose an annual Contract maintenance charge of $35 per Contract and this charge is deducted from the Contract value. A Contract administration charge is also deducted and this charge is deducted as a percentage of and from the assets of the Account of an annual effective rate of .15%. Western Southern represents that the administrative charges will not increase for the life of the Contracts. Western Southern represents that it does not expect that the total revenues from the administrative charges will exceed the expected costs of administering the Contracts. Further, Applicants state that Western Southern will monitor the relationship of the administrative expenses and the proceeds collected from the administrative expenses and the proceeds collected from the administrative charges for compliance with Rule 26a–1 under the 1940 Act.

10. A contingent deferred sales charge (the "Sales Charge") of up to 7% of the amount withdrawn is imposed upon total surrender, partial withdrawal or commencement of an annuity payment option within the first seven years of the Contract. The Sales Charge is a percentage of the amount of each purchase payment that is withdrawn. The percentage declines depending upon how many years have passed since the withdrawn purchase payment was originally credited to a Contract owner.

11. Western Southern will impose a daily charge equal to an annual effective rate of 1.20% of the value of the net assets of the Account to compensate for Western Southern bearing certain mortality and expense risks in connection with the Contracts. Approximately .80% of the 1.20% charge is attributable to mortality risk, and approximately .40% is attributable to expense risk. Applicants represent that the charge for mortality and expense risks will not increase. If the mortality and expense risk charge is insufficient to cover assumed costs and expenses, Western Southern will bear the loss. Conversely, if the charge exceeds costs, this excess will be profit to Western Southern. If Western Southern realizes a gain from the charge for mortality and expense risks, the amount of such gain will be placed in the general account of Western Southern and may be used in its discretion, including for payment of a portion of the costs relating to the distribution of the Contracts.

12. Applicants state that the mortality risk borne by Western Southern is threefold. First, Western Southern assumes a mortality risk because of its contractual obligation to pay a death benefit in a lump sum (which sum may also be taken in the form of an annuity payment option) upon the death of an annuitant prior to the date on which annuity payments are scheduled to begin. Second, Western Southern assumes a mortality risk because of its

agreement not to impose any surrender charge or any other charge on the death benefit. Finally, Western Southern assumes a mortality risk because of its contractual obligation to continue to make annuity payments for the entire life of the annuitant under annuity payment options involving life contingencies, thereby assuring each annuitant that neither the annuitant's longevity nor an improvement in life expectancy generally will have an adverse effect on annuity payments received under the Contract.

13. Applicants state that the expense risk assumed by Western Southern is the risk that the administrative charges, which are guaranteed not to increase under outstanding Contracts, will be insufficient to cover actual administrative expenses.

Applicants' Legal Analysis and Conditions

1. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant the exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act in connection with Applicants' assessment of the daily charge for the mortality and expense risks. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

2. Applicants assert that the charge for mortality and expense risks is reasonable compensation for the risks assumed.

3. Applicants represent that the charge of 1.20% for the mortality and expense risks assumed by Western Southern is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon their analysis of publicly available information regarding products of other companies, taking into consideration such factors as: Guaranteed minimum death benefits and guaranteed annuity purchase rates; minimum initial and subsequent purchase payments; other contract charges and the manner in which such charges are imposed; investment options available under other contracts; and the availability of other contracts to individual qualified and nonqualified plans. Applicants represent that Western Southern will maintain at its principal office, available to the Commission upon request, a memorandum setting forth in detail the variable annuity products analyzed and the methodology and results of Western Southern's comparative review.

4. Applicants acknowledge that the Sales Charge may be insufficient to cover all costs relating to the distribution of the Contracts and that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the Sales Charge. Applicants represent that Western Southern has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Western Southern at its principal office and will be made available to the Commission upon request.

5. Western Southern also represents that the Account will invest only in management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by the company's board of directors, a majority of whom are not interested persons of such company within the meaning of the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13740 Filed 6–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20327; 812–8962]

Williamsburg Investment Trust, et al.; Application

June 1, 1994.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Williamsburg Investment Trust (the "Trust"); Lowe, Brockenbrough, Tierney & Tattersall, Inc. ("LBT&T"); Flippin, Bruce & Porter, Inc. ("FBP"); and T. Leavell & Associates, Inc. ("T. Leavell").

RELEVANT ACT SECTIONS: Exemption requested under sections 6(c) and 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting series of the Trust to deposit their daily uninvested cash balances into a single joint account to be used to enter into repurchase agreements. Applicants request that the order also apply to all future registered investment companies and series thereof ("Future Funds," and collectively with the Trust, the "Funds") for which LBT&T, FBP, or T. Leavell (collectively, the "Advisors"), or any entity controlling, controlled by, or under common control with one or more of the Advisors serves as investment adviser.

FILING DATE: The application was filed on April 29, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 27, 1994 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o John F. Splain, Esq., MGF Service Corp., 312 Walnut Street, 21st Floor, Cincinnati, Ohio 45202

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Senior Attorney, at (202) 942–0578, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a registered open-end investment company that offers ten series: The Jamestown Balanced Fund, The Jamestown Equity Fund, The Jamestown Bond Fund, The Jamestown Short Term Bond Fund, The Jamestown Tax Exempt Virginia Fund, FBP Contrarian Balanced Fund, FBP Contrarian Equity Fund, the Alabama Tax Free Bond Fund, The Government Street Bond Fund, and the Government Street Equity Fund.

2. The Advisors are investment advisers registered under the Investment Advisers Act of 1940. Each Fund is advised by one of the Advisors. One or more of the Advisors (or a successor entity) will serve as the investment adviser to the Future Funds.

3. Each series of the Trust is authorized, and the Future Funds will be authorized, by their investment policies to invest in repurchase agreements.

4. Each Fund has or may be expected to have uninvested cash balances with its custodian bank which otherwise would not be invested in portfolio securities by its Advisor at the end of each trading day. In the normal course of business, such assets are or would be invested in overnight repurchase agreements with a bank or major brokerage house collateralized by U.S. Government securities in order to earn additional income. Every morning each Advisor, on behalf of the Funds it serves, begins negotiating the interest rate for repurchase agreements for that day and lining up securities required as collateral. Generally, some portion of the assets in the respective account of each Fund is received too late, or is too small, to be invested effectively in a separate transaction. Further, because each Fund must separately pursue, secure, and implement such investments, there is a duplication of effort that results in certain inefficiencies and may limit the return which some or all Funds can achieve.

5. Applicants seek a conditional order permitting the Funds to deposit their daily uninvested cash balances into a single joint account, the daily balance of which would be used to enter into one or more overnight (or weekend or holiday) repurchase agreements. The requested order will maximize the return by minimizing economic and administrative efficiencies by allowing the Funds to enter into large repurchase agreements.

6. Each repurchase agreement will be made by calling a government securities dealer and indicating the rate of interest and size of the desired repurchase agreement. Particular securities to be held as collateral will then be identified and the Fund's custodian bank will be notified. The securities will be wired to the account of the custodian bank at the proper Federal Reserve Bank, transferred to a sub-custodian account of the Funds at another qualified bank, or redesignated and segregated on the records of the custodian bank if the custodian bank is already the record holder of the collateral for the repurchase agreement. The Funds will not enter into repurchase agreements with the custodian bank, except where cash is received very late in the business day and otherwise would be unavailable for investment at all.

7. Each of the Funds has established the same systems and standards, including quality standards for issuers of repurchase agreements and for collateral, and requirements that the repurchase agreements will be "collateralized fully," as that term is defined in rule 2a–7 under the Act. Identical systems and standards will be adopted by any Future Funds which invest in the proposed joint account.

Applicants' Legal Analysis

1. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, to effect any transaction in which such registered investment company is a joint or a joint and several participant with such person in contravention of rules and regulations which the Commission prescribes for the purpose of preventing participation by such company on a basis different from or less advantageous than that of other participants.

2. Rule 17d–1 provide that no affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, shall participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which such registered investment company is a participant unless an application regarding such joint arrangement has been filed with the Commission and has been granted an order. In passing upon such applications, the Commission will consider whether the investment company's participation in the proposed joint enterprise or arrangement is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Each Fund might be deemed an affiliated person of each other Fund under section 2(a)(3) of the Act. Each Fund, by participating in the proposed account, and the Advisors, by managing the proposed account, could be deemed to be a "joint participant" in a "transaction" within the meaning of section 17(d), and the proposed account could be deemed to be a "joint enterprise or other joint series issue arrangement" within the meaning of rule 17d–1.

4. The proposed account will not be distinguished from any other account maintained by the Funds with their custodian bank except that monies from the Funds could be deposited in the proposed account on a commingled basis. The sole function of this account will be to provide a convenient way of aggregating what otherwise would be the individual daily transactions for each Fund necessary to manage the daily uninvested cash balances of each Fund. Each Fund will participate in the account on the same basis as every other Fund. The Adviser will have no monetary participation in the account, but will be responsible for investing amounts in the account, establishing control procedures, and ensuring the equal treatment of each Fund. The proposed method of operating the account will not result in any conflicts of interest between any of the Funds, or between a Fund and its Advisor.

5. The Funds will benefit from the proposed arrangement because, on any given day and under most market conditions, it is possible to negotiate a rate of return on large repurchase agreements which is greater than the rate of return available for smaller repurchase agreements. In addition, by reducing the number of trade tickets, repurchase transactions will be simplified and the opportunity for errors will be reduced. Each Fund will also benefit from the fact that an institution entering into a very large repurchase agreement is almost always able and willing to increase the amount covered by such agreement near the end of the day, which possibility may not exist with smaller repurchase agreements. Moreover, without a joint account, some Funds may find that they will be unable to invest in repurchase agreements because their respective daily cash balances would not meet the

minimum investment requirement for a repurchase agreement.

6. Applicants assert that granting the requested relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants further assert that participation in the proposed joint account by each Fund would not be on a basis different from or less advantageous that of any other Fund participant and that the participation by the Advisors will be ministerial only.

Applicant's Conditions

As express conditions to the granting of the requested relief, applicants agree that the joint repurchase account will operate as follows:

1. A separate custodian cash account will be established into which each Fund will cause its uninvested net cash balances to be deposited daily. The joint account will not be distinguished from any other accounts maintained by a Fund with its custodian bank except that monies from a Fund will be deposited on a commingled basis. The account will not have any separate existence or have any indicia of a separate legal entity. The sole function of the account will be to provide a convenient way to aggregating individual transactions which would otherwise require daily management by each Fund of its uninvested cash balance.

2. Cash in the account will be invested solely in repurchase agreements with a duration not to exceed one business day and collateralized by suitable U.S. Government securities (*i.e.*, obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities) and satisfying the uniform standards set by the Funds for such investments.

3. All securities held by the joint account will be valued on an amortized cost basis.

4. Each Fund relying upon rule 2a–7 under the Act for valuation of its net assets on the basis of amortized cost will use the average maturity of the repurchase agreements purchased by the Funds participating in the account for the purpose of computing the Fund's average portfolio maturity with respect to the portion of its assets held in such account on that day.

5. In order to assure that there will be no opportunity for one Fund to use any part of a balance of the account credited to another Fund, no Fund will be allowed to create a negative balance in the account for any reason, although a Fund will be permitted to draw down its entire balance at any time; each Fund shall retain the sole rights of ownership of any of its assets, including interest payable on the assets invested in the account.

6. Each Fund will participate in the net income earned or accrued in the account on the basis of the percentage of the total amount in the account on any day represented by its share of the account.

7. Each Advisor will administer the investment of the cash balance in and the operation of the account as part of its duties under its existing or any future investment advisory contract with each Fund and will not collect any additional fees for management of the account. The Advisors will collect their fees based upon the assets of each separate Fund as provided in each respective investment advisory agreement.

8. Each Fund's decision to invest in the account shall be solely at the Fund's option and no Fund shall be obligated to invest or to maintain any minimum amount in the account.

9. Each Fund's investment in the account shall be documented daily on the books of each Fund as well as on the books of the Fund's custodian bank.

10. All repurchase agreements will have an overnight, over-the-weekend, or over-a-holiday duration.

11. The Funds will enter into an agreement with each other to govern the arrangements in accordance with the foregoing principles.

12. The administration of the account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

13. The trustees of the Trust and the boards of directors of any Future Funds participating in the joint account shall evaluate the joint account arrangement annually, and shall continue the account only if they determine that there is a reasonable likelihood that the account will benefit the Funds and their shareholders.

14. All joint repurchase agreement transactions will be effected in accordance with Investment Company Act Release No. 13005 (Feb. 2, 1983) and with other existing and future positions taken by the Commission or its staff by rule, interpretive release, no-action letter, any release adopting any new rule, or any release adopting any amendments to any existing rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13741 Filed 6–6–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2722]

Indiana (With Contiguous Counties in Illinois); Declaration of Disaster Loan Area

Tippecanoe and Vermillion Counties and the contiguous counties of Benton, Carroll, Clinton, Fountain, Montgomery, Parke, Vigo, Warren, and White in the State of Indiana and Edgar and Vermilion Counties in the State of Illinois constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding which occurred between April 12 and April 27, 1994. Applications for loans for physical damage may be filed until the close of business on July 25, 1994, and for economic injury until the close of business on February 27, 1995, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.125
Homeowners Without Credit Available Elsewhere	3.625
Businesses With Credit Available Elsewhere	7.125
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for the State of Indiana are 272206 for physical damage and 827400 for economic injury, and in Illinois the numbers are 272306 and 827500, respectively.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 26, 1994

Erskine B. Bowles,

Administrator.

[FR Doc. 94–13791 Filed 6–6–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2713]

Missouri; Declaration of Disaster Loan Area, Amendment Number 1

The above-numbered Declaration is hereby amended, effective May 18, 1994, to include Barry, Calloway, Clay, Morgan, Phelps, Pulaski, Reynolds, Shannon, Vernon, and Washington Counties in the State of Missouri as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding April 9 through May 5, 1994.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location. Audrain, Bates, Barton, Benton, Camden, Carter, Cedar, Clinton, Cooper, Dent, Howell, Iron, Jackson, Laclede, Lawrence, Maries, McDonald Newton, Oregon, Pettis, Platte, Ray, St. Clair, Stone, Texas, and Wayne Counties in Missouri; Benton and Carroll Counties in Arkansas; and Bourbon, Crawford, Linn, and Wyandotte Counties in Kansas.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is June 21, 1994 and for economic injury the deadline is January 23, 1995.

The economic injury numbers are 824500 for Missouri, 826000 for Arkansas, and 827600 for Kansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 27, 1994

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–13792 Filed 6–6–94; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2714]

Oklahoma; Declaration of Disaster Loan Area; Correction

Amendment #1 to the above-numbered Declaration which published on May 19, 1994 (59 FR 26331) showed incorrect termination dates for the filing period.

The correct dates are as follows: the termination date for filing applications for physical damage is June 21, 1994 and for economic injury the deadline is January 23, 1995.

All other information remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 20, 1994

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 94–13793 Filed 6–6–94; 8:45 am]

BILLING CODE 8025–01–M

Canaan S.B.I.C., L.P. (Application No. 99000118); Notice of Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by Canaan S.B.I.C., L.P., 105 Rowayton Avenue, Rowayton, Connecticut 06853, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 as amended, (15 U.S.C. *et seq.*), and the Rules and Regulations promulgated thereunder. In addition to its main office in Rowayton, Connecticut, the applicant will have a branch office at 2884 Sand Hill Road, Menlo Park, California 94025. Canaan S.B.I.C., L.P. is a Delaware limited partnership.

The general and limited partners of Canaan S.B.I.C., L.P., and the ownership interest of entities owning 10 percent or more of the applicant are as follows:

Name	Type of partner	Ownership interest (percent)
Harry T. Rein	General	
James J. Fitzpatrick	General	
David C. Fries	General	
Stephen L. Green	General	
Gregory Kopchinsky	General	
Robert J. Migliorino	General	
Alan E. Salzman	General	
Eric A. Young	General	
Canaan Capital Limited Partnership, 105 Rowayton Avenue, Rowayton, Connecticut 06853.	Limited	10
Canaan Capital Offshore L.P., c/o ABN Bank Trust Company, Pietermaai 15, Willemstad, Curacao, The Netherlands Antilles.	Limited	86.6

No individual, or entity other than those listed above, will beneficially own 10 percent or more of the applicant.

Canaan S.B.I.C., L.P. will be managed by its investment advisor, Canaan S.B.I.C., Inc., located at the same address as the applicant. The officers and directors of the investment advisor are:

Name	Title
Harry T. Rein	President and Director.
James J. Fitzpatrick	Vice President
David C. Fries	Vice President
Stephen L. Green	Vice President
Gregory Kopchinsky	Vice President
Robert J. Migliorino	Vice Pres., Secretary, Treasurer
Alan E. Salzman	Vice President
Eric A. Young	Vice President
Guy M. Russo	Controller

All these individuals are employees of the Canaan entities, and have business offices at the Towayton, Connecticut or Menlo Park, California addresses. Mr. Kopchinsky will manage the day to day operations of Canaan S.B.I.C., L.P.

The applicant has Regulatory Capital of $15.0 million. It will be a source of equity financings for qualified small business concerns, and will invest primarily in the Northeast and West Coast regions of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Rowayton, Connecticut.

(Catalog of Federal Domestic Assistance Programs No. 59.001, Small Business Investment Companies)

Dated: June 1, 1994

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–13794 Filed 6–6–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets 49483 and 49484]

Applications of Polar Air Cargo, Inc., for Certificate Authority

AGENCY: Department of Transportation

ACTION: Notice of order to show cause (order 94–6–2).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Polar Air Cargo, Inc., fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and overseas scheduled air transportation of property and mail, and foreign scheduled air transportation of property and mail between points in the United States and Australia, Hong Kong, South Korea, Taiwan, and the United Kingdom.

DATES: Persons wishing to file objections should do so no later than June 16, 1994.

ADDRESSES: Objections and answers to objections should be filed in Dockets 49483 and 49484 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms Carol A. Woods, Air Carrier Fitness Division (X–56, room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2340.

Dated: June 1, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–13744 Filed 6–6–94; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 236]

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of authority

SUMMARY: The Delegation Order is extended to rollover and recurring issue settlements effected by Appeals with respect to the same taxpayer in the previous or subsequent tax periods

EFFECTIVE DATE: June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Harry E. Lebedun, CP:EX:C:C, Room 2032 1111 Constitution Avenue NW., Washington, DC 20224, (202)–622–3373 (not a toll free number).

Order No. 236 (Rev. 1)
Effective Date: 6–3–94.
Settlement Authority for Examination Case Managers.

The authority vested in the Commissioner of the Internal Revenue by Treasury Order Nos. 150–04, 150–09 and 150–10 and the authority contained in 26 U.S.C. & 7121 is hereby delegated as follows:

1. All District Directors, Examination division chiefs, Examination branch chiefs, and Examination case managers are delegated discretionary authority under section 7121 of the Internal Revenue Code to accept settlement offers, regardless of the amount of liability sought to be compromised, with respect to rollover and recurring issues in Coordinated Examination Program cases where a settlement on the merits has been effected by Appeals with respect to the same taxpayer in a previous or subsequent tax period. Prior to finalization, the proposed settlement, together with any related closing agreement or Form 870AD, shall be substantively reviewed and approved by the appropriate branch chief within the Examination function.

2. For purposes of this delegation of limited settlement authority, the terms "rollover" and "recurring" issues are defined as follows:

(a) A "rollover" issue involves an adjustment arising from the same legal issue in the same transaction or taxable event and impacts more than one tax period. For example, the rate of amortization or depreciation of an asset, bad debt losses, basis and inventory adjustments and the like, when related to the same transaction and which affect future tax periods, would be susceptible to case manager settlement where a settlement on the merits has been reached in Appeals in a previous tax period with respect to the same taxpayer.

(b) A "recurring" issue involves an adjustment arising from the same legal issue in a separate transaction or a repeated taxable event in which the taxpayer advances the same legal position with respect to such similar transaction or repeated taxable event as advanced by such taxpayer in a prior tax period. For example, the method of depreciation with respect to similar assets, the use of the same accounting method with respect to similar transactions, the annual computation of such deductions as depletion, the computation of certain tax credits and the like, when advanced by the same taxpayer in later tax periods would be susceptible to case manager settlement where a settlement on the merits has been reached by Appeals in a previous tax period with respect to the same taxpayer.

3. No settlement shall be effected unless the following factors are present in the tax year currently under Examination jurisdiction:

(a) The facts surrounding a transaction or taxable event in the tax period under examination, including the relative amounts at issue, are substantially the same as the facts in the settled period.

(b) The underlying issue must have been settled on its merits independently of other issues in a previous or subsequent tax period by Appeals.

(c) The legal authority relating to such issue must have remained unchanged.

(d) The issue must have been settled in Appeals with respect to the same taxpayer (including consolidated and unconsolidated subsidiaries) in a previous tax period.

4. All District Directors, Examination division chiefs, Examination branch chiefs, and Examination case managers are delegated authority to execute closing agreements and the Form 870AD in order to effect any final settlement reached with respect to any rollover or recurring issue in a Coordinated Examination Program case.

5. The authority delegated in this Order may not be redelegated.

6. The authority contained in this Order is intended to supplement the authority contained in Delegation Order No. 97 (as amended).

Dated: May 31, 1994.

Approved:

Michael P. Dolan,

Deputy Commissioner.

[FR Doc. 94–13813 Filed 6–6–94; 8:45 am]

BILLING CODE 4830–01–U

Sunshine Act Meetings

Federal Register
Vol. [illegible] No. 103
[illegible]

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND PLACE: 9:30 a.m., June 10 [illegible]

PLACE: RFE/RL, Inc., C.D. Jackson Raum 67 Oettingenstrasse am Englischen Garten, Munich, Germany

OPEN MEETING: The members of the Board for International Broadcasting (BIB) will meet in open session at 9:30 a.m. to discuss the following matters: (1) approval of the minutes of the most recent BIB meeting; (2) the Chairman's report; (3) RFE/RL Interim President's report; (4) new business; and (5) the date and place of the next meeting. The open session of the BIB meeting will be followed by a closed meeting of the Board of Directors of RFE/RL, Inc., a nonprofit private corporation.

CONTACT PERSON FOR MORE INFORMATION: Patricia Sowick, Program Officer, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, N.W., Washington, DC 20036. (Tel: 202–254–3040) Persons interested in attending the meeting should contact Patricia Schlueter to facilitate entering the RFE/RL, Inc., building in Munich. (Tel: 202–254–8040)

Dated: June 2, 1994

Richard W. McBride,

Executive Director

[FR Doc. 94–13957 Filed 6–1–94; 3:54 pm]

BILLING CODE 6155–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, June 28, 1994.

PLACE: 2033 K St., N.W., Washington, DC, 8th Floor Hearing Room

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission

[FR Doc. 94–13863 Filed 6–3–94; 10:29 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, June 28, 1994.

PLACE: 2033 K St., NW., Washington, DC, Lower Level Hearing Room

STATUS: Open

MATTERS TO BE CONSIDERED:

—Stock disclosure by Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators and Commodity Trading Advisors to [illegible] Bankruptcy Declaration Rules

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission

Jean A. Webb,

Secretary of the Commission

[FR Doc. 94–13862 Filed 6–3–94; 10:29 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 24, 1994

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314

Jean A. Webb,

Secretary of the Commission

[FR Doc. 94–13861 Filed 6–3–94; 10:29 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday June 17, 1994

PLACE: 2033 K St., NW., Washington DC, 8th Floor Hearing Room

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314

Jean A. Webb,

Secretary of the Commission

[FR Doc. 94–13860 Filed 6–3–94; 10:29 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Wednesday, June 15, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314

Jean A. Webb,

Secretary of the Commission

[FR Doc. 94–13858 Filed 6–3–94; 10:29 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, June 15, 1994.

PLACE: 2033 K St., NW., Washington, DC, Lower Level Hearing Room

STATUS: Open

MATTERS TO BE CONSIDERED:

—Application for designation as a contract market in the Canadian Dollar Currency Forward, Deutsche Mark Currency Forward, Japanese Yen Currency Forward, Pound Sterling Currency Forward, and Swiss Franc Currency Forward futures contracts and options on those futures contracts/Chicago Mercantile Exchange

—Application for designation as a contract market for the International Edible Oils Index futures contract/Chicago Board of Trade.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission

Jean A. Webb,

Secretary of the Commission

[FR Doc. 94–13859 Filed 6–3–94; 10:29 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 10, 1994

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room

STATUS: Closed

MATTERS TO BE CONSIDERED: Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314

Jean A. Webb,

Secretary of the Commission

[FR Doc. 94–13857 Filed 6–3–94; 10:29 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 3, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–13856 Filed 6–3–94; 10:29 am]

BILLING CODE 6351–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 9, 1994, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. Reports

1. Chief Operating Officer's Quarterly Report

Closed Session*

A. New Business

1. Enforcement Actions

Dated: June 2, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–13847 Filed 6–2–94; 5:11 pm]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board) concerning the FCS Building Association.

DATE AND TIME: The special meeting of the Board concerning the FCS Building Association will be held June 9, 1994 at the offices of the Farm Credit Administration in McLean, Virginia, immediately following the FCA Board's regular meeting at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Reports

1. FCSBA Quarterly Report

B. New Business

1. Other

a. Preliminary 1995 FCSBA Budget Estimates.

Dated: June 2, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–13848 Filed 6–2–94; 5:11 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Thursday, June 9, 1994

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 9, 1994, which is scheduled to commence at 9:30 a.m., in room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Office of Plans and Policy, Office of Engineering and Technology—Title: Amendment of the Commission's Rules to Establish New Personal Communications Services (GN Docket No. 90–314, RM 7140, 7175, and 7618). Summary: The Commission will consider petitions for reconsideration of the rules and policies governing broadband Personal Communications Services.

2—Common Carrier—Title: Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services. Summary: The Commission will consider initiating a proceeding to consider interconnection obligations of local exchange carriers with respect to commercial and private mobile radio service providers, and equal access and interconnection obligations of commercial mobile radio service providers.

3—Mass Media, Common Carrier—Title: Reorganization of MMDS (Multichannel Distribution Service/Multipoint Distribution Service) From Common Carrier Bureau to Mass Media Bureau. Summary: The Commission will consider the organization of its MMDS licensing functions.

4—Mass Media—Title: Amendment of Part 74 of the Commission's Rules Governing Use of the Frequencies in the Instructional Television Fixed Service (MM Docket No. 93–106). Summary: The Commission will consider the use of channel loading.

5—Mass Media—Title: Amendment of Part 74 of the Commission's Rules and Regard to the Instructional Television Fixed Service (MM Docket No. 93–24). Summary: The Commission will consider the revision of application processing procedures

6—Office of Plans and Policy—Title: Implementation of section 26 of the Cable Television Consumer Protection and Competition Act of 1992—Inquiry into Sports Programming Migration (PP Docket No. 93–21). Summary: The Commission will consider information obtained in its inquiry into sports programming migration

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 418–0500.

Dated: June 2, 1994.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 94–13872 Filed 6–3–94; 10:52 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

Amended Notice of Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, June 14, 1994.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted. This notice amends the time and date which appeared in our notice published in the ICC Register and served on May 31, 1994 and published at 59 Fed. Reg. 28,132 (1994).

MATTERS TO BE DISCUSSED:

Finance Docket No. 27590 (Sub-No. 2), *TTX Company et al.—Application for Approval of the Pooling of Car Service with Respect to Flat Cars.*

Finance Docket No. 32404, *Central Michigan Railway Company—Trackage*

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* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Rights Exemption—Detroit & Mackinac' Railway Company.

Finance Docket No. 30965 (Sub-No. 4), *Delaware and Hudson Company—Lease and Trackage Rights—Springfield Terminal Railway Company*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–13770 Filed 6–2–94; 11:17 am]

BILLING CODE 7035–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 6, 13, 20, and 27, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 6

Monday, June 6

10:00 a.m.
Briefing by DOE on HLW Program (Public Meeting)
(Contact: Linda Desell, 202–586–1462)
1:00 p.m.
Briefing on Proposed Rule on Radiological Criteria for Decommissioning (Public Meeting)
(Contact: Chip Cameron, 301–504–1642)

Wednesday, June 8

10:00 a.m.
Briefing on Electricity Forecast from Energy Information Administration (EIA) Annual Energy Outlook (Public Meeting)
(Contact: Mary Hutzler, 202–586–2222)

Thursday, June 9

10:00 a.m.
Briefing on Review of Rulemaking Process (Public Meeting)
(Contact: William Olmstead, 301–504–1740)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Licensee Submittal of Data in Computer—Readable Form
(Contact: R. Gramann, 301–504–2456)
b. Advanced Medical Systems, Inc.—Appeal of LBP–90–17 (Suspension Order Proceeding)
(Contact: Stephen Burns, 301–504–2184)
c. Final Rule on "Timeliness in Decommissioning of Materials Facilities" (Tentative)
(Contact: Mary Thomas, 301–492–3886)
d. Intervention Petitions Challenging Proposed Fuel Shipments to Temelin Reactors in the Czech Republic (Tentative)
(Contact: Grace Kim, 301–504–3605)
2:00 p.m.
Briefing on Final Rule for Protection Against Malevolent Use of Vehicles at Nuclear Power Plants—Part 73 (Public Meeting)
(Contact: Phillip McKee, 301–504–2933)
3:30 p.m.
Update on Design Basis Threat (Closed—Ex. 1 and 3)

Friday, June 10

10:00 a.m.
Briefing on Proposed Rule for License Renewal—Part 54 (Public Meeting)
(Contact: William Travers, 301–504–1117)
2:00 p.m.
Briefing on Status on Nuclear Issues Concerning Russia (Closed—Ex. 1)

Week of June 13—Tentative

Thursday, June 16

10:30 a.m.
Discussion of Personnel Matters (Closed—Ex. 2 and 6)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 20—Tentative

Monday, June 20

10:00 a.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)

Thursday, June 23

9:30 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities
(Contact: Victor McCree, 301–504–1711)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 27—Tentative

There are no meetings scheduled for the Week of June 27.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661

Dated: June 2, 1994

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary

[FR Doc. 94–13865 Filed 6–3–94; 10:30 am]

BILLING CODE 7590–01–M

Corrections

Federal Register

Vol. 59, No. 108

Tuesday, June 7, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

48 CFR Part 533

[APD 2800.12A, CHGE 53]

RIN 3090-AE98

General Services Administration Acquisition Regulation; Implement Revision to General Services Administration Board of Contract Appeals Rules of Procedure

Correction

In rule document 94-10259 beginning on page 22520 in the issue of Monday, May 2, 1994, make the following correction:

533.105 [Corrected]

1. On page 22520, in the third column, in section 533.105(a)(4), in the fifth line, "has" should read "have".

2. On the same page, in the same column, in amendatory instruction 3, in the first line, "Section 553.7103-1" should read "Section 533.7103-1".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Final Minimum Percentages for "High Rate" and "Significant Increase in the Rate" for Implementation of the General Statutory Funding Preference for Grants for Nurse Practitioner and Nurse-Midwifery Programs for Fiscal Year 1994

Correction

In notice document 94-12152 beginning on page 26247 in the issue of Thursday, May 19, 1994, make the following correction:

On page 26248, in the first column, in the sixth line from the top, following the word "facilities," insert ", long-term care facilities".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-070-04-4210-04; MTM82124]

Realty Action: Exchange

Correction

In notice document 94-12232 beginning on page 26318, in the issue of Thursday, May 19, 1994, make the following corrections:

On page 26319, in the 1st column, under the heading **Montana Principal Meridian**, in the land description, in T.6 S, R. 2 W., "Sec. 12, SW¼NE¼, SW¼," should read "Sec. 12, SW¼NW¼, SW¼;"

On the same page, in the same column, in T.7 S, R.9 W., "Sec. 13, NW¼SW¼," should read "Sec. 13, NW¼SW¼, N½SW¼SW¼;".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items in the Possession of the Nebraska Historical Society

Correction

In notice document 94-13168 appearing on page 28104 in the issue of Tuesday, May 31, 1994, in the second column, beginning in the last line, "within [*45 days after publication of this notice*]." should read "on or before July 15, 1994.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563b and 575

[No. 94-49]

RIN 1550-AA74

Conversions From Mutual to Stock Form; Mutual Savings and Loan Holding Companies

Correction

In proposed rule document 94-9980 beginning on page 22764 in the issue of Tuesday, May 3, 1994, make the following correction:

On page 22764, in the first column, under **DATES**, in the second line, "July 17, 1994" should read "June 17, 1994"

BILLING CODE 1505-01-D

Tuesday
June 7, 1994

Part II

Department of the Treasury

Office of the Comptroller of the Currency
12 CFR Part 34

Office of Thrift Supervision
12 CFR Parts 545, 563, and 564

Federal Reserve System

12 CFR Part 225

Federal Deposit Insurance Corporation

12 CFR Part 323

Real Estate Appraisals; Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. 94–10]

RIN 1557–AB34

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0803]

RIN 7100–AB20

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 323

RIN 3064–AB05

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 563, 564

[Docket No. 94–47]

RIN 1550–AA64

Real Estate Appraisals

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively the agencies) are amending their regulations regarding appraisals of real estate. This final rule is adopted pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

The final rule increases to $250,000 the threshold at or below which appraisals are not required pursuant to Title XI, expands and clarifies existing exemptions to the Title XI appraisal requirement, identifies additional circumstances when appraisals are not required under Title XI, and specifies when exempt transactions nevertheless require appropriate evaluations. In addition, the final rule amends existing requirements governing appraisal content and the use of appraisals prepared by other financial services institutions.

The agencies are adopting this final rule to further federal financial and public policy interests by reducing regulatory burden, while requiring Title XI appraisals when necessary to protect the safety and soundness of financial institutions or otherwise advance public policy.

EFFECTIVE DATE: This final rule is effective on June 7, 1994.

FOR FURTHER INFORMATION CONTACT:

Office of the Comptroller of the Currency (OCC)

Thomas E. Watson, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874–5170; or Horace G. Sneed, Senior Attorney, or Stephen Freeland, Attorney, (202) 874–4460, Bank Operations and Assets Division; Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board of Governors of the Federal Reserve System (Board)

Roger T. Cole, Deputy Associate Director, (202) 452–2618, Rhoger H Pugh, Assistant Director, (202) 728–5883, Stanley B. Rediger, Supervisory Financial Analyst (202) 452–2629, or Virginia M. Gibbs, Supervisory Financial Analyst, (202) 452–2521, Division of Banking Supervision and Regulation; or Gregory A. Baer, Senior Attorney (202) 452–3236, Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

Federal Deposit Insurance Corporation (FDIC)

Robert F. Miailovich, Associate Director, (202) 898–6918, James D. Leitner, Examination Specialist, (202) 898–6790, Division of Supervision; or Walter P. Doyle, Counsel, (202) 898–3682, Legal Division; Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Office of Thrift Supervision (OTS)

Robert Fishman, Senior Program Manager, Credit Risk, Supervision Policy, (202) 906–5672; Deirdre G. Kvartunas, Policy Analyst, Supervision Policy, (202) 906–7933; Ellen J. Sazzman, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office, (202) 906–7133; Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. 3331 *et seq.*, directs each Federal banking agency to publish appraisal regulations for federally related transactions within its jurisdiction. The purpose of the legislation is to protect federal financial and public policy interests in real estate related transactions by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, and by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. See 12 U.S.C. 3331.

Section 1121(4) of FIRREA, 12 U.S.C. 3350(4), defines a federally related transaction as a real estate-related financial transaction that is regulated or engaged in by a federal financial institutions regulatory agency and requires the services of an appraiser. A real estate-related financial transaction is defined as any transaction that involves:

(i) The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;

(ii) The refinancing of real property or interests in real property; and

(iii) The use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities. See 12 U.S.C. 3350(5) (FIRREA section 1121(5)).

In their appraisal regulations, the agencies identify categories of real estate-related financial transactions that do not require the services of an appraiser in order to protect federal financial and public policy interests or to satisfy principles of safe and sound banking. These real estate-related financial transactions are not federally related transactions under the statutory and regulatory definitions. Accordingly, they are subject to neither Title XI of FIRREA nor those provisions of the agencies' regulations governing appraisals.

In December 1992, Congress confirmed that the agencies may set a threshold level below which the services of state certified or licensed appraisers are not required in connection with federally related transactions if the agencies determine in writing that the threshold does not represent a threat to the safety and soundness of financial institutions. See Housing and Community Development Act of 1992, Public Law 102–550, section 954 (amending 12 U.S.C. 3341).

The agencies jointly published a proposed rule to amend their appraisal regulations on June 4, 1993. See 58 FR

31878. The agencies published a notice of the availability of supplemental information concerning the proposed rule and invited further comments on November 10, 1993. See 58 FR 59688.

The agencies are issuing this joint final rule under their authority to issue rules to implement Title XI of FIRREA and each agency's authority to prescribe rules and regulations to carry out its responsibility to ensure that the institutions under its supervision conduct their activities in accordance with safe and sound banking principles. This final rule is intended to protect federal financial and public policy interests and the safety and soundness of financial institutions, while reducing duplication, costs and regulatory burden.

II. Comments on the Proposed Rule

A. Overview of Comments

Collectively, the agencies received over 19,000 comment letters on the proposed rule. In response to the June 4th Notice of Proposed Rulemaking, the agencies received comment letters from appraisers, bankers, and others as shown in Table A. Comment letters received in response to the November 10th Notice of Supplemental Information were distributed as shown in Table B.

TABLE A.—DISTRIBUTION OF COMMENTS RECEIVED IN RESPONSE TO JUNE 4, 1993 PROPOSED RULE

Agency	Letters from appraisers	Letters from bankers	Letters from others	Total
OCC	1660	161	168	1989
Board	1608	259	276	2143
FDIC	1574	376	149	2099
OTS	1298	40 (14 thrifts)	134	1472

TABLE B.—DISTRIBUTION OF COMMENTS RECEIVED IN RESPONSE TO NOVEMBER 10, 1993 NOTICE OF SUPPLEMENTAL INFORMATION

Agency	Letters from appraisers	Letters from bankers	Letters from others	Total
OCC	1878	659	242	2779
Board	1994	519	528	3041
FDIC	1818	1142	467	3427
OTS	1644	57 (22 thrifts)	502	2203

The agencies have reviewed and considered all comments concerning the proposed rule. The agencies discuss general comments immediately below. Responses to the agencies' specific requests for comment and comments concerning specific amendments to the appraisal regulation are discussed in the section-by-section analysis.

B. General Comments on the Proposed Rule

Regulated institutions generally endorsed the proposed changes to the appraisal regulations, though a small number of savings associations, banks, and other commenters opposed changing the regulation. Appraisers almost unanimously opposed changing the threshold, and a large number of appraisers opposed the business loan exemption. However, appraisers commented favorably on other parts of the proposed rule.

A large number of appraisers commented that the proposed changes would lead to abuses that caused savings associations to fail in the mid-to-late 1980s and that the changes would violate the intent of Congress. In the experience of the agencies, and in the opinion of studies conducted on the failures of the 1980s, abuses were related to real estate acquisition or development projects and larger loans. The regulations issued today continue to require appraisals for these transactions. Moreover, the regulations fully comply with the intent of Congress by continuing to protect federal financial and public policy interests in real estate-related financial transactions as well as the safety and soundness of financial institutions.

Regulated institutions and appraisers have over three years experience with the appraisal regulations and have urged changes in the regulations to improve credit availability and reduce duplication, costs, and regulatory burden. Some commenters, focusing on the proposed threshold, opposed changing the regulations because they believed that additional time was needed to study the effect of the existing regulations. Delaying the issuance of the final rule would deny regulated institutions, appraisers, and borrowers the benefits of these changes. To the extent that subsequent events demonstrate that additional changes are needed, the agencies can further amend the regulations.

One appraisal organization suggested that several of the proposed exemptions should be replaced with guidelines regarding when to obtain Title XI appraisals. Because regulated institutions and appraisers can become liable for substantial penalties for violating the regulation, the agencies believe that it benefits regulated institutions, appraisers, and the public for the agencies to identify categories of exempt transactions in the regulation. However, the agencies intend to provide supplemental information about the appraisal and evaluation practices of regulated institutions in guidance.

Some commenters stated that they were denied an opportunity to comment on the supplemental information identified in the November 10th notice because the materials were available only in Washington, DC, and the comment period was 30 days. The agencies believe that the public procedures on the proposed amendments to the appraisal regulations fully complied with the requirements of the Administrative Procedure Act and accorded the public a full opportunity to participate in the rulemaking.

The November 10th notice explained that the supplemental materials were available from each of the agencies. In accordance with established procedures, all agencies mailed copies of those materials to any person requesting them, as well as having the documents available for review at each agency

The agencies also believe the 30-day comment period was appropriate for the second comment period on the proposed amendments. The notice of supplemental information requested comment on materials that dealt almost exclusively with the appraisal threshold. As shown in Table B above, more than 11,000 comment letters were received in response to the November 10th notice.

III. Section-by-Section Analysis

§ ___.2 Definitions.

(d) Business Loan

The agencies are adopting the proposed definition of "business loan" as a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship (including an individual engaged in farming), or other business entity. The definition is used in connection with the exemption for business loans of $1 million or less that are not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment.

Commenters suggested that the agencies amend the definition of business loan to include loans to individuals for business purposes and to permit use of the exemption when individuals lease real estate to a related business. Loans to individuals are included in the definition of business loan as loans to sole proprietorships and other business entities. This exemption does not apply to loans to individuals that are consumer or personal loans. Therefore, the agencies do not believe that it is necessary to amend the definition.

(h) Real Estate or Real Property

The Board is adding a definition of "real estate" and "real property" to § 225.62 of its regulation. The Board proposed this amendment to incorporate the definition of real estate and real property employed by the other agencies. That definition specifically excludes mineral rights, timber rights, growing crops, water rights, and similar interests.

Title XI of FIRREA does not define "real estate" or "real property" nor does the context in which these terms are used suggest that the terms are intended to have different technical meanings. See 55 FR 27762 (July 5, 1990).

The Board used "real property" and "real estate" interchangeably throughout its appraisal rule to mean interests in an identified parcel or tract of land and improvements. However, the Board did not intend these terms to include mineral rights, timber rights, or growing crops when they are considered separately from the parcel or tract of land. Valuation of such interests generally requires the services of a professional other than a real estate appraiser.

To clarify this distinction, the Board has amended its regulation to define "real property" and "real estate" for purposes of the appraisal regulation as an identified parcel or tract of land, including improvements, easements, rights of way, undivided or future interests and similar rights in a tract of land, but excluding mineral rights, timber rights, or growing crops.

Few commenters expressed an opinion on this proposed change. Those few commenters who opposed the definition stated that timber and growing crops should not be excluded from the definition of real estate in that the value of such items is tied to the value of the land. Comments opposing this definition were generally from appraisers who perform farm and timber appraisals.

In many states, minerals, timber, and growing crops that have not been severed from the land are considered interests in real estate or real property. Consequently, if mineral rights are collateral for a loan in one of those states, a question arises whether the institution must obtain a real estate appraisal of the parcel or tract of land to which the mineral rights are attached but in which the institution has no interest.

The Board's final rule clarifies that regulated institutions are not required to obtain appraisals of the parcel of land to which mineral rights, or similar severable interests in real estate are attached, if the transaction only involves the severable interest rather than the parcel or tract of land. Where mineral rights, timber rights, or growing crops, *and* the associated parcel or tract of land, are the subject of a real estate-related financial transaction, the services of a licensed or certified appraiser would be required unless the transaction is otherwise exempt.

In addition, the contribution of relevant mineral rights, timber rights, or growing crops should be included when appraising a parcel of land which possesses any of these features. However, valuation of these interests would not be required if they are not part of the transaction or if they are not relevant to the analyses which the appraiser needs to perform to arrive at an estimate of value for the parcel or tract of land.

§ ___.3(a) Appraisals required

(1) Threshold

The agencies proposed an increase from $100,000 to $250,000 in the threshold at or below which a Title XI appraisal is not required, and specifically asked commenters whether a $250,000 or some other threshold would be appropriate. In addition, the agencies requested information on loss experience of depository institutions for loans greater than $250,000 and loans of $250,000 or less. On November 10, 1993, the agencies made available supplemental information on the proposed rule and extended the comment period for 30 days in order to allow commenters to consider and comment on the information. The supplemental information related primarily to the proposed increase in the threshold.

A majority of the commenters addressed the threshold issue. Almost all of the commenters opposed to the increase were appraisers, while almost all of the commenters in favor of the increase were depository institutions.

Most of those opposed stated as the basis for their opposition that an increase in the threshold would cause substantial losses for depository institutions, and thereby for the deposit insurance funds. To support this view, commenters generally cited the thrift failures of the 1980s and asserted that an increase in the threshold would lead to the same result.

A total of 74 comment letters provided data on loss experience. The institutions providing the data varied in size, and included large regional multi-bank holding companies, as well as small banks. This data is discussed below.

For the reasons set forth below, the agencies have decided to raise the threshold from $100,000 to $250,000. Such an increase will benefit consumers and lenders and will not threaten the safety and soundness of financial institutions, particularly as an evaluation will be required for all loans exempt under the threshold.

Benefits for Consumers and Lenders of an Increase in the Threshold. Many commenters stated that an increase in the threshold would benefit consumers and lenders. Numerous bank and thrift commenters pointed to the cost and time needed in order to obtain an appraisal as an impediment to lending. The appraisal was cited by several commenters as the most important factor causing delay in small business lending, and the cost of the appraisal was described as high, especially for commercial borrowers. Commenters

reported that appraisal fees for commercial transactions between $100,000 and $250,000 could cost 5 percent of the loan amount to the borrower. Banks and thrifts also commented that increasing the threshold would reduce regulatory burden associated with making loans below $250,000. Many appraisers, however, commented that appraisal costs have remained relatively steady.

Many appraisers also stated that appraisals by certified or licensed appraisers are necessary to protect the consumer. The agencies believe that this assertion mischaracterizes the role of the institution's determination of collateral value in a typical consumer transaction. The regulated institution obtains the appraisal or evaluation as part of its loan underwriting process in order to make certain that it is adequately secured. Any appraisal ordered by a financial institution is not designed, and generally comes too late, to assist the consumer in negotiating a contract price. In a purchase of real estate, the purchase offer is generally made before financing is sought and the financial institution orders an appraisal. Therefore, the appraisal represents an after-the-fact cost. Further, even when a Title XI appraisal is not required, nothing prevents a consumer from independently obtaining an appraisal by a licensed or certified appraiser for the consumer's own use in the negotiating process. Moreover, the agencies' rules require an institution to obtain an appropriate evaluation of the real property collateral for transactions below the threshold, and that evaluation would be available to the consumer.

The agencies believe that many of the concerns about consumer protection are addressed under statutory and regulatory programs other than Title XI of FIRREA, which focuses on bank and thrift safety and soundness.

The Real Estate Settlement Procedures Act (RESPA) establishes procedures for lenders to disclose to consumers the charges for a variety of settlement services, including appraisals and evaluations. To comply with the letter and intent of the Board's Regulation B (implementing the Equal Credit Opportunity Act), regulated institutions must either disclose to the borrower the right to receive a copy of the documents the lender uses to value the collateral in an application for a loan secured by a dwelling, regardless of whether the documents constitute a Title XI appraisal or evaluation, or, as a matter of course provide the borrower with the appraisal or evaluation. Thus, to the extent that a borrower benefits from knowing the value the lender places on the property the borrower has contracted to purchase or pledged as collateral, the borrower should be able to benefit from that knowledge whether it is in the form of a Title XI appraisal or an evaluation.

Furthermore, although such a disclosure is not required by RESPA, Regulation B, or Title XI, the agencies believe that a regulated institution should advise consumers whether the institution intends to have a licensed or certified appraiser prepare the estimate of value. This should be done early enough in the loan application process to allow the consumer to make an informed decision that the intended method of estimating the real estate's value meets his or her needs.

Effects on Safety and Soundness of Financial Institutions. The agencies have concluded that a $250,000 threshold would not threaten the safety and soundness of financial institutions.

Benefits to Safety and Soundness. The agencies believe that the increase in the threshold will have affirmative benefits for safety and soundness. A decrease in appraisal requirements should relieve regulatory burden for banks and thrifts and thereby improve their competitiveness with non-regulated lenders. Appraisal costs represent a significant expense for certain small loans, making such lending less attractive to a potential borrower or less profitable for the lender. Numerous comments from lenders supported this conclusion. The problem is particularly troubling for lenders in small towns, who must pay a premium for a licensed or certified appraiser to visit the town. A GAO survey of bankers in connection with a study of small business lending revealed that the minimum cost to perform the necessary appraisal on commercial real estate property used as collateral for small business loans was approximately $3,000.[1] See GAO Report GGD–93–121, Bank Regulation: Regulatory Impediments to Small Business Lending Should Be Removed (September 1993).

Experience with the $100,000 Threshold. The Board has had a $100,000 threshold in place since August 1990, and the other agencies have had a $100,000 threshold since March or April 1992. The experience of the agencies has demonstrated that the $100,000 threshold has posed no risk to safety and soundness.

A survey by each of the agencies of its senior examination staff indicates that over a period of many years, with a few possible exceptions,[2] no bank or thrift has failed or suffered significant losses as a result of appraisal problems with loans under $100,000 or even up to $250,000. Each of the regional representatives of the Board, the FDIC, and the OCC supported adoption of the $250,000 threshold as consistent with safety and soundness. Representatives of the OTS suggested that the threshold should only apply to healthier thrifts. As described below, this concern has been addressed by the agencies in the final regulation.

The $250,000 threshold was also supported by the Conference of State Bank Supervisors (CSBS), the professional association for state officials who supervise and regulate state-chartered commercial and savings banks. The CSBS concluded that the increased threshold would reduce unnecessary costs and would not represent a threat to the safety and soundness of financial institutions.

Numerous bank and thrift commenters also reported that their experience with the $100,000 threshold had been good. Moreover, commenters opposed to the increased threshold did not identify institutions that had failed or suffered significant losses because of the existence of the $100,000 threshold.

The agencies believe that low loss experience with a $100,000 threshold provides justification for an increase in the threshold to $250,000.

Data Indicate Similarities Between the $100,000 Threshold and $250,000 Threshold. A substantial body of evidence provides strong reasons to believe that exempting loans between $100,000 and $250,000 from the Title XI appraisal requirement will not present materially greater risk than the prior exemption for loans under $100,000.

Data from the commercial bank Consolidated Reports of Condition and Income (Call Reports) for year-end 1992 show that approximately 53 percent of the dollar volume of all real estate-secured loans of all sizes in the commercial banking industry are loans secured by 1-to-4 family residential

[1] The GAO noted that a survey performed by the American Bankers Association reflected a lower average cost.

[2] The Central Region of the OTS was the only OTS respondent to identify failures attributable to inadequate appraisal practices. The Central Region identified fewer than six failures over the previous twelve years where appraisal issues for loans under $250,000 were a major contributing factor to a thrift's failure. The Central Region noted that in those failures where inadequate appraisal practices were a problem, other areas of loan underwriting were usually found to be equally deficient.

One OCC survey respondent reported that one institution had failed because of residential and commercial loans between $100,000 and $500,000. The respondent noted that the problems occurred before 1987, when the OCC issued guidelines that would have prevented the institution's real estate evaluation problems.

properties. Data from the Thrift Financial Reports (TFR) for year-end 1992 show that the number is 77 percent in the thrift industry.

Data on loan size are not reported for residential loans on the Call Report or TFR. However, information from the National Association of Realtors, the Census Bureau, and the Department of Housing and Urban Development (HUD) indicate that approximately 29 percent of the dollar volume of 1-to-4 family real estate loans to purchase new homes, and 33 percent of the dollar volume of loans to finance the purchase of existing homes, fell below the prior $100,000 threshold. Approximately 56 percent of the dollar volume for new 1-to-4 family homes and 49 percent of the dollar volume for existing homes fell between $100,000 and $250,000. In sum, 85 percent of the dollar volume of mortgages financing new homes and 82 percent of the volume of mortgages financing purchases of existing homes will fall below the $250,000 threshold.

Thus, increasing the threshold from $100,000 to $250,000 is likely to more than double the amount of lending for 1-to-4 family residential real estate loans exempt from the Title XI appraisal requirement. Inasmuch as a solid majority of total real estate lending is composed of 1-to-4 family loans, the agencies believe that 1-to-4 family loans will be the largest block of loans exempted by the increase in the threshold.

The increase in 1-to-4 family residential real estate loans exempted by the $250,000 threshold will not affect safety and soundness, as these loans are traditionally the safest in a lending institution's portfolio. In 1992, the net loan charge-off rate[3] for all commercial bank loans secured by 1-to-4 family real estate was 0.23 percent; for thrifts, the net charge-off rate for loans secured by 1-to-4 family residential real estate was 0.22 percent. Low loss rates for 1-to-4 family residential real estate loans predate enactment of Title XI; for example, in 1991, when the great majority of 1-to-4 family loans had been originated prior to implementation of Title XI in August 1990, the charge-off rate for 1-to-4 family loans was 0.20 percent for commercial banks and 0.11 percent for thrifts. See FDIC Quarterly Banking Profile (4th Quarter 1991) and Thrift Financial Reports (1991).

Beginning June 30, 1993, commercial banks and thrifts are required to report annually the number and dollar amount of non-farm non-residential real estate loans, which basically constitute business loans secured by real estate. They are also required to report the number and dollar amount of all agricultural loans.

The data from the June 1993 Call Reports show that 12 percent of the dollar volume of real estate-secured business loans was below the $100,000 threshold. Also by dollar volume, only 11 percent of outstanding real estate-secured business loans fell between $100,000 and $250,000. For thrifts, the TFRs show that 10 percent of the dollar volume of all real-estate secured business loans was below $100,000, and 9 percent between $100,000 and $250,000.

These findings are consistent with data compiled in the 1989 National Survey of Small Business Finances, which surveyed firms with fewer than 500 employees. See National Survey of Small Business Finances (1989) (cosponsored by the Federal Reserve Board and Small Business Administration). According to that survey, of the commercial mortgages to small businesses by depository institutions, 6 percent of the dollar volume of these loans was in loans of less than $100,000, and 12 percent was in loans between $100,000 and $250,000.

As noted in the regional examiner surveys, the $100,000 threshold has not resulted in significant losses, even though that threshold captures 12 percent of the dollar volume of small business loans. The agencies do not believe that an increase in the threshold that exempts another 11 percent of business loans will significantly increase such losses.

Call Report data also show that 63 percent of the dollar volume of agricultural real estate loans fell below the $100,000 threshold, and that 15 percent fell between $100,000 and $250,000. For thrifts, TFR data show that 46 percent of farm loans fell below $100,000, and 36 percent between $100,000 and $250,000. Farm loans represented approximately one-half of one percent (.58%) of non-residential mortgages held by thrifts. Thus, in the area of farm loans, only a relatively small amount of additional loans will be exempted by the raised threshold.

Although the increase in the threshold will increase the dollar volume of exempt transactions, the agencies believe that the quality of loans and lending practices of banks and thrifts will not change for these transactions. Moreover, an institution must obtain evaluations for these exempt transactions when it does not obtain appraisals.

In addition, there is evidence that the loss rates on loans below the $250,000 threshold will be low. For 1992, the commercial bank loss rate for farm loans was .23 percent (approximately the same loss rate as for 1-to-4 family loans). These loss rates on residential and farm loans are significantly lower than the loss rates for the types of real estate loans that are much less likely to fall below the $250,000 threshold—construction loans (3.54% loss rate for commercial banks) and multifamily loans (1.68% loss rate for commercial banks). Loss rates for non-farm non-residential real estate loans at commercial banks were 1.55 percent, higher than residential or farm loans, but still below the loss rates experienced for loans for construction or multifamily housing.

Finally, in addition to the relatively lower risk of the portfolio of real estate related loans between $100,000 and $250,000, the fact remains that the dollar amount of each credit is relatively small. In the experience of the agencies, banks and thrifts generally do not fail because of real estate-related financial transactions under $250,000. It is generally large construction and development loans that have created safety and soundness problems. For example, much of the thrift losses of the 1980s were caused by losses in large, speculative real estate development projects, such as construction of offices, condominiums, and apartments. See, e.g., GAO Report AFMD-89–62, Thrift Failures: Costly Failures Resulted from Regulatory Violations and Unsafe Practices. Such projects generally involve loans in much greater amounts than $250,000. The experience of the agencies continues to be that larger development and construction loans are most likely to cause significant losses.

Although many commenters suggested that raising the threshold would result in losses similar to those of the thrift failures of the 1980s, they did not offer analysis to support those statements. The agencies do not believe that inadequate appraisals on loans under $250,000 were a significant cause of those failures.

Additional Protections. Significant protections exist so that loans under $250,000 will not create a safety and soundness problem once the $250,000 threshold is in place.

First, each agency will, during each required full-scope, on-site examination, analyze the prudence of each institution's credit underwriting practices, including appraisal and evaluation practices, as appropriate to

[3] The net loan charge-off rate is determined by taking the dollar amount of gross losses, subtracting the amount recovered, and dividing the result by the average of outstanding loans.

the institution's size and nature of its real estate-related activities. If an institution is doing a poor job of evaluating real estate for transactions under $250,000, then the appropriate agency may order the institution to obtain appraisals for certain loans or for all loans above a certain amount that are not subject to another exemption.[4]

Second, even though a bank or thrift will not generally be required to obtain a Title XI appraisal for real estate-secured loans under $250,000, the institution must determine the value of the real estate before making the loan. Under the appraisal regulations, banks and thrifts must support any transaction below the threshold with an evaluation that is consistent with the agencies' guidelines. Evaluations will be performed by persons who are capable of rendering an appropriate estimate of value of real estate as a result of their real estate-related experience or training.

As several commenters noted, a $250,000 threshold will have its greatest effect in smaller communities where property values are lower. However, as many community bank commenters pointed out, local lenders in small communities tend to be extremely knowledgeable of property values. Also, collateral for loans of this size do not typically represent complex problems of analysis or valuation.

Third, a $250,000 threshold does not prevent the use of appraisals when needed. Banks and thrifts may obtain appraisals prepared by licensed or certified appraisers whenever the institutions believe it is prudent, and customer may independently obtain such appraisals. If, as some commenters contend, history demonstrates that such appraisals are important to the decision to lend and the failure to obtain such an appraisal will lead to higher loss rates, then banks and thrifts would presumably have a strong incentive to use appraisals. As several commenters noted, institutions will obtain appraisals when their underwriting criteria warrant one, regardless of whether regulations require it.

Fourth, in many cases involving residential real estate, banks and thrifts will be required to obtain the equivalent of a Title XI appraisal in order to make the loan eligible for sale in the secondary market. According to HUD data, in 1992, secondary mortgage market purchasers, such as the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), purchased approximately 63 percent of all 1-to-4 family mortgages originated in the United States. In addition to the 63 percent that were purchased by major secondary mortgage market entities, other loans were originated so as to be eligible for sale to such entities. The agencies have concluded that the appraisal requirements of these government sponsored agencies should protect federal financial and public policy interests in the loans that are eligible to be purchased by them. The agencies also believe that compliance with these appraisal requirements will protect the safety and soundness of regulated financial institutions.

Data Submitted by Commenters. The notice of proposed rulemaking asked commenters to submit loan loss data for different categories of real estate-secured loans above and below $250,000. Many depository institution commenters noted that they do not maintain loss data by loan size and that this information is not reasonably accessible. Only a small number of depository institutions submitted such data. The agencies do not believe that this response is sufficiently large to base any conclusions about industry-wide conditions. Nonetheless, the agencies note that the information provided by commenters is consistent with the low loss rates for real estate lending indicated by other sources. The responses that the agencies received are summarized in the following table.

Real estate-secured loans	Size of loans	Number of loans	Outstanding principal amount of loans [1] (12/31/92)	Loss on loans [1] (annual net charge-offs) [2] (12/31/92)	Loss rate [3] (calculated) (percent)
Loans secured by 1-to-4 family residential real estate.	Loans greater than $250,000	7,151	3,169,918	4,129	0.13
Loans secured by commercial real estate.	Loans of $250,000 or less	524,137	22,240,821	23,773	.11
	Loans greater than $250,000	25,344	28,315,961	372,706	1.32
	Loans of $250,000 or less	67,469	5,131,866	36,751	0.72

[1] Dollars rounded to thousands.
[2] Annual net charge-offs are determined by taking the dollar amount of gross losses and subtracting the amount recovered.
[3] The agencies have calculated the loss rate for each of the categories of real estate-secured loans about which the agencies requested data by dividing total annual net charge-offs by the total outstanding principal balance.

Additional Comments on the $250,000 Threshold—OMB Study. Several commenters opposing an increase in the threshold pointed to an August 1992 study by the Office of Management and Budget (OMB) entitled Report to Congress: De Minimis Levels for Commercial Real Estate Appraisals. The OMB study did not oppose an increase in the threshold level but instead stated, "OMB does not recommend—at this time—a *de minimis* level higher than $100,000. . . ." OMB study at i.

The agencies believe that the major concerns identified by the OMB in urging delay have been addressed with the passage of time. Most importantly, each of the agencies now has an additional year's experience with the $100,000 threshold. Furthermore, OMB noted that FIRREA's appraisal requirements had not been implemented in all states, but such implementation has now occurred.

Rulemaking Process. Several commenters stated that the agencies had failed to justify increasing the threshold from $100,000 to $250,000 because the agencies had not produced a definitive study showing that doing so would not increase loss rates

[4] As noted below, the agencies may require an appraisal for loans between $100,000 and $250,000 (not otherwise subject to an exemption) when an institution is in troubled condition, and that troubled condition is attributable to underwriting problems in the institution's real estate loan portfolio.

Congress granted the agencies explicit authority to establish a threshold consistent with safety and soundness. The delegation of authority was broad, and no requirement for quantitative analysis was included. Nor is it reasonably feasible for the agencies to conduct a definitive quantitative analysis that isolates the effect of obtaining Title XI appraisals on institutions' losses on real estate-secured loans given the many variables, including changing market conditions and varying loan underwriting practices, that may affect institutions' ultimate loss experience. For the same reason, the agencies did not conduct a random sampling of the experience of financial institutions, as suggested by one commenter. This does not mean, however, that the final rule fails to rely on objective data. Moreover, that data was analyzed in light of the agencies' experience and expertise.

As part of this rulemaking, the agencies reviewed the data the agencies currently collect from financial institutions and sought out data that would enable the agencies to analyze the effect of the threshold on regulated institutions. Consistent with statutory requirements, the agencies have carefully considered the effect of raising the threshold and determined that a $250,000 threshold level does not represent a threat to the safety and soundness of financial institutions based on the agencies' judgment, expertise, and experience. In making this determination, the agencies have, as described above, analyzed the available data, the comments received during the rulemaking, and relevant work of other governmental agencies.

Appraiser Employment. Many commenters from the appraisal industry objected to the proposed increase in the threshold on the grounds that it would decrease their business and employment in the appraisal industry.

In the event that an appraisal is not required because the transaction falls below $250,000, the appraisal regulation nonetheless requires that an evaluation of the property be conducted. The agencies' appraisal rules do not impede licensed and certified appraisers from performing those evaluations.

GAO Study. Several commenters suggested that the agencies delay action on any rulemaking pending completion of General Accounting Office (GAO) studies of the threshold scheduled for completion in April 1994 and October 1995. Congress delegated authority to the agencies to establish a threshold in the same legislation that directed the GAO to conduct two studies of the appraisal threshold. Congress clearly did not require the agencies to withhold action on the threshold pending completion of the GAO studies; nor did it make agency action contingent on the outcome of the GAO studies or any other studies. Also, in the Interagency Policy Statement on Credit Availability issued March 10, 1993, the agencies identified a need to reexamine their existing appraisal rules to make certain that thresholds below which formal appraisals are not needed are reasonable. Therefore, the agencies believe that it is appropriate to proceed with the rulemaking. The agencies are cooperating with the GAO by providing information that it may use in preparing its studies.

Private Mortgage Insurance Industry Experience. A trade association representing the private mortgage insurance industry opposed increasing the threshold level to $250,000, citing substantial losses on loans under $100,000. However, it also noted that for loans originated in 1984, loans above $250,000 had a relative claim rate more than 50 percent higher than the claim rate for loans originated under $100,000. Information provided by this commenter also showed that the relative claim rates on loans below $100,000 and loans between $100,000 and $250,000 were close for most years, while the relative claim rate for loans above $250,000 exceeded the claim rates for loans below $250,000 in all years except one. The commenter did not provide actual claim rates nor dollar amounts of claims. Nor did the commenter disclose the average loan-to-value ratios for those mortgages, a factor that could affect the loss experience.

Although the trade association stated its belief that a significant amount of the claims experienced by its members were related to inadequate appraisals, bank and thrift commenters stated that losses on foreclosed properties were more directly related to deterioration in the local real estate market, damage to the property, or actions or inaction by the borrower.

Application of $100,000 Threshold to Certain Troubled Institutions. As described in more detail below, the agencies are adopting substantially as proposed a separate amendment stating that each agency continues to reserve the right to require a regulated institution to obtain a Title XI appraisal whenever the agency believes that an appraisal is necessary to address safety and soundness concerns. This authority may involve the agency requiring an institution to obtain an appraisal for a particular extension of credit or an entire group of credits.

Whether an institution will be required, pursuant to this provision or existing safety and soundness authority, to obtain an individual appraisal or group of appraisals may depend on the condition of that institution. If an institution's troubled condition is attributable to real estate loan underwriting problems, then the appropriate agency may require appraisals for all new real estate-related transactions of more than $100,000 that are not subject to an exemption.

Since thrift industry assets are concentrated in real estate loans, OTS believes that problem thrifts or thrifts in troubled condition [5] generally will have real estate-related asset quality problems. As a matter of policy, OTS intends to require thrifts in troubled condition to adhere to a $100,000 threshold.

Reassessment of Threshold. Finally, just as the agencies have reviewed their experience with the $100,000 threshold in determining whether a higher (or lower) threshold was appropriate, so too will the agencies review their experience with the $250,000 threshold. If the agencies should determine that the increased threshold is causing safety and soundness problems, then the agencies will reassess that threshold.

(2) The "Abundance of Caution" Exemption

The agencies are amending their regulations to clarify and expand the scope of the exemption for real estate liens taken in an "abundance of caution." Under the amended rule, regulated institutions will be able to apply the abundance of caution exemption to a broader range of transactions in which real estate is taken as additional collateral for an extension of credit that is well supported by income or other collateral of the borrower.

Prior to adoption of this amendment, the abundance of caution exemption was available only for transactions in which a lien on real estate had been taken as collateral solely through an abundance of caution and where the terms of the transaction as a consequence had not been made more

[5] A "problem" association is defined as an association that: (1) Has a composite MACRO rating of 4 or 5; (2) is undercapitalized under prompt corrective action standards; (3) is subject to a capital directive or a cease and desist order, a consent order, or a formal written agreement, relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the OTS; or (4) has been notified in writing by the OTS that is has been designated a problem association or an association in troubled condition. (See Regulatory Bulletin 27a, Executive Compensation.)

favorable than they would have been in the absence of a lien. In the agencies' experience, however, this standard was being interpreted too narrowly. As a result, regulated institutions obtained appraisals even though they were unnecessary to protect federal financial and public policy interests in the transaction or bank and thrift safety and soundness. Further, a transaction would not qualify for the exemption if the regulated institution made the terms more favorable to the borrower because of the real estate collateral. Therefore, bankers believed they were unable to use this exemption when common business practices would call for a lower interest rate on a secured loan than an unsecured loan.

To qualify for the amended exemption, the regulated institution's decision to enter into the transaction must be well supported by the borrower's income or collateral other than real estate. The following examples from the proposed rule help to explain how this standard is applied.

Example 1: A business with an established cash flow seeks a loan from a regulated institution to purchase an adjacent property for expansion. As a common business practice, the institution takes a lien against real estate whenever available for greater comfort. However, the institution's analysis determines that the current income from the business and personal property available as collateral support the decision to extend credit without knowing the real estate's market value. During loan negotiations, the institution offers to make the loan on slightly better terms for the borrower if it receives a lien on real estate. The borrower accepts the offer and provides the real estate as additional collateral.

The regulated institution may reasonably conclude that the lien on the real estate was taken in an abundance of caution because the current income from the business and personal property taken as collateral support the decision to extend credit. Therefore, no appraisal would be required.

Example 2: The owner of a shop seeks a term loan from a regulated institution for modernization of its facilities. The institution determines that other sources of repayment and collateral do not sufficiently support the decision to extend credit without taking a lien on the real estate and knowing the real estate's market value. Therefore, in order to extend credit to the borrower prudently, the institution needs an appraisal.

The regulated institution should conclude that the real estate lien has *not* been taken in an abundance of caution because the other sources of repayment and collateral do not support the decision to extend credit without knowing the real estate's market value. This transaction would not qualify for the abundance of caution exemption.

Regulated institutions generally supported the proposed amendment. Some commenters representing appraisers agreed that the abundance of caution exemption had been too narrowly interpreted and supported the proposal to extend the scope of the exemption.

Other appraisers commented that the agencies should require an appraisal, limited scope appraisal, or evaluation any time a regulated institution takes real estate as collateral. Some regulated institutions noted that the prior rule caused them to forgo liens on real estate collateral in order to avoid the expense of an appraisal, thus potentially increasing their exposure unnecessarily.

The agencies are not requiring appraisals for these transactions because an estimate of the real estate collateral's value generally would not assist the regulated institution to make its lending decision. Therefore, an appraisal generally would not further the purposes of Title XI of FIRREA nor significantly improve the safety and soundness of financial institutions.

(3) Loans Not Secured by Real Estate

The agencies are adopting a uniform exemption for transactions that are not secured by real estate. The exemption makes clear that a regulated institution is not required to obtain a Title XI real estate appraisal in connection with a loan used to acquire or invest in real estate if the institution does not take a security interest in real estate.

The prior appraisal regulations of the OCC, FDIC and OTS exempted these transactions, and the amendment does not result in any substantive change in regulatory requirements for these agencies. The amendment eliminates minor differences between the text of the rules adopted by the OCC and OTS and the text of the FDIC's rule. Prior to adoption of the amendment, the Board's appraisal regulation did not specifically exempt these transactions.

Although a few appraisers stated that Title XI appraisals should be obtained for these transactions, other commenters, including appraisers, supported this exemption. Several commenters stated that Title XI was never intended to reach transactions that were not secured by real estate.

In transactions covered by this exemption, the value of the real estate has no direct effect on the regulated institution's decision to extend credit because the institution has no security interest in the real estate. The agencies conclude that federal financial and public policy interests would not be served by requiring lenders and borrowers to incur the cost of obtaining Title XI appraisals in connection with these transactions.

(4) Liens for Purposes Other Than the Real Estate's Value

The agencies are adopting a new exemption for transactions in which a regulated institution takes a lien on real estate for a purpose other than the value of the real estate. This amendment will permit regulated institutions to take liens against real estate to protect rights to, or control over, collateral other than the real estate without obtaining an appraisal.

Regulated institutions frequently take real estate liens to protect legal rights to other collateral and not because of the value of the real estate as an individual asset. For example, in lending associated with logging operations, a regulated institution typically takes a lien against the real estate upon which the timber stands to ensure its access to the timber in the event of default. Similarly, where the collateral for a loan is a business or manufacturing facility, a regulated institution may take a lien against the land and improvements in order to be able to sell the entire business or facility as a going concern if the borrower defaults.

A Title XI appraisal contains an opinion of the market value of real estate. When the market value of the real estate as an individual asset is not needed to support the regulated institution's decision to lend, no purpose is served by requiring the institution to obtain a Title XI appraisal.

Commenters generally favored adopting an exemption addressing these circumstances, agreeing that Title XI appraisals did not enhance the safety and soundness of these transactions because the lenders were basing their decision to extend credit on the value of collateral other than real estate.

Some commenters suggested that this exemption could be combined with the abundance of caution exemption. Although there are situations in which the two exemptions overlap, the agencies believe that both exemptions are necessary because there will be transactions that qualify for one exemption, but not the other.

(5) Real Estate-Secured Business Loans of $1 Million or Less

The agencies are adopting a new exemption for business loans with a value of $1 million or less where the sale of, or rental income derived from, real estate is not the primary source of repayment. The agencies also are adopting the proposed definition of "business loan" as a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship (including an individual engaged in farming), or other business entity. This provision allows a regulated institution to take real estate as security in connection with a loan to a small- or medium-sized business when the primary source of repayment for the

loan does not depend on sale of, or rental income derived from, real estate.

The final rule differs in two respects from the proposed rule. First, the exemption is available for business loans of $1 million or less. The proposed rule would have exempted business loans less than $1 million. The change was adopted to reduce confusion by making this provision consistent with the way other limits are treated in the rule. The change affects the scope of the exemption very slightly.

Second, under the final rule, the exemption is available for business loans that do not depend on real estate sales and rental income as the primary source of repayment for the loan. The proposed rule would have exempted business loans that were not dependent on sale of, or rental income derived from, the real estate taken as collateral as the primary source of repayment. The change narrows the scope of the exemption by preventing a borrower from qualifying for the exemption by showing that the primary source of repayment for the loan is income from real estate sales and rentals involving real estate other than the real estate in which the lender has a security interest. This means, for example, that a real estate developer cannot qualify for the exemption by showing that a real estate-secured loan for one project, in which the lender has taken a security interest, will be repaid with income from real estate sales or rentals from other real estate projects, in which the lender does not have a security interest.

The following examples illustrate the application of this exemption.

Example 1: The owner of a shop seeks a term loan for $1 million or less from a regulated institution. The loan will be repaid with income derived from operations. The regulated institution would not extend credit to the borrower without a lien against the real estate.

However, because the loan is for $1 million or less and the sale of, or rental income derived from, real estate is not the primary source of repayment, a Title XI appraisal would not be required for this transaction under this exemption.

Example 2: A company acquires an adjacent parcel of land to construct an office building. The company seeks a loan of $1 million or less from a regulated institution to provide construction financing and a permanent mortgage for the office building. The company intends to lease part of the building and will use the rental income to help repay the loan. The lender estimates that operations of the business would contribute approximately 45 percent of the funds necessary to repay the loan and rental income approximately 55 percent.

The regulated institution should conclude that rental income derived from real estate serves as the primary source of repayment for the loan. Therefore, assuming no other exemption is applicable to the transaction, a Title XI appraisal would be required.

Increased Lending to Small- and Medium-Sized Businesses. In the experience of the agencies, the appraisal requirement may have adversely affected the ability of small- and medium-sized businesses to obtain credit. In particular, there are indications that the cost of an appraisal may impede small- and medium-sized businesses from receiving working capital, operating loans, and other business-related credits that otherwise would be consistent with prudent banking practice.

The majority of financial institutions and financial institution trade associations that responded to the agencies' request for comment on the effect of the business loan exemption on credit availability stated that the proposed exemption would increase credit availability by reducing the cost and time to make real estate-secured business loans. These commenters generally stated that the changes would have the most significant effect on credit availability for small- and medium-sized businesses. Some appraisers also stated that the proposed changes would increase credit availability.

A large number of commenters responding to the specific request for comment thought that the changes would have no effect on credit availability. These commenters included appraisers and appraiser trade associations, a small number of financial institutions, and other commenters. Some of these commenters stated that the ability of financial institutions to earn a reasonable return by making relatively risk-free investments in U.S. government securities was the cause of credit availability problems.

The agencies believe that the final rule may reduce the cost of real estate-secured loans to small- and medium-sized businesses and increase the availability of loans to these borrowers.

Effect on Safety and Soundness. Some commenters stated that this exemption would eliminate the requirement to obtain Title XI appraisals for a large portion of the real estate-secured business loans in their communities. Others stated that this exemption raised safety and soundness concerns because the only tangible collateral for many businesses is real estate. Though real estate may be an important asset of many small- and medium-sized businesses, the agencies have concluded that this exemption for certain business loans that do not rely on real estate as the primary source of repayment will not threaten the safety and soundness of regulated institutions nor pose a threat to federal financial and public policy interests.

Although the agencies are not requiring Title XI appraisals in connection with these business loans, the agencies are requiring regulated institutions to obtain appropriate evaluations of the real estate collateral. The evaluation should provide the institution with sufficient information on the value of the real estate to satisfy principles of safe and sound banking. In addition, during each required full-scope, on-site examination, each agency will analyze the prudence of each institution's credit underwriting practices, including appraisal and evaluation practices, as appropriate to the institution's size and nature of its real estate-related activities.

Shortly after the agencies issued the proposed rule, the GAO completed its report entitled *Regulatory Impediments to Small Business Lending Should Be Removed* (September 1993). In the report's summary, the GAO stated: "Specifically, we believe that real estate appraisal requirements can be safely modified when applied to collateral taken as supplementary support for traditional small business loans. Therefore, we agree with those aspects of the rule changes recently proposed by the banking regulators to expand the exemptions from mandatory appraisals as they pertain to such loans." The GAO noted that the report and its comment on the proposed appraisal regulations were limited "to situations in which real estate collateral is used to support loans to small businesses for such purposes as working capital and equipment purchases." This exemption is intended to reach these loans, as well as loans for other business purposes where sale of, or rental income derived from, real estate is not the primary source of repayment.

The conclusion that exempting these transactions will not threaten the safety and soundness of financial institutions is supported by responses to a 1993 OCC survey of its senior examining staff. The survey asked for information on the effect of the proposed business loan exemption on bank safety and soundness, as well as information on the significance, by loan size, of losses on loans secured by 1-to-4 family residential real estate and other categories of real estate.

Eighteen of the 20 respondents to the OCC survey stated that the proposed exemption for business loans would not threaten the safety and soundness of financial institutions, although some respondents noted that the exemption

could present more serious risks for small financial institutions. Respondents to the survey identified loans above $1 million secured by non-residential real estate as the category of transactions that had the most significant losses attributable to inadequate appraisals, followed by loans secured by non-residential real estate in the ranges $750,000 to $1 million and $500,000 to $750,000.

In general, respondents noted that where real estate serves as only a secondary source of repayment for a business loan, an evaluation of the collateral would be sufficient to address safety and soundness issues. Although the other bank regulatory agencies' surveys did not include the specific questions posed in the OCC survey, the results of the other bank regulatory agencies' surveys also generally support the business loan exemption.

In addition to the survey responses, the data from the 1992 commercial bank Call Reports and savings associations' TFR indicate that the exposure to the banking system from these transactions is limited. All commercial loans secured by non-farm non-residential real estate in the range between $250,000 and $1 million (this includes both non-exempt and exempt transactions) represent less than 4 percent of all loans for commercial banks and less than 3 percent of all loans for savings associations. Furthermore, these loans represent less than 27 percent of commercial loans secured by non-farm non-residential real estate at commercial banks and less than 36 percent of commercial loans secured by such real estate at savings associations. This generally agrees with the National Survey of Small Business Finances (1989), cosponsored by the Federal Reserve Board and Small Business Administration. The results of the survey (adjusted to 1992 dollars) show that 22 percent of all commercial mortgages were for amounts between $250,000 and $1 million.

The agencies requested specific comment on loss experience for real estate-secured business loans. Only a small number of banks and no thrifts submitted the requested data. Although the agencies do not believe the response is large enough to reach conclusions about industry-wide loss experience, the data submitted is consistent with the conclusion that regulated institutions are not suffering high levels of losses in connection with real estate-secured business loans of $1 million or less that do not depend on real estate sales or rental income as the primary source of repayment. The responses that the agencies received are summarized in the following table.

Real estate-secured loans [1]	Number of loans (12/31/92)	Outstanding principal amount of loans [2] (12/31/92)	Loss on loans [2] (annual net charge-offs) [3] (12/31/92)	Loss rate [4] (calculated) (percent)
All real estate-secured business loans	90,410	17,488,561	178,237	1.02
Real estate-secured business loans less than $1 million that are not dependent on the sale of, or rental income derived from, the real estate taken as collateral as the primary source of repayment for the loan	59,595	8,008,422	32,680	0.41

[1] None of the comment letters received by OTS included data on these loans.
[2] Dollars rounded to thousands.
[3] Annual net-charges are determined by taking the dollar amount of gross losses and subtracting the amount recovered.
[4] The agencies have calculated the loss rate for both categories of real estate-secured loans about which the agencies required data by dividing total annual net charge-offs by the total outstanding principal balance.

Limited to Business Loans of $1 Million or Less. The exemption applies only to transactions involving business loans with a value of $1 million or less. Capping the exemption at $1 million serves two purposes. It helps to ensure that the transactions involve small- and medium-sized businesses. It also limits the overall exposure of the banking system to transactions exempt under this provision.

Some commenters stated that a $1 million limit may be too high for small institutions and suggested that the limit be set at a percentage of the institution's capital. Others stated that the exemption should cover business loans of any size.

Regulated institutions typically are subject to capital-based lending limits that restrict the amount of credit they can extend to any one borrower. While a $1 million business loan may be much more significant to a smaller institution, the agencies believe that a second capital-based limit in the appraisal regulation is inappropriate because it can place smaller institutions at a competitive disadvantage to larger institutions. In addition, the agencies regularly examine the lending practices of all regulated institutions and can address problems with individual institutions if they arise. The agencies believe it is appropriate, however, to place a limit on the size of loan that can qualify for this exemption. Many commenters agreed that a $1 million dollar limit was appropriate.

Primary Source of Repayment. Some commenters suggested that the exemption should be available only if the borrower could repay the loan entirely from sources other than sale of, or rental income derived from, real estate. Commenters also suggested specific percentage limits on the contribution of real estate to repayment of the loan ranging from 10 to 50 percent. Other commenters stated that the exemption should allow a regulated institution to determine whether a business loan requires an appraisal, regardless of the contribution of real estate sales or rental income to the borrower's repayment of the loan.

The exemption is intended to improve the ability of small- and medium-sized businesses to obtain real estate-secured loans for business purposes. As the contribution of real estate sales and rentals to the borrower's sources for repaying the loan increases, repayment becomes more dependent on the performance of the real estate market. Therefore, in deciding whether a transaction qualifies for this exemption regulated institutions should be guided by the importance of the real estate-related sources of income to the borrower's repayment of the loan, rather than applying a universal numerical cap. In no case, however, may a business loan qualify for this exemption if real estate-related sources of income contribute more toward repayment of the loan than non-real estate sources of income.

Exempting these business loans will reduce the adverse effects on small- and medium-sized business lending associated with the requirement to obtain a Title XI appraisal. Moreover since repayment of these loans generally

will not depend primarily on the performance of the real estate markets, allowing lenders to make these business loans on the basis of evaluations of the real estate collateral does not threaten the safety and soundness of financial institutions.

Agricultural Lending. The agencies received comment letters from appraisers in rural areas who stated that the exemption should not apply to agricultural production loans because use of the real estate generates the income for repayment of the loan. For any transaction exempt under this provision, the regulated institution is responsible for documenting that the borrower's sources of income are not primarily dependent upon the sale of, or rental income derived from, real estate. The agencies do not view the sale of growing crops as the sale of real estate, nor as providing rental income derived from real estate. The agencies have concluded that transactions involving agricultural operations present no greater risk than other types of business operations, provided the primary source of repayment for the loan is not sale of, or rental income derived from, real estate.

(6) Leases

The agencies did not propose changes to the existing exemption for leases. Under this exemption, regulated institutions are not required to obtain appraisals of leases that are not the economic equivalent of the purchase or sale of real estate.

Even though the agencies did not propose changes to this exemption, some commenters suggested that Title XI appraisals should be required if a regulated institution takes any security interest in a real estate lease. The distinction between operating leases and capital leases is well recognized in accounting practice. Consistent with the distinction in accounting for operating and capital leases, the agencies have concluded that, in general, operating leases, which are not equivalent to the purchase or sale of the leased property, should not require Title XI appraisals given the limited real estate interest such leases represent.

In transactions that involve capital leases (leases that are the economic equivalent of purchasing or selling real estate), the given real estate interest is of sufficient magnitude to be counted as an asset of the lessee under accounting practices. Generally, the agencies will continue to require regulated institutions to obtain appraisals in connection with transactions that involve capital leases.

(7) Renewals, Refinancings, and Other Subsequent Transactions

The agencies are adopting a modified version of the proposed exemption for renewals, refinancings, and other subsequent transactions at the lending institution to simplify the conditions under which the exemption applies. Under the final rule, regulated institutions will be permitted to renew or refinance existing extensions of credit without first obtaining a Title XI appraisal for two general classes of transactions.

First, a subsequent transaction is exempt provided there has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new funds. This modification to the proposed rule is intended to emphasize that an institution must consider the effect of changes in market conditions and physical aspects of the property on its collateral protection when it advances funds in excess of reasonable closing costs as part of a renewal, refinancing, or other subsequent transaction.

Second, a subsequent transaction is exempt provided that no new monies are advanced other than funds necessary to cover reasonable closing costs. The proposed rule did not explicitly address this class of transactions.

The agencies note that this exemption would not be applicable if a borrower refinances a mortgage with a new lender.

Prior to the adoption of this amendment, the agencies did not require a Title XI appraisal for a subsequent transaction that resulted from a maturing extension of credit if:

(i) The borrower had performed satisfactorily according to the original terms;

(ii) No new monies were advanced other than as previously agreed;

(iii) The credit standing of the borrower had not deteriorated; and

(iv) There had been no obvious and material deterioration in market conditions or physical aspects of the property which would threaten the institution's collateral protection.

In the agencies' experience, the original exemption may not have provided sufficient flexibility to regulated institutions and borrowers when a transaction was refinanced before its maturity. This is particularly true for refinancings to reduce a loan's interest rate. Further, bankers questioned whether a Title XI appraisal would be required for a refinancing where the borrower's payment history is sound and future repayment prospects are good, but the borrower's collateral has declined in value as a result of a general market decline. The agencies believe that not requiring a Title XI appraisal in such refinancings is consistent with safe and sound banking practices because the amount of the loan (except for the addition of reasonable closing costs) and the lender's collateral remain the same, and the lower loan payments may improve the ability of the borrower to repay the loan without adversely affecting the likelihood that the lender will be repaid.

If a subsequent transaction that includes the advancement of additional funds does not result in the level of collateral protection being threatened, despite a change in the market conditions or physical aspects of the property, a Title XI appraisal need not be obtained. For example, a loan originally extended with a low loan-to-value ratio could be renewed and additional funds advanced above closing costs without a Title XI appraisal, even though market conditions have deteriorated, if the regulated institution, after verifying the value of the collateral, concludes that the new loan-to-value ratio will provide adequate protection.

Similarly, if a borrower is refinancing a loan where the real estate collateral is located in a market that has experienced significant appreciation, the institution should ensure that the advancement of any new monies is based on substantiated appreciation in value. An institution can advance funds against an appreciated property whose future use is consistent with the use described in the original appraisal. If an institution makes a substantial advance that could possibly threaten the institution's collateral protection, it should consider the need to obtain a new Title XI appraisal. This exemption would not be available if a material change in the use of the property produces the reported appreciation, such as when property is rezoned for a different use.

While a Title XI appraisal is not required for transactions that qualify for this exemption, regulated institutions are required to obtain an appropriate evaluation of the collateral in accordance with the agencies' guidelines. The level of analysis and information included in the evaluation should be more detailed as the institution's exposure in the transaction increases.

Several commenters raised questions about the applicability of this exemption to loan restructurings and workouts. In such situations, the

commenters contended that requiring a Title XI appraisal may impede an institution's ability to obtain additional real estate collateral to shore-up its position or to advance new funds to protect its existing collateral position. The agencies acknowledge that the time and cost of obtaining a Title XI appraisal may present barriers to institutions in their negotiations with borrowers in a loan restructuring or workout. The agencies believe that this situation has been addressed in the regulation and the agencies' guidance, such as the November 7, 1991 Interagency Policy Statement on the Review and Classification of Commercial Real Estate Loans. It is the agencies' policy to encourage lenders to work constructively with their borrowers when restructuring existing loans that have credible support for repayment.

(8) Transactions Involving Real Estate Notes

The agencies are adopting a modified version of the proposed exemption for transactions involving real estate-secured loans, loan participations, pooled loans, interests in real property, and mortgage-backed securities. The amendment clarifies when regulated institutions may engage in secondary mortgage market transactions involving real estate loans and other interests in real estate without obtaining a new Title XI appraisal.

The exemption adopted by the agencies clarifies and allows regulated institutions to purchase, sell, invest in, exchange, or extend credit secured by, real estate-secured notes or interests in real estate without obtaining a new Title XI appraisal if each note or real estate interest is supported by an appraisal that met the regulatory appraisal requirements for the institution at the time the real estate-secured note was originated. The prior exemption referred to purchases of these interests only. In addition, the agencies have changed the text of the final rule to more clearly state the appraisal requirements that the underlying notes must meet.

The exemption serves federal public policy interests by helping to ensure that the appraisal regulation does not unnecessarily inhibit secondary mortgage market transactions that involve these real estate-secured loans and real estate interests. The exemption makes clear that a regulated institution need not obtain new Title XI appraisals for loans originated before the effective date of the agencies' regulations in order to buy or sell them in the secondary mortgage market.

The agencies have concluded that the transactions exempted by this provision do not require new Title XI appraisals to protect federal financial and public policy interests or the safety and soundness of financial institutions. Principles of safe and sound banking practice require regulated institutions to determine the suitability of purchasing or investing in existing real estate-secured loans and real estate interests. Typically, these transactions will have a history of performance or will have been originated according to secondary mortgage market standards. The additional information from these sources, when coupled with the original documentation, permits regulated institutions to make appropriate decisions regarding these transactions.

Some commenters stated that this exemption raised safety and soundness concerns because exempt transactions may have appraisals performed before Title XI appraisal requirements went into effect. Because regulated institutions will have other sources of information about the performance of these seasoned loans, the agencies believe that new Title XI appraisals are not necessary to ensure the safety and soundness of these exempt transactions.

Some commenters urged the agencies to expand the proposed exemption, or adopt new exemptions, to eliminate the Title XI appraisal requirement for all mortgage-backed securities. In addition, commenters suggested that the agencies exempt residential mortgage warehousing loans (loans to residential mortgage lenders who ultimately sell the mortgages to the secondary mortgage market), transactions with credit ratings by established rating agencies, or transactions that were not subject to the agencies' jurisdiction at origination.

The agencies believe that to protect federal financial and public policy interests, the underlying loans or real estate interests should have appraisals that meet the requirements that were applicable to regulated institutions when the underlying transactions were originated. For this reason, the agencies are not adopting the suggestions for exempting additional categories of transactions under this provision.

Commenters also suggested that the agencies should permit a regulated institution that purchases a pool of loans, invests in mortgage-backed securities, or secures a mortgage warehousing loan with real estate notes, to confirm that the loans have appropriate appraisals without reviewing the appraisal for each underlying loan. The agencies agree that it should not be necessary to review the appraisal for each underlying loan in all cases. The agencies believe that regulated institutions may use sampling and audit procedures to determine whether appraisals for the underlying loans in a loan pool satisfy the regulation's requirements and to verify the seller's representations and warranties.

The agencies also believe that a regulated institution may presume that the underlying loans in an investment-grade, marketable, mortgage-backed security satisfy the requirements of the appraisal regulation whenever an issuer makes a public statement, such as in a prospectus, that the appraisals comply with the agencies' regulations. To be considered investment grade, a security must be rated in one of the top four rating classifications of at least one nationally recognized statistical rating service. A marketable security is one that may be sold with reasonable promptness at a price that corresponds to its fair value.

For mortgage warehousing loans, sale to Fannie Mae or Freddie Mac of the mortgages that secure the mortgage warehouse loan may be used to demonstrate that the underlying loans complied with the appraisal requirements of the agencies' regulations. The institution, however, must continue to monitor its borrower's performance in selling loans to the secondary market and take appropriate steps, such as increased sampling and auditing of the loans and their documentation, if the borrower experiences more than a minimal rejection rate.

(9) Transactions Insured or Guaranteed by a U.S. Government Agency or U.S Government Sponsored Agency

The agencies are adopting a uniform exemption for transactions that are wholly or partially insured or guaranteed by a United States government agency or government sponsored agency because these loans pose little risk to insured institutions This exemption will eliminate the confusion among regulated institutions who may believe that two separate appraisals are required—one meeting the banking agencies' regulations and another meeting the federal loan programs' standards.

The prior regulations of the OCC, FDIC, and OTS exempted many of these transactions. However, they previously required that these transactions be supported by an appraisal that conformed to the requirements of the insuring or guaranteeing agency. Prior to adoption of this amendment, the Board's appraisal regulation did not specifically exempt these transactions

Federally insured or guaranteed transactions must meet all the

underwriting requirements of the federal insurer or guarantor, including real estate appraisal requirements, in order to receive the insurance or guarantee. The agencies believe that the standards of these loan programs are sufficient to protect the safety and soundness of regulated financial institutions. Therefore, it is unnecessary to require that these transactions also meet the overlapping requirements of the banking and thrift agencies' appraisal regulations.

Some commenters suggested that the agencies should limit the application of this exemption to federal loan programs with appraisal requirements that conform to the Uniform Standards of Professional Appraisal Practice (USPAP) and require the use of licensed or certified appraisers. In addition, commenters raised concerns that some loan programs may not have appraisal standards and asked the agencies to list those loan programs to which this exemption applies.

OMB has directed federal agencies with government guaranteed or insured loan programs to conduct real estate appraisal programs in a manner to reduce default risks to the federal government. Specifically, these federal agencies are required to ensure that all real estate credit transactions over $100,000 have an appraisal performed by a state licensed or certified appraiser and that the appraisal be conducted under appraisal standards that are consistent with the USPAP.[6]

The agencies believe that the authority of OMB to ensure that federal agencies adopt appropriate real estate appraisal standards eliminates the need to list specific loan programs for which this exemption applies. Moreover, OMB is monitoring the implementation of those appraisal programs and has required any federal agency not having appraisal standards and practices in place to submit an implementation plan and schedule to OMB. If the agencies later determine that a particular federal loan program poses a threat to the safety and soundness of regulated institutions, the agencies have retained the authority to require appraisals in such situations.

This exemption also applies to certain other real estate-related financial transactions involving government agencies or government sponsored agencies. For example, the U.S. Postal Service typically contracts with a developer to erect and lease a special purpose building for the Postal Service's use. Applicable contract procedures normally require only cost estimates when determining who is awarded the contract. The Postal Service also enters into a lease with the developer. The lease payments, which are assigned to the lender, are sufficient to repay the loan. Because the developer is complying with applicable contract procedures, which require only cost estimates, it would be an unnecessary burden for the developer or the lender to also obtain a Title XI appraisal.

(10) Transactions That Meet the Qualifications for Sale to a United States Government Agency or Government Sponsored Agency

The agencies are adopting a modified version of the proposed exemption for transactions that meet the qualifications for sale to any U.S. government agency or government sponsored agency. By referring to any U.S. government agency or sponsored agency, the exemption includes not only loans sold to federal agencies, but also any transaction that meets the qualifications for sale to agencies established or chartered by the federal government to serve public purposes specified by the U.S. Congress. These government sponsored agencies are:

- Banks for Cooperatives.
- Federal Agricultural Mortgage Corporation (Farmer Mac).
- Federal Farm Credit Banks.
- Federal Home Loan Banks (FHLBs).
- Federal Home Loan Mortgage Corporation (Freddie Mac).
- Federal National Mortgage Association (Fannie Mae).
- Student Loan Marketing Association (Sallie Mae).
- Tennessee Valley Authority (TVA).

This exemption permits regulated institutions to originate, hold, buy, or sell transactions that meet the qualifications for sale to any U.S. government agency and the above listed government sponsored agencies without obtaining a separate appraisal conforming to the agencies' regulations.

The exemption contains a modification to the original proposal that permits regulated institutions to accept appraisals performed in accordance with the appraisal standards of Fannie Mae and Freddie Mac for any residential real estate transaction, both single family and multifamily, regardless of whether the loan is eligible to be purchased by Fannie Mae or Freddie Mac. This modification clarifies that a regulated institution's "jumbo" or other residential real estate loans that do not conform to all the underwriting standards of Fannie Mae or Freddie Mac, but that are supported by an appraisal that meets the appraisal standards of these agencies, will qualify for this exemption.

This exemption expands the prior exception to the regulations of the OCC, FDIC, and OTS for transactions involving 1-to-4 family residential properties that had appraisals conforming to the appraisal standards of Fannie Mae and Freddie Mac. In addition, the OTS exception applied to existing multifamily properties. These transactions were not required to comply with the additional supervisory standards set forth in the prior regulations. The Board did not have a similar exception in its prior regulation.

Some commenters requested that the agencies continue the prior exception allowing the use of Fannie Mae or Freddie Mac standards for any loans involving 1-to-4 family residential real estate. Other commenters stated that the proposed exemption should not be adopted because the agencies would not be meeting their statutory obligation to set appraisal standards for transactions within their jurisdiction.

The agencies believe the appraisal standards of the U.S. government agencies or sponsored agencies established to maintain a secondary market in various types of loans are appropriate for these exempt transactions. Recently, Fannie Mae and Freddie Mac revised their 1-to-4 family residential appraisal standards and report forms to incorporate the USPAP as the minimum appraisal standards. Further, the appraisal standards and forms of Fannie Mae and Freddie Mac are recognized as the appraisal industry's standard for residential real estate appraisals. The agencies have concluded that those appraisal standards should protect federal financial and public policy interests in the loans that are eligible for purchase by U.S. government agencies or sponsored agencies. The agencies also believe that compliance with these standards will protect the safety and soundness of regulated financial institutions.

The agencies believe that permitting regulated institutions to follow these standardized appraisal requirements, without the necessity of obtaining a separate appraisal or an appraisal supplement for conformance with the banking agencies' regulations, will reduce regulatory burden and increase an institution's ability to buy and sell these types of loans, improving the institution's liquidity.

(11) Transactions by Regulated Institutions as Fiduciaries

The agencies are adopting a new exemption for transactions in which a

[6] OMB Circular A-129, "Policy for Federal Programs and Non-Tax Receivables," revised January 1993.

regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law. The amendment clarifies that regulated institutions acting as fiduciaries are not required to obtain appraisals under the agencies' appraisal regulations if no appraisal is required under other law governing their fiduciary responsibilities in connection with those transactions.

Prior to adoption of this amendment, it was unclear whether the agencies' appraisal regulations required appraisals for all real estate-related financial transactions in which regulated institutions participated as fiduciaries. For example, other law may not require an appraisal in connection with the sale of a parcel of real estate to a beneficiary of a trust on terms specified in the trust instrument.

While financial institutions were in general agreement with the proposed exemption, some of these commenters stated that a fiduciary should be exempt from meeting Title XI appraisal requirements regardless of whether other laws require an appraisal. Commenters opposing this exemption believe that fiduciaries should be required to obtain a Title XI appraisal for all their real estate-related transactions.

The agencies have concluded that a Title XI appraisal should not be required when regulated institutions engage in real estate-related financial transactions as fiduciaries and no other law (including state common law establishing the responsibilities of fiduciaries) requires appraisals for those transactions. Losses as a result of these transactions would not, absent some negligence by the institution, be incurred by the institution. Therefore, exempting these transactions from the Title XI appraisal requirement should not adversely affect the safety and soundness of financial institutions.

When a fiduciary transaction requires an appraisal under other law, that appraisal should conform to the requirements of the agencies' regulations.

(12) Appraisals Not Necessary To Protect Federal Financial and Public Policy Interests or the Safety and Soundness of Financial Institutions

This provision was added to the rule to make clear that the agencies retain the authority to determine in a given case when the services of an appraiser are not required.

Only a few commenters addressed this issue. One commenter expressed the concern that the agencies are granting themselves the authority to create new exemptions without the benefit of public comment.

The agencies have the authority to implement and interpret regulations under their jurisdiction. The specific exemptions of the regulation describe the major categories of transactions that would not require appraisals. As a result of their experience in implementing their regulations, however, the agencies recognized that it is impossible to identify all types of transactions for which the services of an appraiser should not be required under Title XI of FIRREA and proposed this exemption to confirm their authority to determine that individual transactions do not require the services of an appraiser. The agencies will adopt any new exemptions covering broad categories of transactions in accordance with notice and comment rulemaking procedures.

§ ____.3(b) Evaluations Required

The agencies are adopting a modified version of the proposed amendment concerning evaluations.

The final rule requires regulated institutions to obtain evaluations for real estate-related financial transactions that do not require Title XI appraisals because they: (i) Are below the threshold level; (ii) qualify for the exemption for business loans of $1 million or less where income from real estate is not the primary source of repayment; or (iii) qualify for the exemption for subsequent transactions resulting from an existing extension of credit. The agencies changed the text of this amendment to make clear that institutions must still obtain evaluations for these exempt transactions. The regulation does not require the institution to have an evaluation if the transaction qualifies for an exemption other than these three exemptions.

An evaluation provides a general estimate of the value of real estate and need not meet the detailed requirements of a Title XI appraisal. An evaluation must provide appropriate information to enable the institution to make a prudent decision regarding the transaction. Because institutions must tailor evaluations to provide appropriate information for different types of transactions, the content and form of evaluations will vary for different transactions.

In their prior regulations, the OCC, Board and OTS required evaluations for all real estate-related financial transactions that do not require appraisals. The FDIC's prior regulation stated that supervisory guidelines, general banking practices or other prudent standards may require an appropriate valuation of real property collateral when a Title XI appraisal is not required. For some institutions, the effect of these provisions may have been to require evaluations in cases where they did not assist in protecting the institutions' safety and soundness. The agencies are amending their regulations to require regulated institutions to have evaluations only for those real estate-related financial transactions where an understanding of the real estate's value is generally needed to assist the institution in deciding whether to enter into the transaction.

Some commenters stated that evaluations should not be required for any exempt transactions and that the decision to obtain an evaluation should be left to the institution. Commenters suggested that the agencies should require appraisals for any transaction that requires an evaluation and raised questions about the qualifications and independence of persons performing evaluations. Some commenters stated that only licensed or certified appraisers were qualified to perform evaluations.

The agencies believe that safety and soundness principles require institutions to obtain an understanding of, and document, the value of the real estate involved in transactions that: (i) Are below the threshold level; (ii) qualify for the exemption for business loans of $1 million or less where income from real estate is not the primary source of repayment; or (iii) involve an existing extension of credit. In these cases, while a Title XI appraisal is not required to determine the value of the real estate, the agencies have concluded that regulated institutions must have an estimate of the real estate's value as a matter of safe and sound banking practice. For this reason, the agencies have decided that institutions should not have the discretion to decide whether they will obtain evaluations for these transactions. However, institutions will have discretion, within the limits of safe and sound banking practice as indicated in agency guidance, to determine the content and form of the evaluation.

While licensed or certified appraisers may be qualified to perform evaluations, the agencies do not believe these appraisers are the only persons that can render a competent estimate of the value of real estate for exempt transactions. Requiring institutions to procure the services of a licensed or certified appraiser to prepare evaluations or Title XI appraisals for exempt transactions could impose significant additional costs on lenders and borrowers without significantly increasing the safety and soundness of the transactions. However, the agencies' regulations do not, as

suggested by some commenters, prohibit regulated institutions from using licensed or certified appraisers to prepare evaluations. Nor do the regulations prevent regulated institutions from obtaining Title XI appraisals for exempt transactions.

The agencies also believe that regulated institutions can take steps to ensure that the individuals performing evaluations are capable of providing an unbiased estimate of value. Institutions would generally be expected to check that persons who prepare evaluations are subject to adequate safeguards and controls to assure the integrity of the evaluation they perform. The agencies intend that regulated institutions have some flexibility in the safeguards they erect to ensure the independence of the person performing the evaluation.

The agencies' experience with transactions exempt under their prior appraisal requirements indicates that employees of a regulated institution generally can provide an unbiased and competent evaluation of real estate collateral for exempt transactions

If there are deficiencies in an individual institution's evaluation procedures, including its procedures for determining whether to order Title XI appraisals for exempt transactions, the agencies can take appropriate steps to have the institution correct the problem. This can include requiring the institution to obtain appraisals for exempt transactions to address safety and soundness problems.

Several commenters requested that the agencies provide additional information on what is required in evaluations and who may perform them. The agencies intend to revise their existing guidance on real estate appraisal and evaluation programs for regulated institutions to further address these issues.

§ ____.3(c) Appraisals To Address Safety and Soundness Concerns

The agencies are adopting substantially as proposed an amendment stating that each agency continues to reserve the right to require a regulated institution to obtain a Title XI appraisal whenever the agency believes that an appraisal is necessary to address safety and soundness concerns. This authority may involve the agency requiring an institution to obtain an appraisal for a particular extension of credit or an entire group of credits.

Some commenters raised the concern that the agencies' authority to require a Title XI appraisal for safety and soundness purposes should be exercised only on a prospective basis. Further, several commenters noted that the agencies' authority to determine on a case-by-case basis whether an appraisal is required may lead to inconsistencies among the agencies.

Whether an institution will be required, pursuant to this provision or existing safety and soundness authority, to obtain an appraisal for a particular extension of credit, or an entire group of credits, may depend on the condition of that institution. If an institution is in troubled condition, and that troubled condition is attributable to underwriting problems in the institution's real estate loan portfolio, then the agencies may require such an institution to obtain an appraisal for all new real estate-related financial transactions below the threshold that are not subject to another exemption. Thus, for example, a troubled institution whose problems are attributable to trading losses, investment losses, or a defalcation might be allowed to continue to operate under the $250,000 threshold, whereas an institution whose problems are attributable to poor underwriting of real estate loans may be subjected to a lower threshold.

However, regardless of an institution's condition, an examiner may determine that a particular real estate-related financial transaction requires a Title XI appraisal. This provision confirms that the agencies have the authority to require appraisals for a particular transaction to address safety and soundness concerns.

A determination that a particular institution will have to obtain appraisals below the threshold will be made by the appropriate agency's supervisory office. Although this provision is intended to be applied on a case-by-case basis to address the problems of a particular institution, the agencies will work to maintain consistency.

As previously stated in the discussion of the appraisal threshold, as a matter of policy, OTS intends to require problem institutions or institutions in troubled condition to continue to obtain Title XI appraisals for loans over $100,000. Given the overall concentration of real estate-related transactions in the thrift industry, OTS believes that a problem thrift or a thrift in troubled condition will, in general, have real estate-related asset quality problems.

§ ____.4(a) Minimum Appraisal Standards

The agencies are adopting five minimum appraisal standards in place of the 14 standards in the prior rule. The final rule includes four modifications to the proposed rule concerning minimum appraisal standards. The final rule requires all appraisals for federally related transactions to:

(i) Conform to generally accepted appraisal standards as evidenced by the USPAP unless principles of safe and sound banking require compliance with stricter standards;

(ii) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(iii) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

(iv) Be based upon the definition of market value as set forth in the regulation; and

(v) Be performed by State licensed or certified appraisers.

Adoption of these standards will simplify compliance with the appraisal regulation without affecting the usefulness of the Title XI appraisals prepared for federally related transactions. The amendment allows institutions to make use of the USPAP Departure Provision and eliminates several regulatory standards that parallel existing USPAP standards.

The agencies proposed three alternatives for meeting the statutory requirement to use the USPAP in setting minimum appraisal standards for federally related transactions. Under the first two alternatives, the agencies would have published the USPAP as part of their regulations (either as an appendix to their rules or through incorporation by reference). The agencies have chosen to adopt the third alternative that generally references USPAP, but does not make USPAP a part of the agencies' regulations. The agencies agree with many commenters who believed that Alternative III was the most workable approach because the agencies would not have to republish changes to the USPAP adopted by the Appraisal Standards Board, and references to USPAP in the regulation could be assumed to always refer to the most current USPAP edition. The agencies believe that Alternative III minimizes potential conflicts between an institution's duty to follow the agencies' appraisal requirements and an appraiser's professional obligation to follow the latest USPAP version.

Since the agencies are adopting Alternative III, USPAP provisions applicable to federally related transactions will no longer be published as Appendix A to the agencies' appraisal regulations. Therefore, each agency has deleted Appendix A from its appraisal regulation.

Because application of present or future USPAP standards to federally related transactions may be inconsistent with maintaining the safety and soundness of financial institutions, the agencies have modified the standard on compliance with the USPAP. This modification makes clear that principles of safe and sound banking may require institutions to comply with stricter standards than the USPAP. Although the institution has the primary responsibility for obtaining a Title XI appraisal that meets its needs, the agencies may by regulation or guidance identify USPAP standards that are inappropriate for federally related transactions. For example, the USPAP allows an appraiser to appraise property even though the appraiser may have a direct or indirect interest in the property, if the appraiser discloses this fact in the appraisal report. The agencies believe, however, that federal financial and public policy interests are better served by requiring that an appraiser for a federally related transaction not have any direct or indirect interest, financial or otherwise, in the transaction or the property. The agencies have included this requirement in the section of the regulation that deals with appraiser independence.

The minimum standards also permit regulated institutions to use appraisals prepared in accordance with the USPAP Departure Provision for federally related transactions. The Departure Provision permits limited exceptions to specific guidelines in the USPAP. Appraisers preparing appraisals using the Departure Provision still must comply with all binding requirements of the USPAP and must be sure that the resulting appraisal will not be misleading.

The agencies believe that regulated institutions should be allowed to determine, with the assistance of the appraiser, whether an appraisal to be prepared in accordance with the Departure Provision is appropriate for a particular transaction and consistent with principles of safe and sound banking practice.

The agencies are adopting a modified version of the proposed standard that requires appraisals for federally related transactions to be written. The modification makes clear that the written appraisal must contain sufficient information and analysis to support the institution's decision to engage in the transaction. The modification puts regulated institutions on notice of their responsibility to have appraisals that are appropriate for the particular federally related transaction. The agencies are aware that the Appraisal Standards Board of the Appraisal Foundation has proposed changing the USPAP to expand the types of appraisal reports that appraisers may prepare. The agencies believe that the standard on written appraisals permits regulated institutions to take advantage of additional flexibility that may be available if the USPAP is amended, as long as the appraisal report contains information and analysis to support the institution's decision.

The agencies are retaining from the prior rule the standard regarding deductions and discounts. The USPAP provision on this subject requires the appraiser to include a discussion of deductions and discounts only when it is necessary to prevent an appraisal from being misleading. Although commenters were divided over the need to retain this regulatory standard, the agencies have decided that it is appropriate to emphasize the need to include an appropriate discussion of deductions and discounts applicable to the estimate of value in Title XI appraisals for federally related transactions.

For example, in order to properly underwrite a loan, a regulated institution may need to know a prospective value of a property, in addition to the market value as of the date of the appraisal. A prospective value of a property is based upon events yet to occur, such as completion of construction or renovation, reaching a stabilized occupancy level, or some other event to be determined. Thus, more than one value may be reported in an appraisal, as long as all values are clearly described and reflect the projected dates when future events could occur.

The standard on deductions and discounts is intended to make clear that appraisers must analyze, apply, and report appropriate discounts and deductions when providing values based on future events. In financing the purchase of an existing home, there typically would be no need to apply any discounts or deductions to arrive at the market value of the property since the institution's financing of the project does not depend on events such as further development of the property or the sale of units in a tract development.

In place of the proposed standard on market value, the agencies are retaining the prior standard that required the appraisal to be based on the definition of market value contained in the agencies' rules. Use of the standard from the prior rule is intended to emphasize that the agencies are not changing the definition of market value or the manner in which that definition is applied.

The agencies are eliminating regulatory standards that parallel or duplicate requirements of the USPAP. The regulatory standards originally were put in place because of uncertainty about the content of the USPAP and its interpretation. Based on their experience with the USPAP, the agencies believe that the additional standards may be eliminated. Commenters generally agreed. The majority of commenters responded to three specific questions on the need for additional regulatory standards by indicating that it was unnecessary to adopt separate standards on: (i) Analysis of revenues, expenses and vacancies; (ii) valuation of personal property; and (iii) reconciliation of the three approaches to value. The elimination of regulatory standards that parallel USPAP standards should simplify the preparation of appraisals for federally related transactions and reduce regulatory burden.

As proposed, the agencies are adding a new provision to make clear that all appraisals for federally related transactions must be prepared by licensed or certified appraisers. This requirement is mandated by Title XI of FIRREA and repeated in other parts of the appraisal regulation.

§ ____.4(b/c) Unavailability of Information [Removed]

The agencies are removing the provision that required appraisers to disclose and explain when information necessary to the completion of an appraisal is unavailable. The USPAP currently requires appraisers to disclose and explain the absence of information necessary to completion of an appraisal that is not misleading. See USPAP Standard Rule 2–2(k). Moreover, when information that may materially affect the estimate of value is unavailable, the agencies believe that generally accepted appraisal standards require appraisers to explain the absence of that information and its effect on the reliability of the appraisal. Therefore, eliminating this provision does not result in a substantive change in the requirements applicable to appraisals for federally related transactions.

§ ____.4(c/d) Additional Standards [Removed]

The agencies are removing a provision that merely confirmed the authority of regulated institutions to require appraisers they use to comply with additional standards. The regulation's minimum appraisal standards for federally related transactions do not prevent a regulated institution from requiring an appraiser to follow

additional standards or provide additional information to satisfy the institution's business needs and it is unnecessary to restate this fact in the appraisal regulation.

§ ____.5(b) Appraiser Independence

The agencies are adopting the proposed amendment concerning the use of appraisals prepared for financial services institutions other than institutions subject to Title XI of FIRREA. The agencies' prior appraisal regulations provided that fee appraisers must be engaged by the regulated institution or its agent. An exception to this requirement was permitted if the appraiser was directly engaged by another institution that is subject to Title XI of FIRREA.

The agencies concluded that the prior provision on the use of appraisals prepared for other institutions was too restrictive. It required a regulated institution to obtain a new appraisal if the borrower originally sought a loan from an institution that was not subject to Title XI of FIRREA and was not an agent of that regulated institution. There also was uncertainty about the meaning of agent in these cases.

The amended provision permits a regulated institution to use an appraisal that was prepared for any financial services institution, including mortgage bankers, if certain conditions are met. The appraiser must be engaged directly by the financial services institution and must not have a direct interest, financial or otherwise, in the property or the transaction. In addition, the regulated institution must ensure that the appraisal conforms to the requirements of the regulation and is otherwise acceptable. The prohibition on the institution using an appraisal prepared for the borrower remains in effect.

The majority of comments concerning this provision favored the proposed change. One commenter requested that the agencies define financial services institutions and include mortgage brokers within that definition. Other commenters requested clarification of the circumstances under which a non-regulated institution can be an agent of a regulated institution and whether agents are prohibited from receiving a commission on each transaction.

The agencies have decided not to adopt a specific definition of financial services institution. This term is intended to describe entities that provide services in connection with real estate lending transactions on an ongoing basis.

The agencies do not intend to limit the arrangements that regulated institutions have with their agents, provided those arrangements do not place the agent in a conflict of interest that prevents the agent from representing the interests of the regulated institution. For example, the agencies do not require that there be a written agreement between the regulated institution and the agent, and the agent may represent the regulated institution solely with respect to ordering appraisals. In addition, the agencies' regulations do not prohibit agents from receiving a commission for transactions on which they order appraisals.

Some commenters opposed the amendment because of their concern that it would increase the pressure on appraisers to render an estimate of value that favors the interests of the borrower. However, regulated institutions are not required to accept appraisals that are prepared for other financial services institutions. Therefore, the institution always retains complete control over the process of ordering real estate appraisals. In addition, institutions must determine that the appraisal ordered by the financial services institution complies with the requirements of the agencies' regulations and is otherwise acceptable. This should include obtaining assurance that the financial services institution has an independent appraisal.

Other suggested changes to reduce the burden on secondary market transactions involving real estate notes, particularly for mortgage warehousing loans, are addressed in the exemption for transactions in real estate notes.

IV. Waiver of Delayed Effective Date

This final rule is effective on June 7, 1994. The 30-day delayed effective date required under the Administrative Procedure Act (APA) is waived pursuant to 5 U.S.C. 553(d)(1), which provides for waiver when a substantive rule grants or recognizes an exemption or relieves a restriction. The amendments adopted in this final rule exempt additional transactions from the appraisal regulation, reduce appraisal standards, and provide other modifications that have the effect of relieving perceived restrictions. Consequently, all amendments in this final rule meet the requirements for waiver set forth in the APA.

V. Paperwork Reduction Act

OCC Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1557–0190. The estimated annual burden per recordkeeper ranges from 0 hours to in excess of 100 hours, depending on individual circumstances, with an estimated average of 34.5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Comptroller of the Currency, Legislative, Regulatory, and International Activities, Attention: 1557–0190, 250 E Street SW., Washington, DC 20219, and to the Office of Management and Budget, Paperwork Reduction Project (1557–0190), Washington, DC 20503.

Board Paperwork Reduction Act

The Board is adopting revisions to Regulation Y in this rulemaking that relate to recordkeeping requirements under authority delegated to it by the Office of Management and Budget, in accordance with section 3507 of the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35, and part 1320 of title 5, Code of Federal Regulations, 5 CFR part 1320. In developing these revisions, the Board has consulted with the OCC, the FDIC, and the OTS.

The collection of information in this regulation is in 12 CFR part 225. This information is required by the Federal Reserve System to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser. State member banks will use this information in determining whether and on what terms to enter into federally related transactions, such as making loans secured by real estate. The Federal Reserve System will use this information in its examination of State member banks and bank holding companies to ensure that they undertake real estate-related financial transactions in accordance with safe and sound banking principles.

The likely recordkeepers are for-profit institutions.

The estimated annual burden per recordkeeper varies from 0 hours to in excess of 100 hours, depending on individual circumstances, with an estimated average of 25.1 hours. Estimated number of recordkeepers: 1573.

FDIC Paperwork Reduction Act

The collection of information contained in this final rule has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be

sent to the Assistant Executive Secretary (Administration), room F–400, 550 17th Street, NW., Washington, DC 20429, with a copy to the Office of Management and Budget, Paperwork Reduction Project 3064–0103, Washington, DC 20503.

The collection of information in this final rule is in 12 CFR part 323. This information is required by the FDIC to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser. State nonmember banks will use this information in determining whether and on what terms to enter into federally related transactions, such as making loans secured by real estate. The FDIC will use this information in its examination of State nonmember banks to ensure that they undertake real estate-related financial transactions in accordance with safe and sound banking principles.

The likely recordkeepers are for-profit institutions.

The estimated annual burden per recordkeeper varies from 0 hours to in excess of 100 hours, depending on individual circumstances, with an estimated average of 20.0 hours. Estimated number of recordkeepers: 7,310.

OTS Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1550. The estimated annual burden per recordkeeper ranges from 0 hours to in excess of 100 hours, depending on individual circumstances, with an estimated average of 59 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

VI. OCC and OTS Executive Order 12866 Determination

It has been determined that this final rule is not a "Significant Regulatory Action" under Executive Order 12866.

List of Subjects

12 CFR Part 34

Mortgages, National banks, Real estate appraisals, Real estate lending standards, Reporting and recordkeeping requirements.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 323

Banks, banking, Mortgages, Real estate appraisals, Reporting and recordkeeping requirements, State nonmember insured banks.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 564

Appraisals, Real estate appraisals, Reporting and recordkeeping requirements, Savings associations.

COMPTROLLER OF THE CURRENCY

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, part 34 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 34—REAL ESTATE LENDING AND APPRAISALS

1. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a, 371, 1701j-3, 1828(o), and 3331 et seq.

2. In § 34.42, existing paragraphs (d) through (l) are redesignated as paragraphs (e) through (m), respectively, and a new paragraph (d) is added to read as follows:

§ 34.42 Definitions.

* * * * *

(d) *Business loan* means a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity.

* * * * *

3. In § 34.43, paragraph (a) is revised, paragraphs (b) through (d) are redesignated as paragraphs (d) through (f), respectively, and new paragraphs (b) and (c) are added to read as follows:

§ 34.43 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $250,000 or less;

(2) A lien on real estate has been taken as collateral in an abundance of caution;

(3) The transaction is not secured by real estate;

(4) A lien on real estate has been taken for purposes other than the real estate's value;

(5) The transaction is a business loan that:

(i) Has a transaction value of $1 million or less; and

(ii) Is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment;

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(7) The transaction involves an existing extension of credit at the lending institution, provided that:

(i) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or

(ii) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs;

(8) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgaged-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met OCC regulatory requirements for appraisals at the time of origination;

(9) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction either:

(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or

(12) The OCC determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution.

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraph (a)(1), (a)(5) or (a)(7) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

(c) *Appraisals to address safety and soundness concerns.* The OCC reserves the right to require an appraisal under this subpart whenever the agency believes it is necessary to address safety and soundness concerns.

* * * * *

4. Section 34.44 is revised to read as follows:

§ 34.44 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005, unless principles of safe and sound banking require compliance with stricter standards;

(b) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(c) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

(d) Be based upon the definition of market value as set forth in this subpart; and

(e) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this subpart.

5. In § 34.45, paragraph (b) is revised to read as follows:

§ 34.45 Appraiser independence.

* * * * *

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and

(ii) The regulated institution determines that the appraisal conforms to the requirements of this subpart and is otherwise acceptable.

Appendix A to Subpart C [Removed]

6. Appendix A to subpart C, part 34, is removed.

Dated: March 31, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

For the reasons set forth in the common preamble, the Board amends 12 CFR part 225 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Section 225.62 is amended by redesignating paragraphs (d) through (f) and paragraphs (g) through (k) as paragraphs (e) through (g) and paragraphs (i) through (m), respectively, and adding new paragraphs (d) and (h) to read as follows:

§ 225.62 Definitions.

* * * * *

(d) *Business loan* means a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity.

* * * * *

(h) *Real estate* or *real property* means an identified parcel or tract of land, with improvements, and includes easements, rights of way, undivided or future interests, or similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights, or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

* * * * *

3. Section 225.63 is amended by revising the section heading, revising paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (d) and (e) and adding new paragraphs (b) and (c) to read as follows:

§ 225.63 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $250,000 or less;

(2) A lien on real estate has been taken as collateral in an abundance of caution;

(3) The transaction is not secured by real estate;

(4) A lien on real estate has been taken for purposes other than the real estate's value;

(5) The transaction is a business loan that:

(i) Has a transaction value of $1 million or less; and

(ii) Is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment;

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(7) The transaction involves an existing extension of credit at the lending institution, provided that:

(i) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or

(ii) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs;

(8) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgaged-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met Board regulatory requirements for appraisals at the time of origination;

(9) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction either:

(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or

(12) The Board determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution.

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraph (a)(1), (a)(5) or (a)(7) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

(c) *Appraisals to address safety and soundness concerns.* The Board reserves the right to require an appraisal under this subpart whenever the agency believes it is necessary to address safety and soundness concerns.

* * * * *

4. Section 225.64 is revised to read as follows:

§ 225.64 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005, unless principles of safe and sound banking require compliance with stricter standards;

(b) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(c) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

(d) Be based upon the definition of market value as set forth in this subpart; and

(e) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this subpart.

5. Section 225.65 is amended by revising paragraph (b) to read as follows:

§ 225.65 Appraiser independence.

* * * * *

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and

(ii) The regulated institution determines that the appraisal conforms to the requirements of this subpart and is otherwise acceptable.

Appendix A to Subpart G [Removed]

6. Appendix A to subpart G, part 225, is removed.

Dated: May 25, 1994.

William W. Wiles,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set out in the joint preamble, part 323 of subchapter B of chapter III of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 323–APPRAISALS

1. The authority citation for part 323 is revised to read as follows:

Authority: 12 U.S.C. 1818, 1819 ["Seventh" and "Tenth"], and 3331–3352.

2. Section 323.2 is amended by redesignating paragraphs (d) through (l) as paragraphs (e) through (m), respectively, and adding a new paragraph (d) to read as follows:

§ 323.2 Definitions.

* * * * *

(d) *Business loan* means a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity.

* * * * *

3. Section 323.3 is amended by revising the section heading and paragraph (a), revising the phrase in paragraph (d) "paragraphs (b) and (c) of this section" to read "this section", redesignating paragraphs (b) through (d) as paragraphs (d) through (f), respectively, and adding new paragraphs (b) and (c) to read as follows:

§ 323.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $250,000 or less;

(2) A lien on real estate has been taken as collateral in an abundance of caution;

(3) The transaction is not secured by real estate;

(4) A lien on real estate has been taken for purposes other than the real estate's value;

(5) The transaction is a business loan that:

(i) Has a transaction value of $1 million or less; and

(ii) Is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment;

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(7) The transaction involves an existing extension of credit at the lending institution, provided that:

(i) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or

(ii) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs;

(8) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgaged-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met FDIC regulatory requirements for appraisals at the time of origination;

(9) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction either:

(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or

(12) The FDIC determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution.

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraph (a)(1), (a)(5) or (a)(7) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

(c) *Appraisals to address safety and soundness concerns.* The FDIC reserves the right to require an appraisal under this part whenever the agency believes it is necessary to address safety and soundness concerns.

* * * * *

4. Section 323.4 is revised to read as follows:

§ 323.4 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005, unless principles of safe and sound banking require compliance with stricter standards;

(b) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(c) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

(d) Be based upon the definition of market value as set forth in this part; and

(e) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this part.

5. Section 323.5 is amended by revising paragraph (b) to read as follows:

§ 323.5 Appraiser independence.

* * * * *

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and

(ii) The regulated institution determines that the appraisal conforms to the requirements of this part and is otherwise acceptable.

Appendix IX [Removed]

6. Appendix A to Part 323 is removed.

By order of the Board of Directors.

Dated at Washington, DC, this 3rd day of May 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

OFFICE OF THRIFT SUPERVISION

12 CFR Chapter V

Authority and Issuance

Accordingly, for the reasons set forth in the joint preamble, the Office of Thrift Supervision hereby amends chapter V, title 12 of the Code of Federal Regulations, as set forth below:

Subchapter C—Regulations for Federal Savings Associations

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

2. Section 545.32 is amended by revising the first sentence of paragraph (b)(2) to read as follows:

§ 545.32 Real estate loans.

* * * * *

(b) * * *

(2) *Appraisals.* A Federal savings association may make a real estate loan only after an appraiser has submitted a signed appraisal of the security property consistent with the requirements of part 564 of this chapter. * * *

* * * * *

3. Section 545.103 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 545.103 Suretyship.

* * * * *

(b) * * * If real estate, the value must be established by a signed appraisal consistent with the requirements of part 564 of this chapter. * * *

* * * * *

Subchapter D—Regulations Applicable to All Savings Associations

PART 563—OPERATIONS

4. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1468, 1817, 1818, 3806; 42 U.S.C. 4106; Pub. L. 102–242, sec. 306, 105 Stat. 2236, 2335 (1991).

5. Section 563.170 is amended by revising paragraph (c)(1)(iv) to read as follows:

§ 563.170 Examinations and audits; appraisals; establishment and maintenance of records.

* * * * *

(c) * * *

(1) * * *

(iv) One or more written appraisal reports, prepared at the request of the lender or its agent and for the lender's use, and signed prior to the approval of such application (except in the case of an approval conditioned upon obtaining an appraisal) that satisfies the requirements of part 564 of this chapter: *Provided, however,* That nothing in this paragraph (c)(1)(iv) shall apply to property improvement loans, as that term is used in 24 CFR 200.167, insured by the Federal Housing Administration for which that agency does not require an appraisal or certification of valuation;

* * * * *

PART 564—APPRAISALS

6. The authority citation for part 564 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828(m), 3331 *et seq.*

7. Section 564.2 is amended by redesignating paragraphs (d) through (l) as paragraphs (e) through (m), respectively, and by adding a new paragraph (d) to read as follows:

§ 564.2 Definitions.

* * * * *

(d) *Business loan* means a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity.

* * * * *

8. Section 564.3 is amended by revising paragraph (a), redesignating paragraphs (b) through (d) as paragraphs (d) through (f), and adding new paragraphs (b) and (c) to read as follows:

§ 564.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals required.* An appraisal performed by a State certified or

licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $250,000 or less;

(2) A lien on real estate has been taken as collateral in an abundance of caution;

(3) The transaction is not secured by real estate;

(4) A lien on real estate has been taken for purposes other than the real estate's value;

(5) The transaction is a business loan that:

(i) Has a transaction value of $1 million or less; and

(ii) Is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment;

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(7) The transaction involves an existing extension of credit at the lending institution, provided that:

(i) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or

(ii) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs;

(8) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgaged-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met OTS regulatory requirements for appraisals at the time of origination;

(9) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction either:

(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or

(12) The OTS determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution.

(b) *Evaluations required.* For a transaction that does not require the services of a State certified or licensed appraiser under paragraph (a)(1), (a)(5) or (a)(7) of this section, the institution shall obtain an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices.

(c) *Appraisals to address safety and soundness concerns.* The OTS reserves the right to require an appraisal under this part whenever the agency believes it is necessary to address safety and soundness concerns.

* * * * *

9. Section 564.4 is revised to read as follows:

§ 564.4 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005, unless principles of safe and sound banking require compliance with stricter standards;

(b) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(c) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

(d) Be based upon the definition of market value as set forth in this part; and

(e) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this part.

10. Section 564.5 is amended by revising paragraph (b) to read as follows:

§ 564.5 Appraiser independence.

* * * * *

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and

(ii) The regulated institution determines that the appraisal conforms to the requirements of this part and is otherwise acceptable.

§ 564.8 [Amended]

11. Section 564.8 is amended by removing paragraph (d)(1), by removing the colon following the introductory text of paragraph (d), by revising the word "Appraisals" to read "appraisals" in paragraph (d)(2), and by removing the paragraph designation (d)(2)

Appendix A [Removed]

12. Appendix A to Part 564 is removed.

Dated: April 6, 1994.

By the Office of Thrift Supervision:

Jonathan L. Fiechter,

Acting Director

[FR Doc. 94-13312 Filed 6-6-94, 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Part 291

Single Family Property Disposition; Lease and Sale of HUD-Acquired Properties; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 291

[Docket No. R–94–1720; FR–3399–F–02]

RIN 2502–AF96

Single Family Property Disposition; Lease and Sale of HUD-Acquired Single Family Properties for the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the Department's regulations governing the Single Family Property Disposition program for the lease and sale of HUD-acquired properties for the homeless by implementing section 1407 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), with regard to notifying eligible applicants of available properties in their areas.

EFFECTIVE DATE: July 7, 1994.

FOR FURTHER INFORMATION CONTACT: David H. Patton, Acting Director, Single Family Property Disposition, room 9170, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1832; (TDD) number for the hearing- and speech-impaired (202) 708–4594). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

The Single Family Property Disposition program (24 CFR part 291), which disposes of one-to-four family properties acquired by HUD or otherwise held by HUD, includes an initiative by the Department for the lease and sale of properties to governmental entities, tribes, and private nonprofit organizations for use by homeless persons (subpart E of part 291).

Under the current regulations, applicants that have been preapproved by HUD are notified of the availability of properties for a 10-day consideration and inspection period before the properties are offered for sale to the general public. (See 24 CFR 291.410(d).) Properties are leased or sold to applicants on a first come-first served basis. No more than 10 percent of the total inventory, as of October 1, may be leased under the program; there is no limitation on the sale of properties.

Applicants may purchase properties, at a discount, either through a direct sale or by submitting a competitive bid. Applicants that choose to lease properties may purchase them at any time during the leasehold. Leases are for a one-year term, renewable for up to four additional one-year terms, for $1 a year. Lessees are responsible for all utilities, taxes, and other costs associated with operating the property. Under 24 CFR 291.415(d), lessees are required to establish an escrow account, with HUD as a co-signer, and make monthly deposits to the account in an amount sufficient to reimburse HUD for any taxes on the property.

II. Amendments by the Housing and Community Development Act of 1992

Section 1407 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved Oct. 28, 1992; hereafter referred to as "1992 HCD Act") directs the Secretary to make several amendments to this discretionary program. Subsection 1407(a) prohibits the Secretary from making a property available for lease under the homeless initiative program unless the property has first been listed and made generally available for sale to the public for at least 30 days.

Subsection 1407(b) of the 1992 HCD Act provides an exception to subsection 1407(a) with respect to any area in which the Secretary determines that there will not be a sufficient quantity of decent, safe, and sanitary affordable housing available for use under the program if properties located in the area are first made generally available to the public. In such exception cases, the Secretary will make available to preapproved applicants up to 10 percent of the total number of properties in the HUD inventory for the area before offering those properties to the general public. The Secretary is also directed to consult with the unit of general local government for the area in determining which properties should be reserved.

The 1992 HCD Act, in subsection 1407(c), also directs the Secretary to identify and describe, upon request by an applicant or lessee, any exemptions or reductions related to the payment of property taxes under State or local laws that may be applicable to lessees or to the leased properties. Finally, subsection 1407(c) of the 1992 HCD Act also provides that the Secretary may not require the lessee to make deposits for the payment of taxes into an escrow account, where such an exemption or reduction is provided.

III. Final Rule

On August 11, 1993, the Department published a proposed rule (58 FR 42707) which would implement the changes required by section 1407 of the 1992 HCD Act, as well as some additional conforming changes. This final rule implements those proposed changes as described below.

30-day Marketing Period and Exception

In accordance with subsection 1407(a), this final rule amends 24 CFR 291.400(c) to reflect the statutory requirement that HUD make property available for sale to the general public for at least 30 days before HUD makes the property available for lease under the program. In addition, this final rule also requires that the property be vacant, and not under contract or committed to another program for availability under the lease program.

This final rule also adds conforming changes to § 291.410(d) regarding notification to applicants of available properties. After the public sale period, the HUD Field Office will notify applicants of eligible properties available in the ZIP Code areas previously designated by them. Specific properties selected by an applicant will be held off the market for a 10-day consideration and inspection period, which will begin to run upon written notification by the applicant to the Field Office. (The Department encourages applicants to notify Field Offices by Facsimile (FAX).) Only those properties in which an applicant has submitted a written expression of interest will be held off the market. If no further communication from the applicant is received by the end of the 10-day consideration and inspection period, the Field Office will resume offering the properties for sale to the public.

In accordance with section 1407(b) of the 1992 HCD Act, the final rule provides an exception to the 30-day listing for general sale in Field Offices having 200, or fewer, total properties in inventory as of October 1 of each year. HUD has determined that these offices are less likely to have properties available for applicants after 30 days on the market. HUD will select these "exception" field offices based upon the number of properties held in inventory as of October 1, of each year (initially October 1, 1993), the number of properties the Department anticipates acquiring over the ensuing 12-month period and the speed with which such properties are selling. In "exception" Field Offices, if homeless providers have requested to lease properties, properties will be offered to them for a

10-day consideration and inspection period before the properties are listed for sale to the general public. Field Offices subject to this exception will notify applicants of properties in designated ZIP Code areas prior to public listing until such time as 10 percent of their total inventory, as of October 1, has been leased. The Assistant Secretary for Housing-Federal Housing Commissioner will supply a list of the exception Field Offices to the Assistant Secretary for Community Planning and Development and all field offices on an annual basis.

The final rule also provides that, in those Field Offices subject to the exception, HUD will consult with units of general local government to identify areas where there is a need for units for homeless persons and will make this information available to applicants. However, local governments will not have veto-power over where properties used by the homeless are located.

Exception From or Reduction of State and Local Property Taxes

The final rule also amends 24 CFR 291.415(d) to describe HUD's duty under subsection 1407(c) of the 1992 HCD Act to provide information to applicants or lessees regarding any exemption from or reduction of property taxes under State and local laws. Under this final rule, where State or local law grants such an exemption or reduction, HUD will not require that the applicant establish an escrow account for that portion of the payment of property taxes.

While the amendment necessitated by subsection 1407(c) is included in the final rule, the Department previously determined that this provision is effective as of October 28, 1992, the date of enactment of the 1992 HCD Act. HUD Field Offices were instructed to provide this information upon the request of an applicant or lessee.

Miscellaneous Changes

This final rule also amends part 291 to reflect changes to the Department's Supportive Housing program. The 1992 HCD Act terminated the Supportive Housing Demonstration (formerly implemented in 24 CFR parts 577 and 578), and replaced it with a new Supportive Housing program. An interim rule for that program was published on March 15, 1993 (58 FR 13870), and is codified at 24 CFR part 583.

Changes to the Proposed Rule

Finally, the Department has made several changes to the proposed rule in this final rule. Those changes are as follows:

A. This final rule requires that applicants submit a certification of compliance with fair housing laws, as well as other nondiscrimination and equal opportunity requirements, as part of the preapproval process.

B. In § 291.410(d), the references to a 45-day period have been changed to 30-day period. The 45-day reference was inadvertently put in the proposed rule, and this change reflects a technical correction.

C. In § 291.410(d), and with regard to re-offering a property to an applicant, the rule is changed to provide that an unsold property will be re-offered to an applicant if no offer from the public has been *accepted* by HUD, rather than just *received* by HUD.

D. Section 291.410(d) is further modified to show that written notification of interest in a particular property by the applicant may be sent via facsimile, and the Department encourages applicants to use this method of notification. Signed leases may also be transmitted in this manner, followed by submission of the original.

E. Section 291.410(e) has been deleted from the final rule. The Department believes that this provision was redundant since § 291.110, as published on October 20, 1993, in an interim rule amending the Single Family Property Disposition program, sets forth the same notification procedures. In the interest of simplification and readability, the Department has removed this provision.

F. Paragraphs (b) and (c) of § 291.425 have been changed to indicate that the sales price of any HUD-owned property acquired under this program will be discounted in an amount determined appropriate by the Secretary, but not less than 10 percent. This change will make the rule governing the homeless initiative consistent with an amendment to § 291.110(a) in the October 20, 1993 interim rule for the Single Family Property Disposition program.

IV. Discussion of Public Comments From Interim Rule

The Department received 38 public comments in response to the proposed rule published on August 11, 1993. The following discussion summarizes the comments and provides HUD's responses to those comments. Every comment was reviewed and considered, although it may not be specifically addressed in this preamble.

30-day Public Listing Period: § 291.400(c)(1)

Comment: The Department received twenty-one comments objecting to the regulatory change which requires that HUD offer properties for sale to the public for 30 days prior to making them available for leasing to homeless providers. These commenters were generally concerned that only the least desirable properties would remain in the inventory after the 30-day public listing period for a variety of reasons: (a) The increased costs associated with repairing the least desirable properties; (b) the unsuitability of leasing remainder properties because of problems with accessibility to supportive services; and (c) the location of remainder properties often being in crime ridden areas.

HUD's response: Section 1407(a) of the 1992 HCD Act requires that HUD first offer properties to the general public for at least 30 days before HUD makes such properties available for leasing to homeless providers. However, HUD believes that homeless providers will have a sufficient number of acceptable properties available for their programs in most housing markets when the 30 day marketing priority takes effect. This belief is based upon the number of single family properties currently in the Department's inventory and the number of new acquisitions projected throughout any given year. In addition, the Department will administer the exception provision of the law with attention to valid concerns of the participating homeless providers, and if in general a sufficient number of acceptable properties are not available to applicants after the public listing period, the Department will revisit the exception provision in the future.

Exception to Public Listing Period and Consultation With Units of Local Government: § 291.400(c)(2)

Comment: Three commenters objected to the 200-unit exception to the 30-day public listing period requirement. One commenter suggested that exceptions be determined based upon the current level of usage of the homeless leasing program in an area, and input from each field office as to where and whether the exception should apply. One commenter recommended that the exception to the 30-day public listing period should apply whenever the inventory in a field office is less than 500 units. One commenter recommended that the Community Planning and Development Division in each field office work with Property Disposition staff to determine whether the exception to the 30-day listing period requirement should apply.

HUD's response: The 200 property threshold, which will determine what field offices must offer their inventory to

homeless providers on a priority basis, is based on HUD's experience administering the Homeless Initiative Program nationwide. The Department believes this is a reasonable benchmark which will ensure adequate property availability for homeless providers; however, if future program experience demonstrates a need for modification of this criterion to determine exception areas, the Department will respond appropriately.

Comment: Section 1407(b) of the Housing and Community Development Act of 1992 requires that HUD consult with units of local government in determining the area in which properties should be reserved for disposition under the exception to the 30-day public listing period. Several commenters recommended that HUD give local governments more input into the program. Eight commenters objected to HUD's exclusion of local communities from reviewing and approving of properties for the homeless on a case-by-case basis. Eight commenters suggested that HUD require that the program be consistent with the local CHAS.

HUD's response: HUD has no control over which properties enter its inventory or where they will be located; therefore, there is no guarantee of property availability in areas designated by the locality for providing services to the homeless. However, in areas subject to section 1407(b), HUD will consult with local officials on an annual basis to determine which neighborhoods are targeted by the locality for provision of adequate supportive services necessary to conduct homeless programs. This consultation will be carried out in a manner to minimize any delay in making HUD owned properties available to homeless providers. While the language in section 1407(b) of the 1992 HCD Act provides for consultation on "which properties should be reserved," HUD believes that Congress intended that the Department seek input from local governments on the specific geographic areas in these communities where the homeless population could best be served rather than seeking input on a property-by-property basis. Such a process would be administratively burdensome for both HUD and the unit of local government. HUD will make every effort to work with local governments and applicants; however, the decision on which properties are available is ultimately determined by the location of properties coming into inventory.

Notification by ZIP Codes: § 291.410

Comment: Several commenters objected to the exclusive use of ZIP codes in § 291.410 for identifying areas of interest by homeless providers for leasing properties, and notifying the providers of available properties since many communities share the same ZIP codes, but not the same housing patterns.

HUD's response: Property listings must be based upon some generally recognized geographic designation that is part of HUD's existing data base. The Department currently tracks its property acquisitions by ZIP code. Moreover, the Department is not aware of a better method for tracking and identifying properties. Finally, the Department has not experienced any difficulties using this approach in the past, nor has it had any complaints regarding this method from program participants.

Fair Housing Requirements

Comment: Several commenters objected to the absence of fair housing requirements in the rule. These commenters recommended that HUD require that the homeless providers submit a fair housing action plan and an affirmative marketing plan. One commenter suggested that the Department require that homeless providers submit a certification of compliance with fair housing laws.

HUD's response: Since the Department cannot control which properties or what geographic areas are represented in its inventory, a requirement that participating agencies submit a fair housing action plan and an affirmative marketing plan is not appropriate. However, the Department requires that all of its programs be administered in a non-discriminatory manner, and § 291.435 expressly makes applicants subject to the Fair Housing Act, as well as other nondiscrimination and equal opportunity requirements. The Department agrees that applicants should submit a certification of compliance with applicable fair housing laws. Accordingly, this final rule amends § 291.410(c) to require that applicants submit a certification of compliance with fair housing laws, as well as other nondiscrimination and equal opportunity requirements, as part of the preapproval process.

Miscellaneous Comments

Comment: Several commenters recommended that HUD change the rule to require that HUD notify local municipalities of all property disposition properties.

HUD's response: On request, HUD does notify local officials of all properties which become available for purchase within their jurisdiction.

Comment: Several commenters suggested that HUD give local municipalities an opportunity to purchase homes on a more competitive basis. A few commenters recommended that HUD offer substantial discounts for bulk purchases.

HUD's response: The Department believes that the current pricing structure is appropriate. HUD offers to public agencies and nonprofits wishing to purchase a HUD-owned property the following discounts: a 10 percent discount off the list price on single purchases, a 15 percent discount off the list price on the purchase of five or more properties, and a 30 percent discount off the list price for properties located in certain designated "revitalization areas."

Comment: Several commenters suggested that HUD change the leasing program to place a greater emphasis on supportive services, and require that providers set up a reserve account for participants to assist the participants in moving toward independence.

HUD's response: The Department agrees that it is important to place a greater emphasis on the availability of appropriate supportive services in order to maximize the long term benefits of the Homeless Initiative program; however, requiring that homeless providers establish reserve accounts to help move tenants towards independence seems overly burdensome to homeless providers participating in the program at this time.

Comment: Section 291.400(f) currently provides that, to the extent practical and possible, HUD will avoid excessive concentration in a single neighborhood of properties leased or sold under this program. Although the Department did not propose to change this provision in the proposed rule, a number of commenters recommended that the Department define "excessive concentration" in the final rule.

HUD's response: The Department previously addressed this issue in the final rule published September 16, 1991, where we stated that "HUD believes that the need to avoid excessive concentration in a single neighborhood is important to the goal of integrating former homeless persons into the community. However, rigid standards * * * would be counterproductive, and do not recognize the diversity of communities and needs. The need for flexibility outweighs the need to establish strict standards to ease delivery of supportive services." Based upon past experience in this program, the Department continues to believe that

a rigid definition would be counterproductive. Accordingly, the rule is unchanged on this issue. However, if in the future, this proves to be a problem, the Department will revisit the issue at that time.

Comment: One commenter objected to the single family property disposition homeless initiative program in general, arguing that it is incompatible with local municipal housing patterns, and that leasing PD properties to homeless providers causes declining property values.

HUD's response: There is no evidence that leasing PD properties to homeless providers has caused values to decline. However, in most housing markets, HUD properties will now be offered first to the general public before being made available for lease to homeless providers. This should enhance homeownership opportunities, as well as provide greater stability in residential neighborhoods.

Comment: Three commenters supported the proposal that HUD limit the number of properties held off market for any applicant at any one time based upon the applicant's financial capacity and past performance.

HUD's response: HUD believes that the number of properties held off the market for an applicant should relate to that applicant's prior housing experience and demonstrated capacity to administer the program. Field offices currently have the discretion to determine the appropriate number of properties for any applicant.

Comment: Two commenters recommended that HUD grant the field offices more discretion in the program's administration.

HUD's response: On November 2, 1993 (58 FR 58560), the FHA Commissioner redelegated to field offices the authority to waive handbooks, notices, directives and other issuances for Housing programs unless a regulatory or statutory provision is involved. As a result of this redelegation of authority, field offices now have more flexibility in program administration of the single family property disposition homeless initiative program.

Comment: Two commenters recommended that HUD change the way it administers the ten percent cap on leasing property to homeless providers. These commenters believe that leased properties are counted toward the annual ten percent cap each time their annual lease is renewed.

HUD's response: Properties leased to homeless providers are counted only once against the ten percent of annual inventory cap. Renewal of a lease does not mean that an individual property is counted twice in one year towards the limitation on the number of properties which may be leased for this purpose. Moreover, in the past, the Department as a whole has never leased ten percent of the nationwide inventory to homeless providers, so that individual field offices exceeding their own ten percent threshold may request reallocation of authority to lease from other areas.

V. Other Matters

A. Executive Order 12866

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review. Any changes made in this rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 for the proposed rule published on August 11, 1993. The Department has determined that the Finding is not affected by the changes in this final rule. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC.

C. Executive Order 12612, Federalism

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under that Order.

D. Executive Order 12606, the Family

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that the Single Family Property Disposition Homeless Initiative, generally, has a positive and beneficial impact on the formation, maintenance, and general well-being of homeless families, and the amendments made by this rule will not significantly change the overall impact of the rule on families. Therefore, the rule is not subject to review under that Order.

E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. Specifically, the rule modifies the procedures under which HUD makes properties available for lease to governmental entities and private nonprofit organizations for use by homeless persons.

F. Paperwork

The amendments made to 24 CFR part 291 by this final rule will not add any additional information collection burden to that already approved by the Office of Management and Burden under the Paperwork Reduction Act and assigned OMB approval numbers 2502–0412 and 2502–0306.

G. Regulatory Agenda

This rule was listed as Sequence No. 1606 in the Department's Semiannual Agenda of Regulations published at 59 FR 20424, 20452 on April 25, 1994, under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

Accordingly, for the reasons stated in the preamble, part 291, subpart E, of title 24 of the Code of Federal Regulations is amended as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

1. The authority citation for 24 CFR part 291 is revised to read as follows:

Authority: 12 U.S.C. 1709 and 1715b; 42 U.S.C. 1441, 1441a, and 3535(d).

2. In § 291.400, paragraph (b) is amended by removing the word "Demonstration"; and paragraphs (c), (d), and (e) are revised to read as follows:

§ 291.400 Purpose and scope.

* * * * *

(c) *Property available for lease with option to purchase.* (1) HUD will make available up to 10 percent of its total inventory of properties as of October 1, 1993. Thereafter, on October 1 of each year, the 10 percent figure will be adjusted upward or downward to reflect increases or decreases in the total inventory. Property will be available for lease under the terms and conditions described in § 291.415, in accordance with the following criteria:

(i) The property has been listed for sale for at least 30 days, except as provided in paragraph (c)(2) of this section;

(ii) The property is vacant; and

(iii) A sales contract has not been accepted for the property, or the property has not been committed to another program.

(2) Where a Field Office has 200, or fewer, total properties in inventory on October 1 of each year, and where applicants have requested to lease properties in certain designated areas, such properties will be offered first to applicants for lease before being listed for sale to the general public until 10 percent of the total inventory of the Field Office has been leased. HUD will also take into consideration the number of properties that the Department anticipates acquiring over the next 12-month period and the speed with which acquired properties are selling in the area. HUD will consult, on an annual basis, with units of general local government in the area on parts of the area where there is a need for housing for homeless persons.

(d) *Property available under a McKinney Act Supportive Housing program lease-option agreement.* Eligible properties will be available under a lease-option to purchase agreement, under the terms and conditions described in § 291.420, to Supportive Housing program applicants for acquisition grants under 24 CFR part 583.

(e) *Properties available for sale.* Eligible properties will be available for competitive sale or direct sale for fair market value, less a discount determined appropriate by the Secretary but not less than 10 percent, under the terms and conditions described in § 291.425.

* * * * *

§ 291.405 [Amended]

3. In § 291.405, the definition of "Applicant" is amended by removing the word "Demonstration", and by removing the words "24 CFR 577.5 or 578.5" and replacing them with "24 CFR part 583" in the last sentence; the definition of "Eligible properties" is amended by adding the word "vacant" before "single family properties"; and the definition of "Supportive Housing Demonstration" is removed.

4. Section 291.410 is amended by revising paragraph (c) introductory text, adding paragraph (c)(6), and revising paragraph (d), to read as follows:

§ 291.410 Applicant preapproval; notification of eligible properties.

* * * * *

(c) *Applicant data and certification.* To obtain preapproval, applicants must provide the appropriate HUD Field Office with the following data and certification:

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) * * *

(6) A certification of the applicant's intent to comply with the requirements of the nondiscrimination and equal opportunity requirements set forth in § 291.435.

(d) *Notification of eligible properties available for lease.* (1) Applicants, preapproved by HUD as described in paragraph (a) of this section, must designate geographic areas of interest by ZIP Code to the appropriate HUD Field Office(s), and must indicate their intention to lease properties in those areas.

(2)(i) Upon request, and after properties have been listed for sale to the general public for at least 30 days, except as provided in paragraph (d)(2)(ii) of this section, Field Offices will notify applicants, in writing, of available eligible properties in the ZIP Code areas previously designated by the applicant. Specific properties selected by the applicant will be held off the market for a 10-day consideration and inspection period beginning to run upon notification by the applicant to the Field Office. (Where notification is by mail, the 10-day period will begin to run five days after mailing.) Only those properties in which the applicant has expressed an interest will be held off the market. If a signed lease is not received from the applicant by the end of the 10-day consideration and inspection period, the Field Office will resume offering the properties for sale. (Facsimile (FAX) transmissions are acceptable.)

(ii) Where properties are made available to applicants before being listed for sale to the public, as described in § 291.400(c)(2), upon request, Field Offices will notify applicants, in writing, when eligible properties become available in the ZIP Code areas previously designated by the applicant. Those properties will remain available for a 10-day consideration and inspection period before being listed for sale to the public. The 10-day period will begin to run upon notification of the applicant by the Field Office. (Where notification is by mail, the consideration period will begin to run five days after mailing.) Applicants must submit a signed lease to the Field Office by the end of the 10-day period. (Facsimile (FAX) transmissions are acceptable.) If a signed lease is not received by the end of the 10-day period, the Field Office will offer the properties for sale to the general public. After the initial 10-day consideration and inspection period, a property will not be available to applicants for lease again until it has been offered to the public for 30 days. If an applicant expresses an interest in leasing a property during or after the 30-day public sale period, the Field Office will offer the property to the applicant for 10 days after the public sale period, provided the property is unsold, no offer from the public has been accepted, and the property is not in a public bid-offering period or committed to another purpose or program.

(iii) In notifying applicants of available properties, Field Offices will coordinate the dissemination of the information to ensure that where more than one applicant designates a specific area, those applicants receive the list of properties at the same time, based on intervals agreed upon between HUD and the applicants. Properties will be leased or sold to applicants on a first come-first served basis.

(iv) HUD may limit the number of properties held off the market for an applicant at any one time, based upon the applicant's financial capacity and past performance as determined by HUD from information provided in the preapproval process and observations made during monitoring of a program in progress.

5. Section 291.415 is amended by redesignating paragraph (d)(1) as paragraph (d)(1)(i), by adding paragraph (d)(1)(ii), and by revising the first sentence of paragraph (f)(1), to read as follows:

§ 291.415 Lease with option to purchase properties for use by the homeless.

* * * * *

(d) *Property operating costs and insurance.*

(1)(i) * * *

(ii) Upon request by an applicant or lessee, HUD will identify and describe any exemptions or reductions relating to payment of property taxes under State or local laws, for the jurisdiction requested by the applicant or lessee, that may be applicable to lessees or to properties leased under this subpart. If a lessee of a property under this subpart is provided an exemption from any requirement to pay State or local property taxes, or a reduction in the amount of any such taxes, the lessee will be required to establish an escrow account to cover only the amount of taxes owed.

* * * * *

(f) *Purchase of leased properties.* (1) Lessees that desire to purchase leased properties during the lease term will be offered the properties at the lower of the fair market value established at the time of the initiation of the lease or at the time of the sale, less a discount determined appropriate by the Secretary but not less than 10 percent, provided lessees agree to use the properties either to house low-income tenants for a period of not less than 10 years or to resell the properties to low-income buyers. * * *

* * * * *

6. Section 291.420 is amended by revising the section heading and paragraphs (a) (1) and (3), and by removing the word "Demonstration" from the first sentence of paragraph (b), to read as follows:

§ 291.420 Supportive Housing program lease-option to purchase properties.

(a) *Lease-option for Supportive Housing program applicants.* (1) Eligible properties will be available under a lease-option agreement to applicants for acquisition grants under the Supportive Housing program, as described in 24 CFR part 583. An applicant may enter into a lease-option agreement with HUD for up to six months while its application for Supportive Housing assistance is being reviewed by HUD.

* * * * *

(3) The applicant may purchase the property for fair market value, less a discount determined appropriate by the Secretary but not less than 10 percent, at any time during the lease period in accordance with the terms of § 291.415(f).

* * * * *

7. Section 291.425 is amended by revising paragraphs (b) and (c) to read as follows:

§ 291.425 Sale of properties for use by the homeless.

* * * * *

(b) *Direct sales.* In accordance with § 291.110(a), the purchase price for the property will be at the fair market value established for the property in the approved disposition program, less a discount determined appropriate by the Secretary but not less than 10 percent.

(c) *Competitive sales.* As an alternative to direct sales, an applicant, whether or not preapproved, may submit a competitive bid on any property listed for sale to the general public, as described in § 291.105. If the HUD Field Office accepts the bid, the net amount due HUD will be reduced by a discount determined appropriate by the Secretary but not less than 10 percent.

* * * * *

8. Section 291.435(a)(1) is amended by replacing the period at the end of the paragraph with a semi-colon, and by adding the following language after the final semi-colon:

§ 291.435 Applicability of other Federal requirements.

* * * * *

(a) *Nondiscrimination and equal opportunity.* * * * and, where applicable, the Americans with Disabilities Act (42 U.S.C. 12131) and implementing regulations at 28 CFR parts 35 and 36.

* * * * *

Dated: April 5, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94-13729 Filed 6-6-94; 8:45 am]

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Part IV

Department of Housing and Urban Development

Office of the Secretary

Proprietary Information Submitted by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-94-3786; FR-3734-N-01]

Proprietary Information Submitted by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation

AGENCY: Office of the Secretary, Housing and Urban Development.

ACTION: Notice of temporary order.

SUMMARY: This Notice sets forth the Order of the Secretary of Housing and Urban Development that certain information submitted by the Federal National Mortgage Association ("Fannie Mae", "Government-Sponsored Enterprise", or "GSE") and the Federal Home Loan Mortgage Corporation ("Freddie Mac", "Government-Sponsored Enterprise", or "GSE") to the Department of Housing and Urban Development ("HUD") is proprietary and shall not be disclosed to the public at this time.

EFFECTIVE DATE OF THE ORDER: May 31, 1994.

COMMENTS: Interested persons are invited to submit comments regarding this Notice of Temporary Order to the Rules Docket Clerk, room 10276, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500. Comments will be considered in developing any subsequent order and regulations implementing the Secretary's regulatory authority respecting Fannie Mae and Freddie Mac to be proposed this summer. While no deadline has been set for comments to be considered in developing the regulations, comments must be received prior to the deadline date established in the proposed regulations.

Communications should refer to the above docket number and title. Facsimilie (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Harold L. Bunce, Acting Director, Financial Institutions Regulation Staff, telephone (202) 708-1464 or Kenneth A. Markison, Assistant General Counsel for Government-Sponsored Enterprises/RESPA, telephone (202) 708-3137; Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. A telecommunications device (TDD) for hearing- or speech-impaired persons (TDD) is available at (202) 708-0770. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

The Temporary Order

By the authority vested in me as Secretary of Housing and Urban Development, under sections 1323 and 1326 of the Federal Housing Enterprise Financial Safety and Soundness Act, 12 U.S.C. 4543 and 4546, I have determined that certain information, identified in the attached Exhibit A, contained in the loan-level data files which were submitted by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to the Department of Housing and Urban Development, as required under the Interim Housing Goals, should be deemed proprietary information. Accordingly, under the authority of section 1326 of the Act, I hereby order that this information be withheld from public disclosure at this time. The basis and terms of this Temporary Order are set forth fully below.

Background

The Federal Housing Enterprise Financial Safety and Soundness Act of 1992, enacted as Title XIII of the Housing and Community Development Act of 1992, (Pub. L. 102-550, approved October 28, 1992), codified generally at 12 U.S.C. 4501-4561 ("the Act"),[1] requires the Secretary to establish and monitor the performance of Fannie Mae and Freddie Mac in meeting annual goals for mortgage purchases on housing for low- and moderate-income families, housing located in central cities, and special affordable housing, *i.e.*, housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families. On October 13, 1993, the Secretary published the housing goals and requirements for the GSEs' mortgage purchases for the 1993-94 transition period in Notices of Interim Housing Goals ("the Notices"). 58 FR 53047-53096.

Under the Notices, the Secretary required the GSEs to submit certain data on their mortgage purchases by March 1, 1994. This information is to assist the Secretary in monitoring the GSEs' performance under the goals and to satisfy the requirements of subsections 309(m)-(n) of the Federal National Mortgage Association Charter Act, 12 U.S.C. 1723a(m)-(n), and subsections 307(e)-(f) of the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1456(e)-(f). Sections 309(m) and 307(e) under these Acts mandate that the GSEs collect, maintain and provide to the Secretary data relating to their mortgages on single family and multifamily housing and sections 309(n) and 307(f) require that the GSEs report aggregate information on their mortgages to Congress.

Under the Notices, the Secretary required each GSE to provide information in two forms—loan-level data files that provide detailed information on each mortgage loan purchased by the GSE, and data reports that aggregate data on mortgage loans in various ways. In addition, the Secretary required each GSE to provide a written report discussing its performance under the housing goals. The information required in the loan-level data files includes detailed information on individual loans purchased by the GSEs including: The borrower(s') annual income, race, and gender; census tract; other geographic identifiers; loan-to-value ratio; number of units; owner-occupancy status; and other details on the mortgage, the property, and the borrower(s). The information required for the data reports includes aggregate data concerning: The amount of mortgage purchases that qualify towards each housing goal, classified by number of units and dollar volume; mortgagors' income; race; location of property; and various other categories.

Legal Requirements Regarding Proprietary Information

Section 1323 of the Act, 12 U.S.C. 4543, provides that the Secretary shall make available to the public the data submitted by the GSEs in the reports required under section 309(m) of the Federal National Mortgage Association Charter Act and section 307(e) of the Federal Home Loan Mortgage Corporation Act *except* the data that the Secretary determines by regulation or order pursuant to section 1326, 12 U.S.C. 4546, is proprietary. Section 1323(b)(2) of the Act, 12 U.S.C. 4543(b)(2), specifically provides that the Secretary may not restrict access to data consisting of income, census tract location, race, and gender of mortgagors of single family properties. Section 1326 provides that the Secretary may by regulation or order provide that certain information shall be treated as proprietary and, pending the issuance of a final decision on the matter, the material may not be disclosed.

The Freedom of Information Act (FOIA) under Exemption 4, 5 U.S.C. 552(b)(4), allows confidential business information to be protected from disclosure, and the Trade Secrets Act, 18 U.S.C. 1905, forbids Government officers and employees from releasing trade secret and other confidential business information. Executive Order No. 12,600, 3 CFR at 235 (1988), requires that agencies notify submitters of confidential business information of requests under FOIA for such information and that agencies afford submitters an opportunity to comment on release of the requested information. If an agency determines to release notwithstanding a submitted objection, the Executive Order requires that the agency notify the submitter reasonably prior to release. The President of the United States, by memorandum, dated October 4, 1993, to Heads of Departments and Agencies, emphasized the importance of public disclosures under FOIA and an implementing memorandum from the Attorney General, attached to the President's memorandum, instructed agencies to disclose information unless disclosure would harm an interest protected by a FOIA exemption. The President's and the Attorney General's memoranda do not alter Executive Order No. 12,600.

In addition to the legal requirements respecting proprietary information, the Privacy Act of 1974, 5 U.S.C. 552a, and FOIA Exemption 6, 5 U.S.C. 552(b)(6), pertain to the disclosure of information on individuals. Accordingly, even if information is not withheld as proprietary, it still may be withheld pursuant to the Privacy Act or Exemption 6.

Information Regarded as Proprietary by the GSEs

Prior to March 1, 1994, Departmental staff met separately with staff of each GSE to discuss the subject of proprietary information in view of the impending deadline for receipt of materials by HUD in accordance with the Notices. Fannie Mae staff advised that, notwithstanding that it considered most of the information submitted under the Notice to be proprietary, Fannie Mae sought for HUD to withhold only certain data from the loan-level data files because, if released, such data would cause substantial competitive harm to Fannie Mae.

Both GSEs pointed out that, because the Act requires the Secretary to release information on census tract location of properties, releasing other details on specific loans such as unpaid principal balance (UPB), date of mortgage note, loan type, loan-to-value ratio (LTV), and similar terms would cause competitive harm by permitting the other GSE or other market competitors to gain competitive advantage from the information. For example the GSEs argue that: Releasing loan-level information on each properties' UPB and census tract location will reveal what size loans a GSE is willing to buy in a particular area, at what prices and on what terms, and that such information will assist competitors in the same market and other markets. Likewise, customers will use the information to obtain insight into each GSEs' pricing and marketing strategies.

Correspondence from the GSEs details the GSEs' objections to release of items in the loan-level data files. This correspondence, attached to and incorporated in this Notice of Temporary Order, includes: Exhibit B—a letter from Anthony F. Marra, Senior Vice President and Deputy General Counsel of Fannie Mae, to Kenneth A. Markison, Assistant General Counsel for Administrative Law, dated March 11, 1994; and Exhibit C—a letter from Allan G. Ratner, Vice President and Deputy General Counsel of Freddie Mac, to Mr. Markison, dated May 9, 1994. This correspondence lists the particular data items that each GSE requested be withheld.

Freddie Mac requested the withholding of more items than Fannie Mae. Both GSEs requested that the Secretary treat the GSEs' information the same so that any information deemed proprietary for one GSE is deemed proprietary for the other GSE. Accordingly, where only one GSE requested proprietary treatment for a particular category of information, this Temporary Order provides that such information is treated as proprietary for both GSEs. Exhibit A identifies the items requested to be withheld as proprietary: Solely by Freddie Mac (marked with an "*"); solely by Fannie Mae (marked with "**"); and by both Freddie Mac and Fannie Mae (unmarked).

Conclusion

The Department will comply fully with the requirements of the Act and will make available to the public data submitted to HUD by the GSEs, consisting of income, census tract location, race, and gender of mortgagors of single family properties. However, having considered the views of the GSEs concerning the disclosure of the remainder of the data and the statutory requirements concerning withholding proprietary information, it is concluded that a Temporary Order is necessary to protect other information submitted by the GSEs, not in the foregoing categories, which the GSEs regard as proprietary.

The legislative history of the Act characterizes the lack of information on the GSEs' performance as "an information vacuum." S. Rep. No. 102-282, 102d Cong., 2d Sess. 39 (1992). The legislative history notes that "public access and disclosure of information is a key tool for permitting appropriate public scrutiny and oversight of the activities of the [GSEs] and in evaluating possible improvements in housing finance markets." *ID.* at 44. On the other hand, the Act also protects proprietary information from release. Based on the submissions of both GSEs, the information in the attached Exhibit A shall be deemed proprietary. The Secretary further concludes, however, that: This Order should be temporary; the public should be accorded full opportunity to comment during the regulatory process; and this Temporary Order should expire no later than the date regulations fully addressing this subject are effective.

This Temporary Order does not extend to aggregated data information in the data reports and the written reports submitted by Fannie Mae and Freddie Mac. Such data are not regarded as causing substantial competitive harm by the GSEs and, at such time as this information is requested by the public, it will be released. Even though loan-level information is not deemed proprietary under this Temporary Order, other statutes, including the Privacy Act of 1974 and Exemption 6 of FOIA, may pertain and result in withholding of information.

Expiration and Modification of This Temporary Order

This Temporary Order shall be effective until such time as it is determined necessary and/or appropriate to withdraw or modify it. Final GSE regulations will fully address the disclosure and withholding of information under the Act and this Temporary Order will, in any event, expire when the final regulations are published. Pending final regulations, the Department will work with the GSEs to narrow the list of items withheld and develop ways that information deemed proprietary under this Temporary Order may be released without disclosing proprietary information. This Temporary Order may be modified if it is determined that additional information should be made available to the public. Any such determination will be conducted in accordance with the

[1] Unless otherwise specified, all section cites herein are cites to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Sections 1331-1336 of that Act are codified at 12 U.S.C. 4561-66.

Act. In any event, in responding to FOIA requests, the Department will follow the procedures in Executive Order 12,600, as applicable.

Release in Response to Requests on Behalf of Congressional Committee or Subcommittee, the Comptroller General, a Subpoena or Other Legal Process

If the Department receives a request on behalf of a Congressional Committee or Subcommittee, the Comptroller General, a subpoena from a court of competent jurisdiction, or is otherwise compelled by law to release information determined to be proprietary under this Temporary Order, the Department will provide the information in accordance with the request without regard to the provisions of this Temporary Order. In releasing requested information under this paragraph, the Department will include a statement with the information to the effect that the Secretary has determined that the information is subject to this Temporary Order, the GSEs' regard the information as proprietary, and public disclosure of the information may cause competitive harm to the GSEs. To the extent practical, the Department will provide notice to the GSEs after a request under this paragraph is received and before the information is provided in response to the request.

Dated: May 31, 1994.

Henry G. Cisneros,

Secretary.

Exhibit A

LIST OF PROPRIETARY INFORMATION CONTAINED IN LOAN LEVEL DATA FILES SUBMITTED BY FREDDIE MAC AND FANNIE MAE

Field description	Field position
Single Family:	
Acquisition UPB*	80–85
Loan-to-Value Ratio at Origination	86–88
Date of Mortgage Note*	89–94
Date of Acquisition*	95–100
Purpose of Loan**	101
Cooperative Unit Mortgage	102
Refinancing Loan From Own Portfolio	103
Special Affordable, Seasoned Loan Proceeds Recycled*	104
Product Type	105–106
RTC/FDIC	108
Term of Mortgage at Origination*	109–111
Amortization Term*	112–114
Seller Institution	115
Mortgage Purchased Under GSE's Community Lending Program	118
Acquisition Type	119
GSE Real Estate Owned*	120
Public Subsidy Program	121
Occupancy Code	132
Number of Units	133
Unit 1 Number of Bedrooms (if property has 2–4 units)*	134
Unit 1 Owner-Occupied (if property has 2–4 units)*	135
Unit 1 Affordability Category (if property has 2–4 units)*	136
Unit 1 Reported Rent Level (if property has 2–4 units)*	137–141
Unit 1 Reported Rent Plus Utilities (if property has 2–4 units)*	142–146
Unit 2 Number of Bedrooms*	147
Unit 2 Owner-Occupied*	148
Unit 2 Affordability Category*	149
Unit 2 Reported Rent Level*	150–154
Unit 2 Reported Rent Plus Utilities*	155–159
Unit 3 Number of Bedrooms*	160
Unit 3 Owner-Occupied*	161
Unit 3 Affordability Category*	162
Unit 3 Reported Rent Level*	163–167
Unit 3 Reported Rent Plus Utilities*	168–172
Unit 4 Number of Bedrooms*	173
Unit 4 Owner-Occupied*	174
Unit 4 Affordability Category*	175
Unit 4 Reported Rent Level*	176–180
Unit 4 Reported Rent Plus Utilities*	181–185
Multifamily:	
U.S. Postal Zip Code	13–17
Affordability Category*	70
Acquisition UPB	71–76
Participation Percent*	77–80
Date of Mortgage Note	81–86
Date of Acquisition*	87–92
Purpose of Loan**	93
Cooperative Project Loan	94
Refinancing Loan From Own Portfolio*	95
Special Affordable, Seasoned Loans: Are Proceeds Recycled?*	96
Mortgagor Type*	97

LIST OF PROPRIETARY INFORMATION CONTAINED IN LOAN LEVEL DATA FILES SUBMITTED BY FREDDIE MAC AND FANNIE MAE—Continued

Field description	Field position
Term of Mortgage at Origination	98–100
Loan Type	101
Amortization Term*	102–104
Seller Institution*	105
Acquisition Type	107
GSE Real Estate Owned*	108
Public Subsidy Program*	109
Total Number of Units	110–114
Special Affordable—45 percent*	115–123
Special Affordable—55 percent*	124–132
Unit Type XX—Number of Bedroom(s)*	133
Unit Type XX—Number of Units*	###
Unit Type XX—Average Reported Rent Level	###–###
Unit Type XX—Average Reported Rent Plus Utilities	###–###
Unit Type XX—Affordability Level*	###–###

*Only Freddie Mac asserted that this data was proprietary.
**Only Fannie Mae asserted that this data was proprietary.

Exhibit B

March 11, 1994.

Mr. Kenneth A. Markison, Assistant General Counsel for Administrative Law, Department of Housing and Urban Development, Room 10252, 451 Seventh St. SW., Washington, DC 20410.

Re: Supplemental Information Regarding Confidentiality of Certain Data Submitted March 1, 1994 by Fannie Mae.

Dear Mr. Markison: This letter summarizes Fannie Mae's views on the issue of proprietary information contained in its March 1 submission to the Secretary of Housing and Urban Development, which contained tapes of loan level detail relating to our purchase of single-family and multifamily mortgages.

We believe that all the information contained in the tapes submitted on March 1 is entitled to receive confidential treatment, because it is the product of a substantial investment by Fannie Mae. Such information is not available publicly and is treated as extremely confidential information and closely held within the corporation.

However, in the spirit of providing HUD our fullest cooperation as it administers the new public disclosure provisions of 12 U.S.C. 4543, Fannie Mae is requesting "proprietary" and "confidential" designations for only the elements in the database that would advantage competitors or customers at our expense. These elements (only 23 of the 108 we are providing) would, if disclosed, compromise our efficiency and competitive position in the market where we compete day-to-day throughout the country with both Freddie Mac and highly innovative Wall Street firms. Disclosure of such information would also hurt our bargaining position with companies with whom we conduct business. The specific elements for which confidentiality is requested are listed and discussed in detail below.

We also request that HUD extend proprietary treatment reciprocally both to Fannie Mae and Freddie Mac, so that any element specifically deemed proprietary or confidential for one corporation would be deemed proprietary or confidential also for the other, regardless of whether both firms specifically requested such treatment.

Pursuant to 12 U.S.C. 4546(c), governing disclosure of proprietary information, we believe that HUD is required to issue a final written decision regarding classification of our data submission as "proprietary" prior to releasing any such information. This decision requirement is an express predicate for data disclosure under 12 U.S.C. 4543. We believe that it also should govern any release under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, by virtue of the enactment of 12 U.S.C. 4546 after FOIA, its greater specificity, and Congress' decision not to establish any exception regarding FOIA requests.

Further, it is our understanding that independent of its obligations under 12 U.S.C. 4546, HUD will observe the provisions of Executive Order No. 12,600 (52 FR 23,781 (1987)) for all data that Fannie Mae classifies as proprietary and confidential commercial or financial information. That Order recognizes the procedural rights of submitters of confidential commercial data to the government, and mandates that a recipient agency provide notice and a reasonable response time whenever the agency determines that it may be required to disclose the requested data. The Order further mandates that if an agency overrules a submitter's objection, it must notify the submitter in writing and provide an explanation of its decision. The agency must provide such an explanation a reasonable number of days prior to a specified disclosure date, to afford the submitter an opportunity to seek judicial relief if necessary.

Adherence to the procedures set forth in Executive Order No. 12,600 accords with existing arrangements between HUD and Fannie Mae for treatment of confidential business information submitted by Fannie Mae as required by HUD regulations (see letter dated February 15, 1979 from Irving Margulies, Acting HUD Deputy General Counsel, to Bernard Carl, Fannie Mae's outside counsel). These arrangements have been in place for over 15 years and have provided a reasonable framework for us to submit very sensitive business information to HUD. Last year, in response to a FOIA request, HUD had the opportunity to implement the agreed-upon procedures for notification, and we were able to provide HUD with the reasons that certain of the business information previously provided to HUD should continue to remain confidential.

Finally, we request that HUD observe certain additional safeguards for requests from Congress regarding data identified by Fannie Mae to be proprietary or confidential commercial information. In such cases, we request that HUD also provide Fannie Mae with notice upon receipt of a congressional request for proprietary or confidential data, as well as notice prior to HUD's delivery of requested data to Congress, to give us the opportunity to explain to Congress the need to protect such data. We also request that HUD provide requested confidential data only when accompanied by a legend stating that HUD has determined that the material is proprietary and exempt from public disclosure under both 5 U.S.C. 552 and 12 U.S.C. 4546, and that public disclosure would result in substantial competitive harm.

Basis for Non-Disclosure to Public

We have listed below specific data elements contained in the Fannie Mae Multifamily Acquisitions, Multifamily Units, and Single-Family Acquisitions Files that have been submitted to HUD. We are requesting HUD's designation of these data elements as both "proprietary" within the meaning of 12 U.S.C. 4543, 4546,[1] and confidential commercial or financial information pursuant to Exemption 4 of FOIA, 5 U.S.C. 552(b)(4). Specifically, the following data elements are entitled to such designation:

Multifamily Acquisitions

1. Zip code (Ref. 3)
2. Acquisition UPB (Ref. 17)
3. Date of mortgage note (Ref. 19)
4. Coop flag (Ref. 22)

[1] Sections 1323 and 1326 of Pub. L. 102–550 (1992).

5. Term at origination (Ref. 26)
6. Loan type (more properly amortization) (Ref. 27)
7. Acquisition type (Ref. 31)
8. Total number of units (Ref. 34)
9. Purpose of loan (Ref. 21)

Multifamily Units

1. Average reported rent per bedroom type (Ref. 4)
2. Average reported rent plus utilities per bedroom type (Ref. 5)

Single-Family Acquisitions

1. Loan-to-value LTV ratio at origination (Ref. 19)
2. Product Type (Ref. 26)
3. Seller Institutions (Ref. 31)
4. Purpose of Loan (Ref. 22)
5. Occupancy Code (Ref. 44)
6. Number of Units (Ref. 45)
7. Cooperative Unit Mortgage (Ref. 23)
8. RTC/FDIC (Ref. 28)
9. Public Subsidy Program (Ref. 37)
10. Refinancing from Own Portfolio (Ref. 24)
11. Acquisition Type (Ref. 35)
12. Community Lending Mortgage (Ref. 34)

The basis for our request derives from the major precedents interpreting the FOIA's Exemption 4. The leading case in determining whether information provided to the government is "privileged and confidential" and therefore entitled to be withheld under Exemption 4 is *National Parks & Conservation Association* v. *Morton*, 498 F. 2d 765 (D.C. Cir. 1974). In *National Parks*, the DC Circuit Court of Appeals held that the test for confidentiality is an objective one that could be determined by a two prong test:

To summarize, commercial or financial matter is "confidential" for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) To impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.* at 770.

The second prong of *National Parks* is applicable to each of the referenced items because, when combined with each other and with information on unpaid principal balance ("UPB"), income, and precise geographic markers, disclosure would cause us substantial competitive harm

Single-Family Data Elements

Public disclosure of the entire Single-Family Acquisitions database would provide customers and competitors with the elements described above at loan level detail, in combination with loan amount, race, income, gender, zip code, and census tract. Precise details on such factors as loan-to-value ratios, when combined with other basic loan level detail, would likely cause substantial competitive injury to Fannie Mae by providing competitors and customers with valuable insights about our business plans, risk assessments and marketing strategies. These insights could lead to changes in pricing or negotiating tactics detrimental to the company.

Multifamily Data Elements

The multifamily elements (contained in the Multifamily Acquisitions and Multifamily Units Files) that Fannie Mae is classifying as proprietary and confidential are: Acquisition UPB; date of mortgage note; coop status; term at origination; loan type (more properly, amortization); acquisition type; total number of units; average reported rent per bedroom type; average reported rent plus utilities per bedroom type; purpose of loan, and zip code. Public disclosure of this data would reveal key factors in our business strategies and successes to our competitors and companies with whom we do business. This would subsidize such firms at our expense by providing them information they otherwise could acquire only at great expense.

Conclusion

Disclosing the referenced data for both single-family and multifamily elements would harm us by subsidizing the competitors' acquisition of valuable market information, increasing their efficiency at Fannie Mae's expense. Such consequences are precisely the type that courts have held justify non-disclosure of information under Exemption 4. See, *e.g.*, *Gulf & Western Indus.* v. *United States*, 615 F.2d 527, 530 (D.C. Cir. 1980); *Braintree Electric Light Dept.* v. *Department of Energy*, 494 F. Supp. 287, 289 (D.D.C. 1980); *National Parks & Conservation Association* v. *Kleppe*, 547 F.2d 673, 684 (DC Cir. 1976); and *Westinghouse Elec. Corp.* v. *Schlesinger* 392 F. Supp. 1246, 1249 (E.D. Va. 1974).

Specifically, case law establishes that Exemption 4 is designed to protect a "mosaic" of data, to shield information that might not cause competitive harm on a stand-alone basis, but would be harmful in combination with other information available to the requester. See *e.g.*, *Timken Co.* v. *United States Customs Serv.*, 491 F. Supp. 557, 559 (D.D.C. 1980). Under the precedents, information also must be deemed proprietary and confidential if public disclosure would displace a submitter from a level competitive playing field—by forcing it to divulge sensitive business information which competitors may access freely without incurring any parallel disclosure obligation to the submitter of the information.

The courts thus will direct "close attention" to proposed agency disclosures that benefit competitors at the expense of submitters, and have disfavored disclosure that affords a potential windfall to competitors by providing them data at bargain rates rather than the considerable funds that otherwise would be expended in private research and development. *Worthington Compressors, Inc.* v. *Castle*, 662 F.2d 45, 51 (D.C. Cir. 1981), supplemental opinion sub. nom. *Worthington Compressors, Inc.* v. *Gorsuch*, 668 F.2d 1371 (DC Cir. 1981). See also *Allnet Communication Servs., Inc.* v. *FCC*, 800 F. Supp. 984, 988–89 (D.D.C. 1992); *SMS Data Prods. Group, Inc.* v. *United States Dept. of Air Force*, 1989 U.S. Dist. LEXIS 3156, 35 Cont. Cas. Fed. (CCH) P 75644 (D.D.C. 1989) (noting that release would allow competitors access to information that they would have to spend "considerable funds" to develop on their own).

No competitor of Fannie Mae is subject to data disclosure requirements of the breadth and detail included in the data elements we have submitted to HUD. The information contained in our 1993 annual report on housing goals, the accompanying tables and the proprietary information in the database, as to which we have not requested confidential treatment, provide an unprecedented view of our business. We have limited our request for confidential treatment to only those parts of the database having the likelihood, if released, to cause us substantial competitive harm. As a result, our request is limited to only approximately 21 percent of the elements in the database. Because release of the information, for which we have asked for confidentiality, would have clearly adverse commercial consequences for us, we request that HUD designate the referenced items as "proprietary pursuant to 12 U.S.C. 4546 and invoke Exemption 4 to withhold release of such information.

I hope this discussion and information is helpful to you in evaluating our confidentiality request.

Sincerely,

Anthony F. Marra,

AFM/pab.

Exhibit C

May 9, 1994.

Kenneth Markison, Esquire, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410.

Dear Mr. Markison: The Federal Home Loan Mortgage Corporation ("Freddie Mac") has submitted to the U.S. Department of Housing and Urban Development ("HUD") computer-tapes that contain single-family and multifamily loan registries for the mortgages that Freddie Mac acquired during 1993. Freddie Mac requests that HUD accord proprietary treatment to certain data elements of those loan registries because they contain confidential, proprietary Freddie Mac information.

In support of our request, I enclose a memorandum that discusses the reasons those data elements must be accorded proprietary treatment and an attachment that identifies the individual data elements that contain confidential, proprietary Freddie Mac information. We would have no objection to your publishing the letter, memorandum and attachment in the **Federal Register** should you find it appropriate to do so.

Please feel free to contact me if you wish to discuss this matter or if there is anything further we can provide.

Sincerely,

Allan C. Ratner,

Vice President and Deputy General Counsel.

Enclosure

The Federal Home Loan Mortgage Corporation's Request for Proprietary Treatment of Certain Loan-Registry Data Elements

The U.S. Department of Housing and Urban Development ("HUD") has required the Federal Home Loan Mortgage Corporation

("Freddie Mac") to provide HUD with extensive information on the mortgages that Freddie Mac acquired in 1993. HUD identified the general types of data required, in its Notice of Interim Housing Goals, 58 FR 53,047–53,096 (Oct. 13, 1993), and specified the form in which Freddie Mac was to submit the data, in a letter dated January 14, 1994. As so directed, Freddie Mac submitted the required information to HUD in the form of two sets of computer tapes and 19 tables.

The computer tapes contain loan-level information for every mortgage that Freddie Mac acquired during 1993. One set of tapes includes information on Freddie Mac's 1993 single-family mortgages, and it includes from 51 to 66 required data elements for each loan, depending on the number of units in the property. The other set of tapes contains comparable information for Freddie Mac's 1993 multifamily mortgages, and it includes a minimum of 42 elements for each loan, with additional sets of elements for each additional "unit type" in the property. These two sets of tapes are referred to as the "loan registries."

Freddie Mac requests that HUD accord proprietary treatment to certain of the data elements contained in the loan registries because they contain confidential, proprietary Freddie Mac information. Freddie Mac does not, however, object to the public release of the 19 tables submitted on March 31, 1994, which contain much of the categories of information that Freddie Mac seeks to protect from public disclosure—but which disclose the information in an aggregated form that is both useful and less likely to reveal confidential, proprietary Freddie Mac information.

We discuss below the reasons that certain loan-registry data elements must be treated as proprietary information, and we designate the specific data elements affected in an attachment to this request. Freddie Mac also requests that any confidential treatment accorded to Fannie Mae data apply equally to data submitted by Freddie Mac, and vice-versa, so that the same data elements will be treated equally for both enterprises.

I. Proprietary Information Generally

A. The Proprietary-Information Balance

HUD requested the loan registries under section 307(e) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e)). While HUD is generally authorized to make such section 307(e) loan-registry data available to the public (section 1323 of the Federal Housing Enterprises Safety and Soundness Act of 1992 ("FHEFSSA"), 12 U.S.C. 4543), HUD is expressly not permitted to make proprietary loan-registry data available to the public (FHEFSSA 1326, 12 U.S.C. 4546). In fact, FHEFSSA provides that no such information is to be made available to the public unless and until a final decision has been made that the data are *not* proprietary (FHEFSSA 1326(c), 12 U.S.C. 4546(c)).

In effect, FHEFSSA recognizes the inherent tension between (1) the provision that directs HUD to make available data that might be useful for housing-related research and (2) the provision that directs HUD to prevent the financial or competitive harm to the enterprises that could flow from providing public access to proprietary information. FHEFSSA, however, also provides guidance on how the balance between these conflicting directives is to be struck.

That is, FHEFSSA suggests that where reasonable people might disagree as to whether information is proprietary or not, the issue should be resolved in favor of according the data proprietary treatment. Under FHEFSSA, information is not to be made public until HUD makes a final determination as to whether the information is proprietary. It follows, therefore, that where HUD is unable to make that determination to a reasonable degree of certainty, the information should not be made public. This treatment of data where its proprietary character is uncertain would seem to be especially appropriate during the 1993–1994 interim time period.

The approach that the balance is to be struck against public disclosure presumably reflects a recognition on Congress' part that, in the long run, Freddie Mac and Fannie Mae will be able to contribute most effectively to the nation's housing needs if they retain one of the key attributes of every viable business—the ability to protect the confidentiality of business strategies and plans. That is, in close cases, the need to protect the fundamentals of the enterprises' ability to perform is presumed to outweigh the short-term benefits of placing more information on the public record.

B. What is "Proprietary" Information?

The term "proprietary" is not defined in FHEFSSA and, on the face of the term, it could apply to virtually every data element of the loan registries: All were developed by Freddie Mac and are Freddie Mac's property, and nearly all are the types of information that Freddie Mac does not customarily provide to the public. However, reading the term in the context of the two competing directives described above, the legislative history of the Act and analogous case law, it may be more appropriate to interpret proprietary information to mean information that Freddie Mac does not customarily release to the public—where the release of that information could tend to cause financial or competitive injury to Freddie Mac, or could tend to impair competition between Freddie Mac and Fannie Mae.

That more-limited interpretation is consistent with the legislative history of FHEFSSA. For example, the issue of the scope of the term "proprietary" information was discussed directly in a floor debate of section 515 of the Senate bill (the precursor to the proprietary provision of FHEFSSA) involving Senators Seymore and Garn:

Mr. SEYMORE. It is my understanding that section 515 of the bill prohibits the Director [the Director was to administer the housing goals under the Senate bill] from disclosing to the public information provided by the enterprises that the Director determines to be proprietary. What types of information does this legislation contemplate would be treated as proprietary?

Mr. GARN. As a general matter, courts have construed various types of business information to be proprietary if it might cause competitive or financial harm to the company.

While the legislation contemplates that the Director will determine what information is proprietary consistent with current legal precedents applicable to other companies, section 515 is intended to protect especially information relating to pricing and fees. If one of the enterprises learned of the other's pricing and fee strategy, it would create an extraordinary competitive disadvantage.

Maintining competition between Fannie Mae and Freddie Mac is essential because there are only two GSE's involved in mortgage finance. Congress created the two GSE's expressly for the purpose of ensuring competition. This competition has resulted in lowering prices and enhancing efficiency to the housing finance market, which ultimately benefits homeowners and renters

Mr. SEYMORE. So, if I understand the Senator correctly, section 515 should ensure that information on pricing, fees and other key aspects of business strategy will be considered proprietary and therefore protected from disclosure to the public.

Mr. GARN. That is correct. By including this provision in the legislation, it was intended that the Director protect from public disclosure a broad range of information that might impair competition between these two GSE's.

138 *Cong. Rec.* S8778–S8779 (daily ed. June 24, 1992).

That interpretation also is consistent with case law interpreting Exemption 4 of the Freedom of Information Act ("FOIA") (5 U.S.C. 552(b)(4)), which is probably the case law to which the two senators had referred. The term "proprietary information" does not appear in FOIA, but the principles underlying that exemption are similar—but not identical—to those underlying section 1326 of FHEFSSA.

FOIA Exemption 4 applies to "trade secrets and commercial or financial information obtained from a person and privileged and confidential," and courts have applied that exemption to protect information that a person is required to submit to a federal agency where

(1) The information was of the type "which would customarily not be released to the public by the person from whom it was obtained," S. Rep. No. 813, 89th Cong., 2d Sess. 9 (1964), *reprinted in* 1966 U.S.C.C.A.N. 2418 (quoted in *Sterling Drug, Inc.* v. *FTC*, 450 F.2d 698, 709 (D.C. Cir. 1971) and *Critical Mass Energy Project* v. *NRC*, 975 F.2d 871, 872–73 (D.C. Cir. 1992)), and

(2) The release of the information would be likely to cause substantial competitive injury to the person submitting the information, *see Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1291 & n.30 (D.C. Cir. 1983); *Gulf & Western Industries, Inc.* v. *United States*, 615 F.2d 527, 530 (DC Cir. 1979); *National Parks and Conservation Ass'n* v. *Morton*, 498 F.2d 765, 770 (DC Cir. 1974); *see also* OCC Interpretive Letter from Chief Counsel P. Allan Schott to James C. Goodale, 1989 WL 300373 (database FFIN–OCCIL) (April 5, 1989) (based on Exemption 4, OCC denied FOIA request for portions of documents describing commercial and financial facts surrounding loan).

II. Reasons for Designating Certain Data Elements as Proprietary

While Congress wished to shed increased light on the affordable-housing activities of Freddie Mac and Fannie Mae, it is virtually impossible to be certain that the release of any particular data from the loan registries would be harmless to Freddie Mac, particularly during this interim period. Freddie Mac operates in an environment in which its operations are constantly scrutinized by analysts at Fannie Mae, on Wall Street, and in other sophisticated financial institutions. Those analysts have access to information from a variety of sources, and have increasing abilities to analyze that information in ways that one may not immediately imagine.

The data elements Freddie Mac has designated contain the type of information that Freddie Mac does not customarily release to the public, and if all those data elements were to be publicly disclosed, we believe a variety of competitive and financial harms could be suffered by Freddie Mac. In some cases, this harm could occur as a result of the disclosure of a data element standing on its own; in other cases, the harm would occur because of a correlation of one data element with another. The following are examples of problems that disclosure of all the elements would pose:

(1) Both competitors and customers would be able to learn a great deal about the types of loans we are targeting for purchase in particular areas of the country, thereby enabling them to counter our marketing strategy more effectively. Moreover, the data would be available in one place, permitting competitors to obtain information relatively cheaply;

(2) Competitors and customers would be able to learn far more than they can learn now as to our philosophy and strategy concerning the purchase of newly originated versus seasoned loans;

(3) Both customers and competitors would be able to learn more about the cycles of Freddie Mac's business during the year, *e.g.*, times at which we tend to be more busy than others, and the likely implications of seasonality to our pricing strategy;

(4) By analyzing the types of products we are purchasing, and where the purchases are occurring, customers and competitors would be able to divine a great deal of nonpublic information about our likely strategy for meeting the affordable housing goals;

(5) Customers and competitors would learn far more than they currently know about how the mix of mortgage types that we purchase varies by region, thereby affecting the course of business negotiations in particular transactions in particular regions;

(6) Customers and competitors would be able to change the dynamics of business negotiations regarding the disposition of real estate owned ("REO"), since they would have access to far greater information concerning our REO disposition strategies and practices. In addition, by analyzing REO statistics, a competitor could learn much about our default patterns;

(7) Customers and competitors would could use seemingly non-proprietary data as a "proxy" for information that clearly is proprietary, or could use seemingly non-proprietary data as a link to other available information, so as to reveal other, previously inaccessible proprietary information.

In each case, the disclosure of information would work to the disadvantage of Freddie Mac, and to the advantage of other parties. Also, in many cases—particularly, but not exclusively, in the multifamily field—the public release of all the data elements listed in a fully correlated manner probably would permit reviewers of the data to identify specific properties. This raises important issues of personal privacy for homeowners, tenants, and lenders, who could soon expect to become the targets of marketing efforts not only by our competitors, but by other businesses seeking to market their products in demographic niches. In comparable circumstances, HUD has previously taken the position that it would not release individual mortgage records in response to a request under the Freedom of Information Act, 5 U.S.C. 552, because it would be an unwarranted invasion of the borrowers' privacy interests. See *Schoettle* v. *Kemp*, 733 F. Supp. 1395 (D. Haw. 1990) (upholding denial of FOIA request based on Exemption 6, 5 U.S.C. 552(b)(6)); *see also Heights Community Congress* v. *Veterans Administration*, 732 F.2d 526 (6th Cir. 1984) (court upholding VA's denial of FOIA request for property address, loan amount and identity of lender on VA-insured loans in certain city, based on FOIA Exemption 6).

In light of the above concerns, Freddie Mac has evaluated each data element to determine whether or not its release would be reasonably likely to cause Freddie Mac competitive or financial harm, either standing alone or linked to other available information. In the interest of making as much data as possible available to the public, Freddie Mac also considered whether certain data elements might be made available as separate files or packages of data elements, so that they could be released without identifying the location of the underlying property. Without a link to the geographic data, there may be no reason for HUD to withhold certain data elements as proprietary information. Similarly, we considered whether certain data elements might be recoded so that HUD would not need to withhold them as proprietary information. Such alternative treatments would substantially reduce Freddie Mac's proprietary concerns with respect to those data elements, while making more information available to the public, consistent with the intent of Congress. *See* S. Rep. No. 464, 102d Cong., 2d Sess. 44 (1992) ("The Director is encouraged whenever possible to develop disclosure methods that take into account any proprietary concerns, while continuing public access to the information."). The results of Freddie Mac's evaluations, including proposed alternative treatments of certain data elements, are summarized in the attachment to this request.

We trust that this request and attachment will be sufficient for HUD to make its determination that the information contained in the data elements designated in the attachment to this request contain "proprietary" information—that is, that the designated data elements contain information that Freddie Mac does not customarily release to the public and that the release of that information could tend to cause financial or competitive injury to Freddie Mac, or could tend to impair competition between Freddie Mac and Fannie Mae. Alternatively, it should be sufficient for HUD to find that it *cannot* determine that certain of those data elements do *not* contain "proprietary" information. In either case, the designated data elements should not be made publicly available.

* * * * *

Attachment

Federal Home Loan Mortgage Corporation's Designation of Certain Loan-Registry Data Elements as Proprietary [1]

I. Proprietary Confidential Data Elements

A. Single Family Data Elements

- *Acquisition UPB* [positions 80–85]
- *Loan-to-Value Ratio At Origination* [positions 86–88]
- *Date of Mortgage Note* [positions 89–94]
- *Date of Acquisition* [positions 95–100]
- *Cooperative Unit Mortgage* [position 102]
- *Refinancing Loan From Own Portfolio* [position 103]
- *Special Affordable, Seasoned Loan Proceeds Recycled* [position 104]
- *Product Type* [positions 105–106]
- *RTC/FDIC* [position 108]
- *Term of Mortgage At Origination* [positions 109–111]
- *Amortization Term* [positions 112–114]
- *Seller Institution* [position 115]
- *Mortgage Purchased Under FHLMC/FNMA Community Lending Program* [position 118]
- *Acquisition Type* [position 119]
- *FHLMC's Real Estate Owned* [position 120]
- *Public Subsidy Programs* [position 121]

B. Multifamily Data Elements

- *U.S. Postal Zip Code* [positions 13–17]
- *Acquisition UPB* [positions 71–76]
- *Percent Participation* [positions 77–80]
- *Date of Mortgage Note* [positions 81–86]
- *Date of Acquisition* [positions 87–92]
- *Refinancing Loan From Own Portfolio* [position 95]
- *Special Affordable, Seasoned Loans: Are Proceeds Recycled?* [position 96]
- *Cooperative Project Loan* [position 94]
- *Mortgagor Type* [position 97]
- *Term of Mortgage At Origination* [positions 98–100]
- *Loan Type* [position 101]
- *Amortization term* [positions 102–104]
- *Seller Institution* [position 105]
- *Acquisition Type* [position 107]
- *FHLMC's Real Estate Owned* [position 108]
- *Public Subsidy Programs* [position 109]
- *Special Affordable—45%* [positions 115–123]
- *Special Affordable—55%* [positions 124–132]
- *MF Unit Type XX—Affordability Level* [position 133+4—fifth unit-level field]

[1] Each data element is identified by the field description and the position numbers shown in the January 14, 1994, letter from HUD that set forth the loan-registry requirements.

Rather than making this data element available, Freddie Mac suggests that HUD instead disclose the element *Affordability Category* [position 70] (which is defined in terms of four "buckets" or range of values rather than as a particular percent)— along with the unit-level data and in a manner that is entirely severed from any information from which one might determine location. Alternatively, or in addition, *Affordability Level* could be recoded into "buckets" or ranges of values rather than being expressed in terms of a specific percent of adjusted local median income, and then could be released with the unit-level data as described below.

II. Data Elements That Should Be Released Only in Unit-Level Files

We request that the following unit-level data for two- to four-unit and multifamily properties be released only as a separate file or "package" of data—severed entirely from the geographic and other data:

A. Single-Family Unit-Level Data Files

We request that the following single-family elements for each two- to four-unit property be released only in a separate file, which file would contain no other data elements:

- *Number of Units* [position 133]
- *Unit 1/2/3/4 Number of Bedrooms* [positions 134, 147, 160, 173]
- *Unit 1/2/3/4 Owned-Occupied [or Tenant]* [positions 135, 148, 161, 174]
- *Unit 1/2/3/4 Affordability Category* [positions 136, 149, 162, 175]
- *Unit 1/2/3/4 Reported Rent Level [positions 137–141, 150–154, 163–167, 176–180]*
- *Unit 1/2/3/4 Reported Rent Level Plus Utilities* [positions 142–146, 155–159, 168–172, 181–185]

B. Multifamily Unit-Level Data Files

Similarly, we request that the following multifamily elements for each multifamily property be released only in a separate file, which file would contain no other data elements:

- *Number of Units* [positions 110–114]
- *Unit Type XX—Number of Bedrooms* [position 133—first unit-level field]
- *Unit Type XX—Numbers of Units* [position 133+1—second unit-level field]
- *Unit Type XX—Average Reported Rent Level* [position 133+2—third unit-level field]
- *Unit Type XX—Average Reported Rent Level Plus Utilities* [position 133+3—fourth unit-level field]
- *Unit Type XX—Affordability Level* [position 133+4—fifth unit-level field] As is described above, we would propose that this data element be included in a unit-level file *only* after it is recoded to show affordability level by "bucket" or range of values rather than by a particular percent of adjusted local median income. In its current form, the data element is proprietary and should not be released—even in a unit-level file.
- *Affordability Category* [position 70]

III. Data Element That Should Be Recoded Consistent With HMDA Before Being Made Publicly Available

The data element *Occupancy Code* [position 132] indicates whether a single-family mortgage purchased by Freddie Mac was for a "Principal Residence/Owner Occupied," "Second Home" or "Investment Property (Rental)." We request that this element be released only after it is recoded so that the second homes would be combined with investment properties as "Not owner Occupied" consistent with the treatment of second homes under the Home Mortgage Disclosure Act ("HMDA"). *See* 12 CFR part 203, App. A, section V(A)(7)(a).

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Tuesday
June 7, 1994

Part V

The President

Executive Order 12919—National Defense Industrial Resources Preparedness

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Presidential Documents

Title 3—

The President

Executive Order 12919 of June 3, 1994

National Defense Industrial Resources Preparedness

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Defense Production Act of 1950, as amended (64 Stat. 798; 50 U.S.C. App. 2061, *et seq.*) and section 301 of title 3, United States Code, and as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows

PART I—PURPOSE, POLICY AND IMPLEMENTATION

Section 101. *Purpose.* This order delegates authorities and addresses national defense industrial resource policies and programs under the Defense Production Act of 1950, as amended ("the Act"), except for the amendments to Title III of the Act in the Energy Security Act of 1980 and telecommunication authorities under Executive Order No. 12472.

Sec. 102. *Policy.* The United States must have an industrial and technology base capable of meeting national defense requirements, and capable of contributing to the technological superiority of its defense equipment in peacetime and in times of national emergency. The domestic industrial and technological base is the foundation for national defense preparedness. The authorities provided in the Act shall be used to strengthen this base and to ensure it is capable of responding to all threats to the national security of the United States.

Sec. 103. *General Functions.* Federal departments and agencies responsible for defense acquisition (or for industrial resources needed to support defense acquisition) shall:

(a) Identify requirements for the full spectrum of national security emergencies, including military, industrial, and essential civilian demand;

(b) Assess continually the capability of the domestic industrial and technological base to satisfy requirements in peacetime and times of national emergency, specifically evaluating the availability of adequate industrial resource and production sources, including subcontractors and suppliers materials, skilled labor, and professional and technical personnel;

(c) Be prepared, in the event of a potential threat to the security of the United States, to take actions necessary to ensure the availability of adequate industrial resources and production capability, including services and critical technology for national defense requirements;

(d) Improve the efficiency and responsiveness to defense requirements of the domestic industrial base; and

(e) Foster cooperation between the defense and commercial sectors for research and development and for acquisition of materials, components and equipment to enhance industrial base efficiency and responsiveness

Sec. 104. *Implementation.* (a) The National Security Council is the principal forum for consideration and resolution of national security resource preparedness policy.

(b) The Director, Federal Emergency Management Agency ("Director FEMA") shall:

(1) Serve as an advisor to the National Security Council on issues of national security resource preparedness and on the use of the authorities and functions delegated by this order·

(2) Provide for the central coordination of the plans and programs incident to authorities and functions delegated under this order, and provide guidance and procedures approved by the Assistant to the President for National Security Affairs to the Federal departments and agencies under this order;

(3) Establish procedures, in consultation with Federal departments and agencies assigned functions under this order, to resolve in a timely and effective manner conflicts and issues that may arise in implementing the authorities and functions delegated under this order; and

(4) Report to the President periodically concerning all program activities conducted pursuant to this order.

(c) The head of every Federal department and agency assigned functions under this order shall ensure that the performance of these functions is consistent with National Security Council policy and guidelines.

PART II—PRIORITIES AND ALLOCATIONS

Sec. 201. *Delegations of Priorities and Allocations.* (a) The authority of the President conferred by section 101 of the Act to require acceptance and priority performance of contracts or orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense, is delegated to the following agency heads:

(1) The Secretary of Agriculture with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer;

(2) The Secretary of Energy with respect to all forms of energy;

(3) The Secretary of Health and Human Services with respect to health resources;

(4) The Secretary of Transportation with respect to all forms of civil transportation;

(5) The Secretary of Defense with respect to water resources; and

(6) The Secretary of Commerce for all other materials, services, and facilities, including construction materials.

(b) The Secretary of Commerce, in consultation with the heads of those departments and agencies specified in subsection 201(a) of this order, shall administer the Defense Priorities and Allocations System ("DPAS") regulations that will be used to implement the authority of the President conferred by section 101 of the Act as delegated to the Secretary of Commerce in subsection 201(a)(6) of this order. The Secretary of Commerce will redelegate to the Secretary of Defense, and the heads of other departments and agencies as appropriate, authority for the priority rating of contracts and orders for all materials, services, and facilities needed in support of programs approved under section 202 of this order. The Secretary of Commerce shall act as appropriate upon Special Priorities Assistance requests in a time frame consistent with the urgency of the need at hand.

(c) The Director, FEMA, shall attempt to resolve issues or disagreements on priorities or allocations between Federal departments or agencies in a time frame consistent with the urgency of the issue at hand and, if not resolved, such issues will be referred to the Assistant to the President for National Security Affairs for final determination.

(d) The head of each Federal department or agency assigned functions under subsection 201(a) of this order, when necessary, shall make the finding required under subsection 101(b) of the Act. This finding shall be submitted for the President's approval through the Assistant to the President for National Security Affairs. Upon such approval the head of the Federal depart-

ment or agency that made the finding may use the authority of subsection 101(a) of the Act to control the general distribution of any material (including applicable services) in the civilian market.

(e) The Assistant to the President for National Security Affairs is hereby delegated the authority under subsection 101(c)(3) of the Act, and will be assisted by the Director, FEMA, in ensuring the coordinated administration of the Act.

Sec. 202. *Determinations.* The authority delegated by section 201 of this order may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense:

(a) By the Secretary of Defense with respect to military production and construction, military assistance to foreign nations, stockpiling, outer space, and directly related activities;

(b) By the Secretary of Energy with respect to energy production and construction, distribution and use, and directly related activities; and

(c) By the Director, FEMA, with respect to essential civilian needs supporting national defense, including civil defense and continuity of government and directly related activities.

Sec. 203. *Maximizing Domestic Energy Supplies.* The authority of the President to perform the functions provided by subsection 101(c) of the Act is delegated to the Secretary of Commerce, who shall redelegate to the Secretary of Energy the authority to make the findings described in subsection 101(c)(2)(A) that the materials (including equipment), services, and facilities are critical and essential. The Secretary of Commerce shall make the finding described in subsection 101(c)(2)(A) of the Act that the materials (including equipment), services, or facilities are scarce, and the finding described in subsection 101(c)(2)(B) that it is necessary to use the authority provided by subsection 101(c)(1).

Sec. 204. *Chemical and Biological Warfare.* The authority of the President conferred by subsection 104(b) of the Act is delegated to the Secretary of Defense. This authority may not be further delegated by the Secretary.

PART III—EXPANSION OF PRODUCTIVE CAPACITY AND SUPPLY

Sec. 301. (a) *Financing Institution Guarantees.* To expedite or expand production and deliveries or services under government contracts for the procurement of industrial resources or critical technology items essential to the national defense, the head of each Federal department or agency engaged in procurement for the national defense (referred to as "agency head" in this part) and the President and Chairman of the Export-Import Bank of the United States (in cases involving capacity expansion, technological development, or production in foreign countries) are authorized to guarantee in whole or in part any public or private financing institution, subject to provisions of section 301 of the Act. Guarantees shall be made in consultation with the Department of the Treasury as to the terms and conditions thereof. The Director of the Office of Management and Budget ("OMB") shall be informed when such guarantees are to be made.

(b) *Direct Loan Guarantees.* To expedite or expand production and deliveries or services under government contracts for the procurement of industrial resources or critical technology items essential to the national defense, each agency head is authorized to make direct loan guarantees from funds appropriated to their agency for Title III.

(c) *Fiscal Agent.* Each Federal Reserve Bank is designated and authorized to act, on behalf of any guaranteeing agency, as fiscal agent in the making of guarantee contracts and in otherwise carrying out the purposes of section 301 of the Act.

(d) *Regulations.* The Board of Governors of the Federal Reserve System is authorized, after consultation with heads of guaranteeing departments and agencies, the Secretary of the Treasury, and the Director, OMB, to

prescribe regulations governing procedures, forms, rates of interest, and fees for such guarantee contracts.

Sec. 302. *Loans.* (a) To expedite production and deliveries or services to aid in carrying out government contracts for the procurement of industrial resources or a critical technology item for the national defense, an agency head is authorized, subject to the provisions of section 302 of the Act, to submit to the Secretary of the Treasury or the President and Chairman of the Export-Import Bank of the United States (in cases involving capacity expansion, technological development, or production in foreign countries) applications for loans.

(b) To expedite or expand production and deliveries or services under government contracts for the procurement of industrial resources or critical technology items essential to the national defense, each agency head may make direct loans from funds appropriated to their agency for Title III.

(c) After receiving a loan application and determining that financial assistance is not otherwise available on reasonable terms, the Secretary of the Treasury or the President and Chairman of the Export-Import Bank of the United States (in cases involving capacity expansion, technological development, or production in foreign countries) may make loans, subject to provisions of section 302 of the Act.

Sec. 303. *Purchase Commitments.* (a) In order to carry out the objectives of the Act, and subject to the provisions of section 303 thereof, an agency head is authorized to make provision for purchases of, or commitments to purchase, an industrial resource or a critical technology item for government use or resale.

(b) Materials acquired under section 303 of the Act that exceed the needs of the programs under the Act may be transferred to the National Defense Stockpile, if such transfer is determined by the Secretary of Defense as the National Defense Stockpile Manager to be in the public interest.

Sec. 304. *Subsidy Payments.* In order to ensure the supply of raw or non-processed materials from high-cost sources, an agency head is authorized to make subsidy payments, after consultation with the Secretary of the Treasury and the Director, OMB, and subject to the provisions of section 303(c) of the Act.

Sec. 305. *Determinations and Findings.* When carrying out the authorities in sections 301 through 303 of this order, an agency head is authorized to make the required determinations, judgments, statements, certifications, and findings, in consultation with the Secretary of Defense, Secretary of Energy or Director, FEMA, as appropriate. The agency head shall provide a copy of the determination, judgment, statement, certification, or finding to the Director, OMB, to the Director, FEMA, and, when appropriate, to the Secretary of the Treasury.

Sec. 306. *Strategic and Critical Materials.* (a) The Secretary of the Interior in consultation with the Secretary of Defense as the National Defense Stockpile Manager and subject to the provisions of section 303 of the Act, is authorized to encourage the exploration, development, and mining of critical and strategic materials and other materials.

(b) An agency head is authorized, pursuant to section 303(g) of the Act, to make provision for the development of substitutes for strategic and critical materials, critical components, critical technology items, and other industrial resources to aid the national defense.

(c) An agency head is authorized, pursuant to section 303(a)(1)(B) of the Act, to make provisions to encourage the exploration, development and mining of critical and strategic materials and other materials.

Sec. 307. *Government-owned Equipment.* An agency head is authorized, pursuant to section 303(e) of the Act, to install additional equipment, facilities, processes, or improvements to facilities owned by the government and to install government-owned equipment in industrial facilities owned by private persons.

Sec. 308. *Identification of Shortfalls.* Except during periods of national emergency or after a Presidential determination in accordance with sections 301(e)(1)(D)(ii), 302(c)(4)(B), or 303(a)(7)(B) of the Act, no guarantee, loan or other action pursuant to sections 301, 302, and 303 of the Act to correct an industrial shortfall shall be taken unless the shortfall has been identified in the Budget of the United States or amendments thereto.

Sec. 309. *Defense Production Act Fund Manager.* The Secretary of Defense is designated the Defense Production Act Fund Manager, in accordance with section 304(f) of the Act, and shall carry out the duties specified in that section, in consultation with the agency heads having approved Title III projects and appropriated Title III funds.

Sec. 310. *Critical Items List.* (a) Pursuant to section 107(b)(1)(A) of the Act, the Secretary of Defense shall identify critical components and critical technology items for each item on the Critical Items List of the Commanders-in-Chief of the Unified and Specified Commands and other items within the inventory of weapon systems and defense equipment.

(b) Each agency head shall take appropriate action to ensure that critical components or critical technology items are available from reliable sources when needed to meet defense requirements during peacetime, graduated mobilization, and national emergency. "Appropriate action" may include restricting contract solicitations to reliable sources, restricting contract solicitations to domestic sources (pursuant to statutory authority), stockpiling critical components, and developing substitutes for critical components or critical technology items.

Sec. 311. *Strengthening Domestic Capability.* An agency head, in accordance with section 107(a) of the Act, may utilize the authority of Title III of the Act or any other provision of law, in consultation with the Secretary of Defense, to provide appropriate incentives to develop, maintain, modernize, and expand the productive capacities of domestic sources for critical components, critical technology items, and industrial resources essential for the execution of the national security strategy of the United States.

Sec. 312. *Modernization of Equipment.* An agency head, in accordance with section 108(b) of the Act, may utilize the authority of Title III of the Act to guarantee the purchase or lease of advance manufacturing equipment and any related services with respect to any such equipment for purposes of the Act.

PART IV—IMPACT OF OFFSETS

Sec. 401. *Offsets.* (a) The responsibilities and authority conferred upon the President by section 309 of the Act with respect to offsets are delegated to the Secretary of Commerce, who shall function as the President's Executive Agent for carrying out this authority.

(b) The Secretary of Commerce shall prepare the annual report required by section 309(a) of the Act in consultation with the Secretaries of Defense, Treasury, Labor, State, the United States Trade Representative, the Arms Control and Disarmament Agency, the Director of Central Intelligence, and the heads of other departments and agencies as required. The heads of Federal departments and agencies shall provide the Secretary of Commerce with such information as may be necessary for the effective performance of this function.

(c) The offset report shall be subject to the normal interagency clearance process conducted by the Director, OMB, prior to the report's submission by the President to Congress.

PART V—VOLUNTARY AGREEMENTS AND ADVISORY COMMITTEES

Sec. 501. *Appointments.* The authority of the President under sections 708(c) and (d) of the Act is delegated to the heads of each Federal department or agency, except that, insofar as that authority relates to section 101 of the Act, it is delegated only to the heads of each Federal department or agency assigned functions under section 201(a) of this order. The authority

delegated under this section shall be exercised pursuant to the provisions of section 708 of the Act, and copies and the status of the use of such delegations shall be furnished to the Director, FEMA.

Sec. 502. *Advisory Committees.* The authority of the President under section 708(d) of the Act and delegated in section 501 of this order (relating to establishment of advisory committees) shall be exercised only after consultation with, and in accordance with, guidelines and procedures established by the Administrator of General Services.

PART VI—EMPLOYMENT OF PERSONNEL

Sec. 601. *National Defense Executive Reserve.* (a) In accordance with section 710(e) of the Act, there is established in the Executive Branch a National Defense Executive Reserve ("NDER") composed of persons of recognized expertise from various segments of the private sector and from government (except full-time federal employees) for training for employment in executive positions in the Federal Government in the event of an emergency that requires such employment.

(b) The head of any department or agency may establish a unit of the NDER in the department or agency and train members of that unit.

(c) The head of each department or agency with an NDER unit is authorized to exercise the President's authority to employ civilian personnel in accordance with section 703(a) of the Act when activating all or a part of its NDER unit. The exercise of this authority shall be subject to the provisions of subsections 601(d) and (e) of this order and shall not be redelegated.

(d) The head of a department or agency may activate an NDER unit, in whole or in part, upon the written determination that an emergency affecting the national security or defense preparedness of the United States exists and that the activation of the unit is necessary to carry out the emergency program functions of the department or agency.

(e) At least 72 hours prior to activating the NDER unit, the head of the department or agency shall notify, in writing, the Assistant to the President for National Security Affairs of the impending activation and provide a copy of the determination required under subsection 601(d) of this order.

(f) The Director, FEMA, shall coordinate the NDER program activities of departments and agencies in establishing units of the Reserve; provide for appropriate guidance for recruitment, training, and activation; and issue necessary rules and guidance in connection with the program.

(g) This order suspends any delegated authority, regulation, or other requirement or condition with respect to the activation of any NDER unit, in whole or in part, or appointment of any NDER member that is inconsistent with the authorities delegated herein, provided that the aforesaid suspension applies only as long as sections 703(a) and 710(e) of the Act are in effect.

Sec. 602. *Consultants.* The head of each department or agency assigned functions under this order is delegated authority under sections 710(b) and (c) of the Act to employ persons of outstanding experience and ability without compensation and to employ experts, consultants, or organizations. The authority delegated by this section shall not be redelegated.

PART VII—LABOR SUPPLY

Sec. 701. *Secretary of Labor.* The Secretary of Labor, identified in this section as the Secretary, shall:

(a) Collect, analyze, and maintain data needed to make a continuing appraisal of the nation's labor requirements and the supply of workers for purposes of national defense. All agencies of the government shall cooperate with the Secretary in furnishing information necessary for this purpose, to the extent permitted by law;

(b) In response to requests from the head of a Federal department or agency engaged in the procurement for national defense, consult with and advise that department or agency with respect to (1) the effect of contemplated

actions on labor supply and utilization, (2) the relation of labor supply to materials and facilities requirements, and (3) such other matters as will assist in making the exercise of priority and allocations functions consistent with effective utilization and distribution of labor;

(c) Formulate plans, programs, and policies for meeting defense and essential civilian labor requirements;

(d) Project skill shortages to facilitate meeting defense and essential civilian needs and establish training programs;

(e) Determine the occupations and skills critical to meeting the labor requirements of defense and essential civilian activities and, with the assistance of the Secretary of Defense, the Director of Selective Service, and such other persons as the Director, FEMA, may designate, develop policies regulating the induction and deferment of personnel for the armed services, except for civilian personnel in the reserves; and

(f) Administer an effective labor-management relations policy to support the activities and programs under this order with the cooperation of other Federal agencies, including the National Labor Relations Board and the Federal Mediation and Conciliation Service.

PART VIII—DEFENSE INDUSTRIAL BASE INFORMATION AND REPORTS

Sec. 801. *Foreign Acquisition of Companies.* The Secretary of the Treasury, in cooperation with the Department of State, the Department of Defense, the Department of Commerce, the Department of Energy, the Department of Agriculture, the Attorney General, and the Director of Central Intelligence, shall complete and furnish a report to the President and then to Congress in accordance with the requirements of section 721(k) of the Act concerning foreign efforts to acquire United States companies involved in research, development, or production of critical technologies and industrial espionage activities directed by foreign governments against private U.S. companies.

Sec. 802. *Defense Industrial Base Information System.* (a) The Secretary of Defense and the heads of other appropriate Federal departments and agencies, as determined by the Secretary of Defense, shall establish an information system on the domestic defense industrial base in accordance with the requirements of section 722 of the Act.

(b) In establishing the information system required by subsection (a) of this order, the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate Federal departments and agencies, as determined by the Secretary of Defense in consultation with the Secretary of Commerce, shall consult with each other for the purposes of performing the duties listed in section 722(d)(1) of the Act.

(c) The Secretary of Defense shall convene a task force consisting of the Secretary of Commerce and the Secretary of each military department and the heads of other appropriate Federal departments and agencies, as determined by the Secretary of Defense in consultation with the Secretary of Commerce, to carry out the duties under section 722(d)(2) of the Act.

(d) The Secretary of Defense shall report to Congress on a strategic plan for developing a cost-effective, comprehensive information system capable of identifying on a timely, ongoing basis vulnerability in critical components and critical technology items. The plans shall include an assessment of the performance and cost-effectiveness of procedures specified in section 722(b) of the Act.

(e) The Secretary of Commerce, acting through the Bureau of the Census, shall consult with the Secretary of Defense and the Director, FEMA, to improve the usefulness of information derived from the Census of Manufacturers in carrying out section 722 of the Act.

(f) The Secretary of Defense shall perform an analysis of the production base for not more than two major weapons systems of each military depart-

ment in establishing the information system under section 722 of the Act. Each analysis shall identify the critical components of each system.

(g) The Secretary of Defense, in consultation with the Secretary of Commerce, and the heads of other Federal departments and agencies as appropriate, shall issue a biennial report on critical components and technology in accordance with section 722(e) of the Act.

PART IX—GENERAL PROVISIONS

Sec. 901. *Definitions.* In addition to the definitions in section 702 of the Act, the following definitions apply throughout this order:

(a) "Civil transportation" includes movement of persons and property by all modes of transportation in interstate, intrastate, or foreign commerce within the United States, its territories and possessions, and the District of Columbia, and, without limitation, related public storage and warehousing, ports, services, equipment and facilities, such as transportation carrier shop and repair facilities. However, "civil transportation" shall not include transportation owned or controlled by the Department of Defense, use of petroleum and gas pipelines, and coal slurry pipelines used only to supply energy production facilities directly. As applied herein, "civil transportation" shall include direction, control, and coordination of civil transportation capacity regardless of ownership.

(b) "Energy" means all forms of energy including petroleum, gas (both natural and manufactured), electricity, solid fuels (including all forms of coal, coke, coal chemicals, coal liquification, and coal gasification), and atomic energy, and the production, conservation, use, control, and distribution (including pipelines) of all of these forms of energy.

(c) "Farm equipment" means equipment, machinery, and repair parts manufactured for use on farms in connection with the production or preparation for market use of food resources.

(d) "Fertilizer" means any product or combination of products that contain one or more of the elements—nitrogen, phosphorus, and potassium—for use as a plant nutrient.

(e) "Food resources" means all commodities and products, simple, mixed, or compound, or complements to such commodities or products, that are capable of being ingested by either human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products thereof in vendible form for human or animal consumption. "Food resources" also means all starches, sugars, vegetable and animal or marine fats and oils, cotton, tobacco, wool, mohair, hemp, flax fiber, and naval stores, but does not mean any such material after it loses its identity as an agricultural commodity or agricultural product.

(f) "Food resource facilities" means plants, machinery, vehicles (including on-farm), and other facilities required for the production, processing, distribution, and storage (including cold storage) of food resources, livestock and poultry feed and seed, and for the domestic distribution of farm equipment and fertilizer (excluding transportation thereof).

(g) "Functions" include powers, duties, authority, responsibilities, and discretion.

(h) "Head of each Federal department or agency engaged in procurement for the national defense" means the heads of the Departments of Defense, Energy, and Commerce, as well as those departments and agencies listed in Executive Order No. 10789.

(i) "Heads of other appropriate Federal departments and agencies" as used in part VIII of this order means the heads of such other Federal agencies and departments that acquire information or need information with respect to making any determination to exercise any authority under the Act.

(j) "Health resources" means materials, facilities, health supplies, and equipment (including pharmaceutical, blood collecting and dispensing supplies, biological, surgical textiles, and emergency surgical instruments and supplies) required to prevent the impairment of, improve, or restore the physical and mental health conditions of the population.

(k) "Metals and minerals" means all raw materials of mineral origin (excluding energy) including their refining, smelting, or processing, but excluding their fabrication.

(l) "Strategic and Critical Materials" means materials (including energy) that (1) would be needed to supply the military, industrial, and essential civilian needs of the United States during a national security emergency, and (2) are not found or produced in the United States in sufficient quantities to meet such need and are vulnerable to the termination or reduction of the availability of the material.

(m) "Water resources" means all usable water, from all sources, within the jurisdiction of the United States, which can be managed, controlled, and allocated to meet emergency requirements.

Sec. 902. *General.* (a) Except as otherwise provided in subsection 902(c) of this order, the authorities vested in the President by title VII of the Act may be exercised and performed by the head of each department and agency in carrying out the delegated authorities under the Act and this order.

(b) The authorities which may be exercised and performed pursuant to subsection 902(a) of this order shall include (1) the power to redelegate authorities, and to authorize the successive redelegation of authorities, to departments and agencies, officers, and employees of the government, and (2) the power of subpoena with respect to authorities delegated in parts II, III, and IV of this order, provided that the subpoena power shall be utilized only after the scope and purpose of the investigation, inspection, or inquiry to which the subpoena relates have been defined either by the appropriate officer identified in subsection 902(a) of this order or by such other person or persons as the officer shall designate.

(c) Excluded from the authorities delegated by subsection 902(a) of this order are authorities delegated by parts V, VI, and VIII of this order and the authority with respect to fixing compensation under section 703(a) of the Act.

Sec. 903. *Authority.* All previously issued orders, regulations, rulings, certificates, directives, and other actions relating to any function affected by this order shall remain in effect except as they are inconsistent with this order or are subsequently amended or revoked under proper authority. Nothing in this order shall affect the validity or force of anything done under previous delegations or other assignment of authority under the Act.

Sec. 904. *Effect on other Orders.* (a) The following are superseded or revoked:

(1) Section 3, Executive Order No. 8248 of September 8, 1939, (4 FR 3864).

(2) Executive Order No. 10222 of March 8, 1951 (16 FR 2247).

(3) Executive Order No. 10480 of August 14, 1953 (18 FR 4939).

(4) Executive Order No. 10647 of November 28, 1955 (20 FR 8769).

(5) Executive Order No. 11179 of September 22, 1964 (29 FR 13239).

(6) Executive Order No. 11355 of May 26, 1967 (32 FR 7803).

(7) Sections 7 and 8, Executive Order No. 11912 of April 13, 1976 (41 FR 15825, 15826–27).

(8) Section 3, Executive Order No. 12148 of July 20, 1979 (44 FR 43239, 43241).

(9) Executive Order No. 12521 of June 24, 1985 (50 FR 26335).

(10) Executive Order No. 12649 of August 11, 1988 (53 FR 30639).

(11) Executive Order No. 12773 of September 26, 1991 (56 FR 49387), except that part of the order that amends section 604 of Executive Order 10480.

(b) Executive Order No. 10789 of November 14, 1958, is amended by deleting "and in view of the existing national emergency declared by Proclamation No. 2914 of December 16, 1950," as it appears in the first sentence.

(c) Executive Order No. 11790, as amended, relating to the Federal Energy Administration Act of 1974, is amended by deleting "Executive Order No. 10480" where it appears in section 4 and substituting this order's number.

(d) Subject to subsection 904(c) of this order, to the extent that any provision of any prior Executive order is inconsistent with the provisions of this order, this order shall control and such prior provision is amended accordingly.

Sec. 905. *Judicial Review.* This order is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

William J. Clinton

THE WHITE HOUSE,
June 3, 1994.

[FR Doc. 94-14027
Filed 6-6-94; 10:45 am]
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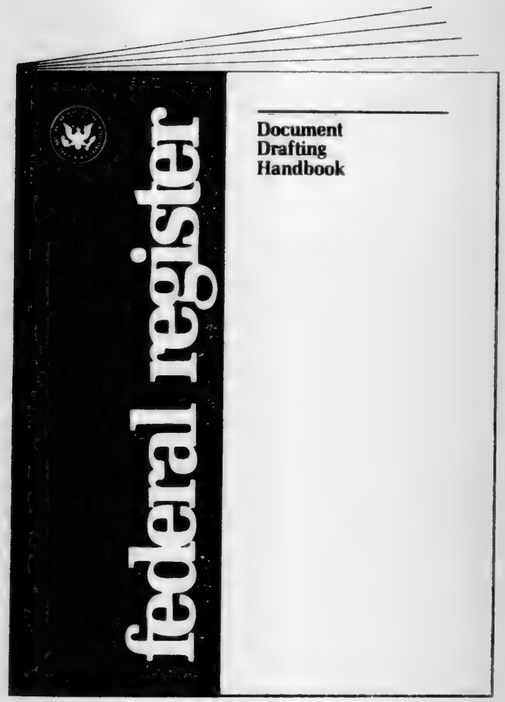
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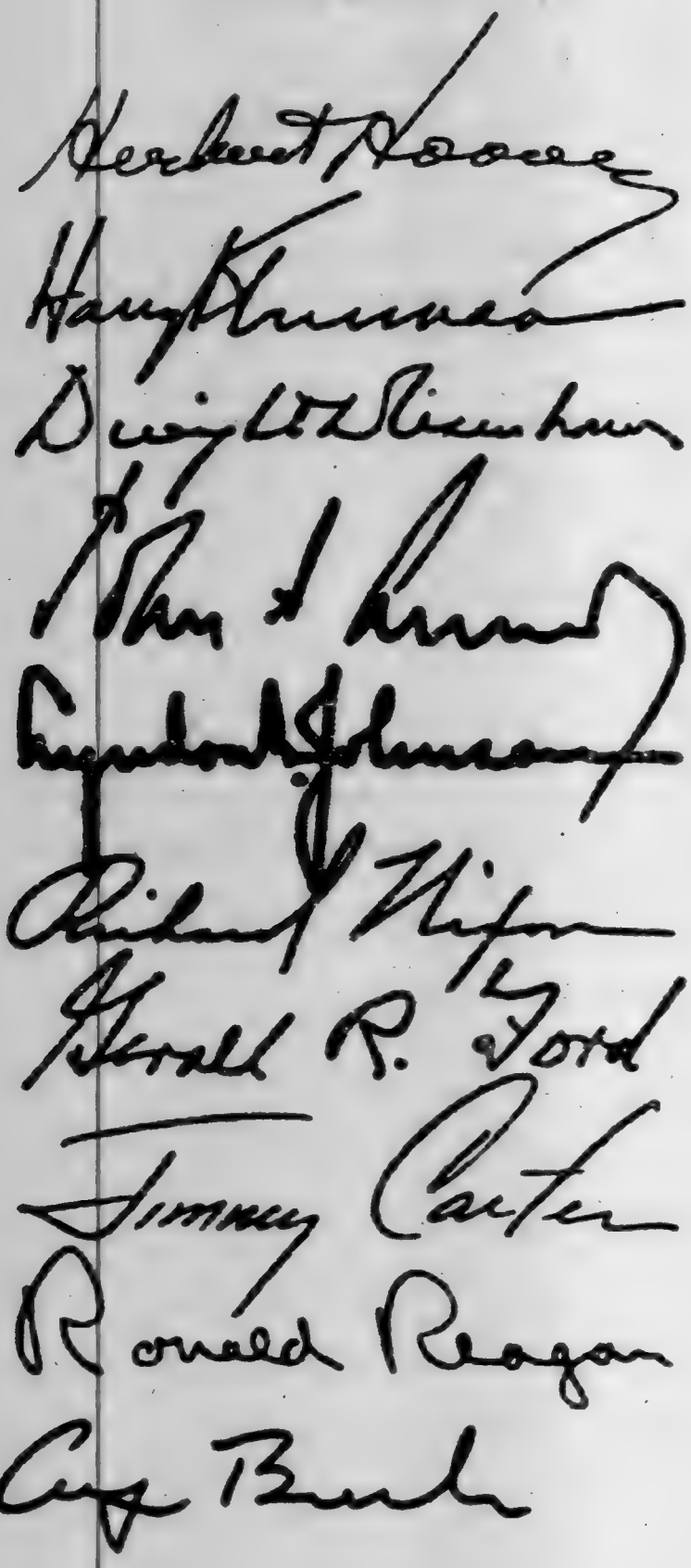
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

[Docket No. FV94–911–1–FIR]

Limes Grown in Florida; Finalize Temporarily Suspended Volume Regulation and Pack-Out Reporting Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes without change an interim final rule which temporarily suspended certain volume regulation and pack-out reporting requirement provisions of the marketing order for fresh limes grown in Florida. These provisions were suspended, because they are temporarily not needed due to reduced lime production in Florida.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5331; or Aleck J. Jonas, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act; and of Marketing Agreement and Marketing Order No. 911 (7 CFR part 911) regulating the handling of limes grown in Florida, hereinafter referred to as the order. This order is effective under the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 20 Florida lime handlers subject to regulation under the marketing order covering limes grown in Florida, and about 25 lime producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of these handlers and producers may be classified as small entities.

The Florida Lime Administrative Committee (committee) unanimously recommended the temporary suspension of the provisions. The committee meets prior to and during each season to review the rules and regulations effective on a continuous basis for limes regulated under this order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

This rule finalizes an interim final rule which temporarily suspended §§ 911.53 through 911.59 (7 CFR 911.53–59) of the order containing provisions pertaining to the issuance of volume regulations for fresh limes grown in Florida, and § 911.111 (7 CFR 911.111) containing provisions requiring Florida handlers to file certain reports with the committee on their fresh Florida lime shipments. The interim final rule was issued March 16, 1994, with an effective date of March 22, 1994, and published in the **Federal Register** (59 FR 13429, March 22, 1994). The interim final rule provided a 30-day comment period ending April 21, 1994, and no comments were received.

Sections 911.53 through 911.59 were used by the committee to collect and maintain information from handlers, so that it could recommend to the Department that lime volume regulations be issued, when and if needed. The committee determined that volume regulations will not be needed during the next two seasons, and, thus, such information will not be needed during such period. Volume regulations will not be needed, because Florida's lime production was considerably reduced by hurricane damage to the lime groves in 1992.

Section 911.111 required Florida lime handlers to file certain reports with the committee on their fresh Florida lime shipments, including information on types and number of containers of limes they pack each day. This section was suspended, because information collected under the section is not needed at a time when lime production

is reduced. The committee reported that sufficient information is currently available from inspection certificates collected on a daily basis by committee staff to meet committee needs for operations, marketing policies, and compliance during the next two seasons.

The committee reported that it expects that Florida lime production will have recovered and volume regulation and reporting requirement provisions may be needed when the suspension ends on March 31, 1996. The committee also reported that it needs to reduce administrative costs and staff, due to the reduced lime production and resulting lower assessment collections, and the suspension will help achieve this objective.

This rule reflects the committee's and the Department's appraisal of the need to finalize the suspended volume regulation and pack-out reporting provisions under the order. Such suspension temporarily removed certain reporting requirements on the part of Florida lime handlers, and lessened the overall reporting and recordkeeping burden under the order. The Department's view is that the suspension has a beneficial impact on Florida lime producers and handlers, since the reporting burden on handlers and committee expenses incurred under the order are reduced.

The information collection requirements have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB Number 0581–0091. The interim final rule temporarily suspended an annual reporting burden currently estimated at 210.4 hours for all Florida lime handlers who: (1) Apply for a prorate base and allotment; (2) report daily the percentages, by size category, of the limes packed by them; and (3) report daily the number of containers of limes sold and delivered by them within the State of Florida.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that the provisions discussed herein, at this time, do not tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 911 is amended as follows:

PART 911—LIMES GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 911 which was published at 59 FR 13429 on March 22, 1994, is adopted as a final rule without change.

Dated: June 2, 1994

Patricia Jensen,

Acting Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 94–13890 Filed 6–7–94; 8:45 am]

BILLING CODE 3410–02–P

Rural Electrification Administration

7 CFR Part 1735

RIN 0572–AA91

Telephone Program Loan Policies, Types, and Requirements

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends its regulation concerning general policies for telephone loans to make consistent for all telephone borrowers the adjusted net worth to assets requirement set forth in the mortgage between REA and its borrowers. The final rule establishes at 10 percent, the percentage of adjusted assets used in determining both the borrower's allowable distribution of capital and certain reporting requirements. This percentage will be incorporated in new mortgages and will also apply to borrowers with outstanding loans regardless of the percentage stated in their existing mortgages.

EFFECTIVE DATE: This regulation is effective on July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Matthew P. Link, Director, Rural Telephone Bank Management Staff, Rural Electrification Administration, U.S. Department of Agriculture, 14th & Independence Avenue, SW., room 2832–S, Washington, DC 20250–1500, telephone number (202) 720–0530.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866, Regulatory Planning and Review, and therefore has not been reviewed by the Office of Management and Budget

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

REA has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The REA program provides loans to REA borrowers at interest rates and terms that are more favorable than those generally available from the private sector. REA borrowers, as a result of obtaining federal financing, receive economic benefits which exceed any direct economic costs associated with complying with REA regulations and requirements. Moreover, this final rule corrects inequities and establishes a more consistent standard.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this final rule have previously been approved by the OMB in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements are approved under OMB control number 0572–0031. Comments concerning these requirements should be directed to: Department of Agriculture, Clearance Office, Office of Information Resources Management, room 404–W, Washington, DC 20250, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

REA has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et*

seq.). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees to governmental and nongovernmental entities from coverage under this Order.

Background

On December 29, 1993, REA published a proposed rule at 58 FR 68780 revising the adjusted net worth percent used to specify certain cash distribution and reporting requirements placed on a borrower. REA received comments from the United States Telephone Association (USTA) regarding the proposed rule, which were taken into consideration in preparing the final rule.

Comment Summary: With regard to paragraph (b), USTA commented that the language "an alternative", which is referencing a calculation contained in the REA mortgage, is confusing because this calculation has always been the standard, not "an alternative" calculation. USTA further commented that the "alternative dividend calculation", outlined in the February 13, 1978 supplement to REA Bulletin 402–1, should be codified and that REA explore other possible changes to its dividend policy which will increase borrowers' flexibility.

Response: The mortgage provides an alternative to the borrower for distributing dividends when it cannot meet the 40 percent net worth to total assets ratio test. The proposed rule relates exclusively to a revision made in the dividend policy contained in the mortgage. There are other alternatives available if the borrower cannot distribute under the methods provided in the mortgage. These alternatives were not revised and are contained in REA Bulletin 402–1. While this revision to the mortgage represents a move towards a more flexible but consistent policy, REA is considering other less complicated but financially responsible policies.

Comment Summary: USTA suggested that REA's policy requiring that borrowers retain cash in the corporation in order to secure cash and other assets, be revised. USTA also suggested REA consider excluding cash and other current assets, and other investments, from its dividend calculation.

Response: As a credit agency, REA is rightfully concerned about the extent of a borrower's financial leverage and liquidity. When a borrower is highly debt-leveraged or has a marginal working capital position, the flow of cash away from its operations can be risky and could jeopardize REA's loan security. However, REA is only concerned with this outflow when a borrower cannot meet the 40 percent net worth to total assets ratio. In general, this ratio represents the borrower's ability to finance its assets with an appropriate level of debt and equity. Once a borrower is above the 40 percent comfort level, neither the amount nor flow of cash is subject to retention. In fact, at no time is a borrower required to maintain a specific level of cash.

List of Subjects in 7 CFR Part 1735

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

Chapter XVII of Title 7 of the Code of Federal Regulations is amended as follows:

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELEPHONE PROGRAM

1. The authority citation for part 1735 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. In § 1735.46, the existing text is designated as paragraph (a) and new paragraphs (b) through (h) are added to read as follows:

§ 1735.46 Loan security documents.

(a) * * *

(b) The standard form of mortgage or other security document required by REA to secure telephone loans prohibits the borrower from making certain investments or distributions of assets unless, after such action, the borrower's adjusted net worth is at least:

(1) Forty percent of its adjusted assets; or

(2) As an alternative, the sum of ten percent of its adjusted assets plus certain other adjustments specified in the mortgage.

(c) The standard form of telephone mortgage also states that if the borrower's adjusted net worth is at least ten percent of its adjusted assets, the borrower is not required to take or refrain from taking certain actions as set forth in the mortgage.

(d) REA will apply the ten percent requirement to all telephone borrowers regardless of whether the borrower's existing mortgage sets forth a higher percentage of adjusted net worth to assets for purposes of determining whether the borrower can:

(1) Use the alternative calculation described in paragraph (b)(2) of this section to determine if it can make investments or distributions; or

(2) Take advantage of the benefits described in paragraph (c) of this section.

(e) A borrower with an adjusted net worth of less than twenty percent of its adjusted assets shall continue to fulfill the requirements of the mortgage relating to reporting its ownership and transfers of its ownership, including capital stock, membership certificates and equity capital certificates.

(f) Any borrower meeting the standard forty percent limitation described in paragraph (b)(1) of this section shall continue to be able to pay dividends or make investments in accordance with the borrower's mortgage.

(g) References to a borrower's mortgage in this section include deeds of trust and any other loan document applying the same requirements to a borrower.

(h) This section does not limit the rights of any parties to the mortgage other than REA or RTB.

Dated: June 2, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–13888 Filed 6–7–94; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A on Extensions

of Credit by Federal Reserve Banks to reflect its approval of an increase in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

EFFECTIVE DATE: These amendments to part 201 (Regulation A) were effective June 2, 1994. The rate changes for adjustment credit were effective on the dates specified in § 201.51.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary of the Board (202/452–3257); for the hearing impaired only, Telecommunications Device for the Deaf (TDD) (202/452–3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The "basic discount rate" is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Bank's discretion, for extended credit. In increasing the basic discount rate, the Board acted on requests submitted by the Boards of Directors of the twelve Reserve Banks. The new rates were effective on the dates specified below. The increase was made to maintain favorable trends in inflation and thereby sustain the economic expansion. This action, combined with other adjustments by the Federal Open Market Committee, substantially removes the degree of monetary accommodation that prevailed throughout 1993.

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of this amendment because the Board for "good cause" finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in maintaining favorable trends in inflation and thereby sustaining the economic expansion.[1]

The provisions of 5 U.S.C. 553(d) that prescribe 30 days' prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. Although the change increases the rate of interest charged to borrowers from Reserve Banks, the Board believes that the higher cost of funds is outweighed by the salutary effect on the economy.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons outlined in the preamble, the Board of Governors amends 12 CFR part 201 as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 is revised to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal Reserve Bank	Rate	Effective
Boston	3.5	May 17, 1994.
New York	3.5	May 17, 1994.
Philadelphia	3.5	May 17, 1994.
Cleveland	3.5	May 18, 1994.
Richmond	3.5	May 17, 1994.
Atlanta	3.5	May 17, 1994.
Chicago	3.5	May 17, 1994.
St. Louis	3.5	May 17, 1994.
Minneapolis	3.5	May 17, 1994.
Kansas City	3.5	May 17, 1994.
Dallas	3.5	May 17, 1994.
San Francisco	3.5	May 17, 1994.

3. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit for depository institutions.

(a) *Seasonal credit.* The rate for seasonal credit extended to depository institutions under § 201.3(b) is a flexible rate that takes into account rates on market sources of funds, but in no case will the rate charged be less than the rate for adjustment credit as set out in § 201.51.

(b) *Extended credit.* For extended credit to depository institutions under § 201.3(c), for credit outstanding for more than 30 days, a flexible rate will be charged that takes into account rates on market sources of funds, but in no case will the rate charged be less than the rate for adjustment credit, as set out in § 201.51, plus one-half percentage point. At the discretion of the Federal Reserve Bank, this time period may be shortened, and the rate may be the discount rate applicable to adjustment credit.

By order of the Board of Governors of the Federal Reserve System, June 2, 1994

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–13867 Filed 6–7–94; 8:45 am]

BILLING CODE 6210–01–P

[1] The Board's Rules of Procedure provide that advance notice and deferred effective date will ordinarily be omitted in the public interest for changes in discount rates. 12 CFR 262.2(c).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–97; Special Conditions No. 25–ANM–86]

Special Conditions: Modified Gulfstream G–1159A Series Airplanes, High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions with request for comments.

SUMMARY: These special conditions are issued for the Gulfstream G–1159A series airplanes modified by ElectroSonics, Division of AiRadio Corporation of Columbus, Ohio. These airplanes are equipped with digital electronic flight instrument systems (EFIS) that perform critical functions. The applicable type certification regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions that these systems perform are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is May 31, 1994. Comments must be received on or before July 25, 1994.

ADDRESSES: Comments on these special conditions may be mailed in triplicate to: Federal Aviation Administration, Transport Airplane Directorate (ANM–100), Attn: Docket No. NM–97, 1601 Lind Avenue SW., Renton, WA 98055–4056; or delivered in triplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM–97. Comments may be inspected weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Michael Zielinski, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056, telephone (206) 227–2279.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special conditions number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be a available in the Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the Docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–97." The postcard will be date stamped, and returned to the commenter.

Background

On March 25, 1994, ElectroSonics, Division of AiRadio Corporation of Columbus, Ohio, applied for a supplemental type certificate to modify the Gulfstream G–1159A series airplanes. The Gulfstream G–1159A is a business jet with two aft-mounted turbojet engines. The airplane can carry two pilots and up to 19 passengers, depending on the exit and interior configuration, and is capable of operating to 45,000 feet altitude. The proposed modification incorporates the installation of digital avionics consisting of an electronic flight instrument system (EFIS) that is potentially vulnerable to HIRF external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the FAR, ElectroSonics, Division of AiRadio Corporation, must show that the modified Gulfstream G–1159A series airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A12EA, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certification No. A12EA include the following: CAR4b of the Civil Aviation Regulations, dated December 31, 1953, including Amendments 4b–1 through 4b–14. In addition the following Federal Aviation Regulations (FAR) apply to the EFIS installation: §§ 25.1303(b) and 25.1322, as amended through Amendment 25–38; §§ 25.1309, 251321 (a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335, as amended by Amendment 25–41. These special conditions will form an additional part of the supplemental type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Gulfstream G–1159A series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.6 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Gulfstream G–1159A series airplanes that would require that new technology electrical and electronic systems, such as EFIS and digital avionics systems be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170

Frequency	Peak (V/M)	Average (V/M)
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Aviation Authorities.

As discussed above, these special conditions are applicable to the Gulfstream G–1159A series airplanes, modified by ElectroSonics, Division of AiRadio Corporation of Columbus, Ohio. Should ElectroSonics apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A12EA to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain unusual or novel design features on the Gulfstream G–1159A series airplanes modified by ElectroSonics, Division of AiRadio Corporation of Columbus, Ohio. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the Gulfstream G–1159A series airplanes modified by ElectroSonics, Division of AiRadio Corporation of Columbus, Ohio.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may have not been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq; E.O. 11514; and 49 U.S.C. 106(g)

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Gulfstream G–1159A series airplanes modified by ElectroSonics, Division of AiRadio Corporation of Columbus, Ohio.

1. *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

2. The following definitions apply with respect to these special conditions:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 31, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 94–13909 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 93–CE–33–AD; Amendment 39–8936; AD 94–12–08]

Airworthiness Directives: Cessna Aircraft Company 210, P210, and T210 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 92–26–04, which applies to certain Cessna Aircraft Company (Cessna) 210, P210, and T210 series airplanes. That AD requires operational checks of the fuel gauges, fuel cap and adapter modifications, and preflight fuel system quantity checks. The Federal Aviation Administration (FAA) received a petition for reconsideration of AD 92–26–04, and subsequently suspended the effectiveness of this AD while the concerns specified in the petition were evaluated. This action retains certain requirements of AD 92–26–04, and incorporates certain items raised by the petition for reconsideration. The actions specified by this AD are intended to prevent loss of engine power caused by inadvertent fuel loss or inadequate fuel servicing.

DATES: Effective July 22, 1994.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of January 22, 1993.

ADDRESSES: Service information that applies to this AD may be obtained from the Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Wichita, Kansas 67209; telephone (316) 946–4143; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna 210, P210, and T210 series airplanes was published in the **Federal Register** on August 24, 1993 (58 FR 44621). The action proposed to supersede AD 92–26–04, Amendment 39–8431 (57 FR 57658, December 7, 1992), with a new AD that would require the following on Cessna 210, P210, and T210 series airplanes:

- Retain the fuel gauge operational checks, fuel cap and adapter modifications, and preflight fuel system quantity checks currently required by AD 92–26–04;
- Provide the option of utilizing approved alternative procedures for calibrating the fuel systems;
- Provide the option of accomplishing fuel capacity checks after refueling the airplane or installing raised fuel caps; and
- Revise the applicability of the actual AD to more fully clarify which airplanes are affected.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters state that the calibration procedures proposed are ineffective, very expensive, and the equipment necessary to accomplish the calibration is unavailable. Two of these commenters referenced calibration and gauge accuracy procedures that they felt were more realistic (more effective, less expensive, and available) than those specified in the proposal. The FAA (1) reviewed the procedures submitted by the commenters; (2) determined that the referenced procedures are, at least, as realistic as those proposed; and (3) incorporated the procedures into the AD.

One commenter recommends limiting the number of hours of operation before an airplane equipped with uncalibrated fuel gauges must refuel. The commenter states that this would reduce the cost associated with requiring accurate fuel gauge calibration. The FAA concurs and has added this provision to the AD.

Several commenters suggest increasing the pilots' knowledge of the fuel system limitations through training and advisories. The FAA concurs that this step is essential for aviation safety; however, AD's are utilized to correct an unsafe condition that exists or is likely to develop in aircraft of the same type design. Appropriate fuel system placarding (specified in the proposed AD) does provide an advisory to the limitations of the originally certificated fuel system, which could help increase pilot knowledge. Any other action related to increasing the pilot's knowledge of fuel system limitations is outside the scope of AD action. The AD is unchanged as a result of this comment.

One commenter recommends that the FAA not require replacement of the flush fuel caps because the existing fuel caps are acceptable if they are properly maintained. The FAA concurs. The proposal included the option of installing these raised fuel caps or fabricating and installing a fuel capacity check placard on each wing fuel filler opening. The AD is unchanged as a result of this comment.

One commenter recommends requiring replacement of the fuel caps with caps that are not susceptible to fuel leakage or siphoning and where certificated fuel capacity is easily obtainable. This commenter states that service experience indicates that the fuel caps originally certificated on these Cessna 210 series airplanes make fuel servicing difficult and susceptible to water leakage into the tanks and fuel siphoning during flight. The FAA does not concur that mandatory fuel cap replacement is necessary. The FAA has determined that the accomplishment of certain preflight requirements will provide the same level of safety as fuel cap replacement. The FAA encourages fuel cap replacement and the preflight requirements are reduced when replacement is accomplished. The AD is unchanged as a result of this comment.

After careful review of all available information including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the incorporation of the calibration and gauge accuracy procedures referenced above and minor editorial corrections. The FAA has determined that these procedures and minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 5,000 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $150 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,850,000. This figure is based on the assumption that no affected airplane owner/operator has accomplished the required action.

In addition, AD 92–26–04 currently has a cost impact of $2,125,000 (5 workhours × $55 per hour plus $150 for parts × 5,000 airplanes) if the FAA had not suspended the effectiveness of that AD. The cost of this AD is actually a reduction of one workhour per airplane over that specified in AD 92–26–04, or a reduction of $275,000 for the entire U.S. fleet.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 92–26–04, Amendment 39–8431 (57 FR 57658, December 7, 1992), and by adding a new airworthiness directive to read as follows:

94–12–08 Cessna Aircraft Company: Amendment 39–8936; Docket No. 93–CE–33–AD. Supersedes AD 92–26–04, Amendment 39–8431.

Applicability: The following model and serial number airplanes, certificated in any category.

Model	Serial No.
210G through 210R, and.	21058819 through 21065009, and
T210G through T210R.	T210–0198 through T210–0454.
P210N, and P210R	P21000001 through P21000874.

Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent loss of engine power caused by inadvertent fuel loss or inadequate fuel servicing, accomplish the following:

(a) Incorporate the Pilot Operating Procedures—Preflight Fuel System Quantity Check that is Figure 1 of this AD into the airplane flight manual or airplane records

Figure 1

Pilot Operating Procedures—Preflight Fuel System Quantity Check

The following procedures are to be used on certain Cessna 210, P210, and T210 Series airplanes whenever more than 75 gallons of fuel are needed for range and reserve.

1. Verify that the airplane is level laterally and is approximately 4.5 degrees nose up (normal nose strut on a level surface).

Note: The airplane turn and bank instrument may be used to check lateral leveling.

2. Visually inspect each fuel tank for fuel level with the upper wing surface when full fuel capacity is intended to be in each tank.

3. Check each fuel cap and seal for security and wing surface for a lack of fuel stains aft of each fuel cap.

Note: It is highly recommended that the wing tips and flap trailing edges are checked during flight for evidence of fuel siphoning.

(b) The incorporation of Figure 1 of this AD into the airplane flight manual or airplane records as required by paragraph (a) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(c) Calibrate the fuel quantity indicating system at the unusable (empty) fuel gauge indication by accomplishing either (c)(1) or (c)(2) of this AD as follows:

(1) Checking (one-time) the fuel gauge calibration by:

(i) Draining the wing fuel tank sumps (defuel the airplane).

(ii) Turning the master switch on, ensuring that the fuel gauges indicate empty ("E"); and

(iii) Adjusting or replacing the transmitter or gauge, as required to obtain proper "empty" indication with empty wing fuel tanks; or

(2) Fabricate a ⅛-inch wide (¼-inch long minimum) red "Empty" radial line and center on the gauge glass where the gauge pointer indicates when the tank is empty; and fabricate and install adjacent to the fuel gauges a placard (using letters at least ⅛-inch in height) with the following words:

Fuel Gauges Not Calibrated, Base All Fuel Calculations on Visual Inspection, Time and Consumption Figures. With Full Tanks, Maximum Endurance Is 4 Hours for Flight Planning.

(d) Accomplish either (d)(1) or (d)(2) of this AD as follows:

(1) Install raised fuel caps in accordance with the instructions to Cessna Service Kit SK210–136, which is referenced by Cessna Service Bulletin SEB91–10, dated October 25, 1991; or Supplemental Type Certificate SA2456CE (owned by Mr. William J. Barton) for Monarch Air & Development, Inc., Assembly No. WW–100–2 fuel caps (only); or

(2) Fabricate two placards with the following words on each using letters at least ⅛-inch in height and install a placard on each wing fuel filler opening: "To Assure Full Capacity While Filling, Fill Slowly During Last 5 Gallons. Recheck For Full After 2 Minutes."

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(g) The replacement required by this AD shall be done in accordance with Cessna Service Kit SK210–136, which is referenced by Cessna Service Bulletin SEB91–10, dated October 25, 1991. This incorporation by reference was previously approved by the Director of the Federal Register as of January 23, 1993, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–8936) supersedes AD 92–26–04, Amendment 39–8431.

(i) This amendment (39–8936) becomes effective on July 22, 1994.

Issued in Kansas City, Missouri, on June 1, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13850 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 94–AWP–11]

Alteration of VOR Federal Airway V–291

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes the exclusionary language from Federal Airway V–291 concerning Restricted Area R–2302. The restricted area's altitude was reduced in another rulemaking action, from 11,000 feet mean sea level (MSL) to 10,000 feet MSL. The minimum en route altitude (MEA) of V–291 between the Flagstaff, AZ, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) and the intersection of Kacee is 11,000 feet MSL; therefore, the exclusionary language is no longer necessary.

EFFECTIVE DATE: 0901 u.t.c., August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes the exclusionary language from Federal Airway V–291 concerning Restricted Area R–2302. The FAA, in another rulemaking action, reduced the restricted area's altitude from 11,000 feet MSL to 10,000 feet MSL. The MEA of V–291 between the Flagstaff, AZ, VOR/DME and the intersection of Kacee is 11,000 feet MSL; therefore, the exclusionary language is no longer necessary. Because this action is a minor technical amendment in which the public would not be particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 56298; July 6, 1993). The airway listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–291 [Revised]

From Hobbs, NM, via INT Hobbs 287° and Chisum, NM, 136° radials; Chisum, via INT Chisum 335° and Corona, NM, 124° radials; Corona, via INT Corona 328° and Albuquerque, NM, 103° radials; Albuquerque; Gallup, NM; Winslow, AZ; Flagstaff, AZ; to Peach Springs, AZ.

* * * * *

Issued in Washington, DC, on May 25, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–13911 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AB83

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations; correction.

SUMMARY: This document corrects errors in the final regulations published in the **Federal Register** on April 29, 1994 for the Federal Family Education Loan Program (59 FR 22462). These regulations implement statutory changes in the program authorized by title IV of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, and certain technical changes made by the Cash Management Improvement Act Amendments of 1992, the Omnibus Budget Reconciliation Act of 1993, and the Higher Education Technical Amendments of 1993.

FOR FURTHER INFORMATION CONTACT: George Harris, Loans Branch, Division of Policy Development, Policy, Training and Analysis Service, U.S. Department of Education, 400 Maryland Avenue SW. (room 4310, ROB–3), Washington, DC 20202. Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Dated: June 2, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The following corrections are made in FR Doc. 94–10250, published on April 29, 1994 (59 FR 22462):

1. On page 22462, under "Dates", in line 5, the reference to "§ 682.202" is removed.

§ 682.402 [Corrected]

2. On page 22485, column 1, in § 682.402(e)(13)(ii), the cross-reference to "(e)(8)(i)" is corrected to read "(e)(13)(i)", and in § 682.402(e)(13)(iii), the cross-reference to "(e)(8) (i) and (ii)" is corrected to read "(e)(13) (i) and (ii)".

3. On page 22487, in column 2, Item 5, in line 6, the reference to paragraph "(B)(6)(vii) introductory text" is corrected to read "(b)(6)(vii) introductory text", in line 8, the reference to paragraph "(B)(6)(vii)(B)" is corrected to read "(b)(6)(vii)(B)", and in line 10, the word "reserving" is corrected to read "revising".

[FR Doc. 94–13906 Filed 6–7–94; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F4284/R2063; FRL–4865–8]

RIN 2070–AB78

Bacillus Subtilis MBI 600; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement for a tolerance for residues of the biofungicide *Bacillus subtilis* Mbi 600 in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices. This exemption was requested by Gustafson, Inc.

EFFECTIVE DATE: Effective on May 25, 1994.

ADDRESSES: Written objections, identified by the document control number [PP 4F4284/R2063], may be submitted to the: Hearing Clerk (1900), Environmental Protection Agency, Rm. M-3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steve Robbins, Acting Product Manager (PM) 21, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)- 305-6900.

SUPPLEMENTARY INFORMATION: EPA received from Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, pesticide petition (PP) 4F4284 on March 2, 1993, proposing to amend 40 CFR part 180 by establishing a regulation pursuant to the Federal Food, Drug and Cosmetics Act, 21 U.S.C. 346a and 371, to exempt from the requirement of a tolerance the residues of the biofungicide *Bacillus subtilis* MBI 600 in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices. The notice of application to register *Bacillus subtilis* MBI 600 as a new active ingredient was published in the **Federal Register** of December 22, 1993 (58 FR 67791). A rule proposing to establish an exemption from the requirement for a tolerance for this organism was published in the **Federal Register** of April 13, 1994 (59 FR 17509). No comments were received in response to the **Federal Register** documents.

Strain MBI 600 of the bacterium *Bacillus subtilis* is a naturally occurring isolate of the spore-forming genus *Bacillus* which was first isolated from faba bean plants growing at Nottingham University School of Agriculture, Sutton Boningham, United Kingdom. *Bacillus subtilis* is a soil saprophyte found world-wide. Strains of this organism are not generally regarded as human or animal pathogens. The product is intended to be used as a seed treatment. When applied to seeds, the bacteria colonize the developing root system, competing with disease organisms which attack roots.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the exemption

from the requirement of a tolerance include an acute oral toxicity/pathogenicity study in the rat, an acute dermal toxicity study in the rabbit, an acute pulmonary toxicity/pathogenicity study in the rat, an acute intravenous toxicity/pathogenicity study in the rat, a primary eye irritation study in the rabbit, and a delayed contact hypersensitivity study in the guinea pig. These studies were performed on the active ingredient and the end-use product Gus 376 Concentrate Biological Fungicide. A review of these studies indicated that the biofungicide was not toxic to test animals when administered via the oral, dermal, intravenous, or pulmonary routes. The active ingredient was not infective or pathogenic for test animals when administered via the oral, pulmonary, or intravenous route. The end-use product produced-slight ocular irritation which dissipated within 4 days of dosing. An overall moderate skin sensitization reaction was noted in the treated guinea pigs 24 to 72 hours following treatment. No reports of hypersensitivity have been recorded from personnel working with this organism. All of the toxicity studies submitted are considered acceptable. The toxicity data provided are sufficient to show that there are no foreseeable human or domestic health hazards likely to arise from the use of the product as a seed treatment.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because the data submitted demonstrated that this biological control agent is not toxic to humans. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This is the first exemption from the requirement of a tolerance for this biofungicide.

Bacillus subtilis MBI 600 is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed in 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims to the contrary; and resolution of factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 25, 1994.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.1128, to read as follows:

§ 180.1128 Bacillus subtilis MBI 600; exemption from the requirement of a tolerance.

The biofungicide *Bacillus subtilis* MBI 600 is exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied as a seed treatment on seeds used for growing agricultural crops in accordance with good agricultural practices.

[FR Doc. 94-13675 Filed 6-7-94; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7063

[ID-943-406A-02; IDI-08932 01, IDI-14647 01]

Partial Revocation of Public Land Order No. 2588 and Bureau of Land Management Order Dated January 28, 1952; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order and a Bureau of Land Management order insofar as they affect 2,071.66 acres of public lands withdrawn by the Bureau of Reclamation for the Mountain Home and Snake River Reclamation Projects. The lands are no longer needed for the purpose for which they were withdrawn. This action will open 2,031.66 acres to surface entry and mining, but the remaining 40 acres are overlapped by another withdrawal, and therefore will remain closed to agricultural entry and mining. This revocation will permit the disposal of the lands by exchange. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706-2500, 208-384-3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 2588 and Bureau of Land Management Order dated January 28, 1952, for the Bureau of Reclamation's Mountain Home and Snake River Reclamation Projects, are hereby revoked insofar as they affect the following described lands:

Boise Meridian

IDI-08932 01 (Public Land Order No. 2588)

T. 2 S., R. 4 E.,
Sec. 2, S½.
T. 2 S., R. 5 E.,
Sec. 4, lot 1 and SE¼NE¼.
T. 5 S., R. 6 E.,
Sec. 1, lots 3 and 4.

IDI-14647 01 (Bureau of Land Management Order 1/28/52)

T. 1 N., R. 1 E.,
Sec. 15, NW¼NE¼, W½ and W½SE¼.
T. 1 S., R. 4 E.,
Sec. 3, SW¼NW¼;
Sec. 4, lots 3 and 4, S½N½ and SE¼.

Sec. 5, lots 1 and 2, S½N½, W½SW¼ and N½SE¼;
Sec. 34, N½NW¼;
Sec. 35, N½NE¼.
T. 2 S., R. 4 E.,
Sec. 1, N½SE¼.
T. 4 S., R. 6 E.,
Sec. 26, NW¼NW¼.
T. 5 S., R. 6 E.,
Sec. 1, S½NW¼.

The areas described aggregate 2,071.66 acres in Ada and Elmore Counties

2. The following described land will remain closed to agricultural entry and mining due to an overlapping withdrawal, but will otherwise be opened to the general land laws:

Boise Meridian

T. 4 S., R. 6 E.,
Sec. 26, NW¼NW¼

The area described contains 40 acres in Elmore County.

3. At 9 a.m. on July 8, 1994, the lands described in paragraphs 1 and 2 will be opened to the operation of the public land laws generally, except for those lands in paragraph 2 which will remain closed to the agricultural laws. The lands will be opened subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 8, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on July 8, 1994, the lands described in paragraph 1, except for the lands described in paragraph 2, will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 24, 1994

Bob Armstrong,

Assistant Secretary of the Interior

[FR Doc. 94–13826 Filed 6–7–94; 8:45 am]

BILLING CODE 4310–GG–P

43 CFR Public Land Order 7061

[MT–930–4210–06; MTM 41636]

Partial Revocation of Secretarial Order Dated September 20, 1904; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a Secretarial order insofar as it affects 55.36 acres of public land withdrawn for the Sun River Reclamation Project. The land is no longer needed for the purpose for which it was withdrawn and the revocation is needed to permit disposal of the land through exchange. This action will open the land to surface entry and mining. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Secretarial Order dated October 17, 1903, which withdrew public land for the Sun River Reclamation Project, is hereby revoked insofar as it affects the following described land:

Principal Meridian

T. 20 N., R. 3 W.,
Sec. 18, lots 1 to 4, inclusive

The area described contains 55.36 acres in Cascade County.

2. At 9 a.m. on July 8, 1994, the land shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 8, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on July 8, 1994, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized Any such attempted appropriation, including attempting adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 24, 1994.

Bob Armstrong,

Assistant Secretary of the Interior

[FR Doc. 94–13825 Filed 6–7–94; 8:45 am]

BILLING CODE 4310–ON–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 940418–4118; I.D. 031894B]

Sea Turtle Conservation; Restrictions Applicable to Fishery Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary restriction; request for comments.

SUMMARY: NMFS is issuing a temporary restriction that establishes all inshore and offshore waters from Cape Canaveral, FL (28°24.6′ N. lat.), to the North Carolina-Virginia border (36°30.5′ N. lat.) as the leatherback conservation zone and notifies owners and operators of shrimp trawlers operating in that zone that short-term area closures may be required if high abundance levels of leatherback turtles are documented. During the most recent surveys by the State of South Carolina, concentrations of leatherback sea turtles were observed in the conservation zone. Therefore, the potential exists, for the next 30 days, that closure of the conservation zone may be necessary.

NMFS will close these areas to any shrimp trawler required to have a turtle excluder device (TED) installed in each net that is rigged for fishing unless the TED installed is a NMFS-approved Taylor TED, a Morrison TED with either of the two NMFS-approved modifications made in May 1993, or the modified single-grid hard TED described in a final rule, technical amendment, published May 18, 1994 in the **Federal Register** (59 FR 25827). This temporary rule is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

Specific area closures will be announced in the **Federal Register**, on the NOAA weather channel and in newspapers and other media. Shrimp trawlers in the leatherback conservation zone are responsible for monitoring the NOAA weather channel for closure announcements. Shrimp fishermen may also call (813) 893–3163 for updated closure information.

Owners and operators of shrimp trawlers operating in closed areas with modified TEDs must register with the Director, Southeast Region, NMFS, and may be required to carry an observer and provide information on trawling hours, gear modifications and turtle captures if requested by the Regional Director.

DATES: This restriction is effective from June 3, 1994 through July 5, 1994. Comments on this restriction and consideration of any extension of this restriction must be submitted by June 23, 1994.

ADDRESSES: Requests for a copy of the environmental assessment for this action and comments on this action should be addressed to Dr. William W. Fox, Jr., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Room 8268, Silver Spring, MD 20910. Comments on the collection-of-information requirement subject to the Paperwork Reduction Act should be directed to the Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Margaret Lorenz, and to the Office of Information and Regulatory Affairs, Office of Management and Budget,, Washington, D.C. 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz, Endangered Species Division (301) 713–2322, or Charles A. Oravetz, Chief, Protected Species Program, NMFS, Southeast Region, (813) 893–3366.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA) of 1973. The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. The incidental take and mortality of these species, as a result of fishing activities, have been documented in the Gulf of Mexico and along the Atlantic seaboard.

Under the ESA and its implementing regulations, it is prohibited to take sea turtles. The incidental taking of turtles during fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition if specified sea turtle conservation measures are used.

Existing sea turtle conservation regulations (50 CFR part 227) require most shrimp trawlers to have a NMFS-approved TED installed in each net rigged for fishing throughout the year. The use of TEDs significantly reduces mortalities of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

The existing sea turtle conservation regulations allow the Assistant Administrator for Fisheries, NOAA, (AA) to restrict fishing activities in order to conserve a species listed under the ESA (50 CFR 227.72(e)(6)(ii)). This action may be taken if the AA determines that restrictions are necessary to avoid unauthorized takings that may likely jeopardize the continued existence of a listed species. The provision is particularly applicable to leatherback turtles, where despite the use of TEDs, taking by shrimp trawlers can occur. In accordance with the endangered status of leatherback turtles, NMFS considers preventable take of leatherbacks to be inappropriate. If the leatherbacks are relatively abundant in areas where shrimp trawlers are fishing, restrictions to minimize the take of leatherbacks must be imposed.

Because of their primarily pelagic existence, leatherbacks normally occur outside of areas where they would be subject to take by shrimp trawlers. During most months of the year, leatherbacks are not considered abundant in shrimping areas, and only isolated incidents of take by trawlers are expected. However, the coastal waters of northern Florida, Georgia, South Carolina and North Carolina experience relatively high abundance levels of leatherbacks as a periodic spring phenomenon. When leatherback abundance is high and shrimp trawlers are fishing, leatherback stranding pulses have been documented on adjacent beaches. A NMFS Biological Opinion prepared for a revision to the sea turtle conservation regulations made on December 4, 1992, (52 FR 24244) episodic stranding events from Florida through North Carolina and required NMFS to develop and implement a contingency plan to solve this problem.

A contingency plan for protection of leatherback turtles on the Atlantic seaboard that can be implemented, if necessary, was prepared in cooperation with State officials from Florida, Georgia, and North Carolina. The necessity for implementation of protective measures for leatherback turtles is expected to be short-term and apply to specific areas. The plan considers several options to provide protection, and any or all them may be implemented, if necessary, pursuant to 50 CFR 227.72(e)(6). These options include, closure of areas to all fishing, use of restricted tow-times in lieu of TEDs, mandatory observers, and use of modified TEDs designed to exclude leatherback turtles.

Presence of Leatherback Turtles

During December of 1993 and January and February 1994, NMFS received regular reports of leatherback sightings in northern Florida. During recent surveys by the State of South Carolina, concentrations of leatherback sea turtles were observed in the conservation zone. The turtles normally migrate northward during the months of March through June from Florida waters to those off North Carolina.

Sea Turtle Conservation Measures

Based on the information presented and evidence indicating that shrimp trawlers may incidentally take endangered leatherback sea turtles, the AA has determined that immediate action may be necessary to conserve sea turtles. The AA has determined that incidental takings of leatherback sea turtles during shrimp trawl fishing in the leatherback conservation zone are unauthorized unless these takings are consistent with the applicable biological opinions and associated incidental take statements.

A biological opinion addressing the potential adverse effects of shrimp trawling to endangered and threatened species was conducted in 1992 for final sea turtle conservation regulations. The opinion concluded that, "episodic take of leatherback turtles by shrimp trawlers during periods of high jellyfish abundance must be eliminated." A biological opinion on this action analyzed the impact of shrimp trawl fishing in the leatherback conservation zone on endangered leatherback turtles. The opinion emphasizes the need for additional protective measures such as requiring the use of TEDs with escape openings large enough for leatherback sea turtles to escape in areas where high abundance levels of leatherbacks are observed. The incidental take statement issued with this opinion allows for the documented take of 20 leatherback turtles and mortality of four leatherback turtles. If observer reports or other information indicate that this incidental is met or exceeded, consultation must be reinitiated, and the AA may require additional or more stringent conservation measures.

Requirements

The definitions in 50 CFR 217.12 are applicable to this action, as are all relevant provisions in 50 CFR parts 217, 222 and 227.

The term "leatherback conservation zone" means all inshore and offshore waters of the Atlantic area from Cape Canaveral, FL (28°24.6′ N. lat.) , to the North Carolina-Virginia border (36°30.5′ N. lat.).

NMFS hereby notifies owners and operators of shrimp trawlers in the leatherback conservation zone that short-term closures in specific areas may be required to protect endangered leatherback turtles. Weekly aerial surveys will be conducted from northern Florida through the North Carolina-Virginia border. If sightings of leatherback turtles during such surveys exceed 10 animals per 50 nautical miles (nm) of trackline, the survey will be replicated within 12 hours, or as soon as practicable, to ensure that leatherback turtle presence is persistent in the area. If surveys demonstrate the continued presence of large concentrations of leatherbacks, NMFS will temporarily close these specific areas to any shrimp trawler required to have a NMFS-approved TED installed in each net rigged for fishing, unless the TED installed is one of the NMFS-approved TEDs as described below. In addition, owners and operators of vessels operating in closed areas with an allowed TED, described below, must register with the Director, Southeast Region, NMFS, in accordance with 50 CFR 227.72(e)(6)(v)(A) through (F). If requested, they must carry a NMFS-approved observer on board such vessel(s). A shrimp trawler in the leatherback conservation zone must comply with the terms and conditions accompanied by any such request as well as provide information on trawling hours, gear modifications and turtle captures.

Specific area closures will be announced in the **Federal Register**, on the NOAA weather channel, and in newspapers and other media. Shrimp trawlers in the leatherback conservation zone are responsible for monitoring the NOAA weather channel for closure announcements. Shrimp trawlers may also call (813) 893–3163 for updated area closure information. Closure will take effect upon public filing with the **Federal Register**.

NMFS-Approved TEDs With Escape Openings Large Enough for Leatherback Sea Turtles

NMFS previously approved the Taylor TED, two modifications to the Morrison TED, and a modification to the single-grid hard TED that will allow leatherback turtles to escape the trawl. Descriptions of the Taylor TED and the Morrison modifications were published on May 17, 1993 (58 FR 28795), and a description of the modified single-grid hard TED was published on May 18, 1994 (59 FR 25827).

Additional Sea Turtle Conservation Measures

NMFS anticipates that shrimp trawlers may continue to interact with leatherback turtles throughout the summer. As necessary, the AA may extend, for additional 30-day periods, the restrictions described in this temporary rule through notification in the **Federal Register**.

In addition, the AA may modify, at any time, the requirements of this action through notification in the **Federal Register**, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA will impose any necessary additional or more stringent measures if NMFS determines that shrimp trawlers are having a significant adverse effect on sea turtles. For example, if monitoring to assess turtle mortality indicates that the incidental take level is approaching the level established by the biological opinion for this action issued under section 7 of the ESA, the AA may modify or add conservation measures to protect leatherback sea turtles. That level is 20 documented takes, including four by mortality of leatherback turtles. If the incidental take level is met or exceeded, if significant or unanticipated levels of lethal or nonlethal takings or strandings occur that are associated with fishing activities in the leatherback conservation zone, or if there is significant non-compliance with this action, additional measures may be imposed. Additional restrictions may include closing the entire leatherback conservation zone to all shrimping.

Classification

The AA has determined that this action is necessary to respond to an emergency situation to conserve and provide adequate protection for leatherback turtles. This action is consistent with the ESA and other applicable law.

Because neither section 553 of the Administrative Procedures Act (APA) or any other law requires that a general notice of proposed rulemaking be published for this action, under section 503(b) of the Regulatory Flexibility Act, an initial regulatory flexibility analysis is not required.

It has been determined that this rule is not significant for purposes of E.O. 12866.

This action allows the AA to establish a registration program as authorized by the final rule (57 FR 57348, December 4, 1992), codified at 50 CFR 227.72(e)(6)(iv). Such a program contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), namely, registration by vessels fishing in the leatherback conservation zone from Cape Canaveral, FL., to the Virginia-North Carolina border. This collection has been approved by OMB under control number 0648–0267. The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be sent to NMFS and OMB (see **ADDRESSES**).

Pursuant to section 553(b)(B) of the APA, the AA finds that there is good cause to take this action without notice and opportunity for comment. It is impracticable and contrary to the public interest because relatively high levels of leatherback turtle abundance have been reported recently in Florida, and closures and/or restrictions may need to be imposed quickly. The action announced by this notice is needed at this time so that shrimp trawlers will monitor NOAA weather radio and prepare for closures and/or restrictions in specific areas where relatively high leatherback sea turtle concentrations are identified. Comments were solicited and none received on a temporary rule that was effective from April 29, 1994 through May 31, 1994 (59 FR 23169, May 5, 1994). Also, comments were solicited on the temporary rule establishing a leatherback conservation zone last year (58 FR 28790, May 17, 1993). In addition, comments were solicited on potential leatherback conservation measures (57 FR 57348, December 4, 1992), and a summary of the comments received and a response

was published (57 FR 40859, September 8, 1992). NMFS also solicited comments in meetings with fishing groups and state officials concerning this problem.

Pursuant to section 553(d) of the APA, the AA finds there is good cause to waive the required 30-day delay in effective date for this action. Advance preparation is not necessary to monitor the NOAA weather radio. While time may be needed to procure a Taylor TED or make the appropriate modifications to the Morrison TED, restricted ares will be relatively small in size and shrimp trawlers should be able to operate in other areas with existing gear.

The AA prepared an Environmental Assessment (EA) for the final rule (57 FR 57348, December 4, 1992). A supplemental EA prepared specifically for this action concludes that, with specified mitigation measures, this action will have no significant impact on the human environment.

Dated: June 1, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94-13851 Filed 6-3-94; 1:06 pm]

BILLING CODE 3510-22-F

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50 CFR Part 672

[Docket No. 931199-4042; I.D. 060394A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 62 (between 154° and 159° W. long.) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 5, 1994, until 12 noon, A.l.t., July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The second quarterly allowance of pollock TAC in Statistical Area 62 is 5,514 metric tons (mt), as established by the 1994 final specifications (59 FR 7647, February 16, 1994) and modified in accordance with § 672.20(a)(2)(iv).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1994 second quarterly allowance of pollock TAC in Statistical Area 62 soon will be reached. The Regional Director established a directed fishing allowance of 5,000 mt, and has set aside the remaining 514 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 62 is prohibited, effective from 12 noon, A.l.t., June 5, 1994, until 12 noon, A.l.t., July 1, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 3, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-13893 Filed 6-3-94; 1:06 pm]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register

Vol. 59, No. 109

Wednesday, June 8, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC); Food Funding Formula Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes revisions to funding and funds allocation procedures for the Special Supplemental Food Program for Women, Infants and Children (WIC) in order to simplify and update the funding process in anticipation of a fully funded program. The proposed amendments will provide a greater share of funds to States receiving comparatively less than their fair share of funds based on their WIC income eligible population, simplify and better manage the food funding allocation process by eliminating obsolete features and provide all State agencies with stability funding, adjusted for inflation, to the extent funds are available.

DATES: To be assured of consideration, written comments must be received on or before August 8, 1994. Since comments may be accepted simultaneously on several separate rulemakings, commenters on this proposed rule are asked to label their comments "Food Funding Formula Rule".

ADDRESSES: Comments may be mailed to Stanley C. Garnett, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 540, Alexandria, Virginia 22302, (703) 305–2746. All written submissions will be available for public inspection at this address during regular business hours (8:30 a.m. to 5 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Deborah McIntosh, Chief, Program Analysis and Monitoring Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria Virginia 22302, (703) 305–2710

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866 and has been classified as significant.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service (FNS) has certified that this rule will not have a significant impact on a substantial number of small entities. The rule affects how the Department will calculate food grant allocations for WIC State agencies.

Paperwork Reduction Act

No new data collection or recordkeeping requiring Office of Management and Budget (OMB) approval under the Paper Reduction Act of 1980 (44 U.S.C. 3501 through 3502) are included in this proposed rule.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Program, the administrative procedures are as follows: (1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18; (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36

Background

Need for Revisions to the Food Funds Allocation Process

The WIC Program has consistently demonstrated its effectiveness in promoting the health and nutritional well-being of low-income women, infants and children at nutritional or medical risk, and has experienced large increases in its appropriation for the last several years. Due to its success, the WIC Program is likely to soon achieve "full funding" whereby it is estimated that all eligible women, infants and children who apply could obtain program benefits. In moving toward the full funding objective, the Department finds that its current food funding formula presents impediments to funding equality and is so complex it is difficult to execute and predict its results.

Historically, WIC has never had enough funds to serve all who are in need of, and eligible for, its benefits. Certain State agencies receive levels of funding that allow them to serve more of their eligible populations than others. The concept of full funding for WIC as set forth by the Administration does not guarantee unlimited funds nor does it establish the WIC Program as a federal entitlement program. As before, WIC must manage within a finite appropriation level. However, a fully funded WIC Program implies that the appropriation level will more adequately provide for all eligible persons who apply for benefits, and that each State agency should have an equal chance to serve their eligible population. Currently, many State agencies are serving lesser proportions of their WIC-eligible population than other State agencies. Therefore, the formula must support growth among

State agencies which are now funded to serve a lesser proportion of their eligible population, as well as allocate funds fairly among all State agencies under a stable, fully funded program.

Therefore, to better prepare the WIC Program for full funding, the proposed revisions to the food funding formula strive for three major objectives: (1) To provide a greater share of funds to State agencies receiving comparatively less than their fair share of funds based on their WIC income eligible population; (2) to simplify the food funding formula and delete obsolete components; and (3) to maintain current services to eligible participants that State agencies are serving to the extent funds are available.

FNS has recognized for some time that constraints of the current funds allocation process necessitated revisions to the food funding formula. Additionally, the National Association of WIC Directors (NAWD) formed a special Funding Formula Committee (Committee) to provide recommendations to FNS for revising the formula and improving methods for allocating WIC food funds. The Committee views are referenced in this preamble on particular issues.

The Committee recommendations focused on how full funding should alter the funding formula for the future. The limited funds provided to the WIC Program in the past were not adequate to fully reach the eligible population. Consequently, the current funding formula sought to preserve participation gains that State agencies achieved. If additional funds were available, funds were allocated to foster program growth, particularly to the pregnant women and infant population at highest risk. Service to this highest risk group is now largely accomplished. A fully funded program must now strive to achieve greater funding equity among all State agencies.

Assumptions Under Full Funding

Cost Control Efforts. The President's goal of fully funding the WIC Program strongly assumes that current policies and procedures affecting cost containment strategies will continue. Cost savings through cost containment initiatives, including infant formula rebates, have been highly effective in the WIC Program in recent years, creating savings that have allowed the program to assist millions of additional participants. State agencies are required to continue infant formula rebates, and are encouraged to explore other cost containment initiatives to manage the WIC Program more efficiently and effectively and to ensure that the President's goal can be realized.

Due to the intense scrutiny and competition for funds that all Government programs now face, it is imperative that in a fully funded program, WIC State agencies continue to monitor and aggressively pursue cost containment strategies. The Department seeks comments and suggestions as to how the policies, rules or procedures could be adjusted to better reward efficient State management and cost containment efforts without putting upward pressure on program costs or undue burdens on the program. State agencies may have valuable insights to share with the Department on cost containment strategies and on strengthening standards for cost containment to insure that existing structural incentives for cost efficiency will be maintained.

WIC Food Costs. WIC Program food costs account for approximately 75 percent of the overall WIC budget. Therefore, it is critical that State agencies use these food dollars wisely so that additional WIC participants can be served. Since funds are allocated based on the national average food package cost, State agencies that have food package costs above the national average will not be able to serve the number of participants estimated to be served with their allocation. This will function as an incentive for these State agencies to manage their food package costs more efficiently in order to serve all eligibles in their respective jurisdictions.

State agencies currently are required to employ various strategies to reduce food costs, such as infant formula rebates and effective vendor management. Additional strategies found effective in controlling costs include, but are not limited to, food container size and name brand management practices, and rebates on foods other than infant formula. Many States are utilizing these additional strategies; however, other State agencies may need to implement additional cost containment initiatives to reduce their per person food package cost to enable them to serve additional participants.

Nutritional Risk Criteria. Another area where State agencies have some discretion in operating the WIC Program which may affect a State agency's ability to realize the President's goal of full funding are the nutritional risk standards used to establish program eligibility. In addition to meeting income eligibility standards, an applicant for program benefits must also be certified by a competent professional authority to be at nutritional risk due to medically-related conditions or dietary deficiencies that impair or endanger health. Currently State agencies have considerable flexibility in establishing and implementing nutritional risk criteria.

The commitment to WIC full funding can only be met if States continue to utilize risk-related eligibility criteria that are based in sound medical, nutritional, and preventive health research. Poverty in and of itself, while strongly associated with many health and nutrition-related problems, is not a sufficient condition for program eligibility.

In order to help advance understanding of the current state of scientific knowledge of nutritional risk as it pertains to the WIC target population, FNS funded a grant to the National Academy of Sciences, Institute of Medicine, Food and Nutrition Board (FNB). The grant will be used for a scientific evaluation of WIC nutrition risk criteria, including an independent review of all nutrition risk factors currently in use by the WIC Program, and a review of the related scientific literature. The FNB will issue a report summarizing its findings regarding determination of nutritional risk for each criterion, and will identify gaps in the scientific knowledge indicating that additional research is needed.

The results of this review will be shared with State agencies to help them better manage program services and to ensure that full funding will meet the nutritional and health-related needs in a well targeted manner.

Funding Formula Objectives

The funding process should assure each State agency a grant that allows it an equal opportunity to serve its fair share of eligible persons seeking WIC service by providing a food package suited to the participant's unique nutritional deficiencies, not to exceed the maximum food benefit allowed under regulations. This rule proposes a funding formula to meet this overall goal.

The objective of fair share allocation is to give each State agency a percentage of total available funds based on its number of WIC-eligibles as a percent of the total number of WIC-eligibles nationally. Accordingly, an "under fair share" State agency is one whose percent share of grant funds is less than its percent share of the total national WIC-eligible population. An "over fair share" State agency is one whose percent share of grant funds is greater than its percent share of the WIC-eligible population. While there is general agreement that the fair share concept is important and that it is necessary to bring "under fair share"

State agencies closer to their fair share objective, the best way to implement this concept was a more difficult decision. The current formula provides a "stability" grant which assures all State agencies of their prior year grant plus some inflationary increases. While "stability" funding was important in the past to avoid eroding participation gains, fully funding the WIC Program does not ensure that grant levels to individual State agencies will be stable, since States' eligible populations may increase or decrease over time due to changes in the economy or other factors.

The current formula for allocating food funds was published in a final rule on July 2, 1987 (52 FR 25182). Most recently, it was amended by a Final Rule published March 11, 1994, at 59 FR 11475. This preamble is organized first to describe the most significant current provisions, and to explain the proposed revision or elimination of these provisions. Second, a summary of how the proposed food funding formula will work is provided.

Current Provisions

Section 246.16(c)(1) Allocation Formula—Use of Participation Data in the Formula

The proposed food funding formula would no longer use reported priority participation data or data reflecting State-funded participation for imputing the figures needed for the targeting components of the formula described in § 246.16(c)(3)(ii) and (c)(1)(ii)(A). Accordingly, the Department is proposing to revise § 246.16(c)(1) to eliminate the use of participation data for these purposes.

Section 246.16(c)(3)(i) Allocation of Stability Funds

Currently, in allocating funds to State agencies, first priority is given to maintaining each State's operating level "stability funding". The stability component of a State agency's allocation is initially based on the amount of food funds received by each State agency in the prior fiscal year, adjusted to restore 50 percent of any grant funds voluntarily returned in the prior year. This base level is then adjusted to account for a portion of the inflation estimated for the upcoming fiscal year (except that Indian State agencies receive a full inflation adjustment).

The proposed formula retains this component with some modification. The principle of stability is maintained to help assure that each State agency receives enough funds to support its current participation level. However, the proposed rule tempers this with the principle of fair share allocation based on each State agency's eligible population.

This rule proposes deleting the provision allowing a State agency the option to retain 50 percent of funds it returns before July 16 as a part of its stability grant the next fiscal year. For example, currently a State agency which voluntarily returns $100 in unspent food funds would be reduced by only $50 of that $100 in its stability grant for the next year.

The 50 percent credit was intended as an incentive for a State agency to return food funds that it could not spend, thereby making those funds available for reallocation to State agencies that needed additional funds. Actually, almost all State agencies which have elected to return funds under this provision have been those which were in danger of failing to spend at least 95 percent of their allocated food funds. Failure to achieve this expenditure level results in a specific decrease in the amount of food funds in the subsequent fiscal year as specified in § 246.16(e)(2). In these instances, State agencies simply returned the amount of funds necessary to ensure expenditures of at least 95 percent of their adjusted food grants. The Department no longer believes restoration of 50 percent of returned funds to State agencies in the next year is prudent. The restoration of these funds makes it possible for a State agency already serving all of its eligible population to retain funds it does not need.

Section 246.16(c)(3)(i)(A) Inflation Adjustment

The current food funding formula uses a calculation referred to as the "targeted inflation factor". It is designed to provide an inflation adjustment proportionate to a State agency's service to the highest priority participants. Under this process, the full inflation increase is adjusted according to each State agency's percentage of participants in the top three priority level categories (Priority I–III women, infants and children at nutritional or medical risk). Specifically, the formula requires multiplying the percentage of its participation which is in the top three priorities by the full rate of inflation. The resultant factor is multiplied by the prior year food grant to determine the stability grant, as adjusted for targeted inflation. For instance, if 75 percent of a State agency's participation was in the Priority I to III participation categories, and the full inflation rate was 4 percent, that State agency would receive a targeted inflation rate of 3 percent applied against its prior year grant to determine its stability grant. An exception is made for Indian State agencies which receive full inflation.

The intent of the existing provision is twofold. First, it gives a greater inflation increase to State agencies which are serving high priority participants. Second, by not providing full inflation to all State agencies, some funds remain after stability grant allocations. These funds are distributed under the "residual funds" portion of the formula and provide additional funds to all State agencies. The impact of targeted inflation, coupled with the residual funds portion of the formula, has been to provide almost all State agencies with a full inflation increase anyway. However, the targeted inflation process is complicated and, since service to the highest risk participants is now largely achieved, is no longer relevant. This rule proposes the more straight-forward process of providing all State agencies with a full inflationary increase as long as funds are adequate to do so.

If, however, the appropriation for any given year is insufficient to support prior year grant levels plus full inflation, the funding formula must reduce State agency grants to allow for funds allocation within available funding. Two options were considered when the appropriation is inadequate to support stability. The first option, and the one most favored by the Committee, was an equal pro rata reduction for all State agencies for that fiscal year. The second option is that State agencies with under fair share allocations receive first priority for any available inflationary increases, and those State agencies at or above their fair share allocation for that fiscal year receive second priority. The Department believes that when funds are limited, the concept of a fair share allocation should remain a priority in the allocation of funds. Therefore, this rule proposes to adopt the second option. This will assure continued progress in increasing the grants of States that are under their fair share.

Section 246.16(c)(3)(i)(B) Migrant Set-Aside

Section 17(g)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(4)) provides that not less than ⅘ of one percent of the funds appropriated for the WIC Program be available first for services to migrant women, infants and children. Currently, the regulations stipulate that the full ⅘ of one percent set-aside is to be subtracted from all States' stability grants and then added to stability grants of States that report serving migrants. Because these adjustments for the migrant set-aside

become part of the base grant of stability funds for the next fiscal year, FNS found that stability grants were skewed over time, directly causing some State agencies to receive more than their fair share of funds while preventing other States from receiving their fair share. This distorting effect becomes even larger as overall funding increases.

Additionally, for the last few years, the number of reported migrants receiving WIC services is consistently and substantially less than the number that could be supported by the full migrant set-aside. The Department thinks that continued increases in the appropriation have made the full migrant set-aside excessive and unnecessary. With full funding and the fair share allocation objective proposed by this rule, the current method of allocating the migrant set-aside is irrelevant, since the proposed funding formula is based upon an estimate of WIC eligibles which already includes the migrant population.

This rule proposes that for State agencies that serve migrants, a portion of the grant be designated for service to the migrant population. The designated amount would be based on prior year migrant participation reported by each State agency. By designating a target funding level, the migrant grant does not distort subsequent grant allocations, yet establishes service to this needy population as a priority. This is an approach similar to the one employed to target expenditures for breastfeeding promotion and support. However, as under current regulations, a State agency would not be penalized for not fully spending the portion of its grant designated for migrants as this would be to the detriment of other needy participants waiting for service. As the migrant population served in a State in a prior year may change in the following year when migrant workers travel to other States where work is available, it is unreasonable to hold funds to serve a population that may not be present that year. In a full funding environment, migrant populations actually pose a dilemma similar to unexpected changes in the overall eligible population. At any time, a demographic change could result in greater or fewer eligibles than estimated. The Department believes that State agencies must estimate and accommodate such changes according to the information available from State and local sources.

Therefore, for planning purposes, expenditure targets will be established for both food grants and nutrition services and administration grants to insure that ½₀ of one percent of the appropriation is made available for service to migrants. State agencies would be expected to plan for migrant participants as now required in their State Plan of Operation and give priority service to migrant participants that arrive from another State agency seeking WIC services.

Section 246.16(c)(3)(ii) Allocation of Residual Funds

Under the current rule, any funds remaining after stability grants are allocated are "residual funds". Residual funds are allocated under two components—"targeting" and "growth". This rule proposes eliminating the targeting component and modifying the growth component as discussed below.

Section 246.16(c)(3)(ii)(A) "Targeting" Component for Food Funds

The current funding formula requires that 50 percent of residual funds be distributed to all State agencies for the targeting component. These targeting funds are allocated to each State agency based primarily on its number of Priority I participants. The targeting formula procedure is complex, requiring many computations to calculate a targeting index by which each State agency's share of targeting funds is determined.

The targeting component was originally designed to provide an incentive for targeting benefits to the highest risk participants, Priority I women and infants. However, State-reported participation data indicate that nationwide, 90 percent of all fully (categorical, income and at nutritional risk) eligible infants and pregnant women are receiving services through the WIC Program. Therefore, the targeting component is no longer needed to encourage service to Priority I participants.

The Department is also concerned that the targeting component is a barrier to achieving funding equity among State agencies. All State agencies receive targeting funds, regardless of whether their stability grants already provide a fair share allocation. With targeting, funding levels for State agencies at or above their fair share level can continue to increase, while State agencies receiving below their fair share amount have difficulty catching up. With the elimination of the targeting component, funding equity can be reached more rapidly. In short, this rule proposes the elimination of the targeting component to simplify the formula, and ensure greater funding equity based on each State agency's eligible population.

Section 246.16(c)(3)(ii)(B) "Growth" Component for Food Funds

Under the current formula, after targeting funds are allocated, the remaining half of residual funds are allocated for "growth" within State agencies that have less opportunity to serve their eligible population compared to other State agencies. Growth funds are allocated based primarily on a "fair share" concept similar to that discussed earlier. To determine fair share funding, FNS uses a mathematical equation to create an estimate of each State's eligible WIC population. The estimate begins with each State agency's number of income eligibles, currently extracted from decennial census data. The estimate is adjusted slightly to account for State agency variations in infant mortality and low birth weight rates ("health indicators"). Also, women, infants and children served by the Commodity Supplemental Food Program (CSFP) are subtracted from this estimate for those States in which CSFP operates.

Each State agency's estimated ratio of the eligible WIC population is divided by the national estimated eligible WIC population to establish each State agency's "fair share" percent of total funds. A State agency receives growth funds if the funds it was allocated through the stability and targeting components are less than its calculated fair share. The amount of funds available for growth are divided among all State agencies receiving less than their fair share of funds, with State agencies furthest from their fair share of funds receiving greater allocations. The number of State agencies receiving growth funds each fiscal year varies.

As explained below, the Department proposes retaining the "growth" component of the formula using only the estimate of income eligibles (with some adjustments) and deleting the use of health indicators. It is believed that this best defines each State agency's actual need for program funds and greatly simplifies the "fair share" equation. Each component and revision of the eligibles database is discussed below.

Income Eligibles

Currently, each State agency's estimate of WIC income eligible persons is based on data from the 1990 Decennial Census, which reflects population characteristics as of 1989. Although the Census data provides the most current State-by-State information, the Department recognizes that data which describe a population at a fixed point in the past may not accurately

reflect recent and future socioeconomic and demographic trends. Accordingly, the Department is currently exploring other potential data sources for the state-level income eligibles estimates. One such potential source is the Current Population Survey (CPS), which provides state-level population data by income on an annual basis. CPS is used to estimate the total number of WIC income eligibles on a national basis. State-level CPS data, used in conjunction with other state-level economic, demographic and program participation data, may prove to be a better and more current alternative source for state-level income eligibles estimates. This proposed rule does not establish or define the exact source of the eligibles database in order to allow for the use of the most timely and reliable data as it becomes available.

The fair share funding allocations are based on estimates of the State agency's target population at or below 185 percent of poverty rather than estimates of fully-eligibles (persons income eligible and at nutritional risk). This is, in part, because consistent state-level data on income is more readily available than state-level data on nutritional risk. In addition, the use of income-eligibles data results in consistent treatment of State agencies regardless of nutritional risk criteria. That is, State agency allocations are not adjusted for nutritional risk standards which, compared with other State agencies, are more or less inclusive.

It should be noted that the state level income-eligible estimates will be used to determine each state's proportion of the national total of WIC income-eligibles. Funding allocations are based on this proportion—not on the absolute number of estimated income eligibles in each State. Each State agency's fair share allocation thus depends on both its share of income eligibles and the total amount of funds available nationally.

Under full funding, the total amount of funds available should reflect a national estimate of the cost of serving all fully-eligible persons who wish to participate in the program. Because a national estimate will assume "average" nutritional risk criteria, each State agency's fair share allocation will also implicitly assume average nutritional risk certification practices, as well as average food costs. The allocation formula does not provide additional funds to States with higher than average food package costs or broader than average definitions of nutritional risk. This basic approach to establishing each State agency's fair share funding allocation would likely be maintained regardless of any foreseeable changes in the data and methodologies used to estimate income eligibles.

Health Indicators

In the current formula, the calculation of each State's eligible WIC population, used to compute its fair share allocation, includes an adjustment for its infant mortality and low birth weight rates. These health indicators were originally included in the food funding formula to help direct limited funds to States that were especially needy. However, as appropriation levels have grown, the WIC Program has been better able to serve high risk participants (who tend to have the highest rates of infant mortality and low birth weight babies). Since this prenatal population is now largely served, these adjustments are no longer necessary. Moreover, as service to the highest risk participants has increased, the overall impact of the health indicators on the amount of food funds received by States has become negligible. FNS examined the effect of these health indicators on States' Fiscal Year 1993 food grants and found that, as currently factored in the growth component, health indicators affected food grants for very few State agencies and only by a difference of one percent or less. Furthermore, the inclusion of the health indicators unduly complicates and reduces understanding of the food funding formula. Therefore, this rule proposes to eliminate the use of the health indicator adjustments.

Adjustments for Higher Cost Areas

The current growth component also makes an adjustment for the higher food costs of State agencies located outside of the continental United States. This adjustment is done to ensure that the share of funds received by these State agencies is adequate to serve their share of the eligible population given their higher costs. The current regulation provides detailed specifications for those States and territories with higher food costs as recognized by the Food Stamp Program's Thrifty Food Plan (TFP). These States and territories include Alaska, Hawaii, Guam, and the Virgin Islands.

The Department proposes to retain this adjustment, but to allow more flexibility than the current regulation. Therefore, the proposed rule incorporates more general requirements so that if economic data is available that can measure and document higher costs in particular outlying State agencies, the Department may use available data to construct adjustment factors for such State agencies. Consideration of such adjustments would be predicated on the condition that State agencies with higher food costs aggressively pursue cost containment initiatives, such as stringent vendor management practices, participation in multi-state agency infant formula rebate contracts and other cost containment efforts.

Adjustments for Indian Tribal Organizations

The growth allocation for the Indian Tribal Organizations has traditionally presented problems due to inadequate data regarding eligibles. Currently, 30 Indian State agencies, each primarily representing members from one or more Native American tribes, operate WIC programs. The Department recognizes that the method for determining eligibles to be served by these Indian State agencies is imprecise, since census and Vital Statistics data on Native Americans are not available by tribe. Often these Indian State agencies also serve non-Native Americans, who are not captured within their estimated eligible population data. In many cases, the present method of determining growth allocations indicates that many Indians State agencies are already receiving adequate funds to fully serve their estimated eligible populations.

The Department knows of no data source to resolve this problem. Therefore, the rule proposes to give FNS the authority to organize and oversee negotiations between the Indian State agency (or agencies) and the geographic State agency (or agencies) in which the Indian State agency is located. FNS could, acting independently or at the request of a State agency, involve affected State agencies in an agreement on the temporary or permanent transfer of funds. Negotiations could be conducted to shift funds among these State agencies to better reflect the actual service being provided by each of the State agencies.

Commodity Supplemental Food Program

The Commodity Supplemental Food Program's (CSFP) service to low-income women, infants and children contributes to the Administration's goal of fully funding the WIC Program by the end of Fiscal Year 1996. The Fiscal Year 1995 budget request and out year targets assume CSFP women, infants and children participation will equal the authorized caseload level.

In those States where both CSFP and WIC operate, the current rule requires the subtraction from the WIC income eligible database of those participants (based on actual, average CSFP participation in the prior fiscal year) who are eligible for the WIC Program.

but elect to receive benefits under CSFP. As CSFP is currently authorized to serve, in addition to WIC eligibles, 5 year old children and postpartum women from 6 months to 1 year postpartum, not all CSFP participants are categorically eligible for the WIC Program. Therefore, FNS currently assumes that one-fourth of the children and one-half of the postpartum women participating in CSFP are not eligible for the WIC Program. The balance of CSFP participants are subtracted from the WIC eligibles estimate.

The Department is proposing to revise § 246.16(c)(3)(i) to make three changes to this deduction from the WIC eligibles baseline data. First, the proposed rule modifies the method for determining the number of CSFP women, infants and children to subtract from the WIC eligibles baseline. The deduction will now be based upon the authorized CSFP women, infants and children caseload, rather than actual participation figures. Second, the deduction will be based on the CSFP caseload authorized at the beginning of the caseload cycle of the prior fiscal year (generally announced on December 1). This is a change from the current practice of using actual, average participation for the prior fiscal year. Finally, the adjustment described above for those CSFP participants who are not also categorically eligible for WIC (postpartum women from 6 months to 1 year postpartum and 5 year old children) will no longer be made. Utilizing the total CSFP caseload level for women, infants and children, rather than performance, more equitably accounts for the resources provided to a State agency to serve the WIC target population using CSFP. These changes will ensure that States that do not have access to CSFP will not be disadvantaged in their access to WIC funds when compared with States that operate both programs.

Summary of the Proposed Food Funding Formula

The foregoing has described the components of the current formula that are proposed for deletion, retention or modification. To ensure that the proposed formula is fully understood, the following describes the proposed allocation process and provides simplified examples of the proposed process.

Fair Share Allocation Objective

In the proposed § 246.16(c)(3), the funding objective would be to give each State agency its fair share allocation of funds to the extent funds are available. Funds available would include funds appropriated for the fiscal year as well as unspent funds carried over from the prior fiscal year that State agencies have not retained under spendforward authority as provided in § 246.16(b)(3)(ii). An example of a simplified fair share allocation is shown below. This example assumes that available funds total $5000, and the total number of income eligibles is 1000 persons.

State agency	Eligibles No.	Fair share percentage	Fair share allocation
A	200	20	$1,000
B	500	50	2,500
C	300	30	1,500
Total	1,000	100	5,000

Stability Allocation

Recognizing that State agencies may already have participants on the program supported with the grant funds each State agency received in the prior year, the formula would strive to protect this service depending on total funds available. Section 246.16 (c)(ii) proposes a Stability Allocation which protects prior year grant levels contingent on availability of funds.

It is proposed that if funds are not adequate to fully fund prior year grants, all State agencies will receive a pro-rata reduction from their prior year grant level commensurate with the shortfall of available funds. If funds are available, each State agency would receive a stability allocation equal to its final authorized grant level as of September 30 of the prior fiscal year. If funds are still available, State agencies will receive an inflation adjustment in the following two-step sequence.

(1) Each State agency with a prior year final authorized grant level which is less than its fair share allocation shall receive its prior year final authorized grant level, increased by an inflation factor which reflects the anticipated rate of food cost increases as determined by the Department, not to exceed its fair share allocation. Should funds be inadequate to fully meet this adjustment, each under fair share State agency will receive an equal percent increase as permitted by the amount of funds available.

(2) If funds remain after completing step 1, each State agency with a prior year final authorized grant level that is at or greater than its fair share allocation shall receive its prior year final authorized grant level, increased by an inflation factor which reflects the anticipated rate of food cost increases as determined by the Department. Should funds be inadequate to fully meet this adjustment, each State agency will receive an equal percent increase as permitted by the amount of the funds available.

Growth Allocation

If funds remain after step 1 and 2 above, then funds are provided for a "growth allocation". The growth allocation gives additional funds to each State agency which has an inflation-adjusted stability allocation which is less than its fair share allocation. The formula subtracts each State agency's current year stability allocation from its fair share allocation to determine the dollar shortfall. Each State agency's shortfall, as a percent of all State agency's shortfalls, yields its percent share of the funds available for the growth allocation.

Example of Formula Allocation Process

The example below describes allocation steps for stability and growth. First, all State agencies have received at least their prior year final grant, which totaled $4,500. As $5,000 is available to allocate in this case, funds are sufficient to do both stability and growth allocations.

1. Stability Allocation—Under Fair Share

First, under fair share State agencies get an inflationary increase, based on full inflation, to the extent permitted by available funding. In this example, available funding permits the entire inflationary increase:

State agency	Fair share	Prior year final grant	Inflation 3 percent	New grant
A	$1,000	$1,100	NA	$1,100
B	2,500	2,000	$60	2,060
C	1,500	1,400	42	1,442

State agency	Fair share	Prior year final grant	Inflation 3 percent	New grant
Total	5,000	4,500	102	4,602
Funds remaining = $398				

2. Stability Allocation—Over Fair Share

Next, over fair share State agencies get an inflationary increase, based on full inflation, to the extent permitted by available funding. In this example, available funding permits the entire inflationary increase:

State agency	Fair share	Prior year final grant	Inflation 3 percent	New grant
A	$1,000	$1,100	$33	$1,133
B	2,500	2,000	60	2,060
C	1,500	1,400	42	1,442
Total	5,000	4,500	135	4,635
Funds remaining = $365				

3. Growth Allocation

Under fair share State agencies get a proportion of remaining funds based on the shortfall between their fair share allocation and stability grant. In the example below, the $365 available for growth funding is shared by States B and C according to their respective shortfalls from their fair share allocations.

State agency	Fair share	Stability grant	Shortfall		Funds received	Final grant
			Dollar's	Percent		
A	$1,000	$1,133	NA	NA	NA	$1,133
B	2,500	2,060	$440	88	$322	2,382
C	1,500	1,442	58	12	43	1,485
Total	5,000	4,635	498	100	365	5,000
Funds remaining = $0.						

If any funds allocated in the three steps above cannot be used and are declined by one or more State agencies, then these funds will be allocated, using the method in Step 3, to the under fair share State agencies which have the ability to use more funds. If all funds are still not distributed, then these remaining funds would be allocated to State agencies which have a stability allocation which is at or greater than its fair share allocation. Each of these State agencies which can document the need for additional funds will be eligible to receive additional funds based on the difference between its stability allocation level and fair share allocation. State agencies closest to their fair share allocation shall receive first consideration.

For instance, in the example above, State A would be able to receive funds declined by State B or C. In this way, the precedence for funding will be to increase funding to under fair share State agencies to the extent possible, while still allowing State agencies that are over their fair share level to receive additional funds when a documented need for additional funds exists. All grants awarded through this process would become the basis of the following year's stability allocation.

Performance Standard

The 95 percent performance standard in current regulations was reevaluated. This standard reduces the current year grant for any State agency that did not spend at least 95 percent of its food grant. The Department is concerned that this current standard of 95 percent of the grant is too generous in the context of a fully funded program. While the Department is sympathetic to the difficulties of rapidly growing States of meeting the 95 percent expenditure level, State agencies with relatively stable funding and participation do not face the same difficulties. For stable State agencies, expending less than the 95 percent of allocated food funds is likely to indicate they have funds they cannot use. Therefore, the Department has proposed in § 246.16(e)(2)(i) a 95 percent standard for State agencies receiving less than their fair share allocation, and 98 percent for those at or over their fair share level. Additionally, prior to applying the performance standard, the current provision in § 246.16(e)(3)(i) allows for exclusion from the grant of food funds that are spent forward into a succeeding fiscal year as authorized by § 246.16(b)(3)(ii), and (iv) and (v). Since spentforward funds are merely unspent funds that the State agency can retain, the Department no longer believes that they should be excluded when assessing spending performance. Accordingly, the proposed rule deletes this provision. Any food funds backspent under § 246.16(b)(3)(i) or converted to Nutritional Services and Administration (NSA) funds under § 246.16(g) will continue to be excluded from the food grant for purposes of applying the performance standard. These two reductions are appropriate in that they reflect food funds actually expended in the current year, and not merely reserved for future use.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women

Accordingly, 7 CFR part 246 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.16
a. Paragraph (c)(1) is revised.
b. Paragraph (c)(3) is revised.
c. Paragraph (e)(2)(i) is revised.
The revisions read as follows:

§ 246.16 Distribution of Funds.

* * * * *

(c) Allocation formula. * * *

(1) *Use of participation data in the formulas.* Wherever the formula set forth in paragraphs (c)(2) and (c)(3) of this section require the use of participation data, the Department shall use participation data reported by State agencies according to § 246.25(b).

* * * * *

(3) *Allocation of food benefit funds.* In any fiscal year, any amounts remaining from amounts appropriated for such fiscal year and amounts appropriated from the preceding fiscal year after making allocations under paragraph (a)(6) of this section and allocations for nutrition services and administration (NSA) as required by paragraph (c)(2) of this section shall be made available for food costs. Allocations to State agencies for food costs will be determined according to the following procedure:

(i) *Fair share allocation.* (A) For each State agency, establish a fair share allocation which shall be an amount of funds proportionate to the State agency's share of the national aggregate population of persons who are income eligible to participate in the Program based on the nationally uniform 185 percent of poverty criterion. The Department will determine each State agency's population of income eligible persons through the best available indicators as determined by the Department. If the CSFP also operates in the area served by the WIC State agency, the CSFP women, infants and children caseload level at the beginning of the caseload cycle of the prior fiscal year shall be deducted from the WIC State agency's population of income eligible persons.

(B) The Department may adjust the respective amounts of food funds that would be allocated to a State agency which is outside the 48 contiguous states and the District of Columbia when the State agency can document that economic conditions result in higher food costs for the State agency. Prior to any such adjustment, the State agency must demonstrate that it has successfully implemented voluntary cost containment measures, such as improved vendor management practices, participation in multi-state agency infant formula rebate contracts or other cost containment efforts. The Department may use the Thrifty Food Plan amounts used in the Food Stamp Program, or other available data, to formulate adjustment factors for such State agencies.

(ii) *Stability allocation.* If funds are available, each State agency shall receive a stability allocation equal to its final authorized grant level as of September 30 of the prior fiscal year. If funds are not available to provide all State agencies with their prior year final authorized grant level, all State agencies shall receive a pro-rata reduction from their prior year grant level as required by the short fall of available funds. If additional funds are available after each State agency receives a stability allocation, the balance of funds shall be allocated first to meet the requirement in paragraph(c)(3)(ii)(A) of this section, then paragraph (c)(3)(ii)(B) of this section.

(A) Each State agency with a prior year final authorized grant level which is *less* than its current fair share allocation shall receive its prior year final authorized grant level, increased by an inflation factor which reflects the anticipated rate of food cost increases as determined by the Department; not to exceed its fair share allocation. Should funds be inadequate to fully meet this requirement, each State agency will receive an equal percent increase as permitted by the funds available.

(B) Each State agency with a prior year final authorized grant level that is at or greater than its fair share allocation shall receive its prior year final authorized grant level, increased by an inflation factor which reflects the anticipated rate of food cost increases as determined by the Department. Should funds be inadequate to fully meet this requirement, each State agency will receive an equal percent increase as permitted by the funds available.

(iii) *Growth allocation.* (A) If additional funds remain available after the allocation of funds under paragraph (c)(3)(ii) of this section, each State agency which has a stability allocation, as calculated in paragraph (c)(3)(ii)(A) of this section, which is less than its fair share allocation shall receive additional funds based on the difference between its stability allocation and fair share allocation. Each State agency's difference shall be divided by the total of the differences for all such State agencies, to determine the percent share of the available growth funds each State agency shall receive. In the event a State agency declines any of its allocation in paragraph (c)(3)(ii) of this section or this paragraph, the funds declined shall be allocated to the remaining State agencies which are still under their fair share.

(B) In the event funds still remain after completing the distribution in paragraph (c)(3)(iii)(A) of this section, these funds shall be allocated to all State agencies including those with a stability allocation at, or greater than, their fair share allocation. Each State agency which can document the need for additional funds shall receive additional funds based on the difference between its prior year grant level and its fair share allocation. State agencies closest to their fair share allocation shall receive first consideration.

(iv) *Migrant services.* At least 9/10 of one percent of appropriated funds for each fiscal year shall be available first to assure service to eligible members of migrant populations. For those State agencies serving migrants, a portion of the grant shall be designated to each State agency for service to members of migrant populations based on that State agency's prior year reported migrant participation. The national aggregate amount made available first for this purpose shall equal 9/10 of one percent of all funds appropriated each year for the Program. Funds designated or used for migrant services shall not be included in a State agency's stability allocation, under paragraph (c)(3)(ii) of this section.

(v) *Special provisions for indian state agencies.* The Department may choose to adjust the allocations and/or eligibles data among Indian State agencies and the geographic State agencies in which they are located when eligibles data for the State agencies' population is determined to not fairly represent the population to be served. Such allocations may be redistributed from one State agency to another, based on negotiated agreements among the affected State agencies approved by FNS.

* * * * *

(e) *Recovery and reallocation of funds.*

* * * * *

(2) * * *

(i) The amount allocated to any State agency for food benefits in any fiscal year shall be reduced if such State agency's food expenditures for the preceding fiscal year were less than the established performance standard. For State agencies which received less than

their fair share allocation as defined in paragraph (c)(3)(i) of this section, the performance standard shall be the expenditure of funds at no less than 95 percent of the food grant. For State agencies over their fair share allocation, the performance standard shall be the expenditure of funds at no less than 98 percent of the food grant. Such reduction shall equal the difference between the State agency's preceding year food expenditures and applicable percent performance standard applied to the amount allocated to the State agency for such benefits. For purposes of determining the amount of such reduction, the amount allocated to the State agency for food benefits for the preceding fiscal year shall not include food funds expended for food costs incurred under the spendback provision in paragraph (b)(3)(i) of this section or conversion authority in paragraph (g) of this section. Temporary waivers of the performance standard may be granted at the discretion of the Department.

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Dated: June 2, 1994

Ellen Haas,

Assistant Secretary for Food and Consumer Services

[FR Doc. 94-13891 Filed 6-7-94; 8:45 am]

BILLING CODE 3410-30-U

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 94-035-1]

Importation of Fuji Variety Apples From Japan and the Republic of Korea

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Fruits and Vegetables regulations to allow the importation of Fuji variety apples from Japan and the Republic of Korea. As a condition of entry, the Fuji variety apples would have to be cold treated and fumigated for certain injurious insects in Japan or the Republic of Korea under the supervision of the Animal and Plant Health Inspection Service. The Fuji variety apples would also have to be inspected by the Animal and Plant Health Inspection Service and the national plant protection agency in Japan or the Republic of Korea prior to export. This action would relieve restrictions on the importation into the United States of Fuji variety apples from Japan and the Republic of Korea without presenting a significant risk of introducing injurious insects into the United States.

DATES: Consideration will be given only to comments received on or before July 8, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94-035-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser or Mr. Frank E. Cooper, Senior Operations Officers, Port Operations Staff, Plant Protection and Quarantine, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56-8 (referred to below as the regulations) prohibit or restrict the importation into the United States of fruits and vegetables from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

Currently, the regulations do not allow the importation of Fuji variety apples from Japan and the Republic of Korea. However, the agricultural ministries of those countries have recently requested that the Animal and Plant Health Inspection Service (APHIS) allow Fuji variety apples to be imported into the United States.

Several plant pest, including the peach fruit moth (*Carposina niponensis*), the yellow peach moth (*Conogethes punctiferalis*), the fruit tree spider mite (*Tetranychus viennensis*), and the kanzawa mite (*T. kanzawai*), are known to attack Fuji variety apples in Japan and the Republic of Korea. If introduced into the United States, these pests would represent a serious threat to domestic fruit crops. Therefore, we are proposing to allow Fuji variety apples to be imported into the United States from Japan and the Republic of Korea only if they are cold treated and fumigated prior to export from Japan or the Republic of Korea.

The cold treatment would be carried out at the packing house while the apples were still in the wooden or plastic field bins in which they are collected at harvest. To offer a measure of flexibility to exporters in Japan and the Republic of Korea, we would allow the fumigation to be conducted either at the packing house, while the apples are still in their field bins, or at the port of export, after the apples have been packaged in cartons. The treatments, which would have to be conducted under APHIS supervision, would be as follows:

Treatment for *Carposina niponensis, Conogethes punctiferalis, Tetranychus viennensis,* and *T. kanzawai:*

1. Cold treatment in wooden or plastic field bins:

40 days at 1.1 °C (34 °F) or below

2. Followed by fumigation with methyl bromide at normal atmospheric pressure (NAP) in a chamber or under tarpaulin:

a. With apples in wooden or plastic field bins, maximum load factor 50 percent or less:

48 g/m³ (3 lb/1000 ft³) for 2 hours at 10 °C (50 °F) or above, with minimum gas concentrations of:

44g (oz) at ½ hour after fumigation begins
36g (oz) at 2 hours after fumigation begins or

b. With apples in export cartons; maximum load factor 40 percent or less:

38 g/m³ (2.375 lb/1000 ft³) for 2 hours at 17 °C (59 °F) or above, with minimum gas concentrations of:

35g (oz) at ½ hour after fumigation begins
29g (oz) at 2 hours after fumigation begins

Fuji variety apples treated in this manner would present an insignificant risk of introducing the peach fruit moth, the yellow peach moth, the fruit tree spider mite, and the kanzawa mite into the United States. Pest risk analyses conducted by APHIS have determined that any other injurious insects that might be carried by Fuji variety apples would be readily detectable by an inspector. Therefore, after the treatments described above have been completed, the Fuji variety apples would have to be inspected in Japan or the Republic of Korea by inspectors from APHIS and the national plant protection agency of the respective country; the apples would be subject to further disinfection if additional plant pests were found. The apples would also be subject to inspection and disinfection at the port of first arrival in the United States, as provided in § 319.56-6.

Trust Fund Agreement

We are proposing that APHIS' participation in the activities necessary for importation of Fuji variety apples be contingent upon the national plant protection agencies of Japan and the

Republic of Korea each entering into a trust fund agreement with APHIS. These agreements would require each agency to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing the necessary services in Japan or the Republic of Korea during that shipping season. These costs would include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing the services.

The agreements would require each national plant protection agency to deposit a certified or cashiers check with APHIS for the amount of these costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreements would further require the agencies to deposit with APHIS a certified or cashiers check for the amount of the remaining costs, as determined by APHIS, before any additional Fuji variety apples would be treated or inspected. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the national plant protection agency that made the overpayment or held on account until needed, at that agency's option.

Department Not Responsible for Damage

The proposed regulations would explain that the United States Department of Agriculture is not responsible for any damage that might be sustained by Fuji variety apples as a result of the prescribed treatment.

PPQ Treatment Manual

We propose to add the cold treatment and fumigation for Fuji variety apples from Japan and the Republic of Korea to the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations at 7 CFR part 300.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the Fruits and Vegetables regulations by allowing the importation of Fuji variety apples from Japan and the Republic of Korea

According to an estimate by the International Apple Institute, U.S. growers produced approximately 160 million pounds of Fuji apples in 1993, about 1.5 percent of the total U.S. apple production for that year. It is likely that this estimate understates the amount of Fuji apples produced domestically, as Fuji acreage in California, Washington, and other States is expanding rapidly.

About 75 percent of the Fuji variety apples grown in the United States are grown in California and Washington. In 1993, growers in California and Washington produced about 60 million pounds per State, while growers in other States produced a total of about 40 million pounds. Statistics on the number of domestic growers of Fuji apples and their sizes are not available.

Most of the domestic production of Fuji apples is exported because demand, and consequently the price, for Fuji apples is quite low in the United States as compared to other countries, particularly in the Pacific Rim. Prices of $30 to $50 per 40-pound box (depending upon quality) are common in Hong Kong, Taiwan, and other Pacific Rim markets. Domestic buyers, however, have been paying less than half that price.

Growers in the Republic of Korea produce annually about 923 million pounds of Fuji variety apples. APHIS estimates that about 220,000 to 440,000 pounds of Fuji variety apples might be exported per year from the Republic of Korea to the United States. This estimate assumes the Republic of Korea's exports to the United States will approach levels currently exported to European countries.

Japanese growers produce annually about 1.18 billion pounds of Fuji variety apples, just over half of Japan's total annual apple production. APHIS estimates that exports to the United States of all varieties of Japanese apples would probably never exceed 2.2 million pounds.

It is unlikely that imports of Fuji variety apples from Japan and the Republic of Korea would reach the estimated levels above, due to the low demand and low price for Fuji variety apples in the United States. However, even if imports were to reach 2.6 million pounds (2.2 million pounds from Japan and 440,000 pounds from the Republic of Korea), this would constitute less than 1.4 percent of domestic production of Fuji variety apples. Consequently, allowing Fuji variety apples to be imported from Japan and the Republic of Korea would not have a significant economic impact on domestic Fuji variety apple producers or other small entities

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities

Executive Order 12778

This proposed rule would allow Fuji variety apples to be imported into the United States from Japan and the Republic of Korea under certain conditions. If this proposed rule is adopted, State and local laws and regulations regarding imported Fuji variety apples under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, title 7, chapter III, of the Code of Federal Regulations would be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would be revised to read as follows:

Authority: 7 U.S.C. 150ee, 161, 162; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 300.1, paragraph (a) would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was revised and reprinted November 30, 1992, and includes all revisions through _____, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

4. In Subpart—Fruits and Vegetables, a new § 319.56–2cc would be added to read as follows:

§ 319.56–2cc Administrative instructions governing the entry of Fuji variety apples from Japan and the Republic of Korea.

Fuji variety apples may be imported into the United States from Japan and the Republic of Korea only under the following conditions:

(a) *Treatment and fumigation.* The apples must be cold treated and then fumigated, under the supervision of an Animal and Plant Health Inspection Service (APHIS) inspector, either in Japan or the Republic of Korea, for the peach fruit moth (*Carposina niponensis*), the yellow peach moth (*Conogethes punctiferalis*), the fruit tree spider mite (*Tetranychus viennensis*), and the kanzawa mite (*T. kanzawai*), in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(b) *APHIS inspection.* The apples must be inspected upon completion of the treatments required by paragraph (a) of this section, prior to export from Japan or the Republic of Korea, by an APHIS inspector and an inspector from the national plant protection agency of Japan or the Republic of Korea. The apples shall be subject to further disinfection in the exporting country if additional plant pests are found prior to export. Imported Fuji variety apples inspected in Japan or the Republic of Korea are also subject to inspection and disinfection at the port of first arrival, as provided in § 319.56–6.

(c) *Trust fund agreements.* The national plant protection agency of the exporting country must enter into a trust fund agreement with APHIS before APHIS will provide the services necessary for Fuji variety apples to be imported into the United States from Japan or the Republic of Korea. The agreement requires the national plant protection agency to pay in advance of each shipping season all costs that APHIS estimates it will incur in providing services in Japan or the Republic of Korea during that shipping season. These costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement requires the national plant protection agency to deposit a certified or cashiers check with APHIS for the amount of these costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the national plant protection agency to deposit with APHIS a certified or cashiers check for the amount of the remaining costs, as determined by APHIS, before APHIS will provide any more services necessary for Fuji variety apples to be imported into the United States from that country. After a final audit at the conclusion of each shipping season, any overpayment of funds will be returned to the national plant protection agency, or held on account until needed, at that agency's option.

(d) *Department not responsible for damage.* The treatments prescribed in paragraph (a) of this section are judged from experimental tests to be safe for use with Fuji variety apples from Japan and the Republic of Korea. However, the Department assumes no responsibility for any damage sustained through or in the course of such treatment or by compliance with requirements under paragraph (a) of this section.

Done in Washington, DC, the 3rd day of June 1994.

Alex B. Thiermann,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–13889 Filed 6–7–94; 8.45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 362

RIN 3064–AB20

Activities and Investments of Insured State Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Response to petitions for rulemaking.

SUMMARY: On April 29, 1993, the FDIC sought comment on whether to amend its regulations governing insurance underwriting by well-capitalized insured state banks and their subsidiaries to provide that excepted insurance underwriting activities may only take place in the state in which the bank is chartered and in the state in which the bank's insurance underwriting subsidiary is incorporated. After reviewing the comments, the FDIC has determined not to amend the regulation.

FOR FURTHER INFORMATION CONTACT: Curtis L. Vaughn, Examination Specialist, (202) 898–6579, Division of Supervision, FDIC, 550 17th Street NW., Washington, DC 20429 or Pamela E.F. LeCren, Senior Counsel, (202) 898–3730, Legal Division, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 1991, President George Bush signed into law the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236). Section 303 of FDICIA added section 24 to the Federal Deposit Insurance Corporation Act, "Activities of Insured State Banks" (FDI Act)(12 U.S.C. 1831a). With certain exceptions, section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to the activities and equity investments that are permissible for national banks. Well-capitalized insured state banks and their subsidiaries that were lawfully providing insurance as principal in a state on November 21, 1991 may continue to provide insurance of the same type to residents of the state, individuals employed in the state and any other person to whom insurance was provided without interruption since such person resided, or was employed,

in the state. (Section 24(d)(2)(B), 12 U.S.C. 1831a(d)(2)(B)).[1]

On June 16, 1992, the FDIC's Board of Directors adopted a proposed regulation implementing the above described insurance underwriting provisions of section 24. (12 CFR part 362, "Activities and Investments of Insured State Banks", 57 FR 30435, July 9, 1992). The preamble accompanying the proposed regulation indicated that it was the FDIC's intention to construe the reference to "in a state" as excepting insurance underwriting activities by an insured state bank only in the state in which the bank was chartered and as limiting the subsidiary of the bank to insurance underwriting activities in the state in which the subsidiary was incorporated and doing business as of November 21, 1991.

The final rule adopted by the FDIC's Board of Directors did not limit the geographic scope of the insurance underwriting exception to the bank's home state and the subsidiary's state of incorporation. (57 FR 53213, November 9, 1992). At the conclusion of the comment period, the FDIC's Board of Directors decided that the proper construction of section 24(d)(2)(B) was that the insurance underwriting exception should extend to any state in which the bank or its subsidiary was underwriting insurance on November 21, 1992. The change of position resulted from information brought to the FDIC's attention during the comment period. (See discussion at 57 FR 53226, November 9, 1992).

The FDIC was subsequently petitioned pursuant to section 553(e) of the Administrative Procedure Act (5 U.S.C. 553(e)) to repeal that portion of part 362 construing the phrase "in a state" and to seek further comment before adopting any provision concerning insurance underwriting by insured state banks. The FDIC granted the petitions and solicited public comment on whether that portion of part 362 dealing with the geographic scope of the insurance underwriting exception should be amended to read as had originally been proposed or should be left unchanged (58 FR 25953, April 29, 1993). In doing so, the Board indicated that it was of the opinion that the position reflected in part 362 as adopted in final was correct but that it was possible that further comment on the issue would bring additional information to the FDIC's attention that should be weighed by the agency.

Comment Summary

Thirty-three comments were submitted in response to the request for comment. Of the thirty-three comments, twenty-three urged the FDIC not to modify the regulation and ten urged the FDIC to amend part 362 so as to return the language regarding the insurance underwriting grandfather to that which had been originally proposed. The arguments on either side can be summarized as follows:[2]

Leave regulation as is:

(1) The language of section 24(d)(2)(B) is clear and unambiguous on its face and should be construed without resort to any analysis of the FDI Act's legislative history. The most important tool in determining the meaning of a statute is the text of the statute itself and there is no need to go beyond that text if the statute is unambiguous. The use of the indefinite article "a" in the phrase "in a state" has a clear meaning which is consistent with part 362 as adopted by the FDIC. Congress could have inserted language such as "state of charter", "state of incorporation", "home state", etc. but it chose not to do so. That approach having been rejected by Congress, the FDIC should not by regulation impose restrictions that Congress chose not to impose.

(2) If the FDIC feels compelled to resort to an analysis of the FDI Act's legislative history, that history clearly shows that Congress specifically rejected the result contemplated by the FDIC in its original proposal. The comments pointed to specific language changes from an earlier version of the legislation as evidence of the fact that Congress specifically chose not to adopt the more limited version of the exception which was originally reported out of committee in the Senate.

(3) The FDIC should not place any weight on the unpublished conference committee transcript as such exchanges are not reliable evidence of legislative intent. Even if the FDIC were to consider that transcript in determining its views on the proper construction of the section, the exchanges set out in the transcript are ambiguous and should not be relied upon to override much clearer statements made to the entire legislative body.

(4) In the opinion of the commenters, those who oppose the existing regulation do not understand how the insurance industry operates. In order for a bank or a subsidiary of a bank to underwrite insurance in a state, the bank and/or subsidiary must be licensed by the state to underwrite in that state. No one state can authorize its banks or their subsidiaries to underwrite insurance in any other state. Those other states, however, may do so. The existing regulation does not, therefore, permit a state bank to use its home state as a spring board to launch a nationwide underwriting campaign. The regulation limits the availability of the exception to those states in which a bank or subsidiary was licensed to underwrite (i.e., in which the bank or subsidiary was "lawfully providing insurance as principal").

Reinstate original interpretation:

(1) The FDIC improperly attached substantive importance to the technical amendment which substituted the word "a" for "that" in the insurance underwriting exception (the exception originally used the phrase "in that state").

(2) There is ample support in the legislative history demonstrating the intent of Congress to limit the insurance underwriting exception to the state in which the bank is chartered and the state in which the subsidiary is incorporated. The FDIC placed too much emphasis on the remarks of Senator Roth who was not a conferee and overlooked the statements of

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[1] Section 24(d)(2)(B) reads as follows: (2) Insurance Underwriting Prohibited.—

* * *

(B) Continuation of Existing Activities.—notwithstanding subparagraph (A), a well-capitalized insured State bank or any of its subsidiaries that was lawfully providing insurance as principal in a State on November 21, 1991, may continue to provide, as principal, insurance of the same type to residents of the State (including companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the State, but only on behalf of their employees resident in or property located in the State), individuals employed in the State, and any other person to whom the bank or subsidiary has provided insurance as principal, without interruption, since such person resided in or was employed in such State.

[2] In addition to addressing the geographic scope of the insurance underwriting exception, one comment expressed the concern that part 362 allows banks that are not well-capitalized to take advantage of the insurance underwriting exception, and three comments objected to the FDIC's posture, reflected in the preamble accompanying part 362 when it was adopted in final, that annuities are not insurance. Both of these issues were raised in the section 553(e) rulemaking petitions which were filed with the FDIC. When the petitions were taken up by the FDIC, the Board of Directors declined to reopen the rulemaking on part 362 on either issue. It was (and still is) the FDIC's posture that part 362 does not permit an other than well-capitalized bank to take advantage of the insurance underwriting exception. Persons who read the regulation as so allowing are misreading the regulation. It was (and likewise still is) the agency's position that in applying part 362 and section 24 of the FDI Act the FDIC should apply the law pertaining to national bank powers as construed by the Office of the Comptroller of the Currency (OCC). It has been the OCC's opinion that an annuity contract is not a contract of insurance. Although recently a court came to the opposite conclusion, the OCC has asked the Supreme Court to review that decision. (*Ludwig v. Variable Annuity Life Ins. Co.*, petition for cert. filed, _____ U.S.L.W. _____ (U.S. April 13, 1994)(No. 93–1613). Until such time as the issue is finally decided, the FDIC will continue to follow the OCC's view on this matter.

conferees as reflected in the conference committee transcript.

(3) The FDIC's interpretation of the statute allows state banks to underwrite insurance in any state in which the bank sold insurance policies on November 21, 1991. The rule thus exposes banks and the deposit insurance fund to exactly the risks section 24 sought to prevent.

Decision After Review of the Comments

The FDIC is persuaded by the comments which urge the FDIC not to amend part 362. A careful review of the comments leads the FDIC to conclude that while the original intent of the legislation that ultimately became section 24(d)(2)(B) may have been to restrict the exception to a bank's home state and the state of incorporation of the bank's subsidiary, subsequent changes to the language of the section were made which broadened the scope of the exception.

The exception as originally reported out of committee on the Senate side limited the exception to "that" state in which the bank and its subsidiary were lawfully providing insurance as principal on July 15, 1991. The legislation at that point also contained a transition rule which permitted an insured state bank and any of its subsidiaries which were lawfully engaged in insurance underwriting activities made unlawful by the bill to continue to underwrite insurance for one year after the enactment date of the legislation. A section-by-section analysis of the exception as worded when reported out of committee on the Senate side indicated that the exception allowed a bank to continue to provide insurance of the same type to residents or an individual employed in the state in which the bank is chartered. These things taken together demonstrate that the provision as reported out of committee probably was intended to limit the insurance grandfather to a bank's home state.

The language as reported out of committee was subsequently amended, however, to refer to providing insurance as principal in "a" state; the grandfather date was changed to November 21, 1991; the transition rule was deleted; and the section was given the heading "Continuation of Existing Activities". It is the agency's belief that these changes had a substantive impact on the legislation and were not merely technical changes. It is a tenet of statutory construction that the best indication of the meaning of a statute is the statute itself and that where the language of a statute is plain on its face, the statute should be accorded its plain meaning. *Norfolk and Western Railway Co.* v. *American Train Dispatchers Ass'n*, 499 U.S. 117 (1991).

It is the agency's opinion that the plain meaning of the phrase "in a state" as used in section 24(d)(2)(B) as ultimately adopted means in "any" state in which the bank and/or its subsidiary were lawfully underwriting insurance on November 21, 1991. The word "a" is defined in Webster's Dictionary to mean either "one" or "any". According to Black's Law Dictionary (Fourth Ed., 1989), the proper meaning of the word "a" depends upon the context in which it is used. It may mean one where only one is intended or it may mean any one of a great number. As there are many states in the United States and any of those states may have authorized the lawful provision of insurance as principal on November 21, 1991, the context of the word "a" in section 24(d)(2)(B) appears to be "any" and not "one". Furthermore, there is nothing in the text of the provision itself which suggests that the phrase "in a state" is limited to encompassing activities in the bank's chartering state or the subsidiary's state of incorporation. The statute could have used words like "home state" or "chartering state" but it does not. The elimination of the transition rule in conjunction with the addition of the heading "continuation of existing activities" are also evidence that the changes made to the statute resulted in a substantive amendment to the scope of the insurance underwriting exception.

As the regulation is, in the FDIC's view, consistent with the plain meaning of section 24(d)(2)(B), there is no need to rely upon legislative history in construing the statute. However, the FDIC did carefully review all of the legislative history brought to the agency's attention.[3] We find that as there are conflicting statements in the legislative history, the history of the section is not necessarily very enlightening. To the extent that the history does shed light on the issue under consideration, however, the FDIC finds that the history is weighted more in favor of the position reflected in the FDIC's current regulation which, as we have already indicated, is consistent with the plain meaning of the language of the statute.

In consideration of the above, the FDIC's Board of Directors has voted to decline to amend § 362.5 of the FDIC's regulations.

By Order of the Board of Directors.

Dated at Washington, DC this 24th day of May, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary

[FR Doc. 94-13366 Filed 6-7-94, 8:45 am]

BILLING CODE 6714-01-P

[3] Although the FDIC re-opened the comment period with the thought that by doing so additional information pertaining to the section's legislative history might be brought to the agency's attention, the additional comment period did not produce any material not previously on the record.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-94-12]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petitions or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received September 5, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. 27542, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT:

Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on May 31, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations

Petitions for Rulemaking

Docket No.: 27542.
Petitioner: Ms. Debra Russi.
Regulations Affected: 14 CFR 105.
Description of Rulechange Sought

To require all parachute training be performed in accordance with the United States Parachute Association (USPA) training program or in accordance with a plan approved by the Federal Aviation Administration (FAA); incorporated by reference the USPA training program in part 105; and require that the operator of an aircraft immediately, and by the most expeditions means available, notify the nearest FAA Air Traffic Facility when a sport parachute accident/incident occurs involving a person who made an international jump from that aircraft.

Petitioner's Reason for the Request

The petitioner feels that this amendment is needed to protect the citizens of the United States of America, who wish to participate in sport parachuting, by providing participants the assurance of a training course which adheres to approved specifications; and, in the event of a parachute accident, the proposed changes would facilitate prompt notification of the nearest FAA field office, enabling timely investigative procedures.

[FR Doc. 94–13914 Filed 6–7–94, 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AGL–19]

Modification of Class E Airspace; Hutchinson, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Hutchinson Municipal Airport-Butler Field, Hutchinson, MN, to accommodate the Nondirectional Beacon (NDB) Runway 15 and Very High Frequency Omni-Directional Radio Range and Distance Measuring Equipment (VOR/DME) Runway 33, Standard Instrument Approach Procedure (SIAP). Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before July 20, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–19, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–19." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Hutchinson Municipal Airport-Butler Field, Hutchinson, MN, to accommodate the Nondirectional Beacon (NDB) Runway 15 and Very High Frequency Omni-Directional Radio Range and Distance Measuring Equipment (VOR/DME) Runway 33, Standard Instrument Approach Procedure (SIAP). Controlled airspace extending from 700 to 1200 feet AGL is needed for aircraft executing the approach. The intended effected of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in

this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter than will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g), 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas listed below extend upward from 700 feet or more above the surface

* * * * *

AGL MN E5 Hutchinson, MN [Revised]

Hutchinson Municipal Airport-Butler Field, MN

(Lat. 44°51'32" N., Long. 94°22'54" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Hutchinson Municipal Airport-Butler Field and within 2.5 miles each side of the 336° bearing from the airport, extending from the 6.3-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on May 26, 1994.

Roger Wall,

Manager, Air Traffic Division

[FR Doc. 94–13913 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–13–M

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Parts 803, 804 and 805

Review and Approval of Projects; Special Regulations and Standards; Hearings/Enforcement Actions

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Susquehanna River Basin Commission is proposing a reorganized and revised set of regulations and procedures for review of projects. These rules implement the commission's general project review authority set forth in Section 3.10 of the Susquehanna River Basin Compact and contain special review and approval requirements for consumptive uses of water, ground-water withdrawals and surface water withdrawals. In addition, new regulations are proposed to be added to include special regulations on water withdrawal registration, water conservation standards, public hearing procedures and imposition of penalties or other enforcement actions. This proposal is prompted by: The need to improve the overall precision and clarity of the regulations; The need to reorganize the regulations into an integrated format that is more readily understandable by the regulated community and others who work with the regulations; The need to add provisions covering subject matter not addressed or inadequately addressed in the existing regulations; and The need to deal more effectively with certain segments of the regulated community.

DATES: All written comments must be received by August 1, 1994. The commission will hold a series of public hearings on the proposed regulations as follows:

(1) June 23, 1994, 1:30 p.m. and 7 p.m., Apalachin, N.Y.
(2) June 24, 1994, 1 p.m., Williamsport, Pa.
(3) June 28, 1994, 10 a.m. and 7 p.m., Harrisburg, Pa.
(4) July 6, 1994, 1:30 p.m. and 7 p.m., Perryville, Md.
(5) July 14, 1994, 1:30 p.m., Easton, Md.

ADDRESSES: Submit comments to Richard A. Cairo, General Counsel/Secretary, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, Pa. 17102–2391. Addresses for public hearings: (1) The Fred L. Waterman Conservation Education Center, Hilton Road, Apalachin, N.Y.; (2) The Days Inn, River Ave. Exit from Rt. 180, Williamsport, Pa.; (3) Pennsylvania Game Commission Headquarters Auditorium (10 a.m.) 2001 Elmerton Ave., Harrisburg, Pa.; SRBC Headquarters Building (7:00 p.m.), 1721 N. Front St., Harrisburg, Pa.; (4) Perryville High School, Perryville, Md.; (5) The Tidewater Inn, 101 E. Dover Street, Easton, Md.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel/Secretary at the above address, or telephone 717/238–0423.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed regulations by submitting such data, views, or arguments as they may desire, either in writing or by making an oral statement at one of the scheduled public hearings. The proposals contained in this notice may be changed in light of the comments received.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the commission at the above address.

Discussion

The proposed rules are the product of 12 months of intensive in house review input from a federal/state interagency advisory committee, and consultation with the commission's signatory parties. All parties involved in this process agreed that the existing SRBC "Regulations and Procedures for Review of Projects," presently codified at 18 CFR part 803, are badly in need of revision and reorganization. The existing regulations were promulgated in several separate pieces between 1975 and 1979. The first set of regulations was put into place in 1975 to allow the commission to exercise its basic project review authority under section 3.10 of the Susquehanna River Basin Compact. section 803.61 regulating consumptive use of water was added in 1976; section 803.62 regulating ground-water withdrawals was added in 1978; and finally, water conservation standards were added via section 803.63 in 1979.

As a result of this piecemeal promulgation, general procedures for review of projects set forth in the initial set of regulations do not always mesh

cleanly with the more specific requirements of the special regulations on consumptive use and ground-water withdrawals. For example, the regulated community has confused the effective date for general project review with the more specific effective dates set forth in sections 803.61 & 803.62. There has also been confusion about whether project review applications should be submitted directly to the commission or through signatory agencies.

The commission attempted to correct these types of deficiencies with certain regulatory amendments adopted in 1990; however, the confusion persists in the regulated community and even among the signatory party agencies who cooperate with the commission in the management of the river basin's water resources. Subpart B—Application Procedure, as it is presently written, directs the sponsors of certain types of projects to apply to the commission, though ultimately these projects may not require commission approval. This has been a constant source of confusion, as applicants and others who work with the regulation find it difficult to distinguish the application process from the approval process.

The proposed regulations consolidate the disparate portions of the regulations and establish a procedure for determining whether a project is subject to commission approval *before* an application is filed. Projects requiring approval are clearly listed. Sponsors of other projects which may require approval are directed to seek a determination from the commission's executive director.

Beyond the need for a reorganized format, there is also a need to add provisions covering subject matter either not addressed in the current regulation or inadequately addressed therein. For example, there is no existing regulation applying to surface water withdrawals. The proposed regulations will add an explicit section requiring approval of surface water withdrawals exceeding 100,000 gpd.

A new Part 804 is created to house a water withdrawal registration requirement for any withdrawal exceeding 10,000 gpd. Existing section 803.63 on water conservation standards is also moved into the new Part 804.

A new Part 805 houses procedures governing the holding of public hearings, including hearings or additional hearings conducted as adjudicatory hearings. The current regulations contain only the barest of provisions on the conduct of hearings. Criteria and procedures for the imposition of penalties and abatement or remedial requirements on alleged violators of commission regulations and orders are also included in this part. Settlements are also permitted with alleged violators.

A final reason for this package of revisions and additions is the need to deal more effectively with certain segments of the regulated community. For example, the existing consumptive use regulation 803.61 applies to agricultural activities such as crop irrigation. Nevertheless, agricultural compliance with the regulation has been spotty and inconsistent due mainly to a lack of knowledge of the regulation in the agricultural community and SRBC enforcement limitations. When the commission made an affirmative effort to inform the agricultural community of these requirements, agriculture quickly responded on the need for adjustments in the regulation to take into account the special compliance problems faced by farmers. As a result, special provisions have been included in the revised consumptive use regulation extending a 50% compliance credit to agricultural consumptive users as an incentive for their up front compliance with the regulation.

Summary of Additions and Changes

The following is a section-by-section summary of the additions and changes made by the proposed rules.

PART 803—REVIEW AND APPROVAL OF PROJECTS

Subpart A—General Provisions

Section 803.1—Introduction (change)

Roughly like original format but revised to note that scope of review includes consumptive use, ground-water withdrawal, and surface water withdrawal projects, as well as those reviewed and approved under section 3.10 of the compact.

Also, savings clause added in (d) in case any portion declared invalid.

Section 803.2—Purposes (new)

Unlike prior regulations, the purposes of all the review regulations are consolidated and set forth in one place.

Section 803.3—Definitions (new)

Unlike prior regulations, virtually all definitions are consolidated and set forth in one place.

Section 803.4—Projects Requiring Review and Approval (change)

Only projects which clearly and unambiguously require commission approval under the compact or the special sections on consumptive use and water withdrawals are set forth in this section.

Section 803.5—Projects Which May Require Review and Approval (new)

All other projects which fall into an uncertain or ambiguous category as to the requirement for SRBC approval are set forth and directed to file a "request for determination" with the executive director.

Section 803.6—Concurrent Project Review by Signatory Parties (change)

This section providing for cooperation with signatory agencies on project review is left mostly unchanged; however, previous provisions providing that, in some instances, application to a signatory is tantamount to application to the commission, are removed. All applications should come directly to the commission unless the commission has a clear and workable arrangement with a signatory agency to do otherwise.

Section 803.7—Waiver/Modification (change)

Previously only included in the ground-water regulation. This section gives it general application, allowing waiver of any requirement if consistent with the purposes of the regulation.

Subpart B—Application Procedure

Section 803.22—Request for Determination (new)

This section outlines the procedure for submitting a "request for determination" to the executive director in the event a project falls into a classification that makes the need for commission approval a possibility. It goes on to describe the method by which the director goes on to make his/her determination, how that determination is published, how requests for reconsideration can be filed with the director, and how the director's final determination can be appealed to the commission.

Section 803.23—Submission of Application (change)

This section plainly sets forth the requirement for submission of an application for a project requiring approval or determined to require approval.

Section 803.24—Contents of Application (change)

Not radically changed but does include special requirement for additional information in the case of a proposed diversion

Section 803.25—Notice of Receipt of Application (change)

Broadened to include notification of additional parties beyond the local media that an application has been received including the local municipality and the county planning agency. The responsibility of publishing a notice of submission of an application in a local newspaper is placed upon the applicant. Contents of the notice are generally prescribed.

Section 803.26—Staff Review/Action/ Recommendations (new)

A clear statement of what actions staff takes, once it receives an application right up to formal docketing of the project and action by the commission.

Section 803.27—Emergencies (change)

Revised to allow the executive director to allow emergency "actions," rather than an emergency "approval." It should be clear that only the commission has authority to approve a project. The commission should not simply be ratifying an approval by the executive director.

Section 803.28—Application/ Monitoring Fees (new)

Explicit reference to authority to impose these fees. This had not been included in previous regs and the agency has been relying only on a separate resolution of the commission.

Subpart C—Terms and Conditions of Approval

Section 803.30—Duration of Approvals (new)

Sets definite limits on duration of SRBC approvals. Approvals would be for 25 years or the duration of an accompanying signatory permit if one exists. If there is no duration on an accompanying permit, the duration of commission approval will be 25 years. This provision is made retroactive to previous commission approvals.

A paragraph is also included providing that, unless an approved project is implemented within three years, commission approval expires. This may be extended by the commission.

Section 803.31—Transferability of Approvals (new)

Sets forth conditions for the transferability of SRBC approvals.

Section 803.32—Reopening/ Modification (new)

Explicitly sets forth in the regulations themselves what had only been included as a docket condition, i.e. right to reopen and modify a docket decision to protect the public, health, safety and welfare.

Section 803.33—Interest on Fees (new)

Explicitly sets forth what had only been a policy and covers any kind of fee payable to the SRBC, not just application and monitoring fees.

Subpart D—Standards for Review and Approval

Section 803.40—Purpose of this Subpart (new)

The purpose of this subpart is to set forth general review standards for all projects and special standards for consumptive use, ground-water withdrawal and surface water withdrawal regulations.

Section 803.41—General Standards (new)

The original regulations did not make clear the criteria for approval of a project which are so clearly set forth in Section 3.10 of the compact. This section reiterates those criteria.

Section 803.42—Standards for Consumptive Uses of Water (change)

This section includes the remnants of old Section 803.61 minus the definitions and general terms and conditions which have been consolidated elsewhere. Significant changes include: (1) The addition of public water suppliers in paragraph (j); (2) The special 50% credit for ag consumptive use and a general approval procedure in paragraph (h); and (3) The "certificate of pre-compact use" procedure in Paragraph (i) which greatly limits grandfathering of pre-compact consumptive uses but does allow transfers to subsequent owners of land on which agricultural consumptive uses are located. Also, list of methods for providing compensation is eliminated in favor of a method or methods acceptable to the commission (paragraph b); ground-water as a source of make-up is virtually eliminated with its only use being made an alternative to compensation, rather than a method of compensation; the definitions of consumptive use, low flow and trigger flow are amended. (see Section 803.3) The effective date of this section is preserved as January 23, 1971.

Section 803.43—Standards for Ground-water Withdrawals (change)

This section includes the remnants of old Section 803.62 minus the definitions and general terms and conditions which have been consolidated elsewhere. Significant changes are few but include elimination of the five year review, elimination of any exemptions to the metering requirement, and a new definition of a "ground-water source" (See Section 803.3). The effective date of this section is preserved as July 13, 1978 and grandfathered withdrawals which increase their taking are required to apply to the commission for approval.

Section 803.44—Standards for Surface Water Withdrawals (new)

This section provides for SRBC approval of surface water withdrawals exceeding 100,000 gpd. It removes any past ambiguity regarding when the SRBC must approve a surface water withdrawal. Previously, the commission had relied solely on the general authority of Section 3.10 of the compact to review surface water withdrawals rather than a set of separately promulgated standards. This section removes any legal uncertainty regarding when a surface water withdrawal must be approved. The regulation itself is modeled closely after the ground-water regulation and becomes effective with the adoption of the omnibus package except for withdrawal projects previously approved by the commission.

PART 804—SPECIAL REGULATIONS AND STANDARDS

Subpart A—Water Withdrawal Registration

Sections 804.1–804.4 (new)

These sections require registration of water withdrawals exceeding 10,000 gpd, set forth time requirements for registration, allow registration through administrative agreements with signatory parties, and become effective with this proposed package of revisions.

Subpart B—Water Conservation Requirements

Sections 804.20 and 804.21 (change)

Some minor wording changes to cover direct and indirect withdrawals, correct phrasing inconsistencies, and add a clear effective date of January 11, 1979.

PART 805—HEARINGS/ ENFORCEMENT ACTIONS

Subpart A—Conduct of Hearing

Sections 805.1–805.6 (change)

These sections greatly broaden rules pertaining to public hearings. The occasions when public hearings are held are detailed, participants are listed and a presiding officer is designated.

Additional provisions are included for the holding of an adjudicatory hearing. An adjudicatory hearing procedure is set forth, the powers of the hearing officer prescribed, hearing costs are assessed, and provisions are made for a report and action by the commission. Hearings may be consolidated or held jointly with other agencies. Hearings may also be continued for good cause.

Subpart B—Enforcement Actions and Settlements

Sections 805.20–805.28 (new)

These sections provide a procedure for assessing penalties or making abatement and remedial action orders against violators of commission regulations or orders. Alleged violators can be ordered by the executive director to appear before the commission and show cause why a penalty should not be assessed; an adjudicatory hearing can be held if necessary; factors to be considered in assessing a penalty are listed; and a possible settlement with alleged violators is allowed

List of Subjects

18 CFR Part 803

Administrative practice and procedure; water resources

18 CFR Part 804

Water resources

18 CFR Part 805

Administrative practice and procedure.

Dated: May 31, 1994

Paul O. Swartz,

Executive Director

Accordingly, Chapter VIII of title 18 of the Code of Federal Regulations is proposed to be amended as set forth below:

1. Part 803 is revised to read as follows:

PART 803—REVIEW AND APPROVAL OF PROJECTS

Subpart A—General Provisions

Sec

803.1 Introduction
803.2 Purposes.
803.3 Definitions.
803.4 Projects requiring review and approval.
803.5 Projects which may require review and approval.
803.6 Concurrent project review by signatory parties.
803.7 Waiver/modification.

Subpart B—Application Procedure

803.20 Purpose of this subpart.
803.21 Preliminary consultations
803.22 Request for determination
803.23 Submission of application
803.24 Contents of application.
803.25 Notice of application
803.26 Staff review/action/recommendations.
803.27 Emergencies.
803.28 Application/monitoring fees

Subpart C—Terms and Conditions of Approval

803.30 Duration of approvals
803.31 Transferability of approvals
803.32 Reopening/modification.
803.33 Waiver/modification.
803.34 Interest on fees.

Subpart D—Standards for Review and Approval

803.40 Purpose of this subpart.
803.41 General standards.
803.42 Standards for consumptive uses of water.
803.43 Standards for ground-water withdrawals.
803.44 Standards for surface-water withdrawals.

Authority: Secs. 3.4, 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq*

Subpart A—General Provisions

§ 803.1 Introduction.

(a) This part establishes the scope and procedures for review and approval of projects under Section 3.10 of the Susquehanna River Basin Compact, Public Law 91–575, 84 Stat. 1509 et seq., (the compact) and establishes regulations governing water withdrawals, and the consumptive use of water.

(b) Except for activities relating to site evaluation, no person or governmental entity shall begin construction or operation of any project subject to commission review and approval until such project is approved by the commission.

(c) When projects subject to commission review and approval are sponsored by governmental entities, the commission shall submit recommendations and findings to the sponsoring agency which shall be included in any report submitted by such agency to its respective legislative body or to any committee thereof in connection with any request for authorization or appropriation therefor. The commission review will ascertain the project's compatibility with the objectives, goals, guidelines and criteria set forth in the comprehensive plan. If determined compatible, the said project will also be incorporated into the comprehensive plan if so required by the compact.

(d) If any portion of this part shall, for any reason, be declared invalid by a court of competent jurisdiction, all remaining provisions shall remain in full force and effect.

(e) Except as otherwise stated in this part, this part shall be effective on [effective date of final rule]; provided, however, that nothing in this paragraph shall be deemed to exempt any project which has been or could have been subject to review and approval by the commission under the authority set forth in Section 3.10 of the compact or any prior regulations of the commission.

(f) When any period of time is referred to in this part, such period in all cases shall be so computed as to exclude the first and include the last day of such period. Whenever the last day of any such period shall fall on Saturday or Sunday, or on any day made a legal holiday by the law of the United States, such day shall be omitted from the computation.

§ 803.2 Purposes.

(a) The general purposes of this part are to advance the purposes of the compact and include but are not limited to:

(1) The promotion of interstate comity;

(2) The conservation, utilization, development, management, and control of water resources under comprehensive, multiple purpose planning; and

(3) The direction, supervision and coordination of water resources efforts and programs of federal, state and local governments and of private enterprise.

(b) In addition, §§ 803.42, 803.43 and 803.44 contain the following specific purposes: Protection of public health, safety and welfare; stream quality control; economic development; protection of fisheries and aquatic habitat; recreation; dilution and abatement of pollution; the regulation of flows and supplies of surface and ground waters; the avoidance of conflicts among water users; the prevention of undue salinity; and protection of the Chesapeake Bay.

(c) The objective of all interpretation and construction of this part is to ascertain and effectuate the purposes and the intention of the commission set out in paragraph (b) of this section.

§ 803.3 Definitions.

For purposes of this part, the words listed in this section are defined as follows:

Agricultural consumptive use. A consumptive use associated primarily with the raising of food or forage crops, trees, flowers, shrubs, turf, aquaculture and livestock.

Application. A request for action by the commission in written form including without limitation thereto a letter, referral by any agency of a

signatory party, or an official form prescribed by the commission.

Basin. The Susquehanna River basin.

Commission. The Susquehanna River Basin Commission, a body politic created under Article 2, Section 2.1 of the compact.

Compensation. Water utilized or provided from surface storage as makeup for a project's consumptive use.

Comprehensive Plan. The "Comprehensive Plan for Management and Development of the Water Resources of the Susquehanna River Basin" prepared and adopted by the commission pursuant to Article 3, Section 3.3 of the compact.

Consumptive use. Consumptive use is the loss of water from a ground-water or surface water source through a manmade conveyance system (including such water that is purveyed through a public water supply system), due to transpiration by vegetation, incorporation into products during their manufacture, evaporation, diversion from the Susquehanna River basin, or any other process by which the water withdrawn is not returned to the waters of the basin undiminished in quantity. Deep well injection shall not be considered a return to the waters of the basin.

Construction. Clearing or excavation of the site or installation of any portion of the project on the site.

Dedicated augmentation. Release from an upstream storage facility which is required for any other instream or withdrawal use.

Deep Well Injection. Injection of waste or wastewater substantially below aquifers containing fresh water.

Diversion. The transfer of water into or from the basin.

Executive Director. The chief executive officer of the commission appointed pursuant to Article 15, Section 15.5 of the compact.

Governmental entity. The federal government, the signatory states, their political subdivisions, public corporations, public authorities and special purpose districts.

Ground-water source. (1) Pumped wells or well fields;

(2) Flowing wells;

(3) Pumped quarries, pits, and underground mines having no significant surface water inflow (significant meaning that any surface water inflow is greater than the withdrawal); or

(4) A spring in which the water level is sufficiently lowered by pumping to eliminate the surface flow. All other springs will be considered to be surface water.

Low flow. Any flow less than or equal to the trigger flow.

Person. An individual, corporation, partnership, unincorporated association, and the like and shall have no gender and the singular shall include the plural.

Pre-Compact Use. The maximum average quantity or volume of water consumptively used over any consecutive 30 day period prior to January 23, 1971 expressed in "gallons per day".

Project. Any work, service, activity, or facility undertaken which is separately planned or financed for the conservation, utilization, control, development, or management of water resources which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation.

Signatory party. The States of Maryland and New York, the Commonwealth of Pennsylvania, and the federal government.

Signatory state. The States of Maryland and New York, the Commonwealth of Pennsylvania.

Sponsor. Any person or governmental entity proposing to undertake a project. The singular shall include the plural.

Surface water source. Any river, stream, lake, pond, spring, wetland or other body of surface water situated in the basin.

Susquehanna River basin. The area of drainage of the Susquehanna River and its tributaries into the Chesapeake Bay to the southern edge of the former Pennsylvania Railroad Bridge between Havre de Grace and Perryville, Maryland.

Trigger flow. The 7-day 10-year low flow value plus the project's approved consumptive use and any dedicated augmentation, measured at an appropriate stream gage location.

Water(s). Surface and ground water(s) contained within the Susquehanna River basin either before or after withdrawal.

§ 803.4 Projects requiring review and approval.

The following projects are subject to review and approval by the commission and require an application to be submitted to the commission in accordance with the procedures outlined in § 803.23:

(a) Projects on or crossing the boundary between two signatory states;

(b) Projects involving the diversion of water;

(c) Projects resulting in a consumptive use of water exceeding an average of 20,000 gallons per day (gpd) for any consecutive thirty-day period or such other amounts as stipulated in § 803.42;

(d) Projects withdrawing in excess of an average of 100,000 gpd for any consecutive thirty-day period from a ground-water or surface water source or such other amounts as stipulated in §§ 803.43 and 803.44; and

(e) Projects which have been included by the commission in its comprehensive plan.

§ 803.5 Projects which may require review and approval.

The following projects, if not already covered under § 803.4, may be subject to commission review and approval and require, in accordance with the procedures outlined in § 803.22, a "request for determination" to be submitted to the executive director:

(a) Projects which may change interstate water quality standards or criteria.

(b) Projects within a signatory state that have the potential to affect waters within another signatory state. This includes but is not limited to projects which have the potential to alter the physical, biological, chemical or hydrological characteristics of water and related natural resources of interstate streams designated by the commission under separate resolution.

(c) Projects which may have a significant effect upon the comprehensive plan.

(d) Projects not included in paragraphs (a) through (c) of this section, but which could have an adverse, adverse cumulative, or interstate effect on the water resources of the basin; provided that the project sponsor is notified in writing by the executive director that it shall submit a "request for determination".

§ 803.6 Concurrent project review by signatory parties.

(a) The commission recognizes that agencies of the signatory parties will exercise their review authority and evaluate many proposed projects in the basin. The commission will adopt procedures to assure compatibility between signatory review and commission review.

(b) To avoid duplication of work and to cooperate with other government agencies, the commission may develop agreements of understanding in accordance with the above procedures with appropriate agencies of the signatory parties regarding joint review of projects. These agreements may provide for joint efforts by staff, delegation of authority by an agency or the commission, or any other matter to support cooperative review activities. Permits issued by a signatory agency shall be considered commission

approved if issued pursuant to an agreement of understanding with the commission specifically providing therefor.

§ 803.8 Waiver/modification.

The commission may, in its discretion, waive or modify the requirements of this part if the essential purposes set forth in § 803.2 continue to be served.

Subpart B—Application Procedure

§ 803.20 Purpose of this subpart.

The purpose of this subpart is to set forth procedures governing applications required by §§ 803.4 and 803.5.

§ 803.21 Preliminary consultations.

(a) Any sponsor of a proposed project that is or may be subject to the commission's review jurisdiction under § 803.4 or § 803.5 is encouraged, prior to making application for commission review, to request a preliminary consultation with the commission staff for an informal discussion of preliminary plans for the proposed project. To facilitate preliminary consultations, it is suggested that the sponsor provide a general description of the proposed project, a map showing its location and, to the extent available, data concerning dimensions of any proposed structures and the environmental impacts.

(b) Preliminary consultations shall be optional with the project sponsor and shall not relieve the sponsor from complying with the requirements of the compact or with this part.

§ 803.22 Request for determination.

(a) Sponsors of projects which may require review and approval, as described in § 803.5, shall submit a "request for determination" to the executive director with such accompanying information and data as the executive director shall prescribe.

(b) If a project sponsor is uncertain whether a "request for determination" should be filed with the commission, the sponsor may ask for and, within thirty days after submission of information in such form and manner as will allow the executive director to make a decision, receive from the executive director a letter stating whether a "request for determination" should be filed. The executive director may also direct a project sponsor to submit a "request for determination."

(c) Within thirty days of the receipt of such "request for determination," the executive director shall determine whether the said project must be reviewed and approved by the commission. In making such determination, the executive director shall be guided primarily by his/her findings as to the following factors:

(1) Whether the proposed project will have a significant interstate effect on water supply, stream flows, aquifers, water quality, flooding, sensitive land areas, aquatic or terrestrial forms of plant or animal life, historical or cultural resources, or any other water-related resource.

(2) Whether the proposed project will have a significant impact upon the goals, objectives, guidelines, plans, or projects included in the comprehensive plan.

(3) Whether the proposed project may have an adverse or adverse cumulative effect on the water resources of the basin.

(d) The executive director shall notify the sponsor of the project, the agency of the signatory party, if any, reviewing the project, the governing body of each municipality and the planning agency of each county in which the project is located of his/her initial determination under this section. Notice to the sponsor shall be by certified mail, and to all other interested parties by regular, first class mail. At a cost to be assessed to the project sponsor, the executive director shall also publish in a newspaper of general circulation in that municipality, at least once, a notice of such determination. If no objection is made to the executive director's initial determination, it shall become final ten days after publication as set forth in this paragraph.

(e) Any interested party objecting to the determination may, within ten days of the newspaper publication, object to such determination and appeal to the executive director by letter for reconsideration. Following such reconsideration, if requested, the executive director shall serve notice upon the agency of the signatory party, the applicant and each such objector of his/her determination. Any such party may appeal such final determination to the commission by notice in writing served upon the executive director within 14 days after the service of the executive director's decision upon reconsideration. The commission will determine such appeal at a regular meeting thereafter.

§ 803.23 Submission of application.

(a) Sponsors of projects requiring the review and approval of the commission under § 803.4, or determined to require the approval of the commission under § 803.22, shall, prior to the time the project is undertaken, submit an application to the commission. The application shall be submitted to the commission at its headquarters, 1721 N. Front Street, Harrisburg, Pennsylvania 17102–2391, and shall contain the information prescribed in § 803.24.

(b) An application shall not be deemed to be pending before the commission until such time as the information required under § 803.24 has been provided and any applicable fee has been paid.

(c) As determined from applications or otherwise, the commission shall review and either approve, approve with conditions or modifications, or disapprove such projects.

§ 803.24 Contents of application.

(a) Applications shall be submitted on forms prescribed by the commission.

(b) If no forms are prescribed by the commission for a particular type of project, the sponsor shall submit an application addressing the following items (as they may be) applicable to the project:

(1) Identification of sponsor and name of person authorized to speak for the sponsor.

(2) Description of project and site in terms of:

(i) Water use and availability.

(ii) Engineering feasibility.

(iii) Ability of sponsor to fund the project or action.

(iv) Project location.

(v) Project purpose.

(vi) Identification and description of reasonable alternatives, the extent of their economic and technical investigation, and an assessment of their potential environmental impact. In the case of a proposed diversion, the sponsor should include information: Detailing the efforts that have been made to develop its own in-basin sources of water; and demonstrating that the proposed diversion will not substantially impede the ability of the Susquehanna River basin to meet its own water needs.

(vii) Supporting studies, reports and other information upon which assumptions and assertions have been based.

(viii) Compatibility of proposed project with existing and anticipated uses.

(ix) Plans for avoiding or compensating for consumptive use during low flow periods.

(x) Anticipated impact of the proposed project on:

(A) Flood damage potential considering the location of the project with respect to the flood plain and flood hazard zones;

(B) Surface water characteristics (quality, quantity, flow regimen, other hydrologic characteristics);

(C) Recreation potential;

(D) Fish and wildlife (habitat quality, kind and number of species);

(E) Natural environment uses (scenic vistas, natural and manmade travel corridors, wild and wilderness areas, wild, scenic and recreation rivers);

(F) Site development considerations (geology, topography, soil characteristics, adjoining and nearby land uses, adequacy of site facilities); and

(G) Historical, cultural and archaeological impacts.

(3) Governmental considerations:

(i) Need for governmental services or finances.

(ii) Commitment for government to provide services or finances.

(iii) Status of application with other governmental regulatory bodies.

(4) Project completion date and construction schedule.

(c) A report about the project prepared for any other purpose, or an application for approval prepared for submission to a signatory party, may be accepted by the commission provided the said report or application addresses the applicable items listed in paragraph (b) of this section.

§ 803.25 Notice of application.

(a) The project sponsor shall, within ten days of the submission of an application to the commission, notify area and regional news media, each municipality and the planning agency for each county in which the project is situated, contiguous property owners and all other interested parties known to the project sponsor or the commission, that an application has been submitted to the commission. The commission shall compile a list of additional interested parties who comment on the application, request a hearing or make inquiries concerning the application. The project sponsor shall also publish at least once in a newspaper of general circulation in that municipality a notice of the submission of the application which contains a sufficient description of the project, its purpose and its location. Both the notification and the notice shall contain the address and phone number of the commission.

(b) The project sponsor shall provide the commission with a copy of the return receipt for the required municipal notification and a proof of publication for the required newspaper notice. The project sponsor shall also provide certification or documentation acceptable to the commission that it has made such other notifications as required under paragraph (a) of this section. Until these items are provided to the commission, processing of the application will not proceed.

§ 803.26 Staff review/action/recommendations.

(a) The commission's staff shall review the application, and if necessary, request the sponsor to provide any additional information that is deemed pertinent for proper evaluation of the project. The staff review shall include:

(1) Determination of completeness of the application. An application deemed incomplete will not be processed.

(2) Identification of the issues pertinent to commission review.

(3) Assessment of the project's compatibility with the compact, comprehensive plan, and with the other requirements of this part.

(4) Consultation with the project sponsor if requested or deemed necessary.

(5) Determination of the appropriate application fee and the transmission of a billing to the project sponsor for that fee. Applications will not be presented to the commission for review and action until such application fee has been paid.

(6) Formal docketing of the project and, within 90 days of receipt of a complete application, presentation to the commission along with the recommendations of the staff for disposition of the application. The executive director may, for good cause, extend this review period for up to an additional 60 days. Any further extension must be approved by the commission.

(b) If the project sponsor fails to respond to the commission's request for additional information, the commission may notify the project sponsor that the application process has been terminated. To reactivate the closed file, the project sponsor shall reapply and may be required to submit new or updated evaluations.

§ 803.27 Emergencies.

In the event of an emergency requiring immediate action to protect the public health, safety and welfare or to avoid substantial and irreparable injury to any person, property, or natural resources and the circumstances do not permit a review and determination in the regular course of the regulations in this part, the executive director, with the concurrence of the chairperson of the commission and the member from the affected signatory state, may issue an emergency certificate authorizing a project sponsor to take such action as the executive director may deem necessary and proper in the circumstances, pending review and determination by the commission as otherwise required by this part.

§ 803.28 Application/monitoring fees.

The commission may, by separate resolution, establish and modify fees for the submission and processing of applications and for the monitoring of project compliance with this part.

Subpart C—Terms and Conditions of Approval

§ 803.30 Duration of approvals.

(a) Approvals issued under this part shall have a duration equal to the term of any accompanying signatory permit or license regulating the same subject matter. If there is no such accompanying license or permit or if no term is specified in such accompanying license or permit, the duration of a commission approval issued hereunder shall be 25 years, unless otherwise stipulated by the commission in the project's docket approval. This provision applies to all projects previously approved by the commission under this part.

(b) For projects that have been approved by the commission but not implemented, approval by the commission under this part shall expire three years from the date of commission action. Likewise, if the use of a project is discontinued for such a period of time and under such circumstances that an abandonment of the project may reasonably be inferred, the commission may rescind a prior approval for such abandoned project. In either case, an approval may be extended or renewed by the commission upon request.

(c) The sponsors of projects previously approved by the commission should apply for renewal of their approvals no later than within six months of the expiration of their previous approval.

§ 803.31 Transferability of approvals.

Approvals by the commission are transferable to new owners of projects, provided that the transferors or the transferees notify the commission of the transfer either before or within 60 days after the date of the transfer and that the new owners, within 30 days of being requested to do so by the commission, submit in writing their intention to comply with all conditions of the project's docket approval and assume all other associated obligations. The commission may waive or extend any of these deadline periods for good cause.

§ 803.32 Reopening/modification.

Once approved, the commission, upon its own motion, or upon application of the project sponsor or any interested party, may at any time reopen any project docket and make additional orders that may be necessary to mitigate

or avoid adverse impacts or to otherwise protect the public health, safety, and welfare or natural resources.

§ 803.33 Interest on fees.

The commission may, by resolution, establish interest to be paid on all overdue or outstanding fees of any nature that are payable to the commission.

Subpart D—Standards for Review and Approval

§ 803.40 Purpose of this subpart.

The purpose of this Subpart is to set forth standards that shall be used by the commission to evaluate proposed projects pursuant to §§ 803.4 and 803.5. General standards applying to all projects and special standards applying to certain types of projects are set forth in this subpart. This subpart does not identify all the aspects of a proposed project that will be evaluated, nor should it be construed as a self-imposed limitation upon the commission's authority and scope of review.

§ 803.41 General standards.

(a) A project shall not be detrimental to the proper conservation, development, management, or control of the water resources of the basin.

(b) The commission may modify and approve as modified, or may disapprove, a project if it determines that the project is not in the best interest of the conservation, development, management, or control of the basin's water resources, or is in conflict with the comprehensive plan.

§ 803.42 Standards for Consumptive Uses of Water.

(a) *Requirement.* (1)(i) Compensation in an amount equal to the project's total consumptive use shall be required when the streamflow at the appropriate gaging station is or is anticipated to be less than or equal to the trigger flow. The commission reserves the right to modify the trigger flow for a particular stream reach when it finds, as the result of evidence presented at a public hearing, that it is needed to serve the purposes outlined in § 803.2. For the purposes of implementing this section, the commission will identify the appropriate stream gaging station for determining the applicable trigger flow.

(ii) Consumptive uses by a project not exceeding an average of 20,000 gpd for any consecutive thirty-day period are exempt from the requirement unless such uses have a significant adverse affect on the purposes outlined in § 803.2.

(iii) The required amount of compensation shall be provided by the applicant or project sponsor near or above the point of taking or another appropriate site as approved by the commission to satisfy the purposes outlined in § 803.2.

(2) If compensation for consumptive use from a surface source is to be provided upstream from the point of taking, such compensation shall reasonably assure no diminution of the flow which would otherwise exist naturally immediately downstream from the point of taking, plus any other dedicated augmentation.

(b) *Method of compensation.* (1) Compensation may be provided by construction, acquisition or utilization of storage facilities acceptable to the commission or by a monetary payment to the commission in an amount and method to be determined by the commission from time-to-time for the purpose of developing, operating or maintaining makeup water storage or taking such other action as may improve the basinwide management of low flows.

(2) Alternatives to compensation may be appropriate such as discontinuance of that part of the project's operation that consumes water, use of conservation measures or use of an alternative source that is unaffected by the compensation requirement.

(3) The commission shall, in its sole discretion, determine the acceptable manner of compensation, alternatives to compensation, or combinations thereof, as applicable, for consumptive use by a project. Such a determination will be made after considering the project location, anticipated amount of consumptive use and its effect on the purposes set forth in § 803.2, and any other pertinent factors.

(c) *Quantity of consumptive use.* For purposes of evaluating a proposed project, the commission shall require estimates of anticipated consumptive use from the project sponsor. In no case shall consumptive use exceed the maximum consumptive use approved by the commission. In setting this maximum amount, the commission shall apply the same criteria it uses to limit ground-water withdrawals under § 803.43 and surface water withdrawals under § 803.44.

(d) *Metering, monitoring and reporting requirements.* The commission, as part of the project review, shall evaluate the proposed methodology for monitoring consumptive losses and compensating flows, including flow metering devices, stream gages, and other facilities used to measure the consumptive use of the project or the rate of streamflow. If the commission determines that additional flow measuring devices are required, these shall be provided at the expense of the applicant and shall be subject to inspection by the commission at any time. When the project is operational, the commission shall be responsible for determining when compensation is required and shall notify the project sponsor accordingly. The project sponsor shall provide the commission with periodic reports in the time and manner as the commission requires showing actual consumptive uses associated with the project. The commission may use this data to modify, as appropriate, the magnitude and timing of the compensating releases initially required when the project was approved.

(e) *Quality of compensation water.* The water used for compensation shall at all times meet the quality requirements for the purposes listed in § 803.2, as applicable.

(f) *Effective date.* Notwithstanding the overall effective date for other portions of this part set forth in § 803.1(e), this section shall apply to all consumptive uses initiated on or after January 23, 1971, the effective date of the compact. Any project that has initiated consumptive use on or after this effective date is subject to this section. The sponsor of any project initiated before this effective date shall be issued or may apply for a certificate of pre-compact use under the conditions set forth in paragraph (i) of this section.

(g) *Public water suppliers.* Public water suppliers shall be subject to the requirements of this section; provided, however, that nothing herein shall be construed to exempt individual consumptive users connected to any such public water supply system from the requirements of this section; and provided further that such public water suppliers shall receive a credit against the amount of their consumptive use for each consumptive user connected to their system that is or should be regulated by the commission under this section. Existing public water suppliers subject to this section shall submit an application to the commission pursuant to this part upon being notified by the commission to do so.

(h) *Agricultural consumptive use.* (1) The sponsors of agricultural consumptive use projects may receive a 50 percent credit toward the amount of compensation or alternative to compensation they must make under the requirements of this part. To receive this credit, the sponsors of existing projects shall both register with the commission pursuant to part 804, subpart A, of this chapter and submit an application to the commission pursuant

to this section by April 30, 1996. In no case shall the sponsors of such existing projects be required to implement the method of compensation required under paragraph (b) of this section prior to April 30, 1996. Thereafter, the sponsors of all new projects shall be registered in accordance with part 804, subpart A, of this chapter and, prior to operation, apply to the commission in order to receive the 50 percent credit.

(2) The sponsors of agricultural consumptive use projects consuming a consecutive 30 day average in excess of 20,000 gpd but no more than 100,000 gpd, may be generally approved by the commission. In such cases, the commission staff shall summarily issue a certificate of approval to the project sponsor without formal review, docketing and action by the commission. At least 10 days prior to issuance, the commission shall distribute via its regular meeting notice mailing list, a notice of general approvals it intends to issue. When such general approval is given, the project shall be exempt from any and all commission application or monitoring fees and the sponsor's only method of compliance shall be a monetary payment to the commission as provided in paragraph (b) (1) of this section.

(i) *Certificate of pre-compact use.* (1)(i) The executive director, by [90 days from the publication of this section as a final rule in the **Federal Register**], shall issue by certified mail to the sponsors of all previously approved consumptive use projects a "notice of pre-compact use" specifying the amount of consumptive use, if any, constituting the pre-compact consumptive use of the sponsor as of January 23, 1971. The executive director shall publish a notice of this action in the **Federal Register**.

(ii) Such preliminary notice of pre-compact use shall become a final "certificate of pre-compact use" unless the sponsor, within 20 days after service of the notice, or any interested party, within 20 days after publication of the notice in the **Federal Register**, shall file a request for hearing by the commission. At such hearing, the water user or interested party may show cause why the proposed pre-compact use shall not take effect.

(iii) The executive director will schedule a hearing before the commission at the next convenient regular meeting of the commission, but in no case more than two regular meetings past the date of the hearing request. The hearing will be conducted in accordance with the requirements set forth in part 805, subpart A, of this chapter.

(iv) A final certificate of pre-compact use will be issued either upon expiration of the time to request a hearing, where there has been no request, or in accordance with the determination of a hearing where one is held.

(2) Any other sponsor of a consumptive use project may apply for a certificate of pre-compact use as part of a regular project application to the commission or otherwise; provided, however, that such applications shall be filed with the commission no later than April 30, 1996. The consumptive use project of any sponsor not applying for a certificate by that date will be presumed to have been initiated after January 23, 1971.

(3) Each sponsor may submit proof satisfactory to the commission of the factors constituting pre-compact use as defined in § 803.3. Whenever adequate records of pre-compact use for agricultural irrigation purposes are not available to the commission, such pre-compact use shall be measured by the maximum number of acres under irrigation by the water user during any year prior to 1971, allowing one acre-foot of surface water annually per acre irrigated.

(4) A certificate of pre-compact use is not transferable except that:

(i) A certificate issued for an agricultural consumptive use may be transferred to a subsequent owner or operator of the land on which the use occurs, provided that the transferee continues to use the land for the raising of food or forage crops, trees, flowers, shrubs, turf, aquaculture or livestock, and provided that written notice of the transfer is provided to the commission.

(ii) A certificate issued for any consumptive use may be transferred in connection with a corporate reorganization within any of the following categories, provide that written notice of the transfer is given to the commission:

(A) Whenever property is transferred to a corporation by one or more persons solely in exchange for stock or securities of the same corporation, provided that immediately after the exchange the same person or persons are in control of the transferee corporation, that is, they own 80 percent or more of the voting stock and 80 percent or more of all other stock of the corporation.

(B) Whenever the transfer is an incident of a statutory merger or consolidation pursuant to the corporation laws of any state, the District of Columbia or the United States.

(C) Whenever the transfer is included in a transfer by a corporate holder of a certificate of entitlement of all or a part of its assets to another corporation if immediately after the transfer the transferor or one or more of its stock holders or any combination thereof, are in control of the corporation to which the assets are transferred and such transfer is in exchange solely for stocks or securities of the transferee corporation as a party to a reorganization within the meaning of section 354 or section 361 of the Internal Revenue Code (26 U.S.C. 354 or 361).

(D) Where such transfer is required merely as a result of a change of the name, identify, form or place of organization of a corporate holder of a certificate of pre-compact use.

(5) If the consumptive use for which a certificate has been issued is documented for such a period of time and under such circumstances that an abandonment of the use may reasonably be inferred, the commission may rescind the certificate after notice and opportunity to be heard have been given to the holder of the certificate.

§ 803.43 Standards for ground-water withdrawals.

(a) *Requirement.* (1) Any project sponsor proposing to withdraw from a ground-water source in excess of an average of 100,000 gpd for any consecutive thirty-day period or proposing to increase an existing withdrawal to more than an average of 100,000 for any consecutive thirty-day period shall apply for approval pursuant to subpart B of this part. These withdrawals may be denied or may be limited by the commission to the amount (quantity and rate) of ground water that is needed to meet the reasonably foreseeable needs of the project sponsor and that can be withdrawn from an aquifer or aquifer system without causing adverse lowering of ground-water levels, rendering competing supplies unreliable, causing water quality degradation that may be injurious to any existing or potential ground or surface water use, causing permanent loss of aquifer storage capacity, or having substantial impact on low flow of perennial streams.

(2) Projects withdrawing more than an average of 100,000 gpd for any consecutive thirty-day period prior to the effective date of this section are exempt from the above approval requirements, provided that the current withdrawal rate does not exceed the amount withdrawn before the said effective date. The sponsor of any such exempted project that proposes to increase the said average withdrawal in

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excess of 100,000 gpd above that which it was withdrawing prior to the said effective date shall submit said proposal to the commission for review and approval as provided herein.

(3) After obtaining approval for the withdrawal pursuant to this paragraph, the sponsor shall also comply with metering, monitoring and reporting requirements as set forth in this section..

(b) *Withdrawal application.* Information required by the commission is specified in the commission's ground-water withdrawal application and includes but is not limited to the results of a constant rate pumping test. Review and approval by SRBC staff of the test procedures to be used by the applicant are necessary before the test is started.

(c) *Metering.* Projects approved hereunder shall meter all approved ground-water withdrawals. The meters shall be accurate to within 5 percent of the actual flow.

(d) *Monitoring and reporting.* (1) Monitoring and periodic reporting of water levels, well production, and ground-water quality are required of all approved ground-water withdrawals. The required information is listed in Form SRBC #30 (Ground-water Withdrawal Reporting Form) [1] and includes but is not limited to the following:

(i) Ground-water levels shall be measured weekly in all approved production wells and reported to the commission annually. Additional water level measurements may be required in one or more observation wells as determined by the commission.

(ii) Production from approved ground-water sources shall be recorded weekly and reported to the commission annually.

(iii) Samples of ground water for water quality analysis shall be obtained and the results reported to the commission every three years. The required chemical constituents to be included in the analysis are listed in Form SRBC #30.

(2) The information in paragraph (d)(1) of this section may be provided to the commission either on Form SRBC #30 or other similar document containing all of the required information.

(e) *Planning.* If projections indicate that a project's ground-water supply will be constrained in the future by either the quantity or quality of available ground water, the commission may, in its discretion, require the submission of a water resource development plan prior to accepting any new withdrawal applications for the same or related projects.

(f) *Interference with existing withdrawals.* If review of the application or substantial data demonstrates that operation of a proposed ground-water withdrawal will significantly affect or interfere with an existing ground-water or surface water withdrawal, the project may be denied or the project sponsor may be required to provide, at its expense, an alternate water supply or other mitigating measures.

(g) *Effective date.* Notwithstanding the overall effective date for other portions of this part set forth in § 803.1(e), this section shall apply to all ground-water withdrawals initiated on or after July 13, 1978.

§ 803.44 Standards for surface water withdrawals.

(a) *Requirement.* (1) Any project sponsor proposing to withdraw either directly or indirectly (through another user) from a surface source in excess of an average of 100,000 gpd for any consecutive thirty-day period or proposing to increase an existing withdrawal to more than an average of 100,000 gpd for any consecutive thirty-day period shall obtain commission approval of the withdrawal. These withdrawals may be denied or may be limited by the commission to the amount (quantity and rate) of water that is needed to meet the reasonably foreseeable needs of the project sponsor and that can be withdrawn without causing adverse lowering of streamflow levels, rendering competing supplies unreliable, causing water quality degradation that may be injurious to any existing or potential water use, adversely affecting fish, wildlife or other living resources or their habitat, or having substantial impact on the low flow of perennial streams.

(2) A project that proposes to increase the said average withdrawal above that which was previously approved by the commission or in excess of 100,000 gpd above that which it was withdrawing prior to the said effective date, shall submit said proposal to the commission for review and approval as provided herein.

(3) Any sponsor of a project subject to this section shall complete a surface water withdrawal application. After obtaining approval hereunder, the sponsor shall comply with metering, monitoring, and conservation requirements as set forth.

(b) *Withdrawal application.* Information required by the commission is specified in the commission's application for withdrawal from surface water sources.

(c) *Metering.* Project sponsors shall meter all approved surface withdrawals. The meters shall be accurate to within 5 percent of the actual flow.

(d) *Monitoring and reporting.* Monitoring and periodic reporting of all approved surface water withdrawals is required. The required information includes but is not limited to the following:

(1) Daily records of withdrawals by source reported annually;

(2) Description of conservation activity; and

(3) Records of releases or flowby for instream protection reported annually.

(e) *Planning.* If projections indicate that a project's surface water supply will be constrained in the future by either the quantity or quality of available surface water, the commission may, in its discretion, require the submission of a water resource development plan prior to accepting any new withdrawal applications for the same or related projects.

(f) *Interference with existing withdrawals.* If review of the application or substantial data demonstrates that operation of a proposed surface water withdrawal will significantly affect or interfere with an existing ground-water or surface water withdrawal, the project may be denied or the project sponsor may be required to provide, at its expense, an alternate water supply or other mitigating measures.

(g) *Effective date.* This section shall be effective as provided in § 803.1(e), except for projects previously reviewed and approved by the commission under the general authority of section 3.10 of the compact. Commission authority shall continue over such previously approved projects.

2. Parts 804 and 805 are added to read as follows:

PART 804—SPECIAL REGULATIONS AND STANDARDS

Subpart A—Water Withdrawal Registration

Sec.

804.1 Requirement.
804.2 Time limits.
804.3 Administrative agreements.
804.4 Effective date.
804.5 Definitions.

Subpart B—Water Conservation Requirements

804.20 Requirement.
804.21 Effective date.
804.22 Definitions.

Authority: Secs. 3.4(2) and (9), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

[1] This form is available from SRBC, 1721 North Front Street, Harrisburg, PA 17102–2391.

Subpart A—Water Withdrawal Registration

§ 804.1 Requirement.

In addition to any other requirements of commission regulations, all persons withdrawing or diverting in excess of an average of 10,000 gpd for any consecutive thirty-day period, from surface or ground-water sources, as defined in part 803 of this chapter, shall register the amount of this withdrawal with the commission and provide such other information as requested on forms prescribed by the commission. This requirement applies to all present and future withdrawals or diversions, irrespective of when such withdrawals or diversions were initiated.

§ 804.2 Time limits.

Except as provided in § 803.42(h) of this chapter regarding existing agricultural consumptive users, all registration forms shall be submitted within one year of [the effective date of this final rule] or within six months of their initiation, whichever is later; provided, however, that nothing in this section shall limit the responsibility of an applicant to apply for and obtain an approval as may be required under part 803 of this chapter. All registered withdrawals shall re-register with the commission within five years of their initial registration, and at five-year intervals thereafter, unless sooner disconfinued.

§ 804.3 Administrative agreements.

The commission may complete appropriate administrative agreements or informal arrangements to carry out this registration requirement through the offices of signatory agencies. Forms developed by the commission shall apprise registrants of any such agreements or arrangements and provide appropriate instructions to complete and submit the form. Permits issued by a signatory party agency shall be considered a registration with the commission if issued pursuant to an agreement of understanding with the commission specifically providing therefor.

§ 804.4 Effective date.

This subpart shall be effective on [effective date of final rule].

§ 804.5 Definitions.

Terms used in this subpart shall be defined as set forth in § 803.3 of this chapter..

Subpart B—Water Conservation Requirements

§ 804.20 Requirement.

Any project sponsor proposing to withdraw water either directly or indirectly (through another user) from surface or ground-water sources or both shall comply with the following requirements:

(a) *Public water supply utilities.* As circumstances warrant, the utility shall:

(1) Reduce distribution system losses to a level not exceeding 20 percent of the gross withdrawal.

(2) Install meters for all users.

(3) Establish a program of water conservation that will:

(i) Require installation of water conservation devices, as applicable, by all classes of users;

(ii) Prepare and distribute literature to customers describing available water conservation techniques;

(iii) Implement a water pricing structure which encourages conservation; and

(iv) Encourage water reuse.

(b) *Industrial water users.* Industrial users shall:

(1) Designate a company representative to manage plant water use.

(2) Install meters or other suitable devices or utilize acceptable flow measuring methods for accurate determination of water use by various parts of the company operation.

(3) Install flow control devices which match the needs of the equipment being used for production.

(4) Evaluate and utilize applicable recirculation and reuse practices.

(c) *Agricultural and other irrigation.* Water users for irrigation purposes shall utilize irrigation systems properly designed for the user's respective soil characteristics, topography and vegetation.

§ 804.21 Effective date.

Notwithstanding the effective date for other portions of this part, this subpart shall apply to all surface and ground-water withdrawals initiated on or after January 11, 1979.

§ 804.22 Definitions.

Terms used in this subpart shall be defined as set forth in § 803.3 of this chapter.

PART 805—HEARINGS/ ENFORCEMENT ACTIONS

Subpart A—Conduct of Hearing

Sec.

805.1 Public hearings
805.2 Adjudicatory Hearing.
805.3 Consolidation of hearing
805.4 Joint hearings
805.5 Transcript.
805.6 Continuance.
805.7 Effective date.
805.8 Definitions.

Subpart B—Enforcement Actions and Settlements

805.20 Scope of subpart.
805.21 Notice to possible violators.
805.22 The record for decision-making
805.23 Adjudicatory hearings/alleged violations.
805.24 Assessment of a penalty/abatement or remedial action.
805.25 Factors to be applied in fixing penalty amount.
805.26 Enforcement of penalties/abatement or remedial orders.
805.27 Settlement by agreement.
805.28 Effective date.
805.29 Definitions.

Authority: Secs. 3.4(9), 3.5(5), 3.10, 15.2 and 15.17, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

Subpart A—Conduct of Hearing

§ 805.1 Public hearings.

(a) A public hearing shall be conducted in the following instances:

(1) Addition of projects or adoption of amendments to the comprehensive plan

(2) Rulemaking.

(3) Approval of projects.

(4) Hearing requested by a signatory party.

(5) When in the opinion of the commission, a hearing is necessary to give adequate consideration to issues relating to public safety, protection of the environment, or other important societal factors.

(6) At all other times required by the compact or commission regulations

(b) *Notice of public hearing.* At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the commission shall be published at least once in a newspaper or newspapers of general circulation in the area affected. Occasions when public hearings are required by the compact include, but are not limited to, amendments to the comprehensive plan, drought emergency declarations, and review and approval of diversions. In all other cases, at least 10 days prior to the hearing, notice shall be posted at the office of the commission, mailed by first class mail to the parties who, to the commission's knowledge, will participate in the hearing, and mailed by first class mail to persons, organizations, news media and governmental entities who have made requests to the commission for notices of hearings or of a particular hearing. In the case of hearings held in connection

with rulemaking, notices need only be forwarded to the directors of the New York Register, the Pennsylvania Bulletin, the Maryland Register, and the Federal Register, and it is sufficient that this notice appear only in the **Federal Register** at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

(c) *Participants to a public hearing.* (1) Hearings shall be open to the public. Participants to a public hearing shall be the project sponsor and the commission staff. Participants may also be any person or governmental entity wishing to appear at the hearing and make an oral or written statement. Statements may favor or oppose the project/proposal or may simply express a position without specifically favoring or opposing the project/proposal. Statements shall be made a part of the record of the hearing, and written statements may be received up to and including the last day on which the hearing is held, or within a reasonable time thereafter as may be specified by the presiding officer, which time shall be not less than ten days nor more than 30 days, except that a longer time may be specified if requested by a participant.

(2) Participants (except the project sponsor and the commission staff) are encouraged to file with the commission at its headquarters written notice of their intention to appear at the hearing. The notice should be filed at least three days prior to the opening of the hearing.

(d) *Representative capacity.* Participants wishing to be heard at a public hearing may appear in person or be represented by an attorney or other representative. A governmental entity may be represented by one of its officers, employees or by a designee of the governmental entity. Any person intending to appear before the commission in a representative capacity on behalf of a participant shall give the commission written notice of the nature and extent of his/her authorization to represent the person or governmental entity on whose behalf he/she intends to appear.

(e) *Description of project.* When notice of a public hearing is issued, there shall be available for inspection at the commission offices such plans, summaries, maps, statements, orders or other supporting documents which explain, detail, amplify, or otherwise describe the project the commission is considering. Instructions on where and how the documents may be obtained will be included in the notice.

(f) *Presiding officer.* A public hearing shall be conducted by the commission, the executive director, or any member or designee of the commission. The presiding officer shall have full authority to control the conduct of the hearing and make a record of the same.

§ 805.2 Adjudicatory hearing.

(a) *Generally.* The commission, upon application by any interested party or upon its own motion, may determine that, due to outstanding issues of fact, an adjudicatory hearing shall be conducted. If, for any reason, the commission determines that there are not sufficient issues of fact to schedule an adjudicatory hearing, it may still require briefs or oral argument on any issues of law.

(b) *Hearing procedure.* (1) The presiding officer shall have the power to rule upon offers of proof and the admissibility of evidence, to regulate the course of the hearings, to hold conferences for the settlement or simplification of issues, to determine the proper parties to the hearing, to determine the scope of any discovery procedures, and to delineate the issues to be adjudicated.

(2) The presiding officer shall cause each witness to be sworn or to make affirmation.

(3) Any party to a hearing shall have the right to present evidence and to examine and cross-examine witnesses.

(4) When necessary, in order to prevent undue prolongation of the hearing, the presiding officer may limit the number of times any witness may testify, the repetitious examination or cross-examination of witnesses, or the extent of corroborative or cumulative testimony.

(5) The presiding officer shall exclude irrelevant, immaterial or unduly repetitious evidence, but the parties shall not be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received.

(6) Any party may appear and be heard in person or be represented by an attorney at law.

(7) Briefs and oral argument may be required by the presiding officer and shall be permitted upon request made prior to the close of the hearing by any party. They shall be part of the record unless otherwise ordered by the presiding officer.

(c) *Staff and other expert testimony.* The executive director shall arrange for the presentation of testimony by the commission's technical staff and other experts, as he/she may deem necessary or desirable, to incorporate in the record or support the administrative action, determination or decision which is the subject of the hearing.

(d) *Written testimony.* If the direct testimony of an expert witness is expected to be lengthy or of a complex, technical nature, the presiding officer may order that such direct testimony be submitted to the commission in sworn, written form. Copies of said testimony shall be served upon all parties appearing at the hearing at least ten days prior to said hearing. Such written testimony, however, shall not be admitted whenever the witness is not present and available for cross-examination at the hearing unless all parties have waived the right of cross-examination.

(e) *Assessment of costs.* (1) Whenever an adjudicatory hearing is required, the costs thereof, as herein defined, shall be assessed by the presiding officer to the project sponsor or such other party as the hearing officer deems equitable. For the purposes of this section, costs include all incremental costs incurred by the commission, including, but not limited to, hearing examiner and expert consultants reasonably necessary in the matter, stenographic record, rental of the hall and other related expenses.

(2) Upon the scheduling of a matter for adjudicatory hearing, the commission secretary shall furnish to the applicant a reasonable estimate of the costs to be incurred under this section. The applicant may be required to furnish security for such costs either by cash deposit or by a surety bond of a corporate surety authorized to do business in a signatory state.

(f) *Findings and report.* The presiding officer shall prepare a report of his/her findings and recommendations. The report shall be served by personal service or certified mail (return receipt requested) upon each party to the hearing or its counsel unless all parties have waived service of the report. Any party may file objections to the report within 20 days after the service upon the party of a copy of the report. A brief shall be filed together with objections and briefs shall be promptly submitted to the commission. The commission may require or permit oral argument upon such submission prior to its decision.

(g) *Action by the commission.* The commission will act upon the findings and recommendations of the presiding officer pursuant to law. The determination of the commission will be in writing and shall be filed together with any transcript of the hearing, report of the hearing officer, objections thereto, and all plans, maps, exhibits and other papers, records or documents relating to the hearing.

§ 805.3 Consolidation of hearing.

The commission may order any two or more public hearings involving a common or related question of law or fact to be consolidated for hearing on any or all the matters at issue in such hearings.

§ 805.4 Joint hearings.

The commission may conduct public hearings in concert with any other agency of a signatory party.

§ 805.5 Transcript.

A verbatim transcript of the adjudicatory hearings shall be kept by the commission. Other public hearings may be electronically recorded and a transcript made only if deemed necessary by the executive director or general counsel. A certified copy of the transcript and exhibits shall be available for review during business hours at the commission's headquarters to anyone wishing to examine them. Persons wishing to obtain a copy of the transcript of any hearing shall make arrangements to obtain it directly from the recording stenographer at their expense.

§ 805.6 Continuance.

The sponsor and all other persons wishing to be heard should be prepared to proceed on the date of the hearing. Applications for continuances will not be granted, except when good cause is shown.

§ 805.7 Effective date.

This subpart shall be effective on [effective date of final rule].

§ 805.8 Definitions.

Terms used in this subpart shall be defined as set forth in § 803.3 of this chapter.

Subpart B—Enforcement Actions and Settlements

§ 805.20 Scope of subpart.

This subpart shall be applicable where the commission has information indicating that a person or governmental entity (hereafter referred to as alleged violator) has violated or attempted to violate any provision of the compact or any of the commission's rules, regulations or orders.

§ 805.21 Notice to possible violators.

Upon direction of the commission, the executive director shall, and in all other instances, the executive director may require an alleged violator to show cause before the commission why a penalty should not be assessed in accordance with the provisions of this chapter and section 15.17 of the compact. The notice to the alleged violator shall:

(a) Set forth the date on which the alleged violator shall respond;

(b) Set forth any information to be submitted or produced by the alleged violator; and

(c) Specify the violation that is alleged to have occurred.

§ 805.22 The record for decision-making.

(a) *Written submission.* In addition to the information required by the commission, any alleged violator shall be entitled to submit in writing any other information that it desires to make available to the commission before it shall act. The executive director may require documents to be certified or otherwise authenticated and statements to be verified. The commission may also receive written submissions from any other persons as to whether a violation has occurred and the adverse consequences resulting from a violation of the compact or the commission's rules, regulations and orders.

(b) *Presentation to the commission.* On the date set in the notice, the alleged violator shall have the opportunity to supplement its written presentation before the commission by any oral statement it wishes to present and shall be prepared to respond to any questions from the commission or its staff or to the statements submitted by persons affected by the alleged violation.

§ 805.23 Adjudicatory hearings/alleged violations.

(a) An adjudicatory hearing (which may be in lieu of or in addition to proceedings pursuant to §§ 805.21 and 805.22) shall not be scheduled unless the executive director or the commission determines that a hearing is required to have an adequate record for the commission, or the commission directs that such a hearing be held.

(b) If an adjudicatory hearing is scheduled, the alleged violator shall be given at least 14 days written notice of the hearing date unless waived by consent. Notice of such a hearing may be given to the general public and the press in the manner provided in § 805.1(b), but may be waived by the executive director.

(c) Except to the extent inconsistent with the provisions of this subpart, adjudicatory hearings shall be conducted in accordance with the provisions of §§ 805.2 through 805.6.

§ 805.24 Assessment of a penalty/abatement and remedial action.

The executive director may recommend to the commission the amount of the penalty to be imposed or the abatement and remedial actions to be required. Such a recommendation shall be in writing and shall set forth the basis for the penalty amount proposed. Based upon the record submitted to the commission, the commission shall decide whether a violation has occurred that justifies the imposition of a penalty pursuant to section 15.17 of the compact or the requirement of abatement or remedial action. If it is found that such a violation has occurred, the commission shall determine the amount of the penalty to be paid and the nature of the abatement or remedial action to be undertaken.

§ 805.25 Factors to be applied in fixing penalty amount.

(a) Consideration shall be given to the following factors in deciding the amount of any penalty or any settlement:

(1) Previous violation, if any, of the compact, commission regulations or orders;

(2) The intent of the alleged violator;

(3) The extent to which the violation caused adverse environmental consequences;

(4) The costs incurred by the commission or any signatory party relating to the failure to comply with the compact, commission regulations or orders;

(5) The extent to which the violator has cooperated with the commission in correcting the violation and remediating any adverse consequences or harm that has resulted therefrom;

(6) The extent to which the failure to comply with the commission's compact and regulations was economically beneficial to the violator; and

(7) The length of time over which the violation occurred and the amount of water used during that time period.

(b) The commission retains the right to waive any penalty or reduce the amount of the penalty should it determine that, after consideration of the factors in paragraph (a) of this section, extenuating circumstances justify such action

§ 805.26 Enforcement of penalties/abatement or remedial orders.

Any penalty imposed or abatement or remedial action ordered by the commission shall be paid or completed within such time period as shall be fixed by the commission. The executive director and commission counsel are authorized to take such action as may be necessary to assure enforcement of this Subpart. If a proceeding before a court becomes necessary, the action of the commission in determining a penalty amount shall constitute the penalty

amount recommended by the commission to be fixed by the court pursuant to section 15.17 of the compact.

§ 805.27 Settlement by agreement.

An alleged violator may request settlement of an enforcement proceeding by agreement. If the executive director determines that settlement by agreement is in the best interest of the commission, he/she may submit to the commission a proposed settlement agreement. No settlement will be considered by the commission unless the alleged violator has indicated in writing to the commission acceptance of the terms of the agreement and the intention to comply with all requirements of the settlement agreement including payment of any settlement amount or completion of any abatement or remedial action within the time period provided. If the commission determines not to approve a settlement agreement, the commission may proceed with an enforcement action in accordance with this subpart.

§ 805.28 Effective date.

This subpart shall be effective on [effective date of final rule].

§ 805.29 Definitions.

Terms used in this subpart shall be defined as set forth in § 803.3 of this chapter.

[FR Doc. 94–13831 Filed 6–7–94; 8:45 am]
BILLING CODE 7040–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300344; FRL–4868–1]

RIN 2070–AC18

Vinyl Pyrrolidone-Dimethylaminoethylmethacrylate Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer (CAS Reg. No. 30581-59-0) when used as an inert ingredient (leaching inhibitor, binder for water dispersable aggregates, sticker and suspension stabilizer) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, and to animals. This proposed regulation was requested by International Specialty Products.

DATES: Comments, identified by the document control number [OPP-300344], must be received on or before July 8, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th floor, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: International Specialty Products, 1361 Alps Rd., Wayne, NJ 07470, submitted pesticide petition (PP) 4E04319 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) [21 U.S.C. 346a(e)], propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for residues of vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer (CAS Reg. No. 30581-590) when used as an inert ingredient (leaching inhibitor, binder for water dispersable aggregates, sticker and suspension stabilizer) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, and to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients, published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies that would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. However, where it can be determined without that data that the inert ingredient will present minimal or no risk, the Agency generally does not require some or all of the listed studies to rule on the proposed tolerance or exemption from the requirement of a tolerance for an inert ingredient. The Agency has decided that no data, in addition to that described below, for vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer will need to be submitted. The rationale for this decision is described below:

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria that are used to identify low-risk polymers:

1. The minimum number-average molecular weight of vinyl pyrrolidone-dimethylaminoethylmethacrylate

copolymer is greater than 20,000. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through skin or GI tract generally are incapable of eliciting a toxic response.

2. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or a modification of a biopolymer that is substantially intact.

7. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer is not manufactured from reactants containing, other than impurities, halogen atoms or cyano groups.

8. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer does not contain a reactive functional group that is intended or reasonably anticipated to undergo further reaction.

9. Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer is not designed or reasonably expected to substantially degrade, decompose, or depolymerize.

Based on the information above and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, that contains any of the ingredients listed herein may request within 30 days after the publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [OPP-300344]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: May 26, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

Part 180—[Amended]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371

2. Section 180.1001(c) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Vinyl pyrrolidone-dimethylaminoethylmethacrylate copolymer (CAS Reg. No. 30581-590), minimum number average molecular weight 20,000..	.....	Leaching inhibitor, binder for water dispersable aggregates, sticker and suspension stabilizer
* * *	* * *	* * *

* * * * *

[FR Doc. 94-13674 Filed 6-7-94; 8:45 am]
BILLING CODE 6560-60-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD-409-P]

RIN 0938-AD02

Medicare Program; Optional Payment System for Low Medicare Volume Skilled Nursing Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 9126 of the Consolidated Omnibus Budget Reconciliation Act of 1985 by allowing skilled nursing facilities (SNFs) that provide fewer than 1,500 days of care to Medicare beneficiaries in a cost reporting period to have the option of receiving prospectively determined payment rates in the following cost reporting period. The prospectively determined payment rates would be based on components of SNF costs such as routine operating costs, capital-related costs, and a return on equity for proprietary facilities for routine services furnished before October 1, 1993. This proposed rule would also specify, as required by section 13503(c) of the Omnibus Budget Reconciliation Act of 1993, that the return on equity provision for proprietary SNFs is eliminated for services furnished on or after October 1, 1993.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 8, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-409-P, P.O. Box 7517, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD-409-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

For comments that relate to information collection requirements, mail a copy of comments to: Allison Herron Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3001, New Executive Office Building, Washington, DC 20503.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783-3238 or by faxing to (202) 275-6802. The cost for each copy is $4.50. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

David Goldberg—Simplified Cost Reporting (410) 966-4517

Robert Kuhl—All Other Issues (410) 966-4597

SUPPLEMENTARY INFORMATION:

I. Background

A. Payment on a Reasonable Cost Basis

Skilled nursing facilities (SNFs) are paid on the basis of reasonable cost as defined by section 1861(v)(1) of the Social Security Act (the Act). Under this section, the Secretary is also authorized to establish limits on the allowable costs incurred by providers of health care services, such as SNFs, in furnishing care to Medicare beneficiaries. The limits are based on estimates of the costs necessary for the efficient delivery of needed health services. Implementing regulations appear at 42 CFR 413.30.

Sections 1861(v)(1)(A), (v)(1)(E), (v)(7), and 1888 of the Act provide authority for the payment of routine service costs to SNFs. Section 1888 of the Act provides for the following:

- Separate cost limits for hospital-based and freestanding SNFs.
- Cost limits for freestanding SNFs are to be set at 112 percent of the mean inpatient routine service costs for freestanding SNFs in urban and rural areas respectively.
- Cost limits for hospital-based SNFs are to be set at the freestanding limit plus 50 percent of the difference between 112 percent of mean per diem hospital-based inpatient routine service costs for urban and rural SNFs, respectively, and the freestanding limit.
- For cost reporting periods beginning before October 1, 1993, cost differences between hospital-based and freestanding SNFs attributable to excess overhead allocations resulting from Medicare payment principles are recognized as an add-on to the cost limit for hospital-based SNFs, as determined by the Secretary. Section 13503(a)(3) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66) eliminated this add-on for cost reporting periods beginning on or after October 1, 1993.

B. Legislation

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272) was enacted. Section 9126(a) of Public Law 99-272 added a new section (d) to section 1888 of the Act to require the establishment of prospectively determined payment rates for routine services furnished by certain SNFs. (Technical changes to section 1888(d) of the Act were subsequently made in sections 1895(b)(7)(A) and (b)(7)(B) of the Tax Reform Act of 1986 (Pub. L. 99-514).)

In response to a strong interest by Congress in beneficiary access to SNF care, HCFA conducted a study of SNF payment on a reasonable cost basis. The first results of this study were reported to Congress in 1985 (See Health Care Financing Review, Fall 1986, Vol. 8, No. 1). This study showed that it was widely believed that the current payment system contributed to the limited access to care and that the reporting burden involved plus the time delay in determining exact payment amounts inherent in this system due to retrospective payment adjustments may have discouraged facilities that would have had a low Medicare patient load from furnishing services to Medicare beneficiaries. A change was needed to increase beneficiary access to SNF services by easing the reporting burden for low volume SNFs. In enacting section 9126(a) of Public Law 99-272, Congress made this change possible.

Section 1888(d) of the Act provides that the prospectively determined payment rate is optional for the eligible SNFs, and it is to be determined on a per diem basis for the cost of furnishing inpatient routine services and associated capital-related costs. As specified in the Conference Committee Report accompanying Public Law 99-272 (H.R. Rep. No. 453, 99th Cong., 2nd Sess. 480 (1985)), the rates paid to proprietary SNFs were to include a component for return on equity related to routine service costs.

The specific provisions of section 9126 of Public Law 99-272 are as follows:

- Requirements for Eligibility To Receive SNF Prospectively Determined Payment Rate: Maximum Medicare Inpatient Days

Under section 1888(d)(1)(f) of the Act, SNFs that had fewer than 1,500 Medicare inpatient days in one cost reporting period have the option of being paid on the basis of a prospectively determined payment rate in the following cost reporting period.

- Determining the Amount of Payment for Routine Services

Section 1888(d)(2) of the Act requires that the amount of payment under the SNF prospectively determined payment rate system be determined on a per diem basis. However, it may not exceed the limit on routine service costs set forth in section 1888(a) of the Act with respect to the facility, adjusted to take into account average capital-related costs with respect to the type and location of the facility. The limit used for this purpose is the applicable routine service cost limit in effect when the provider elects to be paid a prospectively determined payment rate.

For SNFs located in an urban area, the prospectively determined payment amount is equal to 105 percent of the mean of the per diem reasonable routine service and routine capital-related costs of services for SNFs in urban areas within the same census region. The mean per diem is determined without regard to the limitations of section 1888(a) of the Act and is adjusted for different area wage levels.

For SNFs located in a rural area, the prospectively determined payment amount is equal to 105 percent of the mean of the per diem reasonable routine service and routine capital-related costs of covered services for SNFs in rural areas within the same census region. The mean per diem is determined without regard to the limitations of section 1888(a) of the Act and is adjusted for different area wage levels

- Determining Area Prospectively Determined Payment Rates

Section 1888(d)(3) of the Act requires that, for purposes of determining SNF prospectively determined payment rates, urban and rural areas be determined in the same manner as for purposes of section 1888(a) of the Act (that is, the provisions governing the SNF cost limits). It further requires that the term "region" have the same meaning as that under section 1886(d)(2)(D) of the Act. That section defines "region" for purposes of the inpatient hospital prospective payment system as one of the nine census divisions, comprising the 50 States and the District of Columbia, that are established by the Bureau of the Census for statistical and reporting purposes. Since rates must be determined on a regional basis, eligibility is limited to SNFs within the areas for which rates are available.

- Notification Required

Under section 1888(d)(4) of the Act, the Secretary is required to establish the prospectively determined payment rates for each Federal fiscal year, at least 90 days prior to the beginning of that fiscal year. The law also requires an SNF to notify the Secretary of its intention to be paid a prospectively determined payment rate no later than 30 days before the beginning of the cost reporting period for which the request is made.

- Cost Report Simplification

Under section 1888(d)(5) of the Act, the Secretary is required to provide for a simplified cost report to be filed by SNFs being paid under prospectively determined payment rates. This cost report must require only the cost information necessary for determining prospectively determined payment rates in accordance with section 1888(d)(2) of the Act and reasonable costs of ancillary services.

- Payment for Ancillary Services

Section 1888(d)(6) of the Act provides that, in the case of an SNF receiving prospectively determined payment rates, the Secretary may pay for ancillary services on a reasonable charge basis, rather than on a cost basis, if the Secretary determines that a reasonable charge basis provides an equitable level of payment and eases the SNF's reporting burden.

- Costs of Implementing Nursing Home Reform Provisions

Section 1888(d)(7) of the Act requires that the computation of the rates of payment take into account the additional costs of implementing nursing home reform provisions (including the costs of conducting nurse aide training and competency evaluation programs). In the manual issuances effective on or after October 1, 1989, we have allowed for an adjustment to the prospectively determined payment rates to account for these additional costs. However, this adjustment is necessary only if the cost data used to develop the prospectively determined payment rates were compiled from cost reporting periods that began prior to October 1, 1990, the effective date of the nursing home reform provisions. In the future, when later cost report data reflect these additional costs, the resulting prospectively determined payment rates will automatically include these costs and an adjustment will not be necessary. Therefore, we believe that it is not necessary to implement this provision in the proposed regulations.

In addition, section 9311(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), which was enacted on October 21, 1986, amended section 1815 of the Act to identify situations in which we are to provide (or continue to provide) payment on a periodic interim basis. Section 1815(e)(2)(C) of the Act specifically directs that periodic interim payments be made available to facilities furnishing extended care services, including facilities being paid on a reasonable cost basis as well as those being paid prospectively determined payment rates.

Section 1815(e)(2) of the Act provides that periodic interim payments be made under the standards established under § 405.454(j) of the regulations (now redesignated as § 413.64(h); see 51 FR 34790, September 30, 1986). Section 413.64(h)(2) sets forth the requirements that providers of health care services (such as SNFs) must meet in order to qualify for periodic interim payments. The requirements concern the level of a provider's estimated annual Medicare payment, whether a Medicare cost report has been filed, and recordkeeping and financial matters.

While SNFs that elect prospectively determined payment rates may qualify for periodic interim payments, we note that electing a bill-by-bill payment method has the advantage of providing a payment amount for routine services under prospectively determined payment rates that would not create the need for retroactive payment adjustments. Such adjustments would be necessary under the periodic interim payment method and are the source of

some criticism under payment on a reasonable cost basis.

On August 10, 1993, Public Law 103–66 was enacted. Section 13503(c) of Public Law 103–66 amended section 1861(v)(1)(B) of the Act to eliminate the provision for payment for a return on equity for services furnished by proprietary SNFs on or after October 1, 1993. Also, we note that section 13503(b) states that the Secretary may not change the amount of any prospectively determined payment rate paid to a SNF under section 1888(d) of the Act for services furnished during cost reporting periods beginning during FYs 1994 and 1995, except as necessary to take into account the elimination of the return on equity provision.

C. Manual Issuance

As noted above, section 1888(d) of the Act, as enacted by section 9126(a) of Public Law 99–272, provides for the optional prospectively determined payment rate system for SNF routine services. In order to provide the public with information on the rates as soon as possible and to implement the prospectively determined rates, we issued sections 2820 through 2822 of Chapter 28 of the Provider Reimbursement Manual (HCFA Pub. 15–1) in August 1986.

In the manual transmittal, we provided guidelines for implementing per diem prospectively determined payment rates for SNF routine services. The rates were effective for cost reporting periods beginning on or after October 1, 1986, but before October 1, 1987. Additional transmittals were issued providing rates for subsequent cost reporting periods. The provisions of Chapter 28 of the Provider Reimbursement Manual closely adhere to the requirements of section 1888(d) of the Act, as described below. In calculating the prospectively determined payment rates announced in the manual transmittals, we used the most recent data available at that time.

The provisions of Chapter 28 of the Provider Reimbursement Manual are as follows:

- Eligibility Criteria

We stipulated the statutory criterion that an SNF may choose to be paid under the prospectively determined payment rate option for general inpatient routine services if the facility had, in its immediately preceding cost reporting period, fewer than 1,500 Medicare patient days.

- Classification Criteria

For prospectively determined payment rate purposes, we grouped SNFs by census region, and by urban area or rural area designation within the region. As required by section 1888(d)(3) of the Act and as stated above, the term "region" means one of the nine census divisions, comprising the fifty States and the District of Columbia. The term "urban area" means an area within a Metropolitan Statistical Area (MSA) (as defined by the Office of Management and Budget (OMB)). The term "rural area" means any area outside an urban area.

- Adjustment of SNF Cost Data by Wage Index

We adjust the labor portion of the prospectively determined payment rate to account for area wage differences through the application of an appropriate wage index.

The labor-related costs are those costs in the market basket that change with local wage variations. This method of adjusting labor-related costs is the same as that used in implementing the current SNF limits. The wage index values are the same as those used to compute the SNF limits in effect for the same period as the prospectively determined payment rates.

- Use of SNF Market Basket Index

We based the prospectively determined payment rate on reported costs, adjusted for actual and projected cost increases by applying the SNF market basket index. The methodology of applying this index is the same as that described in our October 7, 1992 notice of SNF limits (57 FR 46177). Capital costs are not adjusted for inflation because depreciation is fixed on a straight line basis, capital-related interest is long term fixed rate debt and, where appropriate, return on equity can fluctuate from year to year. We cannot predict the amount or direction of fluctuations in equity.

- Ancillary Services

For SNFs electing to receive payment under prospectively determined payment rates, ancillary services are paid on the basis of reasonable cost with retroactive adjustment based on an annual cost report.

II. Discussion of Proposed Regulations

We stated in the original manual transmittal discussed above that we planned to pursue rulemaking to establish a framework in regulations for payment to SNFs under prospectively determined payment rates. Below, we describe proposed regulations that would be effective for revising the prospectively determined payment rates for the Federal fiscal year that begins at least 30 days after the publication of a final rule. In the interim, we will continue to update the prospectively determined payment rates through Chapter 28 of the Provider Reimbursement Manual.

We are proposing to add a new Subpart I, Optional Prospectively Determined Payment Rates for Certain Skilled Nursing Facilities, to 42 CFR part 413. This new subpart would set forth regulations that are consistent with the statutory changes to section 1888 of the Act made by provisions in Public Laws 99–272, 99–514, and 103–66.

A. General Provisions

We are proposing to add new § 413.300 to introduce the contents of Subpart I. This section would broadly list the conditions and procedures for making prospectively determined payments to qualifying SNFs. In new § 413.302, we would provide definitions of the terms "area wage level", "census region", "routine operating costs", "routine capital-related costs", and "urban" and "rural" areas as described above.

B. Eligibility Criteria

We are proposing to add new § 413.304 to describe the eligibility criteria specified in section 1888(d)(1) of the Act. SNFs that furnished fewer than 1,500 Medicare covered inpatient days in a cost reporting period as reported on the Medicare cost report would be allowed the option of being paid on the basis of prospectively determined payment rates during the next cost reporting period. If an SNF's preceding Medicare cost reporting period was shorter than a full calendar year, it must have had an average daily Medicare census (that is, the total Medicare inpatient days divided by the total number of inpatient days) for the period of not greater than 4.1 to qualify for prospectively determined payment. This figure was determined by dividing 1,499 (that is, the largest number of Medicare inpatient days fewer than 1,500) by the number of days in a calendar year. If there is no preceding cost reporting period for which an SNF was approved for Medicare participation, we propose that the SNF would automatically qualify for prospectively determined payment.

C. Approval Process

In the new § 413.308, we would establish rules to govern the process by which SNFs may request and be approved for payment under the prospectively determined payment rate option. Under section 1888(d) of the Act, we are required to establish the

prospectively determined payment rates at least 90 days prior to the beginning of each Federal fiscal year (that is, by July 1 of each year). An SNF may request to receive prospectively determined payments by notifying its fiscal intermediary of its intention at least 30 days prior to the beginning of the cost reporting period for which the request is made. The intermediary would notify the SNF as to whether the SNF qualifies for the option.

In most cases, a final count of Medicare inpatient days cannot be made for a cost reporting period prior to the beginning of the next cost reporting period. Therefore, the intermediary's initial determination of provider eligibility would be a tentative approval or disapproval. The final determination would be made once a count of the total Medicare inpatient days in the preceding cost reporting period is available. We would provide that the intermediary notify the SNF of the final determination within 10 working days after the data necessary to make the determination are available. If tentative approval was given and the final determination is that the SNF does not qualify to be paid on the basis of a prospectively determined payment rate, the intermediary will adjust payments to reflect payment on a reasonable cost basis.

For a newly certified SNF with no preceding cost reporting period, the election must be made within 30 days of its notification of approval to participate in Medicare.

The election by the SNF and any approval by the intermediary would be effective for only one cost reporting period at a time. We would also specify that once an election has been made and approved and the cost reporting period has begun, the SNF may not revoke its election for that period. Each SNF electing to receive a prospectively determined payment rate would agree to accept that rate prior to the start of the cost reporting period, regardless of what its final costs for the period would be. Under this proposed rule, the provider has traded the opportunity for any retroactive adjustments for the opportunity to operate at a profit and the foreknowledge of a specified rate. To allow a provider to reverse its election would entirely defeat the purpose and the philosophy of a prospectively determined payment program.

D. Basis of Payment

We propose to add new § 413.310 to set forth the basis of payment to be used for routine service costs, capital-related costs, and return on equity (for services furnished before October 1, 1993), as well as for ancillary service costs, as specified in sections 1888 (d)(2) and (d)(6) of the Act. We would specify the following:

- Prospectively determined payment is in lieu of payment on a reasonable cost basis for routine services.
- The routine operating component of the prospectively determined payment rate excluding capital cost, and excluding return on equity (if applicable) may not exceed the amount of the provider's routine service cost limit determined under § 413.30 that is in effect when the provider elects to be paid a prospectively determined payment rate.

E. Methodology for Calculating Rates

We are proposing to add new § 413.312 to establish the methodology for determining the prospectively determined payment rates as specified in sections 1888 (d)(2) and (d)(6) of the Act. Under these sections of the Act, mean per diem routine operating costs, capital-related costs, and, for proprietary SNFs, return on equity for services furnished before October 1, 1993, are determined separately for SNFs located in urban areas and those in rural areas for the nine census regions. To reflect those statutory provisions, the basic methodology discussed below would be established in regulations. This methodology would be used to establish the prospectively determined payment rates each year. The rates would be published in the **Federal Register** as described in § 413.320. Amendments to the regulations would be proposed to implement changes to the basic methodology described in §§ 413.312 through 413.314.

The capital-related portion of the per diem rate would be calculated from the SNF's capital costs as reported on the Medicare cost report. The capital-related portion includes both direct and indirect capital costs allocated to routine services. A per diem capital amount would be determined by dividing each SNF's capital-related costs by its inpatient days. A group mean would be computed and the mean multiplied by 105 percent.

For services furnished before October 1, 1993, the return on equity portion of the per diem rate would be calculated using the return on equity from each proprietary SNF's cost report. The current allowable return on equity is equal to 100 percent of the average rate of interest of public debt obligations issued by the Federal Hospital Insurance Trust Fund. For cost reporting periods beginning prior to October 1, 1985, the allowable return on equity was equal to 150 percent of the average rate. Therefore, the return on equity data from cost reports for periods beginning prior to October 1, 1985 must be adjusted and is multiplied by 67 percent to reflect the decrease in the rate of return on equity. (The 67 percent represents the ratio of 100 percent to 150 percent. When future updates of the prospectively determined payment rates use later cost report data that include the current allowable return on equity, this adjustment would no longer be needed.) The per diem would then be determined by dividing the SNF's adjusted return on equity by its inpatient days. A group mean would be determined and each group mean multiplied by 105 percent to determine that portion of the rate.

F. Determining Routine Per Diem Rate

In § 413.314, we describe proposed methodology for determining the routine per diem rate for an SNF. We explain that the per diem rate would be composed of a routine operating portion, a capital-related cost portion applicable to routine services, and, for proprietary SNFs, a return on equity portion for services furnished before October 1, 1993. The labor-related costs of the routine operating portion would be adjusted to reflect area wage differences. The total rate would be adjusted by using a factor based on the projected increase in the market basket index to reflect a different cost reporting period if an SNF's cost reporting period is other than October 1 through September 30.

We would also provide that the prospectively determined payment rate, excluding capital, and excluding return on equity (if applicable) may not exceed the amount of an SNF's routine service cost limit that is in effect when the provider elects to be paid a prospective payment rate.

In developing the proposed prospectively determined payment rates, we considered: a rate for freestanding facilities based on freestanding SNF cost data and a rate for hospital-based facilities based on hospital-based SNF cost data; and a single rate (for urban and rural locations, respectively) based on combined freestanding and hospital-based SNF cost data. The current and the proposed single prospectively determined payment rates are based on combined freestanding and hospital-based SNF cost data. We believe that the proposed methodology of basing the prospectively determined payment rates on combined freestanding and hospital-based SNF cost data is consistent with and represents the most accurate

reading of section 1888(d)(2)(B) of the Act. We are especially interested in receiving public comments on the proposed methodology.

G. Determining Payment Amount for Ancillary Services

In searching for a way to implement section 1888(d)(6) of the Act and bring ancillary services under the prospectively determined payment rate system, we considered a number of different payment methodologies.

We determined that only one methodology could clearly fit the requirement for a method for determining payment rates prospectively based on reasonable charges. This method would develop reasonable charge payment screens applicable to ancillary services furnished by all SNFs in a particular area. These payment screens would function similarly to current Medicare reasonable charge based fee schedule amounts. However, we have no data at this time upon which to base payment screens that would provide an equitable level of payment, as required under 1888(d)(6) of the Act.

We also considered the following alternative payment methodologies, some of which may not be consistent with the reasonable charge methodology intended by the statute, while others clearly are not based on charges. However, we believe that it may be beneficial to discuss and solicit comments on these methodologies in this proposed rule.

Currently, ancillary payments are determined by applying the provider's cost-to-charge ratio to ancillary charges. One method we considered was establishing an average total cost-to-charge ratio for urban and rural areas within each census area. This ratio could be used by all SNFs within the geographic area and could be applied to the charges for all services. While this would be a simplified approach, we do not believe that it would provide appropriate payment in all cases. It would not account for the wide variation among SNFs in the kinds of services furnished, or the wide variations in the providers' cost-to-charge ratios. It could also discriminate against those SNFs furnishing more resource-intensive ancillary services and could encourage substituting low cost services for more costly services. Some of these problems could be ameliorated by the use of a separate ratio for each service. We did not review the data for this option because we do not believe this payment methodology meets the statutory requirements.

We considered a method of paying for ancillary services on the basis of estimated cost with no retroactive cost settlement. Payment would be based on current charges converted to estimated cost, using the cost-to-charge ratio from the cost report for the most recent 12-month cost reporting period for which a Notice of Amount of Program Reimbursement (NPR) has been issued. From that cost report, we would obtain the cost-to-charge ratio (not to exceed 1.0) for each ancillary cost center and multiply the ratio by the same cost center's ancillary charges in the period for which the election to receive prospectively determined payment is made. The average cost-to-charge ratio (not to exceed 1.0) for the urban and rural area within each census region would be used if, for any reason, there is no prior year period for which an NPR has been issued. Capital cost would also be reflected in the cost-to-charge ratio; therefore, no additional capital payment would be made. This methodology would be used to determine payment under both Part A and Part B of Medicare. All applicable coinsurance and deductibles would continue to be applied.

While this approach does present some positive features, it could be problematic. First, this method is not consistent with the statutory requirement that ancillary services be paid on the basis of either actual cost or reasonable charges. In addition, it is possible that there would be a wide variation between estimated cost and actual cost. However, as in a prior approach, we did not review the data for this option because we do not believe this payment methodology meets the statutory requirements.

We considered two methodologies for establishing a prospective per diem rate for ancillary services. The rate would be based on historical cost report data, as follows:

- Develop a flat average per diem in the aggregate for all ancillary services, by location; or
- Develop an average by ancillary service equal to 105 percent of the appropriate group mean, by location.

While both of these approaches would have the advantage of being easy to administer and informing the provider precisely how much it would be paid, there are some problems with implementing an average per diem cost based rate. First, neither approach meets the alternative statutory methodology of payment for ancillary services on the basis of reasonable charges. The first approach would also not recognize the wide variations in the types of ancillary services provided by different SNFs. Neither approach would take into consideration the fact that, with respect to SNFs, ancillary services may be provided by outside suppliers. Either approach could also act as a disincentive to providing resource-intensive services, or in some cases, any ancillary services. The historical data used in either approach do not take into account any changes, especially increases, in patient acuity levels that could impact on the utilization of current ancillary services.

We considered a facility specific prospectively determined per diem payment for ancillary services subject to an adjustable limit. Both the payment amount and the adjustable limit would be based on historical cost data. Therefore, in addition to not meeting the mandate for an alternate methodology of payment on the basis of reasonable charges, the historical data do not account for changes in utilization of ancillary services due to increases in patient acuity.

We considered one methodology even though it does not meet the alternate prospective methodology of payment on the basis of reasonable charges but does meet the requirement of 1861(v)(1)(A). That is, similar to the current routine cost limit system, we would make payments for ancillary services not to exceed 105 percent of the appropriate group mean for SNFs by location. Since this payment could not be prospectively determined, we did not consider incorporating this methodology into this proposed notice.

Finally, we considered developing a case-mix adjusted per diem payment for ancillary services. HCFA is currently studying the feasibility of a case-mix type payment system for Medicare SNFs. The data to develop a case-mix adjusted ancillary cost per diem are not currently available.

In reviewing these various methodologies for payment of ancillary costs, we are interested in a methodology that would be easy to apply and that would result in payment commensurate with the services provided. We also would prefer to adopt a methodology that recognizes the wide variation in services among SNFs. We were unable to develop a methodology based on available data that met these requirements. We therefore are soliciting comments on any of the methodologies described above or any additional methodologies not mentioned.

Until such time as a methodology can be developed, ancillary services would continue to be paid on the basis of reasonable costs.

H. Publication of Rates

In new § 413.320, we would provide that HCFA will update the routine prospectively determined payment rates in a **Federal Register** notice published no later than July 1 of each year. In the notices, we would establish the rates for routine services under the prospectively determined payment rate system.

I. Simplified Cost Report

All Medicare providers with low Medicare utilization have had, at the intermediary's discretion, the option of filing less than a full Medicare cost report. This option would continue to be available to those SNFs that qualify for it.

In addition, in new § 413.321, we would provide that a simplified cost report would be filed by certain SNFs receiving a prospectively determined rate. At this time, a simplified form is available only for freestanding SNFs. The simplified form is not applicable to hospital-based SNFs or SNFs that are a part of a health care complex. Another simplified form to be used by those facilities will be available in the future.

The new simplified cost report requires inputting only the cost information necessary for determining prospective payment rates. The report employs a simplified method of cost finding to be used in lieu of the cost finding methods described in § 413.24(d). This method is specified in the instructions for Form-HCFA 2540S, contained in sections 3000–3027.3 of Part 2 of the Provider Reimbursement Manual. We are also proposing to change § 413.24(d) to clarify that the cost finding provisions of that regulation do not apply to those SNFs that qualify for the simplified method of cost finding. In addition, § 413.24(h) would be revised to clarify that the waiver of full cost reporting for low program utilization also applies to providers filing a simplified cost report.

III. Impact Statement

Unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612). For purposes of the RFA, we consider SNFs as small entities.

Medicare payments to SNFs comprise only about 5.3 percent of total SNF revenues and this rule would only have a small impact on those revenues. Moreover, the purpose of this rule is to ease the compliance burden for small entities, and we believe the rule would have a positive impact on small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact statement if a proposed rule may have a significant economic impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds.

We have determined, and the Secretary certifies, that this proposed rule would not have a significant effect on the operations of a substantial number of small entities or on small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of the effects of this rule on small rural hospitals.

In accordance with the provisions of Executive Order 12866 this regulation was not reviewed by the Office of Management and Budget.

IV. Response to Comments

A. Public Comment

Because of the large number of items of correspondence we normally receive on FR documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

B. Paperwork Reduction Act

Section 413.308 of this proposed rule contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511), we have submitted a copy of this proposed rule to the Executive Office of Management and Budget (EOMB) for its review of these information collection requirements. Total public reporting burden for this collection of information is estimated to be 1,200 hours during the first 12-month period that the rule would be in effect. A notice will be published in the **Federal Register** after approval is obtained. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the OMB official whose name appears in the **ADDRESSES** section of this preamble.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reason set out in the preamble 42 CFR part 413 is proposed to be amended as follows:

A. The title of part 413 is amended to read as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

B. Part 413 is amended as follows:

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833 (a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l (a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); sec. 104(c) of Public Law 100–360 as amended by sec. 608(d)(3) of Public Law 100–485 (42 U.S.C. 1395ww (note)); sec 101(c) of Public Law 101–234 (42 U.S.C. 1395ww (note)); and sec. 13503 of Public Law 103–66 (42 U.S.C. 1395ww (note))

Subpart A—Introduction and General Rules

2. In § 413.1, a new paragraph (g) is added to read as follows:

§ 413.1 Introduction.

* * * * *

(g) *Prospectively determined payment rates for low Medicare volume SNFs.* Rules governing requests by SNFs for prospectively determined payment rates under section 1888(d) of the Act are set forth in subpart I of this part.

Subpart B—Accounting Records and Reports

3. In § 413.24 the introductory text of paragraph (d), and paragraph (h), are revised to read as follows:

§ 413.24 Adequate cost data and cost finding.

* * * * *

(d) *Cost finding methods.* After the close of the accounting period, providers must use one of the following methods of cost finding to determine the actual costs of services furnished during that period. These provisions do not apply to SNFs that elect and qualify for prospectively determined payment rates under subpart I of this part for cost reporting periods beginning on or after October 1, 1986. For the special rules that are applicable to those SNFs, see

§ 413.321. For cost reporting periods beginning after December 31, 1971, providers using the departmental method of cost apportionment must use the step-down method described in paragraph (d)(1) of this section or an "other method" described in paragraph (d)(2) of this section. For cost reporting periods beginning after December 31, 1971, providers using the combination method of cost apportionment must use the modified cost finding method described in paragraph (d)(3) of this section. Effective for cost reporting periods beginning on or after October 1, 1980, HHAs not based in hospitals or SNFs must use the step-down method described in paragraph (d)(1) of this section. (HHAs based in hospitals or SNFs must use the method applicable to the parent institution.) However, an HHA not based in a hospital or SNF that received less than $35,000 in Medicare payment for the immediately preceding cost reporting period, and for whom this payment represented less than 50 percent of the total operating cost of the agency, may use a simplified version of the step-down method, as specified in instuctions for the cost report issued by HCFA.

* * * * *

(h) *Waiver of full or simplified cost reporting for low program utilization*—(1) If the provider has had low utilization of covered services by Medicare beneficiaries (as determined by the intermediary) and has received correspondingly low interim payments for the cost reporting period, the intermediary may waive a full cost report or the simplified cost report described in § 413.321 if it decides that it can determine, without a full or simplified report, the reasonable cost of covered services provided during that period.

(2) If a full or simplified cost report is waived, the provider must submit within the same time period required for full or simplified cost reports:

(i) The cost reporting forms prescribed by HCFA for this situation; and

(ii) Any other financial and statistical data the intermediary requires.

4. A new subpart I is added to read as follows:

Subpart I—Prospectively Determined Payment Rates for Skilled Nursing Facilities

Sec.
413.300 Basis and scope.
413.302 Definitions.
413.304 Eligibility for prospectively determined payment rates.
413.308 Rules governing election of prospectively determined payment rates.
413.310 Basis of payment.
413.312 Methodology for calculating rates.
413.314 Determining payment amounts: Routine per diem rate.
413.316 Determining payment amounts: Ancillary services.
413.320 Publication of prospectively determined payment rates or amounts.
413.321 Simplified cost reports for SNFs.

Subpart I—Prospectively Determined Payment Rates for Skilled Nursing Facilities

§ 413.300 Basis and scope.

(a) *Basis.* This subpart implements section 1888(d) of the Act, which provides for optional prospectively determined payment rates for qualified SNFs.

(b) *Scope.* This subpart sets forth the eligibility criteria an SNF must meet to qualify, the process governing election of prospectively determined payment rates, and the basis and methodology for determining prospectively determined payment rates.

§ 413.302 Definitions.

For purposes of this subpart—

Area wage level means the average wage per hour for all classifications of employees as reported by health care facilities within a specified area.

Census region means one of the nine census divisions, comprising the fifty States and the District of Columbia, established by the Bureau of the Census for statistical and reporting purposes.

Routine capital-related costs means the capital-related costs, allowable for Medicare purposes (as described in subpart G of this part), that are allocated to the SNF participating inpatient routine service cost center as reported on the Medicare cost report.

Routine operating costs means the cost of regular room, dietary, and nursing services, and minor medical and surgical supplies for which a separate charge is not customarily made. It does not include the costs of ancillary services, capital-related costs, or, where appropriate, return on equity.

Rural area means any area outside an urban area in a census region.

Urban area means a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA), as defined by the Office of Management and Budget, or a New England county deemed to be an urban area, as listed in § 412.62(f)(ii)(B) of this chapter.

§ 413.304 Eligibility for prospectively determined payment rates.

(a) *General rule.* An SNF may receive a prospectively determined payment rate for a cost reporting period only if it had fewer than 1,500 Medicare covered inpatient days as reported on a Medicare cost report in its immediately preceding cost reporting period. This criterion applies even if the SNF received a prospectively determined payment rate during the preceding cost reporting period.

(b) *Less than a full cost reporting period.* If the cost reporting period that precedes an SNF's request for prospectively determined payment is not a full cost reporting period, the SNF may receive prospectively determined payment rates only if the average daily Medicare census for the period (Medicare inpatient days divided by the total number of days in the cost reporting period) is not greater than 4.1.

(c) *Newly-participating SNFs.* An SNF may receive prospectively determined payment rates for its first cost reporting period for which it is approved to participate in Medicare.

§ 413.308 Rules governing election of prospectively determined payment rates.

(a) *Requirements.* An SNF must notify its intermediary at least 30 calendar days before the beginning of the cost reporting period for which it requests to receive such payment that it elects prospectively determined payment rates. A separate request must be made for each cost reporting period for which an SNF seeks prospective payment. A newly participating SNF with no preceding cost reporting period must make its election within 30 days of its notification of approval to participate in Medicare.

(b) *Intermediary notice.* After evaluating an SNF's request for prospectively determined payment rates, the intermediary notifies the SNF in writing as to whether the SNF meets any of the eligibility criteria described in § 413.304. The intermediary must notify the SNF of its determination within 10 working days after it receives all the data necessary to make the determination. The intermediary's determination is limited to one cost reporting period.

(c) *Prohibition against revocation.* An SNF may not revoke its request after it has received final determination of eligibility from the intermediary and the cost reporting period has begun.

§ 413.310 Basis of payment.

(a) *Method of payment.* Under the prospectively determined payment rate system, a qualified SNF receives a per diem payment of a predetermined rate for inpatient services furnished to Medicare beneficiaries. Each SNF's routine per diem payment rate is determined according to the methodology described in § 413.312 and is based on various components of SNF costs.

(b) *Payment in full.* The payment rate represents payment in full for routine services as described in § 413.314 (subject to applicable coinsurance as described in subpart G of part 409 of this title). Payment is made in lieu of payment on a reasonable cost basis for routine services.

§ 413.312 Methodology for calculating rates.

(a) *Data used*—(1) To calculate the prospectively determined payment rates, HCFA uses:

(i) The SNF cost data that were used to develop the applicable routine service cost limits;

(ii) A wage index to adjust for area wage differences; and

(iii) The most recent projections of increases in the costs from the SNF market basket index.

(2) In the annual schedule of rates published in the **Federal Register** under the authority of § 413.320, HCFA announces the wage index and the annual percentage increases in the market basket used in the calculation of the rates.

(b) *Calculation of per diem rate*—(1) *Routine operating component of rate*—(i) *Adjusting cost report data.* The SNF market basket index is used to adjust the routine operating cost from the SNF cost report to reflect cost increases occurring between cost reporting periods represented in the data collected and the midpoint of the initial cost reporting period to which the payment rates apply.

(ii) *Calculating a per diem cost.* For each SNF, an adjusted routine operating per diem cost is computed by dividing the adjusted routine operating cost (see paragraph (b)(1)(i) of this section) by the SNF's total patient days.

(iii) *Adjusting for wage levels*—(A) The SNF's adjusted per diem routine operating cost calculated under paragraph (b)(1)(ii) of this section is then divided into labor-related and nonlabor-related portions.

(B) The labor-related portion is obtained by multiplying the SNF's adjusted per diem routine operating cost by a percentage that represents the labor-related portion of cost from the market basket. This percentage is published when the revised rates are published as described in § 413.320.

(C) The labor-related portion of each SNF's per diem cost is divided by the wage index applicable to the SNF's geographic location to arrive at the adjusted labor-related portion of routine cost.

(iv) *Group means.* SNFs are grouped by urban or rural location by census region. Separate means of adjusted labor-related and nonlabor routine operating costs for each SNF group are established in accordance with the SNF's region and urban or rural location. For each group, the mean labor-related and mean nonlabor-related per diem routine operating costs are multiplied by 105 percent.

(2) *Computation of routine capital-related cost.* (i) The SNF routine capital-related cost for both direct and indirect capital costs allocated to routine services, as reported on the Medicare cost report, is obtained for each SNF in the data base.

(ii) For each SNF, the per diem capital-related cost is calculated by dividing the SNF's routine capital costs by its inpatient days.

(iii) SNFs are grouped by urban and rural location by census region, and mean per diem routine capital-related cost is determined for each group.

(iv) Each group mean per diem capital-related cost is multiplied by 105 percent.

(3) *Computation of return on owner's equity for services furnished before October 1, 1993*—(i) Each proprietary SNF's Medicare return on equity is obtained from its cost report and the portion attributable to the routine service cost is determined as described in § 413.157.

(ii) For each proprietary SNF, per diem return on equity is calculated by dividing the routine cost related return on equity determined under paragraph (b)(3)(i) of this section by the SNF's total Medicare inpatient days.

(iii) Separate group means are computed for per diem return on equity of proprietary SNFs, based on regional and urban or rural classification.

(iv) Each group mean is multiplied by 105 percent.

§ 413.314 Determining payment amounts: Routine per diem rate.

(a) *General rule.* An SNF that elects to be paid under the prospectively determined payment rate system is paid a per diem rate for inpatient routine services. This rate is adjusted to reflect area wage differences and the cost reporting period beginning date (if necessary) and is subject to the limitation described below.

(b) *Per diem rate.* The prospectively determined payment rate for each urban and rural area in each census region is comprised of the following:

(1) A routine operating component, which is divided into:

(i) A labor-related portion adjusted by the appropriate wage index; and

(ii) A nonlabor-related portion.

(2) A routine capital-related cost portion.

(3) For proprietary SNFs only, a portion that is based on the return on owner's equity related to routine cost, applicable only for services furnished before October 1, 1993.

(c) *Adjustment for cost reporting period.* (1) If a facility has a cost reporting period beginning after the beginning of the Federal fiscal year, the intermediary increases the labor-related and nonlabor-related portions of the prospective payment rate that would otherwise apply to the SNF by an adjustment factor. Each factor represents the projected increase in the market basket index for a specific 12-month period. The factors are used to account for inflation in costs for cost reporting periods beginning after October 1. Adjustment factors are published in the annual notice of prospectively determined payment rates described in § 413.320.

(2) If a facility uses a cost reporting period that is not 12 months in duration, the intermediary must obtain a special adjustment factor from HCFA for the specific period.

(d) *Limitation of prospectively determined payment rate.* The per diem prospectively determined payment rate for an SNF, excluding capital-related costs and excluding return on equity for services furnished prior to October 1, 1993, may not exceed the individual SNF's routine service cost limit. Under § 413.30, the routine service cost limit is the limit determined without regard to exemptions, exceptions, or retroactive adjustments, and is the actual limit in effect when the provider elects to be paid a prospectively determined payment rate.

§ 413.316 Determining payment amounts: Ancillary services.

Ancillary services are paid on the basis of reasonable cost in accordance with section 1861(v)(1) of the Act and § 413.53.

§ 413.320 Publication of prospectively determined payment rates or amounts.

At least 90 days prior to the beginning of a Federal fiscal year to which revised prospectively determined payment rates are to be applied, HCFA publishes a notice in the **Federal Register**:

(a) Establishing the prospectively determined payment rates for routine services; and

(b) Explaining the basis on which the prospectively determined payment rates are calculated.

§ 413.321 Simplified cost report for SNFs.

SNFs electing to be paid under the prospectively determined payment rate system may file a simplified cost report.

The cost report contains a simplified method of cost finding to be used in lieu of cost methods described in § 413.24(d). This method is specified in the instructions for Form HCFA–2540S, contained in sections 3000–3027.3 of part 2 of the Provider Reimbursement Manual. This form may not be used by hospital-based SNFs or SNFs that are part of a health care complex. Those SNFs must file a cost report that reflects the shared services and administrative costs of the hospital and any other related facilities in the health care complex.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance).

Dated: March 29, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: May 24, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–13506 Filed 6–7–94; 8:45 am]

BILLING CODE 4120–01–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub-No. 12)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1994 Update

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to adopt the 1994 User Fee Update and revise its fee schedule in compliance with the regulatory requirement that its fees be updated annually. Several new fee items are proposed. In addition, the Commission proposes to realign and clarify some fee items and to adopt fee policy changes which will improve the Commission's user fee program.

DATES: Comments on this proposal are due July 8, 1994.

ADDRESSES: Send an original and 15 copies of comments referring to Ex Parte No. 246 (Sub-No. 12) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 927–5493 or for costing questions David T. Groves, (202) (927–6395) or John C. Pertino, (202) 927–6229. [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Most of the proposed fee revisions result from the application of the Commission's fee update formula and the addition of new direct labor costs for processing fees and checks.

One of the most common fee items which is proposed to be increased is Fee Item (74)(i) for tariff filings. Based on the fee update process and addition of fee and check processing costs, the fee would increase to $13.00. In addition, a special assessment of $2.16 will cover the cost of the Commission's new tariff optical imaging system and should be added to the fee item cost. Therefore, the Commission proposes to increase the tariff filing fee to $15.00.

In addition, the Commission is proposing to modify the fees for previously capped rail finance, abandonment, and exemption proceedings based on a current cost study. However, the Commission is deferring any increases in the capped fees for rail finance petitions for exemption and complaints and complaint-type declaratory order proceedings until next year, because the costs of those fee items are still under study.

The Commission also is proposing to adopt new fee items for accounting interpretations, operational interpretations, extensions of temporary authority, special docket proceedings involving sums of less than $25,000, requests for pleadings lists, the Practitioners' Exam information package, Uniform Railroad Costing System (URCS) software and information, and faxed copies of operating authority.

The fee policy changes proposed will allow the Commission: (1) To accept foreign checks payable in U.S. currency; (2) to update user fees more than once a year; and (3) to charge for publications.

The Commission believes these fee changes will not have a significant economic impact on a substantial number of small entities because the Commission's regulations provide for waiver of filing fees for those entities which can make the required showing of financial hardship. The proposed fee policy changes will not have a significant economic impact on a substantial number of small entities because those changes only involve minor revisions of the Commission's user fee policy.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: May 31, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321

2. Section 1002.1 is proposed to be amended by revising paragraphs (a), (b), (c), (d), and (e)(1) and the chart in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(a) Certificate of the Secretary, $9.00.

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $23.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work etc., incidental thereto, at the rate of $16.00 per hour.

(d) Electrostatic copies of tariffs, reports, and other public documents, at the rate of $.70 per letter size or legal size exposure. A minimum charge of $5.00 will be made for this service.

(e) * * *

(1) A fee of $38.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(f) * * *

(6) * * *

Grade	Rate
GS–1	$6.74
GS–2	7.33
GS–3	8.27
GS–4	9.28
GS–5	10.38
GS–6	11.57
GS–7	12.86
GS–8	14.24

Grade	Rate
GS–9	15.73
GS–10	17.32
GS–11	19.03
GS–12	22.81
GS–13	27.12
GS–14	32.05
GS–15 and over	37.70

* * * * *

3. Section 1002.2 is proposed to be amended by revising paragraphs (a)(3) and (f) to read as follows:

§ 1002.2 Filing fees.

(a) * * *

(3) Fees will be payable to the Interstate Commerce Commission by a check payable in United States currency drawn upon funds deposited in a United States or foreign bank or other financial institution, money order payable in United States' currency, or credit card (VISA or MASTERCARD).

* * * * *

(f) Schedule of filing fees.

Type of proceeding	Fee
Part I: Non-Rail Applications for Operating Authority or Exemptions:	
(1) An application for motor carrier operating authority; a certificate of registration including a certificate of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority.	$300
(2) A fitness-only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products.	150
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.66	2,800
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plant site, or the change of a highway name or number.	50
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923	200
(6) An application to remove restriction or broaden unduly narrow authority	300
(7) An application for authority to deviate from authorized regular-route authority	150
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928	100
(9) An application for motor carrier emergency temporary authority under 49 U.S.C. 10928(c)(1)	100
(10) An extension of the time period during which an outstanding application for temporary or emergency temporary authority as defined in 49 U.S.C. 10928 may continue.	26
(11) Request for name change of carrier, broker, or household goods freight forwarder	13
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1167.3.	150
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10526(a)(5)	70
(14) [Reserved]..	
(15) A joint petition to substitute applicant in a pending operating rights proceeding	30
(16) [Reserved].	
Part II: Non-Rail Proceedings to Discontinue Transportation:	
(17) A notice or petition to discontinue ferry service under 49 U.S.C. 10908	11,900
(18) A petition to discontinue motor carrier of passenger transportation in one state	1,000
(19) [Reserved].	
Part III: Non-Rail Applications or Proceedings to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(20) An application for the pooling or division of traffic	2,300
(21) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343.	1,100
(22) An application for approval of a non-rail rate association agreement 49 U.S.C. 10706	14,500
(23) An application for approval of an amendment to a non-rail rate association agreement-	
(i) Significant amendment	2,400
(ii) Minor amendment	50
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349	250
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker's license under 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544.	300
(26) [Reserved].	
(27) A petition for exemption under 49 U.S.C. 11343(e)	300
(28)–(32) [Reserved].	
Part IV: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings:	
(33):	
(i) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	3,800
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	950
(iii) Petition for exemption under 49 U.S.C. 10505	3,000
(34) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(i)	4,600
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b(1)(A)(ii)	2,600
(36)–(37) [Reserved]	
Part V: Rail Abandonment or Discontinuance of Transportation Services Proceedings:	
(38):	
(i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments under 49 CFR 1152.50).	11,600
(ii) Notice of an exempt abandonments or discontinuances under 49 CFR 1152.50	1,900
(iii) A petition for exemption under 49 U.S.C. 10505	3,300
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to North East Rail Service Act.	250
(40) Abandonments filed by bankrupt railroads. 49 CFR 1152.40	950

Type of proceeding	Fee
(41) [Reserved].	
(42) A notice or petition to discontinue passenger train service	11,800
(43) [Reserved].	
Part VI: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103	9,900
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342	5,400
(46) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11343:	
(i) Major transaction	195,200
(ii) Significant transaction	39,000
(iii) Minor transaction	3,200
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	900
(v) Responsive application	3,200
(vi) Petition for exemption under 49 U.S.C. 10505	3,625
(47) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343:	
(i) Major transaction	195,200
(ii) Significant transaction	39,000
(iii) Minor transaction	3,200
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	700
(v) Responsive application	3,200
(vi) Petition for exemption under 49 U.S.C. 10505	3,625
(48) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343:	
(i) Major transaction	195,200
(ii) Significant transaction	39,000
(iii) Minor transaction	3,200
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	650
(v) Responsive application	3,200
(vi) Petition for exemption under 49 U.S.C. 10505	3,625
(49) An application of a carrier or carriers to purchase, lease or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343:	
(i) Major transaction	195,200
(ii) Significant transaction	39,000
(iii) Minor transaction	3,200
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	750
(v) Responsive application	3,200
(vi) Petition for exemption under 49 U.S.C. 10505	3,625
(50) An application for a determination of fact of competition. 49 U.S.C. 11321(a)(2) or (b)	39,000
(51) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	36,700
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	6,800
(ii) Minor amendment	50
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322	400
(54):	
(i) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for competitive bidding requirements of Ex Parte No. 158, under 49 CFR part 1175 and 49 U.S.C. 11301.	1,700
(ii) Notice of an exempt transaction under 49 CFR part 1175	150
(55) A petition for exemption under 49 U.S.C. 10505 (other than a rulemaking) filed by rail carriers not otherwise covered.	1,625
(56)–(59) [Reserved].	
Part VII: Formal Proceedings:	
(60) A complaint alleging unlawful rates or practices of carriers, property brokers, or freight forwarders of household goods.	1,000
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares, or charges. 49 U.S.C. 10705(f)(1)(A).	4,600
(62) A petition for declaratory order:	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding.	1,000
(ii) All other petitions for declaratory order	1,300
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increases.	8,100
(64) A petition for exemption from filing tariffs by bus carriers	250
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	3,700
(66) Petition for review of state regulation of intrastate rates, rules, or practices filed by interstate rail carriers. 49 U.S.C. 11501.	1,000
(67) Petition for review of state regulation of intrastate rates, rules, or practices filed by interstate bus carriers. 49 U.S.C. 11501.	2,300
(68)–(71) [Reserved].	
Part VIII: Informal Proceedings:	

Type of proceeding	Fee
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster).	650
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements.	60
(74):	
(i) The filing of tariffs, rate schedules, contracts, and/or contract summaries, including supplements	15 per series transmitted
(ii) Tariffs transmitted by fax	1 per page.
(75):	
(i) Special docket applications from rail and water carriers	50
(ii) Special docket application involving sums of $25,000 or less	40
(76) Informal complaint about rail rate application	300
(77):	
(i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BI&PD).	3,900
(ii) An application for original qualification as self-insurer for cargo insurance	400
(78) A service fee for insurer, surety, or self-insurer accepted certificate of insurance, surety bond, or other instrument submitted in lieu of a broker surety bond.	10 per accepted certificate or other instrument in lieu of a broker surety bond.
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR Part 1057	400
(80) A petition for reinstatement of revoked operating authority	70
(81)–(82) [Reserved].	
(83) Petition for reinstatement of a dismissed operating rights application	400
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c)	21 per document
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceeding	1,500
(86) Informal opinions about rate applications (all modes)	50
(87):	
(i) A railroad accounting interpretation	600
(ii) A motor carrier accounting interpretation	150
(88) An operational interpretation	750
(89)–(95) [Reserved]	
Part IX: Services:	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	16 per delivery
(97) Request for service or pleading list for proceedings	12 per list.
(98) Requests for copies of the 1% carload waybill sample	150
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation.	22 per movement verified
(100):	
(i) Application fee for Interstate Commerce Commission Practitioners' Exam	100
(ii) Practitioners' Exam Information Package	25
(101) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual	25
(ii) Updated URCS PC version Phase III cost file if diskette provided by requestor	5
(iii) Updated URCS PC version Phase III cost file, if diskette provided by the Commission	10
(iv) Public requests for Source Codes to the PC version URCS Phase III	500
(v) PC version or mainframe version URCS Phase II	200
(vi) PC version or mainframe version Updated Phase II databases	25
(vii) Public requests for Source Codes to PC version URCS Phase II	1,000
(102) Faxed copies of operating authority to applicants or their representatives who did not receive a served copy.	5

4. Section 1002.3 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1002.3 Updating user fees.

(a) *Update.* Each fee established in this part shall be updated in accordance with this section at least once a year. However, any fee may be updated more than once a year, if the Commission finds that an additional update is necessary.

* * * * *

[FR Doc. 94–13907 Filed 6–7–94, 8:45 am]
BILLING CODE 7035–01–P

Notices

Federal Register
Vol. 59, No. 109
Wednesday, June 8, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene on Thursday, June 23, 1994, from 1:30 p.m. to 3:30 p.m. at the Mile High Center, 1700 Broadway, 4th Floor Conference Room, Denver, Colorado 80200. The purpose of the meeting is to review and approve a draft report of the committee's project on the retention of minorities in Colorado higher education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gwendolyn A. Thomas or William F. Muldrow, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 24, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–13820 Filed 6–7–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 940548–4148]

Annual Capital Expenditures Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with title 13, United States Code, sections 182, 224, and 225, I have determined that 1993 Annual Capital Expenditures data from a comprehensive source are needed by various Government agencies, as well as private organizations and researchers, for measuring and analyzing economic performance. Effective with the 1993 survey, this program will provide data on capital expenditures in private nonfarm industry on a comprehensive and consistent basis. Data in the basic annual survey include value of assets for companies and total capital expenditures, capital expenditures for new versus used structures and equipment, and capital expenditures by industry activities in which companies operate. In the 1994 survey, data will include detailed information on capital expenditures by types of structures. The 1995 survey data will include detailed information about capital expenditures by types of equipment. The data are not publicly available from nongovernment or other Government sources.

FOR FURTHER INFORMATION CONTACT: Elinor Champion on (301) 763–7161.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys to furnish current data on subjects covered by the major censuses authorized by title 13, United States Code. This survey will provide continuing and timely national statistical data on capital expenditures for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquires covered in the economic censuses. The Bureau of the Census will select a probability sample of private nonfarm firms in the United States to report in the survey. The sample will provide national level statistics, with measurable reliability, on capital expenditures by industry activity. We will mail report forms to the firms selected for the survey and require most firms to submit their forms 45 days after receipt. We will allow the largest firms 60 days to submit their forms.

This survey has been approved by the Office of Management and Budget (OMB Control Number 0607–0782) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based on the foregoing determination, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: May 17, 1994.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 94–13832 Filed 6–7–94; 8:45 am]

BILLING CODE 3510–07–P

National Oceanic and Atmospheric Administration

[I.D. 052494B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of Incidental Take Permit 908 to the Idaho Department of Fish and Game (P503K).

On November 26, 1993, notice was published (58 FR 62328) that an application (P503K) had been filed by Idaho Department of Fish and Game (IDFG), to take listed species of Snake River salmon as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227). The take of listed species would occur incidental to IDFG's resident fish stocking program.

Notice is hereby given that on May 25 1994, as authorized by the provisions of the ESA, NMFS issued Permit 908 for the above taking, subject to certain conditions set forth therein.

Issuance of this permit, as required by the ESA, was based on a finding that: (1) The taking will be incidental; (2) the applicant will, to the maximum extent practicable, monitor, minimize, and mitigate the impacts of such taking; (3) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (4) there are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.

The application, permit, and supporting documentation are available

for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–2322); and

Environmental and Technical Services Division, NMFS, NOAA, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503-230-5400).

Dated: May 25, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–13822 Filed 6–7–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

June 3, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: June 10, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 31190, published on June 1, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 3, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 25, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1993 and extends through June 30, 1994.

Effective on June 10, 1994, you are directed to amend further the directive dated May 25, 1993 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia:

Category	Adjusted twelve-month limit [1]
Levels in Group: I	
219	6,351,695 square meters.
345	338,203 dozen.
359–C/659–C [2]	698,877 kilograms.
359–S/659–S [3]	686,219 kilograms.
445/446	60,099 dozen.
604–A [4]	276,114 kilograms.
625/626/627/628/629.	19,925,949 square meters.
645/646	523,345 dozen.
Group II	
200, 201, 218, 220, 222-224, 226, 227, 229, 237, 239, 330, 332, 333, 349, 350, 352–354, 359–O [5], 360–363, 369–O [6], 400, 410, 414, 431, 432, 433, 434, 435, 436, 438, 439, 440, 442, 444, 447, 448, 459, 464, 465, 469, 603, 604–O [7], 606, 607, 621, 622, 624, 630, 632, 633, 643, 644, 649, 650, 652–654, 659–O [8], 665, 666, 669–O [9], 670–O [10], 831–836, 838, 839, 840, 842–846, 850–852, 858 and 859, as a group.	73,332,884 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 431, 432, 433, 434, 435, 436, 438, 439, 440, 442, 444, 447, 448, 459, 464, 465 and 469, as a group.	2,690,640 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1993.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[4] Category 604–A: only HTS number 5509.32.0000.

[5] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025; 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005 (Category 359–S).

[6] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[7] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A)

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[9] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[10] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–13936 Filed 6–7–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

June 3, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 10, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6718. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 350 and 351/651 are being increased by application of swing, reducing the Fabric Group to account for the increases.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 5394, published on February 4, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 3, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 31, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994.

Effective on June 10, 1994, you are directed to amend the directive dated January 31, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Turkey:

Category	Adjusted twelve-month limit [1]
219, 313, 314, 315, 317, 326, 617, 625, 626, 627 and 628, as a group.	129,074,047 square meters of which not more than 30,211,029 square meters shall be in 219; 36,924,591 square meters shall be in 313; 21,483,398 square meters shall be in 314; 28,868,318 square meters shall be in 315; 30,211,029 square meters shall be in 317; 3,356,780 square meters shall be in 326; 20,140,687 square meters shall be in 617; 3,356,780 square meters shall be in 625; 3,356,780 square meters shall be in 626; 3,356,780 square meters shall be in 627; 3,356,780 square meters shall be in 628.
Limits not in a group:	
350	426,436 dozen.
351/651	681,798 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–13937 Filed 6–7–94; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

June 3, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export licensing system between the Governments of the United States and the People's Republic of China is being amended to require an export visa for part-Categories 224–V (cotton and man-made fiber woven pile fabric) and 224–O (all other fabric in Category 224), produced or manufactured in China and exported from China on and after June 15, 1994. Goods in Category 224 which are exported during the period June 15, 1994 through July 15, 1994, shall be permitted entry if visased as 224 or the correct part category.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 49 FR 7269, published on February 28, 1984; 52 FR 28741, published on August 3, 1987; and 59 FR 3847, published on January 27, 1994.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 3, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 23, 1984, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China for which the Government of the People's Republic of China has not issued an appropriate visa.

Effective on June 15, 1994, you are directed to amend further the February 23, 1984 directive to require an export visa for shipments of cotton and man-made fiber textile products in part-Categories 224–V [1] and 224–O [2], produced or manufactured in China and exported from China on and after June 15, 1994. Merchandise in Category 224 which is exported from China during the period June 15, 1994 through July 15, 1994 may be visaed as Category 224 or the correct part-category. Merchandise in Category 224 which is exported on and after July 15, 1994 must be visaed as Category 224–V or 224–O.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa or replacement visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–13935 Filed 6-7-94; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[2] Category 224–O: all HTS numbers in Category 224 except those in 224–V.

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 94–C0007]

Neeley Sales Company, Inc., a Corporation; Final Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Final acceptance of a Settlement Agreement.

SUMMARY: The Commission has finally accepted a Settlement Agreement with Neeley Sales Company, Inc.

DATES: The Consent Order Agreement became effective on May 27, 1994.

FOR FURTHER INFORMATION CONTACT:

Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: On January 24, 1994, the Commission provisionally accepted a Settlement Agreement and Order in the matter of the Neeley Sales Company, Inc., and published it for comment in the **Federal Register** on January 31, 1994 (55 FR 4269). The Commission received three comments on the Provisional Settlement Agreement and Order. After considering those comments, the Commission voted on May 26, 1994 to finally accept the Agreement. The text of the Agreement and the Order were published in the January 31, 1994 **Federal Register**.

Dated: June 2, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Order

Upon consideration of the Settlement Agreement entered into between respondent Neeley Sales Company, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Neeley Sales Company; and it appearing that the settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted; and it is

Further Ordered, that upon final acceptance of the Settlement Agreement, Neeley Sales Company, Inc. shall pay to the Commission a civil penalty in amount of ten thousand and 00/100 dollars ($10,000.00) in two (2) installment payments of five-thousand and 00.100 dollars ($5,000.00). The first installment payment of five-thousand and 00/100 dollars ($5,000.00) shall be due twenty (20) days after service of the Final Order of the Commission accepting the Settlement Agreement. The second installment payment of five-thousand and 00.100 dollars ($5,000.00) is due and payable no later than 365 days after service of the Final Order. For any payment that is overdue less than thirty (30) days, Neeley Sales Company, Inc. shall be charged interest, payable to the Commission, in accordance with the rate and method of calculation set forth in 28 U.S.C. 1961 (a) and (b), during the period that the payment is overdue. Any payment that is thirty (30) days or more overdue shall cause the entire outstanding balance to become due immediately and payable with interest in accordance with 28 U.S.C. 1961 (a) and (b) as set forth above, during the period that the outstanding balance is overdue. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraph five through ten in the Settlement Agreement that Neeley Sales Company, Inc. or Dennis Neeley, individually, or any of Neeley's officers, agents, or employees has violated the FHSA.

Provisionally accepted and Provisional Order issued on the 24th day of June 1994

By order of the Commission:

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Upon consideration of the Settlement Agreement between Neeley Sales Company, Inc. and the staff and the comments received on the provisional

Settlement Agreement and Order, the Consumer Product Safety Commission finally accepts the Settlement Agreement.

Final Order issued on the 1st day of June 1994

By order of the Commission:

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–13929 Filed 6–7–94; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program

ACTION: Notice.

In accordance with Title 10, U.S.C. 2902 the Strategic Environmental Research and Development Program (SERDP) 1994 Strategic Investment Plan is available for review by the public for a period of 30 days from the date of this notice. Reviews shall be by appointment only, by calling Ms. Amy Levine at (703) 525–9400 ext 575 and conducted at the SERDP Program Office in the spaces of LABAT–ANDERSON Incorporated, 2200 Clarendon Blvd, Suite 900, Arlington, VA 22201. Additional copies of the Strategic Investment Plan are not available.

Dated: June 2, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–13815 Filed 6–7–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of the Army

Final Environmental Impact Statement for Mission Expansion/Multiple Construction at Camp Grayling, MI

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: This plan facilitates the training of Reserve Component Forces of Camp Grayling to better prepare them for mission accomplishment by providing the best training facilities possible. The FEIS analyzes the alternatives of: Implement Master Plan projects as proposed, Implement Master Plan projects at different locations and the No Action Alternative (Do not implement Master Plan projects).

Within each alternative, the installation Master Plan projects are: Construction of two logistic support facilities, and construction to upgrade an existing Armor training facility to a Multi-Purpose Range Complex-Heavy-Reduced (MPRC–H–R). The Draft Environmental Impact Statement proposed implementation of 20 projects, 13 of which were deleted due to public comment, budget reductions, or became unnecessary in the installation Master Plan; and 4 projects were completed under separate environmental documentation.

There will be a 30-day public review period for the FEIS prior to making a final decision on implementation of Installation Master Plan projects.

ADDRESSES: Copies of the FEIS will be mailed to individuals who participated in the public comment process or who requested a copy. Copies will also be sent to city, county, federal officials, civic organizations, and public libraries. Individuals not currently on the mailing list may obtain a copy of the FEIS by request.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory N. Huntington, Environmental Manager, Michigan Department of Military Affairs, 2500 S. Washington Avenue, Lansing, Michigan 48913–5101.

Dated: June 1, 1994.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety, and Occupational Health) OASA (IL&E).

[FR Doc. 94–13839 Filed 6–7–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army

Availability for Exclusive or Partially Exclusive Licensing of U.S. Patent No. 5,176,466, Revetment Unit and Method for Protecting Shoreline or Waterway

AGENCY: U.S. Army Engineer Waterways Experiment Station, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of the availability of U.S. Patent No. 5,176,466 for licensing. This patent is assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

DATES: Proposals for an exclusive or partially exclusive license must be submitted within 120 days following publication of this notice in the **Federal Register** (October 6, 1994).

ADDRESSES: United States Army Corps of Engineers, Waterways Experiment Station, ATTN: CEWES–CT–C, Vicksburg, MS 39180–6199.

FOR FURTHER INFORMATION CONTACT: Ms. Tina Wright, (601) 634–4317.

SUPPLEMENTARY INFORMATION: This patent concerns a revetment unit for protecting shoreline or waterway embankments from erosion caused by waves or currents. The object of the invention is to provide a revetment unit which has a simplified design and enhanced interlocking capabilities when arranged with other identical units into a protective matrix covering. The unit is generally L-shaped, has a low center of gravity for stability, and maximizes area covered per unit weight. The units form a matrix which has sufficient porosity to allow drainage and prevent excessive water pressure under the units. A model revetment formed from the units has been tested in a laboratory wave flume at the U.S. Army Engineer Waterways Experiment Station. The units have demonstrated a high stability coefficient when subjected to the action of water waves.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Engineer Waterways Experiment Station wishes to license the above-mentioned technology in an exclusive, or partially exclusive manner to any party interested in manufacturing and selling revetment units covered by the above-mentioned patent.

Each interested party is requested to submit a proposal for an exclusive or a partially exclusive license within 120 days of publication of this notice in the **Federal Register**. The proposals for manufacturing and selling the revetment units covered by the above mentioned patent will be evaluated using the following criteria:

1. Demonstrated ability to manufacture and market revetment units.

2. Presentation of applicants plan to manufacture and market revetment units employing the patented technology.

3. Capability of manufacturing and installing revetment units.

4. Time required to bring item to market and production rate.

5. License Fee and Royalty.

6. Technical Capability.

7. Small Business.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–13892 Filed 6–7–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Notice of Public Hearing for the Draft Environmental Impact Statement for the Realignment of Naval Training Center, Great Lakes, IL

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the realignment of Naval Training Center Great Lakes, Illinois.

In response to the recommendations of the 1993 Defense Base Closure and Realignment Commission (BRAC–93) and to legislative requirements in the 1990 Base Closure and Realignment Act (Pub. L. 101–510), Naval Training Center (NTC) Orlando, Florida; NTC San Diego, California; Naval Technical Training Center (NTTC) Treasure Island; and Combat Systems Technical Schools Command (CSTC) Mare Island are to be closed and some of the Service School Command (SSC) training is to be realigned and collocated at NTC Great Lakes, Illinois. The proposed action consists of renovations to existing buildings within the SSC, some new construction and increases in student and instructor personnel over current levels. Also, 240 new family housing units are to be constructed at Naval Air Station Glenview, which is closing.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice for public review and comment. A public hearing to inform the public of

The public hearing will be conducted by the Navy. Federal, state, local agencies, and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, oral comments should not exceed five minutes. Longer statements should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement.

All written statements must be postmarked by July 11, 1994, to become part of the official record.

Additional information concerning this notice may be obtained by contacting Mr. Robert Teague (Code 203RT), Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, South Carolina 29419–9010, telephone (803) 743–0785.

Dated: June 3, 1994.

Lewis T. Booker, Jr,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–13871 Filed 6–7–94; 8:45 am]

BILLING CODE 3810–AE–M

Government-Owned Invention; Availability for Licensing

AGENCY: Department of the Navy. Defense.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Request for copies of patent application cited should be directed to the Office of Naval Research (Code 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number

FOR FURTHER INFORMATION CONTACT: Mr R.J. Erickson, Staff Patent Attorney, Office of Navy Research (ONR 00CC3), 800 North Quincy Street, Arlington, Virginia 22217–5600, telephone (703) 696–4001.

Patent Application 07/983,990: REMOVING THE EFFECTS OF ACOUSTIC RINGING AND REDUCING TEMPERATURE EFFECTS IN THE DETECTION OF EXPLOSIVES BY NQR: FILED NOVEMBER 30, 1992.

Dated: May 31, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer

[FR Doc. 94–13870 Filed 6–7–94; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Naval Research and Development will meet on June 21 and 22, 1994. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Ballston Center Tower One, Room 915, Arlington, Virginia. The first session will commence at 8:30 a.m. and terminate at 5:00 p.m. on June 21 the second session will commence at 8:30 a.m. and terminate at 5:00 p.m. on June 22, 1994. All sessions of the meeting will be open to the public.

The purpose of the meeting is to provide the Department of the Navy with an assessment of the missions, functions, processes, and core competencies of the Naval Research and Development (R&D) infrastructure, applying the following criteria: relevance to the Naval customer; criticality to the Department of the Navy (critical technology interests); integration of R&D; interaction with industry/academia; in-house cost and efficiency vs. out-of-house; and ability to meet Naval needs of the twenty-first century.

The meeting will primarily be devoted to working sessions during which panel members will begin to formulate a report outline and out briefing of their findings and conclusions. The working sessions will include discussions relating to laboratory management and funding; 1995 Base Realignment and Closure; Program Executive Officer interface with R&D; future naval technology requirements; and sub-panel reports of laboratory visits.

For further information concerning this meeting contact: Captain Michael Brinkac, USN, Office of Naval Research Ballston Center Tower One, 800 North Quincy Street, Arlington, VA 22217-5660. Telephone Number: (703) 696-4870.

Dated: June 3, 1994

Lewis T. Booker, Jr.

LCDR, JAGC, USN, Federal Register Liaison Officer

[FR Doc. 94-13868 Filed 6-7-94; 8:45 am]

BILLING CODE 3810-AE-F

Intent To Grant Partially Exclusive Patent License; Poiesis Research

AGENCY: Department of the Navy.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Poiesis Research a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned invention described in U.S. Patent Application Serial No. 08/186,058 entitled "Acoustic Attenuation and Vibration Damping Materials" filed January 25, 1994 in

which the Government owns an undivided interest.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001

Dated: May 31, 1994

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–13869 Filed 6–7–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Golden Field Office; Cooperative Agreement Award to Electric Power Research Institute (EPRI)

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to a non-competitive financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2) is announcing its intention make a financial assistance award to the Electric Power Research Institute (EPRI) to design, build and test a 1 meter and a 30 meter High-Temperature Superconducting underground transmission cable.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden CO 80401, Attention: John W. Meeker, Contract Specialist, or at 303/275–4748. The Contracting Officer for this action is Dr. Paul K. Kearns.

SUPPLEMENTARY INFORMATION: The EPRI application was initially submitted in response to a Department of Energy solicitation for financial assistance application titled "Superconductivity Partnership Initiative" (SPI) dated January 19, 1993. While the application submitted by EPRI was technically acceptable, it was considered not to merit a competitive award under the limited funding available for that solicitation. That solicitation was closed on April 19, 1993, and three awards were made. EPRI now has reworked its original application into the current proposal resulting in the government's cost share being reduced, and the program being extended from two (2) to four (4) years. This proposal was then resubmitted to DOE as an application for a non-competitive financial assistance award. A reduction in the government's cost share allowed this project to fit within the programs budget. The lengthening of the time schedule from 2 to 4 years allowed the project to move at a slower pace while achieving the same objective.

The proposed project will contribute to the DOE mission of "* * * providing the scientific foundation and technology * * * necessary to achieve efficiency in energy use * * *" by developing an energy efficient underground transmission cable using High-Temperature Superconducting (HTS) materials. Superconductivity is defined as a disappearance of electrical resistance in a substance. This occurs in common electrical conductors at or very near a temperature of zero (0) Kelvin or absolute zero (−273.15°C or −459.67°F). High Temperature Superconductors, discovered in 1986, have superconducting characteristics at temperatures up to 77 Kelvin (−196°C or −321°F). The main advantage of an HTS cable is that it can carry more current than conventional underground cables of comparable size. The underground HTS cable design implemented in this project can carry a maximum transmission current or about 2500 amperes. This power capacity matches the typical maximum current carried by an overhead line. The proposed HTS cable will have a higher power capacity, as well as lower operating losses than conventional cable systems. The proposed project fits into the SPI program by developing and demonstrating HTS material applications.

The ultimate goal of this program is to develop a commercially viable HTS power transmission cable. The objective of this project is an intermediate phase, where a 30-meter prototype 115 kv HTS power cable will be manufactured and tested by conventional industry-accepted techniques. This project will conclude with the design of a 3-phase, 100-meter cable system

The probability of success is high, because the applicant, EPRI, has brought together a team, consisting of American Superconductor Co. and the Pirelli Cable Corp., that has unique expertise in each area of concern as follows:

EPRI

Was founded in 1973 to enable the United States electric power industry to pool resources and conduct research and development that will benefit utilities, their customers and society. EPRI's Underground Transmission Program has participated in every major innovation in underground transmission for nearly two decades. EPRI also has short and long term transmission testing facilities at the EHV Cable Test Center in Yonkers, New York, and the Underground Cable Test Facility in Waltz Mill, Pennsylvania. These test centers have become the preferred proving ground for new cable technologies.

American Superconductor Corp

Is a United States concern primarily involved in the development and manufacturing of commercially viable HTS products, including electromagnetic coils, electromagnets, and multistrand conductors for electric power and magnet systems such as motors, generators and power transmission cables.

Pirelli Cable Corp

A United States based manufacturing, marketing and research affiliate of the international Pirelli group of companies, is the United States leading cable supplier. Pirelli started HTS research activity in 1987 in Milan to investigate the performance of HTS materials, develop ways to incorporate them into practical wires, characterize wires for the required properties, and study the technical and economic potential related to their use, particularly in power cables. Work under this proposal will be conducted at the Pirelli Research and Development Center in Lexington, South Carolina, which has been involved in developing new technologies in the field of wire and cable. Integrated within the worldwide Pirelli Research, Development and Engineering, this center is in an excellent position to develop prototype cables.

The project team that has been assembled by the Electric Power Research Institute (EPRI) is uniquely qualified to develop a high temperature superconducting (HTS) cable for the U.S. Utility industry. The vertically integrated project team consists of the leading U.S. HTS wire maker (American Superconductor Corporation), the country's leading cable supplier (Pirelli Cable Corporation) and the utility industry's research organization (EPRI—supported by 700 member utilities).

The project will be overseen by EPRI's Underground Transmission Task Force which consists of 30 cable experts drawn from EPRI's member utilities. This interaction with the utility industry will facilitate technology transfer and commercialization and is unique to EPRI audits HTS cable project team.

The project team has been working together for the past two years. In 1992, EPRI contracted with Pirelli to develop detailed designs of a manufacturing plan for constructing HTS cable. Pirelli's interaction with American Superconductor dates back to 1990 when they initiated a contract to develop HTS wire that could be used for transmission cable.

EPRI's EHV Laboratory and Walts Mill Test Center (where the 30-meter HTS cable will be tested) have been the proving grounds for all new cable innovations introduced in this country during the last 20 years. These centers will be utilized for testing the HTS cable, and will lend a great deal of credibility and confidence in the performance of the system.

The personnel within the team are uniquely qualified to develop an HTS cable system. The facilities that are/will be available to the EPRI lead team will provide manufacturing ability and will provide the utilities with confidence in the testing and demonstration of the cable.

The major public benefit to be derived from this project is providing a more economical, efficient and versatile underground transmission cable. EPRI has identified three applications for an HTS cable system: 1) Retrofitting existing underground circuits, 2) one-to-one transition from an overhead line to an underground cable system, and 3) long-distance underground transmission.

(1) Retrofit Existing Underground Circuits: About 20% of the underground transmission cables in the U.S. are nearing the end of their planned 30 to 40 year design life and may require replacement over the next decade. utilities could increase the power transmission capacity of these systems by 50 to 500% by retrofitting them with HTS cables.

(2) One-to-One Transition from an Overhead Line to an Underground Cable System: Utilities typically install two or more underground circuits to match the capacity of a single overhead line. Since a single HTS circuit can match the power rating of an overhead line, it will enable utilities to cut their excavation and installation costs (which account for up to 70% of the total capital costs of a new underground cable).

(3) Long-Distance Underground Transmission: The difficulty of acquiring overhead rights-of-way may force utilities to consider installing longer underground transmission cables. HTS cable systems will carry higher currents and will require much less compensation than comparable underground installations, and could operate in lengths comparable to overhead lines.

In addition to the above uses, this project will advance the U.S. competitiveness in a highly sought after market. An annual installation of 50 Kilometers of cable would create an HTS cable market of approximately $75 million per year. Other countries, namely Japan and Germany, are actively working to develop HTS applications/products to capture this market.

The development and demonstration of a HTS transmission cable system fits comfortably within the direction and objectives of DOE's Superconducting Partnership Initiative program. Through the Superconductivity Partnership Initiative, three awards have been made to industry teams to develop and demonstrate applications for HTS material. The initial EPRI proposal was considered meritorious but funding of that initiative limited awards to the three that were made. However, with the additional refinements contained in the EPRI proposal, DOE can now propose funding this application at $300,000 per fiscal year.

Competition for this effort would have a significant adverse impact on the continuity and completion of the proposed activity. Ten applications were received through the Superconductivity Partnership Initiative solicitation. EPRI had submitted the only application that proposed developing a transmission cable. This industry team is uniquely qualified for this effort since EPRI represents the U.S. power industry's research organization, American Superconductor Corp. is the leading U.S. manufacture of HTS conductors and Pirelli Cable is the country's leading cable supplier. Therefore, we do not believe that a solicitation to build and test an HTS transmission cable would generate much interest or be cost effective.

Issued in Golden, CO, on April 25, 1994.

John W. Meeker,

Chief, Procurement, Golden Field Office

[FR Doc. 94–13922 Filed 6–7–94; 8:45 am]

BILLING CODE 6450–01–M

Secretary of Energy Advisory Board Task Force on Alternative Futures for the DOE National Laboratories

AGENCY: Department of Energy.

ACTION: Notice of open public meeting.

SUMMARY: Notice is hereby given of the following open public meeting of the Task Force:

Name: Secretary of Energy Advisory Board Task Force on Alternative Futures for the DOE National Laboratories.

Date and Time: Thursday, June 23, 1994, 9 a.m.–4 p.m.

Place: Capitol Hilton, Federal Room "B", 16th & K Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Dr. Michele Donovan, Task Force Director, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092.

SUPPLEMENTARY INFORMATION: Purpose of the Task Force: The Secretary of Energy Advisory Board Task Force on Alternative Futures of the DOE National Laboratories was established to serve as the Secretary of Energy's primary mechanism for examining options for change within the laboratories and proposing specific alternatives for directing the scientific and engineering resources of the laboratories toward the economic, environmental, defense, scientific and energy needs of the Nation. The Task Force was established under the Secretary of Energy Advisory Board Charter and consists of 21 members, including Board members and outside experts. The Task Force is expected to report in February 1995

Tentative Agenda

9 a.m.—Opening Remarks by Chairman Bob Galvin
9:15 a.m.—Discussion of Headquarters/Field Offices Laboratories Roles with DOE Officials
10:15 a.m.—Break
10:30 a.m.—DOE Labs' Contributions to DoD—Deputy Secretary of Defense, John Deutch
11:30 a.m.—Public Comment
Noon—Break for Lunch
1 p.m.—Task Force Discussion
4 p.m.—Adjourn.

A final agenda will be available at the meeting.

Public Participation

The Task Force welcomes the public's input and written representations. If business permits, members of the public may be heard in the order in which their requests are received and the five minute rule will ordinarily apply. The Task Force will make every effort to hear the views of interested parties. Written comments addressed to the Task Force are urged, and may be submitted to Dr. Michele Donovan, Task Force Director, Secretary of Energy of Advisory Board, 1000 Independence Avenue, SW., 7B–198/HR–2, Washington, DC 20585. Written comments received by Monday, June 20 1994, will be made available to Task Force members prior to the meeting

Minutes

Minutes of the meeting will be available for public review and copying approximately 30 days following the meeting at the Department of Energy Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC, on June 3, 1994.

Joan Williams,

Acting Advisory Committee Management Officer.

[FR Doc. 94–13923 Filed 6–7–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF94–91–000]

Anheuser-Busch, Inc.; Amendment To Filing

June 2, 1994.

On May 27, 1994, Anheuser-Busch, Inc. tendered for filing a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of the facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by June 20, 1994, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13843 Filed 6–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–552–000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

June 2, 1994.

Take notice that on May 18, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE, Charleston, West Virginia 25314–1599, filed in Docket No. CP94–552–000 a request pursuant to sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization, under its blanket certificate issued in Docket No. CP83–76–000, to establish an additional delivery point for interruptible transportation service under part 284 of the Commission's regulations, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia states the additional delivery point in Northampton County, Pennsylvania was requested by Penn Fuel Gas Inc (PFG) for interruptible transportation service. The transportation service will be provided under Columbia's Rate Schedule ITS or it may be provided under firm capacity released by other shippers. The end use of the gas will be industrial and the new delivery point will be utilized to serve Metropolitan Edison Company's Portland Station power plant.

Pursuant to a blanket certificate issued in Docket No. CP86–240–000, Columbia states the new delivery point will have a Maximum Daily Quantity of 43,200 Dth and an Estimated Annual Quantity of 15,768,000 Dth. Since the quantities will be provided on an interruptible basis, Columbia does not expect any impact on its existing design day and annual obligations for its customers.

Columbia states $381,300 as the estimated cost for establishing the new delivery point with PFG reimbursing Columbia for the total cost, plus any gross-up for tax purposes.

Columbia proposes to revamp an existing measuring station for the increase in delivery to PFG by installing two filter separators, two turbine meter runs, flow control, remote terminal unit and a building.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13841 Filed 6–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–93–002]

K N Interstate Gas Transmission Co.; Proposed Changes In FERC Gas Tariff

June 2, 1994.

Take notice that on May 27, 1994, K N Interstate Gas Transmission Co. (KNI), tendered for filing proposed changes to its FERC Gas Tariff in compliance with the Commission's May 24, 1994, Letter Order in these proceedings. In particular, the tariff filing reflects the revision of KNI's Account No. 858 tracker.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13844 Filed 6–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–446–002]

Pacific Interstate Transmission Co.; Petition

June 2, 1994.

Take notice that on May 25, 1994, Pacific Interstate Transmission Company (PITCO), 633 West Fifth Street, Los Angeles, CA 90071–2071, filed in Docket No. CP92–446–002 a petition, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207), PITCO seeks to remove a previous certificate condition, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

PITCO and Southern California Gas Company (SoCalGas) jointly petition the Commission to remove the two-year limitation in the order issued in this case on December 1, 1992 (61 FERC ¶ 61,282). The order granted a certificate

of public convenience and necessity to PITCO for sales and deliveries of natural gas to SoCalGas at Ignacio, Colorado until December 31, 1994. PITCO requests that the use of the Ignacio Delivery Point be extended for the term of PITCO's current service agreement with El Paso Natural Gas Company, which is coterminous with PITCO's gas purchase agreement with Northwest Alaskan Pipeline Company (Northwest Alaskan). Recent negotiations are expected to result in a termination date of PITCO's gas supply agreement with Northwest Alaskan on October 31, 2003.

Any person desiring to be heard or to make any protest with reference to said petition should on or before June 23, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13840 Filed 6–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–6–007]

Texas Gas Transmission Corp.; Proposed Changes In FERC Gas Tariff

June 2, 1994.

Take notice that on May 24, 1994, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with an effective date of June 1, 1994:

First Revised Sheet No. 352
First Revised Sheet No. 353

Texas Gas states that the referenced tariff sheets have been revised to reflect changes in the list of affiliated marketing companies as a result of the sale and reorganization of certain assets by Transco Energy Company.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected customers and interested state commissions.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13842 Filed 6–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA89–1–43–004 and RP89–39–005]

Williams Natural Gas Co.; Order Granting in Part and Denying in Part Rehearing and Rejecting Motion for Summary Judgment and Providing Notice to Colorado and Wyoming Producers of Further Proceedings

Issued June 2, 1994.

On March 17, 1994, the Missouri Public Service Commission (Missouri PSC) filed a request for rehearing of a Commission letter order issued February 15, 1994,[1] accepting certain tariff sheets and supplemental information filed by Williams Natural Gas Company (Williams), and terminating a technical conference. For the reasons discussed below, the Commission grants in part and denies in part the request for rehearing. The Commission also rejects a motion for summary judgment of one of the issues raised in the rehearing, and issues a notice of further proceedings.

Background

On March 1, 1989, Williams submitted its proposed annual adjustment to its PGA clause in Docket No. TA89–1–43–000, to be effective May 1, 1989.[2] Reflected in the PGA, *inter alia*, was $18,087,099 in payments that Williams made to its producer-suppliers to reimburse them for their payments of *ad valorem* taxes to Kansas, Colorado, and Wyoming. The producers had charged these amounts to Williams as an add-on to the ceiling prices permitted by Section 110 of the Natural Gas Policy Act (NGPA).[3] Williams reflected these amounts in its PGA as net adjustments to its unrecovered gas costs. Several protesters claimed that the *ad valorem* tax reimbursements could be contract reformation costs that should not be reflected in Williams' PGA. By order issued April 27, 1989, the Commission accepted and suspended the filing subject to a technical conference to address this and other issues, and subject to Commission "review of the additional information requested regarding *ad valorem* tax reimbursements and pricing dispute settlements."[4] The suspension order stated that these costs related to taxes assessed by the states of Kansas, Colorado, and Wyoming. On May 30, 1989, Williams filed revised tariff sheets to comply with the directives in the April 27, 1989 order.

The technical conference was held in 1989, but Staff held its report in abeyance while the issue of whether certain Kansas *ad valorem* taxes were severance taxes eligible for recovery under NGPA section 110 was being decided in another case before the Commission. In 1988, in Colorado Interstate Gas Company (CIG)[5] the U.S. Court of Appeals for the D.C. Circuit had remanded to the Commission the issue of whether the Kansas *ad valorem* tax was a severance tax qualifying under NGPA section 110 as an add-on to the maximum lawful price. On December 1, 1993, the Commission issued its order in the CIG case.[6] On remand, the Commission stated that, to determine if a tax was a "severance tax" for purposes of NGPA section 110, there had to be a systematic analysis of whether the tax is more like a severance tax on the production of gas as opposed to a personal property tax on the value of the gas remaining in the ground or on other production assets of the lease. The Commission found that the Kansas *ad valorem* taxes are not a tax on production and thus do not qualify as severance taxes recoverable under NGPA section 110. Accordingly, the Commission ordered all Kansas producers that had unlawfully charged any interstate pipeline for such taxes after the June 28, 1988 date of issuance of the Court's decision in the CIG case,

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[1] Williams Natural Gas Co., 66 FERC ¶ 61,198 (1994).

[2] Williams also filed tariff sheets in Docket No. RP88–39–000 to eliminate its standby service rates.

[3] Section 110 of the NGPA permitted producers to charge as an add-on to the maximum lawful price "State severance taxes attributable to the production of such natural gas." 15 U.S.C. 3320(a). All NGPA price ceilings were eliminated as of January 1, 1993.

[4] Williams Natural Gas Co., 47 FERC ¶ 61,114 at 61,340 (1989); reh'g 48 FERC ¶ 61,017 (1989).

[5] *Colorado Interstate Gas Co.* v. *FERC*, 850 F.2d 769 (DC Cir. 1988).

[6] 65 FERC ¶ 61,292 (1993); reh'g denied 67 FERC ¶ 61,209 (1994).

to repay the excess over the maximum lawful price to the pipelines, and for the pipelines to pass those refunded costs along to its customers.

Missouri PSC sought clarification of the Commission's statement in CIG that it would not require that pipelines be guarantors of refunds of the Kansas *ad valorem* taxes. Missouri PSC asked the Commission to clarify that it was not prejudging the merits of this issue in the instant Williams case. Missouri PSC argued that, because Williams' instant rates were protested and accepted subject to refund, Williams could have taken steps to protect itself, such as establishing an escrow account to ensure that it would be able to account for tax reimbursements. In the order on remand in CIG, the Commission found that this issue would be addressed in the instant proceeding, based upon the rulings in the CIG proceeding.[7]

Following the CIG order, the Commission, by the February 15, 1994 letter order, accepted Williams' revised tariff sheets in this case. The Commission also accepted the supplemental information filed by Williams on May 30, 1989, subject to Williams refunding the Kansas *ad valorem* taxes reflected in its filing according to the methodology set out in CIG, and the Commission terminated the technical conference. The Commission held that all other issues addressed in the technical conference regarding Williams' PGA are now moot, since Williams no longer has a PGA mechanism after restructuring.

Rehearing

On March 17, 1994, the Missouri PSC filed for rehearing of the February 15, 1994 letter order. Missouri PSC argues that, while the issue of the Kansas *ad valorem* taxes may have been resolved by the Commission's decision in CIG, Williams' PGA also included payments made by Williams to producers to reimburse them for Colorado and Wyoming *ad valorem* taxes. Missouri PSC argues that the issue as to whether the Colorado and Wyoming taxes are severance taxes under NGPA section 110 has never been addressed. Accordingly, Missouri PSC argues that the Commission should not have accepted the compliance tariff sheets or terminated the refund obligation in this proceeding until the Commission has determined whether Colorado and Wyoming *ad valorem* taxes were eligible for recovery under NGPA section 110.

Missouri PSC also claims that the refund methodology in CIG should not be applied here because the circumstances in the instant case differ from those in CIG. Missouri PSC contends that, in CIG, the Commission found that Kansas first sellers of gas that collected revenues in excess of the NGPA maximum lawful price as a result of the reimbursement of the Kansas taxes had to refund those amounts, with interest, to their customers, and that the pipeline was then to flow the refunds through to its customers through a lump-sum payment. Missouri PSC contends that the refund liability in CIG was contingent upon the pipelines' recovery of the subject costs from its suppliers. Missouri PSC claims that the subject tariff sheets in the instant proceeding were accepted subject to refund, and that such refund should not be contingent on Williams receiving any refunds of the costs from producers. Missouri PSC claims that it does not matter when Williams paid the related taxes to its suppliers. The issue, contends Missouri PSC, is that Williams included these taxes in its rates that are subject to refund. Accordingly, Missouri PSC argues that the Commission should order Williams to immediately refund amounts collected from its customers for the unlawful reimbursements of Kansas property taxes.

Motion

Missouri PSC also filed a motion for summary judgment in this proceeding on March 17, 1994, arguing that there is no material question of fact or law in this proceeding regarding the Kansas property taxes, and repeats the arguments made on rehearing regarding the need for immediate refunds by Williams of amounts it paid to reimburse producers for Kansas *ad valorem* taxes. Therefore, Missouri PSC moves that the Commission immediately order Williams to immediately calculate the amount of Kansas property taxes recovered in its rates subject to refund, and to promptly refund those amounts.

On April 1, 1994, Williams filed an answer to Missouri PSC's motion, arguing that the motion is a collateral attack on CIG, and is an attempt to induce the Commission to amend the CIG order, or to misapply it to the instant proceeding. Williams contends that the CIG order was a broad industry-wide determination that established refund procedures applicable to all pipelines reflecting Kansas *ad valorem* taxes in their rates. Williams contends that the Commission's letter order in the instant proceeding confirmed that the CIG ruling is fully applicable to Williams, and that the ruling should be applied to all pipelines in a uniform, non-discriminatory manner. Williams states that the Commission determined in CIG that pipelines will not be required to be guarantors of refunds from producers, even in situations similar to the instant case. Williams contends that Missouri PSC is wrongfully attempting to overturn that determination. Williams also claims that this determination that pipelines should not be guarantors of refunds is consistent with the Commission's determinations in other producer refund situations where rates were accepted subject to refund.[8] Williams also argues that it would be unfair for the Commission to order it to pay refunds before it collects these payments from its producers.

Discussion

Further Proceedings

The Commission agrees with Missouri PSC that there are issues in the instant proceeding that had not been resolved when the Commission issued its February 15, 1994 letter order terminating the technical conference in this proceeding. First, the issue remains as to whether the Wyoming and Colorado *ad valorem* taxes paid by Williams to its producer-suppliers are production taxes that producers in these states could recover from their customers as an add-on under NGPA section 110 to the otherwise applicable maximum lawful price. The issue must still be addressed by the Commission pursuant to the standards established by the Commission in its order on remand in CIG. If the severance taxes are so recoverable by the producers, then they were properly paid to the producers by Williams and did qualify as gas costs recoverable under Williams' PGA. If they were not so recoverable, then the producers could be required to refund these amounts and issues would arise as to Williams' right to recover the amounts in its PGA. Accordingly, the Commission grants in part rehearing, and reverses its decision to terminate this proceeding.[9]

The Commission also finds that additional information and briefing is necessary in order to decide the remaining issues of whether the Wyoming and Colorado *ad valorem* taxes are severance taxes eligible to be recovered by first sellers under NGPA section 110 as an add-on to the maximum lawful, first-sale, ceiling price. The Commission finds that fairness dictates that Williams and its Wyoming and Colorado producers be allowed to address the Commission's recent decision in CIG as it applies to the instant proceeding, and more specifically, as it applies to the Wyoming and Colorado *ad valorem* taxes. In CIG, the Commission established a test to use in determining whether a state tax qualifies as a severance tax that would be includable as a gas cost under the NGPA. The Commission directs Williams to submit to the Commission, within 20 days of the date of this order, a filing that sets forth: (1) The amounts of Wyoming and Colorado *ad valorem* taxes reflected in Williams' PGA filings beginning with the rates in the instant proceeding and ending on the December 31, 1992 expiration date of the NGPA ceiling rates; and (2) the text of the state laws or regulations pertaining to the taxes at issues. Producers that recovered the Wyoming and Colorado *ad valorem* taxes are invited to intervene in this proceeding within 40 days of the date of this order. In addition, within 40 days of the date of this order, Williams must (and any producer wishing to do so may) file an analysis of why the Wyoming and Colorado *ad valorem* taxes qualify for recovery under the CIG test, and thus were properly includable in Williams' PGA filing. Parties to this proceeding are invited to file answers to Williams' filing within 60 days of the date of this order.

Refunds

The Commission denies in part rehearing as it applies to Missouri PSC's request that partial refunds be immediately ordered for the full amount of the Kansas *ad valorem* taxes reflected in the filing. The Commission made a ruling in CIG as to how these taxes were to be refunded by the producers to the pipelines (including Williams) and then, in turn, by the pipelines to their customers. The finding in CIG as it applies to Williams, will not be overturned here.

The only difference that Missouri PSC points out between the CIG case and the instant case is that in the instant case the rates were accepted subject to refund. The Commission fails to see why that would dictate the outcome Missouri PSC requests. The acceptance of certain rates subject to refund does not determine the manner in which the Commission will order that those refunds be made. While Missouri PSC did protest the inclusion of *ad valorem* taxes in Williams' instant PGA filing, and the Commission did accept that filing subject to refund, that is not to say that if the Commission found that such taxes were not a production cost that the pipeline must deduct them entirely even before it had recovered these costs from its producers. Rather, the acceptance subject to refund meant that the Commission would order whatever refunds it found to be appropriate when it made a determination on the underlying issue. The Commission made that determination in CIG.

The Commission did state, in its order on remand in CIG, that refunds would be appropriate from the date producers "could have taken steps to protect themselves, such as establish an escrow account for such tax reimbursement," [10] but that reference was to the effective date of refunds and not to the issue of whether the pipeline must guarantee all refunds. Further, Williams merely included in its PGA filing the tax costs that it had paid to its producers. Hence, there would be no additional revenues for Williams to put into an escrow account. The producers, on the other hand were recovering unlawful tax costs, the proceeds of which could have been set aside for future refund obligations. Therefore, there is no reason why Williams should guarantee refunds when the Commission has found in CIG that other pipelines did not have that same obligation. Accordingly, the Commission finds that the instant case is not different from the GIG case in a manner that would require that the Commission to order refunds in a manner that is inconsistent with our decision in CIG. As the Commission has denied this request for rehearing regarding refunds, the Commission will reject the motion for summary judgment as moot.

The Commission Orders

(A) Notice is hereby provided to all producers in Colorado and Wyoming that a proceeding is being instituted in this docket to determine if the *ad valorem* taxes of those two states are recoverable as production costs. Producers that recovered the Wyoming and Colorado *ad valorem* taxes may file to intervene in this proceeding within 30 days of the date of this order.

(B) Rehearing is granted in part, in that the instant proceeding is not terminated.

(C) Rehearing is denied in part, in that the Commission will not order further refunds in this case at this time.

(D) Missouri PSC's motion for summary judgment is rejected.

(E) Williams is directed to file, within 20 days of this order:

(1) the dollar amounts of Wyoming and Colorado *ad valorem* taxes reflected in the subject filing and subsequent PGA filings through the December 31, 1992 expiration date of the NGPA ceiling prices; and

(2) the text of the state laws or regulations pertaining to the Wyoming and Colorado *ad valorem* taxes at issues; and

(F) Williams is directed to file, within 40 days of this order, an analysis, under the CIG test, of why those taxes qualify for recovery in the instant PGA filing.

(G) Within 40 days of the date of this order, producers that recovered the Wyoming and Colorado *ad valorem* taxes are invited to intervene in this proceeding, and are also invited to file their analysis of why those taxes qualify for recovery in the instant PGA filing under the CIG test.

(H) Parties to this proceeding may file answers to Williams' filing within 60 days of the date of this order.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13875 Filed 6-7-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. TM94-4-49-000]

Williston Basin Interstate Pipeline Co.; Annual Take-Or-Pay Reconciliation Filing

June 2, 1994.

Take notice that on May 31, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing its Annual Take-or-Pay Reconciliation Filing pursuant to sections 36 and 37 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. More specifically, Williston Basin tendered for filing as part of its FERC Gas Tariff, the following tariff sheets:

Second Revised Volume No. 1
Fourth Revised Sheet No. 15
Fourth Revised Sheet No. 16
Fourth Revised Sheet No. 18
Fifth Revised Sheet No. 21
First Revised Sheet No. 308
First Revised Sheet No. 320
First Revised Sheet No. 321
Original Volume No. 2
Fifty-first Revised Sheet No. 11B

Williston Basin has requested that the Commission accept this filing to become effective July 1, 1994.

Williston Basin states that the revised tariff sheets are being filed to reflect

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[7] 67 FERC ¶ 61,209 at fn. 46 (1994)

[8] Citing Refunds Resulting from Btu Measurement Adjustments, Order No. 399, FERC Stats. and Regs., Regs. Preambles 1982–1985, ¶ 30,597 at 31,154, reh'g Order No. 399–A, FERC Stats. and Regs., Regs. Preambles 1982–1985, ¶ 30,612 (1984), vacated in part on other grounds, *Interstate Natural Gas Ass'n of America* v. *FERC*, 756 F.2d 166 (D.C. Cir. 1985), cert. denied sub nom., *Pennzoil Co.* v. *Associated Gas Distributors*, 474 U.S. 847 (1985).

[9] Missouri PSC has not shown a reason why it was error to accept the tariff sheets in the February 15, 1994 order. As the Commission is not terminating the proceeding, the rates reflected in such tariff sheets remain subject to refund.

[10] 65 FERC at 62,373.

recalculated fixed monthly surcharges and revised throughput surcharges to be effective during the period July 1, 1994 through June 30, 1995, pursuant to the procedures contained in sections 36 and 37 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1. Williston states that this filing reflects a revised total throughput surcharge of 20.211 cents per dkt on all applicable transportation volumes.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13845 Filed 6–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–5–49–000]

Williston Basin Interstate Pipeline Co.; Annual Gas Supply Realignment Reconciliation Filing

June 2, 1994.

Take notice that on May 31, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing its Annual Gas Supply Realignment Reconciliation Filing pursuant to subsection 39.3.3 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. More specifically, Williston Basin tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Fifth Revised Sheet No. 15
Fifth Revised Sheet No. 16
Fifth Revised Sheet No. 17

Williston Basin has requested that the Commission accept this filing to become effective July 1, 1994.

Williston Basin states that the revised tariff sheets reflect the annual reconciliation of the GSR cost recovery period and a new reservation charge surcharge of 117.807¢ per equivalent dkt of Maximum Daily Delivery Quantity applicable to service under Rate Schedule FT–1, a new volumetric reservation charge surcharge of 24.391¢ applicable to service under Rate Schedule ST–1 and a new base rate unit cost of 6.186¢ applicable to service under Rate Schedule IT–1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13846 Filed 6–7–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed During the Week of May 6 Through May 13, 1994

During the Week of May 6 through May 13, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: May 31, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date	Name and location of applicant	Case No.	Type of submission
4/1/94	Westinghouse Hanford Company, Richland, Washington.	LWZ-0031	Motion to Dismiss. If granted: Helen Gaidine Oglesbee, Case No. LWA–0006 would be dismissed.
5/9/94	ARCO/B & D Butane Company, Atlantic Beach, Florida.	RR304–68	Request for Modification/Rescission in the Arco Refund Proceeding. If granted: The June 4, 1993 Dismissal Letter (Case No. RF304–13517) issued to B & D Butane Company would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.
5/9/94	Chambers Oil Company, Beckley, West Virginia.	LEE–0116	Exception to the Reporting Requirements. If granted: Chambers Oil Company would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
5/9/94	Time Oil/California National Helium/California Charter/California, Sacramento, California	RQ334–589 RQ3–590 RM23–269	Implementation of Second-Stage Refund Procedures. If granted: California would receive funds in the Time Oil and National Helium refund proceedings, and the March 12, 1990 Decision an Order (Case No. RQ23–546) issued to California would be modified regarding the state's application submitted in the Charter second-stage refund proceedings.
5/10/94	Arco/Pearl Oil Company, Inc., Bethsda, Maryland.	RR304–69	Request for Modification/Rescission in the Arco Refund Proceeding. If granted: The April 1, 1994 Decisions and Order (Case No. RF304–14786) issued to Pearl Oil Company, Inc. would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.

Date	Name and location of applicant	Case No.	Type of submission
5/10/94	Donco Carriers, Inc., Washington, DC	RR272–130	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The April 5, 1994 Decision and Order (Case No. RC272–234) issued to Donco Carriers, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
5/11/94	C. D. Varnadore & Betty Freels, Houston, Texas	LFA–0375	Appeal of an Information Request Denial. If granted: The May 4, 1994 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and C. D. Varnadore & Betty Freels would receive access to documents relating to government monies spent by a contractor organization defending against certain whistleblower claims.
5/12/94	William H. Payne, Albuquerque, New Mexico	LFA–0376	Appeal of an Information Request Denial. If granted: The December 16, 1993 Freedom of Information Request Denial issued by the FOI and Privacy Acts Branch would be rescinded, and William H. Payne would receive access to names and phone numbers of individuals in the Inspector General's office who corresponded verbally or in writing with Sandia National Laboratory personnel between November 1992 and the day of request.
5/13/94	Kenneth H. Besecker, Martinez, Georgia	LFA–0377	Appeal of an Information Request Denial. If granted: The April 25, 1994 Freedom of Information Request Denial issued by the Office of Civil Rights would be rescinded, and Kenneth H. Besecker would receive access to information requested.

Date received	Name of refund proceeding/name of refund application	Case No
05/09/94	Turkey Express, Inc.	RF321–20983
05/10/94	Whaley's Arco #2	RF304–15457
05/13/94	Waterloo Service Company	RF344–2
05/06/94 thru 5/13/94	Crude Oil Refund Applications Received	RF272–95277 thru RF272–95295

[FR Doc. 94–13924 Filed 6–7–94; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00382; FRL–4870–8]

Update of Pesticide Residue Chemistry Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Request for Comments.

SUMMARY: This notice announces the availability of and requests comments on updated guidance for registrants on the residue data requirements in 40 CFR Part 158 to support registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and tolerances under Federal Food, Drug and Cosmetic Act. The updated guidance consists of a revision of Table II of the Pesticide Assessment Guidelines, Subdivision O, Residue Chemistry, describing raw and processed foods and animal feeds.

ADDRESSES: Copies of this proposed updated Table II may be obtained from the Pesticides Docket, Office of Pesticide Programs, Public Response and Program Resources Branch, Rm 1132, Crystal Mall # 1921 Jefferson Davis Highway, Arlington, VA 22202. (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Contact by mail: Jerry Stokes, Health Effects Division (7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: Rm. 803, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 305–7561. Comments will be accepted for 75 days following publication of this notice

SUPPLEMENTARY INFORMATION: Table II of the Pesticide Assessment Guidelines, Subdivision O, Residue Chemistry, provides a listing of all significant food and feed commodities, both raw and processed, for which residue data are collected and tolerances are set. In addition, for feed commodities, Table II provides (1) the maximum percent of the diet for beef and dairy cattle, poultry and swine, and (2) guidance on which crops EPA believes it would be appropriate to allow lable restrictions prohibiting use of commodities as feeds.

As a culmination of a long-term project to update the "Guide For Estimating Toxic Residues in Animal Feeds or Diets" (authored by Dr. L. Harris in 1975, and commonly known as the "Harris Guide") EPA has updated Table II. This update of Table II was deemed appropriate because there have been significant change in agricultural processing and feeding practices in the past decade. The update has revised which raw agricultural and processed commodities and livestock feeds are listed in the Table II and the percentage of these items in the diets of animals. More information on the basis for these revisions are included in the updated Table II.

In reviewing the data collected on animal fees EPA also reevaluated the policy of allowing as a substitute for data, a label restriction prohibiting the use (or sale) of a commodity for livestock feed purposes. EPA derived three criteria which would be weighed in determining whether to permit label restrictions in lieu of data in the future More details on the criteria are provided in the revised Table II. Generally, the Agency does not consider it good public policy to regulate pesticides in such a way that growers/farmers using a registered product must then destroy an economically and nutritionally valuable portion of the treated crop. EPA's preliminary view is that there are only four cases: safflower forage, buckwheat forage, lentil forage, and sunflower forage. EPA will reevaluate the

appropriateness of label restrictions on a commodity by commodity basis in future registration and tolerance actions. Comments are specifically requested on the Agency's label restriction policy. Comments should provide information, and documentation if available, of the economic value of specific commodities in terms of cash, barter, or as fed directly on the farm. If commodities can practically be diverted from use as a livestock feed, their alternative use or disposal should be explained. After all comments on the updated Table II are received, they will be reviewed and the document revised and if necessary, reissued.

As guidelines, EPA will begin with the publication of this notice to use the revised Table II in its evaluation of pesticide registrations and tolerances. EPA realize that in some instances where studies have already begun or are scheduled to begin in the near future, data may not be able to be collected on the commodities that have been added to Table II. EPA believes that six months should be sufficient time for registrants to familiarize themselves with the changes in Table II. For studies begun either prior to the publication of this notice or in the next six months, EPA will be flexible regarding whether studies which do not supply data on the new commodities in Table II are adequate for registration and tolerance purposes and when additional data, if any, will be required to be submitted under EPA's data call-in authority.

List of Subjects

Environmental protection

Dated: May 31, 1994.

Penelope A. Fenner-Crisp,

Director, Health Effects Division, Office of Pesticide Programs.

[FR Doc. 94–13789 Filed 6–7–94; 8:45 am]

BILLING CODE 6560–50–F–M

[OPP–180938; FRL 4867–4]

Receipt of Application for Emergency Exemption to Use Imidacloprid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Texas Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide imidacloprid (CAS 105827–78–9) to treat up to 11,000 acres of broccoli, cabbage, and cauliflower to control the sweet potato whitefly (*Bemesia tabaci*). The Applicant proposes the first food use of an active ingredient; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before June 23, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180938," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of imidacloprid on broccoli, cabbage, and cauliflower to control the sweet potato whitefly (SPWF). Information in accordance with 40 CFR part 166 was submitted as part of this request.

The SPWF is common on many wild and cultivated crops such as tomatoes, cotton, cucurbits and solanaceae. The SPWF was first confirmed in Texas in 1987. The Applicant states that in 1990, cotton growers in the Lower Rio Grande Valley began to experience significant crop losses due to infestation by the SPWF. The sweet potato whitefly (SPWF) is a relatively new pest on broccoli, cauliflower, and cabbage. The SPWF has caused severe economic damage to several other commodities nationwide including cotton, lettuce, squash, beans, peanuts, and ornamentals. The Applicant states that in 1991, SPWF severely infested many more fields of cotton and caused severe devastation to fall vegetable crops upon harvesting of the cotton. According to the Applicant, SPWF populations for this season are expected to be widespread, and heavy enough to cause serious economic loss to the broccoli, cabbage, and cauliflower crops. SPWF causes damage through feeding activities, and also indirectly through the production of a honeydew, which encourages growth of sooty mold and other fungi. The Applicant claims that adequate control of the SPWF is not being achieved with the currently registered materials. The Applicant indicates that without adequate control of the SPWF in broccoli, cabbage, and cauliflower, significant economic losses could be suffered.

The Applicant proposes to apply imidacloprid at a maximum rate of 0.3016 lb. active ingredient (20 fluid oz. of product) per acre with a maximum of one application per crop season on a total of 11,000 acres of the above-listed crops. For each of the crops named, it is possible to produce two crops per calendar year on a given acre, and therefore, the acreage could potentially receive two applications of imidacloprid per calendar year. However, the Applicant proposed to limit the maximum amount which could be applied per calendar year to 0.5 lb. a.i. (32 fl. oz. product) per acre. Therefore, use under this exemption could potentially amount to a maximum total of 5,500 lbs. of active ingredient, or 2,750 gal. of product. This is the first time that the Applicant has applied for the use of imidacloprid on the named crops.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing the first food use of an active ingredient. Accordingly, interested persons may submit written views on

this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Texas Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: May 20, 1994

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–13671 Filed 6–7–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66193; FRL 4864–9]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by September 6, 1994, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the Federal Register before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 78 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000070–00067	Kill-Ko Mange Cure	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000070–00163	Kill-Ko Lindane Concentrate	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000070–00205	Rigo Tobacco Transplant Solution	Lindane (Gamma isomer of benzene hexachlonde) (99% pure gamma isomer)
000070–00273	Lindane Multi-Purpose Spray	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000352 AL–81–0031	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 AL–81–0032	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 CA–77–0431	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 CA–80–0187	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 CA–80–0188	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 CA–80–0189	Dupont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 CA–80–0190	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 CA–82–0037	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 CA–90–0036	Dupont Lannate Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 DE–80–0010	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–78–0038	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–78–0056	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–80–0010	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–80–0011	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–82–0015	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–84–0014	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–84–0015	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–88–0005	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 LA–81–0033	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 LA–81–0037	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 MS–80–0049	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000352 NC–82–0012	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 NM–82–0021	Du Pont Lannate L Methomyl & Ambush Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 OR–78–0005	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 PA–91–0004	Du Pont Lannate Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 PR–78–0002	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 TX–77–0014	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 TX–82–0025	Du Pont Lannate L Methomyl & Ambush Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 TX–91–0014	Dupont Lannate Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 TX–91–0015	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 TX–92–0010	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000491–00103	New Vixol	Hydrogen chloride
000527–00121	Rocadyne	Nonylphenoxypolyethoxyethanol - iodine complex
		Phosphoric acid
000550–00152	Grid-10 Dairy Cleaner Sanitizer	Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12})
		Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14})
		Phosphoric acid
000655–20203	Prentox Boric Acid Powder 99%	Boric acid
001043–00032	Staphene O	Potassium 2-benzyl-4-chlorophenate
		o-Phenylphenol, potassium salt
		p-tert-Amylphenol, potassium salt
001043–00095	Staphene SE	4-tert-Amylphenol
		o-Phenylphenol
001270–00120	Zepona Insecticide	2,2-Dichlorovinyl dimethyl phosphate
001744–00002	Sunny Sol "150"	Sodium hypochlorite
002393–00361	Hopkins Hog Mange Powder	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
002393–00371	Lindane Emulsifiable Concentrate	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
003487–00022	Eagles-7 Spra-Kill with Baygon	*o*-Isopropoxyphenyl methylcarbamate
		2,2-Dichlorovinyl dimethyl phosphate
004822–00112	Johnson Wax Big Wally Wall Washer	Sodium *o*-phenylphenate
005535–00096	Gro-Well Lawn Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
005887–00054	Black Leaf Borer Spray	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
006198–00006	Det-San Detergent-Sanitizer	Sodium dichloroisocyanurate dihydrate
008536–00010	Brom 70/30	1,3-Dichloropropene
		Methyl bromide
010182–00181	Sutan 6E	*S*-Ethyl diisobutylthiocarbamate
010182–00182	Sutan+10g	*S*-Ethyl diisobutylthiocarbamate
010182–00192	Sutan + 7E	*S*-Ethyl diisobutylthiocarbamate
010182–00201	Sutazine + 18 - 6G Selective Herbicide	*S*-Ethyl diisobutylthiocarbamate
		2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
010182–00211	Sutan & 6E	*S*-Ethyl diisobutylthiocarbamate
010182–00236	Sutan & Encapsulated	*S*-Ethyl diisobutylthiocarbamate
010182–00248	Sutazine + Selective Herbicide	*S*-Ethyl diisobutylthiocarbamate
		2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
010182–00249	Sutan + A 6-E	*S*-Ethyl diisobutylthiocarbamate
010182–00286	Butylate-7EC	*S*-Ethyl diisobutylthiocarbamate
010182–00288	Genate Plus 6.7 EC	*S*-Ethyl diisobutylthiocarbamate

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
010182–00289	Captan 50 Wettable Fungicide	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
010182–00295	Orthocide 80 Wettable	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
010182–00305	Orthocide 15 Dust	cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
010182–00315	Orthocide Sulfur 15–40 Dust	Sulfur
		cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
010182 NC–91–0014	Dyfonate II 10-G	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
044446–00005	Fogasol Room Fogger	*o*-Isopropoxyphenyl methylcarbamate
		2,2-Dichlorovinyl dimethyl phosphate
051793–00019	Elite Flea Collar for Cats	2,2-Dichlorovinyl dimethyl phosphate
051793–00020	Elite Flea Collar for Dogs	2,2-Dichlorovinyl dimethyl phosphate
056228 ND–88–0001	Gas Cartridge for Control of Coyotes	Carbon
		Sodium nitrate
056228 TX–93–0015	Gas Cartridge for Control of Coyotes	Carbon
		Sodium nitrate
056228 UT–93–0002	Gas Cartridge for Control of Coyotes	Carbon
		Sodium nitrate
056228 WY–93–0001	Gas Cartridge for Control of Coyotes	Carbon
		Sodium nitrate
062719–00133	Treflan Milled Concentrate	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine) (Note: α = alpha)
065564 NC–88–0009	JSM Stylet - Oil	Aliphatic petroleum hydrocarbons
067360–00001	Copper Naphthenate 8%	Copper naphthenate
067360–00006	Intercide ABF	10,10'-Oxybisphenoxarsine
067360–00008	Intercide ABF-5 Solid	10,10'-Oxybisphenoxarsine

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000070	Wilbur-Ellis Co., Box 16458, Fresno, CA 93755.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880
000491	The Selig Chemical Industries, 840 Selig Dr., SW, Atlanta, GA 30378
000527	Rochester Midland, c/o Unytex Research Corp., Box 818, Rochester, NY 14603
000550	Van Waters & Rogers, Inc., Subsidiary of Univar, Box 34325, Seattle, WA 98104
000655	Prentiss Inc., C. B. 2000, Floral Park, NY 11002.
001043	Calgon Vestal Laboratories Inc., Subsidiary of Merck & Co. Inc., Box 147, St Louis, MO 63166
001270	ZEP Mfg. Co., Box 2015, Atlanta, GA 30301
001744	Jones Chemicals, Inc., 80 Munson Street, Leroy, NY 14482
002393	Haco, Inc., Box 7190, Madison, WI 53707.
003487	Bacon Products Co. Inc., Box 22187, Chattanooga, TN 37422
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
005535	J & L Adikes Inc., 103-23 178th St., Box 600, Jamaica, NY 11431
005887	Wilbur-Ellis Co., Box 9518, Fresno, CA 93792.
006198	National Chemicals Inc., 105 Liberty Street, Box 32, Winona, MN 55987
008536	Soil Chemicals Corp. Products, D/b/a SCC Products & Soil Chemicals Co., Box 782, Hollister, CA 95024
010182	Zeneca Inc., 1800 Concord Pike, Wilmington, DE 19897.
044446	Quest Chemical Corp., 12255 F.M. 529 Northwoods Industrial Park, Houston, TX 77041

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No	Company Name and Address
051793	RSR Laboratories, Inc., 501 Fifth St., Bristol, TN 37620.
056228	U. S. Dept of Agriculture, Animal & Plant Health Inspection, Federal Building, Room 533, Hyattsville, MD 20782.
062719	DowElanco, 9330 Zionsville Rd, Indianapolis, IN 46268.
065564	Jms Flower Farms Inc., 1105 25th Ave, Vero Beach, FL 32960.
067360	Akzos Chemicals America, c/o Charles Yeager, Registration Consulting Assoc., 12184 Woodland Ct. (LOP), Auburn, CA 95603

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before September 6, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1–year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: May 27, 1994.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs

[FR Doc. 94–13670 Filed 6–7–94; 8:45 am]

BILLING CODE 6560–50–F

[PP 2G4048 and 2G4049/T660; FRL 4867–8]

Miles Inc.; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for residues of the insecticide *O*-[2-(1,1-Dimethylethyl)-5-pyrimidinyl] *O*-ethyl *O*-(1-methylethyl)phosphorothioate and for residues of the insecticide cyfluthrin in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire December 31, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Forrest, Product Manager (PM) 14, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6600.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of July 28, 1993 (58 FR 40425), announcing that temporary tolerances had been established for residues of the insecticide *O*-[2-(1,1-Dimethylethyl)-5-pyrimidinyl] *O*-ethyl *O*-(1-methylethyl)phosphorothioate in or on the raw agricultural commodities corn, sweet (K + CWHR); corn, grain, field and pop; corn, forage and fodder field, pop, and sweet at 0.01 part per million (ppm), and for residues of the insecticide cyfluthrin Cyano-(4-fluoro-3 phenoxyphenyl)methyl-3-(2,2-dichloro ethenyl)-2,2-dimethyl-cyclopropanecarboxylate in or on these raw agricultural commodities at 0.01 ppm. These tolerances are being renewed in response to pesticide petitions (PP) 2G4048 and 2G4049, submitted by Miles Inc., Agricultural Division, P.O. Box 4913, Kansas City, MO 64120–0013.

The company has requested a 1–year renewal of the temporary tolerances for residues of the insecticides to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 3125-EUP-202, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136). The scientific data reported and other relevant material were evaluated, and it was determined that renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Miles Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire December 31, 1994. Residues not in excess of these amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 26, 1994

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–13672 Filed 6–7–94, 8:45 am]

BILLING CODE 6560–50–F

[OPP–180940; FRL 4867-6]

Receipt of Application for Emergency Exemption to Use Propazine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Kansas Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide propazine (CAS 139–40–2) to treat up to 120,000 acres of sorghum to control various weeds. The Applicant proposes the use of a new (unregistered) chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before June 23, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180940," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of propazine on sorghum to control pigweed. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Sorghum is grown as a rotational crop with cotton and wheat, in order to comply with the soil conservation requirements. Propazine, which was formerly registered for use on sorghum, was voluntarily canceled by the former Registrant, who did not wish to support its re-registration. The Applicant claims that this has left many sorghum growers with no pre-emergent herbicides that will adequately control certain broadleaf weeds, especially pigweed. The Applicant states that other available herbicides have serious limitations on their use, making them unsuitable for control of pigweed in sorghum. The Applicant claims that significant economic losses will occur without the availability of propazine.

Although the original Registrant of propazine has decided not to support this chemical through re-registration, another company has committed to support the data requirements for this use. Propazine was once registered for this use, but has now been voluntarily canceled and is therefore considered to be a new chemical.

The Applicant proposes to apply propazine at a maximum rate of 1.2 lbs a.i. (2.4 pt. of product) per acre, by ground or air, to a maximum of 120,000 acres of sorghum, with one application allowed per crop growing season. Therefore, use under this exemption could potentially amount to a maximum total of 144,000 lbs. of active ingredient (36,000 gal. of product). This is the first time that Kansas has applied for this use of propazine on sorghum. Requests for exemptions for this use were also received earlier this year from Oklahoma and Colorado, which are currently under EPA review. New Mexico and Texas were recently issued exemptions for this use for this growing season, and Texas was issued an exemption for this use for last growing season. This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Kansas Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: May 20, 1994

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-13676 Filed 6-7-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200864.

Title: Port Authority of New York & New Jersey/Puerto Rico, Marine Management Container Incentive Agreement.

Parties: The Port Authority of New York & New Jersey, Puerto Rico Marine Management.

Filing Agent: Donald H. Lotz, Manager, The Port Authority of NY & NJ, One World Trade Center, New York, N.Y. 10048.

Synopsis: The Agreement provides for the Port to pay Puerto Rico Marine Management a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the port.

Dated: June 2, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94-13835 Filed 6-7-94; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 202-011432-002.

Title: Pacific Central America Agreement.

Parties: Sea-Land Service, Inc., Central American Container Line, S.A., A.P. Moller-Maersk Line.

Synopsis: The proposed amendment expands the scope of the Agreement to include ports and points in Ecuador, Pacific Coast of Colombia, Peru, Chile and intransit cargo to and from Bolivia via ports in Peru and Chile. The amendment also changes the name of the Agreement to the Pacific Latin America Agreement.

Agreement No. 232-011455.

Title: South Seas Steamship Co. and South Pacific Interline, Ltd. Management, Cross-Space Charter and Sailing Agreement.

Parties: South Seas Steamship Co. ("South Seas"), South Pacific Interline, Ltd. ("South Pacific").

Synopsis: The proposed Agreement provides for South Seas to manage South Pacific and for the parties to enter into a cross space charter and sailing arrangement in the trades between West Coast ports and points of the United States (including Hawaii), and ports and points in Tahiti, American Samoa, Western Samoa, Tonga, Fiji, New Guinea, New Caledonia, Australia and Canada. The parties have requested a shortened review period.

Dated: June 2, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94-13836 Filed 6-7-94; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Federal Building-Courthouse, Central Islip, NY; Environmental Assessment/ FONSI and Public Hearing

This notice serves to inform the public of the availability of the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) prepared by the U.S. General Services Administration for the proposed construction of a Federal Building-Courthouse in Central Islip, New York. This notice also serves to inform the public of a public hearing to be held for the above project. The public hearing will be held on June 23, 1994, from 3 p.m. to 5 p.m. and from 7 p.m. to 9 p.m. The public hearing will be held at the Student Activities Center Auditorium of the New York Institute of Technology Suffolk campus, located on Carleton Avenue in Central Islip, Long Island, New York. Comments on the proposed action may be submitted verbally at the public hearing or in writing during the 30-day public comment period, which starts on June 10, 1994, and ends on July 11, 1994. The Finding of No Significant Impact will be signed and become final after completion of the public comment period, provided that no information leading to a contrary finding is received or comes to light during the 30-day comment period.

For further information please contact Mr. Peter A. Sneed, Director of Planning Staff, Public Buildings Service, General Services Administration, 26 Federal Plaza, room 1609, New York, New York 10278. Telephone: (212) 264-3581.

Issued in New York, NY on June 2, 1994

Robert W. Martin,

Deputy Regional Administrator, General Services Administration.

[FR Doc. 94-13908 Filed 6-7-94; 8:45 am]

BILLING CODE 6820-23-M

[G-94-1]

Delegation of Authority to the Secretary of Veterans Affairs

Pursuant to the authority vested in the Administrator of General Services by section 3726 of title 31, United States Code and redelegated to the Director, Office of Transportation Audits, Federal Supply Service, I have determined that it is both cost effective and in the public interest to delegate authority to the Secretary of Veterans Affairs to conduct a prepayment audit of transportation bills relating to foreign and domestic household goods, freight, and passenger movements, subject to the provisions of the Federal Property Management Regulations, title 41, Code of Federal Regulations, subpart 101-41, and amendments thereto. This prepayment audit will be conducted by a General Services Administration contractor, at the contractor's site, on behalf of the Austin Finance Center (AC), Austin, Texas, for the Department of Veterans' Affairs field station locations, medical centers, regional offices, and outpatient clinics.

The Secretary of Veterans Affairs may redelegate this authority to any officer, official, or employee of the Department of Veterans' Affairs.

The Secretary of Veterans Affairs shall notify GSA in writing of these additional delegations. This delegation is effective upon publication in the **Federal Register**.

Dated: May 26, 1994

Joseph I. Cosimano,

Director, Office of Transportation Audits (FBW)

[FR Doc. 94-13824 Filed 6-7-94; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94N-0169]

Assessment of Serum and Red Blood Cell Folate Methodology; Availability of Tentative Report; Announcement of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled "Tentative Report: Assessment of Serum and Red Blood Cell Folate Methodology Used in NHANES III." The report was prepared for FDA by the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB). This document also announces a public meeting on the subject of the tentative report. The announcement of this meeting and the tentative report are intended to provide FDA with scientific information on the assessment of folate status in the U.S. population

DATES: The public meeting on the subject of the tentative report will be held on July 15, 1994, 9 a.m., by LSRO/FASEB. Requests to make oral presentations at the open meeting must be submitted in writing and received by July 1, 1994. Scientific data, information, and views to be considered at the public meeting should be submitted on or before July 12, 1994.

ADDRESSES: Submit written requests for single copies of "Tentative Report, Assessment of Serum and Red Blood Cell Folate Methodology Used in NHANES III" to LSRO/FASEB, 9650 Rockville Pike Bethesda, MD 20814-3998. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. A copy of the tentative report is available for public examination at LSRO/FASEB (address above) and at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Submit written requests to make oral presentations of scientific data, information, and views at the public meeting to LSRO/FASEB and to the Dockets Management Branch. Requests must be identified with the docket number found in brackets in the heading of this document. Two copies of the scientific data, information, and views should be submitted to each office.

The public meeting will be held in the Chen Auditorium, Lee Bldg., FASEB, 9650 Rockville Pike, Bethesda, MD 20814-3998.

FOR FURTHER INFORMATION CONTACT:

Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814-3998, 301-530-7030; or

Jeanne I. Rader, Center for Food Safety and Applied Nutrition (HFS-175), Food and Drug Administration, 200 C St. SW., Washington, DC 20204-0001, 202-205-5375.

SUPPLEMENTARY INFORMATION: FDA has a contract (number 223-92-2185) with LSRO/FASEB concerning the analysis of scientific issues that bear on the safety of foods and cosmetics. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with the analysis of human nutrition.

Analysis of serum and red blood cell (RBC) folate samples from Phase 1 (1988-1991) of the Third National Health and Examination Survey (NHANES III) was recently completed. These analyses were performed using a radioassay kit with 125-I-folate as the tracer. The radioassay kit that previously has been used to determine folate values is based on pteroylglutamic acid (PGA) standards, which were developed in 1975.

In a 1993 report (Ref. 1), Levine reported that the folate data derived from the radioassay kits used for Phase 1 of NHANES III were about 30 percent higher than he would have expected based upon internal PGA standards prepared in his laboratory. He suggested that this discrepancy was related to differences between the standards in his laboratory and the standard values established in 1975 that have been provided with the radioassay kits (Ref. 1). According to Edwards (Ref. 2), the folate radioassay kit introduced in 1975 was calibrated against the *Lactobacillus casei* microbiological assay which was the accepted standard at that time. The Centers for Disease Control and Prevention (CDC) and others have consistently confirmed Levine's finding. Thus the serum and RBC folate values derived by use of the radioassay kits in Phase 1 of NHANES III are likely to be high by a factor of about 30 percent.

Based on these results, CDC has recommended the use of an "adjustment" factor to more accurately reflect the actual serum and RBC folate concentrations relative to corrected reference standards. This adjustment, however, may also require reconsideration of the interpretative criteria for evaluating the folate status of the U.S. population from blood samples from Phases 1 and 2 of NHANES III.

FDA is announcing that it has asked FASEB, as a task under contract number 223-92-2185, to provide its Center for Food Safety and Applied Nutrition with an up-to-date scientific assessment of the methodology used in NHANES III to assess serum and RBC folate in the U.S. population. Specifically, FDA asked FASEB to address the following matters in its tentative and final reports: (1) Examine the analytical and biochemical bases for the discrepancies associated with serum and RBC folate values derived from use of the radioassay kits used in Phase 1 of NHANES III, (2) evaluate the scientific basis and validity of the procedures recommended by CDC to make corrections to serum and RBC folate values obtained in Phase 1 of NHANES III, (3) re-examine current

"cut-off" values for estimation of "deficient" and "low" folate status in light of the need for application of a correction factor for survey sample values, (4) determine whether these approaches are still useful for estimating the prevalence of inadequate folate nutriture, and (5) obtain suggestions on approaches to addressing the comparability of the folate assays from Phase 1 and Phase 2 of NHANES III, and the comparability of the NHANES III data with those obtained in NHANES II. In response to this request, FASEB directed LSRO to obtain state-of-the-art scientific information about the analytical methodology and possible use of an adjustment factor for Phase 1 NHANES III serum and RBC folate data.

LSRO has prepared a tentative report entitled "Assessment of Serum and Red Blood Cell Folate Methodology Used in NHANES III" (Ref. 3). Requests for a copy of the report should be made to LSRO/FASEB. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. The tentative report will be on display at LSRO/FASEB and at the Dockets Management Branch (address above).

FDA and FASEB are announcing that LSRO/FASEB will hold a public meeting on the report announced in this document on July 15, 1994. It is anticipated that the public meeting will not exceed 1 day depending on the number of requests to make oral presentations.

Written requests to make oral presentations of scientific data, information, and views at the open meeting on the five issues given in this document must be submitted in writing to LSRO/FASEB and the Dockets Management Branch and received by July 1, 1994.

FDA and FASEB are also inviting submission of written presentations of scientific data, information, and views on the issues identified above for this topic. These materials should be submitted on or before July 12, 1994. Two copies of the written material to be considered at the open meeting must be submitted to each office listed above.

Pursuant to its contract with FDA, FASEB will provide the agency with a final report of its review and evaluation on or before September 30, 1994.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Levine, S., "Analytical Inaccuracy for Folic Acid with a Popular Commercial Vitamin B12/Folate Kit," *Clinical Chemistry*, 39(10):2209–2210, 1993.

2. Edwards, R. B., "Response," *Clinical Chemistry*, 39(10):2210, 1993.

3. "Tentative Report: Assessment of Serum and Red Blood Cell Folate Methodology Used in NHANES III," Life Sciences Research Office, Federation of American Societies for Experimental Biology, Bethesda, MD, May 1994.

Dated: June 3, 1994.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 94–13934 Filed 6–3–94; 3:17 pm]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Final Minimum Percentages for "High Rate" and "Significant Increase in the Rate" for Implementation of the General Statutory Funding Preference for Nurse Anesthetist Traineeships for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces the final minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference for fiscal year (FY) 1994 Grants for Nurse Anesthetist Traineeships funded under the authority of section 831(a), title VIII of the Public Health Service (PHS) Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

Purpose

Section 831(a) of the Public Health Service Act authorizes the Secretary to award grants to cover the costs of traineeships for licensed registered nurses to become nurse anesthetists.

Statutory Funding Preference

Preference will be given to any qualified applicant that:

(a) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(b) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

Minimum Percentages for "High Rate" and "Significant Increase in the Rate"

A notice which announced this grant cycle was published in the **Federal Register** on November 3, 1993 at 58 FR 58701, and proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference. One letter was received during the 30 day comment period. The respondent suggested that the reference to public health nurses in the definition of "high rate" be deleted since it is not relevant to this program. The definition of "high rate" has been revised to include this suggestion. Other comments on issues not specifically proposed for public comment are not addressed in this notice. The final minimum percentages are shown below

"High rate" is defined as a minimum of 20 percent of graduates in academic years 1990–91, 1991–92 or 1992–93 who spend at least 50 percent of their worktime in clinical practice in the specified settings. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1991–92 and 1992–93, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Additional Information

If additional programmatic information is needed, please contact: Ms. Donna English, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9–36, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5763 FAX: (301) 443–8586.

This program, Grants for Nurse Anesthetist Traineeships, is listed at 93.124 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: June 3, 1994.

Ciro V. Sumaya,

Administrator.

[FR Doc. 94–13932 Filed 6–7–94; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Notice of a Meeting of the Acquired Immunodeficiency Syndrome Program Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the NIH Acquired Immunodeficiency Syndrome Program Advisory Committee on June 20, 1994. The meeting will take place from 9 a.m. to 5 p.m. at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland.

The meeting will be open to the public from 9 a.m. to 3 p.m. to review the NIH Plan for HIV-Related Research and projects to be funded by the Office of AIDS Research discretionary fund.

In accordance with the provisions set forth in section 552b(c)(4), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 3 p.m. until adjournment for the review and discussion of issues related to human subject protections under a protocol for expanded availability of an investigational new drug through the parallel track mechanism. This discussion could reveal confidential trade secrets or commercial property such as patentable material.

A summary of the Committee meeting and a roster of members may be obtained from Ms. Linda Reck, Senior Program Analyst, Office of AIDS Research, Building 31, room 5C02, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–0358, upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Reck in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

Dated: June 1, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94–13838 Filed 6–7–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

United States Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter a cooperative research and development agreement (CRADA) with Radon Abatement Systems, Inc., of Evergreen, Colorado, and COLOG, Inc., of Golden, Colorado. The purpose of the CRADA is to develop a method for decreasing concentration of radon–222 in ground water used for drinking-water supplies.

Any other organization interested in entering the CRADA for similar kinds of activities should contact the USGS. We are interested in potential partners that have the following capabilities: National or extended geographic coverage of well servicing and well rehabilitation; financial, marketing, and educational support; and scientific expertise. Interested parties should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Chief, Branch of Sedimentary Processes, U.S. Geological Survey, Box 25046, MS 939, Denver Federal Center, Denver CO 80225.

FOR FURTHER INFORMATION CONTACT: Richard B. Wanty, U.S. Geological Survey, Box 25046, MS 916, Denver Federal Center, Denver CO 80225; telephone (303) 273–8620.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: May 24, 1994.

Benjamin A. Morgan,

Chief Geologic Division.

[FR Doc. 94–13823 Filed 6–7–94; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[NM 018–4210–04; NM 91327]

Realty Action-Exchange, Federal Surface in San Miguel County, New Mexico for Private Surface in Taos County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction regarding segregation period of public lands.

SUMMARY: This notice corrects the third full paragraph in the second column of the Notice of Realty Action published in the **Federal Register** on May 19, 1994 (59 FR 26318). The paragraph referred to should read: Publication of this notice segregates the public land from the operation of the public laws, including the general mining laws, but not the mineral leasing laws. The segregation period will terminate 2 years from the date of this publication or upon issuance of a patent whichever occurs first.

Dated: June 2, 1994.

Chuck Schultz,

Acting District Manager.

[FR Doc. 94–13853 Filed 6–7–94; 8:45 am]

BILLING CODE 4310–FB–M

[MT–930–4210–06–P; MTM 011811 and MTM 1171]

Notice of Proposed Continuation of Withdrawal; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that withdrawals for the Philipsburg Administrative Site and the Elkhorn Cemetery, totaling 155.18 acres, continue for an additional 20 years. The lands will remain closed to mining, but those lands currently closed to surface entry will be opened to such forms of disposition as may by law be made of National Forest System lands. Of the 155.18 acres, 145.18 will be opened to mineral leasing, but have been and will remain open to oil and gas; the remaining 10 acres have been and will remain open to mineral leasing.

DATE: Comments should be received on or before August 8, 1994.

ADDRESS: Comments should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, 406–255–2949.

SUPPLEMENTARY INFORMATION: The Department of Agriculture proposes that the existing land withdrawals made by PLO 1217 (amended by PLO 1268) and PLO 4463, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988). The lands are described as follows:

Principal Meridian, Montana

Elkhorn Cemetery
T. 6 N., R. 3 W.,
Sec. 14, SW¼SW¼ of lot 13, SE¼SE¼ of lot 14, NE¼NE¼SW¼SW¼, and NW¼NW¼SE¼SW¼.
Philipsburg Administrative Site
T. 7 N., R. 13 W.,
Sec. 31, that portion of lot 13 lying within the SW¼SW¼.
T. 7 N., R. 14 W.,
Sec. 36, lots 5, 8, 9, 10, and 12.

The areas described aggregate 155.18 acres in Granite and Jefferson Counties.

The purpose of the withdrawals is to protect the Philipsburg Administrative Site, which was segregated from settlement, sale, location, and entry, including location and entry under the

mining and mineral leasing laws, except oil and gas, and the Elkhorn Cemetery, which was segregated from settlement, sale, location, and entry, including location and entry under the mining laws, but not the mineral leasing laws. No change is proposed in the purposes of the withdrawals; the lands will be segregated from mining only.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land Resources in the Montana State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

May 27, 1994.

Thomas P. Lonnie,

Acting State Director.

[FR Doc. 94–13821 Filed 6–7–94; 8:45 am]

BILLING CODE 4310–DN–P

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Donald G. McMillan, Mendota Heights, CA, PRT–790775

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. M. G. Wienand, "Longwood", Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Circus Productions, Inc., New York, NY, PRT–790823

The applicant requests a permit to import one male and one female captive-bred leopard (*Panthera pardus*), and two female captive-bred Asian elephants (*Elephas maximus*), from the Moscow Circus, Russia, for the purpose of enhancement of survival through conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 2, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–13833 Filed 6–7–94; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Acadia National Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. Ap. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, June 20, 1994.

The Commission was established pursuant to Public Law 99–420, section 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands and termination of rights of use and occupancy.

The meeting will convene on Islesford, Cranberry Isles, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held December 6, 1993.
2. Report of the Conservation Easement Subcommittee.
3. Report of the Acquisition Subcommittee.
4. Superintendent's report.
5. Public comments.
6. Proposed agenda and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting. Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: May 31, 1994.

Evelyn Sheehan,

Acting Regional Director.

[FR Doc. 94–13816 Filed 6–7–94; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–663 (Final)]

Certain Paper Clips From the People's Republic of China

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–663 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China (China) of certain paper clips wholly of wire of base metal, provided for in subheading 8305.90.30 of the Harmonized Tariff Schedule of the United States (HTS).[1]

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 16, 1994.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain paper clips from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on October 13, 1994, by ACCO USA, Inc. (Wheeling, IL) and Noesting, Inc. (Bronx, NY). Commerce postponed the date of its final determination until September 30, 1994.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on September 21, 1994, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on October 4, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 26, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 28, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is September 28, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is October 13, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 13, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: May 31, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary

[FR Doc. 94–13905 Filed 6–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–365]

Certain Audible Alarm Devices for Divers; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 28, 1994, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of David A. Hancock, 4257 24th Avenue West, Seattle, WA 98199 and Ideations Design Inc., 4257 24th Avenue West, Seattle, WA 98199. Supplementary letters were filed on May 23, 1994. The complaint alleges violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain audible alarm devices for divers, by reason of infringement of claim 6 of U.S. Letters Patent 4,950,107 and claim 1 of U.S. Letters Patent 5,106,236, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the

[1] The products covered by this investigation are certain paper clips, wholly of wire of base metal, whether or not galvanized, whether or not plated with nickel or other base metal (e.g., copper), with a wire diameter between 0.025 inches and 0.075 inches (0.64 to 1.91 millimeters), regardless of physical configuration, except as specifically excluded. The products subject to this investigation may have a rectangular or ring-like shape and include, but are not limited to, clips commercially referred to as "No. 1 clips", "No. 3 clips", "Jumbo" or "Giant" clips, "Gem clips", "Marcel Gems", "Universal clips", "Nifty clips", Peerless clips", "Ring clips", and "Glide-on clips". Specifically excluded from the scope of this investigation are plastic and vinyl covered paper clips, or other paper fasteners that are not made wholly of wire of base metal and are covered under a separate subheading of the HTS

Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on May 31, 1994, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of section 337(a)(1)(B)(i) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain audible alarm devices for divers, by reason of infringement of claim 6 of U.S. Letters Patent 4,950,107 or claim 1 of U.S. Letters Patent 5,106,236, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

David A. Hancock, 4257 24th Avenue West, Seattle, Washington 98199

Ideations Design Inc., 4257 24th Avenue West, Seattle, Washington 98199.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Duton Industry Co., Ltd., 3F, No. 85, Ming Teh Road, Peitou, Taipei, Taiwan

IHK International Corp., 2902 Oregon Court, B–1, Torrance, California 90503.

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., room 401–O, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: May 31, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13898 Filed 6–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–360]

Certain Devices for Connecting Computers Via Telephone Lines; Decision Not To Review Initial Determinations Granting Joint Motions To Terminate the Investigation With Respect to Respondent Focus Enhancements, Inc. on the Basis of Patent and Settlement Agreements, and With Respect to Good Way Industrial Co., Ltd., Caltechnology International Ltd., Shiunn Yang Enterprises Co., Ltd., Tremon Enterprises Co., Ltd, and Taiwan Techtron Corp. on the Basis of Settlement Agreements

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review three initial determinations (IDs) (Order No. 23 and Order Nos. 24, and 25) issued on May 2, 1994, and May 4, 1994, respectively, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Farallon Computing, Inc. ("Farallon") and respondent Focus Enhancements, Inc. ("Focus") to terminate the investigation as to Focus on the basis of a licensing agreement and a settlement agreement, and the joint motions of Farallon and respondents Good Way Industrial Co., Ltd. ("Good Way"), Caltechnology International Ltd. ("Caltechnology"), Shiunn Yang Enterprises Co., Ltd. ("Shiunn Yang"), Tremon Enterprises Co., Ltd. ("Tremon"), and Taiwan Techtron Corp. ("Techtron") to terminate the investigation as to Good Way, Caltechnology, Shiunn Yang, Tremon, and Techtron on the basis of settlement agreements.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–3113.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain devices for connecting computers via telephone lines, on November 12, 1993; a notice of the institution was published in the **Federal Register** on November 17, 1993 (58 FR 60671). Complainant Farallon alleges infringement of certain claims of U.S. Letters Patent 5,003,579.

On April 21, 1994, Farallon and respondent Focus filed a joint motion to terminate the investigation with respect to Focus on the basis of licensing and settlement agreements. Also on April 21, 1994, Farallon and respondents Good Way, Caltechnology, and Shiunn Yang filed joint motions to terminate the investigation with respect to Good Way, Caltechnology, and Shiunn Yang on the basis of settlement agreements. On April 26, 1994, Farallon and respondents Tremon and Techtron filed joint motions to terminate the investigation with respect to Tremon and Techtron on the basis of settlement agreements. The Commission investigative attorney supported the joint motions. The ALJ issued IDs granting the joint motions and terminating the investigation as to Focus, Good Way, Caltechnology, Shiunn Yang, Tremon, and Techtron. No petitions for review of the IDs were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the nonconfidential version of the IDs and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: June 2, 1994

By order of the Commission

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13899 Filed 6–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–360]

Certain Devices for Connecting Computers Via Telephone Lines; Decision Not To Review an Initial Determination Granting Joint Motions To Terminate the Investigation With Respect to Respondents CPU Products and Ming Technology Corp. on the Basis of Settlement Agreements

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 26) issued on May 9, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motions of complainant Farallon Computing, Inc. ("Farallon") and respondents CPU Products ("CPU") and Ming Technology Corp. ("Ming") to terminate the investigation as to CPU and Ming on the basis of settlement agreements.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–3113.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain devices for connecting computers via telephone lines, on November 12, 1993; a notice of the institution was published in the **Federal Register** on November 17, 1993 (58 FR 60671). Complainant Farallon alleges infringement of certain claims of U.S. Letters Patent 5,003,579.

On April 29, 1994, Farallon and respondent CPU filed a joint motion to terminate the investigation with respect to CPU on the basis of a settlement agreement. On May 2, 1994, Farallon and respondent Ming filed a joint motion to terminate the investigation with respect to Ming also on the basis of a settlement agreement. The Commission investigative attorney supported the joint motions. The ALJ issued an ID granting the joint motions and terminating the investigation as to CPU and Ming. No petitions for review of the ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the nonconfidential version of the IDs and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: June 2, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13900 Filed 6–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–702 (Preliminary)]

Ferrovanadium and Nitrided Vanadium From Russia

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–702 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Russia of ferrovanadium and nitrided vanadium, provided for in subheadings 7202.92.00 and 8112.40.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 15, 1994.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 31, 1994, by counsel on behalf of Shieldalloy Metallurgical Corp., New York, NY.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation

upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 21, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–205–3185) not later than June 17 to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 24, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: June 2, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13901 Filed 6–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–703, 704 and 705 (Preliminary)]

Furfuryl Alcohol From China, South Africa, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–703, 704 and 705 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China, South Africa, and Thailand of furfuryl alcohol, provided for in subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 15, 1994.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on May 31, 1994, by QO Chemicals, Inc., West Lafayette, IN.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 21, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202–205–3191) not later than June 16, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 24, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: June 2, 1994.

By order of the Commission

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13902 Filed 6–7–94; 8:45 am]

BILLING CODE 7020–02–P

Iron Construction Castings From Canada; Request for Comments Concerning the Institution of a Section 751(b) Review Investigation

AGENCY: International Trade Commission.

ACTION: Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731–TA–263 (Final), Iron Construction Castings from Canada.

SUMMARY: The Commission invites comments from the public on whether changed circumstances exist sufficient to warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) (the Act) to review the Commission's affirmative determination in the above investigation. The purpose of the proposed review investigation is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of iron construction castings from Canada if the existing antidumping order on such merchandise were to be modified or revoked. Iron construction castings are provided for in subheading 7325.10.00 of the Harmonized Tariff Schedule of the United States.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1986, the Commission issued an affirmative injury determination with respect to iron construction castings in investigation No. 731–TA–263 (Final), Iron Construction Castings from Canada (51 FR 7646), following the U.S. Department of Commerce's final determination that imports of such merchandise were being sold at less than fair value (LTFV) (51 FR 2412, January 16, 1986). The Commission's determination was based on a cumulative assessment of imports from Canada with imports from Brazil, the People's Republic of China (China), and India, which Commerce also determined were being sold at LTFV (51 F.R. 9477, March 19, 1986). Commerce issued antidumping orders for all four countries.

On May 20, 1994, the Commission received a petition to review its final injury determination with respect to Canada in the light of changed circumstances, pursuant to section 751(b) of the Trade Act of 1930. The petition was filed by counsel on behalf of Associated Foundry, Ltd.; Laperle Foundry Division of Fonderies Bibby-Ste-Croix; Fonderies Bibby-Ste-Croix, Inc.; and Titan Foundry, Ltd.—producers of the subject products in Canada. The alleged changed circumstances include: (1) An exclusion of foreign producers from an estimated 60–75 percent of the market due to a 1991 extension of Buy America provisions to iron products used in highway construction; (2) an exclusion of foreign producers from an additional 2 percent of the market due to a 1992 extension of Buy America provisions to iron products used in airport and airway construction; and (3) an effective exclusion of foreign producers from an estimated 12 percent of the market for heavy iron castings due to Customs' enforcement of a 1984 statute that requires the country of origin to appear boldly on the top surface of manhole covers that show the name of a U.S. location, thus increasing the cost of foreign-produced covers, making them less price competitive, and discouraging purchases by local and municipal governments that do not wish to so boldly advertise the purchase of a foreign-produced product. The petitioners maintain that with such a substantial portion of the United States market "closed" to Canadian producers, domestic producers are effectively protected from injury and would continue to be protected if the order for Canada were to be revoked.

Because the alleged changed circumstances relate to the domestic industry and are not limited to imports from Canada, submissions should also address the possibility of reviewing outstanding orders on imports from other countries. Also at issue is the subject of cumulation and whether the Commission should cumulate imports from Canada with those from Brazil, China, and/or India in any review investigation.

Written Comments Requested

Pursuant to § 207.45(b)(2) of the Commission's rules of practice and procedure (19 CFR 207.45(b)(2)), the Commission requests comments concerning whether the alleged changed circumstances are sufficient to warrant institution of a review investigation.

Written Submissions

In accordance with § 201.8 of the Commission's rules (19 CFR 201.8), the signed original and 14 copies of all written submissions must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436. All comments must be filed no later than 30 days after the date of publication of this notice in the **Federal Register**. The Commission's determination regarding initiation of a review is due within 30 days of the close of the comment period. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under § 201.6 of the Commission's rules (19 CFR 201.6). Such requests should be directed to the Secretary to the Commission and must include a full

statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked at the top "Confidential Business Information." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Copies of the request for review of the injury determination and any other documents in this matter are available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission, telephone 202–205–2000.

Issued: June 3, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13903 Filed 6–7–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–366]

Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 9, 1994, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minnesota 55133. An amended complaint was filed on May 27, 1994. The complaint, as amended, alleges violations of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain microsphere adhesives, and products containing same, including self-stick repositionable notes, by reason of alleged infringement of claims 1–8 and 10 of U.S. Letters Patent 4,166,152, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: John M. Whealan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on June 2, 1994, *ordered* that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of section 337(a)(1)(B) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain microsphere adhesives, and products containing same, including self-stick repositionable notes, by reason of alleged infringement of claims 1–8 or 10 of U.S. Letters Patent 4,166,152, or whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minnesota 55133.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Taiwan Hopax Chemicals Mfg. Co. Ltd., 13 F–2, 77, Li Wen Rd., Tso Ying District, Kaohsiung, Taiwan.

Yuen Foong Paper Co. Ltd., 4F, 51 Chung Ching S. Rd., Sec. 2, Chung Cheng Dist., Taipei, Taiwan.

Beautone Specialties Co. Ltd., 4th Floor, 51 Chung Ching South Road, Section 2, Chung Cheng District, Taipei, Taiwan.

Kudos Finder Tape Industrial Ltd., 10th Floor, 811 Chung Hsiao East Road, Section 5, Taipei, Taiwan TW–115.

Kudos Finder Trading Co. Ltd., 10th Floor, 811 Chung Hsiao East Road, Section 5, Nan Kang District, Taipei Taiwan TW–115.

Print-Inform GmbH & Co., Borsigstr 8, 24568 Kaltenkirchen, Germany.

Beautone Specialties Co. Ltd. Inc., 200 High Street, 5th Floor, Boston, MA 02110.

Z-International, 110 East 16th Avenue, North Kansas City, MO 64116.

(c) John M. Whealan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401–P, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received no later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: June 3, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–13904 Filed 6–7–94; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

TA-W-29, 405

General Motors Corporation Inland Fisher Guide Division, Syracuse, NY; Notice of Negative Determination on Reconsideration

On May 23, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former worker of the Inland Fisher Guide Division of General Motors (GM) in Syracuse, New York. The notice was will soon be published in the **Federal Register**.

The United Auto Workers (UAW) stated that a production relationship existed between the subject firm and GM's Tarrytown, New York plant whose workers were certified under TA-W-26,063.

The workers produced exterior and interior plastic trim for GM vehicles.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act were not met. This test is generally demonstrated through survey of the worker's firm's customers. The Department's survey showed that none of the respondents increased their purchases of imported trim while decreasing their purchase from the subject firm during the relevant period.

Findings on reconsideration show that purchases from Tarrytown and all other GM plants where workers are certified eligible to apply for TAA did not constitute an important portion of Syracuse's 1993 sales decline.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of the Inland Fisher Guide Division of General Motors Corporation in Syracuse, New York.

Signed at Washington, DC, this 31st day of May 1994.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94-13883 Filed 6-7-94; 8:45 am]

BILLING CODE 4510-30-M

[NAFTA-00083]

Miami Trim, Inc; Miami, FL; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance, hereinafter called (NAFTA-TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on April 18, 1994, in response to a petition filed by the company on behalf of workers at Miami Trim, Inc. in Miami, Florida. The firm produces buttons and trim for apparel.

In a letter dated May 20, 1994, the petitioner requested that the petition for NAFTA-TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of May, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-13886 Filed 6-7-94; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than June 20, 1994.

Interested person are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 20, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 23rd day of May 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Sunshine Rope Manufacturing (Wkrs)	Miami, FL	05/23/94	04/11/94	29,883	Synthetic Twine and Rope
Jockey International, Inc. (Wkrs)	Belzoni, MS	05/23/94	05/11/94	29,884	Men's T Shirts and Briefs.
Peerless Winsmith, Inc. (Wkrs)	Warren, OH	05/23/94	05/10/94	29,885	Fans and Blowers.
Mascotech Forming Technologies (Wkrs).	Roseville, MI	05/23/94	05/02/94	29,886	Screw Machine Parts
Baxter Healthcare Corp. (Co)	Kingstree, SC	05/23/94	05/09/94	29,887	Latex Medical Gloves.
Alcan Aluminum Corp./Alcan Ingot (Co)	Henderson, KY	05/23/94	05/12/94	29,888	Primary Aluminum.
American Battery Tubes, Inc. (Co)	Weddington, NC	05/23/94	05/11/94	29,889	Fabric Gauntlets for Batteries.
Canon Business Machines, Inc. (Wkrs)	Costa Mesa, CA	05/23/94	05/16/94	29,890	Electronic Word Processors.
August F. Nelson Co., Inc. (Wkrs)	Allentown, PA	05/23/94	05/11/94	29,891	Children's Sleepwear.
Trico Products Corp. (UAW)	Buffalo, NY	05/23/94	05/04/94	29,892	Windshield Wiper Systems for Autos.
Producers Service Corp. (Co)	Zanesville, OH	05/23/94	05/11/94	29,893	Crude Oil & Natural Gas.
Neil Sportswear, Inc. (ILGWU)	Cambridge, MA	05/23/94	05/11/94	29,894	Ladies' Skirts and Jackets.
Keytronic Southwest (Wkrs)	Las Cruces, NM	05/23/94	05/07/94	29,895	PC Keyboards.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
General Electric Co. (IUE)	Linton, IN	05/23/94	05/09/94	29,896	Fractional H.P. Electric Motor Parts.
Dimensional Products (Wkrs)	Mobile, AL	05/23/94	04/28/94	29,897	Furniture/Clock Cases.
Commodore Semiconductor Group (Wkrs).	Norristown, PA	05/23/94	05/09/94	29,898	Computer Chips.
Clayton Williams Energy, Inc. (Wkrs)	San Antonio, TX	05/23/94	05/01/94	29,899	Exploration & Production of Oil/Gas.
Caddo Well Service, Inc. (Co)	Shreveport, LA	05/23/94	05/08/94	29,900	Oil.
C.H. Hartshorn Co. (IUE)	Gardner, MA	05/23/94	05/09/94	29,901	Furniture.
Arsynco, Inc. (Wkrs)	Carlstadt, NJ	05/23/94	05/02/94	29,902	Organic Intermediates.
ABB Process Automation (Wkrs)	Houston, TX	05/23/94	05/06/94	29,903	Software & General Services.
J&G Shake (Co)	Forks, WA	05/23/94	04/21/94	29,904	Cedar Shakes and Shingles.
Citation Oil & Gas Corp. (Co)	Oklahoma City, OK	05/23/94	05/10/94	29,905	Crude Oil.
Citation Oil & Gas Corp. (Co)	Odessa, TX	05/23/94	05/10/94	29,906	Crude Oil.
Citation Oil & Gas Corp. (Co)	Cement, OK	05/23/94	05/10/94	29,907	Crude Oil.
Citation Oil & Gas Corp. (Co)	Lyford, TX	05/23/94	05/10/94	29,908	Crude Oil.
Citation Oil & Gas Corp. (Co)	Odessa, TX	05/23/94	05/10/94	29,909	Crude Oil.
Citation Oil & Gas Corp. (Co)	Stratton, NE	05/23/94	05/10/94	29,910	Crude Oil.
Swiss Precision Products, Inc. (Wkrs)	Lake Havasu, AZ	05/23/94	04/13/94	29,911	Connectors, Pins, Contacts & Etc.

[FR Doc. 94–13885 Filed 6–7–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,766]

USA Enterprises of Georgia A/K/A USA Enterprises, Inc.; Conyers, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of USA Enterprises of Georgia in Conyers, Georgia. The certification notice was issued on May 24, 1994 and will soon be published in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that some of the claimants' wages are reported under unemployment insurance (UI) tax account for USA Enterprises, Inc., in Conyers, Georgia. Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–29,766 is hereby published as follows:

"All workers of USA Enterprises of Georgia, Conyers, Georgia a/k/a USA Enterprises, Inc. of Conyers, Georgia who became totally or partially separated from employment on or after March 24, 1993, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 26th day of May 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–13884 Filed 6–7–94; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (94–033)]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee.

DATES: June 29, 1994, 8:30 a.m. to 5 p.m.; and June 30, 1994, 8:30 a.m. to 4:45 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC–5, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Arnauld Nicogossian, Code U, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0215.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Thursday, June 30, 1994, from 11:30 a.m. to 12:15 p.m. in accordance with 5 U.S.C. 522b(c)(6), to allow for discussion on qualifications of individuals being considered for membership to the Committee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Office of Life and Microgravity Sciences and Applications Status and Congressional Activities
—Subcommittee Reports
—Review of Flight Programs Status and Space Station Facilities
—Results of the Centrifuge Review
—Report on Science and Education
—Review of Phase I Mir Program and International Cooperation
—Committee Recommendations/Future Planning

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 1, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 94–13927 Filed 6–7–94; 8:45 am]
BILLING CODE 7510–01–M

[Notice (94–032)]

Intent To Grant a Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Final Touch of Virginia, Inc., of Richmond, Virginia, a partially exclusive, royalty-bearing, revocable license to practice the invention described and claimed in U.S. Patent No. 5,266,252, which issued on November 30, 1993, and entitled "Ceramic Slip Casting Technique." The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. The fields of use will be limited to the manufacture of ceramic parts for the recreational and commercial marine industries, electrical insulator industry, and for heat insulation in the medical equipment industry. NASA will negotiate the final terms and conditions and grant the partially exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the partially exclusive.

DATES: Comments to this notice must be received by August 8, 1994.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358–2041.

Dated: May 27, 1994

Edward A. Frankle,

General Counsel.

[FR Doc. 94–13928 Filed 6–7–94; 8:45 am]
BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by June 15, 1994, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C.).

DATES: Comments on this information collection must be submitted by June 10, 1994.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of all of its funding application guidelines. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Blanket Justification for NEA Funding Application Guidelines FY 1995–FY 1998.

Frequency of Collection: Annually.

Respondents: Individuals, nonprofit arts organizations, state and local arts agencies.

Use: Guideline instructions and applications elicit relevant information from individuals, nonprofit arts organizations, and state and local arts agencies that apply for funding in the following Endowment programs: Challenge/Advancement, Dance, Design Arts, Expansion Arts, Folk & Traditional Arts, Literature, Media Arts, Museum, Music, Opera-Musical Theater, Presenting & Commissioning, Theater, Visual Arts, Arts in Education, International, Local Arts Agencies, State & Regional, and Arts Administration Fellows. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process.

Estimated Number of Respondents: 17,000.

Average Burden Hours Per Response 26.75.

Total Estimated Burden. 454,750.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 94–13849 Filed 6–7–94; 8:45 am]
BILLING CODE 7537–01–M

U.S. NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 16 1994, through May 26, 1994. The last biweekly notice was published on May 25, 1994 (59 FR 27049).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11555 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 8, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: December 30, 1993

Description of amendment requests The proposed amendment would modify Tables 3.3-4 and 3.3-5 of Technical Specification 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation," to provide clarification of settings for undervoltage relay trip values for the Class IE 4.16 kV electrical bus. The proposed amendment would also add Figure 3.3-1, "LOSS OF VOLTAGE RELAY (GE IAV) TIME VS VOLTAGE CURVE," to clarify the relay setpoints and methodology.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1—Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS amendment does not significantly increase the probability of an accident previously evaluated. The methodology remains the same.

Clarifying the minimum acceptable voltage and allowing more conservative values of the 4.16 kV bus undervoltage trip value will ensure that 4.16 kV ESF [Engineered Safety Features] bus voltages are sufficient to provide adequate voltage to equipment necessary for accident response.

Standard 2—Create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously analyzed. No new or different methodology is being proposed.

The minimum undervoltage relay setpoints are specified and the new wording will allow a more conservative setpoint to ensure voltage levels to equipment powered by the 4.16 kV ESF bus.

The proposed amendment also adds a figure to clarify the relay setpoints and methodology.

Standard 3—Involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS will be increased by specifying the minimum and allowing more conservative values for the 4.16 kV ESF bus undervoltage relay trip values. This clarification will ensure that the trip setpoint adequately protects that equipment powered by the 4.16 kV ESF bus from a potentially damaging degraded voltage condition.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: March 28, 1994

Description of amendment requests: The proposed amendment would change Technical Specification 3/4.3.7.1.3 Condensate Storage Tank. The licensee proposed to change the minimum condensate storage tank (CST) indicated level from 25 feet to 29.5 feet to ensure that the CST contains sufficient volume of water. In addition, the licensee proposed to make an editorial change to the Unit 3 Technical Specification 3/4.3.7.1.3, from "with a level" to "with an indicated level," to be consistent with the Units 1 and 2 Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1—Involve a significant increase in the probability or consequences of an accident previously evaluated.

This amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated based on the safety analysis for the CST [condensate storage tank] minimum indicated level. The proposed change increases the minimum indicated CST water level from 25 feet to 29.5 feet. Increasing the minimum indicated CST water level ensures that the requirements of BTP [Branch Technical Position] RSB [Reactor System Branch] 5-1 and UFSAR [Updated Final Safety Analysis Report] Section 9.2.6 continue to be met. Therefore, this proposed change ensures that the consequences of an accident previously evaluated are not affected.

Standard 2—Create the possibility of a new or different kind of accident from any accident previously analyzed.

This amendment request does not create the possibility of a new or different kind of accident from any accident previously analyzed since the minimum water volume of 300,000 gallons is maintained by this change. The change in the CST minimum required water level does not change the operation of any plant equipment while ensuring that the required 300,000 gallons are available. Since this change does not affect the operation of plant equipment and ensures that the minimum CST water inventory is maintained, the proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed.

Standard 3—Involve a significant reduction in a margin of safety.

The margin of safety presently provided is not reduced by the proposed change in the CST minimum required water level. The proposed change ensures that the CST volume of 300,000 gallons is available to satisfy the requirements of BTP RSB 5-1 UFSAR Section 9.2.6 and the BASES for Technical Specification 3/4.3.7.1.3. Therefore, since the minimum required CST level in maintained, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: May 20, 1994

Description of amendment request: The proposed amendment will change the Technical Specifications (TS) to (1) add an exception to TS 6.3.1 regarding the requirement for the Manager - Operations position to hold a Senior Reactor Operator's (SRO's) license, (2) add a new TS 6.3.2 to describe the

qualifications for the Manager - Operations and Manager - Shift Operations positions. This new section will require the Manager-Operations to hold or have held an SRO license for either the H. B. Robinson Steam Electric Plant, Unit No. 2 (Robinson), or a similar plant and require the Manager-Shift Operations to hold an SRO license at the Robinson plant, and (3) renumber the sections to allow for the insertion of a new TS 6.3.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The total number of senior reactor operator licensed personnel on shift remains unchanged. The change to provide a middle level of management will lessen the burden of the daily shift operations placed on the Manager - Operations. This will allow for more effective overall management of the Operations Unit. Requiring the Manager shift Operations to hold an SRO license will assure that supervision of operator activities continues to be performed by a senior licensed individual. The proposed changes to the Operations management organization do not involve physical alterations of the plant configuration or changes in setpoints or operating parameters. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As described above, these changes affect the organization of the Operations Unit. They do not represent any appreciable change in the current methodologies; they merely update the TS to reflect current personnel organization configuration and standards. The proposed changes to the Operations management organization do not involve physical alterations of the plant configuration or changes in setpoints or operating parameters. Therefore, the changes proposed do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The changes proposed do not reduce the number of senior reactor operator licensed personnel on shift. The changes to the Operations organization, as reflected in the proposed change, will enhance the overall effectiveness of plant operations and will serve to improve nuclear safety. There are no changes to the plant configuration or changes in setpoints or procedures. Therefore, the changes proposed have no affect on the facility's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: William H. Bateman

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: May 10, 1994

Description of amendment request: The proposed amendment would remove component lists from Technical Specification (TS) sections in accordance with the guidance provided in Generic Letter (GL) 91-08 dated May 6, 1991. Related TS which reference the lists are also modified.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change will not result in any hardware or operating changes. The proposed change is based upon Generic Letter 91-08 and merely removes component lists, removes details relating to the component lists, provides clarifying information supporting the removal of the component listings, or removes details (which are considered administrative) that are no longer applicable to the TS. The removal of tabular component listings from the TS does not impact affected component OPERABILITY requirements. TS will continue to require the components to be OPERABLE. Action statements and surveillance requirements for the components will also remain in the TS. The tabular component lists will be relocated to plant procedures which will be controlled in accordance with the provisions specified in the Administrative Controls Section of the TS. Therefore, this change is administrative in nature and does not involve a significant increase in the probability or consequences of an accident previously evaluated. Further, the proposed changes do not alter the design, function, or operation of the components involved and therefore, do not affect the consequences of any previously evaluated accident.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes will not impose any different operational or surveillance requirements. The changes propose to relocate these component lists to plant procedures whereby adequate control of information is maintained. Further, as stated above, the proposed changes do not alter the design, function, or operation of the components involved and therefore, no new accident scenarios are created.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumption. The proposed change does not alter the scope of equipment currently required to be OPERABLE or subject to surveillance testing nor does the proposed change affect any instrument setpoints or equipment safety functions. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: Ledyard B. Marsh

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: July 15, 1993

Description of amendment request: The revision proposed by Technical Specification Change Request (TSCR) No. 211 to the Technical Specifications would remove a footnote to specification 3.24, "Reactor Coolant Inventory Trending System," and would revise that specification to be consistent with the revised Babcock & Wilcox revised Standard Technical Specifications, issued as NUREG-1430.

The July 15, 1993, request supersedes the request of September 5, 1991, published in the **Federal Register** on November 13, 1991 (56 FR 57697).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. The revised Limiting Condition for Operation represents no increase in the probability of occurrence or consequences of an accident previously evaluated.

The TSCR represents no change to the physical configuration or operation of the Reactor Coolant Inventory Trending System.

As stated in the Bases for the existing Technical Specification 3.24, the system is not a system required to mitigate accidents. It may be useful to have the system operable, but adverse impact does not result if it is not operable; other useful information for monitoring inadequate core cooling is available. The change proposed is in accordance with the Limiting Condition for Operation in NUREG 1430.

2. The revised Limiting Condition for Operation does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As identified above, the TSCR represents no change to the physical configuration or operation of the Reactor Coolant Inventory Trending System.

3. The revised Limiting Condition for Operation does not involve a significant reduction in a margin of safety.

The margin of safety for the proposed Limiting Condition for Operation is no different from that for existing Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: April 11, 1994

Description of amendment request: The purpose of the request is to revise the Technical Specifications (TS) by relocating the detailed inspection criteria, methods and frequencies of the containment tendon surveillance program to the Final Safety Analysis Report (FSAR) and providing a direct reference to the existing tendon surveillance program in the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment only relocates the tendon surveillance program detailed requirements and criteria to the FSAR, consistent with the BWOG [Babcock & Wilcox Owners Group] Revised Standard Technical Specifications. The proposed amendment does not affect the requirement to verify the containment structural integrity in accordance with the inservice tendon surveillance program. The proposed Technical Specification specifies that the tendon surveillance program conforms to the recommendations of U.S. NRC Regulatory Guide 1.35, which ensures the effectiveness of the program is not reduced and containment structural integrity is not affected. Therefore, this change does not increase the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The tendon surveillance program is required to conform to the recommendations of U.S. NRC Regulatory Guide 1.35. Therefore, the effectiveness of the surveillance program is maintained, thus providing continued assurance of containment structural integrity.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The performance of the inservice tendon surveillance program is maintained in conformance with the recommendations of U.S. NRC Regulatory Guide 1.35, thus providing continued assurance of containment structural integrity. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a reduction in a margin of safety as defined in the basis of any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr.; Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: April 19, 1994

Description of amendment request The purpose of the request is to delete the quality assurance (QA) audit program frequency requirements from the Technical Specifications (TS) and to utilize the Operational Quality Assurance (OQA) Plan as the controlling document.

Basis for proposed no significant hazards consideration determination. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. These changes do not affect the function of any system or component. Therefore, they do not increase the probability of occurrence or the consequences of an accident previously evaluated in the SAR [Safety Analysis Report].

2. These changes do not involve a physical change to plant configuration and they do not affect the performance of any equipment Therefore, they do not create the possibility of a new or different kind of accident or malfunction of a different type than previously identified.

3. The shifting of the audit frequency requirements from the Technical Specifications to the OQA Plan and the extension of the maximum interval between audits of certain areas do not change the activities to be audited nor the scope of individual audits. Furthermore, audit frequencies are not associated with the marginof safety in the bases of any Technical Specification. Therefore, the margin of safety in not affected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: April 14, 1994.

Description of amendment request: The licensee proposes to revise Technical Specification 5.3.1, "Fuel Assemblies." The amendment would permit fuel assembly reconstitution to restore the usefulness of fuel assemblies containing damaged or leaking fuel rods.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of a previously evaluated

accident.

Fuel assemblies containing filler rods will be shown to meet the current nuclear, mechanical, and thermal-hydraulic design limits on a cycle-specific basis. Since fuel assemblies containing filler rods will be shown to meet the current nuclear, mechanical, and thermal-hydraulic design limits on a cycle-specific basis, there is no impact on the design basis of the plant.

Replacement of fuel rods with fuel rods containing natural uranium or fuel rods from fresh or burned assemblies will be evaluated by South Texas Project's internal 10 CFR 50.59 review process. Reconstituted fuel assemblies with fuel rods containing natural uranium and/or fuel rods from fresh or burned assemblies will be analyzed using the normal design methodology as described in Section 6.9.1.6 of the Technical Specifications.

Since current reload core design limits will be met by fuel assemblies using zirconium alloy or stainless steel filler rods, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind accident from any previously evaluated.

The use of filler rods does not involve any alteration to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The use of filler rods does not change the reload design or safety analysis limits for a reload core. Their use will be evaluated on a cycle-specific basis using NRC-accepted fuel rod configurations and analysis techniques. Since the safety analysis limits are unaffected and since the modified fuel assemblies will be shown to meet existing design limits on nuclear, mechanical, and thermal-hydraulic parameters, the proposed change does not involve a significant reduction in a margin of safety

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: James E. Lyons, Acting

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: April 29, 1994

Description of amendment request: The licensee proposes to revise Technical Specification 3.7.1.1, "Turbine Cycle - Safety Valves." The amendment would change the maximum allowable power range neutron flux high setpoint when one or more main steam safety valve (MSSV) is inoperative. The Bases for Technical Specification 3.7.1.1 would also be changed to reflect the new algorithm used to calculate the revised setpoint values.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of a previously evaluated accident. The Main Steam Safety Valves [MSSVs] are only actuated after a transient has occurred. Therefore, revising the maximum power level with inoperable MSSVs would not increase the probability of a previously evaluated accident. Following a loss of load/turbine trip, the revised Technical Specification Table 3.7-1 maximum allowable power range neutron flux high setpoints would ensure that the maximum power level allowed for operation with inoperable MSSVs is below the heat removing capability of the operable MSSVs. This would ensure that the design limit of 110% overpressurization is not exceeded. Therefore, there is no increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change would not alter the design, configuration, or method of operation of STP [South Texas Project]. For this reason, as well as the reasons stated in response to Criterion 1 above, the proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The revised Table 3.7-1 setpoint values were calculated using a conservative method where the maximum power level allowed for operation with inoperable MSSVs is below the heat removing capability of the operable MSSVs. Using the revised maximum plant operating power levels will ensure that the secondary system pressure will be limited to within 110% of its design pressure. Therefore, since the design criteria will continue to be met, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: Suzanne C. Black

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: April 27, 1994

Description of amendment request: The amendment would delete Technical Specifications Surveillance Requirement 4.4.1.1.1, which requires that the reactor recirculation pump discharge valve be demonstrated operable by performing a full-stroke test of the valve prior to reactor thermal power exceeding 25% of rated reactor thermal power.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to delete the TS Surveillance Requirement (SR) does not require any modifications to the plant or equipment, and will not impact the operation of the reactor recirculation system. The reactor recirculation system will continue to function as designed to maintain reactor pressure boundary integrity and to provide sufficient flow through the reactor core to remove heat from the fuel. This proposed TS change does not affect the operation of any Emergency Core Cooling System (ECCS) or other plant equipment important to safety. The purpose of this TS SR is to satisfy an ECCS operability requirement for Boiling Water Reactor (BWRs) where the reactor recirculation system piping serves as the injection flowpath to the reactor pressure vessel for the Low Pressure Coolant Injection (LPCI) system, an ECCS. Each LPCI subsystem, at LGS, has an independent flowpath which does not rely on the reactor recirculation system piping for injecting to the reactor pressure vessel. The reactor recirculation system pump discharge valves do not perform an active safety-related function and are classified as passive safety-related components designed to maintain the reactor pressure boundary integrity during reactor recirculation pump maintenance activities. These valves are not normally used during plant operations except to establish normal shutdown cooling, a manually initiated non-safety related function. These valves are not used to mitigate the consequences of design bases accidents.

Therefore, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed TS does not require physical changes to the plant or equipment, and does not impact any design or functional requirements of the reactor recirculation system, LPCI system, or other plant systems important to safety. The purpose for this TS SR is to satisfy an ECCS operability requirement for BWRs where the reactor recirculation system piping serves as the injection flowpath to the reactor pressure vessel for the LPCI system. The LPCI system at LGS has an independent flowpath for injecting to reactor pressure vessel and does not rely on the reactor recirculation system piping as part of the injection flowpath. Since the intent of this requirement is to support LPCI operation, and the LPCI system design function is accident mitigation, eliminating this TS SR has no impact on the types of accidents that could occur. The reactor recirculation system pump discharge valves do not perform an active safety-related function and are classified as passive safety-related components designed to maintain the reactor pressure boundary integrity during reactor recirculation pump maintenance activities

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed change to delete the TS SR does not involve a change to the physical design or functional requirements of the reactor recirculation system, LPCI system, or other plant system important to safety. The reactor recirculation system will continue to function as designed to maintain reactor pressure boundary integrity and to provide sufficient flow through the reactor core to remove heat from the fuel. This proposed TS change does not impact the safety-related operation of the LPCI system. The LPCI system will continue to function as designed to mitigate the consequences of an accident. These valves do not perform an active safety-related function and are classified as passive safety-related components designed to maintain the reactor pressure boundary integrity during reactor recirculation pump maintenance activities.

Therefore, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this, review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Public Service Electric and Gas Company,Delmarva Power and Light Company, and Atlantic City Electric Company,Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station,Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: April 27, 1994

Description of amendment request: These technical specifications (TS) changes are being proposed to support the implementation of proposed Modification 5274 which is intended to replace the Peach Bottom Atomic Power Station (PBAPS), Unit 2 Containment Atmospheric Dilution (CAD) System and Containment Atmospheric Control (CAC) System analyzers. This modification was performed on PBAPS, Unit 3 during the previous Unit 3 outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design function and operation of the CAC and CAD Systems, which are supported by the operation of the containment monitoring system, have not been altered as a result of these changes. The CAC System monitors the content of oxygen during startup and normal operation and the CAD System is utilized to monitor the content of hydrogen and oxygen during post-LOCA [loss-of-coolant accident] operation. The monitoring of these variables will continue to mitigate the consequences of accidents previously evaluated. Additionally, no accident precursors will be impacted by these changes.

The new system meets or exceeds the design standards of the original system. Additionally, the decrease in warmup time will increase the availability and usefulness of the analyzers to mitigate the consequences of an accident. Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different type of accident from any accident previously evaluated; or.

The proposed TS changes do not involve the introduction of any new accident initiators. The new containment monitoring system will enhance the ability of [the] CAD system to mitigate the consequences of an accident and prevent the introduction of a new or different type of accident previously evaluated. The new system meets or exceeds existing design standards and will be tested to ensure its reliability. The new containment monitoring system is a monitoring system and will not introduce new accident initiators. Therefore, the proposed changes will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Although the number of analyzers is being reduced, the proposed modification and TS changes will enhance the ability of the containment monitoring system to support the operation of the CAC and CAD systems [through] the use of improved equipment that meets or exceeds the design standards of the original system. Therefore, the proposed changes will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Power Authority of The State of New York, Docket No. 50-286, Indian PointNuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: May 10, 1994

Description of amendment request: The proposed amendment would revise Section 3.1.C.3 and Table 4.1-1 of Appendix A of the Operating License. This change would require that the reactor coolant average temperature (T_{avg}) be restored to greater than or equal to 540° F within a 15-minute period or be in hot shutdown within the following 15 minutes. The proposed change in Table 4.1-1 entitled, "Minimum Frequencies for Checks, Calibrations and Tests," will add the requirement for T_{avg} instrument check frequency to be reduced to 30 minutes when the T_{avg} deviation and low T_{avg} alarms are not reset and the control banks are above zero steps. This application also proposes revision to the Bases to reflect that the minimum temperature for criticality provides assurance that the reactor is operated within the bounds of the safety analyses. In addition, the proposed application also includes an administrative change to correct some typographical errors on page 3.1-25 of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The probability or the consequences of an accident previously evaluated will not be affected because the proposed changes will make the Minimum Temperature for Criticality Specification (540° F) more restrictive than the current specification which allows reactor criticality at a temperature as low as 450° F. The proposed changes will also make the minimum temperature for criticality consistent with the licensing basis safety analyses. In addition, critical operation at T_{avg} less than 540° F will require operator response to restore T_{avg} to (greater than or equal to) 540° F within 15 minutes or be in hot shutdown within the following 15 minutes. [***] [T]he minimum temperature for criticality when defined to be within 7° F below the no-load T_{avg} value of 547° F does not adversely affect pressurizer operability, reactor vessel nil-ductility temperature, the reactor protection system operability, nor the plant design basis analyses and is supported by the current licensing basis safety analyses The presence of two separate alarms, each annunciating on a 1-out-of-4 T_{avg} signal, will provide assurance that constant T_{avg} monitoring is available during approaches to criticality. The proposed change also increases the surveillance frequency for T_{avg} instrument check when the T_{avg} deviation and low T_{avg} alarms are not reset and the control banks are above zero steps. Therefore, the proposed changes have no effect on the probability or consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve the addition of any new or different type of equipment, nor do they involve the operation of equipment required for safe operation of the facility in a manner different from those addressed in the Final Safety Analysis Report. The safety analyses, which assume a critical temperature of 547° F, are applicable for critical temperatures as low as 540° F. The proposed changes will ensure that the plant parameters are within their analyzed ranges and will increase the surveillance frequency for the T_{avg} instrument check when the T_{avg} deviation and low T_{avg} alarms are not reset and the control banks are above zero steps. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

:Response:

The proposed license amendment does not involve a significant reduction in a margin of safety. The proposed changes do not affect any safety related system or component operation or operability, instrument operation, or safety system setpoints and do not result in increased severity of any of the accidents considered in the safety analyses. Operator response to a drop in temperature after reaching criticality for a specified period of time will place the reactor in the hot shutdown condition where the LCO [limiting condition for operation] does not apply. The proposed changes are being made to make the Technical Specifications consistent with the licensing basis safety analyses and increase the surveillance frequency. These changes have no effect on any margin of safety and, therefore, do not create a significant reduction in a margin of safety

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Michael L. Boyle, Acting

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 31, 1994

Description of amendment request: This amendment request would revise the diesel fuel oil storage operability requirements and the 5 minute diesel hot restart test conditions. In addition, the amendment request also revises the Surveillance Requirements to allow the 24-hour diesel generator endurance test to be conducted during any operational condition.

Basis for proposed no significant hazards consideration determination As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of a 48 hour period to complete restoration of the required fuel oil level prior to declaring the diesel generator inoperable does not significantly increase the probability or consequences of an accident previously evaluated. PSE&G believes that the attendant risk of maintaining the diesel generator OPERABLE status under temporary conditions where fuel oil supply is below 48,800 gallons (but greater than 44,709 gallons) is less than the attendant risk of initiation and completion of shutdown actions currently required by Technical Specifications under these conditions. Since a minimum 44,709 gallon [6 day] supply of oil will be maintained for these 48 hours, and procedures are implemented to obtain replenishment fuel oil when the level falls below 48,800 gallons of fuel, and the probability of an event requiring the onsite power sources during this brief period are low (as stated in NUREG-1433), PSE&G concludes that this change does not increase the likelihood of accidents occurring nor significantly affect the performance of any system involved in the occurrence or mitigation of the accidents.

The proposed amendment to allow the 24 hour diesel generator endurance run to be conducted during any mode of operation does not significantly increase the probability or consequences of an accident previously evaluated in Chapter 15 of the UFSAR since the capability to safely shutdown the plant following a Loss of Offsite Power (LOP), LOCA or LOCA/LOP coincident with a single failure is maintained throughout the surveillance test. The 24 hour endurance test does not disable any of the automatic actuations and interlocks of the diesel generator control functions, nor prevent the satisfactory completion of the LOP or LOCA/LOP loading sequence if a LOP or LOCA signal is received at any time during the test. Required Class-1E onsite power OPERABILITY during normal operation, shutdown cooling, loss of off-site power, and accident conditions will be the same.

In addition, the performance of proposed Surveillance Requirement 4.8.1.1.2.k.1 during Operational Conditions 1 or 2 will not significantly increase the consequences of perturbations to any of the electrical distribution systems that could result in a challenge to steady state operation or to plant safety systems. Performance of proposed Surveillance Requirement 4.8.1.1.2.k.1 during Operational Conditions 1 or 2, or failure of the surveillance, will not cause, or result in, an anticipated operational occurrence with attendant challenges to plant safety systems that has not been previously analyzed for the existing monthly surveillances.

Therefore, PSE&G concludes that this above change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The establishment of the new Surveillance Requirement 4.8.1.1.2.k.2, allows the five minute diesel hot restart test to be performed at times other than after the 24 hour endurance run test, but does not alter nor modify the test requirements currently required by Surveillance Requirement 4.8.1.1.2.h.4.b. The proposed Surveillance Requirement 4.8.1.1.2.k.2 maintains the test conditions required by current Specifications, and satisfies the intent of Regulatory Guide 1.9, Rev. 3, paragraph 2.2.10. Therefore, PSE&G believes that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not involve any physical changes to plant structures, systems or components, or change the manner in which the plant is operated Therefore, the proposed changes will not increase the probability of accidents of a different type, nor will they create malfunctions of a different type than any previously evaluated in the SAR

3. Will not involve a significant reduction in a margin of safety. The basis for this statement is outlined in Item 1 above.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 31, 1994

Description of amendment request: The amendment request would establish an allowed out-of-service time (AOT) of 72 hours for any one low pressure Emergency Core Cooling System injection subsystem inoperable in addition to an inoperable High Pressure Coolant Injection system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change establishes a 72 hour Allowed Out-of-Service Time (AOT) for coincidental High Pressure Coolant Injection system (HPCI) and one low pressure injection/spray subsystem inoperability, in accordance with NUREG-1433. In addition, PSE&G will justify retaining the existing HCGS AOTs for one, two, and three Low Pressure Coolant Injection (LPCI) subsystems inoperable.

The HCGS electrical distribution system that supplies the ECCS (Emergency Core Cooling System) equipment with power contains four (4) Emergency Diesel Generator (EDGs) while the electrical distribution system of the NUREG-1433 plant contains only three (3) EDGs. This additional, redundant system adds reliability to the overall electrical distribution system. In NUREG-1433, the loss of one EDG (Emergency Diesel Generator) results in the inoperability of two (2) Low Pressure Injection (LPCI) pumps or one (1) LPCI and one (1) 100% capacity CS subsystem, whereas the loss of one EDG at HCGS would only result in the inoperability of one LPCI pump and one-half of a CS subsystem (50% capacity). Another design feature of the HCGS LPCI system that makes it more reliable than the plant discussed in NUREG-1433 is that the LPCI system injects directly into the reactor vessel via water boxes mounted inside the core shroud. The LPCI system of the NUREG-1433 plant injects into the reactor vessel via the recirculation loops. 2 LPCI pumps inject into each recirculation loop. Therefore, following a rupture of a recirculation line, a Design Base Accident Loss of Coolant Accident, the NUREG-1433 plant would lose 2 LPCI subsystems, while HCGS would maintain all 4 LPCI subsystems available for injection. The end result is that, following assumed loss of a single EDG electrical system, the HCGS plant is left with much more injection capability than the NUREG-1433 plant For these reasons:

*the HCGS AOT for one LPCI subsystem inoperable, given at least one CS subsystem is operable, is 30 days as opposed to 7 days as specified in NUREG-1433, and

*the HCGS AOT for two LPCI subsystems inoperable, given at least one CS subsystem is operable, is 7 days. This AOT is the same as the AOT in NUREG-1433 for one (1) LPCI subsystem inoperable. However, this AOT is less restrictive than the action required in NUREG-1433 for one (1) LPCI subsystem inoperable with one (1) CS subsystem inoperable, which is immediate entry into Technical Specification 3.0.3., and

*the HCGS AOT for three LPCI subsystems inoperable, given both CS subsystems are operable, is 72 hours as opposed to immediate entry into Technical Specification 3.0.3 as specified in NUREG-1433.

NUREG-1433 would be overly conservative for HCGS, since HCGS has four (4) EDGs and four (4) physically separate channels of electrical power, while the NUREG-1433 plant only has 3 EDGs. HCGS has greater capability to supply power to its ECCS in an emergency than the NUREG-1433 plant. Similarly, the incorporation of an AOT of 72 hours for HPCI and one low pressure injection/spray subsystem as proposed in NUREG-1433 would also be conservative for HCGS.

In the HCGS safety analysis, the small break LOCA is the design basis event for the HPCI system. The most limiting single failure coincident with a large or small break LOCA is the failure of the DC source (Channel A) common to the HPCI system, one CS subsystem, and one LPCI subsystem. The change made by this submittal would establish a 72 hour AOT for either one LPCI subsystem or one CS subsystem to be inoperable coincident with HPCI being inoperable. As discussed above, if an initiating event occurs while in the proposed AOT for the ECCS, the resulting scenario would be within the design basis of the HCGS. Even with a failure of one CS subsystem while HPCI and LPCI are in a 72 hour LCO or a failure of one LPCI subsystem while HPCI and CS are in a 72 hour LCO, HCGS would still be within its design basis if an initiating event occurred. Adequate cor

cooling is ensured by the operability of the ADS and the remaining low pressure injection/spray subsystems.

The loss of feedwater flow transient analyzed in Chapter 15 of the HCGS UFSAR assumes both the HPCI and RCIC systems to be operable. The existing TS for HPCI allows the system to be inoperable for up to 14 days. Sufficient injection capability is assured because the RCIC system will be required to be operable if the HPCI is inoperable. For this transient, the proposed 72 hour AOT for the HPCI and one low pressure injection/spray subsystem inoperable presents no challenge greater than the existing 14 day HPCI AOT.

For the steam line breaks outside of containment, the HPCI system is assumed unavailable. For feed line breaks outside of containment, either the HPCI or RCIC systems are capable of providing adequate cooling to the vessel to prevent cladding damage. The RCIC system will be required to be operable during the proposed 72 hour AOT.

The Core Damage Frequency (CDF) at HCGS is calculated based on Probabilistic Risk Assessment (PRA) models using present Technical Specifications that do not allow simultaneous outages of either HPCI and one LPCI subsystem or HPCI and one CS subsystem. The proposed action statement, which would allow 72 hours of plant operation with the HPCI system inoperable coincident with one low pressure ECCS injection/spray subsystem (LPCI or CS) inoperable, was determined to have a potential impact on 28 of the core damage sequences. These 28 core damage sequences were requantified with a new model (based on the proposed action statement that would allow the simultaneous outage), and none of the frequencies of the 28 sequences were significantly affected.

In addition, the probability of an accident is not affected because no physical modifications are being made to the plant.

Finally, implementation of this proposed change would reduce unnecessary plant shutdowns without commensurate effects on safety and minimize associated challenges to safety systems.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Establishing an AOT of 72 hours for the HPCI system inoperable in addition to any one (1) low pressure injection/spray subsystem does not alter the function of the equipment nor involve any type of plant modification. Additionally, no new modes of plant operation are involved with these changes. The proposed change therefore will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The basis for this statement is outlined in item 1 above.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 25, 1994

Description of amendment request: The proposed amendment would change the minimum level in the Emergency Diesel Generator (EDG) Fuel Oil Day Tank from 200 gallons to 360 gallons. The change is necessary to support a required run time of 55-60 minutes from the day tank. The Bases would also be changed to include reference to Amendment 59, which authorized a change to the EDG surveillance requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of the Hope Creek Generating Station (HCGS) in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment to the Technical Specifications will bring the minimum allowable EDG fuel oil day tank levels into agreement with the levels corresponding to EDG run times reviewed and approved by the NRC in Amendment 59 to the Hope Creek Generating Station Facility Operating License. Increasing the minimum level requirement is conservative and when compared to the current level requirement, will act to reduce the consequences of any accident or malfunction of equipment important to safety previously evaluated in the Updated Final Safety Analysis Report (FSAR). The proposed change will have no impact on the probability of any accident.

2. The operation of the Hope Creek Generating Station (HCGS) in accordance with the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

The physical changes to the plant and to the manner in which the plant is operated in the proposed revisions add conservatism to the current requirements in the Technical Specifications. No new or different kind of accident is created by the proposed change.

3. The operation of the Hope Creek Generating Station (HCGS) in accordance with the proposed change does not involve a significant reduction in a margin of safety.

The proposed revision, by maintaining a higher (more conservative) Emergency Diesel Generator Day Tank level, will result in an increase in margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 25, 1994

Description of amendment request: The proposed amendment would eliminate the requirement from the Hope Creek technical specifications to perform Type C leak rate tests in accordance with 10 CFR 50, Appendix J, of identified containment isolation valves that penetrate the primary containment and terminate below the minimum water level in the suppression chamber (torus). The valves would still be subject to testing in accordance with the American Society of Mechanical Engineers Boiler and Pressure Vessel Code and Type A leak rate tests (Integrated Leak Rate Test) of the primary containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Containment Isolation Valves (CIVs) for which Appendix J, Type C leak rate testing will no longer be performed are all on lines which penetrate the Torus and terminate below the Torus minimum water level. Since the Torus is designed and operated to be filled with water during and following any postulated Design Basis Accident, the CIVs will remain water sealed during these conditions.

Type C testing of individual CIVs per the requirements of 10CFR50 Appendix J is not

necessary since no potential containment bypass leakage path exists due to the water seal and closed system piping. The CIVs will, however, continue to be tested pursuant to the applicable requirements of Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel (ASME B&PV) Code.

In addition, the elimination of 10CFR50 Appendix J, Type C testing for the subject CIVs will not affect the overall leak-tight integrity of the Primary Reactor Containment, which will be demonstrated during 10CFR50 Appendix J Type A Integrated Leak Rate Testing as described in the Hope Creek Generating Station Updated Final Safety Analysis Report (HCGS UFSAR) Section 6.2.6.1.

Consequently, radiological releases and their consequences due to leakage of the subject CIVs will be minimized and within the existing plant licensing basis.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposal does not involve any hardware or logic changes, nor does it alter the way in which any plant systems operate. Post-accident Containment isolation features, boundaries and system interfaces are not affected by the changes. Therefore, there are no new possibilities or types of accidents considered.

3. Will not involve a significant reduction in a margin of safety.

The proposed elimination of 10CFR50 Appendix J, Type C testing for certain CIVs in lines which penetrate the Torus and terminate below the minimum water level will not adversely affect the margins of safety associated with the plant's licensing bases.

The water seal provided by the Torus, in conjunction with the closed system piping, precludes post-accident bypass leakage. Individual CIVs will be tested in accordance with the ASME B&PV Code Section XI - Division 1, Article IWV-3000, as required. 10CFR50 Appendix J, Type A testing will ensure that the overall Containment leakage rate is consistent with the plant's licensing bases. In addition, any leakage associated with the subject CIVs will have little radiological significance since it will involve liquid releases (i.e., minimum fission products). CIV seat leakage will be confined within the closed system piping downstream of the CIVs. Existing Containment isolation features, boundaries and system interfaces are not affected by the changes.

Since the CIVs and the systems they serve are all located in the Reactor Building, any leakage (e.g., packing gland leakage) which escapes the confines of the closed system piping, will be contained within the Reactor Building. The Reactor Building is a radiologically controlled area which is served by the Filtration, Recirculation, and Ventilation System. This assures that all radioactive releases to the environment are within the existing plant licensing bases. The elimination of Type C testing for the subject isolation valves will not affect the existing radiological release evaluations currently described in the HCGS-UFSAR.

The proposed Amendment will not affect the functional capability of any plant safety-related structures, systems or components nor will it result in any relaxation of existing plant licensing bases.

In addition, the implementation of the proposed Amendment will result in a reduction of radiological exposure to plant personnel. Therefore, the proposed revision will not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: March 28, 1994

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.3.2, Table 3.3-4, Item 7b, Sustained Degraded Voltage for Salem Generating Station Units 1 and 2. The amendment proposes to change the Sustained Degraded Voltage Trip Setpoint from greater than or equal to 91.6% of bus voltage for less than or equal to 13 seconds to greater than or equal to 94.6% of bus voltage for less than or equal to 13 seconds, and the Allowable Value for Sustained Degraded Voltage from greater than or equal to 91% of bus voltage for less than or equal to 15 seconds to greater than or equal to 94% of bus voltage for less than or equal to 15 seconds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident or malfunction of equipment important to safety previously evaluated.

The proposed amendment will increase the minimum voltage available at the vital buses and maintain vital loads within their voltage ratings under degraded voltage conditions.

The change to the Sustained Degraded Voltage Trip Setpoint also considered the minimum bus recovery voltage following a transient that would reset the undervoltage relay to prevent unnecessary transfers to the emergency diesel generators. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated in the UFSAR.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendment to the Sustained Degraded Voltage Trip Setpoint ensures a higher minimum voltage is available to all vital loads during any electrical transient, and is sufficient to operate these loads within their voltage rating. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed amendment will increase the minimum voltage available at the vital buses and maintain vital loads within their voltage ratings. This ensures that the minimum voltage for any vital load will continue to be available including under degraded voltage conditions. Calculations have determined that a Sustained Degraded Voltage Trip Setpoint of greater than or equal to 94.6% of bus voltage for less than or equal to 13 seconds is the optimum setpoint with an Allowable Value of greater than or equal to 94% of bus voltage for less than or equal to 15 seconds to meet the current design requirements. These values provide sufficient margin based on the minimum voltage of 93.2% required to ensure that vital loads will operate within their designed voltage range. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, and Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 13, 1994

Description of amendment request: The proposed changes revise the Quality Assurance audit frequencies in the Hope Creek and Salem Unit Nos. 1

and 2 Technical Specifications. These revisions will permit a biennial audit frequency with a 25% extension to the frequency and transfer subsequent control over the audit program to the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The likelihood that an accident will occur is neither increased or decreased by the proposed Technical Specification changes which affect review and audit frequencies. The proposed changes will not impact the function or method of operation of plant equipment. Thus, there is not a significant increase in the probability of a previously analyzed accident due to the changes. Also, the consequences of a malfunction of equipment important to safety previously evaluated in the UFSAR is not increased by the changes.

The proposed changes affect review and audit frequencies. As such, the proposed changes have no impact on accident initiators or plant equipment, and thus, do not affect the probabilities or consequences of an accident.

The audit program verifies that functions and methods of plant operation have not been altered or degraded. This verification process will continue, but on a more flexible basis. The proposed changes will not alter the function or diminish the quality of the audits. Frequency may only be decreased for those programs which demonstrate acceptable performance. The changes provide added flexibility in scheduling audits and facilitate resource allocation to areas with perceived weaknesses. In this regard, the proposed changes offer an opportunity for possible decreases in the likelihood that an accident would occur.

Therefore, we conclude that the proposed changes do not significantly increase the probabilities or consequences of an accident.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve changes to the physical plant or operations. Since program audits do not contribute to accident initiation, changes related to audit functions cannot produce a new accident scenario or produce a new type of equipment malfunction. Also, the [changes do] not alter any existing accident scenarios. The proposed changes do not affect equipment or its operation, and, thus, do not create the possibility of a new or different kind of accident.

The proposed changes revise the audit frequency to biennial and permit a 25% extension to this frequency. However, audit frequency may only be decreased for those programs exhibiting acceptable performance. The 25% extension is a provision to provide added flexibility in scheduling audits and is not applicable to the audits of the Facility Emergency and Security Plans.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes concerning conduct of reviews and audits do not directly affect plant equipment or operation. Safety limits and limiting safety system settings are not affected.

The proposed changes will not alter the function or diminish the quality of the reviews and audits. For the audit program, the changes propose a biennial audit frequency and a subsequent transfer of control over the audit program to the Updated Final Safety Analysis Report. This will not result in a loss of regulatory control. 10 CFR 50.54(a)(3) requires that changes to the quality assurance description report which reduce commitments be submitted to the NRC prior to implementation. In addition, the audit frequency may only be decreased for those programs which demonstrate acceptable performance. The changes provide added flexibility in scheduling audits and facilitate resource allocation to areas with perceived weaknesses. The proposed changes should result in a more effective audit program that will contribute to an improvement in plant safety.

Therefore, use of the proposed Technical Specification changes would not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079 (Salem Generating Station, Units 1 and 2) and Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070 (Hope Creek Generating Station)

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 3, 1994

Description of amendment request: The proposed amendments would modify the Technical Specification (TS) for Combustible Gas Control (3/4.6.4.1) by changing the surveillance frequency for performing the channel functional test to once-per-quarter and the channel calibration to once-per-refueling. Also, the TS for the Auxiliary Feedwater System (3/4.7.1.2) would be changed to reduce the surveillance frequency for performing pump operability tests to once-per-quarter on a staggered test basis. These changes are consistent with the provisions of Generic Letter 93-05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements For Testing During Power Operation."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes to the surveillance requirements for the hydrogen analyzers and the Auxiliary Feedwater pumps are consistent with the intent of Generic Letter 93-05, Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation, and NUREG-1366, Improvements to Technical Specification Surveillance Requirements. The proposed changes will modify surveillance frequency for both the hydrogen analyzers and the Auxiliary Feedwater Pumps. Changing the surveillance frequency for the hydrogen analyzers and the Auxiliary Feedwater pumps does not affect the probability of occurrence or the consequences of accidents identified in the UFSAR. No accident precursors are being generated by the proposed increase in surveillance frequency. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of a previously analyzed accident.

2. Create the possibility of a new or different kind of accident.

The proposed changes to the surveillance requirements for the hydrogen analyzers and the Auxiliary Feedwater pumps are consistent with Generic Letter 93-05 and NUREG-1366. There are no modifications or changes in operating conditions associated with the proposed changes. Therefore, the proposed changes will not increase the possibility of a new or different kind of accident from any accident previously identified.

3. Involve a significant reduction in a margin of safety.

The Technical Specification operability requirements for the hydrogen analyzers and the Auxiliary Feedwater pumps are not being changed. Surveillance testing will still be performed on a routine frequency. The proposed frequency will be capable of performing its intended function and ensuring a consistent degree of reliability. Therefore, the changes to the surveillance frequencies do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: September 29, 1993 (TS 333)

Description of amendment request: The proposed amendment would increase the amount of Boron-10 required to be available in the Standby Liquid Control System (SLCS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The Standby Liquid Control System (SLCS) is designed to make the reactor subcritical from rated power to a cold shutdown at any time in core life with the control rods remaining withdrawn in the rated power pattern. The increase in the amount of Boron-10 that is required to be stored in the SLCS Solution Tank does not affect the precursors for any accident or transient analyzed in Chapter 14 of the BFN Final Safety Analysis Report (FSAR). Since there is no change to an accident precursor, there is no increase in the probability of any accident previously evaluated.

The increase in the amount of Boron-10 required to be stored in the SLCS Solution Tank restores the ability of the SLCS to maintain the Boron concentration required to ensure cold shutdown for future anticipated core configurations. The minimum concentration of natural Boron in the reactor vessel required to achieve cold shutdown for the currently anticipated future core configurations is 660 ppm. The 660 ppm concentration was recommended by General Electric in Service Information Letter (SIL) No. 325, June 1980.

The increase in the amount of Boron-10 required to be stored in the SLCS Solution Tank restores the ability of the SLCS to maintain the Boron concentration required to ensure cold shutdown for future anticipated core configurations. The increased Boron-10 storage requirements does not represent a change to the designed Boron concentration capability of the SLCS. Since this change will ensure the ability of the SLCS to mitigate the consequences of an accident for future anticipated core designs, the change does not involve a significant increase in the consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The increase in the amount of Boron-10 required to be stored in the SLCS Solution Tank does not affect the function or operation of any other system. The proposed change does not introduce any new modes of operation or modify existing equipment design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The SLCS shutdown margin is determined for each core configuration by using the BWR simulator code to calculate the core multiplication for the cold, xenon-free, all-rods-out condition at the exposure point of maximum cold reactivity. The resulting k-effective is subtracted from the critical k-effective of 1.0 to obtain the SLCS shutdown margin. Increasing the amount of Boron-10 stored in the SLCS Solution Tank increases the SLCS shutdown margin. Therefore, the proposed amendment results in an increased margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: September 30, 1993 (TS 312)

Description of amendment request: The proposed amendment removes Technical Specification requirements for scram discharge volume air header pressure trip switches in the Reactor Protection System (RPS) for the Browns Ferry Nuclear Plant (BFN) Unit 2. The amendment also clarifies the description of the RPS scram discharge volume high water level bypass in the Technical Specifications for BFN Units 1, 2, and 3.

Basis for proposed no significant hazards consideration determination As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The Unit 2 scram pilot air header pressure trip switches perform the same function as the high water level switches in the scram discharge instrument volume. They automatically initiate control rod insertion (scram) in the event that degraded air conditions are detected in the BWR control air supply system. Since the scram pilot air header pressure trip function is to ensure that the Control Rod Drive (CRD) System is available to mitigate the consequence of an accident or transient, and the removal of the scram pilot air header pressure e trip switches scram function does not effect the precursors for any accident or transient analyzed in Chapter 14 of the BFN Final Safety Analysis Report (FSAR), there is no increase in the probability of any accident previously evaluated.

The scram system has been analyzed, based on a plant-specific maximum inleakage, and the removal of the scram pilot air header pressure trip switches scram function would still result in a successful scram, provided that the CRD leakage rate and the water level instrumentation response characteristics remain within the success criteria region. Administrative controls and periodic measurements of the CRD and scram discharge system performance ensure acceptable response time delays and stall flow rates. Since the scram function would be successfully performed, the removal of the scram pilot air header pressure trip switches scram function does not involve a significant increase in the consequences of any accident previously evaluated.

The clarification of the description of the scram discharge volume high water level bypass in the Reactor Protection System does not reflect a modification to plant equipment, maintenance activities, or operating instructions. The revised description does not effect the precursors for any accident or transient analyzed in Chapter 14 of the BFN FSAR or equipment used in the mitigation of these accidents or transients. Therefore, there is no increase in the probability of any accident previously evaluated nor an increase in the consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The design criteria for the scram system is contained in the generic Safety Evaluation Report (SER), which was transmitted by NRC

letter to All BWR Licensees, dated December 9, 1980, BWR Scram Discharge System. Section 4.2.4.1 of the generic SER states that the CRD system shall be analyzed based on a plant-specific maximum inleakage to ensure that the system function is not lost prior to initiation of automatic scram. This analysis has been performed and it was concluded that the removal of the scram pilot air header pressure trip switches scram function would still allow a successful scram, provided that the CRD leakage rate and the water level instrumentation response characteristics remain within the success criteria region. Administrative controls and periodic measurements of the CRD and scram discharge system performance ensure acceptable response time delays and stall flow rates.

The overall scram system design is in conformance with the generic SER. No new system failure modes are created as a result of removing the scram pilot air header pressure trip switches scram function since, assuming the maximum CRD inleakage due to a degraded air supply system, redundant and diverse level switches will initiate a successful scram prior to this function becoming disabled. The removal of the scram pilot air header pressure trip switches scram function does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The clarification of the description of the scram discharge volume high water level bypass in the Reactor Protection System does not reflect a modification to plant equipment, maintenance activities, or operating instructions. No new external threats, system interactions, release pathways, or equipment failure modes are created. Therefore, the clarification of this description does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The water level in the scram discharge instrument volume is monitored by redundant Magnetrol and heated reference resistive temperature devices (RTD) level switches. Since the level switches are redundant and diverse, redundancy and diversity in the instrumentation that initiates the scram signal is maintained even with the removal of the scram pilot air header pressure trip switches scram function.

The scram system has been analyzed, based on a plant-specific maximum inleakage, and the removal of the scram pilot air header pressure trip switches scram function would still result in a successful scram, provided that the CRD leakage rate and the water level instrumentation response characteristics remain within the success criteria region. Since the scram system would successfully operate to mitigate the consequences of accidents and transients previously analyzed, the proposed amendment does not involve a significant reduction in the margin of safety.

The clarification of the description of the scram discharge volume high water level bypass in the Reactor Protection System does not reflect a modification to plant equipment, maintenance activities, or operating instructions. There is no change to the licensing or design basis of the Reactor Protection System. Therefore, the revised description does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority (TVA), Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: April 4, 1994 (TS322, Revision 1)

Description of amendment request: The proposed amendment supersedes an amendment request dated March 25, 1993. Similar to the March 25, 1993, proposal, the revised amendment request for the Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, continues to seek elimination of Technical Specifications (TS) for the reactor scram and main steam line isolation functions associated with the main steam line radiation monitors (MSLRMs). Additionally the revised amendment request proposes elimination of TS for the remaining isolation functions associated with the MSLRMs as well. The remaining isolation functions include main steam line drain valve closure, reactor recirculation loop sample valve closure, and main condenser mechanical vacuum pump (MVP) trip and isolation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence of previously evaluated accidents is based on initial conditions and assumptions which are not dependent directly or indirectly on the functions of the Main Steam Line Radiation Monitors (MSLRMs). Elimination of the MSLRM scram and isolation functions does not affect the operation of the other Reactor Protection System or Primary Containment Isolation System functions required to mitigate a Rod Drop Accident (RDA). Also, eliminating the MSLRM functions does not affect the Control Rod Drive System and, hence, cannot increase the probability of RDA. The proposed change does not involve any increase in the probability of an [any] previously evaluated accident.

There is no significant increase in the consequences of any previously evaluated accident. Elimination of the MSLRM reactor scram and isolation functions could potentially increase the amount of radioactivity released following an RDA. However, the potential increase in release from those previously determined is not significant. Both the NEDO-31400 analysis and the additional BFN dose calculations determined that the resulting doses (See Table B [of this request]) remain well below the limits of Standard Review Plan (SRP) 15.4.9 and 10 CFR 100.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change deletes the reactor scram and isolation functions of the MSLRMs. The sole purpose of these functions is to assist in mitigating the consequences of an RDA, a previously analyzed event. This event is terminated by a high flux scram.

The NEDO-31400 RDA analysis without the MSLRM scram and MSIV [Main Steam Isolation Valve] closure functions has been reviewed and accepted by the NRC. An RDA without the MSLRM MVP isolation function has been previously reviewed by the NRC as documented in Section 14.6.2 of the Updated Final Safety Analysis Report (UFSAR). An RDA without the MSLRM recirculation sample line isolation coupled with a sample line break is no different than that if the normal RWCU [Reactor Water Cleanup] [system] sample path is in service (see Section III.C) [of this request]. However, TVA has evaluated the consequences of this event and determined the MSLRM sample line isolation function is not required to maintain radioactive releases within the acceptable limits.

The NEDO-31400 RDA analysis and the additional BFN offsite dose calculations show that the elimination of the MSLRM functions does not create the possibility of a new or different kind of

accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

A reliability assessment of the elimination of the MSLRM scram function on reactivity control failure frequency and core damage frequency was performed as part of the NEDO-31400 analysis. The results of the NEDO-31400 analysis indicated a negligible increase in reactivity control failure frequency associated with deletion of the MSLRM scram function. However, this increase is offset by a reduction in the frequency of transient initiating events (inadvertent scrams). This reduction in

transient initiating events represents a net reduction in core damage frequency of 0.3 percent.

BFN TS Bases 3.2 states that the MSLRMs are provided to detect gross fuel failures as in an RDA and provide main steam isolation valve closure to maintain radiological releases below the 10 CFR 100 limits. The BFN offsite dose calculations and the NRC's Safety Evaluation Report approving the NEDO-31400 RDA analysis document that the potential radiological release consequences following an RDA without the MSLRMs reactor scram and isolation functions are still well within the 10 CFR 100 limits. Thus, this change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: May 16, 1994 (TS 93-18)

Description of amendment request: The proposed change would revise Surveillance Requirement 4.8.1.1.1.b to reflect installation of common station service transformers with auto load tap changers and the resulting change to the alignment of this portion of the distribution system. The proposed amendment would replace the terms "normal" and "alternate" with "unit generator supported" and "preferred power (GDC 17)," respectively, circuits that must be demonstrated operable.

Basis for proposed no significant hazards consideration determination: Asrequired by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) changeand has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The description clarification for the circuits in TS 4.8.1.1.1.b does not change any TS requirement and will not alter plant functions or components as a result of normal alignment to the common station service transformers (CSSTs). By implementing normal CSST alignment to unit power, SQN has reduced the required transfers to obtain alignment to the preferred power circuit under accident conditions. The verifications provided by TS Surveillance 4.8.1.1.1.b will continue to ensure the capability of this transfer during occasional use of the unit station service transformer (USST) for maintenance or repair activities. The accidents described in Chapter 15 of the SQN Updated Final Safety Analysis Report assume the unit power supply to be from the USST circuit that requires transfer to the CSST after turbine trip. This analysis is bounding for normal alignment to the CSST that does not require a transfer. These changes minimize the impact of malfunctions because transfers will not be required as often. The consequences of an accident are therefore not increased by this change. The proposed unit power alignment to the CSSTs has always been used for unit start-up; and since no plant functions are changed as a result of normal alignment to the CSSTs, other than a lower potential for transfers, the probability of an accident is not increased.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The TS 4.8.1.1.1.b clarification does not change plant functions and only provides a more appropriate description of the circuits involved in the transfer function. The transfer from the USST circuit to the CSST circuit will still be available when SQN is using the USST circuit, but the need for these transfers will be reduced by normal alignment of unit power to the preferred CSST circuit. These changes will not create a new or different kind of accident because the plant functions remain unchanged and only the CSST alignment for normal unit power and circuit descriptions is altered. This CSST alignment has always been used for unit start-up and is being expanded to apply to normal power operation in addition to start-up and accident conditions.

3. Involve a significant reduction in a margin of safety.

The clarification for the unit power circuit descriptions does not alter the intent of requirements for this surveillance. Plant functions and setpoints remain unchanged for automatic transfers from the USST circuit to the CSST circuit. This circuit description change provides a clearer explanation of how the transfer functions. The margin of safety has not been altered for unit power alignment to the USST or CSST, and this change will support SQN's use of the CSST for the normal unit power circuit. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 6, 1993

Description of amendment request The proposed amendment would remove the requirement to perform jet pump integrity and operability surveillances in the idle loop during operation with one recirculation pump It also provides consistency between the Bases and Section 4.6.F on jet pump surveillance requirements, and includes some administrative changes within the Bases.

Basis for proposed no significant hazards consideration determination As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Removing the surveillance requirement to examine the jet pump flow patterns within the idle loop during single loop operation does not increase the probability or consequences of an accident previously evaluated. The probability of loss of the ability of such a jet pump to maintain a refloodable volume of two thirds core height is not increased. The stresses undergone without forced recirculation flow are very small and therefore a jet pump within an idle recirc loop should not physically degrade during this time. The ability of the core standby cooling systems to provide their intended function is not degraded by removal of this surveillance requirement; therefore the consequences of the recirculation line break accident are not increased.

This change will remove a surveillance requirement that has been determined to be unnecessary based upon the operating conditions during single recirculation loop operation. Other surveillance requirements within the technical specifications adequately determine jet pump operability when stresses exist which could cause a jet pump failure to occur. The change will not affect any plant hardware, plant design, safety limit settings, or plant system operation, and therefore does not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident.

As discussed above, there is no increase in the probability of a jet pump failing and

being undetectable with the proposed technical specification surveillances. Therefore, there is no increase in the possibility of not being able to maintain a floodable volume of two thirds core height during the design basis LOCA [loss-of-coolant accident]. As a result, there is no reduction in a margin of safety

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of application for amendment: January 14, 1994

Brief description of amendment request: The proposed amendment would revise the technical specifications (TSs) by removing component lists from the TSs in accordance with NRC Generic Letter (GL) 91-08 and by removing the schedule for withdrawal of reactor vessel material specimen capsules from the TSs in accordance with GL 91-01.

Date of individual notice in **Federal Register:** May 23, 1994 (59 FR 26675)

Expiration date of individual notice: June 22, 1994

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2 Benton County, Washington

Date of application for amendment: December 6, 1993, supplemented by letter May 6, 1994

Brief description of amendment request: The proposed amendment would revise Technical Specifications (TS) 3/4.4.2 and 3/4.5.1 to require main steam system and automatic depressurization system safety/relief valve (SRV) surveillance testing within 12 hours after steam pressure and flow have been found to be adequate to do the testing. Also, TS Table 4.3.7.5-1 would be revised to require SRV position indicator surveillance testing within 12 hours after steam pressure and flow have been found to be adequate to do the testing.

Date of individual notice in **Federal Register:** May 13, 1994 (59 FR 25131)

Expiration date of individual notice: June 13, 1994

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2 Benton County, Washington

Date of application for amendment: May 5, 1994

Brief description of amendment request: The proposed amendment would change the plant operating license to rename three primary containment isolation check valves listed in the technical specifications. The licensee is making an administrative change to rename valve PI-EFC-X29d to make its number consistent with other similar valves in the technical specifications. The licensee is renaming excess flow check valves PI-EFCX-72f and PI-EFCX-73e because they are replacing them with swing check valves that have a different numbering nomenclature.

Date of individual notice in **Federal Register:** May 12, 1994 (59 FR 24762)

Expiration date of individual notice: June 13, 1994

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: January 20, 1994

Brief description of amendments: The amendments increase the departure from nucleate boiling ratio limit from 1.24 to 1.30 to accommodate the uncertainties in core inlet flow distribution. The amendments also add the analytical method supplement entitled "System 80™ Inlet Flow Distribution" to the list of methods used to determine core operating limits.

Date of issuance: May 26, 1994
Effective date: May 26, 1994
Amendment Nos.: 76, 62 and 48
Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 16, 1994 (59 FR 12358) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 26, 1994.No significant hazards consideration comments received: No.
Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: April 1, 1993
Brief description of amendments: The amendments make administrative, editorial, and format changes to the Operating Licenses. These changes include the deletion or incorporation, as appropriate, of all handwritten or "pasted-up" changes and the removal of all previous license conditions that have been completed to the satisfaction of the Commission. The changes and reformatting result in the Operating Licenses containing only those license conditions that are currently applicable.
Date of issuance: May 20, 1993
Effective date: As of the date of issuance to be implemented within 30 days.
Amendment Nos.: 189 and 166
Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Facility Operating Licenses.
Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28052) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated May 20, 1994.No significant hazards consideration comments received: No
Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: February 9, 1994
Brief description of amendment: This amendment changes the Technical Specifications and the License. These changes consist of revised wording for the License, clarifying wording to aid operators in selecting the correct pressure/temperature curve during startup and shutdown operations, and removal of certain obsolete mechanical snubber acceptance criteria.
Date of issuance: May 16, 1994
Effective date: May 16, 1994
Amendment No.: 153
Facility Operating License No. DPR-35: Amendment revised the Technical Specifications and License.
Date of initial notice in **Federal Register:** March 16, 1994 (59 FR 12359) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 1994. No significant hazards consideration comments received: No
Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment March 1, 1993
Brief description of amendment: The amendment revises the Technical Specifications to provide specific actions to take if primary containment leakage limits are exceeded and cannot be restored when reactor coolant temperature is greater than 200° F
Date of issuance: May 26, 1994
Effective date: May 26, 1994
Amendment No. 60
Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 30, 1994 (59 FR 14896) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 26, 1994. No significant hazards consideration comments received: No
Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment January 17, 1994
Brief description of amendment: The amendment removes Technical Specification 3/4.4.12, "Failed Fuel Rods" and its associated Bases Section 3/4.4.12.
Date of Issuance: May 17, 1994Effective date: As of the date of issuance to be implemented within 30 days.
Amendment No.: 171
Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 16, 1994 (59 FR 7687) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 17, 1994.No significant hazards consideration comments received: No.
Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: March 19, 1993
Brief description of amendment: The amendment changed Technical Specification 4.18.6 and Table 4.18-2 to make the requirements for C-3 reports on steam generator tube inspections consistent with the Babcock & Wilcox Standard Technical Specifications.Date of issuance: May 19, 1994Effective date: May 19, 1994
Amendment No.: 172
Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39049) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1994.No significant hazards consideration comments received: No
Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments September 3, 1993
Brief description of amendments: These amendments eliminate the reliance on the five "cranking" diesel generators by replacing the motor driver on one of the standby steam generator feedwater pumps with a dedicated diesel driver.
Date of issuance: May 20, 1994
Effective date: May 20, 1994
Amendment Nos. 164 and 158Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 13, 1993 (58 FR 52985) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated

May 20, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: November 30, 1993

Brief description of amendment: The amendment revises the plant Technical Specifications (TS) to remove the protective and maximum allowable setpoint limits for axial power imbalance and the trip setpoint for nuclear overpower based on reactor coolant system (RCS) flow (flux-to-flow) from the TS and relocate them to the existing TMI-1 Core Operating Limits Report (COLR).

Date of Issuance: May 23, 1994

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 184

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 19, 1994 (59 FR 2867). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: March 3, 1994

Brief description of amendment: The amendment revises the technical specifications in accordance with the guidance provided by Generic Letter 93-08, "Relocation of Technical Specification Tables of Instrument Response Time Limits."

Date of issuance: May 19, 1994

Effective date: May 19, 1994

Amendment No.: 73

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 16, 1994 (59 FR 12380) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: January 21, 1994

Brief description of amendment: The amendment revised the Technical Specifications by changing the name of one operator and one of the owners of the Duane Arnold Energy Center from Iowa Electric Light and Power Company to IES Utilities Inc. The title of the position responsible for the management of the Nuclear Division has also been changed to Vice President, Nuclear from Manager-Nuclear Division. One blank page was deleted and several other editorial changes were made. Pages 1 through 4 of the Facility Operating License were revised to reflect the corporate name change and a spelling error.

Date of issuance: May 13, 1994

Effective date: May 13, 1994

Amendment No.: 198

Facility Operating License No. DPR-49. Amendment revised the license and Technical Specifications.

Date of initial notice in **Federal Register:** March 2, 1994 (59 FR 10008) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 13, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: December 22, 1993

Brief description of amendment: The amendment revised the Technical Specifications by correcting several typographical and administrative errors.

Date of issuance: May 18, 1994

Effective date: May 18, 1994

Amendment No.: 199

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 2, 1994 (59 FR 10008) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: April 14, 1994, as supplementedApril 20, 1994.

Brief description of amendment: The amendment revises the Technical Specifications (TS) to change the laboratory testing protocol for the charcoal absorbers for the Control Room Emergency Ventilation System (TS 3.7.6.1), the Enclosure Building Filtration System (TS 3.6.5.1) and the Storage Pool Ventilation System (TS 3.9.15).

Date of issuance: May 23, 1994

Effective date: As of the date of issuance to be implemented within30 days.

Amendment No.: 175

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes (59 FR 23085, May 4, 1994) That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by June 3, 1994, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 23, 1994.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County,Minnesota

Date of application for amendments: February 14, 1994

Brief description of amendments: The amendments revise Technical Specifications to reflect the new configuration for the Unit 1 480V safeguards bus arrangement (two 480V safeguards buses fed by each 4160V safeguards bus). These changes make the specifications the same for both units since the configuration for the two units will become the same at the completion of the current outage.

Date of issuance: May 17, 1994

Effective date: May 17, 1994

Amendment Nos.: 110 & 103

Facility Operating License Nos. DPR-42 and DPR-60. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 30, 1994 (59 FR 14892) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: January 6, 1993

Brief description of amendment: The amendment revised the Technical Specifications (TS) to incorporate the following changes:

(1) The residual heat removal (RHR) pump flow calibration frequency (specified in TS Table 4.1-1) was changed to accommodate operation on a 24-month cycle.

(2)The RHR loop isolation valve automatic isolation and interlock testing frequency (specified in TS Table 4.1-3) was changed to accommodate operation on a 24-month cycle.

(3)The RHR system leakage testing frequency (specified in TS Section 4.4.I.4) was changed to accommodate operation on a 24-month cycle.

(4)The recirculation pump testing frequency (specified in TS Section 4.5.B.1.a) was changed to accommodate operation on a 24-month cycle.

(5)The accumulator check valve operability testing frequency (specified in TS Section 4.5.B.2.b) was changed to accommodate operation on a 24-month cycle.

(6)The safety injection (SI)/RHR check valve gross leakage testing frequency (specified in TS Section 4.5.B.2.c) was changed to accommodate operation on a 24-month cycle.

These changes followed the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

In addition, the gross leakage surveillance requirements for certain SI/RHR system check valves (specified in TS Section 4.5.B.2.d) was changed to implement requirements as set forth in NRC generic letter, dated February 23, 1980, regarding testing of low pressure injection (LPI)/RHR check valves. Therefore, Item A.5 of the February 11, 1980, Confirmatory Order is considered rescinded.

Date of issuance: May 20, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 148

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8777) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: October 18, 1993, and suplement dated March 7, 1994

Brief description of amendment: This amendment revised TS 3/4.3.2 and associated Bases to increase surveillance test intervals and add out-of-service times for isolation actuation instrumentation. The changes are in accordance with General Electric Company's Licensing Topical Reports which have been previously reviewed and approved by the NRC staff.

Date of issuance: May 25, 1994

Effective date: As of date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment No.: 70

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 8, 1993 (58 FR 64615) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: October 26, 1993 and supplemented by letter dated December 14, 1993.

Brief description of amendment: The amendment request revised the MINIMUM CHANNELS OPERABLE requirement for suppression pool water temperature instruments, Accident Monitoring ACTION STATEMENTS, and removes ACTIONS and Surveillance Requirements for suppression chamber temperature and level instruments.

Date of issuance: May 25, 1994

Effective date: May 25, 1994

Amendment No.: 71

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67861) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: October 14, 1993

Brief description of amendments: The requested changes incorporate changes allowing longer surveillance test intervals (STIs) and allowed outage times (AOTs) for the reactor trip system (RTS) and engineered safety features actuation system (ESFAS) instrumentation into the Technical Specifications. The proposed changes also revise certain RTS/ESFAS functions, minimum channels operable, channel calibration, and channel functional test requirements to ensure they are in concert with the Westinghouse Standard Technical Specifications and WCAP-10271, "Evaluation of Surveillance Frequencies and Out-of-Service Times for Reactor Protection Instrumentation Systems."

Date of issuance: May 16, 1994

Effective date: May 16, 1994

Amendment Nos.: 107 and 99

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 1994 (57 FR 17605)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 16, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Tennessee Valley Authority, Docket Nos. 50-259 and 50-296, Browns Ferry Nuclear Plant, Units 1 and 3, Limestone County, Alabama

Dates of application for amendments: April 6, 1992 (TS 308), and September 28, 1992 (TS 326)

Brief description of amendments: The amendments change the Technical Specifications (TS) to add Automatic Depressurization System (ADS) high drywell pressure bypass timer requirements, revise the ADS timer trip level setting, increase the number of ADS valves required to be operable for startup, and revise the limiting conditions for operation with inoperable ADS valves. The ADS bases have also been revised for consistency with these TS changes.

Date of issuance: May 19, 1994
Effective date: May 19, 1994
Amendment Nos.: 205 and 178
Facility Operating License Nos. DPR-33 and DPR-68: Amendments revised the Technical Specifications.

Dates of initial notice in **Federal Register:** May 27, 1992 (57 FR 22269) and November 25, 1992 (57 FR 55593).The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1994.No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: February 9, 1994; supplemented April 13, 1994 (TS 93-21)

Brief description of amendments: The amendments change Technical Specification Table 3.3-11 to reflect the addition of ionization fire detectors to Fire Zones 184, 185, 186, and 187.

Date of issuance: May 23, 1994
Effective date: May 23, 1994
Amendment Nos.: 181 and 173
Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** March 16, 1994 (59 FR 12369) The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated May 23, 1994. No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: October 1, 1993; supplemented March 29, 1994 (TS 93-09)

Brief description of amendments: The amendments revise the setpoints and time delays for the Auxiliary Feedwater loss of power and 6.9 kv shutdown board loss-of-voltage and degraded-voltage instrumentation. In addition, the description, total number of channels, channels to trip, minimum channels operable, actions, trip setpoints, allowable values, channel checks, and channel functional test requirements for loss-of-power instrumentation have been revised.

Date of issuance: May 24, 1994
Effective date: May 24, 1994
Amendment Nos.: 182 and 174
Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** February 2, 1994 (59 FR 4947) The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated May 24, 1994.No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: March 30, 1994

Brief description of amendments: The proposed amendments revise the technical specifications by adding an alternative method for verifying that the emergency diesel generator fuel oil meets requirements.

Date of issuance: May 13, 1994
Effective date: May 13, 1994, to be implemented within 30 days of issuance.
Amendment Nos.: Unit 1 - Amendment No. 24; Unit 2 - Amendment No. 10
Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17606) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1994 No significant hazards consideration comments received: No.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments February 25, 1994

Brief description of amendments: The amendments revise the surveillance frequency of the nozzles in the Quench Spray and Recirculation Spray Systems from 5 to 10 years. The change is in accordance with NRC Generic Letter 93-05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements at Power Operation," dated September 27, 1993.

Date of issuance: May 16, 1994
Effective date: May 16, 1994
Amendment Nos.: 182 and 163
Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17608) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 16, 1994No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: October 4, 1993

Brief description of amendments: These amendments revise the NA-1&2 Technical Specifications requirements to allow the use of ZIRLO material for fuel cladding.

Date of issuance: May 26, 1994
Effective date: May 26, 1994
Amendment Nos.: 183 and 164
Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57859) The Commission's related evaluation of the amendments is

contained in a Safety Evaluation dated May 26, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: February 25, 1994

Brief description of amendments: The amendments revise the surveillance frequency of the nozzles in the containment spray and recirculation spray systems from 5 to 10 years.

Date of issuance: May 20, 1994

Effective date: May 20, 1994

Amendment Nos. 191 and 191

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17608) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1991.No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By July 8, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible

effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Commonwealth Edison Company, Docket No. STN 50-457, Braidwood Station, Unit No. 2, Will County, Illinois

Date of application for amendment: April 21, 1994

Brief description of amendment: The amendment effects a one-time only change to Technical Specification (TS) Surveillance Requirement 4.7.1.1 by adding a note which relieves Braidwood, Unit 2, from compliance with the provisions of TS 4.0.4 until initial entry into Mode 2. This will permit Braidwood, Unit 2, to reach Mode 3 to reset Main Steam Safety Valves (MSSVs) and proceed with a startup. The amendment is applicable only until entry into Mode 2 following forced outage A2F27.

Date of issuance: May 16, 1994
Effective date: May 16, 1994
Amendment No.: 51
Facility Operating License No. NPF-77. This amendment revised the Technical Specifications. Public comments requested as to proposed no siginificant hazards consideration: Yes. The NRC published a public notice of the proposed amendment, issued a proposed finding of no significant hazards consideration and requested that any comments on the proposed no significant hazards consideration be provided to the staff by the close of business on May 12, 1994. The notice was published in the Joliet News Herald and the Morris Daily Herald on May 9, 1994. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the state of Illinois and final no significant hazards consideration determination are contained in a Safety Evaluation dated May 16, 1994.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

NRC Project Director: James E. Dyer

Dated at Rockville, Maryland, this 1st day of June 1994.

For the Nuclear Regulatory Commission

Gus C. Lainas,

Acting Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[FR Doc. 94-13765 Filed 6-7-94; 8:45 am]

Billing Code 7590-01-F

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440]

The Cleveland Electric Illuminating Company, et al.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 61 to Facility Operating License No. NPF-58 issued to The Cleveland Electric Illuminating Company, et al. (the licensee), which revised the Technical Specifications for operation of the Perry Nuclear Power Plant, Unit 1, located in Lake County, Ohio. The amendment is effective as of the date of issuance.

The amendment revised the Technical Specifications to permit operation of the plant with only a single recirculation loop in operation. Several editorial changes were also made.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on July 8, 1992 (57 FR 30275). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (58 FR 65197).

For further details with respect to the action see (1) the application for amendment dated June 28, 1991, (2) Amendment No. 61 to License No. NPF–58, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 2nd day of June 1994.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Project Directorate III–3, Division of Reactor Projects III, IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–13866 Filed 6–7–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—John J. Lane (202) 942–8800.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 144A Information Request From Intermediaries—File No. 270–342

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has requested extension of approval to collect information from approximately 35 intermediaries about participants in the market for securities eligible for resale under Rule 144A.

The staff estimates that the information collection will result in approximately 10 responses per respondent at an estimated .75 burden hours per response for a total burden of 262.5 hours.

General comments regarding the estimated burden hours should be directed to the OMB Clearance Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and OMB Clearance Officer for the Securities and Exchange Commission, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503 (Project No. 3235–0407).

Dated: June 1, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13877 Filed 6–7–94; 8:45 am]

BILLING CODE 8010–01–M

Rule Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane (202) 942–8800.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

New Proposed Rule

Proposed Rule 17f–6—File No. 270–392

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed rule 17f–6 under the Investment Company Act of 1940.

The rule would permit registered management investment companies to use futures commission merchants ("FCMs") and commodity clearing organizations as custodians of their assets in connection with futures contracts and commodity options regulated under the Commodity Exchange Act ("CEA").

It is estimated that 2,614 total respondents (2,200 investment companies, 335 adviser/delegates, and 79 FCMs) may expend an estimated 17,937 total burden hours meeting the rule's requirements during the first year following the adoption of proposed rule 17f–6.

Direct general comments to the OMB Clearance Officer for the Securities and Exchange Commission at the address stated below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and OMB Clearance Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Building, Washington, DC 20543.

Dated: May 18, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13879 Filed 6–7–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges in Two Over-the-Counter Issues and To Withdraw Unlisted Privileges in Two Over-the-Counter Issues

June 2, 1994.

On May 26, 1994, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–12503 ...	TLAB	Tellabs Incorporated. Common Stock. No par value.
7–12504 ...	PWRS	Powersoft Corporation Common Stock. S.00167 par value.

The above-referenced issues are being applied for as replacements for the following securities, which form a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issues:

File No.	Symbol	Issuer
7–12505 ..	INNN	Interactive Network.

File No.	Symbol	Issuer
7–12506 ..	BSBL .	Common Stock. No par value. Score Board. Common Stock. $.01 par value.

Replacement issues are being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before June 23, 1994, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13878 Filed 6–7–94, 8:45 am]

BILLING CODE [illegible]-01-M

[Release No. 34–34144; File No. SR–NASD–94–30]

June 1, 1994.

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Interim Extension of the OTC Bulletin Board Service Through September 1, 1994

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 24, 1994, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

I. Self-Regulatory organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD, through a subsidiary corporation, initiated operation of the OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the Commission's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are neither listed on The Nasdaq Stock Market℠ nor on a primary national securities exchange (collectively referred to as "OTC Equities").[2] Essentially, the Service supports NASD members' market making in OTC Equities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB Service data. The Service is currently operating under interim approval that expires on June 1, 1994.[3]

The NASD hereby files this proposed rule change, pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain authorization for an interim extension of the Service through September 1, 1994. During this interval, there will be no material change in the OTCBB Service's operational features, absent Commission approval of a corresponding Rule 19b–4 filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service. For the month ending April 30, 1994, the Service reflected the market making positions of 392 NASD member firms displaying quotations/indications of interest in approximately 4,836 OTC Equities.

During the proposed extension, foreign securities and American Depository Receipts (collectively, "foreign/ADR issues") will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for foreign/ADR issues will remain indicative.

In conjunction with the start-up of the Service, in 1990, the NASD implemented a filing requirement (under section 4 of Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with Rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's oversight of broker-dealers' market making in OTC Equities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, particularly section 17B of the Act.[4] The NASD notes that

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[1] Securities and Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124 (May 8, 1990).

[2] With the Commission's recent approval of File No. SR–NASD–93–24, the universe of securities eligible for quotation in the OTCBB now includes certain equities listed on regional stock exchanges that do not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape Association. Securities Exchange Act Release No. 33507 (January 24, 1994), 59 FR 4300 (order approving File No. SR–NASD–93–24).

[3] Securities Exchange Act Release No. 33839 (March 31, 1994), 59 FR 16667

[4] On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system pursuant to section 17B(b) of the Act. On December 30, 1992, the Commission granted Qualifying Electronic Quotation System ("QEQS") status for the Service for purposes of certain penny stock rules that became effective on January 1, 1993. On August 26, 1993, the Commission granted the NASD's request for an extension of QEQS status until such time as the

implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with sections 11A(a)(1), 15A(b)(6) and (11), and section 17B of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD believes that extension of the Service through September 1, 1994, is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

OTCBB meets the statutory requirements of section 17B(b)(2). Finally, on May 13, 1994, the NASD filed an application the Commission for permanent designation of the Service as an automated quotations system for penny stocks pursuant to section 17B(b).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service. The current authorization for the Service extends through June 1, 1994. Hence it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 4,836 OTC Equities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the price and volume data reported by member firms pursuant to section 2 of Schedule H to the NASD By-Laws.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 29, 1994.

V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and, in particular, with the requirements of section 15A(b)(11) of the Act, which provides that the rules of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in these securities and that facilitates price discovery and the execution of customers' orders at best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of its members trading in OTC Equities that are eligible and quoted in the Service, and in non-Tape B securities that are listed on regional exchanges and quoted in the OTCBB by NASD members.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through September 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13880 Filed 6–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34146; File No. SR–NASD–93–75]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Referral of Matters by Arbitrators for Disciplinary Investigation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association")

filed with the Securities and Exchange Commission ("SEC" or "Commission"), and amended on May 25, 1994,[1] the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NSAD is proposing to amend section 5 of the Code of Arbitration Procedure ("Code")[2] to specify that arbitrators, at the conclusion of a proceeding, may refer matters arising or discovered during the course of an arbitration proceeding for disciplinary investigation. Below is the text of the proposed rule change. Proposed new language is italicized.

Code of Arbitration Procedure

Non-Waiver of Association Objects and Purposes

Sec. 5. The submission of any matter to arbitration under this Code shall in no way limit or preclude any right, action or determination by the Association which it would otherwise be authorized to adopt, administer or enforce. *If any matter comes to the attention of an arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Association's rules or the federal securities laws, the arbitrator may initiate a referral of the matter to the Association for disciplinary investigation; provided, however, that any such referral should only be initiated by an arbitrator after the matter before him has been settled or otherwise disposed of, or after an award finally disposing of the matter has been rendered pursuant to section 41 of the Code.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The NASD is proposing to amend section 5 of the Code of Arbitration Procedure to specify that arbitrators, at the conclusion of a proceeding, may refer to disciplinary investigation matters which come to their attention during the course of an arbitration proceeding.

The NASD believes that potential violations uncovered during arbitration hearings should be investigated by the NASD as part of its comprehensive regulatory program. The NASD is aware, however, that while customers who suffer a financial loss as a result of misconduct by their registered representative may bring arbitration actions, they often do not pursue formal complaints with a self-regulatory organization ("SRO") necessary to trigger an investigation of the potential violation. Further, while the filing of an arbitration complaint will alert an SRO to the existence of a potential violation,[3] because customer complaints in arbitration often do not allege or disclose sufficient information to indicate obvious misconduct on the part of a respondent, they may not trigger a disciplinary investigation. Indeed, in such cases, violations of the securities laws or the NASD's rules are not apparent until an arbitration hearing occurs and the parties testify and introduce evidence about the relevant events. Thus, in some cases, the NASD never is made aware of securities law violations or violations of the NASD's rules, notwithstanding the fact that the financial injury to the customer resulting from the violations is the subject of an arbitration proceeding.

The NASD also has observed that arbitrators seldom refer for disciplinary investigation matters which come to their attention during the course of an arbitration proceeding. Because the NASD believes that arbitration matters, and the evidentiary material related to or produced in such matters, constitute a valuable source of information concerning potential violations of the NASD's rules and the federal securities laws, bringing such information to the attention of the Association's regulatory staff should improve the efficacy of the NASD's regulatory function. Accordingly, the NASD believes that specifying a mechanism in the Code for arbitrators to bring such information to the attention of the NASD's regulatory staff for investigation will serve the public interest by ensuring that potential violations of the NASD's rules and the federal securities laws are not overlooked.

In addition, the NASD believes that it is important for arbitrators to understand that the arbitration process is for the resolution of disputes between the securities industry and others, and that there is also a regulatory apparatus separate from the arbitration process which is designed to address misconduct which affects the public interest and the integrity of the financial markets. Thus, to the extent arbitrators are aware that they may refer matters, in addition to or in lieu of awarding punitive damages as part of awards,[4] the fairness of the arbitration process will be enhanced.

The proposed amendment to section 5 specifies that if any matter comes to the attention of an arbitrator during the course of a proceeding the arbitrator may initiate a referral of the matter to the Association for disciplinary investigation. The proposed amendment also specifies, however, that any such referral should be initiated by an arbitrator only after final disposition of the matter through settlement or award. Although the NASD is not setting forth a specific procedure for such referrals, the NASD contemplates that arbitrators will direct referrals to the Association through the Arbitration Department staff and the Director of Arbitration.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6)[5] of the Act is that specifying a mechanism in the Code for arbitrators to bring information concerning potential violations of the Association's rules and the federal securities laws to the attention of the NASD's regulatory staff for investigation will serve the public

[1] Amendment No. 1 amended to NASD's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

[2] NASD Manual, Code of Arbitration Procedure, part I, section 5, (CCH) ¶3705.

[3] The filing of a customer-initiated arbitration complaint against an associated person alleging damages of $10,000 or more triggers a requirement of the member or associated person to amend the associated person's Form U–4 or U–5, as appropriate. Information supplied pursuant to such an amendment will be entered into the Central Registration Depository and will also be forwarded to the appropriate NASD District office for preliminary investigation.

[4] The NASD, in connection with this rule filing, is not expressing any official position with respect to the ability of arbitrators to award punitive damages.

[5] 15 U.S.C. 78o–3

interest by ensuring that such potential violations are not overlooked.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection any copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–94–75 and should be submitted by June 29, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13876 Filed 6–7–94; 8:45 am]

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[Release No. 34–34145; File No. SR-NASD–94–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the New N•PROVE System for Price Improvement and Execution of Small Orders

June 1, 1994

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] Notice is hereby given that on March 28, 1994,[2] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a rule change regarding the operations of the Nasdaq Primary Retail Order View and Execution System ("N•PROVE"), a new system for execution and price improvement of small-sized customer orders. The "Rules of Operation and Procedures for the N•PROVE Service" will replace in its entirety the "Rules of Practice and Procedures for the Small Order Execution System" ("SOES Rules"), which the NASD proposes to withdraw simultaneously with the new system becoming operational.

The NASD is also proposing conforming modifications to the NASD manual, including the Rules of Practice and Procedure for the Automated Confirmation Transaction Service ("ACT Rules") and Schedule D to the NASD By-Laws (and any other places in the manual that refer to SOES) to delete references to SOES and/or the SOES Rules and to replace those references with N•PROVE and/or the N•PROVE Rules, as appropriate. These references may be found in the ACT Rules, Section (c)(2); in Schedule D, Part V, Section (1)(f), Section (7)(a), Section (7)(c), Section (8)(c), and Section (9); and Schedule D, Part XI, Section (2)(e)(1) Below is the text of the proposed rule change.

Rules of Operation and Procedures for the N•PROVE System

(1) Definitions

The terms used in this Section shall have the same meaning as those defined in the Association's By-Laws and Rules of Fair Practice, unless otherwise specified.

a. The term The Nasdaq Primary Retail Order View and Execution System ("N•PROVE") shall mean the small order delivery and execution system owned and operated by The Nasdaq Stock Market, Inc. (a wholly owned subsidiary of the National Association of Securities Dealers, Inc.) which enables N•PROVE participants to execute agency transactions of limited size in equity securities listed on The Nasdaq Stock Market; to have reports of the transactions automatically forwarded through the Automated Confirmation Transaction service ("ACT") to the trade reporting system for dissemination to the public, to "lock in" those trades by sending both sides to the National Securities Clearing Corporation ("NSCC") for clearance and settlement; and to provide N•PROVE participants with sufficient monitoring and updating capability to participate in an automated order delivery and execution environment. The N•PROVE service also offers a facility for storing and executing agency limit orders and an opportunity for improving prices that investors receive on market and limit orders.

b. The term "N•PROVE participant" shall mean either a market maker or order-entry firm registered for participation in N•PROVE.

c. The term "N•PROVE eligible security" shall mean any Nasdaq SmallCap or Nasdaq National Market equity security; the term "active N•PROVE security" shall mean an N•PROVE eligible security in which at least one N•PROVE market maker is currently active with an open quote.

d. The term "open quote" shall mean a market maker's quotation price and size in an eligible security against which orders may be executed through the N•PROVE system during normal market hours, as specified by the NASD. A market marker has a "closed quote" when it has not updated its quotation in Nasdaq or its exposure limit in N•PROVE.

e. The term "N•PROVE market maker" shall mean a member of the Association that is registered as a Nasdaq market maker pursuant to the requirements of Schedule D to the NASD By-Laws and as a market maker in one or more N•PROVE eligible securities. An "active N•PROVE market maker" is a market maker that has an open quote in an N•PROVE eligible security.

f. The term "N•PROVE order entry firm" shall mean a member of the Association that is registered as an order entry firm for participating in N•PROVE which permits the firm to enter agency orders of limited size for delivery to and execution against N•PROVE market makers.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The NASD initially filed the proposed rule change on March 4, 1994. On March 28, 1994, the NASD filed Amendment No. 1, which expands and clarifies the description of the system.

g. The term "agency order" shall mean an order from a public customer that is entered by the N•PROVE order entry firm on an agency basis. It shall also include, for purposes of these rules:

(1) an order entered into N•PROVE on a principal basis by an N•PROVE order entry firm that is not a market maker in the N•PROVE security, in N•PROVE or otherwise, where the N•PROVE order entry firm has contemporaneously received an order from a customer and executes the transaction on a riskless principal basis; and

(2) an order entered by a market maker in the security for the account of a public customer if the order is preferenced to the entering market maker (i.e., self-preferenced)

An order will not be considered an agency order if it is for any account of a person associated with any member firm or any account controlled by such an associated person. An order will not be considered an agency order if it is for any account of a member of the "immediate family" (as that term is defined in the NASD Free-Riding and Withholding Interpretation, Article III, Section 1 of the Rules of Fair Practice) of an associated person who has physical access to a terminal capable of entering orders into N•PROVE.

h. The term "preferenced order" shall mean an order entered into N•PROVE and directed to a particular market maker. Each market maker has the ability to select order entry firms from which it will accept preferenced orders.

i. The term "unpreferenced order" shall mean an order entered into N•PROVE and not directed to any particular market maker or a preferenced order that has been directed to a market maker that has not identified the order entry firm as one from which it will accept preferencing.

j. The term "locked and crossed market" shall have the same meaning as defined in Part V of Schedule D to the NASD By-Laws.

k. The term "maximum order size" shall mean the maximum size of individual orders for a security that may be entered into or executed through N•PROVE. The maximum order size for each security shall be published from time to time by the Association. In establishing the maximum order size for each Nasdaq National Market security, the Association will give consideration to the average daily non-block volume, bid price, and number of market makers for each security. Maximum order size for Nasdaq National Market securities shall be 200, 500 or 1,000 shares, depending upon the trading characteristics of the securities.* Maximum order size for Nasdaq SmallCap securities shall be 500 shares. These sizes may be adjusted on an issue by issue basis, depending upon trading characteristics of the issue as determined by the Association.

l. The term "exposure limit" shall mean the number of shares of an N•PROVE eligible security specified by an N•PROVE market maker that it is willing to have executed for its account by unpreferenced orders entered into N•PROVE on either side of the market.

m. The term "minimum exposure limit" for a security shall mean the aggregate number of shares of the security equal two times the maximum order size for that security, unless the automated quotation update facility is utilized by the N•PROVE market maker.

n. The term "automated quotation update facility" shall mean the facility in the N•PROVE system that allows the system to automatically refresh a market maker's quotation in any security that the market maker designates when the market maker's exposure limit has been exhausted. The facility will update both the bid and offer side of the quote using a quotation interval designated by the market maker. When the automated quotation update facility is utilized, the market maker's required minimum exposure limit may be established to equal the maximum order size for the security.

o. The term "Automated Confirmation Transaction service" ("Act"), for purposes of the N•PROVE rules, shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which accommodates trade reporting of transactions executed through N•PROVE and submits locked-in trades to clearing

(2) N•PROVE Participant Registration

a. All members participating in N•PROVE shall register and be authorized as N•PROVE market makers and/or order entry firms. Registration as an N•PROVE participant shall be conditioned upon the member's initial and continuing compliance with the following requirements: (1) Membership in, or access arrangement with, a clearing agency registered with the Securities and Exchange Commission which maintains facilities through which N•PROVE compared trades may be settled; (2) registration as a market maker (if applicable) in Nasdaq pursuant to Schedule D of the NASD By-Laws and compliance with all applicable rules and operating procedures of the Association and the Securities and Exchange Commission; (3) maintenance of the physical security of the equipment located on the premises of the member to prevent the unauthorized entry of orders or other data into N•PROVE or Nasdaq; and (4) acceptance and settlement of each trade that is executed through the facilities of the N•PROVE service, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified N•PROVE trade by the clearing member on the regularly scheduled settlement date.

b. Upon effectiveness of the member's registration to participate in N•PROVE, participants may commence activity within N•PROVE for entry and/or execution of orders, as applicable, and their obligations as established in sections 4–10 will commence.

c. Pursuant to Schedule D to the NASD By-Laws, participation as an N•PROVE market maker is required for any Nasdaq market maker registered to make a market in a Nasdaq National Market security. A market maker in a Nasdaq SmallCap security may withdraw from and reenter N•PROVE at any time, and without limitations, during the operating hours of the service.

d. Each N•PROVE participant shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

(3) Operating Hours of N•PROVE

The operating hours of N•PROVE will the normal market hours specified for The Nasdaq Stock Market.

(4) Participant Obligations in N•PROVE

a. Market Makers

1. An N•PROVE market maker shall commence participation in N•PROVE by initially contacting the Market Operation Center to obtain authorization for market making in particular Nasdaq securities and identifying those terminals on which the N•PROVE trade information is to be displayed. Thereafter, on-line registration on a security-by-security basis is permissible, consistent with the requirements of Schedule D to the NASD By-Laws.

2. Participation as an N•PROVE market maker obligates the firm, upon presentation or preferenced or unpreferenced orders through the service, to execute those orders provided however, that for unpreferenced orders, the N•PROVE market maker shall have an opportunity[b] consistent with SEC Rule 11Ac1–1 to decline the order; if no action is taken the order will be automatically executed against the market maker. The market maker may decline to execute the unpreferenced N•PROVE order only if the market maker has executed an order (or is in the process of executing an order) in the security and has updated its quotation (or is in the process of updating its quotation) for the security. If a market maker rejects the N•PROVE order, it will be displayed to all other market makers at the inside quotation simultaneously and executed against the market maker that accepts the order, or if no market maker accepts the order, the next market maker in rotation that has not rejected the order will receive the execution. If all market makers reject the order because they have had an execution (or are in the process of effecting a trade) and have updated their quotations (or are in the process of updating their quotations), the order will be delivered to the first market maker at the new inside quote on Nasdaq and that market maker will not be able to reject that order. N•PROVE market makers will also not be permitted to reject orders preferenced to the firm pursuant to a preferencing arrangement acknowledged by the market maker. The system will transmit

*The applicable maximum order size for each Nasdaq National Market security is determined generally by the following criteria:

i. a 1,000 share maximum order size shall apply to Nasdaq National Market securities with an average daily non-block volume of 3,000 shares or more a day, a bid price of less than or equal to $100, and three or more market makers;

ii. a 500 share maximum order size shall apply to Nasdaq National Market securities with an average daily non-block volume of 1,000 shares or more a day, a bid price of less than or equal to $150, and two or more market makers; and

iii. a 200 share maximum order size shall apply to Nasdaq National Market securities with an average daily non-block volume of less than 1,000 shares a day, a bid price of less than or equal to $250, and that have two or more market makers.

[b] This period of time shall initially be established as 15 seconds, but may be modified upon appropriate notification to N•PROVE participants.

to the market maker on the Nasdaq Workstation screen and printer, if requested, or through a computer interface, as applicable, an execution report generated following each execution.

3. An N•PROVE market maker that improves the best bid or offer in Nasdaq is eligible to receive all unpreferenced orders entered into N•PROVE (for a specific period of time or number of executions as established by the NASD[4]) so long as the market maker manually accepts the orders prior to automatic execution of the orders.

4. For each security in which a market maker is registered, the market maker shall enter into N•PROVE an exposure limit. For a Nasdaq National Market security, that limit may be any amount equal to or larger than the minimum exposure limit. If no exposure limit is entered for a Nasdaq National Market security, the firm's exposure limit will be the minimum exposure limit.

5. An N•PROVE market maker may elect to use the automated quotation update facility in one or more securities in which it is registered. The facility will refresh the market maker's quotation automatically by a quotation interval designated by the market maker, once its exposure limit in the security had been exhausted. The facility will refresh the market maker's quotation in both the bid and offer side of the market by the interval designated and will reestablish the market maker's displayed size and the minimum exposure limit. If the market maker elects to utilize the automated quotation update feature, it may establish an exposure limit equal to the maximum order size for the security regardless of the minimum exposure limit.

6. At any time a locked or crossed market exists for a Nasdaq National Market security, a market maker with a quotation for that security in Nasdaq that is causing the locked or crossed market will have orders delivered by N•PROVE for that market maker to execute irrespective of any preference indicated by the order entry firm.

7. For each security in which a market maker is registered, the market maker may not enter orders on an agency basis into N•PROVE, unless a locked or crossed market exists for that security. This prohibition against use of N•PROVE does not obviate the market maker's duty to give its agency orders best execution in the prevailing market, according to the Board of Governor's Interpretation on Executions of Retail Transactions, Article III, Section 1 of the NASD Rules of Fair Practice.

8. The market maker may terminate its obligation by keyboard withdrawal from N•PROVE at any time. However, the market maker has the specific obligation to monitor its status in N•PROVE to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the market maker. In the case of a Nasdaq SmallCap security, a market maker whose exposure limit is exhausted will be deemed to have withdrawn from N•PROVE and may reenter at any time. In the case of a Nasdaq National Market security, a market maker whose exposure limit is exhausted will have a closed quote in N•PROVE and will be permitted a standard grace period within which to take action to restore its exposure limit. A market maker that fails to renew its exposure limit in a Nasdaq National Market security within the allotted time will be deemed to have withdrawn as a market maker. Except as provided in subsection (9) below, a market maker that withdraws from a Nasdaq National Market security may not re-register in N•PROVE as a market maker in that security for twenty (20) business days.

9. Notwithstanding the provisions of subsection (8) above, (i) a market maker that obtains an excused withdrawal pursuant to Part V of Schedule D to the NASD By-Laws prior to withdrawing from N•PROVE may reenter N•PROVE according to the conditions of its withdrawal; and (ii) a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in ACT and N•PROVE for Nasdaq National Market securities, may reenter N•PROVE after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements. Provided however, that if the Association finds that the ACT market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Schedule D and these rules.

10. In the event that a malfunction in the market maker's equipment occurs rendering on-line communications with the N•PROVE service inoperable, the N•PROVE market maker is obligated to immediately contact the Market Operations Center by telephone to request withdrawal from N•PROVE. For Nasdaq National Market securities, such request must be made pursuant to the requirements of Part V, Schedule D to the NASD By-Laws. If withdrawal is granted, Market Operations personnel will enter the withdrawal notification into N•PROVE from a supervisory terminal. Such manual intervention, however, will take a certain period of time for completion and the N•PROVE market maker will continue to be obligated for any transaction executed prior to the effectiveness of its withdrawal.

b. N•PROVE Order Enter Firms

1. Agency orders may be entered in N•PROVE by the N•PROVE order entry firm through either its Nasdaq Workstation or computer interface. The system will transmit to the order entry firm on the Nasdaq Workstation screen and printer, if requested, or through a computer interface, as applicable, an execution report generated following each execution.

2. N•PROVE will accept both market and limit agency order for execution. Agency orders may be preferenced to a specific N•PROVE market maker or may be unpreferenced, thereby resulting in execution in rotation against N•PROVE market makers. If an order is preferenced to a market maker by an order entry firm from which it has not agreed to accept preferencing, the order will be executed on an unpreferenced basis.

3. Only agency orders no larger than the maximum order size may be entered by an N•PROVE order entry firm into N•PROVE for execution against an N•PROVE market maker. Agency orders in excess of the maximum order size may not be divided into smaller parts for purposes of meeting the size requirements for orders entered into N•PROVE. All orders based on a single investment decision that are entered by an N•PROVE order entry firm for accounts under the control of associated persons or public customers, whether acting alone or in concert with other associated persons or public customers, will be deemed to constitute a single order and will be aggregated for determining compliance with the maximum order size limits. Orders entered by the N•PROVE order entry firm within any five-minute period in accounts controlled by associated persons or public customers, acting alone or in concert with other associated persons or public customers, will be presumed to be based on a single investment decision. An associated person or customer will be deemed to control an account if the account is a personal account; the person exercises discretion over the account; the person has been granted a power of attorney over the account; or the account is the account of an immediate family member as that term is defined in the Board of Governors Interpretation on Free-Riding and Withholding, Article III, Section 1 of the NASD Rules of Fair Practice.

4. No order will be considered an agency order from a public customer if it is for any account of a person associated with any member firm or any account controlled by such an associated person. No order will be considered any agency order from a public customer if it is for any account of a member of the "immediate family" (as that term is defined in the NASD Free-Riding and Withholding Interpretation, Article III, Section 1 of the Rules of Fair Practice) of an associated person who has physical access to a terminal capable of entering orders into N•PROVE.

5. No member or person associated with a member shall utilize N•PROVE for the execution of agency orders in a security in which the member is a Nasdaq market maker but is not an N•PROVE market maker.

6. No short sales may be entered into N•PROVE.

(5) Execution of NΔPROVE Orders

a. Orders in Nasdaq equity securities entered into N•PROVE may be preferenced or unpreferenced. Preferenced orders will be delivered to the designated market maker. Except as provided in subparagraph (c) below, unpreferenced orders will be delivered to market makers at the current inside bid or offer in rotation. Odd-lot orders (orders of less than 100 shares) will be automatically executed in N•PROVE and execution reports will be delivered to the order entry firm and the market maker

b. Limit orders may be entered into N•PROVE. A limit order priced at the Nasdaq

[4] The parameters for market makers receiving priority in the rotation when they have created an improved inside market have been initially established as five minutes or five executions (whichever occurs first) after one or more market makers have changed their quote to equal the improved price. The NASD may modify these parameters upon notification to members.

inside market when the order is delivered to an N•PROVE market maker will be handled as a market order. Limit orders priced outside the Nasdaq inside market will be stored in the N•PROVE limit order file, and when the inside market equals or betters the limit price, the order will be handled as a market order. Limit orders priced better than the inside market upon entry will establish the price at which subsequent incoming market orders on the other side of market may be priced and executed (e.g., a sell order priced between the best bid and offer would improve the price of an incoming buy order). Market makers will receive notification of the existence of a limit order priced better than the inside market on their quote retrieval screens; provided however, notification of the existence of a preferenced limit order will only be delivered to the designated market maker. A limit order priced better than the inside market in Nasdaq may also be matched and executed against an incoming market or limit order, on the other side of the market, without the participation of a market maker.

c. Market orders may be entered into N•PROVE. A market order will be delivered to a market maker for execution at the current inside market (buy orders will be executed at the best offer and sell orders at the best bid). If a limit order previously has been entered into N•PROVE at a price superior to the best bid or offer, the incoming market order will be repriced to match the limit order price and will be displayed for 15 seconds to market makers at the inside quote. That order will either be executed by a market maker or will be matched and executed against the limit order. All market orders entered into N•PROVE will be executed in compliance with market maker obligations as established in subsection (4).

(6) Clearance and Settlement

All transactions executed in N•PROVE shall be transmitted to the National Securities Clearing Corporation to be cleared and settled through a registered clearing agency using a continuous net settlement system.

(7) Obligation to Honor System Trades

If an N•PROVE participant, or clearing member acting on its behalf, is reported by N•PROVE to clearing at the close of any trading day, or shown by the activity reports generated by N•PROVE as constituting a side of an N•PROVE trade, such N•PROVE participant, or clearing member acting on its behalf, shall honor such trade on the scheduled setttlement date.

(8) Compliance With Procedures and Rules

Failure of an N•PROVE participant or person associated with an N•PROVE participant to comply with any of the rules or requirements of N•PROVE may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Article III, Section 1 of the Rules of Fair Practice. No member shall effect an N•PROVE transaction for the account of a customer, or for its own account, indirectly or through the offices of a third party, for the purpose of avoiding the application of these rules. Members are precluded from doing indirectly what is directly prohibited by these rules. All entries in N•PROVE shall be made in accordance with the procedures and requirements set forth in the N•PROVE User Guide. Failure by an N•PROVE participant to comply with any of the rules or requirements applicable to N•PROVE shall subject such N•PROVE participant to censure, fine, suspension or revocation of its registration as an N•PROVE market maker and/or order entry firm or any other fitting penalty under the Rules of Fair Practices of the Association.

(9) Termination of AΔPROVE Service

The Association may upon notice, terminate N•PROVE service to a participant in the event that a participant fails to abide by any of the rules or operating procedures of the N•PROVE service or the Association, or fails to pay promptly for services rendered.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing rules of operation and procedures for a new service for the delivery, handling and execution of investors' small-sized agency orders. The "N•PROVE" service, operated by The Nasdaq Stock Market, Inc., will provide automated executions of investors' small agency orders in Nasdaq equity securities, and will offer new opportunities for price improvement of market orders. The new service will also heighten protections for investors' limit orders while enhancing the ability of market makers to monitor and maintain competitive quotations accessible to investors participating in an automated execution environment.

N•PROVE has been developed to improve the communication and handling of small investor orders so they will receive a prompt, cost effective execution at the best price available in the marketplace at any particular point in time. N•PROVE will facilitate delivery and execution of small-sized investor orders in Nasdaq equities to market makers participating in N•PROVE. Participation is required for all market makers registered in Nasdaq National Market securities but is voluntary with respect to Nasdaq SmallCap issues. Orders entered into the service may be preferenced to a particular market maker that agrees to accept preferencing or neutrally routed on an unpreferenced basis to the appropriate market maker at the inside quotation (best bid or offer) in the Nasdaq market. As discussed in more detail below, the N•PROVE service will deliver orders to market makers for execution and has been designed with default execution parameters if the market maker does not manually accept the order within a 15-second time frame. N•PROVE will also, consistent with the Commission's quote rule, Rule 11Ac1–1, permit market makers to decline to execute unpreferenced orders if the market maker has effected, or is in the process of effecting, an execution in the security and has updated (or is in the process of updating) its quote in Nasdaq. When such a decline takes place, the order is passed on to other market makers in the issue for prompt execution.

Significantly, N•PROVE will provide an interactive limit order processing capability that will facilitate price improvement for incoming market (or limit) orders and price protection for limit orders. The limit order file will store priced orders in time priority as they enter the system and will deliver the orders for execution as the inside market reaches the limit price. Where limit orders residing in N•PROVE are at prices superior to the best bid or offer, subsequent incoming market orders will be priced for execution at the limit order price and will either be executed at the improved price by a market maker or will be matched and executed against the limit order without the participation of a market maker.

N•PROVE has been developed to respond more effectively to the respective needs of three constituencies—individual investors seeking timely execution of small market orders at the best available price; individual investors seeking a different price over that readily available in the market by using limit orders; and market makers needing a cost effective alternative to the negotiation and manual processing of small investor orders. Accordingly, N•PROVE will provide what each party needs—a reliable, optimally priced execution for the customer with opportunities for price improvement together with a cost effective, automated execution system with trade reporting and locked-in trades that obviates the need for

individual order negotiation and processing.

N•PROVE will replace the Small Order Execution System ("SOES"), which does not offer the opportunity for price improvement of customer orders or afford market makers the opportunity to interact with orders in a manner consistent with their firm quote obligations. The new N•PROVE service constructively responds to concerns that automatic, quote-based execution systems do not provide sufficient opportunities for price improvement. N•PROVE's enhanced processing of limit orders and market orders will significantly expand public customers' abilities to achieve price improvement—an important benefit identified in the SEC's recent *Market 2000* study.[3] N•PROVE's price improvement features will significantly expand the ability of member firms to achieve a better-priced execution for their small customer orders and will enhance the protections offered to limit orders priced between the spread.

Additionally, the new N•PROVE service will enable market makers to manage risk effectively. The NASD is concerned that the lack of opportunity for a market maker to respond to an order as it is presented through the existing SOES system seriously interferes with participants' ability to manage risk and undermines market makers' control of their capital and trading positions. By enabling market makers to accept or reject orders (if they are in the process of trading or have already traded and are updating their quote), the N•PROVE service permits market makers to engage in effective risk management while providing price discovery in an automated execution environment. N•PROVE has been designed as an order delivery system with default execution parameters to ensure the continuation of market depth, liquidity, and price discovery mechanisms in the Nasdaq market. The new delivery and execution functionality will more accurately reflect market makers' affirmative obligations to provide liquidity to the market, while not depriving market makers of the exceptions from the firmness requirements contained in Rule 11Ac1–1, the Commission's firm quote rule.

1. System Operations

The new N•PROVE system will feature the following operations:

[3] *Market 2000; An Examination of Current Equity Market Developments;* Division of Market Regulation, SEC (January 1994).

• Enhanced market making functionality.

The order processing functions in N•PROVE will provide market makers with several options for handling incoming orders. The market maker may either accept the order immediately or allow the system to execute the order automatically after a short time period (15 seconds). In addition, the market maker may reject the order if it has effected a trade (or is in the process of executing a transaction in the security) and has updated its quote (or is in the process of updating its quote). This procedure allows dealers to more effectively monitor and react to market movements, to timely update their quotations following the execution of N•PROVE and other orders, or to reject an N•PROVE order if they are in the process of trading or have already traded at that price. As the SEC acknowledges in Rule 11Ac1–1, it is appropriate to give market makers an opportunity after an execution to adjust their quotations to reflect new information or in consideration of their inventory position.

Order entry firms have two alternatives when entering orders in Nasdaq stocks into N•PROVE—they may preference the order to a particular market maker (with whom they have established a preferencing arrangement through the system) or they may enter an unpreferenced order into N•PROVE.[4] A preferenced order will be delivered to the designated market maker who may manually execute the order or let the system automatically execute the order after 15 seconds. Once a market maker agrees to accept preferencing from an order entry firm, the market maker effectively waives the ability to reject an order, although the market maker may use the 15-second time period following receipt of the preferenced order to update its quotation so that a second order will not be presented for execution at the same quote.[5]

An unpreferenced order will be routed to the market maker at the inside bid or offer that is next in line for an N•PROVE execution. The market maker may manually execute the trade or allow the system to automatically execute the trade after 15 seconds. If the market maker has effected a trade (or is in the process of executing a trade in that security) and has updated its quotation (or is in the process of updating), it may reject the N•PROVE unpreferenced order. When, consistent with the requirements of Rule 11Ac1–1, an order is rejected by the first market maker in rotation, the order will automatically be displayed to all remaining market makers at the inside quote. All of these market makers will have the opportunity to execute the order during a 15 second period. If no market maker manually accepts the order, it will be automatically executed against the first market maker in rotation. In the unlikely event that all of these market makers reject the order pursuant to a valid exception from Rule 11Ac1–1, the order will be executed automatically by the first market maker in rotation quoting at the new inside market. As the system only allows a few seconds for each of these steps, every N•PROVE order is assured a timely execution, usually within 15 seconds of it being delivered to the first market maker. Once the execution has been accomplished, whether on a preferenced or unpreferenced basis, the order entry firm and market maker will each receive an execution report on their N•PROVE message area on the Nasdaq Workstation.

An additional feature in N•PROVE allows market makers to receive additional order flow if they establish a new quotation that betters the current inside quote in the Nasdaq market. When a market maker improves its bid or offer to better the inside bid or offer, it is placed first in rotation to receive N•PROVE unpreferenced orders. When other market makers adjust their quotes to match the new inside quote, the initial market maker at that quote will be able to maintain its priority status, receiving all unpreferenced orders regardless of the delivery mechanisms that usually send orders to the market makers at the inside quote in rotation, if the initial market maker manually accepts each order. For a short period (initially established as five minutes or five executions, whichever comes first), all unpreferenced orders will be routed to the market maker first in rotation, until such time as that market maker rejects an order, allows the system to automatically execute an order, or a new inside has been established. When any of these events occur, the usual order delivery routines will commerce.

• Price improvement and limit order protection.

The operation of the N•PROVE system facilities price improvement of incoming N•PROVE market orders while providing price protection for

[4] Odd-lot orders (orders of less than 100 shares) entered into N•PROVE will be executed automatically at the best bid or offer in Nasdaq and market makers will receive execution reports rather than orders.

[5] Preferencing arrangements are common throughout the securities industry and reflect agreements to accept order flow for execution from specific order entry firms. Accordingly, a preferenced order may not be rejected.

limit orders placed in between the spread in Nasdaq.[6] Price improvement could occur whenever a limit order between the spread was placed in the system. All market makers in the issue will be alerted when such a limit order has been entered between the spread to permit the market maker immediate access to the order for execution.[7] If the limit order remains open, the next incoming market order on the opposite side of the market (e.g., the limit order is to sell stock and the market order is to buy stock) would automatically "pass over" or read the limit order file to see if there are any orders residing in the limit order file at prices superior to the best bid or offer in the Nasdaq marketplace. If limit orders at a superior price exist, then the market order will be displayed on the screen at that superior price, rather than at the inside bid or offer, as the case may be. In that event, all market makers at the inside quotation would have the opportunity for 15 seconds to execute the market order at the superior limit price. If no market maker elected to execute the order at that improved price, the system would execute the orders against each other at the limit price. Thus, Nasdaq market makers would retain the ability to interact with orders and improve market prices through the system while providing customers that place limit orders between the spread price protection and the possibility of an execution within seconds of a market order entering the system. A limit order priced better than the inside Nasdaq market continues to set the price for incoming market orders until it is executed, whether as a match against a market order (or another limit order priced in between the spread), or as an execution from a market maker. Thus customers placing market orders receive price improvement and customers placing limit orders will be assured that N•PROVE executions will not occur at prices inferior to their limit prices.

For example, if the inside market on a Nasdaq security is 20—20¼ and a limit order to buy at 20⅛ is entered, the next incoming sell order will be priced at 20⅛ and will be displayed to the market makers at the inside quote. If the market order is executed by a market maker at 20⅛, that customer receives ⅛ point more than the current best quoted price, and each subsequent incoming market order is priced at the limit order price until the limit and market orders execute against each other or the limit order is executed independently by a market maker. If no market maker manually accepts an improved market order trade, the two investor orders are matched against each other at a price of 20⅛.

2. Scope

The requirements of the N•PROVE service would mirror those currently in place for the SOES system, with the modifications described above to facilitate price improvement and risk management features.[8] The following changes have also been proposed: (1) To establish a maximum order size for the most liquid tier of N•PROVE securities at 1,000 shares; (2) to modify the handling of preferenced orders when the market is locked or crossed and (3) to prohibit short sales in the system.

The current maximum order size for SOES is 500 shares; the NASD believes that with the risk management features of the new service implemented, it is appropriate to allow the entry of agency orders up to 1,000 shares. Market makers in the most liquid tier of Nasdaq securities are currently required to post size in their quotations of 1,000 shares, and the ability to execute such sizes in N•PROVE will facilitate executions of agency orders in compliance with a market maker's firm quote obligations.

When markets in a Nasdaq security are locked or crossed, the new delivery mechanisms of N•PROVE will facilitate quick resolution of the condition by sending each incoming N•PROVE order to the market maker locking or crossing the market, whether the orders are preferenced to that market maker or not. The automated default executions will continue to occur until the market maker updates its quotation, depletes its exposure limits, or rejects a trade (and updates its quote). In this regard, possible receipt of multiple executions will encourage the market maker to respond quickly to correct the aberrant quote condition.[9]

Finally, one of the N•PROVE rules prohibits the entry of short sales into the service. The SEC approved this restriction in the SOES system for a one year pilot period[10] because of experience with excessive short-term trading occurring in SOES. In its approval for the "interim" SOES rules, the SEC stated that prohibiting short selling through SOES was a means reasonably designed to reduce the costs to market makers and investors that result from active intra-day trading activity through SOES. Having identified the costs associated with intra-day trading, the Commission went on to say that any burden placed on short sellers was outweighed by the benefits of potentially narrower spreads and enhanced liquidity in Nasdaq securities. Further, the SEC took into consideration the fact that short sales among typical retail investors are infrequent and broker/dealers rarely execute short sales through an automated system such as SOES. Accordingly, the Commission believed that prohibiting the execution of short sales through SOES was an effective means of limiting intra-day trading with little concomitant effect on retail investors.

The NASD believes that the N•PROVE service, while offering enhanced facilities for market makers to handle exposure to transactions such as short sales by enabling them to reject trades if they have already traded, still provides an automated execution environment that may be susceptible to active intra-day traders. While the N•PROVE service does provide a 15 second period for a market maker to react to an N•PROVE order, that time period is sufficiently short that there remains a risk of destabilizing short term trading through the service. Having identified and analyzed the costs associated with active intra-day trading scenarios using the SOES system, the NASD believes that prohibiting short sales in N•PROVE is an appropriate action as it prohibits a narrow, generally non-retail type of trading activity from an automated execution system, rather

[6] The system also includes a matching and/or price improvement feature for limit orders entered in between the spread. For example, if the inside bid and offer were 20—20¼, and two limit orders were entered to buy and sell at 20⅛, the system would allow the orders to match against each other within 15 seconds. If two limit orders crossed each other in between the inside spread (i.e., a buy order priced at 20⅛ and a sell order priced at 20⅛), the orders would be matched after 15 seconds and the price averaged between the orders (each would receive 20¼).

[7] If the limit order is preferenced to a single market maker, only that market maker would receive the limit order alert. The incoming market orders would still receive the benefits of price improvement, however, regardless of preferencing

[8] The current SOES limit order file has also been modified (as discussed above) to permit limit orders to interact with market orders and to narrow the time frame for matching orders within the file from the current five minute period to 15 seconds.

[9] Additional modifications in the N•PROVE rules pertain to regulatory controls over what is considered an agency order eligible for entry into the system. For example, the new rules state that "No order will be considered an agency order from a public customer if it is for any account of a person associated with any member firm or any account controlled by such an associated person. No order will be considered an agency order from a public customer if it is for any account of a member of the "immediate family" (as that term is defined in the NASD Free-Riding and Withholding Interpretation, Article III, Section 1 of the Rules of Fair Practice) of an associated person who has physical access to a terminal capable of entering orders into N•PROVE." *See* Section 5(b)(4) of the proposed N•PROVE Rules.

[10] Securities Exchange Act Release No. 33377 (Dec. 23, 1993), 58 FR 69419 (Dec. 30, 1993).

than limiting a type of investor or active trader from the system. The NASD concurs with the Commission that limiting short sales in an automated execution environment is a means reasonably designed to assure continued market maker participation and liquidity in the market. It is appropriate to exclude discernable trading practices that impose excessive risks and costs on market makers and jeopardize market quality. Accordingly, the NASD believes that prohibiting short sales in N•PROVE is necessary and appropriate and consistent with requirements of the Act.

The new N•PROVE service addresses the concerns that customers cannot achieve price improvement in quote-based execution systems and that market makers cannot effectively manage risk in an automated execution environment. By allowing market makers to see orders prior to their execution, N•PROVE is facilitating risk management; by alerting members to the existence of a limit order between the spread and using that limit price to establish the new market price, N•PROVE is facilitating price improvement in an automated facility. The NASD believes the proposed rule change is consistent with sections 15A(b)(6), 15A(b)(9), 15A(b)(11), and 11A(a)(1)(C) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(9) requires that rules of an Association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(B)(11) requires the NASD to formulate rules governing the quality of fair and informative quotations. Section 11A(a)(1)(C) finds that it is in the public interest to, among other things, assure economically efficient execution of securities transactions. The fundamental purpose of N•PROVE is to assist investors in achieving prompt, efficient executions of their small orders and to provide an opportunity for price improvement within an automated execution environment. The integrity and efficiency of Nasdaq for public investors and market-making participants is critical and the NASD believes that N•PROVE will provide benefits to both consistencies. The design of N•PROVE is not anti-competitive as it treats all unpreferenced orders uniformly; to the extent that preferenced orders are distinguished, by entering into preferencing arrangements with known customers, market maker's effectively waive the protections offered by the system. N•PROVE may also enhance the quality of quotations in the Nasdaq marketplace as market makers participating in the service may be encouraged to narrow the spread and improve the best inter-dealer quotations in Nasdaq in order to be first in priority and continue to receive unpreferenced order flow through N•PROVE.

The new proposals are also fully consistent with the significant national market system objectives contained in Section 11A of the Act. The facilities of N•PROVE would advance these objectives by offering efficient execution of investors' small orders, by maintaining market maker participation through the automated delivery of orders with the ability to reject those orders if trades have already occurred, and by offering the opportunity for price improvement to N•PROVE orders. The system's functionality will more accurately reflect market makers' affirmative obligations to provide liquidity to the market, without depriving market makers of legitimate exceptions from the firmness requirements contained in Rule 11Ac1–1.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act. When fashioning a rule proposal for SEC review, an SRO is not required to find the least anti-competitive means to achieve a desired result, but the SRO and the SEC must determine that the means chosen are necessary or appropriate to achieve the objectives of the Act. In its recent approval of the interim modifications to the SOES system, the SEC found that it may be appropriate to exclude discernable trading practices that impose excessive risks and costs on market makers and jeopardize market quality. The NASD concurs with this evaluation and accordingly, has proposed some of the same restrictions in N•PROVE. The design of N•PROVE is not anti-competitive as it treats all unpreferenced orders uniformly; to the extent that preferenced orders are distinguished, by entering into preferencing arrangements with known customers, market maker's effectively waive the protections offered by the system. Accordingly, the NASD believes that the new proposals are fully consistent with the requirements of the Act.

c. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. The Commission specifically requests that commenters address the handling of limit and market orders. The proposal includes the opportunity for price improvement for limit and market orders. Limit orders entered in N•PROVE priced away from the inside market will reside in a limit order file. If another limit order on the opposite side of the market is entered that either matches or crosses the first limit order, the two limit orders will be matched for execution (at either the matching price or, when two limit orders cross, at the average price). If a market order on the opposite side of the market is entered in N•PROVE, it will be repriced to match an existing limit order if the limit order provides price improvement over the current inside market. Under either scenario, however, prior to execution, the system will allow a 15-second period within which a market maker in the security can execute one side of the match at the improved price. While the proposal will provide both orders the opportunity for price improvement, it could also result in one public order that otherwise would have been

executed at the improved price to remain unexecuted.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–94–13 and should be submitted by June 29, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13881 Filed 6–7–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Noise Exposure Maps and Request for Review of Noise Compatibility Program for Lake Tahoe Airport, South Lake Tahoe, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by city of South Lake Tahoe, California, for Lake Tahoe Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are incompliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Lake Tahoe Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before November 14, 1994.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is May 18, 1994. The public comment period ends July 17, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriguez, Planning/Programming Supervisor, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, California 94010–1303, Telephone: (415) 876–2805. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Lake Tahoe Airport are in compliance with applicable requirements of part 150, effective May 18, 1994. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before November 14, 1994. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of South Lake Tahoe, submitted to the FAA on September 24, 1992 noise exposure maps, descriptions and other documentation which were produced during the preparation of the Noise Compatibility Program, Lake Tahoe Airport, California, dated September 1992. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of South Lake Tahoe. The specific maps under consideration are Figure 3.3.1, "Predicted 1991 CNEL Contours", and Figure 3.3.2, "Predicted 1996 CNEL contours", in the submission. The FAA has determined that these maps for Lake Tahoe Airport are in compliance with applicable requirements.

This determination is effective on May 18, 1994. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Lake Tahoe Airport, also effective on May 18, 1994. Preliminary review of the

[11] 17 CFR 200.30–3(a)(12) (1993)

submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program.

The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 14, 1994. The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP–600, 15000 Aviation Blvd., Hawthorne, CA 90261, Mail Address: P.O. Box 92007, World Way Postal Center, Los Angeles, CA 90009–2007

Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, California 94010–1303

Mr. Richard D. French, AAE, Airport Director, City of South Lake Tahoe, Lake Tahoe Airport, 1901 Airport Road, suite 100, South Lake Tahoe, California 96150–7004

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on May 18, 1994.

Robert C. Bloom,

Acting Manager, Airports Division, AWP–600.

[FR Doc. 94–13915 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–94–22]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 28, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 2, 1994

Donald P. Byrne,

Assistant Chief Counsel for Regulations

Petitions for Exemption

Docket No.: 27178.
Petitioner: Continental Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.358.
Description of Relief Sought/ Disposition: To permit Continental Airlines to extend the December 31, 1995, compliance date permitted in Exemption No. 5256 for installation of required windshear equipment in its aircraft in order to develop, certificate, and implement predictive windshear devices in lieu of installing existing reactive systems.

Docket No.: 27617.
Petitioner: American Airsport Association.
Sections of the FAR Affected: 14 CFR 103.1 (a), (b), and (e).
Description of Relief Sought/ Disposition: To permit American Airsport Association to operate powered, two-placed ultralight vehicles for instructional purposes that weigh less than 500 pounds, have a fuel capacity not exceeding 10 U.S. gallons, are not capable of more than 90 miles per hour at full power in level flight, and have a power-off stall speed of 40 miles per hour or less.

Docket No.: 27674.
Petitioner: IBM Flight Operations.
Sections of the FAR Affected: 14 CFR parts 43, 91, and 145.
Description of Relief Sought: To allow IBM Flight Operations to use electronically printed, computer generated signatures and stamp numbers on required documents for maintenance managers, chief inspectors, designated inspectors, maintenance technicians, avionics inspectors, avionics technicians, and aircraft commanders.

Docket No.: 27725.
Petitioner: Mr. Smiley E. Johnson.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To permit Mr. Johnson to serve as a pilot in part 121 air carrier operations after his 60th birthday.

[FR Doc. 94–13917 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee: Air Carrier/General Aviation Maintenance Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of change in task assigned to the Aviation Rulemaking Advisory Committee, Parts Approval Action Team-Phase 3 Working Group.

SUMMARY: Notice is given of a change in the task assigned to the Parts Approval Action Team—Phase 3 Working Group of the FAA Aviation Rulemaking Advisory Committee (ARAC). This

notice informs the public of the activities of the ARAC on air carrier/general aviation maintenance issues.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick J. Leonelli, Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Flight Standards Service (AFS–300), 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–3546; fax: (202) 267–5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One area of the ARAC deals with air carrier/general aviation maintenance issues. These issues involve mechanic certification and approved training schools as outlined in parts 65 and 147 and the maintenance standards for parts 23, 25, 27, 29, 31, 33, and 35 aircraft engines, propellers, and their component parts and parallel provisions in parts 21, 43, 91, 121, 135, and 137 of the Federal Aviation Regulations. The Parts Approval Action Team—Phase 3 Working Group will forward recommendations to the ARAC, which will determine whether to forward them to the FAA.

After reevaluating the task originally assigned to ARAC, the FAA has determined that it would be appropriate to redefine the task as follows:

Develop an interim plan for evaluating the acceptability of aircraft parts existing within present civil inventories that lack acceptable documentation. Develop such advisory circulars, notices, NPRM's, or other documents, as deemed appropriate, to accomplish this task. Develop a plan to ensure that in the future aircraft parts are properly documented.

If the ARAC determines that a Notice of Proposed Rulemaking (NPRM), an Advisory Circular (AC), or both would be appropriate, those documents are to be submitted to the FAA in the format prescribed. The working group should make recommendations to the ARAC in the following manner.

Reports

(a) Recommend a work plan for completion of the task, including the rationale supporting the plan, for consideration at the meeting of the ARAC to consider air carrier/general aviation maintenance issues held following publication of this notice;

(b) Give a detailed conceptual presentation on the proposed recommendation to the ARAC before proceeding with the work stated in item (c) below;

(c) If considered appropriate, develop NPRM(s) proposing the revised rules for undocumented parts with supporting economic and other required analyses, advisory and guidance material, and any other collateral documents the working group determines to be needed. Present these recommendations to the ARAC for further consideration and disposition; and

(d) Give a status report on the task at each meeting of the ARAC held to consider air carrier/general maintenance issues.

The Parts Approval Action—Phase 3 Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A working group member need not necessarily be a representative of one of the organizations of the ARAC. Individuals who have expertise in the subject matter and wish to become a member of the working group should write the person listed under the caption, **FOR FURTHER INFORMATION CONTACT,** expressing that desire, describing their interest in the task, and the expertise they would bring to the working group. Each request will be reviewed by the ARAC Assistant Chair for Air Carrier/General Aviation Maintenance Issues and the chair of the working group, and the individual will be advised if the request can be granted.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary and in the public interest, in connection with the performance of duties of the FAA. Meetings of the ARAC to consider air carrier/general aviation maintenance issues will be open to the public, except as authorized by Section 10(d) of the Federal Advisory Committee Act. Meetings of the Parts Approval Action Team—Phase 3 Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on June 1, 1994

Frederick J. Leonelli,

Assistant Executive Director for Air Carrier/General, Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–13916 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Butler and Carter Counties, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Butler and Carter Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO 65102, Telephone Number 314–636–7104; or Mr. Bob Sfreddo, Design Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2876.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Highway and Transportation Department (MHTD), will prepare an environmental impact statement (EIS) on a proposal to improve Missouri Route 60 in Butler and Carter Counties, Missouri.

1. The proposed improvement would reconstruct approximately 67.6 kilometers (42 miles) of Route 60 between Poplar Bluff and Van Buren, including a new interchange at U.S. Route 67. Improvements to the corridor are needed to provide for existing and projected traffic demand.

2. Alternatives under consideration include: (1) A "no build" option, (2) mass transit and transportation system management, (3) improvement of the existing two-lane roadway to four lanes, (4) constructing a four-lane, limited-access highway on a new location, and (5) constructing a four-lane, fully controlled access highway on a new location.

3. To date, preliminary information has been issued to local officials and other interested parties. The scoping process will be initiated with Federal, State, and local agencies. Formal agency and public scoping meetings will be held in Elsinore and Poplar Bluff in June or July of 1994.

In addition, a public hearing will be held. Public notice will be given in advance of the date and time of each meeting. The draft EIS will be available prior to the public hearing for public review and comment. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Any comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Missouri Highway and Transportation Department at the addresses provided above.

Issued on: May 20, 1994.

Donald Neumann,

Program Review Engineer, Jefferson City.

[FR Doc. 94–13829 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Howell, Shannon, and Carter Counties, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Howell, Shannon, and Carter Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO 65102, Telephone Number 314–636–7104; or Mr. Bob Sfreddo, Design Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2876.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Highway and Transportation Department (MHTD), will prepare an environmental impact statement (EIS) for a location study along Route 60 in Howell, Shannon, and Carter Counties, Missouri.

1. The proposed location study begins at Route U east of Willow Springs, in Howell County, and continues approximately 88.5 kilometers (55 miles) to a point approximately 2.4 kilometers (1.5 miles) west of Van Buren, in Carter County. Improvements are considered necessary to improve safety, to improve access in the three-county region, and to increase capacity.

2. Alternatives under consideration include improving the existing highway, widening the existing highway, and constructing a new four-lane highway. A "no build" option, as well as mass transit and transportation system management options also are being considered.

3. To date, preliminary information has been issued to local officials and other interested parties. The scoping process will be initiated with Federal, State, and local agencies. Formal agency and public scoping meetings will be held in about June of 1994. A public hearing will likely be held in the fall of 1995. Public notice will be given in advance of the date and time of each meeting. The draft EIS will be available prior to the public hearing for public review and comment. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Any comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Missouri Highway and Transportation Department at the addresses provided above.

Issued on May 6, 1994.

Donald Neumann,

Program Review Engineer, Jefferson City.

[FR Doc. 94–13828 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

Approval of Applicant as Trustee

Notice is hereby given that American National Bank and Trust Company, with offices at 101 East Fifth Street, St. Paul, Minnesota, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR part 221.

Dated: June 2, 1994.

By Order of the Maritime Administrator

James E. Saari,

Secretary.

[FR Doc. 94–13920 Filed 6–7–94; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee for Cooperative Studies, Health Services Research and Development and Rehabilitation Research and Development; Meeting

In Accordance with Public Law 92–463, the Department of Veterans Affairs gives notice of a meeting of the Rehabilitation Research and Development Scientific Review and Evaluation Board Sub-Committee of the Advisory Committee for Cooperative Studies, Health Services, and Rehabilitation Research and Development. This meeting will convene at the Vista International Hotel, 1400 "M" Street NW, Washington, DC July 12 through July 15, 1994. The session on July 12, 1994, is scheduled to begin at 6:30 p.m. and end at 10:30 p.m. The sessions on July 13, 14, 15, 1994, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) for the July 12 session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On July 13–15, 1994 the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols, the similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 522b(c)(6), and (c)(9)(B) and the determination of the Secretary of the Department of Veterans Affairs under section 10(d) of Public Law 92–463 as amended by section 5(c) of Public Law 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service, Department of Veterans Affairs, 103 South Gay Street, Baltimore, Maryland 21202 (Phone: 410–962–2563) at least five days before the meeting.

Dated: May 16, 1994

Heyard Bannister,

Committee Management Officer

[FR Doc. 94–13874 Filed 6–7–94; 8:45 am]

BILLING CODE 8320–01–M

Special Medical Advisory Group (SMAG); Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Special Medical Advisory Group (SMAG) has been renewed for a period beginning November 17, 1993, through November 17, 1995.

Dated: May 31, 1994

Heyward Bannister,

Committee Management Officer

[FR Doc. 94–13873 Filed 6–7–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 109

Wednesday, June 8, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, June 13, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551

STATUS: Closed

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 3, 1994

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 94-14010 Filed 6-6-94; 9:11 am]

BILLING CODE 6210-01-P

Corrections

Federal Register

Vol. 59, No. 109

Wednesday, June 8, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

Correction

In notice document 94-11589 beginning on page 24683 in the issue of Thursday, May 12, 1994 is corrected to read as follows:

On page 24684, in the table, in the column headed "Period to be reviewed", insert "04/01/93-03/31/94" on the sixth and the ninth line from the bottom.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP94-554-000]

Williams Natural Gas Co.; Request Under Blanket Authorization

Correction

In notice document 94-12840 appearing on page 27273 in the issue of Thursday, May 26, 1994, the docket number is corrected as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7048

[AK-932-4210-06; AA-17986]

Partial Revocation of Executive Order No. 3406 Dated February 13, 1921; Alaska

Correction

In rule document 94-11565 appearing on page 24649 in the issue of Thursday, May 12, 1994 is corrected to read as follows:

On page 24649, in the second column, in the sixth line from the bottom, in the land description, "24" should read "14".

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2609

RIN 1212-AA64

Debt Collection by Administrative Offset

Correction

In proposed rule document 94-12426 beginning on page 26467 in the issue of Friday, May 20, 1994, make the following correction:

On page 26467, in the third column, under SUPPLEMENTARY INFORMATION, in the first full paragraph, in the seventh line, "FHWA" should read "U.S.C."

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34080; File No. SR-DGOC-94-02]

Self-Regulatory Organizations; Delta Government Options Corp.; Filing of Proposed Rule Change Modifying Exercise Settlement Date and Buy-In Procedures

Correction

In notice document 94-12748 beginning on page 27087 in the issue of Wednesday, May 25, 1994 is corrected to read as follows:

On page 27087, in the third column, before the first full paragraph, insert the date "May 18, 1994".

BILLING CODE 1505-01-D

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Federal Register

Wednesday
June 8, 1994

Part II

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal years 1994–1995 for the Knowledge Dissemination and Utilization Program.

SUMMARY: The Secretary announces funding priorities for the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities and their families.

EFFECTIVE DATE: These priorities takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: David Esquith, U.S. Department of Education, 400 Maryland Avenue SW., room 3424, Switzer Building, Washington, DC 20202–2601. Telephone: (202) 205–8801.

SUPPLEMENTARY INFORMATION: This notice contains six priorities under the D&U program. These priorities would train persons with rights and duties under the Americans with Disabilities Act (ADA). The six priority areas are: (1) Independent living centers; (2) family organizations; (3) school districts; (4) State and local ADA coordinators and policymakers; (5) Hispanics with rights and duties under the ADA whose proficiency in English is limited; and (6) standards for accessible design.

Authority for the D&U program of NIDRR is contained in sections 202 and 204(a) and 204(b)(6) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations.

These priorities support the National Education Goals. National Education Goal 6 provides that by the year 2000 every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 355.32), the Secretary may establish research priorities by reserving funds to support particular research activities.

NIDRR is in the process of developing a revised long-range plan. The priorities in this notice are consistent with the long-range planning process.

On April 6, 1994 the Secretary published a notice of proposed priorities in the **Federal Register** at (59 FR 16486). The Department of Education received 18 letters commenting on the proposed priorities. Modifications were made to the priorities as a result of those comments. The comments, and the Secretary's responses to them, are discussed in an appendix to this notice.

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications under these competition is published in a separate notice in this issue of the **Federal Register**.

General

Unless indicated otherwise in the priority, the following requirements apply to the training projects:

Applicants for the training projects must identify the target groups and organizations that will be selected for training as specified in each of the priorities and describe in detail how the project will schedule and provide training during national, regional, State, or local conferences and meetings of the selected organizations. Applicants must demonstrate knowledge of the extent to which the target groups and organizations have received prior training on the ADA.

Applicants for training projects must describe how the project will provide persons with all types of disabilities an equal opportunity to receive training. Applicants for training projects must describe how the project will utilize a variety of training methods and deliver training in formats and styles that are accessible to individuals with a range of sensory, communication, cognitive, and learning disabilities.

Applicants for training projects must describe the training materials that the project will develop as well as identify existing training materials that the project will use.

Applicants must establish a timetable for beginning training activities and demonstrate that key staff and facilities will be available in order to achieve a comprehensive nationwide program within the period of the project.

Applicants for the training projects who propose to use subcontractors must demonstrate that it is cost-effective and describe how the applicant will directly supervise the subcontractors (see 34 CFR 75.701).

The training project must consult with each of NIDRR's regional Disability and Business Technical Assistance Centers (DBTACs) during the development of its schedule of training activities. To the maximum extent feasible, the training project must conduct its training activities in collaboration with each of the DBTACs.

The training project (except Priority 6: Standards for Accessible Design) must develop two schedules of regional training activities. The first schedule of training activities must be finalized and training must begin within six months after the award of the grant. The second schedule must be finalized within eighteen months after the award of the grant. The training project must carry out its training activities as equitably as possible across and within each region of the country.

The training project must have a staff with expertise on the ADA and training and carry out its training activities using those staff persons.

The training project must include individuals with disabilities or their family members or representatives to the maximum extent possible in all phases of the project's activities.

The training project must submit final drafts of the training materials it produces to NIDRR for review of their legal sufficiency. (NIDRR estimates it will take between two and four weeks to review materials for legal sufficiency depending upon their length and complexity.) The training project must submit monthly status reports on its training activities through NIDRR's ADA Technical Assistance Coordination Contract to NIDRR. Each training project must submit its final report to the National Rehabilitation Information Center clearinghouse.

The training project must cooperate with other Federal agencies that provide technical assistance and training on the ADA, such as the Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ), and the Architectural and Transportation Barriers Compliance Board (ATBCB).

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary will fund under this program only applications that meet these absolute priorities:

Priorities—Americans With Disabilities Act Training Projects

Background

Public Law 101–336, the Americans with Disabilities Act (ADA), which was

enacted on July 26, 1990, prohibits discrimination against individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. In 1991 NIDRR established an ADA technical assistance program made up of ten regional Disability and Business Technical Assistance Centers (DBTACs—previously, Disability and Business Accommodation Centers), two national training projects, three materials development projects, and an ADA technical assistance coordination contract. The two national training projects addressed the needs of persons affiliated with independent living centers and peer and family networks. These training projects, which were awarded for three years, will complete their activities in fiscal year (FY) 1994.

For FY 1994, Congress provided NIDRR with additional funding, which it directed be used "for training activities related to the implementation of the Americans with Disabilities Act" (1994 Senate Appropriations Committee Report, p. 207). In accordance with this congressional directive, NIDRR proposes to establish six new training projects that will be supported by the additional funding that Congress provided as well as by existing NIDRR funds. The training projects will enhance the capacity of those with rights and duties under the ADA to facilitate its implementation.

NIDRR has consulted with a range of relevant Federal agencies, including, but not limited to, DOJ, EEOC, the Architectural and Transportation Barriers Compliance Board (ATBCB), the Department of Transportation, and the National Council on Disability, as well as representatives from disability organizations, to develop responsive and meaningful training projects that will complement the planned efforts of other public and private agencies. These priorities were developed on the basis of these consultations and relevant information from NIDRR projects, including the ADA technical assistance projects. NIDRR intends to continue to coordinate activities under this program with other Federal agencies and with other public and private initiatives to implement the ADA.

Priority 1: ADA Training for Independent Living Centers

Background

The more than 400 Independent Living Centers (ILCs) in the United States emphasize consumer control and peer services. These ILCs have a strong incentive to promote the successful implementation of the ADA. ILCs serve as resources not only to individuals with disabilities in their communities, but also to individuals and entities with responsibilities under the Act.

Preliminary results from a survey conducted by the Independent Living Research Utilization Program (ILRU) of persons associated with ILCs from around the country indicate that knowledge concerning specific sections of the ADA is not high, even among persons who have a direct interest in effective ADA implementation. Initial analysis of these data suggests that a lack of training opportunities and high turnover among the staff who are trained are factors in the current level of knowledge of persons associated with ILCs.

Some ILCs have had opportunities to participate in ADA training activities sponsored by Federal agencies, and many ILCs have developed into sophisticated community resources on the ADA. Training projects for the ILCs have generally taken the form of an ILC sending a representative to attend an intensive ADA training session over a number of days. This approach has some limitations in terms of impact due to the high turnover of ILC staff and multiple or shifting work responsibilities in the ILC.

Other ILCs, due in large part to their size or location, have not had ADA training opportunities sponsored by Federal agencies. This group of ILCs is the primary target audience for this training project. The secondary target group for the training project is composed of those ILCs who have lost their ADA-trained staff person. The project is intended to enable both of these groups of ILCs to become experts on the ADA so that their staff, associates and volunteers can answer technical questions, advise individuals on their rights or responsibilities, make referrals, increase awareness of the ADA in their community, and conduct ADA training activities for covered entities in their community.

Priority

An ADA training project for ILCs shall—

- Identify and select for training ILCs that have either not received training from a NIDRR, EEOC, or DOJ ADA project, or lost their staff representative who was trained by a NIDRR, EEOC, or DOJ project;
- Develop a strategy and schedule for training as many of these ILCs as possible using a variety of approaches, including, but not limited to, on-site training, national, regional, State, and local meetings, teleconferences, and audioconferences;
- Utilizing existing federally-approved materials to the maximum extent appropriate, develop an array of training materials and activities that vary in length and content in order to accommodate the information and scheduling needs of selected organizations;
- Provide training to staff, associates, and volunteers from each selected ILC in order to enable them to answer technical questions on the ADA, advise individuals or entities on their rights or responsibilities, make referrals, increase awareness of the ADA in their community, and conduct ADA training activities for covered entities in their community;
- To the maximum extent possible, utilize as trainers those individuals with disabilities who are from the same approximate area of the country as the selected ILC and who have been trained as trainers on the ADA by a NIDRR, EEOC, or DOJ technical assistance or training project; and
- For the length of the project, provide selected ILCs with quarterly ADA information updates, before and after training, regarding legal and policy developments.

Priority 2: ADA Training for Family Organizations

Background

The National Rehabilitation Information Center (NARIC) publishes a National Directory of Information Sources on Disability that includes information on many (but not all) organizations serving the disability community. According to the NARIC staff who are updating this directory, there are a minimum of 411 organizations providing information or direct services to individuals with disabilities and their families. These organizations disseminate information through national, State, and local conferences, as well as publications such as newsletters and brochures. They also provide training, using a variety of means and settings, to their professional staff as well as to their membership.

According to representatives of disability organizations, the extent to which national disability organizations, as well as their State and local affiliate organizations, have provided training or information to their members about the ADA varies according to the primary mission of the organization (e.g., provision of services or advocacy), resources available to the organization, and the interest of the membership and its leaders. As a result, knowledge about

the ADA among these organizations can vary widely from one organization to another as well as from one affiliate to another within the same organization.

The purpose of this priority is to provide training on the ADA to persons who are members or staff of disability organizations that provide services and information primarily to individuals with disabilities and their families by utilizing the existing training and information systems of these organizations.

Priority

An ADA training project for family organizations shall—

- Placing special emphasis on those organizations that have had limited access to ADA training and information, identify and select for training a range of disability organizations that provide services and information primarily to individuals with disabilities and their families, including those organizations focused on developmental, cognitive, emotional, physical, or sensory disabilities;
- Develop a strategy and schedule for training the membership and staff of these organizations using a variety of approaches including, but not limited to, on-site training, national, regional, State, and local meetings, teleconferences, and audioconferences;
- Utilizing existing Federally approved materials to the maximum extent appropriate, develop an array of training materials and activities that vary in length and content in order to accommodate the information and scheduling needs of selected organizations;
- Provide training to the membership and staff of selected organizations on the provisions of the ADA and the resources available to them to facilitate the implementation of the ADA;
- To the maximum extent possible, utilize as trainers those individuals with disabilities who have been trained as trainers on the ADA by a NIDRR, EEOC, or DOJ technical assistance or training project; and
- For the length of the project, provide selected organizations with quarterly ADA information updates, before and after training, regarding legal and policy developments.

Priority 3: ADA Training for School Districts

Background

There are 15,173 regular school districts in the United States according to the U.S. Department of Education National Center for Education Statistics 1993 Digest of Education Statistics in the United States). These school districts are covered under Title II of the ADA. Title II of the ADA prohibits discrimination on the basis of disability in all services, programs, and activities of State and local governments. The Office for Civil Rights within the U.S. Department of Education (OCR/ED) has been designated to enforce Title II in public elementary and secondary educational systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools) and public libraries.

Title II covers three major categories of programs or activities: employment; activities involving general public contact as part of an entity's ongoing operation (e.g., telephone contacts, office walk-ins, interviews, and public use of the facilities); and activities or programs directly administered by the entity for program beneficiaries and participants (e.g., programs that provide State or local government services or benefits).

School districts that have received Federal funds have been covered by Section 504 of the Rehabilitation Act since 1973. Title II is patterned after Section 504, and many school districts need information and training to understand not only their responsibilities under the ADA, but also the relationship of Section 504 to the ADA. OCR/ED and NIDRR cooperated in producing a self-evaluation guide for school districts that includes information addressing the relationship between Section 504 and the ADA.

One of the primary purposes of this training project will be to assist school districts to conduct their self-evaluations with this new self-evaluation guide and implement their plans to comply with the ADA. As part of this process, the project will enable trainees to understand not only their responsibilities under the ADA, but also the relationship of Section 504 to the ADA. The project will place special emphasis on school districts where a majority of the students are from minority backgrounds because of their limited access to outside training opportunities. The project will train selected educational organizations whose members have responsibility for complying with the ADA in school districts (e.g., superintendents, principals, special education directors, school boards, etc.), as well as staff from selected individual school districts.

Applicants may receive an outline of the guide by contacting David Esquith at (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

Priority

An ADA training project for school districts shall—

- Placing special emphasis on school districts where a majority of the students are from minority backgrounds, identify and select for direct training a range of school districts, equitably distributed throughout the country, including those from urban, rural, and suburban areas;
- Identify and select for training the membership and staff of educational organizations whose members have responsibility for complying with the ADA in school districts;
- Develop a strategy and a schedule for directly training school districts as well as the members and staff of selected organizations using a variety of approaches including, but not limited to, on-site training, national, regional, State, and local meetings, teleconferences, and audioconferences;
- Utilizing the OCR/ED self-evaluation guide and other existing federally-approved materials to the maximum extent appropriate, develop an array of training materials and activities that vary in length and content in order to accommodate the information and scheduling needs of selected school districts and organizations;
- Provide training to selected school districts and organizations on updating or conducting self-evaluations using the new guide, understanding the responsibilities of school districts under the ADA, implementing changes to comply with the ADA, and the resources available to them to facilitate the implementation of the ADA;
- To the maximum extent possible, utilize as trainers those individuals with disabilities who have been trained as trainers on the ADA by NIDRR, EEOC, or DOJ technical assistance or training project;
- For the length of the project, provide selected school districts and organizations with quarterly ADA information updates, before and after training, regarding legal and policy developments; and
- Coordinate training activities with the regional offices of OCR/ED.

Priority 4: ADA Training for State and Local ADA Coordinators and Policymakers

Background

Governors, mayors, city managers, city planners, county boards, agency directors, and other State and local

government officials bear responsibility for ensuring compliance with Title II of the ADA. In addition, § 35.107 of the ADA regulations (28 CFR part 35) requires that a public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with the ADA, including investigation of any complaint alleging its noncompliance or alleging any prohibited actions. Such persons are frequently identified as "ADA Coordinators" by State or local governments. According to the most recent (1987) report of the U.S. Census Bureau, there are approximately 7,665 counties, municipalities, and townships that have 50 or more full-time employees.

Title II requires public entities to evaluate their current services, policies, and practices to identify and correct any that are not consistent with the requirements of Title II. State and local ADA Coordinators and government policymakers are responsible for ensuring that the self-evaluations are carried out. To ensure that these self-evaluations are appropriately carried out and the necessary changes made, State and local ADA Coordinators and government policymakers need information and training about the requirements of the ADA and policy developments in the field.

Priority

An ADA training project for State and local ADA coordinators and policymakers shall—

- Identify and select for direct training State and local ADA coordinators and government policymakers from every Federal Region of the country, including those from urban, rural, and suburban areas, and ensuring the broad representation of local governments where a majority of the citizens are from minority backgrounds;
- Identify and select for training organizations whose members are policymakers in State and local government with responsibilities for complying with the ADA;
- Develop a strategy and a schedule for directly training State and local ADA coordinators and policymakers as well as the membership and staff of selected organizations using a variety of approaches including, but not limited to, on-site training, national, regional, State, and local meetings, teleconferences, and audioconferences;
- Utilizing existing federally-approved materials to the maximum extent appropriate, develop an array of training materials and activities that vary in length and content in order to accommodate the information and scheduling needs of selected coordinators and organizations;
- Provide training to selected State and local ADA coordinators, policymakers and members of organizations on the responsibilities of State and local governments under Title II of the ADA and in order to assist State and local governments to undertake their self-evaluation plans and make the changes needed to comply with the ADA;
- To the maximum extent possible, utilize as trainers those individuals with disabilities who have been trained as trainers by a NIDRR, EEOC, or DOJ technical assistance or training project;
- For the length of the project provide selected coordinators, policymakers and organizations with quarterly ADA information updates, before and after training, regarding legal and policy developments.

Priority 5: ADA Training for Hispanics With Rights and Duties Under the ADA Whose Proficiency in English Is Limited

Background

The Hispanic population in the U.S. totals approximately 22 million people, or 9.0 percent of the population. By the year 2010, the Hispanic population is expected to become the second- largest racial/ethnic group (National Council of La Raza Census Information Center, Hispanic Population Factsheet, November 1993).

There are approximately 3,343,000 persons of Hispanic origin with a disability. In other words, one out of every fifteen Americans with a disability is Hispanic (McNeil, Americans with Disabilities: 1991–1992, Current Population Reports, U.S. Bureau of the Census, 1993).

In 1990, 17.4 million persons reported that they spoke Spanish at home. Of these persons, 8.3 million persons, or 50.8 percent, reported that they do not speak English "very well" (U.S. Census Bureau, Language Spoken at Home and Ability to Speak English for U.S. Regions and States, 1993).

Hispanics with disabilities whose proficiency in English is limited, as well as Hispanic business owners and service providers whose proficiency in English is limited, need to understand the requirements of the ADA. Federal agencies have made a number of their ADA publications available in Spanish, and NIDRR has piloted an effort with its Region 6 Southwest DBTAC to provide training and technical assistance to persons in the Spanish-speaking community. This pilot project has included the publication of additional documents in Spanish as well as efforts to provide popular Hispanic media with information about the ADA that is sensitive to cultural norms regarding disability. While these efforts have made certain ADA materials and technical assistance available to persons whose proficiency in English is limited, more needs to be done.

Reaching a target population that is broadly dispersed and as diverse as Hispanics whose proficiency in English is limited is particularly challenging. The Hispanic population includes people from different cultural backgrounds and different countries and regions of the world, such as Mexico (63.6 percent), Puerto Rico (10.6 percent), Cuba (4.7 percent), and Central and South America (14.0 percent) (National Council of La Raza Census Information Center, Hispanic Population Factsheet, November 1993) For the purposes of this priority, "Hispanics whose proficiency in English is limited" includes all persons from those countries and regions listed above who do not speak English very well, if at all.

In order to reach as wide an audience as possible a training project must collaborate with Hispanic organizations that currently provide training and information to their members. It must also utilize TV, radio, and print media that are popular in the targeted Hispanic community. Applicants for this project must demonstrate Spanish fluency, knowledge, cultural understanding, and experience in providing training and technical assistance to Hispanic organizations and individuals Applicants must recruit Hispanic community leaders to participate as trainees in the project. Applicants must also include a substantial number of Hispanic individuals with disabilities in all phases of the project's activities

Priority

An ADA training project for Hispanics with right or duties under the ADA whose proficiency in English is limited shall—

- Identify and select for training organizations that provide services and information to Hispanics with rights and duties under the ADA whose proficiency in English is limited;
- Develop a strategy and a schedule for training the members and staff of selected organizations using a variety of approaches including, but not limited to, on-site training, national, regional, State, and local meetings, teleconferences, and audioconferences;
- Utilizing existing federally approved materials to the maximum extent appropriate, develop an array of

training materials and activities that vary in length and content in order to accommodate the information and scheduling needs of selected organizations;

• Provide training to the members and staff of selected organizations on the provisions of the ADA and the resources available to them to facilitate the implementation of the ADA;

• To the maximum extent possible, utilize as trainers those individuals with disabilities who have been trained as trainers on the ADA by a NIDRR, EEOC, or DOJ technical assistance or training project;

• For the length of the project, provide selected organizations with quarterly ADA information updates, before and after training, regarding legal and policy developments; and

• Provide information about the ADA and technical assistance resources in areas with high concentrations of persons who are Spanish-speaking utilizing popular mass media such as local Hispanic TV and radio programming as well as Spanish print media.

Priority 6: ADA Training on Standards for Accessible Design

Background

Titles II and III of the ADA require that new governmental and commercial facilities be built in an accessible manner and require that, when existing governmental or commercial facilities are renovated or otherwise altered, the alterations be made in an accessible manner. In their regulations implementing Titles II and III of the ADA, the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT) adopted Standards for Accessible Design for purposes of enforcing the ADA's non-discrimination requirements in the built environment. For commercial facilities and public transportation facilities, they adopted the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG), developed by the Architectural and Transportation Barriers Compliance Board. For government facilities other than transportation facilities covered by DOT, DOJ currently permits the use of either the Uniform Federal Accessibility Standards or ADAAG as the "Standards for Accessible Design."

These Standards must be followed in new construction and alteration projects. They also serve as a guide for public accommodations undertaking to remove barriers in inaccessible existing facilities, as required under Title III. These Standards are complex and made up of scoping and technical provisions that contain many discrete requirements and necessitate referencing other technical provisions in order to make an element or space accessible

NIDRR proposes a project to develop a series of audio/visual and complementary training materials on the Standards for Accessible Design that can be used across the country at the local level. Local organizations whose members include individuals with disabilities, business owners, building managers, employers, government agency officials, city planners, architects, designers, or other relevant parties need access to reliable materials that explain the ADA Standards. NIDRR proposes to develop this series of materials in short discrete segments that could be used in meetings normally scheduled by professional or business organizations such as local chapters of the American Institute of Architects, local Chambers of Commerce, and other groups. These materials could also be used by the DBTACs in carrying out ADA training activities.

Applicants must demonstrate knowledge, understanding, and experience in the following areas: In-depth knowledge of the ADA Standards for Accessible Design; thorough understanding of the rationale(s) underlying the Standards; understanding of the ways in which individuals with disabilities use, or are unable to use, the built environment; experience in the development and dissemination of educational videos; and experience in using innovative and engaging video techniques such as animation and fade-ins or transformations from actual scenes to diagrammatic or conceptual material. Samples of an applicant's recent relevant work, including the use of animation or other innovative video techniques and the development of training materials related to the ADA Standards or training materials on accessible design, must be submitted with the application.

Based on the estimated size of the award that will be published in the notice inviting applications, applicants may propose to cover some, but not all of the topics. Applicants must propose an order of production of the videos and identify the topics that will be addressed in each video. Applicants must justify their order of production, based on the importance of the topic. Applicants must propose to group topics on each of the videos and explain the rationale for the groupings.

Priority

An ADA training project on the ADA Standards for Accessible Design shall—

• Develop, test, and disseminate a series of short, broadcast quality videos and complementary training materials that address the technical and scoping requirements of the ADA Standards for Accessible Design. These materials shall cover *as many of the following topics as possible* (emphasis added) as set out in the current Standards as well as new provisions that will be adopted: New construction; additions, alterations, and path of travel; historic buildings; parking and passenger loading zones; exterior accessible routes and curb ramps; drinking fountains; telephones and TDDs; ramps and stairs; platform lifts; entrances and exits (areas of rescue assistance); doors and gates; building lobbies and corridors (interior accessible routes); elevators; rooms and spaces; assembly areas; toilet rooms and bathrooms; bathtubs and showers; dressing and fitting rooms; signage; alarms; detectable warnings; automated teller machines; restaurants and cafeterias; medical care facilities; mercantile facilities; libraries; hotels, motels, inns, boarding houses, dormitories, and similar places; homeless shelters, halfway houses, transient group homes, and similar social services establishments; bus stops; fixed transportation facilities, bus and train terminals and stations; and airports. The project shall address the requirements of the standards from a Universal Design perspective;

• Illustrate how people with disabilities use the built environment and the rationale that underlies specific technical and scoping provisions of the Standards and how discrete provisions in the Standards fit together with each other to ensure accessibility;

• Use innovative techniques, including animation, fade-ins or transformations to transition from footage showing a person using a space or element to footage showing design layouts and diagrams from the Standards relevant to that kind of space or element;

• Utilizing, as much as possible, materials that have been developed by Federal agencies, develop readily reproducible complementary training materials in conjunction with each video to supplement the video materials and to provide guidance on using the videos effectively;

• Identify organizations whose members include individuals with disabilities, business owners, building managers, employers, government agency officials, city planners,

architects, designers, and other relevant parties who would be an appropriate audience for the videos;

• Develop and implement a plan to disseminate the videos and complementary training materials to selected organizations;

• Produce the first video and complementary training material of the series within six months of the grant award;

• Coordinate with the Department of Justice, the Access Board, and the Department of Transportation in the development and dissemination of the videos and complementary training materials;

• Ensure that the training videos and complementary training material are available in formats that accommodate persons with hearing impairments and vision impairments;

• Provide four one-inch NCSC standard fully mixed and open captioned edited master video tapes, including two master tapes and two safety dub tapes suitable for duplication, and four copies on VHS cassettes of each videotape produced, along with four reproducible copies of each set of complementary training materials to NIDRR for use by the Federal government.

Applicable Program Regulations: 34 CFR parts 350 and 355.

Program Authority: 29 U.S.C. 760–762.

Dated: June 3, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number 84.133D, Knowledge Dissemination and Utilization Program)

Appendix—Analysis of Comments and Changes

The Department received 18 letters in response to the notice of proposed priorities. This Appendix contains an analysis of the comments and of the changes in the priorities since the publication of the notice of proposed priorities. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Priority 1: ADA Training for Independent Living Centers

Comment: One commenter suggested requiring ILC personnel to disseminate information on the ADA to American Indian rehabilitation organizations and tribal councils on reservations and Alaska Native villages.

Discussion: The priority does not specify the activities of any ILC that receives training from this project. The Background statement to Priority 1 states that the project is intended to enable ILCs "to become experts on the ADA so that their staff, associates and volunteers can answer technical questions, advise individuals on their rights or responsibilities, make referrals, increase awareness of the ADA in their community, and conduct ADA training activities for covered entities in their community." The Secretary believes that specifying the follow-up activities that an ILC undertakes once it has received ADA training from this training project is outside the scope of the priority and should be left to the discretion of the ILC. However, the Secretary expects that any ILC that receives training from this project and that is part of a community that includes American Indians and Alaska Natives will disseminate information on the ADA to these individuals.

Changes: None.

Comment: One commenter suggested requiring training to be directed to key personnel who would be less inclined to leave the organization in order to address the issue of staff turnover.

Discussion: In order to address the issue of staff turnover, the priority requires the training project to train a number of persons affiliated with an ILC, including staff, associates, and volunteers. The Secretary does not believe it is feasible to identify which staff are less likely to leave an ILC.

Changes: None.

Priority 2: ADA Training for Family Organizations

Comment: One commenter was concerned about the Background statement reference to The National Rehabilitation Information Centers's Directory of Information Sources on Disability because the directory does not provide information on organizations that provide rehabilitation services on reservations and to Alaska Natives.

Discussion: The reference to the Directory of Information Sources was intended solely to illustrate the approximate number of organizations providing information or direct services to individuals with disabilities and their families. The Secretary wishes to clarify that this reference does not place any limit on the organizations that an applicant may propose to include in their application.

Changes: The Background statement has been revised to indicate that the Directory includes many (but not all) organizations serving the disability community.

Comment: Four commenters suggested that Parent Training and Information programs (PTIs) be included in the list of target audiences for the training.

Discussion: The Secretary recognizes that PTIs are a potential target audience for the training. The Secretary points out that the priority does not include the name of any organization or program. The Secretary does not believe it is appropriate to identify one program or organization by name in the priority

Changes: None.

Comment: One commenter suggested that the priority be revised to include national meetings as potential training forums.

Discussion: The general requirements for all the training projects indicate that the projects will schedule and provide training during national, regional, State and local meetings. The Secretary agrees that national meetings should be included in the specific requirement regarding training forums in order to be consistent.

Changes: The specific requirement on training forums (in this priority as well as Priorities 1, 3, 4, and 5) have been revised to include national meetings.

Comment: One commenter was concerned about placing special emphasis on those organizations that have had limited access to ADA training and information. The commenter indicated that members of family organizations who have received some training or information on the ADA may have a need for further training or information.

Discussion: The Secretary agrees that members of family organizations have a need for continuing ADA training and information. The Secretary believes that the requirement cited above does not prohibit applicants from proposing to include organizations that have had some ADA training as well as those that have had no training or access to ADA information.

Changes: None.

Comment: One commenter suggested that conventional training methods (e.g., lecture) are not effective with members of family organizations and should be discouraged in favor of experiential approaches.

Discussion: The Secretary believes that all the training projects must tailor their methods to the learning styles of their audiences. The Secretary points out that applicants for all of the projects must describe how the project will utilize a variety of training methods. The Secretary believes that applicants should be given the discretion to propose the training methods that they think would be most effective.

Changes: None.

Comment: One commenter suggested that selection criteria for Priority 2 be revised to require that the grantee be an organization that has made a commitment as an institution to the principles embodied in the ADA, has established a presence in all regions of the country, and represents the interests of people with a full range of disabilities.

Discussion: The Secretary does not believe that additional selection criteria are necessary in order to ensure that the grantee for the family organization training project accomplishes the purposes of the project.

Changes: None.

Priority 3: ADA Training for School Districts

Comment: One commenter stated that postsecondary vocational educational institutions need training and information to understand the relationship between the ADA and Section 504 and that many of these institutions are not part of school districts. The commenter suggested expanding Priority 3 to include postsecondary vocational technical institutions that are not part of school districts.

Discussion: The Secretary agrees that postsecondary vocational technical institutions need ADA training and information, and NIDRR will consider issuing an ADA-related research priority regarding adult education programs. The Secretary believes that expanding this training project to include educational institutions that are not a part of school districts is outside the scope of this project.

Changes: None.

Comment: One commenter noted the reference to the OCR/ED guide and asked about its status.

Discussion: The OCR/ED guide is in the final stages of production at this time. The Secretary recognizes that applicants for this training project will want as much information as possible about the content of the guide. Upon request, NIDRR will make an outline of the guide available to all interested parties.

Changes: The background statement of the priority has been amended to inform interested parties how to obtain a copy of an outline of the guide.

Comment: One commenter suggested providing ADA training to BIA- funded schools on reservations.

Discussion: The Secretary believes that applicants should be given the discretion to propose the school districts that will be selected for training.

Changes: None.

Priority 4: ADA Training for State and Local ADA Coordinators and Policymakers

Comment: One commenter suggested providing ADA training to American Indians and Alaska Native Councils.

Discussion: The Secretary believes that applicants should be given the discretion to propose the State and local ADA coordinators and policymakers that will be selected for training.

Changes: None.

Comment: One commenter was concerned that the requirement to identify and select State and local ADA coordinators implied that not all State and local ADA coordinators and policymakers would participate in the training project. The commenter suggested requiring the project to impose a registration fee for all training attendees or scheduling the training over an extended period of time until as many officials as possible would have participated in the training project.

Discussion: The Secretary recognizes that strategies such as charging a reasonable registration fee and acquiring matching funds from cooperating agencies are permissible means for a project to increase its number of trainees. The Secretary believes that applicants should have the discretion to propose such strategies and elects not to dictate the strategies to be used.

The Secretary also recognizes that for this training project, as well as for the other training projects, the size and the length of the award will limit the project's ability to train all of the potential target audience.

Changes: None.

Comments: One commenter suggested that the training project form an association of ADA Coordinators and policymakers in order to promote the sharing of information and uniform policies at the local and State level.

Discussion: The Secretary believes that the formation of an association of ADA Coordinators and policymakers is outside of the scope of this priority.

Changes: None.

Priority 5: ADA Training for Hispanics With Rights and Duties Under the ADA Whose Proficiency in English Is Limited

Comment: One commenter suggested expanding the priority to include ADA training for American Indians, Alaska Natives, and Pacific Islanders in their native languages.

Discussion: The Secretary believes that expanding the priority to include ADA training for American Indians, Alaska Natives, and Pacific Islanders is outside the scope of this priority.

Changes: None.

Comment: One commenter suggested recruiting and training Hispanic community leaders in order to encourage participation in the training projects.

Discussion: The Secretary agrees that the participation of community leaders in the project is an important variable that should be required in the priority.

Changes: The Background statement to the priority has been revised to require applicants to recruit Hispanic community leaders to participate as trainees in the project.

Comment: One commenter suggested requiring applicants' decision-making personnel to be Hispanic individuals with disabilities.

Discussion: The Secretary agrees that Hispanic individuals with disabilities should be extensively involved in the training project. The Secretary points out that the Background statement includes a requirement that applicants must include a substantial number of Hispanic individuals with disabilities in all phases of the project's activities. The Secretary does not believe that any further requirements are necessary.

Changes: None.

Priority 6: ADA Training on Standards for Accessible Design

Comment: One commenter suggested that the proposed priority limits the training materials to video tape and precludes the use of other media (e.g., CD ROM) that may be attractive to some potential users.

Discussion: The Secretary believes that producing the training materials in video tape will result in the widest possible distribution of the information. The priority gives applicants the discretion to propose producing the training materials in other media in addition to video tape.

Changes: None.

Comment: One commenter suggested requiring the project to coordinate with the Access Board in addition to the Department of Justice and the Department of Transportation.

Discussion: The Secretary agrees that coordination with the Access Board would be beneficial.

Changes: The priority has been revised to require the project coordinate with the Access Board in addition to the Department of Justice and the Department of Transportation.

Comment: One commenter suggested requiring that the video tapes and training materials be designed in a culturally appropriate manner and relevant to reservations, villages, and islands, and disseminated to tribal council members and leaders of

American Indians, Alaska Natives, and Pacific Islanders.

Discussion: The Secretary believes that the video tapes and training materials should be relevant to as wide an audience as possible. The Secretary believes that applicants should be given the discretion to propose the details of their dissemination plan for the video tapes and training materials.

Changes: None.

Comment: One commenter was concerned that individuals with cognitive disabilities are not adequately addressed in the Standards for Accessible Design (i.e., the Uniform Federal Accessibility Standards or the ADAAG), and, as a result, the project's video tapes and training materials would convey the misconception that covered entities had to fulfill their accessibility obligations under the ADA to persons with cognitive disabilities by meeting the Standards for Accessible Design. The commenter suggested that any training materials developed on the Standards for Accessible Design include a focus on issues of cognitive accessibility and give special attention to demonstrating how to make governmental and commercial facilities accessible to people with cognitive disabilities.

Discussion: The purpose of Priority 6 is to produce video tapes and training materials that will increase understanding of the current Standards for Accessible Design. The responsibility for establishing standards for accessibility rests with the DOJ and the DOT. When the DOJ and the DOT issue additional design standards regarding individuals with cognitive disabilities, the Disability and Business Technical Assistance Centers (DBTACs) will provide training and technical assistance to covered entities on the additional standards.

Changes: None.

Comment: One commenter suggested presenting the Standards for Accessible Design in terms that are relevant and appropriate for the target audiences listed in the priority.

Discussion: The Secretary recognizes the importance and difficulty inherent in producing technical training materials for a diverse audience. The training project applications will be reviewed to determine to what degree the training content of each application is comprehensive and at an appropriate level as well as likely to be effective (see 34 CFR 350.34(c)). The Secretary does not believe that any further requirements are necessary.

Changes: None.

Comment: One commenter indicated that all of the technical and scoping requirements are intricately related to each other, and that to omit one or more would jeopardize the complete understanding of the rationale underlying the Standards.

Discussion: The Secretary recognizes the problems associated with omitting one or more of the topics in the Standards for Accessible Design. However, the Secretary believes that the estimated size of the award necessitates providing applicants with the option of proposing to cover some, but not all, of the topics.

Changes: None.

General Comments:

Comment: One commenter expressed a concern regarding the requirement that appears in the Priorities 1 through 5 that the training projects "To the maximum extent possible, utilize as trainers those individuals with disabilities who have been trained as trainers on the ADA by a NIDRR, EEOC, or DOJ technical assistance or training project." The commenter expressed the concern that this requirement would preclude qualified, non-disabled individuals from participating as trainers in the projects.

Discussion: The Secretary wishes to clarify that the requirement does not preclude the participation of qualified nondisabled individuals as trainers. The requirement is intended solely to maximize the participation of qualified individuals with disabilities.

Changes: None.

Comment: One commenter recommended deleting the requirement cited above regarding the use of individuals as trainers who have been trained on the ADA by NIDRR, EEOC, or DOJ from the School Districts (Priority 3) and State and Local ADA Coordinators and Policymakers (Priority 4). The commenter indicated that these two training projects are highly specialized and cover material not likely to have been addressed in the training provided to individuals trained by NIDRR, EEOC, or DOJ.

Discussion: The Secretary recognizes the complexities of the two referenced training projects. The Secretary believes that some of the individuals who have been trained by NIDRR, EEOC and DOJ can serve as trainers in these projects, and expects applicants to exercise appropriate discretion in selecting qualified individuals.

Changes: None.

Comment: One commenter was concerned that the training projects would not impact Indian people with disabilities and their families who live off reservations. The commenter suggested including American Indians and Native Alaskans as a special population in each priority.

Discussion: The Secretary recognizes that there are many individuals from minority backgrounds, including American Indians and Native Alaskans, who need training on the ADA. The Rehabilitation Act Amendments of 1992 require that each applicant for a project under this competition must demonstrate in its application how it will address the needs of individuals from minority backgrounds who have disabilities. The Secretary believes that applicants should be given the discretion to identify their training audience, including those individuals from minority backgrounds who will receive training from the project.

Changes: None.

Comment: One commenter pointed out that the general requirement on training schedules is inconsistent with the purpose and video tape production schedule requirements of Priority 6: Standards for Accessible Design. The commenter suggested excepting Priority 6 from the general requirement on training schedules.

Discussion: The Secretary agrees that an exception from the general requirement on training schedules should be made for Priority 6.

Changes: The general requirement on training schedules has been amended to exclude Priority 6.

Comment: One commenter suggested that, for planning purposes, the final priority include a statement regarding the length of time NIDRR will take to review final draft materials for legal sufficiency.

Discussion: The length of time needed to review material for legal sufficiency will depend significantly upon the length and complexity of the material. The Secretary agrees that an estimate of the time it will take NIDRR to review material for legal sufficiency would assist projects in developing their materials production and training schedules.

Changes: The general requirements section has been amended to indicate that NIDRR estimates it will take between two and four weeks to review materials for legal sufficiency depending upon their length and complexity.

Comment: One commenter suggested requiring each project to have an evaluative research function, and a second commenter, addressing the training needs of American Indians and Alaska Natives, questioned how the training projects will measure the trainers' effectiveness and the impact of the training in the community, reservations, and villages

Discussion: The Secretary agrees that each of the training projects should have a strong evaluation component. The evaluation plan selection criteria for these training projects are set forth at 34 CFR 350.34 (e). The Secretary does not believe that any further requirements are necessary.

Changes: None

Comment: One commenter suggested that NIDRR fund a national State-by-State assessment of the implementation of the ADA.

Discussion: The Secretary believes that understanding the impact of the ADA is an important research topic. However, the Congress has instructed NIDRR to support additional training to facilitate the implementation of the ADA. These priorities are in response to that directive.

Changes: None.

Comment: Four commenters recommended revising or omitting the general requirement that the training projects may not rely primarily on subcontractors to carry out training activities. These commenters indicated that the limitation on subcontracting would limit the cost-effectiveness of the training projects' efforts. In addition, one commenter indicated that this limitation was inconsistent with the requirement that the training projects, to the maximum extent possible, utilize as trainers those individuals with disabilities who have been trained as trainers on the ADA by a NIDRR, EEOC, or DOJ technical assistance or training project.

Discussion: The Secretary recognizes that under some circumstances subcontracting is a cost-effective strategy. However, experience has shown that an over-reliance on subcontracting may contribute to quality control problems. In order to reconcile the cost-effectiveness and quality control issues, the Secretary agrees to permit subcontracting when an applicant demonstrates that it is cost-effective and describes how the applicant will directly supervise the subcontractor.

The Secretary believes that this change will resolve any potential conflict regarding the requirement to use individuals who have been trained as trainers on the ADA by a NIDRR, EEOC, or DOJ technical assistance or training projects.

Changes: The general requirement regarding subcontracting has been revised to require applicants who propose to use subcontractors to demonstrate that it is cost-effective and describe how the applicant will directly supervise the subcontractor (see 34 CFR 75.701).

Comment: Four commenters recommended revising the general requirements that the training projects must: (1) Consult with each of NIDRR's DBTACs during the development of its schedule of training activities, and, (2) to the maximum extent feasible, conduct its training activities in collaboration with each of the DBTACs. The commenters felt that the consultation and collaboration requirements would be too demanding logistically.

Discussion: The Secretary recognizes the logistical demands that these requirements place on the training projects as well as the DBTACs. However, experience has shown that such requirements are necessary in order to ensure appropriate collaboration between the DBTACs and the training projects. In order to assist the training projects to address the logistical demands that collaboration will create, each of the DBTACs has designated a staff person who will serve as a training coordinator. This DBTAC staff person will serve as the single point of contact for the training projects and will consult with the training project on scheduling and coordinate collaborative training efforts. The Secretary believes that the benefits of increased collaboration outweigh the additional logistical demands placed on the training projects and the DBTACs.

Changes: None.

Comment: Three commenters recommended requiring the training projects to share information and materials. The commenters suggested requiring the training projects for school districts and family organizations to share relevant materials and information. In addition, one of these commenters suggested requiring that the training project for Hispanics collaborate with the other training projects as well as the DBTACs.

Discussion: The Secretary agrees that sharing of information and materials between all of the ADA technical assistance projects is important. NIDRR's Technical Assistance Coordination contractor is responsible for promoting this sharing of information and materials through Project Directors' meetings and regular communication on an electronic bulletin board. Experience has shown that no further requirements are necessary in order to promote the sharing of information and materials among all ADA technical assistance projects.

Changes: None.

Comment: One commenter suggested revising the general requirement that applicants must describe the training materials that the project will develop as well as identify existing training materials that the project will use. The commenter suggested that applicants should demonstrate their knowledge of and use of training materials developed by NIDRR ADA projects.

Discussion: The Secretary believes that training materials developed by NIDRR ADA projects may compose a part of the training materials that applicants identify in response to this requirement. However, the Secretary believes that applicants should have the discretion to identify the materials that they propose to use in the project.

Changes: None.

Comment: One commenter suggested that applicants be required to demonstrate that a substantial number of individuals with disabilities or family members, as appropriate, be involved in all aspects of the training project.

Discussion: All of the training projects must comply with the general requirement that individuals with disabilities or family members or representatives must include individuals with disabilities or their families to the maximum extent possible in all phases of the project's activities. The Secretary does not believe any further requirements are necessary.

Changes: None.

Comment: One commenter suggested requiring applicants to show prior experience with coordinating and providing national training on the ADA.

Discussion: The training project applications will be reviewed to determine to what degree the principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the training (see 34 CFR 350.34(d)). The Secretary does not believe that any further requirements are necessary.

Changes: None.

Comment: One commenter was concerned that the establishment of the training projects may give the impression that NIDRR does not have full confidence in the DBTACs.

Discussion: The Secretary believes that there is a need for additional training projects. The Secretary wishes to clarify that he has full confidence in the DBTACs.

Changes: None.

Comment: One commenter suggested requiring that applicants for Priorities 1–5 develop strategies to address the issue of staff turnover among the organizations and programs that receive training.

Discussion: The Secretary recognizes that staff turnover is an important issue. The Secretary believes that the projects'

model of training a number of individuals (members and staff) of the target organizations will minimize the phenomenon of staff turnover by providing training to more than one key person. The Secretary does not believe that any further requirements are feasible in light of the estimated size of the awards for the projects.

Changes: None.

Comment: One commenter suggested clarifying the projects' responsibilities to evaluate the impact of their training efforts.

Discussion: The Secretary agrees that evaluating the outcomes of the projects is important. The training project applications will be reviewed to determine to what degree there is a mechanism to evaluate the project's results (see 34 CFR 350.34(e)). In addition, NIDRR is considering supporting an external evaluation of the training projects. The Secretary does not believe that any further requirements are necessary.

Changes: None.

Comment: One commenter was concerned that individuals with certain disabilities would be overlooked in the outreach and training activities of all of the training projects. The commenter indicated that the general requirement regarding delivering training in formats and styles that are accessible to individuals with a range of sensory, communication, cognitive, and learning disabilities was not sufficient to ensure equal opportunity for persons with all types of disabilities. The commenter suggested adding a requirement that the projects must include persons with all types of disabilities in their training.

A second commenter, addressing the ILC training project, was concerned that the ILC training project would not include individuals with mental retardation and other cognitive disabilities.

Discussion: The Secretary agrees that persons with all types of disabilities should be provided with an equal opportunity to receive training by the projects. The Secretary believes that further clarification in the general requirements is necessary.

Changes: The general requirements for the training projects have been revised to require that applicants describe how the training projects will provide persons with all types of disabilities an equal opportunity to receive training.

Comment: One commenter suggested requiring the training projects for school districts and State and local ADA coordinators and policymakers to address building partnerships between individuals with disabilities and covered entities.

Discussion: The Secretary believes that building partnerships between individuals with disabilities and Title II entities is desirable. The Secretary believes that an applicant for either of these projects could propose to include partnership building in their training. However, the Secretary believes that applicants should be provided with discretion to propose the content of their training.

Changes: None.

Comment: One commenter suggested two additional priorities for training projects. The commenter suggested one project to train State code official responsible for enforcing State accessibility law, and a second project to impart information about disability rights at all levels of the educational system.

Discussion: The Secretary believes that both of these suggestions would contribute to the successful implementation of the ADA. NIDRR will consider these suggestions when developing future technical assistance and training projects.

Changes: None.

Comment: Two commenters suggested that the notice clarify that non-profit organizations and for-profit organizations are eligible to apply for the training projects.

Discussion: The Notice inviting applications for these projects states that parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Changes: None.

[FR Doc. 94–13930 Filed 6–7–94; 8:45 am]
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June 8, 1994

Part III

Department of Education

Notice Inviting Applications for New Awards Under the Knowledge Dissemination and Utilization Program for Fiscal Year 1994

DEPARTMENT OF EDUCATION

[CFDA No. 84.133D]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Knowledge Dissemination and Utilization Program for Fiscal Year (FY) 1994

Note to Applicants: This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under this competitions. The final priorities for the Knowledge Dissemination and Utilization program are published in this issue of the Federal Register. This consolidated application package includes the closing date, estimated funding, and application forms necessary to apply for an award under this program's competition. Potential applicants should consult the statement of the final priorities published in this issue to ascertain the substantive requirements for their applications.

The estimated funding level in this notice does not bind the Department of Education to make awards or to any specific number of awards or funding levels.

Note: The Rehabilitation Act Amendments of 1992 require that each applicant for a project under this competition must demonstrate in its application how it will address the needs of individuals from minority backgrounds who have disabilities

APPLICATION NOTICE FOR FISCAL YEAR 1994—KNOWLEDGE DISSEMINATION AND UTILIZATION PROGRAM, CFDA NO. 84.133D

ADA training project funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Independent Living Centers	07/22/94	1	$250,000	36
Family Organizations	07/22/94	1	250,000	36
School Districts	07/22/94	1	250,000	36
State and Local ADA Coordinators and Policymakers	07/22/94	1	250,000	36
Hispanics Whose Proficiency in English is Limited	07/22/94	1	250,000	36
Standards for Accessible Design	07/22/94	1	250,000	36

Before your application can be reviewed, it must include this description. Applications for which this information is not received will not be reviewed.

Successful applicants that provide services to individuals with disabilities will be required to advise these individuals, or as appropriate, the parents, family guardians, advocates, or authorized representatives of these individuals, of the availability and purposes of the State Client Assistance Program (CAP), including information on means of seeking assistance under such programs. A list of State CAPs will be provided to successful applicants when they are notified of their award.

This notice supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

If you need further information about these requirements, please contact David Esquith at (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 78, 80, 81, 82, 85, 86;

(b) The regulations for this program in 34 CFR parts 350 and 355; and

(c) The notice of final priorities as published elsewhere in this issue of the Federal Register.

Purpose of Program

The Knowledge Dissemination and Utilization is designed to support activities that will ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and from other sources is fully utilized to improve the lives of individuals with disabilities and their families.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Potential Impact of Outcomes:* Importance of Program (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The proposed activity relates to the announced priority;

(2) The research is likely to produce new and useful information (research activities only);

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target populations;

(5) The training needs are clearly defined (training activities only);

(6) The training methods and developed subject matter are likely to meet the defined need (training activities only); and

(7) The need for information exists (utilization activities only).

(b) *Potential Impact of Outcomes.* Dissemination/Utilization (Weight 3.0) The Secretary reviews each application to determine to what degree—

(1) The research results are likely to become available to others working in the field (research activities only);

(2) The means to disseminate and promote utilization by others are defined;

(3) The training methods and content are to be packaged for dissemination and use by others (training activities only); and

(4) The utilization approach is likely to address the defined need (utilization activities only).

(c) *Probability of Achieving Proposed Outcomes; Program/Project Design* (Weight 5.0). The Secretary reviews each application to determine to what degree—

(1) The objectives of the project(s) are clearly stated;

(2) The hypothesis is sound and based on evidence (research activities only);

(3) The project design/methodology is likely to achieve the objectives;

(4) The measurement methodology and analysis is sound;

(5) The conceptual model (if used) is sound (development/demonstration activities only);

(6) The sample populations are correct and significant (research and development/demonstration activities only);

(7) The human subjects are sufficiently protected (research and

development/demonstration activities only);

(8) The device(s) or model system is to be developed in an appropriate environment;

(9) The training content is comprehensive and at an appropriate level (training activities only);

(10) The training methods are likely to be effective (training activities only);

(11) The new materials (if developed) are likely to be of high quality and uniqueness (training activities only);

(12) The target populations are linked to the project (utilization activities only); and

(13) The format of the dissemination medium is the best to achieve the desired result (utilization activities only).

(d) *Probability of Achieving Proposed Outcomes:* Key Personnel (Weight 4.0). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature and/or methods;

(3) All required disciplines are effectively covered;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its nondiscriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(e) *Probability of Achieving Proposed Outcomes: Evaluation Plan* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(f) *Program/Project Management: Plan of Operation* (Weight 2.0). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that insures proper and efficient administration of the project(s);

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(g) *Program/Project Management: Adequacy of Resources* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative support and adequate facilities is evident.

(h) *Program/Project Management: (Budget and Cost Effectiveness* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The budget for the project(s) is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project(s); and

(3) The budget for subcontracts (if required) is detailed and appropriate.

Eligible Applicants

Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 761a and 762

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, DC time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I—Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions

PART II—Budget Form—Non-Construction Programs (Standard Form 424A) and instructions

PART III—Application Narrative

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non—Non Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Workplace Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form ED 80–0014) and instructions.

(**Note:** ED Form ED–80–0014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application

and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition in the notice published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dianne Villines, U.S. Department of Education, room 3417 Switzer Building, 400 Maryland Avenue, SW., Washington, DC 20202–2704. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Program Authority: 29 U.S.C. 760–762.

Dated: June 3, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

Applicants in the FIR, AND Innovation grants programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply For Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply For Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs.

8. Can NIDRR Staff Advise Me Whether My Project is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel For Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including the title of the priority to which they are responding.

10. How Soon After Submitting My Application Can I Find Out If It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out If My Application Is Being Funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount In Subsequent Years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)		$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(Future funding periods (years))

(a) Grant Program	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks

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SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e) The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A

Section D Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about –

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

_____

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89, ED Form GCS-008, (REV 12/88); ED 80-0010, 5/90, and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report ____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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[FR Doc. 94-13933 Filed 6-7-94; 8:45 am]
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Federal Register

Wednesday
June 8, 1994

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 7, et al.

Federal Acquisition Regulation; Inherently Governmental Functions; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 10, and 37

[FAR Case 92–51]

Federal Acquisition Regulation, Inherently Governmental Functions

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA)

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing changes to the Federal Acquisition Regulation (FAR) to implement Office of Federal Procurement Policy (OFPP) Letter 92–1, Inherently Governmental Functions. This rule provides a definition of, and internal Government responsibilities and procedures relating to, inherently Governmental functions. This regulatory action was subject to Office of Management and Budget review pursuant to Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted to the address shown below on or before August 8, 1994 to be considered in the formulation of a final rule

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., room 4037, Washington, DC 20405

Please cite FAR case 92–51 in all correspondence related to this case

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405, (202) 501–4755 Please cite FAR case 92–51.

SUPPLEMENTARY INFORMATION:

A. Background

The OFPP published its proposed policy letter, for public comment, in the **Federal Register** at 56 FR 65279, December 16, 1991. OFPP evaluated public comments and published the final policy letter at 57 FR 45096 in the **Federal Register** at 57 45096, September 30, 1992. This proposed rule implements the policy letter in the FAR.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to internal Government operations. An Initial Regulatory Flexibility Analysis has therefore, not been performed. Comments are invited from small businesses and other interested parties Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 92–51), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose record keeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 7, 10, and 37

Government procurement

Dated: June 1, 1994

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy

Therefore, it is proposed that 48 CFR parts 7, 10, and 37 be amended as set forth below:

1. The authority citation for 48 CFR parts 7, 10, and 37 continues to read as follows:

Authority: 40 U.S.C. 486(c), 10 U.S.C. 137, and 42 U.S.C. 2473(c)

PART 7—ACQUISITION PLANNING

2. Section 7.000 is amended in paragraph (b) by removing the word "and"; in paragraph (c) by removing the period at the end of the sentence and inserting in its place "; and"; and by adding paragraph (d) to read as follows:

7.000 Scope of part.

* * * * *

(d) Determining whether functions are inherently governmental.

3. Section 7.103 is amended in paragraph (i) by removing "; and" and inserting a period in its place; and adding paragraph (m) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(m) Ensuring that no purchase request is initiated or contract entered into that would result in the performance of an inherently governmental function by a contractor and that all contracts are adequately managed so as to ensure effective official control over contract performance.

4. Section 7.105 is amended by redesignating paragraphs (b)(9) through (b)(19) as (b)(10) through (b)(20), respectively, and adding a new paragraph (b)(9) to read as follows:

7.105 Content of written acquisition plans.

* * * * *

(b) * * *

(9) *Inherently governmental functions* Address the consideration given to OFPP Policy Letter 92–1 (See subpart 7.5).

* * * * *

5. Subpart 7.5 is added to read as follows:

Subpart 7.5—Inherently Governmental Functions

Sec.

7.500 Scope of subpart
7.501 Definition.
7.502 Applicability
7.503 Policy

Subpart 7.5—Inherently Governmental Functions

7.500 Scope of subpart.

The purpose of this subpart is to prescribe policies and procedures to ensure that inherently governmental functions are not performed by contractors. It implements the policies of Office of Federal Procurement Policy (OFPP) Policy Letter 92–1, Inherently Governmental Functions.

7.501 Definition.

Inherently governmental function means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, *i.e.*, the discretionary exercise of Government authority, and monetary transactions and entitlements.

(a) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to—

(1) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order or otherwise;

(2) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(3) Significantly affect the life, liberty, or property of private persons;

(4) Commission, appoint, direct, or control officers or employees of the United States; or

(5) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of Federal funds.

(b) Inherently governmental functions do no normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services. The list of commercial activities included in the attachment to Office of Management and Budget (OMB) Circular No. A–76 is an authoritative, nonexclusive list of functions which are not inherently governmental functions.

7.502 Applicability.

The requirements of this subpart apply to all contracts for services. The subpart does not apply to services obtained through either personnel appointments or advisory committees.

7.503 Policy.

(a) Contracts shall not be used for the performance of inherently governmental functions.

(b) Agency decisions which determine whether a function is or is not an inherently governmental function may be reviewed and modified by appropriate Office of Management and Budget officials.

(c) The following is a list of examples of functions considered to be inherently governmental functions or which shall be treated as such. This list is not all inclusive:

(1) The direct conduct of criminal investigations.

(2) The control of prosecutions and performance of adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).

(3) The command of military forces, especially the leadership of military personnel who are members of the combat, combat support or combat service support role.

(4) The conduct of foreign relations and the determination of foreign policy.

(5) The determination of agency policy, such as determining the content and application of regulations, among other things.

(6) The determination of Federal program priorities for budget requests

(7) The direction and control of Federal employees.

(8) The direction and control of intelligence and counter-intelligence operations.

(9) The selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment.

(10) The approval of position descriptions and performance standards for Federal employees.

(11) The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency).

(12) In Federal procurement activities with respect to prime contracts—

(i) Determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);

(ii) Participating as a voting member on any source selection boards;

(iii) Approval of any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;

(iv) Awarding contracts;

(v) Administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);

(vi) Terminating contracts;

(vii) Determining whether contract costs are reasonable, allocable, and allowable; and

(viii) Participating as a voting member on performance evaluation boards.

(13) The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.

(14) The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.

(15) The approval of Federal licensing actions and inspections.

(16) The determination of budget policy, guidance, and strategy.

(17) The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds, unless authorized by statute, such as 31 U.S.C. 952 (relating to private collection contractors) and 31 U.S.C. 3718 (relating to private attorney collection services), but not including—

(i) Collection of fees, fines, penalties, costs or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard case management techniques; and

(ii) Routine voucher and invoice examination.

(18) The control of the treasury accounts.

(19) The administration of public trusts.

(20) The development of Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, the General Accounting Office, or other Federal Audit entity.

(d) Certain services and actions that are not considered to be inherently governmental functions may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract or the manner in which the Government administers contractor performance. The following is a list of examples of functions generally considered not to be inherently governmental functions. This list is not all inclusive:

(1) Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.

(2) Services that involve or relate to reorganization and planning activities

(3) Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.

(4) Services that involve or relate to the development of regulations.

(5) Services that involve or relate to the evaluation of another contractor's performance.

(6) Services in support of acquisition planning.

(7) Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).

(8) Contractors providing technical evaluation of contract proposals.

(9) Contractors providing assistance in the development of statements of work.

(10) Contractors providing support in preparing responses to Freedom of Information Act requests.

(11) Contractors working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the Defense Industrial Security Program described in 4.402(b)).

(12) Contractors providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.

(13) Contractors participating in any situation where it might be assumed that they are agency employees or representatives.

(14) Contractors participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.

(15) Contractors serving as arbitrators or providing alternative methods of dispute resolution.

(16) Contractors constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

(17) Contractors providing inspection services.

(18) Contractors providing legal advice and interpretations of regulations and statutes to Government officials.

(19) Contractors providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

(e) Agency implementation shall include procedures requiring the agency head or designated requirements official to provide the contracting officer, concurrent with transmittal of the statement of work (or any modification thereof), a written determination that none of the functions to be performed are inherently governmental. This assessment should place emphasis on the degree to which conditions and facts restrict the discretionary authority, decision-making responsibility, or accountability of Government officials using contractor services or work products. Disagreements regarding the determination will be resolved in accordance with agency procedures before issuance of a solicitation.

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

6. Section 10.002 is amended by adding paragraph (f) to read as follows:

10.002 Policy.

* * * * *

(f) In drafting purchase descriptions for service contracts, agency requiring activities shall ensure that inherently governmental functions (see subpart 7.5) are not assigned to a contractor. These purchase descriptions shall (1) reserve final determination for Government officials; (2) require proper identification of contractor personnel who attend meetings, answer Government telephones, or work in situations where their actions could be construed as acts of Government officials unless, in the judgment of the agency, no harm can come from failing to identify themselves; and (3) require suitable marking of all documents or reports produced by contractors.

PART 37—SERVICE CONTRACTING

7. Section 37.102 is revised to read as follows:

37.102 Policy.

(a) Agencies shall generally rely on the private sector for commercial services (see OMB Circular No. A–76, Performance of Commercial Activities and subpart 7.3).

(b) Agencies shall not award a contract for the performance of an inherently governmental function (see subpart 7.5).

(c) Non-personal service contracts are proper under general contracting authority.

8. Section 37.113 is added to read as follows:

37.113 Special acquisition requirements.

(a) Contracts for services which require the contractor to provide advice, opinions, recommendations, ideas, reports, analyses, or other work products have the potential for influencing the authority, accountability and responsibilities of Government officials. These contracts require special management attention to ensure that they do not result in performance of inherently governmental functions by the contractor and that Government officials properly exercise their authority.

(b) Agency must ensure that a sufficient number of qualified Government employees are assigned to oversee contractor activities, especially those that involve support of Government policy or decision making. During performance of service contracts, the functions being performed shall not be changed or expanded to become inherently governmental.

(c) Agencies must ensure that a greater scrutiny and an appropriate enhanced degree of management oversight is exercised when contracting for functions that are not inherently governmental but closely support the performance of inherently governmental functions (7.503(c)).

(d) Agencies must ensure that all contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties are required to identify themselves as such to avoid creating an impression in the minds of members of the public or Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. They must also ensure that all documents or reports produced by contractors are suitably marked as contractor products or that contractor participation is appropriately disclosed.

[FR Doc. 94–13894 Filed 6–7–94; 8:45 am]
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Federal Register

Wednesday
June 8, 1994

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN: 1018-AA24

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds. This supplementary document describes proposed changes and provides additional information that will facilitate establishment of the 1994–95 hunting regulations. This document also announces the meetings of the Service Migratory Bird Regulations Committee.

DATES: The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early seasons on June 21, 22, and 23, and for late seasons on August 2, 3, and 4. Public hearings on proposed early- and late-season frameworks will be held at 9:00 a.m. on June 23 and August 4, 1994, respectively. The comment period for proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons will end on July 21, 1994; and for late-season proposals will end on August 29, 1994.

ADDRESSES: Meetings of the Service Migratory Bird Regulations Committee will be held in room 200 of the U.S. Fish and Wildlife Service's ARLSQ Building, 4401 N. Fairfax Drive, Arlington, Virginia. Public hearings will be held in the Auditorium of the Department of the Interior Building, 1849 C Street, NW., Washington, DC. Written comments on the proposals and notice of intention to participate in either hearing should be sent to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, ARLSQ Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1994

On April 7, 1994, the Service published in the **Federal Register** (59 FR 16762) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. Comment periods on this second document are specified above under **DATES**. Early-season frameworks will be proposed in late June and late-season frameworks in early August. Final regulatory frameworks for early seasons are scheduled for publication on or about August 16, 1994, and those for late seasons on or about September 23, 1994.

On June 23, 1994, a public hearing will be held in Washington, DC, to review the status of migratory shore and upland game birds and recommended hunting regulations for these species and other early seasons.

On August 4, 1994, a public hearing will be held in Washington, DC, to review the status of waterfowl and recommended hunting regulations for regular waterfowl seasons, and other species and seasons not previously discussed at the June 23 public hearing.

Announcement of Service Regulations Committee Meetings for Early-Season Regulations

The meeting on June 21 is to review information on the 1994 status of migratory game birds and to develop 1994–95 migratory game bird regulations recommendations. The June 22 meeting is to ensure that the Service's regulation recommendations are developed with the benefit of full consultation on the issues.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee that are attended by any person outside the Department, these meetings will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Announcement of Flyway Council Meetings

Service representatives will be present at the following meetings of Flyway Councils:

Atlantic Flyway—July 28–29, St. Michaels, Maryland (Harbor Town Resort)

Mississippi Flyway—July 28–29, Memphis, Tennessee (Peabody Hotel)

Central Flyway—July 28–29, Crested Butte, Colorado (Crested Mountain Village-Conference Center)

Pacific Flyway—July 29, Reno, Nevada (Peppermill Hotel)

Although agendas are not yet available, these meetings usually commence at 8:30 to 9 a.m. on the days indicated.

Review of Public Comments

This supplemental rulemaking describes changes which have been recommended based on the preliminary proposals published on April 7, 1994, in the **Federal Register**. Only those recommendations that would require either new proposals or substantial modification of the preliminary proposals to facilitate effective public participation are included herein. Those that support or oppose but do not recommend alternatives to the preliminary proposals are not included, but will be considered later in the regulations-development process. The Service will publish responses to proposals, written comments, and public-hearing testimony when final frameworks are developed, at which time additional data about the status of affected species will be available.

The Service seeks additional information and comments on the recommendations contained in this supplemental proposed rule. These recommendations and all associated comments will be considered during development of the final frameworks.

New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 7, 1994, **Federal Register**.

1. Ducks.

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories containing substantial recommendations are included below.

B. Framework Dates

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the season framework dates of the Saturday nearest October 1 to January 20 be established

as a basic regulation and not fluctuate annually.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that Iowa be permitted to hold a portion of their regular duck season in September to increase harvest opportunity on blue-winged teal.

E. Bag Limits

The Central Flyway Council requested that the Service review its policy for the use of the point-system bag limit option that requires that it be no more liberal than the conventional bag limit.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council requested that the Service review its current point-system bag-limit policy. They feel that at least 1 more bird should be allowed in the point system than in the conventional bag limit.

The Pacific Flyway Council recommended that the Service: (1) review its current point-system policy, (2) work with both Pacific and Central Flyway Technical Committees to interpret available data, and (3) consider all available new information, and evaluate the point system against other bag-limit systems.

G. Special Seasons/Species Management

i. Canvasback.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that an open season for canvasbacks be allowed in the Mississippi Flyway with a 1-bird daily bag limit throughout the regular duck season beginning in 1994, contingent upon breeding population and habitat conditions.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that an open season for canvasbacks of at least 10 days be allowed with a 1-bird daily bag limit beginning in 1994, contingent upon breeding population and habitat conditions.

ii. September Teal Seasons.

The Central Flyway Council recommended that September teal season shooting hours begin one-half hour before sunrise to sunset without further evaluation for all non-production Central Flyway States.

The Central Flyway Council recommended that the Service review the guidelines for establishing a September teal season for any new requests for seasons.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that Michigan be permitted to hold an experimental September teal season in southeast portions of the State.

The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that September teal season shooting hours beginning 1/2-hour before sunrise be made operational and that no further evaluation of shooting hours be required.

4. Canada Geese.

A. Special Seasons

The Atlantic Flyway Council recommended that West Virginia be permitted to initiate a 3-year experimental resident Canada goose season between September 1–10.

The Atlantic Flyway Council made the following recommendations to modify zones to hunt resident Canada geese in September:

In Maryland, expand its hunt zone to include Worcester, Wicomico, Somerset, Dorchester, and that portion of Talbot and Caroline Counties east of U.S. Route 50 and south of Maryland Route 404 during 1994–96.

In North Carolina, include that portion of the State east of Interstate 95 except in the Counties of Bertie, Beaufort, Camden, Chowan, Currituck, Dare, Gates, Hartford, Hyde, Northhampton (east of I-95), Pamlico, Pasquotank, Perquimans, Tyrrel, and Washington, where migrant Canada geese are expected to occur prior to the end of September.

In northwestern Pennsylvania, expand its Northwest zone to include Allegheny, Armstrong, Beaver, Cambria, Greene, Fayette, Indiana, Lawrence, Somerset, Venango, Washington, and Westmoreland Counties, during 1994–96.

In southeastern Pennsylvania, amend its current zone to include 4 additional counties.

In Virginia, amend its current zone to include 26 additional counties, including portions of the Shenandoah Valley, the central piedmont, the coastal plain, and the eastern shore.

The Upper-Region Regulations Committee of the Mississippi Flyway Council made the following recommendations pertaining to special Canada goose seasons:

In Indiana, expand the September-season hunting area to Statewide with a September 1–15 framework. The proposed changes would not be experimental.

In Michigan, extend the seasons in the northern Lower Peninsula and Upper Peninsula for 2 additional years and expand the zone in the Upper Peninsula to approximately the eastern half of the Peninsula; change the season length in the southern part of the Lower Peninsula from 10 to 15 days (September 1–15) for 3 years and include the southern portions of Tuscola and Huron Counties. The proposed changes would be experimental.

In Minnesota, expand the Fergus Falls/Alexandria Zone and extend the framework for the 10-day season to September 1–16 for 3 years. The proposed changes would be experimental.

In Ohio, expand the September-season hunting area to Statewide with a September 1–15 framework. The proposed changes would not be experimental.

In Wisconsin, enlarge the size of the Southeastern Wisconsin Zone and continue as a special season with a September 1–13 framework. The proposed changes would not be experimental.

The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that the Service closely monitor all Canada goose seasons, and fully analyze data from existing special or experimental seasons before expanding seasons that cumulatively might increase harvest of the Southern James Bay Population. Also, current special seasons should adhere to present criteria designed by the Service.

The Lower-Region Regulations Committee of the Mississippi Flyway Council also requested a 3-year experimental 10-day September Canada goose season be permitted in the eastern portion of Tennessee.

B. Regular Seasons

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the early-season frameworks provide for the opening of regular goose seasons in Wisconsin and the Upper Peninsula of Michigan as early as September 24

The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that the Service closely monitor all Canada goose seasons, and fully analyze data from existing special or experimental seasons before expanding seasons that cumulatively might increase harvest of the Southern James Bay Population of Canada geese.

The Pacific Flyway Council seeks a limited resumption of cackling Canada goose hunting throughout their range and recommends that the Service provide an expedited review of their recommended changes in cackling

Canada goose regulations for impacts on Aleutian Canada geese under the Section 7 Consultation process.

6. Brant.

The Upper-Region Regulations Committee of the Mississippi Flyway Council requested that the daily bag limit for brant be reduced to 2 birds to better conform with units in other flyways.

7. Snow and Ross's (Light) Geese.

The Central Flyway Council recommended that the framework closing date for light geese be changed from the Saturday nearest "February 15" to "February 28" for all Central Flyway States.

14. Woodcock.

The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that Tennessee be allowed to divide the State into 2 zones (East and West) for woodcock hunting.

16. Mourning Doves.

The Central Flyway Council recommends that Texas be allowed an increase in the number of segments from 2 to 3 in 2 of the 3 mourning dove hunting zones now offered to Texas.

17. White-winged and White-tipped Doves.

The Central Flyway Council proposes an increase in the 12-dove aggregate daily bag limit to allow 6 instead of 2 white-winged doves as now permitted in Cameron, Hidalgo, Starr, and Willacy Counties of Texas during the regular mourning dove season.

18. Alaska.

The Pacific Flyway Council recommended that Alaska be allowed no more than 1 Canada goose in the daily bag for Unit 9E and the western portions of Unit 18.

The Pacific Flyway Council recommended that the Statewide closure on cackling Canada geese be removed.

The Pacific Flyway Council recommended removal of restrictive bag limits for white-fronted geese in Units 1–9 and 14–18 in Alaska. The goose limit will be 6 daily and 12 in possession, of which no more than 4 daily and 8 in possession could be any combination of Canada or white-fronted geese.

Public Comment Invited

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. Consultations are presently under way to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. It is possible that the findings from the consultations, which will be included in a biological opinion, may cause modification of some regulatory measures proposed in this document. Any modifications will be reflected in the final frameworks. The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for public inspection in the Division of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act; Executive Order (E.O.) 12866 and the Paperwork Reduction Act

In the **Federal Register** dated April 7 1994 (59 FR 16762), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing an Analysis of Regulatory Effects and an updated Final Regulatory Impact Analysis, under the Regulatory Flexibility Act (5 U.S.C. 601 et seq), and publication of a summary of the latter. This information is included in the present document by reference. This action was not subject to review by the Office of Management and Budget under E.O. 12866. This rule does not contain any information collection requiring approval by the Office of Management and Budget under 44 U.S.C. 3504.

Authorship

The primary author of this proposed rule is Robert J. Blohm, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1994–95 hunting season are authorized under the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711); the Fish and Wildlife Improvement Act (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife

Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a–d and e–j).

Dated: May 23, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–13926 Filed 6–7–94; 8:45 am]

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Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 352

Sunscreen Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Tentative Final Monograph; Reopening of Comment Period; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 352

[Docket No. 78N–0038]

RIN 0905–AA06

Sunscreen Drug Products for Over-the-Counter Human Use; Proposed Amendment to the Tentative Final Monograph; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the tentative final monograph for over-the-counter (OTC) sunscreen drug products (58 FR 28194, May 12, 1993) to include only the 15 active ingredients for which United States Pharmacopeia (U.S.P.) monographs currently exist or for which interest in developing U.S.P. monographs has been expressed. This proposal is part of the ongoing review of OTC drug products conducted by FDA. FDA is reopening the comment period until August 22, 1994 to give interested parties an opportunity to comment on the proposed amendment to the tentative final monograph.

DATES: Written comments or objections by August 22, 1994; writen comments on the agency's economic impact determination by August 22, 1994.

ADDRESSES: Written comments or objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 12, 1993 (58 FR 28194), FDA published a notice of proposed rulemaking, in the form of a tentative final monograph, for OTC sunscreen drug products. In proposed § 352.10 (21 CFR 352.10) of the May 12, 1993, tentative final monograph (58 FR 28194 at 28295), the agency proposed the following ingredients in Category I (i.e., generally recognized as safe and effective):

(1) Aminobenzoic acid,
(2) Cinoxate,
(3) Diethanolamine methoxycinnamate,
(4) Digalloyl trioleate,
(5) Dioxybenzone,
(6) Ethyl 4-[bis(hydroxypropyl)] aminobenzoate,
(7) Glyceryl aminobenzoate,
(8) Homosalate,
(9) Lawsone with dihydroxyacetone,
(10) Menthyl anthranilate,
(11) Octocrylene,
(12) Octyl methoxycinnamate,
(13) Octyl salicylate,
(14) Oxybenzone,
(15) Padimate O,
(16) Phenylbenzimidazole sulfonic acid,
(17) Red petrolatum,
(18) Sulisobenzone,
(19) Titanium dioxide,
(20) Trolamine salicylate.

The agency also stated that, in order for a sunscreen ingredient to be included in the final monograph, it would be necessary for the ingredient to be adequately characterized and for these standards to be published in an official compendium (58 FR 28194 at 28284). The agency noted that only a few Category I sunscreen active ingredients are standardized and characterized for quality and purity and are included in official compendia (i.e., aminobenzoic acid, cinoxate, dioxybenzone, oxybenzone, and titanium dioxide). The agency suggested that interested parties should develop with the U.S.P. appropriate standards for the quality and purity of sunscreen active ingredients that are not already included in official compendia (i.e., diethanolamine methoxycinnamate, digalloyl trioleate, ethyl 4-[bis(hydroxypropyl)] aminobenzoate, glyceryl aminobenzoate, homosalate, lawsone with dihydroxyacetone, menthyl anthranilate, octocrylene, octyl methoxycinnamate, octyl salicylate, phenylbenzimidazole sulfonic acid, red petrolatum, sulisobenzone, and trolamine salicylate). The agency pointed out that if such standards are not established, ingredients without available public standards would not be included in the final monograph.

In letters dated January 13, 1994 (Ref. 1), the agency reminded two manufacturers associations (representing many OTC drug and cosmetic manufacturers of sunscreen-containing drug products) that all sunscreens ingredients must have a U.S.P. monograph before being included in the final monograph for OTC sunscreen drug products. FDA encouraged the associations to work with the U.S.P. in establishing the necessary monographs. Stating that the agency believes that some of the proposed Category I ingredients are no longer used for formulating sunscreen drug products, the agency questioned whether manufacturers would be working to establish U.S.P. standards for these ingredients. The agency asked for comment regarding which ingredients companies would be working to establish U.S.P. monographs.

The associations replied jointly in a letter dated February 15, 1994 (Ref. 2). The letter stated that, in addition to the five ingredients FDA listed as having established U.S.P. monographs, a sixth ingredient, padimate O, also has a U.S.P. monograph. The letter further stafed that industry members currently intend to work with U.S.P. to develop compendial monographs for the following nine ingredients:

(1) Diethanolamine,
(2) Octocrylene,
(3) Octyl methoxycinnamate,
(4) Octyl salicylate,
(5) Homosalate,
(6) Menthyl anthranilate,
(7) Phenylbenzimidazole sulfonic acid,
(8) Sulisobenzone,
(9) Trolamine salicylate

No interest was expressed in the remaining ingredients (i.e., digalloyl trioleate, ethyl 4-[bis(hydroxypropyl)] aminobenzoate, glyceryl aminobenzoate, lawsone with dihydroxyacetone, and red petrolatum).

References

(1) Letters from W. E. Gilbertson, FDA, to J. D. Cope, Nonprescription Drug Manufacturers Association, and E. E. Kavanaugh, Cosmetic, Toiletry and Fragrance Association, Comments No. LET110 and LET111, respectively, in Docket No. 78N–0038, Dockets Management Branch.

(2) Letter from E. E. Kavanaugh, Cosmetic, Toiletry and Fragrance Association, and J. D. Cope, Nonprescription Drug Manufacturers Association, to W. E. Gilbertson, FDA, Comment No. C301, in Docket No. 78N–0038, Dockets Management Branch.

II. The Agency's Tentative Conclusions

Based upon the apparent lack of interest in establishing U.S.P. monographs for digalloyl trioleate, ethyl 4-[bis(hydroxypropyl)] aminobenzoate, glyceryl aminobenzoate, lawsone with dihydroxyacetone, and red petrolatum, the agency tentatively concludes that these ingredients will not be included in the final monograph for OTC sunscreen drug products and should be deleted from the tentative final monograph. Therefore, the agency is amending the tentative final monograph for OTC sunscreen drug products to remove these five ingredients. The agency is also withdrawing the warnings and directions proposed in §§ 352.52(c)(2)

and 352.52(d)(3) for lawsone with dihydroxyacetone.

FDA has examined the impacts of the amendment of the tentative final monograph under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this amendment of the tentative final monograph is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the amendment of the tentative final monograph is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order. The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency is not aware of any currently marketed sunscreen drug products that contain any of the ingredients being withdrawn from the monograph. Accordingly, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency is reopening the comment period until August 22, 1994 to allow interested persons the opportunity to comment specifically on the proposal in this document to include only the 15 active ingredients listed. The agency is also inviting public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC sunscreen drug products. Types of impact may include, but are not limited to, costs associated with reformulating, relabeling, or repackaging. Comments regarding the impact of this rulemaking on OTC sunscreen drug products should be accompanied by appropriate documentation. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before August 22, 1994, submit to the Dockets Management Branch (address above) written comments or objections regarding this proposal. Written comments on the agency's economic impact determination may be submitted on or before August 22, 1994. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and objections are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments and objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 352

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 352 (as proposed in the **Federal Register** of May 12, 1993 (58 FR 28194)), be amended as follows:

PART 352—SUNSCREEN DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 352 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

§ 352.10 [Amended]

2. Section 352.10 Sunscreen active ingredients is amended by removing paragraphs (d), (f), (g), (i), and (q) and reserving them.

§ 352.20 [Amended]

3. Section 352.20 Permitted combinations of active ingredients is amended by removing paragraphs (a)(2)(iv), (a)(2)(vi), (a)(2)(vii), (a)(2)(ix), and (a)(2)(xvii) and reserving them.

§ 352.52 [Amended]

4. Section 352.52 Labeling of sunscreen drug products is amended by removing paragraphs (c)(2) and (d)(3) and reserving them.

Dated: May 18, 1994

Michael R. Taylor,

Deputy Commissioner for Policy

[FR Doc. 94–13933 Filed 6–7–94, 8:45 am]

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Federal Register

Wednesday
June 8, 1994

Part VII

Department of Transportation

Research and Special Programs Administration

Pipeline Safety Summit; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety Summit

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: The Research and Special Programs Administration (RSPA) invites representatives of industry, state and local government, other interested groups, and the public to a Pipeline Safety Summit. The purpose of this open meeting is to assist RSPA in developing a public/private agenda that establishes priorities for pipeline safety initiatives and identifies the next steps needed to make them a reality. The Summit will identify how to leverage available resources to optimize public safety and environmental protection. This effort will explore new and revised policies, procedures, and possible legislation utilizing strengthened partnerships.

DATE AND LOCATION: The Pipeline Safety Summit will be held on June 20, 1994, from 9 a.m. until 5 p.m., at the Radisson Hotel, 128 Frontage Road (Newark Airport), Newark, New Jersey, telephone (202) 690–5500.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, RSPA, U.S. Department of Transportation, room 8321, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366–4431, FAX (202) 366–7431. To pre-register for the Summit, contact Ms. Whetsel by June 15. On-site registration will begin at 7:30 a.m. on June 20.

SUPPLEMENTARY INFORMATION: On March 23, 1994, an interstate natural gas transmission pipeline, operated by Texas Eastern Gas Pipeline Company, exploded in Edison, NJ. Preliminary examination indicated evidence of previously inflicted excavation damage to the pipeline. While the incident resulted in only one fatality (a heart attack), it raised important questions about the safety of pipelines. Following the accident, Department of Transportation Secretary Federico Peña proposed significant changes to the federal pipeline safety program for both the short and the long terms.

Secretary Peña also announced that the Department would convene a Pipeline Safety Summit, calling together experts to assess the current state of the nation's pipeline system. The Summit will include four panel discussions: allaying public concerns about pipeline safety, using existing and evolving technologies to maximize pipeline safety, calculating the cost of pipeline safety, and creating effective partnerships for reducing pipeline risk. Limited time will be available at the end of the day for the audience to ask questions of the panelists.

To help ensure that all concerned voices are heard, RSPA invites interested persons to submit brief 2–3 page issue papers in advance for distribution at the June 20 Summit. To reduce reproduction costs, please keep these papers concise and targeted on issues relevant to enhancing pipeline safety and reducing the risk to the environment associated with pipeline transportation.

Papers should arrive at the address noted above by June 15, 1994, to be distributed at the Summit. RSPA will also accept papers until July 20 for inclusion as appendices in the final report of the Summit proceedings.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety

[FR Doc. 94–13834 Filed 6–7–94; 8:45 am]

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103d Congress, 2d Session, 1994

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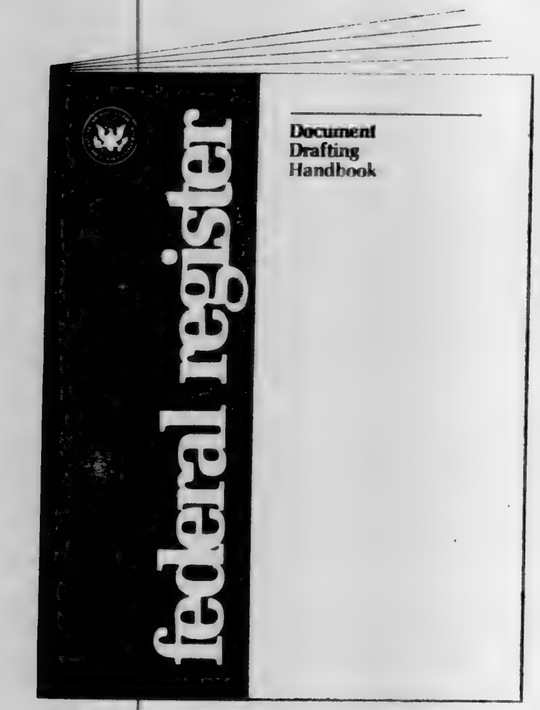
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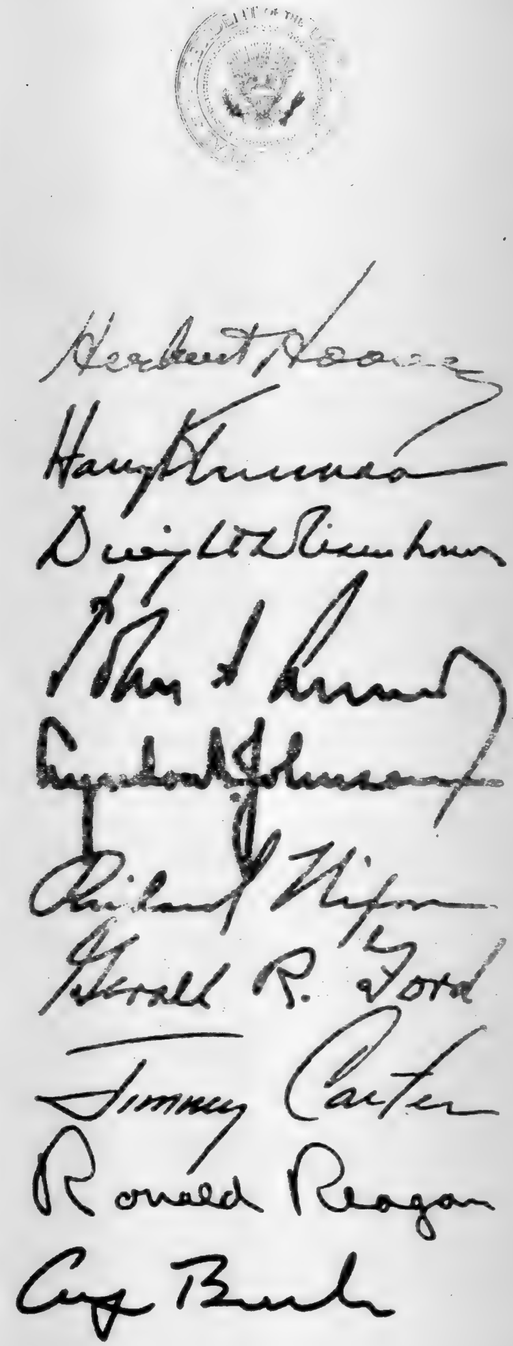
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For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, 275, 276, 278, and 279

[Amdt. No. 356]

Food Stamp Program: Technical Amendments to Various Provisions of Food Stamp Rules

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule is implementing technical amendments to numerous provisions of the regulations governing the Food Stamp Program. These technical amendments: (1) Correct errors in spelling, grammar, regulatory references and typographical errors; (2) provide consistency or conformity with other regulatory provisions; and (3) finalize proposed technical changes published on March 28, 1991. These technical amendments do not change the substance of the affected provisions.

EFFECTIVE DATE: This final rule is effective June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Judith M. Seymour, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302 or FAX (703) 305–2454.

SUPPLEMENTARY INFORMATION

Classification

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the proposed rule and related notices of 7 CFR part 3015, subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This final rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program, the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or part 284 (for rules related to QC liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

The Department has also reviewed this final rule in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). William E. Ludwig, Administrator of the Food and Nutrition Service (FNS), has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program. The amendments addressed in this final rule are technical corrections and do not change the principles nor the policy intent of the provisions affected.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3507).

Public Participation

Those portions of this final rule, which were not previously proposed in 56 FR 12857 on March 28, 1991, are being published without providing an opportunity for public comment and will become effective on the date published in the **Federal Register**. The action, with respect to those portions not previously proposed, is technical in nature and public comment would not be useful or necessary. The action concerns codification of prior approvals obtained from OMB of the information collection and recordkeeping burdens contained in Food Stamp Program regulations. These approvals were previously announced only in the preamble section of the regulations as they were individually published in the **Federal Register** over the years. For these reasons, William E. Ludwig, the Administrator of the Food and Nutrition Service has determined that, in accordance with 5 U.S.C. 553(b)(3)(B), good cause exists both for publishing this regulation without taking public comment and for making the rule effective upon publication. Those portions of this final rule which were previously proposed in 56 FR 12857 on March 28, 1991 received no comments. The remaining provisions of that proposed rule, which pertained to retail grocers, are being withdrawn by this rule.

Background

Technical Amendments and Corrections

On a periodic basis, the Department reviews the Food Stamp Program regulations to ensure the text is clear and correct. During the last review, the Department noted numerous technical errors in the text of the regulations. In order to correct these errors, the Department is making technical amendments to: (1) Correct errors in spelling, grammar, regulatory references, and other typographical errors; (2) provide consistency or conformity with other regulatory provisions; and (3) finalize proposed technical changes published on March

28, 1991 (56 FR 12857). The amendments do not change the substance of the provisions affected. There are several technical amendments that require some explanation about why the Department is making these changes.

On June 29, 1982 the Department published a final regulation at 47 FR 28067, "pursuant to the Food Stamp Act of 1977, and to legislation enacted on March 24, 1976, approving and reiterating the 'Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America', Public Law 94–241 and Public Law 96–597." That final rule added part 284 to the food stamp regulations. Part 284 describes the general terms and conditions under which a modified Food Stamp Program shall be provided by the Food and Nutrition Service (FNS) to the Commonwealth of the Northern Mariana Islands (CNMI). In preparing this final rule, the Department failed to add a reference to part 284 in 7 CFR 271.1(b), which describes the scope of food stamp regulations. The Department is taking this opportunity to include a conforming amendment to § 271.1(b) to explain that part 284 provides for a nutrition assistance program for CNMI.

Current regulations at 7 CFR 273.1(e)(1)(i), originally published on October 17, 1978 at 43 FR 47889, grant food stamp eligibility to residents of federally subsidized housing for the elderly built under either section 202 of the Housing Act of 1959 or section 236 of the National Housing Act. Subsequently in 1988, FNS Policy Interpretation Response System (PIRS) Memo 88–9, dated April 19, 1988, was issued to explain that section 236 of the National Housing Act was no longer effective and other housing programs for the elderly had been developed since § 273.1(e)(1)(i) was originally implemented. For this reason, the Department is removing the reference to section 236 of the National Housing Act in 7 CFR 273.1(e)(1)(i).

The Department is also amending 7 CFR 273.17 by removing paragraph (i), which discusses the losses of benefits that occurred prior to elimination of the purchase requirement. The purchase requirement for food stamps was terminated with the enactment of the Food Stamp Act of 1977. The Department originally implemented § 273.17(i) to protect households during the change from the purchase requirement to the current Food Stamp Program system of benefit delivery. The Department believes there is no further need for § 273.17(i) at this time and is removing this section from food stamp regulations.

Under current regulations at 7 CFR 273.20, the States of California and Wisconsin are listed as "SSI Cash-Out States". Under the "SSI Cash-Out" demonstration project, California and Wisconsin provide recipients of Supplemental Security Income (SSI) payments with the cash value of their food stamp allotment, in lieu of coupons, by increasing the SSI grant award. Residents of these states are considered ineligible for food stamp benefits.

On January 1, 1992, the State of Wisconsin officially ended its "SSI Cash-out" demonstration project, thereby making SSI recipients eligible for food stamp benefits. In order to ensure conformity, the Department is removing all references to Wisconsin throughout 7 CFR 273.20.

The Department is making several technical changes to regulations in part 278, which pertain to the participation of retail food stores, wholesale food concerns and insured financial institutions. The Department is also adding the word "accepted" immediately before the words "in accordance" in 7 CFR 278.2(g) which describes how firms may redeem coupons. The word was inadvertently omitted from the regulations when they were last published.

The Department is deleting the reference in 7 CFR 278.6(e) to "FNS regional offices" being the agent of FNS in disqualification actions taken against retail food stores and wholesale food concerns. Instead, the regulation will state that "FNS" shall take action. This change in wording is being made to reflect the fact that some FNS regional offices have delegated authority to act in these matters to their field offices.

Lastly, the Department is using this rulemaking to finalize proposed technical changes to part 279 that were originally published in a proposed rule on March 28, 1991 at 56 FR 12857. The remaining proposals in that rulemaking (pertaining to authorizing and educating retail grocers and assigning penalties to retailers who violate program rules) have been withdrawn by the Department. No comments were received concerning the proposed technical changes.

The amendments are being made to the following sections of 7 CFR:

271.1(b)
271.6(b)(1)(ii), (iii), (vi), and (vii)
271.7(d)(1)(ii)
272.1(g)(7)(viii), (g)(10), (g)(17)(i)(B), (g)(36), (g)(74), (g)(84)(i), (g)(90)
272.2(a)(2)
272.6(c)(3)
272.8(i)
272.10(a)(2)(iii)
273.1(c)(3)(i) and (ii), (e)(1)(i)
273.8(i)(2)(i)
273.11(b)(1)(ii)(A) and (B)
273.15(r)(2)
273.17(i)
273.18(d)(2)
273.20(a), (b), (c)
273.22(f)(6)(iii)(A)
275.8(a)
275.9(c)(1)
276.3(b)(3)
276.7(h)(4)
278.1(j)(1), (k)(1)(ii)
278.2(g)
279.2(a), (b)
279.3(a), (b)
279.7(b), (c), (d)
279.8(a), (a)(1), (b), (c), (d), (e), (f), (g)
279.9(a), (b)
279.10(a)

Effective Date

This final rule does not change the current policy under which State agencies are operating. Therefore, the final rule does not require special implementation procedures by State agencies. This rule is effective upon the date of publication.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Penalties.

7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, General line—wholesalers, Groceries, Groceries—retail, Penalties.

7 CFR Part 279

Administrative practice and procedure, Food stamps, General line—

wholesalers, Groceries, Groceries—retail.

Accordingly, parts 271, 272, 273, 275, 276, 278 and 279 are amended as follows:

1. The authority citations for parts 271, 272, 273, 275, 276, 278 and 279 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.1 [Amended]

2. In § 271.1, paragraph (b) is amended by adding a new sentence between the twelfth and last sentences of the paragraph to read as follows:

§ 271.1 General purpose and scope.

* * * * *

(b) *Scope of the regulations.* * * * Part 284 provides for a nutrition assistance program for the Commonwealth of the Northern Mariana Islands (CNMI).

§ 271.6 [Amended]

3. In § 271.6:

a. Paragraph (b)(1)(ii) is amended by removing the words "1100 Spring Street NW, Room 200, Atlanta, Ga. 30367" and adding in their place the words "77 Forsyth Street SW., Suite 112, Atlanta, GA 30303–3427";

b. Paragraph (b)(1)(iii) is amended by removing the words "50 East Washington Street, Chicago, Ill. 60602" and adding in their place the words "77 West Jackson Blvd., 20th Floor, Chicago, IL 60604–3507";

c. Paragraph (b)(1)(vi) is amended by removing the words "33 North Avenue, Burlington, Mass. 01803" and adding in their place the words "10 Causeway St., Boston, MA 02222–1069";

d. Paragraph (b)(1)(vii) is amended by removing the words "2420 West 26th Avenue, Suite 430–D, Denver, Colo. 80211" and adding in their place the words "1244 Speer Blvd., Suite 903, Denver, CO 80204–3581".

§ 271.7 [Amended]

4. In § 271.7, the first sentence of paragraph (d)(1)(ii) is amended by removing the words "upcoming month's allotments" and adding in their place the words "upcoming month's allotment".

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

§ 272.1 [Amended]

5. In § 272.1:

a. The third sentence of paragraph (g)(7)(viii) is amended by adding a comma after the words "Discrepancies and Other Information";

b. The second sentence of paragraph (g)(10) is amended by removing the word "seperate" and adding in its place the word "separate";

c. The second sentence of paragraph (g)(17)(i)(B) is amended by removing the words "Secretary of Health, Education, and Welfare" and adding in their place the words "Secretary of Health and Human Services";

d. The second sentence of paragraph (g)(36) is amended by removing the hyphen in the word "State-wide";

e. Paragraph (g)(74) is amended by redesignating paragraphs (g)(74) (1), (2) introductory text, (i) and (ii) as (g)(74) (i), (ii) introductory text, (A) and (B), respectively;

f. In paragraph (g)(84)(i) the second sentence is amended by removing the words "any eligible determination" and adding in their place the words "any eligibility determination";

g. The first sentence of paragraph (g)(90) is amended by removing the words "applying the provisions" and adding in their place the words "applying the provision".

§ 272.2 [Amended]

6. In § 272.2, the fifth sentence of paragraph (a)(2) is amended by removing the words "State Plan of Operations" and adding in their place the words "State Plan of Operation".

§ 272.6 [Amended]

7. In § 272.6, paragraph (c)(3) is amended by removing the words "(iii), (iv)" and adding in their place the words "(iii) or (iv)".

§ 272.8 [Amended]

8. In § 272.8, the heading of paragraph (l) is amended by removing the words "Plan of Operations" and adding in their place the words "State Plan of Operation" and the introductory text of paragraph (i) is amended by removing the words "State Agency's Plan of Operations" and adding in their place the words "State Plan of Operation."

§ 272.10 [Amended]

9. In § 272.10, the first sentence of paragraph (a)(2)(iii) is amended by adding the word "and" between the words "each planned activity," and "including a consideration".

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.1 [Amended]

10. In § 273.1:

a. Paragraphs (c)(3) (i) and (ii) are amended by removing the words "Thrifty Food Plan" and adding in their place the words "maximum food stamp allotment";

b. Paragraph (e)(1)(i) is amended by removing the words "or section 236 of the National Housing Act" at the end of the paragraph.

§ 273.8 [Amended]

11. In § 273.8, paragraph (i)(2)(i) is amended by removing the word "personnel" and adding in its place the word "personal".

§ 273.11 [Amended]

12. In § 273.11, paragraphs (b)(1)(ii)(A) and (B) are amended by removing the words "thrifty food plan" and adding in their place the words "maximum food stamp allotment".

§ 273.15 [Amended]

13. In § 273.15, the first sentence of paragraph (r)(2) is amended by adding a hyphen between the words "45" and "day".

§ 273.17 [Amended]

14. In § 273.17, paragraph (i) is removed.

§ 273.18 [Amended]

15. In § 273.18, the last sentence of paragraph (d)(2) is amended by removing the words "guilty of misrepresentation of fraud" and adding in their place the words "guilty of misrepresentation or fraud".

§ 273.20 [Amended]

16. In § 273.20, paragraphs (a), (b), and (c) are amended by removing the word "Wisconsin" wherever it appears.

§ 273.22 [Amended]

17. In § 273.22, the first sentence of paragraph (f)(6)(iii)(A) is amended by removing the comma between the words "income" and "standard".

PART 275—PERFORMANCE REPORTING SYSTEM

§ 275.8 [Amended]

18. In § 275.8, the last sentence of paragraph (a) is amended by removing the words "agencies would have 60 days" and adding in their place the words "agencies have 60 days".

§ 275.9 [Amended]

19. In § 275.9, the second sentence of paragraph (c)(1) is amended by removing the words "to determine it the project" and adding in their place the words "to determine if the project"

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

§ 276.3 [Amended]

20. In § 276.3, the first sentence in paragraph (b)(3) is amended by

removing the words "base it determinations" and adding in their place "base its determinations".

§ 276.7 [Amended]

21. In § 276.7, the last sentence in paragraph (h)(4) is amended by removing the words "prior of the expiration" and adding in their place the words "prior to the expiration".

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

§ 278.1 [Amended]

22. In § 278.1:

(a) Paragraph (j)(1) is amended by removing the reference to "paragraphs (b), (c), (d), and (e)" and adding in its place the reference to "paragraphs (b), (c), (d), (e), (f), (g), or (h)";

(b) Paragraph (k)(1)(ii) is amended by removing the reference to "paragraphs (b), (c), (d), or (e)" and adding in its place a reference to "paragraph (b), (c), (d), (e), (f), (g), or (h)".

§ 278.2 [Amended]

23. In § 278.2:

a. The first sentence of paragraph (g) is amended by adding the word "accepted" immediately preceding the words "in accordance";

b. The last sentence of paragraph (g) is amended by removing the word "and" from the words "and shelters for battered women".

§ 278.5 [Amended]

24. In § 278.5, the fourth sentence of paragraph (e) is amended by removing the words "Federal Operations Division, FNS, U.S. Department of Agriculture, Washington, DC 20250" and adding in their place the words "Benefit Redemption Division, FSP, FNS, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302".

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

§ 279.1 [Amended]

25. In § 279.1, the first and third sentences are amended by removing the words "food stamp" and adding in their place the word "administrative" each time they precede the words "review officer".

§ 279.2 [Amended]

26. In § 279.2:

a. The section heading is amended by removing the words "Food Stamp" and adding in their place the word "Administrative";

b. Paragraphs (a) and (b) are amended by removing the words "food stamp" each time they appear and adding in their place the word "administrative".

§ 279.3 [Amended]

27. In § 279.3, paragraphs (a) and (b) are amended by removing the words "food stamp" each time they appear and replacing them with the word "administrative".

§ 279.7 [Amended]

28. In § 279.7:

a. Paragraph (b) is amended by removing the words "food stamp" in the first sentence and adding in their place the word "administrative" and by removing the word "regional" in the last sentence.

b. Paragraphs (c) and (d) are amended by removing the words "food stamp" each time they appear and adding in their place the word "administrative".

§ 279.8 [Amended]

29. In § 279.8:

a. The section heading is amended by removing the words "food stamp" and adding in their place the word "administrative";

b. The introductory text of paragraph (a) is amended by removing the words "food stamp" each time they appear and adding in their place the word "administrative";

c. Paragraph (a)(1) is amended by removing the words "FNS regional" and adding in their place the words "appropriate FNS";

d. Paragraph (b) is amended by removing the words "food stamp" and adding in their place the word "administrative";

e. Paragraph (c) is amended by removing the words "food stamp" each time they appear and adding in their place the word "administrative" and by removing the word "regional" whenever it appears and adding in its place the words "appropriate FNS";

f. Paragraphs (d) and (e) are amended by removing the words "food stamp" each time they appear and adding in their place the word "administrative";

g. The heading of paragraph (f) is amended by removing the word "regional" and adding in its place the words "appropriate FNS". The text of paragraph (f) is amended by removing the words "food stamp" and adding in their place the word "administrative", and by removing the word "regional";

h. Paragraph (g) is amended by removing the words "food stamp" and replacing them with the word "administrative".

§ 279.9 [Amended]

30. In § 279.9, paragraphs (a) and (b) are amended by removing the words "food stamp" each time they appear and adding in their place the word "administrative".

§ 279.10 [Amended]

31. In § 279.10, paragraph (a) is amended by removing the words "food stamp" each time they appear and adding in their place the word "administrative".

Dated: June 1, 1994.

William E. Ludwig,

Administrator.

[FR Doc. 94–13864 Filed 6–8–94; 8:45 am]

BILLING CODE 3410–30–U

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AB46

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) is amending its regulations governing computation of an institution's assessment base to provide for the subtraction of certain liabilities arising under depository institution investment contracts. The subject liabilities are those not treated as insured deposits under section 11(a)(8) of the Federal Deposit Insurance Act (FDI Act). Under the final rule, these liabilities would be excluded from the deposit base on which deposit insurance premiums are assessed, thereby reducing assessment payments for affected institutions. The purpose of the amendment is to give effect, by regulation, to apparent congressional intent.

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: William Farrell, Chief, Assessments Management Section, Division of Finance, (703) 516–5546; or Gerald J. Gervino, Senior Attorney, (202) 898–3723; Federal Deposit Insurance Corporation, Washington D.C. 20429.

SUPPLEMENTARY INFORMATION: Prior to December 1993, liabilities arising under bank or thrift investment contracts (BICs) that qualified as deposits under section 3(l) of the FDI Act, 12 U.S.C. 1813(l), were insured in accordance with the statutory and regulatory provisions governing federal deposit insurance coverage. Similarly, BIC liabilities that qualified as deposits were included in an institution's deposit base

for the purpose of calculating the institution's deposit insurance premiums.

Effective December 19, 1993, a new section 11(a)(8) was added to the FDI Act by section 311(a)(1) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Under this new provision, codified at 12 U.S.C. 1821(a)(8), liabilities arising under certain depository institution investment contracts are no longer treated as insured deposits.

A companion provision to the new section 11(a)(8) was a new subparagraph (D) added to section 7(b)(6) of the FDI Act (12 U.S.C. 1817(b)(6)) by section 311(a)(2) of FDICIA, which also became effective December 19, 1993. Section 7(b)(6)(D) excluded from an institution's insurance assessment base any liability of the institution not treated as an insured deposit pursuant to section 11(a)(8).

Although section 11(a)(8) continues in force, its companion provision does not. Section 7(b)(6), as amended effective December 19, 1993, was superseded as of January 1, 1994, by a totally revised version of section 7(b) that provides for a risk-based assessment system. The existing section 7(b), 12 U.S.C. 1817(b), as amended by section 302(a) of FDICIA, omits all provisions of the superseded section 7(b) that dealt with the computation of an institution's deposit insurance assessment base. Under the existing provisions, definition of the assessment base is to be determined by the FDIC.

The Board believes that it is appropriate and desirable to give continued effect, by regulation, to the intent of Congress, as reflected in superseded section 7(b)(6), that investment contract liabilities not treated as insured deposits under section 11(a)(8) of the FDI Act should be excluded from the universe of deposits on which insurance assessments are paid. The amendment maintains the balance the Board believes Congress intended in enacting the former section 7(b)(6) as a companion to section 11(a)(8).

The FDIC invited comments on the proposal. 59 FR 9687 (March 1, 1994). Four comments were received. Two were furnished by trade associations and two by financial institutions. One comment letter from each group supported the proposal. One association commenter and one institutional commenter opposed the proposal. An association commenter strongly opposed the proposal, indicating that the amendment would favor larger banks since, according to the commenter, small banks generally do not have deposit liabilities arising under these investment contracts. It also asked that the change not be addressed until a larger review of the assessment base is made by the FDIC. Citing congressional intent, the other trade association supported the proposal. However, they suggested that the FDIC make it clear that the exclusion of BICs is a special case and should not be construed as indicative of other actions that the FDIC may take to change the assessment base.

The two institutions offered diametrically opposed comments. One felt that the exemption should be adopted quickly enough to be used in the first quarter of this year. The other institution was totally against excluding BICs from the insurance assessment. It felt that BICs were useful for large money center banks with the resources to enter complicated arrangements. It felt that any argument that BICs should not be assessed, if they are not insured, was inappropriate. The commenter noted that it pays assessments on behalf of customer deposits that are not insured because the deposits exceed $100,000. In the commenter's view, principles of fairness require that BICs be assessed for FDIC insurance purposes.

The Board has carefully considered the comments of each of the four commenters. The Board believes that the amendment is designed to give continued effect to congressional intent to exclude investment contract liabilities, that are not treated as insured deposits, from the deposit base on which premiums are assessed. Since the amendment is designed to carry out congressional intent, the Board does not believe it is appropriate to delay the amendment pending further study of the assessment base. This amendment does not reflect any policy judgment of the FDIC relating to the assessment base.

The Board does not believe that the proposal is designed to favor large banks. Any insured institution, regardless of size, may deduct deposit liabilities arising under these investment contracts from its assessment base. Any bank may potentially use the investment contracts described in the regulation.

Accordingly, the Board is amending its assessments regulation to exclude from an institution's assessment base, as computed under § 327.4, those investment contract liabilities not treated as insured deposits under section 11(a)(8) of the FDI Act.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Board hereby certifies that the amendments to part 327 will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In light of this certification, the Regulatory Flexibility Act requirements (at 5 U.S.C. 603, 604) to prepare initial and final regulatory flexibility analyses do not apply.

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Financing corporation, Savings associations.

For the reasons stated in the preamble, 12 CFR part 327 is amended as follows:

PART 327—[AMENDED]

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1817–1819.

2. Section 327.4 is amended by removing the period at the end of paragraph (b)(2)(iv)(B) and adding a semicolon in lieu thereof, and by adding paragraph (b)(2)(v) to read as follows:

§ 327.4 Average assessment base.

* * * * *

(b) * * *

(2) * * *

(v) Liabilities arising from a depository institution investment contract that are not treated as insured deposits under section 11(a)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(8)).

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C., this 24th day of May 1994.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–14008 Filed 6–8–94; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 27583; Amendment 91-241]

Special Visual Flight Rules (SVFR); Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date; correction.

SUMMARY: This document corrects an error to a Final Rule, on "Special Visual Flight Rules (SVFR); Denver, CO", which was published on Friday, May 13, 1994 (59 FR 24915). The Amendment number is incorrect.

EFFECTIVE DATE: May 13, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Crum, Air Traffic Rules Branch (ATP-230), Airspace-Rules and Aeronautical Information Division, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION: FR Doc. 94-11690, which was published on May 13, 1994 (59 FR 24915), in the heading next to the "Docket No. 27583", please change the Amendment number to read "91-241".

Donald P. Byrne,

Manager, Regulations Division, Office of Chief Counsel.

[FR Doc. 94-13910 Filed 6-8-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93-4-000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

June 3, 1994.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of availability of standardized data sets and communication protocols.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is making available the Standardized Data Sets And Communication Protocols providing the standards for pipeline Electronic Bulletin Boards.

EFFECTIVE DATE: June 3, 1994.

ADDRESSES: The document can be obtained at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street NE., Washington DC 20426.

FOR FURTHER INFORMATION CONTACT:
Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208-1283.
Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208-0292.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208-1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington DC 20426.

Pursuant to § 284.8(b)(5) of the Commission's regulations (18 CFR 284.8(b)(5)), the Commission is making available the "Standardized Data Sets And Communication Protocols" reflecting the standards governing pipeline Electronic Bulletin Boards.[1] The document may be obtained from the Public Reference and Files Maintenance Branch, Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington DC 20426.

The Standardized Data Sets And Communication Protocols are available in WordPerfect 5.1 format on two diskettes through the Commission's duplication contractor, LaDorn System Corporation (LaDorn). Disk one contains the introduction, standardized data sets and communication protocols. Disk two contains the EDI implementation guide. The diskettes can be purchased in the following ways:

(1) By written request to the Commission, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, ATTN: Mr. William McDermott, Chief, Public Reference & Files Branch.

Please enclose a check, payable to LaDorn System Corporation for $7.00 per diskette ordered and $4.40 to cover postage and handling. Allow 10-14 days for processing and delivery.

(2) Directly from LaDorn System Corporation at the cashier's window in the Commission's Public Reference Room for $7.00 per diskette plus applicable sales tax, if any. The Public Reference Room is located on the third floor, 941 N. Capitol Street NE., Washington, DC.

(3) By telephone request to LaDorn Energy Information Services at 1-800-676-FERC. Orders placed by phone will be assessed charges as follows:

(a) A $25.00 processing fee,

(b) $7.00 per diskette ordered, and

(c) Cost of shipping and handling. (The requestor will have a choice of regular mail, 2-Day Express Mail or Federal Express).

Please contact the Commission's Public Reference & Files Maintenance Branch on (202) 208-1371 or LaDorn (1-800-676-FERC) for information and the cost of purchasing the paper version of any documents.

LaDorn System Corporation employees cannot answer questions regarding the use of the record formats and software. Any questions concerning the application of the information contained in these documents should be directed to:

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208-1283

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208-0292

Lois D. Cashell,

Secretary.

[FR Doc. 94-13971 Filed 6-8-94; 8:45 am]

BILLING CODE 6717-01-P

[1] The Commission's final rule in this docket was issued on December 23, 1993 (59 FR 516, January 5, 1994).

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[AG Order No. 1884-94]

Delegations of Authority; Bureau of Prisons

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends the delegations of authority to the Director of the Bureau of Prisons to allow for the securing, sale, assignment, transfer, or conveyance of donations on behalf of the Bureau of Prisons. This order is necessary to allow for the more efficient and direct handling of this matter.

EFFECTIVE DATE: June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington, DC 20534, telephone (202) 307-3062.

SUPPLEMENTARY INFORMATION: Section 4044 of Title 18, United States Code, provides that the Attorney General may, in accordance with rules prescribed by the Attorney General, accept in the name of the Department of Justice any form of devise, bequest, gift or donation of money or property for use by the Bureau of Prisons or Federal Prison Industries. This authority had been previously delegated to the Director of the Bureau of Prisons by Order No. 1186-87 (52 FR 17951). Additional authority given in 18 U.S.C. 4044 for securing the possession of such property and for the sale, assignment, transfer, or conveyance of such property other than money is herein delegated to the Director for reasons of efficiency of operation.

This order is a matter of internal department management. It will not have a significant economic impact on a substantial number of small entities. It is not a significant regulatory action within the meaning of or subject to Executive Order 12866.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in the Attorney General by law, including 5 U.S.C. 301 and 28 U.S.C. 509-510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for 28 CFR part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

2. In § 0.96, paragraph (s) is revised to read as follows:

§ 0.96 Delegations.

* * * * *

(s) Authority to accept, in accordance with regulations prescribed by the Director, any form of devise, bequest, gift or donation of money or property for use by the Bureau of Prisons or Federal Prison Industries, and authority to take all appropriate steps to secure possession of such property, and to sell, assign, transfer, or convey such property other than money (18 U.S.C. 4044).

* * * * *

Dated: May 31, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94-13950 Filed 6-8-94; 8:45 am]

BILLING CODE 4410-01-M

28 CFR Part 16

[AAG/A Order No. 88-94]

Exemption of System of Records Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Drug Enforcement Administration (DEA) amends its Privacy Act Regulations. First, DEA removes the exemptions from subsections (e)(4), (G), (H), (f), and (h) of the Privacy Act (5 U.S.C. 552a). Second, DEA is providing a greater degree of specificity with respect to the reasons given for those exemptions which have been retained, and with respect to subsections (j) and (k) of the Act upon which such exemptions are based.

The exemptions from subsections (e)(4)(G), (H), and (f), and (h) are removed because they are unnecessary in that DEA complies with the provisions thereof. The additional specificity is provided regarding the remaining exemptions (and the subsections upon which they are based) to provide clarity and add to public understanding.

Information in this system relates to official Federal investigations and matters of law enforcement of the DEA and the exemptions are necessary to avoid interference with DEA's law enforcement responsibilities. Reasons for the exemptions are set forth in the text below.

EFFECTIVE DATE: June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely on (202) 616-0178.

SUPPLEMENTARY INFORMATION: The revisions to 28 CFR 16.98 affect twelve DEA Privacy Act systems of records, including the Investigative Reporting and Filing System, Justice/DEA-008. A revised description of that system is published in today's **Federal Register**. This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

In addition, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), it has been determined that it is impracticable and unnecessary to provide for public comment and that it is not in the public interest to delay the effective date of this rule.

List of Subjects in Part 16

Administrative practices and procedure, Courts, Freedom of Information Act, Government in the Sunshine Act, Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, 28 CFR 16.98 is revised as set forth below.

Dated: June 3, 1994.

Stephen R. Colgate,

Assistant Attorney General for Administration.

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR 16.98 is revised as set forth below.

§ 16.98 Exemption of the Drug Enforcement Administration (DEA)—limited access.

(a) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (d):

(1) Automated Records and Consummated Orders System/Diversion Analysis and Detection System (ARCOS/DADS) (Justice/DEA-003)

(2) Controlled Substances Act Registration Records (Justice/DEA-005)

(3) Registration Status/Investigatory Records (Justice/DEA-012)

(b) These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(2). Exemptions from the particular

subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of the disclosure accounting would enable the subject of an investigation to gain valuable information concerning the nature and scope of the investigation and seriously hamper the regulatory functions of the DEA.

(2) From subsection (d) because access to records contained in these systems may provide the subject of an investigation information that could enable him to avoid compliance with the Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91–513).

(c) Systems of records identified in paragraphs (c)(1) through (c)(6) below are exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(5), (e)(8) and (g) of 5 U.S.C. 552a. In addition, systems of records identified in paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) below are also exempted pursuant to the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d) and (e)(1). Finally, systems of records identified in paragraphs (c)(1), (c)(2), (c) (3) and (c)(5) below are also exempted pursuant to the provisions of 5 U.S.C. 552a(k)(1) from subsections (c)(3), (d) and (e)(1):

(1) Air Intelligence Program (Justice/DEA–001)

(2) Investigative Reporting and Filing System (Justice/DEA–008)

(3) Planning and Inspection Division Records (Justice/DEA–010)

(4) Operations Files (Justice/DEA–011)

(5) Security Files (Justice/DEA–013)

(6) System to Retrieve Information from Drug Evidence (Stride/Ballistics) (Justice/DEA–014)

(d) Exemptions apply to the following systems of records only to the extent that information in the systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2): Air Intelligence Program (Justice/DEA–001); Planning and Inspection Division Records (Justice/DEA–010); and Security Files (Justice/DEA–013). Exemptions apply to the Investigative Reporting and Filing System (Justice/DEA–008) only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(1). Exemptions apply to the Operations Files (Justice/DEA–011) only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). Exemptions apply to the System to Retrieve Information from Drug Evidence (STRIDE/Ballistics) (Justice/DEA–014) only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2). Exemption from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because release of disclosure accounting would provide to the subjects of an investigation significant information concerning the nature of the investigation and thus would present the same impediments to law enforcement as those enumerated in paragraph (d)(3) regarding exemption from subsection (d).

(2) From subsection (c)(4) to the extent that it is not applicable because an exemption is being claimed from subsection (d).

(3) From the access provisions of subsection (d) because access to records in this system of records would present a serious impediment to law enforcement. Specifically, it could inform the record subject of an actual or potential criminal, civil, or regulatory investigation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. Similarly, it may alert collateral suspects yet unprosecuted in closed cases. It could prevent the successful completion of the investigation; endanger the life, health, or physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony; or it may simply reveal a sensitive investigative technique. In addition, granting access to such information could result in the disclosure of confidential/security-sensitive or other information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. From the amendment provisions of subsection (d) because amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because the application of this provision could impair investigations and interfere with the law enforcement responsibilities of the DEA for the following reasons:

(i) It is not possible to detect relevance or necessity of specific information in the early stages of a civil, criminal or other law enforcement investigation, case, or matter, including investigations during which DEA may obtain properly classified information. Relevance and necessity are questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(ii) During the DEA's investigative activities DEA may detect the violation of either drug-related or non-drug related laws. In the interests of effective law enforcement, it is necessary that DEA retain all information obtained because it can aid in establishing patterns of activity and provide valuable leads for Federal and other law enforcement agencies or otherwise assist such agencies in discharging their law enforcement responsibilities. Such information may include properly classified information, the retention of which could be in the interests of national defense and/or foreign policy.

(5) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement for the following reasons:

(i) The subject of an investigation would be placed on notice as to the existence of an investigation and would therefore be able to avoid detection or apprehension, to improperly influence witnesses, to destroy evidence, or to fabricate testimony.

(ii) In certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information relating to a subject's illegal acts must be obtained from other sources.

(iii) In any investigation it is necessary to obtain evidence from a variety of sources other than the subject of the investigation in order to verify the evidence necessary for successful prosecution.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided a form stating the requirements of subsection (3)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of an actual or potential confidential investigation, reveal the identity of confidential sources of information and endanger the life, health or physical safety of confidential informants, witnesses, and investigators/law enforcement personnel.

(7) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to

determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(8) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation, and could reveal investigative techniques, procedures, or evidence.

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1) and (k)(2) of the Privacy Act.

(e) The following systems of records are exempt from 5 U.S.C. 552a (d)(1) and (e)(1):

(1) Grants of Confidentiality Files (GCF) (Justice/DEA–017), and

(2) DEA Applicant Investigations (Justice/DEA–018).

(f) These exemptio9ns apply only to the extent that information in these systems is subject to exception pursuant to 5 U.S.C. 552a(k)(5). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d)(1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning an applicant for a grant of confidentiality with DEA. By permitting access to information which may reveal the identity of the source of that information—after a promise of confidentiality has been given—DEA would breach the promised confidentiality. Ultimately, such breaches would restrict the free flow of information which is vital to a determination of an applicant's qualifications for a grant.

(2) From subsection (e)(1) because in the collection of information for investigative and evaluation purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may appear irrelevant, when combined with other apparently irrelevant information, can on occasion provide a composite picture of an applicant which assists in determining whether a grant of confidentiality is warranted.

(g) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4), (d), (e) (1), (2) and (3), (e)(5), (e)(8) and (g) of 5 U.S.C. 552a. In addition, this system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), and (e)(1):

Freedom of Information/Privacy Act Records (Justice/DEA–006)

(h) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) for the reasons given in paragraphs (b)(1) and (d)(1).

(2) From subsection (c)(4) to the extent that is not applicable because an exemption is being claimed from subsection (d).

(3) From subsection (d) for the reasons given in paragraphs (b)(2), (d)(3), and (f)(1).

(4) From subsection (e)(1) for reasons given in paragraphs (d)(4) and (f)(2).

(5) From subsection (e)(2) for reasons given in paragraph (d)(5).

(6) From subsection (e)(3) for reasons given in paragraph (d)(6).

(7) From subsection (e)(5) for reasons given in paragraph (d)(7).

(8) From subsection (e)(8) for the reasons given in paragraph (d)(8).

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d) pursuant to subsections (j)(2), (k)(1) and (k)(2) of the Privacy Act.

[FR Doc. 94–14012 Filed 6–8–94; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

Hopi Tribe Abandoned Mine Land Reclamation (AMLR) Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Secretary of the Interior concurs with the Hopi Tribe's certification that the Tribe has abated or reclaimed all coal-related abandoned mine land problems under the Hopi Tribe AMLR plan (hereinafter, referred to as the "Hopi Tribe plan"). The Hopi Tribe made the certification in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Hopi Tribe is now authorized to utilize AMLR funds for noncoal reclamation purposes.

EFFECTIVE DATE: June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of SMCRA established an AMLR program for the purposes of reclaiming and restoring lands and waters adversely affected by past mining. The program is funded by a reclamation fee levied on the production of coal. Lands and water eligible for reclamation under Title IV are those that were mined or affected by mining and abandoned or inadequately reclaimed prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, Tribal, or other laws.

Title IV provides for State or Tribal submittal to OSM of an AMLR plan. The Secretary adopted regulations in 30 CFR part 870 through 888 that implement Title IV of SMCRA. Under these regulations, the Secretary reviewed the plans submitted by States and Tribes and solicited and considered comments of State and Federal agencies and the public. Based upon the comments received, the Secretary determined whether a State or Tribe had the ability and necessary legislation to implement provisions of Title IV. After making such a determination, the Secretary decided whether to approve the State or Tribe program. Approval granted the State or Tribe exclusive authority to administer its approved plan.

Ordinarily, under section 405 of SMCRA, a State or Tribe must have an approved surface mining regulatory program prior to submittal of an AMLR plan to OSM. However, on July 11, 1987, the President signed a supplemental appropriations bill (Pub. L. 100–71) that authorized the Crow and Hopi Tribes and the Navajo Nation to adopt AMLR programs without approval of Tribal surface mining regulatory programs.

Upon approval of a State's or Tribe's plan by the Secretary, the State or Tribe may submit to OSM, on an annual basis, an application for funds to be expended by that State or Tribe on specific projects that are necessary to implement the approved plan. Such annual requests are reviewed and approved by

OSM in accordance with the requirements of 30 CFR part 886.

II. Background on the Hopi Tribe Plan

On June 28, 1988, the Secretary of the Interior approved the Hopi Tribe plan as submitted on June 10, 1982, and revised on July 25, 1983, and March and May 1988. General background information on the Hopi Tribe plan, including the Secretary's findings, the disposition of comments, and the approval of the Hopi Tribe plan can be found in the June 28, 1988, **Federal Register** (53 FR 24262). Approval of the Hopi Tribe plan is codified at 30 CFR 756.15.

III. Request for Certification

By letter dated February 2, 1994, the Chairman and Chief Executive Officer of the Hopi Tribe notified the Secretary that the Tribe had satisfied the requirements of SMCRA in regard to abandoned coal mine reclamation and was, therefore, requesting the Secretary's concurrence with certification of completion of all known coal-related problems (administrative record No. HO–135).

OSM announced receipt of the Hopi Tribe's request for the Secretary's concurrence with its certification in the April 14, 1994, **Federal Register** (59 FR 17748), provided an opportunity for a public hearing on the Tribe's certification, and invited public comments concerning any known or suspected unreclaimed lands and water resources on Hopi lands that may have been adversely impacted by coal mining practices prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, Tribal, or other laws (administrative record No. HO–140). Because no one requested a public hearing or meeting, none was held. The public comment period ended on May 16, 1994.

IV. Director's Findings

Since the Secretary's approval of the Hopi Tribe AMLR plan, the Tribe has conducted reclamation to correct or mitigate the problems caused by post coal mining. The Tribe completed this reclamation in the order of priority set forth in section 403(a) of SMCRA. Based upon the Hopi Tribe's February 2, 1994, certification, and the absence of any known unreclaimed coal-related impacts, the Director of OSM, on behalf of the Secretary, concurs with the Hopi Tribe's certification that all coal-related abandoned mine land problems have been abated or reclaimed, and finds that the Hopi Tribe has satisfied the requirements of section 403 of SMCRA. If a coal problem occurs or is identified in the future, the Hopi Tribe would have to seek immediate funding to reclaim the coal-related problem.

Furthermore, the Director finds, pursuant to 30 CFR 884.14(a), that (1) the public was given adequate notice and opportunity to comment; (2) views of other Federal, State, and Tribal agencies were solicited; (3) the Hopi Tribe has the legal authority, policies, and administrative structure necessary to implement the Tribe's AMLR program; (4) the request for the Secretary's concurrence with certification of completion of coal reclamation meets all requirements of OSM's AMLR program provisions; and (5) the certification is in compliance with all applicable State, Federal, and Tribal laws and regulations.

Because the Hopi Tribe has, as discussed above, reclaimed all lands adversely impacted by past coal mining, the Hopi Tribe may submit annual grant requests for AMLR funds to address eligible lands, waters, and facilities impacted by noncoal mining and construction of new facilities in accordance with the provisions of section 411 of SMCRA.

V. Summary and Disposition of Comments

1. Public Comments

In accordance with section 411 of SMCRA and the Federal regulations at 30 CFR 884.15(a) and 884.14(a)(2), the Director solicited public comments and provided an opportunity for a public hearing on the Hopi Tribe's request for the Secretary's concurrence with the Tribe's certification of completion of coal reclamation. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), the Director solicited comments from other Federal, State, and Tribal agencies with an actual or potential interest in the Hopi Tribe's AMLR plan. No agency comments were received.

VI. Director's Decision

Based on the above findings, the Director, on behalf of the Secretary, concurs with the Hopi Tribe's certification, as submitted by the Tribe on February 2, 1994, that all abandoned coal mine-related problems have been abated or reclaimed under its AMLR program in accordance with Title IV of SMCRA. The effect of the Director's concurrence with the Tribe's certification is to allow the Hopi Tribe to use its AMLR funds for noncoal reclamation and construction of public facilities in areas of the Hopi Reservation impacted by coal development, mining, or processing as provided in section 411 of SMCRA.

The Director is codifying this AMLR plan decision at 30 CFR 756.16. This final rule is being made effective immediately to expedite the Indian Tribe AMLR plan amendment process.

VII. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State or Tribal AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed State or Tribal AMLR plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State or Tribal AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Tribal submittal that is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and

certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the Tribe. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

VIII. List of Subjects in 30 CFR Part 756

Indian lands, Abandoned mine land reclamation program.

Dated: June 2, 1994

Russell F. Price,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter E of the Code of Federal Regulations is amended as set forth below:

PART 756—INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAM

1. The authority citation for part 756 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq* and Pub. L. 100–71.

2. Section 756.16 is added to read as follows:

§ 756.16 Approval of Amendments to the Hopi Tribe's Abandoned Mine Land Reclamation Plan.

The Hopi Tribe certification of completion of coal reclamation, as submitted on February 2, 1994, is approved effective June 9, 1994.

[FR Doc. 94–13854 Filed 6–8–94; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

Availability of Department of the Navy Records and Publication of Department of the Navy Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule sets forth amended regulations pertaining to the Department of the Navy's Freedom of Information Act Program. The rule reflects changes in the Secretary of the Navy's procedures.

EFFECTIVE DATE: June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris M. Lama (N09B30P), Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000, Telephone: (703) 614–2004/2817.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR part 701, subparts A, B, C, and D derived from the Secretary of the Navy Instruction 5720.42 series, which implements within the Department of the Navy the provisions of Department of Defense Directives 5400.7 and 5400.7–R series, Department of Defense Freedom of Information Act Program (32 CFR part 286). This rule is being published by the Department of the Navy for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). It has been determined that invitation of public comment on these changes to the Department of the Navy's implementing instruction prior to adoption would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of 32 CFR parts 286 and 701, subpart E. Interested persons, however, are invited to comment in writing on this amendment. All written comments received will be considered in making subsequent amendments or revisions to 32 CFR part 701, subparts A, B, C, and D, or the instruction upon which it is based. Changes may be initiated on the basis of comments received. Written comments should be addressed to Mrs. Doris M. Lama (N09B30P), Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20530–2000. It has been determined that this final rule is not a "major rule" within the criteria specified in section 1(b) of Executive Order 12291 and does not have substantial impact on the public.

List of Subjects in 32 CFR Part 701

Administrative practice and procedure. Freedom of Information. Privacy.

Accordingly, 32 CFR part 701 is amended as follows:

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

1. The authority citation for part 701 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Part 701 is amended by removing "(OP–09B30)" and adding in its place "(N09B30)", and removing "CMC (MI–3)" and adding in its place "CMC (ARAD)", wherever those respective terms appear.

§ 701.3 [Amended]

3. Section 701.3 is amended by removing paragraph (i).

§ 701.5 [Amended]

4. Section 701.5, paragraph (b), is amended by removing "Director, Manpower Management Information Systems Division (HQMC (Code MI))" and adding in its place "Director of Administration and Resource Management (Code AR)".

5. Section 701.5, paragraph (e)(2)(i), is amended by removing "Naval Intelligence Command" and adding in its place "Office of Naval Intelligence", and is further amended by removing "Naval Oceanography Command" and adding in its place "Naval Meteorology and Oceanography Command".

6. Section 701.5, paragraph (e)(2)(iii)(B), is amended by removing "Commander, Naval Investigative Service Command" and adding in its place "Director, Naval Criminal Investigative Service".

7. Section 701.8 is amended by removing paragraph (k); redesignating paragraphs (l) through (p) as (k) through (o), respectively, and revising paragraphs (b) and newly designated (k), to read as follows:

§ 701.8 Records requiring special handling.

* * * * *

(b) *Naval Investigative Service (NIS)/ Naval Criminal Investigative Service (NCIS) reports.* The Director, Naval Criminal Investigative Service, is the release/denial authority for all NIS/ NCIS reports. Accordingly, a request for a NIS/NCIS report shall be promptly readdressed to NCIS and the requester notified of the referral. Direct liaison with NCIS prior to the referral is encouraged.

* * * * *

(k) *Naval Nuclear Propulsion Information (NNPI).* The Director, Naval Nuclear Propulsion Program (N00N/ NAVSEA 08) is the release/denial authority for all information concerning NNPI. Naval activities receiving such requests are responsible for searching their files for responsive records. If no documents are located, the naval activity should respond to the requester and provide N00N with a copy of the request and response. If documents are located, the request, responsive records, and a recommendation regarding release should be promptly readdressed to the

CNO (N00N/NAVSEA 08), who will ensure proper coordination and review.

* * * * *

§ 701.9 [Amended]

8. Section 701.9, paragraph (j)(2), is amended by removing "the Records Disposal Manual" and adding in its place "SECNAVINST 5212.5C (Records Disposal Manual)".

§ 701.10 [Amended]

9. Section 701.10, paragraph (c), is amended by adding after the term "Principal Deputy OGC" the phrase "or Deputy General Counsel (Logistics),".

10. Section 701.10, paragraph (c)(2)(ii)(H), is amended by removing the period at the end of the paragraph and adding in its place "; and".

11. Section 701.10 is amended by adding paragraph (c)(2)(ii)(I) to read as follows:

§ 701.10 FOIA appeals/judicial actions.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(I) Environmental matters.

* * * * *

12. Section 701.10, paragraph (d)(2), is amended by removing "General Counsel, Navy Department, Washington, DC 20360–5110" and adding in its place "General Counsel of the Navy, 2211 Jefferson Davis Highway, Arlington, VA 22244–5103".

13. Section 701.25 is amended by revising paragraphs (b) through (j) and adding paragraphs (k) through (s) to read as follows:

§ 701.25 Exemption (b)(3).

* * * * *

(b) Confidentiality of identity of employee who complains to the IG (5 U.S.C. App., Inspector General Act of 1978, section 7).

(c) Ethics in Government Act of 1978—Protecting Financial Disclosure Reports of Special Government Employees (5 U.S.C. App., Ethics in Government Act of 1978, section 207(a)(1) and (2)).

(d) Civil Service Reform Act—Representation Rights and Duties. Labor Unions, 5 U.S.C. 7114(b)(4).

(e) Authority to Withhold Unclassified Special Nuclear Weapons Information, 10 U.S.C. 128. This statute prohibits the unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material.

(f) Authority to Withhold Unclassified Technical Data with Military or Space Application, 10 U.S.C. 130.

(g) Action on Reports of Selection Boards, 10 U.S.C. 618.

(h) Confidentiality of Medical Quality Records: Qualified Immunity Participants, 10 U.S.C. 1102.

(i) Confidentiality of Financial Records, 12 U.S.C. 3403.

(j) Communication Intelligence, 18 U.S.C. 798.

(k) Confidential Status of Patent Applications, 35 U.S.C. 122.

(l) Secrecy of Certain Inventions and Withholding of Patents (specific applicable section(s) must be involved, 35 U.S.C. 181 through 188.

(m) Confidentiality of Inventions Information, 35 U.S.C. 205.

(n) Procurement Integrity, 41 U.S.C. 423.

(o) Confidentiality of Patient Records, 42 U.S.C. 290dd–2.

(p) Information regarding Atomic Energy: Restricted and Formerly Restricted Data (Atomic Energy Act of 1954), specific applicable exemptions must be invoked (*e.g.*, 42 U.S.C. 2161 through 2168).

(q) Protection of Intelligence Sources and Methods, 50 U.S.C. 403(d)(3).

(r) Protection of identities of US undercover intelligence officers, agents, informants and sources, 50 U.S.C. 421.

(s) Examples of statutes which DO NOT qualify under exemption (b)(3) include: 5 U.S.C. 552a, Privacy Act; 17 U.S.C. 101 *et seq.*, Copyright Act; 18 U.S.C. 793, Gathering, Transmitting or Losing Defense Information to Aid Foreign Governments; 18 U.S.C. 1905, Trade Secrets Act; and 28 U.S.C. 1498, Patent and Copyright Cases.

14. Section 701.31 is amended by revising the second sentence of paragraph (d)(2); the first sentence of paragraph (f); paragraph (g)(1); paragraph (g)(3); the final sentence of paragraph (h)(1); and paragraph (m)(5), to read as follows:

§ 701.31 Addresses for requests for Department of the Navy records.

* * * * *

(d) * * *

(2) * * * If unknown, submit requests for Navy contracts to the Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000, and Marine Corps contracts to the Deputy Chief of Staff for Installations and Logistics, Headquarters U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–0001.

* * * * *

(f) Send requests for Navy hotline complaints and all other investigations and inspections conducted by the NAVINSGEN to the Naval Inspector General, Building 200, room 100, 901 M Street SE., Washington, DC 20374–5006.

* * *

(g) * * *

(1) Send requests for NCIS investigatory records and related matters to the Director, Naval Criminal Investigative Service, Washington Navy Yard, Building 111, 901 M Street SE., Washington, DC 20388–5380.

* * * * *

(3) Send requests for mishap investigative reports to Commander, Naval Safety Center, 375 A Street, Norfolk, VA 23511–4399.

(h) * * * If unknown, submit to the General Counsel of the Navy, 2211 Jefferson Davis Highway, Arlington, VA 22344–5103.

* * * * *

(m) * * *

(5) *Supply.* Send requests for information on naval supply matters to the Commander, Naval Supply Systems Command, 1931 Jefferson Davis Highway, Arlington, VA 22341–5360, and for Marine Corps supply matters to the Commandant of the Marine Corps, HQ USMC, 2 Navy Annex, Washington, DC 20380–0001.

* * * * *

15. Section 701.31, paragraph (i)(5), is amended by removing "Chief, Bureau of Medicine and Surgery, Navy Department, Washington, DC 20372–5120", and adding in its place "Chief, Bureau of Medicine and Surgery, 2300 E Street, NW., Washington, DC 20372–5120".

16. Section 701.31, paragraph (j)(1), is amended by removing "Chief, Bureau of Naval Personnel, Navy Department, Washington, DC 20378–5000" and adding in its place "Chief of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001".

17. Section 701.31, paragraph (k)(1), is amended by removing "Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120–5099" and adding in its place "Aviation Supply Office, Naval Publications and Forms Directorate, Customer Service, Code 1013, 5801 Tabor Avenue, Philadelphia, PA 19120–5099".

18. Section 701.31, paragraph (k)(2), is amended by removing "CNO (OP–09B30), Pentagon, Washington, DC 20350–2000" and adding in its place "CNO (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000".

19. Section 701.31, paragraph (k)(3), is amended by removing "Navy Department, Washington, DC 20380–0001" and adding in its place "HQ USMC, 2 Navy Annex, Washington, DC 20380–0001"

20. Section 701.31, paragraph (k)(4), is amended by removing "Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120–5099" and adding in its place "Defense Printing Service Detachment Office, Customer Service, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111–5094".

21. Section 701.31, paragraph (l), is amended by removing "5000" and adding in its place "5660".

22. Section 701.31, paragraph (m)(1), is amended by removing "Naval Air Systems Command Headquarters, Washington, DC 20361–0001" and adding in its place "1421 Jefferson Davis Highway, Arlington, VA 22243–5120".

23. Section 701.31, paragraph (m)(3), is amended by removing "Naval Sea Systems Command Headquarters, Washington, DC 20362–5101" and adding in its place "2531 Jefferson Davis Highway, Arlington, VA 22242–5160".

24. Section 701.31, paragraph (m)(4), is amended by removing "Washington, DC 20363–5100" and adding in its place "2451 Crystal Drive, Arlington, VA 22245–5200".

25. Section 701.31, paragraph (n), is amended by removing "Director, Naval Historical Center, Ships' Histories Section, Washington Navy Yard, Washington, DC 20374" and adding in its place "Director, Naval Historical Center, Ships' Histories Branch, 901 M Street SE., Washington Navy Yard, Washington, DC 20374–0571".

26. Section 701.31, paragraph (q), is amended by removing "Chief of Naval Operations (Code 09B30), Pentagon, Washington, DC 20350–2000 and Marine Corps matters to Commandant of the Marine Corps, HQMC (Code MI–3), Navy Department, Washington, DC 20380–0001" and adding in its place "Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000, and Marine Corps matters to Commandant of the Marine Corps (Code ARAD); HQ USMC, 2 Navy Annex, Washington, DC 20380–0001".

§ 701.51 [Amended]

27. Section 701.51, paragraph (b), is amended by removing "naval industrially funded (NIF)" and adding in its place "Defense Business Operating Fund (DBOF)".

28. Section 701.51, paragraph (c), is amended by removing "NIF" in the two instances where it appears and adding in its place "DBOF".

Dated: June 3, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–13966 Filed 6–8–94; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG73

Disease Associated With Exposure to Certain Herbicide Agents (Multiple Myeloma and Respiratory Cancers)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning presumptive service connection for certain diseases even though there is no record of the disease during service. This amendment is necessary to implement a decision of the Secretary of Veterans Affairs under the authority granted by the Agent Orange Act of 1991 that there is a positive association between exposure to herbicides used in the Republic of Vietnam during the Vietnam era and the subsequent development of multiple myeloma and respiratory cancers. The intended effect of this amendment is to establish presumptive service connection for those conditions based on herbicide exposure.

EFFECTIVE DATE: This amendment is effective on June 9, 1994, as provided by Public Law 102–4.

FOR FURTHER INFORMATION CONTACT: Donald England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.307(a) and 3.309(e) to establish presumptive service connection for multiple myeloma and respiratory cancers based on exposure to herbicides in the **Federal Register** of February 3, 1994 (59 FR 5161–63). As explained in that notice, these presumptions of service connection, like various others, are rebuttable under 38 U.S.C. 1113 by affirmative evidence to the contrary; evidence establishing an intercurrent, post-service cause of the disease; or evidence establishing that the disease is due to the veteran's own willful misconduct. Interested persons were invited to submit written comments, suggestions or objections concerning the proposal on or before March 7, 1994. We received one comment from the General Counsel and Director of Litigation for the National Veterans Legal Services Project.

The commenter suggested changes not only to the proposed rule concerning multiple myeloma and respiratory cancers published on February 3, 1994, but also to the final rule effective February 3, 1994, that established presumptive service connection for Hodgkin's disease and porphyria cutanea tarda (See 59 FR 5106–07) based on exposure to herbicides, to the final rule published on October 15, 1991, that established service connection for soft-tissue sarcoma (See 56 FR 51651–53) based on exposure to herbicides containing dioxin, and to the final rule published on October 21, 1991, that extended the period during which chloracne must appear following exposure to a herbicide containing dioxin in order to establish service connection (See 56 FR 52473–74).

To the extent that these comments pertain to rulemaking other than the proposed rule concerning multiple myeloma and respiratory cancers published on February 3, 1994, the comments are beyond the scope of the current rulemaking.

The commenter stated that the proposal concerning multiple myeloma and respiratory cancers is in error since it specifies an effective date that is not consistent with the Final Stipulation and Order entered in *Nehmer* v. *United States Veterans Administration*, C.A. No. C–86–6160 (TEH) (N.D. Cal.), and the procedural instructions contained in Circular 21–94–1, Processing of Claims Based on Exposure to Herbicide Agents (February 15, 1994). The commenter suggested that the final rule should specify an effective date for the payment of benefits that conforms with the *Nehmer* stipulation.

VA does not concur. 38 U.S.C. 1116(c)(2), which was added by the Agent Orange Act of 1991, Public Law 102–4, clearly and unambiguously requires that regulations promulgated as a result of a decision of the Secretary of Veterans Affairs that a positive association exists between exposure to herbicides and a specified condition or disease be effective on the date of issuance, i.e., the date the final rule is published in the **Federal Register**. The effective date for this rule conforms to that statutory mandate.

Further, the commenter recognized that the effective date of this regulation and the date of entitlement in an individual claim for benefits are not synonymous. In fact, there is a specific regulatory framework that governs the assignment of the date of entitlement (See 38 CFR 3.400 through 3.404). In addition, the Final Stipulation and Order entered in the *Nehmer* case contains provisions governing effective dates of entitlement applicable to certain groups of claimants. VA is

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bound by these provisions. This notice merely specifies the effective date of the regulatory amendment and does not purport to modify provisions governing effective dates of entitlement contained in regulations or in the *Nehmer* stipulation.

Under the *Nehmer* stipulation, when the Secretary of Veterans Affairs issues regulations under Public Law 102–4 establishing a presumption of service connection for a disease associated with herbicide exposure, VA will review herbicide-exposure claims based on disability or death resulting from that disease which were: (1) Denied under regulations voided by the court in *Nehmer* and never finally decided under a valid regulation, or, (2) filed after the date of the court's decision and before issuance of the new regulations. Where benefits are awarded under such reviews, the effective date of entitlement will be based on the later of the date of receipt of the claim or the date on which disability or death occurred, subject to the provisions of 38 U.S.C. 5110 (b)(1) and (d)(1) allowing earlier effective dates in some cases where claims are filed within one year of service discharge or death. Under the stipulation, the date of entitlement may be based on the date of claim, if otherwise appropriate, without regard to whether the claim was filed prior to September 25, 1985, the effective date of the voided regulations, if the claim was denied under those regulations.

As to the suggestion that the regulation restate the provisions governing effective dates of entitlement found in the *Nehmer* stipulation, that stipulation applies to a specific class of claimants whose claims for benefits based on exposure to dioxin were denied on or after September 25, 1985, or who have claims pending at the time of issuance of regulations under Public Law 102–4. This regulation will apply to a broader class of veterans and dependents, including those whose claims were denied prior to September 25, 1985, and those who file claims in the future. Individuals will continue to have specific rights under the terms of the *Nehmer* stipulation and it is not necessary to include them in a regulation of general applicability. To the extent that class counsel believes that class members are not sufficiently aware of their rights under the stipulation, the stipulation provides class counsel with a means to contact class members concerning their rights.

For those reasons, as well as the fact that the effective date established by this rule is in accordance with 38 U.S.C. 1116(c)(2), VA finds that it is neither necessary nor appropriate to include requirements affecting a specific class of claimants in a rule which is for broader application.

VA appreciates the comment submitted in response to the proposed rule which is now adopted without change.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

These regulations have been reviewed by the Office of Management and Budget under E.O. 12866.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: April 28, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.307, paragraph (a)(6)(ii) is revised to read as follows:

§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

(a) * * *

(6) * * *

(ii) The diseases listed at § 3.309(e) shall have become manifest to a degree of 10 percent or more at any time after service, except that chloracne or other acneform disease consistent with chloracne and porphyria cutanea tarda shall have become manifest to a degree of 10 percent or more within a year, and respiratory cancers within 30 years, after the last date on which the veteran was exposed to an herbicide agent during active military, naval, or air service.

* * * * *

§ 3.309 [Amended]

3. In § 3.309(e) in the listing of diseases, after the words "Hodgkin's disease" and before the words "Non-Hodgkin's lymphoma", add the words "Multiple myeloma"; and after the words "Porphyria cutanea tarda" and before the words "Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)", add the words "Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)".

[FR Doc. 94–14124 Filed 6–7–94; 12:16 pm]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 241

Discontinuance of Post Offices

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The regulations that govern the discontinuance of post offices, which are set forth in the Postal Operations Manual (POM), are hereby also included in the Code of Federal Regulations (CFR), in order to make them more accessible to the public.

EFFECTIVE DATE: June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Kimberly Matalik, (202) 268–3500, or Kevin Coleman, (202) 268–2851.

SUPPLEMENTARY INFORMATION: Formerly the regulations governing the discontinuance of post offices were set forth in part 113 of the Domestic Mail Manual (DMM), a publication incorporated by reference in the Code of Federal Regulations (CFR) under 39 CFR 111.1. The DMM was restructured and revised effective July 1, 1993 (58 FR 34887, June 30, 1993), at which time the discontinuance regulations were published in the Domestic Mail Manual Transition Book (DMMT). On September 20, 1993, these DMMT regulations were revised, reorganized, and moved to the POM. The POM contains official regulations, 39 CFR 221.2(a)(2), but is chiefly designed for use within the Postal Service and is not incorporated by reference in the CFR. In order to ensure the broadest availability of these provisions to the public, the Postal Service has determined also to publish them in the CFR.

The Postal Service therefore amends part 241 of title 39 of the CFR to set forth, without substantive amendment, its post office discontinuance regulations.

List of Subjects in 39 CFR Part 241

Organization and functions (Government agencies), Postal Service.

1. The authority citation for part 241 continues to read as follows:

Authority: 39 U.S.C. 401.

PART 241—ESTABLISHMENT CLASSIFICATION, AND DISCONTINUANCE

2. The part heading for part 241 is revised as set forth above.

3. Part 241 is amended by adding new § 241.3 to read as follows:

§ 241.3 Discontinuance of post offices.

(a) *Introduction*—(1) *Coverage.* This section establishes the rules governing the Postal Service's consideration of whether an existing post office should be discontinued. The rules cover any proposal to replace a post office with a community post office, station or branch, consolidation with another post office, and any proposal to discontinue a post office without providing a replacement facility.

(2) *Legal requirements.* Under 39 U.S.C. 404(b), any decision to close or consolidate a post office must be based on certain criteria. These include the effect on the community served; the effect on employees of the post office; compliance with government policy established by law that the Postal Service must provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining; the economic savings to the Postal Service; and any other factors the Postal Service determines necessary. In addition, certain mandatory procedures apply as follows:

(i) The public must be given 60 days' notice of a proposed action to enable the persons served by a post office to evaluate the proposal and provide comments.

(ii) After public comments are received and taken into account, any final determination to close or consolidate a post office must be made in writing and must include findings covering all the required considerations.

(iii) The written determination must be made available to persons served by the post office at least 60 days before the discontinuance takes effect.

(iv) Within the first 30 days after the written determination is made available, any person regularly served by the affected post office may appeal the decision to the Postal Rate Commission.

(v) The Commission may only affirm the Postal Service determination or return the matter for further consideration but may not modify the determination.

(vi) The Commission is required by 39 U.S.C. 404(b)(5) to make a determination on the appeal no later than 120 days after receiving the appeal.

(vii) The following is a summary table of the notice and appeal periods under the statute for these regulations.

BILLING CODE 7710–12–P

Public Notice of Proposal

60-day comment period

As long as needed for consideration of comments and internal review

Public Notice of Final Decision

30 days for filing any appeal

At least 60-day wait before closing post office

120 days for appeal consideration and decision

BILLING CODE 7710–12–C

(3) *Additional requirements.* This section also includes:

(i) Rules to ensure that the community's identity as a postal address is preserved.

(ii) Rules for consideration of a proposed discontinuance and for its implementation, if approved. These rules are designed to ensure that the reasons leading a district manager, Customer Service and Sales, to propose the discontinuance of a particular post office are fully articulated and disclosed at a stage that enables customer participation to make a helpful contribution toward the final decision.

(b) *Preservation of community address*—(1) *Policy.* The Postal Service permits the use of a community's separate address to the extent practicable.

(2) *ZIP Code assignment.* The ZIP Code for each address formerly served from the discontinued post office should be the ZIP Code of the facility providing replacement service to that address. In some cases, the ZIP Code originally assigned to the discontinued post office may be kept, if the responsible district manager, Customer Service and Sales, submits a request with justification to Address Management, Postal Service Headquarters, before the proposal to discontinue the post office is posted.

(i) In a consolidation, the ZIP Code for the replacement community post office, station, or branch is either (A) the ZIP Code originally assigned to the discontinued post office, or (B) the ZIP Code of the replacement facility's parent post office, whichever provides the most expeditious distribution and delivery of mail addressed to the customers of the replacement facility.

(ii) If the ZIP Code is changed and the parent post office covers several ZIP Codes, the ZIP Code must be that of the delivery area within which the facility is located.

(3) *Post office name in address.* If all the delivery addresses using the name of the post office to be discontinued are assigned the same ZIP Code, customers may continue to use the discontinued post office name in their addresses, instead of the new delivering post office name.

(4) *Name of facility established by consolidation.* If a post office to be discontinued is consolidated with one or more other post offices by establishing in its place a community post office, classified or contract station, or branch affiliated with another post office involved in the consolidation, the replacement unit is given the same name of the discontinued post office.

(5) *List of discontinued post offices.* Publication 65, National Five-Digit ZIP Code and Post Office Directory, lists all post offices discontinued after March 14, 1977, for mailing address purposes only if they are used in addresses. The ZIP Codes listed for discontinued offices are those assigned under this subsection.

(c) *Initial proposal*—(1) *In general.* If a district manager, Customer Service and Sales, believes that the discontinuance of a post office within his or her responsibility may be warranted, the manager:

(i) Must use the standards and procedures in § 241.3 (c) and (d).

(ii) Must investigate the situation.

(iii) May propose the post office be discontinued.

(2) *Consolidation.* The proposed action may include a consolidation of post offices to substitute a community post office or a classified or contract station or branch for the discontinued post office if:

(i) The communities served by two or more post offices are being merged into a single incorporated village, town, or city; or

(ii) A replacement facility is necessary for regular and effective service to the area served by the post office considered for discontinuance.

(3) *Views of postmasters.* Whether the discontinuance under consideration involves a consolidation or not, the district manager, Customer Service and Sales, must discuss the matter with the postmaster (or the officer in charge) of the post office considered for discontinuance, and with the postmaster of any other post office affected by the change. The manager should make sure that these officials submit written comments and suggestions as part of the record when the proposal is reviewed.

(4) *Preparation of written proposal.* The district manager, Customer Service and Sales, must gather and preserve for the record all documentation used to assess the proposed change. If the manager thinks the proposed action is warranted, he or she must prepare a document titled "Proposal to (Close) (Consolidate) the (Name) Post Office." This document must describe, analyze, and justify in sufficient detail to Postal Service management and affected customers the proposed service change. The written proposal must address each of the following matters in separate sections:

(i) *Responsiveness to community postal needs.* It is the policy of the Government, as established by law, that the Postal Service will provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. The proposal should (A) contrast the services available before and after the proposed change; (B) describe how the changes respond to the postal needs of the affected customers; and (C) highlight particular aspects of customer service that might be less advantageous as well as more advantageous.

(ii) *Effect on community.* The proposal must include an analysis of the effect the proposed discontinuance might have on the community served, and discuss the application of the requirements in § 241.3(b).

(iii) *Effect on employees.* The written proposal must summarize the possible effects of the change on the postmaster, supervisors, and other employees of the post office considered for discontinuance. (The district manager, Customer Service and Sales, must suggest measures to comply with personnel regulations related to post office discontinuance and consolidation.)

(iv) *Savings.* The proposal must include an analysis of the economic savings to the Postal Service from the proposed action, including the cost or savings expected from each major factor contributing to the overall estimate.

(v) *Other factors.* The proposal should include an analysis of other factors that the district manager, Customer Service and Sales, determines are necessary for a complete evaluation of the proposed change, whether favorable or unfavorable.

(vi) *Summary.* The proposal must include a summary that explains why the proposed action is necessary, and assesses how the factors supporting the proposed change outweigh any negative factors. In taking competing considerations into account, the need to provide regular and effective service is paramount.

(vii) *Notice.* The proposal must include the following notice: "This Is A Proposal. It Is Not A Final Determination To (Close) (Consolidate) This Post Office."

(A) If a final determination is made to close or consolidate this post office, after public comments on this proposal are received and taken into account, a notice of that final determination must be posted in this post office.

(B) The final determination must contain instructions on how affected customers may appeal that decision to the Postal Rate Commission. Any such appeal must be received by the Commission within 30 days of the posting of the final determination.

(d) *Notice, public comment, and record*—(1) *Posting proposal and comment notice.* A copy of the written proposal and a signed invitation for comments must be posted prominently in each affected post office. The invitation for comments must:

(i) Ask interested persons to provide written comments within 60 days, to a stated address, offering specific opinions and information, favorable or unfavorable, on the potential effect of the proposed change on postal services and the community.

(ii) State that copies of the proposal with attached optional comment forms are available in the affected post offices.

(iii) Provide a name and telephone number to call for information.

(2) *Proposal and comment notice.* The following is a sample format that may be used for the proposal and comment notice.

BILLING CODE 7710-12-P

UNITED STATES POSTAL SERVICE
Proposal to (Close)(Consolidate) the (Name) Post Office and Optional Comment Form

Attached is a proposal that we are considering to attempt to provide your community's postal service more economically and efficiently, while also providing regular and effective service. Please read the proposal carefully and then let us have your comments and suggestions. If you choose, you may use the form provided below. Your comments will be carefully considered and will be made part of a public record. If you use the form provided below and need additional room, please attach additional sheets of paper.
Return the completed form to _____ by _____.

In considering this proposal, if you have any questions you want to ask a postal official, you may call _____ whose telephone number is _____.

I. Effect on Your Postal Services
Please describe any favorable or unfavorable effects that you believe the proposal would have on the regularity or effectiveness of your postal service

_____

_____

_____

_____

II. Effect on Your Community
Please describe any favorable or unfavorable effects that you believe the proposal would have on your community.

_____

_____

_____

_____

III. Other Comments
Please provide any other view or information that you believe the USPS should consider in deciding whether to adopt the proposal.

_____

_____

_____

_____

_____

_____

_____

(Signature of Postal Customer) **(Date)**

_____

(Mailing Address)

_____

(City) **(State)** **(ZIP Code)**

BILLING CODE 7710-12-C

(3) *Other steps.* In addition to providing notice and inviting comment, the district manager, Customer Service and Sales, must take any other steps necessary to ensure that the persons served by the affected post office understand the nature and implications of the proposed action (e.g., meeting with community groups and following up on comments received that seem to be based on incorrect assumptions or information).

(i) If oral contacts develop views or information not previously documented, whether favorable or unfavorable to the proposal, the district manager, Customer Service and Sales, should encourage persons offering the views or information to provide written comments to preserve them for the record.

(ii) As a factor in making his or her decision, the district manager, Customer Service and Sales, may not rely on communications received from anyone unless submitted in writing for the record.

(4) *Record.* The district manager, Customer Service and Sales, must keep as part of the record for his or her consideration and for review by the senior vice president of Customer Service and Sales all the documentation gathered about the proposed change.

(i) The record must include all information that the district manager, Customer Service and Sales, considered, and the decision must stand on the record. No information or views submitted by customers may be excluded.

(ii) The docket number assigned to the proposal must be the ZIP Code of the office proposed for closing or consolidation.

(iii) The record must include a chronological index in which each document contained is identified and numbered as filed.

(iv) As written communications are received in response to the public notice and invitation for comments, they are included in the record.

(v) A complete copy of the record must be available for public inspection during normal office hours at the post office proposed for discontinuance or at the post office providing alternative service, if the office to be discontinued was temporarily suspended, beginning no later than the date on which notice is posted and extending through the comment period.

(vi) Copies of documents in the record (except the proposal and comment form) are provided on request and on payment of fees as noted in the Administrative Support Manual (ASM) § 352.6.

(e) *Consideration of public comments and final local recommendation.*—(1) *Analysis of comments.* After waiting not less than 60 days after notice is posted under § 241.3(d)(1) the district manager, Customer Service and Sales, must prepare an analysis of the public comments received for consideration and inclusion in the record. If possible, comments subsequently received should also be included in the analysis. The analysis should list and briefly describe each point favorable to the proposal and each point unfavorable to the proposal. The analysis should identify to the extent possible how many comments support each point listed.

(2) *Re-evaluation of proposal.* After completing the analysis, the district manager, Customer Service and Sales, must review the proposal and re-evaluate all the tentative conclusions previously made in light of additional customer information and views in the record.

(i) *Discontinuance not warranted.* If the district manager, Customer Service and Sales, decides against the proposed discontinuance, he or she must post, in the post office considered for discontinuance, a notice stating that the proposed closing or consolidation is not warranted.

(ii) *Discontinuance warranted.* If the district manager, Customer Service and Sales, decides that the proposed discontinuance is justified, the appropriate sections of the proposal must be revised, taking into account the comments received from the public. After making necessary revisions, the manager must:

(A) Forward the revised proposal and the entire record to the senior vice president of Customer Service and Sales for final review.

(B) Attach a certificate that all documents in the record are originals or true and correct copies.

(f) *Postal Service decision.*—(1) *In general.* The senior vice president of Customer Service and Sales or a designee must review the proposal of the district manager, Customer Service and Sales. This review and the decision on the proposal must be based on and supported by the record developed by the district manager, Customer Service and Sales. The senior vice president can instruct the district manager to provide more information to supplement the record. Each such instruction and the response must be added to the record. The decision on the proposal of the district manager, which must also be added to the record, may approve or disapprove the proposal, or return it for further action as set forth below.

(2) *Approval.* The senior vice president of Customer Service and Sales or a designee may approve the proposal of the district manager, Customer Service and Sales, with or without further revisions. If approved, the term "Final Determination" is substituted for "Proposal" in the title. A copy of the Final Determination must be provided to the district manager. The Final Determination constitutes the Postal Service determination for the purposes of 39 U.S.C. 404(b). The Final Determination must include the following notices:

(i) *Supporting materials.* "Copies of all materials on which this Final Determination is based are available for public inspection at the (Name) Post Office during normal office hours."

(ii) *Appeal rights.* "This Final Determination to (close) (consolidate) the (name) Post Office may be appealed by any person served by that office to the Postal Rate Commission. Any appeal must be received by the Commission within 30 days of the date this Final Determination was posted. If an appeal is filed, copies of appeal documents prepared by the Postal Rate Commission, or the parties to the appeal, must be made available for public inspection at the (name) Post Office during normal office hours."

(3) *Disapproval.* The senior vice president of Customer Service and Sales or a designee may disapprove the proposal of the district manager, Customer Service and Sales, and return it and the record to the manager with written reasons for disapproval. The manager must post a notice in each affected post office that the proposed closing or consolidation has been determined to be unwarranted.

(4) *Return for further action.* The senior vice president of Customer Service and Sales or a designee may return the proposal of the district manager, Customer Service and Sales, with written instructions to give additional consideration to matters in the record, or to obtain additional information. Such instructions must be placed in the record.

(5) *Public file.* Copies of each Final Determination and each disapproval of a proposal by the senior vice president of Customer Service and Sales, must be placed on file in the Postal Service Headquarters Library.

(g) *Implementation of final determination*—(1) *Notice of final determination to discontinue post office.* The district manager, Customer Service and Sales, must:

(i) Provide notice of the Final Determination by posting a copy prominently in the affected post office

or offices. The date of posting must be noted on the first page of the posted copy as follows:

"Date of posting:"

The district manager, Customer Service and Sales, must notify the senior vice president of Customer Service and Sales in writing of the date of posting.

(ii) Ensure that a copy of the completed record is available for public inspection during normal business hours at each post office where the Final Determination is posted for 30 days from the posting date.

(iii) Provide copies of documents in the record on request and payment of fees as noted in the ASM 352.6.

(2) *Implementation of determinations not appealed.* If no appeal is filed pursuant to 39 U.S.C. 404(b)(5), the official closing date of the office must be published in the Postal Bulletin, effective the first Saturday 90 days after the Final Determination was posted. A district manager, Customer Service and Sales, may request a different date for official discontinuance in the Post Office Change Announcement document submitted to the senior vice president of Customer Service and Sales. However, the post office may not be discontinued sooner than 60 days after the posting of the notice required by § 241.3(g)(1).

(3) *Actions during appeal*—(i) *Implementation of discontinuance.* If an appeal is filed, only the senior vice president of Customer Service and Sales may direct a discontinuance before disposition of the appeal. However, the post office may not be discontinued sooner than 60 days after the posting of notice required by § 241.3(g)(1).

(ii) *Display of appeal documents.* Classification and Customer Service, Postal Service General Counsel, must provide the district manager, Customer Service and Sales, with copies of all pleadings, notices, orders, briefs, and opinions filed in the appeal proceeding.

(A) The district manager must ensure that copies of all these documents are prominently displayed and available for public inspection in the post office to be discontinued. If the operation of that post office has been suspended, the manager must display copies in the affected post offices.

(B) All documents except the Postal Rate Commission's final order and opinion must be displayed until the final order and opinion are issued. The final order and opinion must be displayed for 30 days.

(4) *Actions following appeal decision*—(i) *Determination affirmed.* If the Commission dismisses the appeal or affirms the Postal Service's determination, the official closing date of the office must be published in the Postal Bulletin, effective the first Saturday 90 days after the Commission renders its opinion, if not previously implemented under § 241.3(g)(3)(i). However, the post office may not be discontinued sooner than 60 days after the posting of the notice required under § 241.3(g)(1).

(ii) *Determination returned for further consideration.* If the Commission returns the matter for further consideration, the senior vice president of Customer Service and Sales must direct that either (A) notice be provided under § 241.3(f)(3) that the proposed discontinuance is determined not to be warranted or (B) the matter be returned to an appropriate stage under these regulations for further consideration following such instructions as the senior vice president may provide.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–14057 Filed 6–8–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD23–1–6369; FRL–4893–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Stage II Vapor Recovery at Gasoline Dispensing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This submittal consists of regulations requiring Stage II gasoline vapor recovery in the Baltimore ozone nonattainment area and the Maryland portion of the Washington, DC and Philadelphia ozone nonattainment areas. The intended effect of this action is to approve the addition of Maryland's Stage II vapor recovery regulations into Maryland's ozone SIP. This action is being taken in accordance with the SIP submittal and revision provisions of the Clean Air Act (the Act).

EFFECTIVE DATE: This final rule will become effective on June 10, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 597–9337, at the EPA Regional office listed in the **Addresses** section.

SUPPLEMENTARY INFORMATION: On November 24, 1993 (58 FR 62065), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of the addition of COMAR 26.11.24, Stage II Vapor Recovery at Gasoline Dispensing Facilities, into Maryland's ozone SIP. Maryland formally submitted COMAR 26.11.24 to EPA as a SIP revision on January 18, 1993 to comply with the Stage II vapor recovery requirements of section 182(b)(3) of the Act.

This rulemaking action is approving the addition of COMAR 26.11.24 into the Maryland ozone SIP. COMAR 26.11.24 requires Stage II vapor recovery at existing gasoline dispensing facilities which dispense 10,000 gallons per month (gpm) or more, and at gasoline dispensing facilities which are owned by independent small business marketers (ISBMs) and which dispense 50,000 gpm or more. All new facilities with storage tank capacity greater than 2000 gallons, for which the Maryland Department of the Environment issued or issues a permit to construct after 11/15/90, regardless of ISBM ownership, are covered by this regulation.

Other specific requirements of COMAR 26.11.24 and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving the addition of COMAR 26.11.24, Stage II Vapor Recovery at Gasoline Dispensing Facilities, which Maryland submitted to EPA on January 18, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the

Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to corrections to VOC regulations in the Maryland ozone SIP, must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: May 25, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(107) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(107) Revisions to the Maryland State Implementation Plan submitted on January 18, 1993 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of January 18, 1993 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) The addition of COMAR 26.11.24, Stage II Vapor Recovery at Gasoline Dispensing Facilities, adopted by the Secretary of the Environment on January 18, 1993, effective February 15, 1993.

(ii) Additional material.

(A) Remainder of the January 18, 1993 State submittal pertaining to COMAR 26.11.24, Stage II Vapor Recovery at Gasoline Dispensing Facilities.

[FR Doc. 94–14084 Filed 6–9–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[CA–37–2–6310 FRL–4889–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approvals and limited disapprovals of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on July 26, 1993. This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from gasoline loading operations. Thus, EPA is finalizing a simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This final rule is effective July 11, 1994.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826

FOR FURTHER INFORMATION CONTACT: Susanne Wong, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1152

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1993, in 58 FR 39717, EPA proposed granting limited approval and limited disapproval of the following rules into the California SIP: SMAQMD Rules 448, Gasoline Transfer into Stationary Storage Containers, and 449, Transfer of Gasoline into Vehicle Fuel Tanks. Rules 448 and 449 were adopted by SMAQMD on December 17, 1991. These rules were submitted by the California Air Resources Board (CARB) to EPA on June 19, 1992. These rules were submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the notice of proposed rulemaking (NPR) cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRs. EPA is finalizing the limited approval of these rules in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. Both rules contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. Both rules allow the Control Officer to use "equivalent" test methods for determining compliance. A detailed discussion of the rule provisions and evaluations has been provided in the NPRs and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated February 1, 1993 for Rules 448 and 449).

Response to Public Comments

A 30-day public comment period was provided in 58 FR 39717. EPA received no comment letters on the NPR.

EPA Action

EPA is finalizing a limited approval and a limited disapproval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the section 182(a)(2)(A) CAA requirement because of the rule deficiencies which were discussed in the NPR. Thus, in order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing the limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. As stated in the NPR, upon the effective date of this final rule, the 18 month clock for sanctions and the 24 month FIP clock will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the final rule, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rules covered by this final rule have been adopted by the SMAQMD and are currently in effect in the District. EPA's limited disapproval action in this final rule does not prevent SMAQMD or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). A revision to the SIP processing review tables was approved by the Acting Administrator for Air and Radiation on October 4, 1993 (Michael H. Shapiro's memorandum to Regional Administrators). A future document will inform the general public of these tables. Under the revised tables, this action remains classified as a Table 3 action. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: April 29, 1994.

David Howekamp,

Acting Regional Administrator

Part 52, title 40 of the Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (188)(i)(F) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(188) * * *

(i) * * *

(F) Sacramento Metropolitan Air Quality Management District.

(*1*) Rules 448 and 449 adopted on December 17, 1991.

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[FR Doc. 94–14069 Filed 6–8–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[CO32–1–5417; FRL–4894–5]

Clean Air Act Approval and Promulgation of PM–10 Implementation Plan for Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the EPA is approving the State implementation plan (SIP) submitted by the State of Colorado for the purposes of bringing about the attainment of the National ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The SIP was submitted by the State on May 27, 1993 to satisfy certain Federal requirements for an approvable nonattainment area PM–10 plan for Lamar, Colorado.

EFFECTIVE DATE: This rule will become effective on July 11, 1994.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART-AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

Lamar, Colorado was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act (Act) upon enactment of the Clean Air Act Amendments of 1990.[1] (See 56 FR 56694, November 6, 1991; 40 CFR 81.306 (specifying nonattainment designation for Lamar.)) The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of part D of title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM–10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this final action and the supporting rationale.

Those states containing initial moderate PM–10 nonattainment areas (i.e., those areas designated nonattainment for PM–10 under section 107(d)(4)(B) of the Act) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology–RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions were due at a later date. States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see section 189(a)). Revisions to satisfy these requirements were submitted by the State on January 14, 1993, and EPA will be taking action on these requirements in a separate **Federal Register** document. Such States were also required to submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline. (See section 172(c)(9) of the Act and 57 FR 13543–13544.) The State submitted PM–10 contingency measures for the Lamar PM–10 nonattainment area on December 9, 1993. EPA will take action on these contingency measures in a separate **Federal Register** document.

On April 6, 1994, EPA announced its proposed approval of the Lamar, Colorado PM–10 nonattainment area SIP as meeting those moderate PM–10 nonattainment area requirements due on November 15, 1991 (see 59 FR 16158–16162). In that proposed rulemaking action and related Technical Support Document (TSD), EPA described in detail its interpretations of title I and its rationale for proposing to approve the Lamar moderate nonattainment area PM–10 SIP, taking into consideration the specific factual issues presented. EPA requested public comments on all aspects of the proposed rulemaking pertaining to Lamar (see 59 FR 16162). No comments were received on the proposed rulemaking.

This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). On May 27, 1993, the Governor of Colorado submitted revisions to the SIP which were intended to satisfy those moderate PM–10 nonattainment area SIP requirements due for Lamar on November 15, 1991. As described in EPA's notice of proposed approval of this SIP submittal, the Lamar moderate PM–10 nonattainment area plan includes, among other things: (1) A comprehensive and accurate emissions inventory; (2) reliance on existing Federal control measures that satisfy the RACM requirement; (3) a demonstration (including air quality modeling) that attainment of the PM–10 NAAQS will be achieved in Lamar by December 31, 1994 and maintained through December 31, 1997; (4) an explanation that the implementation of available control measures are not reasonably required for attainment and maintenance of the PM–10 NAAQS in Lamar, thus satisfying the November 15, 1994 quantitative milestone and RFP requirements; and (5) enforceability documentation. In that document, EPA also proposed to determine that major sources of precursors of PM–10 do not contribute significantly to PM–10 levels in excess of the NAAQS in Lamar. Please refer to EPA's April 6, 1994 notice of proposed rulemaking (59 FR 16158–16162) and the TSD for that action for a more detailed discussion of these elements of the Lamar plan.

EPA finds that the State of Colorado's PM–10 SIP for the Lamar moderate PM–10 nonattainment area meets the RACM, including RACT, requirement. Wind erosion from agricultural lands was identified as the principal contributor to the PM–10 nonattainment problem in Lamar and, therefore, was targeted for control in the SIP. The State chose to rely on the soil conservation measures of the Federal Food Security Act (FSA) to control emissions from agricultural land wind erosion. While the State is relying on these provisions to reduce PM–10 emissions from wind erosion in the Lamar area, the State did not adopt these measures into the SIP because these measures are federally-mandated and will be implemented by the U.S. Department of Agriculture. Further, no credit was taken for these measures because of the difficulty in estimating the effectiveness of these measures and because no credit was needed to demonstrate attainment or maintenance of the PM–10 NAAQS in Lamar. Nevertheless, EPA does believe that the provisions of the FSA will have a

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401 *et seq.*

significant impact on the emissions from wind erosion from agricultural land in the Lamar area. It does not appear that applying further control measures to these or other sources would expedite attainment. Thus, EPA believes the Lamar PM–10 moderate nonattainment area plan has adequately satisfied the RACM (including RACT) requirement.

A more detailed discussion of the individual source contributions, their associated control measures (including available control technology) and an explanation of why certain available control measures were not implemented, can be found in the TSD accompanying EPA's proposed approval of the Lamar moderate PM–10 nonattainment area SIP.

The Lamar PM–10 nonattainment area plan adequately demonstrates that the Lamar area will attain the PM–10 NAAQS by December 31, 1994 and maintain the PM–10 NAAQS through December 31. 1997. Thus, EPA believes the State has met all of the moderate PM–10 nonattainment area requirements for the Lamar moderate PM–10 nonattainment area which were due to EPA on November 15, 1991 and submitted by the State on May 27, 1993. By this action, EPA is approving the Lamar PM–10 moderate nonattainment area plan.

In this document, EPA is also announcing its determination that major stationary sources of precursors of PM–10 do not contribute significantly to PM–10 levels in excess of the NAAQS in Lamar.[2]

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for a revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Final Action

This document makes final the action proposed on April 6, 1994 [59 FR 16158). As noted elsewhere in this final action, EPA received no public comments on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 2 to Table 3 under the processing procedures established at 54 FR 2214, January 19, 1989.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. The OMB has exempted this regulatory action from Executive Order 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be file, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: June 1, 1994.

Nola Y. Cooke,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart G—Colorado

2. Section 52.332 is amended by adding paragraph (c) to read as follows:

§ 52.332 Moderate PM–10 nonattainment area plans.

* * * * *

(c) On May 27, 1993, the Governor of Colorado submitted the moderate PM–10 nonattainment area plan for the Lamar area. The submittal was made to satisfy those moderate PM–10 nonattainment area SIP requirements which were due for Lamar on November 15, 1991.

[FR Doc. 94–14015 Filed 6–8–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 271

[FRL–4894–6]

New Mexico: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of New Mexico has applied for final authorization of revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), and the Environmental Protection Agency (EPA) has reviewed New Mexico's application and decided that its hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve New Mexico's hazardous waste program revision subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. New Mexico's application for the program revision is available for public review and comment.

DATES: This final authorization for New Mexico shall be effective August 23, 1994, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on New Mexico's program revision application must be received by the close of business July 25, 1994.

ADDRESSES: Copies of the New Mexico program revision application and the materials which EPA used in evaluating the revision are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: New Mexico Environment Department, 1190 St. Francis Drive, Sante Fe, New Mexico 87502 and USEPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain

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[2] The consequences of this finding are to exclude these sources from the applicability of PM–10 nonattainment area control requirements. Note that EPA's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area.

Place, 1445 Ross Avenue, Dallas, Texas 65202, phone (214) 655–6444. Written comments, referring to Docket Number NM–94–1, should be sent to Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, USEPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 AR–NM Authorization Coordinator, Grants and Authorization Section (6H–HS), RCRA Programs Branch, USEPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655–8533.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or the "Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268, and 270.

B. New Mexico

New Mexico received final authorization January 25, 1985 (see 50 FR 1515), to implement its base hazardous waste management program. New Mexico received authorization for revisions to its program on April 10, 1990 (see 55 FR 4604), July 25, 1990 (see 55 FR 28397), and December 4, 1992 (see 57 FR 45717). The authorized New Mexico RCRA program was incorporated by reference into the Code of Federal Regulations (CFR), effective December 13, 1993 (see 58 FR 52677). New Mexico submitted a final complete program revision application for additional program approvals. Today, New Mexico is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA reviewed New Mexico's application, and made an immediate final decision that New Mexico's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to New Mexico. The public may submit written comments on EPA's final decision until July 25, 1994. Copies of New Mexico's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of New Mexico's program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this document is received by the end of the comment period. If an adverse written comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a document containing a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

New Mexico's program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR parts 124, 260–262, 264, 265, 266 and 270 that were published in the **Federal Register** through December 4, 1992. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements.

Federal citation	State analog
1. Petroleum Refinery Primary and Secondary Oil/Water/Solids separation Sludge Listings (F037 and F038), November 2, 1990 (55 FR 46354–46397), as amended on December 17, 1990 (55 FR 51707). (Checklists 81 and 81.1).	New Mexico Statutes Annotated (NMSA) 1978, Sections 74–4–4A(1) and 74–4–4E (Replacement Pamphlet 1993); New Mexico Hazardous Waste Management Regulations (HWMR), HWMR–7; Part II, Section 201, as amended November 20, 1992.
2. Wood Preserving Listings, (55 FR 50450–50490), December 6, 1990. (Checklist 82).	NMSA 1978, Sections 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART I, PART II, PART III, PART V, PART VI and PART IX, Sections 101, 102, 201, 301, 501 & 502(A) 601, 602(A)(B), 901, and 902, as amended November 20, 1992.
3. Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendments, (56 FR 3864–3928), January 31, 1991. (Checklist 83).	NMSA 1978, Sections 74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7 PART I, PART II, PART V, and PART VI, and PART VII, Sections 101, 102, 201, 501, 502, 601, 602, and 701, as amended November 20, 1992.
4. Burning of Hazardous Waste in Boilers and Industrial Furnaces, February 21, 1991 (56 FR 7134–7240). (Checklist 85).	NMSA 1978, Sections 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART I, PART II, PART V, PART VI, and PART VII. Sections 101, 102, 201, 501, 502, 601, 602 and 701, as amended November 20, 1992.
5. Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment, (56 FR 7567–7568), February 25, 1991. (Checklist 86).	NMSA 1978, Sections 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7; PART II, Section 201, as amended November 20, 1992.
6. Organic Air Emission Standards for process Vents and Equipment Leaks; Technical Amendment, April 26, 1991 (56 FR 19290). (Checklist 87).	NMSA 1978, Section 74–4–4A and 74–4–4E (Repl. Pamp. 1993); HWMR–7 PART II, PART V, PART VI and PART IX. Sections 201, 501, 502, 601, 602, and 901, as amended November 20, 1992.
7. Administrative Stay for K069 Listing, May 1, 1991 (56 FR 19951). (Checklist 88).	NMSA 1978, Sections 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993), HWMR–7 PART II, Section 201, as amended November 20, 1992.
8. Mining Waste Exclusion III, June 13, 1991 (56 FR 27300). (Checklist 90).	NMSA 1978, Sections 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7 PART II, Section 201, as amended November 20, 1992.
9. Wood Preserving Listings, June 13, 1991 (56 FR 27332). (Checklist 91).	NMSA 1978, Sections 74–4–4A(1) and 74–4–4E (Repl. Pamp. 1993); HWMR–7 PART II Section 201, as amended November 20, 1992.

New Mexico is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that New Mexico's application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, New Mexico is granted

final authorization to operate its hazardous waste program as revised. New Mexico now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. New Mexico also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

EPA uses 40 CFR part 272 for codification of the decision to authorize New Mexico's program and for incorporation by reference of those provisions of New Mexico's Statutes and regulations that EPA will enforce under sections 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR part 272, subpart GG until a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New Mexico's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 11, 1994.

Allyn M. Davis,

Acting Regional Administrator.

[FR Doc. 94–13960 Filed 6–8–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 931249–3349; I.D. 052794B]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces the end of the "regular" season for sablefish taken with nontrawl gear by vessels with limited entry permits, a 72-hour closure, and reimposition of a daily trip limit of 250 lbs (113 kg) north of 36°00′ N. lat. and 350 lbs (159 kg) south of 36°00′ N. lat. off Washington, Oregon and California. This action is authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP). The daily trip limits are necessary to keep landings within the nontrawl harvest guideline for sablefish.

DATES: Effective from 0001 hours (local time) June 4, 1994, through December 31, 1994. Comments must be received by June 24, 1994.

ADDRESSES: Submit comments to J. Gary Smith, Acting Regional Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN–C15700, Seattle, WA 98115–0070; or Rodney McInnis, Acting Regional Director, Southwest Region, NMFS, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION: The notice of 1994 groundfish fishery specifications and management measures (59 FR 685, January 6, 1994) announced that, in the 1994 limited entry fishery, a daily trip limit of 250 lbs (113 kg) north of 36°00′ N. lat. and 350 lbs (159 kg) south of 36°00′ N. lat. for the nontrawl sablefish fishery would apply until the first 72-hour closure before the start of the regular season, and again, after a second 72-hour closure after the end of the regular season. The daily trip limits are reimposed on the date necessary to extend the nontrawl allocation for sablefish to the end of the year. During the regular season, the only trip limit in effect applies to sablefish smaller than 22 inches (55.9 cm) (total length). The 72-hour closure is authorized at 50 CFR 663.23(b)(2), which also sets a flexible starting date for the regular season (58 FR 16629, March 30, 1993).

The regular season began on May 15, 1994 (59 FR 685, January 6, 1994). The best available data on May 26, 1994, indicate that 1,107 mt of sablefish had been harvested through May 24, 1994, with landings averaging 120 mt per day during the regular season. At that rate, the nontrawl allocation will be reached by June 4, 1994, if landings are not further curtailed. For these reasons, NMFS is closing the limited entry fishery for sablefish caught with nontrawl gear at 0001 hours (local time) June 4, 1994 (the end of the regular season), and reimposing 72 hours later, the 250-lb (113 kg) daily trip limit north of 36°00′ N. lat. and the 350-lb (159 kg) daily trip limit south of 36°00′ N. lat. on June 7, 1994. This action is intended to leave less than 100 mt to be harvested under the daily trip limits for the rest of the year. The 72-hour closure and these fishing restrictions apply only to vessels operating in the limited entry fishery off Washington, Oregon, and California.

Secretarial Action

NMFS hereby announces the following actions pursuant to 50 CFR 663.23(b)(2)(iii):

(1) From 0001 hours (local time) June 4, 1994, through 2400 hours (local time) June 6, 1994, the taking and retention, possession, or landing of sablefish taken with nontrawl gear by a vessel operating in the limited entry fishery is prohibited.

(2) Beginning at 0001 hours (local time) June 7, 1994, the daily trip limit for sablefish caught with nontrawl gear by a vessel in the limited entry fishery is 250 lbs (113 kg) north of 36°00′ N. lat., and 350 lbs (159 kg) south of 36°00′ N. lat., through December 31, 1994. These trip limits apply to sablefish of any size.

(3) These restrictions apply to all sablefish caught with nontrawl gear by vessels operating in the limited entry fishery between 3 and 200 nautical miles (nm) offshore of Washington, Oregon, and California. The sablefish trip limits for "open access" gear are not changed. All sablefish caught with nontrawl gear and possessed 0–200 nm offshore, or landed in Washington, Oregon, or California, are presumed to have been taken and retained from the fishery management area (3–200 nm offshore Washington, Oregon, and

California) unless otherwise demonstrated by the person in possession of those fish.

The determination to reimpose the daily limits for the limited entry nontrawl sablefish fishery is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours.

Classification

Because any delay in the implementation of this action could result in exceeding the nontrawl sablefish fishery allocation, NMFS therefore finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness requirement of the Administrative Procedure Act.

This action is taken under the authority of 50 CFR 663.23 (b) and (c), is exempt from OMB review under E.O. 12866, and is in compliance with the Regulatory Flexibility Act.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, and Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 3, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–13969 Filed 6–3–94; 4:31 pm]

BILLING CODE 3510–22–P

50 CFR Part 675

[Docket No. 931100–4043; I.D. 052794E]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Recision of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for Greenland turbot in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the 1994 total allowable catch (TAC) for Greenland turbot in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 6, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The directed fishery for Greenland turbot in the AI was prohibited on May 4, 1994, under § 675.20(a)(8), (59 FR 22762, May 3, 1994) to prevent exceeding the Greenland turbot TAC in that subarea.

The Director, Alaska Region, NMFS, has determined that 517 metric tons remain in the directed fishing allowance for Greenland turbot in this area as of May 14, 1994. Therefore, NMFS is rescinding the May 4, 1994, closure and is reopening directed fishing for Greenland turbot in the AI effective from 12 noon, A.l.t., June 6, 1994, until 12 midnight, A.l.t., December 31, 1994.

Other closures remain in full force and effect, including the closure to directed fishing for aggregate species in the Greenland turbot/arrowtooth flounder/sablefish trawl fishery category by vessels using trawl gear in the BSAI (59 FR 27246, May 26, 1994).

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 6, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–14083 Filed 6–6–94; 2:52 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 110
Thursday, June 9, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1320

Controlling Paperwork Burden on the Public, Delegation of Review and Approval Authority to the Managing Director of the Federal Communications Commission (FCC)

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking seeks comments on the proposal to delegate to the Managing Director of the Federal Communications Commission (Commission) the authority, under the Paperwork Reduction Act of 1980, as amended (the Act), and 5 CFR 1320.9, to reauthorize information collection requests, information collection requirements, and collections of information in current rules conducted or sponsored by the Commission. This delegation applies to collections of information that have been initially approved by the Office of Management and Budget (OMB) and have an annual total public burden that is 5,000 hours or less and an estimated burden per respondent of less than 500 hours. In exercising this delegated authority, the Commission is to afford the public an opportunity to participate in the reauthorization review process. Commission-reauthorized collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A report of delegated approval for each information collection reauthorized by the Commission will be placed in OMB's public docket files when that approval is made. Under the Act, OMB may limit, condition, or rescind this delegation at any time, but it is intended that OMB will exercise this authority only rarely and in unusual circumstances.

DATES: Comments need to be received on or before August 8, 1994.

ADDRESSES: Comments may be mailed to Timothy R. Fain, Policy Analyst, Office of Information and Regulatory Affairs, Room 3221 New Executive Office Building, 725 17th Street N.W., Washington DC 20503.

Written comments will be available for inspection in the Docket Library, Room 3201 of the above address, between 9:00 am and 5:00 pm, Monday through Friday. Call (202) 395–6880 for an appointment.

FOR FURTHER INFORMATION CONTACT: Timothy R. Fain, (202) 395–7231.

SUPPLEMENTARY INFORMATION: Section 3507(e) of the Paperwork Reduction Act of 1980 and 5 CFR 1320.9 authorize OMB to delegate its authority to approve collections of information to an agency's designated senior official for paperwork reduction or to the agency head if certain conditions are met. The Act and OMB's implementing regulations require OMB to comply with the notice and comment procedures of title 5, United States Code, chapter 5, before providing delegation to any agency. OMB has preliminarily determined that the FCC meets all of the requirements for delegation of the authority requested. Accordingly, OMB is seeking public comment on this proposal.

The delegation would be granted to the Commission's Managing Director who, as the Commission's designated senior official, will have the authority to reauthorize the Commission's extension of collections of information, subject to the Paperwork Reduction Act. OMB approval will still be required for new, revised, and expired information collections or those collections that represent more than a total annual burden of 5,000 hours or an individual respondent's burden of greater than 500 hours.

Under the terms of the delegation, each quarter, the agency clearance officer will identify the information collections that will need to be reauthorized during the next quarter and notify the appropriate functional Bureau and Office (B/O) of the Commission. Sponsoring B/Os will analyze each of these collections and consider: the continued need for the information, including the need for individual report items; how the Commission has used this information in the past; the reporting frequency; and selection of the reporting instrument. The review will cover clarity of format and instructions, reporting deadlines, costs and burdens, any public comments the Commission received during the previous clearance period, and other relevant items. For those eligible collections that the B/Os choose to extend, the reauthorization process would be initiated by B/O preparation of a "request for extension of an information collection." This request, and the accompanying supporting statement, will be submitted to the agency clearance officer in the Office of the Managing Director. After screening by the agency clearance officer, a **Federal Register** notice and a **FCC Public Notice** will be issued requesting public comment during a 30-day review period beginning on the date of publication of the notice. Public comments will be evaluated and, where appropriate, incorporated into the collection. The agency clearance officer will provide written responses to all public comments. The Managing Director will not reauthorize collections with substantive changes. Finally, when appropriate, the Managing Director will reauthorize the collection for use and submit a report of delegated approval to OMB.

This entire process will occur under the general direction of the Managing Director in his capacity as the Commission's designated senior official for Paperwork Reduction. The Commission's clearance process will be under the day-to-day supervision and management of the agency clearance officer who reports to the Managing Director and is outside and independent of any program office that would originate requests to extend information collections. The agency clearance officer would maintain administrative control throughout the review process regardless of how or where the request for extension originates. Each B/O will designate staff to act as liaison with the review structure described above and to help ensure their organization's adherence to the paperwork clearance standards and procedures. The agency clearance officer will ensure public access to the Commission's information collection files in compliance with approved retention and disposition schedules. Over the longer term, the agency clearance officer will work towards making summary information available electronically.

OMB believes that this review and reauthorization process meets the requirements for a delegation of OMB's Paperwork Reduction Act approval authority. These requirements and the reasons why OMB believes that the Commission fully meets them follow.

(1) The agency review process must exhibit independence from program office responsibility.

Virtually all of these collections are contained in regulatory requirements. The Commissioners generally establish overall policies with the functional B/Os responsible for the decisions to initiate or sponsor a collection of information. The Commission's Managing Director serves as the senior official for management and administrative matters and is independent of and separate from the functional B/Os. The Managing Director will serve as the final approval authority on all FCC decisions to reauthorize information collections. The agency clearance officer in the Office of the Managing Director will review each information collection to determine if the original purpose and intent of the collection warrants its continued existence. This review will also assess whether the collection remains necessary for the Commission to perform its duties and responsibilities as identified in the Communications Act of 1934, as amended, and the relevant parts of the Code of Federal Regulations.

(2) The agency must have sufficient resources to carry out paperwork responsibilities.

OMB believes that the Managing Director has demonstrated a commitment to conduct reviews of information collections that include the use of resources and personnel from all areas within the Commission. Each functional B/O having programmatic responsibilities will provide staff resources to prepare the analytical materials described above. The agency clearance officer in the Office of the Managing Director will then conduct the reviews identified above. To ensure that the agency clearance officer can perform an adequate review of each information collection, the records management division in the Office of the Managing Director has been assigned a staff of two senior analysts. These individuals, under the direct supervision of the agency clearance officer, each have extensive experience in addressing issues related to the Paperwork Reduction Act and information collections. Finally, the resources of the Office of General Counsel will be available if additional assistance is needed to evaluate the necessity of information collection in its current form. The Managing Director of the FCC has requested a delegation to review and reauthorize collections of information that represent a narrow scope of the Commission's collections. We believe that the limited number and complexity of these collections will not overburden the ability of the agency clearance officer to perform these reviews.

(3) The agency review process must evaluate fairly whether the proposed collections of information should be approved.

OMB believes that the Commission has developed a process that ensures that the Office of the Managing Director can fairly evaluate and reauthorize collections of information. The Office of the Managing Director has assembled an experienced staff under the direction of a paperwork clearance officer who is independent from the program B/Os. Additionally, the Managing Director has proposed a process for reauthorizing extensions to approved information collections that will: maintain public participation; allow OMB the opportunity to consult during the review process; ensure prompt notification of OMB concerning decisions made about individual information collections and any public comments received during this process; and provide OMB with information necessary to maintain its inventory of approved collections. Under the proposed delegation, the Commission would continue to request OMB approval for new, expired, or revised information collections.

The Commission recognizes that OMB can and will continue to have a consultative role in the approval process. The Commission will work closely with OMB should an assessment of the existing information collection indicate that a modification would benefit the Commission or the public.

(4) Evidence of successful performance of paperwork review activities.

Despite a dynamic regulatory environment that has resulted in the creation of numerous new information collection requirements, the Commission has been actively working to reduce its overall paperwork burden. The FCC has been working closely with the public to improve its ability to collect and evaluate information, particularly in the use of information technology to reduce or minimize the reporting burden of its information collections. Recent FCC innovations include: a) use of "800" telephone lines to provide direct access to program experts who provide advice on completing the collection; b) providing forms that can be faxed by the respondents directly to the program office for FCC advice or action; and c) allowing submission of certain financial information in electronic format. The FCC is aggressively pursuing other applications of information technology to reduce the burden placed on the public.

In May 1990, the FCC erred in implementing the Paperwork Reduction Act when rules prescribing an information collection entitled "Authorization to Construct a Cellular Telephone System" were found to have been ambiguous concerning submission of certain documents required to be filed in support of an application. The Commission concurred with OMB's finding concerning this ambiguity and reopened the proceeding involving this collection. Since then, the Commission has upgraded the training of both the program B/Os and the Office of the Managing Director, and the Commission has been conscientious in managing its information collections.

Summary

Based on these facts, OMB proposes to grant the Managing Director of the FCC a delegation to reauthorize its approved information collections subject to three exclusions.

The first exclusion would apply to changes to an existing collection. Any change, revision, or modification, other than non-substantive clarifications or corrections of spelling or grammatical errors, would cause a collection of information to be submitted to OMB for review and approval.

The second exclusion would apply to new collections of information or reauthorization of collections for which approval has lapsed. New or lapsed collections of information would continue to be submitted to OMB for review and approval.

The third exclusion would apply to the reauthorization of information collections employing statistical methods. Because OMB believes that the agency clearance officer lacks the resources required to effectively evaluate such collections, these collections would continue to be submitted to OMB for review and approval. Voluntary customer surveys will be treated under streamlined procedures established by OMB Memorandum M–93–14 dated September 29, 1993.

The Commission will continue to follow OMB rules with respect to information collections excluded from this delegation. The Commission may also, at its option, request OMB to conduct any delegated review.

The Commission's final action on the reauthorization of a collection of information would be taken after the public has a reasonable opportunity to comment through notice in the **Federal Register** and **FCC Public Notice**. The comment period will extend for at least 30 days following publication of the notice in the **Federal Register**. These notices will advise the public that a copy of comments may also be submitted to the OMB/Office of Information and Regulatory Affairs (OIRA) desk officer for the Commission.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

List of Subjects in 5 CFR Part 1320

Reporting and recordkeeping requirements, paperwork, collection of information, delegated review authority.

For the reasons set forth in the preamble, OMB proposes to amend 5 CFR part 1320 as follows:

PART 1320—CONTROLLING PAPERWORK BURDENS ON THE PUBLIC

1. The authority citation for part 1320 is revised to read as follows and the authority citation at the end of appendix A is removed:

Authority: 31 U.S.C. 18a and 1111 and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35.

2. Appendix A to part 1320 is amended by adding a new entry at the end of the appendix to read as follows:

Appendix A to Part 1320—Agencies With Delegated Review and Approval Authority

* * * * *

2. The Managing Director of the Federal Communications Commission

(a) Authority to review and approve currently valid (OMB-approved) collections of information, including collections of information contained in existing rules, that have a total annual burden of 5,000 hours or less and a burden of less than 500 hours per respondent is delegated to the Managing Director of the Federal Communications Commission.

(1) This delegation does not include review and approval authority over any new collection of information, any collections whose approval has lapsed, any substantive or material modification to existing collections, any reauthorization of information collections employing statistical methods, or any information collections that exceed a total annual burden of 5,000 hours or an estimated burden of 500 hours per respondent.

(2) The Managing Director may ask that OMB review and approve collections of information covered by the delegation.

(3) In exercising delegated authority the Managing Director will:

(i) Provide the public, to the extent possible and appropriate, with reasonable opportunity to comment on collections of information under review prior to taking final action on reauthorizing an existing collection. Reasonable opportunity for public comment will include publishing a notice in the **Federal Register** and a **FCC Public Notice** informing the public that a collection of information is being extended and announcing the beginning of a 30-day comment period, notifying the public of the "intent to extend an information collection," and providing the public with the opportunity to comment. Such notices shall advise the public that they may also send a copy of their comments to the OMB/Office of Information and Regulatory Affairs desk officer for the Commission.

(A) Should the Managing Director determine that a collection of information that falls within the scope of this delegation must be reauthorized quickly and that public participation in the reauthorization process interferes with the Commission's ability to perform its statutory obligation, the Managing Director may temporarily reauthorize the extension of an information collection, for a period not to exceed 90 days, without providing opportunity for public comment.

(B) At the earliest practical date after granting this temporary extension to an information collection, the Managing Director will conduct a normal delegated review and publish a **Federal Register Notice** soliciting public comment on its intention to extend the collection of information for a period not to exceed 3 years.

(ii) Assure that approved collections of information are reviewed not less frequently than once every 3 years and that such reviews are conducted before the expiration date of the prior approval. When the review is not completed prior to the expiration date, the Managing Director will submit the lapsed information collection to OMB for review and reauthorization.

(iii) Assure that each reauthorized collection of information displays an OMB control number and, except for those contained in regulations or specifically designated by OMB, displays the expiration date of the approval.

(iv) Transmit to OMB for incorporation into OMB's public docket files, a report of delegated approval certifying that the Managing Director has reauthorized each collection of information in accordance with the provisions of this delegation. Such transmittal shall be made no later than 15 days after the Managing Director has taken final action reauthorizing the extension of an information collection.

(b) OMB will:

(1) Provide notice to the Commission acknowledging receipt of the report of delegated approval and its incorporation into OMB's public docket files and inventory of currently approved collections of information.

(2) Act upon any request by the Commission to review a collection of information referred by the Commission in accordance with the provisions of section 2(a)(2) of this Appendix.

(3) Periodically assess, at its discretion, the Commission's paperwork review process as administered under the delegation. The Managing Director will cooperate in carrying out such an assessment. The Managing Director will respond to any recommendations resulting from such a review and, if it finds the recommendations to be appropriate, will either accept the recommendation or propose an alternative approach to achieve the intended purpose.

(c) This delegation may, as provided by 5 CFR 1320.9(c), be limited, conditioned, or rescinded, in whole or in part at any time. OMB will exercise this authority only in unusual circumstances.

[FR Doc. 94–13895 Filed 6–8–94; 8:45 am]

BILLING CODE 3110–01–F

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 26

[Docket No. 94–11]

RIN 1557–AB39

Management Interlocks Small Market Share Exemption

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to amend its regulations that implement the Depository Institution Management Interlocks Act (Interlocks Act or Act) as part of a joint initiative by the Federal depository institution regulatory agencies. The Interlocks Act generally prohibits certain management official interlocks between unaffiliated depository institutions, depository holding companies, and their affiliates. The proposed amendment creates limited exemptions to the prohibition on management official interlocks between certain depository organizations located in the same community or relevant metropolitan statistical area. These exemptions would permit management official interlocks between depository organizations that together control only a small percentage of the total deposits in the community or relevant metropolitan statistical area. The exemptions are based on the OCC's belief that management interlocks between certain depository organizations do not threaten to inhibit or restrict competition within a particular market and that the present restrictions are not necessary, and may actually impede healthy competition.

DATES: Written comments must be received on or before August 8, 1994.

ADDRESSES: Comments may be mailed to the Communications Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219, attention: Docket No. 94–11. Comments will be available for public inspection and photocopying at the same location on business days between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: William W. Templeton, Senior Attorney, Legislative, Regulatory and International Activities Division (202/874–5090); Sue Auerbach, Senior Attorney, Corporate Organization and Resolution Division (202/874–5300); Sheila Ogilvie, Licensing and Policy Systems, Bank Organization and Structure (202/874–5060); or Emily McNaughton, Office of the Chief National Bank Examiner (202/874–5170).

SUPPLEMENTARY INFORMATION:

I. Background

The general purpose of the Interlocks Act (12 U.S.C. 3201 *et seq.*) is to foster competition among depository institutions, depository holding companies, and their affiliates by prohibiting certain management interlocks that may contribute to anticompetitive practices. The primary concern is that interlocking management may enable certain depository institutions to control the flow and availability of credit in the markets in which they operate.

The Interlocks Act prohibits, among other things, a management official of a depository organization [1] from serving as a management official of an unaffiliated depository organization if an office of one of the depository organizations (or any depository institution affiliate thereof) is located in the same community [2] or metropolitan statistical area [3] as an office of the other depository organization (or any depository institution affiliate thereof). The RMSA restriction, however, does not apply in the case of depository institutions with assets of less than $20 million. Section 203 of the Interlocks Act (12 U.S.C. 3202). Congress included RMSAs as appropriate regions within which to restrict management interlocks because RMSAs are "economic trade areas and reflect the area in which financial institutions compete." S. Rep. No. 323, 95th Cong., 1st Sess. 14 (1977).[4]

In the Interlocks Act, Congress authorized the Federal depository institutions regulatory agencies (the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision, the National Credit Union Administration, and the OCC, hereinafter the "Agencies") to implement rules and regulations to carry out the Act, including rules or regulations that permit service by a management official that would otherwise be prohibited by the Act. Section 209 of the Interlocks Act (12 U.S.C. 3207). The legislative history of the Act indicates that the Agencies may exercise this rulemaking authority to exempt management official interlocks that otherwise might be prohibited by the statute if they establish that the exemption has a pro-competitive effect. H.R. Rep. No. 1383, 95th Cong., 2d Sess. 15 (1978).

Pursuant to this rulemaking authority, the Agencies have previously established exemptions for institutions located in low- and moderate-income areas, minority and womens'organizations, newly-chartered institutions, and institutions facing conditions endangering their safety and soundness. See, *e.g.*, 12 CFR 26.4(b). These exemptions are available on a temporary basis upon a demonstration that the exempted management official interlock is necessary to provide management or operating expertise to the requesting institution.

The OCC now seeks comment on a proposal to establish an additional exemption from the prohibitions of the Act. The exemption would be available to depository organizations that between them control a small percentage of deposits in a community or RMSA. The exemption would be available without the prior approval of the OCC.[5] Each of the Agencies is proposing an identical deposit share exemption although each Agency is publishing its proposal separately.

The OCC also proposes an amendment to exempt honorary and advisory directors that serve institutions with less than $100 million in assets from the definition of a "management official" in the Interlocks Act. This change brings the definition in 12 CFR 26.2 into conformance with the statutory definition of that term. See 12 U.S.C. 3201(4). The proposal also makes certain technical amendments to conform the regulation to the proper **Federal Register** style.

In addition to the proposed new exemption, the OCC, together with the other Agencies, is considering a more comprehensive revision of the regulations implementing the Act. The Agencies intend to simplify the regulations, broaden existing exemptions, and consider new exemptions that would foster competition in relevant RMSAs and communities. These actions would reduce unnecessary regulatory burdens while still fulfilling the requirements of the Interlocks Act.

II. The Proposal

The Interlocks Act prevents two or more competing institutions from adversely affecting competition in the products and services they offer by virtue of their shared management officials. Where two depository institutions dominate a large portion of the market, these risks are real. But when a particular market is served by many institutions, the risks diminish that two depository institutions with interlocking management can adversely affect the products and services available in their markets.

The OCC believes that an examination of the market share of the deposits held by two institutions provides a meaningful assessment of the capacity of the two institutions to control credit and related services in that market. Analyses of market structure and performance in banking and other industries usually conclude that a small market share means a limited ability to influence market prices or terms. This proposal recognizes that two depository institutions with a small proportion of the market they serve are not capable of exerting sufficient market influence to materially restrict the terms and availability of credit in their market. For most institutions located in an RMSA, the RMSA constitutes the relevant market.

The Interlocks Act and regulations provide that the relevant market for organizations which are not located in

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[1] "Depository organization" is defined to mean a depository institution or a depository holding company. 12 CFR 26.2(g).

[2] "Community" is defined under the OCC's regulations to mean a city, town, or village, or contiguous or adjacent cities, towns, or villages. 12 CFR 26.2(c).

[3] Specifically, the restriction relates to a primary metropolitan statistical area, a metropolitan statistical area, or a consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas as defined by the Office of Management and Budget. These areas are referred to herein as "RMSAs". See 12 CFR 26.2(n).

[4] The prohibitions apply if both organizations are depository institutions, each with an office in the same RMSA; if offices of depository institution affiliates of both organizations are located in the same RMSA; or if one organization is a depository institution that has an office in the same RMSA as a depository institution affiliate of the other organization. The RMSA prohibition does not apply to depository institutions with less than $20 million in assets. See 12 CFR 26.3.

[5] For the purpose of ascertaining whether depository organizations qualify for the exception, deposit information regarding specific communities and RMSAs will be available at the appropriate Federal Reserve Bank.

an RMSA and organizations with total assets of less than $20 million that are located within an RMSA, is the city, town, or village and contiguous and adjacent communities in which the organizations are located. The OCC believes that providing a similar small market share exemption for these community-based organizations also is appropriate.

This exemption for community-based organizations is available on the same basis as the exemption for organizations whose relevant market is the RMSA. A community-based organization that intends to use the small market share exemption may qualify for the exemption in the same manner as any depository institution located in an RMSA.

III. The Small Market Share Exemption

The proposal would amend the management interlocks regulations (12 CFR part 26) to permit two depository organizations that serve the same RMSA to share management officials in circumstances where neither organization controls a significant portion of the deposits in that market. Specifically, the proposal would permit two competing depository organizations, each with assets in excess of $20 million, to share management officials if the organizations together control no more than 20 percent of the deposits in the RMSA. The proposal also would require that the organizations control no more than 20 percent of the deposits in other RMSAs where they may compete directly through offices or through affiliated depository institutions.

The proposal treats management interlocks between institutions with assets of less than $20 million that are located within an RMSA and all depository institutions located outside of an RMSA in a similar manner. Specifically, the amendment exempts any management interlock between two depository organizations located in a community, as defined by the regulation, if their combined share of the total deposits in the community is no more than 20 percent. Similarly, the organizations may not together control more than 20 percent of the deposits in any community in which they or their depository institution affiliates compete.

To illustrate by example, if an RMSA has an assumed total deposit base of $1 billion, a depository institution which is located within that RMSA may engage in a management interlock with another institution if the organizations control no more than $200 million of deposits between them in that RMSA. If a community has an assumed total deposit base of $100 million, a depository institution located in that community may engage in a management interlock with another institution if the organizations control no more than $20 million of deposits between them in that community. When an interlock is sought for institutions that have offices in more than one RMSA or community, the same calculation must be made for each area in which both institutions have an office.

These exemptions would only be available if management interlocks between the two organizations are not otherwise prohibited by the Act. For example, the exemption would not be available if the interlock is prohibited by the major assets provision of the Act. (12 U.S.C. 3203).[6]

The availability of the exemption will be determined in reliance upon the deposit data provided by depository organizations to their primary federal regulatory agency in the Summary of Deposits (the "Summary"). The Summary is filed as an addendum to the Report of Condition and Income due from all insured depository institutions on June 30 of each year. As the Summary breaks total deposits out by branch, it will provide the necessary information to determine deposit share by RMSA and community.[7]

For the purpose of ascertaining whether depository organizations qualify for the exception, deposit information regarding specific communities and RMSAs will be available at each Federal Reserve Bank. Under the proposal, a national bank would request appropriate deposit share data from its Federal Reserve Bank (FRB) and then determine whether it qualifies for the exemption in reliance upon this information. The process would involve neither an application nor an approval from the OCC. The burden of determining the applicability of the exemption falls upon the depository organizations. The exemption is intended to be self-implementing. Management is responsible for compliance with the terms of the exemption and for maintaining sufficient supporting documentation.

Upon the request of any national bank, the FRB will provide the most recently available deposit share data to allow the requesting organizations to determine whether they are entitled to the small market share exemption. The process of collecting and compiling the deposit share data takes some time. In any given year, the FRB may provide the deposit share data compiled for the previous year if the new deposit share data from the June 30 Summary for that year has been collected and analyzed. When the current year data becomes available, institutions may request that the FRB provide the new data.

While deposit share data can be pre-sorted and made readily available by RMSA, the deposit share data cannot be pre-sorted by community. For example, two national banks seeking to rely on the small market share exemption must first determine the total deposits in their community. To do this, the national banks must request deposit share data from their FRB with sufficient specificity to delineate the community defined by the Interlocks Act that both the interlocking institutions will serve. Only then can they determine the portion of deposits that the institutions would be deemed to control in their relevant market if they engage in the interlock.

Institutions that determine they are entitled to the small market share exemption in reliance on the Summary filed on June 30 of a particular year will continue to enjoy that status until such time as the deposit share data from the June 30 Summary for the following year is available from the FRB. The institutions must then determine that the required level of deposits has not been exceeded. If at that point the level of deposits controlled exceeds 20 percent of deposits in the community or RMSA as measured in the new Summary, the depository organizations have up to 15 months to correct the prohibited interlock. Institutions will be required to retain records supporting the applicability of the exemption.

The OCC is interested in receiving comment on the effect of this proposal on the geographic markets covered by the Interlocks Act. The OCC has attempted to determine the potential consequences of the proposal for RMSA markets by examining summary data for two very large RMSAs, two RMSAs of moderate size, and two smaller RMSAs. The OCC has not attempted to assess the effect of the rule on communities because of the unique delineation of each community.

Depository organizations in each of the six RMSAs were ranked by their proportional share of total deposits in the market. The data was not analyzed, however, for proportional shares of total deposits in other RMSAs or other communities where the depository organizations may also compete against one another. Moreover, since the data was taken from the Summary for June 30, 1992, the data does not reflect recent consolidations in the six markets.

OCC's preliminary analysis indicates that the exemption would be available to the great majority of depository organizations operating in markets where they have a limited share of the market. In general, this exemption would allow smaller depository organizations in the six RMSAs to interlock with each other. Smaller depository organizations could not interlock with larger depository organizations, however, when the latter possesses a dominant share of the market. It is unlikely that the larger organizations in the six markets studied could interlock with each other because of their large share of the deposits in their markets or because of other Interlocks Act provisions such as the major assets provision. (See footnote 5.)

The purpose of the proposed small market share exemption is to provide an opportunity to a number of smaller institutions to share management talent and improve their ability to compete with larger institutions in their markets. The OCC's ability to measure the actual effect of the proposed exemption in the RMSAs is limited. A prompt determination of the effect of the exemption in a community is not possible because of the OCC's difficulty in delineating specific communities. For these reasons, the OCC seeks comment on whether the availability of the exemption would have a detrimental effect on competition in the affected markets.

The OCC believes that this proposal will, on balance, have a pro-competitive effect. Since the deposit base of the exempted interlocking institutions is small, the risk of anticompetitive control over the market is remote. To provide to these particular institutions this limited relief from the management interlocks restrictions enlarges the pool of experienced management talent upon which they may draw and enhances their operational effectiveness. The result will be better managed, more competitive, and healthier depository institutions.

Request for Comment

The OCC invites comment on any aspect of this proposal. The OCC specifically requests comment on the following:

1. Whether 20 percent or less of the deposits of a community or RMSA is an appropriate threshold for the exemptions, or whether a different level is more appropriate.

2. Should the community and RMSA exemptions rely on the same or a different threshold level?

3. Should the exemption require depository organizations to demonstrate that they control no more than 20% of the deposits of communities within an RMSA? For example, if two depository organizations with more than $20 million in assets operate in a community within an RMSA, should the exemption require that the depository organizations control no more than 20% of the deposits in the community and no more than 20% of the deposits in the RMSA? (Consider depository organizations that compete in several communities within the same RMSA.)

4. Whether the proposed procedure to employ the deposit data collected in connection with the Report of Condition and Income will permit depository organizations to determine easily and effectively whether they qualify for the small market share exemption.

5. Whether the exemption for community-based institutions will be easy to use, or whether these institutions might be better served by another approach to the exemption.

6. Whether the exemption would enable depository organizations to frustrate the purposes of the Interlocks Act by establishing multiple interlocks involving several individuals and several depository organizations. For example, could each of several directors of one depository organization serve as a director of a different unaffiliated depository organization, facilitating diminished competition among the several depository organizations?

7. Could several depository organizations be linked through a series of separate interlocks involving different individuals? The OCC seeks comment on whether this concern is justified, and if so, whether it is exacerbated by the fact that the threshold limit for the exemption is set at 20 percent of the deposits in the RMSA or community, rather than a smaller percentage.

8. Whether the availability of the exemption would have a detrimental effect on competition in the affected markets.

In addition to this proposal, the OCC plans a comprehensive revision of the regulations implementing the Interlocks Act. The OCC intends to simplify the regulation, revise the interlocks prohibitions and exemptions, and consider new exemptions that promote competition without fostering anticompetitive practices. The comprehensive revision will eliminate unnecessary regulatory burden in a manner consistent with the Interlocks Act and the stated objectives of the OCC. Toward this end, the OCC welcomes comment on how to clarify and improve the entire rule in a manner consistent with the purpose of the Interlocks Act.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC hereby certifies that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities. The effect of the rule, if adopted as proposed, would be slight but beneficial. The rule would reduce the compliance requirements imposed upon small entities by creating a regulatory exemption to the prohibition on management interlocks between certain organizations. Furthermore, the proposed rule would affect the management structure of only a few institutions.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Comptroller of the Currency, Legislative, Regulatory, and International Activities, Attention: 1557–AB39, 250 E. Street, SW., Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project, Attention Treasury Desk Officer, (1557–AB39) Washington, DC 20503.

The collections of information in this proposed regulation are in 12 CFR 26.4(d)(2). This information is required by the OCC to support a national bank's determination that it qualifies for a small market share exemption to the Interlocks Act. This information will be used by the OCC to assess the bank's compliance with Federal law and regulation.

The likely respondents are for-profit institutions.

The estimated annual burden per recordkeeper will average three hours.

[6] Section 204 of the Act provides that a depository institution or a depository holding company with assets in excess of $1 billion (or any affiliate thereof) may not enter into a management interlock with a depository institution or a depository holding company with assets in excess of $500 million (or any affiliate thereof).

[7] The Summary does not include the deposits held by federally-chartered credit unions, which are insured by the National Credit Union Share Insurance Fund, and state-chartered credit unions. Typically, these credit union deposits comprise only a small part of the total deposits in a relevant market. If included, the deposit figures for a particular market would be slightly increased. As such, the data will not include the credit union deposits, but will still serve as a reliable approximation of the total deposits in the relevant market.

Estimated number of respondents and/or recordkeepers: 100.

Executive Order 12866

It has been determined that this document is not a significant regulatory action.

List of Subjects in 12 CFR Part 26

Antitrust, Holding companies, Management official interlocks, National banks.

Authority and Issuance

For the reasons set out in the preamble, part 26 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 26—MANAGEMENT OFFICIAL INTERLOCKS

1. The authority for part 26 is revised to read as follows:

Authority: 12 U.S.C 93a and 3201 *et seq.*

2. In § 26.2, paragraph (h)(1)(ii) is revised to read as follows:

§ 26.2 Definitions.

* * * * *

(h) (1) * * *

(ii) A director (including an advisory or honorary director, except in the case of a depository institution with total assets of less than $100,000,000);

* * * * *

3. In § 26.4 a new paragraph (d) is added to read as follows:

§ 26.4 Permitted interlocking relationships.

* * * * *

(d) *Small market share exemption.*—(1) *Depository organizations controlling no more than 20 percent of the deposits in a community or Relevant Metropolitan Statistical Area.* A management official may serve two unaffiliated depository organizations in a capacity which would otherwise be prohibited by § 26.3(a) or (b) if the following conditions are met:

(i) The interlock is not prohibited by § 26.3(c); and

(ii) The two depository organizations hold in the aggregate no more than 20 percent of the deposits, as reported annually in connection with the Summary of Deposits in each Relevant Metropolitan Statistical Area or community in which the depository organizations have offices or in which depository institution affiliates of both depository organizations are located.

(2) *Confirmation and records.* Depository organizations must maintain records sufficient to support their determination that the interlocking relationship is exempt under this paragraph (d) and must reconfirm that determination on an annual basis.

(3) *Termination.* An interlock permitted by this exemption may continue as long as the conditions of this paragraph (d) are satisfied. Any increase in the aggregated deposit holdings of the depository organizations as reported in the Summary of Deposits that causes the interlock to become prohibited will be treated as a change in circumstances under § 26.6.

(The collection of information contained in this section was approved by the Office of Management and Budget under OMB control number 1557-____.)

Dated: April 5, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 94-13855 Filed 6-8-94; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-52-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric CF6-45 or CF6-50 Engines or Pratt & Whitney JT9D Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require installation of a seal on the wing front spar at each engine strut. This proposal is prompted by a report of a fire that occurred due to fuel leakage from the fuel line coupling in the engine strut area along with the wing front spar while the airplane was on the ground after engine shutdown. The actions specified by the proposed AD are intended to ensure that fuel is contained within the strut drainage area and channeled away from ignition sources.

DATES: Comments must be received by August 3, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-52-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2689; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-52-AD." The postcard will be date stamped and returned to the commenter. Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-52-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The FAA has received a report of a strut fire that occurred due to fuel leakage from the fuel line (Wiggins) coupling in the engine strut area of a Boeing Model 747 series airplane that was on the ground. Fuel leaked from the fuel line coupling and flowed along the wing front spar. After engine shutdown, fuel dripped from the wing onto the engine exhaust section and ignited. The flame also ignited fuel that was contained in the strut. This condition, if not corrected, could result in a strut fire.

Although airflow when the airplane is in flight or airflow from the engine running when the airplane is on the ground prevents fuel from leaking onto hot engine surfaces, the FAA has determined that a potential unsafe condition exists because a fire can occur after engine shutdown.

The FAA has reviewed and approved Boeing Service Bulletin 747-28-2160, Revision 1, dated December 16, 1993, that describes procedures for installing a seal on the wing front spar at each engine strut. Installation of this seal will contain fuel leaks within the strut drainage area and channel any leakage away from ignition sources.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require installation of a seal on the wing front spar at each engine strut. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 610 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 183 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $57 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $151,341, or $827 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 94-NM-52-AD.

Applicability: Model 747 series airplanes, equipped with General Electric CF6-45 or CF6-50 engines, or Pratt & Whitney JT9D series engines; as listed in Boeing Service Bulletin 747-28-2160, Revision 1, dated December 16, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that fuel is contained within the strut drainage area and channeled away from ignition sources, accomplish the following:

(a) Within 12 months after the effective date of this AD, install a seal on the wing front spar at each engine strut in accordance with Boeing Service Bulletin 747-28-2160 dated July 23, 1992, or Revision 1, dated December 16, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 3, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-14019 Filed 6-8-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 94-NM-32-AD]

Airworthiness Directives; Lockheed Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Lockheed Model L-1011-385 series airplanes. This proposal would require various modifications and inspections of the flight controls, doors, and horizontal stabilizers. This proposal is prompted by a recommendation by the Systems Review Task Force (SRTF) for accomplishment of certain modifications and inspections that will enhance the controllability of these airplanes in the unlikely event of flight control malfunction or failure. The actions specified by the proposed AD are intended to ensure airplane survivability in the event of damage to fully powered flight control systems.

DATES: Comments must be received by August 3, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-32-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field

Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE-160A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991-3915; fax (404) 991-3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-32-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-32-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

In July 1989, a transport category airplane was involved in an accident in Sioux City, Iowa, resulting in the deaths of 110 passengers and one crewmember. The National Transportation Safety Board (NTSB) identified the catastrophic disintegration of the stage 1 fan disk of one of the engines as a probable cause of the accident. The resulting debris damaged the hydraulic systems that power the flight controls, resulting in the loss of virtually all control capability.

Following the accident, the Administrator of the Federal Aviation Administration convened a Systems Review Task Force (SRTF) to investigate means for enhancing airplane survivability following damage to fully powered flight control systems. The SRTF formed working groups to perform these investigations for specific airplane models to determine what actions could be effective in protecting other transport category airplanes with powered flight control systems from similar engine or systems failures.

The SRTF working group assigned to review Lockheed Model L-1011-385 series airplanes has completed its review of the Model L-1011-385 design, including existing service bulletins, and has issued a report recommending accomplishment of certain modifications and inspections described in a Lockheed L-1011-385 service bulletin. A copy of the report is contained in the Rules Docket for this AD action.

The FAA has reviewed and approved Lockheed Service Bulletin 093-27-301 ["Flight Controls, Modifications and Inspections, Collector Service Bulletin" (CSB)], dated June 9, 1992, which was issued in response to the SRTF report. Accomplishment of the inspections and modifications specified in the CSB will enhance the controllability of the airplane in the unlikely event of flight control malfunction or failure.

The CSB lists 34 individual service bulletins that describe procedures for accomplishment of various modifications and inspections recommended by the SRTF. The FAA has determined that the modifications and inspections described in 8 of the 34 service bulletins identified in the CSB must be accomplished in order to ensure airplane survivability in the event of damage to fully powered flight control systems. All 8 of these service bulletins have been reviewed and approved by the FAA. The remaining 26 service bulletins contained in the CSB address service problems and systems enhancements that are not directly related to increasing in-flight controllability of the airplane.

Six of the eight individual Lockheed service bulletins discussed previously describe procedures for various modifications and inspections involving the flight controls and are identified as follows:

1. Alert Service Bulletin 093-27-A102, dated March 13, 1974, "Flight Controls—Pitch and Roll Disconnects, Inspection of Cable Attachments."
2. Service Bulletin 093-27-178, dated April 30, 1979, "Flight Controls—Horizontal Stabilizer—Pitch Override Bungee Fasteners Torque Verification."
3. Service Bulletin 093-27-200, Revision 2, dated September 28, 1982, "Flight Controls—Aileron and Horizontal Stabilizer Control Systems—Pitch and Roll Disconnect Handle Support Bosses and Disconnect Mechanism Inspection/Modification."
4. Service Bulletin 093-27-279, Revision 1, dated February 1, 1984, "Flight Controls—Stabilizer Servo Cross-Tie Interlock Bungee Inspection/Modification and Bracket Modification."
5. Service Bulletin 093-27-289, dated December 3, 1984, "Control Wheel Roll Interconnect Inspection."
6. Service Bulletin 093-27-292, Revision 3, dated March 28, 1991, "Flight Controls—Horizontal Stabilizer Control System—Modification of Torque Tube Assembly Support Brackets.

One of the eight individual service bulletins describes procedures for modification of the doors and is identified as follows:

7. Service Bulletin 093-52-061, Revision 1, dated November 1, 1974, "Doors—Ram Air Turbine Doors—Modification of Linkage.

The eighth individual service bulletin describes procedures for modification of the horizontal stabilizers and is identified as follows:

8. Service Bulletin 093-55-030, Revision 1, dated March 20, 1991, "Stabilizers—Horizontal Stabilizers—Left and Right Pivot Bearing Assembly—Replacement of Setscrews with Safety Wired Fillister Head Screws.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require various modifications and inspections of the flight controls, doors, and horizontal stabilizers. The actions would be required to be accomplished in accordance with the CSB described previously.

There are approximately 236 Model L-1011-385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD, that it would take

approximately 87 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts for certain modifications would be supplied by the manufacturer at no cost to operators. Required parts for certain other modifications would be minimal in cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $559,845, or $4,785 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions proposed in this AD were to be conducted as "stand alone" actions. However, the 4-year compliance time specified in paragraph (a) of this proposed AD should allow ample time for the modifications and inspections to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed Aeronautical Systems Company: Docket 94–NM–32–AD.

Applicability: Model L–1011–385 series airplanes; as listed in Lockheed Service Bulletin 093–27–301 ["Flight Controls—Modifications and Inspections—Collector Service Bulletin" (CSB)], dated June 9, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure airplane survivability in the event of damage to fully powered flight control systems, accomplish the following:

(a) Within 4 years after the effective date of this AD, accomplish modifications and inspections of the flight controls, modification of the doors, and modification of the horizontal stabilizers, in accordance with Lockheed Service Bulletin 093–27–301 ["Flight Controls—Modifications and Inspections—Collector Service Bulletin" (CSB)], dated June 9, 1992 (hereinafter referred to as the CSB). This paragraph requires accomplishment of certain Lockheed service bulletins identified in the CSB, as listed below. Modifications or inspections accomplished previously in accordance with earlier revisions of the service bulletins listed below are acceptable for compliance with this AD.

Service bulletin No.	Revision level	Date of issuance
093–27–A102 (Alert Service Bulletin).	Original ...	March 13, 1974.
093–27–178	Original ...	April 30, 1979.
093–27–200	2	September 28, 1982.
093–27–279	1	February 1, 1984.
093–27–289	Original ...	December 3, 1984.
093–27–292	3	March 28, 1991.
093–52–061	1	November 1, 1974.
093–55–030	1	March 20, 1991.

Note 1: Paragraph (a) of this AD does not require accomplishment of any of the service bulletins listed in the CSB other than those identified above.

Note 2: Accomplishment of the actions described in Lockheed Service Bulletin 093–27–280, dated December 16, 1983, is considered an acceptable means of compliance for accomplishment of the inspection and modification described in Lockheed Service Bulletin 093–27–279, Revision 1, dated February 1, 1984.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 3, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–14020 Filed 6–8–94; 8:45 am]
BILLING CODE 4910–13–U

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 90–94]

Exemption of System of Records Under the Privacy Act

AGENCY: Departmet of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, FBI, proposes to exempt a Privacy Act system of records from subsections 5 U.S.C. 552a (c)(3), (c)(4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act. The system of records is the FBI Counterdrug Information Indices System. Information in the system consists of automated indices related to the law enforcement activities and responsibilities of the FBI regarding drug law enforcement. These exemptions are necessary to avoid interference with the law enforcement functions and responsibilities of the FBI. Reasons for the exemptions are set forth in the text below.

DATES: Submit any comments by July 11, 1994.

ADDRESSES: Address all comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Information Resources Management, Justice Management Division , DOJ, Washington, DC (Room 850, WCTR Bldg.)

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely, (202) 616–0178.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the FBI provides a description of the FBI Counterdrug Information Indices System.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subject in Part 16

Administrative Practices and Procedure, Courts, Freedom of Information Act, Government in the Sunshine Act, Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16, as set forth below.

Dated: June 3, 1994.

Stephen R. Colgate,

Assistant Attorney General for Administration.

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203 (a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.96 by adding paragraphs (*l*) and (m) as set forth below.

§ 16.96 Exemption of Federal Bureau of Investigation (FBI)—limited access.

* * * * *

(l) The following system of records is exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f) and (g).

(1) FBI Counterdrug Information Indices System (CIIS) (JUSTICE/FBI–016)

(m) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest by not only the FBI, but also by the recipient agency. This would permit the record subject to take appropriate measures to impede the investigation, e.g., destroy evidence, intimidate potential witnesses or flee the area to avoid the thrust of the investigation.

(2) From subsection (c)(4) to the extent it is not applicable because an exemption is being claimed from subsection (d).

(3) (i) From subsections (d), (e)(4) (G) and (H) because these provisions concern individual access to records, compliance with which could compromise sensitive information, interfere with the overall law enforcement process by revealing a pending sensitive investigation, possibly identify a confidential source or disclose information which would constitute an unwarranted invasion of another individual's personal privacy, reveal a sensitive investigative technique, or constitute a potential danger to the health or safety of law enforcement personnel.

(ii) In addition, from paragraph (d), because to require the FBI to amend information thought to be incorrect, irrelevant or untimely, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations attempting to resolve questions of accuracy, etc.

(4) From subsection (e)(1) because it is not possible in all instances to determine relevancy or necessity of specific information in the early stages of a criminal or other investigation.

(ii) Relevance and necessity are questions of judgment and timing; what appears relevant and necessary when collected ultimately may be deemed otherwise. It is only after the information is assessed that its relevancy and necessity in a specified investigative activity can be established.

(iii) In any investigation the FBI might obtain information concerning violations of law not under its jurisdiction, but in the interest of effective law enforcement, dissemination will be made to the agency charged with enforcing such law.

(iv) In interviewing individuals or obtaining other forms of evidence during an investigation, information could be obtained, the nature of which would leave in doubt its relevancy and necessity. Such information, however, could be relevant to another investigation or to an investigative activity under the jurisdiction of another agency.

(5) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual often can only be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to principally rely upon information furnished by the individual concerning his own activities.

(6) From subsection (e)(3) because disclosure would provide the subject with information which could impede or compromise the investigation. The individual could seriously interfere with undercover investigative activities and could take appropriate steps to evade the investigation or flee a specific area.

(7) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(8) From subsection (e)(8) because the notice requirements of this provision could seriously interfere with a law enforcement activity by alerting the subject of a criminal or other investigation of existing investigative interest.

(9) From subsection (f) to the extent that this system is exempt from the provisions of subsection (d).

(10) From subsection (g) to the extent that this system of records is exempt from the provisions of subsection (d).

[FR Doc. 94–14014 Filed 6–8–94; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for proposed Program Amendment Number 63 (PA 63) to the Ohio permanent regulatory program and AML program (hereinafter referred to as the Ohio programs) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio has submitted additional information to expand upon its original submission of PA 63.

DATES: Written comments must be received by 4 p.m., E.D.T., June 24, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to Richard J. Seibel, Director, Columbus Field Office, at the address listed below.

Copies of the Ohio programs, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Columbus Field Office.

Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 4480 Refugee Road, suite 201, Columbus, Ohio 43232, Telephone: (614) 866–0578

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio programs. Information on the general background of the Ohio program submissions, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio programs, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendment

By letter dated March 15, 1993 (Administrative Record No. OH–1845), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed PA 63. In that submission, Ohio proposed to reduce the staff of the Ohio programs by abolishing 28 existing positions. Ohio also proposed to reorganize the remaining staff positions to assume the existing job duties.

PA 63 included seven attachments intended to describe Ohio's proposal for the staffing reduction and reorganization and to provide the rationale for those actions. The amendment contains no proposed revisions to Ohio's coal mining law in the Ohio Revised Code or coal mining rules in the Ohio Administrative Code.

The seven attachments to PA 63 are summarized briefly in the notice of the receipt of the proposed amendment which OSM published in the **Federal Register** (55 FR 18185) on April 8, 1993. The public comment period ended on May 10, 1993. The public hearing scheduled for May 3, 1993, was not held because no one requested an opportunity to testify.

By letter dated June 16, 1993 (Administrative Record No. OH–1890), Ohio submitted additional information concerning the reduction of staffing levels. In addition, Ohio included seven attachments. The first attachment was a chart for the years 1987 through 1992 showing coal production, active mining permits, and new permits issued; the second attachment was a chart showing the acreage of Phase I, Phase II, and Phase III bond releases from 1983 through 1992; the third attachment was a draft policy/procedure directive concerning the role of the inspectors in inspecting forfeited sites and in assisting in plan review and preparation and in completing the paperwork associated with forfeitures; the fourth attachment was the monthly enforcement report; the fifth attachment was a draft policy/procedure directive concerning the participation of Abandoned Mine Lands (AML) staff in small project designs; the sixth attachment was a description of the workload of the inspection and enforcement engineer; and the seventh attachment concerned engineering guidelines. Through an oversight, OSM did not reopen the comment period at that time.

Subsequently, by letter dated November 2, 1993 (Administrative Record No. OH–1948), OSM provided its questions and comments to Ohio on the March 15, 1993, and June 16, 1993, submissions of PA 63. OSM's questions and comments were listed under the following six headings: Streamlining of AML Designs; Engineering—Bond Forfeitures; Engineering—Inspection and Enforcement Issues; Position Descriptions; Bond Forfeiture Program; and SOAP Program.

By letter dated December 6, 1993 (Administrative Record No. OH–1971), Ohio provided its responses to OSM's questions and comments under the six headings listed above. In addition, Ohio included two attachments. One attachment is a letter addressed to OSM dated November 5, 1993. This letter explains organizational responsibilities in Ohio's engineering/geotechnical support group and the AML program.

The other attachment is a log of engineering inspection and enforcement activity.

OSM announced receipt of Ohio's additional Administrative Record information in the January 21, 1994, **Federal Register** (59 FR 3325), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on February 7, 1994.

In response to OSM's concerns regarding engineering practices and engineering workload, on April 21, 1994 (Administrative Record No. OH–2014), Ohio submitted additional information on both of these items.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Ohio program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted.

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 3, 1994.

Robert J. Biggi,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–14055 Filed 6–8–94; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FR–4895–1]

Open Meeting on the Definition of Solid Waste and Hazardous Waste Recycling

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is conducting a public meeting on revising the regulatory definition of solid waste under the Resource Conservation and Recovery Act (RCRA). The revisions are intended to simplify the regulations and to eliminate disincentives to recycling while maintaining full protection of human health and the environment. They are also intended to reduce any possible current underregulation of hazardous waste recycling.

DATES: The meeting will take place on June 23, 1994 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will take place at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008. Telephone: (202) 234–0700.

FOR FURTHER INFORMATION CONTACT: For additional information on the meeting, please contact Sharon Brent of EPA's Office of Solid Waste at (202) 260–4627.

SUPPLEMENTARY INFORMATION: The Agency has selected fifteen individuals to provide technical and policy expertise at the meeting. These individuals will provide their opinions about the issues of hazardous waste recycling and how the federal solid waste rules affect such recycling. The individuals are:

Dorothy Kelly (Ciba-Geigy Corp.)
John Fognani (Gibson, Dunn, and Crutcher)
Harvey Alter (Chamber of Commerce)
Jeff Reamy (Phillips Petroleum Co.)
Jon Jewett (Solite Corp.)
Robert Westcott (Wesco Parts Cleaners)
Richard Fortuna (Hazardous Waste Treatment Council)
John Wittenborn (Collier, Rill, Shannon, and Scott)
William Collinson (General Motors Corp.)
Gerald Dumas (RSR Corp.)
Kevin Igli (Waste Management Inc.)
Karen Florini (Consultant)
David Lennett (Consultant)
Roy Brower (State of Oregon)
Pat Matuseski (State of Minnesota)

EPA participants in the discussions will be James Berlow, Director of the Definition of Solid Waste Task Force, and Andy Bellina, EPA Region II. In addition, any interested member of the public may attend the meeting.

Dated: June 6, 1994.

Deborah Dalton,

Deputy Director, Consensus and Dispute Resolution Program.

[FR Doc. 94–14077 Filed 6–8–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 63

[AD–FRL–4892–6]

RIN 2060–AE04

National Emission Standards for Hazardous Air Pollutants (NESHAP) (Secondary Lead Smelters)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule; notice of public hearing.

SUMMARY: This action proposes standards that would limit emissions of hazardous air pollutants (HAP's) from new and existing secondary lead smelters. The proposed standards partially implement section 112(d) of the Clean Air Act (the Act) as amended in November 1990, which requires the Administrator to regulate categories of major and area sources of HAP's listed in section 112(b) of the Act. The intent of the standards is to reduce HAP emissions from secondary lead smelters to the maximum degree achievable through the application of maximum achievable control technology (MACT). The EPA is also proposing to add secondary lead smelters that are area sources to the list of source categories that will be subject to MACT standards.

DATES: *Comments.* Comments must be received on or before August 8, 1994.

Public Hearing. If a request to speak at a public hearing is received, the hearing will be held on July 11, 1994, beginning at 10 a.m. Requests to speak at a public hearing must be received by the EPA by June 30, 1994.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if

possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A–92–43, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below.

Public Hearing. If a public hearing is requested, it will be held at the EPA Office of Administration auditorium in Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should contact Mary Hinson, Industrial Studies Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5601.

Background Information Document. The Background Information Document (BID) for the proposed standard may be obtained from the docket or from the US EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Secondary Lead Smelting—Background Information Document for Proposed Emissions Standards," EPA No. EPA–450/R–94–024.

Docket. Docket No. A–92–43 contains supporting information used in developing the proposed standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 12 p.m. and 1 to 3 p.m., Monday through Friday. The proposed regulatory text and other materials related to this rule making are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed standards and technical aspects of secondary lead smelting emissions and control, contact Mr. George Streit at (919) 541–2364, Industrial Studies Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information concerning the area source listing of secondary lead smelters, contact Ms. Dianne Byrne at (919) 541–5342, Pollutant Assessment Branch, Emission Standards Division (MD–13) at the above address.

SUPPLEMENTARY INFORMATION: The regulatory text of the proposed rule is not included in this **Federal Register** notice, but is available in Docket No. A–92–43 or by request from the Air Docket (see **ADDRESSES**). If necessary, a limited number of copies is available from the EPA contact persons designated earlier in this notice. This Notice with the proposed regulatory language is also available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on TTN is needed, call the HELP line at (919) 541–5384.

The information presented in this preamble is organized as follows:

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I. Initial List of Categories of Major and Area Sources

Section 112 of the Act requires that the EPA promulgate regulations requiring the control of HAP emissions from major and area sources. The control of HAP's is achieved through promulgation of emission standards under sections 112(d) and (f) and work practice standards under section 112(h) for categories of sources that emit HAP's.

An initial list of categories of major and area sources of HAP's selected for regulation in accordance with section 112(c) of the Act was published in the **Federal Register** on July 16, 1992 (57 FR 31576). Secondary lead smelters is one of the 174 categories of sources listed. The category consists of smelters that recycle lead-bearing scrap materials, primarily lead-acid batteries, into lead metal. The listing was based on the Administrator's determination that secondary lead smelters may reasonably be anticipated to emit several of the 189 listed HAP's in quantities sufficient to designate them as major sources. Information subsequently collected by the EPA as part of this rulemaking confirms that two-thirds of operating secondary lead smelters have the potential to emit greater than 9.1 megagrams per year (Mg/yr) [10 tons per year (tpy)] of a single HAP or greater than 22.7 Mg/yr (25 tpy) of a combination of HAP's and, therefore, are major sources.

Section 112(c)(3) directs the Administrator to list each category of area sources that the Administrator finds presents a threat of adverse effects to human health or the environment warranting regulation. The EPA performed an assessment of the remaining one-third of the secondary lead smelters not qualifying as major sources to determine whether the listing of these area sources for regulation under section 112(c)(3) was justified. Based on a detailed assessment of emissions, population exposure, and known and suspected health effects, the Administrator proposes finding that the

threat of adverse effects to human health from area sources in the secondary lead smelter category is sufficient to support regulation. Smelters designated as area sources would, under the proposed regulation, be subject to the same standards as smelters qualifying as major sources. The rationale for this area source listing is presented in more detail in section II D of this preamble.

The secondary lead smelters category was originally in the group of categories for which final regulations are scheduled for promulgation by November 15, 1994. Final regulations are now scheduled for promulgation by May 21, 1995 (58 FR 63952–63953) in accordance with a consent decree entered in *Sierra Club* v. *Browner*, Case Number 93–0124 (and related cases) (D.D.C. 1993).

II. Background

A. Regulatory History

The EPA promulgated new source performance standards (NSPS) for secondary lead smelters on March 8, 1974 (40 CFR part 60, subpart L). The NSPS limit emissions of particulate matter (PM) from blast and reverberatory furnaces (including rotary furnaces) to a concentration of 50 milligrams per dry standard cubic meter (mg/dscm) (0.022 grains per dry standard cubic foot (gr/dscf)) and emissions from refining kettles (pot furnaces) to 10 percent opacity. Secondary lead smelters are also subject to state regulations enacted to prevent violations of the National Ambient Air Quality Standards (NAAQS) for lead. In addition, about one-half of smelters are subject to permit conditions developed under the Prevention of Significant Deterioration provisions of the Act.

Secondary lead smelters must also obtain hazardous waste storage permits pursuant to the Resource Conservation and Recovery Act (RCRA) to store spent lead-acid batteries before smelting them (40 CFR 266.80(b)). Air emissions from smelting activities, however, are not presently regulated under the hazardous waste rules (40 CFR 266.100(c)).

On July 16, 1992, the EPA published an initial list of categories of major and area sources selected for regulation in accordance with section 112(c) of the Act (57 FR 31476). Secondary lead smelters were among the listed categories. On December 3, 1993, the EPA published a schedule for the promulgation of standards for the sources selected for regulation under section 112(c). According to this schedule, regulations for secondary lead smelters must be promulgated no later than May 31, 1995 (58 FR 63941).

Today, the EPA is issuing a notice of proposed rulemaking for secondary lead smelters and is soliciting comments on the proposed rule.

Air emissions from secondary lead smelters may also potentially be subject to regulation under the rules implementing RCRA. This is because the principal feed material to these devices, scrap lead-acid batteries, is a spent material being reclaimed, and hence is defined as a solid and (by virtue of the lead content) hazardous waste (40 CFR 261.2 (a)(2)(i), (c)(3), and *Ass'n v. EPA*, 996 F. 2d 1126 (11th Cir. 1993)). In 1991, the EPA decided to defer RCRA standards for the air emissions from these devices, in large part because the forthcoming Clean Air Act MACT standards might make further RCRA controls unnecessary (56 FR 7142 (Feb. 21, 1991)) (40 CFR 266.100(c)). In proposing this rule, EPA believes that this rule also satisfies the goals and objectives of RCRA so that any further RCRA regulation of air emissions would be unnecessary. The EPA is specifically soliciting comments on this decision.

B. Description of Source Category

Secondary lead smelters are recycling facilities that use blast, rotary, reverberatory, and/or electric furnaces to recover lead metal from lead-bearing scrap materials, primarily lead-acid batteries. The secondary lead smelters source category does not include secondary smelters and refiners or primary lead smelters.

There are 23 secondary lead smelters in the United States, although only 16 of them were operating as of December 1993. Smelters often close temporarily when the price of lead is low. A current trend in the industry is toward fewer but larger smelters, although overall industry capacity has been relatively constant.

Lead-acid batteries represent about 90 percent of the lead-bearing raw materials at a typical secondary lead smelter. The majority of these batteries are automotive-type batteries and the remainder are industrial and uninterruptible power supply batteries. The other 10 percent of lead-bearing materials are battery plant scrap, defective batteries, drosses from refining operations, and other scrap such as lead pipes and roof flashing.

About 98 percent of all lead-acid batteries are recycled at secondary lead smelters. The remaining 2 percent are either stored indefinitely in residential basements and garages, disposed of as municipal solid waste, or dumped illegally. Secondary lead smelters, however, represent the only acceptable disposal option for used batteries, and these smelters also recover or treat the plastic case material and sulfuric acid from automotive-type batteries.

The secondary lead smelting process consists of: (1) Breaking lead-acid batteries and separating the lead-bearing materials from the other materials, including the plastic case material and acid electrolyte, (2) melting lead metal and reducing lead compounds to lead metal in the smelting furnace, and (3) refining and alloying the lead to customer specifications.

Battery breaking is accomplished using hammermills to crush whole batteries. Saws are used at some blast furnace smelters to cut open batteries so that the lead grids from inside the battery can be removed intact as whole units. The empty cases are then sent to a hammermill for crushing. Following battery breaking, a sink/float separator is used to separate the lead-bearing materials from the polypropylene plastic from the battery cases, which is sold for recycling.

The lead-bearing components are then sent directly to a materials storage and handling area or are chemically treated to remove the sulfur in the lead paste attached to the battery grids. The desulfurization step is performed to reduce sulfur emissions from the smelting furnace and to improve furnace efficiency.

Lead-bearing materials are typically stored in bins or enclosures before being charged to the smelting furnaces. If the storage area is not totally enclosed, the storage piles and the roadways between them are usually kept wet to prevent the formation of dust that may cause fugitive emissions. Materials are handled within the smelter by front-end loaders, enclosed screw conveyors, and belt- or pan-type conveyors.

Broken battery components are charged to the smelting furnaces along with lead-bearing slag, dross, flue dust recycled from the air pollution control devices, fluxing agents (including iron, silica sand, and limestone or soda ash), and coke. Fluxing agents are added to blast and rotary furnaces to promote the conversion of lead compounds to lead metal. Coke is added to blast furnaces as a fuel and to rotary and reverberatory furnaces as a fluxing agent. A dryer may be used prior to charging a reverberatory furnace to remove moisture from the charge materials. A dryer is typically a large, rotating chamber heated to about 200 °C (400 °F) by a gas-fired burner. The exhaust from the dryer is drawn directly into the reverberatory furnace.

Smelting is performed in reverberatory, blast, rotary, or electric smelting furnaces. Reverberatory and blast furnaces are the most common types of smelting furnaces. Reverberatory furnaces are always operated in conjunction with a blast furnace or an electric furnace. Blast and rotary furnaces may be operated independently of other furnace types. All smelting furnaces operate at a temperature of about 980 to 1,200 °C (1,800 to 2,200 °F).

Blast furnaces are vertical shaft furnaces that use coke as a fuel source. The combustion zone of the furnace is at the bottom of the vertical shaft, where combustion air is injected through tuyeres. The combustion gases then pass through a thick column of charge material before being vented to a control device. Exhaust temperatures are relatively cool, typically about 420 to 480 °C (800 to 900 °F).

Rotary furnaces consist of a rotating, refractory-lined cylinder and are fired in the same way as reverberatory furnaces. Unlike other smelting furnaces, which are operated on a continuous basis, rotary furnaces are operated on a batch cycle consisting of charging, smelting, and tapping of lead and slag.

Blast and rotary furnaces produce hard and semi-soft lead, respectively, by adding soda ash (Na_2CO_3) or limestone ($CaCO_3$) to the charge materials as fluxing agents. These fluxing agents promote the reaction of lead sulfate ($PbSO_4$) and carbon (from coke) to reduce the $PbSO_4$ to elemental lead. The fluxing agents, however, also promote the reduction of oxides of alloying metals to their elemental forms. These metals are tapped from the furnace with the lead in the form of a hard or semi-soft lead alloy.

Reverberatory furnaces are rectangular, refractory-lined furnaces that use natural gas- or propane-fired jets to heat the walls and roof of the furnace and the charge materials. Reverberatory furnaces are used to produce soft (nearly pure) or semi-soft lead by reducing lead compounds to metallic form, but at the same time oxidizing the alloying elements so that they are removed in the slag. Therefore, soda ash and limestone fluxing agents are added to reverberatory furnaces in much smaller quantities than to blast or rotary furnaces.

Reverberatory furnace slag has a much higher lead content than blast or rotary furnace slag because of the lower reducing conditions of the furnace. This slag must be processed in a blast or electric furnace to recover the remaining lead fraction. For this reason, reverberatory furnaces are always operated in conjunction with a blast or electric furnace.

There is only one electric furnace in use in the U. S. secondary lead industry. It is collocated with a reverberatory furnace at one of three smelters owned by the same company. The electric furnace is only used to process reverberatory furnace slag from the furnace with which it is collocated and slag shipped in from the company's other two smelters. The charge materials in the furnace are heated by passing an electric current through them. The electric furnace produces a hard lead similar to that from a blast furnace.

Blast, rotary, and electric furnaces produce a final slag that cannot be recycled and that must be disposed of as a solid waste. This slag, however, may qualify as a hazardous waste and must be disposed of in an approved landfill.

The lead tapped from smelting furnaces is refined and alloyed in open-top refining kettles that are heated from underneath by a gas-fired burner. Impurities are removed from the molten lead as drosses that float on the surface of the lead. Drosses often have a high lead content and are therefore recycled to the smelting furnace. After refining, lead is pumped from the refining kettle into a machine for casting into ingots. These ingots are stored at the smelter before being shipped to a customer or transferred to a collocated battery manufacturing facility.

Flue dust collected from baghouses at secondary lead smelters is recycled to the smelting furnaces for recovery of the lead content. At smelters that operate blast furnaces, an agglomerating furnace is used to heat and melt the flue dust so that it can be cast into molds before being recycled to the furnace. This is done to facilitate handling of the dust and to prevent the dust from clogging the blast furnace charge column.

C. Emissions and Factors Affecting Emissions

Hazardous air pollutants are emitted from secondary lead smelters as: (1) Process emissions contained in the primary exhaust of smelting furnaces, (2) process fugitive emissions associated with charging and tapping of smelting furnaces and lead refining kettles, and (3) fugitive dust emissions from wind or mechanically induced entrainment of dust from stockpiles and plant yards and roadways.

1. Process Emissions

Smelting furnaces are sources of all three classes of HAP's: metal, organic, and acid gas [chlorine (Cl_2) and hydrochloric acid (Hcl)]. The mix and relative quantities of potential emissions are highly dependent on furnace type and use. Metal HAP emissions from process sources are produced through the volatilization of the metals contained in the feed materials by the elevated smelting temperatures or by the entrainment of metal-containing PM in the furnace exhaust. All smelting furnace types emit substantial quantities of metal compounds, ranging from 40 to 100 Mg/yr (uncontrolled). About 70 percent of metal HAP emissions are lead compounds, with lesser amounts of antimony, arsenic, and other metal compounds. Controlled emissions, however, are typically less than 1 Mg/yr.

Organic HAP emissions from smelting furnaces result from incomplete combustion of organic-containing materials (coke, plastic separators, and hard rubber battery case material) in the furnace charge, as well as coke and other fuels used for combustion. The emissions potential for organic HAP's is highly variable. Blast furnaces typically emit larger amounts of organic HAP's than other furnace types. A typical uncontrolled blast furnace can emit over 100 Mg/yr of a mixture of about 30 organic HAP's. The most predominant HAP's are benzene, carbon disulfide, 1-3-butadiene, methyl chloride, and styrene. Also found in blast furnace emissions are trace amounts of dioxins/furans. Emissions of 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD), which is a HAP, are about 0.07 grams per year from a typical blast furnace. Emissions of total dioxins/furans, expressed as 2,3,7,8-TCDD toxic equivalents are about 0.3 grams per year.

Reverberatory and rotary furnaces have comparatively low organic HAP emissions. Uncontrolled emissions from a typical furnace are less than 4 Mg/yr of a mixture of about 25 or 30 organic HAP's. The most predominant are benzene, 1-3-butadiene, formaldehyde, and styrene. Reverberatory and rotary furnaces are operated at much higher flue gas temperatures [about 980 to 1,200 °C (1,800 to 2,200 °F)] and turbulence and achieve more complete combustion than blast furnaces. As a result, reverberatory and rotary furnaces tend to have much lower organic HAP emissions. Emissions of dioxins/furans from these furnaces are near or below detection limits.

The one electric furnace now in operation processes only slag (which contains little, if any, organic material) and uses no coke or other fossil fuel. Therefore, organic HAP emissions are presumed to be very low. This presumption is confirmed by CO emissions of only 1.1 kilograms per hour (kg/hr) [2.5 pounds per hour (lb/

hr)] and a CO concentration of 26 parts per million by volume (ppmv), according to the results of a test conducted by the smelter operator (Docket A–92–43, Item No. II–B–8).

For reverberatory/blast furnace configurations, a substantially lower level of organic HAP emissions is possible than for blast furnaces alone. Commingling (blending) the blast furnace exhaust (temperature about 500 °C) and the much hotter reverberatory furnace exhaust (about 1,000 °C) contributes significantly to the destruction of the organic HAP compounds in the blast furnace exhaust. Organic HAP emissions from such a commingled configuration are also about 4 Mg/yr.

All smelting furnaces that process broken batteries are potential sources of HCl and Cl_2 emissions. Many used lead-acid batteries contain polyvinyl chloride (PVC) plastic separators between the battery grids, although the use of PVC plastic as a separator material has been discontinued by most battery manufacturers. These separators are typically not removed from the lead-bearing parts of the battery during the battery breaking and separation process. When the PVC plastic is burned in the smelting furnace, the chlorides are released as HCl, Cl_2, and chlorinated hydrocarbons.

In blast furnaces and rotary furnaces, soda ash or limestone are used as fluxing agents to increase the reduction of lead compounds to elemental lead. These fluxing agents also combine with the chlorine in the charge materials to form sodium chloride (NaCl) and calcium chloride ($CaCl_2$) salts, which are removed with the slag. As a result, these furnaces have low HCl and Cl_2 emissions, typically less than 1 Mg/yr total.

In reverberatory furnaces, however, much less fluxing agent is added to the charge material than in blast or rotary furnaces in order to produce a soft lead product. Less of the chlorine is removed in the slag and, therefore, reverberatory furnaces have higher HCl and Cl_2 emissions than blast or rotary furnaces, about 100 Mg/yr of HCl and 4 Mg/yr of Cl_2.

The one electric furnace in use is not a source of HCl or Cl_2 emissions because it processes only slag from a reverberatory furnace to which fluxing agents are added. Any chlorine present in the slag should be in the form of $CaCl_2$ or NaCl and cannot be emitted as HCl or Cl_2.

2. Process Fugitive Emissions

Process fugitive emissions result from furnace charging, lead and slag tapping, lead refining and casting, dust agglomerating, and battery breaking. Process fugitive emissions contain metal HAP's and, in some cases, organic HAP's. Total uncontrolled metal HAP emissions from all process fugitive sources at a typical smelter range from 10 to 80 Mg/yr, depending on smelter capacity. Metal HAP emissions are independent of furnace configuration. Controlled metal HAP process fugitive emissions are typically less than 1 Mg/yr.

Depending on charging method, hood design, and ventilation rate, organic HAP's may be found in the process fugitive emission stream from blast furnace charging. An improper balance between the ventilation rate of the hood over the furnace charging chute and the primary exhaust gas off-take can result in process emissions being drawn into the process fugitive control system. The escaping organic HAP emissions may be as high as 50 Mg/yr, based on measurements made at one facility at which this problem was detected. Organic HAP emissions from a properly balanced system should be less than 0.5 Mg/yr.

3. Fugitive Dust Emissions

Fugitive dust emissions result from the entrainment of dust due to material handling, vehicle traffic, and wind erosion from storage piles. Fugitive dust emissions contain only metal HAP's. The quantity of fugitive dust emissions is dependent on the size of the facility and the fugitive dust controls and practices in place. These emissions cannot be measured and can only be roughly estimated using emission factors and facility-specific data. Estimates of fugitive dust emissions from all smelters range from 1 to 19 Mg/yr.

D. Adverse Health Effects Finding for Area Sources

As stated previously, the EPA today is proposing to add secondary lead smelters that are area sources to the list of source categories that will be subject to emission standards. In order to list categories of area sources, the EPA must find a threat of adverse health or environmental effects warranting regulation under section 112.

Section 112(a) contains no accompanying definition of adverse health effect. The area source provisions of section 112(k) directing regulation of area sources in urban areas, however, are closely linked to section 112(c) and state that health effects considered under this program shall include, but not be limited to, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction, and other acute and chronic effects [section 112(k)(2)]. The term "adverse environmental effect" is defined in section 112(a) as "any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas."

In the finding for secondary lead area sources, quantitative assessments of risk are an important consideration in assessing significant threats of adverse health effects. Quantitative risk assessment, in this context, means the estimation of a mathematical probability of an individual or population being subject to some adverse health effect, such as cancer. The EPA has historically developed assessments of potential cancer risks, both to maximally exposed individuals and populations, as part of its regulatory actions under the previous version of section 112. Population risks are expressed in terms of the total number of cancer cases (i.e., cancer incidence) that could be expected to occur in a given time within a prescribed area, considering the exposure of the population within the area to modeled ambient concentrations of toxic air pollutants. In this finding, nationwide cancer incidence is expressed in cases per year. In contrast, a maximum individual "lifetime" risk is expressed as the risk of contracting cancer associated with the highest individual's exposure to the modeled, maximum, long-term concentration of the listed HAP's for an assumed life-span of 70 years. Typically, both these cancer risk estimates are based on upper-bound estimates of cancer potency and exposure. The EPA also considers, where possible, the probability of non-cancer effects.

The finding proposed in today's notice is based only on health effects from inhalation exposures. The EPA did not consider other adverse environmental effects. Future findings for other source categories may be based on environmental effects as well as human health effects as the appropriate information becomes available.

Section 112(c) does not offer a "bright line" test for the EPA to use in making an area source finding. Instead, considering the language cited above, the EPA believes it has discretion to consider a range of health effect endpoints and exposure criteria in making a finding of a threat of adverse effects. In the finding, the EPA considers factors such as the number of sources in a category, the quantity of emissions, the toxicity of the HAP's, the potential for individual and population exposures and risks, the geographical distribution of the sources, and the reasonableness of control measures. Thus, both qualitative and quantitative factors are considered in making a finding.

The EPA recognizes uncertainties in current estimates of risk based on modeled concentrations and the use of several upper-bound risk assumptions. The EPA acknowledges that current cancer risk estimates do not reflect the true risk, but often represent a conservative risk level that may be an upper bound that is unlikely to be exceeded. The EPA intends to improve its risk estimation procedures in accordance with internal guidance and through the risk assessment studies required under sections 112(f), 112(o), and 303 of title III of the Act.

Today's finding is based on six smelters that the EPA believes fit the definition of an area source plus one other that is borderline between major and area. The smelters are located in six states and approximately 17.6 million people reside within 50 kilometers (about 30 miles) of the seven facilities. These people are considered by the EPA to be exposed to HAP emissions from the smelters.

Secondary lead smelters emit a large number of pollutants. Of these, EPA has performed scientific assessments that provide estimates of the associated health risks of fourteen. Ten of the compounds have unit risk estimates (URE or cancer potency estimates), three (ethylbenzene, n-hexane, and toluene) have inhalation reference concentrations (RfC), and one has a NAAQS (lead). In this finding, elemental lead is being used as a surrogate for all lead compounds. The reason for this is discussed below.

The health effects caused by increased blood lead levels are the same, regardless of the lead compounds causing the exposure. However, there are considerable differences in the bioavailability between lead compounds. Unfortunately, there is little available literature on this subject (Docket No. A–92–43, Item Nos. II–I–18 and II–I–29). The literature that is available, however, does indicate that lead oxide, which accounts for a substantial portion of the lead compounds emitted from secondary lead smelters, is bioavailable. This indicates that using lead as a surrogate for estimating health effects from the lead compounds from this source category should be appropriate.

Lead is also a B2 carcinogen. However, a cancer risk factor has not been developed for lead, so cancer rates associated with its exposure can not be estimated.

Four of the ten potential carcinogens with quantitative assessments are known human carcinogens and have URE's based on epidemiological data. These are arsenic, benzene, and some chromium and nickel compounds. The other potentially carcinogenic compounds have URE's based on animal studies and are classified as either probable or possible human carcinogens. These include acetaldehyde, 1,3-butadiene, cadmium, formaldehyde, naphthalene, and 2,3,7,8-TCDD.

A URE is HAP-specific and equals the risk of cancer per unit of lifetime pollutant exposure. It represents the probability of developing cancer in a hypothetical individual, continuously exposed throughout his/her life to 1 microgram per cubic meter ($\mu g/m^3$) of the potential carcinogen in the air. An RfC is also HAP-specific and is an estimate of the daily exposure to the human population, including sensitive subpopulations, that is likely to be without deleterious effects during a lifetime. The uncertainty of the estimate can span an order of magnitude or more.

The estimated annual cancer incidence for the seven sources modeled is low, approximately 0.1 incidence of cancer per year. However, the EPA estimates that the upper-bound maximum individual lifetime cancer risk associated with any one of the smelters ranges from 4 in 10,000 to 1 in 1,000. Furthermore, about 500 persons living in proximity to these smelters are estimated to be subject to lifetime individual risks possibly in excess of 1 in 10,000; over 40,000 are possibly subject to lifetime individual risks above 1 in 100,000; and about 560,000 are possibly subject to individual lifetime risks above 1 in 1 million. The risks calculated are due to a mixture of pollutants, with arsenic and 1,3-butadiene posing the highest risks.

In addition to cancer risk, the EPA has examined the public health risks associated with elevated blood lead levels. Little controversy exists that high blood lead levels are associated with adverse health effects, but there is also substantial concern regarding health effects associated with lower blood lead levels as well: (1) Alterations in the heme synthetic pathway may affect multiple organ system and physiological functions, (2) children's IQ's may be lowered, (3) impaired auditory function in children may affect language acquisition and learning, and (4) animal experiments and human data have shown that lead accumulates and is retained in the brain and other soft tissues and can be remobilized from bone stores, resulting in a continuing risk of lead toxicity even if exposure to lead is stopped.

Children may be particularly at risk as atmospheric lead deposits on soils, crops, and street and playground surfaces. Soil lead, which serves as a continuous source of outdoor and indoor (household) dusts as well as a direct exposure route for young children, is relatively insoluble and immobile and can continue to accumulate indefinitely.

Approximately 250 people are expected to be exposed to lead concentrations that are above the current lead NAAQS of 1.5 $\mu g/m^3$, calendar quarter average. Because the level of the lead NAAQS has not been revised since it was established in 1978, the EPA also determined potential exposure levels below the NAAQS. At 1.0 $\mu g/m^3$, the number of people potentially exposed is about 300, rising to 1500 at 0.5 $\mu g/m^3$.

As stated above, the EPA did not evaluate environmental risks or health risks associated with non-inhalation exposures because of a lack of site-specific data and, in some cases, effects data. There is some potential for increased risks due to exposure from metal compounds and dioxins through routes of exposure such as ingestion of contaminated soil, ingestion of food and water, and dermal contact. In addition, the health effects from non-inhalation routes of exposure are not well known for many air pollutants, and data on environmental effects are even more scarce.

The EPA is proposing to regulate secondary lead smelters as area sources, subject to consideration of public comment, because emissions associated with these sources may present a threat of adverse health effects. The upper-bound, maximum lifetime individual risks resulting from exposure to arsenic and 1,3-butadiene are of particular concern. The EPA, therefore, requests comments on the proposal to regulate these sources as area sources and the appropriate criteria to be used in making these decisions. In particular, the EPA requests comment on whether the number of sources, the quantity of emissions, the toxicity of the HAP's, the potential for individual and population exposures and risks, the geographical distribution of the sources, and the reasonableness of control measures justify a decision to regulate area sources within this category.

The EPA notes that the exposures, the cancer incidence, and the maximum individual risk associated with these area sources are all below levels that have prompted the Administrator to designate other categories of area sources for regulation. However, the relatively low costs associated with regulation and the small number of area sources in this category appear to warrant such regulation. The EPA requests comment on whether regulation of these areas sources is warranted.

III. NESHAP Decision Process

A. Source of Authority for NESHAP Development

Section 112 specifically directs the EPA to develop a list of all categories of all major and such area sources as appropriate emitting one or more of the 189 HAP's listed in section 112(b) (section 112(c)). Section 112 of the Act replaces the previous system of pollutant-by-pollutant health-based regulation that proved ineffective at controlling the high volumes and concentrations of HAP's in air emissions. The provision directs that this deficiency be redressed by imposing technology-based controls on sources emitting HAP's, and that these technology-based standards may later be reduced further to address residual risk that may remain even after imposition of technology-based controls. A major source is any source that emits or has the potential to emit 10 tons of any one HAP or 25 tons of any combination of HAP's. The EPA published an initial list of source categories on July 16, 1992 (57 FR 31,586), and may amend the list at any time. (The EPA is proposing to add secondary lead smelters to the list of area sources as part of this rulemaking, for example.)

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112, as amended. The statute requires the standard to reflect the maximum degree of reduction of HAP emissions that is achievable taking into consideration the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements.

Emission reductions may be accomplished through application of measures, processes, methods, systems, or techniques, including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications, (2) enclosing systems or processes to eliminate emissions, (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage, or fugitive emissions point, (4) design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h), or (5) a combination of the above (section 112(d)(2)).

To develop a NESHAP, the EPA collects information about the industry, including information on emission source characteristics, control technologies, data from HAP emissions tests at well-controlled facilities, and information on the costs and other energy and environmental impacts of emission control techniques. The EPA uses this information to analyze possible regulatory approaches.

Although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. In some cases, for example, physically measuring emissions from a source may be impossible, or at least impractical, because of technological and economic limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard, or a combination thereof, in those cases where it is not feasible to prescribe or enforce an emissions standard.

If sources in the source category are major sources, then a MACT standard is required for those major sources. The regulation of the area sources in a source category is discretionary. If there is a finding of a threat of adverse effects on human health or the environment, then the source category can be added to the list of area sources to be regulated. Based on the area source finding described in section II.D of this preamble, the EPA proposes to regulate secondary lead smelters as area sources.

C. Determining the MACT Floor

After the EPA has identified the specific source categories or subcategories of major sources to regulate under section 112, it must set MACT standards for each category or subcategory. Section 112 limits the EPA's discretion by establishing a minimum baseline or "floor" for standards. For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source, as determined by the Administrator (section 112(d)(3)).

The standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (excluding certain sources) for categories and subcategories with 30 or more sources, or the best-performing 5 sources for categories or subcategories with fewer than 30 sources (section 112(d)(3)). There are fewer than 30 secondary lead smelters, so the standards for existing sources will be based on the best-performing five sources.

In developing the proposal, the EPA has interpreted the term "average" to be equivalent to "median" and the MACT floor has been selected to represent the median of the five best-controlled sources. The median of the five best-controlled sources was selected as the MACT floor on the basis of control technology because insufficient emissions data were available for determining an average emission limitation. An emission source testing program was then conducted in order to determine an appropriate limitation based on the MACT floor technology.

After the floor has been determined for a new or existing source in a source category or subcategory, the Administrator must set MACT standards that are no less stringent than the floor. Such standards must then be met by all sources within the category or subcategory.

Section 112(d)(2) specifies that the EPA shall establish standards that require the maximum degree of reduction in emissions of hazardous air pollutants * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable * * *

In establishing standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory (section 112(d)(1)). For example, the Administrator could establish two classes of sources within a category or subcategory based on size and establish a different emissions standard for each class, provided both standards are at least as stringent as the MACT floor for that class of sources.

In addition, the Act provides the Administrator further flexibility to regulate area sources. Area sources can be regulated by MACT. However, section 112(d)(5) allows the Administrator to promulgate standards for area sources that provide for the use

of "generally available control technologies (GACT) or management practices." Area source standards promulgated under this authority (GACT standards) would not be subject to the MACT floors described above. Moreover, for source categories subject to standards promulgated under section 112(d)(5), the EPA is not required to conduct a residual risk analysis under section 112(f).

At the end of the data gathering and analysis, the EPA must decide whether it is more appropriate to follow the MACT or the GACT approach for regulating an area source category. (As stated previously, MACT is required for major sources.) If all or some portion of the sources emit less than 9.1 Mg/yr (10 tpy) of any one HAP or less than 22.7 Mg/yr (25 tpy) of total HAP's, then it may be appropriate to define subcategories within the source category and apply a combination MACT/GACT approach: MACT for major sources and GACT for area sources in a source category. In the case of this proposed rulemaking for secondary lead smelters, the EPA has decided to regulate both major and area sources by applying MACT. The EPA knows of no technological or economic reasons why secondary lead smelters that are area sources cannot achieve the same level of control as those that are major sources.

The next step in establishing MACT standards is the investigation of regulatory alternatives. With MACT standards, only alternatives at least as stringent as the floor may be selected. Information about the industry is analyzed to develop model plant populations for projecting national impacts, including HAP emission reduction levels, costs, energy, and secondary impacts. Several regulatory alternative levels (which may be different levels of emissions control or different levels of applicability or both) are then evaluated to select the regulatory alternative that best reflects the appropriate MACT level.

The selected alternative may be more stringent than the MACT floor, but the control level selected must be technically achievable. In selecting a regulatory alternative that represents MACT, the EPA considers the achievable emission reductions of HAP's (and possibly other pollutants that are co-controlled), cost and economic impacts, energy impacts, and other environmental impacts. The objective is to achieve the maximum degree of emissions reduction without unreasonable economic or other impacts (section 112(d)(2)). The regulatory alternatives selected for new and existing sources may be different because of different MACT floors, and separate regulatory decisions may be made for new and existing sources.

The selected regulatory alternative is then translated into a proposed regulation. The regulation implementing the MACT decision typically includes sections on applicability, standards, test methods and compliance demonstration, monitoring, reporting, and recordkeeping. The preamble to the proposed regulation provides an explanation of the rationale for the decision. The public is invited to comment on the proposed regulation during the public comment period. Based on an evaluation of these comments, the EPA reaches a final decision and promulgates the standard.

IV. Summary of the Proposed Standards

A. Sources To Be Regulated

Standards are being proposed to limit HAP emissions from: (1) Process sources, (2) process fugitive sources, and (3) fugitive dust sources at secondary lead smelters.

Process source emissions are discharged as the main exhaust of a smelting furnace through a chimney, flue, or ductwork. For the purpose of establishing numerical limits for process source emissions, smelting furnaces have been grouped into the following source types: (1) Collocated reverberatory and blast furnaces (reverberatory/blast), (2) reverberatory or rotary furnaces not collocated with a blast furnace, (3) blast furnaces not collocated with a reverberatory furnace, and (4) electric furnaces.

Process fugitive emission sources that would be regulated are smelting furnace charging, smelting furnace lead and slag tapping, flue dust agglomerating furnace operation, and refining kettles.

Fugitive dust emission sources that would be regulated are plant yards and roadways subject to wind and vehicle traffic, materials handling and storage areas, battery breaking areas, and smelting and refining areas.

B. Proposed Emission Limits for Process Sources

Emission limits are being proposed for lead compounds, total hydrocarbons (THC), and HCl and Cl_2 emissions and opacity from reverberatory, blast, reverberatory/blast furnace combination, rotary, and electric furnaces. Limits are being proposed for lead compounds and THC as surrogates for metal HAP's and organic HAP's, respectively.

Lead compound emissions from all smelting furnace configurations (both new and existing) would be limited to a concentration of 2.0 mg/dscm (0.00087 gr/dscf). Total hydrocarbon emissions from both new and existing reverberatory/blast furnace configurations would be limited to 20 ppmv [expressed as propane at 4 percent carbon dioxide (CO_2) to correct for dilution]. Total hydrocarbon emissions from existing blast furnaces would be limited to 360 ppmv (as propane) at 4 percent CO_2. Total hydrocarbon emissions from new blast furnaces would be limited to 70 ppmv (as propane) at 4 percent CO_2. There is no proposed standard for THC emissions from reverberatory, rotary, or electric furnaces.

Total HCl and Cl_2 emissions from both new and existing reverberatory/blast, blast, reverberatory, and rotary smelting furnace configurations would be limited to 15 mg/dscm (0.0065 gr/dscf) at 4 percent CO_2 to correct for dilution. There is no proposed standard for HCl or Cl_2 emissions from new and existing electric smelting furnaces.

The proposed numerical emission limits for process sources are summarized in table 1.

TABLE 1.—SUMMARY OF PROPOSED STANDARDS FOR PROCESS SOURCES

Furnace configuration	Lead compounds (mg/dscm)	THC[a] (ppmv)	Total HCl and Cl_2[a] (mg/dscm)
Reverberatory/blast	2	20	15
Blast:			
Existing	2	360	15
New	2	70	15
Reverberatory and rotary	2	None	15
Electric	2	None	None

[a] THC and HCl/Cl_2 emissions limits are at 4 percent CO_2 to correct for dilution.
[b] Concentrations (ppmv) for THC are as propane.

C. Proposed Standards for Process Fugitive Sources

The proposed standards for process fugitive sources are in the form of equipment and operating standards. The standards apply to both new and existing sources. All secondary lead smelters would be required to control process fugitive emission sources with capture hoods equivalent in design and performance to those specified in the Occupational Safety and Health Administration's "Cooperative Assessment Program Manual for the Secondary Lead Industry" (Docket No. A–92–43, Item No. II–I–16).

The standards would require the following process fugitive sources to be partially enclosed with a hood and ventilated: smelting furnace and dryer charging hoppers and chutes, lead and slag tapping operations, refining kettles, dryer transition pieces, and flue dust agglomerating furnaces. All hoods, except those on refining kettles, would be required to be designed and operated to achieve a face velocity of at least 110 meters per minute (m/min) [350 feet per minute (fpm)] at all openings. Refining kettle hoods would be required to be designed and operated to achieve a face velocity of at least 75 m/min (250 fpm) and a volumetric flow rate of at least 60 actual cubic meters per minute per square meter [200 actual cubic feet per minute per square foot (acfm/ft ^{2})] of kettle surface area. All hoods would be required to be ventilated to a control device with an outlet lead compound concentration not to exceed 2.0 mg/dscm (0.00087 gr/dscf).

D. Proposed Standards for Fugitive Dust Sources

The proposed standards for fugitive dust sources are in the form of work practice and operating standards. Again, the standards apply to both new and existing fugitive dust sources. Each secondary lead smelter would be required to develop a Standard Operating Procedures (SOP) manual that details procedures to limit fugitive dust emissions. Each smelter's SOP manual would be reviewed and subject to approval by the Administrator.

The SOP manual would describe how each smelter would implement the types of work practices and operating standards which EPA has determined represent MACT controls for fugitive dust emissions. These controls are specified in the proposed regulation and include cleaning of paved areas through vacuuming or power-washing, use of water or chemical dust suppression in materials storage and handling areas, use of partial or total enclosures to prevent wind erosion of storage piles, and use of measures to prevent crossdrafts from upsetting process fugitive control hoods. The SOP manual would also indicate the frequencies with which pavement cleaning and dust suppression are to be performed, and which areas are partially and totally enclosed and which are paved. The MACT controls specified in the proposed regulation would serve as the criteria by which the Administrator would decide whether or not to approve a smelter's SOP.

E. Compliance Dates

Compliance with the standards would be achieved within 24 months of promulgation for existing secondary lead smelters, and upon startup for new and reconstructed smelters.

F. Compliance Test Methods

Testing of lead compound emissions from process and process fugitive emission control devices would be conducted according to EPA reference method 12 (40 CFR part 60, appendix A). Testing of THC emissions from process sources for reverberatory/blast and blast furnace configurations would be conducted according to EPA reference method 25A (40 CFR part 60, appendix A), and the results reported as a concentration in ppmv, as propane, corrected to 4 percent CO_2 for dilution. Testing of HCl and Cl_2 emissions would be conducted according to EPA reference method 26A (59 FR 19306–19323), and the results reported as HCl equivalents, in mg/dscm, corrected to 4 percent CO_2 for dilution. An average of three runs would be used to determine compliance for lead compounds, THC, and total HCl and Cl_2.

Sampling locations for all compliance tests would be determined by EPA reference method 1. Stack gas velocity and volumetric flow rate would be determined by EPA reference method 2. Gas analysis would be conducted according to EPA reference method 3 for CO_2, oxygen, excess air, and molecular weight on a dry basis. The Single Point Integrated Sampling and Analytical Procedure of EPA reference method 3B would be used to measure the CO_2 content of the stack gas during the THC and HCl/Cl_2 compliance tests for correcting to 4 percent CO_2.

G. Enhanced Monitoring Requirements

Continuous opacity monitors (COM's) would be used on all process control stacks to monitor compliance with the lead compound emission limit. Opacity (based on a 6-minute average) greater than the maximum opacity recorded during the initial lead compliance test (plus 2 percent opacity to allow for normal instrument drift) would be a violation of the standard. Process fugitive and building ventilation baghouse performance would be monitored through inspections of the baghouses. Pressure drop and water flow rate would be monitored for PM scrubbers used to control process fugitive sources.

Compliance with the THC standard would require either continuous monitoring of incineration or afterburner temperature or continuous THC monitoring for reverberatory/blast and blast furnace configurations. The temperature would be maintained above a minimum established during the initial THC compliance test. Operating at a lower temperature (based on a 3-hour average) would constitute a violation of the emissions standard. Alternatively, a facility could monitor THC concentration directly with a THC continuous emissions monitor (CEM) if desired.

Compliance with the HCl/Cl_2 standard would require monitoring of either: (1) The addition of soda ash and limestone to furnace charge materials, (2) scrubber parameters (media pH and injection rate), (3) sulfur dioxide (SO_2) concentration, or (4) HCl concentration. The quantity of soda ash and limestone, the scrubber parameters, or the SO_2 concentration would be maintained within allowable ranges established during the initial HCl/Cl_2 compliance test. Failure to maintain these variables within the allowable ranges would constitute a violation of the standard. An operator wishing to establish new allowable ranges would have to demonstrate that compliance with the HCl/Cl_2 standard is still achieved. Alternatively, the operator could monitor HCl concentration using an HCl CEM.

All COM's would be required to comply with Performance Specification 1 in appendix B of 40 CFR part 60. If an owner or operator chose to monitor SO_2, the SO_2 CEM would be required to comply with Performance Specification 2 in appendix B of 40 CFR part 60. All CEM's would be required to comply with the Quality Assurance Procedures found in appendix F of 40 CFR part 60.

H. Notification Requirements

The owner or operator of a secondary lead smelter would be required to submit the notifications described in the General Provisions to part 63, (40 CFR part 63, subpart A). These would include the initial notification, notifications of performance tests and continuous monitoring system (including COM and CEM) performance evaluations, and the notification of compliance status. In addition, each owner or operator would be required to submit the SOP manual and a notification to the Administrator requesting review and approval of the smelter's fugitive dust control SOP manual.

I. Recordkeeping and Reporting Requirements

The owner or operator of a secondary lead smelter would be required to retain for 5 years records of: (1) The results of

initial and subsequent compliance tests, (2) the recorded values for the parameters that must be monitored to demonstrate continuous compliance, and (3) records demonstrating implementation of the fugitive dust controls contained in the smelter's SOP manual.

The owner or operator would be required to submit the quarterly excess emissions and continuous monitoring performance reports, including the results of annual and other compliance tests, as prescribed in the General Provisions.

V. Summary of Environmental, Energy, and Economic Impacts

A. Facilities Affected by This NESHAP

The proposed standards would apply to all secondary lead smelters in the United States, regardless of whether they are classified as a major source or an area source under section 112(c). The EPA estimates that 18 smelters would have to upgrade controls to reduce emissions. All 23 existing smelters would be required to perform monitoring and meet the requirements for recordkeeping and reporting. It is not anticipated that any new smelters will be built over the next 5 years because of the depressed price of lead and the excess capacity in the industry.

B. Air Quality Impacts

Under the proposed standards, organic HAP emissions would be reduced by approximately 1,200 Mg/yr (1,300 tpy). This represents an approximately 70-percent reduction from estimated baseline emissions. Metal HAP emissions would be reduced by 53 Mg/yr (58 tpy) through the reduction of process fugitive emissions [29 Mg/yr (32 tpy)] and fugitive dust emissions [24 Mg/yr (26 tpy)]. This represents a 20-percent reduction from baseline metal HAP emissions. There would be no reductions in metal HAP emissions from process sources. Hydrochloric acid and Cl_2 emissions would be reduced 720 Mg/yr (790 tpy). This represents a 98-percent reduction from baseline emissions.

In addition to HAP reductions, criteria pollutant emissions would also be reduced. Emissions of SO_2 would be reduced by 7,400 Mg/yr (8,100 tpy) if wet scrubbers were installed to control HCl/Cl_2 emissions. Emissions of CO would be reduced by approximately 83,000 Mg/yr (91,000 tpy) and THC emissions (including 1,200 Mg/yr of organic HAP's) would be reduced by approximately 6,400 Mg/yr (7,000 tpy). Controlling metal HAP emissions would also reduce PM emissions (including 53 Mg/yr of metal HAP's) by 140 Mg/yr (150 tpy).

C. Water Quality Impacts

Direct water quality impacts from the proposed standards will vary depending on which control option smelters choose in order to comply with the proposed HCl/Cl_2 emission limits. There would be no wastewater impact if all smelters chose to eliminate HCl/Cl_2 emissions through the addition of fluxing agents to the furnace feed material and the removal of chlorides through slagging, which is the least-cost option.

If wet scrubbers are installed to control HCl/Cl_2 emissions, about 27 million gallons of wastewater from scrubber blowdown would be generated. This wastewater would require neutralization and settling before being discharged to a publicly owned treatment works. Evaporation of water from these scrubbers would be about 430 million gallons per year. The evaporated water would require no treatment. Because EPA does not believe smelters would adopt wet scrubbers as a means of compliance, it is not soliciting comment as to whether the existing effluent limitation guidelines for the secondary lead industry should be amended to account for this source of wastewater.

Use of water for wet suppression and pavement cleaning to control fugitive dust emissions could increase the amount of water runoff that must be treated on site. This incremental increase in runoff would represent less than 1 percent of the volume of water currently treated at secondary lead smelters.

Several of the facilities which would be affected by this rule are located in States adjacent to the Great Lakes. Because these facilities would reduce their emissions of metals and organic HAP's, the indirect water quality impacts of this rule are expected to be positive, albeit difficult to quantify.

D. Solid Waste Impacts

The addition of fluxing agents to smelting furnaces to eliminate HCl/Cl_2 emissions through slagging would result in a slight increase in the amount of slag that must be disposed of as solid waste. This increase would represent only about 5 percent of the slag currently generated by each of the six smelters that would be impacted.

If a smelter chose to install a scrubber to control HCl and Cl_2, a solid waste stream that would require disposal could be generated if the smelter also elected to control SO_2 emissions. Scrubbers installed to control only HCl and Cl_2 do not produce solid waste. If two smelters that do not currently perform paste desulfurization installed scrubbers to control SO_2 emissions in addition to HCl/Cl_2 emissions, these scrubbers would generate as much as 21,000 Mg/yr of solid waste as scrubber sludge.

Because secondary lead smelters typically process hazardous waste that exhibits the toxicity characteristics for lead (40 CFR 261.24), all of the residue generated from these facilities would have to satisfy the standards for treatment prescribed in 40 CFR part 268 for D008 (lead-bearing hazardous waste) before any residue can be land-disposed. (*Chemical Waste Management v. EPA*, 976 F. 2d 2 (D.C. Cir. 1992).

Flue dust and sludge generated at secondary lead smelters are listed as hazardous waste KO69 under 40 CFR 261.32, Hazardous Wastes from Specific Sources. Flue dust collected by baghouses is recycled on site to the smelting furnace at all smelters and is not disposed of as a solid waste. Furthermore, the EPA has issued a limited administrative stay so that the KO69 listing does not apply to sludges generated from acid gas scrubber systems located at secondary lead smelters (56 FR 19951, May 1, 1991).

E. Energy Impacts

No significant increases in electricity consumption are expected as a result of the proposed standards. Natural gas consumption is expected to increase at six of the smelters with blast furnace configurations as a result of installing afterburners or increasing afterburner temperatures. The total increase in natural gas consumption at these smelters is expected to be about 3.7 million cubic meters (130 million cubic feet) per year.

F. Cost Impacts

The estimated nationwide capital and annualized costs of the proposed standards would be $2,700,000 and $2,600,000, respectively. These costs were estimated for all 23 smelters, including those that are currently shut down, and include costs for monitoring, recordkeeping, and reporting.

The estimated capital costs of reducing organic HAP emissions under the proposed standards would be $1,100,000. Estimated annualized costs would be $620,000. Ten smelters would be impacted. For the blast-furnace-only configuration, costs incurred would be for the installation and operation of new afterburners at four smelters and increased natural gas consumption at two smelters. For the collocated reverberatory/blast furnace

configuration, costs incurred would be for the retrofit of additional ductwork to achieve gas stream blending at four smelters

The estimated capital and annualized costs of reducing metal HAP emissions would be $240,000 and $110,000, respectively. These costs would be distributed over an estimated 14 smelters. The capital costs would be for 1 smelter to upgrade its process fugitive emission controls, and for that smelter and 13 others to upgrade their fugitive dust emission controls. Upgrades would be in the form of improved housekeeping, including the purchase of vacuum sweepers by four smelters. Because all smelters currently operate at the level of the proposed standard for metal HAP's, no anticipated reductions or costs are associated with the control of metal HAP's from process sources.

No capital costs to reduce HCl/Cl_2 emissions would be incurred under the proposed standards if all smelters chose to control HCl/Cl_2 emissions through fluxing. The estimated annualized cost would be $160,000, distributed over six smelters, for the purchase of additional fluxing agents. If a smelter chose to install a scrubber to control HCl/Cl_2 emissions, the approximate capital cost would be $1,700,000 and the annualized cost would be $850,000 for a reverberatory furnace with a production capacity of 50,000 Mg/yr.

Enhanced monitoring and recordkeeping and reporting costs would be incurred by all 23 smelters. These costs are estimated to be $73,000 per smelter per year and the total national cost is estimated to be $1,700,000 per year. The only capital costs would be for COM's, for which the total national cost is estimated to be $1,400,000. The recordkeeping and monitoring cost estimate includes the costs for the emission tests needed to demonstrate compliance. Only the tests for lead emissions from process fugitive sources and building ventilation systems are annual tests, so testing costs would be lower after the initial compliance demonstration.

G. Economic Impacts

The Economic Impact Analysis evaluated: (1) The ability of facilities to absorb annual control costs and obtain financing for capital control costs, and (2) the market response to the regulation—specifically, impacts on industry-wide output, employment, and revenue. The analysis was performed on all 23 facilities in the industry, including facilities that have shut down operations indefinitely but have not closed permanently.

Because lead is an internationally traded commodity whose price is determined by international market factors, secondary lead producers have little influence on price. Therefore, the economic analysis assumed that no price increase would occur and control costs would have to be absorbed by affected facilities. Based on discussions with industry experts, EPA formulated guidelines for estimating when a facility would be significantly impacted. A facility would be significantly impacted if either: (1) Total annualized control costs result in more than a 1-percent increase over baseline cost of production, or (2) capital control costs exceed 5 percent of baseline total assets (company-wide) and post-regulation total liabilities exceed two-thirds of baseline total assets if the capital control costs are financed with debt.

The analysis indicates that up to 11 facilities would be significantly impacted, depending on the level of the standards and the amount of continuous monitoring required. Almost all of the significantly impacted facilities are owned by small businesses because of economies of scale and limited access to capital resources.

Implementation of emission controls equal to the MACT floor, the basis for the proposed rule, results in significant impacts to two facilities that are currently in operation. Three other facilities that are currently shut down would also be impacted significantly. If control levels are imposed at levels above the MACT floor, seven facilities are significantly impacted. Of the seven facilities, four sources are currently in operation and three are shut down. When continuous opacity monitoring is required in addition to the MACT floor, one additional source that is currently shut down is significantly impacted.

If the MACT floor is considered with continuous opacity and THC monitoring, nine facilities are significantly impacted. Of the nine facilities, three sources are currently in operation and six are shut down. If continuous monitoring for HCl is added, 11 facilities would be significantly impacted. Of the 11 facilities, four sources are currently in operation and seven are shut down.

Under any of the regulatory alternatives considered, industry employment and output is reduced by less than 1-percent. At current market conditions (December 1993), no closures are expected as a consequence of the regulation. If the price of lead decreases to levels observed over the past year, the possibility of closure increases for two currently operating major sources. Under any of the regulatory alternatives, all smelters currently shut down have additional incentive to not reopen.

VI. Rationale for Selecting the Proposed Standards

This section describes the rationale for the decisions made by the Administrator in selecting the proposed standards.

A. Selection of Pollutants and Source Category

Secondary lead smelters emit several of the 189 HAP's listed in section 112(b) of the Act. Organic HAP's emitted by secondary lead smelters include carbon disulfide, 1,3-butadiene, methyl chloride, benzene, styrene, toluene, formaldehyde, and naphthalene. Metal HAP's emitted include primarily compounds of lead, antimony, and arsenic, with lesser quantities of compounds of chromium, nickel, manganese, mercury, and cadmium. In addition, secondary lead smelters emit the HAP's HCl and Cl_2. Criteria pollutants emitted include lead, PM, SO_2, CO, and hydrocarbons.

Approximately two-thirds of the secondary lead smelters in the United States are major sources of HAP's, based on potential-to-emit estimates that take into account air pollution control measures currently in place at each smelter. Furthermore, as described in section II.D of this preamble, the Administrator has initially determined that secondary lead smelters that are area sources of HAP's present a threat of adverse effects to human health sufficient to support adding secondary lead smelters to the list of area source categories subject to regulation under section 112(c)(3) of the Act. Consequently, the standards being proposed would apply to all new and existing secondary lead smelters regardless of source (major or area) designation.

The emission, equipment, and work practice standards being proposed today would substantially limit emissions of metal HAP's, organic HAP's, HCl, and Cl_2 from secondary lead smelters. The standards being proposed to address metal and organic HAP emissions establish limits for surrogates rather than for individual compounds.

Establishing emission limits for each of the numerous metal and organic HAP compounds emitted from secondary lead smelters is considered impractical because measuring each compound would be too costly and would pose unreasonable compliance and monitoring costs and would achieve little, if any, emission reduction above the surrogate pollutant approach. On the other hand, strong correlations exist

between emissions of the selected surrogate pollutants and emissions of the pollutant classes they represent. In addition, the technologies identified for the control of HAP's have equivalent performance on the selected surrogates. Therefore, emissions standards requiring good control of the selected surrogates will also achieve good control of HAP's.

Candidate surrogates for the mix of metal HAP's present, including lead compounds, are PM and lead, both of which are criteria pollutants. The selected surrogate is lead. Compounds of lead are the most prevalent metal HAP contained in secondary lead smelter emissions. In addition, lead is concentrated, along with metal HAP's, in the smaller size fractions of PM, which are the most difficult to control. Therefore, controlling lead will also control metal HAP's. Available data on the performance of baghouses used to control particulate emissions at secondary lead smelters indicate a much stronger correlation of metal HAP's with lead emissions than with total PM (Docket No. A–92–43, Item Nos. II-A–1, II-A–2, II-A–3, II-I–1, and II-I–9). Therefore, lead is a better surrogate than PM. Lastly, there is a validated test method (EPA reference method 12) for the determination of inorganic lead emissions from stationary sources.

The surrogate pollutant chosen for organic HAP's is THC. There are much data to demonstrate that the destruction of THC through incineration is strongly correlated with the destruction of organic HAP compounds (Docket No. A–92–43, Item No. II-I–27, 56 FR 7155–56 (February 21, 1991)). In addition, THC is easily measured and can be monitored. Carbon monoxide, another indicator of destruction efficiency for organic compounds, was considered but dismissed. It does not correlate as well as THC with destruction of organic HAP compounds. No surrogates are needed for HCl and Cl_2 because they can be measured directly.

The proposed regulation does not establish explicit limits for dioxin/furan emissions from secondary lead smelters for several reasons. First, secondary lead smelters emit very small quantities of dioxin. Cumulative annual emissions for the entire industry are estimated to be only 1.6 grams of dioxin/furan, expressed in toxic equivalents (Docket No. A–92–43, Item No. II–B–35). Emission rates from the other two smelters (a reverberatory/blast smelter and a rotary smelter) were an order of magnitude lower (Docket No. A–92–43, Item Nos. II–A–1 and II–A–3). Second, the Agency believes that the emission controls necessary to achieve the emission limitations associated with this proposed standard would reduce dioxin/furan emissions, particularly from blast furnaces. Finally, any risks associated with dioxin will be addressed in the residual risk evaluation required within eight years of promulgation of the standard pursuant to section 112(f) of the Act.

The Agency currently is in the process of revising its assessment of the risks associated with the exposure to dioxin. The EPA requests comment whether additional action is necessary to reduce dioxin emissions from secondary lead smelters.

Facilities that solely melt scrap or refined lead for use in specific molded or fabricated products would not be covered by the proposed rule because they do not operate blast, reverberatory, rotary, or electric smelting furnaces and, therefore, have substantially different and lower emissions potential than do secondary lead smelters.

Lead-acid battery manufacturing operations that may be collocated with a secondary lead smelter and primary lead smelters that produce refined lead from ore concentrate would not be covered by the proposed rule because they are listed as separate categories in the list of major sources to be regulated by MACT standards (57 FR 31576) in separate rulemakings.

B. Selection of Affected Sources

The proposed standards apply to three types of emission sources at secondary lead smelters: (1) Process sources, (2) process fugitive sources, and (3) fugitive dust sources.

1. Process Sources

Affected process sources include all furnaces (blast, reverberatory, rotary, or electric) used for smelting lead-bearing scrap or slag. All smelting furnaces are equipped with chimneys, flues, or ductwork that convey exhaust gases from the furnace. These exhaust gases contain varying amounts of organic HAP's, metal HAP's, HCl, and Cl_2.

Blast furnaces and collocated reverberatory and blast furnaces have potentially large organic HAP emissions. Therefore, standards are being proposed to limit organic HAP emissions from these furnace configurations. Rotary furnaces, electric furnaces, and reverberatory furnaces not collocated with blast furnaces have relatively low potentials for organic HAP emissions and no standards are being proposed to limit organic HAP emissions from these furnace configurations. The MACT floor for these configurations does not include add-on controls and the EPA does not believe that there is any justification to be more stringent than the MACT floor because of the small amounts of organic HAP emissions associated with these sources.

Collocated reverberatory and blast furnaces are being regulated as a single source type because a greater level of control is achievable when reverberatory and blast furnaces are collocated than when they are not. Other furnace combinations have not been observed in this industry.

All smelting furnaces have high uncontrolled emissions of metal HAP's. Therefore, emission standards to limit lead emissions (as a surrogate for metal HAP's) that would apply to all smelting furnace types and configurations are being proposed.

All smelting furnaces that process lead-acid batteries are also potential sources of HCl and Cl_2 emissions because of the presence of PVC plastic separators in the furnace feed. The amount of HCl and Cl_2 emitted will vary substantially depending on the quantity of PVC in the feed and whether fluxing agents are added to promote the elimination of chlorides through slagging. However, because all furnace types (except electric furnaces) are potential sources, emission standards are being proposed to limit HCl and Cl_2 emissions from all but electric smelting furnaces.

Electric furnaces are not sources of HCl or Cl_2 emissions because the chlorine present in the feed material is in the form of NaCl or CaC_2 and cannot be released during smelting. However, the proposed regulation defines electric smelting furnaces to include only those that process reverberatory furnace slag as the lead-bearing material charged to the furnace. No electric furnaces that process other lead-bearing materials are currently in use.

2. Process Fugitive Sources

The following process fugitive sources were selected for regulation: (1) Smelting furnace and dryer charging hoppers and chutes (the furnace and dryer openings into which materials are charged), (2) lead taps and molds, (3) slag taps and molds, (4) refining and alloying kettles, (5) dryer transition pieces, and (6) flue dust agglomerating furnace taps and molds. All process fugitive sources are potential emission points of metal HAP's. Blast furnace charging emissions may also contain organic HAP's if there is leakage of primary exhaust gases into the ventilation hood over the charging chute.

The EPA is not proposing standards for battery breaking equipment (e.g.,

rotary hammermills, saws, and shears) or lead casting machines. Many smelters do not have add-on controls for metal HAP's for these sources so that the MACT floor is no control. The EPA does not believe there is any justification for controls more stringent than the floor. Battery breakers are small sources of metal HAP emissions [about 18 kilograms (40 pounds) per year per battery breaker] compared to other sources, and they emit relatively large particles that settle out quickly from the air in the battery breaking area. The proposed NESHAP would require fugitive dust controls in the battery breaking area that would control potential emissions from these settled particles. Casting machines that are used to cast refined lead into ingots are also small sources of metal HAP emissions because the molten lead in the molds is below the fuming temperature of lead. Therefore, casting machines are not included in the proposed regulation.

3. Fugitive Dust Sources

Fugitive dust sources selected for regulation are the following: (1) The battery breaking area, (2) the materials storage and handling area (including, but not limited to, areas in which slag and flue dust are stored), (3) the smelting furnace area, (4) the refining and casting area, and (5) plant yards and roadways. Fugitive dust sources are potential emission sources of metal HAP's, but not organic HAP's or HCl and Cl_2. Therefore, the five listed sources will be covered by the proposed regulation.

C. Selection of Basis and Level for the Proposed Standards for New and Existing Sources

Section 112(d)(3)(B) of the Act requires that the EPA set standards no less stringent than "the average emission limitation achieved by the best performing 5 sources" for categories with fewer than 30 sources. Floor levels of control were determined for each of the affected source types under consideration for regulation. Source types are process sources, process fugitive sources, and fugitive dust sources. For process fugitive sources and fugitive dust sources, which are similar in character and emissions potential across all secondary lead smelters, the entire population of secondary lead smelters was considered in determining MACT floor levels of control. For process sources, specifically smelting furnaces, smelters were differentiated and divided into configurations based on the smelting furnace types used at individual smelters. This was done because smelting furnaces differ substantially, based on configuration, in both emissions potential (mix and amounts) and achievable control levels for organic HAP's. Section 112(d)(1) of the Act gives the Administrator the authority to distinguish among classes, types, and sizes of sources within a category when establishing standards.

Because the secondary lead smelter category comprises fewer than 30 sources, the floor level of control selected for existing sources is based on the median level of control achieved by the best-performing five sources. That is, the floor level of control reflects the control technology in use by the source positioned third (the median) among the best-performing five. The median was selected as the MACT floor, rather than the mean, because the MACT floor is based on the control technology used and the mean cannot be determined. The floor for new sources reflects the control technology in use by the best-controlled source in the category. Emission limits were then selected based on the performance continuously achievable by the proposed MACT technology.

1. Selection of MACT for Process Sources

Separate MACT floors were determined for the following smelting furnace configurations: (1) Collocated reverberatory and blast furnaces, (2) blast furnaces not collocated with a reverberatory furnace, (3) reverberatory or rotary furnaces not collocated with a blast furnace, and (4) electric furnaces. Only smelters with a similar furnace configuration were used to establish the MACT floor level of control for new and existing furnaces within each configuration. The four configurations were selected based on differences in potential emissions and control options among the configurations.

With one exception—the blast-furnace-only configuration—the MACT floor level of control was the only option considered because no options more stringent than the MACT floor are known. For the blast-furnace-only configuration, two options—the floor and one more stringent than the floor—were considered.

The emission reductions and cost impacts of the proposed MACT floor and more stringent options are presented in more detail in chapters 5 and 6 of the BID, respectively.

a. *Reverberatory/Blast Furnace Configuration.* Control measures currently in use to control furnace emissions at collocated reverberatory/blast furnace facilities are combinations of afterburners, gas stream blending, baghouses, wet scrubbers, and fluxing additions.

Afterburners used to control only blast furnace emissions are capable of achieving about 90-percent control of organic HAP's, THC, and CO. Gas stream blending consists of mixing blast furnace gases with hotter and larger volume reverberatory furnace gases in a chamber for incineration. Gas stream blending provides more cost-effective control of organic HAP's than do afterburners by utilizing the large volume of hot (greater than 1,000 °C) exhaust produced by the reverberatory furnace. Greater than 99-percent control of THC (the surrogate for organic HAP's) and 98-percent control of CO have been demonstrated (Docket No. A–92–43, Item No. II–A–3).

Baghouses are used to control PM and lead. Properly operated and maintained, baghouses are capable of achieving greater than 99-percent control of PM and about 98-percent control of lead and other metal HAP compounds (Docket No. A–92–43, Items II–A–1, II–A–2, II–A–3). Wet scrubbers, primarily in place to control SO_2, are capable of providing 99-percent control of HCl/C_2 (Docket No. A–92–43, Item No. II–A–3). The addition of soda ash or limestone fluxing agents to the furnace feed to enhance the removal of chlorides through slagging can achieve HCl/Cl_2 control equivalent to that of wet scrubbing (Docket No. A–92–43, Items II–A–1, II–A–2).

Nine smelters operate reverberatory/blast configurations. The best-controlled source and best-performing five sources all blend gas streams to control organic HAP emissions, use baghouses to control metal HAP emissions, and either scrub or flux to control HCl/Cl_2 emissions. Consequently, the combination of these controls constitutes MACT floors for both new sources and existing sources.

Because there are no control options available for consideration more stringent than the MACT floor controls for new or existing sources, the technological basis selected for the proposed standards for collocated reverberatory/blast furnaces is gas stream blending to control organic HAP's, a baghouse to control metal HAP's, and a scrubber or flux addition to control HCl/Cl_2.

Under this selection of MACT for existing sources, six smelters would have to upgrade their air pollution controls to some degree to meet the proposed MACT. Physical upgrades would include the retrofit of additional ductwork at five smelters to blend the blast and reverberatory furnace gas

stream to achieve incineration of organic HAP's in the blast furnace emissions. Other upgrades required at four smelters include the addition of fluxing agents to the reverberatory furnace feed for HCl/Cl_2 control.

Total estimated capital costs for upgrades at the smelters requiring additional ductwork would be about $330,000. The costs for purchasing additional fluxing agents were included as annual costs rather than capital costs. Total annualized costs for all six impacted smelters would be about $120,000—$40,000 for capital recovery and about $80,000 for the purchase of fluxing agents (soda ash or limestone) at four smelters that do not have SO_2 scrubbers.

Installing the proposed MACT floor controls at smelters with reverberatory/blast furnaces would reduce organic HAP emissions by 640 Mg/yr (700 tpy) and HCl/Cl_2 emissions by 360 Mg/yr (400 tpy). Emissions of THC and CO would also be reduced by about 2,500 Mg/yr (2,800 tpy) and 47,000 Mg/yr (52,000 tpy), respectively. All of these smelters currently have baghouses, so there would be no reduction in metal HAP emissions from process sources and no associated cost impacts.

b. *Blast Furnace Configuration.* Control measures currently in use to control furnace emissions at blast furnace-only facilities include afterburners, baghouses, wet scrubbers, and fluxing. Although installed primarily for the combustion of CO, afterburners also provide varying degrees of control for organic HAP's. The most important variable in afterburner performance, that is, the ability to combust and destroy organics, is temperature, although residence time and turbulence are also important. Temperature, however, is the most important variable, with higher levels of destruction achieved at higher temperatures.

The operating temperature of the best-performing afterburner in this furnace configuration is 870 °C (1,600 °F) (Docket No. A–92–43, Item No. II–D–4), which represents an estimated 98-percent organic HAP control (Docket No. A–92–43, Item II–B–31). The average temperature of the five best-performing afterburners operating at the highest temperatures is 700 °C (1,300 °F), which represents an estimated 84-percent organic HAP control. Baghouses, wet scrubbers, and fluxing provide the same levels of control for metal HAP's (98 percent) and HCl/Cl_2 (99 percent) for blast furnaces as for collocated reverberatory/blast furnaces.

The blast furnace-only configuration encompasses 13 blast furnaces at 8 smelters. The best-controlled blast furnace is controlled by an afterburner at 870 °C (1,600 °F) to control organic HAP's and a baghouse to control metal HAP's, and performs fluxing with soda ash or limestone or operates an SO_2 scrubber to control HCl/Cl_2 emissions. The combination of these controls constitutes the proposed MACT for new sources.

Seven blast furnaces are controlled by an afterburner to control organic HAP's and a baghouse to control metal HAP's, and perform fluxing or use a scrubber to control HCl/Cl_2. The average temperature of the five afterburners operated at the highest temperatures is 700 °C (1,300 °F). The proposed MACT floor for existing sources is, therefore, an afterburner operated at 700 °C (1,300 °F), a baghouse, and fluxing.

To comply with a standard based on the MACT floor for existing sources, five smelters would have to upgrade their air pollution controls. Physical upgrades would include the installation of afterburners at three smelters. Other upgrades required at four smelters would be increased afterburner temperature, which would require an increase in natural gas consumption. Total estimated capital costs for upgrades at the smelters requiring new afterburners would be about $810,000. Total annualized costs would be $590,000—$120,000 for capital recovery and $470,000 for increased fuel costs and other operating expenses to operate all afterburners at 700 °C (1,300 °F).

Installing the proposed MACT floor controls at all existing blast furnace facilities would reduce organic HAP emissions by 580 Mg/yr (640 tpy). All blast furnace facilities currently have baghouses and perform fluxing, so there would be no reductions in metal HAP or HCl/Cl_2 emissions and no associated cost impacts. Emissions of THC and CO would also be reduced by about 2,700 Mg/yr (3,000 tpy) and 32,000 Mg/yr (35,000 tpy), respectively.

There is one control option more stringent than the controls in the floor for existing sources. That option is to raise the afterburner temperature from 700 to 870 °C (1,300 to 1,600 °F)—effectively adopting the same controls for existing sources as the new source MACT. The EPA evaluated the incremental impacts of selecting an afterburner at 870 °C (1,600 °F) as the technological basis for controlling existing sources. Physical upgrades would include the installation of new afterburners at seven smelters, and other upgrades would include increased natural gas consumption at all but one smelter.

Total capital and annualized costs for upgrades at blast furnace smelters would nearly triple under the more stringent option. Estimated total capital costs would increase by $1,700,000 to $2,300,000 (at 870 °C) relative to the floor level of control, and annualized costs would increase by $1,100,000 to $1,700,000. The increased costs would lead to an increase in adverse economic impacts. Under the more stringent option, 7 blast furnace smelters would be significantly impacted, compared to 5 smelters under the MACT floor option. The two additional smelters that are significantly impacted are operating smelters.

Under the more stringent option, organic HAP emissions at blast furnace smelters would decrease an additional 110 Mg/yr (120 tpy), compared to an emissions reduction of 580 Mg/yr (640 tpy) under a standard based on the floor. Emissions of THC and CO would decrease by an additional 500 Mg/yr (550 tpy) and 21,000 Mg/yr (23,000 tpy), respectively, compared to initial reductions of 2,700 Mg/yr and 32,000 Mg/yr under a standard based on the floor. The incremental cost-effectiveness of organic HAP reductions would be $10,000/Mg ($9,100/ton) under the more stringent option.

In light of the cost and economic impacts and the HAP reductions achievable, the EPA has concluded (subject to comment) that adoption of this more stringent (above the MACT floor) option as the basis for standards for existing blast furnace smelters is unreasonable. Therefore, the technological basis for the proposed standards for existing blast furnaces is an afterburner at 700 °C (1,300 °F), a baghouse, and fluxing or a scrubber.

The EPA is aware, however, that this proposal permits organic HAP emissions at the eight facilities with blast furnace-only configurations to remain significantly higher than the organic HAP emissions resulting from other configurations. Further, the EPA recognizes that additional reductions are technically feasible at these locations if the afterburner temperatures are raised. The EPA requests comment on how consideration of the differential impacts and environmental justice should be incorporated in the final MACT determination. The EPA specifically requests comment on the decision to establish proposed standards at the MACT floor for the blast furnace-only smelting configuration.

c. *Rotary and Reverberatory Furnace Configurations.* Control measures currently in use to control furnace emissions at rotary furnace and reverberatory furnace facilities are

baghouses, wet scrubbers, and the addition of fluxing agents. Baghouses and wet scrubbers provide the same levels of control for metal HAP's (98 percent) and HCl/Cl_2 (99 percent), respectively, as with other furnace configurations. Soda ash and limestone are added to all rotary furnaces and some reverberatory furnaces as fluxing agents, providing HCl/Cl_2 control equivalent to that of scrubbing.

The high exhaust temperature maintained in rotary and reverberatory furnaces (greater than 1,000 °C) ensures nearly complete destruction of any organic HAP's present. Consequently, no additional control for organic HAP's is necessary.

Six smelters operate either rotary or reverberatory furnace configurations. The best-controlled furnace and best-performing five furnaces use a baghouse to control metal HAP's and a scrubber or fluxing to control HCl/Cl_2. Consequently, the combination of these controls constitutes the MACT floors for both new source and existing source. Because there are no control options available for consideration more stringent than the controls in the floors for new or existing sources, the technological basis selected for the proposed standards for rotary and reverberatory furnaces is a baghouse for controlling metal HAP's and a scrubber or flux addition for controlling HCl/Cl_2.

Under this selection of MACT for new and existing sources, two smelters would have to upgrade their air pollution controls to some degree by increasing the amount of fluxing agents added to their furnaces. No capital costs would be incurred; total annualized costs would be $76,000 for the additional fluxing agents at the two smelters. Hydrochloric acid and Cl_2 emissions would be reduced by about 350 Mg/yr (390 tpy). There would be no reduction in metal HAP or organic HAP emissions and no associated cost impacts. All six smelters operating this configuration currently have baghouses for PM, lead, and other metals control. Add-on controls for organic HAP emissions are unnecessary because neither furnace type emits organic HAP's.

d. *Electric Furnace Configuration.* There is currently only one electric furnace in use in the secondary lead smelting source category. It is used to process slag generated at three reverberatory furnace-only smelters. The furnace is equipped with a baghouse to control PM and lead emissions. Neither organic HAP's nor HCl/Cl_2 are emitted from this furnace because it processes only slag that is relatively free of organic matter and available chlorine. Consequently, a baghouse constitutes the floor for both new source and existing source MACT for controlling metal HAP's. Because there are no available control options more stringent than a baghouse, the proposed MACT for new and existing sources is a baghouse. Because this furnace already has a baghouse, no upgrades in air pollution controls are needed and there would be no emission reductions or cost impacts associated with the proposed standard.

2. Selection of MACT for Process Fugitive Sources

Process fugitive sources are similar in emissions characteristics and control technology across all secondary lead smelters, regardless of smelting furnace configuration. Therefore, there was no need to distinguish among process furnace configurations when developing the standards for process fugitive sources. The entire population of secondary lead smelters was used in determining MACT floor levels of control for new and existing sources.

The four types of process fugitive sources being regulated are smelting furnace charging and tapping locations, flue dust agglomerating furnaces, refining kettles, and dryers. All of these are sources of metal HAP's and are typically controlled by hoods ventilated to baghouses.

The proposed equipment specifications for the design and operation of capture hooding and ventilation for process fugitive sources are adapted from the Occupational Safety and Health Administration's (OSHA's) "Cooperative Assessment Program Manual for the Secondary Lead Smelter Industry" (Docket No. A–92–43, Item No. II–I–16). The OSHA manual specifies that process fugitive sources should be controlled by an enclosure-type hood that is ventilated so that a minimum face velocity is achieved. Face velocity is the velocity at which air is drawn into a hood and, along with hood type, is a primary factor in hood capture efficiency. The minimum recommended face velocity varies by source type, but is generally about 110 m/min (350 fpm). These controls represent state-of-the-art ventilation practices to protect workers by promoting effective capture and ventilation of process fugitive emissions.

The OSHA manual was developed in 1983 through a cooperative effort by government, industry, and labor in response to the occupational health standard for lead (29 CFR 1910.1025), which requires that employers in the secondary lead smelting industry implement controls to reduce employee exposure to lead. The manual was prepared to assist employers and employees in identifying and implementing the best controls that were recognized as technologically feasible.

Based on observations at operating secondary lead smelters, the EPA believes that the capture and ventilation systems installed and operated at secondary lead smelters are designed and operated in accordance with the specifications contained in the OSHA cooperative assessment program manual. These controls consequently establish the MACT floor. Therefore, the EPA is proposing to incorporate these specifications into the proposed MACT for new and existing process fugitive sources.

a. *Smelting Furnace Charging and Tapping.* Smelting furnace charging and tapping are sources of metal HAP's. Blast furnace charging can also be a source of organic HAP's. With one exception, all furnace charging and lead tapping and slag tapping locations on 44 smelting furnaces are enclosed in a hood and captured emissions are ventilated to a baghouse for the control of metal HAP's. One blast furnace has no hooding or ventilation on the charging chute. Consequently, the MACT floor for existing sources is hooding and ventilation to a baghouse for the control of metal HAP's. There are no control options above the MACT floor, so the floor is the proposed MACT for both existing and new sources. The OSHA manual recommends an enclosure-type hood with a minimum face velocity of 110 m/min (350 fpm) for these emission points. The manual also recommends a similar hood for the transition piece on rotary furnaces.

The proposed MACT to control organic HAP emissions from blast furnace charging is a hood over the charging chute with a ventilation flow rate that is properly balanced against the primary exhaust flow rate from the furnace. The two flow rates are balanced to minimize the escape of primary exhausts and organic HAP's to the furnace charging hood.

b. *Agglomerating Furnaces.* Agglomerating furnaces are sources of metal HAP's. They are used at nine smelters and all are hooded and ventilated to a baghouse. Therefore, the MACT floor for existing sources is a hood with ventilation to a baghouse. There are no control options above the MACT floor, so the MACT floor is the basis for the proposed MACT for both new and existing sources. The OSHA manual recommends an enclosure-type hood with a minimum face velocity of 110 m/min (350 fpm).

c. *Refining Kettles.* Refining kettles are sources of metal HAP's. There are about 170 refining kettles and they are hooded and ventilated to baghouses at all but three smelters; three smelters use wet scrubbers instead of baghouses. Baghouses typically offer greater control of metal HAP's than wet scrubbers. Therefore, the MACT floor for existing sources is a hood and ventilation to a baghouse. There are no control options above the MACT floor, so the MACT floor is the basis for the proposed MACT for both new and existing sources. The OSHA manual recommends enclosure-type hoods with minimum face velocities of 75 m/min (250 fpm) and flow rates of at least 60 m^3/min per m^2 (200 acfm/ft^2) of the surface area of the kettle's contents.

d. *Dryers.* Dryers are sources of metal HAP's. They are currently in use at six smelters to remove moisture from materials just prior to charging them to reverberatory smelting furnaces. Each dryer has a transition piece between the dryer cylinder and the furnace feed chute. These transition pieces on all dryers are hooded and ventilated to a baghouse. The MACT floor for both existing and new dryers is, therefore, hoods over the transition pieces with ventilation to a baghouse. There are no control options above the MACT floor, so the MACT floor is the basis for the proposed MACT for both new and existing sources.

The OSHA manual does not contain recommendations for dryers, but the transition piece on a dryer is analogous to the transition piece on a rotary smelting furnace, for which the manual recommends an enclosure-type hood with a face velocity of at least 110 m/min (350 fpm). The proposed MACT includes these specifications.

3. Impacts of Proposed Standards for Process Fugitive Sources

There are no controls more stringent than those established by the MACT floor described above for process fugitive sources. Therefore, the EPA is proposing standards for process fugitive sources that correspond to the MACT floor.

One smelter would be required to upgrade its process fugitive controls by adding a hood over its blast furnace charging chute. The estimated capital and annualized costs to enclose and ventilate this one source would be $47,000 and $4,400, respectively. The estimated pollutant reduction would be 26 Mg/yr (29 tpy) of metal HAP's.

Another smelter would be required to balance existing ventilation air at the blast furnace charging chute to preclude the inadvertent collection of process gases that contain organic HAP's. The potential emission reductions at the one smelter at which organic HAP process emissions were detected in the charging hood exhaust air would be about 50 Mg/yr (55 tpy).

The EPA has no data on the performance of the wet scrubbers being used to control the refining kettle emissions at three smelters. The MACT floor for refining kettles is hooding and ventilation to a baghouse, and baghouses are generally more efficient than scrubbers in controlling metal HAP's. However, refining kettles are very similar to scrap melting operations at battery manufacturing facilities. Data from the latter that are controlled by wet scrubbers indicate that refining kettles controlled by wet scrubbers should be able to achieve a lead limit that is based on the performance of a baghouse (Docket No. A–92–43, Item No. II–A–8). Therefore, it should not be necessary to replace the existing wet scrubbers with baghouses and there should be no associated cost impacts.

4. Selection of MACT for Fugitive Dust Sources

Fugitive dust sources are similar in emissions characteristics and control technology for all smelters, regardless of smelting furnace configuration. Therefore, there was no need to distinguish among furnace configurations when developing the standards for fugitive dust sources. The entire population of 23 secondary lead smelters was used to determine the MACT floors for new and existing fugitive dust sources.

The four areas of fugitive dust sources being regulated are battery breaking areas, furnace and refining and casting areas, materials storage and handling areas, and plant roadways.

Controls for fugitive dust sources include: (1) Paving all areas subject to vehicle traffic to facilitate the removal of accumulated dust, (2) periodic cleaning of all paved areas to remove deposited dust and prevent its re-entrainment or transfer to other areas by vehicle traffic, (3) vehicle washes at exits from materials storage and handling areas to prevent carry-out of metal HAP-bearing residues and dust, (4) wetting or use of chemical surfactants, binding agents, or sealers on storage piles coupled with partial or total enclosures to limit wind erosion and the generation of dust associated with materials storage and handling, and (5) ventilating total enclosures, where used, to a baghouse or equivalent device to capture airborne dust.

Total enclosure of a fugitive dust source and ventilation of the enclosure to a control device may at first appear to be the most effective means of controlling fugitive dust emissions. However, the EPA has determined from observations of operating smelters and a technical analysis of fugitive dust control measures applicable to this source category that partial enclosures with appropriate wetting and pavement cleaning cost much less and are equally effective in controlling fugitive dust emissions when coupled with monitoring and recordkeeping to ensure these activities are performed (Docket No. A–92–43, Item No. II–B–28).

It should be noted that existing Clean Water Act effluent limitation guidelines already provide discharge allowances, based on technology-based controls, for pollutants in the wastewater generated from facility wash down and truck washing. This proposed regulation should not require any amendments to those standards. (See 40 CFR 421, subpart M).

a. *Battery Breaking Area.* At least nine smelters control fugitive dust emissions from the battery breaking area. Controls include partial or total enclosures, vacuum or powerwashing systems, and the wetting of storage piles. Therefore, these controls are the MACT floor for existing sources. Because there exists no more stringent controls that are demonstrated for the battery breaking area, these floor level controls are the proposed MACT for existing sources and are also the proposed MACT for new sources. An equivalent alternative technology is to totally enclose the area and ventilate the entire building or enclosure volume to a baghouse.

b. *Furnace and Lead Refining and Casting Areas.* At least 12 smelters either totally enclose the furnace and lead refining and casting areas and ventilate the enclosure to a baghouse, or partially enclose this area on at least three sides and vacuum or powerwash the pavement. The remaining smelters use some, but not all, of these techniques. Therefore, partial enclosure coupled with pavement cleaning (vacuuming or powerwashing) or total enclosure ventilated to a baghouse is the MACT floor for existing sources. Because no more stringent controls are available, these floor level controls are the proposed MACT for existing sources and are also the proposed MACT for new sources.

c. *Materials Storage and Handling Areas.* At least 12 smelters have paved the materials storage and handling areas, operate vehicle washes at exits from these areas, and either totally enclose the area and ventilate the

enclosure to a baghouse or partially enclose the storage piles and use wetting or other dust suppression techniques on the storage piles. The remaining smelters use some, but not all, of these techniques. Therefore, vehicle washes, paving, and either partial enclosure coupled with wet suppression or total enclosure and a baghouse is the MACT floor for existing sources. Because no more stringent controls are available, these floor level controls are the proposed MACT for existing sources and also the proposed MACT for new sources.

d. *Roadways.* At least 10 smelters have paved their roadways and periodically clean the pavement by vacuuming or powerwashing. Therefore, these controls are the MACT floor for existing sources. Because no more stringent controls are available, these floor level controls are the proposed MACT for existing sources and also the proposed MACT for new sources.

5. Impacts of Proposed Standards for Fugitive Dust Sources

The EPA is proposing that the MACT floors should serve as the basis of the proposed standards for fugitive dust sources because there are no available control technologies more stringent than the MACT floors. Each smelter would be required to develop an SOP manual that describes how it will use MACT controls to limit fugitive dust emissions and operate according to the manual at all times.

Thirteen smelters would be required to upgrade their fugitive dust controls and practices to meet the MACT level of control in the proposed standards. Four smelters would need to purchase mobile vacuum systems and allocate additional labor hours to operate them. Nine smelters that already operate vacuums would need to increase the operation of the vacuums to clean additional areas not currently vacuumed or begin implementing some form of dust suppression practices in the materials storage area.

The capital costs of adopting the proposed standards would be about $190,000 for the purchase of vacuums at four smelters. The total annual cost would be $110,000, which includes the annualized cost of the new vacuums, operating labor for additional vacuuming, and the cost of additional water (including treatment) for wet suppression. The estimated emission reductions would be 23 Mg/yr (25 tpy) of metal HAP's. The dust collected by the additional vacuum sweepers and other fugitive dust controls would be recycled back into the smelting furnace to recover the lead content. Therefore, there would be no significant costs incurred for the management of the captured fugitive dust.

D. Selection of the Format for the Proposed Standards

Several formats were considered to implement the control techniques selected as the basis for the proposed standards. These include emission standards in a variety of format options, as well as design, equipment, work practice, and operational standards. Section 112(d) of the Act requires the Administrator to prescribe emission standards for HAP control unless, in the Administrator's judgement, it is not feasible to prescribe or enforce emission standards.

Section 112(h) defines two conditions under which it is not feasible to prescribe or enforce emission standards:

(1) If the HAP cannot be emitted through a conveyance device designed and constructed to emit or capture the HAP, or

(2) if the application of measurement methodology to a particular class of sources is not practicable because of technological or economic limitations. If it is not feasible to prescribe or enforce emission standards, then the Administrator may instead promulgate equipment, work practice, design, or operational standards, or a combination thereof.

Format options for numerical emission standards or limits include mass concentration (mass per unit volume), volume concentration (volume per unit volume), mass emission rate (mass per unit time), process emission rate (mass per unit of production or other process parameter), and percent reduction.

1. Process Emission Sources

The EPA is proposing numerical emission standards, expressed as mass or volume concentrations, for lead, THC, and HCl/Cl_2 emissions from smelting furnaces. As noted in section II.D of this preamble, lead and THC have been selected as surrogates for metal HAP's and organic HAP's, respectively.

Baghouses constitute the technological basis for the MACT standards proposed to limit metal HAP emissions from smelting furnaces. Because of the physical mechanism by which baghouses operate, they characteristically achieve a constant outlet concentration independent of the inlet concentration or loading. Tempering air is introduced before the baghouse at some smelters to cool furnace process emissions and control baghouse temperature, but this dilution prior to the baghouse does not affect outlet concentrations or baghouse performance. Dilution with ambient air between the control device and an emission monitoring or testing point is prohibited under section 63.4 of the General Provisions.

Other format options considered included mass rate (kg/hr), a production-based emission rate (kg/Mg of furnace charge), and percent reduction. The EPA is not proposing the mass emission rate format (kg/hr) because it cannot account for differences in actual emission rates between different size smelting furnaces. The production-based emission rate format is not proposed because production rate is difficult to measure over short periods and the mass emission rate from a baghouse may not correlate well with production rate during an emissions test. The EPA is not proposing the percent reduction format because baghouses are constant outlet devices, causing removal efficiency to vary with inlet loading. In addition, this format would require simultaneous testing at inlet and outlet locations, which would subject smelters to unnecessary additional testing costs. Consequently, the EPA is proposing a concentration limit for lead reflecting performance of a properly operated baghouse.

The format the EPA is proposing for the THC emission standard is concentration expressed in ppmv as propane, corrected to a constant CO_2 concentration. The correction to a constant CO_2 concentration accounts for any dilution due to blending with process fugitive emission streams prior to discharge to the atmosphere. Alternative formats that were evaluated but not selected were mass emission rate, production-based emission rate, and percent reduction.

The format of the proposed HCl/Cl_2 standard is concentration expressed as mg/dscm and corrected to a constant CO_2 concentration to account for dilution from combined process fugitive streams. Format options examined but not selected for the HCl/Cl_2 emission standard include mass emission rate, production based emission rate, and percent reduction.

For both the THC and HCl/Cl_2 emission standards, the kg/hr mass emission format was not proposed because it does not account appropriately for size differences among smelting furnaces. The EPA is not proposing the production-based emission rate format because of the difficulty in establishing relationships between emissions and production or process parameters during the short

time period of an emissions test. The percent reduction format is not proposed because there is often no suitable inlet location for testing. In addition, even if a suitable test location were available, this format requires simultaneous inlet and outlet testing, which would subject smelters to unnecessary additional testing costs.

The measured THC and HCl/Cl_2 concentrations would be corrected to a constant CO_2 concentration of 4 percent to account for dilution from tempering air or from combined process fugitive emission sources. The measured THC or HCl/Cl_2 concentration would be multiplied by a correction factor determined by dividing 4 percent CO_2 by the CO_2 measured during the compliance test. If the measured CO_2 concentration is less than 0.4 percent, then a maximum correction factor of 10 would be used. A cap on the correction factor was selected because the relation between the correction factor and the measured CO_2 concentration is non-linear and the correction factor becomes unreasonably high at a CO_2 concentration below 0.4 percent. Furthermore, the proposed method for measuring CO_2 (EPA reference method 3B) is only accurate to within 0.2 percent CO_2.

A cap on the correction factor will not bias compliance calculations towards less stringent enforcement of the THC or HCl/Cl_2 emission standards. It is unlikely, because of the economic cost of moving such a large volume of air, that any smelter would attempt to dilute a process emission stream more than 10 times above the level needed for normal gas stream conditioning.

2. Process Fugitive Sources

The proposed standards for process fugitive emissions would require: (1) Proper capture of process fugitive emissions, and (2) control or destruction of the captured emissions. Equipment specifications (i.e., requirements for hoods with specified face velocities) are proposed to ensure that emissions from process fugitive sources are effectively captured and conveyed into a duct that can be directed to a control device.

Numerical emission limits are being proposed to judge the performance of the control device. A numerical emission limit (mg/dscm) for lead compounds, as a surrogate for metal HAP's, is proposed for the control device that collects the captured process fugitive emissions (e.g., the sanitary baghouse). A mass rate (kg/hr) THC emission limit, as a surrogate for organic HAP's, is being proposed for emissions from blast furnace charging. A concentration THC limit was considered but is inappropriate because of the variability among smelters in the quantity of ventilation air applied at furnace charging locations and the frequent mixing of furnace charging air with ventilation air from other process fugitive sources, such as furnace tapping locations and refining kettles.

The THC limit on blast furnace charging would apply only if the charging process fugitive emissions are discharged through a separate stack from the process emissions. The facility operator would not need to demonstrate compliance with the THC emission standard for process fugitive charging emissions if two conditions exist: (1) The ventilation air from the hood and the process exhaust gases are combined and discharged through a common stack, and (2) compliance with the THC emission limit for process sources is determined downstream from the point at which the charging ventilation air and process source exhaust are combined. In this case, compliance with the THC limit for process sources would be sufficient to confirm that process emissions are not escaping into the blast furnace charging hood and that all organic HAP emissions are being properly controlled.

3. Fugitive Dust Sources

Work practice standards are being proposed to control fugitive dust sources, as allowed under section 112(h) of the Act. Because of their nature, fugitive dust emissions can not be captured and subsequently discharged through a stack, vent, or other conveyance. Consequently, the use of conventional stack sampling methods are not practical or feasible. The proposed work practice standards would also require the development of a site-specific SOP manual that describes the steps that would be taken to limit fugitive dust emissions from all affected sources. The controls included in the SOP manual must be equivalent to those specified in the proposed regulation.

E. Selection of Emission Limits and Equipment and Work Practice Standards for New and Existing Sources

The proposed emission limits for lead, THC, and HCl/Cl_2 are based on emissions data collected by the EPA primarily through an emission source testing program conducted at several well-controlled secondary lead smelters. The purpose of the testing program was to evaluate the performance of candidate MACT systems and to establish appropriate and corresponding limits.

Prior to the EPA testing program, compliance test data and emissions data from previous EPA studies of the secondary lead smelting industry were collected and reviewed. These data were mostly for criteria pollutants (PM, lead, and SO_2) and included insufficient data for metal HAP's, organic HAP's, or HCl/Cl_2 to accurately estimate baseline emissions and to establish emission limits. Therefore, the EPA testing program was initiated to collect additional data on HAP emissions and on surrogates that are strongly correlated with HAP emissions.

The EPA testing was conducted at six facilities: a collocated reverberatory/blast furnace facility, a rotary furnace-only facility, a reverberatory furnace-only facility, and three blast furnace facilities. These facilities were selected for testing because they were representative of other facilities with similar furnace configurations and because each facility had controls for organic HAP's, metal HAP's, and HCl/Cl_2 that represented the MACT floor controls.

Complete results of the testing program and their analyses are summarized in chapter 3 and appendix A of the BID. The derivation of the proposed emission limits for process and process fugitive sources is described in more detail in Docket No A–92–43, Item No. II–B–32.

1. Process Sources

Emission limits for process sources were developed from EPA test data for lead and THC (surrogates for metal HAP's and organic HAP's, respectively) and for HCl/Cl_2.

a. *Lead Emission Limit.* The proposed lead emission limit was selected primarily on the basis of the results of EPA-sponsored tests of smelting furnaces controlled by well-maintained and well-operated baghouses. The EPA tested three baghouses used to control furnace exhausts from a blast furnace, a combined reverberatory/blast furnace, and a rotary furnace. The baghouse on the blast furnace also treated ventilation air from furnace charging and lead and slag tapping. Three sample runs using EPA reference method 12 were conducted at the outlet of each baghouse to quantify lead emissions.

The average lead concentration from each baghouse ranged from 0.60 to 0.70 mg/dscm (0.00026 to 0.00031 gr/dscf). The average lead concentration for all three baghouses tested (total of nine sample runs) was 0.66 mg/dscm (0.00029 gr/dscf). Individual runs ranged from 0.28 mg/dscm to 1.03 mg/dscm.

A statistical analysis of the variability in the process baghouse data was performed. The analysis inherently accounts for variability in emissions from well-operated and well-maintained baghouses as well as measurement variability. At a 95-percent confidence level, lead emissions measured during subsequent tests of the same baghouses could be as high as 1.3 mg/dscm (0.00057 gr/dscf) with no changes in baghouse operation or maintenance. This suggests that the proposed lead emission limit should be no lower than 1.3 mg/dscm.

Compliance test data collected from other operating smelters were also examined. These data, consisting of 23 individual compliance tests, show lead emissions from process baghouses ranging from 0.04 to 4.7 mg/dscm (0.00002 to 0.0021 gr/dscf) and suggest that the lead emission limit should be higher than 1.3 mg/dscm.

Most of the data are distributed continuously at concentrations less than or equal to 1.6 mg/dscm. The emissions of 1.6 mg/dscm were measured at a new smelter just after it began operating in 1992. Close examination of the data greater than 1.6 mg/dscm and available documentation provided the following comments. Lead emissions of 2.3 mg/dscm were measured in 1988 at a smelter that has since upgraded its air pollution control systems. The other emissions data greater than 2.3 mg/dscm were measured at smelters that are not currently operating. The operation and maintenance quality of the baghouses at these latter smelters cannot, therefore, be determined.

These compliance data indicate that the lead emission limit should be greater than 1.6 mg/dscm but less than 2.3 mg/dscm. Based on this information, the EPA selected an emission limit of 2.0 mg/dscm (0.00087 gr/dscf) as a reasonable value between 1.6 and 2.3 mg/dscm.

A complete and detailed presentation of the baghouse test data, both EPA-collected and industry-supplied, is included in chapter 3 and appendix A of the BID. The analysis performed in selecting the proposed lead emission limit is described in Docket No. A–92–43, Item No. II–B–32.

The compliance data available to the EPA show several smelters with lead emissions substantially lower than 2.0 mg/dscm. These data may lead to the conclusion that the MACT floor emission limit (based on the average emission limitation achieved by the best-performing five sources) should also be substantially lower than 2.0 mg/dscm. However, it should be kept in mind that these compliance data, like the EPA test data, were collected over a brief time period, i.e., three 1-hour runs. Therefore, these data represent only a "snapshot" of the performance of each source and do not necessarily represent an emission level that can be continuously achieved on a long-term basis by the MACT floor control technology.

There are variations in emissions over time that cannot be attributed to variation in any particular furnace or control device operating or maintenance parameter. This is demonstrated, for example, by the variation in the measurements observed over the three runs during a single emissions test. The EPA took this variation in emissions into account when developing the proposed emission limit of 2.0 mg/dscm by examining all of the data that are available for smelting furnaces controlled by well-operated and well-maintained baghouses. The proposed 2.0 mg/dscm emission limit represents the average of the five best-performing sources adjusted for variability and it is continuously achievable on a long-term basis by a smelter controlled by a well-operated and well-maintained baghouse.

b. *THC Emission Limits.* The EPA measured controlled THC concentrations at the following smelting furnace configurations with corresponding MACT controls: (1) A reverberatory/blast furnace combination controlled by gas stream blending with a combined exhaust temperature of 930 °C (1,700 °F); (2) a blast furnace controlled by an afterburner operating at 700 °C (1,300 °F); (3) a rotary furnace with no add-on organic HAP controls; and (4) a reverberatory furnace with no add-on organic HAP controls.

The THC concentration at each smelter was measured using EPA reference method 25A and expressed as an equivalent concentration of propane. The average CO_2 concentration was also measured as part of the gas stream analysis using EPA reference method 3B (40 CFR part 60, appendix A). The results of this testing program are presented in more detail in chapter 3 and appendix A of the BID. The methodology for the selection of the THC limits is described in more detail in Docket No. A–92–43, Item No. II–B–32.

The reverberatory/blast furnace configuration tested by the EPA was controlled by blending the blast and reverberatory furnace gases and then venting the combined stream to an afterburner. The average temperature of the combined stream at the afterburner inlet was 780 °C (1,430 °F) and the average afterburner outlet temperature was 940 °C (1,720 °F). The temperature range of the afterburner outlet was 900 °C to 980 °C (1,650 °F to 1,800 °F). The residence time of the afterburner was 2.5 seconds. In this configuration, the fuel input to the afterburner was minimal and most of the afterburner temperature increase was probably due to the fuel value of the organic compounds in the blast furnace exhaust.

At the reverberatory/blast furnace smelter, the controlled THC measurements were made over three 3-hour sampling runs. The average THC concentrations for the three runs were 3.0 ppmv, 5.1 ppmv, and 20 ppmv at 4 percent CO_2. The average concentration for all three runs was 9.4 ppmv at 4 percent CO_2. The variation observed in THC concentrations could not be correlated with any variation in the smelting furnaces or combustion conditions during the tests and, therefore, appears to be normal for a well-controlled reverberatory/blast furnace configuration. The THC emissions limit selected for collocated reverberatory/blast furnaces is 20 ppmv (as propane corrected to 4 percent CO_2), which is the highest THC concentration obtained during the individual 3-hour runs. The EPA selected the highest run as the proposed THC limit to account for normal variation in THC emissions.

The blast furnace tested by the EPA was controlled by an afterburner with an average operating temperature of 700 °C (1,300 °F), although during the tests the temperature varied between 680 and 730 °C (1,250 and 1,350 °F), with a few short-term spikes to 790 °C (1,450 °F). The retention time of the afterburner was 2.5 seconds.

At the blast furnace-only smelter, the controlled THC emissions were measured over two 3-hour runs. The average THC concentration in the first run was 300 ppmv (as propane, corrected to 4 percent CO_2) and the average THC concentration during the second run was 360 ppmv. The average afterburner temperature during both runs was 700 °C (1,300 °F). The 20-percent difference in THC concentration between the two runs could not be attributed to any other smelting furnace or afterburner operating parameter, so the difference is expected to represent normal variation in THC emissions from a well-controlled blast furnace. Based on these tests, the EPA is proposing a THC emissions limit for blast furnace facilities of 360 ppmv (as propane, corrected to 4 percent CO_2), which is the higher concentration from the two 3-hour runs. The EPA selected the higher concentration to account for the normal variability in THC emissions from a blast furnace controlled by an

afterburner operating at 700 °C (1,300 °F).

No data are available for the THC concentration from a blast furnace controlled by an afterburner operating at 870 °C (1,600 °F), the proposed MACT for new blast furnaces. However, previous EPA studies have demonstrated that afterburners operating at 870 °C and a minimum residence time of 0.75 seconds are capable of achieving a 98-percent destruction efficiency for vent streams with organic concentrations greater than 2,000 ppmv as carbon (about 700 ppmv as propane) (Docket No. A–92–43, Item No. II–B–31). Based on a typical uncontrolled level for THC of 3,500 ppmv as propane, the predicted THC concentration from a blast furnace controlled by an afterburner operating at 870 °C (1600 °F) is 70 ppmv, at 4 percent CO_2. Therefore, the EPA is proposing a THC limit for new blast furnace facilities of 70 ppmv (as propane, corrected to 4 percent CO_2).

The exhaust temperature from rotary and reverberatory furnaces are comparable to the afterburner outlet temperature of the reverberatory/blast furnace configuration (940 °C [1720 °F]), so there is nearly complete combustion of organic compounds within the furnace itself and no add-on organic HAP controls are needed. Rotary furnaces are operated in batches lasting from 15 to 24 hours in length. During charging, the furnace temperature is reduced and there are brief (1-hour) periods when the THC level may reach as high as 1,500 ppmv. The THC level drops quickly, however, to less than 10 ppmv when charging is completed and the furnace is brought to normal operating temperature. Reverberatory furnaces are operated at a constant temperature so there are no peaks in organic emissions associated with charging.

None of the rotary furnaces in use at secondary lead smelters have add-on controls for organics or CO. At the rotary furnace smelter tested by the EPA, the THC concentration at the furnace outlet was measured over six complete batch cycles. Each batch cycle lasted from 15 to 24 hours. The THC concentration averaged over the length of each batch cycle ranged from 35 to 170 ppmv as propane, corrected to 4 percent CO_2. The organic HAP emission rate from the rotary smelting furnace was only about 0.5 kg/hr (1 lb/hr), compared to about 3 and 9 kg/hr (7 and 20 lb/hr) of uncontrolled organic HAP emissions from the reverberatory/blast and blast furnaces tested by the EPA, respectively.

The proposed MACT for new and existing rotary furnaces is no add-on control for organic HAP's, which is consistent with the MACT floor for these furnace types. For this reason, and because of the low organic HAP emissions potential from rotary furnaces, no THC emissions limit is being proposed for rotary furnaces.

At the reverberatory furnace smelter tested by the EPA, the THC concentration was measured at the furnace outlet over one 5-hour run and three 1-hour runs. The average THC concentration, as propane, for each run ranged from 9 to 11 ppmv, at 4 percent CO_2. The average THC concentration was lower than for rotary furnaces because reverberatory furnaces are operated on a continuous basis and the furnace temperature is not lowered during charging. No add-on or process modification organic HAP controls are in use for this furnace type, and the proposed MACT for new and existing reverberatory furnaces is no add-on control. Therefore, no THC emissions limit is being proposed for reverberatory furnaces.

No THC or organic HAP emissions data are available for the electric smelting furnace. However, this furnace processes only slag that is essentially free of organic material, and, therefore, is not likely to be a source of organic HAP emissions. This presumption is confirmed by CO emissions (which are correlated with organic HAP emissions) that are similar to CO emissions from other furnace types that also have low organic HAP emissions (Docket No. A–92–43, Item II–I–22).

The EPA is not proposing organic HAP or THC standards for rotary, reverberatory, and electric smelting furnaces because of the low organic HAP emission potential and because the MACT floor for organic HAP controls is no control for these configurations. Moreover, efficient production of lead in these furnace types requires operating and exhaust temperatures that result in low organic HAP and THC emissions. Relatively low emissions, therefore, should be ensured even in the absence of an emissions standard or a monitoring requirement.

c. *HCl and Chlorine Emission Limits.* The EPA measured HCl and Cl_2 emissions at the following smelting furnace configurations with corresponding MACT controls: (1) A reverberatory/blast furnace configuration controlled by the addition of soda ash to the blast furnace and by a wet SO_2 scrubber on the combined blast and reverberatory furnace exhausts; (2) a blast furnace controlled by the addition of soda ash to the furnace and a wet SO_2 scrubber; and (3) a rotary furnace controlled by the addition of soda ash to the furnace and a wet SO_2 scrubber. The facilities were selected for testing because they were representative of other facilities with similar furnace configurations and because each smelter was fitted with a wet SO_2 scrubber. At the time the testing program was initiated, wet SO_2 scrubbers were the only HCl/Cl_2 controls being evaluated. The use of fluxing to control HCl/Cl_2 emissions was developed as a result of the EPA testing program.

Emissions of HCl and Cl_2 were measured ahead of and after the scrubber at each smelter in three 1-hour sample runs using EPA reference method 26A. The average CO_2 concentration was also measured as part of the gas stream analysis using EPA reference method 3B (40 CFR part 60 appendix A).

At the blast furnace and rotary furnace smelters, the total HCl/Cl_2 concentrations and emission rates measured ahead of the scrubber were less than 1 mg/dscm (0.0004 gr/dscf) and 0.05 kg/hr (0.1 lb/hr), respectively. At these low levels, no detectable incremental control was observed across the scrubber at either facility.

The reverberatory/blast furnace had a much higher total HCl/Cl_2 concentration and emission rate ahead of the scrubber than either the blast and rotary furnaces: 273 mg/dscm (0.119 gr/dscf) and 12.5 kg/hr (27.6 lb/hr), respectively. About 98 percent of these emissions were HCl and 2 percent were Cl_2. The scrubber was measured to be 99.8-percent effective in reducing total HCl/Cl_2 emissions, and the controlled emissions were less than 1 mg/dscm (0.0004 gr/dscf) and 0.05 kg/hr (0.1 lb/hr).

The EPA believes that the very low uncontrolled HCl emissions observed are due to the use of soda ash and limestone as fluxing agents in the rotary and blast furnaces. Both smelters reported that soda ash or limestone were added primarily to enhance the reduction of lead compounds to lead metal. An analysis performed by the EPA indicates that these fluxing agents will also bind chloride ions in the feed material as NaCl or $CaCl_2$ salts so that the chlorides are removed in the slag rather than being emitted as HCl or Cl_2. No fluxing agents were added to the reverberatory furnace in the reverberatory/blast configuration tested, and uncontrolled emissions of HCl recorded were substantially higher than those recorded at the blast and rotary furnaces tested with fluxing. However, the wet scrubber was effective in reducing the HCl/Cl_2 emissions from the

reverberatory/blast furnace to the same level as observed from the blast and rotary furnaces using fluxing agents.

All three of these furnace types charge the smelting furnace with battery scrap which contains PVC battery plate separators. These separators, when burned, are believed to be the source of the chlorides observed. These chlorides may be removed from the furnace in two ways, either in the form of HCl and Cl_2 in the exhaust gas or they may be bound in the slag and subsequently removed. At both the blast and rotary furnaces, soda ash or limestone are normally charged with the battery scrap. These compounds react with the available chlorides to form salts (NaCl or $CaCl_2$), which are stable at typical furnace temperatures. These salts are then removed from the furnace during slagging. At the reverberatory/blast furnace combination, neither soda ash nor limestone was charged to the furnace with the battery scrap. Subsequently the chlorides are eliminated from the furnace as HCl and Cl_2 emissions.

Tests were also conducted at a reverberatory furnace at which soda ash is charged to the furnace. These tests indicate that substantial reductions in HCl emissions are possible (greater than 90 percent) by adding soda ash to this type of furnace. Other facilities operating this type of furnace also add soda ash or limestone to the furnace feed, but the EPA has no emissions data on these furnaces. Because these other facilities normally charge these fluxing agents to the furnaces, it is believed that the addition of these fluxing agents will have no detrimental effect on the final lead product.

A related method called desulfurizing also appears effective in eliminating emissions of HCl/Cl_2. The chlorides are eliminated from the furnace in the slag using the same chemical mechanism previously described. In this process, the battery paste and flue dust are reacted with soda ash to remove the sulfur from the feedstock. In this process, unreacted soda ash remains with the resulting paste and is charged into the furnace. Data indicate that resulting HCl emissions are very low, less than 1.5 mg/dscm (Docket No. A–92–43, Item Nos. II-D–18 and II-D–21).

If a facility chooses not to add these fluxing agents to the furnace for process-related reasons, wet scrubbers are capable of achieving the same emission rates for HCl/Cl_2.

It is also important to note that the EPA believes the potential for HCl emissions from this source category will be diminishing over the next several years. As stated earlier, the source of chlorides in the furnace is the PVC separators. Most battery manufacturers are phasing out the use of PVC separators in favor of other materials (Docket No. A–92–43, Item No. II-I–11).

Based on the EPA test results and technical analysis, the EPA is proposing an HCl/Cl_2 limit of 15 mg/dscm, corrected to 4 percent CO_2, for all smelting furnace configurations except the electric smelting furnace. The EPA is proposing an HCl/Cl_2 limit of 15 mg/dscm rather than 1 mg/dscm, which was the emission concentration measured during testing, because EPA reference method 26A has a possible negative bias below an HCl concentration of 30 mg/dscm (59 FR 19306–19323). The margin between 1 mg/dscm and 15 mg/dscm was selected to account for this potential bias. The CO_2 correction factor is to account for dilution if the process emissions at a facility are combined with process fugitive emissions before the point at which compliance with the HCl/Cl_2 limit is determined.

No data are available for HCl or Cl_2 emissions from the electric smelting furnace. However, this furnace processes only reverberatory furnace slag in which chlorides are present in the form of NaCl or $CaCl_2$ and there is a very low potential for HCl and Cl_2 emissions. Therefore, the EPA is not proposing an HCl or Cl_2 limit for this configuration.

2. Process Fugitive Sources

Equipment specifications are being proposed for process fugitive emission capture systems. Emission limits for lead emissions as a surrogate for metal HAP's are being proposed for control devices that handle captured process fugitive emissions. Emission limits for THC emissions as a surrogate for organic HAP's are being proposed for control devices that handle the gas streams from blast furnace charging capture systems.

a. *Equipment Specifications.* The proposed equipment specifications for process fugitive emission capture systems were selected on the basis of observations at operating smelters and the recommendations contained in the OSHA Cooperative Assessment Program Manual for the Secondary Lead Smelter Industry. The proposed equipment specifications are described in more detail under the selection of MACT for process fugitive sources in section VI.C of this preamble.

Observations made during EPA visits to operating smelters indicated that nearly all process fugitive emission sources at all the smelters visited are controlled by enclosure-type hoods consistent with those recommended in the OSHA manual. All of these hoods were ventilated to baghouses or wet scrubbers. Face velocities measured with a hand-held anemometer at one smelter were greater than the minimum face velocities recommended in the OSHA Manual. (Docket No. A–92–43, Item No. II–B–34).

b. *Lead Emission Limit.* The proposed lead emission limit was selected on the basis of the results of EPA-sponsored tests of process fugitive sources controlled by well-maintained and well-operated baghouses.

The EPA determined baghouse performance for the control of process fugitive metal HAP emissions by measuring baghouse outlet lead concentrations using EPA reference method 12. The EPA tested six baghouses controlling process fugitive sources at three smelters. One baghouse controlled the refining kettles at a blast furnace smelter. Another baghouse controlled the refining kettles and furnace charging and tapping at a rotary furnace smelter. The remaining four baghouses controlled the process fugitive emissions and building ventilation sources at a reverberatory/blast furnace smelter. The average of three runs was used to characterize the performance of each baghouse.

The average lead concentration from each baghouse ranged from 0.33 to 1.82 mg/dscm (0.00015 to 0.00080 gr/dscf). The average lead concentration for all six baghouses tested was 0.83 mg/dscm (0.00036 gr/dscf). The baghouse with the highest lead emission rate appeared to be well operated and well maintained, although removal efficiency was substantially lower because the inlet grain loading was also lower than for the other process fugitive baghouses.

A statistical comparison of the average emission concentrations indicate that there is no significant difference in the controlled lead emissions from the process fugitive baghouses compared to the process baghouses at the 5 percent probability level. A statistical analysis of the normal variability in the process fugitive baghouse data (excluding the baghouse with the lowest efficiency) predicted at the 95-percent confidence level that lead emissions measured during subsequent tests of the same baghouses could be as high as 2.0 mg/dscm (0.00087 gr/dscf) with no changes in baghouse operation or maintenance. Compliance test data provided to the EPA by smelter operators show lead emissions from process fugitive baghouses ranging from 0.02 to 1.1 mg/dscm (0.00001 to 0.00048 gr/dscf), indicating that all smelters could achieve a lead emission level of 2.0 mg/dscm. This emission level also accommodates the baghouse with the 1.82 mg/dscm outlet concentration measured by the EPA. Based on the outcome of the EPA testing program, the EPA has selected a proposed lead emissions limit of 2.0 mg/dscm (0.00087 gr/dscf) for process fugitive sources.

The EPA baghouse data are presented in chapter 3 and appendix A of the BID. The analysis performed in selecting the proposed lead emission limit is detailed in Docket No. A–92–43, Item No. II–B–32.

c. *THC Emission Limit.* The proposed THC emissions limit for process fugitive emissions from blast furnace charging was selected on the basis of the results of EPA-sponsored tests of the charging system at two blast furnaces. Each blast furnace charging chute was enclosed in a hood. On the first furnace, the chute was also fitted with a door that opened during charging. The flow rate of each hood was balanced against the flow rate of the primary furnace exhaust to minimize the escape of primary exhaust gases to the charging hood.

The THC emission rate was measured in the duct leading from the charging hood using EPA reference method 25A. Each test consisted of two 3-hour runs. The THC emission rates measured during each run of the first test were 0.026 kg/hr (0.058 lb/hr) and 0.035 kg/hr (0.077 lb/hr) (Docket No. A–92–43, Item No. II–A–5). The THC emission rates measured during each run of the second test were 0.11 kg/hr (0.24 lb/hr) and 0.20 kg/hr (0.44 kg/hr) (Docket No. A–92–43, Item II–A–6). The average THC emission rate for all four runs was 0.090 kg/hr (0.20 lb/hr). The THC emissions were substantially lower from the furnace fitted with the door, but it could not be confirmed that the difference was due to the door or simply normal variation in emissions from well-controlled charging ventilation systems. The THC emission rate from the higher of the two sources tested was less than 1 percent of the THC emissions from the blast furnace charging chute at which the potential emission problem was first detected.

Based on these test results, the EPA is proposing a THC emissions limit for blast furnace charging process fugitive emissions of 0.20 kg/hr (0.44 lb/hr), which was the highest THC value obtained during the test runs and was selected to account for normal variation in THC emissions. The EPA THC data from blast furnace charging are presented in chapter 3 and appendix A of the BID.

3. Fugitive Dust Sources

The proposed standard requires an SOP manual for the control of fugitive dust emissions and also establishes a lead emissions limit for building and enclosure ventilation systems.

a. *SOP Manual.* The EPA is proposing that each smelter develop an SOP manual that would describe the controls and work practices that would be implemented to control fugitive dust emissions. These control and work practices would be equivalent to those specified in the proposed regulation. The EPA selected the controls in the proposed regulation on the basis of observations made during visits to smelters that had already implemented fugitive dust controls equivalent to the proposed MACT and on the basis of a technical analysis of the effectiveness of different control options (Docket No. A–92–43, Item No. II–B–28).

The use of a site-specific SOP manual is being proposed, rather than a list of required work practices, because there are several equivalent control options available for fugitive dust. The flexibility of the SOP approach is needed because the best control option for a particular smelter would be determined by the physical layout of the smelter and the control measures that are already in place. These two factors vary greatly among smelters.

b. *Lead Emissions Limit.* The EPA is proposing a lead emissions limit of 2.0 mg/dscm (0.00087 gr/dscf) for ventilation systems for buildings that enclose fugitive dust sources, such as the materials storage and handling area or the furnace and refining and casting areas. This limit was selected on the basis of controlled lead emissions from the process fugitive baghouses (which also controlled some building ventilation emissions) measured during the EPA testing program and is the same limit that was selected for process and process fugitive sources.

E. Reconstruction Considerations

Section 112(a) of the Act defines a new source as a stationary source, the construction or reconstruction of which is commenced after the proposal date of a relevant regulation. An existing source is defined as any stationary source other than a new source.

Reconstructed sources are considered to be new sources. Reconstruction means the replacement of components of an existing source to such an extent that: (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source, and (2) it is technologically and economically feasible for the reconstructed source to meet all relevant promulgated standards for new sources.

Some changes can be made at secondary lead smelters that may be deemed reconstructions under section 63.5 of the General Provisions. However, the proposed standards for secondary lead smelters are the same for both existing and new sources except in the case of the THC emission limit for blast furnace-only configurations. As a result, the designation as a "reconstruction" has limited practical significance. If a change to an existing blast furnace is determined to constitute a reconstruction, then that furnace would be subject to the proposed THC limit for new blast furnaces, which is more stringent than the limit for existing blast furnaces. In order to meet the more stringent THC limit, a reconstructed blast furnace would probably need to install a new afterburner that could reach a temperature of 870 °C (1,600 °F), based on the proposed MACT for new blast furnaces.

G. Selection of Compliance Dates

The proposed regulation would require owners or operators of existing secondary lead smelters to achieve compliance with the proposed standards within 24 months of promulgation. This schedule would allow the affected sources the time necessary to modify existing processes and control equipment; design, fabricate, and install new control equipment as needed; develop and implement the SOP for equipment and work practice standards; and complete installation of all required continuous monitoring systems.

The proposed 2-year period for existing sources to achieve compliance with the proposed standard is based on the estimated time needed for a blast furnace facility to have a new afterburner designed, fabricated, installed, and tested. The installation of a new afterburner is the most significant upgrade anticipated under the proposed standard. The EPA believes that a 2-year period is realistic and practical to accomplish these required tasks. The proposed standard is also consistent with compliance deadlines allowed by section 112(i) of the Act, which allows existing sources up to 3 years to achieve compliance.

Owners or operators of new secondary lead smelters would be required to achieve compliance upon startup or promulgation of this NESHAP (whichever is later) and must perform compliance testing within 6 months of startup or promulgation, pursuant to

sections 63.6 and 63.7 of the General Provisions.

H. Selection of Emission Test Methods and Schedule

Testing requirements are being proposed for lead, THC, and HCl/Cl_2 from process, process fugitive, and fugitive dust sources.

1. Process Sources

Lead emissions from process emission control devices would be measured using EPA reference method 12, THC emissions would be measured using EPA reference method 25A, and HCl/Cl_2 emissions would be measured using EPA reference method 26A. For all of these tests, EPA reference method 1 would be used to determine the number and locations of sampling points, method 2 would be used to determine stack gas velocity and volumetric flow rate, method 3 would be used for flue gas analysis, and method 4 would be used to determine the volume percent moisture content in the stack gas. For the measurement of THC and HCl/Cl_2, the Single Point Integrated Sampling and Analytical Procedure of method 3B would be used to measure CO_2 in order to correct for excess air or dilution.

Each test would consist of three runs conducted under representative operating conditions. The average of the three runs would be used to determine compliance. The test methods selected above were used by the EPA to collect the data upon which the proposed emission limits are based.

The proposed standard would require initial tests of lead emissions from all sources and annual compliance tests for process fugitive sources and building ventilation systems. Annual tests of the latter two sources must be performed because compliance with the lead emission standard cannot be continuously monitored. The proposed standard would also require initial compliance tests for THC and HCl/Cl_2 and then monitoring to demonstrate continuous compliance. Following the initial THC compliance test, no annual compliance test would be required if the facility maintains or exceeds the minimum afterburner temperature established during the initial compliance test. Following the initial HCl compliance test, no annual compliance test would be required if the facility maintains the required level of fluxing, scrubber parameters, or SO_2 concentration established during the initial compliance test or operates and maintains an HCl monitor.

2. Process Fugitive Sources

An annual compliance test for lead using the same methods as for process sources would be required for process fugitive control devices. If a facility is subject to the THC emission limit for blast furnace charging, then an initial test would be required that would use the same THC measurement methods as for process sources.

Compliance with the face velocity and flow rate requirements for enclosure hoods over process fugitive emission sources would be determined by measuring the flow in the duct leading from the source and by measuring the area of the openings in the hood and the area of the refining kettle, if appropriate. Volumetric flow rate in the duct would be measured using EPA reference method 2. Hood face area or kettle surface area would be measured directly.

There are no EPA reference methods for directly measuring the face velocity of a hood. The use of a hand-held anemometer was evaluated, but this technique is not as accurate or as precise as calculating the face velocity from the measured volumetric flow rate and face area.

3. Fugitive Dust Sources

Compliance with the lead emission standard for building ventilation emission points would be determined using the same methods as for process sources. Compliance would be determined through an annual test of each emission point, except in the case of emissions from identical control devices that are discharged through separate stacks.

If a facility has two or more identical control devices for building ventilation, then each would be required to undergo an initial compliance test. Subsequent compliance tests, however, could be alternated or rotated among the identical control devices so that not all of them would be tested every year. However, at least one device would be tested each year and each device would be tested at least once every 5 years. This provision assumes that the maintenance of identical units would be similar as a result of the baghouse inspection and logging procedures in the monitoring requirements of the proposed standard. In addition, smelters would only be allowed to alternate compliance testing as long as they demonstrate compliance with the baghouse inspection and logging provisions of the proposed monitoring requirements. This provision is being proposed to reduce unnecessary testing costs. This provision would not apply to control devices receiving emissions from process or process fugitive sources.

I. Selection of Proposed Enhanced Monitoring Requirements

Section 114(a) of the Act, as amended under section 702(b) of title VII of the 1990 amendments, requires enhanced monitoring and the submission of periodic compliance certifications for all major stationary sources. Compliance certifications shall include information on the methods used for determining compliance status and statements as to whether compliance was determined on an intermittent or continuous basis.

The enhanced monitoring requirements proposed herein were determined by examining the hierarchy of monitoring options available for specific processes, pollutants, and control equipment. This hierarchy may range from monitoring continuously the emissions of a specific pollutant or pollutant class to the continuous monitoring of a related process or control device parameter. Each option was evaluated relative to its technical feasibility, cost, ease of implementation, and relevance to its underlying process emission limit or control device.

The proposed standards for secondary lead smelters contain monitoring requirements for process sources, process fugitive sources, and fugitive dust sources. The proposed standards require either pollutant monitoring directly through the use of a CEM, parameter monitoring that indicates proper operation and maintenance of a control device, or recordkeeping to ensure that specific work practices are being followed.

1. Process Sources

Monitoring requirements are being proposed to ensure control of metal HAP, organic HAP, and HCl/Cl_2 emissions from process sources.

a. *Metal HAP's.* The EPA is proposing that each process baghouse be monitored with a COM and that a site-specific opacity limit be established for each process emission point. The site-specific opacity limit for an affected baghouse would be equal to the maximum 6-minute opacity reading recorded by a COM during the initial compliance test for lead emissions, plus 2 percent opacity to allow for normal drift in the output from the COM. Exceedance of the site-specific opacity limit would constitute a violation of the standard for lead emissions.

The proposed MACT for the control of metal HAP's is a baghouse of the design now used in the industry that is operated and maintained optimally on a continuous basis. The facilities at which

baghouses were assessed in the EPA testing program had comprehensive, periodic inspection and maintenance programs to ensure proper operation of the baghouses. However, these inspection and maintenance programs are relatively costly to implement, and offer no explicit assurance that the emission limitations in the standards are being achieved on a continuous basis.

Emissions from a baghouse can change with time as a result of incidental or periodic upsets (e.g., torn bags) and normal wear of baghouse components. Inspection and maintenance programs aid in protecting against slow, continual degradation of baghouse performance but do not ensure continuous optimal operation. Although inspection and maintenance may indicate a baghouse is functioning normally, there is no assurance that an established emission limitation is being achieved. Furthermore, these programs, if sufficiently comprehensive to ensure the baghouse is performing optimally on a continuous basis, are labor-intensive and, as noted, quite costly.

The EPA estimates that with a good inspection and maintenance program a baghouse may still emit, on average, an emission stream with an opacity of 5 or 10 percent. Several theoretical and experimental studies have been performed to quantify the relationship between the PM concentration in an emissions stream and the opacity of the stream. From such a relationship developed at a secondary brass/lead smelter, it is estimated that gases in a stack with a 1.5 meter diameter exhibiting an opacity of 10 percent could contain as much as 80 mg/dscm PM. Given that the PM discharged from process baghouses at secondary lead smelters typically contains about 25 percent lead, the lead concentration of the baghouse discharge corresponding to 10 percent opacity would be 20 mg/dscm. This is 10 times the pollutant concentration of the proposed standard (Docket No. A–92–43, Item No. II–A–[illegible]).

In contrast, the use of COM's offer a timely, sensitive and direct indication of increased emissions. They give an immediate indication of an occurrence, which provides for timely action that will minimize the duration and, therefore, the emissions, of an upset. They can also address the long-term gradual deterioration of performance of a baghouse.

In addition, COM's are cost-effective. A typical, generally available monitor with auxiliaries costs about $47,300 to install and about $16,500 to operate annually. Proper usage of a COM can ensure that the gases emitted from a baghouse exhibit less than 2 percent opacity on average over a year (Docket No. A–92–43, Item No. II–B–34). The approximate cost-effectiveness of reducing the average opacity from 10 percent to 2 percent through the use of a COM is $2,100 per ton of lead or $525 per ton of PM.

The EPA invites comments on the reasonableness of incorporating this strategy for COM into the final standard promulgated for this source category.

b. Organic HAP's. The EPA is proposing two monitoring options that smelter operators may pursue. Continuous monitoring systems are available for THC, but the operating and maintenance costs of existing systems may be prohibitive for many sources in this category. Alternatively, operators may continuously monitor afterburner or exhaust stream temperature, which correlates strongly with THC emissions, after conducting an initial performance test to demonstrate compliance with the THC standard.

Under the second option, THC and temperature would have to be measured simultaneously for three runs lasting 1 hour each during the initial THC compliance test. The average THC concentration and temperature would be determined for the total sampling period. Compliance with the THC standard would be determined on the basis of the average THC concentration. The minimum allowable afterburner or exhaust temperature would be determined on the basis of the average temperature during the total sampling period. To remain in compliance, the owner or operator could not allow the average temperature for any 3-hour period to fall more than 28 °C (50 °F) below the average measured during the initial THC compliance test. Allowing the average temperature to fall below this level would constitute a violation of the emissions standard.

The proposed allowable temperature range of 28 °C (50 °F) for the afterburner or combined reverberatory/blast exhaust streams is based on temperature data collected during the organic HAP and THC testing performed by the EPA. During the test of the blast furnace, the 3-hour average temperature of the afterburner varied over a range of 32 °C (59 °F). During the test of the reverberatory/blast furnace configuration, the 3-hour average temperature of the combined exhaust stream varied over a range of 29 °C (52 °F). The proposed 28 °C (50 °F) allowable temperature range is consistent with the range allowed in the monitoring requirements for sources controlled by afterburners in other Federal standards (40 CFR part 60, subparts EE, MM, SS, TT, WW, BBB, DDD, FFF, III, NNN, QQQ, SSS, and VVV).

Another THC compliance test would be required if the operator desires to establish a lower afterburner temperature. Owners or operators also have the option of monitoring THC using a CEM instead of temperature.

c. HCl and Chlorine. Continuous emission monitors are available for HCl, but they have not been used in this industry. Furthermore, the estimated capital and annual costs of these CEM's for the entire industry would be $2,900,000 and $1,400,000, respectively. The cost of requiring an HCl CEM would double the capital and annual cost impacts of the proposed standards and would increase the number of facilities that are significantly impacted. Other, less costly monitoring options are available, so the EPA has determined that an HCl CEM should not be required and several alternative monitoring options are being included in the proposed standard. However, these alternatives allow the use of an HCl CEM to fulfill the monitoring requirements for HCl/Cl_2, if an operator chooses to use one.

Where SO_2 scrubbers are used, continuous emission monitoring for SO_2 can be used as an indicator of scrubber performance. Alternatively, scrubber parameters, including sorbent injection rate and pH, can also be monitored as indicators of scrubber performance. Where fluxing with soda ash or limestone is used to preclude HCl/Cl_2 emissions, monitoring the use of these fluxing agents can ensure that sufficient quantities are being added to control emissions.

The EPA is therefore proposing four alternative monitoring options for control of HCl/Cl_2: (1) manual monitoring of the addition of soda ash and limestone, (2) instrument monitoring of scrubber parameters, (3) CEM for SO_2, or (4) CEM for HCl. Each of these alternatives is described below.

Option 1. Owners or operators could monitor the amounts of soda ash and limestone added to the smelting furnace and the total amount of charge material added during the 8-hour shift in which the initial HCl/Cl_2 compliance test was performed. This ratio of soda ash and limestone to total charge material would establish a minimum ratio that would be maintained thereafter. A new HCl/Cl_2 compliance test would be required if the operator wanted to alter the amount or type of fluxing agent to be used in the future. Continued compliance would be determined on the basis of the ratio of soda ash and limestone to total charge

material added to the furnace during each 8-hour shift thereafter. Failure to maintain the same ratio would constitute a violation of the HCl/Cl_2 standard.

Option 2. The owner or operator of a facility that has a scrubber to control HCl and Cl_2 could record the scrubber liquid injection rate and pH every 15 minutes during the initial HCl/Cl_2 compliance test, which consists of three 1-hour runs. The average of these recorded values for pH and media injection rate would be used to establish minimum operating parameters for the scrubber that must be maintained thereafter. Failure to maintain the minimum scrubber media injection rate or minimum inlet pH would constitute a violation of the HCl/Cl_2 standard.

The media injection rate would be recorded every 15 minutes after the HCl compliance test and could be no less than 70 percent of the average injection rate demonstrated during the initial HCl compliance test. No data were collected during the EPA tests on the variability of SO_2 scrubber media injection rates. The proposed 30-percent allowable drop in media injection rate is adopted from the range allowed in the monitoring requirements in other Federal standards (40 CFR part 60, subparts LL, OOO, and PPP) for sources controlled by wet scrubbers.

The standards in subparts LL, OOO, and PPP are for control of PM sources, not acid gases. Therefore, the EPA is also considering allowing no drop in liquid injection rate, but has not included that requirement in the proposed regulation. The EPA solicits comment on the appropriateness of allowing a 30-percent drop in liquid injection rate.

The scrubber media inlet pH would also be recorded every 15 minutes and the 3-hour average could be no more than 1.0 pH points below the average inlet pH demonstrated during the initial HCl/Cl_2 compliance test. The allowable pH range of 1.0 for the scrubber media inlet pH is based on data collected during the HCl/Cl_2 testing performed by the EPA. During the EPA test of the blast furnace, the 3-hour average pH of the sorbent at the SO_2 scrubber inlet varied from 7.7 to 8.3, a range of 0.6. At the reverberatory/blast furnace tested, the pH of the sorbent at the SO_2 scrubber outlet showed a similar pH range. An allowable pH range of 1.0, rather than 0.6, is being proposed because HCl and Cl_2 are absorbed more easily than SO_2, and control of HCl and Cl_2 would not vary significantly over a scrubber sorbent pH range of 1.0.

Option 3. The owner or operator of a facility that operates an SO_2 scrubber could record the SO_2 concentration every 15 minutes during the initial HCl/Cl_2 compliance test. The average of these recorded values for SO_2 concentration would be used to establish a 3-hour average maximum SO_2 concentration that could not be exceeded thereafter. The SO_2 concentration would be recorded every 15 minutes and the average for any 3-hour period could be no more than 200 ppmv above the average SO_2 concentration measured during the initial HCl/Cl_2 compliance test. A 3-hour average SO_2 concentration exceeding the maximum SO_2 concentration would constitute a violation of the HCl/Cl_2 standard.

The allowable SO_2 range is based on data collected during the HCl/Cl_2 testing performed by the EPA. During the test of the reverberatory/blast furnace configuration, the 3-hour average SO_2 concentration, as recorded by the facility's SO_2 CEM, ranged from 37 ppmv to 195 ppmv. During the test of the blast furnace, the 3-hour average SO_2 concentration ranged from 0 ppmv to 50 ppmv. An allowable range of 200 ppmv above the average SO_2 concentration measured during the initial HCl/Cl_2 compliance test is being proposed to reflect the range of SO_2 concentrations measured and the fact that HCl and Cl_2 are absorbed more easily than SO_2.

Option 4. The owner or operator could also install, operate, and maintain an HCl CMS and demonstrate compliance with an initial HCl/Cl_2 compliance test and by meeting all of the requirements for CMS's found in the General Provisions. The CO_2 concentration needed to correct for dilution would be determined during the initial HCl/Cl_2 compliance test and would not need to be continuously monitored. To remain in compliance, the HCl concentration measured by the CMS and corrected to 4 percent CO_2 must remain below an HCl limit of 15 mg/dscm.

The HCl limit of 15 mg/dscm for enhanced monitoring was based on the results of the EPA-sponsored HCl/Cl_2 testing. These tests indicated that about 98 percent of the chlorine was emitted as HCl.

2. Process Fugitive Sources

The proposed MACT for control of metal HAP emissions from process fugitive sources is an enclosure-type hood ventilated to a baghouse. When these hoods are in place and the smelter has demonstrated compliance with the proposed face velocity and flow rate requirements, no further monitoring of capture efficiency would be necessary. Similarly, the proposed MACT for control of organic HAP emissions from blast furnace charging is proper balance between the blast furnace charging and primary exhaust ventilation systems. No monitoring of blast furnace charging would be necessary after compliance has been demonstrated with the THC limit for blast furnace charging.

As noted previously, no CMS's are available for lead. In addition, a COM cannot be used to monitor process fugitive baghouse performance because the opacity of uncontrolled process fugitive emissions is too low to indicate a control device failure. Therefore, the proposed standard would require daily, weekly, and monthly inspection of process fugitive baghouses and would require monitoring the pressure drop and water flow rate of PM scrubbers. Scrubbers are used instead of baghouses at some smelters to control process fugitive sources.

The majority of smelters already perform regular inspections of baghouses and monitor scrubber operating parameters as part of normal baghouse and scrubber operation and maintenance. These monitoring requirements would ensure that the control devices are being operated and maintained in a manner consistent with good air pollution control practices. These monitoring requirements are being proposed as separately enforceable standards. However, a violation of the proposed monitoring requirements could not be used to indicate a violation of the proposed lead emissions limit for process fugitive sources. Therefore, the proposed standard would also require an annual compliance test of lead emissions.

The proposed baghouse inspection program is the only monitoring option available for process fugitive sources controlled by baghouses at secondary lead smelters. This proposed requirement is not intended to serve as a model of monitoring requirements for other source categories of particulate or HAP emissions controlled by baghouses.

3. Fugitive Dust Sources

Monitoring of compliance with the work practice controls for fugitive dust sources specified in each smelter's SOP manual would be accomplished through recordkeeping requirements that would also be specified in the SOP.

A COM is not applicable to the building and enclosure ventilation emission points that are subject to the lead emissions limit. The proposed standard, therefore, would require a baghouse inspection program and an annual compliance test of lead emissions for the same reasons as those described above for process fugitive baghouses.

J. Selection of Notification Requirements

Owners or operators of secondary lead smelters would be required to comply with all of the notification requirements under section 63.9 of the General Provisions. An owner or operator would be required to submit the initial notification, notifications of performance tests, notification of CMS performance evaluations, and the notification of compliance status. Information submitted in these notifications would confirm that the source is subject to the standards and establish the source's compliance status.

Each operator of a smelter would also be required to submit the fugitive dust control SOP manual to the Administrator or his or her authorized representative, along with a notification that the smelter is seeking review and approval of the manual. Operators of existing smelters would be required to submit the manual no later than 180 days before the compliance date for existing smelters. Operators of new smelters would be required to submit the manual no later than 180 days before startup of the new smelter but no sooner than the effective date of the proposed standard.

The notification of compliance status would list the results of any performance tests and opacity measurements, methods used for determining continuous compliance, descriptions of the air pollutant control equipment and methods applied at each affected emission point, and a statement as to whether the source is in compliance with all relevant standards and provisions of this subpart. The proposed regulation would waive the requirement that the smelter perform an analysis demonstrating whether the smelter is a major source or area source since the regulation would apply equally to all smelters. The compliance notification would also certify that the facility has completed an SOP manual for the control of fugitive dust emissions and that the SOP manual has been approved by the Administrator.

K. Selection of Recordkeeping and Reporting Requirements

The recordkeeping and reporting requirements of the General Provisions for 40 CFR part 63 would apply to secondary lead smelters unless specifically superseded in this part.

1. Recordkeeping

Consistent with the General Provisions of part 63 and with the operating permit rules in part 70, promulgated under title V of the Act, records required by this part would be retained for at least 5 years. Each affected source would be required to maintain records of the results of compliance tests for each of the proposed emission limits, including THC, lead, and HCl/Cl_2. These records are necessary to document the initial compliance determination with these standards. If a smelter is subject to the proposed emission standards for THC and must monitor afterburner or exhaust stream temperature to comply with the proposed enhanced monitoring requirements, then records of the afterburner or exhaust stream temperature would be maintained. These records could be in the form of strip charts or digital printouts, with the period between measurements not to exceed 15 minutes. A block average temperature would be recorded every 3 hours. These records would be used by an affected source to demonstrate continuous compliance with the THC standards.

The source would be required to maintain records explaining any periods when the monitored afterburner temperature dropped below the minimum established during the facility's initial THC compliance test. Maintenance records of the afterburner temperature monitor would also be required pursuant to section 63.10 of the General Provisions. All secondary lead smelters that currently operate afterburners already monitor and record afterburner temperature as part of normal afterburner operation and maintenance. Therefore, the incremental burden associated with these proposed recordkeeping requirements for temperature are considered minimal.

Each source would be required to maintain records of opacity, as measured by a COM and in terms of 6-minute averages. Records would also be maintained of any exceedances of the site-specific opacity limit and any corrective actions following those exceedances. Maintenance records of the opacity monitor probes would also be maintained, including records of periodic cleaning and replacements and calibration checks, pursuant to section 63.10 of the General Provisions. These records would be used to demonstrate continuous compliance with the opacity standard.

Each source would also be required to maintain records consistent with the enhanced monitoring approach chosen for controlling HCl/Cl_2 emissions to ensure that the source is in continuous compliance with the HCl/Cl_2 standard. If an owner or operator chooses to rely on fluxing as a control for HCl/Cl_2, records of the soda ash or limestone added to the smelting furnace and the total amount of material charged would have to be maintained. The amount of fluxing agent added and material charged would be recorded on a total-per-shift basis. Most smelters already maintain records of fluxing agents added to the furnace and material charged as a normal part of production and quality control. Consequently, the incremental burden associated with this recordkeeping requirement would be minimal.

If a source operates an acid gas scrubber and the owner or operator chooses to control HCl and Cl_2 with the scrubber rather than through fluxing, then the source would be required to either (1) maintain records of scrubber media injection rate and pH, or (2) maintain records of SO_2 concentrations measured continuously with a CMS. Most sources with scrubbers already maintain records of media injection rate and pH as part of normal scrubber operation, as well as CMS's for SO_2. If a source operates a CMS for HCl, it would maintain records of HCl concentration.

Records would also be maintained of fugitive dust control activities, as required by each smelter's SOP.

2. Reporting

Owners or operators of secondary lead smelters would be required to comply with all of the reporting requirements under section 63.10 of the General Provisions. They would be required to report the results of performance tests and CMS performance evaluations, and to submit quarterly excess emissions and CMS performance reports or summary reports.

These quarterly reports would include summaries (e.g., 3-hour averages) of the records required to demonstrate continuous compliance with the proposed standards. These reports would also contain summaries of the records that are required to demonstrate continuous compliance with the fugitive dust control measures described in the source's SOP manual, including an explanation of the periods when the procedures outlined in the SOP were not followed.

The Administrator believes that excess emissions and compliance parameter monitoring reports are a critical enforcement tool. Therefore, the proposed standard would require quarterly, rather than semi-annual reports. However, pursuant to section 63.10(e)(3)(ii) of the General Provisions, sources may request to reduce reporting frequency after they can demonstrate

continuous compliance for a one-year period.

L. Operating Permit Program

Under title V of the Act, all HAP-emitting sources would be required to obtain an operating permit. Oftentimes, the emission limits and the requirements for monitoring, reporting, and recordkeeping for a facility are scattered among numerous provisions of State Implementation Plans or Federal regulations. As discussed in the final rule for the operating permit program, published on July 21, 1992 (57 *FR* 32295), an operating permit under this new permit program will include all of the requirements that pertain to a single source in a single document.

After a State's permit program has been approved, each secondary lead smelter within that State must apply for and obtain an operating permit. If the State where the secondary lead smelter is located does not have an approved permitting program, the owner or operator must submit the application under the General Provisions of 40 CFR part 63. The addresses for the EPA Regional Offices and States are included in the General Provisions.

M. Whether to Also Regulate Air Emissions Under RCRA

As noted earlier, air emissions from secondary lead smelting furnaces are also potentially subject to regulation under RCRA because the battery and other lead-bearing secondary feed is often classified as a hazardous waste because of lead content. These emissions are presently exempt from regulation (40 CFR 266.100(c)), but the EPA is considering whether RCRA controls are necessary as part of this rulemaking. The EPA has agreed to reexamine the appropriateness of the exemption as part of a settlement agreement in *Horsehead Resources Inc. v. Browner*, No. 92–1221. The settlement agreement provides that the EPA may issue revised regulatory standards under the Act alone, under RCRA, or under both statutes.

The EPA is proposing to continue exempting air emissions from secondary lead smelting furnaces from RCRA essentially because the EPA believes these emissions will be comprehensively and adequately regulated under the section 112 rules proposed here, plus the subsequent residual risk determination. Although the RCRA standard for regulation ["as may be necessary to protect human health and the environment", RCRA section 3004 (a)] differs from the initial technology-based regime of section 112 of the Act, the EPA does not believe that further RCRA regulation of air emissions is necessary. The reasons are that: (1) The proposed MACT optimizes control of the principal HAP contributed by the hazardous waste (i.e. lead-bearing feed, as opposed to fossil fuels) processed by the source by imposing the best pollution control technology for the principal HAP—lead compounds—emitted from these sources; (2) all secondary lead smelters (both major and area sources) would be controlled by the proposed standards; (3) the proposed standards control not only stack emissions, but facility-wide fugitive emissions; (4) organic HAP's are controlled as well, and emissions of chlorinated organic HAP's (such as PCDD's and PCDF's) are minimal; and (5) HCl and Cl_2 emissions are controlled as well. To the extent any significant residual risk remains after MACT standards are implemented, the risk will be addressed through the section 112(f) residual risk process. Consequently, the EPA believes that RCRA regulation of air emissions from these sources should not be required.

In this regard, it is important to remember that RCRA section 1006 requires the Agency to "integrate all provisions of [RCRA] for purposes of administration and enforcement and * * * avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act * * *.". The EPA believes that imposition of RCRA air emission standards for these sources could result in the types of unnecessary duplication that section 1006 is intended to prevent. Accordingly, the Agency is proposing to retain the current regulatory exemption from RCRA regulation for air emissions from secondary lead smelters.

There is also a second potential area of overlap between RCRA standards and the proposed MACT standards. This is with respect to strategy units that are presently regulated under RCRA. The EPA believes that the controls for fugitive dust emissions proposed in this rule (proposed §§ 63.545 (c)(2) and (c)(5) in particular) are consistent with, and complement, the existing RCRA standards. The RCRA standards are directed largely at preventing releases of waste to land and groundwater, and so would be complemented by the proposed rules, which are directed to preventing exposure via an air exposure pathway. In addition, the provisions of the RCRA rules preventing air emissions are consistent with the standards proposed today. For example, § 264.1101(c)(1)(iv) prevents fugitive dust emissions from containment buildings by prohibiting visible emissions and achieves the same emission control objective of the fugitive dust control standards being proposed today. The Agency solicits comment, however, to ensure that none of the requirements for RCRA storage units are incompatible with the standards proposed today.

N. Solicitation of Comments

The EPA welcomes comments on all aspects of the proposed standards and specifically solicits comments on the following: (1) The determination by the EPA that area sources in the category present a threat of adverse effects to human health and therefore should be regulated; (2) the use of fluxing agents to eliminate HCl and Cl_2 emissions from smelting furnaces, including the technical feasibility of this approach, any adverse impacts on smelting operations, and its effectiveness in reducing HCl/Cl_2 emissions; (3) the feasibility and impacts of establishing a THC limit for existing blast furnaces based on an afterburner temperature above that identified as the MACT floor (700 °C); and (4) the proposed enhanced monitoring requirements, including the proposed strategy of establishing a site-specific opacity limit concurrent with the initial lead compliance test. Comments on these aspects of the standards will be most useful if they contain specific information and data pertinent to an evaluation of the magnitude and severity of the impact(s) and suggested alternative courses of action that would avoid the impact(s).

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards for secondary lead smelters, in accordance with section 307(d)(5) of the Act. Persons wishing to make an oral presentation at a public hearing should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–92–43. A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to, or otherwise considered by, the EPA in the development of this proposed rule. The principal purposes of the docket are to: (1) Allow interested parties to readily identify and locate documents so they can intelligently and effectively participate in the rulemaking process, and (2) serve as the record in case of judicial review, except for interagency review materials [section 307(d)(7)(a) of the CAA].

C. Executive Order 12866

Under Executive Order 12866 (58 *FR* 5173, October 4, 1993), the EPA must determine whether a regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The proposed regulation presented in this notice was submitted to the OMB for review. Any written EPA response to those comments are included in the docket listed at the beginning of today's notice under ADDRESSES. The docket is available for public inspection at EPA's Air Docket Section, which is listed in the ADDRESSES section of this preamble.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document was prepared by the EPA (ICR No. 1686.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch, U.S. Environmental Protection Agency, 401 M Street SW. (2136), Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information (including emission testing) is estimated to average 1,200 hours per smelter for reporting in the first year in which compliance is demonstrated and 550 hours per year for subsequent years, and to require 210 hours annually per smelter for recordkeeping. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the EPA to consider potential impacts of proposed regulations on small business entities. If a preliminary analysis indicates that a proposed regulation would have any economic impact on any small entities, then a regulatory flexibility analysis must be prepared.

Present Regulatory Flexibility Act guidelines indicate that an economic impact should be considered significant if it meets one of the following criteria: (1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a significant portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or (4) regulatory requirements are likely to result in closure of small entities. Based on discussions with technical support experts, the EPA formulated alternative criteria for the determination of significant impacts in the secondary lead industry. The guidelines were discussed in the economic impacts section of this preamble.

The results of an economic assessment indicated that the proposed rule will have an economic impact on small business entities. However, adverse economic impacts have been minimized to the greatest extent possible in this rule making, and those that remain are unavoidable. All of the small entities that are currently operating and that are impacted are major sources of HAP's for which the EPA is required to propose MACT standards. Consequently, the economic impacts can not be minimized by proposing less stringent standards based on GACT. The standards being proposed in this rule making are based on MACT floor controls, and in no instance did the EPA choose to propose standards based on controls more stringent than the floor. The EPA was also able to identify alternatives to add-on controls (e.g., process modifications and work practices) in the MACT floors that offered equivalent levels of control.

The EPA has minimized the impacts associated with monitoring by adopting a surrogate pollutant approach and by allowing for alternative monitoring strategies when available. Finally, the EPA has minimized the impacts associated with recordkeeping and reporting by proposing only the minimum requirements needed to document continuous compliance with the proposed emission limits.

F. Pollution Prevention Considerations

Pollution prevention/source reduction is the use of process modifications or alternative processing technologies to reduce air pollutant emissions from the source, rather than through the use of add-on controls. Several pollution prevention and source reduction options were considered for application to the secondary lead smelter industry in this rulemaking. These options are described in more detail in chapter 3 of the BID.

1. Emission Prevention Through Electrowinning

Electrowinning is a process to recover lead metal by dissolving lead compounds in acid and then depositing lead metal on a cathode in an electrolytic cell. Electrowinning is being developed as an alternative to the use of smelting furnaces to reduce lead compounds to lead metal. Electrowinning would reduce potential emissions of metal HAP's, organic HAP's, and HCl/Cl_2. This process is still experimental and has not been demonstrated on a commercial basis anywhere in the world. However, the proposed standards would not prevent a smelter from pursuing this technology. The proposed standards for process sources are in the form of emission limits and operators may use any technology that can achieve the emission limit. There are no design,

equipment, or work practice requirements that would discourage or prohibit the use of this technology.

2. Organic HAP and HCl/Chlorine Emission Prevention Through Plastic Removal

Plastic battery separators are sources of organic HAP and HCl/Cl_2 emissions from smelting furnaces. Technology is available to remove these materials from the furnace feed material and this may decrease organic HAP and HCl/Cl_2 emissions. However, no data are available to confirm such a decrease and the recycling options for the recovered material are limited. Material that is not recycled would need to be disposed of as hazardous waste if it is contaminated with lead. However, the proposed standards would not prevent a smelter from pursuing this option.

3. HCl and Chlorine Emission Prevention Through Fluxing

Soda ash or limestone can be added to a smelting furnace to prevent emissions of HCl and Cl_2. The use of fluxing agents would avoid the need for a wet scrubber and the solid waste and wastewater impacts associated with a wet scrubber. This practice is currently in use in the secondary lead industry and is incorporated in the proposed regulation

4. HCl and Chlorine Emission Prevention Through Dechlorination of Flue Dust

Chlorine is found in the flue dust of secondary lead smelters in the form of lead chloride. Recycling the flue dust to the smelting furnace causes the chlorine to build up in the furnace and baghouse system until it is released as HCl or Cl_2, unless it is removed in the slag. The same technology that can be used to perform paste desulfurization can be used to remove chlorine from the flue dust by diverting the flue dust to the paste desulfurization system before recycling it to the furnace. This strategy is being used by at least one secondary lead smelter and it appears to be as effective as fluxing in the control of HCl and Cl_2 emissions. The proposed standards would not prevent smelters from pursuing this option.

G. Miscellaneous

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator welcomes comments on all aspects of the proposed regulation, including health, economic, and technological issues, and on the proposed test methods.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

VIII. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended; 42 U.S.C., 7401, 7412, 7414, 7416, and 7601.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Secondary lead smelters.

Dated: May 27, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–13667 Filed 6–8–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB

Endangered and Threatened Wildlife and Plants, Public Hearing on Endangered Status for Four Plants and Threatened Status on One Plant From the Central Sierran Foothills of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), announces a public hearing on the proposed endangered status for *Calystegia stebbinsii* (Stebbins' morning-glory), *Ceanothus roderickii* (Pine Hill ceanothus), *Fremontodendron californicum* ssp. *decumbens* (Pine Hill flannelbush), and *Galium californicum* ssp. *sierrae* (El Dorado bedstraw) and threatened status for *Senecio layneae* (Layne's butterweed). During the public hearing the Service will allow all interested parties to present oral testimony on the proposed rule. Written comments on the proposal will be accepted until July 19, 1994.

DATES: The public hearing will be held from 6 to 8 pm. on Thursday, June 30, 1994, in Sacramento, California. The Service will accept written comments on the proposed rule until July 19, 1994. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the Radisson Hotel, 500 Leisure Lane, Sacramento, California. Written comments and materials concerning this proposal should be sent to the Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp at the above address (telephone 916/978–4866).

SUPPLEMENTARY INFORMATION:

Background

Calystegia stebbinsii, Ceanothus roderickii, Fremontodendron californicum ssp. *decumbens, Galium californicum* ssp. *sierrae* and *Senecio layneae* are perennial plants that are found primarily on gabbroic soils and occur either in western El Dorado, Nevada, or Tuolumne Counties in northern California. Commercial and private development, inadequate regulatory mechanisms, off-road vehicle use, change in fire frequency, grading, road construction and maintenance, irrigation, herbicide spraying, invasive alien vegetation, susceptibility to catastrophic events, excessive grazing, dumping, and mining variously threaten these plants. A proposal to list these five plants was published in the **Federal Register** on April 20, 1994 (59 FR 18774).

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. In response to the proposed rule, Daniel Macon, Director of Industry Affairs, California Cattlemen's Association, and William Hazeltine, Environmental Consultant, Oroville, California, requested a public hearing in letters dated May 2, 1994 and April 4, 1994 (sic) respectively. As a result the Service has scheduled a public hearing on Thursday, June 30, 1994, from 6 to 8 pm at the Radisson Hotel, 500 Leisure Lane, in Sacramento, California. Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. There are no limits to the length of written comments or materials presented at the hearing or mailed to the Service. Written comments carry the same weight as oral comments. The comment period closes on July 19, 1994. Written comments should be submitted to the Service (see **ADDRESSES**).

Author

The primary author of this notice is Kirsten Tarp (see **ADDRESSES** section)

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted).

Dated: June 3, 1994.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–14023 Filed 6–8–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 931078–93278; I.D. 011394A]

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: NMFS is reopening, from June 6, 1994, through June 24, 1994, the comment period on the proposed rule to implement, on an experimental basis, a voluntary, pilot program that would allow retention of undersized swordfish in excess of the trip allowance for donation, through charitable organizations, to needy individuals.

DATES: Comments on the proposed rule will be accepted from June 6, 1994, through June 24, 1994.

ADDRESSES: Comments on the petition should be directed to: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910 (Attention: Richard Stone—F/CM4). Please indicate whether your comments are in regard to the proposed rule or on information-collection requirements.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301/713–2347.

SUPPLEMENTARY INFORMATION: A proposed rule, requesting public comment over a 30-day period, was published in the **Federal Register** on December 23, 1993, at 58 FR 68109. NMFS subsequently extended the comment period on the proposed rule through February 9, 1994 (59 FR 3328, January 21, 1994; 59 FR 4265, January 31, 1994). In response to a request from the public, the comment period on the proposed rule is again reopened from June 6, 1994, through June 24, 1994.

Dated: June 3, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–14028 Filed 6–6–94; 11:54 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 59, No. 110
Thursday, June 9, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 3, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;
(2) Title of the information collection;
(3) Form number(s), if applicable;
(4) How often the information is requested;
(5) Who will be required or asked to report;
(6) An estimate of the number of responses;
(7) An estimate of the total number of hours needed to provide the information;
(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250. (202) 690–2118.

Revision

- Foreign Agricultural Service
  7 CFR part 1494—Regulations Covering CCC's Dairy Export Incentive Program.
  Recordkeeping; On occasion.
  Businesses or other for-profit; Small businesses or organizations; 6,003 responses; 2,735 hours.
  L.T. McElvain (202) 720–6211
- Foreign Agricultural Service
  7 CFR part 1494—Regulations Covering CCC's Export Enhancement Program.
  Recordkeeping; On occasion.
  Businesses or other for-profit; 23,724 responses; 10,825 hours.
  L.T. McElvain (202) 720–6211.
- Agricultural Marketing Service
  Grapefruit & Oranges Grown in the Lower Rio Grande Valley in Texas, Marketing Order No. 906.
  FV–81; FV–82; FV–83.
  Farms; Businesses or other for-profit; Small businesses or organizations; 583 responses; 112 hours.
  Charles L. Rush (202) 690–3670.

Extension

- Agricultural Marketing Service
  Nectarines Grown in California; Marketing Order No. 916.
  FV–84 and FV–85.
  Recordkeeping; On occasions.
  Farms; Businesses or other for-profit; Small businesses or organizations; 1,148 responses; 1,085 hours.
  Mark J. Kreggor (202) 720–1755.
- Federal Crop Insurance Corporation
  Request to Exclude Hail and Fire Coverage From Insurance Policy.
  FCI–78.
  On occasion.
  Individuals or households; Farms; 54,535,000 responses; 13,634 hours.
  Bonnie L. Hart (202) 254–8393.

Reinstatement

- Cooperative State Research Service
  Higher Education Teaching and Research Grants Programs.
  CSRS–711; CSRS–712; CSRS–713; CSRS–708; CSRS–710; CSRS–662; and CSRS–663.
  Annually.
  Non-profit institutions; 2,200 responses; 15,000 hours.
  Dr. Wm. Jay Jackman (202) 401–1790.

Donald E. Hulcher,
Deputy Department Clearance Officer.

[FR Doc. 94–13967 Filed 6–8–94; 8:45 am]
BILLING CODE 3410–01–M

BIPARTISAN COMMISSION ON ENTITLEMENT AND TAX REFORM

Meeting Announcement

The Bipartisan Commission on Entitlement and Tax Reform gave notice in the **Federal Register** on Friday, May 27, 1994, (59 FR 27529) of a meeting of its Members on Monday, June 13, 1994, from 1 p.m. to 4 p.m. The meeting will be held in room 210 of the Cannon House Office Building in Washington, D.C.

The meeting of the Commission shall be open to the public. The proposed agenda includes discussion on the long-term budget picture.

Records shall be kept of all Commission proceedings and shall be available for public inspection in room 825 of the Hart Senate Office Building, 120 Constitution Avenue, NE., Washington, DC 20510.

J. Robert Kerrey,
Chairman.

John C. Danforth,
Vice Chairman.

[FR Doc. 94–14009 Filed 6–8–94; 8:45 am]
BILLING CODE 4151–04–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 5 p.m. on Wednesday, June 29, 1994, at the Embassy Suites Hotel, Boardroom, 200 Stoneridge Drive in Columbia Drive in Columbia, South Carolina 29210. The purpose of the meeting is to: (1) To discuss the status of the Commission and SACs; (2) to discuss civil rights progress and/or problems in the State; and (3) to review and discuss the draft report on "Racial Tensions in South Carolina".

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 1, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94-14049 Filed 6-8-94; 8:45 am]

BILLING CODE 6335-01-P

Agenda and Notice of Public Meeting of the Tennessee Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 9 p.m. on Monday, June 27, 1994, and reconvene at 9 a.m. until 3 p.m. on Tuesday, June 28, 1994, at the City Council Public Hearing Room, City Hall, East 11th Street in Chattanooga Tennessee 37402. The purpose of the meeting on June 27 is to: (1) Discuss civil rights issues; (2) review the status of the Commission and the SACs; (3) discuss a draft report on "Racial Tensions in Tennessee"; (4) discuss project plans; (5) hear from the general public on the issue of enforcement of Title VI in the Chattanooga area. The meeting will resume on June 28 for an invitational briefing on enforcement of Title VI.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobbie D. Doctor, Director of the Southern Regional Office, 404-730-2476 (TDD 404-730-2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 1, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94-14048 Filed 6-8-94; 8:45 am]

BILLING CODE 6335-01-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

June 3, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 7, 1994

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

Pursuant to section 204 of the Agricultural Act of 1956, as amended, the Government of the United States is extending the current limit on Category 443 for an additional one-year period beginning on June 7, 1994 and extending through June 6, 1995 at a level of 80,800 numbers.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 31509, published on June 3, 1993.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 3, 1994

Commissioner of Customs

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 7, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 443, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the twelve-month period beginning on June 7, 1994 and extending through June 6, 1995 in excess of 80,800 numbers.

Imports charged to Category 443 for the period June 7, 1993 through June 6, 1994, shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-14074 Filed 6-8-94; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Conversion Factors for Non-Category Textile Items

Dated: June 3, 1994

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Nat Cohen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended, section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

When the Uruguay Round agreement on textiles and clothing enters into force, trade under the following classifications of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) will be required to be counted in square meter equivalents. The conversion factors below will be used to convert trade from the primary unit of quantity reported in the HTSUSA to square meter equivalents. The remaining classifications subject to the terms of the agreement for textiles and clothing under the Uruguay Round are grouped into textile categories and take the conversion factor applicable to categories to which they belong.

Conversion factors for the great majority of the classifications below were derived by using the conversion factor of a similar product that is assigned to a textile category. For instance, the conversion factor for silk sweaters is the same as the conversion factor for the silk blend sweater category and the man-made fiber sweater category. Conversion factors were derived in this way for classifications

representing over 98% of the trade entered in the classifications below.

SQUARE METER EQUIVALENT FACTORS FOR NON-CATEGORY TEXTILE ITEMS

HTS	SMEF
3005901000	0.94/S
3005905000	0.94/S
5004000000	8.50
5005000010	8.50
5006000010	8.50
5006001000	8.50
5007103020	1.00
5007103040	1.00
5007103090	1.00
5007200010	1.00
5007200020	1.00
5007200040	1.00
5007200090	1.00
5007903020	1.00
5007903040	1.00
5007903090	1.00
5110000000	3.70
5113000000	1.00
5208312000	1.00
5208321000	1.00
5208412000	1.00
5208421000	1.00
5208512000	1.00
5208521000	1.00
5209313000	1.00
5209413000	1.00
5209513000	1.00
5307100000	8.50
5307200000	8.50
5310100020	1.00
5310100040	1.00
5310100060	1.00
5310900000	1.00
5311006000	14.00
5402103020	20.10
5402203020	20.10
5402410010	20.10
5402410020	20.10
5402410030	20.10
5402420000	20.10
5402430020	20.10
5402490010	20.10
5402490050	20.10
5403103020	20.10
5403310020	20.10
5403330020	20.10
5403390020	20.10
5404101000	20.10
5404102020	20.10
5404102040	20.10
5404102090	20.10
5404900000	20.10
5405003000	20.10
5405006000	20.10
5407301000	1.00
5501100000	7.60
5501200000	7.60
5501300000	7.60
5501900000	7.60
5502000000	6.30
5503100000	7.60
5503200000	7.60
5503300000	7.60
5503400000	7.60
5503900000	7.60
5504100000	6.30
5504900000	6.30
5505100020	7.60

SQUARE METER EQUIVALENT FACTORS FOR NON-CATEGORY TEXTILE ITEMS—Continued

HTS	SMEF
5505100040	7.60
5505100060	7.60
5505200000	6.30
5506100000	7.60
5506200000	7.60
5506300000	7.60
5506900000	7.60
5507000000	6.30
5601290010	14.40
5601300000	8.50
5603001090	1.00
5604900000	6.50
5605000010	6.50
5607100000	6.50
5607210000	6.50
5607290000	6.50
5607301000	6.50
5607302000	6.50
5607411000	6.50
5607491000	6.50
5607901000	6.50
5608110010	13.60
5608901000	13.60
5608902010	13.60
5608903000	13.60
5609001000	8.50
5609002000	11.10
5609003000	14.40
5609004000	3.70
5701101300	1.00
5701901010	1.00
5701901090	1.00
5701902010	1.00
5701902090	1.00
5702101000	1.00
5702109090	1.00
5702201000	1.00
5702202000	1.00
5702391000	1.00
5702392090	1.00
5702491500	1.00
5702492000	1.00
5702592000	1.00
5702912000	1.00
5702992000	1.00
5703900000	1.00
5705001000	1.00
5705002090	1.00
5801902010	1.00
5802200010	1.00
5802300010	1.00
5803904010	1.00
5804100010	11.10
5804290010	11.10
5804300010	11.10
5805001000	1.00
5805002000	1.00
5805004090	1.00
5806103010	11.10
5806393010	11.10
5806400000	13.60
5807101090	11.10
5807102010	8.50
5807102020	14.40
5807102090	11.10
5807901090	11.10
5807902010	8.50
5807902020	14.40
5807902090	11.10
5808102090	11.10

SQUARE METER EQUIVALENT FACTORS FOR NON-CATEGORY TEXTILE ITEMS—Continued

HTS	SMEF
5808103090	11.10
5808900090	11.10
5810920040	14.40
5810990090	11.10
5811004000	1.00
5903101000	1.00
5903101500	1.00
5903102010	1.00
5903102090	1.00
5903103000	1.00
5903201000	1.00
5903201500	1.00
5903202000	1.00
5903203090	1.00
5903901000	1.00
5903901500	1.00
5903902000	1.00
5903903090	1.00
5904100000	1.00
5904910000	1.00
5904920000	1.00
5905001000	1.00
5906100000	13.60
5906911000	1.00
5906912000	1.00
5906913000	1.00
5906991000	1.00
5906992000	1.00
5906993000	1.00
5908000000	8.50
5909001000	8.50
5909002000	14.40
5910001010	4.78
5910001020	32.00
5910001030	32.00
5910001060	9.50
5910001070	9.50
5910001090	13.60
5910009000	14.40
5911101000	13.60
5911102000	13.60
5911201000	1.00
5911202000	1.00
5911310010	13.60
5911310020	13.60
5911310090	13.60
5911320010	13.60
5911320020	13.60
5911320090	13.60
5911400000	13.60
5911900000	13.60
6001990010	1.00
6002990010	11.10
6101900040	34.50
6102900020	34.50
6103194060	3.76
6103292028	34.50
6103292034	30.30
6103292040	14.90
6103292052	15.00
6103292064	30.80
6103292080	14.40
6103392040	30.30
6103493016	14.90
6103493039	14.40
6104192070	3.76
6104292016	34.50
6104292028	14.90
6104292040	14.90
6104292052	12.50

SQUARE METER EQUIVALENT FACTORS FOR NON-CATEGORY TEXTILE ITEMS—Continued

HTS	SMEF
6104292062	30.80
6104292080	14.40
6104392040	34.50
6104490040	37.90
6104592040	14.90
6104693016	14.40
6104693028	14.90
6105903040	15.00
6106902040	12.50
6107190010	10.40
6107294010	43.50
6107991010	42.60
6108190020	13.40
6108220010	13.40
6109290010	13.40
6109390010	43.50
6109990010	42.60
6109902010	15.00
6109902020	12.50
6110909016	30.80
6110909032	30.80
6110909056	14.40
6110909058	14.40
6110909090	15.00
6110960382	12.50
6111906010	14.40
6112192010	34.50
6112192040	12.50
6112192070	14.90
6113000005	34.50
6113000010	34.50
6113000012	14.90
6114900005	12.50
6114900015	14.40
6114900025	14.40
6114900035	14.40
6114900090	14.40
6115190030	14.40
6115200020	3.50
6115990510	3.80
6116100500	2.90
6116100550	2.90
6116101000	2.90
6116101510	2.90
6116101810	2.90
6116102510	2.90
6116102540	2.90
6116104515	2.90
6116104540	2.90
6116105000	2.90
6116105001	2.90
6116106040	2.90
6116107040	2.90
6116108040	2.90
6116920500	2.90
6116920800	2.90
6116921000	2.90
6116930500	2.90
6116930800	2.90
6116931000	2.90
6116992000	2.90
6116993000	2.90
6116993500	2.90
6116998040	2.90
6116999040	2.90
6117104000	14.40
6117200040	6.60
6117800040	14.40
6117900016	30.80
6117900028	12.50

SQUARE METER EQUIVALENT FACTORS FOR NON-CATEGORY TEXTILE ITEMS—Continued

HTS	SMEF
6117900038	34.50
6117900048	14.90
6117900058	14.40
6201190040	34.50
6201990040	34.50
6202190040	34.50
6202990040	34.50
6203194060	3.76
6203293010	34.50
6203293026	30.30
6203293030	14.90
6203293050	20.10
6203293070	14.40
6203394040	30.30
6203421000	14.90
6203431000	14.90
6203493010	14.40
6203493035	14.90
6203493050	14.90
6204193070	3.76
6204294016	34.50
6204294028	14.90
6204294040	14.90
6204294052	12.10
6204294064	14.40
6204394040	34.50
6204490040	37.90
6204594040	14.90
6204621000	14.90
6204631000	14.90
6204693040	14.90
6204693060	14.40
6205902040	20.10
6205100040	12.10
6207190020	13.40
6207290020	43.50
6207996010	42.00
6207996030	13.40
6208194010	13.40
6208290020	43.50
6208920025	13.40
6208996010	13.40
6208996020	13.40
6209004010	14.40
6210102000	14.40
6210104010	14.40
6210201010	34.50
6210202010	34.50
6210301010	34.50
6210302010	34.50
6210401010	34.50
6210402010	34.50
6210501010	34.50
6210502010	34.50
6211112030	14.40
6211112010	14.40
6211201025	34.50
6211201050	34.50
6211320003	8.50
6211330003	14.40
6211390010	14.40
6211420003	8.50
6211430003	14.40
6211490010	14.40
6212101030	4.00
6212102030	4.00
6212900050	14.40
6213101000	1.40
6214101000	14.40
6215100040	6.60

SQUARE METER EQUIVALENT FACTORS FOR NON-CATEGORY TEXTILE ITEMS—Continued

HTS	SMEF
6216000500	2.90
6216000800	2.90
6216001000	2.90
6216001210	2.90
6216001510	2.90
6216001810	2.90
6216002010	2.90
6216002300	2.90
6216002301	2.90
6216002540	2.90
6216002740	2.90
6216002840	2.90
6216002900	2.90
6216002901	2.90
6216003005	0.40/S
6216003040	2.90
6216003140	2.90
6216003240	2.90
6216003300	2.90
6216003400	2.90
6216003500	2.90
6216004300	2.90
6216004400	2.90
6216004600	2.90
6216004700	2.90
6216004701	2.90
6216004805	2.90
6217100040	14.40
6217900015	12.10
6217900040	34.50
6217900065	14.90
6217900090	14.40
6301900020	11.10
6302290010	11.10
6302390020	11.10
6302991000	11.10
6304193030	11.10
6304910060	11.10
6304991000	1.00
6304992560	11.10
6304994000	3.70
6304996030	11.10
6305100000	11.10
6306210000	8.50
6306219000	14.40
6306229010	14.40
6306290000	14.40
6306310000	14.40
6306390000	8.50
6306410000	9.40
6306490000	14.40
6306510000	8.50
6306990000	14.40
6307102030	8.50
6307200000	14.40
6307905090	14.40
6307906010	14.40
6307906090	14.40
6307907010	14.40
6307907020	8.50
6307907500	8.50
6307908500	14.40
6307909025	1.60
6307909035	1.60
6307909050	11.50
6307909525	1.60
6307909535	1.60
6307909550	11.50
6307909590	11.50
6309000010	11.50

SQUARE METER EQUIVALENT FACTORS FOR NON-CATEGORY TEXTILE ITEMS—Continued

HTS	SMEF
6209000020	11.50
6305031530	8.50/kg
6501003000	4.40
6501006000	4.40
6502002000	18.70
6502004000	18.70
6502006030	18.70
6502006060	18.70
6503000060	4.70
6503003030	5.80
6503006000	5.80
6504003060	7.50
6504006000	7.50
6504009045	3.70/kg
[illegible]	[illegible]
6505908015	14.40/kg
6505909030	12.50/kg
6601100000	17.00
6601910000	7.50
6601990000	11.20
8708210000	2.72
8804000000	20.00 $1000
9113904000	1.17 $1000
9404909025	11.50/kg
9404909040	0.85 S
9502910000	10.00 $1000
9612109020	14.40/kg

Rita D. Hayes,

Chairman, Committee for the [illegible] Agreement.

[FR Doc. 94-14067 Filed 6-8-94; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Meeting of the Department of Defense (DoD) Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense

ACTION: Notice.

SUMMARY: The Commission on Roles and Missions of the Armed Forces will hold a closed meeting on Tuesday, June 21, 1994, from 1 p.m. until 6 p.m. at suite 1200F, 1100 Wilson Blvd., Arlington, Virginia

The Commission meeting will consist of classified briefings and discussions of the future threat environment as well as classified operational mission taskings to unified and specified commanders for warplanning purposes. In accordance with section 552b(c)(1) of Title 5 U.S.C. disclosure of such classified information would be contrary to the interests of national defense; therefore this meeting will be closed to the public.

For further information contact CDR Gregg Hartung, Director for Public Affairs, (703) 696-4230/50.

Dated: June 6, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 94-14047 Filed 6-8-94; 8:45 am]

BILLING CODE 5000-04-M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The Supportability Panel of the USAF Scientific Advisory Board's 1994 Summer Study on "Mission Support & Enhancement for Foreseeable Aircraft Force Structure" will meet on 6-8 July 1994 at Hill AFB, Utah and The RAND Corporation, Santa Monica, CA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information related to extending the service life of current inventory aircraft and to draft a panel report.

The meeting will be closed to the public in accordance with section 552b of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) [illegible]

Patsy J. Conner,

Air Force Federal Register Liaison Officer

[FR Doc. 94-14052 Filed 6-8-94; 8:45 am]

BILLING CODE 3910-01-P

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Proposed Disposal and Reuse of Excess Property at Naval Air Station Memphis, Millington, TN

Pursuant to the National Environmental Policy Act, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500-1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the disposal and reuse of excess property at Naval Air Station (NAS) Memphis, Millington, Tennessee.

In accordance with recommendations of the 1993 Base Closure and Realignment Commission, the Navy plans to realign NAS Memphis. As part of the realignment, air operations conducted at NAS Memphis will be either disestablished or transferred to other naval facilities. The proposed action involves the disposal of the majority of the land, buildings, and infrastructure associated with the air operations at NAS Memphis including runways, taxi ways, hangers, etc. Approximately 1500 acres will be declared excess.

The Navy intends to analyze the environmental effects of the disposal of the excess NAS Memphis property based on the reasonably foreseeable reuse of the property, taking into account uses identified by the Millington Base Reuse Committee determined during the scoping process. It is anticipated that reuse of NAS Memphis will include, but not be limited to, aviation uses, education or institutional uses, commercial and light industry, office space, wildlife preserve, recreational uses, or a combination of those uses. The EIS will evaluate alternative reuse concepts of the property, including the "no action" alternative, which would be retention of the property by the Navy in caretaker status. However, due to provisions found in the Base Realignment and Closure Act, selection of the "no action" alternative would be considered impractical for the Navy to implement.

Major environmental issues that will be addressed in the EIS include, but are not limited to, air quality, water quality, wetlands, endangered species, cultural resources, and socio-economic impacts of the reasonably foreseeable reuse of the property.

The Navy is initiating this scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on June 28, 1994, beginning at 7 p.m., at the Baker Community Center, 7942 Church Street, Millington, Tennessee. This meeting will be advertised in Millington area newspapers.

A brief presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the

commentor believes the EIS should address.

Written statements and/or questions regarding the scoping process should be mailed no later than July 31, 1994, to: Commanding Officer, Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, SC 29419–9010 (Attn: Mr Laurens Pitts, Code 203), telephone (803) 743–0893.

Dated: June 6, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–14081 Filed 6–8–94; 8:45 am]

BILLING CODE 3810–AE–P

Intent To Prepare a Supplemental Draft Environmental Impact Statement for the Proposed Homeporting and Pre-Acceptance Trials of Seawolf Class Submarines on the East Coast of the United States

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy announces its intent to prepare a Supplemental Draft Environmental Impact Statement (SDEIS) for the proposed homeporting and Pre-Acceptance Trials of SEAWOLF Class submarines.

On May 10, 1991, the Navy distributed for public review a Draft Environmental Impact Statement (DEIS) with the U.S. Environmental Protection Agency for the proposed dredging of the Thames River in support of the operational evaluation requirements (Pre-Acceptance Trials) of SEAWOLF submarines. Program changes necessitated a delay in the EIS preparation, and a Final Environmental Impact Statement was never issued.

The Navy has recently changed the proposed action addressed in this DEIS to now include the homeporting requirements of SEAWOLF class submarines. The Navy will prepare a Supplemental Draft Environmental Impact Statement (SDEIS) addressing Homeporting and Pre-Acceptance Trial requirements of SEAWOLF class submarines. The Naval Submarine Base New London (SUBASE NLON) has been identified as the Preferred Alternative to be addressed in the SDEIS and the Naval Station Norfolk VA (NAVSTA NORVA) and the Naval Submarine Base Kings Bay GA (NSB KB) will be evaluated as alternatives to SUBASE NLON.

Electric Boat Division of the General Dynamics Corporation located in Groton, Connecticut, is constructing the first SEAWOLF submarine. Following delivery to the Navy, this submarine (as well as those that follow) must undergo extensive operational and engineering evaluations referred to as Pre-Acceptance Trials. These evaluations are conducted by Submarine Development Squadron TWELVE located at SUBASE NLON. The SDEIS will evaluate these Pre-Acceptance Trial and Homeporting requirements for SUBASE NLON. However, since these Pre-Acceptance Trial requirements must be conducted near the SEAWOLF contractor's plant, Pier 7 at the Naval Undersea Warfare Center (NUWC) New London, Connecticut, will be evaluated as the location for SEAWOLF Pre-Acceptance Trials should either NAVSTA NORVA or NSB KB be selected as the homeport for SEAWOLF class submarines. If SEAWOLFs are homeported at SUBASE NLON, Pre-Acceptance Trials will be conducted from SUBASE NLON.

Implementation of the proposed action would affect the natural and man-made environments. The principal environmental consequence would result from dredging of the Thames River to a depth of 41 feet mean low water to provide safe passage to the SUBASE NLON for SEAWOLF submarines. Approximately 2.7 million cubic yards of river sediment would be dredged for proposed disposal at the New London Disposal Site located in Long Island Sound.

Dredging would also be necessary at NAVSTA NORVA and NSB KB with quantities ranging from approximately 225,000 cubic yards to 500,000 cubic yards respectively. At these locations, disposal of dredged material would be at upland disposal sites.

If Pre-Acceptance Trials are to be conducted at NUWC NLON, dredging at Pier 7 would be required. Approximately 1.3 million cubic yards would be removed from around the pier and the Thames River channel from NUWC to Long Island Sound. Disposal would be at the New London Disposal Site.

The SDEIS will provide a detailed analysis of dredging requirements, including sediment characterizations and disposal options, for each alternative. Other Homeporting and/or Pre-Acceptance Trials requirements for each alternative will also be addressed in the SDEIS.

Due to the size of the crew to be assigned to each SEAWOLF submarine and the small number of submarines, socioeconomic impacts at any alternative locations will be addressed, but are not expected to be significant.

In July 1994, the Navy will initiate a public scoping process for the purposes of determining the scope of issues to be addressed and for identifying the significant issues relative to the Proposed Action. The Navy will conduct scoping hearings, to be announced at a later date, at all alternative locations. Specific information concerning date, place and time for each of these scoping hearings will be published in local area newspapers.

Questions concerning this announcement should be directed to: Mr. R.K. Ostermueller, Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, Lester, Pennsylvania 19113, Attn: Code 202, telephone 610–595–0759.

Dated: June 6, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–14082 Filed 6–8–94; 8:45 am]

BILLING CODE 3810–AE–P

Board of Advisors to the Superintendent, Naval Postgraduate School; Meeting

Notice was published Thursday May 12, 1994, at 59 FR 24693, that the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California, was to have met on May 25-26, 1994, in Herrman Hall (Bldg 220) at the School. That Meeting has been rescheduled and will be held on July 20 21, 1994. All other information in the previous notice remains in effect. In accordance with 5 U.S.C. section 552b(e)(2), the meeting change is publicly announced at the earliest time.

For further information concerning this meeting contact: CDR Wayne A. Wagner, USN (Code 007), Naval Postgraduate School, Monterey, CA. 93943-5001, Telephone (408) 656-2512

May 25, 1994

Lewis T. Booker, Jr.

LCDR, JAGC, USN, Federal Register Liaison Officer

[FR Doc. 94–14083 Filed 6–8–94; 8:45 am]

BILLING CODE 3810–AE–F

Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet June 22, 1994, from 9:00 a.m. to 3:30 p.m., at the

Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: LCDR D. B. Rich, Pentagon, Room 4D534, Washington, DC 20350, Telephone Number: (703) 693-7248.

Dated: June 3, 1994.

Lewis T. Booker, Jr.

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–13968 Filed 6–8–94; 8:45 am]

BILLING CODE 3810–AE–F

Planning and Steering Advisory Committe[illegible]osed Meeting

Pursua[illegible]e provisions of the Federal A[illegible]y Committee Act (5 U.S.C. A[illegible]otice is hereby given that the F[illegible]g and Steering Advisory Commit[illegible]eet June 22, 1994, from 9 [illegible]30 p.m. at the Center for Na[illegible]4401 F[illegible]. This session will be Alex[illegible] be[illegible]

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LCDR[illegible] JAGC, USN, Re[illegible]ison Officer.

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BILLI[illegible]

Patent Licenses; Non-Exclusive, or Partially Exclusive: Fiber Optic Detectors, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant partially exclusive patent license; Fiber Optic Detectors, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Fiber Optic Detectors, Inc. a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned inventions described in U.S. Patents No. 4,981,338 entitled "Optical Fiber Refractometer" issued January 1, 1991 and 4,988,863 entitled "Optical Fiber Refractometer Launching Light At A Non-Zero Launch Angle" issued January 29, 1991.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower [illegible]800 North Quincy Street, Arlingt[illegible]nia 22217–5660, telephone (70[illegible]01.

Dated: June

Lewis T. Book[illegible]

LCDR, JAGC, U[illegible]egister Liaison Officer.

[FR Doc. 94–1[illegible]94; 8:45 am]

BILLING CODE 38[illegible]

DEPARTME[illegible]

[CFDA No.: 8[illegible]

Cooperative [illegible] (Manufacturi[illegible]

AGENCY: Depa[illegible]

ACTION: Corre[illegible]

SUMMARY: On [illegible] Department o[illegible] the **Federal** [illegible] applications [illegible] Demonstrati[illegible] Technologie[illegible] last column [illegible] transmittal [illegible] intergovernm[illegible] The deadlin[illegible] applications [illegible] deadline for [illegible] is Septembe[illegible]

FOR FURTHE[illegible]

Jackie L. Fr[illegible]

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The [illegible]al review [illegible]

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[illegible]epartment o[illegible]

Education, 400 Maryland Avenue, SW., (room 4512–MES), Washington, DC 20202–7242. Telephone: (202) 205–9071. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 2420a.

Dated: June 2, 1994.

Augusta S. Kappner,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 94–14025 Filed 6–8–94; 8:45 am]

BILLING CODE 4000–01–P

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act

DATES AND TI[illegible] ne 27, 1994 from 9 a.m. to 5 p.[illegible] June 28, 1994 from 9 a.m[illegible]d;) and from 12 p[illegible].

ADDRESS[illegible] [illegible]tol, 550 C Street, S[illegible] 20024.

FOR FURT[illegible]NTACT: Charles K[illegible]d for the Improve[illegible]y Educatio[illegible]W., Washing[illegible]hone: (202) 70[illegible]

SUPPLE[illegible] The National [illegible]the Improv[illegible] Educ[illegible] establis[illegible]f of the Higher [illegible]s [illegible]The [illegible]

[illegible]sistant [illegible]ication [illegible]val or [illegible]l to the [illegible]

On Jun[illegible]. to 5 m. the [illegible]n [illegible]ssion. [illegible]r the [illegible]en po[illegible] include a review o[illegible] Program

priorities and an update on FIPSE targeted competitions.

On June 27, 1994 from 9 a.m. to 5 p.m., and June 28, 1994 from 9 a.m. to 12 p.m., the meeting will be closed to the public for the purpose of reviewing and recommending grant applications submitted to the Comprehensive Program. This portion of the meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C.A. Appendix 2) and under exemptions (4) and (6) of the Government in the Sunshine Act (Pub. L. 94–409, 5 U.S.C. 552b(c) (4) and (6). The review and discussions of the applications and the qualifications of proposed staff to work on these grants are likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, or to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Board proceedings, and are available for public inspection at the Office of the Fund for the Improvement of Postsecondary Education, room 3100, Regional Office Building #3, 7th & D Streets, SW., Washington, DC 20202 from the hours of 8 a.m. to 4:30 p.m.

Dated: May 25, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–14050 Filed 6–8–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG94–66–000, et al.]

Compania De Electricidad De Puerto Plata, S.A., et al.; Electric Rate and Corporate Regulation Filings

May 31, 1994.

Take notice that the following filings have been made with the Commission:

1. Compania De Electricidad De Puerto Plata, S.A.

[Docket No. EG94–66–000]

Take notice that Compania De Electricidad De Puerto Plata, S.A. ("CEPP") filed an application on May 18, 1994 for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

CEPP is a Dominican Republic company formed to own two diesel electric generating facilities located in Puerto Plata, Dominican Republic.

Comment date: June 17, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Electricidad De Cortes S. De R.L.

[Docket No. EG94–67–000]

Take notice that on May 20, 1994, Electricidad De Cortes S. De R.L. ("ELCOSA") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

ELCOSA is a Honduras company formed to own an electric generating facility. The Facility will be a 60 MW electric generating facility and will consist of six 10 MW medium speed diesel electric generators and will include equipment necessary to deliver electric energy generated by the Facility to Empresa Nacional de Electrica, a Honduran utility, and certain Honduran industrial facilities.

ELCOSA will be engaged directly, or indirectly through one or more affiliates and exclusively in the business of owning or operating, and selling electric energy at wholesale, with the exception that ELCOSA will make retail sales of electricity to industrial companies located in Honduras.

Comment date: June 13, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of this application.

3. Kansas City Power & Light Co.

[Docket No. ES94–19–001]

Take notice that on May 20, 1994, KCPL filed an amendment to expand the purposes for which authority to issue such short-term debt instruments was granted by adding the following to paragraph (h) of the application: and (5) to purchase the securities of subsidiary companies of the Applicant, the proceeds of which would be used for the working capital and other general corporate purposes of such subsidiary companies.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Dixie Valley, L.P.

[Docket No. QF93–148–000]

On May 27, 1994 Dixie Valley, L.P. tendered for filing a supplement to its filing in this docket. The supplement pertains to information relating to the ownership of the facility and technical aspects of the qualifying facility. No determination has been made that these submittals constitute a complete filing

Comment date: June 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13972 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EC94–16–000, et al.]

Robbins Resource Recovery Co., et al.; Electric Rate and Corporate Regulation Filings

June 1, 1994.

Take notice that the following filings have been made with the Commission:

1. Robbins Resource Recovery Co. and Robbins Resource Recovery Partners, L.P.

[Docket Nos. EC94–16–000; ES94–29–000]

Take notice that on May 20, 1994, Robbins Resource Recovery Company (RRRC) and Robbins Resource Recovery Partners, L.P. (RRRP) filed a joint application seeking an order pursuant to

sections 203 and 204 of the Federal Power Act authorizing RRRC to assign and transfer all of its interest in a power sale agreement with Commonwealth Edison Company (RRRC Rate Schedule FERC No. 1) to RRRP. The application also seeks an order granting RRRP blanket preapproval of all issuances of securities and assumptions of liabilities under section 204 of the Act for the purpose of developing, owning, and operating a resource recovery facility in Cook County, Illinois.

Comment date: June 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. City of Redding, California v. Pacific Gas and Electric Co.

[Docket No. EL94–67–000]

Take notice that on May 16, 1994, the City of Redding California (Redding) tendered for filing a document entitled Complaint, Motion for Summary Disposition, Motion for Expedited Consideration and Request for Waiver of Regulations. Redding states that Pacific Gas and Electric Company (PG&E) is the company against which its complaint is directed. In its complaint Redding requests that the Commission: (1) Find that PG&E has violated the Federal Power Act and the Commission's regulations in failing to notify the Commission of the termination of Rate Schedule R–1, effective June 1, 1994; (2) grant relief sought in the complaint acknowledging termination of Rate Schedule R–1, effective June 1, 1994; (3) grant Redding's Motion for Summary Disposition; and grant Redding's Motion for Expedited Consideration.

Comment date: July 1, 1994, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint are also due on July 1, 1994.

3. Ohio Power Co.

[Docket No. ER94–1256–000]

Take notice that Ohio Power Company (OPCo), on May 13, 1994, tendered for filing with the Commission a Municipal Resale Service Agreement dated April 4, 1994, between OPCo and the Village of Greenwich, Ohio (Village). The Village is a wholesale customer of OPCo pursuant to Service Agreement No. 003 under OPCo's Municipal Resale Electric Tariff MRS, FERC rate schedule OPCo No. 001.

The Village has requested OPCo to provide it with a second delivery point for the delivery of wholesale power and energy under OPCo's Tariff MRS. OPCo requests an effective date of May 31, 1994, for the tendered agreements.

OPCo states that copies of its filing were served upon the Village of Greenwich, Ohio, and the Public Utilities Commission of Ohio.

Comment date: June 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13973 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–267–000]

Arkla Energy Resources Co.; Intent To Prepare an Environmental Assessment for the Proposed Line F Replacement Project and Request for Comments on Environmental Issues

June 3, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts of the construction and operation of facilities proposed in the Line F Replacement Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether or not to approve the project.

Summary of the Proposed Project

Arkla Energy Resources Company (AER) wants Commission authorization to replace and rearrange an existing mainline pipeline, abandon gas storage and supply pipelines, and make mainline enhancements to its pipeline system in Arkansas, Louisiana, and Texas.[2] These actions would improve the safety, reliability, and efficiency of AER's pipeline system. Specifically, AER wants authorization for the following:

- Abandon about 87 miles of 20-inch-diameter pipeline on Line F in Caddo, Bossier, Webster, Claiborne, Lincoln, Union, and Ouachita Parishes, Louisiana and replace it with about 91 miles of 20-inch-diameter pipeline in eight segments ranging from 0.8 mile to 36.4 miles in length.
- Reroute a portion of Line F included in the above 91 miles of replacement pipe. About 5 miles of pipe would be replaced with about 5.5 miles of pipe to reroute and connect Line F directly to the Ruston Compressor Station in Lincoln Parish, Louisiana.
- Abandon Line 1–F, a 0.8-mile-long 20-inch-diameter storage line no longer needed after reroute of Line F.
- Abandon Line FT–5, a 0.9-mile-long 10-inch-diameter gas supply line, no longer needed after the reroute of Line F.
- Reclassify about 8.2 miles of Line F as a low pressure gas supply line and operate it as part of Line F–1–F in Caddo Parish, Louisiana.
- Abandon about 0.4 mile of Line S in Harrison County, Texas.
- Abandon 66 delivery taps installed to deliver gas to rural customers served by Arkansas Louisiana Gas Company.
- Construct about 2.2 miles of 20-inch-diameter pipeline (Line ACT–4) in Hot Springs County, Arkansas.
- Install two 2,250-horsepower slow speed reciprocal compressor units at the existing Ruston Compressor Station.
- Uprate the maximum allowable operating pressure on AER's Line S from 880 pounds per square inch (psi) to 930 psi.

Some portions of the pipeline to be abandoned would be removed, others would be left in place. The general location of the project facilities is shown in appendix 1.[3]

Land Requirements for Construction

The majority of the proposed pipeline would be built adjacent and parallel to existing rights-of-way. AER intends to use a 60-foot-wide construction right-of-way. About 15 feet of the planned 60-foot width would use existing right-of-way. Consequently, about 45 feet of new clearing would be required in most areas. Following construction, about 20 feet of the construction right-of-way would be allowed to revert to its former land use.

Additional working space would be required adjacent to the planned construction right-of-way at road and stream crossings.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by AER. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- Line F would cross 85 waterbodies, 6 of which are greater than 100 feet wide. These six waterbodies greater than 100 feet in width would be crossed by directional drilling.
- Line F would cross 39 wetlands, 9 of which are greater than 500 feet wide at the crossing location. Line ACT–4 would cross one wetland.
- Line F would disturb approximately 21 acres of forested wetland which may require active restoration and compensation.
- Eight residences are near Line F's right-of-way.
- Line F would cross two waterbodies classified as Louisiana Scenic Rivers. These waterbodies are both greater than 100 feet in width and are part of the six waterbodies mentioned above that would be directionally drilled.
- Line F would cross about 2.3 miles of the D'Arbonne National Wildlife Refuge in Union Parish, Louisiana.
- Noise from the proposed Ruston Mainline Compressor Station may be above the acceptable limits.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426;
- Reference Docket No. CP94–267–000;
- Send a *copy* of your letter to: Ms. Lauren O'Donnell, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE, room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before July 6, 1994.

If you wish to receive a copy of the EA, you should request one from Ms. O'Donnell at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by § 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Lauren O'Donnell, EA Project Manager, at (202) 208–0325.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13976 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–561–000, et al.]

Columbia Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

May 27, 1994

Take notice that the following filings have been made with the Commission

1. Columbia Gas Transmission Corp.

[Docket No. CP94–561–000]

Take notice that on May 20, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314–1599, filed in Docket No. CP94–561–000 a request pursuant to § 157.205 of the Commission's Regulations to construct and operate facilities to relocate an existing point of delivery to Corning Natural Gas Corporation (Corning) and to abandon approximately 1 mile of 4-inch and 6-inch lateral pipeline located in Steuben County, New York under Columbia's blanket certificate issued in Docket No. CP83–76–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

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[1] Arkla Energy Resources Company's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] In Docket No. CP94–541–000 filed on May 11, 1994, AER officially changed its name to NorAm Gas Transmission Company.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE, Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Columbia proposes to relocate the Coopers Plains Measuring Station (Coopers Plains) serving Corning located at the terminus of Lines A–1 and A–3 in Steuben County, New York by constructing and operating a new delivery point for Corning on Line A–5 in Steuben County, New York approximately 1.63 miles east of the interconnection of Lines A–1 and A–5. Additionally, Columbia proposes to abandon, in place and partially by removal, 2,787 feet of 4-inch pipeline and 1,235 feet of 6-inch pipeline of Line A–1, and 1,235 feet of 6-inch pipeline of Line A–3. Columbia states that Lines A–1 and A–3 are in need of replacement due to deteriorating condition. Columbia states that the relocation and replacement of the measuring station and the retirement of the pipelines, agreed to by Corning, is the least costly replacement alternative and avoids the environmental impact of a river crossing by either Columbia or Corning. Columbia indicates that the relocation of Coopers Plains involves the relocation of flow control and tie-in facilities owned and operated by Corning. Columbia states that it would pay Corning a contribution in aid of construction of up to $37,000 to enable Corning complete the relocation of these facilities. Columbia states that the estimated cost of the abandonment of its facilities is $60,000.

Comment date: July 11, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gulf Transmission Co.

[Docket No. CP94–562–000]

Take notice that on May 20, 1994, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP94–562–000 an abbreviated application pursuant to section 7(b) of the Natural Gas Act, as amended, and §§ 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission to abandon a firm transportation service for Northern Natural Gas Company, a division of Enron Corp. (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf states that it proposes to abandon a transportation service originally authorized by Commission order issued May 6, 1977, in Docket No. CP77–8–000. Columbia Gulf indicates that under the arrangement with Northern, Columbia Gulf would receive gas from various points offshore Louisiana into its existing offshore facilities and transport the gas to Columbia Gulf's facilities in Egan, Louisiana. Columbia Gulf further indicates that Northern pays a monthly demand charge for the service performed by Columbia Gulf. Columbia Gulf states that it has tendered to Northern, and Northern has executed, a service agreement effective February 1, 1994, providing that the remaining Part 157 service will be provided under Part 284. Columbia Gulf indicates that no facilities are to be abandoned.

Comment date: June 17, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Questar Pipeline Co.

[Docket No. CP94–563–000]

Take notice that on May 23, 1994, Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP94–563–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas transportation services contained in its FERC Gas Tariff, Original Volume No. 3 for: (1) Columbia Gas Transmission Corporation (Columbia), under Questar's Rate Schedule X–23, which was authorized in Docket Nos. CP80–7 *et al.*, and, (2) Northwest Pipeline Corporation (Northwest), under Questar's Rate Schedule X–19, which was authorized in Docket Nos. CP78–538–000 and CP78–434–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Questar says that Columbia, Northwest, and Questar have all mutually agreed to cancel the transportation services certificated as Rate Schedules X–23 and X–19. Questar further indicates that it does not propose to abandon any facilities in conjunction with the requested abandonment.

Comment date: June 17, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. Texas Eastern Transmission Corp.

[Docket No. CP94–564–000]

Take notice that on May 23, 1994, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–564–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to modify an existing receipt point in order to use it additionally for deliveries, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to reverse its existing check valve at Louisiana Intrastate Gas Corporation's (LIG) meter station located on Texas Eastern's Line No. 14 in St. Landry Parish, Louisiana. It is stated that this modification would enable the meter station to be used for deliveries of to LIG as well as receipt. The cost of the proposed modification is estimated at $150. It is asserted that the modification would have no effect on Texas Eastern's peak day or annual deliveries. Texas Eastern states that the proposed modification can be accomplished without detriment or disadvantage to Texas Eastern's other customers.

Comment date: July 11, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. Pacific Gas Transmission Co.

[Docket No. CP94–566–000]

Take notice that on May 24, 1994, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105–1570, filed in Docket No. CP94–566–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install a new tap and meter set near Rathdrum, Idaho, for delivery of gas to Washington Water Power Company (WWP) and upgrade the existing Rathdrum Meter Station in Rathdrum, Idaho under PGT's blanket certificate issued in Docket No. CP82–530–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

PGT proposes to construct a new tap and meter station adjacent to PGT's existing meter station near Rathdrum, Idaho to serve WWP. PGT states that it entered into an interruptible (backhaul) transportation service agreement with WWP on December 15, 1993, to provide 25 MMBtu per day to PGT's existing delivery point at Rathdrum and 48,000 MMBtu per day to PGT's proposed Rathdrum Turbine Generating Meter Station. PGT also states that the generator would be used for peaking service (approximately 10 days per year). PGT and WWP anticipate that the scheduled date for delivery of gas from this new point would be September 1, 1994.

PGT also proposes to increase the flow capacity of its existing meter station near Rathdrum which serves WWP. PGT states that the current meter capacity is 1.7 MMcf per day; however, recent deliveries have been as high as 2 MMcf per day. PGT proposes to increase the meter capacity to 5.5 MMcf per day. PGT also states that the proposed changes will not impact PGT's peak day and annual deliveries to other customers and is not an increase in WWP's contract demands.

Comment date: July 11, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13974 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. GP94–10–000]

Railroad Commission of Texas, Tight Formation Determinations—Texas-112, 113, 114, 115, Vicksburg Formation (M, R, S, & T Sands), FERC Nos. JD93–04541T, JD93–04589T, JD93–04590T, & JD93–04591T; Preliminary Finding

June 2, 1994.

The Railroad Commission of Texas (Texas) separately determined that the M, R, S, and T sands of the Lower Vicksburg Formation ("M sand," "R sand," "S sand," and "T sand") underlying parts of the McAllen Ranch Field in Hidalgo County, Texas, qualify as tight formations under section 107(c)(5) of the Natural Gas Policy Act of 1978.

For the reasons discussed below, the Commission issues this Notice of Preliminary Finding that the determinations are not supported by substantial evidence.

Background

1. Texas' Determinations

On February 16, 1993, the Commission received Texas' notices separately determining that the Vicksburg M, R, S, and T sands underlying parts of the McAllen Ranch Field in Hidalgo County, Texas, qualify as tight formations. Shell Western E & P Inc. (Shell) is the applicant before Texas. Texas' determinations are amendments of an earlier notice of determination (Texas-15 Addition 3, JD92–02505T) still pending before the Commission after the 45-day period was tolled by two staff letters.[1]

The recommended areas for the M, R, S, and T Sands consist of 3,010 acres, 1,440 acres, 11,700 acres, and 7,320 acres, respectively, with parts of the four areas overlapping one another.

Texas concluded that the sands meet the Commission's permeability guideline based on pressure build up (PBU) tests from five M Sand wells, three R Sand wells, 27 S Sand wells, and eight T Sand wells.[2]

Texas concluded that the same wells show that the sands meet the Commission's gas flow rate guidelines based on calculations using standard flow equations requiring, among other things, the permeability values calculated from the wells' PBU tests.

2. Staff's Tolling Letter and Texas' Response

By letter dated April 2, 1993, staff tolled the 45-day review period because, in pertinent part, the record did not include the PBU tests upon which all four determinations are based, nor was there documentation showing that the PBU tests represented initial reservoir permeabilities (i.e., prior to sustained production).

In response to staff's letter, Shell requested an informal conference with staff, which was held at the Commission's offices on May 4, 1993. At that meeting, staff requested Shell to provide the relevant PBU tests, documentation showing that the data wells were actually completed in the PBU-tested zones, and geophysical well logs showing how net pay thickness values were derived.

In its reply received October 28, 1993, Texas reaffirmed its determinations and provided, in pertinent part, additional documentation from Shell, including PBU tests and portions of daily drillers reports for 43 data wells, as well as a narrative discussion of how net pay thickness values were derived.

3. Staff's Second Tolling Letter and Texas' Response

By letter dated December 10, 1993, staff again tolled the 45-day review period because, in pertinent part, Texas October 28, 1993 response showed that several permeability values were derived from PBU tests run from 7 months to 12 years after the tested intervals were perforated. Therefore Texas was requested to explain why it believed such permeabilities represented original reservoir conditions, prior to sustained production. In addition, staff requested documentation showing when the tested wells were initially hydraulically fractured in order to clarify whether the permeabilities and flow rates reported

[1] TX–15 Addition 3 includes the same four sands as well as several other Lower Vicksburg sands.

[2] The M sand actually includes the M, N, and O sands. Shell refers to them as the M sand because it is the shallowest sand in a Texas-designated field consisting of the M, N, and O sands.

on PBU tests represented pre-stimulated conditions.

In its reply received April 18, 1994, Texas reaffirmed its determinations and concurred with additional data provided by Shell, including well logs for the data wells, a table showing perforation and fracturing dates for the data wells, and narrative discussions addressing the proper definition of "*in situ*."

Discussion

To qualify a formation as a tight formation, § 271.703(c)(2)(i)(A) of the regulations requires the jurisdictional agency to determine that the expected in situ gas permeability throughout the pay section is 0.1 millidarcy (md) or less. Our review shows that the PBU tests upon which Texas based its permeability finding for each sand include tests that were run from seven months to twelve years after the wells were completed and sustained production commenced.[4] Moreover, the records show that permeability in well drainage areas declines with production of natural gas. Therefore, for the following reasons, we preliminarily find that the permeability data in the records do not demonstrate that the sands meet the Commission's permeability guideline.

In previous tight formation proceedings, we held that the characteristics of a formation before the onset of sustained production from that formation must be evaluated to determine whether that formation meets the tight formation guidelines.[5] We have also held that current-day gas permeability and flow rate characteristics which are the result of years of sustained production do not demonstrate that a formation is a tight formation.[6] In accordance with these findings, the Commission preliminarily found in the Texas-81, Texas-156, and Texas-158 tight formation proceedings that the subject formations did not qualify as tight formations because current-day test values were the result of sustained production and/or water injection and did not represent original reservoir conditions.[7] Accordingly, we find that the PBU tests run from seven months to twelve years after the commencement of sustained production in wells do not sufficiently represent initial conditions found throughout the four sands.

Shell asserts that staff has incorrectly defined the term "*in situ*" permeability, and that the term simply means "in place" permeability that exists at the time that wells are drilled. Shell further asserts that the initial permeabilities of the sands prior to sustained production are immaterial to the delineation of the *in situ* permeabilities. In light of the Commission's previous findings, as discussed above, we find that Shell's assertions are without merit, especially because the records show that permeabilities derived from tests run long after production has commenced do not represent the permeabilities existing at the time the wells were drilled.

To qualify a formation as a tight formation, 271.703(c)(2)(i)(B) requires the jurisdictional agency to show that the expected pre-stimulation stabilized natural gas flow rate, against atmospheric pressure, for wells completed for production in the formation is not expected to exceed the depth-dependent maximum flow rated specified in the table in that section.[8] Our review of the parent Texas-15 Addition 3 record shows that wells completed in the four sands typically reach stabilized flow approximately 100 days after initial production commences. Moreover, the flow rates upon which Texas' determinations are based were calculated with equations that include the permeability values derived from the PBU tests described earlier. Lower permeability values result in lower flow rate values. Therefore, we find that the flow rate values calculated in those wells where the PBU tests were run from seven months to twelve years after production commenced do not represent the initial, pre-stimulation flow rates prior to sustained production.

In addition, our review shows that many of the M, R, and S sands data wells were either never fractured or were not fractured until several months to years after the wells were perforated.[9] Numerous pre-fracturing PBU tests in such wells show flow rates occurring after the 100-day stabilization dates that substantially exceed the stabilized flow rates upon which Texas' determinations are based. Therefore, we find that the record does not contain substantial evidence in support of the reported stabilized flow rates in such wells. We also believe that Texas should examine the actual, metered flow rates at or near the 100th production day in such wells, since measured flow rates are usually more accurate than calculated flow rates.

Under 275.202(a) of the regulations, the Commission may make a preliminary finding, before any determination becomes final, that the determination is not supported by substantial evidence in the record. Based on the foregoing facts, the Commission hereby makes a preliminary finding that Texas' determinations are not supported by substantial evidence in the records upon which they were made. Texas or the applicant may, within 30 days from the date of this preliminary finding, submit written comments and request an informal conference with the Commission pursuant to section 275.202(f) of the regulations. A final Commission order will be issued within 120 days after the issuance of this preliminary finding.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13977 Filed 6-8-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP94-565-000, et al.]

Texas Eastern Transmission Corp., et al.; Natural Gas Certificate Filings

June 1, 1994

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corp.

[Docket No. CP94-565-000]

Take notice that on May 23, 1994, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP94-565-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities in the Caillou Island and Lake Raccourci Fields, Timbalier Bay, located in Terrebonne Parish, Louisiana, all as more fully set forth in the application

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[3] 18 CFR 271.703(c)(2)(i)(A) (1993).

[4] Although the M, S, and T sands also include PBU tests run shortly after well completion, our review of the records and the parent Texas-15 Addition 3 record shows that wells testing below 0.1 md following sustained production can substantially exceed 0.1 md at initial conditions.

[5] See 63 FERC 61,067 (1993) at 61,291. The Commission subsequently affirmed the determination after the applicant submitted data showing that original reservoir conditions also met the Commission's guidelines: 64 FERC 61,225 (1993).

[6] 57 FERC 61,129 (1991).

[7] See 64 FERC ¶ 61,004 (1993), 67 FERC ¶ 61,011 (1994), and 67 FERC ¶ 61,073 (1994). Final orders were not issued in Texas-81 and Texas-156 because the applicants withdrew the applications. Texas-158 is still pending before the Commission.

[8] 18 CFR 271.703(c)(2)(i)(B) (1993). The maximum allowable rates for the M, R, S, and T sands are 600 Mcf/day, 927 Mcf/day, 1,071 Mcf/day, and 1,238 Mcf/day, respectively.

[9] For the M and R Sands, the majority of the data wells were not hydraulically fractured for at least two years after perforation. We believe that this indicates good permeability in these sands.

which is on file with the Commission and open to public inspection.

Texas Eastern proposes to abandon several segments of pipeline which vary in diameter from 4-inch to 12-inch and vary in length from 0.22 miles to 2.45 miles, as well as ten platforms and associated piping, twenty-nine measuring stations, and one barge-mounted compressor.

Texas Eastern, it is said, has determined that there is no current or foreseeable future need for the subject facilities and proposes to abandon the facilities in order to eliminate ongoing maintenance and operating expenses associated with these facilities.

Comment date: June 22, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Co.

[Docket No. CP94–568–000]

Take notice that on May 25, 1994, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–568–000, a request pursuant to section 7 of the Natural Gas Act, as amended, and §§ 157.205, 157.212 and 157.216 (18 CFR 157.205, 157.211 and 157.216) of the Commission's regulations under the Natural Gas Act, and Panhandle's authorization in Docket No. CP83–83–000 to: (1) Abandon the existing measurement facility for the Town of Hardesty, Oklahoma, and construct and operate new delivery facilities for the Town of Hardesty, and (2) modify the delivery facilities for the Town of Taloga, Oklahoma. Both towns are existing customers of Panhandle and these modifications are proposed in order to provide adequate service to both towns, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle states that the existing delivery points for the towns are located on field gathering lines. It is stated that because of declining wellhead production and pressures on these lines, reliable firm service cannot be guaranteed for the 1994/1995 heating season without a modification to the physical supply source for these delivery facilities. It is further stated that in order to service these customers Panhandle is proposing this modification to interconnect the delivery facilities into Panhandle's transmission system. Panhandle states that the existing pipelines that currently provide service to the towns will continue to be utilized as field gathering lines; therefore, Panhandle is not proposing the abandonment of any pipeline facilities.

Comment date: July 18, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corp.

[Docket No. CP94–567–000]

Take notice that on May 25, 1994, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–567–000 an application pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon by sale to Newfield Exploration Company (Newfield) Texas Eastern's Line No. 62, a 4.8 mile non-contiguous lateral located in the Eugene Island Area, offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Line No. 62 was constructed pursuant to Texas Eastern's Part 157 blanket construction certificate and that Line No. 62 is wholly owned by Texas Eastern. It is further stated that Line No. 62 is comprised of 4.8 miles of 8 inch pipeline and a related metering facility, that was constructed by Texas Eastern to access gas reserves in the Eugene Island Block 182 "A" area. Texas Eastern avers that Line No. 62 is a non-contiguous lateral which connects to Sea Robin Pipeline Company's pipeline system in Eugene Island Block 197 in offshore Louisiana.

Texas Eastern states that it entered into a gas purchase agreement dated February 28, 1984 (Gas Purchase Agreement), with Exxon Corporation (Exxon). It is further stated that pursuant to the Gas Purchase Agreement, the natural gas reserves located at or near Eugene Island Block 182 "A" were dedicated to Texas Eastern for its system supply. It is stated that on November 1, 1992; Newfield acquired from Exxon the natural gas reserves in Eugene Island Block 182 "A", and that Texas Eastern and Newfield, subsequently, mutually agreed to terminate the Gas Purchase Agreement on June 16, 1993.

Texas Eastern stated that it has transported, on an interruptible basis, the Eugene Island Block 182 "A" reserves on Line No. 62 for various shippers who purchase Newfield's reserves, since termination of the Gas Purchase Agreement. Therefore, Texas Eastern is requesting permission and approval to abandon by sale, Line No. 62 to Newfield for $650,000. However, it is stated that the Offer to Purchase between Texas Eastern and Newfield is contingent on Texas Eastern's receipt of the Commission authorization requested herein by July 1, 1994.

Texas Eastern submits that abandonment of Line No. 62 is in the public interest since such abandonment by sale to Newfield, will give Newfield an economic alternative to installing new and duplicative offshore facilities, and that abandonment by sale limits the environmental impact associated with duplicative facilities.

It is further asserted that the abandonment by sale to Newfield, will also allow Texas Eastern to avoid costs associated with the physical abandonment of Line No. 62, and the abandonment of the lateral will eliminate Texas Eastern's ongoing operation and maintenance costs associated with Line No. 62.

Comment date: June 22, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. Equitrans, Inc.

[Docket No. CP94–569–000]

Take notice that on May 26, 1994, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed a request with the Commission in Docket No. CP94–569–000 pursuant to Sections 157.205 and 157.212(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install a delivery tap under Equitrans' blanket certificate issued in Docket No. CP83–508–000 and CP86–676, pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection

Equitrans proposes to install a delivery tap on its H–106 line located in the City of Waynesburg, Greene County, Pennsylvania. Equitrans states that the tap would be instituted for deliveries to Equitable, an affiliate of Equitrans, to permit retail gas service of approximately 1 Mcf on a peak day to Howard Dohn of Waynesburg, Pennsylvania. Equitrans further states it would offer the proposed service within the existing certificated transportation entitlement of Equitable under Equitrans' Rate Schedule FTS.

Equitrans states that it has sufficient capacity to accomplish the proposed deliveries without detriment to its other existing customers.

Comment date: July 18, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. K N Interstate Gas Transmission Co.

[Docket No. CP94–571–000]

Take notice that on May 27, 1994, K N Interstate Gas Transmission Co. (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No.

CP94–571–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate eight new delivery taps and appurtenant facilities under K N Interstate's blanket certificate issued in Docket No. CP83–140–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

K N Interstate proposes to install eight new delivery taps in Thomas and Wichita Counties, Kansas; Adams, Furnas, Gosper and York Counties, Nebraska; and Fremont County, Wyoming, under existing transportation agreements between K N Interstate and K N Energy, Inc.; K N Interstate and Peoples Natural Gas Co.; and K N Interstate and Northern Gas Co. It is stated that the additional delivery points will facilitate the delivery of natural gas to direct retail customers. It is stated that the total cost of installing the eight delivery taps will be $148,550.

Comment date: July 18, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13975 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–

[Docket No. IR–15 –000]

Corn Belt Power Cooperative; Petition for Waiver

June 3, 1994.

Notice is hereby given that the Corn Belt Power Cooperative (Corn Belt) has filed on May pursuant to § 292.402 of sion's Regulations r waiver of certain oblig ed under §§ 292.303(a) (b) of the Commission s (18 CFR Part 292 Subpart plement section 210 o Utility Regulatory P 1978 (PURPA). Cor uly implemente sion's PURPA Regulations RPA implementa May 27, 1994.

Corn Belt ver on behalf of Boone Va perative, Butler Cour Cooperative v Electric Cooperative anklin Rural Electric Coo en Rural Electric Co dy County Rural Elect Hancock County Ru erative, Midland Power Cooperative, Humbolt County Rural Electric Cooperative, Iowa Lakes Electric Cooperative, Sac County Rural Electric Cooperative and Wright County Rural Electric Cooperative (Members). Specifically, Corn Belt seeks a waiver of the requirement contained in 18 CFR 292.303(a) which would require these member electric cooperatives to purchase power made available from any qualifying facility (QF) and of the obligation in 18 CFR 292.303(b) which would require Corn Belt to make sales to any QF. The applicant believes that purchases by the Members from QFs or sales by Corn Belt to QFs are unnecessary to encourage cogeneration or small power production and are not otherwise required by section 210 of PURPA.

Any person desiring to be heard or objecting to the granting of the petition for this waiver of the Commission's Regulations should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13980 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP –271–000]

East Tennessee Natural Gas Co.; Report on Account 191 Trailing Costs and Revised Account 191 Direct Bill Amounts

June 3, 1994

Take notice that on June 1, 1994, East Tennessee al Gas Company (East Tennessee a report covering the costs and es recorded in Account 191 during eriod August 1993 through 4. East Tennessee also filed First Sheet No. 6 of its FERC Gas Second Revised Volume N which imposed adjusted direct bill ts reflecting the revised level of ting from adjustments to Accou shown in the report.

East Tennessee requests an effective date of May 1, 1994.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13982 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–266–000]

ANR Pipeline Co., Proposed Changes in FERC Gas Tariff

June 3, 1994.

Take notice that on May 31, 1994, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of June 1, 1994:

Fourth Revised Sheet No. 9
Fourth Revised Sheet No. 13
Fourth Revised Sheet No. 16
Fourth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed pursuant to the approved recovery mechanism of its tariff to implement recovery of $8.6 million of costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation fee surcharge applicable to its part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs and an adjustment to the maximum base tariff rates of Rate Schedule ITS shippers to recover the remaining ten percent (10%). ANR has requested that the Commission accept the tendered sheets to become effective June 1, 1994.

ANR states that all of its Volume No. 1 customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 385.214). All such motions or protests should be filed on or June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and area available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13978 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–32–000]

Colorado Interstate Gas Co.; Tariff Filing

June 3, 1994.

Take notice that on June 1, 1994, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 11, reflecting an increase in the fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.49% to 0.78% effective July 1, 1994.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and that the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13979 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–573–000]

East Tennessee Natural Gas Co.; Request Under Blanket Authorization

June 3, 1994.

Take notice that on May 31, 1994, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–573–000 a request pursuant to §§ 157.205 and 157.212 of the Commissions' Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish a new delivery point under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to establish a new delivery point for its firm transportation customer, Elk River Public Utility District (Elk River). In order to establish this point East Tennessee proposes to remove an existing Sewannee Sands meter and renovate the existing Sewannee meter number 75–9088. East Tennessee will install the necessary cross-over piping and riser to deliver gas to Elk River in Grundy County, Tennessee and will be located on an existing East Tennessee right-of-way. East Tennessee will install, own, operate and maintain all facilities and will be reimbursed 100% for its construction. It is stated that the proposal will not result in a change in authorized quantities of gas to be delivered to Elk River.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13981 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–259–000]

El Paso Natural Gas Co.; Tariff Filing

June 3, 1994.

Take notice that on May 31, 1994, El Paso Natural Gas Company (El Paso), tendered for filing and acceptance pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations Under the Natural Gas Act and section 31 of the General Terms and Conditions of El Paso's Second Revised Volume No. 1–A Tariff, certain tariff sheets.

El Paso states section 31.4(b) of its tariff provides the mechanism by which El Paso will adjust each Shipper's Monthly Amortized Amount for interest calculated on the unrecovered balance of its stranded investment cost in Washington Ranch. The tariff further provides that El Paso will adjust its rates for any differences resulting from the use of estimated interest versus actual interest and such differences shall be added to or deducted from the estimated interest for the upcoming six (6) month period.

El Paso states that no adjustment for differences in the estimated interest rate for the period January 1, 1994 through June 30, 1994 is necessary since the interest rate did not change.

El Paso states the Monthly Amortized Amount has been adjusted for estimated interest. The estimated interest has been calculated pursuant to § 154.67(c)(2)(iii) of the Commission's Regulations, for the period July 1994 through December 1994, on the unrecovered balance of the stranded investment costs. El Paso states that the revised Washington Ranch Reservation Surcharges and resulting Monthly Billed Amounts are shown on the tendered tariff sheets.

El Paso requests that the tendered tariff sheets be accepted for filing and permitted to become effective July 1, 1994.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system transportation customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 10, 1994.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13983 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FP94–270–000]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

June 3, 1994.

Take notice that on June 1, 1994, Equitrans, Inc. (Equitrans) tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1, the following proposed tariff sheets, with a proposed effective date of July 1, 1994:

Original Sheet No. 9
Original Sheet No. 10–19

Equitrans states that it is proposing to recover its Account No. 191 costs attributable to gas purchases made prior to September 1, 1993, that were incurred as a consequence of Equitrans providing a bundled merchant function. Equitrans states that this filing is being made to recover known and measurable purchase gas costs which have been incurred and booked in Account No. 191 (Account No. 191 Costs) as determined and allocated in accordance with the procedures set forth in § 27.2 of the General Terms and Conditions of Equitrans' FERC Gas Tariff as approved and made effective by the Commission.

Equitrans states that the total amount to be direct billed by this filing under § 27.2 (iii) of the tariff is $4,257,231.37. This amount reflects all unrecovered Account No. 191 Costs which have not been previously collected, plus interest calculated in accordance with § 154.305 of the Commission's Regulations as detailed in Schedule C2 hereto. The unrecovered Account No. 191 Costs include actual costs of gas purchased through August 31, 1993, plus adjustments booked to Account No. 191. Also included are anticipated carrying charges of $24,422.69 through the projected payment date of July 20, 1994.

Equitrans states that the balance reflected in its Account No. 191, does not reflect refunds owed to Equitrans from Texas Eastern Transmission Corporation pursuant to the Commission's "Order Approving Settlement" issued May 12, 1994 in Docket No. RP85–177, et al. (67 FERC ¶ 61,170), as well as certain other refunds which are due to Equitrans from various pipelines, producers, and marketers Pursuant to § 27.2(ii) of Equitrans' FERC Gas Tariff, Equitrans states that it will make subsequent section 4 filings to flow through refunds related to these matters to Equitrans' former sales customers on the same basis as Account No. 191 costs are allocated herein.

Any person desiring to be heard or protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13984 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–275–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 3, 1994.

Take notice that on June 1, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current GSR surcharge and implements a GSR-Reverse Auction (R.A.) surcharge, both of which are designed to recover Northern's gas supply realignment costs. Therefore, Northern has filed Eighth Revised Sheet Nos. 50 and 51 to revise/implement these surcharges effective July 1, 1994.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13991 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–48–000]

Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

June 3, 1994.

Take notice that on May 26, 1994, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance termination notices for terminated service agreements with the following customers:

Rate Schedule ODL–1 Customers

Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Natural Gas Company
The Washington Water Power Company

Rate Schedule DS–1 Customers

City of Buckley, Washington
Greeley Gas Company
Western Gas Supply

Rate Schedule SGS–1

Greeley Gas Company

Northwest states that the Commission issued an order on October 1, 1993, in Docket No. RS92–69, *et al.*, accepting Northwest's tariff sheets with eliminated all sales service on the Northwest system. Accordingly, Northwest states that it has terminated sales service to the above listed Rate Schedules ODL–1, DS–1 and SGS–1 customers as of November 1, 1993.

Northwest states that termination notices along with the actual volume and revenue data for the twelve months immediately preceding the date of each termination of service has been included in its filing.

Northwest states that a copy of this filing has been served upon all customers mentioned above who were parties to these rate schedules and upon affected states regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 395.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13992 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–274–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 3, 1994.

Take notice that on June 1, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the filing revises the current Stranded Account No. 858 and Stranded Account No. 858–R.A. surcharges, both of which are designed to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed Seventh Revised Sheet Nos. 50 and 51 to revise these surcharges effective July 1, 1994.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room

Lois D. Cashell,

Secretary.

[FR Doc. 94–13993 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–3–86–000]

Pacific Gas Transmission Co.; Change in Rates

June 3, 1994.

Take notice that on June 1, 1994, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance proposed tariff sheets to be a part of its FERC Gas Tariff, First Revised Volume No. 1–A and Second Revised Volume No. 1. PGT requests these tariff sheets become effective on July 1, 1994.

PGT further states that it is submitting these tariff sheets to comply with paragraphs 37 and 23 of the terms and conditions of First Revised Volume No. 1–A and Second Revised Volume No. 1, respectively of its FERC Gas Tariff, "Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages". These tariff changes reflect the new fuel and line loss surcharge percentage to become effective July 1, 1994. Also included, as required by paragraphs 37 and 23, are workpapers showing the derivation of the current fuel and line loss percentage in effect for each month the fuel tracking mechanism has been in effect.

PGT further states that a copy of this filing has been served on PGT's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room

Lois D. Cashell,

Secretary.

[FR Doc. 94–13990 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94-211-001]

Pacific Gas Transmission Co.; Notice of Compliance Filing

June 3, 1994.

Take notice that on June 1, 1994, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to section 4 of the Natural Gas Act and § 154.63 of the Commission's Regulations thereunder, certain revised tariff sheets in compliance with the Commission's Order in this proceeding dated May 20, 1994. PGT states that the revised tariff sheets reflect the Commission's Order to add language to the Transportation General Terms and conditions of PGT's FERC Gas Tariff, First Revised Volume No. 1-A giving Releasing Shippers an option of selecting less stringent credit worthiness criteria for parcels of one year or less of service through PGT's Capacity Release Program contained in paragraph 28. PGT requests these tariff sheets become effective on May 21, 1994.

PGT states that copies of this filing has been served on PGT's jurisdictional customers and interested state commissions and all parties of record.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13994 Filed 6-8-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-262-022, RP88-262-023, RP88-262-026, RP88-262-027, CP89-817-004, and CP89-817-000]

Panhandle Eastern Pipe Line Co.; Technical Conference

June 3, 1994.

Take notice that a technical conference has been scheduled in the above-captioned proceedings for Thursday, June 16, 1994 at 10 a.m., in a hearing room at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

The purpose of this conference is to allow the participants to discuss issues related to Panhandle Eastern Pipe Line Company's general refund liability in Docket No. RP88-262, and its liability for refunds arising from its customers' conversions from firm sales service to firm transportation service (the D-2 refund issue).

In particular, the parties should be prepared to discuss Panhandle's draft revised refund report circulated to parties in this proceeding on April 29, 1994, and Panhandle's refund liability, as a result of D-2 Billing after conversions, for the period prior to the effective date of the Docket No. RP88-262 rates.

All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13995 Filed 6-8-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-4-5-000]

Midwestern Gas Transmission Company; Rate Filing

June 3, 1994.

Take notice that on May 31, 1994, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Tariff Sheet No. 7 for a proposed effective date of July 1, 1994, pursuant to Article I of the Stipulation and Agreement filed by Midwestern in Docket No. RP91-78 and accepted by the Commission on July 25, 1992.

Midwestern states that this filing reflects revisions in the recovery of take-or-pay and contract reformation costs billed to Midwestern by its upstream supplier, Tennessee Gas Pipeline Company (Tennessee) pursuant to section XXX of Tennessee's General Terms and Conditions.

Midwestern further states that the revised demand surcharge amount reflects a reduction to zero from the previously effective demand surcharge amount, which was filed on December 1, 1993, in Docket No. TM94-2-5. The current volumetric charge will not change.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing show file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13985 Filed 6-8-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-260-000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

June 3, 1994

Take notice that on May 31, 1994, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fifth Revised Sheet No. 25, to be effective July 1, 1994.

Natural states that the filing is submitted to commence recovering, effective July 1, 1994, $1,952,840 net premium paid for coal gasification supplies which is part of its gas supply realignment program.

Natural requested whatever waivers may be necessary to permit the tariff sheet as submitted herein to become effective July 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Natural states that it has reached a tentative settlement with members of the Natural Customer Group (NCG) regarding recovery from them of GSR costs. Natural suggests that members of the NCG may preserve their rights by filing an abbreviated protest which may be supplemented if the settlement is not approved.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13986 Filed 6-8-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-578-000]

NorAm Gas Transmission Company; Application

June 3, 1994.

Take notice that on June 1, 1994, NorAm Gas Transmission Company (NGT), a subsidiary of NorAm Energy Corporation, whose main office is located at 1600 Smith Street, Houston, Texas 77002, filed an abbreviated application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended and part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations thereunder (18 CFR 157.7 and 157.18), requesting issuance of a Commission order authorizing NGT (formerly Arkla Energy Resources Company) to abandon an existing transportation and exchange transaction with Tennessee Gas Pipeline Company. NGT's proposal is more fully set forth in the application which is on file with the Commission and open to public inspection.

This transaction provided for Tennessee to receive for the account of NGT certain quantities of gas produced in Mississippi Canyon Block 148, Offshore Louisiana, and to transport such quantities to NGT at various points of delivery.

This transportation and exchange service was previously certificated on November 15, 1994, under Docket No CP84-248-000 (29 FERC ¶ 61,184) and, according to NGT and Tennessee, has been inactive, is no longer necessary and has been terminated by the written consent of both parties. No facilities will be abandoned as a result of the abandonment of this service. As such, certificate authorization is no longer necessary.

NGT states that, although the contract between Tennessee and NGT was filed by Tennessee as part of Tennessee's tariffs, due to administrative oversight the contract was never included in NGT's tariffs.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 24, 1994, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein or if the Commission on its own review of the matter, finds that a grant of the certificate for the proposal is required by the public convenience and necessity. If the Commission believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for NGT to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13987 Filed 6-8-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-272-000]

NorAm Gas Transmission Company; Filing

June 3, 1994.

Take notice that on June 1, 1994, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of July 1, 1994:

Second Revised Sheet No. 4.3
Alternate Second Revised Sheet No. 4.3

NGT states that these revised tariff sheets are filed in compliance with § 5.7(c)(ii)(2)(B), First Revised Sheet Nos. 107 and 108 of NGT's tariff.

NGT states that pursuant to said tariff provision, the proposed tariff sheets adjust NGT's cashout balancing revenue credit for the period January through March 1994.

Any person desiring to be heard or protest the proposed tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13988 Filed 6-8-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-147-000]

Northern Natural Gas Co.; Technical Conference

June 3, 1994

In the Commission's order issued on March 31, 1994, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Tuesday, June 14, 1994, at 1 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13989 Filed 6-8-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-269-000]

Southern Natural Gas Co.; GSR Cost Recovery Filing

June 3, 1994.

Take notice that on May 31, 1994, Southern Natural Gas Company (Southern) submitted for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to reflect an increase in GSR billing units effective June 1, 1994, due to new transportation commitments under Rate Schedule FT:

Eighth Revised Sheet No. 15

Eighth Revised Sheet No. 17
Sixth Revised Sheet No. 29
Sixth Revised Sheet No. 30
Sixth Revised Sheet No. 31

Southern states that copies of the filing were served upon Southern's customers and interested state commissions

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13996 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–264–000]

Southern Natural Gas Co., GSR Cost Recovery Filing

June 3, 1994.

Take notice that on May 31, 1994, Southern Natural Gas Company (Southern) set forth its revised demand surcharges and revised interruptible rates that will be charged in connection with its recovery of GSR costs associated with the payment of price differential costs under realigned gas supply contracts or contract buyout and transactional costs associated with continuing realignment efforts during the period February 1, 1994 through April 30, 1994. These GSR costs have arisen as a direct result of customers' elections during restructuring to terminate their sales entitlements under Order No. 636. Southern tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, with the proposed effective date of July 1, 1994:

Ninth Revised Sheet No. 15
First Alternate Ninth Revised Sheet No. 15
Ninth Revised Sheet No. 17
First Alternate Ninth Revised Sheet No. 17
Seventh Revised Sheet No. 18
First Alternate Seventh Revised Sheet No. 18

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13997 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–261–000]

Tennessee Gas Pipeline Co., Change Pursuant to Tariff Adjustment Provisions

June 3, 1994.

Take notice that on May 31, 1994, Tennessee Gas Pipeline Company (Tennessee) filed to revise its recovery of take-or-pay and contract reformation costs pursuant to Article XXV of the General Terms and Conditions of Volume One of its FERC Gas Tariff. As part of the filing, Tennessee tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to be effective July 1, 1994:

Second Revised Sheet Nos. 38–42

Tennessee states that the purpose of the filing is to reflect the recovery of an additional $68,574 of buyout/buydown costs, including interest, which are in the nature of excess royalty settlement payments. Tennessee's total additional costs of $164,132 have been allocated under an equitable sharing formula of 50% absorption-41.8% demand-8.2% volumetric in conformance with the Stipulation and Agreement approved by Order of the Commission on June 25, 1992, in Docket Nos. RP86–119, *et al.*

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13998 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–262–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 3, 1994

Take notice that on May 31, 1994, Texas Eastern Transmission Corporation (Texas Eastern) filed a limited application pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder to recover gas supply realignment costs (GSR Costs) incurred as a consequence of Texas Eastern's implementation of Order No. 636.

Texas Eastern states it is filing to recover GSR Costs from customers in accordance with the procedures set forth in § 15.2(C) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and in accordance with the Commission's order issued April 22, 1993 (April 22 Order), September 17, 1993 (September 17 Order) and December 17, 1993 (December 17 Order) in Docket Nos. RS92–11–000, RS92–11–003, RS92–11–004, RP88–67–000, et al., (Phase I/Rates), and RP92–234–001. Texas Eastern states that Order No. 636 and the April 22, September 17 and December 17 Orders permit Texas Eastern to file this limited Section 4 filing to continue recovery of its GSR Costs.

Texas Eastern states that the filing includes known and measurable GSR Costs incurred since the date of its previous quarterly filing, plus carrying charges through May 31, 1994, totalling $29,414,633. Additional interest of $676,421 at the current FERC annual rate of 6.00% is added for carrying charges from June 1, 1994 to the projected payment dates. The proposed effective date of the filing is July 1, 1994.

Texas Eastern states that copies of the filing were served on firm customers of

Texas Eastern and interested state commissions, as well as current interruptible customers.

Inasmuch as Texas Eastern's global settlement has been approved, without modification, by the Commission and upon its effective date such settlement would resolve any issues that may be presented by the instant proceeding, Texas Eastern requests that the Commission not establish any proceedings in the instant docket prior to the effective date of Texas Eastern's global settlement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13999 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–263–000]

Texas Eastern Transmission Corp., Proposed Changes in FERC Gas Tariff

June 3, 1994.

Take notice that on May 31, 1994, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with a proposed effective date on July 1, 1994:

Original Sheet No. 186
Original Sheet No. 187
Original Sheet No. 188
Sheets Nos. 189–199

Texas Eastern states that the above tariff sheets are filed pursuant to section 15.2(B) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that the purpose of this filing is to refund a net overrecovery in its Account No. 191 attributable to gas purchases made prior to June 1, 1993, the date of implementation of Order No. 636 on Texas Eastern's system. Texas Eastern states that the overrecovery resulted due to a large refund payment from Koch Gateway Pipeline Company (Koch, formerly United Gas Pipe Line Company). Texas Eastern states that the refund payment, totalling $2,771,946.90 results in a credit balance as of April, 1994, of $2,737,007, which Texas Eastern proposes in the instant filing to refund to its customers pursuant to its FERC Gas Tariff, plus carrying charges calculated in accordance with Section 154.305 of the Commission's regulations.

Texas Eastern states that under the terms of its Order No. 636 Global Settlement in Docket No. RP85–177–119, et al. (Settlement), approved by order issued May 12, 1994, it has agreed to refund all amounts collected under its account No. 191 direct billings that exceed a cap of $121 million. Texas Eastern states that while the Settlement is not yet effective, the Commission's approval of the instant proposal of a direct billing refund will reduce the amount of the refunds payable under the Settlement when it becomes effective, by providing for disposition of the instant refund amounts at an earlier date. Texas Eastern states that the allocation methodology for the instant direct billing refund is the same as provided in the Settlement.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14000 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG88–47–006]

Texas Gas Transmission Corp.; Filing

June 3, 1994.

Take notice that on May 24, 1994, Texas Gas Transmission Corporation (Texas Gas) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 20, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14001 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–34–006 and RP93–34–007]

Transwestern Pipeline Co.; Reports of Refunds

June 3, 1994.

Take notice that on May 27, 1994, Transwestern Pipeline Company (Transwestern) tendered for filing two refund reports. Transwestern states that the reports document refunds of amounts pertaining to IT revenue credit and firm reservation charges due customers under Transwestern's settlement in Docket No. RP93–34.

Transwestern states that it is filing the refund reports pursuant to Articles III and IV of the Joint Stipulation and Agreement filed on November 23, 1993, in the above referenced docket. Additionally, in accordance with

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[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992), Order No. 497–D, *order on remand and extending sunset date*, III FERC Stats. & Regs. Preambles ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993), Order No. 497–F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994).

§ 154.67(c)(2)(iii) of the Commission's Regulations, Transwestern states that interest is included on the refund amounts.

Any person desiring to protest said filings should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Regulations. All such protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14002 Filed 6–08–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–213–001]

Transwestern Pipeline Co.; Amendment

June 3, 1994.

Take notice that on May 27, 1994, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, submitted an amendment to its abbreviated application filed February 3, 1994, in Docket No. CP94–213–000. Transwestern's amendment seeks authorization for an abandonment by sale to Mewbourne Oil Company (Mewbourne) of certain small diameter pipelines, meter stations and related facilities located in Lipscomb County, Texas and Ellis County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern states that the submitted amendment revises the original February 3, 1994, application in three respects: (1) Net book value amount for the South Higgins facilities and the Trenfield facilities has been changed from $252,950 to $369,127 as of December 31, 1993. The original application inaccurately stated that the sales price was equal to the net book value of the facilities. The sales price to Mewbourne will remain at $252,950; (2) Journal entries for Account 108 and 101 on Exhibit Y of the original application inaccurately showed the original cost of the facilities to be $252,950 instead of $1,123,220. As revised, Transwestern feels Exhibit Y is consistent with the accounting treatment applicable to the abandonment by sale of a non-operating unit and will not reflect a gain or loss on the sale of these facilities in its accounting records; and, (3) Exhibit Z–1 of the original application incorrectly listed the Squire No. 1 well rather than the Squire No. 2 well, and the length of pipe of the subject facilities. With respect to the Trenfield facilities, the following line and segments should be revised as follows: MC–2–02 should be 1,408 feet rather than 9,500 feet; MC–2–09 should be 10,788 feet which was previously not included; and MC–2–11 should be 5,600 feet rather than 5,131 feet.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 10, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transwestern to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14003 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–267–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

June 3, 1994.

Take notice that on May 31, 1994, Wyoming Interstate Company, Ltd. (WIC), tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1 and Second Revised Volume No. 2. WIC states that the proposed changes would increase revenues from jurisdictional transportation service by $3.6 million based on the 12-month period ending February 28, 1994, as adjusted. WIC requested an effective date of July 1, 1994.

WIC states that the rates filed herewith are designed to enable WIC to recover its jurisdictional cost of service.

WIC states that copies of WIC's filing have been served on WIC's jurisdictional transportation customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14004 Filed 6–8–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4894–5]

Agency Information Collection Activities Under OMB; Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The

ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 11, 1994.

FOR FURTHER INFORMATION: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Notice of Supplemental Distribution of a Registered Pesticide Product. (*EPA ICR No.:* 0278.05; *OMB No.:* 2070–0044). This is a request for extension of the expiration date of a currently approved collection with no changes. The current clearance expires on January 31, 1995.

Abstract: Under section 3(e) of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA), pesticide registrants may distribute or sell their registered pesticide product under another person's name. Such distribution and sale is termed "supplemental distribution". To participate in this program, registrants must notify the Agency each time they make their product available for supplemental distribution. To notify the Agency, registrants must complete and submit *EPA Form No.:* 8570–5, *titled:* "Notice of Supplemental Distribution of a Registered Pe icide Product". The form requests following information: a) EPA regist number of the product to b buted; b) distributor company nu c) name and address of the basic registrant; e) name to be used stributed product; f) name and the distributor; g) signature the appropriate distribut officer and date signed; a e and title of the appropriat ci registrant company signed.

Both th stributor are requi e informati

The Ag nsure that all d well as the or are registere

Burde r this col estimat respon includ instruc e data n the form a inform

Res ts a distri

Estimated No. of Respondents: 10,000.

Estimated No. of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: June 1, 19

Paul Lapsley,

Director, Regula ement Division.

[FR Doc. 94–13 –94; 8:45 am]

BILLING CODE 656

[FRL–4894–4]

Agency Infor ection Activities Un view

AGENCY: Env rotection Agency (EPA)

ACTION: Notic

SUMMARY: In Paperwork R 3501 *et seq.*) the Informati abstracted be the Office of (OMB) for re ICR describe information cost and bur includes the instrument.

DATES: Comm or before July

FOR FURTHE For further i copy of this at 202–260–2

SUPPLEMENTA

Office of Air

Title: New tandards (N ood Heater . 1176.04; a request f pproved inf

Abstract: W sting labora quired to s eriodic repo

ith the 44 U.S.C. nounces that Request (ICR) orwarded to nd Budget ment. The the its expected ropriate, it lection

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NTACT: obtain a dy Farmer

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records to comply with the NSPS. Manufacturers must give 30 days advance notice of scheduled certification testing, report the results of the certification tests, and submit a statement biennially certifying that no changes have been made to the model line that affect emission performance. Manufacturers must affix labels to wood heaters and must prepare an owner's manual in accordance with the regulations. Testing laboratories must apply to EPA for accreditation and report the results of the initial and annual proficiency tests. Both manufacturers and laboratories are required to keep records pertaining to certification tests.

EPA uses the information supplied by the manufacturers to ensure that best demonstrated technology is being applied to reduce emissions from wood heaters and to ensure compliance with the certification procedures and emission standards. EPA uses the information from the testing laboratories to grant or deny accreditation and to assist in enforcement and compliance activities. Commercial owners are required to maintain names and addresses of previous owners of used wood heaters. This information is necessary to prevent the sale of new, uncertified wood stoves under a claim that they are exempt used stoves.

Burden Statement: The public reporting burden for this collection of information is estimated to average 1 hour per response for reporting, and 5 hours per recordkeeping annually. This estimate incl es the time needed to review instr ons, search existing data sources, gat and maintain the data needed, and plete and review the collection o ormation.

Respond Manufacturers, distributors retailers of residential wood heate d laboratories that conduct ce tion tests.

Estimate of Respondents: 54 for reporting a for recordkeeping.

Estimate of Responses per Respondent

Estimat l Annual Burden on Respondent: 75 hours.

Frequen ollection: On occasion for test res nually for laboratory proficiency and biennially for a manufact tification that no changes h made t model line that a ssion pe mance.

Send co regardi e burden estimate, information, inc ng suggestion ucing th rden, to: Ms. Sandy , U.S. E nmental Protecti cy, Infor ion Policy Branch 1 M S W., Washing 20460

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: June 1, 1994.

Paul Lapsley,

Director, Regulatory Management Division

[FR Doc. 94–13958 Filed 6–8–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4894–9]

Availability of FY 93 Grant Performance Reports for Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA recently performed end-of-year evaluations of eight state air pollution control programs (Alabama Department of Environmental Management, Florida Department of Environmental Protection, Georgia Environmental Protection Division, Kentucky Department for Environmental Protection, Mississippi Bureau of Pollution Control, North Carolina Department of Environment, Health, and Natural Resources, South Carolina Department of Health and Environmental Control and Tennessee Department of Conservation and Environment) and 16 local programs (Knox County Department of Air Pollution Control, Tn—Chattanooga-Hamilton County Air Pollution Control Bureau Tn—Memphis-Shelby County Health Department, Tn—Nashville-Davidson County Metropolitan Health Department, Tn—Jefferson County Air Pollution Control District, Ky—Western North Carolina Regional Air Pollution Control Agency, NC—Mecklenburg County Department of Environmental Protection, NC—Forsyth County Environmental Affairs Department FL—Palm Beach County Public Health Unit, Fl—Hillsborough County Environmental Protection Commission, Fl—Dade County Environmental Resources Management, Fl—Jacksonville Air Quality Division, Fl—Broward County Environmental Quality Control Board, Fl—Pinellas County Department of Environmental Management, Fl—City of Huntsville Department of Natural Resources, Al—Jefferson County Department of Health, Al). These audits were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act. EPA Region IV, has prepared reports for the twenty-four agencies identified above and these 105 reports are now available for public inspection.

ADDRESSES: The reports may be examined at the EPA's Region IV office, 345 Courtland Street, NE., Atlanta, Georgia 30365, in the Air, Pesticides, and Toxics Management Division.

FOR FURTHER INFORMATION CONTACT: Linda Thomas, at the above Region IV address, for information concerning States of Alabama, Florida, Mississippi, Georgia, and local agencies. Vera Bowers, at the above Region IV address, for information concerning the States of Kentucky, North Carolina, South Carolina, Tennessee, and local agencies.

Dated: May 25, 1994

Patrick M. Tobin,

Acting Regional Administrator

[FR Doc. 94–14067 Filed 6–8–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4895–2]

Science Advisory Board, Environmental Engineering Committee; Open Meeting

Under Public Law 92–463, notice is hereby given that the Environmental Engineering Committee (EEC) of the Science Advisory Board will meet June 28–30, 1994 in room 3 north of the conference center on the ground floor of the mall area at EPA Headquarters Building, 401 M Street SW, Washington D.C. The meeting, which is open to the public, will start at 9:00 AM on the June 28 and adjourn by 4:00 on June 30.

On June 28, the EEC will review the *Technology Innovation Strategy of the United States Environmental Protection Agency*, External Discussion Draft, January 1994. The Agency plans to provide the Committee with comments already received on the strategy. The charge for this review is still in the negotiation process. On June 29, the EEC will conduct consultations on waste minimization and combustion issues for the Office of Solid Waste. On June 30, the EEC will be briefed on the Use Cluster Scoring System, the Hazardous Waste Identification Rule, and Superfund Presumptive Remedies. The Committee will consider a draft contribution to the "Re-inventing the Science Advisory Board" effort, discuss its contribution to the Science Advisory Board's Futures Project, and consider what activities it might usefully undertake in FY95.

An agenda for the meeting and a copy of the charge is available from Ms. Dorothy Clark, Staff Secretary, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington D.C. 20460 (202–260–6552). Members of the public desiring additional information about the conduct of the meeting should contact Mrs. Kathleen Conway, Designated Federal Official, Environmental Engineering Committee by mail at the address above, by telephone at 202/260–2558, by fax at 202/260–7118, or by internet at

Conway Kathleen@epamail.epa.gov.

Anyone wishing to provide written comment should supply Mrs. Conway with 35 copies. Anyone wishing to make brief oral comments should contact Mrs. Conway by 2:00 Eastern Time June 22.

Dated: June 3, 1994.

Donald G. Barnes,

Staff Director, Science Advisory Board

[FR Doc. 94–14076 Filed 6–8–94; 8:45am]

BILLING CODE 6560–50–P

[FRL–4894–8]

Pennsylvania: Final Determination of Adequacy of the Commonwealth's Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region III).

ACTION: Notice of final determination of full program adequacy for the Commonwealth of Pennsylvania's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/

Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, state/tribal landfill permit programs. The Agency intends to approve adequate state/tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, states/tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved state/tribal permit programs provide interaction between the state/tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in state/tribal areas with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the state/tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a state/tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

The Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Resources (PADER) applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed Pennsylvania's MSWLF permit program application and proposed a determination on November 4, 1993, that Pennsylvania's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. EPA is today issuing a final determination that the Commonwealth of Pennsylvania's program is adequate.

EFFECTIVE DATE: The determination of adequacy for the Commonwealth of Pennsylvania shall be effective June 9, 1994.

FOR FURTHER INFORMATION CONTACT: USEPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Andrew Uricheck, mailcode (3HW53), telephone (215) 597–7936.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs that incorporate the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which state/tribal programs must satisfy to be determined adequate.

EPA intends to approve state/tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for states or tribes to develop "adequate" programs for permits or other forms of prior approval, as imposing several minimum requirements. First, each state/tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the state/tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The state/tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the state/tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether state/tribal programs are "adequate" based on the criteria outlined above.

B. Commonwealth of Pennsylvania

On July 23, 1993, Pennsylvania submitted an application for adequacy determination for its MSWLF permit program. On November 4, 1993, EPA published a tentative determination of adequacy for all portions of Pennsylvania's program. Further background on the tentative determination of adequacy appears at 58, FR 58862–58864, November 4, 1993.

A public comment period began on November 4, 1993, and ended on December 22, 1993. In this notice of tentative determination, EPA announced that a public hearing would be held on December 22, 1993, in Harrisburg, PA. A public hearing was held on December 22, 1993. No one requested the opportunity to speak or offered public comments at the public hearing.

In the Commonwealth's final application for adequacy determination, Pennsylvania proposed non-regulatory revisions to those portions of their existing program which did not fully meet the Federal requirements in EPA's 40 CFR part 258. EPA tentatively determined in the November 4, 1993 **Federal Register** that once minor changes as described below were made, Pennsylvania's MSW landfill permitting program would ensure compliance with 40 CFR part 258. PADER has made the changes specified in the November 4, 1993 **Federal Register**, and as listed below.

Subpart A—General

The current Pennsylvania requirements fully comply with 40 CFR 258.1 (hereinafter referred to as § 258.—), Purpose, Scope, and Applicability; § 258.2, Definitions; and § 258.3, Consideration of other Federal laws.

Subpart B—Location Restrictions

1. The current Pennsylvania requirements fully comply with § 258.11, Floodplains; § 258.12, Wetlands; and § 258.15, Unstable areas.

2. Airport Safety (§ 258.10) and Seismic Impact Zone (§ 258.14) siting restrictions are addressed by Pennsylvania's revision of their permit application forms requiring permittees to comply with the notification requirements of § 258.10 (PADER Form D) and to consider seismic impacts in their design as stated in § 258.14 (PADER Form 24).

3. Fault Areas (§ 258.14)—Pennsylvania has provided a certification from the Pennsylvania Geologic Survey which states that there are no Holocene Faults in the Commonwealth of Pennsylvania, and therefore this requirement is not applicable. EPA concurs with this position.

4. Closure of Existing MSWLF Units (§ 258.16)—Section 258.16 will not be adopted by Pennsylvania, since Pennsylvania has certified that no currently operating landfills are sited in areas impacting airport safety (§ 258.10), floodplains (§ 258.11), or unstable areas (§ 258.15), as defined in these sections.

Subpart C—Operating Criteria

1. The current Pennsylvania requirements fully comply with: § 258.20, Hazardous Waste Exclusion, § 258.21, Daily Cover; § 258.22, Disease Vector Control; § 258.24, Air Criteria; § 258.25, Access Requirements; § 258.26, Run-on/Run-off; § 258.27, Surface Water; and § 258.29, Record Keeping.

2. Explosive Gas Control (§ 258.23)—Pennsylvania's program meets these requirements through Pennsylvania Code, title 25, chapter 273, section 292 (273.292), which requires regular passive-venting and monitoring of

facility structures. If critical levels of methane gas are reached in facility structures or at the facility boundary, the owner/operator is required to conduct active venting on the landfill system. In the event of an emergency situation, Pennsylvania requires the owner/operator to immediately implement their previously prepared and approved contingency plan (see 25 Pa. Code section 273.303).

3. Liquids Restrictions (§ 258.28)—Pennsylvania revised permit application Form 25 to prohibit the recirculation of leachate except at those landfills that have a composite liner.

Subpart D—Landfill Design

1. In accordance with § 258.40(b) and (c), Pennsylvania has demonstrated that their alternate liner system, consisting of a double synthetic liner/double leachate collection system design (25 Pa. Code sections 273.251–273.258), ensures compliance with the requirements of this section. Pennsylvania has made this demonstration through mathematical modeling, using the Hydrologic Evaluation of Landfill Performance (HELP) and Multimedia Exposure Assessment (MULTIMED) Models. Pennsylvania's modeling shows that this liner system meets the § 258.40 performance standard under worst-case assumptions anywhere in the Commonwealth. Pennsylvania-specific data were used as input parameters to the models when available and appropriate. In addition, worst-case conditions were assumed for other parameters where data from Pennsylvania were not applicable or available.

Pennsylvania's existing regulations also allow an option of using two feet of natural (clay) material for the secondary (lower) liner, in place of a second synthetic liner. Additional PADER modeling documentation did not fully demonstrate that this option would meet the § 258.40 performance standard under worst-case assumptions throughout the Commonwealth. Therefore, PADER has revised their MSW permit application forms relating to liner design (Form 24) to require any applicant proposing this option to provide a demonstration that the liner system meets the performance standards of 40 CFR 258.40 on a case-by-case, site-specific basis, through the use of mathematical modeling.

Subpart E—Ground-Water Monitoring and Corrective Action

1. The current Pennsylvania requirements fully comply with: § 258.50, Applicability; § 258.51, Ground-water monitoring systems; and § 258.57, Selection of Remedy.

2. Ground-Water Sampling and Analysis Requirements (§ 258.53), Detection Monitoring Program (§ 258.54) and Assessment Monitoring Program (§ 258.55)—Through the use of existing authorities and appropriate permit conditions, Pennsylvania will require Appendix I sampling of leachate collected in the detection zone of the liner system. Based on the results of that testing, Pennsylvania will require the owner/operator to include any detected parameters exceeding the Maximum Contaminant Level (MCL) in the routine ground-water sampling and analysis program (25 Pa. Code section 273.284). If appendix I MCL's are exceeded in the sampling wells, sampling for all appendix II parameters will be required. If ground-water degradation has been detected in accordance with 25 Pa. Code section 273.286, Pennsylvania will require that a ground-water assessment plan be prepared and implemented. With these mechanisms in place, through the revisions of PADER Forms 8, 19, 50, and 51, Pennsylvania's program ensures compliance with the requirements of these sections.

3. Assessment of Corrective Measures (§ 258.56) and Selection of Remedy (§ 258.57)—Pennsylvania's program will ensure compliance with these sections through Pennsylvania's abatement plan requirements (25 Pa. Code section 273.287). In the event that an abatement plan must be prepared and implemented by an owner/operator, Pennsylvania requires that the permit be modified. The permit modification process includes public involvement.

4. Implementation of the Corrective Action Program (§ 258.58)—Pennsylvania ensures compliance with the requirements of this section through both 25 Pa. Code section 273.287 and the Clean Streams Law, which prohibits pollution of any waters in the Commonwealth.

Subpart F—Closure and Post-Closure Care

1. Closure Criteria (§ 258.60)—Pennsylvania requires, through a revised Form 24, flexible membrane final covers. However, Pennsylvania may approve a clay cap in situations where the use of a flexible membrane cover may be impracticable. In addition, Pennsylvania requires the use of a drainage layer to further limit infiltration by diverting rainfall from the cap, thus further ensuring that the final cover system meets the EPA performance criteria. Pennsylvania, through Form 24, requires that the final cover be in place within six months of the last receipt of waste. Time extensions for construction of the final cover can be granted by Pennsylvania where weather conditions prohibit proper cover construction, or where it is technically impractical to construct a final cover within six months.

2. Post-Closure Care Requirements (§ 258.61)—Although Pennsylvania's regulations do not specifically state that post-closure must occur for 30 years, Pennsylvania requires that post-closure continue until leachate generation ends and gas collection is no longer necessary (25 Pa. Code sections 271.314, 271.341 and 271.342). In addition, Pennsylvania requires that bonds needed for financial assurance be calculated for a minimum period of thirty (30) years. With these requirements in place, EPA has determined that Pennsylvania's program ensures compliance with the requirements of this section.

Subtitle G—Financial Assurance

1. The current Pennsylvania requirements fully comply with: § 258.70, Applicability; and § 258.74, Allowable Mechanisms.

2. Financial Assurance for Post-Closure Care (§ 258.72) and Financial Assurance for Corrective Action (§ 258.73)—Pennsylvania considers a facility to be active until final closure is reached. At the time of final closure, the owner/operator must have a bond that is based upon the total estimated cost to Pennsylvania for completing final closure. Through the above mechanisms, EPA believes that Pennsylvania's program will ensure compliance with these sections.

C. Public Comments

EPA Region III received the following written public comments on its tentative determination of full program adequacy approval of the Pennsylvania MSW landfill permitting program.

One commenter urged EPA to reconsider its approach in approving the Pennsylvania liner system on a statewide worst case approach, believing that the 40 CFR part 258 regulations do not allow such an option, but only provide for a site-specific variation to the prescribed composite liner. This same writer also stated that the double geomembrane liner design proposed by the State of Florida was found to fail "reasonable" worst case assumptions statewide, in an independent review by a landfill design consultant.

The Agency believes that the flexibility afforded to an approved state to approve an alternate liner design, as long as that design meets the design performance standard, allows the application of a statewide alternate

design, again as long as it can be demonstrated that the standards are met on a statewide basis. There are at least four statements in the October 9, 1991 Preamble to the 40 CFR part 258 regulations supporting the position that it was EPA's intent to allow a statewide option. The Agency also has discussed this at technical training seminars (based on the 40 CFR part 258 Technical Manual) held in 1992 for the EPA regional staffs and the state agencies, the discussion of which addressed alternatives to landfill designs in approved states, including the adoption of a design standard that meets the performance standard in all locations in a state.

We do not consider comments on the assumptions contained in the State of Florida's demonstration applicable to Pennsylvania, since we are requiring a Pennsylvania-specific demonstration of compliance to EPA's performance standard. We also note that this commenter stated that "(the Florida consultant) is not familiar with the assumptions used by the State of Pennsylvania . . .".

Another commenter requested that PADER be required to hold a public hearing for each new landfill permitted, and be required to respond to public comments, rather than be allowed the option of doing so based on public interest. PADER has authority to hold a public hearing on every new landfill permitted in the Commonwealth, and in recent years, has held a public meeting or hearing on all new landfills. PADER's regulations provide for public notice and require PADER to evaluate all comments received and address applicable comments prior to a permit decision. Comments can also be submitted to PADER at any time during the operation of the facility. In regard to a related concern that any proposed corrective action measures be discussed at a public meeting, PADER also assured EPA that any such action would be considered a "major permit modification", and thus subject to PADER's public participation requirements.

This same commenter noted that EPA requested additional modeling and leachate data and narrative information concerning PADER's documentation of their liner system alternative, and stated that EPA should not approve the Pennsylvania liner system until this information was received. EPA agrees with this comment, and delayed issuing this Final Determination until this data was submitted and reviewed. This new documentation provided additional support to PADER's position that their double synthetic liner system meets EPA's 40 CFR part 258 performance standards anywhere in Pennsylvania. It did not fully demonstrate that the option of using a clay liner as the second (secondary) liner of PADER's double liner requirement could meet the standard anywhere in the state. Therefore, PADER will require any permittee proposing to choose this option to demonstrate that the EPA performance standards are maintained on the site-specific basis.

This writer opposed the recirculation of any leachate. EPA disagrees with this comment, as 40 CFR 258.28(a)(2) clearly authorizes the recirculation of leachate under certain circumstances. He also suggested that PADER require tests for "all chemicals regulated by the EPA". PADER has agreed to a groundwater monitoring program that EPA believes is adequate to cover all the chemicals listed in appendices I and II, the limits of the groundwater sampling required under 40 CFR part 258.

This commenter also asked that seismic impact concerns should be considered at all locations in the Commonwealth. PADER has clarified their statement and intent to revise permit application forms to insure that all permit applicants in Pennsylvania will be required to address seismic concerns.

Two commenters stated that Pennsylvania should be required to adopt a minimum 30 year post-closure care period for all post-closure care requirements, not just for their (existing) bonding requirements. EPA believes that PADER's existing requirement that post-closure care continue until leachate generation ends and gas collection is no longer necessary fully satisfies EPA's concern that care continue until the landfill wastes are stabilized. The PADER regulations require the bond to be maintained for at least 10 years after the facility reaches final closure, which is defined as the date that no further maintenance is needed at the site. We note that 40 CFR 258.61(b) allows an approved state to decrease (or increase) the length of the post-closure care period based on landfill specific concerns.

One commenter raised the issue of whether or not Pennsylvania ground-water samples would be filtered or not filtered. 40 CFR 258.53 states that ground-water samples shall not be field filtered prior to laboratory analysis. This commenter expressed the opinion that double samples, one unfiltered, and one filtered, would be preferable. PADER, in fact, requires that groundwater samples be both filtered and unfiltered prior to analysis.

This commenter expressed the opinion that municipal incinerator ash should not be accepted at MSW landfills in Pennsylvania. EPA's position on Municipal Waste Combustor (MWC) ash was that it was excluded from regulation as a hazardous waste under RCRA Subtitle C. The Supreme Court decision on May 2, 1994, however, ruled that MWC ash is not excluded from Subtitle C hazardous waste rules, meaning that if a specific combustor's ash fails the EPA prescribed tests and is determined hazardous, then that ash would not be allowed in a MSW landfill. PADER considers ash as a special handling waste, requiring additional handling and/or analysis considerations. In light of the recent Court ruling, and assuming no new Federal legislation to preempt it, PADER would require any MWC ash failing the Toxicity Characteristic Leaching Procedure (TCLP) tests to be handled in accordance with hazardous waste program requirements.

A commenter expressed concern that allowing PADER an option to approve, on a site-specific basis, a clay final cap on steep slopes (because of PADER's significant past experience that clay caps on steep slopes are more stable than flexible membranes) would encourage landfill operators to create steeper than normal slopes, to take advantage of any possible economic savings. They feared that steeper slopes would lead to even higher landfills, thereby creating a potential for increased runoff problems and visual pollution. EPA does not agree. First, depending on site-specific conditions, a synthetic cover is not always more expensive. Secondly, the final elevation and side slope geometry of a landfill is set during the permitting process based on stability and drainage design considerations, rather than final cover material.

One commenter maintained that it was premature to approve the Pennsylvania program before the publication of the final State/Tribal Implementation Rule (STIR). EPA disagrees with this statement, in that the Agency is not utilizing the draft STIR as a regulation which binds either the Agency or the states. Instead, EPA is using the draft STIR as guidance for evaluating state permit programs, and maintains its discretion to approve state permit programs utilizing the draft STIR and/or other criteria which assure compliance with 40 CFR part 258. In addition, the public has the opportunity to comment on the criteria used by EPA to assure the adequacy of state MSWLF permit programs with each tentative determination published in the Federal

Register. The Agency discusses these criteria in each tentative determination published, including Pennsylvania's tentative determination. To date, tentative and/or final determinations have been issued for at least 38 states.

A commenter expressed concern that PADER has not yet established a wellhead protection program under Section 1428 of the Safe Drinking Water Act, and the possible negative impact of approval of their MSWLF permitting program without this program in place. States are not required to have a wellhead protection program in place in order to receive approval of the MSWLF permitting program. PADER is currently developing regulations for a wellhead protection program, in cooperation with EPA.

One commenter requested EPA to direct PADER to develop additional discretionary siting criteria to accompany the 40 CFR part 258 criteria, with the intent that the State take a more direct role in the siting of landfills. EPA is satisfied that the existing PADER regulations, with minor changes as described in the Pennsylvania Tentative Determination and this Final Determination, are adequate to ensure compliance with 40 CFR part 258, and we have no authority to direct PADER to adopt additional requirements.

This same commenter questioned the Commonwealth's consideration of seismic impacts in their review process. As stated previously, PADER agreed to revise their permit application forms to require all permit applicants to consider seismic impacts on location and design decisions.

A commenter also questioned if PADER had the resources and expertise to make the determinations required under 40 CFR part 258, and to take timely enforcement action. EPA believes that since the PADER staff is one of the largest and most experienced MSW landfill staffs among Region III states, having been involved with permitting decisions on over 50 landfills since 1988, that they are fully capable of making such determinations. The commenter also questioned PADER's reliance on information and data provided mainly by permit applicants. PADER reviews and evaluates all information received as part of the permit application. In addition, their regulations allow them considerable flexibility to require any additional information they feel is necessary to make their decisions.

A commenter stated that PADER did not have adequate hazardous waste screening requirements, and provided detailed suggestions on screening, tracking, and the financing of a hazardous waste program. These suggestions exceed the 40 CFR part 258 requirements, and are beyond EPA's authority to require them. PADER's regulations require all facilities to have a Commonwealth-approved waste analysis and acceptance plan. As part of the waste acceptance plan and site operational plan, the operator must identify how incoming waste are to be inspected to make sure no regulated quantities of hazardous waste are accepted at the facility. PADER requires that a waste screening plan be implemented at all facilities. The waste analysis and acceptance plan approved at the facilities addresses the standards for accepting residual (non-hazardous) waste.

This same commenter requested that PADER be directed to conduct research on ash treatment options. This is beyond the requirements of 40 CFR part 258. The commenter further suggested that MSW wastes be disposed of in dedicated landfill areas to facilitate possible future landfill reclamation. This is also not required by 40 CFR part 258. PADER has taken significant steps to prevent landfill disposal of recyclables, batteries, and yard waste. They also require facilities to keep records on where and when waste is disposed so reclamation may be easier in the future.

A commenter criticized Pennsylvania's implementation of financial assurance requirements under the Pennsylvania Municipal Authorities Act, and requested that EPA withhold final program approval until the Commonwealth prepares an approved plan for correcting their current procedures. The MSW requirements in Pennsylvania, including the financial assurance requirements, are administered by PADER through the Solid Waste Management Act, the Municipal Waste Planning, Recycling and Waste Reduction Act, and the municipal waste regulations, rather than the Municipal Authorities Act. PADER's authority requires the permit applicant to have the appropriate bonding and insurance requirements in place prior to the issuance of a permit. EPA is satisfied that PADER's existing authorities and procedures fulfill the requirements of 40 CFR part 258, subpart G.

A commenter suggested that the addition of a requirement to add a bentonite mat underneath the secondary liner would significantly improve liner performance, and that EPA should therefore require this statewide. EPA disagrees. It could not be required unless determined to be needed to meet either a site-specific performance standard, or a statewide alternate liner requirement. While this has not been demonstrated to be needed for PADER's double synthetic liner system, it is an option for permittees to evaluate in performance modeling.

Two commenters objected to routine sampling of Appendix II parameters in leachate collected from the leachate detection system, on the grounds that it is excessive (costly) and goes beyond the intent of the groundwater monitoring screening process in 40 CFR 258. PADER agreed that the detection zone leachate system will only be routinely monitored for the Appendix I parameters. Appendix II analysis is required only in monitoring wells, and only if and when Appendix I criteria are exceeded in those wells.

D. Decision

Taking into consideration the public comments received as a result of our tentative determination, and revisions made to the PADER program as a result thereof, I conclude that the Commonwealth of Pennsylvania's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Pennsylvania is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a state/tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in Pennsylvania's program are currently in effect as a matter of Commonwealth law. EPA's action today does not impose any new requirements with which the regulated community must begin to comply, nor do these requirements become enforceable by EPA as federal law. Consequently, EPA does not find it necessary to give notice prior to mak its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended; 42 U.S.C. 6912, 6945 and 6949(a)(c).

Dated: June 1, 1994.

Peter H. Kostmayer,

Regional Administrator.

[FR Doc. 94–14070 Filed 6–8–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2014]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

June 2, 1994.

Petition for reconsideration has been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed June 24, 1994. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of part 97 of the Commission's Rules Concerning Message Forwarding Systems in the Amateur Service. (PR Docket No. 93–85, RM Nos. 7649, 7669, 7675, 7676, 7681, 7904)

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–14017 Filed 6–8–94; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

Proposed United States Courthouse-Federal Building, City of Sacramento, CA; Notice of Availability for a Final Environmental Impact Statement

The U.S. General Services Administration (GSA) hereby gives notice that a Final Environmental Impact Statement (FEIS) has been prepared in accordance with the National Environmental Policy Act (NEPA) for a new U.S. Courthouse-Federal Building within the downtown area of the City of Sacramento, California. The site is bordered by H Street to the North, I Street to the South, 5th Street to the West, and 6th Street to the East.

The FEIS is on file and may be obtained from U.S. General Services Administration, Region 9, Attn: Lou Lopez, Public Buildings Service, Planning Staff (9PL), 525 Market Street, 35th Floor, San Francisco, California 94105–2799 ((415) 744–5253). A limited number of copies of the FEIS are available to fill single copy requests. Loan copies of the FEIS are available for review at the GSA Sacramento Field Office, 650 Capitol Mall, suite-5515, Sacramento, California.

Written comments on the FEIS should be sent no later than Monday, July 11, 1994 to Lou Lopez at the above listed address.

Dated: May 31, 1994.

Aki K. Nakao,

Acting Regional Administrator (9A).

[FR Doc. 94–14042 Filed 6–8–94; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[GN #2252]

Hearing Procedures for Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Office of Research Integrity (ORI) is publishing the revised Guidelines for Hearings Before the Research Integrity Adjudications Panel of the Departmental Appeals Board (DAB). Publication is intended to provide notice to the scientific community and the general public of the procedures followed by the DAB, based on their experience and applicable legal principles, on conducting hearings on ORI findings of scientific misconduct. These hearings are provided upon the request of the accused scientist and are made available for scientists who receive or apply for Public Health Service (PHS) support under grants, contracts, or cooperative agreements or who conduct research in PHS laboratories. The availability of hearings was first announced by ORI in November 1992. See 57 FR 53125, Nov. 6, 1992. These Guidelines were revised by the DAB on May 5, 1994, and will apply to any request for a hearing that occurs after the date of publication. They are published below.

FOR FURTHER INFORMATION CONTACT: Director, Division of Policy and Education, Office of Research Integrity, 5515 Security Lane, Rockville, MD 20852, (301) 443–5300.

Lyle W. Bivens,

Director, Office of Research Integrity.

Departmental Appeals Board Guidelines, Hearings Before the Research Integrity Adjudications Panel

I. What These Guidelines Are for and How To Get More Information

These guidelines will help you understand how to proceed before the Research Integrity Adjudications Panel, which is part of the Departmental Appeals Board in the Office of the Secretary of HHS. The Board may modify these guidelines to fit the needs of a particular case. In all cases, our objective is to fairly and promptly develop and consider a complete record of relevant and material evidence so that we can issue a sound decision.

These guidelines are intended for use in cases where HHS (through the Office of Research Integrity of the Public Health Service or the Deputy Assistant Secretary for Grants and Acquisition Management) proposes debarment or other administrative actions for scientific misconduct.

Below, we use the term "Respondent" to mean the person or organization which received a notice of proposed findings of scientific misconduct from HHS. The Respondent and HHS are the "parties" in the case.

Soon after a case is docketed at the Board, we will inform the parties of the name of a Board staff attorney who can respond to questions about procedures for the case. If you have general questions, there is a contact listed at the end of these guidelines.

II. How the Review Process Starts; Time Limits

HHS provides written notice to the Respondent of proposed findings of

scientific misconduct. The Respondent has thirty days after receiving the HHS notice to request a hearing by submitting a written request to the Research Integrity Adjudications Panel, Departmental Appeals Board, room 637–D, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. At the same time, the Respondent must send a copy of the request to the official who sent the HHS notice.

If the Respondent does not file the hearing request within thirty days, the proposed HHS findings and remedies will be made final.

The filing date is the postmark date (or, if hand delivered or transmitted by fascimile, the date received by the Board). If the deadline falls on a Saturday, Sunday, or legal holiday, the filing date is the next business day.

III. How the Dispute Is Framed and What the Respondent's Hearing Request Must Include

The HHS written notice should clearly summarize the basis for the HHS proposed findings of misconduct and proposed administrative actions. HHS may, however, include with the notice an investigative report, and refer to that report (or specific parts of it) for any findings or legal conclusions underlying the proposed findings of misconduct or proposed administrative actions.

The Respondent's hearing request must include a succinct statement identifying specific factual findings and administrative actions, set out in the written notice or report and relied on by HHS, which Respondent disputes. Factual findings that are stated or adopted in the notice and that are not specifically disputed by Respondent must be considered as facts to which Respondent has admitted. Administrative actions which are not specifically disputed in the request will be considered accepted. The hearing request should also identify any legal issues which the Respondent intends to raise.

Thus, the written notice, any parts of the report relied upon in the notice, and Respondent's hearing request together frame the dispute before the Panel. If HHS wishes to add new proposed findings of misconduct to the Panel proceeding, HHS must timely move to amend its findings.

IV. Establishing the Panel For the Case

The Research Integrity Adjudications Panel will consist of three members. Immediately after we receive the request for hearing, the Chair of the Board will designate from Board staff a Presiding Panel Member of the Research Integrity Adjudications Panel which will hear and decide the case. The Panel is assisted by a staff attorney who also functions as the parties' contact for questions about case status and procedures. The Presiding Panel Member chairs the Panel, sets procedures, presides at the preliminary conference and the hearing, and generally leads development of the case.

Upon request of either party, one of the other two Panel Members for the case will be a scientist or other expert from outside the board. This request should be timely made in order to avoid any delay in these proceedings.

Only unbiased and disinterested experts will be appointed.

V. Acknowledgement of Request for Hearing

The Presiding Panel Member will send the parties a written notice that we received the hearing request. This acknowledgment will describe the next steps and may include special information (such as earlier Board decisions which may be relevant) or requests for clarification. The acknowledgment will tell HHS to promptly notify the Presiding Panel Member and the Respondent of the name, address and telephone number of HHS's representative.

The acknowledgment also will tentatively schedule the preliminary conference (see VI below), usually for a date and time within two weeks of the acknowledgment. The date and time are tentative. Please advise the Board staff attorney immediately whether the proposed date and time are convenient and what telephone number we should use. Note that we will not permit any substantial delay, so that if the date is inconvenient, a party generally should request a postponement of no more than a few days.

VI. Preliminary Conference

The next step is the preliminary conference, which is designed for the Presiding Panel Member to discuss scheduling and other matters with the parties. Generally, this conference is conducted by telephone. The parties should be prepared to discuss anything that will enable the case to proceed fairly and efficiently, including: (1) Whether HHS has sufficiently defined the findings to which the Respondent must respond; (2) what documents, if any, should be submitted by whom and deadlines for submission; (3) the date, location and anticipated length of the hearing; (4) who the parties' witnesses will be and the general nature of their proposed testimony; (5) specification of disputes of fact and their materiality to the findings of scientific misconduct; (6) whether there is any need for briefing of issues prior to hearing; (7) simplifying, narrowing and clarifying issues; (8) stipulations or admissions of undisputed facts, authenticity of documents, admissibility of documents, and qualifications of expert witnesses; and (9) any other matter which the Presiding Panel Member finds it appropriate to discuss.

The conference will be audiotaped. At the end of the conference, after consulting the parties, the Presiding Panel Member will decide how the results of the conference will be noted for the record (for example, we may keep a copy of the tape in the record or summarize the results of the conference in a written document kept in the record).

VII. The Right To A Hearing; Waiver

The Respondent is entitled to an in-person hearing.

The Respondent may choose to waive his or her right to an in-person hearing so that the Panel will review and decide the case on the basis of the written record (including briefs and documents which both parties would be allowed to submit). This review may be accompanied by oral presentation by telephone.

If the Respondent chooses to proceed this way, the Presiding Panel Member will ask whether the HHS representative agrees to dispense with an in-person hearing (since HHS may have witnesses it wishes to present). Even if both parties agree to a review on the written record, the Presiding Panel Member may require the parties to participate in a telephone conference to respond to questions about issues in the case.

VIII. Hearing Procedures

The Presiding Panel Member will determine the place and time of the hearing after consulting the parties in the preliminary conference (see VI above). Generally, hearings are set at a site which is most convenient for the largest number of participants and which has appropriate facilities.

The Presiding Panel Member will preside at the hearing. Other Panel Members will attend as much of the hearing as the Members decide among themselves; all Members, of course, will have full access to the transcript of the hearing and the rest of the record. The hearings will be as informed as reasonably possible, consistent with the need to establish an orderly record. There are no formal rules of evidence applicable; however, the Presiding Panel Member may refer to the Federal Rules of Evidence for guidance.

The Presiding Panel Member generally will admit documents and testimony into the record unless clearly irrelevant, immaterial or unduly repetitious, so the parties should avoid frequent objections to questions and documents.

The HHS written notice, any report (or part of a report) relied on in the notice, and the Respondent's hearing request will be included in the record in any scientific misconduct hearing. They do not themselves constitute evidence, but frame the dispute; the notice and report may also contain findings which are considered admitted because not disputed in the hearing request. (See section III above). The Respondent should not consider the written notice and report to be a comprehensive summary of all the evidence that HHS may present at a hearing. HHS may present other relevant evidence at the hearing if HHS identifies it in a timely manner and no later than its final witness and exhibit list (which generally is submitted at least 30 days prior to the hearing), according to the procedures set by the Presiding Panel Member.

Both parties may make opening and closing statements, may present witnesses as agreed upon in the prehearing conference and may cross examine opposing witnesses. The Panel Members may ask questions as well. Witnesses will be warned that any false statement may be a basis for criminal prosecution

Hearings [illegible] open to the public. Generally, [illegible] witnesses' presence in the hearing [illegible] om when not testifying will be re[illegible] ed if a party requests it.

The hea[illegible] will be transcribed at Departme[illegible] pense and each party will be provid[illegible] opy of the transcript (this usu[illegible] es about ten days, unless th[illegible] cript is lengthy). Generall[illegible] anscript and all other material[illegible] ecord are matters of public r[illegible]

IX. Post-[illegible] Briefing

The P[illegible] Panel Member, after consulti[illegible] rties at the end of the hearing, [illegible] de whether post-hearing [illegible] l be allowed or required [illegible] set deadlines for briefing[illegible]

X. The [illegible] cision

Gene[illegible] anel will complete its review [illegible] a written decision within [illegible] ter the last action in the proc[illegible]

The F[illegible] cision will be the final agency [illegible] remedies specific to the Pub[illegible] Service (such as prohibi[illegible] ce on advisory committees, boards or peer review groups). On debarment under 45 CFR part 76 and 48 CFR 9.4 and 309.4, the Panel's decision will be a recommendation to the Deputy Assistant Secretary for Grants and Acquisition Management (DASGAM), who generally will make a final decision within thirty days of the Panel recommendation. DASGAM may reject findings of fact which form the basis for the Panel decision only if DASGAM determines them to be arbitrary and capricious or clearly erroneous.

XI. Burden of Proof

HHS must always prove scientific misconduct by a preponderance of the evidence.

XII. Submitting Material to Panel, Contacts With Panel

Whenever a party submits anything to the Panel, that party must include a statement that he or she has at the same time given a copy to the other party.

Time limits for filing briefs and documents will be set by the Presiding Panel Member. Calculating filing deadlines is done in the same manner as for the request for hearing (see II above).

No party may engage in any ex parte contact with Panel Members or any other Board staff. This means that you must never provide written materials to the Panel without giving a copy to the other party, and you must never communicate orally with Panel Members or other Board staff about matters in the case outside the presence of the other party. Exceptions: you may speak to the Board attorney assigned to your case on purely procedural matters, or for guidance, the Panel may refer to a provision on ex parte contacts contained in the Board's published procedures (45 CFR 16.17).

The materials submitted to the Panel during a proceeding under these Guidelines are considered public records and may be disclosed to any person requesting the record. See 58 FR 29228 (May [illegible]).

XIII. Panel's Po[illegible]

A. In General

The Panel, o[illegible] through the Presiding Pane[illegible] may exercise the Board's ple[illegible] ority to take whatever actio[illegible] nel deem necessary for fa[illegible] ete, and expeditious res[illegible] f the case. For guidance, the Pa[illegible] refer to 45 CFR part 16 (in partic[illegible] CFR 16.13).

B. Discovery

The Presidin[illegible] ember may order a party to [illegible] information which the Presiding Panel Member determines may be directly relevant and material to dispositive issues in the case and likely to be important to a sound decision. Failure of a party to comply with such an order may result in the panel drawing a negative inference from the failure (that is, the panel may assume that the evidence would substantiate the proposition for which the evidence was sought). The Respondent may also have rights to certain information under the Freedom of Information Act, but this is independent of the process in these guidelines.

* * * * *

Questions? If you have any questions about these procedures, call Andrea M. Selzer, Senior Attorney, at 202/690–6012. In her absence, please call the Departmental Appeals Board at 202/690–5501 and ask for assistance with the Research Integrity Adjudications Panel guidelines.

Issuance: September 30, 1992.

Revised: May 5, 1994.

[FR Doc. 94–13939 Filed 6–8–94; 8:45 am]
BILLING CODE 4160–17–M

Centers for Disease Control and Prevention

[Announce[illegible] Number 453]

Coopera[illegible] reements for Active Varicella S[illegible]illance and Epidemic[illegible] Studies

Introduct[illegible]

The Ce[illegible] or Disease Control and Prevention[illegible]C) announces the availabili[illegible] scal year (FY) 1994 funds for [illegible]ram for competitive cooperati[illegible]ement applications to conduct [illegible]ance and case investiga[illegible] varicella disease (chicken[illegible]nds will be provided to conduct [illegible]rveillance and epidemi[illegible]dies to monitor disease [illegible]or to licensure of varicella[illegible] and continuing for a period a[illegible]ne licensure.

The P[illegible]lth Service (PHS) is commit[illegible]ieving the health promot[illegible]isease prevention objecti[illegible]lthy People 2000," a PHS-le[illegible]ctivity to reduce morbid[illegible]rtality and to improve the qua[illegible] This announcement is relat[illegible]iority areas of immun[illegible] infectious diseases, and sur[illegible]nd data systems. (For orderin[illegible] "Healthy People 2000," se[illegible]tion "Where to Obtain Addition[illegible]nation.")

Authority

This program is authorized under sections 301(a) and 317(k)(3) of the Public Health Service Act [42 U.S.C. 241(a), 247b (k)(3)].

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants for this program are the official State and local public health agencies. To ensure statistical validity, these surveillance areas must have populations of at least 100,000 to provide a sufficient number of varicella cases each year during the anticipated period of declining varicella incidence after vaccine licensure and expected wide use of the vaccine in children.

Availability of Funds

Approximately $500,000 is available in FY 1994 to fund 2 to 4 cooperative agreements. It is expected that the average award will be $165,000, ranging from $100,000 to $250,000. It is expected that awards will begin on or about August 15, 1994, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. There are no matching or cost participation requirements; however, the applicant's anticipated contribution to the overall program costs, if any, should be provided on the application. Funds awarded under this cooperative agreement cannot be used to supplant existing State expenditures in this area.

Objectives

1. To establish a reporting system to accurately define the baseline incidence and epidemiological profile of varicella disease prior to licensure and wide use of varicella vaccine.

2. To maintain and expand the reporting system to obtain similar data for a period of time after vaccine licensure in order to identify changes occurring in the epidemiology of varicella as a result of vaccine usage, and to ascertain the immunization status of cases and evaluate the demographic and clinical profiles of vaccinated and unvaccinated cases.

Purpose

The purpose of these cooperative agreements is to provide assistance to selected State, city, or local areas in developing, maintaining and evaluating active surveillance systems that will provide (1) age-, gender-, race-, and ethnicity-specific incidence and clinical information on cases of varicella disease prior to or at the time of licensure of varicella vaccine in a defined population; and (2) similar information in addition to immunization status of cases following licensure of varicella vaccine.

Program Requirements

In conducting the activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under Item A. (Recipient Activities) and CDC will be responsible for the activities listed under Item B. (CDC Activities). The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Survey and describe the demography of health care providers, physicians, schools, and institutions within the surveillance area or population under study and identify appropriate reporting and sampling units for surveillance and epidemiologic studies.

2. Establish, maintain, and evaluate an active surveillance system with the capacity to monitor varicella disease trends in a well-defined population and to identify changes in disease incidence and prevalence as a result of the use of varicella vaccine.

3. Using this active surveillance system, collect, analyze and disseminate information that should include age-, gender- and race- and ethnicity-specific incidence of varicella disease; clinical data on reported cases that include the types of complications, rates of hospitalization, lengths of stay, and use of serologic tests to confirm the diagnosis of varicella; detection of outbreaks; and, in selected samples of cases, incidence of illness in household contacts and information on the number of school days lost to children and work days lost to adult patients and parents of children with varicella disease. Such information will likely require specific investigation (follow-up of each reported case in the study population).

4. Following licensure of the vaccine, the immunization status of all reported cases, including age of vaccination, other vaccines simultaneously administered, etc., should be ascertained in addition to the information obtained prior to licensure, as described in item 3 above. With wide use of the vaccine, it is anticipated that the incidence of varicella disease will be reduced (by 50%–90%) to a level that will permit the collection of more detailed data for all cases (e.g., incidence of illness in household contacts, number of school days lost to children and work days lost to adult patients and parents of children with varicella disease, risk of specific complications and clinical course of disease).

5. Participate in the analysis of data, writing of reports and presentation of findings.

The timing of activities following the establishment of an active surveillance system will depend on when the vaccine is licensed and how quickly populations become vaccinated. Pending the availability of funds, recipients may be requested to perform the following additional activities:

1. Compare trends in incidence and the epidemiology of varicella before and after licensure of varicella vaccine.

a. This should include, but not be limited to, rates of disease specific for age, sex, race and ethnicity, and if feasible, other demographic characteristics such as socioeconomic status.

b. Determine the relative impact of vaccine use with respect to age-specific rates of complications and hospitalization.

2. Ascertain the immunization status of cases and evaluate the demographic and clinical characteristics of vaccinated and unvaccinated cases.

3. Evaluate the surveillance system for the purpose of recommending methods that can be used to enhance national surveillance.

B. Centers for Disease Control and Prevention (CDC) Activities

1. Provide technical assistance in the design and execution of the project.

2. Provide assistance to recipients regarding development and implementation of all surveillance activities, data collection methods including case investigation forms, and analysis of data.

3. Assist in the development and implementation of data management processes, including development of computer programs for data entry and interim analyses.

4. Participate in the analysis of data, writing of reports, presentation and publication of findings, and development and dissemination of

information to enhance national surveillance.

Review and Evaluation Criteria

A. Initial Application

Applications will be reviewed and evaluated according to the following weighted criteria:

1. The applicant's understanding of the purpose of the proposed activity and the feasibility of accomplishing the outcomes described. (10%)

2. The extent to which background information and other data demonstrate that the applicant has the appropriate organizational structure, administrative support, and ability to access [illegible] sources of [illegible]. (15%)

3. The adequacy of the description of appropriate plan, and the extent to which these proposed sources of case reports will ensure an adequate sample size and representativeness of populations at risk for varicella to ensure that the epidemiologic analysis of the impact of varicella vaccine, and the assessment of cases with respect to vaccination status will be appropriate and statistically valid. (15%)

4. The adequacy of the plan for establishing the active surveillance system described under recipient activities and supporting evidence that the applicant can implement and maintain these systems. (25%)

5. The extent to which the applicant demonstrates capacity for timely access to public health surveillance data from the jurisdiction or area under study, and capacity to integrate future surveillance activities into existing surveillance systems. (15%)

6. The degree to which the proposed objectives are specific, measurable, time-phased, and consistent with the defined purpose of this program, and the quality of the methods and instruments to be used to evaluate the program. (15%)

7. The qualifications, including training and experience, of project personnel and the projected level of effort by each toward accomplishment of the proposed activities. (10%)

In addition, consideration will be given to the extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

B. Continued Funding

Continuation awards within the project period will be made on the basis of the following criteria:

1. The degree to which accomplishments in the prior budget period show that the applicant is meeting its objectives;

2. The extent to which objectives for the new budget period are consistent with the purpose of the cooperative agreement and are specific, measurable, and time-phased.

3. The degree to which the proposed methods of achieving the stated objectives are likely to be successful.

4. The adequacy of methods and plans to evaluate program activities.

5. The extent to which the budget is clearly explained, reasonable, and consistent with the intended use of the cooperative agreement funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. This order sets up a system for State and local review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State recommendations on applications submitted to CDC, they should forward them to the CDC, Attention: Elizabeth M. Taylor, Grants Management Officer, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Mailstop E–16, Atlanta, Georgia 30305, no later than 60 days after the application deadline date for the new awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.185, Immunization Research, Demonstration, Public Information and Education, Training, and Clinical Skills Improvement Projects.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the completed application Form PHS–5161–1 must be submitted to Elizabeth M Taylor, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–16, Atlanta, Georgia 30305 on or before June 30, 1994.

Applications will be considered to meet the deadline if they are:

1. Received on or before the stated deadline date, or,

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable proof of timely mailing.)

Applications which do not meet the criteria in 1. or 2. above, are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Eddie L. Wilder, Senior Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–16, Atlanta, Georgia 30305, telephone (404) 842–6805.

Programmatic technical assistance may be obtained from Sandra J. Holmes, Ph.D., M.H.A., Medical Epidemiologist, Surveillance, Investigation and Research Branch, National Immunization Program, Centers for Disease Control and Prevention (CDC), Mailstop E–61, Atlanta, Georgia 30333, telephone (404) 639–8257.

Please refer to Announcement Number 453 when requesting information and submitting an application in response to this Request for Assistance.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1), referenced in "Introduction," through the Superintendent of Documents, Government Printing Office,

Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: June 3, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–14021 Filed 6–8–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing an amendment to the notice of a meeting of the Blood Products Advisory Committee which is scheduled for June 21 and 22, 1994. This meeting was announced in the Federal Register of May 20, 1994 (59 FR 26506). The amendment is being made to announce the agenda for June 22, 1994. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–300), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–6700.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 20, 1994, FDA announced that a meeting of the Blood Products Advisory Committee would be held on June 21 and 22, 1994. On page 26507, column 1, the "*Type of meeting and contact person*" and the "*Open committee discussion*" portions of this meeting are amended to read as follows:

Type of meeting and contact person. Open committee discussion, June 21, 1994, 8 a.m. to 8:30 a.m.; open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5:30 p.m.; open committee discussion, June 22, 1994, 8 a.m. to 8:45 a.m.; open public hearing, 8:45 a.m. to 9:45 a.m., unless public participation does not last that long; open committee discussion, 9:45 a.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 6 p.m.

Open committee discussion. On June 21, 1994, the committee will discuss and provide recommendations on plasma collected by apheresis, particularly with regard to infrequent donations of different frequencies, and on autologous blood donation, and in the afternoon, will discuss and provide recommendations on red cell loss during source plasma collection and plateletpheresis, and will hear an informational summary of regulatory issues concerning stem cells. On June 22, 1994, the committee will discuss and provide recommendations on issues related to sample collection kits labeled for detection of human immunodeficiency virus (HIV) infection. The discussion will reexamine the approach described in Federal Register notices of February 17, 1989 (54 FR 7279), and July 20, 1990 (55 FR 30982), to evaluate the safety and effectiveness of collection kits. The notices provided guidance as to FDA's concerns at that time. However, in light of subsequent scientific and technological developments and the changing nature of the HIV epidemic, FDA has been reconsidering the information provided in those notices and recognizes that other approaches may be useful in reviewing HIV collection kits. The committee will also consider and make recommendations on appropriate post-marketing studies of novel sample (e.g. dried blood spots, urine, oral fluid) collection systems intended for professional use only. Additionally, the discussion will focus on specimen collection systems intended for over-the-counter purchase and home use, which provide test results anonymously, along with telephone counseling and medical referral. The question whether approval of an HIV home collection test would create a precedent applicable to over-the-counter (OTC) testing for other serious medical conditions also may be raised.

Dated: June 3, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–14016 Filed 6–8–94; 11:44 am]

BILLING CODE 4160–01–F

Office of Inspector General

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Office of the Secretary, HHS, Office of Inspector General.

ACTION: Notice.

SUMMARY: This notice amends Part A (Office of the Secretary) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services to reflect organizational changes in chapter AF, Office of Inspector General (OIG).

EFFECTIVE DATE: This notice is effective on June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Joel J. Schaer, (202) 619–0089.

SUPPLEMENTARY INFORMATION: Chapter AF, the Office of Inspector General's Statement of Organization, Functions and Delegations of Authority Chapter AF, published in the **Federal Register** on November 7, 1989 (54 FR 46775), is amended as follows:

1. Section AF.10, Office of Inspector General—Organization, is revised to read as follows:

Section AF.10 Office of Inspector General—Organization

There is at the head of the OIG a statutory Inspector General, appointed by the President and confirmed by the Senate. The Office of Inspector General consists of six organizational units:

A. Immediate Office of the Inspector General (AFA)

B. Office of the Principal Deputy Inspector General (AFA1).

C. Office of Audit Services (AFH)

D. Office of Investigations (AFI)

E. Office of Evaluation and Inspections (AFE).

F. Office of Civil Fraud and Administrative Adjudication (AFL).

2. Section AFJ.10, Office of Investigations—Organization, is revised to read as follows:

Section AFJ.10 Office of Investigations—Organization

The Office of Investigations comprises the following components:

A. Immediate Office.

B. Criminal Investigations.

C. Investigations Policy and Oversight.

3. Section AFL20, Office of Investigations—Functions, is revised by deleting existing paragraph C., and by redesignating existing paragraph D. to read as the new paragraph C.

4. A new section AFL.00, Office of Civil Fraud and Administrative Adjudication (OCFAA)—Mission, is added to read as follows:

Section AFL.00 Office of Civil Fraud and Administrative Adjudication (OCFAA)—Mission

The Office of Civil Fraud and Administrative Adjudication is responsible for protecting the government-funded health care programs and deterring fraudulent conduct by health care providers through the negotiation and imposition of civil money penalties, assessments and program exclusions. It works with various investigative agencies and organizations in the development of health care civil fraud cases, including *qui tam* cases referred by the Department of Justice.

5. A new section AFL.10, Office of Civil Fraud and Administrative Adjudication—Organization, is added to read as follows:

Section AFL. 10 Office of Civil Fraud and Administrative Adjudication—Organization

The Office of Civil Fraud and Administrative Adjudication comprises the Assistant Inspector General and an immediate staff.

6. A new section AFL.20, Office of Civil Fraud and Administrative Adjudication—Functions, is added to read as follows:

Section AFL.20 Office of Civil Fraud and Administrative Adjudication—Functions

This office is directed by the Assistant Inspector General for Civil Fraud and Administrative Adjudication.

1. The office provides policy guidance and technical expertise to the Department, other Federal agencies, carriers, intermediaries, providers and private organizations on civil fraud law and regulations, penalties, sanctions and other remedies. It maintains liaison with the Department of Justice on the civil fraud aspects of health care and other HHS investigations.

2. The office coordinates and helps investigate matters arising under the Program Fraud Civil Remedies Act, the Civil Monetary Penalties Law, and the Medicare and Medicaid Patient and Program Protection Act, including alleged misconduct by health care entities and others under Medicare and the State health care programs. It assists the Department of Justice to investigate and evaluate civil fraud lawsuits brought under the qui tam provisions of the Federal False Claims Act and related statutes.

3. The office directs and coordinates medical reviews on civil money penalty and exclusion cases to ensure that findings and conclusions are correct and supported by medical records. It evaluates proposals to exclude individuals and entities from participation in the Department's health care programs. It conducts administrative reviews on proposed exclusions and provides written reports incident to the reviews. It negotiates, implements and monitors settlement agreements and exclusion requirements and, in cases of default, implements penalty provisions. It assists in investigations related to requests for reinstatement by excluded individuals and entities, and conducts administrative reviews in accordance with regulations, and adjudicates the requests for reinstatement. It maintains indices of sanctioned individuals and entities and prepares reports of sanction and penalty activities for distribution.

Dated: May 27, 1994.

June Gibbs Brown,

Inspector General.

[FR Doc. 94–14051 Filed 6–8–94; 8:45 am]

BILLING CODE 4150–04–M

Public Health Service

Agency for Toxic Substances and Disease Registry; Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HT (Agency for Toxic Substances and Disease Registry), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (50 FR 25129–25130, dated June 17, 1985, as amended most recently at 58 FR 7568, dated February 8, 1993) is amended to reflect organizational changes within the Agency for Toxic Substances and Disease Registry (ATSDR) that will: (1) Establish the Public Health Practice Coordination Group within the Office of the Assistant Administrator, ATSDR; (2) revise the functional statement for the Division of Toxicology; and (3) revise the functional statements for the Division of Health Assessment and Consultation (DHAC) and the Office of the Director, DHAC. The revised functional statements will provide a more accurate description of the responsibilities of the Divisions.

After the functional statement for the Office of Program Operations and Management (HTB1), insert the following:

Public Health Practice Coordination Group (HTB2)

(1) Coordinates follow-up actions at sites evaluated by the Division of Health Assessment and Consultation (public health assessments), Division of Health Studies (health investigations), Division of Health Education (community health education), and other parts and programs of ATSDR as appropriate; (2) coordinates inter-divisional community involvement plans for sites where more than one division is conducting site activities; (3) coordinates ATSDR's Minority Health Program; (4) coordinates ATSDR's Minority Health Program; (4) coordinates other special projects as required.

Delete the functional statements for the Division of Health Assessment and Consultation (HTB6) and the Office of the Director (HTB61) and insert the following:

The mission of ATSDR is to prevent or mitigate adverse human health effects and diminished quality of life resulting from exposure to hazardous substances in the environment. In particular, the Division is responsible for mitigating the public health impacts to communities resulting from expostures to hazardous substances in the environment and for undertaking appropriate interventions to prevent adverse health effects. In order to fulfill that mission, the Division: (1) Conducts public health assessments and other related health activities such as site review updates and Record of Decision reviews, to determine the health implications of releases or threatened releases of hazardous substances into the environment; in particular, such activities are conducted for Superfund, Resource Conservation and Recovery Act (RCRA), petitioned, and other sites; (2) conducts and evaluates exposure pathways analyses and other exposure screening analyses to identify impacted communities, to include biologic sampling, personal monitoring and health surveys, and related environmental assessments, as appropriate; (3) identifies and implements appropriate intervention at impacted communities to prevent exposures and/or adverse health effects; (4) provides health and medical consultations and technical support to address public health hazards at Superfund, RCRA, petitioned, and other sites where hazardous materials have been released into the environment; (5) issues public health advisories when a release or threatened release of a hazardous substance poses an imminent health hazard; (6) establishes a center of excellence for the development of innovative approaches, applied research methods and procedures for the analysis and use of health, demographic, and environmental data, and community health concerns.

Office of the Director (HTB61)

(1) Plans, directs, coordinates, evaluates, and manages the operations of the Division of Health Assessment and Consultation;

(2) develops goals and objectives and provides leadership, policy formation, and guidance in program planning and development;

(3) provides program management, administrative and logistical support services for the division;

(4) coordinates division activities with other components of ATSDR and other Federal, State and local agencies;

(5) Initiates specific research and medical activities as appropriate to the Division's mission and program needs;

(6) oversees implementation of a quality assurance and training program for the Division's activities.

I delete the functional statement for the Division of Toxicology (HTS) and insert the following:

(1) Coordinates all activities associated with toxicologic profiles and toxicologic research;

(2) Identifies and publishes a list of the most hazardous substances related to Superfund releases and sites;

(3) Provides chemical-specific consultations as needed;

(4) Initiates research to expand knowledge of the relationship between exposure to hazardous substances and adverse human health effects through toxicologic studies of hazardous substances;

(5) Coordinates ATSDR toxicology activities with the Environmental Protection Agency, National Toxicology Program, and other appropriate Federal, State, local, or public programs.

Dated: May 27, 1994.

David Satcher,

Administrator.

[FR Doc. 94–14024 Filed 6–8–94; 8:45 am]

BILLING CODE 4160–70–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3714; FR–3397–N–04]

NOFA for Public and Indian Housing Family Investment Centers; Amendment and Notice of Waiver of Requirements

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Amendment and notice of waiver of publication requirements.

SUMMARY: This notice further amends a NOFA that was published in the **Federal Register** on February 28, 1994 (59 FR 9592), and was amended on April 19, 1994 (59 FR 18570). This amendment: (1) Includes Comprehensive Improvement Assistance Program (CIAP) language, where appropriate; (2) decreases the amount of funds made available competitively under the NOFA for Family Investment Centers (FIC) for Public and Indian Housing; and (3) announces the award of $2 million to the Chicago Housing Authority (CHA) on an emergency basis for eligible purposes. In conjunction with the announcement of the award to the CHA, the Secretary is also publishing his reasons for waiving the requirements of paragraphs (1), (2), and (3) of section 102(a) of the Department of Housing and Urban Development Reform Act of 1989.

FOR FURTHER INFORMATION CONTACT: Marcia Y. Martin, Office of Resident Initiatives (ORI), or Dom Nessi, Director, Office of Native American Programs (ONAP), Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; telephone numbers: ORI (202) 708–3611; and ONAP (202) 708–1015 (these are not toll-free numbers). Hearing- or speech-impaired persons may use the Telecommunications Device for the Deaf (TDD) by contacting the Federal Information Relay Service on 1–800–877–8339 or 202–708–9300 (not a toll-free number) for information on the program.

SUPPLEMENTARY INFORMATION: On February 28, 1994, the Department published its NOFA for Public and Indian Housing Family Investment Centers (59 FR 9592).

The NOFA was amended for the first time on April 19, 1994 (59 FR 18570), and is being amended further by this notice. This amendment clarifies that Comprehensive Improvement Assistance Program (CIAP) language was inadvertently left out of the NOFA in the sections on Ranking Factors and Checklist of Application Submission Requirements.

The Department also is announcing that of the $63 million being made available under the NOFA, it intends to make $2 million available immediately to the Chicago Housing Authority (CHA) for purposes of demonstrating in public housing comprehensive, coordinated, and strategic approaches to neighborhood revitalization and the serious issue of violent crime reduction. As a result, the amount of funding available for competitive awards under the NOFA is decreased to $67 million.

Recently, the Department was charged by the President with determining effective measures for addressing the urgent problems of violent crime at public housing developments in Chicago, such as in the Robert Taylor Homes and Stateway developments. As a result of dialogues and needs assessments undertaken with CHA and local agencies and service providers, HUD determined that comprehensive, long-term efforts would be most effective in addressing the lack of educational and employment training opportunities for residents of these developments.

The Secretary has also determined, under section 102(a)(3) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(a)) (HUD Reform Act), that the Department's Family Investment Centers program is an appropriate emergency funding resource to address the range of services identified by CHA. The funds will be used to: coordinate services utilizing public and private resources; assess and address personal welfare issues, and correlated crime; expand and improve the delivery of support services; provide funding for essential training and services that cannot otherwise be provided; improve the capacity of management to assess the training and service needs of eligible families; and coordinate the provision of training and services that meet such needs. HUD expects that this funding will demonstrate the importance of long-term commitments to local neighborhood revitalization and to servicing the educational, employment, and personal welfare needs of public housing residents, thereby reducing crime and its root causes.

In making his determination that the requirements of paragraphs (1), (2), and (3) of section 102(a) of the HUD Reform Act should be waived to make FIC funds available immediately to CHA, the Secretary has stated:

> There is an immediate need to effect this funding because of the emergency provisions which prevail in Chicago. As you know, we have already committed to make modernization assistance available to CHA out of the special reserve under section 14(k) of the 1937 Act [United States Housing Act of 1937, 42 U.S.C. 14371] for emergencies. The CHA emergency includes severe problems of firearms control, drugs, and youth gangs, all of which have been demonstrated in the recent CHA "sweeps" efforts. These same near-siege conditions apply to Family Investment Center funding. (Secretary's Memorandum on Family Investment Center Emergency Determination, June 3, 1994.)

Accordingly, FR Doc. 94–4413, the NOFA for Public and Indian Housing Family Investment Centers, published at 59 FR 9592 (February 28, 1994), and amended at 59 FR 18570 (April 19, 1994), is further amended as follows:

1. In the Summary on page 9592, column 1, the first sentence is amended by revising the total amount of funding available under the NOFA from "$69 million" to "$67 million".

2. Under the heading "Allocation Amounts" on page 9592, in the third column, the first sentence of the second paragraph is amended by revising the total amount of funding available under the NOFA from "$69 million to "$67 million", and the following new sentence is added to the end of the second paragraph, as amended, to read as follows:

Further, the Department intends to make $2 million available immediately as emergency funds for the Chicago Housing Authority (CHA), for purposes of demonstrating in public housing developments a comprehensive, coordinated, and strategic approach to neighborhood revitalization and the serious issue of violent crime reduction.

3. On page 9596, column 1, paragraph (j) of Section I.G(1) is revised to read as follows:

(j) The extent to which the HA has demonstrated that it will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP)/ Comprehensive Improvement Assistance Program (CIAP) funds for CGP/CIAP-eligible activities that result in employment, training, and contracting opportunities for eligible residents [25 points].

4. On page 9596, column 2, paragraph (k) of Section I.G(2) is revised to read as follows:

(k) The extent to which the HA has demonstrated that it will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP)/ Comprehensive Improvement Assistance Program (CIAP) funds for CGP/CIAP eligible activities that result in employment, training, and contracting opportunities for eligible residents [25 points].

5. On page 9597, column 2, paragraph (18) of Section III.A is revised to read as follows:

(18) Certification of the extent to which the HA will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP)/ Comprehensive Improvement Assistance Program (CIAP) funds for CGP/CIAP-eligible activities that result in employment, training, and contracting opportunities for eligible residents;

6. On page 9598, column 1, paragraph (5) of Section III.B is revised to read as follows:

(5) Certification of the extent to which the HA will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP)/Comprehensive Improvement Assistance Program (CIAP) funds for CGP/CIAP-eligible activities that result in employment, training, and contracting opportunities for eligible residents.

7. On page 9599, column 1, paragraph (11) of Section III.C is revised to read as follows:

(11) Certification of the extent to which the HA will commit to its FIC part of its formula allocation of Comprehensive Grant Program (CGP)/ Comprehensive Improvement Assistance Program (CIAP) funds for CGP/CIAP-eligible activities that result in employment, training, and contracting opportunities for eligible residents.

Dated: June 3, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–14059 Filed 6–8–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–4210–05; NVN 57164]

Notice of Realty Action; Recreation and Public Purposes Act Classification; Douglas County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described land, comprising 2.50 acres, has been examined and is determined to be suitable for classification for lease or conveyance pursuant to the authority in the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*):

Mt. Diablo Meridian, Nevada

T. 14 N., R. 20 E.;
Sec. 8, SE¼SE¼NW¼NW¼.
Containing 2.50 acres.

SUPPLEMENTARY INFORMATION: The public land is located two miles south of Carson City. The land is not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. There is currently an application on file by Douglas County to construct a fire and sheriff's station on the site.

The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior, and the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals deposits in the land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws but not the mineral leasing laws, the material disposal laws, or the Geothermal Steam Act. The segregation shall terminate upon issuance of a conveyance document or publication in the **Federal Register** of an order specifying the date and time of opening.

DATES: On or before July 25, 1994, interested parties may submit comments.

ADDRESSES: Written comments should be sent to: Walker Resource Area Manager, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, NV 89706–0638. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, Walker Area Realty Specialist, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, NV 89706–0638; (702) 885–6000.

Dated: May 26, 1994.

John Matthiessen,

Walker Resource Area Manager.

[FR Doc. 94–13954 Filed 6–8–94; 8:45 am]

BILLING CODE 4310–HC–M

[UT–040–03–4210–05, UTU–71137]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, recreation and public purpose conveyance.

SUMMARY: The following described public land in Garfield County, Utah has been examined and found suitable for lease or conveyance under the provisions of the Recreation and Public Purposes Amendment Act of 1988, (Pub L. 100–648). The lands to be conveyed and the proposed patentees are as follows:

Patentee: Antimony Town.
Location: Salt Lake Meridian, Utah, T. 31 S., R. 2 W., Sec. 10, NW¼SE¼SE¼, containing 10 acres.
Patentee: Boulder Town.
Location: Salt Lake Meridian, Utah, T. 33 S., R. 4 E., Sec. 3, Lot 6, containing 9.27 acres.
Patentee: Escalante Town.
Location: Salt Lake Meridian, Utah, T. 35 S., R. 2 E., Sec. 24, NE¼SE¼NE¼, containing 10 acres.

These lands are hereby segregated from all forms of appropriation under the public land laws, including the mining laws.

The communities propose to use the lands as solid waste transfer stations. The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent when issued will be subject to the following terms, conditions and reservations:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the same. The Secretary of the Interior reserves the right to determine whether such mining and removal of minerals will interfere with the development, operation and maintenance of the transfer station.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The conveyance will be subject to all valid rights and reservations of record.

4. The communities listed above assume all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or the release of hazardous substances from the above listed tracts, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

5. Provided, that the title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date five years after the date of conveyance. No portion of the land shall under any circumstance revert to the United States if any such portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, or release of any hazardous substance.

6. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed conveyance of the lands to the District Manager, Cedar City District Office, 176 D.L. Sargent Drive, Cedar City, Utah 84720.

Application comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for transfer stations.

Any adverse comments will be reviewed by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this notice will become the final determination of the Department of the Interior on August 8, 1994.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Escalante Resource Area office by contacting Gregg Christensen, P. O. Box 225, Escalante, Utah 84726 or telephone (801) 826–4291.

Dated: May 31, 1994

Gordon R. Staker,

District Manager.

[FR Doc. 94–13955 Filed 6–8–94; 8:45 am]

BILLING CODE 4310–DQ–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

Applicant: U.S. Fish and Wildlife Service, PRT–697823, Assistant Regional Director, Ecological Services, Region 5

The applicant requests an amendment to their current permit to include take activities for the following species: Delmarva fox squirrel (*Sciurus niger cinereus*); Roanoke logperch (*Percina rex*); duskytail darter (*Etheostoma* [*Catonotus*] sp.); Lee County Cave isopod (*Lirceus usdagalun*); harperella (*Ptilimnium nodosum*); running buffalo clover (*Trifolium stoloniferum*); sandplain gerardia (*Agalinis acuta*); shale barren rock-cress (*Arabis serotina*); and smooth coneflower (*Echinacea laevigata*) for the purpose of scientific research and enhancement of propagation or survival of the species as prescribed by Service recovery documents.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, and must be received by the Regional Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Phone: (413) 253–8627; FAX: (413) 253–8482.

Ralf Pisapia,

Assistant Regional Director, Ecological Services.

[FR Doc. 94–14022 Filed 6–8–94; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[920–4210–06; NMNM 022486]

Notice of Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, proposes that a 1,265.42-acre withdrawal for the Bear Springs, Bland, La Cueva, Las Conchas, Sulphur Flat, Borrego Ranger Station, and San Ceronimo Administrative Sites; Cerro Pelado Lookout; Horseshoe Springs Recreation Area; and Paliza Recreation Area, all in the Sante Fe National Forest, continue for an additional 20 years. The lands

will remain closed to mining, but will be opened to such forms of disposition as may by law be made of the National Forest System lands, and have been and will remain open to mineral leasing.

DATES: Comments should be received by September 7, 1994.

ADDRESSES: Comments should be sent to State Director, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505–438–7502.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, 505–438–7594.

SUPPLEMENTARY INFORMATION: The United States Department of Agriculture, Forest Service, proposes that the existing land withdrawal made by Public Land Order No. 1515 be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988).

The lands are described as follows:

New Mexico Principal Meridian

Santa Fe National Forest

Paliza Recreation Area (466.19 acres)
T. 17 N., R. 3 E.,
Sec. 9, S½ of lot 1;
Sec. 10, S½ of lot 1;
Sec. 15, lot 3 and SW¼NW¼;
Sec. 16, lot 1, S½NE¼, NE¼SW¼, S½SW¼, and N½SE¼;
Sec. 21, lots 3 and 4.

Sulphur Flat Administrative Site (223.85 acres)
T. 19 N., R. 3 E.,
Sec. 16, lots 1, 2, and SW¼.

Horseshoe Springs Recreation Area (150 acres)
T. 19 N., R. 3 E.,
Sec. 18, E½NE¼NE¼, E½W½NE¼NE¼, SE¼NE¼SW¼NE¼, NE¼SE¼SW¼NE¼, S½SE¼SW¼NE¼, SE¼NE¼, NE¼SE¼, N½NE¼NW¼SE¼, SE¼NE¼NW¼SE¼, and NE¼SE¼NW¼SE¼;
Sec. 17, W½NW¼NW¼.

La Cueva Administrative Site (65.49 acres)
T. 19 N., R. 3 E.,
Sec. 20, lots 7 and 8.

Bear Springs Administrative Site (130 acres)
T. 17 N., R. 4 E.,
Sec. 29, S½ of lot 3, lot 4, NE¼SW¼SW¼, N½SE¼SW¼, SE¼SE¼SW¼, and W½SW¼SE¼.

Las Conchas Administrative Site (59.89 acres)
T. 18 N., R. 4 E.,
Sec. 3, lots 16 and 27.

Cerro Pelado Lookout (160 acres)
T. 18 N., R. 4 E.,
Sec. 19, NE¼.

Bland Administrative Site (10 acres)
T. 18 N., R. 4 E.,
Sec. 25, SE¼SW¼SE¼NW¼, SW¼SE¼SE¼NW¼, NE¼NW¼NE¼SW¼, and NW¼NE¼NE¼SW¼.

The areas described aggregate 1,265.42 acres in Sandoval County.

The purpose of the withdrawal is to protect the Bear Springs, Bland, La Cueva, Las Conchas, Sulphur Flat, Borrego Ranger Station, and San Geronimo Administrative Sites; Cerro Pelado Lookout; Horseshoe Springs Recreation Area; and Paliza Recreation Area, all in the Santa Fe National Forest. The withdrawal segregates the lands from settlement, sale, location, and entry, including location and entry under the mining laws, but not the mineral leasing laws. No change is proposed in the purpose of the withdrawal, but the lands will be opened to such forms of disposition as may by law be made of the National Forest System lands.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: May 31, 1994.

Frank Splendoria,

Acting Associate State Director.

[FR Doc. 94–14043 Filed 6–8–94; 8:45 am]

BILLING CODE 4310–FB–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0099), Washington, DC 20503, telephone 202–395–7340.

Title: Maintenance of State Programs and Procedures for Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs 30 CFR Part 733.

OMB Number: 1029–0099

Abstract: This information collection requirement allows any interested person to request that OSM evaluate an approved State program.

Bureau Form Number: 1029–0099.

Frequency: On Occasion

Description of Respondents: Any interested person (individuals, businesses, institutions, organizations)

Annual Responses: 3

Annual Burden Hours: 495

Estimated Completion Time: 165 hours

Bureau clearance officer: John A Trelease (202) 343–1475

Dated: April 22, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis

[FR Doc. 94–14060 Filed 6–8–94; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–355]

Certain Vehicle Security Systems and Components Thereof; Decision Not To Review an Initial Determination Terminating Investigation Based on a Summary Determination of Patent Invalidity and To Affirm the Presiding Administrative Law Judge's Decision Not To Terminate the Investigation Based Upon Complainant's Withdrawal of its Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 18) issued on April 19, 1994, by the presiding administrative law judge (ALJ) in the above-captioned investigation terminating the investigation based on summary determination of patent invalidity. The Commission also determined to affirm the ALJ's denial of complainant's motion to terminate the investigation based upon withdrawal of its complaint

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3105.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation, sale for importation, and sale after importation of certain vehicle security systems and components thereof, on August 25, 1993. Complainant Code-Alarm, Inc. ("Code-Alarm") alleged infringement of claims 1–16 of U.S. Letters Patent 5,049,867 (the '867 patent). The complaint named four respondents: Audiovox Corp. ("Audiovox"); Directed Electronics Inc. ("Directed"); Magnadyne Corporation ("Magnadyne") and Nutek Corporation ("Nutek"). On January 3, 1994, Code-Alarm and Audiovox filed a joint motion to terminate the investigation with respect to Audiovox on the basis of a license agreement, and the ALJ granted that motion in an ID that was not reviewed by the Commission. 59 FR 11308 (March 10, 1994).

On September 3, 1993, respondent Directed Electronics Inc. ("Directed") filed a motion for summary determination of the investigation on the ground that the '867 patent is invalid under 35 U.S.C. 102(b) by reason of an on-sale bar. Respondents Magnadyne and Nutek subsequently joined in Directed's motion. Code-Alarm and the Commission investigative attorney (IA) opposed the motion for summary determination.

After discovery and the filing of pre-hearing statements, and six days before the trial before the ALJ was to begin, Code-Alarm filed a motion to terminate the investigation based upon withdrawal of its complaint. Respondents filed an opposition to Code-Alarm's motion to terminate, and the IA filed a response supporting a motion to terminate with prejudice.

On February 7, 1994, the ALJ issued an order (Order No. 16) denying the motion to terminate as of that time, pending resolution of issues raised by the motion for summary determination and other outstanding motions. The ALJ postponed the trial and a set schedule for supplemental briefing regarding Directed's motion for summary determination. The parties thereafter filed supplemental documents regarding the motion for summary determination, in which they maintained their original positions. On April 19, 1994, the ALJ denied Code-Alarm's motion to terminate the investigation based on withdrawal of its complaint and issued an ID (Order No. 18) terminating the investigation based on summary determination of invalidity based on an on-sale bar.

Code-Alarm petitioned for review of the ID and appealed the ALJ's denial of its motion for termination of the investigation based on withdrawal of its complaint. The IA petitioned for review of the ID granting summary determination. Respondents filed an opposition to both petitions. Respondents and the IA filed responses in opposition to Code-Alarm's appeal of the denial of the motion to terminate based upon withdrawal of the complaint. Respondents also filed a motion to strike Code-Alarm's petition for review and a conditional opposition to notices of withdrawal filed by Code-Alarm's outside counsel. Respondents' motion to strike was denied by the Commission, and the Commission allowed complainant's outside counsel to withdraw from representing complainant notwithstanding respondents' conditional opposition.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.53 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.53.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: June 3, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–14072 Filed 6–8–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32513]

Missouri Pacific Railroad Company—Trackage Rights Exemption—Northeast Kansas & Missouri Division, Mid-Michigan Railroad Company, Inc.

Northeast Kansas & Missouri Division, Mid-Michigan Railroad Company, Inc., has agreed to grant overhead trackage rights to Missouri Pacific Railroad Company over approximately 65 miles of rail line from milepost 42.7 at Hiawatha, KS, to milepost 107.7 at Upland, KS, in Brown, Nemaha and Marshall Counties, KS. The trackage rights were to become effective on or after May 27, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer, General Attorney, 1416 Dodge Street, Omaha, NE 68179.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 2, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–14036 Filed 6–8–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32512]

Union Pacific Railroad Company—Trackage Rights Exemption—Northeast Kansas & Missouri Division, Mid-Michigan Railroad Company, Inc.

Northeast Kansas & Missouri Division, Mid-Michigan Railroad Company, Inc., has agreed to grant overhead trackage rights to Union Pacific Railroad Company over approximately 65 miles of rail line from milepost 42.7 at Hiawatha, KS, to milepost 107.7 at Upland, KS, in Brown, Nemaha and Marshall Counties, KS. The trackage rights were to become effective on or after May 27, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false

or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer, General Attorney, 1416 Dodge Street, Omaha, NE 68179.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 2, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–14035 Filed 6–8–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States and Commonwealth of Pennsylvania* v. *Delaware Regional Water Quality Control Authority*, Civil Action No. 91–2787, was lodged on May 24, 1994 with the United States District Court for the Eastern District of Pennsylvania.

The Consent Decree concerns violations of the Federal Water Pollution Control Act (also known as the "Clean Water Act"), 33 U.S.C. 1251 *et seq.*, and the Pennsylvania Clean Streams Law, 35 P.S. § 691.2 *et seq.*, at the defendant's publicly-owned municipal and residential wastewater treatment plant located in Chester, Pennsylvania.

The complaint in this action alleged that, from 1986–91, the defendant discharged pollutants into the Delaware River in excess of several of the effluent limitations established in its National Pollutant Discharge Elimination system ("NPDES") permit; discharged, on several occasions, untreated wastewater into tributaries of the Delaware River; failed to operate all of its facilities and equipment as required by its permit; and failed to comply with certain sampling and reporting requirements of its permit. The proposed Consent Decree requires defendant to comply fully with all terms and conditions of its NPDES permit, to construct and operate an additional secondary clarifier at its plant by May 1, 1997, and to pay a civil penalty of $350,000, plus interest that has accrued on that sum since May 1992.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States and Commonwealth of Pennsylvania* v. *Delaware Regional Water Quality Control Authority* (E.D. Pa.), DOJ Ref. # 90–5–1–1–3445.

The proposed consent decree may be examined at the office of the United States Attorney, 615 Chestnut Street, suite 1300, Philadelphia, Pennsylvania 19106; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–13953 Filed 6–8–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Madison, Florida and State of Florida*, Civil Action No. *TCA–94–40220*, was lodged on May 16, 1994 with the United States District Court for the Northern District of Florida (Tallahassee Division).

The proposed consent decree resolves the United States' civil claims against the City of Madison ("City") and the State of Florida for violations of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1311 and 1342, resulting from the discharge of pollutants from the City's wastewater treatment plant, in violation of the City's National Pollutant Discharge Elimination System ("NPDES") Permit. The proposed consent decree requires that the City pay the United States $100,000 in civil penalties for past violations of the Clean Water Act and provides for stipulated civil penalties to be paid for any failure by the City to comply with its NPDES Permit limitations in the future.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Madison, and State of Florida*, DOJ Ref. #90–5–1–1–3938.

The proposed consent decree may be examined at the office of the United States Attorney, 315 S. Calhoun Street, suite 510, Tallahassee, Florida 32301; the Region IV Office of the Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–13949 Filed 6–8–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Sun Company, Inc (R&M) and Atlantic Refining & Marketing Corp.*, Civil Action No. 94-CV-3246, was lodged on May 26, 1994 with the United States District Court for the Eastern District of Pennsylvania. The Consent Decree settles an action brought under Section 113 of the Clean Air Act (the "Act"), 42 U.S.C. 7413, seeking an injunction and civil penalties for defendants' violations of (1) procedural and substantive requirements imposed by Pennsylvania's implementation plan (SIP) enacted pursuant to Section 110 of the Act; 42 U.S.C. 7410; (2) the Prevention of Significant Deterioration

(PSD) requirements of 42 U.S.C. 7470, *et. seq.*, and the regulations promulgated thereunder; and (3) the New Source Performance Standards (NSPS) promulgated pursuant to 42 U.S.C. 7411. Pursuant to the Consent Decree, defendants have agreed to pay a civil penalty of $1.4 million and undertake certain corrective actions directed towards reducing emissions of nitrogen oxides, sulfur dioxide and particulate matter.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Sun Company, Inc., et. al.*, DOJ Ref. #90-5-2-1-1744.

The proposed consent decree may be examined at the office of the United States Attorney, 615 Chestnut Street, Twelfth Floor, Philadelphia, PA 19106; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94-13952 Filed 6-8-94; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 87–94]

Privacy Act of 1974; Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Drug Enforcement Administration (DEA) proposes to modify an existing system of records entitled, "Investigative Reporting and Filing System (IRFS), Justice/DEA–008."

The DEA proposes to modify its IRFS system which covers drug enforcement-related records to (1) more clearly describe the categories of individuals covered by the system and the categories of records in the system, (2) provide specificity with respect to the routine uses of the information in the system, (3) remove unnecessary exemptions, (4) more accurately respond to other notice captions, in particular those captions identified as "Retrievability," and "Retention and Disposal," and (5) reflect that an automated index, containing limited, unclassified data, will be available to Federal Law enforcement agencies. The index will assist these agencies in determining whether DEA may have a more detailed record which is relevant to their law enforcement responsibilities, and which may be made available to them upon request.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30–day period in which to comment on the new routine uses of a system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires that it be given a 40-day period in which to review this system.

Therefore, please submit any comments by July 11, 1994. The public, OMB and the Congress are invited to send written comments to Patricia E. Neely, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

A description of the modified system of records is provided below. In addition, the Department has provided a report to OMB and the Congress in accordance with 5 U.S.C. 552a(r).

Dated: June 3, 1994.

Stephen R. Colgate,

Assistant Attorney General for Administration

SYSTEM NAME:

Investigative Reporting and Filing System, Justice/DEA–008.

SYSTEM LOCATION:

Drug Enforcement Administration; 700 Army Navy Drive, Arlington, VA 22202; and field offices. For field office addresses, see appendix identified as "DEA Appendix—List of Record Location Addresses, Justice/DEA–999."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Drug offenders

B. Alleged drug offenders; and

C. Persons suspected of drug offenses.

D. Defendants.

Such individuals may include individuals registered with DEA and responsible for the handling, dispensing, or manufacturing of controlled substances under the Comprehensive Drug Abuse Prevention and Control Act of 1970.

CATEGORIES OF RECORDS IN THE SYSTEM:

Subpart A:

Subpart A is (1) a manual index (which serves as a backup to the automated index described in subpart B) and (2) paper case file records consisting of: Criminal Investigative Files; Regulatory Audit and Investigatory Files; and General Investigative Files. These files may include investigative and confidential informant reports and all documented findings and investigative "lead" information relative to preregistrant inspections, investigations, targeted conspiracies, and trafficking situations, etc. The reports pertain to the full range of DEA criminal drug enforcement and regulatory investigative functions that emanate from the Comprehensive Drug Prevention and Control Act of 1970.

For example, records in the Criminal Investigative Case Files may include a systematic gathering of information targeted on an individual or group of individuals operating in illegal drugs either in the United States or internationally; reports on individuals suspected or convicted of narcotics violations; reports of arrests; information on drug possession, sales, and purchases by such individuals; and information on the transport of such drugs, either inside the United States or internationally, by such individuals. Records in the Regulatory Audit and Investigatory Files may include similar investigative reports regarding those individuals specifically identified under item C. of the "Categories of Individuals Covered by the System." Records in the General Investigative Files may generally include fragmentary or low priority information on an individual which is not significant enough to open a case file.

Subpart B:

Subpart B is an automated index containing limited, summary-type data which are extracted from and which point to the case files described in subpart A above. Examples of such data include: Record number; subject name (person, business, vessel), aliases and soundex; personal data; (occupation(s), race, sex, date and place of birth, height, weight, hair color, eye color, citizenship, nationality/ethnicity, alien status); special considerations (fugitive, armed/dangerous); resident and criminal address (business and personal); miscellaneous numbers (telephone, passport, drivers license, vehicles registration, social security number, etc.); relevant case file numbers, with indicators for active investigations; date/stamp (event) data

(Subpart B will contain no classified information.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained to enable DEA to carry out its assigned law enforcement and criminal regulatory functions under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91–513), Reorganization Plan No. 2 of 1973, and Title 21 United States Code; and to fulfill United States obligations under the Single Convention on Narcotic Drugs.

PURPOSE:

The records in this system have been compiled for the purpose of identifying, apprehending, and prosecuting individuals connected in any way with the illegal manufacture, distribution, or use of drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant records or any relevant facts derived therefrom may be disclosed to:

(1) Other Federal, State, local, and foreign law enforcement and regulatory agencies, and components thereof, to support their role in the detection and monitoring of the distribution of illegal drugs in the United States or such other roles in support of counterdrug law enforcement as may be permitted by law; direct, electronic, "read only" access by Federal law enforcement agencies only to subpart B of this system of records may be permitted to enable these agencies to: (i) Identify DEA law enforcement information or activities which may be relevant to their law enforcement responsibilities and, where such information or activities is identified, request access to the underlying case files records described in subpart A, and (ii) ensure appropriate coordination of such activities with DEA; (2) Other Federal, State, local, and foreign law enforcement and regulatory agencies, and components thereof, to the extent necessary to elicit information pertinent to counter-drug law enforcement; (3) Foreign law enforcement agencies through the Department of State (with whom DEA maintains liaison), and agencies of the U.S. foreign intelligence community to further the efforts of those agencies with respect to the national security and foreign affairs aspects of international drug trafficking; (4) individuals and organizations in the course of investigations to the extent necessary to elicit information about suspected or known illegal drug violators; (5) Federal and state regulatory agencies responsible for the licensing or certification of individuals in the fields of pharmacy and medicine to assist them in carrying out such licensing or certification functions; (6) any person or entity to the extent necessary to prevent an imminent or potential crime which directly threatens loss of life or serious bodily injury; (7) news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (8) a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; (9) National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906; and (10) to a court or adjudicative body before which DEA is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by DEA to be arguably relevant to the litigation: (i) DEA, or any subdivision thereof, or (ii) any employee of DEA in his or her official capacity, or (iii) any employee of DEA in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (iv) the United States, where DEA determines that the litigation is likely to affect it or any of its subdivisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records described in subpart A of the "Categories of Records in the System" are maintained on standard index cards and in standard file folders at DEA Headquarters and field offices. Records described in subpart B are stored on a computer database at the DEA and on a mainframe at the Department of Justice Computer Center.

Retrievability:

Information will be retrieved by accessing either the manual or automated index by name and by cross-referencing the name with a number assigned to the case file. In addition to other Federal law enforcement agencies (reference routine use a. above), the law enforcement components of the Department of Justice may have direct, electronic, "read only" access (under subsection (b)(1) of the Privacy Act) to subpart B of the "Categories of Records in the System/" These data will assist DOJ law enforcement components in identifying whether there may be detailed records which reside in subpart A of this system of records that may be relevant to their law enforcement responsibilities. Where such records are identified, DOJ law enforcement components may request access.

Safeguards:

Access is limited to designated employees with a need-to-know. All records are stored in a secure area of a secure building. In addition to controlled access to the building, the areas where records are kept are either attended by responsible DEA employees, guarded by security guard, and/or protected by electronic surveillance and/or alarm systems, as appropriated. In addition, paper records, including the manual index, are in locked files during off-duty hours and unauthorized access to the automated index is also prevented through state-of-the-art technology such as encryption and multiple user ID's and passwords.

RETENTION AND DISPOSAL:

Paper records will be transferred to the Washington National Records Center 10 years after date of last entry; and destroyed 25 years after date of last entry. The related index will be deleted 25 years after date of last entry. Approval pending DEA records management and the NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Administrator, Operations Division, Drug Enforcement Administration, Freedom of Information Section, Washington, D.C. 20537.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to: Drug Enforcement Administration, Freedom of Information Section, Washington, D.C. 20537.

RECORD ACCESS PROCEDURE:

Same as above.

CONTESTING RECORDS PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

(a) DEA personnel, (b) Confidential informants, witnesses and other cooperating individuals, (c) Suspects and defendants, (d) Federal, State and local law enforcement and regulatory agencies, (e) foreign law enforcement agencies, (f) business records by subpoena, and (g) drug and chemical companies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(5) and (8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2). In addition, the system has been exempted from subsections (c)(3), (d), and (e)(1), pursuant to subsection (k)(1). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 94-14013 Filed 6-[illegible]-94; 8:45 am]

BILLING CODE 4410-09

[AAG/A Order No. 89-94]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Investigation (FBI) proposes to describe a separate system of records entitled, "FBI Counterdrug Information Indices System" (CIIS) (JUSTICE/FBI-016).

The newly described FBI system reflects that automated indices, containing limited data, will be available to Federal law enforcement agencies. The indices will assist these agencies in determining whether the FBI may have a more detailed record which is relevant to their law enforcement responsibilities, and which may be made available to them upon request.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30-day period in which to comment on the new routine uses of a system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires that it be given a 40-day period in which to review these systems.

Therefore, please submit any comments by July 11, 1994. The public, OMB and the Congress are invited to send written comments to Patricia E. Neely, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 850, WCTR Building).

A description of the system of records is provided below. In addition, the Department has provided a report to OMB and the Congress in accordance with 5 U.S.C. 552a(r).

Dated: June 3, 1994.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/FBI-015

SYSTEM NAME:

FBI Counterdrug Information Indices System (CIIS) (JUSTICE/FBI-016)

SYSTEM LOCATION:

The Department of Justice (DOJ) Computer Center, Rockville, Maryland, and at FBI Headquarters, Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who relate in any manner to official FBI drug law enforcement investigations including, but not limited to, subjects, suspects, victims, witnesses, and close relatives and associates who are relevant to an investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system will consist of automated indices to information located in drug law enforcement case files of the FBI. Examples of the case files include those concerning the distribution of controlled substances, continuing criminal enterprises, racketeering enterprises, Organized Crime Drug Enforcement Task Forces cases, and organized crime-drug intelligence cases.

These automated indices contain limited summary type data extracted from the case files. These indices will serve as a pointer system to FBI case files containing drug law enforcement information; but the system does not contain the case files themselves. Access to the case file information must be gained by separate contact with the appropriate FBI office, outside this system, after the system has been queried. The system will facilitate better exchange of drug law enforcement information between and among the FBI and DEA, and such other law enforcement agencies as may participate in the counterdrug investigative information sharing program which this system serves.

Only specified data fields from these records will be provided. Examples of data fields included are name, case file number, race, sex, name identifiers (alias, true-name, main, reference, individual, non-individual), locality indicators, date of birth, place of birth, ID numbers, addresses, violation codes, investigative classification, and office of origin. Data fields from cases also include status, date case was opened, date case was closed, and point-of-contact information such as squad assigned, and auxiliary office. Additional point-of-contact information will be provided via a table of field offices and telephone numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system is found at 28 U.S.C. 534, and 44 U.S.C. 3101.

PURPOSE:

The records in this system have been compiled for the purpose of identifying, apprehending, and prosecuting individuals connected in any way with the manufacture, distribution, and use of illegal drugs. The system, by promoting the enhanced sharing of drug intelligence, is intended to facilitate enhanced cooperation between and among the FBI and DEA and such other law enforcement agencies as may participate in the drug law enforcement information sharing program it serves, eliminate duplication of efforts, and enhance the safety of law enforcement personnel who conduct these inherently dangerous investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

System records or any pertinent information derived therefrom may be disclosed (through electronic or other means in the case of participating Federal law enforcement agencies, and through other, non-electronic means as appropriate in other cases) to:

(1) Federal, state, local, and foreign law enforcement agencies, and components thereof, to support their role in the detection and monitoring of the distribution of illegal drugs in the United States or such other roles in support of counterdrug law enforcement as may be permitted by law; direct, electronic, "read only" access, by Federal law enforcement agencies only, to the automated indices of this system of records may enable these agencies to: (i) Identify FBI law enforcement information or activities which may be relevant to their law enforcement responsibilities and, where such information or activities are identified, request access to information in FBI case files relating to drug law enforcement, and (ii) ensure appropriate coordination of such activities with the FBI;

(2) Federal, state, local, and foreign law enforcement agencies, and components thereof, to the extent necessary to elicit information pertinent to counterdrug law enforcement;

(3) Foreign law enforcement agencies with whom the FBI maintains liaison, and agencies of the U.S. foreign

intelligence community to further the efforts of those agencies with respect to the national security and foreign affairs aspects of international drug trafficking;

(4) Individuals and organizations in the course of investigations to the extent necessary to elicit information pertinent to counterdrug law enforcement;

(5) Any person, organization, or entity within the private or public sector, domestic or foreign, to the extent necessary to prevent an imminent or potential crime which could or does directly threaten loss of life, serious injury, or serious loss of property;

(6) The news media and/or the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(7) A Member of Congress or staff acting upon the Member's behalf, when the Member or staff requests the information on behalf of and at the specific request of the individual who is the subject of the record;

(8) National Archives and Records Administration and the General Services Administration for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906; and

(9) To a court or adjudicative body before which the FBI is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the FBI to be arguably necessary to the litigation: (i) The FBI, or any subdivision thereof, or (ii) any employee of the FBI in his or her official capacity, or (iii) any employee of the FBI in his or her individual capacity where the DOJ has agreed to represent the employees, or (iv) the United States, where the FBI determines that the litigation is likely to affect it or any of its subdivisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING AND RECORDS IN THE SYSTEM:

STORAGE:

Records described in this system are stored on a mainframe computer at the DOJ Computer Center, and on back-up storage devices at FBI Headquarters, which are accessible by the FBI.

RETRIEVABILITY:

Information in the automated indices will be retrieved by name or other unique identifier. In addition to other Federal law enforcement agencies (reference routine use above), the law enforcement components of the DOJ may have direct, electronic, "read only" access (under subsection (b)(1) of the Privacy Act) to this system. This data will assist DOJ law enforcement components in identifying whether there may be detailed records which reside in the case files of the FBI that may be relevant to their law enforcement responsibilities. Where such records are identified, DOJ law enforcement components may request access to them.

SAFEGUARDS:

Access is limited to designated agency employees with a need-to-know. All records are stored in a secure area of a secure building. In addition to controlled access to the building, the areas where records are kept are either attended by responsible employees, guarded by security personnel, and/or protected by electronic surveillance and/or alarm systems, as appropriate. In addition, unauthorized access to the automated indices is also prevented through state-of-the-art technology such as encryption and user ID's and multiple passwords.

RETENTION AND DISPOSAL:

The automated indices in this system relate to case files which are characterized as either permanent or temporary, governed by NARA criteria in making such assessments. Depending on the nature of the case files to which they relate, the automated indices in this system will be retained permanently or disposed of in accordance with the FBI Records Disposition Schedule developed jointly by NARA and the FBI and approved by the United States District Court for the District of Columbia, Washington, DC.

SYSTEMS MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, Washington, DC 20535.

NOTIFICATION PROCEDURE:

Inquires should be addressed to: Federal Bureau of Investigation, Freedom of Information/Privacy Acts Section, 9th Street and Pennsylvania Avenue, NW., Washington, DC 20535

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORDS PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

The data maintained in the automated indices in this system is derived from information in FBI drug law enforcement related case files, which are not part of this system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

[FR Doc. 94–14011 Filed 6–8–94; 8:45 am]

BILLING CODE 4410–02

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993 the Compressor Crankshaft Failure Control Survey Project

Notice is hereby given that, on May 13, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are CNG Transmission Corporation, Clarksburg, WV; Consumers Power Company, Jackson, MI; El Paso Natural Gas Company, El Paso, TX; Natural Gas Pipeline Company of America, Lombard, IL; Southern California Gas Company, Los Angeles, CA; Southern Natural Gas Company, Birmingham, AL; and Tennessee Gas Pipeline Company, Houston, TX. The general area of planned activity include studying the industry's experiences in failures of reciprocating compressor crankshafts by developing a survey designed to document the causes and costs of recent crankshaft failures and assembling responses to the survey; preparing a database based on the survey responses and analyzing the data; and producing a list of potential solutions and a technical plan addressing the problem and presenting the plan to the industry for implementation.

Membership in this venture remains open, and SwRI intends to file

additional written notification disclosing all changes in membership.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–13948 Filed 6–8–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—"Ultra Low Emission Engine Program"

Notice is hereby given that, on May 13, 1994 pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SWRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Suzuki Motor Corporation, Engine Design Division and Toyota Motor Corporation have withdrawn from participation; and the period of performance has been extended for one year to September 30, 1994.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI intends to file additional written notification disclosing all changes in membership.

On November 13, 1991, SwRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 9, 1991, 56 FR 64276.

This last notification was filed with the Department on April 1, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 1993, 58 FR 21318.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–13951 Filed 6–8–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Correction—Lonza Riverside

In the **Federal Register** (FR Doc. 94–7735) Vol. 59, No. 63 at page 15459, April 1, 1994, controlled substance Amphetamine (1100) should have been listed instead of Methamphetamine (1105).

Dated: May 23, 1994

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–13399 Filed 6–8–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

- The Agency of the Department issuing this recordkeeping/reporting requirement.
- The title of the recordkeeping/reporting requirement.
- The OMB and/or Agency identification numbers, if applicable.
- How often the recordkeeping/reporting requirement is needed.
- Whether small businesses or organizations are affected.
- An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
- The number of forms in the request for approval, if applicable.
- An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–7316).

Any member of the public who wants to comment on recordkeeping/ reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

OSHA

Ethylene Oxide

1218–0108

On Occasion

Businesses or other for profit; small businesses or organizations 96 respondents; .09 hours per response; 9 total hours; 0 forms. The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with the occupational exposure to ethylene oxide. The standard requires employers to allow OSHA to have access to various records to ensure that employers are complying with disclosure provisions of the standard.

The standard also requires that employers contact the National Institute for Occupational Safety and Health (NIOSH) when there is no successor to receive or retain the records for the prescribed period of time. Employers may be required to submit their records to NIOSH.

	Proposed total burden hours
Federal Records Access	8
Federal Records Transfer	1
Total	9

Extension

Employment and Training Administration

Nonmonetary Determinations Report

1205–0150; ETA 207

Form	Affected public	Respondents	Frequency	Avg time per response (minutes)
ETA 207 ...	State Govt	53	4	244
ETA 207 ...	Local Govt	3	4	244

910 total hours.

Data are used to monitor the impact of the disqualification provisions, to measure workload, and to appraise adequacy and effectiveness of State and Federal nonmonetary determination procedures.

Reinstatement

Occupational Safety and Health Administration

Initial and Renewal Application for Training and Education Grant
1218–0020; OSHA–177
Ongoing
Non-profit institutions
150 respondents; 56 hours per response: 8,400 total hours

The OSHA Form 177 is used as the basis for the grant award. OSHA staff selects organizations for grant awards which demonstrate in the application that they can effectively carry out the objectives of the program.

Extension

Employment Standards Administration
29 CFR 570.35a—Work Experience and Career Exploration Programs
1215–0121
Biennially
Individuals or households: State or local governments

Requirement	Respondents	Number of responses	Avg time per response
Reporting	6	1	1 hour
Recordkeeping (recording)	12	1	1 hour.
Recordkeeping (filing)	12	1000	½ minute.

118 total hours.

Signed at Washington, DC, this 3rd day of June, 1994.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94–14038 Filed 6–8–94; 8:45 am]

BILLING CODE 4510–26–P

Office of the American Workplace

Secretary of Labor's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation; Establishment

In accordance with the provisions of the Federal Advisory Committee Act and Office of Management and Budget Circular A–63 of March 1974, and after consultation with GSA, the Secretary of Labor has determined that the establishment of the Task Force on Excellence in State and Local Government through Labor-Management Cooperation is in the public interest.

The Task Force will investigate the current state of labor-management cooperation in State and local government and report back to the Secretary in response to the following questions:

1. What, if any, new methods or institutions should be encouraged or required to enhance the quality, productivity and cost-effectiveness of public sector services through labor-management cooperation and employee participation, recognizing the broad variety of functions performed by different levels of government and various other agencies and public organizations?

2. What, if any, changes to legal frameworks which impact on labor-management relations, including, collective bargaining and civil service legislation could be considered to enhance cooperative behaviors that would improve the delivery of services by reducing conflict, duplication and delays?

3. What, if any, should be done to increase the extent to which workplace problems are resolved directly by the parties themselves rather than through recourse to administrative bodies and the courts?

4. What, if anything, can be done to improve the coordination between appropriate executive and legislative bodies to enhance labor-management relations in the public sector and to create a climate where productivity improvement, innovation and risk taking are encouraged and rewarded?

5. What conditions are necessary to enable elected political leaders, public managers, public employees and labor organizations to work together to achieve excellence in state and local government? What are the obstacles, and how can they be overcome?

6. What examples of successful cooperative efforts are appropriate to serve as public sector models? Why have some initially successful efforts failed, and what can be done to enhance prospects for success?

The Task Force will be composed of up to 15 members representing the viewpoints of labor, management, agencies which administer collective bargaining laws covering State and local government employees, labor relations neutrals and the public.

The Task Force will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of the Secretary of Labor's Task Force on Excellence in State and Local Government through Labor-Management Cooperation. Such comments should be addressed to Charles Richards, U.S. Department of Labor, 200 Constitution Avenue NW., room S2302, Washington, DC 20210.

Signed at Washington, DC, this 26th day of May 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–14037 Filed 6–8–94; 8:45 am]

BILLING CODE 4510–85–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before July 11, 1994.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room 3002, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., room 310, Washington, DC 20506 (202) 606–8494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: New Collection.
Title: Generic Clearance Authority for the National Endowment for the Humanities.
Form Number: Not applicable.
Frequency of Collection: On occasion.
Respondents: Applicants for NEH support, NEH grantees, NEH panelists and reviewers.
Use: Application for NEH Grant Programs, Reporting Forms for NEH Grantees, Panelists and Reviewers and Program Evaluation.
Estimated Number of Respondents: 73,805.
Frequency of Response: Various.
Estimated Hours for Respondents to Provide Information: 4.4386 hours per respondent.
Estimated Total Annual Reporting and Recordkeeping Burden: 327,596 hours.

Juan Mestas,
Deputy Chairman.

[FR Doc. 94–13938 Filed 6–8–94; 8:45 am]
BILLING CODE 7536–01–M

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Overview/Special Projects Section) to the National Council on the Arts will be held on June 28–29, 1994. The panel will meet from 9:30 a.m. to 5 p.m. on June 28, 1994 and from 9 a.m. to 5 p.m. on June 29, 1994. This meeting will be held in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on June 28, 1994 from 1 p.m. to 5 p.m. and on June 29, 1994 from 9 a.m. to 5 p.m. to review and discuss current Arts in Education program efforts and to make recommendations to the Arts in Education Program.

The remaining portion of this meeting from 9:30 a.m. to 12 p.m. on June 28, 1994 is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994. This session will be closed to the public pursuant to subsection (c) (4), (6), and 9(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: June 3, 1994.

Yvonne M. Sabine,
Director, Office of Panel Operations, National Endowments for the Arts.

[FR Doc. 94–14039 Filed 6–8–94; 8:45 am]
BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel, Bioengineering and Environmental Systems.
Date and Time: June 30, 1994, 8:30 am–5 pm.
Place: Conference Room 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Fred G. Heineken, Program Director, BES, room 565, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA. 22230, Telephone: (703) 306–1319.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: to review and evaluate proposals for Bioengineering and Environmental Systems as part of the selection process for group awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the government in the Sunshine Act.

Dated: June 6, 1994.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 94–14063 Filed 6–8–94; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communication Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communication Systems (#1196).
Date and Time: June 27–28, 1994, 8:30 a.m. to 5 p.m.
Place: National Science Foundation, room 530.
Type of Meeting: Closed.
Contact Person: Dr. Radhikishan Baheti, Program Director, Systems Theory, Division of Electrical and Communication Systems, Room 530, NSF, 4201 Wilson Blvd., Arlington, VA 22230, Phone (703) 306–1339.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b. (c)(4) and (6) the Government in the Sunshine Act.

Dated: June 6, 1994.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 94–14062 Filed 6–8–94; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical & Communication Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical & Communication System.
Date and Time: June 28–29 8 am–5 pm.
Place: National Science Foundation, 4201 Wilson Blvd., Room 530, Arlington, Virginia 22230.
Contact Person: Dr. George Lea, Program Director, ECS, room 675, National Science Foundation, 4201 Wilson Blvd.
Telephone: 703/306–1339.
Type of Meeting: Closed.
Purpose of: To provide advice and recommendations concerning proposals.
Meeting: submitted to NSF for financial support.
Agenda: To review concept papers submitted to NSF for possible later proposal submissions (National Challenge Groups—Fiscal Year 1994).
Reason for Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C.552b(c)(4) and (6) of the Government Sunshine Act.

Dated: June 6, 1994.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 94–14066 Filed 6–8–94; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Science & Technology Infrastructure; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Science & Technology Infrastructure.
Date and Time: June 27–29, 1994, 8:30 am–5 pm.
Place: National Science Foundation, 4201 Wilson Blvd., rooms 375, 380, & 1235. Arlington, Virginia 22230.
Contact Person: Dr. Nathaniel Pitts, Director, Office of Science and Technology Infrastructure, room 1270, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.
Telephone: 703/306–1318.
Type of Meeting: Closed.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the facilities modernization component of the Academic Research Infrastructure Program.
Reason for Closing: The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 6, 1994.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 94–14065 Filed 6–8–94; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education.
Date and Time: June 29, 1994: 7:30 p.m. to 9 p.m., June 30, 1994: 8:30 a.m. to 5 p.m., July 01, 1994; 8:30 a.m. to 1 p.m
Place: Holiday Inn Arlington at Ballston, I–66 and Glebe Road, 4610 North Fairfax Drive, Arlington, VA 22203.
Type of Meeting: Closed
Contact Person: Dr. James Lightbourne, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1667.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate unsolicited proposals submitted to the Mathematical Sciences and Their Applications Throughout the Curriculum (CCD–MATH) Program Panel Meeting
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: June 6, 1994.

M. Rebecca Winkler,
Committee Management Officer

[FR Doc. 94–14064 Filed 6–8–94; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives:

New Appointees

James L. Blaha, Assistant for Operations, Office of the Executive Director for Operations
Frank J. Miraglia, Deputy Director, Office of Nuclear Reactor Regulation
Stephen G. Burns, Director, Office of Commission Appellate Adjudication
John B. Martin, Regional Administrator, Region III
Elizabeth Q. Ten Eyck, Deputy Director for Operations, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards
Bill M. Morris, Director, Division of Regulatory Application, Office of Nuclear Regulatory Research

In addition to the above new appointments, the following members are continuing on the PRB:

Jesse L. Funches, Deputy Controller, Office of the Controller
Francis P. Gillespie, Director, Program Management, Policy Development & Analysis Staff, Office of Nuclear Reactor Regulation

Martin Malsch, Deputy General Counsel for Licensing and Regulation, Office of the General Counsel
Luis A. Reyes, Deputy Administrator, Region II
John C. Hoyle, Assistant Secretary, Office of the Secretary

The following individuals are appointed as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Karen D. Cyr, Associate General Counsel, Office of the General Counsel
James L. Milhoan, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, Office of the Executive Director for Operations

In addition to the above new appointments, the following member will continue on the PRB Panel: Hugh L. Thompson, Jr., Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, Office of the Executive Director for Operations.

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

EFFECTIVE DATE: June 9, 1994.

FOR FURTHER INFORMATION CONTACT: James F. McDermott, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–4661.

Dated at Rockville, Maryland, this 27th day of May, 1994.

For the U.S. Nuclear Regulatory Commission.

James F. McDermott,

Secretary, Executive Resources Board.

[FR Doc. 94–14073 Filed 6–8–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

National Information Infrastructure; Public Meeting

AGENCY: Office of Management and Budget.

ACTION: Notice of public meeting.

SUMMARY: The Clinton Administration has announced a public meeting to promote the security, integrity, and reliability of information on the emerging National Information Infrastructure (NII) in Washington on July 15, 1994. The meeting is sponsored by the NII Security Issues Forum and the U.S. Advisory Council on the NII. The Forum was established under the auspices of the Information Infrastructure Task Force (IITF) by Ron Brown, Secretary of Commerce. The public is invited to appear before the IITF and members of the Advisory Council at this meeting.

DATES: Persons wishing to be on the program should submit a 1–2 page position statement and requests to appear by June 28, 1994.

ADDRESSES: Position statements and requests to appear should be sent to the NII Security Issues Forum—Public Meeting, c/o U.S. Treasury Department, 3090 Annex, Washington, DC 20220. Statements may also be submitted via fax to (202) 622–2057 or through electronic mail. The Internet address is NII.SECURITYT@REAS.SPRINT.COM, and the X.400 address is /PN=NII.SECURITY/PRMD=GOVT+TREAS/ADMD=TELEMAIL/C=US.

FOR FURTHER INFORMATION CONTACT: For further information regarding the Public Meeting, contact Mr. Marty Ferris, U.S. Treasury Department, at (202) 622–1110. For information regarding the NII Security Issues Forum, contact Ms. Virginia Huth, Office of Management and Budget, at (202) 395–3785.

SUPPLEMENTARY INFORMATION: The public meeting will be the first step of a dialogue with the Administration to assess the security needs and concerns of users, service providers, information providers, State, local and tribal governments and others.

"Americans will not use the NII to its full potential unless they trust that information will go where and when they want it and nowhere else," declared Sally Katzen, Administrator of the Office of Information Regulatory Affairs at OMB and chair of the Forum. "The Federal government is a primary user of the NII and thus a catalyst for change. Yet the NII will be designed, built, owned, operated, and used primarily by the private sector, making it essential that security on the NII be considered in partnership with the public."

The NII is envisioned as an advanced, digital network of networks that will allow individuals, businesses, government services providers, and others to send, receive, and share information, whether video, audio, text, or data, when and where they want it and at a reasonable cost. The U.S. Advisory Council represents industry, labor, academia, public interest groups, and state and local governments, and has identified security as a major concern.

Effective security will ensure the reliability of public networks especially during emergencies, the privacy of financial, health and other personal transmissions, the protection of intellectual property, the ability to send authenticated business messages, protection against the unauthorized interception of communications, and the integrity of financial transactions.

The public is invited to appear before the IITF and members of the Advisory Council at a public meeting to be held July 15, 1994, from 9 a.m. to 4 p.m. at the Commerce Department Auditorium in Washington, DC. Persons wishing to be on the program should submit a 1–2 page position statement and request to appear to the NII Security Issues Forum by June 28, 1994.

Position statements should address security needs from the point of view of a specific user sector or application of the NII such as health services, electronic mail, libraries, small business, education, manufacturing, environmental monitoring, electronic commerce, entertainment, electronic publishing, electronic data interchange, or government services.

Position statements should address three principal questions:

1. How will you use the NII?
2. What security exposures or risks are of concern to you?
3. What kinds of approaches should be taken to address these security concerns?

More information about the Clinton Administration's National Information Infrastructure initiative can be obtained from the IITF Secretariat. Inquiries may be directed to Yvette Barrett at (202) 482–1835, by e-mail to ybarrett@ntia.doc.gov, or by mail to U.S. Department of Commerce, IITF Secretariat, NTIA, Room 4892, Washington, DC, 20230.

For inquiries over the Internet to the IITF Gopher Server, gopher, telnet (login=gopher), or anonymous ftp to iitf.doc.gov. Access is also available over the World-Wide-Web. Questions may be addressed to nii@ntia.doc.gov.

For access by modem, dial (202) 501–1920 and set modem communication parameters at no parity, 8 data bits, and one stop (N,8,1). Modem speeds of up to 14,400 baud are supported.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 94–14080 Filed 6–8–94; 8:45 am]

BILLING CODE 3110–01–M

Standards for the Classification of Federal Data on Race and Ethnicity

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Information and Regulatory Affairs

ACTION: Advance Notice of Proposed Review and Possible Revision of OMB's Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting; and Announcement of Public Hearings on Directive No. 15.

SUMMARY: During the past few years, OMB's Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting, has come under increasing criticism. These standards are used governmentwide for recordkeeping, collection, and presentation of data on race and ethnicity in Federal statistical activities and program administrative reporting. Since the standards were first issued 17 years ago, citizens who report information about themselves and users of the information collected by Federal agencies have indicated that the categories set forth in Directive No. 15 are becoming less useful in reflecting the diversity of our Nation's population. Accordingly, OMB currently is undertaking a review of the racial and ethnic categories in the Directive. (See Appendix for the text of Directive No. 15.)

ISSUES FOR COMMENT: OMB is interested in receiving comments from the public on (1) the adequacy of the current categories, (2) principles that should govern any proposed revisions to the standards, and (3) specific suggestions for changes that have been offered by various individuals and organizations.

ADDRESS: Written comments on these issues may be addressed to Katherine K. Wallman, Chief, Statistical Policy, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC. 20503.

DATE: To ensure consideration, written comments must be provided to OMB on or before September 1, 1994.

PUBLIC HEARINGS: To provide additional opportunities to hear views from the public on Directive No. 15, OMB has scheduled a series of hearings, as follows:

Date/Time	Location
July 7, 1994 10:00 a.m.	Thomas P. O'Neill, Jr. Federal Building Auditorium 10 Causeway Street Boston, Massachusetts (Local arrangements contact: Harold Wood, Bureau of the Census Regional Office, (617) 424–0500)
July 11, 1994 10:00 a.m.	State Capitol Building Old Supreme Court Chambers 200 East Colfax Street Denver, Colorado (Local arrangements contact: Jerry O'Donnell, Bureau of the Census Regional Office, (303) 969–7750)
July 14, 1994 10:00 a.m.	Federal Reserve Bank of San Francisco Interpretive Center 101 Market Street San Francisco, California (Local arrangements contact: Vicki Cooper-Murphy, Bureau of Labor Statistics Regional Office, (415) 744–7166)

If you wish to present an oral statement at any of these hearings, please contact the Statistical Policy Office (at the address below) by telephone or fax (do no use electronic mail) by July 1, 1994, and provide the following information: your name, address, telephone and fax numbers, and the name of the organization which you represent. After July 1, please call the appropriate local arrangements contact identified above to be placed on the hearing schedule. Persons testifying are asked to bring three (3) copies of their statement to the hearing. Written statements will also be accepted at the hearings. Depending on the number of persons who request to present their views, the hearings in each location may be extended to the following day.

ADDRESS: Requests to be placed on the hearing schedule should be directed to the Statistical Policy Office, Office of Management and Budget, 725 17th Street, N.W., Washington, D.C. 20503. Telephone: (202) 395–3093. Fax number: (202) 395–7245.

ELECTRONIC AVAILABILITY AND COMMENTS: This document is available on the Internet via anonymous File Transfer Protocol (ftp) from *ftp.census.gov* as */pub/docs/ombdir15.txt* in ASCII format (do not use any capital letters in the file name). For those who do not have ftp capability, the document can also be obtained through the gopher (*gopher gopher.census.gov*) and HTTP servers (accessible by mosaic, cello, lynx, etc.), or by sending an electronic mail message to *ftpmail@census.gov* with the following lines in the message area:

open
get/pub/docs/ombdir15.txt
quit

Comments may be sent via electronic mail to an OMB x.400 mail address, which is */s=ombdir15/c=us/admd=telemail/prmd=gov+eop*. The Internet address is *ombdir15@eop.sprint.com*. Comments sent to this address will be included as part of the official record. Do not use this electronic mail address to have your name included in the hearing schedule.

For assistance using electronic mail, ftp, gopher, or HTTP, please contact your system administrator. You may also want to send an electronic message to *access@census.gov* with a subject of *HELP* and nothing in the message area. You will receive by return electronic mail "FAQ (Frequently Asked Questions)" and more information on how to access the services on *census.gov*.

FOR FURTHER INFORMATION CONTACT: Suzann Evinger, Statistical Policy Office, Office of Information and Regulatory Affairs, Office of Management and Budget, Telephone: (202) 395–3093.

SUPPLEMENTARY INFORMATION:

Background

Development of Directive No. 15.—Developmental work on the categories in OMB's Directive No. 15 originated in the activities of the Federal Interagency Committee on Education (FICE), which was created by Executive Order in 1964 More than 30 Federal agencies were members or regular participants in FICE's work to improve coordination of educational activities at the Federal level. The FICE Subcommittee on Minority Education completed a report in April 1973 on higher education for Chicanos, Puerto Ricans, and American Indians and sent it to then Secretary of Health, Education, and Welfare (HEW) Caspar Weinberger for comment. He showed particular interest in the portion of the report that deplored the lack of useful data on racial and ethnic groups. Further, he encouraged the implementation of the report's second recommendation which called for the coordinated development of common definitions for racial and ethnic groups, and the Federal collection of racial and ethnic enrollment and other educational data on a compatible and nonduplicative basis.

In June 1974, FICE created an Ad Hoc Committee on Racial and Ethnic

Definitions whose 25 members came from Federal agencies with major responsibilities for the collection or use of racial and ethnic data. This Ad Hoc Committee was charged with developing terms and definitions for the collection of a broad range of racial and ethnic data by Federal agencies on a compatible and nonduplicative basis. It took on the task of determining and describing the major groups to be identified by Federal agencies when collecting and reporting racial and ethnic data. While the Ad Hoc Committee recognized that there is frequently a relationship between language and ethnicity, it made no attempt to develop a means of identifying persons on the basis of their primary language. The Ad Hoc Committee wanted to ensure that whatever categories the various agencies used could be aggregated, disaggregated, or otherwise combined so that the data developed by one agency could be used in conjunction with the data developed by another agency. In addition, the Ad Hoc Committee thought that the basic categories could be subdivided into more detailed ethnic subgroups to meet users' needs, but that to maintain comparability, data from one major category should never be combined with data from any other major category.

In the spring of 1975, FICE completed its work on a draft set of categories, and an agreement was reached among OMB, the General Accounting Office (GAO), the HEW's Office for Civil Rights, and the Equal Employment Opportunity Commission (EEOC) to adopt these categories for a trial period of at least one year. This trial was undertaken to test the new categories and definitions and to determine what problems, if any, would be encountered in their implementation.

At the end of the test period, OMB and GAO convened an Ad Hoc Committee on Racial/Ethnic Categories to review the experience of the agencies that had implemented the standard categories and definitions and to discuss any potential problems that might be encountered in extending the use of the categories to all Federal agencies. The Committee met in August 1976 and included representatives of OMB; GAO; the Departments of Justice, Labor, HEW, and Housing and Urban Development; the Bureau of the Census; and the EEOC. Based upon the discussion in that meeting, OMB prepared minor revisions to the FICE definitions and circulated the proposed final draft for agency comment. These revised categories and definitions became effective in September 1976 for all compliance recordkeeping and reporting required by the Federal agencies represented on the Ad Hoc Committee.

Based upon this interagency agreement, OMB drafted for agency comment a proposed revision of the race and ethnic categories contained in its circular on standards and guidelines for Federal statistics. Some agencies published the draft revision for public comment. Following the receipt of comments and incorporation of suggested modifications, OMB on May 12, 1977, promulgated for use by all Federal agencies the racial and ethnic categories now contained in Directive No. 15, the text of which appears in the Appendix. This meant that for the first time, standard categories and definitions would be used at the Federal level in reporting and presentation of data on racial and ethnic groups. While OMB requires the agencies to use these racial and ethnic categories, it should be emphasized that the Directive permits collection of additional detail if the more detailed categories can be aggregated into the basic racial and ethnic classifications set forth in the Directive.

As demonstrated by this brief history, the present categories were developed through a deliberate cooperative process; participation of the agencies that use the categories was an essential element in that process.

1988 Proposed Revision.—The standards promulgated in 1977 have not been revised since that time. OMB did, however, publish in the January 20, 1988, **Federal Register** a draft Statistical Policy Circular soliciting public comment on a comprehensive revision of existing Statistical Policy Directives. Among the proposed changes was a revision of Directive No. 15 that would have added an "Other" racial category and required classification by self-identification. While this proposal was supported by many multi-racial and multi-ethnic groups and some educational institutions, it drew strong opposition from Federal agencies such as the Civil Rights Division of the Department of Justice, the Department of Health and Human Services, the EEOC, and the Office of Personnel Management, and from large corporations.

Respondents who opposed the change asserted that the present system provided adequate data, that any changes would disrupt historical continuity, and that the proposed change would be expensive and potentially divisive. Some members of minority communities interpreted the proposal as an attempt to provoke internal dissension within their communities and to reduce the official counts of minority populations. Because it was evident from all of these comments that this proposal would not be widely accepted, no changes were made at the time to Directive No. 15.

1993 Hearings.—During 1993, Congressman Thomas C. Sawyer, Chairman of the House Subcommittee on Census, Statistics, and Postal Personnel, held a series of four hearings (April 14, June 30, July 29, and November 3) on the measurement of race and ethnicity in the decennial census. OMB testified at the hearing on July 29. Information on these hearings may be obtained by contacting the Subcommittee at (202) 226–7523.

Workshop.—As a first step in undertaking its review of the racial and ethnic categories, OMB asked the Committee on National Statistics (CNSTAT) of the National Academy of Sciences to convene a workshop to provide an informed discussion of the issues surrounding a review of the categories. Convened on February 17–18, 1994, the workshop included representatives of Federal agencies, academia, social science research, interest groups, private industry, and local school districts. A report on the workshop will be forthcoming from CNSTAT.

Interagency Committee. OMB has established an Interagency Committee for the Review of the Racial and Ethnic Standards, whose members represent the many and diverse Federal needs for racial and ethnic data, including statutory requirements for such data. The Committee will be an integral part of this review process, by assisting OMB in the evaluation and assessment of proposed changes, for example, on the quality of resulting data and costs of implementation.

Suggested Changes and Criticisms

Your comments are invited on any aspect of Directive No. 15; if you are satisfied with the existing racial and ethnic categories, it would be useful for OMB to know that also. You may also wish to comment on the following suggestions and criticisms about the Directive that OMB received during the recent hearings and the CNSTAT workshop:

—adding a "multi-racial" category to the list of racial designations so that respondents would not be forced to deny part of their heritage by having to choose a single category;

—adding an "other" category for individuals of multi-racial backgrounds and those who want the option of specifically stating a unique identification;

—providing an open-ended question to solicit information on race and ethnicity, or combining concepts of race, ethnicity, and ancestry;

—changing the name of the "Black" category to "African American";

—changing the name of the "American Indian or Alaskan Native" category to "Native American";

—including Native Hawaiians as a separate category or as part of a "Native American" category (which would also include American Indians, Aleuts, and Eskimos), rather than as part of the "Asian or Pacific Islander" category;

—including Hispanic as a racial designation, rather than as a separate ethnic category; and

—adding a "Middle Easterner" category to the list of ethnic designations.

The critiques of the current standard and the proposals for change include as well a number of other concerns. For example:

—The categories and their definitions have been criticized for failing to be comprehensive and scientific. As cases in point, using the present definitions there are no proper categories for the original Indian population of South America or for Australian aborigines.

—Some have suggested that the geographic orientation of the definitions for the various racial and ethnic categories is not sufficiently definitive. They believe that there is no readily apparent organizing principle for making such distinctions and that definitions for the categories should be eliminated. Others disagree, stating that the current definitions of the racial and ethnic categories have served their uses well and thus should be maintained.

—The identification of an individual's racial and ethnic "category" often is a subjective determination, rather than one that is objective and factual, no matter what the process for arriving at the categories. Consequently, it has been suggested that it may no longer be appropriate to consider the categories as a "statistical standard."

—The issue of self-identification of race and ethnicity versus third party identification also has been raised. This issue will merit increased attention if multi-racial and/or multi-ethnic categories or identification procedures are adopted.

—Some have proposed eliminating the five-category combined racial and ethnic classification in favor of separate, mutually exclusive, racial and ethnic categories. The combined format now permitted by the Directive is particularly suitable for observer identification, and is used by the Department of Health and Human Service's Office for Civil Rights, the Equal Employment Opportunity Commission, and the Office of Federal Contract Compliance because it facilitates aggregating data on the minority groups with which these agencies are concerned. The use of the Hispanic category in the combined format does not, however, provide information on the race of those selecting it. As a result, the combined format makes it impossible to distribute persons of Hispanic ethnicity by race and, therefore, reduces the utility of the four racial categories by excluding from them persons who would otherwise be included. Thus, the two formats currently permitted by Directive No. 15 for collecting racial and ethnic data do not provide comparable data.

—The perceived importance of historical comparability of racial and ethnic data has been questioned by some. Since the names of the categories have changed in the decennial censuses, and agencies use different methods even internally to collect the data, there is less continuity in racial and ethnic data than many believed. As a result, it has been suggested that this review of Directive No. 15 should have a more forward-looking approach, rather than being bound by past history.

—Some have suggested that consideration be given to collecting racial and ethnic data using "categories for response" that can be decoupled from "categories for reporting data." For example, the response categories could permit responses reflecting multiple origins; later these data would be aggregated into reporting categories following a set of standards and guidelines to make the reported data more useful for various program, administrative, and statistical purposes.

—There have also been suggestions that the classification of persons by race and ethnicity be eliminated entirely. Proponents of this view assert that the categories merely serve to perpetuate an over-emphasis on race in America and contribute to the fragmentation of our society.

Federal Uses of Racial and Ethnic Data

Given the broad range of suggestions and criticisms, OMB believes that a comprehensive review of all the categories is warranted. It is important to stress comprehensive, because these categories are not used simply for statistical purposes. Thus, while the use of the racial and ethnic categories in the collection of decennial census data is most widely known—and has most often been cited in the 1993 hearings and in the correspondence OMB receives—the categories are also used by Federal agencies for civil rights enforcement and for program administrative reporting. Some important examples of the Federal Government's uses of racial and ethnic data are:

- enforcing the requirements of the Voting Rights Act;
- reviewing State redistricting plans;
- collecting and presenting population and population characteristics data, labor force data, education data, and vital and health statistics;
- establishing and evaluating Federal affirmative action plans and evaluating affirmative action and discrimination in employment in the private sector;
- monitoring the access of minorities to home mortgage loans under the Home Mortgage Disclosure Act;
- enforcing the Equal Credit Opportunity Act;
- monitoring and enforcing desegregation plans in the public schools;
- assisting minority businesses under the minority business development programs; and
- monitoring and enforcing the Fair Housing Act.

These examples of statutory requirements are mentioned to foster public awareness and understanding of the Federal Government's many different needs for racial and ethnic data. Appreciation of the intended uses of the data helps determine what categories make sense. Further, these uses need to be taken into account when changes to the categories are suggested. In any event, OMB believes that it is essential for the Federal agencies to study the possible effects of any proposed changes to the categories on the quality and utility of the resulting data for a multiplicity of purposes.

General Principles for the Review of the Racial and Ethnic Categories

The critiques and suggestions for changing Directive No. 15 have underscored the importance of having a set of general principles to govern the current review process. The following principles were drafted in cooperation with Federal agencies serving on the Interagency Committee. Comments on these principles are welcomed.

1. The racial and ethnic categories set forth in the standard should not be interpreted as being scientific or anthropological in nature.

2. Respect for individual dignity should guide the processes and methods for collecting data on race and ethnicity; respondent self-identification should be facilitated to the greatest extent possible.

3. To the extent practicable, the concepts and terminology should reflect clear and generally understood definitions that can achieve broad public acceptance.

4. The racial and ethnic categories should be comprehensive in coverage and produce compatible, nonduplicated, exchangeable data across Federal agencies.

5. Foremost consideration should be given to data aggregations by race and ethnicity that are useful for statistical analysis, program administration and assessment, and enforcement of existing laws and judicial decisions, bearing in mind that the standards are not intended to be used to establish eligibility for participation in any Federal program.

6. While Federal data needs for racial and ethnic data are of primary importance, consideration should also be given to needs at the State and local government levels, including American Indian tribal and Alaska Native village governments, as well as to general societal needs for these data.

7. The categories should set forth a minimum standard; additional categories should be permitted provided they can be aggregated to the standard categories. The number of standard categories should be kept to a manageable size, as determined by statistical concerns and data needs.

8. A revised set of categories should be operationally feasible in terms of burden placed upon respondents and the cost to agencies and respondents to implement the revisions.

9. Any changes in the categories should be based on sound methodological research and should include evaluations of the impact of any changes not only on the usefulness of the resulting data but also on the comparability of any new categories with the existing ones.

10. Any revision to the categories should provide for a crosswalk at the time of adoption between the old and the new categories so that historical data series can be statistically adjusted and comparisons can be made.

11. Because of the many and varied needs and strong interdependence of Federal agencies for racial and ethnic data, any changes to the existing categories should be the product of an interagency collaborative effort.

The agencies recognize that these principles may in some cases represent competing goals for the standard. Through the review process, it will be necessary to balance statistical issues, needs for data, and social concerns. The application of these principles to guide the review and possible revision of the standard ultimately should result in consistent, publicly accepted data on race and ethnicity that will meet the needs of the government and the public while recognizing the diversity of the population and respecting the individual's dignity.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

APPENDIX

DIRECTIVE NO. 15

Race and Ethnic Standards for Federal Statistics and Administrative Reporting (as adopted on May 12, 1977)

This Directive provides standard classifications for recordkeeping, collection, and presentation of data on race and ethnicity in Federal program administrative reporting and statistical activities. These classifications should not be interpreted as being scientific or anthropological in nature, nor should they be viewed as determinants of eligibility for participation in any Federal program. They have been developed in response to needs expressed by both the executive branch and the Congress to provide for the collection and use of compatible, nonduplicated, exchangeable racial and ethnic data by Federal agencies.

1. **Definitions**

The basic racial and ethnic categories for Federal statistics and program administrative reporting are defined as follows:

a. *American Indian or Alaskan Native.* A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliations or community recognition.

b. *Asian or Pacific Islander.* A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

c. *Black.* A person having origins in any of the black racial groups of Africa.

d. *Hispanic.* A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

e. *White.* A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

2. **Utilization for Recordkeeping and Reporting**

To provide flexibility, it is preferable to collect data on race and ethnicity separately. If separate race and ethnic categories are used, the minimum designations are:

a. *Race:*
—American Indian or Alaskan Native
—Asian or Pacific Islander
—Black
—White

b. *Ethnicity:*
—Hispanic origin
—Not of Hispanic origin

When race and ethnicity are collected separately, the number of White and Black persons who are Hispanic must be identifiable, and capable of being reported in that category.

If a combined format is used to collect racial and ethnic data, the minimum acceptable categories are:
—American Indian or Alaskan Native
—Asian or Pacific Islander
—Black, not of Hispanic origin
—Hispanic
—White, not of Hispanic origin.

The category which most closely reflects the individual's recognition in his community should be used for purposes of reporting on persons who are of mixed racial and/or ethnic origins.

In no case should the provisions of this Directive be construed to limit the collection of data to the categories described above. However, any reporting required which uses more detail shall be organized in such a way that the additional categories can be aggregated into these basic racial/ethnic categories.

The minimum standard collection categories shall be utilized for reporting as follows:

a. *Civil rights compliance reporting.* The categories specified above will be used by all agencies in either the separate or combined format for civil rights compliance reporting and equal employment reporting for both the public and private sectors and for all

levels of government. Any variation requiring less detailed data or data which cannot be aggregated into the basic categories will have to be specifically approved by the Office of Management and Budget (OMB) for executive agencies. More detailed reporting which can be aggregated to the basic categories may be used at the agencies' discretion.

b. *General program administrative and grant reporting.* Whenever an agency subject to this Directive issues new or revised administrative reporting or recordkeeping requirements which include racial or ethnic data, the agency will use the race/ethnic categories described above. A variance can be specifically requested from OMB, but such a variance will be granted only if the agency can demonstrate that it is not reasonable for the primary reporter to determine the racial or ethnic background in terms of the specified categories, and that such determination is not critical to the administration of the program in question, or if the specific program is directed to only one or a limited number of race/ethnic groups, e.g., Indian tribal activities.

c. *Statistical reporting.* The categories described in this Directive will be used at a minimum for federally sponsored statistical data collection where race and/or ethnicity is required, except when: the collection involves a sample of such size that the data on the smaller categories would be unreliable, or when the collection effort focuses on a specific racial or ethnic group. A repetitive survey shall be deemed to have an adequate sample size if the racial and ethnic data can be reliably aggregated on a biennial basis. Any other variation will have to be specifically authorized by OMB through the reports clearance process. In those cases where the data collection is not subject to the reports clearance process, a direct request for a variance should be made to OMB.

5. **Effective Date**

The provisions of this Directive are effective immediately for all new and revised recordkeeping or reporting requirements containing racial and/or ethnic information. All existing recordkeeping or reporting requirements shall be made consistent with this Directive at the time they are submitted for extension, or not later than January 1, 1980.

4. **Presentation of Race/Ethnic Data**

Displays of racial and ethnic compliance and statistical data will use the category designations listed above. The designation "nonwhite" is not acceptable for use in the presentation of Federal Government data. It is not to be used in any publication of compliance or statistical data or in the text of any compliance or statistical report.

In cases where the above designations are considered inappropriate for presentation of statistical data on particular programs or for particular regional areas, the sponsoring agency may use:

(1) The designations "Black and Other Races" or "All Other Races," as collective descriptions of minority races when the most summary distinction between the majority and minority races is appropriate;

(2) The designations "White," "Black," and "All Other Races" when the distinction among the majority race, the principal minority race and other races is appropriate; or

(3) The designation of a particular minority race or races, and the inclusion of "Whites" with "All Other Races," if such a collective description is appropriate.

In displaying detailed information which represents a combination of race and ethnicity, the description of the data being displayed must clearly indicate that both bases of classification are being used.

When the primary focus of a statistical report is on two or more specific identifiable groups in the population, one or more of which is racial or ethnic, it is acceptable to display data for each of the particular groups separately and to describe data relating to the remainder of the population by an appropriate collective description.

[FR Doc. 94-14079 Filed 6-8-94; 8:45 am]

BILLING CODE 3110-01-F

OFFICE OF PERSONNEL MANAGEMENT

Request for Reclearance of Information Collection OPM Form 2809–EZ1

AGENCY: Office of Personnel Management

ACTION: Notice

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. OPM Form 2809–EZ1, Enrollment Change and Brochure Request, is used only at Open Season to request an enrollment change, insurance plan brochures and other informational materials. If OPM Form 2809–EZ1 is used to request plan brochures, an OPM Form 2809–EZ2 is furnished to the enrollee for use if a plan change is desired.

Approximately 102,531 OPM Forms 2809–EZ1 are completed annually. Each form takes approximately 30 minutes to complete. The annual burden is 51,266 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received July 11, 1994.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis & Design, (202) 606–0623.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94-14080 Filed 6-8-94; 8:45 am]

BILLING CODE 6325-01-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1994, shall be at the rate of 40 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1994, 37.5 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 62.5 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of

the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: June 1, 1994.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94–14040 Filed 6–8–94; 8:45 am]

BILLING CODE 7905–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Oak Valley, Riverside County, CA

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Oak Valley, located in Beaumont and Calimesa, Riverside County, California, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the RTC until September 7, 1994.

ADDRESSES: Copies of detailed descriptions of this property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. V. Jackson Carney, III, Resolution Trust Corporation, c/o Landmark Land Companies, 2500 Landmark Drive, LaPlace, LA 70068, (504) 466–7469; Fax (504) 651–6057.

SUPPLEMENTARY INFORMATION: The Oak Valley property is located in north central Riverside County northwest of the junction of Interstate 10 and State Route 60, within the city limits of Beaumont and Calimesa, California. The site contains habitat for the Federally-listed endangered Least Bell's vireo and Stephen's kangaroo rat. The Oak Valley property consists of approximately 6,725 acres of undeveloped land except for an eighteen hole golf course which occupies approximately 202 acres. The property is contiguous with Noble Creek Park, which is managed by the Beaumont Cherry Valley Recreation and Park District, and adjacent to De Anza Park, which is managed by the Riverside County Regional Park and Open-Space District. This property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before September 7, 1994, by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

RE: [insert name of property]

Federal Register Publication Date:

_____

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing rate, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated: June 2, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–13945 Filed 6–8–94; 8:45 am]

BILLING CODE 6714–01–M

Coastal Barrier Improvement Act; Property Availability; Reserve Residential, St. John the Baptist Parish, LA; Airline Industrial North, St. John the Baptist Parish, LA

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the properties known as Reserve Residential and Airline Industrial North, located in Reserve, St. John the Baptist Parish, Louisiana, are affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of these properties may be mailed or faxed to the RTC until September 7, 1994.

ADDRESSES: Copies of detailed descriptions of these properties, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. V. Jackson Carney, III, Resolution Trust Corporation, c/o Landmark Land Companies, 2500 Landmark Drive, LaPlace, LA 70068, (504) 466–7469; Fax (504) 651–6057.

SUPPLEMENTARY INFORMATION: The Reserve Residential property is located in the northwest portion of the intersection of Airline Highway (U.S. Hwy 61) and the Codshalk Canal in Reserve, Louisiana. The site is subject to the State's Coastal Zone Management Program, it has recreational value, and is adjacent to St. John the Baptist City Park. The Reserve Residential property consists of approximately 227.4 acres of undeveloped land. The site is bounded to the north by vacant land, to the west by St. John the Baptist Parish Airport, and to the south by Airline Highway.

The Airline Industrial North property is also located in the northwest portion of the intersection of Airline Highway (U.S. Hwy 61) and the Codshalk Canal in Reserve, Louisiana. The site is subject to the State's Coastal Zone Management Program, it has recreational value, and is adjacent to St. John the Baptist City Park. The Airline Industrial North property consists of approximately 122.37 acres of undeveloped land. The site is bounded to the north by St. John the Baptist Parish Airport, to the east by vacant land, to the west by Terra Haute plantation, and to the south by Airline Highway. These properties are covered properties within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of these properties must be received on or before September 7, 1994, by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

RE: [insert name of property]

Federal Register Publication Date:

_____

[insert Federal Register publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h))(3))

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated: June 2, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–13946 Filed 6–8–94; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34148; File No. S7–18–94]

EDGAR Review

AGENCY: Securities and Exchange Commission.

ACTION: Request for comments.

SUMMARY: The Securities and Exchange Commission ("Commission") is requesting public comment on the performance of the operational Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. Responses will be used in the evaluation of EDGAR's readiness for and acceptability in support of mandated EDGAR filing for all domestic registrants.

DATES: Comments should be received on or before July 11, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. All comment letters should refer to File No. S7–18–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: David T. Csoenhafer, Director, at (202) 942–8800, Office of Planning, Administration and Security, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system is an information system developed by the Securities and Exchange Commission (SEC) to automate the filing, processing, and dissemination of more than 11 million pages of registration statements and applications received by the SEC each year. Begun in January 1989, and implemented for operational use in July 1992, the operational EDGAR system will ultimately receive submissions from over 15,000 companies that are registered with the SEC.

Currently, some 3,400 companies file reports electronically through EDGAR. Based on implementation and operation to date, the Commission is now contemplating expansion of EDGAR beyond this initial group of mandated filers, to include all domestic registrants as well as most third party filings with respect to those registrants. To this end, public comment is sought on the performance and success of the operational EDGAR system to date.

Respondents are asked to, as applicable:

- Identify the group they best represent: registrant, investment company, third-party filer, filing agent, training agent, secondary market (disseminator/service bureau), or the public;
- Identify the year they first began using EDGAR (Pilot or Operational system);
- Estimate the number of test filings they have submitted via EDGAR since it went operational on July 15, 1992; and
- Estimate the number of live filings they have submitted via EDGAR since it went operational on July 15, 1992

Respondents are asked to comment on EDGAR performance in the following areas:

- Integrity (e.g., are filings processed correctly?, are fees calculated correctly?, does the content of disseminated filings equal what was submitted?);
- Reliability (e.g., availability of EDGAR, CompuServe and dissemination systems);
- Responsiveness (e.g., speed of filing, acceptance, notification and queries);
- Stability (e.g., lack of interruptions or outages);
- Security (e.g., safeguards against inappropriate access, use or modification of data);
- Capacity (e.g., adequacy of phone lines, storage and processing power); and
- Usability (e.g., ease-of-use and user-friendliness).

Respondents are also asked to:

- Identify any reason why the SEC should not adopt a rule requiring mandated EDGAR filing by all domestic registrants (as well as third parties making filings with respect to these registrants)

Third-party filers are encouraged to also comment on the experience of being a third-party filer.

Although participation is voluntary, responses are encouraged to ensure the valid assessment of EDGAR performance and capabilities

Dated: June 2, 1994.

Jonathan G. Katz,

Secretary

[FR Doc. 94–13963 Filed 6–8–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34155; File No. SR–CHX–94–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc., to Establish a Policy Relating to the Automatic Execution Feature of the Midwest Automated Execution System

June 3, 1944.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 31, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX has published to members a policy relating to the automatic execution feature of the Midwest Automated Execution ("MAX") System which, *inter alia*, automates the Exchange's Guaranteed Execution System ("BEST System") pursuant to Article XX, Rule 37 of the CHX Rules.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

I. Purpose

The MAX System automates the requirements of Rule 37 of Article XX (the BEST System) which guarantees executions at the best market up to a certain size for agency orders. Numbered paragraph 7 under Rule 37[2] allows Specialists and floor brokers to seek relief from the requirements of the BEST System in unusual trading situations. For example, on January 26, 1994, the Exchange filed SR–CHX–94–2 which set forth a temporary policy that dealt with one type of unusual trading situation. That policy expired on April 9, 1994.[3]

The purpose of this rule filing is to publish to members a new policy that describes procedures to be followed in the event that unusual trading situations arise in the future which might require relief from the automatic execution feature of MAX in a particular stock.[4] In the event that the automatic execution feature is switched to the manual mode, the Exchange will disseminate this fact to MAX terminals as an administrative message, if time permits.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The proposed rule change has been endorsed by the Exchange's Floor Procedures Committee.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–94–14 and should be submitted by June 30, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–14030 Filed 6–8–94; 8:45 am]

BILLING CODE 8010–01–M

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[1] The policy, which was included in a Notice To Members dated May 31, 1994, states, in part, that beginning with the opening on April 4, 1994, specialists have had the ability to switch their MAX terminals off automatic execution at their respective posts. This new functionality is being implemented to allow specialists to timely switch to a manual execution mode when a certain analyst's report is broadcast on cable T.V., if market conditions in a particular stock warrant it. Specialists should switch to manual mode only when absolutely necessary and are required to return to the automatic execution functionality immediately when the primary market quotes accurately reflect market conditions. A specialist cannot remain in manual mode, under this paragraph, for more than 10 minutes without securing the permission of two (2) floor officials.

In all other instances, when a specialist believes it is necessary to be in a manual execution mode, he or she must always seek the permission of two (2) floor officials before switching to manual. This new functionality cannot be used merely because of a volatile market, but shall only be permitted when the primary market quotes are inaccurate due to market conditions. For example, this new functionality might be used if it became apparent that the NYSE invoked its unusual market conditions rule (pursuant to SEC Rule 11Ac1–1). Floor officials must be satisfied that the conditions which permit putting an issue on manual mode are present before granting a specialist's request to switch to the manual mode and shall monitor the conditions which formed the basis for their decision to ensure that specialists' return to the auto-execution feature when such conditions are no longer present. Specialists also have the responsibility, and are required, to immediately reinstate MAX's automatic execution functionality when the primary market quotes accurately reflect market conditions.

Specialists are reminded that when operating in the manual mode they still have the responsibility to fill customer orders according to CHX rules—including the BEST Rule. All pricing executions will be reviewed for accuracy.

The Exchange and the Committee on Floor Procedure anticipate that this capability will only be utilized on an infrequent basis and only in unusual circumstances.

[2] CHX Rule 37, Paragraph 7 states that in unusual trading situations, a specialist or floor broker may seek relief from the requirements of Rule 37, Paragraphs 1 through 6 from two members of the Committee on Floor Procedure or a designated member of the Exchange staff who would have authority to set execution prices.

[3] The temporary policy in File No. SR–CHX–94–2 was amended by the Exchange to provide for a "sunset" provision whereby the effectiveness of the policy would terminate on April 9, 1994. See letter from J. Craig Long, Foley & Lardner, to Louis A. Randazzo, Attorney, Office of Derivative and Exchange Oversight, SEC, dated February 2, 1994.

[4] The Commission notes that the policy does not permit specialists to switch to manual execution mode merely because a certain analyst's report is broadcast on cable television. The Commission would be concerned if the MAX terminals were switched off automatic execution in the absence of market conditions that resulted in inaccurate primary market quotes.

[Release No. 34–34156; File No. SR–NASD–94–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Application for Membership in the Association

June 3, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 4, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend sections 1(b) and 1(c) to Article III of the NASD By-Laws and Schedule C to the By-Laws to modify the process by which an applicant applies for membership in the Association. Below is the text of the proposed rule change. Proposed new language is italicized and deleted language is bracketed.

By-Laws Article III Membership

Application for Membership

Sec 1. (a) Application for membership in the Corporation, properly signed by the applicant, shall be made to the Corporation, on the form to be prescribed by the Corporation, and shall contain:

(1) An acceptance of and an agreement to abide by, comply with, and adhere to, all the provisions, conditions, and covenants of the Certificate of Incorporation, the By-Laws, the rules and regulations of the Corporation as they are or may from time to time be adopted, changed or amended, and all rulings, orders, directions and decisions of, and sanctions imposed by, the Board of Governors or any duly authorized committee, the provisions of the federal securities laws, including the rules and regulations adopted thereunder, including the rules of the Municipal Securities Rulemaking Board and the Treasury Department, provided, however, that such an agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act;

(2) An agreement to pay such dues, assessments, and other charges in the manner and amount as shall from time to time be fixed by the Board of Governors pursuant to these By-Laws;

(3) An agreement that neither the Corporation, nor any officer or employee thereof, nor any member of the Board of Governors or of any district or other committee, shall be liable, except for willful malfeasance, to the applicant or to any member of the Corporation or to any other person, for any action taken by such officer or member of the Board of Governors or of any district or other committee, in his official capacity, or by any employee of the Corporation while acting within the scope of his employment or under instruction of any officer, board, or committee of the Corporation, in connection with the administration or enforcement of any of the provisions of the rules of the Corporation as they are or may from time to time be adopted, or amended, or any ruling, order, directive, decision of, or penalty imposed by, the Board of Governors or any duly authorized committee, the provisions of the federal securities laws, including the rules and regulations adopted thereunder, including the rules of the Municipal Securities Rulemaking Board and the Treasury Department; and

(4) Such other reasonable information with respect to the applicant as the Board of Governors may require.

(b) Any application received by the Corporation shall be referred to the District Committee of the [d]*D*istrict in which the applicant has his principal place of business, and if [a majority of the members of] such District Committee *or a Subcommittee designated by such District Committee* determines that the applicant has satisfied all of the admission requirements of the [By-Laws] *Corporation*, it shall [recommend the applicant's admission to the membership and promptly notify the Secretary of the Corporation of such recommendation] *promptly notify the Association's Membership Department of its determination.*

(c) If [a majority of the members of] such District Committee *or a Subcommittee designated by such District Committee* determines that the applicant fails to satisfy all of the admission requirements of the [By-Laws] *Corporation*, it shall promptly notify the [Secretary of the Corporation who shall thereafter take appropriate action as of the date when posted to the membership roll] *Association's Membership Department of its determination.*

(d) Each member shall ensure that this membership application with the Corporation is kept current at all times by supplementary amendments to the original application

* * * * *

Schedule C

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Part I—Applications For Membership

(1) Pre-Membership Interviews

(a) An applicant for membership in the Corporation shall furnish to the District Office *staff* for the District in which it has or intends to have its principal place of business:

(1) A copy of its [current submission to the Securities and Exchange Commission pursuant to Rule 15b1–2(c) under the Securities Exchange Act of

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[1] 15 U.S.C. 78s(b)(1) (1988)

[2] The NASD amended the proposed rule change once subsequent to its original filing on March 11, 1994. This amendment changes the requirement that an applicant for membership in the NASD submit a copy of its "current submission to the Securities and Exchange Commission pursuant to Rule 15b1–2(c) under the Securities Exchange Act of 1934" to require that the applicant submit "Form BD filed with the Central Registration Depository." This amendment is technical in nature in that it corrects a deficiency that arose out of the 1992 amendments to the broker-dealer registration process which deleted Rule 15b1–2(c) and requires that Form BD be submitted to the NASD. See Securities Exchange Act Release No. 31660 (Dec. 28, 1992), 58 FR 11 (Jan. 4, 1993) (adoption of rule amendments to broker-dealer registration and reporting requirements).

1934] *Form BD filed with the Central Registration Depository*;

(2) Its most recent trial balance, balance sheet, supporting schedules and computation of new capital;

(3) A copy of its written supervisory procedures;

(4) A list of all officers, directors, general partners, employees and other persons who will be associated with it at the time of admission to membership;

(5) A description of business activities in which it intends to engage; and

(6) Such other relevant information and documents as may be requested by the District Office *staff*.

Unless otherwise determined by *a Subcommittee designated by* the District [c]Committee, an applicant's failure to respond or a materially inadequate response to a request for information by the District Office *staff* within sixty (60) days of the request shall result in the termination of that application.

(b) Before an applicant shall be admitted to membership in the Corporation, and within a reasonable period of time after receipt of the foregoing information, the District Office *staff* shall schedule a pre-membership interview at which responsible personnel of the applicant, as determined by the District Office *staff*, shall personally appear at the District Office. At such interview, the applicant shall demonstrate, in accordance with the criteria listed in section (1)(c) hereof, the appropriateness of its admission to membership in the Corporation to conduct the type of business intended in the manner specified in its submission. Unless otherwise determined by *a Subcommittee designated by* the District (c)Committee, an applicant shall have twelve (12) months, from the date of application made in accordance with section 1(a) above, to complete the pre-membership review process. Failure to complete requirements for review by *a Subcommittee designated by* the District [c]Committee by that date shall result in the termination of that application.

(c) The pre-membership interview shall address the applicant's business plans to determine their adequacy and consistency with the federal securities laws and the rules of the Corporation; good business practices in the investment banking or securities business; a member's fiduciary obligation to its customers; and the public interest and the protection of investors. The pre-membership interview and shall review, among other things,

(1) The nature, adequacy, source and permanence of applicant's capital and its arrangements for additional capital should a business need arise;

(2) The applicant's proposed recordkeeping system;

(3) The applicant's proposed internal procedures, including compliance procedures;

(4) The applicant's familiarity with applicable NASD rules and federal securities laws;

(5) The applicant's capability to properly conduct the type of business intended in view of the:

A. Number, experience and qualifications of the persons to be associated with it at the time of its admission to membership,

B. Its planned facilities,

C. Arrangements, if any, with banks, clearing corporations and others, to assist it in the conduct of its securities business,

D. Supervisory personnel, methods and procedures; and

(6) Other factors relevant to the scope and operation of its business.

(d) Within thirty (30) days after the conclusion of such pre-membership interview, or if further information and/or documents are requested, within thirty (30) days of the receipt of such information or documents, [the District Office] *a Subcommittee designated by the District Committee shall consider the application and* shall notify the applicant in writing whether its application has been granted, denied, or granted subject to restrictions on its business activities, and provide the rationale for such determination.

(e) In all cases where restrictions are placed on its business activities, the applicant shall, prior to approval of membership, execute a written agreement with the Corporation agreeing to abide by the restrictions specified in the determination and agreeing not to modify its business activities in any way inconsistent with such agreement without first notifying the Corporation and receiving its written approval. These restrictions shall remain in effect and are binding on the applicant and all successors to the ownership or control of the applicant until modified pursuant to [paragraph] *section* (3) below.

(2) Procedures for Review by the District Committee and the Board of Governors

(a) The [District Office's] *Subcommittee's* determination shall be [reviewed] *subject to review* by the relevant District Committee upon request made by the applicant, *filed* within 15 *calendar* days *after the date* [of receipt] of the notification. Until completion of the District Committee's review, an applicant denied membership shall not be admitted to membership, and an applicant admitted to membership subject to restrictions on its business activities may engage in business consistent with such restrictions only after it has executed the agreement required by [paragraph] *section* (1)(e) hereof.

(b) In connection with review by the District Committee, the applicant shall have the right to appear before a *Hearing* [s]*Subcommittee* of the District Committee, or the *Hearing* [s]*Subcommittee* may require such appearance. The applicant may present evidence and be represented by counsel. The *Hearing* [s]*Subcommittee* may request additional information to assist it in reaching a determination. A record shall be kept of the proceedings. *No member of the District Committee who served as a member of the Subcommittee designated pursuant to Section 1(d) shall participate in the determination by the District Committee.*

(c) The District Committee, after consideration of the record before it *developed by the Hearing Subcommittee* and the criteria contained in section (1)(c), above, shall within a reasonable time after *the* close of the record, notify the applicant in writing that its application has been granted, denied or granted subject to restrictions on its business activities and provide the rationale for such determination. The District Committee's determination shall be made independent of the determination of the [District Office] *Subcommittee designated by the District Committee* and shall not be limited thereby.

(d) The District Committee's determination shall be [reviewed] *subject to review* by the [Board of Governors] *National Business Conduct Committee (NBCC)* upon request made by the applicant, *filed* within 15 *calendar* days *after the date* [of receipt] of the notification. The [Board of Governors] *NBCC* may call for review any District Committee determination within forty-five *calendar* days [of] *after* the date of the notification. During the pendency of such review, an applicant denied membership shall not be admitted to membership and an applicant admitted to membership subject to restrictions on its business activities may engage in business consistent with such restrictions only after it has executed the agreement required by [paragraph] *section* (1)(e), above.

(e) In connection with review by the [Board of Governors] *NBCC*, the applicant shall have the right to appear before a [s]Subcommittee of the [Board

of Governors] *NBCC*, or the *NBCC* [s]Subcommittee may require such appearance. The applicant may supplement the record developed before the District Committee and be represented by counsel. The NBCC [s]Subcommittee may request additional information to assist the [Board of Governors] *NBCC* in reaching a determination. A record shall be kept of the proceedings.

(f) *Unless a matter is called for discretionary review by the Board of Governors (Board) pursuant to Section (2)(g),* [T]the [Board of Governors] *NBCC*, after consideration of the record before it *developed by the NBCC Subcommittee*, and the criteria stated in Section (1)(c), above, shall within a reasonable period of time after close of the record before it, notify the applicant in writing that its application has been granted, denied or granted subject to restrictions on its business activities, provide the rationale for such determination, *and shall constitute final action for the NASD for purposes of section (2)(h) below.* The [Board of Governors'] *NBCC's* determination shall be made independent of the determinations of the [District Office] *Subcommittee designated by the District Committee* and District Committee, and shall not be limited thereby. *In the event of discretionary review by the Board of Governors, the decision of the Board shall constitute final action of the NASD for the purposes of section (2)(h) below and the applicant shall be promptly notified in writing that its application has been granted, denied or granted subject to restrictions in its business activities, and shall be provided the rationale for such determination.*

(g) *Determinations of the NBCC may be reviewed by the Board of Governors solely on the request of one or more Governors. Such review, which may be undertaken solely at the discretion of the Board, shall be in accordance with resolutions of the Board governing the review of NBCC determinations. In reviewing any NBCC determination of an application for membership, the Board may affirm, reverse of modify any decision to accept, deny or accept subject to restrictions, an applicant. Discretionary review by the Board shall operate as a stay of any action or denial by the Subcommittee designated by the District Committee and any determination by the NBCC, until a decision is rendered by the Board.*

[(g)] *(h)* The applicant may apply for review of the *NBCC's or the* Board of Governors' determination to the Securities and Exchange Commission in accordance with Section 19 of the Securities Exchange Act of 1934, as amended.

[(h)] *(i)* In any case where restrictions have been placed upon its business activities by the Board of Governors, *NBCC*, [or] a District Committee, *or a Subcommittee designated by a District Committee*, the applicant shall, prior to approval of membership, execute the agreement required by paragraph (1)(e), above.

(3) Removal of Restrictions Imposed

(a) Upon written request by the member, any restrictions on the business activities of a member shall be reviewed and may be removed or modified by *a Subcommittee designated by* the District Committee for the District in which the member currently has its principal place of business, when, in the [District Committee's] *Subcommittee's* judgement, the member has demonstrated that such action is appropriate in light of the criteria contained in section (1)(c), above. In doing so, the District Committee shall consider the circumstances which gave rise to the imposition of the restrictions, the operations of the member since the imposition of the restrictions and any new evidence submitted in connection with the member's request.

(b) Any modification of restrictions shall be subject to review by *the District Committee and the NBCC or* the Board of Governors and the SEC pursuant to the procedures provided in Section (2), above. A refusal *by a Subcommittee designated by a District Committee* to *remove or* modify *any restrictions* shall be similarly reviewed but only upon [application] *request* of the member filed with the [Board of Governors] *District Committee that is filed* within ten *calendar* days *after the date* of notification of such refusal.

(c) Should the restrictions on a member's activity be modified, the agreement required by [paragraph] *section* (1)(e), above, shall be modified accordingly.

(4) Changes in Ownership or Control of Existing Members

Should the ownership or control of an existing member change, the Corporation may, in its discretion, condition continuance in membership in the Corporation on prompt compliance with the pre-membership interview procedures contained in this part I.

(5) Notification to the District Office of Certain Events

Members are required to notify in writing the Corporation's District Office for the District in which the member's main office is located no later than ten (10) business days after any of the following specified events: (1) Any merger of the member; (2) an acquisition by the member; (3) an acquisition of the member or substantially all of its assets; and (4) any change in the entity ownership or partnership capital of the member which results in one person or entity owning 50% or more of such equity ownership or partnership capital.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

By-Laws

Sections 1(b) and 1(c) to Article III of the NASD By-Laws currently provide that any application for membership in the Association shall be referred to the District Committee of the NASD district in which the applicant has its principal place of business, and that such District Committee shall make the determination as to whether the applicant satisfies or fails to satisfy all of the admission requirements of the NASD By-Laws. However, the provisions governing pre-membership interviews in Schedule C to the NASD By-Laws currently contemplate a possible three-step process under which the initial determination for Association eligibility is made by District Office staff with review, if appropriate, by the District Committee upon request by the applicant.

Although the provisions of Schedule C contemplate review of applications for membership in the Association by the District Office staff, no District, in fact, has ever made such a determination at a staff level. Additionally, such action would be inconsistent with the governing By-Law provision that requires that the District Committee shall make such an initial determination. The proposed rule change, therefore, would amend the NASD By-Laws and Schedule C to

modify and make consistent the process by which an applicant applies for membership in the Association in that it would require all initial applications for membership be reviewed by either the District Committee or a Subcommittee of the District Committee, with a right of appeal to the full District Committee.

Subsection 1(b) and 1(d) to Article III of the NASD By-Laws are proposed to be amended to establish the authority of a District Committee to designate a Subcommittee to make a determination of admissibility of an applicant and to require a designated Subcommittee to promptly notify the Association's Membership Department of its determination. The phrase "a majority of the members of" is proposed to be eliminated from Subsection 1(b) as unnecessary.

Schedule C

As an initial matter, Schedule C is proposed to be amended throughout by referencing the phrase "a Subcommittee designated by the District Committee" in place of the phrases "District Committee" or "District Office" wherever such replacement conforms the language of Schedule C to the proposed change in the By-laws establishing the ability for the District Committee to delegate authority to a Subcommittee to review and determine the admissibility of an applicant.

Subsection (1)(a) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that applications for membership in the Association are to be furnished to the District Office staff. Subsection 1(a)(6) is proposed to be amended to clarify that the applicant must provide in connection with its application submission such other relevant information and documents as may be requested by the District Office staff.

Subsection 1(b) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that the scheduling of an applicant's pre-membership interview and the determination of which responsible personnel shall appear on behalf of the applicant at such interview will be determined by the District Office staff.

Subsection (1)(d) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that the District Committee's designated Subcommittee, rather than the District Office, shall consider the application submission.

Subsection 2(a) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that it is the determination of the designated Subcommittee, rather than the District Office, which will be reviewed by the District Committee upon request of the applicant. Subsection 2(a) to part I of Schedule C to the By-Laws is also proposed to be amended to clarify that the applicant's request for review must be filed within 15 calendar days after notification of the Subcommittee's determination.

Subsection 2(b) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that, in connection with review by the District Committee, an applicant is entitled to appear before a Hearing Subcommittee of the District Committee and that no member of the District Committee who served as a member of the Subcommittee originally designated to review the applicant's submission and no member of the Hearing Subcommittee shall participate in the determination resulting from the District Committee's review.

Subsection 2(c) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that the District Committee's determination of the record developed before it shall be made independent of the determination of the Subcommittee designated by the District Committee.

Subsection 2(d) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that the District Committee's determination shall be subject to review by the National Business Conduct Committee ("NBCC") upon request made by the applicant filed within 15 calendar days after the date of notification to the applicant by the District Committee of its determination.

Subsection 2(e) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that in connection with review by the NBCC, the applicant has the right to appear before a Subcommittee of the NBCC.

Subsection 2(f) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that the NBCC's determination of the record developed before it shall be made independent of the determination of the Subcommittee designated by the District Committee, and shall constitute final action for the NASD for purposes of Subsection (2)(h) to part I of Schedule C to the By-Laws unless called for discretionary review by the Board of Governors. Subsection 2(f) to part I of Schedule C to the By-Laws is also proposed to be amended to clarify that a decision by the Board pursuant to its power of discretionary review shall constitute final action for purposes of Subsection (2)(h) to part I of Schedule C to the By-Laws and that such determination and its rationale shall be communicated to the applicant in writing.

Proposed new Subsection (2)(g) to part I of Schedule C to the By-Laws is intended to clarify that review by the Board of Governors of NBCC determinations is discretionary and may occur solely on the request of one or more governors, and not at the request of the applicant. Such discretionary review of the Board shall be in accordance with the resolutions of the Board governing the review of NBCC determinations. The Board may affirm, reverse or modify an NBCC decision. The commencement of the review shall operate as a stay of any action by the Subcommittee designated by the District Committee and any determination by the NBCC until a decision is reached by the Board.

Old Subsection (2)(g) to part I of Schedule C to the By-Laws is proposed to be designated Subsection (2)(h) and states that the applicant may apply for review to the Securities and Exchange Commission of any determination by the NBCC or the Board.

Old Subsection (2)(h) to part I of Schedule C to the By-Laws is proposed to be designated Subsection (2)(i) and clarifies that the requirements of the Subparagraph apply to determinations of restrictions placed on the applicant made by the NBCC or a Subcommittee designated by the District Committee, as well as to such determinations made by the Board or a District Committee.

Subsection (3)(a) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that review and removal or modification of restrictions placed on the applicant shall be done by a Subcommittee designated by the District Committee.

Subsection (3)(b) to part I of Schedule C to the By-Laws is proposed to be amended to clarify that modifications of restrictions shall be subject to review by the District Committee and the NBCC, as well as by the Board and the SEC. Subsection (3)(b) to part I of Schedule C to the By-Laws is also proposed to be amended to clarify that the refusal by a Subcommittee designated by the District Committee to remove or modify restrictions shall also be subject to review, but only upon request of the member filed with the District Committee within ten calendar days after the date of notification of such refusal.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(8) of the Act,[3] which require, among other things, that the rules of the Association provide a fair procedure for the denial of membership to any person seeking membership therein or the prohibition or limitation by the Association of any person with respect to access to services offered by the Association or a member thereof, in that the proposed rule clarifies the process by which an applicant for membership in the Association is accepted, denied or accepted with limitations and eliminates any ambiguity in the Association's By-Laws and the Schedules to the By-Laws with respect to the application and administration of such process.

[3] 15 U.S.C. 78o–3.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–94–14 and should be submitted by June 30, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[Fr Doc. 94–14029 Filed 6–8–94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–34151; File No. SR–NASD–94–19]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change to Provide the NASD With Discretionary Authority to Exclude an Issuer From the Nasdaq Stock Market or Impose Additional or More Stringent Criteria for Inclusion in the Nasdaq Stock Market

June 3, 1994.

I. Introduction

On April 6, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The rule change adds provisions to Schedule D to the NASD By-Laws clarifying the NASD's discretionary authority to exclude an issuer from the Nasdaq Stock Market ("Nasdaq") or require additional or more stringent criteria for inclusion in Nasdaq

Notice of the proposed rule change together with its terms of substance was provided by issuance of a Commission release and by publication in the **Federal Register**.[3] Three comments were received in response to the Commission release, one expressing general support and two opposing the proposal. This order approves the proposed rule change.

[1] 17 CFR 200.30–3(a)(12) (1993).

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1993).

[3] Securities Exchange Act Release No. 33899 (Apr. 12, 1994), 59 FR 18171 (Apr. 15, 1994).

II. Description

According to the NASD, it submitted this rule filing primarily to address concerns about the increasing number of applications for inclusion in Nasdaq by companies controlled or substantially influenced by persons with a history of securities or commodities violations.[4] The NASD also indicated that its proposal to amend Sections 1 and 2 of Part II to Schedule D[5] is intended to codify certain principles underlying Nasdaq. First, the NASD states, that as operator of Nasdaq, it is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. Second, Nasdaq stands for integrity and ethical business practices in order to enhance investor confidence, thereby continuing to the financial health of the economy, and supporting the capital formation process. Third, inclusion in Nasdaq carries with it an implicit expectation that all Nasdaq issuers, from new public companies to companies of international stature, share these objectives. The proposal further clarifies that the NASD, in addition to applying the enumerated criteria set forth in Parts II and III to Schedule D, may exercise broad discretionary authority over the initial and continued inclusion of securities in Nasdaq in order to maintain the quality of and public confidence in its market. Under this broad discretion, and in addition to its authority under Subsection 3(a), the proposal notes that the NASD may deny initial inclusion or apply additional or more stringent

[4] In addition, this rule change corrects a technical deficiency in the NASD's rules. The proposal amends Part II, Section 3(a) of Schedule D to the NASD's By-Laws which currently provides the NASD, under certain circumstances, with the authority to apply additional or more stringent criteria for the initial or continued inclusion of particular securities or to suspend or terminate the inclusion of a security otherwise qualified for inclusion in Nasdaq. For many years, the NASD has interpreted Section 3(a) to authorize the NASD to deny inclusion of a security in Nasdaq. The NASD believes authority to deny inclusion is inherent in Section 3(a), otherwise the NASD would be required to include a security in Nasdaq in order to terminate the security's inclusion. The NASD has determined that its authority to deny inclusion of particular securities in Nasdaq in compliance with the enumerated provisions of Section 3(a) should be stated expressly. The proposed rule change, therefore, amends Part II, Section 3(a) of Schedule D to clarify this authority.

[5] NASD Manual, Schedules to the By-Laws, Schedule D, Part II, Secs. 1 & 2, (CCH) ¶¶ 1804 & 1804. Nasdaq includes both Nasdaq SmallCap Market and Nasdaq National Market securities. Sections 1 and 2 to Part II of Schedule D include the qualification requirements for domestic and Canadian securities and for non-Canadian foreign securities and American Depositary Receipts, respectively. The qualification requirements in Sections 1 and 2 of Part II to Schedule D apply to both the Nasdaq SmallCap Market and Nasdaq National Market securities.

criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance which exists or occurs that makes initial or continued inclusion of the securities in Nasdaq inadvisable or unwarranted in the opinion of the NASD, even though the securities meet all enumerated criteria for initial or continued inclusion in Nasdaq.

The NASD is concerned about an increase in recent years in the number of applications for inclusion in Nasdaq by issuers that are managed, controlled or influenced by persons with a history of significant securities or commodities violations.[6] In particular, the NASD is concerned about issuers substantially influenced by persons who have previously been the subject of a significant sanction for violations of state or federal securities laws, self-regulatory organization ("SRO") rules and regulations, or the subject of a felony conviction in connection with the purchase or sale of securities or commodities. The NASD believes that applications from these issuers for inclusion in Nasdaq reflect a pattern of activity in which persons with a history of securities or commodities violations seek to continue their violative conduct in the securities markets through the management, control or influence of a publicly-held company. The NASD has indicated that a case-by-case review of issuer applications has previously resulted in denials of certain applications pursuant to the "catch-all" provision of Part II, Section 3(a)(3) of Schedule D.[7]

In exercising discretion about whether to include an issuer in Nasdaq, the NASD will form a reasonable belief as to whether certain persons connected with an issuer may be predisposed to engage in further violative conduct contrary to interests of the investing public. In these cases, the NASD believes that the history of prior violative conduct raises concerns regarding the continuing potential for conduct in connection with the operation of the company or the market for its securities that would be considered fraudulent and manipulative, contrary to just and equitable principles of trade, or otherwise raise investor protection concerns.

The NASD's concern regarding situations where a person with a history of securities or commodities law violations manages, controls or influences a Nasdaq issuer is heightened by the fact that inclusion of the securities of such issuers in Nasdaq would exempt the transactions in these securities from Commission rules adopted to prevent certain fraud and abuse in the penny stock market. In August 1989, the Commission adopted Rule 15c2–6 to address sales practice abuses in low priced over-the-counter ("OTC") securities.[8] In general, this rule prohibits broker-dealers from selling a "designated security" to, or effecting the purchase of a "designated security" by, any person, unless the broker-dealer has approved the purchaser's account for such transactions and received from the purchaser a written agreement to the transaction.[9] On April 10, 1992, the Commission adopted the Penny Stock Disclosure Rules[10] which, in general, require that broker-dealers: (1) Furnish to a customer a risk disclosure document; (2) disclose the current bid and ask quotations and the commissions; and (3) provide monthly updates on the value of the securities. Among other exemptions, the Commission excluded from the scope of Rule 15c2–6 and the Penny Stock Disclosure Rules all issuers authorized or approved for inclusion in Nasdaq. The NASD believes that continued vigilance is required to ensure that inclusion in Nasdaq is not used as a vehicle to avoid compliance with the Penny Stock Disclosure Rules. The NASD further believes that prospective investors in the securities of a Nasdaq company are entitled to assume that securities included in Nasdaq meet the system's standards.[11]

III. Comments

As noted above, the Commission received three comment letters in response to the NASD's proposed rule change. The Task Force on Listing Standards of Self-Regulatory Organizations of the Federal Regulation of Securities Committee, Section of Business Law of the American Bar Association ("ABA Task Force") expressed general support for the NASD's initiative, but indicated concern over the retroactive application of the NASD's rule. In particular, the ABA Task Force is concerned that the NASD may exclude a current issuer based on a previously disclosed condition. The ABA Task Force believes that the NASD should only apply the rule retroactively to issuers where there is a change in control, disclosure of new material information, or other meaningful change in circumstance.[12] A second commenter opposed the proposal, asserting that the discretion accorded the NASD was unlimited and could lead the NASD to exclude an issuer from Nasdaq on a basis wholly unrelated to the legitimate concerns of administering Nasdaq.[13] Finally, a third commenter argued that the NASD's comparison to the NYSE and Amex rules is misplaced. In particular, this commenter argued that the rules of these exchanges provide greater procedural protection to issuers in that an appeal within the NYSE or Amex provides an automatic stay of the initial decision but does not with an

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[6] As a result of its concerns, on June 2, 1993, the NASD filed a proposal to amend Part II, Section 3(a). Securities Exchange Act Release No. 32605 (July 9, 1993), 58 FR 38150 (July 15, 1993) (Commission notice of File No. SR–NASD–93–32). Concurrent with the filing of the instant proposal, the NASD withdrew File No. SR–NASD–93–32. Letter from T. Grant Calhoun, Vice President and General Counsel, NASD, to Mark P. Barracca, Branch Chief, SEC (Apr. 6, 1994).

[7] Section 3(a)(3) provides that "[t]he Association may, in accordance with Article IX of the NASD's Code of Procedure, apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of an otherwise qualified security if * * * the Association deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest." NASD Manual, Schedules to the By-Laws, Schedule D, Part II, Sec. 3(a)(3), (CCH) ¶ 1805 ("Section 3(a)(3)").

[8] Securities Exchange Act Release No. 27160 (Aug. 22, 1989), 54 FR 35468 (Aug. 28, 1989).

[9] 17 CFR 240.15c2–6(a).

[10] The Penny Stock Sales Practice and Disclosure Rules of the Act are comprised of Rule 3a51–1 providing definitions of penny stocks and Rules 15g–1 to 15g–6, 15g–8 and 15g–9. In general, the Penny Stock Rules have been enacted to require more stringent regulation of broker-dealers that recommend penny stock transactions to customers. Under Rule 3e51–1 of the Act, Nasdaq securities are excluded from the scope of the Penny Stock Disclosure Rules, except that Nasdaq SmallCap securities under $5.00 are deemed penny stocks for purposes of Section 15(b)(6) of the Act. See, Securities Exchange Act Release No. 30608 (Apr. 20, 1992), 57 FR 18004 (Apr. 28, 1992).

[11] See In the Matter of Tasaway, Inc., Securities Exchange Act Release No. 11291 (Mar. 13, 1975), 45 SEC 706, 6 SEC Docket 427 ("primary emphasis must be placed on the interests of prospective future investors").

[12] Letter from John F. Olson, Chair, Committee on Federal Regulation of Securities, ABA Section on Business Law, and Robert Todd Lang, Chair, Task Force on Listing Standards of Self-Regulatory Organizations, ABA Section on Business Law, to Jonathan G. Katz, Secretary, SEC (Apr. 29, 1994). According to the letter, it was prepared by members of the ABA Task Force, circulated among the members and a substantial majority of the members agree with it. Nonetheless, the letter indicated that it does not represent the official position of the ABA, the Section of Business Law, the Federal Regulation of Securities Committee or the ABA Task Force.

[13] Letter from Andrew J. Telsey to Jonathan G. Katz, Secretary, SEC (Apr. 26, 1994). This commenter also asserted that the proposal was tantamount to a prior restraint on speech and a violation of the United States Constitution's guarantee of free speech. The Commission is convinced that the proposal, as designed, will have no such consequences. The NASD's proposal is similar in many respects to that of existing authority vested in other securities markets.

appeal within the NASD of an NASD decision.[14]

The NASD responded to these comments in letters dated May 17 and May 25, 1994.[15] With respect to the concerns of the ABA Task Force, the NASD believes that limiting this authority to prospective issuers or to issuers undergoing a material change in circumstance would inappropriately restrict its oversight of Nasdaq and hinder its review of individual issuers. In addition, the NASD believes that prospective investors are entitled to assume that the NASD protects the quality and integrity of Nasdaq.[16]

The NASD also believes that assertions that the proposed rule would provide the NASD boundless discretion are unwarranted. First, the nature and scope of the NASD's discretionary authority is set forth in the proposed new language. In addition, any determination to exclude an issuer will be made on a case-by-case basis in accordance with the procedures set forth in Article IX of the NASD's Code of Procedure,[17] and an aggrieved party may request the NASD to review its initial determination.[18] In addition, the NASD indicated that an issuer may request, or the NASD may voluntarily grant, a stay pending appeal within the NASD. Indeed, in the past, the NASD has delayed immediate delisting when the matter presented novel policy issues. Finally, if the aggrieved party is dissatisfied with a final determination of the NASD, it may then request that the Commission stay the NASD's action, and ultimately it may obtain review of the Commission's final order in the United States Court of Appeals.

IV. Discussion

Under Section 19(b) of the Act, the Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the NASD.[19] No other finding is required.[20] In evaluating a given proposal, the Commission must examine the record before it and all relevant factors and necessary information.[21] Section 15A of the Act addresses with some specificity the requirements applicable to NASD rules, and those are the standards against which the Commission must measure the NASD proposal.[22]

The Commission has determined to approve the NASD's proposal. The Commission believes that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Sections 15A (b)(6) and 15A (b)(9) of the Act.[23] Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Section 15A(b)(9) requires that the NASD's rule not impose any burden on competition not necessary or appropriate in furtherance of the Act. In addition, the Commission believes that the rule change will further the goals of Section 11A in that it will help preserve and strengthen the nation's securities markets.[24]

The Commission believes that inclusion of a security for trading in Nasdaq, like listing on an exchange, should not depend solely on meeting quantitative criteria, but should also entail an element of judgment given the expectations of investors and the imprimatur of listing on a particular market.[25] Securities listed for trading or included in Nasdaq often qualify for margin loans and are exempt from many of the state blue sky laws, which apply concepts of merit regulation to determine whether investors in that state may purchase the issuer's securities.

Almost twenty years ago, the Commission held in *In the Matter of Tassaway*[26] that the NASD is vested with discretionary authority to deny an issuer's request that its securities be included in Nasdaq. In that decision, the Commission stated that while exclusion from Nasdaq may hurt existing shareholders, the primary emphasis must be placed on the interest of prospective public investors and that this latter group is entitled to assume that the securities in Nasdaq meet the NASD standards. Although the Commission is of the view that the NASD's current rules authorize it to exclude an issuer, the proposal would clarify that authority. The Commission believes that this rule change provides greater protection to both existing and prospective investors. This rule change provides investors greater assurance that the risk associated with investing in Nasdaq is market risk rather than the risk that the promoter or other persons exercising substantial influence over the issuer is acting in an illegal manner.

The rule change will address the increase of applications by issuers for inclusion in Nasdaq where a person with a history of significant securities or commodities law violations is in a position to manage, control or influence the issuer to the detriment of investors. The rule change also responds to the related concern that inclusion of these securities in Nasdaq would exempt the

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[14] Letter from Joseph McLaughlin, Brown & Wood, to Jonathan G. Katz, Secretary, SEC (May 6, 1994).

[15] Letters from T. Grant Callery, Vice President and General Counsel, NASD, to Mark P. Barracca, Branch Chief, SEC (May 17, 1994) and Suzanne F. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, SEC (May 25, 1994).

[16] In connection with its prior proposal, SR-NASD-93-32, the NASD responded to a similar comment by the ABA Task Force by stating that limiting its discretion in the suggested manner would impose an arbitrary restriction on the NASD's oversight of Nasdaq. This, the NASD argued, could undermine public confidence in Nasdaq and would be contrary to interests of retail and institutional investors, issuers, broker-dealers and the public. See Securities Exchange Act Release No. 33899 (Apr. 12, 1994), 59 FR 18171 (Apr. 15, 1994) (Commission notice of File No. SR-NASD-94-19); File No. SR-NASD-93-32, Amendment No. 2 (File No. SR-NASD-93-32 was withdrawn by the NASD concurrent with the filing of File No. SR-NASD-94-19).

[17] NASD Manual, Code of Procedure, Art. IX, Sec. 1, (CCH) ¶ 3101. The NASD also noted that its Code of Procedure has been subject to public notice and comment; Securities Exchange Act Release No. 19097 (Oct. 4, 1982), 47 FR 44903 (Oct. 12, 1982) (Commission notice of SR-NASD-82-11), and has been approved by the Commission, Securities Exchange Act Release No. 21838 (Mar. 12, 1985), 50 FR 11035 (Mar. 19, 1985) (Commission approval of SR-NASD-82-11). The NASD also noted that its authority to exclude an issuer or to impose additional or more stringent criteria under the proposed rule is substantially similar to the authority it currently exercises under Section 3(a)(3).

[18] NASD Manual, Code of Procedure, Art. IX, Secs. 6 & 8, (CCH) ¶¶ 3106 & 3108.

[19] 15 U.S.C. 78s(b).

[20] The Commission's statutory role is limited to evaluating the rule as proposed against the statutory standards, and does not require the SRO to prove its proposal is the least burdensome solution to a problem.

[21] In the Securities Acts Amendments of 1975 ("1975 Amendments"), Congress directed the Commission to use its authority under the Act, including its authority to approve SRO rule changes, to foster the establishment of a national market system and promote the goals of economically efficient securities transactions, fair competition, and best execution. Congress granted the Commission "broad, discretionary powers" and "maximum flexibility" to develop a national market system and to carry out these objectives. Furthermore, Congress gave the Commission "the power to classify markets, firms, and securities in any manner it deems necessary or appropriate in the public interest or for the protection of investors and to facilitate the development of subsystems within the national market system." S.Rep. No. 75, 94th Cong., 1st. Sess., at 7 (1975).

[22] See 15 U.S.C. 78o-3.

[23] *Id.* § 78o-3(b) (6) and (9).

[24] *Id.* § 78k-1(a)(1)(A).

[25] See, e.g., *In the Matter of Silver Shield Mining and Milling Company*, Securities Exchange Act Release No. 6214 (Mar. 18, 1960) ("use of the facilities of a national securities exchange is a privilege involving important responsibilities under the Exchange Act"); *In the Matter of Consolidated Virginia Mining Co.*, Securities Exchange Act Release No. 6192 (Feb. 26, 1960) (same).

[26] Securities Exchange Act Release No. 11291 (May 13, 1975), 45 SEC 706, 6 SEC Docket 427.

transactions in these securities from Commission rules adopted to prevent certain fraudulent sales practices and abuses in the penny stock market.[27] The Commission agrees that with respect to the Nasdaq SmallCap Market, the rule change furthers the purposes of the Penny Stock Rules adopted under the Act. The rule change will provide the NASD with authority to ensure that securities which would otherwise be subject to the Penny Stock Rules merit this exemption when entering Nasdaq and continue to merit this exemption thereafter.

As indicated above, one commenter raised due process concerns. In the context of excluding issuers from Nasdaq, the Commission believes these concerns are addressed by the statutory and regulatory authority and obligations of the NASD. The Act requires the NASD to adopt and enforce rules designed, among other things, to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.[28] The Act further requires that the NASD's rules provide a fair procedure when prohibiting or limiting access to Nasdaq,[29] which includes notification of the specific grounds for prohibiting or limiting access, providing an opportunity to be heard, and maintaining a record.[30] In accordance with these obligations, the NASD has established quantitative and qualitative criteria for inclusion in Nasdaq,[31] and procedures to review decisions to deny or limit access to an issuer the NASD determines does not satisfy the criteria for inclusion.[32] Those procedures provide an opportunity for a hearing[33] and, although not explicit, an opportunity to request a stay from the NASD. In addition to these obligations, the Act and Commission rules require the NASD to notify the Commission promptly of any final or summary action to prohibit or limit access to Nasdaq.[34] The Act and Commission rules further provide that any final action by the NASD is subject to review by the Commission.[35] In addition, the Commission may stay summary action by the NASD on its own motion or upon an application by the issuer.[36] Finally, a person dissatisfied with a final determination of the Commission may seek review of that decision by the United States Court of Appeals.[37]

The Commission believes that this rule strikes the appropriate balance between protecting investors and providing a marketplace for issuers satisfying the disclosure requirements under the federal securities laws. This rule change clarifies the NASD's current practice of using its authority under Section 3(a)(3) of Part II to Schedule D. The authority granted under Section 3(a)(3) is discretionary in nature and this rule change will continue to allow the NASD to exercise its discretion in applying the standards of Section 3(a)(3) on a case-by-case basis. The rule change will also provide important guidance to the NASD review process, and will alert issuers seeking inclusion in Nasdaq, as well as current Nasdaq issuers, that the NASD considers an issuer's connection to a person with a history of significant securities or commodities violations in determining whether to grant initial or continued inclusion of the security, and that the security may be subject to additional criteria as a condition for initial and continued inclusion in Nasdaq. The rule change establishes the NASD's discretionary authority under Part II, Sections 1 and 2 of Schedule D to deny initial inclusion or apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance which exists or occurs that makes initial or continued inclusion of the securities in Nasdaq inadvisable or unwarranted, even though the securities meet all enumerated criteria for initial or continued inclusion in Nasdaq. Nonetheless, the Commission expects that before the NASD exercises its discretionary authority under the new rule, it will consider as one of several factors the extent to which events or circumstances giving rise to the proposed action were previously disclosed.

V. Conclusion

In conclusion, for the reasons stated above, the Commission finds that the rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Commission therefore finds that the proposed rule change is consistent with the requirements of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–NASD–94–19 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–14031 Filed 6–8–94; 8:45 am]

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[27] See Letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to Joseph R. Hardiman, President, NASD (Jan. 10, 1990).

[28] 15 U.S.C. section 78o–3(b)(6).

[29] *Id.* section 78o–3(b)(8).

[30] *Id.* section 78o–3(h)(2).

[31] NASD Manual, Schedules to the By-Laws, Schedule D, Parts II & III, (CCH) ¶¶ 1805–1806A & 1807–1813.

[32] NASD Manual, Code of Procedure, Art. VIII, Secs. 1–10, (CCH) ¶¶ 3081–3090 (NASD procedures re: summary action prohibiting or limiting access to Nasdaq) and Art. IX, Secs. 1–9, (CCH) ¶¶ 3101–3109 (NASD procedures re: final action prohibiting or limiting access to Nasdaq).

[33] See *Belfort* v. *NASD,* No 93–7159, 1994 U.S. Dist. LEXIS 3457 (S.D.N.Y. Mar. 24, 1994) (court lacks jurisdiction because the plaintiff did not exhaust administrative remedies under the Act); *Dimensional Visions* v. *NASD,* 799 F. Supp. 29 (E.D. Pa. 1992) (same).

[34] 15 U.S.C. 78s(d)(1). The Commission rule promulgated pursuant to 15 U.S.C. 78s(d)(1) distinguishes between notice to the Commission of final action excluding an issuer from Nasdaq (17 CFR 240.19d–1(e)) and notice to the Commission of summary action excluding an issuer from Nasdaq (17 CFR 240.19d–1(i)). With respect to notice of final action, the rule requires that it be promptly filed with the Commission and include the name of the issuer and the last known place of business, the statutory and/or regulatory basis for excluding the issuer, a statement describing the issuer's response to the NASD's decision, a statement of the finding of facts and conclusions, a statement supporting the resolution of the principal issues raised, the effective date of the NASD's action and other information the NASD deems relevant. 17 CFR 240.19d–1(f). With respect to notice of summary action, the rule requires that it be filed with the Commission within 24 hours of the effectiveness of the action and include the name of the issuer and the last known place of business, a statement describing the specific statutory basis for summarily excluding the issuer, the effective date of the NASD's action and other information the NASD deems relevant. 17 CFR 240.19d–1(i).

[35] 15 U.S.C. 78s(d)(2) and 17 CFR 240.19d–3.

[36] 15 U.S.C. 78o–3(h)(3) and 17 CFR 240.19d–2

[37] *Id.* section 78y(a)(1).

[38] 17 CFR 200.30–3(a)(12).

[Release No. 34–34137; File No. Phlx–94–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Modification of Trading Hours on the Big Cap Index

June 1, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the trading hours applicable to the Phlx's Big Cap Index ("Index"), a broad-based index. The trading hours originally proposed in connection with the Index were from 9:30 a.m. to 4:10 p.m. on business days. The Phlx now proposes to modify Phlx Rules 101 and 1101A to reflect that the trading hours of the Index from 9:30 a.m. to 4:15 p.m. on business days. Because the Exchange believes that this proposal is an extension of an existing policy of the Exchange to trade broad-based indexes until 4:15 p.m., it has submitted this proposed rule change effective immediately upon filing so that the Index will be open for trading until 4:15 p.m. each business day from the time it commences trading on May 17, 1994.

The text of the proposed rule change is available at the office of the Secretary, Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

On April 28, 1994, the Commission issued an order approving the Exchange's proposal to list and trade options on the Index.[3] That proposal had specified that the trading hours for the Index would be from 9:30 a.m. to 4:10 p.m., and the Commission approved the proposal with these trading hours in effect. However, the Exchange states that the trading hours were communicated incorrectly to Commission staff while the proposal was pending. The Exchange states that it intended for the Index to be open until 4:15 p.m. on each business day, consistent with all of the other broad-based indexes listed on the Exchange (as well as all other broad-based indexes listed on all other options exchanges). Further, the Exchange states that its Board of Governors approved the Index with the intention of having it trade until 4:15 p.m.[4] Traditionally, it has been the policy of the Phlx, as well as all of the other options exchanges, to trade broad-based indexes until 4:15 p.m. Additionally, early materials that were distributed to the public announcing the new Index and showing its specifications indicated that the Index would close at 4:15 p.m. Because at the time this proposal was filed the Index had not yet started trading, the Exchange does not expect any customer confusion regarding the change in the closing time of Index. Accordingly, the Exchange is submitting this filing as an extension of an existing policy and practice of the Exchange and requests that the filing be effective immediately upon filing pursuant to section 19(b)(3)(A).

The Exchange believes that the proposed rule change is consistent with section 6 of the Act, and, in particular, section 6(b)(5) thereof, in that it will foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, and Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Exchange rule, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 30, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–13962 Filed 6–8–94; 8:45 am]

BILLING CODE 8010–01–M

[3] See Securities Exchange Act Release No. 33973 (April 28, 1994), 59 FR 23245 (May 5, 1994).

[4] Phlx Rule 101 states that its Board of Governors shall determine by resolution the hours during which business may be transacted on the Exchange.

[Investment Company Act Rel. No. 20333; 813–128]

ABS Employees' Venture Fund Limited Partnership and Alex. Brown Investments Incorporated; Notice of Application

June 2, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: ABS Employees' Venture Fund Limited Partnership (the "Venture Partnership") and Alex. Brown Investments Incorporated (the "General Partner"), on behalf of themselves and all partnerships identical in all material respects (other than investment objective and strategy) that may be offered in the future to the same class of investors as those investing in the Venture Partnership (the "Subsequent Partnerships") (the Venture Partnership and the Subsequent Partnerships, collectively "the Partnerships") and any direct or indirect wholly-owned subsidiaries of Alex. Brown Incorporated that may be formed to serve as general partners of the Subsequent Partnerships.

RELEVANT ACT SECTIONS: Exemption requested under section 6(b) from all of the provisions of the Act except sections 9, 17 (except for certain provisions of sections 17(a), (d), (f), (g), and (j) as described herein), 30 (except for certain provisions of sections 30(a), (b), (d), and (f) as described herein), and 36–53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants seek an order exempting them from most of the provisions of the Act and permitting certain joint transactions. Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

FILING DATE: The application was filed on January 13, 1994, and amended on May 17, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 27, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 135 East Baltimore Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Venture Partnership is a limited partnership organized under the laws of the State of Maryland. The General Partner, a wholly-owned subsidiary of Alex. Brown Incorporated, is a Maryland corporation that acts as the general partner of the Venture Partnership. All of the executive officers and directors of the General Partner and any corporation created to serve as general partner of the Subsequent Partnerships will be employees of Alex. Brown Incorporated or its subsidiaries.

2. The Venture Partnership's investment strategy will be to invest in particular securities in which each individual limited partner has elected to participate on a case-by case basis. The General Partner will screen investment opportunities that come to its attention through Alex. Brown & Sons Incorporated ("Alex. Brown") or other affiliates of Alex. Brown, and will inform the limited partners of the availability of certain of these opportunities for investment through the Venture Partnership. The General Partner will not recommend investments or exercise investment discretion. Capital contributions made to the Venture Partnership by participating limited partners will be allocated *pro rata* to the capital sub-accounts relating to a particular investment, and limited partners who elect not to participate in particular investment will have no interest therein.

3. Each Subsequent Partnership will be structured as a limited partnership. Certain Subsequent Partnerships may have an investment strategy similar to that of the Venture Partnership and will invest in securities in which individual limited partners have elected to participate on a case-by-case basis through allocations to capital sub-accounts. Other Subsequent Partnerships may be operated as pooled entities managed by their general partners. The General Partner is expected to serve as general partner for the Subsequent Partnerships, although one or more separate, wholly-owned subsidiaries of Alex. Brown Incorporated may be created to serve as general partner of the Subsequent Partnerships.

4. Each Partnership will offer limited partnership interests only to persons who are: (a) Employees of Alex. Brown who are present or former managing directors or principals of Alex. Brown or partners of Alex. Brown's predecessor, Alex. Brown Partners, or employees holding positions equivalent to managing director or principal with other wholly-owned subsidiaries of Alex. Brown Incorporated; (b) "accredited investors" as defined in rule 501(a)(6) of regulation D under the Securities Act of 1933; and (c) in the opinion of the General Partner (or in the case of any Subsequent Partnership, its general partner), sufficiently knowledgeable, sophisticated, and experienced in business and financial matters to be capable of evaluating the merits and risk of the partnership investment, able to bear the economic risk of such investment, and able to afford a complete loss of such investment. The Partnerships are intended to allow the participants to diversify their investments and to have the opportunity to participate in investments that might not otherwise be available to them or that might be beyond their individual means.

5. Alex. Brown Incorporated or its affiliates will bear all expenses incurred in connection with the organization of each Partnership. The Venture Partnership will bear its own operating expenses. No compensation will be paid to the General Partner for its services to the Venture Partnership and the General Partner will not receive reimbursement for its own expenses. Because the General Partner receives no compensation for its services to the Venture Partnership, it will not register as an investment adviser under the Investment Advisers Act of 1940. Applicants will consider at the time of formation of any Subsequent Partnership whether the General Partner (or any entity acting as general partner for such Subsequent Partnership) will be required to register as an investment adviser.

6. The General Partner of each Partnership will contribute capital to the Partnership in an amount equal to at least 1% of the aggregate initial capital contributions of that Partnership's initial limited partners. Each general partner will be capitalized so as to satisfy existing Internal Revenue Service guidelines regarding the characterization of an entity for federal income tax purposes as a partnership, rather than as an association taxable as a corporation.

7. Each Partnership will send its limited partners an annual report regarding its operations and valuation of Partnership assets as carried on the books of the Partnership. The report will set out information with respect to each limited partner's distributive share of income, gains, losses, credits, and other

items for federal income tax purposes. The annual report of the Venture Partnership and of each Subsequent Partnership with a similar investment strategy will contain unaudited financial statements because these Partnerships' assets will consist only of initial capital contributions and investments selected by individual limited partners. These Partnerships will maintain a file containing any financial statements and other information received from the issuers of the investments held by such Partnerships, and will make such file available for inspection by their limited partners. The annual report of each other Partnership will contain financial statements audited by independent public accountants.

Applicants' Legal Analysis

1. Section 6(b) provides that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 2(a)(13) defines an employees' security company, among other things, as any investment company all of the outstanding securities of which are beneficially owned by the employees or persons on retainer of a single employer or affiliated employers or by former employees of such employers.

2. Applicants submit that the exemptions requested are consistent with the protection of investors in view of the substantial community of interest among all of the parties and the fact that each Partnership is an "employees securities' company" as defined in section 2(a)(13) of the Act. The Partnerships are organized and managed by persons who will be investing in the Partnerships, and will not be promoted by persons seeking to profit from fees or investment advice or from the distribution of securities.

3. On behalf of the Partnerships, applicants request relief from all of the provisions of the Act, and the regulations thereunder, except sections 9, 17 (except for certain provisions of sections 17 (a), (d), (f), (g), and (j) as described herein), 30 (except for certain provisions of sections 30 (a), (b), (d), and (f) as described herein), and 36–53, and the rules thereunder.

4. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such registered investment company or to purchase from such registered investment company any security or other property. An exemption is requested from section 17(a) to permit the Partnerships to: (a) Purchase from Alex. Brown, or from an Alex. Brown affiliate, securities or interests in properties previously acquired for the account of Alex. Brown or the Alex. Brown affiliate; (b) sell to Alex. Brown or Alex. Brown affiliates securities or interests in properties previously acquired by the Partnerships; (c) invest in companies, partnerships, or other investment vehicles offered, sponsored, or managed by Alex. Brown or by an Alex. Brown affiliate ("Alex. Brown Sponsored Vehicles"); (d) purchase securities from Alex. Brown Sponsored Vehicles, except that bridge financing in Alex. Brown Sponsored Vehicles will be limited to 50% of the assets of a Partnership; (e) invest in securities of entities for which Alex. Brown or its affiliated persons have performed investment banking or other services and from which they may have received fees; (f) purchase interests in a company or other investment vehicle in which Alex. Brown or Alex. Brown affiliates or their respective employees own 5% or more of the voting securities, or that is otherwise affiliated with the Partnership or Alex. Brown; (g) purchase securities that are underwritten by Alex. Brown (including a member of a selling group) on terms at least as favorable to the Partnership as those offered to investors other than "affiliated persons" (as defined in the Act) of Alex. Brown; (h) participate as a selling securityholder in a public offering that is underwritten by Alex. Brown or by an Alex. Brown affiliate or in which Alex. Brown or an Alex. Brown affiliate acts as a member of the selling group; (i) invest in money market funds managed or underwritten by Alex. Brown or Alex. Brown affiliates; (j) purchase short-term instruments from, or sell such instruments to, Alex. Brown or Alex. Brown affiliates at market value; and (k) enter into repurchase transactions with Alex. Brown or Alex. Brown affiliates.

5. Any assets of a Partnership invested in a money market fund managed by an Alex. Brown affiliate will be invested in only those money market funds that do not impose sales loads or redemption fees, and will be subject only to those fees charged to and paid by persons unaffiliated with Alex. Brown investing in that fund. Furthermore, a Partnership purchasing any other short-term instrument from Alex. Brown or an Alex. Brown affiliate will pay no fee in connection with that purchase. No Partnership will acquire more than 3% of the total outstanding voting stock of any investment company.

6. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant with the affiliated person in contravention of such rules and regulations as the SEC may prescribe. Rule 17d–1 was promulgated pursuant to section 17(d) and prohibits most joint transactions unless approved by order of the SEC. An exemption is requested pursuant to section 17(d) and rule 17d–1 to permit the Partnerships to participate in joint transactions, including the following: (a) An investment by one or more Partnerships in a non-Alex. Brown Sponsored Vehicle, (i) in which Alex. Brown, an Alex. Brown affiliate or an affiliated person thereof, an Alex. Brown Sponsored Vehicle, an employee, officer, or director of the General Partner, or certain transferees of the aforementioned (collectively, "Affiliates") is a participant or plans to become a participant, and/or (ii) with respect to which Alex. Brown or an Alex. Brown affiliate is entitled to receive placement fees, investment banking fees, brokerage commissions, or other economic benefits or interests; (b) an investment by one or more Partnerships in an Alex. Brown Sponsored Vehicle; and (c) an investment by one or more Partnerships in an Alex. Brown Sponsored Vehicle in which an Affiliate is a participant or plans to become a participant, including situations in which an Affiliate has a partnership or other interest in, or compensation arrangement with, the Alex. Brown Sponsored Vehicle.

7. Section 17(f) permits a registered investment company to maintain self custody of its securities and similar investments subject to such rules and regulations as the SEC prescribes for the protection of investors. An exemption is requested from section 17(f) and rule 17f–1 to the extent necessary to permit Alex. Brown to act as custodian for the Partnerships without a written contract.

8. Section 17(g) and rule 17g–1 generally require that a majority of the board of directors of an investment company who are not interested persons take certain actions and make certain approvals concerning bonding. An exemption is requested to the extent necessary to permit the Partnerships to comply with rule 17g–1 without the necessity of having a majority of the board of directors of the General Partner who are not "interested persons" take such action and make such approvals as set forth in rule 17g–1. Except for the

requirements of approval by non-interested directors, the Partnerships will comply with rule 17g–1.

9. Section 17(j) and rule 17j–1 require that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report transactions in any security in which the access person has, or by reason of the transaction acquires, any direct or indirect beneficial ownership. Applicants request an exemption from the requirements of rule 17j–1, with the exception of rule 17j–1(a), because they are burdensome and unnecessary in light of the community of interest among the partners of the Partnerships.

10. Section 30 of the Act generally requires a registered investment company to file quarterly and annual reports with the SEC and make semi-annual reports to its stockholders. An exemption is requested from sections 30(a) and 30(b) to the extent necessary to exempt the Partnerships from filing annual and quarterly reports with the SEC. The pertinent information that would be contained in such filings must, pursuant to the terms of the partnership agreements, be sent to the limited partners of the Partnerships. Exemptive relief from section 30(d) is necessary to permit the Partnerships to report annually, rather than semi-annually, to the limited partners. Exemptive relief from section 30(f) is necessary to exempt the General Partner and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4, and 5 under section 16 of the Securities Exchange Act of 1934.

Applicants' Conditions

An order granting the requested exemptions will be subject to the following conditions set forth in the application:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (the "Section 17 Transactions") will be effected only if the General Partner, or in the case of any Subsequent Partnership, its general partner, determines that:

(a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the limited partners and do not involve overreaching of the Partnership or its limited partners on the part of any person concerned; and

(b) The transaction is consistent with the interests of the limited partners, the Partnership's organizational documents and the Partnership's reports to its limited partners.

In addition, the General Partner, and any general partner of any Subsequent Partnership, will record and preserve a description of such affiliated transactions, their findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of the Partnerships and at least two years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. In any case where purchases or sales are made from or to an entity affiliated with a Partnership by reason of a 5% or more investment in such entity by a director, officer or employee of the general partner of that Partnership, such individual will not participate in the general partner's determination of whether or not to effect such purchase or sale.

3. The General Partner, and any general partner of any Subsequent Partnership, will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnerships, or any affiliated person of such a person, promoter, or principal underwriter.

4. No general partner of any Partnership will invest the funds of that Partnership in any investment in which a "Co-Investor" has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives that general partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and *pro rata* with the Co-Investor. The term "Co-Investor" means any person who is: (a) An "affiliated person" (as such term is defined in the Act) of the Partnership; (b) Alex. Brown Incorporated, its subsidiaries and controlled entities ("Alex. Brown Incorporated"); (c) an employee, officer, or director of Alex. Brown Incorporated; (d) Alex. Brown Sponsored Vehicles; (e) any entity with respect to which Alex. Brown Incorporated provides management, investment management or similar services as manager, investment manager, or general partner or in a similar capacity, and for which it may receive compensation, including without limitation, management fees, performance fees, carried interests entitling it to share disproportionately in income and capital gains or similar compensation; or (f) a company in which an officer or director of the General Partner (or of any other general partner of a Partnership) acts as an officer, director, or general partner, or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor or a trust established for any such family member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934, as amended (the "1934 Act"); or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the 1934 Act and rule 11Aa2–1 thereunder.

5. The general partner of each Partnership will send to each limited partner who had an interest in the Partnership, at any time during the fiscal year then ended, Partnership financial statements. Such financial statements will be unaudited in the case of the Venture Partnership and each Subsequent Partnership with a similar investment strategy, but in the case of all other Partnerships will be audited by the Partnerships' independent accountants. At the end of each fiscal year, the general partner of each Partnership, other than the Venture Partnership and each Subsequent Partnership with a similar investment strategy, will make an appraisal or have an appraisal made of all of the assets of the Partnership as of such fiscal year end. The appraisal of the Partnership assets may be by independent third parties appointed by the general partner and deemed qualified by the general partner to render an opinion as to the value of Partnership assets, using such methods and considering such

information relating to the investments, assets and liabilities of the Partnership as such persons may deem appropriate, but in the case of an event subsequent to the end of the fiscal year materially affecting the value of any Partnership asset or investment, the general partner may revise the appraisal as it, in its good faith and sole discretion, deems appropriate. In addition, within 90 days after the end of each fiscal year of each of the Partnerships or as soon as practicable thereafter, its general partner shall send a report to each person who was a limited partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the limited partner of his or her federal and state income tax returns and a report of the investment activities of the Partnership during such year.

6. Each Partnership and its general partner will maintain and preserve, for the life of each such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements and annual reports of such Partnership to be provided to the limited partners, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13961 Filed 6–8–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26060]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 3, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 27, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant application(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Indiana Michigan Power Company (70–6458)

Indiana Michigan Power Company ("I&M"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment to its application-declaration under Sections 9(a), 10 and 12(d) of the Act.

By orders dated June 11, 1980 and June 25, 1980 (HCAR Nos. 21618 and 21642, respectively), I&M was authorized to enter into an agreement of sale ("Agreement") with the City of Rockport, Indiana ("City") concerning the construction, installation, financing and sale of pollution control facilities ("Facilities") at I&M's Rockport Plant. Under the Agreement, the City may issue and sell its pollution control revenue bonds ("Revenue Bonds") or pollution control refunding bonds ("Refunding Bonds"), in one or more series, and deposit the proceeds with the trustee ("Trustee") under an indenture ("Indenture") entered into between the City and the Trustee. The proceeds are applied by the Trustee to the payment of the costs of construction of the Facilities, or, in the case of proceeds from the sale of Refunding Bonds, to the payment of the principal, premium (if any) and/or interest on Revenue Bonds to be refunded.

I&M was also authorized to convey an undivided interest in a portion of the Facilities to the City, and to reacquire that interest under an installment sales arrangement requiring I&M to pay as the purchase price semiannual installments in such an amount, together with other monies held by the Trustee under the Indenture for that purpose, as to enable the City to pay, when due, the interest and principal on the Revenue Bonds. The City issued and sold its Revenue Bonds, in one series, in the aggregate principal amount of $40 million.

By subsequent orders dated December 4, 1984 and December 12, 1984 (HCAR Nos. 23514 and 23528, respectively), the Commission authorized I&M to enter into amendments to the Agreement with the City providing for the disposition and acquisition of the Project in connection with the issuance by the City of $110 million principal amount of pollution control bonds ("Series 1984 A Bonds"), also in one series, to finance the construction of the remainder of the Project.

Then, by order dated August 2, 1985 (HCAR No. 23781), the Commission authorized I&M to enter into further amendments to the Agreement with the City providing for the issuance and sale of an aggregate principal amount of $150 million, in three additional series, of pollution control bonds ("Series 1985 A Bonds"), each in the principal amount of $50 million with a maturity of August 1, 2014. The third series of the Series 1985 A Bonds were fixed rate bonds bearing interest at 9¼% per annum, payable semiannually, and subject to optional redemption following an initial period not to exceed ten years ("Fixed Rate Bonds"). The proceeds of the Series 1985 A Bonds were used to cover a portion of the cost of construction of the Project and to refund the outstanding short-term Series 1984 A Bonds in the principal amount of $110 million.

I&M now proposes to have the City issue and sell, no later than December 31, 1995, an additional series of Refunding Bonds in the aggregate principal amount of up to $50 million ("Refunding Fixed Rate Bonds"). The proceeds of the sale of the Refunding Fixed Rate Bonds will be deposited with the Trustee and applied by the Trustee, and used together with other funds supplied by I&M, to provide for the early redemption of the Fixed Rate Bonds at a price of 102% of their principal amount.

It is contemplated that the Refunding Fixed Rate Bonds will be sold by the City pursuant to arrangements with Goldman, Sachs & Co. While I&M will not be a party to the underwriting arrangements for the Refunding Fixed Rate Bonds, the Agreement provides that the Refunding Fixed Rate Bonds shall have such terms as shall be specified by I&M.

I&M is advised that the Refunding Fixed Rate Bonds will bear interest semi-annually. It is expected that the Refunding Fixed Rate Bonds will mature at a date or dates not more than 40 years from the date of their issuance. The Refunding Fixed Rate Bonds may be subject to mandatory or optional redemption under circumstances and

terms specified at the time of pricing, and, if it is deemed advisable, may also include a sinking fund provision. In addition, the Refunding Fixed Rate Bonds may not be redeemable at the option of the City in whole or in part at any time for a period to be determined a the time of pricing the Refunding Fixed Rate Bonds. Finally, I&M may provide some form of credit enhancement for the Refunding Fixed Rate Bonds, such as a letter of credit, surety bond or bond insurance, and I&M may pay a fee in connection therewith. Any letter of credit would not exceed a face amount of $50 million and would be for a term of from one to five years. Drawings will bear interest at a rate not exceeding 1% above the bank's prime rate and annual fees will not exceed 1.25% of the face amount of the letter of credit.

It is not possible to predict precisely the interest rate which may be obtained in connection with the issuance of the Refunding Fixed Rate Bonds. However, I&M has been advised that, depending on maturity and other factors, the annual interest rate on obligations, interest on which is so excludable from gross income, historically has been, and can be expected at the time of issuance of the Refunding Fixed Rate Bonds to be, 1½% to 2½% or more lower than the rates of obligations of like terms and comparable quality, interest on which is fully subject to Federal income tax.

Moreover, I&M will not agree, without further order of this Commission, to the issuance of any Refunding Fixed Rate Bond by the City if: (1) The stated maturity of any such bond shall be more than forty years; (2) the rate of interest to be borne by any such bond shall exceed 8% per annum; (3) the discount from the initial public offering price of any such bond shall exceed 5% of the principal amount thereof; or (4) the initial public offering price shall be less than 95% of the principal amount thereof. Further, I&M will not enter into the proposed refunding transaction unless the estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and on the securities to be refunded is, on an after tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. The discount rate used shall be the estimated after-tax interest rate on the Refunding Fixed Rate Bonds to be issued.

WPS Resources Corporation, (70–8379)

WPS Resources Corporation ("WPS Resources"), a Wisconsin corporation not currently subject to the Act, 700 North Adams Street, Green Bay, Wisconsin 54307, has filed an application requesting an order: (1) Approving the direct acquisition by WPS Resources, under sections 9(a)(2) and 10 of the Act, of all the outstanding shares of common stock of Wisconsin Public Service Corporation ("Wisconsin Public Service"), and, through such acquisition, the indirect acquisition of 33.1% of the outstanding shares of Wisconsin River Power Company ("Wisconsin River Power"), and (2) granting WPS Resources and its subsidiary companies, upon consummation of the proposed transaction, an exemption under section 3(a)(1) of the Act from all of the provisions of the Act, except section 9(a)(2).

Wisconsin Public Service, a public-utility company and a public-utility holding company exempt from registration by order of the Commission under section 3(a)(2) of the Act,[1] is principally engaged in the production, transmission, distribution and sale of electricity to approximately 347,000 customers in northeastern Wisconsin and upper Michigan. Wisconsin Public Service also engages in the purchase, distribution, transportation and sale of natural gas to approximately 190,000 customers in northeastern Wisconsin and upper Michigan. Total operating revenues for 1993 were $680.6 million, of which $493.2 million (72%) was from electric service and $187.4 million (28%) was from gas service. In 1993, Wisconsin Public Service derived 97.8% of its operating revenues and 98.6% of its net income from operations in Wisconsin, and 2.2% of its operating revenues and 1.4% of its net income from operations in Michigan.

Wisconsin River Power, a Wisconsin corporation, owns and operates two dams and related hydroelectric plants on the Wisconsin River with an aggregate installed capacity of about 35 megawatts. The output of the plants is sold, at the sites of the plants, to the three companies which own the outstanding capital stock of Wisconsin River Power, substantially in proportion to their stock ownership interests.[2] Total assets of Wisconsin River Power at December 31, 1993 were $6.06 million, representing 0.51% of Wisconsin Public Service's total assets of $1.2 billion. Wisconsin Public Service's share of Wisconsin River Power's net income for 1993 was $310,000, representing 0.50% of Wisconsin Public Service's total net income of $62 million.

Wisconsin Public Service proposes to reorganize by forming a holding company over itself. Under an Agreement and Plan of Share Exchange ("Plan"), one share of common stock, $1 par value, of WPS Resources, a corporation organized to facilitate the reorganization, will be exchanged for each share of common stock, $4 par value, or Wisconsin Public Service outstanding ("Exchange") at the effective time of the Plan, and the outstanding shares of WPS Resources common stock held by Wisconsin Public Service prior to the effective time of the Plan will be canceled. Following the Exchange, all of the outstanding common stock of WPS Resources will be owned by the former Wisconsin Public Service common shareholders, and WPS Resources will own all of the outstanding common stock of Wisconsin Public Service. Wisconsin River Power will remain a subsidiary of Wisconsin Public Service.[3] There will be no exchange of the outstanding preferred stock or first mortgage bonds of Wisconsin Public Service in connection with the exchange.

The holders of the common stock of Wisconsin Public Service approved the Plan at the annual meeting of shareholders held on May 5, 1994. The Wisconsin Public Service Commission approved the formation of a holding company by order dated May 31, 1994.

The principal reasons for the proposed restructuring are: (1) To create a structure which can more effectively address the growing national competition in the energy industry; (2) to facilitate selective diversification into nonutility businesses which are related to the utility business of Wisconsin Public Service or energy conservation or energy resources or which otherwise benefit the service territory of the utility; (3) to separate the utility and nonutility businesses; and (4) to provide additional flexibility for financing and for maintaining appropriate utility capital ratios.

The application states that following the restructuring, WPS Resources and its subsidiaries will meet the requirements for an exemption under section 3(a)(1). WPS Resources, Wisconsin Public Service and River Power are and will continue to be predominantly intrastate in character and will continue to carry on their

[1] *Wisconsin Public Service Corporation*, 1 S.E.C. 512 (1936).

[2] See *Wisconsin Public Service Corporation*, 27 S.E.C. 539 (1948) (approving the acquisition by the utility of the capital stock of transmission or distribution facilities.

[3] Wisconsin Public Service, by means of a non-cash dividend, will transfer to WPS Resources all the outstanding stock of its nonutility subsidiary companies, WPS Communications, Inc. and Packerland Energy Services, Inc.

business substantially in Wisconsin, the state in which they are organized.

Southern Indiana Gas and Electric Company (70–8407)

Southern Indiana Gas and Electric Company ("SIGECO"), 20 N.W. Fourth Street, Evansville, Indiana 47741–0001, an Indiana public-utility holding company exempt from registration under sections 3(a)(1) and 3(a)(2) of the Public Utility Holding Company Act of 1935 ("Act") by order and pursuant to rule 2, has filed an application under sections 9(a)(2) and 10 of the Act in connection with the proposed acquisition of all of the outstanding common stock ("Lincoln Common Stock") of Lincoln Natural Gas Company, Inc. ("Lincoln"), an Indiana public utility corporation engaged in the gas utility business.[4]

A wholly-owned subsidiary of SIGECO, Spencer Energy Corp., an Indiana corporation ("Spencer"), will be merged with and into Lincoln (the "Merger") pursuant to an Agreement and Plan of Merger among SIGECO, Spencer and Lincoln ("Agreement"), with Spencer ceasing to exist and Lincoln the surviving corporation. Spencer was incorporated for the sole purpose of effecting SIGECO's acquisition of the Lincoln Common Stock and consummating the transactions described herein and is not engaged in any business.

SIGECO is a publicly held operating public utility engaged in the generation, transmission, distribution and sale of electricity and the purchase of natural gas and its transportation, distribution and sale in a service area which covers ten counties in southwestern Indiana.[5] At December 31, 1993, SIGECO served 118,163 electric customers and supplied gas service to 100,398 customers in Evansville and 63 other nearby communities and their environs.[6]

Lincoln is a closely held public utility corporation which owns and operates a gas distribution system in the City of Rockport, Spencer County, Indiana, and surrounding territory. Lincoln serves approximately 1,330 customers in Spencer County in southwestern Indiana and owns, operates, maintains and manages plant, property, equipment and facilities used and useful for the transmission, transportation, distribution and sale of natural gas to the public. Lincoln's gas service territory is adjacent to SIGECO's gas service territory.

In the Merger, the holders of Lincoln Common Stock issued and outstanding immediately prior to the Merger would be entitled to receive shares of common stock, without par value, of SIGECO ("SIGECO Common Stock") having a market value of approximately $1,350,000 in accordance with the formula contained in the Agreement, and each share of common stock, no par value ("Spencer Common Stock"), of Spencer issued and outstanding immediately prior to the Merger would be converted into one share of Lincoln Common Stock. Any shares of Lincoln Common Stock held in treasury by Lincoln at the effective time of the Merger will be canceled.

The number of shares of SIGECO Common Stock to be exchanged in the transactions will be determined by their average closing market price over a five-day period before the relevant closing date. After the consummation of the Merger, Lincoln will operate as a gas utility subsidiary company of SIGECO but, if appropriate, SIGECO may eventually merge Lincoln into itself.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–14032 Filed 6–8–94; 8:45 am]

BILLING CODE 8010–01–M

[4] SIGECO is a holding company as defined under section 2(a)(7)(A) of the Act by virtue of SIGECO's ownership of 33% of the capital stock of Community Natural Gas Company, Inc., an Indiana corporation, which is a gas utility company serving customers in southwestern Indiana.

[5] The only property SIGECO owns outside of Indiana is approximately eight miles of electric transmission line which is located in Kentucky. SIGECO does not distribute any electric energy in Kentucky.

[6] For the twelve months ended December 31, 1993, approximately 79% of SIGECO's total utility operating revenues were derived from its electric operations and approximately 21% from its gas operations.

DEPARTMENT OF STATE

[Public Notice 2017]

International Telecommunications Advisory Committee (ITAC) Standardization Sector; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Telecommunications Standardization Sector Study Group A will meet on June 28, 1994, in room 1406 from 9:30 a.m. to 1:00 p.m., and the Standardization Sector Group, on June 29, 1994, in room 1105 from 9:30 to 3, at the U.S. Department of State, 2201 "C" Street NW., Washington, DC 20520.

The agenda for Study Group A will include a debrief of the recent ITU–T Study Group 3 meeting and continue preparations for the September 27-October 7, Geneva ITU–T Study Group 1 meeting, and discuss issues related to ITU–T Study Group 2 activities.

The agenda for the Standardization Sector meeting (formerly the CCITT USNC) will include a debrief of the April meeting of TSAG, the ITU council-related activities covering strategic planning, etc.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you are not presently named on the mailing list of the Telecommunications Sector C Group, and wish to attend please call 202–647–0201 no later than 5 days before the meeting. Enter from the C Street Main lobby. A picture ID will be required for admittance.

Dated: June 1, 1994.

Earl S. Barbely,

Chairman, U.S., ITAC for ITU-Telecommunication Standardization Sector

[FR Doc. 94–14041 Filed 6–8–94; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In April 1994, there were eight applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IV of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Metropolitan Washington Airports Authority, Alexandria, Virginia.

Application Number: 94–02–U–00–DCA.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $166,739,071.

Charge Effective Date: November 1, 1993.

Estimated Charge Expiration Date: November 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: No change from previously approved application of August 16, 1993.

Brief Description of Project Approved for Use Only: Thirty-five gate north passenger terminal complex.

Decision Date: April 6, 1994.

For Further Information Contact: Robert Mendez, Washington Airports District Office, (703) 285–2570.

Public Agency: City of La Crosse, La Crosse, Wisconsin.

Application Number: 94–01–C–00–LSE.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $795,299.

Earliest Charge Effective Date: July 1, 1994.

Estimated Charge Expiration Date: August 1, 1997.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Planning studies, Runway safety equipment, Security access system, Taxiway safety improvements, Runway safety improvements, Land acquisition, New aircraft rescue and firefighting (ARFF) building and associated safety items.

Decision Date: April 6, 1994.

For Further Information Contact: Franklin Benson, Minneapolis Airports District Office, (612) 725–4221.

Public Agency: County of Marquette, Marquette, Michigan.

Application Number: 94–02–U–00–MQT.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $459,700.

Charge Effective Date: December 1, 1992.

Estimated Charge Expiration Date: April 1, 1996.

Class of Air Carriers Not Required to Collect PFC's: No change from previously approved application of October 1, 1992.

Brief Description of Projects Approved for Use Only: Perimeter deer fencing, Terminal security.

Decision Date: April 6, 1994.

For Further Information Contact: Dean Nitz, Detroit Airports District Office, (313) 487–7300.

Public Agency: City of Midland, Midland, Texas.

Application Number: 94–02–U–00–MAF.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $30,372,250.

Charge Effective Date: January 1, 1993.

Estimated Charge Expiration Date: January 1, 2010.

Class of Air Carriers Not Required to Collect PFC's: No change from previously approved application of December 16, 1993.

Brief Description of Projects Approved for Use Only: Rehabilitate airfield taxiways, Reconstruct runway 4/22, Rehabilitate runway 16L/34R, Construct new terminal complex.

Decision Date: April 14, 1994.

For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: Bert Mooney Airport Authority, Butte, Montana.

Application Number: 94–01–C–00–BTM.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $410,202.

Earliest Charge Effective Date: July 1, 1994.

Estimated Charge Expiration Date: May 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled air taxi/commercial operators.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Bert Mooney Airport.

Brief Description of Projects Approved for Collection and Use: Airport layout plan update, Runway 11/29 rehabilitation, Taxiway C extension, Taxiway D widening, Taxiways B and E rehabilitation, Americans with Disabilities Act terminal compliance, Modify loading bridge, Rehabilitate taxiway A lighting.

Brief Description of Projects Approved for Collection Only: Purchase new ARFF vehicle, Expand ARFF garage and update maintenance building, Air carrier apron reconstruction, Runway 15/33 rehabilitation.

Decision Date: April 17, 1994.

For Further Information Contact: David B. Gabbert, Helena Airports District Office, (406) 449–52171.

Public Agency: Clark County Department of Aviation, Las Vegas, Nevada.

Application Number: 94–03–U–00–LAS.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $944,028,500.

Charge Effective Date: June 1, 1992.

Estimated Charge Expiration Date: September 1, 2014.

Class of Air Carriers Not Required to Collect PFC's: No change from previously approved applications of February 24, 1992, August 21, 1992, and June 7, 1993.

Brief Description of Projects Approved for Use Only: Railroad track relocation, Runway 7L/25R extension—design and construction.

Decision Date: April 20, 1994.

For Further Information Contact: Joseph Rodriquez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: Outagamie County, Appleton, Wisconsin.

Application Number: 94–01–C–00–ATW.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $3,233,645.

Earliest Charge Effective Date: July 1, 1994.

Estimated Charge Expiration Date: September 1, 2000.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use: Land acquisition—parcel 42, Security fencing, Runway 11/29 grooving and airfield signage, Land acquisition—Doell property, Taxiway D and G reconstruction, ARFF building expansion, Snow removal vehicle, Terminal apron reconstruction and expansion, General aviation apron, PFC administration.

Brief Description of Projects Approved-in-Part for Collection and Use: Terminal water line.

Determination: Approved-in-part. Certain portions of facilities in the terminal are not Airport Improvement Program (AIP) eligible, and, accordingly, are not PFC eligible. Airport safety and snow removal vehicles.

Determination: Approved-in-part. The safety (security) vehicle is not AIP eligible, and therefore, not PFC eligible.

Brief Description of Projects Approved for Collection Only: Stormwater drainage improvements—phase I, Terminal baggage claim expansion, Install emergency generator, Acquire friction testing vehicle, Stormwater drainage improvements—phase II, Taxiway B reconstruction.

Brief Description of Project Withdrawn: Land acquisition—parcel 57.

Determination: Outagamie County requested that the land acquisition, parcel 57, be withdrawn from the PFC application by letter dated April 8, 1994.

Decision Date: April 25, 1994.

For Further Information Contact: Franklin Benson, Minneapolis Airports District Office, (612) 725–4221.

Public Agency: Chattanooga Metropolitan Airport Authority, Chattanooga, Tennessee.

Application Number: 93–01–C–00–CHA.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $7,177,253.

Earliest Charge Effective Date: July 1, 1994.

Estimated Charge Expiration Date: October 1, 2002.

Class of Air Carriers Not Required to Collect PFC's: Air carriers operating under Part 135 or Part 298 of the Federal Aviation Regulations, on an on-demand, non-scheduling basis, and not selling tickets to individual passengers.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Chattanooga Metropolitan Airport.

Brief Description of Projects Approved for Collection and Use: Bag claim devices, Loading bridges, Security system, Miscellaneous terminal improvements, General project (terminal building), Master plan/Part 150 update, Airfield signage, Ramp security system, PFC administration.

Brief Description of Project Disapproved: Widen/strengthen Taxiway A.

Determination: Disapproved. The FAA determined that the public agency did not provide justification that this project met the objectives of section 158.15(a) as required under section 158.25(b)(7).

Brief Description of Projects Withdrawn: Concourse seating, Airfield fill and drainage.

Determination: These projects were withdrawn by the Chattanooga Metropolitan Airport Authority by letter dated December 27, 1993.

Decision Date: April 26, 1994.

For Further Information Contact: Charles Harris, Memphis Airports District Office, (901) 544–3495.

Amendments to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp date
92–01–C–01–PDX, Portland, OR	04/12/94	$17,961,850	$22,090,000	07/01/94	10/31/94

Issued in Washington, DC, on May 20, 1994.

Donna Taylor,

Manager, Passenger Facility Charge Branch

Cumulative List of PFC Applications Previously Approved

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Alabama:					
92–01–I–00–Hsv., Huntsville Intl-Carl T. Jones Field, Huntsville	03/06/1992	$3	$36,472,657	06/01/1992	11/01/2009
93–02–U–00–Hsv., Huntsville Intl-Carl T. Jones Field, Huntsville	06/03/1993	3	0	09/01/1993	11/01/2009
92–01–C–00–Msl., Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	100,000	06/01/1992	02/01/1995
Arizona:					
92–01–C–00–Flg., Flagstaff, Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
93–01–C–00–Yum., Yuma Mcas/Yuma International, Yuma	09/09/1993	3	1,678,064	12/01/1993	06/01/2003
California:					
92–01–C–00–Acv., Arcata, Arcata	11/24/1992	3	186,500	02/01/1993	05/01/1994
93–01–C–00–Cic., Chico Municipal, Chico	09/29/1993	3	137,048	01/01/1994	06/01/1997
92–01–C–00–Iyk., Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
93–01–C–00–Lgb., Long Beach-Daugherty Field, Long Beach	12/30/1993	3	3,533,766	03/01/1994	03/01/1998
93–01–C–00–Lax., Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	07/01/1993	07/01/1995
93–01–C–00–Mry., Monterey Peninsula, Monterey	10/08/1993	3	3,960,855	01/01/1994	06/01/2000
92–01–C–00–Oak., Metropolitan Oakland International, Oakland	06/26/1992	3	12,343,000	09/01/1992	05/01/1994
94–02–C–00–Oak., Metropolitan Oakland International, Oakland	02/23/1994	3	8,999,000	05/01/1994	04/01/1995
93–01–I–00–Ont., Ontario International, Ontario	03/26/1993	3	49,000,000	07/01/1993	07/01/1998
92–01–C–00–Psp., Palm Springs Regional, Palm Springs	06/25/1992	3	81,888,919	10/01/1992	11/01/2032
92–01–C–00–Smf., Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1995

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date aporoved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
92-01-C-00-Sjc., San Jose International, San Jose ..	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
93-02-U-00-Sjc., San Jose International, San Jose ...	02/22/1993	3	0	05/01/1993	08/01/1995
93-03-C-00-Sjc., San Jose International, San Jose ...	06/16/1993	3	16,245,000	08/01/1995	05/01/1997
92-01-C-00-Sbp., San Luis Obispo County-McChesney Field, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
92-01-C-00-Sts., Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995
91-01-I-00-Tvl., Lake Tahoe, South Lake Tahoe [illegible].	05/31/1992	3	928,747	08/01/1992	03/01/1997
92-01-C-00-Cos., Colorado Springs Municipal, Colorado Springs	[illegible]	[illegible]	5,622,000	03/01/1993	02/01/1996
92-01-C-00-Dnx., Denver International (New), Denver	04/29/1992	3	2,330,734,521	07/01/1992	01/01/2026
93-01-C-00-Ege., Eagle County Regional, Eagle	06/15/1993	3	572,609	09/01/1993	04/01/1998
93-01-C-00-Fnl., Fort Collins-Loveland, Fort Collins	07/14/1993	3	707,857	10/01/1993	06/01/1996
92-01-C-00-Gjt., Walker Field, Grand Junction	[illegible]	3	1,812,000	04/01/1993	[illegible]/1993
93-01-C-00-Gnc., Gunnison County, Gunnison	03/27/1993	3	702,133	11/01/1993	04/01/1998
93-01-C-00-Hdn., Yampa Valley, Hayden	08/23/1993	3	532,881	11/01/1993	04/01/1997
93-01-C-00-Mtj., Montrose County, Montrose	07/29/1993	3	1,461,745	11/01/1993	02/01/2009
93-01-C-00-Pub., Pueblo Memorial, Pueblo	08/16/1993	3	1,200,745	11/01/1993	08/01/2010
92-01-C-00-Sbs., Steamboat Springs/Bob Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
92-01-C-00-Tex., Telluride Regional, Telluride	11/23/1992	3	300,000	03/01/1993	11/01/1997
Connecticut:					
93-01-C-00-Hvn., Tweed-New Haven, New Haven	09/10/1993	3	2,490,450	12/01/1993	06/01/1999
93-02-I-00-Bdl., Bradley International, Windsor Locks	07/09/1993	3	12,030,000	10/01/1993	09/01/1995
94-03-U-00-Bdl., Bradley International, Windsor Locks	02/22/1994	3	0	06/01/1994	03/01/1995
Florida:					
93-01-C-00-Dab., Daytona Beach Regional, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
92-01-C-00-Rsw., Southwest Florida International, Fort Myers	03/31/1992	3	253,858,512	11/01/1992	03/01/2014
93-02-U-00-Rsw., Southwest Florida International, Fort Myers	05/10/1993	3	0	11/01/1992	06/01/2014
93-01-C-00-Jax., Jacksonville International, Jacksonville	01/28/1994	3	12,258,255	05/01/1994	07/01/1997
92-01-C-00-Eyw., Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
92-01-C-00-Mth., Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	06/01/1995
92-01-C-00-Mco., Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
93-02-C-00-Mco., Orlando International, Orlando	09/24/1993	3	12,957,000	12/01/1993	02/01/1998
93-01-I-00-Pfn., Panama City-Bay County International, Panama City..	12/01/1993	3	8,236,499	02/01/1994	10/01/2007
92-01-C-00-Pns., Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
92-01-I-00-Srq., Sarasota-Bradenton International, Sarasota	05/29/1992	3	38,715,000	09/01/1992	09/01/2005
92-01-I-00-Tlh., Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
93-02-U-00-Tlh., Tallahassee Regional, Tallahassee	12/30/1993	3	0	02/01/1993	06/01/1998
93-01-C-00-Tpa., Tampa International, Tampa	07/15/1993	3	87,102,000	10/01/1993	09/01/1999
93-01-C-00-Pbi., Palm Beach International, West Palm Beach	01/26/1994	3	38,801,036	04/01/1994	04/01/1999
Georgia:					
93-01-C-00-Csg., Columbus Metropolitan, Columbus	10/01/1993	3	534,633	12/01/1993	06/01/1995
91-01-C-00-Sav., Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
92-01-I-00-Vld., Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho:					
93-01-C-00-Sun., Friedman Memorial, Hailey	06/29/1993	3	188,000	09/01/1993	09/01/1997
92-01-C-00-Ida., Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
94-01-I-00-Lws., Lewiston-Nez Perce County, Lewiston	02/03/1994	3	229,610	05/01/1994	03/01/1997
92-01-C-00-Twf., Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois:					
93-01-C-00-Mdw., Chicago Midway, Chicago	06/28/1993	3	79,920,958	09/01/1993	08/01/2001
93-01-C-00-Ord., Chicago O'Hare International, Chicago	06/28/1993	3	500,418,285	09/01/1993	10/01/1999
93-01-I-00-Rfd., Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
93-02-I-00-Rfd., Greater Rockford, Rockford	09/02/1993	3	0	12/01/1993	10/01/1996
92-01-I-00-Spi., Capital, Springfield	03/27/1992	3	562,104	06/01/1992	02/01/1994
93-02-U-00-Spi., Capital, Springfield	04/28/1993	3	0	06/01/1992	02/01/1994
93-03-I-00-Spi., Capital, Springfield	11/24/1993	3	4,585,443	06/01/1992	02/01/2006
Indiana:					
92-01-C-00-Fwa., Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
93-01-C-00-Ind., Indianapolis International, Indianapolis	06/28/1993	3	117,344,750	09/01/1993	07/01/2005
Iowa:					
93-01-C-00-Dsm., Des Moines Municipal, Des Moines	11/29/1993	3	6,446,507	03/01/1994	04/01/1997
92-01-I-00-Dbq., Dubuque Regional, Dubuque	10/06/1992	3	148,500	01/01/1993	05/01/1994
94-02-C-00-Dbq., Dubuque Regional, Dubuque	02/09/1994	3	203,420	05/01/1994	02/01/1996
93-01-C-00-Sux., Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
94-01-C-00-Alo., Waterloo Municipal, Waterloo	03/29/1994	3	637,000	06/01/1994	06/01/1998
Kentucky:					
94-01-C-00-Cvg., Cincinnati/Northern Kentucky International, Covington	08/30/1994	3	20,737,000	06/01/1994	09/01/1995
93-01-C-00-Lex., Blue Grass, Lexington	08/31/1993	3	12,378,791	11/01/1993	05/01/2003
93-01-C-00-Pah., Barkley Regional, Paducah	12/02/1993	3	386,500	03/01/1994	12/01/1998
Louisiana:					
92-01-I-00-Btr., Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
93-02-U-00-Btr., Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/23/1993	3	0	12/01/1992	12/01/1998
93-01-C-00-Msy., New Orleans International/Moisant Field, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
93-02-U-00-Msy., New Orleans International/Moisant Field, New Orleans	11/16/1993	3	0	06/01/1993	04/01/2000
93-01-I-00-Shv., Shreveport Regional, Shreveport	11/19/1993	3	33,050,278	02/01/1994	02/01/2019
Maine:					
93-01-C-00-Pwm., Portland International Jetport, Portland	10/29/1993	3	12,233,751	02/01/1994	05/01/2011
Maryland:					
92-01-I-00-BWI., Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2007
94-01-I-00-Cbe., Greater Cumberland Regional, Cumberland	03/30/1994	3	150,000	07/01/1994	07/01/1999
Massachusetts:					
93-01-C-00-Bos., General Edward L. Logan International, Boston	08/24/1993	3	604,794,000	11/01/1993	10/01/2011
92-01-C-00-Orh., Worcester Municipal, Worcester	07/28/1992	3	2,301,392	10/01/1992	10/01/1997
Michigan:					
92-01-C-00-Dtw., Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	05/01/2009
92-01-I-00-Esc., Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
93-01-C-00-Fnt., Bishop International, Flint	06/11/1993	3	32,296,450	09/01/1993	09/01/2020
92-01-I-00-Grr., Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
92-01-C-00-Cmx., Houghton County Memorial, Hancock	04/29/1993	3	162,986	07/01/1993	01/01/1996
93-01-C-00-Iwd., Gogebic County, Ironwood	05/11/1993	3	74,690	08/01/1993	10/01/1998
93-01-C-00-Lan., Capital City, Lansing	07/23/1993	3	7,355,483	10/01/1993	03/01/2002
92-01-I-00-Mqt., Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
94-01-C-00-Mkg., Muskegon County, Muskegon	02/24/1994	3	5,013,088	05/01/1994	05/01/2019
92-01-C-00-Pln., Pellston Regional—Emmet County, Pellston	12/22/1992	3	440,875	03/01/1993	03/01/1995
Minnesota:					
93-01-C-00-Brd., Brainerd-Crow Wing County Regional, Brainerd	05/25/1993	3	42,000	08/01/1993	12/31/1995
92-01-C-00-Msp., Minneapolis-St. Paul International, Minneapolis	03/31/1992	3	66,3[illegible],662	06/01/1992	08/01/1994
Mississippi:					
91-01-C-00-Gtr., Golden Triangle Regional, Columbus	[illegible]/[illegible]/92	3	1,693,211	08/01/1992	09/01/2[illegible]
92-01-C-00-Gpt., Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	3[illegible],[illegible]	07/01/1992	12/01/19[illegible]
93-02-C-00-Gpt., Gulfport-Biloxi Regional, Gulfport-Biloxi	11/02/1993	3	607,[illegible]17	07/01/1993	12/01/1998
92-01-C-00-Pib., Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/19/1992	3	119,153	04/01/1992	01/01/19[illegible]3
93-01-C-00-Jan., Jackson International, Jackson	02/10/1993	3	1,918,865	05/01/1993	01/01/19[illegible]5
92-01-C-00-Mei., Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	01/01/1994
93-02-C-00-Mei., Key Field, Meridian	10/19/1993	3	155,2[illegible]9	11/01/1992	[illegible]
Missouri					
93-01-C-00-Sgf., Springfield Regional, Springfield	08/30/1993	3	1,937,[illegible]50	11/01/1993	10/01/1[illegible]6

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
92–01–C–00–Stl., Lambert-St. Louis International, St. Louis	09/30/1992	3	84,607,850	12/01/1992	03/01/1996
Montana:					
93–01–C–00–Bil., Billings-Logan International, Billings	01/26/1994	3	5,672,136	04/01/1994	05/31/2002
93–01–C–00–Bzn., Gallatin Field, Bozeman	05/17/1993	3	4,198,000	08/01/1993	06/01/2005
92–01–C–00–Gtf., Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
93–02–U–00–Gtf., Great Falls International, Great Falls	05/25/1993	3	0	11/01/1992	07/01/2002
92–01–C–00–Hln., Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
93–01–C–00–Fca, Glacier Park International, Kalispell	09/29/1993	3	1,211,000	12/01/1993	11/01/1999
92–01–C–00–Mso., Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada:					
91–01–C–00–Las., McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
93–02–C–00–Las., McCarran International, Las Vegas	06/07/1993	3	36,500,000	06/01/1992	09/01/2014
93–01–C–00–Rno., Reno Cannon International, Reno	10/29/1993	3	34,263,607	01/01/1994	05/01/1999
New Hampshire:					
92–01–C–00–Mht., Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey:					
92–01–C–00–Ewr., Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York:					
93–01–I–00–Alb., Albany County, Albany	12/03/1993	3	40,726,364	03/01/1994	04/01/2005
93–01–C–00–Bgm., Binghamton Regional/Edwin A Link Field, Binghamton	08/18/1993	3	1,872,264	11/01/1993	11/01/1997
92–01–I–00–Buf., Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
92–01–I–00–Ith., Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
92–01–C–00–Jhw., Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822	06/01/1993	06/01/1996
92–01–C–00–JFK., John F. Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
92–01–C–00–Lga., Laguardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
93–01–C–00–Plb., Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
92–01–C–00–Hpn., Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Carolina:					
93–01–C–00–Ilm., New Hanover International, Wilmington	11/02/1993	3	1,505,000	02/01/1994	08/01/1997
North Dakota:					
92–01–C–00–Gfk., Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
93–01–C–00–Mot., Minot International, Minot	12/15/1993	3	1,569,483	03/01/1994	03/01/1999
Ohio:					
92–01–C–00–Cak., Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
92–01–C–00–Cle., Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
94–02–U–00–Cle., Cleveland-Hopkins International, Cleveland	02/02/1994	3	0	05/01/1994	11/01/1995
92–01–I–00–Cmh., Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
93–02–I–00–Cmh., Port Columbus International, Columbus	07/19/1993	3	16,270,256	02/01/1994	09/01/1996
93–03–U–00–Cmh., Port Columbus International, Columbus	10/27/1993	3	0	10/01/1992	09/01/1996
93–01–C–00–Tol., Toledo Express, Toledo	06/29/1993	3	2,750,896	09/01/1993	09/01/1996
94–01–C–00–Yng., Youngstown—Warren Regional, Youngstown	02/22/1994	3	367,180	05/01/1994	07/01/1996
Oklahoma:					
92–01–C–00–Law., Lawton Municipal, Lawton	09/08/1992	3	452,635	08/01/1992	04/01/1996
92–01–I–00–Tul., Tulsa International, Tulsa	05/11/1992	3	9,717,000	08/01/1992	08/01/1995
93–02–U–00–Tul., Tulsa International, Tulsa	10/18/1993	3	0	02/01/1994	08/01/1995
Oregon:					
93–01–C–00–Eug., Mahlon Sweet Field, Eugene	08/31/1993	3	3,709,699	11/01/1993	11/01/1998
93–01–C–00–Mfr., Medford-Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
93–01–C–00–Oth., North Bend Municipal, North Bend	11/24/1993	3	182,044	02/01/1994	01/01/1998
92–01–C–00–Pdx., Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
93–01–C–00–Rdm., Roberts Field, Redmond	07/02/1993	3	1,191,552	10/01/1993	03/01/2000
Pennsylvania:					
92–01–I–00–Abe., Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
92–01–C–00–Aoo., Altoona-Blair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996
92–01–C–00–Eri., Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
93–01–C–00–Jst., Johnstown-Cambria County, Johnstown	08/31/1993	3	307,500	11/01/1993	02/01/1998

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
92–01–I–00–Phl., Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
93–02–U–00–Phl., Philadelphia International, Philadelphia	05/14/1993	3	0	08/01/1993	07/01/1995
92–01–C–00–Unv., University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
93–01–C–00–Avp., Wilkes-Barre/Scranton International, Wilkes-Barre/Scranton	09/24/1993	3	2,369,566	10/01/1993	06/01/1997
Rhode Island:					
93–01–C–00–Pvd., Theodore F. Green State, Providence	11/30/1993	3	103,885,286	02/01/1994	08/01/2013
South Carolina:					
93–01–C–00–Cae., Columbia Metropolitan, Columbia	08/23/1993	3	32,969,942	11/01/1993	09/01/2008
93–01–C–00–49J., Hilton Head, Hilton Head Island	11/19/1993	3	1,542,300	02/01/1994	03/01/1999
Tennessee:					
93–01–C–00–Tys., McGhee Tyson, Knoxville	10/06/1993	3	5,681,615	01/01/1994	01/01/1997
92–01–I–00–Mem., Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
93–02–C–00–Mem., Memphis International, Memphis	01/14/1994	3	24,026,000	04/01/1994	10/01/1999
92–01–C–00–Bna., Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Texas:					
93–02–C–00–Aus., Robert Mueller Municipal, Austin	06/04/1993	3	6,181,800	11/01/1993	01/01/1995
93–01–C–00–Crp., Corpus Christi International, Corpus Christi	12/29/1993	3	5,540,745	03/01/1994	01/01/1998
94–01–C–00–Dfw., Dallas/Fort Worth International, Dallas/Fort Worth	02/17/1994	3	115,000,000	07/01/1994	02/01/1996
92–01–C–00–Ile., Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
93–01–I–00–Lrd., Laredo International, Laredo	07/23/1993	3	11,983,000	10/01/1993	09/01/2013
93–01–C–00–Lbb., Lubbock International, Lubbock	07/09/1993	3	10,699,749	10/01/1993	02/01/2000
94–02–U–00–Lbb., Lubbock International, Lubbock	02/15/1994	3	0	05/01/1994	02/01/2000
92–01–I–00–Maf., Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
93–01–C–00–Sjt., Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
93–01–C–00–Tyr. Tyler Pounds Field, Tyler	12/20/1993	3	819,733	03/01/1994	07/01/1998
Virginia:					
92–01–I–00–Cho., Charlottesville-Albemarle, Charlottesville	06/11/1992	2	255,559	09/01/1992	11/01/1993
92–02–U–00–Cho., Charlottesville, Charlottesville	12/21/1992	2	0	09/01/1992	11/01/1993
93–03–U–00–Cho., Charlottesville-Albemarle, Charlottesville	10/20/1993	2	0	01/01/1994	11/01/1993
94–01–C–00–Ric., Richmond International (Byrd Field), Richmond	02/04/1994	3	30,976,072	05/01/1994	08/01/2005
93–01–C–00–Iad., Washington Dulles International, Washington, DC	10/18/1993	3	199,752,390	01/01/1994	11/01/2003
93–01–C–00–Dca., Washington National, Washington, DC	08/16/1993	3	166,739,071	11/01/1993	11/01/2000
Washington:					
93–01–C–00–Bli., Bellingham International, Billingham	04/29/1993	3	366,000	07/01/1993	01/01/1995
93–01–C–00–Psc., Tri-Cities, Pasco	08/03/1993	3	1,230,731	11/01/1993	11/01/1996
93–01–C–00–Clm., William R. Fairchild International, Port Angeles	05/24/1993	3	52,000	08/01/1993	08/01/1994
94–01–C–00–Puw., Pullman-Moscow Regional, Pullman	03/22/1994	1	169,288	06/01/1994	01/01/1998
92–01–C–00–Sea., Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
93–02–C–00–Sea., Seattle-Tacoma International, Seattle	10/25/1993	3	47,500,500	01/01/1994	01/01/1996
93–01–C–00–Geg., Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
93–01–I–00–Alw., Walla Walla Regional, Walla Walla	08/03/1993	3	1,187,280	11/01/1993	11/01/2014
93–01–C–00–Eat., Pangborn Field, Wenatchee	05/26/1993	3	280,500	08/01/1993	10/01/1995
92–01–C–00–Ykm., Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia:					
93–01–C–00–Crw., Yeager, Charleston	05/28/1993	3	3,254,126	08/01/1993	04/01/1998
93–01–C–00–Ckb., Benedum, Clarksburg	12/29/1993	3	105,256	04/01/1994	04/01/1996
92–01–C–00–Mgw., Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wiscosin:					
92–01–C–00–Grb., Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
93–01–C–00–Msn., Dane County Regional-Truax Field, Madison	06/22/1993	3	6,746,000	09/01/1993	03/01/1998
93–01–I–00–Cwa., Central Wisconsin, Mosinee	08/10/1993	3	7,725,600	11/01/1993	11/01/2012

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
93–01–C–00–Rhi., Rhinelander-Oneida County, Rhinelander	08/04/1993	3	167,201	11/01/1993	04/01/1996
Wyoming:					
93–01–C–00–Cpr., Natrona County International, Casper	06/14/1993	3	506,144	09/01/1993	10/01/1996
93–01–C–00–Cys., Cheyenne, Cheyenne	07/30/1993	3	742,261	11/01/1993	08/01/2000
93–01–I–00–Gcc., Gillette-Campbell County, Gillette	06/28/1993	3	331,540	09/01/1993	09/01/1999
93–01–C–00–Jac., Jackson Hole, Jackson	05/25/1993	3	1,081,183	08/01/1993	02/01/1996
Guam:					
92–01–C–00–Ngm., Agana Nas, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
93–02–C–00–Ngm., Agana Nas, Agana	02/25/1994	3	258,408,107	05/01/1994	06/01/2021
Puerto Rico.					
92–01–C–00–Bgn., Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
92–01–C–00–Pse., Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
92–01–C–00–Sju., Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1997
93–02–U–00–Sju., Luis Munoz Marin International, San Juan	12/14/1993	3	0	03/01/1994	02/01/1997
Virgin Islands:					
92–01–I–00–Stt., Cyril E. King, Charlotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
92–01–I–00–Stx., Alexander Hamilton, Christiansted St. Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1995

*The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 94–13919 Filed 6–8–94; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Belknap, Merrimack, Rockingham, and Strafford Counties, NH

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Revised notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement *will not* be prepared for a proposed highway project in Belknap, Merrimack, Rockingham and Strafford Counties, New Hampshire. A "Notice of Intent" to prepare an EIS was published in the **Federal Register** on June 1, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas D. Myers, Assistant Division Administrator, Federal Highway Administration, 279 Pleasant Street, suite 204, Concord, New Hampshire 03301–2509, Telephone: (603) 225–1606, or William R. Hauser, Administrator, Bureau of Environment, New Hampshire Department of Transportation, P.O. Box 483, J.O. Morton Building, Concord, New Hampshire 03302–0483, Telephone (603) 271–3226.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the New Hampshire Department of Transportation (NHDOT), has determined that it will not prepare an environmental impact statement as previously intended for a proposed highway project to serve transportation needs from the Concord area to the Dover, Somersworth and Rochester (Tri-Cities) area, a distance of about 50 kilometers (30 miles). Portions of twenty-one communities, primarily in Strafford and Merrimack Counties were included in the study. As consensus was being reached on which alternatives would be carried into the DEIS for full evaluation it became apparent based upon public input, agency coordination, constraint evaluation and funding-availability that a full new location alternative highway was not feasible. Consensus was reached that upgrading of the existing US Routes 4 and 202 and NH Route 9 corridors would serve the bulk of the transportation needs supplemented with possible short bypasses of portions of the Towns of Epsom and Northwood.

Further improvements to these corridors will be considered on a case-by-case basis, consistent with this consensus, in future development of New Hampshire's Transportation Plan, as financial feasibility and local commitment are demonstrated. The National Environmental Policy Act process will be continued as required for such proposed actions that may emerge from the above procedure. However, this overall environmental impact statement process for a new 50-kilometer (30-mile) facility has been terminated.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 31, 1994.

Thomas D. Myers,

Assistant Division Administrator, Concord, New Hampshire.

[FR Doc. 94–14044 Filed 6–8–94; 8:45 am]
BILLING CODE 4910–22–M

Environmental Impact Statement: County of Los Angeles, California

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Los Angeles County, California.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, Chief, District Operations, Federal Highway Administration, California Division, 980 9th Street, suite 400, Sacramento, California 95814–2724, Telephone: (916) 551–1310.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans) will prepare an environmental impact statement (EIS) on a proposal to improve Interstate Route 10 in Los Angeles County, California. The proposed improvement would involve adding one High Occupancy Vehicle (HOV) lane in each direction on the route, between Interstate Route 605 and Interstate Route 210/State Route 57 for a distance of 18.0 kilometers (11.2 miles). To construct the two new HOV lanes, this proposed project would include pavement rehabilitation, widening of existing freeway bridges and necessary roadside improvements such as guardrails and soundwalls.

Improvements to the corridor are considered necessary to improve the level of service by increasing the person carrying capacity of this section of I–10, relieving existing and anticipated increase peak period traffic congestion. The proposed project is also an integral element of the I–10 portion of the proposed regional freeway-based HOV system in Los Angeles County.

At this time two alternatives are being considered, Alternative 1, widening the half-width of the section to a total of 24.7 meters (81 feet) and Alternative 4, the no-build alternative. Two other build alternatives with wider half-sections were considered during the scoping process, but removed from further consideration due to the minimal benefits to be derived versus the impacts of the acquisition of significantly more right of way than Alternative 1.

The scoping process was initiated in 1993 by contacting, by letter and newspaper notices, elected officials, federal, state, regional and local agencies as well as corridor residents. The scoping process is tentatively completed with a scoping summary report prepared.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: June 2, 1994.

Douglas Bennett,

Acting Chief, District Operations "B", Federal Highway Administration.

[FR Doc. 94–14045 Filed 6–8–94; 8:45 am]
BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 94–48; Notice 1]

John Russo Industrial, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

John Russo Industrial, Inc. (Russo) of San Jose, California, has determined that some of its trucks fail to comply with requirements of several Federal motor vehicle safety standards (FMVSS) in 49 CFR part 571. These are FMVSS No. 113, "Hood Latch Systems," FMVSS No. 120, "Tire Selection and Rims for Motor Vehicles other than Passenger Cars," FMVSS No. 205, "Glazing Materials," and FMVSS No. 207, "Seating Systems." Russo has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Russo has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance are inconsequential as they relate to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

All noncompliances covered by this petition were discovered on July 13, 1993 during inspection of vehicles by NHTSA's Office of Vehicle Safety Compliance (File NCI 3288).

1. FMVSS No. 113, "Hood Latch Systems"

In April 1991, Russo completed one Command/Communications van (Gillig chassis) and, in July 1991, one Hazardous Materials van (Spartan chassis). These vehicles do not comply with the hood latching requirements in S4.2 of FMVSS No. 113, in that their front opening hoods, which in any open position partially or completely obstruct a driver's forward view through the windshield, are not provided with a second latch position on the hood latch system or with a second hood latch system.

Russo supports its petition for inconsequential noncompliance with the following:

[49 CFR 571.113 S3] definition, "Hood means any movable exterior body panel forward of the windshield that is used to cover [an] engine, luggage, storage, or battery compartment." The forward face panels on our vehicles are below the windshield, and are not used as compartment, storage, or any criteria to classify it as a hood.

Paragraph S4.2 of standard 113 states, "A front opening hood which, in any open position partially or completely obstructs a driver's forward view through the windshield must be provided with a second latch position on the hood latch system or with a second hood latch system."

The access panels in question are not classified as a hood mechanism, therefore [they] do not need to follow these guidelines. If the panel were left open it would not obstruct the driver's view enough to cause a driving hazard.

Our testing of this design consisted of the air flow testing of up to 78 mph with a head wind of 14 mph that brought the total air speed to 92 mph. Air flow only holds the access panel down more securely. The panel cannot fly up as a result of the air flow.

Panels of similar design are easily found on hundreds of thousands of on-road vehicles including GMC Astro 9500, Chevrolet Titan 90, Ford CLT 9000, Freight Liner cab overs, and many other vehicles I have found in researching my response.

The Hazmat and Command vehicles are built with windshields which are much larger than those of typical van or cab over engine type vehicles. This large windshield is provided partially as a styling feature and partly to provide exceptional visibility in low speed maneuvering situations. The small area of windshield which would be blocked if the access panel could physically be lifted up by air flow, would not even be in the field of view on typical vehicles in this class.

2. FMVSS No. 120, "Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars"

From 1989 through 1991, Russo completed one Command/Communications van (Gillig chassis) and one Hazardous Materials van (Spartan chassis) and modified six Ford F350 and nine F800 trucks. These vehicles do not have the label required by S5.3 of FMVSS No. 120, which includes the size designation of the tires, the size designation of the rims, and the cold inflation pressure of the tires. Russo states that the noncompliances are due to removal of labels after the purchaser took delivery of the vehicles.

Russo supports its petition for inconsequential noncompliance with the following:

The Act states that the labels must be installed by us. NHTSA * * * says that the customer can do whatever they want to the vehicle once they get it, "they can even cut seatbelts * * *." Then we respectively state that no manufacturer whether Chevrolet or John Russo should be made to do anything anytime anyone decides to remove a sticker. We are not Chevrolet, we are a small minority family business across the street that [was] asked to install bodies on [the San Jose Fire Department's] chassis under their total supervision.

* * * * * *

The rim width missing will not affect the safety of the vehicle. All vehicles involved *...*

the petition belong to one user. The user has redundant data and all information available, plus all the resources to possess the information. The vehicle has this information. The user has all the incomplete vehicle manuals. The customer has a whole city fleet and its own service department and had ordered cab and chassis to match their tire and rim fleet specifications before we even got the contract to build the bodies.

When these vehicles were first delivered, engraved labels were requested in place of the white labels that we normally install. This was done.

When the new person took over, yellow NTEA labels were requested. This was complied with.

* * * * *

No safety benefit to anyone has come out of this.

* * * * *

Without waving this petition for exemption due to inconsequential non-compliance, we will notify the Deputy Chief of the San Jose Fire Dept. of our offer to supply and install new decals if they wish in a coordinated verifiable supervised manner. We shall document it for NHTSA and send NHTSA all copies of the labels.

* * * * *

There has to be fairness and a limit to a manufacturers' accountability especially in view of the circumstances and the years of service we have rendered to this user in the former administration. We cannot be held accountable for situations beyond our control. Those Labels Were There and They Had Been Removed (emphasis original)

3. FMVAA No. 205, "Glazing Materials"

In April 1991, Russo completed one Command/Communications van (Gilling chassis) and, in July 1991, one Hazardous Materials van (Spartan chassis). These vehicles do not comply with the glazing materials marking requirements in section 6 of FMVSS No. 205, which state that windshields must be marked AS–1 and windows to the right and left of the driver's position must be marked AS–2. The subject vehicles had no marking on the windshields, and the markings on the windows to the right and left of the driver's position were AS–3, not AS–2. Russo provided a photocopy of a purchase order for AS–1 windshield glass which it claims were used for the windshields. Russo further provided a copy of a letter from the supplier of the cockpit side windows stating that the windows in question were marked AS–3. These materials are available in the NHTSA Docket Section.

Russo supports its petition for inconsequential noncompliance with the following:

The windshields that were installed in these vehicles were labeled AS–1.

The [installers] had shown us the windshield label on the windshield stock plate before the installation and fitting process. The San Jose Fire Dept.'s Battalion Chief Master Mechanic was also shown the label at this time and he said this to Mr. Shifflet [of NHTSA's Office of Vehicle Safety Compliance] during his visit.

We have a sample of the label that the glass company that supplies the Fire Dept. [a]nd all of California had supplied to show DOT.

The windshield that was supplied to us by San Jose Glass contained this label:

Laminated

16 CFR 1201 M550

CATT II AS–1

DOT 273

* * * * *

The labeling on the driver's and passenger's window is also inconsequential to vehicle safety as shown by supporting data that the glass manufacturer uses all the same AS–2 glass except for a very slight insignificant light transmission in AS-certified configuration.

4. FMVSS No. 207, "Seating Systems"

In April 1991, Russo produced a Command/Communications van (1989 Gillig chassis) with an 18,000 pound gross vehicle weight rating. The vehicle is a specially configured portable meeting room for use at the scene of disasters. It is a closed, straight body van-type vehicle consisting essentially of a cab for vehicle operation and a cargo area which Russo converted into a conference room.

Section 4.4 of FMVSS No. 207 requires that all seats not designed to be occupied while the vehicle is in motion are to be conspicuously labeled to that effect. The seats located in the meeting room area of this vehicle are not designed to be occupied while the vehicle is being operated, but are not labeled as such.

Russo supports its petition for inconsequential noncompliance with the following:

A sign in the cab states that only two people are to be seated in the cab. This is a specially configured portable meeting room for disasters. The vehicle was configured for a specific purpose by the user and the construction of the body layout was very closely supervised by the fire department to the detail. The user (as mentioned to NHTSA) * * * stated that [the vehicle] is only used for meetings at the disaster scene. Many command centers are trailers, only for use as scene command.

There is a very big sign on the vehicle stating that it is a command and communications center. This is an official vehicle in case of a disaster, designed to only be occupied by a driver and one passenger while in motion.

We were contracted to build a vehicle for the user for [a] specific purpose. In the case of a severe emergency, where a command station is required, this vehicle is called in to act as the meeting and communications center. This vehicle is not a response vehicle, and is only brought to the scene after the situation has been evaluated by the on scene command team as critical. The vehicle is then used as a center and checkpoint to all incoming and outgoing personnel at the scene.

This vehicle was built to the strict specification of the City of San Jose Fire Department. It was ordered with seat belts for the driver and one passenger only as the back communications and meeting areas [were] not to be occupied when the vehicle was in motion. The fire department is aware of the vehicle configuration and is fully capable of instructing its employees that the back sections are not to be occupied when the vehicle is in motion.

Interested persons are invited to submit written data, views, and arguments on the petitions of Russo, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 11, 1994.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on June 3, 1994

Barry Felrice,

Associate Administrator for Rulemaking

[FR Doc. 94–13970 Filed 6–8–94; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on June 15 at the Voice of America facilities, Wilbur J. Cohen Federal Building, 330 Independence Avenue, SW., Washington, DC from 9:30 a.m.–12:30 p.m. The Commission will meet with the following from the United States Information Agency's Bureau of Broadcasting to discuss policies and programs: Messrs. Goeffrey Cowan, Director, Voice of America; Charles Fox, Director, Worldnet Television and Film Service; Richard Lobo, Director, Office of Cuba Broadcasting; Robert Komosa, Director, VOA Engineering; and Richard Caldwell, director, Telecommunications.

FOR FURTHER INFORMATION: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: June 6, 1994.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 94–14061 Filed 6–8–94; 8:45 am]

BILLING CODE 8230–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment: Possible Barriers to the Access for U.S. Agricultural Products to the Korean Market

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comment concerning possible barriers to the access for U.S. agricultural products to the Korean market.

SUMMARY: The United States Trade Representative (USTR) is seeking public comment on problems exporters of U.S. agricultural products may be having with respect to access to the Korean market. In particular, USTR seeks comments with respect to 77 products covered by a 1989 Agreement between the United States and the Republic of Korea.

DATES: Written comments from interested persons are due on or before July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Deputy Assistant USTR for Asia and the Pacific (202) 395–6813; Len Condon, Deputy Assistant USTR for Agricultural Affairs (202) 395–5006; or Thomas Robertson, Assistant General Counsel (202) 395–6800, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION:

Background

Certain U.S. exporters of agricultural products have informed USTR that their access to the Korean market has been limited by unjustifiable regulatory barriers imposed by the Korean Government. They claim that these regulatory barriers lack scientific basis and have a discriminatory effect on U.S. agricultural products. In particular, they point to what they consider to be inappropriate food safety regulations (such as shelf life limitations that lack scientific basis and unnecessarily burdensome "self specification" requirements); inappropriate human, animal, and plant health and safety regulations; and customs misclassification problems. USTR requests all interested persons to provide additional information concerning these and other alleged barriers that may be imposed by the Korean government.

In a 1989 exchange of letters, the governments of the Republic of Korea and the United States agreed, among other things, that Korea would liberalize import restrictions on 62 agricultural products, implement tariff reductions for seven products, and subject eight products to automatic import approval. The two governments also agreed that these commitments would remain unimpaired by restrictions or requirements directly or indirectly affecting importation of the agricultural products. USTR therefore is particularly interested in any restrictions or requirements directly or indirectly affecting importation of the 77 products covered by the 1989 Agreement, each of which is listed in the Annex to this notice.

Requirements for Submissions

Comments must be in writing, state clearly the information and claims presented, filed with 20 copies by July 8, 1994, and addressed to: Deputy General Counsel, Office of the United States Trade Representative, room 223, 600 17th Street, NW., Washington, DC 20506. Interested persons may, upon advanced request, inspect at the USTR public reading room any written submissions, except that confidential business information will not be made available in this manner if: (1) the person furnishing such information certifies in writing that such information is business confidential, the disclosure of such information would endanger trade secrets or profitability, and such information is not generally available; and (2) the information submitted is clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each copy, and shall be accompanied by a nonconfidential summary of the confidential information. USTR retains the right to deny confidential treatment of information if such information is not entitled to protection under the law. The public file will be available for inspection in the USTR Reading Room, room 101, which is open to the public from 10 to 12 noon, and from 1 pm to 4 pm, Monday thru Friday. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186.

Irving Williamson,

Deputy General Counsel.

ANNEX

HS. No.	Product description
0206.220000	Livers of bovine animals, frozen.
0206.300000	Edible offals of swine, fresh/chilled
0206.410000	Livers of swine, frozen.
0206.490000	Edible offals of swine (excluding liver), frozen.
0206.800000	Other edible offal, fresh/chilled.
0206.900000	Other animal offal, frozen.
0207.100000	Poultry (ducks), not in pieces, fresh/chilled.
0207.230000	Duck, whole, frozen.
0207.391000	Poultry cuts (duck), fresh/chilled.
0207.431000	Poultry cuts (duck), frozen.
0504.001000	Guts of animals
0713.100000	Peas.
0713.200000	Chickpeas.
0713.330000	Kidney beans
0713.390000	Other beans.
0713.400000	Lentils.
0713.500000	Broad beans.
0713.900000	Other dried legumincus vegetables.
0802.120000	Almonds, shelled.
0802.210000	Filberts, in shell.
0802.220000	Filberts, shelled.
0802.310000	Walnuts, in shell
0802.320000	Walnuts, shelled
0802.500000	Pistachios.
0802.909000	Pecans and macadamia nuts
0804.400000	Avocados.
0806.200000	Raisins.
0807.100000	Melons.
0807.200000	Papayas.
0809.200000	Cherries, fresh.
0810.100000	Strawberries, fresh
0810.400000	Cranberries, bilberries and other fruits of the genus vaccinium, fresh.
0810.909000	Kiwifruit, fresh
1001.100000	Durum wheat.
1001.901000	Meslin wheat
1001.909000	Other wheat
1002.000000	Rye.
1004.000000	Oats.
1208.100000	Flour and meals of soybeans.
1214.100000	Alfalfa products
1507.100000	Soybean oil, crude.
1507.901000	Soybean oil, refined.
1507.909000	Soybean oil, other.
1512.111000	Sunflower seed oil, crude.
1512.191010	Sunflower seed oil, refined.

ANNEX—Continued

HS. No.	Product description
1515.210000	Corn oil, crude.
1515.290000	Corn oil, other.
1601.001000	Sausages.
1602.311000	Canned turkey.
1602.391000	Canned poultry.
1602.411000	Canned pork.
2007.100000	Homogenized preparations.
2007.911000	Jams, fruit jellies and marmalades of citrus.
2007.991000	Jams, fruit jellies and marmalades of other.
2007.999000	Puree and pastes of other.
2008.111000	Peanut butter.

ANNEX—Continued

HS. No.	Product description
2008.200000	Pineapple, in airtight containers.
2008.400000	Pears, prepared/preserved.
2008.700000	Peaches, in airtight containers.
2009.500000	Tomato juice.
2106.109000	Other protein concentrates and textured protein substances (over 48% protein content).
2106.909010	Coffee creamer.
2106.909090ex	Popcorn.
2301.102000	Greaves.
2302.100000	Corn gluten feed.
2304.000000	Soybean cake.

ANNEX—Continued

HS. No.	Product description
2309.100000	Dog and cat food.
2309.901010	Mixed feed for pigs.
2309.901030	Mixed feeds for fish.
2309.901090	Mixed animal feeds, other.
2309.903020	Feed additives (chiefly on the basis of vitamins).
2309.903030	Feed additives (chiefly on the basis of micro minerals).
3502.100000	Egg albumin.
3504.002030	Protein isolates.
4410.100000	Wood particleboard.

[FR Doc. 94-13941 Filed 6-8-94; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 110

Thursday, June 9, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94-13590.

PREVIOUSLY ANNOUNCED DATE AND TIME:
Tuesday, June 7, 1994, 10:00 a.m.
Meeting Closed to the Public.

The following item was erroneously noted on the agenda:

Briefing on Allocation Regulations.

PREVIOUSLY ANNOUNCED DATE AND TIME:
Thursday, June 9, 1994, 10:00 a.m.
Meeting Open to the Public.

The following item was deleted from the agenda:

Advisory Opinion 1994-14: Scott Lehman of Tsakanikas for U.S. Congress

The following item was added to the agenda:

Advisory Opinion 1994-10: Robert F. Bauer on behalf of Franklin National Bank

DATE AND TIME: Tuesday, June 14, 1994 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, June 16, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Convention Regulations: Final Rules and Explanation and Justification
Advisory Opinion 1994-12: James S. Todd for the American Medical Association
Advisory Opinion 1994-14: Scott Lehman of Tsakanikas for U.S. Congress
Administrative Matters

PERSON TO CONTACT FOR INFORMATION:
Ron Harris, Press Officer, Telephone: (202) 219-4155.

Delores Hardy,
Administrative Assistant.

[FR Doc. 94-14152 Filed 6-7-94; 11:55 am]

BILLING CODE 6715-01-M

Corrections

Federal Register

Vol. 59, No. 110

Thursday, June 9, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596-AB06

Recreation Residence Authorization

Correction

In notice document 94-13323 beginning on page 28713 in the issue of Thursday, June 2, 1994, make the following corrections:

On page 28738, in the "Terms and Conditions" portion of the "Forest Service Handbook 2709.11--Special Uses, Chapter 50," the revised permit clauses were not printed in italics. For the convenience of the reader, Exhibit 01 appearing on page 28737 is set forth below along with the "Terms and Conditions" text appearing on pages 28738 through 28741 with the text of the revised permit clauses indicated in italics.

BILLING CODE 1505-01-D

EXHIBIT 01, SEC. 54.1--TERM SPECIAL USE PERMIT

FS-2700-5a (01/94)
OMB No. 0596-0082
Expires 06/30/96

USDA - Forest Service

TERM SPECIAL USE PERMIT
For Recreation Residences

Act of March 4, 1915, As Amended
(Ref. FSM 2710)

Holder No.	Type Site	Authority
* /	*	*
Auth. Type	**Issue Date**	**Expir. Date**
*	* / /	* / /
Location Sequence No.		**Stat. Ref.**
*		*
Latitude	**Longitude**	**LOS Case**
* - -	* - -	*

* _____ of * _____
(Holder Name) (Billing Address - 1)

* _____ * _____ * _____ * _____
(Billing Address - 2) (City) (State) (Zip Code)

(hereafter called the holder) is hereby authorized to use National Forest lands for a recreation residence for personal recreational use on the * _____ National Forest, subject to the provisions of this permit including items * _____ through * _____, on page(s) * _____ through * _____. This permit covers * _____ acres.

Described as: (1) Lot * _____ of the * _____ tract.
(A plat of which is on file in the office of the Forest Supervisor.)

OR (2) * _____ as shown on the attached map.
(Legal Description)

The following improvements, whether on or off the lot, are authorized in addition to the residence structure:

*

This use shall be exercised at least 15 days each year, unless otherwise authorized in writing. It shall not be used as a full-time residence to the exclusion of a home elsewhere

THIS PERMIT IS NOT TRANSFERABLE
PURCHASERS OF IMPROVEMENTS ON SITES AUTHORIZED BY THIS PERMIT MUST SECURE A NEW PERMIT FROM THE FOREST SERVICE.

THIS PERMIT IS ACCEPTED SUBJECT TO ALL OF ITS TERMS AND CONDITIONS.

ACCEPTED: * _____ * _____
HOLDER'S NAME AND SIGNATURE DATE

APPROVED: * _____ * _____
AUTHORIZED OFFICER'S NAME AND SIGNATURE TITLE DATE

BILLING CODE 1505-01-C

Note: Permit clauses revised as a result of the reformulation of the recreation residence policy as described in this notice are printed in italics.

Terms and Conditions

I. Authority And Use And Term Authorized

A. This permit is issued under the authority of the Act of March 4, 1915, as amended (16 U.S.C. 497), and title 36, Code of Federal Regulations, sections 251.50–251.64. Implementing Forest Service policies are found in the Forest Service Directives System (FSM 1920, 1950, 2340, 2720; FSH 2709.11, chap. 10–50). Copies of the applicable regulations and policies will be made available to the holder at no charge upon request made to the office of the Forest Supervisor.

B. The authorized officer under this permit is the Forest Supervisor, or a delegated subordinate officer.

C. This permit authorizes only personal recreation use of a noncommercial nature by the holder, members of the holder's immediate family, and guests. Use of the permitted improvements as a principal place of residence is prohibited and shall be grounds for *revocation* of this permit.

D. Unless specifically provided as an added provision to this permit, this authorization is for site occupancy and does not provide for the furnishing of structures, road maintenance, water, fire protection, or any other such service by a Government agency, utility association, or individual.

E. *Termination* at End of Term: This authorization will *terminate* on *_____. (insert date)

II. Operation and Maintenance

A. The authorized officer, after consulting with the holder, will prepare an operation and maintenance plan which shall be deemed a part of this permit. The plan will be reviewed annually and updated as deemed necessary by the authorized officer and will cover requirements for at least the following subjects:

1. Maintenance of vegetation, tree planting, and removal of dangerous trees and other unsafe conditions.
2. Maintenance of the facilities.
3. Size, placement and descriptions of signs.
4. Removal of garbage or trash.
5. Fire protection.
6. Identification of the person responsible for implementing the provisions of the plan, if other than the holder, and a list of names, addresses, and phone numbers of persons to contact in the event of an emergency.

Note: Forest Supervisors may include other provisions relating to fencing, road maintenance, boat docks, piers, boat launching ramp, water system, sewage system, incidental rental, and the Tract Association. Regional Foresters may add specific provisions that Forest Supervisors should include in the plan.

III. Improvements

A. Nothing in this permit shall be construed to imply permission to build or maintain any improvement not specifically named on the face of this permit or approved in writing by the authorized officer in the operation and maintenance plan. Improvements requiring specific approval shall include, but are not limited to: Signs, fences, name plates, mailboxes, newspaper boxes, boathouses, docks, pipelines, antennas, and storage sheds.

B. All plans for development, layout, construction, reconstruction or alteration of improvements on the *lot*, as well as revisions of such plans, must be prepared by a licensed engineer, architect, and/or landscape architect (in those states in which such licensing is required) or other qualified individual acceptable to the authorized officer. Such plans must be approved by the authorized officer before the commencement of any work.

IV. Responsibilities of Holder

A. The holder, in exercising the privileges granted by this permit, shall comply with all present and future regulations of the Secretary of Agriculture and all present and future federal, state, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit. However, the Forest Service assumes no responsibility for enforcing laws, regulations, ordinances and the like which are under the jurisdiction of other government bodies.

B. The holder shall exercise diligence in preventing damage to the land and property of the United States. The holder shall abide by all restrictions on fires which may be in effect within the forest at any time and take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during a closed fire season established by law or regulation without written permission from the authorized officer.

C. The holder shall protect the scenic and esthetic values of the National Forest System lands as far as possible consistent with the authorized use, during construction, operation, and maintenance of the improvements.

D. No soil, trees, or other vegetation may be removed from the National Forest System lands without prior permission from the authorized officer. Permission shall be granted specifically, or in the context of the operations and maintenance plan for the permit.

E. The holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. The holder shall fully repair and bear the expense for all damage, other than ordinary wear and tear, to National Forest lands, roads and trails caused by the holder's activities.

F. The holder assumes all risk of loss to the improvements resulting from acts of God or catastrophic events, including but not limited to, avalanches, rising waters, high winds, falling limbs or trees and other hazardous natural events. In the event the improvements authorized by this permit are destroyed or substantially damaged by acts of God or catastrophic events, the authorized officer will conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. The analysis will be provided to the holder within 6 months of the event.

G. The holder has the responsibility of inspecting the site, authorized rights-of way, and adjoining areas for dangerous trees, hanging limbs, and other evidence of hazardous conditions which could affect the improvements and or pose a risk of injury to individuals. After securing permission from the authorized officer, the holder shall remove such hazards.

H. In case of change of permanent address or change in ownership of the recreation residence, the holder shall immediately notify the authorized officer.

V. Liabilities

A. This permit is subject to all valid existing rights and claims outstanding in third parties. The United States is not liable to the holder for the exercise of any such right or claim.

B. The holder shall hold harmless the United States from any liability from damage to life or property arising from the holder's occupancy or use of National Forest lands under this permit.

C. The holder shall be liable for any damage suffered by the United States resulting from or related to use of this permit, including damages to National Forest resources and costs of fire suppression. Without limiting available civil and criminal remedies which may be available to the United States, all timber cut, destroyed, or injured without authorization shall be paid for at stumpage rates which apply to the unauthorized cutting of timber in the State wherein the timber is located.

VI. Fees

A. Fee Requirement: This special use authorization shall require payment in advance of an annual rental fee.

B. Appraisals:

1. Appraisals to ascertain the fair market value of the *lot* will be conducted by the Forest Service at least every 20 years. The next appraisal will be implemented in *_____ (insert year).

2. Appraisals will be conducted and reviewed in a manner consistent with the Uniform Standards of Professional Appraisal Practice, from which the appraisal standards have been developed, giving accurate and careful consideration to all market forces and factors which tend to influence the value of the *lot*.

3. If dissatisfied with an appraisal utilized by the Forest Service in ascertaining the permit fee, the holder may employ another qualified appraiser at the holder's expense. The authorized officer will give full and complete consideration to both appraisals provided the holder's appraisal meets Forest Service standards. If the two appraisals disagree in value by more than 10 percent, the two appraisers will be asked to try and reconcile or reduce their differences. If the appraisers cannot agree, the Authorized Officer will utilize either or both appraisals to determine the fee. When requested by the holder, a third appraisal may be obtained with the cost shared equally by the holder and the Forest Service. This third appraisal must meet the same standards of the first and second appraisals and may or may not be accepted by the authorized officer.

C. Fee Determination:

1. The annual rental fee shall be determined by appraisal and other sound business management principles (36 CFR 251.57(a)). The fee shall be 5 percent of the appraised fair market fee simple value of the *lot* for recreation residence use.

Fees will be predicated on an appraisal of the *lot* as a base value, and that value will be adjusted in following years by utilizing the percent of change in the Implicit Price Deflator-Gross National Product (IPD–GNP) index as of the previous June 30. A fee from a prior year will be adjusted upward or downward, as the case may be, by the percentage change in the IPD–GNP, except that the maximum annual fee adjustment shall be 10 percent when the IPD–GNP index exceeds 10 percent in any one year with the amount in excess of 10 percent carried forward to the next succeeding year where the IPD–GNP index is less than 10 percent. The base rate from which the fee is adjusted will be changed with each new appraisal of the lot, at least every 20 years.

2. If the holder has received notification that a new permit will not be issued following expiration of this permit, the annual fee in the tenth year will be taken as the base, and the fee each year during the last 10-year period will be one-tenth of the base multiplied by the number of years then remaining on the permit. If a new term permit should later be issued, the holder shall pay the United States *the total amount of fees foregone*, for the most recent 10 years period in which the holder has been advised that a new permit will not be issued. This amount may be paid in equal annual installments over a 10-year period in addition to those fees for existing permits. Such amounts owing will run with the property and will be charged to any subsequent purchaser of the improvements.

D. Initial Fee: The initial fee may be based on an approved Forest Service appraisal existing at the time of this permit, with the present day value calculated by applying the IPD–GNP index to the intervening years.

E. Payment Schedule: Based on the criteria stated herein, the initial payment is set at $*_____ per year and the fee is due and payable annually on *_____ (insert date). Payments will be credited on the date received by the designated collection officer or deposit location. If the due date(s) for any of the above payments or fee calculation statements fall on a nonworkday, the charges shall not apply until the close of business of the next workday. Any payments not received within 30 days of the due date shall be delinquent.

F. Interest and Penalties

1. A fee owed the United States which is delinquent will be assessed interest based on the most current rate prescribed by the United States Department of Treasury Financial Manual (TFM–6–8020). Interest shall accrue on the delinquent fee from the date the fee payment was due and shall remain fixed during the duration of the indebtedness.

2. In addition to interest, certain processing, handling, and administrative costs will be assessed on delinquent accounts and added to the amounts due.

3. A penalty of 6 percent per year shall be assessed on any indebtedness owing for more than 90 days. This penalty charge will not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

4. When a delinquent account is partially paid or made in installments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

G. Nonpayment Constitutes Breach: Failure of the holder to make the annual payment, penalty, interest, or any other charges when due shall be grounds for termination of this authorization. However, no permit will be terminated for nonpayment of any monies owed the United States unless payment of such monies is more than 90 days in arrears.

H. Applicable Law: Delinquent fees and other charges shall be subject to all the rights and remedies afforded the United States pursuant to federal law and implementing regulations (31 U.S.C. 3711 *et seq.*).

VII. Transfer, Sale, and Rental

A. Nontransferability: Except as provided in this section, this permit is not transferable.

B. Transferability Upon Death of the Holder:

1. If the holder of this permit is a married couple and one spouse dies, this permit will continue in force, without amendment or revision, in the name of the surviving spouse.

2. If the holder of this permit is an individual who dies during the term of this permit and there is no surviving spouse, an annual renewable permit will be issued, upon request, to the executor or administrator of the holder's estate. Upon settlement of the estate, a new permit incorporating current Forest Service policies and procedures will be issued for the remainder of the deceased holder's term to the properly designated heir(s) as shown by an order of a court, bill of sale, or other evidence to be the owner of the improvements.

C. Devolution of Ownership: If the holder through voluntary sale, transfer, enforcement of contract, foreclosure, or other legal proceeding shall cease to be the owner of the physical improvements, this permit shall be terminated. If the person to whom title to said improvements is transferred is deemed by the authorizing officer to be qualified as a holder, then such person to whom title has been transferred will be granted a new permit. Such new permit will be for the remainder of the term of the original holder.

D. Notice to Prospective Purchasers: When considering a voluntary sale of the recreation residence, the holder shall provide a copy of this special use permit to the prospective purchaser.

before finalizing the sale. The holder cannot make binding representations to the purchasers as to whether the Forest Service will reauthorize the occupancy.

E. Rental: The holder may rent or sublet the use of improvements covered under this permit only with the express written permission of the authorized officer. In the event of an authorized rental or sublet, the holder shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

VIII. Revocation

A. *Revocation* for Cause: This permit may be *revoked* for cause by the authorized officer upon breach of any of the terms and conditions of this permit or applicable law. Prior to such *revocation* for cause, the holder shall be given notice and provided a reasonable time—not to exceed ninety (90) days—within which to correct the breach.

B. *Revocation* in the Public Interest During the Permit Term:

1. This permit *may be revoked during its term* at the discretion of the authorized officer for reasons in the public interest. (36 CFR 251.60(b.) In the event of such *revocation* in the public interest, the holder shall be given one hundred and eighty (180) days' prior written notice to vacate the premises, provided that the authorized officer may prescribe a date for a shorter period in which to vacate ("prescribed vacancy date") if the public interest objective reasonably requires the *lot* in a shorter period of time.

2. The Forest Service and the holder agree that in the event of a *revocation* in the public interest, the holder shall be paid damages. *Revocation* in the public interest and payment of damages is subject to the availability of funds or appropriations.

a. Damages in the event of a public interest *revocation* shall be the lesser amount of either (1) the cost of relocation of the approved improvements to another *lot* which may be authorized for residential occupancy (but not including the costs of damages incidental to the relocation which are caused by the negligence of the holder or a third party), or (2) the replacement costs of the approved improvements as of the date of *revocation*. Replacement cost shall be determined by the Forest Service utilizing standard appraisal procedures giving full consideration to the improvement's condition, remaining economic life and location, and shall be the estimated cost to construct, at current prices, a building with utility equivalent to the building being appraised using modern materials and current standards, design and layout as of the date of *revocation*. If *revocation* in the public interest occurs after the holder has received notification that a new permit will not be issued following expiration of the current permit, then the amount of damages shall be adjusted as of the date of *revocation* by multiplying the replacement cost by a fraction which has as the numerator the number of full months remaining to the term of the permit prior to *revocation* (measured from the date of the notice of *revocation*) and as the denominator, the total number of months in the original term of the permit.

b. The amount of the damages determined in accordance with paragraph a. above shall be fixed by mutual agreement between the authorized officer and the holder and shall be accepted by the holder in full satisfaction of all claims against the United States under this clause: *Provided*, That if mutual agreement is not reached, the authorized officer shall determine the amount and if the holder is dissatisfied with the amount to be paid may appeal the determination in accordance with the Appeal Regulations (36 CFR *251.80*) and the amount as determined on appeal shall be final and conclusive on the parties hereto: *Provided further*, That upon the payment to the holder of the amount fixed by the authorized officer, the right of the Forest Service to remove or require the removal of the improvements shall not be stayed pending final decision on appeal.

IX. Issuance of a New Permit

A. Decisions to issue a new permit or convert the *permitted area* to an alternative public use *upon termination of this permit* require a determination of consistency with the Forest Land and Resource Management Plan (Forest plan).

1. Where continued use is consistent with the Forest plan, the authorized officer *shall issue a new permit, in accordance with applicable requirements for environmental documentation.*

2. If, as a result of an amendment or revision of the Forest plan, the *permitted area* is within an area allocated to an alternative public use, the authorized officer *shall conduct a site specific project analysis* to determine the range and intensity of the alternative public use.

a. If the project analysis results in a finding that the use of the *lot* for a recreation residence may continue, the holder shall be notified in writing, this permit shall be modified as necessary, and a new term permit shall be issued following expiration of the current permit.

b. If the project analysis results in a decision that the *lot* shall be converted to an alternative public use, the holder shall be notified in writing and given at least 10 years continued occupancy. The holder shall be given a copy of the project analysis, environmental documentation, and decision document.

c. A decision resulting from a project analysis shall be reviewed two years prior to permit expiration, *when that decision and supporting environmental documentation is more than 5 years old.* If this review indicates that the conditions resulting in the decision are unchanged, then the decision *may be implemented.* If this review indicates that conditions have changed, a new project analysis shall be made to determine the proper action.

B. In issuing a new permit, the authorized officer *shall* include terms, conditions, and special stipulations that reflect new requirements imposed by current Federal and State land use plans, laws, regulations, or other management decisions. (36 CFR 251.64)

C. If the 10-year continued occupancy given a holder who receives notification that a new permit will not be issued would extend beyond the expiration date of the current permit, a new term permit shall be issued for the remaining portion of the 10-year period.

X. Rights and Responsibilities Upon Revocation or Notification That a New Permit Will Not Be Issued Following *Termination* of This Permit

A. Removal of Improvements Upon *Revocation* or Notification That A New Permit Will Not Be Issued Following *Termination* Of This Permit: At the end of the term of occupancy authorized by this permit, or upon abandonment, or *revocation* for cause, Act of God, catastrophic event, or in the public interest, the holder shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall return the *lot* to a condition approved by the authorized officer unless otherwise agreed to in writing or in this permit. If the holder fails to remove all such structures or improvements within a reasonable period—not to exceed one hundred and eighty (180) days from the date the authorization of occupancy is ended—the improvements shall become the property of the United States, but in such event, the holder remains obligated and liable for the cost of their removal and the restoration of the *lot*.

B. In case of *revocation* or notification that a new permit will not be issued following *termination* of this permit,

except if *revocation* is for cause, the authorized officer may offer an *in-lieu lot* to the permit holder for building or relocation of improvements. *Such lots* will be nonconflicting locations within the National Forest containing the residence being terminated or under notification that a new permit will not be issued or *at nonconflicting locations* in adjacent National Forests. Any *in-lieu lot* offered the holder must be accepted within 90 days of the offer or within 90 days of the final disposition of an appeal on the *revocation* or notification that a new permit will not be issued under the Secretary of Agriculture's administrative appeal regulations, whichever is later, or this opportunity will terminate.

XI. Miscellaneous Provisions

A. This permit replaces a special use permit issued to: *_____ (Holder Name) on *_____ (Date), [*

B. The Forest Service reserves the right to enter upon the property to inspect for compliance with the terms of this permit. Reports on inspection for compliance will be furnished to the holder.

C. Issuance of this permit shall not be construed as an admission by the Government as to the title to any improvements. The Government disclaims any liability for the issuance of any permit in the event of disputed title.

D. If there is a conflict between the foregoing standard printed clauses and any special clauses added to the permit, the standard printed clauses shall control.

Note: Additional provisions may be added by the authorized officer to reflect local conditions.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports, and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB control number 0596–0082), Washington, DC 20503.

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federal register

Thursday
June 9, 1994

Part II

Department of Transportation

Federal Aviation Administration

Proposed Policy Regarding Airport Rates and Charges; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 27782]

Proposed Policy Regarding Airport Rates and Charges

AGENCY: Department of Transportation, Federal Aviation Administration.

ACTION: Notice of proposed policy.

SUMMARY: The Department of Transportation (DOT) and Federal Aviation Administration (FAA) are publishing for comment a proposed policy statement with respect to fair and reasonable, and nondiscriminatory airport rates and charges. Specifically, the proposed policy statement sets forth FAA policy regarding airport practices that DOT/FAA would consider to be consistent with Federal requirements for airport rates and charges for aeronautical uses. The proposed policy statement would assist airport proprietors and users in negotiating rates and charges and would be the basis for FAA to evaluate complaints of non-compliance with applicable law governing airport rates and charges.

DATES: Comments must be received on or before August 8, 1994.

ADDRESSES: Comments on this notice should be mailed in quadruplicate to: Federal Aviation Administration, Office of Chief Counsel, Attn.: Rules Docket (AGC–10), Docket No. 27782, 800 Independence Ave. SW., Washington, DC 20591. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27782." The postcard will be date stamped and mailed to the commenter.

FOR FURTHER INFORMATION CONTACT: John Rodgers, Director, Office of Aviation Policy, Plans and Management Analysis, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–3274; Barry L. Molar, Manager, Airports Law Branch, Office of Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591 (202) 267–3473.

SUPPLEMENTARY INFORMATION:

Request for Comments

Commenters are requested to identify recommended changes to the proposed policy statement and to identify legal, policy, financial or administrative principles or practices relied on to support each modification. Commenters are also requested to describe how each such modification will better comport with governing legal requirements and with the objectives of managing and developing the nation's air transportation system effectively to promote safety and efficiency and better serve aeronautical users, the traveling public and their communities than would the proposed policy statement. Further, comment is requested on the consistency of the proposed policy statement with practices now prevailing in the industry.

The proposed policy statement would have airports use historical costs as the basis for the aeronautical rate base, unless the airport and aeronautical users agree to a different methodology. This proposal is consistent with the prevalent practice in the airport industry. Because historical costs provide a reliable and verifiable valuation methodology on which to base rates and charges, they are consistent with the policy statement's goal of encouraging local resolution of disputes. Historic costs are also the generally used methodology in public utility regulation. Historic cost valuation assures that airport users will pay for the facilities currently in use, rather than for replacement facilities.

Nevertheless, we recognize that there are alternative approaches to historic cost valuation, including replacement costs and other methodologies. We solicit comment on how other valuation methods would comport with applicable legal requirements and promote efficient use of airport resources. To facilitate analysis of any recommended alternatives, the agency is particularly interested in examples in which the proposed methodology has been used in comparable circumstances to establish a rate base.

All comments received on or before the closing date for comments will be considered before adoption and publication of a final policy statement. The proposed policy statement may be changed in light of comments received. All comments will be available in the Rules Docket for examination by interested persons.

Public Meeting

A public discussion will be held in Washington, DC at which views may be expressed orally. A notice setting forth the location, date and time of the discussion and procedures for participation will be published in the **Federal Register**.

The Secretary of Transportation and the FAA are charged with promoting and maintaining a national aviation system that operates safely and efficiently. The Federal government pursues this objective by investing Federal funds, via grants-in-aid, in modern airport facilities sufficient to handle current and future air traffic and by facilitating local investment in such facilities. Transportation goals are also advanced when airport rates and charges are reasonable and consistent with airport development needs, and airport revenues are employed in the aviation system.

Traditionally, these goals have been pursued effectively at the local airport level through negotiation regarding operating costs, capital investment needs and financing strategies. Airlines, airport management and investors in airport securities have proven adept at striking a reasonable balance. As a result, the public interest has been served in the establishment of a safe air transportation system, airport rates and charges that have broad acceptance, continued growth of the national aviation system, and affordable air travel.

In publishing this proposed policy statement and associated administrative procedures for review of airport compliance, DOT/FAA continue to encourage negotiations between airport proprietors and aeronautical users as the primary means of setting airport rates and charges. Adversarial proceedings are no substitute for prompt and productive negotiations between directly interested local parties.

Nonetheless, where needed to ensure the interests of airports, their users and the traveling public, the Secretary and the Administrator are prepared to take a more active role in airport-airline disputes. Normally, the Federal role will be to assist parties unable to resolve fee disputes locally to conclude their own agreements successfully. In appropriate circumstances, the Secretary and the Administrator have broad legal authority to review the legality of proposed airport rates and to take all necessary investigatory and enforcement actions in aid of that authority. Where an impasse could have a significant adverse impact on air transportation, or otherwise involves a significant policy issue, parties directly affected will have the opportunity, through a streamlined procedural process being proposed concurrently, to seek a determination as to compliance with the principles set forth in this proposed policy statement. In these proceedings, DOT/FAA would not determine a specific level of legally acceptable rate, but rather would determine whether a rate was or was not in compliance with requirements that

rates be fair and reasonable and not unjustly discriminatory.

To provide guidance to parties engaged in their own negotiations and to make clear the criteria to which DOT/FAA would refer in addressing disputes over airport rates and charges, DOT/FAA have assembled, in a single policy statement, guidelines whose elements are based on various statutes, judicial and administrative decisions and historic industry practice. The fundamental requirement is that airport rates and charges imposed on aeronautical users be fair, reasonable and not unjustly discriminatory. This requirement is based on statutory mandates and obligations assumed by airport owners or operators (sponsors) as a condition for receiving Federal financial assistance. In addition, in accordance with relevant federal statutory provisions, airport sponsors are required to use airport revenue for the benefit of the airport system.

While the proposed policy statement would provide guidance for many airport charging practices, it cannot address each issue that may arise in this complex and fact-specific area. DOT/FAA does expect that the proposed policy statement would reduce uncertainty and, accordingly, the need to bring matters to the FAA for resolution through the administrative process. DOT/FAA intend that publication of the policy statement would help focus airport-airline rate negotiations on solutions that benefit airports and airlines alike. The FAA will consider the challenged rate after consideration of all the circumstances of the particular case in light of the basic principles articulated in the proposed policy statement.

DOT/FAA do not intend the policy statement to limit unduly the flexibility of airport proprietors to respond to a wide range of local conditions. In addition, this proposed policy statement is intended to preserve the credit ratings of airport revenue bonds by assuring capital markets that the Federal framework maintains the flexibility necessary for airport practices to meet local needs and changing conditions on a timely basis. High credit ratings can reduce the cost of airport infrastructure and ultimately of air transportation by lowering the financing costs of airport capital projects. Conversely, lower credit ratings can increase the financing costs of airport infrastructure development.

The proposed policy statement is intended to assist in maintaining a balance between airport infrastructure development and the preservation of safe and efficient transportation. Airlines should benefit from assurances that airport-related costs will be fair and reasonable. Airport operators should benefit from being afforded the flexibility necessary to tailor financial management, pricing, and investment strategies to meet local needs and conditions. DOT/FAA recognize that there is no single procedure or fixed methodology for establishing rates and charges in use in the industry and that the standard of reasonableness does not compel a single approach or a single fee. Airport proprietors may adopt procedures and methdologies that serve their objectives so long as they comply with applicable Federal requirements, including the requirement to keep airport revenues employed in the airport system.

This proposed policy statement is based on existing statutes, regulations, policies and judicial and administrative precedent. These sources are described below. The requirement that airport user charges be fair and reasonable and not unjustly discriminatory is based in two statutes, the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. App. 2201 *et seq.* (AAIA) and the Anti-Head Tax Act, 49 U.S.C. App. 1513(a)–(d) (AHTA).

a. Airport and Airway Improvement Act

The AAIA authorizes the Secretary of Transportation to make grants-in-aid to airport sponsors to finance airport development in the interests of safety, efficiency and capacity. In exchange for grant funds, airport sponsors agree to follow Federal requirements for the implementation of airport development projects and for operation of the airport. The Secretary has delegated the authority to administer the grant-in-aid program to the FAA.

Section 511(a) of the AAIA, 49 U.S.C. App. 2210(a), requires airport sponsors to the give various assurances satisfactory to the Secretary as a condition for receipt of grants. Under the authority of section 512 of the AAIA, 49 U.S.C. App. 2211, the FAA incorporates these assurances as part of the grant agreement between the sponsor and the FAA.

Of central importance to airport rates and charges is the requirement in section 511(a)(1) that airports be made available on fair and reasonable terms and without unjust discrimination. DOT/FAA construe this provision to include a requirement that rates and charges imposed on aeronautical users be fair and reasonable and without unjust discrimination. Also relevant is section 511(a)(9), which obligates the airport sponsor to maintain a fee and rental structure that will make the airport as self-sustaining as possible, but to exclude the Federal share of airport development from the airport's rate-base. In addition, section 511(a)(12) obligates the airport sponsor, with certain exceptions, to use airport revenue on the capital and operating costs of the airport or closely related transportation facilities. Section 519 of the AAIA grants general authority to the FAA to conduct investigations and hearings and to issue orders and regulations to carry out its provisions. Under section 519(b), the FAA may withhold approval of new entitlement grants and payments of funds under all existing grants for up to 180 days before issuing a final determination regarding compliance.

b. Anti-Head Tax Act

The requirement of reasonableness is also incorporated in the AHTA, which is part of the FAAct. Section 1113(a), 49 U.S.C. App. 1513(a), generally prohibits State and local taxation of air commerce and passengers traveling in air commerce. Section 1113(b) excludes from the prohibition reasonable landing fees and other charges to aircraft operators using the airport. Based on these provisions, the courts have consistently interpreted the AHTA to bar unreasonable landing fees as prohibited taxation. These provisions must also be implemented consistent with U.S. international obligations regarding airline user charges, pursuant to section 1102(a) of the FAAct, 49 U.S.C. App. 1502(a).

Section 1113(e) contains another exception to the AHTA's general prohibition. Section 1113(e) authorizes airport operators to impose a passenger facility charge approved by the FAA on paying passengers enplaned at the airport. Subsection 1113(e)(7)(B) generally prohibits inclusion of the cost of capital projects paid for with PFC revenue in the airport's rate base.

c. Other Sources

In addition to these statutory mandates, many airports have assumed the obligation to charge fair and reasonable and not unjustly discriminatory rates in connection with transfers of Federal property. Under the authority of the Surplus Property Act of 1944, 50 U.S.C. 1622(g), the Federal government has transferred for airport use title to real property to numerous airport operators around the country.

Judicial decisions and administrative decisions reviewing the reasonableness of airport rates and charges, though relatively few in number, have also provided guidance. The most recent is the decision in *Northwest Airlines* v.

Kent County, ____ U.S. ____, 114 S.Ct 855(1994).

FAA statements of policy regarding the administration of the airport grant program, principally FAA Order 5190.6A, Airport Compliance Requirements (October 1989) provide an additional basis for some of the matters addressed. Finally, prevailing practices regarding cost allocation, economic and financial modeling and generally accepted accounting practices have been considered, as they apply specifically to airport rates.

Additional FAA Actions Relating to Airport Rates and Charges

In addition to this proposed policy statement, DOT/FAA are taking a variety of other actions to assure that airports comply with Federal requirements relating to airport rates and charges and the use of airport revenues.

First, DOT/FAA are concurrently publishing in the **Federal Register** a Notice of Proposed Rulemaking proposing new procedural regulations for review of complaints regarding airport proprietor compliance with Federal obligations. The proposal regulation includes special expedited procedures for review of carrier complaints about an increase in airport rates and charges. Second, under the authority of section 518 of the AAIA, 49 U.S.C. App. 2217, the FAA is notifying airport sponsors to make available to the public full financial statements and audit reports maintained by the airport sponsor. Third, under the authority of section 507(c)(3) of the AAIA, 49 U.S.C App. 2206(c)(3), the FAA will consider the availability of accumulated surplus from nonaeronautical activities and the use of such surplus in selecting projects for funding with AIP discretionary funds. In addition, the FAA will continue to scrutinize the capital improvement plans submitted with applications for passenger facility charges to assure that the amount and duration of the PFC will not result in revenues that exceed amounts necessary to finance the specific projects.

With respect to the requirements for the use of airport revenues, the FAA is strengthening the audit procedures set forth in the compliance supplement to the single audits of state and local governments under the Single Audit Act. Additionally, the FAA is developing and implementing an action plan to counsel those airports identified as potentially in noncompliance and initiating enforcement actions where continuing noncompliance is found. Enforcement actions may include suspension or reduction of any AIP discretionary or entitlement funds. In addition, the FAA is working closely with the Office of Inspector General to address issues of unlawful revenue diversion.

The Proposed Policy Statement

Accordingly, DOT/FAA propose to adopt a new policy statement regarding the establishment of airport rates and charges as follows:

POLICY REGARDING THE ESTABLISHMENT OF AIRPORT RATES AND CHARGES

Introduction

DOT/FAA reiterate here the fundamental position that the issue of rates and charges is best addressed at the local level by agreement between users and airports. By providing guidance on standards applicable to airport rates and charges imposed for aeronautical use of the airport, DOT/FAA intend to facilitate direct negotiation between the proprietor and aeronautical users and to minimize the need to seek direct Federal intervention to resolve differences over airport rates and charges. Because DOT/FAA encourage direct resolution of airport fee issues, the FAA does not generally monitor practices established by agreement, except with respect to requirements for the use of airport revenue.

Principles Applicable to Airport Rates and Charges

1. In general, DOT/FAA rely upon airport proprietors, aeronautical users, and the market and institutional arrangements within which they operate, to ensure compliance with applicable legal requirements. Direct Federal intervention will be available, however, where needed.

2. Rates, fees, rentals and other charges ("rates and charges") imposed on aeronautical users must be fair and reasonable.

3. Airport rates and charges may not unjustly discriminate against aeronautical users or user groups.

4. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible.

5. In accordance with relevant Federal statutory provisions governing the use of airport revenue, airport proprietors must keep airport revenue employed in the local airport system.

Local Negotiation and Resolution

1. In general, DOT/FAA rely upon airport proprietors, aeronautical users, and the market and institutional arrangements within which they operate, to ensure compliance with applicable legal requirements. Direct Federal intervention will be available, however, where needed.

1.1 DOT/FAA encourage direct resolution of differences at the local level between aeronautical users and the airport proprietor. Such resolution is best achieved through adequate and timely consultation between the airport proprietor and the aeronautical users. Airport proprietors should engage in adequate and timely consultation with aeronautical users about airport rates and charges.

1.1.1 Airport proprietors should consult with aeronautical users well in advance of introducing significant changes in charging systems and procedures or in the level of charges. The proprietor should provide adequate information to permit aeronautical users to evaluate the airport proprietor's justification for the change and to assess the reasonableness of the proposal. For consultations to be effective, airport proprietors should give due regard to the views of aeronautical users and to the effect upon them of changes in rates and charges. Likewise, aeronautical users should give due regard to the views of the airport proprietor and the financial needs of the airport.

1.1.2 Airport proprietors and aeronautical users should consider the public interest in establishing airport rates and charges.

1.1.3 Airport proprietors and aeronautical users should make a good-faith effort to reach agreement. Absent agreement, airport proprietors are free to act in accordance with their proposals, subject to review by the FAA upon complaint by the user or, in unusual circumstances, on DOT/FAA's initiative.

1.2 Where airport sponsors and aeronautical users have been unable, despite all reasonable efforts, to resolve disputes between them, DOT/FAA will act to resolve the issues raised in the dispute.

1.2.1 First, DOT/FAA will offer its good offices to facilitate parties' reaching a successful outcome in a timely manner. Prompt resolution of these disputes is always desirable since extensive delay can lead to uncertainty for the public and a hardening of the parties' positions.

1.2.2 Second, where negotiations between the parties are unsuccessful and a complaint is filed alleging that airport rates and charges violate an airport sponsor's federal grant obligations, DOT/FAA will, where warranted, exercise the broad statutory authority to investigate and review the

legality of those rates and charges. Where an impasse could have a significant adverse impact on air transportation, or otherwise involves a significant policy issue, parties directly affected will have the opportunity, through a streamlined procedural process, to seek DOT/FAA's determination as to compliance with the principles set forth in this proposed policy statement.

1.3 Airport proprietors must retain the ability to respond to local conditions with flexibility and innovation. However, an airport proprietor is encouraged to achieve consensus and agreement with its airline tenants before implementing a practice that would represent a major departure from this guidance. However, the requirements of any law, including the requirements for the use of airport revenue, may not be waived, even by agreement with the aeronautical users.

Fair and Reasonable Rates and Charges

2. Rates, fees, rentals and other charges ("rates and charges") imposed on aeronautical users must be fair and reasonable.

DOT/FAA consider the aeronautical use of an airport to be any activity that involves, makes possible, is required for the safety of the operations of, or is otherwise directly related to, the operation of aircraft. Aeronautical use includes services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail and cargo.

2.1 Revenues from rates and charges for aeronautical uses (aeronautical revenues) may not exceed the costs to the airport proprietor of providing airport services and facilities currently in aeronautical use (aeronautical costs) unless otherwise agreed to by the affected aeronautical users.

2.1.1 Aeronautical users may receive a cross-credit of non-aeronautical revenues only if the airport proprietor agrees. Agreements providing for such cross-crediting are commonly referred to as "residual agreements" and generally provide a sharing of non-aeronautical revenues with aeronautical users. The aeronautical users in turn agree to assume part or all of the liability for non-aeronautical costs. An airport proprietor may not require aeronautical users to cover losses generated by non-aeronautical facilities except by agreement.

2.1.2 In other situations, an airport proprietor assumes all liability for non-aeronautical costs and retains all non-aeronautical profits for its own use in accordance with Federal requirements. This approach to airport financing is generally referred to as the compensatory approach.

2.1.3 Airports frequently adopt charging systems that employ elements of both approaches. Federal law does not require a single approach to airport financing.

2.2 The "rate base" is the total of all aeronautical costs that may be recovered from aeronautical users through rates and charges. Airport proprietors must employ a reasonable, consistent and "transparent" (i.e., clear and fully justified) method of establishing the rate base and adjusting the rate base on a timely and predictable schedule.

2.3 Costs that may be included in the rate base (allowable costs) are limited to: operating and maintenance expenses directly and indirectly associated with the provision of aeronautical facilities and services; all capital costs directly associated with the provision of aeronautical facilities and services currently in use; and current costs of planning future aeronautical facilities and services.

2.3.1 Where airport proprietors have expended funds from non-aeronautical sources to finance capital investments for aeronautical use, the implicit capital cost of these funds may be included in the aeronautical rate base in addition to the cost of the asset. DOT/FAA consider it reasonable to use, as a measure of the implicit capital cost, the average rate of interest on airport revenue bonds prevailing of similarly-sized airports at the time the funds were spent for the capital projects.

2.3.2 Airport proprietors may include reasonable environmental costs in the rate base to the extent that the airport proprietor incurs a corresponding actual expense (an example of an actual expense is the cost of providing acoustical insulation for homes). All revenues received based on the inclusion of these costs in the rate base are subject to Federal requirements on the use of airport revenue.

2.3.3 Airport proprietors are encouraged to establish rates and charges with due regard for economy and efficiency.

2.3.4 The airport proprietor may include in the rate base amounts needed to fund short-term cash reserves to protect against the risks of cash-flow fluctuations associated with normal airport operations.

2.4 Airport proprietors must comply with the following practices in establishing the rate base, provided, however, that one or more aeronautical users may agree to a rate base that deviates from these practices in the establishment of those users' rates and charges.

2.4.1 Airport assets must be valued according to their historic cost to the original airport proprietor. Subsequent airport proprietors shall acquire the cost basis of the original airport proprietor. An airport proprietor may not employ current cost and replacement cost methods to value airport assets.

2.4.2 The costs of facilities not yet built and operating may not be included in the rate base. The airport proprietor may include in the rate base the costs of land that facilitates the current operations of the airport.

2.4.3 The rate base of an airport cannot include costs associated with another airport unless (1) the proprietor of the first airport is also the proprietor of the second airport; (2) the second airport is currently in use; and (3) the costs of the second airport to be included in the first airport's rate base reflect the aviation benefits that the second airport provides or is expected to provide to the aeronautical users of the first airport.

2.5 At all times, airport proprietors must comply with the following practices:

2.5.1 Indirect costs may not be included in the rate base unless they are based on a reasonable, transparent cost allocation formula calculated consistently for other units or cost centers of government.

2.5.2 The value of airport development or planning projects paid for with government grants and contributions and passenger facility charges (PFCs) may not be included in the rate base.

2.5.2(a) Exception: In the case of gates and related areas, or another terminal facility that is occupied by one or more carriers on an exclusive or preferential use basis, the rates and charges paid to use those facilities shall be no less than the fees charged for similar facilities that were not financed with PFC revenues.

Prohibition on Unjust Discrimination

3. Airport rates and charges may not unjustly discriminate against aeronautical users or user groups.

3.1 Unless aeronautical users agree, the rates and charges imposed on any aeronautical user or group of aeronautical users may not exceed the costs allocated to that user or user group under the cost allocation methodology adopted by the airport proprietor that is consistent with this guidance.

3.2 A properly structured peak pricing system that allocates limited resources using price during periods of congestion will not be considered to be unjustly discriminatory. An airport proprietor may, consistent with the

policies expressed in this policy statement, establish rates and charges that maximize the efficient utilization of the airport.

3.3 Relevant provisions of the Convention on International Civil Aviation (Chicago Convention) and many bilateral aviation agreements specify, inter alia, that charges imposed on foreign airlines must not be unjustly discriminatory, must not be higher than those imposed on domestic airlines engaged in similar international air services and equitably apportioned among categories of users. Charges that are inconsistent with these principles will be considered unjustly discriminatory or unfair and unreasonable.

3.5 Allowable costs—costs properly included in the rate base—must be allocated to aeronautical users by a transparent, reasonable and not unjustly discriminatory rate-setting methodology. The methodology must be applied consistently and cost differences must be determined quantitatively.

3.5.1 Common costs (costs not directly attributable to a specific user group or cost center) must be allocated according to a reasonable, transparent and not unjustly discriminatory cost allocation formula that is applied consistently.

Requirement of Financial Self-Sufficiency

4. Airport proprietors will maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible.

4.1 If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the airport proprietor should establish long-term goals and targets to make the airport financially self-sustaining.

4.2 The federal obligation to make the airport as financially self-sustaining as possible does not justify the inclusion of environmental costs in the rate base unless an airport proprietor incurs actual costs.

Requirements Governing Revenue Application and Use

5. In accordance with relevant Federal statutory provisions governing the use of airport revenue, airport proprietors must keep airport revenue employed in the local airport system.

5.1 Whether or not total airport revenues exceed full current airport costs—

(a) aeronautical revenues may not exceed aeronautical costs; and

(b) the airport proprietor must keep all airport revenue and assets (aeronautical and non-aeronautical) employed in the local airport system in accordance with relevant Federal statutory provisions governing the use of airport revenue.

5.2 The progressive accumulation of substantial amounts of airport revenues may warrant an FAA inquiry into the airport proprietor's application of revenues to the local airport system.

5.3 The airport proprietor should consider the conversion of a reasonable amount of surplus airport revenues into airport improvements, which may include types of development that are not eligible for grants of funds under the Airport Improvement Program.

5.4 Indirect costs may not be included in the rate base unless they are based on a reasonable, transparent cost allocation formula calculated consistently for other units or cost centers of government.

5.5 If an airport proprietor generates a surplus from non-aeronautical sources, such revenue shall be expended in accordance with relevant Federal statutory provisions governing the use of airport revenue for the capital or operating costs of the airport, the local airport system, or other local facilities directly and substantially related to air transportation.

Issued in Washington, DC, on June 3, 1994

Federico Peña,

Secretary of Transportation.

David R. Hinson,

Administrator, Federal Aviation Administration.

[FR Doc. 94–13943 Filed 6–3–94; 4:22 pm]

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Federal Register

Thursday
June 9, 1994

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 13 and 16
Rules of Practice for Federally Assisted Airport Proceedings; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 13 and 16

[Docket No. 27783; Notice No. 94–18]

RIN 2120–AF–43

Rules of Practice for Federally Assisted Airport Proceedings

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Notice of proposed rule (NPRM).

SUMMARY: This NPRM proposes to establish rules of practice for the filing of complaints and adjudication of compliance matters involving Federally assisted airports. The proposed rule would address exclusively airport compliance matters arising under the Airport and Airway Improvement Act (AAIA) of 1982, as amended; certain airport-related provisions of the Federal Aviation Act of 1958, as amended; the Surplus Property Act; as amended; predecessors to those acts; and regulations, grant agreements, and documents of conveyance issued or made under those acts. The proposed rule is intended to expedite substantially the handling and disposition of airport-related complaints, and to provide an efficient process for the agency to resolve disputes between air carriers and airport proprietors regarding whether airport fees and charges comply with Federal requirements. The NPRM would also amend the FAA's existing complaint and adjudication procedures, 14 CFR Part 13, "Investigative and Enforcement Procedures," to remove from the coverage of part 13 the airport-related matters that would be handled under the new part 16.

DATES: Comments must be received on or before August 8, 1994.

ADDRESSES: Comments on this notice may be mailed, in duplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC–10), Docket No. 27783, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27783. Comments may be examined in room 915F weekdays between 8:30 a.m. and 5 p.m. except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barry Molar, Airport Law Branch (AGC–610), Office of the Chief Counsel, (202) 267–3473, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they desire. Comments relating to the economic effects that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27783." The postcard will be dated and time stamped and returned to the commenter.

All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in the notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with DOT/FAA personnel concerning this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3464. Requests must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's also should request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

Background

In addition to its plenary responsibility for aviation safety, the Federal Aviation Administration (FAA) is responsible for administering Federal laws that impose certain economic requirements on the operation of airports in the National Aviation System. These laws include the Airport and Airway Improvement Act of 1982, as amended, (AAIA) which provides for Federal grants to airport sponsors and imposes conditions on the grants in the form of assurances by those sponsors; the Surplus Property Act, which provides for the transfer of Federal property to local governments for airport use and, like the AAIA, requires specific assurances from the sponsor for the use of the property; section 308(a) of the Federal Aviation Act of 1958, as amended (FAAct), which prohibits an airport operator from granting an exclusive operating right at an airport that has received Federal funds; and the Anti-Head Tax Act, section 1113(a)–(d) of the FAAct, which prohibits local taxes on air travel but expressly permits the imposition of reasonable fees.

The FAA, concurrently with the publication of this NPRM, has published for public comment a notice of proposed policy on the standards for determining whether airport rates and charges are "fair and reasonable" within the meaning of the above statutes. The FAA will refer to that policy statement, as revised after review of the comments received, in the implementation of these laws and in adjudicating complaints brought before the agency involving airport rates and charges.

The Secretary of Transportation and the FAA Administrator have the authority and responsibility to receive complaints and adjudicate matters of compliance with these statutes. Typically, complaints received by the FAA involve an allegation of economic discrimination toward an airport tenant or a claim that an exclusive right has been granted by the airport operator. However, two recent disputes between airlines serving a major airport and the airport operator indicate that the FAA may soon receive cases involving more complex rates and charges issues. In both cases, the airlines filed suit in court but did not file an administrative complaint with the FAA. In *Northwest Airlines, Inc., et al.* v. *County of Kent, Michigan*, the airline tenants at the Grand Rapids Airport challenged various aspects of a new rate structure at the airport. The Supreme Court issued a decision substantially in favor of the airport operator in January 1994. _____ U.S. _____, 62 U.S.L.W. 4103 (1994). In 1993, the Air Transport Association and tenant airlines at Los Angeles International Airport filed suit in U.S. District Court to challenge a substantial increase in landing fees at the airport. The District Court for the Central District of California dismissed the airline complaint in February 1994, citing among other things the lack of a private right of action for complaints under the Anti-Head Tax Act.

Even though no administrative complaint was filed in the Los Angeles case, the Department of Transportation

became involved after the City announced that airlines that did not pay the new fees would be barred from operation at the airport. In November 1993, Secretary of Transportation Federico Peña convened the parties to the dispute in Washington, DC, to assist in a settlement of the controversy. The product of the ensuing discussions was an agreement by the parties that permitted continued litigation of the issues without the threat of interruption of air service to the traveling public.

Shortly after the Los Angeles discussions, Secretary Peña issued a letter, dated December 10, 1993, outlining the Department's prospective policy on involvement in airport-airline fee disputes. The Secretary noted the significant potential impact on air travelers and on the national air transportation system of unresolved airport-airline disputes. While reaffirming the Department's historic reliance on good faith negotiations and agreement by the local parties, the Secretary announced a more active and engaged approach to disputes that could not be resolved at the local level. The letter included the Secretary's direction to the FAA to streamline the procedural rules for handling airport-airline fee disputes. In keeping with the approach announced by the Secretary, and the expressed need for a more effective, streamlined enforcement and adjudication procedure, the FAA proposes the adoption of a revised and updated procedural rule adapted specifically to the investigation and adjudication of airport-related complaints within the jurisdiction of the FAA.

Existing FAR Part 13

At present, enforcement of the requirements imposed on airport proprietors as a condition of the acceptance of Federal grant funds or property is accomplished through the administrative procedures set forth in 14 CFR part 13. Requirements include, without limitation: (a) The obligation to provide access to the airport on fair and reasonable terms without unjust discrimination; (b) the prohibition on grants of exclusive rights; (c) the obligation to use all airport revenue on capital or operating costs of the airport, the sponsor's airport system or other transportation projects directly related to air transportation, consistent with 49 U.S.C. App. 2210(a)(12); (d) the obligation to make the airport as self-sustaining as possible; (e) the obligation to ensure that, to the maximum extent practicable, at least 10 percent of concession businesses are small business concerns owned and operated by socially and economically disadvantaged businesses (DBE's); and (f) the obligations pursuant to section 505(d) of the AAIA that at least 10 percent of AIP funds shall be expended with DBE's.

The application of part 13 procedures to enforcement of airport grant agreements began in 1979, largely as the result of the enactment of a civil rights statute, Section 30 of the Airport and Airway Development Act, as amended (ADAP). Section 30, reenacted as section 520 in the AAIA, as amended, is similar to Title VI of the Civil Rights Act (CRA), but is not an amendment to the CRA. For this reason, the Title VI administrative process provided in 49 CFR part 21 does not cover section 520 cases, and it was necessary to provide another avenue of administrative process for compliance matters.

Accordingly, the FAA added ADAP to the list of statutes in part 13 under which the Administrator conducts investigations. In 1988, the FAA amended the applicability provisions of part 13 to refer to the Airport and Airway Improvement Act of 1982 (AAIA) and to the Airport and Airway Safety and Capacity Expansion Act of 1987.

While the scope of part 13 was thereby enlarged to accommodate a range of airport enforcement matters, no attempt was made to revise the complaint or hearing procedures to address the particular requirements of airport cases. In the late 1980's, the number and complexity of complaints from aeronautical users regarding airport sponsor compliance with grant assurances and other Federal obligations began to increase. In 1987, an amendment to the AAIA compressed the time available to the agency to reach a final decision in a case in which grant funds could be withheld. In effect, section 519 of the AAIA, as amended in 1987, prohibits the Secretary from denying a grant of entitlement funds or from withholding payments under a grant for more than 180 days without providing opportunity for a hearing and issuing a determination of a violation. Using the complex formal hearing procedures of subpart D of part 13, it would be practically impossible to meet the 180-day deadline in the statute for completion of the entire hearing and final decision process. The difficulty of meeting the 180-day deadline arises from a number of characteristics of part 13:

- There are no explicit deadlines for completion of the investigative phase of a complaint.
- There is no guidance or direction on the processing of complaints that are treated as reports of violations under § 13.1. The absence of procedures for processing such cases has led to delays in disposition of cases, confusion as to the status of regional determinations under § 13.1 as judicially appealable final agency orders, and confusion over the procedures and standards for obtaining FAA headquarters review of regional determinations under § 13.1.
- The lack of more streamline adjudicatory procedures has tended to encourage the practice of submitting out-of-channel appeals and pleas for action directly to the Administrator and Secretary of Transportation. The submission of these requests diverts agency resources from investigations and leads to confusion regarding the contents of the administrative record.
- Some elements of part 13 today do not facilitate an expedited and definitive finding on compliance. For example, multiple, potentially duplicative an drawn-out hearings and the current administrative review process for hearing officer's decisions under subpart D make timely decisionmaking exceedingly difficult
- FAA experience with part 13 indicates that some provisions permit parties to prolong litigation once the FAA has initiated formal proceedings. Subpart D of part 13 includes, for example, open-ended subpoena provisions, and permits discovery and motions practice without time limit if the hearing officer chooses to allow it. Also, part 13 places no clear limits upon the successive filing of dispositive motions under § 13.49 by all parties.

Part 13, in short, does not provide a structure that regularly facilitates the final administrative disposition of airports-related cases within prescribed time limits, and cannot be relied upon to afford expedited resolution of disputes that may be needed in major airline-airport cases. For these purposes, and consistent with the Secretary's direction for a more streamlined process, a new procedural rule is necessary to focus exclusively on airport matters; to avoid duplicative and unnecessary steps; and to offer expeditious treatment, especially in cases with substantial potential impact on air transportation. In support of these objectives, the rules proposed here would:

1. Require parties to undertake serious attempts at informal resolution of their dispute prior to the filing of a complaint.

2. Focus administrative resources as a priority on resolving complaints which,

if not expeditiously resolved, may result in substantial adverse impact on air transportation.

3. Provide for a single complaint procedure, rather than for formal and "informal" complaints as in part 13. This will avoid duplicate complaints and investigations on the same subject.

4. Limit "standing" to persons directly and substantially affected by the specific dispute at issue, i.e. persons with a substantial actual and present interest in the outcome of an issue that is ripe for decision. Part 16 could not be used to obtain advisory opinions on speculative actions or academic questions.

5. Set clear time limits on the actions of all parties, including the agency, from the time a complaint is filed through final agency decision.

6. Provide procedural flexibility, e.g., to shorten time limits and eliminate procedural steps in a particular proceeding, consistent with fairness to those affected, where circumstances require special expedition.

7. Promote the likelihood of informal resolution of cases by the affected air carrier and airport parties without expensive formal hearings, by rendering a public initial agency determination of compliance in a short time frame.

8. Limit the number of formal pleadings and require that the documentary evidence relied upon by the parties be submitted promptly with the pleadings.

9. Require that parties serve all pleadings and documents on each other and the FAA, and use overnight or hand-delivery when the need for expeditious resolution of the matter is particularly acute.

10. Provide for an expedited process for investigatory hearings that will provide a full record, without undue complexity, regarding proposed increases in airport rates and charges in cases of particular significance.

11. Provide hearing procedures that permit the scope of each hearing to be tailored to the complexity and circumstances of the particular case, and rely on briefing and oral argument where there are no genuine issues of material fact in dispute.

12. Clearly establish the burden that each party must carry to make its case.

13. Limit *amicus* participation to the filing of briefs.

14. Prohibit interlocutory appeals and requests for reconsideration, and focus instead on an effective appeals process.

Subparts A through I of the proposed rule set forth a comprehensive procedure for the filing, investigation, and adjudication of complaints filed with the FAA against airports, and for appeal of agency decisions regarding such complaints. Subpart J of the proposed rule includes a special procedure for the receipt and investigation of complaints by airlines against an airport alleging that an airport fee increase is unreasonable or unjustly discriminatory.

The normal complaint procedure would result in an initial determination by the agency, within approximately six months of the filing of a complaint, whether the airport was in violation of its Federal obligations. This time period would include two round of responsive pleadings by the complainant and respondent, and a reasonably expeditious investigation and preparation of decision by the FAA.

The special subpart J procedure would result in an initial determination within 120 days of the complaint. Typically, this determination would be whether the challenged rate was fair and reasonable within the meaning of the relevant statutes. Under subpart J, the agency would appoint a presiding officer who will act independently to conduct an expedited investigatory hearing on the complaint. The presiding officer would then prepare a report of investigation for transmittal to the Assistant Administrator for Airports, who would consider the hearing record and report in issuing the initial determination of compliance.

Both the investigatory hearing under subpart J and the adjudicatory hearing under subpart F would provide an open and fair process for efficient and expedited consideration of complaints involving Federally funded airports. In both procedures, the time allowed for issuance of a compliance decision represents a considered balance between the interest in expedited resolution of disputes and the need for adequate time for investigation and deliberation before issuing agency decisions in these potentially complex cases. In subpart J, for example, the relatively short time provided for an interim determination on a complaint is sufficient to allow for oral investigatory hearing.

Within the constraints imposed by the effort achieve expedition, the investigatory hearing would provide complainants and airports the opportunity to develop the record before the FAA through streamlined procedures that permit cross-examination, adversary process, and limited discovery. In the atypical case in which an adjudicatory hearing would be held (under section 519 of the AAIA or section 1002 of the FAAct), the proposed hearing procedures are intended to permit the FAA to complete compliance hearings within 180 days, while assuring that a sponsor receives a fair hearing and opportunity to present evidence and argument to support its position. That process would provide substantial procedural safeguards, although it would not conform in every respect to the provisions of the Administrative Procedure Act (APA). The hearings mandated by section 519 of the AAIA and section 1002 of the FAAct are not an "agency adjudication required by statute to be determined on the record after opportunity for an agency hearing" within the meaning of section 554 of the APA. Accordingly, provisions of section 554 of the APA do not apply to the adjudicatory hearing proposed in this rule.

Description of the Proposed Rule

Subpart A—General Provisions

Subpart A would include provisions of general applicability to proceedings brought under part 16, definitions of terms used in the regulation, and a provision on separation of functions.

The regulation would apply to complaints, investigations and adjudications regarding compliance by airports with the following:

(a) Sections 308 and 1113 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. App. 1347 and 1513;

(b) Obligations contained in grant-in-aid agreements (grant assurances) issued under airport financial assistance legislation enacted over the years, and obligations directly imposed by that legislation (including obligations relating to use of disadvantaged business enterprises); and

(c) Obligations contained in deeds of transfer for property transferred from the United States to airport proprietors (proposed section 16.1(a)).

The proposed regulation would also specify that if a grant assurance concerns a requirement that is within the authority of another Federal agency, that agency's administrative processes should be used and that the FAA would defer to the other Federal agency's authority (proposed § 16.1(b)). For example, the grant assurances require compliance with the Davis-Bacon Act relating to the payment of union-scale wages on Federally funded construction projects. Allegations of violation of the Davis-Bacon Act would continue to be adjudicated by the Department of Labor, not by the FAA under proposed part 16.

The proposed definitions (proposed section 16.3) are for the most part derived from the definitions of like or similar terms in 14 CFR part 13. The proposed definition of agency attorney would specify the FAA attorneys who can be responsible for investigating and prosecuting complaints. To assure compliance with the proposed rules on separation of functions in cases that go on to hearings under proposed subpart F, attorneys holding certain positions and working in certain offices of the FAA would be precluded from functioning as agency attorneys at any stage of the proceedings. Such attorneys would be available to advise the FAA decisionmaker or to serve as a hearing officer.

The proposed definition of hearing officer would require the hearing officer to be an attorney. FAA attorneys holding certain positions and working in specific offices would be precluded from functioning as hearing officers to assure compliance with the proposed rule on separation of functions.

Proposed § 16.5, requiring the separation of prosecutorial and adjudicatory functions in hearings, is based on FAR § 13.203, relating to civil penalty adjudications. Separation of functions is not required by statute because hearings under part 16 would not be subject to APA hearing requirements; however, the separation is provided to promote confidence in the impartiality and integrity of decisions under the new procedures. Separation of prosecutorial and adjudicatory functions would be provided from the time of the issuance of an initial determination in all cases in which an opportunity for hearing is provided, including cases in which the respondent waives hearing and appeals the initial determination in writing to the Administrator. When separation applies, the Assistant Administrator for Airports would be considered as performing the investigatory and prosecutorial function and would not participate in the decision of the Administrator or hearing officer.

Subpart B—General Rules Applicable to Complaints, Proceedings, and Appeals Initiated by the FAA

This subpart would apply to all phases of the investigations and adjudications under this part.

Proposed § 16.11 would provide for expediting any portion of an investigation or adjudication. While the normal procedures in this proposal are designed to be completed efficiently, in some circumstances there is a need to resolve an issue even more quickly. The section would authorize the Assistant Administrator for Airports to take a variety of steps appropriate to the particulars of any given case. The section is intended to provide flexibility to adopt such special procedures to assure sufficiently rapid decisionmaking and procedural fairness in the circumstances of the individual case.

The proposed rules on filing and service of documents, computation of time, and motions (proposed §§ 16.13, 16.15, 16.17, and 16.19), are based on similar provisions in the Federal Rules of Civil Procedure, the Department's Rules of Practice in Proceedings (14 CFR part 302), the Rules of Practice in Civil Penalty Actions (14 CFR part 13 subpart G), and the National Transportation Safety Board's Rules of Practice in Air Safety Proceedings (49 CFR part 821). These rules have been used for many years, are well-know to the aviation bar, and have proven to be effective.

Subpart C—Special Rules Applicable to Complaints.

Under proposed § 16.21, a potential complainant, *i.e.*, a person directly affected by the alleged noncompliance, would be required to engage in good faith efforts to resolve the disputed matter informally with potentially responsible respondents before filing a complaint with the FAA under part 16. Informal resolution may include mediation, arbitration, use of a dispute resolution board, or other form of third-party assistance. The Department's preference for informal resolution in lieu of formal complaint to the FAA is clearly stated in the notice of proposed policy statement published concurrently with this proposed rule.

Under this section, it would be necessary for the potential complainant or his representative to certify that good faith efforts had been made to achieve informal resolution. To protect the parties, and for consistency with Rule 408 of the Federal Rules of Evidence, the certification would not include information on monetary or other settlement offers made but not agreed upon in writing.

Section 16.23 Complaints, Answers, and Other Documents

Section 16.23 would specify the information to be included in a complaint, the additional pleadings allowed and the information to be contained therein, and the method for filing a motion to dismiss. In addition, it would shift to the complainant and the respondent the burden of providing all available supporting documents on which they rely and serving them upon all parties as specified in § 16.15.

Finally, it would provide that the FAA will have 20 days to docket and review the complaint. In the event that the complaint is not dismissed, the FAA will notify both the complainant and named respondent in writing within 20 days after the complaint is received that an answer shall be filed within 20 days of the date of service of the notification. The complainant's reply is due within 15 days of the answer, and the respondent's rebuttal, if any, is due within 15 days of the reply.

Section 16.25 Dismissals

Complaints that clearly do not state a cause of action that warrants investigation by the jurisdiction of the Administrator, as well as those that do not come within the jurisdiction of the Administrator under the authorities set forth in this part, would be dismissed with prejudice, within 20 days after receipt of the complaint. As a final order of the agency, a dismissal would be appealable to a United States Court of Appeals.

Section 16.27 Incomplete Complaints

Section 16.27 deals with a second category of complaint—one which states a *prima facie* cause of action and falls within the jurisdiction of the Administrator but is deficient as to one or more of the filing requirements set forth in § 16.23(b). Incomplete complaints would be dismissed within 20 days after the receipt of the complaint, without prejudice. Since the complainant would be able to refile, this dismissal would not be appealable to the FAA decision-maker or to a United States Court of Appeals.

Section 16.29 Investigations

Under § 16.29, where the FAA finds reasonable grounds to investigate the matters described in a complaint, it would conduct an investigation. Where there is little dispute about factual matters, or where documentary submissions alone are deemed sufficient to make a record for decision, the investigation may consist entirely of a review of the arguments and materials submitted by the parties in pleadings, *i.e.*, the complaint, answer, reply, and rebuttal. The FAA may rely on this review for its initial determination on compliance. Because the FAA could rely exclusively on information and documentary evidence filed with the pleadings, parties would be expected to provide thorough submissions in order to protect their interests.

Alternatively, the FAA could supplement the submissions by requesting additional information from a party or by field investigation if appropriate. Further, if necessary information is not furnished voluntarily the FAA could use its authority under the FAAct and the AAIA to subpoena witnesses for deposition and production of documents. By permitting the FAA to

render its initial determination based on the pleadings and material submitted therein, this section in effect permits the grant of initial summary judgment.

Section 16.31 Initial Determinations After Investigations

Section 16.31 provides procedures for issuance of the FAA's initial determinations and orders, and for issuance of the final decision on appeal of the initial determination in cases that do not involve a hearing. The Assistant Administrator for Airports, or a designee, would issue an initial determination in every case in which the FAA investigates a complaint. The agency would be required to issue an initial determination in 120 days from the due date of the last pleading (*i.e.*, reply or rebuttal), but the date could be extended for up to 60 days for good cause, or due to delay caused by the complainant. If there is no appeal of the initial determination, it would become the final decision of the Administrator. If a party adversely affected by the initial determination does not file an administrative appeal, the FAA proposes that the final decision would not be judicially reviewable.

The initial determination is intended to provide a prompt and authoritative indication of the agency position on a complaint. Consistent with the view that local parties are best positioned to resolve disputes, the initial determination should provide guidance to airport proprietors and airport users in resolving the matter without further process. While the initial determination can be appealed, the FAA expects that in many instances the initial decision would resolve the issues raised in the complaint to the satisfaction of the parties. In such cases, the parties may find it more beneficial to negotiate a solution based on the FAA's initial position than to continue to litigate the matter.

Section 16.33 Final Decision Without Hearing

If the initial determination finds the sponsor in compliance and dismisses the complaint, the complainant could appeal the determination by a written appeal to the Administrator within 30 days. Reply briefs could be filed within 20 days, and the Administrator would be required to issue a final agency decision on appeal within 30 days of the due date for the reply briefs. The FAA would not provide opportunity for a hearing on the dismissal of a complaint.

If the initial determination contains a finding of noncompliance and the respondent is entitled to a hearing, the determination would provide the sponsor the opportunity elect an oral evidentiary hearing under subpart F. The procedure for electing or waiving a hearing is set forth in Subpart E. If the respondent waives hearing and instead elects to file a written appeal to the Administrator, a final decision would be issued by the Administrator or a designee under § 16.33.

Subpart D—Special Rules Applicable to Proceedings Initiated by the FAA

Section 16.101 would make clear the FAA's continuing authority to initiate its own investigation of any matter within the applicability of this part without having received a complaint, as authorized by section 313 and section 1002 of the Federal Aviation Act and section 519 of the Airport and Airway Improvement Act.

Section 16.103 serves three purposes: (1) To require a notice setting forth the specific areas of concern to the FAA, following the initiation of an investigation; (2) to establish the time limit for a response; and (3) to encourage and provide time for informal resolution. In the event the issues raised are not resolved informally, the FAA could proceed to issue an initial determination under § 16.31.

Subpart E—Proposed Orders of Compliance

Subpart E is similar to § 13.20 of part 13, but provides a more streamlined and expedited procedure for the sponsor to elect to exercise the option of requesting a hearing, in keeping with the purpose of proposed part 16. If the initial determination proposes a sanction against the sponsor subject to section 519(b) of the AAIA or section 1002 of the FAAct, the respondent could file a request for hearing within 30 days after service of the determination. If the respondent elects a hearing, the agency will issue a hearing order.

Alternatively, if the respondent waives hearing and instead files a written appeal (within 30 days), the Administrator would issue a final decision in accordance with the procedures set forth in § 16.33.

During the 30-day period before an election of hearing or written appeal is due, the respondent and complainant would be encouraged to negotiate a resolution of the dispute based on the initial determination.

If the respondent fails to respond, the initial determination becomes final.

Subpart F—Hearings

Proposed subpart F would state the procedures for initiating and conducting adjudicative hearings. The hearing order, issued by the Deputy Chief Counsel under proposed § 16.201, would set the scope of the hearing by identifying the issues to be resolved, as well as assigning the hearing officer.

If no material facts that require oral examination of witnesses are in dispute, the hearing could be limited to submission of briefs and oral argument. If the hearing follows an investigatory hearing under subpart J, the record from the subpart J proceeding would be made part of the adjudicative hearing record, and the hearing officer could limit the submission of evidence to avoid duplication of the prior proceeding.

In the hearing, the agency attorney would represent the agency's position before the hearing officer, and would have the same status as any other representative of a party.

The proposed rules include commonly used adjudicatory procedures such as representation of the parties by attorneys, intervention, participation by non-parties, pretrial procedures and discovery, the availability of compulsory process to obtain evidence, and procedures for use at the hearing. They are based on similar provisions in the Federal Rules of Civil Procedure, the Department's Rules of Practice in Proceedings (14 CFR Part 302), the Rules of Practice in Civil Penalty Actions (14 CFR part 13 subpart G), and the National Transportation Safety Board's Rules of Practice in Air Safety Proceedings (49 CFR part 821). These provisions are intended to provide the parties with a reasonable opportunity to prepare their cases, while allowing the process to be completed expeditiously.

Subpart G—Initial Decisions, Orders and Appeals

Proposed subpart G provides procedures for issuance of initial decisions and orders by hearing officers, appeals of the initial decision to the FAA decisionmaker and for the issuance of consent orders. Proposed § 16.241 governing initial decisions and administrative appeals is based on 14 CFR 13.20(g)–(i). However, shorter time periods are provided to accommodate the time limits of section 519 of the AAIA. In addition, the proposed rule would include a provision for *sua sponte* review of an initial decision by the FAA decisionmaker, consistent with the practice under 14 CFR 302.28(d).

Proposed § 16.243 governing disposal of cases by consent orders is derived from 14 CFR 13.13.

Subpart H—Judicial Review

Proposed Subpart H would contain rules applicable to judicial review of final agency orders. Proposed

§ 16.247(a) would set forth the basic authority to seek judicial review. The provision is based on 14 CFR 13.235. Specific reference to section 519(b)(4) of the AAIA has been added. Proposed § 16.247(b) would identify FAA decisions and actions under part 16 that the FAA does not consider to be judicially reviewable final agency orders.

Subpart I—Ex Parte Communications

The proposed rule on *ex parte* communications is based on subpart J of the Rules of Practice in Air Safety Proceedings of the NTSB, 49 CFR Part 821, subpart J.

Subpart J—Alternate Procedure for Certain Complaints Concerning Airport Rates and Charges

Proposed subpart J would provide a special procedure for the expedited resolution of certain significant disputes involving the fees that airport operators charge airlines. The procedure would involve a formal investigation, including an evidentiary investigative hearing. The concept of the investigatory hearing derives from subpart F of part 13. However, special provisions governing the conduct of discovery, hearing, and initial determination in the subpart J proceeding are intended to assure that the investigative process can be completed within the time frame provided in the rule. If the conditions for the use of subpart J are met, the airline filing the complaint could request either the subpart J procedure or the investigatory procedures under § 16.29.

Proposed § 16.401 sets forth the conditions necessary to request the special procedure. A subpart J proceeding would be available only to carriers holding authority under sections 401, 402, or 418 of the FAAct or operating under an exemption for scheduled service under 14 CFR part 298.

A complaint requesting subpart J procedures would have to meet the general requirements of Part 16 and the complainant would have to request the use of subpart J procedures. In addition, subpart J would only be available for a complaint alleging that an increase in an airport rate or charge is unreasonable or unjustly discriminatory. The request would be granted if the Assistant Administrator for Airports determines that the complaint involves an issue that if not resolved in an expedited manner could have a significant adverse impact on air transportation. The FAA also proposes that subpart J could be used when the Assistant Administrator for Airports determines that a complaint raises a significant policy issue, without regard to the significance of the potential impacts of the case.

The subpart J proceeding would be more than usually resource-intensive for the agency, because of the expedited schedule and the formal investigatory hearing. The limitation of complainants under subpart J to scheduled air carriers and the limitation of the subject matter to significant disputes over airport fees is intended, therefore, to limit use of agency resources for an expedited hearing procedure to those cases that have the greatest potential effect on the traveling public.

Section 16.403 would establish requirements for the filing of complaints and would establish procedures for ruling on the request for use of subpart J procedures. The Administrator would rule on the request for use of subpart J procedures within seven days. If the complaint did not meet the requirements for use of subpart J but otherwise satisfied part 16, the complaint would be processed under subparts B and C exclusively.

If the Assistant Administrator for Airports determined to employ subpart J procedures, the respondents would be required to file an answer within 21 days of the Administrator's notice.

Under § 16.405, the Assistant Administrator for Airports would issue a notice and order of investigation within seven days after the answer is served. The notice and order of investigation would identify the presiding officer for the investigation, the allegations and scope of investigation and the date by which the presiding officer is directed to issue a report of investigation. The report will generally be due 60 days after the answer was filed. Under § 16.407, the presiding officer may not be an agency attorney, as defined in subpart A, or a person otherwise involved in the investigation of airport compliance matters. Accordingly, while the presiding officer could be an FAA or other DOT attorney, or another FAA employee with experience relevant to the issue, the presiding officer would not be a person with any prior involvement in the case at hand or a person whose regular duties involved enforcement of airport compliance.

Proposed § 16.411 sets forth procedures for a subpart J investigation, including an expedited investigatory hearing. The procedures are derived from existing part 13 and the hearing procedures in proposed part 16, subpart F.

Proposed § 16.413 would require the preparation of a report of investigation which would be provided to the Assistant Administrator and served on the parties. Under proposed § 16.415, the Assistant Administrator would issue an initial determination after review of the record developed in the investigation, including the presiding officer's report. The initial determination would be appealable to the Administrator or his designee under the provisions of § 16.31.

Proposed § 16.415 would provide for automatic suspension, 30 days after the initial determination, of eligibility to receive new Airport Improvement Program grants or payments under existing grants if the initial determination finds that the challenged rate or charge is unreasonable or unjustly discriminatory. However, the suspension would be deferred if the respondent issued an appropriate rescission of the disputed rate or charge pending completion of the proceeding under part 16.

Request for Comments

Interested persons are invited to comment on any aspect of the proposed rules. The FAA is particularly interested in comment on the following issues:

1. Whether the proposed rule strikes the right balance between providing an opportunity to be heard, on the one hand, and producing an expeditious agency decision, on the other.

2. Whether the overall time frames provided from complaint to initial agency determination and from appeal to final agency decision are practical.

3. Whether the particular time limits provided for each procedural step are adequate.

4. The placement of responsibility for investigation, hearing, and adjudication of complaints received by the FAA.

Regulatory Evaluation Summary

This notice proposes to adopt a new procedure for the filing, investigation, and adjudication of complaints against airports for violation of certain statutes administered by the FAA. The new procedures would be substituted for existing procedures under 14 CFR part 13. While the proposed rule differs in many details from the existing rule, the costs to a complainant and respondent involved in the complaint process would be virtually identical to the costs involved under the existing rule. Accordingly, the expected economic impact of this proposed amendment would be so minimal that a full Regulatory Evaluation is not warranted.

International Trade Impact Statement

This rule is not anticipated to affect the import of foreign products or

services into the United States or the export of U.S. products or services to foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on the potential relief that the rule will provide and the criteria of implementing FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, the FAA has determined that the rule will not have a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This proposed rule contains no information collection requirements that require approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*)

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Analysis, the FAA has determined that this proposed regulation is not economically significant under Executive Order 12866. However, due to the public interest in this rulemaking, this proposed rule is considered significant under the Executive Order. The FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects

14 CFR Part 13

Enforcement procedures, Investigations, Penalties.

14 CFR Part 16

Enforcement procedures, Investigations.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend part 13 and adopt new part 16 of the Federal Aviation Regulations (14 CFR parts 13 and 16) as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

Authority: 49 U.S.C. 106(g) and 322; 49 U.S.C. App. 1354(a) and (c), 1374(d), 1401–1406, 1421–1432, 1471–1473, 1481, 1482, 1484–1489, 1523, 1655(c), 1808–1810, 2157(e) and (f), 2218, 2219; 16 U.S.C. 6002, 6004; 49 CFR 1.47.

2. Section 13.3 is amended by adding paragraph (d), to read as follows:

§ 13.3 Investigations (general).

* * * * *

(d) A complaint against the sponsor, proprietor, or operator of a Federally-assisted airport shall be filed in accordance with the provisions of part 16 of this chapter. Notwithstanding other provisions of this part, complaints, investigations, and agency decisions involving violations of the legal authorities listed in § 16.1 of this chapter are governed exclusively by the provisions of part 16 of this chapter.

3. A new part 16 is added to read as follows:

PART 16—RULES OF PRACTICE FOR FEDERALLY ASSISTED AIRPORT ENFORCEMENT PROCEEDINGS

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Sec

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Authority: 49 U.S.C. 106(g), 322; 49 U.S.C. 1110, 1111, and 1115; 49 U.S.C. App. 1349

(a) and (c), 1354 (a) and (c), 1482 (a), (b) and (c), 1486, and 1513 (a) through (d) and (f); 49 U.S.C. 1718 (a) and (b), 1719, 1723, 1726 and 1727; 49 U.S.C. App. 2204 (a), (b), (c), (d) and (h), 2210(a), 2211(a), 2215, 2218, 2219, and 2222(c); 50 U.S.C. App. 1622(g); 49 U.S.C. App. 1655(c); 49 CFR 1.47.

Subpart A—General Provisions

§ 16.1 Applicability and description of part.

(a) *General.* The provisions of this part govern all proceedings involving Federally-assisted airports, whether the proceedings are instituted by order of the FAA or by filing with the FAA of a complaint, under the following authorities:

(1) Section 308 of the Federal Aviation Act of 1958, as amended, 49 U.S.C. App. 1349, prohibiting the grant of exclusive rights for the use of any landing area or air navigation facility on which Federal funds have been expended.

(2) Requirements of the Anti-Head Tax Act, section 1113 (a) through (d) of the Federal Aviation Act, 49 U.S.C. App. 1513 (a)–(d).

(3) The assurances contained in grant-in-aid agreements issued under the Federal Airport Act of 1946, 49 U.S.C. 1101 *et seq.*

(4) The assurances contained in grant-in-aid agreements issued under the Airport and Airway Development Act of 1970, as amended, 49 U.S.C. 1701, *et seq.*

(5) The assurances contained in grant-in-aid agreements issued under the Airport and Airway Improvement Act of 1982, as amended, (AAIA) 49 U.S.C. App. 2201 *et seq.*, specifically section 511(a), 49 U.S.C. App. 2210(a).

(6) Section 505(d) of the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. App. 2214(d).

(7) Obligations contained in property deeds for property transferred under to section 16 of the Federal Airport Act (49 U,S.C. 1115), section 23 of the Airport and Airway Development Act (49 U.S.C. 1723), or section 516 of the Airport and Airway Improvement Act (49 U.S.C. App. 2215).

(8) Obligations contained in property deeds for property transferred under the Surplus Property Act (50 U.S.C. 1622(g)).

(b) *Other agencies.* Where a grant assurance concerns a statute, executive order, regulation, or other authority that provides an administrative process for the investigation or adjudication of complaints by a Federal agency other than the FAA, complaints shall use the administrative process established by those authorities. Where a grant assurance concerns a statute, executive order, regulation, or other authority that enables a Federal agency other than the FAA to investigate, adjudicate, and enforce compliance under those authorities on its own initiative, the FAA may defer to that Federal agency.

(c) *Other enforcement.* If a complaint or action initiated by the FAA involves a violation of the Federal Aviation Act or FAA regulations, except as specified in paragraphs (a)(1) and (a)(7) of this section, the FAA may take investigative and enforcement action under 14 CFR part 13, "Investigative and Enforcement Procedures."

(d) *Effective date:* This part applies to a complaint filed with the FAA on or after [effective date of final rule].

§ 16.3 Definitions.

Terms defined in the Acts are used as so defined. As used in this part:

Act means a statute listed in § 16.1 of this part or any regulation, agreement, or document of conveyance issued or made under that statute.

Administrator means the Administrator or his designee.

Agency attorney means the Deputy Chief Counsel; the Assistant Chief Counsel and attorneys in the Airports/Environmental Law Division of the Office of the Chief Counsel; the Assistant Chief Counsel and attorneys in an FAA region or center who represent the FAA during the investigation of a complaint or at a hearing on a complaint, and who prosecute on behalf of the FAA, as appropriate. An agency attorney shall not include the Chief Counsel, the Assistant Chief Counsel for Litigation, or any attorney on the staff of the Assistant Chief Counsel for Litigation who advises the FAA decisionmaker regarding an initial decision of the hearing officer or any appeal to the decisionmaker or who is supervised in that action by a person who provides such advice in an action covered by this part.

Assistant Administrator means the Assistant Administrator for Airports.

Complainant means the person submitting a complaint.

Complaint means a written document meeting the requirements of this part filed with the FAA by a person directly and substantially affected by anything allegedly done or omitted to be done by any person in contravention of any provision of any Act, as defined in this section, as to matters within the jurisdiction of the Administrator.

FAA decisionmaker means the Administrator of the FAA or any person to whom the Administrator has delegated the authority to issue a final decision and order of the Administrator on appeal from the initial decision of a hearing officer.

File means to submit written documents to the FAA for inclusion in the Enforcement Docket or to a hearing officer or presiding officer as appropriate.

Final decision and order means a final agency decision on the disposition of a complaint or on a respondent's compliance with any Act, as defined in this section, and directs appropriate action. A final decision and order that finds noncompliance may direct any sanction authorized by applicable laws.

Hearing officer means an attorney designated by the FAA in a hearing order to serve as a hearing officer in a hearing under this part. The following are not designated as hearing officers: the Chief Counsel and Deputy Chief Counsel; the Assistant Chief Counsel and attorneys in the FAA region or center in which the noncompliance has allegedly occurred or is occurring; and the Assistant Chief Counsel and attorneys in the Airports and Environmental Law Division of the FAA Office of the Chief Counsel.

Initial decision means a decision made by the hearing officer in a hearing under subpart F of this part.

Initial determination means a non-final agency decision following an investigation, including an investigation by investigative hearing under subpart J of this part.

Mail means U.S. first class mail; U.S. certified mail; and U.S. Express mail.

Noncompliance means anything done or omitted to be done by any person in contravention of any provision of any Act, as defined in this section, as to matters within the jurisdiction of the Administrator.

Party means the complainant(s) and the respondent(s) named in the complaint and, when an initial determination providing an opportunity for hearing is issued under § 16.31 and subpart E of this part, the agency.

Person means an individual, professional or other association, business or other private organization, including a sole proprietorship, partnership, or corporation, or a State or any agency of a State, such as a municipality or other political subdivision of a State, a tax-supported organization, or an Indian tribe or pueblo.

Personal delivery means hand delivery or overnight express delivery service.

Presiding officer means a person designated by the Assistant Administrator to preside over the investigation provided in subpart J of this part, who is neither an agency attorney as defined in this section or a

person otherwise engaged in the investigation of airport compliance.

Respondent means any person named in a complaint as a person responsible for things done or omitted to be done in contravention of any provision of any Act as to matters within the jurisdiction of the Administrator.

Sponsor means:

(1) Any public agency which, either individually or jointly with one or more other public agencies, has received Federal financial assistance for airport development or planning under the Federal Airport Act, Airport and Airway Development Act or Airport and Airway Improvement Act.

(2) Any private owner of a public-use airport who has received financial assistance from the FAA for such airport; and

(3) Any person to whom the Federal government has conveyed property for airport purposes under section 13(g) of the Surplus Property Act of 1944, as amended.

§ 16.5 Separation of functions.

(a) Proceedings under this part, including hearings under subpart F of this part, will be prosecuted by an agency attorney.

(b) After issuance of an initial determination in which the FAA provides the opportunity for a hearing, an agency employee engaged in the performance of investigative or prosecutorial functions in a proceeding under this part will not, in that case or a factually related case, participate or give advice in an initial decision by the hearing officer, a final decision by the Administrator or designee on written appeal, or final decision by the FAA decisionmaker, and will not, except as counsel or as witness in the public proceedings, engage in any substantive communication regarding that case or a related case with the hearing officer, the Administrator on written appeal, the FAA decisionmaker, or agency employees advising those officials in that capacity.

(c) The Chief Counsel, the Assistant Chief Counsel for Litigation, or an attorney on the staff of the Assistant Chief Counsel for Litigation advises the FAA decisionmaker regarding an initial decision, an appeal, or a final decision regarding any case brought under this part.

Subpart B—General Rules Applicable to Complaints, Proceedings Initiated by the FAA, and Appeals

§ 16.11 Expedition and other modification of process.

Under the authority of 49 U.S.C. 1354(a) and 2218(a), the Assistant Administrator may conduct investigations, issue orders, and take such other actions as are necessary to fulfill the purposes of this part, including the extension of any time period prescribed where necessary or appropriate for a fair and complete hearing of matters before the agency. Notwithstanding any other provision of this part, upon finding that circumstances require expedited handling of a particular case or controversy, the Assistant Administrator may issue an order directing any of the following prior to the issuance of an initial determination:

(a) Shortening the time period for any action under this part consistent with due process;

(b) If other adequate opportunity to respond to pleadings is available, eliminating the reply, rebuttal, or other actions prescribed by this part;

(c) Authorizing a presiding officer to adopt expedited procedures;

(d) Designating alternative methods of service; or

(e) Directing such other measures as may be required.

§ 16.13 Filing of documents.

Except as otherwise provided in this part, documents shall be filed with the FAA during a proceeding under this part as follows:

(a) *Filing address.* Documents to be filed with the FAA shall be filed with the Office of the Chief Counsel, Attention: FAA Enforcement Docket (AGC–10), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591. Documents to be filed with a hearing officer shall be filed at the address stated in the hearing order. Documents to be filed with a presiding officer shall be filed at the address stated in the notice of investigation.

(b) *Date and method of filing.* Filing of any document shall be by personal delivery or mail as defined in this part, or by facsimile (when confirmed by filing on the same date by one of the foregoing methods). Unless the date is shown to be inaccurate documents to be filed with the FAA shall be deemed to be filed on the date of personal delivery, on the mailing date shown on the certificate of service, on the date shown on the postmark if there is no certificate of service, on the send date shown on the facsimile (provided filing has been confirmed through one of the foregoing methods), or on the mailing date shown by other evidence if there is no certificate of service and no postmark.

(c) *Number of copies.* Unless otherwise specified, an executed original and three copies of each document shall be filed with the FAA Enforcement Docket. Copies need not be signed, but the name of the persons signing the original shall be shown. If a hearing order or notice and order of investigation has been issued in the case one of the three copies shall be filed with the hearing officer or presiding officer. If filing by facsimile, the facsimile copy does not constitute one of the copies required under this section.

(d) *Form.* Documents filed with the FAA shall be typewritten or legibly printed. In the case of docketed proceedings, the document shall include the docket number of the proceeding on the front page.

(e) *Signing of documents and other papers.* The original of every document filed shall be signed by the person filing it or the person's duly authorized representative. The signature shall serve as a certification that the signer has read the document and, based on reasonable inquiry and to the best of the signer's knowledge, information, and belief, the document is—

(1) Consistent with this part;

(2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and

(3) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the administrative process.

(f) *Designation of person to receive service.* The initial document filed shall state on the first page the name, post office address, telephone number, and facsimile number, if any, of the person(s) to be served with documents in the proceeding. If any of these items change during the proceeding, the person shall promptly file notice of the change with the FAA Enforcement Docket and the hearing officer and shall serve the notice on all parties.

(g) *Docket numbers.* Each submission identified as a complaint under this part by the submitting person will be assigned a docket number.

§ 16.15 Service of documents on the parties and the agency.

Except as otherwise provided in this part, documents shall be served as follows:

(a) *Who must be served.* Copies of all documents filed with the FAA Enforcement Docket shall be served by the persons filing them on all parties to the proceeding. A certificate of service shall accompany all documents when they are tendered for filing and shall certify concurrent service on the FAA and all parties. Certificates of service

shall be in substantially the following form:

I hereby certify that I have this day served the foregoing [name of document] on the following persons at the following addresses and facsimile numbers (if also served by facsimile) by [specify method of service]:

[list persons, addresses, facsimile numbers]

Dated this _____ day of _____, 19 __.

[signature], for [party]

(b) *Method of service.* Except as otherwise agreed by the parties and the hearing officer, the method of service is the same as set forth in § 16.13(b) for filing documents.

(c) *Where service shall be made.* Service shall be made to the persons identified in accordance with § 16.13(f). If no such person has been designated, service shall be made on the party.

(d) *Presumption of service.* There shall be a presumption of lawful service—

(1) When acknowledgment of receipt is by a person who customarily or in the ordinary course of business receives mail at the address of the party or of the person designated under § 16.13(f).

(2) When a properly addressed envelope, sent to the most current address submitted under § 16.13(f), has been returned as undeliverable, unclaimed, or refused.

(e) *Date of service.* The date of service shall be determined in the same manner as the filing date under § 16.13(b).

§ 16.17 Computation of time.

This section applies to any period of time prescribed or allowed by this part, by notice or order of the hearing officer or presiding officer, or by an applicable statute.

(a) The date of an act, event, or default, after which a designated time period begins to run, is not included in a computation of time under this part.

(b) The last day of a time period is included in a computation of time unless it is a Saturday, Sunday, or legal holiday for the FAA, in which case, the time period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(c) Whenever a party has the right or is required to do some act within a prescribed period after service of a document upon the party, and the document is served on the party by mail, 5 days shall be added to the prescribed period.

§ 16.19 Motions.

(a) *General.* An application for an order or ruling not otherwise specifically provided for in this part shall be by motion. Unless otherwise ordered by the agency, the filing of a motion will not stay the date that any action is permitted or required by this part.

(b) *Form and contents.* Unless made during a hearing, motions shall be made in writing, shall state with particularity the relief sought and the grounds for the relief sought, and shall be accompanied by affidavits or other evidence relied upon. Motions introduced during hearings may be made orally on the record, unless the hearing officer or presiding officer directs otherwise.

(c) *Answers to motions.* Except as otherwise provided in this part, or except when a motion is made during a hearing, any party may file an answer in support of or in opposition to a motion, accompanied by affidavits or other evidence relied upon, provided that the answer to the motion is filed within 10 days after the motion has been served upon the person answering, or any other period set by the hearing officer. Where a motion is made during a hearing, the answer and the ruling thereon may be made at the hearing, or orally or in writing within the time set by the hearing officer or presiding officer.

Subpart C—Special Rules Applicable to Complaints

§ 16.21 Pre-complaint resolution.

(a) Prior to filing a complaint under this part, a person directly and substantially affected by the alleged noncompliance shall initiate and engage in good faith efforts to resolve the disputed matter informally with those individuals or entities believed responsible for the noncompliance. These efforts at informal resolution may include, without limitation, at the parties' expense, mediation, arbitration, use of a dispute resolution board.

(b) A complaint under this part will not be considered unless the person or authorized representative filing the complaint certifies that he or she has engaged in substantial and reasonable good faith efforts to resolve the disputed matter informally prior to filing the complaint and that there appears no reasonable prospect for timely resolution of the dispute. This certification shall include a brief description of the party's efforts to obtain informal resolution but shall not include information on monetary or other settlement offers made but not agreed upon in writing by all parties.

§ 16.23 Complaints, answers, replies, rebuttals, and other documents.

(a) A person directly and substantially affected by any alleged noncompliance may file a complaint with the Administrator.

(b) Complaints filed under this part shall—

(1) State the name and address of each person who is the subject of the complaint and, with respect to each person, the specific provisions of each Act that the complainant believes was violated;

(2) Be served, in accordance with § 16.15 of this part, along with all documents then available in the exercise of reasonable diligence, offered in support of the complaint, upon all persons named in the complaint as persons responsible for the alleged action(s) or omission(s) upon which the complaint is based;

(3) Provide a concise but complete statement of the facts relied upon to substantiate each allegation;

(4) Describe how the complainant was directly and substantially affected by the things done or omitted to be done by the respondents; and

(5) Comply with any additional or special requirements of subpart J of this part, if the complaint is brought under subpart J of this part.

(c) Unless the complaint is dismissed pursuant to § 16.25 or § 16.27, the FAA notifies the complainant and respondents in writing within 20 days after the date the FAA receives the complaint that the complaint has been docketed and that respondents are required to file an answer within 20 days of the date of service of the notification.

(d) The respondent shall file an answer within 20 days of the date of service of the FAA notification.

(e) The complainant may file a reply within 15 days of the date of service of the answer.

(f) The respondent may file a rebuttal within 15 days of the date of service of the complainant's rebuttal.

(g) The answer, reply, and rebuttal shall, like the complaint, be accompanied by supporting documentation upon which the parties rely.

(h) The answer shall deny or admit the allegations made in the complaint or state that the person filing the document is without sufficient knowledge or information to admit or deny any allegation, and shall assert any affirmative defense.

(i) The answer, reply, and rebuttal shall each contain a concise but complete statement of the facts relied upon to substantiate the answers, admissions, denials, or averments made.

(j) The respondent's answer may include a motion to dismiss the complaint, or any portion thereof, with a supporting memorandum of points and authorities. If a motion to dismiss

is filed, the complainant may respond as part of its rebuttal notwithstanding the 10-day time limit for answers to motions in § 16.19(c).

§ 16.25 Dismissals.

Within 20 days after the receipt of the complaint, the Assistant Administrator will dismiss a complaint, or any claim made in a complaint, with prejudice if it: Appears on its face to be outside the jurisdiction of the Administrator under the Acts listed in § 16.1; or on its face does not state a claim that warrants an investigation or further action by the FAA. The FAA will advise the person who filed the complaint or the person's duly authorized representative and the person(s) named in the complaint of the reasons for the dismissal.

§ 16.27 Incomplete complaints.

If a complaint is not dismissed pursuant to § 16.25, but is deficient as to one or more of the requirements set forth in § 16.21 or § 16.23(b), the Assistant Administrator will dismiss the complaint within 20 days after receiving it. Dismissal will be without prejudice to the refiling of the complaint after amendment to correct the deficiency. The FAA shall advise the person who filed the complaint or the person's duly authorized representative and the person(s) named in the complaint of the reasons for the dismissal.

§ 16.29 Investigations.

(a) If, based on the pleadings, there appears to be a reasonable basis for further investigation, the FAA investigates the subject matter of the complaint.

(b) The investigation may include one or more of the following, at the sole discretion of the FAA:

(1) A review of the written submissions or pleadings of the parties, as supplemented by any informal investigation the FAA considers necessary and by additional information furnished by the parties at FAA request. In rendering its initial determination, the FAA may rely entirely on the complaint and the responsive pleadings provided under this subpart, and each party shall file documents that it considers sufficient to present all relevant facts and argument necessary for the FAA to determine whether the sponsor is in compliance.

(2) Obtaining additional oral and documentary evidence by use of the agency's authority to compel production of such evidence under Section 313 of the Federal Aviation Act and Section 519 of the Airport and Airway Improvement Act. The Administrator's statutory authority to issue compulsory process has been delegated to the Chief Counsel, the Deputy Chief Counsel, the Assistant Chief Counsel for Airports and Environmental Law, and each Assistant Chief Counsel for a region or center.

(3) Conducting, or requiring that a sponsor conduct, an audit of airport financial records and transactions, as provided in 49 U.S.C. 2210(a)(11) and 2217.

§ 16.31 Initial determinations after investigations.

(a) After consideration of the pleadings and other information obtained by the FAA after investigation, the Assistant Administrator will render an initial determination and provide it to each party by certified mail within 120 days of the date the last pleading specified in § 16.23 was due. The time for issuing an initial determination may be extended for a period of up to 60 days upon a written determination by the Assistant Administrator that:

(1) The additional time is necessary for investigation and analysis of the matters in the complaint; or

(2) The investigation has been delayed by actions of a complainant.

(b) The initial determination will set forth a concise explanation of the factual and legal basis for the Assistant Administrator's determination on each claim made by the complainant.

(c) A party adversely affected by the initial determination may appeal the initial determination to the Administrator as provided in § 16.33.

(d) If the initial determination finds the respondent in noncompliance and proposes the issuance of a compliance order, the initial determination will include notice of opportunity for a hearing under subpart F of this part. The respondent may elect or waive a hearing as provided in subpart E of this part.

§ 16.33 Final decisions without hearing.

(a) The Administrator will issue a final decision on appeal from an initial determination, without a hearing, where—

(1) The complaint is dismissed after investigation;

(2) A hearing is not required by statute and is not otherwise made available by the FAA; or

(3) The FAA provides opportunity for a hearing to the respondent and the respondent waives the opportunity for a hearing as provided in subpart E of this part.

(b) In the cases described in paragraph (a) of this section a party adversely affected by the initial determination may file an appeal with the Administrator within 30 days after the date of service of the initial determination.

(c) A reply to an appeal may be filed with the Administrator within 20 days after the date of service of the appeal.

(d) The Administrator will issue a final decision and order within 30 days after the due date of the reply.

(e) If no appeal is filed within the time period specified in paragraph (b) of this section, the initial determination becomes the final decision and order of the FAA without further action. An initial determination that becomes final because there is no administrative appeal is not judicially reviewable.

Subpart D—Special Rules Applicable to Proceedings Initiated by the FAA

§ 16.101 Basis for the initiation of agency action.

The FAA may initiate its own investigation of any matter within the applicability of this part without having received a complaint. The investigation may include, without limitation, any of the actions described in § 16.29(b).

§ 16.103 Notice of investigation.

Following the initiation of an investigation under § 16.101 of this part, the FAA sends a notice to the person(s) subject to investigation. The notice will set forth the areas of the agency's concern and the reasons therefor; request a response to the notice within 30 days of the date of service; and inform the respondent that the FAA will, in its discretion, invite good faith efforts to resolve the matter.

§ 16.105 Failure to resolve informally.

If the matters addressed in the FAA notices are not resolved informally, the FAA may issue an initial determination under § 16.31.

Subpart E—Proposed Orders of Compliance

§ 16.109 Orders terminating eligibility for grants, cease and desist orders, and other compliance orders.

This section applies to initial determinations issued under § 16.31 that provide the opportunity for a hearing.

(a) The agency will provide the opportunity for a hearing if, in the initial determination, the agency proposes to issue an order terminating eligibility for grants, an order suspending the payment of grant funds, a cease and desist order, an order directing the refund of fees unlawfully collected, or any other compliance order issued by the Administrator to carry out the provisions of the Acts. In cases in which a hearing is not required by statute, the FAA may provide

opportunity for a hearing at its discretion.

(b) In a case in which the agency provides the opportunity for a hearing, the initial determination issued under § 16.31 will include a statement of the availability of a hearing under subpart F of this part.

(c) Within 30 days after service of an initial determination under § 16.31 and paragraph (b) of this section, a person subject to the proposed compliance order may—

(1) Request a hearing under subpart F of this part;

(2) Waive hearing and appeal the notice in writing to the Administrator, as provided in § 16.33;

(3) File, jointly with the complainant, a motion to withdraw the complaint and to dismiss the proposed compliance action; or

(4) Submit, jointly with the agency attorney, a proposed consent order under § 16.243(e).

(d) If the respondent fails to request a hearing or to file an appeal in writing within the time periods provided in paragraph (c) of this section, the initial determination becomes final.

Subpart F—Hearings

§ 16.201 Notice and order of hearing.

(a) If a respondent is provided the opportunity for hearing in an initial determination and does not waive hearing, the Deputy Chief Counsel within 10 days after the respondent elects a hearing will issue and serve on the respondent a hearing order. The hearing order will set forth:

(1) The allegations in the complaint, and the chronology and results of the investigation preliminary to the hearing;

(2) The relevant statutory, judicial, regulatory, and other authorities;

(3) The issues to be decided;

(4) Such rules of procedure as may be necessary to supplement the provisions of this part;

(5) The name and address of the person designated as hearing officer, and the assignment of authority to the hearing officer to conduct the hearing in accordance with the procedures set forth in this part;

(6) The date by which the hearing officer is directed to issue an initial decision.

(b) Where there are no genuine issues of material fact requiring oral examination of witnesses, the hearing order may contain a direction to the hearing officer to conduct a hearing by submission of briefs and oral argument without the presentation of testimony or other evidence.

§ 16.202 Powers of a hearing officer.

In accordance with the rules of this subpart, a hearing officer may:

(a) Give notice of, and hold, prehearing conferences and hearings;

(b) Administer oaths and affirmations;

(c) Issue subpoenas authorized by law and issue notices of deposition requested by the parties;

(d) Rule on offers of proof;

(e) Receive relevant and material evidence;

(f) Regulate the course of the hearing in accordance with the rules of this part to avoid unnecessary and duplicative proceedings in the interest of prompt and fair resolution of the matters at issue;

(g) Hold conferences to settle or to simplify the issues by consent of the parties;

(h) Dispose of procedural motions and requests;

(i) Examine witnesses; and

(j) Make findings of fact and conclusions of law, and issue an initial decision.

§ 16.203 Appearances, parties, and rights of parties.

(a) *Appearances.* Any party may appear and be heard in person.

(1) Any party may be accompanied, represented, or advised by an attorney licensed by a state, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that state or territory.

(2) An attorney who represents a party shall file a notice of appearance in accordance with § 16.15(f).

(b) *Parties and agency participation.*

(1) The parties to the hearing are the respondent(s) named in the hearing order, and the agency.

(2) Unless otherwise specified in the hearing order, the agency attorney will serve as prosecutor for the agency from the date of issuance of the initial determination providing an opportunity for hearing.

(3) As appropriate to the issues raised in a particular case, offices and services of the FAA and the Office of the Secretary may assist the FAA attorney consistent with the provisions of § 16.5.

§ 16.207 Intervention and other participation.

(a) A person may submit a motion for leave to intervene as a party. Except for good cause shown, a motion for leave to intervene shall be submitted not later than 10 days after the notice of hearing and hearing order.

(b) If the hearing officer finds that intervention will not unduly broaden the issues or delay the proceedings and, if the person has a property or financial interest that may not be addressed adequately by the parties, the hearing officer may grant a motion for leave to intervene. The hearing officer may determine the extent to which an intervenor may participate in the proceedings.

(c) Other persons may petition the hearing officer for leave to participate in the hearing. Participation is limited to the filing of post-hearing briefs and reply to the hearing officer and the decisionmaker. Such briefs shall be filed and served on all parties in the same manner as the parties' post hearing briefs are filed.

(d) Participation under this section is at the discretion of the FAA, and no decision permitting participation shall be deemed to constitute an expression by the FAA that the participant has such a substantial interest in the proceeding as would entitle it to judicial review of such decision.

§ 16.209 Extension of time.

(a) *Extension by oral agreement.* The parties may agree to extend for a reasonable period the time for filing a document under this part. If the parties agree, the hearing officer shall grant one extension of time to each party. The party seeking the extension of time shall submit a draft order to the hearing officer to be signed by the hearing officer and filed with the hearing docket. The hearing officer may grant additional oral requests for an extension of time where the parties agree to the extension.

(b) *Extension by motion.* A party shall file a written motion for an extension of time with the hearing officer not later than 7 days before the document is due unless good cause for the late filing is shown. A party filing a written motion for an extension of time shall serve a copy of the motion on each party.

(c) *Failure to rule.* If the hearing officer fails to rule on a written motion for an extension of time by the date the document was due, the motion for an extension of time is deemed denied.

(d) *Effect on time limits.* If the hearing officer grants an extension of time as a result of oral agreement by the parties as specified in paragraph (a) of this section or, if the hearing officer grants an extension of time as a result of the sponsor's failure to adhere to the hearing schedule, the due date for the hearing officer's initial decision and for the final agency decision are extended by the length of the extension by the hearing officer, in accordance with section 519(b) of the AAIA, as amended in 1987.

§ 16.211. Prehearing conference.

(a) *Prehearing conference notice.* The hearing officer schedules a prehearing conference and serves a prehearing conference notice on the parties promptly after being designated as a hearing officer.

(1) The prehearing conference notice specifies the date, time, place, and manner (in person or by telephone) of the prehearing conference.

(2) The prehearing conference notice may direct the parties to exchange proposed witness lists, requests for evidence and the production of documents in the possession of another party, responses to interrogatories, admissions, proposed procedural schedules, and proposed stipulations before the date of the prehearing conference.

(b) *The prehearing conference.* The prehearing conference is conducted by telephone or in person, at the hearing officer's discretion. The prehearing conference addresses matters raised in the prehearing conference notice and such other matters as the hearing officer determines will assist in a prompt, full and fair hearing of the issues.

(c) *Prehearing conference report.* At the close of the prehearing conference, the hearing officer rules on any requests for evidence and the production of documents in the possession of other parties, responses to interrogatories, and admissions; on any requests for depositions; on any proposed stipulations; and on any pending applications for subpoenas as permitted by § 16.219. In addition, the hearing officer establishes the schedule, which shall provide for the issuance of an initial decision not later than 120 days after issuance of the initial determination order unless otherwise provided in the hearing order.

§ 16.213 Discovery.

Discovery is limited to requests for admissions, requests for production for documents, interrogatories, and depositions as authorized by § 16.215.

§ 16.215 Depositions.

(a) *General.* For good cause shown, the hearing officer may order that the testimony of a witness may be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Generally, an order to take the deposition of a witness is entered only if:

(1) The person whose deposition is to be taken would be unavailable at the hearing; or

(2) The deposition is deemed necessary to perpetuate the testimony of the witness; or

(3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in undue burden to other parties or in undue delay.

(b) *Application for deposition.* Any party desiring to take the deposition of a witness shall make application therefor to the hearing officer in writing, with a copy of the application served on each party. The application shall include:

(1) The name and residence of the witness;

(2) The time and place for the taking of the proposed deposition;

(3) The reasons why such deposition should be taken; and

(4) A general description of the matters concerning which the witness will be asked to testify.

(c) *Order authorizing deposition.* If good cause is shown, the hearing officer, in his or her discretion, issues an order authorizing the deposition and specifying the name of the witness to be deposed, the location and time of the deposition and the general scope and subject matter of the testimony to be taken.

(d) *Procedures for deposition.* (1) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question propounded shall be recorded and the answers of the witness transcribed verbatim.

(2) Objections to questions or evidence shall be recorded in the transcript of the deposition. The interposing of an objection shall not relieve the witness of the obligation to answer questions, except where the answer would violate a privilege.

(3) The written transcript shall be subscribed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. The reporter shall note the reason for failure to sign.

§ 16.217 Witnesses.

(a) Each party may designate as a witness any person who is able and willing to give testimony that is relevant and material to the issues in the hearing case, subject to the limitation set forth in paragraph (b) of this section.

(b) The hearing officer may exclude testimony of witnesses that would be irrelevant, immaterial, or unduly repetitious.

(c) Any witness may be accompanied by counsel. Counsel representing a nonparty witness has no right to examine the witness or otherwise participate in the development of testimony.

§ 16.219 Subpoenas.

(a) *Request for subpoena.* A party may apply to the hearing officer, within the time specified for such applications in the prehearing conference report, for a subpoena to compel testimony at a hearing or to require the production of documents only from the following persons:

(1) Another party;

(2) An officer, employee or agent of another party;

(3) Any other person named in the complaint as participating in or benefiting from the actions of the respondent alleged to have violated any Act; or

(4) An officer, employee or agent of any other person named in the complaint as participating in or benefiting from the actions of the respondent alleged to have violated any Act.

(b) *Issuance and service of subpoena.* (1) The hearing officer issues the subpoena if the hearing officer determines that the evidence to be obtained by the subpoena is relevant and material to the resolution of the issues in the case.

(2) Subpoenas shall be served by personal service, or upon an agent designated in writing for the purpose, or by registered or certified mail addressed to such person or agent. Whenever service is made by registered or certified mail, the date of mailing shall be considered at the time when service is made.

(3) A subpoena issued under this part is effective throughout the United States or any territory or possession thereof.

(c) *Motions to quash or modify subpoena.* (1) A party or any person upon whom a subpoena has been served may file a motion to quash or modify the subpoena with the hearing officer at or before the time specified in the subpoena for the filing of such motions. The applicant shall describe in detail the basis for the application to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive.

(2) A motion to quash or modify the subpoena stays the effect of the subpoena pending a decision by the hearing officer on the motion.

§ 16.221 Witness fees.

(a) The party on whose behalf a witness appears is responsible for paying any witness fees and mileage expenses.

(b) Except for employees of the United States summoned to testify as to matters related to their public employment, witnesses summoned by subpoena shall be paid the same fees and mileage expenses as are paid to a witness in a court of the United States in comparable circumstances.

§ 16.223 Evidence.

(a) *General.* A party may submit direct and rebuttal evidence in accordance with this section.

(b) *Requirement for written testimony and evidence.* Except in the case of evidence obtained by subpoena, or in the case of a special ruling by the hearing officer to admit oral testimony, a party's direct and rebuttal evidence shall be submitted in written form, in advance of the oral hearing pursuant to the schedule established in the hearing officer's prehearing conference report. Written direct and rebuttal fact testimony shall be certified by the witness as true and correct. Subject to the same exception (for evidence obtained by subpoena or subject to a special ruling by the hearing officer), oral examination of a party's own witness is limited to certification of the accuracy of written evidence, including correction and updating, if necessary, and reexamination following cross-examination by other parties.

(c) *Subpoenaed testimony.* Testimony of witnesses appearing under subpoena may be obtained orally.

(d) *Cross-examination.* A party may conduct cross-examination that may be required for disclosure of the facts, subject to control by the hearing officer for fairness, expedition, and exclusion of extraneous matters.

(e) *Hearsay evidence.* Hearsay evidence is admissible in proceedings governed by this part. The fact that evidence is hearsay goes to the weight of evidence and does not affect its admissibility.

(f) *Admission of evidence.* The hearing officer admits evidence introduced by a party in support of its case in accordance with this section, but may exclude irrelevant, immaterial or unduly repetitious evidence.

(g) *Expert or opinion witnesses.* An employee of the FAA or DOT may not be called as an expert or opinion witness for any party other than the agency except as provided in Department of Transportation regulations at 49 CFR part 9.

(h) *Subpart J hearing.* If an investigative hearing under subpart J was held on the complaint, the hearing officer may limit fact testimony and evidence in the hearing under this part to genuine issues of material fact not adequately developed in the record of the initial determination or not addressed in the initial determination.

§ 16.225 Public disclosure of evidence.

(a) Except as provided in this section, the hearing shall be open to the public.

(b) The hearing officer may order that any information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the hearing officer. The person shall state specific grounds for nondisclosure in the motion.

(c) The hearing officer shall grant the motion to withhold information from public disclosure if the hearing officer determines that disclosure would be in violation of the Privacy Act, would reveal trade secrets or privileged or confidential commercial or financial information, or is otherwise prohibited by law.

§ 16.227 Standard of proof.

The hearing officer shall issue an initial decision or shall rule in a party's favor only if the decision or ruling is supported by, and in accordance with, reliable, probative, and substantial evidence contained in the record and is in accordance with law.

§ 16.229 Burden of proof.

(a) The burden of proof of noncompliance with an Act or any regulation, order, agreement or document of conveyance issued under the authority of an Act is on the agency.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

§ 16.231 Offer of proof.

A party whose evidence has been excluded by a ruling of the hearing officer may offer the evidence on the record when filing an appeal.

§ 16.233 Record.

(a) *Subpart J investigation.* If a special hearing was held on the complaint under subpart J of this part, the pleadings, transcript of hearing, all exhibits received into evidence, all motions, applications, requests, and rulings, and all documents included in the hearing record and the report of the investigation are entered into the record of the hearing under this subpart.

(b) *Exclusive record.* The transcript of all testimony in the hearing, all exhibits received into evidence, all motions, applications, requests and rulings, and all documents included in the hearing record shall constitute the exclusive record for decision in the proceedings and the basis for the issuance of any orders.

(c) *Examination and copying of record.* Any interested person may examine the record at the Enforcement Docket, Federal Aviation Administration, 800 Independence Avenue, SW., room 924A, Washington, DC 20591. Any person may have a copy of the record after payment of reasonable costs for search and reproduction of the record.

§ 16.235. Argument before the hearing officer.

(a) *Argument during the hearing.* During the hearing, the hearing officer shall give the parties reasonable opportunity to present oral argument on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The hearing officer may direct written argument during the hearing if the hearing officer finds that submission of written arguments would not delay the hearing.

(b) *Posthearing briefs.* The hearing officer may request or permit the parties to submit posthearing briefs. The hearing officer may provide for the filing of simultaneous reply briefs as well, if such filing will not unduly delay the issuance of the hearing officer's initial decision. Posthearing briefs shall include proposed findings of fact and conclusions of law; exceptions to rulings of the hearing officer; references to the record in support of the findings of fact; and supporting arguments for the proposed findings, proposed conclusions, and exceptions.

§ 16.237 Waiver of procedures.

(a) The hearing officer shall waive such procedural steps as all parties to the hearing agree to waive before issuance of an initial decision.

(b) Consent to a waiver of any procedural step bars the raising of this issue on appeal.

(c) The parties may not by consent waive the obligation of the hearing officer to enter an initial decision on the record.

Subpart G—Initial Decisions, Orders and Appeals

§ 16.241 Initial decisions, orders, and appeals.

(a) The hearing officer shall issue an initial decision based on the record developed during the proceeding and shall send the initial decision to the parties not later than 120 days after the initial determination by the Assistant

Administrator unless otherwise provided in the hearing order.

(b) Each party adversely affected by the hearing officer's initial decision may file an appeal within 20 days of the date the initial decision is issued. Each party may file a reply to an appeal within 10 days after it is served on the party. Filing and service of appeals and replies shall be by personal delivery.

(c) If an appeal is filed, the FAA decisionmaker reviews the entire record and issues a final agency decision and order within 30 days after the due date for replies to the appeal(s). If no appeal is filed, the decisionmaker may take review of the case on his or her own motion. If the FAA decisionmaker finds that the respondent is not in compliance with any Act or any regulation, agreement, or document of conveyance issued or made under such Act, the final agency order includes a statement of corrective action, if appropriate, and identifies sanctions for continued noncompliance.

(d) If no appeal is filed, and the FAA decisionmaker does not take review of the initial decision on the FAA decisionmaker's own motion, the initial decision shall take effect as the final agency decision and order on the twenty-first day after the actual date the initial decision is issued.

(e) The failure to file an appeal is deemed a waiver of any rights to seek judicial review of an initial decision that becomes a final agency decision by operation of § 16.241(d).

(f) If the FAA decisionmaker takes review on the decisionmaker's own motion, the FAA decisionmaker issues a notice of review by the twenty-first day after the actual date the initial decision is issued.

(1) The notice sets forth the specific findings of fact and conclusions of law in the initial decision that are subject to review by the FAA decisionmaker.

(2) Parties may file briefs on review to the FAA decisionmaker or rely on their post-hearing briefs to the hearing officer. Briefs on review shall be filed not later than 15 days after service of the notice of review.

(3) The FAA decisionmaker issues a final agency decision and order within 30 days after the due date for briefs on review. If the FAA decisionmaker finds that the respondent is not in compliance with any Act or any regulation, agreement or document of conveyance issued under such Act, the final agency order includes a statement of corrective action, if appropriate, and identifies sanctions for continued noncompliance.

§ 16.243 Consent orders.

(a) The agency attorney and the respondents may agree at any time before the issuance of a final decision and order to dispose of the case by issuance of a consent order. Good faith efforts to resolve a complaint through issuance of a consent order may continue throughout the administrative process. Except as provided in § 16.209, such efforts may not serve as the basis for extensions of the times set forth in this part.

(b) A proposal for a consent order, specified in paragraph (a) of this section, shall include:

(1) A proposed consent order;

(2) An admission of all jurisdictional facts;

(3) An express waiver of the right to further procedural steps and of all rights to judicial review; and

(4) An incorporation by reference of the hearing order, if issued, and an acknowledgment that the hearing order may be used to construe the terms of the consent order.

(c) If the issuance of a consent order has been agreed upon by all parties to the hearing, the proposed consent order shall be filed with the hearing officer, along with a draft order adopting the consent decree and dismissing the case, for the hearing officer's adoption.

(d) The deadline for the hearing officer's initial decision and the final agency decision is extended by the amount of days elapsed between the filing of the proposed consent order with the hearing officer and the issuance of the hearing officer's order continuing the hearing.

(e) If the agency attorney and sponsor agree to dispose of a case by issuance of a consent order before the FAA issues a hearing order, the proposal for a consent order is submitted jointly to the official authorized to issue a hearing order, together with a request to adopt the consent order and dismiss the case. The official authorized to issue the hearing order issues the consent order as an order of the FAA and terminates the proceeding.

Subpart H—Judicial Review

§ 16.247 Judicial review of a final decision and order.

(a) A person may seek judicial review, in a United States Court of Appeals, of a final decision and order of the Administrator as provided in section 1006 of the Federal Aviation Act of 1958, as amended, or section 519(b)(4) of the Airport and Airway Improvement Act of 1982, as amended. A party seeking judicial review of a final decision and order shall file a petition for review with the Court not later than 60 days after a final decision and order under the AAIA has been served on the party or within 60 days after the entry of an order under the Federal Aviation Act.

(b) The following do not constitute final decisions and orders subject to judicial review:

(1) An FAA decision to dismiss a complaint without prejudice, as set forth in § 16.17;

(2) An initial determination issued by the Assistant Administrator;

(3) An initial decision issued by a hearing officer at the conclusion of a hearing;

(4) An initial determination or an initial decision of a hearing officer that becomes the final decision of the Administrator because it was not appealed within 30 days;

Subpart I—Ex Parte Communications

§ 16.301 Definitions.

As used in this subpart:

Decisional employee means the Administrator, Deputy Administrator, FAA decisionmaker, hearing officer, or other FAA employee who is or who may reasonably be expected to be involved in the decisional process of the proceeding;

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this part.

§ 16.303 Prohibited ex parte communications.

(a) The prohibitions of this section shall apply from the time a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply at the time of the acquisition of such knowledge.

(b) Except to the extent required for the disposition of ex parte matters as authorized by law:

(1) No interested person outside the FAA make or knowingly cause to be made to any decisional employee an ex parte communication relevant to the merits of the proceeding;

(2) No FAA employee shall make or knowingly cause to be made to any interested person outside the FAA an ex parte communication relevant to the merits of the proceeding; or

(3) Ex parte communications regarding solely matters of agency procedure or practice are not prohibited by this section.

§ 16.305 Procedures for handling ex parte communication

A decisional employee who receives or who makes or knowingly causes to be made a communication prohibited by § 16.303 shall place on the public record of the proceeding:

(a) All such written communications;

(b) Memoranda stating the substance of all such oral communications; and

(c) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (a) and (b) of this section.

§ 16.307 Requirement to show cause and imposition of sanction.

(a) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of § 16.303, the Administrator or his designee or the hearing officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(b) The Administrator may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the FAA, consider a violation of this subpart sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

Subpart J—Alternate Procedure for Certain Complaints Concerning Airport Rates and Charges

§ 16.401 Availability of alternate procedure.

(a) A scheduled air carrier holding a certificate of public convenience and necessity under 49 U.S.C. 1371, 1372, or 1388 or an exemption from those sections under 14 CFR part 298, may bring a complaint under this part using the procedures in this subpart.

(b) The procedures in this subpart are used only when all of the following requirements are met:

(1) The complaint alleges that an increase in the fee charged by an airport proprietor to scheduled air carriers is unreasonable within the meaning of 49 U.S.C. 1513 (a) through (d), or is unreasonable or unjustly discriminatory within the meaning of 49 U.S.C. 2210(c)(1);

(2) The Assistant Administrator, in his or her discretion, determines that the complaint involves a matter which, if not resolved by expedited procedure, may result in a substantial adverse impact on air transportation or that determines that the complaint involves a significant policy issue;

(3) The complaint meets the requirements for the filing of a complaint set forth in subparts B and C of this part; and

(4) The complaint includes an express request that the complaint be processed under this subpart.

(c) The Assistant Administrator may permit another air carrier eligible to file a complaint under paragraphs (a) and (b) of this section to join the complaint. A motion for joinder shall be filed on or before the date the answer is due to be filed.

(d) Other than joinder of additional parties under paragraph (c) of this section, participation in proceedings under this subpart by persons other than complainants will be permitted only through the filing of a written brief by a person with a substantial interest in the proceeding at the discretion of the presiding officer before issuance of the report of investigation, or by the Assistant Administrator after issuance of the report. A person may file a motion to submit a written brief to the presiding officer or the Assistant Administrator, as appropriate.

§ 16.403 Answer and other documents.

(a) Within seven calendar days of receiving a complainant requesting processing under this subpart, the Assistant Administrator serves on the complainant and each person named in the complaint the agency's determination whether the complaint—

(1) Meets the other requirements of this subpart; and

(2) Meets the requirements of subparts B and C of this part for the filing of complaints.

(b) If the Assistant Administrator determines that the complaint meets the requirements for a complaint under this subpart, each respondent shall file an answer within 21 days of service of the determination in paragraph (a) of this section.

(c) If the Assistant Administrator determines that the complaint does not meet the requirements of this subpart but does meet the requirements of subpart C of this part for the filing of a complaint, the complaint will be processed under § 16.29.

(d) The Assistant Administrator may dismiss a complaint as provided in §§ 16.25 and 16.27.

(e) The answer and all documents filed and served under this subpart shall be filed and served by personal delivery. All other requirements of subpart B of this part apply to the filing and service of documents under this subpart.

(f) The Assistant Administrator may for good cause grant an extension of the date by which the report of investigation is due.

§ 16.405 Notice and order of investigation.

Within seven days after the answer is served, the Assistant Administrator issues a notice and order of investigation. The investigation order states:

(a) The scope of the investigation, by describing the information sought in terms of its subject matter or its relevance to specified allegations;

(b) A description of the remedial or enforcement actions that may be ordered in the event that a rate or charge is found to be useful, including those provided in § 16.109(a).

(c) Such rules of procedure as may be necessary to supplement this part;

(d) The name and address of the presiding officer and the authority delegated to the presiding officer to conduct the investigation in accordance with the procedures set forth in this part;

(e) The date by which the presiding officer is directed to issue a report of investigation, normally 60 days after filing of the answer.

§ 16.407 Presiding officer.

(a) The presiding officer is a person designated by the Assistant Administrator who is neither an agency attorney, as defined in this part, nor a person otherwise engaged in the investigation of airport compliance.

(b) In accordance with the rules of this part, a presiding officer may:

(1) Give notice of, and hold, prehearing conferences and investigative hearings;

(2) Administer oaths and affirmations;

(3) Issue subpoenas authorized by law;

(4) Rule on offers of proof;

(5) Receive relevant and material evidence;

(6) Regulate the course of the hearing in accordance with the rules of this part to avoid unnecessary and duplicative proceedings in the interest of prompt and fair resolution of the matters at issue;

(7) Hold conferences to settle or to simplify the issues by consent of the parties;

(8) Dispose of procedural motions and requests; and

(9) Examine witnesses.

(c) The presiding officer shall issue a report of investigation which shall include findings of fact and, if directed by the Assistant Administrator, proposed conclusions of law.

§ 16.409 Parties.

(a) Parties may appear as provided in § 16.203(a) of this part.

(b) The parties to the investigation are the complainant(s), and the respondent(s).

(c) The FAA is represented by an agency attorney who, for the purposes of this part, will be deemed to be in the position of a party. The function of the agency attorney is to assist in development of a complete record for decision by the Assistant Administrator.

§ 16.411 Investigation procedure.

(a) *Investigative hearing.* The presiding officer shall hold an evidentiary hearing to investigate the factual matters identified in the investigative order. The hearing may be in person or, alternatively, by oral argument following submission of documentary evidence if the presiding officer determines that there are no genuine issues of material fact that require oral examination of witnesses and that documentary evidence in combination with oral argument is sufficient to develop a complete record. Oral proceedings will be transcribed and a transcript made available to the parties.

(b) *Discovery.* Discovery is limited to requests for admissions and requests for production of documents. The presiding officer may—

(1) Require parties to submit discovery requests to the presiding officer;

(2) Submit requests to the parties as modified by the presiding officer in the interest of relevance, economy, and completeness of the record for decision; and

(3) Require that responses be submitted to the presiding officer with service on other parties.

(c) *Witnesses.* Consistent with paragraph (a), witnesses may be designated and appear as provided in §§ 16.217 and 16.221(a). The presiding officer may exclude testimony as provided in § 16.221(b).

(d) *Subpoenas.* Where necessary to ensure a complete record, the presiding officer may issue a subpoena to compel a complainant or respondent, or an officer, employee, or agent of a complainant or respondent, to testify or to produce documents at the investigatory hearing. Issuance of, service of, and motions regarding subpoenas shall be in accordance with § 16.219.

(e) *Evidence.* A party may offer direct and rebuttal evidence in accordance with this section.

(1) *Requirement for written testimony and evidence.* Except in the case of evidence obtained by subpoena, a party's direct and rebuttal evidence, including testimony of witnesses, shall be submitted in written form, in advance of any oral hearing pursuant to the schedule established by the presiding officer. Written direct and rebuttal fact testimony shall be certified by the witness as true and correct. Oral examination of a party's own witness is limited to certification of the accuracy of written evidence, including correction and updating, if necessary, and redirect examination following cross-examination by other parties.

(2) *Cross-examination.* A party may conduct cross-examination needed for disclosure of the facts, subject to the control of the presiding officer for fairness, expedition, and exclusion of extraneous matters.

(3) *Admission of evidence.* The presiding officer admits evidence in accordance with this section, but may exclude irrelevant, immaterial, privileged, or unduly repetitious evidence.

(4) *Expert or opinion witnesses.* An employee of the FAA or DOT may not be called as an expert or opinion witness for any party other than the agency except as provided in Department of Transportation regulations at 49 CFR part 9.

(f) *Public disclosure of evidence.* Proceedings under this part are open to the public. Evidence is disclosed or withheld from public disclosure as provided in § 16.225. Objections to public disclosure may be filed with and ruled on by the presiding officer.

(g) *Location of hearing.* The investigative hearing shall be conducted at a place or places designated by the presiding officer with due regard for the convenience of the parties and the expeditious and efficient handling of the investigation.

(h) *Offer of proof.* A party whose evidence has been excluded by a ruling of the presiding officer may make an offer of the proof to be included in the record.

(i) *Exclusive record.* The pleadings, transcript of the hearing, all exhibits received into evidence, all motions, applications, requests and rulings, and all documents included in the hearing record shall constitute the exclusive record for the report of investigation.

(j) *Argument before the presiding officer.* During the hearing, the presiding officer shall give the parties reasonable opportunity to present oral argument on the record supporting or opposing motions, objections, and rulings. In addition, the presiding officer may permit oral argument on the merits of the case. The presiding officer may request the parties to submit proposed findings of fact and conclusions of law.

§ 16.413 Report of investigation.

(a) On or before the date set in the notice and order of investigation, the presiding officer shall issue a written report of investigation based on the record developed during the investigation. The report shall include a concise summary of the evidence and findings of fact and, if directed by the Assistant Administrator, conclusions of law, on the issues set forth in the order of investigation.

(b) The presiding officer shall transmit the report of investigation and the record to the Assistant Administrator.

(c) The presiding officer shall file the report of investigation in the Enforcement Docket and serve copies on the parties.

§ 16.415 Initial determination.

(a) Within 120 days after the complaint is filed, unless extended by the Assistant Administrator upon agreement of all the parties, the Assistant Administrator will render an initial determination and serve it on each party by certified mail, return receipt requested, or personal delivery.

(b) The initial determination will set forth a concise explanation of the factual and legal basis for the Assistant Administrator's determination on each claim made by the complainant.

(c) A party adversely affected by the initial determination may appeal the initial determination as provided in § 16.31(c) or 16.31(d).

§ 16.417 Eligibility for grants pending final agency decision.

(a) *Suspension of eligibility.* If the initial determination under § 16.415 is that the challenged increase in rates and charges is unreasonable or unjustly discriminatory, the respondent's eligibility to receive new Airport Improvement Program grants under the AAIA and to receive payments under existing grants is suspended effective 30 days after the issuance of the initial determination, unless the respondent files a notice of resolution of complaint or a notice of rescission under this section.

(b) *Rescission of increase.* The suspension of eligibility is deferred if, within 30 days after service of the initial determination, the respondent does one of the following—

(1) Rescinds the increase in rates or charges. To implement the rescission for purposes of this part, the respondent shall file a notice of rescission in the Enforcement Docket and serve a copy on each party.

(2) Resolves the dispute through agreement with other parties, subject to the concurrence of the Assistant Administrator. The respondent shall indicate resolution by the filing of a joint motion for dismissal and for withdrawal of the complaint in the Enforcement Docket. In exercising discretion whether to grant the motion, the Assistant Administrator will consider, among other things, whether all parties have joined the motion and the effect of the proposed resolution on non-party aeronautical users of the airport.

(c) Deferral of the suspension of eligibility for grants and grant payments under this section does not limit the FAA's authority to impose any sanction or remedy for the past or continuing imposition of an unreasonable or unjustly discriminatory fee, including ordering refund with interest of fees paid prior to the effective date of the order.

(d) Notwithstanding the provision for suspension of eligibility in paragraph (a) of this section, the Assistant Administrator may execute a grant agreement or approve payment under an existing grant if necessary to correct or prevent an unsafe condition.

Issued in Washington, DC, on June 3, 1994

Federico Peña,

Secretary of Transportation

David R. Hinson,

Administrator, Federal Aviation Administration.

[FR Doc. 94-13942 Filed 6-6-94; 12:42 pm]

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Federal Register

Thursday
June 9, 1994

Part IV

Department of Labor

Office of the Secretary

29 CFR Part 70

Freedom of Information Act; Technical Amendment; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 70

Freedom of Information Act; Technical Amendment

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of final rulemaking; technical amendment.

SUMMARY: This document amends Appendix A to the Department of Labor's regulation relating to the Freedom of Information Act (FOIA). Appendix A lists the disclosure officers under FOIA. This amendment will delete one office, will update the name of another office, and will update the titles and the addresses within Appendix A so that the publication of the disclosure officers will be accurate. The document also adds an Appendix B which will list the names of the Department's FOIA/PA Coordinators.

EFFECTIVE DATE: June 9, 1994.

FOR FURTHER INFORMATION CONTACT: Miriam McD. Miller, Co-Counsel for Administrative Law, Office of the Solicitor, U.S. Department of Labor, room N–2428, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 219–8188.

SUPPLEMENTARY INFORMATION: This document amends Appendix A to the Department of Labor's regulation implementing the Freedom of Information Act (FOIA). Appendix A lists the disclosure officers under FOIA. This amendment will delete one office, will update the name of another office, and will update the titles and the addresses within Appendix A so that the publication of the disclosure officers will be accurate. The document also adds an Appendix B which will list the names of the Department's FOIA/PA Coordinators.

Publication in Final

The Department has determined that these amendments need not be published as a proposed rule, as generally required by the Administrative Procedure Act (5 U.S.C. 553)(APA) since this rulemaking merely reflects agency organization, procedure, or practice. It is thus exempt from notice and comment by virtue of section 553(b)(A).

Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that the rule is technical and nonsubstantive, and merely reflects agency organization, practice and procedure.

Executive Order 12866

This rule is not classified as a "rule" under Executive Order 12866 on federal regulations, because it is a regulation relating to agency organization, management or personnel. See section 3(d)(3) which exempts this rule.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the APA, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility analysis do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirements.

List of Subjects in 29 CFR Part 70

Freedom of information.

Accordingly, part 70 subtitle A of title 29 of the Code of Federal Regulations is amended as follows:

PART 70—EXAMINATION AND COPYING OF DEPARTMENT OF LABOR RECORDS

1. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301, 552, as amended by Pub. L. 93–502, 88 Stat. 1561; 29 U.S.C. 9(b); Reorganization Plan No. 6 of 1950; 64 Stat. 1263 5 U.S.C. Appendix

Appendix A to Part 70—Disclosure Officers [Amended]

2. Appendix A to part 70 is amended by removing paragraph (a)(7), by redesignating current paragraphs (a)(8) through (a)(20) as new paragraphs (a)(7) through (a)(19), and by revising the newly redesignated paragraph (a)(12) (which currently contains the Office of Labor-Management Standards) to read as follows:

(a) * * *

(12) Office of the American Workplace

* * * * *

PART 70—[AMENDED]

3. Part 70 is amended by revising paragraph (b) of Appendix A to Part 70—Disclosure Officers to read as follows:

* * * * *

(b)(1) The titles of the responsible officials of the various independent agencies in the Department of Labor are listed below. This list is provided for information and to assist requesters in locating the office most likely to have responsive records. The officials may be changed by appropriate designation. Unless otherwise specified, the mailing addresses of the officials shall be: U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Secretary of Labor, Attention: Assistant Secretary for Administration and Management (OASAM)
Deputy Solicitor, Office of the Solicitor
Chief Administrative Law Judge, Office of the Administrative Law Judges (OALJs)
Assistant Secretary for Administration and Management (OASAM)
Deputy Assistant Secretary for Administration and Management (OASAM)
Director, National Capital Service Center (NCSC)
Deputy Director, National Capital Service Center (NCSC)
Director, Office of Personnel Management Services (NCSC)
Director, Office of Procurement Services (NCSC)
Director, Directorate of Personnel Management (OASAM)
Deputy Director, Directorate of Personnel Management (OASAM)
Comptroller, Office of the Comptroller (OASAM)
Deputy Comptroller, Office of the Comptroller (OASAM)
Director, Office of Budget (Comptroller-OASAM)
Director, Office of Accounting (Comptroller-OASAM)
Director, Office of Financial Policy and Systems (Comptroller-OASAM)
Director, Directorate of Administrative and Procurement Programs (OASAM)
Director, Office of Facilities Management (OASAM)
Chief, Division of Security and Emergency Preparedness (OASAM)
Director, Office of Acquisition Integrity (OASAM)
Director, Office of Safety and Health (OASAM)
Director, Directorate of Civil Rights (OASAM)
Director, Directorate of Information Resources Management (DIRM-OASAM)
Director, Office of IRM Policy (DIRM-OASAM)
Director, DOL Academy
Director, Office of Small Business and Minority Affairs
Comptroller, Office of the Comptroller (OASAM)
Director, Office of Safety and Health (OASAM)
Director, Directorate of Civil Rights (OASAM)
Director, Office of Employee and Labor-Management Relations (OASAM)
Director, Office of Employment and Evaluation (OASAM)
Chief, Division of Security and Emergency Preparedness (OASAM)

Director, Office of Acquisition Integrity (OASAM)
Chairperson, Employees' Compensation Appeals Board (ECAB)
Deputy Assistant Secretary for Policy
Deputy Director, Office of Information and Public Affairs
Director, Office of Administrative Appeals
Assistant Inspector General, Office of Resource Management and Legislative Assessment, Office of the Inspector General (OIG)
Director, Office of Management, Administration and Planning, Bureau of International Labor Affairs (ILAB)
Assistant Secretary for the American Workplace (OAW)
Deputy Assistant Secretary for Labor-Management Programs, OAW
Deputy Assistant Secretary for Labor-Management Standards, OAW
Deputy Assistant Secretary for Work and Technology Policy, OAW
Commissioner, Bureau of Labor Statistics

The mailing address for responsible officials in the Bureau of Labor Statistics is: Rm. 4040—Postal Square Bldg., 2 Massachusetts Ave., NE., Washington, DC 20212–0001.

Assistant Secretary for Employment Standards, Employment Standards Administration (ESA)
Director, Office of Workers' Compensation Programs (OWCP), Assistant to the Director, OWCP, ESA
Director for Federal Employees' Compensation, OWCP, ESA
Director for Longshore and Harbor Workers' Compensation, OWCP, ESA
Director for Coal Mine Workers' Compensation, OWCP, ESA
Administrator, Wage and Hour Division, ESA
Deputy Administrator, Wage and Hour Division, ESA
Assistant Administrator, Office of Program Operations, Wage and Hour Division, ESA
Assistant Administrator, Office of Policy, Planning and Review, Wage and Hour Division, ESA
Deputy Assistant Administrator, Wage and Hour Division, ESA
Director, Office of Federal Contract Compliance Programs (OFCCP), ESA
Director, Division of Policy, Planning and Program Development, OFCCP, ESA
Director, Division of Program Operations, OFCCP, ESA
Director, Office of Management, Administration and Planning, ESA
Director, Division of Personnel and Organization Management, ESA
Director, Division of Internal Management Control, ESA
Director, Equal Employment Opportunity Unit, ESA
Director, Office of Public Affairs, ESA
Director, Division of Policy and Research Analysis, ESA
Assistant Secretary of Labor, Employment and Training Administration (ETA)
Deputy Assistant Secretary of Labor, Employment and Training Administration (ETA)
Administrator, Office of Financial and Administative Management, ETA
Director, Office of Management Support, ETA
Director, Office of Human Resources, ETA
Director, Office of the Comptroller, ETA
Director, Office of Information Resources Management, ETA
Director, Office of Grants and Contracts Management, ETA
Chief, Division of Acquisition and Assistance, ETA
Administrator, Office of Regional Management, ETA
Administrator, Office of Strategic Planning and Policy Development, ETA
Director, Unemployment Insurance Service, ETA
Director, United States Employment Service, ETA
Chief, Division of Foreign Labor Certifications, ETA
Administrator, Office of Job Training Programs, ETA
Director, Office of Employment and Training Programs, ETA
Director, Office of Job Corps, ETA
Director, Office of Special Targeted Programs, ETA
Administrator, Office of Work-Based Learning, ETA
Director, Bureau of Apprenticeship and Training, ETA
Director, Office of Worker Retraining and Adjustment Programs, ETA
Director, Office of Trade Adjustment Assistance, ETA
Director, Office of Equal Employment Opportunity Occupational Safety and Health Administration (OSHA)
Director, Office of Management Accountability and Performance, OSHA
Director, Office of Information and Consumer Affairs, OSHA
Director, Office of Field Operations, OSHA
Director, Office of Construction and Engineering, OSHA
Director, Directorate of Federal-State Operations, OSHA
Director, Directorate of Policy, OSHA
Director, Directorate of Administrative Programs, OSHA
Director, Office of Personnel Management, OSHA
Director, Office of Administrative Services, OSHA
Director, Office of Management Data Systems, OSHA
Director, Office of Management Systems and Organization, OSHA
Director, Office of Program Budgeting, Planning and Financial Management, OSHA
Director, Directorate of Technical Support, OSHA
Director, Directorate of Safety Standards Programs, OSHA
Director, Directorate of Health Standards Programs, OSHA
Director, Office of Statistics, OSHA
Director of Program Services, Pension and Welfare Benefits Administration
Assistant Secretary for Veterans' Employment and Training (VETS)
Deputy Assistant Secretary for Veterans' Employment and Training, VETS
Director, Office of Information, Management and Budget, VETS

The mailing address for responsible officials in the Mine Safety and Health Administration is: 4015 Wilson Boulevard, Arlington, Virginia 22203.

Deputy Assistant Secretary
Chief, Office of Congressional and Legislative Affairs
Director, Office of Information and Public Affairs
Administrator for Coal Mine Safety and Health
Chief, Office of Technical Compliance and Investigation (Coal)
Administrator for Metal and Nonmetal Mine Safety and Health
Director, Office of Assessments
Director, Office of Standards, Regulations and Variances
Director of Program Planning and Evaluation
Director of Administration and Management
Director of Educational Policy and Development

The mailing address for the Office of Administrative Law Judges and the Benefits Review Board is, respectively: 800 K Street, NW., Washington, DC 20001–8002 and 20001–8001.

Chief, Office of Administrative Law Judges, suite 400–N.
Chair, Benefits Review Board, suite 500–N.

(2) The titles of the responsible officials in the field offices of the various independent agencies are listed below: Unless otherwise specified, the mailing address for these officials by region, shall be:

Region I:

One Congress Street, 11th floor, Boston, Massachusetts 02114.

In Region I, Only, the Mailing Address For OSHA Is:

133 Portland Street, 1st floor, Boston, Massachusetts 02114.

Region II:

201 Varick Street, New York, New York 10014.

Region III:

Gateway Building, 3535 Market Street, Philadelphia, Pennsylvania 19104.

Region IV:

1375 Peachtree Street, NE., Atlanta, Georgia 30367.
214 N. Hogan Street, suite 1006, Jacksonville, Florida 32202, (OWCP Only).

Region V:

Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604.
1240 East Ninth Street, room 851, Cleveland, Ohio 44199, (FEC only).

Region VI:

525 Griffin Square Building, Griffin & Young Streets, Dallas, Texas 75202.

Region VII:

Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.

Region VIII:

Federal Office Building, 1961 Stout Street, Denver, Colorado 80294.
and
1801 California Street, Denver, Colorado 80202.

The mailing address for the Director of the Regional Bureau of Apprentice and Training in Region VIII is:

Room 465, U.S. Custom House, 721—19th Street, Denver, CO. 80202.

Region IX:

71 Stevenson Street, San Francisco, California 94105.

Region X:

111 Third Avenue, Seattle, Washington 98101–3212.

Regional Administrator for Administration and Management (OASAM)
Regional Personnel Officer, OASAM
Regional Director for Information and Public Affairs
Regional Administrator for Employment and Training Administration (ETA)
Regional Director, Job Corps, ETA
Director, Regional Bureau of Apprenticeship and Training, ETA
Regional Management Analyst, ETA-Atlanta, Georgia
Regional Administrator for Wage and Hour, ESA
Regional Director for Federal Contract Compliance Programs, ESA
Regional Director for the Office of Workers' Compensation Programs, ESA
District Director, Office of Workers' Compensation Programs, ESA

Wage and Hour Division, ESA Responsible Officials, District Offices

135 High Street, room 310, Hartford, Connecticut 06103.
66 Pearl Street, room 211, Portland, Maine 04101.
One Bowdoin Square, 8th floor, Boston, Massachusetts 02114.
200 Sheffield St., room 102, Mountainside, New Jersey 07092.
3131 Princeton Pike, Building 5, room 216, Lawrenceville, New Jersey 08648.
Leo W. O' Brien Federal Bldg., rm. 822, Albany, New York 12207.
1967 Turnbull Avenue, Bronx, New York 10473.
111 West Huron Street, room 617, Buffalo, New York 14202.
825 East Gate Boulevard, room 202, Garden City, New York 11530.
26 Federal Plaza, room 3838, New York, New York 10278.
159 Carlos Chardon Street, room 102, Hato Rey, Puerto Rico 00918.
Federal Office Building, room 913, 31 Hopkins Plaza, Charles Center, Baltimore, Maryland 21201.
U.S. Custom House, room 238, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106.
Federal Building, room 313, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222.
3329 Penn Place, 20 North Pennsylvania Ave., Wilkes-Barre, Pennsylvania 18701.
Federal Building, room 7000, 400 North Eighth Street, Richmond, Virginia 23240.
2 Hale Street, suite 301, Charleston, West Virginia 25301–2834.
1375 Peachtree St NE., room 608, Atlanta, Georgia 30367.
Berry Building, suite 301, 2015 North Second Avenue, Birmingham, Alabama 35203.
Federal Building, room 407, 299 East Broward Boulevard, Fort Lauderdale, Florida 33301.
3728 Phillips Hwy., suite 219, Jacksonville, Florida 32207.
1150 Southwest First Street, room 202, Miami, Florida 33130.
Austin Laurel Bldg., suite 300, 4905 W. Laurel Street, Tampa, Florida 33607.
Federal Building, room 167, 600 Martin Luther King Jr. Place, Louisville, Kentucky 40202.
800 Briar Creek Road, suite CC–412, Charlotte, North Carolina 28205.
Somerset Park Building, 4407 Bland Rd., suite 260, Raleigh, North Carolina 27609.
Federal Building, room 1072, 1835 Assembly Street, Columbia, South Carolina 29201.
1 Jackson Place, No.1020, 188 East Capitol Street, Jackson, Mississippi 39210.
1321 Murfreesboro Road, suite 511, Nashville, Tennessee 37217.
230 South Dearborn Street, room 412, Chicago, Illinois 60604–1595.
509 West Capitol Avenue, suite 205, Springfield, Illinois 62704.
46 East Ohio Street, room 148, Indianapolis, Indiana 46204–1919.
River Glen Plaza, suite 160, 501 East Monroe, South Bend, Indiana 46601–1615.
2920 Fuller Avenue, NE., suite 100, Grand Rapids, Michigan 49505–3409.
Bridge Place, room 106, 220 South Second Street, Minneapolis, Minnesota 55401–2104.
Federal Office Building, room 817, 1240 East Ninth Street, Cleveland, Ohio 44199–2054.
525 Vine Street, room 880, Cincinnati, Ohio 45202–3268.
646 Federal Office Building, 200 North High Street, Columbus, Ohio 43215–2475.
Federal Center Building, room 309, 212 East Washington Avenue, Madison, Wisconsin 53703–2878.
Savers Building, suite 611, 320 West Capitol, Little Rock, Arkansas 72201.
701 Loyola Avenue, room 13028, New Orleans, Louisiana 70113.
Western Bank Bldg., suite 840, 505 Marquette, NW., Albuquerque, New Mexico 87102–2160.
Government Plaza Building, room 307, 400 Mann Street, Corpus Christi, Texas 78401.
Federal Building, room 507, 525 South Griffin Street, Dallas, Texas 75202.
2320 LaBranch, room 2100, Houston, Texas 77004.
Northchase I Office Building, suite 140, 10127 Morocco, suite 104, San Antonio, Texas 78216.
Fifty-One Yale Building, suite 303, 5110 South Square, Tulsa, Oklahoma 74135–7438.
Federal Building, room 643, 210 Walnut Street, Des Moines, Iowa 50309.
Federal Office Building, room 2900, 911 Walnut Street, Kansas City, Missouri 64106.
1222 Spruce Street, rm. 9102B, St. Louis, Missouri 63103.
Federal Building, room 715, 106 South 15th Street, Omaha, Nebraska 68102.
Room 615, Federal Office Building, 1961 Stout Street, PO Drawer 3505, Denver, Colorado 80294.
10 West Broadway, suite 307, Salt Lake City, Utah 84101.
3221 North 16th Street, suite 301, Phoenix, Arizona 85016.
300 South Glendale Avenue, room 250, Glendale, California 91205–1752.
2981 Fulton Avenue, Sacramento, California 95821.
211 Main Street, room 341, San Francisco California 94105.
5675 Ruffin Road, suite 320, San Diego, California 92123–5378.
111 SW Columbia, suite 1010, Portland, Oregon 97201–5842.
1111 Third Avenue, suite 755, Seattle, Washington 98101–3212.

Office of Federal Contract Compliance Programs, ESA, Responsible Officials, Regional Offices

One Congress Street, 11th floor, Boston, Massachusetts 02114.
201 Varick Street, room 750, New York, New York 10014.
Gateway Building, room 15340, 3535 Market Street, Philadelphia, Pennsylvania 19104.
1375 Peachtree Street, NE., suite 678, Atlanta, Georgia 30367.
Kluczynski Federal Building, room 570, 230 South Dearborn Street, Chicago, Illinois 60604.
Federal Building, room 840, 525 South Griffin Street, Dallas, Texas 75202.
Federal Office Building, 911 Walnut Street, room 2011, Kansas City, Missouri 64106.
1801 California Street, suite 935, Denver, Colorado 80202.
71 Stevenson Street, suite 1700, San Francisco, California 94105.
1111 Third Avenue, suite 610, Seattle, Washington 98101–3212.

Office of Workers' Compensation Programs, ESA, Responsible Officials, District Directors

One Congress Street, 11th Floor, Boston, Massachusetts 02203, (FECA and LHWCA only).
201 Varick Street, Seventh Floor, New York, New York 10014, (FECA and LHWCA only).
3535 Market Street, Philadelphia, Pennsylvania 19104, (FECA and LHWCA only).
Penn Traffic Building, 319 Washington Street, Johnstown, Pennsylvania 15901, (BLBA only).
South Main Towers, 116 South Main Street, room 208, Wilkes-Barre, Pennsylvania 18701, (BLBA only).
Wellington Square, 1225 South Main Street, Greensburg, Pennsylvania 15601, (BLBA only).
31 Hopkins Plaza, room 1026, Baltimore, Maryland 22201, (LHWCA only).
Federal Building, 200 Granby Mall, room 212, Norfolk, Virginia 23510, (LHWCA only).
2 Hale Street, suite 304, Charleston, West Virginia 25301, (BLBA only).
609 Market Street, Parkersburg, West Virginia 26101, (BLBA only).
800 North Capitol Street, NW., Washington, DC 20211, (FECA only).
1200 Upshur Street, NW., Washington, DC 20210, (DCCA only).
334 Main Street, Fifth Floor, Pikeville, Kentucky 41501, (BLBA only).
500 Springdale Plaza, Spring Street, Mt. Sterling, Kentucky 40353, (BLBA only).

214 N. Hogan Street, 10th Floor, Jacksonville, Florida 32201, (FECA and LHWCA only).
230 South Dearborn Street, 8th floor, Chicago, Illinois 60604, (FECA and LHWCA).
1240 East 9th Street, Cleveland, Ohio 44199, (FECA only).
274 Marconi Boulevard, 3rd Floor, Columbus; Ohio 43215, (BLBA only).
525 Griffin Street, Federal Building, Dallas, Texas 75202, (FECA only).
701 Loyola Avenue, room 13032, New Orleans, Louisiana 70113, (LHWCA only).
12600 North Featherwood Drive, Houston, Texas 77034, (LHWCA only).
911 Walnut Street, Kansas City, Missouri 64106, (FECA only).
1801 California Street, Denver, Colorado 80202, (FECA and BLBA only).
71 Stevenson Street, 2nd Floor, San Francisco, California 94105, (FECA and LHWCA only).
401 E. Ocean Boulevard, suite 720, Long Beach, California 90802, (LHWCA only).
300 Ala Moana Boulevard, room 5108, Honolulu, Hawaii 96850, (LHWCA only).
1111 3rd Avenue, Seattle, Washington 98101–3212, (LHWCA and FECA only).

Mine Safety & Health Administration Field Offices

Chief, Division of Mining Information System MSHA

P.O. Box 25367, DFC, Denver, CO 80225–0367.

Superintendent, National Mine Health and Safety Academy

P.O. Box 1166, Beckley, WV 25802–1166.

Chief, Approval and Certification Center, MSHA

R.R. Box 251, Industrial Park Road, Triadelphia, WV 26059.

District Manager for Coal Mine Safety and Health

Penn Place, room 3128, 20 N. Pennsylvania Avenue, Wilkes-Barre, PA 18701.
RR1, Box 736, Hunker, PA 15639.
5012 Mountaineer Mall, Morgantown, WV 26505.
100 Bluestone Road, Mt. Hope, WV 25880.
P.O. Box 560, Norton, VA 24273.
219 Ratliff Creek Road, Pikeville, KY 41501.
HC 66, Box 1762, Barbourville, KY 40906.
P.O. Box 418, Vincennes, IN 47591.
P.O. Box 25367, Denver, CO 80225–0367.
100 YMCA Drive, Madisonville, KY 42431–9019.

District Manager for Metal and NonMetal Mine Safety and Health

230 Executive Drive, Mars, PA 16046–9812.
135 Gemini Circle, suite 212, Birmingham, AL 35209.
515 W. 1st Street, #228, Duluth, MN 55802–1302.
1100 Commerce Street, room 4C50, Dallas, TX 75242–0499.
P.O. Box 25367, Denver, CO 80225–0367
3333 Vaca Valley Parkway, suite 600, Vacaville, CA 95688.

Office of Labor-Management Standards, Regional Directors—District Directors

OLMS Regional Directors

Suite 600, 1365 Peachtree Street, NE., Atlanta, GA 30367.
Suite 302, 121 High Street, Boston, MA 02110.
Suite 774, Federal Office Building, 230 S. Dearborn Street, Chicago, IL 60604.
Suite 831, Federal Office Building, 1240 E. Ninth Street, Cleveland, OH 44199.
Suite 300, 525 Griffin Sq. Bldg., Griffin & Young Streets, Dallas, TX 75202.
Suite 2200, Federal Office Bldg., 911 Walnut Street, Kansas City, MO 64106.
Suite 878, 201 Varick Street, New York, NY 10014.
Suite 9452, William Green Federal Bldg., 600 Arch Street, Philadelphia, PA 19106.
Suite 725, 71 Stevenson Place, San Francisco, CA 94105.
Suite 558, Riddell Bldg., 1730 K Street, NW., Washington, DC 20006.

OLMS District Directors

Suite 1310, Federal Bldg., 111 W. Huron Street, Buffalo, NY 14202.
Suite 950, 525 Vine Street, Cincinnati, OH 45202.
Suite 940, 1801 California Street, Denver, CO 80202–2614.
Suite 630, Federal Bldg., & Courthouse, 231 W. Lafayette Street, Detroit, MI 48226.
Suite 350, Federal Office Bldg., Carlos Chardon Street, Hato Rey, PR 00918.
Suite 165, 401 Louisiana Street, Houston, TX 77002.
Suite 708, 3660 Wilshire Boulevard, Los Angeles, CA 90010.
Suite 503, Washington Square Bldg., 111 NW 183rd Street, Miami, FL 33169.
Suite 118, 517 East Wisconsin Avenue, Milwaukee, WI 53202–4504.
Suite 100, Bridgeplace, 220 South Second Street, Minneapolis, MN 55401.
Suite 238, 233 Cumberland Bend Drive, Nashville, TN 37228.
Metro Star Plaza, 190 Middlesex/Essex Turnpike, Iselin, NJ 08830.
Suite 804, 234 Church Street, New Haven, CT 06510.
Suite 13009, 701 Loyola Avenue, New Orleans, LA 70113.
Suite 801, Federal Office Bldg., 1000 Liberty Avenue, Pittsburgh, PA 15222.
Suite 9109 E, 1222 Spruce Street, St. Louis, MO 63103.
Suite 880, 111 3rd Avenue, Seattle, WA 98101–3212.
Suite 301, 4905 W. Laurel Street, Tampa, FL 33607

Regional Administrator, Occupational Safety and Health Administration (OSHA)

Area Director, OSHA

Valley Office Park, 13 Branch Street, Methuen, Massachusetts 01844.
639 Granite Street, 4th Floor, Braintree, Massachusetts 02184.
279 Pleasant Street, suite 201, Concord, New Hampshire 03301.
380 Westminister Mall, room 243, Providence, Rhode Island 02903.
1145 Main Street, room 108, Springfield, Massachusetts 01103–1493.
40 Western Avenue, room 121, Augusta, Maine 04330.
Federal Office Building, 450 Main Street, room 508, Hartford, Connecticut 06103.
One LaFayette Square, suite 202, Bridgeport, Connecticut 06604.
90 Church Street, room 1407, New York, New York 10007.
990 Westbury Road, Westbury, New York 11590.
42–40 Bell Boulevard, Bayside, New York 11361.
3300 Vikery Road, North New, Syracuse, New York 13212.
5360 Genesee Street, Bowmansville, New York 14026.
U.S. Courthouse & Federal Office Building, Carlos Chardon Avenue, room 559, Hato Key, Puerto Rico 00918.
401 New Karner Road, suite 300, Albany, New York 12205–3809.
Marlton Executive Park, Building 2, suite 120, 701 Route 73 South, Marlton, New Jersey 08053.
299 Cherry Hill Road, suite 304, Parsippany, New Jersey 07054.
500 Route 17 South, 2nd Floor, Hasbrouck Heights, New Jersey 07604.
Plaza 35, suite 205, 1030 St. Georges Avenue, Avenel, New Jersey 07001.
660 White Plains Road, 4th Floor, Tarrytown, New York 10591–5107.
US Custom House, room 242, Second & Chestnut Street, Philadelphia, Pennsylvania 19106.
One Rodney Square, suite 402, 920 King Street, Wilmington, Delaware 19801.
Federal Building, room 1428, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222.
20 North Pennsylvania Avenue, Penn Place, room 2005, Wilkes-Barre, Pennsylvania 18701–3590.
850 North 5th Street, Allentown, Pennsylvania 18102.
550 Eagan Street, room 206, Charleston, West Virginia 25301.
3939 West Ridge Road, suite B12, Erie, Pennsylvania 16506–1857.
Progress Plaza, 49 North Progress Street, Harrisburg, Pennsylvania 17109.
Federal Building, room 1110, Charles Center, 31 Hopkins Plaza, Baltimore, Maryland 21201.
Federal Office Building, 200 Granby Street, room 835, Norfolk, Virginia 23510–1811.
La Vista Perimeter Office Park, Building 7, suite 110, Tucker, Georgia 30084.
2400 Herodian Way, suite 250, Smyrna, Georgia 30080.
450 Mall Boulevard, suite J, Savannah, Georgia 31406.
Todd Mall, 2047 Canyon Road, Birmingham, Alabama 35216.
3737 Government Boulevard, suite 100, Mobile, Alabama 36693.
1835 Assembly Street, room 1468, Columbia, South Carolina 29201.
Jacaranda Executive Court, 8040 Peters Road, Building H–100, Fort Lauderdale, Florida 33324.
3780 I–55 North, suite 210, Jackson, Mississippi 39211–6323.
3100 University Boulevard South, room 303, Jacksonville, Florida 32216
John C. Watts Federal Building, 330 West Broadway, room 108, Frankfort, Kentucky 40601.

2002 Richard Jones Road, suite C–205, Nashville, Tennessee 37215.
Century Station, 300 Fayetteville Mall, room 438, Raleigh, North Carolina 27601.
5807 Breckenridge Parkway, suite A, Tampa, Florida 33610.
1600 167th Street, suite 12, Calumet City, Illinois 60409
O'Hara Lake Plaza, 2360 East Devon Avenue, suite 1010, Des Plaines, Illinois 60018.
344 Smoke Tree Business Park, North Aurora, Illinois 60542.
Federal Office Building, 1240 East 9th Street, room 899, Cleveland, Ohio 44199.
Federal Office Building, 200 N. High Street, room 620, Columbus, Ohio 43215.
US P.O. & Courthouse Building, 46 East Ohio Street, room 423, Indianapolis, Indiana 46204.
36 Triangle Park Drive, Cincinnati, Ohio 45246.
2618 North Ballard Road, Appleton, Wisconsin 54915.
Henry S. Reuss Building, room 1180, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.
110 South 4th Street, room 116, Minneapolis, Minnesota 55401.
234 North Summit Street, room 734, Toledo, Ohio 43604
801 South Waverly Road, suite 306, Lansing, Michigan 48917–4200.
4802 East Broadway, Madison, Wisconsin 53716.
2918 W. Willow Knolls Road, Peoria, Illinois 61614.
8344 East R.L. Thornton Freeway, suite 420, Dallas, Texas 75228.
611 East 6th Street, Grant Building, room 303, Austin Texas 78701.
Westbank Building, suite 829, 505 Marquette Avenue, NW., Albuquerque, New Mexico 87102.
2156 Wooddale Boulevard, Hoover Annex, suite 200, Baton Rouge, Louisiana 70806.
Government Plaza, 400 Mann Street, room 300, Corpus Christi, Texas 78401.
Federal Office Building, 1205 Texas Avenue, room 422, Lubbock, Texas 79401.
350 North Sam Houston Parkway East, room 120, Houston, Texas 77060.
17625 El Camino Real, suite 400, Houston, Texas 77058.
420 West Main Place, suite 300, Oklahoma City, Oklahoma 73102.
North Starr II, suite 430, 8713 Airport Freeway, Fort Worth, Texas 76180–7604.
Savers Building, suite 828, 320 West Capitol Avenue, Little Rock, Arkansas 72201.
4171 North Mesa Street, room C119, El Paso, Texas 79902.
6200 Connecticut Avenue, suite 100, Kansas City, Missouri 64120.
911 Washington Avenue, room 420, St. Louis, Missouri 63101.
210 Walnut Street, room 815, Des Moines, Iowa 50309.
300 Epic Center, 301 North Main, Wichita, Kansas 67202.
Overland—Wolf Building, room 100, 6910 Pacific Street, Omaha, Nebraska 68106.
5799 Broadmoor, suite 338, Mission, Kansas 66202.
19 North 25th Street, Billings, Montana 59101.
220 E. Rosser, room 348, P.O. Box 2439, Bismarck, North Dakota 58501.
7935 East Prentice Avenue, suite 209, Englewood, Colorado 80011–2714.
1391 Speer Boulevard, suite 210, Denver, Colorado 80204.
1781 South 300 West, PO Box 65200, Salt Lake City, Utah 84165–0200.
71 Stevenson Street, room 415, San Francisco, California 94105.
300 Ala Moana Boulevard, suite 5122, PO Box 50072, Honolulu, Hawaii 96850.
3221 North 16th Street, suite 100, Phoenix Arizona 85016.
1050 East William, suite 435, Carson City, Nevada 89701.
301 West Northern Lights Boulevard, suite 407, Anchorage, Alaska 99503.
3050 North Lakeharbor Lane, suite 134, Boise, Idaho 83703.
121 107th Avenue, Northeast, room 110, Bellevue, Washington 98004.
1220 Southwest Third Avenue, room 640, Portland, Oregon 97204.

Pension and Welfare Benefits Administration Area Director or District Supervisor

Area Director, One Bowdoin Square, 7th Floor, Boston, Massachusetts 02114.
Area Director, 1633 Broadway, rm. 226, New York, NY 10019.
Area Director, 3535 Market Street, room M300, Gateway Building, Philadelphia, Pennsylvania 19104.
District Supervisor, 1730 K Street NW., suite 556, Washington, DC 20006.
Area Director, 1371 Peachtree Street NE., room 205, Atlanta, Georgia 30367.
District Supervisor, 111 NW. 183rd Street, suite 504, Miami, Florida 33169.
Area Director, 1885 Dixie Highway, suite 210, Ft. Wright, Kentucky 41011.
District Supervisor, 231 W. Lafayette Street room 619, Detroit, Michigan 48226.
Area Director, 401 South State St., suite 840 Chicago, Illinois 60605.
Area Director, room 1700, 911 Walnut Street Kansas City, Missouri 64106.
District Supervisor, 815 Olive Street, room 338, St. Louis, Missouri 63101.
Area Director, 525 Griffin Street, room 707 Dallas, Texas 75202.
Area Director, 71 Stevenson Street, suite 915, P.O. Box 190250, San Francisco, California 94119–0250.
District Director, 1111 Third Avenue, room 860, Seattle, Washington 98101–3212
Area Director, 3660 Wilshire Boulevard, room 718, Los Angeles, California 90010.
Area Director, suite 514, 790 E. Colorado Blvd., Pasadena, CA 91101.

Regional Administrators, Veterans' Employment and Training Service (VETS)

Region I: One Congress Street, 11th Floor, Boston, Massachusetts 02114.
Region II: 201 Varick Street, room 766, New York, New York 10014.
Region III: U.S. Customs House, room 305, Second and Chestnut Streets, Philadelphia Pennsylvania 19106.
Region IV: 1371 Peachtree Street, NE., room 326, Atlanta, Georgia 30367.
Region V: 230 South Dearborn, room 1064 Chicago, Illinois 60604.
Region VI: 525 Griffin Street, room 205, Dallas, Texas 75202.
Region VII: Federal Building, room 803, 911 Walnut Street, Kansas City, Missouri 64106.
Region VIII: 1801 California Street, suite 910 Denver, Colorado 80202–2614.
Region IX: 71 Stevenson Street, suite 705, San Francisco, California 94105.
Region X: 1111 Third Avenue, suite 800 Seattle, Washington 98101–3212.

PART 70—[AMENDED]

4. Part 70 is amended by adding an Appendix B to read as follows:

Appendix B to Part 70—Freedom of Information/Privacy Act Coordinators

The Departmental Legal and Administrative Contact is Miriam McD. Miller, Esq., Office of the Solicitor, Room N–2428, FPB, tel. (202) 219–8188; FAX (202) 219–6896. For direct assistance, you may wish to contact the following agency coordinators for the Freedom of Information Act and the Privacy Act:

Agency	Person	Address	Telephone [1]
Office of the Secretary (O/SEC'Y)	Tena Lumpkins	Rm. N–1301, FPB	219–5095
Office of the Assistant Secretary for Admin. and Management (OASAM).	Tena Lumpkins	Rm. N–1301, FPB	219–5095
Office of the Admin. Law Judges (OALJ)	Mary Grace Dorsey	Suite 400–N, 800 K St., NW WDC	633–0355
Benefits Review Board (BRB)	Sharon Ratliff	Suite 500–N, 800 K St., NW WDC	633–7503
Office of the American Workplace, Ofc of Statutory Programs (OAW/OSP).	Kelly Andrews	RM. N–5411, FPB	219–4473
Bureau of Labor Statistics (BLS)	K. Kurz or D. Solis	Rm. 3255, PSB	606–7628
Employees Compensation Appeals Board (ECAB)	Mary Ellen McKenna	Rm. 300, Reporters Bldg.	401–8600

Agency	Person	Address	Telephone [1]
Employment Standards Admin. (ESA)	Dorothy Chester	Rm. S–3013C, FPB	219–8447
Employment and Training Admin. (ETA)	Patsy Files	Rm. N–4671, FPB	219–6695
Ofc of the Inspector General (OIG)	Pamela Davis	Rm. S–5506, FPB	219–6747
Deputy Under Secretary for International Labor Affairs (ILAB).	Patricia Clark	Rm. S–5303, FPB	219–6136
Office of Labor-Management Standards (OLMS)	James Santelli	Rm. N–5613, FPB	219–7373
Mine Safety and Health Admin. (MSHA)	Tom Brown	Rm. 605, BT#3 Arlington, VA	(703) 235–1452
Occupational Safety and Health Admin. (OSHA)	James Foster	Rm. N–3647, FPB	219–8148
Pension and Welfare Benefits Admin. (PWBA)	June Patron	Rm. N–5625, FPB	219–6999
President's Committee on the Employment of Persons with Disabilities (PCEPD).	Gregory Best	Suite 300, 1331 F St., NW WDC	376–6200
Office of the Solicitor (OSOL)	Elizabeth Newton	Rm. N–2414, FPB	219–6884
Veterans' Employment and Training Service (VETS)	Bernard Wroble	Rm. S–1310, FPB	219–6350

[1] All numbers are within area code (202) except MSHA.

Building Addresses

a. Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.
b. Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC 20212–0001.
c. Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, VA 22203.
d. Reporters' Building, 300 7th Street, SW., Washington, DC 20024.
e. Tech World, 800 K Street, NW., Washington, DC 20001–8002.

Signed at Washington, DC, this 1st day of June, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–13882 Filed 6–8–94; 8:45 am]

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Federal Register

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June 9, 1994

Part V

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Mandatory Guidelines for Federal Workplace Drug Testing Programs; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Mandatory Guidelines for Federal Workplace Drug Testing Programs

AGENCY: Substance Abuse and Mental Health Services Administration, PHS, HHS.

ACTION: Revised mandatory guidelines.

SUMMARY: The Department of Health and Human Services (HHS) revises some of the scientific and technical guidelines for Federal drug testing programs and revises certain standards for certification of laboratories engaged in urine drug testing for Federal agencies.

EFFECTIVE DATE: September 1, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Donna M. Bush, Chief, Drug Testing Section, Division of Workplace Programs, Substance Abuse and Mental Health Services Administration (SAMHSA), room 9A–53, 5600 Fishers Lane, Rockville, Maryland 20857, tel. (301) 443–6014.

SUPPLEMENTARY INFORMATION: The Department is revising the guidelines entitled "Mandatory Guidelines for Federal Workplace Drug Testing Programs," (Mandatory Guidelines) which were initially published in the **Federal Register** on April 11, 1988 (53 FR 11979). These Mandatory Guidelines and the revisions are developed in accordance with Executive Order No. 12564 dated September 15, 1986, and section 503 of Public Law 100–71, 5 U.S.C. section 7301 note, the Supplemental Appropriations Act for fiscal year 1987 dated July 11, 1987. The revisions to the Mandatory Guidelines incorporate changes based on the comments submitted and the Department's first 5 years of experience in implementing and administering these Guidelines.

BACKGROUND AND SUMMARY OF PUBLIC COMMENTS AND POLICIES OF THE REVISED GUIDELINES

A. Proposed Revised Mandatory Guidelines

The basic purpose of the Mandatory Guidelines is to establish scientific and technical guidelines for Federal agencies' workplace drug testing programs and to establish a certification program for laboratories engaged in urine drug testing for Federal agencies. The proposed revisions published in the **Federal Register** on January 25, 1993 (58 FR 6062), retained the basic requirements in the Mandatory Guidelines published in the **Federal Register** on April 11, 1988, but as indicated above refined some requirements in order to incorporate changes based on the Department's first 5 years of experience in implementing and administering these Guidelines.

The major changes proposed in the notice published in the **Federal Register** on January 25, 1993, are summarized here to facilitate the discussion of the comments received during the public comment period.

The Department proposed reducing the requirement to collect 60 mL of urine at the collection site to 30 mL. This change was proposed because many times donors have difficulty in providing the 60 mL of urine. In addition, 30 mL is adequate to complete the required testing and satisfy other program requirements.

The Department proposed to revise the specimen collection procedure to allow Federal agencies to use an optional "split specimen" collection procedure. Several Federal agencies have been granted waivers to use split specimen collection procedures during the past 5 years. Establishing a "split specimen" procedure will ensure that each Federal agency will be using the same procedure. The Department believes that appropriate guidance must be provided regarding the minimum acceptable volumes for the split specimens, measuring temperature before a single donor specimen is transferred into two separate specimen bottles, sending both split specimen bottles to the laboratory at the same time to ensure that they are subject to the same shipping and storage conditions, and specifying the procedures for testing Bottle B when the Bottle A specimen is reported positive.

The Department proposed to revise the collection procedure to allow Federal agencies to use an individual of the same gender, other than a collection site employee, to observe the collection of a specimen whenever there is reason to believe the individual may have altered or substituted the specimen. This change is based on the understanding that it is not always possible to have a collection site employee of the same gender observe the collection.

The Department proposed a change to allow a laboratory to use a certifying scientist who is only certified to review initial drug tests which are negative. This could assist in reducing the cost of testing without compromising the reliability of drug testing.

The Department proposed that the initial test level for marijuana metabolites be reduced from 100 ng/mL to 50 ng/mL. This change reflects advances in technology of immunoassay tests for marijuana metabolites.

The Department proposed to allow laboratories to use multiple immunoassay tests for the same drug or drug class. This would allow laboratories to use an initial test and then forward all presumptive positives for a second test by a different immunoassay technique to minimize possible presumptive positives due to the presence of structural analogues in the specimen. In addition, this policy would allow a laboratory to use a different immunoassay for specimens that may be untestable with one immunoassay.

The Department proposed that in order to report a specimen positive for only methamphetamine, the specimen must also contain the metabolite amphetamine at a concentration equal to or greater than 200 ng/mL by the confirmatory test. This proposed requirement would ensure that high concentrations of sympathomimetic amines available in over-the-counter and prescription medications will not be misidentified as methamphetamine.

The Department proposed reducing the number of blind samples a Federal agency must submit each quarter to its contracting laboratory from 10% of all samples to a minimum of 3% (with a maximum of 100 blind samples). This proposed change may significantly reduce the costs associated with maintaining a blind sample program without affecting the Federal agency's ability to monitor a laboratory's performance.

The performance testing sample portion of the laboratory certification program was proposed to be changed by reducing the performance testing (PT) challenges for certified laboratories from 6 cycles per year to 4 cycles per year. Experience in this and other performance testing programs indicates that 4 cycles per year is sufficient to assess a laboratory's ability to test and report results for performance testing samples.

The Department proposed restricting the types of arrangements that can exist between the Medical Review Officer (MRO) and the laboratory to ensure that a conflict of interest does not exist. The restrictions would require that the agency's MRO not be an employee or an agent of, or have any financial interest in, the laboratory for which the MRO is reviewing drug testing results. Similarly, the laboratory would be prohibited from entering into any agreement with an MRO that could be construed as a conflict of interest.

A new subpart D was proposed which provides detailed procedures for the

internal review of a suspension or proposed revocation of a laboratory's certification to perform drug testing. These procedures will ensure and provide a timely and fair review of all suspensions or proposed revocations.

The Department proposed that the written notice of the suspension which is sent to the laboratory, as well as the reviewing official's written decision upholding or denying suspension or proposed revocation under the review procedures in subpart D, would be made available to the public upon request. This provision ensures that the public has access to the documents containing the basis for HHS's actions.

B. Public Comments and the Department's Responses

The Department received 73 public comments on the proposed changes from Federal agencies, individuals, organizations, and companies. About 50% of these supported all or some of the proposed changes. All written comments were reviewed and taken into consideration in the preparation of the revised Mandatory Guidelines. The substantive concerns raised in the public comments and the Department's responses to the comments are set out below. Similar comments are considered together.

1. Definitions

A number of commenters expressed concerns with the definitions in section 1.2. It was suggested that the definition for chain of custody indicate that couriers do not need to document chain of custody while the specimens are in transit to the laboratory. The Department agrees that the Mandatory Guidelines should be clarified to address that issue. Specimens are sealed in packages and any tampering with a sealed specimen would be noticed by the laboratory and documented on the specimen chain of custody. In addition, as a practical matter, couriers, express couriers, and postal service personnel do not have access to the specimen chain of custody form since the form is inside the sealed package. Section 2.2(i) of the Mandatory Guidelines that discusses the transportation of a specimen to a laboratory has been revised to clarify this point.

One commenter recommended that the definitions in the Guidelines conform to the definitions established by the National Committee for Clinical Laboratory Standards (NCCLS) since the proposed definitions may be in conflict with the efforts of that nonprofit, educational organization. The Department fully supports the efforts of this committee to develop standard definitions since a common understanding of definitions is essential for maintaining a high level of performance within laboratory testing programs. The Department has revised the definitions in section 1.2 to ensure that they are consistent with those proposed currently by NCCLS. The Department has changed the proposed definitions for calibrator, control, and standard as well as included new definitions for donor, specimen, sample, and quality control sample. The Department also made appropriate changes in other sections of the Guidelines to ensure that the terms used were consistent with these new definitions. The Department notes, however, that these changes are not substantive, but rather are technical in nature to clarify the definitions. The Department believes these changes will eliminate the confusion expressed by several other commenters regarding the use of these terms in other sections of the Guidelines.

One commenter believes the proposed definition for the certifying scientist should specifically state that the individual understands chain of custody. The Department intended that the definition of certifying scientist include that the individual have a thorough understanding of chain of custody, since it was proposed that such individual have "training and experience in the theory and practice of all methods and procedures used in the laboratory." See section 1.2. However, in order to prevent any confusion, the definition has been changed to clarify this issue.

One commenter suggested that the Secretary require a certifying scientist to possess at least a masters degree, so they would be equal to experts presented by an employee who is contesting the result in court or in an administrative proceeding. Based on the Department's experience, there are numerous highly qualified individuals serving as certifying scientists who possess bachelors' degrees, and who have the expertise to testify as to the records they have certified. These certifying scientists do not need to be qualified as experts in litigation, as the defense may qualify someone else in the laboratory or outside the laboratory to perform this function, if necessary. Further, the Department believes that requiring higher educational requirements would place an unnecessary burden on the laboratories, as well as eliminate many qualified individuals from serving as certifying scientists.

One commenter believes the requirement to use an Office of Management and Budget (OMB) approved specimen chain of custody form requires the laboratories to use OMB approved laboratory chain of custody forms. This interpretation is incorrect. The Department proposed that such forms be used only for specimen chain of custody forms, *not* laboratory chain of custody forms. The Department believes that standard specimen chain of custody forms are important to ensure that collection sites have a consistent form so as to reduce any errors or incomplete documentation when filling out the forms.

One commenter noted that the Department's proposed definition of an immunoassay test is ambiguous and does not support the policy that allows using a second immunoassay test for specimens that are presumptively positive for amphetamines. Specifically, the term "initial test" was proposed to be defined as "[a]n immunoassay test to eliminate "negative" urine specimens from further consideration and to identify the class of drugs that requires confirmation." The Department agrees with the commenter that the definition is ambiguous. The Department supports allowing laboratories to perform multiple immunoassay tests for the same drug or drug class. Therefore, the Department has clarified the definition to ensure that further testing is consistent with section 2.4(e)(4) which permits conducting multiple initial tests.

2. Dilution/Adulteration Tests

Several commenters concurred with section 2.1(c) which clarifies that laboratories may conduct dilution/adulteration testing to determine the validity of the specimen while some commenters sought to have the Secretary define the specific tests to be conducted and require that such tests be performed. The issue regarding the types of dilution/adulteration testing to be performed has been highly controversial among forensic laboratory professionals since there is a lack of data to suggest that dilution/adulteration testing can clearly identify a donor who has intentionally taken a substance to affect the outcome of a drug test or has otherwise diluted or adulterated the specimen. At this time, the Department believes that such testing should remain optional and the selection of tests to be conducted for possible dilution/adulteration and the cutoff levels for such tests, if conducted, should be determined by the laboratories based on their best judgment.

Two commenters requested that the Department allow dilution/adulteration testing to be conducted at the collection

site. The Department believes that it is better able to monitor the performance of such testing when it is conducted by laboratory personnel, rather than require agencies to monitor such testing at the collection sites. During the laboratory inspection process, the Department is able to evaluate the laboratories' performance of such testing to ensure that tests are performed properly, chain of custody is not broken, and cross-contamination does not occur from one donor specimen to another which could impact the integrity of a specimen. The MRO can review the results of the dilution/adulteration tests and make a decision on the basis of the test and on his or her interview of the donor to determine whether a medical factor may have contributed to the results of such testing. In addition, disallowing the use of dilution/adulteration testing at the collection site ensures that agency employees are not unnecessarily subject to observed collection and thus protects the privacy of individuals to the maximum extent possible.

3. Specimen Collection Procedure

With regard to the specimen collection procedure, a number of commenters were highly supportive of reducing the required volume of a urine specimen from 60 mL to 30 mL as stated in section 2.2(f)(10). One commenter, however, expressed concern that 30 mL is insufficient when dealing with a specimen that is positive for more than one drug. That may be the case in some cases. Nevertheless, the number of specimens that are positive for more than one drug is very small and most volumes collected generally exceed 30 mL. The Department believes this reduced volume requirement will make it easier for an individual to provide a urine specimen with sufficient volume on the first attempt rather than requiring the collection of a second specimen after drinking a reasonable quantity of liquid. It is noted that the policy of combining additional urine, after drinking a reasonable amount of liquid, with a partial specimen (i.e., an insufficient volume of urine on the first void) has been eliminated. The Department believes the reduced volume requirements will ensure that a sufficient volume is collected on the first void and combining partial specimens will not be necessary.

One commenter expressed concern over the fact that the Mandatory Guidelines did not specify limitations or guidance as to the amount of liquid to be given a donor who could not provide a 30 mL urine specimen. The commenter expressed concerns regarding the possible risk of water intoxication if there is no limit established for the amount of liquid that can be provided. The Department concurs and has changed the example given in section 2.2(f)(10) to read "(e.g., an 8 oz glass of water every 30 minutes, but not to exceed a maximum of 24 oz)." The example provided describes a reasonable amount of liquid to be provided and the Department would expect collection sites to use reasonable care in its determination of the amount of liquid to provide donors.

Several commenters noted that the temperature range stated in the proposed revisions did not agree with the range stated in the introductory discussion of the proposed changes. A notice correcting the error was published in the **Federal Register** on March 1, 1993. The correct temperature range is "32°-38°/90°-100°F."

There was general agreement that the marginally wider temperature range will not adversely affect the ability to detect a donor who may possibly tamper with the specimen. Two commenters, however, believe that the lower limit of the temperature range should be increased. The Department does not agree with this recommendation. A urine specimen provided in a collection cup that is at room temperature will cool quickly; therefore, a narrow temperature range will significantly increase the number of specimens that will not satisfy the temperature range requirements. This would cause numerous unnecessary collections of second specimens and falsely raise suspicions that many donors have tampered with their specimens.

With regard to the collection of a urine specimen when using direct observation, one commenter suggested that the employee's agency choose the observer if there is no collection site person of the same gender available. The Department agrees and sections 2.2(f)(13), 2.2(f)(16), and 2.2(f)(23) have been revised to include this requirement. The Department believes that the agency will select an individual who will act responsibly and reliably so as not to substantiate any allegation to the contrary by an employee.

One commenter believes that only trained collectors should be involved in the collection procedure, especially when direct observation is required. The Department acknowledges that trained personnel should be involved in the collection of urine specimens; however, it is not always possible to ensure that a trained collection site person of the same gender will be available when a direct observation is required. Allowing the agency to select an individual to act as the observer, when there are unusual circumstances, ensures that the collection will occur promptly and as scheduled rather than delaying the collection unnecessarily.

One commenter believed that observed collection should never be used in any circumstances. The Department disagrees. The Department continues to believe that observed collection is justified and necessary when there exists reasonable suspicion to believe that the donor altered or substituted the specimen. Observed collections do not occur frequently. However, the Department believes that any invasion of a donor's privacy is greatly outweighed by public health and safety concerns in such cases.

One commenter recommended that we refer to the individual providing the urine specimen as the "donor." The Department concurs with the recommendation and has replaced the word "individual," when it refers to the person providing a urine specimen, with the word "donor" throughout the Guidelines. A definition for donor has been included in section 1.2. In addition, the use of the word "donor" is consistent with its use on the specimen chain of custody form.

One commenter suggested that the entire collection procedure be revised substantially to provide more specific guidance to agencies on the collection process. The Department believes the procedure, as described, provides sufficient guidance to the agencies on the collection process, including factors to ensure that urine specimens are collected properly and satisfy chain of custody requirements. The changes made in the Mandatory Guidelines with regard to the single specimen collection procedure and the optional split specimen procedure should clarify the procedures and, thereby, address many of the concerns raised by this commenter without completely revising and expanding the descriptions of the collection procedures.

Many commenters concurred with including an optional split specimen collection procedure. They believed it was important to include split specimens since the Omnibus Transportation Employee Testing Act of 1991, Title V of Public Law 102–143, requires using a split specimen collection procedure for industries regulated by the Department of Transportation (DOT). This is particularly important since Federal employees from a number of Departments will be subject to both the requirements of DOT (49 CFR Part 40) and the requirements of the Mandatory Guidelines and Executive Order 12564 (September 15, 1986).

Two commenters suggested allowing the use of two or three containers to collect split specimens. The Department agrees with this recommendation and has revised the collection procedure to indicate clearly that either a specimen bottle or a specimen container may be used when collecting urine specimens. However, when using a split specimen collection procedure, it is not acceptable for a donor to provide the split specimens by urinating directly into both Bottle A and Bottle B. The specimen must be provided by urinating into only one container or into Bottle A. After the temperature is measured, if the specimen was provided directly into Bottle A, an appropriate amount is poured into Bottle B. If a specimen container was used, appropriate amounts are poured from the specimen container into both Bottle A and Bottle B. For split specimen collections, this procedure ensures that the specimens in Bottle A and Bottle B are identical, it is easier to measure the temperature of a single specimen rather than to measure the temperature of two specimens that were collected in separate containers, and it is easier for a donor to provide one specimen in a single container/bottle rather than into two separate bottles.

It was suggested by several commenters that we specify the amount of urine to be poured into Bottle B. We concur with that recommendation and have changed section 2.2(h)(3) of the split specimen procedure to specify that a minimum of 15 mL of urine shall be poured into Bottle B. Since Bottle B will only be tested for a specific substance(s), 15 mL is sufficient to conduct the testing and to allow a sufficient quantity to be retained frozen if Bottle A is reported positive. Additionally, section 2.2(h)(1) has been changed to specify that a minimum of 45 mL of urine is required when using a split specimen collection procedure rather than the 30 mL minimum when using the single specimen collection procedure.

One commenter was concerned with the handling and storage of the split specimen (Bottle B) after the Bottle A specimen is shipped to the laboratory. We agree that the wording in section 2.2(h)(5) of the split specimen collection procedure regarding refrigerating the specimens was confusing and it has been revised. The Department believes that the most efficient and cost effective way to handle split specimens is to send both the Bottle A and Bottle B specimens to the laboratory at the same time including the appropriate specimen chain of custody forms. This procedure will ensure the integrity of both Bottle A and Bottle B. This procedure is also simpler and more cost effective than one which would require the collection site to retain Bottle B specimens until the results for the Bottle A specimens are reported by the MRO to the agency and the agency notifies the collection site to either discard the Bottle B specimens or to ship a specific Bottle B specimen to another certified laboratory. When both specimens are received by the laboratory, Bottle A is normally tested within one day and, if positive, both Bottle A and Bottle B can be placed in secure, refrigerated storage until the confirmatory test is completed. This procedure will ensure that both specimens are treated essentially the same and subject to similar storage conditions until the testing is completed.

Several commenters were concerned with the impact that a failed to reconfirm result on the Bottle B specimen would have on a donor since personnel action may have been taken based on an MRO verified positive result for Bottle A. Although a failed to reconfirm result for Bottle B requires the MRO to void the test result for Bottle A and an agency may be required to reverse any personnel action that may have been taken, we believe failed to reconfirm reports will occur infrequently and this possibility should not be the basis for an agency to delay any personnel action. The Department believes that removing an employee, for example, from a safety-sensitive position which may impact public health and safety outweighs the minimal possibility that the testing of Bottle B will not reconfirm the presence of a drug or metabolite.

In view of the comments, section 2.2(h)(6) has also been clarified to indicate the MRO's responsibility to report a positive result for Bottle A. When an MRO has verified the test of the first specimen bottle (Bottle A) as a positive result, the MRO must report the result to the agency without waiting for the donor to request that the Bottle B specimen be tested.

Several commenters expressed concern regarding the actions taken when a second laboratory fails to reconfirm the presence of a drug or metabolite in the second specimen bottle (Bottle B) in a split specimen collection. Since the Bottle B specimen is tested without regard to the cutoff levels, the result reported by the second laboratory is not reported as a negative or positive result, but reported as either reconfirmed or failed to reconfirm the presence of a drug or metabolite. The Department agrees that if this situation occurs, an investigation must be conducted. The Department has added this requirement in section 2.2(h)(8) of the Mandatory Guidelines and has required the MRO to notify the donor's agency. In addition, the Federal agency must contact the Secretary and the Secretary will investigate the failed to reconfirm result and attempt to determine the reason for the inconsistent results between Bottle A and Bottle B. HHS will report its findings to the Federal agency and ensure that appropriate action is taken to prevent the recurrence of the failed to reconfirm result.

Some commenters simply did not like permitting Federal agencies to have the option of a split specimen procedure, believing, for example, that the use of a split specimen procedure gives the perception of a lack of confidence in the results when using a single specimen collection, that the additional administrative and collection costs are not justified, and that there is an increased risk of administrative errors.

It should be noted that certain Federal employees are subject to both the Mandatory Guidelines and the Omnibus Transportation Employee Act of 1991, Title V of Public Law 102–431, (Omnibus Act) which requires split specimens. Therefore, the agencies must have the flexibility to collect split specimens as required by the Omnibus Act. Since Federal agencies may also request a waiver under section 1.1(e) of the Mandatory Guidelines and the Department has provided a number of agencies with a waiver to permit split specimens during the past 5 years, the Department believes including an optional split specimen collection procedure in the Mandatory Guidelines will ensure consistency among all agencies currently using split specimens and those wanting to implement split specimen collections. In addition, each agency should have the option of treating its employees equally rather than treating its employees under the Omnibus Act differently from the employees only subject to the Mandatory Guidelines.

With regard to the perception that the results from a single specimen collection are unreliable and not adequate to protect employee rights when compared to a split specimen collection, the Department is confident that the results from a single specimen collection are scientifically and legally supportable. This belief is based on the stringent requirements that have been established by the Mandatory Guidelines—that is, requiring the use of rigorous chain of custody procedures when handling and testing specimens; requiring laboratories to use qualified

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and trained personnel, validated analytical testing procedures, and extensive internal quality control and quality assurance procedures; requiring laboratories to participate in a comprehensive certification program that includes performance testing samples and semi-annual inspections; and using MROs to ensure that procedures have been followed as required.

Although the split specimen procedures are designed to minimize administrative errors, the Department acknowledges that any time procedures are modified the risk of administrative errors increases. However, the use of a standard specimen chain of custody form should minimize such errors and the Department, through the inspection process, will monitor the laboratories' procedures in processing split specimens.

The procedures for split specimens are also designed to keep the administrative burden at a minimum. The Department believes that the paperwork for collection sites or laboratories will not increase much since the collection sites will be using a seven-part chain of custody form instead of a six-part form and sending both split specimens to the laboratory at the same time and in the same shipping container. This should minimize the additional cost and administrative burden on both collection sites and laboratories.

One commenter believed that split specimen collections create a potential to reverse results especially if there is a significant variation in the analytical sensitivities of the confirmatory tests used by each of the HHS-certified laboratories. The Department is aware of this potential and has provided guidance to the laboratories with regard to their capability to accurately quantitate and identify drugs at concentrations that are 40 percent of the confirmatory test levels. The Department believes this guidance and challenging laboratories with performance testing samples at these low concentrations will ensure that all laboratories have essentially the same sensitivity for each of the confirmatory tests.

Finally, one commenter requested guidance on whether the donor or agency would be responsible for paying the costs associated with analyzing the split specimen. The Department believes that the decision regarding financial responsibility for testing Bottle B is one the agencies must decide.

4. Certifying Test Results

One commenter stated that the proposed revision to section 2.3(b) that discusses "test validation" did not make it clear that a laboratory may use a certifying scientist who is only certified to review initial drug tests which are negative. Although this is the intent of this section and to ensure that no confusion exists, the title of section 2.3(b) has been changed to read "Certifying Test Results" and that section has been revised to state clearly that a laboratory may designate a certifying scientist(s) that is only qualified to certify results that are negative on the initial test. We note, however, that if a certifying scientist certifies confirmatory test results, the individual must have training and experience in all "procedures relevant to the results that the individual certifies." This includes both initial test and confirmatory test procedures. Changing the title of this section to read "Certifying Test Results" should also ensure that we are referring to the review and certification of specimen test results rather than the results associated with "validating" an analytical procedure before it is used to test specimens. The Department believes there was some confusion associated with the former title of this section.

5. Security and Chain of Custody

One commenter requested that the security requirements in section 2.4(a)(1), as proposed, be revised to allow emergency personnel access to all sections of the laboratory without escorts. The requirements for security pertain to limiting and documenting access under normal situations and providing escorts for authorized visitors, maintenance, and service personnel. For real emergencies, such as fires, it would be inappropriate to require the laboratory to provide an escort. This section has been changed to ensure that emergency personnel (such as firefighters) can have unescorted access similar to that authorized for inspectors. As suggested by the commenter, it would be acceptable for the laboratory to document the emergency and include, to the extent practicable, dates, time of entry and exit, and purpose of entry for all emergency response personnel. It must be noted that this exception does not apply to emergency "service" personnel, such as manufacturers' technical representatives who are called to repair an instrument or to conduct routine service.

6. Specimen Processing

One commenter noted that the word "standards" had been used incorrectly in section 2.4(d), as proposed, when stating the requirements for each initial and confirmatory batch. The Department concurs and has changed this section to state that each initial and confirmatory batch must satisfy the quality control requirements in sections 2.5(b) and 2.5(c), respectively, rather than using terms such as "standards" and "controls." Additionally, the last sentence of this section has been deleted because it is not entirely correct. Quality control samples must be known to laboratory technicians conducting the testing while only blind performance testing samples are unknown (i.e., the location in the batch, drug or metabolite present, and concentration). The requirements for laboratory blind performance testing samples and agency blind samples are discussed in section 2.5.

7. Marijuana Initial Test Level

Many respondents concurred with lowering the initial test level for marijuana metabolites from 100 to 50 ng/mL as proposed in section 2.4(e). However, one commenter claimed that the lowered cutoff concentration would identify the occasional user. The intent of Federal workplace drug testing programs is to identify individuals who use illegal substances regardless of whether they are regular or occasional users. Lowering the initial test level should increase the ability to detect any use of marijuana.

Another commenter questioned the impact that might result by the lowered cutoff concentration for those individuals who are exposed to passive inhalation (i.e., breathing the smoke exhaled by another individual smoking marijuana cigarettes). The Department does not believe that passive inhalation is a reasonable defense or that significant exposure can occur through passive inhalation to cause a urine specimen to be reported positive. A comprehensive study of passive inhalation conducted at the National Institute on Drug Abuse's Addiction Research Center in Baltimore (see Cone, E.J., et al., Passive Inhalation of Marijuana Smoke: Urinalysis and Room Air Levels of Delta-9–Tetrahydrocannabinol, Journal of Analytical Toxicology, 11: 89–96, 1987) indicates that it takes extensive exposure to extremely high concentrations under unrealistic conditions to cause a positive result; therefore, passive inhalation is not a reasonable explanation for a positive result.

8. Initial and Confirmatory Tests

One commenter believed that the wording in section 2.4(e)(3), as proposed, conflicted with the authority to conduct dilution/adulteration tests as stated in section 2.1(c). The Department agrees that this section needs to be clarified. A laboratory may conduct dilution/adulteration tests on all specimens, whether they are positive or negative, and either before or after conducting the initial test. Section 2.4(e)(3) has been changed to clarify this policy.

Several commenters questioned the use of specimens that test negative on either the initial test or the confirmatory test for the laboratory's internal quality control program as proposed in sections 2.4(e)(3) and 2.4(f)(3). These commenters were concerned that the results may have been affected by such factors as medications that may have been taken, the health of the donors, and possible unknown problems with confirmation, thereby, making these specimens unsuitable as quality control samples. Several of these commenters recommended the use of certified negative urine or, at a minimum, confirming the negative pool by GC/MS prior to its use in a quality control program. In response to these concerns, the Department notes that the laboratory's operation must be consistent with good forensic laboratory practice (see section 3.20(c)) and such practice requires a laboratory to always certify a urine pool as negative before it is used to prepare negative samples or to prepare other quality control samples. If pooled urine does not satisfy the criteria for acceptability, it is discarded. Such certification of the urine will ensure the quality of a laboratory's internal quality control program.

9. Multiple Initial Tests

Two commenters supported the use of multiple initial tests as stated in section 2.4(e)(4), as proposed, while several commenters expressed concern with permitting the use of multiple testing. The Department believes that the use of multiple initial tests may reduce the number of presumptive positives that are forwarded to confirmatory testing that will not be confirmed and may allow obtaining a valid analytical result if a specimen is untestable on one immunoassay test. The use of multiple initial tests has been widely used with regard to testing for amphetamines and this policy should apply to all drugs.

In addition, there are reports that various substances, including prescription medications, can prevent obtaining a valid initial test result when using one immunoassay test. We believe it is appropriate to use a different immunoassay test in order to obtain a valid initial test result before reporting the specimen as "test not performed" and including an appropriate comment on the specimen chain of custody form. To clarify this issue, the example given in section 2.4(e)(4) has been changed to include the use of a second immunoassay test for untestable specimens.

It is noted that the last sentence of section 2.4(e)(4), as proposed, has been deleted since it is redundant with the requirements as stated in the first sentence of the section.

10. 200 ng/mL Amphetamine Reporting Rule

Six commenters concurred with the proposal in sections 2.4(f)(1) and 2.4(g)(2) that require a methamphetamine positive to contain at least 200 ng/mL of amphetamine before reporting the result as positive. Two commenters recommended that the 200 ng/mL rule be dropped entirely because they believed it is no longer relevant and the emphasis should be on improving the quality of the GC/MS confirmatory procedure. Seven commenters held similar views that the 200 ng/mL rule is too conservative and produces too many false negatives and recommended that it be lowered to either 100 or 50 ng/mL or at least equal to or greater than the limit of detection for amphetamine.

The Department believes that the 200 ng/mL requirement implemented as a temporary policy since December 22, 1990, is a necessary one to prevent false positive test results. On a special set of performance testing samples provided to the laboratories by the program, the Department found that the requirement adequately controlled all of the possible technical problems based on observations of results reported by the laboratories on that set of performance testing samples. The results indicated that a significant number of laboratories experienced chromatographic resolution problems when methamphetamine was present with ephedrine and 2% of the performance testing results evidenced a methamphetamine response when challenged with high concentrations of over-the-counter medications (e.g., ephedrine, pseudoephedrine, or phenylpropanolamine). These results indicated that the 200 ng/mL rule was effective in preventing any false positive results and should be continued. In addition, recent information provided by laboratories regarding their limits of quantitation and their results on performance testing samples that contained very low concentrations of amphetamine and methamphetamine indicate that 200 ng/mL continues to be the lowest concentration that most of the laboratories can reliably identify and quantitate for either methamphetamine or amphetamine. For these reasons, the Department believes using a lower concentration or eliminating the 200 ng/mL rule would increase the possibility for reporting a false positive methamphetamine result.

11. Reporting Results

One commenter was concerned that substituting "certifying scientist" in section 2.4(g)(5), as proposed, for the responsible person was making the certifying scientist responsible for the overall laboratory operations. We believe the commenter did not understand the purpose for changing the wording in this section. The use of "certifying scientist" in this section ensures that the requirement is consistent with current program practice. The responsible person continues to be responsible for the overall operation of the laboratory (see section 2.3(a)); however, section 2.4(g)(5) allows a certifying scientist to sign the external chain of custody form that is sent to the MRO.

12. Calibrators and Controls

One commenter raised concern with the materials used to prepare calibrators and controls which as described in section 2.4(n)(2) only allowed calibrators and controls to be prepared from pure drug standards. The commenter correctly indicated that calibrators and controls were available from other sources. The Department concurs and has revised the sentence to allow calibrators and controls to be prepared not only from pure drug reference materials, but from stock standard solutions obtained from other laboratories, or from commercial manufacturers. This change clarifies that laboratories have the flexibility to obtain "standards" used to prepare the calibrators and controls from different sources.

13. Potential Conflicts of Interest

Several commenters supported the policies in sections 2.4(n)(6) and 2.6(b), as proposed, that restricts the types of relationships between laboratories and Medical Review Officers to ensure there were no conflicts of interest. There were several comments submitted, however, stating that these requirements were not necessary since there is no evidence that MROs have not acted in the interest of

the donor or that current arrangements have adversely affected the ability of an MRO to monitor laboratories. The Department does not question the dedication and integrity of its certified laboratories and the MROs in carrying out their responsibilities and protecting the interests of the Federal agencies and donors. Nevertheless, the Department believes the issue must be addressed..

The MRO plays an essential role in the Federal drug testing program. See generally section 2.6 of the Mandatory Guidelines. The MRO is a licensed physician with a knowledge of substance abuse disorders who verifies whether the tests are positive or negative. In the case of a positive result reported by the laboratory, the Mandatory Guidelines require that the MRO contact the employee and personally interview the employee, i.e., in-person or by telephone, to determine whether alternate medical explanations would explain a positive result. See section 2.6(c). During the course of such interview and possibly through having the specimen retested, the MRO may identify false positive test results. In such a case, the MRO is required to contact the Secretary so that the Department can conduct an investigation into the matter and take whatever action is necessary to prevent such a result from occurring in the future. See section 2.6(g).

Because the MRO plays such an essential role, the Department believes any relationship that may be construed as a potential conflict of interest may be sufficient to undermine the integrity of the program. Every Federal agency, employee, and job applicant must have complete assurance that test results will be thoroughly reviewed and, if errors are discovered, that the MRO will report the error and an appropriate investigation and corrective action will be taken.

14. Laboratory Quality Control Requirements for Initial Tests

There were several comments submitted regarding the requirements in section 2.5(b), as proposed, for quality control samples when conducting the initial test. The commenters believed the proposed requirements were confusing and suggested using different terms to describe the types of quality controls that must be included in each initial test batch. The Department concurs that the quality control requirements in this section were confusing and they have been revised based on the definitions in section 1.2. It should be noted the changes to this section only clarify the requirements for quality control samples; the actual policy has not changed from the original Mandatory Guidelines. See section 2.5(b) of 53 FR 11979, 11984 (April 11, 1988). We have also revised the quality control requirements for each confirmatory test batch in section 2.5(c) using the new definitions in section 1.2 without changing the policy as compared to the original Mandatory Guidelines. See section 2.5(c) of 53 FR 11979, 11985 (April 11, 1988).

In addition, it was noted that there was an error in the requirement that each initial test batch must contain a minimum of 20% quality control samples. A correction stating that 10% was the minimum amount was published in the **Federal Register** on March 1, 1993.

15. Agency Blind Sample Program

A number of commenters supported reducing the requirements for agency blind samples from 10% to 3% as indicated in section 2.5(d)(2). One commenter suggested retaining the 10% minimum and one commenter suggested establishing a minimum number of blind samples per quarter for organizations with a small test population. The Department believes the reduced requirement will not have a significant impact on the ability of an agency to evaluate its entire drug testing program; however, there is no prohibition for an agency to use a higher percentage or a higher number of blind samples to be submitted with donor specimens.

The Department has also changed the requirements for the number of blind samples to be submitted with donor specimens during the initial 90-day period of any new contract to conform with reducing the requirements of blind samples as provided by section 2.5(d)(2). Our experience during the past 5 years suggests that it is not necessary to submit large numbers of blind samples to verify the testing conducted by the certified laboratories.

16. Reanalysis Authorized

Two commenters expressed concern with the retesting policy proposed in section 2.6(e) which provided that only the MRO was authorized to order a reanalysis of the original specimen or Bottle B from a split specimen collection. One commenter believes the donor was authorized to request a retest of the original specimen. It is the Department's position that if an MRO cannot verify a positive result for whatever reason, only the MRO is authorized to request the retest of the original specimen since the MRO is the only individual who has all the information necessary to identify a particular specimen in a laboratory.

Another commenter pointed out an inconsistency between the retest policy proposed in this section and the policy proposed for testing Bottle B from a split specimen collection as described in section 2.2(h)(6) which states that only the donor may request through the MRO that the second specimen bottle (Bottle B) be tested. The Department agrees that there is an inconsistency in the proposed policies because we inadvertently referred to the Bottle B specimen in section 2.6(e) rather than the Bottle A specimen. Section 2.6(e) has been changed to clarify that only the MRO may request the retest of either a single specimen or a Bottle A specimen when using a split specimen collection. The procedures for the testing of Bottle B remain as proposed in section 2.2(h)(6)—that is, only the donor may request through the MRO that Bottle B be tested.

17. Reporting Final Results to the Agency

One commenter suggested that section 2.6(h), as proposed, which clarifies the requirement that the MRO provide written reports to the agency on positive and negative drug test results would significantly increase the administrative costs associated with the program and recommended that the MRO be required to provide written reports to the agency for positive results only. The Department disagrees. Written reports from the MRO to the agency on all specimens tested ensures that all specimens have been tested and the results of all specimens have been reviewed by the MRO. In addition, the Department believes that this requirement for written reports to the agency does not prevent the MRO from reporting several results on the same correspondence sent to the agency and, therefore, should not significantly affect the cost associated with the MRO review of drug testing results.

18. Certified Laboratories Notifying Private Sector Clients

Two commenters were concerned that the policy in section 3.4 did not adequately ensure that a laboratory would inform clients if and when the laboratory did not satisfy the certification requirements. The Department concurs that a laboratory must inform its clients when its certification has been suspended. Since the program began, this notification has been required and is set out in the suspension letter that is sent to the laboratory.

However, the intent of the requirement in section 3.4 that certified laboratories clearly inform clients when procedures followed do not conform to the Mandatory Guidelines is not related to suspension and/or proposed revocation actions. The purpose is to ensure that unregulated, private sector clients are aware that the laboratory may be using procedures that are not subject to or in accordance with the Mandatory Guidelines. The Department believes that a certified laboratory must not use its certification to promote itself as such if, in fact, it uses procedures that do not comply with the Mandatory Guidelines for such clients. This section has been revised to clarify this requirement.

19. Performance Testing Program

There were several comments submitted regarding changing the performance testing (PT) program from a bimonthly program to a quarterly program as stated in various sections of subpart C. One commenter disagreed with changing the performance testing program to a quarterly program because this would prolong the recertification process and suggested that a monthly PT program would be more appropriate. The Department has no intention of changing the initial certification procedures or to change the procedures when a laboratory has been suspended and must successfully analyze performance testing samples prior to having the suspension lifted. In addition, the Department believes a monthly PT program does not allow sufficient time for a laboratory to receive its results on a set of PT samples, analyze its performance, and initiate appropriate corrective action before the next cycle of PT samples.

One commenter was concerned that adopting a quarterly PT program without changing the criteria for determining acceptable performance, as set out in section 3.19, would increase the period for evaluating a laboratory's performance to 9 months. The Department concurs that the criteria for determining acceptable performance, that is, performance on 3 consecutive quarterly PT cycles, would unduly lengthen the time before corrective action may be taken. Since the total number of PT samples in 2 cycles of the quarterly PT program will be essentially the same as those for 3 cycles of the bimonthly PT program, it is appropriate to establish acceptable performance criteria based on performance over 2 consecutive cycles of quarterly PT samples. All criteria in section 3.19 that pertain to evaluating the performance of certified laboratories have been changed to evaluate acceptable performance over 2 consecutive cycles rather than over 3 consecutive cycles, which retains the 6-month evaluation period.

One commenter agreed with the change in section 3.19(b)(4), as proposed, that would allow a certified laboratory to have one quantitative result greater than 50% from the target value without requiring program action against the laboratory. However, the commenter is concerned that the cause for the error may not be investigated since program action is not taken against the laboratory. The Department did not intend that this change would prevent any investigation into the cause for the error or that the laboratory would not be required by the Department to make a concerted effort to determine the cause for the error and to take appropriate corrective action.

One commenter believes that the overall costs for the certification program may be decreased without compromising the high quality of the program by increasing the PT challenges to a monthly program and decreasing the maintenance inspections to once a year. The Department disagrees with this proposal because it is important to inspect laboratories at least every six months to ensure that the laboratory has continued to satisfy the requirements of the Mandatory Guidelines and for the inspectors to review the results reported for the PT samples. If corrective action is necessary, it will be more timely than if inspections were on a yearly basis. In addition, the existence of a significant problem over a long period of time would possibly jeopardize the results of many more personnel specimens.

20. Corrective Action by Certified Laboratories

Several commenters expressed concern that section 3.12(c), as proposed, would give the Secretary the authority to review all results and activities associated with a laboratory's testing of specimens for private sector, unregulated clients. This was not the intent and the section has been changed to indicate that the Secretary has authority to review results for specimens collected for private sector clients that were tested by the certified laboratory under the Mandatory Guidelines to the extent necessary to ensure the full reliability of drug testing for Federal agencies.

21. Recertification

One commenter was concerned with the policy contained in section 3.16, as proposed, because the commenter believed the procedure to regain certification after the laboratory's certification has been revoked would be prolonged given that the maintenance PT program has been reduced to a quarterly program. The commenter misunderstood that provision. The Department has not changed the initial certification procedure (section 3.16) under which a laboratory that had its certification revoked must proceed to regain certification. Thus, such a laboratory will proceed as in the past and must satisfactorily perform in each phase of the initial certification process. However, the first sentence of section 3.16 has been changed to indicate that the recertification policy applies only when a laboratory has its certification revoked.

22. Inspection Performance

One commenter was concerned that the meaning of the phrase "consistent with good forensic laboratory practice" in section 3.20(c), as proposed, was too subjective. The commenter believes that each inspection team interprets laboratory's procedures differently, thereby, what is acceptable during one inspection may be unacceptable during the next inspection. We do not concur with this assessment of the inspection process. Although there is some inherent subjectivity in the inspection process when applying certain criteria under the Mandatory Guidelines, the inspectors are provided clear guidance on what is to be inspected and what is acceptable and unacceptable. The Department requires trained, qualified inspectors to use a comprehensive checklist consisting of some 300 questions to evaluate a laboratory's procedures. They are asked to respond "yes" or "no" to the questions and then provide comments if the answer is unacceptable. This checklist ensures that each inspector is reviewing essentially all of the same laboratory documents and results. The inspection reports are reviewed by the Department to ensure that program requirements and policies are applied consistently among all laboratories. In addition, it is the responsibility of each laboratory to review the Mandatory Guidelines, to be aware of what is to be inspected by reviewing the checklist and other program documents, to correct deficiencies, and to use good forensic laboratory practice in its testing program.

One commenter suggested that the word "all" be deleted from the second sentence in section 3.20(c), as proposed, because a laboratory is not required to correct "all" deficiencies identified by the inspectors. We concur with the comment and have deleted the word "all." The Department's policy has always been to include minor

deficiencies or concerns in the critique developed from the inspection reports and give the laboratory the option to take whatever additional corrective action it deems appropriate for these minor deficiencies or concerns.

23. Procedures for Review of Suspension or Proposed Revocation of a Certified Laboratory

One commenter suggests that the definition of appellant in section 4.2, as proposed, is unclear and believes that the review procedures only apply when there is a proposed revocation. The Department disagrees with this position. The Department believes that principles of fairness necessitate allowing laboratories to seek internal reviews not only of proposed revocations but also internal reviews of immediate suspensions.

24. Other Minor Changes

In addition to the changes discussed above, there were several minor changes made in other sections. The acronym "MRO" has been added to the definition for Medical Review Officer in section 1.2. Since the original Guidelines were published, the "MRO" acronym has become a common and accepted way to refer to a physician performing this function. We have replaced "Medical Review Officer" with "MRO" throughout the Guidelines.

Section 2.5(d)(4) was changed to clarify that an agency shall investigate any unsatisfactory blind performance testing results and submit its findings to HHS rather than HHS conducting the initial investigation. The Department believes the agency must gather all pertinent information and investigate the reason before HHS is contacted to continue the investigation and to ensure that the laboratory has taken corrective action.

Section 2.6(c) has been simplified to require the MRO to send results only to the designated person in the agency rather than to both agency's Employee Assistance Program and to the agency's management official. The Department believes that the agency should have the discretion to determine who should receive results.

Section 3.3 was clarified to read that a laboratory must satisfy all pertinent provisions of the Guidelines in order to maintain certification while the original requirement only addressed satisfying the provisions in order to qualify for certification.

Section 3.15(b) was revised to conform with the review procedure in new subpart D which allows laboratories the opportunity for an informal review of a program action within 30 days of the date the laboratory received the notice, or if seeking an expedited review, within 3 days of the date the laboratory received the notice.

Two commenters noted that section 3.18(b) referred to a subset of PT samples as "directed specimens" rather than as "retest samples" which is current program terminology. We concur with the comment submitted and have revised the section to refer to these PT samples as "retest samples."

Other appropriate minor editorial changes have been made for clarity and consistency.

Information Collection Requirements

Any comments related to the Paperwork Reduction Act of 1980 may be sent to the HHS Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Information collection and recordkeeping requirements which would be imposed on laboratories engaged in urine drug testing for Federal agencies concern quality assurance and quality control; security and chain of custody; documentation; reports; performance testing; and inspections as set out in sections 3.7, 3.8, 3.10, 3.11, 3.17, and 3.20. To facilitate ease of use and uniform reporting, a specimen chain of custody form has been developed as referenced in sections 1.2, 2.2(c), and 2.2(f).

The information collection and recordkeeping requirements contained in these Mandatory Guidelines have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980.

Dated: February 7, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Dated: March 16, 1994

Donna E. Shalala,

Secretary.

The Mandatory Guidelines as revised are hereby adopted in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. For the public's convenience the Mandatory Guidelines as revised are set out in full as follows:

Mandatory Guidelines for Federal Workplace Drug Testing Programs

Subpart A—General

1.1 Applicability.
1.2 Definitions.
1.3 Future Revisions.

Subpart B—Scientific and Technical Requirements

2.1 The Drugs.
2.2 Specimen Collection Procedures.
2.3 Laboratory Personnel.
2.4 Laboratory Analysis Procedures.
2.5 Quality Assurance and Quality Control.
2.6 Reporting and Review of Results.
2.7 Protection of Employee Records.
2.8 Individual Access to Test and Laboratory Certification Results

Subpart C—Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

3.1 Introduction.
3.2 Goals and Objectives of Certification.
3.3 General Certification Requirements.
3.4 Capability to Test for Five Classes of Drugs.
3.5 Initial and Confirmatory Capability at Same Site.
3.6 Personnel.
3.7 Quality Assurance and Quality Control
3.8 Security and Chain of Custody.
3.9 One-Year Storage for Confirmed Positives.
3.10 Documentation.
3.11 Reports.
3.12 Certification.
3.13 Revocation.
3.14 Suspension.
3.15 Notice.
3.16 Recertification.
3.17 Performance Testing (PT) Requirement for Certification.
3.18 Performance Test Samples Composition.
3.19 Evaluation of Performance Testing.
3.20 Inspections.
3.21 Results of Inadequate Performance
3.22 Listing of Certified Laboratories.

Subpart D—Procedures for Review of Suspension or Proposed Revocation of a Certified Laboratory

4.1 Applicability.
4.2 Definitions.
4.3 Limitations on Issues Subject to Review
4.4 Specifying Who Represents the Parties.
4.5 The Request for Informal Review and the Reviewing Official's Response.
4.6 Abeyance Agreement.
4.7 Preparation of the Review File and Written Argument.
4.8 Opportunity for Oral Presentation.
4.9 Expedited Procedures for Review of Immediate Suspension.
4.10 Ex Parte Communications
4.11 Transmission of Written Communications by Reviewing Official and Calculation of Deadlines.
4.12 Authority and Responsibilities of Reviewing Official.
4.13 Administrative Record.
4.14 Written Decision.
4.15 Court Review of Final Administrative Action; Exhaustion of Administrative Remedies.

Authority: E.O. 12564 and Sec. 503 of Pub L. 100–71.

Subpart A—General

Section 1.1 Applicability.

(a) These mandatory guidelines apply to:

(1) Executive Agencies as defined in 5 U.S.C. 105;

(2) The Uniformed Services, as defined in 5 U.S.C. 2101(3) (but excluding the Armed Forces as defined in 5 U.S.C. 2101(2));

(3) And any other employing unit or authority of the Federal Government except the United States Postal Service, the Postal Rate Commission, and employing units or authorities in the Judicial and Legislative Branches.

(b) Subpart C of these Guidelines (which establishes laboratory certification standards) applies to any laboratory which has or seeks certification to perform urine drug testing for Federal agencies under a drug testing program conducted under E.O. 12564. Only laboratories certified under these standards are authorized to perform urine drug testing for Federal agencies.

(c) The Intelligence Community, as defined by Executive Order No. 12333, shall be subject to these Guidelines only to the extent agreed to by the head of the affected agency.

(d) These Guidelines do not apply to drug testing conducted under legal authority other than E.O. 12564, including testing of persons in the criminal justice system, such as arrestees, detainees, probationers, incarcerated persons, or parolees.

(e) Agencies may not deviate from the provisions of these Guidelines without the written approval of the Secretary. In requesting approval for a deviation, an agency must petition the Secretary in writing and describe the specific provision or provisions for which a deviation is sought and the rationale therefor. The Secretary may approve the request upon a finding of good cause as determined by the Secretary.

(f) Agencies shall purchase drug testing services only from laboratories certified by HHS or an HHS-recognized certification program in accordance with these Guidelines.

Section 1.2 Definitions

For purposes of these Guidelines the following definitions are adopted:

Aliquot. A fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.

Calibrator. A solution of known concentration used to calibrate a measurement procedure or to compare the response obtained with the response of a test specimen/sample. The concentration of the analyte of interest in the calibrator is known within limits ascertained during its preparation. Calibrators may be used to establish a calibration curve over a range of interest.

Certifying Scientist. An individual with at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent who reviews all pertinent data and quality control results. The individual shall have training and experience in the theory and practice of all methods and procedures used in the laboratory, including a thorough understanding of chain of custody procedures, quality control practices, and analytical procedures relevant to the results that the individual certifies. Relevant training and experience shall also include the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial action to be taken in response to test systems being out of control-limits or detecting aberrant test or quality control results.

Chain of Custody. Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an Office of Management and Budget (OMB) approved specimen chain of custody form be used from time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory chain of custody form(s) account for the specimens and samples within the laboratory. Chain of custody forms shall, at a minimum, include an entry documenting date and purpose each time a specimen or sample is handled or transferred and identifying every individual in the chain of custody.

Collection Site. A place designated by the agency where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collection Site Person. A person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals. A collection site person shall have successfully completed training to carry out this function.

Confirmatory Test. A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (At this time gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

Control. A sample used to monitor the status of an analysis to maintain its performance within desired limits.

Donor. The individual from whom a urine specimen is collected.

Initial Test (also known as Screening Test). An immunoassay test to eliminate "negative" urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing.

Laboratory Chain of Custody Form. The form(s) used by the testing laboratory to document the security of the specimen and all aliquots of the specimens during testing and storage by the laboratory. The form, which may account for an entire laboratory test batch, shall include the names and signatures of all individuals who accessed the specimens or aliquots and the date and purpose of the access.

Medical Review Officer (MRO). A licensed physician responsible for receiving laboratory results generated by an agency's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

Quality Control Sample. A sample used to evaluate whether or not the analytical procedure is operating within predefined tolerance limits. Calibrators, controls, negative urine samples, and blind samples are collectively referred to as "quality control samples" and each as a "sample."

Reason to Believe. Reason to believe that a particular individual may alter or substitute the urine specimen as provided in section 4(c) of E.O. 12564.

Sample. A representative portion of a urine specimen or quality control sample used for testing.

Secretary. The Secretary of Health and Human Services or the Secretary's designee. The Secretary's designee may be a contractor or other recognized organization which acts on behalf of the Secretary in implementing these Guidelines.

Specimen. The portion of urine that is collected from a donor.

Specimen Chain of Custody Form. An OMB approved form used to document the security of the specimen from time of collection until receipt by the laboratory. This form, at a minimum, shall include specimen identifying information, date and location of collection, name and signature of

collector, name of testing laboratory, and the names and signatures of all individuals who had custody of the specimen from time of collection until the specimen was prepared for shipment to the laboratory.

Standard. A reference material of known purity or a solution containing a reference material at a known concentration.

Section 1.3 Future Revisions

In order to ensure the full reliability and accuracy of drug assays, the accurate reporting of test results, and the integrity and efficacy of Federal drug testing programs, the Secretary may make changes to these Guidelines to reflect improvements in the available science and technology. These changes will be published in final as a notice in the **Federal Register**.

Subpart B—Scientific and Technical Requirements

Section 2.1 The Drugs

(a) The President's Executive Order 12564 defines "illegal drugs" as those included in Schedule I or II of the Controlled Substances Act (CSA), but not when used pursuant to a valid prescription or when used as otherwise authorized by law. Hundreds of drugs are covered under Schedule I and II and while it is not feasible to test routinely for all of them, Federal drug testing programs shall test for drugs as follows:

(1) Federal agency applicant and random drug testing programs shall at a minimum test for marijuana and cocaine;

(2) Federal agency applicant and random drug testing programs are also authorized to test for opiates, amphetamines, and phencyclidine; and

(3) When conducting reasonable suspicion, accident, or unsafe practice testing, a Federal agency may test for any drug listed in Schedule I or II of the CSA.

(b) Any agency covered by these guidelines shall petition the Secretary in writing for approval to include in its testing protocols any drugs (or classes of drugs) not listed for Federal agency testing in paragraph (a) of this section. Such approval shall be limited to the use of the appropriate science and technology and shall not otherwise limit agency discretion to test for any drugs covered under Schedule I or II of the CSA.

(c) Urine specimens collected pursuant to Executive Order 12564, Public Law 100–71, and these Guidelines shall be used only to test for those drugs included in agency drug-free workplace plans and may not be used to conduct any other analysis or test unless otherwise authorized by law except if additional testing is required to determine the validity of the specimen. Urine that tests negative by initial or confirmatory testing may, however, be pooled for use in the laboratory's internal quality control program.

(d) These Guidelines are not intended to limit any agency which is specifically authorized by law to include additional categories of drugs in the drug testing of its own employees or employees in its regulated industries.

Section 2.2 Specimen Collection Procedures

(a) *Designation of Collection Site.* Each agency drug testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing laboratory.

(b) *Security.* Procedures shall provide for the designated collection site to be secure. If a collection site facility is dedicated solely to urine collection, it shall be secure at all times. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during drug testing.

(c) *Chain of Custody.* Chain of custody standardized forms shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens.

(d) *Access to Authorized Personnel Only.* No unauthorized personnel shall be permitted in any part of the designated collection site when urine specimens are collected or stored.

(e) *Privacy.* Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular donor may alter or substitute the specimen to be provided.

(f) *Integrity and Identity of Specimen.* Agencies shall take precautions to ensure that a urine specimen not be adulterated or diluted during the collection procedure and that information on the urine bottle and on the specimen chain of custody form can identify the donor from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:

(1) To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. There shall be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs.

(2) When a donor arrives at the collection site, the collection site person shall request the donor to present photo identification. If the donor does not have proper photo identification, the collection site person shall contact the supervisor of the donor, the coordinator of the drug testing program, or any other agency official who can positively identify the donor. If the donor's identity cannot be established, the collection site person shall not proceed with the collection.

(3) If the donor fails to arrive at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(4) The collection site person shall ask the donor to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the donor's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The donor may retain his or her wallet.

(5) The donor shall be instructed to wash and dry his or her hands prior to urination.

(6) After washing hands, the donor shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent, or any other materials which could be used to adulterate the specimen.

(7) The collection site person shall give the donor a clean specimen bottle or specimen container. The donor may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy.

(8) The collection site person shall note any unusual behavior or appearance on the specimen chain of custody form.

(9) In the exceptional event that an agency-designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., an accident investigation), a public rest room may be used according to the following procedures: A person of the same gender as the donor shall accompany the donor into the public rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the donor not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the donor will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures.

(10) Upon receiving the specimen from the donor, the collection site person shall determine the volume of urine in the specimen bottle/container.

(i) If the volume is greater than 30 milliliters (mL), the collection site person will proceed with step (11) below.

(ii) If the volume is less than 30 mL and the temperature is within the acceptable range specified in step (13) below, the specimen is discarded and a second specimen shall be collected. The donor may be given a reasonable amount of liquid to drink for this purpose (e.g., an 8 oz glass of water every 30 min, but not to exceed a maximum of 24 oz). If the donor fails for any reason to provide 30 mL of urine for the second specimen collected, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(iii) If the volume is less than 30 mL and the temperature is outside the acceptable range specified in step (13) below, a second specimen shall be collected using the procedure specified in step (13) below.

(11) After the specimen has been provided and submitted to the collection site person, the donor shall be allowed to wash his or her hands.

(12) Immediately after the specimen is collected, the collection site person shall measure only the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measurement is critical and in no case shall exceed 4 minutes.

(13) If the temperature of the specimen is outside the range of 32°–38 °C/90°–100 °F, that is a reason to believe that the donor may have altered or substituted the specimen, and another specimen shall be collected under direct observation of a person of the same gender and both specimens shall be forwarded to the laboratory for testing. The agency shall select the observer if there is no collection site person of the same gender available. A donor may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the donor may have altered or substituted the specimen caused by the specimen's temperature falling outside the prescribed range.

(14) Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the specimen chain of custody form.

(15) All specimens suspected of being adulterated or diluted shall be forwarded to the laboratory for testing.

(16) When there is any reason to believe that a donor may have altered or substituted the specimen to be provided, another specimen shall be obtained as soon as possible under the direct observation of a person of the same gender and both specimens shall be forwarded to the laboratory for testing. The agency shall select the observer if there is no collection site person of the same gender available.

(17) Both the donor and the collection site person shall keep the specimen bottle/container in view at all times prior to its being sealed and labeled. If the specimen is transferred from a specimen container to a specimen bottle, the collection site person shall request the donor to observe the transfer of the specimen and the placement of the tamper-evident seal/tape on the bottle. The tamper-evident seal may be in the form of evidence tape, a self-sealing bottle cap with both a tamper-evident seal and unique coding, cap and bottle systems that can only be sealed one time, or any other system that ensures any tampering with the specimen will be evident to laboratory personnel during the accessioning process.

(18) The collection site person and the donor shall be present at the same time during procedures outlined in paragraphs (f)(19)–(f)(22) of this section.

(19) The collection site person shall place securely on the specimen bottle an identification label which contains the date, the donor's specimen number, and any other identifying information provided or required by the agency.

(20) The donor shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.

(21) The collection site person shall enter on the specimen chain of custody form all information identifying the specimen.

(22) The donor shall be asked to read and sign a statement on the specimen chain of custody form certifying that the specimen identified as having been collected from him or her is in fact that specimen he or she provided.

(23) Based on a reason to believe that the donor may alter or substitute the specimen to be provided, a higher level supervisor shall review and concur in advance with any decision by a collection site person to obtain a specimen under direct observation. The person directly observing the specimen collection shall be of the same gender. The agency shall select the observer if there is no collection site person of the same gender available.

(24) The collection site person shall complete the specimen chain of custody form.

(25) The urine specimen and specimen chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, it shall be appropriately safeguarded during temporary storage.

(26) While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his or her work station momentarily, the urine specimen and specimen chain of custody form shall be taken with him or her or shall be secured. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended period of time, the specimen shall be packaged for mailing before he or she leaves the site.

(g) *Collection Control.* To the maximum extent possible, collection site personnel shall keep the donor's specimen bottle within sight both before and after the donor has urinated. After the specimen is collected, it shall be properly sealed and labeled. A specimen chain of custody form shall be used for maintaining control and accountability of each specimen. The date and purpose shall be documented on a specimen chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

(h) *Split Specimens.* An agency may, but is not required to, use a split specimen method of collection. If the urine specimen is split into two specimen bottles (hereinafter referred to as Bottle A and Bottle B) the following procedure shall be used:

(1) The donor shall urinate into either a specimen bottle or specimen container. The collection site person, in the presence of the donor, after determining specimen temperature, pours the urine into two specimen bottles that are labeled Bottle A and Bottle B or, if Bottle A was used to collect the specimen, pours an appropriate amount into Bottle B. A minimum of 45 mL of urine is required when using a split specimen procedure, i.e., 30 mL for Bottle A and 15 mL for Bottle B.

(2) The Bottle A specimen, containing a minimum of 30 mL of urine, is to be used for the drug test. If there is no additional urine available for the second specimen bottle (Bottle B), the first specimen bottle (Bottle A) shall nevertheless be processed for testing.

(3) A minimum of 15 mL of urine shall be poured into the second specimen bottle (Bottle B).

(4) All requirements of this part shall be followed with respect to Bottle A and Bottle B, including the requirements that a copy of the chain of custody form accompany each bottle processed under split sample procedures.

(5) The collection site shall send the split specimens (Bottle A and Bottle B) at the same time to the laboratory that will be testing the Bottle A specimen.

(6) If the test of the first specimen bottle (Bottle A) is verified positive by the MRO, the MRO shall report the result to the agency. Only the donor may request through the MRO that the second specimen bottle (Bottle B) be tested in an HHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the first specimen bottle (Bottle A). The MRO shall honor such a request if it is made within 72 hours of the donor's having received notice that he or she tested positive. The result of this test is transmitted to the MRO without regard to the cutoff levels used to test the first specimen bottle (Bottle A).

(7) Any action taken by a Federal agency as a result of an MRO verified positive drug test (e.g., removal from performing a safety-sensitive function) may proceed whether Bottle B is or is not tested.

(8) If the result of the test on the second specimen bottle (Bottle B) fails to reconfirm the result reported for Bottle A, the MRO shall void the test result for Bottle A and the donor shall re-enter the group subject to random testing as if the test had not been conducted. The MRO shall notify the Federal agency when a failed to reconfirm has occurred and the agency shall contact the Secretary. The Secretary will investigate the failed to reconfirm result and attempt to determine the reason for the inconsistent results between Bottle A and Bottle B. HHS will report its findings to the agency including recommendations and/or actions taken to prevent the recurrence of the failed to reconfirm result.

(i) *Transportation to Laboratory.* Collection site personnel shall arrange to ship the collected specimens to the drug testing laboratory. The specimens shall be placed in containers designed to minimize the possibility of damage during shipment, for example, specimen boxes or padded mailers; and those containers shall be securely sealed to eliminate the possibility of undetected tampering. The collection site personnel shall ensure that the specimen chain of custody form is enclosed within each container sealed for shipment to the drug testing laboratory. Since specimens are sealed in packages that would indicate any tampering during transit to the laboratory and couriers, express carriers, and postal service personnel do not have access to the chain of custody forms, there is no requirement that such personnel document chain of custody for the package during transit.

Section 2.3 Laboratory Personnel

(a) *Day-to-Day Management.* (1) The laboratory shall have a responsible person (RP) to assume professional, organizational, educational, and administrative responsibility for the laboratory's urine drug testing facility.

(2) This individual shall have documented scientific qualifications in analytical forensic toxicology. Minimum qualifications are:

(i) Certification as a laboratory director by the State in forensic or clinical laboratory toxicology; or

(ii) A Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology; or

(iii) Training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology; and

(iv) In addition to the requirements in (i), (ii), and (iii) above, minimum qualifications also require:

(A) Appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse, and

(B) Appropriate training and/or experience in forensic applications of analytical toxicology, e.g., publications, court testimony, research concerning analytical toxicology of drugs of abuse, or other factors which qualify the individual as an expert witness in forensic toxicology.

(3) This individual shall be engaged in and responsible for the day-to-day management of the drug testing laboratory even where another individual has overall responsibility for an entire multispeciality laboratory.

(4) This individual shall be responsible for ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of the drug testing laboratory. He or she shall assure the continued competency of laboratory personnel by documenting their inservice training, reviewing their work performance, and verifying their skills.

(5) This individual shall be responsible for the laboratory's having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by this responsible person whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the drug testing laboratory. Copies of all procedures and dates on which they are in effect shall be maintained. (Specific contents of the procedure manual are described in section 2.4(n)(1))

(6) This individual shall be responsible for maintaining a quality assurance program to assure the proper performance and reporting of all test results; for maintaining acceptable analytical performance for all controls and standards; for maintaining quality control testing; and for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(7) This individual shall be responsible for taking all remedial actions necessary to maintain satisfactory operation and performance of the laboratory in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. This individual shall ensure that sample results are not reported until all corrective actions have been taken and he or she can assure that the results provided are accurate and reliable.

(b) *Certifying Test Results.* The laboratory's urine drug testing facility shall have a certifying scientist(s), as defined in section 1.2, who reviews all pertinent data and quality control results in order to attest to the validity of the laboratory's test reports. A laboratory may designate certifying scientists that are qualified to certify only results that are negative on the initial test and certifying scientists that are qualified to certify both initial and confirmatory tests.

(c) *Day-to-Day Operations and Supervision of Analysts.* The laboratory's urine drug testing facility shall have an individual(s) to be responsible for day-to-day operations and to supervise the technical analysts. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the laboratory, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

(d) *Other Personnel.* Other technicians or nontechnical staff shall have the necessary training and skills for the tasks assigned.

(e) *Training.* The laboratory's urine drug testing program shall make available continuing education programs to meet the needs of laboratory personnel.

(f) *Files.* Laboratory personnel files shall include: resume of training and experience; certification or license, if any; references; job descriptions; records of performance evaluation and advancement; incident reports; and results of tests which establish employee competency for the position he or she holds, such as a test for color blindness, if appropriate.

Section 2.4 Laboratory Analysis Procedures

(a) *Security and Chain of Custody.* (1) Drug testing laboratories shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory processes or to areas where records are stored. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented. With the exception of personnel authorized to conduct inspections on behalf of Federal agencies for which the laboratory is engaged in urine testing or on behalf of the Secretary or emergency personnel (e.g., firefighters and medical rescue teams), all authorized visitors and maintenance and service personnel shall be escorted at all times. The laboratory shall maintain a record that documents the dates, time of entry and exit, and purpose of entry of authorized visitors, maintenance, and service personnel accessing secured areas.

(2) Laboratories shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred, and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen or aliquot in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received.

(b) *Receiving.* (1) When a shipment of specimens is received, laboratory personnel shall inspect each package for evidence of possible tampering and compare information on specimen bottles within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and the specimen chain of custody forms attached to the shipment shall be immediately reported to the agency and shall be noted on the specimen chain of custody forms which shall accompany the specimens while they are in the laboratory's possession.

(2) Specimen bottles will normally be retained within the laboratory's accession area until all analyses have been completed. Aliquots and laboratory chain of custody forms shall be used by laboratory personnel for conducting initial and confirmatory tests while the original specimen and specimen chain of custody form remain in secure storage.

(c) *Short-Term Refrigerated Storage.* Specimens that do not receive an initial test within 7 days of arrival at the laboratory shall be placed in secure refrigeration units. Temperatures shall not exceed 6 °C. Emergency power equipment shall be available in case of prolonged power failure.

(d) *Specimen Processing.* Laboratory facilities for urine drug testing will normally process specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory tests, every batch shall satisfy the quality control requirements in sections 2.5 (b) and (c), respectively.

(e) *Initial Test.* (1) The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

	Initial test level (ng/mL)
Marijuana metabolites	50
Cocaine metabolites	300
Opiate metabolites	[1]300
Phencyclidine	25
Amphetamines	1,000

[1] 25 ng/mL if immunoassay specific for free morphine.

(2) These test levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations. The agency requesting the authorization to include other drugs shall submit to the Secretary in writing the agency's proposed initial test methods, testing levels, and proposed performance test program.

(3) Specimens that test negative on all initial immunoassay tests will be reported negative. No further testing of these negative specimens for drugs is permitted and the specimens shall either be discarded or pooled for use in the laboratory's internal quality control program.

(4) Multiple initial tests (also known as rescreening) for the same drug or drug class may be performed provided that all tests meet all Guideline cutoffs and quality control requirements (see section 2.5(b)). Examples: a test is performed by immunoassay technique "A" for all drugs using the HHS cutoff levels, but presumptive positive amphetamines are forwarded for immunoassay technique "B" to eliminate any possible presumptive positives due to structural analogues; a valid analytical result cannot be obtained using immunoassay technique "A" and immunoassay technique "B" is used in an attempt to obtain a valid analytical result.

(f) *Confirmatory Test.* (1) All specimens identified as positive on the initial test shall be confirmed for the class(es) of drugs screened positive on the initial test using gas chromatography/mass spectrometry

(GC/MS) at the cutoff values listed in this paragraph. All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the laboratory record as "exceeds the linear range of the test."

	Confirmatory test level (ng/mL)
Marijuana metabolite [1]	15
Cocaine metabolite [2]	150
Opiates:	
Morphine	300
Codeine	300
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine [3]	500

[1] Delta-9-tetrahydrocannabinol-9-carboxylic acid.
[2] Benzoylecgonine.
[3] Specimen must also contain amphetamine at a concentration ≥ 200 ng/mL.

(2) These test levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations. The agency requesting the authorization to include other drugs shall submit to the Secretary in writing the agency's proposed confirmatory test methods, testing levels, and proposed performance test program.

(3) Specimens that test negative on confirmatory tests shall be reported negative. No further testing of these specimens for drugs is permitted and the specimens shall either be discarded or pooled for use in the laboratory's internal quality control program.

(g) *Reporting Results.* (1) The laboratory shall report test results to the agency's MRO within an average of 5 working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by a certifying scientist who satisfies the requirements described by the definition in section 1.2. The report shall identify the drugs/metabolites tested for, whether positive or negative, and the cutoff for each, the specimen number assigned by the agency, and the drug testing laboratory specimen identification number.

(2) Except as otherwise provided by this subsection, the laboratory shall report as negative all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug. For amphetamines, to report a specimen positive for methamphetamine only, the specimen must also contain amphetamine at a concentration equal to or greater than 200 ng/mL by the confirmatory test. If this criterion is not met, the specimen must be reported as negative for methamphetamine.

(3) The MRO may request from the laboratory and the laboratory shall provide quantitation of test results. The MRO may not disclose quantitation of test results to the agency but shall report only whether the test was positive or negative.

(4) The laboratory may transmit results to the MRO by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

(5) The laboratory shall send only to the MRO a certified copy of the original chain of custody form signed by a certifying scientist.

(6) The laboratory shall provide to the agency official responsible for coordination of the drug-free workplace program a monthly statistical summary of urinalysis testing of Federal employees and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that month. Normally this summary shall be forwarded by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary. The summary shall contain the following information:

Initial Testing:

(i) Number of specimens received;

(ii) Number of specimens reported out; and

(iii) Number of specimens screened positive for: Marijuana metabolites, Cocaine metabolites, Opiate metabolites, Phencyclidine, and Amphetamines.

Confirmatory Testing:

(i) Number of specimens received for confirmation;

(ii) Number of specimens confirmed positive for: Marijuana metabolite, Cocaine metabolite, Morphine, codeine, Phencyclidine, Amphetamine, and Methamphetamine. (7) The laboratory shall make available copies of all analytical results for Federal drug testing programs when requested by HHS or any Federal agency for which the laboratory is performing drug testing services.

(8) Unless otherwise instructed by the agency in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

(h) *Long-Term Storage.* Long-term frozen storage (−20 °C or less) ensures that positive urine specimens will be available for any necessary retest. Unless otherwise authorized in writing by the agency, drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens confirmed positive. Within this 1-year period an agency may request the laboratory to retain the specimen for an additional period of time. If no such request is received, the laboratory may discard the specimen after the end of 1 year, except that the laboratory shall be required to maintain any specimens under legal challenge for an indefinite period.

(i) *Retesting of a Specimen* (i.e., the reanalysis by gas chromatography/mass spectrometry of a specimen previously reported positive or the testing of Bottle B of a split specimen collection). Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.

(j) *Subcontracting.* Drug testing laboratories shall not subcontract and shall perform all work with their own personnel and equipment unless otherwise authorized by the agency. The laboratory must be capable of performing testing for the five classes of drugs (marijuana, cocaine, opiates, phencyclidine, and amphetamines) using the initial immunoassay and confirmatory GC/MS methods specified in these Guidelines.

(k) *Laboratory Facilities.* (1) Laboratory facilities shall comply with applicable provisions of any State licensure requirements.

(2) Laboratories certified in accordance with Subpart C of these Guidelines shall have the capability, at the same laboratory premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

(l) *Inspections.* The Secretary, any Federal agency utilizing the laboratory, or any organization performing laboratory certification on behalf of the Secretary may reserve the right to inspect the laboratory at any time. Agency contracts with laboratories for drug testing, as well as contracts for collection site services, shall permit the agency to conduct unannounced inspections. In addition, prior to the award of a contract the agency may carry out preaward inspections and evaluation of the procedural aspects of the laboratory's drug testing operation.

(m) *Documentation.* The drug testing laboratories shall maintain and make available for at least 2 years documentation of all aspects of the testing process. This 2-year period may be extended upon written notification by HHS or by any Federal agency for which laboratory services are being provided. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain of custody forms; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. The laboratory shall be required to maintain documents for any specimen under legal challenge for an indefinite period.

(n) *Additional Requirements for Certified Laboratories.*

(1) *Procedure Manual.* Each laboratory shall have a procedure manual which includes the principles of each test, preparation of reagents, standards and controls, calibration procedures, derivation of results, linearity of methods, sensitivity of the methods, cutoff values, mechanisms for reporting results, controls, criteria for unacceptable specimens and results, remedial actions to be taken when the test systems are outside of acceptable limits, reagents and expiration dates, and references. Copies of all procedures and dates on which they are in effect shall be maintained as part of the manual.

(2) *Calibrators and Controls.* Laboratory calibrators and controls shall be prepared using pure drug reference materials, stock standard solutions obtained from other laboratories, or standard solutions obtained from commercial manufacturers. The calibrators and controls shall be properly labeled as to content and concentration. The standards (e.g., pure reference materials, stock standard solutions, purchased standards) shall be labeled with the following dates: When received (if applicable); When prepared or opened; when placed in service; and expiration date.

(3) *Instruments and Equipment.* (i) Volumetric pipettes and measuring devices shall be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and dilutors shall be checked for accuracy and reproducibility before being placed in service and checked periodically thereafter.

(ii) There shall be written procedures for instrument set-up and normal operation, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks, and instructions for major troubleshooting and repair. Records shall be available on preventive maintenance.

(4) *Remedial Actions.* There shall be written procedures for the actions to be taken when systems are out of acceptable limits or errors are detected. There shall be documentation that these procedures are followed and that all necessary corrective actions are taken. There shall also be in place systems to verify all stages of testing and reporting and documentation that these procedures are followed.

(5) *Personnel Available to Testify at Proceedings.* A laboratory shall have qualified personnel available to testify in an administrative or disciplinary proceeding against a Federal employee when that proceeding is based on positive urinalysis results reported by the laboratory.

(6) *Restrictions.* The laboratory shall not enter into any relationship with an agency's MRO that may be construed as a potential conflict of interest or derive any financial benefit by having an agency use a specific MRO.

Section 2.5 Quality Assurance and Quality Control

(a) *General.* Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, certification of calibrators and controls, and validation of analytical procedures. Quality assurance procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the testing process.

(b) *Laboratory Quality Control Requirements for Initial Tests.* Each analytical run of specimens to be screened shall include:

(1) Sample(s) certified to contain no drug (i.e., negative urine samples);

(2) Positive control(s) fortified with drug or metabolite;

(3) At least one positive control with the drug or metabolite at or near the threshold (cutoff);

(4) A sufficient number of calibrators to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known calibrators, those values will be used to calculate sample data;

(5) A minimum of 10 percent of the total specimens and quality control samples in each analytical run shall be quality control samples; and

(6) One percent of each run, with a minimum of at least one sample, shall be the laboratory's blind quality control samples to appear as normal samples to the laboratory analysts.

Implementation of procedures to ensure that carryover does not contaminate the testing of an donor's specimen shall be documented.

(c) *Laboratory Quality Control Requirements for Confirmation Tests.* Each analytical run of specimens to be confirmed shall include:

(1) Sample(s) certified to contain no drug (i.e., negative urine samples);

(2) Positive calibrator(s) and control(s) fortified with drug or metabolite; and

(3) At least one positive control with the drug or metabolite at or near the threshold (cutoff).

The linearity and precision of the method shall be periodically documented. Implementation of procedures to ensure that carryover does not contaminate the testing of a donor's specimen shall also be documented.

(d) Agency Blind Sample Program.

(1) Agencies shall only purchase blind quality control materials that: (a) have been certified by immunoassay and GC/MS and (b) have stability data which verifies those materials' performance over time.

(2) During the initial 90-day period of any new drug testing program, each agency shall submit blind performance test samples to each laboratory it contracts with in the amount of at least 20 percent of the total number of specimens submitted (up to a maximum of 200 blind samples) and thereafter a minimum of 3 percent blind samples (up to a maximum of 100 blind samples) submitted per quarter.

(3) Approximately 80 percent of the blind quality control samples shall be negative (i.e., certified to contain no drug) and the remaining samples shall be positive for one or more drugs per sample in a distribution such that all the drugs to be tested are included in approximately equal frequencies of challenge. The positive samples shall be spiked only with those drugs for which the agency is testing.

(4) The agency shall investigate any unsatisfactory blind performance test sample results and submit its findings to the Secretary. The Secretary shall continue the investigation to ensure that the laboratory has corrected the cause of the unsatisfactory performance test result. A report of the Secretary's

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investigative findings and the corrective action taken by the laboratory shall be sent to the agency contracting officer. The Secretary shall ensure notification of the finding to all other Federal agencies for which the laboratory is engaged in urine drug testing and coordinate any necessary action.

(5) Should a false positive error occur on a blind performance test sample and the error is determined to be an administrative error (clerical, sample mixup, etc.), the Secretary shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future; and, if there is reason to believe the error could have been systematic, the Secretary may also require review and reanalysis of previously run specimens.

(6) Should a false positive error occur on a blind performance test sample and the error is determined to be a technical or methodological error, the laboratory shall submit all quality control data from the batch of specimens which included the false positive specimen. In addition, the laboratory shall retest all specimens analyzed positive for that drug or metabolite from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the Responsible Person. The Secretary may require an on-site review of the laboratory which may be conducted unannounced during any hours of operation of the laboratory. The Secretary has the option of revoking (section 3.13) or suspending (section 3.14) the laboratory's certification or recommending that no further action be taken if the case is one of less serious error in which corrective action has already been taken, thus reasonably assuring that the error will not occur again.

Section 2.6 Reporting and Review of Results

(a) *Medical Review Officer Shall Review Results.* An essential part of the drug testing program is the final review of results. A positive test result does not automatically identify an employee/applicant as an illegal drug user. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the MRO prior to the transmission of results to agency administrative officials.

(b) *Medical Review Officer—Qualifications and Responsibilities.* The MRO shall be a licensed physician with knowledge of substance abuse disorders. The MRO may be an employee of the agency or a contractor for the agency; however, the MRO shall not be an employee or agent of or have any financial interest in the laboratory for which the MRO is reviewing drug testing results. Additionally, the MRO shall not derive any financial benefit by having an agency use a specific drug testing laboratory or have any agreement with the laboratory that may be construed as a potential conflict of interest. The role of the MRO is to review and interpret positive test results obtained through the agency's testing program. In carrying out this responsibility, the MRO shall examine alternate medical explanations for any positive test result. This action could include conducting a medical interview with the donor, review of the donor's medical history, or review of any other relevant biomedical factors. The MRO shall review all medical records made available by the donor when a confirmed positive test could have resulted from legally prescribed medication. The MRO shall not, however, consider the results of urine specimens that are not obtained or processed in accordance with these Guidelines.

(c) *Positive Test Result.* Prior to making a final decision to verify a positive test result, the MRO shall give the donor an opportunity to discuss the test result with him or her. Following verification of a positive test result, the MRO shall report the result to the agency's official designated to receive results.

(d) *Verification for Opiates; Review for Prescription Medication.* Before the MRO verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence—in addition to the urine test—of illegal use of any opium, opiate, or opium derivative (e.g., morphine/codeine) listed in Schedule I or II of the Controlled Substances Act. This requirement does not apply if the confirmatory procedure for opiates confirms the presence of 6-monoacetylmorphine since the presence of this metabolite is proof of heroin use.

(e) *Reanalysis Authorized.* Should any question arise as to the accuracy or validity of a positive test result, only the MRO is authorized to order a retest of a single specimen or the Bottle A specimen from a split specimen collection. Such retests are authorized only at laboratories certified under these Guidelines.

(f) *Result Consistent With Legal Drug Use.* If the MRO determines there is a legitimate medical explanation for the positive test result, he or she shall take no further action and report the test result as negative.

(g) *Result Scientifically Insufficient.* Additionally, the MRO, based on review of inspection reports, quality control data, and other pertinent results, may determine that the result is scientifically insufficient for further action and declare the test specimen negative. In this situation the MRO may request a retest of the original specimen before making this decision. (The MRO may request that the retest be performed by the same laboratory or, as provided in section 2.6(e), that an aliquot of the original specimen be sent for a retest to an alternate laboratory which is certified in accordance with these Guidelines.) The laboratory shall assist in this review process as requested by the MRO by making available the individual responsible for day-to-day management of the urine drug testing laboratory or other employee who is a forensic toxicologist or who has equivalent forensic experience in urine drug testing, to provide specific consultation as required by the agency. The MRO shall report to the Secretary all negative findings based on scientific insufficiency but shall not include any personal identifying information in such reports.

(h) *Reporting Final Results.* The MRO shall report the final results of the drug tests in writing and in a manner designed to ensure confidentiality of the information.

Section 2.7 Protection of Employee Records

Consistent with 5 U.S.C. 522a(m) and 48 CFR 24.101–24.104, all laboratory contracts shall require that the contractor comply with the Privacy Act, 5 U.S.C. 522a. In addition, laboratory contracts shall require compliance with patient access and confidentiality provisions of section 503 of Public Law 100–71. The agency shall establish a Privacy Act System of Records or modify an existing system, or use any applicable Government-wide system of records to cover both the agency's and the laboratory's records of employee urinalysis results. The contract and the Privacy Act System of Records shall specifically require that employee records be maintained and used with the highest regard for employee privacy.

Section 2.8 Individual Access to Test and Laboratory Certification Results

In accordance with section 503 of Public Law 100–71, any Federal employee who is the subject of a drug test shall, upon written request, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings.

Subpart C—Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

Section 3.1 Introduction

Urine drug testing is a critical component of efforts to combat drug abuse in our society. Many laboratories are familiar with good laboratory practices but may be unfamiliar with the special procedures required when drug test results are used in the employment context. Accordingly, the following are minimum standards to certify laboratories engaged in urine drug testing for Federal agencies. Certification, even at the highest level, does not guarantee accuracy of each result reported by a laboratory conducting urine drug testing for Federal agencies. Therefore, results from laboratories certified under these Guidelines must be interpreted with a complete understanding of the total collection, analysis, and reporting process before a final conclusion is made.

Section 3.2 Goals and Objectives of Certification

(a) *Uses of Urine Drug Testing.* Urine drug testing is an important tool to identify drug users in a variety of settings. In the proper context, urine drug testing can be used to deter drug abuse in general. To be a useful tool, the testing procedure must be capable of detecting drugs or their metabolites at concentrations indicated in sections 2.4(e) and 2.4(f).

(b) *Need to Set Standards; Inspections.* Reliable discrimination between the presence, or absence, of specific drugs or their metabolites is critical, not only to achieve the goals of the testing program but to protect the rights of the Federal employees being tested. Thus, standards have been set which laboratories engaged in Federal employee urine drug testing must meet in order to achieve maximum accuracy of test results. These laboratories will be evaluated by the Secretary or the Secretary's designee as defined in section 1.2 in accordance with these Guidelines. The qualifying evaluation will involve three rounds of performance testing plus an on-site inspection. Maintenance of certification requires participation in a quarterly performance testing program plus periodic, on-site inspections. One inspection following successful completion of a performance testing regimen is required for initial certification. This must be followed by a second inspection within 3 months, after which biannual inspections will be required to maintain certification.

(c) *Urine Drug Testing Applies Analytical Forensic Toxicology.* The possible impact of a positive test result on an individual's livelihood or rights, together with the possibility of a legal challenge of the result, sets this type of test apart from most clinical laboratory testing. In fact, urine drug testing should be considered a special application of analytical forensic toxicology. That is, in addition to the application of appropriate analytical methodology, the specimen must be treated as evidence, and all aspects of the testing procedure must be documented and available for possible court testimony. Laboratories engaged in urine drug testing for Federal agencies will require the services and advice of a qualified forensic toxicologist, or individual with equivalent qualifications (both training and experience) to address the specific needs of the Federal drug testing program, including the demands of chain of custody of specimens, security, proper documentation of all records, storage of positive specimens for later or independent testing, presentation of evidence in court, and expert witness testimony.

Section 3.3 General Certification Requirements

A laboratory must meet all the pertinent provisions of these Guidelines in order to qualify for and maintain certification under these standards.

Section 3.4 Capability to Test for Five Classes of Drugs

To be certified, a laboratory must be capable of testing for at least the following five classes of drugs: marijuana, cocaine, opiates, amphetamines, and phencyclidine using the initial immunoassay and quantitative confirmatory GC/MS methods specified in these Guidelines. The certification program will be limited to the five classes of drugs (sections 2.1(a) (1) and (2)) and the methods (sections 2.4 (e) and (f)) specified in these Guidelines. The laboratory will be surveyed and performance tested only for these methods and drugs. Certification of a laboratory indicates that any test result reported by the laboratory for the Federal Government meets the standards in these Guidelines for the five classes of drugs using the methods specified. Certified laboratories must clearly inform all unregulated, private clients when their specimens are being tested using procedures that are different from those for which the laboratory is certified (i.e., testing specimens not under the Guidelines).

Section 3.5 Initial and Confirmatory Capability at Same Site

Certified laboratories shall have the capability, at the same laboratory site, of performing both initial immunoassays and confirmatory GC/MS tests (sections 2.4 (e) and (f)) for marijuana, cocaine, opiates, amphetamines, and phencyclidine and for any other drug or metabolite for which agency drug testing is authorized (sections 2.1(a) (1) and (2)). All positive initial test results shall be confirmed prior to reporting them.

Section 3.6 Personnel

Laboratory personnel shall meet the requirements specified in section 2.3 of these Guidelines. These Guidelines establish the exclusive standards for qualifying or certifying those laboratory personnel involved in urinalysis testing whose functions are prescribed by these Guidelines. A certification of a laboratory under these Guidelines shall be a determination that these qualification requirements have been met.

Section 3.7 Quality Assurance and Quality Control

Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process, including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality control procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs as specified in section 2.5 of these Guidelines.

Section 3.8 Security and Chain of Custody

Laboratories shall meet the security and chain of custody requirements provided in section 2.4(a).

Section 3.9 One-Year Storage for Confirmed Positives

All confirmed positive specimens shall be retained in accordance with the provisions of section 2.4(h) of these Guidelines.

Section 3.10 Documentation

The laboratory shall maintain and make available for at least 2 years documentation in accordance with the specifications in section 2.4(m).

Section 3.11 Reports

The laboratory shall report test results in accordance with the specifications in section 2.4(g).

Section 3.12 Certification

(a) *General.* The Secretary may certify any laboratory that meets the standards in these Guidelines to conduct urine drug testing. In addition, the Secretary may consider to be certified any laboratory that is certified by an HHS-recognized certification program in accordance with these Guidelines.

(b) *Criteria.* In determining whether to certify a laboratory or to accept the certification of an HHS-recognized certification program in accordance with these Guidelines, the Secretary shall consider the following criteria:

(1) The adequacy of the laboratory facilities;

(2) The expertise and experience of the laboratory personnel;

(3) The excellence of the laboratory's quality assurance/ quality control program;

(4) The performance of the laboratory on any performance tests;

(5) The laboratory's compliance with standards as reflected in any laboratory inspections; and

(6) Any other factors affecting the reliability and accuracy of drug tests and reporting done by the laboratory.

(c) *Corrective Action by Certified Laboratories.* A laboratory must meet all the pertinent provisions of these Guidelines in order to qualify for and maintain certification. The Secretary has broad discretion to take appropriate action to ensure the full reliability and accuracy of drug testing and reporting, to resolve problems related to drug testing, and to enforce all standards set forth in these Guidelines. The Secretary shall have the authority to issue directives to any laboratory suspending the use of certain analytical procedures when necessary to protect the integrity of the testing process; ordering any laboratory to undertake corrective actions to respond to material deficiencies identified by an inspection or through proficiency testing; ordering any laboratory to send aliquots of urine specimens to another laboratory for retesting when necessary to ensure the accuracy of testing under these Guidelines; ordering the review of results for specimens tested under the Guidelines for private sector clients to the extent necessary to ensure the full reliability of drug testing for Federal agencies; and ordering any other action necessary to address deficiencies in drug testing, analysis, specimen collection, chain of custody, reporting of results, or any other aspect of the certification program.

Section 3.13 Revocation

(a) *General.* The Secretary shall revoke certification of any laboratory certified under these provisions or accept revocation by an HHS-recognized certification program in accordance with these Guidelines if the Secretary determines that revocation is necessary to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results.

(b) *Factors to Consider.* The Secretary shall consider the following factors in determining whether revocation is necessary:

(1) Unsatisfactory performance in analyzing and reporting the results of drug tests; for example, a false positive error in reporting the results of an employee's drug test;

(2) Unsatisfactory participation in performance evaluations or laboratory inspections;

(3) A material violation of a certification standard or a contract term or other condition imposed on the laboratory by a Federal agency using the laboratory's services;

(4) Conviction for any criminal offense committed as an incident to operation of the laboratory; or

(5) Any other cause which materially affects the ability of the laboratory to ensure the full reliability and accuracy of drug tests and the accurate reporting of results.

(c) *Period and Terms.* The period and terms of revocation shall be determined by the Secretary and shall depend upon the facts and circumstances of the revocation and the need to ensure accurate and reliable drug testing of Federal employees.

Section 3.14 Suspension

(a) *Criteria.* Whenever the Secretary has reason to believe that revocation may be required and that immediate action is necessary in order to protect the interests of the United States and its employees, the Secretary may immediately suspend a laboratory's certification to conduct urine drug testing for Federal agencies. The Secretary may also accept suspension of certification by an HHS-recognized certification program in accordance with these Guidelines.

(b) *Period and Terms.* The period and terms of suspension shall be determined by the Secretary and shall depend upon the facts and circumstances of the suspension and the need to ensure accurate and reliable drug testing of Federal employees.

Section 3.15 Notice

(a) *Written Notice.* When a laboratory is suspended or the Secretary seeks to revoke certification, the Secretary shall immediately serve the laboratory with written notice of the suspension or proposed revocation by facsimile mail, personal service, or registered or certified mail, return receipt requested. This notice shall state the following:

(1) The reasons for the suspension or proposed revocation;

(2) The terms of the suspension or proposed revocation; and

(3) The period of suspension or proposed revocation.

(b) *Opportunity for Informal Review.* The written notice shall state that the laboratory will be afforded an opportunity for an informal review of the suspension or proposed revocation if it so requests in writing within 30 days of the date the laboratory received the notice, or if expedited review is requested, within 3 days of the date the laboratory received the notice. Subpart D contains detailed procedures to be followed for an informal review of the suspension or proposed revocation.

(c) *Effective Date.* A suspension shall be effective immediately. A proposed revocation shall be effective 30 days after written notice is given or, if review is requested, upon the reviewing official's decision to uphold the proposed revocation. If the reviewing official decides not to uphold the suspension or proposed revocation, the suspension shall terminate immediately and any proposed revocation shall not take effect.

(d) *HHS-Recognized Certification Program.* The Secretary's responsibility under this section may be carried out by an HHS-recognized certification program in accordance with these Guidelines.

(e) *Public Notice.* The Secretary will publish in the **Federal Register** the name, address, and telephone number of any laboratory that has its certification suspended or revoked under section 3.13 or section 3.14, respectively, and the name of any laboratory which has its suspension lifted. The Secretary shall provide to any member of the public upon request the written notice provided to a laboratory that has its certification suspended or revoked, as well as the reviewing official's written decision which upholds or denies the suspension or proposed revocation under the procedures of subpart D

Section 3.16 Recertification

Following revocation, a laboratory may apply for recertification. Unless otherwise provided by the Secretary in

the notice of revocation under section 3.13(a) or the reviewing official's decision under section 4.9(e) or 4.14(a), a laboratory which has had its certification revoked may apply for certification in accordance with this section. In order to be certified, the laboratory shall meet the criteria of section 3.12(b), as well as all other requirements of these Guidelines, including the successful participation in three cycles of performance testing (sections 3.17(b) and 3.19(a)) and a laboratory inspection (sections 3.2(b) and 3.20). Once certified, the laboratory must undergo a second inspection within three months, after which biannual inspections will be required to maintain certification (section 3.2(b)), as well as participation in the quarterly performance testing program (sections 3.1(b) and 3.17(c)).

Section 3.17 Performance Testing (PT) Requirement for Certification

(a) *An Initial and Continuing Requirement.* The PT program is a part of the initial evaluation of a laboratory seeking certification (both PT and laboratory inspection are required) and of the continuing assessment of laboratory performance necessary to maintain this certification.

(b) *Three Initial Cycles Required.* Successful participation in three cycles of testing shall be required before a laboratory is eligible to be considered for certification.

(c) *Four Challenges Per Year.* After certification, laboratories shall be challenged with at least 10 PT samples on a quarterly cycle.

(d) *Laboratory Procedures Identical for Performance Test and Routine Employee Specimens.* All procedures associated with the handling and testing of the PT samples by the laboratory shall to the greatest extent possible be carried out in a manner identical to that applied to routine laboratory specimens, unless otherwise specified.

(e) *Blind Performance Test.* Any certified laboratory shall be subject to blind PT samples (see section 2.5(d)). Performance on blind PT samples shall be at the same level as for the open or non-blind PT samples.

(f) *Reporting—Open Performance Test.* The laboratory shall report results of open PT samples to the certifying organization in the same manner as specified in section 2.4(g)(2) for routine specimens.

Section 3.18 Performance Test Samples Composition

(a) *Description of the Drugs.* PT samples shall contain those drugs and metabolites which each certified laboratory must be prepared to assay in concentration ranges that allow detection of the analytes by commonly used immunoassay screening techniques. These levels are generally in the range of concentrations which might be expected in the urine of recent drug users. For some drug analytes, the sample composition will consist of the parent drug as well as major metabolites. In some cases, more than one drug class may be included in one sample, but generally no more than two drugs will be present in any one sample in order to imitate the type of specimen which a laboratory normally encounters. For any particular PT cycle, the actual composition of kits going to different laboratories will vary but, within any annual period, all laboratories participating will have analyzed the same total set of samples.

(b) *Concentrations.* PT samples (as differentiated from blind quality control samples) shall be spiked with the drug classes and their metabolites that are required for certification (marijuana, cocaine, opiates, amphetamines, and phencyclidine) with concentration levels set by, but not limited to, one of the following schema: (1) At least 20 percent above the cutoff limit for either the initial assay or the confirmatory test, depending on which is to be evaluated; (2) below the cutoff limit as retest samples (for GC/MS quantitation); and, (3) below the cutoff limit for special purposes. Some PT samples may be identified for GC/MS assay only (retest samples). Blanks shall contain less than 2 ng/mL of any of the target drugs. These concentration and drug types may be changed periodically in response to factors such as changes in detection technology and patterns of drug use. Finally, PT samples may be constituted with interfering substances.

Section 3.19 Evaluation of Performance Testing

(a) *Initial Certification.* (1) An applicant laboratory shall not report any false positive result during PT for initial certification. Any false positive will automatically disqualify a laboratory from further consideration.

(2) An applicant laboratory shall maintain an overall grade level of 90 percent for the three cycles of PT required for initial certification, i.e., it must correctly identify and confirm 90 percent of the total drug challenges. Any laboratory which achieves a score on any one cycle of the initial certification such that it can no longer achieve a total grade of 90 percent over the three consecutive PT cycles will be immediately disqualified from further consideration.

(3) An applicant laboratory shall obtain quantitative values for at least 80 percent of the total drug challenges which are ±20 percent or ±2 standard deviations (whichever range is larger) of the calculated reference group mean. Failure to achieve 80 percent will result in disqualification.

(4) An applicant laboratory shall not obtain any quantitative values that differ by more than 50 percent from the calculated reference group mean. Any quantitative values that differ by more than 50 percent will result in disqualification.

(5) For any individual drug, an applicant laboratory shall successfully detect and quantitate in accordance with paragraphs (a)(2), (a)(3), and (a)(4) of this section at least 50 percent of the total drug challenges. Failure to successfully quantitate at least 50 percent of the challenges for any individual drug will result in disqualification.

(b) *Ongoing Testing of Certified Laboratories.* (1) *False Positives and Procedures for Dealing with Them.* No false drug identifications are acceptable for any drugs for which a laboratory offers service. Under some circumstances a false positive test may result in suspension or revocation of certification. The most serious false positives are by drug class, such as reporting THC in a blank specimen or reporting cocaine in a specimen known to contain only opiates. Misidentifications within a class (e.g., codeine for morphine) are also false positives which are unacceptable in an appropriately controlled laboratory, but they are clearly less serious errors than misidentification of a class. The following procedures shall be followed when dealing with a false positive:

(i) The agency detecting a false positive error shall immediately notify the laboratory and the Secretary of any such error.

(ii) The laboratory shall provide the Secretary with a written explanation of the reasons for the error within 5 working days. If required by paragraph (b)(1)(v) below, this explanation shall include the submission of all quality control data from the batch of specimens that included the false positive specimen.

(iii) The Secretary shall review the laboratory's explanation within 5 working days and decide what further action, if any, to take.

(iv) If the error is determined to be an administrative error (clerical, sample mixup, etc.), the Secretary may direct the laboratory to take corrective action to minimize the occurrence of the particular error in the future and, if

there is reason to believe the error could have been systematic, may require the laboratory to review and reanalyze previously run specimens.

(v) If the error is determined to be a technical or methodological error, the laboratory shall submit to the Secretary all quality control data from the batch of specimens which included the false positive specimen. In addition, the laboratory shall retest all specimens analyzed positive by the laboratory from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the laboratory's responsible person. Depending on the type of error which caused the false positive, this retesting may be limited to one analyte or may include any drugs a laboratory certified under these Guidelines must be prepared to assay. The laboratory shall immediately notify the agency if any result on a specimen that has been retested must be corrected because the criteria for a positive are not satisfied. The Secretary may suspend or revoke the laboratory's certification for all drugs or for only the drug or drug class in which the error occurred. However, if the case is one of a less serious error for which effective corrections have already been made, thus reasonably assuring that the error will not occur again, the Secretary may decide to take no further action.

(vi) During the time required to resolve the error, the laboratory shall remain certified but shall have a designation indicating that a false positive result is pending resolution. If the Secretary determines that the laboratory's certification must be suspended or revoked, the laboratory's official status will become "Suspended" or "Revoked" until the suspension or revocation is lifted or any recertification process is complete.

(2) *Requirement to Identify and Confirm 90 Percent of Total Drug Challenges.* In order to remain certified, laboratories must successfully complete four cycles of PT per year. Failure of a certified laboratory to maintain a grade of 90 percent over the span of two consecutive PT cycles, i.e., to identify 90 percent of the total drug challenges and to correctly confirm 90 percent of the total drug challenges, may result in suspension or revocation of certification.

(3) *Requirement to Quantitate 80 Percent of Total Drug Challenges at ±20 Percent or ±2 Standard Deviations.* Quantitative values obtained by a certified laboratory for at least 80 percent of the total drug challenges must be ±20 percent or ±2 standard deviations (whichever range is larger) of the appropriate reference or peer group mean as measured over two consecutive PT cycles.

(4) *Requirement to Quantitate Within 50 Percent of Calculated Reference Group Mean.* After achieving certification a laboratory is permitted one quantitative result differing by more than 50% from the target value within two consecutive cycles of PT. More than one error of this type within two consecutive PT cycles may result in a suspension or proposed revocation.

(5) *Requirement to Successfully Detect and Quantitate 50 Percent of the Total Drug Challenges for Any Individual Drug.* For any individual drug, a certified laboratory must successfully detect and quantitate in accordance with paragraphs (b)(2),(b)(3), and (b)(4) of this section at least 50 percent of the total drug challenges.

(6) *Procedures When Requirements in Paragraphs (b)(2)—(b)(5) of this Section Are Not Met.* If a certified laboratory fails to maintain a grade of 90 percent over the span of two consecutive PT cycles after initial certification as required by paragraph (b)(2) of this section or if it fails to successfully quantitate results as required by paragraphs (b)(3),(b)(4), or (b)(5) of this section, the laboratory shall be immediately informed that its performance fell under the 90 percent level or that it failed to quantitate test results successfully and how it failed to quantitate successfully. The laboratory shall be allowed 5 working days in which to provide any explanation for its unsuccessful performance, including administrative error or methodological error, and evidence that the source of the poor performance has been corrected. The Secretary may revoke or suspend the laboratory's certification or take no further action, depending on the seriousness of the errors and whether there is evidence that the source of the poor performance has been corrected and that current performance meets the requirements for a certified laboratory under these Guidelines. The Secretary may require that additional performance tests be carried out to determine whether the source of the poor performance has been removed. If the Secretary determines to suspend or revoke the laboratory's certification, the laboratory's official status will become "Suspended" or "Revoked" until the suspension or revocation is lifted or until any recertification process is complete.

(c) *80 Percent of Participating Laboratories Must Detect Drug.* A laboratory's performance shall be evaluated for all samples for which drugs were spiked at concentrations above the specified performance test level unless the overall response from participating laboratories indicates that less than 80 percent of them were able to detect a drug.

(d) *Participation Required.* Failure to participate in a PT cycle or to participate satisfactorily may result in suspension or revocation of certification.

Section 3.20 Inspections

(a) *Frequency.* Prior to laboratory certification under these Guidelines and at least twice a year after certification, a team of three qualified inspectors, at least two of whom have been trained as laboratory inspectors, shall conduct an on-site inspection of laboratory premises. Inspections shall document the overall quality of the laboratory setting for the purposes of certification to conduct urine drug testing. Inspection reports may also contain recommendations to the laboratory to correct deficiencies noted during the inspection.

(b) *Inspectors.* The Secretary shall establish criteria for the selection of inspectors to ensure high quality, unbiased, and thorough inspections. The inspectors shall perform inspections consistent with the guidance provided by the Secretary. Inspectors shall document the overall quality of the laboratory's drug testing operation.

(c) *Inspection Performance.* The laboratory's operation shall be consistent with good forensic laboratory practice and shall be in compliance with these Guidelines. It is the laboratory's responsibility to correct deficiencies identified during the inspection and to have the knowledge, skill, and expertise to correct deficiencies consistent with good forensic laboratory practice. Consistent with sections 3.13 and 3.14, deficiencies identified at inspections may be the basis for suspending or revoking a laboratory's certification.

Section 3.21 Results of Inadequate Performance

Failure of a laboratory to comply with any aspect of these Guidelines may lead to revocation or suspension of certification as provided in sections 3.13 and 3.14 of these Guidelines.

Section 3.22 Listing of Certified Laboratories

A **Federal Register** listing of laboratories certified by HHS will be updated and published periodically. Laboratories which are in the applicant stage of HHS certification are *not* to be considered as meeting the minimum requirements in these Guidelines. A laboratory is not certified until HHS has sent the laboratory an HHS letter of certification.

Subpart D—Procedures for Review of Suspension or Proposed Revocation of a Certified Laboratory

Section 4.1 Applicability

These procedures apply when:

(a) The Secretary has notified a laboratory in writing that its certification to perform urine drug testing under these Mandatory Guidelines for Federal Workplace Drug Testing Programs has been suspended or that the Secretary proposes to revoke such certification.

(b) The laboratory has, within 30 days of the date of such notification or within 3 days of the date of such notification when seeking an expedited review of a suspension, requested in writing an opportunity for an informal review of the suspension or proposed revocation.

Section 4.2 Definitions

Appellant: Means the laboratory which has been notified of its suspension or proposed revocation of its certification to perform urine drug testing and has requested an informal review thereof.

Respondent: Means the person or persons designated by the Secretary in implementing these Guidelines (currently the National Laboratory Certification Program is located in the Division of Workplace Programs, Substance Abuse and Mental Health Services Administration).

Reviewing Official: Means the person or persons designated by the Secretary who will review the suspension or proposed revocation. The reviewing official may be assisted by one or more of his or her employees or consultants in assessing and weighing the scientific and technical evidence and other information submitted by the appellant and respondent on the reasons for the suspension and proposed revocation.

Section 4.3 Limitation on Issues Subject to Review

The scope of review shall be limited to the facts relevant to any suspension or proposed revocation, the necessary interpretations of those facts, the Mandatory Guidelines for Federal Workplace Drug Testing Programs, and other relevant law. The legal validity of the Mandatory Guidelines shall not be subject to review under these procedures.

Section 4.4 Specifying Who Represents the Parties

The appellant's request for review shall specify the name, address, and phone number of the appellant's representative. In its first written submission to the reviewing official, the respondent shall specify the name, address, and phone number of the respondent's representative.

Section 4.5 The Request for Informal Review and the Reviewing Official's Response

(a) Within 30 days of the date of the notice of the suspension or proposed revocation, the appellant must submit a written request to the reviewing official seeking review, unless some other time period is agreed to by the parties. A copy must also be sent to the respondent. The request for review must include a copy of the notice of suspension or proposed revocation, a brief statement of why the decision to suspend or propose revocation is wrong, and the appellant's request for an oral presentation, if desired.

(b) Within 5 days after receiving the request for review, the reviewing official will send an acknowledgment and advise the appellant of the next steps. The reviewing official will also send a copy of the acknowledgment to the respondent.

Section 4.6 Abeyance Agreement

Upon mutual agreement of the parties to hold these procedures in abeyance, the reviewing official will stay these procedures for a reasonable time while the laboratory attempts to regain compliance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs or the parties otherwise attempt to settle the dispute. As part of an abeyance agreement, the parties can agree to extend the time period for requesting review of the suspension or proposed revocation. If abeyance begins after a request for review has been filed, the appellant shall notify the reviewing official at the end of the abeyance period advising whether the dispute has been resolved. If the dispute has been resolved, the request for review will be dismissed. If the dispute has not been resolved, the review procedures will begin at the point at which they were interrupted by the abeyance agreement with such modifications to the procedures as the reviewing official deems appropriate.

Section 4.7 Preparation of the Review File and Written Argument

The appellant and the respondent each participate in developing the file for the reviewing official and in submitting written arguments. The procedures for development of the review file and submission of written argument are:

(a) *Appellant's Documents and Brief.* Within 15 days after receiving the acknowledgment of the request for review, the appellant shall submit to the reviewing official the following (with a copy to the respondent):

(1) A review file containing the documents supporting appellant's argument, tabbed and organized chronologically, and accompanied by an index identifying each document. Only essential documents should be submitted to the reviewing official.

(2) A written statement, not to exceed 20 double-spaced pages, explaining why respondent's decision to suspend or propose revocation of appellant's certification is wrong (appellant's brief).

(b) *Respondent's Documents and Brief.* Within 15 days after receiving a copy of the acknowledgment of the request for review, the respondent shall submit to the reviewing official the following (with a copy to the appellant):

(1) A review file containing documents supporting respondent's decision to suspend or revoke appellant's certification to perform urine drug testing, tabbed and organized chronologically, and accompanied by an index identifying each document. Only essential documents should be submitted to the reviewing official.

(2) A written statement, not exceeding 20 double-spaced pages in length, explaining the basis for suspension or proposed revocation (respondent's brief).

(c) *Reply Briefs.* Within 5 days after receiving the opposing party's submission, or 20 days after receiving acknowledgment of the request for review, whichever is later, each party may submit a short reply not to exceed 10 double-spaced pages.

(d) *Cooperative Efforts.* Whenever feasible, the parties should attempt to develop a joint review file.

(e) *Excessive Documentation.* The reviewing official may take any appropriate step to reduce excessive documentation, including the return of or refusal to consider documentation found to be irrelevant, redundant, or unnecessary.

Section 4.8 Opportunity for Oral Presentation

(a) *Electing Oral Presentation.* If an opportunity for an oral presentation is desired, the appellant shall request it at the time it submits its written request for review to the reviewing official. The reviewing official will grant the request if the official determines that the

decision-making process will be substantially aided by oral presentations and arguments. The reviewing official may also provide for an oral presentation at the official's own initiative or at the request of the respondent.

(b) *Presiding Official.* The reviewing official or designee will be the presiding official responsible for conducting the oral presentation.

(c) *Preliminary Conference.* The presiding official may hold a prehearing conference (usually a telephone conference call) to consider any of the following: simplifying and clarifying issues; stipulations and admissions; limitations on evidence and witnesses that will be presented at the hearing; time allotted for each witness and the hearing altogether; scheduling the hearing; and any other matter that will assist in the review process. Normally, this conference will be conducted informally and off the record; however, the presiding official may, at his or her discretion, produce a written document summarizing the conference or transcribe the conference, either of which will be made a part of the record.

(d) *Time and Place of Oral Presentation.* The presiding official will attempt to schedule the oral presentation within 30 days of the date appellant's request for review is received or within 10 days of submission of the last reply brief, whichever is later. The oral presentation will be held at a time and place determined by the presiding official following consultation with the parties.

(e) *Conduct of the Oral Presentation.*

(1) *General.* The presiding official is responsible for conducting the oral presentation. The presiding official may be assisted by one or more of his or her employees or consultants in conducting the oral presentation and reviewing the evidence. While the oral presentation will be kept as informal as possible, the presiding official may take all necessary steps to ensure an orderly proceeding.

(2) *Burden of Proof/Standard of Proof.* In all cases, the respondent bears the burden of proving by a preponderance of the evidence that its decision to suspend or propose revocation is appropriate. The appellant, however, has a responsibility to respond to the respondent's allegations with evidence and argument to show that the respondent is wrong.

(3) *Admission of Evidence.* The rules of evidence do not apply and the presiding official will generally admit all testimonial evidence unless it is clearly irrelevant, immaterial, or unduly repetitious. Each party may make an opening and closing statement, may present witnesses as agreed upon in the prehearing conference or otherwise, and may question the opposing party's witnesses. Since the parties have ample opportunity to prepare the review file, a party may introduce additional documentation during the oral presentation only with the permission of the presiding official. The presiding official may question witnesses directly and take such other steps necessary to ensure an effective and efficient consideration of the evidence, including setting time limitations on direct and cross-examinations.

(4) *Motions.* The presiding official may rule on motions including, for example, motions to exclude or strike redundant or immaterial evidence, motions to dismiss the case for insufficient evidence, or motions for summary judgment. Except for those made during the hearing, all motions and opposition to motions, including argument, must be in writing and be no more than 10 double-spaced pages in length. The presiding official will set a reasonable time for the party opposing the motion to reply.

(5) *Transcripts.* The presiding official shall have the oral presentation transcribed and the transcript shall be made a part of the record. Either party may request a copy of the transcript and the requesting party shall be responsible for paying for its copy of the transcript.

(f) *Obstruction of Justice or Making of False Statements.* Obstruction of justice or the making of false statements by a witness or any other person may be the basis for a criminal prosecution under 18 U.S.C. 1505 or 1001.

(g) *Post-hearing Procedures.* At his or her discretion, the presiding official may require or permit the parties to submit post-hearing briefs or proposed findings and conclusions. Each party may submit comments on any major prejudicial errors in the transcript.

Section 4.9 Expedited Procedures for Review of Immediate Suspension

(a) *Applicability.* When the Secretary notifies a laboratory in writing that its certification to perform urine drug testing has been immediately suspended, the appellant may request an expedited review of the suspension and any proposed revocation. The appellant must submit this request in writing to the reviewing official within 3 days of the date the laboratory received notice of the suspension. The request for review must include a copy of the suspension and any proposed revocation, a brief statement of why the decision to suspend and propose revocation is wrong, and the appellant's request for an oral presentation, if desired. A copy of the request for review must also be sent to the respondent.

(b) *Reviewing Official's Response.* As soon as practicable after the request for review is received, the reviewing official will send an acknowledgment with a copy to the respondent.

(c) *Review File and Briefs.* Within 7 days of the date the request for review is received, but no later than 2 days before an oral presentation, each party shall submit to the reviewing official the following: (1) a review file containing essential documents relevant to the review, tabbed, indexed, and organized chronologically, and (2) a written statement, not to exceed 20 double-spaced pages, explaining the party's position concerning the suspension and any proposed revocation. No reply brief is permitted.

(d) *Oral Presentation.* If an oral presentation is requested by the appellant or otherwise granted by the reviewing official, the presiding official will attempt to schedule the oral presentation within 7–10 days of the date of appellant's request for review at a time and place determined by the presiding official following consultation with the parties. The presiding official may hold a pre-hearing conference in accordance with section 4.8(c) and will conduct the oral presentation in accordance with the procedures of sections 4.8 (e), (f), and (g).

(e) *Written Decision.* The reviewing official shall issue a written decision upholding or denying the suspension or proposed revocation and will attempt to issue the decision within 7–10 days of the date of the oral presentation or within 3 days of the date on which the transcript is received or the date of the last submission by either party, whichever is later. All other provisions set forth in section 4.14 will apply.

(f) *Transmission of Written Communications.* Because of the importance of timeliness for these expedited procedures, all written communications between the parties and between either party and the reviewing official shall be by facsimile or overnight mail.

Section 4.10 Ex parte Communications

Except for routine administrative and procedural matters, a party shall not communicate with the reviewing or presiding official without notice to the other party.

Section 4.11 Transmission of Written Communications by Reviewing Official and Calculation of Deadlines

(a) Because of the importance of a timely review, the reviewing official should normally transmit written communications to either party by facsimile or overnight mail in which case the date of transmission or day following mailing will be considered the date of receipt. In the case of communications sent by regular mail, the date of receipt will be considered 3 days after the date of mailing.

(b) In counting days, include Saturdays, Sundays, and holidays. However, if a due date falls on a Saturday, Sunday, or Federal holiday, then the due date is the next Federal working day.

Section 4.12 Authority and Responsibilities of Reviewing Official

In addition to any other authority specified in these procedures, the reviewing official and the presiding official, with respect to those authorities involving the oral presentation, shall have the authority to issue orders: examine witnesses; take all steps necessary for the conduct of an orderly hearing; rule on requests and motions; grant extensions of time for good reasons; dismiss for failure to meet deadlines or other requirements; order the parties to submit relevant information or witnesses; remand a case for further action by the respondent; waive or modify these procedures in a specific case, usually with notice to the parties; reconsider a decision of the reviewing official where a party promptly alleges a clear error of fact or law; and to take any other action necessary to resolve disputes in accordance with the objectives of these procedures.

Section 4.13 Administrative Record

The administrative record of review consists of the review file; other submissions by the parties; transcripts or other records of any meetings, conference calls, or oral presentation; evidence submitted at the oral presentation; and orders and other documents issued by the reviewing and presiding officials.

Section 4.14 Written Decision

(a) *Issuance of Decision.* The reviewing official shall issue a written decision upholding or denying the suspension or proposed revocation. The decision will set forth the reasons for the decision and describe the basis therefor in the record. Furthermore, the reviewing official may remand the matter to the respondent for such further action as the reviewing official deems appropriate.

(b) *Date of Decision.* The reviewing official will attempt to issue his or her decision within 15 days of the date of the oral presentation, the date on which the transcript is received, or the date of the last submission by either party, whichever is later. If there is no oral presentation, the decision will normally be issued within 15 days of the date of receipt of the last reply brief. Once issued, the reviewing official will immediately communicate the decision to each party.

(c) *Public Notice.* If the suspension and proposed revocation are upheld, the revocation will become effective immediately and the public will be notified by publication of a notice in the **Federal Register**. If the suspension and proposed revocation are denied, the revocation will not take effect and the suspension will be lifted immediately. Public notice will be given by publication in the **Federal Register**.

Section 4.15 Court Review of Final Administrative Action; Exhaustion of Administrative Remedies

Before any legal action is filed in court challenging the suspension or proposed revocation, respondent shall exhaust administrative remedies provided under this subpart, unless otherwise provided by Federal Law. The reviewing official's decision, under section 4.9(e) or 4.14(a), constitutes final agency action and is ripe for judicial review as of the date of the decision.

[FR Doc. 94–13940 Filed 6–8–94; 8:45 am]

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Federal Register

Thursday
June 9, 1994

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 189

Use of Federal Aviation Administration Communications Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 189

[Docket No. 27778; Notice No. 94–17]

RIN 2120–AE68

Use of Federal Aviation Administration Communications Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to modify part 189 of the Federal Aviation Regulations (FAR) to remove outdated fee provisions and services designated in the rule. Due to enhanced commercial communications the FAA has determined that the need to accept (and charge fees for) messages that address such topics as lost baggage, hotel reservations, crew assignments, and other commercial matters (Class B messages) no longer exists. The proposed change is only intended to remove the outdated fee provisions and services related to Class B messages; it is not intended to affect the FAA's transmission of messages relating to flight safety, flight plans, and weather (Class A messages) to alter the current practice of relaying messages received from an FAA FSS outside of the 48 contiguous States and the District of Columbia, or received from a foreign station of the Aeronautical Fixed Telecommunications Network (AFTN).

DATES: Comments must be received on or before September 7, 1994.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27778, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27778. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ellen E. Crum, Air Traffic Rules Branch, ATP–230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the specified closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27778." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The predecessor of part 189, part 612—Aeronautical Fixed Communications, published in the August 25, 1950, *Federal Register*, became effective on September 1, 1950. It specified that airlines could send certain messages over specific Government circuits. The specific circuits were established between several Pacific Islands. The United States government made this communications network available, at the users expense, to transmit Class B messages since there were few other communication systems established. Subsequent amendments to part 612 accomplished the following: (1) Expanded the service to any station serviced by the integrated international aeronautical network (now AFTN); (2) defined the specific messages that would be accepted free of charge and those for which fees would be charged, (3) established the priority given to two categories of messages; and (4) limited the Government's liability in the handling of all messages accepted under these provisions.

Concurrent with the evolution of the above provisions, similar International Civil Aviation Organization (ICAO) procedures were developed. Beginning in 1951, ICAO procedures were implemented whereby each country would: (1) accept, free of charge, messages that were meant for "* * * ensuring safety of air navigation and regularity of air traffic between aeronautical fixed stations of the different States * * *;" (2) accept other messages that did not fall in the above category provided there was an "* * * absence of rapid commercial telecommunications * * *;" and (3) determine the acceptability of messages.

Communication systems and the air traffic control system have improved greatly in the last several decades. Consequently, users have elected to transmit Class B messages through communications systems other than the FAA's.

In the past, the FAA has considered the need for, and removal of, part 189 of the FAR. In 1981, all FAA Regional offices were queried regarding what operational effect, if any, the complete removal of part 189 would have. At that time, only the Alaska region objected to this action. The Anchorage International Flight Service Station (IFSS) handled a high volume of Class B messages, and the Region felt strongly that complete removal of part 189 would preclude them from continuing this service. In 1992, the Regions were again queried regarding their positions with respect to the proposed amendment to part 189. All of the Regions concurred with this proposal. Since the IFSS in Anchorage, Alaska was decommissioned in 1984, aircraft that had previously utilized its communications services are not using a private communications company; therefore, the prior concerns of the Alaska Region are no longer relevant.

Current Requirements

Part 189 stipulates that domestic FSS's may accept for transmission only messages related to distress and distress traffic, safety of human life, flight safety

(including air traffic control messages), weather, aeronautical administration, and Notices to Airmen (NOTAM's) (Class A messages). The acceptance and transmission of these messages is completed without charge. The FAA is not proposing to change this service.

In addition to accepting Class A messages, IFSS's, and those FSS's located outside the 48 contiguous States and the District of Columbia, may accept messages originated by and addressed to aircraft operating agencies, or their representatives, that directly bear on the efficient and economic conduct of day to day operations. These messages (Class B messages) include such things as new or revised passenger or cargo rates and train or hotel reservations. This service is provided for a fee of 25 cents for each group of 10 words. FSS acceptance of these messages is based on the absence of adequate non-USA communication facilities.

In recent years additional means of communication have been developed, including satellites, computer networks, and cellular telephones. Therefore, the need to use the FAA AFTN system for the transmission of Class B messages has been greatly reduced. In January, 1988, a new communication network called National Airspace Data Interchange Network (NADIN) was commissioned in the United States. The capability to segregate Class B messages, which required payment from the user, was intentionally omitted from the system because the need for such a capability is negligible. However, part 189 was not amended when NADIN was commissioned; consequently it is outdated because it still contains provisions for the collection of fees for the transmission of Class B messages

Annex 10, an International Civil Aviation Organization (ICAO) document, provides guidance to FSS's for handling the operational aspects of international aeronautical telecommunications. The FAA relays Class A or B messages that were originally accepted for transmission at an FAA FSS outside of the 48 contiguous States and the District of Columbia that were received from a foreign station of the AFTN, and that in normal routing would require transit of the 48 contiguous States or the District of Columbia in order to reach an overseas address.

The Proposal

Elimination of Acceptance for Transmission of Class B Messages

Currently, only FAA IFSS's or FSS's located outside the 48 contiguous States and the District of Columbia may accept for transmission Class B messages when adequate commercial communication systems are not available. These facilities have not received any requests to accept Class B messages for transmission in over 5 years.

Communication systems technology has improved and expanded to include private data networks, private line services, telegrams, satellite communications, and cellular telephones. Therefore, the need to use FAA communications systems for transmission of Class B messages has diminished. This proposal will not restrict or deny users from utilizing the FAA communications systems for relay of Class B messages when other adequate communications systems are not available. Additionally, this proposal will align the regulations with current practices by eliminating the authority of FSS's to accept for transmission Class B messages without adversely affecting the users.

Elimination of Charges for Class B Messages

The current rule requires that fees be charged when Class B messages are accepted for transmission over FAA communication systems. However, current communication systems cannot segregate those kinds of messages that require a charge for transmission. In fact, over the last 5 years, there are no records of fees having been collected for transmission of Class B messages, nor does the FAA propose to resume this practice. This proposed change will remove from the regulation all references to the collection of fees and align the regulation with current practices.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization Standards and Recommended Practices (SARP) to the maximum extent practicable. For this notice, the FAA has reviewed the SARP of Annex 10. The FAA has determined that this proposal, if adopted, would not present any differences.

Economic Summary

This proposed rule would be neither a significant proposed regulatory action under Executive Order 12866 nor a significant proposed rule under the Department of Transportation Regulatory Policies and Procedures. The FAA does not expect the proposal to impose a significant cost on society (aviation industry, public, or government). The NPRM would not cause any diminution of safety.

The proposed amendment would delete rule language that allows the transfer of certain data. This data includes messages addressing topics such as: lost baggage, hotel reservations, and crew assignments on international or overseas flights (Class B data). At present, only IFSS's and FSS's located outside the 48 contiguous States and the District of Columbia have the authority and capability to accept such information for transmission. In practice, the FAA has not received requests for this service for several years

The FAA queried FSS's to determine the consequences of this action. The responses indicated that this action would not affect any air carrier operator Adequate private communications facilities are available to transmit Class B data and, in the past few years, international and overseas carriers have not chosen to avail themselves of the FAA service. However, the FAA recognizes a remote possibility that a future potential user of this service would not have the chance to do so.

The FAA does not expect the proposal to impose a significant cost, but requests comment and information on the potential use of this service and on any impact of eliminating the acceptance for transmission of Class B messages.

International Trade Impact Analysis

This proposed rule would have no effect on the sale of foreign products or services in the United States. The rule also does not affect the sale of United States products or services in foreign countries. Hence, all foreign and domestic trade would be equally unaffected by this proposed rule

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that government regulations do not needlessly and disproportionately burden small businesses. The RFA requires the FAA to review each rule that may have "a significant economic impact on a substantial number of small entities."

The proposed amendment deletes rule language that allows the transfer of certain data because users have not requested this service for several years. Hence, the proposal would not impose a significant cost on a substantial number of small entities.

Federalism Implications

The regulations proposed herein will not have substantial effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Conclusion

For the reasons discussed in the preamble, the FAA has determined that this proposed regulation is not a significant regulatory action under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations.

List of Subjects in 14 CFR Part 189

Air transportation, Telecommunications.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 189 of the Federal Aviation Regulation (14 CFR part 189) as follows:

PART 189—USE OF FEDERAL AVIATION ADMINISTRATION COMMUNICATIONS SYSTEM

1. The authority citation for part 189 continues to read as follows:

Authority: Secs. 301(c), 305, 307(b), 313(a), and 314, 72 Stat. 744; 49 U.S.C. 1341(c), 1346, 1348(b), 1354(a), and 1355, and sec. 501, 65 Stat. 290; 31 U.S.C. 483a.

2. Section 189.1 is revised to read as follows:

§ 189.1 Scope.

This part describes the kinds of messages that may be transmitted or relayed by FAA Flight Service Stations.

3. Section 189.3 is amended by removing paragraph (b); revising this section heading and the introductory text of paragraph (a); adding a new paragraph (b) introductory text; redesignating paragraphs (a)(7) and (a)(8) as new paragraphs (b)(1) and (b)(2) respectively; and in newly designated (b)(2)(i), by revising the reference "(a)(7)" to "(b)(1)". The changes read as follows:

§ 189.3 Kinds of messages accepted or relayed.

(a) Flight Service Stations may accept for transmission over FAA communication systems any messages concerning international or overseas aircraft operations described in paragraphs (a)(1) through (6) of this section. In addition, Flight Service Stations may relay any message described in this section that was originally accepted for transmission at an FAA Flight Service Station outside the 48 contiguous States, or was received from a foreign station of the Aeronautical Fixed Telecommunications Network that, in normal routing, would require transit of the United States to reach an overseas address.

* * * * *

(b) The following messages may only be relayed through the FAA communications systems:

* * * * *

4. Section 189.5 is revised to read as follows:

§ 189.5 Limitation of liability.

The United States is not liable for any omission, error, or delay in transmitting or relaying, or for any failure to transmit or relay, any message accepted for transmission or relayed under this part, even if the omission, error, delay, or failure to transmit or relay is caused by the negligence of an employee of the United States.

§ 189.7 [Removed]

5. Section 189.7 is removed in its entirety.

Issued in Washington, DC, on June 1, 1994.

Harold W. Becker,

Manager, Airspace Rules & Aero. Information Division.

[FR Doc. 94–13912 Filed 6–8–94; 8:45 am]

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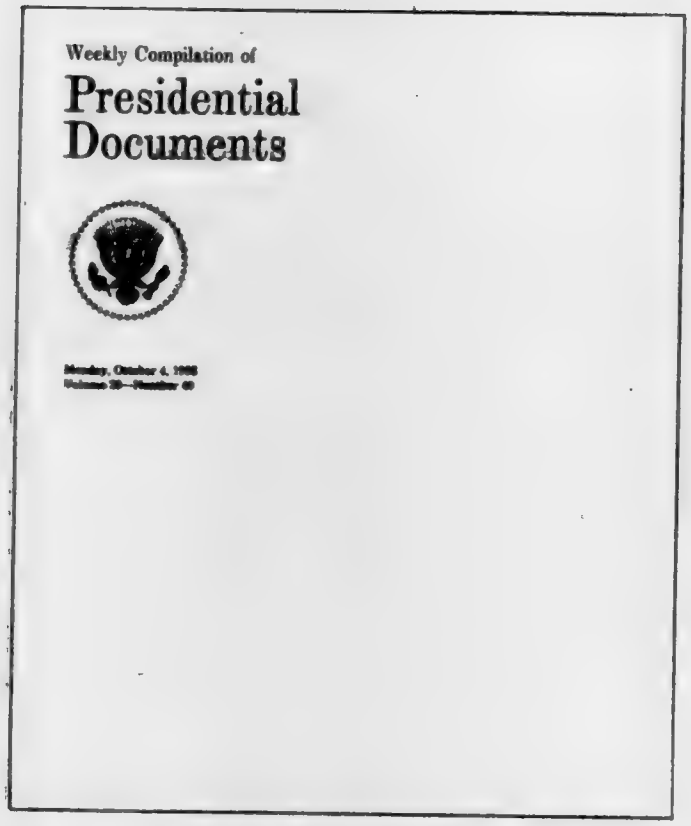
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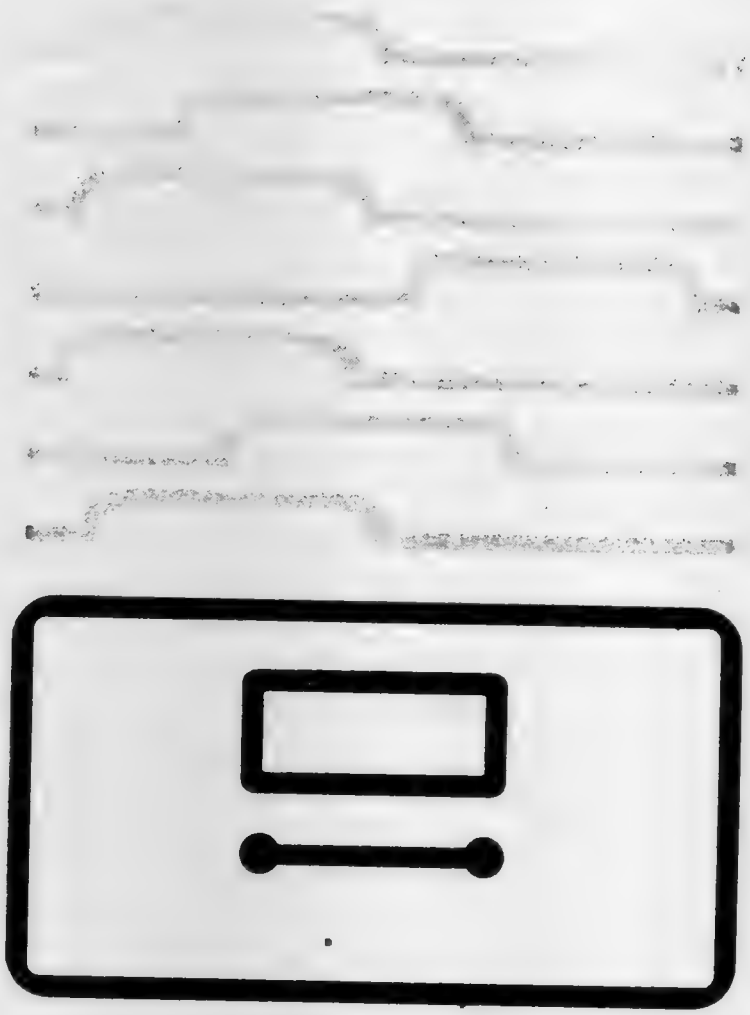
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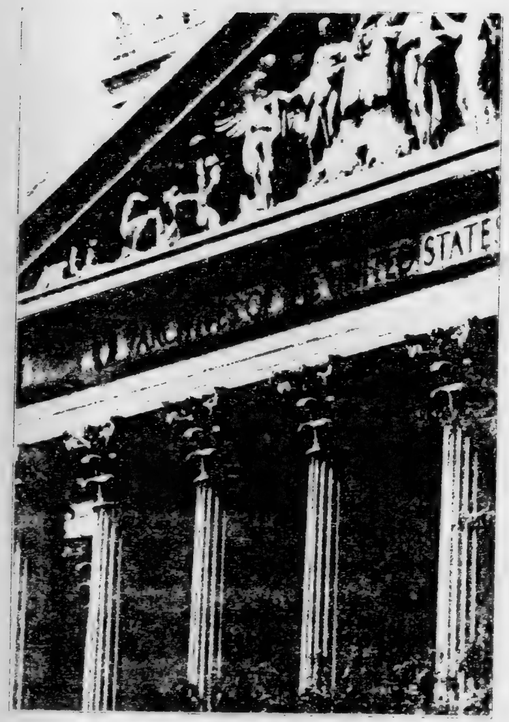
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Vol. 59, No. 111
Friday, June 10, 1994

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ANE–21]

Alteration of VOR Federal Airway V–229; CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Federal Airway V–229 located in Connecticut. This action is necessary to accommodate airspace users, reduce air traffic control (ATC) coordination and improve operations. The description for V–229 is also being changed to eliminate the exclusionary language regarding R–5002A, R–5002E, V–139 and V–308. In addition, this action will correct an inadvertent error in the airway description that reversed the Hartford true and magnetic radials.

EFFECTIVE DATE: 0901 u.t.c., August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On November 1, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify V–229 between the Hartford, CT, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility and the Gardner, MA, VORTAC. It also proposed to eliminate the exclusionary language regarding R–5002A, R–5002E, V–139 and V–308 (58 FR 58312). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and the correction to the Hartford 040° radial, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies V–229 between the Hartford, CT, VORTAC and the Gardner, MA, VORTAC. Realigning the airway will accommodate the airspace users, reduce ATC coordination, and improve operations.

The airspace designation for V–229 presently excludes R–5002A, R–5002E, V–139 and V–308. These exclusions are being removed because the airspace boundaries of the restricted areas and the airways do not overlap the airspace of V–229. In addition, the Hartford true and magnetic radials used to define an intersection on V–229 were reversed. This action corrects the description to read "INT Hartford 040°T(053°M)."

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–229 [Revised]

From Patuxent, MD; INT Patuxent 036° and Atlantic City, NJ, 236° radials; Atlantic City; INT Atlantic City 055° and Colts Neck, NJ, 181° radials; INT Colts Neck 181° and Kennedy, NY, 209° radials; Kennedy; INT Kennedy 053° and Bridgeport, CT, 200° radials; Bridgeport; Hartford, CT; INT Hartford 040° and Gardner, MA, 195° radials; Gardner; Keene, NH; INT Keene 336° and Burlington, VT, 160° radials; to Burlington. The airspace within R–5002B is excluded during times of use. The airspace below 2,000 feet MSL outside the United States is excluded.

* * * * *

Issued in Washington, DC, on May 27, 1994.

Harold W. Becker,

Manager, Airspace–Rules and Aeronautical Information Division.

[FR Doc. 94–14192 Filed 6–9–94; 8:45 am]

Billing Code 4910–13–P

14 CFR Part 71

[Airspace Docket No. 94–ANM–2]

Modification of Class D Airspace; Pasco, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Pasco, Washington, Tri-cities Airport, Class D airspace by excluding additional airspace overlying the Vista Field Airport, Kennewick, Washington. This action will allow operations to and from the Vista Field Airport without radio communication with the Pasco Airport Traffic Control Tower.

EFFECTIVE DATE: 0901 u.t.c., August 18, 1994.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–537, Federal Aviation Administration, Docket No 94–ANM–2, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone number: (206) 227–2537

SUPPLEMENTARY INFORMATION:

History

On April 4, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class D airspace for Tri-Cities Airport, Pasco, Washington (59 FR 15668). Airspace within a .9-mile radius of Vista Field Airport is presently excluded from the Pasco Class D airspace. Recent construction at the Vista Field airport has resulted in closure of the east-west runway, requiring aircraft operating to runway 02/20 to fly over the Columbia River outside the present airspace exclusion. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace is published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class D airspace at Pasco, Washington by excluding additional airspace overlying the Vista Field Airport Kennewick, Washington. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ANM WA D Pasco, WA [Revised]

Pasco, Tri-Cities Airport, WA
(Lat. 46°15'52" N, Long. 119°07'08" W)
Vista Airport, Kennewick, WA
(Lat. 46°13'14" N, Long. 119°12'19" W)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.3-mile radius of the Tri-Cities Airport, excluding that airspace within a 2 mile radius of the Vista Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on May 25, 1994

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–14133 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ANM–35]

Modification of Class D Airspace; Mountain Home, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace area at Mountain Home AFB, Idaho, by amending the area's effective hours to coincide with the associated control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with the air traffic control tower is required.

DATES: Effective date—0901 u.t.c., August 18, 1994

Comment date: Comments must be received on or before August 11, 1994

ADDRESSES: Send comments on the rule in triplicate to: Manager, System Management Branch, Air Traffic Division, ANM–530, Federal Aviation Administration, Docket No. 94–ANM–35, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Northwest Mountain Region, suite 570, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James E. Riley, Airspace and Procedures Section, System Management Branch, Air Traffic Division, ANM–530, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone: (206) 227–2537

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments, and, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace area at Mountain Home AFB, Idaho, by amending the area's effective hours to coincide with the associated control tower's hours of operation. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at this airport. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ was continuous, while the former ATA was contingent upon the operation of the air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with this air traffic control tower is required.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraphs 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify this Class D airspace area in order to promote the safe and efficient handling of air traffic in this area. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR 1959–1968 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000—General

* * * * *

ANM ID D Mountain Home, ID [Revised]

Mountain Home AFB, ID
(Lat. 43°02'37" N., Long. 115°52'21" W.)

That airspace extending upward from the surface to and include 5,500 feet MSL within a 5.9-mile radius of the Mountain Home AFB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington on May 26, 1994.

Temple H. Johnson,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–14132 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ANE–19]

Update of Class D and Class E Airspace in the New England Region

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends certain Class D and Class E airspace published in a final rule in the **Federal Register** on March 11, 1994. That final rule updated Class D and Class E airspace areas in the New England Region based on a region-wide review of Class D and Class E airspace for conformity with the requirements of the United States Standards for Terminal Procedures (TERPS). This action amends technical errors in the classification and description of certain airspace areas contained in FAA Order 7400.9A, Airspace Designations and Reporting Points.

EFFECTIVE DATE: 0901 u.t.c., June 23, 1994.

FOR FURTHER INFORMATION CONTACT: Karl D. Anderson, System Management Specialist, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; Telephone: (617) 238–7530; Facsimile: (617) 238–7560.

SUPPLEMENTARY INFORMATION:

History

On July 26, 1993, the FAA published a Notice of Proposed Rulemaking (NPRM) to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to update certain control zones and transition areas in the New England Region (58 FR 39693). That NPRM was prompted by a region-wide review of control zones and transition areas for conformity with the United States Standards for Terminal Procedures (TERPS). That review revealed a need to make revisions to many of those airspace areas in the New England region.

After publication of that NPRM, all airspace areas in the United States were reclassified according to the standards adopted by the International Civil Aviation Organization (ICAO). (See, Airspace Reclassification final rule, 56 FR 65638.) Airspace Reclassification, effective on September 16, 1993, discontinued the use of the terms "control zone" and "transition area," and reclassified those areas respectively as either Class D or Class E airspace.

The FAA published the final rule to revise airspace areas in the vicinity of airports in the New England region on March 11, 1994 (59 FR 11535). That final rule contained airspace descriptions of the former "control zones" and "transition areas" translated into Class D and Class E classifications.

The Amendment

The final rule, however, contained minor errors introduced during the process of translating the descriptions into Class D and Class E classifications. Specifically, three airspace areas with

no operating airport traffic control tower (ATCT) were listed Class D instead of Class E; Augusta, ME, Houlton, ME and Presque Isle, ME. One area was listed as Class D instead of as a Class E extension to a Class D area; Brunswick, ME. Two Class E areas, listed as extensions to Class D areas, require correction because of the changes made to those Class D areas; Hartford, CT, Portsmouth, NH.

In addition, this action makes three general revisions to the descriptions of certain airspace areas, which delete language introduced into the descriptions during the translation process. Some descriptions of former transition areas, now Class E airspace, contained language that excluded from those areas airspace defined as higher class airspace. This language is no longer needed because of the general rule of airspace classification under the ICAO standards that higher class airspace always takes precedence. Further, when modified to fit the new airspace classifications and to meet the TERPS requirements, certain descriptions no longer used some airway facilities, therefore, the definition and location of those unused facilities is no longer needed in the airspace description. Lastly, this action corrects the description of Class E airspace defined as extensions to higher class airspace by deleting altitude limits, not needed because of the general rule that Class E airspace extends upward to the base of the overlying airspace. Finally, this action makes minor typographical changes.

This document reprints the entire airspace description for those areas needing correction. This action is necessary to correct errors in the descriptions of certain Class D and Class E airspace areas in the New England region.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This action clarifies the existing rule and does not place any new restriction or requirements on the public. Furthermore, the FAA finds that this amendment does not involve a change in the dimensions or operating requirements of the airspace listings incorporated by reference in part 71. These errors are insignificant in nature and impact and inconsequential to the industry and public. Therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Additionally, in consideration of the immediate need to advise pilots of the corrections to the classification and description of certain airspace areas, the FAA finds good cause, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days in order to promote the safe operation of aircraft in this area.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 71 (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Subpart D—Class D Airspace

Paragraph 5000 General

* * * * *

ANE MA D Beverly, MA [Revised]

Beverly Municipal Airport, MA
(Lat. 42°35'03" N, Long. 70°55'01" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.5-mile radius of Beverly Municipal Airport; excluding that airspace within the Boston Class B Airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ANE MA D Westfield, MA [Revised]

Westfield, Barnes Municipal Airport, MA
(Lat. 42°09'28" N, Long. 72°42'56" W)

That airspace extending from the surface to and including 2,800 feet MSL within a 4.3-mile radius of Barnes Municipal Airport from the Barnes Municipal Airport 341° bearing clockwise to the Barnes Municipal Airport 288° bearing, and within a 7.5 mile radius from the Barnes Municipal Airport 288° bearing clockwise to the Barnes Municipal Airport 341° bearing, and within 1.6 miles on each side of the Barnes Municipal Airport 009° bearing extending from the 4.3-mile radius to 4.9 miles north of the Barnes Municipal Airport, and within 2.5 miles on each side of the Barnes Municipal Airport 175° bearing extending from the 4.3-mile radius to 5.8 miles south of the Barnes Municipal Airport; excluding that airspace within the Springfield/Chicopee, MA Class D Airspace during the dates and times it is effective, and that airspace within the Windsor Locks Class C Airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be published in the Airport/Facility Directory

* * * * *

ANE ME D Brunswick, ME [Revised]

Brunswick NAS, ME
(Lat. 43°53'32" N, Long. 69°56'19" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.3-mile radius of Brunswick NAS

* * * * *

ANE NH D Lebanon, NH [Revised]

Lebanon Municipal Airport, NH
(Lat. 43°37'35" N, Long. 72°18'15" W)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 6.7-mile radius of Lebanon Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

ANE NH D Nashua, NH [Revised]

Nashua, Boire Field, NH
(Lat. 42°46'54" N, Long. 71°30'53" W)
Manchester VORTAC
(Lat. 42°52'06" N, Long. 71°22'10" W)
Lawrence VOR/DME
(Lat. 42°44'25" N, Long. 71°05'41" W)
Sports Center Airport, Pepperell
(Lat. 42°41'45" N, Long. 71°33'03" W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 6-mile radius of Boire Field, and that airspace extending upward from the surface within 1.1 miles on each side of the Manchester VORTAC 231° radial extending from the 6-mile radius to 1.3 miles southwest of the Manchester VORTAC, and within 3.7 miles on each side of the Lawrence VOR/DME 277° radial extending from the 6-mile radius to 6.9 miles east of Boire Field; excluding that airspace within a 2-mile radius of Sports Center Airport, Pepperell, and that airspace within the Manchester

Class C Airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

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Subpart E—Class E Airspace

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Paragraph 6002 Class E airspace areas designated as a surface area for an airport

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ANE ME E2 Augusta, ME [Revised]

Augusta State Airport, ME
(Lat. 44°19'14" N, Long. 69°47'50" W)
Dunns LOM
(Lat. 44°24'39" N, Long. 69°51'39" W)
Augusta VORTAC
(Lat. 44°19'12" N, Long. 69°47'48" W)

Within a 4.1-mile radius of Augusta State Airport, and within 3.5 miles on each side of the Augusta State Airport 333° bearing extending from the 4.1-mile radius to 10 miles northwest of the Dunns LOM, and within 2.5 miles on each side of the Augusta State Airport 156° bearing extending from the 4.1-mile radius to 7 miles southeast of the Augusta VORTAC.

ANE ME E2 Houlton, ME [Revised]

Houlton International Airport, ME
(Lat. 46°07'25" N, Long. 67°47'32" W)

That airspace extending upward from the surface within a 6.5-mile radius of Houlton International Airport excluding the airspace outside of the United States.

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ANE ME E2 Presque Isle, ME [Revised]

Northern Maine Regional Airport at Presque Isle, ME
(Lat. 46°41'20" N, Long. 68°02'41" W)
EXCAL LOM
(Lat. 46°36'37" N, Long. 68°01'08" W)
Rogers Airport
(Lat. 46°37'30" N, Long. 67°56'10" W)

That airspace extending upward from the surface within a 6.8-mile radius of Northern Maine Regional Airport at Presque Isle, and within 2.5 miles on each side of the Northern Maine Regional Airport at Presque Isle 165° bearing extending from the 6.8-mile radius to 8.2 miles southeast of the EXCAL LOM; excluding that airspace within a 1-mile radius of the Rogers Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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Paragraph 6003 Class E airspace areas designated as an extension to a Class C surface area.

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ANE CT E3 Windsor Locks, CT [Revised]

Windsor Locks, Bradley International, CT
(Lat. 41°56'20" N, Long. 72°40'59" W)
Bradley VORTAC
(Lat. 41°56'27" N, Long. 72°41'19" W)

That airspace extending upward from the surface within 2.2 miles on each side of the Bradley VORTAC 314° radial extending from a 5-mile radius of Bradley International Airport to 6.4 miles northwest of the Bradley VORTAC, and within 2.2 miles on each side of the Bradley VORTAC 218° radial extending from the 5-mile radius to 5.0 miles southwest of the Bradley VORTAC.

ANE ME E3 Bangor, ME [Revised]

Bangor International Airport, ME
(Lat. 44°48'27" N, Long. 68°49'41" W)
Bangor VORTAC
(Lat. 44°50'30" N, Long. 68°52'26" W)

That airspace extending upward from the surface within 1.5 miles on each side of the Bangor VORTAC 135° radial extending from a 5-mile radius of Bangor International Airport to 9.4 miles southeast of the Bangor VORTAC, and within 3.1 miles on each side of the Bangor VORTAC 318° radial extending from the 5-mile radius to 7.2 miles northwest of the Bangor VORTAC.

ANE NH E3 Manchester, NH [Revised]

Manchester Airport, NH
(Lat. 42°56'00" N, Long. 71°26'16" W)
Manchester VORTAC
(Lat. 42°52'07" N, Long. 71°22'10" W)

That airspace extending upward from the surface within 1.1 miles on each side of the Manchester VORTAC 325° radial extending from a 5-mile radius of the Manchester Airport to 5.6 miles northwest of the Manchester Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE RI E3 Providence, RI [Revised]

Providence, Theodore Francis Green State Airport, RI
(Lat. 41°43'30" N, Long. 71°25'40" W)
Providence VORTAC
(Lat. 41°43'28" N, Long. 71°25'47" W)

That airspace extending upward from the surface within 3.3 miles on each side of the Providence VORTAC 132° radial extending from a 5-mile radius of Providence, Theodore Francis Green State Airport, to 8.4 miles southeast of the Providence VORTAC, and within 3.8 miles on each side of the Theodore Francis Green State Airport 211° bearing extending from the 5-mile radius to 15 miles southwest of the Theodore Francis Green State Airport; excluding that airspace within the North Kingstown Class D airspace during the dates and times that it is effective.

ANE VT E3 Burlington, VT [Revised]

Burlington International Airport, VT
(Lat. 44°28'17" N, Long. 73°09'10" W)
Burlington VORTAC
(Lat. 44°23'50" N, Long. 73°10'57" W)

That airspace extending upward from the surface within 2.4 miles on each side of the Burlington VORTAC 201° radial extending from a 5-mile radius of the Burlington International Airport to 7 miles southwest of the Burlington VORTAC, and that airspace extending upward from the surface within 1.8 miles on each side of the Burlington International Airport 302° bearing extending from the 5-mile radius to 5.4 miles northwest of the Burlington International Airport.

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Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area

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ANE CT E4 Hartford, CT [Removed]

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ANE MA E4 Beverly, MA [Revised]

Beverly Municipal Airport, MA
(Lat. 42°35'03" N, Long. 70°55'01" W)
Topsfield NDB
(Lat. 42°37'10" N, Long. 70°57'25" W)

That airspace extending upward from the surface within 3.2 miles on each side of the Topsfield NDB 317° bearing, extending from a 4.5-mile radius of Beverly Municipal Airport to 7 miles northwest of the Topsfield NDB. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

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ANE ME E4 Brunswick, ME [Revised]

Brunswick NAS, ME
(Lat. 43°53'32" N, Long. 69°56'19" W)
Brunswick Navy TACAN
(Lat. 43°54'09" N, Long. 69°56'43" W)

That airspace extending upward from the surface within 1.8 miles on each side of the Brunswick Navy TACAN 166° radial extending from a 4.3-mile radius of Brunswick NAS to 7 miles southeast of the Brunswick Navy TACAN and within 1.8 miles on each side of the Brunswick Navy TACAN 015° radial extending from the 4.3-mile radius to 8.6 miles northeast of the Brunswick Navy TACAN.

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ANE NH E4 Lebanon, NH [Revised]

Lebanon Municipal Airport, NH
(Lat. 43°37'35" N, Long. 72°18'15" W)
BURGR OM
(Lat. 43°43'57" N, Long. 72°20'00" W)
Hanover NDB
(Lat. 43°42'08" N, Long. 72°10'39" W)

That airspace extending upward from the surface within 3.3 miles on each side of the BURGR OM 352° bearing extending from a 6.7-mile radius of Lebanon Municipal Airport to 8 miles north of the BURGR OM, and within 2.4 miles on each side of the Hanover NDB 051° bearing extending from the 6.7-mile radius to 7 miles northeast of Hanover NDB.

ANE NH E4 Nashua, NH [Revised]

Nashua, Boire Field, NH
(Lat. 42°46'54" N, Long. 71°30'53" W)
CHERN NDB
(Lat. 42°49'24" N, Long. 71°36'08" W)

That airspace extending upward from the surface within 2.6 miles on each side of the CHERN NDB 303° bearing extending from a 6-mile radius of Boire Field to 7 miles northwest of the CHERN NDB. This Class E

airspace is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

ANE NH E4 Portsmouth, NH [Revised]

Portsmouth, Pease International Tradeport, NH
(Lat. 43°04'40" N, Long. 70°49'24" W)
Pease VORTAC
(Lat. 43°05'04" N, Long. 70°49'55" W)

That airspace extending upward from the surface within 1.8 miles on each side of the extended centerline of Runway 16 at Portsmouth, Pease International Tradeport (Pease) extending from a 4.5-mile radius of Pease to 6.4 miles southeast of Pease, and within 1.8 miles on each side of the Pease VORTAC 148° radial extending from a 4.5-mile radius of Pease to 7 miles southeast of the Pease VORTAC, and within 1.8 miles on each side of the Pease VORTAC 338° radial extending from a 4.5-mile radius of Pease to 7 miles northwest of the Pease VORTAC

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Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

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ANE CT E5 Bridgeport, CT [Revised]

Bridgeport, Igor I. Sikorsky Memorial Airport, CT
(Lat. 41°09'48" N, Long. 73°07'34" W)
Stratford, Sikorsky Heliport, CT
(Lat. 41°14'57" N, Long. 73°05'48" W)
Bridgeport VOR
(Lat. 41°09'39" N, Long. 73°07'28" W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Igor I. Sikorsky Memorial Airport from the Sikorsky Airport 245° bearing clockwise to the Sikorsky Airport 070° bearing, and within a 6.5-mile radius from the Sikorsky Airport 070° bearing clockwise to the Sikorsky Airport 245° bearing, and within 4 miles on each side of the Bridgeport VOR 041° radial extending from the 10-mile radius to 14.8 miles northeast of Bridgeport VOR, and within a 8.5-mile radius of the Sikorsky Heliport.

ANE CT E5 Chester, CT [Revised]

Chester Airport, CT
(Lat. 41°23'02" N, Long. 72°30'21" W)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of Chester Airport, and within 4 miles west and 5.4 miles east of the Chester Airport 339° bearing extending from the 9.3-mile radius to 17.3 miles northwest of Chester Airport.

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ANE CT E5 Danbury, CT [Revised]

Danbury Municipal Airport, CT
(Lat. 41°22'17" N, Long. 73°28'56" W)
Carmel VORTAC
(Lat. 41°16'48" N, Long. 73°34'53" W)

That airspace extending upward from 700 feet above the surface within a 11.5-mile radius of Danbury Municipal Airport from the Danbury Airport 320° bearing clockwise to the Danbury Airport 010° bearing, and within a 10-mile radius from the Danbury Airport 010° bearing clockwise to the Danbury Airport 320° bearing, and within 3 miles on each side of the Carmel VORTAC 218° radial extending from the 10-mile radius to 10 miles southwest of the Carmel VORTAC, and within 4 miles north and 5.5 miles south of the Danbury Airport 255° bearing extending from the 10-mile radius to 16 miles west of the Danbury Airport; excluding that airspace within the White Plains, NY, and Poughkeepsie, NY, Class E Airspace.

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ANE CT E5 Groton, CT [Revised]

Groton-New London Airport, CT
(Lat. 41°19'48" N, Long. 72°02'42" W)
Groton VOR
(Lat. 41°19'49" N, Long. 72°03'07" W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Groton-New London Airport, and within 1.3 miles on each side of the Groton VOR 048° radial extending from the 7.5-mile radius to 15.6 miles northeast of the GROTON VOR; excluding that airspace within the Westerly, RI Class E Airspace.

ANE CT E5 Hartford, CT [Revised]

Hartford-Brainard Airport, CT
(Lat. 41°44'10" N, Long. 72°39'00" W)
East Hartford, Rentschler Airport, CT
(Lat. 41°45'15" N, Long. 72°37'28" W)

That airspace extending upward from 700 feet above the surface within a 11.5-mile radius of Hartford-Brainard Airport, and within a 11.9-mile radius of the Rentschler Airport; excluding that airspace within the Windsor Locks, CT and Chester, CT, Class E Airspace

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ANE CT E5 Meriden, CT [Revised]

Meriden Markham Municipal Airport, CT
(Lat. 41°30'31" N, Long. 72°49'46" W)
Madison VOR/DME
(Lat. 41°18'50" N, Long. 72°41'32" W)

That airspace extending upward from 700 feet above the surface within a 10.8-mile radius of Meriden Markham Municipal Airport, and within 4 miles on each side of the Madison VOR/DME 332° radial extending from the 10.8-mile radius to 0.6 miles northwest of the Madison VOR/DME; excluding that airspace within the Bridgeport, CT, Madison, CT, Chester, CT, and Hartford, CT, Class E Airspace.

ANE CT E5 New Haven, CT [Revised]

New Haven, Tweed-New Haven Airport, CT
(Lat. 41°15'49" N, Long. 72°53'12" W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Tweed-New Haven Airport; excluding that airspace within the Bridgeport, CT, Meriden, CT, Chester, CT, and Madison, CT, Class E Airspace.

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ANE CT E5 Windsor Locks, CT [Revised]

Windsor Locks, Bradley International Airport
(Lat. 41°56'20" N, Long. 72°40'59" W)
Bradley VORTAC
(Lat. 41°56'27" N, Long. 72°41'19" W)

That airspace extending upward from 700 feet above the surface within a 10.9 mile radius of Bradley International Airport.

ANE MA E5 Boston, MA [Revised]

Boston, General Edward Lawrence Logan International Airport
(Lat. 42°21'51" N, Long. 71°00'18" W)

That airspace extending upward from 700 feet above the surface within that area bounded by a line beginning at Lat. 42°30'00" N, Long. 70°47'58" W and running to Lat. 42°43'00" N, Long. 70°39'28" W, then to Lat. 42°55'00" N, Long. 70°57'58" W, then to Lat. 42°56'00" N, Long. 71°15'28" W, then to Lat. 42°42'00" N, Long. 71°17'58" W, then to Lat. 42°32'00" N, Long. 71°40'58" W, then to Lat. 42°21'00" N, Long. 71°41'58" W, then to Lat. 42°20'00" N, Long. 71°24'28" W, then to Lat. 42°05'00" N, Long. 71°22'30" W, then to Lat. 42°04'00" N, Long. 71°11'58" W, then to Lat. 41°56'00" N, Long. 71°06'58" W, then to Lat. 41°59'00" N, Long. 70°56'28" W, then to Lat. 42°12'00" N, Long. 70°36'28" W, then to the point of beginning.

ANE MA E5 Fall River, MA [Revised]

Fall River Municipal, MA
(Lat. 41°45'18" N, Long. 71°06'36" W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Fall River Municipal Airport; excluding that airspace within the New Bedford, MA, Providence, RI, and North Kingstown, RI, Class E Airspace

ANE MA E5 Falmouth, MA [Revised]

Falmouth, Otis ANGB, MA
(Lat. 41°39'30" N Long. 70°31'17" W)
Barnstable Municipal Airport-Boardman/Polando Field
(Lat 41°40'09" N, Long. 70°16'49" W)
Chatham Municipal Airport
(Lat. 41°41'18" N, Long. 69°59'22" W)
Martha's Vineyard Municipal Airport
(Lat. 41°23'35" N, Long. 70°36'52" W)
Martha's Vineyard VOR/DME
(Lat. 41°23'46" N, Long. 70°36'46" W)
BOGEY LOM
(Lat. 41°42'58" W, Long. 70°12'11" W)

That airspace extending upward from 700 feet above the surface within a 12.2-mile radius of Otis ANGB, and within a 6.7-mile radius of Barnstable Municipal Airport, and within 3 miles on each side of the BOGEY LOM 050° bearing extending from the 6.7-mile radius to 10 miles northeast of the BOGEY LOM, and within a 6.3-mile radius of the Chatham Municipal Airport, and within a 6.5-mile radius of Martha's Vineyard Municipal Airport, and within 5.1 miles on each side of the 052° radial of the Martha's Vineyard VOR/DME extending from the 6.5-mile radius to 14 miles northeast of Martha's Vineyard VOR/DME.

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ANE MA E5 Hopedale, MA [Revised]

Hopedale Industrial Park Airport, MA
(Lat. 42°06'23" N, Long. 71°30'36" W)
Putnam VOR/DME
(Lat. 41°57'20" N, Long. 71°50'39" W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Hopedale Industrial Park Airport, and within 4 miles on each side of the Putnam VOR/DME 059° radial extending from the 7.3-mile radius to the Putnam VOR/DME; excluding that airspace within the Boston, MA, Danielson, CT, and Pawtucket, RI, Class E Airspace.

ANE MA E5 Mansfield, MA [Revised]

Mansfield Municipal Airport, MA
(Lat. 42°00'00" N, Long. 71°11'48" W)

That airspace extending upward from 700 feet above the surface within a 8.3-mile radius of Mansfield Municipal Airport; excluding that airspace within the Boston, MA, Hopedale, MA, Fall River, MA, North Kingstown, RI, and Pawtucket, RI, Class E Airspace.

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ANE MA E5 Northampton, MA [Revised]

Northampton Airport, MA
(Lat. 42°19'41" N, Long. 72°36'41" W)

That airspace extending upward from 700 feet above the surface within a 13.3-mile radius of Northampton Airport; excluding that airspace within the Springfield/Chicopee, MA, Keene, NH, and Windsor Locks, CT, Class E Airspace.

ANE MA E5 Palmer, MA [Revised]

Palmer, Metropolitan Airport, MA
(Lat. 42°13'24" N, Long. 72°18'41" W)
Palmer NDB
(Lat. 42°13'34" N, Long. 72°18'41" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Metropolitan Airport, and within 3.9 miles on each side of the Palmer NDB 201° bearing extending from the 6.3-mile radius to 13.3 miles southwest of the Palmer NDB; excluding that airspace within the Springfield/Chicopee, MA, Northampton, MA, and Windsor Locks, CT, Class E Airspace.

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ANE MA E5 Springfield/Chicopee, MA [Revised]

Springfield/Chicopee, Westover ARB/Metropolitan Airport, MA
(Lat. 42°11'52" N, Long. 72°31'48" W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Westover ARB; excluding that airspace within the Westfield, MA Class E Airspace.

ANE MA E5 Taunton, MA [Revised]

Taunton Municipal Airport, MA
(Lat. 41°52'28" N, Long. 71°01'01" W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Taunton Municipal Airport; excluding that airspace within the Boston, MA, Fall River, MA, New Bedford, MA, and Mansfield, MA, Class E Airspace.

ANE MA E5 Westfield, MA [Revised]

Westfield, Barnes Municipal Airport, MA
(Lat. 42°09'28" N, Long. 72°42'56" W)

That airspace extending upward from 700 feet above the surface within a 12.8-mile radius of Barnes Municipal Airport; excluding that airspace within the Northampton, MA, Palmer, MA, and Windsor Locks, CT, Class E Airspace.

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ANE ME E5 Bangor, ME [Revised]

Bangor International Airport, ME
(Lat. 44°48'27" N, Long. 68°49'41" W)
Bangor VORTAC
(Lat. 44°50'30" N, Long. 68°52'26" W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Bangor International Airport, and that airspace within 6.5 miles south and 4 miles north of the Bangor International Airport 136° bearing extending from the 10-mile radius to 16.7 miles southeast of the Bangor International Airport, and that airspace within 3.7 miles on each side of the Bangor VORTAC 318° radial extending from the 10-mile radius to 8.8 miles northwest of the Bangor VORTAC.

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ANE ME E5 Brunswick, ME [Revised]

Brunswick NAS, ME
(Lat. 43°53'32" N, Long. 69°56'19" W)
Brunswick Navy TACAN
(Lat. 43°54'09" N, Long. 69°56'43" W)
Wiscasset Airport, ME
(Lat. 43°57'40" N, Long. 69°42'48" W)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Brunswick NAS, and within 1.8 miles on each side of the Brunswick Navy TACAN 166° radial extending from the 7.8-mile radius to 10.4 miles south of the Brunswick Navy TACAN, and within a 8.4-mile radius of Wiscasset Airport, and within 4 miles south and 6 miles north of the Navy Brunswick TACAN 070° radial extending from the 8.4-mile radius to 25.5 miles east of the Navy Brunswick TACAN.

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ANE ME E5 Fryeburg, ME [Revised]

Fryeburg, Eastern Slopes Regional Airport, ME
(Lat. 43°59'26" N, Long. 70°56'49" W)

That airspace extending upward from 700 feet above the surface within a 2.3-mile radius of Eastern Slopes Regional Airport from the Eastern Slopes Airport 197° bearing clockwise to the Eastern Slopes Airport 295° bearing, and that airspace within a 10.3-mile radius of Eastern Slopes Regional Airport from the Eastern Slopes Airport 295° bearing clockwise to the Eastern Slopes Regional Airport 197° bearing.

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ANE ME E5 Machias, ME [Revised]

Machias Valley Airport, ME
(Lat. 44°42'11" N, Long. 67°28'41" W)

That airspace extending upward from 700 feet above the surface within a 8.3-mile radius of Machias Valley Airport.

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ANE ME E5 Old Town, ME [Revised]

Old Town, Dewitt Field, Old Town Municipal Airport, ME
(Lat. 44°57'10" N, Long. 68°40'25" W)
Bangor VORTAC
(Lat. 44°50'30" N, Long. 68°52'26" W)
Old Town NDB
(Lat. 45°00'24" N, Long. 68°38'00" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Dewitt Field, Old Town Municipal Airport, and within 2.8 miles on each side of the Old Town NDB 029° bearing extending from the 7-mile radius to 9 miles northeast of the Old Town NDB, and within 4 miles on each side of the Bangor VORTAC 050° radial extending from the 7-mile radius to 25 miles northeast of the Bangor VORTAC; excluding that airspace within the Bangor, ME Class E Airspace.

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ANE ME E5 Portland, ME [Revised]

Portland International Jetport, ME
(Lat. 43°38'46" N, Long. 70°18'31" W)
ORHAM LOM
(Lat. 43°39'09" N, Long. 70°26'28" W)

That airspace extending upward from 700 feet above the surface within a 8.7-mile radius of the Portland International Jetport, and within 3 miles on each side of the ORHAM LOM 275° bearing extending from the 8.7-mile radius to 10 miles west of the ORHAM LOM; excluding that airspace within the Biddeford, ME Class E Airspace.

ANE ME E5 Presque Isle, ME [Revised]

Northern Maine Regional Airport at Presque Isle, ME
(Lat. 46°41'20" N, Long. 68°02'41" W)
Presque Isle VORTAC
(Lat. 46°46'27" N, Long. 68°05'40" W)
EXCAL LOM
(Lat. 46°36'37" N, Long. 68°01'08" W)
Caribou Municipal Airport, ME
(Lat. 46°52'17" N, Long. 68°01'04" W)
Loring Air Force Base
(Lat. 46°57'01" N, Long. 67°53'08" W)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Northern Maine Regional Airport at Presque Isle, and within 3 miles on each side of the EXCAL LOM 165° bearing extending from the 11-mile radius to 9.2 miles south of the EXCAL LOM, and within 4 miles east and 8 miles west of the Presque Isle VORTAC 340° radial extending from the 11-mile radius to 16 miles northwest of the VORTAC, and within a 8.5-mile radius of Caribou Municipal Airport, and within an 8.5-mile radius of Loring Air Force Base; excluding that airspace outside of the United States.

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ANE ME E5 Sanford, ME [Revised]

Sanford Municipal, ME
(Lat. 43°23'38" N, Long. 70°42'29" W)
Kennebunk VORTAC
(Lat. 43°25'33" N, Long. 70°36'49" W)
SANFD LOM
(Lat. 43°20'04" N, Long. 70°50'04" W)

That airspace extending upward from 700 feet above the surface within 10.7 miles of Sanford Municipal Airport from the Sanford Airport 253° bearing clockwise to the Sanford Airport 073° bearing, and within 6.7 miles of the Sanford Municipal Airport from the Sanford Airport 073° bearing clockwise to the Sanford Airport 253° bearing, and within 4 miles north and 5 miles south of the SANFD LOM 238° bearing extending from the 6.7-mile radius to 10 miles southwest of the

SANFD LOM, and within 4 miles north and 5 miles south of the Kennebunk VORTAC 064° radial extending from 6.7-mile radius to 9 miles northeast of the Kennebunk VORTAC; excluding that airspace within the Portsmouth, NH, Kennebunkport, ME, and Biddeford, ME, Class E Airspace.

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ANE NH E5 Concord, NH [Revised]

Concord Municipal Airport, NH
(Lat. 43°12'12" N, Long. 71°30'07" W)
EPSOM NDB
(Lat. 43°07'07" N, Long. 71°27'09" W)
Concord VORTAC
(Lat. 43°13'11" N, Long. 71°34'31" W)

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Concord Municipal Airport, and within 4 miles on each side of the EPSOM NDB 156° bearing extending from the 12-mile radius to 9.6 miles south of the EPSOM NDB, and within 8 miles south and 15 miles north of the Concord VORTAC 300° radial extending from the 12-mile radius to 20 miles northwest of the Concord VORTAC.

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ANE NH E5 Manchester, NH [Revised]

Manchester Airport, NH
(Lat. 42°56'00" N, Long. 71°26'16" W)

That airspace extending upward from 700 feet above the surface within a 23-mile radius of the Manchester Airport; excluding that airspace within the Boston, MA, and Keene, NH, Concord, NH, Portsmouth, NH, Nashua, NH, Newburyport, MA, Class E Airspace.

ANE NH E5 Nashua, NH [Revised]

Nashua, Boire Field, NH
(Lat. 42°46'54" N, Long. 71°30'53" W)
CHERN NDB
(Lat. 42°49'24" N, Long. 71°36'08" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Boire Field, and within that area bounded by a line beginning at Lat. 42°53'54" N, Long. 71°30'47" W then to Lat. 43°02'23" N, Long. 71°13'28" W, then to Lat. 42°55'15" N, Long. 71°06'58" W, then to Lat. 42°38'30" N, Long. 71°21'48" W, then to Lat. 42°40'30", Long. 71°27'03", and within 4 miles on each side of the CHERN NDB 303° bearing extending from the 7-mile radius to 10 miles northwest of the CHERN NDB; excluding that airspace within the Portsmouth, NH, Fort Devens, MA, and Boston, MA, Class E Airspace.

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ANE NH E5 Portsmouth, NH [Revised]

Portsmouth, Pease International Tradeport, NH
(Lat. 43°04'40" N., Long. 70°49'24" W.)

That airspace extending upward from 700 feet above the surface within that area bounded by a line beginning at Lat. 43°25'00" N., Long. 71°13'00" W. and running to Lat. 43°27'00" N., Long. 70°56'00" W., then to Lat. 43°25'00" N., Long. 70°48'00" W., then to Lat. 43°14'00" N., Long. 70°36'00" W., then to Lat. 43°00'00" N., Long. 70°36'00" W., then to Lat. 42°54'00" N., Long. 70°52'00" W., then to Lat. 42°49'00" N., Long. 71°09'00" W., then to Lat. 42°53'00" N., Long. 71°12'00" W., then to Lat. 43°03'00" N., Long. 71°05'00" W., then to the point of beginning; excluding that airspace within the Newburyport, MA, and Boston, MA, Class E Airspace.

* * * * *

ANE RI E5 Newport, RI [Revised]

Newport State, RI
(Lat. 41°31'56" N., Long. 71°16'53" W.)
Providence VORTAC
(Lat. 41°43'28" N., Long. 71°25'47" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Newport State Airport, and within 2.2 miles on each side of the Providence VORTAC 150° radial extending from the 6.3-mile radius to 5.6 miles southeast of the Providence VORTAC, and within 4 miles northwest to 6 miles southeast of Newport State Airport 025° bearing extending from the 6.3-mile radius to 16.2 miles northeast of the Newport State Airport; excluding that airspace within the New Bedford, MA, and Fall River, MA, Class E Airspace.

ANE RI E5 North Kingstown, RI [Revised]

North Kingstown, Quonset State Airport, RI
(Lat. 41°35'48" N., Long. 71°24'43" W.)
Providence VORTAC
(Lat. 41°43'28" N., Long. 71°25'47" W.)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of Quonset State Airport, and within 6.5 miles east to 4.5 miles west of the Quonset State Airport 145° bearing extending from the 9.3-mile radius to 16.3 miles southeast of the Quonset State Airport, and within 5 miles east to 8 miles west of the Providence VORTAC 355° radial extending from the 9.3-mile radius to 14.5 miles north of the Providence VORTAC; excluding that airspace within the Newport, RI, and New Bedford, MA, Class E Airspace.

ANE RI E5 Pawtucket, RI [Revised]

Pawtucket, North Central State, RI
(Lat. 41°55'14" N., Long. 71°29'29" W.)
Providence VORTAC
(Lat. 41°43'28" N., Long. 71°25'47" W.)
Putnam VOR/DME
(Lat. 41°57'20" N., Long. 71°50'39" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of North Central State Airport, and within 2 miles on each side of the North Central State Airport 032° bearing extending from the 6.6-mile radius to 13.4 miles northeast of the North Central State Airport, and within 4.5 miles east and 6.5 miles west of the North Central State Airport 212° bearing extending from the 6.6-mile radius to 16 miles southwest of the North Central State Airport, and within 3.6 miles on each side of the Putnam VOR/DME 097° radial extending from the 6.6-mile radius to 6.8 miles east of the Putnam VOR/DME, and within 3.8 miles on each side of the Providence VORTAC 347° radial extending from the 6.6-mile radius to 0.8 mile north of the Providence VORTAC; excluding that airspace within the North Kingstown, RI, Danielson, CT, and Boston, MA, Class E Airspace.

ANE RI E5 Providence, RI [Revised]

Providence, Theodore Francis Green State Airport, RI
(Lat. 41°43'25" N., Long. 71°25'36" W.)
Providence VORTAC
(Lat. 41°43'28" N., Long. 71°25'47" W.)

That airspace extending upward from 700 feet above the surface within an 8.8-mile radius of Theodore Francis Green State Airport, and within 4 miles northwest to 4.5 miles southeast of the Providence VORTAC 211° radial extending from the 8.8-mile radius to 16.7 miles southwest of the Providence VORTAC, and within 4 miles on each side of the VORTAC 330° radial extending from the 8.8-mile radius to 15.4 miles northwest of the Providence VORTAC, and within 2.9 miles on each side of the Providence VORTAC 132° radial extending from the 8.8-mile radius to 9.6 miles southeast of the Providence VORTAC, excluding that airspace within the North Kingstown, RI, Pawtucket, RI, Newport, RI, and Fall River, MA, Class E Airspace.

* * * * *

ANE RI E5 Westerly, RI [Revised]

Westerly State Airport, RI
(Lat. 41°20'58" N., Long. 71°48'12" W.)
Westerly NDB
(Lat. 41°20'40" N., Long. 71°48'52" W.)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Westerly State Airport, and within 2.9 miles on each side of the Westerly NDB 222° bearing extending from the 8.5-mile radius to 9.4 miles southwest of Westerly NDB; excluding that airspace within the Block Island, RI, Class E Airspace.

* * * * *

ANE VT E5 Burlington, VT [Revised]

Burlington International Airport, VT
(Lat. 44°28'17" N., Long. 73°09'10" W.)

That airspace extending upward from 700 feet above the surface within a 23-mile radius of Burlington International Airport; excluding that airspace within the Plattsburgh, NY, Class E Airspace.

* * * * *

Issued in Burlington, Massachusetts, on June 1, 1994.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 94–14134 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 94–AWP–4]

Establishment of Class E Airspace; South Lake Tahoe, CA

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at South Lake Tahoe, CA. A Localizer Type Directional Aid (LDA)/Distance Measuring Equipment (DME) standard instrument approach procedure (SIAP) has been developed for the South Lake Tahoe Municipal Airport. Controlled airspace extending upward from the surface is needed for aircraft executing the approach. The establishment of Class E airspace will provide adequate airspace for instrument flight rules (IFR) operations at South Lake Tahoe Municipal Airport. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 u.t.c., December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Scott Speer, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261; telephone (310) 297–0697.

SUPPLEMENTARY INFORMATION:

History

On March 15, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class E Airspace area at South Lake Tahoe, CA. (59 FR 14804). An SIAP was being developed for the South Lake Tahoe Municipal Airport at South Lake Tahoe, CA. This will add controlled airspace extending from the surface for IFR operations at South Lake Tahoe Municipal Airport. Interested parties were invited to participate in this rulemaking proceedings by submitting written comments on the proposal to the FAA. No objections were received concerning this proposal. The coordinates in the proposal were based on North American Datum 83. Class E airspace designations for airspace areas extending upward from the surface designated as an extension to a Class D surface area are published in Paragraph 6004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulation establishes Class E airspace at South Lake Tahoe, CA. This action will provide adequate Class E airspace for IFR operators executing the LDA/DME–1/2 approaches at South Lake Tahoe, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area

* * * * *

AWP CA E4 South Lake Tahoe, CA [New]

Lake Tahoe Airport, CA
(Lat. 38°53'38" N, Long. 119°59'43" W)

That airspace extending upward from the surface within 1.8 miles each side of the South Lake Tahoe LDA/DME south course extending from the 4.3-mile radius of South Lake Tahoe Airport to 9.8-miles north of the airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory

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Issued in Los Angeles, California, on May 20, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–14135 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ANM–46]

Amendment of Class E Airspace; Idaho Falls, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Idaho Falls, Idaho, Class E airspace. Controlled airspace extending from 700 feet above ground level (AGL) is necessary to accommodate an amendment to an instrument approach procedure for the Fanning Field Airport, Idaho Falls, Idaho. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The airspace will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 u.t.c., August 18, 1994.

FOR FURTHER INFORMATION CONTACT: James E. Riley, ANM–537, Federal Aviation Administration, Docket No 93–ANM–46, 1601 Lind Avenue SW., Renton, Washington 98055–4056; Telephone: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

History

On April 11, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Idaho Falls, Idaho, Class E airspace (59 FR 17055). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received.

Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and certain airspace areas extending upward from 700 feet or more above the surface of the earth are now Class E airspace areas. Class E airspace designations for airspace areas extending 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends

the Class E airspace at Idaho Falls, Idaho. This action is necessary to accommodate an amendment to an instrument approach procedure for the Fanning Field Airport, Idaho Falls, Idaho.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows

Authority: 49 U.S.C. app. 1348(a) 1354(a) 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM ID E5 Idaho Falls, ID [Revised]

Idaho Falls, Fanning Field, ID
(Lat. 43°30'52" N, Long. 112°04'13" W
Pocatello VORTAC
(Lat. 42°52'13" N, Long. 112°[illegible]'08" W
Burley VORTAC
(Lat. 42°34'49" N, Long. 113°[illegible]'57" W
Idaho Falls VOR/DME
(Lat. 43°31'08" N, Long. 112°01'50" W

That airspace extending upward from 700 feet above the surface within 10.2 miles northwest and 4.3 miles southeast of the Idaho Falls VOR/DME 036° and 216° radials extending from 27.2 miles northeast to 16.1 miles southwest of the VOR/DME, and within 7.9 miles southeast and 5.3 miles northwest of the 029° radial of the Pocatello VORTAC extending from 20.1 to 40.9 miles northeast of the VORTAC; that airspace extending upward from 1200 feet above the surface bounded by a line beginning at the intersection of Long. 112°30'03" W, and the south edge of V–298, extending east along V–298 to the west edge of V–465, southwest on V–465 to the intersection of V–465 and Long. 112°00'00" W, south along 112°00'00" W to the north edge of V–4 west on V–4 to the 24.4 mile radius of the Burley VORTAC, thence counter-clockwise via the 24.4 mile radius to the south edge of V–269, then east along the south edge of V–269 to the 25.3 mile radius of the Pocatello VORTAC, thence clockwise via the 25.3 mile radius to Lat. 43°05'46" N, Long. 113°08'15" W; to Lat. 43°20'30" N, Long. 112°45'33" W; to Lat. 43°32'00" N, Long. 112°35'03" W; to Lat. 43°50'20" N, Long 112°30'03" W, then direct to the point of beginning; excluding that airspace within Federal Airways, the Jackson Hole Airport, Wyoming, and the Rexburg/Madison County Airport, Idaho, Class E airspace areas

* * * * *

Issued in Seattle, Washington, on May 25 1994

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region

[FR Doc. 94–14136 Filed 6–9–94 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ANM–9]

Establishment of Class E Airspace; Sandpoint, ID

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This action establishes the Sandpoint, Idaho, Class E airspace. This action is necessary to accommodate arrival/departure aircraft transitioning between the enroute and terminal areas in western Idaho. The area will be depicted on aeronautical charts.

EFFECTIVE DATE: 0901 u.t.c., August 18, 1994.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–537, Federal Aviation Administration, Docket No. 94–ANM–9, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537

SUPPLEMENTARY INFORMATION:

History

On April 4, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Sandpoint, Idaho, Class E airspace area (59 FR 15669). This action is necessary to accommodate arrival/departure aircraft transitioning between the enroute and terminal areas in western Idaho. The area will be depicted on aeronautical charts for pilot reference. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received. This action is the same as the proposal except for a typographical error discovered (and corrected herein) in the coordinates of the airspace description for Fairchild AFB, Washington. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace is published in Paragraph 6006 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations establishes Class E airspace at Sandpoint, Idaho. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6006 Enroute domestic airspace areas

* * * * *

ANM ID E6 Sandpoint, ID [New]

Fairchild AFB, WA
(Lat. 47°36'54" N., Long. 117°39'29" W.)

That airspace extending upward from 6,500 feet MSL bounded on the north by Lat 48°30'00" N., on the east by the Idaho/Montana state boundary, on the south by the north edge of V–120, on the west by the 45.3-mile radius of Fairchild AFB and the east edge of V–112; excluding Federal airways and that airspace below 1,200 feet AGL.

* * * * *

Issued in Seattle, Washington, on May 25, 1994

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–14137 Filed 6–9–94, 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AGL–3]

Modification of Class E Airspace; Warroad, MN

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Warroad International-Swede Carlson Field, Warroad, MN, to accommodate an Instrument Landing System (ILS) Runway 31, and Nondirectional Beacon (NDB) Runway 31 Standard Instrument Approach (SIAP). Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 u.t.c., August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, March 29, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Warroad International-Swede Carlson Field, Warroad, MN (59 FR 14574). The proposal was to modify Class E airspace to accommodate Instrument Landing System (ILS) Runway 31, and Nondirectional Beacon (NDB) Runway 31 Standard Instrument Approach (SIAP). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations to modify Class E airspace at Warroad International-Swede Carlson Field, Warroad, MN, to accommodate Instrument Landing System (ILS) Runway 31, and Nondirectional Beacon (NDB) Runway 31 Standard Instrument Approach (SIAP). Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas listed below extend upward from 700 feet or more above the surface of the earth

* * * * *

AGL MN E5 Warroad, MN [Revised]

Warroad International-Swede Carlson Field
(Lat. 48°56'26" N, Long. 95°20'48" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Warroad International-Swede Carlson Field, excluding that area north of Lat 49°00'00" N (Canadian-U.S. boundary).

* * * * *

Issued in Des Plaines, Illinois on May 26, 1994

Roger Wall,

Manager, Air Traffic Division

[FR Doc. 94–14138 Filed 6–9–94, 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ANM–8]

Amendment of Class E Airspace; La Grande, OR

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This action amends the La Grande, Oregon, Class E airspace. This action is necessary to accommodate arrival/departure aircraft transitioning between the en route and terminal areas in southeastern Oregon. The area will be depicted on aeronautical charts.

EFFECTIVE DATE: 0901 u.t.c., August 18, 1994

FOR FURTHER INFORMATION CONTACT:
James Riley, ANM–537, Federal Aviation Administration, Docket No. 94–ANM–8, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537

SUPPLEMENTARY INFORMATION:

History

On April 4, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional airspace to accommodate arrival/departure aircraft transitioning between the en route and terminal areas in southeastern Oregon (59 FR 15670). Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and certain airspace areas extending upward from 700 feet or more above the surface of the earth are now Class E airspace areas. The area will be depicted on aeronautical charts for pilot reference. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received. This action is the same as the proposal except for a typographical error discovered and corrected herein in the coordinates for La Grande/Union County Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace is published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations amends Class E airspace at La Grande, Oregon. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM OR E5 La Grande, OR [Revised]

La Grande/Union County Airport, OR
(Lat. 45°17'25" N., Long. 118°00'26" W.)

That airspace extending upward from 700 feet above the surface bounded on the north by a line beginning at Lat. 45°38'59" N., Long. 118°02'04" W., extending eastwardly to Lat. 45°37'00" N., Long. 117°44'34" W., on the east by a line extending to Lat. 45°15'29" N., Long. 117°49'04" W., on the south by a line extending to Lat. 45°17'29" N., Long. 118°07'04" W., on the west by a line extending to the point of beginning, and within a 4.3-mile radius of the La Grande/Union County Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at Lat. 45°38'59" N., Long. 118°02'04" W., extending northwest along V–357 to the Walla Walla VOR/DME 16.6-mile radius; thence north along the Walla Walla VOR/DME 16.6-mile radius until intercepting Lat. 46°00'00" N., thence eastward along Lat. 46°00'00" N., to Long. 117°02'00" W.; thence south along Long. 117°02'00" W., until intercepting V–298; thence westward along V–298 to Lat. 45°23'30" N., Long. 117°47'10" W.; to Lat. 45°37'00" N., Long. 117°44'34" W.; thence to the point of beginning, excluding that airspace within Federal Airways.

* * * * *

Issued in Seattle, Washington, on May 25, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–14139 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ANM–5]

Establishment of Class E Airspace; Cascade Range, WA

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This action establishes the Cascade Range, Washington, Class E airspace. This action is necessary to accommodate arrival/departure aircraft transitioning between the en route and terminal areas east of Seattle, Washington. The area will be depicted on aeronautical charts.

EFFECTIVE DATE: 0901 UTC, August 18, 1994.

FOR FURTHER INFORMATION CONTACT:
James Riley, ANM–537, Federal Aviation Administration, Docket No. 94–ANM–5, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone number: (206) 227–2537

SUPPLEMENTARY INFORMATION:

History

On April 4, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Cascade Range, Washington, Class E airspace area (59 FR 15671). This action is necessary to accommodate arrival/departure aircraft transitioning between the en route and terminal area east of Seattle, Washington. The area will be depicted on aeronautical charts for pilot reference. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received. This action is the same as the proposal except for a typographical error discovered and offered herein in the coordinates of the airspace description. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace is published in Paragraph 6006 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of Federal Aviation Regulations established Class E airspace at Cascade Range, Washington. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6006 Enroute domestic airspace areas

* * * * *

ANM WA E6 Cascade Range, WA [New]

That airspace extending upward from 1,200 feet AGL bounded on the north by the south edge of V–120, on the east by Long. 120°00'00" W., on the south by the north edge of V–204, and on the west by Long. 121°35'04" W., excluding Federal airways, Wenatchee, Ellensburg, and Yakima Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on May 25, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–14141 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ANM–7]

Amendment to Class E Airspace; Kalispell, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Kalispell, Montana, Class E airspace. This action is necessary to accommodate arrival/departure aircraft transitioning between the en route and terminal areas in western Montana. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The area will be depicted on aeronautical charts.

EFFECTIVE DATE: 0901 UTC, August 18, 1994.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–537, Federal Aviation Administration, Docket No. 94–ANM–7, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

History

On March 21, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Kalispell, Montana, Class E airspace area (59 FR 13263). This action is necessary to accommodate arrival/departure aircraft transitioning between the en route and terminal area in western Montana. The area will be depicted on aeronautical charts for pilot reference. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and certain airspace areas extending upward from 700 feet or more above the surface of the earth are now Class E airspace areas. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace is published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends Class E airspace at Kalispell, Montana. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM MT E5 Kalispell, MT [Revised]

Kalispell, Glacier Park International Airport, MT

(Lat. 48°16'43" N, Long. 114°15'18" W)

Smith Lake NDB

(Lat. 48°06'30" N, Long. 114°27'40" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Glacier Park International Airport, and within 4.8 miles each side of the 035° and 215° bearing from the Smith Lake NDB extending from the 7-mile radius to 10.5 miles southwest of the NDB; that airspace extending upward from 1,200 feet AGL bounded by a line beginning at Lat. 47°30'00" N., Long. 113°30'03" W.; to Lat. 48°30'00" N., Long. 113°30'03" W.; west along Lat. 48°30'00" N., to the Montana/Idaho state

boundary, south along the Montana/Idaho state boundary until intersecting Lat. 47°30'00" N., then to the point of beginning; excluding Federal airways.

* * * * *

Issued in Seattle, Washington, on May 25, 1994.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94-14140 Filed 6-9-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 1270

[Docket No. 93N-0453]

Public Workshop on Human Tissue Intended for Transplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim rule; notification of public workshop.

SUMMARY: The Food and Drug Administration (FDA), Center for Biologics Evaluation and Research (CBER), is holding a public workshop to discuss specific topics relating to an interim rule on human tissue intended for transplantation that appeared in the **Federal Register** of December 14, 1993.

DATES: The public workshop will be held on Monday, June 20, 1994, 8:30 to 5 p.m. Submit comments and information on issues addressed at the workshop by August 20, 1994.

ADDRESSES: The public workshop will be held at the Holiday Inn Gaithersburg, 2 Montgomery Village Ave., Gaithersburg, MD. To register for the workshop, contact April Wells, KRA Corp., 1010 Wayne Ave., suite 850, Silver Spring, MD 20910, 301-495-1591; or FAX 301-495-9410. Registration will also be accepted at the workshop.

Submit written comments regarding the workshop to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 10857.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Biologics Evaluation and Research (HFM-300), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448, 301-594-6700.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 14, 1993 (58 FR 65514), FDA published an interim rule on human tissue intended for transplantation. This interim rule requires certain infectious disease testing, donor screening, and recordkeeping to help prevent the transmission of acquired immunodeficiency syndrome (AIDS) and hepatitis through human tissue used in transplantation. The regulations set forth in the interim rule became effective upon publication. Interested persons were given until March 14, 1994, to comment on the interim rule.

The objective of this public workshop is to discuss practical concerns expressed in received public comments relating to the implementation of the interim rule. The following topics will be discussed:

1. Experience with the interim rule;

2. Management of testing relative to hemodilution;

3. Experience with test kit performance on cadaveric blood samples; and

4. Management of current inventories in regard to testing for human immunodeficiency virus (HIV) and hepatitis C virus (HCV).

Discussion of these topics will be considered by FDA in the development of any future rulemaking.

FDA is reopening the comment period to the interim rule so that interested persons may submit comments on the workshop. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above).

Interested persons may, on or before August 20, 1994, submit to the Dockets Management Branch (address above), written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 6, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-14212 Filed 6-7-94; 4:36 pm]

BILLING CODE 4160-01-F

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

[Public Notice 2018]

22 CFR Parts 123, 124, and 126

Amendment to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: On July 22, 1993, the Department published a major revision to the International Traffic in Arms Regulations (ITAR) (58 FR 39280). After being in use by government agencies and industry for several months, certain issues were identified which required revision. The revisions made in this final rule are viewed by the Department of State as beneficial for U.S. persons and industry.

EFFECTIVE DATE: June 10, 1994.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice may be obtained from Department of State, Office of Defense Trade Controls. Rose Marie Biancaniello, Deputy Director for Licensing, or Glenn Smith, Licensing Officer, may be reached by phone at 703 875-6643 or fax at 703 875-6647.

SUPPLEMENTARY INFORMATION: On July 22, 1993, the Department published a major revision to the International Traffic in Arms Regulations (ITAR) (58 FR 39280). After several months of implementation and various training seminars with other government agencies and with industry, several issues have been identified which merit regulatory or procedural changes. This final rule is being published to address three (3) of the issues. Section 123.16(a) is revised to exclude significant military equipment from the exemption stated in § 123.16. This change was deemed necessary in order to ensure compliance with the Department's congressional notification requirements and the ITAR requirement for nontransfer and use certification for defense articles which are defined in part 120 of the ITAR as "significant military equipment". In addition, § 124.10 is amended by removing the requirement that a signed DSP-83 be submitted with proposed agreements. Compliance with this requirement has proven to be difficult, and of insufficient benefit to the Department to merit continuation of the requirement. Finally, § 126.5 is amended by deleting the exception to the Canadian exemption which requires a license for the export to Canada of unclassified technical data directly related to a classified defense article.

The Department of State views these changes as beneficial for U.S. persons and industry and has decided to implement them immediately by publication of a final rule. Notwithstanding this final rule, public comment is welcomed.

This amendment involves a foreign affairs function of the United States. It is exempt from review under E.O. 12866 and has been reviewed internally by the Department of State to ensure consistency with the purposes thereof. It is also excluded from the procedures of 5 U.S.C. 553 and 554.

List of Subjects

22 CFR Part 123

Arms and munitions, Exports

22 CFR Part 124

Arms and munitions, Exports, Technical assistance.

22 CFR Part 126

Arms and munitions, Exports

Accordingly, for the reasons set forth in the preamble, 22 CFR subchapter M, parts 123, 124 and 126 are amended as follows:

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

1. The authority citation for 22 CFR part 123 continues to read as follows:

Authority: Secs. 2 and 38, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311, 3 CFR 1977 Comp. 79; 22 U.S.C. 2658

2. Section 123.16 is amended by revising paragraph (a) to read as follows:

§ 123.16 Exemptions of general applicability.

(a) The following exemptions apply to exports of unclassified defense articles for which no approval is needed from the Office of Defense Trade Controls. These exemptions do not apply to: Proscribed destinations under § 126.1 of this subchapter; exports for which Congressional notification is required (see § 123.15 of this subchapter); MTCR articles; Significant Military Equipment (SME); and may not be used by persons who are generally ineligible as described in § 120.1(c) of this subchapter. All shipments of defense articles, including those to and from Canada, require a Shipper's Export Declaration (SED) or notification letter. If the export of a defense article is exempt from licensing, the SED must cite the exemption. Refer to § 123.22 for Shipper's Export Declaration and letter notification requirements.

* * * * *

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

3. The authority citation for 22 CFR part 124 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658.

4. Section 124.10 is revised to read as follows:

§ 124.10 Nontransfer and use assurances.

(a) *Types of agreements requiring assurances.* With respect to any manufacturing license agreement or technical assistance agreement which relates to significant military equipment or classified defense articles, including classified technical data, a Nontransfer and Use Certificate (Form DSP-83) (see § 123.10 of this subchapter) signed by the applicant and the foreign party must be submitted to the Office of Defense Trade Controls. With respect to all agreements involving classified articles, including classified technical data, an authorized representative of the foreign government must sign the DSP-83 (or provide the same assurances in the form of a diplomatic note), unless the Office of Defense Trade Controls has granted an exception to this requirement. The Office of Defense Trade controls may require that a DSP-83 be provided in conjunction with an agreement that does not relate to significant military equipment or classified defense articles. The Office of Defense Trade Controls may also require with respect to any agreement that an appropriate authority of the foreign party's government also sign the DSP-83 (or provide the same assurances in the form of a diplomatic note).

(b) *Timing of submission of assurances.* Submission of a Form DSP-83 and/or diplomatic note must occur as follows:

(1) Agreements which have been signed by all parties before being submitted to the Office of Defense Trade Controls may only be submitted along with any required DSP-83 and/or diplomatic note.

(2) If an agreement has not been signed by all parties before being submitted, the required DSP-83 and/or diplomatic note must be submitted along with the signed agreement.

Note: In no case may a transfer occur before a required DSP-83 and/or diplomatic note has been submitted to the Office of Defense Trade Controls.

PART 126—GENERAL POLICIES AND PROVISIONS

5. The authority citation for 22 CFR part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Arms Export Control Act, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791 and 2797); E.O. 11958, 42 FR 4311, E.O. 11322, 32 FR 119; 22 U.S.C. 2658.

6. Section 126.5 is revised to read as follows:

§ 126.5 Canadian exemptions.

(a) District Directors of Customs and postmasters shall permit the permanent or temporary export or temporary import without a license of any unclassified equipment or unclassified technical data to Canada for end use in Canada by Canadian citizens or return to the United States, or from Canada for end use in the United States or return to a Canadian citizen in Canada, with the exception of the defense articles, defense services or related technical data.

(b) *Exceptions.* The exemptions of this section do not apply to the following defense articles, defense services, or related technical data:

(1) Fully automatic firearms and components and parts therefor in Category I(a) which are not for end use by the Federal Government, or a Provincial or Municipal Government of Canada;

(2) Nuclear weapons strategic delivery systems and all components, parts, accessories, attachments specifically designed for such systems and associated equipment;

(3) Nuclear weapon design and test equipment listed in Category XVI;

(4) Naval nuclear propulsion equipment listed in Category VI(e);

(5) Aircraft listed in Category VIII(a);

(6) Submersible and oceanographic vessels and related articles listed in Category XX (a) through (d).

(7) Defense articles, defense services, or related technical data for use by a foreign national other than a Canadian.

(c) *Related requirements.* The foregoing exemption from obtaining an export license does not exempt an exporter from complying with the requirements set forth in § 123.15 of this subchapter or from filing the Shipper's Export Declaration or notification letter required by § 123.22 of this subchapter.

(d) *Part 124 agreements.* The requirements of part 124 of this subchapter must be complied with in the situations contemplated in that part. For example, the exemptions of this section may not be used for the provision of defense services except pursuant to an approved manufacturing

license agreement or technical assistance agreement.

Dated: May 13, 1994.

Lynn E. Davis,

Under Secretary of State for International Security Affairs.

[FR Doc. 94–13944 Filed 6–9–94; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 367

[DoD Directive 5136.1]

Assistant Secretary of Defense for Health Affairs

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document revises the responsibilities, functions, relationships, and authorities of the Assistant Secretary of Defense for Health Affairs ASD(HA). The principal revision, the assignment of the Health Affairs functions under the Under Secretary of Defense for Personnel and Readiness is consistent with Section 903 of the FY 1994 Defense Authorization Act.

EFFECTIVE DATE: May 27, 1994.

FOR FURTHER INFORMATION CONTACT: G. Meiners, (703) 697–1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 367

Organization and functions (Government agencies).

Accordingly, 32 CFR part 367 is revised to read as follows:

PART 367—ASSISTANT SECRETARY OF DEFENSE FOR HEALTH AFFAIRS

Sec.

367.1 Purpose.
367.2 Applicability.
367.3 Responsibilities and functions.
367.4 Relationships.
367.5 Authorities.

Authority: 10 U.S.C. 113 and 138.

§ 367.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense by 10 U.S.C. 113 and 138, this part updates the responsibilities, functions, relationships, and authorities of the ASD(HA), as prescribed herein.

§ 367.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 367.3 Responsibilities and functions.

The Assistant Secretary of Defense for Health Affairs, as the principal staff assistant and advisor to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) and the Secretary and Deputy Secretary of Defense for all DoD health policies, programs, and activities, shall effectively execute the Department's medical mission, which is to provide, and to maintain readiness to provide, medical services and support to members of the Armed Forces during military operations, and to provide medical services and support to members of the Armed Forces, their dependents, and others entitled to DoD medical care.

(a) In carrying out these responsibilities, the ASD(HA) shall exercise authority, direction, and control over the medical personnel, facilities, programs, funding, and other resources within the Department of Defense, including, but not limited to:

(1) Establishing policies, procedures, and standards that shall govern DoD medical programs.

(2) Serving as program manager for all DoD health and medical resources. Preparing and submitting in the Department's planning, programming, and budgeting system (PPBS) a unified medical program and budget to provide resources for all medical activities within the Department of Defense. Consistent with applicable law, all funding for the DoD medical program, including operation and maintenance, procurement, and the Civilian Health and Medical Program of the Uniformed Services, but excluding funds for active and reserve medical military personnel, shall be accounted for in a single defense medical appropriations account. Funds for medical facility military construction shall be in a separate, single appropriations account.

(3) Presenting and justifying the unified medical program and budget throughout the PPBS process, including representations before the Congress.

(4) Co-chairing with the Director, Defense Research and Engineering, the Armed Services Biomedical Research Evaluation and Management Committee, which facilities consideration of DoD biomedical research.

(5) Performing such other functions as the USD(P&R) and the Secretary of Defense may prescribe.

(b) The ASD(HA) may not direct a change in the structure of the chain of command within a Military Department with respect to medical personnel and may not direct a change in the structure of the chain of command with respect to medical personnel assigned to that command.

§ 367.4 Relationships.

(a) In the performance of assigned responsibilities and functions, the ASD(HA) shall serve under the authority, direction, and control of the USD(P&R) and shall:

(1) Report directly to the USD(P&R).

(2) Exercise authority, direction, and control over:

(i) The Director, Office of Civilian Health and Medical Program of the Uniformed Services.

(ii) The Director, Defense Medical Programs Activity.

(iii) The Director, Armed Forces Institute of Pathology.

(iv) The President, Uniformed Services University of the Health Sciences (USUHS), pursuant to the authority vested in the Secretary of Defense by 10 U.S.C. Chapter 104, except that the authority to appoint the President of the USUHS is reserved to the Secretary of Defense.

(v) Such other subordinate officials as may be assigned.

(3) Consult, as appropriate, with the Comptroller of the Department of Defense (C, DoD) and the Director, Program Analysis and Evaluation, to ensure that medical planning, programming, and budgeting activities are integrated with the DoD PPBS. The C, DoD, shall allocate and reallocate the funds in the Defense Health Program account and the medical facility military construction account among the DoD Components in accordance with ASD(HA) instructions, as coordinated with the USD(P&R), and applicable law.

(4) Obtain through the Chairman of the Joint Chiefs of Staff, submissions of the operational and other needs of the Commanders of the Unified Combatant Commands, and obtain submissions from the Secretaries of the Military Departments of their proposed elements of the medical unified program and budget, and integrate those submissions as appropriate.

(5) Coordinate and exchange information with other OSD officials and the Heads of DoD Components having collateral or related functions.

(6) Use existing facilities and services of the Department of Defense and other Federal and non-Federal Agencies, whenever practicable, to achieve maximum efficiency and economy.

(b) Other OSD officials and the Heads of the DoD Components shall coordinate with the ASD(HA) on all matters related

to the responsibilities and functions in § 367.3.

§ 367.5 Authorities.

The ASD(HA) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M [1], that implement policy approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1 [2] as necessary to carry out assigned functions.

(c) Communicate directly with the Heads of the DoD Components. Communications to the Commanders of the Unified Combatant Commands shall be coordinated through the Chairman of the Joint Chiefs of Staff.

(d) Make determinations on the uniform implementation of laws on separation from the Military Departments due to physical disability as prescribed in DoD Directive 1332.18 [3].

(e) Develop, issue, and maintain regulations, with the coordination of the Military Departments, as necessary and appropriate to fulfill the Secretary of Defense's responsibility to administer 10 U.S.C. Chapter 55.

(f) Establish arrangements for DoD participation in nondefense governmental programs for which the ASD(HA) has been assigned primary cognizance.

(g) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

Dated: June 6, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–14085 Filed 6–9–94; 8:45 am]

BILLING CODE 5000–04–M

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 367.5(a).

[3] See footnote 1 to § 367.5(a).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN31–1–5934; FRL–4888–2]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving the State Implementation Plan (SIP) revision request adopted by the Indiana Pollution Control Board on July 21, 1993, and formally submitted by the state of Indiana on January 6, 1994, for the purpose of implementing an emission statement program for stationary sources within the ozone nonattainment counties of Clark, Elkhart, Floyd, Lake, Marion, Porter, St. Joseph, and Vanderburgh. The implementation plan was submitted by the state to satisfy the Federal requirements for an emission statement program as part of the SIP for Indiana.

EFFECTIVE DATE: This final rule will be effective August 9, 1994 unless notice is received by July 11, 1994 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments on this action should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the requested SIP revision, technical support documents and public comments received are available at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Hattie Geisler, Regulation Development Section (AR–18), Regulation Development Branch, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3199. Anyone wishing to come to Region 5 offices should contact Hattie Geisler first. Reference File IN31–1–5934.

A copy of this revision to the Indiana SIP is available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7548.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On July 21, 1993, the Indiana Pollution Control Board adopted and on January 6, 1994, the Indiana Department of Environmental Management (IDEM) formally submitted to the USEPA a request to approve the July 21, 1993, adopted emission statement regulations, codified as 326 IAC 2–6. This submission addresses the emission statement requirements which are found in section 182(a)(3)(B) of the Clean Air Act (Act), as amended (1990 Amendments).

Section 182(a)(3)(B) of the Act states that, within 2 years after the enactment of the Act, states with ozone nonattainment areas (classified as marginal or worse) must submit revisions to their SIPs to require the owners or operators of stationary sources of Volatile Organic Compounds (VOC) or Oxides of Nitrogen (NO_X) to provide the states with statements, in a form acceptable to the USEPA, showing actual emissions of NO_X and/or VOC from the sources. The first emission statements must be submitted within 3 years of the enactment of the Act. Subsequent statements are to be submitted annually thereafter. These statements must contain certifications of accuracy.

Section 182(a)(3)(B)(ii) of the Act specifies that the states may waive the requirements for emission statements for any class or category of sources which emit less than 25 tons per year if the states, through the submission of base year emission inventories or periodic emission inventories (required to be submitted to the USEPA every three years), provide for the reporting of the emissions from the exempted source classes or categories and emissions are determined using emission factors acceptable to the USEPA.

II. Analysis of State Submittal

The criteria used to review the submitted SIP revisions are found in USEPA's draft Guidance on the Implementation of an Emission Statement Program, (July 1992). It should be noted that this guideline has not been finalized, but does provide current USEPA guidance on the contents of emission statements and on the states' use of emission statements. For this reason, the July 1992 draft guidance has been used for the technical review of this submission. It should be noted that the USEPA intends to incorporate the guidelines contained in

the July 1992 guidance into the Code of Federal Regulations in the near future.

The July 1992 guidance describes the following requirements for emission statement SIP revisions:

1. Regardless of what minimum emission reporting level is established, if either VOC or NO_X is emitted at or above the established minimum reporting level, the emissions of both VOC and NO_X should be reported;

2. The emission statements should, at minimum, include the following data:

a. Certification of data accuracy; to be made by an officer of the reporting company who will take legal responsibility for the accuracy of the reported data;

b. Source identification information;

c. Operating schedules;

d. Emissions information, including both annual and typical ozone season daily emissions;

e. Control equipment information; and

f. Process data.

3. States must incorporate the emission statement data into an annual point source emissions submittal to the USEPA. This annual emissions submittal is first due to the USEPA by July 1, 1993;

4. In addition to the submittal of emission statements and the annual point source emissions report, the USEPA is also requesting that states submit an Emissions Statement Status Report (ESSR) beginning by July 1, 1993. The ESSR is to be submitted quarterly each year until all applicable sources have submitted emission statements. The ESSR should individually list the source facilities that are delinquent in submitting emission statements. The ESSR should also include the total annual and typical ozone season day emissions from all source facilities submitting emission statements prior to the ESSR submittal;

5. States are required to use the data collected through the emission statement program to annually update the facility-specific data contained in the Aerometric Information Retrieval System (AIRS) by July 1st of each year; and

6. States must commit to retain emission statement data and submittals for a period of at least three years.

Indiana's submittal contains the adopted regulations that will apply to source facilities and that specify what data are to be submitted. The remainder of this technical review will be dedicated to reviewing the contents and technical merits of the state's adopted regulations and the accompanying state commitments.

As noted above, the emission statement regulations are codified as 326 IAC 2–6. The provisions of the regulations are outlined as follows:

Applicability

The emission statement regulations are applicable to all sources of VOC or NO_X with the potential to emit 10 tons per year or more of VOC or NO_X in the Counties of: Clark, Elkhart, Floyd, Lake, Marion, Porter, St. Joseph, and Vanderburgh. The regulations are also applicable to sources of Carbon Monoxide (CO), VOC, NO_X, Particulate Matter (PM), and Sulfur Dioxide (SO_2) which have the potential to emit 100 tons per year or more and to sources of Lead (Pb) which have the potential to emit 5 tons per year or more in the State of Indiana. If the emissions from a facility surpass the emission cutoff for any of these pollutants, the emissions of all the named pollutants must be addressed in the submitted emission statement.

Definitions

The definitions in 326 IAC 2–6 applicable to the emission statement regulations and of greatest relevance to the emission statement regulations are summarized here.

Actual emissions means the actual rate of emissions of a pollutant from an emissions unit for the calendar year or seasonal period.

Annual process rate means the actual or estimated annual fuel, process, or solid waste operating rate in an emission statement operating year.

Certifying individual means the individual responsible for the completion and certification of the emission statement, such as an officer of the company or an employee, who will take legal responsibility for the accuracy of the emission statement.

Control efficiency means the actual emission control efficiency achieved by the applicable emission control device(s) during the emission statement operating year. The control efficiency must reflect control equipment downtime, operation with diminished effectiveness, and any other malfunctions that occurred while the emission source(s) were in operation. If the actual control efficiency during the emission statement operating year is unknown or cannot reasonably be predicted from available data, then the efficiency designed by the manufacturer may be used. When the actual control efficiency is unknown, it should be clearly indicated that the design efficiency, and not the actual efficiency, is being reported.

Control equipment identification code means the AIRS or AIRS Facility Subsystem (AFS) code which defines the equipment used to reduce by destruction or removal the amount of air pollutant in an air stream prior to discharge to the ambient air.

Downtime means the period of time when the control device is not operational during the corresponding period of the process.

Emission factor means an estimate of the rate at which a pollutant is released to the atmosphere as the result of some activity, divided by the rate of that activity, such as production rate or throughput.

Emission statement operating year means the 12 consecutive month time period starting December 1 and ending November 30 for those sources located in Clark, Elkhart, Floyd, Lake, Marion, Porter, St. Joseph, or Vanderburgh Counties with the potential to emit VOC or NO_X into the ambient air at levels equal to or greater than 10 tons per year, or the 12 consecutive month time period starting January 1 and ending December 31 for all other sources to which the emission statement regulations apply (see the discussion of applicability above).

Estimated emissions method code means a one position (one character) AIRS or AFS code which identifies the estimation technique used in the calculation of estimated emissions.

Fugitive emission means releases to the air that are not emitted through stacks, vents, ducts, pipes, or any other confined air stream. Fugitive emissions include equipment leaks, evaporative losses from surface impoundments, and releases from building ventilation systems.

Peak ozone season means the contiguous three-month period of the year from June through August.

Percentage annual throughput means:

1. The weighted percent of yearly activity for those sources located in Clark, Elkhart, Floyd, Lake, Marion, Porter, St. Joseph, or Vanderburgh Counties with the potential to emit VOC or NO_X into the ambient air at levels equal to or greater than 10 tons per year and for the following periods:

a. December through February;

b. March through May;

c. June through August; and

d. September through November.

2. The weighted percent of yearly activity for all other sources to which the emission statement regulations apply for the following periods:

a. January through March;

b. April through June;

c. July through September; and

d. October through December.

Plant means the total facilities available for production or service.

Point means a physical emission point or process, such as a distinct building or a portion of a building, within a plant that results in pollutant emissions.

Process rate means a quantity per unit of time of any raw material or process intermediate consumed, or product generated through the use of any equipment, source operation, or process. For a stationary internal combustion unit or any other fuel burning equipment, this term means the quantity of fuel burned per unit time.

Segment means components of an emissions point or process, at the level that emissions are calculated.

SIC code means the standard industrial classification code.

Stack means a (smoke) stack or vent within a plant where emissions are introduced into the atmosphere.

Stationary source means any building, structure, facility, or installation which emits, or may emit, any air pollutant subject to regulation under Indiana Code 13–1–1 (IC 13–1–1).

Typical ozone season day means a day typical of that period of the year during the peak ozone season.

Compliance Schedule

The owner or operator of any source facility located in Clark, Elkhart, Floyd, Lake, Marion, Porter, St. Joseph, or Vanderburgh Counties with the potential to emit VOC or NO_x into the ambient air at levels equal to or greater than 10 tons per year must annually submit an emission statement to the Commissioner (of IDEM) by April 15. The owners or operators of other sources to which the emission statement regulations apply must annually submit an emission statement to the Commissioner by July 1. The submittals must cover the time periods covered under the definition of "emission statement operating year."

Requirements

The emission statement submitted by each applicable facility must contain the following information:

1. Certification that the information contained in the emission statement is accurate to the best knowledge of the individual certifying the emission statement. The certification must include the full name, title, signature, date of signature, and telephone number of the certifying individual. The certifying individual shall be employed by the company and shall take legal responsibility for the accuracy of the emission statement;

2. Source identification information including: (a) The full name, physical location, and mailing address of the facility; (b) source latitude and longitude; and (c) SIC code(s);

3. Operating data, to include the following:

a. Percent annual throughput by quarter:

i. For those sources of VOC or NO_x with the potential to emit equal to or more than 10 tons per year of VOC or NO_x in the Counties of: Clark; Elkhart; Floyd; Lake; Marion; Porter; St. Joseph; and Vanderburgh, the quarters are defined as follows:

(AA) December through February;
(BB) March through May;
(CC) June through August;
(DD) September through November;

ii. For all other sources subject to the emission statement rule, the quarters are defined as follows:

(AA) January through March;
(BB) April through June;
(CC) July through September;
(DD) October through December;

b. For those sources of VOC or NO_x with the potential to emit equal to or greater than 10 tons per year of VOC or NO_x in the Counties of: Clark; Elkhart; Floyd; Lake; Marion; Porter; St. Joseph; and Vanderburgh, the days per week on both the normal operating schedule and on a typical ozone season week, if different from the normal operating schedule. The peak ozone season for Indiana is June through August;

c. For all other sources (other than those in (b) above) subject to the emission statement rule, the days per week of the normal operating schedule;

d. Hours per day during the normal operating schedule;

e. Hours per year during the normal operating schedule;

f. For those sources of VOC or NO_x with the potential to emit equal to or greater than 10 tons per year of VOC or NO_x in the Counties of: Clark; Elkhart; Floyd; Lake; Marion; Porter; St. Joseph; and Vanderburgh, the weeks of operation during the peak ozone season;

g. Annual fuel or process weight and units used;

4. Emissions information including:

a. For those sources of VOC or NO_x with the potential to emit equal to or greater than 10 tons per year of VOC or NO_x in the Counties of: Clark; Elkhart; Floyd; Lake; Marion; Porter; St. Joseph; and Vanderburgh, the estimated actual VOC and NO_x emissions at the segment level, in tons per year for an annual emission rate and pounds per day for a typical ozone season day. Actual emission estimates must include upsets, downtime, and fugitive emissions;

b. For all other sources (other than those in (a) above) subject to the emission statement rule, the estimated actual VOC, NO_x, CO, SO2, Pb, or PM emissions at the segment level, in tons per year for an annual emission rate. Actual emission estimates must include upsets, downtime, and fugitive emissions;

c. AIRS facility subsystem estimated emissions method code;

d. Calendar year for the emissions;

e. Emission factor if used. If the emissions were calculated using an emission factor, the emission factor must:

i. Be one established in AP–42, "Compilation of Air Pollutant Emission Factors", Volume 1, Fourth Edition, September 1985; or

ii. In the alternative, the source may substitute site specific values for those listed in AP–42 if these site specific values are accepted by the IDEM and the USEPA;

f. Source Classification Code number;

5. Control equipment information including: (a) Current primary and secondary AFS control equipment identification codes; and (b) current control equipment efficiencies reflecting the total control efficiencies from all control equipment and including the effects of downtime and maintenance degradation. If the control efficiency is unavailable, the design control efficiency or the control efficiency limit imposed by a permit must be specified;

6. Process rate data (in units prescribed in the AIRS facility subsystem source classification code table) including:

a. Annual process rates; and

b. For those sources of VOC or NO_x with the potential to emit equal to or greater than 10 tons per year of VOC or NO_x in the Counties of: Clark; Elkhart; Floyd; Lake; Marion; Porter; St. Joseph; and Vanderburgh, peak ozone season daily process rates.

In addition to the requirements of the emission statement regulations, the emission statement SIP revision submittal also contains IDEM commitments to the following:

1. IDEM will update the AIRS facility subsystem using the annual emissions report data. The data required by the Act will be entered into AIRS by July 1st each year. The data required by 40 CFR part 51 will be updated into AIRS by September 1 of each year.

2. IDEM will retain the annual emission reports on file for at least 3 years.

3. IDEM will develop and submit to the USEPA a status report that outlines the degree of compliance with the emission statement program. IDEM will report quarterly to the USEPA, the total number of sources affected by the

emission statement regulations, the number of sources that have complied with the emission statement regulations, and the number of sources that have not. The status report will also include the total annual and typical ozone season day emissions from all reporting VOC and NO_x sources located in Clark, Elkhart, Floyd, Lake, Marion, Porter, St. Joseph, and Vanderburgh Counties, both corrected and non-corrected for rule effectiveness. Sources that are delinquent in submitting their emission statements will be individually listed if they emit 500 tons per year or more of VOC or 2,500 tons per year or more of NO_x. The quarterly status reports will be submitted July 1, October 1, January 1, and April 1 of each year.

III. Final Action

IDEM's adopted annual emissions reporting regulations submitted on January 6, 1994, are acceptable under section 182(a)(3)(B) of the Act and USEPA's draft guidelines.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on August 9, 1994. However, if we receive notice by July 11, 1994 that someone wishes to submit adverse comments, then USEPA will publish: (1) A document that withdraws the action; and (2) a document that begins a new action by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This has been classified as a Table 2 action by the Regional Administrator under procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA* 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a) (2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Carbon monoxide, Volatile organic compounds, Particulate matter, Sulfur dioxide.

Dated: April 26, 1994.

Robert Springer,

Acting Regional Administrator.

For the reasons stated in the preamble, chapter I, title I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(91) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(91) On January 6, 1994, the State of Indiana submitted a requested revision to the Indiana State Implementation Plan (SIP) intended to satisfy the requirements of section 182(a)(3)(B) of the Clean Air Act as amended in 1990. Included were State rules establishing procedures for the annual reporting of emissions of volatile organic material (VOM) and oxides of nitrogen (NO_x) as well as other regulated air pollutants by stationary sources in ozone nonattainment areas.

(i) Incorporation by reference.

(A) Title 326 of the Indiana Administrative Code (326IAC) 2–6 which was adopted by the Indiana Air Pollution Control Board, effective December 13, 1993.

[FR Doc. 94–14078 Filed 6–9–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[DE10–1–6433; FRL–4893–1]

Approval and Promulgation of Air Quality Implementation Plans; State of Delaware; Stage II Vapor Recovery Regulations for Gasoline Dispensing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision establishes and requires Stage II Vapor Recovery Regulations for Gasoline Dispensing Facilities throughout the State of Delaware. The intended effect of this action is to approve these regulations to satisfy the requirements of the Clean Air Act (the Act).

EFFECTIVE DATE: This final rule will become effective on July 11, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S.

Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 597–6863.

SUPPLEMENTARY INFORMATION: On February 11, 1994 (59 FR 6608), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of the addition of section 36 and appendix J to Regulation No. 24, Stage II Vapor Recovery Regulations, into Delaware's ozone SIP. Delaware formally submitted section 36 and appendix J of Regulation No. 24 to EPA as a SIP revision on January 11, 1993, to comply with the Stage II vapor recovery requirements of section 182(b)(3) of the Act.

This rulemaking action is approving the addition of section 36 and appendix J into the Delaware ozone SIP. Section 36 and appendix J requires Stage II vapor recovery at gasoline dispensing facilities which dispense 10,000 gallons per month (gpm) or more. Further discussion of the applicability of this regulation, as well as the compliance schedule for Delaware's three counties are outlined in the NPR.

Other specific requirements of the Stage II Vapor Recovery Regulations for Gasoline Dispensing Facilities and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving the SIP revision to add Section 36–Stage II Vapor Recovery and Appendix J, *Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems for Gasoline Dispensing Facilities* to Regulation No. 24, "Control of Volatile Organic Compound Emissions" submitted by the State of Delaware on January 11, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action had been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). However, in an October 4, 1993 memo, the Acting Assistant Administrator for Air and Radiation, Michael H. Shapiro, revised these SIP tables so that Table 2 final actions on which no adverse comments were received on the proposed rule may be delegated to Table 3 actions. No comments were received concerning this action, therefore, under the new guidelines this final action may be classified as a Table 3 action. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request is still applicable under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this approval of Stage II Vapor Recovery Regulations for Gasoline Dispensing Facilities in the State of Delaware must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: May 25, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

Subpart I—Delaware

2. Section 52.420 is amended by adding paragraph (c)(50) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(50) Revisions to the Delaware State Implementation Plan submitted on January 11, 1993 by the Delaware Department of Natural Resources & Environmental Control:

(i) Incorporation by reference.

(A) Letter of January 11, 1993 from the Delaware Department of Natural Resources & Environmental Control submitting and requesting approval of Stage II Vapor Recovery Regulations for Gasoline Dispensing Facilities.

(B) Addition of Section 36–Stage II Vapor Recovery and Appendix J–*Procedures for Implementation of Regulations Covering Stage II Vapor Recovery Systems for Gasoline Dispensing Facilities* to Regulation No. 24, "Control of Volatile Organic Compound Emissions." Section 36 and Appendix J have an effective date of January 11, 1993.

(ii) Additional materials.

(A) Delaware Secretary's Order No. 93–00078, issued January 11, 1993, adopting Stage II Vapor Recovery Regulations in the State.

(B) Remainder of the January 11, 1993 State submittal pertaining to Section 36 and Appendix J of Regulation No. 24, Stage II Vapor Recovery at Gasoline Dispensing Facilities.

[FR Doc. 94–14068 Filed 6–9–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[MD–21–1–6265; FRL–4888–3]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland–Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision establishes and requires the implementation of an Oxygenated Gasoline Program in three control areas as follows: the Northeast Oxygenated Gasoline Control Area—comprised of Cecil County which is part of the Philadelphia Consolidated Metropolitan

Statistical Area (CMSA); the Baltimore Oxygenate Gasoline Control Area—comprised of Baltimore City and the counties of Anne Arundel, Baltimore, Carroll, Harford, Howard, and Queen Anne's, all of which are included in the Baltimore Metropolitan Statistical Area (MSA); and the Washington Oxygenated Gasoline Control Area—comprised of the counties of Calvert, Charles, Frederick, Montgomery, and Prince George's, which comprise the Maryland portion of the Washington, DC MSA. The intended effect of this action is to approve these regulations to satisfy the requirements of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (the Act). This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule will become effective on July 11, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Air and Radiation Docket (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 597–6863 at the EPA address indicated in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: On December 14, 1993, (58 FR 65309), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of an Oxygenated Gasoline Program in the State of Maryland. A formal SIP revision was submitted by the State of Maryland on November 13, 1992.

Specific requirements of the Oxygenated Gasoline Program and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No comments were received on the NPR.

Final Action

EPA is approving the SIP revision submitted by the State of Maryland on November 13, 1992, which implements an Oxygenated Gasoline Program in the State. The SIP revision consists of revisions to Code of Maryland Regulations (COMAR) 03.03.05, and COMAR 26.11.13 and new regulations codified at COMAR 03.03.06 and COMAR 26.11.20. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action was originally classified as a Table 2 action for signature by the Acting Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). However, in an October 4, 1993 memorandum, the Acting Assistant Administrator for Air and Radiation, Michael H. Shapiro, revised these SIP tables so that Table 2 final actions on which no adverse comments were received on the proposed rule may be delegated to Table 3 actions. No comments were received concerning this action; therefore, under the new guidelines, this final action may be classified as a Table 3 action. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. The USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request is still applicable under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve Maryland's Oxygenated Gasoline Program must be filed in the United States Court of Appeals for the appropriate circuit by August 9, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Clean Air Act.)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 13, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(101) and by removing and reserving paragraph (c)(88) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(101) Revisions to the State of Maryland Regulations Oxygenated Gasoline Program regulations submitted on November 13, 1992 by the Maryland Department of the Environment. Effective date October 26, 1992.

(i) Incorporation by reference.

(A) Letter of November 13, 1992 from the Maryland Department of the Environment transmitting Oxygenated Gasoline Program regulations.

(B) The following State of Maryland regulations effective October 26, 1992:

(*1*) Amendments to COMAR 26.11.13.01 (Control of Gasoline and Volatile Organic Compound Storage and Handling).

(*2*) Deletion of Regulation .06 under COMAR 26.11.13 (Control of Gasoline and Volatile Organic Compound Storage and Handling).

(*3*) New Regulation COMAR 26.11.20.03 (Mobile Sources).

(*4*) COMAR 03.03.05.01, .01–1, .02–1, .05, .08, and .15 (Motor Fuel Inspection).

(*5*) COMAR 03.03.06.01 through .06 (Emissions Control Compliance).

(ii) The remainder of the November 13, 1992 submittal.

[FR Doc. 94–14071 Filed 6–9–94; 8:45 am]

BILLING CODE 6560–60–F

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40 CFR Parts 144, 264, and 280

[FRL–4894–3]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Underground Storage Tanks, and Underground Injection Control Systems; Financial Assurance; Letter of Credit

AGENCY: Environmental Protection Agency.

ACTION: Final rule; amendment.

SUMMARY: EPA is amending the regulations related to financial assurance promulgated under Subtitles C and I of the Resource Conservation and Recovery Act (RCRA). Those regulations cite the "Uniform Customs and Practice for Documentary Credits," published by the International Chamber of Commerce. This notice inserts the words "and copyrighted" into the letter of credit instrument to clarify that the International Chamber of Commerce publication is copyrighted material. As a result of this notice, owners and operators using the letter of credit instrument to demonstrate financial assurance must include this additional language.

EFFECTIVE DATE: August 9, 1994.

FOR FURTHER INFORMATION CONTACT: Tom Gorman at (202) 260–1339, Office of General Counsel, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Authority

This amendment is promulgated under the authority of Sections 2002(a), 1004, 3005, and 3006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912, 6924, 6925, 6926, and 6991, and under the authority of the Safe Drinking Water Act, 42 U.S.C. 300f et seq.

II. Background

Owners and operators of hazardous waste treatment, storage, and disposal facilities must demonstrate financial assurance for costs of closure, post-closure care, third-party liability and corrective action associated with their facilities. In subpart H of 40 CFR part 264, the Agency has established regulations regarding financial assurance for closure, post-closure care, and third party liability. Section 264.151 provides wording for the various financial instruments that owners and operators may use to demonstrate financial assurance. Section 264.151(d) provides wording for a letter of credit to demonstrate financial assurance for closure and post-closure care, and § 264.151(k) provides wording for a letter of credit to demonstrate financial assurance for third-party liability.

The RCRA regulations in 40 CFR part 280 impose similar requirements on owners and operators of underground storage tanks. Under those provisions, owners and operators of underground storage tanks must demonstrate financial assurance for taking corrective action and for third party liability. The regulations then establish a series of mechanisms that owners and operators can use. Section 280.99 provides the wording for a letter of credit, which is one of those allowable mechanisms.

Finally, the regulations at 40 CFR part 144, subpart F for the Underground Injection Control Program contain specific requirements for financial responsibility for Class I hazardous waste injection wells. Class I wells inject industrial and municipal wastes, including RCRA hazardous wastes, below the lowermost underground source of drinking water (USDW). 40 CFR part 144, subpart F, is directly applicable to owners and operators of all Class I hazardous waste injection wells.

III. Purpose of This Notice

The wording of the letter of credit instrument in §§ 144.70(d), 264.151 (d) and (k), and § 280.99 includes a reference to the "Uniform Customs and Practice for Documentary Credits," published by the International Chamber of Commerce. However, the language does not make it clear that the International Chamber of Commerce publication is copyrighted material.

This correction notice amends the letter of credit instrument in §§ 144.70(d), 264.151 (d) and (k), and 280.99 to clarify that the International Chamber of Commerce publication is copyrighted material by including the words "and copyrighted" in the wording of the letter of credit instrument. As a result of this change to the regulations, owners and operators who obtain a letter of credit to demonstrate financial assurance must use the revised language in § 264.151(d), 264.151(k), or 280.99(b), which includes the words "and copyrighted."

IV. Effect on State Authority To Administer Federal Programs

Since this amendment only revises the description of the document, and does not impose new duties on owners or operators that choose to rely on letters of credit, EPA will not require states to adopt this change as part of their approved UIC and UST programs or authorized RCRA programs. Therefore, owners and operators in authorized states that do not adopt this change will not be affected by this rule. However, EPA encourages states to adopt this change.

In states that adopt this change and in states without approved UIC or UST programs or states not authorized for the RCRA program, new letter of credit instruments will have to include this new language.

V. Administrative Procedures Act Requirements

Under 5 U.S.C. 553(b)(3)(B), a rule is exempt from notice and public comment requirements "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issues) that notice and public procedures thereon are impractical, unnecessary, or contrary to the public interest." EPA believes that comment is unnecessary because this amendment makes only a change in the wording of the letter of credit instrument, but does not change the requirements for using the letter of credit instrument to demonstrate financial assurance. Therefore, EPA believes there is good cause to make today's rule effective on August 9, 1994.

List of Subjects

40 CFR Part 144

Environmental protection, Administrative practice and procedure, Confidential Business Information, Hazardous waste, Indian—lands, Reporting and recordkeeping requirements, Surety bonds, Water supply.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 280

Environmental protection, Hazardous substances, Insurance, Oil pollution, Reporting and recordkeeping requirements, Surety bonds, Water pollution control, Water supply.

Dated: April 15, 1994

Elliott Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response

Dated: April 25, 1994

Robert Perciasepe,

Assistant Administrator, Office of Water

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for part 144 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. In § 144.70, the last sentence in paragraph (d) is revised to read as follows:

§ 144.70 Wording of the instruments.

* * * * *

(d) * * * This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. In § 264.151, the last sentence in paragraphs (d) and (k) is revised to read as follows:

§ 264.151 Wording of the instruments.

* * * * *

(d) * * * This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

* * * * *

(k) * * * This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

* * * * *

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

1. The authority citation for part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, and 6991h.

2. In § 280.99, the last sentence of paragraph (b) is revised to read as follows:

§ 280.99 Letter of credit.

* * * * *

(b) * * * This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

* * * * *

[FR Doc. 94-14171 Filed 6-9-94; 8:45 am]

BILLING CODE 6560-50-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1802, 1804, 1805, 1807, 1809, 1815, 1822, 1823, 1825, 1839, and 1852

[NASA FAR Supplement Directive 89-15]

RIN 2700-AB36

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters, such as redesignation of NASA offices and delegation of authority within NASA.

EFFECTIVE DATE: June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. David K. Beck, (202) 358-0482.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, telephone number (202) 783-3238. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

Dryden Flight Research Center and Space Station Program Office

The following sections are changed as a result of the establishment of the Dryden Flight Research Center and Space Station Program Office: 1802.101, 1804.7102-4(a), 1804.7103-2, 1805.207, 1805.303-71(b)(1), 1807.7102(b), 1815.807-71, 1822.103-4, 1839.7003-5, and 1852.103.

Waiver of Certified Cost and Price Data for Canadian Commercial Corporation

An existing waiver in 1815.804 is extended. Subparagraph 1815.804-3(e)(4) is removed. It required NASA personnel to report use of the waiver to NASA Headquarters.

Delegation of Authority for Small Foreign Purchases

Changes to 1825.7003 and 1825.7004 delegate authority and describe internal procedures within NASA.

Reversion of Domestic Preference to Buy American Act

Subpart 1825.71 and clauses at 1852.225-74 and 1852.225-75 are removed because an appropriation act requirement for domestic preference was not extended beyond Fiscal Year 1991 funding. The domestic preference required by the Buy American Act, as implemented in (FAR) 48 CFR Subparts 25.1 and 25.2 and (NASA FAR Supplement) 48 CFR Subparts 1825.1 and 1825.2, remains in effect.

Additional Changes

Section 1815.805-5(b) is revised in order to complete an incomplete sentence. Section 1815.970-3(b) is revised in order to correct a cross-reference. A reference is corrected in 1822.870 regarding contractor EEO reports. A reference to Code FO is changed to Code UO and the division title is changed (section 1823.7002(c)). Section 1852.209-71 is revised in order to correct two cross-references. In addition, section references and subpart headings are revised to reflect corresponding changes in the Federal Acquisition Regulation.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 48 CFR Parts 1801, 1802, 1804, 1805, 1807, 1809, 1815, 1822, 1823, 1825, 1839, and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1801, 1802, 1804, 1805, 1807, 1809, 1815, 1822, 1823, 1825, 1839, and 1852 are amended as follows.

1. The authority citation for 48 CFR parts 1801, 1802, 1804, 1805, 1807, 1809, 1815, 1822, 1823, 1825, 1839, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—PURPOSE, AUTHORITY, ISSUANCE

2. The title of subpart 1801.6 is revised to read as follows:

Subpart 1801.6—Career Development, Contracting Authority, and Responsibilities

PART 1802—DEFINITIONS OF WORDS AND TERMS

3. In section 1802.101, the term "field installation" is revised to read as follows:

1802.101 Definitions.

* * * * *

Field installation means Ames Research Center, Dryden Flight Research Center, Goddard Space Flight Center, John F. Kennedy Space Center, Langley Research Center, Lewis Research Center, Johnson Space Center, George C. Marshall Space Flight Center, Space Station Program Office, John C. Stennis Space Center, or any other field installation established by NASA in the future.

* * * * *

PART 1804—CONTRACT REPORTING

4. Section 1804.7102–4 is amended in paragraph (a) by removing the entry for "Space Station Procurement Office" and adding the following entries in alphabetical order in the table as follows:

1804.7102–4 Assigned contract or agreement prefixes.

(a) * * *

Installation	Prefix
* * * * *	
Dryden Flight Research Center	NAS4
* * * * *	
Space Station Program Office	NAS15
* * * * *	

5. Section 1804.7103–2 is amended by removing the entry for "Space Station Procurement Office" and adding the following entries in alphabetical order in the table as follows:

1804.7103–2 Assigned purchase order or request prefixes.

* * * * *

Installation	Prefix
* * * * *	
Dryden Flight Research Center	E
* * * * *	
Space Station Program Office	K

PART 1805—PUBLICIZING CONTRACT ACTIONS

6. Section 1805.207 is amended in paragraph (a) by adding the following entries in alphabetical order in the table as follows:

1805.207 Preparation and transmittal of synopses.

(a) * * *

Dryden Flight Research Center 8022

* * * * *

Space Station Program Office 8025

* * * * *

7. Section 1805.303–71 is amended in paragraph (b) by revising the introductory text and in paragraph (b)(1) by republishing the first sentence and revising the second sentence to read as follows:

1805.303–71 Public Affairs Office notification.

(a) * * *

(b) *Definitive contracts and supplemental agreements.*

(1) This paragraph (b)(1) does not pertain to supplemental agreements covering overruns or incremental funding actions or to contracts or supplemental agreements that require approval of the Associate Administrator for Procurement pursuant to 1804.7203. It does pertain to contracts, supplemental agreements, and the execution of options that are in an amount of $10,000,000 or over for the Dryden Flight Research Center, Stennis Space Center, Headquarters Acquisition Division, and the NASA Management Office—JPL and $25,000,000 or over for Ames Research Center, Goddard Space Flight Center, Johnson Space Center, Kennedy Space Center, Langley Research Center, Lewis Research Center, Marshall Space Flight Center, and Space Station program Office. * * *

* * * * *

PART 1807—ACQUISITION PLANNING

8. Section 1807.7102 is amended by revising paragraph (b) to read as follows:

1807.7102 Applicability.

(a) * * *

(b) The following are monetary limitations under the Master Buy Plan procedures:

(1) $10,000,000

(i) Dryden Flight Research Center

(ii) John C. Stennis Space Center

(iii) NASA Management Office—JPL

For the purpose of the initial Master Buy Plan submission only, any of the above installations not having any procurements at or above the $10 million limitation shall submit the three largest procurements over $5 million.

(2) $25,000,000

(i) Ames Research Center

(ii) Goddard Space Flight Center

(iii) Headquarters Acquisition Division

(iv) Johnson Space Center

(v) Kennedy Space Center

(vi) Langley Research Center

(vii) Lewis Research Center

(viii) Marshall Space Flight Center

(ix) Space Station Program Office

* * * * *

PART 1809—CONTRACTOR QUALIFICATIONS

9. The title of subpart 1809.5 is revised to read as follows:

Subpart 1809.5—Organizational and Consultant Conflicts of Interest

PART 1815—CONTRACTING BY NEGOTIATION

10. Section 1815.804–3 is amended by revising the second sentence in paragraph (e)(3) to read as follows and removing paragraph (e)(4):

1815.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

* * * * *

(e) * * *

(3) * * * Therefore, NASA has waived the requirement for certification of cost or pricing data submitted by the CCC during the period April 1, 1990 through March 31, 1996. * * *

11. Section 1815.807–71 is amended by revising the first sentence to read as follows:

1815.807–71 Installation reviews.

Each contracting activity shall establish a formal system for the prenegotiation review of any proposal over $250,000 ($100,000 at Dryden Flight Research Center, Stennis Space Center, Jet Propulsion Laboratory, Space Station Program Office, and Headquarters Acquisition Division). * * *

12. Section 1815.970–3 is amended in paragraph (b) by revising the sixth sentence to read as follows:

1815.970–3 Facilities capital cost of money.

(a) * * *

(b) * * * This total represents the estimated facilities capital cost of money amount for the contract and is the figure to be used to calculate the prenegotiation position memorandum objective cost and to reduce the profit objective in accordance with 1815.970–3(a). * * *

* * * * *

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

13. Section 1822.103-4 is amended by revising the fifth sentence to read as follows:

1822.103–4 Approvals.

* * * Designations to approve overtime shall be in writing and shall not be delegated under the first level of supervision below the Procurement Officer, except that delegation may be made to the head of a procurement function at geographically remote branch facilities (e.g., Wallops Flight Facility) without power of redelegation.

14. Section 1822.870 is amended in paragraph (a) by revising the second sentence to read as follows:

1822.870 Reports and other required information.

(a) * * * Such a report by the prime or subcontractor is required by 41 CFR 60–1.7 and paragraph (b)(7) of the clause, Equal Opportunity, at (FAR) 48 CFR 52.222–26.

* * * * *

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

15. Section 1823.7002 is amended by revising paragraph (c) to read as follows:

1823.7002 Responsibility.

* * * * *

(c) *Headquarters occupational health official.* At installations where medical and environmental health officers or other designated responsible officials are not available to assist with the formulation of occupational medicine and environmental health provisions of a contract, the Director, Occupational Health and Medicine Division, NASA Headquarters (Code UO), shall assume this responsibility.

* * * * *

PART 1825—FOREIGN ACQUISITION

16. Section 1825.7003 is amended by revising the first sentence to read as follows:

1825.7003 Assignment of responsibility for contract negotiation.

The Headquarters Acquisition Division (Code HW), in conjunction with the International Relations Division (Code IRD) and the Office of General Counsel, is responsible for negotiating and executing contracts exceeding $25,000 with foreign governments and private foreign organizations. * * *

17. Section 1825.7004 is amended by revising the first sentence to read as follows:

1825.7004 Procedure.

A Headquarters or field installation technical office requiring a foreign contract acquisition shall submit a properly approved procurement request (including (a) statement of work/specification, (b) budget estimate including shipping and duty charges, if applicable, (c) Justification for Other Than Full and Open Competition, (d) period of performance, and (e) delivery schedule) through channels to the Headquarters Acquisition Division (Code HW) for action. * * *

Subpart 1825.71—[Removed and Reserved]

18. Subpart 1825.71 is removed and reserved.

PART 1839—ACQUISITION OF FEDERAL INFORMATION PROCESSING RESOURCES

19. Section 1839.7003–5 is amended by revising paragraph (a)(2) to read as follows:

1839.7003–5 APR submission.

(a) * * *

(2) The cognizant IPOs for this purpose are: The Office of Space Flight (Attn: Code MIC) for Johnson Space Center, Kennedy Space Center, Marshall Space Flight Center, Stennis Space Center, and the Space Station Program Office; the Office of Aeronautics (Attn: Code RI) for Ames Research Center, Dryden Flight Research Center, Langley Research Center, and Lewis Research Center; and the Office of Space Science (Attn: Code SP) For Goddard Space Flight Center. For Headquarters acquisitions the Director, Headquarters Acquisition Division (Code HW), shall submit APR's directly to the Office of Management Systems and Facilities (Attn: Code JT) after concurrence by the SIIO in Code J.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

20. Section 1852.103 is amended in paragraph (a)(1) by revising the second sentence to read as follows:

1852.103 Identification of provisions and clauses.

(a) * * *

(1) * * * The prefix shall be an alphabetical abbreviation of the installation name (e.g., ARC, DFRC, GSFC, HW, JSC, KSC, LARC, LERC, MSFC, SSC, or SSPO). * * *

* * * * *

21. Section 1852.209–71 is amended by revising the introductory text to read as follows:

1852.209–71 Limitation of future contracting.

As prescribed in 1809.507–2, the contracting officer may insert a clause substantially as follows in solicitations and contracts, in compliance with (FAR) 48 CFR 9.507–2:

* * * * *

1852.225–74 and 1852.225–75 [Removed]

22. Sections 1852.225–74 and 1852.225–75 are removed.

[FR Doc. 94–13818 Filed 6–9–94; 8:45 am]

BILLING CODE 7510–01–M

48 CFR Parts 1807 and 1810

RIN 2700–AB54

Acquisition Regulation; Addition of Coverage to the NASA FAR Supplement on Performance-Based Contracting

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule sets forth the policies for using performance-based contracting techniques and addressing this issue as an item in procurement plans.

EFFECTIVE DATE: June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Dave Beck, Telephone: (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

The regulation was developed to implement OMB's request that NASA make greater use of performance based contracting techniques. It holds requiring activities responsible for stating specifications, purchase descriptions, and statements of work, on the basis of performance, where practical, so that a variety of products or services may apply. The regulation also ensures that contract files include a statement on consideration or use of performance-based contracting techniques.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this regulation will become a part, is codified in 48 CFR, Chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003–00000–1. It is not distributed to the public, whether in whole or in part, directly by NASA.

Executive Order 12866

The Office of Information and Regulatory Affairs has determined that this rule is significant under E.O. 12866. This regulation is needed because greater use of performance-based contracting techniques will give contractors more freedom to innovate and economize, and also hold them more accountable for the end results. The regulation meets that need by requiring performance-based specifications, purchase descriptions and statements of work, where feasible, to (i) describe the work in terms of the required output; (ii) place full responsibility for quality performance on contractors with formal, measurable performance standards and surveillance plans used to assess contractor performance; and (iii) avoid relying on cumbersome and intrusive process-oriented inspection and oversight programs to assess contractor performance.

The potential costs and benefits of the regulatory action are supported by OFPP Policy Letter 91–2, Service Contracting. The regulation is NASA's internal implementation of OFPP Policy Letter 91–2. NASA has benefited using performance-oriented launch service contracts that balance the assignment of positive and negative performance incentives with a meaningful system of financial rewards and penalties. The statements of work are broad in scope and general in nature, focusing on the successful delivery of the undamaged and operational spacecraft to the proper trajectory and orbital conditions without violating mission parameters. Some of these contracts provide for (i) mission success pools that incentivize the contractor to deliver payload safely and into correct orbit and (ii) liquidated damages relative to timely and effective performance.

Regulatory Flexibility Act

NASA certifies that this rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

Paperwork Reduction Act

This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR 1807 and 1810

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1807 and 1810 are amended as follows:

1. The authority citation for 48 CFR parts 1807 and 1810 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1807—ACQUISITION PLANNING

2. Part 1807 is amended as set forth below:

a. In section 1807.170–1, paragraphs (b)(1) (iv) and (v) are revised and a new paragraph (b)(1)(vi) is added to read as follows:

1807.170–1 Procurement plans requiring approval by NASA Headquarters.

* * * * *

(b) * * *

(1) * * *

(iv) An identification of any later phases if the procurement is to be a phased procurement including the estimated cost thereof;

(v) A statement as to whether the contractor will be required to comply with detailed specifications, meet performance requirements, perform a mission, or furnish a level of effort; and

(vi) A statement on consideration or use of performance-based contracting techniques.

* * * * *

b. Section 1807.170–2 is revised to read as follows:

1807.170–2 Procurement plans requiring approval at the installation level.

Procurement plans prepared for installation-level approval shall be prepared in accordance with 1807.170–1 or in the format prescribed by the installation. Installation prescribed formats shall ensure that the consideration or use of performance-based contracting techniques required at 1807.170–1(b)(1)(vi) and all contract management considerations enumerated at 1807.170–1(c) are addressed.

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

1810.002–71 [Added]

3. Section 1810.002–71 is added to read as follows:

1810.002–71 Performance-based contracting

Use of performance-based specifications, where feasible, is the preferred method for establishing contract requirements. Requiring activities shall, to the maximum extent practicable, use performance-based specifications, purchase descriptions and statements of work in order to give contractors freedom to innovate and economize, and to hold contractors accountable for the end results.

[FR Doc. 94–13819 Filed 6–9–94; 8:45 am]

BILLING CODE 7510–01–M

48 CFR Parts 1843 and 1852

[NASA FAR Supplement Directive 89–15]

Amendments to Interim Rules on Undefinitized Contract Action and Deviation From FAR 31.205–18

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: The section numbers for the interim rule on Undefinitized Contract Action are redesignated in order to conform to the numbering style for the Federal Acquisition Regulation System. In the interim rule on Deviation From FAR 31.205–18 a cross-reference is corrected.

EFFECTIVE DATE: June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. David K. Beck, (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Editorial changes

This document amends two interim rules (59 FR 22521, May 2, 1994, and 59 FR 23802, May 9, 1994). Because the changes are not substantive, the deadlines for submission of comments are unchanged.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 48 CFR Parts 1843 and 1852

Government procurement.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1843 and 1852 are amended as follows.

1. The authority citation for 48 CFR parts 1843 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1843—CONTRACT MODIFICATIONS

2. Subpart 1843.1 is redesignated and retitled as follows:

SUBPART 1843.70—UNDEFINITIZED CONTRACT ACTION

1843.101 through 1843.105 [Redesignated]

3. Sections 1843.101 through 1843.105 are redesignated as follows:

Old section	New section
1843.101	1843.7001
1843.102	1843.7002
1843.103	1843.7003
1843.104	1843.7004
1843.105	1843.7005

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. The introductory text of section 1852.216–89 is revised to read as follows:

1852.216–89 Allowable Cost and Payment.

As prescribed at 1816.307–70(h), insert the following clause:

* * * * *

[FR Doc. 94–13817 Filed 6–9–94; 8:45 am]

BILLING CODE 13817–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 931100–4043; I.D. 060694B]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to prevent exceeding the total allowable catch (TAC) of Atka mackerel specified for this District.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 7, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Atka mackerel TAC for the Central Aleutian District was established by the final 1994 initial specifications of groundfish for the BSAI (59 FR 7656, February 16, 1994) as 37,846 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Atka mackerel TAC specified for the Central Aleutian District soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 37,346 mt after determining that 500 mt will be taken as incidental catch in directed fishing for other species in the Central Aleutian District. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District, effective from 12 noon, A.l.t., June 7, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 6, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–14098 Filed 6–6–94; 4:09 pm]

BILLING CODE 3510–22–F–P

Proposed Rules

Federal Register
Vol. 59, No. 111
Friday, June 10, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

RIN 3150–AE 42

Combined Licenses; Conforming Amendments; Supplementary Post-Promulgation Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Supplementary post-promulgation comment period.

SUMMARY: The Nuclear Regulatory Commission (Commission) is providing a supplementary post-promulgation comment opportunity on a portion of its final rule amending its regulations to conform to the provisions of Title XXVIII of Public Law 102–486, the "Energy Policy Act of 1992," signed into law on October 24, 1992. This notice is necessary to inform the public of the comment opportunity.

DATES: The final rule became effective January 22, 1993. Comments are due 30 days after the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Grace H. Kim, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–504–3605.

SUPPLEMENTARY INFORMATION:

Background

In 1992 Congress passed, and the President signed, the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776). Title XXVIII of that Act amended in part the nuclear power plant licensing provisions of the Atomic Energy Act to authorize explicitly the issuance of combined construction and operating licenses for nuclear power plants. The new legislation largely codified the Commission's existing regulations in 10 CFR part 52 with respect to such combined licenses, but also made several changes to the licensing process established under those regulations. On December 23, 1992, the Commission issued a final rule amending part 52 in light of the new legislation (57 FR 60975). Finding prior public comment on the part 52 amendments unnecessary because the changes were limited to incorporating the language of the Energy Policy Act into the regulations, the Commission established a 60-day post-promulgation comment period. *Id.*

On February 18, 1993, the Nuclear Information and Resource Service (NIRS), which did not submit post-promulgation comments,[1] petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the Commission's final rule. DC Circuit No. 93–1164. Recently, however, the NIRS voluntarily requested dismissal of its petition for review (which the court granted) after obtaining the Commission's agreement, in the interest of judicial economy, to provide the NIRS another opportunity for post-promulgation comment on the final rule's treatment of the so-called "Sholly" procedure applicable to combined licenses. The "Sholly" procedure, which the Commission made applicable to combined licenses in the final rule in accordance with the Energy Policy Act (see 57 FR at 60976; 10 CFR 52.97(b)(2)(ii)), allows the Commission to make an amendment to a combined license immediately effective (*i.e.*, prior to a hearing) if it makes a finding that there are no significant hazards considerations.

In light of these specific circumstances, the Commission is providing another opportunity for post-promulgation comment. Any interested member of the public may submit comments on the Commission's treatment of the "Sholly" procedure in the final rule (see *id.*) within 30 days of the date of publication of this notice. Pursuant to 10 CFR 2.804(f), the Commission will publish in the **Federal Register** an evaluation of the significant comments and any revisions of the rule made as a result of the comments and their evaluation.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

Dated at Rockville, Maryland this 6th day of June, 1994.

For the Nuclear Regulatory Commission

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–14122 Filed 6–9–94; 8:45 am]

BILLING CODE 7590–01–P

[1] The only post-promulgation comment that the Commission received was submitted on February 22, 1993 by the Nuclear Management and Resources Council. The Commission responded to this comment in a **Federal Register** notice published on December 30, 1993 (58 FR 69220).

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 304 and 327

RIN 3064–AB45

Assessments; Forms, Instructions, and Reports

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) is proposing to amend its regulation on assessments to provide for the quarterly collection of assessments by means of FDIC-originated direct debits through the Automated Clearing House (ACH) network, based on invoices prepared by the FDIC using data reported by insured institutions in their quarterly reports of condition. The FDIC believes that the proposed amendments would result in a more efficient collection process, to the benefit of the deposit insurance funds and insured institutions, and would reduce the regulatory burden on insured institutions. The Board is further proposing to amend the assessments regulation to clarify the obligation of acquiring institutions to pay assessments on deposits assumed from institutions terminating their insured status; to delete from the assessments regulation the existing references to experience factors, which are not available for use after 1994; and to include such amendments to the FDIC's regulation on forms as are necessitated by the proposed changes to the assessments regulation.

DATES: Written comments must be received by the FDIC on or before August 9, 1994.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550—17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room F–400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838). Comments will be available for inspection in room 7118, 550—17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Connie Brindle, Chief, Assessment Operations Section, Division of Finance, (703) 516–5553, or Martha Coulter, Counsel, (202) 898–7348, regarding the collection improvement proposal; William Farrell, Chief, Assessment Management Section, Division of Finance, (703) 516–5546, or Jules Bernard, Counsel, (202) 898–3731, regarding assessment obligations of acquiring institutions; Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Collection Improvement Proposal

A. Existing Statutory and Regulatory Provisions

Section 7(c) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1817(c), requires that each insured depository institution pay a semiannual assessment to the FDIC. Payment of the assessment is to be made in the manner and at the time(s) prescribed by the Board. Each institution is to file a certified statement in such form and containing such information as the FDIC requires. An officer of the institution must certify that the statement is true, correct, and complete, and in accordance with the statute and related regulations.

At present, the FDIC's assessment regulations, which are based on a prior version of section 7 of the FDI Act, require the payment of assessments twice a year. The amount of the semiannual payment is computed by the institution. The computation, and the resulting assessment amount, is shown on the certified statement filed by the institution, which is accompanied by a check for the full amount of the assessment. The payment must be postmarked no later than January 31 for the first semiannual period of the year (January through June), and July 31 for the second semiannual period (July through December).

B. Purpose of the Proposal

The FDIC believes that the existing assessment collection process can be improved substantially by utilizing an electronic payment process, to the benefit of insured depository institutions and the federal deposit insurance funds. Because the existing process is paper-based, it is more time consuming and less efficient—both for insured institutions and for the FDIC—than an improved collection process making fuller use of advanced payment technology.

The proposed rule introduces a more efficient collection process using the Automated Clearing House (ACH) network. Funds for assessment payments would be directly debited by the FDIC from accounts designated by insured depository institutions for that purpose. This procedure would substantially improve the efficiency of the collection process, in such ways as eliminating paperwork costs and allowing the FDIC to monitor assessment receipts electronically.

In connection with this improvement in the collection process, the FDIC believes that it is highly desirable to reduce the regulatory burden imposed on insured depository institutions by shifting to the FDIC the responsibility of computing each institution's assessment. To facilitate this process, the FDIC is also proposing a move to quarterly assessment payments. The FDIC believes that this change would have other benefits as well, both for the FDIC and for insured institutions.

A quarterly-payment schedule is a straightforward means of minimizing inefficiencies in the assessment collection process that would not be addressed by other elements of the proposal. For example, it would simplify the assessment computation by basing each quarterly installment on one quarterly report of condition rather than two. It would also resolve a timing problem resulting from a statutory requirement. Under section 7(a) of the FDI Act, 12 U.S.C. 1817(a), the certified statements filed by each institution for a particular semiannual assessment period must be based on the two reports of condition [1] to be filed by the institution for the prior semiannual period. The report dates set pursuant to section 7(a) are March 31, June 30, September 30, and December 31. The June 30 and December 31 report dates precede by only one day the beginning of the semiannual assessment periods for which they provide the basis for assessment computation. As a result, the report data needed by the institution for its assessment computation are not complete until the beginning of the semiannual period, and are not required to be submitted by the institution until the end of the first month of the semiannual period. If, as under the existing collection process, the payment due date falls early within the semiannual period, it is necessary for each institution to compute its own assessment, since there is not sufficient time before the due date for the FDIC to receive the relevant report data from the institution and to prepare and edit an assessment statement based on the data. Under the existing collection process, any subsequent amendment of the reported data on which the assessment is based can potentially—and often does—necessitate recalculation of the institution's assessment.

A possible solution to this timing problem would be to move the semiannual assessment due date to a later date during the semiannual period, for example to the end of the first quarter of the period (that is, to March 31 and September 30). This would be preferable to the existing system in that it would provide the additional time necessary for the FDIC to receive the requisite data from insured institutions and to initiate a direct debit for the assessment amount due. However, it would not permit other improvements that would result from the quarterly-collection proposal, such as simplifying the assessment computation, reducing the data-refinement and billing-adjustment complications associated with semiannual collection, and eliminating the risk of nonpayment for insurance coverage provided for some portion of the assessment period in the case of an institution that fails prior to the payment due date. Thus, the FDIC believes that the quarterly-collection proposal is preferable to delayed semiannual collection.

Under the quarterly-collection proposal, institutions would be invoiced for an initial quarterly payment for the first quarter of each semiannual assessment period (for example, the period beginning January 1) approximately one month before the beginning of the period (in this example, on November 30), based on the report-of-condition data for the first quarter of the preceding semiannual period (in this example, September 30). Although the due date for this first quarterly payment (December 30) would fall approximately one month earlier

[1] For banks, the report of condition is called the Report of Income and Condition; for thrift institutions, the Thrift Financial Report; and for insured branches of foreign banks, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

than the due date for the semiannual payment required under the existing regulations, the quarterly payment would be for only a portion (roughly one-half, assuming minimal changes in the rate of deposit growth across quarters) of the full semiannual assessment amount. The balance of the semiannual assessment—based on the report of condition for the last day of the second quarter of the prior semiannual period (in the above example, December 31)—would be due approximately 3 months into the semiannual period (March 30), about two months later than the existing single semiannual payment date (January 31).

Based on FDIC estimates, the proposed quarterly-payment plan should not result in a material financial loss either to the FDIC or to insured depository institutions.

It is currently anticipated that, if adopted, the proposal would be implemented for the semiannual assessment period beginning July 1, 1995.

C. Additional Description of the Proposal

1. Quarterly Invoices.

Under the proposal, the FDIC would provide to each insured depository institution a quarterly invoice based on the quarterly report of condition most recently due from the institution. In addition, the invoice would reflect adjustments from previous quarters, such as adjustments resulting from amendments to earlier reports of condition or from assessment audits by the FDIC.

The invoices would be provided no later than 30 days before the due date of the quarterly assessment payment. As the following table indicates, first-quarter invoices would be distributed by the preceding November 30 for the period beginning January 1, and by the preceding May 30 for the period beginning July 1. The respective payment dates [2] for these invoices would be December 30 and June 30. Second-quarter invoices would be distributed by February 28 for the then-current semiannual period, with a payment (debit) date of March 30, and by August 30 for the then-current semiannual period, with a payment date of September 30.

Semiannual assessment period covered	Quarter	Invoice date	Payment date	Report of condition used for preparation
Jan.–June	1	Nov. 30	Dec. 30	Sept. 30.
	2	Feb. 28	Mar. 30*	Dec. 31.
July–Dec	1	May 30	June 30	Mar. 31.
	2	Aug. 30	Sept. 30	June 30.

The proposal would eliminate the existing process of averaging the two assessment bases derived from the two quarterly reports of condition for the preceding semiannual period. Instead, as indicated above, each quarterly payment would be based separately on the single most recent report of condition. For institutions whose deposits are increasing, this change could result in slightly lower payments in earlier quarters and higher payments in later quarters, while the converse would apply to an institution whose deposits are decreasing. On the whole, however, whether on an institution-by-institution or industry-wide basis, elimination of averaging is expected to simplify the assessment process without having a significant impact on the amount of assessments paid.

2. Assessment Computation Review Procedure.

The assessment-base data reflected on an institution's quarterly invoices would be copied from data reported by the institution in its reports of condition. Given the source of the data and the mechanical nature of the assessment computation, it is anticipated that there would be only limited occasion for institutions to disagree with the invoices. However, a procedure for resolving any such disagreements is included in the proposal.

The new procedure would apply only to disagreements expressly identified in § 327.3(h) of the proposed regulation, such as where the institution believes the rate multiplier applied by the FDIC is inconsistent with the assessment risk classification assigned to the institution for the semiannual period for which the payment is due. The new procedure would not apply to disputes regarding the appropriateness of the assessment risk classification assigned to the institution; such disputes would continue to be covered by the risk classification review procedure in the existing regulations.

Under the proposed new procedure, the period within which an institution could file a request for revision of an invoice would generally terminate 60 days from the date of the invoice. However, where the revision would result from an institution-initiated amendment to its report of condition, the filing deadline for the request for revision would be 60 days from the date on which such amendment is filed. Such amendment of the report of condition would not automatically trigger an assessment adjustment. Instead, institutions would need to utilize the new procedure to provide notice to the FDIC of the requested revision resulting from the amendment.

3. Certified Statements

Under the proposed rule, institutions would no longer be required to compute their assessments. However, pursuant to section 7(c) of the FDI Act, each institution would still be required to file a semiannual certified statement. For the proposed system, the FDIC would provide a certified statement form reflecting both first- and second-quarter invoice data. The form would show a semiannual assessment amount based on the two quarterly reports of condition on which, by statute, the certified statement is to be based. Each institution would be required to certify its agreement with the assessment computation shown on the form as received from the FDIC or, alternatively, its agreement with that computation as amended in a manner specified by the institution.

In connection with amendment of the assessments regulation, the certified-statement element of the proposal includes incidental amendments to part 304 of the FDIC's regulations ("Forms,

[2] Under the proposal, if a specified payment date falls on a day that is not a business day, the payment date becomes the previous business day.

Instructions, and Reports" (12 CFR part 304), for such purposes as revising the description of the certified statement forms in § 304.3.

4. Designated Deposit Account

A necessary component of the proposed direct-debit payment system is the designation by each insured institution of a deposit account to be debited by the FDIC. Under the proposal, each institution would be required to give timely notice to the FDIC of the account designated by the institution for that purpose. In addition, each institution would be required to take any action necessary to enable the FDIC to direct-debit assessment payments from the account, and to ensure that the account has sufficient funds to cover the assessment amount on the FDIC invoice. Failure on the part of the institution to take any such action or to provide sufficient funding in the designated account would be deemed to constitute nonpayment.

5. Semiannual Notice of Assessment Risk Classification

Under the proposal, the date of the notice of an institution's assessment risk classification currently described in § 327.3(e) would be changed to coincide with the date of the first-quarterly invoice. The FDIC believes that combining the notice and the invoice would result in operational efficiencies both for the FDIC and for insured depository institutions.

Comment was requested by the FDIC on a similar operational change in connection with an assessment rulemaking proceeding last year. The change on which comment was sought at that time was the consolidation of the assessment rate notice and the certified statement form in a single mailing. A consolidated mailing was supported by each of the six comment letters that addressed it. See 58 FR 34357, 34365 (June 25, 1993).

6. Payment of Interest on Overpayments and Underpayments.

Under § 327.7 of the existing assessments regulations, the FDIC pays interest to insured institutions for any timely overpayments of assessments, from the time the assessment is due until the date a refund or credit is given for the overpayment amount. Similarly, institutions are required to pay interest on underpayments from the assessment due date to the date of payment of the shortfall.

Because of inefficiencies inherent in the existing paper-based system, and in the semiannual collection procedure that allows very little time for the refinement of report-of-condition data before it is used in assessment computations, it typically takes in excess of three to five months from the assessment due date to identify, verify, and pay or collect overpayment or underpayment amounts resulting from miscomputations or similar errors.

The proposed rule contemplates a "rolling" correction process in which any necessary adjustments in the assessment amount are made on a quarterly basis. Under this proposal, the FDIC would pay or collect interest on overpayments and underpayments, respectively, on a full-quarter basis. Interest would be due for the period beginning the day after the payment date on which the institution overpaid or underpaid and ending on the payment date for the quarterly invoice reflecting the corresponding adjustment. Thus, even if an underpayment were identified early in the quarter, the FDIC would not collect the balance due until the next quarterly assessment payment date, and would impose interest for the entire quarter. The converse would apply to overpayments; that is, the amount of the overpayment, together with interest through the next assessment payment date, would be credited to the institution on the invoice for the next quarterly payment after the overpayment is discovered.

The FDIC believes that this approach would not have a detrimental impact on insured institutions. Significantly, approximately 75 percent of incorrect assessment payments result from errors made by institutions in filling out their certified statement forms. Such errors would be virtually eliminated under the proposed procedure. Moreover, it is anticipated that any remaining adjustments would be processed more quickly, and that institutions would actually pay less interest from underpayment errors—and would receive credit for overpayments more quickly—than under the existing arrangement.

7. Fail-Safe Payment Plan

Because the proposed payment procedure relies on computerized systems, it seems prudent to provide for a back-up plan to be triggered in the event of a system failure or similar but less global circumstances. The fail-safe plan incorporated into the proposed rule provides that any institution that does not receive its quarterly assessment invoice by the beginning of the month in which payment is due is to promptly notify the FDIC. It is anticipated that, in most cases, the FDIC would provide a duplicate invoice to the institution. However, in the event that could not be done, the institution would, as a preliminary matter, make its quarterly payment in the amount shown on its assessment invoice for the preceding quarter. Any necessary adjustments to that payment would be reflected on the next quarterly invoice.

II. Mergers Resulting in the Termination of Insured Status

A. Assessment Base Adjustments

Proposed § 327.6(a) sets forth the rules for computing institutions' assessment bases when one institution (a seller) transfers its deposits to one or more other institutions (buyers), and then goes out of business. Transactions of this kind (transfers) can take many forms: they include statutory mergers, consolidations, statutory assumptions, and contractual arrangements in which buyers purchase assets and assume deposits from a seller. Proposed § 327.6(a) would cover all such cases. But it would not cover cases where the seller continues to survive (such as cases in which a seller only sells some but not all of its branches). Nor would it cover cases in which buyers assume deposits from the receivership for a failed institution.

Sometimes the buyers complete a transfer (or related series of transfers) in the first quarter of a semiannual period (January through March, or July through September). In that case, the buyers assume all the seller's deposits before the end of the quarter. The buyers report the transferred deposits in their first-quarter reports of condition. Under the proposed rule, the second-quarter payments made by the buyers would be based (in part) on the transferred deposits.

But many transfers take place in the second quarter of a semiannual period (April through June, or October through December). A seller still has deposits at the end of the first quarter, and reports the deposits in its first-quarter report of condition. Under the proposed quarterly-payment schedule described herein, an institution continuing in business would make a second-quarter payment based on these deposits, and that payment would represent an installment on the assessment for the upcoming semiannual period.

However, where a seller has gone out of business before the start of the upcoming semiannual period, there may be a risk that neither the seller nor the buyers would pay any assessments on these deposits under the proposed quarterly-payment plan. The buyers would not have included these deposits in their first-quarter reports of condition, and would not have counted

the deposits in their first-quarter assessment bases. The net effect could be that neither the seller nor the buyers would compensate the FDIC for insuring these deposits.

Proposed § 327.6(a) would clarify the assessment obligation for these transfers. Section 7 of the FDI Act says the FDIC must base an institution's assessment on the probability that the appropriate deposit insurance fund will incur a loss with respect to the institution. Section 7 further specifies that the FDIC must take into account the likely amount of any such loss. 12 U.S.C. 1817(b)(1). Accordingly, proposed § 327.6(a) would call for the buyers—the institutions that would present a continuing insurance risk to the FDIC for the deposits—to pay assessments that reflect that risk.

Proposed § 327.6(a) would achieve this goal by adjusting the buyers' assessment bases upward. The proposed rule would call for each buyer's assessment base to be increased by that buyer's "pro rata share" of the seller's first-quarter assessment base: that is, by the ratio of the deposits that the buyer assumes from the seller to the seller's total quarter-end deposits. The proposed regulation would correspondingly reduce the seller's assessment base.[3]

This formula is designed to be relatively simple, and to be satisfactory for most cases. A seller generally transfers all its deposits at the same time, even when several buyers assume the deposits. In a few cases, a seller may transfer its deposits to several buyers over an interval: but even then, the interval tends to be short, and the seller tends to decline in size (if it changes in size at all). The formula would function properly under these conditions.

But the formula would not, on its own, accommodate cases in which a seller's volume of deposits increases between the end of the quarter and the date of the transfer. In that event, the buyers would assume more deposits than the seller reported in its report of condition. The formula would cause the buyers' collective assessment bases to increase by an amount greater than the seller's quarter-end assessment base.

Proposed § 327.6(a) addresses this difficulty by putting a cap on the aggregate amount by which the buyers' assessment bases could be increased. The FDIC considers that it would be justified in collecting an aggregate assessment based on the seller's quarter-end assessment base, because the seller itself would pay such an assessment if the seller remained in existence. But, by the same token, the FDIC would not be justified in collecting an aggregate assessment based on a higher amount.

Nor would the formula, on its own, accommodate more elaborate deposit-transfer arrangements. For example, a buyer may be acting merely as an intermediary, or a transfer may be only incidental to other mergers or deposit-assumptions. In such cases, the formula might not accurately reflect the likely amount of the loss that the buyer—or the other institutions—ultimately pose to their insurance funds in the upcoming period.

The FDIC does not believe it is possible to foresee all the special situations that might arise in complex cases. Proposed § 327.6(a) accordingly would give the FDIC a limited flexibility to adjust a buyer's or seller's assessment base. The proposed rule would specify that the FDIC may use this authority only to bring an institution's assessment base into line with the true magnitude of the likely amount of the loss that the institution poses for the upcoming quarter—that is, with the institution's true deposit-base at the beginning of that quarter.

It must be emphasized that proposed § 327.6(a) would only apply to institutions that participate directly in a transfer (or related series of such transactions), or that participate in transactions directly related to such a transaction (for example, an institution that assumes deposits from a buyer). Furthermore, the authority would not mean that the FDIC could consider other risk factors—ones unrelated to the volume of deposits transferred—in determining the likely amount of the loss.

B. Examples

The following examples apply the proposed rule. For the sake of convenience, amounts in the examples are rounded to the nearest million.

Example 1—Partial transfer of deposits; transferor remains in business. Institution A reported $100 million worth of deposits in its report of condition as of December 31. On January 15, Institution B agrees to acquire a branch office of Institution A that held $5 million worth of deposits reported in Institution A's December 31 report of condition. Institution A continues to be an insured institution. Institution A's February 28 assessment invoice that will be collected on March 30 will be based on the reported $100 million worth of deposits, in accordance with normal processing.

Institution A remains responsible for the assessment liability on January 1 based on the December 31 report of condition. The February invoice represents the second installment payment of the January through June semiannual assessment period. The FDIC expects that Institutions A and B may well have dealt with any question of allocating the cost of the assessment premium. But Institution A must still make the payment to the FDIC.

Example 2—Partial transfer of deposits; transferor remains in business. Institution A reported $100 million worth of deposits in its report of condition as of September 30. On October 1, Institution B agrees to acquire a branch office of Institution A that held $10 million worth of deposits reported in Institution A's September 30 report of condition. Institution A continues to be an insured institution. Institution A's November 30 assessment invoice that will be collected on December 30 will be based on the $100 million worth of deposits, in accordance with normal processing.

Institution A remains responsible for the assessment liability established on October 1 based on the September 30 report of condition. The November invoice represents the first installment payment for the next semiannual assessment period (January through June). The FDIC expects that Institutions A and B may well have dealt with any question of allocating the assessment premium. But Institution A must still make the assessment payment to the FDIC.

Example 3—Transfer of deposits; transferor ceases to exist. Institution A reported $100 million worth of deposits in its report of condition as of September 30. Its assessment base (deposits less deductions) is $90 million. On October 15, Institution A transfers all its deposits to Institution B and goes out of business. Institution A has only $98 million in deposits at the time of the transfer. The FDIC will increase Institution B's September 30 assessment base to reflect its *pro rata* share of Institution A's assessment base. That is, Institution B's assessment base will be increased by $88 million, determined as follows: $98 million deposits acquired divided by $100 million deposits reported by Institution A on its September 30 report of condition multiplied by $90 million assessment base (98/100 × $90 million), or $88 million. Institution B would receive credit for any assessment payments attributable to the transferred deposits that have already been made by Institution A.

Institution B's payment represents the first installment for the January through June assessment period. The FDIC considers that the deposits transferred in bulk to Institution B continue to pose a risk to the insurance fund. Accordingly, it is appropriate to adjust Institution B's assessment base to reflect that risk.

Example 4—Multiple transfers of deposits, transferor ceases to exist. Institution A reported $100 million worth of deposits in its report of condition as of September 30; its assessment base is $90 million. On October 15 it transfers $33 million of its deposits in

[3] This latter provision may seem superfluous. In virtually all such cases the seller would cease to exist before the end of the transfer period. Sometimes, however, a related series of transfers could extend beyond the end of a semiannual period. In that case, the seller would still be in existence at the start of the following period. The seller would make a second-quarter payment based on its first-quarter assessment base. Absent this latter provision, the FDIC would in effect be assessing the same deposits twice.

bulk to Institution B. Institution A then shrinks in size from $67 million to $50 million, and on November 30 transfers all its remaining deposits to Institution C. The FDIC will increase the September assessment bases of Institutions B and C by $20 million and $45 million, respectively. The supporting calculation shows: Institution B—$33 million in deposits acquired by Institution B divided by $100 million deposits reported by Institution A on the September report of condition multiplied by $90 million assessment base of Institution A determined from the report of condition based on September 30 report of condition; Institution C—$50 million in deposits acquired from Institution A divided by $100 million deposits reported by Institution A's September report of condition multiplied by the $90 million assessment base of Institution A determined from its report of condition.

The FDIC believes that the *pro rata* methodology presented properly reflects the continued risk to the insurance fund presented by the deposits transferred in bulk from Institution A to Institutions B and C. The insurance fund will bear the cost of deposits that are not transferred in bulk.

Example 5—Multiple transfers of deposits, transferor ceases to exist. The circumstances presented in Example 4 remain constant for this example, except that the deposits acquired by Institutions B and C are $50 million and $60 million, respectively. In this situation, the total deposits transferred exceed the deposits reported in Institution A's September 30 report of condition. In this case, each institution's pro rata share will be determined by dividing the acquiring institution's acquired deposits by the total deposits transferred in bulk from the disappearing institution in that quarter. Thus, the September 30 assessment base of Institution B would be increased by $41 million ($50 million deposits acquired divided by $110 million total deposits transferred by Institution A during that quarter multiplied by the $90 million of Institution A's assessment base) and Institution C's September 30 assessment base will be increased by $49 million ($60 million deposits acquired divided by $110 million total deposits transferred during that quarter multiplied by the $90 million assessment base of Institution A).

Example 6—Resolution of a failed institution. Institution A reported $100 million worth of deposits in its September 30 report of condition. Institution A fails and is placed into receivership effective October 1. The resolution of Institution A on October 1 includes the transfer of all deposits to Institution B. The resolution of Institution A has presumptively taken into account the assessment amount that would have been invoiced by the FDIC on November 30 and collected on December 30. Institution B does not owe any additional assessment for the deposits acquired from Institution A.

The FDIC believes that the final resolution of the assets and liabilities of the failed Institution A included and satisfied the assessment amount to be invoiced and paid on the assessment base determined from the September 30 report of condition.

C. Reports

The existing rule requires the seller to file a final certified statement and gives the buyer the option—but does not impose the duty—of making the filing on behalf of the seller. The proposed rule would do away with final certified statements in the case of transfers, on the ground that final certified statements would not be needed in the new assessment plan. As a collateral but incidental matter, the proposed rule would formally eliminate Form 6420/11.

Under the proposed rule, in order to determine the buyer's first-quarter assessment base for use in computing its second-quarter assessment payment, the FDIC would need to know the amount of deposits that the buyer has assumed. The FDIC does not believe, however, that it is necessary to set forth a formal reporting requirement in the proposed regulation. The FDIC expects that the existing reports that buyers must make to their primary supervisors would serve this purpose.

An institution's second-quarter payment would be due—in full, and computed with reference to the institution's assessment base as determined pursuant to proposed § 327.6(a)(2)—on the regularly-scheduled payment date. An institution that underpaid this assessment would have to pay interest on the shortfall at the rate prescribed by proposed § 327.7 ("Payment of interest on assessment underpayments and overpayments"). Accordingly, a buyer might well find it convenient to estimate the deposits it planned to assume, and to relay the estimate to the FDIC. If the payment exceeded the amount properly due, the buyer would be entitled to an adjustment on its next payment for the excess amount so paid (plus interest).

If the FDIC were to receive the estimates early enough, it could use the information when preparing the invoice for the buyer's second-quarter payment. If not, the FDIC could either send out a supplemental invoice as soon as practicable reflecting the amendments to the buyer's assessment base, or could make an appropriate adjustment to the buyer's next assessment payment.

III. Deletion of References to Experience Factors

The FDIC's assessments regulations currently permit the use of "experience factors" in the computation of an institution's assessment base, for the purpose of quantifying unposted debits and credits. However, under the existing regulations, the use of experience factors will no longer be permitted for assessments due after 1994. Accordingly, the FDIC proposes to delete all references to experience factors from the regulations.

IV. Paperwork Reduction Act

The proposed rule contains a revision to an existing collection of information. The revision has been submitted to the Office of Management and Budget (OMB) for review and approval pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments regarding the accuracy of the burden estimate, and suggestions for reducing the burden, should be addressed to the Office of Management and Budget, Paperwork Reduction Project (3064–0057), Washington, DC 20503, with copies of such comments sent to Steven F. Hanft, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, room F–400, 550 17th St., NW., Washington, DC 20429.

At present, each insured depository institution is required to compute its own semiannual assessment. Under the proposed rule, assessments would be computed by the FDIC using information reported by the institution in its quarterly reports of condition. The institution would be required to certify its agreement with the assessment computation shown on the certified statement form as received from the FDIC or, alternatively, its agreement with that computation as amended in a manner specified by the institution. It is expected that, prior to certification, an institution would compare the information on the form with its own records—which it collects and maintains for purposes of filing its reports of condition—and, if necessary, indicate any amendments. This process should constitute a substantially smaller burden for the institution than preparing and reporting its own assessment computation. The requirements concerning the certified statement are found in § 327.2 of the proposed rule.

The estimated annual reporting burden for the collection of information requirement in this proposed rule is summarized as follows:

Approximate Number of Respondents: 13,400.

Number of Responses per Respondent: 2.

Total Approximate Annual Responses: 26,800.

Average Time per Response: 30 minutes.

Total Average Annual Burden Hours: 13,400.

V. Regulatory Flexibility Act

The Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under the proposal, the FDIC would compute the assessment payments due from each depository institution, a task currently required of the institution. Thus, the proposal would reduce an existing burden. Moreover, to the extent any burden would remain, the FDIC believes that it would be proportionate to the size of the institution and, accordingly, that the proposal would not have a disparate impact of the nature contemplated by the Regulatory Flexibility Act.

VI. Request for Public Comment

The Board hereby requests comment on all aspects of the proposed rule. The Board particularly invites comment on the proposal to collect assessments by means of direct debits initiated by the FDIC and on the impact of the quarterly collection of assessments on insured depository institutions. Interested persons are invited to submit written comment during a 60-day comment period.

Comments are not requested in this proceeding as to what measure—whether total deposits or another measure—should be used as a basis for determining an institution's assessment base. The Board expects to seek public comment on that subject in the near future, in a separate proceeding.

List of Subjects

12 CFR Part 304

Bank deposit insurance, Banks, banking, Freedom of information, Reporting and recordkeeping requirements.

12 CFR Part 327

Assessments, Bank deposit insurance, Financing corporation, Savings associations.

For the reasons stated in the preamble, the Board proposes to amend 12 CFR parts 304 and 327 as follows:

PART 304—FORMS, INSTRUCTIONS AND REPORTS

1. The authority citation for part 304 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1817, 1818, 1819, 1820; Public Law 102–242, 105 Stat. 2251 (12 U.S.C. 1817 note).

2. Section 304.3 is revised to read as follows:

§ 304.3 Certified statements.

The certified statements required to be filed by insured depository institutions under the provisions of section 7 of the Federal Deposit Insurance Act as amended (12 U.S.C. 1817) shall be filed in accordance with part 327 of this chapter. The applicable forms are as follows:

(a) *Form 6420/07: Certified Statement.* Form 6420/07 shows the computation of the semiannual assessment due to the Corporation from an insured depository institution. As provided for in part 327 of this chapter, the form will be furnished to insured depository institutions by the Corporation twice each calendar year and the completed statement must be returned to the Corporation by each institution, except that newly insured institutions must submit their first certified statement on Form 6420/10.

(b) *Form 6420/10: First Certified Statement.* Form 6420/10 shows the computation of the semiannual assessment due to the Corporation from an institution in the first semiannual period after the semiannual period during which the institution becomes an insured depository institution, as provided for in part 327 of this chapter.

Appendix A to Part 304—[Amended]

3. Appendix A to part 304 is amended by removing the entries for FDIC 6400/01, Consolidated Statement Amending Certified Statements, and FDIC 6420/11, Final Certified Statement.

PART 327—ASSESSMENTS

1. The table of contents for part 327 is revised to read as follows:

Subpart A—In General

Sec.
327.1 Purpose and scope.
327.2 Certified statements.
327.3 Payment of semiannual assessments.
327.4 Annual assessment rate.
327.5 Assessment base.
327.6 Termination of insurance: Assessments, certified statements, and notices to depositors.
327.7 Payment of interest on assessment underpayments and overpayments.
327.8 Definitions.
327.9 Assessment rate schedules.

Subpart B—Insured Depository Institutions Participating in Section 5(d)(3) Transactions

327.31 Scope.
327.32 Computation and payment of assessment.

2. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1817–1819.

3. Section 327.2 is revised to read as follows:

§ 327.2 Certified statements.

(a) *Required.* Each insured depository institution shall file a certified statement during each semiannual period.

(b) *Time of filing.* Certified statements for any semiannual period must be filed no later than the second-quarterly payment date specified in § 327.3(d)(2). Certified statements postmarked on or before such date are deemed to be timely filed.

(c) *Form.* The Corporation will provide to each insured depository institution a certified statement form showing the amount and computation of the institution's semiannual assessment. The president of the insured depository institution, or such other officer as the institution's board of directors or trustees may designate, shall review the information shown on the form.

(d) *Certification*—(1) *Form accepted.* If such officer agrees that to the best of his or her knowledge and belief the information shown on the certified statement form is true, correct and complete and in accordance with the Federal Deposit Insurance Act and the regulations issued thereunder, the officer shall so certify.

(2) *Form amended*—(i) *In general.* If such officer determines that to the best of his or her knowledge and belief the information shown on the certified statement form is not true, correct and complete and in accordance with the Federal Deposit Insurance Act and the regulations issued thereunder, the officer shall make such amendments to the information as he or she believes necessary. The officer shall certify that to the best of his or her knowledge and belief the information shown on the form, as so amended, is true, correct and complete and in accordance with the Federal Deposit Insurance Act and the regulations issued thereunder.

(ii) *Request for revision.* The certification and filing of an amended form under paragraph (d)(2) of this section does not constitute a request for revision by the Corporation of the information shown on the form. Any such request to the Corporation for revision of the information shown on the form shall be submitted separately from the certified statement and in accordance with the provisions of § 327.3(h).

(iii) *Rate multiplier.* The rate multiplier shown on the certified statement form shall be amended only if it is inconsistent with the assessment risk classification assigned to the institution in writing by the Corporation for the current semiannual period pursuant to § 327.4(a). Agreement with the rate multiplier shall not be deemed

to constitute agreement with the assessment risk classification assigned.

§ 327.5 [Removed]

3a. Section 327.5 is removed.

§§ 327.3 and 327.4 [Redesignated as §§ 327.4 and 327.5]

4. Sections 327.3 and 327.4 are redesignated as §§ 327.4 and 327.5, respectively, and a new § 327.3 is added to read as follows:

§ 327.3 Payment of semiannual assessments.

(a) *Required*—(1) *In general.* Except as provided in paragraph (b) of this section, each insured depository institution shall pay to the Corporation, in two quarterly payments, a semiannual assessment determined in accordance with this part 327.

(2) *Notice of designated deposit account.* For the purpose of making such payments, each insured depository institution shall designate a deposit account for direct debit by the Corporation. No later than 30 days prior to the next payment date specified in paragraphs (c)(2) and (d)(2) of this section, each institution shall provide written notice to the Corporation of the account designated, including all information and authorizations needed by the Corporation for direct debit of the account. After the initial notice of the designated account, no further notice is required unless the institution designates a different account for assessment debit by the Corporation, in which case the requirements of the preceding sentence apply.

(b) *Newly insured institutions.* A newly insured institution shall not be required to pay an assessment for the semiannual period during which it becomes an insured institution. For the semiannual period following the period during which it becomes an insured institution, it shall pay its full semiannual assessment at the time and in the manner provided for in paragraph (d) of this section, in an amount that is the product of its assessment base for the prior semiannual period, as provided for in § 327.5(c), multiplied by one-half of the annual assessment rate corresponding to the assessment risk classification assigned to the institution pursuant to § 327.4(a). For the purpose of making such payment, the institution shall provide to the Corporation no later than the payment date specified in paragraph (d)(2) of this section the notice required by paragraph (a)(2) of this section.

(c) *First-quarterly payment*—(1) *Invoice.* No later than 30 days prior to the payment date specified in paragraph (c)(2) of this section, the Corporation will provide to each insured depository institution an invoice showing the amount of the assessment payment due from the institution for the first quarter of the upcoming semiannual period, and the computation of that amount. Subject to paragraph (g) of this section and to subpart B of this part, the invoiced amount shall be the product of the following: The assessment base of the institution for the preceding September 30 (for the semiannual period beginning the following January 1) or March 31 (for the semiannual period beginning the following July 1) computed in accordance with § 327.5; multiplied by one-quarter of the annual assessment rate corresponding to the assessment risk classification assigned to the institution pursuant to § 327.4(a).

(2) *Payment date and manner.* On December 30 (for the semiannual period beginning the following January 1) and on June 30 (for the semiannual period beginning the following July 1), the Corporation will cause the amount stated in the applicable invoice to be directly debited from the deposit account designated by the insured depository institution for that purpose.

(d) *Second-quarterly payment*—(1) *Invoice.* No later than 30 days prior to the payment date specified in paragraph (d)(2) of this section, the Corporation will provide to each insured depository institution an invoice showing the amount of the assessment payment due from the institution for the second quarter of that semiannual period, and the computation of that amount. Subject to paragraph (g) of this section and to subpart B of this part, the invoiced amount shall be the product of the following: The assessment base of the institution for the preceding December 31 (for the semiannual period beginning the following January 1) or June 30 (for the semiannual period beginning the following July 1) computed in accordance with § 327.5; multiplied by one-quarter of the annual assessment rate corresponding to the assessment risk classification assigned to the institution pursuant to § 327.4(a).

(2) *Payment date and manner.* On March 30 (for the semiannual period beginning the preceding January 1) and on September 30 (for the semiannual period beginning the preceding July 1), the Corporation will cause the amount stated in the applicable invoice to be directly debited from the deposit account designated by the insured depository institution for that purpose.

(e) *Necessary action, sufficient funding by institution.* Each insured depository institution shall take all actions necessary to allow the Corporation to debit assessments from the institution's designated deposit account and, prior to each payment date indicated in paragraphs (c)(2) and (d)(2) of this section, shall ensure that funds in an amount at least equal to the invoiced amount are available in the designated account for direct debit by the Corporation. Failure to take any such action or to provide such funding of the account shall be deemed to constitute nonpayment of the assessment.

(f) *Business days.* If a payment date specified in paragraph (c) or (d) of this section falls on a day that is not a business day, the applicable date shall be the previous business day.

(g) *Payment adjustments in succeeding quarters.* The quarterly assessment invoices provided by the Corporation may reflect adjustments resulting from such factors as amendments to prior quarterly reports of condition, retroactive revision of an institution's assessment risk classification, and revisions of assessment computations for prior quarters.

(h) *Request for revision of computation of quarterly assessment payment*—(1) *In general.* An institution may submit a request for revision of the computation of the institution's quarterly assessment payment as shown on the quarterly invoice. Such revision may be requested in the following circumstances:

(i) The institution disagrees with the computation of the assessment base as stated on the invoice;

(ii) The institution determines that the rate multiplier applied by the Corporation is inconsistent with the assessment risk classification assigned to the institution in writing by the Corporation for the semiannual period for which the payment is due; or

(iii) The institution believes that the invoice does not fully or accurately reflect adjustments provided for in paragraph (g) of this section.

(2) *Inapplicability.* This paragraph (h) is not applicable to requests for review of an institution's assessment risk classification, which are covered by § 327.4(d).

(3) *Requirements.* Any such request for revision must be submitted within 60 days of the date of the quarterly assessment invoice for which revision is requested, except that requests for revision resulting from detection by the institution of an error or omission for which the institution files an amendment to its quarterly report of condition must be submitted within 60 days of the filing date of the amendment to the quarterly report of condition. The request for revision shall be submitted to the Chief of the Assessment Operations Section, and shall provide documentation sufficient to support the revision sought by the institution. If additional information is requested by the Corporation, such information shall be provided by the institution within 21 days of the date of the Corporation's request for additional information. Any institution submitting a timely request for revision will receive written notice from the Corporation regarding the outcome of its request. Upon completion of a review, the Chief Financial Officer (or his or her designee) shall make a determination as to whether the requested revision is warranted and shall promptly notify the institution in writing of the determination.

(i) *Assessment notice not received.* Any institution that has not received an assessment invoice for any quarterly payment by the fifteenth day of the month in which the quarterly payment is due shall promptly notify the Corporation. Failure to provide prompt notice to the Corporation shall not affect the institution's obligation to make full and timely assessment payment. Unless otherwise directed by the Corporation, the institution shall preliminarily pay the amount shown on its assessment invoice for the preceding quarter, subject to subsequent correction.

5. Newly designated § 327.4 is amended by revising the section heading; removing paragraphs (a) through (c); redesignating paragraphs (d), (f), and (g) as new paragraphs (g), (c), and (d), respectively; removing the heading of paragraph (e); redesignating paragraphs (e)(1) and (e)(2) as new paragraphs (a) and (b), respectively, and revising them; revising newly designated paragraph (g); and redesignating paragraphs (h) and (i) as new paragraphs (f) and (e), respectively, to read as follows:

§ 327.4 Annual assessment rate.

(a) *Assessment risk classification.* For the purpose of determining the annual assessment rate for BIF members under § 327.9(a), and the annual assessment rate for SAIF members under § 327.9(c), each insured depository institution will be assigned an "assessment risk classification". Notice of the assessment risk classification applicable to a particular semiannual period will be provided to the institution with the first-quarterly invoice provided pursuant to § 327.3(c)(2). Each institution's assessment risk classification, which will be composed of a group and a subgroup assignment, will be based on the following capital and supervisory factors:

(1) *Capital factors.* Institutions will be assigned to one of the following three capital groups on the basis of data reported in the institution's Report of Income and Condition, Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, or Thrift Financial Report containing the necessary capital data, for the report date that is closest to the last day of the seventh month preceding the current semiannual period.

(i) *Well capitalized.* For assessment risk classification purposes, the short-form designation for this group is "1".

(A) Except as provided in paragraph (a)(1)(i)(B) of this section, this group consists of institutions satisfying each of the following capital ratio standards: Total risk-based ratio, 10.0 percent or greater; Tier 1 risk-based ratio, 6.0 percent or greater; and Tier 1 leverage ratio, 5.0 percent or greater. New insured depository institutions coming into existence after the report date specified in paragraph (a)(1) of this section will be included in this group for the first semiannual period for which they are required to pay assessments.

(B) For purposes of assessment risk classification, an insured branch of a foreign bank will be deemed to be "well capitalized" if the insured branch maintains the pledge of assets required under 12 CFR 346.19, and maintains the eligible assets prescribed under 12 CFR 346.20 at 108 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (a)(1) of this section.

(ii) *Adequately capitalized.* For assessment risk classification purposes, the short-form designation for this group is "2".

(A) Except as provided in (a)(1)(ii)(B) of this section, this group consists of institutions that do not satisfy the standards of "well capitalized" under this paragraph but which satisfy each of the following capital ratio standards: Total risk-based ratio, 8.0 percent or greater; Tier 1 risk-based ratio, 4.0 percent or greater; and Tier 1 leverage ratio, 4.0 percent or greater.

(B) For purposes of assessment risk classification, an insured branch of a foreign bank will be deemed to be "adequately capitalized" if the insured branch:

(*1*) Maintains the pledge of assets required under 12 CFR 346.19;

(*2*) Maintains the eligible assets prescribed under 12 CFR 346.20 at 106 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (a)(1) of this section; and

(*3*) Does not meet the definition of a well capitalized insured branch of a foreign bank.

(iii) *Undercapitalized.* For assessment risk classification purposes, the short-form designation for this group is "3". This group consists of institutions that do not qualify as either "well capitalized" or "adequately capitalized" under paragraphs (a)(1) (i) and (ii) of this section.

(2) *Supervisory risk factors.* Within its capital group, each institution will be assigned to one of three subgroups based on the Corporation's consideration of supervisory evaluations provided by the institution's primary federal regulator. The supervisory evaluations include the results of examination findings by the primary federal regulator, as well as other information the primary federal regulator determines to be relevant. In addition, the Corporation will take into consideration such other information (such as state examination findings, if appropriate) as it determines to be relevant to the institution's financial condition and the risk posed to the BIF or SAIF. Authority to set dates applicable to the determination of supervisory subgroup assignments is delegated to the Corporation's Director of the Division of Supervision (or his or her designee). The three supervisory subgroups are:

(i) *Subgroup "A".* This subgroup consists of financially sound institutions with only a few minor weaknesses;

(ii) *Subgroup "B".* This subgroup consists of institutions that demonstrate weaknesses which, if not corrected, could result in significant deterioration of the institution and increased risk of loss to the BIF or SAIF; and

(iii) *Subgroup "C".* This subgroup consists of institutions that pose a substantial probability of loss to the BIF or SAIF unless effective corrective action is taken.

(b) *Payment of assessment at rate assigned.* Institutions shall make timely payment of assessments based on the assessment risk classification assigned in the notice provided to the institution pursuant to paragraph (a) of this section. Timely payment is required notwithstanding any request for review filed pursuant to paragraph (d) of this section. An institution for which the assessment risk classification cannot be determined prior to an invoice date specified in § 327.3 (c)(1) or (d)(1) shall preliminarily pay on that invoice at the

assessment rate applicable to the classification designated "2A" in the appropriate rate schedule set forth in § 327.9. If such institution is subsequently assigned for that semiannual period an assessment risk classification other than that designated as "2A", or if the classification assigned to an institution in the notice is subsequently changed, any excess assessment paid by the institution will be credited by the Corporation, with interest, and any additional assessment owed shall be paid by the institution, with interest, in the next quarterly assessment payment after such subsequent assignment or change. Interest payable under this paragraph shall be determined in accordance with § 327.7.

* * * * *

(g) *Lifeline accounts.* Notwithstanding any other provision of this part 327, the portion of an institution's assessment base that is attributable to deposits in lifeline accounts pursuant to the Bank Enterprise Act, 12 U.S.C. 1831, will be assessed at such rate as may be established by the Corporation pursuant to 12 U.S.C. 1834 and section 7(b)(2)(H) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1817(b)(2)(H).

6. Newly designated § 327.5 is amended by revising the section heading, removing paragraph (a), redesignating paragraphs (b) and (c) as new paragraphs (a) and (b), respectively, revising newly designated paragraph (a) introductory text, revising newly designated paragraphs (b)(1) introductory text and (b)(1)(ii), removing newly designated paragraphs (b)(1)(iii) and (b)(1)(iv), and adding a new paragraph (c), to read as follows:

§ 327.5 Assessment base.

(a) *Computation of assessment base.* Except as provided in paragraph (c) of this section, the assessment base of an insured depository institution for any date on which the institution is required to file a quarterly report of condition shall be computed by:

* * * * *

(b) *Methods of reporting unposted credits and unposted debits*—(1) *Unposted credits.* Each insured depository institution shall report unposted credits in quarterly reports of condition for addition to the assessment base in the following manner:

* * * * *

(ii) If the institution's records show the total actual amount of unposted credits but do not segregate the amount as stated in paragraph (b)(1)(i) of this section, the institution must report the total actual amount of the unposted credits for addition to time and savings deposits.

* * * * *

(c) *Newly insured institutions.* In the case of a newly insured institution, the assessment base for the last date for which insured depository institutions are required to file quarterly reports of condition within the semiannual period in which the newly insured institution became an insured institution shall be deemed to be its assessment base for that semiannual period. If the institution has not filed such a report by the due date for such reports from insured depository institutions, it shall promptly provide to the Corporation such information as the Corporation may require to prepare the certified statement form for the institution for the current semiannual period.

7. Section 327.6 is amended by revising the section heading and paragraph (a) to read as follows:

§ 327.6 Termination of insurance: Assessments, certified statements, and notices to depositors.

(a) *Deposit transfers*—(1) *Assessment base computation.* If a deposit-transfer transaction occurs at any time in the second quarter of the transfer period—

(i) Each acquiring institution's assessment base for the first quarter of the transfer period (as computed pursuant to § 327.5) shall be increased by an amount equal to such institution's *pro rata* share of the transferring institution's assessment base for such first quarter; and

(ii) The transferring institution's assessment base for such first quarter shall be reduced by an amount equal to the following product: the transferring institution's assessment base for that quarter; multiplied by the sum of the pro rata shares of all acquiring institutions participating in deposit-transfer transactions occurring during the second quarter of the transfer period.

(2) For purposes of paragraph (a)(1) of this section, the phrase "pro rata share" means a fraction the numerator of which is the deposits assumed by an acquiring institution from the transferring institution during the second quarter of the transfer period, and the denominator of which is the total deposits of the transferring institution as required to be reported in the quarterly report of condition for the first quarter of the transfer period.

(3) *Other assessment-base adjustments*—(i) *In general.* The Corporation may in its discretion make such adjustments to the assessment base of an institution participating in a deposit-transfer transaction, or in a related transaction, as may be necessary properly to reflect the likely amount of the loss presented by the institution to its insurance fund.

(ii) *Limitation on adjustments.* The total amount by which the Corporation may increase the assessment bases of acquiring or other institutions under paragraph (a)(2)(i) of this section shall not exceed, in the aggregate, the transferring institution's assessment base as reported in its quarterly report of condition for the first quarter of the transfer period.

* * * * *

8. Section 327.7 is amended by revising the section heading and paragraph (a), to read as follows:

§ 327.7 Payment of interest on assessment underpayments and overpayments.

(a) *Payment of interest*—(1) *Payment by institutions.* Each insured depository institution shall pay interest to the Corporation on any underpayment of the institution's assessment.

(2) *Payment by Corporation.* The Corporation will pay interest to an insured depository institution on any overpayment by the institution of its assessment.

(3) *Accrual of interest.* Interest shall accrue under this section from the day following the due date, as provided for in § 327.3(c) and (d), of the quarterly assessment amount that was overpaid or underpaid, through the payment date applicable to the quarterly assessment invoice on which adjustment is made by the Corporation for the underpayment or overpayment, *provided*, however, that interest shall not begin to accrue on any overpayment until the day following the date such overpayment was received by the Corporation.

* * * * *

9. Section 327.8 is amended by revising paragraph (d)(2) and by adding a new paragraph (h), to read as follows:

§ 327.8 Definitions.

* * * * *

(d) * * *

(2) *Current semiannual period.* The term *current semiannual period* means, with respect to a certified statement or an assessment, the semiannual period within which such certified statement is required to be filed or for which such assessment is required to be paid.

* * * * *

(h) As used in § 327.6, the following terms are given the following meanings:

(1) *Acquiring institution.* The term *acquiring institution* means an insured depository institution that assumes some or all of the deposits of a transferring institution in a particular deposit-transfer transaction.

(2) *Transferring institution.* The term *transferring institution* means an insured depository institution the deposits of which are assumed by an acquiring institution in a particular deposit-transfer transaction.

(3) *Deposit-transfer transaction.* The term *deposit-transfer transaction* means the assumption by one insured depository institution of another insured depository institution's liability for deposits, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract, when the transferring institution's status as an insured institution has terminated or is expected to terminate either as a result of the particular deposit-transfer transaction or as a result of a related series of such transactions. The term deposit-transfer transaction does not refer to the assumption of liability for deposits from the estate of a failed institution.

(4) *Transfer period.* The term *transfer period* means the semiannual period, consisting of two calendar quarters, during which a deposit-transfer transaction occurs.

§§ 327.11 and 327.12 [Removed]

10. Sections 327.11 and 327.12 are removed.

§ 327.13 [Redesignated as § 327.9]

11. Section 327.13 is redesignated as § 327.9, transferred to subpart A, and amended by revising the section heading, removing paragraphs (a) and (b), redesignating paragraphs (c) and (d) as new paragraphs (a) and (b), respectively, revising newly designated paragraph (a), amending newly designated paragraph (b) by removing the word "assessment" in the first sentence, and adding a new paragraph (c) to read as follows:

§ 327.9 Assessment rate schedules.

(a) *BIF members.* Subject to § 327.4(c), the annual assessment rate for each BIF member other than a bank specified in § 327.31(a) shall be the rate designated in the following rate schedule applicable to the assessment risk classification assigned by the Corporation under § 327.4(a) to that BIF member (the schedule utilizes the group and subgroup designations specified in § 327.4(a)):

SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	23	26	29
2	26	29	30
3	29	30	31

* * * * *

(c) *SAIF members.* Subject to § 327.4(c), the annual assessment rate for each SAIF member shall be the rate designated in the following schedule applicable to the assessment risk classification assigned by the Corporation under § 327.4(a) to that SAIF member (the schedule utilizes the group and subgroup designations specified in § 327.4(a).):

SCHEDULE

Capital group	Supervisory subgroup		
	A	B	C
1	23	26	29
2	26	29	30
3	29	30	31

§§ 327.21–327.24 [Removed]

12. Sections 327.21, 327.22, 327.23, and 327.24 are removed.

§ 327.32 [Amended]

13. Section 327.32 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as new paragraphs (a) and (b), respectively.

§ 327.33 [Removed]

14. Section 327.33 is removed.

15. Part 327 is amended by removing subparts B and C, redesignating subpart D as new subpart B, and in the list below, for each section in subpart A and newly designated subpart B, remove the reference indicated in the middle column everywhere it appears and add the reference indicated in the right column:

Section	Remove	Add
327.4(c)	327.13(c)(2)	327.9(a).
	327.23(d)(2)	327.9(c).
327.4(d)	(e)(1)	(a).
327.4(e)	(e)(1)	(a).
327.5(a)(1)(i)	(c)(1)	(b)(1).
327.5(a)(1)(ii)	(c)(1)	(b)(1).
327.5(a)(2)(iii)	(b)(1)(i)	(a)(1)(i).
	(c)(2)	(b)(2).
327.5(a)(2)(iv)	(b)(1)(ii)	(a)(1)(ii).
	(c)(2)	(b)(2).
327.5(b)(2)	(c)(1)	(b)(1).
327.31(a)	Subpart D	Subpart B.
327.31(b)	Subpart D	Subpart B.
327.32(a)(1)(i)	(b)(2)(i)	(a)(2)(i).
	(b)(2)(ii)	(a)(2)(ii).
	327.3	327.4.
	Subpart D	Subpart B.
327.32(a)(2)(i)	(b)(l)(i)	(a)(l)(i).
	Subpart C	Subpart A.
327.32(a)(2)(ii)	(b)(1)(i)	(a)(1)(i).
	Subpart B	Subpart A.
327.32(a)(3)	(b)(3)(iii)	(a)(3)(iii).
	(b)(3)(i)	(a)(3)(i).
	(b)(3)(ii)	(a)(3)(ii).
327.32(a)(4)	(b)(3)(i)	(a)(3)(i).
	(b)(4)(ii)	(a)(4)(ii).
327.32(a)(5)	(b)(4)	(a)(4).
327.32(b)	Subpart D	Subpart B.
	Subpart B	Subpart A.

By order of the Board of Directors.

Dated at Washington, DC, this 24th day of May, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–13368 Filed 6–9–94; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563b and 575

[No. 94–106]

RIN 1550–AA74

Conversions From Mutual to Stock Form; Mutual Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Office of Thrift Supervision (OTS) is extending the comment period until July 18, 1994 for its proposed rule regarding conversions from mutual to stock form and mutual savings and loan holding companies that was published on May 3, 1994.

DATES: Comments must be received by July 18, 1994.

ADDRESSES: Interested parties are invited to submit written comments on this proposal to: Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: Docket No. 94–49. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days, or may be sent by facsimile transmission to FAX number (202) 906–7755. Comments will be available for inspection at 1700 G Street, NW., from 1:00 p.m. until 4:00 p.m. on business days. Visitors will be escorted to and from the Public Reference Room at established intervals.

FOR FURTHER INFORMATION CONTACT: Michael P. Vallely, Senior Attorney (202) 906–6241, Kevin A. Corcoran, Assistant Chief Counsel, (202) 906–6962, Corporate and Securities Division, Chief Counsel's Office; Diana L. Garmus, Deputy Assistant Director, (202) 906–5683, Corporate Activities Division, Office of Thrift Supervision

1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The proposed rule, published in the Federal Register on May 3, 1994 (59 FR 22764), indicated that public comments were to be submitted to the OTS no later than July 17, 1994. This date was not properly calculated by the Office of the **Federal Register**. The requested closing date for comments was 45 days from date of publication, or June 17, 1994. A correction was published on June 7, 1994 (59 FR 29480). However, in order to afford the public adequate time to comment, the OTS has determined that closing date in the original notice should be used. The OTS believes that there has been sufficient level of confusion about the closing date to warrant reinstating the later date. Therefore, the comment period is hereby extended until July 18, 1994, as July 17 is not a business day.

Dated: June 8, 1994.

By the Office of Thrift Supervision

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94-14307 Filed 6-9-94; 8:45 am]

BILLING CODE 6720-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

Airworthiness Standards; Fiscal Year 1997 Rotorcraft Research and Development Initiative, Program Identification

AGENCY: Federal Aviation Administration, DOT.

ACTION: Call for Part 27 and 29 Research and Development Program Proposals.

SUMMARY: This notice announces a call for proposals that will define the Federal Aviation Administration (FAA), Aircraft Certification Service, Rotorcraft Directorate Research and Development (RE&D) initiative for Fiscal Year (FY) 1997 by defining and documenting specific, potential RE&D program proposals. The call for proposals will focus on Aircraft Certification RE&D programs that support activity related to FAR Parts 27, 29, and associated operations Parts. Other FAA requirements such as flight standards, air traffic, or airway facilities will not be addressed. The FAA is soliciting the public sector to ensure that proposed Rotorcraft RE&D requirements will have relevant, practical applications and will be cost effective.

DATES: The call for proposals will be open until close of business July 11, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, (FAA), Mr. Mike Mathias, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0111.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193-0111; telephone (817) 222-5123.

SUPPLEMENTARY INFORMATION: Each FY the FAA prepares an RE&D program plan that includes new (and amended) RE&D proposals. The Aircraft Certification Service's Rotorcraft Directorate is responsible for preparing its part of the overall FAA submittal.

The philosophy of the RE&D process is to create an atmosphere that will promote the identification of requirements by any person or organization in the government or private sector. This makes the RE&D process more responsive to public sector needs. Within the Aircraft Certification Service, the RE&D process places increased emphasis on FAA Aircraft Certification Directorate and Division level participation in identifying new requirements and in sponsoring and monitoring the resulting RE&D projects.

Therefore, as part of the overall FAA and Aircraft Certification initiative, the FAA's Rotorcraft Directorate is undertaking a directly-related initiative specifically for the rotorcraft community. It has the same basic mission, goals, and procedures as the agency-wide initiative.

The Rotorcraft Directorate will implement its segment of the FY-97 submittal by identifying, describing, evaluating, and cataloging potential RE&D requirements (i.e., proposals) for potential sponsorship and incorporation into the overall FAA FY-97 RE&D submittal. This will result in a coordinated FY-97 rotorcraft requirements package that will be assigned to the appropriate FAA RE&D provider organizations when approved and when funds are allocated by the budget process.

It should be stressed that the proposals that are evaluated as a result of this notice, if accepted, will not be funded until the overall FAA FY 97 RE&D submittal is funded, (i.e., at least two (2) years after their original submittal on 10/15/94) and that reprogramming of limited RE&D resources before then is highly unlikely. Also, the accepted proposals will have to compete for resources with other requirements identified for RE&D by other FAA activities. Nonetheless, the need clearly exists to identify Rotorcraft Certification RE&D needs to compete for the agency's RE&D resources.

As a matter of information, there are four primary FAA RE&D supplier organizations: (1) The Technical Center (ACD) in Atlantic City, New Jersey; (2) the Research and Development Service (ARD) in Washington, DC; (3) the Office of Environment and Energy (AEE) in Washington, DC; and (4) the Office of Aviation Medicine's Civil Aeromedical Institute (AAM/CAMI) in Oklahoma City, Oklahoma. These organizations perform the RE&D on programs that are approved and funded through the process.

Although not mandatory, the format of Figure 1 for RE&D proposals is preferred:

Figure 1.—FY-97 Rotorcraft Directorate RE&D Program Description Form I.D. No. (FAA will fill in)

Originator

(Insert Name, Address, Phone Number, and Fax Number)

Proposed RE&D Program Descriptions & Objectives

(Insert Brief Description of the proposal program and its major goals and objectives)

Note: A more detailed description may be attached in addition to this summary but is not mandatory at this time.

How Would You Accomplish This Program?

(Insert Brief Description of your recommended method of accomplishing the proposed RE&D program)

Justification/History:

(If appropriate, furnish data such as a concise accident/incident history and any other relevant statistics or information that would show that the proposed research is needed, cost-effective, and applicable to developing a solution to the proposed RE&D project. This history/justification input data will be used to aid in assessing the relative value of the proposed RE&D project.)

Anticipated Benefits/Products and Beneficiaries

(Insert Brief Description of anticipated benefits/products, who would benefit, and how)

If an RE&D proposal has been submitted previously, then (unless a major change or update has been made) it is on file and need not be resubmitted.

Copies of this notice are being mailed to all known interested parties. Any interested party who desires but has not received a copy of this notice by July 4, 1994, should request a copy from Kathy Jones, FAA Rotorcraft Standards Staff, ASW–110, Fort Worth, TX 76137–4298, telephone (817) 722–5110.

Issued in Fort Worth, Texas, on June 3, 1994.

Wayne J. Barbini,

Acting Manager, Rotorcraft Standards Staff, Aircraft Certification Service.

[FR Doc. 94–14148 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

The Use of Immunohistochemical Devices in the Clinical Care of Patients; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop to discuss the use of immunohistochemical devices in the clinical care of patients. In addition, FDA is interested in obtaining comments on the regulation of products used in immunohistochemical tests.

DATES: The public workshop will be held on June 28 and 29, 1994, from 8:30 a.m. to 5 p.m. Those interested in making a formal presentation must submit a written request by June 20, 1994.

ADDRESSES: The public workshop will be held at the Gaithersburg Hilton Hotel, 620 Perry Pkwy., Gaithersburg, MD. There is no registration fee, but interested persons should call the contact person listed below to preregister. Public participation is welcomed. Anyone wishing to make a formal presentation for inclusion in the workshop should submit a request accompanied by an outline of comments to Max Robinowitz (address listed below).

FOR FURTHER INFORMATION CONTACT: Max Robinowitz, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–3084, FAX 301–594–2360.

SUPPLEMENTARY INFORMATION: Developments in the use of monoclonal antibodies in immunohistochemical devices which are used as an aid in the diagnosis and management of a variety of diseases, including neoplasms, make it appropriate to reassess FDA's regulation of these devices. Among the major topics scheduled for discussion are: (1) The role of immunohistochemical products in cancer diagnosis; (2) problems associated with the use of monoclonal antibodies in immunohistochemical techniques; (3) the role of training and proficiency; (4) proposed role of the Biological Stain Commission in technical certification of immunohistochemical antibodies; (5) discussion on a proposal for the classification of immunohistochemical antibodies as class II medical devices; and (6) draft points to consider and guidance for the regulation of immunohistochemical antibodies.

Dated: June 7, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy

[FR Doc. 94–14213 Filed 6–7–94; 4:36 pm]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WV24–1–6423, WV24–2–6424 FRL–4895–6]

Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Redesignation of the Parkersburg, WV Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 13, 1992, the West Virginia Department of Commerce, Labor & Environmental Resources; Division of Environmental Protection; Office of Air Quality (WVOAQ) submitted a request to EPA to redesignate the Parkersburg moderate ozone nonattainment area from nonattainment to attainment. On November 13, 1992, the WVOAQ also submitted a maintenance plan for the Parkersburg area as a revision to the West Virginia State Implementation Plan (SIP). On February 28, 1994, West Virginia submitted an update to its November 13, 1994 submittal. The EPA is proposing to redesignate the Parkersburg ozone nonattainment area from nonattainment to attainment and proposing to approve the maintenance plan submitted by the WVOAQ as a revision to the West Virginia SIP because the relevant requirements set forth in the Clean Air Act, as amended in 1990, have been met. This proposal to approve the redesignation is contingent upon West Virginia's submittal of a revision to its maintenance plan's provisions for implementation of contingency measures.These actions are being taken in accordance with the Clean Air Act. The approved maintenance plan will become a federally enforceable part of the SIP for the Parkersburg area.

DATES: Comments must be received on July 11, 1994.

ADDRESSES: Written comments should be sent to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The state submittal and EPA's Technical Support Document (TSD) prepared on these proposed actions is available for public review at the above address and at the West Virginia Division of Environmental Protection, Office of Air Quality 1558 Washington Street, East Charleston, West Virginia, 25311–2599.

FOR FURTHER INFORMATION CONTACT: Michael Dubowe at (215) 597–1109, Todd Ellsworth at (215) 597–2906.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act, as amended in 1977 (1977 Act), required areas that were designated nonattainment based on a failure to meet the ozone national ambient air quality standard (NAAQS) to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. (1977 Act, sections 110(a)(1) and 172.) The Parkersburg, West Virginia nonattainment area was designated under section 107 of the 1977 Act as nonattainment with respect to the ozone NAAQS on September 12, 1978. (40 CFR 81.347) In accordance with section 110 of the 1977 Act, West Virginia submitted a part D ozone SIP on November 15, 1979 which EPA approved as meeting the requirements of section 110 and part D of the 1977 Act. In its SIP, the State of West Virginia projected that the Parkersburg, West Virginia nonattainment area would attain the ozone standard by December 31, 1982. The area failed to attain the standard.

On November 15, 1990, the Clean Air Act Amendments of 1990 (hereafter the Act) were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The nonattainment

designation of the Parkersburg, West Virginia area continued by operation of law according to section 107(d)(1)(C)(i) of the Act, furthermore, it was classified by operation of law as moderate for ozone pursuant to section 181(a)(1) of the Act. See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.347.

The Parkersburg, West Virginia ozone nonattainment area more recently has attained the ozone NAAQS, based on air quality data from 1989 through 1991. In an effort to comply with the Act and to ensure continued attainment of the NAAQS, on November 13, 1992 the WVOAQ submitted an ozone maintenance plan for the Parkersburg West Virginia area as a revision to the West Virginia SIP.

On November 13, 1992, the State of West Virginia also requested that EPA redesignate the Parkersburg, West Virginia area to attainment with respect to the ozone NAAQS. In addition, on February 28, 1994, West Virginia submitted an update to its November 13, 1992 submittal, collectively referred to hereafter as the "State of West Virginia's redesignation request."

II. Evaluation Criteria

According to section 107(d)(3)(E) of the Act, five specific requirements must be met in order for EPA to redesignate an area from nonattainment to attainment:

1. The area must have attained the applicable NAAQS;
2. The area has met all relevant requirements under section 110 and part D of the Act;
3. The area has a fully approved SIP under section 110(k) of the Act;
4. The air quality improvement must be permanent and enforceable; and
5. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

III. Review of West Virginia's Submittal

The State of West Virginia's redesignation request for the Parkersburg, West Virginia area included information and documentation sufficient for EPA to determine that the five requirements of section 107, noted above have been met. Following is a brief description of how the each of these requirements has been fulfilled. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request. A Technical Support Document (TSD) has also been prepared by EPA on these rulemaking actions. That TSD is available for public inspection at the EPA Regional Office listed in the **ADDRESSES** section of this document.

1. Attainment of the Ozone NAAQS

The submittal contains an analysis of ozone air quality data which is relevant to the maintenance plan and to the redesignation request. Ambient ozone monitoring data for 1989 through 1991 show attainment of the ozone NAAQS in the Parkersburg, West Virginia area. See 40 CFR 50.9 and appendix H. The State of West Virginia's redesignation request included documentation that the Parkersburg, West Virginia ozone nonattainment area has complete, quality-assured data showing attainment of the standard over the most recent consecutive three calendar year period. Therefore, the Parkersburg, West Virginia area has met the first statutory criterion for redesignation to attainment of the ozone NAAQS found at section 107(d)(3)(E)(i) of the Act.

It is important to note that EPA has also reviewed the ozone data monitored during the 1992 and 1993 ozone seasons in the Parkersburg area and determined that no violations of the standard were monitored during those years. Therefore, there have been no violations of the ozone standard monitored in the Parkersburg area since the 1988 ozone season.

2. Meeting Applicable Requirements of Section 110 and Part D

As previously stated, EPA fully approved the State of West Virginia SIP for the Parkersburg, West Virginia area as meeting the requirements of section 110(a)(2) and part D of the 1977 Act. The amended Act, however, modified section 110(a)(2) and, under part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, EPA has reviewed the SIP to ensure that it contains all measures that were due under the Act as of November 13, 1992, the date the State of West Virginia submitted its redesignation request.

2.A. Section 110 Requirements

Although section 110 of the 1977 Act was amended in 1990, the Parkersburg, West Virginia SIP meets the requirements of section 110(a)(2) of the amended Act. A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, See 57 FR 27936 and 23939 (June 23, 1993), many are duplicative of other requirements of the Act.

EPA has analyzed the SIP and determined that it is consistent with the requirements of section 110(a)(2) of the Act. It contains enforceable emission limitations, it requires monitoring, compiling, and analyzing ambient air quality data, it requires preconstruction review of new major stationary sources and major modifications to existing ones, it provides for adequate funding, staff, and associated resources necessary to implement its requirements, and requires stationary source emissions monitoring and reporting.

2.B. Part D Requirements

Before the Parkersburg, West Virginia ozone nonattainment area may be redesignated to attainment, it also must have fulfilled applicable requirements of part D due as of the date of the State's redesignation request. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). The Parkersburg, West Virginia ozone nonattainment area was classified as moderate. (See 56 FR 56694, codified at 40 CFR 81.347.) Therefore, in order to be redesignated to attainment, West Virginia must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176—as well as the applicable requirements of subpart 2 of part D—due as of the date of the State's November 13, 1992 request for redesignation. EPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation request to be approved, the State has met all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. Requirements of the Act that come due subsequently continue to be applicable to the area at those later dates (see section 175A(c)) and, if the redesignation of the area is disapproved, the State remains obligated to fulfill those requirements.

2.B.1. Subpart 1 of Part D—Section 172(c) Provisions

Under section 172(b), the section 172(c) requirements are applicable no later than 3 years after an area has been designated as nonattainment under the Act. EPA has determined that these requirements were not applicable to ozone nonattainment areas on or before November 13, 1992, the date the State of West Virginia, submitted a complete redesignation request and maintenance plan for Parkersburg. Therefore, the

State of West Virginia is not required to meet these requirements for purposes of redesignation. West Virginia has, however, completed and submitted a 1990 base year emissions inventory for its ozone nonattainment areas (including the Parkersburg area) in accordance with EPA's guidance. It is also important to note that upon redesignation to attainment, the preconstruction new source review requirements for prevention of significant deterioration (PSD) would apply in the Parkersburg area. EPA approved West Virginia's PSD SIP program on April 11, 1986 (51 FR 12517).

2.B.2. Subpart 1 of Part D—Section 176 Conformity Provisions

Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by States must be consistent with Federal conformity regulations that the Act required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, USEPA's General Preamble for the Implementation of title I informed States that its conformity regulations would establish a submittal date (see 57 FR 13498, 13557 (April 16, 1992)).

The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to § 51.396 of the transportation conformity rule and § 51.851 of the general conformity rule, the State of West Virginia is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, West Virginia is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadlines for these submittals have not yet come due, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

2.B.3. Subpart 2 of Part D—Section 182 Provisions for Ozone Nonattainment Areas

The Parkersburg, West Virginia nonattainment area is classified as moderate and is subject to the requirements of section 182(b) of the Act. As of November 13, 1992, the date West Virginia submitted a complete redesignation request for the Parkersburg, West Virginia nonattainment area, the Parkersburg, West Virginia area was required to meet the provisions of section 182(a)(2)(A) to correct its Reasonably Available Control Technology (RACT) requirements in effect prior to enactment of the 1990 amendments to the Act. The State of West Virginia submitted those RACT corrections as SIP revisions to EPA on June 4, 1991. A notice of final rulemaking approving these RACT corrections was published on September 17, 1992 (57 FR 42895).

On January 15, 1993, EPA notified the Governor of West Virginia that it had made a finding that West Virginia had failed to submit either a full or committal SIP revision for a basic inspection and maintenance (I/M) program for its ozone nonattainment areas. On January 18, 1994, EPA notified the Governor of West Virginia that it had made a finding that West Virginia had failed to submit a 15% rate of progress plan SIP revision for its ozone nonattainment areas. Upon the effective date of a final approval by EPA of West Virginia's redesignation request, these findings will be automatically rescinded in the Parkersburg nonattainment area.

3. Fully Approved SIP Under Section 110(k) of the Act

As stated previously, EPA has approved the RACT corrections noted above. Therefore, the State of West Virginia has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and part D as discussed above. Therefore, the redesignation requirement of section 107(d)(3)(E)(ii) has been met.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the 1977 Act, EPA approved the State of West Virginia SIP control strategy for the Parkersburg, West Virginia nonattainment area. EPA determined that the rules and the emission reductions achieved as a result of those rules were enforceable. Since enactment of the 1990 amendments, the State of West Virginia submitted corrections to its RACT regulations as identified above. EPA finds that these additional measures contribute to the permanence and enforceability of reductions in ambient ozone levels in the Parkersburg, West Virginia area.

Between 1988 and 1990, because of permanent and enforceable state and federal provisions, emissions of volatile organic compounds (VOCs) were reduced by 2.23 tons/day and emissions of nitrogen oxides (NOx) were reduced by 1.0 tons/day in Parkersburg. Most of the reductions came from mobile sources and gasoline marketing-related activities. The Reid Vapor Pressure (RVP), of gasoline marketed for use in the Parkersburg, West Virginia area decreased from 10.5 RVP to 9.5 RVP in 1990 and was reduced to 9.0 in 1992. In addition, due to automobile fleet turnover, there was an increase in the percent of automobile operated in the Parkersburg area meeting more stringent emission standards as required by the Federal Motor Vehicle Control Program (FMVCP). It must be noted here that since 1992 the federal RVP requirement of 9.0 has been the applicable standard in the Parkersburg, West Virginia area.

The State of West Virginia maintenance plan requires the continuation of the federal RVP program. These reductions due to lower RVP and more stringent tailpipe standards resulting from the Federal Motor Vehicle Control Program were determined using the mobile emission inventory model MOBILE 5.0a and the relevant vehicle miles traveled data.

Permanent and enforceable decreases in VOCs at stationary sources contributed a small amount to the total VOC reduction in the Parkersburg, West Virginia area. In association with its emission inventory, the State of West Virginia demonstrated that point source VOC emissions were not artificially low due to local economic downturn during the period in which the Parkersburg, West Virginia area's ambient air quality came into attainment. Reductions due to decreases in production levels or from other unenforceable scenarios such as voluntary reductions were not included in the determination of the emission reductions.

EPA finds that the combination of measures contained in the SIP and federal measures have resulted in permanent and enforceable reductions in ozone precursors that have allowed

the Parkersburg, West Virginia area to attain the NAAQS, and therefore, that the redesignation criterion of section 107(d)(3)(E)(iii) has been met.

5. Fully Approved Maintenance Plan Under Section 175A

EPA is proposing approval of the State of West Virginia maintenance plan for the Parkersburg, West Virginia area because EPA finds that West Virginia's submittal meets the requirements of section 175A of the Act. If EPA determines after notice and comment that it should give final approval to the maintenance plan, the Parkersburg, West Virginia nonattainment area will have a fully approved maintenance plan in accordance with section 175A of the Act.

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the area is redesignated. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period.

To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

5.A. Emissions Inventory—Base Year Inventory

On November 13, 1992, the State of West Virginia submitted comprehensive inventories of VOC and NOx emissions from area, stationary, and mobile using 1990 as the base year for calculations to demonstrate maintenance. The 1990 VOC inventory is considered most representative of attainment conditions because no violations occurred in 1990 and it reflects the typical inventory for the three-year period demonstrating attainment of the standard.

The State of West Virginia submittal contains detailed inventory data and summaries by source categories. The State of West Virginia submittal also contains information related to how it comported with EPA's guidance, which model and emission factors were used (note MOBILE 5.0a was used), how Vehicle Miles Travelled (VMT) data was generated, what RVP was considered in the base year, and other technical information verifying the validity of the Parkersburg, West Virginia emission inventory.

The State of West Virginia submittal contains the detailed inventory data and summaries by source category. This inventory was prepared in accordance with EPA guidance. A summary of the base year and projected maintenance year inventories are shown in the following six tables. The TSD which has been prepared for this action contains more in-depth details regarding the base year for the Parkersburg area.

SUMMARY OF EMISSIONS FROM THE PARKERSBURG NONATTAINMENT AREA FOR 1990

Source category	VOC (tpd)	CO (tpd)	NO_x (tpd)
Area	10.2	29.0	6.1
Point	34.9	3.1	13.9
Highway Mobile	8.0	63.6	6.9
Total Emissions	53.2	95.7	26.9

SUMMARY OF EMISSIONS FROM THE PARKERSBURG NONATTAINMENT AREA FOR 1993

Source category	VOC (tpd)	CO (tpd)	NO_x (tpd)
Area	10.5	29.3	6.1
Point	33.7	3.0	13.4
Highway Mobile	6.6	53.9	6.7
Total Emissions	50.3	86.2	26.2

All Emissions in Tons Per Day (tpd).

SUMMARY OF EMISSIONS FROM THE PARKERSBURG NONATTAINMENT AREA FOR 1996

Source category	VOC (tpd)	CO (tpd)	NO_x (tpd)
Area	9.9	29.7	6.1
Point	32.6	2.9	13.0
Highway mobile	6.3	50.1	6.5
Total emissions	48.8	82.6	25.6

SUMMARY OF EMISSIONS FROM THE PARKERSBURG NONATTAINMENT AREA FOR 1999

Source category	VOC (tpd)	CO (tpd)	NO_x (tpd)
Area	10.2	30.3	6.2
Point	31.5	2.8	12.6
Highway mobile	6.1	47.6	6.3
Total emissions	47.8	80.7	25.1

All Emissions in Tons Per Day (tpd).

SUMMARY OF EMISSIONS FROM THE PARKERSBURG NONATTAINMENT AREA FOR 2002

Source category	VOC (tpd)	CO (tpd)	NO_x (tpd)
Area	10.4	30.6	6.2
Point	31.0	2.7	12.4
Highway mobile	6.0	47.5	6.2
Total emissions	47.3	80.8	24.8

SUMMARY OF EMISSIONS FROM THE PARKERSBURG NONATTAINMENT AREA FOR 2005

Source category	VOC (tpd)	CO (tpd)	NO_x (tpd)
Area	10.6	31.2	6.3
Point	30.0	2.6	12.0
Highway mobile	6.0	49.1	6.4
Total emissions	46.7	62.9	24.7

All Emissions in Tons Per Day (tpd).

5.B. Demonstration of Maintenance—Projected Inventories

In addition to the continued use of lower RVP gasoline (7.8) and fleet turnover to automobiles meeting more stringent emission standards, mobile source emission projections are dependent upon the implementation of the federal reformulated gasoline program. Total VOC and NO_x emissions were projected from the 1990 base year to year 2005. These projected inventories were prepared in accordance with EPA guidance. The projections demonstrate that the ozone standard will be maintained i.e., emissions are not expected to exceed the level of the base year inventory during this time period. EPA believes that the emissions projections demonstrate that the area will continue to maintain the ozone NAAQS because this area achieved attainment through VOC controls and reductions.

5C. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Parkersburg, West Virginia area depends, in part, on the State of West Virginia effort toward tracking indicators of continued attainment during the maintenance period. The State of West Virginia will track the status and effectiveness of the maintenance plan by periodically updating the emissions inventory every three years. The WVOAQ has committed to perform this tracking on an annual basis in order to enable the State of West Virginia to implement the

contingency measures of its maintenance plan as expeditiously as possible.

The State of West Virginia annual update will indicate new source growth, as indicated by annual emission statements. The State of West Virginia will continue to monitor ambient ozone levels by operating its ambient ozone air quality monitoring network in accordance with 40 CFR part 58.

5D. Contingency Plan

The level of VOC and NO_x emissions in the Parkersburg area will largely determine its ability to stay in compliance with the ozone NAAQS in the future. Despite the State of West Virginia's best efforts to demonstrate continued compliance with the NAAQS, the Parkersburg area may exceed or violate the NAAQS. Therefore, West Virginia has provided contingency measures with a schedule for implementation in the event of future ozone air quality problems. In the event that exceedances of the ozone NAAQS are measured such that nonattainment is indicated in any of the areas or in the event that periodic emission inventory updates or major permitting activity reveals that excessive or unanticipated growth in ozone precursor emissions has occurred or will occur, West Virginia will accordingly select and adopt measures including the following to assure continued attainment:

1. Extend the applicability of 45CSR21 (VOC/RACT rule) to include source categories previously exclude
2. Revised new source permitting requirements requiring more stringent emissions control technology and/or emissions offsets.
3. NO_x RACT requirements, if such requirements are not already applicable.
4. Stage II Vapor Recovery Regulations.
5. Regulations to establish plant-wide emission caps (potentially with emissions trading provisions).
6. Implementation of basic (or enhanced) programs for motor vehicle inspection and maintenance.

One or more of these regulatory revisions would be selected within three (3) months after verification of a monitored ozone standard violation and a draft rule submitted to the WVOAQ.

Quality assurance procedures must confirm the monitored violation within 45 days of occurrence. The WVOAQ will be requested to adopt the control measure(s) as emergency rule(s) which will be implemented within six (6) months after adoption. EPA's approval of West Virginia's redesignation request is contingent upon West Virginia promulgating a revision to its contingency plan that includes a schedule for the mandatory implementation of the selected contingency measures.

5E. Subsequent Maintenance Plan Revisions

In accordance with Section 175A(b) of the Act, the State of West Virginia has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years. EPA has determined that the maintenance plan adopted by the State of West Virginia and submitted to EPA on November 13, 1992 meets the requirements of section 175A of the CAA. Therefore, EPA is proposing to approve the maintenance plan submittal. In addition, EPA has determined that upon final approval of the maintenance plan the provisions of section 107(d)(3)(E)(iv) for redesignation will have been met.

Proposed Action

EPA proposes to approve the ozone maintenance plan for the Parkersburg, West Virginia area submitted by the State of West Virginia on November 13, 1992 as a revision to the West Virginia SIP because it meets the requirements of section 175A. In addition, EPA is proposing to redesignate the Parkersburg, West Virginia nonattainment area to attainment, subject to final approval of the maintenance plan, because the Agency has determined that the provisions of section 107(d)(3)(E) of the Act for redesignation of nonattainment areas to attainment have been met.

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the person and address listed in the **ADDRESSES** section at the beginning of this notice.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements. Ozone State Implementation Plans (SIPs) are designed to satisfy the requirements of part D of the Clean Air Act and to provide for attainment and maintenance of the ozone NAAQS. Today's proposed redesignation action should not be interpreted as authorizing the State of West Virginia to delete, alter, or rescind any of the VOC emission limitations and restrictions contained in the currently approved ozone SIP. Changes to the ozone SIP's regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation under section 173(b) of the Act and in a SIP deficiency call made pursuant to section 110(k)(5).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have any economic impact on any small entities. Redesignation of an area to attainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Accordingly, I certify that EPA's approval of West Virginia's request to redesignate the Parkersburg ozone nonattainment area to attainment and the associated maintenance plan will not have an impact on any small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

List of Subjects

40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, and Ozone.

40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 28, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 94–14172 Filed 6–9–94; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 59, No. 111
Friday, June 10, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Availability of the 1995 Standard Reinsurance Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of availability of documents.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice to advise all interested parties that the 1995 Standard Reinsurance Agreement is available for consideration by private sector insurance companies.

ADDRESSES: For information on the Standard Reinsurance Agreement, contact Heyward Baker, Director, Delivery System Services, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 254–8245.

SUPPLEMENTARY INFORMATION: The Standard Reinsurance Agreement establishes the terms and conditions under which FCIC provides premium subsidy, expense reimbursement, and reinsurance on multiple peril crop insurance policies. The Standard Reinsurance Agreement is a cooperative financial assistance agreement between FCIC and private insurance companies to deliver the multiple peril crop insurance program under the authority of the Federal Crop Insurance Act, as amended, (7 U.S.C. 1501 *et seq.*).

Done in Washington, DC, on May 24, 1994

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

FR Doc. 94–14201 Filed 6–9–94; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 691]

Grant of Authority for Subzone Status; Cortelco USA, Inc. (Telephone and Computer Equipment) Corinth, MS

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Vicksburg/Jackson Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 158, for authority to establish a special-purpose subzone for the telephone and computer equipment manufacturing plant of Cortelco USA, Inc., in Corinth, Mississippi, was filed by the Board on May 17, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 20–93, 58 FR 31362, 6/2/93); and,

Whereas, the Board has found that the requirements of the Act and Board's regulations is satisfied, and that approval of the application, subject to a restriction on foreign color cathode ray tubes, is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 158A) at the Cortelco USA plant in Corinth, Mississippi, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to a restriction that requires Cortelco to elect privileged foreign status (19 CFR § 146.41) on foreign color cathode ray tubes admitted to the subzone.

Signed at Washington, DC, this 1st day of June 1994.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–14203 Filed 6–9–94; 8:45 am]

BILLING CODE: 3510–DS–P

[Docket 53–93]

Foreign-Trade Zone 38—Spartanburg County, Application for Expansion; Amendment of Application

The pending application of the South Carolina State Ports Authority, grantee of FTZ 38, requesting authority to expand its zone in Spartanburg County, South Carolina (Docket 53–93, filed 10/29/93, 58 FR 59236, 11/8/93) has been amended to include an additional proposed site located at the Highway 290 Commerce Park (111 acres), Highway 290 and River Ridge Road, some 5 miles southeast of the City of Duncan, and to restore zone status to a parcel (17 acres) that was previously deleted from Site 1 (U.S. Highway 29 and I–85, Spartanburg County). The two proposed sites will be operated by Carolina Trade Zone, Inc.

The comment period is reopened until July 25, 1994.

The application and amendment material are available for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, 150–A West Phillips Road, Greer, South Carolina 29650.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., room 3716, Washington, DC 20230.

Dated: May 27, 1994.

John J. Da Ponte, Jr.,

Executive Secretary

[FR Doc. 94–14204 Filed 6–9–94; 8:45 am]

BILLING CODE 3510–25–M

International Trade Administration

(A–588–831)

Antidumping Duty Order: Grain-Oriented Electrical Steel From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 10, 1994.

FOR FURTHER INFORMATION CONTACT: Mike Ready or Paul Kullman, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2613 or (202) 482–1279, respectively.

Scope of Order

The product covered by this order is grain-oriented electrical steel, which is a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.56 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States ("HTS") under item subheadings 7225.10.0030, 7226.10.1030, 7226.10.5015 and 7226.10.5065. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

In accordance with section 735(d) of the Act, on April 25, 1994, the Department of Commerce (Department) published in the **Federal Register** its final determination that grain-oriented electrical steel from Japan is being sold at less than fair value (59 FR 19693). On June 2, 1994, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of grain-oriented electrical steel from Japan materially injure a U.S. industry.

Suspension of Liquidation

In accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of grain-oriented electrical steel from Japan. These antidumping duties will be assessed on all unliquidated entries of grain-oriented electrical steel from Japan entered, or withdrawn from warehouse, for consumption on or after February 9, 1994, the date on which the Department published its preliminary determination notice in the **Federal Register** (59 FR 5990).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage
Kawasaki Steel Corporation	31.08
Nippon Steel Corporation	31.08
All Others	31.08

This notice constitutes the antidumping duty order with respect to grain-oriented electrical steel from Japan, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: June 6, 1994.

Susan G. Esserman,

Assistant Secretary, for Import Administration.

[FR Doc. 94–14205 Filed 6–9–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–307–702]

Certain Electrical Conductor Aluminum Redraw Rod From Venezuela; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain electrical conductor aluminum redraw rod from Venezuela for the period January 1, 1992 through December 31, 1992. There are no known entries in the review period. Therefore, we preliminarily determine that the cash deposit rate of estimated countervailing duties will be 0.50 percent *ad valorem*, the rate established in the final results of the last administrative review of this order (57 FR 36063; August 12, 1992). We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 10, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1993, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (58 FR 41239) for the countervailing duty order on certain electrical conductor aluminum redraw rod from Venezuela (53 FR 31904; August 22, 1988). We received a request for review from Southwire Company, the petitioner. We initiated the review, covering the period January 1, 1992 through December 31, 1992, on September 30, 1993 (58 FR 51053). The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The final results of the last administrative review of this order were published in the **Federal Register** on September 14, 1992 (57 FR 41918).

Scope of Review

Imports covered by this review are shipments of certain electrical conductor aluminum redraw rod from Venezuela, which is wrought rod of aluminum that is electrically conductive and contains not less than 99 percent of aluminum by weight. This merchandise is currently classifiable under item numbers 7604.10.3010, 7604.10.3050, 7604.29.3010, 7604.29.3050, 7605.11.0030, 7605.11.0090, 7605.19.0000, 7605.21.0030, 7605.21.0090 and 7605.29.0000 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review period is January 1, 1992 through December 31, 1992.

In its questionnaire response, the Government of Venezuela reported no shipments of the subject merchandise to the United States during the review period. On April 7, 1994, Southwire Company submitted factual information regarding possible shipments of subject

merchandise during the review period. We subsequently confirmed through various Customs, Census, and Import Administration sources that there were no known entries of the subject merchandise during the review period. See Memorandum to the File dated May 19, 1994; Certain Electrical Conductor Aluminum Redraw Rod from Venezuela No Shipment Search, which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

Preliminary Results of Review

As a result of our review, we preliminarily determine that there are no known entries of the subject merchandise exported to the United States in the period January 1, 1992 through December 31, 1992. Therefore, we preliminarily determine the estimated net subsidy to be 0.50 percent *ad valorem*, the cash deposit rate established in the final results of the last administrative review (57 FR 36063; August 12, 1992).

If the final results of this review remain the same as these preliminary results, as provided by section 751(a)(1) of the Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 0.50 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Venezuela entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Interested parties may request a hearing, not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication in accordance with 19 CFR 355.38(c). Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 1, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–14207 Filed 6–9–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–614–503]

Lamb Meat From New Zealand; Request for Revocation of the Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of Request for Revocation of the Countervailing Duty Order.

SUMMARY: The Department of Commerce has received a request from the Government of New Zealand for revocation of the countervailing duty order on lamb meat from New Zealand.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1993, the Government of New Zealand submitted a request for revocation of the countervailing duty order on lamb meat from New Zealand (50 FR 37708; September 17, 1985). This request will be considered by the Department in conjunction with the administrative review of this order initiated on October 18, 1993. (See *Initiation of Antidumping and Countervailing Duty Administrative Reviews; Recision of Initiation*, (58 FR 53710; October 18, 1993)). This notice is issued pursuant to 19 CFR 355.25(c)(2)(i)(1992).

Dated: June 3,1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance

[FR Doc. 94–14206 Filed 6–9–94; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

[Docket No. 930521–4076]

RIN 0693–AB18

Approval of Federal Information Processing Standards Publication 173–1, Spatial Data Transfer Standard (SDTS)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the Secretary of Commerce has approved a revised standard, which will be published as FIPS Publication 173–1, Spatial Data Transfer Standard (SDTS). This revision adds Part 4, Topological Vector Profile (TVP) to the specifications adopted by the Spatial Data Transfer Standard and makes minor changes and clarifications to the Parts 1 and 3 of the SDTS.

On July 26, 1993, notice was published in the **Federal Register** (58 FR 39792) that a revision to Federal Information Processing Standard 173, SDTS, was being proposed for Federal use.

NIST reviewed written comments submitted by interested parties and other available material. On the basis of this review, NIST recommended that the Secretary approve the revised standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washingotn, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATES: This revised standard becomes effective December 30, 1994.

ADDRESSES: Interested parties may purchase copies of this revised standard, including the technical specifications section, from the National

Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT:

Mr. Henry Tom, (301) 975–3271, Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Dated: June 6, 1994.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication 173–1,

June 10, 1994.

Announcing the Standard for Spatial Data Transfer Standard (SDTS).

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Spatial Data Transfer Standard (SDTS) (FIPS PUB 173–1).

2. Category of Standard. Software Standard, Information Interchange.

3. Explanation. This standard provides specifications for the organization and structure of digital spatial data transfer, definition of spatial features and attributes, data transfer encoding, and topological vector profile. The purpose of the standard is to promote and facilitate the transfer of digital spatial data between dissimilar computer systems.

Work on a national spatial data transfer standard was initiated by the National Committee for Digital Cartographic Data Standards, American Congress on Surveying and Mapping in 1982 to develop a comprehensive set of data exchange standards for the profession. In 1985, the Standards Working Group of the Federal Interagency Coordinating Committee on Digital Cartography also began work on spatial data exchange standards. During 1987, the results of these parallel efforts were merged by the Digital Cartographic Data Standards Task Force into the proposed Digital Cartographic Data Standard, published as a special issue of *The American Cartographer* in January 1988.

Subsequent testing, modification, and refining of the specifications were done by the Spatial Data Transfer Standard Technical Review Board. These efforts resulted in the approval and issuance of the Spatial Data Transfer Standard (SDTS) as Federal Information Processing Standard (FIPS) Publication 173 consisting of three parts: Part 1—Logical Specifications, Part 2—Spatial Features, Part 3—ISO 8211 Encoding. The revision of this standard adds Part 4, the Topological Vector Profile (TVP). The TVP is a limited subset of SDTS specifications for the transfer of vector data, it also specifies several changes and clarifications to Parts 1 and 3 of SDTS. They are as follows:

a. many-to-many and many-to-one relationships between spatial objects and attributes are permitted (Section 5.3);

b. composite objects which do not contain component objects are permitted (Section 5.4);

c. the Entity Authority and Attribute Authority subfields in the Data Dictionary/Schema module may contain a maximum of 8 characters; if Part 2 of the SDTS is the source of a definition the subfield shall contain "SDTS-USA"; a provision for standard feature registers of other countries has been added (Section 5.12);

d. the Attribute Authority subfield in the Data Dictionary/Domain and Data Dictionary/Definition modules may have a maximum length of 8 characters (Sections 5.13 and 5.14);

e. the External Spatial Reference subfield in the Conformance field in the Identification module shall have a null value meaning "undefined, not relevant" when used in a transfer containing only a master data dictionary; it is acceptable to specify this by omitting this subfield (Section A.2.2);

f. in the Point-Node module, the Attribute ID field is not mandatory for objects "NE" and "NL" (Section 5.5.4);

g. in the Line module, Annex D allows the simultaneous use of both the Chain Component ID and Spatial Address subfields (Section D.6.2); and

h. the ISO 8211 tag for the primary Field of the Arc module shall be ARCC (Section D.7.2).

SDTS supports the transfer of vector data with geometry and topology, raster data, graphic representation modules, and geometry-only vector data. The SDTS Topological Vector Profile supports only geographic vector data with geometry and topology.

An SDTS application profile, not requiring the full functionality of SDTS, defines requirements for a specific type of data and/or application. A SDTS profile simplifies the implementation of SDTS while maximizing the probability of successful data interchanges between dissimilar computer systems.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Interior, United States Geological Survey (USGS), National Mapping Division.

6. Related Documents. a. Federal Information Resources Management Regulations (FIRMR) subpart 201.20.303, Standards, and subpart 201.39.1002, Federal Standards.

b. A list of references is contained in section 1.3 and Annex F of Part 1 of the specifications.

7. Objectives. The objectives of the SDTS are to:

—provide a common mechanism for transferring digital spatial information between dissimilar computer systems, while preserving information meaning, and minimizing the need for information external to this standard;

—provide, for the purpose of transfer, a set of clearly specified spatial objects and relationships to represent real world spatial entities, and to specify the ancillary information necessary to accomplish the transfer;

—provide a transfer model that will facilitate the conversion of user-defined to standardized set of objects, relationships, and information.

8. Applicability. a. This standard is intended for use in the acquisition and development of government applications and programs involving the transfer of digital spatial data between dissimilar computer systems.

b. The use of the FIPS SDTS applies when the transfer of digital spatial data occurs or is likely to occur within and/or outside of the Federal government.

c. The use of the FIPS SDTS does not apply to the transfer of digital spatial data files which are not intended to represent spatial entities as digital geographic or cartographic features.

d. FIPS SDTS is not intended to facilitate product distribution of spatial data in a form designed for direct access by application software specific to a particular data structure, class of computer platform, or distribution media.

e. Nonstandard features should be used only when the needed operation or function cannot be reasonably implemented with standard features alone. Although nonstandard features can be very useful, it should be recognized that the use of these or any other nonstandard elements may make the interchange of digital spatial data and future conversions more difficult and costly.

f. Use of this standard or a FIPS approved SDTS application profile, such as the SDTS TVP, is required for Federal Government implementations of this standard. FIPS SDTS implementations not requiring full functionality are designated as application profiles. Application profiles, requiring all three parts of the FIPS SDTS, are limited subsets designed for use with a specific type of data and/or application. The SDTS Topological Vector Profile (TVP) is an application profile.

9. Specifications. The FIPS SDTS, in four parts, provides specifications for the organization and structure of digital spatial data transfer, definition of spatial features and attributes, data transfer encoding, and Topological Vector Profile.

Specifications of this FIPS have the following characteristics:

a. ability to transfer vector, raster, grid and attribute data and other ancillary information;

b. common set of terminology and definitions for spatial features;

c. internal description of the data types, formats, and data structures such that the information items can be readily identified and processed in the recipient system; and

d. media independence and extendibility to encompass new spatial information as needed.

10. Implementation. The implementation of this standard involves three areas of consideration: acquisition of FIPS SDTS implementations, validation, and interpretations of the standard.

10.1 Acquisition of FIPS SDTS Implementations. This revised standard becomes effective December 30, 1994.

10.2 Validation. Conformance to FIPS SDTS is applicable whether implementations are developed internally, acquired as part of an automated data processing (ADP) procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

Conformance criteria, based on application profiles, will be developed for use in validating the conformance of FIPS SDTS implementations. Validation of implementations for conformance to FIPS SDTS conformance criteria, policy, and procedures are under the authority of the FIPS program.

10.3 Interpretation of FIPS SDTS. Resolution of questions regarding this standard will be provided by NIST. Questions concerning the content and specification should be addressed to: Director, Computer Systems Laboratory, ATTN: FIPS SDTS Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Telephone: (301) 975–3271.

11. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment of such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

12. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the United States Geological Survey (USGS).) When ordering, refer to Federal Information Processing Standards Publication 173–1 (FIPSPUB173–1), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 94–14209 Filed 6–9–94; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

[I.D. 053194A]

Gulf of Mexico Fishery Management Council; Public Workshop

AGENCY: National Marine Fisheries Service (NMFS) National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public workshop.

SUMMARY: The Special Management Zone Monitoring Team (SMZMT) of the Gulf of Mexico Fishery Management Council (Council) will hold a fact-finding workshop/scoping meeting on proposals by the Alabama Department of Conservation and Natural Resources (ADCNR) to establish Special Management Zones (SMZs) in the exclusive economic zone (EEZ) off Alabama. A framework procedure of the Fishery Management plan for the Reef Fish Fishery of the Gulf of Mexico, as amended, provided that the SMZMT will evaluate such requests to establish SMZs and will prepare a report for future consideration by the Council and its Scientific and Statistical Committee, its Advisory Panel, and the public at hearings. The purpose of the workshop is to provide the affected fishermen and the public an opportunity to provide information to the SMZMT on the proposed establishment of SMZs and on fishing activities occurring in the area affected that may be included in this report.

DATES: June 29, 1994, from 6 p.m. to 10 p.m.

ADDRESSES: This workshop will be held at the Orange Beach Community Center, 27235 Canal Road, Orange Beach, Alabama.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, Florida; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the Council office by June 22, 1994.

Dated: June 6, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–14121 Filed 6–9–94; 8:45 am]

BILLING CODE 3510–22–M

[I.D. 052794D]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of Permit 924 (P772#66), and Issuance of Modifications to Permits 802 (P512) and 811 (P534).

On March 29, 1994, notice was published (59 FR 14612) that an application had been filed by NMFS, Southwest Regional Office (P772#66), to conduct scientific research on listed sea turtles, including those taken incidentally by the Hawaiian longline fishery, as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222).

Notice is hereby given that on June 2, 1994, as authorized by the provisions of the ESA, NMFS issued Permit Number 924 (P772#66), for the above taking, subject to certain conditions set forth therein.

Notice is hereby given that on May 25, 1994, NMFS issued a second modification to Permit Number 802 (P512) to Texas A&M University to take sea turtles for tagging and biological sampling as authorized by the ESA, subject to certain conditions set forth therein.

Notice is hereby given that on May 10, 1994, NMFS issued a modification to Permit Number 811 (P534) to Hubbs Sea World to take leatherback sea turtles (*Dermochelys coriacea*) for the purpose of conducting migration studies, as authorized by the ESA, subject to certain conditions set forth therein.

Issuance of this permit and these modifications, as required by the ESA,

were based on findings that such permit and modifications: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of this permit and these modifications; (3) are consistent with the purposes and policies set forth in section 2 of the ESA. This permit and these modifications were also issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The applications, permits, modifications, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–2322); and

Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813-893-3141); or

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

Dated: June 2, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–14099 Filed 6–9–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D.051794C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification No. 1 to scientific research permit no. 846 (P532A).

SUMMARY: Notice is hereby given that a request for modification of Scientific Research Permit No. 846 submitted by Dr. Randall W. Davis, Department of Marine Biology, Texas A&M University, has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907/586–7221).

SUPPLEMENTARY INFORMATION: On April 19, 1994, notice was published in the **Federal Register** (59 FR 18523) that a modification of Permit No. 846, issued June 7, 1993 (58 FR 32913), had been requested by the above-named individual to increase the number of Steller sea lion pups taken annually from 40 to 60, change location of take from Chirikof to Marmot, and attach subcutaneous transmitters to 5 pups and 5 adult females. The requested modification has been granted under authority of the Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361–*et seq.*), the Endangered Species Act (16 U.S.C. 1543 *et seq.*) and implementing regulations.

Issuance of this modification, as required by the Endangered Species Act of 1973, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act.

Dated: June 3, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources National Marine Fisheries Service.

[FR Doc. 94–14117 Filed 6–9–94; 8:45 am]

BILLING CODE 3510–22–F

National Technical Information Service

NTIS Advisory Board Meeting

AGENCY: National Technical Information Service, Technology Administration, U.S. Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the "Board") will meet on Monday, July 11, 1994, from 9 a.m. to 4 p.m. and on Tuesday, July 12, 1994, from 9 a.m. to 12 p.m. The afternoon session on July 11, 1994 will be closed to the Public.

The Board was established under the authority of 15 U.S.C. 3704b(c), and was chartered on September 15, 1989. The Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to review and make recommendations regarding general policies and operations of its services. The agenda will include a progress report on NTIS activities, an update on NTIS plans to assist Depository Libraries, an update on the progress of FedWorld, and a discussion of NTIS' long range plans. The closed session discussion is scheduled to begin at 1 p.m. and end at 4 p.m. on July 11, 1994. The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plan.

DATES: The meeting will convene on July 11, 1994 at 9 a.m. and adjourn at 4 p.m. and convene again on July 12, 1994 at 9 a.m. and adjourn at 11:45 a.m.

ADDRESSES: The meeting will be held in room 2029, U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

PUBLIC PARTICIPATION: Except for the closed session from 1 to 4 p.m. on July 11, 1994, the meeting will be open to public participation. Approximately thirty minutes each day will be set aside for oral comments or questions as indicated in the agenda. Seats will be available for the public and for the media on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time. Copies of the minutes of the meeting will be available within thirty days of the meeting from the address given below.

FOR FURTHER INFORMATION CONTACT: Barbara Higgins, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: (703) 487–4612; Fax (703) 487–4093.

Dated: June 6, 1994.

Donald R. Johnson,

Deputy Director.

[FR Doc. 94–14087 Filed 6–9–94; 8:45 am]

BILLING CODE 3510–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List military resale commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 11, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely

Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 15, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 FR 18104) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the military resale commodities and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the military resale commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the military resale commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the military resale commodities and service.

3. The action will result in authorizing small entities to furnish the military resale commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the military resale commodities and service proposed for addition to the Procurement List.

Accordingly, the following military resale commodities and service are hereby added to the Procurement List:

Military Resale Commodities

Pad, Replacement, Handle Scrubber
M.R. 540
M.R. 545
M.R. 546

Service

Janitorial/Grounds Maintenance, Buffumville Lake and Hodges Village Dam, Oxford, Massachusetts

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–14154 Filed 6–9–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list .

SUMMARY: The Committee has received a proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 11, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agency listed: Janitorial/Custodial, VA Outpatient Clinic, 4600 Broadway, Sacramento, California.

NPA: Easter Seal Society of Superior California, Sacramento, California.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–14155 Filed 6–9–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List shipping boxes to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 11, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On March 11, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 FR 11579) of proposed addition to the Procurement List.

Comments were received from the current contractor for the boxes in response to a request for sales data. The contractor indicated that addition of the boxes to the Procurement List would cause one or more of four events to occur: Loss of sales for the contractor, loss of jobs, loss of profit for the contractor because of an inability to purchase raw materials in volume, and increased cost to the Government on future procurements conducted under the Committee's program.

The contractor did not furnish any information to support its claims about loss of profit and increased cost to the Government. Nonprofit agencies participating in the Committee's program are required to sell to the Government at a fair market price set by the Committee, so there is little possibility of a substantial increase in

price to the Government when an item is added to the Procurement List.

The contract value for the boxes is such that loss of sales will represent only a very small percentage of the contractor's sales. The Committee does not believe that a sales loss of this size constitutes severe adverse impact on the contractor.

The contractor provided a range of numbers of jobs which might be lost if the boxes are added to the Procurement List and did not indicate specifically whether any jobs would be lost because of the Committee's action. However, addition of the boxes to the Procurement List will definitely create jobs for blind people, who traditionally have unemployment rates far above those of people without severe disabilities. Consequently, the Committee believes that this definite creation of jobs for blind people outweighs the possible loss of jobs by the contractor's employees.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Box, Shipping
8115–00–134–3655
8115–00–134–3656
8115–01–006–7257
8115–01–010–8956
8115–00–516–0251

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–14156 Filed 6–9–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Closed Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Board.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the Defense Intelligence Agency Scientific Advisory Board has been scheduled as follows:

DATES: Tuesday and Wednesday 28–29 June 1994 (0830–1600).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–5100, (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Panel will receive briefings on and discuss several current critical issues and advise the Director Defense Intelligence Agency on related matters.

Dated: June 7, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–14131 Filed 6–9–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Information School Board of Visitors Meeting

AGENCY: Department of Defense, Office of the Assistant to the Secretary of Defense for Public Affairs, American Forces Information Service.

ACTION: Notice of meeting.

A meeting of the Defense Information School Board of Visitors will be held to review the status of consolidation of the Defense Information School, the Defense Photography School, and the Defense Visual Information School, the Defense Photography School, and the Defense Visual Information School into a single, joint-Service training facility. The meeting is open to the public.

Dates and Times: June 21, 1994—9 a.m. to 11:15 a.m. (first session); 1:10 p.m. to 2 p.m. (second session); 2:30 p.m. to 4:45 p.m. (third session); June 22, 1994—8 a.m. to 12 noon (fourth session),

ADDRESSES: The first, third and fourth sessions will be conducted in room 355, 601 North Fairfax Street, Alexandria, VA 22314. The second session will be conducted at the Joint Combat Camera Center, room, 5A518, Pentagon.

FOR FURTHER INFORMATION CONTACT: Mr. Wallace N. Guthrie, Jr., Training Directorate, American Forces Information Service, 601 North Fairfax Street, room 370, Alexandria, VA 22314. Telephone (703) 274–4897.

Dated June 6, 1994.

L. M. Bynum

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–14086 Filed 6–9–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Draft Feasibility Study/Proposed Plan-Environmental Impact Statement for Remedial Action at Operable Unit 4, Fernald Environmental Management Project

AGENCY: Department of Energy (DOE).

ACTION: Extension of public comment period.

SUMMARY: DOE, in response to public comments received to date, has decided to extend the public comment period on the Feasibility Study/Proposed Plan-Draft Environmental Impact Statement for remedial action at Operable Unit 4, Fernald Environmental Management Project (DOE/EIS–0195D, EPA EIS No. 940066) to June 19, 1994.

DATES: Comments on the Feasibility Study/Proposed Plan-Draft Environmental Impact Statement should be postmarked by June 19, 1994, to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: Comments should be addressed to: Mr. Gary Stegner, Public Information Officer, U.S. Department of Energy, Fernald Field Office, P.O. Box 398705, Cincinnati, OH 45239–8705, (513) 648–3131 Fax: (513) 648–3073.

FOR FURTHER INFORMATION CONTACT: For further information on the Fernald Environmental Management Project, contact Gary Stegner at the above address. For further information on DOE's National Environmental Policy Act (NEPA) procedures, contact: Carol Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. Telephone: (202) 586–4600 or leave a message at (800) 472–2756. For further information on DOE's Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) procedures, contact: Andrew Lawrence, Acting Director, Office of Environmental Compliance (EH–22), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone. (202) 586–4440.

SUPPLEMENTARY INFORMATION: On March 4, 1994, the Environmental Protection Agency published a notice in the **Federal Register** (59 FR 10381) announcing the availability of the Feasibility Study/Proposed Plan-Draft Environmental Impact Statement (DOE/EIS–0195D, EPA EIS No. 940066) and the close of the public comment period scheduled for April 20, 1994. DOE's Feasibility Study/Proposed Plan-Draft Environmental Impact Statement for the Fernald Site integrates NEPA values with the procedural and documentation requirements of CERCLA, whenever practicable pursuant to DOE Order 5400.4. In response to requests from the State of Nevada and the public to extend the comment period, and after consultation with EPA Region V, in an effort to ensure that all interested parties have the opportunity to comment, DOE is extending the comment period to June 19, 1994. Comments should be postmarked by June 19, 1994, to ensure consideration; comments postmarked after that date will be considered to the extent practicable.

Issued in Washington, DC, on June 7, 1994.

Steven Galson,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 94–14189 Filed 6–9–94; 8:45 am]

BILLING CODE 6450–01–P

Kansas City Support Office; Non-Competitive Financial Assistance Award to the American Council for an Energy Efficient Economy

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE), Kansas City Support Office, announces, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i)(B) it intends to award a Cooperative Agreement to the American Council for An Energy Efficient Economy (ACEEE). ACEEE will investigate options for stimulating the use of more efficient electric motor systems and influencing the development and marketing of more efficient motor-driven equipment.

SUPPLEMENTARY INFORMATION: The proposed project meets the criterion for noncompetitive financial assistance specified in 10 CFR 600.7(b)(2)(i)(B) in that the activities are being or would be conducted by the applicant using its own resources or those provided by third parties. This award will further the objectives of the DOE, Industrial Electric Motor Systems Program to promote the use of efficient electric motor systems. The application is being accepted because DOE knows of no other opportunity to conduct such a project by any other organization or entity.

PROJECT PERIOD: The project period for this award is one year and is expected to begin June 1994. DOE plans to provide funding in the amount of approximately $26,538.

FOR FURTHER INFORMATION CONTACT: Chris Cockrill, Technology Marketing Division, U.S. Department of Energy, Kansas City Support Office, 911 Walnut Street, Kansas City, MO 64106–2024. (816) 426–4772.

John W. Meeker,

Chief, Procurement Team, Golden Field Office

[FR Doc. 94–14190 Filed 6–9–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Grant to the American Statistical Association

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(B) to the American Statistical Association (ASA), Alexandria, Virginia, under Grant Number DE–FG01–94EH89458. The DOE intends to make a noncompetitive financial assistance award. The purpose of the proposed grant is to support a conference entitled, "Eleventh Conference on Radiation and Health." This effort will have a total estimated cost of $92,000, which is currently allocated as follows: $0 (0.0%) from the ASA, $50,000 (54.4%) from the DOE, $20,000 (21.7%) from other Federal agencies, and $22,000 (23.9%) from non-Federal sources.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Jeffrey R. Dulberg, HR–531.24, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The proposed grant will provide funding to the ASA to organize and conduct its "Eleventh Conference on Radiation and Health." The theme of the conference is "Radiation Dosimetry and Risk Assessment." The conference is scheduled to be held from June 26 through July 1, 1994, in Nantucket, Massachusetts. The conference is planned to be a forum for direct and efficient information transfer, both within the United States and internationally, among biostatisticians, health physicists, epidemiologists, public health researchers, the general public, and to governmental entities. The project will allow internationally recognized researchers to review and consider methods and information about radiation and health in a multidisciplinary approach. The primary benefit to be derived from this conference is to bring a broader and more complete understanding of state-of-the-art research to both established investigators and those new to the research area. It is hoped that from this understanding will come new research initiatives and collaborations and that new researchers will be recruited to the field. The requested DOE support will enhance the public benefit to be derived by expanding the ASA's current efforts to obtain the widest range of worldwide expertise for the conference.

The project is meritorious because of its relevance to the accomplishment of an important public purpose—providing an international forum for the dissemination of the latest information on radiation dosimetry and risk assessment. Issues related to human health effects and exposure to ionizing and non-ionizing radiation generate intense public concern. Some of these concerns include the risk of cancer in nuclear workers, the risk of disease in children due to parental exposure to radiation, and the risks associated to electric and magnetic fields (from power lines and everyday electric appliances). Nuclear workers, the public, and Federal, State, and local government officials constantly seek out information concerning cancer risk as it relates to nuclear energy and technology. The proposed conference will review current issues related to the potential health risks associated with these exposures. It is anticipated that there would be

several significant scientific and technical advancements from such a meeting which would be shared not only with the participants but also with the scientific community and the interested public through publication of the proceedings. This information can be used by epidemiologists, health physicists, and other public health officials to estimate radiation exposure and potential health risks. As a supplement to other Federal assistance in the amount of $20,000 plus $22,000 in non-Federal funding, the $50,000 requested from the DOE will enhance the public benefit to be derived by expanding the ASA's current efforts to obtain the widest range of worldwide expertise for the conference. The DOE knows of no other entity which is conducting or is planning to conduct such an activity.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the proposal represents a beneficial method and approach to publicly disseminate information on radiation dosimetry and risk assessment.

Issued in Washington, DC, on June 2, 1994.

Scott Sheffield,

Director, Headquarters Operations Division B, Office of Placement and Administration.

[FR Doc. 94-14196 Filed 6-9-94; 8:45 am]

BILLING CODE 6450-01-P

Golden Field Office; Grant Award to Minnesota Department of Public Service

AGENCY: Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: DOE Golden Field Office, through the Chicago Support Office, announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2) it intends to award a grant to the Minnesota Department of Public Service (DPS) to continue to support a renewable energy resource assessment program by expanding data collection and analysis of potential wind energy in the southwestern part of Minnesota.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Chicago Support Office, 9800 South Cass Avenue, Argonne, Illinois 60439, Attention: Mark Burger, Energy Conservation Programs Specialist, at 708/252-2193. The Contracting Officer is Diane Rowe.

SUPPLEMENTARY INFORMATION: DPS is the designated State Energy Office responsible for conducting activities under the State Energy Conservation Program. DPS has been extensively involved in efforts to facilitate the use of renewable energy electricity generation, which is an initiative encouraged by DOE's Office of Energy Efficiency and Renewable Energy. This award will further the aim of renewable energy electricity generation by the continued monitoring of designated sites in southwestern Minnesota where wind energy data is being gathered. This will permit a more accurate way to determine the energy potential that large numbers of wind electric conversion systems (WECS) have on the present electricity supply in Minnesota. This work is being conducted in cooperation with Northern States Power Company, which presently has WECS installed and operating in the region. Therefore, the grant application is being accepted because DOE knows of no other organization that is conducting or planning to conduct this type of effort. The project period for the grant award is 24 months, with the second year expected to begin on July 1, 1994. DOE plans to provide funding in the amount of $15,000 for this budget period.

Christine A. Phoebe,

Director, Administrative Division, Golden Field Office.

[FR Doc. 94-14191 Filed 6-9-94; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance: Cooperative Agreement

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office announces that pursuant to the Financial Assistance Rules 10 CFR 600.7, it intends to award a cooperative agreement resulting from an unsolicited research proposal offered by Montana State University. The objective of the work that Montana State University will be performing is as follows: (1) To study and develop reasonable Data Quality Objectives (DQO) approaches and processes to obtain only the data necessary for effective decision making relative to remediation site sample characterizations and (2) to improve the substance and objectivity of the national debate on nuclear waste and remediation issues by providing a quantitative evaluation of the risks associated with the cleanup process.

FOR FURTHER INFORMATION CONTACT: Gary A. Johnson, U.S. Department of Energy, 850 Energy Drive, MS 1221, Idaho Falls, Idaho 83401-1563, (208) 526-0982.

SUPPLEMENTARY INFORMATION: The statutory authority for the proposed award is the Department of Energy Organization Act (Pub. L. 95-91), as amended. The proposal meets the criteria for "non-competitive" financial assistance as set forth in 10 CFR Part 600.7(b)(2)(i)(A). The applicant is a state institution of higher education. To date DOE and the EPA have provide approximately $2,400,000 (over a six year period) to MSU's research and development programs in the areas of environmental restoration and waste management. Under these earlier awards MSU has initiated several major research studies, including one focused on enhancing the DQO process. These studies are ongoing and will build upon progress already made by MSU in previous awards.

The anticipated total project period to be awarded is three years. DOE will provide $1,050,000 over this three year period. $350,000 is proposed for FY 1995. Montana State University will share approximately ten (10) percent of the total project costs.

David W. Newnam,

Acting Director, Procurement Services Division.

[FR Doc. 94-14192 Filed 4-9-94; 8:45 am]

BILLING CODE 6450-01-M

Golden Field Office

Award Based on Acceptance of an Unsolicited Application Activities to Enhance the Transfer of Pollution Prevention Research Information Among Funders and Researchers Throughout North America

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE), Golden Field Office, through the Seattle Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.14(f), DOE intends to award a grant to Pacific Northwest Pollution Prevention Research Center (PPRC) for Activities to Enhance Researchers Throughout North America. The anticipated overall objective is to support specific industry-related activity in the areas of pollution prevention research.

SUPPLEMENTARY INFORMATION: PPRC proposes to build a public-private partnership with the U.S. Department of Energy to support specific industry-related activity in the areas of pollution

prevention research. The specific objectives of the PPRC are:

(1) To develop and maintain a national clearinghouse for Requests for Proposals (RFPs) on pollution prevention research in order to attract more qualified researchers in the field.

(2) To conduct a detailed analysis of funding organizations, to better educate both funders and grant seekers on organizational priorities and current activities.

(3) To expand the PPRC database of current and recent research projects in order to avoid wasteful duplication of research efforts and stimulate interest in project results.

(4) To publish and disseminate a comprehensive resource guide to pollution prevention research funding, to encourage proposals and publicize funding programs.

Therefore, the grant application is being accepted because DOE knows of no other organization that is conducting or planning to conduct this type of effort in pollution prevention.

The project period for the grant award is 12-months, expected to begin in June 1994. DOE plans to provide funding in the amount of $45,000 for this project period.

FOR FURTHER INFORMATION CONTACT: Roxanne Dempsey, U.S. Department of Energy, Seattle Support Office, 800 Fifth Avenue, suite 3950, Seattle, WA 98104, (206) 553–2155.

Issued in Golden, Colorado on June 1, 1994.

John W. Meeker,

Contracting Officer, Golden Field Office.

[FR Doc. 94–14193 Filed 6–9–94; 8:45 am]

BILLING CODE 6450–01–M

Pittsburgh Energy Technology Center; Unsolicited Financial Assistance Award

AGENCY: U.S. Department of Energy.

ACTION: Acceptance of an unsolicited proposal application of a grant award with Texas A&M University.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.14, it intends to award financial assistance (grant) through the Pittsburgh Energy Technology Center To Texas A&M University for a research effort entitled " Investigation of the Effect of Coal Particle Sizes on the Interfacial and Rheological Properties of Coal-Water Slurry Fuels.".

ADDRESSES: Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P. O. Box 10940, MS 921–188, Pittsburgh, PA 15236.

FOR FURTHER INFORMATION CONTACT: Cynthia Y. Mitchell, Contract Specialist (412) 892–4862.

SUPPLEMENTARY INFORMATION: Grant Number: DE–FG22–94PC94120.

Title of Research Effort

"Investigation of the Effect of Coal Particle Sizes on the Interfacial and Rheological Properties of Coal-Water Slurry Fuels."

Awardee: Texas A&M University.

Term of Assistance Effort: Twenty-four (24) months.

Grant Estimated Total Value: $99,670.00.

Objective: Based upon the authority of 10 CFR 600.14, the objective of this grant is for Texas A&M University to determine the effect coal particle size on the surface properties and rheology of coal-water slurry (CWS) fuels containing different surfactant. Coal powder samples of different size ranges will be obtained from a single source of coal through sieving. CWS mixtures to be tested will be prepared from these individual samples with known particle sizes. Properties of the CWS fuel samples to be measured will include the apparent viscosity, static and dynamic surface tensions. In order to correlate the measured surface properties and rheological data with the atomization characteristics, a cross-injected spray into convective air stream will be tested. Detailed characteristics of the spray development will also be investigated using a high-speed photographic recording technique. The results of these investigations will provide comprehensive information on the spray development and atomization behaviors that are known to depend to an uncertain degree on the surface properties and rheology. This effort will also contribute to developing guidelines for CWS fuel preparation technology. The potential to achieve the stated objectives is very high. Therefore the proposed effort will present a unique opportunity to expand the fundamental understanding of slurry atomization.

Dated: May 26, 1994.

Dale A. Siciliano,

Contracting officer.

[FR Doc. 94–14194 Filed 6–9–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award: Intent to Award a Cooperative Agreement to Tulane University

AGENCY: Department of Energy.

ACTION: Notice of non-competitive financial assistance award.

SUMMARY: The Department of Energy announces that, pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criteria set forth at 10 CFR 600.7(b)(2)(i)(H) to Tulane University of Louisiana under Cooperative Agreement Number DE-FG01–94EW54102. The subject Cooperative Agreement will be for a two year project period and a total estimated amount of $23,000,000.

Under this Cooperative Agreement Tulane will initiate a comprehensive risk evaluation program that will focus on identifying urgent human health risks, including worker safety, that exist at and around the nation's major hazardous and mixed waste facilities and sites; and provide a mechanism for the systematic evaluation of hazards to health and the environment that will facilitate near-term decision-making, consistent with the goals of the nation's environmental cleanup initiative. The Tulane/Xavier Center for Bioenvironmental Research has extensive experience in environmental and occupational health and safety research, which provides the critical foundation for the rapid initiation and completion of an unbiased, comprehensive study that will have a high degree of credibility with all stakeholders.

The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(H), that the award of this non-competitive Cooperative Agreement to Tulane University is in the public interest.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Kristin Wright, HR–531.24, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC on: June 2, 1994.

Scott Sheffield,

Director, Headquarters Operations Division B, Office of Placement and Administration.

[FR Doc. 94–14197 Filed 6–9–94; 8:45 am]

BILLING CODE 6450–01–P

Golden Field Office; Grant Award to University of Wisconsin

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to the University of Wisconsin for continuing research efforts in support of the DOE Office of Building Energy Research programs.

The Wisconsin project seeks to develop and improve solar heating and cooling systems for building applications.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John K. Lewis, Contract Specialist, 303–275–4739. The Contracting Officer is John W. Meeker.

SUPPLEMENTARY INFORMATION: The proposed basic research will contribute to the DOE mission by assisting in the development of solar heating and cooling technologies for use in buildings. Successful completion of this research would advance the goal of commercialization of solar heating and cooling systems. Deploying these technologies will reduce energy use in buildings which, in the U.S., accounts for about 40% of annual national energy consumption.

The proposed research effort has four major objectives: (1) Provide support to the Solar Rating and Certification Commission (SRCC); (2) further develop the TRNSYS program to include state-of-the-art solar component models; (3) investigate new and innovative solar heating systems; and (4) increase the capabilities of TRNSYS and expand the current base of TRNSYS users.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research. DOE funding for the Grant is estimated at $275,000 and the anticipated period of performance is twelve (12) months.

Issued in Golden, Colorado on May 27, 1994.

John W. Meeker,

Chief, Procurement Team, Golden Field Office.

[FR Doc. 94–14195 Filed 6–9–94; 8:45 am]

BILLING CODE 6450–01–M

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board.

Date and Time: Thursday, June 30, 1994, 1:30 am–4 pm.

Place: Lawrence Berkeley Laboratory, 1 Cyclotron Road, Building 66 Auditorium, Berkeley, California 94720.

FOR FURTHER INFORMATION CONTACT:

Jake W. Stewart, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The Secretary of Energy Advisory Board was established to serve as the Secretary of Energy's primary mechanism for long-range planning and analysis of major issues facing the Department of Energy. The Board will advise the Secretary on the research, development, energy and national defense responsibilities, activities, and operations of the Department and provide expert guidance in these areas to the Department.

Tentative Agenda

1:30 pm–2:30pm—Task Force Updates

2:30 pm–2:45 pm—Break

2:45 pm–3:45 pm—Open Discussion

3:45 pm–4:00 pm—Public Comment

4 pm—Chairman's closing remarks/ Adjourn

A final agenda will be available at the meeting.

Public Participation: The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. Due to the limited time available to discuss Board Activities, public comment will be limited to a 15 minute period. The Board requests that comments be submitted in writing to the Executive Director, Secretary of Energy of Advisory Board, HR–2, 1000 Independence Avenue, SW., Washington, DC 20585. In order to insure that Board members have the opportunity to review written comments prior to the meeting, comments should be received by Friday, June 24, 1994.

Minutes: Minutes and a transcript of the meeting of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 am and 4 pm, Monday through Friday except Federal holidays.

Issued at Washington, DC, on June 7, 1994.

Marcia Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–14198 Filed 6–9–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER93–702–000, et al.]

PECO Energy Company, et al.; Electric Rate and Corporate Regulation Filings

June 3, 1994

Take notice that the following filings have been made with the Commission:

1. PECO Energy Co.

[Docket No. ER93–702–000]

Take notice that on May 19, 1994, PECO Energy Company (PECO) tendered for filing an Amendment to its June 8, 1993 filing, in which PECO has submitted a Supplemental Agreement dated April 5, 1993 to the Interconnection Facilities Agreement dated February 19, 1965 between PECO and Pennsylvania Power & Light Company (PL). The Amendment to the Filing provides a new Supplemental Agreement dated April 15, 1994. PECO requests waiver of the Commission's notice requirements and asks that the Commission allow the Supplemental Agreement to become effective on August 12, 1993, which is the date the Supplemental Agreement would have become effective under the initial filing.

Comment date: June 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Power Service Corporation on behalf of West Penn Power Co. Monongahela Power Co. Ohio Edison Co. and Pennsylvania Power Co.

[Docket No. ER94–1064–000]

Take notice that on May 13, 1994, Allegheny Power Service Corporation, on behalf of West Penn Power Company, Monongahela Power Company, Ohio Edison Company and Pennsylvania Power Company, filed Supplement No. 1 to Amendment No. 13 to the Interchange Agreement dated October 17, 1968. The parties filed this supplement to the Interchange Agreement in accordance with staff recommendations, transmitting documents to complete the filing requirements for Docket No. ER94–1064–000.

Copies of the filing were served upon the public Utility's relevant state public regulatory commissions.

Comment date: June 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Electric Power Co.

[Docket No. ER94–1225–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on May 3, 1994, tendered for filing a Service Voltage Coordination Agreement between itself and the City of Kiel, Wisconsin (Kiel). The agreement sets forth the details of the voltage arrangements at the Kiel Switching Station.

Wisconsin Electric respectfully requests an effective date of sixty days after filing.

Copies of the filing have been served on Kiel, and the Public Service Commission of Wisconsin.

Comment date: June 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Service

[Docket No. ER94–1287–000]

Take notice that on May 20, 1994, New England Power Service tendered for filing a Notice of Termination of Supplement No. 8 to Rate Schedule FERC No. 323 between New England Power Company and the Massachusetts Wholesale Electric Company.

Comment date: June 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Gulf Power Co.

[Docket No. ER94–1289–000]

Take notice that on May 17, 1994, Gulf Power Company tendered for filing documents relating to supplemental agreements for West Florida Electric Cooperative Association at the Altha delivery point, which receives transmission service under Supplement No. 1 to FERC Rate Schedule No. 82 (Service Schedule T of the Gulf/AEC Interconnection Agreement).

Comment date: June 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Co.

[Docket No. ER94–1295–000]

Take notice that on May 27, 1994, Portland General Electric Company (PGE) tendered for filing a supplement to its filing by letter dated May 23, 1994, regarding Service Agreements Under FERC Electric Tariff, Original Volume No. 1 (PGE–1) with Enron Power Marketing, Inc. and Electric Clearinghouse, Inc.

Comment date: June 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. San Diego Gas & Electric Co.

[Docket No. ER94–1300–000]

Take notice that on May 25, 1994, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance an Interchange Agreement (Agreement) between SDG&E and Eugene Water & Electric Board (Eugene).

SDG&E requests that the Commission allow the Agreement to become effective on the 1st day of August, 1994 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Eugene.

Comment date: June 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Power, Inc.

[Docket No. ER94–1301–000]

Take notice that Entergy Power, Inc. (Entergy Power), on May 26, 1994, tendered for filing a unit power sale agreement between Entergy Power and East Texas Electric Cooperative, Inc. Entergy Power requests waiver of the Commission's cost-support requirements under Section 35.12 or 35.13 of the Commission's Regulations, to the extent they are otherwise applicable to this filing.

Comment date: June 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER94–1302–000]

Take notice that on May 25, 1994, Entergy Services, Inc. (Entergy Services), as agent of Mississippi Power & Light Company (MP&L), tendered for filing two letters setting forth the terms for a long-term bulk power transmission service transaction pursuant to Paragraph 140.21(a) of Service Schedule I to the Interconnection Agreement between Municipal Energy Agency of Mississippi and MP&L effective as of July 1, 1984, as amended. Entergy Services requests waiver of the notice requirements of the Federal Power Act and the Commission's regulations to permit the service to become effective as of June 1, 1994. To the extent necessary, Entergy Services also requests waiver of the requirements of Section 35.13 of the Commission's regulations.

Comment date: June 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Co.

[Docket No. ER94–1304–000]

Take notice that on May 27, 1994, Southern California Edison Company (Edison) tendered for filing Amendment No. 2 to the Letter Agreement Between Southern California Edison Company and Southern California Water Company (SCWC) to Obtain Licenses and Permits, Conduct Environmental Studies, and Provide Preliminary Engineering for New Electrical Facilities to Serve the Big Bear Lake Area (Amendment No. 2).

Amendment No. 2, executed on April 27, 1994, (i) increases the maximum total project costs Edison is obligated to incur and the maximum total amount for which SCWC is obligated to reimburse Edison to cover additional project development costs; (ii) extends the date for completion of installation of the new facilities and establishment of a new point of delivery; and (iii) provides for further negotiations for an alternative wholesale rate arrangement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Ohio Edison Co.

[Docket No. ER94–1308–000]

Take notice that on May 27, 1994, Ohio Edison Company filed revisions to Appendices A and B to its Service Agreement for Full or Partial Requirements Service with American Municipal Power-Ohio, Inc. which reflect the addition of a new 138 Kv delivery point for the Hudson municipal electric system. The effect of the revision is to lower the annual bill for service to American Municipal Power-Ohio, Inc.

Ohio Edison requests that the revisions to Appendices A and be permitted to become effective as of April 18, 1994, as it relates to loss factor application, and June 1, 1994 as it relates to application of an additional customer charge.

Copies of this filing have been served on Hudson, Ohio, American Municipal Power-Ohio, and the Public Utilities Commission of Ohio.

Comment date: June 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal-Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14108 Filed 6–9–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–572–000]

ANR Pipeline Co.; Request Under Blanket Authorization

June 6, 1994.

Take notice that on May 27, 1994, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94–572–000 a request pursuant to sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to and operate facilities which are constructed pursuant to section 311 of the Natural Gas Policy Act of 1978 for the delivery of gas to an existing customer, Wisconsin Gas Company (WGC), under ANR's blanket certificate issued in Docket No. CP82–480–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR proposes to operate as a jurisdictional facility a hot tap which was installed under section 311 and which was limited to section 311 activities. It is stated that ANR would use the tap for the delivery of gas transported under part 284 of the Commission's Regulations to deliver up to 100 dt equivalent of gas per day to WGC for residential customers in the town of Saxeville, Wisconsin, under ANR's Rate Schedule ETS. It is stated that the volumes to be delivered would be within WGC's existing entitlement from ANR.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14110 Filed 6–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER94–1062–000 and EL94–68–000]

Montaup Electric Company, Newport Electric Corporation; Initiation of Proceeding and Refund Effective Date

June 6, 1994.

Take notice that on May 26, 1994, the commission issued an order in the above-indicated dockets initiating an investigation in Docket No. EL94–68–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL94–68–000 will be 60 days after publication of this notice in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14123 Filed 6–9–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–618–001]

Pacific Gas Transmission Co.; Amendment

June 6, 1994.

Take notice that on May 31, 1994, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105–1570, filed in Docket No. CP93–618–001 an amendment to its application filed on August 5, 1993. The amendment was filed pursuant to section 7(c) of the Natural Gas Act (NGA). PGT now seeks a Certificate of Public Convenience and Necessity authority it to build and operate only two extensions of its mainline facilities and to provide transportation service over those extensions. All other requests in the August 5, 1993, filing have been withdrawn and some of the terms of the service on the extensions have been changed. The two mainline extensions would serve customers in Oregon, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

PGT seeks authorization to construct and operate two pipeline extensions or laterals, along with new metering facilities on the extensions. The first one is the Medford Extension which will begin near PGT's Station 14 at Bonanza, Oregon and interconnect with the facilities of WP Natural Gas (an operating division of The Washington Water Power Company) (WP Natural), at Klamath Falls, Keno and Medford, Oregon. The Medford Extension will be about 86 miles long and will be made of 12-inch pipe. The cost of the Medford Extension is estimated to be $37.9 million in "as-spent dollars". PGT proposes to transport 16,400 MMBtu per day on an annual basis and 15,000 MMBTu per day on a winter-only basis for WP Natural over the Medford Extension.

The second pipeline extension is the Coyote Springs Extension which will begin at milepost No. 304 on PGT'S mainline (south of Stanfield, Oregon), and connect to Portland General Electric Company's (Portland General) proposed electric generation facility near Boardman, Oregon. The Coyote Springs Extension will be about 18 miles long and will be made of 12-inch pipe. The cost of the Coyote Springs Extension is estimated to be $8.1 million in "as-spent dollars". PGT proposes to transport 41,000 MMBtu per day on an annual basis for Portland General over the Coyote Springs Extension.

PGT states that WP Natural and Portland General will be responsible for arranging for gas supply and any other related authorizations. PGT will receive gas requested by these shippers at various receipt points, primarily the International Boundary with Canada, and will deliver gas on their behalf at various delivery points also nominated by these shippers.

PGT proposes to provide service to WP Natural and Portland General under its existing Part 284 Blanket Certificate. The transportation will be under the terms and conditions of PGT's FTS–1 rate schedule. PGT will charge WP Natural and Portland General its applicable part 284 rate for the mainline haul and proposes to add surcharges for deliveries on the Medford and Coyote Springs Extensions. Illustrative rates for the proposed Medford and Coyote Springs Extension surcharges are shown in Exhibit P of PGT's amendment.

PGT has included an Applicant Prepared Environmental Assessment showing its view of the environmental impacts and mitigation measures for its construction of the Medford and Coyote Springs Extensions.

Any person desiring to be heard or to protest said amendment should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 27, 1994. Protests will be considered by the Commission in determining the appropriate action to

be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14109 Filed 6–9–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Proposed Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of the total amount of $2,226,782.70 in crude oil overcharges obtained by the DOE under the terms of a Consent Order that Mt. Airy Refining Company (Mt. Airy) and its former shareholders, William P. Boswell, W. Luke Boswell, Lindsay B. McLean, David P. Boswell, P. Wilson Boswell II and Ellen W. Boswell, entered into with DOE on November 14, 1990. Case No. LEF–0121. OHA has tentatively determined that the funds will be distributed in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases.

DATE AND ADDRESS: Comments must be filed in duplicate by July 11, 1994 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to Case Number LEF–0121.

FOR FURTHER INFORMATION CONTACT: Kim L. Hargrove, Staff Attorney, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–2400.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that DOE has tentatively formulated to distribute the total amount of $2,226,782.70 obtained under the terms of a Consent Order that DOE entered into with Mt. Airy Refining Company and its former shareholders on November 14, 1990. The Consent Order settles claims by DOE that Mt. Airy had violated reporting provisions of the Mandatory Petroleum Allocation Regulations and the Administrative Procedures and Sanctions Regulations with regard to its sale of crude oil.

OHA proposes to distribute the Mt. Airy Consent Order funds in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (the MSRP). 51 FR 27899 (August 4, 1986). Under the MSRP, crude oil overcharge monies are divided between the Federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states are distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers are based on the total volume of petroleum products purchased and the degree to which they can demonstrate injury.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to forward two copies of their submissions, within 30 days of publication of this notice in the **Federal Register**, to the address set forth at the beginning of this notice. Comments so received, will be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: June 3, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Mt. Airy Refining Company.
Date of Filing: February 3, 1994.
Case Number: LEF–0121.

Dated: June 3, 1994.

On February 3, 1994, the Economic Regulatory Administration (ERA) of the Department of Energy filed a Petition requesting that the Office of Hearings and Appeals (OHA) formulate and implement Subpart V special refund proceedings for crude oil overcharge funds. Under DOE procedural regulations, special refund proceedings may be implemented to refund monies to persons injured by violations of DOE petroleum price and allocation regulations, provided DOE is unable to readily identify such persons or ascertain the refund amount each person should receive. 10 CFR 205.280. We have considered ERA's request to formulate refund procedures for the disbursement of $2,226,782.70 remitted by Mt. Airy Refining Company (Mt. Airy) and its former shareholders, William P. Boswell, W. Luke Boswell, Lindsay B. McLean, David P. Boswell, P. Wilson Boswell II and Ellen W. Boswell, in connection with a Consent Order Mt. Airy and its former shareholders entered into with DOE and have determined that such procedures are appropriate.

The Mt. Airy Consent Order funds were remitted to DOE to remedy the firm's alleged violation of the Mandatory Petroleum Allocation Regulations published at 10 CFR part 211 and the provisions of the Administrative Procedures and Sanctions Regulations set forth at 10 CFR part 205. These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution. This Decision sets forth OHA's tentative plan to distribute those funds. The specific application requirements appear in Section III of this Decision. Because these procedures are set forth in proposed form, refund applications should not be filed at this time. Comments are solicited.

I. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR part 205, subpart V. These procedures apply in situations where DOE cannot readily identify persons injured as a result of actual or alleged violations of its regulations or ascertain the refund amount each person should receive. For a more detailed discussion of subpart V and OHA's authority to fashion procedures to distribute refunds see, *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

II. Background

Mt. Airy operated a refinery in Mt. Airy, Louisiana from the date of its incorporation under the laws of the state of Ohio in 1977 until its dissolution on August 11, 1983. It was therefore a "refiner" as that term has been defined in the federal petroleum price and allocation regulations. As such, Mt. Airy was subject to the jurisdiction of DOE.

In accordance with the reporting requirements found at 10 CFR 211.66(b)(h). Mt. Airy was required to submit a "Refiners Monthly Report" detailing its crude oil receipts, runs to stills and volume of crude oil processed. DOE reviewed Mt. Airy's compliance with those regulatory provisions, as well as provisions set forth at section 211.67, during the course of an audit of Mt Airy's principal business operations. The audit was conducted during the period beginning on January 1, 1977 and ending on January 27, 1981. On July 25, 1986, ERA issued a Proposed Remedial Order (PRO) which found that Mt. Airy had improperly reported its crude oil receipts for the period beginning July 1977 and ending November 1977, by approximately 300,000 barrels of controlled crude oil.

ERA amended that Proposed Remedial Order on May 27, 1987 (the May 1987 PRO) to include additional entitlement reporting violations by Mt. Airy. In its May 1987 PRO ERA found that Mt. Airy under reported its crude receipts by a total of (i) 1,018,905 barrels of controlled crude oil; or (ii) 718,905 barrels of controlled crude oil, in the event OHA found that Mt. Airy was not required to report the 300,000 barrels identified in the original PRO. The May 1987 PRO directs Mt. Airy to refund the amount of its violation, plus interest. The PRO further states that Mt.

Airy shareholders were individually liable, to the extent that Mt. Airy's assets were distributed to them upon its dissolution in 1983, for refunding the violation amount.

ERA found that shareholder liability in this case was predicated upon the "trust fund doctrine", which provides that stockholders who receive assets upon corporate dissolution hold those assets in trust for the payment of bona fide corporate debts incurred before dissolution. See *Bayport*, 18 DOE ¶ 83,007 at 86,058 (1989). Mt. Airy and its former shareholders vigorously contested the May 1987 PRO in proceedings before OHA. Nonetheless, without admitting any violations, they agreed to enter into a Consent Order with DOE to settle the alleged violations. The Consent Order was published in proposed form in the **Federal Register** on November 26, 1990 (the November 1990 Order). 55 FR 49104.[1]

According to the November 1990 Order, Mt. Airy's alleged violations resulted in its receipt of $2,059,649.94 in entitlements which it was not authorized to receive. The maximum potential liability, with interest, was estimated by ERA as roughly $7.6 million. *Id.* After assessing a number of factors, including the time and expense required to litigate fully every issue in order to obtain any recovery, ERA concluded that the resolution of the matters referred to in the Proposed Consent Order for the principal sum of $2,000,000 was both an appropriate settlement and in the public interest. *Id.*

In accordance with the November 1990 Order, Mt. Airy and its former shareholders (1) paid the principal sum of two million dollars ($2,000,000.00), plus interest, in full and final settlement of all matters covered by the Order; and (2) agreed to retain (i) Mt. Airy's records evidencing sales volume data for each product subject to controls, during the period covered by the audit; and (ii) Mt. Airy's customers' names and addresses. The November 1990 Order requires Mt. Airy to retain the records described above for a period of thirty (30) days following DOE's final distribution of the Mt. Airy Consent Order funds or January 1, 2000, whichever occurs earlier. Mt. Airy shall make such information available to DOE, if so requested.

III. The Proposed Refined Product Refund Procedures

A. Crude Oil Refund Policy

The Mt. Airy Consent Order funds will be distributed in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP). See 51 FR 27899 (August 4, 1986). This policy has been utilized in all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). Under the MSRP, 40 percent of the crude oil overcharge funds will be refunded to the Federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims by injured parties. The MSRP also specified that, after all valid claims by injured purchasers are paid, any remaining monies will be disbursed to the Federal government and to the states in equal amounts. For a more detailed discussion of the MSRP see, *In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986)(the Stripper Well Settlement Agreement).

In its April 10, 1987 Notice, OHA stated that Subpart V claimants, anticipating filing refund applications for crude oil monies, would generally be required to (1) document the volume of petroleum products they purchased from August 19, 1973 to January 27, 1981; and (2) prove they were injured by the alleged crude oil overcharges. End-users of petroleum products whose businesses are unrelated to the petroleum industry are presumed injured by the alleged crude oil overcharges and therefore need not submit additional proof of injury. End-users need only document the volume of their petroleum purchases in order to be eligible to receive a refund. See *City of Columbus, Georgia*, 16 DOE ¶ 85,550 (1987).

B. Refund Claims

We propose that standard DOE procedures, as set forth in the MSRP, govern the distribution of the $2,226,782.70 in crude oil monies obtained from Mt. Airy. We have chosen initially to reserve 20 percent of the fund ($445,357.00) for direct refunds to applicants. We propose that refund applications in the Mt. Airy proceeding be evaluated in exactly the same manner as refund applications submitted in other crude oil proceedings. Applicants generally will be required to document the volume of petroleum products they purchased and prove that they were injured as a result of the alleged violations. We will adopt a presumption that the alleged crude oil overcharges were absorbed rather than passed on, by applicants who were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h. In order to receive a refund, end-user applicants need only document the volume of petroleum products they purchased. See *Shell*, 17 DOE ¶ 85,204 (1988). Petroleum retailer, reseller and refiner applicants will be required to submit detailed evidence of injury. They may not rely upon the injury presumptions utilized in some refined product refund cases. *Id.*

As has been stated in prior Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See *e.g., A. Tarricone, Inc.*, 15 DOE ¶ 85,495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings implemented by DOE. Any applicant who has executed and submitted a valid waiver, pursuant to one of the escrow accounts established by the Stripper Well Settlement Agreement, has waived his right to file an application for Subpart V crude oil refund monies. See *Mid-America Dairymen v. Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶ 26,617 (1989); *In re: Department of Energy Stripper Well Exemption Litigation*, 707 F. Supp. 11267 (D. Kan.), 3 Fed. Energy Guidelines ¶ 26,613 (1987).

The current deadline for filing an Application for Refund is June 30, 1994. All crude oil refund claims filed before June 30, 1994, will be paid at the rate of $.0008 per gallon. We anticipate, however, that applicants who filed their claims by June 30, 1988, will receive a supplemental refund payment. We will decide in the future whether applicants that filed applications after that date should receive additional refunds. Applicants may be required to submit additional information to support their claims for future amounts. Notice of any such additional amounts will be published in the **Federal Register**.

C. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision or $1,781,426.00 in principal, plus accrued interest, should be disbursed in equal shares to the states and Federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds allocated to each state is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements that apply to any other crude oil funds received by the states in accordance with the Stripper Well Agreement.

It Is Therefore Ordered That:

The $2,226,782.70 refund amount remitted to the Department of Energy by Mt. Airy and its former shareholders pursuant to the Consent Order finalized on January 17, 1991 will be distributed in accordance with the foregoing Decision.

[FR Doc. 94–14199 Filed 6–9–94; 8:45 am]

BILLING CODE 6450–01–P

[1] On January 17, 1991, ERA published a notice making the Proposed Consent Order a final DOE Order pursuant to 10 CFR 205.199J. 56 FR 1804.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4997–2]

Title: Acid Rain Program: Notice of Draft Compliance Plans and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft compliance plans and public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment 5-year nitrogen oxides (NO_x) compliance plans for 18 utility units which amend previously issued draft or final Phase I Acid Rain Permits, in accordance with the Acid Rain Program regulations (40 CFR part 76).

DATES: Comments on draft NO_x compliance plans must be received no later than 30 days after the date of this notice or the publication date of a similar notice in local newspapers.

ADDRESSES: Administrative Records. The administrative record for draft NO_x compliance plans, except information protected as confidential, may be viewed during normal operating hours at EPA Region 7, 726 Minnesota Ave., Kansas City, KS 66101.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions concerning a draft NO_x compliance plan to EPA Region 7, Air and Toxics Division, Attn: Jon Knodel (address above).

Submit all comments in duplicate and identify the NO_x compliance plan to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the NO_x compliance plan. All timely comments will be considered, except comments on aspects of the permit other than the NO_x compliance plan and other comments not relevant to the NO_x compliance plan.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the NO_x compliance plan.

FOR FURTHER INFORMATION CONTACT: Contact Jon Knodel, (913) 551–7622, EPA Region 7 (address above) for more information about the draft permits.

SUPPLEMENTARY INFORMATION: EPA proposes to approve NO_x compliance plans under which units will comply with the applicable emission limitations for NO_x under 40 CFR 76.5 (referred to as "standard emission limit") or other indicated compliance options for NO_x for the following:

Region 7

Burlington unit 1 in Iowa will comply with a NO_x averaging plan for 1995–1999. For each year under the plan, this unit's actual annual average emission rate for NO_x shall not exceed the alternative contemporaneous annual emission limitation of 0.348 lbs/MMBtu, and this unit's actual annual heat input shall not be less than the annual heat input limit of 10,998,000 MMBtu. The other unit designated in this plan is Prairie Creek unit 4. The designated representative is Roger Lessly.

Milton L. Kapp unit 2 in Iowa will meet the standard emission limit of 0.45 lbs/MMBtu. The designated representative is Michael R. Chase.

Prairie Creek unit 4 in Iowa will comply with a NO_x averaging plan for 1995–1999. For each year under the plan, this unit's actual annual average emission rate for NO_x shall not exceed the alternative contemporaneous annual emission limitation of 0.638 lbs/MMBtu, and this unit's actual annual heat input shall not be greater than the annual heat input limit of 8,095,000 MMBtu. The other unit designated in this plan is Burlington unit 1. The designated representative is Roger Lessly.

Riverside unit 9 in Iowa will meet the standard emission limit of 0.45 lbs/MMBtu. The designated representative is Stephen E. Shelton.

Quindaro unit 2 in Kansas will meet the standard emission limit of 0.50 lbs/MMBtu. The designated representative is Lawrence M. Adair.

Hawthorn unit 5 in Missouri will meet the standard emission limit of 0.45 lbs/MMBtu. The designated representative is Marcus Jackson.

James River units 3, 4, and 5 in Missouri will each meet the standard emission limit of 0.50 lbs/MMBtu. The designated representative is G. Duane Galloway.

Labadie units 1, 2, 3, and 4 in Missouri will each meet the standard emission limit of 0.45 lbs/MMBtu. The designated representative is Jerrel D. Smith.

Montrose units 1, 2, and 3 in Missouri will each meet the standard emission limit of 0.45 lbs/MMBtu. The designated representative is Marcus Jackson.

Southwest unit 1 in Missouri will meet the standard emission limit of 0.50 lbs/MMBtu. The designated representative is G. Duane Galloway.

Thomas Hill unit MB3 in Missouri will meet the standard emission limit of 0.50 lbs/MMBtu. The designated representative is Gary L. Fulks.

Dated: June 7, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–14168 Filed 6–9–94; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–140222; FRL–4869–4]

Access to Confidential Business Information by Labat-Anderson, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Labat-Anderson, Inc. (LAI) of Arlington, Virginia for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than June 24, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404. TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–W4–00697, contractor LAI, of 2200 Clarendon Blvd., Suite 900, Arlington, VA 22201, will assist the Office of Pollution Prevention and Toxics (OPPT) in managing and operating the TSCA Confidential and Nonconfidential Business Information Centers. EPA is issuing this notice to extend LAI's access to TSCA CBI under this contract, which is an extension of contract number 68–W9–0052.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W4–00697, LAI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. LAI personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide LAI access to these CBI materials on a need-to-know basis only. Access to TSCA CBI will take place at EPA Headquarters and at LAI's leased facility at EPA Headquarters.

In a previous notice published in the **Federal Register** of November 10, 1992 (57 FR 53501), LAI was authorized for access to CBI submitted to EPA under all sections of TSCA. LAI is currently authorized access to TSCA CBI at its facility under the EPA *TSCA Confidential Business Information Security Manual*. EPA has ensured that the facility is in compliance with the manual. Upon completing review of the CBI materials, LAI will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until July 31, 1995.

LAI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: June 1, 1994

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94-14181 Filed 6-9-94; 8:45 am]

BILLING CODE 6560-50-F

[ER-FRL-4712-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 23, 1994 through May 27, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 8, 1994 (59 FR 16807).

Draft EISs

ERP No. D-BLM-E65044-FL Rating EC2, Florida Land and Resource Management Plan, Implementation, Split-Estate Federal Mineral Ownership (FMO), several counties, FL.

Summary: EPA supported alternative 2, but expressed environmental concerns regarding the potential wetland and wading bird impacts.

ERP No. D-FHW-K40202-CA Rating EO2, CA-58-Mojave Freeway Project, Construction from 0.1 mile east of the Cache Creek Bridge to 5.0 miles east of the town of Mojave, Funding, COE Section 404 Permit and Right-of-Way Acquisition, Kern County, CA.

Summary: EPA expressed environmental objections due to the loss and fragmentation of habitat for the desert tortoise, a species listed as threatened under the Endangered Species Act. The preferred alternative affects the most desert tortoise habitat despite the US Fish & Wildlife Service's strong recommendation to avoid habitat loss and fragmentation. EPA's second objection was the failure of the draft EIS to address the requirements of the Clean Water Act Section 404 or its regulations. The preferred alternative had the most impact to waters of the United States, according to the draft EIS. The final EIS needs to address the project's consistency with Section 404 requirements, including impact mitigation.

ERP No. D-FHW-L40189-WA Rating EC2, WA-525/Paine Field Boulevard Project, Improvements, between WA-99 to WA-526, Funding and COE Section 404 Permit, City of Mukitteo, Snohomish County, WA.

Summary: EPA expressed environmental concerns about the potential for adverse impacts on water quality, wetlands and fisheries resources. EPA had requested additional information on effects of the estimated annual pollutant load on water quality, effectiveness of mitigation, and potential impacts on natural resources from indirect effects, secondary and cumulative impacts.

ERP No. D-NPS-K61128-CA Rating EC2, Santa Rosa Island Development Concept Plan, Implementation and Funding, Channel Islands National Park, Santa Barbara County, CA.

Summary: EPA expressed environmental concerns regarding potential adverse impacts to water quality from the project, particularly construction-related impacts. The final EIS should closely examine potential project impacts to water quality and water quality mitigation measures which may prove necessary under the Clean Water Act (stormwater permitting from construction actions, consistency with California's nonpoint source management program). The final EIS should provide details on hazardous substances which could have emanated from a defunct air force base on the Island.

Final EISs

ERP No. F-AFS-K67021-NV, Jerritt Canyon Gold Mine Expansion Project, Implementation, Plan of Operation and COE Section 404 Permit, Humboldt National Forest, Mountain City Ranger District, Elko County, NV.

Summary: EPA expressed environmental concerns about the new information in the final EIS on the acid potential of waste rock at the project site, EPA had serious concerns regarding waste rock characterization, handling and disposal.

ERP No. F-DOE-L05204-WA, Tenaska-Washington II Generation Electric Power Plant Construction, Operation and NPDES Permit, Pierce County, WA.

Summary: EPA had a lack of objection to the proposed project.

ERP No. F-FAA-L51014-WA, Seattle-Tacoma International Airport Improvement, South Aviation Support Area, Airport Layout Plan, Airport Master Plan, Funding, Section 10 and 404 Permits and NPDES Permit, Port of Seattle, King County, WA.

Summary: EPA expressed environmental concerns based on potential effects to wetland and aquatic resources. EPA recommended the development of a wetland plan that is an enforceable condition of a 404 permit. Mitigation measures to deal with flow attenuation in Des Moines Creek remain inadequate. EPA recommended that the types and amounts of pollutants that will enter Puget Sound be documented in the Record of Decision.

ERP No. F-IBR-K39032-CA, All-American Canal (AAC) Lining Project, Construction and Operation, Lining a 23-mile Canal from Pilot Knob to Drop 4, Controlling Water Seepage, Imperial Irrigation District, Imperial County, CA.

Summary: EPA had no objection to the proposed action.

Dated: June 7, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94-14186 Filed 6-9-94; 8:45 am]

BILLING CODE 6560-50-U

[ER-FRL-4712-1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075. Weekly receipt of Environmental Impact Statements Filed May 30, 1994 Through June 03, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940204, Draft EIS, AFS, ID, Grays Range Timber Sales, Implementation, Caribou National Forest, Soda Springs Ranger District, Caribou County, ID, Due: August 03, 1994, Contact: Faye Krueger (208) 236-7576.

EIS No. 940205, Final EIS, SFW, OR, Hart Mountain National Antelope Refuge Comprehensive Management Plan, Implementation, Lake County, OR, Due: July 11, 1994, Contact: Barry Reiswig (503) 947-3315.

EIS No. 940206, Draft EIS, NPS, WV, Gauley River National Recreation Area, Implementation, General Management Plan and Land Protection Plan, Nicholas and Fayette Counties, WV, Due: August 08, 1994, Contact: Joe Kennedy (304) 465-0508.

EIS No. 940207, Final EIS, COE, OR, Barney Reservoir Expansion Project, Increasing Municipal Water Supply on the Middle Fork of the North Fork Trash River and COE Section 404 Permit Issuance, Washington County, OR, Due: July 11, 1994, Contact: David Kurkaski (503) 326-6094.

EIS No. 940208, Draft EIS, FHW, MN, US 14/52 Transportation Corridor, Reconstruction between Olmsted CSAH 14 (75th Street NW) and TH-63 (Broadway) Funding, COE Section 404 Permit and NPDES Permit, City of Rochester, Olmsted County, MN, Due: July 25, 1994, Contact: Craig Lenz (507) 285-7124.

EIS No. 940209, Draft EIS, BLM, CA, Southeast Regional Wastewater Treatment Plant and Geysers Effluent Pipeline Injection Project, Improvements, Funding, COE Section 404 Permit and NPDES Permit, City of Clearlake, Lake County, CA, Due: July 26, 1994,, Contact: Rich Estabrook (707) 468-4000.

EIS No. 940210, Final EIS, AFS, NV, East Shore Land and Resource Management Plan, Implementation, Lake Tahoe Basin Management Unit (LTBMU), Washoe and Douglas Counties, NV, Due: July 11, 1994, Contact: Scott Parsons (916) 573-2600.

EIS No. 940211, Final EIS, COE, NC, Fairfield Bridge Replacement Project, Implementation, Atlantic Intracoastal Waterway, Hyde County, NC, Due: July 11, 1994, Contact: Hugh Heine (910) 251-4070.

EIS No. 940212, Draft EIS, AFS, OR, Washington Analysis Area/Baker City Municipal Watershed Project, Implementation, Wallowa-Whitman National Forest, Baker Ranger District, Baker County, OR, Due: July 29, 1994, Contact: Joanne Britton (503) 523-1929.

EIS No. 940213, Final Supplement, VAD, IL, Northeastern Illinois Area, National Cemetery Development, Construction and Operation, Updated Information Concerning New Site Selection, Joliet Grant Park or Cissna Park, Possible COE Section 404 Permit, Kankanka, Iroquois or Will County, IL, Due: July 11, 1994, Contact: Scott Gebhardtsbaur (202) 233-7204.

EIS No. 940214, Final EIS, USA, MI, Camp Grayling Army National Guard Training Site, Mission Expansion and Multiple Construction, Implementation, Crawford, Otsego and Kalkaska Counties, MI, Due: July 11, 1994, Contact: Gregory N. Huntington (517) 483-5646.

EIS No. 940215, Final Supplement, FHW, MN, TH-610 Construction, I-94 in Maple Grove to TH-252 in Brooklyn Park, Additional Funding and COE Section 404 Permit, Hennepin County, MN, Due: July 11, 1994, Contact: James McCarthy (612) 290-3230.

EIS No. 940216, Final EIS, UAF, AZ, Williams Air Force Base (AFB) Disposal and Reuse, Implementation, Permit and Approval, City of Mesa, Maricopa County, AZ, Due: July 11, 1994, Contact: Ltc. Gary Baumgartel (210) 536-3869.

EIS No. 940217, Final EIS, EPA, FL, Tampa Electric-Polk 1150 Megawatt Power Station Construction, and Operation, NPDES and COE Section 404 Permits, Polk County, FL, Due: July 11, 1994, Contact: Heinz J. Mueller (404) 347-3776.

EIS No. 940218, Final EIS, AFS, CA, North Yuba Trail Construction Project, between Rocky Rest in Indian Valley to Goodyears Bar, Tahoe National Forest, Downieville Ranger District, Sierra County, CA, Due: July 11, 1994, Contact: Mary Furney (916) 4788-6253.

Dated: June 7, 1994.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94-14187 Filed 6-9-94; 8:45 am]

BILLING CODE 6560-50-U

[FRL-4997-3]

Toxics Data Reporting Subcommittee of The Environmental Information and Assessments Committee; National Advisory Council For Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, EPA gives notice of a 2-day meeting of the Toxics Data Reporting subcommittee of the National Advisory Council for Environmental Policy and Technology. This will be the sixth meeting of the Toxics Data Reporting subcommittee, whose mission is to provide advice to EPA regarding the Agency's Toxics Release Inventory (TRI) Program.

DATES: The public meeting will take place on July 7, 1994, from 8:30 a.m. to 5 p.m., and July 8, 1994 from 8:30 a.m. to 3 p.m. Members of the public wishing to make comments at this meeting should submit their comments, in writing, by July 1, 1994.

ADDRESSES: The public meeting will be held at the Bellevue Hotel, Lexington Room, 15 E Street, Northwest, Washington, DC 20001 (202-638-0900). Written comments must be submitted to: U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Attn: Sam Sasnett, 7408.

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, Environmental Assistance Division, U.S. Environmental Protection Agency, Mail Stop 7408, 401 M St., SW., Washington, DC 20460; Telephone: 202-260-0675.

SUPPLEMENTARY INFORMATION: The subcommittee is likely to discuss the following subjects: Expansion of the facilities subject to reporting under TRI, development of comprehensive modifications to the TRI reporting Form, progress in developing final guidance for meeting the mandate of the Pollution Prevention Act. The agenda for the two days will focus on these and other potential topics.

Dated: June 6, 1994.

Morris Altschuler,

Acting Director, Office of Cooperative Environmental Management.

[FR Doc. 94-14178 Filed 6-9-94; 8:45 am]

BILLING CODE 6560-50-M

[FRL 4895-8]

Bypass 601 Groundwater Contamination Site, Concord, NC; Proposed De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed *De Minimis* Settlement.

SUMMARY: Under section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended 42 U.S.C. 9601 *et seq.*, the United States Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Bypass 601 Groundwater Contamination Site, Concord, North Carolina, with seventy eight parties. EPA will consider public comments on the proposed *de minimis* settlement for thirty (30) days. EPA may withdraw from or modify the proposed *de minimis* settlement should such comments disclose facts or considerations which indicate the proposed *de minimis* settlement is inappropriate, improper, or inadequate. Copies of the proposed *de minimis* settlement and a listing of settling parties are available from: Ms. Carmen J. Santiago-Ocasio, Enforcement Project Manager, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404-347-5059 ext. 6170.

Written comments must be submitted to the person above by thirty days from the date of publication.

Dated: June 3, 1994

Richard D. Green,

Acting Director, Waste Management Division

[FR Doc. 94–14176 Filed 6–9–94; 8:45 am]

BILLING CODE 6560–60–M

[FRL–4855–6]

Office of Emergency and Remedial Response Availability of Report To Congress on Progress Toward Implementing Superfund Fiscal Year 1991

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Agency's Progress Toward Implementing Superfund: Fiscal Year 1991 which is required by section 301(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986. The Report to Congress contains information on overall progress, and includes the following four categories of information specifically requested in section 301(h) of CERCLA: (1) Feasibility studies, remedial and enforcement actions; (2) an evaluation of newly developed and feasible permanent treatment technologies; (3) progress in reducing the number of facilities subject to review under section 121(c) of CERCLA; and (4) an estimate of resources needed by the federal government to complete CERCLA's implementation. The Report also includes: information required by section 105(f) of CERCLA about the participation of minority firms in Superfund contracting; and the EPA Inspector General audit report required by section 301(h)(2) of CERCLA.

ADDRESSES: Published copies of the Report may be purchased by the public, from the National Technical Information Service (NTIS) at 5285 Port Royal Road, Springfield, VA., 22161 (call (703) 487–4650).

Dated: January 27, 1994

Carol M. Browner,

Administrator.

[FR Doc. 94–14175 Filed 6–9–94; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Statement of Policy on System Institution Activities Involving the Potential for Nonexclusive Territories; Extension of Comment Period

AGENCY: Farm Credit Administration.

ACTION: Proposed statement of policy; comment period extension.

SUMMARY: The Farm Credit Administration (FCA) Board published for comment a proposed "Statement of Policy on System Institution Activities Involving the Potential for Nonexclusive Territories" in the **Federal Register** on April 13, 1994 (59 FR 17543). The comment period is scheduled to expire on June 13, 1994. The FCA Board hereby gives notice that the original comment period is extended to July 13, 1994.

DATES: The period for receipt of written comments is hereby extended to July 13, 1994.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to Kenneth D. Smith, Executive Assistant to FCA Board Member Gary C. Byrne, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all comments received will be available for examination by interested parties in the offices of the Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Smith, Executive Assistant to FCA Board Member Gary C. Byrne, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4000, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The 1971 Act authorizes the FCA to issue and amend the charters of System institutions and regulate the exercise of their powers. Included in this authority is the ability for the FCA to issue or amend charters or promulgate regulations that would result in increased competition among System institutions. The issue of competition among System institutions arises, typically, in two types of situations. First, charters could be issued authorizing two or more System institutions to extend the same types of credit services to the same types of customers in the same geographic territories; such charters have typically been issued as a result of mergers or other chartering actions requested by institutions. Second, institutions could be authorized by regulation to engage in certain activities outside of their chartered territories.

The FCA Board has determined that an extended comment period would be beneficial in order to ensure that all interested parties have an opportunity to comment on the proposed statement of policy on System institution activities involving the potential for nonexclusive territories.

Dated: June 7, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board

[FR Doc. 94–14202 Filed 6–9–94; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Hi-Tech Air Shipping, Inc., 7006 N.W. 46 Street, Miami, FL 33166, Officers: Robert E. Booth, President, Fiorella Booth, General Manager

Fortune Cargo, Ca., 7555 Angeton Drive, San Diego, CA 92126, Alfredo T. Espanta and Ruben C. Magtoto and Emilliano C. Magtoto (a partnership)

Joyce Logistics, Inc., 313 Glen Echo Road, Philadelphia, PA 19119, Officer: David M. Joyce, President

Josephine D. Mina-Saito, 29360 N. Begolinias Lane, Canyon Country, CA 91351, Sole Proprietor

Professional Services International, 3041 Magnolia Court, Edgewood, KY 41017, Pamela S. Stapleton, Sole Proprietor

Seven Seas Freight Forwarding Services, 11335 Parkridge Drive, Fontana, CA 92337, Roger Wang, Sole Proprietor

Thor Air Freight Corp., 147–05 Guy R. Brewer Blvd., Jamaica, NY 11434, Officers: Michael M. Ono, President/Director, Andrew M. Ono, Vice President, Numzio Mastromarino, Secretary/Treasurer/Director

Navigo International Inc., 3103 McKinney, Houston, TX 77003, Officers: Allen William White, President, Veronica Sandra McFadden, Vice President

Cargoza Forwarding Corporation, 7220 N.W. 79th Terrace, Miami, FL 33166, Officer: Francisco Zamora, President

Export NW, 845 NE Arrington, Hillsboro, OR 97124, Lori A. Wren, Sole Proprietor

F.P. International, Corporation, 5775 Blue Lagoon, suite 380, Miami, FL 33126, Officer: Maria A. Fullana, President, Norman C. Baez, Vice President

Dated: June 7, 1994.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–14115 Filed 6–9–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

ABN AMRO Holding N.V.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 29, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. ABN AMRO Holding N.V., Amsterdam, The Netherlands; Stichting Administratiekantoor ABN AMRO Holding, Amsterdam, The Netherlands; Stichting Prioriteit ABN AMRO Holding, Amsterdam, The Netherlands; ABN AMRO Bank N.V., Amsterdam, The Netherlands; to engage *de novo* through Lease Plan (U.S.A.) Inc., Atlanta, Georgia, in leasing of personal or real property or acting as agent, broker, or advisor in high residual value leasing of such property in which Lease Plan relies on an estimated residual value of the property in excess of 25 percent pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–14100 Filed 6–9–94; 8:45 am]

BILLING CODE 6210–01–F

Atlantic Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 5, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Atlantic Bancorp, Inc., Portland, Maine; to become a bank holding company by acquiring 100 percent of the voting shares of Citibank (Maine) N.A., South Portland, Maine.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Bankshares, Inc., East Point, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Georgia, East Point, Georgia.

2. Southwest Banks, Inc., Naples, Florida; to acquire 100 percent of the voting shares of Cape Coral National Bank, Cape Coral, Florida, a *de novo* bank.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Banks, Inc., Clayton, Missouri, to acquire at least 65.16 percent of the voting shares of BancTEXAS Group, Inc., Dallas, Texas, and thereby indirectly acquire BankTEXAS N.A., Houston, Texas.

2. Midwest Bancshares, Inc., Poplar Bluff, Missouri; to acquire 100 percent of the voting shares of First Southern Missouri Bancshares, Inc., Poplar Bluff, Missouri, and thereby indirectly acquire Carter County State Bank, Van Buren, Missouri.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. South Texas Capital Group, Inc., San Antonio, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Plaza International Bank, N.A., San Antonio, Texas.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. San Mateo County Bancorp, San Mateo, California; to acquire 100 percent of the voting shares of Mid-Peninsula Bank, Palo Alto, California.

2. Vancouver Bancorp, Vancouver, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Vancouver, Vancouver, Washington.

Board of Governors of the Federal Reserve System, June 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–14157 Filed 6–9–94; 8:45 am]

BILLING CODE 6210–01–F

Ralph C. Carlson, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 29, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Ralph C. Carlson, Marion, Arkansas; to acquire an additional 7.13 percent of the voting shares of Carlson Bancshares, Inc., West Memphis, Arkansas, for a total of 27.22 percent, and thereby indirectly acquire Fidelity National Bank of West Memphis, West Memphis, Arkansas.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Duncan Family Trust, James H. Duncan and Juell L. Duncan, Trustees, Neche, North Dakota; to acquire 25.11 percent; and Douglas M. Taylor, individually and as personal representative of the Leslie R. Taylor Estate, Pembina, North Dakota, to acquire 30.68 percent of the voting shares of Pembina County Bankshares, Ltd., Cavalier, North Dakota, and thereby indirectly acquire Citizens State Bank of Pembina County, Cavalier, North Dakota.

C. Federal Reserve Bank of Kansas City (Stephen E. McBride, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. William D. & Jeanette A. Whited, Maryville, Missouri; to acquire 69.9 percent of the voting shares of Northwest Missouri Bancshares, Inc., Craig, Missouri, and thereby indirectly acquire Bank of Craig, Craig, Missouri.

Board of Governors of the Federal Reserve System, June 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14101 Filed 6-9-94; 8:45 am]

BILLING CODE 6210-01-F

FDH Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 23, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. FDH Bancshares, Inc., Little Rock, Arkansas; to acquire Grant Federal Savings Bank, Sheridan, Arkansas, and thereby engage in operating a federally-chartered savings bank pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in Pulaski County, Grant County, and Saline County, Arkansas.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire the mortgage originationa and servicing business of LaPorte Bank and Trust Company, LaPorte, Indiana, and thereby engage in originating and servicing mortgages pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in LaPorte County, Indiana. **Comments on this application must be received by July 1, 1994.**

Board of Governors of the Federal Reserve System, June 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14102 Filed 6-9-94; 8:45 am]

BILLING CODE 6210-01-F

First Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 5, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Bankshares, Inc., East Point, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of East Point, East Point, Georgia.

B. Federal Reserve Bank of Kansas City (Stephen E. McBride, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Denver Bankshares, Inc., Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Denver, Denver, Colorado.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Northeast Bancshares, Inc., Mesquite, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Northeast Bancshares-Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire Northeast National Bank, Garland, Texas. In connection with this application, Northeast Bancshares-Delaware, Inc., Wilmington, Delaware, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Northeast National Bank, Garland, Texas.

Board of Governors of the Federal Reserve System, June 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14103 Filed 6-9-94; 8:45 am]

BILLING CODE 6210-01-F

Jay Gober, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 30, 1994.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Jay Gober, Graham, Texas, to acquire an additional 1.96 percent for a total of 11.15 percent; Charles Gober, Throckmorton, Texas, to acquire an additional 1.96 percent, for a total of 10.13 percent; and Gober Oil & Investments, Inc., Graham, Texas, to acquire an additional 3.21 percent for a total of 5.0 percent of the voting shares of Woodson Bancshares, Inc., Graham, Texas, and thereby indirectly acquire First State Bank, Graham, Texas.

Board of Governors of the Federal Reserve System, June 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14158 Filed 6-9-94; 8:45 am]

BILLING CODE 6210-01-F

Golden Triangle Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 1994

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Golden Triangle Bancshares, Inc., Campbellsburg, Kentucky; to engage *de novo* through its subsidiary, Citizens Bank, New Liberty, Kentucky, in the sale of credit insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Kentucky.

Board of Governors of the Federal Reserve System, June 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14159 Filed 6-9-94; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 94-13153) published on page 28105 of the issue for Tuesday, May 31, 1994.

Under the Federal Reserve Bank of Minneapolis heading, the entry for Norwest Corporation is corrected to read as follows:

Norwest Corporation, Minneapolis, Minnesota; to acquire through Norwest Mortgage, Inc., Minneapolis, Minnesota, the mortgage business of American National Bank of Silver City, Silver City, New Mexico, and thereby engage in originating and servicing mortgages pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Silver City, New Mexico.

Comments on this application must be received by June 24, 1994.

Board of Governors of the Federal Reserve System, June 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14160 Filed 6-9-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging; Statement of Organization, Functions, and Delegations of Authority

This notice amends Part B of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services ("HHS"), Administration on Aging ("AoA"), as follows: Continues

the Office of the Assistant Secretary for Aging; establishes two new Offices, the Office of the Deputy Assistant Secretary for Program Operations and Intergovernmental Affairs, and the Office of the Deputy Assistant Secretary for Program Development and Elder Rights Programs; places all units of AoA, except the Office of Field Operations, the Regional Offices and the Office of Administration and Management, under the two new Offices; establishes a new Office of Elder Rights Protection; retitles the Division of Research, Demonstration and Training and the Division of Dissemination and Utilization as the Office of Research, Demonstration and Training and the Office of Dissemination and Utilization, respectively; retitles the Division of Eldercare Service Implementation as the Division of Community-Based Services; establishes a new Division of Information Resources Management within the Office of Administration and Management; and abolishes the Office of External Affairs. The language to implement these changes is as follows:

Part B, Chapter B, "The Administration on Aging," as published in the **Federal Register** on September 13, 1991 (56 FR 46620); amended on December 24, 1992 (57 FR 61433); and further amended on March 2, 1993 (58 FR 12040) is amended as follows:

Delete B.00 and replace with the following:

B.00 Mission. The Administration on Aging, an Operating Division of the Department of Health and Human Services, is the principal agency designated to carry out the provisions of the Older Americans Act ("OAA" or "The Act") of 1965, as amended, 42 U.S.C. 3001 *et seq.* Serves as the effective and visible advocate for older persons within the Department of Health and Human Services and with other Federal departments and agencies. Directly assists the Secretary in all matters pertaining to problems of the aging. Advocates for the needs of older persons in program planning and policy development within the Department and in other Federal agencies. Gives priority to older persons in greatest economic or social need. Develops standards and issues best practice guidelines; disseminates information; provides technical assistance; and initiates policy related to services funded by the Department and provided to older persons. Advises the Secretary, Department components and other Federal departments and agencies on the characteristics, circumstances and needs of older people and develops policies, plans and programs designed to promote their welfare; under Title III of the Act (45 CFR part 1321) administers a program of formula grants to States to establish State and community programs for older persons; administers a program of grants to American Indians, Alaskan Natives and Native Hawaiians to establish programs for older Native Americans under Title VI of the Act (45 CFR parts 1326 and 1328). Provides policy and procedural direction, advice and assistance to States and Native American grantees to promote the development of State and Native American administered, community-based systems of comprehensive social services for older persons. Administers long term care ombudsman and protective services programs, legal services development programs, and outreach, counseling and assistance programs for older people under Title VII of the Act. Approves or disapproves State plans and Native American funding applications. Administers programs of training, research and demonstration under Title IV of the Act. Administers national centers for service development and assistance, and information dissemination benefitting older persons. Promotes through the State and Area Agencies on Aging and Indian Tribal Organizations a national community-based long term care program for older persons. Develops and issues program designs, guidelines, standards and assistance to State and Area Agencies, Indian Tribal Organizations and nutrition providers to support Titles III and VI nutrition services and disseminate nutrition education material.

Delete B.10 and replace with the following:

B.10 Organization. The Administration on Aging is headed by the Assistant Secretary for Aging and consists of:

Office of the Assistant Secretary
Office of Field Operations
Regional Offices
Office of Administration and Management
- Division of Budget and Finance
- Division of Management Systems
- Division of Grants Management
- Division of Information Resources Management

Office of the Deputy Assistant Secretary for Program Operations and Intergovernmental Affairs
- Executive Secretariat
- Office of State and Community Programs
- Division of Program Management and Analysis
- Division of Community-Based Services
- Office for American Indian, Alaskan Native and Native Hawaiian Programs
- Office of Policy Coordination and Analysis

Office of the Deputy Assistant Secretary for Program Development and Elder Rights Programs
- Office of Research, Demonstration and Training
- Office of Dissemination and Utilization
- Office of Elder Rights Protection

Delete B.20, A–I, and replace with the following:

B.20. *Functions.* A. *Office of the Assistant Secretary (BA)* The Office of the Assistant Secretary serves as the focal point for OAA programs through the development, coordination and administration of those programs nationwide. Serves as the effective and visible advocate within the Federal government to ensure the rights and entitlements of the elderly. Conducts active public education of officials, citizens, and the aged to ensure broad understanding of the needs and capabilities of the aged.

Sets national policies, establishes national priorities, ensures policy consistency, and directs plans and programs conducted by AoA. Advises the Secretary, HHS agencies, and other Federal departments and agencies on the characteristics, circumstances, and needs of older people and on policies, plans and programs designed to promote their welfare. The Principal Deputy Assistant Secretary is the Assistant Secretary's primary associate in carrying out the mission of the agency, particularly in the advocacy and policy negotiation role within the Federal government.

Serves as an advocate for older people with voluntary and private organizations. Collaborates with other Federal agencies to assist older persons by the development and implementation of interagency agreements. Coordinates joint interests and initiation of projects with other Federal agencies and State and local government entities. Provides liaison with the Federal Council on the Aging and other Federal advisory committees focused on the aging. Works with national aging organizations, professional societies, and academic organizations to identify mutual interests and plan voluntary and funded approaches to meet the needs of older persons. Ensures affirmative action throughout the Aging Network in employment and services delivery.

Oversees the international liaison and coordination functions of AoA.

Stimulates and coordinates AoA international activities and coordinates AoA international activities with Departmental and other Federal agencies concerned with international affairs.

Coordinates all liaison activities with Congress and with the print and electronic media. Manages AoA's media relations and legislative development activities.

Develops legislative proposals, testimony, background statements, and other policy documents for use by the Assistant Secretary in activities related to legislation. In coordination with the Office of the Assistant Secretary for Legislation, analyzes proposed and enacted legislation related directly or indirectly to older people, including legislation directly affecting OAA programs. Through an automated legislative information system tracks bills related to the aging. Develops and issues status reports regarding key legislative developments to Headquarters and Regional Office staff, the network of State and Area Agencies on Aging, and Indian Tribal Organizations.

Coordinates with the Office of the Assistant Secretary for Public Affairs, including planning and implementing strategy for relations with the news and other information media; initiates media outreach activities and responds to all media inquiries concerning AoA programs and related issues.

B. *Office of Field Operations* (BA1) Headed by the Director, Office of Field Operations, who reports to the Principal Deputy Assistant Secretary for Aging. Provides leadership and technical guidance to the Regional Offices as they implement the national programs of the OAA. Keeps the Assistant Secretary apprised of Regional Offices' progress in carrying out their responsibilities. Represents Regional Office concerns to Central Office program units, as well as the concerns of Central Office program units relative to the operations of field programs. Serves as the focal point for all communications flowing to Regional Offices from Central Office and from Regional Offices to Central Office. Ensures that clear and consistent guidance is given to all Regional Offices on program and policy directives. Serves as a clearinghouse for the exchange of innovative program models and ideas among the Regional Offices.

Issues substantive operating procedures to guide Regional staff of AoA in the conduct of their responsibilities; establishes standards for performance plans in the Regional Offices; regularly assesses the performance of AoA Regional Office staff against the established standards. In consultation with the AoA Office of Administration and Management ("OAM") and the HHS Office for Civil Rights, provides guidance to AoA Regional staff on a variety of civil rights issues, including such areas as contracting with minority organizations, age discrimination in employment and services provision and discrimination against persons with disabilities.

Maintains information on the professional development and technical capacity of Regional staff, and identifies training needs and recommends training courses to ensure an AoA Regional staff capacity for responding to emerging program and management demands.

Provides day-to-day guidance on all program and administrative management activities for which the AoA Regional Offices are responsible. Determines support and resource levels of Regional AoA staff.

C. *Regional Offices on Aging (BD–1 to BD–X)* Regional Offices on Aging are headed by a Regional Administrator ("RA") who is responsible to the Assistant Secretary for Aging through the Director, Office of Field Operations, who gives day-to-day guidance and coordination.

Serve as the focal point for the development, coordination and administration of OAA programs within the designated HHS region. Represent the Assistant Secretary for Aging within the region, and provide information for, and contribute to the development of, national policy dealing with the elderly. Based on national policy and priorities, establish regional program goals and objectives.

Serve as the effective and visible advocates for the elderly to Federal agencies in their geographic jurisdiction to ensure the rights and entitlements of the elderly; advise, consult and cooperate with each Federal agency proposing or administering programs or services related to the aging; coordinate and assist in the planning and development by public (including Federal, State, Tribal and local agencies) and private organizations of comprehensive and coordinated services and opportunities for older individuals in each community of the nation; conduct active public education of officials and citizens and the aged to ensure broad understanding of the needs and capabilities of the aged.

Monitor, assist and evaluate State Agencies on Aging administering programs supported under Titles II, III and VII of the OAA, and Indian Tribal Organizations administering projects under Title VI. Review OAA State Plans on Aging and approve acceptable plans or recommend disapproval to the Assistant Secretary for Aging, as appropriate. Recommend approval or disapproval of Title IV applications to the Assistant Secretary. Review applications and recommend approval or disapproval of Title VI applications to the Assistant Secretary.

Advise the Assistant Secretary of problems and progress of programs through the Director, Office of Field Operations; recommend to the Assistant Secretary changes that would improve OAA operations; evaluate the effectiveness of OAA and related programs in the Region and recommend to the Assistant Secretary or take positive action to gain improvement; and guide agencies and grantees in applications of policy to specific operational issues requiring resolution. Facilitate interagency cooperation at the Federal, Regional, State and Tribal levels to enhance resources and assistance available to the elderly. Coordinate with the HHS Regional Director as needed on matters of an administrative or crosscutting nature. Disseminate and provide technical assistance regarding nutrition guidelines and developments to State and Area Agencies, Indian Tribal Organizations and nutrition service providers.

Monitor and assist State and Area Agencies and Indian Tribal Organizations in the implementation and execution of the long-term care ombudsman, elder abuse prevention, elder rights and legal assistance development, and outreach, counseling and assistance programs, and the implementation of elder rights under Title VII of the OAA.

D. *Office of Administration and Management (BE)* reports to the Principal Deputy Assistant Secretary for Aging. Advises the Assistant Secretary in the areas of internal administration and management of AoA. In response to Federal statutes, regulations and Departmental policies and instructions, provides leadership, policies and procedures for effective and efficient management throughout AoA, including such areas as budget, finance, grants administration, personnel management,procurement, materiel and facilities management, management systems, information resources management, telecommunications and similar administrative management facilitation services. Responsible for all management and administrative reviews, analyses and controls within AoA required by statutes or regulation, such as the Federal Managers Financial Integrity Act. The Director, OAM, serves as the AoA Chief Financial Officer ("CFO") and, on behalf of the Assistant

Secretary for Aging, performs the duties assigned to AoA under the Chief Financial Officers Act of 1990, including the development of the CFO 5-year plan and status report, and carries out the responsibilities assigned by the Government Performance and Results Act of 1993. Conducts management analysis and automated systems development activities for AoA and serves as the principal AoA staff examining the AoA organization. Provides technical assistance and guidance to Headquarters and Regional Office units in the development, implementation and maintenance of administrative and grants management systems and audit resolution.

Division of Budget and Finance (BE1) provides and coordinates management support services involving budget formulation and execution, and financial management. In coordination with AoA program offices, formulates and presents budget estimates; executes apportionment documents; plans, directs, and coordinates financial and budgetary programs of AoA. Provides guidance to AoA program offices in preparing budgets, justifications, and other budgetary materials. Prepares budget documents on behalf of the Assistant Secretary for presentation to Departmental management, the Office of Management and Budget ("OMB"), and Congress. Assists in planning for and presenting the budget before OMB and the Congress. Solicits, obtains and consolidates information and data from other AoA offices for testimony at hearings before these bodies in coordination with the Immediate Office of the Assistant Secretary. Analyzes the budget as approved by the Congress and apportioned by OMB, obtains input from program offices and recommends for the Assistant Secretary's approval a financial plan for its execution. Makes allowances to AoA offices within the guidelines of the approved financial plan. Develops and maintains an overall system of budgetary controls to ensure observance of established ceilings on both program—including all formula and discretionary grants accounts—and S&E funds; maintains administrative control of funds against allotments and allowances, and certifies funds availability for all AoA accounts. Prepares requests for apportionment of appropriated funds. Maintains control of allotted funds against current obligations, and maintains separate financial operating plans for much of the Regional offices. Prepares spending plans and status-of-funds reports for the Assistant Secretary.

Acts as AoA's coordination point with the Office of the Secretary and AoA organizational units on policy and regulatory issues involving travel management, develops and interprets AoA policies on travel, and provides support services to AoA components for travel management.

Provides analysis and coordinates accounting reports for AoA. Manages funds for salary and expense accounts. Tracks financial status of all AoA program and salary and expense funds.

In meeting the Assistant Secretary's priorities and instructions, with appropriate input from AoA organizational units, develops financial operating procedures and manuals, including directing the implementation within AoA (headquarters and regions) of Departmental and other Federal fiscal policies and procedures. Participates in program development and implementation plans where there are budgetary implications; serves as the AoA liaison with the Office of the Secretary and OMB on all budgetary matters.

Division of Management Systems (BE2) initiates and develops AoA administrative and human resources management policies, procedures and instructions. Plans, organizes and conducts management studies of the AoA program, staff and organization.

Plans, organizes and conducts in-depth studies of organization structures, functional statements, job structure, staffing patterns, management and administrative information systems, relevant legislative and regulatory authorities and/or workloads to analyze staff, equipment, and systems resources and needs and/or to determine and measure work elements. Recommends to the Assistant Secretary organization changes; alternate staffing patterns; job structure and/or functional statement modifications; and staff, workload and equipment distribution.

Manages the AoA management improvement program. Assesses AoA's management methods and recommends improvements to the Assistant Secretary. Monitors AoA's progress toward approved goals.

Consistent with relevant OMB Circulars, develops, defines and implements management analysis and reporting systems to provide for better informed management decisions and more equitable distribution of resources, and through the Division of Information Resources Management implements these within the AoA automated information system; manages official AoA administrative oversight systems, such as the personnel data base and the administrative issuance process. Performs assessments of paperwork processing, reporting, and other systems needs in AoA.

Plans, organizes and conducts management reviews under the Federal Manager's Financial Integrity Act ("FMFIA"), OMB Circular A–123 (Internal Control Reviews ("ICR")). Develops protocols for each ICR segment; develops and evaluates ICR self-assessment models; and recommends corrective actions. Monitors AoA's compliance with FMFIA instructions and findings. Acts as the AoA liaison with ASMB on FMFIA matters. Prepares the AoA annual FMFIA report to the Secretary.

Develops, implements and assesses strategies on use of human resources and the assignment of FTE ceilings. Develops and administers the AoA Position Management Plan and functional statements. Acts as liaison with ASMB and ASPER in coordinating preparation of organizational proposals requiring approval by the Secretary. Maintains official organizational, functional statement and delegation files for AoA. Develops formal program, administrative and personnel delegations of authority for AoA based on continuing management assessment and on review and analysis of legislation and regulations.

Provides technical assistance and guidance to AoA managers and staff regarding personnel management matters. Reviews proposed requests for personnel action and recommends approval/disapproval of such requests.

Developes and monitors the annual AoA employee training strategy and budget, assuring that the common training needs of AoA employees are identified and implemented. Coordinates Presidential Management Intern, Federal Women's and other developmental programs with high AoA/HHS priorities. Oversees AoA training contracts.

Develops, manages, and assesses the effectiveness of AoA employee performance management, incentive and award systems. Provides training and technical assistance on current and demonstration systems.

Serves as the AoA records manager, providing guidance and assistance to both Headquarters and Regional staff regarding filing practices, retention and disposition of records.

Acts as AoA's focal point with the Office of the Secretary, other Federal agencies, and AoA organizational units on policy and regulatory issues involving real and personal property, space management, occupational safety and health, materiel management, telecommunications, postal

management, and forms and records management.

Provides oversight and direction to meet the administrative needs of AoA components. Serves as liaison with the Office of the Secretary, the General Services Administration ("GSA") and outside vendors to provide facilities services including acquisition of facilities and equipment, personal property management, inventory control, and labor services. Administers AoA's personal and capitalized property management program, including the establishment and maintenance of property accountability systems, the storing and distribution of supplies, and the movement of furniture and equipment associated with the relocation of offices. Develops and implements AoA's plans, guidelines and activities for space and facilities management, including identification of the negotiations for space, and planning and design of office layouts. Responsible for the acquisition, disposition, allocation, and budgeting of space for AoA.

Provides telecommunications planning, budgeting and management for AoA Headquarters' facilities, including procurement, installation, alterations, and maintenance. Provides liaison with HHS and GSA on telecommunications matters, and provides assistance to AoA components to identify telecommunications needs and to use communications equipment and systems.

Division of Grants Management (BE3) serves as AoA's focal point for management, leadership and administration of discretionary and formula grants, and cooperative agreements. Provides national policy oversight and development for grant management and administration matters. Ensures that all grant awards conform with applicable statutes, regulations, and policies. Maintains liaison and coordination with appropriate AoA and HHS organizations to ensure consistency between AoA discretionary and formula grant award activities, and the Department's various payment systems for grants.

For discretionary grants, ensures that the administrative and financial management aspects of grants administration are carried out and monitors grantee performance in these areas. Provides support for and processes all discretionary grant award documents and negotiates grant budgets, and makes all awards for AoA Headquarters and Regional Offices. Reviews discretionary grants after input for AoA program offices, and coordinates AoA grantee financial management matters as necessary with appropriate HHS and AoA units.

Issues and maintains control over formula grant awards under the OAA, and makes adjustments to previously issued formula grant awards.

In coordination with all AoA Headquarters and Regional Offices having grant administrative responsibilities: reviews and assesses AoA formula grant award procedures; directs and/or coordinates management initiatives to improve formula grant programs in financial areas; develops proposals for improving the efficiency in awarding grants and coordinating financial operations among AoA programs; establishes priorities and develops procedures for grantee financial monitoring; and, reviews activities at the regional level for all AoA discretionary and formula grant programs.

Following consultation with all Headquarters and Regional Offices having grant administrative responsibilities, and with the approval of the Assistant Secretary: develop AoA instructions and procedures for the administration of all discretionary and formula grants, including those approved in AoA Regional Offices. Provides training and technical assistance to AoA staff regarding grants and provides overall guidance, monitoring, and assistance to Regional Offices in all areas of administrative and financial management of grants.

Has primary responsibility for developing policy issuances for grants management in AoA, and reviews all proposed AoA instructions and policy issuances pertaining to grant matters which are derived from Departmental, OMB or other government-wide issuances to ensure consistent policy and interpretation with AoA concerning grants management.

Functions as AoA liaison with the General Accounting Office ("GAO"), the HHS Office of the Inspector General and the Department's Office of Grants and Acquisition Management on grant matters. Assists at discretionary and formula grant hearings before the Departmental Appeals Board in response to disallowances and other financial claims by AoA or State Agencies on Aging and other grantees.

For formula grant activities, develops financial management standards for State and Area Agencies and provides guidance on and interpretation of 45 CFR parts 74 and 92 to AoA staff. Based on formula grants management policies and procedures approved by the Department, reprograms formula grant funds as required under the OAA.

Responds to audit issues raised by Department and General Accounting Office audit reviews and ensures the proper analysis and resolution of audit findings by Regional Offices for final action by the Assistant Secretary.

Division of Information Resources Management (BE4) manages AoA's information resources management ("IRM") program and develops policies, plans, budgets, standards and procedures related to it. Plans, manages, maintains and operates AoA's automated information system, including the LAN, personal computers, software, and support systems and services. Provides guidance and technical assistance on all components of the system and coordinates the preparation of manuals and policy issuances required to meet the instructional and informational needs of users of the system. Provides or contracts for training of users in all AoA systems, hardware and software. In coordination with the Office of the Deputy Assistant Secretary for Program Operations and Intergovernmental Affairs ("D/ASPOIA"), carries out the activities required under the Paperwork Reduction Act of 1980, as amended, as the Federal Information Resources Management Regulations, other Federal regulations and Executive Orders and DHHS/OS policies and procedures apply the Paperwork Reduction Act to automated information resources management. Represents AoA on the OS IRM Policy and Planning Board.

Responsible for IRM reviews; Federal Information Processing resources retirement and disposal; and conducting and reporting of information resource inventories.

Acts within the overall strategy, annual workplan and budget approved by the AoA Information Resources Management Board, composed of management representatives from each component of AoA.

Assesses the need for, and defines the specifications for procurement of all Headquarters and Regional Office IRM hardware and software. Reviews and recommends to the Director, OAM, the decision for Headquarters and Regional requests for Automatic Data Processing ("ADP") equipment and services. Assesses, recommends and defines the need to share ADP services through inter-government, inter-department and interagency agreements. Surveys specifications and other literature, initiates requests for services, and defines AoA's need for support services from private ADP vendors.

Recommends strategies, provides for, and maintains systems integration in the AoA corporate data enterprise. Designs

and institutes procedures for the protection, security and integrity of the AoA data, hardware and software.

E. Office of the Deputy Assistant Secretary for Program Operations and Intergovernmental Affairs (BB)

Reports to the Assistant Secretary for Aging. Plans, directs and evaluates agency program operations, including the development and implementation of a comprehensive, coordinated system of services for older Americans. Coordinates all AoA cross-cutting program activities and initiatives. Responsible for policy development concerning programs and services under the OAA, including long-term care initiatives, services, and policy. Assures internal coordination of programs, and develops and maintains effective relationships with government entities at the Federal, State and local levels to successfully achieve a community-based approach to aging and long-term care.

Provides leadership on behalf of Titles III and VI of the OAA, and those parts of Title II of the OAA for which the Office is responsible. Plans, directs and evaluates the programs under the OAA designed to provide planning, coordination and services to older Americans through grant programs authorized under Titles III and VI of the OAA. Assures the successful collection of data and its analysis to demonstrate program effectiveness. Assures that program and service information and trends are disseminated to advocates for older persons. Provides technical assistance to and education for State and Area Agencies on Aging and Tribal Grantees in the development of plans, goals, and system development activities. Serves as the agency's program regulations clearance officer for AoA programs mandated under the OAA. Assures that statutory requirements, regulations, policies, and instructions are implemented for Titles III and VI, and for the functions under Title II for which the Office is responsible.

Performs the following functions under Title II: Issues and enforces regulations regarding conflicts of interest in arranging the provision of services under the Act, including prohibiting such conflicts on the part of Area Agencies on Aging; provides direction to service providers to improve data collection and analysis; designs uniform data collection procedures; assists State and Area Agency volunteer coordinators, as necessary, and encourages the effective use and training of volunteers; consults with State and Area Agencies and Tribal grantees in the development of goals, regulations, instructions and policies; oversees the Nutrition Officer who provides technical assistance and guidance to Regional Offices, States, Area Agencies on Aging and service providers; establishes and convenes a nutrition guidance council to assess program effectiveness and to promote nutrition and dietary standards; and assures planning for and completion of studies and evaluations.

Provides liaison with OMB for the management of the agency paperwork burden reduction program. Coordinates clearance of OAA Titles II, III, IV, VI and VII program regulations within AoA and with appropriate HHS offices, and review of those regulations by OMB. Prepares and processes clearance for collection of information, and assures compliance with related standards, procedures and policies.

Directs intergovernmental affairs activities and develops and maintains effective relationships with other governmental departments and agencies. Plans, negotiates, facilitates, and updates, as appropriate, memoranda of understanding with other departments and agencies to promote agreements and cooperative relationships and ventures that address policies and services affecting the aging population.

Provides program expertise to the Assistant Secretary for policy development, advocacy and program initiatives.

Executive Secretariat serves as the communications center for AoA, ensuring that issues requiring the attention of the Assistant Secretary, Principal Deputy Assistant Secretary of AoA Executive Staff are identified on a timely and coordinated basis. Monitors the response of other AoA units in developing necessary documents for the Assistant Secretary's review and provides assistance to staff on the content and style of special assignments. Operates the agency-wide correspondence and assignment tracking and control system and provides technical assistance on standards for control of correspondence and memoranda. Manages the clearance system and reviews documents for consistency with the Assistant Secretary's and the Secretary's assignments, previous decisions on related matters, and editorial standards. Refers unprecedented policy questions to the Office of Policy Coordination and Analysis.

Maintains official copies of all policy and information issuances and data collection instruments; ensures they proper clearance before issuance and annually reviews them for currency and compliance with law and regulations. Reviews all materials prepared for **Federal Register** publication and ensures their compliance with guidelines. Serves as AoA's liaison with the Executive Secretariats in the Office of the Secretary and other HHS units regarding AoA program, policy and special administrative matters. Receives and sorts internal mail for AoA headquarters components.

Serves as liaison with the Office of the General Counsel and the General Accounting Office on all program matters other than those related to grants or procurement management. Reviews requests for information under the Freedom of Information Act and arranges for appropriate responses, in coordination with the HHS Freedom of Information Act Officer.

E. 1 Office of State and Community Programs (BB1) serves as the focal point with AoA for the operation, administration, management and assessment of the programs authorized under Title III of the OAA. Also carries out the following responsibilities of Title II: oversees development of more responsive service systems through intergovernmental and private sector initiatives and partnerships to address age-related issues and concerns; encourages and assists in the provision of information to older people with the need for Supplemental Security Income, Medicaid and Food Stamps; implements and oversees the supportive services and nutrition programs; implements and oversees the uniform data collection procedures for States; implements and oversees the responsibilities for consultation with the other Federal agencies and with State and Area Agencies on Aging.

Implements Title III of the OAA through the development of regulations, policies and guidance governing the development and enhancement of comprehensive and coordinated home and community-based care service delivery systems by State and Area Agencies on Aging. Provides guidance regarding State Plan processing and approval, the process and criteria for approval of States' Intrastate Funding Formulas for the allocation and targeting of resources within States, and implementation of the Interstate Funding Formula for distribution of Title III funds among States. In the field, implements Title III through the provision to Regional Office staff of guidance and information concerning AoA programs, and interpretation of Title III program regulations and policy. In addition, fosters, oversees, and assesses the implementation of Title III by States and Area Agencies through

guidance and direction to Regional Office staff regarding program reviews, compliance monitoring, program and system development and enhancements. Designs and provides training and technical assistance for program compliance, effectiveness, and enhancement.

Develops and designs the criteria for collecting, analyzing and distributing program performance data on State and Area Agencies' implementation of OAA programs, and prepares that data for reporting to Congress, the public and the National Aging Information Center.

Provides specialized input on Title II and III programs to long-range planning, operational plans and the budget process. Develops program plans and instructions for AoA Regional Offices and State and Area Agencies to improve Title III programs and to ensure that the objectives of the OAA in fostering independence and life with dignity are met.

Division of Program Management and Analysis (BB11) develops policies, guidance and technical assistance to State and Area Agencies on Aging with respect to programs under Title III of the OAA, including the development and implementation of comprehensive and coordinated systems for supportive services, congregate and home-delivered nutrition services, the development and operation of multipurpose senior centers and the delivery of legal assistance; provides guidance and technical assistance to AoA Regional Staff in the effective implementation of programs under Title III of OAA; designs, implements and provides guidance and technical assistance to State and Area Agencies and Aging and service providers on data collection and analysis (Section 202(b)(28)) and on uniform data collection procedures for State Units on Aging (Section 202(b)(29)); consults with State and Area Agencies on Aging, service providers and other appropriate stakeholders in the development of goals, regulations, program instructions and policies regarding comprehensive and coordinated supportive and nutrition systems of services for older individuals.

Develops regulations for use by State and Area Agencies on Aging and local service providers responsible for programs under Title III of the OAA. Carries out the functions of the designated nutrition officer, who coordinates nutritional services under the Act and develops the regulations and guidelines, and provides technical assistance regarding nutrition to the AoA Regional Offices, State and Area Agencies, nutrition service providers, and other organizations; serves as the liaison to the United States Department of Agriculture and other Federal agencies and organizations related to nutrition policy and program issues.

Administers the State plan hearing process required by Section 307(c) of the OAA and provides the analysis and recommendations for the Assistant Secretary's decision resulting from the hearing.

Provides timely and accurate responses to requests for policy interpretation and technical assistance from Congress, State and Area Agencies on Aging, and the general public.

Develops and operates a National Aging Program Information System focused on the information needs of AoA and the Network on Aging to both manage and advocate for the delivery of effective and efficient services to the elderly. Coordinates and conducts operational studies, program analyses, and evaluations on special issues of concern to the Secretary, the Assistant Secretary, Regional Offices, and State and Area Agencies on Aging. Prepares reports on program operations under Title III for the Assistant Secretary, other AoA offices, the Secretary, the President, Congress and the public.

Through the analysis of State Plans, evaluation findings and other relevant material, identifies potential Title III program and management issues and develops recommendations to the Assistant Secretary on possible solutions.

Division of Community-Based Services (BB12) carries out the Title II responsibilities related to facilitating the continuing development, expansion and improvement of home and community-based service systems to be more responsive at the community level to meet the social and human service needs of the elderly. Develops and implements special initiatives at the national level for building strong interagency, intergovernmental and private sector partnerships to address age-related issues and concerns and promotes these initiatives throughout the network of agencies involved with older Americans.

At all levels, from national to the local service delivery level, develops methods and relationships to articulate the problems and concerns of the elderly to organizations beyond the traditional network of agencies and works with these organizations to be more sensitive and responsive to age-related needs and issues.

Directs and assesses the development under Title III of the OAA of State-administered, home and community-based long-term care systems, and social and supportive services for the elderly. Initiates and encourages expansion of the capacities of home and community-based social service and health care systems to deliver comprehensive services to the elderly. Strengthens and extends the development of the continuum of care principle in local community based social services systems for the elderly. Provides technical and subject matter expertise for the development of these systems, targeted at enhancing the capabilities of State and Area Agencies and local service delivery programs to improve their service to older people.

Assists State and Area Agencies and local service delivery agencies to analyze program trends and project needs of the aging population, and to develop strategies and specific implementation plans to enable all levels of the Aging Network to anticipate and adapt to community program needs in the future. Develops policies, guidance and technical assistance to the Aging Network of States, Area Agencies, service providers, national organizations, state organizations, local organizations and academia. Focuses primarily on the development of systems of care at the community or local level. Coordinates with the Division of Program Management and Analysis to achieve a fully integrated approach for the enhancement of systems of care throughout the nation.

E. 2 *Office for American Indian, Alaskan Native, and Native Hawaiian Programs* (BB2) on behalf of individuals who are older Native Americans, serves as the effective and visible advocate within the Department, with other Departments and agencies of the Federal Government, and with State, local and tribal governments regarding all Federal policies affecting Native American elders. Additionally, advocates and promotes linkages among national Indian organizations, national aging organizations, and national provider organizations with the goal of enhancing the interests of and services to Native American elders.

Recommends to the Assistant Secretary policies and priorities with respect to the development and operation of programs and activities relating to individuals who are older Native Americans. The Office coordinates activities among other Federal departments and agencies to ensure a continuum of improved services through memoranda of agreements or through other appropriate means of coordination. Carries out the following responsibilities of Title II: Evaluates the outreach under Title III

and Title VI and recommends necessary action to improve service delivery, outreach, and coordination between Title III and Title VI services; encourages and assists the provision of information to older Native Americans with need for Supplemental Security Income, Medicaid, food assistance, housing assistance, and transportation assistance; develops research plans, conducts and arranges for research in the field of Native American aging; collects, analyzes, and disseminates information related to problems experienced by older Native Americans, including information on health status of older individuals who are Native Americans, elder abuse, in-home care, and other problems unique to Native Americans; develops, implements, and oversees the uniform data collection procedures for Tribal and Native Hawaiian Organizations; and implements and oversees the consultation requirements of Title II as they apply to Native American issues.

Chairs the Interagency Task Force on Older Indians which is comprised of representatives from the Federal departments and agencies with an interest in the welfare of individuals who are older Indians and makes recommendations to the Assistant Secretary at six month intervals, to facilitate coordination among Federally funded programs and improve services to older Indians.

Provides the Native American input to the Office of the Deputy Assistant Secretary for Program Development and Elder Rights Programs for inclusion in AoA's research plan. In addition, collaborates with the Office of State and Community Programs on Title VI—Title III coordination.

Provides input and feedback to the Office of the Deputy Assistant Secretary for Program Development and Elder Rights Programs for the development and operation of Resource Centers on Native American Elders which gather information, perform research, provide for dissemination of results of the research, and provide technical assistance and training to those who provide services to Native American elders.

Provides specialized input on Title VI programs and the Native American components of Title II and Title VII–B programs to other Offices for long range planning, operational plans, research and training, and the budget process. Determines the Title VI grant amounts from annual appropriations. Develops testimony and background documents concerning Native Americans for use by the Assistant Secretary and Deputy Assistant Secretaries.

Serves as the AoA focal point for the administration and assessment of the programs authorized under Title VI and the Native American Organization provisions of Title VII–B of the OAA, including administering grants, cooperative agreements and contracts. Implements the American Indian, Alaskan Native and Native Hawaiian programs in the field through provision of program and policy direction, training and oversight to the Regional Offices in the execution of the Native American components of their Title II, Title VI and Title VII–B responsibilities. Oversees the Regional Offices' monitoring of Title VI grantees. Arranges for and manages on-going training and technical assistance for Title VI grantees. Coordinates additional training and technical assistance with other projects managed by the Office of Research, Demonstration, and Training.

E. 3 *Office of Policy Coordination and Analysis* (BB3) analyzes and interprets issues related to AoA program policy; develops and interprets AoA goals, priorities, and strategies; performs analyses related to the aging. Performs all functions with appropriate input from the AoA units with subject matter responsibility.

Conducts policy studies on a wide range of issues affecting AoA programs and the elderly; solicits policy and strategy input from a wide spectrum of organizations concerned with the aging. Prepares the AoA long- and short-range plans; provides interpretation and guidance for implementation of these plans to all AoA units; and reviews all new and changed policy documents for consistency with AoA long-range goals and strategies. Coordinates with the Office of the Assistant Secretary and all AoA units, and Departmental staff offices on policy, planning and evaluation issues and development.

Coordinates with the Office of Administration and Management in that Office's translation of the long- and short-range plans into procedural guidance for AoA units concerning employee performance appraisal planning, work planning and budget preparation. By means of this system, coordinates the development of implementation strategies and subsidiary plans as well as processes for monitoring progress toward stated objectives.

Develops AoA plans and priorities for evaluation of programs, with subject matter input from appropriate units. Manages contracting for mandated evaluation projects and performs intramural evaluation studies. Prepares reports of the results of program and impact evaluations conducted by and for AoA, with technical input from other AoA units.

Assesses the need for, develops strategies and priorities about, and conducts activities for the development of adequate knowledge for improving the circumstances of older people.

Assists in the collection and analysis of demographic and socio-economic information related to the aging.

F. *Office of the Deputy Assistant Secretary for Program Development and Elder Rights Programs* (BC) reports to the Assistant Secretary for Aging. Plans, directs and evaluates activities authorized under Titles IV and VII of the OAA. Conducts activities for the development of adequate knowledge for improving the circumstances of older people and develops a knowledge base for policy decisions and program development and coordination through support of a wide range of research, demonstration, and training activities. Elicits new knowledge and techniques to improve the circumstances of older Americans.

Promotes coordination of research, demonstration, and training activities. Prepares the planning documents for, and coordinates the development of, the annual discretionary funds program announcement. Oversees the grant and contract activities designed to carry out research, demonstration, and training activities, and develops AoA policies and criteria for monitoring grants and contracts supported through the Office of the Deputy Assistant Secretary for Program Development and Elder Rights ("D/ASPDER"). Assesses results of these activities to develop utilization strategies.

Implements strategies for improving the quality of facilities, programs, and services for the nation's older population. Maintains information on programs in other Federal agencies and national voluntary agencies which have potential for relating to these strategies. Collects and disseminates information related to problems of the aged and aging. Manages AoA's public information and public education activities.

As the Office designated in Title II of the OAA as the Office of Long Term Care Ombudsman Programs, develops and carries out the Ombudsman, elder abuse prevention, legal assistance development, and benefits outreach, counseling and assistance provisions of Titles II and VII of the OAA throughout the Aging Network, including administration of the National Ombudsman Resource Center and the National Center on Elder Abuse, and advising the Assistant Secretary on the operation of those Centers. The Deputy Assistant Secretary carries out the functions of the Director of the Office of Long-Term Care Ombudsman Programs established in Section 201(d)(3) of the OAA. Reviews State Plans to determine eligibility for funding under Sec. 705 of the OAA and recommends approval or disapproval to the Assistant Secretary. Implements Title VII in the field through provision to Regional Office staff of guidance and information concerning AoA programs, and the development and interpretation of Title VII program regulations and policy; ensures the implementation of guidance and instructions concerning long-term care ombudsman, prevention of elder abuse, elder rights and legal assistance development and outreach, counseling and assistance programs.

Serves as the effective and visible advocate within the Department and with other departments and agencies of the Federal Government regarding all Federal policies affecting older residents of long term care facilities; reviews Federal legislation, regulation, and policy respecting long-term care ombudsman programs and makes recommendations to the Secretary and Assistant Secretary; coordinates the activities of AoA with other Federal, State and local entities relating to long-term care ombudsman programs; prepares an annual report to Congress on the effectiveness of services provided by State long-term care ombudsman programs; investigates the operations of any Federal law administered by HHS that may adversely affect the health, safety, welfare, or rights of older individuals; and establishes standards for the training of State long-term care ombudsman staff.

Provides technical assistance to the Headquarters and Regional Offices, State and Area Agencies on Aging, and other organizations on their statistical data needs, uses of data, and methods of collecting the data.

F. 1 *Office Research, Demonstration and Training* (BC1) administers the programs of research, demonstration and training authorized under Title IV of the OAA, including proposing strategies, developing concept papers and carrying out all implementation activity for the program. Provides technical input for Congressional and budget presentations related to the research and demonstration program. Evaluates research, demonstration and training grant and contract proposals; and recommends approval/disapproval, monitors progress, gives technical guidance to and evaluates the performance of grantees and contractors. Analyzes and interprets project results and recommends technical applications. Promotes coordination of research and demonstrations with other national, regional and local programs related to aging.

Within overall AoA strategy and long range plans, conducts continuing studies and periodic reviews of personnel needs and resources in the field of aging. Plans and assesses AoA's activities to ensure trained staff for programs serving older Americans. Develops and monitors a national plan for increasing these resources, and prepares reports thereon for AoA, the Federal Council on the Aging, the Secretary, the President and Congress.

Administers a program through grants and contracts for developing curricula and providing training related to preparation for professional, teaching, research, and paraprofessional careers in the field of aging. Makes grants for planning, developing, and operating multidisciplinary centers of gerontology designed to serve the purposes set forth under Title IV of the OAA, including the monitoring of such grants on a continuing basis.

Develops standards, optional models, and "best practice" suggestions on services to the elderly for use by the Regional Offices, and State and Area Agencies on Aging. Develops technical assistance material and in-service training curricula concerning these standards, models, and best practice suggestions.

Provides technical input on research, demonstration and training programs to the AoA planning and policy development activities, legislative activities and the annual budget development cycle. Participates in Departmental and inter-departmental activities which concern health and social services; reviews and comments on Departmental regulations and policies regarding health programs and institutional and non-institutional long term care services.

F. 2 *Office of Dissemination and Utilization (BC2)* manages a program for the collection, analysis, and dissemination of information related to the needs and problems of older persons. Develops and coordinates initiatives with older Federal agencies, national aging organizations and universities to fill gaps in information in the field of aging. Funds and administers the National Aging Information Center, which compiles, publishes and disseminates information on programs funded under the Act, as well as demographic data on the elderly population and data from other Federal agencies on the health, social and economic status of older persons, and provides technical assistance and training to State and area agencies and to service providers on State and local data collection and analysis.

Reviews all products from AoA, the OAA network, and other sources of information on aging to identify new findings which will be useful to older people and professionals operating in the field of aging, concentrating particularly on research, demonstration and evaluation findings. Determines the relative utility of each product, its potential users, and the most effective way to disseminate information to users. Plans and manages special dissemination projects.

Assesses results of these activities to develop utilization strategies. Promotes information dissemination in professional fields. Develops and manages AoA information clearinghouse to ensure dissemination of information such as best practice models, to exchange program experience with the network of State and Area Agencies on Aging, and to coordinate information dissemination requirements with other national organizations in the field of aging.

Maintains a knowledge of data generated by a wide range of organizations; provides liaison with the Federal Task Force on Aging Statistics; in support of planning and program requirements, performs routine and special statistical analyses of data for AoA offices, other Federal and non-Federal organizations, and the general public.

In conjunction with the Immediate Office of the Assistant Secretary, develops and implements public affairs strategies for Headquarters and Regional Offices to achieve AoA program objectives in coordination with other AoA units; develops and distributes publications and audiovisual materials about older people and prepares and issues brochures, fact sheets, news releases, exhibits and films on the needs and concerns of older persons and measures to improve the circumstances, available services, and environment for the older population.

Develops and implements a public education strategy for AoA in response to the Assistant Secretary's initiatives and goals. Edits and produces Aging Magazine aimed at professionals and constituents in the field of aging. Develops special information campaigns to inform older people and the general public about issues, problems and benefits important to older people. Fosters the annual Older Americans Month, and plans and coordinates other ceremonies and celebrations related to the elderly. Prepares the AoA Annual Report to the President and Congress

and other reports such as "Developments In Aging".

Responds to written, phone and personal inquiries from all sources dealing with services and needs of the aging.

F. 3 *Office of Elder Rights Protection (BC3)* develops and executes the ombudsman provisions of the OAA throughout the Aging Network. Serves as the focal point within AoA for the operation and assessment of the programs authorized under Title VII–A of the OAA. In response to mandates of Titles II and VII–A, oversees development of more responsive ombudsman, protection, legal assistance and counseling systems through intergovernmental initiatives and private sector partnerships to address issues of the rights and protection of older people.

Implements Title VII–A in the field by the provision to Regional Office staff of guidance and information concerning the ombudsman, elder abuse prevention, legal assistance development, and benefits outreach, counseling and assistance provisions of Titles II and VII–A of the OAA, and interpretation of regulations and policy implementing those programs. Fosters, oversees, assists, and assesses the development of State-administered long term care ombudsman, elder abuse prevention, legal assistance development, and benefit counseling programs for the elderly as authorized under Title VII–A of the OAA. Establishes, administers and evaluates the National Ombudsman Resources Center and the National Center on Elder Abuse.

Provides specialized input on Title VII–A programs to long range planning, operational plans and the budget process. Responsible for the implementation of regulations and policy on Title VII–A of the OAA. Develops program plans and instructions for AoA Regional Offices and State and Area Agencies to improve the Title VII–A protection and representational programs funded under the OAA.

Dated: May 30, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–14114 Filed 6–9–94; 8:45 am]

BILLING CODE 4130–01–M

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 1 p.m.–5 p.m., June 27, 1994. 9 a.m.–5 p.m., June 28, 1994.

Place: The Washington Court Hotel, Ash Room 525 New Jersey Avenue, NW, Washington, D.C. 20001.

Status: Open to the public, limited only by the space available.

Purpose: The board reviews research activities to provide guidance on the quality, timeliness, and efficacy of the Institute's programs.

Matters to be Discussed: The agenda will include the NIOSH Director's report; a report from the Deputy Director; the NIOSH role in health care reform; a review of the new research facility in Morgantown, West Virginia; a review of the strategic planning process; an extramural research review; a training review; discussion of special projects; and the Board of Scientific Counselors' charter, Agenda items and subject to change as priorities dictate.

Contact Person for Additional Information: Richard A. Lemen, Ph.D., Executive Secretary, Office of the Director, NIOSH, CDC, 1600 Clifton Road, NE, Mailstop D–35, Atlanta, Georgia 30333, telephone 404/639–3773.

Dated: June 6, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–14164 Filed 6–9–94; 8:45 am]

BILLING CODE 4163–19–M

[Announcement Number 465]

RIN 0905–ZA67

Neighborhood-Based Childhood Lead; Primary Prevention Program; Availability of Funds for Fiscal Year 1994

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of grant funds in fiscal year (FY) 1994 for the initiation of primary prevention activities that demonstrate a neighborhood-based approach to preventing and eliminating lead exposure for children living in high-risk housing. This primary prevention program is funded by CDC with support from the U.S. Department of Housing and Urban Development (HUD), Office of Lead-Based Paint Abatement and Poisoning Prevention (OLBPAPP).

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see **WHERE TO OBTAIN ADDITIONAL INFORMATION** section.)

Authority

This program is authorized under sections 301(a) (42 U.S.C. 241(a)) and 317A (42 U.S.C. 247b–1) of the Public Health Service Act, as amended, and section 1011(a–f) of Title X (42 U.S.C. 4851 *et seq.*) of the Residential Lead-Based Paint Hazard Reduction Act. Program regulations are set forth in Title 42, Code of Federal Regulations, Part 51b.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants are the 37 current recipients of CDC grant funds for State and Community-based Childhood Lead Poisoning Prevention Programs that meet both of the following requirements (prior to the grant award being made):

1. At the time of the grant application, an applicant must have an approved Comprehensive Housing Affordability Strategy (CHAS) under section 105 of the National Affordable Housing Act (NAHA), (42 U.S.C. 12705) that includes a lead-hazard control element. Current CHAS regulations are set forth in title 24, Code of Federal Regulations, § 576.31. (Applicants are permitted to use an abbreviated housing strategy, as set forth in § 91.25 of the CHAS regulations.)

2. By September 1, 1994, applicants must have State enabling legislation and promulgated regulations in place to establish a State Certification and Accreditation Program for contractors, inspectors, workers, and others engaged in lead hazard control activities. The State Certification Program shall be consistent with the currently identified elements of the U.S. Environmental Protection Agency (EPA) Model State Plan being developed under Title IV, sections 402 and 404, of the Toxic Substances Control Act (see Appendix E of the HUD NOFA). (For ordering a copy of the HUD NOFA, see **WHERE TO OBTAIN ADDITIONAL INFORMATION** section.)

The applicant must furnish copies of the enabling legislation and/or promulgated regulations, as well as other appropriate documentation, as proof of the program.

Availability of Funds

Approximately $2,500,000 will be available to fund up to two neighborhood-based childhood lead poisoning primary prevention programs. Awards for the first budget year will range from $750,000 to $1,250,000 each. Awards are expected to begin on or about September 1, 1994, and will be made for a 12-month budget period within project periods not to exceed 3 years. Funding estimates may vary and are subject to change based on the actual availability of funds.

These grants are intended to develop, expand, or improve collaboration among childhood lead poisoning prevention programs, community housing agencies, and neighborhood groups to ensure the identification and reduction of lead hazards in neighborhoods with a large proportion of demonstrated high-risk housing, and with a high percentage of young children living in these houses. Grant awards cannot supplant existing funding for childhood lead poisoning prevention programs or hazard reduction activities. Eligible applicants may enter into contracts, including consortia agreements, as necessary, to meet the requirements of the program and strengthen the overall application.

Note

- Not more than 10 percent of any grant may be obligated for administrative costs.
- HUD funds under this announcement should target "priority housing"—defined as housing that qualifies as affordable housing under section 215 (appendix G of HUD NOFA) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745). Priority housing does not include public housing (whether Federal or locally supported), federally owned housing, or any federally assisted housing except tenant-based housing that receives assistance under sections 8(b) or 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(b) or (o)).
- Applicants are advised that an operational State Certification and Accreditation Program is an essential prerequisite for implementing lead hazard reduction activities.

Purpose

Historically, most approaches to childhood lead poisoning have been reactive. After a child has been identified as poisoned, action may be taken to investigate the home environment to identify and address lead hazards. This approach provides epidemiologic and some preventive benefits by identifying and providing for the control of demonstrated, immediate hazards to which the same children, their siblings, and playmates might subsequently be exposed. However, relying solely on the presence of poisoned children to identify housing that contains lead hazards is considered to be "secondary prevention," in that it postpones action until after a child is exposed to lead. Moreover, the reactive, child-by-child and house-by-house approach is an inefficient use of resources in the long run. A "primary prevention" approach emphasizes identifying and correcting lead hazards in the neighborhood *before children are poisoned*, shifting the focus from the poisoned child to the environmental exposure source—most often, the child's home.

This joint CDC/HUD grant program will provide financial assistance and support to State and local government agencies to develop and implement a comprehensive neighborhood-based, holistic approach to ensure lead hazard control in a small, well defined neighborhood with a high percentage of high risk housing. These "Primary Prevention" demonstration projects are intended to bring together representatives from public health, the medical community, housing and rehabilitation, Community-based/Neighborhood-based Organizations (CBOs), business and labor interests, and other organizations interested in developing or expanding neighborhood-based lead poisoning primary prevention projects in targeted communities. The goal of these projects will be to develop or enhance neighborhood-based efforts to prevent and eliminate lead exposure for children living in high-risk neighborhoods.

Essential Components of the Primary Prevention Project Include

1. Identifying a high-risk neighborhood.
2. Establishing, expanding, or improving environmental investigations to identify sources of lead for children in the selected neighborhood.
3. Characterizing and prioritizing lead hazards in neighborhoods.
4. Ensuring/providing effective rapid reduction, control, and abatement of lead hazards throughout the neighborhood. Priority for activities should be given to reducing and controlling lead hazards posing an immediate threat to children.
5. Planning hazard reduction, control, and abatement activities to take advantage of economies of scale for labor and materials.
6. Utilizing "opportunity points" when environmental intervention is especially convenient and/or timely (e.g., unit turnover, planned weatherization, remodeling, or renovation).
7. Ensuring/providing interim lead-safe housing for families during hazard reduction.
8. Enhancing primary prevention knowledge and skills for residents, owners, landlords, etc., in high-risk neighborhoods through training and other methods. This includes planning and implementing a neighborhood education campaign.
9. Building coalitions and ensuring neighborhood participation in all components of this project, including the planning process.
10. Training of staff and neighborhood residents to plan, implement, maintain, and evaluate all aspects of the primary prevention strategy.

Program Requirements

The following are requirements for the Primary Prevention Projects:

A. A full-time director/coordinator with authority and responsibility to carry out the requirements of this primary prevention program. There must be sufficient grantee capability to plan, implement, coordinate, and maintain all aspects of the primary prevention strategy.

B. A plan to identify lead hazards in the neighborhood in a systematic manner and to oversee the safe and effective lead hazard reduction and control.

C. A plan to ensure that primary prevention activities are also directed at neighborhood properties not specifically eligible under the definition of "priority housing".

D. A plan to identify and ensure participation of neighborhood groups that have an interest in providing lead-safe housing, and a lead-safe neighborhood.

E. Assurances of compliance with HUD/EPA or other appropriate certification and training requirements, as well as other regulations relating to hazard reduction and worker safety.

F. Information which describes why a certain neighborhood was selected for this primary prevention activity, including information on housing conditions, income, other socioeconomic factors, and previous surveys or screening activities for childhood lead poisoning prevention. The selected neighborhood must be a

defined geographic area of contiguous blocks.

G. Assurances and documentation that activities, services, and educational materials provided by the program are endorsed by neighborhood leaders or representatives of the intended target neighborhood.

H. A comprehensive plan for program evaluation. Applicants should develop plans for evaluating program activities in two ways: Process Evaluations should be included for each component of the Program Plan. Process Evaluations should determine whether program activities were actually carried out as planned. An overall Outcome Evaluation for the program should be described separately. The Outcome Evaluation should be designed to measure, to the extent feasible, the impact of the program on the neighborhood environment and health status of children.

Evaluation Criteria

CDC will use the following evaluation criteria to rate and rank applications received in response to this Program Announcement. The review of applications will be conducted by an objective review committee who will review the quality of the application based on the strength and completeness of the plan submitted. The budget justification will be used to assess how well the technical plan is likely to be carried out using the available resources. The total number possible for the rating factors is 100 points.

1. *Strategy and Technical Approach* (25 total points)

The quality of the technical approach in carrying out the proposed activities. The Strategy and Technical Approach should include:

(a) Description of the proposed neighborhood and the need for program activities. (10 points)

(b) Plan for including neighborhood residents in planning, developing and implementing program activities. In addition, there should be:

- Plan for conducting a neighborhood-wide assessment to identify and control lead hazards. (5 points)
- Plan to identify, train, and involve neighborhood residents in program activities. (5 points)
- Plan to direct health education activities to neighborhood residents. (5 points)

2. *Collaboration* (25 total points)

(a) Extent to which the applicant demonstrates that proposed activities are being conducted in conjunction with, or through, organizations with known and established ties in the identified neighborhood. Evidence of support and participation from appropriate community-based or neighborhood-based organizations in the form of memoranda of understanding or other agreements of collaboration. (15 points)

(b) Extent to which the applicant documents established collaboration with appropriate governmental agencies responding to childhood lead poisoning prevention issues such as environmental health, housing, medical management, etc. through specific commitments for consultation, employment, or other activities, as evidenced by the names and proposed roles of these participants and letters of commitment. Absence of letters describing specific participation will result in a reduced rating under this factor. (10 points)

3. *Applicant Capability and Commitment to Lead Hazard Control* (25 total points)

Capability of the applicant to initiate and carry out the lead-based paint testing and hazard-reduction and control program successfully within the time frames set forth in the application. Proposed staff skills must match the proposed program of work described. Elements to consider include:

(a) Demonstrated knowledge and experience of the proposed project director or manager in planning and managing large and complex interdisciplinary programs involving housing rehabilitation, public health, and environmental management. The percentage of time the project manager will be devoted to this project is a significant factor, and must be indicated. (10 points)

(b) Demonstrated knowledge and experience of the staff assigned to this project in carrying out these undertakings, including the percentage of time each person will devote to the project. (5 points)

(c) Institutional capacity, demonstrated by the experience and continuing capability of the jurisdiction to initiate and implement similar environmental and housing projects. Applicant should describe previous related efforts and the current capacity of its agencies. (10 points)

4. *Evaluation Plan* (20 total points)

The applicant's plan that describes the evaluation of *each* program component and the overall strategy in evaluating the impact of the primary prevention effort.

5. *State Certification and Accreditation Program* (5 total points)

Applicants are advised that an operational State Certification and Accreditation Program acceptable to HUD and EPA is an essential prerequisite for implementing lead hazard reduction activities. States and eligible applicants within States that have an operational State Certification and Accreditation Program will be awarded FIVE points.

6. *Budget Justification and Adequacy of Facilities* (Not Scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and to receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirement

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the items identified below to the head of the appropriate State and/or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate State and/or local health agency is determined by the applicant. The following information must be provided:

A. A copy of the face page of the application SF 424.

B. A summary of the project that should be titled "Public Health System Impact Statement" (PHSIS), not to exceed one page, and include the following:

1. A description of the population to be served;

2. A summary of the services to be provided; and

3. A description of the coordination plans with the appropriate State and/or local health agencies.

If the State and/or local health official should desire a copy of the entire application, it may be obtained from the State Single Point of Contact (SPOC) or directly from the applicant.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.197.

Application Submission and Deadline

The program announcement and application kit were sent to all eligible applicants in May 1994.

Where to Obtain Additional Information

A complete program description, information on application procedures are contained in the application package. Business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6796 .

Please refer to Announcement Number 465 when requesting information and submitting an application.

Technical assistance may be obtained from David L. Forney, Chief, Program Services Section, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–42, Atlanta, GA 30341–3724, telephone (404) 488–7330.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Potential applicants may obtain a copy of the HUD NOFA "Lead-Based Paint Hazard Control in Priority Housing" through the Program Management Division, Office of Lead-Based Paint Abatement and Poisoning Prevention, room B–133, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–1822.

Dated: June 3, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–14118 Filed 6–9–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Advisory Committees; Filing of Annual Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings.

ADDRESSES: Copies are available from the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, 301–443–1751

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR 14.60(c), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period October 1, 1992, through September 30, 1993:

Center for Biologics Evaluation and Research: Allergenic Products Advisory Committee, Biological Response Modifiers Advisory Committee, Blood Products Advisory Committee, Vaccines and Related Biological Products Advisory Committee.

Center for Drug Evaluation and Research: Anesthetic and Life Support Drugs Advisory Committee, Anti-Infective Drugs Advisory Committee, Antiviral Drugs Advisory Committee, Arthritis Advisory Committee, Cardiovascular and Renal Drugs Advisory Committee, Dermatologic Drugs Advisory Committee, Drug Abuse Advisory Committee, Gastrointestinal Drugs Advisory Committee, Generic Drugs Advisory Committee, Medical Imaging Drugs Advisory Committee, Nonprescription Drugs Advisory Committee, (formerly OTC Drugs Advisory Committee) Oncologic Drugs Advisory Committee, Pulmonary-Allergy Drugs Advisory Committee.

National Center for Toxicological Research: Science Advisory Board to the National Center for Toxicological Research.

Annual reports are available for public inspection at: (1) The Library of Congress, Madison Bldg., Newspaper and Current Periodical Reading Room, rm. 133, 101 Independence Ave. SE., Washington, DC; and (2) the Dockets Management Branch (HFA–305), rm.1–23, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 3, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations

[FR Doc. 94–14090 Filed 6–9–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

[PN 2243]

RIN 0905–ZA 63

Special Projects of National Significance

AGENCY: Health Resources and Services Administration.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of up to $10.5 million in fiscal year (FY) 1994 funds to be awarded as cooperative agreements under the Special Projects of National Significance (SPNS) program. The SPNS program, authorized by section 2618(a) of the Public Health Service Act, receives its appropriation of funds through Public Law 103–112. Project periods can be from three to five years, subject to Congressional reauthorization in FY 1996 of the Ryan White CARE Act. This announcement solicits two types of applications: (1) HIV service delivery model demonstration projects, or (2) HIV service delivery model demonstration projects in conjunction with an evaluation and dissemination center. The SPNS program, in collaboration with the evaluation and dissemination center(s), will sponsor multi-site program evaluation studies. All HIV service delivery model demonstration

projects agree, as a condition of grant award, to participate in these studies. Awards will be made to achieve population and geographic diversity.

The SPNS program is designed to demonstrate and evaluate innovative and potentially replicable HIV service delivery models. The authorizing legislation specifies three SPNS program objectives: (1) To support the development of innovative models of HIV care; (2) to evaluate the effectiveness of innovative program designs; and (3) to promote replication of effective models. Therefore, crucial factors in appraising proposals for the HIV service delivery model demonstration projects will include the applicant's plan for conducting an evaluation of the model, the program's potential to improve access to, coordination of, and quality of, HIV service delivery, and a plan for disseminating findings about the model's effectiveness.

Because of the complexity of this program, a cooperative agreement mechanism is being utilized to allow for substantial Federal programmatic participation in the conduct of the program, and to facilitate communication and coordination in the overall implementation and evaluation of the program. A steering committee will be established to facilitate coordination and cooperation among the service demonstration projects and the evaluation and dissemination center(s), and to oversee the cooperative agreements.

DATES: Applications for the announced cooperative agreements must be received in the Grants Management Office by the close of business July 20, 1994, to be considered for competition. An advance notice of the application deadline date for the Special Projects of National Significance for FY 1994 was published in the **Federal Register** on April 26, 1994 at 59 FR 21769. Applications will meet the deadline if they are either (1) Received on or before the deadline date or (2) postmarked on or before the deadline date, and received in time for submission to the objective review panel. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications received after the deadline will be returned.

ADDRESSES: Grant applications, guidance materials, and additional information regarding business, administrative and fiscal issues related to the awarding of grants under this Notice may be requested from Ms. Glenna Wilcom, Grants Management Officer, Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, room 7–15, Rockville, MD 20857. The telephone number is (301) 443–2280 and the FAX number is (301) 594–6096. Applicants for grants will use Form PHS 5161–1, approved under OMB Control No. 0937–0189. Completed applications should be sent to the Grants Management Officer.

FOR FURTHER INFORMATION CONTACT: Additional technical information may be obtained from Mr. George Sonsel or Mr. Russell Brady, SPNS Branch, Office of Science and Epidemiology, Bureau of Health Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, room 7A–19, Rockville, MD 20857. The telephone number is (301) 443–9976 and the FAX number is (301) 594–2511.

SUPPLEMENTARY INFORMATION:

Background and Objectives

The SPNS program endeavors to advance knowledge and skills in HIV service delivery, stimulate the design of innovative models of care, and support the development of effective delivery systems for these services. SPNS accomplishes its purpose through funding and technical support of innovative HIV service delivery models. For purposes of this announcement, models seeking SPNS support must address at least one of the four (4) new service delivery system categories described below. Additional funding will be provided to one or more interested grantees to establish, either on site or by subcontract, evaluation and dissemination center(s) to provide technical assistance to grantees in the design and implementation of evaluation studies and dissemination activities, in collaboration with the SPNS program and the funded applicants.

In establishing the current special project categories, consideration was given to the priority service areas identified in the concept paper, "Future Directions: Increasing Knowledge about Health and Support Service Delivery to People with HIV Disease." This document was developed through interviews with, and written comments from, key HRSA staff and experts inside and outside the U.S. Public Health Service, and through a review of relevant HIV-related service delivery, research, evaluation, policy, and planning documents.

Descriptions: HIV Service Delivery Model Categories

The Special Project Categories for FY 1994 will support the implementation and evaluation of innovative HIV service delivery models. SPNS funds cannot be used for expenses related to the provision of medical care; supportive services; or any other expenses currently reimbursed, subsidized or eligible for reimbursement through third party payors, grants awarded under Titles I-IV of the Ryan White CARE Act, or other grant and foundation sources. Applicants may not submit proposals for more than one subcategory in a category.

Proposals will be accepted for HIV service delivery model projects that demonstrate and evaluate:

(1) *Comprehensive primary care service delivery systems for people with HIV within one of the distinct environments or settings described in the six following sub-categories.*

(a) Develop and evaluate the effectiveness of including new or existing support services as part of the basic benefits of a managed care plan or a comprehensive, coordinated care system.

Because one of the potential strengths of managed care plans or coordinated care systems is their capacity to coordinate the services of several providers, the proposed service delivery model must test its ability to meet the wide range of service needs required by individuals with HIV. These service needs, in addition to primary care, may include, but are not limited to, specialty medical care, mental health services, substance abuse treatment, and/or assistance with locating housing, transportation, child care, etc. Grantees must evaluate changes in: (1) Patient adherence to medical treatment plans; (2) access to and use of medical and support services; (3) costs per-patient of providing both medical and support services; and (4) patient satisfaction with services.

(b) Test the feasibility of providing comprehensive HIV services under a capitated reimbursement system (including, but not limited to, Ryan White CARE Act Title I and Title II funds).

Grantees must evaluate patterns of utilization of medical and support services under a capitated system, compare the costs of delivering services under a capitated reimbursement system with a fee-for-service system, and evaluate client satisfaction.

(c) Add primary care services to an intermediate level of care, i. e., subsidized housing, residential care,

shelter, partial hospitalization, or other type of "step down" setting, for individuals with HIV disease.

Grantees must evaluate the effectiveness of primary care services provided in this environment on reducing dependence on inpatient hospitalization, increasing the continuity of medical care, and improving client satisfaction.

(d) Develop, in a geographically defined rural area, a comprehensive continuum of care for the purpose of increasing accessibility and quality of primary and specialty medical care to its residents with HIV disease.

Grantees must explain how the proposed model accommodates the needs of the residents with HIV disease in relation to the health service delivery system characteristics of the area. Based on the needs of the area, models that supplement primary medical care with case management, psychosocial support, and other non-medical support services are encouraged.

(e) Develop a service delivery model for adolescents and young adults (up to age 25) with CDC-defined Stage III or IV HIV disease that effectively manages their medical and, when appropriate, substance abuse treatment needs.

Grantees should evaluate the model's effectiveness in meeting the full range of physical, psychological, social, and spiritual needs of adolescents and young adults who are seriously or terminally ill.

(f) Develop a service delivery model for women with HIV disease that emphasizes the coordination of services from outreach, counseling and HIV testing, including expanded counseling and testing during pregnancy, through early intervention and care, including appropriate therapeutic drug regimens, for asymptomatic and symptomatic disease, and for prevention of transmission of HIV during pregnancy and delivery.

Grantees must describe how the proposed model is using innovative features to reach pregnant women and women at high risk (e.g., substance abusing women) who have been reluctant to become engaged in traditional counseling/testing services, and how these women will be engaged and retained in care systems for themselves during and after pregnancy. Priority will be given to applicants in States or cities which have made the decision to "routinely recommend" that women (during pregnancy and/or whenever they receive primary care services) learn their HIV infection status for the purposes of improving their own care and health status; preventing transmission to their infants during pregnancy; and preventing transmission during breastfeeding. The funds will be used primarily to support system development and organizing and training providers. The intent of this sub-category is to foster systems of care for women with HIV; to encourage more women to know their infection status; to encourage States and cities to develop plans for accomplishing this; and to assess the reasons for and impact of the various decisions women make regarding HIV testing, use of AZT during pregnancy, and adherence to follow-up care decisions made jointly with providers.

(2) *Coordinated delivery of HIV health and support services to specific mobile populations in the United States, ensuring the delivery of continuous services throughout the course of HIV disease.*

For the purposes of this category, mobile populations are defined as border populations; populations with migration patterns primarily between the continental United States and its territories and commonwealths and between the United States and other countries; migrant farm labor workers; and, undocumented workers and residents. Examples of services needed by these populations include primary medical care, mental health services, and advocacy or other legal support services that address AIDS discrimination and access to care. Special attention must be paid to ensuring and documenting continuity of care for clients that receive care from providers located in different geographical locations. SPNS is seeking innovative methods of interagency communication and for tracking referrals between providers so that longitudinal follow-up of clients from provider to provider will be possible. Grantees must evaluate their success at ensuring continuity of medical care and access to needed support services.

(3) *Reduction of cultural, linguistic, and/or organizational barriers to care in a geographically defined area (e.g., neighborhood, community, region, state).*

Grantees must have the capacity to analyze reductions in organizational barriers to accessing care. AIDS service providers and other community-based organizations located in the geographic area and staffed by the cultural and/or linguistic group to be served by the proposed service delivery model are encouraged to apply under this category. Grantees submitting a proposal under Category #3 must address one of the following four populations:

(a) An underserved population group experiencing significant barriers to care (e.g., men of color, HIV infected women, AIDS survivors, etc.) by addressing their access to care issues through organizational collaboration and inclusion in policy development.

The grantee chooses the target population in this sub-category based on documented evidence that this population affected by HIV disease is not receiving services. At a minimum, collaboration among providers must include all Ryan White CARE Act-funded grantees in the area that serve the targeted population.

(b) An ethnic group facing both linguistic and cultural barriers.

A critical component of a proposed model in this sub-category must be the involvement of individuals and/or community-based organizations with established service relationships with the targeted special population.

(c) Active substance abusers utilizing primary care on an intermittent basis or who do not adhere to their treatment regiment.

Models for expanding enrollment and enhancing retention of HIV infected substance users, particularly active users, in primary care may include methods of increasing primary care providers' knowledge, receptiveness, and skill in treating this population.

(d) Individuals or special populations experiencing HIV-based discrimination in health care, employment, and/or housing, that inhibits their receipt and/or utilization of health care services.

Grantees must demonstrate and evaluate how innovative advocacy services targeting HIV discrimination impacts access to and utilization of appropriate health care for people whose needs are already complicated by cultural, linguistic or organizational issues.

(4) *Provider training and education models that develop, test, and evaluate strategies for increasing, improving or updating knowledge about HIV disease and its treatment for providers in rural areas, correctional facilities or mental health services programs and facilities.*

Grantees should collaborate, when feasible, with existing AIDS Education and Training Centers (AETC) and other training centers already providing education services to a wide variety of health care providers. Adoption, or adaptation to local conditions, of existing training models with outcome oriented evaluation is encouraged. The project's evaluation must specify the extent to which providers incorporate new skills and knowledge into their practices, and if there are any changes in numbers of people with HIV disease served by the provider. Evaluation designs comparing the results between

different levels or intensity of training are encouraged.

Review Criteria: HIV Service Delivery Models

All applications for HIV Service Delivery Model cooperative agreements described under Category (1) through (4) above and submitted to the SPNS program will be reviewed and rated by an objective review panel. Factors for the technical review of applications are as follows:

Factor 1 (10 points). Adequacy of justification of need within the community and target population for the proposed program.

Factor 2 (25 points). The feasibility, clarity of the description, appropriateness, innovative quality, and potential for replication and dissemination of the proposed model.

Factor 3 (15 points). Comprehensiveness of the program plan as described in clearly stated goals, time-limited and measurable objectives for each goal, activities for each objective, and a time line that shows the scheduled production of materials that corresponds to milestones stated in the objectives and program evaluation.

Factor 4 (20 points). Thoroughness, feasibility and appropriateness of the project's capability to conduct and collaborate on a comprehensive evaluation design and a plan for dissemination of the project's findings.

Factor 5 (15 points). Competency of the applicant organization in fiscal and program management as evidenced by (a) the consistency between the proposed level of effort and the budget justification; (b) skill level and time commitment required in the personnel specifications; (c) the level of resources being proposed to conduct a quality evaluation of the project; and (d) appropriate confidential handling of medical, social service, and epidemiological data of clients served.

Factor 6 (15 points). Extensiveness of coordination and collaboration with related HIV activities within the project's catchment area as documented by the applicant.

Additional Funding for SPNS Evaluation & Dissemination Center(s)

In addition to the funds provided to successful applicants for development of service delivery model demonstration projects, additional funds will be provided to one or more successful applicants to establish, either on site or by subcontract, evaluation and dissemination center(s) to work with all of the SPNS grantees funded under the HIV Service Delivery Models Categories [1] through [4]. The Center(s) will have two primary responsibilities: (1) to provide technical assistance to SPNS grantees in designing and implementing evaluation studies and dissemination activities for their individual projects; and, (2) to develop and coordinate the implementation of cross-cutting evaluations within groups of similar projects. HRSA staff will offer advice and guidance and participate in each of these areas as well as monitor the Center's work to assure its progress is in accordance with program objectives and Federal requirements. HRSA staff may accomplish this task, in part, through an advisory panel composed of Federal employees and external consultants.

Inclusion of a request for additional funding for the SPNS Evaluation and Dissemination Center is not a mandatory requirement of the application. Those applications not requesting this additional funding will be given equal consideration for service delivery model funding. All applications, regardless of inclusion of a request for evaluation center funding, will be scored first only on the applicant's proposal for the service delivery model. Service delivery model applications which are approved for funding will then be reviewed for interest in the additional funding. Only then will proposals for an evaluation and dissemination be reviewed and scored according to the following.

Review Criteria: Additional Funding for SPNS Evaluation & Dissemination Center(s)

Those successful service delivery model applications which include a request for funding for the SPNS Evaluation and Dissemination Center (Part B) will be eligible for review and rating by an objective review panel of that part of the application. Applications will be considered for funding on the basis of overall technical merit as determined through the review process, and the proposed center's suitability for working with the funded SPNS projects. Factors for the technical review of Part B of the applications will include the following:

Factor 1 (25 points). Qualifications and experience of the principal investigator, the proposed staff and consultants in designing and conducting health service evaluation studies, disseminating study findings and in providing technical assistance on evaluation and dissemination issues.

Factor 2 (30 points). Adequacy of plans for providing technical assistance to SPNS grantees on program evaluation and information dissemination.

Factor 3 (25 points). Adequacy of plans for designing and implementing cross-cutting evaluations within groups of similar projects and for assuring data quality.

Factor 4 (20 points). Appropriateness of budget, staffing plans, facilities and information management resources, and time frame for implementing the project's operational and programmatic objectives.

Role of Federal Staff in Cooperative Agreements

The cooperative agreement mechanism allows for substantial post-award programmatic participation by SPNS staff in the projects' operations. In addition to the project officer's monitoring function, SPNS staff will be active participants in the operations of the HIV service delivery model demonstration projects and the SPNS evaluation and dissemination center. SPNS staff will facilitate the exchange of relevant information among the HIV service delivery model projects and provide support for training and consultation. SPNS staff will also monitor the function and activities of the center, assuring satisfactory progress and timely reporting.

"Substantial programmatic participation" means that SPNS staff will provide guidance and coordination for certain programmatic activities to a degree beyond their customary stewardship responsibilities in grants administration. This may include, but is not limited to, the following: participating in the design and direction of activities to develop cross-cutting evaluation studies; assisting in the selection of project director and/or other key staff; assisting in the selection of contractors; participating in the analysis of data; coordinating or providing training of project staff; participating in selection and approval of analysis mechanisms; participating in selection of results for publication; and providing assistance in the management and technical performance of the project's activities.

Availability of Funds

Section 2618, subsection (a) of the Public Health Service Act, "Special Projects of National Significance," permits the Secretary to allocate up to ten percent of the funds provided for Part B of Title XXVI to award grants directly to public and non-profit private entities to promote the statute's objectives. Approximately $9.7 million is available in FY 1994, to fund 25 HIV service delivery model demonstration projects estimating an average annual project budget of $350,000. The evaluation and dissemination center budget will be based on the availability of funds in relation to the objective review panel's recommendations. Approximately $600,000 is available in FY 1994 for this Center. The budget and project periods for approved and funded projects will begin October 1, 1994.

Project periods may be requested for up to five years. However, recommended support beyond the third year is subject to a determination by an objective review panel in conjunction with an assessment by the SPNS staff of the project's progress to date. All grants to support projects beyond the first budget year will be contingent upon the availability of funds, Congressional reauthorization of Ryan White CARE Act funding within the second project year, and satisfactory progress each year in meeting the project's objectives.

All grantees funded to support HIV service delivery model demonstration projects under this Notice are encouraged to secure and show evidence of non-SPNS funding support equal to 20 percent of the approved project budget by the fourth project year, and equal to 40 percent of the approved project budget by the fifth year. Applicants are required to submit, in the initial application, budgets for each proposed project year.

Eligible Applicants

The statute, Section 2618 (a) (1), specifies that grants may be awarded to public and non-profit private entities to fund special programs for the care and treatment of people with HIV disease. Eligible entities may include, but are not limited to, State, local, or tribal public health, mental health, or substance abuse departments; public or non-profit hospitals; community-based service organizations (e.g., AIDS service organizations, primary health care clinics, family planning centers, AIDS discrimination and advocacy organizations, hemophilia centers, community mental health centers, substance abuse treatment centers, urban Indian health centers, migrant health centers, Ryan White CARE Act Title IIIb clinics, etc.); institutions of higher education; and national service provider and/or policy development associations/organizations.

Allowable Costs

The basis for determining allocable and allowable costs to be charged to PHS grants is set forth in 45 CFR part 74, Subpart Q and 45 CFR part 92 for State, local or tribal governments. The four separate sets of cost principles prescribed for public and private non-profit recipients are: OMB Circular A-87 for State, local or tribal governments; OMB Circular A-21 for institutions of higher education; 45 CFR part 74, Appendix E for hospitals; and OMB Circular A-122 for nonprofit organizations.

Reporting and Other Requirements

A successful applicant under this notice will submit semi-annual activity summary reports in accordance with provisions of the general regulations which apply under 45 CFR Part 74, Subpart J, "Monitoring and Reporting of Program Performance," with the exception of State and local governments to which 45 CFR Part 92, Subpart C reporting requirements apply. As a condition of all awards funded under this Notice, grantees will be required to cooperate with HRSA and the SPNS Evaluation and Dissemination center(s) in any multi-site evaluation studies sponsored by the SPNS Program.

Healthy People 2000 Objectives

The Public Health Service urges applicants to address a specific objective of the *Healthy People 2000* in their work plans. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017-001-00473-0) or *Healthy People 2000* (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone: (202) 783-3238).

Federal Smoke-Free Compliance

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements which have been approved by the Office of Management and Budget under No. 937-0195. Under these requirements, any community-based, non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to keep State and local health officials apprised of proposed health services grant applications submitted from within their jurisdictions.

Community-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the administrator of the State and local health agencies and to the State and local AIDS program director in the area(s) to be impacted by the proposal: (1) a copy of the face page of the application (SF 424); and, (2) a summary of the project, not to exceed one page, which provides: (a) a description of the population to be served; (b) a summary of the services to be provided; and, (c) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to this program.

Executive Order 12372

The Special Projects of National Significance Grant Program has been determined to be a program subject to the provisions of Executive Order 12372, concerning intergovernmental review of Federal Programs, as implemented by 45 CFR Part 100. Under urgent conditions, the Secretary may waive any provision of this regulation. (See 45 CFR part 100.13.) The Secretary has waived 45 CFR Part 100 due to the compelling need to get funds to grantees.

The OMB *Catalog of Federal Domestic Assistance* number for the Special Projects of National Significance is 93.928.

Dated: May 3, 1994.

John H. Kelso,

Acting Administrator.

[FR Doc. 94-14088 Filed 6-9-94; 8:45 am]

BILLING CODE 4160-15-P

Public Health Service

Notice Regarding Section 602 of the Veterans Health Care Act of 1992; Manufacturer Audit Guidelines and Informal Dispute Resolution

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: Section 602 of Public Law 102-585, the "Veterans Health Care Act of 1992" (the "Act"), enacted section 340B of the Public Health Service Act ("PHS Act"), "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement (the "Agreement") with the Secretary of Health and Human Services (the "Secretary") in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula.

Section 340B(a)(5) of the PHS Act identifies certain requirements for covered entities concerning potential double price reductions and drug diversion. A covered entity must permit the manufacturer of a covered outpatient drug that has signed the Agreement, to audit the records of the covered entity directly pertaining to the entity's compliance with the requirements of section 340B(a)(5) (A) and (B) as to drugs purchased from the manufacturer. These audits must be conducted in accordance with guidelines established by the Secretary, as stated in section 340B(a)(5)(C).

Further, the Office of Drug Pricing anticipates that disputes may arise between covered entities and participating manufacturers regarding implementation of the provisions of section 340B. To resolve these disputes in an expeditious manner, the Office of Drug Pricing has developed a proposed informal dispute resolution process.

The purpose of this notice is to invite public comment on the proposed manufacturer audit guidelines and the proposed informal dispute resolution process.

DATES: The public is invited to submit comments on the proposed audit guidelines and dispute resolution process by July 11, 1994. After consideration of the comments submitted, PHS will issue the final audit guidelines and the dispute resolution process.

ADDRESSES: Submit comments to Ms. Alvarez at the address noted below.

FOR FURTHER INFORMATION CONTACT: Marsha Alvarez, R. Ph., Director, Office of Drug Pricing, Bureau of Primary Health Care, 4350 East West Highway, West Towers, 10th Floor, Bethesda, MD 20814, Tel: (301) 594–4354.

SUPPLEMENTARY INFORMATION:

Manufacturer Audit Guidelines

Covered entities which choose to participate in the section 340B drug discount program must comply with the requirements of section 340B(a)(5) of the PHS Act. Section 340B(a)(5)(A) prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate. Further, section 340B(a)(5)(B) prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the entity. The participating entity must permit the manufacturer of a covered outpatient drug who has signed the Agreement with the Secretary to audit its records that directly pertain to the entity's compliance with section 340B(a)(5) (A) and (B) requirements with respect to drugs of the manufacturer. Manufacturer audits must be conducted in accordance with guidelines developed by the Secretary as required by section 340B(a)(5)(C). This notice does not include the audit guidelines to be used by Government auditors where the Government performs the audit of the records of the covered entity's compliance with the requirements of section 340B(a)(5) (A) and (B).

The following is the proposed "Compliance Audit Guide" concerning manufacturer audit guidelines as developed by the Secretary pursuant to section 340B(a)(5)(C):

I. General Guidelines

A manufacturer shall conduct an audit only when the Office of Drug Pricing determines that there is reasonable cause to believe a violation of section 340B(a)(5) (A) or (B) has occurred. The manufacturer must submit a request for an audit of a covered entity to the Office of Drug Pricing. [See section II for audit steps]. Auditors have an ethical and legal responsibility to perform quality audits conducted in accordance with Government Auditing Standards, Current revision, developed by the Comptroller General of the United States. Patient confidentiality requirements must also be observed. Audit reports must be prepared at the completion of the audit. Copies of the audit report shall be prepared in accordance with the reporting standards for performance audits in Government Auditing Standards, Current Revision. The cost of a manufacturer audit will be borne by the manufacturer, as provided by section 340B(a)(5)(C) of the PHS Act.

(a) Number of Audits

Consistent with Government auditing standards, the organization performing the audit shall coordinate with other auditors, when appropriate, to avoid duplicating work already completed or that may be planned. Only one audit will be permitted at any one time. When specific allegations involving the drugs of more than one manufacturer have been made concerning an entity's failure to comply with section 340B(a)(5) (A) and (B), the Office of Drug Pricing will determine whether an audit should be performed by the (1) Government or (2) the manufacturer.

(b) Scope of Audits

The manufacturer must submit an audit workplan describing the audit to the Office of Drug Pricing for review. The workplan will be reviewed for reasonable purpose and scope. Further, a determination will be made that only those records of the covered entity that directly pertain to the potential violation(s) will be accessed including those systems and processes (e.g., purchasing, distribution, dispensing, and billing) that would assist in identifying a violation.

(c) Duration of Audits

Audits shall be performed in the minimum time necessary with the minimum intrusion on the covered entity's operations.

II. Audit Steps

(a) The manufacturer shall notify the covered entity in writing when it believes the covered entity has violated provisions of section 340B. The manufacturer and the covered entity shall have at least 30 days from the date of notification to attempt in good faith to resolve the matter.

(b) The manufacturer has the option to proceed to the informal dispute resolution process described later in the notice without an audit, if it believes it has sufficient evidence of a violation absent an audit. If the matter is not resolved and the manufacturer desires to perform an audit, the manufacturer must file a request for a covered entity audit with the Office of Drug Pricing. [See section "**FOR FURTHER INFORMATION**" for address.] The request must set forth a clear description of the reasonable cause to believe that a violation of section 340B(a)(5) (A) or (B) has occurred, along with sufficient facts and evidence in support of the request. In addition, the manufacturer shall provide copies of any documents supporting its claims.

(c) The Office of Drug Pricing will conduct a preliminary review of the documentation submitted to determine if reasonable cause exists. If the Office of Drug Pricing finds that there is reasonable cause to believe that a violation of section 340B(a)(5) (A) or (B) has occurred, the audit will be permitted, and the manufacturer will be notified accordingly. In cases where the Office of Drug Pricing determines that the audit shall be performed by the Government, the Office of Drug Pricing will so advise the manufacturer and the covered entity.

(d) The filing of a request for an audit does not affect any statutory obligations of the parties as defined in section 340B of the PHS Act. During the audit process, a manufacturer must continue to sell covered outpatient drugs at or below the section 340B ceiling price to the covered entity being audited.

(e) Upon approval of the request for a covered entity audit, the manufacturer

shall then submit an audit workplan to the Office of Drug Pricing for approval. The Office of Drug Pricing, after consultation with the PHS Office of Cost and Audit Management, will evaluate the manufacturer's workplan, and approval will be based on criteria set forth in the Audit Program section, Field Work Standards for Performance Audits, Government Audit Standards, Current Revision. The audit workplan shall describe in detail the following:

(1) Audit objectives (what the audit is to accomplish), scope (type of data to be reviewed, systems and procedures to be examined, officials of the covered entity to be interviewed, and expected time frame for the audit), and methodology (processes used to gather and analyze data and to provide evidence to reach conclusions and recommendations);

(2) Skill and knowledge of the audit organization's personnel to staff the assignment, their supervision, and the intended use of consultants, experts, and specialists;

(3) Tests and procedures to be used to assess the covered entity's system of internal controls;

(4) Procedures to be used to determine the amounts to be questioned should violations of section 340B(a)(5) (A) and (B) be discovered; and

(5) Procedures to be used to protect patient confidentiality.

(f) When the audit workplan has been approved, the Office of Drug Pricing shall notify the: (1) Manufacturer of the approval of the audit, and (2) covered entity of a pending manufacturer audit. The covered entity will have at least 15 days from the date of receipt of the notice to prepare for the audit.

(g) Suggested audit procedures include the following:

(1) Review the covered entity's policies and procedures regarding the procurement, inventory, distribution, dispensing, and billing for covered outpatient drugs.

(2) Assess internal controls applicable to the policies and procedures identified above (#1) when necessary to satisfy the audit objectives.

(3) Review the covered entity's policies and procedures to prevent the resale or transfer of drugs to a person or persons who are not patients of the covered entity.

(4) Test compliance with the policies and procedures identified above (#3) when necessary to satisfy the audit objectives.

(5) Review the covered entity's records of drug procurement and distribution and determine whether the covered entity obtained a discount only for those programs authorized to receive discounts by section 340B of the PHS Act.

(6) If a covered entity does not use an all inclusive billing system (per encounter or visit), but instead bills outpatient drugs using a cost based billing system, determine whether the covered entity has provided its Medicaid provider number to the Office of Drug Pricing and billed Medicaid at the actual acquisition cost.

(h) Where the manufacturer's auditors conclude that there has been a violation of the requirements of section 340B(a)(5)(A) or (B), the manufacturer's auditors shall identify (1) the procedures or lack of adherence to existing procedures which caused the violation; and (2) the dollar amounts involved.

(i) Following completion of the audit field work, the manufacturer's auditors shall provide a verbal briefing of the audit findings to the covered entity to ensure a full understanding of the facts.

(j) An audit report must be prepared at the completion of the audit in accordance with reporting standards for performance audits of the Government Auditing Standards, Current Revision. The manufacturer shall submit a copy of the audit report to the covered entity. The covered entity shall provide its response to the manufacturer on the audit report's findings and recommendations within 60 days from the date of receipt of the audit report. When the covered entity agrees with the audit report's findings and recommendations either in full or in part, the covered entity shall include in its response to the manufacturer a description of the actions planned or taken to address the audit findings and recommendations. When the covered entity does not agree with the audit report's findings and recommendations, the covered entity shall provide its rationale for the disagreement to the manufacturer.

(k) Informational copies of the audit report shall also be submitted to the Office of Drug Pricing (see section **For Further Information Contact** for the address), the Office of Inspector General, Office of Audit Services, PHS Audits Division at room 1–30, Park Building, 12420 Parklawn Drive, Rockville, MD 20857, and the PHS Cost and Audit Management Branch, room 17A–50, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

(l) If a dispute concerning the audit findings and recommendations arises, the parties may file a request for informal dispute resolution with the Office of Drug Pricing. All dispute resolution procedures developed by the Office of Drug Pricing shall be followed.

Informal Dispute Resolution

The Office of Drug Pricing is proposing an informal process for the resolution of certain disputes between manufacturers, covered entities, and PHS concerning compliance with the provisions of section 340B of the PHS Act. PHS expects parties to utilize this informal process before resorting to other remedies which may be available.

I. Types of Disputes Covered

Disputes resolved by these procedures include:

(a) A manufacturer believes a covered entity is in violation of the prohibition against resale or transfer of a covered outpatient drug provided in section 340B(a)(5)(B) of the PHS Act, or the prohibition against duplicate discounts or rebates provided in section 340B(a)(5)(A) of the PHS Act;

(b) A covered entity believes that a manufacturer is charging a price for a covered outpatient drug that exceeds the ceiling price as determined by section 340B(a)(1) of the PHS Act;

(c) A manufacturer is conditioning the sale of covered outpatient drugs to a covered entity on the entity's provision of assurances or other compliance with the manufacturer's requirements that are based upon section 340B provisions;

(d) A manufacturer has refused to sell a covered outpatient drug to a covered entity at or below the ceiling price as determined by section 340B(a)(1) of the PHS Act;

(e) A manufacturer believes that a covered entity is dispensing a covered outpatient drug in an unauthorized service (e.g., inpatient services or ineligible clinics within the same health system);

(f) A manufacturer believes that a covered entity has not complied with the audit requirements under section 340B(a)(5)(C) of the PHS Act, or the auditors of the manufacturer have not abided by the approved workplan or audit guidelines.

II. Review Process

Prior to the filing of a request for review with the Office of Drug Pricing, the parties must attempt, in good faith, to resolve the dispute. All parties involved in the dispute must maintain written documentation as evidence of a good faith attempt to resolve the dispute. Such evidence includes documentation of meetings, letters, or telephone calls between the disputing parties that concern the dispute.

If the dispute has not been resolved after a good faith attempt, a party may submit a written request for a review of the dispute to the Director of the Office of Drug Pricing. [See address in "For Further Information Contact" section].

The party requesting the review may not rely only upon allegations but is required to set forth specific facts showing that there is a genuine and substantial issue of material fact in dispute that requires a review.

The request for review shall include a clear description of the dispute, shall identify all the issues in the dispute, and shall contain a full statement of the party's position with respect to such issue(s) and the pertinent facts and reasons in support of the party's position. In addition to the required statement, the party shall provide copies of any documents supporting its claim and evidence that a good faith effort was made to resolve the dispute. These materials must be tabbed and organized chronologically and accompanied by an indexed list identifying each document.

The filing of the dispute does not affect any statutory obligations of the parties as defined in section 340B of the PHS Act. During the review process, for example, a manufacturer must continue to sell covered outpatient drugs at or below the section 340B ceiling price to all covered entities, including the covered entity involved in the dispute.

The Director, Bureau of Primary Health Care, shall appoint a committee to review the documentation submitted by the disputing parties and to make a proposed determination. A minimum of three individuals shall be appointed (one of whom shall be designated as a chairperson) either on an ad hoc, case-by-case basis, or as regular members of the review committee. The chairperson shall be from the Office of Drug Pricing and the committee members shall be from other sections of PHS (e.g., chief pharmacist, auditor).

Upon receipt of a request for a review, the chairperson of the review committee will send a letter to the party alleged to have committed a violation. The letter will include (1) the name of the party making the allegation(s), (2) the allegation(s), (3) documentation supporting the party's position, and (4) a request for a response to or rebuttal of the allegations within 30 calendar days of the receipt of the letter. 7 days from the date of the postmark of the letter will be allowed for mailing and processing through the organization.

Upon receipt of the response or rebuttal, the review committee chairperson will review all documentation. The request and rebuttal information will be reviewed for (1) evidence that a good faith effort was made to resolve the dispute, (2) completeness, (3) adequate documentation supporting the issues, and (4) the reasonableness of the allegations. If the documentation is adequate, the review committee will be convened to consider the matter.

The reviewing committee may, at its discretion, invite parties to discuss the pertinent issues with the committee and to submit such additional information as the committee deems appropriate.

The reviewing committee will propose to dismiss the dispute, if it conclusively appears from the data, information, and factual analyses contained in the request for a review and rebuttal documents that there is no genuine and substantial issue of fact in dispute. This proposed finding of the committee will be submitted to the Director of the Office of Drug Pricing for consideration and approval. A written decision of dismissal will be sent to each party and will contain the Director's findings and conclusions in detail and reasons why the request for a review did not raise a genuine and substantial issue of fact.

With all other proposed findings, the review committee will prepare a written document containing the findings and detailed reasons supporting the proposed decision. The document is to be signed by the chairperson and each of the other committee members. The chairperson will submit the proposed findings to the Director of the Office of Drug Pricing for consideration and approval. The Director's written decision will be sent with a transmittal letter to both parties.

If the covered entity or the manufacturer does not agree with the Office of Drug Pricing's determination, the covered entity or the manufacturer may appeal within 30 days after receiving such a determination to the Administrator of the Health Resources and Services Administration who will appoint a review official or committee.

III. Penalties

If the final determination is that a manufacturer has violated the provisions of section 340B of the PHS Act or the PHS pharmaceutical pricing agreement, the manufacturer's agreement with PHS could be terminated or other actions taken as deemed appropriate. If the final determination is that an entity has violated section 340B prohibitions against resale or transfer of covered outpatient drugs, the prohibition against duplicate discounts and rebates (or billing Medicaid more than the actual acquisition cost of the drug), or other statutory prohibitions, the entity shall be liable to the manufacturer of the covered outpatient drug that is the subject of the violation in an amount equal to the reduction in the price of the drug for the period of the violation, as provided by section 340B(a)(5)(D) of the PHS Act. The entity may also be excluded from the drug discount program, if the conduct warrants such a sanction.

After the dispute is resolved, any disputed amounts plus the rate of interest must be paid or credited to an account balance no later than 30 days following a final determination. Interest will begin to accrue from the time the manufacturer is deemed to have been out of compliance with section 340B (or provisions of the PHS Pharmaceutical Pricing Agreement) or the entity is deemed to have violated prohibitions of section 340B. The interest rate will be based upon an annual rate established by the Secretary of the Treasury after considering private consumer rates of interest prevailing at the time of the violation. This rate, utilized by the Department of Health and Human Services (HHS) in the collection of debts owed to the United States, may be revised quarterly by the Secretary of the Treasury and is published by the HHS Assistant Secretary for Management and Budget in the **Federal Register**. See 45 CFR 30.13 Parties will apply the interest rate for the quarter in which the violation occurred, and this rate will remain fixed for the duration of the time in which interest accrues.

(The reporting requirements of this document are subject to Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act of 1980, 44 U.S.C 3501–3520, and will not be implemented until such clearance has been obtained)

Dated: June 6, 1994.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

[FR Doc. 94–14089 Filed 6–9–94; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–87]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Barbara Richards, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW.,

Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Barbara Richards at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; GSA: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 208–0619; Dept. of Interior: Lola D. Knight, Property Management specialist, Dept. of Interior, 1849 C St. NW, Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; U.S. Army: Elaine Sims, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 355–3475; Dept. of Energy: Tom Knox, Acting Team Leader, Facilities Planning and Acquisition Branch, FM–20, Forrestal Bldg., Room 6H–058, Washington, DC 20585; (202) 586–1191; (These are not toll-free numbers).

Dated: June 3, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 06/10/94

Suitable/Available Properties

Buildings (by State)

Colorado

3 Bldgs.
Former U.S. Forest Service Admin. Site
Fox Lane
Beaulah Co: Pueblo CO 81023–
Landholding Agency: GSA
Property Number: 549330002
Status: Excess
Comment: 1100 sq. ft. 2-story house, 600 sq ft. 1-story house and 1800 sq. ft. garage most recent use—classroom, storage residence
GSA Number: 7–GR–CO–525

Land (by State)

Kansas

Parcels #2 and #3
Fall River Lake
Sections 25 and 26 Co: Greenwood KS
Landholding Agency: GSA
Property Number: 319010066
Status: Excess
Comment: 64.24 acres, most recent use—recreation
GSA Number: 7–D–KS–0513

Puerto Rico

Parcel C
Naval Station, Roosevelt Roads
Vieques PR 00765–
Landholding Agency: GSA
Property Number: 549340004
Status: Excess
Comment: 96.41 acres, subject to water/sewer easement, access restrictions, most recent use—buffer zone
GSA Number: 2–N–PR–486

Suitable/Unavailable Properties

Land (by State)

Arizona

Quartermaster Depot
4th Avenue and Colorado River
Yuma Co: Yuma AZ 85364–
Landholding Agency: Interior
Property Number: 619420001
Status: Unutilized
Comment: Less than 1 acre, dirt and shrubbery along the river, lease restrictions, historical site

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 402–C
Alabama Army Ammunition Plant
Childersburg Co: Talladega AL 35044–
Landholding Agency: Army
Property Number: 219420124
Status: Unutilized
Reason: Secured Area

Bldg. 233, Fort McClellan
Anniston Co: Calhoun AL 36205–5000

Landholding Agency: Army
Property Number: 219420125
Status. Unutilized
Reason: Extensive deterioration

Bldg. 283, Fort McClellan
Anniston Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219420126
Status: Unutilized
Reason: Extensive deterioration

Bldg. 686, Fort McClellan
Anniston Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219420127
Status: Unutilized
Reason: Extensive deterioration

Facility 731, Fort McClellan
Anniston Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219420128
Status: Unutilized
Reason: Extensive deterioration

Bldg. 732, Fort McClellan
Anniston Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219420129
Status: Unutilized
Reason: Extensive deterioration

Bldg. 733, Fort McClellan
Anniston Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219420130
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1386, Fort McClellan
Anniston Co: Calhoun AL 36205–5000
Landholding Agency: Army
Property Number: 219420131
Status: Unutilized
Reason: Extensive deterioration

Arkansas

Bldg. 251, Fort Chaffee
Ft Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219420132
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1095, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219420133
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1185, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219420134
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1342, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219420135
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1590, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219420136
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1680, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219420137
Status: Unutilized
Reason: Extensive deterioration

Bldg. 12–600
Pine Bluff Arsenal
Pine Bluff Co: Jefferson AR 71602–9500
Landholding Agency: Army
Property Number: 219420138
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 12–610
Pine Bluff Arsenal
Pine Bluff Co: Jefferson AR 71602–9500
Landholding Agency: Army
Property Number: 219420139
Status: Unutilized
Reason: Secured Area

Bldg. 16–420
Pine Bluff Arsenal
Pine Bluff Co: Jefferson AR 71602–9500
Landholding Agency: Army
Property Number: 219420140
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 16–430
Pine Bluff Arsenal
Pine Bluff Co: Jefferson AR 71602–9500
Landholding Agency: Army
Property Number: 219420141
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 16–450
Pine Bluff Arsenal
Pine Bluff Co: Jefferson AR 71602–9500
Landholding Agency: Army
Property Number: 219420142
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Colorado

Bldg. T–200, Fort Carson
Colorado Spring Co: El Paso Co 80913–
Landholding Agency: Army
Property Number: 219420143
Status: Unutilized
Reason: Extensive deterioration

Georgia

Bldg. 34603, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219420144
Status: Unutilized
Reason: Extensive deterioration

Bldg. 51201, Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219420145
Status: Unutilized
Reason: Extensive deterioration

Bldg. P–133
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219420146
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–220
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219420147
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–422
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219420148
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–708
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219420149
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–1007
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219420150
Status: Unutilized
Reason: Extensive deterioration

Bldg. S–1200
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219420151
Status: Unutilized
Reason: Extensive deterioration

Bldg. 917
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219420152
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8667
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219420153
Status: Unutilized
Reason: Within airport runway clear zone

Bldg. 08, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420155
Status: Unutilized
Reason: Extensive deterioration

Bldg. T153, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420156
Status: Unutilized
Reason: Extensive deterioration

Bldg. 156, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420157
Status: Unutilized
Reason: Extensive deterioration

Bldg. 339, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420158
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–369, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420159

Status: Unutilized
Reason: Extensive deterioration

Bldg. T–372, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420160
Status: Unutilized
Reason: Extensive deterioration

Bldg. 625, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420161
Status: Unutilized
Reason: Extensive deterioration

Bldg. 701, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420162
Status: Unutilized
Reason: Extensive deterioration

Bldg. 708, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420163
Status: Unutilized
Reason: Extensive deterioration

Bldg. 927, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420164
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1008, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420165
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1310, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420166
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1312, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420167
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8021, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420168
Status: Unutilized
Reason: Extensive deterioration

Bldg. T9721, Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219420169
Status: Unutilized
Reason: Other
Comment: Detached latrine

Hawaii

Bldg. P–1519 A/B
Schofield Barracks, Hauula Loop
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219420154
Status: Unutilized
Reason: Extensive deterioration

Illinois

Bldg. 103
Charels Melvin Price Support Center
Granite City Co: Madison IL 62040–
Landholding Agency: Army
Property Number: 219420182
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 114
Charels Melvin Price Support Center
Granite City Co: Madison IL 62040–
Landholding Agency: Army
Property Number: 219420183
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 417
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040–
Landholding Agency: Army
Property Number: 219420184
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Indiana

Bldg. TC124
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219420170
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 738
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219420171
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 739
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219420172
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 741
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219420173
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1503
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219420174
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1516, 1517
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219420175
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

11 Bldgs.
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Location: #2701, 2703–2704, 2706, 2709, 2713, 2716–2718, 2722, 2730, 2735
Landholding Agency: Army
Property Number: 219420176
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

5 Bldgs.
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Location: #2708, 2725, 2728, 2732–2734
Landholding Agency: Army
Property Number: 219420177
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 2731
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219420178
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2740, 2747, 2749
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219420179
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 3056, 3059, 3062–3067
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219420180
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 6666
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111–
Landholding Agency: Army
Property Number: 219420181
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Kansas

Bldgs. 133–1, 133–2, 134
Sunflower Army Ammunition Plant
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219420185
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Floodway, Secured Area

Bldgs. 136, 137
Sunflower Army Ammunition Plant
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219420186
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Floodway, Secured Area

Bldgs. 154–4 & A, B, C, F
Sunflower Army Ammunition Plant
DeSoto Co: Johnson KS 66018–
Landholding Agency: Army
Property Number: 219420187
Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material, Floodway, Secured Area

Bldg. T–991, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219420188
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. T–992, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219420189
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. T–1975, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219420190
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–1984, Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 219420191
Status: Unutilized
Reason: Extensive deterioration

Kentucky

Bldg. A6932, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219420192
Status: Unutilized
Reason: Extensive deterioration

Bldg. A7008, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219420193
Status: Unutilized
Reason: Extensive deterioration

Bldg. 06861, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219420194
Status: Unutilized
Reason: Extensive deterioration

Minnesota

Bldg. 119A
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420195
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 119B
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420196
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 119C
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420197
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 119H
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420198
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 119P
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420199
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 119R
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420200
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 119S
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420201
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 119T
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420202
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 119U
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420203
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 121B
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420204
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 121A
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420205
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 125
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420206
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 126
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420207
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 127
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420208
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 128
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420209
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 129A
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420210
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 129B
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420211
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 130
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420212
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 131
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420213
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 132A
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420214
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 132B
Twin Cities Army Ammunition Plant

New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420215
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 135
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420216
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 136
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420217
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 137
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420218
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 138A
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420219
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 138B
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420220
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 138C
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420221
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 139A
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420222
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 139B
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420223
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 139C
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420224
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 139D
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420225
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 140A
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420226
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 140B
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420227
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 140C
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420228
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 141A
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420229
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 141B
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420230
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 142
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420231
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 143
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420232
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 144A
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420233
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 144C
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420234
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 144D
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420235
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 144E
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420236
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 144F
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420237
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 144G
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420238
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 144H
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420239
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 149A
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420240
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 149B
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420241
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 149C
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219420242
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 149D
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420243
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 149E
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420244
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 149F
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420245
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 149G
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219420246
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area

Bldg. 149H
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420247
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 149I
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420248
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 149J
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420249
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 149K
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420250
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 149L
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420251
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 149M
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420252
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 149N
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420253
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 159
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420254
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 165
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420255
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 177
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420256
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 180
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420257
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 191
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420258
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 192A
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420259
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 192B
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219420260
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 195
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219420261
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 196
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420262
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 199
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420263
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 303
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420264
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 304
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420265
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 314
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420266
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 315
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219420267
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 327
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420268
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 328
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420269
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 329
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army

Property Number: 219420270
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 330
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420271
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 338B
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420272
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 338C
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420273
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 338D
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420274
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 372
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420275
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 519B
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420276
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 530
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112
Landholding Agency: Army
Property Number: 219420277
Status: Unutilized
Reason: Secured Area

Bldg. 701
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420278
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 908
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420279
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 917C
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420280
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 1190
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420280
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 1490
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420282
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 5154
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420283
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Housing Area
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219420284
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

New York

Bldg. 3008, Stewart Gardens
Stewart Army Subpost
New Windsor Co: Orange NY 12553-
Landholding Agency: Army
Property Number: 219420285
Status: Unutilized
Reason: Extensive deterioration

Bldg. 195
71 Princeton Avenue
Upton Co: Suffolk NY 11973-
Landholding Agency: Energy
Property Number: 219420004
Status: Excess
Reason: Extensive deterioration

Bldg. 196
31 S. Grove Street
Upton Co: Suffolk NY 11973-
Landholding Agency: Energy
Property Number: 419420005
Status: Excess
Reason: Extensive deterioration

Bldg. 562B (Silo)
11 N. Fifth Street
Upton Co: Suffolk NY 11973-
Landholding Agency: Energy
Property Number: 419420006
Status: Excess
Reason: Extensive deterioration

North Carolina

Bldg. 2-1150, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307-
Landholding Agency: Army
Property Number: 219420286
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2-1152, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307-
Landholding Agency: Army
Property Number: 219420287
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2-2823, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307-
Landholding Agency: Army
Property Number: 219420288
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8-3053, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307-
Landholding Agency: Army
Property Number: 219420289
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8-3755, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307-
Landholding Agency: Army
Property Number: 219420290
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8-4545, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307-
Landholding Agency: Army
Property Number: 219420291
Status: Unutilized
Reason: Extensive deterioration

Bldg. 8-4643, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307-
Landholding Agency: Army
Property Number: 219420292
Status: Unutilized
Reason: Extensive deterioration

Bldg. A-2031, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307-
Landholding Agency: Army
Property Number: 219420293
Status: Unutilized
Reason: Extensive deterioration

Bldg. A-2033, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307-
Landholding Agency: Army
Property Number: 219420294
Status: Unutilized
Reason: Extensive deterioration

Bldg. A-2762, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307-
Landholding Agency: Army
Property Number: 219420295
Status: Unutilized
Reason: Extensive deterioration

Bldg. A-4069, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219420296
Status: Unutilized
Reason: Extensive deterioration

Bldg. D-2538, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307-
Landholding Agency: Army
Property Number: 219420297
Status: Unutilized
Reason: Extensive deterioration

Bldg. H–5889, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219420298
Status: Unutilized
Reason: Extensive deterioration

Bldg. H–5979, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219420299
Status: Unutilized
Reason: Extensive deterioration

Bldg. H–5981, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219420300
Status: Unutilized
Reason: Extensive deterioration

Bldg. H–6177, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219420301
Status: Unutilized
Reason: Extensive deterioration

Bldg. M–1934, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219420302
Status: Unutilized
Reason: Extensive deterioration

Bldg. O–9024, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219420303
Status: Unutilized
Reason: Extensive deterioration

Bldg. 79
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420008
Status: Excess
Reason: Secured Area

Bldg. 281
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420009
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 282
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420010
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 88
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420011
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 98
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420012
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 99
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420013
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1234
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420014
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1235
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420015
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1246
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420016
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1390
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420017
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1710
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420018
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1742
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420019
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1743
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420020
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1744
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420021
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 1745
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420022
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 3450
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420023
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 8067
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420024
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 3546
Marine Corps Air Station
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779420025
Status: Excess
Reason: Secured Area, Extensive deterioration

Pennsylvania

Bldg. T–3–109
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219420118
Status: Excess
Reason: Extensive deterioration

Bldg. T–13–117
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219420119
Status: Excess
Reason: Extensive deterioration

Bldg. T–14–319
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219420120
Status: Excess
Reason: Other
Comment: Detached Latrine

Bldg. T–14–520
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number: 219420121
Status: Excess
Reason: Other
Comment: Detached Latrine

Bldg. T–14–575
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number : 219420122
Status: Excess
Reason: Other
Comment: Detached Latrine

Bldg. T–14–576
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011
Landholding Agency: Army
Property Number : 219420123
Status: Excess
Reason: Other
Comment: Detached Latrine

Bldg. 309–3
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37422–
Landholding Agency: Army
Property Number : 219420304
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material. Secured Area. Extensive deterioration

Bldg. T–1048
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37422–
Landholding Agency: Army
Property Number : 219420305
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Bldg. T–1071
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37422–
Landholding Agency: Army
Property Number: 219420306
Status: Unutilized
Resons: Secured Area Extensive deterioration

Bldg. T–1074
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37422–
Landholding Agency: Army
Property Number : 219420307
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Texas

Bldg. P–4200
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number : 219420309
Status: Unutilized
Reason: Extensive deterioration

Bldg. P–4202
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number : 219420310
Status: Unutilized
Reason: Extensive deterioration

Bldg. P–4217
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number : 219420311
Status: Unutilized
Reason: Extensive deterioration

Bldg. P–4298
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number : 219420312
Status: Unutilized
Reason: Extensive deterioration

Bldg. P–4299
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number : 219420313
Status: Unutilized
Reason: Extensive deterioration

Bldg. 399
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219420314
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldg. 450
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number : 219420315
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Bldg. 460
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number : 219420316
Status: Unutilized
Reason: Secured Area

Bldg. 501
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number : 219420317
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Bldg. 507
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number : 219420318
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Bldg. 509
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number : 219420319
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Bldg. 510
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number : 219420320
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Bldg. 526
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number : 219420321
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 532
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219420322
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 567
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219420323
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 575
Red River Army Depot Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219420324
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Bldg. 586
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219420325
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Bldg. 587
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219420326
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Bldg. 673
Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219420327
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Utah

Bldg. 6040
Dugway Proving Ground
Dugway Co: Tooele UT 84022–
Landholding Agency: Army
Property Number: 219420328
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Bldg. 7885
Dugway Proving Ground
Dugway Co: Tooele UT 84022–
Landholding Agency: Army
Property Number: 219420329
Status: Unutilized
Reason: Secured Area. Extensive deterioration

Virginia

Natl. Marine Fisheries Lab
Greenbackville Co: Accomack VA 23356–
Location: Off of County Road 679, Adjacent and south of Maryland-Virginia State Line; east of Greenbackville
Landholding Agency: GSA
Property Number: 549420005
Status: Excess
Reason: Other
Comment: Structural damage
GSA Number: 4–C–VA–654(A)

Land (by State)

Texas

Land—Approx. 50 acres
Lone Star Army Ammunition Plant
Texarkana Co: Bowie TX 75504–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized

Reason: Secured Area

[FR Doc. 94–14005 Filed 6–9–94; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–93–4370–03]

Hearing to Discuss the Use of Helicopters and Motorized Vehicles to Gather Wild Horses

AGENCY: Bureau of Land Management, Interior.

ACTION: Public hearing to discuss the use of helicopters and motorized vehicles to gather wild horses during FY 94.

SUMMARY: In accordance with Public Law 92–195, as amended by Public Law 94–579 and Public Law 95–514, this notice sets forth the public hearing date to obtain public input into the use of helicopters and motorized vehicles to gather wild horses on public lands within the Las Vegas District during FY 94. The hearing will convene at 2 p.m. on Friday, July 1, 1994, in the Conference Room of the Las Vegas District BLM Office, 4765 Vegas Drive, Las Vegas, Nevada. The hearing is open to the public. Interested persons may make oral or written statements. Anyone wishing to make oral comments should contact Gary McFadden, Las Vegas District Wild Horse Specialist, by July 1, 1994 at (702) 647–5000. Written statements must be received by this date also and may be submitted to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Gary McFadden (702) 647–5000.

Dated: May 27, 1994.

Gary Ryan,

Acting District Manager.

[FR Doc. 94–14111 Filed 6–9–94; 8:45 am]

BILLING CODE 4310–HC–M

[NM–940–4110–03; OKNM 56774]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Pubic Law 97–451, a petition for reinstatement of Oil and Gas Lease OKNM 56774, Alfalfa County, Oklahoma, was timely filed and was accompanied by all required rentals and royalties accruing from October 1, 1993, the date of termination. No valid lease has been issued affecting the land. The lessee gas agreed to new lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective October 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Dolores L. Vigil, BLM, New Mexico State Office, (505) 438–7580.

Dated: May 31, 1994.

Dolores L. Vigil,

Chief, Adjudication Section.

[FR Doc. 94–14182 Filed 6–9–94; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Notice of availability of Final Florida Panther Habitat Preservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Florida Panther Interagency Committee (FPIC), composed of representatives from the U.S. Fish and Wildlife Service (Service), National Park Service, Florida Game and Fresh Water Fish Commission, and the Florida Department of Environmental Protection, approved the final Florida Panther Habitat Preservation Plan (Plan) January 3, 1994. The constituent elements of the Plan include: (1) A characterization and identification of occupied and potential Florida panther habitat (grouped into 11 ecological units) in 10 south Florida counties (Charlotte, Collier, Dade, DeSoto, Glades, Hendry, Highlands, Lee, Manatee, and Sarasota); (2) identification of threats to occupied and potential Florida panther habitat in south Florida, and (3) identification of 23 possible Florida panther habitat preservation options. The overall goal of the Plan is to ensure a sustainable population of Florida panther in south Florida.

The Plan is available in paper and electronic formats. Copies of the Plan can be obtained by making requests to the address(es) below.

SUPPLEMENTARY INFORMATION: The following is a brief chronology and update on the Plan. A Habitat Preservation Working Group, comprised of U.S. Fish and Wildlife Service, National Park Service, Florida Game and Fresh Water Fish Commission, and Florida Department of Environmental Protection, began drafting the Plan April 10, 1991. A **Federal Register** Notice announced the draft Plan was available for public review and comment on February 19, 1993. The Florida Panther Technical Advisory Council reviewed the draft Plan on April 8, 1993, and provided technical comments under existing Service policy regarding panther issues. The comment period closed on April 30, 1993. Thirty-one letters of support and 33 letters of opposition to the draft Plan were received before the comment period closed. Three hundred and thirteen letters of support and 96 letters of opposition were received after the comment period closed. All comments were taken into consideration in subsequent revisions of the Plan. The Plan was approved by the FPIC on January 3, 1994. The FPIC chairman and Technical Subcommittee members presented the final Plan to the public at a town meeting on February 3, 1994, in Ft. Myers, Florida, as requested by the Florida Farm Bureau. As of this date, approximately 900 copies of the final Plan have been distributed.

Copies of Plan, as well as a set of maps depicting more detailed information on areas of Panther habitat, have been deposited at the main branch of each of the following county libraries: Charlotte, Collier, Dade, DeSoto, Glades, Hendry, Highlands, Lee, Manatee, and Sarasota. Additional copies of the Plan are available from the U.S. Fish and Wildlife Service free of charge (see **ADDRESSES** below). FPIC representatives are available, upon written request, to meet with special interest groups or individuals to discuss the Plan and answer questions.

For a paper copy of the Plan, or for more information concerning any of the information presented in this notice, please contact: Mr. Andrew C. Eller, Jr., U.S. Fish and Wildlife Service, Assistant Florida Panther Coordinator, 3860 Tollgate Blvd., Suite 37, Naples, Florida 33942, telephone: 813/353–2814.

Florida State University has made the Plan (Volume I) available to Internet users. Graphics are not included. The system is case sensitive and commands should be typed in lower case only. There are three commands: (1) Telnet freenet.fsu.edu; (2) visitor; and (3)

panther. For more details contact Mr. Hilly Levitz at Email: levitz @cs.fsu.edu.

The Florida Game and Fresh Water Fish Commission has made data and maps used in the development of the Plan available on an electronic database. For more information contact Mr. Randy Kautz, Office of Environmental Services, 620 South Meridian Street, Tallahassee, Florida 32399–1600, telephone: 904/488–6661.

Dated: May, 27, 1994.

Warren T. Olds, Jr.,

Acting Regional Director.

[FR Doc. 94–14163 Filed 6–9–94; 8:45 am]

BILLING CODE 4310–55–P

Hart Mountain National Antelope Refuge, OR; Environmental Statements

AGENCY: Fish and Wildlife Service, U.S. Department of the Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Final Environmental Impact Statement (FEIS) on the proposed comprehensive management plan for Hart Mountain National Antelope Refuge, Lake County, Oregon, is available for public review. Five alternatives are being considered, including the Preferred Alternative. This notice is being furnished pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: The review period ends on July 11, 1994 (30 days from the publication of this notice in the **Federal Register**).

ADDRESSES: Written comments should be addressed to: Refuge Complex Manager, Sheldon-Hart Mountain Refuge Complex, P.O. Box 111, Lakeview, OR 97630.

Copies of the FEIS may be inspected at locations listed in Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Ruth Anne Miller, Outdoor Recreation Planner, Sheldon-Hart Mountain Refuge Complex, P.O. Box 111, Lakeview, Oregon 97630, (503) 947–3315.

SUPPLEMENTARY INFORMATION: The Service developed and analyzed five alternatives for the management of wildlife, habitat, and public use of Hart Mountain National Antelope Refuge. The purpose of this FEIS is to recommend a course of action that would best guide the management of the Refuge's resources.

The FEIS analyzes five alternative approaches to resolving the Refuge's core problems, which are: (1) Unnaturally high densities of shrubs and junipers throughout Refuge uplands, and lack of periodic fire in these habitats; (2) eroded stream channels and deficiency of riparain vegetation along a majority or Refuge streams; and (3) insufficient resources and inadequate facilities to manage the increasing number of Refuge visitors. These problems are the underlying factors currently preventing Refuge goals from being achieved, and thus provide a focal point for the proposed comprehensive management plan.

The five alternatives being considered are: (1) Baseline Management, which continues emphasis on a livestock grazing program as the primary means of managing Refuge vegetation; (2) Featured Species Management, which combines the uses of livestock grazing, prescribed burning and herbicides to manage vegetation; (3) Habitat Restoration Alternative, which would emphasize restoration of Refuge habitats, although not to the extent proposed by the Ecosystem Management Alternative; (4) Native Community Restoration (Preferred Alternative), which proposes an ecosystems management approach to restoration of Refuge habitats and natural processes; and (5) Custodial Maintenance, which emphasizes the total exclusion of human intervention.

The Preferred Alternative, if implemented, would (1) reduce shrub and juniper cover on 22,000 to 40,000 acres within 15 years following implementation of the comprehensive management plan, primarily through prescribed burning; (2) allow riparian areas to restore passively, except in limited areas where prescribed burning, willow plantings, and check dams would be used; (3) discontinue the use of livestock on Refuge lands during the next 15 years; (4) redesign one of the existing campgrounds and close the other; (5) create three additional camping areas as mitigation; (6) maintain 162 miles of roads open to the public; (7) continue limited quality hunts for pronghorn, mule deer, and bighorn sheep; and (8) recommend 80,541 acres for further study for potential wilderness designation, and 11,276 acres for further study for potential Research Natural Areas designation.

Copies of the FEIS may be viewed at the following locations:

U.S. Fish and Wildlife Service, Div. of Refuges & Wildlife, Third floor, 911 NE. 11th Avenue, Portland, Oregon 97232–4181

Sheldon-Hart Mountain Refuge Complex, 18 South g. Street, Third floor, Lakeview, Oregon 97630

Lake County Library, 513 Center Street, Lakeview, Oregon 97630

Harney County Library, 80 West D Street, Burns, Oregon 97720

Klamath County Library, 126 South 3rd Street, Klamath Falls, Oregon, 97601

Deschutes County Library, 507 NW Wall Street, Bend, Oregon 97701

Kerr Library, Oregon State University, Corvallis, Oregon 97331

Central Library, Multnomah County Library System, 801 SW 10th Street, Portland Oregon 97205.

Individuals desiring a copy of the FEIS for review should immediately contact the individual in the For Further Information Contact Section. Copies have been sent to all agencies and individuals who participated in the scoping process and were added to the mailing list, and to those people that requested to be added to the mailing list.

Dated: May 25, 1994.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 94–13370 Filed 6–9–94; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Availability of Outer Continental Shelf Official Protraction Diagrams

AGENCY: Minerals Management Service, Interior.

ACTION: Publication of New North American Datum (NAD) 83 Outer Continental Shelf (OCS) Official Protraction Diagrams.

Notice is hereby given that effective with this publication, the following NAD 83-based outer continental shelf (OCS) Official Protraction Diagrams (OPD's) for the Cook Inlet/Shelikof Strait area are on file and available in the Alaska OCS Region office, Anchorage, Alaska. They reflect current baseline and boundary information portrayed on a metric NAD 83 cadastre. These OPD's should be used for the Offshore Program within the Cook Inlet/Shelikof Strait area.

Description	Date
NO 4–6, Ugashik	Jan. 3, 1994.
NO 5–1, Iliamna	Jan. 3, 1994.
NO 5–2, Seldovia	Jan. 3, 1994.
NO 5–3, Mt. Katmai	Jan. 3, 1994.
NO 5–4, Afognak	Jan. 3, 1994.
NO 5–5, Karluk	Jan. 3, 1994.
NO 5–8, Kenai	Jan. 3, 1994.

ADDRESSES: Copies of these OPD's may be purchased for $2.00 each from the Library, Minerals Management Service, Alaska OCS Region, 949 East 36th

Avenue, Anchorage, Alaska 99508–4302, (907) 271–6435.

Technical comments or questions pertaining to these maps should be directed to Leasing and Environment, Chief, Leasing Activities Section, (907) 271–6691.

Dated: June 1, 1994.

Robert J. Brock,

Acting Regional Director, Alaska OCS Region.

[FR Doc. 94–14167 Filed 6–9–94; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Weir Farm National Historic Site, Wilton and Ridgefield, CT—Amendment Notice to the Draft General Management Plan / Draft Environmental Impact Statement and Notice of Availability and Public Comment Period

This is to append the notice of Friday, May 6, 1994 (FR Vol.59/#97–23744) to clarify that the Draft Environmental Impact Study/Draft General Management Plan (DEIS/DGMP) is being duly filed with the Environmental Protection Agency (EPA). Please refer to the customary Environmental Protection Agency listing of such actions which will appear in the Friday, June 6 or Friday, June 17, 1994 edition. The EPA notice will initiate a sixty-day review period for the DEIS/DGMP.

At the midpoint of the review period, the National Park Service will hold a public meeting in the immediate area of Weir Farm National Historic Site in the Wilton/Ridgefield area of Connecticut. Please watch out for time and place of the meeting which will be announced in the local media.

During the comment period, interested persons may review the document and provide written comments to the Superintendent, Weir Farm National Historic Site, 735 Nod Hill Road, Wilton, CT 06897.

June 3, 1994.

Robert W. McIntosh,

Deputy Regional Director.

[FR Doc. 94–14116 Filed 6–9–94; 8:45am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Ceiling Fans From the People's Republic of China; Request for Comments Concerning the Institution of a Section 751(b) Review Investigation

AGENCY: United States International Trade Commission.

ACTION: Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. 731–TA–473 (Final), Certain Electric Fans from the People's Republic of China (China).

SUMMARY: The Commission invites comments from the public on whether changed circumstances exist sufficient to warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) (the Act) to review the Commission's affirmative determination in the above investigation. The purpose of the proposed review investigation is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of ceiling fans from China if the existing antidumping order on such merchandise were to be modified or revoked.[1] Ceiling fans are provided for in subheading 8414.51.00 of the Harmonized Tariff Schedule of the United States.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW. Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background

On October 25, 1991, the Department of Commerce gave notice that imports of certain electric fans (including ceiling fans) from China were being sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act (19 U.S.C. 1673) (an amendment to its determination, modifying the margins accorded to specific companies, was published in the **Federal Register** on December 9, 1991 (56 F.R. 64240)), and on December 2, 1991, the Commission determined, pursuant to section 735(b)(1) of the Act (19 U.S.C. 1673d(b)(1)), that an industry in the United States was materially injured by reason of imports of ceiling fans.[2] Commerce thereby ordered that dumping duties be imposed. On March 2, 1994, however, Commerce published in the **Federal Register** a revision to its original dumping determination, effectively excluding one of the Chinese producers from the order and reducing the margin for non-specified firms (59 FR 9956). Consequently, on May 4, 1994, counsel for Encon Industries, Inc., an importer of the subject merchandise, filed a request with the Commission to review its earlier affirmative injury determination pursuant to section 751(b) of the Act (19 U.S.C. 1675(b)).

Written Comments Requested

Pursuant to section 207.45(b)(2) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)(2)), the Commission requests comments concerning whether the alleged changed circumstances, brought about by Commerce's revision of its dumping order, are sufficient to warrant institution of a review investigation.

Written Submissions

In accordance with section 201.8 of the Commission's rules (19 CFR 201.8), the signed original and 14 copies of all written submissions must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436. All comments must be filed no later than 30 days after the date of publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under section 201.6 of the Commission's rules (19 CFR 201.6). Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked at the top "Confidential Business Information." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Copies of the request for review of the injury determination and any other documents in this matter are available for public inspection during regular

[1] Although the scope of the Commerce's investigation included both ceiling fans and oscillating fans, the Commission found these fans to be separate like products of separate industries and determined accordingly on the question of injury.

[2] The Commission also determined that an industry in the United States was materially injured by reason of LTFV imports of oscillating fans; however, that determination is not at issue in the petition.

business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission; telephone 202–205–2000.

Issued: June 7, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–14153 Filed 6–9–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32507]

Cen-Tex Rail Link, Ltd.—Acquisition and Operation Exemption—Certain Lines of The Atchison, Topeka and Santa Fe Railway Co.

Cen-Tex Rail Link, Ltd. (Cen-Tex), a noncarrier, has filed a notice of exemption to acquire and operate approximately 151 miles of rail line owned by The Atchison, Topeka and Santa Fe Railway Company (ATSF) as follows: (1) Between Fort Worth, TX (approximately milepost 1 + 1,541 feet on ATSF's Dublin Subdivision) and Ricker, TX (approximately 134 + 2,171 feet on ATSF's Dublin Subdivision), and between a point on the foregoing segment near Cresson, TX (approximately milepost 18 + 133 feet on ATSF's Cresson Subdivision), and Cleburne, TX (approximately milepost 0 + 1,167.1 feet on ATSF's Cresson Subdivision).[1]

This proceeding is related to a petition for exemption filed concurrently in *Joel T. Williams, III, Roy C. Coffee, Jr., Rafael Fernandez-Macgregor, Bristol Investment Co., Inc.—Continuance in Control Exemption—Cen-Tex Rail Link, Ltd. and South Orient Railroad Company, Ltd.*, in Finance Docket No. 32478, wherein Joel T. Williams, III *et al.* have concurrently filed a petition for exemption to continue in control of Cen-Tex and South Orient Railroad Company, Ltd. when the former becomes a rail carrier upon consummation of the transaction described in this notice.

Cen-Tex will also acquire incidental overhead trackage rights: (i) On the ATSF line between Ricker, TX (approximately milepost 134 + 2,171 feet on ATSF's Dublin Subdivision) and San Angelo Junction, TX (approximately milepost 0 + 330 feet on ATSF's San Angelo Subdivision), (ii) on the ATSF line between milepost 1 + 1,541 feet (ATSF Dublin Subdivision) and milepost 368.5 (ATSF Fort Worth Subdivision) for certain intermodal produce shipments, and (iii) on the ATSF line between milepost 1 + 1,541 feet and milepost 0 + 4,752 feet on ATSF's Dublin Subdivision, to reach other carriers in Ft. Worth, TX. Cen-Tex's acquisition of the properties is expected to be consummated and operations to begin upon or soon after the effective date of this exemption.[2]

Any comments must be filed with the Commission and served on: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 19th St., NW., Suite 400, Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 3, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–14129 Filed 6–9–94; 8:45am]

BILLING CODE 7035–01–P

[Docket No. AB–167 (Sub-No. 1121X)]

Consolidated Rail Corporation—Abandonment Exemption—In Clark County, OH

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 8.1 miles of rail line from approximately milepost 124.5+ in Glen Echo to approximately milepost 132.6± [1] in Springfield, Clark County, OH

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental), 49 CFR 1105.8 (historic requirement), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expressions of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 10, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29[4] must be filed by June 21, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 30, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: Robert S.

[1] ATSF will retain limited overhead trackage rights between Fort Worth and Ricker, TX, while transferring all other rights on the line to Cen-Tex.

[2] Shortly after consummation, Cen-Tex will sell the subject rail lines (but not the incidental trackage rights and other assets) to the Centex Rural Rail Transportation District. However, Cen-Tex will retain all of its common carrier operating rights on the lines under a permanent freight railroad operations easement.

[1] Grand Trunk Western Railroad (GTW) maintains overhead trackage rights over a portion of the line from milepost 129.1 to milepost 132.6. We interpret this to mean that GTW has no local trackage rights on this portion of the line. In *Missouri Pac. R. Co.—Aban.—Osage & Morris Count., KS.*, 9 I.C.C.2d 1228 (1993) (*Missouri Pac.*), the Commission held that a railroad that certifies that there has been no local traffic on the line, including that of the railroad with trackage rights, can use the exemption procedures to abandon the line without the holder of trackage rights receiving discontinuance authority subject to certain conditions.

Accordingly, because of GTW's existing trackage rights, Conrail may only discontinue service at this time. The effectiveness of this notice as to the abandonment will be contingent upon: (1) GTW obtaining Commission approval or exemption to discontinue its trackage rights; and (2) Conrail informing any party requesting public use or trail use if and when such trackage rights are discontinued. *See Missouri Pac., supra.* Requests for public use or trail use conditions will not be acted upon until GTW has relinquished its trackage rights.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to deal

Natalini, Two Commerce Square, 2001 Market Street, P. O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by June 15, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 3, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–14130 Filed 6–9–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Village Drug Revocation of Registration

On March 18, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Village Drug (Respondent), of El Segundo, California, proposing to deny Respondent's application for a DEA Certificate of Registration as a practitioner. The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

Specifically the Order to Show Cause alleged that: Respondent's pharmacy license as well as the pharmacist's license of Bernard P. Kastigar (Mr. Kastigar), the owner/operator of Respondent, were suspended for thirty days and placed on three years probation in 1985 by the Board of Pharmacy, Department of Consumer Affairs, State of California (Pharmacy Board); in 1988, based upon violations of the Pharmacy Board's probation order, Mr. Kastigar's pharmacist license was again suspended for thirty days and placed on probation for an additional three years; between 1991 and 1993, Mr. Kastigar dispensed Percodan, a Schedule II controlled substance, and anabolic steroids, Schedule III controlled substances, to several individuals without a valid physician's authorization; on October 21, 1993, Mr. Kastigar pled guilty to and was convicted of one count of unlawfully furnishing a controlled substance, in the Municipal Court for the South Bay Judicial District, County of Los Angeles, State of California; and Mr. Kastigar materially falsified an application for a DEA Certificate of Registration, submitted on June 4, 1993, by indicating on such application that he had never surrendered a DEA Certificate of Registration, when in fact Respondent's DEA Certificate of Registration had been surrendered on April 27, 1993, and by also indicating on the application that he had never had a state license suspended or placed on probation, when in fact his pharmacist's license as well as Respondent's license had been suspended and placed on probation by the Pharmacy Board.

The Order to Show Cause was sent to Respondent by registered mail. More than thirty days have passed since the Order to Show Cause was received by Respondent and the DEA has received no response thereto. Pursuant to 21 CFR 11301. 54(d) and 1301.54(e). Respondent is deemed to have waived his opportunity for a hearing. Accordingly, the Deputy Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

In 1983, the Pharmacy Board filed an accusation against Respondent pharmacy and Mr. Kastigar alleging, *inter alia*, that an audit revealed significant shortages for a number of controlled substances and that Mr. Kastigar filled numerous controlled substance prescriptions issued under circumstances in which he knew or should have known that such prescriptions were not issued for a legitimate medical reason. Based upon a consent decree, Respondent and Mr. Kastigar admitted the allegations. Both agreed to a thirty day suspension and a three year probationary term, effective June 28, 1985.

On October 20, 1987, the Pharmacy Board issued another accusation against Mr. Kastigar based upon allegations that he dispensed propoxyphene, a Schedule IV controlled substance, to an individual without a valid physician's authorization. Mr. Kastigar entered into a second consent decree with the Pharmacy Board. Again, he admitted to the accusations and his pharmacist's license was suspended for another thirty days and placed on probation for another three years, effective June 24, 1988.

Subsequent investigation by the California Bureau of Narcotics Enforcement revealed that Mr. Kastigar dispensed Percodan, a Schedule II controlled substance, and anabolic steroids, a Schedule III controlled substance, to several individuals without a physician's authorization between January 1991 and April 1993. A search warrant was served on Respondent pharmacy on March 25, 1993. Mr. Kastigar was interviewed at that time and admitted some of the allegations concerning the unlawful dispensing of the Percodan and anabolic steroids.

On April 26, 1993, Mr. Kastigar was charged in the Municipal Court for the South Bay Judicial District, County of Los Angeles, State of California, with eleven counts of the unlawful furnishing of controlled substances and two counts of dispensing controlled substances without a medical purpose. On September 23, 1993, Mr. Kastigar entered into a plea agreement whereby he agreed to plea no contest to one felony count of the unlawful furnishing of a controlled substance and agreed to a sentence of three years probation. The conditions of the probation included, *inter alia*, 250 hours of community service, a $15,000 fine, the surrender of his pharmacist's license and surrender of medicare and medicaid privileges. On October 21, 1993, Mr. Kastigar entered the plea pursuant to the agreement and was convicted and sentenced pursuant to the plea agreement.

Mr. Kastigar voluntarily surrendered Respondent pharmacy's previous DEA Certificate of Registration, AK2083119, on April 27, 1993. On June 4, 1993, Mr. Kastigar submitted an application to obtain a new DEA Certificate of Registration for Respondent pharmacy. On this application, he indicated that he had never surrendered a DEA Certificate of Registration. He also indicated on this application that he never had a state professional license suspended or placed on probation, notwithstanding that the California Pharmacy Board had taken action against both Respondent and its owner in 1985 and 1988, as noted above.

In evaluating whether Respondent's registration by the Drug Enforcement Administration would be inconsistent with the public interest, the Deputy Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether a registration would be inconsistent with the public interest, the Deputy Administrator is not required to make findings with respect to each of the factors listed above. Instead, he has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See *David E. Trawick, D.D.S.*, Docket No. 88–69, 53 FR 5326 (1988).

In this proceeding factors one, two, three, and five apply. Factor one is applicable based upon the California Board of Pharmacy's suspensions and probation terms imposed on the licenses of Respondent pharmacy and the pharmacist's license of Mr. Kastigar in 1985 and 1988. Factor two applies because Respondent dispensed controlled substances without a physician's authorization or for no legitimate medical reason on a number of occasions between 1983 and 1993. Factor three is applicable based upon the conviction of Mr. Kastigar in the Municipal Court for the South Bay Judicial District, County of Los Angeles, State of California, of one count of unlawfully furnishing controlled substances. Factor five applies because Mr. Kastigar made two material falsifications on the application he submitted for a new DEA Certificate of Registration on June 4, 1993.

No evidence of explanation or mitigating circumstances has been offered by Respondent. Therefore, the Deputy Administrator concludes that Respondent's application for a DEA Certificate of Registration must be denied.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application executed by Village Drug, on June 4, 1993, for a DEA Certificate or Registration as a retail pharmacy, be, and it hereby is, denied. This order is effective June 10, 1994.

Dated: June 3, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–14161 Filed 6–9–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Ave, NW., room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination Nos. VA940045 and VA940055 dated February 11, 1994.

Agencies with construction projects pending, to which these wage decisions would have been applicable, should utilize Wage Decision VA940029. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-

Bacon and Related Acts" are listed by Volume and State.

Volume III

Tennessee
TN940053 (Jun. 10, 1994)
TN940054 (Jun. 10, 1994)
TN940055 (Jun. 10, 1994)
TN940056 (Jun. 10, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA940001 (Feb. 11, 1994)
MA940002 (Feb. 11, 1994)
MA940003 (Feb. 11, 1994)
MA940005 (Feb. 11, 1994)
MA940007 (Feb. 11, 1994)
MA940008 (Feb. 11, 1994)
MA940009 (Feb. 11, 1994)
MA940013 (Feb. 11, 1994)
MA940015 (Feb. 11, 1994)
NY940002 (Feb. 11, 1994)
NY940003 (Feb. 11, 1994)
NY940004 (Feb. 11, 1944)
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NY940031 (Feb. 11, 1994)
NY940032 (Feb. 11, 1994)
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NY940042 (Feb. 11, 1994)
NY940043 (Feb. 11, 1994)
NY940044 (Feb. 11, 1994)
NY940045 (Feb. 11, 1994)
NY940046 (Feb. 11, 1994)
NY940047 (Feb. 11, 1994)
NY940048 (Feb. 11, 1994)
NY940049 (Feb. 11, 1994)
NY940050 (Feb. 11, 1994)
NY940051 (Feb. 11, 1994)
Puerto Rico
PR940002 (Feb. 11, 1994)

Volume II

Virginia
VA940029 (Feb. 11, 1994)

Volume III

Florida
FL940001 (Feb. 11, 1994)
FL940009 (Feb. 11, 1994)
FL940015 (Feb. 11, 1994)
FL940017 (Feb. 11, 1994)
FL940032 (Feb. 11, 1994)
Georgia
GA940003 (Feb. 11, 1994)
GA940031 (Feb. 11, 1994)
Tennessee
TN940001 (Feb. 11, 1994)
TN940041 (Feb. 11, 1994)

Volume IV

Indiana
IN940001 (Feb. 11, 1994)
IN940002 (Feb. 11, 1994)
IN940003 (Feb. 11, 1994)
IN940004 (Feb. 11, 1994)
IN940005 (Feb. 11, 1994)
IN940006 (Feb. 11, 1994)
IN940016 (Feb. 11, 1994)
IN940017 (Feb. 11, 1994)
IN940018 (Feb. 11, 1994)

Volume IV

Kansas
KS940006 (Feb. 11, 1994)
KS940009 (Feb. 11, 1994)
KS940012 (Feb. 11, 1994)
KS940025 (Feb. 11, 1994)
Nebraska
NE940001 (Feb. 11, 1994)
NE940003 (Feb. 11, 1994)
NE940005 (Feb. 11, 1994)
NE940009 (Feb. 11, 1994)
NE940010 (Feb. 11, 1994)
NE940011 (Feb. 11, 1994)

Volume VI

Colorado
CO940005 (Feb. 11, 1994)
CO940009 (Feb. 11, 1994)
CO940010 (Feb. 11, 1994)
CO940011 (Feb. 11, 1994)
CO940018 (Feb. 11, 1994)
CO940020 (Feb. 11, 1994)
CO940021 (Feb. 11, 1994)
CO940022 (Feb. 11, 1994)
CO940023 (Feb. 11, 1994)
CO940024 (Feb. 11, 1994)
Idaho
ID940003 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 3rd day of June 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–13896 Filed 6–9–94; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–43; Exemption Application No. D–9282, et al.]

Grant of Individual Exemptions; Fidelity Management Trust Company, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The aplicaitons have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for

a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Fidelity Management Trust Company Located in Boston, Massachusetts

[Prohibited Transaction Exemption 94–43; Exemption Application No. D–9282]

Exemption

The restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of the Code, shall not apply to the cross-trading of securities by Fidelity Management Trust Company (Fidelity) on behalf of employee benefit plan accounts for which Fidelity acts as fiduciary.

Part I—General Conditions

(A) Each Plan participating in Fidelity's cross-trading program has assets of at least $25 million;

(B) A Plan's participation in the cross-trade program is subject to a written authorization executed in advance by a fiduciary with respect to each such Plan;

(C) The authorization referred to in section (B) of this Part I is terminable at will without penalty to such Plan, upon receipt by Fidelity of written notice of such termination;

(D) Before an authorization is made, the authorizing Plan fiduciary must be furnished with any reasonably available information necessary for the authorizing fiduciary to determine whether the authorization should be made, including (but not limited to) a copy of this exemption, an explanation of how the authorization may be terminated, a detailed disclosure of the procedures implemented in Fidelity's cross-trade practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests;

(E) Each cross-trade transaction involves only securities for which there is a generally recognized market;

(F) Each cross-trade transaction is effected at the current market value for the security on the date of the transactions, which shall be, for equity securities, the closing price for the security on the date of the transaction, and for debt securities, as determined in accordance with paragraph (b) of Rule 17a–7 issued by the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940;

(G) Fidelity will not charge any Plan affected by a cross-trade transaction any fee or commission for such transaction;

(H) At least every three months, and not later than 45 days following the period to which it relates, Fidelity will furnish the authorizing Plan fiduciary with a report disclosing (1) a list of all cross-trade transactions engaged in on behalf of the Plan, and (2) with respect to each cross-trade transaction, the highest and lowest prices at which the securities involved in the transaction were traded on the date of such transaction;

(I) The authorizing Plan fiduciary will be furnished with a summary of certain additional information at least once per year. The summary must be furnished within 45 days after the end of the period to which it relates, and must contain the following: (1) A description of the total amount of Plan assets involved in cross-trade transactions during the period, (2) a description of Fidelity's cross-trade practices, (3) A statement that the Plan fiduciary's authorization of cross-trade transactions may be terminated upon receipt by Fidelity of the fiduciary's written notice to that effect, and (4) a statement that the Plan fiduciary's authorization of the cross-trade transaction will continue in effect unless it is terminated; and

(J) The Accounts involved in cross-trade transactions will not include assets of any Plan established or maintained by Fidelity or its affiliates.

Part II—Specific Conditions

(A) Index Accounts

(1) The index of the Account is based on an index which represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries. The organization creating and maintaining the index must be (a) engaged in the business of providing financial information, evaluations, advice or securities brokerage services to institutional clients, (b) a publisher of financial news or information, or (c) a public stock exchange or association of securities dealers. The index must be created and maintained by an organization independent of Fidelity and its affiliates. The index must be a generally accepted standardized index of securities which is not specifically tailored for the use of Fidelity or its affiliates.

(2) The transaction takes place within three business days of the "triggering event" giving rise to the cross-trade transaction. A triggering event is defined as:

(a) A change in the composition or weighting of the index underlying an Index Account; or

(b) A change in the overall level of investment in an Index Account as a result of investments and withdrawals made on the Index Account's opening date (the regularly-scheduled date on which investments in or withdrawals from an Index Account may be made).

(3) Fidelity maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in section (4) of this Part II (A) to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Fidelity or its affiliates, the records are lost or destroyed prior to the end of the six-year period.

(4) (a) Except as provided in subsection (b) of this section (4) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in section (3) of this Part II are unconditionally available at their customary location for examination during normal business hours by—

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(2) Any fiduciary of a Plan participating in an Index Account who has authority to acquire or dispose of the interests of the Plan or any duly authorized employee or representative of such fiduciary,

(3) Any contributing employer to any Plan participating in an Index Account or any duly authorized employee or representative of such employer, and

(4) Any participant or beneficiary of any Plan participating in an Index Account, or any duly authorized employee or

representative of such participant or beneficiary.

(b) None of the persons described in paragraphs (2) through (4) of subsection (a) of this section (4) shall be authorized to examine trade secrets of Fidelity, any of its affiliates, or commercial or financial information which is privileged or confidential.

(B) Managed Accounts

(1) An independent fiduciary of each Plan must specifically authorize each cross-trade transaction in accordance with the following procedure:

(a) No more than three business days prior to the execution of any cross-trade transaction, Fidelity must inform an independent fiduciary of each Plan involved in the cross-trade transaction that Fidelity proposes to buy or sell specified securities in a cross-trade transaction if an appropriate opportunity is available, the current trading price for such securities, and the total number of shares to be acquired or sold by each such Plan.

(b) Prior to each cross-trade transaction, the transaction must be authorized either orally or in writing by the independent fiduciary of each Plan involved in the cross-trade transaction;

(c) If a cross-trade transaction is authorized orally by an independent fiduciary, Fidelity will provide written confirmation of such authorization in a manner reasonably calculated to be received by such independent fiduciary within one business day from the date of such authorization;

(d) The authorization referred to in this Part II(B) will be effective for a period of three business days; and

(e) No more than ten days after the completion of a cross-trade transaction, the independent fiduciary authorizing the cross-trade transaction must be provided a written confirmation of the transaction and the price at which the transaction was executed;

(2) A cross-trade transaction will be effected only where the transaction involves less than five percent of the aggregate average daily trading volume for the securities involved in the transaction for the week immediately preceding the authorization of the transaction. A cross-trade transaction may exceed this limit only by express authorization of independent fiduciaries on behalf of Plans affected by the transaction; and

(3) The cross-trade transaction is effected at a price which is within ten percent of the closing price of the security on the day before the date on which Fidelity receives authorization by the independent Plan fiduciary to engage in the cross-trade transaction.

Part III—Definitions

(A) "Account" means an account holding assets of one or more employee benefit plans which are subject to the Act (the Plans), for which Fidelity or an affiliate of Fidelity acts as a fiduciary;

(B) "Affiliate" means any person, directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Fidelity;

(C) "Cross-trade transaction" means a purchase and sale of securities between ERISA Accounts or between an ERISA Account and a non-ERISA account for which Fidelity or an affiliate of Fidelity acts as a trustee or investment manager;

(D) "Index Account" means an Account for which Fidelity and the Plan sponsor or other named fiduciary have agreed that the investment of the assets in question will be designed to replicate the capitalization-weighted composition of a stock or bond index; and

(E) "Managed Account" means an Account for which Fidelity and the Plan sponsor or other named fiduciary have agreed that the investment of the assets in question will be managed actively at the discretion of Fidelity, pursuant to written guidelines as to which types of securities to buy or sell for the Account.

Written Comments: The Department received one written comment and no requests for a hearing. The comment was submitted by the applicant, Fidelity Management Trust Company. The applicant addresses two matters which are summarized as follows:

(1) The applicant notes a typographical error in Part III of the proposed exemption: Within the definition of "Cross-trade transaction", the word "account" should not be capitalized. The applicant represents that, as described elsewhere in the Notice of Proposed Exemption, cross-trade transactions covered by the proposed exemption may occur between an account holding assets of one or more employee benefit plans which are subject to the Act ("Account") and a non-ERISA account managed by the applicant or an affiliate ("account").

(2) The applicant wishes to supplement the summary of facts and representations of the notice of proposed exemption (the Summary), by clarifying and revising its explanation of the manner in which opportunities for cross-trading transactions are allocated among accounts under its management, which is found in section 10 of the Summary. The applicant represents that subsequent to the publication of the Summary, it determined that its cross-trading program will be effected pursuant to a non-discretionary pro-rata allocation system. For example, in the event that the number of shares of a particular security which an Account proposes to sell on a given day is less than the number of shares of such security which other Fidelity-advised accounts propose to buy on that date, the direct cross-trade opportunity will be allocated among potential buyers on a pro-rata basis. A similar procedure would apply where the number of shares of a particular security to be sold by Fidelity-advised accounts is less than the number of such shares which an Account and one or more other Fidelity-advised accounts proposes to buy on that date. Thus, the Accounts participating in Fidelity's cross-trade program will have opportunities to participate on a proportional basis in all cross-trade transactions during the operation of the cross-trade program. The applicant represents that this aspect of Fidelity's cross-trading program is among the information which will be disclosed in writing to the fiduciaries of the pension plans which invest in the Accounts.

After careful consideration of the entire record, the Department has determined to grant the exemption, as supplemented by the applicant's comment.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 10, 1993 at 58 FR 64978.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Lone Star Industries, Inc. Master Retirement Trust (the Master Trust) Located in Chicago, Illinois

[Prohibited Transaction Exemption No. 94–44; Application No. D–9295]

Exemption

Section I—Transactions

Effective September 10, 1990, the restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to:

(a) The lease (the Lease) by the Master Trust of a certain parcel of real property (the Property) located in Rancho Cordova, California, to RMC Lonestar (RMC), a party in interest with respect to plans participating in the Master Trust (the Plans);

(b) The obligations and guarantees to the Master Trust by Lone Star

Industries, Inc. (LSI), a party in interest with respect to the Plans, arising under the terms of the Lease on the Property, subsequent to the assignment by LSI of its leasehold interest in the Property to RMC; and

(c) The payment in the amount of $6,000,000 by LSI to the Master Trust in exchange for a release of LSI's obligation to perform under the terms of a certain yield guarantee agreement signed December 18, 1992, by LSI and the Master Trust; provided that the conditions set forth in section II below are met.[1]

Section II—Conditions

This exemption is conditioned upon the adherence to the material facts and representations described herein and in the application for exemption and upon the satisfaction of the following requirements:

(a) The Bankruptcy Court for the Southern District of New York (the Bankruptcy Court) enters and order confirming the modified amended consolidated plan of reorganization filed by LSI and its affiliates, pursuant to Chapter 11 of the Bankruptcy Code;

(b) The obligations and guarantees of LSI to the Master Trust under the Lease are assumed by LSI and continue after the plan of reorganization is confirmed by the Bankruptcy Court;

(c) LSI pays the $6,000,000 in a single lump-sum payment in cash to the Master Trust, not later than sixty (60) days following the later of (1) the date of the order of the Bankruptcy Court approving the payment, or (2) the date the grant of this exemption is published in the **Federal Register**;

(d) Morrison, Karsten, Ramzy & Arthur, Inc. (MKRA), acting as independent qualified fiduciary on behalf of the Master Trust (the I/F), has negotiated, reviewed, and approved the transactions, and has determined that the transactions were feasible, in the interest of, and protective of the participants and beneficiaries of the Plans invested in the Master Trust, as of the effective date of this exemption;

(e) MKRA at the time of its appointment was unrelated to LSI, RMC, and any other parties involved in the Lease and will at all times remain independent of such parties;

(f) The provisions of the amendment to the Lease, executed in December 1992 (the First Amendment) become effective on the date that the grant of this exemption is published in the **Federal Register**;

(g) The terms of the Lease, as modified by the First Amendment, are at least as favorable to the Master Trust, the Plans, and their participants and beneficiaries, as those which could have been obtained by the Master Trust in an arm's length negotiation with an unrelated third party under similar circumstances;

(h) From September 10, 1990, to June 1, 1993, the Northern Trust Company (the Trustee), an independent party with respect to LSI, RMC, and their affiliates, managed the Property on behalf of the Master Trust and monitored and enforced the terms of the Lease;

(i) From June 1, 1993, MKRA managed the Property on behalf of the Master Trust and monitored and enforced the terms of the Lease, and MKRA or its successors, will act as I/F with respect to the Property and will monitor and enforce the provisions of the Lease as long as such Property is leased to a party in interest;

(j) MKRA or its successors will monitor the fair market value of the Master Trust in order to insure that the fair market value of the Property will at no time exceed twenty percent (20%) of the total fair market value of the assets of the Master Trust;

(k) LSI has either paid directly or reimbursed the Master Trust for any fees, other than trustee and investment management fees, incurred in connection with the transactions with respect to the ownership of the Property by the Master Trust, and in the future, the Master Trust will incur no fees in connection with the transactions, other than fees paid to the trustee and to the investment manager; and

(l) LSI has filed Forms 5330 and paid the excise taxes with respect to the Lease of the Property for years 1987–1989 and, LSI, not later than sixty (60) days after the date the grant of this exemption is published in the **Federal Register**, will file Forms 5330 and will pay the excise taxes for the period after December 31, 1989, and before the effective date of this exemption.

EFFECTIVE DATE: This exemption will be effective as of September 10, 1990.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and any requests for a hearing on the proposed exemption within forty-five (45) days from the date of the publication of the Notice in the **Federal Register**. All written comments and requests for a hearing were to have been received by the Department by April 22, 1994.

As of the close of the comment period, the Department had received eight (8) letters from interested persons commenting on the proposed exemption in addition to comment letters from the applicant. In this regard, the Department forwarded copies of the commentators' letters to the applicant and requested that the applicant address in writing the concerns raised.

In a letter dated May 4 1994, the applicant responded to the commentators, as requested by the Department. In this regard, the applicant stated that in general the concerns of the commentators did not identify any factual issues or express any direct objection to the exemption. The comments from the commentators on the proposed exemption were summarized by the applicant as follows: (1) Some of the comment letters were generally opposed to anything that would adversely affect their pension; (2) others of the comment letters expressed general concerns regarding the effect of the exemption on pension benefits; and (3) one comment letter supported the exemption.

In the opinion of the applicant the one favorable comment letter would appear to need no response. In response to the adverse comment letters, the applicant notes that the granting of the exemption in and of itself does not affect the security of pensions payable from the Plans participating in the Master Trust. In this regard, the applicant maintains: (1) That the granting of the exemption does not reduce the obligation to pay benefits of any of the Plans participating in the Master Trust; (2) that the exemption does not affect the duty of the sponsoring employer to comply with the funding requirements of applicable law; (3) that the I/F has determined that the terms of the agreement reached with LSI result in an overall transaction that is equal to or superior to transactions that could be negotiated with unrelated third parties; (4) that the terms of the agreement provide for LSI to pay $6 million to the Master Trust; (5) that based on the terms agreed to and the receipt of the $6 million dollar payment, the I/F has determined that the Master Trust is assured an internal rate of return in excess of 11% on the Property; and (6) that the terms of the agreement provide the Master Trust with significant opportunity to obtain an advantageous investment return with very little downside risk. Based on these considerations, the applicant maintains that no adverse effect on pension benefits payable by the Plans participating in the Master Trust should occur if the exemption is granted.

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Two of the commentators requested that the Department schedule a hearing on the matter, in accordance section 29 CFR 2570.46 of the Department's regulations which provides that the Department in its discretion may convene a hearing if requested by any interested persons who may be adversely affected by the exemption and where such exemption proposes to grant relief from section 406(b) of the Act. In response to this request for a hearing, the applicant points out that the commentators do not object to any specific issue in connection with the grant of the exemption, but expresses only general concern for how the exemption might affect health insurance, life insurance, and monthly pension benefits.

The Department's regulations regarding the right to a hearing state that a request for hearing must include "a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. Further, the regulations state that the Department will grant a request for hearing "where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing" or may decline to hold a hearing "where the factual issues identified can be fully explored through the submission of evidence in written form." The Department has concluded that the issues identified by the commentators, who requested a hearing, have been full explored in the case record including the material submitted by the applicant in response to the comments. Accordingly, the Department has determined not to hold a public hearing.

In addition to the above comments and request for a hearing received from interested persons, the applicant informed the Department in submissions dated April 8, 1994, and April 22, 1994, of certain factual changes to the information contained in the application and technical clarifications to the language of the Notice. The following items represents a summary of the comments submitted to the Department by the applicant subsequent to the publication of the Notice:

(1) LSI informed the Department that the Bankruptcy Court had entered an order on March 31, 1994, that approved the $6 million dollar payment by LSI to the Master Trust. Subsequently, the Department was informed that on April 14, 1994, LSI emerged from bankruptcy protection and that in connection with such emergence, LSI made the $6 million payment to the Master Trust that is a condition, as set forth in Section II(c), of this exemption. In this regard, such condition provides that LSI pay "* * * the $6,000,000 in a single lump-sum payment in cash to the Master Trust, not later than sixty (60) days following the later of (1) the date of the order of the Bankruptcy Court approving the payment, or (2) the date the grant of this exemption is published in the **Federal Register**." In the opinion of LSI, since the condition of the exemption states that the payment be made no later than a specified date, that LSI's payment of the $6 million dollars before the publication of the final exemption complies with the condition for grant of the exemption. The Department agrees with the position as expressed by LSI;

(2) LSI commented on the language concerning the condition of the exemption, as set forth in Section II(g), which states that "the terms of the Lease, as modified by the First Amendment, are at least as favorable to the Master Trust, the Plans, and their participants and beneficiaries, as those which could have been obtained by the Master Trust in an arm's length negotiations with an unrelated third party under similar circumstances." With respect to the language in this sentence from Section II(g), the Department wishes to correct a typographical error in that the word, "negotiations," written in the plural should read "negotiation," in the singular. Accordingly, the Department has made this change in the language of Section II(g) in the granted exemption.

Further in the language quoted in the paragraph above from Section II(g), LSI points out that the I/F's opinion regarding the transaction, including the Lease of the Property, is that the overall transaction, taking into account all of its provisions including the $6 million dollar payment, is equal to or superior to transactions that could be negotiated with unrelated third parties. To the extent the inclusion of the language in Section II(g) referring to "under similar circumstances" is intended to include the other term of the overall transaction, LSI states that the condition is accurate as it relates to opinions provided by the I/F. The Department concurs with LSI's position;

(3) LSI requested modification of the language in Section II(k) which provides, in part that, "LSI has either paid directly or reimbursed the Master Trust for any fees, other than trustee and investment management fees, incurred with respect to the ownership of the Property by the Master Trust." In the opinion of LSI the quoted language in the sentence above implies that the Master Trust has paid no fees in connection with ownership of the Property other than trustee or investment manager fees. LSI believes that this language is over broad, because it is not limited to those fees incurred in connection with the transactions. For this reason, LSI suggests adding after the word, "incurred," the phrase, "in connection with the transactions." The Department has no objection to LSI's proposed modification, and accordingly, has amended the language of Section II(k);

(4) LSI proposes clarification of the language of Section II(l) which states that "LSI has filed Forms 5330 and paid the excise taxes with respect to the Lease of the Property for the years 1987–1989 and will file Forms 5330 and pay the excise taxes for the period after December 31, 1989, and before the effective date of this exemption." Because the effective date of this exemption is September 10, 1990, LSI believes that this provision should be revised to clarify that the excise taxes for the period after December 31, 1989, must be paid within sixty (60) days of the date the grant of this exemption is published in the **Federal Register**. For this reason, LSI suggests adding before the words, "will file," the phrase, "LSI not later than sixty (60) days after the date the grant of this exemption is published in the **Federal Register**." The Department has no objection to LSI's proposed modification, and accordingly, has amended the language of Section II(l);

(5) LSI requests modification of the language in the third sentence of paragraph number one in the Summary of Facts and Representations in the Notice which states that, "In addition, LSI is a major source of ready-mixed concrete and precast concrete products and is a leading importer of cement and clinker." In this regard, LSI has brought to the Department's attention a more current description of LSI's business. Accordingly, LSI requests that the sentence be amended to read "In addition, LSI is a leading producer of cement, ready-mixed concrete, sand and gravel, crushed stone, and construction materials." The Department has made the requested change to the description of LSI; and

(6) LSI requests modification of the representation in the fourth sentence in the fourth full paragraph of paragraph number six of the Summary of Facts and Representations which states that, "It is represented that the royalty payments actually made by RMC have exceeded the minimum guaranteed royalty amounts for the years 1989 through 1992." In this regard, LSI has informed the Department that the date 1992 should be corrected to read 1991. The Department has made this change as requested by LSI.

As the Department concurs with the requested the modifications and clarifications to the language of the proposed exemption, such changes are hereby incorporated into the exemption, as granted. Accordingly, after giving full consideration to the record, including the comments by interested persons and the responses of the applicant, the Department has determined to grant the exemption, as described herein. In this regard, the comments submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, room N–5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on March 8, 1994, 59 FR 10832.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc, of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Motors Hourly-Rate Employees Pension Plan; General Motors Retirement Program for Salaried Employees; Saturn Individual Retirement Plan for Represented Team Members; and Saturn Personal Choices Retirement Plan for Non-Represented Team Members (Collectively, the Plans) Located in New York, New York

[Prohibited Transaction Exemption 94–45; Application Nos. D–8402 and D–8405]

Exemption

Section I—Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the following transactions if the conditions set forth in Section II below are met:

(a) The acquisition or sale of a net profits interest (NPI), a royalty interest (Royalty), or a production payment contract (Production Payment), in oil and gas properties (the Properties) between the Plans and oil and gas companies or their affiliates that are parties in interest with respect to the Plans (collectively, the Companies);

(b) Any loan by the Plans to the Companies where such loans are secured by interests in the Properties, including loans with conversion rights to acquire a NPI, Royalty, or Production Payment in the Properties;

(c) The acquisition or sale between the Plans and the Companies of any stock or debt securities which are convertible into such stock, issued by the Companies (Company Securities); and

(d) The acquisition or sale between the Plans and the Companies of any interests in certain limited partnerships which invest in such Properties where the Company is a general partner and/or operating owner for the Properties (Company Partnership Interest), or interests in certain joint ventures which invest in such Properties where the Company is a joint venturer and/or operating owner for the Properties (Company Venture Interest).

Section II—Conditions

(a) A "qualified oil and gas investment manager" (as defined below) fully reviews each transaction before recommending the transaction to the Pension Investment Committee of General Motors Corporation (the PIC) or, as of December 1, 1992, to the General Motors Investment Management Corporation (GMIMCo), fiduciaries of the Plans. The decision to enter into the transaction is made by the PIC or GMIMCo, which retains final approval authority over the transaction. The "qualified oil and gas investment manager" negotiates the transaction and manages the oil and gas investments for the Plans, in its capacity as a fiduciary for the Plans, and monitors all transactions on behalf of the Plans in order to take any appropriate action necessary to safeguard the interests of the Plans.

(b) The Companies and their affiliates are independent of and unrelated to:

(i) The General Motors Corporation (GMC);

(ii) Any person directly or indirectly controlling, controlled by, or under common control with GMC;

(iii) Any officer or director of GMC or any of its subsidiaries or affiliated companies;

(iv) Any partnership in which GMC is a 10 percent or more (directly or indirectly in capital or profits) partner; and

(v) Any "qualified oil and gas investment manager" which acts for the Plans with respect to an oil and gas transaction covered by the exemption, or any other person who exercises discretionary authority, responsibility or control or who provides investment advice for the investment of the Plans' assets involved in oil and gas transactions.

(c) In any transaction where the Plans acquire a NPI, Royalty, Production Payment, Company Security, Company Partnership Interest, or Company Venture Interest from the Companies, the Plans pay a purchase price which is no greater than the fair market value of such interests or securities based on an appraisal developed by the Plans' fiduciaries or an independent, qualified appraiser selected by the Plans' fiduciaries.

(d) In any transaction where the Plans sell a NPI, Royalty, Production Payment, Company Security, Company Partnership Interest, or Company Venture Interest to the Companies, the Plans receive a price which is no less than the fair market value of such interests or securities based on an appraisal developed by the Plans' fiduciaries or an independent, qualified appraiser selected by the Plans' fiduciaries.

(e) In instances involving the acquisition of the Properties by a Company from a third party with a simultaneous sale of a NPI, Royalty, or Production Payment by the Company to the Plans, the Plans pay a purchase price which reflects the fair market value of the interest as agreed to by the Plans' fiduciaries in arms-length negotiations directly involving the Plans, the Company, and the third party seller.

(f) In instances involving the sale of a NPI, Royalty, or Production Payment by the Plans to a Company in connection with the Company's simultaneous sale of a WI in the Properties to a third party, the Plans receive a sales price which reflects the fair market value of the interest as agreed to by the Plans' fiduciaries in arm's-length negotiations directly involving the Plans, the Company, and the third party buyer.

(g) In any loan by the Plans to a Company in connection with an oil and gas investment, the Plans obtain terms which include: (1) An interest rate that is commensurate with the prevailing market rate for such loans at the time of the transaction, as determined by the Plans' fiduciaries in accordance with rates quoted by established commercial lenders offering similar loans; and (ii) a security interest in designated oil and gas investment interests in the Properties, which have a fair market value that equals at least 150% of the amount loaned by the Plans throughout the duration of such loan, based on an appraisal of such interests developed by the Plans' fiduciaries or by an

independent, qualified appraiser selected by the Plans' fiduciaries.

(h) All other terms of each such transaction are not less favorable to the Plans than the terms generally available in an arm's-length transaction between unrelated parties.

(i) The amount of each Plan's total assets involved in all transactions with the Companies represents no more than three percent (3%) of such Plan's total assets as of the date of approval of each transaction by the PIC or GMIMCo.

(j) No investment management fee, advisory fee, underwriting fee, brokerage or sales commission, or similar compensation is paid to the Companies by the Plans with regard to the transactions.

(k) GMC maintains for the duration of each transaction and for six years thereafter records necessary to enable persons described below in subsection (1) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of GMC or an affiliate, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest, other than GMC and its affiliates, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by subsection (1) below; and

(l)(1) Except as provided in subsection (1)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in subsection (k) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service, and

(ii) Any participant or beneficiary of the Plans or duly authorized representative of such participant or beneficiary.

(2) None of the persons described in subsection (l)(1)(ii) shall be authorized to examine trade secrets of the Companies or any commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this exemption,

(a) The term "Company" means a publicly or privately owned oil and gas exploration, development and operating company or partnership which is independent of and unrelated to GMC, its affiliates, and various Plan fiduciaries described in Section II(a) above.

(b) The term "affiliate" of a Company means any entity directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Company.

(c) The term "control," for purposes of the above definition, means the power to exercise a controlling influence over the management or policies of an entity.

(d) The term "qualified oil and gas investment manager" means a fiduciary as defined in section 3(21) of the Act which: (i) Is independent of and unrelated to any of the Companies and their affiliates (as defined above); (ii) is a financial institution or business organization that in the normal course of business advises institutional investors regarding oil and gas investments; (iii) acknowledges in writing to the Plans that is will manage specific oil and gas investments on behalf of the Plans, in its capacity as a fiduciary of the Plans, as designated by the PIC or GMIMCo; and (iv) satisfies the definition of "qualified professional asset manager" (QPAM) under Section V(a) of Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984), except for the fact that either the PIC or GMIMCo retains final approval authority for all oil and gas investments recommended by such fiduciary.

(e) The term "Property" or "Properties" means any oil and gas properties such as long-term leasehold interests in oil and gas producing fields and the oil and gas in place on the properties. Such "Property" may include an interest in the oil and gas wells, platforms, wellheads, piping, as well as the gas gathering system or processing facility through which gas produced from the wells is either transported to the gas pipeline for shipment to various end users or treated before delivery to the end users.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 29, 1993 at 58 FR 68958.

EFFECTIVE DATE: The effective date of this exemption is May 8, 1990.

TEMPORARY NATURE OF EXEMPTION: This exemption will be effective for all transactions described herein which have been entered into by the Plans and the Companies since May 8, 1990. However, this exemption will not apply to any transactions which are entered into with the Companies after five years from the date on which this exemption is published in the **Federal Register**.

NOTICE TO INTERESTED PERSONS: The applicant represents that it was unable to notify interested persons within the time period specified in the **Federal Register** notice published on December 29, 1993. The applicant states that all interested persons were notified, in the manner agreed upon between the applicant and the Department, by January 28, 1994. Interested persons were advised that they had until February 28, 1994 to comment on the proposed exemption.

WRITTEN COMMENTS AND MODIFICATIONS: The applicant submitted a comment letter which requests that certain modifications be made to the notice of proposed exemption (the Proposal).

The applicant states that the Plans covered by the exemption should include the Saturn Individual Retirement Plan for Represented Team Members and the Saturn Personal Choices Retirement Plan for Non-Represented Team Members (the Saturn Plans), whose assets are now included in the trusts which hold the assets of the other Plans sponsored by GMC and its subsidiaries or affiliated companies. The applicant has confirmed that the participants of the Saturn Plans received notice of the proposed exemption in the same manner and during the same time period as the other participants of the Plans. Therefore, the Department has modified the Proposal to include such Plans.

With respect to the Summary of Facts and Representations in the Proposal (the Summary), the applicant wishes to add the following additional information for purposes of clarification:

First, Paragraph 1of the Summary should state that Mellon Bank, N.A. (Mellon), in addition to Bankers Trust Company, is a trustee of the Plans. However, Mellon does not have any discretionary authority over the investment management of the assets held in the Plans relating to the subject transactions.

Second, Paragraph 6 of the Summary should be clarified to reflect the following:

(a) The Company may receive additional compensation, in the form of operating fees, if the Company operates some or all of the Properties pursuant to agreements with the Plans which allow the Company to operate the Properties (Operating Agreements). In addition, a conveyance of a NPI (the Conveyance) may allow the Company to recoup certain general or administrative expenses incurred by the Company as WI owner of the Properties. Such operating fees or expenses are disclosed in detail in the Operating Agreement and the Conveyance, respectively, and are not subject to arbitrary changes by the Company. The applicant states that increases in any operating fees generally involve expenses related to the operation of a Property and are not related to any element of operation within the Company's control, such as the ability to increase the level of production on a Property. The nature and extent of any operating fees under an Operating Agreement, and any general or administrative expenses under a Conveyance, will be reviewed, approved and monitored by the 'qualified oil and gas investment manager" acting for the Plans.[2]

(b) The Company's annual report provided to the Plans containing detailed information on the Company's activities with respect to the Properties during the preceding year is not "audited" by the "qualified oil and gas investment manager" each year, but is "audited" at intervals recommended by the investment manager and authorized by GMIMCo. However, the "qualified oil and gas investment manager" will review the information throughout the year for problems or mistakes which will be corrected by the Company.

Paragraph 10 of the Summary should be clarified to reflect the fact that, as previously noted, the Company may receive additional compensation for operating the Properties in the form of operating fees pursuant to an Operating Agreement and may recoup certain general or administrative expenses as permitted by the Conveyance.

Paragraph 12 of the Summary should be clarified to reflect the fact that GMIMCo has appointed other "qualified oil and gas investment managers" for the Plans, in addition to RPI Institutional Services, Inc., and such managers have met all the requirements of Section III(d) of the Proposal.

Paragraph 14 of the Summary should be clarified to reflect the correct NPI sharing percentages of the May 8, 1990 NPI transaction with Callon Offshore Production Inc. (Callon). The applicant states that although the Plans did in fact pay 98% of the $28 million purchase price, the Plans received a 98% NPI in the Properties which will continue until the Plans recoup their entire share of the purchase price. After the Plans receive their entire investment in the NPI acquisition, there will be a reversion to an 88% NPI for the Plans at that point in time. The applicant believes that this clarification is important because the Plans will receive all of their investment in the Properties before Callon is able to collect from its additional NPI percentage.

The Department also received eleven comment letters from participants in the Plans regarding the Proposal. Two of the commenters were opposed to the granting of the exemption. One of these commenters was concerned that the oil and gas transactions are risky investments for the Plans and that any appraisal of such assets by the Plans may be overvalued. The other commenter stated that he was opposed to the exemption because GMC may either knowingly or unknowingly exercise a controlling influence over various oil and gas suppliers when it buys oil and gas to meet its own energy needs and that such influence may be to the detriment of the Plans' oil and gas investments. This commenter also stated that GMC's oil and gas purchasing power could be used to affect certain local markets. Many of the Commenters stated that they supported the granting of the exemption, but only if GMC offers an "early retirement package" to all salaried employees, regardless of job classification, that meet certain age and service criteria. Some of these commenters noted that notices regarding the Proposal were posted late and that interested persons were not given enough time to reply.

By letter dated March 18, 1994, the applicant responded to these comments.

First, with respect to the comment that oil and gas transactions are risky investments for the Plans and that appraisals of such assets may be overvalued; the applicant states that the subject transactions under the terms and conditions described in the Proposal are in the best interests of the Plans and their participants and beneficiaries. The applicant represents that oil and gas investments can be reasonable and appropriate for a large pension plan, such as the Plans, and that the subject transactions have been and will continue to be carefully monitored by GMIMCo. The oil and gas transactions by the Plans under the requested exemption will represent only a small percentage of each Plan's total assets (see Section II(i) above) and the existing investments have yielded the Plans a high rate of return (see Paragraph 11 of the Summary). The applicant states that any activity by GMIMCo or the "qualified oil and gas investment manager" acting for the Plans that is outside the scope of activity described to the Department in the Proposal, including any methods for overvaluing the fair market value of proposed or existing oil and gas assets of the Plans, would be a breach of fiduciary duty in violation of the Act. In addition, such activity would be outside the scope of the conditions of the Proposal and would not be subject to the prohibited transaction relief which would be afforded by the exemption.

Second, regarding the comment that GMC may exercise a controlling influence over various oil and gas suppliers when GMC buys oil and gas to meet its own energy needs and that such influence may be to the detriment of the Plans' oil and gas investments, the applicant states that the comment is without merit and is inconsistent with the facts and representations contained in the Proposal. The applicant maintains that GMC has a de minimus involvement with any oil and gas suppliers when acquiring oil and gas to run its own operations. With respect to GMC's relationship to any such suppliers in the subject oil and gas transactions by the Plans, the applicant states that the definition of "Company" in Section III(a) of the Proposal excludes any operating company or partnership which is related to GMC or its affiliates. In addition, the oil and gas investments covered by the Proposal involve the Plans' in a passive investment role, with very limited control over the actual sale or distribution of oil and gas obtained from the Properties.

Third, with respect to whether notification of interested persons was adequate and timely, the applicant states that all notices, together with copies of the Proposal as published in the **Federal Register** on December 29, 1993, were posted and distributed by GMC in all primary business locations on or prior to January 28, 1994. In addition, each of the appropriate unions received copies of the notices and the Proposal. These notices, a copy of which has been submitted to the Department by the applicant, informed interested persons of their right to comment on the Proposal in writing to the Department on or before February 28, 1994. An authorized representative of GMC has provided the Department with a declaration under penalty of perjury attesting to the truth of the information regarding GMC's notice to interested persons as required by the Department's regulations (see 29 CFR 2570.43). Thus, the applicant represents that GMC has complied with the Department's exemption procedures regarding notification of interested

[2] The applicant states that any fees or expenses received by a Company for operation of a Property in connection with a NPI owned by the Plans will meet section 408(b)(2) of the Act. However, the Department is providing no opinion as to whether payment of any fees or expenses to a Company under the circumstances described herein would meet section 408(b)(2) of the Act and the regulations thereunder (see 29 CFR 2550.408b–2).

persons in the manner agreed to between the applicant and the Department.

Fourth, with respect to comments which linked the Proposal to GMC providing an early retirement benefits package to its employees, the applicant states that matters concerning the eligibility of Plan participants to certain benefits are totally unrelated to the Proposal. Since the Proposal only involves investing assets of the Plans in specific oil and gas investments and has nothing to do with any early retirement benefits for GMC employees, the applicant requests that the Department not link the granting of an exemption to any requirement that GMC provide early retirement benefits for its employees.

The Department agrees with the applicant that the merits of granting an exemption for the subject oil and gas investments by the Plans should be judged independent of any decisions by GMC regarding the eligibility of participants to certain benefits under the terms of the Plans. In addition, the Department believes that the applicant has adequately addressed all of the issues raised by the commenters and that the subject oil and gas transactions, under the terms and conditions described herein, are in the interests and protective of the Plans and their participants and beneficiaries.

Accordingly, after consideration of the entire record, the Department has determined to grant the exemption as modified.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department at (202) 219–8194. (This is not a toll-free number.)

Alberici Companies Retirement Plan (the Plan) Located in St. Louis, Missouri

[Prohibited Transaction Exemption 94–46; Application No. D–9633]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale (the Sale) by the Plan of Group Annuity Policy No. GA–3363 (the GAP) issued by the New England Life Insurance Company (New England Life) to Alberici Corporation, the Plan sponsor and a party in interest with respect to the Plan; provided that the following conditions are satisfied: (1) The Sale is a one-time transaction for cash; (2) the Plan receives no less than the fair market value of the GAP at the time of the Sale or, the cost of the GAP to the Plan, whichever is greater; (3) the Plan does not suffer any loss nor incur any expenses in connection with the transaction; and (4) the Trustees of the Plan have determined that the proposed transaction is appropriate for and in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 22, 1994 at 59 FR 19254.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Laney & Duke Terminal Warehouse Co., Inc. Profit Sharing Plan and Trust (the Plan) Located in Jacksonville, Florida

[Prohibited Transaction Exemption 94–48; Exemption Application No. D–9552]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of two adjacent commercial buildings (collectively; the Buildings) by the Plan to Laney & Duke Terminal Warehouse Co. Inc. (the Employer), the Plan sponsor and a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(1) The Plan will receive the greater of: (1) $1,958,000, representing the Plan's total investment in the Buildings; or (2) the aggregate fair market value of the Buildings as determined at the time of the sale by an independent, qualified appraiser;

(2) The sale will be a one-time transaction; and

(3) The Plan will pay no costs or commissions as a result of this transaction.

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 22, 1994 at 59 FR 19252/19253.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Atlanta Consulting Group, Inc. Retirement Plan (the Plan) Located in Atlanta, Georgia

[Prohibited Transaction Exemption 94–49 Exemption Application No. D–9638]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of certain shares of stock (the Stock) from the Plan to Atlanta Consulting Group, Inc., a party in interest with respect to the Plan.

This exemption is conditioned upon the following requirements: (1) All terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's-length transaction; (2) the Sale is a one-time cash transaction; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; and (4) the Plan receives a sales price equal to the greater of: (a) The fair market value of the Stock on the date of the Sale; or (b) the Stock's original acquisition price of $25,000.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on April 22, 1994 at 59 FR 19260.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/

or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately described all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 7th day of June 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–14169 Filed 6–9–94; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–9681, et al.]

Proposed Exemptions; NatWest Securities Corporation, Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

NatWest Securities Corporation, Inc. (NatWest) Located in New York, New York

[Application No. D–9681]

Proposed Exemption

I. Transactions

A. Effective December 22, 1993, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective December 22, 1993, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

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[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

(i) The plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective December 22, 1993, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective December 22, 1993, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, placement agent, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) A certificate

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust; with respect to certificates defined in (1) and (2) for which NatWest or any of its affiliates which is subject to the jurisdiction of the United States courts is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent. For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust in the United States and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (1) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) NatWest;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with NatWest; or

(3) Any member of an underwriting syndicate or selling group of which NatWest or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services receivables contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services receivables contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, *obligor* shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase of sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

EFFECTIVE DATE: This exemption, if granted, will be effective for transactions occurring on or after December 22, 1993.

Summary of Facts and Representations

1. NatWest is a corporation incorporated under the laws of the State of New York on March 28, 1986. NatWest, together with its affiliate NatWest International Securities, Inc. (NatWest International) is a broker-dealer registered as such under the Securities and Exchange Act of 1934, as amended. NatWest is an indirect wholly-owned subsidiary of National Westminster Bank Plc (NatWest Plc U.K.), an English banking institution. NatWest Plc U.K. operates in the United States through NatWest Bank Plc, N.Y. Branch (NatWest Bank Plc), which is a New York State licensed branch of NatWest Plc U.K. It derives its basic powers from the New York Banking law and is subject to the supervision of the New York Banking Department.

NatWest Capital Markets Ltd. (NatWest Capital) and NatWest Securities Ltd. (NatWest Securities) are registered and authorized as broker-dealers in the United Kingdom. NatWest Plc U.K., through its various affiliates, maintains a long-standing investment banking presence in key financial centers around the world, and is active on a global basis in dealing, making markets and distribution of a broad range of debt and equity securities of both governmental and private issuers, and has capabilities worldwide in corporate finance, financial advisory, foreign exchange transactions and asset securitization.

NatWest Plc U.K., NatWest Bank Plc, and their non-U.S. affiliates are active in structuring asset securitization transactions, both within the U.S. and overseas, which can involve facilitating or providing credit enhancement or placement agent services, in connection with the issuance and placement of asset-backed instruments in the form of medium-term notes, commercial paper or bank syndicated loans.

The U.K.-based NatWest affiliates have participated outside the U.S. in the underwriting or placement of mortgage-backed securities relating to U.K. mortgage loans.

Within the U.S., the underwriting and distribution activities of the NatWest affiliates have been limited to acting in a pure brokerage capacity for its U.S. institutional client base, and (through NatWest Bank Plc) acting as placement agent. NatWest Bank Plc is authorized under section 200 of the New York Banking to act as placement agent with respect to mortgage-backed and asset-backed securities (as well as other debt and equity securities). With respect to mortgage-backed or asset-backed securities transactions, NatWest Bank Plc acted on December 22, 1993, as the placement agent of certain privately placed mortgage-backed pass-through certificates for SWP Mortgage Securities Trust 1993–A, the assets of which consisted of multifamily apartment building mortgage loans sold by SWP Depositor, Inc. to the trust. NatWest requests that the exemption proposed herein apply to any and all transactions relating to the sale, holding and transfer of the pass-through certificates issued by that trust and the operation of that trust, including the servicing of its assets.

With respect to distributions or placements within the U.S., NatWest Capital and NatWest Securities may act as placement agent or underwriter (through the U.S.-based NatWest affiliates acting in an agency capacity or as brokers) with respect to mortgage-backed and asset-backed securities (as well as other debt and equity securities), consistent with the Federal Reserve Board's Regulation K (12 CFR section 211) and relevant U.S. securities laws and regulations. NatWest and/or NatWest International may in the future be making application to the Federal Reserve Board for authority (Section 20 Authority) and bank regulatory approval to act as placement agent and to underwrite and deal in mortgage-backed and asset-backed securities (as well as other debt and equity securities) under Section 20 of the Glass-Steagall Act (12 U.S.C. at 377). In the event that NatWest and/or NatWest International make such application to the Federal Reserve Board and receive Section 20 Authority, NatWest requests that the exemption proposed herein apply to the private placement and underwriting activities of NatWest and/or NatWest International.[4]

NatWest represents that any of its affiliates which acts as underwriter or placement agent with respect to a transaction for which the exemption proposed herein would be relied on will be subject to the jurisdiction of the United States courts (either because it is a U.S. entity, or, in the event that a foreign affiliate acts as underwriter or placement agent with respect to any such transaction, because the foreign

[4] As described herein, the term "NatWest" refers to NatWest and its affiliates unless the context otherwise requires.

affiliate will consent to personal jurisdiction in the U.S. courts. NatWest represents that in the event a foreign affiliate of NatWest acts as underwriter or placement agent, any sales of certificates to a plan will be effected through a U.S. entity (including NatWest or an affiliate) acting as an agent or broker. Further, NatWest represents that all sales of certificates that are effected in reliance on the exemption proposed herein will comply with applicable federal and state law.

Trust Assets

2. NatWest seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts;[5] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[6]

3. Commercial mortgage investment trusts may include mortgages on ground leases or real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[7]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated, in the ordinary course of business, by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. NatWest, or one or more broker-dealers (which may include NatWest), acts (or may act in the future) as underwriter or placement agent with respect to the sale of the certificates. In addition, NatWest anticipates privately placing certificates on both a firm commitment and an agency basis.

Certificateholders are entitled to receive monthly, quarterly or semi-annually installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. In no event will the period of time between the receipt of funds by the servicer and deposit of these funds in a segregated account exceed 45 days. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. NatWest requests exemptive relief for two types of multi-class certificates: "Strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[8]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing certificates be subordinated to the rights of another

[5] The Department notes that Prohibited Transaction Exemption (PTE) 83–1 (48 FR 895, January 7, 1983) a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. NatWest and its affiliates request relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, NatWest and its affiliates have stated that they may still avail themselves of the exemptive relief provided by PTE 83–1.

[6] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Governmental National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[7] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990) at 23150.

[8] It is the Department's understanding that where a plan invests in REMIC "residential" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirements of section 404(a)91)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders will share in the amount distributed on pro rata basis.[9]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies, for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) A special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to NatWest, the trust sponsor or the servicer. NatWest represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the sponsor or servicer. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retrained by the originator, the sold receivables are flagged as having been sold. To protect the investors' interest, the servicer ordinarily covenants that this "sold flag" will be included in all records relating to the sold receivables, including the master file, archives, tape extracts, and printouts.

The sold flags are invisible to the obligor, and do not affect the manner in which the servicer performs the billing, posting and collection procedures relating to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to the investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* will be registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment or agency basis. Private placements of certificates may be made on a firm commitment or agency basis.

It is anticipated that the lead or co-managing underwriter will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to NatWest. In other cases, however, NatWest (directly or through one or more of its U.S. banking affiliates) may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor will purchase the receivables at fair market value from originator or a finance company pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases,

[9] If a trust issue subordinate certificates, holders of such subordinate certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives cash, or certificates representing the entire beneficial interest in the trust. The sponsor sells some or all of these certificates for cash to investors or securities underwriters.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[10] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon rate, together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting as sponsor) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer, typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid in a lump sum at the time the trust is established, or out of the interest income received on the receivables in excess of the pass-through rate.

14. The servicer may be entitled to retain certain administrative fees paid by a third party usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a data specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a fir commitment underwriting this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payment, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently the pooling and servicing agreement generally provides that the servicer may purchase the receivables included in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually between 5 and 10 percent) of the initial balance.

The repurchase price for such an option is set at a level such that the certificateholders will receive the full amount on all of the receivables held by the trust plus the accrued interest at the pass-through rate plus the full amount of property, if any, that has been required by the trust through collections on or liquidations of the receivables.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as overcollateralization, surety bonds, letter of credit or guarantees) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e., act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be itself) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. In some

[10] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments, into "principal" and "interest" components based on an implicit interest rate.

transactions, the master servicer may not be obligated to advance funds, but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from the future payment stream. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover defaulted payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly, or semi-annually as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee;

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the master servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect. The protection provided by a floor dollar amount to the credit support applies particularly where the master servicer and the insurer are affiliated or are the same entity. (An entity should not be considered as insurer solely because it holds subordinated certificates.)

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' and/or placement agent's plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount

and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

24. NatWest represents that, to date, it has not entered into any forward delivery commitments in connection with the offering of pass-through certificates. However, NatWest states that it may contemplate entering into such commitments. NatWest notes that the utility of forward delivery commitments has been recognized with respect to the offering of similar certificates backed by pools of residential mortgages. As such, NatWest states that it may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

25. NatWest, to the extent it obtains Section 20 Authority (see rep. 1, above) would normally attempt to make a market for securities for which it is lead or co-managing underwriter in the future. It is also NatWest's general policy to facilitate sales by investors who have purchased certificates if NatWest has acted as placement agent in the original placement of the certificates and if such investors request NatWest's assistance. Such policy is in effect for the transaction entered into on December 22, 1993, as to which NatWest Bank Plc acted as placement agent.

Retroactive Relief

26. NatWest represents that it has engaged in one transaction related to mortgage-backed and asset-backed securities (see rep 1, above), based on the assumption that retroactive relief would not be granted. NatWest represents that the transaction was entered into in conformance with the exception contained in the Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101) which applies where equity participation by benefit plan investors is not "significant". However, it is difficult to monitor whether the percentage interest of plans in a trust is at all times not "significant" for purposes of that regulation. Accordingly, relief is requested for transactions which have occurred on or after December 22, 1993.

Summary

27. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which NatWest seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) NatWest anticipates that it will make a secondary market in certificates with respect to which it acts as an underwriter in the future.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 (46 FR 7520, January 23, 1981), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 (48 FR 895, January 7, 1983).

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406 (a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the

mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificate holders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Rating of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[11]

[11] In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durable secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

III. Limited Section 406(b) and Section 407(a) Relief for Sales

NatWest represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter and/or placement agent of certificates may be a pre-existing party in interest with respect to an investing plan.[12] In these cases, a direct or indirect sale or certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[13] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, NatWest represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter and/or placement agent of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. NatWest represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, NatWest represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

[12] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which NatWest or any of its affiliates is either: (a) The sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

[13] The applicant represents that where a trust sponsor is an affiliate of NatWest, sales to plans by the sponsor may be exempt under PTE 75–1, part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if NatWest is not a fiduciary with respect to plan assets to be invested in certificates.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new

exemption may be made to the Department.

Signed at Washington, DC, this 7th day of June, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–14170 Filed 6–9–94; 8:45 am]

BILLING CODE 4510–29–M

LEGAL SERVICES CORPORATION

Grant Award for Legal Service State Support Center in the District of Columbia and the Virgin Islands

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grants.

SUMMARY: The Legal Services Corporation hereby announces its intention to award one-time, nonrecurring grants to the Neighborhood Legal Services Program of the District of Columbia and Legal Services of the Virgin Islands, Inc. for the purpose of planning for the establishment of a support program for their respective jurisdictions. The Corporation plans to award grants in the amount of $20,000 to each.

These one-time grants will be awarded pursuant to authority conferred by section 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this 30-day period.

DATES: All comments and recommendations must be received by 5 p.m. on or before July 10, 1994.

ADDRESSES: Comments should be sent to the Office of Program Services, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Office of Program Services, (202) 336–8825.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national organization charged with administering federal funds provided for civil legal service to the poor. Both programs are recipients of LSC funding for providing direct legal services to their service area. The amount of the 1994 support grants is consistent with the 1994 LSC Appropriations Act.

Dated: June 6, 1994.

John A. Tull,

Director, Office of Program Services.

[FR Doc. 94–14162 Filed 6–9–94; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

May 31, 1994.

The National Credit Union Administration submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Office of Administration, room 5107, 1775 Duke Street, Alexandria, VA 22314–3428.

National Credit Union Administration

OMB Number: 3133–0015.

Form Number: NCUA 4000, 4001, 4008, 4012, 4015, 4016, 9500, 9600 and 4401.

Type of Review: Review of revised collection.

Title: Federal Credit Union Charter Application and Field of Membership Amendments.

Description: Groups interested in establishing a federal credit union must submit an application to NCUA. This collection provides information regarding federal credit unions, procedures for organizing a federal credit union, and information requirements. Also, this collection provides guidance to existing credit unions for amending their field of membership.

Respondents: Federal credit unions and groups organizing a federal credit union.

Estimated Number of Respondents: 5,725.

Estimated Burden Hours per Response: 3.6 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 20,303 hours.

Clearance Officer: Wilmer A. Theard (703) 518–6410, National Credit Union Administration, room 5107, 1775 Duke Street, Alexandria, VA 22314–3428.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,

Secretary of the NCUA Board.

[FR Doc. 94–14107 Filed 6–9–94; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL ENDOWMENT FOR THE ARTS

Expansion Arts Advisory Panel, Panel Meeting Cancellation; Amended Notice of Meeting

ACTION: Notice of correction to **Federal Register** Notice regarding the Overview Section of the Expansion Arts Advisory Panel to the National Council on the Arts.

SUMMARY: This notice to announce the cancellation of the above panel meeting previously scheduled to meet on June 16, 1994 and published in **Federal Register** 59 FR 28567 on June 2, 1994.

EXPLANATION: Current new guidelines cover a two-year period, therefore there will be no opportunity for field input this session. Additionally, the Expansion Arts Program has no significant field data, new initiatives, or personnel action to report. Cancellation is deemed both prudent and cost-saving at this time.

Dated: June 6, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for Arts.

[FR Doc. 94–14093 Filed 6–9–94; 8:45 am]

BILLING CODE 14093–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Theater Advisory Panel; Panel Meeting Postponement

ACTION: Notice of correction to **Federal Register** Notice regarding the Overview Section of the Theater Advisory Panel to the national Council on the Arts.

SUMMARY: This notice is to announce the postponement of the above panel meeting previously scheduled to meet on June 13–14, 1994 and published in the **Federal Register** 59 FR 27586 on May 27, 1994.

EXPLANATION: The Theater Program is entering a period of extensive research, analysis and planning. This meeting has been postponed until the program is farther along in the planning process.

Dated: June 7, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–14278 Filed 6–9–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–19747 License No. 52–21082–01 IA 94–013]

In the Matter of Guillermo Velasquez, M.D. San Juan, PR

Confirmatory Order

I

Guillermo Velasquez, M.D. (Licensee) is the holder of expired Byproduct Materials License No. 52–21082–01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 35 on September 3, 1982. The license authorized the use of strontium-90 for ophthalmic radiotherapy in accordance with the conditions specified therein. The license was renewed in its entirety on August 21, 1987, and expired on August 31, 1992. The byproduct material remained in the possession of the Licensee until it was transferred to an authorized recipient on January 7, 1994 pursuant to an NRC Order to Transfer Byproduct Material to an Authorized Recipient (Effective Immediately) and Demand for Information issued July 21, 1993.

II

The Licensee did not submit an application for renewal of the license prior to its expiration, as required by 10 CFR 30.37, nor did the Licensee notify the Commission in writing, pursuant to 10 CFR 30.36, of a decision not to renew the license. Therefore, on September 11, 1992, NRC Region II issued a Notice of Violation (Notice) to the Licensee for failure to request renewal prior to expiration of the license or to file a notice of non-renewal or transfer of the byproduct material. The letter forwarding the Notice directed the Licensee to place the strontium-90 in storage and to discontinue use of the material until he obtained a new NRC license. In the alternative, the Licensee was directed to transfer the material to an authorized recipient if adequate storage was not available, or to submit an NRC Form 314 to the NRC if the Licensee chose to dispose of the byproduct material. During a December 4, 1992 telephone conversation between a Region II inspector and the Licensee, the Licensee stated that the source was locked in storage and that the Licensee had not used the source. The Licensee responded to the Notice on December 4, 1992, by requesting renewal of the license. Because the Licensee failed to provide the appropriate licensing fee, no action was taken by the NRC to renew the license and the Licensee was notified.

The NRC performed a routine inspection of the Licensee's facility in Rio Piedras, Puerto Rico on February 24, 1993. One purpose of this inspection was to determine the status of the strontium-90 source. The inspection revealed that the Licensee had continued to use the material: (1) After expiration of the license; (2) after receipt of the NRC letter and Notice dated September 11, 1992, which directed the Licensee to place the material in storage and to discontinue use of the material until a new license was obtained; and (3) after the December 4, 1992 telephone conversation with the Region II inspector when the inspector explained that the source could not be used and the Licensee had stated the source was in locked storage and not being used.

In April and May 1993, the NRC Office of Investigations conducted an investigation of the circumstances surrounding the Licensee's apparent use of the source after the license had expired and after receiving notification from the NRC to discontinue use of the material until a new license was obtained. As a result of this investigation, it was determined that on 20 occasions, between October 9, 1992, and February 19, 1993, the Licensee, with the full understanding that use of the source was prohibited, deliberately used the strontium-90 source for patient ophthalmic radiotherapy, in violation of 10 CFR 30.3. In addition, the investigation confirmed that the Licensee deliberately provided false information to the NRC inspector during the December 4, 1992 telephone conversation and during the inspection conducted at the Licensee's facility on February 24, 1993. Specifically, the Licensee told the NRC inspector that the strontium-90 source had not been used for ophthalmic radiotherapy since receipt of the Notice which was issued on September 11, 1992, when in fact the Licensee had used the strontium-90 source at least 20 times between October 9, 1992 and February 19, 1993, which was as recently as five days before the inspection. This deliberate submission of materially false information constitutes violations of 10 CFR 30.9 and 30.10.

III

Based on the NRC inspection and the subsequent investigation, the NRC determined that the Licensee, by continuing to use licensed material after being notified of the expiration of the license which authorized that use and by deliberately providing false information to an NRC inspector, had demonstrated an unwillingness to comply with Commission requirements. The Commission must be able to rely on its licensees to provide complete and accurate information. Willful violations are of particular concern to the Commission because they undermine the Commission's reasonable assurance that licensed activities are being conducted in accordance with NRC requirements. Therefore, on July 21, 1993, the NRC issued an Order to the Licensee requiring the transfer of the strontium-90 source to an authorized recipient within 45 days of the date of the Order. The NRC also issued a Demand for Information with the Order requiring the Licensee to submit a written statement, under oath or affirmation, stating why the NRC should have confidence that in the future the Licensee would comply with NRC requirements or provide complete and accurate information to the NRC.

The Licensee responded to the Order in letters dated September 7 and 13, 1993, and in telephone conversations with the NRC Region II staff on September 10 and 20, 1993. During these communications, the Licensee indicated that he was making a good faith effort to transfer the byproduct material to an authorized recipient. Based on this good faith effort, the NRC by letter dated October 15, 1993, extended the strontium-90 transfer date to December 6, 1993. On January 24, 1994, the Licensee submitted a completed NRC Form 314 notifying the NRC that the strontium-90 source had been transferred to an authorized recipient and provided the documentation required by the Order to demonstrate that the source was tested for leakage prior to the transfer and that the transfer had taken place.

On September 13, 1993, the Licensee responded to the Demand for Information indicating that he did not intend to perform licensed activities or to use the strontium-90 source in his possession, or one in anyone else's possession. Further, in a telephone conversation on June 2, 1994, with Mr. Charles M. Hosey of the NRC Region II office, Dr. Velasquez agreed to the provisions and to the issuance of this Confirmatory Order. I find that the Licensee's commitments as set forth in

that conversation are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments in the telephone call of June 2, 1994 be confirmed by this Order.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 160o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations at 10 CFR 2.202 and 10 CFR parts 30 and 35, it is hereby ordered that:

1. For a period of three years from the date of this Confirmatory Order, Guillermo Velasquez, M.D., shall not supervise or engage in any way in NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. For a period of three years from the date of this Order, Dr. Velasquez shall provide a copy of this Order to any prospective employer who engages in NRC-licensed activities (as defined in 1. above) prior to his acceptance of employment with such prospective employer. The purpose of this requirement is to ensure that the employer is aware of Dr. Velasquez' prohibition from engaging in NRC-licensed activities.

3. The first time Guillermo Velasquez, M.D., is employed in NRC licensed activities following the three year prohibition, he shall notify the Regional Administrator, NRC Region II, 101 Marietta Street, NW., suite 2900, Atlanta, Georgia 30323, prior to engaging in NRC licensed activities including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

The Regional Administrator, NRC Region II, may, in writing, relax or rescind any of the above conditions upon a showing by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of the date of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at same address, and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW., suite 2900, Atlanta, Georgia 30323 and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, the provisions specified in section V above shall be final 20 days from the date of this Order without further order or proceedings.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 3rd day of June 1994.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–14208 Filed 6–9–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of Forms OPM 1496 and OPM 1496A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of two information collections. OPM Forms 1496, Application for Deferred Retirement (Separation before October 1, 1956), and 1496A, Application for Deferred Retirement (Separation on or after October 1, 1956), are used by eligible former Federal employees to apply for a deferred Civil Service annuity. Two forms are needed because there was a major revision in the law effective October 1, 1956; this affects the general information provided with the forms.

Approximately 3,000 deferred retirements are processed annually; 200 of these are submitted on OPM Form 1496 and 2,800 are on OPM Form 1496A. Both forms take approximately 60 minutes to complete. The combined annual burden is 3,000 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication on or about July 11, 1994.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis & Design Section (202) 606–0623.

U.S. Office of Personnel Management

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–14033 Filed 6–9–94; 8:45 am]

BILLING CODE 6325–01–M

Federal Prevailing Rate Advisory Committee Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, July 7, 1994
Thursday, July 21, 1994
Thursday, Aug. 11, 1994
Thursday, Aug. 25, 1994

The meetings will start at 10:45 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: June 2, 1994

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 94–14034 Filed 6–9–94; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34157; File Nos. SR–Amex–92–35, SR–CBOE–93–59, SR–NYSE–94–17, SR–PSE–94–07, and SR–Phlx–94–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes and Amendments Thereto by the American Stock Exchange, Inc., Chicago Board Options Exchange, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc., Relating to Narrow-Based Index Options Listing Standards.

June 3, 1994.

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] on September 23, 1992, December 22, 1993, May 4, 1994, March 3, 1994, and January 31, 1994, the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"),[3] the New York Stock Exchange, Inc. ("NYSE"),[4] the Pacific Stock Exchange, Inc. ("PSE"),[5] and the Philadelphia Stock Exchange, Inc. ("Phlx"),[6] respectively (each individually referred to herein as an "Exchange" and two or more collectively referred to as "Exchanges"), submitted to the Securities and Exchange Commission ("Commission") proposed rule changes to establish generic listing standards for options on narrow-based indexes, and to adopt streamlined procedures for introducing trading in options that satisfy these listing standards.

On January 5, 1994 and May 25, 1994, the Amex filed Amendment Nos. 1[7] and 2,[8] respectively; on April 8, 1994, the CBOE filed Amendment No. 1;[9] on April 19, 1994, the PSE filed Amendment No. 1;[10] and on April 22, 1994, the Phlx filed Amendment No. 1,[11] to their respective proposals (collectively, "Exchange Amendments").

The Amex and CBOE proposals were published for comment in the **Federal Register** on November 25, 1992 and February 25, 1994, respectively.[12] No comments were received on these proposed rule changes. This order approves the Exchanges' proposals and the Exchange Amendments.

II. Description of Proposals

The Exchanges have submitted substantively identical proposals to the Commission to amend their respective rules[13] to establish generic listing

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] On December 14, 1992, the CBOE submitted a filing (SR–CBOE–92–39) covering the same subject matter of the present filing. The CBOE withdrew the filing on April 1, 1994.

[4] On January 22, 1993, the NYSE submitted a filing (SR–NYSE–93–05) covering the same subject matter of the present filing. The NYSE withdrew SR–NYSE–93–05 on May 4, 1994, upon its submission of the present filing.

[5] On June 15, 1993, the PSE submitted a filing (SR–PSE–93–11) covering the same subject matter of the present filing. The PSE withdrew SR–PSE–93–11 on April 20, 1994. See Letter from David P. Semak, Vice President, Regulation, PSE, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated April 20, 1994.

[6] On June 21, 1993, the Phlx submitted a filing (SR–Phlx–93–01) covering the same subject matter of the present filing. The Phlx withdrew SR–Phlx–93–01 on January 31, 1994, upon its submission of the present filing.

[7] In Amendment No. 1, the Amex substantially amended the substance of its original filing to conform its proposal to the CBOE's proposal.

[8] In Amendment No. 2, the Amex provided the proposed text of the rule change, and amended its proposal: (1) To provide that a narrow-based index that is calculated using an equal-dollar weighted methodology will be rebalanced quarterly; and (2) to provide that if a narrow-based index is maintained by a broker-dealer, the index will be calculated by a third party that is not a broker-dealer.

[9] In Amendment No. 1, the CBOE: (1) Clarified in the text of the proposed rule change that its proposal would apply to options on narrow-based indexes only; and (2) stated that the procedures proposed in its filing pertaining to the listing of new narrow-based index options would apply to all narrow-based index options permitted under the CBOE's rules, including options with terms from 12 to 36 months ("long-term options") that satisfy the requirements of CBOE Rule 24.9(b). See Letter from Michael L. Meyer, Schiff Hardin & Waite, to Michael A. Walinskas, Chief, Options Branch, Division of Market Regulation, Commission, dated April 7, 1994.

[10] In Amendment No. 1, the PSE stated that the procedures in its proposal pertaining to the listing of new, narrow-based index options would apply to all narrow-based index options permitted under the PSE's rules, including long-term options that satisfy the requirements of PSE Rule 7.8. See Letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Thomas N. McManus, Division of Market Regulation, Commission, dated April 11, 1994.

[11] In Amendment No. 1, the Phlx: (1) Amended the proposed rule text to clarify that the proposed rule would apply to options on narrow-based indexes only; and (2) to state that if the Phlx determines to list long-term options or reduced-value long-term options on any new indexes filed pursuant to the proposed rule, they would be listed in accordance with existing Phlx rules governing long-term options. See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, Branch Chief, Division of Market Regulation, Commission, dated April 19, 1994.

[12] See Securities Exchange Act Release Nos. 31474 (November 17, 1992), 57 FR 55605 (November 25, 1994) (Amex); and 33636 (February 17, 1994), 59 FR 9262 (February 25, 1994) (CBOE).

[13] Amex Rule 901C; CBOE Rule 24.2; NYSE Rule 715; PSE Rule 7.3; and Phlx Rule 1009A.

standards for options on narrow-based indexes (also known as sector or industry indexes) and procedures designed to expedite the approval of trading of such products. Currently, an Exchange must submit a proposed rule change to the Commission for review in accordance with section 19(b)(2) of the Act ("section 19(b)(2)"), and Rule 19b–4 thereunder, in order to list for trading options on a particular index. The Exchanges' proposed rule changes would permit an Exchange to list classes of options on a particular narrow-based index [14] that satisfy specified generic listing standards, pursuant to a filing submitted to the Commission for effectiveness immediately upon filing under section 19(b)(3)(A) of the Act ("section 19(b)(3)(A)").[15] Under the streamlined procedures, trading in options on the narrow-based index could commence 30 days from the date of filing of the proposal to list such options.

A. Listing and Maintenance Listing Standards

In order to qualify for the streamlined listing procedures, the particular narrow-based index underlying the proposed narrow-based index options must satisfy all of the following initial listing standards, and continue to satisfy the following maintenance listing criteria.[16]

1. Standards Relating to Component Stocks

The proposed initial listing and maintenance listing standards require that all component stocks be deemed "reported securities," as that term is defined in Rule 11Aa3–1 under the Act.[17] Upon the initial listing of narrow-based index options approved for trading pursuant to the procedures contained in this order, the underlying index must include at least ten component stocks. Thereafter, the index must contain at least nine component stocks at all times. In addition, the number of component stocks may not increase or decrease by a number exceeding 33⅓ percent of the number of stocks comprising the index at the time of its initial listing.

Both initial and maintenance listing standards require that the component stocks comprising the top 90 percent of the index, by weight, must have a minimum market capitalization of $75 million. In addition, the component stocks constituting the bottom 10 percent of the index, by weight, must have a minimum market capitalization of $50 million.

The listing and maintenance listing standards also include trading volume requirements. The component stocks comprising the top 90 percent of the index, by weight, must have a monthly trading volume of at least one million shares per month over the six months preceding the filing of the index with the Commission; thereafter, the component stocks must maintain monthly trading volume of at least 500,000 shares per month. The trading volume for the component stocks constituting the bottom 10 percent of the index, by weight, must have been at least 500,000 shares over the same period; thereafter, they must maintain an average monthly trading volume of at least 400,000 shares per month. If the index is capitalization-weighted, and it contains 15 or more component stocks, the top five weighted component stocks each must have an average monthly trading volume over the six months preceding the filing of the index with the Commission of at least two million shares; thereafter, it must maintain an average monthly trading volume over the prior six months of at least one million shares. If a capitalization-weighted index contains less than 15 component stocks, those component stocks comprising the top 30 percent of the total number of stocks in the index each must have an average monthly trading volume over the six months preceding the filing of the index with the Commission of at least two million shares; thereafter, it must maintain an average monthly trading volume over the prior six months of at least one million shares.

Initially and thereafter, no inidividual component stock in the index may represent more than 25 percent of the weight of the index. In addition, initially and thereafter, where an index is comprised of less than 25 stocks, the top five highest weighted stocks may not constitute more than 60 percent of the weight of the index; and where an index is comprised of 25 stocks or more, the top five highest weighted stocks may not represent more than 50 percent of the weight of the index.

At all times, at least 90 percent of the stocks in the index, by weight, and 80 percent of the total number of stocks comprising the index, individually must satisfy the particular Exchange's rules governing the listing and maintenance of listing of options thereon.

Both initial and maintenance listing standards require that no more than 20 percent of the securities in the index, by weight, may be comprised of foreign securities or American depositary receipts ("ADRs") overlying foreign securities that are not subject to comprehensive surveillance sharing agreements between the particular U.S. options Exchange and the primary exchange on which the foreign security underlying the ADR is traded.[18]

2. Standards Relating to the Index and Options Thereon

A narrow-based index subject to the requirements of this order must be cash-settled. The index value may be calculated only pursuant to a capitalization, price, or equal-dollar weighted methodology.[19] The index value must be disseminated at least once every 15 seconds during the trading hours of the index. The settlement value of expiring index options must be based upon the opening prices of the component securities on

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[14] This order approves generic listing standards and streamlined procedures for approval with respect to options on narrow-based indexes only. The proposed rule changes approved herein do not pertain to the listing of options on broad-based indexes.

[15] In the event that proposed narrow-based index options do not qualify for expedited approval under these new standards, the Exchanges will not be foreclosed from filing a proposed rule change for Commission review pursuant to section 19(b)(2).

[16] These standards were established in a coordinated effort with representatives of the Exchanges, and are consistent with many of the criteria that are currently utilized by the Commission in its review of options on narrow-based stock indexes.

[17] See 17 CFR 240.11Aa3–1. A "reported security" is defied in paragraph (a)(4) of this rule as "any listed equity security or Nasdaq security for which transaction reports are required to be made on a real-time basis pursuant to an effective transaction reporting plan." A "transaction reporting plan" is defined in paragraph (a)(2) of this rule as "any plan for collecting, processing, making available or disseminating transaction reports with respect to transactions in reported securities filed with the Commission pursuant to, and meeting the requirements of, this section." Accordingly, a proposed narrow-based index currently can only be comprised of exchange-listed and Nasdaq National Market securities.

[18] See e.g., Securities Exchange Act Release No. 31529 (November 27, 1992), 57 FR 57248 (December 3, 1992) ("Release No. 34–31529"). To the extent that at least 50 percent of the world-wide trading volume of the underlying security occurs in the U.S. ADR market, the Commission has permitted the Exchanges to list options thereon without the existence of such a comprehensive surveillance sharing agreement. Following such initial listing, at least 30 percent of the world-wide trading volume must continue to occur in the U.S. trading market. See, e.g., Securities Exchange Act Release No. 33555 (January 31, 1994), 59 FR 5619 (February 7, 1994) ("Release No. 33555"). Accordingly, because no comprehensive surveillance sharing agreement is required with respect to ADRs satisfying the 50 percent volume requirement, and the 30 percent maintenance volume requirement, such ADRs may be excluded in determining whether the 20 percent restriction has been exceeded. See Release No. 33555, to determine how to calculate the 50 percent and 30 percent world-wide trading volume requirements.

[19] An index whose value is calculated pursuant to an equal dollar weighted methodology must be rebalanced at least once every calendar quarter.

the primary exchange on which they are traded (or on the Nasdaq National Market) (otherwise known as "A.M. settlement") on the applicable expiration date.[20]

If a narrow-based index is maintained by a broker-dealer, it shall be calculated by a third party that is not a broker-dealer. Further, appropriate procedures must be established by the Exchange and the broker-dealer to ensure that the broker-dealer will not possess or be able to misuse any informational advantages with respect to changes in the composition or the level of such index. Such procedures must include, for example, the establishment of appropriate informational barriers.

The streamlined procedures described herein pertaining to the listing of new narrow-based index options would apply to all narrow-based index options permitted under the rules of the Exchanges, including long term options and reduced-value long-term options that otherwise satisfy the particular Exchange's rules governing long-term options and reduced-value long-term options.[21]

In the event that a class of narrow-based index options listed on an Exchange pursuant to the streamlined listing procedures described herein fails to satisfy one or more of the required maintenance criteria, the Exchange responsible for that index option must notify the Commission staff immediately upon discovery of such failure. Further, the Exchange shall not open for trading any additional series of options on that class unless the Exchange determines that such failure is not significant, and the Commission affirmatively concurs in that determination, or unless the Commission specifically approves the continued listing of that class of index options pursuant to a proposal filed in accordance with Section 19(b)(2).

B. Review Procedure

If a particular narrow-based index (and options thereon) proposed by an Exchange satisfy the foregoing generic listing standards, then such Exchange may vial itself of certain streamlined listing procedures. The procedures proposed in the Exchanges' filings are designed to allow them to list narrow-based index options without undergoing the formal process of review and approval by the Commission pursuant to section 19(b)(2). An Exchange would be required to submit its proposal in draft form to Commission staff at least one week prior to the Exchange's formal filing of the rule change proposal. The Exchange would then submit its formal rule change proposal for effectiveness immediately upon filing, pursuant to section 19(b)(3)(A). However, to allow the Commission adequate opportunity to verify the representations made by the Exchange in its proposal and review and address any concerns raised by the proposal or by commenters, the Exchange would be allowed to establish a trade date for the commencement of trading of options on the index no earlier than 30 days from the date of the formal filing of the proposal.

If the Commission determines that the Exchange proposal does not satisfy the generic standards, or if the Commission deems it necessary or appropriate in the public interest or for the protection of investors, the Commission, pursuant to section 19(b)(3)(C) of the Act, has 60 days from the date of the filing of the Exchange's proposal to abrogate the Exchange's rule change and require that the Exchange refile the proposed rule change for formal Commission review pursuant to section 19(b) (1) and (2).

III. Commission Findings and Conclusions

A. Generic Listing Standards

The Commission finds that the proposed rule changes are consistent with the requirements of section 6(b)(5) of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the Exchange's proposals to establish generic listing standards for narrow-based index options strike a reasonable balance between the Commission's mandates under section 6(b)(5) to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. Thus, the Commission finds that the listing by an Exchange of options on particular narrow-based indexes, in accordance with the requirements stated herein, will constitute a stated policy, practice, or interpretation with respect to the administration of an existing Exchange rule, pursuant to section 19(b)(3)(A), relieving the Exchange of the former requirement of obtaining specific Commission approval of such narrow-based index options pursuant to section 19(b)(2).

The Commission believes that trading options on an index (including a narrow-based index) of securities permits investors to participate in the price movements of the index's underlying securities, and allows investors holding positions in some or all of such securities to hedge the risks associated with their portfolios. The Commission further believes that trading options on an index provides investors with an important trading and hedging mechanism that is designed to reflect accurately the overall movement of the component stocks.

Currently, when an exchange intends to list options on an index of securities which the Commission has not specifically approved previously for the listing and trading of such index options, the Exchange must submit a proposed rule change to the Commission pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder. Pursuant to section 6(b)(5) of the Act, the Commission must find, among other things, that trading in options on the particular index will serve to protect investors and contribute to the maintenance of fair and orderly markets. In this regard, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

Accordingly, before approving an Exchange proposal to list options on a particular index, and consistent with its legislative mandate, the Commission must conclude that the Exchange has addressed several issues pertaining to the particular index, including the design and structure of the index, customer protection, surveillance, and market impact. Specifically, with respect to index design and structure, the Commission takes into account, among other things, the number of securities comprising the index, the market capitalizations of the component securities, their relative weightings in the index, their trading volume, and the extent to which the component securities individually, satisfy the Exchange's requirements for the listing of equity options thereon. It is with respect to these criteria, among others,

[20] In the event that a component security did not open for trading on the expiration date of a series of index options, the last sale price for that security shall be used in calculating the index value.

[21] The CBOE has represented that, if it proposes to list reduced-value long-term options on a narrow-based index pursuant to section 19(b)(3)(A) in accordance with this order, it would include as a part of its rule filing an amendment to the list of indexes on which reduced-value long-term options are traded, as set forth in CBOE Rule 24.9(b)(2)(A)

that this order establishes generic standards which, if satisfied, would allow an Exchange to file a proposed rule change, effective immediately upon filing, to list and trade options on a particular narrow-based index 30 days from the filing date.[22]

The Commission believes that the listing and maintenance listing standards set forth herein are consistent with the criteria currently utilized in the Commission's case-by-case consideration of narrow-based index option proposals, and are reasonably designed to ensure the protection of investors and the public interest. Specifically, the Commission finds that the generic standards covering minimum capitalization, monthly trading volume, and relative weightings of component stocks are designed to ensure that the trading markets for component stocks are adequately capitalized and sufficiently liquid, and that no one stock or stock group dominates that index. Thus, the Commission believes that the satisfaction of these requirements significantly minimizes the potential for manipulation of the index.

Two other important requirements are that at least 90 percent of the component stocks, by weight, must be eligible individually for options trading, and that no more than 20 percent of the index may be comprised of ADRs which are not subject to a comprehensive surveillance sharing agreement. The Commission believes that these standards are necessary to ensure that index options are not used as surrogate instruments to trade options on stocks and/or ADRs that otherwise are not eligible for options trading.

The Commission also believes that the number of securities required to constitute the narrow-based index is large enough to ensure that an index is not created for the purpose of obtaining more favorable regulatory treatment, e.g., with respect to position and exercise limits, as compared with the trading of options in the underlying stocks.

The Commission also finds the requirements that all securities comprising the index be "reported securities," as defined in Rule 11Aa3–1 under the Act, and that the index value be disseminated at least once every 15 seconds during trading hours of the index, will contribute significantly to the transparency of the market for such index options.[23] The Commission further believes that basing the settlement value of expiring index options upon the opening prices of the component securities on the primary exchange on which they are traded (or on the Nasdaq National Market) may help contain the volatility of related markets upon their expiration.

The Commission notes that an Exchange which lists options pursuant to this order must notify the Commission immediately upon discovering that such options have failed to satisfy the maintenance listing standards described herein, and is prohibited from listing any additional series of such options unless the Exchange, with the affirmative concurrence of the Commission, determines that such failure is insignificant. The Commission believes that this requirement helps to ensure the continued compliance of such new option products with the standards set forth in this order, and confirms the obligation of the Exchanges to monitor all series of options listed thereon to ensure that they continue to satisfy the maintenance listing standards prescribed in their respective rules. On the other hand, this requirement will allow the Commission to provide flexibility on the issue of continued listing, where the failure to meet a particular standard is insignificant and will not hinder the protection of investors or cause the index to be susceptible to manipulation.

The Commission further notes that each of the Exchanges' rules that are applicable to narrow-based index options, including provisions addressing sales practices, floor trading procedures, position and exercise limits,[24] margin requirements, and trading halts and suspensions, will continue to apply to any narrow-based index listed pursuant to the streamlined approval procedures described herein.

Finally, the Commission generally believes that a surveillance sharing agreement between an Exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. In this regard, all of the Exchanges, as well as the National Association of Securities Dealers, Inc. ("NASD"), are members of the Intermarket Surveillance Group ("ISG"), which provides for the exchange of all necessary surveillance information.[25] In light of the Exchanges' membership in the ISG, and the fact that the generic listing and maintenance listing standards ensure that all stocks (and ADRs) comprising a narrow-based index being added pursuant to this order would be listed on a U.S. exchange (or quoted on and traded through the Nasdaq National Market), the Commission is satisfied that the ISG Agreement would cover investigations and inquiries regarding trading activity in options on narrow-based indexes and their underlying component securities. In addition, the Commission finds that the requirement that no more than 20 percent of the weight of the index may be comprised of ADRs that are not subject to a comprehensive surveillance sharing agreement between the particular U.S. exchange and the primary market of the underlying security will continue to ensure that the Exchanges have the ability to adequately surveil trading in the narrow-based index options and the ADR components of the index.[26]

B. Commission Review of Exchange Proposals

The Commission finds that the review procedures provide the Commission with sufficient opportunity to examine the representations made by an Exchange in connection with its listing of options on a narrow-based index pursuant to section 19(b)(3)(A). Specifically, the Commission believes that the seven day prefiling requirement gives the Commission staff an

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[22] The Commission reiterates that an Exchange would not be foreclosed from pursuing formal Commission review of a proposal to list options on a narrow-based index that do not qualify for effectiveness upon filing under section 19(b)(3)(A). See supra note 15.

[23] Currently, only exchange-traded securities and Nasdaq National Market securities qualify as "reported securities." See supra note 17.

[24] In its section 19(b)(3)(A) filing, an Exchange must specify the applicable position limits for options on the narrow-based index.

[25] The ISG was formed on July 14, 1983, among other things, to coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, dated July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, dated January 29, 1990.

[26] As noted above, comprehensive surveillance sharing agreements must be in place with the markets underlying ADRs representing at least 80 percent of the weight of the index unless the ADR meets the 50 percent U.S. trading volume test (and the 30 percent maintenance volume test). See supra note 18. In addition, by virtue of the Exchange's and the NASD's membership in the ISG, the Exchanges would have the ability to obtain surveillance information regarding trading in the ADR. See Release No. 34–31529, supra note 18.

opportunity to discuss with an Exchange whether its proposal to list and trade particular narrow-based index options properly qualifies for effectiveness upon filing. In addition, the Commission finds that the 30 day delay in the commencement of trading of proposed narrow-based index options will provide a meaningful opportunity for public comment prior to the commencement of trading, while also providing the Exchanges with the opportunity to inform market participants in advance of the proposed trade date for a new index option. In accordance with section 19(b)(3)(C) of the Act, if the Commission determines that the rule change proposal is inconsistent with the requirements of the Act and the rules and regulations thereunder, the 30 day delay would allow the Commission to abrogate the rule change before trading commences, which will minimize disruption on market participants. This authority could be utilized if, for example, it is determined that the proposed narrow-based index option does not satisfy the applicable generic listing standards.

The Commission notes that its ability to review an Exchange's proposal submitted under the procedures outlined herein would not necessarily be limited to determining whether proposed narrow-based index options satisfy the generic standards. Rather, the Commission will have an opportunity to determine whether the proposed index options raise other regulatory concerns that should be addressed before trading commences. For example, the Commission will have an opportunity to determine whether the listing and trading of options on the new narrow-based index will have an adverse impact on the underlying securities markets.[27]

In summary, if the Commission determines that a proposed index option product does not completely satisfy the generic listing standards, or if based on the foregoing considerations it generally appears to the Commission to be necessary or appropriate in the public interest or for the protection of investors, the Commission, within 60 days of the Exchange's filing, may summarily abrogate the Exchange's rule change and require that the rule proposal be filed with the Commission pursuant to sections 19(b) (1) and (2) of the Act. Although the purpose of streamlining the review of new narrow-based index options by creating generic standards is to facilitate the Exchanges' ability to list such new products as the demand for them arises, the Commission believes nevertheless that its authority to abrogate such a rule change proposal supplies a significant regulatory check on the Exchanges to ensure that these new standards are implemented properly.

C. Accelerated Approval of Proposed Rule Changes and Exchange Amendments

The Commission finds good cause for approving the proposed rule changes filed by the NYSE, PSE, and Phlx, and the Exchange Amendments, prior to the thirtieth day after the date of publication on notice of filing thereof in the **Federal Register.** The rule changes proposed by the NYSE, PSE, and Phlx, and Amex Amendment Nos. 1 and 2, conform their proposals to the CBOE's proposal. Further, the CBOE's proposal was published for the full 21-day comment period, and no comments were received. With the exception of Amex Amendment Nos. 1 and 2, the Exchange Amendments clarify, but do not change, the proposed rule changes. The Commission finds, therefore, that no new regulatory issues are raised by the foregoing proposed rule changes and the Exchange Amendments. Accordingly, the Commission believes it is consistent with sections 19(b)(2) and 6(b)(5) of the Act to approve the NYSE, PSE, and Phlx proposed rule changes and Exchange Amendments on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the NYSE, PSE, and Phlx proposed rule changes and Exchange Amendments. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the foregoing that are filed with the Commission, and all written communications relating to the foregoing between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filings also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the appropriate file number(s) in the caption above and should be submitted by July 1, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[28] that the proposed rule changes (File Nos. SR-Amex-92-35, SR-CBOE-93-59, SR-NYSE-94-17, SR-PSE-94-07, and SR-Phlx-94-10), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Jonathan G. Katz,

Secretary.

[FR Doc. 94-14096 Filed 6-9-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34166; File No. SR-DTC-94-01]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change to Add a Standing Instruction Database to the Institutional Delivery System

June 6, 1994.

On January 31, 1994, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-94-01) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to implement the standing instruction database feature of the enhanced institutional delivery ("ID") system.[2] Notice of the proposal was published in the **Federal Register** on March 4, 1994.[3] The Commission received three comment letters supporting implementation of the proposal.[4] The Commission also received one comment letter that discussed the structure of current self-

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[27] An Exchange, in conjunction with a section 19(b)(3)(A) rule filing to list options on a narrow-based index, must provide the Commission with written representations that both the Exchange and the Options Price Reporting Authority have the necessary systems capacity to support those new series of options to be generated by the narrow-based index.

[28] 15 U.S.C. 78s(b)(2) (1988).

[29] 17 CFR 200.30-3(a)(12) (1993).

[1] 15 U.S.C. 78(b)(1) (1988).

[2] The Commission recently approved the overall concept of the enhanced ID system. Securities Exchange Act Release No. 33466 (January 12, 1994), 59 FR 3139 [File No. SR-DTC-93-07]. The approval order sets forth a description and discussion of the enhancements being made to the ID system and requires DTC to submit for each principal new feature the finalized rules and procedures in a proposed rule change filing under Section 19(b)(2) of the Act.

[3] Securities Exchange Act Release No. 33679 (February 24, 1994), 58 FR 59283.

[4] Letters from John Zupan, Chairperson, Bank Depository User Group, to Secretary, Commission (April 28, 1994), from George J. Minnig, Chairman, Securities Operations Division, Regulatory & Clearance Committee of the Securities Industry Association, to Jonathan G. Katz, Secretary, Commission (April 29, 1994), and from Lawrence Morillo, Senior Vice President, Pershing, Division of Donaldson, Lufkin & Jenrette Securities Corporation, to Jonathan G. Katz, Secretary, Commission (May 12, 1994).

regulatory organization ("SRO") confirmation/acknowledgement rules and a response to the comment letter from DTC.[5] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The standing instruction database is a central repository for customer account and settlement information furnished by institutions, agents, and broker-dealers. The information contained therein includes items such as the agent for an institutional customer, the agent's internal account number for the institutional customer, and interested parties. Using the standing instruction database, a broker-dealer can link its internal account numbers for its institutional customers with the institutional customers' internal account numbers. When entering trade data into the ID system, a broker-dealer can simply refer to its internal account number in the standing instruction database, and the ID system will extract the necessary information (such as customer name, agent, interested parties, and settlement related information) from the database and automatically will add the information to the confirmation. The standing instruction database will eliminate the need for the broker-dealer to provide such information each time that the broker-dealer enters trade data into the ID system.

The standing instruction database is an account level optional feature for ID users. A broker-dealer with many institutional accounts can designate that only specified accounts access the standing instruction database. If an account is not designated to access the standing instruction database, the broker-dealer will provide the ID system with the type of information that is contained in the database. However, once a broker-dealer links its internal customer account number with account information furnished to the database by the institutional customer, the data will be used for certain fields in ID system processing when the broker-dealer submits trade data for that institutional customer's trades regardless of whether the broker-dealer submits data for those fields. Participants will have the ability to enter a standing instruction database change with a specific effective date by specifying on which date the addition, change, or deletion should take effect.

II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency, such as DTC, be designed to promote the prompt and accurate clearance and settlement of securities transactions.[6] As discussed below, the Commission believes that DTC's proposed rule change is consistent with this obligation.

The institutional delivery system provides an effective electronic communication network that replaces the written documents that used to be passed among broker-dealers, investment managers, and custodian banks in order for these parties to settle transactions within the regular-way (five business day) settlement cycle. In order to facilitate timely settlement of institutional trades, which constitute a significant percentage of all market trades, several self-regulatory organizations amended their rules in 1982 to require broker-dealers that extend delivery versus payment credit privileges on transactions in depository eligible securities to use the facilities of a registered securities depository for the confirmation, affirmation, and settlement of these transactions.[7] Those changes were designed to facilitate routine trading volume of 100 million shares. In the twelve years since the use of a registered securities depository for generating confirmations and affirmations became mandatory, the U.S. securities markets have handled unprecedented volume and routinely settle trading of 300-400 million shares daily.

DTC's proposal expands the range of functions available to users of the ID system. In particular, the proposal will allow broker-dealers, institutions, and agents to leave with DTC certain trade settlement information that routinely appears on each confirmation and to draw on that information quickly when formatting confirmations. This will promote the prompt and accurate clearance and settlement of securities transactions consistent with Section 17A of the Act.

During the last twelve years, private vendors have offered services that are based on the ID system and encompass some of the features that DTC now proposes to offer its participants. One such service provides database features which allow institutions to advise broker-dealers how to allocate trades among institutional clients and which supply that data to DTC's ID system to be used in generating confirmation and affirmations. The Commission is satisfied that these private vendors will be able to continue to provide these services and supply data to ID.

The standing instruction databases, along with the other enhancements to DTC's ID system,[8] also will facilitate the industry's conversion to a three business day settlement cycle which will be the standard settlement time for most broker-dealer trades beginning June 1, 1995.[9]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–DTC–94–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

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[5] In its comment letter, Thomson Financial Services ("Thomson") agreed that DTC's proposal is consistent with Section 17A of the Act but also asserts that the current self-regulatory organization rules that require the use of the facilities of a registered securities depository for the confirmation and acknowledgement of all depository eligible transactions and DTC's status as a registered securities depository preclude vendors from competing with DTC in supplying electronic trade confirmation services. Letter from Dr. Keith B. Jarrett, President, Thomson Trading Services, Inc. (A Thomson Financial Services Company), to Jonathan A. [sic] Katz, Secretary, Commission (March 25, 1994) ("Thomson letter").

DTC's response to the Thomson letter disputed the statement that DTC's status as a registered securities depository creates an anticompetitive environment and precludes Thomson from providing electronic trade confirmation services. DTC also stressed that the Commission's review of the standing instruction database feature of the enhanced ID system was not the proper forum for the initial consideration of the propriety of SRO rules that require the use of a registered securities depository for the confirmation and acknowledgment of transactions in depository eligible securities. Letter from Carl H. Urist, Deputy General Counsel and Vice President, DTC, to Jonathan G. Katz, Secretary, Commission, (April 15, 1994) ("DTC's response").

The Commission believes that the issues raised by the Thomson letter and DTC's response need not be resolved prior to the approval of the standing instruction database feature of the enhanced ID system. The Commission understands that discussions regarding Thomson's concerns are underway among Thomson, DTC, and the Securities Industry Association.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] For a discussion of the necessity of such SRO rules, see Securities Exchange Act Release Nos. 19227 (November 9, 1982), 47 FR 51658 and 33515 (January 24, 1994), 59 FR 4295 (orders approving proposed rule changes).

[8] *Supra* note 2.

[9] For a detailed description and discussion of the conversion to a three business day settlement cycle, see Securities Exchange Act Release No. 33023 (October 13, 1993), 58 FR 52891 (File No. S7–5–93) (adopting Commission Rule 15c6–1).

[10] 15 U.S.C. 78s(b)(2)

[11] 17 CFR 200.30–3(a)(12) (1993).

Jonathan G. Katz,
Secretary.
[FR Doc. 94–14125 Filed 6–9–94; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–34163; International Series Release No. 670; File No. SR–ISCC–94–2]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by International Securities Clearing Corporation Relating to an Amendment to the Linkage Agreement With Japan Securities Clearing Corporation

June 6, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 26, 1994, International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by ISCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISCC is filing the proposed rule change to amend its linkage agreement with the Japan Securities Clearing Corporation ("JSCC") to allow ISCC to provide JSCC access, through ISCC, to the National Securities Clearing Corporation ("NSCC") New York Window ("NYW") services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis For, the Proposed Rule Change

(a) ISCC is a wholly owned subsidiary of NSCC and is a member of NSCC for the purposes of obtaining access to NSCC services on behalf of foreign financial institutions with whom ISCC enters into linkage agreements. JSCC is a wholly owned subsidiary of the Tokyo Stock Exchange and provides clearing services for securities listed on stock exchanges in Japan. JSCC acts as the central depository for foreign shares, including U.S. shares, listed on stock exchanges in Japan for the benefit of the beneficial owners thereof. It appoints local custodians with respect to non-Japanese securities. In 1988, ISCC and JSCC entered into a linkage agreement which permitted JSCC to obtain access through ISCC to certain services of the Depository Trust Company ("DTC") for U.S. shares listed on stock exchanges in Japan and included in JSCC's central depository clearing system for foreign shares. ISCC and JSCC are entering into an amendment to the linkage agreement which will permit JSCC to obtain access through ICC to NSCC's NYW services for initial public offerings of U.S. securities listed on exchanges in Japan until such time as such securities are eligible for deposit at DTC. The services provided through the NYW will be similar to that which JSCC obtains through ISCC from DTC for DTC eligible securities. Deliveries and receives of these securities would be free of payment and would be initiated based on instructions received from JSCC. The securities held by NSCC would be used as the basis for the bookkeeping entries at JSCC. At such time as these securities become eligible at DTC they would be deposited at DTC for credit to the account of JSCC. At that time, the services that ISCC. At that time, the services that ISCC provides to JSCC for these issues will be the services covered under the terms of the original linkage agreement.

(b) The proposed rule changes fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and as such is therefore consistent with Section 17A of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISCC does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

ISCC has received no written comments. ICC will notify the Commission of any written comments received by ISCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consent, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to File No. SR–ISCC–94–2 and should be submitted by July 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.
[FR Doc. 94–14126 Filed 6–9–94; 8:45 am]
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[1] 15 U.S.C. 78s(b)(1).

[Release No. 34–34162; File No. SR–MSRB–94–7]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Recordkeeping and Record Retention Requirements Concerning Gifts and Gratuities

June 6, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 26, 1994, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The purpose of the proposed rule change is to require municipal securities dealers to keep records of gifts and gratuities given to others, including issuer officials and employees, in relation to municipal securities activities. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing amendments to rule G–8 and G–9, on recordkeeping and record retention, that relate to rule G–20, on gifts and gratuities concerning suitability of recommendations. The proposed rule change requires dealers to keep records of gifts and gratuities given to others, including issuer officials and employees, in relation to municipal securities activities. The Board is requesting that the rule change become effective 30 days after approval by the Commission.

II. Self-Regulatory Organization's Statement of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

Rule G–20 is intended to prevent commercial bribery. The rule has three basic parts. First, rule G–20(a) prohibits dealers from, directly or indirectly, giving or permitting to be given any thing or service of value in excess of $100 per year to any person, other than to an employee or partner of the dealer, in relation to municipal securities activities of the person's employer.[1] All gifts given by a dealer and its associated persons are used to compute the $100 limitation. The $100 limitation applies to gifts and gratuities to customers, individuals associated with issuers, and employees of other dealers. In addition, based on the rule's "directly or indirectly" language, if a third party (e.g., a consultant hired by a dealer) gives a gift to any such person at the request of the dealer, the value of the gift would be included in the $100 limitation.

Second, rule G–20(b) exempts certain payments from the $100 annual limit set forth in paragraph (a). These payments are termed "normal business dealings" and are defined as occasional gifts of meals or tickets to theatrical, sporting, and other entertainments, as well as the sponsoring of legitimate business functions that are recognized by the IRS as deductible business expenses, and gifts or reminder advertising. However, the rule also provides that such gifts cannot be so frequent or so expensive as to raise a suggestion of unethical conduct.

Finally, rule G–20(c) provides that contracts of employment with or compensation for services rendered are not considered gifts or gratuities subject to the $100 limitation. Such arrangements, however, must be in writing and must include the nature of the proposed services, the amount of the proposed compensation, and the written consent of such person's employer.

In 1993, the municipal securities market came under increased scrutiny because of concerns that municipal securities dealers were influencing municipal securities issuers to hire such dealers for municipal securities business through the payment of political contributions and other monies to persons with influence over the dealer selection process. While the Board addressed the issue of political contributions through rule G–37, the Board was concerned that other activities, such as excessive gifts, also might be viewed as influencing the dealer selection process.

The proposed rule change requires dealers to keep and retain specific records of all gifts and gratuities subject to paragraph (a) of the rule.[2] The proposed rule change also requires dealers to keep and retain records of all contracts of employment or agreements for compensation for services and all compensation paid as a result of those agreements. These amendments are consistent with the rules of other self-regulatory organizations. The Board believes that the amendments to the recordkeeping and record retention requirements related to gifts and gratuities will facilitate dealer compliance with rule G–20, and assist enforcement agencies in monitoring for compliance with the rule.

The Board believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In January 1994, the Board published for comment the proposed rule change.[3] The Board received one comment letter that supported the proposed amendments to rules G–8 and G–9 to

[1] "Person" has been interpreted by the Board in the context of rule G–20 to apply only to natural persons because the intent of the rule is to discourage dealers from inducing individual employees to act in a manner inconsistent with their obligations to, or contrary to the interests of, their employers. MSRB Interpretation of March 19, 1980, MSRB Manual (CCH) ¶ 3571.24

[2] The proposed rule change also clarifies that dealers complying with Rule 17a–3 of the Act are required to maintain this information.

[3] MSRB Reports, Vol. 14, No. 1 (January 1994) at 11–12. The request for comment also requested information and comment on a number of specific questions regarding dealings with issuer officials

strengthen the Board's recordkeeping and record retention requirements.[4]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 1, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–14127 Filed 6–9–94; 8:45 am]

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[4] In addition, the commenter acknowledged that business entertainment practices present opportunities for abuse, but believed that existing law and regulation, properly enforced, provides sufficient protection against abuse in the area of business entertainment and gift-giving in the municipal securities industry

[Release No. 34–34159; International Series Release No. 669; File No. SR–NASD–94–33]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Termination of the Nasdaq-London Stock Exchange Linkage

June 3, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 26, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to section 19(b)(1) of the Act, the NASD hereby files this proposed rule change to accelerate to June 30, 1994 the termination date of the experimental quotation linkage between the London Stock Exchange ("LSE") and The Nasdaq Stock Market ("Nasdaq"), a subsidiary of the NASD. The linkage had been scheduled to terminate on October 31, 1994.

II. Self-Regulatory Organization's Statement of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose Of, and Statutory Basis For, the Proposed Rule Change

On October 2, 1987, the SEC issued an order approving operation of an experimental market linkage between Nasdaq and LSE (formerly, the International Stock Exchange of The United Kingdom and the Republic of Ireland) for a pilot term of two years.[2] This linkage supports an interchange of quotation information ("linkage information") on about 740 securities ("linkage securities"); of that total, each marketplace has designated approximately half as its "pilot group" of linkage securities. NASD and LSE members that function as market makers in one or more of a subset of linkage securities that are quoted in both the Nasdaq and LSE dealer markets ("common issues") are entitled to access linkage information without paying a separate charge to receive it. Operation of the linkage in this fashion comports with the terms of the Commission's October 1987 Order.

Most recently, the Commission authorized an extension of this pilot linkage through October 31, 1994 by approving File No. SR–NASD–94–23.[3] The latter also stated that the linkage would terminate on or about October 31, 1994. Subsequently, the LSE advised Nasdaq that it will switch communication carriers at the end of June and that Nasdaq would have to bear the costs of new communication lines to its processors in Trumbull, Connecticut and Rockville, Maryland. After reviewing the specific communication requirements and costs, Nasdaq determined to forgo the added communication costs and terminate the Nasdaq-LSE linkage on June 30, 1994. Therefore, the sole purpose of this rule change is to accelerate the termination date for the Nasdaq-LSE linkage to June 30, 1994.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) and 15A(b)(11) of the Act. Section 15A(b)(5) requires that the NASD's rules provide for the equitable allocation of reasonable dues, fees, and other changes among members or others using any facility or system that the NASD operates or controls. Section 15A(b)(11) authorizes the NASD to adopt rules governing the form and content of quotations disseminated by member firms. Termination of the Nasdaq-LSE linkage on June 30, 1994 will obviate the imposition of additional communication costs (which could not be readily recovered) to support a service that is infrequently used by eligible NASD members and that duplicates market data offerings by commercial vendors. Similarly, LSE members that wish to

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 24979 (Oct 2, 1987), 52 FR 37684 (Oct. 8, 1987) (the "October 1987 Order").

[3] Securities Exchange Act Release No. 33946 (Apr. 21, 1994), 59 FR 22036 (Apr 28, 1994)

receive comprehensive quotation and transaction information from Nasdaq can easily do so by subscribing to an appropriate vendor service. From either perspective, a vendor-sponsored service will provide access to more market information than that which is accessible through the Nasdaq-LSE linkage.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder because the proposal constitutes a stated policy, practice, or interpretation concerned solely with the administration of a pilot system whose operation had been extended, on an interim basis, by numerous rule changes filed by the NASD. In this regard, the establishment of a revised date for terminating this experimental system is an administrative matter that does not involve the enforcement or interpretation of any NASD rules.

At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–94–33 and should be submitted by July 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

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[Release No. 34–34153; File No. SR–NYSE–94–08]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Same-Day Comparison of Initial Trade Data in Listed Stocks Through the NYSE's On-Line Comparison System

June 3, 1994.

On March 10, 1994, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NYSE–94–08) under section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change was published in the **Federal Register** on May 18, 1994, to solicit comments from interested persons.[2] No comments were received by the Commission. This order approves the proposal.

I. Description of the Proposal

The proposed rule change will allow the NYSE to implement its On-Line Comparison System ("OCS"). With OCS, NYSE clearing members will be able to submit trade data on listed stocks to NYSE on trade date for initial comparison. Implementation of NYSE's same-day comparison will be in a phased-in approach similar to that which was used to implement next-day ("T+1") comparison of NYSE transactions.[3] The NYSE's target date for full implementation of trade-date comparison is June 30, 1995. The NYSE filed this proposal with the Commission to provide the NYSE community with almost eighteen months advance notice in order to afford them time to plan and implement the operational changes that may be necessary.[4]

Beginning on June 1, 1994, the NYSE will require its member clearing firms to submit to it periodically during the trading day trade data for transactions in listed stocks, rights, and warrants effected on the NYSE for "regular way,"[5] "next day,"[6] "cash,"[7] and "seller's option" settlement.[8] Trade data for transactions in listed stocks traded on an "issued," "when issued,"[9] and "when distributed"[10] basis also will have to be submitted periodically during the trading day. The NYSE's existing Overnight Comparison System will be the main processor of the data submitted for initial comparison. Accordingly, the NYSE has changed that system's name to the On-Line Comparison System and will continue to use the same acronym of OCS. Compared trades will be submitted by the NYSE to a "qualified clearing agency"[11] to complete the clearance and settlement process.

Implementation of trade-date comparison will require clearing firms to meet three general requirements. First, they will have to suppress certain comparison data submissions to

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 34023 (May 6, 1994), 59 FR 25979.

[3] In March 1989, the Commission approved the NYSE's Rule 130. That rule, which was used to implement overnight comparison over the eighteen months following its approval, established the principle that "regular way" transactions in listed stocks, rights, and warrants must be compared or closed out within one business day after the trade date. Securities Exchange Act Release No. 26627 (March 14, 1989) 54 FR 11470 [File No. SR–NYSE–88–36] (order approving proposed rule change)

[4] The NYSE has distributed to its members a circular, dated January 29, 1994, describing implementation of trade date comparison.

[5] The term "regular way" settlement means settlement on T+5. NYSE Rule 64(3).

[6] "Next day" settlement means settlement on T+1 NYSE Rule 64(2).

[7] "Cash" settlement means settlement on trade date. NYSE Rule 64(1).

[8] "Seller's option" settlement means settlement within the time specified in the contract. NYSE 64(4).

[9] A "when issued" stock refers to a stock which trades after the date of issue but before the certificates have been issued. NYSE Rule 440B.16, D. Scott, Wall Street Words 385 (1988).

[10] A "when distributed" stock refers to a stock which trades after the date of issue but before the certificates have been issued. NYSE Rule 440B.16, D. Scott, Wall Street Words 385 (1988).

[11] For this purpose, the term "qualified clearing agency" means a clearing agency that is registered under the Act, that maintains facilities through which NYSE trades may be compared or settled, that has agreed to supply the NYSE with data in connection with the NYSE's compliance duties under the Act, and that has agreed to establish rules and procedures to facilitate comparison of transactions as provided in NYSE Rule 130, NYSE Rules 130, Supplementary Material .10, and 142 Supplementary Material .10

qualified clearing agencies as the NYSE locks-in additional trades. Second, they will have to submit their comparison data to the NYSE for comparison rather than to a qualified clearing agency. Third, they will have to submit virtually all comparison data to the NYSE during the trading session rather than after the close of trading.[12]

As mentioned above, the implementation of trade date comparison will use a phased-in approach, which the NYSE found successful in implementing T+1 overnight comparison. Beginning June 1, 1994, NYSE clearing members will be required to submit trade data directly to OCS within two hours of trade execution. In August or September of 1994, clearing members will be required to submit trade data within one hour of execution. In October of 1994, clearing members will be required to make on-line, real time submissions of trade data. These time frames are flexible and may be altered by the NYSE as it evaluates clearing firms' abilities to comply. The NYSE intends to monitor closely the implementation of each phase and will not implement a new phase until it is satisfied that no significant operational problems exist.

II. Discussion

For the reasons discussed below, the Commission believes the proposal is consistent with the Act. Section 6(b)(5) of the Act states that exchange rules should be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to securities transactions; to remove impediments to a free and open market; and to protect investors and the public interest.[13]

The risks posed by uncompared trades and by the long span of time between trade execution and trade comparison (i.e., as long as five business days) came under intense scrutiny after the Market Break of October 1987. The leading studies of the Market Break of 1987 identified uncompared trades as a major stress point in post-trade processing which, together with the unprecedented trading volume and the unprecedented price volatility during the Market Break, posed an unacceptable threat to the marketplace.[14] The Commission, in its recommendations to Congress in February of 1988, proposed that markets accelerate their efforts to compare all trades on trade date.[15]

Since 1988, the NYSE, among others, has sought to improve clearing operations and to reduce exposure to losses associated with market volatility occurring during the period between execution and settlement. The NYSE reduced its comparison cycle in stocks first from T+5 in 1990.[16] T+1 comparison also was made applicable to NYSE listed options in 1992 [17] and to NYSE listed bonds in 1993.[18] Currently, according to the NYSE, more than seventy-five percent of all trades executed on the NYSE trading floor are captured and locked-in electronically. The NYSE views the electronic capture of the remaining twenty-five percent of its trades, which primarily occur in trading crowds on its trading floor, as a major goal of OCS.

The NYSE's main objectives as it moves toward complete implementation of OCS include: (1) Increasing the percentage of electronically locked-in trades; (2) maintaining a low rate of uncompared trades rate during the various phases of the project; (3) electronic capture and comparison of trades, especially trading crowd transactions, that currently are not captured by any electronic order entry system; and (4) elimination of any redundant comparison processing. Significantly, as the NYSE moves through its various implementation phases of OCS, its current Rule 130 will remain in operation. That rule requires that each transaction effected on the NYSE be compared or closed out by NYSE's close of business on T+1.

The required changes may affect numerous clearing and non-clearing firms' operations, including such things as trading floor operations, purchase and sales department procedures, clearing operations, and internal account balancing and reconciliation procedures. Because of these significant changes, the NYSE has established two committees, a steering committee and a working group, to advise it on the best methods by which trade-date comparison may be achieved. Additionally, this program of trade-date comparison is being implemented in conjunction with the National Securities Clearing Corporation and the American Stock Exchange, Inc.

As stated above, the Commission believes that the proposed rule change, by shortening the NYSE comparison cycle from T+1 to trade date, will make NYSE's comparison process safer in terms of the risks resulting from market price volatility and more efficient in terms of the time and expense involved in post-trade processing. The Commission believes that the proposal will offer additional protection to investors, brokers, and other persons that safeguard investors' funds and facilitate investors' transactions. In the Commission's view, this proposal will provide fundamental and important improvements to the marketplace.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act, particularly with sections 6(b)(5) of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR–NYSE–94–08) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jonathan G. Katz,

Secretary.

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[12] While the NYSE's ultimate goal is to lock-in all trades electronically and to have all trades compared during the trading session, as a practical matter, there will be trades at the close or immediately before or after the close that are not submitted for comparison during the trading session. This will be especially true in the early stages of the proposal's implementation. Conversation between Harry F. Day, Counsel-Regulation, NYSE; Stanley Jacoby, Trade Comparison Specialist, Post Trade Services, NYSE; and Thomas C. Etter, Jr., Attorney, Division of Market Regulation, Commission (May 27, 1994).

[13] 15 U.S.C. 78f(b)(5) (1988).

[14] See Securities Exchange Act Release No. 26627 (March 14, 1989), 54 FR 11470 [File No. SR–NYSE–88–36] (order approving proposed rule change) and Division of Market Regulation, Market Analysis of October 13 and 16, 1989, 117–129 (December 1990).

[15] Testimony on the Securities and Exchange Commission's Recommendations Regarding the October 1987 Market Break delivered by David S. Ruder, Chairman, Commission, before the Senate Committee on Banking, Housing and Urban Affairs at 23–24 (February 3, 1988).

[16] Securities Exchange Act Release No. 28285 (July 30, 1990), 55 FR 31030 [File No. SR–NYSE–90–21] (order approving proposed rule change).

[17] For a discussion of T+1 comparison or close-out for options, refer to Securities Exchange Act Release No. 30293 (January 27, 1992), 57 FR 4229 [File No. SR–NYSE–91–36].

[18] For a discussion of T+1 comparison of close out for bonds, refer to Securities Exchange Act Release No. 31826 (February 4, 1993), 58 FR 8075 [File No. SR–NYSE–92–32].

[19] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34154; File No. SR–PTCV–94–01]

Self-Regulatory Organizations; Participants Trust Company; Order Approving Proposed Rule Change Relating to the Eligibility of Certain Securities Guaranteed by the Government National Mortgage Association

June 3, 1994.

On April 4 1994, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–PTC–94–01) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change allows PTC to designate certain securities guaranteed by the Government National Mortgage Association ("GNMA")[2] as "eligible securities" as permitted by PTC's Rules. The Commission published notice of the proposed rule change in the **Federal Register** on April 26, 1994.[3] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change allows PTC to designate certain securities guaranteed by GNMA and eligible securities as permitted by Article I, Rule 2 of PTC's Rules. PTC currently acts as depository for single-class GNMA I and GNMA II MBS and REMIC securities[4] guaranteed by the Department of Veterans Affairs ("VA").[5]

GNMA is now establishing a GNMA REMIC program under which GNMA will guarantee multi-class securities issued by REMIC trusts. The GNMA REMIC securities will be issued through single-purpose trusts created by GNMA-approved sponsors which will assemble GNMA-guaranteed single-class mortgage-backed securities to constitute the corpus of the REMIC trust. The sponsors will be private-sector entities such as investment bankers. Upon issuance, the General Counsel of HUD will render an opinion that GNMA's obligations under the GNMA guarantee of its REMIC securities will constitute absolute and unconditional general obligations of the United States, for which the full faith and credit of the United States is pledged.

The authorizing Federal statute[6] provides that the GNMA REMIC program be implemented by GNMA's publication of a notice in the **Federal Register**, and that GNMA subsequently publish regulations within twelve moths of the publication of the initial notice, based upon the comments received and the experience of GNMA in carrying out the program.

GNMA will implement its REMIC program in two stages. During the initial stage, GNMA will restrict participation in the REMIC program to a small number of participants (consisting of sponsors, co-sponsors, trustees, trust counsel, and accounting firms) and a limited number of REMIC issuances. The initial stage will commence upon the closing of the first transaction, after publication of the notice in the **Federal Register**, and is expected to last several months, during which time GNMA will establish standard documentation, and guidelines and procedures applicable to the full implementation of the REMIC program.[7]

While GNMA has not yet determined the characteristics of the GNMA REMIC tranches, for processing purposes it is assumed that the GNMA REMIC classes will have the same basic processing requirements as the VA REMICs, which PTC has had on deposit for approximately the last two years. It is assumed that, as in the case with the VA REMIC securities, all classes of the GNMA REMIC securities except the residual class will be established and maintained in book-entry form through the facilities of PRTC, although holders will have the right to request certificated securities.

II. Discussion

The Commission believes that PTC's proposed rule change is consistent with section 17A of the Act,[8] and in particular, section 17A(b)(3)(F) of the Act. Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that PTC's proposal to designate certain securities guaranteed by GNMA as eligible securities for deposit with PTC is consistent with this goal.

As previously stated, REMIC issuances will be limited during the initial stage of the program. Once the REMIC program is fully established, however, GNMA anticipates that a substantial percentage of its annual production of GNMA single-class securities will be securitized in GNMA REMICs. GNMA has stated they anticipate approximately $75 billion is the average deal size, this will result in approximately 150 REMIC deals issued each year.

It is anticipated that each class of the GNMA REMIC securities will be issued initially in the form of one or more physical certificates registered in the name of MBSCC & Co., nominee for PTC, and held in physical form by PTC's custodian, with participants receiving and delivering REMIC securities by book-entry on PTC's books. REMIC securities may be held subsequent to original issuance in either certificated form, outside of PTC, or on PTC's book-entry system, as is currently the case with the GNMA I and GNMA II single-class MBS and the VA REMIC securities on deposit at PTC. PTC's current custody agreement with its custodian, Chemical Bank, accommodates the deposit of GMNA REMIC securities with the custodian.

The REMIC securities will be supported entirely by the cash flows on the underlying GMA-guaranteed GNMA I MBS. REMIC trustees will be required to pay principal and interest ("P&I") on the REMIC securities in same day funds on the 16th day of the month, or the first business day thereafter if the 16th is not a business day. REMIC P&I will therefore be paid to REMIC holders on the same day that the PSI on the underlying MBS is paid to MBS holders. PTC will pass through the REMIC payment on the same day as received.

Not later than the 14th day of each month, the trustee will deliver to PTC and Chemical Bank the factor

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] GNMA is a wholly-owned corporate instrumentality of the United States within the Department of Housing and Urban Development ("HUD"). Through its single-class GNMA I and GNMA II mortgage-backed securities ("MBS") programs, GNMA guarantees the timely payment of principal and interest on securities issued by private institutions and backed by pools of federally insured or guaranteed mortgage loans. The GNMA guarantee is backed by the full faith and credit of the United States.

[3] Securities Exchange Act Release No. 33927 (April 19, 1994), 59 FR 21794.

[4] REMIC is an acronym for "real estate mortgage investment conduit," as pass-through vehicle created under the Tax Reform Act of 1986 to issue multiclass mortgage-backed securities

[5] As of December 31, 1993, PTC had approximately 260,000 pools of GNMA single-class securities on deposit, representing $850 billion in par value (95% of total GNMA single-class securities par value outstanding), and 71 tranches of VA REMIC securities, representing $4.6 billion in par value, from a total of 5 REMIC transactions (100% of all VA REMIC par value outstanding).

For a more detailed description of PTC's VA REMIC program, see Securities Exchange Act Release Nos. 30792 (June 10, 1992), 57 FR 27495, and 31914 (February 24, 1993), 58 FR 12295.

[6] Section 306(g) of the National Housing Act, 12 U.S.C. 1721(g), as amended by sec. 3004 of the Omnibus Budget Reconciliation Act of 1993, 107 Stat. 339.

[7] GNMA has not yet announced the date on which the initial stage of the REMIC program will commence.

[8] 15 U.S.C. 78q–1 (1988).

information for payment on the REMIC securities. PTC will follow the instructions from the trustee for disbursement of funds received on the GNMA MBS collateralizing the REMIC trust.

The volume of the GNMA REMIC securities initially deposited at FTC will be modest compared to the total face amount of GNMA securities now on deposit at FTC and is expected to have a comparably small impact on FTC's overall transaction volume.[9] GNMA I's that constitute the corpus of a GNMA REMIC trust will remain immobilized at FTC and, therefore, will be removed from FTC's transaction volume after the creation of the REMIC.

It is expected that FTC will utilize pricing sources and the methodology employed for the VA REMIC pricing at FTC for the GNMA REMIC product.[10] As an eligible security, functionally and legally comparable to GNMA single-class and VA REMIC securities, PTC's Rules and procedures are currently consistent with, and govern PTC's and it's participants' rights and obligations with respect to, the GNMA REMIC securities. PTC end of day borrowing agreements also currently apply to GNMA REMIC securities without the change. Finally, PTC anticipates that the fees imposed by PTC for providing depository services for GNMA REMIC securities will be the same as those in effect for GNMA MBS.

PTC has gained almost six years of experience with GNMAs. The Commission believes that PTC's experience with GNMAs serves as a good foundation for continuing to handle REMICs. In addition, PTC has been accepting VA REMICS for deposit for almost two years. PTC's experience with the VA REMIC program has provided a basis for determining the depository services which will be required for the GNMA REMIC. The Commission therefore believes that this proposal furthers the perfection of the national system for the clearance and settlement of securities transactions becuase GNMA REMIC will be processed within a centralized, electronic book-entry environment.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with section 17A of the act, and with the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–PTC–94–01) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[9] The total face amount of GNMA securities now on deposit at FTC is approximately $880 billion.

[10] For further information regarding the pricing sources and methodology employed by PTC, see Securities Exchange Act Release No. 34017 (May 5, 1994) 59 FR 24495.

[Release No. 34–34158; File No. SR–Phlx–94–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adopting Rule 1015, Quotation Guarantees, Including a Trade or Fade Provision

June 3, 1994

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 1, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Purpose of and the Statutory Basis for the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to adopt Phlx Rule 1015 relating to quotation guarantees, to mirror the text of Floor Procedure Advice ("Advice") A–11, with the addition of a "trade or fade" provision.[1]

II. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

Currently, Rule 1033(a) states that all bids/offers in Phlx equity/index options are deemed to be for one contract, unless otherwise specified; in addition, specialists and Registered Options Traders ("ROTs") are required to fill public orders to a minimum depth of ten contracts at the best quoted bid/offer. Consequently, orders for public customers are provided with preferential treatment not afforded to other types of orders.

The Phlx proposes to adopt a "trade or fade" provision comparable to the proposals of the other options exchanges for the handling of orders other than public customer orders.

Specifically, when a non-public order is represented in the trading crowd at the displayed market on the Exchange, the trading crowd would be required to either satisfy the order at that price or better, or fade (withdraw) to a newly disseminated price. If the quote is faded, immediate re-display of the previously disseminated quote without a change in market conditions to warrant such action would be considered conduct inconsistent with just and equitable principles of trade,[2] which could result in an Exchange disciplinary proceeding. For purposes of this rule, non-public orders include broker-dealer orders and that portion of customer orders exceeding the contract size guaranteed by the respective crowd.

The proposed rule is similar to proposals of other option exchanges in that it would expressly require the members of an options trading crowd to respond to non-public orders represented in that trading crowd by either satisfying the order or updating the market in that option series.

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

[11] 15 CFR 78s(b)(12) (1988).

[12] 17 CFR 200.30(a)(12).

[1] See SR–Phlx–91–45, as amended, for text of Advice A–11.

[2] Phlx Rule 707

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) by order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–94–30 and should be submitted by July 1, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–14095 Filed 6–9–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416; Telephone: (202) 205–6629.

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: National Training Participant Evaluation Questionnaire.

Form No.: SBA 20.

Frequency: On occasion.

Description of Respondents: Individuals receiving SBA training and counseling assistance.

Annual Responses: 26,000.

Annual Burden: 6,500.

Dated: June 2, 1994.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 94–14720 Filed 6–9–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 01/01–0327]

Advent Atlantic Capital Company, L.P.; Notice of Surrender of License

Notice is hereby given that Advent Atlantic Capital Company, L.P., 75 State Street, Suite 2500, Boston, Massachusetts 02109 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Advent Atlantic Capital Company, L.P., was licensed by the Small Business Administration on November 28, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on February 9, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 1, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–14119 Filed 6–9–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice No. 2020]

Shipping Coordinating Committee; Notice of Meeting

The Working Group on Lifesaving, Search and Rescue of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on Friday, June 17, 1994 in room 1103 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to review the outcome of the 25th Session of the International Maritime Organization (IMO) Sub-Committee on Lifesaving, Search and Rescue (LSR), held April 11–15, 1994, at the IMO Headquarters in London, and to begin planning of action items for the next session. Specific items to be discussed include:

—Amendments to SOLAS Chapter III approved by the LSR Sub-Committee for forwarding to the Maritime Safety Committee (MSC) for adoption

—Draft revisions to the Recommendation on Testing and Evaluation of Life-Saving Appliances, including new sections on marine evacuation systems and "anti-exposure suits," and a draft proposal for inflatable liferaft fabric requirements

—Amendments to MSC Circular 617 on Guidelines for Passenger Safety Instructions, and a working paper on guidelines for emergency escape arrangements on passenger ships

—Information concerning the European Free Trade Association (EFTA) "Scheme for the Reciprocal Recognition of Tests and Inspections carried out Ships' Equipment"

The IMO LSR Sub-Committee works to develop international agreements, guidelines, and standards for Search and Rescue and for lifesaving equipment installed on commercial ships. Because of the potential impact of the Sub-Committee's work on U.S. regulations and standards, the U.S. SOLAS Working Group serves an excellent forum for the U.S. maritime industry to express their ideas in the areas under the Sub-Committee's purview. Members of the public may attend this meeting up to the seating capacity of the room. Due to unforeseen administrative delays, the notice of this meeting is being published late. The Committee apologizes for any inconvenience.

For further information contact Mr. Kurt J. Heinz at (202) 267-1444, U.S. Coast Guard Headquarters (G-MVI-3/1404), 2100 Second Street, SW., Washington, DC 20593-0001.

Dated: June 6, 1994.

Geoffrey Odgen,

Chairman, Shipping Coordinating Committee.

[FR Doc. 94-14229 Filed 6-7-94; 4:49 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federall Aviation Administration

Notice of Proposed Modification of Airport Improvement Program Grant Assurances

AGENCY: Federal Aviation Administration (FAA), (DOT).

SUMMARY: The FAA proposes to modify the standard grant assurances required of a sponsor receiving a grant under the Airport Improvement Program (AIP). This modification is due to changes in existing legislation. The Secretary of Transportation is required to provide notice in the **Federal Register** and an opportunity for the public to comment upon proposals to modify assurances or to require any additional assurances under AIP pursuant to subsection 511(f) of the Airport and Airway Improvement Act of 1982, as amended.

DATES: These proposed modifications to the Grant Assurances will be effective July 11, 1994. Comments must be submitted on or before June 27, 1994.

ADDRESSES: Comments may be delivered or mailed to the FAA, Airports Financial Assistance Division, APP-500, room 615, 800 Independence Ave, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Leslie S. Haener (Management and Program Analyst) Telephone (202) 267-5879.

SUPPLEMENTARY INFORMATION: The Secretary must receive certain assurances from a sponsor (applicant) under the Airport and Airway Improvement Act of 1982, as amended. These assurances are submitted as part of a sponsor's application for Federal Assistance and are incorporated in all grant agreements. The current assurances were published on February 3, 1988, at 53 FR 3104 and amended on September 6, 1988, at 53 FR 34361, and on August 29, 1989, at 54 FR 35748. As need dictates, these assurances are modified from time to time to reflect new Federal requirements. Notice of such proposed modifications are published in the **Federal Register** and an opportunity provided for comment by the public. FAA is planning to modify the assurances currently in use to reflect some changes in the general requirements.

FAA uses three separate sets of standard assurances: Airport Sponsors (owners/operators); Planning Agency Sponsors; and Nonairport Sponsors Undertaking Noise Compatibility Program Projects (herein after referred to as Nonairport Sponsor Assurances).

Assurance 1, General Federal Requirements, of the Airport Sponsor Assurances and Nonairport Sponsor Assurances is modified to add Executive Order 12699—Seismic Safety of Federal and Federally Assisted New Building Construction, to the Executive Orders section of both sets of assurances. Further, Assurance 1 is modified to add 49 CFR part 41, Seismic safety of Federal and federally assisted or regulated new building construction, to the Federal Regulations section of both sets of assurances.

Assurance 1 is also modified to add 49 CFR Part 20, New restrictions on lobbying, to the Federal Regulations section of all three sets of assurances. The addition of this regulation will alleviate the need for project sponsors to file with the FAA, a separate certification stating that they have not made, and will not make, any payment prohibited by paragraph (a), § 20.100 of 49 CFR part 20. A disclosure of lobbying activities form, however, must still be filed with the FAA if required by paragraph (c), § 20.100 of 49 CFR part 20.

Assurance 1 of all three sets of assurances is also modified to correct the titles of certain Federal Regulations.

Assurance 9 of the Airport Sponsor Assurances has been rewritten to incorporate the provision of Public Law 102-581, which requires the sponsor to certify that the airport management board either has voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

Assurance 23 of the Airport Sponsor Assurances has been rewritten to bring this assurance into conformance with section 511(a)(2) of the Airport and Airway Improvement Act of 1982, as amended.

Assurance 26 of the Airport Sponsor Assurances has been rewritten to incorporate the provision of Public Law 102-581, which requires that the airport sponsor assure that a report of the airport budget is available to the public at reasonable times and places.

Assurance 31 of the Airport Sponsor Assurances, and Assurance 20 of the Nonairport Sponsor Assurances, titled Disposal of Land, have been rewritten to incorporate the provisions of Public Law 101-236, which relaxed the requirement that an airport sponsor must dispose of land which was originally acquired with Federal grant funds for airport development purposes but is no longer needed for such purposes.

Assurance 36 of the Airport Sponsor Assurances, Assurance 13 of the Planning Agency Sponsor Assurances. and Assurance 22 of the Nonairport Sponsor Assurances have been deleted. The grant applicant's requirements for compliance are set forth in the Drug-Free Workplace Act of 1988—41 U.S.C. 702 through 706 and 49 CFR Part 29—Governmentwide debarment and suspension (non-procurement) and governmentwide requirements for drug-free workplace (grants), which are included in Assurance 1. Therefore a separate assurance detailing these requirements is unnecessary.

Issued in Washington, DC on May 13, 1994.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

Airport Improvement Program Grant Assurances

1. The Airport Sponsor Assurances are amended as follows:

a. Assurance C.1. is revised as follows:

C.1. General Federal Requirements

* * * * *

Executive Orders

Executive Order 12699—Seismic Safety of Federal and Federally Assisted New Building Construction

Federal Regulations

f. 49 CFR Part 29—Governmentwide debarment and suspension (non-

procurement) and governmentwide requirements for drug-free workplace (grants).

i. 29 CFR Part 3—Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.

m. 49 CFR Part 41—Seismic safety of Federal and federally assisted or regulated new building construction.

n. 49 CFR Part 20—New restrictions on lobbying.

b. Assurance 9 is revised to read:

9. Public Hearings. In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

c. Assurance 23 is revised to read:

23. Exclusive Rights. It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.

For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and

b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under the Airport and Airway Improvement Act of 1982.

d. Assurance 26 is revised to read:

26. Reports and Inspections. It will submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request. A report of the airport budget will be available to the public at reasonable times and places. For airport development projects, it will also make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request. For noise compatibility program projects, it will also make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request.

e. Assurance 31 is revised to read:

31. Disposal of Land.

a. For land purchased under a grant for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, (1) be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project as prescribed by the Secretary.

b. (1) For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (a) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (b) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.

(2) Land shall be considered to be needed for airport purposes under this assurance if (a) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (b) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

c. Disposition of such land under (a) or (b) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

f. Assurance 36 is deleted:

36. Drug-Free Workplace. It will provide a drug-free workplace at the site of work specified in the grant application in accordance with 49 CFR part 29 by (1) publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the sponsor's workplace and specifying the action that will be taken against its employees for violation of such prohibition; (2) establishing a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace and any available drug counseling, rehabilitation, and employees' assistance programs; (3) notifying the FAA within 10 days after receiving notice of an employee criminal drug statute conviction for a violation occurring in the workplace; and (4) making a good faith effort to maintain a drug-free workplace.

2. The Planning Agency Sponsor Assurances are amended as follows:

a. Assurance C.1. is revised as follows:

C. 1. General Federal Requirements

* * * * *

Federal Regulations

d. 49 CFR Part 29—Governmentwide debarment and suspension (non-procurement) and governmentwide requirements for drug-free workplace (grants).

n. 49 CFR Part 20—New restrictions on lobbying.

b. Assurance 13 is deleted:

13. Drug-Free Workplace. It will provide a drug-free workplace at the site of work specified in the grant application in accordance with 49 CFR part 29 by (1) publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the sponsor's workplace and specifying the actions that will be taken against its employees for violation of such prohibition; (2) establishing a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace and any available drug counseling, rehabilitation, and employees' assistance programs; (3) notifying the FAA within 10 days after receiving notice of an employee criminal drug statute conviction for a violation occurring in the workplace; and (4) making a good faith effort to maintain a drug-free workplace.

3. The Nonairport Sponsor Assurances are amended as follows:

a. Assurance C.1. is revised as follows:

C.1. General Federal Requirements

* * * * *

Executive Orders

Executive Order 12699—Seismic Safety of Federal and Federally Assisted New Building Construction

Federal Regulations

f. 49 CFR Part 29—Governmentwide debarment and suspension (non-procurement) and governmentwide requirements for drug-free workplace (grants).

i. 29 CFR Part 3—Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.

m. 49 CFR Part 41—Seismic safety of Federal and federally assisted or regulated new building construction.

n. 49 CFR Part 20—New restrictions on lobbying.

b. Assurance 20 is revised to read:

20. Disposal of Land.

a. For land purchased under a grant for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, 1) be paid to the Secretary for deposit in the Trust Fund, or 2) be reinvested in an approved noise compatibility project as prescribed by the Secretary.

b. Disposition of such land under (a) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

c. Assurance 22 is deleted.

22. Drug-Free Workplace. It will provide a drug-free workplace at the site of work specified in the grant application in accordance with 49 CFR part 29 by (1) publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the sponsor's workplace and specifying the actions that will be taken against its employees for violation of such prohibition; (2) establishing a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace and any available drug counseling, rehabilitation, and employees' assistance programs; (3) notifying the FAA within 10 days after receiving notice of an employee criminal drug statute conviction for a violation occurring in the workplace; and (4) making a good faith effort to maintain a drug-free workplace.

[FR Doc. 94–14149 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration

Receipt of Revision No. 2 to Approved Noise Compatibility Program and Request for Review; Phoenix Sky Harbor International Airport, Phoenix, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed second revision to the approved noise compatibility program that was submitted for Phoenix Sky Harbor Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the City of Phoenix, Arizona. The Noise Compatibility program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Phoenix Sky Harbor Airport were in compliance with applicable requirements effective November 17, 1988. The Noise Compatibility Program for Phoenix Sky Harbor International Airport was approved by the FAA on April 2, 1990. Revision No. 1 to the approved Noise Compatibility Program was approved by the FAA on August 14, 1992. The proposed second revision to the approved noise compatibility program will be approved or disapproved on or before November 23, 1994.

EFFECTIVE DATE: The effective date of the start of FAA's review of the revision to the approved noise compatibility program is May 27, 1994. The public comment period ends July 26, 1994.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Airport Planner, Airports Division, AWP–611.2, Western-Pacific Region, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone: 310/297–1534. Comments on the proposed second revision to the approved noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed second revision to the approved noise compatibility program for Phoenix Sky Harbor International Airport which will be approved or disapproved on or before November 23, 1994. This notice also announces the availability of this revision for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the second revision to the approved noise compatibility program for Phoenix Sky Harbor International Airport, effective on May 27, 1994. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved

as a noise compatibility program under section 104(b) of the Act. On April 2, 1990, the FAA approved the noise compatibility program for Phoenix Sky Harbor International Airport. An announcement of FAA's approval of the noise compatibility program was published in the **Federal Register** on May 1, 1990. Revision Number 1 to the approved noise compatibility program was approved by the FAA on August 14, 1992. An announcement of FAA's approval of the Revision Number 1 was published in the **Federal Register** on September 14, 1992. Preliminary review of the submitted material for the second revision indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 23, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measure may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed revision with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed second revision to the approved noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261.

City of Phoenix, Aviation Department, 3400 Sky Harbor Boulevard, Phoenix, Arizona 85034–4420.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California, on May 27, 1994.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 94–14143 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–13–M

Approval of Noise Compatibility Program; Seattle-Tacoma International Airport; Seattle, WA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Director of Aviation Planning for Seattle-Tocoma International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980).

On April 15, 1993, the FAA determined that the noise exposure maps submitted by the Director of Aviation Planning under Part 150 were in compliance with applicable requirements. On May 18, 1994, the Assistant Administrator for Airports approved the Seattle-Tacoma International Airport noise compatibility program. All of the program elements were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Seattle-Tacoma International Airport noise compatibility program is May 18, 1994.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop; Federal Aviation Administration; Northwest Mountain Region; Airports Division, ANM–611; 1601 Lind Avenue, SW., Renton, Washington, 98055–4056. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Seattle-Tacoma International Airport, effective May 18, 1994. Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act", an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatibility land uses and prevention of additional noncompatibile land uses within the area covered by the noise exposure maps. The Act requires such a program to be developed in consultation with interested and affected parties including the state, local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in Far part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all

measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Seattle, Washington.

The Port of Seattle submitted to the FAA the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted at Seattle-Tacoma International Airport. The Seattle-Tacoma International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 15, 1993. Notice of this determination was published in the **Federal Register** on April 27, 1993.

The Seattle-Tacoma International Airport noise compatibility program contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1996. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on November 19, 1993 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 10 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determination that the procedural and substantive requirements of the Act and FAR 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective May 18, 1994.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on May 18, 1994. The Record of Approval, as well as other evaluation materials and the documents comprising that submittal, are available for review at the FAA office listed above and at the administrative offices of the Seattle-Tacoma International Airport.

Issued in Renton, Washington, on May 25, 1994.

David Field,

Acting Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 94-14144 Filed 6-9-94; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of the Braking Systems Harmonization Working Group.

SUMMARY: Notice is given of the establishment of the Braking Systems Harmonization Working Group by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC.

FOR FURTHER INFORMATION CONTACT: Michael H. Borfitz, Assistant Executive Director, Aviation Rulemaking Advisory Committee, Transport Airplane and Engine Issues, FAA Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 238–7110, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On January 22, 1991 (56 FR 2190), the Federal Aviation Administration (FAA) established the Aviation Rulemaking Advisory Committee (ARAC). The committee provides advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues.

In order to develop such advice and recommendations, the ARAC may choose to establish working groups to which specific tasks are assigned. Such working groups are comprised of experts from those organizations having an interest in the assigned tasks. A working group member need not be a representative of the full committee. Recently the ARAC established the Braking Systems Harmonization Working Group.

The FAA announced at the Joint Aviation Authorities (JAA)-Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Canada June 2–5, 1992 that it would consolidate within the ARAC structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR).

Tasks

The Braking Systems Harmonization Working Group is charged with recommending to the ARAC new or revised requirements for approval of brakes installed on transport category airplanes. The product of this exercise is intended to be a harmonized standard, acceptable to both the FAA and the Joint Aviation Authorities (JAA).

Reports

The Braking Systems Harmonization Working Group should develop and present to the ARAC:

1. A recommended work plan for completion of the task, including the rationale supporting such plan, for consideration at the meeting of the ARAC to consider transport airplane and engine issues held following publication of this notice;

2. A detailed conceptual presentation on the proposed recommendation(s), prior to proceeding with the work stated in item 3. below;

3. A draft Notice of Proposed Rulemaking (NPRM), with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations; and

4. A status report at each meeting of the ARAC held to consider transport airplane and engine issues.

Participation in Working Group Task

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption FOR FURTHER INFORMATION CONTACT expressing that desire, describing his or her interest in the task and stating the expertise he or she would bring to the working group. The request will be reviewed with the assistant chairman and working group leader, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the Aviation Rulemaking Advisory Committee will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the working group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on June 3, 1994.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–14146 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignments for the Aviation Rulemaking Advisory Committee.

SUMMARY: Notice is given of new task assignments for the Loads and Dynamics Harmonization Working Group of the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC.

FOR FURTHER INFORMATION CONTACT: Michael H. Borfitz, Assistant Executive Director, Aviation Rulemaking Advisory Committee, Transport Airplane and Engine Issues, FAA Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 238–7110, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On January 22, 1991 (56 FR 2190), the Federal Aviation Administration (FAA) established the Aviation Rulemaking Advisory Committee (ARAC). The committee provides advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues..

In order to develop such advice and recommendations, the ARAC may choose to establish working groups to which specific tasks are assigned. Such working groups are comprised of experts from those organizations having an interest in the assigned tasks. A working group member need not be a representative of the full committee. One of the working groups established by the ARAC is the Loads and Dynamics Harmonization Working Group.

The FAA announced at the Joint Aviation Authorities (JAA)-Federal Aviation Administration (FAA) Harmonization Conference in Toronto, Canada June 2–5, 1992, that it would consolidate within the ARAC structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR).

Tasks

The Loads and Dynamics Harmonization Working Group's tasks are as follows:

Task 1—Interaction of Systems and Structure: Review existing special conditions for fly-by-wire airplanes and existing requirements for control systems, including automatic and/or power-operated systems, and recommend to the ARAC any new revised general requirements needed for flight control systems and structures affected by those systems (§§ 25.302, 25.671, 25.1329, part 25 appendix K).

Task 2—Continuous Turbulence Loads: Review the requirement for the continuous turbulence standard in light of the ARAC proposal for a tuned discrete gust requirement in order to determine whether the continuous turbulence requirement should be revised or removed from the FAR/JAR for better consistency with the new proposed tuned discrete gust criteria (§ 25.305(d)).

Task 3—Strength and Deformation: Review the recent requirements adopted in the FAR by Amendment 25–77 (for the design of transport airplanes against buffet and forced structural vibrations) and consider appropriate changes for the JAR and FAR to harmonize these rules (§§ 25.305 (e) and (f)).

Task 4—Design Flap Speeds: Review the current flap design loads requirements to resolve differences in interpretation between the FAA and JAA concerning the structural design stall speeds on which the flap design speeds are based. Recent measurements of gust speeds at low altitudes, where flaps are normally extended, indicate a more severe gust environment may be present. Review all aspects of the flap design load requirements, including the design airspeeds, vertical and head-on design gust criteria, and the effects of automatic retraction and load relief systems (§ 25.335(e)).

Task 5—Residual Strength Loads for Damage Tolerance: Review the differences in residual strength design load requirements between the FAR and JAR and resolve differences to harmonize this rule. Prepare a Notice of Proposed Rulemaking or make recommendations to other ARAC efforts concerning FAR § 25.571, so that they can be included in rulemaking that may be forthcoming from those efforts (§ 25.571(b)).

Task 6—Shock Absorption Tests: Review the changes recently introduced into the JAR that have resulted in differences between the FAR and JAR in regard to the requirement for shock absorption tests. Review those changes in view of harmonizing the FAR and JAR (§ 25.723(a)).

Task 7—Rough Air Speed: The ARAC has proposed a new § 25.1517 concerning rough air speed design standards in its proposal for a tuned discrete gust requirement. This action is harmonized with the current JAR 25.1517; however, further changes in the rough air speed requirement may be needed in both the FAR and JAR. Review JAR 25.1517 and the new proposed FAR 25.1517 to determine if further changes are needed. If so, prepare a Notice of Proposed Rulemaking, or, if possible, combine these changes with other rulemaking efforts (§ 25.1517).

Task 8—Taxi, Takeoff, and Landing Roll: Prepare an advisory circular that establishes criteria that may be used to calculate rough runway and taxiway loads, as required by §§ 25.491, 25.235, and 25.305.

Task 9—Braked Roll Conditions: Review the provisions of § 25.493 of the FAR and JAR concerning the braked roll condition and finalize a harmonized Notice of Proposed Rulemaking.

Reports

For each task listed, the Loads and Dynamics Harmonization Working Group should develop and present to the ARAC:

1. A recommended work plan for completion of the task, including the rationale supporting such plan, for consideration at the meeting of the ARAC to consider transport airplane and engine issues held following publication of this notice;

2. A detailed conceptual presentation on the proposed recommendation(s), prior to proceeding with the work stated in item 3. below;

3. A draft Notice of Proposed Rulemaking, with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations; and

4. A status report at each meeting of the ARAC held to consider transport airplane and engine issues.

Participation in Working Group Task

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task(s), and stating the expertise he or

she would bring to the working group. The request will be reviewed with the assistant chairman and working group leader, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the Aviation Rulemaking Advisory Committee will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the working group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on June 3, 1994.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–14147 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–13–M

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from July 11 through July 14, 1994, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Helicopter Association International, 1635 Prince Street, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Mr. W. Frank Price, Executive Director, ATPAC, Air Traffic Rules and Procedures Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3726.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463m; 5 U.S.C. App.2), notice is hereby given of a meeting of the ATPAC to be held from July 11 through July 14, 1994, at the Helicopter Association International, 1635 Prince Street, Alexandria. VA.

The agenda for this meeting will cover a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 8, 1994. The next quarterly meeting of the FAA ATPAC is planned to be held from October 17–20, 1994, in Washington, DC. Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on June 3, 1994.

W. Frank Price,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 94–14150 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee.

SUMMARY: Notice is given of new task assignments for the Flight Test Working Group of the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC.

FOR FURTHER INFORMATION CONTACT: Michael H. Borfitz, Assistant Executive Director, Aviation Rulemaking Advisory Committee, Transport Airplane and Engine Issues, FAA Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 238–7110, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: On January 22, 1991 (56 FR 2190), the Federal Aviation Administration (FAA) established the Aviation Rulemaking Advisory Committee (ARAC). The committee provides advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues.

In order to develop such advice and recommendations, the ARAC may choose to establish working groups to which specific tasks are assigned. Such working groups are comprised of experts from those organizations having an interest in the assigned task. A working group member need not be a representative of the full committee. One of the working groups established by the ARAC is the Flight Test Working Group.

The FAA announced at the Joint Aviation Authorities (JAA)-Federal Aviation Administration (FAA) Harmonization Conference in Toronto. Canada June 2–5, 1992, that it would consolidate within the ARAC structure an ongoing objective to "harmonize" the Joint Aviation Requirements (JAR) and the Federal Aviation Regulations (FAR).

Task

The Flight Test Working Group's tasks are as follows:

Task 1—Gate Requirements for High Lift Devices: Recommend to the ARAC simplified and clarified requirements related to gated positions on the control used by the pilot select the position of an airplane's high lift devices.

Task 2—Flight Characteristics in Icing Conditions: Recommend to the ARAC new or revised requirements and compliance methods related to airplane performance and handling characteristics in icing conditions.

Reports

For each task listed above, the Flight Test Working Group should develop and present to the ARAC:

1. A recommended work plan for completion of the task, including the rationale supporting such plan, for consideration at the meeting of the ARAC to consider transport airplane and engine issues held following publication of this notice;

2. A detailed conceptual presentation on the proposed recommendation(s), prior to proceeding with the work stated in item 3. below;

3. A draft Notice of Proposed Rulemaking (NPRM), with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised

requirements of compliance methods are not recommended, a draft report stating the rationale for not making such recommendations; and

4. A status report at each meeting of the ARAC held to consider transport airplane and engine issues.

Participation in Working Group Task

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task and stating the expertise he or she would bring to the working group. The request will be reviewed with the assistant chairman and working group leader, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the Aviation Rulemaking Advisory Committee will be open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the working group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on June 3, 1994.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–14145 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–13–M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In May 1994, there were six applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IV of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Boise, Idaho.

Application Number: 94–01–C–00–BOI.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PRC Revenue: $6,857,774.

Charge Effective Date: August 1, 1994.

Estimated Charge Expiration Date: October 1, 1998.

Class of Air Carriers Not Required To Collect PFC's: Part 135 air taxi/commercial operators who conduct operations in air commerce carrying persons for compensation or hire, except air taxi/commercial operators of public or private charters in aircraft with a seating capacity of 10 or more.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Boise Air Terminal.

Brief Description of Projects Approved For Collection and Use: Taxiway safety improvements, Aircraft rescue and firefighting (ARFF) improvements, Terminal safety improvements, Air carrier capacity improvements, Land acquisition and perimeter road, Snow removal equipment safety improvements.

Brief Description of Project Approved-In-Part For Collection and Use: Planning studies.

Determination: Approved in part. The financial plan duplicates work already accomplished in the master plan update completed in 1993; therefore, the FAA has determined that this element of the project does not meet any of the project eligibility criterion set forth in section 158.15(a).

Decision Date: May 13, 1994.

For Further Information Contact: Sandra M. Simmons, Seattle Airports District Office, (206) 227–2656.

Public Agency: Metropolitan Airports Commission, Minneapolis, Minnesota.

Application Number: 94–02–C–00–MSP.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PRC Revenue: $113,064,000.

Earliest Charge Effective Date: August 1, 1994.

Estimated Charge Expiration Date: June 1, 1998.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Minneapolis-St. Paul International Airport.

Brief Description of Projects Approved For Collection and Use: Airport noise and operations monitoring system, Centennial School noise abatement—phase 3, Airside electrical modifications, Airfield drainage adjustments, HHH remote apron blast fence, Home insulation/home buyouts—Part 150 sound insulation projects, 1993 airfield guidance signage, 1993 airside bituminous, New Ford Town/Rich Acres acquisition, Airport security system modifications, Airside bituminous construction, Apron lighting upgrade, Security checkpoints relocation, Pavement rehabilitation—aprons, taxiways, and others, Pavement rehabilitation—runways 4/22 and 11R/29L intersection, Airfield drainage strip reconstruction, School noise abatement projects—Part 150 sound insulation, Pavement rehabilitation—runway 11R/29L, Pavement rehabilation—runway 11L/29R segment 2.

Brief Description of Project Approved-In-Part For Collection and Use: Lindbergh terminal chiller replacement.

Determination: Approved in part. This chiller serves both eligible and ineligible areas. PRC approval is limited to the eligible volume of space served by the chiller.

Decision Date: May 13, 1994.

For Further Information Contact: Franklin Benson, Minneapolis Airports District Office, (612) 725–4221.

Public Agency: Muscle Shoals Regional Airport Authority, Muscle Shoals, Alabama.

Application Number: 94–02–C–00–MSL.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue $60,000.

Estimated Charge Effective Date: February 1, 1995.

Estimated Charge Expiration Date For This Approval: February 1, 1997.

Class of Air Carriers Not Required To Collect PFC'S: None.

Brief Description of Projects Approved For Collection and Use: Purchase ARFF vehicle, Complete construction of taxiway B, Install security fencing, Seal air carrier ramp.

Decision Date: May 17, 1994.

For Further Information Contact: Elton E. Jay, Jackson Airports District Office, (601) 965–4628.

Public Agency: Fort Smith Airport Commission, Fort Smith, Arkansas.

Application Number: 94–01–I–00–FSM.

Application Type: Impose PFC Revenue.

PFC Level: $3.00

Total Approved Net PFC Revenue: $4,040,076.

Charge Effective Date: August 1, 1994.

Estimated Charge Expiration Date: April 1, 2007.

Class of Air Carriers Not Required To Collect PFC'S: Unscheduled part 135 air taxi and charter operators using aircraft with 12 seats or less.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Fort Smith Regional Airport.

Brief Description of Projects Approved For Collection Only: PFC reimbursable Airport Improvement Program (AIP) projects: Land acquisition for noise compatibility, Reconstruction of east portion of general aviation ramp, Reconstruction of west portion of general aviation ramp, Noise monitoring and noise study update, Construction of west portion of taxiway A, taxiway E, and taxiway F, Construction of east portion of taxiway A. Disabled passenger lift, Acquire power sweeper, Overlay and marking of runway 7/25, Overlay of taxiway B, Overlay and marking of runway 1/19—south end, Airport master plan update and terminal area development plan, Terminal complex development, Terminal parking apron, Terminal automobile parking lot and access road, Rehabilitate airfield pavement, Install surface condition scanner [sensor] on runway 7/25, Install security improvements, Purchase maintenance/snow removal equipment [blower unit and liquid urea spreader].

Brief Description of Projects Disapproved: Extend runway 7/25 and parallel taxiway with holding apron; relocate instrument landing system visual approach slope indicator's, and approach lights.

Determination: Disapproved. The FAA determined that these projects do not meet the requirements of § 158.25(b)(14)(i); therefore, this project is not PFC eligible. The funding for this project relies heavily upon AIP discretionary funds. The Fort Smith Airport Commission did not submit an alternate funding plan which shows that the project can be accomplished without AIP discretionary funds. Remove hangars at terminal area.

Determination: Disapproved. This project is not AIP eligible because section 513(c)(2) of the Airport and Airway Improvement Act, as amended, generally prohibits funds to be expended on hangar relocation or demolition.

Decision Date: May 18, 1994.

For Further Information Contact: Ben Guttery, Southwest Region Airport Division, (817) 222–5614.

Public Agency: Town of Harrietstown, Saranac Lake, New York.

Application Number: 94–01–C–00–SLK.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $121,952.

Earliest Charge Effective Date: August 1, 1994.

Estimated Charge Expiration Date: January 1, 2003.

Class of Air Carriers Not Required To Collect PFC'S: None.

Brief Description of Projects Approved For Collection and Use: Prepare PFC application, Purchase snow removal equipment, Runway 5/23 crack repair and drainage improvements, Airport beacon rehabilitation, Airline terminal building expansion, Airfield signage improvements, Construct ARFF vehicle/snow removal equipment building rehabilitation and expansion.

Brief Description of Project Disapproved: Runway 9/27 crack repair.

Determination: The FAA determined that this project did not meet the eligibility criteria as stated in paragraph 521(c) of FAA Order 5100.38A, AIP Handbook, for additional runways. Runway 5/23 is the main runway which provides the necessary wind coverage for the Adirondack Regional Airport. Paragraph 521(c) states that AIP participation in runway development will be limited to a single runway at an airport unless additional runways can be justified using stated criteria.

Decision Date: May 18, 1994.

For Further Information Contact: Philip Brito, New York Airports District Office, (718) 553–1882.

Public Agency: City of Modesto, California.

Application Number: 94–01–C–00–MOD.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $300,370.

Charge Effective Date: August 1, 1994.

Estimated Charge Expiration Date: August 1, 2000.

Class of Air Carriers Not Required To Collect PFC'S: Air taxi/commercial operators.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Modesto City-County Airport—Harry Sham Field.

Brief Description of Projects Approved for Collection and Use: Airfield sign upgrade, Pavement rehabilitation—cap seal and pavement overlay, construction of taxiway, Passenger lift vehicle, Airport Way resurfacing and extension. General aviation apron slurry seal, Passenger terminal parking lot, General aviation and terminal security lighting upgrade, Rewire runway and taxiway light circuits.

Brief Description of Projects Approved for Collection Only: Airport perimeter security upgrade, Widen air carrier and transient apron, Runway 10L/28R holding bays, Taxiway B and miscellaneous general aviation area pavement rehabilitation and air carrier apron expansion, runway 10R/28L pavement overlay, Relocate runway 10R/28L edge lights.

Decision Date: May 23, 1994.

For Further Information Contact: Joseph Rodriquez, San Francisco Airports District Office, (415) 876–2805.

Issued in Washington, DC on June 3, 1994.

Donna Taylor,

Manager, Passenger Facility Charge Branch.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State, application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Alabama:					
92–01–I–00–HSV. Huntsville Intl-Carl T Jones Field, Huntsville	03/06/1992	S3	$36,472,657	06/01/1992	11/01/2008
93–02–U–00–HSV. Huntsville Intl-Carl T Jones Field, Huntsville	06/03/1993	3	0	09/01/1993	11/01/2008

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application number, airport, city*	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
92–01–C–00–MSL. Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	100,000	06/01/1992	02/01/1995
Arizona:					
92–01–C–00–FLG. Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
93–01–C–00–YUM. Yuma MCAS/Yuma International, Yuma	09/09/1993	3	1,678,064	12/01/1993	06/01/2003
California:					
92–01–C–00–ACV. Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
93–01–C–00–CIC. Chico Municipal, Chico	09/29/1993	3	137,043	01/01/1994	06/01/1997
92–01–C–00–IYK. Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
93–01–C–00–LGB. Long Beach-Daugherty Field, Long Beach	12/30/1993	3	3,533,766	03/01/1994	03/01/1998
93–01–C–00–LAX. Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	07/01/1993	07/01/1998
93–01–C–00–MRY. Monterey Peninsula, Monterey	10/08/1993	3	3,960,855	01/01/1994	06/01/2000
92–01–C–00–OAK. Metropolitan Oakland International, Oakland	06/26/1992	3	12,343,000	09/01/1992	05/01/1994
94–02–C–00–OAK. Metropolitan Oakland International, Oakland	02/23/1994	3	8,999,000	05/01/1994	04/01/1995
93–01–I–00–ONT. Ontario International, Ontario	03/26/1993	3	49,000,000	07/01/1993	07/01/1998
92–01–C–00–PSP. Palm Springs Regional, Palm Springs	06/25/1992	3	81,888,919	10/01/1992	11/01/2032
92–01–C–00–SMF. Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996
92–01–C–00–SJC. San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
93–02–U–00–SJC. San Jose International, San Jose	02/22/1993	3	0	05/01/1993	08/01/1995
93–03–C–00–SJC. San Jose International, San Jose	06/16/1993	3	16,245,000	08/01/1995	05/01/1997
92–01–C–00–SEP. San Luis Obispo County-McChesney Fie, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	01/01/1995
92–01–C–00–STS. Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995
91–01–I–00–TVL. Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado:					
92–01–C–00–COS. Colorado Springs Municipal, Colorado Springs	12/22/1992	3	5,622,000	03/01/1993	02/01/1996
92–01–C–00–DVX. Denver International (New), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
93–01–C–00–EGE. Eagle County Regional, Eagle	06/15/1993	3	572,609	09/01/1993	04/01/1998
93–01–C–00–FNL. Fort Collins-Loveland, Fort Collins	07/14/1993	3	207,857	10/01/1993	06/01/1996
92–01–C–00–GJT. Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	03/01/1998
93–01–C–00–GVC. Gunnison County, Gunnison	08/27/1993	3	702,133	11/01/1993	03/01/1998
93–01–C–00–HDN. Yampa Valley, Hayden	08/23/1993	3	532,881	11/01/1993	04/01/1997
93–01–C–00–MTJ. Montrose County, Montrose	07/29/1993	3	1,461,745	11/01/1993	02/01/2009
93–01–C–00–PUB. Pueblo Memorial, Pueblo	08/16/1993	3	1,200,745	11/01/1993	08/01/2010
92–01–C–00–SBS. Steamboat Springs/Bob Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
92–01–C–00–TEX. Telluride Regional, Telluride	11/23/1992	3	200,000	03/01/1993	11/01/1997
Connecticut:					
93–01–C–00–HVN. Tweed-New Haven, New Haven	09/10/1993	3	2,490,450	12/01/1993	06/01/1999
93–02–I–00–BDL. Bradley International, Windsor Locks	07/09/1993	3	12,030,000	10/01/1993	09/01/1995
94–03–U–00–BDL. Bradley International, Windsor Locks	02/22/1994	3	0	05/01/1994	09/01/1995
Florida:					
93–01–C–00–DAB. Daytona Beach Regional, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
92–01–C–00–RSW. Southwest Florida International, Fort Myers	08/31/1992	3	253,858,512	11/01/1992	06/01/2014
93–02–U–00–RSW. Southwest Florida International, Fort Myers	05/10/1993	3	0	11/01/1992	06/01/2014
93–01–C–00–JAX. Jacksonville International, Jacksonville	01/28/1994	3	12,258,255	05/01/1994	07/01/1997
92–01–C–00–EYW. Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
92–01–C–00–MTH. Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	06/01/1995
92–01–C–00–MCO. Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
93–02–C–00–MCO. Orlando International, Orlando	09/24/1993	3	12,957,000	12/01/1993	02/01/1998
93–01–I–00–PFN. Panama City-Bay County International, Panama City	12/01/1993	3	8,238,499	02/01/1994	10/01/2007
92–01–C–00–PNS. Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1995
92–01–I–00–SRQ. Sarasota-Bradenton International, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
92–01–I–00–TLH. Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
93–02–U–00–TLH. Tallahassee Regional, Tallahassee	12/30/1993	3	0	02/01/1993	06/01/1998
93–01–C–00–TPA, Tampa International, Tampa	07/15/1993	3	87,102,000	10/01/1993	09/01/1999

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
93-01-C-00-PBI. Palm Beach International, West Palm Beach	01/26/1994	3	38,801,096	04/01/1994	04/01/1999
Georgia:					
93-01-C-00-CSG. Columbus Metropolitan, Columbus	10/01/1993	3	534,633	12/01/1993	06/01/1995
91-01-C-00-SAV. Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
92-01-I-00-VLD. Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho:					
93-01-C-00-SUN. Friedman Memorial, Hailey	06/29/1993	3	188,000	09/01/1993	09/01/1997
92-01-C-00-IDA. Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
94-01-I-LWS. Lewiston-Nez Perce County, Lewiston	02/03/1994	3	229,610	05/01/1994	03/01/1997
92-01-C-00-TWF. Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois:					
93-01-C-00-MDW. Chicago Midway, Chicago	06/28/1993	3	79,920,958	09/01/1993	08/01/2001
93-01-C-00-ORD. Chicago O'Hare International, Chicago	06/28/1993	3	500,418,285	09/01/1993	10/01/1999
92-01-I-00-RFD. Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
93-02-V-00-RFD. Greater Rockford, Rockford	09/02/1993	3	0	12/01/1993	10/01/1996
93-01-I-00-SPI. Capital, Springfield	03/27/1992	3	562,104	06/01/1992	02/01/1994
93-02-U-00-SPI. Capital, Springfield	04/28/1993	3	0	06/01/1992	02/01/1994
93-03-I-00-SPI. Capital, Springfield	11/24/1993	3	4,585,443	06/01/1992	02/01/2006
Indiana:					
92-01-C-00-FWA. Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015
93-01-C-00-IND. Indianapolis International, Indianapolis	06/28/1993	3	117,344,750	09/01/1993	07/01/2005
Iowa:					
93-01-C-00-DSM. Des Moines Municipal, Des Moines	11/29/1993	3	6,446,507	03/01/1994	04/01/1997
92-01-I-00-DBQ. Dubuque Regional, Dubuque	10/06/1992	3	148,500	01/01/1993	05/01/1994
94-02-C-00-DBQ. Dubuque Regional, Dubuque	02/09/1994	3	203,420	05/01/1994	02/01/1996
93-01-C-00-SUX. Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
94-01-C-00-ALO. Waterloo Municipal, Waterloo	03/29/1994	3	637,000	06/01/1994	06/01/1998
Kentucky:					
94-01-C-00-CVG. Cincinnati/Northern Kentucky Interna, Covington	03/30/1994	3	20,737,000	06/01/1994	09/01/1995
93-01-C-00-LEX. Blue Grass, Lexington	08/31/1993	3	12,378,791	11/01/1993	05/01/2003
93-01-C-00-PAH. Earkley Regional, Paducah	12/02/1993	3	386,550	03/01/1994	12/01/1998
Louisiana:					
92-01-I-00-BTR. Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
93-02-U-00-BTR. Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/23/1993	3	0	12/01/1992	12/01/1998
93-01-C-00-MSY. New Orleans International/Moisant Fi, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
93-02-U-00-MSY. New Orleans International/Moisant Fi, New Orleans	11/16/1993	3	0	06/01/1993	04/01/2000
93-01-I-00-SHV. Shreveport Regional, Shreveport	11/19/1993	3	33,050,278	02/01/1994	02/01/2019
Maine:					
93-01-C-00-PWM. Portland International Jetport, Portland	10/29/1993	3	12,233,751	02/01/1994	05/01/2001
Maryland:					
92-01-I-00-BWI. Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
94-01-I-00-CBE. Greater Cumberland Regional, Cumberland	03/30/1994	3	150,000	07/01/1994	07/01/1999
Massachusetts:					
93-01-C-00-BOS. General Edward L. Logan International, Boston	08/24/1993	3	604,794,000	11/01/1993	10/01/2011
92-01-C-00-ORH. Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan:					
92-01-C-00-DTW. Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
92-01-I-00-ESC. Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
93-01-C-00-FNT. Bishop International, Flint	06/11/1993	3	32,296,450	09/01/1993	09/01/2030
92-01-I-00-GRR. Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
92-01-C-00-CMX. Houghton County Memorial, Hancock	04/29/1993	3	162,986	07/01/1993	01/01/1996
93-01-C-00-IWD. Gogebic County, Ironwood	05/11/1993	3	74,690	08/01/1993	10/01/1998
93-01-C-00-LAN. Capital City, Lansing	07/23/1993	3	7,355,483	10/01/1993	03/01/2002

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
92–01–I–00–MQT. Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
94–02–U–00–MQT. Marquette County, Marquette	04/06/1994	3	0	07/01/1994	04/01/1996
94–01–C–00–MKG. Muskegon County, Muskegon	02/24/1994	3	5,013,088	05/01/1994	05/01/2019
92–01–C–00–PLN. Pellston Regional—Emmet County, Pellston	12/22/1992	3	440,875	03/01/1993	06/01/1995
Minnesota:					
93–01–C–00–BRD. Brainerd-Crow Wing County Regional, Brainerd	05/25/1993	3	43,000	08/01/1993	12/31/1995
92–01–C–00–MSP. Minneapolis-St Paul International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
Mississippi:					
91–01–C–00–GTR. Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
92–01–C–00–GPT. Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	390,595	07/01/1992	12/01/1993
93–02–C–00–GPT. Gulfport-Biloxi Regional, Gulfport-Biloxi	11/02/1993	3	607,817	07/01/1992	12/01/1995
92–01–C–00–PIB. Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
93–01–C–00–JAN. Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
92–01–C–00–MEI. Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
93–02–C–00–MEI. Key Field, Meridian	10/19/1993	3	155,223	11/01/1992	08/01/1996
Missouri:					
93–01–C–00–SGF. Springfield Regional, Springfield	08/30/1993	3	1,937,090	11/01/1993	10/01/1996
92–01–C–00–STL. Lambert-St. Louis International, St. Louis	09/30/1992	3	84,607,850	12/01/1992	03/01/1996
Montana:					
93–01–C–00–BIL. Billings-Logan International, Billings	01/26/1994	3	5,672,136	04/01/1994	05/31/2002
93–01–C–00–BZN. Gallatin Field, Bozeman	05/17/1993	3	4,198,000	08/01/1993	06/01/2005
94–01–C–00–BTM. Bert Mooney, Butte	04/17/1994	3	410,202	07/01/1994	05/01/2000
92–01–C–00–GTF. Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
93–02–U–00–GTF. Great Falls International, Great Falls	05/25/1993	0	0	11/01/1992	07/01/2002
92–01–C–00–HLN. Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
93–01–C–00–FCA. Glacier Park International, Kalispell	09/29/1993	3	1,211,000	12/01/1993	11/01/1999
92–01–C–00–MSO. Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada:					
91–01–C–00–Las. Mc Carran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
93–02–C–00–LAS. Mc Carran International, Las Vegas	06/07/1993	3	36,500,000	06/01/1992	09/01/2014
94–03–U–00–LAS. Mc Carran International, Las Vegas	04/20/1994	0	0	07/01/1994	.....
93–01–C–00–RNO. Reno Cannon International, Reno	10/29/1993	3	34,263,607	01/01/1994	05/01/1999
New Hampshire:					
92–01–C–00–MHT. Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey:					
92–01–C–00–EWR. Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York:					
93–01–I–00–ALB. Albany County, Albany	12/03/1993	3	40,726,364	03/01/1994	04/01/2005
93–01–C–00–BGM. Binghamton Regional/Edwin A Link Fie, Binghamton	08/18/1993	3	1,872,264	11/01/1993	11/01/1997
92–91–I–00–BUF. Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
92–01–I–00–ITH. Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
92–01–C–00–JHW. Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822	06/01/1993	06/01/1996
92–01–C–00–JFK. John F. Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
92–01–C–00–LGA. LaGuardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
93–01–C–00–PLB. Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
92–01–C–00–HPN. Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Carolina:					
93–01–C–00–ILM. New Hanover International, Wilmington	11/02/1993	3	1,505,000	02/01/1994	08/01/1997
North Dakota:					
92–01–C–00–GFK. Grand Forks International, Grand Forks	11/16/1993	3	1,016,509	02/01/1993	02/01/1997
93–01–C–00–MOT. Minot International, Minot	12/15/1993	3	1,569,483	03/01/1994	03/01/1999
Ohio:					
92–01–C–00–CAK. Akron Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
92–01–C–00–CLE. Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
94–02–U–00–CLE. Cleveland-Hopkins International, Cleveland	02/02/1994	3	0	05/01/1994	11/01/1995
92–01–I–00–CMH. Fort Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
93–02–I–00–CMH. Fort Columbus International, Columbus	07/19/1993	3	16,270,256	02/01/1994	09/01/1996
93–03–U–00–CMH. Fort Columbus International, Columbus	10/27/1993	3	0	10/01/1992	09/01/1996
93–01–C–00–TOL. Toledo Express, Toledo	06/29/1993	3	2,750,896	09/01/1993	09/01/1996
94–01–C–00–YNG. Youngstown—Warren Regional, Youngstown	02/22/1994	3	351,180	05/01/1994	07/01/1996
Oklahoma:					
92–01–C–00–LAW. Lawton Municipal, Lawton	05/08/1992	3	482,135	08/01/1992	04/01/1996
92–01–I–00–TUL. Tulsa International, Tulsa	05/11/1992	3	9,717,000	08/01/1992	08/01/1995
93–02–U–00–TUL. Tulsa International, Tulsa	10/18/1993	3	0	02/01/1994	08/01/1995
Oregon:					
93–01–C–00–EUG. Mahlon Sweet Field, Eugene	08/31/1993	3	3,729,699	11/01/1993	11/01/1998
93–01–C–00–MFR. Medford-Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
93–01–C–00–OTH. North Bend Municipal, North Bend	11/24/1993	3	182,044	02/01/1994	01/01/1998
92–01–C–00–PDX. Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
93–01–C–00–RDM. Roberts Field, Redmond	07/02/1993	3	1,191,552	10/01/1993	03/01/2000
Pennsylvania:					
92–01–I–00–ABE. Allentown-Bethlehem–Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
92–01–C–00–ADD. Altoona-Blair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996
92–01–C–00–ERI. Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
93–01–C–00–JST. Johnstown-Cambria County, Johnstown	08/31/1993	3	307,500	11/01/1993	02/01/1998
92–01–I–00–PHL. Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
93–02–U–00–PHL. Philadelphia International, Philadelphia	05/14/1993	3	0	08/01/1993	07/01/1995
93–01–C–00–UNV. University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
93–01–C–00–AVP. Wilkes-Barre/Scranton International, Wilkes-Barre/Scranton	09/24/1993	3	2,369,566	12/01/1993	06/01/1997
Rhode Island:					
93–01–C–00–PVD. Theodore F Green State, Providence	11/30/1993	3	103,885,286	02/01/1994	08/01/2013
South Carolina:					
93–01–C–00–CAE. Columbia Metropolitan, Columbia	08/23/1993	3	32,969,942	11/01/1993	09/01/2008
93–01–C–00–49J. Hilton Head, Hilton Head Island	11/19/1993	3	1,542,300	02/01/1994	03/01/1999
Tennessee:					
93–01–C–00–CHA. Lovell Field, Chattanooga	04/26/1994	3	7,177,253	07/01/1994	10/01/2002
93–01–C–00–TYS. McGhee Tyson, Knoxville	10/06/1993	3	5,661,615	01/01/1994	01/01/1997
92–01–I–00–MEM. Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
93–02–C–00–MEM. Memphis International, Memphis	01/14/1994	3	24,026,000	04/01/1994	10/01/1999
92–01–C–00–BNA. Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Texas:					
93–02–C–00–AVS. Robert Mueller Municipal, Austin	06/04/1993	3	6,181,800	11/01/1993	01/01/1995
93–01–C–00–CRP. Corpus Christi International, Corpus Christi	12/29/1993	3	5,540,745	03/01/1994	01/01/1998
94–01–C–00–DFW. Dallas/Fort Worth International, Dallas/Fort Worth	02/17/1994	3	115,000,000	07/01/1994	02/01/1996
92–01–C–00–ILE. Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
93–01–I–00–LRD. Laredo International, Laredo	07/23/1993	3	11,983,000	10/01/1993	09/01/2013
93–01–C–00–LBB. Lubbock International, Lubbock	07/09/1993	3	10,699,749	10/01/1993	02/01/2000
94–02–U–00–LBB. Lubbock International, Lubbock	02/15/1994	3	0	05/01/1994	02/01/2000
92–01–I–00–MAF. Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
94–02–U–00–MAF. Midland International, Midland	04/14/1994	3	0	07/01/1994	01/01/2013
93–01–C–00–SJT. Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
93–01–C–00–TYR. Tyler Pounds Field, Tyler	12/20/1993	3	819,733	03/01/1994	07/01/1998
Virginia:					
92–01–I–00–CHO. Charlottesville-Albemarle, Charlottesville	06/11/1992	2	255,559	09/01/1992	11/01/1993
92–02–U–00–CHO. Charlottesville-Albemarle, Charlottesville	12/21/1992	2	0	09/01/1992	11/01/1993
93–03–U–00–CHO. Charlottesville-Albemarle, Charlottesville	10/20/1993	2	0	01/01/1994	11/01/1993
94–01–C–00–RIC. Richmond International (Byrd Field), Richmond	02/04/1994	3	30,976,072	05/01/1994	08/01/2005
93–01–C–00–IAD. Washington Dulles International, Washington, DC	10/19/1993	3	199,752,390	01/01/1994	11/01/2003
93–01–C–00–DCA. Washington National, Washington, DC	08/16/1993	3	166,739,071	11/01/1993	11/01/2000
94–02–U–00–DCA. Washington National, Washington, DC	04/06/1994	3	0	07/01/1994	11/01/2000
Washington:					
93–01–C–00–BLI. Bellingham International, Bellingham	04/29/1993	3	366,000	07/01/1993	01/01/1995
93–01–C–00–PSC. Tri-Cities, Pasco	08/03/1993	3	1,230,731	11/01/1993	11/01/1996
93–01–C–00–CLM. William R. Fairchild International, Port Angeles	05/24/1993	3	52,000	08/01/1993	08/01/1994
94–01–C–00–PUW. Pullman-Moscow Regional, Pullman	03/22/1994	1	169,288	06/01/1994	01/01/1998
92–01–C–00–SEA. Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
93–02–C–00–SEA. Seattle-Tacoma International, Seattle	10/25/1993	3	47,500,500	01/01/1994	01/01/1996
93–01–C–00–GEG. Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
93–01–I–00–ALW. Walla Walla Regional, Walla Walla	08/03/1993	3	1,187,280	11/01/1993	11/01/2014
93–01–C–00–EAT. Pangborn Field, Wenatchee	05/26/1993	3	280,500	08/01/1993	10/01/1995
92–01–C–00–YKM. Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia:					
93–01–C–00–CRW. Yeager, Charleston	05/28/1993	3	3,254,126	08/01/1993	04/01/1998
93–01–C–00–CKB. Benedum, Clarksburg	12/29/1993	3	105,256	04/01/1994	04/01/1996
92–01–C–00–MGW. Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wisconsin:					
94–01–C–00–ATW. Outagamie County, Appleton	04/25/1994	3	3,233,645	07/01/1994	09/01/2000
92–01–C–00–GRB. Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
94–01–C–00–LSE. La Crosse Municipal, La Crosse	04/06/1994	3	795,299	08/01/1994	08/01/1997
93–01–C–00–MSN. Dane County Regional-Truax Field, Madison	06/22/1993	3	6,746,000	09/01/1993	03/01/1998
93–01–I–00–CWA. Central Wisconsin, Mosinee	08/10/1993	3	7,725,600	11/01/1993	11/01/2012
93–01–C–00–RHI. Rhinelander-Oneida County, Rhinelander	08/04/1993	3	167,201	11/01/1993	04/01/1996
Wyoming:					
93–01–C–00–CPR. Natrona County International, Casper	06/14/1993	3	506,144	09/01/1993	10/01/1996
93–01–C–00–CYS. Cheyenne, Cheyenne	07/30/1993	3	742,261	11/01/1993	08/01/2000
93–01–I–00–GCC. Gillette-Campbell County, Gillette	06/28/1993	3	331,540	09/01/1993	09/01/1999
93–01–C–00–JAC. Jackson Hole, Jackson	05/25/1993	3	1,081,183	08/01/1993	02/01/1996
Guam:					
92–01–C–00–NGM. Agana Nas, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
93–02–C–00–NGM. Agana Nas, Agana	02/25/1994	3	258,408,107	05/01/1994	06/01/2021
Puerto Rico:					
92–01–C–00–BQN. Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
92–01–C–00–PSE. Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
92–01–C–00–SJU. Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1997
93–02–U–00–SJU. Luis Munoz Marin International, San Juan	12/14/1993	3	0	03/01/1994	02/01/1997
Virgin Islands:					
92–01–I–00–STT. Cyril E King, Charlotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
92–01–I–00–STX. Alexander Hamilton, Christiansted St. Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1995

*The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 94–14151 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Carroll, Lafayette, and Saline Counties, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Carroll, Lafayette, and Saline Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO 65102, Telephone Number 314–636–7104; or Mr. Bob Sfreddo, Design Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2876.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Highway and Transportation Department (MHTD), will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Route 65 in Carroll, Lafayette, and Saline Counties, Missouri.

1. The proposed improvement would involve the reconstruction of U.S. Route 65 from immediately south of Marshall to just north of Carrollton. The project would be approximately 54.7 kilometers (34 miles) long. Improvements in the corridor are considered necessary to (1) provide additional capacity in the U.S. Route 65 regional corridor between the

Iowa and Arkansas state lines to accommodate increasing traffic, and (2) improve regional mobility and connections to major linkages within the corridor. The U.S. route 65 corridor is the only mid-state, continuous, north-south corridor across Missouri. This proposal also includes the replacement of a functionally obsolete bridge across the Missouri River.

2. Alternatives under consideration include (1) a "no build" option; (2) using alternative travel modes; (3) phased construction of a four-lane freeway, with fully controlled access, substantially parallel to the existing route; (4) phased construction of a four-lane freeway substantially parallel to the existing route on a new location; and (5) phased construction of a four-lane freeway in an alternative corridor between Carrollton and Marshall.

3. To date, preliminary information has been issued to local officials and other interested parties. The scoping process has been initiated with Federal, State, and local agencies. Formal agency and public scoping meetings will be held. In addition, public hearings will be held. Public notice will be given in advance of the date and time of each meeting. The draft EIS will be available prior to the public hearing for public review and comment. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Any comments or questions concerning this proposed action and the EIS should be directed to the FHW or the Missouri Highway and Transportation Department at the address provided above.

Issued on: May 25, 1994.

Donald Neumann,

Program Review Engineer, Jefferson City.

[FR Doc. 94–14183 filed 6–9–94; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Clark and Lewis Counties, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Clark and Lewis Counties, Missouri, and Henry and Lee Counties, Iowa.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO 65102, Telephone Number 314–636–7104; or Mr. Bob Sfreddo, Design Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2876.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Highway and Transportation Department (MHTD), will prepare an environmental impact statement (EIS) on a proposal to improve a portion of U.S. Route 61 (the Avenue of the Saints roadway) in Clark and Lewis Counties, Missouri, and Henry and Lee Counties, Iowa.

1. The proposed improvement would provide a four-lane highway from Canton, Missouri, to approximately 1.61 kilometers (1 mile) south of Mount Pleasant, Iowa. The project is approximately 90 kilometers (56 miles) long. The Missouri Section would be an expressway on expressway right of way, with freeway and interchange right of way purchased at major state routes. It would run for 37 kilometers (23 miles) along the corridor of existing portions of U.S. 61, U.S. 136 Spur, U.S. 136, and Missouri Route B. The Iowa section would be designed to expressway standards and would generally follow U.S. 218 and Iowa 394 for 53 kilometers (33 miles). The corridor crosses the Des Moines River and includes the crossing now occupied by Iowa 394 and Missouri Route B. However, the new crossing will be at a different location. Several wetland areas associated with rivers and streams will be crossed.

2. In Missouri, alternatives under consideration include (1) a "no build" option, (2) improvement of the existing alignment, and (3) two alternatives on new alignments.

The first Missouri alternate on new alignment would begin north of the junction on U.S. 61 and Missouri 16, just west of Canton, and would extend along a new alignment west of U.S. 61 and generally west of U.S. 136 Spur. It would provide a western bypass around Wayland, Missouri, and continue northwest to Missouri Route B. St. Francisville, Missouri, would be bypassed on the west.

The second Missouri alternative on new alignment would also begin north of the U.S. 61 and Missouri 16 junction and would extend north on an alignment east of U.S. 61 and U.S. 136 Spur. It would bypass Wayland and continue north to Missouri Route B. South of St. Francisville, it would cross Route B and bypass St. Francisville to the east. Within Missouri, combinations of build alternatives are possible.

In Iowa, alternatives being considered include (1) a "no build" option, (2) improvement of the existing alignment, and (3) a construction alternative that includes some sections on new alignment combined with upgrading the existing alignment. This alternative consists of improving existing two-lane sections of U.S. 218 and Iowa 394 to four-lane expressway standards with eastern bypasses of the communities of Donnellson and Argyle.

3. To date, preliminary information has been issued to local officials and other interested parties. The scoping process was initiated with Federal, State, and local agencies in September of 1993. Formal agency and public scoping meetings were held on October 12, 1993, in Donnellson, Iowa. A meeting with local government officials and community leaders was held in Wayland, Missouri, on February 8, 1994. On February 24, 1994, a second public information meeting was held near Wayland to gain public input about alternatives being considered for the project. In addition, public hearings will be held. Public notice will be given in advance of the date and time of each meeting. The draft EIS will be available prior to the public hearing for public review and comment. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Any comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Missouri Highway and Transportation Department at the addresses provided above. Missouri is the lead state for the proposed action.

Issued on: June 1, 1994.

Donald Neumann,

Program Review Engineer, Jefferson City.

[FR Doc. 94–14184 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 94–47; Notice 1]

Program Plan for Evaluating the Effectiveness of Existing Regulations, 1994–98

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of its Evaluation Program Plan for 1994–98. The report describes the agency's ongoing and planned evaluations of its existing Federal Vehicle Safety Standards [49 CFR part 571] and its other safety and

consumer programs. It also summarizes the results of completed evaluations. The agency's evaluation program responds to Executive Order 12866, which provides for Government-wide review of existing significant Federal regulations. This notice solicits public review and comment on the evaluation plan. Comments received will be used to improve the plan.

DATES: Comments must be received no later than August 9, 1994.

ADDRESSES: *Report:* Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms Glorious Harris (NAD–51, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

Comments: All comments should refer to the docket and notice number of this notice and be submitted to: Docket section, room 5109, Nassif Building, 400 Seventh Street, SW., Washington DC 20590. [Docket hours, 9:30 a.m.–4 p.m., Monday through Friday.] It is requested but not required that 10 copies of comments be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Ephraim, Chief, Evaluation Division, Office of Strategic Planning and Evaluation, Plans and Policy, National Highway Traffic Safety Administration, room 5208, 400 Seventh Street, SW., Washington, DC 20590 (202–336–1574).

SUPPLEMENTARY INFORMATION: NHTSA has rigorously evaluated its major programs as a matter of policy since 1970. The evaluation of the effectiveness of the Federal Motor Vehicle Safety Standards (FMVSS) began in 1975. Executive Order 12866, issued in October 1993, is the formal government-wide requirement for Federal agencies to evaluate their existing regulations and programs. Since the mid-1970's NHTSA was a leader among Federal agencies in evaluating the effectiveness of its regulations. There are large data bases of motor vehicle accidents which can be analyzed to find out what vehicle and traffic safety programs works best.

This five-year plan presents and discusses the programs, regulations, and related areas NHTSA proposes to evaluate, and it summarizes the findings of past evaluations. Depending on scope, evaluations typically take a year or more, counting initial planning, contracting for support, Office of Management and Budget clearance for surveys, internal review, approval, report publication for comment, and the last phase of preparing options for subsequent agency action.

Most of NHTSA's crashworthiness and several crash avoidance standards have been evaluated at least once since 1975. A number of consumer-oriented regulations, e.g., bumpers, theft protection, and fuel economy, have also been evaluated. The plan for the next five years includes evaluations of new and existing safety and consumer information and protection regulations, plus assessments of specific enforcement and highway safety programs.

NHTSA welcomes public review of the plan and invites the reviewers to comment about the selection, priority, and schedule of the regulations to be evaluated. The agency is interested in learning of any additional data that may be useful in the evaluations. The plan will be periodically updated in response to public and agency needs, with a complete revision scheduled very four years.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50 and 501.8)

Issued on: June 3, 1994.

Donald C. Bischoff,

Associate Administrator for Plans and Policy

[FR Doc. 94–14091 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

International Standards on the Transport of Radioactive Materials; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to discuss issues to be considered at the International Atomic Energy Agency (IAEA) Technical Committee Meeting (TCM) during June 27–July 1, 1994. A TCM is a meeting of experts from member nations assembled to address the technical aspects of a particular proposal.

DATES: June 15, 1994 at 9:30 am.

ADDRESSES: Room 8442, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: George Brown, Chief, Radioactive Materials Branch, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366–4545.

SUPPLEMENTARY INFORMATION: This meeting will be held to discuss several issues being considered for incorporation into the next publication of international regulations. The IAEA meeting will be held in Vienna, Austria, June 27–July 1, 1994. Topics to be covered include:

1. The impact of the new recommendations proposed by the International Council on Radiological Protection (ICRP) and the draft of the IAEA Basic Safety Standards on the "Regulations for Safe Transport of Radioactive Material," IAEA Safety Series #6.

2. Review status of changes to the "Q" System. The "Q" system is an index of the relative hazards of each radionuclide, and is the basis for determining such issues as Type A and Type B quantities.

3. Exemption/Exception criteria. The issue is to investigate the merits of replacing the current generic radioactivity threshold of .002 uCi/g of any radionuclide with a threshold based on each individual radionuclide.

4. Minimum weight limit for packages labeled "Radioactive Yellow III". The proposal is to require a minimum weight of 10 kg for these packages.

The public is invited to attend without prior notification.

Documents

Copies of documents related to the issues to be covered at the tenth meeting of SAGSTRAM may be obtained from RSPA. Documents may be ordered by contacting RSPA's Dockets Unit (202–366–4453). For more information on the use of the HMIX system, contact the HMIX information center: 1–800–PLANFOR (752–6367); in Illinois, 1–800–367–9592; Monday through Friday, 8:30 a.m. to 5 p.m. Central time.

Issued in Washington, DC, on June 7, 1994.

Robert A. McGuire,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 94–14214 Filed 6–9–94; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Commissioner's Advisory Group: Public Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Public Meeting of Commissioner's Advisory Group.

SUMMARY: Public meeting of the Commissioner's Advisory Group will be held in Washington, DC.

DATES: The meeting will be held June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia Andrews, PC:E, 1111 Constitution Avenue, NW., room 1311, Washington, DC 20224. Telephone No. (202) 622–5026, (not a toll-free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a public meeting of the Commissioner's Advisory Group will be held on June 16, 1994, in room 3313 beginning at 8:30 a.m., main Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

The agenda will include the following topics:

IRS Small Business Study
Commercial Return Preparers Conference on Professionalism
Protecting Privacy and Security
Legislative Update
Business Master Plan Overview
Compliance Subgroup Status Report
FY 1995 Compliance Initiatives
Recommendations for Electronic Filing Strategy
Taxlink Update

Note: Last minute changes to the agenda or order of topic discussion are possible and could prevent effective advance notice.

The meeting, which will be open to the public will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Patricia Andrews, Senior Program Analyst, no later than June 10, 1994. Ms. Andrews can be reached on (202) 622–5026 (not toll-free).

If you would like to have the committee consider a written statement, please call or write: Ms. Patricia Andrews, Strategic Planning and Communications, PC:E, Internal Revenue Service, 1111 Constitution Avenue, NW., room 1311, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Patricia Andrews, Program Analyst, (202) 622–5026 (not toll-free).

Margaret Milner Richardson,
Commissioner.

[FR Doc. 94–14185 Filed 6–9–94; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Educational Advising Program for International Students From Hong Kong

ACTION: Notice—Request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) seeks applications from non-profit applicants willing to establish and maintain an educational advising center in Hong Kong. The advising center will facilitate international educational exchange through overseas educational advising, orientation, and information services for international students and scholars seeking information on opportunities in U.S. higher education.

USIA anticipates awarding up to $90,000 for the implementation and coordination of the advising center. Grants will only be awarded to eligible applicants with at least four years of experience in conducting international exchange programs.

Announcement Name and Number

All communications with USIA concerning this announcement should refer to the above title and reference number E/ASA–94–04.

DATES: *Deadline for proposals:* All proposals must be received at the U.S. Information Agency by close of business (5 p.m., Eastern Standard Time) Friday, July 14, 1994. Faxed documents will not be accepted, nor will documents postmarked on July 14, 1994, but received at a later date.

Duration

The duration of the grant should be from October 1, 1994 through September 30, 1995. Programs may begin no earlier than October 1, 1994. No funds may be expended until the grant agreement is signed.

ADDRESSES: A total of fifteen copies of the application should be submitted to the office below. Three copies (one a signed original) should include the completed application, including tabs A–U; the other 12 copies should include tabs A–D.

U.S. Information Agency, Reference number: E/ASA–94–04, Grants Management Division, E/XE, 301 4th Street SW., room 336, Washington, DC. 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. applicants should contact Alexandra Hattemer at the United States Information Agency, 301 4th Street SW., Advising and Student Services Branch (E/ASA), Room 349, Washington, DC. 20547, 202–619–5434 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life.

Overall authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Pub. L. 87–256 (Fulbright Hays Act). The purpose of the Act is to "enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and other countries of the world." Programs and projects must conform with all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

Overview

An ideal program would provide a state-of-the-art advising center dedicated to providing information, orientation, and advice to international students in Hong Kong interested in studying in the U.S.

Guidelines

The proposal should be presented in three parts.

I. Applicant's Background and Overview

The first part should contain an overview of the applicant's history and purpose. Evidence of previous experience with advising or educational exchange of international students and scholars should be included. The overview should indicate the total amount of funding requested with a justification as well as a budget presentation outlining the total project costs.

A listing of names, titles, addresses, and telephone numbers of the executive officer(s) and of the person(s) ultimately responsible for project, must be included in the proposal. Resumes or vitae of key personnel must be provided. USIA also recommends the inclusion of brochures and general information concerning the applicant, e.g. organizational charts, job descriptions, the names of board members (or similar group), the number of employees, etc.

II. Advising Center Operational and Services

The second part of the proposal should contain details on the advising center's proposed location and hours of operation, proposed staffing pattern (including the percentage of time each employee will devote to advising activities and a description of their functions and responsibilities), budget, and advising services to be provided. A resume or brief narrative explaining the qualifications of the person or persons who will have primary responsibility for conducting advising and/or providing oversight of the advising center staff should be included. The proposal should demonstrate the center's ability to provide the following educational advising services to international students and scholars:

1. Information and guidance on U.S. educational institutions, systems, tuition and related costs, fields of study, specialized training, etc;
2. Information and advice on U.S. standardized tests, e.g. TOEFL, GRE, GMAT, FMGEMS, etc., to include the provision of registration application forms, maintenance of bulletins and testing schedules;
3. Information and research on short-term institutional training in technical and professional fields;
4. Information on English language training programs in the U.S.;
5. Group and individual advising sessions, pre-departure orientation and reentry programs, as appropriate.

The center will also be required to monitor the status of the educational system in Hong Kong and to share that information with USIA and United States Information Service (USIS) office at the American Consulate. The applicant should be willing to assist and support educational outreach activities of the USIS post abroad by developing a network of contacts with the local Ministry of Education, universities, and other appropriate institutions.

The center should also be willing to serve as an information resource for overseas educational advising centers in the People's Republic of China. The proposal should address the applicant's ability to do so.

III. Provision of Resource Materials, Equipment and Training

The third part of the proposal should address the extent to which the U.S. headquarters office will support its advising center abroad through the provision of educational advising resource materials and professional development activities and training.

Student access to a comprehensive university catalog collection, in print and/or microfiche or computer software programs, and an extensive collection of current references on U.S. educational institutions and programs, through print or computer networks, is an integral component of an educational advising center and the applicant's ability to provide such should be made clear in this section.

Office equipment that facilitates the processing of inquiries, such as electronic mail, facsimile machines, and telexes, would be regarded as an asset to the advising function and mention of such equipment should be made in the proposal. The Agency expects the advising center to be equipped with audio visual aids for students' use. Videos on U.S. study and life should complement the presentation and materials offered at group and individual advising sessions.

Proposed Budget

Applicants must submit a comprehensive line-item budget for which specific details are available in the application packet. The budget should not exceed $90,000.

Cost-sharing is encouraged. Cost-sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E. Cost sharing and matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost-sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution.

The recipient's proposal shall include the cost of an audit that: (1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for: (1) Preparation of basic financial statements and other accounting services; and (2) preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Applicants should refer to the application package for a list of allowable costs.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the USIA budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

a. *Quality of program plan:* Proposals should exhibit a thorough knowledge and understanding of the needs of students from Hong Kong and exhibit originality, substance, and rigor.

b. *Program planning:* Proposals must include a detailed agenda and relevant workplan of program activities. The agenda should adhere to the program overview and guidelines described above.

c. *Ability to achieve program objectives/institutional capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals and adhere to the guidelines described above. The applicant should demonstrate an ability to recruit and

maintain a professional staff to successfully accomplish the goals of the program.

d. *Multiplier effect/impact:* Program activities should be designed to foster long-term mutual understanding between citizens of the United States and Hong Kong.

e. *Institution's track record/ability:* Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for Agency grants. The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

f. *Evaluation plan:* Proposals should provide a plan for evaluation by the grantee institution, including periodic progress reports.

g. *Cost-effectiveness:* The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

h. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct-funding contributions. Evidence of such cost sharing should be detailed in the proposal.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about September 15, 1994. Funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: June 6, 1994.

John P. Loiello,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–14166 Filed 6–9–94; 8:45 am]

BILLING CODE 8230–04–M

Educational Advising Program for International Students From Mexico and a Regional Educational Advising Consultancy for Overseas Educational Advising Centers Throughout Central America

ACTION: Notice—Request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) seeks applications from non-profit applicants willing to establish and maintain an educational advising center in Mexico City which would also serve as the Regional Educational Advising Consultancy (REAC) for overseas educational advising centers throughout Mexico and Central America. The advising center will facilitate international educational exchange through overseas educational advising, orientation, and information services for international students and scholars seeking information on opportunities in U.S. higher education.

USIA anticipates awarding up to $130,000 for the implementation and coordination of the advising center and the REAC. Grants will only be awarded to eligible applications with at least four years of experience in conducting international exchange programs.

Announcement Name and Number

All communications with USIA concerning this announcement should refer to the above title and reference number E/ASA–94–03.

DATES: *Deadline for proposals:* All proposals must be received at the U.S. Information Agency by close of business (5 p.m., Eastern Standard Time) Friday, July 14, 1994. Faxed documents will not be accepted, nor will documents postmarked on July 14, 1994, but received at a later date.

Duration

The duration of the grant should be from October 1, 1994 through September 30, 1995. Programs may begin no earlier than October 1, 1994. No funds may be expended until the grant agreement is signed.

ADDRESSES: A total of fifteen copies of the application should be submitted to the office below. Three copies (one a signed original) should include the completed application, including tabs A–U; the other 12 copies should include tabs A–D.

U.S. Information Agency, Reference number: E/ASA–94–03, Grants Management Division, E/XE, 301 4th Street SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. applicants should contact Alexandra Hattemer at the United States Information Agency, 301 4th Street SW., Advising and Student Services Branch (E/ASA), room 349, Washington, DC 20547, 202–619–5434 to request detailed application packets.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life.

Overall authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Pub. L. 87–256 (Fulbright Hays Act). The purpose of the Act is to "enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Programs and projects must conform with all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

Overview

An ideal program would provide a state-of-the-art advising center dedicated to providing information, orientation, and advice to international students in Mexico interested in study in the U.S. and would also serve as a well informed resource on U.S. education to overseas educational advisers throughout Mexico and Central America.

Guidelines

The proposal should be presented in four parts.

I. Applicant's Background and Overview

The first part should contain an overview of the applicant's history and purpose. Evidence of previous experience with advising or educational exchange of international students and scholars should be included. The overview should indicate the total amount of funding requested with a justification as well as a budget presentation outlining the total project costs.

A listing of names, titles, addresses, and telephones numbers of the executive officer(s) and of the person(s) ultimately responsible for project, must

be included in the proposal. Résumés or vitae of key personnel must be provided. USIA also recommends the inclusion of brochures and general information concerning the applicant, e.g. organizational charts, job descriptions, the names of board members (or similar group), the number of employees, etc.

II. Advising Center Operation and Services

The second part of the proposal should contain details on the advising center's proposed location and hours of operation, proposed staffing pattern (including the percentage of time each employee will devote to advising activities and a description of their functions and responsibilities), budget, and advising services to be provided. A resume or brief narrative explaining the qualifications of the person or persons who will have primary responsibility for conducting, advising and/or providing oversight of the advising center staff should be included. The proposal should demonstrate the center's ability to provide the following educational advising services to international students and scholars:

1. Information and guidance on U.S. educational institutions, systems, tuition and related costs, fields of study, specialized training, etc;

2. Information and advice on U.S. standardized tests, e.g. TOEFL, GRE, GMAT, FMGEMS, etc., to include the provision of registration application forms, maintenance of bulletins and testing schedules;

3. Information and research on short-term institutional training in technical and professional fields;

4. Information on English language training programs in the U.S.;

5. Group and individual advising sessions, pre-departure orientation and reentry programs, as appropriate.

The center will also be required to monitor the status of the educational system in Mexico and to share that information with USIA and United States Information Service (USIS) office at the American Embassy. The applicant should also be willing to assist and support educational outreach activities of the USIS post abroad by developing a network of contacts with the local Ministry of Education, universities, and other appropriate institutions.

III. Provision of Resource Materials, Equipment and Training

The third part of the proposal should address the extent to which the U.S. headquarters office will support its advising center abroad through the provision of educational advising resource materials and professional development activities and training.

Student access to a comprehensive university catalog collection, in print and/or microfiche, and an extensive collection of current references on U.S. educational institutions and programs is an integral component of an educational advising center and the applicant's ability to provide such should be made clear in this section.

Office equipment that facilitate the processing of inquiries, such as electronic mail, facsimile machines, and telexes, would be regarded as an asset to the advising function and mention of such equipment should be made in the proposal. The Agency expects the advising center to be equipped with audio visual aids for students' use. Videos on U.S. study and life complement the presentation and materials offered at group and individual advising sessions.

IV. Regional Educational Advising Consultancy

The fourth part of the proposal should contain details on the Regional Educational Advising Consultancy (REAC) for Mexico and Central America. Funding for the REAC should be contained within the $130,000 budget. The Agency recommends that the person(s) dédicated to the REAC work a minimum of 20 hours per week. The REAC would service overseas educational advising centers in Mexico and Central America. The objective of the REAC is to:

1. Attain widespread recognition as the regional resource center for educational advising;

2. Encourage regional communication and networking among Mexican and Central American advising centers;

3. Foster information sharing through such means as the development and sharing of materials (i.e., advising handouts), a regional newsletter, workshops, electronic mail, Internet, etc.;

4. Provide advice to advising centers on how to conduct regional and in-country workshops, pre-admission and pre-departure orientation sessions, outreach activities, etc.

5. Provide needs assessments, training, and professional development for the educational advisers in the region as necessary.

Please note that travel within the region for needs assessments and consultations, must be arranged by means of an annual request (via cable) to the educational advising centers via the USIS office in each country.

Proposed Budget

Applicants must submit a comprehensive line-item budget for which specific details are available in the application packet. The budget should not exceed $130,000, including the REAC. The applicant should submit separate line-item budgets for the Educational Advising Center in Mexico City and for the REAC.

Cost-sharing is encouraged. Cost-sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E. Cost sharing and matching should be described in the proposal. In the event the recipient does to provide the minimum amount of cost-sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution.

The recipient's proposal shall include the cost of an audit that: (1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for: (1) Preparation of basic financial statements and other accounting services; and (2) preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Applicants should refer to the application package for a list of allowable costs.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also

be reviewed by the appropriate geographic area office, and the USIA budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

a. *Quality of program plan:* Proposals should exhibit a thorough knowledge and understanding of the needs of students from Mexico and Central America and exhibit originality, substance, and rigor.

b. *Program planning:* Proposals must include a detailed agenda and relevant workplan of program activities. The agenda should adhere to the program overview and guidelines described above.

c. *Ability to achieve program objectives/institutional capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals and adhere to the guidelines described above. The applicant should demonstrate an ability to recruit and maintain a professional staff to successfully accomplish the goals of the program.

d. *Multiplier effect/impact:* Program activities should be designed to foster long-term mutual understanding between citizens of the United States and Central America and Mexico.

e. *Institution's track record/ability:* Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for Agency grants. The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

f. *Evaluation plan:* Proposals should provide a plan for evaluation by the grantee institution, including periodic progress reports.

g. *Cost-effectiveness:* The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

h. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct-funding contributions. Evidence of such cost sharing should be detailed in the proposal.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about September 15, 1994. Funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: June 6, 1994.

John P. Loiello,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–14165 Filed 6–9–94; 8:45 am]

BILLING CODE 8230–03–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 111
Friday, June 10, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, June 14, 1994, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Proposed revision to Part 336 of the Corporation's rules and regulations, entitled "Employees Responsibilities and Conduct," which would remove the standards of conduct regulations at sections 336.1–336.23 and 336.29–37 and the Appendix to such part and would promulgate similar regulations as a supplement to regulations on "Standards of Ethical Conduct for Employees of the Executive Branch" issued by the Office of Government Ethics.

Memorandum and resolution re: Proposed amendments to the Corporation's rules and regulations in the form of a new Part 366, entitled "Contractor Conflicts of Interest," which would be applicable to private sector contractors, including law firms, which submit offers to provide services to the Corporation or which enter into contracts to provide services to the Corporation; would govern conflicts of interest, ethical responsibilities, and the use of confidential information by such contractors; and would provide guidance to Corporation contracting personnel.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898–6757.

Dated: June 7, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–14243 Filed 6–7–94; 8:45 am]

BILLING CODE 6714–0–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, June 7, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General.

Matters relating to the probable failure of a certain insured depository institution.

Matters relating to the Corporation's corporate and supervisory activities.

Application of Community Federal Savings Bank, Tupelo, Mississippi, a proposed new federally chartered stock savings bank, for Federal deposit insurance.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: June 7, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–14268 Filed 6–8–94; 11:37 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of June 13, 1994.

A closed meeting will be held on Tuesday, June 14, 1994, at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 14, 1994, at 2:00 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive action.

Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Ramsay (202) 942–0700.

Dated: June 8, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–14327 Filed 6–8–94; 3:40 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [59 FR 29324, June 6, 1994].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: June 6, 1994.

CHANGE IN THE MEETING: Additional Item.

The following item will be considered at a closed meeting scheduled for Thursday, June 9, 1994.

Litigation matter.

Commissioner Roberts, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Carrie Dwyer at (202) 942–0100.

Dated: June 7, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–14269 Filed 6–8–94; 11:39 am]

BILLING CODE 8010–01–M

UNITED STATES ENRICHMENT CORPORATION BOARD OF DIRECTORS

TIME AND DATE: 8:00 a.m., Tuesday, June 14, 1994.

PLACE: USEC Corporate Headquarters, 6903 Rockledge Drive, Bethesda, Maryland 20817.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Review of commercial, financial and internal personnel issues of the Corporation.

CONTACT PERSON FOR MORE INFORMATION: Barbara Arnold, 301–564–3354.

Dated: June 7, 1994.

William H. Timbers, Jr.,

President and Chief Executive Officer.

[FR Doc. 94–14267 Filed 6–8–94; 11:35 am]

BILLING CODE 8720–01–M

federal register

Friday
June 10, 1994

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 20, 25, and 602
Valuation Tables and Actuarial Tables Exceptions; Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, and 602

[TD 8540]

RIN 1545–AM81

Valuation Tables

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the valuation of annuities, interests for life or terms of years, and remainder or reversionary interests. Changes to the applicable tax law were made by section 5031 of the Technical and Miscellaneous Revenue Act of 1988. These regulations will provide the public with the guidance needed to comply with the Act.

DATES: These regulations are effective May 1, 1989. For dates of applicability of these regulations, see the EFFECTIVE DATES portion under SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1343. The estimated annual burden per respondent varies from 30 minutes to one hour, depending on individual circumstances, with an estimated average of 45 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On November 2, 1992, the IRS published in the **Federal Register** proposed amendments to the income tax regulations (26 CFR part 1) under sections 170, 642, 664, and 7520 of the Internal Revenue Code (Code), and to the estate and gift tax regulations (26 CFR part 20 and part 25) under sections 2031, 2512, and 7520 of the Code. Conforming changes were proposed for regulations under other sections of the Code. On February 3, 1993, the IRS published in the **Federal Register** certain corrections to the proposed regulations. This project finalizes those amendments. Written comments responding to the Notice of Proposed Rulemaking were received. No public hearing was requested, and none was held. After consideration of all of the comments received regarding the proposed regulations, those amendments are adopted by this Treasury decision with revisions in response to those comments. A summary of the principal comments received and revisions made in the final regulations in response to those comments is provided below.

Explanation of Provisions

The notice of proposed rulemaking included estate tax regulations that described the implementation of the new valuation standard, including an explanation of the general effective date of May 1, 1989 (§ 20.7520–1), an explanation of the special elections for charitable interests (§ 20.7520–2), a listing of Code provisions that are not subject to section 7520 (§ 20.7520–3), and a description of transitional rules for income, estate, and gift tax valuations (§ 20.7520–4). In the final regulations, the substance of §§ 20.7520–1 through 20.7520–4 has been incorporated into analogous provisions for the Income Tax Regulations (§§ 1.7520–1 through 1.7520–4) and the Gift Tax Regulations (§§ 25.7520–1 through 25.7520–4).

In response to comments, several editorial changes were made to clarify certain of the formulas contained in the proposed regulations. These clarifications principally involve the insertion of additional parentheses or brackets in order to make the formulas easier for the reader to understand and apply.

Also in response to comments, § 1.170A–12(b) was updated in a correction to the proposed regulations that was published in the **Federal Register** on February 3, 1993. The update includes a formula for the computation of the special factor to value a remainder interest following one life where the property is subject to exhaustion, wear and tear, or obsolescence. A similar formula in § 1.170A–12(e), which is applicable to the valuation of a remainder interest following two lives, was also updated. The change in formulas avoids the need to include lengthy commutation factor tables in the regulations.

Clarifying amendments have been made in the final regulations concerning the meaning of "valuation date" for purposes of an election to value a transfer to a charitable remainder trust. In the case of an election under section 7520 to compute the present value of the charitable interest by use of the interest rate component for either of the 2 months preceding the month in which the transfer is made, the month so elected is the valuation date for purposes of determining the interest rate and mortality tables. Sections 1.664–2(c) and 1.664–4(e)(4) of the final regulations have been revised accordingly.

Comments were received pertaining to the rule in the proposed regulations under section 7520 concerning the transfer of more than one partial interest in the same property at different times. In response to these comments, the regulations have been amended to make it clear that, generally, each separate transfer is valued with the interest rate applicable in the month of the transfer.

The proposed regulations provide for making the election to use a prior month's interest rate in the case of a transfer to charity. Comments questioned the need for requiring the filing of detailed information as part of a prior-month election. This information is already required to be filed with the tax return for certain situations involving charitable interests that are subject to measuring lives. See, for example, § 20.2055–2(f)(5). This requirement is now explained in the regulations under section 7520. Comments also raised a question about the revocability of the election and the time for making the election. The final regulations provide that the taxpayer makes the prior-month election by so stating on the return and identifying the elected month. The failure to include with the return other information that is required to describe the transfer, whether or not the election is made, will ordinarily not invalidate the election. For elections made on or before June 10, 1994, a reasonable attempt to make the election and submit the required information will be treated as a valid election. The final regulations also provide that the election is generally made on a timely filed tax return for the year of the transfer. However, the election may also be made or changed on an amended or supplemented return that is made within 24 months after the original return is filed.

Comments were received concerning whether the five percent de minimis test (i.e., a transfer to charity of at least five percent of the value of the interest) set forth in the proposed regulations should be applied in determining if the

taxpayer may elect to use an alternative prior month interest rate. The final regulations delete this de minimis test.

Comments were received concerning the application of these regulations in situations where an individual is expected to die prematurely or where two individuals die simultaneously. See, for example, Rev. Rul. 80–80, 1980–1 C.B. 194, which holds that, in cases where the individual's death is imminent, the standard actuarial tables prescribed by the regulations are not to be used. See, also, *Carter* v. *United States*, 291 F.2d 63 (5th Cir. 1991), where the court refused to ascribe value to an income interest for purposes of the section 2013 credit where the death of the transferee was simultaneous with the death of the transferor. Comments were also received concerning the scope of these regulations in light of *O'Reilly* v. *Commissioner*, 973 F.2d 1403 (8th. Cir. 1992), *rem'd*, T.C.M. 1994–61. In *O'Reilly*, the Circuit Court held that the standard actuarial tables were not applicable to a situation in which the application of those tables would have produced an unreasonable result. In that case, the property held in trust produced an extraordinarily low rate of return. A similar result was reached by the Tax Court in *Froh* v. *Commissioner*, 100 T.C. 1 (1993), dealing with depletable property. Consistent with these comments, the Service and Treasury are contemporaneously proposing an amendment to these regulations that defines the circumstances in which the section 7520 tables would not apply in valuing a transferred interest. That Notice of Proposed Rulemaking is published elsewhere in this issue of the **Federal Register**.

Notice 89–60, 1989–1 C.B. 700, announced a method for determining the deemed yearly rate of return for new pooled income funds. This method defined the deemed rate as the highest annual average section 7520 interest rate for the preceding three years, reduced by one percentage point. The proposed regulations would have defined the deemed rate as the highest annual average section 7520 interest rate for the preceding three years, multiplied by 90 percent. Both methods produced the same result for each of the years after the enactment of section 7520:

First year of pooled income fund	5/1/89 to 12/31/89	1990	1991	1992	1993	1994
Notice 89–60 method	9.4	9.8	9.8	9.8	9.4	8.4
Proposed regulation method	9.4	9.8	9.8	9.8	9.4	8.4

Commentators have indicated a strong preference for the method announced in Notice 89–60, because they view the computation as simpler than that set forth in the proposed regulations. In response to these comments, the final regulations adopt the method described in Notice 89–60 for determining the deemed yearly rate of return for new pooled income funds.

Comments were received concerning whether, in valuing transfers to a new pooled income fund, the same deemed rate of return would be used throughout the entire three-year period. The final regulations provide that the deemed rate of return for transfers to a new pooled income fund is recomputed each calendar year using the monthly section 7520 rates for the three-year period immediately preceding the calendar year in which each transfer to the fund is made until the fund has been in existence for three taxable years and can compute its highest rate of return for the three taxable years immediately preceding the taxable year in which the transfer of property to the fund is made.

A commentator suggested that, with respect to the interpolation method for valuing transfers to pooled income funds and charitable remainder unitrusts, a taxpayer be permitted to elect a more exact method of computing the appropriate interest rate. The method prescribed in the proposed regulations has been in use for many years and is prescribed by the Internal Revenue Service in Publication 1457, "Actuarial Values, Alpha Volume," (8–89) and Internal Revenue Service Publication 1458, "Actuarial Values, Beta Volume," (8–89). The IRS and Treasury believe that any change from the method prescribed in these publications, which are in current use, would create undue confusion for taxpayers. Consequently, the commentator's suggested change is not being adopted at this time.

Comments were received inquiring about the application of section 7520 to the valuation of annuities issued by certain organizations other than insurance companies. In response to these comments, the final regulations explain that the section 7520 tables are to be used in valuing these annuities. This is an application of the principle adopted in Rev. Rul. 84–162, 1984–2 C.B. 200, for transfers after November 23, 1984. A different method of valuation continues to apply for purposes of computing the exclusion ratio in reporting the annuity payments under section 72. These clarifications have been made by updating § 1.101–2(e)(1)(iii)(*b*) and *Example 8* of § 1.1011–2(c).

Comments were received concerning the presumption in the proposed regulations under section 664 that, if a governing instrument for a charitable remainder unitrust does not prescribe when the distribution is made during the period, the distribution is presumed to be made on the first day of the period. Unitrusts have traditionally been regarded as providing for distributions at the beginning of each period unless the governing instrument provides to the contrary. This presumption has been reflected in unitrust factors prescribed in the regulations under section 664 since the enactment of that section. Therefore, the presumption that distributions are made on the first day of the period, if not otherwise provided for in the instrument, is continued in the final regulations.

Effective Dates

These regulations are generally effective in the case of annuities, interests for life or terms of years, and remainder or reversionary interests created after April 30, 1989. The regulations provide certain transitional rules intended to alleviate any adverse consequences resulting from the statutory amendments. Several principal provisions of the regulations were announced in Notice 89–24, 1989–1 C.B. 660 (which announced the change from the 10 percent fixed rate of interest to the section 7520 floating rate of interest), and Notice 89–60 (which announced the change in mortality tables) (See § 601.601(d)(2)(ii)(*b*) of the Statement of Procedural Rules). A transitional rule in the final regulations provides that, for valuation dates of transfers after April 30, 1989, and before June 10, 1994, a transferor can rely on Notice 89–24 or Notice 89–60 in valuing the transferred interest. For gift tax purposes, a transitional rule in the final regulations provides that if, after December 31, 1988, but before May 1, 1989, a donor transferred an interest in property, retaining an interest in the same property, and the donor later transferred the retained interest in the

property after April 30, 1989, and before January 1, 1990, the donor may elect to value the transfer of the retained interest under either the 10 percent tables or the section 7520 tables (whichever is more beneficial). For estate tax purposes, a transitional rule in the final regulations provides that the estate of a mentally incompetent decedent may elect to value the property interest included in the gross estate under the mortality table and interest rate in effect at the time the decedent became mentally incompetent or the mortality table and interest rate in effect on the decedent's date of death if the decedent was under a mental incapacity that existed on May 1, 1989, and continued uninterrupted until the decedent's death. For purposes of determining the value of the remainder interest in a testamentary charitable remainder unitrust or annuity trust, a transitional rule in the final regulations provides that the mortality table and 10 percent interest rate in effect before May 1, 1989, or the mortality table and interest rate under section 7520 may be used if the decedent was mentally incompetent on May 1, 1989, and (1) such incompetency continued uninterrupted until death, or (2) the decedent died within 90 days of first regaining competency after April 30, 1989.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is William L. Blodgett, Office of Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, 25, and 602 are amended as follows:

Paragraph 1. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Section	Remove	Add
1.52–1(f)	or 20.2031–10, whichever is appropriate	or, for certain prior periods, 20.2031–7A
1.101–2(e)(2) *Example (1)*(ii)	paragraph (f) of	
1.170A–4(d) *Example 9*, third sentence	Table B of §20.2031–10(f)	§20.2031–7A(c)
1.170A–5(b) *Example 5*, fifth sentence	Table A(1) in §20.2031–10(f)	§20.2031–7A(c)
1.170A–6(c)(3)(i)	or §20.2031–10, whichever is appropriate	or, for certain prior periods, 20.2031–7A
1.170A–6(c)(3)(iii) *Example 1* second sentence	Table B in §20.2031–10(f)	§20.2031–7A(c)
1.170A–6(c)(3)(iii) *Example 2* second sentence	Table B in §20.2031–10(f)	§20.2031–7A(c)
1.170A–6(c)(3)(iii) *Example 3* third sentence	§20.2031–10(e)	§20.2031–7A(c)
1.170A–6(c)(3)(iii) *Example 3* fourth sentence	Table B in §20.2031–10(f)	§20.2031–7A(c)
1.170A–6(c)(4) second sentence	or §20.2031–10, whichever is appropriate.	
1.170A–6(c)(5) *Example 1* sixth sentence	Table B in §20.2031–10(f)	§20.2031–7A(c)
1.170A–6(c)(5) *Example 2*(b)	§1.664–4(b)(5)	§1.664–4A(c)
1.170A–6(c)(5) *Example 3*(b)	§20.2031–10(f)	§20.2031–7A(c)
1.170A–7(c) third sentence	or §20.2031–10, whichever is appropriate	
1.170A–12(a)(3) fourth sentence	paragraph (d) of §25.2512–5 or 25.2512–9 whichever is appropriate.	§25.2512–5 (or, for certain prior periods, §25.2512–5A)
1.170A–12(c) first and third sentences	paragraph (d) in §25.2512–5 or 25.2512–9	§25.2512–5 (or, for certain prior periods, §25.2512–5A)
1.170A–12(c) *Example*, fourth sentence	Table B of §25.2512–9(f)	§25.2512–5A(c)
1.414(c)–2(b)(2)(ii) second sentence	or §20.2031–10 (Estate Tax Regulations), whichever is appropriate.	or, for certain prior periods, §20.2031–7A (Estate Tax Regulations)
1.414(c)–4(b)(3)(i) last sentence	or §20.2031–10 (Estate Tax Regulations), whichever is appropriate.	or, for certain prior periods, §20.2031–7A (Estate Tax Regulations)
1.642(c)–6(d)(2) third and fifth sentences	paragraph (d)(2)	paragraph (d)(3)
1.642(c)–6(d)(2) fourth sentence	paragraph (a)(2) of this section	§1.642(c)–6(b)
1.642(c)–7(d)(2) first and second sentences	paragraph (b)(2) of	
1.664–1(a)(6) *Example (6)*(ii) second sentence	§1.664–4(b)(2)	§1.664–4A(c)
1.664–4(b)(2) second sentence	paragraph (a)(4) of this section	§1.664–4(a)
1.664–4(b)(2) last sentence	paragraph (a)(3) of this section	§1.664–4(b)
1.664–4(b)(3) first sentence	paragraph (b)(5)	paragraph (d)(6)
1.664–4(b)(3) third and sixth sentences	paragraph (b)(3)	paragraph (d)(4)
1.664–4(b)(3) fifth sentence	paragraph (a)(4) of this section	§1.664–4(b)
1.1014–5(a)(3) first sentence	or §20.2031–10, whichever is applicable	or, for certain prior periods, §20.2031–7A
1.1014–5(c) *Example (1)* fourth sentence	Table A(2) in paragraph (f) of §20.2031–10	§20.2031–7A(c)
1.1014–5(c) *Example (2)* second sentence	Table A(2) in paragraph (f) of §20.2031–10	§20.2031–7A(c)
1.1014–5(c) *Example (3)* sixth sentence	Table A(1) in paragraph (f) of §20.2031–10	§20.2031–7A(c)
1.1014–5(c) *Example (4)* third sentence	Table A(1) in paragraph (f) of §20.2031–10	§20.2031–7A(c)
1.1014–5(c) *Example (5)*(a) fifth sentence	Table A(1) in paragraph (f) of §20.2031–10	§20.2031–7A(c)
1.1014–5(c) *Example (6)* fourth sentence	Table A(2) in paragraph (f) of §20.2031–10	§20.2031–7A(c)
20.2031–7(a)(2) first and second sentences	paragraph (f)	paragraph (d)(6)

Section	Remove	Add
20.2031–7(a)(2)	paragraph (e)	paragraph (d)(5)
20.2031–7(b)(1)	paragraph (b)(1)	paragraph (d)(2)(i)
20.2031–7(b)(2)	paragraph (b)(2)	paragraph (d)(2)(ii)
20.2031–7(b)(2) (in the *Example*)	paragraph (b)(1)	paragraph (d)(2)(i)
20.2031–7(b)(3)(i)	paragraphs (b)(1) or (2)	paragraphs (d)(2)(i) or (ii)
20.2031–7(b)(3)(i)	paragraph (b)(3)(i)	paragraph (d)(2)(iii)(A)
20.2031–7(b)(3)(i) (in the *Example*)	paragraph (b)(2)	paragraph (d)(2)(ii)
20.2031–7(b)(3)(ii)	paragraph (b)(3)(ii)	paragraph (d)(2)(iii)(B)
20.2031–7(c)	paragraph (c)	paragraph (d)(3)
20.2031–7(d)	paragraph (d)	paragraph (d)(4)
20.2031–7(e)	paragraph (f)	paragraph (d)(6)
20.2032–1(f)(1) fourth sentence	§20.2031–7	§20.2031–7A(d)
20.2039–2(c)(1)(viii)	through 20.2031–10	or, for certain prior periods, §20.2031–7A
20.2039–5(c)(1)	through 20.2031–10	or, for certain prior periods, §20.2031–7A
20.2039–5(c)(2)	through 20.2031–10	or, for certain prior periods, §20.2031–7A
20.2055–2(f)(2)(iv)	or 20.2031–10, whichever is appropriate	or, for certain prior periods, §20.2031–7A
20.2056(b)–4(d) fourth sentence	paragraph (e)	paragraph (b)
25.2511–1(h)(6)	paragraph (e) of §25.2512–5 or paragraph (e) of §25.2512–9, whichever is applicable.	§25.2512–5
25.2511–1(h)(7)	paragraph (e) of §25.2512–5 or paragraph (e) of §25.2512–9, whichever is applicable.	§25.2512–5
25.2512–5(a)(2) first and second sentences	paragraph (f)	paragraph (d)(6)
25.2512–5(a)(2) third sentence	paragraph (e)	paragraph (d)(5)
25.2512–5(b)(1) third sentence	paragraph (b)(1)	paragraph (d)(2)(i)
25.2512–5(b)(2) last sentence	paragraph (b)(2)	paragraph (d)(2)(ii)
25.2512–5(b)(2) (in the *Example*)	paragraph (b)(1)	paragraph (d)(2)(i)
25.2512–5(b)(3)(i)	paragraphs (b)(1) or (2)	paragraph (d)(2)(i) or (ii)
25.2512–5(b)(3)(i) last sentence	paragraph (b)(3)(i)	paragraph (d)(2)(iii)(A)
25.2512–5(b)(3)(ii)	paragraph (b)(3)(ii)	paragraph (d)(2)(iii)(B)
25.2512–5(c)	paragraph (c)	paragraph (d)(3)
25.2512–5(d)	paragraph (d)	paragraph (d)(4)
25.2518–3(a)(1)(iv)(A)	§20.2031–10	§20.2031–7
25.2522(c)–3(d)(2)(iv) first sentence	or 25.2512–9, whichever is appropriate	
25.2522(c)–3(d) (2)(iv) *Example 1* second sentence.	Table B in §25.2512–9(f)	§25.2512–5A(c)
25.2522(c)–3(d)(2)(iv) *Example 2* second sentence.	Table B in §25.2512–9(f)	§25.2512–5A(c)
25.2522(c)–3(d)(2)(iv) *Example 3* third sentence.	§25.2512–9(e)	§25.2512–5A(c)
25.2522(c)–3(d)(2)(iv) *Example 3* fourth sentence.	Table B in §25.2512–9(f)	§25.2512–5A(c)
25.2523(a)–1(d) second sentence	or 25.2512–9, whichever is appropriate	or, for certain prior periods, §25.2512–5A.
25.2523(a)–1(d) third sentence	(d) of §25.2 512–5 or 25.2512–9, whichever is appropriate.	(d) of §25.2512–5.
25.2523(a)–1(d) fourth sentence	(see §25.2512–5(e) or 25.2512–9(e), whichever is appropriate).	
25.2523(a)–1(d) fifth sentence	(e) or 25.2512–9(e), whichever is appropriate .	(d) or, for certain prior periods, §25.2512–5A
25.2523(c)–1(c) *Example*, tenth sentence	(70,000 X .708919, as found in Table II of §25.2512–5).	as determined under §25.2512–5A(c)

PART 1—INCOME TAXES

Par. 2. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.170A–12 also issued under 26 U.S.C. 170(f)(4). * * *

Section 1.642(c)–6 also issued under 26 U.S.C. 642(c)(5).

Section 1.642(c)–6A also issued under 26 U.S.C. 642(c)(5).

Section 1.664–1 also issued under 26 U.S.C. 664(a).

Section 1.664–2 also issued under 26 U.S.C. 664(a).

Section 1.664–3 also issued under 26 U.S.C. 664(a).

Section 1.664–4 also issued under 26 U.S.C. 664(a).

Section 1.664–4A also issued under 26 U.S.C. 664(a). * * *

Section 1.7520–1 also issued under 26 U.S.C. 7520(c)(2).

Section 1.7520–2 also issued under 26 U.S.C. 7520(c)(2).

Section 1.7520–3 also issued under 26 U.S.C. 7520(c)(2).

Section 1.7520–4 also issued under 26 U.S.C. 7520(c)(2).

Par. 3. Section 1.101–2 is amended as follows:

1. Paragraphs (e)(1)(iii)(*b*) (*1*) and (2) are revised.

2. Paragraph (e)(1)(iii)(*b*)(*3*) is removed.

3. The revised provisions read as follows:

§ 1.101–2 Employees' death benefits.

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(*b*) * * *

(*1*) In the case of an annuity paid by an insurance company or by an organization (other than an insurance company) regularly engaged in issuing annuity contracts with an insurance company as the coinsurer or reinsurer of the obligations under the contract, by use of the discount interest rates and mortality tables used by the insurance company involved to determine the installment benefits; and

(*2*) In the case of an annuity issued after November 23, 1984, to which paragraph (e)(1)(iii)(*b*)(*1*) of this section is not applicable, by use of the

appropriate tables in § 20.2031–7 of this chapter (Estate Tax Regulations).

* * * * *

Par. 4. Section 1.170A–12 is amended as follows:

1. In paragraph (a)(3), a sentence is added between the fourth and fifth sentences.

2. Paragraphs (b), and (e) (1) and (2) are revised.

3. Paragraph (f) is removed.

4. The authority citation at the end of the section is removed.

5. The added and revised provisions read as follows:

§ 1.170A–12 Valuation of a remainder interest in real property for contributions made after July 31, 1969.

(a) * * *

(3) * * * Except as provided in § 1.7520–3(b) of this chapter, for transfers of remainder interests after April 30, 1989, the present value of the remainder interest is determined under § 25.2512–5 of this chapter by use of the interest rate component on the date the interest is transferred unless an election is made under section 7520 and § 1.7520–2 of this chapter to compute the present value of the interest transferred by use of the interest rate component for either of the 2 months preceding the month in which the interest is transferred. * * *

(b) *Valuation of a remainder interest following only one life*—(1) *General rule.* The value of a remainder interest in real property following only one life is determined under the rules provided in § 20.2031–7 (or for certain prior periods, § 20.2031–7A) of this chapter (Estate Tax Regulations), using the interest rate and life contingencies prescribed for the date of the gift. See, however, § 1.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances). However, if any part of the real property is subject to exhaustion, wear and tear, or obsolescence, the special factor determined under paragraph (b)(2) of this section shall be used in valuing the remainder interest in that part. Further, if any part of the property is subject to depletion of its natural resources, such depletion is taken into account in determining the value of the remainder interest.

(2) *Computation of depreciation factor.* If the valuation of the remainder interest in depreciable property is dependent upon the continuation of one life, a special factor must be used. The factor determined under this paragraph (b)(2) is carried to the fifth decimal place. The special factor is to be computed on the basis of the interest rate and life contingencies prescribed in § 20.2031–7 (or for certain prior periods, § 20.2031–7A) of this chapter (Estate Tax Regulations) and on the assumption that the property depreciates on a straight-line basis over its estimated useful life. For transfers for which the valuation date is after April 30, 1989. special factors for determining the present value of a remainder interest following one life and an example describing the computation are contained in Internal Revenue Service Publication 1459, "Actuarial Values, Gamma Volume," (8–89). This publication is no longer available for purchase from the Superintendent of Documents. However, it may be obtained by requesting a copy from: CC:DOM:CORP:T:R (IRS Publication 1459), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. See, however, § 1.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances). Otherwise, in the case of the valuation of a remainder interest following one life, the special factor may be obtained through use of the following formula:

$$\left(1+\frac{i}{2}\right)\sum_{t=0}^{n-1} v^{(t+1)}\left[\left(1-\frac{l_{x+t+1}}{l_x}\right)-\left(1-\frac{l_{x+t}}{l_x}\right)\right]\left(1-\frac{1}{2n}-\frac{t}{n}\right)$$

Where:

n=the estimated number of years of useful life,

i=the applicable interest rate under section 7520 of the Internal Revenue Code,

v=1 divided by the sum of 1 plus the applicable interest rate under section 7520 of the Internal Revenue Code,

x=the age of the life tenant, and

lx=number of persons living at age x as set forth in Table 80CNSMT of § 20.2031–7 (or, for prior periods, in § 20.2031–7A) of this chapter.

(3) The following example illustrates the provisions of this paragraph (b):

Example. In June 1992, A, who is 62, donates to Y University a remainder interest in a personal residence, consisting of a house and land, subject to a reserved life estate in A. At the time of the gift, the land has a value of $30,000 and the house has a value of $100,000 with an estimated useful life of 45 years, at the end of which the value of the house is expected to be $20,000. The portion of the property considered to be depreciable is $80,000 (the value of the house ($100,000) less its expected value at the end of 45 years ($20,000)). The portion of the property considered to be nondepreciable is $50,000 (the value of the land at the time of the gift ($20,000) plus the expected value of the house at the end of 45 years ($20,000)). The interest rate prescribed under section 7520 for June 1992 is 8.4 percent. Based on an interest rate of 8.4 percent, the remainder factor for $1.00 prescribed in § 20.2031–7 of this chapter for a person age 62 is 0.29567. The value of the nondepreciable remainder interest is $14,783.50 (0.29567 times $50,000). The value of the depreciable remainder interest is $17,387.20 (0.21734, computed under the formula described in paragraph (b)(2) of this section, times $80,000). Therefore, the value of the remainder interest is $32,170.70.

* * * * *

(e) * * *

(1)(i) If the valuation of the remainder interest in the real property is dependent upon the continuation or the termination of more than one life or upon a term certain concurrent with one or more lives, a special factor must be used.

(ii) The special factor is to be computed on the basis of—

(A) Interest at the rate prescribed under § 25.2512–5 (or, for certain prior periods, § 25.2512–5A) of this chapter, compounded annually;

(B) Life contingencies determined from the values that are set forth in the mortality table in § 20.2031–7 (or, for certain prior periods, § 20.2031–7A) of this chapter; and

(C) If depreciation is involved, the assumption that the property depreciates on a straight-line basis over its estimated useful life.

(iii) If any part of the property is subject to depletion of its natural resources, such depletion must be taken into account in determining the value of the remainder interest.

(2) In the case of the valuation of a remainder interest following two lives, the special factor may be obtained through use of the following formula:

$$\left(1+\frac{i}{2}\right)\sum_{t=0}^{n-1}v^{(t+1)}\left[\left(1-\frac{l_{x+t+1}}{l_x}\right)\left(1-\frac{l_{y+t+1}}{l_y}\right)-\left(1-\frac{l_{x+t}}{l_x}\right)\left(1-\frac{l_{y+t}}{l_y}\right)\right]\left(1-\frac{1}{2n}-\frac{t}{n}\right)$$

Where:
n=the estimated number of years of useful life,
i=the applicable interest rate under section 7520 of the Internal Revenue Code,
v=1 divided by the sum of 1 plus the applicable interest rate under section 7520 of the Internal Revenue Code,
x and y=the ages of the life tenants, and
lx and ly=the number of persons living at ages x and y as set forth in Table 80CNSMT in § 20.2031–7 (or, for prior periods, in § 20.2031–7A) of this chapter.

§ 1.170A–13 [Amended]

Par. 5. Section 1.170A–13 is amended by removing the authority citation immediately following paragraph (d)(3).

Par. 6. Section 1.170A–14 is amended by:

1. Revising the third and fourth sentences of paragraph (h)(4), *Example 2*, as set forth below.

2. Removing the fifth sentence of paragraph (h)(4), *Example 2*.

§ 1.170A–14 Qualified conservation contributions.

* * * * *

(h) * * *

(4) * * *

Example 2. * * * Under § 1.170A–12(b), the value of a remainder interest in real property following one life is determined under § 25.2512–5 of this chapter (Gift Tax Regulations). (See § 25.2512–5A of this chapter with respect to the valuation of annuities, interests for life or term of years, and remainder or reversionary interests transferred before December 1, 1983.)

* * * * *

Par. 7. Immediately following § 1.643(d)-2, an undesignated center heading and § 1.642(c)–6A are added to read as follows:

Pooled Income Fund Actuarial Tables Applicable Before May 1, 1989

§ 1.642(c)–6A Valuation of charitable remainder interests for which the valuation date is before May 1, 1989.

(a) *Valuation of charitable remainder interests for which the valuation date is before January 1, 1952.* There was no provision for the qualification of pooled income funds under section 642 until 1969. See § 20.2031–7A(a) of this chapter (Estate Tax Regulations) for the determination of the present value of a charitable remainder interest created before January 1, 1952.

(b) *Valuation of charitable remainder interests for which the valuation date is after December 31, 1951, and before January 1, 1971.* No charitable deduction is allowable for a transfer to a pooled income fund for which the valuation date is after the effective dates of the Tax Reform Act of 1969 unless the pooled income fund meets the requirements of section 642(c)(5). See § 20.2031–7A(b) of this chapter (Estate Tax Regulations) for the determination of the present value of a charitable remainder interest for which the valuation date is after December 31, 1951, and before January 1, 1971.

(c) *Present value of remainder interest in the case of transfers to pooled income funds for which the valuation date is after December 31, 1970, and before December 1, 1983.* For the determination of the present value of a remainder interest in property transferred to a pooled income fund for which the valuation date is after December 31, 1970, and before December 1, 1983, see § 20.2031–7A(c) of this chapter (Estate Tax Regulations) and former § 1.642(c)–6(e) (as contained in the 26 CFR part 1 edition revised as of April 1, 1994).

(d) *Present value of remainder interest dependent on the termination of one life in the case of transfers to pooled income funds made after November 30, 1983, for which the valuation date is before May 1, 1989*—(1) *In general.* For transfers to pooled income funds made after November 30, 1983, for which the valuation date is before May 1, 1989, the present value of the remainder interest at the time of the transfer of property to the fund is determined by computing the present value (at the time of the transfer) of the life income interest in the transferred property (as determined under paragraph (d)(2) of this section) and subtracting that value from the fair market value of the transferred property on the valuation date. The present value of a remainder interest that is dependent on the termination of the life of one individual is computed by use of Table G in paragraph (d)(4) of this section. For purposes of the computation under this section, the age of an individual is to be taken as the age of the individual at the individual's nearest birthday.

(2) *Present value of life income interest.* The present value of the life income interest in property transferred to a pooled income fund shall be computed on the basis of:

(i) Life contingencies determined from the values of *lx* that are set forth in Table LN of § 20.2031–7A(d)(6) of this chapter (Estate Tax Regulations); and

(ii) Discount at a rate of interest, compounded annually, equal to the highest yearly rate of return of the pooled income fund for the 3 taxable years immediately preceding its taxable year in which the transfer of property to the fund is made. For purposes of this paragraph (d)(2), the yearly rate of return of a pooled income fund is determined as provided in § 1.642(c)–6(c) unless the highest yearly rate of return is deemed to be 9 percent. For purposes of this paragraph (d)(2), the first taxable year of a pooled income fund is considered a taxable year even though the taxable year consists of less than 12 months. However, appropriate adjustments must be made to annualize the rate of return earned by the fund for that period. Where it appears from the facts and circumstances that the highest yearly rate of return for the 3 taxable years immediately preceding the taxable year in which the transfer of property is made has been purposely manipulated to be substantially less than the rate of return that would otherwise be reasonably anticipated with the purpose of obtaining an excessive charitable deduction, that rate of return may not be used. In that case, the highest yearly rate of return of the fund is determined by treating the fund as a pooled income fund that has been in existence for less than 3 preceding taxable years. If a pooled income fund has been in existence less than 3 taxable years immediately preceding the taxable year in which the transfer of property to the fund is made, the highest yearly rate of return is deemed to be 9 percent.

Par. 8. Section 1.642(c)–6 is amended as follows:

1. The section heading is revised.

2. Paragraphs (a) and (b) are revised.

3. Paragraph (c)(1) is revised.

4. Paragraphs (d)(2) and (d)(3) are redesignated as § 1.642(c)–6A, paragraphs (d)(3) and (d)(4), respectively.

5. Paragraph (d)(1) is redesignated as paragraph (d) and revised.

6. Paragraph (e) is revised.

7. The authority citation at the end of the section is removed.

8. Paragraph (f) is added.

9. The added and revised provisions read as follows:

§ 1.642(c)–6 Valuation of a remainder interest in property transferred to a pooled income fund after April 30, 1989.

(a) *In general.* (1) For purposes of sections 170, 2055, 2106, and 2522, the fair market value of a remainder interest in property transferred to a pooled income fund is its present value determined under paragraph (d) of this section.

(2) The present value of a remainder interest at the time of the transfer of property to the pooled income fund is determined by computing the present value (at the time of the transfer) of the life income interest and subtracting that value from the fair market value of the transferred property on the valuation date. The fact that the income beneficiary may not receive the last income payment, as provided in paragraph (b)(7) of § 1.642(c)–5, is not taken into account for purposes of determining the value of the life income interest. For purposes of this section, the valuation date is the date on which property is transferred to the fund by the donor except that, for purposes of section 2055 or 2106, it is the alternate valuation date, if elected, under the provisions and limitations set forth in section 2032 and the regulations thereunder.

(3) Any claim for a deduction on any return for the value of the remainder interest in property transferred to a pooled income fund must be supported by a statement attached to the return showing the computation of the present value of the interest.

(b) *Actuarial computations by the Internal Revenue Service.* The regulations in this and in related sections provide tables of actuarial factors and examples that illustrate the use of the tables in determining the value of remainder interests in property. Section 1.7520–1(c)(2) refers to government publications that provide additional tables of factors and examples of computations for more complex situations. If the computation requires the use of a factor that is not provided in this section, the Commissioner may supply the factor upon a request for a ruling. A request for a ruling must be accompanied by a recitation of the facts including the pooled income fund's highest yearly rate of return for the 3 taxable years immediately preceding the date of transfer, the date of birth of each measuring life, and copies of the relevant documents. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (see §§ 601.201 and 601.601(d)(2)(ii)(*b*) of this chapter) and include payment of the required user fee. If the Commissioner furnishes the factor, a copy of the letter supplying the factor should be attached to the tax return in which the deduction is claimed. If the Commissioner does not furnish the factor, the taxpayer must furnish a factor computed in accordance with the principles set forth in this section.

(c) *Computation of pooled income fund's yearly rate of return.* (1) For purposes of determining the present value of the life income interest, the yearly rate of return earned by a pooled income fund for a taxable year is the percentage obtained by dividing the amount of income earned by the pooled income fund for the taxable year by an amount equal to—

(i) The average fair market value of the property in such fund for that taxable year; less

(ii) The corrective term adjustment.

* * * * *

(d) *Valuation.* The present value of the remainder interest in property transferred to a pooled income fund after April 30, 1989, is determined under paragraph (e) of this section. The present value of the remainder interest in property transferred to a pooled income fund for which the valuation date is before May 1, 1989, is determined under the following sections:

Valuation dates		Applicable regulations
After	Before	
	01–01–52	1.642(c)–6A(a)
12–31–51	01–01–71	1.642(c)–6A(b)
12–31–70	12–01–83	1.642(c)–6A(c)
11–30–83	05–01–89	1.642(c)–6A(d)

(e) *Present value of the remainder interest in the case of transfers to pooled income funds for which the valuation date is after April 30, 1989*—(1) *In general.* In the case of transfers to pooled income funds for which the valuation date is after April 30, 1989, the present value of a remainder interest is determined under this section. See, however, § 1.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances). The present value of a remainder interest that is dependent on the termination of the life of one individual is computed by the use of Table S in paragraph (e)(5) of this section. For purposes of the computations under this section, the age of an individual is the age at the individual's nearest birthday. If the valuation date of a transfer to a pooled income fund is after April 30, 1989, and before June 10, 1994, a transferor can rely on Notice 89–24, 1989–1 C.B. 660, or Notice 89–60, 1989–1 C.B. 700, in valuing the transferred interest. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

(2) *Present value of a remainder interest.* The present value of a remainder interest in property transferred to a pooled income fund is computed on the basis of—

(i) Life contingencies determined from the values of *Ix* that are set forth in Table 80CNSMT in § 20.2031–7(d)(6) of this chapter (Estate Tax Regulations); and

(ii) Discount at a rate of interest, compounded annually, equal to the highest yearly rate of return of pooled income fund for the 3 taxable years immediately preceding its taxable year in which the transfer of property to the fund is made. For purposes of this paragraph (e), the yearly rate of return of a pooled income fund is determined as provided in § 1.642(c)–6(c) unless the highest rate of return is deemed to be the rate described in paragraph (e)(3) of this section for funds in existence less than 3 taxable years. For purposes of this paragraph (e)(2)(ii), the first taxable year of a pooled income fund is considered a taxable year even though the taxable year consists of less than 12 months. However, appropriate adjustments must be made to annualize the rate of return earned by the fund for that period. Where it appears from the facts and circumstances that the highest yearly rate of return of the fund for the 3 taxable years immediately preceding the taxable year in which the transfer of property is made has been purposely manipulated to be substantially less than the rate of return that would otherwise be reasonably anticipated with the purpose of obtaining an excessive charitable deduction, that rate of return may not be used. In that case, the highest yearly rate of return of the fund is determined by treating the fund as a pooled income fund that has been in existence for less than 3 preceding taxable years.

(3) *Pooled income funds in existence less than 3 taxable years.* If a pooled income fund has been in existence less than 3 taxable years immediately preceding the taxable year in which the transfer is made to the fund and the transfer to the fund is made after April 30, 1989, the highest rate of return is deemed to be the interest rate (rounded to the nearest two-tenths of one percent) that is 1 percent less than the highest annual average of the monthly section 7520 rates for the 3 calendar years immediately preceding the calendar year in which the transfer to the pooled income fund is made. The deemed rate of return for transfers to new pooled

income funds is recomputed each calendar year using the monthly section 7520 rates for the 3-year period immediately preceding the calendar year in which each transfer to the fund is made until the fund has been in existence for 3 taxable years and can compute its highest rate of return for the 3 taxable years immediately preceding the taxable year in which the transfer of property to the fund is made in accordance with the rules set forth in the first sentence of paragraph (e)(2)(ii) of this section.

(4) *Computation of value of remainder interest.* The factor that is used in determining the present value of a remainder interest that is dependent on the termination of the life of one individual is the factor from Table S in paragraph (e)(5) of this section under the appropriate yearly rate of return opposite the number that corresponds to the age of the individual upon whose life the value of the remainder interest is based. The tables in paragraph (e)(5) of this section include factors for yearly rates of return from 4.2 to 14 percent. Many actuarial factors not contained in the tables in paragraph (e)(5) of this section are contained in Table S in Internal Revenue Service Publication 1457, "Actuarial Values, Alpha Volume," (8–89). A copy of this publication may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. For other situations, see § 1.642(c)–6(b). If the yearly rate of return is a percentage that is between the yearly rates of return for which factors are provided, a linear interpolation must be made. The present value of the remainder interest is determined by multiplying the fair market value of the property on the valuation date by the appropriate remainder factor. This paragraph may be illustrated by the following example:

Example. A, who will be 55 years old on May 8, 1990, transfers $100,000 to a pooled income fund on January 1, 1990, and retains a life income interest in the property. The highest yearly rate of return earned by the fund for its 3 preceding taxable years is 9.47 percent. In Table S, the remainder factor opposite 55 years under 9.4 percent is .18785 and under 9.6 percent is .18322. The present value of the remainder interest is $18,623.00, computed as follows:

Factor at 9.4 percent for age 55	.18785
Factor at 9.6 percent for age 55	.18322
Difference	.00463

Interpolation adjustment:

$$\frac{9.47\% - 9.4\%}{0.2\%} = \frac{\lambda}{.00463}$$

$$\lambda = .00162$$

Factor at 9.4 percent for age 55	.18785
Less: Interpolation adjustment	.00162
Interpolated factor	.18623
Present value of remainder interest: ($100,000×.18623)	$18,623.00

(5) *Actuarial tables.* In the case of transfers for which the valuation date is after April 30, 1989, the present value of a remainder interest dependent on the termination of one life in the case of a transfer to a pooled income fund is determined by use of the following tables:

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS

[Applicable after April 30, 1989]

Age	Interest rate									
	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
0	.07389	.06749	.06188	.05695	.05261	.04879	.04541	.04243	.03978	.03744
1	.06494	.05832	.05250	.04738	.04287	.03889	.03537	.03226	.02950	.02705
2	.06678	.05999	.05401	.04874	.04410	.03999	.03636	.03314	.03028	.02773
3	.06897	.06200	.05587	.05045	.04567	.04143	.03768	.03435	.03139	.02875
4	.07139	.06425	.05796	.05239	.04746	.04310	.03922	.03578	.03271	.02998
5	.07401	.06669	.06023	.05451	.04944	.04494	.04094	.03738	.03421	.03137
6	.07677	.06928	.06265	.05677	.05156	.04692	.04279	.03911	.03583	.03289
7	.07968	.07201	.06521	.05918	.05381	.04903	.04477	.04097	.03757	.03453
8	.08274	.07489	.06792	.06172	.05621	.05129	.04689	.04297	.03945	.03630
9	.08597	.07794	.07079	.06443	.05876	.05370	.04917	.04511	.04148	.03821
10	.08936	.08115	.07383	.06730	.06147	.05626	.05159	.04741	.04365	.04027
11	.09293	.08453	.07704	.07035	.06436	.05900	.05419	.04988	.04599	.04250
12	.09666	.08807	.08040	.07354	.06739	.06188	.05693	.05248	.04847	.04486
13	.10049	.09172	.08387	.07684	.07053	.06487	.05977	.05518	.05104	.04731
14	.10437	.09541	.08738	.08017	.07370	.06788	.06263	.05791	.05364	.04978
15	.10827	.09912	.09090	.08352	.07688	.07090	.06551	.06064	.05623	.05225
16	.11220	.10285	.09445	.08689	.08008	.07394	.06839	.06337	.05883	.05472
17	.11615	.10661	.09802	.09028	.08330	.07699	.07129	.06612	.06144	.05719
18	.12017	.11043	.10165	.09373	.08656	.08009	.07422	.06890	.06408	.05969
19	.12428	.11434	.10537	.09726	.08992	.08327	.07724	.07177	.06679	.06226
20	.12850	.11836	.10919	.10089	.09337	.08654	.08035	.07471	.06959	.06492
21	.13282	.12248	.11311	.10462	.09692	.08991	.08355	.07775	.07247	.06765
22	.13728	.12673	.11717	.10848	.10059	.09341	.08686	.08090	.07546	.07049
23	.14188	.13113	.12136	.11248	.10440	.09703	.09032	.08418	.07858	.07345
24	.14667	.13572	.12575	.11667	.10839	.10084	.09395	.08764	.08187	.07659
25	.15167	.14051	.13034	.12106	.11259	.10486	.09778	.09130	.08536	.07991
26	.15690	.14554	.13517	.12569	.11703	.10910	.10184	.09518	.08907	.08346
27	.16237	.15081	.14024	.13056	.12171	.11359	.10614	.09930	.09302	.08724
28	.16808	.15632	.14555	.13567	.12662	.11831	.11068	.10366	.09720	.09125
29	.17404	.16208	.15110	.14104	.13179	.12329	.11547	.10827	.10163	.09551
30	.18025	.16808	.15692	.14665	.13721	.12852	.12051	.11313	.10631	.10002
31	.18672	.17436	.16300	.15255	.14291	.13403	.12584	.11827	.11127	.10480
32	.19344	.18090	.16935	.15870	.14888	.13980	.13142	.12367	.11650	.10985
33	.20044	.18772	.17598	.16514	.15513	.14587	.13730	.12936	.12201	.11519
34	.20770	.19480	.18287	.17185	.16165	.15221	.14345	.13533	.12780	.12080

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
35	.21522	.20215	.19005	.17884	.16846	.15883	.14989	.14159	.13388	.12670
36	.22299	.20974	.19747	.18609	.17552	.16571	.15660	.14812	.14022	.13287
37	.23101	.21760	.20516	.19360	.18286	.17288	.16358	.15492	.14685	.13933
38	.23928	.22572	.21311	.20139	.19048	.18032	.17085	.16201	.15377	.14607
39	.24780	.23409	.22133	.20945	.19837	.18804	.17840	.16939	.16097	.15310
40	.25658	.24273	.22982	.21778	.20654	.19605	.18624	.17706	.16847	.16043
41	.26560	.25163	.23858	.22639	.21499	.20434	.19436	.18502	.17627	.16806
42	.27486	.26076	.24758	.23525	.22370	.21289	.20276	.19326	.18434	.17597
43	.28435	.27013	.25683	.24436	.23268	.22172	.21143	.20177	.19270	.18416
44	.29407	.27975	.26633	.25373	.24191	.23081	.22038	.21057	.20134	.19265
45	.30402	.28961	.27608	.26337	.25142	.24019	.22962	.21966	.21028	.20144
46	.31420	.29970	.28608	.27326	.26120	.24983	.23913	.22904	.21951	.21053
47	.32460	.31004	.29632	.28341	.27123	.25975	.24892	.23870	.22904	.21991
48	.33521	.32058	.30679	.29379	.28151	.26992	.25897	.24862	.23883	.22957
49	.34599	.33132	.31746	.30438	.29201	.28032	.26926	.25879	.24888	.23949
50	.35695	.34224	.32833	.31518	.30273	.29094	.27978	.26921	.25918	.24966
51	.36809	.35335	.33940	.32619	.31367	.30180	.29055	.27987	.26973	.26010
52	.37944	.36468	.35070	.33744	.32486	.31292	.30158	.29081	.28057	.27083
53	.39098	.37622	.36222	.34892	.33629	.32429	.31288	.30203	.29170	.28186
54	.40269	.38794	.37393	.36062	.34795	.33590	.32442	.31349	.30308	.29316
55	.41457	.39985	.38585	.37252	.35983	.34774	.33621	.32522	.31474	.30473
56	.42662	.41194	.39796	.38464	.37193	.35981	.34824	.33720	.32666	.31658
57	.43884	.42422	.41028	.39697	.38426	.37213	.36053	.34945	.33885	.32872
58	.45123	.43668	.42279	.40951	.39682	.38468	.37307	.36196	.35132	.34114
59	.46377	.44931	.43547	.42224	.40958	.39745	.38584	.37471	.36405	.35383
60	.47643	.46206	.44830	.43513	.42250	.41040	.39880	.38767	.37699	.36674
61	.48916	.47491	.46124	.44814	.43556	.42350	.41192	.40080	.39012	.37985
62	.50196	.48783	.47427	.46124	.44874	.43672	.42518	.41408	.40340	.39314
63	.51480	.50081	.48736	.47444	.46201	.45006	.43856	.42749	.41684	.40658
64	.52770	.51386	.50054	.48773	.47540	.46352	.45208	.44105	.43043	.42019
65	.54069	.52701	.51384	.50115	.48892	.47713	.46577	.45480	.44422	.43401
66	.55378	.54029	.52727	.51472	.50262	.49093	.47965	.46876	.45824	.44808
67	.56697	.55368	.54084	.52845	.51648	.50491	.49373	.48293	.47248	.46238
68	.58026	.56717	.55453	.54231	.53049	.51905	.50800	.49729	.48694	.47691
69	.59358	.58072	.56828	.55624	.54459	.53330	.52238	.51179	.50154	.49160
70	.60689	.59427	.58205	.57021	.55874	.54762	.53683	.52638	.51624	.50641
71	.62014	.60778	.59578	.58415	.57287	.56193	.55131	.54100	.53099	.52126
72	.63334	.62123	.60948	.59808	.58700	.57624	.56579	.55563	.54577	.53617
73	.64648	.63465	.62315	.61198	.60112	.59056	.58029	.57030	.56059	.55113
74	.65961	.64806	.63682	.62590	.61527	.60492	.59485	.58504	.57550	.56620
75	.67274	.66149	.65054	.63987	.62948	.61936	.60950	.59990	.59053	.58140
76	.68589	.67495	.66429	.65390	.64377	.63390	.62427	.61487	.60570	.59676
77	.69903	.68841	.67806	.66796	.65811	.64849	.63910	.62993	.62097	.61223
78	.71209	.70182	.69179	.68199	.67242	.66307	.65393	.64501	.63628	.62775
79	.72500	.71507	.70537	.69588	.68660	.67754	.66867	.65999	.65151	.64321
80	.73768	.72809	.71872	.70955	.70058	.69180	.68320	.67479	.66655	.65849
81	.75001	.74077	.73173	.72288	.71422	.70573	.69741	.68926	.68128	.67345
82	.76195	.75306	.74435	.73582	.72746	.71926	.71123	.70335	.69562	.68804
83	.77346	.76491	.75654	.74832	.74026	.73236	.72460	.71699	.70952	.70219
84	.78456	.77636	.76831	.76041	.75265	.74503	.73756	.73021	.72300	.71592
85	.79530	.78743	.77971	.77212	.76466	.75733	.75014	.74306	.73611	.72928
86	.80560	.79806	.79065	.78337	.77621	.76917	.76225	.75544	.74875	.74216
87	.81535	.80813	.80103	.79404	.78717	.78041	.77375	.76720	.76076	.75442
88	.82462	.81771	.81090	.80420	.79760	.79111	.78472	.77842	.77223	.76612
89	.83356	.82694	.82043	.81401	.80769	.80147	.79533	.78929	.78334	.77747
90	.84225	.83593	.82971	.82357	.81753	.81157	.80570	.79991	.79420	.78857
91	.85058	.84455	.83861	.83276	.82698	.82129	.81567	.81013	.80466	.79927
92	.85838	.85263	.84696	.84137	.83585	.83040	.82503	.81973	.81449	.80933
93	.86557	.86009	.85467	.84932	.84405	.83884	.83370	.82862	.82360	.81865
94	.87212	.86687	.86169	.85657	.85152	.84653	.84160	.83673	.83192	.82717
95	.87801	.87298	.86801	.86310	.85825	.85345	.84872	.84404	.83941	.83484
96	.88322	.87838	.87360	.86888	.86420	.85959	.85502	.85051	.84605	.84165
97	.88795	.88328	.87867	.87411	.86961	.86515	.86074	.85639	.85208	.84782
98	.89220	.88769	.88323	.87883	.87447	.87016	.86589	.86167	.85750	.85337
99	.89612	.89176	.88745	.88318	.87895	.87478	.87064	.86656	.86251	.85850
100	.89977	.89555	.89136	.88722	.88313	.87908	.87506	.87109	.86716	.86327
101	.90326	.89917	.89511	.89110	.88712	.88318	.87929	.87543	.87161	.86783
102	.90690	.90294	.89901	.89513	.89128	.88746	.88369	.87995	.87624	.87257
103	.91076	.90694	.90315	.89940	.89569	.89200	.88835	.88474	.88116	.87760

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
104	.91504	.91138	.90775	.90415	.90058	.89704	.89354	.89006	.88661	.88319
105	.92027	.91681	.91337	.90996	.90658	.90322	.89989	.89659	.89331	.89006
106	.92763	.92445	.92130	.91816	.91506	.91197	.90890	.90586	.90284	.89983
107	.93799	.93523	.93249	.92977	.92707	.92438	.92170	.91905	.91641	.91378
108	.95429	.95223	.95018	.94814	.94611	.94409	.94208	.94008	.93809	.93611
109	.97985	.97893	.97801	.97710	.97619	.97529	.97438	.97348	.97259	.97170

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS

[Applicable after April 30, 1989]

Age	Interest rate									
	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
0	.03535	.03349	.03183	.03035	.02902	.02783	.02676	.02579	.02492	.02413
1	.02486	.02292	.02119	.01963	.01824	.01699	.01587	.01486	.01395	.01312
2	.02547	.02345	.02164	.02002	.01857	.01727	.01609	.01504	.01408	.01321
3	.02640	.02429	.02241	.02073	.01921	.01785	.01662	.01552	.01451	.01361
4	.02753	.02535	.02339	.02163	.02005	.01863	.01735	.01619	.01514	.01418
5	.02883	.02656	.02453	.02269	.02105	.01956	.01822	.01700	.01590	.01490
6	.03026	.02790	.02578	.02387	.02215	.02060	.01919	.01792	.01677	.01572
7	.03180	.02935	.02714	.02515	.02336	.02174	.02027	.01894	.01773	.01664
8	.03347	.03092	.02863	.02656	.02469	.02300	.02146	.02007	.01881	.01766
9	.03528	.03263	.03025	.02810	.02615	.02438	.02278	.02133	.02000	.01880
10	.03723	.03449	.03201	.02977	.02774	.02590	.02423	.02271	.02133	.02006
11	.03935	.03650	.03393	.03160	.02949	.02757	.02583	.02424	.02279	.02147
12	.04160	.03865	.03598	.03356	.03136	.02936	.02755	.02589	.02438	.02299
13	.04394	.04088	.03811	.03560	.03331	.03123	.02934	.02761	.02603	.02458
14	.04629	.04312	.04025	.03764	.03527	.03311	.03113	.02933	.02768	.02617
15	.04864	.04536	.04238	.03968	.03721	.03496	.03290	.03103	.02930	.02773
16	.05099	.04759	.04451	.04170	.03913	.03679	.03466	.03270	.03090	.02926
17	.05333	.04982	.04662	.04370	.04104	.03861	.03638	.03434	.03247	.03075
18	.05570	.05207	.04875	.04573	.04296	.04044	.03812	.03599	.03404	.03225
19	.05814	.05438	.05095	.04781	.04494	.04231	.03990	.03769	.03565	.03378
20	.06065	.05677	.05321	.04996	.04698	.04424	.04173	.03943	.03731	.03535
21	.06325	.05922	.05554	.05217	.04907	.04623	.04362	.04122	.03901	.03697
22	.06594	.06178	.05797	.05447	.05126	.04831	.04559	.04309	.04078	.03865
23	.06876	.06446	.06051	.05688	.05355	.05048	.04766	.04505	.04265	.04042
24	.07174	.06729	.06321	.05945	.05599	.05281	.04987	.04715	.04465	.04233
25	.07491	.07031	.06609	.06219	.05861	.05530	.05224	.04941	.04680	.04438
26	.07830	.07355	.06918	.06515	.06142	.05799	.05481	.05187	.04915	.04662
27	.08192	.07702	.07250	.06832	.06446	.06090	.05759	.05454	.05170	.04906
28	.08577	.08071	.07603	.07171	.06772	.06402	.06059	.05740	.05445	.05170
29	.08986	.08464	.07981	.07534	.07120	.06736	.06380	.06049	.05742	.05456
30	.09420	.08882	.08383	.07921	.07492	.07095	.06725	.06381	.06061	.05763
31	.09881	.09327	.08812	.08335	.07891	.07479	.07095	.06738	.06405	.06095
32	.10369	.09797	.09267	.08774	.08315	.07888	.07491	.07120	.06774	.06451
33	.10885	.10297	.09750	.09241	.08767	.08325	.07913	.07529	.07170	.06834
34	.11430	.10824	.10261	.09736	.09246	.08790	.08363	.07964	.07592	.07243
35	.12002	.11380	.10800	.10259	.09754	.09282	.08841	.08428	.08041	.07679
36	.12602	.11963	.11366	.10809	.10288	.09800	.09344	.08917	.08516	.08140
37	.13230	.12574	.11961	.11387	.10850	.10347	.09876	.09433	.09018	.08628
38	.13887	.13214	.12584	.11994	.11441	.10922	.10436	.09978	.09549	.09145
39	.14573	.13883	.13237	.12630	.12061	.11527	.11025	.10553	.10109	.09690
40	.15290	.14583	.13920	.13297	.12712	.12162	.11644	.11157	.10698	.10266
41	.16036	.15312	.14633	.13994	.13393	.12827	.12294	.11792	.11318	.10871
42	.16810	.16071	.15375	.14720	.14103	.13522	.12973	.12456	.11967	.11505
43	.17614	.16858	.16146	.15475	.14842	.14245	.13682	.13149	.12645	.12169
44	.18447	.17675	.16948	.16261	.15613	.15000	.14421	.13873	.13355	.12864
45	.19310	.18524	.17780	.17078	.16414	.15787	.15192	.14630	.14096	.13591
46	.20204	.19402	.18644	.17926	.17247	.16604	.15995	.15418	.14870	.14350
47	.21128	.20311	.19538	.18806	.18112	.17454	.16830	.16238	.15676	.15141
48	.22080	.21249	.20462	.19716	.19007	.18335	.17696	.17090	.16513	.15964
49	.23059	.22214	.21413	.20653	.19930	.19244	.18591	.17970	.17379	.16816
50	.24063	.23206	.22391	.21617	.20881	.20180	.19514	.18879	.18274	.17697
51	.25095	.24225	.23398	.22610	.21861	.21147	.20466	.19818	.19199	.18609
52	.26157	.25275	.24436	.23636	.22874	.22147	.21453	.20791	.20159	.19556
53	.27249	.26357	.25505	.24694	.23919	.23180	.22474	.21799	.21154	.20537

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
54	.28369	.27466	.26604	.25782	.24995	.24244	.23526	.22839	.22181	.21552
55	.29518	.28605	.27734	.26900	.26103	.25341	.24611	.23912	.23243	.22601
56	.30695	.29774	.28893	.28050	.27242	.26469	.25728	.25019	.24338	.23685
57	.31902	.30973	.30084	.29232	.28415	.27632	.26881	.26161	.25469	.24805
58	.33138	.32203	.31306	.30446	.29621	.28829	.28069	.27339	.26637	.25962
59	.34402	.33461	.32558	.31691	.30859	.30059	.29290	.28550	.27839	.27155
60	.35690	.34745	.33836	.32963	.32124	.31317	.30540	.29792	.29073	.28379
61	.36999	.36050	.35137	.34259	.33414	.32601	.31817	.31062	.30334	.29633
62	.38325	.37374	.36458	.35576	.34726	.33907	.33117	.32356	.31621	.30912
63	.39669	.38717	.37799	.36913	.36060	.35236	.34441	.33674	.32933	.32217
64	.41031	.40078	.39159	.38272	.37415	.36588	.35789	.35016	.34270	.33548
65	.42416	.41464	.40545	.39656	.38798	.37968	.37166	.36390	.35639	.34912
66	.43825	.42876	.41958	.41070	.40211	.39380	.38576	.37797	.37043	.36312
67	.45260	.44315	.43399	.42513	.41655	.40824	.40019	.39238	.38482	.37749
68	.46720	.45779	.44868	.43985	.43129	.42299	.41494	.40713	.39956	.39221
69	.48197	.47263	.46357	.45478	.44625	.43798	.42995	.42215	.41458	.40722
70	.49686	.48760	.47861	.46988	.46140	.45316	.44516	.43738	.42983	.42248
71	.51182	.50265	.49374	.48508	.47666	.46847	.46051	.45276	.44523	.43790
72	.52685	.51778	.50896	.50038	.49203	.48390	.47599	.46829	.46079	.45349
73	.54194	.53298	.52426	.51578	.50751	.49946	.49161	.48397	.47652	.46926
74	.55714	.54832	.53972	.53134	.52317	.51520	.50744	.49986	.49247	.48527
75	.57250	.56382	.55536	.54710	.53904	.53118	.52351	.51601	.50870	.50156
76	.58803	.57951	.57120	.56308	.55515	.54740	.53984	.53245	.52522	.51817
77	.60369	.59535	.58720	.57923	.57144	.56383	.55639	.54912	.54200	.53504
78	.61942	.61126	.60329	.59549	.58787	.58040	.57310	.56596	.55896	.55212
79	.63508	.62713	.61935	.61174	.60428	.59698	.58983	.58283	.57597	.56925
80	.65059	.64285	.63527	.62785	.62058	.61345	.60646	.59961	.59290	.58632
81	.66579	.65827	.65090	.64368	.63659	.62965	.62283	.61615	.60959	.60316
82	.68061	.67332	.66616	.65914	.65226	.64550	.63886	.63235	.62595	.61968
83	.69499	.68793	.68099	.67418	.66749	.66092	.65447	.64813	.64191	.63579
84	.70896	.70213	.69541	.68881	.68233	.67595	.66969	.66353	.65748	65153
85	.72256	.71596	.70947	.70308	.69681	.69063	.68456	.67859	.67271	66693
86	.73569	.72931	.72305	.71688	.71081	.70484	.69896	.69318	.68748	.68188
87	.74818	.74204	.73599	.73003	.72417	.71839	.71271	.70711	.70159	.69616
88	.76011	.75419	.74836	.74261	.73695	.73137	.72588	.72046	.71512	.70986
89	.77169	.76599	.76037	.75484	.74938	.74400	.73870	.73347	.72831	.72323
90	.78302	.77755	.77215	.76683	.76158	.75640	.75129	.74625	.74128	.73638
91	.79395	.78870	.78352	.77842	.77337	.76840	.76349	.75864	.75385	.74913
92	.80423	.79920	.79423	.78933	.78449	.77971	.77499	.77033	.76572	.76118
93	.81377	.80894	.80417	.79946	.79481	.79022	.78568	.78120	.77677	.77239
94	.82247	.81784	.81325	.80873	.80425	.79983	.79547	.79115	.78688	.78266
95	.83033	.82586	.82145	.81709	.81278	.80852	.80431	.80014	.79602	.79195
96	.83729	.83298	.82872	.82451	.82034	.81622	.81215	.80812	.80414	.80019
97	.84361	.83944	.83532	.83124	.82721	.82322	.81927	.81537	.81151	.80769
98	.84929	.84525	.84126	.83730	.83339	.82952	.82569	.82190	.81815	.81443
99	.85454	.85062	.84674	.84290	.83910	.83534	.83161	.82792	.82427	.82066
100	.85942	.85561	.85184	.84810	.84440	.84074	.83711	.83352	.82997	.82644
101	.86408	.86037	.85670	.85306	.84946	.84589	.84236	.83886	.83539	.83196
102	.86894	.86534	.86177	.85823	.85473	.85126	.84782	.84442	.84104	.83770
103	.87408	.87060	.86714	.86371	.86032	.85695	.85362	.85031	.84703	.84378
104	.87980	.87644	.87311	.86980	.86653	.86328	.86005	.85686	.85369	.85054
105	.88654	.88363	.88046	.87731	.87418	.87108	.86800	.86494	.86191	.85890
106	.89685	.89389	.89095	.88804	.88514	.88226	.87940	.87656	.87374	.87094
107	.91117	.90858	.90600	.90344	.90089	.89836	.89584	.89334	.89085	.88838
108	.93414	.93217	.93022	.92828	.92634	.92442	.92250	.92060	.91870	.91681
109	.97081	.96992	.96904	.96816	.96729	.96642	.96555	.96468	.96382	.96296

TABLE T.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS

[Applicable after April 30, 1989]

Age	Interest rate									
	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
0	.02341	.02276	.02217	.02163	.02114	.02069	.02027	.01989	.01954	.01922
1	.01237	.01170	.01108	.01052	.01000	.00953	.00910	.00871	.00834	.00801
2	.01243	.01172	.01107	.01048	.00994	.00944	.00899	.00857	.00819	.00784
3	.01278	.01203	.01135	.01073	.01016	.00964	.00916	.00872	.00832	.00795

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
4	.01332	.01253	.01182	.01116	.01056	.01001	.00951	.00904	.00862	.00822
5	.01400	.01317	.01241	.01172	.01109	.01051	.00998	.00949	.00904	.00862
6	.01477	.01390	.01310	.01238	.01171	.01110	.01054	.01002	.00954	.00910
7	.01563	.01472	.01389	.01312	.01242	.01178	.01118	.01064	.01013	.00966
8	.01660	.01564	.01477	.01396	.01322	.01254	.01192	.01134	.01081	.01031
9	.01770	.01669	.01577	.01492	.01414	.01342	.01276	.01216	.01159	.01107
10	.01891	.01785	.01688	.01599	.01517	.01442	.01372	.01308	.01249	.01194
11	.02026	.01915	.01814	.01720	.01634	.01555	.01481	.01414	.01351	.01293
12	.02173	.02056	.01950	.01852	.01761	.01678	.01601	.01529	.01463	.01402
13	.02326	.02204	.02092	.01989	.01895	.01807	.01726	.01651	.01582	.01517
14	.02478	.02351	.02234	.02126	.02027	.01935	.01850	.01771	.01698	.01630
15	.02628	.02495	.02372	.02259	.02155	.02058	.01969	.01886	.01810	.01738
16	.02774	.02635	.02507	.02388	.02279	.02178	.02084	.01997	.01917	.01842
17	.02917	.02772	.02637	.02513	.02399	.02293	.02194	.02103	.02018	.01940
18	.03059	.02907	.02767	.02637	.02517	.02406	.02302	.02207	.02118	.02035
19	.03205	.03046	.02899	.02763	.02637	.02521	.02412	.02312	.02218	.02131
20	.03355	.03188	.03035	.02892	.02760	.02638	.02524	.02419	.02320	.02229
21	.03509	.03334	.03173	.03024	.02886	.02758	.02638	.02527	.02424	.02328
22	.03669	.03487	.03318	.03162	.03017	.02882	.02757	.02640	.02532	.02430
23	.03837	.03646	.03470	.03306	.03154	.03013	.02881	.02759	.02644	.02538
24	.04018	.03819	.03634	.03463	.03303	.03155	.03016	.02888	.02767	.02655
25	.04214	.04006	.03812	.03633	.03465	.03309	.03164	.03029	.02902	.02784
26	.04428	.04210	.04008	.03820	.03644	.03481	.03328	.03186	.03052	.02928
27	.04662	.04434	.04223	.04025	.03841	.03670	.03509	.03360	.03219	.03088
28	.04915	.04677	.04456	.04249	.04056	.03876	.03708	.03550	.03403	.03264
29	.05189	.04941	.04709	.04493	.04291	.04102	.03925	.03760	.03604	.03458
30	.05485	.05226	.04984	.04757	.04546	.04348	.04162	.03988	.03825	.03671
31	.05805	.05535	.05282	.05045	.04824	.04616	.04421	.04238	.04067	.03905
32	.06149	.05867	.05603	.05356	.05124	.04906	.04702	.04510	.04329	.04160
33	.06520	.06226	.05950	.05692	.05449	.05221	.05007	.04806	.04616	.04438
34	.06916	.06609	.06322	.06052	.05799	.05560	.05336	.05125	.04926	.04738
35	.07339	.07020	.06720	.06439	.06174	.05925	.05690	.05469	.05260	.05063
36	.07787	.07455	.07143	.06850	.06573	.06313	.06068	.05836	.05617	.05411
37	.08262	.07917	.07593	.07287	.06999	.06727	.06470	.06228	.05999	.05783
38	.08765	.08407	.08069	.07751	.07451	.07167	.06899	.06646	.06407	.06180
39	.09296	.08925	.08574	.08243	.07931	.07635	.07356	.07092	.06841	.06604
40	.09858	.09472	.09109	.08765	.08440	.08132	.07841	.07565	.07303	.07055
41	.10449	.10050	.09673	.09316	.08978	.08658	.08355	.08067	.07794	.07535
42	.11069	.10656	.10265	.09895	.09544	.09212	.08896	.08596	.08312	.08041
43	.11718	.11291	.10887	.10503	.10140	.09794	.09466	.09154	.08858	.08576
44	.12399	.11958	.11540	.11143	.10766	.10407	.10067	.09743	.09434	.09141
45	.13111	.12656	.12224	.11814	.11423	.11052	.10699	.10362	.10042	.09736
46	.13856	.13387	.12941	.12516	.12113	.11728	.11362	.11013	.10680	.10363
47	.14633	.14150	.13690	.13252	.12835	.12438	.12059	.11697	.11352	.11022
48	.15442	.14945	.14471	.14020	.13589	.13179	.12787	.12412	.12055	.11713
49	.16280	.15769	.15281	.14816	.14373	.13949	.13544	.13157	.12787	.12433
50	.17147	.16622	.16121	.15643	.15186	.14749	.14331	.13931	.13546	.13182
51	.18045	.17507	.16993	.16501	.16030	.15580	.15150	.14737	.14342	.13963
52	.18979	.18427	.17899	.17394	.16911	.16448	.16004	.15579	.15172	.14780
53	.19947	.19383	.18842	.18324	.17828	.17352	.16896	.16458	.16038	.15635
54	.20950	.20372	.19819	.19288	.18779	.18291	.17822	.17372	.16940	.16524
55	.21986	.21397	.20831	.20288	.19767	.19266	.18785	.18322	.17878	.17450
56	.23058	.22457	.21879	.21324	.20791	.20278	.19785	.19310	.18854	.18414
57	.24167	.23554	.22965	.22399	.21854	.21329	.20824	.20338	.19870	.19419
58	.25314	.24690	.24090	.23512	.22956	.22420	.21904	.21407	.20927	.20464
59	.26497	.25863	.25252	.24664	.24097	.23550	.23023	.22515	.22024	.21551
60	.27712	.27068	.26448	.25849	.25272	.24716	.24178	.23659	.23158	.22674
61	.28956	.28304	.27674	.27067	.26480	.25913	.25366	.24837	.24325	.23831
62	.30228	.29567	.28929	.28312	.27717	.27141	.26584	.26045	.25524	.25020
63	.31525	.30857	.30211	.29586	.28982	.28397	.27832	.27284	.26754	.26240
64	.32851	.32176	.31522	.30890	.30278	.29685	.29111	.28555	.28016	.27493
65	.34209	.33528	.32868	.32229	.31610	.31010	.30429	.29865	.29317	.28787
66	.35604	.34918	.34253	.33609	.32983	.32377	.31788	.31217	.30663	.30124
67	.37037	.36347	.35678	.35028	.34398	.33786	.33191	.32614	.32053	.31508
68	.38508	.37815	.37142	.36489	.35854	.35237	.34638	.34055	.33488	.32937
69	.40008	.39313	.38638	.37982	.37344	.36724	.36120	.35533	.34961	.34405
70	.41533	.40838	.40162	.39504	.38864	.38241	.37634	.37043	.36468	.35907
71	.43076	.42382	.41705	.41047	.40405	.39780	.39171	.38578	.38000	.37436
72	.44638	.43945	.43269	.42611	.41969	.41344	.40733	.40138	.39558	.38991

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
73	.46218	.45527	.44854	.44197	.43556	.42931	.42321	.41725	.41143	.40575
74	.47823	.47137	.46466	.45812	.45173	.44549	.43940	.43345	.42763	.42195
75	.49469	.48777	.48112	.47462	.46826	.46205	.45598	.45004	.44424	.43856
76	.51127	.50452	.49793	.49148	.48517	.47900	.47297	.46706	.46129	.45563
77	.52823	.52157	.51505	.50867	.50243	.49632	.49033	.48447	.47873	.47311
78	.54541	.53885	.53242	.52613	.51996	.51392	.50800	.50220	.49652	.49094
79	.56267	.55621	.54989	.54369	.53762	.53166	.52582	.52009	.51448	.50897
80	.57987	.57354	.56733	.56125	.55527	.54941	.54366	.53802	.53248	.52705
81	.59685	.59065	.58457	.57860	.57274	.56699	.56134	.55579	.55035	.54499
82	.61361	.60746	.60151	.59567	.58993	.58429	.57875	.57331	.56796	.56270
83	.62978	.62387	.61806	.61236	.60675	.60123	.59581	.59047	.58523	.58007
84	.64567	.63992	.63426	.62869	.62321	.61783	.61253	.60731	.60218	.59713
85	.66125	.65565	.65014	.64472	.63938	.63413	.62896	.62387	.61886	.61392
86	.67636	.67092	.66557	.66030	.65511	.65000	.64496	.64000	.63511	.63030
87	.69081	.68554	.68034	.67522	.67018	.66520	.66031	.65548	.65071	.64602
88	.70468	.69957	.69453	.68956	.68466	.67983	.67507	.67037	.66574	.66117
89	.71821	.71326	.70838	.70357	.69882	.69414	.68952	.68495	.68045	.67601
90	.73153	.72676	.72204	.71739	.71280	.70827	.70379	.69938	.69502	.69071
91	.74447	.73986	.73532	.73083	.72640	.72202	.71770	.71343	.70921	.70504
92	.75669	.75225	.74787	.74354	.73927	.73504	.73087	.72674	.72267	.71864
93	.76867	.76379	.75957	.75540	.75127	.74719	.74317	.73918	.73524	.73135
94	.77849	.77437	.77030	.76627	.76229	.75835	.75446	.75061	.74680	.74303
95	.78792	.78394	.78001	.77611	.77226	.76845	.76468	.76096	.75727	.75362
96	.79630	.79244	.78863	.78485	.78112	.77742	.77377	.77015	.76657	.76303
97	.80391	.80016	.79646	.79280	.78917	.78559	.78203	.77852	.77504	.77160
98	.81076	.80712	.80352	.79996	.79643	.79294	.78948	.78606	.78267	.77931
99	.81709	.81354	.81004	.80657	.80313	.79972	.79635	.79302	.78971	.78644
100	.82296	.81950	.81609	.81270	.80934	.80602	.80273	.79947	.79624	.79304
101	.82855	.82518	.82185	.81854	.81526	.81201	.80880	.80561	.80245	.79932
102	.83438	.83110	.82785	.82462	.82142	.81826	.81512	.81200	.80892	.80586
103	.84056	.83737	.83420	.83106	.82795	.82487	.82181	.81878	.81577	.81279
104	.84743	.84433	.84127	.83822	.83521	.83221	.82924	.82630	.82338	.82048
105	.85591	.85295	.85001	.84709	.84419	.84132	.83846	.83563	.83282	.83003
106	.86676	.86540	.86266	.85993	.85723	.85454	.85187	.84922	.84659	.84397
107	.88592	.88348	.88105	.87863	.87623	.87384	.87147	.86911	.86676	.86443
108	.91493	.91306	.91119	.90934	.90749	.90566	.90383	.90201	.90020	.89840
109	.96211	.96125	.96041	.95956	.95872	.95788	.95704	.95620	.95537	.95455

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS

[Applicable after April 30, 1989]

Age	Interest rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
0	.01891	.01864	.01838	.01814	.01791	.01770	.01750	.01732	.01715	.01698
1	.00770	.00741	.00715	.00690	.00667	.00646	.00626	.00608	.00590	.00574
2	.00758	.00721	.00693	.00667	.00643	.00620	.00600	.00580	.00562	.00544
3	.00760	.00728	.00699	.00671	.00646	.00622	.00600	.00579	.00560	.00541
4	.00786	.00752	.00721	.00692	.00665	.00639	.00616	.00594	.00573	.00554
5	.00824	.00788	.00755	.00724	.00695	.00668	.00643	.00620	.00598	.00578
6	.00869	.00832	.00796	.00764	.00733	.00705	.00678	.00654	.00630	.00608
7	.00923	.00883	.00846	.00811	.00779	.00749	.00720	.00694	.00669	.00646
8	.00986	.00943	.00904	.00867	.00833	.00801	.00771	.00743	.00716	.00692
9	.01059	.01014	.00972	.00933	.00897	.00863	.00831	.00801	.00773	.00747
10	.01142	.01095	.01051	.01009	.00971	.00935	.00901	.00869	.00840	.00812
11	.01239	.01189	.01142	.01098	.01057	.01019	.00983	.00950	.00918	.00889
12	.01345	.01292	.01243	.01197	.01154	.01113	.01075	.01040	.01007	.00975
13	.01457	.01401	.01349	.01300	.01255	.01212	.01172	.01135	.01100	.01067
14	.01567	.01508	.01453	.01402	.01354	.01309	.01267	.01227	.01190	.01155
15	.01672	.01610	.01552	.01498	.01448	.01400	.01356	.01314	.01275	.01238
16	.01772	.01707	.01646	.01589	.01536	.01486	.01439	.01396	.01354	.01315
17	.01866	.01798	.01734	.01674	.01618	.01566	.01516	.01470	.01427	.01386
18	.01956	.01886	.01818	.01755	.01697	.01641	.01590	.01541	.01495	.01452
19	.02050	.01974	.01903	.01837	.01775	.01717	.01662	.01611	.01563	.01517
20	.02143	.02064	.01989	.01919	.01854	.01793	.01735	.01681	.01630	.01582
21	.02238	.02154	.02075	.02002	.01933	.01868	.01807	.01750	.01696	.01646
22	.02336	.02247	.02164	.02087	.02014	.01946	.01882	.01821	.01764	.01711

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
23	.02438	.02345	.02257	.02176	.02099	.02027	.01959	.01895	.01835	.01778
24	.02550	.02451	.02359	.02273	.02192	.02115	.02044	.01976	.01913	.01853
25	.02673	.02569	.02472	.02381	.02295	.02214	.02138	.02067	.01999	.01936
26	.02811	.02701	.02598	.02502	.02411	.02326	.02246	.02170	.02098	.02031
27	.02965	.02849	.02741	.02639	.02543	.02452	.02367	.02287	.02211	.02140
28	.03134	.03013	.02898	.02790	.02689	.02593	.02503	.02418	.02338	.02262
29	.03322	.03193	.03072	.02958	.02851	.02750	.02654	.02564	.02479	.02398
30	.03527	.03391	.03264	.03143	.03030	.02923	.02821	.02726	.02635	.02550
31	.03753	.03610	.03475	.03348	.03228	.03115	.03008	.02907	.02811	.02720
32	.04000	.03849	.03707	.03573	.03446	.03326	.03213	.03105	.03004	.02907
33	.04269	.04111	.03961	.03819	.03685	.03558	.03438	.03325	.03217	.03115
34	.04561	.04394	.04236	.04087	.03946	.03812	.03685	.03565	.03451	.03342
35	.04877	.04702	.04535	.04378	.04229	.04087	.03953	.03826	.03706	.03591
36	.05215	.05031	.04856	.04690	.04533	.04384	.04242	.04108	.03980	.03859
37	.05578	.05384	.05200	.05025	.04860	.04703	.04553	.04411	.04276	.04148
38	.05965	.05761	.05568	.05385	.05211	.05045	.04888	.04738	.04595	.04460
39	.06379	.06165	.05962	.05770	.05587	.05412	.05247	.05089	.04939	.04795
40	.06820	.06596	.06383	.06181	.05989	.05806	.06631	.05465	.05307	.05155
41	.07288	.07054	.06832	.06620	.06418	.06226	.06042	.05868	.05701	.05541
42	.07784	.07539	.07306	.07085	.06873	.06671	.06479	.06295	.06119	.05952
43	.08308	.08052	.07808	.07576	.07355	.07143	.06941	.06748	.06564	.06387
44	.08861	.08594	.08340	.08097	.07865	.07644	.07432	.07230	.07036	.06851
45	.09445	.09167	.08901	.08648	.08406	.08174	.07953	.07741	.07538	.07343
46	.10060	.09770	.09494	.09230	.08977	.08735	.08503	.08281	.08068	.07865
47	.10707	.10406	.10119	.09843	.09579	.09327	.09085	.08853	.08630	.08417
48	.11386	.11073	.10774	.10487	.10213	.09949	.09697	.09455	.09222	.08999
49	.12094	.11769	.11458	.11160	.10874	.10600	.10337	.10084	.09842	.09609
50	.12831	.12494	.12172	.11862	.11565	.11280	.11006	.10743	.10490	.10247
51	.13600	.13251	.12917	.12596	.12288	.11991	.11706	.11432	.11169	.10915
52	.14405	.14044	.13698	.13366	.13046	.12738	.12442	.12157	.11883	.11619
53	.15247	.14875	.14517	.14172	.13841	.13522	.13215	.12919	.12635	.12360
54	.16124	.15740	.15370	.15014	.14671	.14341	.14023	.13717	.13421	.13136
55	.17039	.16642	.16261	.15893	.15539	.15198	.14868	.14551	.14244	.13948
56	.17991	.17583	.17190	.16811	.16445	.16092	.15752	.15423	.15106	.14799
57	.18984	.18564	.18160	.17769	.17392	.17029	.16677	.16338	.16010	.15692
58	.20018	.19587	.19172	.18770	.18382	.18007	.17645	.17295	.16956	.16628
59	.21093	.20652	.20225	.19812	.19414	.19028	.18655	.18294	.17945	.17606
60	.22206	.21753	.21316	.20893	.20483	.20087	.19703	.19332	.18972	.18624
61	.23353	.22890	.22442	.22009	.21589	.21182	.20788	.20407	.20037	.19678
62	.24532	.24059	.23601	.23158	.22728	.22311	.21907	.21515	.21135	.20767
63	.25742	.25260	.24793	.24339	.23900	.23473	.23060	.22658	.22268	.21890
64	.26987	.26495	.26019	.25556	.25107	.24671	.24248	.23837	.23438	.23050
65	.28271	.27771	.27286	.26815	.26357	.25912	.25480	.25059	.24651	.24254
66	.29601	.29093	.28600	.28120	.27654	.27200	.26760	.26331	.25913	.25507
67	.30978	.30462	.29961	.29474	.29000	.28539	.28090	.27653	.27227	.26813
68	.32401	.31879	.31371	.30877	.30396	.29927	.29471	.29027	.28593	.28171
69	.33863	.33336	.32822	.32322	.31835	.31359	.30896	.30445	.30005	.29576
70	.35361	.34829	.34310	.33804	.33311	.32830	.32361	.31903	.31457	.31021
71	.36886	.36349	.35826	.35316	.34818	.34332	.33858	.33394	.32942	.32500
72	.38439	.37899	.37373	.36858	.36356	.35866	.35387	.34919	.34461	.34015
73	.40021	.39479	.38950	.38432	.37927	.37433	.36950	.36478	.36016	.35565
74	.41639	.41096	.40565	.40046	.39538	.39042	.38556	.38081	.37616	.37161
75	.43301	.42758	.42226	.41706	.41198	.40699	.40212	.39734	.39267	.38809
76	.45009	.44467	.43937	.43417	.42908	.42410	.41921	.41443	.40974	.40514
77	.46761	.46221	.45693	.45175	.44667	.44170	.43682	.43203	.42734	.42274
78	.48548	.48013	.47488	.46973	.46468	.45972	.45486	.45009	.44541	.44082
79	.50356	.49826	.49306	.48795	.48294	.47802	.47319	.46845	.46379	.45922
80	.52171	.51647	.51133	.50628	.50132	.49644	.49166	.48695	.48233	.47779
81	.53974	.53457	.52950	.52451	.51961	.51479	.51006	.50541	.50083	.49633
82	.55753	.55245	.54745	.54254	.53771	.53296	.52828	.52369	.51917	.51472
83	.57500	.57001	.56510	.56026	.55551	.55083	.54623	.54170	.53724	.53285
84	.59216	.58726	.58245	.57770	.57304	.56844	.56391	.55945	.55506	.55074
85	.60906	.60428	.59956	.59492	.59034	.58583	.58139	.57702	.57270	.56845
86	.62555	.62088	.61627	.61173	.60725	.60284	.59849	.59420	.58997	.58580
87	.64139	.63683	.63233	.62790	.62352	.61921	.61495	.61076	.60661	.60253
88	.65666	.65221	.64783	.64350	.63923	.63502	.63086	.62675	.62270	.61871
89	.67163	.66730	.66304	.65882	.65466	.65055	.64650	.64249	.63854	.63463
90	.68646	.68226	.67812	.67402	.66998	.66599	.66204	.65814	.65430	.65049
91	.70093	.69686	.69285	.68888	.68496	.68108	.67725	.67347	.66973	.66604

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
92	.71466	.71073	.70684	.70300	.69920	.69545	.69173	.68806	.68444	.68085
93	.72750	.72370	.71994	.71622	.71254	.70890	.70530	.70174	.69822	.69474
94	.73931	.73562	.73198	.72838	.72481	.72129	.71780	.71434	.71093	.70755
95	.75001	.74644	.74291	.73941	.73595	.73253	.72914	.72579	.72247	.71919
96	.75953	.75606	.75262	.74923	.74586	.74253	.73924	.73598	.73275	.72955
97	.76819	.76481	.76147	.75816	.75489	.75165	.74844	.74526	.74211	.73899
98	.77599	.77270	.76944	.76621	.76302	.75986	.75672	.75362	.75054	.74750
99	.78319	.77998	.77680	.77365	.77053	.76744	.76437	.76134	.75833	.75535
100	.78987	.78673	.78362	.78054	.77748	.77446	.77146	.76849	.76555	.76263
101	.79622	.79315	.79010	.78708	.78409	.78113	.77819	.77528	.77239	.76953
102	.80283	.79983	.79685	.79390	.79097	.78807	.78519	.78234	.77951	.77671
103	.80983	.80690	.80399	.80111	.79825	.79541	.79260	.78981	.78705	.78430
104	.81760	.81475	.81192	.80912	.80633	.80357	.80083	.79810	.79541	.79273
105	.82726	.82451	.82178	.81907	.81638	.81371	.81106	.80843	.80582	.80322
106	.84137	.83879	.83623	.83368	.83115	.82863	.82614	.82366	.82119	.81874
107	.86211	.85981	.85751	.85523	.85297	.85071	.84847	.84624	.84403	.84182
108	.89560	.89481	.89304	.89127	.88950	.88775	.88601	.88427	.88254	.88081
109	.95372	.95290	.95208	.95126	.95045	.94964	.94883	.94803	.94723	.94643

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS

[Applicable after April 30, 1989]

Age	Interest rate									
	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
0	.01683	.01669	.01655	.01642	.01630	.01618	.01607	.01596	.01586	.01576
1	.00559	.00544	.00531	.00518	.00506	.00494	.00484	.00473	.00464	.00454
2	.00528	.00513	.00499	.00485	.00473	.00461	.00449	.00439	.00428	.00419
3	.00524	.00508	.00493	.00479	.00465	.00453	.00441	.00429	.00419	.00408
4	.00536	.00519	.00503	.00488	.00473	.00460	.00447	.00435	.00423	.00412
5	.00558	.00540	.00523	.00507	.00492	.00477	.00464	.00451	.00439	.00427
6	.00588	.00569	.00550	.00533	.00517	.00502	.00487	.00473	.00460	.00448
7	.00624	.00604	.00584	.00566	.00549	.00532	.00517	.00502	.00488	.00475
8	.00668	.00646	.00626	.00606	.00588	.00570	.00554	.00538	.00523	.00509
9	.00722	.00699	.00677	.00656	.00636	.00617	.00600	.00583	.00567	.00552
10	.00785	.00761	.00737	.00715	.00694	.00674	.00655	.00637	.00620	.00604
11	.00861	.00835	.00810	.00786	.00764	.00743	.00723	.00704	.00686	.00668
12	.00946	.00918	.00891	.00866	.00843	.00820	.00799	.00779	.00760	.00741
13	.01035	.01006	.00978	.00951	.00927	.00903	.00880	.00859	.00839	.00819
14	.01122	.01091	.01061	.01034	.01007	.00982	.00958	.00936	.00914	.00894
15	.01203	.01171	.01140	.01110	.01082	.01056	.01031	.01007	.00985	.00963
16	.01279	.01244	.01211	.01181	.01151	.01123	.01097	.01072	.01048	.01025
17	.01347	.01311	.01276	.01244	.01213	.01184	.01156	.01130	.01104	.01081
18	.01411	.01373	.01336	.01302	.01270	.01239	.01210	.01182	.01155	.01130
19	.01474	.01434	.01396	.01359	.01325	.01293	.01262	.01233	.01205	.01178
20	.01537	.01494	.01454	.01415	.01379	.01345	.01313	.01282	.01252	.01224
21	.01598	.01553	.01510	.01470	.01432	.01396	.01361	.01329	.01298	.01268
22	.01660	.01613	.01568	.01525	.01485	.01446	.01410	.01375	.01343	.01312
23	.01725	.01674	.01627	.01581	.01539	.01498	.01460	.01423	.01388	.01355
24	.01796	.01742	.01692	.01644	.01599	.01556	.01515	.01476	.01439	.01404
25	.01876	.01819	.01765	.01714	.01666	.01621	.01577	.01536	.01497	.01460
26	.01967	.01907	.01850	.01796	.01745	.01696	.01650	.01606	.01565	.01525
27	.02072	.02008	.01948	.01890	.01836	.01784	.01735	.01688	.01644	.01601
28	.02190	.02122	.02057	.01996	.01938	.01883	.01831	.01781	.01734	.01689
29	.02322	.02249	.02181	.02116	.02054	.01996	.01940	.01887	.01836	.01788
30	.02469	.02392	.02319	.02250	.02184	.02122	.02062	.02006	.01952	.01900
31	.02634	.02552	.02475	.02401	.02331	.02264	.02201	.02140	.02083	.02028
32	.02816	.02729	.02647	.02568	.02494	.02423	.02355	.02291	.02229	.02170
33	.03018	.02926	.02838	.02755	.02675	.02600	.02528	.02459	.02393	.02331
34	.03239	.03142	.03048	.02960	.02875	.02795	.02718	.02645	.02575	.02508
35	.03482	.03378	.03279	.03185	.03095	.03009	.02928	.02850	.02775	.02704
36	.03743	.03633	.03528	.03428	.03333	.03242	.03155	.03072	.02992	.02916
37	.04026	.03909	.03798	.03692	.03591	.03494	.03401	.03313	.03228	.03147
38	.04330	.04207	.04089	.03977	.03869	.03767	.03668	.03574	.03484	.03398
39	.04658	.04528	.04403	.04284	.04170	.04061	.03957	.03857	.03762	.03670
40	.05011	.04873	.04741	.04615	.04495	.04379	.04269	.04163	.04061	.03964
41	.05389	.05244	.05104	.04971	.04844	.04721	.04604	.04492	.04384	.04281

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
42	.05791	.05638	.05491	.05350	.05216	.05086	.04962	.04844	.04729	.04620
43	.06219	.06057	.05902	.05754	.05612	.05475	.05344	.05218	.05098	.04981
44	.06673	.06503	.06340	.06184	.06034	.05890	.05752	.05619	.05491	.05368
45	.07157	.06978	.06806	.06642	.06484	.06332	.06186	.06046	.05911	.05781
46	.07669	.07481	.07301	.07128	.06962	.06802	.06649	.06501	.06358	.06221
47	.08212	.08015	.07826	.07645	.07470	.07302	.07140	.06984	.06834	.06690
48	.08784	.08578	.08380	.08190	.08006	.07830	.07660	.07496	.07338	.07186
49	.09384	.09169	.08961	.08762	.08570	.08384	.08205	.08034	.07868	.07708
50	.10013	.09787	.09570	.09361	.09160	.08966	.08779	.08598	.08424	.08255
51	.10671	.10436	.10209	.09991	.09780	.09577	.09381	.09192	.09009	.08832
52	.11365	.11120	.10883	.10655	.10435	.10222	.10017	.09819	.09628	.09442
53	.12095	.11840	.11593	.11355	.11126	.10904	.10689	.10482	.10282	.10088
54	.12860	.12595	.12338	.12090	.11851	.11619	.11396	.11179	.10970	.10767
55	.13663	.13386	.13120	.12862	.12613	.12372	.12138	.11912	.11694	.11482
56	.14503	.14217	.13940	.13672	.13413	.13162	.12919	.12683	.12456	.12235
57	.15385	.15089	.14801	.14523	.14254	.13994	.13741	.13496	.13259	.13029
58	.16311	.16004	.15706	.15418	.15139	.14868	.14606	.14352	.14105	.13866
59	.17279	.16961	.16654	.16355	.16066	.15786	.15514	.15250	.14994	.14745
60	.18286	.17958	.17640	.17332	.17033	.16743	.16462	.16188	.15922	.15664
61	.19330	.18992	.18665	.18347	.18038	.17738	.17447	.17164	.16889	.16622
62	.20409	.20061	.19724	.19396	.19078	.18768	.18467	.18175	.17891	.17614
63	.21522	.21165	.20818	.20480	.20152	.19833	.19523	.19221	.18928	.18642
64	.22672	.22306	.21949	.21602	.21265	.20937	.20617	.20306	.20003	.19708
65	.23867	.23491	.23125	.22769	.22423	.22085	.21757	.21437	.21125	.20821
66	.25112	.24727	.24353	.23988	.23632	.23286	.22948	.22619	.22299	.21986
67	.26409	.26016	.25633	.25260	.24896	.24541	.24195	.23857	.23528	.23206
68	.27760	.27359	.26968	.26586	.26214	.25851	.25497	.25151	.24814	.24484
69	.29157	.28748	.28350	.27961	.27581	.27211	.26849	.26495	.26150	.25812
70	.30596	.30181	.29775	.29379	.28992	.28614	.28245	.27884	.27532	.27187
71	.32069	.31648	.31236	.30833	.30440	.30055	.29679	.29312	.28952	.28600
72	.33578	.33151	.32733	.32325	.31925	.31535	.31152	.30778	.30412	.30054
73	.35123	.34691	.34269	.33855	.33450	.33054	.32666	.32286	.31914	.31550
74	.36715	.36279	.35852	.35434	.35024	.34623	.34230	.33845	.33468	.33098
75	.38360	.37921	.37491	.37069	.36656	.36250	.35853	.35464	.35082	.34708
76	.40064	.39623	.39190	.38765	.38349	.37941	.37540	.37148	.36762	.36384
77	.41823	.41381	.40947	.40521	.40103	.39692	.39290	.38895	.38507	.38126
78	.43632	.43189	.42755	.42329	.41910	.41499	.41095	.40698	.40309	.39926
79	.45473	.45032	.44599	.44173	.43755	.43344	.42940	.42543	.42153	.41770
80	.47333	.46894	.46463	.46040	.45623	.45213	.44811	.44414	.44025	.43642
81	.49191	.48755	.48328	.47907	.47493	.47085	.46684	.46290	.45902	.45520
82	.51034	.50603	.50179	.49762	.49351	.48947	.48549	.48157	.47772	.47392
83	.52852	.52427	.52008	.51595	.51189	.50788	.50394	.50006	.49623	.49246
84	.54648	.54228	.53815	.53407	.53006	.52610	.52221	.51836	.51458	.51084
85	.56426	.56013	.55606	.55205	.54810	.54420	.54035	.53656	.53282	.52913
86	.58169	.57764	.57364	.56970	.56581	.56197	.55818	.55445	.55076	.54713
87	.59850	.59452	.59060	.58673	.58291	.57913	.57541	.57174	.56811	.56453
88	.61476	.61086	.60702	.60322	.59947	.59577	.59212	.58851	.58494	.58142
89	.63078	.62697	.62321	.61950	.61583	.61220	.60862	.60508	.60159	.59813
90	.64674	.64302	.63935	.63573	.63215	.62861	.62511	.62165	.61823	.61485
91	.66238	.65877	.65520	.65167	.64819	.64474	.64133	.63795	.63462	.63132
92	.67730	.67379	.67032	.66689	.66350	.66014	.65682	.65354	.65029	.64708
93	.69130	.68789	.68452	.68119	.67789	.67463	.67140	.66820	.66504	.66191
94	.70421	.70090	.69762	.69438	.69118	.68800	.68486	.68175	.67867	.67563
95	.71594	.71272	.70954	.70639	.70326	.70017	.69712	.69409	.69109	.68812
96	.72638	.72325	.72014	.71707	.71403	.71101	.70803	.70507	.70215	.69925
97	.73590	.73285	.72982	.72682	.72385	.72090	.71799	.71510	.71224	.70941
98	.74448	.74149	.73853	.73560	.73269	.72981	.72696	.72414	.72134	.71856
99	.75240	.74948	.74658	.74371	.74086	.73805	.73525	.73248	.72974	.72702
100	.75974	.75687	.75403	.75121	.74842	.74566	.74292	.74020	.73751	.73484
101	.76669	.76388	.76109	.75833	.75559	.75287	.75018	.74751	.74486	.74223
102	.77393	.77117	.76844	.76573	.76304	.76037	.75773	.75511	.75251	.74993
103	.78158	.77888	.77620	.77355	.77091	.76830	.76571	.76313	.76058	.75805
104	.79007	.78743	.78482	.78222	.77964	.77709	.77455	.77203	.76953	.76705
105	.80065	.79809	.79556	.79304	.79054	.78805	.78559	.78314	.78071	.77829
106	.81631	.81389	.81149	.80911	.80674	.80438	.80204	.79972	.79741	.79511
107	.83963	.83745	.83529	.83313	.83099	.82886	.82674	.82463	.82254	.82045
108	.87910	.87739	.87569	.87400	.87232	.87064	.86897	.86731	.86566	.86401
109	.94563	.94484	.94405	.94326	.94248	.94170	.94092	.94014	.93937	.93860

(f) *Effective date.* This section is effective as of May 1, 1989.

Par. 9. Section 1.642(c)–6A is further amended by revising the heading for Table G in newly designated paragraph (d)(4) to read as follows:

§ 1.642(c)–6A Valuation of charitable remainder interests for which the valuation date is before May 1, 1989.

* * * * *

(d) *Present value of remainder interest dependent on the termination of one life in the case of transfers to pooled income funds made after November 30, 1983, for which the valuation date is before May 1, 1989.*

* * * * *

(4) * * *

Table G

Table G—Single Life, Unisex—Table Showing the Present Worth of the Remainder Interest in Property Transferred to a Pooled Income Fund Having the Yearly Rate of Return Shown—Applicable for Transfers After November 30, 1983, and Before May 1, 1989

* * * * *

Par. 10. Section 1.664–1 is amended as follows:

1. Paragraph (a)(5)(ii)(*b*) is revised.

2. Paragraphs (a)(5)(iv) (*a*) through (*c*) are revised and paragraph (a)(5)(iv)(*d*) is added.

3. Paragraph (a)(6), the introductory text, is revised.

4. The authority citation at the end of the section is removed.

5. The added and revised provisions read as follows:

§ 1.664–1 Charitable remainder trusts.

(a) * * *

(5) * * *

(ii) * * *

(*b*) (*1*) In the case of transfers made after November 30, 1983, for which the valuation date is before May 1, 1989, a factor equal to 1.000000 less the factor under the appropriate adjusted payout rate in column 2 of Table D in § 1.664–4A(d)(6) opposite the number of years in column 1 between the date of death of the decedent and the date of the earlier of the death of the last recipient or the last day of such taxable year.

(*2*) In the case of transfers for which the valuation date is after April 30, 1989, a factor equal to 1.000000 less the factor under the appropriate adjusted payout rate in Table D in § 1.664–4(e)(6) opposite the number of years in column 1 between the date of death of the decedent and the date of the earlier of the death of the last recipient or the last day of such taxable year. The appropriate adjusted payout rate is determined by using the appropriate Table F contained in § 1.664–4(e)(6) for the section 7520 rate for the month of the valuation date.

(*3*) If the number of years between the date of death and the date of the earlier of the death of the last recipient or the last day of such taxable year is between periods for which factors are provided, a linear interpolation must be made.

* * * * *

(iv) * * *

(*a*) The section 7520 rate for the month in which the valuation date with respect to the transfer is (or one of the prior two months if elected under § 1.7520–2(b)) after April 30, 1989;

(*b*) 10 percent for instruments executed or amended (other than in the case of a reformation under section 2055(e)(3)) on or after August 9, 1984, and before May 1, 1989, and not subsequently amended;

(*c*) 6 percent or 10 percent for instruments executed or amended (other than in the case of a reformation under section 2055(e)(3)) after October 24, 1983, and before August 9, 1984; and

(*d*) 6 percent for instruments executed before October 25, 1983, and not subsequently amended (other than in the case of a reformation under section 2055(e)(3)).

(6) *Examples.* The application of the rules in paragraphs (a)(4) and (a)(5) of this section require the use of actuarial factors contained in § 1.664–4(e), § 1.664–4A(d), and former § 1.664–4(d) (as contained in the 26 CFR Part 1 edition revised as of April 1, 1994) and may be illustrated by use of the following examples:

* * * * *

Par. 11. Section 1.664–2 is amended as follows:

1. Paragraph (c) is revised as set forth below.

2. The authority citation at the end of the section is removed.

§ 1.664–2 Charitable remainder annuity trust.

* * * * *

(c) *Calculation of the fair market value of the remainder interest of a charitable remainder annuity trust.* For purposes of sections 170, 2055, 2106, and 2522, the fair market value of the remainder interest of a charitable remainder annuity trust (as described in this section) is the net fair market value (as of the appropriate valuation date) of the property placed in trust less the present value of the annuity. For purposes of this section, *valuation date* means, in general, the date on which the property is transferred to the trust by the donor regardless of when the trust is created. In the case of transfers to a charitable remainder annuity trust for which the valuation date is after April 30, 1989, if an election is made under section 7520 and § 1.7520–2(b) to compute the present value of the charitable interest by use of the interest rate component for either of the 2 months preceding the month in which the transfer is made, the month so elected is the valuation date for purposes of determining the interest rate and mortality tables. For purposes of section 2055 or 2106, the valuation date is the date of death unless the alternate valuation date is elected in accordance with section 2032, in which event, and within the limitations set forth in section 2032 and the regulations thereunder, the valuation date is the alternate valuation date. If the decedent's estate elects the alternate valuation date under section 2032 and also elects, under section 7520 and § 1.7520–2(b), to use the interest rate component for one of the 2 months preceding the alternate valuation date, the month so elected is the valuation date for purposes of determining the interest rate and mortality tables. The present value of an annuity is computed under § 20.2031–7(d) of this chapter (Estate Tax Regulations) for transfers for which the valuation date is after April 30, 1989, or under § 20.2031–7A (a) through (d) of this chapter, whichever is applicable, for transfers for which the valuation date is before May 1, 1989. See, however, § 1.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances). If the valuation date of a transfer to a charitable remainder annuity trust is after April 30, 1989, and before June 10, 1994, a transferor can rely on Notice 89–24, 1989–1 C.B. 660, or Notice 89–60, 1989–1 C.B. 700 (See § 601.601(d)(2)(ii)(*b*) of this chapter), in valuing the transferred interest.

Par. 12. Immediately following § 1.664–4 an undesignated center heading and § 1.664–4A are added to read as follows:

Unitrust Actuarial Tables Applicable Before May 1, 1989

§ 1.664–4A Valuation of charitable remainder interests for which the valuation date is before May 1, 1989.

(a) *Valuation of charitable remainder interests for which the valuation date is before January 1, 1952.* There was no provision for the qualification of a charitable remainder unitrust under section 664 until 1969. See § 20.2031–7A(a) of this chapter (Estate Tax Regulations) for the determination of the present value of a charitable interest for

which the valuation date is before January 1, 1952.

(b) *Valuation of charitable remainder interests for which the valuation date is after December 31, 1951, and before January 1, 1971.* No charitable deduction is allowable for a transfer to a unitrust for which the valuation date is after the effective dates of the Tax Reform Act of 1969 unless the unitrust meets the requirements of section 664. See § 20.2031–7A(b) of this chapter (Estate Tax Regulations) for the determination of the present value of a charitable remainder interest for which the valuation date is after December 31, 1951, and before January 1, 1971.

(c) *Valuation of charitable remainder unitrusts having certain payout sequences for transfers for which the valuation date is after December 31, 1970, and before December 1, 1983.* For the determination of the present value of a charitable remainder unitrust for which the valuation date is after December 31, 1970, and before December 1, 1983, see § 20.2031–7A(c) of this chapter (Estate Tax Regulations) and former § 1.664–4(d) (as contained in the 26 CFR part 1 edition revised as of April 1, 1994).

(d) *Valuation of charitable remainder unitrusts having certain payout sequences for transfers for which the valuation date is after November 30, 1983, and before May 1, 1989*—(1) *In general.* Except as otherwise provided in paragraph (d)(2) of this section, in the case of transfers made after November 30, 1983, for which the valuation date is before May 1, 1989, the present value of a remainder interest that is dependent on a term of years or the termination of the life of one individual is determined under paragraphs (d)(3) through (d)(6) of this section, provided that the amount of the payout as of any payout date during any taxable year of the trust is not larger than the amount that the trust could distribute on such date under § 1.664–3(a)(1)(v) if the taxable year of the trust were to end on such date. The present value of the remainder interest in the trust is determined by computing the adjusted payout rate (as defined in paragraph (d)(3) of this section) and following the procedure outlined in paragraph (d)(4) or (d)(5) of this section, whichever is applicable. The present value of a remainder interest that is dependent on a term of years is computed under paragraph (d)(4) of this section. The present value of a remainder interest that is dependent on the termination of the life of one individual is computed under paragraph (d)(5) of this section. See paragraph (d)(2) of this section for testamentary transfers for which the valuation date is after November 30, 1983, and before August 9, 1984.

(2) *Rules for determining the present value for testamentary transfers where the decedent dies after November 30, 1983, and before August 9, 1984.* For purposes of section 2055 or 2106, if—

(i) The decedent dies after November 30, 1983, and before August 9, 1984; or

(ii) On December 1, 1983, the decedent was mentally incompetent so that the disposition of the property could not be changed, and the decedent died after November 30, 1983, without regaining competency to dispose of the decedent's property, or died within 90 days of the date on which the decedent first regained competency, the present value determined under this section of a remainder interest is determined in accordance with paragraph (d)(1) and paragraphs (d)(3) through (d)(6) of this section, or § 1.664–4A(c), at the option of the taxpayer.

Par. 13. Section 1.664–4 is amended as follows:

1. Paragraph (a) is revised.
2. Paragraphs (b)(2) through (b)(5) are redesignated as paragraphs (d)(3) through (d)(6) of § 1.664–4A, respectively.
3. Paragraph (b)(1) is redesignated as paragraph (b) and revised.
4. Paragraphs (c) and (d) are revised.
5. The authority citation at the end of the section is removed.
6. Paragraphs (e) and (f) are added.
7. The revisions and additions read as follows:

§ 1.664–4 Calculation of the fair market value of the remainder interest in a charitable remainder unitrust.

(a) *Rules for determining present value.* For purposes of sections 170, 2055, 2106, and 2522, the fair market value of a remainder interest in a charitable remainder unitrust (as described in § 1.664–3) is its present value determined under paragraph (d) of this section. The present value determined under this section shall be computed on the basis of—

(1) Life contingencies determined as to each life involved, from the values of *lx* set forth in Table 80CNSMT contained in § 20.2031–7(d)(6) of this chapter (Estate Tax Regulations) in the case of transfers for which the valuation date is after April 30, 1989, or column 2 of Table LN, of § 20.2031–7A(d)(6) of this chapter in the case of transfers made after November 30, 1983, for which the valuation date is before May 1, 1989. See § 20.2031–7A (a) through (c) of this chapter, whichever is applicable, for transfers for which the valuation date is before December 1, 1983;

(2) Interest at the section 7520 rate in the case of transfers for which the valuation date is after April 30, 1989, or 10 percent in the case of transfers to charitable remainder unitrusts made after November 30, 1983, for which the valuation date is before May 1, 1989. See § 20.2031–7A (a) through (c) of this chapter, whichever is applicable, for transfers for which the valuation date is before December 1, 1983; and

(3) The assumption that the amount described in § 1.664–3(a)(1)(*i*)(*a*) is distributed in accordance with the payout sequence described in the governing instrument. If the governing instrument does not prescribe when the distribution is made during the period for which the payment is made, for purposes of this section, the distribution is considered payable on the first day of the period for which the payment is made.

(b) *Actuarial Computations by the Internal Revenue Service.* The regulations in this and in related sections provide tables of actuarial factors and examples that illustrate the use of the tables in determining the value of remainder interests in property. Section 1.7520–1(c)(2) refers to government publications that provide additional tables of factors and examples of computations for more complex situations. If the computation requires the use of a factor that is not provided in this section, the Commissioner may supply the factor upon a request for a ruling. A request for a ruling must be accompanied by a recitation of the facts including the date of birth of each measuring life, and copies of the relevant documents. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (See § 601.601(d)(2)(ii)(*b*) of this chapter) and include payment of the required user fee. If the Commissioner furnishes the factor, a copy of the letter supplying the factor should be attached to the tax return in which the deduction is claimed. If the Commissioner does not furnish the factor, the taxpayer must furnish a factor computed in accordance with the principles set forth in this section.

(c) *Statement supporting deduction required.* Any claim for a deduction on any return for the value of a remainder interest in a charitable remainder unitrust must be supported by a full statement attached to the return showing the computation of the present value of such interest.

(d) *Valuation.* The fair market value of a remainder interest in a charitable remainder unitrust (as described in

§ 1.664–3) for transfers for which the valuation date is after April 30, 1989, is its present value determined under paragraph (e) of this section. The fair market value of a remainder interest in a charitable remainder unitrust (as described in § 1.664–3) for transfers for which the valuation date is before May 1, 1989, is its present value determined under the following sections:

Valuation dates		Applicable regulations
After	Before	
	01–01–52	1.664–4A(a)
12–31–51	01–01–71	1.664–4A(b)
12–31–70	12–01–83	1.664–4A(c)
11–30–83	05–01–89	1.664–4A(d)

(e) *Valuation of charitable remainder unitrusts having certain payout sequences for transfers for which the valuation date is after April 30, 1989*—(1) *In general.* Except as otherwise provided in paragraph (e)(2) of this section, in the case of transfers for which the valuation date is after April 30, 1989, the present value of a remainder interest is determined under paragraphs (e)(3) through (e)(6) of this section, provided that the amount of the payout as of any payout date during any taxable year of the trust is not larger than the amount that the trust could distribute on such date under § 1.664–3(a)(1)(v) if the taxable year of the trust were to end on such date. See, however, § 1.7520–3(b) (relating to exceptions to the use of the prescribed tables under certain circumstances).

(2) *Transitional rules for valuation of charitable remainder unitrusts.* (i) If the valuation date of a transfer to a charitable remainder unitrust is after April 30, 1989, and before June 10, 1994, a transferor can rely upon Notice 89–24, 1989–1 C.B. 660, or Notice 89–60, 1989–1 C.B. 700, in valuing the transferred interest. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

(ii) For purposes of sections 2055, 2106, or 2624, if on May 1, 1989, the decedent was mentally incompetent so that the disposition of the property could not be changed, and the decedent died after April 30, 1989, without having regained competency to dispose of the decedent's property, or the decedent died within 90 days of the date that the decedent first regained competency after April 30, 1989, the present value of a remainder interest determined under this section is determined as if the valuation date with respect to the decedent's gross estate is either before May 1, 1989, or after April 30, 1989, at the option of the decedent's executor.

(3) *Adjusted payout rate.* For transfers for which the valuation date is after April 30, 1989, the adjusted payout rate is determined by using the appropriate Table F, contained in paragraph (e)(6) of this section, for the section 7520 interest rate applicable to the transfer. If the interest rate is between 4.2 and 14 percent, see paragraph (e)(6) of this section. If the interest rate is below 4.2 percent or greater than 14 percent, see § 1.664–4(b). The adjusted payout rate is determined by multiplying the fixed percentage described in § 1.664–3(a)(1)(i)(*a*) by the factor describing the payout sequence of the trust and the number of months by which the valuation date for the first full taxable year of the trust precedes the first payout date for such taxable year. If the governing instrument does not prescribe when the distribution or distributions shall be made during the taxable year of the trust, see § 1.664–4(a). In the case of a trust having a payout sequence for which no figures have been provided by the appropriate table, and in the case of a trust that determines the fair market value of the trust assets by taking the average of valuations on more than one date during the taxable year, see § 1.664–4(b).

(4) *Period is a term of years.* If the period described in § 1.664–3(a)(5) is a term of years, the factor that is used in determining the present value of the remainder interest for transfers for which the valuation date is after April 30, 1989, is the factor under the appropriate adjusted payout rate in Table D in paragraph (e)(6) of this section corresponding to the number of years in the years. If the adjusted payout rate is an amount that is between adjusted payout rates for which factors are provided in Table D, a linear interpolation must be made. The present value of the remainder interest is determined by multiplying the net fair market value (as of the appropriate valuation date) of the property placed in trust by the factor determined under this paragraph. For purposes of this section, the valuation date is, in the case of an inter vivos transfer, the date on which the property is transferred to the trust by the donor. However, if an election is made under section 7520 and § 1.7520–2(b) to compute the present value of the charitable interest by use of the interest rate component for either of the 2 months preceding the month in which the date of transfer falls, the month so elected is the valuation date for purposes of determining the interest rate and mortality tables. In the case of a testamentary transfer under section 2055, 2106, or 2624, the valuation date is the date of death, unless the alternate valuation date is elected under section 2032, in which event, and within the limitations set forth in section 2032 and the regulations thereunder, the valuation date is the alternate valuation date. If the decedent's estate elects the alternate valuation date under section 2032 and also elects, under section 7520 and § 1.7520–2(b), to use the interest rate component for one of the 2 months preceding the alternate valuation date, the month so elected is the valuation date for purposes of determining the interest rate and mortality tables. If the adjusted payout rate is between 4.2 and 14 percent, see paragraph (e)(6) of this section. If the adjusted payout rate is less than 4.2 percent or greater than 14 percent, see § 1.664–4(b). The application of this paragraph may be illustrated by the following example:

Example. D transfers $100,000 to a charitable remainder unitrust on January 1, 1990. The trust instrument requires that the trust pay 8 percent of the fair market value of the trust assets as of January 1st for a term of 12 years to D in quarterly payments (March 31, June 30, September 30, and December 31). The section 7520 rate of January 1990 is 9.6 percent. Under Table F(9.6), the appropriate adjustment factor is .944628 for quarterly payments payable at the end of each quarter. The adjusted payout rate is 7.557 (8%x.944628). Based on the remainder factors in Table D, the present value of the remainder interest is $38,950.30, computed as follows:

Factor at 7.4 percent for 12 years	.397495
Factor at 7.6 percent for 12 years	.387314
Difference	.010181

Interpolation adjustment:

$$\frac{7.557\% - 7.4\%}{0.2\%} = \frac{x}{.010181}$$

$$x = .007992$$

Factor at 7.4 percent for 12 years	.397495
Less: Interpolation adjustment	.007992
Interpolated factor	.389503
Present value of remainder interest: ($100,000×.389503)	$38,950.30

(5) *Period is the life of one individual.* If the period described in § 1.664–3(a)(5) is the life of one individual, the factor that is used in determining the present value of the remainder interest for transfers for which the valuation date is after April 30, 1989, is the factor in Table U(1) in paragraph (e)(6) of this section under the appropriate adjusted payout. For purposes of the computations described in this paragraph, the age of an individual is

the age of that individual at the individual's nearest birthday. If the adjusted payout rate is an amount that is between adjusted payout rates for which factors are provided in the appropriate table, a linear interpolation must be made. The present value of the remainder interest is determined by multiplying the net fair market value (as of the valuation date as determined in paragraph (e)(4) of this section) of the property placed in trust by the factor determined under this paragraph (e)(5). If the adjusted payout rate is between 4.2 and 14 percent, see paragraph (e)(6) of this section. If the adjusted payout rate is below 4.2 percent or greater than 14 percent, see § 1.664–4(b). The application of this paragraph may be illustrated by the following example:

Example. A, who will be 45 years old on February 19, 1990, transfers $100,000 to a charitable remainder unitrust on January 1, 1990. The trust instrument requires that the trust pay to A semiannually (on June 30 and December 31) 9 percent of the fair market value of the trust assets as of January 1st during A's life. The section 7520 rate for January 1990 is 9.6 percent. Under Table F(9.6), the appropriate adjustment factor is .933805 for semiannual payments payable at the end of the semiannual period. The adjusted payout rate is 8.404 (9%×.933805). Based on the remainder factors in Table U(1), the present value of the remainder interest is $11,098.00, computed as follows:

Factor at 8.4 percent at age 45	.11106
Factor at 8.6 percent at age 45	.10683
Difference	.00423

Interpolation adjustment:

$$\frac{8.404\% - 8.4\%}{0.2\%} = \frac{x}{.00423}$$

$$x = .00008$$

Factor at 8.4 percent at age 45	.11106
Less: Interpolation adjustment	.00008
Interpolated Factor	.11098
Present value of remainder interest: ($100,000×.11098)	$11,098.00

(6) *Actuarial tables for transfers for which the valuation date is after April 30, 1989.* For transfers for which the valuation date is after April 30, 1989, the present value of a charitable remainder unitrust interest that is dependent on a term of years or the termination of a life interest is determined by using the section 7520 rate and the tables set forth below. See, however, § 1.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances). Many actuarial factors not contained in the following tables are contained in Internal Revenue Service Publication 1458, "Actuarial Values, Beta Volume," (8–89). A copy of this publication may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402.

TABLE D.—SHOWING THE PRESENT WORTH OF A REMAINDER INTEREST POSTPONED FOR A TERM CERTAIN IN A CHARITABLE REMAINDER UNITRUST

[Applicable after April 30, 1989]

Years	Adjusted payout rate									
	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
1	.958000	.956000	.954000	.952000	.950000	.948000	.946000	.944000	.942000	.940000
2	.917764	.913936	.910116	.906304	.902500	.898704	.894916	.891136	.887364	.883600
3	.879218	.873723	.868251	.862801	.857375	.851971	.846591	.841232	.835897	.830584
4	.842291	.835279	.828311	.821387	.814506	.807669	.800875	.794123	.787415	.780749
5	.806915	.798527	.790209	.781960	.773781	.765670	.757627	.749652	.741745	.733904
6	.773024	.763392	.753859	.744426	.735092	.725855	.716716	.707672	.698724	.689870
7	.740557	.729802	.719182	.708694	.698337	.688111	.678013	.668042	.658198	.648478
8	.709454	.697691	.686099	.674677	.663420	.652329	.641400	.630632	.620022	.609569
9	.679657	.666993	.654539	.642292	.630249	.618408	.606765	.595317	.584061	.572995
10	.651111	.637645	.624430	.611462	.598737	.586251	.573999	.561979	.550185	.538615
11	.623764	.609589	.595706	.582112	.568800	.555766	.543003	.530508	.518275	.506298
12	.597566	.582767	.568304	.554170	.540360	.526866	.513681	.500800	.488215	.475920
13	.572469	.557125	.542162	.527570	.513342	.499469	.485942	.472755	.459898	.447365
14	.548425	.532611	.517222	.502247	.487675	.473496	.459701	.446281	.433224	.420523
15	.525391	.509177	.493430	.478139	.463291	.448875	.434878	.421289	.408097	.395292
16	.503325	.486773	.470732	.455188	.440127	.425533	.411394	.397697	.384427	.371574
17	.482185	.465355	.449079	.433339	.418120	.403405	.389179	.375426	.362131	.349280
18	.461933	.444879	.428421	.412539	.397214	.382428	.368163	.354402	.341127	.328323
19	.442532	.425304	.408714	.392737	.377354	.362542	.348282	.334555	.321342	.308624
20	.423946	.406591	.389913	.373886	.358486	.343690	.329475	.315820	.302704	.290106

TABLE D.—SHOWING THE PRESENT WORTH OF A REMAINDER INTEREST POSTPONED FOR A TERM CERTAIN IN A CHARITABLE REMAINDER UNITRUST

[Applicable after April 30, 1989]

Years	Adjusted payout rate									
	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
1	.938000	.936000	.934000	.932000	.930000	.928000	.926000	.924000	.922000	.920000
2	.879844	.876096	.872356	.868624	.864900	.861184	.857476	.853776	.850084	.846400
3	.825294	.820026	.814781	.809558	.804357	.799179	.794023	.788889	.783777	.778688
4	.774125	.767544	.761005	.754508	.748052	.741638	.735265	.728933	.722643	.716393
5	.726130	.718421	.710779	.703201	.695688	.688240	.680855	.673535	.666277	.659082
6	.681110	.672442	.663867	.655383	.646990	.638687	.630472	.622346	.614307	.606355
7	.638881	.629406	.620052	.610817	.601701	.592701	.583817	.575048	.566391	.557847
8	.599270	.589124	.579129	.569282	.559582	.550027	.540615	.531344	.522213	.513219

TABLE D.—SHOWING THE PRESENT WORTH OF A REMAINDER INTEREST POSTPONED FOR A TERM CERTAIN IN A CHARITABLE REMAINDER UNITRUST—Continued

[Applicable after April 30, 1989]

Years	Adjusted payout rate									
	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
9	.562115	.551420	.540906	.530571	.520411	.510425	.500609	.490962	.481480	.472161
10	.527264	.516129	.505206	.494492	.483982	.473674	.463564	.453649	.443925	.434388
11	.494574	.483097	.471863	.460866	.450104	.439570	.429260	.419171	.409298	.399637
12	.463910	.452179	.440720	.429527	.418596	.407921	.397495	.387314	.377373	.367666
13	.435148	.423239	.411632	.400320	.389295	.378550	.368081	.357879	.347938	.338253
14	.408169	.396152	.384465	.373098	.362044	.351295	.340843	.330680	.320799	.311193
15	.382862	.370798	.359090	.347727	.336701	.326002	.315620	.305548	.295777	.286297
16	.359125	.347067	.335390	.324082	.313132	.302529	.292264	.282326	.272706	.263394
17	.336859	.324855	.313254	.302044	.291213	.280747	.270637	.260870	.251435	.242322
18	.315974	.304064	.292579	.281505	.270828	.260533	.250610	.241044	.231823	.222936
19	.296383	.284604	.273269	.262363	.251870	.241775	.232065	.222724	.213741	.205101
20	.278008	.266389	.255233	.244522	.234239	.224367	.214892	.205797	.197069	.188693

TABLE D.—SHOWING THE PRESENT WORTH OF A REMAINDER INTEREST POSTPONED FOR A TERM CERTAIN IN A CHARITABLE REMAINDER UNITRUST

[Applicable after April 30, 1989]

Years	Adjusted payout rate									
	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
1	.918000	.916000	.914000	.912000	.910000	.908000	.906000	.904000	.902000	.900000
2	.842724	.839056	.835396	.831744	.828100	.824464	.820836	.817216	.813604	.810000
3	.773621	.768575	.763552	.758551	.753571	.748613	.743677	.738763	.733871	.729000
4	.710184	.704015	.697886	.691798	.685750	.679741	.673772	.667842	.661951	.656100
5	.651949	.644878	.637868	.630920	.624032	.617205	.610437	.603729	.597080	.590490
6	.598489	.590708	.583012	.575399	.567869	.560422	.553056	.545771	.538566	.531441
7	.549413	.541089	.532873	.524764	.516761	.508863	.501069	.493377	.485787	.478297
8	.504361	.495637	.487046	.478585	.470253	.462048	.453968	.446013	.438180	.430467
9	.463003	.454004	.445160	.436469	.427930	.419539	.411295	.403196	.395238	.387420
10	.425037	.415867	.406876	.398060	.389416	.380942	.372634	.364489	.356505	.348678
11	.390184	.380934	.371885	.363031	.354369	.345895	.337606	.329498	.321567	.313811
12	.358189	.348936	.339902	.331084	.322475	.314073	.305871	.297866	.290054	.282430
13	.328817	.319625	.310671	.301949	.293453	.285178	.277119	.269271	.261628	.254187
14	.301854	.292777	.283953	.275377	.267042	.258942	.251070	.243421	.235989	.228768
15	.277102	.268184	.259533	.251144	.243008	.235119	.227469	.220053	.212862	.205891
16	.254380	.245656	.237213	.229043	.221137	.213488	.206087	.198928	.192001	.185302
17	.233521	.225021	.216813	.208887	.201235	.193847	.186715	.179830	.173185	.166772
18	.214372	.206119	.198167	.190505	.183124	.176013	.169164	.162567	.156213	.150095
19	.196794	.188805	.181125	.173741	.166643	.159820	.153262	.146960	.140904	.135085
20	.180657	.172946	.165548	.158452	.151645	.145117	.138856	.132852	.127096	.121577

TABLE D.—SHOWING THE PRESENT WORTH OF A REMAINDER INTEREST POSTPONED FOR A TERM CERTAIN IN A CHARITABLE REMAINDER UNITRUST

[Applicable after April 30, 1989]

Years	Adjusted payout rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
1	.908000	.896000	.894000	.892000	.890000	.888000	.886000	.884000	.882000	.880000
2	.806404	.802816	.799236	.795664	.792100	.788544	.784996	.781456	.777924	.774400
3	.724151	.719323	.714517	.709732	.704969	.700227	.695506	.690807	.686129	.681472
4	.650287	.644514	.638778	.633081	.627422	.621802	.616219	.610673	.605166	.599695
5	.583958	.577484	.571068	.564708	.558406	.552160	.545970	.539835	.533756	.527732
6	.524394	.517426	.510535	.503720	.496981	.490318	.483729	.477214	.470773	.464404
7	.470906	.463613	.456418	.449318	.442313	.435402	.428584	.421858	.415222	.408676
8	.422874	.415398	.408038	.400792	.393659	.386637	.379726	.372922	.366226	.359635
9	.379741	.372196	.364786	.357506	.350356	.343334	.336437	.329663	.323011	.316478
10	.341007	.333488	.326118	.318896	.311817	.304881	.298083	.291422	.284896	.278501
11	.306224	.298805	.291550	.284455	.277517	.270734	.264102	.257617	.251278	.245081
12	.274989	.267729	.260645	.253734	.246990	.240412	.233994	.227734	.221627	.215671
13	.246941	.239886	.233017	.226331	.219821	.213486	.207319	.201317	.195475	.189791
14	.221753	.214937	.208317	.201887	.195641	.189575	.183684	.177964	.172409	.167016
15	.199134	.192584	.186236	.180083	.174121	.168343	.162744	.157320	.152065	.146974
16	.178822	.172555	.166495	.160634	.154967	.149488	.144191	.139071	.134121	.129337

TABLE D.—SHOWING THE PRESENT WORTH OF A REMAINDER INTEREST POSTPONED FOR A TERM CERTAIN IN A CHARITABLE REMAINDER UNITRUST—Continued

[Applicable after April 30, 1989]

Years	Adjusted payout rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
17	.160582	.154609	.148846	.143286	.137921	.132746	.127754	.122939	.118295	.113817
18	.144203	.138530	.133069	.127811	.122750	.117878	.113190	.108678	.104336	.100159
19	.129494	.124123	.118963	.114007	.109247	.104676	.100286	.096071	.092024	.088140
20	.116286	.111214	.106353	.101694	.097230	.092952	.088853	.084927	.081166	.077563

TABLE D.—SHOWING THE PRESENT WORTH OF A REMAINDER INTEREST POSTPONED FOR A TERM CERTAIN IN A CHARITABLE REMAINDER UNITRUST

[Applicable after April 30, 1989]

Years	Adjusted payout rate									
	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
1	.878000	.876000	.874000	.872000	.870000	.868000	.866000	.864000	.862000	.860000
2	.770884	.767376	.763876	.760384	.756900	.753424	.749956	.746496	.743044	.739600
3	.676836	.672221	.667628	.663055	.658503	.653972	.649462	.644973	.640504	.636056
4	.594262	.588866	.583507	.578184	.572898	.567648	.562434	.557256	.552114	.547008
5	.521762	.515847	.509985	.504176	.498421	.492718	.487068	.481469	.475923	.470427
6	.458107	.451882	.445727	.439642	.433626	.427679	.421801	.415990	.410245	.404567
7	.402218	.395848	.389565	.383368	.377255	.371226	.365279	.359415	.353631	.347928
8	.353147	.346763	.340480	.334297	.328212	.322224	.316332	.310535	.304830	.299218
9	.310063	.303764	.297579	.291507	.285544	.279690	.273944	.268302	.262764	.257327
10	.272236	.266098	.260084	.254194	.248423	.242771	.237235	.231813	.226502	.221302
11	.239023	.233102	.227314	.221657	.216128	.210725	.205446	.200286	.195245	.190319
12	.209862	.204197	.198672	.193285	.188032	.182910	.177916	.173047	.168301	.163675
13	.184259	.178877	.173640	.168544	.163588	.158766	.154075	.149513	.145076	.140760
14	.161779	.156696	.151761	.146971	.142321	.137809	.133429	.129179	.125055	.121054
15	.142042	.137266	.132639	.128158	.123819	.119618	.115550	.111611	.107798	.104106
16	.124713	.120245	.115927	.111754	.107723	.103828	.100066	.096432	.092922	.089531
17	.109498	.105334	.101320	.097450	.093719	.090123	.086657	.083317	.080098	.076997
18	.096139	.092273	.088554	.084976	.081535	.078227	.075045	.071986	.069045	.066217
19	.084410	.080831	.077396	.074099	.070936	.067901	.064989	.062196	.059517	.056947
20	.074112	.070808	.067644	.064614	.061714	.058938	.056280	.053737	.051303	.048974

TABLE F(4.2).—WITH INTEREST AT 4.2 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.989820	.984755	.981389
1	2	.996577	.986432	.981385	.978030
2	3	.993166	.983056	.978026	
3	4	.989767	.979691	.974679	
4	5	.986380	.976338		
5	6	.983004	.972996		
6	7	.979639	.969666		
7	8	.976286			
8	9	.972945			
9	10	.969615			
10	11	.966296			
11	12	.962989			
12		.959693			

TABLE F(4.4).—WITH INTEREST AT 4.4 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.989350	.984054	.980533
1	2	.996418	.985806	.980529	.977021
2	3	.992849	.982275	.977017	
3	4	.989293	.978757	.973517	
4	5	.985749	.975251		
5	6	.982219	.971758		
6	7	.978700	.968277		
7	8	.975195			
8	9	.971702			
9	10	.968221			
10	11	.964753			
11	12	.961298			
12		.957854			

TABLE F(4.6).—WITH INTEREST AT 4.6 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.988882	.983354	.979680
1	2	.996259	.985183	.979676	.976015
2	3	.992532	.981498	.976011	
3	4	.988820	.977826	.972360	
4	5	.985121	.974168		
5	6	.981436	.970524		
6	7	.977764	.966894		
7	8	.974107			
8	9	.970463			
9	10	.966832			
10	11	.963216			
11	12	.959613			
12		.956023			

TABLE F(4.8).—With Interest at 4.8 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.988415	.982657	.978830
1	2	.996101	.984561	.978825	.975013
2	3	.992217	.980722	.975008	
3	4	.988348	.976898	.971206	
4	5	.984494	.973089		
5	6	.980655	.969294		
6	7	.976831	.965515		
7	8	.973022			
8	9	.969228			
9	10	.965448			
10	11	.961684			

TABLE F(4.8).—With Interest at 4.8 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS—Continued

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
11	12	.957934			
12		.954198			

TABLE F(5.0).—WITH INTEREST AT 5.0 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.987950	.981961	.977982
1	2	.995942	.983941	.977977	.974014
2	3	.991901	.979949	.974009	
3	4	.987877	.975973	.970057	
4	5	.983868	.972013		
5	6	.979876	.968069		
6	7	.975900	.964141		
7	8	.971940			
8	9	.967997			
9	10	.964069			
10	11	.960157			
11	12	.956261			
12		.952381			

TABLE F(5.2).—WITH INTEREST AT 5.2 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.987486	.981268	.977137
1	2	.995784	.983323	.977132	.973018
2	3	.991587	.979178	.973012	
3	4	.987407	.975050	.968911	
4	5	.983244	.970940		
5	6	.979099	.966847		
6	7	.974972	.962771		
7	8	.970862			
8	9	.966769			
9	10	.962694			
10	11	.958636			
11	12	.954594			
12		.950570			

TABLE F(5.4).—WITH INTEREST AT 5.4 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.987023	.980577	.976295
1	2	.995627	.982707	.976289	.972026
2	3	.991273	.978409	.972019	
3	4	.986938	.974131	.967769	
4	5	.982622	.969871		
5	6	.978325	.965629		
6	7	.974047	.961407		
7	8	.969787			
8	9	.965546			
9	10	.961323			
10	11	.957119			
11	12	.952934			
12	.....	.948767			

TABLE F(5.6).—WITH INTEREST AT 5.6 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.986562	.979888	.975455
1	2	.995470	.982092	.975449	.971036
2	3	.990960	.977643	.971029	
3	4	.986470	.973214	.966630	
4	5	.982001	.968805		
5	6	.977552	.964416		
6	7	.973124	.960047		
7	8	.968715			
8	9	.964326			
9	10	.959958			
10	11	.955609			
11	12	.951279			
12	.....	.946970			

TABLE F(5.8).—WITH INTEREST AT 5.8 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.986102	.979201	.974618
1	2	.995313	.981480	.974611	.970050
2	3	.990647	.976879	.970043	
3	4	.986004	.972300	.965496	
4	5	.981382	.967743		
5	6	.976782	.963206		
6	7	.972203	.958692		
7	8	.967646			
8	9	.963111			
9	10	.958596			
10	11	.954103			
11	12	.949631			
12	.....	.945180			

TABLE F(6.0).—WITH INTEREST AT 6.0 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.985643	.978516	.973784
1	2	.995156	.980869	.973776	.969067
2	3	.990336	.976117	.969059	
3	4	.985538	.971389	.964365	
4	5	.980764	.966684		
5	6	.976014	.962001		
6	7	.971286	.957341		
7	8	.966581			
8	9	.961899			
9	10	.957239			
10	11	.952603			
11	12	.947988			
12	.....	.943396			

TABLE F(6.2).—WITH INTEREST AT 6.2 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.985185	.977833	.972952
1	2	.995000	.980259	.972944	.968087
2	3	.990024	.975358	.968079	
3	4	.985074	.970481	.963238	
4	5	.980148	.965628		
5	6	.975247	.960799		
6	7	.970371	.955995		
7	8	.965519			
8	9	.960691			
9	10	.955887			
10	11	.951107			
11	12	.946352			
12	.....	.941620			

TABLE F(6.4).—WITH INTEREST AT 6.4 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.984729	.977152	.972122
1	2	.994844	.979652	.972114	.967110
2	3	.989714	.974600	.967101	
3	4	.984611	.969575	.962115	
4	5	.979534	.964576		
5	6	.974483	.959602		
6	7	.969458	.954654		
7	8	.964460			
8	9	.959487			
9	10	.954539			
10	11	.949617			

TABLE F(6.4).—WITH INTEREST AT 6.4 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS—Continued

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
11	12	.944721			
12	.....	.939850			

TABLE F(6.6).—WITH INTEREST AT 6.6 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.984274	.976473	.971295
1	2	.994588	.979046	.971286	.966136
2	3	.989404	.973845	.966127	
3	4	.984149	.968672	.960995	
4	5	.978921	.963527		
5	6	.973721	.958408		
6	7	.968549	.953317		
7	8	.963404			
8	9	.958286			
9	10	.953196			
10	11	.948132			
11	12	.943096			
12	.....	.938086			

TABLE F(6.8).—WITH INTEREST AT 6.8 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.983821	.975796	.970471
1	2	.994533	.978442	.970461	.965165
2	3	.989095	.973092	.965156	
3	4	.983688	.967772	.959879	
4	5	.978309	.962481		
5	6	.972961	.957219		
6	7	.967641	.951985		
7	8	.962351			
8	9	.957089			
9	10	.951857			
10	11	.946653			
11	12	.941477			
12	.....	.936330			

TABLE F(7.0).—WITH INTEREST AT 7.0 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.983368	.975122	.969649
1	2	.994378	.977839	.969639	.964198
2	3	.988787	.972342	.964187	
3	4	.983228	.966875	.958766	
4	5	.977700	.961439		
5	6	.972203	.956033		
6	7	.966736	.950658		
7	8	.961301			
8	9	.955896			
9	10	.950522			
10	11	.945178			
11	12	.939864			
12	.....	.934579			

TABLE F(7.2).—WITH INTEREST AT 7.2 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.982917	.974449	.968830
1	2	.994223	.977239	.968819	.963233
2	3	.988479	.971593	.963222	
3	4	.982769	.965980	.957658	
4	5	.977091	.960400		
5	6	.971446	.954851		
6	7	.965834	.949335		
7	8	.960255			
8	9	.954707			
9	10	.949192			
10	11	.943708			
11	12	.938256			
12	.....	.932836			

TABLE F(7.4).—WITH INTEREST AT 7.4 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.982467	.973778	.968013
1	2	.994068	.976640	.968002	.962271
2	3	.988172	.970847	.962260	
3	4	.982311	.965088	.956552	
4	5	.976484	.959364		
5	6	.970692	.953673		
6	7	.964935	.948017		
7	8	.959211			
8	9	.953521			
9	10	.947866			
10	11	.942243			

TABLE F(7.4).—WITH INTEREST AT 7.4 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS—Continued

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
11	12	.936654			
12	.....	.931099			

TABLE F(7.6).—WITH INTEREST AT 7.6 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.982019	.973109	.967199
1	2	.993914	.976042	.967187	.961313
2	3	.987866	.970103	.961301	
3	4	.981854	.964199	.955451	
4	5	.975879	.958331		
5	6	.969940	.952499		
6	7	.964037	.946703		
7	8	.958171			
8	9	.952340			
9	10	.946544			
10	11	.940784			
11	12	.935058			
12	.....	.929368			

TABLE F(7.8).—WITH INTEREST AT 7.8 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.0000000	.981571	.972442	.966387
1	2	.993761	.975447	.966374	.960357
2	3	.987560	.969361	.960345	
3	4	.981398	.963312	.954353	
4	5	.975275	.957302		
5	6	.969190	.951329		
6	7	.963143	.945393		
7	8	.957133			
8	9	.951161			
9	10	.945227			
10	11	.939329			
11	12	.933468			
12	.....	.927644			

TABLE F(8.0).—WITH INTEREST AT 8.0 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.981125	.971777	.965578
1	2	.993607	.974853	.965564	.959405
2	3	.987255	.968621	.959392	
3	4	.980944	.962429	.953258	
4	5	.974673	.956276		
5	6	.968442	.950162		
6	7	.962250	.944088		
7	8	.956099			
8	9	.949987			
9	10	.943913			
10	11	.937879			
11	12	.931883			
12	.....	.925926			

TABLE F(8.2).—WITH INTEREST AT 8.2 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.980680	.971114	.964771
1	2	.993454	.974261	.964757	.958455
2	3	.986951	.967883	.958441	
3	4	.980490	.961547	.952167	
4	5	.974072	.955253		
5	6	.967695	.949000		
6	7	.961361	.942788		
7	8	.955068			
8	9	.948816			
9	10	.942605			
10	11	.936434			
11	12	.930304			
12	.....	.924214			

TABLE F(8.2).—WITH INTEREST AT 8.2 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.980237	.970453	.963966
1	2	.993301	.973670	.963952	.957509
2	3	.986647	.967148	.957494	
3	4	.980037	.960669	.951080	
4	5	.973472	.954233		
5	6	.966951	.947841		
6	7	.960473	.941491		
7	8	.954039			
8	9	.947648			
9	10	.941300			
10	11	.934994			
11	12	.928731			
12	.....	.922509			

TABLE F(8.6).—WITH INTEREST AT 8.6 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.979794	.969794	.963164
1	2	.993148	.973081	.963149	.956565
2	3	.986344	.966414	.956550	
3	4	.979586	.959793	.949996	
4	5	.972874	.953217		
5	6	.966209	.946686		
6	7	.959589	.940199		
7	8	.953014			
8	9	.946484			
9	10	.940000			
10	11	.933559			
11	12	.927163			
12		.920810			

TABLE F(8.8).—WITH INTEREST AT 8.8 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.979353	.969136	.962364
1	2	.992996	.972494	.962349	.955624
2	3	.986041	.965683	.955609	
3	4	.979135	.958919	.948916	
4	5	.972278	.952203		
5	6	.965468	.945534		
6	7	.958706	.938912		
7	8	.951992			
8	9	.945324			
9	10	.938703			
10	11	.932129			
11	12	.925600			
12		.919118			

TABLE F(9.0).—WITH INTEREST AT 9.0 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.978913	.968481	.961567
1	2	.992844	.971908	.961551	.954686
2	3	.985740	.964954	.954670	
3	4	.978686	.958049	.947839	
4	5	.971683	.951193		
5	6	.964730	.944387		
6	7	.957826	.937629		
7	8	.950972			
8	9	.944167			
9	10	.937411			
10	11	.930703			
11	12	.924043			
12		.917431			

TABLE F(9.2).—WITH INTEREST AT 9.2 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.978474	.967827	.960772
1	2	.992693	.971324	.960755	.953752
2	3	.985439	.964226	.953734	
3	4	.978238	.957180	.946765	
4	5	.971089	.950186		
5	6	.963993	.943242		
6	7	.956949	.936350		
7	8	.949956			
8	9	.943014			
9	10	.936123			
10	11	.929283			
11	12	.922492			
12		.915751			

TABLE F (9.4).—WITH INTEREST AT 9.4 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.978037	.967176	.959980
1	2	.992541	.970742	.959962	.952820
2	3	.985138	.963501	.952802	
3	4	.977790	.956315	.945695	
4	5	.970497	.949182		
5	6	.963258	.942102		
6	7	.956074	.935075		
7	8	.948942			
8	9	.941865			
9	10	.934839			
10	11	.927867			
11	12	.920946			
12		.914077			

TABLE F(9.6).—WITH INTEREST AT 9.6 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.977600	.966526	.959190
1	2	.992390	.970161	.959171	.951890
2	3	.984838	.962778	.951872	
3	4	.977344	.955452	.944628	
4	5	.969906	.948181		
5	6	.962526	.940965		
6	7	.955201	.933805		
7	8	.947932			
8	9	.940718			
9	10	.933560			
10	11	.926455			
11	12	.919405			
12		.912409			

TABLE F(9.8).—With Interest at 9.8 Percent, Showing Factors for Computation of the Adjusted Payout Rate for Certain Valuations

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.977165	.965878	.958402
1	2	.992239	.969582	.958382	.950964
2	3	.984539	.962057	.950945	
3	4	.976898	.954591	.943565	
4	5	.969317	.947183		
5	6	.961795	.939832		
6	7	.954331	.932539		
7	8	.946924			
8	9	.939576			
9	10	.932284			
10	11	.925049			
11	12	.917870			
12	.....	.910747			

TABLE F(10.0).—With Interest at 10.0 Percent, Showing Factors for Computation of the Adjusted Payout Rate for Certain Valuations

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.976731	.965232	.957616
1	2	.992089	.969004	.957596	.950041
2	3	.984240	.961338	.950021	
3	4	.976454	.953733	.942505	
4	5	.968729	.946188		
5	6	.961066	.938703		
6	7	.953463	.931277		
7	8	.945920			
8	9	.938436			
9	10	.931012			
10	11	.923647			
11	12	.916340			
12	.....	.909091			

TABLE F(10.2).—With Interest at 10.2 Percent, Showing Factors for Computation of the Adjusted Payout Rate for Certain Valuations

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.976298	.964588	.956833
1	2	.991939	.968428	.956812	.949120
2	3	.983943	.960622	.949099	
3	4	.976011	.952878	.941448	
4	5	.968143	.945196		
5	6	.960338	.937577		
6	7	.952597	.930019		
7	8	.944918			
8	9	.937301			
9	10	.929745			
10	11	.922250			
11	12	.914816			
12	.....	.907441			

TABLE F(10.4).—WITH INTEREST AT 10.4 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.975867	.963946	.956052
1	2	.991789	.967854	.956031	.948202
2	3	.983645	.959907	.948181	
3	4	.975568	.952025	.940395	
4	5	.967558	.944208		
5	6	.959613	.936455		
6	7	.951734	.928765		
7	8	.943919			
8	9	.936168			
9	10	.928481			
10	11	.920858			
11	12	.913296			
12	.....	.905797			

TABLE F(10.6).—WITH INTEREST AT 10.6 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.975436	.963305	.955274
1	2	.991639	.967281	.955252	.947287
2	3	.983349	.959194	.947265	
3	4	.975127	.951174	.939345	
4	5	.966974	.943222		
5	6	.958890	.935336		
6	7	.950873	.927516		
7	8	.942923			
8	9	.935039			
9	10	.927222			
10	11	.919470			
11	12	.911782			
12	.....	.904159			

TABLE F(10.8).—WITH INTEREST AT 10.8 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.975007	.962667	.954498
1	2	.991490	.966710	.954475	.946375
2	3	.983052	.958483	.946352	
3	4	.974687	.950327	.938299	
4	5	.966392	.942239		
5	6	.958168	.934221		
6	7	.950014	.926271		
7	8	.941930			
8	9	.933914			
9	10	.925966			
10	11	.918086			
11	12	.910273			
12	.....	.902527			

TABLE F(11.0).—WITH INTEREST AT 11.0 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.974579	.962030	.953724
1	2	.991341	.966140	.953700	.945466
2	3	.982757	.957774	.945442	
3	4	.974247	.949481	.937255	
4	5	.965811	.941260		
5	6	.957449	.933109		
6	7	.949158	.925029		
7	8	.940939			
8	9	.932792			
9	10	.924715			
10	11	.916708			
11	12	.908770			
12		.900901			

TABLE F(11.2).—WITH INTEREST AT 11.2 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.974152	.961395	.952952
1	2	.991192	.965572	.952927	.944559
2	3	.982462	.957068	.944534	
3	4	.973809	.948638	.936215	
4	5	.965232	.940283		
5	6	.956731	.932001		
6	7	.948304	.923792		
7	8	.939952			
8	9	.931673			
9	10	.923467			
10	11	.915333			
11	12	.907272			
12		.899281			

TABLE F(11.4).—WITH INTEREST AT 11.4 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.973726	.960762	.952183
1	2	.991044	.965005	.952157	.943655
2	3	.982168	.956363	.943630	
3	4	.973372	.947798	.935178	
4	5	.964654	.939309		
5	6	.956015	.930896		
6	7	.947452	.922559		
7	8	.938967			
8	9	.930557			
9	10	.922223			
10	11	.913964			
11	12	.905778			
12		.897666			

TABLE F(11.6).—WITH INTEREST AT 11.6 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.973302	.960130	.951416
1	2	.990896	.964440	.951389	.942754
2	3	.981874	.955660	.942728	
3	4	.972935	.946959	.934145	
4	5	.964077	.938338		
5	6	.955300	.929795		
6	7	.946603	.921330		
7	8	.937985			
8	9	.929445			
9	10	.920984			
10	11	.912599			
11	12	.904290			
12		.896057			

TABLE F(11.8).—WITH INTEREST AT 11.8 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Seminannual period	Quarterly period	Monthly period
	1	1.000000	.972878	.959501	.950651
1	2	.990748	.963877	.950624	.941855
2	3	.981582	.954959	.941828	
3	4	.972500	.946124	.933114	
4	5	.963502	.937370		
5	6	.954588	.928698		
6	7	.945756	.920105		
7	8	.937006			
8	9	.928337			
9	10	.919748			
10	11	.911238			
11	12	.902807			
12		.894454			

TABLE F(12.0).—WITH INTEREST AT 12.0 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Seminannual period	Quarterly period	Monthly period
	1	1.000000	.972456	.958873	.949581
1	2	.990600	.963315	.949860	.940960
2	3	.981289	.954260	.940932	
3	4	.972065	.945290	.932087	
4	5	.962928	.936405		
5	6	.953877	.927603		
6	7	.944911	.918884		
7	8	.936029			
8	9	.927231			
9	10	.918515			
10	11	.909882			
11	12	.901329			
12		.892857			

TABLE F(12.2).—WITH INTEREST AT 12.2 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.972034	.958247	.949128
1	2	.990453	.962754	.949099	.940067
2	3	.980997	.953563	.940038	
3	4	.971632	.944460	.931063	
4	5	.962356	.935443		
5	6	.953168	.926512		
6	7	.944069	.917667		
7	8	.935056			
8	9	.926129			
9	10	.917287			
10	11	.908530			
11	12	.899856			
12		.891266			

TABLE F(12.4).—WITH INTEREST AT 12.4 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Montly period
	1	1.000000	.971614	.957623	.948370
1	2	.990306	.962195	.948340	.939176
2	3	.980706	.952868	.939147	
3	4	.971199	.943631	.930043	
4	5	.961785	.934484		
5	6	.952461	.925425		
6	7	.943228	.916454		
7	8	.934085			
8	9	.925030			
9	10	.916063			
10	11	.907183			
11	12	.898389			
12		.889680			

TABLE F(12.6).—WITH INTEREST AT 12.4 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	but less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.971195	.957000	.947614
1	2	.990159	.961638	.947583	.938289
2	3	.980416	.952175	.938258	
3	4	.970768	.942805	.929025	
4	5	.961215	.933527		
5	6	.951756	.924341		
6	7	.942390	.915245		
7	8	.933117			
8	9	.923934			
9	10	.914842			
10	11	.905840			

TABLE F(12.6).—WITH INTEREST AT 12.4 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS—Continued

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	but less than	Annual period	Semiannual period	Quarterly period	Monthly period
11	12	.896926			
12	.....	.888009			

TABLE F(12.8).—WITH INTEREST AT 12.8 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	but less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.970777	.956379	.946860
1	2	.990013	.961082	.946828	.937403
2	3	.980126	.951484	.937372	
3	4	.970337	.941981	.928011	
4	5	.960647	.932574		
5	6	.951053	.923260		
6	7	.941554	.914040		
7	8	.932151			
8	9	.922842			
9	10	.913625			
10	11	.904501			
11	12	.895468			
12	.....	.886525			

TABLE F(13.0).—WITH INTEREST AT 13.0 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.970360	.955760	.946108
1	2	.989867	.960528	.946075	.936521
2	3	.979836	.950795	.936489	
3	4	.969908	.941160	.926999	
4	5	.960079	.931623		
5	6	.950351	.922183		
6	7	.940721	.912838		
7	8	.931188			
8	9	.921753			
9	10	.912412			
10	11	.903167			
11	12	.894015			
12	.....	.884956			

TABLE F(13.2).—WITH INTEREST AT 13.2 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.969945	.955143	.945359
1	2	.989721	.959975	.945325	.935641
2	3	.979548	.950107	.935608	
3	4	.969479	.940341	.925991	
4	5	.959514	.930675		
5	6	.949651	.921109		
6	7	.939889	.911641		
7	8	.930228			
8	9	.920667			
9	10	.911203			
10	11	.901837			
11	12	.892567			
12		.883392			

TABLE F(13.4).—WITH INTEREST AT 13.4 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quaterly period	Monthly period
	1	1.000000	.969530	.954527	.944611
1	2	.989575	.959423	.944577	.934764
2	3	.979260	.949422	.934730	
3	4	.969051	.939524	.924986	
4	5	.958949	.929730		
5	6	.948953	.920038		
6	7	.939060	.910447		
7	8	.929271			
8	9	.919584			
9	10	.909998			
10	11	.900511			
11	12	.891124			
12		.881834			

TABLE F(13.6).—WITH INTEREST AT 13.6 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quaterly period	Monthly period
	1	1.000000	.969117	.953913	.943866
1	2	.989430	.958873	.943831	.933890
2	3	.978972	.948738	.933854	
3	4	.968624	.938710	.923984	
4	5	.958386	.928788		
5	6	.948256	.918971		
6	7	.938233	.909257		
7	8	.928316			
8	9	.918504			
9	10	.908796			
10	11	.899190			
11	12	.889686			
12		.880282			

TABLE F(13.8).—WITH INTEREST AT 13.8 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.968704	.953301	.943123
1	2	.989285	.958325	.943087	.933018
2	3	.978685	.948056	.932982	
3	4	.968199	.937898	.922985	
4	5	.957824	.927849		
5	6	.947561	.917907		
6	7	.937408	.908072		
7	8	.927364			
8	9	.917428			
9	10	.907598			
10	11	.897873			
11	12	.888252			
12	.....	.878735			

TABLE F(14.0).—WITH INTEREST AT 14.0 PERCENT, SHOWING FACTORS FOR COMPUTATION OF THE ADJUSTED PAYOUT RATE FOR CERTAIN VALUATIONS

[Applicable after April 30, 1989]

1 Number of months by which the valuation date for the first full taxable year of the trust precedes the first payout		2 Factors for payout at the end of each period			
At least	But less than	Annual period	Semiannual period	Quarterly period	Monthly period
	1	1.000000	.968293	.952691	.942382
1	2	.989140	.957778	.942345	.932148
2	3	.978399	.947377	.932111	
3	4	.967774	.937088	.921989	
4	5	.957264	.926912		
5	6	.946868	.916846		
6	7	.936586	.906889		
7	8	.926415			
8	9	.916354			
9	10	.906403			
10	11	.896560			
11	12	.886824			
12	.....	.877193			

TABLE U(1).—BASED ON LIFE TABLE 80CNSMT UNITRUST SINGLE LIFE REMAINDER FACTORS

[Applicable After April 30, 1989]

Age	Adjusted payout rate									
	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
0	.06797	.06181	.05645	.05177	.04768	.04410	.04096	.03820	.03578	.03364
1	.05881	.05243	.04686	.04199	.03773	.03400	.03072	.02784	.02531	.02308
2	.06049	.05394	.04821	.04319	.03880	.03494	.03155	.02856	.02593	.02361
3	.06252	.05579	.04990	.04473	.04020	.03621	.03270	.02961	.02688	.02446
4	.06479	.05788	.05182	.04650	.04183	.03771	.03408	.03087	.02804	.02553
5	.06724	.06016	.05393	.04845	.04363	.03937	.03562	.03230	.02936	.02675
6	.06984	.06257	.05618	.05054	.04557	.04117	.03729	.03385	.03080	.02809
7	.07259	.06513	.05856	.05276	.04764	.04310	.03909	03552	.03236	.02954
8	.07548	.06784	.06109	.05513	.04985	.04517	.04102	.03733	.03405	.03113
9	.07854	.07071	.06378	.05765	.05221	.04738	.04310	.03928	.03588	.03285
10	.08176	.07374	.06663	.06033	.05473	.04976	.04533	.04138	.03786	.03471
11	.08517	.07695	.06966	.06319	.05743	.05230	.04772	.04364	.04000	.03673
12	.08872	.08031	.07284	.06619	.06026	.05498	.05026	.04604	.04227	.03889
13	.09238	.08378	.07612	.06929	.06320	.05776	.05289	.04853	.04463	.04113
14	.09608	.08728	.07943	.07243	.06616	.06056	.05554	.05104	.04701	.04338
15	.09981	.09081	.08276	.07557	.06914	.06337	.05820	.05356	.04938	.04563

TABLE U(1).—BASED ON LIFE TABLE 80CNSMT UNITRUST SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable After April 30, 1989]

Age	Adjusted payout rate									
	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
16	.10356	.09435	.08612	.07874	.07213	.06619	.06086	.05607	.05176	.04787
17	.10733	.09792	.08949	.08192	.07513	.06902	.06353	.05858	.05413	.05010
18	.11117	.10155	.09291	.08515	.07817	.07189	.06623	.06113	.05652	.05236
19	.11509	.10526	.09642	.08847	.08130	.07484	.06901	.06375	.05899	.05469
20	.11913	.10908	.10003	.09188	.08452	.07788	.07188	.06645	.06154	.05708
21	.12326	.11300	.10375	.09539	.08784	.08101	.07483	.06923	.06416	.05955
22	.12753	.11705	.10758	.09902	.09127	.08426	.07789	.07212	.06688	.06212
23	.13195	.12125	.11156	.10279	.09484	.08763	.08109	.07514	.06973	.06481
24	.13655	.12563	.11573	.10675	.09860	.09119	.08446	.07833	.07274	.06766
25	.14136	.13022	.12010	.11091	.10255	.09495	.08802	.08171	.07595	.07069
26	.14640	.13504	.12471	.11530	.10674	.09893	.09181	.08531	.07937	.07394
27	.15169	.14011	.12956	.11994	.11117	.10316	.09584	.08915	.08302	.07742
28	.15721	.14542	.13465	.12482	.11583	.10762	.10010	.09322	.08691	.08112
29	.16299	.15097	.13999	.12994	.12075	.11233	.10461	.09753	.09104	.08507
30	.16903	.15678	.14559	.13533	.12592	.11729	.10937	.10210	.09541	.08926
31	.17531	.16287	.15146	.14099	.13137	.12254	.11441	.10694	.10006	.09372
32	.18186	.16921	.15759	.14691	.13709	.12804	.11972	.11205	.10497	.09844
33	.18869	.17584	.16401	.15312	.14309	.13384	.12531	.11744	.11017	.10345
34	.19578	.18273	.17070	.15961	.14937	.13992	.13119	.12312	.11565	.10874
35	.20315	.18990	.17767	.16637	.15593	.14628	.13735	.12908	.12142	.11431
36	.21076	.19732	.18490	.17340	.16276	.15291	.14377	.13531	.12745	.12016
37	.21863	.20501	.19239	.18071	.16987	.15982	.15049	.14182	.13377	.12628
38	.22676	.21296	.20016	.18828	.17725	.16701	.15748	.14862	.14037	.13269
39	.23515	.22118	.20820	.19614	.18492	.17448	.16476	.15571	.14727	.13940
40	.24379	.22967	.21652	.20428	.19288	.18225	.17234	.16310	.15447	.14641
41	.25270	.23842	.22511	.21270	.20112	.19031	.18021	.17078	.16197	.15372
42	.26184	.24742	.23395	.22137	.20962	.19864	.18836	.17875	.16975	.16132
43	.27123	.25666	.24305	.23031	.21840	.20724	.19679	.18700	.17782	.16921
44	.28095	.26616	.25241	.23952	.22745	.21613	.20551	.19554	.18618	.17739
45	.29072	.27591	.26203	.24901	.23678	.22530	.21452	.20438	.19485	.18589
46	.30082	.28591	.27191	.25875	.24639	.23476	.22381	.21352	.20382	.19468
47	.31116	.29616	.28204	.26877	.25626	.24449	.23340	.22295	.21309	.20379
48	.32171	.30663	.29241	.27902	.26640	.25449	.24326	.23265	.22264	.21318
49	.33245	.31730	.30300	.28950	.27676	.26473	.25336	.24262	.23246	.22285
50	.34338	.32816	.31379	.30020	.28735	.27521	.26371	.25283	.24253	.23277
51	.35449	.33923	.32479	.31112	.29818	.28593	.27431	.26331	.25287	.24297
52	.36582	.35053	.33603	.32230	.30927	.29692	.28520	.27408	.26352	.25349
53	.37736	.36205	.34751	.33372	.32063	.30819	.29637	.28514	.27446	.26431
54	.38909	.37376	.35921	.34537	.33221	.31970	.30780	.29647	.28569	.27542
55	.40099	.38568	.37111	.35724	.34404	.33146	.31949	.30807	.29719	.28681
56	.41308	.39779	.38322	.36934	.35610	.34348	.33143	.31994	.30898	.29851
57	.42536	.41011	.39555	.38167	.36841	.35575	.34366	.33210	.32106	.31051
58	.43781	.42262	.40810	.39422	.38096	.36828	.35615	.34454	.33344	.32281
59	.45043	.43530	.42083	.40698	.39373	.38104	.36888	.35724	.34609	.33540
60	.46318	.44813	.43372	.41992	.40668	.39400	.38183	.37017	.35898	.34824
61	.47602	.46107	.44674	.43299	.41979	.40713	.39497	.38329	.37207	.36129
62	.48893	.47410	.45986	.44617	.43303	.42039	.40825	.39657	.38534	.37454
63	.50190	.48720	.47306	.45946	.44638	.43379	.42168	.41001	.39878	.38796
64	.51494	.50038	.48636	.47286	.45986	.44733	.43526	.42362	.41240	.40158
65	.52808	.51368	.49980	.48641	.47350	.46104	.44903	.43743	.42624	.41544
66	.54134	.52711	.51338	.50013	.48733	.47496	.46302	.45148	.44033	.42956
67	.55471	.54068	.52712	.51401	.50134	.48908	.47723	.46577	.45467	.44394
68	.56820	.55437	.54100	.52805	.51552	.50339	.49165	.48027	.46925	.45858
69	.58172	.56812	.55495	.54219	.52982	.51783	.50620	.49494	.48401	.47341
70	.59526	.58190	.56894	.55637	.54417	.53234	.52086	.50971	.49889	.48838
71	.60874	.59564	.58291	.57055	.55854	.54687	.53554	.52453	.51382	.50342
72	.62218	.60934	.59685	.58471	.57291	.56143	.55026	.53939	.52882	.51854
73	.63557	.62301	.61078	.59887	.58728	.57600	.56501	.55431	.54389	.53373
74	.64896	.63669	.62472	.61307	.60171	.59064	.57985	.56932	.55906	.54906
75	.66237	.65040	.63872	.62733	.61622	.60538	.59480	.58447	.57439	.56455
76	.67581	.66416	.65279	.64168	.63083	.62023	.60988	.59977	.58989	.58023
77	.68925	.67793	.66688	.65606	.64550	.63516	.62506	.61517	.60551	.59605
78	.70263	.69166	.68093	.67044	.66016	.65010	.64026	.63062	.62119	.61195
79	.71585	.70525	.69486	.68468	.67471	.66495	.65538	.64600	.63681	.62780
80	.72885	.71860	.70856	.69872	.68906	.67959	.67031	.66120	.65227	.64350
81	.74150	.73162	.72193	.71242	.70308	.69392	.68492	.67609	.66742	.65890
82	.75376	.74425	.73490	.72572	.71671	.70785	.69915	.69059	.68219	.67393
83	.76559	.75643	.74744	.73859	.72989	.72134	.71293	.70466	.69652	.68852
84	.77700	.76821	.75955	.75104	.74266	.73441	.72629	.71831	.71044	.70270

TABLE U(1).—BASED ON LIFE TABLE 80CNSMT UNITRUST SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable After April 30, 1989]

Age	Adjusted payout rate									
	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
85	.78805	.77961	.77130	.76311	.75505	.74711	.73929	.73158	.72399	.71652
86	.79866	.79056	.78258	.77472	.76697	.75933	.75180	.74438	.73707	.72985
87	.80870	.80094	.79329	.78574	.77829	.77095	.76370	.75656	.74951	.74255
88	.81825	.81081	.80348	.79623	.78908	.78202	.77506	.76818	.76139	.75469
89	.82746	.82035	.81332	.80638	.79952	.79275	.78606	.77945	.77292	.76647
90	.83643	.82963	.82291	.81627	.80971	.80322	.79681	.79047	.78420	.77801
91	.84503	.83854	.83212	.82578	.81950	.81330	.80716	.80109	.79509	.78915
92	.85308	.84689	.84076	.83470	.82870	.82276	.81689	.81107	.80532	.79963
93	.86052	.85460	.84875	.84295	.83721	.83152	.82590	.82033	.81481	.80935
94	.86729	.86163	.85602	.85046	.84496	.83951	.83412	.82877	.82348	.81823
95	.87338	.86795	.86257	.85723	.85195	.84672	.84153	.83639	.83129	.82624
96	.87877	.87354	.86836	.86323	.85814	.85309	.84809	.84313	.83822	.83334
97	.88365	.87861	.87362	.86867	.86375	.85888	.85405	.84926	.84450	.83979
98	.88805	.88318	.87835	.87356	.86880	.86409	.85941	.85477	.85016	.84559
99	.89210	.88739	.88271	.87807	.87347	.86890	.86436	.85986	.85539	.85095
100	.89588	.89131	.88678	.88227	.87780	.87337	.86896	.86459	.86024	.85593
101	.89949	.89506	.89066	.88629	.88195	.87764	.87336	.86911	.86488	.86069
102	.90325	.89897	.89471	.89047	.88627	.88209	.87794	.87381	.86971	.86564
103	.90724	.90311	.89900	.89491	.89085	.88681	.88279	.87880	.87484	.87089
104	.91167	.90770	.90376	.89983	.89593	.89205	.88819	.88435	.88053	.87673
105	.91708	.91333	.90959	.90587	.90217	.89848	.89481	.89116	.88752	.88391
106	.92470	.92126	.91782	.91440	.91100	.90760	.90422	.90085	.89749	.89414
107	.93545	.93246	.92948	.92650	.92353	.92057	.91762	.91467	.91173	.90880
108	.95239	.95016	.94792	.94569	.94346	.94123	.93900	.93678	.93456	.93234
109	.97900	.97800	.97700	.97600	.97500	.97400	.97300	.97200	.97100	.97000

TABLE U(1).—BASED ON LIFE TABLE 80CNSMT UNITRUST SINGLE LIFE REMAINDER FACTORS

[Applicable After April 30, 1989]

Age	Adjusted payout rate									
	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
0	.03176	.03009	.02861	.02730	.02613	.02509	.02416	.02333	.02258	.02191
1	.02110	.01936	.01781	.01644	.01522	.01413	.01316	.01229	.01150	.01080
2	.02156	.01974	.01812	.01669	.01541	.01427	.01325	.01234	.01152	.01078
3	.02233	.02043	.01875	.01725	.01591	.01471	.01364	.01268	.01182	.01105
4	.02330	.02132	.01956	.01800	.01660	.01535	.01422	.01322	.01231	.01149
5	.02443	.02237	.02054	.01890	.01743	.01612	.01494	.01389	.01293	.01208
6	.02568	.02353	.02162	.01990	.01837	.01700	.01576	.01465	.01365	.01275
7	.02704	.02480	.02280	.02102	.01941	.01798	.01668	.01552	.01446	.01351
8	.02852	.02619	.02411	.02224	.02057	.01906	.01770	.01648	.01537	.01437
9	.03014	.02772	.02554	.02360	.02184	.02027	.01885	.01756	.01640	.01535
10	.03190	.02938	.02711	.02508	.02325	.02160	.02012	.01877	.01755	.01645
11	.03381	.03119	.02883	.02672	.02481	.02308	.02153	.02012	.01884	.01768
12	.03585	.03313	.03068	.02847	.02648	.02468	.02305	.02157	.02023	.01902
13	.03798	.03515	.03260	.03030	.02822	.02635	.02464	.02310	.02170	.02042
14	.04012	.03718	.03453	.03213	.02997	.02801	.02623	.02462	.02315	.02181
15	.04225	.03919	.03644	.03395	.03169	.02965	.02779	.02611	.02457	.02317
16	.04436	.04120	.03833	.03574	.03339	.03126	.02932	.02756	.02595	.02449
17	.04647	.04319	.04021	.03752	.03507	.03285	.03082	.02898	.02730	.02577
18	.04860	.04519	.04210	.03930	.03675	.03443	.03232	.03040	.02864	.02703
19	.05079	.04725	.04404	.04113	.03847	.03606	.03386	.03185	.03001	.02833
20	.05304	.04938	.04604	.04301	.04025	.03773	.03543	.03333	.03141	.02965
21	.05537	.05157	.04811	.04495	.04208	.03945	.03705	.03486	.03285	.03101
22	.05779	.05385	.05025	.04698	.04398	.04125	.03874	.03645	.03435	.03242
23	.06032	.05623	.05250	.04910	.04598	.04313	.04052	.03812	.03592	.03390
24	.06302	.05878	.05491	.05136	.04812	.04515	.04242	.03992	.03762	.03550
25	.06589	.06150	.05748	.05380	.05042	.04733	.04448	.04187	.03946	.03725
26	.06897	.06442	.06025	.05643	.05292	.04969	.04673	.04400	.04148	.03916
27	.07228	.06757	.06325	.05928	.05563	.05227	.04917	.04632	.04369	.04126
28	.07582	.07094	.06646	.06234	.05854	.05504	.05182	.04884	.04609	.04355
29	.07958	.07454	.06990	.06562	.06167	.05804	.05468	.05157	.04870	.04604
30	.08360	.07838	.07357	.06913	.06504	.06125	.05775	.05452	.05152	.04874
31	.08788	.08249	.07751	.07291	.06866	.06472	.06108	.05771	.05457	.05167
32	.09242	.08685	.08170	.07694	.07252	.06844	.06465	.06113	.05786	.05483
33	.09724	.09149	.08617	.08124	.07666	.07242	.06848	.06482	.06141	.05824
34	.10234	.09641	.09091	.08581	08107	.07667	.07257	.06876	.06521	.0619[1]

TABLE U(1).—BASED ON LIFE TABLE 80CNSMT UNITRUST SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable After April 30, 1989]

Age	Adjusted payout rate									
	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
35	.10773	.10161	.09594	.09066	.08575	.08119	.07694	.07298	.06928	.06583
36	.11338	.10708	.10122	.09577	.09070	.08597	.08156	.07744	.07360	.07001
37	.11932	.11283	.10680	.10117	.09592	.09102	.08645	.08217	.07818	.07444
38	.12554	.11887	.11265	.10685	.10142	.09636	.09162	.08719	.08304	.07915
39	.13206	.12521	.11880	.11282	.10722	.10198	.09708	.09249	.08818	.08414
40	.13888	.13184	.12526	.11909	.11332	.10791	.10284	.09808	.09361	.08942
41	.14601	.13878	.13201	.12567	.11972	.11414	.10890	.10398	.09935	.09499
42	.15342	.14601	.13906	.13254	.12641	.12066	.11525	.11016	.10537	.10086
43	.16112	.15353	.14640	.13970	.13340	.12747	.12189	.11663	.11168	.10701
44	.16913	.16136	.15406	.14718	.14070	.13460	.12885	.12342	.11830	.11347
45	.17745	.16951	.16202	.15497	.14832	.14204	.13612	.13053	.12525	.12025
46	.18608	.17796	.17030	.16308	.15625	.14981	.14372	.13796	.13251	.12735
47	.19501	.18673	.17890	.17150	.16451	.15790	.15164	.14571	.14010	.13478
48	.20425	.19579	.18780	.18024	.17308	.16630	.15987	.15378	.14800	.14252
49	.21375	.20514	.19698	.18926	.18193	.17499	.16840	.16214	.15620	.15056
50	.22352	.21476	.20644	.19856	.19107	.18396	.17721	.17080	.16470	.15890
51	.23358	.22467	.21620	.20816	.20051	.19325	.18634	.17976	.17350	.16755
52	.24396	.23490	.22628	.21809	.21030	.20288	.19581	.18908	.18267	.17655
53	.25465	.24545	.23670	.22836	.22042	.21285	.20563	.19875	.19218	.18592
54	.26563	.25631	.24742	.23895	.23086	.22315	.21579	.20876	.20204	.19562
55	.27692	.26747	.25846	.24986	.24164	.23379	.22628	.21911	.21225	.20568
56	.28850	.27895	.26982	.26109	.25275	.24476	.23712	.22981	.22281	.21611
57	.30041	.29076	.28152	.27267	.26421	.25610	.24833	.24089	.23376	.22691
58	.31263	.30288	.29355	.28460	.27602	.26780	.25991	.25234	.24508	.23811
59	.32515	.31532	.30590	.29685	.28817	.27984	.27184	.26416	.25677	.24968
60	.33793	.32803	.31853	.30940	.30062	.29219	.28409	.27630	.26880	.26159
61	.35093	.34098	.33141	.32220	.31335	.30483	.29663	.28873	.28113	.27381
62	.36414	.35414	.34451	.33524	.32631	.31771	.30942	.30144	.29374	.28631
63	.37754	.36750	.35783	.34850	.33951	.33084	.32247	.31440	.30661	.29910
64	.39115	.38108	.37137	.36200	.35296	.34422	.33579	.32765	.31978	.31217
65	.40500	.39493	.38519	.37579	.36670	.35792	.34943	.34122	.33328	.32560
66	.41914	.40906	.39932	.38990	.38079	.37197	.36343	.35517	.34717	.33943
67	.43355	.42350	.41376	.40434	.39521	.38636	.37780	.36950	.36145	.35365
68	.44824	.43822	.42851	.41909	.40996	.40111	.39252	.38419	.37611	.36827
69	.46313	.45316	.44348	.43409	.42498	.41613	.40754	.39919	.39109	.38322
70	.47818	.46827	.45864	.44929	.44020	.43137	.42279	.41445	.40634	.39845
71	.49331	.48348	.47391	.46461	.45557	.44677	.43821	.42988	.42177	.41388
72	.50853	.49879	.48930	.48007	.47108	.46233	.45380	.44550	.43741	.42952
73	.52384	.51421	.50482	.49566	.48674	.47805	.46957	.46130	.45324	.44538
74	.53930	.52979	.52050	.51145	.50261	.49399	.48557	.47736	.46934	.46152
75	.55495	.54557	.53641	.52747	.51873	.51020	.50187	.49372	.48577	.47799
76	.57079	.56157	.55256	.54374	.53513	.52670	.51847	.51041	.50253	.49483
77	.58680	.57775	.56890	.56024	.55176	.54346	.53534	.52739	.51960	.51198
78	.60291	.59405	.58537	.57687	.56855	.56040	.55241	.54458	.53691	.52940
79	.61898	.61032	.60184	.59353	.58537	.57738	.56954	.56185	.55431	.54691
80	.63491	.62647	.61819	.61007	.60210	.59428	.58660	.57907	.57167	.56441
81	.65054	.64234	.63427	.62636	.61858	.61094	.60344	.59606	.58882	.58170
82	.66582	.65784	.65000	.64229	.63472	.62727	.61994	.61274	.60566	.59870
83	.68065	.67291	.66530	.65781	.65044	.64319	.63605	.62903	.62212	.61532
84	.69508	.68758	.68020	.67293	.66577	.65872	.65178	.64495	.63821	.63158
85	.70915	.70190	.69475	.68770	.68076	.67392	.66718	.66054	.65399	.64754
86	.72274	.71573	.70882	.70200	.69528	.68865	.68212	.67567	.66931	.66304
87	.73569	.72892	.72224	.71565	.70915	.70273	.69639	.69014	.68397	.67788
88	.74807	.74154	.73509	.72872	.72243	.71622	.71009	.70403	.69805	.69214
89	.76010	.75381	.74759	.74144	.73537	.72937	.72344	.71758	.71179	.70607
90	.77189	.76584	.75985	.75394	.74809	.74230	.73659	.73093	.72534	.71981
91	.78327	.77746	.77171	.76603	.76040	.75484	.74933	.74388	.73850	.73316
92	.79399	.78841	.78289	.77743	.77202	.76667	.76137	.75613	.75093	.74579
93	.80394	.79858	.79328	.78803	.78283	.77768	.77258	.76753	.76252	.75757
94	.81303	.80788	.80278	.79773	.79272	.78776	.78284	.77797	.77315	.76837
95	.82124	.81628	.81136	.80649	.80166	.79687	.79213	.78742	.78276	.77814
96	.82851	.82372	.81897	.81426	.80959	.80496	.80036	.79581	.79129	.78682
97	.83512	.83048	.82588	.82132	.81679	.81230	.80785	.80343	.79905	.79471
98	.84106	.83656	.83210	.82767	.82328	.81892	.81459	.81030	.80604	.80181
99	.84655	.84218	.83785	.83354	.82927	.82503	.82082	.81664	.81249	.80837
100	.85165	.84740	.84318	.83899	.83483	.83070	.82660	.82252	.81848	.81446
101	.85652	.85238	.84827	.84419	.84013	.83611	.83210	.82813	.82418	.82026
102	.86159	.85757	.85358	.84960	.84566	.84174	.83784	.83397	.83012	.82630
103	.86697	.86307	.85920	.85535	.85152	.84771	.84392	.84016	.83642	.83270

TABLE U(1).—BASED ON LIFE TABLE 80CNSMT UNITRUST SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable After April 30, 1989]

Age	Adjusted payout rate									
	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
104	.87295	.86919	.86544	.86172	.85802	.85434	.85068	.84704	.84341	.83981
105	.88030	.87672	.87315	.86959	.86605	.86253	.85903	.85554	.85207	.84861
106	.89081	.88749	.88418	.88088	.87760	.87433	.87106	.86782	.86458	.86135
107	.90588	.90296	.90005	.89715	.89425	.89137	.88849	.88561	.88275	.87989
108	.93013	.92791	.92570	.92350	.92129	.91909	.91689	.91469	.91250	.91031
109	.96900	.96800	.96700	.96600	.96500	.96400	.96300	.96200	.96100	.96000

TABLE U(1).—BASED ON LIFE TABLE 80CNSMT UNITRUST SINGLE LIFE REMAINDER FACTORS

[Applicable after APRIL 30, 1989]

Age	Adjusted payout rate									
	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
0	.02130	.02075	.02025	.01980	.01939	.01901	.01867	.01835	.01806	.01779
1	.01017	.00960	.00908	.00861	.00819	.00780	.00745	.00712	.00683	.00655
2	.01011	.00951	.00897	.00848	.00803	.00762	.00725	.00690	.00659	.00630
3	.01035	.00971	.00914	.00862	.00815	.00771	.00732	.00696	.00663	.00632
4	.01076	.01009	.00948	.00894	.00843	.00798	.00756	.00718	.00683	.00650
5	.01130	.01059	.00996	.00938	.00885	.00836	.00792	.00752	.00714	.00680
6	.01193	.01119	.01051	.00990	.00934	.00883	.00836	.00793	.00754	.00717
7	.01265	.01187	.01116	.01051	.00992	.00938	.00888	.00842	.00800	.00762
8	.01347	.01264	.01189	.01121	.01058	.01001	.00948	.00900	.00856	.00815
9	.01440	.01353	.01274	.01201	.01135	.01075	.01019	.00968	.00921	.00877
10	.01544	.01453	.01369	.01293	.01223	.01159	.01101	.01046	.00997	.00950
11	.01662	.01566	.01478	.01398	.01324	.01257	.01195	.01137	.01085	.01036
12	.01791	.01690	.01597	.01513	.01435	.01364	.01298	.01238	.01182	.01131
13	.01926	.01820	.01722	.01634	.01552	.01477	.01408	.01344	.01285	.01231
14	.02059	.01948	.01846	.01752	.01667	.01588	.01515	.01448	.01386	.01328
15	.02189	.02072	.01965	.01867	.01777	.01694	.01617	.01547	.01481	.01421
16	.02315	.02192	.02080	.01977	.01882	.01795	.01714	.01640	.01572	.01508
17	.02436	.02308	.02190	.02082	.01982	.01891	.01806	.01728	.01656	.01589
18	.02556	.02422	.02298	.02184	.02080	.01983	.01894	.01812	.01736	.01665
19	.02679	.02537	.02408	.02288	.02178	.02077	.01983	.01897	.01817	.01742
20	.02804	.02656	.02519	.02394	.02278	.02172	.02073	.01982	.01898	.01819
21	.02932	.02776	.02633	.02501	.02380	.02268	.02164	.02068	.01979	.01896
22	.03065	.02902	.02751	.02613	.02485	.02367	.02258	.02157	.02063	.01976
23	.03204	.03033	.02876	.02730	.02595	.02471	.02356	.02249	.02150	.02058
24	.03356	.03176	.03010	.02857	.02716	.02585	.02463	.02351	.02246	.02149
25	.03520	.03332	.03158	.02997	.02848	.02710	.02582	.02463	.02352	.02249
26	.03702	.03504	.03321	.03152	.02995	.02850	.02714	.02589	.02472	.02363
27	.03902	.03695	.03502	.03324	.03159	.03006	.02863	.02730	.02607	.02492
28	.04120	.03902	.03700	.03513	.03339	.03178	.03027	.02887	.02757	.02635
29	.04358	.04129	.03917	.03720	.03537	.03367	.03208	.03061	.02923	.02794
30	.04616	.04376	.04154	.03947	.03754	.03575	.03408	.03251	.03106	.02969
31	.04897	.04646	.04413	.04195	.03993	.03804	.03627	.03463	.03309	.03165
32	.05200	.04938	.04693	.04465	.04252	.04053	.03867	.03693	.03531	.03378
33	.05529	.05254	.04998	.04758	.04534	.04325	.04130	.03946	.03775	.03614
34	.05883	.05595	.05326	.05075	.04840	.04620	.04414	.04221	.04040	.03870
35	.06262	.05961	.05680	.05417	.05170	.04939	.04723	.04520	.04329	.04149
36	.06665	.06351	.06057	.05781	.05523	.05280	.05053	.04839	.04638	.04449
37	.07094	.06766	.06459	.06171	.05900	.05646	.05407	.05182	.04971	.04771
38	.07550	.07208	.06888	.06586	.06303	.06037	.05786	.05550	.05327	.05118
39	.08034	.07678	.07344	.07029	.06733	.06454	.06191	.05943	.05709	.05489
40	.08547	.08177	.07828	.07499	.07190	.06898	.06623	.06363	.06118	.05886
41	.09090	.08704	.08341	.07998	.07675	.07371	.07083	.06811	.06553	.06310
42	.09661	.09260	.08882	.08525	.08188	.07870	.07569	.07284	.07015	.06760
43	.10260	.09844	.09451	.09080	.08729	.08397	.08083	.07785	.07503	.07236
44	.10891	.10459	.10051	.09666	.09300	.08954	.08626	.08316	.08021	.07741
45	.11553	.11106	.10683	.10282	.09902	.09542	.09201	.08876	.08568	.08276
46	.12247	.11784	.11346	.10930	.10536	.10161	.09806	.09468	.09146	.08841
47	.12974	.12496	.12042	.11611	.11202	.10813	.10443	.10091	.09756	.09438
48	.13732	.13238	.12769	.12323	.11899	.11495	.11111	.10745	.10397	.10065
49	.14520	.14011	.13526	.13064	.12625	.12207	.11809	.11429	.11066	.10721
50	.15338	.14812	.14312	.13836	.13381	.12948	.12535	.12141	.11765	.11405
51	.16187	.15646	.15130	.14639	.14169	.13721	.13294	.12885	.12495	.12121
52	.17072	.16516	.15985	.15478	.14993	.14531	.14088	.13665	.13261	.12873
53	.17993	.17422	.16876	.16353	.15854	.15377	.14920	.14482	.14064	.13662

TABLE U(1).—BASED ON LIFE TABLE 80CNSMT UNITRUST SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after APRIL 30, 1989]

Age	Adjusted payout rate									
	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
54	.18949	.18362	.17801	.17264	.16750	.16258	.15787	.15335	.14902	.14486
55	.19940	.19339	.18763	.18212	.17683	.17176	.16690	.16224	.15777	.15348
56	.20968	.20353	.19762	.19196	.18654	.18132	.17632	.17152	.16691	.16247
57	.22035	.21406	.20802	.20222	.19665	.19129	.18615	.18121	.17646	.17189
58	.23142	.22499	.21881	.21287	.20717	.20168	.19640	.19132	.18643	.18172
59	.24286	.23630	.23000	.22393	.21809	.21247	.20705	.20184	.19682	.19198
60	.25465	.24797	.24154	.23534	.22938	.22363	.21808	.21274	.20759	.20262
61	.26676	.25996	.25341	.24710	.24101	.23513	.22946	.22399	.21871	.21361
62	.27916	.27225	.26559	.25916	.25295	.24695	.24117	.23557	.23017	.22495
63	.29184	.28483	.27806	.27152	.26520	.25909	.25319	.24748	.24196	.23661
64	.30483	.29772	.29085	.28421	.27779	.27157	.26555	.25973	.25409	.24863
65	.31817	.31098	.30402	.29729	.29076	.28444	.27832	.27240	.26665	.26108
66	.33192	.32466	.31762	.31079	.30418	.29777	.29155	.28552	.27968	.27400
67	.34609	.33876	.33164	.32474	.31805	.31156	.30525	.29913	.29319	.28742
68	.36066	.35328	.34610	.33914	.33238	.32581	.31943	.31323	.30720	.30134
69	.37558	.36815	.36093	.35391	.34709	.34045	.33400	.32773	.32163	.31569
70	.39078	.38332	.37606	.36900	.36213	.35545	.34894	.34260	.33643	.33042
71	.40620	.39872	.39144	.38435	.37744	.37071	.36415	.35776	.35153	.34547
72	.42184	.41435	.40706	.39994	.39301	.38625	.37965	.37322	.36694	.36082
73	.43771	.43023	.42293	.41581	.40886	.40207	.39545	.38899	.38267	.37651
74	.45387	.44641	.43912	.43201	.42505	.41826	.41163	.40514	.39881	.39261
75	.47039	.46296	.45570	.44861	.44167	.43488	.42824	.42175	.41541	.40920
76	.48729	.47991	.47269	.46563	.45872	.45196	.44534	.43886	.43251	.42630
77	.50452	.49722	.49006	.48305	.47619	.46946	.46287	.45642	.45009	.44389
78	.52203	.51481	.50773	.50079	.49399	.48732	.48078	.47437	.46808	.46191
79	.53966	.53254	.52556	.51870	.51198	.50538	.49891	.49255	.48632	.48019
80	.55728	.55028	.54340	.53665	.53002	.52351	.51712	.51083	.50466	.49860
81	.57471	.56784	.56109	.55445	.54792	54151	.53521	.52901	.52292	.51692
82	.59186	.58512	.57850	.57199	.56558	.55927	.55307	.54697	.54097	.53506
83	.60863	.60204	.59556	.58918	.58289	.57671	.57062	.56462	.55872	.55290
84	.62505	.61862	.61228	.60604	.59989	.59383	.58786	.58198	.57618	.57047
85	.64118	.63491	.62873	.62263	.61663	.61070	.60486	.59911	.59343	.58783
86	.65685	.65075	.64473	.63879	.63294	.62716	.62145	.61583	.61027	.60479
87	.67187	.66594	.66008	.65430	.64859	.64296	.63739	.63190	.62647	.62112
88	.68631	.68054	.67485	.66923	.66367	.65818	.65276	.64740	.64211	.63688
89	.70042	.69483	.68930	.68384	.67845	.67311	.66784	.66262	.65747	.65237
90	.71434	.70894	.70359	.69830	.69307	.68790	.68278	.67772	.67271	.66775
91	.72789	.72266	.71750	.71239	.70733	.70232	.69736	.69246	.68760	.68280
92	.74070	.73567	.73068	.72574	.72085	.71601	.71121	.70647	.70176	.69711
93	.75266	.74780	.74298	.73821	.73348	.72880	.72417	.71957	.71502	.71051
94	.76363	.75893	.75428	.74967	.74510	.74057	.73608	.73163	.72722	.72285
95	.77356	.76901	.76451	.76005	.75562	.75123	.74688	.74257	.73829	.73405
96	.78237	.77797	.77360	.76927	.76497	.76071	.75648	.75229	.74813	.74401
97	.79039	.78612	.78187	.77766	.77348	.76934	.76523	.76115	.75710	.75308
98	.79762	.79345	.78932	.78522	.78115	.77711	.77310	.76913	.76518	.76126
99	.80429	.80023	.79620	.79220	.78823	.78429	.78038	.77649	.77264	.76881
100	.81047	.80651	.80258	.79867	.79479	.79094	.78712	.78332	.77955	.77580
101	.81636	.81249	.80865	.80483	.80104	.79727	.79352	.78981	.78611	.78244
102	.82250	.81872	.81497	.81124	.80754	.80386	.80020	.79656	.79295	.78936
103	.82900	.82532	.82167	.81804	.81442	.81083	.80726	.80371	.80018	.79667
104	.83622	.83266	.82911	.82558	.82207	.81858	.81510	.81165	.80821	.80479
105	.84517	.84174	.83833	.83494	.83156	.82819	.82485	.82151	.81820	.81489
106	.85814	.85494	.85175	.84857	.84540	.84225	.83911	.83598	.83286	.82975
107	.87704	.87420	.87136	.86853	.86571	.86290	.86009	.85729	.85450	.85171
108	.90812	.90593	.90375	.90156	.89939	.89721	.89504	.89286	.89070	.88853
109	.95900	.95800	.95700	.95600	.95500	.95400	.95300	.95200	.95100	.95000

TABLE U(1).—BASED ON LIFE TABLE 80CNSMT UNITRUST SINGLE LIFE REMAINDER FACTORS

[Applicable after APRIL 30, 1989]

Age	Adjusted payout rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
0	.01754	.01731	.01710	.01690	.01671	.01654	.01638	.01622	.01608	.01594
1	.00630	.00607	.00585	.00565	.00547	.00530	.00514	.00499	.00485	.00472
2	.00604	.00579	.00557	.00536	.00516	.00498	.00481	.00465	.00451	.00437
3	.00604	.00578	.00554	.00532	.00511	.00492	.00474	.00458	.00442	.00427

TABLE U(1).—BASED ON LIFE TABLE 80CNSMT UNITRUST SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after APRIL 30, 1989]

Age	Adjusted payout rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
4	.00621	.00593	.00568	.00544	.00522	.00502	.00483	.00465	.00448	.00433
5	.00648	.00619	.00592	.00567	.00544	.00522	.00502	.00483	.00465	.00449
6	.00684	.00653	.00624	.00597	.00572	.00549	.00528	.00507	.00489	.00471
7	.00726	.00693	.00663	.00634	.00606	.00583	.00560	.00539	.00518	.00499
8	.00777	.00742	.00709	.00679	.00651	.00624	.00600	.00577	.00555	.00535
9	.00837	.00800	.00765	.00733	.00703	.00675	.00649	.00625	.00602	.00580
10	.00908	.00868	.00832	.00797	.00765	.00736	.00708	.00682	.00657	.00634
11	.00991	.00949	.00910	.00874	.00840	.00808	.00779	.00751	.00725	.00700
12	.01083	.01039	.00997	.00959	.00923	.00890	.00858	.00829	.00801	.00775
13	.01181	.01134	.01090	.01049	.01012	.00976	.00943	.00912	.00883	.00855
14	.01275	.01226	.01180	.01137	.01097	.01060	.01025	.00992	.00961	.00932
15	.01365	.01313	.01264	.01219	.01177	.01138	.01101	.01066	.01034	.01003
16	.01449	.01394	.01343	.01295	.01251	.01209	.01171	.01134	.01100	.01068
17	.01526	.01469	.01415	.01365	.01318	.01274	.01233	.01195	.01159	.01125
18	.01600	.01539	.01482	.01430	.01380	.01334	.01291	.01251	.01213	.01177
19	.01673	.01609	.01550	.01494	.01442	.01393	.01348	.01305	.01265	.01227
20	.01747	.01679	.01616	.01557	.01502	.01451	.01403	.01358	.01316	.01276
21	.01820	.01748	.01682	.01620	.01562	.01508	.01457	.01409	.01365	.01323
22	.01895	.01819	.01749	.01683	.01622	.01565	.01511	.01461	.01414	.01369
23	.01972	.01893	.01818	.01749	.01684	.01624	.01567	.01514	.01464	.01417
24	.02058	.01974	.01895	.01822	.01753	.01689	.01629	.01572	.01519	.01469
25	.02154	.02064	.01981	.01903	.01830	.01762	.01698	.01638	.01582	.01529
26	.02262	.02167	.02079	.01996	.01919	.01847	.01779	.01715	.01655	.01599
27	.02385	.02284	.02191	.02103	.02021	.01944	.01872	.01804	.01740	.01680
28	.02521	.02415	.02316	.02222	.02135	.02053	.01977	.01904	.01836	.01772
29	.02673	.02561	.02455	.02357	.02264	.02177	.02095	.02018	.01946	.01877
30	.02842	.02723	.02611	.02506	.02407	.02315	.02227	.02146	.02068	.01996
31	.03030	.02903	.02784	.02673	.02568	.02470	.02377	.02290	.02207	.02130
32	.03235	.03101	.02976	.02857	.02746	.02641	.02543	.02450	.02362	.02279
33	.03463	.03321	.03188	.03062	.02944	.02833	.02728	.02629	.02535	.02447
34	.03711	.03561	.03419	.03286	.03161	.03043	.02931	.02826	.02726	.02632
35	.03981	.03822	.03672	.03531	.03398	.03273	.03154	.03042	.02936	.02836
36	.04271	.04103	.03945	.03796	.03655	.03522	.03396	.03277	.03164	.03057
37	.04584	.04407	.04239	.04081	.03932	.03791	.03657	.03531	.03411	.03297
38	.04920	.04733	.04556	.04399	.04231	.04082	.03940	.03806	.03679	.03558
39	.05280	.05083	.04897	.04721	.04554	.04396	.04246	.04103	.03968	.03840
40	.05667	.05459	.05263	.05077	.04901	.04733	.04575	.04424	.04280	.04144
41	.06080	.05861	.05655	.05459	.05272	.05096	.04928	.04768	.04617	.04472
42	.06518	.06289	.06071	.05864	.05668	.05482	.05305	.05136	.04975	.04822
43	.06982	.06742	.06513	.06296	.06089	.05893	.05706	.05528	.05358	.05196
44	.07475	.07223	.06983	.06754	.06537	.06330	.06133	.05945	.05766	.05595
45	.07998	.07733	.07481	.07242	.07014	.06796	.06588	.06390	.06202	.06021
46	.08550	.08273	.08010	.07758	.07519	.07290	.07072	.06864	.06665	.06474
47	.09134	.08845	.08569	.08306	.08055	.07815	.07586	.07367	.07157	.06957
48	.09748	.09446	.09158	.08882	.08619	.08368	.08128	.07898	.07678	.07467
49	.10391	.10076	.09775	.09487	.09212	.08949	.08697	.08456	.08225	.08003
50	.11062	.10734	.10420	.10120	.09832	.09557	.09293	.09041	.08798	.08566
51	.11764	.11423	.11096	.10783	.10483	.10195	.09919	.09655	.09401	.09158
52	.12503	.12148	.11807	.11481	.11168	.10868	.10581	.10304	.10039	.09784
53	.13278	.12909	.12556	.12216	.11891	.11578	.11278	.10989	.10712	.10445
54	.14088	.13706	.13339	.12986	.12648	.12322	.12009	.11709	.11419	.11141
55	.14936	.14540	.14159	.13793	.13442	.13103	.12778	.12464	.12163	.11872
56	.15821	.15412	.15018	.14639	.14274	.13923	.13584	.13258	.12944	.12642
57	.16749	.16326	.15918	.15526	.15148	.14784	.14433	.14094	.13768	.13453
58	.17719	.17282	.16862	.16456	.16065	.15688	.15324	.14973	.14634	.14306
59	.18731	.18281	.17847	.17429	.17025	.16634	.16258	.15894	.15543	.15203
60	.19782	.19319	.18872	.18440	.18023	.17621	.17231	.16855	.16491	.16139
61	.20869	.20393	.19934	.19489	.19060	.18644	.18242	.17854	.17477	.17113
62	.21990	.21502	.21029	.20573	.20131	.19703	.19289	.18887	.18499	.18123
63	.23144	.22644	.22159	.21690	.21236	.20796	.20370	.19956	.19556	.19167
64	.24335	.23823	.23326	.22845	.22379	.21927	.21489	.21063	.20651	.20250
65	.25568	.25045	.24537	.24044	.23566	.23103	.22653	.22216	.21791	.21379
66	.26850	.26316	.25797	.25293	.24804	.24329	.23868	.23420	.22984	.22560
67	.28182	.27637	.27108	.26594	.26095	.25609	.25137	.24678	.24231	.23797
68	.29565	.29011	.28472	.27949	.27439	.26943	.26461	.25991	.25534	.25089
69	.30991	.30429	.29882	.29349	.28830	.28325	.27833	.27354	.26887	.26432
70	.32457	.31887	.31332	.30791	.30264	.29750	.29249	.28760	.28284	.27820
71	.33955	.33378	.32816	.32267	.31732	.31210	.30701	.30204	.29719	.29246
72	.35485	.34902	.34333	.33778	.33236	.32707	.32190	.31686	.31193	.30711

TABLE U(1).—BASED ON LIFE TABLE 80CNSMT UNITRUST SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after APRIL 30, 1989]

Age	Adjusted payout rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
73	.37049	.36461	.35887	.35326	.34778	.34242	.33719	.33207	.32707	.32218
74	.38656	.38064	.37485	.36920	.36366	.35825	.35296	.34778	.34272	.33776
75	.40312	.39717	.39136	.38566	.38009	.37464	.36930	.36407	.35895	.35394
76	.42022	.41426	.40842	.40271	.39711	.39163	.38625	.38099	.37583	.37077
77	.43782	.43187	.42603	.42031	.41470	.40920	.40380	.39851	.39332	.38823
78	.45586	.44992	.44410	.43839	.43278	.42728	.42188	.41658	.41138	.40627
79	.47418	.46828	.46248	.45679	.45120	.44572	.44033	.43503	.42983	.42472
80	.49264	.48679	.48103	.47538	.46982	.46436	.45900	.45372	.44853	.44343
81	.51103	.50524	.49954	.49394	.48843	.48301	.47768	.47243	.46727	.46219
82	.52925	.52352	.51789	.51235	.50690	.50153	.49624	.49104	.48591	.48087
83	.54718	.54154	.53598	.53051	.52512	.51981	.51459	.50943	.50436	.49936
84	.56484	.55930	.55383	.54844	.54313	.53789	.53273	.52764	.52262	.51767
85	.58231	.57686	.57149	.56619	.56096	.55581	.55072	.54571	.54076	.53588
86	.59939	.59405	.58878	.58358	.57845	.57339	.56839	.56346	.55858	.55377
87	.61583	.61061	.60545	.60035	.59532	.59035	.58545	.58060	.57581	.57108
88	.63171	.62661	.62156	.61658	.61165	.60678	.60196	.59721	.59251	.58786
89	.64733	.64235	.63742	.63255	.62774	.62298	.61827	.61361	.60900	.60444
90	.66285	.65801	.65321	.64847	.64377	.63913	.63453	.62998	.62548	.62103
91	.67804	.67334	.66868	.66407	.65950	.65498	.65050	.64607	.64169	.63735
92	.69250	.68793	.68341	.67893	.67450	.67011	.66575	.66144	.65718	.65295
93	.70604	.70162	.69723	.69288	.68858	.68431	.68008	.67589	.67174	.66762
94	.71852	.71422	.70997	.70575	.70156	.69742	.69331	.68923	.68519	.68119
95	.72984	.72567	.72154	.71744	.71337	.70934	.70534	.70137	.69744	.69354
96	.73992	.73586	.73183	.72784	.72388	.71995	.71605	.71218	.70835	.70454
97	.74910	.74514	.74122	.73733	.73346	.72963	.72582	.72205	.71830	.71458
98	.75737	.75351	.74967	.74587	.74209	.73835	.73463	.73093	.72727	.72363
99	.76501	.76123	.75748	.75376	.75007	.74640	.74276	.73914	.73555	.73198
100	.77208	.76838	.76471	.76107	.75745	.75385	.75028	.74673	.74321	.73971
101	.77879	.77517	.77157	.76800	.76444	.76092	.75741	.75392	.75046	.74702
102	.78579	.78224	.77871	.77521	.77173	.76827	.76483	.76141	.75801	.75463
103	.79318	.78971	.78626	.78283	.77942	.77604	.77266	.76931	.76598	.76267
104	.80139	.79801	.79464	.79129	.78796	.78465	.78136	.77808	.77482	.77157
105	.81161	.80834	.80508	.80184	.79861	.79540	.79220	.78902	.78585	.78270
106	.82665	.82357	.82049	.81743	.81438	.81134	.80831	.80530	.80229	.79930
107	.84893	.84616	.84340	.84064	.83789	.83515	.83241	.82969	.82696	.82425
108	.88637	.88421	.88205	.87989	.87774	.87559	.87344	.87129	.86915	.86701
109	.94900	.94800	.94700	.94600	.94500	.94400	.94300	.94200	.94100	.94000

TABLE U(1).—BASED ON LIFE TABLE 80CNSMT UNITRUST SINGLE LIFE REMAINDER FACTORS

[Applicable after April 30, 1989]

Age	Adjusted payout rate									
	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
0	.01581	.01569	.01557	.01546	.01536	.01526	.01516	.01507	.01499	.01490
1	.00459	.00448	.00437	.00426	.00417	.00407	.00399	.00390	.00382	.00375
2	.00424	.00412	.00400	.00389	.00379	.00369	.00360	.00352	.00343	.00335
3	.00414	.00401	.00389	.00377	.00366	.00356	.00346	.00337	.00328	.00320
4	.00418	.00404	.00391	.00379	.00368	.00357	.00347	.00337	.00327	.00319
5	.00433	.00418	.00405	.00391	.00379	.00368	.00357	.00346	.00336	.00327
6	.00454	.00439	.00424	.00410	.00397	.00384	.00372	.00361	.00351	.00341
7	.00482	.00465	.00449	.00434	.00420	.00407	.00394	.00382	.00371	.00360
8	.00516	.00498	.00481	.00465	.00450	.00436	.00422	.00410	.00397	.00386
9	.00560	.00541	.00523	.00505	.00489	.00474	.00459	.00446	.00433	.00420
10	.00613	.00592	.00573	.00555	.00537	.00521	.00505	.00491	.00477	.00463
11	.00677	.00655	.00635	.00615	.00597	.00580	.00563	.00547	.00532	.00518
12	.00751	.00728	.00706	.00685	.00666	.00647	.00629	.00613	.00597	.00581
13	.00829	.00805	.00782	.00760	.00739	.00719	.00701	.00683	.00666	.00650
14	.00905	.00879	.00854	.00831	.00809	.00789	.00769	.00750	.00732	.00715
15	.00974	.00947	.00921	.00897	.00874	.00852	.00831	.00811	.00793	.00775
16	.01037	.01009	.00982	.00956	.00932	.00909	.00887	.00866	.00846	.00827
17	.01093	.01063	.01034	.01007	.00982	.00958	.00935	.00913	.00892	.00873
18	.01143	.01112	.01082	.01053	.01027	.01001	.00977	.00954	.00933	.00912
19	.01192	.01159	.01127	.01097	.01069	.01043	.01017	.00993	.00970	.00949
20	.01239	.01204	.01170	.01139	.01109	.01081	.01055	.01029	.01005	.00983
21	.01283	.01246	.01211	.01178	.01147	.01117	.01089	.01063	.01037	.01013
22	.01328	.01288	.01251	.01216	.01183	.01152	.01122	.01094	.01067	.01042

TABLE U(1).—BASED ON LIFE TABLE 80CNSMT UNITRUST SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Adjusted payout rate									
	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
23	.01372	.01331	.01292	.01254	.01219	.01186	.01156	.01125	.01097	.01070
24	.01422	.01378	.01336	.01297	.01260	.01225	.01191	.01160	.01130	.01101
25	.01479	.01432	.01388	.01346	.01306	.01269	.01233	.01200	.01168	.01138
26	.01545	.01495	.01448	.01404	.01362	.01322	.01284	.01248	.01214	.01182
27	.01623	.01570	.01520	.01472	.01427	.01385	.01344	.01306	.01270	.01235
28	.01712	.01655	.01601	.01551	.01503	.01457	.01414	.01373	.01334	.01298
29	.01813	.01752	.01695	.01641	.01589	.01541	.01494	.01451	.01409	.01370
30	.01927	.01862	.01801	.01743	.01688	.01635	.01586	.01539	.01495	.01452
31	.02056	.01987	.01922	.01859	.01801	.01745	.01692	.01642	.01594	.01548
32	.02201	.02127	.02057	.01990	.01927	.01868	.01811	.01757	.01706	.01657
33	.02363	.02284	.02209	.02138	.02071	.02007	.01946	.01888	.01833	.01781
34	.02543	.02458	.02378	.02302	.02230	.02162	.02096	.02034	.01975	.01919
35	.02741	.02651	.02565	.02484	.02407	.02333	.02264	.02197	.02134	.02073
36	.02956	.02859	.02768	.02681	.02599	.02520	.02446	.02374	.02307	.02242
37	.03189	.03087	.02990	.02897	.02809	.02725	.02645	.02569	.02496	.02427
38	.03443	.03334	.03230	.03131	.03037	.02948	.02862	.02781	.02703	.02628
39	.03718	.03602	.03491	.03386	.03285	.03190	.03099	.03011	.02928	.02849
40	.04015	.03891	.03774	.03662	.03555	.03453	.03355	.03262	.03173	.03088
41	.04335	.04204	.04079	.03959	.03846	.03737	.03633	.03534	.03439	.03348
42	.04677	.04538	.04405	.04278	.04157	.04042	.03931	.03825	.03724	.03627
43	.05042	.04894	.04754	.04619	.04491	.04368	.04250	.04138	.04030	.03926
44	.05432	.05276	.05127	.04984	.04848	.04718	.04593	.04473	.04358	.04248
45	.05849	.05684	.05526	.05375	.05231	.05092	.04960	.04832	.04710	.04593
46	.06292	.06118	.05952	.05792	.05639	.05492	.05352	.05217	.05087	.04963
47	.06765	.06581	.06405	.06237	.06075	.05920	.05771	.05628	.05491	.05359
48	.07265	.07071	.06886	.06708	.06537	.06373	.06216	.06064	.05919	.05779
49	.07791	.07587	.07392	.07204	.07024	.06851	.06685	.06525	.06371	.06223
50	.08343	.08129	.07923	.07726	.07536	.07354	.07178	.07009	.06847	.06690
51	.08924	.08699	.08483	.08276	.08076	.07884	.07699	.07520	.07349	.07183
52	.09539	.09303	.09076	.08858	.08648	.08446	.08251	.08064	.07883	.07708
53	.10189	.09942	.09704	.09475	.09255	.09043	.08838	.08640	.08450	.08266
54	.10872	.10614	.10365	.10126	.09894	.09672	.09456	.09249	.09049	.08855
55	.11592	.11322	.11062	.10811	.10569	.10335	.10110	.09892	.09682	.09478
56	.12350	.12068	.11796	.11534	.11281	.11036	.10800	.10571	.10350	.10137
57	.13148	.12855	.12572	.12298	.12033	.11777	.11530	.11291	.11060	.10836
58	.13990	.13685	.13389	.13104	.12828	.12561	.12303	.12053	.11811	.11576
59	.14875	.14557	.14250	.13953	.13665	.13387	.13118	.12856	.12604	.12359
60	.15799	.15469	.15150	.14841	.14542	.14253	.13972	.13700	.13436	.13180
61	.16761	.16419	.16088	.15768	.15457	.15156	.14864	.14580	.14305	.14039
62	.17758	.17404	.17062	.16729	.16407	.16094	.15791	.15496	.15210	.14932
63	.18791	.18425	.18071	.17726	.17392	.17068	.16753	.16447	.16150	.15861
64	.19862	.19484	.19118	.18762	.18417	.18081	.17754	.17437	.17129	.16829
65	.20979	.20590	.20212	.19845	.19487	.19140	.18802	.18474	.18154	.17843
66	.22149	.21748	.21359	.20980	.20612	.20253	.19904	.19564	.19233	.18911
67	.23374	.22962	.22562	.22172	.21792	.21423	.21062	.20712	.20370	.20037
68	.24656	.24234	.23822	.23422	.23031	.22651	.22280	.21919	.21566	.21222
69	.25988	.25556	.25134	.24724	.24323	.23932	.23551	.23179	.22816	.22461
70	.27367	.26925	.26493	.26073	.25662	.25261	.24870	.24488	.24115	.23750
71	.28784	.28333	.27892	.27462	.27042	.26631	.26230	.25839	.25456	.25082
72	.30241	.29781	.29332	.28893	.28464	.28044	.27634	.27233	.26841	.26457
73	.31740	.31272	.30815	.30368	.29930	.29502	.29084	.28674	.28273	.27880
74	.33291	.32817	.32352	.31897	.31452	.31016	.30589	.30171	.29762	.29361
75	.34903	.34422	.33951	.33490	.33038	.32595	.32161	.31735	.31318	.30909
76	.36581	.36095	.35619	.35152	.34694	.34245	.33805	.33373	.32949	.32533
77	.38324	.37835	.37354	.36883	.36420	.35966	.35520	.35083	.34654	.34232
78	.40126	.39634	.39150	.38676	.38210	.37752	.37302	.36861	.36427	.36001
79	.41970	.41476	.40992	.40515	.40047	.39587	.39135	.38690	.38253	.37823
80	.43842	.43348	.42864	.42387	.41918	.41456	.41002	.40556	.40117	.39685
81	.45719	.45228	.44744	.44267	.43799	.43337	.42883	.42436	.41996	.41562
82	.47590	.47101	.46619	.46145	.45677	.45217	.44764	.44317	.43877	.43443
83	.49443	.48957	.48478	.48007	.47542	.47084	.46632	.46187	.45748	.45315
84	.51279	.50798	.50324	.49856	.49394	.48939	.48490	.48048	.47611	.47180
85	.53106	.52630	.52161	.51698	.51241	.50790	.50345	.49906	.49473	.49045
86	.54902	.54434	.53971	.53514	.53062	.52616	.52176	.51741	.51312	.50888
87	.56640	.56178	.55722	.55271	.54826	.54386	.53951	.53521	.53097	.52677
88	.58326	.57872	.57423	.56979	.56541	.56107	.55678	.55254	.54834	.54420
89	.59994	.59548	.59107	.58671	.58240	.57813	.57391	.56973	.56560	.56152
90	.61662	.61226	.60794	.60367	.59944	.59526	.59112	.58702	.58296	.57894
91	.63305	.62879	.62457	.62040	.61627	.61217	.60812	.60411	.60013	.59619

TABLE U(1).—BASED ON LIFE TABLE 80CNSMT UNITRUST SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Adjusted payout rate									
	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
92	.64876	.64461	.64050	.63643	.63239	.62839	.62443	.62051	.61662	.61277
93	.66355	.65950	.65550	.65153	.64759	.64369	.63983	.63600	.63220	.62843
94	.67722	.67328	.66938	.66551	.66167	.65786	.65409	.65035	.64664	.64296
95	.68967	.68583	.68203	.67825	.67451	.67079	.66711	.66345	.65983	.65623
96	.70076	.69701	.69330	.68961	.68595	.68231	.67871	.67513	.67158	.66806
97	.71089	.70722	.70359	.69998	.69640	.69284	.68931	.68581	.68234	.67888
98	.72001	.71642	.71286	.70933	.70582	.70233	.69887	.69544	.69203	.68864
99	.72844	.72492	.72143	.71796	.71452	.71110	.70770	.70433	.70098	.69765
100	.73623	.73278	.72935	.72594	.72256	.71920	.71586	.71254	.70924	.70597
101	.74361	.74021	.73684	.73349	.73016	.72685	.72356	.72029	.71704	.71382
102	.75128	.74794	.74463	.74133	.73806	.73480	.73157	.72835	.72515	.72198
103	.75938	.75610	.75284	.74961	.74639	.74319	.74000	.73684	.73369	.73056
104	.76835	.76514	.76194	.75877	.75561	.75246	.74934	.74623	.74313	.74005
105	.77956	.77643	.77332	.77023	.76714	.76408	.76102	.75798	.75496	.75195
106	.79632	.79334	.79038	.78743	.78449	.78157	.77865	.77575	.77285	.76997
107	.82154	.81884	.81615	.81346	.81079	.80811	.80545	.80279	.80014	.79750
108	.86487	.86274	.86061	.85848	.85635	.85423	.85210	.84998	.84787	.84575
109	.93900	.93800	.93700	.93600	.93500	.93400	.93300	.93200	.93100	.93000

(f) *Effective date.* This section is effective as of May 1, 1989.

Par. 14. Section 1.664–4A is further amended as follows:

1. The fifth sentence of newly designated paragraph (d)(4) is revised.

2. Newly designated paragraph (d)(5) is amended by:

a. Revising the first and fifth sentences.

b. Removing the reference "(b)(4)" in both places it appears and adding "(b)(5)" in each place.

3. The heading for newly designated paragraph (d)(6) is revised.

4. The headings for Table D, Table E, and Table F(1) in newly designated paragraph (d)(6) are revised.

5. The revisions read as follows:

§ 1.664–4A Valuation of charitable remainder interests for which the valuation date is before May 1, 1989.

* * * * *

(d) * * *

(4) *Period is a term of years.* * * * If the adjusted payout rate is greater than 14 percent, see § 1.664–4(b).

* * * * *

(5) *Period is the life of one individual.* If the period described in paragraph (a)(5) of § 1.664–3 is the life of one individual, the factor that is used in determining the present value of the remainder interest is the factor under the appropriate adjusted payout rate in column (2) of Table E in paragraph (d)(6) of this section opposite the number in column (1) that corresponds to the age of the individual whose life measures the period. * * * If the adjusted payout rate is greater than 14 percent, see § 1.664–4(b). * * *

(6) *Actuarial tables for transfers for which the valuation date is after November 30, 1983, and before May 1, 1989.*

* * * * *

Table D

Table D—Term Certain—Table Showing the Present Worth of a Remainder Interest Postponed for a Term of Years in a Charitable Remainder Unitrust Having the Adjusted Payout Rate Shown—Applicable for Transfers After November 30, 1983, and Before May 1, 1989

* * * * *

Table E

Table E—Single Life, Unisex—Table Showing the Present Worth of the Remainder Interest in Property Transferred to a Unitrust Having the Adjusted Payout Rate Shown—Applicable for Transfers After November 30, 1983, and Before May 1, 1989

* * * * *

Table F(1)

Table F(1)—10 Percent—Table Showing Factors for Computations of the Adjusted Payout Rate for Certain Valuations and Payout Sequences—Applicable for Transfers After November 30, 1983, and Before May 1, 1989

* * * * *

Par. 14a. An undesignated center heading is added immediately before § 1.665(a)–0A to read as follows:

Treatment of Excess Distributions of Trusts Applicable to Taxable Years Beginning on or After January 1, 1969

Par. 14b. The undesignated center heading immediately preceding § 1.665(a)–0 is revised to read as follows:

Treatment of Excess Distributions of Trusts Applicable to Taxable Years Beginning Before January 1, 1969

Par. 15. Section 1.1011–2, paragraph (c), *Example (8)(b)* is amended by adding the following three sentences at the end of the paragraph.

§ 1.1011–2 Bargain sale to charitable organization.

* * * * *

(c) * * *

Example (8).

* * * * *

(b) * * * See Rev. Rul. 84–162, 1984–2 C.B. 200, for transfers for which the valuation date falls after November 23, 1984. (See § 601.601(d)(2)(ii)(*b*) of this chapter). For the applicable valuation tables in connection therewith, see § 20.2031–7(d)(6) of this chapter. See, however, § 1.7520–3(b) (relating to exceptions to the use of standard actuarial factors in certain circumstances).

* * * * * *

Par. 16. Immediately following § 1.7519–3T, an undesignated center heading and §§ 1.7520–1 through 1.7520–4 are added to read as follows:

General Actuarial Valuations

§ 1.7520–1 Valuation of annuities, unitrust interests, interests for life or terms of years, and remainder or reversionary interests.

(a) *General actuarial valuations.* (1) Except as otherwise provided in this section and in § 1.7520–3 (relating to exceptions to the use of prescribed tables under certain circumstances), in the case of certain transactions after April 30, 1989, subject to income tax, the fair market value of annuities, interests for life or for a term of years (including unitrust interests), remainders, and reversions is their present value determined under this section. See § 20.2031–7(d) (and, for certain prior periods, § 20.2031–7A) of this chapter, Estate Tax Regulations, for the computation of the value of annuities, unitrust interests, life estates, terms for years, remainders, and reversions, other than interests described in paragraphs (a)(2) and (a)(3) of this section.

(2) For a transfer to a pooled income fund after April 30, 1989, see § 1.642(c)–6(e) (or, for certain prior periods, § 1.642(c)–6A) with respect to the valuation of the remainder interest.

(3) For a transfer to a charitable remainder annuity trust after April 30, 1989, see § 1.664–2 with respect to the valuation of the remainder interest. See § 1.664–4 (or, for certain prior periods, § 1.664–4A) with respect to the valuation of the remainder interest in property transferred to a charitable remainder unitrust.

(b) *Components of valuation*—(1) *Interest rate component*—(i) *Section 7520 Interest rate.* The section 7520 interest rate is the rate of return, rounded to the nearest two-tenths of one percent, that is equal to 120 percent of the applicable Federal mid-term rate, compounded annually, for purposes of section 1274(d)(1), for the month in which the valuation date falls. In rounding the rate to the nearest two-tenths of a percent, any rate that is midway between one two-tenths of a percent and another is rounded up to the higher of those two rates. For example, if 120 percent of the applicable Federal mid-term rate is 10.30, the section 7520 interest rate component is 10.4. The section 7520 interest rate is published monthly by the Internal Revenue Service in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter).

(ii) *Valuation date.* Except as provided in § 1.7520–2, the valuation date is the date on which the transaction takes place.

(2) *Mortality component.* The mortality component reflects the mortality data most recently available from the United States census. As new mortality data becomes available after each decennial census, the mortality component described in this section will be revised periodically and the revised mortality component tables will be published in the regulations at that time. For transactions with valuation dates after April 30, 1989, the mortality component table (Table 80CNSMT) is contained in § 20.2031–7(d) of this chapter (Estate Tax Regulations). See § 20.2031–7A for mortality component tables applicable to transactions for which the valuation date falls before May 1, 1989.

(c) *Tables.* The present value on the valuation date of an annuity, life estate, term of years, remainder, or reversion is computed by using the section 7520 interest rate component that is described in paragraph (b)(1) of this section and the mortality component that is described in paragraph (b)(2) of this section. Actuarial factors for determining these present values are included in tables in these regulations and in publications by the Internal Revenue Service. If a special factor is required in order to value an interest, the Internal Revenue Service will furnish the factor upon a request for a ruling. The request for a ruling must be accompanied by a recitation of the facts, including the date of birth for each measuring life and copies of relevant instruments. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (see Rev. Proc. 94–1, 1994–1 I.R.B. 10, and subsequent updates, and §§ 601.201 and 601.601(d)(2)(ii)(*b*) of this chapter) and include payment of the required user fee.

(1) *Regulation sections containing tables with interest rates between 4.2 and 14 percent.* Section 1.642(c)–6(e)(4) contains Table S used for determining the present value of a single life remainder interest in a pooled income fund as defined in § 1.642(c)–5. Section 1.664–4(e)(6) contains Table D (actuarial factors used in determining the present value of a remainder interest postponed for a term of years), Table U(1) (actuarial factors for one life), and Table F (payout factors) used in determining the present value of a remainder interest in a charitable remainder unitrust as defined in § 1.664–3. Section 20.2031–7(d)(6) of this chapter (Estate Tax Regulations) contains Table S (actuarial factors for one life), Table B (actuarial factors used in determining the present value of an interest for a term of years), Table K (annuity end-of-interval adjustment factors), Table J (term certain annuity beginning-of-interval adjustment factors), and Table 80CNSMT (mortality components) used in determining the present value of annuities, life estates, remainders, and reversions. The regulations will be revised periodically to include new mortality component tables and new tables of factors.

(2) *Internal Revenue Service publications containing tables with interest rates between 2.2 and 26 percent.* The following documents (with the exception of Publication 1459) have been published for sale by the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402:

(i) Internal Revenue Service Publication 1457, "Actuarial Values, Alpha Volume," (8/89). This publication includes tables of valuation factors, as well as examples that show how to compute other valuation factors, for determining the present value of annuities, life estates, terms of years, remainders, and reversions, measured by one or two lives. These factors may also be used in the valuation of interests in a charitable remainder annuity trust as defined in § 1.664–2 of this chapter and a pooled income fund as defined in § 1.642(c)–5 of this chapter.

(ii) Internal Revenue Service Publication 1458, "Actuarial Values, Beta Volume," (8/89). This publication includes term certain tables and tables of one and two life valuation factors for determining the present value of remainder interests in a charitable remainder unitrust as defined in § 1.664–3 of this chapter.

(iii) Internal Revenue Service Publication 1459, "Actuarial Values, Gamma Volume," (8–89) is no longer available for purchase from the Superintendent of Documents. However, it may be obtained by requesting a copy from: CC:DOM:CORP:T:R (IRS Publication 1459), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. This publication includes tables for computing depreciation adjustment factors. See § 1.170A–12 of this chapter.

(d) *Effective date.* This section is effective as of May 1, 1989.

§ 1.7520–2 Valuation of charitable interests.

(a) *In general*—(1) *Valuation.* Except as otherwise provided in this section and in § 1.7520–3 (relating to exceptions to the use of prescribed tables under certain circumstances), the fair market value of annuities, interests for life or for a term of years, remainders, and reversions for which an income tax charitable deduction is allowable is the

present value of such interests determined under § 1.7520–1.

(2) *Prior-month election rule.* If any part of the property interest transferred qualifies for an income tax charitable deduction under section 170(c), the taxpayer may elect (under paragraph (b) of this section) to compute the present value of the interest transferred by use of the section 7520 interest rate for the month during which the interest is transferred or the section 7520 interest rate component for either of the 2 months preceding the month during which the interest is transferred. Paragraph (b) of this section explains how a prior-month election is made. The interest rate for the month so elected is the applicable section 7520 interest rate. If the actuarial factor for either or both of the 2 months preceding the month during which the interest is transferred is based on a mortality experience that is different from the mortality experience at the date of the transfer and if the taxpayer elects to use the section 7520 rate for a prior month with the different mortality experience, the taxpayer must use the actuarial factor derived from the mortality experience in effect during the month of the section 7520 rate elected. All actuarial computations relating to the transfer must be made by applying the interest rate component and the mortality component of the month elected by the taxpayer.

(3) *Transfers of more than one interest in the same property.* If a taxpayer transfers more than one interest in the same property at the same time, for purposes of valuing the transferred interests, the taxpayer must use the same interest rate and mortality component for each interest in the property transferred. If more than one interest in the same property is transferred in two or more separate transfers at different times, the value of each interest is determined by the use of the interest rate component and mortality component in effect during the month of the transfer of that interest or, if applicable under paragraph (a)(2) of this section, either of the two months preceding the month of the transfer.

(4) *Information required with tax return.* The following information must be attached to the income tax return (or to the amended return) if the taxpayer claims a charitable deduction for the present value of a temporary or remainder interest in property—

(i) A complete description of the interest that is transferred, including a copy of the instrument of transfer;

(ii) The valuation date of the transfer;

(iii) The names and identification numbers of the beneficiaries of the transferred interest;

(iv) The names and birthdates of any measuring lives, a description of any relevant terminal illness condition of any measuring life, and (if applicable) an explanation of how any terminal illness condition was taken into account in valuing the interest; and

(v) A computation of the deduction showing the applicable section 7520 interest rate that is used to value the transferred interest.

(5) *Place for filing returns.* See section 6091 of the Internal Revenue Code and the regulations thereunder for the place for filing the return or other document required by this section.

(b) *Election of interest rate component*—(1) *Time for making election.* A taxpayer makes a prior-month election under paragraph (a)(2) of this section by attaching the information described in paragraph (b)(2) of this section to the taxpayer's income tax return or to an amended return for that year that is filed within 24 months after the later of the date the original return for the year was filed or the due date for filing the return.

(2) *Manner of making election.* A statement that the prior-month election under section 7520(a) of the Internal Revenue Code is being made and that identifies the elected month must be attached to the income tax return (or to the amended return).

(3) *Revocability.* The prior-month election may be revoked by filing an amended return within 24 months after the later of the date the original return of tax for the year was filed or the due date for filing the return. The revocation must be filed in the place referred to in paragraph (a)(5) of this section.

(c) *Effective dates.* Paragraph (a) of this section is effective as of May 1, 1989. Paragraph (b) of this section is effective for elections made after June 10, 1994.

§ 1.7520–3 Limitation on the application of section 7520.

(a) *Internal Revenue Code sections to which section 7520 does not apply.* Section 7520 of the Internal Revenue Code does not apply for purposes of—

(1) Part I, subchapter D of subtitle A (section 401 et. seq.), relating to the income tax treatment of certain qualified plans. (However, section 7520 does apply to the estate and gift tax treatment of certain qualified plans and for purposes of determining excess accumulations under section 4980A);

(2) Sections 72 and 101(b), relating to the income taxation of life insurance, endowment, and annuity contracts, unless otherwise provided for in the regulations under sections 72, 101, and 1011 (see, particularly, §§ 1.101–2(e)(1)(iii)(*b*)(*2*), and 1.1011–2(c), *Example 8*);

(3) Sections 83 and 451, unless otherwise provided for in the regulations under those sections;

(4) Section 457, relating to the valuation of deferred compensation, unless otherwise provided for in the regulations under section 457;

(5) Sections 3121(v) and 3306(r), relating to the valuation of deferred amounts, unless otherwise provided for in the regulations under those sections;

(6) Section 6058, relating to valuation statements evidencing compliance with qualified plan requirements, unless otherwise provided for in the regulations under section 6058;

(7) Section 7872, relating to income and gift taxation of interest-free loans and loans with below-market interest rates, unless otherwise provided for in the regulations under section 7872; or

(8) Section 2702(a)(2)(A), relating to the value of a nonqualified retained interest upon a transfer of an interest in trust to or for the benefit of a member of the transferor's family; and

(9) Any other sections of the Internal Revenue Code to the extent provided by the Internal Revenue Service in revenue rulings or revenue procedures. (See §§ 601.201 and 601.601 of this chapter).

(b) *Other limitations on the application of section 7520.* [Reserved]

(c) *Effective date.* Section 1.7520–3(a) is effective as of May 1, 1989.

§ 1.7520–4 Transitional rules.

(a) *Reliance.* If the valuation date is after April 30, 1989, and before June 10, 1994, a taxpayer can rely on Notice 89–24, 1989–1 C.B. 660, or Notice 89–60, 1989–1 C.B. 700 (See § 601.601(d)(2)(ii)(*b*) of this chapter), in valuing the transferred interest.

(b) *Effective date.* This section is effective as of May 1, 1989.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 17. The authority citation for part 20 is revised to read as follows:

Authority: 26 U.S.C. 7805.

Section 20.2031–7 also issued under 26 U.S.C. 7520(c)(2).

Section 20.2031–7A also issued under 26 U.S.C. 7520(c)(2).

Section 20.7520–1 also issued under 26 U.S.C. 7520(c)(2).

Section 20.7520–2 also issued under 26 U.S.C. 7520(c)(2).

Section 20.7520–3 also issued under 26 U.S.C. 7520(c)(2).

Section 20.7520–4 also issued under 26 U.S.C. 7520(c)(2).

Par. 18. Section § 20.2013–4 is amended by:

1. Revising the second sentence of the introductory text of paragraph (a).

2. Revising the fourth sentence in *Example (2)* of paragraph (a).

3. The revisions read as follows:

§ 20.2013–4 Valuation of property transferred.

(a) * * * If the decedent received a life estate or a remainder or other limited interest in property that was included in a transferor decedent's gross estate, the value of the interest is determined as of the date of the transferor's death on the basis of recognized valuation principles (see §§ 20.2031–7 (or, for certain prior periods, § 20.2031–7A) and 20.7520–1 through 20.7520–4). * * *

* * * * *

Example (2). * * * The part of that value attributable to the life estate is $44,688 and the part of that value attributable to the remainder is $55,312 (see § 20.2031–7A(b)).

* * * * *

Par. 19. Section 20.2031–0 is added to read as follows:

§ 20.2031–0 Table of contents.

This section lists the section headings and undesignated center headings that appear in the regulations under section 2031.

§ 2031–1 Definition of gross estate; valuation of property.
§ 20.2031–2 Valuation of stocks and bonds.
§ 20.2031–3 Valuation of interests in businesses.
§ 20.2031–4 Valuation of notes.
§ 20.2031–5 Valuation of cash on hand or on deposit.
§ 20.2031–6 Valuation of household and personal effects.
§ 20.2031–7 Valuation of annuities, interests for life or term of years, and remainder or reversionary interests for estates of decedents for which the valuation date of the gross estate is after April 30, 1989.
§ 20.2031–8 Valuation of certain life insurance and annuity contracts; valuation of shares in an open-end investment company.
§ 20.2031–9 Valuation of other property.

Actuarial Tables Applicable Before May 1, 1989

§ 20.2031–7A Valuation of annuities, interests for life or term of years, and remainder or reversionary interests for estates of decedents for which the valuation date of the gross estate is before May 1, 1989.

Par. 20. Immediately following § 20.2046–1 an undesignated center heading and § 20.2031–7A are added to read as follows:

Actuarial Tables Applicable Before May 1, 1989

§ 20.2031–7A Valuation of annuities, interests for life or term of years, and remainder or reversionary interests for estates of decedents for which the valuation date of the gross estate is before May 1, 1989.

(a) *Valuation of annuities, interests for life or term of years, and remainder or reversionary interests for estates of decedents for which the valuation date of the gross estate is before January 1, 1952.* Except as otherwise provided in § 20.2031–7(b), if the valuation date of the decedent's gross estate is before January 1, 1952, the present value of annuities, life estates, terms for years, remainders, and reversions is their present value determined under this section. If the valuation of the interest involved is dependent upon the continuation or termination of one or more lives or upon a term certain concurrent with one or more lives, the factor for the present value is computed on the basis of interest at the rate of 4 percent a year, compounded annually, and life contingencies as to each life involved from values that are based on the Actuaries' or Combined Experience Table of Mortality, as extended. This table and related factors are described in former § 81.10 (as contained in the 26 CFR Part 81 edition revised as of April 1, 1958). The present value of an interest measured by a term of years is computed on the basis of interest at the rate of 4 percent a year.

(b) *Valuation of annuities, interests for life or term of years, and remainder or reversionary interests for estates of decedents for which the valuation date of the gross estate is after December 31, 1951, and before January 1, 1971.* Except as otherwise provided in § 20.2031–7(b), if the valuation date for the decedent's gross estate is after December 31, 1951, and before January 1, 1971, the present value of annuities, life estates, terms of years, remainders, and reversions is their present value determined under this section. If the valuation of the interest involved is dependent upon the continuation or termination of one or more lives, or upon a term certain concurrent with one or more lives, the factor for the present value is computed on the basis of interest at the rate of 3½ percent a year, compounded annually, and life contingencies as to each life involved are taken from U.S. Life Table 38. This table and related factors are set forth in former § 20.2031–7 (as contained in the 26 CFR Part 20 edition revised as of April 1, 1984). Special factors involving one and two lives may be found in or computed with the use of tables contained in the publication entitled "Actuarial Values for Estate and Gift Tax," Internal Revenue Service Publication Number 11 (Rev. 5–59). This publication is no longer available for purchase from the Superintendent of Documents. However, it may be obtained by requesting a copy from: CC:DOM:CORP:T:R (IRS Publication 11), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. The present value of an interest measured by a term of years is computed on the basis of interest at the rate of 3½ percent a year.

(c) *Valuation of annuities, interests for life or term of years, and remainder or reversionary interests for estates of decedents for which the valuation date of the gross estate is after December 31, 1970, and before December 1, 1983.* Except as otherwise provided in § 20.2031–7(b), if the valuation date of the decedent's gross estate is after December 31, 1970, and before December 1, 1983, the present value of annuities, life estates, terms of years, remainders, and reversions is their present value determined under this section. If the valuation of the interest involved is dependent upon the continuation of or termination of one or more lives or upon a term certain concurrent with one or more lives, the factor for the present value is computed on the basis of interest at the rate of 6 percent a year, compounded annually, and life contingencies are determined as to each male and female life involved, from values that are set forth in Table LN. Table LN contains values that are taken from the life table for total males and the life table for total females appearing as Tables 2 and 3, respectively, in United States Life Tables: 1959– 1960, published by the Department of Health and Human Services, Public Health Service. Table LN and related factors are set forth in former § 20.2031–10 (as contained in the 26 CFR part 20 edition revised as of April 1, 1994). Special factors involving one and two lives may be found in or computed with the use of tables contained in Internal Revenue Service Publication 723, "Actuarial Values I: Valuation of Last Survivor Charitable Remainders," (12–70), and Internal Revenue Service Publication 723A, "Actuarial Values II: Factors at 6 Percent Involving One and Two Lives," (12–70). These publications are no longer available for purchase from the Superintendent of Documents. However, a copy of each may be obtained from: CC:DOM:CORP:T:R (IRS

Publication 723/723A), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044.

Par. 21. Section 20.2031–7 is redesignated as § 20.2031–7A, paragraph (d) and amended as follows:

1. The following redesignation table indicates the old CFR unit numbers for § 20.2031–7 and the corresponding new CFR unit numbers for § 20.2031–7A(d):

Old CFR unit No. in § 20.2031–7	Corresponding new No. in § 20.2031–7A
§ 20.2031–7 heading .	Paragraph (d) heading.
(a)	(d)(1).
(a)(1)	(d)(1)(i).
(a)(2)	(d)(1)(ii).
(a)(3)	(d)(1)(iii).
(b)	(d)(2).
(b)(1)	(d)(2)(i).
(b)(2)	(d)(2)(ii).
(b)(3)	(d)(2)(iii).
(b)(3)(i)	(d)(2)(iii)(A).
(b)(3)(ii)	(d)(2)(iii)(B).
(c) through (f)	(d)(3) through (d)(6).

2. The paragraph heading for paragraph (d) is revised.

3. Paragraphs (d)(1)(i) and (iii) are revised.

4. Paragraph (d)(5), third and fourth sentences are revised and a new sentence is added after the fourth sentence.

5. Paragraph (d)(6), the headings for Tables A, B, and LN are revised.

6. The added and revised provisions read as follows:

§ 20.2031–7A Valuation of annuities, interests for life or term of years, and remainder or reversionary interests for estates of decedents for which the valuation date of the gross estate is before May 1, 1989.

* * * * *

(d) *Valuation of annuities, interests for life or term of years, and remainder or reversionary interests for estates of decedents for which the valuation date of the gross estate is after November 30, 1983, and before May 1, 1989*—(1) *In general.* (i) Except as otherwise provided in § 20.2031–7(b), if the decedent died after November 30, 1983, and the valuation date for the gross estate is before May 1, 1989, the fair market value of annuities, life estates, terms of years, remainders, and reversions is their present value determined under this section. If the decedent died after November 30, 1983, and before August 9, 1984, or, in cases where the valuation date of the decedent's gross estate is before May 1, 1989, if, on December 1, 1983, the decedent was mentally incompetent so that the disposition of the decedent's property could not be changed, and the decedent died on or after December 1, 1983, without having regained competency to dispose of the decedent's property, or if the decedent died within 90 days of the date on which the decedent first regained competency, the fair market value of annuities, life estates, terms for years, remainders, and reversions included in the gross estate of such decedent is their present value determined under either this section or § 20.2031–7A(c), at the option of the taxpayer. The value of annuities issued by companies regularly engaged in their sale, and of insurance policies on the lives of persons other than the decedent, is determined under § 20.2031–8. The fair market value of a remainder interest in a charitable remainder unitrust, as defined in § 1.664–3 of this chapter, is its present value determined under § 1.664–4 of this chapter. The fair market value of a life interest or term for years in a charitable remainder unitrust is the fair market value of the property as of the date of valuation less the fair market value of the remainder interest on such date determined under § 1.664–4 of this chapter. The fair market value of the interests in a pooled income fund, as defined in § 1.642(c)–5 of this chapter, is their value determined under § 1.642(c)–6 of this chapter.

* * * * *

(iii) In all examples set forth in this section, the decedent is assumed to have died on or after August 9, 1984, with the valuation date of the decedent's gross estate before May 1, 1989, and to have been competent to change the disposition of the property on December 1, 1983.

* * * * *

(5) *Actuarial computations by the Internal Revenue Service.* * * * Table LN contains values of *lx* taken from the life table for the total population appearing as Table 1 of United States Life Tables: 1969–71, published by the Department of Health and Human Services, Public Health Service. Many special factors involving one and two lives may be found in or computed with the use of the tables contained in Internal Revenue Service Publication 723E, "Actuarial Values II: Factors at 10 Percent Involving One and Two Lives," (12–83). This publication is no longer available for purchase from the Superintendent of Documents. However, it may be obtained by requesting a copy from: CC:DOM:CORP:T:R (IRS Publication 723E), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044.

(6) * * *

Table A

Table A—Single Life, Unisex, 10 Percent—Table Showing the Present Worth of An Annuity, of a Life Estate, and a Remainder Interest—Applicable for Transfers After November 30, 1983, and Before May 1, 1989

* * * * *

Table B

Table B—Term Certain, Unisex, 10 Percent—Table Showing the Present Worth of an Annuity for a Term Certain, of an Income Interest for a Term Certain, and of a Remainder Interest Postponed for a Term Certain—Applicable for Transfers After November 30, 1983, and before May 1, 1989

* * * * *

Table LN

Table LN—Applicable for Transfers After November 30, 1983, and Before May 1, 1989

* * * * *

Par. 22. New § 20.2031–7 is added to read as follows:

§ 20.2031–7 Valuation of annuities, interests for life or term of years, and remainder or reversionary interests for estates of decedents for which the valuation date of the gross estate is after April 30, 1989.

(a) *In general.* Except as otherwise provided in paragraph (b) of this section and § 20.7520–3(b) (pertaining to certain limitations on the use of prescribed tables), the fair market value of annuities, life estates, terms of years, remainders, and reversionary interests for estates of decedents is the present value of such interests, determined under paragraph (d) of this section. The regulations in this and in related sections provide tables with standard actuarial factors and examples that illustrate how to use the tables to compute the present value of ordinary annuity, life, and remainder interests in property. These sections also refer to standard and special actuarial factors that may be necessary to compute the present value of similar interests in more unusual fact situations.

(b) *Commercial annuities and insurance contracts.* The value of annuities issued by companies regularly engaged in their sale, and of insurance policies on the lives of persons other than the decedent, is determined under § 20.2031–8. See § 20.2042–1 with respect to insurance policies on the decedent's life.

(c) *Actuarial valuations before May 1, 1989.* The present value of annuities, life estates, terms of years, remainders, and reversions for estates of decedents

for which the valuation date of the gross estate is before May 1, 1989, is determined under the following sections:

Valuation date		Applicable section
After	Before	
	01–01–52	20.2031–7A(a)
12–31–51	01–01–71	20.2031–7A(b)
12–31–70	12–01–83	20.2031–7A(c)
11–30–83	05–01–89	20.2031–7A(d)

(d) *Actuarial valuations after April 30, 1989*—(1) *In general.* Except as otherwise provided in paragraph (b) of this section and § 20.7520–3(b) (pertaining to certain limitations on the use of prescribed tables), if the valuation date for the gross estate of the decedent is after April 30, 1989, the fair market value of annuities, life estates, terms of years, remainders, and reversionary interests is their present value determined by use of standard or special section 7520 actuarial factors. These factors are derived by using the appropriate section 7520 interest rate and, if applicable, the mortality component for the valuation date of the interest that is being valued. See §§ 20.7520–1 through 20.7520–4.

(2) *Specific Interests*—(i) *Charitable Remainder Trusts.* The fair market value of a remainder interest in a pooled income fund, as defined in § 1.642(c)–5 of this chapter, is its value determined under § 1.642(c)–6(e) of this chapter. The fair market value of a remainder interest in a charitable remainder annuity trust, as defined in § 1.664–2(a) of this chapter, is its present value determined under § 1.664–2(c) of this chapter. The fair market value of a remainder interest in a charitable remainder unitrust, as defined in § 1.664–3 of this chapter, is its present value determined under § 1.664–4(e) of this chapter. The fair market value of a life interest or term of years in a charitable remainder unitrust is the fair market value of the property as of the date of valuation less the fair market value of the remainder interest on that date determined under § 1.664–4(e) of this chapter.

(ii) *Ordinary remainder and reversionary interests.* If the interest to be valued is to take effect after a definite number of years or after the death of one individual, the present value of the interest is computed by multiplying the value of the property by the appropriate remainder interest actuarial factor (that corresponds to the applicable section 7520 interest rate and remainder interest period) in Table B (for a term certain) or Table S (for one measuring life), as the case may be. Tables B and S are included in paragraph (d)(6) of this section and in Internal Revenue Service Publication 1457. For information about obtaining actuarial factors for other types of remainder interests, see paragraph (d)(4) of this section.

(iii) *Ordinary term-of-years and life interests.* If the interest to be valued is the right of a person to receive the income of certain property, or to use certain nonincome-producing property, for a term of years or for the life of one individual, the present value of the interest is computed by multiplying the value of the property by the appropriate term-of-years or life interest actuarial factor (that corresponds to the applicable section 7520 interest rate and term-of-years or life interest period). Internal Revenue Service Publication 1457 includes actuarial factors for an interest for a term of years in Table B and for the life of one individual in Table S. However, term-of-years and life interest actuarial factors are not included in Table B or Table S in § 20.2031–7(d)(6) of this chapter. If Internal Revenue Service Publication 1457 (or any other reliable source of term-of-years and life interest actuarial factors) is not conveniently available, an actuarial factor for the interest may be derived mathematically. This actuarial factor may be derived by subtracting the correlative remainder factor (that corresponds to the applicable section 7520 interest rate and the term of years or the life) in Table B (for a term of years) or in Table S (for the life of one individual) in § 20.2031–7(d)(6), as the case may be, from 1.000000. For information about obtaining actuarial factors for other types of term-of-years and life interests, see paragraph (d)(4) of this section.

(iv) *Annuities.* (A) If the interest to be valued is the right of a person to receive an annuity that is payable at the end of each year for a term of years or for the life of one individual, the present value of the interest is computed by multiplying the aggregate amount payable annually by the appropriate annuity actuarial factor (that corresponds to the applicable section 7520 interest rate and annuity period). Internal Revenue Publication 1457 includes actuarial factors in Table B (for an annuity payable for a term of years) and in Table S (for an annuity payable for the life of one individual). However, annuity actuarial factors are not included in Table B or Table S in paragraph (d)(6) of this section. If Internal Revenue Service Publication 1457 (or any other reliable source of annuity actuarial factors) is not conveniently available, a required annuity factor for a term of years or for one life may be mathematically derived. This annuity factor may be derived by subtracting the applicable remainder factor (that corresponds to the applicable section 7520 interest rate and annuity period) in Table B (in the case of a term-of-years annuity) or in Table S (in the case of a one-life annuity) in paragraph (d)(6) of this section, as the case may be, from 1.000000 and then dividing the result by the applicable section 7520 interest rate expressed as a decimal number.

(B) If the annuity is payable at the end of semiannual, quarterly, monthly, or weekly periods, the product obtained by multiplying the annuity factor by the aggregate amount payable annually is then multiplied by the applicable adjustment factor set forth in Table K for payments made at the end of the specified periods. The provisions of this paragraph (d)(2)(iv)(B) are illustrated by the following example:

Example. At the time of [illegible] death in January 1999, the annuitant, age 72, is entitled to receive an annuity of $5,000 a year for life payable in equal monthly installments at the end of each period. The section 7520 rate for January 1999 is 9.6 percent. Under Table S, the remainder factor at 9.6 percent for an individual aged 72 is .40148. By converting the remainder factor to an annuity factor, as described above, the annuity factor at 9.6 percent for an individual aged 72 is 6.2356 (1.00000 minus .40148, divided by .096). Under Table K, the adjustment factor under the column for payments made at the end of each monthly

period at the rate of 9.6 percent is 1.0433. The aggregate annual amount, $15,000, is multiplied by the factor 6.2356 and the product multiplied by 1.0433. The present value of the annuity at the date of the decedent's death is, therefore, $97,584.02 ($15,000×6.2356×1.0433).

(C) If an annuity is payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods for a term of years, the value of the annuity is computed by multiplying the aggregate amount payable annually by the annuity factor described in paragraph (d)(2)(iv)(A) of this section, and the product so obtained is then multiplied by the adjustment factor in Table J at the appropriate interest rate component for payments made at the beginning of specified periods. If an annuity is payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods for one or more lives, the value of the annuity is the sum of the first payment plus the present value of a similar annuity, the first payment of which is not to be made until the end of the payment period, determined as provided in this paragraph (d)(2)(iv).

(v) *Annuity and unitrust interests for a term of years or until the prior death of an individual.* See § 25.2512–5(d)(2)(v) of this chapter for examples explaining how to compute the present value of an annuity or unitrust interest that is payable until the earlier of the lapse of a specific number of years or the death of an individual.

(3) *Transitional rule.* (i) If the valuation date is after April 30, 1989, and before June 10, 1994, a taxpayer can rely on Notice 89–24, 1989–1 C.B. 660, or Notice 89–60, 1989–1 C.B. 700 (See § 601.601(d)(2)(ii)(*b*) of this chapter).

(ii) If a decedent dies after April 30, 1989, and if on May 1, 1989, the decedent was mentally incompetent so that the disposition of the decedent's property could not be changed, and the decedent dies without having regained competency to dispose of the decedent's property or dies within 90 days of the date on which the decedent first regains competency, the fair market value of annuities, life estates, terms for years, remainders, and reversions included in the gross estate of the decedent is their present value determined either under this section or under the corresponding section applicable at the time the decedent became mentally incompetent, at the option of the decedent's executor. For example, see § 20.2031–7A(d).

(4) *Publications and actuarial computations by the Internal Revenue Service.* Many standard actuarial factors not included in paragraph (d)(6) of this section are included in Internal Revenue Service Publication 1457, "Actuarial Values, Alpha Volume," (8–89). Publication 1457 also includes examples that illustrate how to compute many special factors for more unusual situations. A copy of this publication may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. If a special factor is required in the case of an actual decedent, the Service may furnish the factor to the executor upon a request for a ruling. The request for a ruling must be accompanied by a recitation of the facts including a statement of the date of birth for each measuring life, the date of the decedent's death, any other applicable dates, and a copy of the will, trust, or other relevant documents. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (see §§ 601.201 and 601.601(d)(2)(ii)(*b*) of this chapter) and include payment of the required user fee.

(5) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Remainder payable at an individual's death. The decedent, or the decedent's estate, was entitled to receive certain property worth $50,000 upon the death of the decedent's elder sister, to whom the income was bequeathed for life. The decedent died in February 1990. At the time of the decedent's death, the elder sister was 47 years 5 months old. In February 1990, the section 7520 rate was 9.8 percent. Under Table S in paragraph (d)(6) of this section, the remainder factor at 9.8 percent for determining the present value of the remainder interest due at the death of a person aged 47, the number of years nearest the elder sister's actual age at the decedent's death, is .11452. The present value of the remainder interest at the date of the decedent's death is, therefore, $5,676.00 ($50,000×.11452).

Example 2. Income payable for an individual's life. A's parent bequeathed an income interest in property to A for life, with the remainder interest passing to B at A's death. At the time of the parent's death in October 1989, the value of the property was $50,000 and A was 30 years 10 months old. The section 7520 rate in October 1989 was 10.2 percent. Under Table S in paragraph (d)(6) of this section, the remainder factor at 10.2 percent for determining the present value of the remainder interest due at the death of a person aged 31, the number of years closest to A's age at the decedent's death, is .03753. Converting this remainder factor to an income factor, as described in paragraph (d)(2)(iii) of this section, the factor for determining the present value of an income interest for the life of a person aged 31 is .96247. The present value of A's interest at the time of the parent's death is, therefore, $48,123.50 ($50,000×.96247).

Example 3. Annuity payable for an individual's life. A purchased an annuity for the benefit of both A and B. Under the terms of the annuity contract, at A's death, a survivor annuity of $10,000 a year payable in equal semiannual installments made at the end of each interval is payable to B for life. A died in September 1989. For September 1989, the section 7520 rate was 9.6 percent. At A's death, B was 45 years 7 months old. Under Table S in paragraph (d)(6) of this section, the factor at 9.6 percent for determining the present value of the remainder interest at the death of a person age 46 (the number of years nearest B's actual age) is .11013. By converting the factor to an annuity factor, as described in paragraph (d)(2)(iv) of this section, the factor for the present value of an annuity payable until the death of a person age 46 is 9.2695 (1.00000 minus .11013, divided by .096). The adjustment factor from Table K in paragraph (d)(6) of this section at an interest rate of 9.6 percent for semiannual annuity payments made at the end of the period is 1.0235. The present value of the annuity at the date of A's death is, therefore, $94,873.33 ($10,000×9.2695×1.0235).

Example 4. Annuity payable for a term of years. The decedent, or the decedent's estate, was entitled to receive an annuity of $10,000 a year payable in equal quarterly installments at the end of each quarter throughout a term certain. The decedent died in February 1990. For February 1990, the section 7520 rate was 9.8 percent. A quarterly payment had just been made prior to the decedent's death and payments were to continue for 5 more years. Under Table B in paragraph (d)(6) of this section for the interest rate of 9.8 percent, the factor for the present value of a remainder interest due after a term of 5 years is .626597. Converting the factor to an annuity factor, as described in paragraph (d)(2)(iv) of this section, the factor for the present value of an annuity for a term of 5 years is 3.8102. The adjustment factor from Table K in paragraph (d)(6) of this section at an interest rate of 9.8 percent for quarterly annuity payments made at the end of the period is 1.0360. The present value of the annuity is, therefore, $34,471.67 ($10,000×3.8102×1.0360).

(6) *Actuarial Tables.* Except as provided in § 20.7520–3(*b*) (pertaining to certain limitations on the use of prescribed tables), the following tables must be used in the application of the provisions of this section when the section 7520 interest rate component is between 4.2 and 14 percent.

TABLE B.—TERM CERTAIN REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1989

Years	Interest rate									
	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
1	.959693	.957854	.956023	.954198	.952381	.950570	.948767	.946970	.945180	.943396
2	.921010	.917485	.913980	.910495	.907029	.903584	.900158	.896752	.893364	.889996
3	.883687	.878817	.873786	.868793	.863838	.858920	.854040	.849197	.844390	.839619
4	.848260	.841779	.835359	.829001	.822702	.816464	.810285	.804163	.798100	.792094
5	.814069	.806302	.798623	.791031	.783526	.776106	.768771	761518	.754348	.747258
6	.781257	.772320	.763501	.754801	.746215	.737744	.729384	.721135	.712994	.704961
7	.749766	.739770	.729925	.720230	.710681	.701277	.692015	.682893	.673908	.665057
8	.719545	.708592	.697825	.687242	.676839	.666613	.656561	.646679	.636964	.627412
9	.690543	.678728	.667137	.655765	.644609	.633663	.622923	.612385	.602045	.591898
10	.662709	.650122	.637798	.625730	.613913	.602341	.591009	.579910	.569041	.558395
11	.635997	.622722	.609750	.597071	.584679	.572568	.560729	.549157	.537846	.526788
12	.610362	.596477	.582935	.569724	.556837	.544266	.532001	.520035	.508361	.496969
13	.585760	.571339	.557299	.543630	.530321	.517363	.504745	.492458	.480492	.468839
14	.562150	.547259	.532790	.518731	.505068	.491790	.478885	.466343	454151	.442301
15	.539491	.524195	.509360	.494972	.481017	.467481	.454350	441612	.429255	.417265
16	.517746	.502102	.486960	.472302	.458112	.444374	.431072	.418194	.405723	.393646
17	.496877	.480941	.465545	.450670	.436297	.422408	.408987	.396017	.383481	.371364
18	.476849	.460671	.445071	.430028	.415521	.401529	.388033	.375016	.362458	.350344
19	.457629	.441256	.425498	.410332	.395734	.381681	.368153	.355129	.342588	.330513
20	.439183	.422659	.406786	.391538	.376889	.362815	.349291	.336296	.323807	.311805
21	.421481	.404846	.388897	.373605	.358942	.344881	.331396	.318462	.306056	.294155
22	.404492	.387783	.371794	.356494	.341850	.327834	.314417	.301574	.289278	.277505
23	.388188	.371440	.355444	.340166	.325571	.311529	.298309	.285581	.273420	.261797
24	.372542	.355785	.339813	.324586	.310068	.296225	.283025	270437	.258431	.246379
25	.357526	.340791	.324869	.309719	.295303	.281583	.268525	.256096	.244263	.232999
26	.343115	.326428	.310582	.295533	.281241	.267664	.254768	.242515	.230873	.219810
27	.329285	.312670	.296923	.281998	.267848	.254434	.241715	.229654	.218216	.207368
28	.316012	.299493	.283866	.269082	.255094	.241857	.229331	.217475	.206253	195630
29	.303275	.286870	.271382	.256757	.242946	.229902	.217582	.205943	.194947	.184557
30	.291051	.274780	.259447	.244997	.231377	.218538	.206434	.195021	.184260	.174110
31	.279319	.263199	.248038	.233776	.220359	.207736	.195858	.184679	.174158	164255
32	.268061	.252106	.237130	.223069	.209866	.197468	.185823	.174886	.164611	.154957
33	.257256	.241481	.226702	.212852	.199873	.187707	.176303	.165512	.155587	.146186
34	.246887	.231304	.216732	.203103	.190355	178429	.167270	.156829	.147058	.137912
35	.236935	.221556	.207201	.193801	.181290	.169609	.158701	.148512	.138996	130105
36	.227385	.212218	.198089	.184924	.172657	.161225	.150570	.140637	.131376	122741
37	.218220	.203274	.189377	.176454	.164436	.153256	.142856	.133179	.124174	115793
38	.209424	194707	.181049	.168373	.156605	.145681	.135537	.126115	.117367	109239
39	.200983	.186501	.173087	.160661	.149148	.138480	.120593	.119428	.110933	103056
40	.192882	.178641	.165475	.153302	.142046	.131635	.122004	113095	.104851	.097222
41	.185107	.171112	.158198	.146281	.135282	.125128	.115754	107098	.099103	.091719
42	177646	.163900	.151241	.139581	.128840	.118943	.109823	101418	.093670	.086527
43	.170486	.156992	.144590	.133188	.122704	.113064	104197	.096040	.088535	.081630
44	.163614	.150376	.138231	127088	.116861	.107475	098853	090947	.083682	.077009
45	.157019	.144038	.132152	.121267	.111297	102163	093795	.086124	.079094	.072650
46	.150690	137968	.126340	.115713	.105997	097113	.088988	.081557	.074758	.068538
47	.144616	.132153	.120784	.110413	100949	.092312	.084429	.077232	070660	.064658
48	138787	126583	.115473	.105356	.096142	.087749	080103	073136	0o6786	.060998
49	133192	121248	110395	.100530	091564	083412	076999	069258	.063125	057546
50	.127824	116138	105540	095926	.087204	079289	072106	065585	.059665	054288
51	.122672	111243	100898	.091532	.083051	.075370	.068411	062107	.056394	051213
52	.117728	106555	.096461	.087340	.079096	.071644	.064907	058813	053302	048315
53	112982	102064	092219	083340	075330	068103	061581	055695	050390	045
54	108423	097763	088164	0.9523	.071745	064737	058429	052741	047618	.043001
55	.104058	093642	084286	076088	.068326	061538	055450	049944	.045009	.040567
56	099884	089696	080	072805	065073	.058495	052593	047	042541	038271
57	095893	085919	0	069	061971	055604	049908	045	040213	
58	092078	082305	0	066	059020		047342	042		
59	.088268	.078806	0				.044916			
60	.084710									

TABLE B.—TERM CERTAIN REMAINDER FACTORS APPLICABLE AFTER APR 1989

Years	Interest rate									
	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	
1	.941620		.939096	.936628	934579	932306	930099	927938	925834	
2	.886647	.882317	.878006	.873713	.873439	.870183	.866945	.863725	.860523	
3	.835525	.830185	.825521	.820892	.816298	.811738	.807211	.802718	.798256	

TABLE B.—TERM CERTAIN REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1989—Continued

Years	Interest rate									
	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
4	796144	780249	774410	768626	762895	757218	751593	746021	740500	735030
5	740248	733317	726464	719687	712986	706360	699808	693328	686920	680583
6	697032	689208	681486	673864	666342	658913	651590	644357	637217	630170
7	656309	647752	639292	630959	622750	614662	606694	598845	591111	583490
8	618322	608720	599711	590786	582009	573379	564892	556547	548340	540269
9	581942	572170	562581	553170	543934	534863	525971	517237	508664	500249
10	547368	537754	527750	517953	508349	498944	489731	480704	471859	463193
11	515977	505408	495075	484972	475093	465433	455987	446750	437717	428883
12	485564	475007	464473	454093	444012	434173	424569	415196	406046	397114
13	457450	446436	435689	425181	414964	406012	396316	385870	376666	367698
14	430781	419382	408595	398109	387817	377810	368073	358615	349412	340461
15	405682	394344	383191	372262	362446	352734	342717	333335	324130	315242
16	381951	370524	359664	349023	338735	328763	319103	309745	300677	291890
17	359463	348631	337386	326805	316574	306682	297117	287867	278921	270269
18	338116	327979	318498	308997	299864	290894	276545	267534	258739	250249
19	318265	307667	298902	290514	276503	266870	257584	248638	240018	231712
20	300268	289179	278530	268272	258419	248946	239836	231076	222651	214548
21	282713	271765	261276	251191	241513	232225	223311	214755	206541	198654
22	266292	255437	245099	235197	225713	216628	207925	199586	191595	183941
23	250689	240073	229924	220222	210947	202078	193598	185489	177733	170315
24	236064	225682	215689	206201	197147	188506	180259	172387	164873	157699
25	222273	212060	202304	193072	184249	175845	167869	160211	152943	146018
26	209297	199305	189807	180779	172195	164005	156275	148895	141877	135202
27	197073	187317	178056	169269	160930	153017	145507	138379	131611	125187
28	185572	176049	167031	158491	150402	142740	135482	128605	122088	115914
29	174729	165460	156690	148400	140563	133153	126147	119521	113255	107328
30	164587	155507	146989	138951	131367	124210	117455	111079	105060	099377
31	154982	146154	137888	130104	122773	115968	109362	103233	097458	092016
32	145867	137362	129351	121820	114741	108085	101827	095942	090406	085200
33	137370	129100	121342	114064	107235	100825	094811	089165	083865	078889
34	129350	121335	113830	106802	100219	094054	088278	082867	077797	073045
35	121798	114036	106782	100001	093663	087737	082196	077014	072168	067635
36	114688	107177	100171	093634	087535	081844	076532	071574	066946	062625
37	107992	100730	093969	087673	081809	076347	071259	066519	062102	057986
38	101688	094671	088151	082090	076457	071219	066349	061821	057609	053690
39	095751	088977	082693	076864	071455	066436	061778	057454	053440	049713
40	090161	083625	077573	071970	066780	061974	057521	053396	049573	046031
41	084897	078595	072770	067387	062412	057811	053558	049625	045987	042621
42	079941	073867	068265	063097	058329	053929	049868	046120	042659	039464
43	075274	069424	064038	059079	054513	050307	046432	042862	039572	036541
44	070880	065248	060074	055318	050946	046928	043233	039835	036709	033834
45	066742	061323	056354	051796	047613	043776	040254	037021	034053	031328
46	062845	057635	052865	048498	044499	040836	037480	034406	031589	029007
47	059176	054168	049592	045410	041587	038093	034898	031976	029303	026859
48	055722	050910	046522	042519	038867	035535	032493	029717	027183	024869
49	052469	047848	043641	039812	036324	033148	030255	027618	025216	023027
50	049405	044970	040939	037277	033948	030922	028170	025668	023392	021321
51	046531	042265	038405	034903	031727	028845	026229	023855	021699	019742
52	043816	039722	036027	032681	029651	026907	024422	022170	020129	018280
53	041248	037333	033796	030660	027711	025100	022739	020604	018673	016925
54	038840	035087	031704	028652	025899	023414	021172	019149	017322	015672
55	036572	032977	029741	026828	024204	021842	019714	017796	016068	014511
56	034437	030993	027903	025119	022621	020375	018355	016539	014905	013436
57	032427	029129	026172	023520	021131	019006	017091	015371	013827	012441
58	030534	027377	024562	022023	019758	017730	015913	014285	012827	011519
59	028751	025730	023032	020620	018465	016539	014817	013276	011899	010666
60	027073	024183	021606	019307	017257	015428	013796	012339	011038	009876

TABLE B.—TERM CERTAIN REMAINDER FACTORS

(Applicable after April 30, 1989)

Years	Interest rate									
	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
4	924214	922509	920810	919118	917431	915751	914077	912409	910747	909091
5	854172	851023	847892	844777	841680	838600	835536	832490	829460	826446
6	789438	785077	780747	776450	772183	767948	763744	759571	755428	751315
7	729610	724241	718920	713649	708425	703250	698121	693039	688003	683013

TABLE B.—TERM CERTAIN REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Years	Interest rate									
	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
5	.674316	.668119	.661989	.655927	.649931	.644001	.638136	.632335	.626597	.620921
6	.623213	.616346	.609566	.602874	.596267	.589745	.583305	.576948	.570671	.564474
7	.575982	.568585	.561295	.554112	.547034	.540059	.533186	.526412	.519737	.513158
8	.532331	.524524	.516846	.509294	.501866	.494560	.487373	.480303	.473349	.466507
9	.491988	.483879	.475917	.468101	.460428	.452894	.445496	.438233	.431101	.424098
10	.454703	.446383	.438230	.430240	.422411	.414738	.407218	.399848	.392624	.385543
11	.420243	.411792	.403526	.395441	.387533	.379797	.372228	.364824	.357581	.350494
12	.388394	.379882	.371571	.363457	.355535	.347799	.340245	.332869	.325666	.318631
13	.358960	.350445	.342147	.334060	.326179	.318497	.311010	.303713	.296599	.289664
14	.331756	.323288	.315052	.307040	.299246	.291664	.284287	.277110	.270127	.263331
15	.306613	.298236	.290103	.282206	.274538	.267092	.259860	.252838	.246017	.239392
16	.283376	.275126	.267130	.259381	.251870	.244589	.237532	.230691	.224059	.217629
17	.261901	.253806	.245976	.238401	.231073	.223983	.217123	.210485	.204061	.197845
18	.242052	.234139	.226497	.219119	.211994	.205113	.198467	.192048	.185848	.179859
19	.223708	.215995	.208561	.201396	.194490	.187832	.181414	.175226	.169260	.163508
20	.206754	.199257	.192045	.185107	.178431	.172007	.165826	.159878	.154153	.148644
21	.191085	.183817	.176837	.170135	.163698	.157516	.151578	.145874	.140395	.135131
22	.176604	.169573	.162834	.156374	.150182	.144245	.138554	.133097	.127864	.122846
23	.163220	.156432	.149939	.143726	.137781	.132093	.126649	.121439	.116452	.111678
24	.150850	.144310	.138065	.132101	.126405	.120964	.115767	.110802	.106058	.101526
25	.139418	.133128	.127132	.121416	.115968	.110773	.105820	.101097	.096592	.092296
26	.128852	.122811	.117064	.111596	.106393	.101441	.096727	.092241	.087971	.083905
27	.119087	.113295	.107794	.102570	.097608	.092894	.088416	.084162	.080119	.076278
28	.110062	.104515	.099258	.094274	.089548	.085068	.080819	.076790	.072968	.069343
29	.101721	.096416	.091398	.086649	.082155	.077901	.073875	.070064	.066456	.063039
30	.094012	.088945	.084160	.079640	.075371	.071338	.067527	.063927	.060524	.057309
31	.086887	.082053	.077495	.073199	.069148	.065328	.061725	.058327	.055122	.052099
32	.080302	.075694	.071358	.067278	.063438	.059824	.056422	.053218	.050202	.047362
33	.074216	.069829	.065708	.061837	.058200	.054784	.051574	.048557	.045722	.043057
34	.068592	.064418	.060504	.056835	.053395	.050168	.047142	.044304	.041641	.039143
35	.063394	.059426	.055713	.052238	.048986	.045942	.043092	.040423	.037924	.035584
36	.058589	.054821	.051301	.048013	.044941	.042071	.039389	.036882	.034539	.032349
37	.054149	.050573	.047239	.044130	.041231	.038527	.036005	.033652	.031457	.029408
38	.050045	.046654	.043498	.040560	.037826	.035281	.032911	.030704	.028649	.026735
39	.046253	.043039	.040053	.037280	.034703	.032309	.030083	.028015	.026092	.024304
40	.042747	.039703	.036881	.034264	.031838	.029587	.027498	.025561	.023763	.022095
41	.039508	.036627	.033961	.031493	.029209	.027094	.025136	.023322	.021642	.020086
42	.036514	.033789	.031271	.028946	.026797	.024811	.022976	.021279	.019711	.018260
43	.033746	.031170	.028795	.026605	.024584	.022721	.021002	.019415	.017951	.016600
44	.031189	.028755	.026515	.024453	.022555	.020807	.019197	.017715	.016349	.015091
45	.028825	.026527	.024415	.022475	.020692	.019054	.017548	.016163	.014890	.013719
46	.026641	.024471	.022482	.020657	.018984	.017449	.016040	.014747	.013561	.012472
47	.024622	.022575	.020701	.018986	.017416	.015978	.014662	.013456	.012351	.011338
48	.022756	.020825	.019062	.017451	.015978	.014632	.013402	.012277	.011248	.010307
49	.021031	.019212	.017552	.016039	.014659	.013400	.012250	.011202	.010244	.009370
50	.019437	.017723	.016163	.014742	.013449	.012271	.011198	.010221	.009330	.008519
51	.017964	.016350	.014883	.013550	.012338	.011237	.010236	.009325	.008497	.007744
52	.016603	.015083	.013704	.012454	.011319	.010290	.009356	.008508	.007739	.007040
53	.015345	.013914	.012619	.011446	.010385	.009423	.008552	.007763	.007048	.006400
54	.014182	.012836	.011620	.010521	.009527	.008629	.007817	.007083	.006419	.005818
55	.013107	.011841	.010699	.009670	.008741	.007902	.007146	.006463	.005846	.005289
56	.012114	.010923	.009852	.008888	.008019	.007237	.006532	.005897	.005324	.004809
57	.011196	.010077	.009072	.008169	.007357	.006627	.005971	.005380	.004849	.004371
58	.010347	.009296	.008354	.007508	.006749	.006069	.005458	.004909	.004416	.003974
59	.009563	.008576	.007692	.006901	.006192	.005557	.004989	.004479	.004022	.003613
60	.008838	.007911	.007083	.006343	.005681	.005089	.004560	.004087	.003663	.003284

TABLE B.—TERM CERTAIN REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1989

Years	Interest rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
1	.907441	.905797	.904159	.902527	.900901	.899281	.897666	.896057	.894454	.892857
2	.823449	.820468	.817504	.814555	.811622	.808706	.805804	.802919	.800049	.797194
3	.747232	.743178	.739153	.735158	.731191	.727253	.723343	.719461	.715607	.711780
4	.678069	.673168	.668312	.663500	.658731	.654005	.649321	.644679	.640078	.635518
5	.615307	.609754	.604261	.598827	.593451	.588134	.582873	.577669	.572520	.567427

TABLE B.—TERM CERTAIN REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1989—Continued

Years	Interest rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
6	.558355	.552313	.546348	.540457	.534641	.528897	.523225	.517625	.512093	.506631
7	.506674	.500284	.493985	.487777	.481658	.475627	.469682	.463821	.458044	.452349
8	.459777	.453156	.446641	.440232	.433926	.427722	.421617	.415610	.409700	.403883
9	.417221	.410467	.403835	.397322	.390925	.384642	.378472	.372411	.366458	.360610
10	.378603	.371800	.365131	.358593	.352184	.345901	.339741	.333701	.327780	.321973
11	.343560	.336775	.330137	.323640	.317283	.311062	.304974	.299016	.293184	.287476
12	.311760	.305050	.298496	.292094	.285841	.279732	.273765	.267935	.262240	.256675
13	.282904	.276313	.269888	.263623	.257514	.251558	.245749	.240085	.234561	.229174
14	.256719	.250284	.244022	.237927	.231995	.226221	.220601	.215130	.209804	.204620
15	.232957	.226706	.220634	.214735	.209004	.203436	.198026	.192769	.187661	.182696
16	.211395	.205350	.199489	.193804	.188292	.182946	.177761	.172732	.167854	.163122
17	.191828	.186005	.180369	.174914	.169633	.164520	.159570	.154778	.150138	.145644
18	.174073	.168483	.163083	.157864	.152822	.147950	.143241	.138690	.134291	.130040
19	.157961	.152612	.147453	.142477	.137678	.133048	.128582	.124274	.120117	.116107
20	.143340	.138235	.133321	.128589	.124034	.119648	.115424	.111357	.107439	.103667
21	.130073	.125213	.120543	.116055	.111742	.107597	.103612	.099782	.096100	.092560
22	.118033	.113418	.108990	.104743	.100669	.096760	.093009	.089410	.085957	.082643
23	.107108	.102733	.098544	.094533	.090693	.087014	.083491	.080117	.076884	.073788
24	.097195	.093056	.089100	.085319	.081705	.078250	.074947	.071789	.068770	.065882
25	.088198	.084289	.080560	.077003	.073608	.070369	.067278	.064327	.061511	.058823
26	.080035	.076349	.072839	.069497	.066314	.063281	.060393	.057641	.055019	.052521
27	.072627	.069157	.065858	.062723	.059742	.056908	.054213	.051650	.049212	.046894
28	.065905	.062642	.059547	.056609	.053822	.051176	.048665	.046281	.044018	.041869
29	.059804	.056741	.053840	.051091	.048488	.046022	.043685	.041470	.039372	.037383
30	.054269	.051396	.048680	.046111	.043683	.041386	.039214	.037160	.035216	.033378
31	.049246	.046554	.044014	.041617	.039354	.037218	.035201	.033297	.031500	.029802
32	.044688	.042169	.039796	.037560	.035454	.033469	.031599	.029836	.028175	.026609
33	.040552	.038196	.035982	.033899	.031940	.030098	.028365	.026735	.025201	.023758
34	.036798	.034598	.032533	.030595	.028775	.027067	.025463	.023956	.022541	.021212
35	.033392	.031339	.029415	.027613	.025924	.024341	.022857	.021466	.020162	.018940
36	.030301	.028387	.026596	.024921	.023355	.021889	.020518	.019235	.018034	.016910
37	.027497	.025712	.024047	.022492	.021040	.019684	.018418	.017236	.016131	.015098
38	.024952	.023290	.021742	.020300	.018955	.017702	.016533	.015444	.014428	.013481
39	.022642	.021096	.019658	.018321	.017077	.015919	.014841	.013839	.012905	.012036
40	.020546	.019109	.017774	.016535	.015384	.014316	.013323	.012400	.011543	.010747
41	.018645	.017309	.016071	.014923	.013860	.012874	.011959	.011111	.010325	.009595
42	.016919	.015678	.014531	.013469	.012486	.011577	.010735	.009956	.009235	.008567
43	.015353	.014201	.013138	.012156	.011249	.010411	.009637	.008922	.008260	.007649
44	.013932	.012864	.011879	.010971	.010134	.009362	.008651	.007994	.007389	.006830
45	.012642	.011652	.010740	.009902	.009130	.008419	.007765	.007163	.006609	.006098
46	.011472	.010554	.009711	.008937	.008225	.007571	.006971	.006419	.005911	.005445
47	.010410	.009560	.008780	.008065	.007410	.006809	.006257	.005752	.005287	.004861
48	.009447	.008659	.007939	.007279	.006676	.006123	.005617	.005154	.004729	.004340
49	.008572	.007844	.007178	.006570	.006014	.005506	.005042	.004618	.004230	.003875
50	.007779	.007105	.006490	.005929	.005418	.004952	.004526	.004138	.003784	.003460
51	.007059	.006435	.005865	.005351	.004881	.004453	.004063	.003708	.003384	.003089
52	.006406	.005829	.005306	.004830	.004397	.004005	.003647	.003322	.003027	.002758
53	.005813	.005280	.004797	.004359	.003962	.003601	.003274	.002977	.002708	.002463
54	.005275	.004783	.004337	.003934	.003569	.003238	.002939	.002668	.002422	.002199
55	.004786	.004332	.003922	.003551	.003215	.002912	.002638	.002390	.002166	.001963
56	.004343	.003924	.003546	.003205	.002897	.002619	.002368	.002142	.001938	.001753
57	.003941	.003554	.003206	.002892	.002610	.002355	.002126	.001919	.001733	.001565
58	.003577	.003220	.002899	.002610	.002351	.002118	.001908	.001720	.001550	.001398
59	.003246	.002916	.002621	.002356	.002118	.001905	.001713	.001541	.001387	.001248
60	.002945	.002642	.002370	.002126	.001908	.001713	.001538	.001381	.001240	.001114

TABLE B.—TERM CERTAIN REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1989

Years	Interest rate									
	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
1	.891266	.889680	.888099	.886525	.884956	.883392	.881834	.880282	.878735	.877193
2	.794354	.791530	.788721	.785926	.783147	.780382	.777632	.774896	.772175	.769468
3	.707981	.704208	.700462	.696743	.693050	.689383	.685742	.682127	.678536	.674972
4	.630999	.626520	.622080	.617680	.613319	.608996	.604711	.600464	.596254	.592080
5	.562388	.557402	.552469	.547589	.542760	.537982	.533255	.528577	.523949	.519369
6	.501237	.495909	.490648	.485451	.480319	.475249	.470242	.465297	.460412	.455587
7	.446735	.441200	.435744	.430364	.425061	.419831	.414676	.409592	.404580	.399637
8	.398160	.392527	.386984	.381529	.376160	.370876	.365675	.360557	.355518	.350559

TABLE B.—TERM CERTAIN REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1989—Continued

Years	Interest rate									
	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
9	.354866	.349223	.343680	.338235	.332885	.327629	.322465	.317391	.312406	.307508
10	.316280	.310697	.305222	.299853	.294588	.289425	.284361	.279394	.274522	.269744
11	.281889	.276421	.271068	.265827	.260698	.255676	.250759	.245945	.241232	.236617
12	.251238	.245926	.240735	.235663	.230706	.225862	.221128	.216501	.211979	.207559
13	.223920	.218795	.213797	.208921	.204165	.199525	.194998	.190582	.186273	.182069
14	.199572	.194658	.189873	.185213	.180677	.176258	.171956	.167766	.163685	.159710
15	.177872	.173183	.168626	.164196	.159891	.155705	.151637	.147681	.143835	.140096
16	.158531	.154077	.149757	.145564	.141496	.137549	.133718	.130001	.126393	.122892
17	.141293	.137080	.132999	.129046	.125218	.121510	.117917	.114438	.111066	.107800
18	.125930	.121957	.118116	.114403	.110812	.107341	.103984	.100737	.097598	.094561
19	.112237	.108503	.104899	.101421	.098064	.094824	.091696	.088677	.085762	.082948
20	.100033	.096533	.093161	.089912	.086782	.083767	.080861	.078061	.075362	.072762
21	.089156	.085883	.082736	.079709	.076798	.073999	.071306	.068716	.066224	.063826
22	.079462	.076408	.073478	.070664	.067963	.065370	.062880	.060489	.058193	.055988
23	.070821	.067979	.065255	.062646	.060144	.057747	.055450	.053247	.051136	.049112
24	.063121	.060480	.057953	.055537	.053225	.051014	.048898	.046873	.044935	.043081
25	.056257	.053807	.051468	.049235	.047102	.045065	.043119	.041261	.039486	.037790
26	.050140	.047871	.045709	.043648	.041683	.039810	.038024	.036321	.034698	.033149
27	.044688	.042590	.040594	.038695	.036888	.035168	.033531	.031973	.030490	.029078
28	.039829	.037892	.036052	.034304	.032644	.031067	.029569	.028145	.026793	.025507
29	.035498	.033711	.032017	.030411	.028889	.027444	.026075	.024776	.023544	.022375
30	.031638	.029992	.028435	.026960	.025565	.024244	.022994	.021810	.020689	.019627
31	.028198	.026684	.025253	.023901	.022624	.021417	.020277	.019199	.018180	.017217
32	.025132	.023740	.022427	.021189	.020021	.018920	.017881	.016900	.015975	.015102
33	.022399	.021121	.019917	.018785	.017718	.016714	.015768	.014877	.014038	.013248
34	.019964	.018791	.017689	.016653	.015680	.014765	.013905	.013096	.012336	.011621
35	.017793	.016718	.015709	.014763	.013876	.013043	.012261	.011528	.010840	.010194
36	.015858	.014873	.013951	.013088	.012279	.011522	.010813	.010148	.009525	.008942
37	.014134	.013233	.012390	.011603	.010867	.010178	.009535	.008933	.008370	.007844
38	.012597	.011773	.011004	.010286	.009617	.008992	.008408	.007864	.007355	.006880
39	.011227	.010474	.009772	.009119	.008510	.007943	.007415	.006922	.006463	.006035
40	.010007	.009319	.008679	.008084	.007531	.007017	.006538	.006093	.005679	.005294
41	.008919	.008291	.007708	.007167	.006665	.006199	.005766	.005364	.004991	.004644
42	.007949	.007376	.006845	.006354	.005898	.005476	.005085	.004722	.004386	.004074
43	.007084	.006562	.006079	.005633	.005219	.004837	.004484	.004157	.003854	.003573
44	.006314	.005838	.005399	.004993	.004619	.004273	.003954	.003659	.003386	.003135
45	.005628	.005194	.004795	.004427	.004088	.003775	.003487	.003221	.002976	.002750
46	.005016	.004621	.004258	.003924	.003617	.003335	.003075	.002835	.002615	.002412
47	.004470	.004111	.003782	.003479	.003201	.002946	.002711	.002496	.002298	.002116
48	.003984	.003658	.003359	.003084	.002833	.002602	.002391	.002197	.002019	.001856
49	.003551	.003254	.002983	.002734	.002507	.002299	.002108	.001934	.001774	.001628
50	.003165	.002895	.002649	.002424	.002219	.002031	.001859	.001702	.001559	.001428
51	.002821	.002576	.002353	.002149	.001963	.001794	.001640	.001499	.001370	.001253
52	.002514	.002292	.002089	.001905	.001737	.001585	.001446	.001319	.001204	.001099
53	.002241	.002039	.001856	.001689	.001538	.001400	.001275	.001161	.001058	.000964
54	.001997	.001814	.001648	.001497	.001361	.001237	.001124	.001022	.000930	.000846
55	.001780	.001614	.001463	.001327	.001204	.001093	.000991	.000900	.000817	.000742
56	.001586	.001436	.001300	.001177	.001066	.000965	.000874	.000792	.000718	.000651
57	.001414	.001277	.001154	.001043	.000943	.000853	.000771	.000697	.000631	.000571
58	.001260	.001136	.001025	.000925	.000835	.000753	.000680	.000614	.000554	.000501
59	.001123	.001011	.000910	.000820	.000739	.000665	.000600	.000540	.000487	.000439
60	.001001	.000900	.000809	.000727	.000654	.000588	.000529	.000476	.000428	.000385

TABLE J.—ADJUSTMENT FACTORS FOR TERM CERTAIN ANNUITIES PAYABLE AT THE BEGINNING OF EACH INTERVAL APPLICABLE AFTER APRIL 30, 1989

[Frequency of payments]

Interest rate	Annually	Semi annually	Quarterly	Monthly	Weekly
4.2	1.0420	1.0314	1.0261	1.0226	1.0213
4.4	1.0440	1.0329	1.0274	1.0237	1.0223
4.6	1.0460	1.0344	1.0286	1.0247	1.0233
4.8	1.0480	1.0359	1.0298	1.0258	1.0243
5.0	1.0500	1.0373	1.0311	1.0269	1.0253
5.2	1.0520	1.0388	1.0323	1.0279	1.0263
5.4	1.0540	1.0403	1.0335	1.0290	1.0273
5.6	1.0560	1.0418	1.0348	1.0301	1.0283
5.8	1.0580	1.0433	1.0360	1.0311	1.0293

TABLE J.—ADJUSTMENT FACTORS FOR TERM CERTAIN ANNUITIES PAYABLE AT THE BEGINNING OF EACH INTERVAL APPLICABLE AFTER APRIL 30, 1989—Continued

[Frequency of payments]

Interest rate	Annually	Semi annually	Quarterly	Monthly	Weekly
6.0	1.0600	1.0448	1.0372	1.0322	1.0303
6.2	1.0620	1.0463	1.0385	1.0333	1.0313
6.4	1.0640	1.0478	1.0397	1.0343	1.0323
6.6	1.0660	1.0492	1.0409	1.0354	1.0333
6.8	1.0680	1.0507	1.0422	1.0365	1.0343
7.0	1.0700	1.0522	1.0434	1.0375	1.0353
7.2	1.0720	1.0537	1.0446	1.0386	1.0363
7.4	1.0740	1.0552	1.0458	1.0396	1.0373
7.6	1.0760	1.0567	1.0471	1.0407	1.0383
7.8	1.0780	1.0581	1.0483	1.0418	1.0393
8.0	1.0800	1.0596	1.0495	1.0428	1.0403
8.2	1.0820	1.0611	1.0507	1.0439	1.0413
8.4	1.0840	1.0626	1.0520	1.0449	1.0422
8.6	1.0860	1.0641	1.0532	1.0460	1.0432
8.8	1.0880	1.0655	1.0544	1.0471	1.0442
9.0	1.0900	1.0670	1.0556	1.0481	1.0452
9.2	1.0920	1.0685	1.0569	1.0492	1.0462
9.4	1.0940	1.0700	1.0581	1.0502	1.0472
9.6	1.0960	1.0715	1.0593	1.0513	1.0482
9.8	1.0980	1.0729	1.0605	1.0523	1.0492
10.0	1.1000	1.0744	1.0618	1.0534	1.0502
10.2	1.1020	1.0759	1.0630	1.0544	1.0512
10.4	1.1040	1.0774	1.0642	1.0555	1.0521
10.6	1.1060	1.0788	1.0654	1.0565	1.0531
10.8	1.1080	1.0803	1.0666	1.0576	1.0541
11.0	1.1100	1.0818	1.0679	1.0586	1.0551
11.2	1.1120	1.0833	1.0691	1.0597	1.0561
11.4	1.1140	1.0847	1.0703	1.0607	1.0571
11.6	1.1160	1.0862	1.0715	1.0618	1.0581
11.8	1.1180	1.0877	1.0727	1.0628	1.0590
12.0	1.1200	1.0892	1.0739	1.0639	1.0600
12.2	1.1220	1.0906	1.0752	1.0649	1.0610
12.4	1.1240	1.0921	1.0764	1.0660	1.0620
12.6	1.1260	1.0936	1.0776	1.0670	1.0630
12.8	1.1280	1.0950	1.0788	1.0681	1.0639
13.0	1.1300	1.0965	1.0800	1.0691	1.0649
13.2	1.1320	1.0980	1.0812	1.0701	1.0659
13.4	1.1340	1.0994	1.0824	1.0712	1.0669
13.6	1.1360	1.1009	1.0836	1.0722	1.0679
13.8	1.1380	1.1024	1.0849	1.0733	1.0688
14.0	1.1400	1.1039	1.0861	1.0743	1.0698

TABLE K.—ADJUSTMENT FACTORS FOR ANNUITIES PAYABLE AT THE END OF EACH INTERVAL APPLICABLE AFTER APRIL 30, 1989

[Frequency of Payments]

Interest Rate	Annually	Semi annually	Quarterly	Monthly	Weekly
4.2	1.0000	1.0104	1.0156	1.0191	1.0205
4.4	1.0000	1.0109	1.0164	1.0200	1.0214
4.6	1.0000	1.0114	1.0171	1.0209	1.0224
4.8	1.0000	1.0119	1.0178	1.0218	1.0234
5.0	1.0000	1.0123	1.0186	1.0227	1.0243
5.2	1.0000	1.0128	1.0193	1.0236	1.0253
5.4	1.0000	1.0133	1.0200	1.0245	1.0262
5.6	1.0000	1.0138	1.0208	1.0254	1.0272
5.8	1.0000	1.0143	1.0215	1.0263	1.0282
6.0	1.0000	1.0148	1.0222	1.0272	1.0291
6.2	1.0000	1.0153	1.0230	1.0281	1.0301
6.4	1.0000	1.0158	1.0237	1.0290	1.0311
6.6	1.0000	1.0162	1.0244	1.0299	1.0320
6.8	1.0000	1.0167	1.0252	1.0308	1.0330
7.0	1.0000	1.0172	1.0259	1.0317	1.0339
7.2	1.0000	1.0177	1.0266	1.0326	1.0349
7.4	1.0000	1.0182	1.0273	1.0335	1.0358
7.6	1.0000	1.0187	1.0281	1.0344	1.0368

TABLE K.—ADJUSTMENT FACTORS FOR ANNUITIES PAYABLE AT THE END OF EACH INTERVAL APPLICABLE AFTER APRIL 30, 1989—Continued

[Frequency of Payments]

Interest Rate	Annually	Semi annually	Quarterly	Monthly	Weekly
7.8	1.0000	1.0191	1.0288	1.0353	1.0378
8.0	1.0000	1.0196	1.0295	1.0362	1.0387
8.2	1.0000	1.0201	1.0302	1.0370	1.0397
8.4	1.0000	1.0206	1.0310	1.0379	1.0406
8.6	1.0000	1.0211	1.0317	1.0388	1.0416
8.8	1.0000	1.0215	1.0324	1.0397	1.0425
9.0	1.0000	1.0220	1.0331	1.0406	1.0435
9.2	1.0000	1.0225	1.0339	1.0415	1.0444
9.4	1.0000	1.0230	1.0346	1.0424	1.0454
9.6	1.0000	1.0235	1.0353	1.0433	1.0463
9.8	1.0000	1.0239	1.0360	1.0442	1.0473
10.0	1.0000	1.0244	1.0368	1.0450	1.0482
10.2	1.0000	1.0249	1.0375	1.0459	1.0492
10.4	1.0000	1.0254	1.0382	1.0468	1.0501
10.6	1.0000	1.0258	1.0389	1.0477	1.0511
10.8	1.0000	1.0263	1.0396	1.0486	1.0520
11.0	1.0000	1.0268	1.0404	1.0495	1.0530
11.2	1.0000	1.0273	1.0411	1.0503	1.0539
11.4	1.0000	1.0277	1.0418	1.0512	1.0549
11.6	1.0000	1.0282	1.0425	1.0521	1.0558
11.8	1.0000	1.0287	1.0432	1.0530	1.0568
12.0	1.0000	1.0292	1.0439	1.0539	1.0577
12.2	1.0000	1.0296	1.0447	1.0548	1.0587
12.4	1.0000	1.0301	1.0454	1.0556	1.0596
12.6	1.0000	1.0306	1.0461	1.0565	1.0605
12.8	1.0000	1.0310	1.0468	1.0574	1.0615
13.0	1.0000	1.0315	1.0475	1.0583	1.0624
13.2	1.0000	1.0320	1.0482	1.0591	1.0634
13.4	1.0000	1.0324	1.0489	1.0600	1.0643
13.6	1.0000	1.0329	1.0496	1.0609	1.0652
13.8	1.0000	1.0334	1.0504	1.0618	1.0662
14.0	1.0000	1.0339	1.0511	1.0626	1.0671

TABLE S.—BASED ON LIFE TABLE 80CNSMT Single Life Remainder Factors

[Applicable after April 30, 1989]

Age	Interest rate									
	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
0	.07389	.06749	.06188	.05695	.05261	.04879	.04541	.04243	.03978	.03744
1	.06494	.05832	.05250	.04738	.04287	.03889	.03537	.03226	.02950	.02705
2	.06678	.05999	.05401	.04874	.04410	.03999	.03636	.03314	.03028	.02773
3	.06897	.06200	.05587	.05045	.04567	.04143	.03768	.03435	.03139	.02875
4	.07139	.06425	.05796	.05239	.04746	.04310	.03922	.03578	.03271	.02998
5	.07401	.06669	.06023	.05451	.04944	.04494	.04094	.03738	.03421	.03137
6	.07677	.06928	.06265	.05677	.05156	.04692	.04279	.03911	.03583	.03289
7	.07968	.07201	.06521	.05918	.05381	.04903	.04477	.04097	.03757	.03453
8	.08274	.07489	.06792	.06172	.05621	.05129	.04689	.04297	.03945	.03630
9	.08597	.07794	.07079	.06443	.05876	.05370	.04917	.04511	.04148	.03821
10	.08936	.08115	.07383	.06730	.06147	.05626	.05159	.04741	.04365	.04027
11	.09293	.08453	.07704	.07035	.06436	.05900	.05419	.04988	.04593	.04250
12	.09666	.08807	.08040	.07354	.06739	.06188	.05693	.05249	.04847	.04486
13	.10049	.09172	.08387	.07684	.07053	.06497	.05977	.05513	.05104	.04731
14	.10437	.09541	.09738	.08017	.07370	.06798	.06253	.05791	.05361	.04973
15	.10827	.09912	.09090	.08352	.07688	.07090	.06551	.06064	.05623	.05220
16	.11220	.10285	.09445	.08689	.08008	.07394	.06839	.06337	.05889	.05472
17	.11615	.10661	.09802	.09028	.08330	.07699	.07129	.06612	.06144	.05719
18	.12017	.11043	.10155	.09373	.08656	.08009	.07422	.06890	.06402	.05969
19	.12428	.11434	.10537	.09726	.08992	.08327	.07724	.07177	.06679	.06230
20	.12850	.11836	.10919	.10089	.09337	.08654	.08035	.07471	.06959	.06492
21	.13282	.12248	.11311	.10462	.09692	.08991	.08355	.07775	.07247	.06765
22	.13728	.12673	.11717	.10848	.10059	.09341	.08686	.08090	.07546	.07049
23	.14188	.13113	.12135	.11248	.10440	.09703	.09032	.08418	.07858	.07345
24	.14667	.13572	.12575	.11667	.10839	.10084	.09395	.08764	.08187	.07659
25	.15167	.14051	.13034	.12106	.11259	.10486	.09778	.09130	.08536	.07991
26	.15690	.14554	.13517	.12569	.11703	.10910	.10184	.09518	.08907	.08346
27	.16237	.15081	.14024	.13056	.12171	.11359	.10614	.09930	.09302	.08724

TABLE S.—BASED ON LIFE TABLE 80CNSMT Single Life Remainder Factors—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
28	.16808	.15632	.14555	.13567	.12662	.11831	.11068	.10366	.09720	.09125
29	.17404	.16208	.15110	.14104	.13179	.12329	.11547	.10827	.10163	.09551
30	.18025	.16808	.15692	.14665	.13721	.12852	.12051	.11313	.10631	.10002
31	.18672	.17436	.16300	.15255	.14291	.13403	.12594	.11827	.11127	.10480
32	.19344	.18090	.16935	.15870	.14888	.13980	.13142	.12367	.11650	.10985
33	.20044	.18772	.17598	.16514	.15513	.14587	.13730	.12936	.12201	.11519
34	.20770	.19480	.18287	.17185	.16165	.15221	.14345	.13533	.12780	.12080
35	.21522	.20215	.19005	.17884	.16846	.15883	.14989	.14159	.13388	.12670
36	.22299	.20974	.19747	.18609	.17552	.16571	.15660	.14812	.14022	.13287
37	.23101	.21760	.20516	.19360	.18286	.17288	.16358	.15492	.14685	.13933
38	.23928	.22572	.21311	.20139	.19048	.18032	.17085	.16201	.15377	.14607
39	.24780	.23409	.22133	.20945	.19837	.18804	.17840	.16939	.16097	.15310
40	.25658	.24273	.22982	.21778	.20654	.19605	.18624	.17706	.16847	.16043
41	.26560	.25163	.23858	.22639	.21499	.20434	.19436	.18502	.17627	.16806
42	.27486	.26076	.24758	.23525	.22370	.21289	.20276	.19326	.18434	.17597
43	.28435	.27013	.25683	.24436	.23268	.22172	.21143	.20177	.19270	.18416
44	.29407	.27975	.26633	.25373	.24191	.23081	.22038	.21057	.20134	.19265
45	.30402	.28961	.27608	.26337	.25142	.24019	.22962	.21966	.21028	.20144
46	.31420	.29970	.28608	.27326	.26120	.24983	.23913	.22904	.21951	.21053
47	.32460	.31004	.29632	.28341	.27123	.25975	.24892	.23870	.22904	.21991
48	.33521	.32058	.30679	.29379	.28151	.26992	.25897	.24862	.23883	.22957
49	.34599	.33132	.31746	.30438	.29201	.28032	.26926	.25879	.24888	.23949
50	.35695	.34224	.32833	.31518	.30273	.29094	.27978	.26921	.25918	.24966
51	.36809	.35335	.33940	.32619	.31367	.30180	.29055	.27987	.26973	.26010
52	.37944	.36468	.35070	.33744	.32486	.31292	.30158	.29081	.28057	.27083
53	.39098	.37622	.36222	.34892	.33629	.32429	.31268	.30203	.29170	.28185
54	.40269	.38794	.37393	.36062	.34795	.33590	.32442	.31349	.30308	.29316
55	.41457	.39985	.38585	.37252	.35983	.34774	.33621	.32522	.31474	.30473
56	.42662	.41194	.39796	.38464	.37193	.35981	.34824	.33720	.32666	.31658
57	.43884	.42422	.41028	.39697	.38426	.37213	.36053	.34945	.33885	.32872
58	.45123	.43668	.42279	.40951	.39682	.38468	.37307	.36196	.35132	.34114
59	.46377	.44931	.43547	.42224	.40958	.39745	.38584	.37471	.36405	.35383
60	.47643	.46206	.44830	.43513	.42250	.41040	.39880	.38767	.37699	.36674
61	.48916	.47491	.46124	.44814	.43556	.42350	.41192	.40080	.39012	.37985
62	.50196	.48783	.47427	.46124	.44874	.43672	.42518	.41408	.40340	.39314
63	.51480	.50081	.48736	.47444	.46201	.45006	.43856	.42749	.41684	.40658
64	.52770	.51386	.50054	.48773	.47540	.46352	.45208	.44105	.43043	.42019
65	.54069	.52701	.51384	.50115	.48892	.47713	.46577	.45480	.44422	.43401
66	.55378	.54029	.52727	.51472	.50262	.49093	.47965	.46876	.45824	.44808
67	.56697	.55368	.54084	.52845	.51648	.50491	.49373	.48293	.47248	.46238
68	.58026	.56717	.55453	.54231	.53049	.51905	.50800	.49729	.48694	.47691
69	.59358	.58072	.56828	.55624	.54459	.53330	.52238	.51179	.50154	.49160
70	.60689	.59427	.58205	.57021	.55874	.54762	.53683	.52638	.51624	.50641
71	.62014	.60778	.59578	.58415	.57287	.56193	.55131	.54100	.53099	.52126
72	.63334	.62123	.60948	.59808	.58700	.57624	.56573	.55563	.54577	.53617
73	.64648	.63465	.62315	.61198	.60112	.59056	.58029	.57030	.56059	.55113
74	.65961	.64806	.63682	.62590	.61527	.60492	.59485	.58504	.57550	.56620
75	.67274	.66149	.65054	.63987	.62948	.61936	.60950	.59990	.59053	.58140
76	.68589	.67495	.66429	.65390	.64377	.63390	.62427	.61487	.60570	.59676
77	.69903	.68841	.67806	.66796	.65811	.64849	.63910	.62993	.62097	.61223
78	.71209	.70182	.69179	.68199	.67242	.66307	.65393	.64501	.63628	.62775
79	.72500	.71507	.70537	.69598	.68660	.67754	.66867	.65999	.65151	.64321
80	.73768	.72809	.71872	.70955	.70058	.69180	.68320	.67479	.66655	.65849
81	.75001	.74077	.73172	.72288	.71422	.70573	.69741	.68926	.68128	.67345
82	.76196	.75305	.74435	.73582	.72746	.71926	.71123	.70335	.69562	.68804
83	.77346	.76491	.75654	.74830	.74026	.73236	.72460	.71699	.70952	.70219
84	.78456	.77636	.76831	.76041	.75265	.74503	.73756	.73021	.72300	.71592
85	.79530	.78743	.77971	.77212	.76468	.75733	.75014	.74306	.73611	.72928
86	.80560	.79806	.79065	.78337	.77621	.76917	.76225	.75544	.74875	.74216
87	.81535	.80813	.80103	.79404	.78717	.78041	.77375	.76720	.76076	.75442
88	.82462	.81771	.81090	.80420	.79760	.79111	.78472	.77842	.77223	.76612
89	.83356	.82694	.82043	.81401	.80769	.80147	.79533	.78929	.78334	.77747
90	.84215	.83593	.82971	.82357	.81753	.81157	.80570	.79991	.79420	.78857
91	.85053	.84455	.83861	.83276	.82698	.82129	.81567	.81013	.80466	.79927
92	.85838	.85263	.84696	.84137	.83585	.83040	.82503	.81973	.81449	.80933
93	.86557	.86009	.85467	.84932	.84405	.83884	.83370	.82862	.82360	.81865
94	.87212	.86687	.86169	.85657	.85152	.84653	.84160	.83673	.83192	.82717
95	.87801	.87298	.86801	.86310	.85825	.85345	.84872	.84404	.83941	.83484
96	.88322	.87838	.87360	.86888	.86420	.85959	.85502	.85051	.84605	.84165

TABLE S.—BASED ON LIFE TABLE 80CNSMT Single Life Remainder Factors—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
97	.88795	.88328	.87867	.87411	.86961	.86515	.86074	.85639	.85208	.84782
98	.89220	.88769	.88323	.87883	.87447	.87016	.86589	.86167	.85750	.85337
99	.89612	.89176	.88745	.88318	.87895	.87478	.87064	.86656	.86251	.85850
100	.89977	.89555	.89136	.88722	.88313	.87908	.87506	.87109	.86716	.86327
101	.90326	.89917	.89511	.89110	.88712	.88318	.87929	.87543	.87161	.86783
102	.90690	.90294	.89901	.89513	.89128	.88746	.88369	.87995	.87624	.87257
103	.91076	.90694	.90315	.89940	.89569	.89200	.88836	.88474	.88116	.87760
104	.91504	.91138	.90775	.90415	.90058	.89704	.89354	.89006	.88661	.88319
105	.92027	.91681	.91337	.90996	.90658	.90322	.89989	.89659	.89331	.89006
106	.92763	.92445	.92130	.91816	.91506	.91197	.90890	.90586	.90284	.89983
107	.93799	.93523	.93249	.92977	.92707	.92438	.92170	.91905	.91641	.91378
108	.95429	.95223	.95018	.94814	.94611	.94409	.94208	.94008	.93809	.93611
109	.97965	.97893	.97801	.97710	.97619	.97529	.97438	.97348	.97259	.97170

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS

[Applicable after April 30, 1989]

Age	Interest rate									
	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
0	.03535	.03349	.03183	.03035	.02902	.02783	.02676	.02579	.02492	.02413
1	.02486	.02292	.02119	.01963	.01824	.01699	.01587	.01486	.01395	.01312
2	.02547	.02345	.02164	.02002	.01857	.01727	.01609	.01504	.01408	.01321
3	.02640	.02429	.02241	.02073	.01921	.01785	.01662	.01552	.01451	.01361
4	.02753	.02535	.02339	.02163	.02005	.01863	.01735	.01619	.01514	.01418
5	.02883	.02656	.02453	.02269	.02105	.01956	.01822	.01700	.01590	.01490
6	.03026	.02790	.02578	.02387	.02215	.02060	.01919	.01792	.01677	.01572
7	.03180	.02935	.02714	.02515	.02336	.02174	.02027	.01894	.01773	.01664
8	.03347	.03092	.02863	.02656	.02469	.02300	.02146	.02007	.01881	.01766
9	.03528	.03263	.03025	.02810	.02615	.02438	.02278	.02133	.02000	.01880
10	.03723	.03449	.03201	.02977	.02774	.02590	.02423	.02271	.02133	.02006
11	.03935	.03650	.03393	.03160	.02949	.02757	.02583	.02424	.02279	.02147
12	.04160	.03865	.03598	.03356	.03136	.02936	.02755	.02589	.02438	.02299
13	.04394	.04088	.03811	.03560	.03331	.03123	.02934	.02761	.02603	.02456
14	.04629	.04312	.04025	.03764	.03527	.03311	.03113	.02933	.02768	.02617
15	.04864	.04536	.04238	.03968	.03721	.03496	.03290	.03103	.02930	.02773
16	.05099	.04759	.04451	.04170	.03913	.03679	.03466	.03270	.03090	.02926
17	.05333	.04982	.04662	.04370	.04104	.03861	.03638	.03434	.03247	.03075
18	.05570	.05207	.04875	.04573	.04296	.04044	.03812	.03599	.03404	.03225
19	.05814	.05438	.05095	.04781	.04494	.04231	.03990	.03769	.03565	.03378
20	.06065	.05677	.05321	.04996	.04698	.04424	.04173	.03943	.03731	.03535
21	.06325	.05922	.05554	.05217	.04907	.04623	.04362	.04122	.03901	.03697
22	.06594	.06178	.05797	.05447	.05126	.04831	.04559	.04309	.04078	.03865
23	.06876	.06446	.06051	.05688	.05355	.05048	.04766	.04505	.04265	.04042
24	.07174	.06729	.06321	.05945	.05599	.05281	.04987	.04715	.04465	.04233
25	.07491	.07031	.06609	.06219	.05861	.05530	.05224	.04941	.04680	.04438
26	.07830	.07355	.06918	.06515	.06142	.05799	.05481	.05187	.04915	.04662
27	.08192	.07702	.07250	.06832	.06446	.06090	.05759	.05454	.05170	.04909
28	.08577	.08071	.07603	.07171	.06772	.06402	.06059	.05740	.05445	.05170
29	.09000	.08464	.07981	.07534	.07120	.06735	.06380	.06040	.05742	.05456
30	.09420	.08892	.08388	.07921	.07492	.07095	.06725	.06361	.06061	.05758
31	.09881	.09327	.08812	.08335	.07891	.07479	.07095	.06732	.06405	.06090
32	.10369	.09797	.09267	.08774	.08315	.07888	.07491	.07129	.06774	.06451
33	.10885	.10297	.09754	.09241	.08764	.08325	.07913	.07552	.07170	.06838
34	.11430	.10824	.10261	.09736	.09246	.08780	.08363	.07994	.07592	.07249
35	.12002	.11380	.10800	.10259	.09754	.09262	.08841	.08463	.08041	.07688
36	.12603	.11963	.11356	.10809	.10278	.09770	.09344	.08957	.08513	.08154
37	.13230	.12574	.11941	.11387	.10830	.10347	.09870	.09476	.09010	.08646
38	.13887	.13214	.12554	.11996	.11441	.10952	.10466	.10019	.09534	.09164
39	.14573	.13883	.13227	.12630	.12081	.11587	.11095	.10588	.10085	.09709
40	.15290	.14583	.13930	.13297	.12712	.12152	.11647	.11187	.10664	.10284
41	.16036	.15312	.14663	.13994	.13377	.12827	.12264	.11732	.11272	.10884
42	.16810	.16071	.15376	.14720	.14108	.13528	.12913	.12356	.11864	.11484
43	.17614	.16858	.16118	.15475	.14812	.14246	.13632	.13049	.12545	.12100
44	.18447	.17675	.16948	.16261	.15613	.15000	.14421	.13873	.13355	.12864
45	.19310	.18524	.17780	.17078	.16414	.15797	.15192	.14650	.14056	.13591
46	.20204	.19402	.18644	.17926	.17247	.16604	.15995	.15418	.14870	.14351

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
47	21129	.20311	.19533	.18806	.18112	.17454	.16830	.16238	.15676	.15141
48	22020	.21249	.20462	.19716	.19007	.18335	.17696	.17090	.16513	.15964
49	23059	.22214	.21413	.20663	.19930	.19244	.18591	.17970	.17379	.16815
50	24063	.23206	.22391	.21617	.20881	.20180	.19514	.18879	.18274	.17697
51	25095	.24225	.23393	.22610	.21861	.21147	.20466	.19818	.19199	.18609
52	26197	.25275	.24433	.23636	.22874	.22147	.21453	.20791	.20159	.19556
53	27373	.26357	.25507	.24694	.23919	.23180	.22474	.21799	.21154	.20537
54	28629	.27466	.26604	.25782	.24998	.24244	.23526	.22839	.22181	.21552
55	29968	.28603	.27734	.26900	.26103	.25341	.24611	.23912	.23243	.22601
56	31385	.29771	.28895	.28051	.27242	.26464	.25719	.25005	.24325	.23676
57	32879	.30973	.30090	.29232	.28415	.27632	.26883	.26167	.25483	.24830
58	34453	.32209	.31321	.30446	.29621	.28829	.28070	.27344	.26651	.25990
59	36107	.33481	.32589	.31691	.30859	.30059	.29293	.28560	.27859	.27190
60	37845	.34795	.33890	.32983	.32124	.31317	.30543	.29802	.29093	.28417
61	39672	.36157	.35237	.34299	.33414	.32601	.31817	.31062	.30334	.29633
62	41591	.37571	.36633	.35676	.34726	.33907	.33117	.32356	.31621	.30912
63	43604	.39037	.38081	.37108	.36160	.35236	.34441	.33674	.32933	.32217
64	45711	.40558	.39582	.38593	.37615	.36688	.35789	.34916	.34070	.33248
65	47915	.42134	.41139	.40132	.39148	.38189	.37256	.36348	.35465	.34606
66	50216	.43765	.42753	.41728	.40727	.39750	.38797	.37868	.36963	.36081
67	52615	.45451	.44424	.43383	.42365	.41370	.40398	.39449	.38523	.37619
68	55112	.47192	.46151	.45098	.44063	.43049	.42055	.41083	.40131	.39200
69	57708	.48988	.47935	.46871	.45821	.44790	.43780	.42790	.41820	.40870
70	60403	.50839	.49775	.48702	.47641	.46595	.45568	.44559	.43570	.42600
71	63197	.52744	.51671	.50589	.49521	.48469	.47434	.46418	.45422	.44445	
72	66089	.54702	.53622	.52534	.51460	.50402	.49362	.48341	.47339	.46357
73	69078	.56713	.55627	.54534	.53454	.52391	.51345	.50319	.49312	.48325
74	72163	.58775	.57684	.56587	.55502	.54433	.53382	.52350	.51338	.50346
75	75343	.60886	.59791	.58692	.57604	.56532	.55477	.54441	.53425	.52429
76	78603	.63044	.61946	.60845	.59754	.58679	.57622	.56584	.55567	.54571
77	81938	.65245	.64145	.63043	.61951	.60875	.59817	.58779	.57762	.56766
78	85341	.67485	.66384	.65282	.64189	.63113	.62056	.61019	.60003	.59009
79	88804	.69760	.68660	.67559	.66467	.65392	.64336	.63300	.62286	.61293
80	92317	.72064	.70966	.69867	.68777	.67704	.66650	.65616	.64603	.63612
81	95871	.74391	.73296	.72200	.71113	.70043	.68992	.67961	.66951	.65963
82	99457	.76734	.75643	.74550	.73466	.72398	.71350	.70322	.69315	.68330
83	03064	.79085	.77999	.76913	.75830	.74765	.73719	.72694	.71690	.70708
84	06683	.81437	.80358	.79278	.78199	.77136	.76093	.75071	.74070	.73092
85	10305	.83783	.82712	.81640	.80568	.79509	.78469	.77450	.76452	.75476
86	13931	.86116	.85054	.83992	.82929	.81873	.80836	.79820	.78825	.77853
87	17552	.88429	.87377	.86325	.85273	.84229	.83196	.82183	.81192	.80223
88	21160	.90715	.89673	.88631	.87590	.86554	.85529	.84518	.83528	.82560
89	24747	.92966	.91935	.90904	.89873	.88847	.87830	.86825	.85836	.84868
90	28305	.95175	.94156	.93137	.92118	.91104	.90099	.89106	.88128	.87168
91	31826	.97335	.96329	.95323	.94317	.93315	.92321	.91338	.90369	.89417
92	35302	.99439	.98447	.97455	.96463	.95475	.94494	.93524	.92569	.91631
93	38725	.01480	.00503	.99526	.98549	.97576	.96611	.95658	.94720	.93800
94	42087	.03451	.02490	.01529	.00568	.99611	.98661	.97724	.96803	.95901
95	45380	.05345	.04400	.03455	.02510	.01570	.00636	.99710	.98800	.97908
96	48597	.07155	.06227	.05299	.04371	.03447	.02529	.01619	.00727	.99853
97	51729	.08874	.07954	.07034	.06114	.05199	.04290	.03389	.02506	.01641
98	54770	.10495	.09584	.08673	.07762	.06853	.05950	.05054	.04175	.03313
99	57712	.12011	.11108	.10205	.09302	.08401	.07506	.06618	.05747	.04893
100	60548	.13414	.12519	.11624	.10729	.09835	.08943	.08055	.07182	.06325
101	63270	.14698	.13812	.12926	.12040	.11156	.10274	.09396	.08532	.07683
102	65870	.15855	.14980	.14105	.13230	.12356	.11484	.10615	.09761	.08923
103	68340	.16878	.16015	.15152	.14289	.13426	.12564	.11705	.10860	.10030
104	70672	.17760	.16910	.16060	.15210	.14360	.13511	.12665	.11824	.10990
105	72860	.18494	.17658	.16822	.15986	.15150	.14314	.13480	.12650	.11824
106	74895	.19072	.18249	.17426	.16603	.15780	.14957	.14135	.13316	.12501
107	76772	.19488	.18677	.17866	.17055	.16244	.15433	.14623	.13815	.13009
108	78484	.19736	.18936	.18136	.17336	.16536	.15736	.14936	.14137	.13340
109	80027	.19811	.19021	.18231	.17441	.16651	.15861	.15071	.14282	.13494

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS

[Applicable after April 30, 1989]

Age	Interest rate									
	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
0	.02341	.02276	.02217	.02163	.02114	.02069	.02027	.01989	.01954	.01922
1	.01237	.01170	.01108	.01052	.01000	.00953	.00910	.00871	.00834	.00801
2	.01243	.01172	.01107	.01048	.00994	.00944	.00899	.00857	.00819	.00784
3	.01278	.01203	.01135	.01073	.01016	.00964	.00916	.00872	.00832	.00795
4	.01332	.01253	.01182	.01116	.01056	.01001	.00951	.00904	.00862	.00822
5	.01400	.01317	.01241	.01172	.01109	.01051	.00998	.00949	.00904	.00862
6	.01477	.01390	.01310	.01238	.01171	.01110	.01054	.01002	.00954	.00910
7	.01563	.01472	.01389	.01312	.01242	.01178	.01118	.01064	.01013	.00966
8	.01660	.01564	.01477	.01396	.01322	.01254	.01192	.01134	.01081	.01031
9	.01770	.01669	.01577	.01492	.01414	.01342	.01276	.01216	.01159	.01107
10	.01891	.01785	.01688	.01599	.01517	.01442	.01372	.01308	.01249	.01194
11	.02026	.01915	.01814	.01720	.01634	.01555	.01481	.01414	.01351	.01293
12	.02173	.02056	.01950	.01852	.01761	.01678	.01601	.01529	.01463	.01402
13	.02326	.02204	.02092	.01989	.01895	.01807	.01726	.01651	.01582	.01517
14	.02478	.02351	.02234	.02126	.02027	.01935	.01850	.01771	.01698	.01630
15	.02628	.02495	.02372	.02259	.02155	.02058	.01969	.01886	.01810	.01738
16	.02774	.02635	.02507	.02388	.02279	.02178	.02084	.01997	.01917	.01842
17	.02917	.02772	.02637	.02513	.02399	.02293	.02194	.02103	.02018	.01940
18	.03059	.02907	.02767	.02637	.02517	.02406	.02302	.02207	.02118	.02035
19	.03205	.03046	.02899	.02763	.02637	.02521	.02412	.02312	.02218	.02131
20	.03355	.03188	.03035	.02892	.02760	.02638	.02524	.02419	.02320	.02229
21	.03509	.03334	.03173	.03024	.02886	.02758	.02638	.02527	.02424	.02328
22	.03669	.03487	.03318	.03162	.03017	.02882	.02757	.02640	.02532	.02430
23	.03837	.03646	.03470	.03306	.03154	.03013	.02881	.02759	.02644	.02538
24	.04018	.03819	.03634	.03463	.03303	.03155	.03016	.02888	.02767	.02655
25	.04214	.04006	.03812	.03633	.03465	.03309	.03164	.03029	.02902	.02784
26	.04428	.04210	.04008	.03820	.03644	.03481	.03328	.03186	.03052	.02928
27	.04662	.04434	.04223	.04025	.03841	.03670	.03509	.03360	.03219	.03085
28	.04915	.04677	.04456	.04249	.04056	.03876	.03708	.03550	.03403	.03264
29	.05189	.04941	.04709	.04493	.04291	.04102	.03925	.03760	.03604	.03458
30	.05485	.05226	.04984	.04757	.04546	.04348	.04162	.03988	.03825	.03671
31	.05805	.05535	.05282	.05045	.04824	.04616	.04421	.04238	.04067	.03905
32	.06149	.05867	.05603	.05356	.05124	.04906	.04702	.04510	.04329	.04160
33	.06520	.06226	.05950	.05692	.05449	.05221	.05007	.04806	.04616	.04438
34	.06916	.06609	.06322	.06052	.05799	.05560	.05336	.05125	.04926	.04738
35	.07339	.07020	.06720	.06439	.06174	.05925	.05690	.05469	.05260	.05063
36	.07787	.07455	.07143	.06850	.06573	.06313	.06068	.05836	.05617	.05411
37	.08262	.07917	.07593	.07287	.06999	.06727	.06470	.06228	.05999	.05783
38	.08765	.08407	.08069	.07751	.07451	.07167	.06899	.06646	.06407	.06180
39	.09296	.08925	.08574	.08243	.07931	.07635	.07356	.07092	.06841	.06604
40	.09858	.09472	.09109	.08765	.08440	.08132	.07841	.07565	.07303	.07055
41	.10449	.10050	.09673	.09316	.08978	.08658	.08355	.08067	.07794	.07535
42	.11069	.10656	.10265	.09895	.09544	.09212	.08896	.08596	.08312	.08041
43	.11718	.11291	.10887	.10503	.10140	.09794	.09466	.09154	.08856	.08576
44	.12399	.11958	.11540	.11143	.10766	.10407	.10067	.09743	.09434	.09141
45	.13111	.12656	.12224	.11814	.11423	.11052	.10699	.10362	.10042	.09736
46	.13856	.13387	.12941	.12516	.12113	.11728	.11362	.11013	.10680	.10363
47	.14633	.14150	.13690	.13252	.12835	.12438	.12059	.11697	.11352	.11022
48	.15442	.14945	.14471	.14020	.13569	.13179	.12787	.12412	.12055	.11713
49	.16280	.15769	.15281	.14816	.14373	.13949	.13544	.13157	.12787	.12433
50	.17147	.16622	.16121	.15643	.15186	.14749	.14331	.13931	.13546	.13182
51	.18045	.17507	.16993	.16501	.16030	.15580	.15150	.14737	.14342	.13963
52	.18979	.18427	.17899	.17394	.16911	.16448	.16004	.15579	.15172	.14780
53	.19947	.19383	.18842	.18324	.17828	.17352	.16896	.16458	.16038	.15635
54	.20950	.20372	.19819	.19288	.18779	.18291	.17822	.17372	.16940	.16524
55	.21986	.21397	.20831	.20288	.19767	.19266	.18785	.18322	.17878	.17450
56	.23058	.22457	.21879	.21324	.20791	.20278	.19785	.19310	.18854	.18414
57	.24167	.23554	.22965	.22399	.21854	.21329	.20824	.20338	.19870	.19419
58	.25314	.24690	.24090	.23512	.22956	.22420	.21904	.21407	.20927	.20464
59	.26497	.25863	.25252	.24664	.24097	.23550	.23023	.22515	.22024	.21551
60	.27712	.27068	.26448	.25849	.25272	.24716	.24178	.23659	.23158	.22674
61	.28956	.28304	.27674	.27067	.26480	.25913	.25366	.24837	.24325	.23831
62	.30228	.29567	.28929	.28312	.27717	.27141	.26584	.26045	.25524	.25020
63	.31525	.30857	.30211	.29586	.28982	.28397	.27832	.27284	.26754	.26240
64	.32851	.32176	.31522	.30890	.30278	.29685	.29111	.28555	.28016	.27493
65	.34209	.33528	.32868	.32229	.31610	.31010	.30429	.29865	.29317	.28787
66	.35604	.34918	.34253	.33609	.32983	.32377	.31788	.31217	.30663	.30124
67	.37037	.36347	.35678	.35028	.34398	.33786	.33191	.32614	.32053	.31508
68	.38508	.37815	.37142	.36489	.35854	.35237	.34638	.34055	.33488	.32937

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
69	.40008	.39313	.38638	.37982	.37344	.36724	.36120	.35533	.34961	.34405
70	.41533	.40838	.40162	.39504	.38864	.38241	.37634	.37043	.36468	.35907
71	.43076	.42382	.41705	.41047	.40405	.39780	.39171	.38578	.38000	.37436
72	.44638	.43945	.43269	.42611	.41969	.41344	.40733	.40138	.39558	.38991
73	.46218	.45527	.44854	.44197	.43556	.42931	.42321	.41725	.41143	.40575
74	.47823	.47137	.46466	.45812	.45173	.44549	.43940	.43345	.42763	.42195
75	.49459	.48777	.48112	.47462	.46826	.46205	.45598	.45004	.44424	.43856
76	.51127	.50452	.49793	.49148	.48517	.47900	.47297	.46706	.46129	.45563
77	.52823	.52157	.51505	.50867	.50243	.49632	.49033	.48447	.47873	.47311
78	.54541	.53885	.53242	.52613	.51996	.51392	.50800	.50220	.49652	.49094
79	.56267	.55621	.54989	.54369	.53762	.53166	.52582	.52009	.51448	.50897
80	.57987	.57354	.56733	.56125	.55527	.54941	.54366	.53802	.53248	.52705
81	.59686	.59065	.58457	.57860	.57274	.56699	.56134	.55579	.55035	.54499
82	.61351	.60746	.60151	.59567	.58993	.58429	.57875	.57331	.56796	.56270
83	.62978	.62387	.61806	.61236	.60675	.60123	.59581	.59047	.58523	.58007
84	.64567	.63992	.63426	.62869	.62321	.61783	.61253	.60731	.60218	.59713
85	.66126	.65565	.65014	.64472	.63938	.63413	.62896	.62387	.61886	.61392
86	.67636	.67092	.66557	.66030	.65511	.65000	.64496	.64000	.63511	.63030
87	.69081	.68554	.68034	.67522	.67018	.66520	.66031	.65548	.65071	.64602
88	.70468	.69957	.69453	.68956	.68466	.67983	.67507	.67037	.66574	.66117
89	.71821	.71326	.70838	.70357	.69882	.69414	.68952	.68495	.68045	.67601
90	.73153	.72676	.72204	.71739	.71280	.70827	.70379	.69938	.69502	.69071
91	.74447	.73986	.73532	.73083	.72640	.72202	.71770	.71343	.70921	.70504
92	.75669	.75225	.74787	.74354	.73927	.73504	.73087	.72674	.72267	.71864
93	.76807	.76379	.75957	.75540	.75127	.74719	.74317	.73918	.73524	.73135
94	.77849	.77437	.77030	.76627	.76229	.75835	.75446	.75061	.74680	.74303
95	.78792	.78394	.78001	.77611	.77226	.76845	.76468	.76096	.75727	.75362
96	.79630	.79244	.78863	.78485	.78112	.77742	.77377	.77015	.76657	.76303
97	.80391	.80016	.79646	.79280	.78917	.78559	.78203	.77852	.77504	.77160
98	.81076	.80712	.80352	.79996	.79643	.79294	.78948	.78606	.78267	.77931
99	.81709	.81354	.81004	.80657	.80313	.79972	.79635	.79302	.78971	.78644
100	.82296	.81950	.81609	.81270	.80934	.80602	.80273	.79947	.79624	.79304
101	.82855	.82518	.82185	.81854	.81526	.81201	.80880	.80561	.80245	.79932
102	.83438	.83110	.82785	.82462	.82142	.81826	.81512	.81200	.80892	.80586
103	.84056	.83737	.83420	.83106	.82795	.82487	.82181	.81878	.81577	.81279
104	.84743	.84433	.84127	.83822	.83521	.83221	.82924	.82630	.82338	.82048
105	.85591	.85295	.85001	.84709	.84419	.84132	.83846	.83563	.83282	.83003
106	.86816	.86540	.86266	.85993	.85723	.85454	.85187	.84922	.84659	.84397
107	.88592	.88348	.88105	.87863	.87623	.87384	.87147	.86911	.86676	.86443
108	.91493	.91306	.91119	.90934	.90749	.90566	.90383	.90201	.90020	.89840
109	.96211	.96125	.96041	.95956	.95872	.95788	.95704	.95620	.95537	.95455

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS

[Applicable after April 30, 1989]

Age	Interest rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
0	.01891	.01864	.01838	.01814	.01791	.01770	.01750	.01732	.01715	.01698
1	.00770	.00741	.00715	.00690	.00667	.00646	.00626	.00608	.00590	.00574
2	.00751	.00721	.00693	.00667	.00643	.00620	.00600	.00580	.00562	.00544
3	.00760	.00728	.00699	.00671	.00646	.00622	.00600	.00579	.00560	.00541
4	.00786	.00752	.00721	.00692	.00665	.00639	.00616	.00594	.00573	.00554
5	.00824	.00788	.00755	.00724	.00695	.00668	.00643	.00620	.00598	.00578
6	.00869	.00832	.00796	.00764	.00733	.00705	.00678	.00654	.00630	.00608
7	.00923	.00883	.00846	.00811	.00779	.00749	.00720	.00694	.00669	.00646
8	.00986	.00943	.00904	.00867	.00833	.00801	.00771	.00743	.00716	.00692
9	.01059	.01014	.00972	.00933	.00897	.00863	.00831	.00801	.00773	.00747
10	.01142	.01095	.01051	.01009	.00971	.00935	.00901	.00869	.00840	.00812
11	.01239	.01189	.01142	.01098	.01057	.01019	.00983	.00950	.00918	.00889
12	.01345	.01292	.01243	.01197	.01154	.01113	.01075	.01040	.01007	.00975
13	.01457	.01401	.01349	.01300	.01255	.01212	.01172	.01135	.01100	.01067
14	.01567	.01508	.01453	.01402	.01354	.01309	.01267	.01227	.01190	.01155
15	.01672	.01610	.01552	.01498	.01448	.01400	.01356	.01314	.01275	.01238
16	.01772	.01707	.01646	.01589	.01536	.01486	.01439	.01396	.01354	.01315
17	.01866	.01798	.01734	.01674	.01618	.01566	.01516	.01470	.01427	.01386
18	.01958	.01886	.01818	.01755	.01697	.01641	.01590	.01541	.01495	.01452

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
19	.02050	.01974	.01903	.01837	.01775	.01717	.01662	.01611	.01563	.01517
20	.02143	.02064	.01989	.01919	.01854	.01793	.01735	.01681	.01630	.01582
21	.02238	.02154	.02075	.02002	.01933	.01868	.01807	.01750	.01696	.01646
22	.02336	.02247	.02164	.02087	.02014	.01946	.01882	.01821	.01764	.01711
23	.02438	.02345	.02257	.02176	.02099	.02027	.01959	.01895	.01835	.01778
24	.02550	.02451	.02359	.02273	.02192	.02115	.02044	.01976	.01913	.01853
25	.02673	.02569	.02472	.02381	.02295	.02214	.02138	.02067	.01999	.01936
26	.02811	.02701	.02598	.02502	.02411	.02326	.02246	.02170	.02098	.02031
27	.02965	.02849	.02741	.02639	.02543	.02452	.02367	.02287	.02211	.02140
28	.03134	.03013	.02898	.02790	.02689	.02593	.02503	.02418	.02338	.02262
29	.03322	.03193	.03072	.02958	.02851	.02750	.02654	.02564	.02479	.02398
30	.03527	.03391	.03264	.03143	.03030	.02923	.02821	.02726	.02635	.02550
31	.03753	.03610	.03475	.03348	.03228	.03115	.03008	.02907	.02811	.02720
32	.04000	.03849	.03707	.03573	.03446	.03326	.03213	.03105	.03004	.02907
33	.04269	.04111	.03961	.03819	.03685	.03558	.03438	.03325	.03217	.03115
34	.04561	.04394	.04236	.04087	.03946	.03812	.03685	.03565	.03451	.03342
35	.04877	.04702	.04535	.04378	.04229	.04087	.03953	.03826	.03706	.03591
36	.05215	.05031	.04856	.04690	.04533	.04384	.04242	.04108	.03980	.03859
37	.05578	.05384	.05200	.05025	.04860	.04703	.04553	.04411	.04276	.04148
38	.05965	.05761	.05568	.05385	.05211	.05045	.04888	.04738	.04595	.04460
39	.06379	.06165	.05962	.05770	.05587	.05412	.05247	.05089	.04939	.04795
40	.06820	.06596	.06383	.06181	.05989	.05806	.05631	.05465	.05307	.05155
41	.07288	.07054	.06832	.06620	.06418	.06226	.06042	.05868	.05701	.05541
42	.07784	.07539	.07306	.07085	.06873	.06671	.06479	.06295	.06119	.05952
43	.08308	.08052	.07808	.07576	.07355	.07143	.06941	.06748	.06564	.06387
44	.08861	.08594	.08340	.08097	.07865	.07644	.07432	.07230	.07036	.06851
45	.09445	.09167	.08901	.08648	.08406	.08174	.07953	.07741	.07538	.07343
46	.10060	.09770	.09494	.09230	.08977	.08735	.08503	.08281	.08068	.07865
47	.10707	.10406	.10119	.09843	.09579	.09327	.09085	.08853	.08630	.08417
48	.11386	.11073	.10774	.10487	.10213	.09949	.09697	.09455	.09222	.08999
49	.12094	.11769	.11458	.11160	.10874	.10600	.10337	.10084	.09842	.09609
50	.12831	.12494	.12172	.11862	.11565	.11280	.11006	.10743	.10490	.10247
51	.13600	.13251	.12917	.12596	.12288	.11991	.11706	.11432	.11169	.10915
52	.14405	.14044	.13698	.13366	.13046	.12738	.12442	.12157	.11883	.11619
53	.15247	.14875	.14517	.14172	.13841	.13522	.13215	.12919	.12635	.12360
54	.16124	.15740	.15370	.15014	.14671	.14341	.14023	.13717	.13421	.13136
55	.17039	.16642	.16261	.15893	.15539	.15198	.14868	.14551	.14244	.13948
56	.17991	.17583	.17190	.16811	.16445	.16092	.15752	.15423	.15106	.14799
57	.18984	.18564	.18160	.17769	.17392	.17029	.16677	.16338	.16010	.15692
58	.20018	.19587	.19172	.18770	.18382	.18007	.17645	.17295	.16956	.16628
59	.21093	.20652	.20225	.19812	.19414	.19028	.18655	.18294	.17945	.17606
60	.22206	.21753	.21316	.20893	.20483	.20087	.19703	.19332	.18972	.18624
61	.23353	.22890	.22442	.22009	.21589	.21182	.20788	.20407	.20037	.19678
62	.24532	.24059	.23601	.23158	.22728	.22311	.21907	.21515	.21135	.20767
63	.25742	.25260	.24793	.24339	.23900	.23473	.23060	.22658	.22268	.21890
64	.26987	.26495	.26019	.25556	.25107	.24671	.24248	.23837	.23438	.23050
65	.28271	.27771	.27286	.26815	.26357	.25912	.25480	.25059	.24651	.24254
66	.29601	.29093	.28600	.28120	.27654	.27200	.26760	.26331	.25913	.25507
67	.30978	.30462	.29961	.29474	.29000	.28539	.28090	.27653	.27227	.26813
68	.32401	.31879	.31371	.30877	.30396	.29927	.29471	.29027	.28593	.28171
69	.33863	.33336	.32822	.32322	.31835	.31359	.30896	.30445	.30005	.29576
70	.35361	.34829	.34310	.33804	.33311	.32830	.32361	.31903	.31457	.31021
71	.36886	.36349	.35826	.35316	.34818	.34332	.33858	.33394	.32942	.32500
72	.38439	.37899	.37373	.36858	.36356	.35866	.35387	.34919	.34461	.34015
73	.40021	.39479	.38950	.38432	.37927	.37433	.36950	.36478	.36016	.35565
74	.41639	.41096	.40565	.40046	.39538	.39042	.38556	.38081	.37616	.37161
75	.43301	.42758	.42226	.41706	.41198	.40699	.40212	.39734	.39267	.38809
76	.45009	.44467	.43937	.43417	.42908	.42410	.41921	.41443	.40974	.40514
77	.46761	.46221	.45693	.45175	.44667	.44170	.43682	.43203	.42734	.42274
78	.48548	.48013	.47488	.46973	.46468	.45972	.45486	.45009	.44541	.44082
79	.50356	.49826	.49306	.48795	.48294	.47802	.47319	.46845	.46379	.45922
80	.52171	.51647	.51133	.50628	.50132	.49644	.49166	.48695	.48233	.47779
81	.53974	.53457	.52950	.52451	.51961	.51479	.51006	.50541	.50083	.49633
82	.55753	.55245	.54745	.54254	.53771	.53296	.52828	.52369	.51917	.51472
83	.57500	.57001	.56510	.56026	.55551	.55083	.54623	.54170	.53724	.53285
84	.59216	.58726	.58245	.57770	.57304	.56844	.56391	.55945	.55506	.55074
85	.60906	.60428	.59956	.59492	.59034	.58583	.58139	.57702	.57270	.56845
86	.62555	.62088	.61627	.61173	.60725	.60284	.59849	.59420	.58997	.58580
87	.64139	.63683	.63233	.62790	.62352	.61921	.61495	.61076	.60661	.60253

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
88	.65666	.65221	.64783	.64350	.63923	.63502	.63086	.62675	.62270	.61871
89	.67163	.66730	.66304	.65882	.65466	.65055	.64650	.64249	.63854	.63463
90	.68646	.68226	.67812	.67402	.66998	.66599	.66204	.65814	.65430	.65049
91	.70093	.69686	.69285	.68888	.68496	.68108	.67725	.67347	.66973	.66604
92	.71466	.71073	.70684	.70300	.69920	.69545	.69173	.68806	.68444	.68085
93	.72750	.72370	.71994	.71622	.71254	.70890	.70530	.70174	.69822	.69474
94	.73931	.73562	.73198	.72838	.72481	.72129	.71780	.71434	.71093	.70755
95	.75001	.74644	.74291	.73941	.73595	.73253	.72914	.72579	.72247	.71919
96	.75953	.75606	.75262	.74923	.74586	.74253	.73924	.73598	.73275	.72955
97	.76819	.76481	.76147	.75816	.75489	.75165	.74844	.74526	.74211	.73899
98	.77599	.77270	.76944	.76621	.76302	.75986	.75672	.75362	.75054	.74750
99	.78319	.77998	.77680	.77365	.77053	.76744	.76437	.76134	.75833	.75535
100	.78987	.78673	.78362	.78054	.77748	.77446	.77146	.76849	.76555	.76263
101	.79622	.79315	.79010	.78708	.78409	.78113	.77819	.77528	.77239	.76953
102	.80283	.79983	.79685	.79390	.79097	.78807	.78519	.78234	.77951	.77671
103	.80983	.80620	.80399	.80111	.79825	.79541	.79260	.78981	.78705	.78430
104	.81760	.81475	.81192	.80912	.80633	.80357	.80083	.79810	.79541	.79273
105	.82726	.82451	.82178	.81907	.81638	.81371	.81106	.80843	.80582	.80322
106	.84137	.83879	.83623	.83368	.83115	.82863	.82614	.82366	.82119	.81874
107	.86211	.85981	.85751	.85523	.85297	.85071	.84847	.84624	.84403	.84182
108	.89660	.89481	.89304	.89127	.88950	.88775	.88601	.88427	.88254	.88081
109	.95372	.95290	.95208	.95126	.95045	.94964	.94883	.94803	.94723	.94643

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS

[Applicable after April 30, 1989]

Age	Interest rate									
	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
0	.01683	.01669	.01655	.01642	.01630	.01618	.01607	.01596	.01586	.01576
1	.00559	.00544	.00531	.00518	.00506	.00494	.00484	.00473	.00464	.00454
2	.00528	.00513	.00499	.00485	.00473	.00461	.00449	.00439	.00428	.00419
3	.00524	.00508	.00493	.00479	.00465	.00453	.00441	.00429	.00419	.00408
4	.00536	.00519	.00503	.00488	.00473	.00460	.00447	.00435	.00423	.00412
5	.00558	.00540	.00523	.00507	.00492	.00477	.00464	.00451	.00439	.00427
6	.00588	.00569	.00550	.00533	.00517	.00502	.00487	.00473	.00460	.00448
7	.00624	.00604	.00584	.00566	.00549	.00532	.00517	.00502	.00488	.00475
8	.00668	.00646	.00626	.00606	.00588	.00570	.00554	.00538	.00523	.00509
9	.00722	.00699	.00677	.00656	.00636	.00617	.00600	.00583	.00567	.00552
10	.00785	.00761	.00737	.00715	.00694	.00674	.00655	.00637	.00620	.00604
11	.00861	.00835	.00810	.00786	.00764	.00743	.00723	.00704	.00686	.00668
12	.00946	.00918	.00891	.00866	.00843	.00820	.00799	.00779	.00760	.00741
13	.01035	.01006	.00978	.00951	.00927	.00903	.00880	.00859	.00839	.00819
14	.01122	.01091	.01061	.01034	.01007	.00982	.00958	.00936	.00914	.00894
15	.01203	.01171	.01140	.01110	.01082	.01056	.01031	.01007	.00985	.00963
16	.01279	.01244	.01211	.01181	.01151	.01123	.01097	.01072	.01048	.01025
17	.01347	.01311	.01276	.01244	.01213	.01184	.01156	.01130	.01104	.01081
18	.01411	.01373	.01336	.01302	.01270	.01239	.01210	.01182	.01155	.01130
19	.01474	.01434	.01396	.01359	.01325	.01293	.01262	.01233	.01205	.01178
20	.01537	.01494	.01454	.01415	.01379	.01345	.01313	.01282	.01252	.01224
21	.01598	.01553	.01510	.01470	.01432	.01396	.01361	.01329	.01298	.01268
22	.01660	.01613	.01568	.01525	.01485	.01446	.01410	.01375	.01343	.01312
23	.01725	.01674	.01627	.01581	.01539	.01498	.01460	.01423	.01388	.01355
24	.01796	.01742	.01692	.01644	.01599	.01556	.01515	.01476	.01439	.01404
25	.01876	.01819	.01765	.01714	.01666	.01621	.01577	.01536	.01497	.01460
26	.01967	.01907	.01850	.01796	.01745	.01696	.01650	.01606	.01565	.01525
27	.02072	.02008	.01948	.01890	.01836	.01784	.01735	.01688	.01644	.01601
28	.02190	.02122	.02057	.01996	.01938	.01883	.01831	.01781	.01734	.01689
29	.02322	.02249	.02181	.02116	.02054	.01996	.01940	.01887	.01836	.01788
30	.02469	.02392	.02319	.02250	.02184	.02122	.02062	.02006	.01952	.01900
31	.02634	.02552	.02475	.02401	.02331	.02264	.02201	.02140	.02083	.02028
32	.02816	.02729	.02647	.02568	.02494	.02423	.02355	.02291	.02229	.02170
33	.03018	.02926	.02838	.02755	.02675	.02600	.02528	.02459	.02393	.02331
34	.03239	.03142	.03048	.02960	.02875	.02795	.02718	.02645	.02575	.02508
35	.03482	.03378	.03279	.03185	.03095	.03009	.02928	.02850	.02775	.02704
36	.03743	.03633	.03528	.03428	.03333	.03242	.03155	.03072	.02992	.02916
37	.04026	.03909	.03798	.03692	.03591	.03494	.03401	.03313	.03228	.03147

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
38	.04330	.04207	.04089	.03977	.03869	.03767	.03668	.03574	.03484	.03398
39	.04658	.04528	.04403	.04284	.04170	.04061	.03957	.03857	.03762	.03670
40	.05011	.04873	.04741	.04615	.04495	.04379	.04269	.04163	.04061	.03964
41	.05389	.05244	.05104	.04971	.04844	.04721	.04604	.04492	.04384	.04281
42	.05791	.05638	.05491	.05350	.05216	.05086	.04962	.04844	.04729	.04620
43	.06219	.06057	.05902	.05754	.05612	.05475	.05344	.05218	.05098	.04981
44	.06673	.06503	.06340	.06184	.06034	.05890	.05752	.05619	.05491	.05368
45	.07157	.06978	.06806	.06642	.06484	.06332	.06186	.06046	.05911	.05781
46	.07669	.07481	.07301	.07128	.06962	.06802	.06649	.06501	.06358	.06221
47	.08212	.08015	.07826	.07645	.07470	.07302	.07140	.06984	.06834	.06690
48	.08784	.08578	.08380	.08190	.08006	.07830	.07660	.07496	.07338	.07186
49	.09384	.09169	.08961	.08762	.08570	.08384	.08206	.08034	.07868	.07708
50	.10013	.09787	.09570	.09361	.09160	.08966	.08779	.08598	.08424	.08256
51	.10671	.10436	.10209	.09991	.09780	.09577	.09381	.09192	.09009	.08832
52	.11365	.11120	.10883	.10655	.10435	.10222	.10017	.09819	.09628	.09442
53	.12095	.11840	.11593	.11355	.11126	.10904	.10689	.10482	.10282	.10088
54	.12860	.12595	.12338	.12090	.11851	.11619	.11396	.11179	.10970	.10767
55	.13663	.13386	.13120	.12862	.12613	.12372	.12138	.11912	.11694	.11482
56	.14503	.14217	.13940	.13672	.13413	.13162	.12919	.12683	.12456	.12235
57	.15385	.15089	.14801	.14523	.14254	.13994	.13741	.13496	.13259	.13029
58	.16311	.16004	.15706	.15418	.15139	.14868	.14606	.14352	.14105	.13866
59	.17279	.16961	.16654	.16355	.16066	.15786	.15514	.15250	.14994	.14745
60	.18286	.17958	.17640	.17332	.17033	.16743	.16462	.16188	.15922	.15664
61	.19330	.18992	.18665	.18347	.18038	.17738	.17447	.17164	.16889	.16622
62	.20409	.20061	.19724	.19396	.19078	.18768	.18467	.18175	.17891	.17614
63	.21522	.21165	.20818	.20480	.20152	.19833	.19523	.19221	.18928	.18642
64	.22672	.22306	.21949	.21602	.21265	.20937	.20617	.20306	.20003	.19708
65	.23867	.23491	.23125	.22769	.22423	.22085	.21757	.21437	.21125	.20821
66	.25112	.24727	.24353	.23988	.23632	.23286	.22948	.22619	.22299	.21986
67	.26409	.26016	.25633	.25260	.24896	.24541	.24195	.23857	.23528	.23206
68	.27760	.27359	.26968	.26586	.26214	.25851	.25497	.25151	.24814	.24484
69	.29157	.28748	.28350	.27961	.27581	.27211	.26849	.26495	.26150	.25812
70	.30596	.30181	.29775	.29379	.28992	.28614	.28245	.27884	.27532	.27187
71	.32069	.31648	.31236	.30833	.30440	.30055	.29679	.29312	.28952	.28600
72	.33578	.33151	.32733	.32325	.31925	.31535	.31152	.30778	.30412	.30054
73	.35123	.34691	.34269	.33855	.33450	.33054	.32666	.32286	.31914	.31550
74	.36715	.36279	.35852	.35434	.35024	.34623	.34230	.33845	.33468	.33098
75	.38360	.37921	.37491	.37069	.36656	.36250	.35853	.35464	.35082	.34708
76	.40064	.39623	.39190	.38765	.38349	.37941	.37540	.37148	.36762	.36384
77	.41823	.41381	.40947	.40521	.40103	.39692	.39290	.38895	.38507	.38126
78	.43632	.43189	.42755	.42329	.41910	.41499	.41095	.40698	.40309	.39926
79	.45473	.45032	.44599	.44173	.43755	.43344	.42940	.42543	.42153	.41770
80	.47333	.46894	.46463	.46040	.45623	.45213	.44811	.44414	.44025	.43642
81	.49191	.48755	.48328	.47907	.47493	.47085	.46684	.46290	.45902	.45520
82	.51034	.50603	.50179	.49762	.49351	.48947	.48549	.48157	.47772	.47392
83	.52852	.52427	.52008	.51595	.51189	.50788	.50394	.50006	.49623	.49246
84	.54648	.54228	.53815	.53407	.53006	.52610	.52221	.51836	.51458	.51084
85	.56426	.56013	.55606	.55205	.54810	.54420	.54035	.53656	.53282	.52913
86	.58169	.57764	.57364	.56970	.56581	.56197	.55818	.55445	.55076	.54713
87	.59850	.59452	.59060	.58673	.58291	.57913	.57541	.57174	.56811	.56453
88	.61476	.61086	.60702	.60322	.59947	.59577	.59212	.58851	.58494	.58142
89	.63078	.62697	.62321	.61950	.61583	.61220	.60862	.60505	.60159	.59813
90	.64674	.64302	.63935	.63573	.63215	.62861	.62511	.62165	.61823	.61485
91	.66238	.65877	.65520	.65167	.64819	.64474	.64133	.63795	.63462	.63132
92	.67730	.67379	.67032	.66689	.66350	.66014	.65682	.65354	.65029	.64708
93	.69130	.68789	.68452	.68119	.67789	.67463	.67140	.66820	.66504	.66191
94	.70421	.70090	.69762	.69438	.69118	.68800	.68486	.68175	.67867	.67563
95	.71594	.71272	.70954	.70639	.70326	.70017	.69712	.69409	.69109	.68812
96	.72638	.72325	.72014	.71707	.71403	.71101	.70803	.70507	.70215	.69925
97	.73590	.73285	.72982	.72682	.72385	.72090	.71799	.71510	.71224	.70941
98	.74448	.74149	.73853	.73560	.73269	.72981	.72696	.72414	.72134	.71856
99	.75240	.74948	.74658	.74371	.74086	.73805	.73525	.73248	.72974	.72702
100	.75974	.75687	.75403	.75121	.74842	.74566	.74292	.74020	.73751	.73484
101	.76669	.76388	.76109	.75833	.75559	.75287	.75018	.74751	.74486	.74223
102	.77393	.77117	.76844	.76573	.76304	.76037	.75773	.75511	.75251	.74993
103	.78158	.77888	.77620	.77355	.77091	.76830	.76571	.76313	.76058	.75805
104	.79007	.78743	.78482	.78222	.77964	.77709	.77455	.77203	.76953	.76705
105	.80065	.79809	.79556	.79304	.79054	.78805	.78559	.78314	.78071	.77829
106	.81631	.81389	.81149	.80911	.80674	.80438	.80204	.79972	.79741	.79511

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
107	.83968	.83745	.83529	.83313	.83099	.82886	.82674	.82463	.82254	.82045
108	.87910	.87739	.87569	.87400	.87232	.87064	.86897	.86731	.86566	.86401
109	.94563	.94484	.94405	.94326	.94248	.94170	.94092	.94014	.93937	.93860

TABLE 80CNSMT.— APPLICABLE AFTER APRIL 30, 1989

Age x (1)	1(x) (2)	Age x (1)	1(x) (2)	Age x (1)	1(x) (2)
0	100000	37	95492	74	59279
1	98740	38	95317	75	56799
2	98648	39	95129	76	54239
3	98584	40	94926	77	51599
4	98535	41	94706	78	48878
5	98495	42	94465	79	46071
6	98459	43	94201	80	43180
7	98426	44	93913	81	40208
8	98396	45	93599	82	37172
9	98370	46	93256	83	34095
10	98347	47	92882	84	31012
11	98328	48	92472	85	27960
12	98309	49	92021	86	24961
13	98285	50	91526	87	22038
14	98248	51	90986	88	19235
15	98196	52	90402	89	16598
16	98129	53	89771	90	14154
17	98047	54	89087	91	11908
18	97953	55	88348	92	9863
19	97851	56	87551	93	8032
20	97741	57	86695	94	6424
21	97623	58	85776	95	5043
22	97499	59	84789	96	3884
23	97370	60	83726	97	2939
24	97240	61	82581	98	2185
25	97110	62	81348	99	1598
26	96982	63	80024	100	1150
27	96856	64	78609	101	815
28	96730	65	77107	102	570
29	96604	66	75520	103	393
30	96477	67	73846	104	267
31	96350	68	72082	105	179
32	96220	69	70218	106	119
33	96088	70	68248	107	78
34	95951	71	66165	108	51
35	95808	72	63972	109	33
36	95655	73	61673	110	0

(e) *Effective date.* This section is effective as of May 1, 1989.

§ 20.2031–10 [Removed]

Par. 23. Section 20.2031–10 is removed.

Par. 24. Section 20.2055–2 is amended by revising paragraph (f)(4) to read as follows:

§ 20.2055–2 Transfers not exclusively for charitable purposes.

* * * * *

(f) * * *

(4) *Other decedents.* The present value of an interest not described in paragraph (f)(2) of this section is to be determined under § 20.2031–7(d) in the case of decedents where the valuation date of the gross estate is after April 30, 1989, or under § 20.2031–7A in the case of decedents where the valuation date of the gross estate is before May 1, 1989.

* * * * *

Par. 25. Immediately following § 20.7101–1, an undesignated center heading and §§ 20.7520–1 through 20.7520–4 are added to read as follows:

General Actuarial Valuations

§ 20.7520–1 Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests.

(a) *General actuarial valuations.* (1) Except as otherwise provided in this section and in § 20.7520–3 (relating to exceptions to the use of prescribed tables under certain circumstances), in the case of estates of decedents with valuation dates after April 30, 1989, the fair market value of annuities, interests for life or for a term of years (including unitrust interests), remainders, and reversions is their present value determined under this section. See § 20.2031–7(d) (and, for certain prior periods, § 20.2031–7A) of this chapter for the computation of the value of annuities, unitrust interests, life estates, terms of years, remainders, and reversions, other than interests described in paragraphs (a)(2) and (a)(3) of this section.

(2) In the case of a transfer to a pooled income fund with a valuation date after April 30, 1989, see § 1.642(c)–6(e) (or, for certain prior periods, § 1.642(c)–6A) of this chapter (Income Tax Regulations) with respect to the valuation of the remainder interest.

(3) In the case of a transfer to a charitable remainder annuity trust with a valuation date after April 30, 1989, see § 1.664–2 of this chapter with respect to the valuation of the remainder interest. See § 1.664–4 (or, for certain prior periods, § 1.664–4A) of this chapter with respect to the valuation of the remainder interest in property transferred to a charitable remainder unitrust.

(b) *Components of valuation*—(1) *Interest rate component*—(i) *Section 7520 interest rate.* The section 7520 interest rate is the rate of return, rounded to the nearest two-tenths of one percent, that is equal to 120 percent of the applicable Federal mid-term rate, compounded annually, for purposes of section 1274(d)(1), for the month in which the valuation date falls. In rounding the rate to the nearest two-tenths of a percent, any rate that is midway between one two-tenths of a percent and another is rounded up to the higher of those two rates. For example, if 120 percent of the applicable Federal mid-term rate is 10.30, the section 7520 interest rate component is 10.4. The section 7520 interest rate is published monthly by the Internal Revenue Service in the Internal Revenue Bulletin (See § 601.601(d)(2)(ii)(*b*) of this chapter).

(ii) *Valuation date.* Generally, the valuation date is the date on which the transfer takes place. For estate tax purposes, the valuation date is the date of the decedent's death, unless the executor elects the alternate valuation date in accordance with section 2032, in which event, and under the limitations prescribed in section 2032 and the regulations thereunder, the valuation date is the alternate valuation date. For special rules in the case of charitable transfers, see § 20.7520–2.

(2) *Mortality component.* The mortality component reflects the mortality data most recently available from the United States census. As new mortality data becomes available after each decennial census, the mortality component described in this section will be revised periodically and the revised mortality component tables will be published in the regulations at that time. For decedents' estates with valuation dates after April 30, 1989, the mortality component table (Table 80CNSMT) is included in § 20.2031–7(d)(6). See § 20.2031–7A for mortality component tables applicable to decedent's estates with valuation dates before May 1, 1989.

(c) *Tables.* The present value on the valuation date of an annuity, life estate, term of years, remainder, or reversion is computed by using the section 7520 interest rate component that is described in paragraph (b)(1) of this section and the mortality component that is described in paragraph (b)(2) of this section. Actuarial factors for determining these present values are included in tables in these regulations and in publications by the Internal Revenue Service. If a special factor is required in order to value an interest, the Internal Revenue Service will furnish the factor upon a request for a ruling. The request for a ruling must be accompanied by a recitation of the facts, including the date of birth for each measuring life and copies of relevant instruments. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (see Rev. Proc. 94–1, 1994–1 I.R.B. 10, and the first Rev. Proc. published each year, and §§ 601.201 and 601.601(d)(2)(ii)(*b*) of this chapter) and include payment of the required user fee.

(1) *Regulation sections containing tables with interest rates between 4.2 and 14 percent.* Section 1.642(c)–6(e)(4) of this chapter contains Table S used for determining the present value of a single life remainder interest in a pooled income fund as defined in § 1.642(c)–5 of this chapter (Income Tax Regulations). Section 1.664–4(e)(6) of this chapter contains Table D (actuarial factors used in determining the present value of a remainder interest postponed for a term of years), Table U(1) (actuarial factors for one life), and Table F (payout factors) used in determining the present value of a remainder interest in a charitable remainder unitrust as defined in § 1.664–3 of this chapter. Section 20.2031–7(d)(6) contains Table S (actuarial factors for one life), Table B (actuarial factors used in determining the present value of an interest for a term of years), Table K (annuity end-of-interval adjustment factors), Table J (term certain annuity beginning-of-interval adjustment factors), and Table 80CNSMT (mortality components) used in determining the present value of annuities, life estates, remainders, and reversions. The regulations will be revised periodically to include new mortality component tables and new tables of factors.

(2) *Internal Revenue Service publications containing tables with interest rates between 2.2 and 26 percent.* The following documents (except for Publication 1459) have been published for sale by the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402:

(i) Internal Revenue Service Publication 1457, "Actuarial Values, Alpha Volume," (8/89). This publication includes tables of valuation factors, as well as examples that show how to compute other valuation factors, for determining the present value of annuities, life estates, terms of years, remainders, and reversions, measured by one or two lives. These factors may also be used in the valuation of interests in a charitable remainder annuity trust as defined in § 1.664–2 of this chapter (Income Tax Regulations) and a pooled income fund as defined in § 1.642(c)–5 of this chapter.

(ii) Internal Revenue Service Publication 1458, "Actuarial Values, Beta Volume," (8/89). This publication includes term certain tables and tables of one and two life valuation factors for determining the present value of remainder interests in a charitable remainder unitrust as defined in § 1.664–3 of this chapter.

(iii) Internal Revenue Service Publication 1459, "Actuarial Values, Gamma Volume," (8–89) is no longer available for purchase from the Superintendent of Documents. However, it may be obtained by requesting a copy from: CC:DOM:CORP:T:R (IRS Publication 1459), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. This publication includes tables for computing depreciation adjustment factors. See § 1.170A–12 of this chapter (Income Tax Regulations).

(d) *Effective date.* This section is effective as of May 1, 1989.

§ 20.7520–2 Valuation of charitable interests.

(a) *In general*—(1) *Valuation.* Except as otherwise provided in this section and in § 20.7520–3 (relating to exceptions to the use of prescribed tables under certain circumstances), the fair market value of annuities, interests for life or for a term of years, remainders, and reversions for which an estate tax charitable deduction is

allowable is the present value of such interests determined under § 20.7520–1.

(2) *Prior-month election rule.* If any part of the property interest transferred qualifies for an estate tax charitable deduction under section 2055 or 2106, the executor may compute the present value of the transferred interest by use of the section 7520 interest rate for the month during which the interest is transferred or the section 7520 interest rate for either of the 2 months preceding the month during which the interest is transferred. Paragraph (b) of this section explains how a prior-month election is made. The interest rate for the month so elected is the applicable section 7520 interest rate. If the executor elects the alternate valuation date under section 2032 and also elects to use the section 7520 interest rate for either of the 2 months preceding the month in which the interest is transferred, the month so elected (either of the 2 months preceding the month in which the alternate valuation date falls) is the valuation date. If the actuarial factor for either or both of the 2 months preceding the month during which the interest is transferred is based on a mortality experience that is different from the mortality experience at the date of the transfer and if the executor elects to use the section 7520 rate for a prior month with the different mortality experience, the executor must use the actuarial factor derived from the mortality experience in effect during the month of the section 7520 rate elected. All actuarial computations relating to the transfer must be made by applying the interest rate component and the mortality component of the month elected by the executor.

(3) *Transfers of more than one interest in the same property.* If a decedent's estate includes the transfer of more than one interest in the same property, the executor must, for purposes of valuing the transferred interests, use the same interest rate and mortality components for each interest in the property transferred.

(4) *Information required with tax return.* The following information must be attached to the estate tax return (or be filed subsequently as supplemental information to the return) if the estate claims a charitable deduction for the present value of a temporary or remainder interest in property—

(i) A complete description of the interest that is transferred, including a copy of the instrument of transfer;

(ii) The valuation date of the transfer;

(iii) The names and identification numbers of the beneficiaries of the transferred interest;

(iv) The names and birthdates of any measuring lives, a description of any relevant terminal illness condition of any measuring life, and (if applicable) an explanation of how any terminal illness condition was taken into account in valuing the interest; and

(v) A computation of the deduction showing the applicable section 7520 interest rate that is used to value the transferred interest.

(5) *Place for filing returns.* See section 6091 of the Internal Revenue Code and the regulations thereunder for the place for filing the return or other document required by this section.

(b) *Election of interest rate component*—(1) *Time for making election.* An executor makes a prior-month election under paragraph (a)(2) of this section by attaching the information described in paragraph (b)(2) of this section to the decedent's estate tax return or by filing a supplemental statement of the election information within 24 months after the later of the date the original estate tax return was filed or the due date for filing the return.

(2) *Manner of making election.* A statement that the prior-month election under section 7520(a) of the Internal Revenue Code is being made and that identifies the elected month must be attached to the estate tax return (or by subsequently filing the statement as supplemental information to the return).

(3) *Revocability.* The prior-month election may be revoked by filing a statement of supplemental information within 24 months after the later of the date the original return of tax for the decedent's estate was filed or the due date for filing the return. The revocation must be filed in the place referred to in paragraph (a)(5) of this section.

(c) *Effective dates.* Paragraph (a) of this section is effective as of May 1, 1989. Paragraph (b) of this section is effective for elections made after June 10, 1994.

§ 20.7520–3 Limitation on the application of section 7520.

(a) *Internal Revenue Code sections to which section 7520 does not apply.* Section 7520 of the Internal Revenue Code does not apply for purposes of:

(1) Part I, subchapter D of subtitle A (section 401 et. seq.), relating to the income tax treatment of certain qualified plans. (However, section 7520 does apply to the estate and gift tax treatment of certain qualified plans and for purposes of determining excess accumulations under section 4980A);

(2) Sections 72 and 101(b), relating to the income taxation of life insurance, endowment, and annuity contracts, unless otherwise provided for in the regulations under sections 72, 101, and 1011 (see, particularly, §§ 1.101–2(e)(1)(iii)(*b*)(*2*), and 1.1011–2(c), *Example 8*);

(3) Sections 83 and 451, unless otherwise provided for in the regulations under those sections;

(4) Section 457, relating to the valuation of deferred compensation, unless otherwise provided for in the regulations under section 457;

(5) Sections 3121(v) and 3306(r), relating to the valuation of deferred amounts, unless otherwise provided for in the regulations under those sections;

(6) Section 6058, relating to valuation statements evidencing compliance with qualified plan requirements, unless otherwise provided for in the regulations under section 6058;

(7) Section 7872, relating to income and gift taxation of interest-free loans and loans with below-market interest rates, unless otherwise provided for in the regulations under section 7872; or

(8) Section 2702(a)(2)(A), relating to the value of a nonqualified retained interest upon a transfer of an interest in trust to or for the benefit of a member of the transferor's family; and

(9) Any other sections of the Internal Revenue Code to the extent provided by the Internal Revenue Service in revenue rulings or revenue procedures. (See §§ 601.201 and 601.601 of this chapter).

(b) *Other limitations on the application of section 7520.* [Reserved]

(c) *Effective date.* Section § 20.7520–3(a) is effective as of May 1, 1989.

§ 20.7520–4 Transitional rules.

(a) *Reliance.* If the valuation date is after April 30, 1989, and before June 10, 1994, an executor can rely on Notice 89–24, 1989–1 C.B. 660, or Notice 89–60, 1989–1 C.B. 700 (See § 601.601(d)(2)(ii)(*b*) of this chapter), in valuing the transferred interest.

(b) *Effective date.* This section is effective as of May 1, 1989.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 26. The authority citation for part 25 is revised to read as follows:

Authority: 26 U.S.C. 7805.

Section 25.2512–5 also issued under 26 U.S.C. 7520(c)(2).
Section 25.2512–5A also issued under 26 U.S.C. 7520(c)(2).
Section 25.7520–1 also issued under 26 U.S.C. 7520(c)(2).
Section 25.7520–2 also issued under 26 U.S.C. 7520(c)(2).
Section 25.7520–3 also issued under 26 U.S.C. 7520(c)(2).
Section 25.7520–4 also issued under 26 U.S.C. 7520(c)(2).

Par. 27. Section 25.2512–0 is added to read as follows:

§ 25.2512–0 Table of contents.

This section lists the section headings that appear in the regulations under section 2512.

§ 25.2512–1 Valuation of property; in general
§ 25.2512–2 Stocks and bonds
§ 25.2512–3 Valuation of interests in trusts
§ 25.2512–4 Valuation of notes
§ 25.2512–5 Valuation of annuities, interests for life or term of years, and remainder or reversionary interests transferred after April 30, 1959
§ 25.2512–6 Valuation of certain life insurance and annuity contracts and shares in an open-end investment company
§ 25.2512–7 Effect of surrender
§ 25.2512–8 Transfers for insufficient consideration

Actuarial Tables Applicable Before May 1, 1989

§ 25.2512–5A Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests transferred before May 1, 1989.

Par. 28. Immediately following § 25.2518–3 an undesignated center heading and § 25.2512–5A are added to read as follows:

Actuarial Tables Applicable Before May 1, 1989

§ 25.2512–5A Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests transferred before May 1, 1989.

(a) *Valuation of annuities, interests for life or term of years, and remainder or reversionary interests transferred before January 1, 1952.* Except as otherwise provided in § 25.2512–5(b), if the transfer was made before January 1, 1952, the present value of annuities, life estates, terms of years, remainders, and reversions is their present value determined under this section. If the valuation of the interest involved is dependent upon the continuation or termination of one or more lives or upon a term certain concurrent with one or more lives, the factor for the present value is computed on the basis of interest at the rate of 4 percent a year, compounded annually, and life contingencies for each life involved from values that are based upon the "Actuaries' or Combined Experience Table of Mortality, as extended." This table and many additional factors are described in former § 86.19 (as contained in the 26 CFR Part 81 edition revised as of April 1, 1958). The present value of an interest measured by a term of years is computed on the basis of interest at the rate of 4 percent a year.

(b) *Valuation of annuities, interests for life or term of years, and remainder or reversionary interests transferred after December 31, 1951, and before January 1, 1971.* Except as otherwise provided in § 25.2512–5(b), the present value of annuities, life estates, terms of years, remainders, and reversions transferred after December 31, 1951, and before January 1, 1971, is the present value of such interests determined under this section. If the value of the interest involved is dependent upon the continuation or termination of one or more lives, the factor for the present value is computed on the basis of interest at the rate of 3½ percent a year, compounded annually, and life contingencies for each life involved from U.S. Life Table 16. This table and many accompanying factors are set forth in former § 25.2512–5 (as contained in the 26 CFR Part 25 edition revised as of April 1, 1994). Special factors involving one and two lives may be found in or computed with the use of tables contained in Internal Revenue Service Publication Number 11, "Actuarial Values for Estate and Gift Tax." (Rev. 5–59). This publication is no longer available for purchase from the Superintendent of Documents However, it may be obtained by requesting a copy from: CC:DOM:CORP:T:R (IRS Publication 11), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. The present value of an interest measured by a term of years is computed on the basis of interest at the rate of 3½ percent a year.

(c) *Valuation of annuities, interests for life or term of years, and remainder or reversionary interests transferred after December 31, 1970, and before December 1, 1983.* Except as otherwise provided in § 25.2512–5(b), the present value of annuities, life estates, terms of years, remainders, and reversions transferred after December 31, 1970, and before December 1, 1983, is the present value of such interests determined under this section. If the interest to be valued is dependent upon the continuation or termination of one or more lives or upon a term certain concurrent with one or more lives, the factor for the present value is computed on the basis of interest at the rate of 6 percent a year, compounded annually, and life contingencies determined for each male and female life involved, from the values that are set forth in Table LN. Table LN contains values that are taken from the life table for total males and the life table for total females appearing as Tables 2 and 3, respectively, in United States Life Tables 1959–61, published by the Department of Health and Human Services, Public Health Service. Table LN and accompanying factors are set forth in former § 25.2512–9 (as contained in the 26 CFR Part 25 edition revised as of April 1, 1994). Special factors involving one and two lives may be found in or computed with the use of tables contained in Internal Revenue Service Publication 723, entitled "Actuarial Values II: Valuation of Last Survivor Charitable Remainders" (12–70), and Internal Revenue Service Publication 723A, entitled "Actuarial Values II: Survivor at 6 Percent Involving One and Two Lives" (12–70). These tables are no longer available for purchase from the Superintendent of Documents. However, a copy of each [illegible] CC:DOM:CORP:T:R (IRS Publication 723/723A), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. The present value of an interest measured by a term of years is computed on the basis of interest at the rate of 6 percent a year.

Par. 29. Section 25.2512–5 is redesignated as paragraph (d) of § 25.2512–5A and amended as follows:

1. The following redesignation table indicates the old CFR unit numbers for § 25.2512–5 and the corresponding new CFR unit numbers for § 25.2512–5A(d).

Old CFR unit No. in § 25.2512–5	Corresponding new No. in § 25.2512–5A(d)
§ 25.2512–5 heading	Paragraph (d) heading
(a)	(d)(1).
(a)(1)	(d)(1)(i)
(a)(1)(i)	(d)(1)(i)(A)
(a)(1)(ii)	(d)(1)(i)(B)
(a)(1)(ii)(A)	(d)(1)(i)(B)(1)
(a)(1)(ii)(B)	(d)(1)(i)(B)(2)
(a)(1)(a)	(d)(1)(i)(C)
(a)(1)(iii)(A)	(d)(1)(i)(C)(1)
(a)(1)(iii)(B)	(d)(1)(i)(C)(2)
(a)(2)	(d)(1)(ii)
(a)(3)	(d)(1)(iii)
(b)	(d)(2).
(b)(1)	(d)(2)(i)
(b)(2)	(d)(2)(ii)
(b)(3)	(d)(2)(iii)
(b)(3)(i)	(d)(2)(iii)(A)
(b)(3)(ii)	(d)(2)(iii)(B)
(c)	(d)(3)
(d)	(d)(4)
[illegible]	(d)(5)
[illegible]	(d)(6).

2. The paragraph heading for paragraph (d) is revised.

3. Newly designated paragraph (d)(1)(i)(A) is amended by revising the first sentence and removing the eighth and last sentences.

4. In newly designated paragraph (d)(1)(i)(B), the concluding text is

amended by revising the first full sentence.

5. In newly designated paragraph (d)(1)(i)(C), the concluding text is amended by revising the first and second full sentences.

6. Newly designated paragraph (d)(1)(iii) is revised.

7. Newly designated paragraph (d)(5) is amended by revising the second and third sentences.

8. Newly designated paragraph (d)(6) is revised.

9. The revisions read as follows:

§ 25.2512–5A Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests transferred before May 1, 1989.

* * * * *

(d) *Valuation of annuities, interests for life or term of years, and remainder or reversionary interests transferred after November 30, 1983, and before May 1, 1989*—(1) *In general.* (i)(A) Except as otherwise provided in § 25.2512–5(b) and in this paragraph (d)(1)(i)(A), the fair market value of annuities, life estates, terms of years, remainders, and reversions transferred after November 30, 1983, and before May 1, 1989, is the present value of such interests determined under this section. * * *

(B) * * *

* * * The donor may elect to value both interests transferred in 1983 under § 25.2512–5A(c) as if such section applied to all transfers made before January 1, 1984, or the donor may elect to have both interests transferred valued under this section. * * *

(C) * * *

* * * The donor may elect to value the interest transferred in 1984 under § 25.2512–5A(c) as if such section applied to all transfers made before January 1, 1985, or the donor may elect to have the transfer valued under this section. If the donor elects to value the interest transferred in 1984 under § 25.2512–5A(c), the donor shall indicate that the election is being made by attaching a statement to the donor's gift tax return for 1984. * * *

* * * * *

(iii) In all examples set forth in this section, the interest is assumed to have been transferred after November 30, 1983, and before May 1, 1989.

* * * * *

(5) * * * The factor is to be computed on the basis of interest at the rate of 10 percent a year, compounded annually, and life contingencies are determined for each person involved from the values of *lx* that are set forth in column 2 of Table LN in § 20.2031–7A(d)(6) of this chapter. Table LN contains values of *lx* taken from the life table for the total population appearing as Table 1 in United States Life Tables: 1969–71, published by the Department of Health and Human Services, Public Health Service.

* * * * *

(6) *Tables.* (i) For actuarial factors showing the present worth at 10 percent of a single life annuity, a life interest, and a remainder interest postponed for a single life, see § 20.2031–7A(d)(6) of this chapter, Table A, of the Estate Tax Regulations.

(ii) For actuarial factors showing the present worth at 10 percent of an annuity for a term certain, an income interest for a term certain, and a remainder interest postponed for a term certain, see § 20.2031–7A(d)(6) of this chapter, Table B, of the Estate Tax Regulations.

Par. 30. New § 25.2512–5 is added to read as follows:

§ 25.2512–5 Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests transferred after April 30, 1989.

(a) *In general.* Except as otherwise provided in paragraph (b) of this section and § 25.7520–3(b), the fair market value of annuities, unitrust interests, life estates, terms of years, remainders, and reversions transferred by gift is the present value of the interests determined under paragraph (d) of this section. Section 20.2031–7 of this chapter (Estate Tax Regulations) and related sections provide tables with standard actuarial factors and examples that illustrate how to use the tables to compute the present value of ordinary annuity, life, and remainder interests in property. These sections also refer to standard and special actuarial factors that may be necessary to compute the present value of similar interests in more unusual fact situations. These factors and examples are also generally applicable for gift tax purposes in computing the values of taxable gifts.

(b) *Commercial annuities and insurance contracts.* The value of life insurance contracts and contracts for the payment of annuities issued by companies regularly engaged in their sale is determined under § 25.2512–6.

(c) *Actuarial valuations before May 1, 1989.* The present value of annuities, unitrust interests, life estates, terms of years, remainders, and reversions transferred by gift before May 1, 1989, is determined under the following sections:

Transfers			Applicable
After	Before	Regulations	
Dec. 31, 1951	Jan. 1, 1952	25.2512–5A(a)	
Dec. 31, 1970	Jan. 1, 1971	25.2512–5A(b)	
Dec. 31, 1983	Dec. 1, 1983	25.2512–5A(c)	
	May 1, 1989	25.2512–5A(d)	

(d) *Annuities, interests, etc., after April 30, 1989*—(1) *In general.* Except as otherwise provided in paragraph (b) of this section and § 25.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances), if the valuation date for the gift is after April 30, 1989, the fair market value of annuities, life estates, terms of years, remainders, and reversions transferred after April 30, 1989, is the present value of such interests determined by use of standard or special section 7520 actuarial factors. These factors are derived by using the appropriate section 7520 interest rate and, if applicable, the mortality component for the valuation date of the interest that is being valued. See §§ 25.7520–1 through 25.7520–4. The fair market value of a qualified annuity interest described in section 2702(b)(1) and a qualified unitrust interest described in section 2702(b)(2) is the present value of such interests determined under § 25.7520–1(c).

(2) *Specific interests.* When the donor transfers property in trust or otherwise and retains an interest therein, generally, the value of the gift is the value of the property transferred less the value of the donor's retained interest. However, if the donor transfers property after October 8, 1990, to or for the benefit of a member of the donor's family, the value of the gift is the value of the property transferred less the value of the donor's retained interest as determined under section 2702. If the

donor assigns or relinquishes an annuity, life estate, remainder, or reversion that the donor holds by virtue of a transfer previously made by the donor or another, the value of the gift is the value of the interest transferred. However, see section 2519 for a special rule in the case of the assignment of an income interest by a person who received the interest from a spouse.

(ii) *Charitable remainder trusts.* The fair market value of a remainder interest in a pooled income fund, as defined in § 1.642(c)–5 of this chapter (Income Tax Regulations), is its value determined under § 1.642(c)–6(e) of this chapter. The fair market value of a remainder interest in a charitable remainder annuity trust, as described in § 1.664–2(a) of this chapter, is its present value determined under § 1.664–2(c) of this chapter. The fair market value of a remainder interest in a charitable remainder unitrust, as defined in § 1.664–3 of this chapter, is its present value determined under § 1.664–4(e) of this chapter. The fair market value of a life interest or term for years in a charitable remainder unitrust is the fair market value of the property as of the date of transfer less the fair market value of the remainder interest, determined under § 1.664–4(e) of this chapter.

(iii) *Ordinary remainder and reversionary interests.* If the interest to be valued is to take effect after a definite number of years or after the death of one individual, the present value of the interest is computed by multiplying the value of the property by the appropriate remainder interest actuarial factor (that corresponds to the applicable section 7520 interest rate and remainder interest period) in Table B (for a term certain) or Table S (for one measuring life), as the case may be. Tables B and S are included in § 20.2031–7(d)(6) of this chapter (Estate Tax Regulations) and in Internal Revenue Service Publication 1457. For information about obtaining actuarial factors for other types of remainder interests, see paragraph (d)(4) of this section.

(iii) *Ordinary term-of-years and life interests.* If the interest to be valued is the right of a person to receive the income of certain property, or to use certain nonincome-producing property, for a term of years or for the life of one individual, the present value of the interest is computed by multiplying the value of the property by the appropriate term-of-years or life interest actuarial factor (that corresponds to the applicable section 7520 interest rate and term-of-years or life interest period) Internal Revenue Service Publication 1457 includes actuarial factors for an interest for a term of years in Table B and for the life of one individual in Table S. However, term-of-years and life interest actuarial factors are not included in Table B or Table S in § 20.2031–7(d)(6) of this chapter. If Internal Revenue Service Publication 1457 (or any other reliable source of term-of-years and life interest actuarial factors) is not conveniently available, an actuarial factor for the interest may be derived mathematically. This actuarial factor may be derived by subtracting the correlative remainder factor (that corresponds to the applicable section 7520 interest rate and the term of years or the life) in Table B (for a term of years) or in Table S (for the life of one individual) in § 20.2031–7(d)(6), as the case may be, from 1.000000. For information about obtaining actuarial factors for other types of term-of-years and life interests, see paragraph (d)(4) of this section.

(iv) *Annuities.* (A) If the interest to be valued is the right of a person to receive an annuity that is payable at the end of each year for a term of years or for the life of one individual, the present value of the interest is computed by multiplying the aggregate amount payable annually by the appropriate annuity actuarial factor (that corresponds to the applicable section 7520 interest rate and annuity period) Internal Revenue Service Publication 1457 includes actuarial factors in Table B (for an annuity payable for a term of years) and in Table S (for an annuity payable for the life of one individual). However, annuity actuarial factors are not included in Table B or Table S in § 20.2031–7(d)(6) of this chapter. If Internal Revenue Service Publication 1457 (or any other reliable source of annuity actuarial factors) is not conveniently available, an annuity factor for a term of years or for one life may be derived mathematically. This annuity factor may be derived by subtracting the applicable remainder factor (that corresponds to the applicable section 7520 interest rate and annuity period) in Table B (in the case of a term-of-years annuity) or in Table S (in the case of a one-life annuity) in § 20.2031–7(d)(6), as the case may be, from 1.000000 and then dividing the result by the applicable section 7520 interest rate expressed as a decimal number. See § 20.2031–7(d)(2)(iv) of this chapter for an example that illustrates the computation of the present value of an annuity.

(B) If the annuity is payable at the end of semiannual, quarterly, monthly, or weekly periods, the product obtained by multiplying the annuity factor by the aggregate amount payable annually is then multiplied by the applicable adjustment factor set forth in Table K in § 20.2031–7(d)(6) of this chapter at the appropriate interest rate component for payments made at the end of the specified periods. The provisions of this paragraph (d)(2)(iv)(B) are illustrated by the following example:

Example. On July 1, 1989, the donor agrees to pay the annuitant the sum of $10,000 per year, payable in equal semiannual installments at the end of each period. The semiannual installments are to be made on each December 31st and June 30th. The annuity is payable until the annuitant's death. On July 1, 1989, the annuitant is 68 years and 6 months old. The donee annuitant's age is taken as 68 for purposes of computing the present value of the retained annuity. The section 7520 rate for July 1989 is 10.6 percent. Under Table S, the factor at 10.6 percent for determining the present value of a remainder interest payable at the death of an individual aged 68 is .31371. Converting the remainder factor to an annuity factor, as described above, the annuity factor for determining the present value of an annuity transferred to an individual age 68 is 6.4744 (1.00000 minus .31371 divided by 10.6). The adjustment factor from Table K in the column for payments made at the end of each semiannual period at the rate of 10.6 percent is 1.0258. The aggregate annual amount of the annuity, $10,000, is multiplied by the factor 6.4744 and the product multiplied by 1.0258. The present value of the annuity beneficiary's interest is, therefore, $66,414 ($10,000×6.4744×1.0258).

(C) If an annuity is payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods for a term of years, the value of the annuity is computed by multiplying the aggregate amount payable annually by the annuity factor described in paragraph (d)(2)(iv)(A) of this section, and the product so obtained is then multiplied by the adjustment factor in Table J in § 20.2031–7(d)(6) of this chapter at the appropriate interest rate component for payments made at the beginning of specified periods. If an annuity is payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods for one or more lives, the value of the annuity is the sum of the first payment plus the present value of a similar annuity, the first payment of which is not to be made until the end of the payment period, determined as provided in paragraph (d)(2)(iv)(B) of this section.

(v) *Annuity and unitrust interests for a term of years or until the prior death of an individual*—(A) *Annuity interests.* The present value of an annuity interest that is payable until the earlier to occur of the lapse of a specific number of years or the death of an individual may be computed with values from the tables

in 20.2031–7(d)(6) as described in the following example:

Example. On January 1, 1991, the donor transfers $100,000 into a trust and retains the right to receive an annuity from the trust in the amount of $6,000 per year, payable in equal semiannual installments at the end of each period. The semiannual installments are to be made on each June 30th and December 31st. The annuity is payable for 10 years or until the donor's prior death. On January 1, 1991, the donor is 59 years and 6 months old. The donor's age is taken as 60 for purposes of computing the present value of the retained annuity. The section 7520 rate for January 1991 is 9.8 percent. The present value of the annuity beneficiary's interst is $35,424.00, determined as follows:

Table S value at 9.8 percent, age 60	.23158
Table S value at 9.8 percent, age 70	.36468
Table 80CNSMT value at age 70	.68248
Table 80CNSMT value at age 60	.83726
Table B value at 9.8 percent, 10 years	.392624
Table K value at 9.8 percent,	1.0239

Factor for annuity beneficiary's interest at 9.8 percent:

$$\frac{(1.00000-.23158)-(.392624\times(68248/83726)\times(1.00000-.36468))=5.7662}{.098}$$

Present value of annuity beneficiary's interest: ($6,000×5.7662×1.0233)	$35,424.07

(B) *Unitrust interests.* The present value of a unitrust interest that is payable until the earlier to occur of the lapse of a specific number of years or the death of an individual may be computed with values from the tables in § 1.664–4(e)(6) as described in the following example:

Example. The donor who, as of the nearest birthday, is 60 years old transfers $100,000 to a unitrust on January 1, 1991. The trust instrument requires that each year the trust pay to the donor, in equal semiannual installments on June 30th and December 31st, 6 percent of the fair market value of the trust assets, valued as of January 1st each year, for 10 years or until the prior death of the donor. The section 7520 rate for January 1991 is 9.8 percent. Under Table F(9.8), the appropriate adjustment factor is .932539 for semiannual payments payable at the end of the semiannual period. The adjusted payout rate is 5.595 percent (6% × .932539). The present value of the unitrust beneficiary's interest is $40,495.00 determined as follows:

Table U(1) value at 5.6 percent, age 60	.37017
Table U(1) value at 5.6 percent, age 70	.50971
Table 80CNSMT value at age 70	.68248
Table 80CNSMT value at age 60	.83726
Table D value at 5.6 percent, 10 years	.561979

Factor for the unitrust beneficiary's interest at 5.6 percent:

$$(1.000000-.37017)-(.561979\times(68248/83726)\times(1.000000-.50971))=.40523$$

Table U(1) value at 5.4 percent, age 60	.38183
Table U(1) value at 5.4 percent, age 70	.52086
Table 80CNSMT value at age 70	.68248
Table 80CNSMT value at age 60	.83726
Table D value at 5.4 percent, 10 years	.573999

Factor for the unitrust beneficiary's interest at 5.4 percent:

$$(1.000000-.38183)-(.573999\times(68248/83726\times(1.000000-.52086))=.39399$$

Difference ... .01124

Interpolation adjustment:

$$\frac{5.595\%-5.4\%}{0.2\%}=\frac{x}{.01124}$$

$$x=.01096$$

Factor at 5.4 percent, age 60	.39399
Plus: Interpolation adjustment	.01096
Interpolated Factor	.40495
Present value of unitrust beneficiary's interest: ($100,000×.40495)	$40,495.00

(2) *Transitional rule.* (i) If the valuation date of a transfer of an interest in property by gift is after April 30, 1989, and before June 10, 1994, a donor can rely on Notice 89–24, 1989–1 C.B. 660, or Notice 89–60, 1989–1 C.B. 700, in valuing the transferred interest. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

(ii) If a donor transferred an interest in property by gift after December 31, 1988, and before May 1, 1989, retaining an interest in the same property, and after April 30, 1989, and before January 1, 1990, transferred the retained interest in property, the donor may, at the option of the donor, value the transfer of the retained interest under this section or under § 25.2512–5A(d).

(4) *Publications and actuarial computations by the Internal Revenue Service.* Many standard actuarial factors not included in § 20.2031–7(d)(6) of this chapter are included in Internal Revenue Service Publication 1457, "Actuarial Values, Alpha Volume," (8–89). Internal Revenue Service Publication 1457 also includes examples that illustrate how to compute many special factors for more unusual situations. A copy of this publication may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. If a special factor is required in the case of a completed gift, the Service may furnish the factor to the donor upon a request for a ruling. The request for a ruling must be accompanied by a recitation of the facts including a statement of the date of birth for each measuring life, the date of the gift, any other applicable dates, and a copy of the will, trust, or other relevant documents. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (see §§ 601.201 and 601.601(d)(2)(ii)(*b*) of this chapter) and include payment of the required user fee.

(e) *Effective date.* This section is effective as of May 1, 1989.

§ 25.2512–9 [Removed]

Par. 31. Section 25.2512–9 is removed.

Par. 32. Section 25.2515–2, paragraph (c) is amended by revising the first and last sentences to read as follows:

§ 25.2515–2 Tenancies by the entirety; transfers treated as gifts; manner of election and valuation.

* * * * *

(c) Factors representing the respective interests of the spouses, under a tenancy by the entirety, at their attained ages at the time of the transaction may be readily computed based on the method described in § 25.2512–5. * * * See § 25.2512–5(d)(4) for the procedure for obtaining special factors from the Internal Revenue Service in appropriate cases.

* * * * *

Par. 33. Section 25.2522(a)–2(a) is amended by revising the fifth sentence to read as set forth below, and by removing the fourth sentence.

§ 25.2522(a)–2 Transfers not exclusively for charitable, etc., purposes in the case of gifts made before August 1, 1969.

(a) * * * If the interest involved is such that its value is to be determined by a special computation, see § 25.2512–5(d)(4). * * *

* * * * *

Par. 34. Section 25.2522(c)–3, paragraph (d)(3) is revised to read as follows:

§ 25.2522(c)–3 Transfers not exclusively for charitable, etc., purposes in the case of gifts made after July 31, 1969.

* * * * *

(d) * * *

(3) *Other transfers.* The present value of an interest not described in paragraph (d)(2) of this section is to be determined under § 25.2512–5.

* * * * *

Par. 35. Immediately following § 25.7101–1, an undesignated center heading and §§ 25.7520–1 through 25.7520–4 are added to read as follows:

General Actuarial Valuations

§ 25.7520–1 Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests.

(a) *General actuarial valuations.* (1) Except as otherwise provided in this section and in § 25.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances), in the case of gifts made after April 30, 1989, the fair market value of annuities, interests for life or for a term of years (including unitrust interests), remainders, and reversions is their present value determined under this section. See § 20.2031–7(d) (and, for certain prior periods, § 20.2031–7A) of this chapter, Estate Tax Regulations, for the computation of the value of annuities, unitrust interests, life estates, terms of years, remainders, and reversions, other than interests described in paragraphs (a)(2) and (a)(3) of this section.

(2) In the case of a gift to a beneficiary of a pooled income fund after April 30, 1989, see § 1.642(c)–6(e) (or, for certain prior periods, § 1.642(c)–6A) of this chapter (Income Tax Regulations) with respect to the valuation of the remainder interest.

(3) In the case of a gift to a beneficiary of a charitable remainder annuity trust after April 30, 1989, see § 1.664–2 of this chapter with respect to the valuation of the remainder interest. See § 1.664–4 (or, for certain prior periods, § 1.664–4A) of this chapter (Income Tax Regulations) with respect to the valuation of the remainder interest in property transferred to a charitable remainder unitrust.

(b) *Components of valuation*—(1) *Interest rate component*— (i) *Section 7520 Interest rate.* The section 7520 interest rate is the rate of return, rounded to the nearest two-tenths of one percent, that is equal to 120 percent of the applicable Federal mid-term rate, compounded annually, for purposes of section 1274(d)(1), for the month in which the valuation date falls. In rounding the rate to the nearest two-tenths of a percent, any rate that is midway between one two-tenths of a percent and another is rounded up to the higher of those two rates. For example, if 120 percent of the applicable Federal mid-term rate is 10.30, the section 7520 interest rate component is 10.4. The section 7520 interest rate is published monthly by the Internal Revenue Service in the Internal Revenue Bulletin (See § 601.601(d)(2)(ii)(*b*) of this chapter).

(ii) *Valuation date.* Generally, the valuation date is the date on which the gift is made. For gift tax purposes, the valuation date is the date on which the gift is complete under § 25.2511–2. For special rules in the case of charitable transfers, see § 25.7520–2.

(2) *Mortality component.* The mortality component reflects the mortality data most recently available from the United States census. As new mortality data becomes available after each decennial census, the mortality component described in this section will be revised periodically and the revised mortality component tables will be published in the regulations at that time. For gifts with valuation dates after April 30, 1989, the mortality component table (Table 80CNSMT) is contained in § 20.2031–7(d) of this chapter (Estate Tax Regulations). See § 20.2031–7A of this chapter for mortality component tables applicable to gifts before May 1, 1989.

(c) *Tables.* The present value on the valuation date of an annuity, life estate, term of years, remainder, or reversion is computed by using the section 7520 interest rate component that is described in paragraph (b)(1) of this section and the mortality component that is described in paragraph (b)(2) of this section. Actuarial factors for determining these present values are included in tables in these regulations and in publications by the Internal Revenue Service. If a special factor is required in order to value an interest, the Internal Revenue Service will furnish the factor upon a request for a ruling. The request for a ruling must be accompanied by a recitation of the facts, including the date of birth for each measuring life and copies of relevant instruments. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (see Rev. Proc. 94–1, 1994–1 I.R.B. 10, and subsequent updates, and §§ 601.201 and 601.601(d)(2)(ii)(*b*) of this chapter) and include payment of the required user fee.

(1) *Regulation sections containing tables with interest rates between 4.2 and 14 percent.* Section 1.642(c)–6(e)(4) of this chapter contains Table S used for determining the present value of a single life remainder interest in a pooled income fund as defined in § 1.642(c)–5 of this chapter (Income Tax Regulations). Section 1.664–4(e)(6) of this chapter contains Table D (actuarial factors used in determining the present value of a remainder interest postponed for a term of years), Table U(1) (actuarial factors for one life), and Table F (payout factors) used in determining the present value of a remainder interest in a charitable remainder unitrust as defined in § 1.664–3 of this chapter. Section 20.2031–7(d)(6) of this chapter (Estate Tax Regulations) contains Table S (actuarial factors for one life), Table B (actuarial factors used in determining the present value of an interest for a term of years), Table K (annuity end-of-interval adjustment factors), Table J (term certain annuity beginning-of-interval adjustment factors), and Table 80CNSMT (mortality components) used in determining the present value of annuities, life estates, remainders, and reversions. The regulations will be revised periodically to include new mortality component tables and new tables of factors.

(2) *Internal Revenue Service publications containing tables with*

interest rates between 2.2 and 26 percent. The following documents (except for Publication 1459) have been published for sale by the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402:

(i) Internal Revenue Service Publication 1457, "Actuarial Values, Alpha Volume," (8/89). This publication includes tables of valuation factors, as well as examples that show how to compute other valuation factors, for determining the present value of annuities, life estates, terms of years, remainders, and reversions, measured by one or two lives. These factors may also be used in the valuation of interests in a charitable remainder annuity trust as defined in § 1.664–2 of this chapter (Income Tax Regulations) and a pooled income fund as defined in § 1.642(c)–5.

(ii) Internal Revenue Service Publication 1458, "Actuarial Values, Beta Volume," (8/89). This publication includes term certain tables and tables of one and two life valuation factors for determining the present value of remainder interests in a charitable remainder unitrust as defined in § 1.664–3 of this chapter.

(iii) Internal Revenue Service Publication 1459, "Actuarial Values, Gamma Volume," (8–89) is no longer available for purchase from the Superintendent of Documents. However, it may be obtained by requesting a copy from: CC:DOM:CORP:T:R (IRS Publication 1459), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. This publication includes tables for computing depreciation adjustment factors. See § 1.170A–12 of this chapter (Income Tax Regulations).

(d) *Effective date.* This section is effective as of May 1, 1989.

§ 25.7520–2 Valuation of charitable interests.

(a) *In general*—(1) *Valuation.* Except as otherwise provided in this section and in § 25.7520–3 (relating to exceptions to the use of prescribed tables under certain circumstances), the fair market value of annuities, interests for life or for a term for years, remainders, and reversions for which a gift tax charitable deduction is allowable is the present value of such interests determined under § 25.7520–1.

(2) *Prior-month election rule.* If any part of the property interest transferred qualifies for a gift tax charitable deduction under section 2522, the donor may elect to compute the present value of the interest transferred by use of the section 7520 interest rate for the month during which the gift is made or the section 7520 interest rate for either of the 2 months preceding the month during which the gift is made. Paragraph (b) of this section explains how a prior-month election is made. The interest rate for the month so elected is the applicable section 7520 interest rate. If the actuarial factor for either or both of the 2 months preceding the month during which the gift is made is based on a mortality experience that is different from the mortality experience at the date of the gift and if the donor elects to use the section 7520 rate for a prior month with the different mortality experience, the donor must use the actuarial factor derived from the mortality experience in effect during the month of the section 7520 rate elected. All actuarial computations relating to the gift must be made by applying the interest rate component and the mortality component of the month elected by the donor.

(3) *Gifts of more than one interest in the same property.* If a donor makes a gift of more than one interest in the same property at the same time, the donor must, for purposes of valuing the gifts, use the same interest rate and mortality components for the gift of each interest in the property. If the donor has made gifts of more than one interest in the same property at different times, the donor must determine the value of the gift by the use of the interest rate component and mortality component in effect during the month of that gift or, if applicable under paragraph (a)(2) of this section, either of the two months preceding the month of the gift.

(4) *Information required with tax return.* The following information must be attached to the gift tax return (or to the amended return) if the donor claims a charitable deduction for the present value of a temporary or remainder interest in property—

(i) A complete description of the interest that is transferred, including a copy of the instrument of transfer;

(ii) The valuation date of the transfer;

(iii) The names and identification numbers of the beneficiaries of the transferred interest;

(iv) The names and birthdates of any measuring lives, a description of any relevant terminal illness condition of any measuring life, and (if applicable) an explanation of how any terminal illness condition was taken into account in valuing the interest; and

(v) A computation of the deduction showing the applicable section 7520 interest rate that is used to value the transferred interest.

(5) *Place for filing returns.* See section 6091 of the Internal Revenue Code and the regulations thereunder for the place for filing the return or other document required by this section.

(b) *Election of interest rate component*—(1) *Time for making election.* A taxpayer makes a prior-month election under paragraph (a)(2) of this section by attaching the information described in paragraph (b)(2) of this section to the donor's gift tax return or to an amended return for that year that is filed within 24 months after the later of the date the original return for the year was filed or the due date for filing the return.

(2) *Manner of making election.* A statement that the prior-month election under section 7520(a) of the Internal Revenue Code is being made and that identifies the elected month must be attached to the gift tax return (or to the amended return).

(3) *Revocability.* The prior-month election may be revoked by filing an amended return within 24 months after the later of the date the original return of tax for that year was filed or the due date for filing the return. The revocation must be filed in the place referred to in paragraph (a)(5) of this section.

(c) *Effective dates.* Paragraph (a) of this section is effective as of May 1, 1989. Paragraph (b) of this section is effective for elections made after June 10, 1994.

§ 25.7520–3 Limitation on the application of section 7520.

(a) *Internal Revenue Code sections to which section 7520 does not apply.* Section 7520 of the Internal Revenue Code does not apply for purposes of—

(1) Part I, subchapter D of subtitle A (section 401 et. seq.), relating to the income tax treatment of certain qualified plans. (However, section 7520 does apply to the estate and gift tax treatment of certain qualified plans and for purposes of determining excess accumulations under section 4980A);

(2) Sections 72 and 101(b), relating to the income taxation of life insurance, endowment, and annuity contracts, unless otherwise provided for in the regulations under sections 72, 101, and 1011 (see, particularly, §§ 1.101–2(e)(1)(iii)(*b*)(*2*), and 1.1011–2(c), *Example 8*);

(3) Sections 83 and 451, unless otherwise provided for in the regulations under those sections;

(4) Section 457, relating to the valuation of deferred compensation, unless otherwise provided for in the regulations under section 457;

(5) Sections 3121(v) and 3306(r), relating to the valuation of deferred

amounts, unless otherwise provided for in the regulations under those sections;

(6) Section 6058, relating to valuation statements evidencing compliance with qualified plan requirements, unless otherwise provided for in the regulations under section 6058;

(7) Section 7872, relating to income and gift taxation of interest-free loans and loans with below-market interest rates, unless otherwise provided for in the regulations under section 7872; or

(8) Section 2702(a)(2)(A), relating to the value of a nonqualified retained interest upon a transfer of an interest in trust to or for the benefit of a member of the transferor's family; and

(9) Any other section of the Internal Revenue Code to the extent provided by the Internal Revenue Service in revenue rulings or revenue procedures. (See §§ 601.201 and 601.601 of this chapter).

(b) *Other limitations on the application of section 7520.* [reserved]

(c) *Effective date.* Section 25.7520–3(a) is effective as of May 1, 1989.

§ 25.7520–4 Transitional rules.

(a) *Reliance.* If the valuation date is after April 30, 1989, and before June 10, 1994, a donor can rely on Notice 89–24, 1989–1 C.B. 660, or Notice 89–60, 1989–1 C.B 700 (See § 601.601(d)(2)(ii)(*b*) of this chapter), in valuing the transferred interest.

(b) *Transfers in 1989.* If a donor transferred an interest in property by gift after December 31, 1988, and before May 1, 1989, retaining an interest in the same property and, after April 30, 1989, and before January 1, 1990, transferred the retained interest in the property, the donor may, at the donor's option, value the transfer of the retained interest under either § 25.2512–5(d) or § 25.2512–5A(d).

(c) *Effective date.* This section is effective as of May 1, 1989.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 36. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 37. Section 602.101 (c) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB Control No.
. . . . .	
1.7520–1	1545–1343
1.7520–2	1545–1343
1.7520–3	1545–1343
1.7520–4	1545–1343
. . . . .	
20.7520–1	1545–1343
20.7520–2	1545–1343
20.7520–3	1545–1343
20.7520–4	1545–1343
. . . . .	
25.7520–1	1545–1343
25.7520–2	1545–1343
25.7520–3	1545–1343
25.7520–4	1545–1343
. . . . .	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: March 28, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–12294 Filed 6–9–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, and 25

[PS–26–93]

RIN 1545–AR56

Actuarial Tables Exceptions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the income, estate, and gift tax regulations under the Internal Revenue Code relating to exceptions to the use of standard valuation tables for valuing annuities, interests for life or a term of years, and remainder or reversionary interests. These amendments are necessary in order to provide guidance consistent with court decisions that call for deviation from the use of standard valuation tables in valuing those interests. The proposed regulations would apply in valuing all interests that would, but for the exceptions, be valued under section 7520 of the Code.

DATES: Written comments and requests for a public hearing must be received by August 9, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R ([PS–26–93]), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:T:R ([PS–26–93]), room 5228, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett, telephone (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations (26 CFR 1.7520–3(b), 20.7520–3(b), and 25.7520–3(b)) for the valuation of certain partial interests in property under section 7520 of the Internal Revenue Code (Code), as added by section 5031 of the Technical and Miscellaneous Revenue Act of 1988, when the use of standard actuarial tables would produce unreasonable results.

The regulations are proposed to be effective for valuation dates occurring after the date the regulations are published as final regulations in the **Federal Register**.

Explanation of Provisions

Section 7520(a), which is effective after April 30, 1989, provides that the value of annuities, interests for life or a term of years, and remainder or reversionary interests is to be determined under tables published by the IRS based on an interest rate equal to 120 percent of the applicable Federal mid-term rate (rounded to the nearest two-tenths of one percent) in effect under section 1274(d)(1) for the month in which the valuation date falls. Section 7520(b) provides that section 7520 shall not apply for purposes of any provision specified in regulations. The Conference Report to the Technical and Miscellaneous Revenue Act of 1988, H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. 113 (1988), 1988–3 C.B. 603, explains that section 7520 does not apply to "situations specified in Treasury regulations."

The IRS has never attempted to include in the regulations all of the different actuarial factors that could apply to the many different kinds of vested and contingent annuity, income, and remainder interests that can arise in tax administration. The actuarial tables that have been set forth in the regulations from time to time have listed only those factors that are most frequently needed by taxpayers. Generally, these actuarial tables have included the one-life annuity, income, and remainder factors for ages 0 through 109 and the term-certain annuity, income, and remainder factors for periods of 1 through 60 years. These one-life and term-certain factors are often referred to in this notice of proposed rulemaking as "standard actuarial factors" or "standard section 7520 actuarial factors."

Other standard actuarial factors that are less frequently needed by taxpayers are included in tables that have been separately published by the IRS from time to time and that may be purchased from the Government Printing Office. The tables in these books include two-life actuarial factors, as well as many one-life factors and term-certain factors not found in the regulations tables. These publications also include a number of examples that illustrate how to compute special section 7520 actuarial factors such as the annuity, income, or remainder factor for a period limited to the lesser of a term certain or a lifetime. Special actuarial factors have for many years been referred to as such in the regulations. See, for example, § 20.2055–2(f)(5).

Other special section 7520 actuarial factors that may apply to more unusual situations may be computed by the taxpayer or, upon request, by the Internal Revenue Service for the taxpayer, by using actuarial methods consistent with those used to compute the standard section 7520 actuarial factors that appear in the tables in the regulations and in the Service's publications. Examples of these more unusual situations include an annuity payable for more than two lives, a right to income for a term certain or until the prior death of the first to die of two individuals, and the right to receive a remainder after a term certain if an individual survives the term.

In calculating a standard section 7520 actuarial factor, certain assumptions are made. For all standard section 7520 actuarial factors in the single-life and term-certain tables in § 20.2031–7(d), the interest rate for enjoyment or the postponement of enjoyment is the applicable section 7520 rate. In the case of a life annuity, income, or remainder factor, the basis for mortality rates for measuring lives is the data in Table 80 CNSMT. However, in unusual situations, where special section 7520 actuarial factors must be computed, one or more alternative assumptions may be appropriate. For example, if the actual income is known to be below applicable standards, the section 7520 interest rate may not be used to project the trust income yield. Similarly, if a measuring life is classified as terminally ill, the standard mortality data from Table 80 CNSMT may not be used as the mortality basis. But, even though one or both of these exceptions is applicable in a case, the section 7520 interest rate will ordinarily be used to discount the value of the right to any postponed enjoyment.

In cases requiring the valuation of ordinary annuities, income interests, and remainder and reversionary interests, the courts have consistently recognized the need to use the standard actuarial factors prescribed by the regulations. *See Ithaca Trust* v. *United States*, 279 U.S. 151 (1929).

However, the courts have recognized that the use of the standard actuarial factors is inappropriate in certain cases. *Robinette* v. *Helvering*, 318 U.S. 184 (1943) (reversionary interest with several interdependent contingencies); *Stark* v. *United States*, 477 F.2d 131 (8th Cir. 1973), *cert. denied*, 414 U.S. 975 (1973) (closely held stock that was not publicly traded and paid no dividends); *O'Reilly* v. *Commissioner*, 973 F.2d 1403 (8th Cir. 1992), *rem'd*, T.C.M. 1994–61 (disparity between .2 percent yield and 10 percent tables produced unrealistic and unreasonable result); and *Commissioner* v. *Estate of Sternberger*, 348 U.S. 187 (1955) (charitable bequest that would occur

only if decedent's unmarried daughter died without issue surviving her and her mother). In addition, the courts have held that the standard actuarial factors cannot be used if the measuring life is terminally ill. *Estate of McLendon* v. *Commissioner*, T.C.M. 1993–459; *Estate of Jennings* v. *Commissioner*, 10 T.C. 323 (1948); and *Estate of Denbigh* v. *Commissioner*, 7 T.C. 387 (1946). See Rev. Rul. 80–80, 1980–1 C.B. 194, which provides that, in cases where the individual's death is imminent, the taxpayer may not use standard actuarial factors prescribed by the regulations. See also *Carter* v. *United States*, 921 F.2d 63 (5th Cir. 1991), where the court refused to ascribe value to an income interest for purposes of the section 2013 credit where death of the measuring life was simultaneous with that of the decedent.

In *Shapiro* v. *Commissioner*, T.C. Memo 1993–483 (1993), the Tax Court allowed the taxpayer to improperly value an annuity with a standard one-life annuity actuarial factor from Table A in § 20.2031–7(f) in a situation in which the annuity could have exhausted the fund from which the annuity was to be paid before the death of the annuitant. The Internal Revenue Service believes that the annuity factor that should have been used in this case is a special annuity factor for the right to receive annual payments for 4 years or until the prior death of the annuitant. See Rev. Rul. 77–454, 1977–2 C.B. 351. See also *Moffett* v. *Commissioner*, 269 F.2d 738 (4th Cir. 1959), and *United States* v. *Dean*, 224 F.2d 26 (1st Cir. 1955). Therefore, the Service will not follow the result in *Shapiro*.

Sections 1.7520–3(a), 20.7520–3(a), and 25.7520–3(a) set forth specific Code sections that are exempt from the valuation rules of section 7520. The proposed regulations contained in this notice describe other areas in which the valuation methodology applicable to standard and special section 7520 actuarial factors is not to be used. Generally, if the interest in property that is to be valued is not an ordinary annuity, income interest, or remainder interest, the standard annuity, income and remainder factors in the tables of factors set forth in the regulations and IRS publications cannot be used. In some cases in which the standard factors from the regulations and publications tables cannot be used, a special factor may be computed by the taxpayer or by the Service upon the request of the taxpayer. In other cases where standard or special factors may not be used, the property interest may be valued using other valuation techniques. Depending upon the facts and circumstances, a property interest that cannot be valued using the standard or special section 7520 factors may have no ascertainable value.

The proposed regulations establish two primary tests to determine whether the fair market value of the interest is computed by use of the standard section 7520 actuarial factors found in the regulations and IRS publications. The first test is whether the instrument of transfer provides the beneficiary with the degree of beneficial enjoyment that is consistent with the type of property interest that the standard valuation tables are designed to measure. In this regard, the rights of an annuity beneficiary must be adequately defined and, if the annuity is payable from a group of assets, the value of the assets must be sufficient to support all of the annuity payments. Similarly, the rights of an income beneficiary must be consistent with the rights of an outright owner of the property interest for the same period of time, and the rights of a remainder or reversionary beneficiary must be protected against invasion or erosion of the corpus.

The second test in the proposed regulations addresses the mortality component of the transferred interest. The Internal Revenue Service previously addressed this issue in Rev. Rul. 66–307, 1966–2 C.B. 429, and Rev. Rul. 80–80. Rev. Rul. 66–307 set forth the rule that the value of a life or remainder interest would be determined by taking into account the health of the life tenant if it was known on the valuation date that the life tenant was afflicted with a fatal and incurable disease in its advanced stages and that the life tenant could not survive for more than a brief period of time. Rev. Rul. 80–80 clarified the "brief period" test in Rev. Rul. 66–307, and stated that the standard life actuarial factors are to be applied to value the interest unless death is clearly imminent. In the view of the Service, because the test for determining whether death is imminent set forth in Rev. Rul. 66–307 and Rev. Rul. 80–80 does not satisfactorily quantify the probability of death occurring within 1 year from the valuation date, this test may permit the use of standard actuarial factors in inappropriate situations. These regulations propose to explicitly quantify the applicable standard for purposes of applying this test.

Under the proposed regulations, if an individual who is a measuring life of the interest being transferred is known to be terminally ill, the mortality test of the proposed regulations is not satisfied and a special section 7502 actuarial factor rather than a standard actuarial factor must be used in valuing the interest. Terminal illness is defined in the proposed regulations as an incurable illness or other deteriorating physical condition that would substantially reduce a person's life expectancy to the extent that there is at least a 50 percent probability that the individual will not survive for more than 1 year from the valuation date. Exceptions are made in the regulations for special situations under sections 2013, 2037, and 2042.

In the case of the simultaneous death of the transferor and an individual who is the measuring life of a property interest, the proposed regulations specifically preclude use of the standard factors in the tables to value that interest. This is pertinent in determining the previously taxed property credit under section 2013 and reaffirms the position of the Fifth Circuit in the *Carter* case.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. In particular, the Service requests comments on whether the proposed definition of terminal illness adequately deals with certain illnesses that are known to cause death in a short period of time but are not likely to cause death within 1 year from death. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is William L. Blodgett, Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20 and 25 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.7520–3 is amended by adding the text of paragraph (b) to read as follows:

§ 1.7520–3 Limitation on the application of section 7520.

* * * * *

(b) *Other limitations on the application of section 7520*— (1) *In general*—(i) *Ordinary beneficial interests.* For purposes of this section:

(A) An *ordinary annuity interest* is the right to receive a fixed dollar amount at the end of each year during one or more measuring lives or for some other defined period. A standard section 7520 annuity factor for an ordinary annuity interest represents the present worth of the right to receive $1.00 per year for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. If an annuity interest is payable more often than annually or is payable at the beginning of each period, a special adjustment must be made in any computation with a standard section 7520 annuity factor.

(B) An *ordinary income interest* is the right to receive the income from, the use of, property during one or more measuring lives or for some other defined period. A standard section 7520 income factor for an ordinary income interest represents the present worth of the right to receive the income from $1.00 for a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(C) An *ordinary remainder or reversionary interest* is the right to receive an interest in property at the end of one or more measuring lives or for some other defined period. A standard section 7520 remainder factor for an ordinary remainder or reversionary interest represents the present worth of the right to receive $1.00 at the end of a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(ii) *Certain restricted beneficial interests.* A *restricted beneficial interest* is an annuity, income, remainder, or reversionary interest that is subject to a contingency, power, or other restriction, whether the restriction is provided for by the terms of the trust, will, or other governing instrument or is caused by other circumstances. In general, a standard section 7520 annuity, income, or remainder factor may not be used to value a restricted beneficial interest. However, a special section 7520 annuity, income, or remainder factor may be used to value a restricted beneficial interest under some circumstances. See *Example 2* in § 1.7520–3(b)(4), which illustrates a situation where a special section 7520 actuarial factor is needed to take into account the shorter life expectancy of the terminally ill measuring life. See § 1.7520–1(c) for requesting a special factor from the Internal Revenue Service.

(iii) *Other beneficial interests.* If, under the provisions of § 1.7520–3(b), the interest rate and mortality components prescribed under section 7520 are not applicable in determining the value of any annuity, income, remainder, or reversionary interest, the actual fair market value of the interest (determined without regard to section 7520) is based on all of the facts and circumstances if and to the extent permitted by the Internal Revenue Code provision applicable to the property interest.

(2) *Provisions of governing instrument and other limitations on source of payment*—(i) *Annuities.* A standard section 7520 annuity factor is not to be used to determine the present value of an annuity for a specified term of years or the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to ensure that the annuity will be paid for the entire defined period. In the case of an annuity payable from a trust or other limited fund, the annuity is not considered payable for the entire defined period if, considering the applicable section 7520 interest rate, the annuity is expected to exhaust the fund before the last possible annuity payment is made in full. For this purpose, it must be assumed that it is possible for each measuring life to survive until age 110, because every standard section 7520 life annuity factor is calculated on the basis of that assumption. If it is determined that the trust or other fund from which an annuity is to be paid may exhaust before the end of the defined period of the annuity, it will be necessary to calculate a special section 7520 annuity factor that takes into account the facts and circumstances that may exhaust the trust or fund.

(ii) *Income and similar interests*—(A) *Beneficial enjoyment.* A standard section 7520 income factor for an ordinary income interest is not to be used to determine the present value of an income or similar interest in trust for a term of years or for the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to provide the income beneficiary with that degree of beneficial enjoyment of the property during the term of the income interest that the principles of the law of trusts accord to a person who is unqualifiedly designated as the income beneficiary of a trust for a similar period of time. This degree of beneficial enjoyment is provided only if it was the transferor's intent, as manifested by the provisions of the governing instrument and the surrounding circumstances, that the trust provide an income interest for the income beneficiary during the specified period of time that is consistent with the value of the trust corpus and with its preservation. In determining whether a trust arrangement evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for in the administration of the subject trust. Similarly, in determining the present value of the right to use tangible property (whether or not in trust) for one or more measuring lives or other specified period of time, the interest rate component prescribed under section 7520 and § 1.7520–1 is not to be used unless, during the specified period, the beneficiary is entitled to that degree of use, possession, and enjoyment of the property that an outright owner would be entitled to exercise during a similar period of time.

(B) *Diversions of income and corpus.* A standard section 7520 income factor for an ordinary income interest is not to be used to value an income interest or

similar interest in property for a term of years or for one or more measuring lives if—

(1) The trust, will, or other governing instrument requires or permits the beneficiary's income or other enjoyment to be withheld, diverted, or accumulated for another person's benefit without the consent of the income beneficiary; or

(2) The governing instrument requires or permits trust corpus to be withdrawn from the trust for another person's benefit during the income beneficiary's term of enjoyment without the consent of and accountability to the income beneficiary for such diversion.

(iii) *Remainder and reversionary interests.* A standard section 7520 remainder interest factor for an ordinary remainder or reversionary interest is not to be used to determine the present value of a remainder or reversionary interest (whether in trust or otherwise) unless, consistent with the preservation and protection that the law of trusts would provide for a person who is unqualifiedly designated as the remainder beneficiary of a trust for a similar duration, the effect of the administrative and dispositive provisions for the interest or interests that precede the remainder or reversionary interest is to assure that the property will be adequately preserved and protected from erosion, invasion, depletion, or damage until the remainder or reversionary interest takes effect in possession and enjoyment. This degree of preservation and protection is provided only if it was the transferor's intent, as manifested by the provisions of the arrangement and the surrounding circumstances, that the entire disposition provide the remainder or reversionary beneficiary with an undiminished interest in the property transferred.

(iv) *Pooled income fund interests.* In general, pooled income funds are created and administered to achieve a special rate of return. A beneficial interest in a pooled income fund is not ordinarily valued using a standard section 7520 income or remainder interest factor. The present value of a beneficial interest in a pooled income fund is determined according to rules and special remainder factors prescribed at § 1.642(c)–6.

(3) *Mortality component.* The mortality component prescribed under section 7520 is not to be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if an individual who is a measuring life for the interest dies or is terminally ill at the time of the transaction. For purposes of this paragraph (b)(3), an individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50 percent probability that the individual will die within 1 year.

(4) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

Example 1.—Annuity funded with unproductive property. The taxpayer transfers corporation stock worth $1,000,000 to a trust. The trust provides for a 6 percent ($60,000 per year) annuity in cash or other property to be paid to a charitable organization for 25 years and for the remainder to be distributed to the donor's child. The trust specifically authorizes, but does not require, the trustee to retain the shares of stock. The section 7520 interest rate for the month of the transfer is 8.2 percent. The corporation has paid no dividends on this stock during the past 5 years, and there is no indication that this policy will change in the near future. Under applicable state law, the corporation is considered to be a sound investment for a trust with diversified investments because the corporation's practice of retaining its earnings has caused the value of the corporation stock to grow commensurately each year. Considering the 6 percent annuity payout rate and the 8.2 percent section 7520 interest rate, the trust corpus is considered sufficient to pay this annuity for the entire 25-year term of the trust, or even indefinitely. Thus, though the trust assets not likely to earn dividend income during the term of the trust, the assets would be assumed to appreciate at the rate of 8.2 percent per year if there were no income. Therefore, the trust's sole investment in this corporation is not expected to adversely affect the interest of either the annuitant or the remainder beneficiary. Although it appears that neither beneficiary would be able to compel the trustee to make the trust corpus produce investment income, the annuity interest in this case is considered to be an ordinary annuity interest, and the standard section 7520 annuity factor may be used to determine the present value of the annuity. In this case, the section 7520 annuity factor would represent the right to receive $1.00 per year for a term of 25 years.

Example 2.—Terminal illness. The taxpayer transfers property worth $1,000,000 to a charitable remainder unitrust described in section 664(d)(2) and § 1.664–2. The trust provides for a fixed-percentage 7 percent annual benefit (each annual payment is equal to 7 percent of the trust assets as valued at the beginning of each year) to be paid annually to an individual beneficiary for life and for the remainder to be distributed to a charitable organization. At the time the trust is created, the individual beneficiary is age 60 and has been diagnosed with an incurable illness and there is at least a 50 percent probability of the individual dying within 1 year. Because there is at least a 50 percent probability that this beneficiary will die within 1 year, the standard section 7520 unitrust remainder factor for a person age 60 from the valuation tables may not be used to determine the present value of the charitable remainder interest. Instead, a special unitrust remainder factor must be computed that is based on the section 7520 interest rate and that takes into account the projection of the individual beneficiary's actual life expectancy.

(5) *Additional limitations.* Section 7520 does not apply to the extent provided by the Internal Revenue Service in revenue rulings or revenue procedures.

(6) *Effective date.* The provisions of paragraph (b) of this section are effective with respect to transactions after the date these regulations are published as final regulations in the **Federal Register**.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 3. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 20.7520–3 is amended by adding the text of paragraph (b) to read as follows:

§ 20.7520–3 Limitation on the application of section 7520.

* * * * *

(b) *Other limitations on the application of section 7520—(1) In general—(i) Ordinary beneficial interests.* For purposes of this section—

(A) An *ordinary annuity interest* is the right to receive a fixed dollar amount at the end of each year during one or more measuring lives or for some other defined period. A standard section 7520 annuity factor for an ordinary annuity interest represents the present worth of the right to receive $1.00 per year for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. If an annuity interest is payable more often than annually or is payable at the beginning of each period, a special adjustment must be made in any computation with a standard section 7520 annuity factor.

(B) An *ordinary income interest* is the right to receive the income from or the use of property during one or more measuring lives or for some other defined period. A standard section 7520 income factor for an ordinary income interest represents the present worth of the right to receive the income from $1.00 for a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(C) An *ordinary remainder or reversionary interest* is the right to receive an interest in property at the end of one or more measuring lives or for some other defined period. A standard section 7520 remainder factor for an

ordinary remainder or reversionary interest represents the present worth of the right to receive $1.00 at the end of a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(ii) *Certain restricted beneficial interests—A restricted beneficial interest* is an annuity, income, remainder, or reversionary interest that is subject to any contingency, power, or other restriction, whether the restriction is provided for by the terms of the trust, will, or other governing instrument or is caused by other circumstances. In general, a standard section 7520 annuity, income, or remainder factor may not be used to value a restricted beneficial interest. However, a special section 7520 annuity, income, or remainder factor may be used to value a restricted beneficial interest under some circumstances. See *Example 4* in § 20.7520–3(b)(2)(iv) and *Example 2* in § 20.7520–3(b)(4), which illustrate situations where special section 7520 actuarial factors are needed to take into account limitations on beneficial interests. See § 20.7520–1(c) for requesting a special factor from the Internal Revenue Service.

(iii) *Other beneficial interests.* If, under the provisions of § 20.7520–3(b), the interest rate and mortality components prescribed under section 7520 are not applicable in determining the value of any annuity, income, remainder, or reversionary interest, the actual fair market value of the interest (determined without regard to section 7520) is based on all of the facts and circumstances if and to the extent permitted by the Code provision applicable to the property interest.

(2) *Provisions of governing instrument and other limitations on source of payment*—(i) *Annuities.* A standard section 7520 annuity factor is not to be used to determine the present value of an annuity for a specified term of years or the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to ensure that the annuity will be paid for the entire defined period. In the case of an annuity payable from a trust or other limited fund, the annuity is not considered payable for the entire defined period if, considering the applicable section 7520 interest rate, the annuity is expected to exhaust the fund before the last possible annuity payment is made in full. For this purpose, it must be assumed that it is possible for each measuring life to survive until age 110, because every standard section 7520 annuity factor is calculated on the basis of that assumption. If it is determined that the trust or other fund from which an annuity is to be paid may exhaust before the end of the defined period of the annuity, it will be necessary to calculate a special section 7520 annuity factor that takes into account the facts and circumstances that may exhaust the trust or fund.

(ii) *Income and Similar Interests*—(A) *Beneficial enjoyment.* A standard section 7520 income factor for an ordinary income interest is not to be used to determine the present value of an income or similar interest in trust for a term of years, or for the life of one or more individuals, unless the effect of the trust, will, or other governing instrument is to provide the income beneficiary with that degree of beneficial enjoyment of the property during the term of the income interest that the principles of the law of trusts accord to a person who is unqualifiedly designated as the income beneficiary of a trust for a similar period of time. This degree of beneficial enjoyment is provided only if it was the transferor's intent, as manifested by the provisions of the governing instrument and the surrounding circumstances, that the trust provide an income interest for the income beneficiary during the specified period of time that is consistent with the value of the trust corpus and with its preservation. In determining whether a trust arrangement evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for in the administration of the subject trust. Similarly, in determining the present value of the right to use tangible property (whether or not in trust) for one or more measuring lives or other specified period of time, the interest rate component prescribed under section 7520 and § 20.7520–1 is not to be used unless, during the specified period, the beneficiary is entitled to that degree of use, possession, and enjoyment of the property that an outright owner would be entitled to exercise during a similar period of time.

(B) *Diversions of income and corpus.* A standard section 7520 income factor for an ordinary income interest is not to be used to value an income interest or similar interest in property for a term of years, or for one or more measuring lives, if—

(*1*) The trust, will, or other governing instrument requires or permits the beneficiary's income or other enjoyment to be withheld, diverted, or accumulated for another person's benefit without the consent of the income beneficiary; or

(*2*) The governing instrument requires or permits trust corpus to be withdrawn from the trust for another person's benefit without the consent of the income beneficiary during the income beneficiary's term of enjoyment and without accountability to the income beneficiary for such diversion.

(iii) *Remainder and reversionary interests.* A standard section 7520 remainder interest factor for an ordinary remainder or reversionary interest is not to be used to determine the present value of a remainder or reversionary interest (whether in trust or otherwise) unless, consistent with the preservation and protection that the law of trusts would provide for a person who is unqualifiedly designated as the remainder beneficiary of a trust for a similar duration, the effect of the administrative and dispositive provisions for the interest or interests that precede the remainder or reversionary interest is to assure that the property will be adequately preserved and protected from erosion, invasion, depletion, or damage until the remainder or reversionary interest takes effect in possession and enjoyment. This degree of preservation and protection is provided only if it was the transferor's intent, as manifested by the provisions of the arrangement and the surrounding circumstances, that the entire disposition provide the remainder or reversionary beneficiary with an undiminished interest in the property transferred.

(iv) *Pooled income fund interests.* In general, pooled income funds are created and administered to achieve a special rate of return. A beneficial interest in a pooled income fund is not ordinarily valued using a standard section 7520 income or remainder interest factor. The present value of a beneficial interest in a pooled income fund is determined according to rules and special remainder factors prescribed in § 1.642(c)–6 of this chapter (Income Tax Regulations).

(v) *Examples.* The provisions of this paragraph (b)(2) are illustrated by the following examples:

Example 1.—Unproductive property. The decedent's will provides for a bequest of corporation stock to a trust under the terms of which all of the trust income is payable to the decedent's child for life. After the death of the life income beneficiary, the trust is to terminate and the trust property is to be distributed to the decedent's grandchild. The trust specifically authorizes, but does not require, the trustee to retain the shares of stock. The corporation has paid no dividends on this stock during the past 5 years, and there is no indication that this policy will change in the near future. Under applicable state law, the corporation is considered to be an adequately sound growth investment for a trust with diversified investments because

the corporation's practice of retaining its earnings has caused the value of the corporation stock to increase commensurately each year. The facts and circumstances, including applicable state law, indicate that the life income beneficiary would not be able to compel the trustee to make the trust corpus productive in conformity with the requirements for a lifetime trust income interest under applicable local law. Therefore, the life income interest in this case is considered nonproductive. Consequently, the income interest may not be valued actuarially under this section.

Example 2.—Beneficiary's right to make trust productive. The facts are the same as in *Example 1*, except that the trustee is not specifically authorized to retain the shares of stock. Further, the terms of the trust specifically provide that the life income beneficiary may require the trustee to make the trust corpus productive consistent with income yield standards for trusts under applicable state law. Under that law, the minimum rate of income that a productive trust may produce is substantially below the section 7520 interest rate for the month of the decedent's death. In this case, because the income beneficiary has the right to compel the trustee to make the trust productive for purposes of applicable local law during the beneficiary's lifetime, the income interest is considered an ordinary income interest for purposes of this paragraph, and the standard section 7520 life income interest factor may be used to determine the present value of the income interest.

Example 3.—Discretionary invasion of corpus. The decedent transfers property to a trust under the terms of which all of the trust income is to be paid to the decedent's child for life and the remainder of the trust is to be distributed to a grandchild. The trust authorizes the trustee without restriction to distribute corpus to the decedent's surviving spouse for the spouse's comfort and happiness. In this case, because the trustee's power to invade trust corpus is unrestricted, the exercise of the power could result in the termination of the income interest at any time. Consequently, the income interest is not considered an ordinary income interest for purposes of this paragraph and may not be valued actuarially under this section.

Example 4.—Limited invasion of corpus. The decedent bequeaths property to a trust under the terms of which all of the trust income is to be paid to the decedent's child for life and the remainder is to be distributed to the decedent's grandchild. The trust authorizes the child to withdraw up to $5,000 per year from the trust corpus. In this case, the child's power to invade trust corpus is limited to an ascertainable amount each year. Annual invasions of any amount would be expected to progressively diminish the property from which the child's income is paid. Consequently, the income interest is not considered an ordinary income interest for purposes of this paragraph, and the standard section 7520 income interest factor may not be used to determine the present value of the income interest. Nevertheless, the present value of the child's income interest is ascertainable by making a special actuarial calculation that would take into account not only the initial value of the trust corpus, the section 7520 interest rate for the month of the transfer, and the mortality component for the child's age, but also the assumption that the trust corpus will decline at the rate of $5,000 each year during the child's lifetime. The child's right to receive an amount not in excess of $5,000 per year may be separately valued in this instance and, assuming the trust corpus would not exhaust before the child would attain age 110, would be considered an ordinary annuity interest.

Example 5.—Power to consume. The decedent devises a life estate in 3 parcels of real estate to the surviving spouse with the remainder to a child. The decedent also confers upon the spouse an unrestricted power to consume the property, which includes the right to sell part or all of the property and to use the proceeds for the spouse's support, comfort, happiness, and other purposes. Any portion of the property or its sale proceeds remaining at the death of the surviving spouse is to vest by operation of law in the child at that time. In this case, the surviving spouse's power to consume the corpus is unrestricted, and the exercise of the power could entirely exhaust the remainder interest during the life of the spouse. Consequently, the remainder interest is not considered an ordinary remainder interest for purposes of this paragraph and may not be valued actuarially under this section.

(3) *Mortality component—(i) Terminal illness cases.* Except as provided in paragraph (b)(3)(ii) of this section, the mortality component prescribed under section 7520 is not to be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if an individual who is a measuring life dies or is terminally ill at the time of the decedent's death. For purposes of this paragraph (b)(3), an individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50 percent probability that the individual will die within 1 year.

(ii) *Exceptions.* If, in the case of the allowance of the credit for tax on a prior transfer under section 2013, the tax in the transferor's estate was finally determined without regard to the fact that one or more measuring lives were terminally ill at the time of the transferor's death, the value of any transferred interest dependent on any of those lives shall be determined for purposes of section 2013 without regard to the fact that those measuring lives were terminally ill. In addition, the value of a decedent's reversionary interest under section 2037(b) or 2042(2) shall be determined without regard to the physical condition of the decedent immediately before death.

(4) *Examples.* The provisions of paragraph (b)(3) of this section are illustrated by the following examples:

Example 1.—Simultaneous deaths. The decedent's will establishes a trust to pay income to the decedent's surviving spouse for life. The will provides that, upon the spouse's death or if the spouse fails to survive the decedent, the trust property is to pass to the decedent's children. The decedent and the decedent's spouse die simultaneously in an accident under circumstances in which it was impossible to determine who survived the other. Applicable state law presumes that the decedent died first with the result that the property interest is considered to have passed in trust for the benefit of the spouse for life, after which the remainder is to be distributed to the decedent's children. Therefore, the spouse's life income interest may not be valued under this section.

Example 2.—Terminal illness. The decedent bequeaths $1,000,000 to a trust under the terms of which the trustee is to pay $103,000 per year to a charitable organization during the life of the decedent's child. Upon the death of the child, the remainder in the trust is to be distributed to the decedent's grandchild. The child, who is age 60, has been diagnosed with an incurable illness, and there is at least a 50 percent probability of the child dying within 1 year. The section 7520 interest rate for the month of the decedent's death is 10.6 percent. The standard life annuity factor for a person age 60 (7.4230) may not be used to determine the present value of the charitable organization's annuity interest because there is at least a 50 percent probability that the measuring life will die within 1 year. Instead, a special section 7520 annuity factor must be computed that takes into account the projection of the child's actual life expectancy.

(5) *Additional Limitations.* Section 7520 does not apply to the extent provided by the Internal Revenue Service in revenue rulings or revenue procedures.

(c) *Effective date.* The provisions of this paragraph (b) are effective with respect to estates of decedents dying after the date these regulations are published as final regulations in the Federal Register.

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 6. Section 25.7520–3 is amended by adding the text of paragraph (b) to read as follows:

§ 25.7520–3 Limitation on the application of section 7520.

* * * * *

(b) *Other limitations on the application of section 7520—(1) In*

general—(i) *Ordinary beneficial interests.* For purposes of this section,

(A) An *ordinary annuity interest* is the right to receive a fixed dollar amount at the end of each year during one or more measuring lives or for some other defined period. A standard section 7520 annuity factor for an ordinary annuity interest represents the present worth of the right to receive $1.00 per year for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. If an annuity interest is payable more often than annually or is payable at the beginning of each period, a special adjustment must be made in any computation with a standard section 7520 annuity factor.

(B) An *ordinary income interest* is the right to receive the income from or the use of property during one or more measuring lives or for some other defined period. A standard section 7520 income factor for an ordinary income interest represents the present worth of the right to receive the income from $1.00 for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. However, in the case of certain gifts made after October 8, 1990, if the donor does not retain a qualified annuity, unitrust, or reversionary interest, the value of any interest retained by the donor is considered to be zero if the remainder beneficiary is a member of the donor's family. See § 25.2702-2.

(C) An *ordinary remainder or reversionary interest* is the right to receive an interest in property at the end of one or more measuring lives or for some other defined period. A standard section 7520 remainder factor for an ordinary remainder or reversionary interest represents the present worth of the right to receive $1.00 at the end of a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(ii) *Certain restricted beneficial interests.* A *restricted beneficial interest* is an annuity, income, remainder, or reversionary interest that is subject to any contingency, power, or other restriction, whether the restriction is provided for by the terms of the trust, will, or other governing instrument or is imposed by other circumstances. In general, a standard section 7520 annuity, income, or remainder factor may not be used to value a restricted beneficial interest. However, a special section 7520 annuity, income, or remainder factor may be used to value a restricted beneficial interest under some circumstances. See *Examples 3, 4,* and *5* in § 25.7520–3(b)(2)(iv) and the *Example* in § 25.7520–3(b)(4), which illustrate situations in which special section 7520 actuarial factors are needed to take into account limitations on beneficial interests. See § 25.7520–1(c) for requesting a special factor from the Internal Revenue Service.

(iii) *Other beneficial interests.* If, under the provisions of § 25.7520–3(b), the interest rate and mortality components prescribed under section 7520 are not applicable in determining the value of any annuity, income, remainder, or reversionary interest, the actual fair market value of the interest (determined without regard to section 7520) is based on all of the facts and circumstances if and to the extent permitted by the Internal Revenue Code provisions applicable to the property interest.

(2) *Provisions of governing instrument and other limitations on source of payment*—(i) *Annuities.* A standard section 7520 annuity factor is not to be used to determine the present value of an annuity for a specified term of years or the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to ensure that the annuity will be paid for the entire defined period. In the case of an annuity payable from a trust or other limited fund, the annuity is not considered payable for the entire defined period if, considering the applicable section 7520 interest rate, the annuity is expected to exhaust the fund before the last possible annuity payment is made in full. For this purpose, it must be assumed that it is possible for each measuring life to survive until age 110, because every standard section 7520 annuity factor is calculated on the basis of that assumption. If it is determined that the trust or other fund from which an annuity is to be paid may exhaust before the end of the defined period of the annuity, it will be necessary to calculate a special section 7520 annuity factor that takes into account the facts and circumstances that may exhaust the trust or fund.

(ii) *Income and similar interests.*—(A) *Beneficial enjoyment.* A standard section 7520 income factor for an ordinary income interest is not to be used to determine the present value of an income or similar interest in trust for a term of years, or for the life of one or more individuals, unless the effect of the trust, will, or other governing instrument is to provide the income beneficiary with that degree of beneficial enjoyment of the property during the term of the income interest that the principles of the law of trusts accord to a person who is unqualifiedly designated as the income beneficiary of a trust for a similar period of time. This degree of beneficial enjoyment is provided only if it was the transferor's intent, as manifested by the provisions of the governing instrument and the surrounding circumstances, that the trust provide an income interest for the income beneficiary during the specified period of time that is consistent with the value of the trust corpus and with its preservation. In determining whether a trust arrangement evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for in the administration of the subject trust. Similarly, in determining the present value of the right to use tangible property (whether or not in trust) for one or more measuring lives or other specified period of time, the interest rate component prescribed under section 7520 and § 25.7520–1 is not to be used unless, during the specified period, the beneficiary is entitled to that degree of use, possession, and enjoyment of the property that an outright owner would be entitled to exercise during a similar period of time.

(B) *Diversions of income and corpus.* A standard section 7520 income factor for an ordinary income interest is not to be used to value an income interest or similar interest in property for a term of years, or for one or more measuring lives, if—

(*1*) The trust, will, or other governing instrument requires or permits the beneficiary's income or other enjoyment to be withheld, diverted, or accumulated for another person's benefit without the consent of the income beneficiary; or

(*2*) The governing instrument requires or permits trust corpus to be withdrawn from the trust for another person's benefit without the consent of the income beneficiary during the income beneficiary's term of enjoyment and without accountability to the income beneficiary for such diversion.

(iii) *Remainder and reversionary interests.* A standard section 7520 remainder interest factor for an ordinary remainder or reversionary interest is not to be used to determine the present value of a remainder or reversionary interest (whether in trust or otherwise) unless, consistent with the preservation and protection that the law of trusts would provide for a person who is unqualifiedly designated as the remainder beneficiary of a trust for a similar duration, the effect of the administrative and dispositive provisions for the interest or interests that precede the remainder or reversionary interest is to assure that the property will be adequately preserved and protected from erosion, invasion,

depletion, or damage until the remainder or reversionary interest takes effect in possession and enjoyment. This degree of preservation and protection is [illegible] only if it was the transferor's intent, as manifested by the provisions [illegible] that the [illegible] disposition provide the remainder or [illegible] undiminished interest in the property [illegible].

(iv) *Pooled income fund interests.* In general, pooled income funds are created and administered to achieve a special rate of return. A beneficial interest in a pooled income fund is not ordinarily valued using a standard section 7520 income or remainder interest factor. The present value of a beneficial interest in a pooled income fund is determined according to rules and special remainder factors prescribed in § 1.642(c)–6 of this chapter (Income Tax Regulations).

(v) *Examples.* The provisions of this paragraph (b)(2) are illustrated by the following examples:

Example 1.—Unproductive property. The donor transfers corporation stock to a trust under the terms of which all of the trust income is payable to a child for life. After the death of the life income beneficiary, the trust is to terminate and the trust property is to be distributed to a grandchild. The trust specifically authorizes, but does not require, the trustee to retain the shares of stock. The corporation has paid no dividends on this stock during the past 5 years, and there is no indication that this policy will change in the near future. Under applicable state law, the corporation is considered to be an adequately sound growth investment for a trust with diversified investments because the corporation's practice of retaining its earnings has caused the value of the corporation stock to increase commensurately each year. The facts and circumstances, including applicable state law, indicate that the income beneficiary would not have the legal right to compel the trustee to make the trust corpus productive in conformity with the requirements for a lifetime trust income interest under applicable local law. Therefore, the life income interest in this case is considered nonproductive. Consequently, the income interest may not be valued actuarially under this section.

Example 2.—Beneficiary's right to make trust productive. The facts are the same as in *Example 1*, except that the trustee is not specifically authorized to retain the shares of corporation stock. Further, the terms of the trust specifically provide that the life income beneficiary may require the trustee to make the trust corpus productive consistent with income yield standards for trusts under applicable state law. Under that law, the minimum rate of income that a productive trust may produce is substantially below the section 7520 interest rate on the valuation date. In this case, because the income beneficiary has the right to compel the trustee to make the trust productive for purposes of applicable local law during the beneficiary's lifetime, the income interest is considered an ordinary income interest for purposes of this paragraph, and the standard section 7520 life income factor may be used to determine the value of the income interest. However, in the case of gifts made [illegible] October 8, 1990, if the donor were [illegible] income beneficiary, the value of the income interest would be considered to be zero in this situation. See § 25.2702–2.

[illegible] *unproductive property.* The donor who is age 60 transfers corporation stock worth $1,000,000 to a trust. The trust will pay a 9 percent ($90,000 per year) annuity in cash or other property to the donor for 10 years or until the donor's prior death. Upon the termination of the trust, the trust property is to be distributed to the donor's child. The section 7520 rate for the month of the transfer is 8.2 percent. The corporation has paid no dividends on the stock during the past 5 years, and there is no indication that this policy will change in the near future. Under applicable state law, the corporation is considered to be a sound investment for a trust with diversified investments because the corporation's practice of retaining its earnings has caused the value of the corporation stock to grow commensurately each year. Considering the 6 percent annuity payout rate and the 8.2 percent section 7520 interest rate, the trust corpus is considered sufficient to pay this annuity for the entire 10-year term of the trust, or even indefinitely. Thus, though the trust assets not likely to earn dividend income during the term of the trust, the assets would be assumed to appreciate at the rate of 8.2 percent per year if there were no income. Therefore, the trust's sole investment in this corporation is not expected to adversely affect the interest of either the annuity beneficiary or the remainder beneficiary. The trust specifically authorizes, but does not require, the trustee to retain the shares of stock. Although it appears that neither beneficiary would be able to compel the trustee to make the trust corpus produce investment income, the annuity interest in this case is considered to be an ordinary annuity interest, and a section 7520 annuity factor may be used to determine the present value of the annuity. In this case, the section 7520 annuity factor would represent the right to receive $1.00 per year for a term of 10 years or the prior death of a person age 60.

Example 4.—Unitrust funded with unproductive property. The facts are the same as in *Example 3*, except that the donor has retained a unitrust interest equal to 7 percent of the value of the trust property, valued as of the beginning of each year. Although the trust corpus is nonproductive, the present value of the donor's retained unitrust interest may be determined by using the section 7520 unitrust factor for a term of years or a prior death.

Example 5.—Eroding corpus to an annuity trust. The donor, who is age 60 and in normal health, transfers property worth $1,000,000 to a trust. The trust will pay a 10 percent ($100,000 per year) annuity to a charitable organization for the life of the donor, and the remainder is to be distributed to the donor's child. The section 7520 rate for the month of the transfer is 6.8 percent. Because the 10 percent annuity payout rate exceeds the 6.8 percent income and growth rate [illegible] is expected to erode [illegible] annuity payments [illegible] progressively [illegible] the [illegible] interest rate of 6.8 [illegible] of $100,000 per year, [illegible] $1,000,000 trust corpus in 18 years. The [illegible] payment at the end of the 18th year will consist of a partial payment of $32,712. Under section 7520, the standard life annuity factors are based on the assumption that any person may survive until age 110. This means that the standard life annuity factor for age 60 (9.8585) takes into account the separate probabilities that a person age 60 may survive to receive each of 50 different annuity payments. However, in the present case, because of the eroding corpus, the person age 60 can be assumed to receive no more than 17 $100,000 annuity payments, regardless of how long that person might survive. Therefore, the standard life annuity factor for a person age 60 (9.8585) is not applicable in this case, and special section 7520 annuity factors that take into account the 18-year limitation on the annuity payout must be used. The special annuity factor for the present value of the right to receive $1.00 per year for 17 years or until the prior death of a person age 60 is $8.6121, and the special factor for the present value of the right to receive $1.00 in 18 years if a person age 60 survives is $.1836. The present value of the charitable annuity interest is $867,269 ($100,000 X 8.6121 plus $32,712 X .1836).

(3) *Mortality component.* The mortality component prescribed under section 7520 is not to be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if an individual who is a measuring life dies or is terminally ill at the time the gift is completed. For purposes of this paragraph (b)(3), an individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50 percent probability that the individual will die within 1 year.

(4) *Example.* The provisions of paragraph (b)(3) of this section are illustrated by the following example:

Example.—Terminal illness. The donor transfers property worth $1,000,000 to a child in exchange for the child's promise to pay the donor $104,000 per year for [illegible] diagnosed with an incurable illness and has a [illegible] at least a 50 percent probability of dying within 1 year. The [illegible] on 7520 rate prior for the month of the transfer is 10.6 percent and the standard annuity factor at that interest rate for a person age 60 in normal health is 7.4230. Thus, if the donor were not terminally ill, the present value of the annuity would be $764,569 ($103,000 X 7.4230). Because there is at least a 50 percent

probability that the donor will not survive for one more year, the standard section 7520 annuity factor may not be used to determine the present value of the donor's annuity interest. Instead, a special section 7520 annuity factor must be computed that takes into account the projection of the donor's actual life expectancy.

(5) *Additional limitations.* Section 7520 does not apply to the extent provided by the Internal Revenue Service in revenue rulings or revenue procedures.

(6) *Effective date.* The provisions of this paragraph are effective with respect to gifts made after [the date these regulations are published as final regulations in the **Federal Register**].

Margaret Milner Richardson,

Commissioner of Internal Revenue

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Part III

Department of Education

Direct Grant Programs and Fellowship Programs; Notice Inviting Applications for New Awards for Fiscal Year 1994

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DEPARTMENT OF EDUCATION

Direct Grant Programs and Fellowship Programs

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1995.

SUMMARY: The Secretary invites applications for new awards for fiscal year (FY) 1995 under some of the Department's direct grant and fellowship programs and announces deadline dates for the transmittal of applications under these programs. This combined application notice contains fiscal and programmatic information for potential applicants under the Department's programs announced in this issue of the **Federal Register**. This notice also lists FY 1995 programs previously announced in the **Federal Register**.

DATES: The chart for each principal office (Charts 1 through 6) includes the following dates for each program or competition: the date on which applications will be available, the deadline for submission of applications, and—for programs subject to Executive Order (EO) 12372 (Intergovernmental Review of Federal Programs)—the deadline date for transmittal of State Process Recommendations by State Single Points of Contact (SPOCs) and comments by other interested parties.

ADDRESSES: *For Applications or Further Information:* The address and telephone number for obtaining applications for, or further information about, a program are in the application notice for that program.

For Users of TDD or FIRS: Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number, if any, listed in the individual application notices. If a TDD number is not listed for a given program, individuals who use a TDD may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

For Intergovernmental Review: The address for transmitting recommendations and comments under intergovernmental review is in the appendix to this notice. The appendix also contains the addresses of individual SPOCs.

For Electronic Access to Information: Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The Department's first combined application notice was published in September 1989. It was based on the idea—subsequently affirmed by numerous parties in the educational community—that placing as many application notices as possible in a single notice would assist potential applicants in planning projects and activities. In the intervening years, other issues affecting the application and grant award processes were identified, including the view of a number of potential applicants that the Department's schedule for grant awards did not allow grantees sufficient time to implement departmentally assisted projects before the start of the academic year.

As part of the Administration's goal to "reinvent" the Federal Government, a departmentwide Quality Improvement Team examined the Department's grant procedures and how these procedures affect the timely award of grants. The team's recommendations, which have been adopted by the Secretary, will result in a number of changes in the way the Department announces and awards grants under the Department's programs.

In order to announce and award grants to accommodate the academic year, the Secretary determined that grants should be awarded during the preceding spring, to the maximum extent possible. To allow applicants more time to prepare applications and the Department the necessary time to process those applications, the Secretary further determined that application announcements should be published in the spring preceding the year in which the grants will be awarded.

Thus, it is the Secretary's intent to publish the Department's annual combined application notice in the spring rather than in September, as has been the case until now. This policy will take full effect with the announcement of grants for FY 1996. For this transition year the combined notice for FY 1995 is being published in two sections—one now, announcing as many programs and competitions as possible at this time, and the other in September, announcing the remainder of the Department's programs and competitions.

Thus, this notice contains those application announcements that the Department is able to publish at this time, and references application notices for FY 1995 that were published before this combined notice. Readers should note that, unlike previous combined notices, this notice does not list—or give estimated dates for—programs and competitions for which application notices are to be published at a later date. Those programs and competitions will be listed in the September combined notice.

Among the programs and competitions omitted from this notice are those governed by statutes that are undergoing congressional reauthorization. These include programs administered by the Office of Bilingual Education and Minority Languages Affairs and the Office of Elementary and Secondary Education, and some programs of the Office of Educational Research and Improvement.

Also omitted from this notice are programs and competitions to be governed by new regulations or funding priorities that have not yet been issued in final form. In addition, this notice does not contain programs and competitions that will use application forms not yet approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

The Secretary anticipates that most of the Department's remaining application notices for new awards for FY 1995 will be included in the second section of the combined notice, to be issued in September 1994, or published as separate application notices before then. The September document will reference all programs and competitions announced in this notice, as well as any for which application notices will have been published in the interim.

Within the next month the Secretary intends to publish in the **Federal Register** amendments to the Education Department General Administrative Regulations (EDGAR) that will change how the Department makes non-competing continuation discretionary grant awards for multi-year projects. The amendments will eliminate the requirement that a recipient submit an application for a continuation award. Instead, the due dates for performance reports will be adjusted so that they can be used to determine whether the recipient has met the criteria for receiving the continuation award. This action is being taken to improve the effectiveness, integrity, and quality of the grant award process and the projects that the Department funds.

The amendments will affect the information that an applicant must submit to the Department when it applies for a new grant for a multi-year project. Specifically, the applicant would submit a detailed budget for the entire project period, rather than for only the first budget period of the project. This combined application notice announces the amount the Secretary intends to award for only the first budget period of a multi-year project. In the application package for an individual program or competition, applicants will receive information about the amount the Secretary intends to make available for each year of a multi-year project. That will enable an applicant to provide a detailed budget for each year of the grant, as will be required by the amended regulations.

Organization of Notice

Each principal program office is assigned a separate chart as follows:

Chart 1—Office of Bilingual Education and Minority Languages Affairs.

Chart 2—Office of Educational Research and Improvement.

Chart 3—Office of Elementary and Secondary Education.

Chart 4—Office of Postsecondary Education.

Chart 5—Office of Special Education and Rehabilitative Services.

Chart 6—Office of Vocational and Adult Education.

Each of the charts that lists individual programs or competitions contains the following information:

- The CFDA number and the name of each affected program.
- The date of availability of applications.
- The deadline date for transmitting applications.
- For any program subject to the requirements of EO 12372 and the regulations in 34 CFR part 79, the deadline date for transmitting comments under intergovernmental review.
- The estimated range of awards.
- The estimated average size of awards.
- The estimated number of awards.

For programs or competitions that have already published in the **Federal Register** application notices for FY 1995 grants, the chart references the date and page number of the notice.

Following the chart for each principal program office are additional details for each affected program with an application notice in this combined notice, including—

- A brief statement of the purpose of the program;
- A list of eligible applicants;
- A list of regulations applicable to the program;
- Information regarding priorities, if any;
- Supplemental information, if necessary, regarding selection criteria, any fiscal matters peculiar to the program or competition, or other matters;
- The project period in months;
- The name, address, and telephone number of the person or office at the Department to contact for applications or information; and
- A citation of the statutory or other legal authority for the program.

In addition, some programs have listed an estimated award date.

Available Funds

The Congress has not yet enacted a fiscal year 1995 appropriation for the Department of Education. However, the Department is publishing this notice in order to give potential applicants adequate time to prepare applications. Estimates of the amount of funds available for these programs are based in part on the President's 1995 budget request and in part on the level of funding available for fiscal year 1994. The Department of Education is not Bound by any of the Estimates in this Notice.

National Education Goals

On March 31, 1994, the President signed into law the Goals 2000: Educate America Act (Pub. L. 103–227). The Act enunciates eight National Education Goals for the year 2000:

- All children in America will start school ready to learn.
- The high school graduation rate will increase to at least 90 percent.
- All students will leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter, including English, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our Nation's modern economy.
- United States students will be first in the world in mathematics and science achievement.
- Every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.
- Every school in the United States will be free of drugs, violence, and the unauthorized presence of firearms and alcohol and will offer a disciplined environment conducive to learning.
- The Nation's teaching force will have access to programs for the continued improvement of their professional skills and the opportunity to acquire the knowledge and skills needed to instruct and prepare all American students for the next century.
- Every school will promote partnerships that will increase parental involvement and participation in promoting the social, emotional, and academic growth of children.

In developing this combined application notice the Department has sought to ensure that programs awarding grants during FY 1995 will further achievement of the National Education Goals. The Secretary encourages applicants under these programs to consider the National Education Goals in developing their applications.

Applicability of Section 5301 of the Anti-Drug Abuse Act of 1988

Some programs included in this combined application notice may provide that a grant, fellowship, traineeship, or other monetary benefit may be awarded to an individual. This award may be made to the individual either directly by the Department or by a grantee that receives Federal funds for the purpose of providing, for example, fellowships, traineeships, or other awards to individuals.

Section 5301 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, redesignated as section 421 of the Controlled Substances Act, 21 U.S.C. 862) provides that a sentencing court may deny eligibility for certain Federal benefits to an individual convicted of drug trafficking or possession. Thus, an individual who applies for a grant, fellowship, or other monetary benefit under a program covered by this notice should understand that, if convicted of drug trafficking or possession, he or she is subject to denial of eligibility for that benefit if the sentencing court imposes such a sanction.

This denial applies whether the Federal benefit is provided to the individual directly by the Department or is provided through a grant, fellowship, traineeship, or other award made available with Federal funds by a grantee.

Any persons determined to be ineligible for Federal benefits under the provisions of section 5301 are listed in the General Services Administration's "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs."

Applicability of the Federal Debt Collection Procedures Act of 1990

The programs announced in this notice make discretionary awards subject to the eligibility requirements of the Federal Debt Collection Procedures

Act of 1990 (Pub. L. 101–647; 28 U.S.C. 3201). The Act provides that if there is a judgment lien against a debtor's property for a debt to the United States, the debtor is not eligible to receive a Federal grant or loan, except direct payments to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

Intergovernmental Review of Federal Programs

Certain programs in this notice are subject to the requirements of EO 12372 and the regulations in 34 CFR part 79. These programs are identified in Charts 1 through 6 with a date in the column headed "Deadline for intergovernmental review." For further information, an applicant under a program subject to the Executive order and other parties interested in that program—are directed to the appendix to this notice.

CHART 1.—OFFICE OF BILINGUAL EDUCATION AND MINORITY LANGUAGES AFFAIRS

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
Application notices for all programs will be published at a future date						

CHART 2.—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
Library programs:						
Application notices for all programs will be published at a future date						
Fund for the improvement and reform of schools and teaching (FIRST):						
Application notices for all programs will be published at a future date						
Office of research:						
Application notices for all programs will be published at a future date						
Programs for the improvement of practice:						
Application notices for all programs will be published at a future date						
National center for education statistics:						
Application notices for all programs will be published at a future date						

CHART 3.—OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

CFDA No. and Name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
Application notices for all programs will be published at a future date						

CHART 4.—OFFICE OF POSTSECONDARY EDUCATION

CFDA No. and Name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
84.016A Undergraduate international studies and foreign language program	8/22/94	11/4/94	1/3/95	$30,000–85,000	$62,000	31
84.017A International research and studies program	9/2/94	11/4/94	N/A	30,000–140,000	95,588	15
84.019A Fulbright-Hays faculty research abroad program	8/12/94	10/28/94	N/A	17,000–75,000	38,000	22
84.021A Fulbright-Hays group projects abroad program	8/26/94	10/21/94	N/A	30,000–70,000	52,000	25
84.022A Fulbright-Hays doctoral dissertation research abroad program	8/12/94	10/28/94	N/A	9,000–72,000	[1] 29,000	[2] 61
84.031G Endowment challenge grant program	4/17/95	6/16/95	N/A	50,000–500,000	350,000	20
84.055A Cooperative education program—administration, part a projects	10/21/94	1/6/95	3/6/95	25,000–300,000	78,125	18

CHART 4.—OFFICE OF POSTSECONDARY EDUCATION—Continued

CFDA No. and Name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
84.055B Cooperative education program—demonstration projects	10/21/94	1/6/95	3/6/95	20,000–150,000	100,000	2
84.055C Cooperative education program—research projects	10/21/94	1/6/95	3/6/95	20,000–150,000	100,000	2
84.055D Cooperative education program—training and resource center Projects	10/21/94	1/6/95	3/6/95	20,000–150,000	100,000	2
84.055E Cooperative education program—administration, part B projects	10/21/94	1/6/95	3/6/95	1,000–75,000	15,000	60
84.097A Law school clinical experience program	12/12/94	2/28/95	4/28/95	27,000–250,000	125,000	13
84.120 Minority science improvement program—institutional, design, special, and cooperative projects	8/12/94	10/14/94	12/14/95	[3] 100,000–300,000	120,000	13
				[4] 16,000–20,000	18,000	
				[5] 20,000–150,000	25,000	10
				[6] 200,000–500,000	175,000	2
84.153A Business and international education program	8/26/94	11/7/94	1/9/95	50,000–100,000	80,000	18
84.202A Grants to institutions and consortia to encourage women and minority participation in graduate education program	8/8/94	10/19/94	12/19/94	25,000–100,000	80,000	50
84.220A Centers for international business education program	8/22/94	11/16/94	1/16/95	150,000–350,000	272,000	12
84.261 Dwight D. Eisenhower leadership development program	11/21/94	1/20/95	3/20/95	100,000–225,000	162,500	16

[1] Per fellow.
[2] Individual fellowships
[3] Institutional projects
[4] Design projects.
[5] Special projects.
[6] Cooperative projects

FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION (FIPSE)

CFDA No. and Name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
84.116F Fund for the improvement of postsecondary education—innovative projects for community service	10/14/94	12/30/94	2/28/95	$45,000–75,000	$60,000	25

Program: International Education Exchange Program

Purpose of Program: To provide grants to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

Eligible applicants: Institutions of higher education; combinations of institutions of higher education; and public and nonprofit private agencies and organizations, including professional and scholarly associations.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85 and 86; and (b) The regulations for this program in 34 CFR parts 655 and 658, as amended in the **Federal Register** on June 10, 1993 (58 FR 32574).

Priority: Under 34 CFR 658.35, and section 604(a)(4) of title VI of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards five points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Applications from institutions of higher education or combinations of institutions that—

(a) Require entering students to have successfully completed at least two years of secondary school foreign language instruction;

(b) Require each graduating student to earn two years of postsecondary credit in a foreign language or have demonstrated equivalent competence in the foreign language, or

(c) In the case of a two-year degree granting institution, offer two years of postsecondary credit in a foreign language.

Supplementary information: An institutional grantee shall pay a minimum of 50 percent of the cost of the project for each fiscal year.

Project period: 24 to 36 months.

For Applications or Information Contact: Christine Corey, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5332. Telephone: (202) 732–6061.

Program Authority: 20 U.S.C. 1124.

84.017A International Research and Studies Program

Purpose of Program: To provide grants to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields to provide full understanding of the places in which the foreign languages are commonly used.

Eligible Applicants: Public and private agencies, organizations, and institutions; and individuals.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 655 and 660, as amended in the **Federal Register** on June 10, 1993 (58 FR 32674)

Priorities: Under 34 CFR 75.105(c)(2)(i), and 34 CFR 660.34 and 660.10, the Secretary gives preference to applications that meet either of the following competitive priorities. The Secretary awards five points to an application that meets either of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

(a) Studies and surveys to determine needs for increased or improved instruction in foreign language, area studies, or other international fields, including the demand for foreign language, area, and international specialists in government, education, and the private sector.

(b) Studies and surveys to assess the uses of graduates of programs supported under title VI of the Higher Education Act, as amended, by government, educational, and private sector organizations; and other studies assessing the outcomes and effectiveness of programs supported under title VI.

Project Period: 12 to 36 months.

For Applications or Information Contact: Jose L. Martinez, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5331. Telephone: (202) 732–6072.

Program Authority: 20 U.S.C. 1125

84.019A Fulbright-Hays Faculty Research Abroad Program

84.022A Fulbright-Hays Doctoral Dissertation Research Abroad Program

Purpose of Programs: (a) The Faculty Research Abroad Program offers opportunities to faculty members of higher education for research and study in modern foreign languages and area studies. (b) The Doctoral Dissertation Research Abroad Fellowship Program provides opportunities for graduate students to engage in full time dissertation research abroad in modern foreign languages and area studies.

Eligible Applicants: Institutions of higher education.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 81, 82, 85 and 86; and (b) The regulations for these programs in 34 CFR parts 662 and 663

Priorities: Under 34 CFR 75.105(c)(3), 34 CFR 663.32(c) (Higher Education Programs in Modern Foreign Language Training and Area Studies—Faculty Research Abroad Fellowship Program), and 34 CFR 663.32(c) (Higher Education Programs in Modern Foreign Language Training and Area Studies—Doctoral Dissertation Research Abroad Fellowship Program) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds only applications that meet this absolute priority:

Research projects that focus on one or more of the following: Africa, East Asia, Southeast Asia and the Pacific, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere.

Note: Applications that propose projects focused on Western Europe will not be funded.

Project Period: Three to 12 months for Faculty Research Abroad; and 6 to 12 months for Doctoral Dissertation Research Abroad.

For Applications or Information Contact: For Faculty Research Abroad Program: Eliza Washington, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5331. Telephone: (202) 732–5075.

For Doctoral Dissertation Research Abroad Program: Karla Ver Beek Black, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5331. Telephone: (202) 732–5063.

Program Authority: 22 U.S.C. 2452(b)(6).

84.021A Fulbright-Hays Group Projects Abroad Program

Purpose of Program: To provide grants to support overseas projects in training, research, and curriculum development in modern foreign languages and area studies by teachers, students, and faculty engaged in a common endeavor. Projects may include short-term seminars, curriculum development, group research or study, or advanced intensive language projects.

Eligible Applicants: Institutions of higher education; State departments of education; nonprofit private educational organizations; and consortia of these types of institutions, departments, and organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; (b) The regulations for this program in 34 CFR part 664

Priorities

Absolute Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 664.32 the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds only applications that meet this absolute priority:

Group projects that focus on one or more of the following: Africa, East Asia, the Western Hemisphere, Southeast Asia and the Pacific, East Central Europe and Eurasia, the Near East, and South Asia.

Note: Applications that propose projects focused on Western Europe will not be funded.

Competitive Priority: Within the absolute priority specified in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 664.32, gives preference to applications that meet the following competitive priority. The Secretary awards up to five points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Short-term seminars that develop and improve foreign language and area studies at elementary and secondary schools.

Invitational Priority: Within the absolute priority for and the Western Hemisphere, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Projects that focus on Mexico

Project Periods:

For short-term seminar projects: five weeks.

For curriculum development projects: six to eight weeks.

For group research or study projects: two to twelve months.

For Applications or Information Contact: Dr. Lungching Chiao, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5332. Telephone: (202) 732–6061

Program Authority: 22 U.S.C. 2452(b)(6)

84.031G Endowment Challenge Grant Program

Purpose of Program. To provide [illegible] of higher education to establish or increase their endowment funds.

Eligible Applicants. Institutions of higher education that are designated a[illegible]ble. The Secretary publishes separately in the Federal Register a notice informing interested parties how to be designated as eligible to apply for [illegible].

Applicable Regulations: (a) The [illegible] 34 CFR 74.61(b) or 34 CFR 80.26(and the appendix to 34 CFR part 80), as applicable; 74.30, 74.84 and 74.85; 75.100 through 75.102 and 75.217; and in 34 CFR parts 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 628.

Project Period: 240 months (20 years)

Fundraising Period: 18 months (September 1995–March 1997).

For Applications or Information Contact: Anne Price-Collins, U.S. Department of Education, 400 Maryland Avenue, SW., room 3042, ROB–3. Washington, DC 20202–5337. Telephone: (202) 708–8866. Applications will be sent to those institutions designated as eligible under the title III programs.

Program Authority: 20 U.S.C. 1065

84.055A Cooperative Education Program—Administration, Part A Projects

Purpose of Program: To provide grants for new projects to encourage institutions of higher education to offer their students work experiences that will aid these students in their future careers and support them financially while in school.

Eligible Applicants: Institutions of higher education (IHEs), as defined in section 1201(a) of the Higher Education Act of 1965, as amended; and combinations of IHEs.

Note: The Secretary awards a grant for a new project to an institution, or combination of institutions, that has not received an administration project grant in the 10-year period immediately preceding the date for which the institution, or combination of institutions, requests a grant under this part.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 631 and 632, published in the Federal Register on August 11, 1993 (58 FR 42651).

Project Period: Up to 60 months.

For Applications or Information Contact: [illegible] U.S. Department of Education, 400 Maryland Avenue, SW., Courtyard Suite C–80, Portals Building, Washington, DC [illegible]

[illegible]

84.055B Cooperative Education Program—Demonstration Projects

Purpose of Program. To provide grants to demonstrate or determine the feasibility or value of innovative cooperative education projects, as well as to disseminate information about effective innovative projects.

Eligible Applicants. Institutions of higher education (IHEs), as defined in section 1201(a) of the Higher Education Act of 1965, as amended; combinations of IHEs; and public and nonprofit private agencies and organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 631 and 633, published in the Federal Register on August 11, 1993 (58 FR 42651).

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 633.21(a) the Secretary gives an absolute preference to applications that meet one or more of the following priorities. The Secretary funds under this competition only applications that meet one or more of these absolute priorities:

Absolute Priority 1: Model cooperative education projects in the fields of science and mathematics for women and minorities who are underrepresented in those fields.

Absolute Priority 2. Model cooperative education projects specializing in developing technical and professional work force skills for nontraditional students and students from special or underrepresented populations.

Absolute Priority 3: Model cooperative education projects that focus on developing and establishing articulation and other cooperative arrangements between or among secondary and postsecondary educational institutions.

Project Period: Up to 36 months.

For Applications or Information Contact: Dr. John E. Bonas, U.S. Department of Education, 400 Maryland Avenue, SW., Courtyard Suite C–80, Portals Building, Washington, DC 20202–5329. Telephone: (202) 260–3265.

Program Authority: 20 U.S.C. 1133, 1133a, 1133c.

84.055C Cooperative Education Program—Research Projects

Purpose of Program. To provide grants to conduct studies to improve [illegible] of cooperative education methods of cooperative education for the benefit of the cooperative education community.

Eligible Applicants. Institutions of higher education (IHEs), as defined in section 1201(a) of the Higher Education [illegible] of IHEs and public and nonprofit agencies and organizations.

Applicable Regulations. (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 631 and 634, published in the Federal Register on August 11, 1993 (58 FR 42651).

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 634.21(a) the Secretary gives an absolute preference to applications that meet one or more of the following priorities. The Secretary funds under this competition only applications that meet one or more of these absolute priorities:

Absolute Priority 1: Longitudinal studies on former cooperative education students and non-cooperative education students to determine the relationship between the students' cooperative education work experiences and one or more of the following:

(a) Initial job placement.

(b) Job advancement.

(c) Long-term earnings.

Absolute Priority 2: Assessment of the impact of cooperative education on college retention rates and on the academic achievement of students participating in cooperative education, compared to nonparticipants.

Absolute Priority 3: Assessment of the impact of comprehensive cooperative education projects on—

(a) The institution;

(b) Students at the institution;

(c) Faculty;

(d) Employment opportunities; and

(e) Factors influencing the successes and failures of comprehensive cooperative education projects.

Absolute Priority 4. Identification and assessment of incentives and factors that influence an IHE to continue its cooperative education project successfully after Federal financial assistance has ended.

Project Period: Up to 36 months.

For Applications or Information Contact: Dr. John E. Bonas, U.S. Department of Education, 400 Maryland Avenue, SW., Courtyard Suite C–80, Portals Building, Washington, DC 20202–5329. Telephone: (202) 260–3265.

Program Authority: 20 U.S.C. 1131, 1133a, 1133c

84.055D Cooperative Education Program—Training and Resource Center Projects

Purpose of Program: To provide grants to train and assist individuals who participate in or are planning to participate in the planning, establishment, and administration of cooperative education projects.

Eligible Applicants: Institutions of higher education (IHEs), as defined in section 1201(a) of the Higher Education Act of 1965, as amended; combinations of IHEs; and public and private nonprofit agencies and organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 631 and 635, published in the **Federal Register** on August 11, 1993 (58 FR 42651).

Priority: Under 34 CFR 75.105(c)(2)(ii) and 34 CFR 635.4(b)(5) and 34 CFR 635.21(a) the Secretary gives preference to applications that meet the following competitive priority. An application that meets this competitive priority is selected by the Secretary over applications of comparable merit that do not meet the priority:

Supporting partnerships in which an institution with an existing comprehensive cooperative education program assists one or more institutions to—

(a) Improve their existing cooperative education program; or

(b) Establish, expand, or improve a comprehensive cooperative education program.

Project Period: Up to 36 months

For Applications or Information Contact: Dr. John E. Bonas, U.S. Department of Education, 400 Maryland Avenue, SW., Courtyard Suite C–80, Portals Building, Washington, DC 20202–5329. Telephone: (202) 260–3265.

Program Authority: 20 U.S.C. 1133, 1133a, 1133c.

84.055E Cooperative Education Program—Administration, Part B Projects

Purpose of Program: To provide grants for existing projects to encourage individual institutions of higher education to offer their students work experiences that will aid these students in their future careers and support them financially while in school.

Eligible Applicants: Individual institutions of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, as amended.

Note: The Secretary awards a grant for an existing project to an institution that is operating a cooperative education program, as defined under 34 CFR 631.5(b).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 631 and 632, published in the **Federal Register** on August 11, 1993 (58 FR 42651).

Project Period: Up to 60 months

For Applications or Information Contact: Dr. John E. Bonas, U.S. Department of Education, 400 Maryland Avenue, SW., Courtyard Suite C–80, Portals Building, Washington, DC 20202–5329. Telephone: (202) 260–3265.

Program Authority: 20 U.S.C. 1133–1133b.

84.097A Law School Clinical Experience Program

Purpose of Program: To provide grants to continue, expand, or establish programs that provide clinical experience to students in the practice of law.

Eligible Applicants: Individual law schools that have been accredited by a nationally recognized agency approved by the Secretary; and combinations and consortiums of accredited law schools.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) the regulations of this program in 34 CFR part 639.

Priorities: Under 34 CFR 75.105(c) and 34 CFR 639.11 the Secretary gives an absolute preference to applications that meet both of the following priorities. The Secretary funds under this program only those competing applications that meet both of these absolute priorities.

Projects that—

(a) Provide legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom; and

(b) Provide service to persons who have difficulty in gaining access to legal representation.

Supplementary Information: The authorizing statute for the program permits the Secretary to pay up to 90 percent of the costs of projects at law schools (20 U.S.C. 1134u(a)). The program regulations permit the Secretary to establish annually a lower maximum Federal share (34 CFR 639.40(a)(2)). For fiscal year 1995 the Secretary sets the maximum Federal share at 65 percent to establish programs, 50 percent to expand programs, and 35 percent to continue programs of legal clinical experience.

Project Period: Up to 36 months

For Applications or Information Contact: John J. Lank, U.S. Department of Education, 400 Maryland Avenue, SW., Courtyard Suite C–80, Portals Building, Washington, DC 20202–5129. Telephone: (202) 260–3281.

Program Authority: 20 U.S.C. 1134u, 1134v.

84.120 Minority Science Improvement Program—Institutional, Design, Special, and Cooperative Projects

Purpose of Program: To effect long-range improvement in science education at predominantly minority institutions and to increase the flow of underrepresented ethnic minorities, particularly minority women, into scientific careers.

Eligible Applicants

(a) *For institutional, design, and special projects described in 34 CFR 637.14(a), (b) and (c):* Public and nonprofit private minority institutions.

Note: A minority institution is defined in 34 CFR 637.4(b) as an accredited college or university whose enrollment of a single minority group or combination of minority groups, as defined in 34 CFR 637.4(b), exceeds 50 percent of the total enrollment.

(b) *For institutional, design, and special projects described in 34 CFR 637.14(b) and (c):* Non-profit science-oriented organizations; professional scientific societies; and nonprofit accredited colleges and universities that render a needed service to a group of eligible minority institutions, as defined in 34 CFR 637.4(b), or that provide inservice training of project directors, scientists, and engineers from eligible minority institutions.

(c) *For cooperative projects.* Groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution, as defined in 34 CFR 637.4(b).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 637.

Project Period: Up to 36 months

For Applications or Information Contact: Dr. Argelia Velez-Rodriguez, U.S. Department of Education, 400 Maryland Avenue, SW., Courtyard Suite C–80, Portals Building, Washington, DC 20202–5329. Telephone: (202) 260–3261

Program Authority: 20 U.S.C. 1135b–1135b–3, 1135d–1135d–6.

84.153A Business and International Education Program

Purpose of Program: To provide grants both to enhance international business education programs and expand the capacity of the business community to engage in international economic activities.

Eligible Applicants: Institutions of higher education that have entered into agreements with business enterprises, trade organizations, or associations engaged in international economic activity.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85 and 86; and (b) The regulations for this program in 34 CFR parts 655 and 661.

Supplementary Information: A grantee shall pay a minimum of 50 percent of the cost of the project for each fiscal year.

Project Period: 24 months.

For Applications or Information Contact: Susanna C. Easton or Sarah T. Beaton, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–5332. Telephone: (202) 732–6061.

Program Authority: 20 U.S.C. 1130–1130b.

84.220A Centers for International Business Education Program

Purpose of Program: To provide grants to eligible applicants to pay the Federal share of the cost of planning, establishing, and operating centers for international business.

Eligible Applicants: Institutions of higher education; and combinations of institutions of higher education.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86; and (b) Because there are no program-specific regulations for this program, applicants are encouraged to read the authorizing statute for the Centers for International Business Education Program, under section 612 of part B, title VI, of the Higher Education Act of 1965, as amended by section 6261 of the Omnibus Trade and Competitiveness Act of 1988 (Pub.L. 100–418).

Project Period: 36 months.

For Applications or Information Contact: Susanna C. Easton, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5332. Telephone: (202) 732–6061.

Program Authority: 20 U.S.C. 1130–1.

For Applications or Additional Information Contact: Vicki V. Payne, U.S. Department of Education, 400 Maryland Avenue, SW., Courtyard Suite C–80, Portals Building, Washington, DC 20202–5329. Telephone: (202) 260–3291.

Program Authority: 20 U.S.C. 1134–1134c–2.

84.261A Dwight D. Eisenhower Leadership Development Program

Purpose of Program: To provide grants that establish prototypes that reach out to young Americans and promote the practical study and teachings of leadership through programs specially prepared to foster the development of new generations of leaders in the areas of national and international affairs.

Eligible Applicants: Institutions of higher education (IHEs), as defined in section 1201 of the Higher Education Act of 1965, as amended; and nonprofit private organizations in combination with IHEs.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86; and (b) Because there are no program-specific regulations for this program, applicants are encouraged to read the authorizing statute for the Dwight D. Eisenhower Leadership Development Act, under part D, title X of the Higher Education Act of 1965, as amended (Pub. L. 102–325).

Project Period: Up to 24 months.

For Applications or Information Contact: Dr. Donald N. Bigelow, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5247. Telephone: (202) 732–6070.

Program Authority: 29 U.S.C. 1135f.

84.116F Fund for the Improvement of Postsecondary Education—Innovative Projects for Community Service

Purpose of Program: To provide grants to support projects encouraging students to participate in community service activities.

Eligible Applicants: Institutions of higher education (IHEs); combinations of IHEs; and other public and nonprofit private institutions and agencies.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86, with the exceptions noted in 34 CFR 630.4(a); and (b) The regulations for this program in 34 CFR part 630.

Selection Criteria: In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 630.32.

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would—

(1) Achieve the purpose of the Innovative Projects for Community Service Program as referenced in 34 CFR 630.11(c);

(2) Address an important problem or need;

(3) Represent an improvement upon, or important departure from, existing practice; and

(4) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating); and

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of the availability of other funding sources for the proposed activities.

The Secretary gives equal weight to the selection criteria on significance, feasibility, and appropriateness. Within

each of these criteria, the Secretary gives equal weight to each of the subcriteria. In applying the criteria, the Secretary first analyzes an application in terms of each individual criterion. The Secretary then bases the final judgment of an application on the overall assessment of the degree to which the applicant addresses all selection criteria.

Project Period: 12 to 36 months.

For Applications and Information Contact: FIPSE, 400 Maryland Avenue, SW., room 3100, ROB–3, Washington, DC 20202–5175. Telephone: (202) 205–0082 to order applications; or (202) 708–5750 for information.

Program Authority: 20 U.S.C. 1137–1137a.

CHART 5.—OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards (per year)	Estimated avg. size of awards (per year)	Estimated number of awards
Office of Special Education Programs:						
84.023 Research in education of individuals with disabilities program						
84.023A Advancing and improving the research knowledge base	6/30/94	12/16/94	N/A	$70,000–100,000	$85,000	8
84.023C Field-initiated research projects	6/30/94	10/24/94	N/A	100,000–180,000	140,000	17
84.023E Synthesize and communicate a professional knowledge base: contributions to research and practice	6/30/94	10/17/94	N/A	145,000–150,000	147,500	3
84.023N Initial career awards	6/30/94	9/6/94	N/A	72,000–75,000	73,500	4
84.024 Early education program for children with disabilities						
84.024B Model demonstration projects for young children with disabilities	6/30/94	9/12/94	11/12/94	120,000–140,000	130,000	8
84.024P Early childhood model inservice training projects	6/30/94	9/19/94	11/19/95	120,000–140,000	130,000	10
84.025 Services for children with deaf-blindness program						
84.025A State and multi-state projects for children who are deaf-blind	6/30/94	12/9/94	2/9/95	30,000–800,000	175,000	49
84.025A Optional pilot projects for children who are deaf-blind [1]	6/30/94	12/9/94	2/9/95	60,000–75,000	70,000	10
84.025E Technical assistance for transitional services for children and youth who are deaf-blind	6/30/94	10/17/94	12/17/94	650,000	650,000	1
84.029 Training personnel for the education of individuals with disabilities—grants for personnel training and parent training and information centers						
84.029A Training personnel to service low-incidence disabilities	6/30/94	10/7/94	12/7/94	75,000–115,000	90,000	23
84.029B Preparation of personnel for careers in special education	6/30/94	9/30/94	11/30/94	75,000–100,000	90,000	23
84.029D Preparation of leadership personnel	6/30/94	9/16/94	11/16/94	75,000–100,000	90,000	23
84.029E Minority institutions personnel	6/30/94	10/21/94	12/21/94	75,000–100,000	90,000	11
84.029F Preparation of related services personnel	6/30/94	9/23/94	11/23/94	75,000–115,000	90,000	11
84.029K Special projects	6/30/94	10/28/94	12/28/94	75,000–115,000	90,000	17
84.029L Training educational interpreters	6/30/94	10/28/94	12/28/94	75,000–115,000	90,000	6
84.029M Parent training and information centers	6/15/94	8/19/94	11/19/94	100,000–300,000	150,000	17
84.029P Experimental parent centers	6/15/94	8/19/94	10/19/94	25,000–35,000	30,000	5
84.029Q Training early intervention and preschool personnel	6/30/94	10/14/94	12/14/94	75,000–115,000	90,000	23
84.078 Postsecondary education programs for individuals with disabilities						
84.078C Model demonstration projects to improve the delivery and outcomes of postsecondary education for individuals with disabilities	6/30/94	11/4/94	1/4/95	90,000–110,000	100,000	14
84.086 Program for children with severe disabilities						
84.086D Research project for educating children with severe disabilities in inclusive settings	6/30/94	12/2/94	2/2/95	165,000–175,000	175,000	3
84.086J Statewide system change: children with severe disabilities	6/30/94	10/17/94	12/17/94	210,000–260,000	250,000	6
84.086U Outreach projects: serving children with severe disabilities in general education and community settings	6/30/94	1/23/95	3/23/95	125,000–140,000	130,000	3

CHART 5.—OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES—Continued

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards (per year)	Estimated avg. size of awards (per year)	Estimated number of awards
84.158 State systems for transition services for youth with disabilities program						
84.158A State systems for transition services for youth with disabilities program	6/30/94	1/27/95	3/27/95	N/A	500,000	4
84.158 Secondary education and transitional services for youth with disabilities program						
84.158D Model demonstration projects to identify and develop alternatives for youth with disabilities who have dropped out of school or are at risk of dropping out of school	6/30/94	10/7/94	12/7/94	100,000–115,000	106,000	5
84.158Q Outreach projects for services for youth with disabilities	6/30/94	10/7/94	12/7/94	90,000–110,000	100,000	7
84.159 Special studies program						
84.159A State agency-federal evaluation studies projects	10/7/94	12/9/94	N/A	74,000–80,000	77,000	2
84.159D State and local education efforts to implement the transition requirements in the individuals with disabilities education act	6/17/94	8/19/94	N/A	300,000	300,000	1
84.159F State agency-federal evaluation studies projects	10/7/94	12/9/94	N/A	50,000	50,000	1
84.180 Technology, educational media, and materials for individuals with disabilities program						
84.180G Technology, educational media materials research project that promote literacy	7/11/94	9/12/94	11/14/94	192,000–200,000	196,000	4
84.237 Program for children and youth with serious emotional disturbance						
84.237F Preventing the development of serious emotional disturbance among children and youth with emotional and behavioral problems	7/15/94	9/16/94	11/14/94	173,000–175,000	174,000	5

[1] With regard to CFDA 84.025A, only successful applicants under State and Multi-State Projects are considered for funding under Optional Pilot Projects.

CFDA No. and Name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
National institute on disability and rehabilitation research:						
84.133F Research fellowships [1]						
84.133G Field-initiated research [1]						
84.133N Special projects and demonstrations for spinal cord injuries [1]						
84.133P Research training and career development program [1]						

[1] The application notices for these programs were published in the FEDERAL REGISTER on June 3, 1994 (Part V).

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovern-mental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
Rehabilitation Services Administration:						
84.128G Vocational rehabilitation service projects for migratory agricultural and seasonal farmworkers with disabilities	10/19/94	1/25/95	3/27/95	$150,000–175,000	$162,500	

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovern-mental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
84.128T Special projects and demonstrations for providing supported employment to individuals with the most severe disabilities and technical assistance projects—community-based projects	10/19/94	1/16/95	3/16/95	175,000–225,000	200,000	9
84.129A–1 Rehabilitation long-term training—rehabilitation medicine	8/22/94	10/14/94	12/14/94	90,000–110,000	100,000	2
84.129A–5 Rehabilitation long-term training—prosthetics and orthotics	8/22/94	10/14/94	12/14/94	165,000–185,000	175,000	2
84.129B Rehabilitation long-term training—rehabilitation counseling	8/22/94	10/14/94	12/14/94	60,000–110,000	86,000	20
129D–1 Rehabilitation long-term training—physical therapy	8/22/94	10/14/94	12/14/94	90,000–110,000	100,000	4
84.129E Rehabilitation long-term training—rehabilitation technology	8/22/94	10/14/94	12/14/94	90,000–110,000	100,000	3
84.129F Rehabilitation long-term training—vocational evaluation and work adjustment	8/22/94	10/14/94	12/14/94	90,000–110,000	100,000	3
84.129H Rehabilitation long-term training—rehabilitation of individuals who are mentally ill	8/22/94	10/14/94	12/14/94	90,000–110,000	100,000	2
84.129L Rehabilitation long-term training—undergraduate education in rehabilitation services	8/22/94	10/14/94	12/14/94	65,000–85,000	75,000	5
84.129P Rehabilitation long-term training—specialized personnel for rehabilitation of individuals who are blind or have vision impairment (currently: rehabilitation long-term training—rehabilitation of individuals who are blind)	8/22/94	10/14/94	12/14/94	90,000–110,000	100,000	6
84.129Q Rehabilitation long-term training—rehabilitation of individuals who are deaf or hard of hearing (currently: rehabilitation . long-term training—rehabilitation of individuals who are deaf)	8/22/94	10/14/94	12/14/94	90,000–110,000	100,000	6

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovern-mental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
84.129R Rehabilitation long-term training—rehabilitation job development and placement	8/22/94	10/14/94	12/14/94	90,000–110,000	100,000	2
84.250E Vocational rehabilitation service projects for American Indians with disabilities	10/19/94	4/10/95	N/A	200,000–300,000	250,000	15
84.263A Rehabilitation training—experimental and innovative training	8/1/94	10/14/94	12/14/94	90,000–110,000	100,000	5
84.264A–1 Rehabilitation . training—rehabilitation continuing education programs (for region V only.)	8/22/94	10/14/94	12/14/94	490,000–530,000	510,000	1

84.023A, C, E, and N Research in Education of Individuals With Disabilities Program

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals in regular education environments—to provide children with disabilities effective instruction and enable these children to learn successfully.

Eligible Applicants: State and local educational agencies; institutions of higher education; and other public agencies and nonprofit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 324.

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 324.10 the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only applications that meet one of these absolute priorities:

Absolute Priority 1—Advancing and Improving the Research Knowledge Base (84.023A). This priority supports a wide range of research and related activities that support innovation, development, exchange, and use of advancements in knowledge and practice designed to contribute to the improvement of instruction and learning of infants, toddlers, children, and youth with disabilities.

Invitational Priority: Within Absolute Priority 1 the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

The Secretary is particularly interested in pilot studies, projects that employ new methodologies, descriptive studies, projects to advance assessment, projects that synthesize state-of-the-art research and practice, projects for research dissemination and utilization, and projects that analyze extant data bases. The Secretary further encourages studies that use these approaches to foster the full participation and maximize the achievement of students with disabilities in education reform efforts related to the Goals 2000: Educate America Act.

Project Period: Up to 12 months.

Supplementary Information: No project will be funded at an amount more than the high end of the range specified in Chart 5. Any project approved by reviewers that exceeds this amount will be required to be performed, as proposed, within the award amount.

Absolute Priority 2—Field-Initiated Research Projects (84.023C). This priority provides support for field-initiated research projects focusing on special education and related services for children and youth with disabilities and early intervention services for infants and toddlers, consistent with the purposes of the program, as described in 34 CFR 324.1.

Supplementary Information: No project will be funded at an amount more than the high end of the range specified in Chart 5. Any project approved by reviewers that exceeds this amount will be required to be performed, as proposed, within the award amount.

Project Period: Up to 60 months.

Absolute Priority 3—Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice (84.023E). A project must—

(a) In conducting a synthesis of the literature—

(1) Identify and implement rigorous social science methods for synthesizing the professional knowledge base (e.g., integrative reviews (Cooper, 1982), best-evidence synthesis (Slavin, 1989), meta-analysis (Glass, 1977), multi-vocal approach (Ogawa & Malen, 1991), and National Institute of Mental Health consensus development program (Huberman, 1977));

(2) Identify the topical focus and the relevant and irrelevant concepts under review, and pose hypotheses around which the synthesis would be conducted;

(3) Develop hypotheses with input from potential consumers of the synthesis to enhance the usability and validity of project efforts. Consumers include researchers, policymakers, educators, other relevant practitioners, individuals with disabilities, and parents;

(4) Develop and implement procedures for locating and organizing the extant literature and ensure that these procedures address and guard against potential threats to the integrity and generalizability of findings;

(5) Establish criteria and procedures for judging the appropriateness of studies;

(6) Meet with the Office of Special Education Programs and with the other projects funded under this priority to review their topical focus and methodological approach for conducting the synthesis prior to the start of their respective synthesis; and

(7) Analyze and interpret the professional knowledge base, including identification of general trends in the literature, points of consensus and conflict among the findings, and areas of evidence where the literature base is lacking. The interpretation of the literature base must address the contributions of the findings for improving the practice of professionals educating children and youth with disabilities; and

(b) In communicating its findings—

(1)(i) Cooperate with OSEP to convene a forum—to be held in Washington, DC between the 18th and 21st months of the project—at which the project would exchange findings from the synthesis activity with researchers, policymakers, educators, other relevant practitioners, individuals with disabilities, and parents; and

(ii) Provide draft copies of its analysis and interpretations to participants;

(2) Based on discussion and feedback from forum participants, prepare final synthesis documents; and

(3)(i) Develop the information products that have the greatest potential for use by national professional education and parent organizations in their existing communication systems and member networks;

(ii) In developing the information products the project must propose products appropriate for the topical focus and audience, provide a rationale for those proposed types of products, and propose communication strategies for fostering the use of the products by the appropriate audience; and

(iii) The project must coordinate with OSEP to finalize information products for various systems and networks.

Each project must budget for—

(1) A two-day meeting in Washington, DC, during the first year, as described under paragraph (b)(1) of this priority;

(2) The two-day Research Project Directors' meeting to be held in Washington, DC, each year of the project; and

(3) Two trips for up to two days each to Washington, DC for the activity described under paragraph (b)(3)(iii) of this priority.

Supplementary Information: The estimated average size of award specified in Chart 5 is for year one only. Year two is estimated at $50,000.

Project Period: Up to 24 months.

Absolute Priority 4—Initial Career Awards (84.023N).

(a) To be considered for funding under this priority, a project must—

(a) Pursue a line of inquiry that reflects a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish directions for designing future studies extending beyond the support of this award. The project is not intended to represent all inquiry related to the particular theory or conceptual framework; rather, it is expected to initiate a new line or advance an existing one;

(b) Include, in its design and conduct, sustained involvement with nationally recognized experts having substantive or methodological knowledge and expertise relevant to the proposed research. Experts do not have to be at the same institution or agency at which the project is located, but the interaction must be sufficient to develop the capacity of the researcher to effectively pursue the research into mid-career activities. At least 50 percent of the researcher's time must be devoted to the project;

(c) Prepare its procedures, findings, and conclusions in a manner that informs other interested researchers and is useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families; and

(d) Disseminate project procedures, findings, and conclusions to appropriate research institutes, clearinghouses, and technical assistance providers.

A project must budget for the two-day Research Project Directors' meeting to be held in Washington, DC each year of the project.

Competitive Priority: Within Absolute Priority 4, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

A project that would give a priority to providing support for individuals who are members of groups that have been underrepresented in the field of special education research, such as members of racial or ethnic minority groups (e.g. Black, Hispanic, American Indian, or Alaskan Native, Asian or Pacific Islander), and individuals with disabilities.

Project Period: Up to 36 months

For Applications and General Information Contact: Darlene Crumbley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3525, Switzer Building, Washington, DC 20202–2641. Telephone (202) 205–8653, or FAX: (202) 205–8105.

For Technical Information Contact: For Advancing and Improving the Research Knowledge Base (CFDA 84.023A): Judith Fein, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524, Switzer Building, Washington, DC 20202–2641 Telephone: (202) 205–8116.

For Field-Initiated Research Projects (CFDA 84.023C): Dr. Tom V. Hanley U.S. Department of Education, 400 Maryland Avenue, SW., room 3526, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8110.

For Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice (CFDA 84.023E): Ellen Schiller, U.S. Department of Education, 400 Maryland Avenue, SW., room 3523, Switzer Building, Washington, DC 20202–2641 Telephone: (202) 205–8123.

For Initial Career Awards (84.023N): Melville J. Appell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3525, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8113.

Program Authority: 20 U.S.C. 1441–1443.

84.024B and P Early Education Program for Children With Disabilities

Purpose of Program: To provide Federal financial assistance (a) to address the special needs of children with disabilities, birth through age eight, and their families; and (b) to assist State and local entities in expanding and improving programs and services for these children and their families.

Eligible Applicants: Public agencies and nonprofit private organizations. In addition, profit-making organizations are eligible to apply under Early Childhood Model Inservice Training Projects (84.024P).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 309.

Priorities. Under 34 CFR 75.105(c)(3) and 34 CFR part 309 the Secretary gives an absolute preference to applications that meet the following priorities. The

Secretary funds under these competitions only applications that meet one of these absolute priorities:

Absolute Priority 1—Model Demonstration Projects for Young Children with Disabilities (84.024B). (a) A model demonstration project funded under this priority must—

(1) Address a specific service problem or issue;

(2) Address specific components or strategies and the rationale—based on theory, research, or evaluation—for those components or strategies;

(3) Delineate a specific population of children—i.e., by age, disability, diagnosis, level of functioning, and membership in a special population, if appropriate—and their families;

(4) Produce detailed procedures and materials that enable others to replicate the model as implemented at the original site;

(5) As appropriate, develop and evaluate the model in integrated, age-appropriate settings that facilitate the interaction between project participants and their peers without disabilities, including models developed for use in home or in hospital settings (such as neonatal intensive care units); and

(6) Evaluate the model at the original model development site and—if approved for funding beyond the initial three years of the project period—at other sites to determine whether the model can be adopted by other sites and yield similar positive results. In its evaluation, a project must use multiple outcome measures to determine the effectiveness of the model and its component strategies, including measures of multiple, functional child and family outcomes, other indices of the effects of the model, and cost data associated with implementing the model.

(b) In determining whether to continue a project for the fourth and fifth years of the project period, in addition to considering factors in 34 CFR 75.253(a), the Secretary considers the following:

(1) The degree to which the model developed by the project is, or would be by the end of year three, designed soundly and replicable by other agencies, and provides state-of-the-art interventions for the target population.

(2) The extent to which dissemination of the model would meet a significant or unique service need in other geographic locations.

(3) The degree to which the project has initially produced compelling, quantifiable evidence of the effectiveness of the model as implemented at the original development site.

(4) Availability of funding for the model from sources other than the Early Education Program for Children with Disabilities to support the operation of the model at the original development site during years four and five.

(5) The extent to which the project has documented the commitment of other agencies not affiliated with the original project to adopt its model and participate in evaluation of the model during years four and five of the project period.

(6) The extent to which the project has sound plans for aiding in replication and for evaluating its model at replication sites during years four and five of the project period.

A project that applies for funding for the fourth and fifth years must set aside in its budget for the third year funds to cover costs associated with the services to be performed by the review team appointed by the Secretary to evaluate the project in the third year. These funds are estimated to be approximately $4,000.

Competitive Priority. Within Absolute Priority 1, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Projects designed to develop, implement, evaluate, and disseminate models that—

(a) Incorporate the appropriate use of assistive technology to enhance services to young children with disabilities; or

(b) Address the unique needs of young children with low incidence disabilities, such as deaf-blindness.

Project Period: Up to 60 months.

Absolute Priority 2—Early Childhood Model Inservice Training Projects (84.024P). A model inservice training project considered for funding under this priority must—

(a) Identify the target population to be trained, including their roles and responsibilities, and the national needs addressed by the model;

(b) Delineate a conceptual framework upon which the training model is to be based, including the changes in personnel roles and responsibilities and the skills needed to implement the new roles or responsibilities;

(c) Identify the content of training and the format for delivery of training and other activities of the model;

(d) Develop and demonstrate an inservice training model for professionals, paraprofessionals, or both, who are currently providing services to infants, toddlers, and preschool-aged children with disabilities and their families, or to those individuals who through retraining could provide those services;

(e) Include goals, objectives, and activities to ensure that personnel participating in the training acquire skills to work effectively with children and families who are members of cultural, linguistic, and racial minority groups.

(f) Include within the model an array of follow-up and support activities that ensure that personnel participating in the training acquire the skills being taught and use that knowledge in meeting the service needs of young children with disabilities and their families;

(g) Coordinate with the State agencies responsible for the Comprehensive System of Personnel Development (CSPD) under part H or part B of IDEA, and arrange for credit to be granted to trainees by appropriate agencies, organizations, or institutions of higher education; and

(h) Evaluate the inservice training model through direct assessment of participants' skills following the training and, after a period of time, include some direct observation measures of trainees in the service setting using standardized observational rating techniques.

Competitive Priority. Within Absolute Priority 2, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that provide evidence that they will develop, demonstrate, evaluate, and disseminate models that—

(a) Incorporate collaborative, multi-disciplinary, team training approaches to personnel development; or

(b) Focus on paraprofessionals and address their unique training needs.

Project Period: Up to 36 months.

For Applications and General Information Contact: Sonja Jenkins, U.S. Department of Education, 400 Maryland Avenue, SW., room 4716, Switzer Building, Washington, DC 20202–2732. Telephone (202) 205–9377. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

For Technical Information Contact: Gail Houle, U.S. Department of Education, 400 Maryland Avenue, SW.,

room 4613, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–9045. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

Program Authority: 20 U.S.C. 1423.

84.025A and E Services for Children With Deaf-Blindness Program

Purpose of Program: To provide Federal assistance to address the special needs of infants, toddlers, children, and youth with deaf-blindness.

Eligible Applicants: Public or nonprofit private agencies, institutions, or organizations, including an Indian tribe and the Bureau of Indian Affairs of the Department of the Interior (if acting on behalf of schools operated by the Bureau for children and students on Indian reservations); and tribally controlled schools funded by the Department of the Interior.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 307.

Priorities. Under 34 CFR 75.105(c)(3) and 34 CFR part 307, the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only applications that meet one of these absolute priorities:

Absolute Priority 1(a)—State and Multi-State Projects for Children Who Are Deaf-Blind; and 1(b)—Optional Pilot Projects for Children Who Are Deaf-Blind (84.025A). This priority supports two types of projects:

(a) State and Multi-State Projects for Children who are Deaf-Blind. These projects may provide services to infants, toddlers, children, and youth with deaf-blindness and technical assistance to public and private agencies, institutions, and organizations providing early intervention, educational, transitional, vocational, early identification, and related services to children with deaf-blindness, as described in 34 CFR 307.11.

(b) Optional Pilot Projects for Children who are Deaf-Blind.

(**Note:** Only successful applicants under State and Multi-State Projects (Absolute Priority 1(a)) are considered for funding under Optional Pilot Projects (Absolute Priority 1(b).) These projects are designed to expand local educational agency capabilities by providing services to children with deaf-blindness that supplement services already provided to children and youth through State and local resources, and encourage eventual assumption of funding responsibility by State and local authorities, as described in 34 CFR 307.10(d) and 307.14.

Invitational Priority. Within Absolute Priority 1(b) (Optional Pilot Projects for Children Who Are Deaf-Blind), the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1), an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Projects that propose to provide validated effective practices related to—

(a) Transition from school to adult life in the community;

(b) Early identification and intervention for infants and toddlers who are deaf-blind;

(c) Strategies that facilitate the integration of students who are deaf-blind into neighborhood schools;

(d) Acquisition of communication or orientation and mobility skills; or

(e) Facilitation of family involvement.

Supplementary Information: Applicants seeking support for both 1(a) State and Multi-State Projects for Children who are Deaf-Blind and 1(b) Optional Pilot Projects for Children who are Deaf-Blind must submit a two-part application, each complete by itself and containing its individual budget.

The Secretary evaluates applications for State and Multi-State Projects using criteria in 34 CFR 307.33.

The Secretary evaluates applications for Optional Pilot Projects using criteria in 34 CFR 307.36.

Project Period: Up to 48 months.

Absolute Priority 2—Technical Assistance for Transitional Services for Children and Youth Who Are Deaf-Blind (84.025E). This priority supports a project to provide technical assistance to State educational agencies in making available to adolescents and young adults who are deaf-blind, programs and services to facilitate their transition from education to employment and other services such as vocational, independent living, and other postsecondary services. The project must provide technical assistance, training or inservice training, and assistance in the development or replication of successful innovative approaches, to assist adolescents and young adults who are deaf-blind transition to adult living. (34 CFR 307.13)

Project Period: 12 months.

For Applications and General Information Contact: Robin Buckler, U.S. Department of Education, 400 Maryland Avenue, SW., room 4617, Switzer Building, Washington, DC 20202–2732. Telephone (202) 205–8168. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

For Technical Information Contact: Charles Freeman, U.S. Department of Education, 400 Maryland Avenue, SW., room 4617, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8165. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

Program Authority: 20 U.S.C. 1422.

84.029A–Q Training Personnel for the Education of Individuals With Disabilities—Grants for Personnel Training and Parent Training and Information Centers

Purpose of Program: (a) The purpose of Grants for Personnel Training is to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities. (b) The purpose of Parent Training and Information Centers is to enable parents to work more effectively with professionals in meeting the needs of infants, toddlers, children, and youth with disabilities.

Eligible Applicants: Under Absolute Priorities 1, 2, 3, 4, 5, 7, and 10 (Grants for Personnel Training): institutions of higher education; and appropriate nonprofit agencies.

Under Absolute Priority 6 (Special Projects): institutions of higher education; State agencies; and other appropriate nonprofit agencies.

Under Absolute Priorities 8 (Parent Training and Information Centers) and 9 (Experimental Parent Centers): parent organizations, as defined in 34 CFR 316.5(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 316 and 318.

Priorities: Under 34 CFR 75.105(c)(3), 34 CFR 316, and 34 CFR 318, the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under this program only those applications that meet any one of these absolute priorities:

(**Note:** If an applicant wishes to apply under more than one of these absolute priorities, the applicant must submit a separate application under each affected priority.)

Absolute Priority 1—Training Personnel to Serve Low Incidence Disabilities (84.029A). This priority supports projects to train teachers of children with visual impairments,

including blindness; hearing impairments, including deafness, orthopedic impairments, other health impairments, autism, traumatic brain injury, and severe and multiple disabilities. (34 CFR 318.11(a)(10)).

Competitive Priorities: Within Absolute Priority 1, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet one or more of the following competitive priorities. The Secretary awards up to 10 additional points to an application that meets one or more of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

(a) Training personnel to provide transition assistance from school to adult roles (34 CFR 318.11(a)(12))

(b) Preparing personnel to meet the National Education Goals (34 CFR 318.11(a)(17)).

(c) Utilizing innovative recruitment and retention strategies (34 CFR 318.11(a)(8)).

Project Period: Up to 36 months.

Absolute Priority 2—Preparation of Personnel for Careers in Special Education (84.029B). This priority supports preservice preparation of personnel for careers in special education. Preservice training includes additional training for currently employed teachers seeking additional degrees, certifications, or endorsements. Training at the baccalaureate, masters, or specialist level is appropriate. Under this priority, "personnel" includes special education teachers, speech-language pathologists, audiologists, adapted physical education teachers, vocational educators, and instructive and assistive technology specialists (34 CFR 318.11(a)(1)).

Competitive Priorities: Within Absolute Priority 2, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet one or more of the following competitive priorities. The Secretary awards up to 10 additional points to an application that meets one or more of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

(a) Training personnel to provide transition assistance from school to adult roles (34 CFR 318.11(a)(12))

(b) Preparing personnel to meet the National Education Goals (34 CFR 318.11(a)(17)).

(c) Promoting full qualifications for personnel serving infants, toddlers, children, and youth with disabilities (34 CFR 318.11(a)(9).

Project Period: Up to 36 months

Absolute Priority 3—Preparation of Leadership Personnel (84.029D). This priority supports projects designed to provide preservice professional preparation of leadership personnel in special education, related services, and early intervention. Leadership training is considered to be preparation in—

(a) Supervision and administration at the advanced graduate, doctoral, and post-doctoral levels;

(b) Research; and

(c) Personnel preparation at the doctoral and post-doctoral levels (34 CFR 318.11(a)(4)).

Competitive Priorities: Within Absolute Priority 3, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet one or more of the following competitive priorities. The Secretary awards up to 10 additional points to an application that meets one or more of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

(a) Training personnel to provide transition assistance from school to adult roles (34 CFR 318.11(a)(12)).

(b) Preparing personnel to meet the National Education Goals (34 CFR 318.11(a)(17)).

Project Period: Up to 48 months

Absolute Priority 4—Minority Institutions Personnel (84.029E). This priority supports awards to Historically Black Colleges and Universities and other institutions of higher education whose minority student enrollment is at least 25 percent. Awards may provide training of personnel in all areas noted in § 318.10(a)(1) and (2) and must be designed to increase the capabilities of the institution in appropriate training areas (34 CFR 318(a)(17))

Competitive Priorities: Within Absolute Priority 4, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet one or more of the following competitive priorities. The Secretary awards up to 10 additional points to an application that meets one or more of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

(a) Training personnel to provide transition assistance from school to adult roles (34 CFR 318.11(a)(12)).

(b) Preparing personnel to meet the National Education Goals (34 CFR 318.11(a)(17)).

Project Period: Up to 36 months

Absolute Priority 5—Preparation of Related Services Personnel (84.029F) This priority supports preservice preparation of individuals to provide developmental, corrective, and other supportive services that assist children and youth with disabilities to benefit from special education. These include paraprofessional personnel, therapeutic recreation specialists, school social workers, health service providers, physical therapists, occupational therapists, school psychologists, counselors (including rehabilitation counselors), interpreters, orientation and mobility specialists, respite care providers, art therapists, volunteers, physicians, and other related services personnel.

- Projects to train personnel identified as special education personnel in the regulations in this part are not appropriate, even if those personnel may be considered related services personnel in other settings.
- This priority is not designed for general training. Projects must include inducements and preparation to increase the probability that graduates will direct their efforts toward supportive services to special education. For example, a project in occupational therapy (OT) might support a special component on pediatric or juvenile psychiatric OT, support those students whose career goal is OT in the schools, or provide for practica and internships in school settings. (See 34 CFR 318.11(a)(2).)

Competitive Priorities: Within Absolute Priority 5, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet one or more of the following competitive priorities. The Secretary awards up to 10 additional points to an application that meets one or more of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

(a) Training personnel to provide transition assistance from school to adult roles (34 CFR 318.11(a)(12)).

(b) Preparing personnel to meet the National Education Goals (34 CFR 318.11(a)(17)).

(c) Utilizing innovative recruitment and retention strategies (34 CFR 318.11(a)(8));

Project Period: Up to 36 months

Absolute Priority 6: Special Projects (84.029K). This priority supports projects that include development, evaluation, and distribution of innovative approaches to personnel preparation; development of curriculum materials to prepare personnel to educate or provide early intervention services; and other projects of national significance related to the preparation of personnel needed to serve infants,

toddlers, children, and youth with disabilities.

(a) Appropriate areas of [illegible] include—

(1) Preservice training programs to prepare special [illegible] children and youth with disabilities and their families;

(2) Training teachers to work in community and school settings with children and youth with disabilities and their families;

(3) Inservice and preservice training of personnel to work with infants, toddlers, children, and youth with disabilities and their families;

(4) Inservice and preservice training of personnel to work with minority infants, toddlers, children, and youth with disabilities and their families;

(5) Preservice and inservice training of special education and related services personnel in instructive and assistive technology to benefit infants, toddlers, children, and youth with disabilities; and

(6) Recruitment and retention of special education, related services, and early intervention personnel.

(b) Both inservice and preservice training must include a component that addresses the coordination among all service providers, including regular educators. (See 34 CFR 318(a)(5).)

Competitive Priorities: Within Absolute Priority 6, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet one or more of the following competitive priorities. The Secretary awards up to 10 additional points to an application that meets one or more of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

(a) Training personnel to provide transition assistance from school to adult roles (34 CFR 318.11(a)(12)).

(b) Preparing personnel to meet the National Education Goals (34 CFR 318.11(a)(17)).

Project Period: Up to 36 months

Absolute Priority 7—Training Educational Interpreters (84.029L). This priority supports projects to establish or continue programs to train educational interpreters to meet effectively the various communication needs of elementary and secondary students who are deaf or deaf-blind. These programs may also support training or retraining on the role of educational interpreters (including short-term and inservice training) of regular education teachers who are not certified teachers of individuals who are deaf and other personnel who teach or work with them (34 CFR 318.11(a)(18)).

Project Period: Up to 36 months.

Absolute Priority 8—Parent Training and Information Centers (84.029M). Parent training and information centers assisted under § 316.3(a) must assist parents to—

(a) better understand the nature and needs of the disabling conditions of their children with disabilities;

(b) Provide follow-up support for the educational programs of their children with disabilities;

(c) Communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(d) Participate fully in educational decision-making processes, including the development of the individualized education program, for a child with a disability;

(e) Obtain information about the range of options, programs, services, and resources available at the national, State, and local levels to children with disabilities and their families; and

(f) Understand the provisions for educating children with disabilities under the [Individuals with Disabilities Education] Act (34 CFR 316.3(a)).

Project Period: Up to 60 months.

Absolute Priority 9—Experimental Parent Centers (84.029P). This priority supports both experimental urban and rural parent centers. Experimental urban centers must serve large numbers of parents of children with disabilities located in high density areas. Experimental rural centers must serve large numbers of parents of children with disabilities located in rural areas. The centers may focus on particular aspects of parent training and information services, including but not limited to those activities required under 34 CFR 316.10(a). Experimental projects may include a planning and development phase. (See 34 CFR 316.10(b).)

Project Period: Up to 36 months

Absolute Priority 10—Training Early Intervention and Preschool Personnel (84.029Q). This priority supports projects that are designed to provide preservice preparation of personnel who serve infants, toddlers, and preschool children with disabilities, and their families. Personnel may be prepared to provide short-term services or long-term services that extend into a child's school program. The proposed training program must have a clear and limited focus on the special needs of children within the age range from birth through five, and must include consideration that this priority must have a significant interdisciplinary focus. (See 34 CFR 318(a)(3).)

Competitive Priorities: Within Absolute Priority 10, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet one or more of the following competitive priorities. The Secretary awards up to 10 additional points to an application that meets one or more of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

(a) Preparing personnel to meet the National Education Goals (34 CFR 318.11(a)(17)).

(b) Promoting full qualifications for personnel serving infants, toddlers, children and youth with disabilities (34 CFR 318.11(a)(9)).

Project Period. Up to 36 months.

For Applications Contact: Cecelia Aldridge, U.S. Department of Education, 400 Maryland Avenue SW., room 3072 Switzer Building, Washington, DC 20202–2651. Telephone: 205–9979. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9999.

For Technical Information Contact Dr. Norm Howe, U.S. Department of Education, 400 Maryland Avenue SW., room 3072, Switzer Building, Washington, DC 20202–2651. Telephone: (202) 205–9554. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9999.

Program Authority: 20 U.S.C. 1441

84.078 Postsecondary Education Programs for Individuals With Disabilities

Purpose of Program: To provide assistance for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities.

Eligible Applicants: State educational agencies; institutions of higher education; junior and community colleges; vocational and technical institutions; and other appropriate nonprofit educational agencies.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 338.

Priorities. Under 34 CFR 75.105(c)(3) and 34 CFR part 338, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition

only applications that meet this absolute priority:

Absolute Priority—Model Demonstration Projects to Improve the Delivery and Outcomes of Postsecondary Education for Individuals with Disabilities (84.078C). A model demonstration project must—

(a) Develop and implement programs that address one or more of the three specific service issues described in the background of this priority (for background, see notice of final funding priority for fiscal years 1994 and 1995, published in the **Federal Register** on September 14, 1993 (58 FR 48250));

(b) Develop and implement programs with specific project components or strategies that are based on theory, research, or evaluation;

(c) Produce detailed procedures and materials that would enable others to successfully replicate the model as implemented in the original site. Materials must include a manual or guide describing the components or strategies developed to address the specific issues; and

(d) Evaluate the model by using multiple outcome measures to determine the effectiveness of the model and its components or strategies, as well as a design that includes measures of multiple, functional student outcomes, other indices of the effects of the model, and cost data associated with implementing the model.

Competitive Priority. Within the absolute priority in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the selection criteria for this program.

Projects that would develop models for serving students with disabilities who are also members of minority groups (e.g., Black, Hispanic, American Indian or Alaskan Native, Asian or Pacific Islander).

Project Period: Up to 36 months

For Applications and General Information Contact: Oneida Jennings, U.S. Department of Education, 400 Maryland Avenue, SW., room 4627, Switzer Building, Washington, DC 20202–2732. Telephone (202) 205–9058. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

For Technical Information Contact: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–9503. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

Program Authority: 20 U.S.C. 1424a

84.086D, I, and U Program for Children With Severe Disabilities

Purpose of Program. To provide Federal assistance to address the special needs of infants, toddlers, children, and youth with severe disabilities—including children with deaf-blindness—and their families.

Eligible Applicants: Public or nonprofit private organizations and [illegible]

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 315.

Priorities. Under 34 CFR 75.105(c)(3) and 34 CFR part 315, the Secretary gives an absolute preference to applications that meet one of these absolute priorities. The Secretary funds under these competitions only applications that meet one of these absolute priorities.

Absolute Priority 1—Research Projects for Educating Children with Severe Disabilities in Inclusive Settings (84.086D). To be considered for funding under this priority, a research project must—

(a) Address one or more of the issues identified in the background section of this priority (for background, see notice of final funding priorities for fiscal years 1994 and 1995, published in the **Federal Register** on September 22, 1993 (58 FR [illegible]);

(b) Identify specific interventions or strategies to be investigated;

(c) Design the research activities in a manner that is likely to improve results for students with severe disabilities and, if appropriate, their families;

(d) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the interventions or strategies to be studied, the research design, and the target population;

(e) Conduct the research in typical, inclusive school and, if appropriate, community settings;

(f) Conduct the research using methodological procedures designed to produce unambiguous findings—

(1) Regarding the effects of the interventions or strategies and interaction effects between particular approaches and particular groups of students or particular contexts; and

(2) For use in national, State, and local policy analysis contexts; and

(g) Produce a variety of descriptive and outcome data, including—

(1) Information regarding the settings, the service providers, the students, and, if applicable, their families, targeted by the project (e.g., age, disabilities, skill and ability levels, and membership in a special population, if appropriate); and

(2) Multiple, performance outcome data regarding the students who are the focus of the interventions or strategies.

Competitive Priority. Within Absolute Priority 1, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for this program.

Research projects that identify effective interventions or strategies enabling students with severe disabilities to be educated in general education classes—

(a) At the middle or secondary school levels, or

(b) In urban or rural school districts, or both.

Project Period: Up to 36 months

Absolute Priority 2—Statewide Systems Change: Children with Severe Disabilities (84.086J). To be considered for funding under this priority, a Statewide systems change project must—

(a) Establish a project advisory board that—

(1) Is responsible for providing significant recommendations on project planning, implementation, and evaluation activities; and

(2) Has representation by parents of children participating in the project, service providers (both general education and special education), and providers of related services), institutions of higher education, relevant professional organizations, and State agency staff;

(b) Determine the resources, both human and fiscal, available at the community level to provide quality services to children with severe disabilities as well as resources available through other agencies or parties;

(c) Carry out activities that would assist children with severe disabilities to achieve their highest potential outcomes in general education settings within their neighborhoods—or, in the case of infants and toddlers, in natural environments, including nonsegregated settings—by implementing planned,

capacity building activities that result in systematic and systemic change. These activities must include, but need not be limited to—

(1) Policy analysis and, if necessary, policy revision or further policy development, including development of necessary interagency agreements;

(2) Public awareness;

(3) Product development and dissemination;

(4) Site development;

(5) Staff and parent training;

(6) Technical assistance; and

(7) Analysis and, if necessary, revision of existing teacher training programs including inservice training of faculty of institutions of higher education;

(d) Disseminate formal, written policies and procedures to relevant State agencies, institutions of higher education, local education agencies, other relevant community agencies, and professional and parent organizations for coordinating services to the target population of children with severe disabilities;

(e) Coordinate activities with the State and Multi-State Services Projects for Children with Deaf-Blindness, the State educational agency (including the State coordinator of services for children with severe disabilities, the coordinator for the comprehensive system of personnel development, and the State's transition project, if the State has a federally funded grant under State Systems for Transition Services), the lead agency for part H of IDEA for early intervention services, other relevant State agencies, and institutions of higher education, as well as with technical assistance, information, and personnel development networks within the State, the Early Childhood Research Institute on Integration, the National Early Childhood Technical Assistance System, and the Institute on Implementing Inclusive Education for Children with Severe Disabilities; and

(f) Implement an evaluation plan that includes performance measures for—

(1) Changes in the delivery of special education and related services to the target population, and, in the case of infants and toddlers, changes in the delivery of early intervention services;

(2) The movement of children and youth with severe disabilities in the State from segregated settings to neighborhood general education settings—alongside their peers of the same age—and, in the case of infants and toddlers, to natural environments;

(3) The effectiveness of the training and technical assistance products and procedures; and

(4) The types and numbers of sites where activities are conducted, number and types of persons trained, types of follow-up activities, and number of children and families served at the site where activities were conducted.

Competitive Priority: Within Absolute Priority 2, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for this program:

Statewide Systems Change projects from States that have not received a new Statewide System Change award since 1987.

Project Period: Up to 60 months.

Absolute Priority 3—Outreach Projects: Serving Children with Severe Disabilities in General Education and Community Settings (84.086U). To be considered for funding under this priority, an outreach project must—

(a) Disseminate information about and assist in replicating a proven model or models—or proven components of models—that provide or improve services for children with severe disabilities;

(b) Coordinate its dissemination and replication activities with—

(1) The lead agency for part H of the Individuals with Disabilities Education Act (IDEA) for early intervention services or the State educational agency for special education; as well as

(2) Technical assistance, information, and personnel development networks within the State;

(c) Include—

(1) Approaches relevant to programming in general education and local community settings;

(2) Active involvement of children and their families in the design, implementation, and evaluation of project activities; and

(3) Interagency coordination if multiple agencies are involved in the provision of services;

(d) Ensure that the model or components of models are consistent with part B of the IDEA, are state-of-the-art, match the needs of the proposed sites, and have recent unambiguous evaluation information supporting their effectiveness;

(e) Use activities that include, but need not be limited to, public awareness, product development and dissemination, site development, training, and technical assistance;

(f) Describe the effects of model components (e.g., expected costs, needed personnel, staff training, equipment) on potential users, the sequence of implementation activities, and the criteria for selecting cooperating sites; and

(g) Evaluate the outreach activities to determine their effectiveness. The evaluation must include measures on the number of children and families served at each site, child and family progress, types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, and any changes in the model made by sites.

Competitive Priority: Within Absolute Priority 3, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for this program:

Outreach projects that provide evidence that they will establish implementation sites in urban or rural areas, or both.

Project Period: Up to 36 months.

For Applications and General Information Contact: Robin Buckler, U.S. Department of Education, 400 Maryland Avenue, SW., room 4617, Switzer Building, Washington, DC 20202–2732. Telephone (202) 205–0168. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

For Technical Information Contact: Dawn Hunter, U.S. Department of Education, 400 Maryland Avenue, SW., room 4620, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–5809. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8159.

Program Authority: 20 U.S.C. 1425.

84.158A State Systems for Transition Services for Youth With Disabilities Program

Purpose of Program: To assist States to develop, implement, and improve systems to provide transition services for youth with disabilities from age 14 through the age they exit school.

Eligible Applicants: A State education agency (SEA) and a State vocational rehabilitation agency that submit a joint application; or, if a vocational rehabilitation agency does not choose to participate, an SEA and a State agency that provides transition services to individuals who are leaving programs under the Individuals with Disabilities

Education Act, that submit a joint application.

Note: Because this is a one-time grant, States that have previously received a grant under this program are not eligible to apply (34 CFR 325.2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 325.

Project Period: Up to 60 months.

For Applications and General Information Contact: Oneida Jennings, U.S. Department of Education, 400 Maryland Avenue, SW., room 4627, Switzer Building, Washington, DC 20202–2732. Telephone (202) 205–9058. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

For Technical Information Contact: Dr. William Halloran, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8112. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

Program Authority: 20 U.S.C. 1425(e)

84.158D and Q Secondary Education and Transitional Services for Youth with Disabilities Program

Purpose of Program: To assist youth with disabilities in the transition from secondary school to postsecondary environments.

Eligible Applicants: Institutions of higher education; State education agencies; local education agencies; and other public and nonprofit private institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 326.

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR part 326 the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only applications that meet one of these absolute priorities:

Absolute Priority 1—Model Demonstration Projects To Identify and Develop Alternatives for Youth with Disabilities Who Have Dropped Out of School or Are At Risk of Dropping Out of School (84.158D). A model demonstration project must—

(a) Build upon specific components or strategies based on theory, research, or evaluation. These components or strategies must include procedures to identify youth who are at risk of dropping out of school and to recruit youth with disabilities who have already dropped out of school;

(b) Include alternatives for engaging students in programs that provide functional literacy skills and employment training and for serving students who refuse to return to their previous school;

(c) Develop working relationships with the private sector, especially employers, rehabilitation personnel, and local Private Industry Councils authorized by the Job Training Partnership Act;

(d) Target services to specific students (i.e., by age, disability, level of functioning, and membership in a special population, if appropriate);

(e) Produce detailed procedures and materials that enable others to successfully replicate the model as implemented in the original site; and

(f) Evaluate the model at the original model development site and, if implemented at other sites, at those sites to determine whether the model can be adopted by other sites and yield similar results. The project must determine the effectiveness of the model and its component or strategies, including multiple, functional student outcomes measures, other indices of the effects of the model, and cost data associated with implementing the model.

Invitational Priority: Within Absolute Priority 1 the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects designed to serve minority youth (e.g., Black, Hispanic, American Indian or Alaskan Native, Asian or Pacific Islander) or youth from urban areas with recognized high drop out rates.

Project Period: Up to 36 months.

Absolute Priority 2—Outreach Projects for Services for Youth with Disabilities (84.158Q). An outreach project for services must—

(a) Disseminate information about and assist in replicating proven models, components of models, or exemplary practices that provide or improve transition services for students with disabilities based on the specific needs of the sites selected for outreach;

(b) Develop written plans for implementation;

(c) Coordinate its dissemination and replication activities with relevant State and local educational agencies, consumer organizations, administrative entities established in the service delivery area under the Job Training Partnership Act, and, if appropriate, projects funded under the State Systems for Transition Services for Youth with Disabilities Program, as well as with technical assistance, information, and personnel development networks within the State;

(d) Include—

(1) Services in community-based settings;

(2) Effective involvement of students and adults with disabilities in the design, implementation, and evaluation of project activities;

(3) Coordination with schools, vocational rehabilitation agencies, adult service providers, and potential employers, if appropriate; and

(4) Assistance in identifying funding for assistive devices and services;

(e) Ensure that the model, components of models, or exemplary practices are consistent with part B of the Individuals with Disabilities Education Act, are state-of-the-art, and have recent, unambiguous evaluation information supporting their effectiveness;

(f) Employ activities that include, but need not be limited to, public awareness, product development and dissemination, site development, training, and technical assistance;

(g) Describe the effects of model components (e.g., expected costs, needed personnel, staff training, equipment) on potential users, the sequence of implementation activities, and the criteria for selecting cooperating sites; and

(h) Evaluate the outreach activities to determine their effectiveness. The evaluation designs must include, but need not be limited to, measures of types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, number of youth and families served at the site where models were adopted or adapted, youth and family progress information, and changes in the model made by sites.

Project Period: Up to 36 months.

For Applications and General Information Contact: Oneida Jenkins, U.S. Department of Education, 400 Maryland Avenue, SW., room 4627, Switzer Building, Washington, DC 20202–2732. Telephone (202) 205–9058. Individuals who use a telecommunications device for the deaf

(TDD) may call the TDD number at (202) 205–8169.

For Technical Information Contact: Dr. William Halloran, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–81[illegible]. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

Program Authority: 20 U.S.C. 1425.

84.159A, D, and F Special Studies Program

Purpose of Program: To support the collection of data, studies, investigations, and evaluations to assess the impact and effectiveness of programs and projects assisted under the Individuals with Disabilities Education Act (IDEA).

Eligible Applicants: Under Absolute Priorities 1 and 3 (State Agency-Federal Evaluation Studies Projects) (84.159A and 84.159F): State educational agencies (SEA's); and those State agencies designated by the Governor in each State for the purpose of administering an early intervention program under part H of IDEA.

Under Absolute Priority 2 (State and Local Education Efforts to Implement the Transition Requirements in the Individuals with Disabilities Education Act) (84.159D): Public or private agencies, institutions, and organizations; and other appropriate parties.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 327.

Note: Absolute Priorities 1 and 3 are based on 34 CFR 327.10(c). Absolute Priority 2 is based on 34 CFR 327.10(f) and the notice of final priorities for the Special Studies Program for fiscal years 1994–1995 published in the **Federal Register** on January 20, 1994 (59 FR 2970).

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR part 327 the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only applications that meet one of these absolute priorities:

Absolute Priority 1—State Agency-Federal Evaluation Studies Projects (84.159A). This priority supports cooperative agreements that assess the impact and effectiveness of programs, policies, and procedures assisted under the Individuals with Disabilities Education Act (IDEA) in accordance with sections 618(d)(1) and (2) of the Act.

Invitational Priorities: Within Absolute Priority 1 the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

The Secretary particularly invites projects that evaluate the impact and effectiveness of—

(a) Management and regulatory flexibility that encourages innovative management of schools to expand opportunities for the inclusion of children with disabilities;

(b) Student outcomes and performance of comprehensive, community-based, family-oriented systems of education and support;

(c) Community-supported schools focusing on family participation in activities and services;

(d) Reconfigured relationships and responsibilities of regular and special education staff, and redesigned programs that train personnel for work in schools, for the continued development of all regular and special education personnel in the education of children with disabilities; or

(e) Expanded multi-agency solutions to the collaborative delivery of services for individual children with disabilities and their families.

Supplementary Information: An award under this competition provides not more than 60 percent of the total cost of the project. The State agency receiving the award shall provide an amount not less than 40 percent of the total cost of the project (34 CFR 327.40(a)).

Project Period: Up to 24 months.

Absolute Priority 2—State and Local Education Efforts to Implement the Transition Requirements in the Individuals with Disabilities Education Act (84.159D).

(a) A project funded under this priority must include substudies—or compile extant information that obviates the need for a study—in the following areas:

(1) The range and variation in State and local policies related to the definitional components of transition services;

(2) Student participation in transition planning, and student outcomes associated with implementation of transition services;

(3) State and local policies, practices and procedures related to the implementation of the transition services, with information obtained from local service providers (the substudy may include visits to illustrative sites);

(4) Interagency involvement in transition planning and services, including a description of the impediments associated with interagency involvement in transition planning and provision of services; and

(5) Federal program services (including those of the Department of Labor and the Social Security Administration) and relevant policies related to meeting the transition requirements, including special education, vocational education, rehabilitation services, adult education, postsecondary education, the Job Training Partnership Act, and the Americans with Disabilities Act.

(b) In planning and implementing the substudies, the project must include appropriate policymakers, administrators, and service providers involved in the design and delivery of transition services to youth with disabilities.

(c) The project must submit for approval—

(1) A plan for conducting the substudies and disseminating reports within 60 days of the start of the project;

(2) A report for substudy (1) by the end of year one;

(3) Reports for substudies (2), (3), and (4) by the end of year two;

(4) A report for substudy (5) by the middle of year 3; and

(5) A final report at the end of year three. The final report must include the following: an executive summary, introduction, project objectives, methodology, findings organized by substudy, summary, and conclusions regarding the progress being made by State and local agencies to implement the IDEA transition requirements.

The project must budget for two trips annually to Washington, DC for (1) a two-day Research Project Directors' meeting; and (2) another two-day meeting to meet with the project officer of the Office of Special Education Programs (OSEP) and with other OSEP work groups, as appropriate, to plan and review project activities and progress.

Project Period: Up to 36 months.

Absolute Priority 3—State Agency-Federal Evaluation Studies Projects (84.159F). This priority supports cooperative agreements that assess the impact and effectiveness of programs, policies, and procedures assisted under the Individuals with Disabilities Education Act (IDEA) in accordance with sections 618(d)(1) and (2) of the Act.

Invitational Priority: Within Absolute Priority 3 the Secretary is particularly interested in applications that meet the

following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

The Secretary particularly invites projects that perform feasibility studies that develop the conceptual framework for an evaluation study about a specific issue or question concerning the impact and effectiveness of special education and related services, and determine if the conceptual framework is workable. Feasibility studies identify topics that have significant potential for evaluation, but that require preliminary study to determine feasibility related to identification of the issue, study designs, measurement, and analysis.

While collection and reporting of generalizable impact and effectiveness data are not expected for feasibility studies, the Secretary particularly encourages pilot tests of data collection instruments and procedures to determine the implications of these results for the study design, measurement and analysis.

The Secretary particularly encourages projects that address the feasibility of designs to evaluate the impact and effectiveness of:

(a) Management and regulatory flexibility that encourages innovative management of schools to expand opportunities for the inclusion of children with disabilities;

(b) Student outcomes and performance of comprehensive, community-based, family-oriented systems of education and support;

(c) Community-supported schools focusing on family participation in activities and services;

(d) Reconfigured relationships and responsibilities of regular and special education staff, and redesigned programs that train personnel for work in schools, for the continued development of all regular and special education personnel in the education of children with disabilities; or

(e) Expanded multi-agency solutions to the collaborative delivery of services for individual children with disabilities and their families.

Supplementary Information: An award under this competition provides not more than 60 percent of the total cost of the project. The State agency receiving the award shall provide an amount not less than 40 percent of the total cost of the project (34 CFR 327.40(a)).

Project Period: Up to 12 months.

For Applications and General Information Contact: Darlene Crumblin, U.S. Department of Education, 400 Maryland Avenue, SW., room 3525, Switzer Building, Washington, DC 20202–2641. Telephone (202) 205–8953; or FAX: (202) 205–8105.

For Technical Information Contact: Susan Sanchez, U.S. Department of Education, 400 Maryland Avenue, SW., room 3528, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8998.

Program Authority: 20 U.S.C. 1418.

84.180 Technology, Educational Media, and Materials for Individuals with Disabilities Program

Purpose of Program: To support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities.

Eligible Applicants: Institutions of higher education; State educational agencies; local educational agencies; public agencies; and nonprofit or for-profit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 333.

Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 333.1 and 333.3, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this program only applications that meet this absolute priority:

Absolute Priority—Technology, Educational Media, and Materials Research Projects that Promote Literacy (84.180G). This priority provides support for research projects that examine how advancing the availability, quality, use, and effectiveness of technology, educational media, and materials can address the problem of illiteracy among individuals with disabilities.

Invitational Priority: Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

The Secretary is particularly interested in projects that—

(a) Define literacy as: to read, to communicate, to compute, to make judgments, and to take appropriate action;

(b) Are of rigorous design and employ clearly explicated quantitative or qualitative methodologies, or both, appropriate to the purpose of the project; and

(c) Consider learning and psychosocial factors in examining the availability, quality, and use of specified technology, educational media, and materials, and in examining their effectiveness in providing experiences and opportunities that improve the literacy of children and youth with disabilities.

Project Period: Up to 36 months.

For Applications and General Information Contact: Darlene Crumblin, U.S. Department of Education, 400 Maryland Avenue, SW., room 3525, Switzer Building, Washington, DC 20202–2641. Telephone (202) 205–8953; or FAX: (202) 205–8105.

For Technical Information Contact: Jane Hauser, U.S. Department of Education, 400 Maryland Avenue, SW., room 3521, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8126.

Program Authority: 20 U.S.C. 1461.

84.237 Program for Children and Youth with Serious Emotional Disturbance

Purpose of Program: To support projects designed to improve special education and related services to children and youth with serious emotional disturbance. Types of projects that may be supported under the program include, but are not limited to, research, development, and demonstration projects. Funds may also be used to develop and demonstrate approaches to assist and prevent children with emotional and behavioral problems from developing serious emotional disturbance.

Eligible Applicants: Institutions of higher education; State educational agencies; local educational agencies; and other appropriate public and nonprofit private institutions or agencies.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 328.

Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 328.3(a)(5) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Absolute Priority—Preventing the Development of Serious Emotional Disturbance Among Children and Youth

with Emotional and Behavioral Problems (84.237F). To be considered for funding under this priority, a project must—

(a) Provide a conceptual framework for the proposed preventive approach. The conceptual framework must reflect findings from multi-disciplinary research, as well as validated interventions and strategies relevant for promoting personal and social development of children with emotional and behavioral problems;

(b) As part of the conceptual framework—

(1) Address the challenge and diversity of mental health, psychological, and social characteristics so as to assist children with emotional and behavioral problems from developing serious emotional disturbance;

(2) Identify and define the outcomes related to personal and social development that would comprise the basis for the design of the proposed preventive components;

(3) Document the rationale for each outcome construct; and

(4) describe means for measuring these outcomes;

(c) Propose interventions that—

(1) Are comprehensive and positive;

(2) Promote the social and emotional development of students with emotional and behavioral problems; and

(3) Provide the cornerstone for building school-wide capacity for meeting the social and emotional needs of children with emotional and behavioral problems. The interventions must encompass an array of experiences that ensure that children with emotional and behavioral problems acquire and demonstrate in various settings the competencies needed to achieve the measurable desired outcomes related to personal and social development;

(d) Provide and assess interventions within the general education environment and expand these to include home-based and community-based components appropriate to the proposed approach;

(e) Implement interventions that involve the active participation of a broad range of constituents, including school personnel, parents, and community agencies, and that acknowledge and consider the interaction between regular and special education;

(f) Assess the efficacy of the proposed interventions for improving personal and social outcomes for students with emotional and behavioral problems; and

(g) Evaluate the implementation of the proposed interventions to enhance the personal and social adjustment of students with emotional and behavioral problems across school environments.

A project must budget for two trips annually to Washington, DC for (1) a two-day Research Project Directors' meeting; and (2) another two-day meeting to meet with the project director of the Office of Special Education Programs and the other projects funded under this priority to share their approaches, designs, and experiences, and to design collaborative products.

Project Period: Up to 48 months.

For Applications and General Information Contact: Darlene Crumblin, U.S. Department of Education, 400 Maryland Avenue, SW., room 3525, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8953; or FAX: (202) 205–8105.

For Technical Information Contact: Dr. Helen Thornton, U.S. Department of Education, 400 Maryland Avenue, SW., room 3520, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–5910.

Program Authority: 20 U.S.C. 1426.

Rehabilitation Services Administration

84.128G Vocational Rehabilitation Service Projects for Migratory Agricultural and Seasonal Farmworkers With Disabilities

Purpose of Program: To provide grants for vocational rehabilitation services for migratory agricultural workers or seasonal farmworkers with disabilities.

Eligible Applicants: State vocational rehabilitation agencies (SVRAs); nonprofit agencies working in collaboration with SVRAs; local agencies administering vocational rehabilitation programs under written agreements with SVRAs; and SVRAs that enter into agreements with the State vocational rehabilitation agencies of one or more other States to develop cooperative programs for the provision of vocational rehabilitation services.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; and (b) The regulations for this program in 34 CFR parts 369 and 375.

Project Period: Up to 36 months.

For Applications or Information Contact: Tony Cavataio, U.S. Department of Education, 400 Maryland Avenue, SW., room 3411, Switzer Building, Washington, DC 20202–2650. Telephone: (202) 205–9343 to order applications; or (202) 205–8206 for information.

Program Authority: 29 U.S.C. 777b.

84.128T Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with the Most Severe Disabilities and Technical Assistance Projects—Community-Based Projects

Purpose of Program: To provide grants for community-based special projects and demonstrations to (a) stimulate the development of innovative approaches for improving and expanding the provision of supported employment services to individuals with the most severe disabilities; and (b) enhance local capacity to provide supported employment services.

Eligible Applicants: Public and nonprofit community rehabilitation programs; designated State units; and other public and private agencies and organizations.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; and (b) The regulations for this program in 34 CFR part 380.

Project Period: Up to 36 months.

For Applications or Information Contact: Ted Gonzales, U.S. Department of Education, 400 Maryland Avenue, SW., room 3320, Switzer Building, Washington, DC 20202–2650. Telephone: (202) 205–9343 to order applications; or (202) 205–8321 for information.

Program Authority: 29 U.S.C. 777a(c).

84.129A–R Rehabilitation Training—Rehabilitation Long-Term Training

Purpose of Program: To provide grants for (1) projects that provide basic or advanced training leading to an academic degree in one of the fields of study identified in the Absolute Priorities section of this notice; (2) projects that provide a specified series of courses or program of study leading to award of a certificate in one of the fields of study identified in the Absolute Priorities section of this notice; and (3) projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Eligible Applicants: State agencies; and other public or nonprofit private agencies and organizations, including institutions of higher education.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 386.

Priorities:

Absolute Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 386.1, the

Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under this competition only applications that meet one of these absolute priorities:

Projects that propose to provide training in one of the following areas of personnel shortages:

Rehabilitation medicine (CFDA No 84.129A–1).

Prosthetics and orthotics (CFDA No 84.129A–5).

Rehabilitation counseling (CFDA No 84.129B).

Physical therapy (CFDA No. 129D–1).

Rehabilitation technology (CFDA No. 129E)

Vocational evaluation and work adjustment (CFDA No. 84.129F);

Rehabilitation of individuals who are mentally ill (CFDA No. 84.129H)

Undergraduate education in rehabilitation services (CFDA No 84.129L).

Specialized personnel for individuals who are blind or have vision impairment (currently: Rehabilitation of individuals who are blind) (CFDA No 84.129P).

Rehabilitation of individuals who are deaf or hard of hearing (currently Rehabilitation of individuals who are deaf) (CFDA No. 84.129Q).

Rehabilitation job development and placement (CFDA No. 84.129R).

Invitational Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one of the following invitational priorities. However, an application that meets one of these invitational priorities does not receive competitive or absolute preference over other applications

Invitational Priority 1: Within the absolute priorities specified in this notice, projects designed to provide financial assistance to individuals with disabilities from minority backgrounds for long-term academic training in certificate- or degree-granting courses of study

Invitational Priority 2: Within the absolute priority of Rehabilitation Counseling, projects that provide academic training to individuals at both the master's degree level and the doctoral degree level.

Project Period: Up to 36 months, except for Rehabilitation Counseling (84.129B), which is up to 60 months

For Applications or Information Contact: Richard Melia, U.S Department of Education, 400 Maryland Avenue, SW., room 3324, Switzer Building, Washington, DC 20202–2649 Telephone: (202) 205–9343 to order applications; or (202) 205–9400 for information.

Program Authority: 29 U.S.C. 774

84.250E Vocational Rehabilitation Services Projects for American Indians With Disabilities

Purpose of Program: To provide grants for vocational rehabilitation services to American Indians with disabilities who reside on Federal or State reservations.

Eligible Applicants: Governing bodies of Indian tribes; and consortia of these governing bodies located on Federal and State reservations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, and 85 and (b) The regulations for this program in 34 CFR parts 369 and 371.

Project Period: Up to 36 months

For Applications or Information Contact: Barbara Sweeney, U.S Department of Education, 400 Maryland Avenue, SW., room 3225, Switzer Building, Washington, DC 20202–2650 Telephone: (202) 205–9343 to order applications; or (202) 205–9544 for information.

Program Authority: 29 U.S.C. 750

84.263 Rehabilitation Training—Experimental and Innovative Training

Purpose of Program: To support pilot projects that develop new types of training programs for rehabilitation personnel or that develop new and improved methods of training rehabilitation personnel.

Eligible Applicants: State agencies, and other public or nonprofit private agencies and organizations, including institutions of higher education.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82 85, and 86, and (b) The regulations for this program in 34 CFR parts 385 and 387

Priority: Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Projects designed to train rehabilitation counselors, practitioners, educators, and individuals with disabilities on rehabilitation needs of individuals who are HIV positive or who have Acquired Immune Deficiency Syndrome (AIDS).

Project Period: Up to 36 months

For Applications or Information Contact: Beverly Brightly, U.S Department of Education, 400 Maryland Avenue, SW., room 3322, Switzer Building, Washington, DC 20202–2649 Telephone: (202) 205–9343 to order applications; or (202) 205–9561 for information

Program Authority: 29 U.S.C. 774

84.264A Rehabilitation Continuing Education Programs (for Region V Only)

Purpose of Program: To support cooperative agreements for training centers that (1) serve either a Federal region or another geographic area and (2) provide a broad, integrated sequence of training activities that focus on meeting recurrent and common training needs of employed rehabilitation personnel throughout a multi-State geographical area

Eligible Applicants: State agencies and other public or nonprofit agencies and organizations, including institutions of higher education

Note: Applications are invited for the provision of training for Department of Education Region V only

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 389, as amended on February 18, 1994 [illegible]

Fiscal Information: Applicants will be subject to a four percent cost-share requirement on awards

Project Period: Up to 60 months

For Applications or Information Contact: Ellen Chesley, U.S Department of Education, 400 Maryland Avenue SW., room 3318, Switzer Building, Washington, DC 20202–2649 Telephone: (202) 205–9343 to order applications; or (202) 205–9481 for information

Program Authority: 29 U.S.C. 774

CHART 6.—OFFICE OF VOCATIONAL AND ADULT EDUCATION

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estimated number of awards
[illegible]						

[illegible] program was published in the FEDERAL REGISTER on May 26, 1994 (59 FR 27460).

Invitation To Comment

The Secretary welcomes comments and suggestions for improving [illegible] notice.

Please direct any comments and suggestions to Steven N. Schatken, Assistant General Counsel for Regulations, U.S. Department of Education, 400 Maryland Avenue, SW (room 5131, FOB–6), Washington, DC 20202–2241.

Dated: June 3, 1994

Richard W. Riley,

Secretary of Education

Appendix

Intergovernmental Review of Federal Programs

This appendix applies to each program that is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each of those States under the Executive order. A listing containing the Single Point of Contact for each State is included in this appendix.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, EO 12372–CFDA# [illegible]. Commenter must insert number—including suffix letter, if any] U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC [illegible].

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

State Single Points of Contact

Note: In accordance with Executive Order #12372, this listing represents the designated State Single Points of Contact. Because participation is voluntary some States no longer participate in the process. These include: Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Virginia, and Washington.

Arizona

Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315, FAX (602) 280–1305

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th Street, room 412, Little Rock, Arkansas 72203, Telephone (501) 682–1074, FAX (501) 682–5206

California

Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, room 121, Sacramento, California 95814, Telephone (916) 323–7480, FAX (916) 323–3018

Colorado

Margaret Dubas, State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, room 521, Denver, Colorado 80203, Telephone (303) 866–2156, FAX (303) 866–2251

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 739–3326, FAX (302) 739–5661

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., Suite 500, Washington, DC 20005, Telephone (202) 727–6551, FAX (202) 727–1617

Florida

Suzanne Trenh Mesbar, Florida State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114, FAX (904) 488–9005

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W., room 401J, Atlanta, Georgia 30334, Telephone (404) 656–3855 or 656–3829, FAX (404) 656–7938

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671, FAX (217) 782–6620

Indiana

Francis E. Williams, Intergovernmental Grant Coordinator, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–2972, FAX (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 242–4719, FAX (515) 242–4859

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone (502) 573–2382, FAX (502) 573–2512

Maine

Joyce Benson, State Planning Office, State House Station #38, 184 State Street, Augusta, Maine 04333, Telephone (207) 287–3261, FAX (207) 287–6489

Maryland

Mr. Roland E. English III, Chief, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 West Preston Street, room 1104, Baltimore, Maryland 21201–2365, Telephone (410) 225–4490, FAX (410) 225–4480

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001, ext 443, FAX (617) 727–4259

Michigan

Richard S. Pastula, Director, Office of Federal Grants, Michigan Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Telephone (517) 373–[illegible], FAX (517) [illegible]

Mississippi

Cathy Malette, Clearinghouse Officer, Office of Federal Grant Management and

Reporting, Department of Finance and Administration, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 949–2174, FAX (601) 949–2125

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration P.O. Box 809, room 760, Truman Building, Jefferson City, Missouri 65102 Telephone (314) 751–4834, FAX (314) 751–4819

Nevada

Mond Naroll, Department of Administration, State Clearinghouse, Capitol Complex, room 200, Carson City, Nevada 89710, Telephone (702) 687–4065, FAX (720) 687–4098

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James C. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155, FAX (603) 271–1728

New Jersey

Gregory D. Adkins, Director, Division of Community Resources, New Jersey Department of Community Affairs

Please direct all correspondence and questions about intergovernmental review to Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, room 609, Trenton, New Jersey 08625–0814, Telephone (609) 292–9025, FAX (609) 984–1786

New Mexico

George Elliott, Deputy Director, State Budget Division, room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Suite 5106, Raleigh, North Carolina, 27603–8003, Telephone (919) 733–7232, FAX (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094, FAX (701) 224–2308

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411

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Note: This list is based on the most recent information provided by the States. Information on any changes or applications should be provided to Donna Pontelli, Telephone (202) 395–5090, at the Office of Management and Budget [illegible]

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Part IV

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program: Nutrition Objectives for School Meals; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program: Nutrition Objectives for School Meals

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations outlining the nutrition standards for the National School Lunch and School Breakfast Programs. It is part of an integrated, comprehensive plan for promoting the health of children. Specifically, this proposal would update the current nutrition standards to incorporate the Dietary Guidelines for Americans, which reflect medical and scientific consensus on proper nutrition as a vital element in disease prevention and long-term health promotion. This proposal would also adopt meal planning based on analysis of key nutrients (Nutrient Standard Menu Planning) in lieu of the current meal pattern. These changes would be implemented no later than July 1, 1998. The Department will be providing State agencies and school food authorities with technical assistance to enable them to meet this implementation date.

In developing this proposed rule, the Department is responding to an array of medical and scientific evidence linking improper diet with increased incidence of heart disease, strokes and certain cancers. These proposals acknowledge the positive role school programs must play in establishing childhood eating patterns that influence lifelong habits. The Department also considered extensive oral testimony presented at four public hearings and meetings as well as written comments submitted in response to a notice published in the Federal Register on September 13, 1993.

In recognition of the importance of reinventing and streamlining government programs, this proposal would also remove various paperwork burdens associated with the school meal programs and would modify the review requirements for the National School Lunch Program to ensure adequate oversight of the proposed updated nutrition standards. The overriding purpose behind this proposed rule is to serve more nutritious and healthful meals to school children while maintaining access to the meal programs for needy children, and to enhance the flexibility of local schools to administer the programs.

DATES: To be assured of consideration, comments must be postmarked on or before September 8, 1994.

ADDRESSES: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie at the above address or by telephone at 703–305–2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866 and has been designated significant.

Included at the end of this proposal is the Regulatory Cost/Benefit Assessment. The Assessment provides the background on the economic, market and benefit impacts of this proposal.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Nutrition Service (FNS) has certified that this rule will not have a significant economic impact on a substantial number of small entities. In the interest of furthering efforts to reinvent government, this rule proposes a substantial reduction in current State agency administrative burdens and a technical adjustment in the recordkeeping burdens. Moreover, the Department of Agriculture (the Department or USDA) does not anticipate any adverse fiscal impact on local schools. A recent analysis by FNS and the Department's Economic Research Service found that the menu planning aspects of this proposal can be met at the current cost of food in the National School Lunch Program. Therefore, food costs should not be a barrier to implementation of this regulation.

Catalog of Federal Domestic Assistance

The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.553, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this proposed rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program and School Breakfast Program, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) School food authority appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

Information Collection

This proposed rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Department would like to note that the description of burden hours represents full implementation of the proposed regulation, which would be School Year 1998–9, and only provides for the recordkeeping burden associated with the proposed regulatory changes.

Title: National School Lunch Program and School Breakfast Program: Nutrition Objectives for School Meals.

Description: Under this proposed rule on Nutrition Objectives, some existing recordkeeping activities contained in 7 CFR 210 and 220 would be affected. The

OMB control numbers are 0584–0006 and 0584–0012, respectively

Description of Respondents: State agencies, school food authorities and schools doing on-site preparation of meals.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
7 CFR 210.8 (a)(3):				
Existing	20,249	12	2 hours	485,976
Proposed	0	0	0	0
Difference				485,976
7 CFR 210.10/210.10a:				
Existing	[1] 71,176	180	.25	[1] 3,202,920
Proposed	71,176	180	.333	4,266,289
Difference				+1,063,369
7 CFR 210.15(b)(4):				
Existing	20,249	12	52.333	12,716,291
Proposed	0	0	0	0
Difference				12,716,291
7 CFR 220.8/220.8a:				
Existing	[2] 60,585	180	.083	[2] 905,140
Proposed	60,585	180	.117	1,275,920
Difference				+370,780
7 CFR 220.13(i):				
Existing	5,658	12	34	2,308,464
Proposed	0	0	0	0
Difference				- 2,308,464

[1] The current OMB approved burden is based on 70,455 schools. However, for the purposes of a more accurate comparison, the current burden has been adjusted here to include the same number of schools used to determine the proposed burden.

[2] The current OMB approved burden is based on 49,962 schools. However, for the purposes of a more accurate comparison, the current burden has been adjusted here to include the same number of schools used to determine the proposed burden.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), FNS has submitted a copy of this proposed rule to OMB for review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burdens, should direct them to the Policy and Program Development Branch, Child Nutrition Division, (address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Laura Oliven, Desk Officer for FNS.

Background

Nutrition Standards in the School Meal Programs

The primary purpose of the National School Lunch Program (NSLP), as originally stated by Congress in 1946 in section 2 of the National School Lunch Act (NSLA), 42 U.S.C. 1751, is "to safeguard the health and well-being of the Nation's children * * *." At that time, nutritional concerns in the United States centered on nutrient deficiencies and issues of underconsumption. Over time, meal requirements for the NSLP, 7 CFR 210.10, were designed to provide foods sufficient to approximate one-third of the National Academy of Sciences' Recommended Dietary Allowances (RDA). Participating schools were required to offer meals that complied with general patterns established by the Department. These patterns were developed to provide a balanced meal by focusing on minimum amounts of specific components (meat/meat alternate, bread/bread alternate, vegetables, fruits and dairy products) rather than on the nutrient content of the entire meal. Over the years, virtually no substantive changes have been made to these patterns.

An array of scientific data now augments our knowledge by documenting that excesses in consumption are a major concern because of their relationship to the incidence of chronic disease. The typical diet in the United States is high in fat, saturated-fat and sodium and low in complex carbohydrates and fiber. Nutritional requirements for the NSLP have not kept pace with the growing consensus of the need to modify eating habits. Given the importance of school meals to the nation's children, especially needy children, the Department is committed to meeting its health responsibilities by updating the nutrition standards for school meals to ensure that children have access to a healthful diet as well as an adequate one. To accomplish this task, the Department is proposing to have school meals conform to the 1990 Dietary Guidelines for Americans (hereinafter referred to as the Dietary Guidelines) as well as provide proper levels of nutrients and calories.

Although this proposal would expressly incorporate the 1990 Dietary Guidelines into the school meals programs' nutrition requirements, the Department will consider incorporating into the regulations any updates of the Dietary Guidelines or other scientific recommendations. Specific use of the 1990 Dietary Guidelines will allow the Department to review any revisions of the Dietary Guidelines to determine their applicability to school programs and will avoid any undue burden on State agencies and school food authorities to make the changes without the direction of implementing regulations.

Development of the Dietary Guidelines

Over the past thirty years a large body of evidence based on epidemiological, clinical and laboratory investigation has established that dietary patterns in the

United States are associated with an increased risk of chronic disease including coronary heart disease, stroke, diabetes and certain types of cancer (Surgeon General's Report on Nutrition and Health, 1988; National Academy of Sciences, Diet and Health: Implications for Reducing Chronic Disease Risk, [illegible] Surgeon General's Report [illegible] the ten leading [illegible] with [illegible].

As a result of this [illegible] body of scientific research [illegible] diet/disease links, dietary recommendations for the United States population [illegible] developed in the late 1970's [illegible] Select Committee on Nutrition and Human Needs, established [illegible] for the United States. This was followed closely by The Surgeon General's Report, Healthy People (1979). USDA and the Department of Health and Human Services (DHHS) [illegible] first Dietary Guidelines for Americans [illegible].

The Dietary Guidelines were subsequently updated in 1985 and again in 1990. Also in 1990, Title III of the National Nutrition Monitoring and Related Research Act of 1990 (NNMRRA) (Pub. L. 101-445), 7 U.S.C. 5301, *et seq.*, was enacted. Section 301 of the NNMRRA, 7 U.S.C. 5341(a), requires that the Dietary Guidelines be reviewed at least every five years by a panel of experts in the various fields that contribute to nutrition guidance. The task of the panel is to decide whether there is sufficient evidence for altering the existing Dietary Guidelines and, if so, to recommend specific changes. The Secretaries of the DHHS and USDA then make the final decision on whether or not to incorporate the recommended changes.

The process was first established when the Senate Appropriations Committee, in November, 1985, stipulated that a Dietary Guidelines Advisory Committee be established to review the first edition of the Dietary Guidelines and to make [illegible] recommendations deemed [illegible]. The committee consisted of [illegible] members (three from USDA, three from DHHS, and three selected from a list of nominees recommended by the National Academy of Sciences). In 1985, a second committee composed of nine [illegible] experts in nutrition and health was appointed by the Secretaries of USDA and DHHS. Pursuant to section 301(a) of the NNMRRA, a Dietary Guidelines Advisory Committee will be empaneled in 1995 to determine whether the 1990 Guidelines should be modified.

As a result, the Dietary Guidelines are based on the best available scientific and medical knowledge. Consequently, the Department is proposing to use the Dietary Guidelines as the basis for the nutrition standards for school meals. This established procedure enables medical and scientific experts to continually review and recommend updating of the Dietary Guidelines in light of the most current and highly-regarded data in this area. Moreover, the [illegible] and general public have [illegible] Dietary Guidelines in nutrition education programs, activities and marketing. Because of the widespread [illegible] of the recommendations in the Dietary Guidelines, the Department believes that the transition to using these recommendations as the cornerstone for the school meal programs will be readily accepted.

The 1988 Surgeon General's Report on Nutrition and Health and a 1989 National Academy of Science Report Diet and Health: Implications for Reducing Chronic Disease Risk reinforce the Dietary Guidelines. One common theme runs throughout each of the publications, that is, an improved diet can have positive health consequences.

The most recent Diet and Health report issued by the Food and Nutrition Board of the National Academy of Sciences (1989) provides a very thorough review of the scientific evidence linking diet to disease and gives quantifiable goals for some of the Dietary Guidelines. The report recommends that Americans reduce fat intake to 30% or less of calories, reduce saturated fat intake to less than 10% of calories and reduce the intake of cholesterol to less than 300 mg per day. The report also recommends that sodium intake be limited to 2400 milligrams or less per day.

School Meals' Lack of Compliance With Current Dietary Guidelines

The current Dietary Guidelines recommend that people eat a variety of foods, maintain a healthy weight, [illegible] with plenty of vegetables, fruits, and grain products, and use sugar and sodium in moderation. The Dietary Guidelines also recommend diets low in fat, saturated fat, and cholesterol so that over time, fat comprises 30 percent or less of calorie intake, and saturated fat less than 10 percent of total calories, for persons two years of age and older.

However, information available to the Department consistently shows that children's diets, including meals served in schools, do not conform to the recommendations of the Dietary Guidelines. For example, according to data from the 1989 and 1990 Continuing Survey of Food Intakes by Individuals conducted by USDA, fat composed, on average, 35 per cent of calories for the diets of children ages six to nineteen.

Equally significant were the findings of a nationally representative USDA study entitled the School Nutrition Dietary Assessment (SNDA) Study. Released in October, 1993, the SNDA Study presented findings on the nutrients and foods provided in school meals and described the dietary intakes of students on a typical school day. A [illegible] of 545 schools were surveyed, and [illegible] approximately 3,170 students in grades one through twelve (with assistance from parents for children grades one through three) provided detailed information about foods and beverages consumed in a day that included school attendance. The study compared nutrients provided in school meals with the Dietary Guidelines' recommendations on fat and saturated fat, the National Research Council's (NRC) Diet and Health Recommendations on sodium, cholesterol and carbohydrate intake, and the current objective that the nutrients provided in the NSLP meet one-third of the RDA and that the School Breakfast Program (SBP) meet one-fourth of the RDA.

The SNDA findings showed that, while school lunches meet or exceed one-third of the RDA for key nutrients and food energy, they do not meet the recommended levels of fat and saturated fat established by the Dietary Guidelines. In fact, the report showed that school lunches exceeded the Dietary Guidelines' recommendations for fat and saturated fat. Specifically, the average percentage of calories from total fat was 38 per cent compared with the recommended goal of 30 per cent or less, and the percentage from saturated fat was 15 per cent, compared with the recommended goal of less than 10 per cent. The report also found that children who ate the school lunch consumed a significantly higher amount of calories from fat than children who brought their lunch from home or obtained a lunch from vending machines or elsewhere at school. Further, the report showed that virtually no schools were in compliance with the Dietary Guidelines. In over 40 percent of schools, students could select a meal that met the Dietary Guidelines, but few did so. The SNDA study also showed that while school meals met the NRC recommendation on cholesterol, the meals did not meet the NRC recommendations on sodium and carbohydrate levels. In fact, the level for sodium, at 1,479 milligrams, was nearly two times the lunch target of 800 milligrams.

Even though the SBP did meet most of the recommendations in the Dietary Guidelines, the majority of school meals do not conform to current scientific knowledge of what constitutes a healthful diet. The SNDA findings underscore that the program has not adapted or changed school meal patterns over the years to incorporate scientific knowledge about diet. This situation is cause for concern because it demonstrates the need for significant improvement if the programs are to play their appropriate role in promoting long-term health through proper nutrition.

As the first step toward achieving meaningful improvement in children's diets and, thus, their health and future well being, the Department considers it necessary to update the regulations which establish the specific nutrition criteria for reimbursable school meals to incorporate the RDA for key nutrients, energy allowances for calories, and the most current nutritional standards as outlined in the Dietary Guidelines. In this way, the school meal programs can provide an example of nutritional achievement as well as ensuring that children are served healthful meals.

Before proceeding with a rulemaking, however, the Department recognized the importance of public input. The following is a description of the Department's procedure for obtaining input and a discussion of significant issues raised by commenters.

Providing a Public Forum

To obtain input from the public prior to drafting proposed regulations, the Department solicited comments on nutrition objectives for school meals through public hearings and written comments. In a Notice published in the **Federal Register** (58 FR 47853, September 13, 1993), the Department announced a series of four public hearings. Any person who was interested could register to speak at any of the hearings. Persons unable to testify in person were invited to submit written comments. The Notice identified the following four questions as the focus areas for comments and suggestions:

I. What are the health consequences of children's current dietary patterns?

II. How can the Dietary Guidelines for Americans be used to bring about measurable nutritional improvements in school meals and in children's diets?

III. What are the opportunities and obstacles in meeting current nutrition recommendations in school meal programs?

IV. What actions can the USDA, parents, school food service, food industry and other public and private organizations take to encourage the implementation of current nutrition recommendations in local schools?

The four hearings were held in Atlanta, Georgia on October 13, 1993; in Los Angeles, California on October 27, 1993; in Flint, Michigan on November 12, 1993; and in Washington, DC on December 7, 1993. Each hearing was presided over jointly by officials from USDA and officials from USDA's Federal partners in this effort—the Department of Education (DOEd) and DHHS. The inclusion of representatives from DOEd and DHHS is an important asset in modifying the school meal programs both because of their expertise and their missions. The school meal programs must be considered in the context of the educational framework, as overseen by DOEd, and the national policies regarding health care and disease prevention under the aegis of DHHS. Therefore, USDA is very pleased that a partnership is being forged among all Federal agencies responsible for assisting the nation's schoolchildren. USDA is also pleased to be working with DOEd and DHHS to further their policy initiatives—Goals 2000: Educate America Act (DOEd) and Healthy People 2000: National Health Promotion and Disease Prevention Objectives (DHHS). Of particular concern are solutions to issues such as increasing public awareness of the links between diet and health, familiarizing the public with the need to establish good eating habits in children that will be carried on through their lifetimes and finding innovative ways to incorporate the school meal as a learning experience into daily school curriculums.

A variety of witnesses from the fields of medicine, nutrition and education, food service, production and processors and other food industry representatives, as well as parents, students and other consumers and the general public, testified at each of the hearings. Witnesses were asked to focus their remarks on one of the four questions stated above. A transcript of each hearing was prepared, and witnesses could, if they wished, also submit written testimony and copies of any materials used to prepare their remarks. As noted above, the **Federal Register** Notice also solicited written comments from anyone who could not attend one of the hearings. To be assured of consideration, comments had to be submitted on or before December 15, 1993. The written testimony and all comment letters were reviewed and analyzed by the Department prior to preparation of this proposed regulation. This portion of the preamble provides a summary of the comments.

Summary of Comments Received

The overwhelming majority of commenters, representing a broad range of backgrounds and experiences, called for improvements to school meals. Comments from the public, students, and parents, while expressing serious concerns and supporting change, were general in nature and provided few specific details. However, commenters from the medical, nutrition, and food advocacy communities, State and local food service professionals, and food industry representatives provided detailed information and frequently recommended specific actions.

Commenter Categories

A total of 363 witnesses testified at the hearings, and an additional 2,013 written comments were received by the Department. Of the 2,376 commenters: 21% were medical professionals, nutritionists or dietitians, representatives of public health, nutrition, or food organizations; 21% were from the general public; 21% were parents and students; 16% were school food service personnel, representatives of school food service organizations or representatives from State education/child nutrition agencies; 11% were teachers, school officials or representatives from school associations; 7% were food industry representatives; and 3% were representatives of other State or Federal agencies or members of Congress.

The Department is very pleased that so many persons took the time to testify or to submit written comments and would like to take this opportunity to express its appreciation for their comments and suggestions. The commenters represented an extensive cross-section of perspectives and provided a great variety of opinions and recommendations. Especially gratifying were the number of students and parents who commented. These groups are, after all, the constituency that the Department considers program "customers," and it is these groups the Department is seeking to serve better.

Comment Breakdown

The following number of commenters addressed some aspect of the four basic questions: I. 796; II. 703; III. 752; IV 1,464. Though comments varied greatly in content, the following significant themes emerged: (1) The need to improve school meals in order to improve the health of children; (2) the need for school meals to reflect current nutrition recommendations, specifically reductions in fat and saturated fat as recommended in the Dietary Guidelines;

(3) the importance of an integrated nutrition education program that involves students, parents, teachers, and school food service personnel; (4) the need to revise current commodity programs to provide schools with more nutritious foods; and (5) the need to incorporate nutritional improvements while at the same time improving the appeal of meals offered to ensure that nutritious meals are consumed.

The Department also notes that many commenters raised distinct issues within the four stated questions. For example, many commenters cited the need for vegetarian alternatives; others argued for inclusion of fast food companies in the NSLP, and several specific commodity issues were raised. Therefore, the Department has included an analysis of several of these issues in this preamble. Following are the more prevalent issues raised by the over 2,300 commenters and the number of commenters who addressed them:

(1) Fat levels in school meals: 1,048;

(2) The need for more fruits and vegetables: 829;

(3) The importance of nutrition education: 794;

(4) Concerns about milk and dairy products including the statutory requirement for whole milk and recommendations for a beverage substitute: 687;

(5) The Department's Food Distribution Program and commodities: 493;

(6) The costs and operational difficulties of implementing the Dietary Guidelines: 448;

(7) The need for whole grains in school meals: 387;

(8) Fast foods and fast food companies (both for and against availability in schools): 385;

(9) Vegetarian alternatives for school meals: 263;

(10) Sodium levels in school meals: 213;

(11) The importance of breakfast: 200.

Readers should note that while all comments were taken into consideration, this preamble does not generally discuss individual comments. The preamble does, however, address the common themes which emerged and responds to specific individual comments when they raised significant issues.

Health Consequences Comments

Close to 800 commenters addressed some issue relevant to health consequences and diet. The majority of commenters were from the public and the medical communities. Generally speaking, all of the commenters focused on the link between diet and disease, specifically, cardiovascular disease, obesity, and cancer. The majority of these commenters cited the high incidence of cardiovascular disease in the United States, both among children and adults, and the need to improve the diets of young children in order to prevent the development of heart disease in adulthood.

Many commenters wrote in support of the positions taken by a number of major medical associations. These commenters focused on the importance of improving the diets of children, given the strong evidence that heart disease begins early in life, and emphasized the need to provide foods rich in fiber and complex carbohydrates for the possible prevention of some cancers.

A number of commenters addressed the potential link between diet and learning and behavioral difficulties. These comments ranged from general observations regarding improper nutrition and lack of concentration, to specific concerns addressing functional disabilities, behavioral disturbances, fatigue, and cognitive disabilities.

Commenters also pointed out that nutritional issues are especially vital for under-privileged and ethnic populations. Specifically, commenters cited the poor nutritional intake among low income children and certain minority populations. One commenter indicated that these populations, who are most at risk, do not appear to associate nutritional risk factors with leading causes of death. Commenters also expressed concern over the high incidence of major diseases among low-income, minority populations—specifically, the higher incidence of heart disease and hypertension among African-Americans, obesity among Hispanics and Native Americans, and diabetes among Native Americans.

Finally, a large number of commenters addressed the growing incidence of obesity among children, and the threat this poses to future health. A number of commenters expressed concern over the lack of physical activity in schools as a factor leading to the increase of obesity among school children. Several indicated the need to integrate exercise with other components of good health including school meals. In addition, the unique needs of children with special health problems, the need for proper diet in the prevention of osteoporosis, and the escalating cost of health care and the role of diet as a preventative measure were identified as important concerns.

Dietary Guidelines for Americans' Comments

Over 700 commenters, many from the public and from the school food service community, addressed the issue of school meals meeting nutritional guidelines, the majority of which overwhelmingly agreed that meals should comply with the Dietary Guidelines, especially the recommended limits on fat and saturated fat. Most commenters agreed with the need for school meals to meet the Dietary Guidelines; however, several commenters indicated that compliance with the Dietary Guidelines should be voluntary. With respect to the current meal patterns, many school food service commenters indicated that they could not meet the Dietary Guidelines within the meal pattern requirements, and others indicated that the current meal pattern requirements make it difficult to provide multi-cultural meals to children.

Many commenters supported the implementation of Nutrient Standard Menu Planning (NSMP), a menu planning system that is based on the analysis of nutrients. Commenters believed this system would provide increased flexibility in meal planning as well as consistent analysis of nutrients. Commenters also suggested that this NSMP approach can assist in providing more culturally diverse meals. It must be noted that some commenters expressed concern that some smaller schools may not have or be able to afford the technical capability needed to conduct the analysis. Some commenters also suggested that the Department or State agencies should develop menus that meet the Dietary Guidelines. These menus can be used by smaller and school districts with fewer resources, which may initially have difficulty implementing NSMP.

Nutrition Education Comments

Close to 800 commenters pointed to the need for nutrition education for parents, teachers, children, food service staff, and school administrators. Many commenters came from the nutrition and food service arenas as well as the general public. Commenters supported the idea that nutrition education should be included in comprehensive health education curriculums and should begin at an early age. Commenters also indicated the need for nutrition education to be reinforced by healthful meals in the cafeteria. Commenters pointed to the need for a national nutrition media campaign. Many school food service commenters expressed their desire for national minimum

professional standards which food service personnel would be expected to meet. In addition, a significant number of commenters urged health promotion as a component of health care. Finally, many commenters supported the need for increased funding for the Department's Nutrition Education and Training (NET) program, 7 CFR Part 227.

Taste and Plate Waste Comments

Many commenters from a wide range of commenter categories were quite critical of the current quality of school meals, noting that lack of appeal leads to increased plate waste. Some cautioned, however, that drastic changes in the kinds of food served may drive children away from school meals. These commenters generally supported the need to make meals both appealing to children and nutritious. A number of commenters also cautioned that the increased amount of certain foods that may be necessary to provide a nutritious diet may result in more plate waste if children do not find the meals to be appetizing. Several commenters supported the need to involve culinary institutes and chefs in meal preparation as a way to improve taste and presentation.

Fat in Meals Comments

Nearly one out of two commenters discussed fat in school meals, with most of these commenters coming from the general public and the medical community. The large majority of commenters who addressed the issue of fat content cited the need to lower fat and saturated fat levels in school lunches. Some of the comments were general statements such as "need more low fat foods," while others made specific recommendations detailing the levels of fat and saturated fat that school meals should meet.

A number of medical, public health, and school food service related organizations addressed this issue, all of which were in support of lowering the fat content of meals. A number of commenters recommended that the fat content of meals be set at between 10 to 20 percent of total calories—lower than the current Dietary Guidelines recommendation of 30 percent of calories from fat.

A number of food service workers and directors cautioned that increasing portion sizes of certain foods and serving more expensive fresh produce to meet a 30 percent limit on calories from fat may result in higher costs. Some commenters also expressed concern that lowering fat may result in decreased calories critical for growing children. Several commenters advised that low fat meals need to be appealing so children will consume them.

Several industry representatives indicated that industry is responsive to the need to lower fat and is already making a number of changes to provide more low fat products. A number of commenters, including food service staff, parents and members of the general public made specific recommendations on how to lower fat in school meals, such as trimming or draining fat from meat, eliminating added fats from vegetables, and serving soups more often.

Moreover, many commenters, primarily students and the general public, suggested that the fat content in school meals could be reduced by offering more vegetarian meals, eliminating the whole milk requirement, revising the commodity system to encourage more purchases of low fat items such as fruits and vegetables, and reducing the amount of fast food items and processed foods in school meals.

Meat and Meat Related Comments

The Department received over 200 comments related to meat products, with most comments coming from students, parents and the general public. Many commenters indicated that the current serving size for the meat/meat alternate component is too large and recommended that schools cut down on the amount of meat served. Commenters also indicated that more poultry and fish should be offered. Some commenters recommended that tofu and isolated soy proteins, as well as yogurt, be added to the list of allowable meat alternatives. (The Department wishes to call attention to the fact that isolated soy proteins are currently permitted with some limitations.) On the other hand, several industry representatives cautioned against reducing the amount of meat too much due to its nutritional contributions, specifically, essential amino acids, iron, zinc, and vitamin B6. They also observed that children are familiar with meat and will consume it more readily than some alternative protein sources.

Menu Selection and Variety Comments

The Department received over 250 comments in support of offering more vegetarian meals. Commenters supported the low fat nature of vegetarian meals and their contribution to a healthful diet. Others addressed the need to expose children to more vegetarian foods and foods from diverse cultures at an early age. Some commenters provided specific examples of non-meat items, such as tofu and other plant-based sources, that could be used in school meals, while others simply indicated a general need for more meat-free alternatives. Students as well as school food service personnel indicated the need to offer vegetarian choices as students are requesting them more.

The Department received over 800 comments in support of the use of more fruits, vegetables, or grain products. Commenters gave specific recommendations regarding preparation methods and serving ideas, including offering salad bars more frequently, increasing the variety of fruits and vegetables, and serving more whole grain items. Others recommended the use of more grain and bean products, citing their nutritional benefit as well as low cost. Many school food service commenters expressed concern over serving more and a wider variety of fruits and vegetables as children may not be familiar with them and, therefore, may not consume them.

Breakfast Comments

About 200 commenters, primarily from the medical, school food service, and education communities, addressed breakfast meal issues with a number of these commenters supporting the importance of breakfast to the health of children. A number of food service personnel indicated their success with the SBP and desire to increase participation. Others, while supporting the SBP, expressed concern with the nutritional quality of breakfasts currently offered.

Financial, Paperwork, and Other Operational Obstacles Comments

Over 250 commenters addressed financial and paperwork obstacles, with many of these comments coming from food service (local and State) professionals, the general public, and the nutrition community. A number of commenters indicated that the need to avoid operating at a deficit has prevented food service staff from providing more nutritious meals. Commenters also complained that the amount of paperwork required to administer the feeding programs is excessive and that the review system is cumbersome and inflexible. Specifically, commenters stressed the need to focus more on nutrition and less on meal-by-meal accountability, income verification, and review requirements.

Many commenters expressed concern over the cost of producing meals under the current meal pattern system. Commenters indicated that schools already find it difficult to provide meals within current resources and

maintained that any further nutritional requirements placed on schools would result in additional financial hardship. Commenters specifically noted obstacles such as the increased cost of providing more foods such as fresh fruits and vegetables, low fat and low sodium ingredients, and the increased portion sizes needed to meet the nutrition standards without exceeding the 30% fat limitation. On the other hand, some parents and students indicated that they would be willing to pay extra for more nutritious meals.

A number of commenters indicated that the school meal periods are not adequate, thereby forcing students to throw food away, consume it too quickly, or bring meals from home to prevent waiting in the lunch line. Others expressed concern that more nutritious meals would require larger portions or extra food items that children may not be able to consume during short lunch periods.

Partnerships and Coordination Comments

A number of commenters expressed the need for the Department to establish partnerships with other Federal agencies such as DOEd, DHHS, the Centers for Disease Control and Prevention, as well as with industry representatives, State agencies, school boards, nutrition professionals, extension programs, parents, teachers, and especially students. Commenters also addressed the need for Federal efforts to support, not hamper, local efforts. Commenters indicated that the Department should use its resources and purchasing power to promote change and improve meal quality.

Commodity Comments

The Department received close to 500 comments on various aspects connected with the donation of commodities to schools. The majority of these commenters were from the general public as well as the school food service and industry arenas. Over 250 commenters indicated that a more healthful variety of USDA commodities should be made available to States. The majority encouraged the Department to reduce the amount of fat, cholesterol, and/or sodium in the commodities. These and a number of closely related comments are perhaps best characterized by the opinion of over 50 commenters that the commodities provided to the NSLP should comply with the Dietary Guidelines.

The Department also notes that over 100 commenters addressed the Department's September 1993 announcement of the Fresh Fruit and Vegetable initiative. Most of the comments were supportive of the initiative. Twenty-five commenters stressed the need to use the funds available to schools for direct food purchases as effectively as possible.

Miscellaneous Comments

Some commenters indicated the need to upgrade school kitchens to allow for the storage and preparation of more nutritious meals. In line with this objective, some commenters urged reauthorization of Federal funding for food service equipment. Commenters also pointed to the need for schools to disclose nutrition information so that students can make informed choices and parents and the community would have a basis by which to assess progress. A number of commenters cautioned against instituting changes too rapidly and encouraged the Department to take gradual steps. Others recommended that the Department market successful programs to serve as models. Several commenters recommended that the Department allow for a reimbursable snack to be served as a way to supply the extra foods that may be required to meet nutritional standards.

Other Comments Not Addressed in This Proposal

Finally, the Department wishes to call attention to several issues raised by commenters that are not germane to this proposal, either because of statutory constraints or because they address areas in which the Department believes State agencies and school food authorities need flexibility.

Milk and Dairy Products

The Department received over 600 comments regarding milk and dairy products, with most comments coming from the general public, parents and the school food service community. The majority of commenters recommended that schools not be required to offer whole milk, with a large number of these comments coming from the food service community. Commenters' reasons for eliminating the whole milk requirement included the high fat content, the perceived conflict with the Dietary Guidelines and its higher cost. Many commenters also recommended that non-dairy alternatives be offered in place of milk, as dairy products are high in fat, cholesterol, and protein; contain little iron and fiber; and, commenters claimed, are not tolerated well by many children. Commenters also recommended that more skim, one percent, and two percent milk be offered.

A few commenters supported maintaining the whole milk requirement, on the grounds that children may not consume low fat alternatives and eliminating the requirement would be costly to the Federal dairy program. Others, while not supporting the whole milk requirement, did caution against reducing or eliminating dairy products, as they provide necessary calcium for growing children.

The Department wishes to call attention to the fact that the requirements that fluid milk be available as a beverage and that whole milk be available as an option for the NSLP, are required by section 9(a)(2) of the NSLA, 42 U.S.C. 1758(a)(2). Therefore, the Department cannot deviate from these provisions by regulatory action.

Free Meals to All Children

Over 140 commenters, primarily from the school food service community, advocated a program in which meals would be served free of charge to all children, regardless of their families' economic status. Such a program would eliminate the income eligibility requirements, and all children would receive meals free of charge, regardless of their family's income. Many indicated that such a program would reduce paperwork, increase time for necessary nutrition-related activities, and reduce the stigma associated with participation.

Again, however, such a revision would require specific statutory authority in light of the requirement of section 9(b)(1)(A) of the NSLA 42 U.S.C. 1758(b)(1)(A), that school meals be provided at no cost only to those children from households with incomes of less than 130% of the Federal Income Poverty Guidelines. The Department also notes that such a program, implemented fully in all schools, would increase the cost of NSLP by $7 billion if fully implemented in School Year 1996. About one-half of this increase would be spent on higher reimbursement for meals currently reimbursed at the fully paid and reduced price rates. In other words, about $3.5 billion of the additional funding would be spent even before reaching any more children.

Fast Foods, Competitive Foods, Other Foods

Several commenters were concerned with the increase of fast food companies, fast food-like items and competitive foods of low nutritional value that are sold in schools. Others felt that, since fast foods are popular,

their use should be increased. The Department is not proposing any specific provisions on fast foods or competitive foods at this time. However, it should be noted that, under this proposal, meals claimed for reimbursement which include such foods will be required to comply with established nutritional standards over one week. Further, school food authorities would be required to continue to observe the restrictions currently in the regulations prohibiting the sale of foods of minimal nutritional value in competition with the NSLP and SBP.

Several commenters recommended that certain kinds of foods—principally milk, meat and processed foods—be eliminated entirely from program meals. These recommendations were based on the assumption that some foods are good for people and some are intrinsically bad. However, the Department does not share this view. The Department continues to believe that it is important to obtain essential nutrients from a variety of foods. The Department also emphasizes that foods, particularly those high in fat, must be eaten in moderation, but there are no plans to prohibit any foods from school meals other than the foods of minimal nutritional value currently enumerated in appendix B of part 210 for the NSLP and § 220.12 for the SBP.

Minimum Professional Standards

Some commenters suggested that the Department establish minimum professional standards for local food service workers. The Department is aware that efforts are being made to address this issue. For example, the American School Food Service Association has developed a program to certify food service workers. However, given the wide range of variances in needs and resources among the 20,000 school food authorities and 92,000 schools operating under the NSLP, as well as varying State requirements; the Department does not believe it is feasible to propose uniform national standards. Nevertheless, the Department does intend to continue to provide technical assistance and guidance to both State agencies and local school food authorities on ways to improve food service operations.

Cash in Lieu of Commodities/ Commodity Letter of Credit

Under section 18(b) of the NSLA, 42 U.S.C. 1769(b), Congress established the Cash in Lieu of Commodities (CASH) and Commodity Letter of Credit (CLOC) demonstration projects as a means of examining alternatives to the current commodity distribution system for schools. Under CASH, schools receive their per-meal commodity support entitlement (currently $.14) in the form of a direct cash payment. CLOC provides commodity support through a Letter of Credit which must be used to purchase specific commodities that mirror the Department's commodity purchases. Fifty-nine school districts participate in the CASH/CLOC demonstration. The current project authorization expires at the end of Fiscal Year 1994.

Several commenters supported CASH/CLOC, while a small number opposed it. Others implicitly favored the current commodity distribution system if more healthful commodities can be provided. These commenters would support alternatives only in the event that the current commodity system cannot be strengthened and improved. The Department intends to continue and expand efforts already underway to improve the commodity program. Moreover, the Department does not have the statutory authority to address the CASH/CLOC issue through the rulemaking process.

Guiding Principles and Framework for Action

Improving the nutritional standards of school meals is our national health responsibility. There is no question that diet is linked to health and that chronic disease often begins in childhood. Since eating habits are firmly established by age 12, it is essential that dietary patterns be formed early. What children eat helps determine not only how healthy they are as children, but how healthy they will be as adults.

Updating our nutrition standards and streamlining the administration of school meals programs reinforces President Clinton's priorities for health care reform and government reinvention. Five principles are at the core of our vision and grow out of our analysis of public comments and the participation of those who hold a stake in a healthy future for our children. These principles are:

Healthy children: Our goal is to provide our nation's children with access to school meal programs that promote their health, prevent disease, and meet the Dietary Guidelines for Americans.

Customer appeal: We understand that if food doesn't look good or taste good, children will not eat it. We must involve students, parents, teachers, and the food and agriculture community in any change through a national nutrition education campaign, using the media that children and parents understand and speaking in the language that they speak.

Flexibility: We have to reduce the burden of paperwork, streamline reporting systems, recognize regional and economic differences and offer schools different approaches to designing menus that meet the Dietary Guidelines. To do this, we must use technology more effectively.

Investing in people: We must provide schools and school food service directors with the training and technical assistance they need to bring about nutrition changes in the school meals programs and build the nutrition skills of our nation's children, and thereby improve their health.

Building partnerships: To meet our national health responsibility to American children and to increase cost effectiveness, we must forge partnerships throughout the public and private sectors. This includes continuing collaborative efforts with our federal partners at the Departments of Education and Health and Human Services and building bridges to consumer and industry groups.

Guided by these five principles, USDA constructed a comprehensive, integrated framework for action:

I. *Eating for Health: Meeting the Dietary Guidelines.* School meal nutrition standards will be updated and expanded to include the Dietary Guidelines for Americans with standards for fat and saturated fat as well as required nutrients. The current meal planning system which requires that certain types of foods be served in certain quantities will be replaced by a more flexible system that allows schools to concentrate on serving a variety of foods in amounts that are suitable for children.

II. *Making Food Choices: Nutrition Education, Training and Technical Assistance.* It is not enough to change the food on the plate. We must also provide the knowledge that enables children to make choices that lead to a nutritious diet and improved health. It also is vital that local meal providers receive training on how to improve meal quality. This dual initiative to educate children and assist meal providers offers many opportunities to influence both what foods are offered by schools and what foods are eaten by children.

III. *Maximizing Resources: Getting the Best Value.* By marshalling all available resources and strengthening partnerships with our state and local cooperators, we will stretch food dollars and cut costs while improving the nutritional profile of commodities. We will enhance access to locally grown commodities and better use regional

agricultural resources. And we will provide assistance, training and the power of federal purchases to help school administrators manage school meals programs in a more cost-effective manner.

IV. *Managing for the Future Streamlined Administration.* It is necessary to reduce paperwork and administrative burdens of local administrators. We will streamline procedures and emphasize administrative flexibility to free state and local food program managers to concentrate on nutrition.

The Framework for Action

The regulatory proposals that follow are intended to support the Department's goal of promoting the long term health of children through updating nutrition standards to include the Dietary Guidelines. In addition, several of the proposals reflect the Administration's desire to streamline administration of government programs through increasing State and local flexibility and making better use of advanced technology.

It is important to recognize, however, that these regulatory proposals are but one part of the Department's overall plan for improving the quality of school meals. The Guiding Principles and Framework for Action described above grew out of public comment and the recognition that it is not enough just to change the food served to children on their plates. What is required is a much broader approach that includes significant administrative actions initiated by the Executive Branch.

For example, the Department is committed to investing in people—both the State and local professionals who operate the program and the children who participate in it. This investment will take the form of nutrition education to build the skills necessary to make healthful food choices, training for food service workers and technical assistance. The Department has already committed existing funds toward the development of improved recipes for school meal service, a computerized data bank of standard nutritional values for foods served in the school meals program, and a demonstration project on the use of Nutrient Standard Menu Planning. On the nutrition education front, the Department has already announced a strategy that includes challenge grants to localities to develop community-based, comprehensive approaches to nutrition education and a nutrition publication directed at grade school children. The Department is also assisting local school food service professionals in working with chefs, farmers and others to harness all of their unique skills to make school meals appealing and healthful, and to educate children about food and cooking.

Looking to the future, the Administration's budget proposal for Fiscal Year 1995 contains a request for $18.4 million in additional funds to support nutrition education and technical assistance. Plans for these funds include extensive training for local school meal providers on how to plan and prepare nutritious and appealing meals as well as launching a national media campaign directed at building children's skills at making wise food choices for life-long health.

All these initiatives are being undertaken with the support of USDA's Federal partners at DHHS and DOE. This collaboration extends to addressing issues of common concern such as reducing redundant paperwork requirements, integrating nutrition education into school curriculum and exploring ways to integrate the school meals program more fully into the school environment and into school-based health initiatives. Within the Department, there are also plans to strengthen ties with the Food Service Management Institute and, indeed, with private organizations so that as many resources and as much creativity as possible can be brought to bear on this important issue of improving children's health through sound nutrition.

Efficient and effective government requires that the use of the finite resources available to administer the programs be maximized. Therefore, part of the Department's Framework for Action is to maximize resources wherever possible. One of the important avenues to pursue in this regard is effective use of the USDA commodity program. The Department recognizes that commodity foods are a significant component of the meals that are served to children and, therefore, need to be as nutritious as possible. A wide variety of foods ranging from grain products to fruits and vegetables to meat, poultry and fish are already being offered. The Department plans to continue to offer this wide array of foods. Improvement is always possible, however, and the Department intends to intensify its review of purchase specifications to assure that products are as low in fat and sodium as possible while still maintaining palatability for consumers.

In addition, the USDA agencies that are key partners in delivering commodities are working with one another, as well as with industry, to modify labels on commodities that go to the schools to include nutrition information, and to develop new products, like low-fat cheeses, that will provide the schools with more flexibility to meet the Dietary Guidelines. This latter effort will have a salutary effect not only on the commodity program, but could also prove useful in providing schools with a larger array of healthful products to choose from when they make their local purchases.

Because schools do purchase significant amounts of food independent of the commodity program, the Department is also considering various other strategies for improving the quality and effectiveness of those purchases. For example, a pilot test is planned for School Year 1994 with the Department of Defense to procure produce for the school meal programs. Through this project, schools can obtain a much wider variety of fresh produce than USDA can provide directly. The Department is also working to facilitate interaction among schools, State Departments' of Agriculture, small resource farmers and farmers' markets. This has great potential for improving the quality of the foods used by those schools that are close to particular growing areas as well as providing important new markets for small farmers.

In summary, the Department is committed to improving the quality of school meals and the health of the nation's children through a variety of approaches. There is complete recognition that success can only be achieved over time and through the efforts of the Federal government working in concert with State and local administering agencies, industry, the Congress, a variety of private organizations and the ultimate beneficiaries of the school meals programs—children and their parents.

Proposed Regulatory Changes

Expanding and Updating Nutrition Requirements

The Department's mission continues to be to carry out the declared policy of Congress to "safeguard the health and well-being of the Nation's children." In order to meet this goal, school meals must change to reflect the scientific consensus that is articulated in the Dietary Guidelines. Therefore, the Department believes that current nutrition standards must be expanded to incorporate the Dietary Guidelines in the NSLP and SBP regulations and is proposing to amend §§ 210.10 and 220.8 to require that school meals meet the applicable recommendations of the Dietary Guidelines including the quantified standards established for fat

and saturated fat. Proposed regulations would also require schools to make an effort to reduce sodium and cholesterol, increase dietary fiber and serve a variety of foods.

A more comprehensive discussion of implementation occurs later in this preamble, including the time frames that would be followed for the shift to the updated nutrition standards.

While the proposed regulations would include the basic provision that school meals meet nutrition standards over a one week menu cycle, the proposed revision would also require meals to provide a level of nutrients for specified age groups rather than meet minimum amounts of specific food items for each age group as is currently required. Sections 210.10 and 220.8, therefore, would incorporate nutrition standards for various age/grade groups based on the RDA for the following nutrients: Protein, vitamin A, vitamin C, iron, and calcium as well as the energy allowances for calories. Sections 210.10 and 220.8 would also set the maximum levels of calories from fat and saturated fat at 30 percent and 10 percent of calories, respectively.

Although RDA have been established for more nutrients than indicated above, the Department has chosen to monitor only those listed because these are key nutrients that promote growth and development which are consistent with those required in the Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535). The proposal would also require schools to decrease the levels of sodium and cholesterol and increase the amount of dietary fiber in school meals. The Department is not proposing specific levels for these components, since numeric targets are not established by the current Dietary Guidelines. However, progress in this area could be assessed through a variety of ways including gradual reductions in sodium, and if necessary, cholesterol levels, and increased use of vegetables, fruits and grain products.

The Department wishes to note that the Dietary Guidelines are designed for persons aged two and over. The Department will maintain current meal patterns for children in the zero to eleven months and one to two year age groups. For children who are two years old, schools will have the option of using the minimum calorie and nutrient requirements for school meals for children ages three-six or developing a separate set of nutrient and calorie levels for this age group. Finally, because compliance with the Dietary Guidelines will not be required until School Year 1998–1999, which begins July 1, 1998, the current meal patterns and quantities will be retained temporarily and will be redesignated § 210.10a for the NSLP and § 220.8a for the SBP. This proposal does not apply to infant meal patterns and meal supplements; therefore, the appropriate sections of the redesignated § 210.10a and § 220.8a will continue to be followed by schools serving infants and meal supplements.

New Approaches to Menu Planning: Nutrient Standard Menu Planning and Assisted Nutrient Standard Menu Planning

Schools must currently meet a meal pattern which specifies minimum amounts (by age group) of the five food items which must be offered in order to receive reimbursement for meals. An alternate approach that provides an excellent tool for improving the nutritional quality of school meals is Nutrient Standard Menu Planning (NSMP). Under NSMP, the menu is developed through the nutrient analysis of all foods offered over a school week to ensure that meals meet specific nutrition standards for key nutrients, and meet recommended levels of fat and saturated fat. Other dietary components that will be analyzed are cholesterol, sodium and dietary fiber. However, the Department recognizes that some school food authorities may not have the computer capability or the degree of access to technical support necessary to independently conduct NSMP. In these circumstances, the Department is proposing to allow school food authorities to use a modified form of NSMP entitled Assisted Nutrient Standard Menu Planning (ANSMP). Use of ANSMP would allow development and analysis of menus by other entities while still applying the essentials of NSMP. (A more complete discussion of ANSMP may be found later in this preamble.)

Under NSMP, the menu planner is expected to use effective techniques to provide menus that meet the updated nutrition standards. All menu items (i.e., any single food or combination of food) or other foods offered as part of the reimbursable meal will be counted toward meeting the nutrition standards. An exception to this is foods of minimal nutritional value, as provided for in § 210.11(a)(2) or § 220.12(b), which are not offered as part of a menu item in a reimbursable meal. A definition of "menu item" is proposed to be added to § 210.2 and § 220.2 to expand upon the current definitions of food item and food component that are used in various sections of the regulations concerned with point of service meal counts. The definition would also specify that one menu item offered must be an entree and one must be fluid milk. Further, as discussed later in this preamble, the Department is proposing that the entree must be selected as part of a reimbursable lunch.

Menu items will be analyzed based on production levels to more accurately reflect the overall nutritional composition of the menu. Menus will be planned, analyzed for nutrient content and adjusted as needed to ensure that production and selection trends are considered and nutrition standards are met. A discussion of NSMP software programs and the National Nutrient Database for Child Nutrition Programs is provided later in this preamble.

The purpose of NSMP and ANSMP is two-fold: To provide a flexible way to plan menus using certain nutrient levels, not on limited food items and amounts, and to measure how well meals are meeting nutrition standards. The Department is proposing to adopt NSMP and ANSMP by amending § 210.10(k) and (l) of the regulations to incorporate NSMP and ANSMP for the NSLP and § 220.8(j) and (k) for the SBP.

While school meals will be expected to comply with the updated nutrition standards and to be planned through NSMP or ANSMP, the Department wishes to emphasize that compliance monitoring would stress technical assistance to enable the school to achieve the standards. While all meals offered during a menu cycle that fail to meet the established nutrition standards could technically be subject to an overclaim, the regulations will require State agencies to establish claims only when school food authorities refuse, not simply fail, to take corrective action. It is the Department's intent that every effort be made to provide nutritious meals to children rather than taking punitive actions which could undermine this initiative. Further discussion on this point may be found later in this preamble in the section on monitoring.

Nutrition Disclosure

Since information on the nutritional composition of the menu is readily available as a result of NSMP/ANSMP, the Department is proposing to amend § 210.10(a) to encourage school food authorities to make public, disclose the nutrients contained in their m[illegible]. Many school food authorities, recognizing the benefits of nutrition disclosure already make this information avail[illegible] in the classroom on menus or by notifying local media. These benefits include: (1) An increased awareness on the part of students and parents on the nutritional quality of

school meals; (2) depending on how the information is disclosed, an enhanced ability for students and parents to make healthful choices, and; (3) increased support for the school meal programs through recognition of the improved quality of school meals.

The Department recognizes the differing needs of school food authorities, and, therefore, is not proposing to mandate nutrition disclosure. The Department believes this information should be readily available to students and parents without their having to request it. In providing this information, school food authorities would take into account local factors such as nutrition analysis capabilities and student/parent requests. For example, the school may disclose information either: (1) Developed through the weekly nutrient analysis of meals; (2) based on sample meals offered each day, or; (3) provided along with food item(s) offered in the cafeteria.

The Department also wishes to emphasize that school food authorities that make this disclosure would not experience an additional administrative burden. The information being disclosed is a product of NSMP/ANSMP, and the school food authority can determine, for itself, the most efficient means of disclosure.

Although nutrition disclosure will not be required, the Department recognizes that many school food authorities are already providing this information to students and parents, and strongly encourages others to make public such information. The Department would also like to solicit comments regarding nutrition disclosure, particularly effective nutrition disclosure approaches; which nutrition information to disclose; and disclosure's value as a tool to help children choose nutritious meals.

Assisted Nutrient Standard Menu Planning

As stated above, the Department recognizes that some school food authorities may not have the resources or capacity to independently analyze NSMP. For these school food authorities, the optional method of ANSMP is an alternative approach to NSMP which is proposed in § 210.10(l) for the NSLP and § 220.8(k) for the SBP. School food authorities would draw on the expertise of others to provide menu cycles, adjusted for local needs and preferences. The provided menu would be analyzed to ensure that it meets the required nutrition standards. The menu analysis must be consistent with the local preferences, production records, preparation techniques and food procurement specifications. The provided menu cycles could be developed in a variety of ways—by States; consortiums of school food authorities, by consultants or even by the Federal government.

To ensure consistency with the nutrient analysis of the provided menu, the following components must be standardized: Recipes, food product specifications, and preparation techniques. To accurately reflect the nutrient analysis of the menu as offered, the provided menu must be analyzed and adjusted to the quantities of food prepared and served.

In addition, the school, in conjunction with the entity providing the menu cycle, must periodically review their application of ANSMP to ensure the suitability of the selected menu cycle and the accuracy with which it is being managed (i.e., Are the prescribed procurement specifications and preparation techniques being followed, and are on-going production adjustments made to reflect student choices, thereby resulting in reanalysis of the menu?) It is also possible that standard menus, recipes and procurement specifications could be provided by the Federal government, then adjusted and reanalyzed at the State or local level as necessary. The Department is most interested in receiving comments regarding the usefulness of this approach.

Reimbursable Meals

Schools currently receive reimbursement for each meal served to children that meets the requirements of the lunch or breakfast meal pattern and, if applicable, the offer versus serve option. Basically, the required components (meat/meat alternate, two or more servings of a vegetable and/or fruit, bread/bread alternate and milk) must be offered and a minimum number of items must be selected. In order to determine if the meal chosen by the child is reimbursable, the cashier observes, at the point of service, if the proper number of components are taken.

Under NSMP and ANSMP, a meal will be reimbursable if at least three menu items (one must be an entree and one fluid milk) are being offered, and if at least three menu items are selected. For reimbursable lunches, one of the menu items selected must be an entree. If the school participates in offer versus serve, a meal will be reimbursable if at least three menu items are offered and two menu items are selected. Again, for reimbursable lunches, one of these two menu items must be an entree. For the purpose of point of service counts, this proposal will not change the basic concept of a reimbursable meal. Cashiers will continue to determine if the proper number of menu items was selected and, for the lunch service, that one of the menu items is an entree.

The reason for requiring that one of the selected items for lunch be an entree stems from the Department's concern that the school lunches children consume provide an adequate amount of calories and other essential nutrients. Traditionally, the most significant nutrition contribution in a school lunch comes from the entree. Therefore, this proposal is being offered as a way of assuring that children (particularly those children that participate in other meals such as breakfast) select and, hopefully, consume the most nutritious lunch possible.

The Department recognizes that this proposal deviates from current requirements which do not stipulate that the child must select an entree for lunch. The Department would be concerned if commenters believe this restriction inhibits the flexibility that this proposed rule was designed to promote. For example, if children were prohibited from selecting lunches that were consistent with ethnic or vegetarian preferences, or if plate waste was a potential by-product. Therefore, the Department is particularly interested in receiving comments on and alternatives to this proposed requirement, including comments on whether the minimum number of menu items, both in terms of the standard meal and the offer versus serve option is adequate even with requiring selection of an entree for lunch.

The Department is not proposing to extend the requirement that a reimbursable meal contain an entree to the SBP. This decision was made due to the nature of the breakfast meal and the possible confusion that may result by trying to define an "entree" for the breakfast program.

[illegible]

While implementation of the updated nutrition standards affects the content of meals, it will not affect base counting methodology. Cashiers will continue to take counts at the point of service on the basis of the number of menu items [illegible] personnel will be able to recognize reimbursable meals, as they will not differ substantially [illegible].

In fact, under NSMP/ANSMP, point of service identification of a reimbursable meal may be easier as cashiers would no longer need to determine which of the required components discussed above

have been meet by a particular food item, such as a pot pie, which contains a number of different ingredients. Under NSMP/ANSMP, a pot pie would be the entree which is simply a required one menu item for claiming purposes.

Preparation for Implementation of NSMP and ANSMP

The Department is currently sponsoring a demonstration project to evaluate the optimum use of NSMP as a way for school meals to meet the Dietary Guidelines while ensuring that students also receive needed nutrients and calories. One of the main objectives of this demonstration is to assist the Department in identifying the technical assistance necessary to most efficiently and effectively implement NSMP. This approach shifts the focus from the traditional specifics of a meal pattern to meals containing a combination of foods that meet the nutritional needs of school-age children, by age group, over a school week. Under NSMP and ANSMP, school food authorities will have more flexibility in deciding what other foods will be offered as long as the nutrition standards are met.

The Flexibility of NSMP and ANSMP

The proposed menu development and analysis system has a number of advantages over the current meal pattern, and the Department believes the proposed change to adopt NSMP and ANSMP will greatly assist local school food authorities with implementation of the proposed nutrition standards. With NSMP and ANSMP, there is greater flexibility in food selections and portion sizes because meals are not limited to specific types of foods in specified portions. Further, menus with cultural or other special preferences will be easier to design.

NSMP and ANSMP would also eliminate the need for cumbersome and often confusing food crediting decisions such as whether taco chips or just taco pieces could be considered as a bread alternate or whether yogurt can be allowed as part of a reimbursable meal. The complex Child Nutrition labeling program, which requires the Department to determine how commercial products are credited as food components under the meal pattern, would be substantially reduced in scope or perhaps even eliminated entirely. More nutrient dense items could be added to menus under NSMP, and the nutritional contributions of all foods offered to the child can be recognized. The Department also wishes to emphasize that all nutrients offered to the child are counted in the analysis, including those in foods such as yogurt and desserts which do not presently count toward a reimbursable meal. Of course, the most important aspect of both NSMP and ANSMP is that school food authorities will have an accurate, practical on-going means of determining if the nutrition standards are being met.

Fortification

This proposal does not require school food authorities to distinguish between naturally occurring nutrients and those that are added through fortification. However, the Department is committed to the principle that the preferred source of adequate nutrition is a meal comprised of a variety of conventional foods, as recommended in the Dietary Guidelines, rather than one containing formulated fortified foods.

The Department has been unable to develop a practical method for regulating or monitoring fortification. For example, it is virtually impossible to calculate the amounts of nutrients added to food items and those naturally occurring, especially for food items with numerous ingredients. Although a comparison could be made between a fortified item and a similar item that had no added nutrients, there may not be an identical product on which to base the comparison.

The Department believes the standards as outlined under NSMP that meals contain adequate calories and that at least three menu items be offered, as well as the higher expense of engineered foods, will inhibit excessive reliance on highly fortified foods.

The Department welcomes commenters to address the use of fortified foods in school meal programs, particularly whether there are practical ways to control over-use of fortification, the degree to which this should be a concern, and potential impacts on the character of school meals.

It should be noted that if NSMP/ANSMP is implemented on a nationwide basis, the current regulatory requirements on the use of alternate foods would no longer be necessary. During the interim and where the meal patterns are still in use, these regulations would remain in force.

Operational Aspects of NSMP and ANSMP

National Nutrient Database for the Child Nutrition Programs

In order to conduct nutrient analysis, data on the nutrients contained in a wide range of foods must be available. To meet this need, the Department has developed a centralized National Nutrient Database to allow for accurate nutrient analysis of the menus and recipes used in the NSLP and SBP. The National Nutrient Database contains information on the nutritional composition of: (1) Commodities supplied through the Department; (2) standard reference food items which are used in the SBP and NSLP; (3) Quantity Recipes for School Food Service developed by the Department, and; (4) convenience, processed and pre-prepared foods from food manufacturers. The Department is working closely with the food industry to obtain nutrient analysis of many common food products used by schools for inclusion in the database.

The implementation of NSMP, as opposed to ANSMP, is dependent upon the school or school food authority's ability to analyze the nutrient content of foods. Therefore, the Department is proposing to require that the National Nutrient Database be incorporated into all school food service software systems used for menu and recipe analysis under NSMP. Under ANSMP, the database would be used by the entity providing assistance with nutrition analysis. The Department is making the database available free of charge to participating school food authorities and to computer software companies to develop school food service software programs. The database will be regularly maintained and updated to ensure that the information is as accurate and current as possible. School food authorities would be expected to incorporate these updates into their own software as they are made available. It should be noted that a preliminary version of the Department's database is now available. Information on how to obtain it can be secured from the Department's Child Nutrition Database Hotline at (301) 436–3536.

School Food Service Software Systems

The computer software industry has many nutrient analysis software programs on the market. Few of these, however, are specific to the school programs and do not contain the types of foods, descriptions, weights and measurements used in these programs. Moreover, the results of nutrient analysis can vary dramatically depending on which software package is being used. Nutrient analysis must be based on standardized specifications to ensure accuracy. Therefore, the Department has also developed software specifications for NSMP. The overall objective of any software system used for this purpose is to adapt advanced data automation technology to simplify completion of the mathematical and analytical tasks associated with NSMP. The software specifications include menu planning, nutritional analysis of

menus and recipes, and data management reports presented in a comprehensive, simplified and user-friendly manner. To ensure that school food authorities are using a software package which meets the Department's specifications, school food authorities will be required to use a software system that has been evaluated by FNS and, as submitted, been determined to meet the minimum requirements established by FNS. However, such review does not constitute endorsement by FNS or USDA. This proposed requirement is found in § 210.10(k)(1)(ii) for the NSLP and § 220.8(j)(1)(ii) for the SBP.

Use of Weighted Averages

Some food items are more popular than others and, thus, will be selected by school children more frequently. To accurately perform an assessment of the nutritional composition of reimbursable meals offered, nutrient analysis must be based on production levels of foods offered, as production levels are an indication of foods actually selected. For example, a menu item which is chosen frequently (and therefore more portions are prepared) will contribute more nutrients to the meal than a menu item chosen less frequently.

The calculation method for computing a weighted nutritional analysis will require the school food authority to enter the following information into the selected software program the menu item; portion size; projected servings of each menu item; and the projected number of reimbursable meals each day for the school week. It should be noted that the software specifications discussed above are designed to easily perform weighting calculations. This provision is proposed in § 210.10 (k)(2) and § 210.10 (k)(4) for the NSLP and § 220.8 (j)(2) and (j)(4).

Definition of School Week

A new definition would be added for "school week" to indicate that, for NSMP and ANSMP, a minimum of three days and a maximum of seven days must be included. This is because the nutrition analysis is proposed to be an average of the reimbursable meals served over the course of a week. To ensure common understanding of the terms NSMP and ANSMP, a proposed definition would be added to § 210.2 and § 220.2 explaining the term "school week."

Transition to NSMP and ANSMP

The Department recognizes that school food authorities will need technical assistance in order to implement these changes efficiently. The Department is conducting NSMP demonstration projects in several school food authorities, and the ongoing experiences gained from these will be shared as part of the overall assistance to school food authorities to phase in NSMP and ANSMP.

The Department also plans to provide extensive training and technical assistance to State and local agencies as they prepare to implement NSMP and ANSMP. As noted earlier in this preamble, the Department has requested specific funding in the Administration's Fiscal Year 1995 budget for this purpose as well as to fund other technical assistance and nutrition education activities. Other projects to support the move towards updated nutrition standards are already being undertaken within existing resources, including modification of more than fifty recipes to include more fruits, vegetables, and grain products and to decrease fat levels, and collaboration with the National Food Service Management Institute. Finally, the Department is committed to working with State agencies to target Nutrition Education and Training (NET) resources more intensely toward implementation of the Dietary Guidelines.

This proposed regulation would require school food authorities to adopt the updated nutrition standards and NSMP or ANSMP no later than July 1, 1998, the start of School Year 1998–99. However, school food authorities are encouraged to begin working towards full implementation of the updated nutrition standards as soon as practicable after publication of a final rule or to even use NSMP, ANSMP, or nutrient-based menu analysis in conjunction with the current meal patterns prior to the effective date.

State agencies would need to determine when school food authorities are ready to begin NSMP or ANSMP and would, of course, provide training and technical assistance to help school food authorities whenever they begin implementing this procedure. In determining when to begin NSMP in a particular school or school food authority, States should evaluate their capabilities both in terms of computer technology and availability of other technical resources. States will also need to evaluate implementation on an on-going basis to determine if any adjustments are needed and to provide support when start-up difficulties occur. The Department is not establishing a specific procedure for determining the readiness of school food authorities to phase in NSMP or ANSMP. Rather, the Department believes State agencies are in the best position to determine if a school food authority is ready to begin the shift to NSMP or ANSMP and will be able to respond to the wide range of situations that may occur and to concentrate on achieving the goal. This approach frees State agencies from assuring that a particular process is followed and allows them the flexibility to invest their time and efforts as they judge best.

Monitoring Compliance With Updated Nutrition Standards

The Department also proposes to modify the monitoring requirements to include compliance with the updated nutrition standards. Currently, states monitor compliance with meal pattern components and quantities on a per-meal basis. On the day of a review, the lunch service is observed to ensure that all required food items are offered and, if applicable, that children accept the minimum number of components stipulated both under the standard meal service and the offer versus serve option. Meal services that offer fewer than the five required food items are disallowed for Federal reimbursement, as are meals for which the child has not taken the minimum number of items under the offer versus serve option. States also examine menus and production records for the review period to ensure that all components were available, and that sufficient quantities were offered. Thus, a direct correlation exists between the meal service offered and the meals taken on a given day and the allowable reimbursement for those meals.

Under NSMP and ANSMP, Federal reimbursement will continue to be predicated upon similar factors. As noted earlier in this preamble, under NSMP and ANSMP, schools will continue to offer a minimum number of menu items, and children must accept a minimum number of items. Meals which do not meet these requirements will not be eligible for reimbursement. However, to allow school food authorities adequate time to move towards full implementation of NSMP or ANSMP, school food authorities that implement prior to School Year 1998–1999 will be exempt from Coordinated Review Effort (CRE) Performance Standard 2 on reimbursable meals containing the required food items/components in § 210.18(g)(2) if they are scheduled for an administrative review prior to School Year 1998–1999.

Under this proposal, in addition to meeting the minimums for the number of menu items, the reimbursable meals offered over a school week must also collectively meet the updated nutrition standards established. To determine compliance with the nutrition standards, State agencies will need to closely examine school food authority's nutrient analysis in the course of a review. While this is a much more precise examination than in past practice, it continues the concept of ensuring that the entire food service, not just an individual meal, conforms to program requirements. State agencies must also observe the meal service to determine if meals claimed for reimbursement contain the appropriate number and type of menu items. The Department is proposing to amend § 210.19, Additional Responsibilities, to outline review requirements for nutrition standards. The Department is proposing to add the compliance requirements for the nutrition standards to this section rather than to § 210.18, Administrative Reviews, in order to allow for operational experience and corrective action prior to any imposition of fiscal action.

State Agency Responsibilities

The following summarizes the State agency's responsibilities under the Department's proposal for general program management, including taking fiscal action against school food authorities that consistently refuse to meet program requirements. While State agencies would probably combine a determination of how the nutrition standards and NSMP/ANSMP are being met with the cyclical administrative review, the Department is also proposing to provide State agencies with flexibility to conduct these important evaluations at other times such as during technical assistance visits or even as a separate, special assessment. However, assessments of compliance with the nutrition standards must be conducted no less frequently than administrative reviews.

As proposed by the Department, State agencies would assess the nutrient analyses for the last completed school week. The purpose would be to determine if the school food authority is applying the correct methodology and is properly conducting the NSMP or ANSMP based on the actual menu cycle including any substitutions. The State agency would also review the menus and production records to determine if they correspond to the information used to conduct NSMP or ANSMP.

Corrective Action

If it is indicated that the school food authority is not conducting NSMP accurately or properly applying ANSMP, if the school week's meals, as offered, do not comply with nutrition standards, or if the meal observation identified a significant number of meals that did not meet the definition of a reimbursable meal, the school food authority would be required to take appropriate corrective action to achieve compliance. However, at this time, no claim would be established if the failure to comply was not intentional. (Intentional violations are discussed later in this preamble.)

Pursuant to section 16(b) of the CNA, 42 U.S.C. 1785(b), the Secretary of Agriculture is given authority to settle, adjust or waive any claims under both the NSLA or the CNA if to do so would serve the purposes of either Act. The Department recognizes that the transition to NSMP and ANSMP will not in every instance be completed without problems and unforeseen circumstances to be surmounted. The Department expects State agencies to act quickly to rectify any problems found and to monitor any corrective action undertaken. In the interests of facilitating the transition to NSMP/ANSMP, the Secretary is proposing to exercise his authority to settle, adjust and waive claims by not requiring State agencies to disallow payment or collect overpayments resulting from meals which do not meet the nutrition standards of the regulations as long as State agencies are satisfied that such deviations from the nutrition standards were not intentional and that the school food authority is working towards successful completion of a acceptable corrective action plan in a timely manner.

The Department stresses that this proposal does not establish specific steps or time frames for corrective action. State agencies, as a result of their evaluation of the school food authority, are in the best position to establish corrective action goals and time frames, working in partnership with local school food authorities. The Department believes that State agencies and school food authorities need flexibility in developing a corrective action plan and is, therefore, providing such flexibility in this proposal. Further, in recognition of the fact that timely and effective corrective action is in the best interest of all, the Department intends to incorporate review of this area into its management evaluation activities at the State level.

The Department would like to once again emphasize that, under this proposal, compliance with the updated nutrition standards is of paramount importance. First, corrective action will be required if a meal service does not meet the nutrition standards. The State agency cannot overlook these shortcomings and must ensure that the meal service is improved as stipulated in the corrective action plan. Secondly, the State will be required to monitor the school's corrective action efforts. In most cases, monitoring would include reviewing production records, menus and computer analyses submitted by the school food authority and providing any support indicated by such a review. When a school food authority refuses to make a good faith effort to comply with the terms of the corrective action plan, the State agency would be required to establish a claim.

Exception to Claim Establishment

Under this proposal, State agencies would require corrective action for meals not meeting the nutrition standards, but would receive reimbursement for those meals. This procedure represents a significant means of easing the transition to and operation of the updated nutrition standards. Section 8 of the NSLA, 42 U.S.C. 1757, and section 4(b)(1)(D) of the CNA, 42 U.S.C. 1773 (b)(1)(D), clearly provide that reimbursement for meals served is available only for those meals that meet Program requirements. Further, section 12(g) of the NSLA, 42 U.S.C. 1760(g), continues to provide for Federal criminal penalties for certain intentional Program violations under either the NSLA or the CNA. The Department is concerned that the corrective action provision not be construed by State agencies or school food authorities as an invitation to relax efforts to comply with the nutritional or administrative review requirements of §§ 210.10, 210.10a, 210.18 and 210.19. The institution of corrective action would not be a sufficient remedy by itself in an instance in which a State agency determined that school officials had intentionally failed to meet the nutrition standards required by NSMP. In these situations, while the State agency would initiate corrective action, it must also disallow claims for reimbursement for the substandard meals and, in very severe cases, consider referring the matter to the Department for criminal prosecution.

While continued refusal to take corrective action could result in loss of Federal funding, this provision is not intended to be punitive when school food authorities are acting in good faith to comply with the nutrition standards. The Department is far more concerned about correcting these situations than it is with pursuing fiscal action. The Department's foremost goal is to ensure that children are provided with the most nutritious meals possible. Consequently, the emphasis in this process is on corrective action and technical

assistance. If school food authorities implement appropriate corrective action and make satisfactory progress toward compliance, no fiscal action would be required.

Streamlined Administration

The Department is also proposing to streamline program administration by allowing State agencies and school food authorities flexibility in three important areas. The first provision would extend the Coordinated Review Effort (CRE) review cycle from 4 to 5 years. The Department's experience with CRE indicates that a one-year extension in the cycle would not adversely affect accountability, but it would result in a 20 percent decrease in the number of reviews currently conducted in any given year. While the exact reduction in burden would vary from State to State, the Department expects this decrease would provide the States with additional flexibility to enable them to continue to improve school meals. Section 210.18(c) is proposed to be amended to include this change.

The second provision eliminates the regulatory requirement for a specific type of edit check on daily meal counts contained in § 210.8(a)(2) for schools where the most recent CRE review did not identify meal counting and claiming problems. Currently, the edit check provision requires that each school food authority compare each school's daily meal count with data such as the number of children eligible for free, reduced price or paid meals multiplied by an attendance factor. This check is intended to ensure that monthly claims for reimbursement are based on reasonable and accurate counts of meals offered on any day of operation to eligible children.

The Department believes, however, that school food authorities that have demonstrated, through the CRE review, the accuracy of their meal counts and claims should be provided an optional approach to specific edit checks. This proposal would establish a system whereby these school food authorities could develop and implement their own systems of internal controls designed to ensure the accuracy of claims for reimbursement. This system would then be submitted to the State agency for review. If the State agency's review determined that the proposed method constituted an accurate internal control, no further action would be required, and the school food authority's own proposed internal controls would remain in effect. However, if the State agency concluded that the suggested system of internal controls was inadequate, the school food authority would be required to modify its procedures accordingly. In addition, if during the course of a CRE review or other oversight activity of the school food authority, it is determined that the internal controls were ineffective, the specific, regulatory edit check would replace their system until a future regularly scheduled CRE review indicates there are no meal count problems.

This proposal would virtually eliminate the requirement for a specific edit check for school food authorities with accurate meal counts and claims measured by the CRE review and replace it with a more flexible procedure to allow these school food authorities to design and implement a system that is streamlined for their particular circumstances. However, this proposal also maintains the necessary specificity of an edit check for school food authorities found to have meal counting and claiming violations. Further it provides for State agency oversight of accountability procedures and a ready mechanism, if needed, to substitute a Federally-defined procedure to ensure accurate claims for reimbursement. The Department believes that program integrity must be maintained by requiring specific criteria when review results indicate problems or failure of the school food authority's alternative system. Section 210.8(a)(2) and (a)(3) would be modified to reflect these proposed changes.

The Department is especially interested in receiving comments on this provision. Commenters should address the flexibility this proposed provision allows well-managed school food authorities and any implementation issues this poses. In addition, the Department would be interested in receiving alternative proposals that would accomplish the desired balance between local flexibility and sound accountability.

The third area that the Department is addressing to reduce paperwork at the school food authority level is the requirement in § 210.15(b)(4) that distinct records be maintained to document the nonprofit status of the school food service. These records are the accounts which any enterprise needs to maintain in the normal course of conducting business (i.e., receipts, costs, etc.). Therefore, since these kinds of records are a necessary part of a school food authority's own accountability system and, in many cases, are required by State laws, the Department does not consider it necessary for the program regulations to mandate this recordkeeping requirement. It is important to emphasize that the school food authority would still have to be operated on a nonprofit basis. This proposal is only amending the requirements for documentation of nonprofitability. This proposal would amend § 210.14(c) and § 210.15(b) to include this change. In the event that a question or dispute arises in connection with whether a nonprofit school food service has been properly operated, the burden of proof still be upon the school food authority to demonstrate that the school food service is being operated on a nonprofit basis.

Length of Meal Periods

As noted above, many commenters expressed concern that children be given sufficient time in which to eat, particularly if larger portion sizes are to be served. The Department also recognizes the need to balance the time for academics with the time to receive and eat school meals, especially lunch. Although the Department has no authority in this area, school food service directors are strongly encouraged to work with other school officials to ensure that adequate meal service times and facilities are provided. Likewise, the Department will continue to work with DOEd to solicit support in the education community to ensure that educators and school administrators understand the importance of students having adequate time to eat.

To indicate its concern in this area, the Department is proposing, in § 210.10(i), to recommend that school food authorities make every effort to provide adequate meal service times and periods to ensure that students can effectively participate in the school lunch program.

Changes to the School Breakfast Program Nutritional Requirements

In order to facilitate uniform implementation, the Department is also proposing to amend the nutritional requirements of the SBP to parallel the changes made to the nutritional requirements of the NSLP. The current § 220.8 would be redesignated as § 220.8a to retain the requirements that would be in effect until implementation of the updated nutrition standards on July 1, 1998, while § 220.8 would contain provisions on nutrition standards, NSMP and ANSMP for the SBP.

The major differences for the SBP are that fewer calories are required and one-fourth of the RDA are to be met. A new guide would be incorporated into § 220.8 to indicate the nutrition standards required for the SBP. In addition, separate analyses for SBP and

NSLP would be required to meet the different nutrition standards for each program. As previously discussed, a reimbursable meal under the SBP will not be required to contain an entree.

Effective Dates

As discussed earlier, this proposal requires school food authorities to serve meals through the use of NSMP or ANSMP and be in compliance with updated nutrition standards by School Year 1998–1999 which begins on July 1, 1998. The Department believes this schedule provides sufficient time to enable States to develop appropriate technical assistance and guidance materials, to allow local food service staff to become familiar with the updated requirements and to make appropriate changes in meals. There would be no mandate for school food authorities to implement the required changes prior to July 1, 1998. In the interest of promoting children's long-term health through diet, the Department encourages State agencies to work with school food authorities to implement as soon as possible and, in fact, as discussed earlier, expects State agencies to approve plans for early implementation. The Department considers that early implementation will also provide both State agencies and school food authorities with valuable experience before mandatory implementation.

To encourage early implementation, compliance activities described above will not take effect before School Year 1998–1999. In the interim period, reviews and oversight activities that focus on the food service portion of program operations will provide excellent opportunities for technical assistance and for State agencies to assess preparation for full implementation. All other changes in this rule, including the paperwork reductions and streamlined administration methods, could be implemented 30 days after final publication of the final rule.

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs—social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Children, Food assistance programs, Grant programs—social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

Accordingly, 7 CFR parts 210 and 220 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 is revised to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.2:

a. The definition of "*Food component*" is amended by adding the words "under § 210.10a" at the end of the sentence;

b. The definition of "*Food item*" is amended by adding the words "under § 210.10a" at the end of the sentence;

c. The definition of "*Lunch*" is revised;

d. A new definition of "*Menu item*" is added in alphabetical order;

e. A new definition of "*Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning*" is added in alphabetical order;

f. The definition of "*Reimbursement*" is amended by adding the words "or § 210.10a, whichever is applicable," after "§ 210.10"; and

g. A new definition of "*School Week*" is added in alphabetical order.

The revision and additions read as follows:

§ 210.2 Definitions.

* * * * *

Lunch means a meal which meets the nutrient and calorie levels designated in § 210.10 or the school lunch pattern for specified age/grade groups as designated in § 210.10a.

Menu item means, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, any single food or combination of foods. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards provided in § 210.10(a), except for those foods that are considered as foods of minimal nutritional value as provided for in § 210.11(a)(2) which are not offered as part of a menu item in a reimbursable meal. For the purposes of a reimbursable lunch, a minimum of three menu items must be offered, one of which must be an entree (a combination of foods or a single food item that is offered as the main course) and one must be fluid milk. For the purposes of a reimbursable lunch, one of the selected menu items must be an entree. Under the offer versus serve option, three menu items must be offered and an entree and one other menu item must be selected.

* * * * *

Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning means a way to develop meals which is based on the analysis of nutrients which would require school lunches, when averaged over a school week, to meet specific levels for a set of key nutrients and calories rather than a specific set of food categories. Analysis of the menu items and foods shall be based on averages that will be weighted by production quantities as offered to the students. Such analysis is normally done by a school or a school food authority. However, for the purposes of Assisted Nutrient Standard Menu Planning, menu planning and analysis are completed by other entities and shall incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority.

* * * * *

School week means the period of time used as the basis for determining nutrient levels of the menu and for conducting Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning for lunches. The period shall be a minimum of three days and a maximum of seven days. Weeks in which school lunches are offered less than three times shall be combined with either the previous or the coming week.

* * * * *

§ 210.4 [Amended]

3. In § 210.4, paragraph (b)(3) introductory text is amended by removing the words "§ 210.10(j)(1) of this part" and adding in their place the words "§ 210.10a(j)(1)".

§ 210.7 [Amended]

4. In § 210.7:

a. Paragraph (c)(1)(v) is amended by removing the reference to "§ 210.10(b) of this part" and adding in its place the words "§ 210.10(a) or § 210.10a(b), whichever is applicable,"; and

b. Paragraph (d) is amended by removing the reference to "§ 210.10(j)(1) of this part" and adding in its place the reference "§ 210.10a(j)(1)".

5. In § 210.8:

a. The third sentence of paragraph (a)(2) is removed and new paragraphs (a)(2)(i) and (a)(2)(ii) are added;

b. Paragraph (a)(3) is revised;

c. The first sentence of paragraph (a)(4) is amended by removing the words "review process described in paragraphs (a)(2) and (a)(3) of this section" and adding in their place the

words "the internal controls used by schools in accordance with paragraph (a)(2)(i) of this section or the claims review process used by schools in accordance with paragraphs (a)(2)(ii) and (a)(3) of this section"; and

d. The first sentence of paragraph (b)(2)(i) is amended by removing the reference to "paragraph (a)(2)" and adding in its place a reference to "paragraph (a)(3)" and by adding at the end of the sentence the words "or the internal controls used by schools in accordance with paragraph (a)(2)(i) of this section".

The revision and additions reads as follows:

210.8 Claims for reimbursement.

(a) *Internal controls.* * * *

(2) *School food authority claims review process.* * * *

(i) Any school food authority that was found by its most recent administrative review conducted in accordance with § 210.18, to have *no* meal counting and claiming violations may:

(A) Develop internal control procedures that ensure accurate meal counts. The school food authority shall submit any internal controls developed in accordance with this paragraph to the State agency for approval and, in the absence of specific disapproval from the State agency, shall implement such internal controls. The State agency shall establish procedures to promptly notify school food authorities of any modifications needed to their proposed internal controls or of denial of unacceptable submissions. If the State agency disapproves the proposed internal controls of any school food authority, it reserves the right to require the school food authority to comply with the provisions of paragraph (a)(3) of this section; or

(B) Comply with the requirements of paragraph (a)(3) of this section.

(ii) Any school food authority that was identified in the most recent administrative review conducted in accordance with § 210.18, or in any other oversight activity, as having meal counting and claiming violations shall comply with the requirements in paragraph (a)(3) of this section.

(3) *Edit checks.* (i) The following procedure shall be followed for school food authorities identified in paragraph (a)(2)(ii) of this section, by other school food authorities at State agency option, or, at their own option, by school food authorities identified in paragraph (a)(2)(i) of this section: The school food authority shall compare each school's daily counts of free, reduced price and paid lunches against the product of the number of children in that school currently eligible for free, reduced price and paid lunches, respectively, times an attendance factor.

(ii) School food authorities that are identified in subsequent administrative reviews conducted in accordance with § 210.18 as not having meal counting and claiming violations and that are correctly complying with the procedures in paragraph (a)(3)(i) of this section have the option of developing internal controls in accordance with paragraph (a)(2)(i) of this section.

* * * * *

§ 210.9 [Amended]

6. In § 210.9:

a. Paragraph (b)(5) is amended by adding the words "or § 210.10a, whichever is applicable" at the end of the paragraph before the semicolon;

b. Paragraph (c) introductory text is amended by removing the reference to "§ 210.10(j)(1) of this part" and adding in its place the reference "§ 210.10a(j)(1)"; and

c. Paragraph (c)(1) is amended by removing the reference to "§ 210.10" and adding in its place the reference "§ 210.10a".

§ 210.10 [Redesignated as § 210.10a]

7. Section 210.10 is redesignated as § 210.10a.

8. A new section 210.10 is added to read as follows:

§ 210.10 Nutrition standards for lunches and menu planning systems.

(a) *Nutrition standards for reimbursable lunches.* School food authorities shall ensure that participating schools provide nutritious and well-balanced meals to children based on the nutrition standards provided in this section or, if applicable, for very young children and meal supplements, the appropriate provisions of § 210.10a. For the purposes of this section, the nutrition standards are:

(1) Provision of one-third of the Recommended Dietary Allowances (RDA) of protein, calcium, iron, vitamin A and vitamin C to the applicable age groups in accordance with the *Minimum Nutrient Levels for School Lunches* in paragraph (e)(4)(i) of this section;

(2) Provision of the lunchtime energy allowances for children based on the four age groups provided for in the *Minimum Nutrient Levels for School Lunches* in paragraph (e)(4) of this section;

(3) The applicable 1990 Dietary Guidelines for Americans which are:

(i) Eat a variety of foods;

(ii) Limit total fat to 30 percent of calories;

(iii) Limit saturated fat to less than 10 percent of calories;

(iv) Choose a diet low in cholesterol;

(v) Choose a diet with plenty of vegetables, fruits, and grain products; and

(vi) Use salt and sodium in moderation; and

(4) The following measures of compliance with the 1990 Dietary Guidelines for Americans:

(i) A limit on the percent of calories from total fat to 30 percent based on the actual number of calories offered;

(ii) A limit on the percent of calories from saturated fat to less than 10 percent based on the actual number of calories offered;

(iii) A reduction of the levels of sodium and cholesterol; and

(iv) An increase in the level of dietary fiber.

(b) *General requirements for school lunches.* (1) In order to qualify for reimbursement, lunches, as offered by participating schools, shall, at a minimum, meet the nutrition standards provided in paragraph (a) of this section when averaged over each school week. Except as otherwise provided herein, school food authorities shall ensure that sufficient quantities menu items and foods are planned and produced to meet, at a minimum, the nutrition standards in paragraph (a) of this section.

(2) School food authorities shall ensure that each lunch is priced as a unit and that lunches are planned and produced on the basis of participation trends, with the objective of providing one reimbursable lunch per child per day. Any excess lunches that are produced may be offered, but shall not be claimed for general or special cash assistance provided under § 210.4.

(c) *Requirements for meals served to infants and very young children (birth to 24 months of age).* Meals for infants from birth to 2 years of age shall meet the requirements in § 210.10a (a), (c), (d) and (h).

(d) *Specific nutrient levels for children age 2.* Schools with children age 2 who participate in the program shall ensure that the nutrition standards in paragraph (a) of this section are met except that, such schools have the option of either using the RDA and calorie levels for children ages 3–6 in the table, *Minimum Nutrient Levels for School Lunches,* in paragraph (e)(4)(i) of this section, or developing separate nutrient levels for this age group. The methodology for determining such levels will be available in menu planning guidance material provided by FNS.

(e) *Requirements for meals for children ages 3–17*—(1) *General.* In order to receive reimbursement, school food authorities shall ensure that participating schools offer lunches which meet the nutrition standards provided in paragraph (a) of this section to children age three and over.

(2) *Nutrient levels.* The nutrients of reimbursable lunches shall, as offered and as averaged over each school week, meet the requirements in the table, *Minimum Nutrient Levels for School Lunches,* in paragraph (e)(4)(i) of this section for children of the appropriate age group.

(3) *Records.* Production, menu and nutritional analysis records shall be maintained by schools to demonstrate that lunches meet, when averaged over each school week, the nutrition standards provided in paragraph (a) of this section and the nutrient levels for children of each age group in the table *Minimum Nutrient Levels for School Lunches* in paragraph (e)(4)(i) of this section.

(4) *Specific nutrient levels for children ages 3–17.* (i) Schools that are able to offer meals to children based on nutrient levels reflecting one of the four age levels in the table in this paragraph should do so. Schools that cannot offer meals to children on the basis of the age levels in the table in this paragraph shall, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, adjust the established levels following guidance provided by FNS, or, if only one age is outside the established level, use the levels provided in the table for the majority of children. For example, a school has grades one through five, but if some first graders are six, the levels for Group II would be used as the majority of students are in this age group. Schools shall ensure that lunches are offered with the objective of providing the per lunch minimums for each age level as specified in the following table:

MINIMUM NUTRIENT LEVELS FOR SCHOOL LUNCHES

Nutrients and energy allowances	Group I ages 3–6 years	Group II ages 7–10 years	Group III ages 11–13 years	Group IV ages 14–17 years
Energy allowance/Calories	558	667	783	846
Total Fat (as a percent of actual total food energy)	(1)	(1)	(1)	(1)
Total Saturated Fat (as a percent of actual total food energy)	(2)	(2)	(2)	(2)
RDA for protein (g)	7.3	9.3	15.0	16.7
RDA for calcium (mg)	267	267	400	400
RDA for iron (mg)	3.3	3.3	4.5	4.5
RDA for vitamin A (RE)	158	233	300	300
RDA for vitamin C (mg)	14.6	15.0	16.7	19.2

[1] Less than or equal to 30% of actual calories offered.
[2] Less than 10% of actual calories offered.

(ii) A reimbursable lunch shall include a minimum of three menu items as defined in § 210.2; one menu item shall be an entree and one shall be fluid milk as a beverage. An entree may be a combination of foods or a single food item that is offered as the main course. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards in paragraph (a) of this section, except for those foods that are considered foods of minimal nutritional value as provided for in § 210.11(a)(2) which are not offered as part of a menu item in a reimbursable meal. Reimbursable lunches, as offered, shall meet the established nutrition standards in paragraph (a) of this section when averaged over a school week.

(f) *Milk requirement for children ages 2–17.* Schools shall comply with the requirements for offering milk as provided for in § 210.10a(d)(1).

(g) *Offer versus serve.* Each participating school shall offer its students at least three menu items as required by paragraph (e)(4)(ii) of this section. Under offer versus serve, senior high students are required to take at least two of the three menu items offered; one menu item selected must be an entree. At the discretion of the school food authority, students below the senior high level may also participate in offer versus serve. The price of a reimbursable lunch shall not be affected if a student declines a menu item or accepts smaller portions. State educational agencies shall define "senior high."

(h) *Choice.* To provide variety and to encourage consumption and participation, schools should, whenever possible, offer a selection of menu items, foods and types of milk from which children may make choices. When a school offers a selection of more than one type of lunch or when it offers a variety of menu items, foods and milk for choice as a reimbursable lunch, the school shall offer all children the same selection regardless of whether the children are eligible for free or reduced price lunches or pay the school food authority's designated full price. The school may establish different unit prices for each type of lunch offered provided that the benefits made available to children eligible for free or reduced price lunches are not affected.

(i) *Lunch period.* At or about mid-day schools shall offer lunches which meet the requirements of this section during a period designated as the lunch period by the school food authority. Such lunch periods shall occur between 10 a.m. and 2 p.m., unless otherwise exempted by FNS. With state approval, schools that serve children 1–5 years old are encouraged to divide the service of the meal into two distinct service periods. Such schools may divide the quantities and/or menu items or foods offered between these service periods in any combination that they choose. Schools are also encouraged to provide an adequate number of lunch periods of sufficient length to ensure that all students have an opportunity to be served and have ample time to consume their meals.

(j) *Exceptions.* Lunches claimed for reimbursement shall meet the school lunch requirements specified in this section. However, lunches offered which accommodate the exceptions and variations authorized under § 210.10a(i) are also reimbursable.

(k) *Nutrient Standard Menu Planning for children age 2–17.* In order to assure that school lunches meet the nutrition standards provided in paragraph (a) of this section, nutrient analysis shall be conducted on all menu items or foods offered as part of the reimbursable meal, except for those foods that are considered as foods of minimal

nutritional value as provided for in § 210.11(a)(2) which are not offered as part of a menu item in a reimbursable meal. Such analysis shall be over the course of each school week. The school food authority shall either independently conduct Nutrient Standard Menu Planning or shall request that the State agency allow Assisted Nutrient Standard Menu Planning.

(l) *The National Nutrient Database and software specifications.* (i) Nutrient analysis shall be based on information provided in the National Nutrient Database for Child Nutrition Programs. This database shall be incorporated into software used to conduct nutrient analysis. Upon request, FNS will provide information about the database to software companies that wish to develop school food service software systems.

(ii) Any software used to conduct nutrient analysis shall be evaluated by FNS and, as submitted, been determined to meet the minimum requirements established by FNS. However, such review does not constitute endorsement by FNS or USDA. Such software shall provide the capability to perform all functions required after the basic data has been entered including calculation of weighted averages as required by paragraph (k)(2) of this section.

(2) *Determination of weighted averages.* (i) Menu items and foods offered as part of a reimbursable meal shall be analyzed based on portion sizes and projected serving amounts and shall be weighted based on their proportionate contribution to the meals. Therefore, menu items or foods more frequently selected will contribute more nutrients than menu items or foods which are less frequently selected. Such weighting shall be done in accordance with guidance issued by FNS as well as that provided by the software used.

(ii) An analysis of all menu items and foods offered in the menu over each school week shall be computed for calories and for each of the following nutrients: protein; vitamin A; vitamin C; iron; calcium; total fat; saturated fat; and sodium. The analysis shall also include the dietary components of cholesterol and dietary fiber.

(3) *Comparing average daily levels.* Once the appropriate procedures of paragraph (k)(2) of this section have been completed, the results shall be compared to the appropriate age group level for each nutrient and for calories in the table, *Minimum Nutrient Levels for School Lunch*, in paragraph (e)(4)(i) of this section. In addition, comparisons shall be made to the nutrition standards provided in paragraph (a) of this section in order to determine the degree of conformity.

(4) *Adjustments based on students' selections.* The results obtained under paragraph (k)(2) of this section shall be used to adjust future menu cycles to accurately reflect production and student selections. Menus may require further analysis and comparison, depending on the results obtained in paragraph (k)(3) of this section when production and selection patterns change. The school food authority may need to consider modifications to the menu items and foods offered based on student selections as well as modifications to recipes and other specifications to ensure that the nutrition standards provided in paragraph (a) of this section are met.

(5) *Standardized recipes.* Under Nutrient Standard Menu Planning, standardized recipes shall be developed and followed. A standardized recipe is one that was tested to provide an established yield and quantity through the use of ingredients that remain constant in both measurement and preparation methods. USDA/FNS standardized recipes are included in the National Nutrient Database for the Child Nutrition Programs. In addition, local standardized recipes used by school food authorities shall be analyzed for their calories, nutrients and dietary components and added to the local database by that school food authority in accordance with paragraph (k)(1)(ii) of this section.

(6) *Processed foods.* Unless already included in the National Nutrient Database, the calorie amounts, nutrients and dietary components, in accordance with paragraph (k)(3) of this section, of purchased processed foods and menu items used by the school food authority shall be obtained by the school food authority or State agency and incorporated into the database at the local level in accordance with FNS guidance.

(7) *Substitutions.* If the need for serving a substitute food(s) or menu item(s) occurs at least two weeks prior to serving the planned menu, the revised menu shall be reanalyzed based on the changes. If the need for serving a substitute food(s) or menu item(s) occurs two weeks or less prior to serving the planned menu, no reanalysis is required. However, to the extent possible, substitutions should be made using similar foods.

(l) *Assisted Nutrient Standard Menu Planning.* (1) For school food authorities without the capability to conduct Nutrient Standard Menu Planning, as provided in paragraph (k) of this section, menu cycles developed by other sources may be used. Such sources may include but are not limited to the State agency, other school food authorities, consultants, or food service management companies.

(2) Assisted Nutrient Standard Menu Planning shall establish menu cycles that have been developed in accordance with paragraphs (k)(1) through (k)(6) of this section as well as local food preferences and local food service operations. These menu cycles shall incorporate the nutrition standards in paragraph (a) of this section and the *Minimum Nutrient Levels for School Lunches* in paragraph (e)(4)(i) of this section. In addition to the menu cycle, recipes, food product specifications and preparation techniques shall also be developed and provided by the entity furnishing Assisted Nutrient Standard Menu Planning to ensure that the menu items and foods offered conform to the nutrient analysis determinations of the menu cycle.

(3) If a school food authority requests Assisted Nutrient Standard Menu Planning, the State agency shall determine if it is warranted. At the inception of any approved use of Assisted Nutrient Standard Menu Planning, the State agency shall approve the initial menu cycle, recipes, and other specifications to determine that all required elements for correct nutrient analysis are incorporated. The State agency shall also, upon request, provide assistance with implementation of the chosen system.

(4) After initial service under the Assisted Nutrient Standard Menu Planning menu cycle, the nutrient analysis shall be reassessed in accordance with paragraph (k)(2) of this section and appropriate adjustments made.

(5) Under Assisted Nutrient Standard Menu Planning, the school food authority retains final responsibility for ensuring that all nutrition standards established in paragraph (a) of this section are met.

(m) *Compliance with the nutrition standards.* If the analysis conducted in accordance with paragraphs (k) or (l) of this section shows that the menus offered are not meeting the nutrition standards in paragraph (a) of this section, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the lunches offered to children comply with the nutrition standards established by paragraph (a) of this section.

(n) *Nutrition disclosure.* School food authorities are encouraged to make information available indicating efforts

to meet the nutrition standards in paragraph (a) of this section, such as publicizing the results of the nutrient analysis of the school week menu cycle.

(o) *Supplemental food.* Eligible schools operating after school care programs may be reimbursed for one meal supplement offered to an eligible child (as defined in § 210.2) per day. Meal supplements shall conform to the provisions set forth in § 210.10a(j).

(p) *Implementation of the nutrition standards and Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning.* (1) No later than School Year 1998–99, school food authorities shall ensure that lunches offered to children ages 2 and above by participating schools meet the nutrition standards provided in paragraph (a) of this section.

(2) Further, no later than School Year 1998–99, school food authorities shall ensure that Nutrient Standard Menu Planning, or Assisted Nutrient Standard Menu Planning, where applicable, is applied to lunches offered by participating schools.

(3) Schools and/or school food authorities may begin to implement any or all of the provisions of this section before School Year 1998–99 with prior approval of the State agency. In these situations, State agencies shall evaluate the ability of school food authorities to begin Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning and provide start-up training and facilitate initial implementation. However, school food authorities shall not be subject to the provisions of § 210.19(a) for failure to comply with the nutrition standards established by paragraph (a) of this section or Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning established by paragraphs (k) and (l) of this section until School Year 1998–99. In addition, school food authorities that implement Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning prior to School Year 1998–99 shall be exempt from § 210.18(g)(2) until required implementation in School Year 1998–99.

(4) State agencies shall monitor implementation of Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning at the school food authority level in order to ensure proper compliance. Such monitoring shall include the State agency observation of the meal service to determine if meals claimed for reimbursement contain the appropriate number and type of menu items. FNS may review State agency evaluation criteria and monitoring procedures as part of any management evaluation review conducted during the implementation period.

(5) Beginning with School Year 1998–99, State agencies shall monitor compliance by school food authorities with the nutrition standards in paragraph (a) of this section in accordance with the requirements of § 210.19(a).

9. In the newly redesignated § 210.10a:

a. The section heading is revised; and

b. The table in paragraph (c) is amended by revising the "Milk" description under "Food Components and Food Items:".

The revisions read as follows:

§ 210.10a Lunch components and quantities for the meal pattern, lunches for very young children and meal supplements.

* * * * *

(c) *Minimum required lunch quantities.* * * *

School Lunch Pattern-per Lunch Minimums

Food Components and Food Items	
Milk (as a beverage):	
Fluid whole milk and fluid unflavored lowfat milk must be offered; (Flavored fluid milk, skim milk or buttermilk optional).	

* * * * *

10. In 210.14, paragraph (c) is revised to read as follows:

§§ 210.14 Resource management.

* * * * *

(c) *Financial assurances.* The school food authority shall meet the requirements of the State agency for compliance with § 210.19(a) including any separation of records of nonprofit school food service from records of any other food service which may be operated by the school food authority as provided in paragraph (a) of this section.

* * * * *

11. In 210.15:

a. Paragraph (b)(2) is revised;

b. Paragraph (b)(3) is amended by removing the reference to "210.10(b) of this part" and adding in its place the words "§ 210.10(a) or § 210.10a(b), whichever is applicable"; and

c. Paragraph (b)(4) is removed and paragraph (b)(5) is redesignated as paragraph (b)(4).

The revision reads as follows:

§ 210.15 Reporting and recordkeeping.

* * * * *

(b) *Recordkeeping summary.* * * *

(2) Production and menu records as required under § 210.10a and production, menu and nutrition analysis records as required under § 210.10, whichever is applicable.

* * * * *

12. In 210.16:

a. Paragraph (b)(1) is amended by adding the words "developed in accordance with the provisions of § 210.10 or § 210.10a, whichever is applicable," after the words "21-day cycle menu" whenever they appear, and

b. The first sentence of paragraph (c)(3) is revised to read as follows:

§ 210.16 Food service management [Reserved].

* * * * *

(c) * * *

(3) No payment is to be made for meals that are spoiled or unwholesome at time of delivery, do not meet detailed specifications as developed by the school food authority for each food component/menu item specified in § 210.10 or 210.10a, whichever is applicable, or do not otherwise meet the requirements of the contract. * * *

* * * * *

§ 210.18 [Amended]

13. In 210.18:

a. Paragraph (c) introductory text is amended by removing the number "4" in the phrase "4-year review cycle" wherever it appears and adding in its place the number "5";

b. The first sentence of paragraph (c)(1) is amended by removing the number "4" in the phrase "4-year review cycle" and adding in its place the number "5" and by removing the number "5" in the phrase "every 5 years" and adding in its place the number "6";

c. Paragraph (c)(2) is amended by removing the number "4" in the phrase "4-year cycle" and adding in its place the number "5";

d. Paragraph (c)(3) is amended by removing the number "5" in the phrase "5-year review interval" and adding the number "6" in its place;

e. Paragraph (d)(3) is amended by removing the reference to "210.19(a)(4)" and adding in its place a reference to "210.19(a)(5)", and

f. Paragraph (h)(2) is amended by removing the reference "§ 210.10" and adding in its place a reference to "§ 210.10a".

14. In 210.19:

a. Paragraphs (a)(1) through (a)(5) are redesignated as paragraphs (a)(2) through (a)(6), respectively, and a new paragraph (a)(1) is added;

b. Newly redesignated paragraph (a)(2) is revised;

c. The last sentence in newly redesignated paragraph (a)(3) is revised,

d. The number "4" in the second sentence of newly redesignated paragraph (a)(6) is removed and the number "5" is added in its place;

e. The second sentence of paragraph (c) introductory text is revised;

f. A new sentence is added at the end of paragraph (c)(1);

g. The reference to "§ 210.10" in paragraph (c)(6)(i) is removed and a reference to "§ 210.10a" is added in its place; and

h. The word "or" is removed at the end of paragraph (c)(6)(i), the period at the end of paragraph (c)(6)(ii) is removed and "; or" is added in its place, and a new paragraph (c)(6)(iii) is added.

The additions and revisions read as follows:

§ 210.19 Additional responsibilities.

(a) *General Program management.*

* * *

(1) *Compliance with nutrition standards.* At a minimum, beginning with School Year 1998–99, school food authorities shall meet the nutrition standards established in § 210.10(a) for reimbursable meals.

(i) Beginning with School Year 1998–99, State agencies shall evaluate compliance with the established nutrition standards over a school week. At a minimum, these evaluations shall be conducted once every 5 years and may be conducted at the same time a school food authority is scheduled for an administrative review in accordance with § 210.18. State agencies may also conduct these evaluations in conjunction with technical assistance visits, other reviews, or separately. The State agency shall assess the nutrient analysis for the last completed school week to determine if the school food authority is applying the methodology provided in § 210.10 (k) or (l), as appropriate. Part of this assessment shall be an independent review of menus and production records to determine if they correspond to the analysis conducted by the school food authority and if the menu, as offered, over a school week, corresponds to the nutrition standards set forth in § 210.10(a).

(ii) If the menu for the school week fails to meet any of the nutrition standards set forth in § 210.10(a), the school food authority shall develop, with the assistance and concurrence of the State agency, a corrective action plan designed to rectify those deficiencies. The State agency shall monitor the school food authority's execution of the plan to ensure that the terms of the corrective action plan are met.

(iii) If a school food authority fails to meet the terms of the corrective action plan, the State agency shall determine if the school food authority is working towards compliance in good faith and, if so, may renegotiate the corrective action plan, if warranted. However, if the school food authority has not been acting in good faith to meet the terms of the corrective action plan and refuses to renegotiate the plan, the State agency shall determine if a disallowance of reimbursement funds as authorized under paragraph (c) of this section is warranted.

(2) *Assurance of compliance for finances.* Each State agency shall ensure that school food authorities comply with the requirements to account for all revenues and expenditures of their nonprofit school food service. School food authorities shall meet the requirements for the allowability of nonprofit school food service expenditures in accordance with this part and, as applicable, 7 CFR part 3015. The State agency shall ensure compliance with the requirements to limit net cash resources and shall provide for approval of net cash resources in excess of three months' average expenditures. Each State agency shall monitor, through review or audit or by other means, the net cash resources of the nonprofit school food service in each school food authority participating in the Program. In the event that net cash resources exceed 3 months' average expenditures for the school food authority's nonprofit school food service or such other amount as may be approved in accordance with this paragraph, the State agency may require the school food authority to reduce the price children are charged for lunches, improve food quality or take other action designed to improve the nonprofit school food service. In the absence of any such action, the State agency shall make adjustments in the rate of reimbursement under the Program.

(3) *Improved management practices.* * * * If a substantial number of children who routinely and over a period of time do not favorably accept a particular menu item; return foods; or choose less than all food items/components or foods and menu items as authorized under § 210.10(e)(4)(ii) or § 210.10a(e), poor acceptance of certain menus may be indicated.

* * * * *

(c) *Fiscal action.* * * * State agencies shall take fiscal action against school food authorities for Claims for Reimbursement that are not properly payable under this part including, if warranted, the disallowance of funds for failure to take corrective action in accordance with paragraph (a)(1) of this section. * * *

(1) *Definition.* * * * Fiscal action also includes disallowance of funds for failure to take corrective action in accordance with paragraph (a)(1) of this section.

* * * * *

(6) *Exceptions.* * * *

(iii) When any review or audit reveals that a school food authority's failure to meet the nutrition standards of § 210.10 is unintentional and the school food authority is meeting the requirements of a corrective plan developed and agreed to under paragraph (a)(1)(ii) of this section.

* * * * *

Appendix A to Part 210 [Amended]

15. In Appendix A to part 210, Alternate Foods for Meals, under Enriched Macaroni Products with Fortified Protein, the first sentence of paragraph 1(a) is amended by removing the reference to "§ 210.10" and adding in its place a reference to "§ 210.10a".

16. In Appendix A, Alternate Foods for Meals, under Cheese Alternate Products,

a. Introductory paragraph 1 is amended by removing the reference to "§ 210.10" and adding in its place a reference to "§ 210.10a"; and

b. Paragraph 1(d) is amended by removing the reference to "§ 210.10" and adding in its place a reference to "§ 210.10a".

17. In Appendix A, Alternate Foods for Meals, under Vegetable Protein Products:

a. Introductory paragraph 1 is amended by removing the reference to "210.10" and adding in its place a reference to "210.10a";

b. The second sentence of paragraph 1(d) is amended by removing the reference to "210.10" and adding in its place a reference to "210.10a" ;

c. The first sentence of paragraph 1(e) is amended by removing the reference to "210.10" and adding in its place a reference to "210.10a" ; and

d. The first sentence of paragraph 3 is amended by removing the reference to "§ 210.10" and adding in its place a reference to "§ 210.10a".

18. In Appendix C to Part 210, Child Nutrition Labeling Program:

a. Paragraph 2(a) is amended by removing the reference to "210.10" and adding in its place a reference to "210.10a";

b. The first sentence of paragraph 3(c)(2) is amended by removing the reference to "210.10" and adding in its

place a reference to "210.10a" and by removing the reference to "220.8" and adding in its place a reference to "220.8a"; and

c. The second sentence of paragraph 6 is amended by removing the reference to "210.10" and adding in its place a reference to "210.10a" and by removing the reference to "220.8" and adding in its place a reference to "220.8a".

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation is revised to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In 220.2:

a. Paragraph (b) is amended by adding the words "or § 220.8a, whichever is applicable," after the reference to "§ 220.8";

c. Paragraph (m), previously reserved, is added;

d. A new paragraph (p–1) is added;

e. Paragraph (t) is amended by adding the words "or § 220.8a, whichever is applicable," after the reference to "§ 220.8"; and

f. A new paragraph (w–1) is added

The additions read as follows:

§ 220.2 Definitions.

* * * * *

(m) *Menu item* means, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, any single food or combination of foods. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards provided in § 220.8(b), except for those foods that are considered as foods of minimal nutritional value as provided for in § 220.2(i–1) which are not offered as part of a menu item in a reimbursable meal. For the purposes of a reimbursable meal, a minimum of three menu items must be offered, one of which must be an entree (a combination of foods or a single food item that is offered as the main course) and one must be fluid milk.

* * * * *

(p–1) *Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning* means a way to develop meals based on the analysis of nutrients which would require school breakfasts, when averaged over a school week, to meet specific levels for a set of key nutrients and calories rather than a specific set of food categories. Analysis of the menu items and foods shall be based on averages that will be weighted by production quantities as offered to the students. Such analysis is normally done by a school or a school food authority. However, for the purposes of Assisted Nutrient Standard Menu Planning, menu planning and analysis is completed by other entities and shall incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority.

* * * * *

(w–1) *School week* means the period of time used as the basis for determining nutrient levels of the menu and for conducting Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning for breakfasts. The period week shall be a minimum of three days and a maximum of seven days. Weeks in which breakfasts are offered less than three times shall be combined with either the previous or the coming week.

* * * * *

§ 220.7 [Amended]

3. In 220.7, paragraph (e)(2) is amended by adding the words "or § 220.8a, whichever is applicable," after the reference to "§ 220.8".

§ 220.8 [Redesignated as § 220.8A]

4. Section 220.8 is redesignated as § 220.8a and a new § 220.8 is added to read as follows:

§ 220.8 Nutrition standards for breakfast and menu planning systems.

(a) *Breakfasts for very young children.* Meals for infants and very young children (ages birth to 24 months) who are participating in the Program shall meet the requirements in § 220.8a(a), (b) and (c).

(b) *Nutrition standards for breakfasts for children age 2 and over.* School food authorities shall ensure that participating schools provide nutritious and well-balanced breakfasts to children age 2 and over based on the nutrition standards provided in this section. For the purposes of this section, the nutrition standards are:

(1) Provision of one-fourth of the Recommended Dietary Allowances (RDA) of protein, calcium, iron, vitamin A and vitamin C to the applicable age groups in accordance with the *Minimum Nutrient Levels for School Breakfasts* in paragraph (e)(1) of this section;

(2) Provision of the breakfast energy allowances for children in accordance with the age groups in the *Minimum Nutrient Levels for School Breakfasts* in paragraph (e)(1) of this section;

(3) The applicable 1990 Dietary Guidelines for Americans which are

(i) Eat a variety of foods;

(ii) Limit total fat to 30 percent of calories;

(iii) Limit saturated fat to less than 10 percent of calories;

(iv) Choose a diet low in cholesterol;

(v) Choose a diet with plenty of vegetables, fruits, and grain products; and

(vi) Use salt and sodium in moderation; and

(4) The following measures of compliance with the 1990 Dietary Guidelines for Americans:

(i) A limit on the percent of calories from total fat to 30 percent based on the actual number of calories offered;

(ii) A limit on the percent of calories from saturated fat to less than 10 percent based on the actual number of calories offered;

(iii) A reduction of the levels of sodium and cholesterol; and

(iv) An increase in the level of dietary fiber.

(c) *General requirements for school breakfasts for children age 2 and over.* (1) In order to qualify for reimbursement, breakfasts, as offered by participating schools, shall, at a minimum, meet the nutrition standards in paragraph (b) of this section when averaged over each school week.

(2) School food authorities shall ensure that each breakfast is priced as a unit. Except as otherwise provided herein, school food authorities shall ensure that sufficient quantities of menu items and foods are planned and produced so that breakfasts meet, at a minimum, the nutrition standards in paragraph (b) of this section.

(3) School food authorities shall ensure that breakfasts are planned and produced on the basis of participation trends, with the objective of providing one reimbursable breakfast per child per day. Any excess breakfasts that are produced may be offered, but shall not be claimed for reimbursement under § 220.9.

(d) *Nutritional criteria for breakfasts for children age 2 and over.* In order to receive reimbursement, school food authorities shall ensure that participating schools provide breakfasts to children age two and over in accordance with the nutrition standards in paragraph (b) of this section.

(1) The nutrients of breakfasts shall, when averaged over each school week, meet the requirements in the table *Minimum Nutrient Levels for School Breakfasts*, in paragraph (e)(1) of this section for children of each age group.

(2) Production, menu and nutritional analysis records shall be maintained by schools to demonstrate that breakfasts as offered meet the nutrition standards provided in paragraph (b) of this section and the nutrient levels for children of each age group in the table, *Minimum*

Nutrient Levels for School Breakfasts, in paragraph (e)(1) of this section.

(3) Schools with children age 2 who participate in the program shall ensure that the nutrition standards in paragraph (b) of this section are met except that, such schools have the option of either using the RDA and calorie levels for children ages 3–6 in the table, *Minimum Nutrient Levels for School Breakfasts*, in paragraph (e)(1) of this section or developing separate requirements for this age group. The methodology for determining such levels will be available in menu planning guidance material provided by FNS.

(e) *Requirements for meals for children ages 3–17.* (1) Schools that are able to offer meals to children based on nutrient levels reflecting one of the four age level in the table in this paragraph should do so. Schools that cannot offer meals to children on the basis of age levels in the table in this paragraph shall, under Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning, adjust the established levels following guidance by FNS or, if only one age is outside the established level, use the level provided for the majority of children. Schools shall ensure that breakfasts are offered with the objective of providing the per breakfast minimums for each age level as specified in the following table:

MINIMUM NUTRIENT LEVELS FOR SCHOOL BREAKFASTS

Nutrients and Energy Allowances	Group I ages 3–6 years	Group II ages 7–10 years	Group III ages 11–13 years	Group IV ages 14–17 years
Energy allowances/calories	419	500	538	625
Total fat (as a percent of actual total food energy)	(1)	(1)	(1)	(1)
Total saturated fat (as a percent of actual total food energy)	(2)	(2)	(2)	(2)
RDA for protein (g)	5.50	7.00	11.25	12.50
RDA for calcium (mg)	200	200	300	300
RDA for iron (mg)	2.5	2.5	3.4	3.4
RDA for vitamin A (RE)	119	175	225	225
RDA for vitamin C (mg)	11.00	11.25	12.50	14.40

[1] Less than or equal to 30% of actual calories offered.
[2] Less than 10% of actual calories offered.

(2) A reimbursable breakfast shall include a minimum of three menu items as defined in § 220.2(m), one of which shall be fluid milk as a beverage, offered on cereal, or a combination of both. All menu items or foods offered as part of the reimbursable meal may be considered as contributing towards meeting the nutrition standards, except for those foods that are considered foods of minimal nutritional value as provided for in § 210.2(i–1) which are not offered as part of a menu item in a reimbursable meal. Breakfasts, as offered, shall independently meet the established nutrient standards when averaged over a school week.

(f) *Milk requirement for children ages 2–17.* A serving of milk as a beverage or on cereal or used in part for each purpose shall be a menu item for school breakfasts. Schools shall comply with the minimum required serving sizes for milk in § 220.8a(a)(2) and with the other requirements for milk in § 220.8a(d) and § 220.8a(g).

(g) *Offer versus serve.* Each participating school shall offer its students at least three menu items as required by paragraph (e)(2) of this section. Under offer versus serve, senior high students are required to take at least two of the three menu items. At the discretion of the school food authority, students below the senior high level may also participate in offer versus serve. The price of a reimbursable breakfast shall not be affected if a student declines menu items or accepts smaller portions. State educational agencies shall define "senior high."

(h) *Choice.* To provide variety and to encourage consumption and participation, schools should, whenever possible, provide a selection of foods and types of milk from which children may make choices. When a school offers a selection of more than one type of breakfast or when it offers a variety of foods and milk for choice as a reimbursable breakfast, the school shall offer all children the same selection regardless of whether the children are eligible for free or reduced price breakfasts or pay the school food authority designated full price. The school may establish different unit prices for each type of breakfast offered provided that the benefits made available to children eligible for free or reduced price breakfasts are not affected.

(i) *Substitutions.* Schools shall make substitutions for students who are considered to have disabilities under 7 CFR part 15b in accordance with § 220.8a(f).

(j) *Nutrient Standard Menu Planning/ Assisted Nutrient Standard Menu Planning for children age 2–17.* In order to assure that school breakfasts meet the nutritional standards provided in paragraph (b) of this section, nutrient analysis shall be conducted on all foods offered as part of a reimbursable meal. Such analysis shall be over the course of each school week. The school food authority shall either independently conduct Nutrient Standard Menu Planning or shall request that the State agency allow Assisted Nutrient Standard Menu Planning.

(1) *The National Nutrient Database and software specifications.* (i) Nutrient analysis shall be based on information provided in the National Nutrient Database for Child Nutrition Programs. This database shall be incorporated into software used to conduct nutrient analysis. Upon request, FNS will provide information about the database to software companies that wish to develop school food service software systems.

(ii) Any software used to conduct nutrient analysis shall be evaluated and, as submitted, been determined to meet the minimum requirements established by FNS. However, such review does not constitute endorsement by FNS or USDA. Such software shall provide the capability to perform all functions required after the basic data has been entered including calculation of weighted averages as required by (j)(2) of this section.

(2) *Determination of weighted averages.* (i) Foods offered as part of a reimbursable meal shall be analyzed based on menu items, portion sizes, and projected serving amounts and shall be weighted based on their proportionate contribution to the meals. Therefore, foods more frequently selected will contribute more nutrients than foods which are less frequently selected. Such weighting shall be done in accordance

with guidance issued by FNS as well as that provided by the software used.

(ii) An analysis of all menu items and foods offered in the menu over each school week shall be computed for calories and for each of the following nutrients: Protein; vitamin A; vitamin C; iron; calcium; total fat; saturated fat; and sodium. The analysis shall also include the dietary components of cholesterol and dietary fiber.

(3) *Comparing average daily levels.* Once the procedures of paragraph (j)(2) of this section have been completed, the results shall be compared to the appropriate age group level for each nutrient and for calories in the table, *Minimum Nutrient Levels for School Breakfasts,* in paragraph (e)(1) of this section. In addition, comparisons shall be made to the nutrition standards provided in paragraph (b) of this section in order to determine the degree of conformity.

(4) *Adjustments based on students' selections.* The results obtained under paragraph (j)(2) of this section shall be used to adjust future menu cycles to accurately reflect production and student selections. Menus will require further analysis and comparison, depending on the results obtained in paragraph (j)(2) of this section when production and selection patterns change. The school food authority may need to consider modifications to the menu items and foods offered based on student selections as well as modifications to recipes and other specifications to ensure that the nutrition standards in paragraph (b) of this section are met.

(5) *Standardized recipes.* Under Nutrient Standard Menu Planning, standardized recipes shall be developed and followed. A standardized recipe is one that was tested to provide an established yield and quantity through the use of ingredients that remain constant in both measurement and preparation methods. USDA/FNS standardized recipes are included in the National Nutrient Database for the Child Nutrition Programs. In addition, local standardized recipes used by school food authorities shall be analyzed for their calories, nutrients and dietary components and added to the local database by that school food authority.

(6) *Processed foods.* Unless already included in the National Nutrient Database, the calorie amounts, nutrients and dietary components, in accordance with paragraph (j)(2)(ii) of this section, of purchased processed foods and menu items used by the school food authority shall be obtained by the school food authority or State agency and incorporated into the database at the local level in accordance with FNS guidance.

(7) *Substitutions.* If the need for serving a substitute food(s) or menu item(s) occurs at least two weeks prior to serving the planned menu, the revised menu shall be reanalyzed based on the changes. If the need for serving a substitute food(s) or menu item(s) occurs two weeks or less prior to serving the planned menu, no reanalysis is required. However, to the extent possible, substitutions should be made using similar foods.

(k) *Assisted Nutrient Standard Menu Planning.* (1) For school food authorities without the capability to conduct Nutrient Standard Menu Planning, as provided in paragraph (j) of this section, menu cycles developed by other sources may be used. Such sources may include but are not limited to the State agency, other school food authorities, consultants, or food service management companies.

(2) Assisted Nutrient Standard Menu Planning shall establish menu cycles that have been developed in accordance with paragraphs (j)(1) through (j)(6) of this section as well as local food preferences and local food service operations. These menu cycles shall incorporate the nutrition standards in paragraph (b) of this section and the Minimum Nutrient Levels for School Breakfasts in paragraph (e)(1) of this section. In addition to the menu cycle, recipes, food product specifications and preparation techniques shall also be developed and provided by the entity furnishing Assisted Nutrient Standard Menu Planning to ensure that the menu items and foods offered conform to the nutrient analysis determinations of the menu cycle.

(3) If a school food authority requests Assisted Nutrient Standard Menu Planning, the State agency shall determine if it is warranted. At the inception of any approved use of Assisted Nutrient Standard Menu Planning, the State agency shall approve the initial menu cycle, recipes, and other specifications to determine that all required elements for correct nutrient standards and analysis are incorporated. The State agency shall also, upon request, provide assistance with implementation of the chosen system.

(4) After the initial service, the nutrient analysis shall be reassessed in accordance with paragraph (j)(2) of this section and appropriate adjustments made.

(5) Under Assisted Nutrient Standard Menu Planning, the school food authority retains final responsibility for ensuring that all nutrient standards established in paragraph (b) of this section are met.

(l) *Compliance with the nutrition standards.* If the analysis conducted in accordance with paragraphs (j) and (k) of this section shows that the menus offered are not in compliance with the nutrition standards established in paragraph (b) of this section, actions, including technical assistance and training, shall be taken by the State agency, school food authority, or school, as appropriate, to ensure that the breakfasts offered to children comply with the established nutrition standards.

(m) *Nutrition disclosure.* School food authorities are encouraged to make information available indicating efforts to meet the nutrition standards in paragraph (b) of this section, such as publicizing the results of the nutrient analysis of the school week menu cycle.

(n) *Implementation of nutrition standards and Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning.* (1) At a minimum, the provisions of this section requiring compliance with the nutrition standards in paragraph (b) of this section shall be implemented no later than the beginning of School Year 1998–99. However, schools and/or school food authorities may begin to implement any or all of the provisions in this section with prior approval of the State agency.

(2) Prior to School Year 1998–99, State agencies shall require school food authorities/schools to implement Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning for the School Breakfast Program at the same time it is implemented for the National School Lunch Program and in accordance with the terms of § 210.10(o) of this chapter.

5. The section heading of newly redesignated § 220.8a is revised to read as follows:

§ 220.8a Breakfast components and quantities for the meal pattern and for very young children.

* * * * *

§ 220.9 [Amended]

6. In § 220.9, the first sentence of paragraph (a) is amended by adding the words "or 220.8a, whichever is applicable," after the reference to "§ 220.8".

§ 220.14 [Amended]

7. In § 220.14, paragraph (h) is amended by removing the reference to "§ 220.8 (a)(1)" and adding in its place a reference to "§ 220.8a(a)(1)".

Appendix A to Part 220 [Amended]

8. In Appendix A to part 220, Alternate Foods for Meals, under

Formulated Grain-Fruit Products, paragraph 1(a) is amended by removing the reference to "§ 220.8" and adding in its place a reference to "§ 220.8a".

Appendix C to Part 220 [Amended]

9. In Appendix C to part 220, Child Nutrition (CN) Labeling Program:

a. Paragraph 2(a) is amended by removing the reference to "210.10" and replacing it with a reference to "210.10a";

b. The first sentence of paragraph 3(c)(2) is amended by removing the reference to "210.10" and adding in its place a reference to "210.10a" and by removing the reference to "220.8" and adding in its place a reference to "220.8a"; and

c. The second sentence of paragraph 6 is amended by removing the reference to "210.10" and adding in its place a reference to "210.10a" and by removing the reference to "220.8" and adding in its place a reference to "220.8a".

Dated: June 6, 1994

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

Regulatory Cost/Benefit Assessment

1. *Title:* National School Lunch and School Breakfast Program: Nutrition Objectives for School Meals.

2. *Background:* This rule proposes to amend the regulations outlining the nutrition standards for the National School Lunch and School Breakfast Programs. Specifically, this proposal would update the current nutrition standards to incorporate the Dietary Guidelines for Americans, which reflect medical and scientific consensus on proper nutrition as a vital element in disease prevention and long term health promotion.[1] This proposal would also adopt meal planning based on analysis of key nutrients (Nutrient Standard Menu Planning or Assisted Nutrient Standard Menu Planning) in lieu of the current meal pattern. These changes would be implemented no later than July 1, 1998. In recognition of the importance of reinventing and streamlining government programs, this proposal would also reduce various burdens associated with the school meal programs and would modify the review requirements for the National School Lunch Program to ensure adequate oversight of the proposed updated nutrition standards.

3. *Statutory Authority:* National School Lunch Act (42 U.S.C. 1751–1760, 1779) and Child Nutrition Act of 1966 (42 U.S.C. 1773, 1779).

*Footnotes appear at end of docket

4. *Cost/Benefit Assessment of Economic and Other Effects:*

a. Costs To Produce a Meal:

A nationally representative sample included in the School Lunch and Breakfast Cost Study found an average food cost of $0.72 for school meals prepared under the current meal pattern, rounded to the nearest whole cent. Cost data from this study were used to estimate the cost of two weeks of sample menus developed under the requirements for Nutrient Standard Menu Planning in the proposed rule. The analysis found an average food cost of $0.72 per meal when rounded to the nearest whole cent[2]. These sample menus were developed for elementary and high school students using foods and recipes common to the National School Lunch Program (NSLP). When planning the sample menus, milk was constrained to provide eight fluid ounces with each meal, to include milks of various fat levels and a mix of flavored and unflavored milk. Additional weeks of menus could have been developed at similar cost, but analysis of two weeks of sample menus was deemed sufficient to demonstrate that nutrient targets could be met at current food cost. It would also have been possible to have further reduced the cost of the sample menus, for example by substituting lower cost items or using smaller portions of relatively expensive items such as yogurt and fish sticks. The lower end of the cost range of sample menus was about 28 percent below the two week average food cost. The sample menus were developed using foods and recipes already in common use in NSLP, such as those from "Quantity Recipes for School Food Service"[3]. They did not reflect the potential savings which may be realized when market forces stimulate development of new lower fat foods and recipes. Increased demand for foods lower in fat, saturated fat, sodium and cholesterol are expected to increase availability of these foods in the future. Such new foods and recipes should provide greater flexibility to NSLP menu planners, and may facilitate further moderation of meal cost and food components such as sodium and cholesterol where appropriate.

The sample menus include ingredients that are fresh and those that are processed into more convenient, labor saving forms, such as frozen. Examples of processed foods used in the sample menus include popular food items, pizza and chicken nuggets. Although these items were used less often than currently offered, by using foods and recipes common to the NSLP, the sample menus look similar to meals currently offered to students. By their preexisting use in NSLP, school food service personnel have already demonstrated that these food items can be prepared in the time available to prepare current school lunches, and similarly indicate that the staff with the skills needed to prepare these foods are already available. In addition, the equipment needed for food storage and preparation is either already available, or schools operating under the present rules have demonstrated that such equipment can be obtained within the existing reimbursement rates. Therefore, even though the costs of labor, equipment, and administration were not specifically analyzed, the manner in which the sample menus were developed provides confidence that non-food costs of the NSMP sample menus are expected to be similar to those already experienced in NSLP operation. FNS will continue to explore cost impacts. The evaluation of the Nutrient Standard Menu Planning Demonstration will examine the reported costs of school food service operations associated with implementing NSMP. This evaluation will examine total meal production costs and will analyze separate components (food, labor, other costs).

By definition, the average results reported above mean that some school districts would be expected to experience food costs for the sample menus that vary considerably from those reported above. This is not different from the current situation because there is already a wide range of food costs due to factors such as economies of size, geographic variation in delivery and labor costs, and local market conditions.

b. Market Effects

To estimate market effects a mathematical model was developed to incorporate information on the kinds, amounts, nutrient content, and costs of foods served in schools lunches. The model uses all of this information and seeks a solution which minimizes the changes in current amounts of foods served in NSLP meals and also meets the nutrition objectives set forth in the Dietary Guidelines and adds no additional costs to food purchases. The model constrains food offerings and recipes to those actually used in schools. However, the meal pattern is allowed to deviate from the current regulations regarding food groups and portion sizes as long as it meets at least one-third the RDA for all nutrients. In keeping with the principles of the Dietary Guidelines, the meals are also

restricted to no more than 30 percent of calories from total fat and less than 10 percent of calories from saturated fat.

The model can be specified to allow the amounts of all foods to vary, which permits substitution between high and low-fat beef as well as across other food groups such as pork, poultry, vegetables, and fruits. There are a vast number of possible scenarios which can be explored through this model, and the three discussed below have been selected as most useful in understanding the impacts of the proposed rule. In several of these scenarios the model is constrained to maintain the amounts or types of foods. In all three scenarios the volume of beverage milk is held constant at current consumption levels. This was done because milk will remain a required item under the proposed nutrition based menu planning system. The model minimizes the changes in the quantity of each item served and satisfies the nutrition and cost goals.

The model includes the following constraints for all scenarios: Food ingredient cost at average cost for NSLP meals; calories (⅓ of average energy allowance listed in the RDA report); total fat (not more than 30 percent of calories); saturated fat (less than 10 percent of calories); carbohydrate (not less than 50 percent of calories); cholesterol (not more than 100 mg); ⅓ of RDA level for the following select nutrients: protein, vitamins (vitamins A, B6, B12 and C, niacin, riboflavin, thiamin, folate), and minerals (calcium, iron, magnesium, phosphorus, and zinc); and milk (total volume and mix by fat content held constant at current levels). As described in greater detail below, scenario one is the basic model using these constraints, scenario two constrains all chicken to have the nutrient profile of low-fat chicken, and scenario three constrains the model to retain current levels for major commodity groups. The estimated changes in food items are then aggregated to national estimates based on the total number of school lunches served in FY–1993. Subsequently, the impact of these changes on agricultural markets are estimated using commodity market models developed by economists in the Economic Research Service.

Data

The study is based on the most recently available data on quantity and frequency of foods actually served in NSLP meals, detailed nutrient content of those foods, estimated food ingredient costs, and Recommended Dietary Allowances for micronutrients and Dietary Guidelines recommendations for fat and saturated fat.

Data on actual foods served in the NSLP were obtained from the 1993 USDA School Nutrition Dietary Assessment (SNDA) study conducted by Mathematica Policy Research for FNS. The study included a survey of about 3550 students in grades 1 through 12 in 545 schools throughout the country. The students reported detailed information on the kinds and amounts of foods and beverages they consumed during a 24-hour period. The impact analysis uses only the portion of the data on foods served to children as part of credited school lunches. It includes plate waste but excluded a la carte items, such as desserts, purchased in addition to the school lunch. The SNDA survey contained detailed information on over 600 food items served in the school lunch program. These items were aggregated into over 50 food groups based on the primary ingredient and the percent of calories from fat. For example, there were two beef categories: high-fat and low-fat beef; two poultry categories; etc.

Food items costs are estimated from ingredient cost data obtained in the 1993 School Lunch and Breakfast Cost Study conducted by Abt for FNS and recipes for school lunch items. The recipes were necessary for two reasons: Aggregation of ingredient costs to costs of food served, and for estimating the change in usage of the various agricultural commodities.

With respect to the agricultural economy, the amount of most foods served in NSLP meals is a small part of the total U.S. supply of agricultural commodities. For example, USDA and school district purchases of beef products account for less than two percent of the U. S. beef supply. Therefore, even the anticipated changes in the amounts of different foods served in the meals are expected to have minimal or no change in farm level prices.

Three alternative scenarios were examined to gauge market effects with alternative specific recommendations which could be implemented into the meals. All three scenarios meet dietary recommendations and the milk requirement with no change from the current per meal average food cost. Table 1 shows the total U.S. market in millions of pounds for various groups of commodities and the corresponding current school market size.

The three scenarios illustrate a range of market effects that could occur under alternative implementation assumptions. The first and third options demonstrate the range of market impacts associated with either minimizing the change in current food offerings or minimizing the change in commodity markets. The second scenario was designed to show how the results could change if lower fat preparation techniques were followed in only one of the commodity groups. Although chicken is used in this example, other commodities, such as beef or pork, might show similar changes if substitutions were made between high and low fat alternatives. Additional information on the constraints on the model imposed in each of the three scenarios is described in more detail below.

The three scenarios estimate impacts using current market prices for foods available and in use by schools. To the extent that products are reformulated to provide additional lower-fat products or lower-fat products become more widely available and affordable, the market impacts would change. The scenarios do not assume any product innovations. Similarly, food preparation techniques will play an important role in how the proposal would be implemented. Using lower fat preparation techniques would enable schools to continue to use foods at current levels because fat added during preparation would be reduced.

No single set of assumptions can adequately describe impacts under the proposed regulation. Schools have tremendous flexibility under nutrient standard menu planning to meet the dietary guidelines using the methods most appropriate to their circumstances. Schools can alter the mix of foods served within and among commodity groups. Changes in food preparation techniques could produce significant improvements in the nutritional profile of meals without any changes in the types of foods served. The model and the three scenarios examined show that changes in food preparation techniques for one commodity group can alter the results for other commodity groups. This occurs because the nutrient and cost targets are fixed. Nutritional improvement for one commodity group, such as a reduction in fat, both leaves more flexibility for other commodity groups to provide that food component within the established target, and, in the case of reduction of fat, required additional calories from some source to meet the calorie target.

The first scenario, "Minimum change in current offerings", established the amounts of foods from each of 52 groups required to meet the dietary, cost, and milk requirements with as little deviation as possible from the current eating choices of the children. It also required the consumption of low-fat,

medium-fat and whole milk to stay at the same levels as current consumption. The 52 groups include separate groups for high and low fat versions of food items and dishes. This scenario allows for substitutions among these and other groups.

The second scenario, using poultry as the example, shows how the results change if lower fat preparation techniques were used in one food category while holding food preparation techniques in other categories constant. High-fat poultry preparation techniques (such as chicken nuggets) were entirely replaced with lower fat techniques (such as baked or broiled chicken parts). As noted previously, other commodities might show similar changes if substitutions were made between high and low fat alternatives.

For the third scenario, the analysis model was modified to present a "No change in commodity markets" scenario where food commodity groups were restricted to their current level of use in the NSLP (with the exception of butter). The consumption of the various foods served were allowed to fluctuate within the commodity groups. For example, beef could be consumed alone or in a mixture such as lasagna, but the total level of beef served was required to be the same as is currently being served. In general, this adaptation required that low-fat foods be chosen within food groups. Notable exceptions included serving high-fat chicken and potatoes, probably due to the need to obtain sufficient calories. Also, the cost became more of a constraining factor in this scenario. Many of the higher fat or costly foods were eliminated from the solution. Some of the changes included:

- Serving milk containing less than 17 percent of kilocalories from fat (skim and one-percent);
- Serving beef in mixtures such as chili rather than as roasts, steaks, or hamburger patties;
- Serving low-fat pork products such as ham instead of ribs or bacon;
- Serving more meat mixtures such as chili and fewer grain mixtures such as pizza; and
- Serving more fruits and less fruit juices.

This analysis shows that the impact of the school lunch proposed rule on the major commodity markets and related farm programs would be minimal. Commodity prices, producer marketings and receipts, and farm program outlays under any of the scenarios would not vary significantly from the levels projected in the USDA 10-year Baseline Projections.

The proposed rule's limited impact reflects several factors including:

- The share of commodities used in the school lunch program is typically quite small compared to total U.S. disappearance. Hence changes in school lunch offerings have to be very large before they affect the commercial market.
- For the first scenario, changes in school lunch menus were designed both to meet the nutritional guidelines and to minimize changes in children's food choices. While this was done to reflect children's taste/preference, it has a moderating effect on changes in the commodity composition of school lunches as well as a minimum change in food service offerings.
- The second and third scenarios demonstrate that there is considerable potential for substitutions within food groups (e.g., shifting from conventional to healthier products in the same food group) and for changing food preparation techniques to improve nutritional value (e.g., shifting from fried to roasted chicken). The modified menus took advantage of these options. Changes in food preparation techniques and use of healthier products in the same food group would minimize agricultural impacts.

Individual commodity market impacts of scenarios one and two are described in greater detail below. These should be interpreted with the understanding that scenario three shows that it is possible to achieve the dietary, food cost and milk requirements with no change in commodity markets other than butter. The information presented reflects estimates of market impacts under full implementation of the proposed regulation.

Dairy Impacts

The impacts of the proposed rule differ across the fluid milk, butter, and cheese components of the dairy sector. The modified menus hold milk offerings constant but reduce cheese and eliminate butter. Hence, the major impacts would be in the processed product markets rather than the fluid market.

School lunch use of butter is eliminated in the three scenarios; the modified menus would annually displace 50–55 million pounds of butter in a 1.0 billion pound U.S. market. The dairy program activity expected under the baseline projections would keep the impact of this decline on producer prices, incomes, and government farm programs minimal. Virtually all of the displaced butter is donated by the Commodity Credit Corporation (CCC) from stocks acquired as part of its price support operations; purchases occur at the levels needed to support manufacturing milk prices at legislated levels and minimize stock holding. The school lunch volume is small enough compared to total CCC purchases and other disposal programs that the butter in question would continue to be acquired under the proposed rule but be donated to other institutions or sold concessionally or donated abroad. Hence, butter impacts would ultimately be minimal.

The impact of the proposed rule on the cheese market could be more pronounced but still limited. This is because the volume differences in the use of cheese between the baseline and the scenarios one and two is larger and most of the cheese used in the school lunch program is bought on the open market rather than donated from CCC stocks. But the annual 80–90 million pound decline in cheese disappearance associated with these scenarios would account for less than a 1 percent drop in U.S. cheese disappearance. This would lower farm milk prices 7 to 8 cents per hundredweight causing a decline in production and lower farm revenues from milk by $150-$200 million annually (from a 1990–93 base of $19.5 billion). CCC dairy program costs would increase by an estimated $20 to $25 million annually. Hence, even for cheese, the impacts on the dairy sector and the budget would be relatively small. As scenario two demonstrates for chicken, a more pronounced shift towards use of lower fat cheese or other lower fat items in schools could further moderate these impacts. Under scenario 3 there would be no reduction in cheese.

Meat Sector Impacts: Broilers and Turkeys

The impact of the proposed school lunch rule on the broiler market is expected to be modest under the first and second scenarios. Broiler offerings in the school lunch program would decline 120 million pounds under the first scenario and increase 38 million pounds under the second. The current school lunch use of 245 million pounds is a small share of the total U.S. market of 19.9 billion pounds. Hence, a 120 million pound reduction would lower broiler prices 1.8 percent and reduce farm revenues by 1.2 percent. The second scenario uses chicken as an example of how a large shift towards low-fat preparation (e.g., from fried to broiled) could moderate shifts in commodity usage. If purchases are increased by 38 million pounds as provided for under the second scenario broiler prices would increase 0.4 percent and revenues rise by 0.2

percent. There are no direct government programs for the industry.

The impact of the proposed rule on the turkey market is expected to be modest under scenarios 1 and 2. Total use of turkey meat would decline 52 million pounds under one scenario and increase 16 million pounds under the [illegible]. The [illegible] .07 million pounds is a small share of the total U.S. market of 4.6 billion pounds. Hence, turkey prices would decrease 2 percent on [illegible] the second. Producer revenues decrease [illegible] $75 million under the first scenario and increase $4 million under the second scenario—less than 0.01 percent in either case. There are no direct government programs for the turkey industry. Again, under scenario 3 there would be no change in either broilers or [illegible].

Meat Sector Impacts: Beef and Pork

The impact of the proposed rule on the beef market is expected to be minimal under the first and second scenarios. School lunch offerings of beef would decline 100–125 million pounds from 485 million pounds currently, in a total U.S. market of 24 billion pounds. This school lunch decline would reduce the farm level market price for beef by less than 1 percent and result in a 0.5 percent reduction in beef producers' revenues. A slightly larger reduction (126 million pounds) in beef offerings under the second scenario would result in approximately the same reduction in wholesale beef prices and farm revenues. There are no direct government programs related to the beef industry; hence, the changes likely under the proposed rule have no direct federal budget implications. As scenario two demonstrates for chicken, a more pronounced shift towards the use of lower-fat beef, lower-fat beef preparation, or other lower-fat items in schools could further moderate impacts [illegible] scenario 3 there would be no reduction.

The impact of the proposed school lunch rule on the pork market is also expected to be minimal under the first and second scenarios. This is because much of the pork already used in the school lunch program is lean pork such as ham. Total use of pork in the school lunch program would increase 16 million pounds or less under the first and second scenarios. The school lunch program's current use of 280 million pounds represents a small fraction of the total U.S. market of 17.1 billion pounds. Hence, the 16 million pound increase would boost prices a minimal 0.2 percent. Farm revenues would increase $11 million or 0.1 percent of their existing revenues. There are no government support programs directly associated with the pork industry and hence no budget implications.

Fruit, Vegetable, and Potato Market Impacts

The impacts of the proposed rule on the fruit, vegetable, and potato markets would be small under the first and second scenarios. Schools use these products in a variety of forms, including fresh, frozen, canned, and components of commodity processed products. Total usage of fruits in the school lunch program would increase 70 million pounds under the first scenario and over 1.1 billion pounds under the second. Both represent less than 2 percent of the 61.1 billion pound U.S. fruit market. Under scenario one, prices would increase 0.1 percent and farm revenues increase 1.2 percent or $124 million on a $10.2 billion market. Impacts under the second scenario are slightly larger, with prices up 0.2 percent and revenues up $200 million.

Use of vegetables in the program would increase 80 million pounds under the first scenario and 35 million pounds under the second in a 71 billion pound U.S. market. Under the first and second scenarios, price increases would be negligible and farm revenue gains would be $5–12 million or less than 0.1 percent of industry revenues. Use of potatoes in the program would decline 298 million pounds under the first and second scenarios in response to fewer french fry offerings. These reductions are expected to have a little or no impact on the 34 billion pound U.S. potato market. Reduced potato usage would result in 0.1 percent decline in potato prices and a comparable $20 million reduction in farm revenues. The School Nutrition Dietary Assessment Study found that potatoes are often fried or prepared with a significant amount of added fat. The sample menus developed for the food use analysis show that lower-fat potato dishes can be readily used under nutrient standard menu planning. As with chicken in scenario two, a more pronounced shift towards use of lower-fat potato preparation or raise lower-fat items by schools could further moderate the impacts on the potato market.

Field Crops Impacts

The major impact of the proposed rule on the field crop markets would be in the wheat market. Menu changes would increase the wheat used in various forms in the school lunch program from 16.5 million bushels currently to 28–30 million bushels, under the first two scenarios, in a total U.S. market of 2.6 billion bushels. While the difference between scenarios is insignificant, an increase in wheat demand of 10 to 15 million bushels could spark a small adjustment in the market. After [illegible] changing changes in production, feed use and exports, this increase would [illegible] the net increase in farm income would be [illegible] 5 million bushels would generate a 2 to 4 cent per bushel higher farm price. This would reduce deficiency payments by about $15 million (from a 1990–93 base of $2.9 billion) and would increase farmers' market receipts by about $45 million (from a 1990–93 base of $7.1 billion), more than offsetting the loss [illegible].

Rice use would increase roughly 1 million hundred weight under the first and second scenarios in a national market of 180 million hundred weight. This would generate less than a 1 percent change in the farm price of rice, $5–9 million increase in market revenues, and an offsetting $6–8 million reduction in government payments.

The proposed rule could also reduce use of oilseeds and related products. Changes in menu items as well as preparation techniques would decrease use of vegetable oils for frying and salad dressings.

But the decreases would be too small to measurably affect prices; moreover, with government support for oilseeds limited to a loan program with rates set well below forecast market prices, there would be no budget implications.

Peanut Impacts

In the agricultural impact models developed for this analysis, peanuts are part of a group including legumes and oats. This group shows some increases under the first and second scenarios, although the direct impact on peanuts is less clear. Even if the findings for the group as a whole are assigned to similarly impact peanuts, the impacts of the proposed rule on the peanut market would be small under the first and second scenarios. Under the first and second scenarios, total usage of peanuts [illegible] and the B program would increase about 6 million pounds from the current school lunch base of [illegible] million pounds. This increase represents less than 0.1 percent of the total U.S. peanut market of 2 billion pounds. Farm prices of peanuts are expected to rise about 0.1 percent and farm revenues increase about $1.0 million. There would be no impact on the government cost of the peanut program.

TABLE 1.—ANNUAL QUANTITY IMPACTS FOR MAJOR AGRICULTURAL MARKETS

[In millions of pounds]

Commodity group	1993 market size		Scenario		
	U.S. total farm-level disappearance	School lunches	One: Minimum change within current offerings	Two: Lower fat chicken preparation	Three: No change in commodity markets
Butter	1,007	55	0	0	0
Cheese	6,633	135	53	47	135
Broilers	19,855	245	125	283	245
Turkey	4,591	105	53	121	105
Beef	24,040	485	385	359	485
Pork	17,268	280	296	280	280
Fruits and juices	61,055	1,097	1,815	2,234	1,097
Vegetables	71,018	1,218	1,307	1,253	1,218
Potatoes	34,079	674	376	372	674
Peanuts	2,050	44	50	50	44
Rice (million cwt)	180	1.3	2.3	2.2	1.3
Wheat (million bu)	2,500	16	30	28	16

The three scenarios illustrate that minimizing the change in current offerings creates market impacts that would not occur if lower-fat substitutions are offered or the mix of commodities within category is allowed to change. They also emphasize that school menus would have to change in order to avoid any impacts in the commodity market.

TABLE 2.—FARM PRICE, REVENUE, AND PROGRAM IMPACTS FOR MAJOR AGRICULTURAL MARKETS

Commodity	Total farm receipts (in billions of dollars)	Scenario								
		One: Minimum change in current offerings			Two: Lower fat chicken preparation			Three: No change in commodity markets		
		Prices (percent)	Revenues (in millions of dollars)	Farm program costs (in millions of dollars)	Prices (percent)	Revenues (in millions of dollars)	Farm program costs (in millions of dollars)	Prices (percent)	Revenues (in millions of dollars)	Farm program costs (in millions of dollars)
Cheese (milk equivalent)	[1] 19.4	0.6	166	23	0.6	178	25	0.0	0	0
Butter (milk equivalent)	[1] 19.4	0.0	0	0	0.0	0	0	0.0	0	0
Broilers	11.0	1.8	134	0	0.4	19	0	0.0	0	0
Turkey	2.9	2.1	36	0	0.5	4	0	0.0	0	0
Beef	28.3	0.9	143	0	0.9	103	0	0.0	0	0
Pork	10.7	0.2	11	0	0.0	0	0	0.0	0	0
Fruits	10.2	0.1	124	0	0.2	200	0	0.0	0	0
Vegetables	9.4	0.0	12	0	0.0	5	0	0.0	0	0
Potatoes	2.0	0.1	20	0	0.1	20	0	0.0	0	0
Peanuts	1.0	0.1	1	0	0.1	1	0	0.0	0	0
Rice	1.3	0.6	9	8	0.5	7	6	0.0	0	0
Wheat	7.3	0.7	45	35	0.7	45	35	0.0	0	0

[1] Total farm receipts from milk

USDA Commodities

USDA for a number of years has made adjustments to improve the nutritional content of commodities provided, however, the basic types and quantities of foods offered to schools have not changed significantly. The analysis conducted indicates that schools can provide meals that meet the dietary guidelines without significant changes in the types of food provided and the Department can continue to make improvements to the commodities provided without diminishing agricultural market support to farmers.

In total, USDA commodities account for less than one-sixth of all foods used by schools; the overall average is 16.4 percent. Although there is some variation among schools in the amount of USDA commodities they receive, USDA commodities make up between 10 and 25 percent of the food used for the vast majority (96 percent) of the school food authorities.

The market analysis for scenario one and the sample menus developed for the NSMP food cost analysis reflect an expected shift toward increased use of vegetables, fruits and grains. Such a shift is consistent with the Dietary Guidelines for Americans and the Food Guide Pyramid.[4] This shift can occur without causing significant impacts in overall food markets, however, or in the amounts and types of food USDA provides to schools, with the exception of butter.

USDA continues to make improvements that reduce the proportion of calories from fat in donated commodities: Reducing fat levels in ground beef; acquiring lower fat cheeses and salad dressings; and providing foods in lower-fat forms

(chicken vs. chicken nuggets). Because USDA provides a significant proportion of a small number of foods schools use (cheese—45 percent; beef—30 percent; turkey—70 percent; chicken—29 percent) efforts to lower the percentage of calories from fat for these commodities can have a substantial impact on the overall nutrient profile of foods used in the program. Even if there are some shifts in the types of foods that schools serve, there is likely to be little change in the overall amount of USDA acquisitions of cheese, beef and poultry because the Department's purchasing power would provide the best leverage for securing lower-fat versions of these products at the lowest price.

c. Benefits

No near-term cost savings due to health improvement from the nutritional update are projected. However, longer term savings in health care costs and years of life may result. The Continuing Survey of Food Intake by Individuals, 1989–91 found that school-age children have average daily intakes of 33.7 to 34.7 percent of calories from fat, and 12.6 to 13.3 percent of calories from saturated fat, depending upon the age-sex group. The Dietary Guidelines for Americans recommends limiting total fat intake to not more than 30 percent of total calories, and limiting saturated fat intake to less than 10 percent of total calories. The School Nutrition Dietary Assessment Study (SNDA) found the average daily consumption by NSLP participants on school days to be 35 percent of calories from fat and 13 percent of calories from saturated fat, compared to 33 percent of calories from fat and 12 percent of calories from saturated fat for non-participants.[5] SNDA also found that students consume fat and saturated fat from school meals at about the same levels as those offered to them. SNDA found schools offering NSLP meals which averaged 38 percent of calories from fat and 15 percent of calories from saturated fat, and participants consumed NSLP meals with 37 percent of calories from fat and 14 percent of calories from saturated fat. Implementation of the proposed rule would reduce the fat levels at school meals to the Dietary Guidelines levels. Using these figures along with the average percent of school-age children receiving a USDA meal (51%) and the average number of school days per year (182), we estimate that, on average, the proposed rule will achieve about 12 percent of the change needed to reach the Dietary Guidelines levels for percent of calories from fat and saturated fat for all U.S. children ages 5 to 18 years. Since school meal participation rates are higher for low-income children than for higher income children, the health benefits will be concentrated in the population at greatest risk of nutrition related chronic diseases—those with low income. Healthy People 2000: The National Health Promotion and Disease Prevention Objectives reports that low income is a special risk factor for both heart disease and cancer.[6]

The long term savings in health care costs and increase in years of life could result to the extent that lower intakes of fat, saturated fat, cholesterol, and sodium, and increased intakes of grains, fruits and low-fat vegetables either throughout the school years or over a more extended period of time could reduce the risk of diet-related chronic diseases such as heart disease, stroke, cancer, and atherosclerosis. These diseases accounted for almost 65 percent of all deaths in the U.S. in 1991.[7] McGinnis and Foege, in an analysis of actual causes of death in the U.S., reported about 300,000 deaths per year, 14 percent of the total deaths, as the lower bound estimate for deaths related to diet and activity patterns.[8] These factors cannot be readily separated due to their interdependence in determining obesity.

The savings in years of life and the value associated with a population reduction of fat, saturated fat and cholesterol has been estimated for the U.S. adult population. These estimates were incorporated into the regulatory impact analysis for the food labeling regulatory proposal published on November 27, 1991, the Food and Drug Administration (FDA).[9] While no comparable estimates are currently available for dietary changes by school age children, it is useful to consider the magnitude of effects expected from the proposed changes in the school meal programs with that projected for food labeling.

The study by the Research Triangle Institute (RTI) developed for the food labeling proposal estimated the following changes in fat, saturated fat and cholesterol for male and women due to the labeling changes:[10]

TABLE 3.—AVERAGE DAILY ESTIMATED CHANGES IN FAT, SATURATED FAT AND CHOLESTEROL FOR THE U.S. ADULT POPULATION DUE TO FDA FOOD LABELING CHANGES

	Men	Women	Average
Changes in fat intake:			
Grams	1.49	0.67	1.08
Percent	1.4%	1.1%	1.25%
Changes in saturated fat intake			
Grams	0.48	0.16	0.31
Percent	1.3%	0.7%	1.0%
Changes in cholesterol intake			
Milligrams	0.42	0.26	0.34
Percent	0.1%	0.1%	0.1%

Adapted from Food and Drug Administration regulatory impact analysis statement for the proposed food labeling regulations, FEDERAL REGISTER, November 27, 1991. Average assumes equal numbers of men and women.

RTI and FDA then used the changes for men and women in a computer model developed by Dr. Warren Browner to estimate the effects on years of life over a period of 20 years. The increased years of life estimates were then used to estimate a value for the added years of life. These changes were found to result in an estimated 20-year reduction of 35,179 cases of cancer, and a reduction of 4,028 cases of coronary heart disease. As a result they estimated avoiding 12,902 deaths and increasing life-years by 80,930.

FDA used two different approaches to estimating the total value of the food labeling changes, a remaining years of life approach and a mean value approach (see November 27, 1991 **Federal Register**, pages 60871–0872, for a more detailed description). They also estimated totals using two different dollar values for consumer willingness to pay for risk reduction—a conservative

estimate of $1.5 million and a higher estimate of $3.0 million. The value of the benefits from increased life-years was estimated to be $3.6 billion (discounted at 5 percent over a 20 year period). When benefits were valued based upon the number of early deaths prevented and the higher willingness to pay figure of $3.0 million, the estimate (similarly discounted) increased to $21 billion. In January 6, 1993, when publishing the final food labeling rule with a comment analysis, FDA updated their 20-year value estimates to between $4.4 billion and $26.5 billion.[11]

USDA agrees with FDA that for government policy evaluation, society's willingness to pay for risk reduction is an appropriate concept to use in evaluating the impact of government actions which will reduce risks. The FDA estimates of $1.5 million and $3.0 million used in their analysis are quite conservative. Economists have three decades of experience in estimating the value of reducing the risk of fatalities using labor market data. Fisher, Chestnut and Violette (1989) evaluated the merits of these studies of the extra wages that would have to be paid for accepting a higher risk of fatality on the job; concluded that the results from the studies without obvious design flaws were reasonable consistent; and reported that the studies implied a value-per-statistical-life of $1.6 million to $8.5 million (in 1986 dollars).[12] This range of value-per-statistical-life becomes $2 million to $10.4 million in 1993 dollars (updated using the change in Bureau of Labor Statistics' average weekly earnings paid to nonagriculture nonsupervisory workers).

Viscusi (1993) also surveyed risks of death and concluded that "the most reasonable estimates of the value of life are clustered in the $3 million to $7 million range" (p. 1942). However, he cautions that these estimates may be low, because the populations of exposed workers in these studies generally have lower incomes than individuals being protected by government risk regulations.[13] (The positive income elasticity for risk reduction means that higher values for lifesaving should be used when evaluating many risk reduction programs, such as airline safety programs). Fisher, Chestnut, and Violette also caution that to the individual's valuation of the risk reduction should be added the value loved ones and altruistic others also would be "willing to pay for reducing the fatality risk for those exposed to it" (p. 97).

The values for risk reduction may be greater when risks are involuntarily assumed than when the risks are voluntarily chosen. This is relevant to the school lunch situation where a limited array of choices are offered in the lunch program. Thus, the higher estimates may be most appropriate for evaluating the school lunch programs' healthier diet and its contribution to reducing risk per-statistical-life.

In comparison to the dietary changes predicted by FDA for food labeling, the improvements in fat and saturated fat estimated for the school meal program proposed regulation are substantial. The School Nutrition Dietary Assessment Study found that dietary intake from NSLP lunches provides 37 percent of calories from fat and 14 percent of calories from saturated fat. Reducing these lunchtime intakes to the Dietary Guidelines levels proposed in the regulation would reduce an NSLP participant's intake by 5.9 grams of fat and 3.4 grams of saturated fat on each day school lunch is eaten. Allowing for 182 school days per year and the percent of total U.S. children age 5 through 18 years who receive a meal on any school day (51%), it is estimated that the average daily reduction across all school-aged youth would be 1.5 grams fat and 0.86 grams saturated fat.

These estimates are significantly above those estimated for the FDA food labeling changes for fat and saturated fat. For cholesterol, school meals already provide a moderate intake and no further reduction will be required by the proposed regulation. To further compare the aggregate effect to that estimated for the food labeling regulations, consider the situation where the adult population reduces fat by 1.5 grams, reduces saturated fat by 0.86 grams, and does not reduce dietary cholesterol intake. This is necessary because there are no commonly accepted equations to relate changes in children's intakes of fat, saturated fat, and cholesterol to chronic disease reduction. The Browner model assumes that the relative risk of cancer is a function of total fat. The reduction of 1.5 grams of fat is about 39 percent greater than the reduction of 1.08 grams average for males and females estimated for FDA's food labeling, so a larger reduction in cancer incidence and deaths would be expected. For coronary heart disease, the Browner model assumes that all change is mediated through changes in serum cholesterol, which is affected by total fat, the type of fat, and dietary cholesterol. FDA used the following equation from Hegsted (1986) to estimate the change in serum cholesterol:

Change in serum cholesterol in milligrams per deciliter (mg/dl) = 2.16S − 1.65P + 0.097C

Where

S = change in percentage of total calories represented by saturated fat,

P = change in percentage of total calories represented by polyunsaturated fat, and

C = change in dietary cholesterol measured in milligrams per 1000 kilocalories.

The Hegsted equation shows that the greatest effect on serum cholesterol is due to saturated fat, and that changes in dietary cholesterol only play a small part.[14]

The NSLP changes result in an average reduction in saturated fat of 0.86 grams, which is 2.77 times the reduction of 0.31 grams estimated for FDA's food labeling. Since the estimated change in polyunsaturated fat levels is only slightly greater for food labeling than for the proposed regulation, the overall estimated change in serum cholesterol for the adult example based upon changes at the levels which are proposed for school lunch would be considerably greater than that projected for labeling, driven by the large decline in saturated fat.

In summary, if the reductions in fat and saturated fat intake instituted during the school years are continued into adulthood, the increase in life-years and the value in dollars based upon willingness to pay would be of a magnitude similar to or exceeding that estimated for the food labeling changes, which were $4.4 to $26.5 billion over 20 years. However, the lag time to realize this level of benefits over a 20 year period might be greater since FDA's estimates apply to the U.S. adult population and the proposed rule on school meals will begin to have effect with those children in school at the time of implementation.

The fat and saturated fat reductions estimated to accompany the proposed regulation assume that: (1) Students do not replace school meal fat and saturated fat reductions by increasing fat intake at other times of the day or on non-school days, (2) that the dietary improvements at USDA school meals do not result in similar improvements at other meals or on non-school days and (3) that the improvements by program participants do not result in changes by non-program participants. If students did replace fat and saturated fat at other eating occasions, a smaller health benefit would result. If improvements on school days serve as a positive models which, when combined with

nutrition education, result in improvements to non-USDA school meal, a larger improvement would result. The findings from the Menu Modification Demonstrations indicate that the daily fat intakes of NSLP participants would decline if their fat intakes at lunch were lower, but the effect on non-school meals is less clear.[15] Four sites at geographically dispersed locations (Chattanooga, TN; Denver, CO; Princeton City, OH; and San Bernadino, CA) received grants to test reduction in the fat content of NSLP meals. Dietary intakes of fifth grade NSLP participants at lunch and over 24 hours were collected both at baseline and after the reduction of fat in the NSLP meals. The demonstration found that the percent of calories from fat over 24 hours declined either significantly or marginally at all sites for both boys and girls. In addition, the reduction of intake in grams of total fat over 24 hours was greater than or equal to the reduction at the NSLP meal at three of the four sites. At the fourth site (Princeton City), despite an NSLP reduction in fat, 24-hour calories and grams of fat increased. At the San Bernardino site, which achieved the largest reduction in fat at the NSLP meals, the reduction of grams of fat over 24 hours was significantly greater than the NSLP reduction. On balance, the results of this demonstration indicate that when fat at the NSLP meal is reduced, students usually do not replace these calories by increasing fat intake at other eating occasions. While there is some indication that an accompanying reduction in fat at other eating occasions may be more common than an increase in fat at other eating occasions, findings are mixed and therefore not robust enough to influence benefit projections. Accordingly, the analysis in this section assumes that changes in NSLP fat levels do not affect fat intake at other occasions.

The fat and saturated fat reductions discussed in the impact analysis above relate only to the lunch meal. The proposed regulation will also reduce fat and saturated fat in school breakfasts, from 28 to 25 percent of total calories from fat, and from 11 to 10 percent of total calories from saturated fat. This will increase the overall reduction in average fat and saturated fat for the student population, but to a lesser extent than NSLP due to the smaller reductions and because fewer students participate in the School Breakfast Program.

The food labeling regulations are not expected to reduce U.S. fat and saturated fat levels by the full amount needed to achieve the Dietary Guidelines. This indicates that there will be room for the fat and saturated fat reductions which would result from the proposed rule to generate health improvement.

d. Effects on Participation

It is anticipated that the rule will have minimal effect on NSLP participation because implementation of the rule is not expected to increase meal prices or decrease meal acceptability. On a typical day, 25 million children participate in the National School Lunch Program. About 14 million of these meals are served to children receiving free or reduced price lunches. USDA has analyzed both the impact of meeting the dietary guidelines on meal price and meal acceptability and the implications for program participation.

Lunch price is an important factor in determining the level of participation among these students, with students participating at higher rates in schools with lower prices. Research indicates that price increases can cause substantial decreases in student participation. A key factor in maintaining participation among paid students while implementing the dietary guidelines is minimizing the meal cost. Food cost analysis demonstrated that nutritional targets can be reached within current food cost constraints. Minimizing cost impacts removes upward pressure on student fees which would result in decreased student participation.

USDA's efforts to test the effect of reducing fat and sodium and increasing the nutritional quality of meals has shown that improvements can be made without affecting participation. Although the SNDA study found that schools that served meals with a low proportion of calories from fat (less than 32 percent) had lower than average program participation, this information needs to be viewed in the larger context of efforts specifically designed to examine improvements in school meals.

The Department sponsored demonstration projects in five school food authorities from school year 1989–90 to 1991–92 to evaluate the extent to which menus planned to meet the NSLP meal pattern could be modified to better reflect the dietary guidelines.[16] Through the Menu Modification Demonstration Project, USDA examined the process involved in modifying school meals, including the impact on program participation. The demonstration found that fat could be decreased significantly without decreasing program participation. The percentage decrease in grams of fat ranged from 12 to 31 percent in the four sites. In all schools, average daily participation remained stable or increased slightly. In addition, the improvements were made with relatively minor changes in the types of foods offered. Although the districts were not able to make comparable improvements in the percentage of calories from fat, because overall calories decreased, the results demonstrate that fat can be cut without losing participation.

California is operating a State-wide demonstration of nutrient standard menu planning. The State reported that the nutrient-based system they implemented did not result in any decreases in gross meal participation between 1990 and 1992.

SNDA did find lower student participation in very low-fat schools, however, the study also indicated that it is possible to reduce the average fat content of lunches offered to well below the national average of 38 percent of food energy without adversely affecting participation in the NSLP. Participation rates were similar in schools whose lunches provide a moderate percentage of food energy from fat (32 percent to 35 percent) and in those whose meals provide a high or very high percentage of food energy from fat. It is important to note that the SNDA finding of low participation among low-fat schools is not based on experience with schools altering the nutrient content of food but rather on a point-in-time cross-sectional observation of schools with low-fat meals. The study did not collect information on how the schools implemented low-fat meals and what consequences these would have had on participation.

USDA recognizes that significant efforts must be undertaken to ensure that participation is maintained as meals are improved. If a meal does not taste good or look good then children will not eat it. The proposed regulation recognizes that food changes alone will not bring schools meals in line with the dietary guidelines. The results of SNDA and the two demonstrations suggest that reductions in calories from fat must be accompanied by nutrition education and promotional activities to maintain student participation. Gradual implementation of the Dietary Guidelines in school meals will allow for incremental changes in food offerings, minimizing the impact on current participation in the school meal programs. School food service is a nonprofit business that must meet student preferences to stay viable. This requires maintenance of participation by meeting food preferences, and accomplishing nutritional improvements through changes to

recipes, food preparation techniques and purchasing specifications that are consistent with these preferences.

e. Implementation Costs

Initial implementation costs faced by schools will vary depending on existing capabilities and resources within districts and will take many forms. Local, State and Federal resources are available for implementation. USDA has already initiated a number of improvements: Updated and improved recipes for schools, a computerized data bank of standard nutritional values of meals served and a demonstration project on NSMP. The demonstration will incur much of the developmental cost of the basic system framework and identify cost effective strategies for implementation. The Department has announced the availability of nutrition education cooperative agreements to develop comprehensive community-based approaches to nutrition education and is working on a national publication directed at grade school children. The Department is assisting school food service professionals in working with chefs, farmers and others to make school meals appealing and healthful.

The President's FY 1995 budget contains a request of over $20 million to support extensive training for school meal providers on how to plan and prepare nutritious and appealing meals as well as launching a national media campaign directed at building children's skills at making wise food choices for life.

States receive over $[illegible] million annually from the Federal level in State Administrative Expense (SAE) funds for program oversight. A portion of these resources are available to assist in implementation. In addition, the proposed regulation would reduce the level of State resources devoted to local school food authority reviews, which is described in more detail below.

At the local level, implementing nutrient standard menu planning will require computer capabilities. Many schools currently make extensive use of computers for management activities and have the facilities and capabilities to undertake nutrient standard menu planning. One of the goals of the initiative is to use the technology more effectively.

A study of school food authorities in the mid-Atlantic region found that 60 percent of SFAs employ computers for some functions.[17] Over one-fourth of these districts had comprehensive systems that allowed them to do menu management and nutritional evaluations. The menu modification demonstrations found that the lack of appropriate computer software limited the feasibility of monitoring the nutritional quality of menus. More recently developed software has greatly enhanced the ability to perform these analyses, which will now be supported by a USDA developed data base. Schools with microcomputers should be able to use this software.

Schools without sufficient computer capability or necessary access to technical assistance may opt for Assisted Nutrient Standard Menu Planning, which will allow development and analysis of menus by other entities, such as State agencies, consortiums of school districts, consultants or the Federal government, while still applying the essentials of NSMP.

The per meal reimbursement provided to schools was designed to cover both the food and administrative costs (labor and operations) of providing meals to students and can be used to acquire computer hardware and software. Enhanced computing abilities offer significant improvements in other areas of food service management beyond nutrient standard menu planning. The potential for additional improvements in food service operations beyond menu planning, for example, inventory control, should help offset the cost of acquiring this capability for NSMP.

The cost analysis found that the nutrient requirements of NSMP can be met at about the current cost of food in the National School Lunch Program. Because the foods used in the sample menus were drawn from what is currently being served, USDA does not anticipate the need for significant changes in meal preparation practices that would affect the cost to prepare meals. The administrative cost of conducting NSMP should be about the same as current operations once the system is fully implemented in a school. An evaluation of costs in the California nutrient standard demonstration reported that most schools experienced slight cost changes that ranged from 4 percent savings to 1.5 percent increased costs and concluded that most districts can expect to experience very little change in overall food service costs when implementing a nutrient-based system.[18]

f. Other Significant Effects

The Food and Nutrition Service believes that implementation of nutrient-based menus will require extensive training and technical assistance, especially at the school food authority level. In addition, the acquisition of computers (for schools that do not already have them) or contracting for computer or assistance with the revised menu planning system may involve some local level expenditures during the implementation period. While implementation will require a dedicated effort on the part of our agency, the state agencies and local school food authorities, the ongoing operation and maintenance of nutrient-based menu planning will be indistinguishable from the current meal pattern based system in terms of efforts.

To provide for the resources needed for implementation, the regulation proposes a twenty per cent reduction in state monitoring requirements. This reduction will enhance the level of resources available to focus on training and technical assistance efforts. Many school food authorities will no longer have the requirement for specific edit checks to review claims submitted for reimbursable meals. Rather, these school food authorities will have flexibility to develop their own internal controls for such review. This provision is largely intended to streamline program administration, but will also provide some relief from program management burdens.

Other Regulatory Changes

The regulation proposes to streamline some existing administrative procedures of State agencies and school districts. This will permit States and school districts to implement NSMP and focus on the nutritional needs of children. At the State level the school food authority review cycle will be extended from four to five years, reducing by 20 percent the resources devoted to this effort. While this will extend the time period between formal reviews, most districts are currently visited more frequently than the current four year cycle. The States will continue to have a significant presence at the local level. Although the focus of attention will be on implementing NSMP there should be no perceived reduction in State oversight.

5. *Reason for Selection of Proposed Alternative:* The overriding purpose behind this rule is to serve more nutritious and healthful meals to school children while maintaining access to the meal programs for needy children and enhancing the flexibility of local schools to administer the programs.

The nutrient targets selected are derived from the Dietary Guidelines for Americans and the Recommended Dietary Allowances (RDAs).[19] The Dietary Guidelines for Americans encompass the Federal government policy on nutrition. They are developed in consideration of scientific sources such as The Surgeon General's Report

on Nutrition and Health [20] and the National Academy of Sciences reports Diet and Health: Implications for Reducing Chronic Disease Risk [21] and Recommended Dietary Allowances. They are based upon the recommendations of an expert committee, the Dietary Guidelines Advisory Committee, specifically appointed to assist in developing Dietary Guidelines for use across Federal government. There are no alternative policy documents with official sanction by the government departments responsible for domestic nutrition which could provide alternative dietary targets for the general population. Other government publications in this area, such as "Building for the Future: Nutrition Guidance for the Child Nutrition Programs" [22] are based upon the Dietary Guidelines.

6. *Public Comments:* The Department also considered extensive oral testimony presented at four public hearings and meetings as well as written comments submitted in response to a notice published in the **Federal Register** on September 13, 1993. A summary of the comments is included in the preamble to the proposed rule.

7. *References:*

Footnotes

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[FR Doc. 94–14092 Filed 6–8–94; 8:45 am]

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Federal Register

Friday
June 10, 1994

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding on the Bull Trout; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding on the Bull Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding on a petition to list the bull trout (*Salvelinus confluentus*) pursuant to the Endangered Species Act of 1973, as amended (Act). The Service finds that listing bull trout throughout its range is not warranted at this time due to unavailable or insufficient data regarding the threats to and status and population trends of the species within Alaska and Canada. Sufficient information is available, however, to support a warranted finding to list bull trout within the conterminous United States. The Service, therefore, finds that listing a distinct vertebrate population segment of bull trout residing in the conterminous United States is warranted, but precluded due to other higher priority listing actions. The Service continues to seek data and comments from the public on the status and threats to this species.

DATES: The finding reported in this document was made on June 6, 1994. Comments and information may be submitted until further notice.

ADDRESSES: Comments and materials concerning this petition may be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 3704 Griffin Lane SE, suite 102, Olympia, Washington 98501. The petition, finding, supporting data, comments, and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David C. Frederick, Field Supervisor (see **ADDRESSES** section), at 206/753–9440.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*), requires that for any petition to list a species as endangered or threatened that presents substantial scientific or commercial information, a finding must be made within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals to list, delist, or reclassify species. Such 12-month findings are to be published promptly in the **Federal Register**. If the finding is warranted but precluded, the Service will, within 12 months of such finding, reevaluate the issue and again make one of the three findings described above with regard to the petition.

The bull trout was designated as a category 2 candidate for listing in the conterminous United States in the September 18, 1985, Animal Notice of Review (50 FR 37958). Category 2 species are species for which the Service has some evidence of vulnerability but for which substantial information is not currently available to support a proposal to list the species as endangered or threatened.

On October 30, 1992, the Service received a petition to list the bull trout as an endangered species throughout its range from the following conservation organizations in Montana: Alliance for the Wild Rockies, Inc., Friends of the Wild Swan, and Swan View Coalition. The petitioners also requested that critical habitat be designated for the bull trout concurrently with the listing. They further requested an emergency listing and concurrent critical habitat designation for bull trout populations in select aquatic ecosystems where the biological information indicates that the species is in imminent threat of extinction.

A 90-day petition finding, published May 17, 1993 (58 FR 28849), determined that the petitioners had provided substantial information indicating that listing of the species may be warranted. The Service initiated a rangewide status review of the species concurrent with publication of the 90-day finding. The period of the Service's status review was extended due to insufficient staff.

The Service has carefully assessed the best scientific and commercial information available regarding the present and future threats facing the bull trout. The species historically was widely distributed throughout the major rivers and tributaries of the Pacific Northwest, including seven States (Alaska, Montana, Idaho, Washington, Oregon, Nevada, and California) and two Canadian Provinces (Alberta and British Columbia). The species has been extirpated from most of the large mainstem rivers in which it historically occurred. The majority of remaining individuals exist within headwater streams. These fragmented and isolated populations are subject to local extirpation.

The species is threatened with extinction within the conterminous United States as a result of aquatic habitat degradation due to forest management practices, roadbuilding, dams, water diversions, mining, and grazing, as well as from isolation, competition and hybridization with non-native fishes, and overharvest. Even populations occurring in wilderness areas, where land use impacts are minimal, are threatened by non-native species and by isolation from other populations such that stochastic events might, in time, result in extirpation.

Different amounts of scientific and commercial data are available on the different populations of bull trout throughout its range. There is little information available regarding the existence or status of bull trout in Alaska. Sufficient monitoring data to document the possible declining population trend in Canada is not currently available in Service files. As a result of the Service's status review for this species, the Service finds that listing bull trout throughout its range is not warranted at this time due to unavailable or insufficient data regarding the threats to and status and population trends of the species within Alaska and Canada.

Sufficient information on the biological vulnerability and threats to the species is, however, available to support a warranted finding to list bull trout within the conterminous United States. The Service has identified a national interest in preserving species in the conterminous United States, even though they also occur in Canada and Alaska. Examples of cases where the Service has used an international boundary to define a distinct vertebrate population segment include: Grizzly bear, bald eagle, marbled murrelet, and woodland caribou.

On September 21, 1983 (48 FR 43098), the Service published a system for prioritizing species for listing. This system results in a listing priority number from 1 to 12 (with number 1 as the most threatened). Because of limited staff and funding, the Service must give priority to the listing of species with a listing priority of 1 through 6. Given the moderate, yet imminent threats facing bull trout residing in the conterminous United States, the Service assigns the listing priority number of 9 to this distinct vertebrate population segment.

Section 4(b)(3)(B)(iii) of the Act provides that petitioned actions may be found to be warranted, but precluded by other listing actions when it is found that the Service is making expeditious progress in proposing and listing species of plants and animals that are imminently and highly threatened.

For the current fiscal year that began on October 1, 1994, the Service is making expeditious progress to propose and list (within the six conterminous States where bull trout reside), at least 80 plant and animal taxa with listing priority numbers between 2 and 8. The Service, therefore, finds that listing the distinct vertebrate population segment of bull trout residing in the conterminous United States is warranted, but precluded due to other higher priority listing actions. Such species are placed in category 1 of the candidate species list.

More detailed information regarding the above decisions may be obtained from the Service's Olympia office (see **ADDRESSES** above).

References Cited

A complete list of references used in the preparation of this finding is available, upon request, from the Olympia State Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are Carolyn Scafidi (see **ADDRESSES** section), Ron Rhew, Oregon State Office, 2600 SE 98th Avenue, suite 100, Portland, Oregon 97266; Lori Nordstrom, Helena Field Office, P.O. Box 10023, Helena, Montana 59626–0023; Wade Fredenberg, Creston Fish and Wildlife Center, 780 Hatchery Road, Kalispell, Montana 59901; and Bob Hallock, Northern Idaho Office, 11103 East Montgomery Drive, suite 2, Spokane, Washington 99206.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

Dated: June 6, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–14112 Filed 6–7–94; 2:52 pm]

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Friday
June 10, 1994

Part VI

Department of Education

34 CFR Part 75
Direct Grant Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 75

RIN 1880–AA61

Direct Grant Programs

AGENCY: Department of Education

ACTION: Final regulations with request for comments.

SUMMARY: The Secretary amends the Education Department General Administrative Regulations (EDGAR) to amend regulations governing the requirements for non-competing continuation (NCC) discretionary grant awards. The amendments will eliminate the requirement for recipients to submit an application for NCCs. Instead, the due dates for performance reports will be adjusted so they may be used to determine whether a recipient has met the criteria for receiving a continuation award. EDGAR is also amended to clarify the Department's policy for the use of funds that remain unobligated by the recipient and carried over from one budget period of a project to the next budget period of a project. The action is being taken to improve the effectiveness, integrity, and efficiency of the grant award process, and to contribute to the effectiveness and integrity of the grants. Because these changes are procedural, the Secretary is not publishing these regulations as a proposed rule. However, the Secretary is interested in comments from the public on ways to further improve the non-competing continuation award process.

DATES: *Effective Dates:* These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. Sections 75.118 and 75.590 will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

Applicability Dates: The final regulations published in this document will apply only to those competitions for new grants that will be awarded on or after October 1, 1994 and that are announced in the Federal Register on or after June 10, 1994. The Department's Combined Application Notice (CAN) for fiscal year 1995 is published elsewhere in this issue of the Federal Register and announces competitions that will be subject to the regulations contained in this document. For those competitions announced before today's CAN, applicants are subject to the EDGAR regulations as they existed before this regulation becomes effective regarding what had to be included in an application.

Recipients that receive initial year awards on the basis of competitions that were conducted under the prior EDGAR regulation will have to submit a continuation application, as they have in the past. For the first continuation award made after October 1, 1994, the continuation application must include a complete budget for each of the remaining budget periods of the project that is equivalent to the budget information that will be required under § 75.117 after the effective date of these final regulations. For any continuation awards made after this initial continuation award, the recipient must submit a performance report, as required by these new regulations rather than submitting further continuation applications.

COMMENTS: Comments must be received on or before August 9, 1994.

ADDRESSES: All comments concerning these final regulations should be addressed to Sherlyn Taylor, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW room 3616, ROB–3, Washington, DC 20202–4700.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Kathy Thomas, U.S. Department of Education, 400 Maryland Avenue, SW room 3616, ROB–3, Washington, DC 20202–4700. Telephone: (202) 401–3981. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: To improve the administration of discretionary grants and to clarify for recipients the procedures and requirements of the Department, the Secretary is amending sections in the Education Department General Administrative Regulations (EDGAR) on non-competing continuation applications and the use of unobligated funds.

Background

In 1993 the Department chartered a Quality Improvement Team for Non-Competing Continuation Grants (the Team). The Team studied the Department's process for awarding non-competing continuation grants. To conduct its analysis, the Team collected information from a wide variety of sources within and outside the Department, including flowcharting, analyzing data from the Department's automated grants management information system, conducting focus groups and interviews of program and grants staff at all levels in the Department, and benchmarking the grant award processes with other Federal agencies. The Team developed four options, ranging from retaining the current non-competing continuation award process (with certain refinements and improvements) to establishing a new process for making NCC awards. The outline of these options was shared with the public during the data gathering stage of the Team's work.

The public was given the opportunity to comment on improving the process for making non-competing continuation awards by submitting written comments or presenting testimony at a public meeting. Both the meeting and the invitation to submit written comments were announced in a notice published by the Department in the Federal Register on July 19, 1993 (55 FR 40640). Thirteen written comments were received in response to that request. The Team received additional comments at a public meeting held on August 18, 1993.

The information gained from these extensive data gathering activities allowed the Team to identify deficiencies in the current process and to base recommendations for developing and improving the current process.

Recommendation to Streamline the Non-competing Continuation Award Process

Based on input from interested parties, both inside and outside the Department, the Team recommended that the Department make non-competing continuation awards on the basis of acceptable and timely performance reports without requiring the recipient to submit applications for those awards. The Team's recommendation is consistent with the goals of the Government Performance and Results Act and the specific recommendations of the National Performance Review to "eliminate the continuation application process for

budget years within the project period" and that the process "be replaced by yearly program progress reports focusing on program outcomes and problems related to program implementation and service delivery." Instead, funding levels for each budget period of a project will be determined at the time of the initial award.

Changes in funding will be made on an "as needed" basis using prior approval standards already in place under 34 CFR 74.105 and 34 CFR 80.30(d). Under these standards and the procedures in §§ 74.102 and 80.30(f), a recipient must seek prior approval for certain changes to a budget and submit the request to the Grants Division of the Grants and Contracts Service. A request for a change in a recipient's budget should be made at the time that the recipient becomes aware of the need for the change, whether the change affects the current budget period or any or all future budget periods.

If the change affects the next budget period and the recipient becomes aware of the need for the change at the time that it submits its performance report, the recipient may submit the request at the time that it submits the performance report. However, the Secretary notes that submission of proposed budget changes with, or after, the performance report may delay the recipient's receipt of the continuation award. Any funding of a continuation award, whether or not made in conjunction with a request for a budget change, is contingent upon the availability of funds.

Annual awards will be made after approval of performance reports by the program offices. Based on public comment, it was clear to the Team that recipients understand the importance of providing information about progress of grant activities but feel that more timely performance reports would be preferable to an annual application timed to meet the Department's award schedule. Also, there was a perception among recipients that the Non-competing Continuation process demonstrates an "enforcement" mentality on the part of the Federal Government, at the expense of a collaborative and assisting attitude. Recipients favored a new paradigm whereby performance reporting would be tied more to projects' reporting on results and performance, and less to the threat of a cut-off in funding (even though extremely rare in practice). This option was chosen to implement an entirely new paradigm for the NCC award process.

Continuation funding will be based, as it has in the past, on evidence that the grantee has met the standards for continuation contained in 34 CFR 75.253. These standards include requirements that Congress appropriate sufficient funds to continue existing awards, that the grantee make substantial progress toward achieving the objectives of the project or obtain approval from the Secretary for certain changes to the grant, that continuation of the project is in the best interests of the Federal Government, and that the grantee submit, as required by § 75.118, every report that it must submit to get the continuation award. This last standard will take on increased importance under the amended regulations because the continuation award decision—including the decision about whether the grantee has made substantial progress—will be based entirely on the submission of reports as specified by the Secretary, rather than on the submission of a continuation award application. Moreover, having recipients submit their performance reports closer to the date when funding decisions must be made will make the reports more valuable instruments than the previous continuation applications. Until now, recipients often have been required to submit performance data in continuation applications before their projects had completed more than a few months of activities.

The Secretary stresses to recipients the increased importance of performance reports. Because these reports will be key to the decision to continue funding, recipients will be expected to submit high quality reports. A performance report must contain the most current performance information specified in EDGAR and any applicable program requirements. These requirements include an evaluation of the grantee's progress in achieving the objectives of the approved application, the effectiveness of the project in meeting the purposes of the program under which it was funded, and the effect of the project on the participants it serves (§ 75.590); and a discussion of the reasons for slippage if established goals were not met, and a computation of the cost per unit of output if the output of the project can be quantified (§§ 74.82(c) and 80.40(b)).

If a recipient fails to submit a performance report as directed by the Secretary, the recipient will not receive a continuation award. See § 75.253(a)(3). To merit receipt of a continuation award, the report must demonstrate that a recipient has made substantial progress in fulfilling the objectives of the grant. The Secretary intends that employees of the Department will scrutinize these reports closely to ensure that the recipient has, in fact, met this standard. The Department currently is developing a generic performance report for approval by the Office of Management and Budget (OMB).

The new process will provide many benefits to recipients. It will free up time previously spent on duplicative processes, both internal and external. For example, certifications and assurances (e.g., Lobbying; Debarment) must be submitted whenever an entity applies for funds. Since recipients will no longer submit an application to receive continuation funding, they will no longer be required to resubmit these assurances annually for the life of the project. The new process for making continuation awards should free up resources for both the recipients and Department staff that can be reinvested in higher quality project management, technical assistance, and monitoring.

Section-by-Section Analysis

Section 75.100 is revised to remove references to the application process that will no longer be used to make non-competing continuation awards.

Section 75.112 is amended by revising paragraph (b) to require an applicant for a new grant to describe in its application how, in each budget period of the grant, the applicant plans to meet each objective of the project.

Section 75.117 is revised to reflect the new procedure for determining the award amounts for all budget periods in a multi-year grant at the time the initial award is made. The revision ensures that the applicant provides multi-year budgetary information in its initial application since continuation applications will no longer be required.

Section 75.118 is revised to remove references to items that were formerly required in a continuation application. The items listed in paragraph (b) of this section are no longer needed because adequate information already will be provided in the initial application in accordance with the revised § 75.117. The performance report now will become due before the beginning of the continuation award, and will provide the information on which the funding decision will be made. This section makes clear that a performance report must be submitted, prior to the next budget period, for all multi-year awards and that the Secretary will establish the specific due date for submission of the report. In addition, this section changes any references to "applicant" so that it now will refer to the "recipient" because an application will no longer be a part of the continuation award process.

Section 75.232 is revised to incorporate the new procedure under which the Department performs its cost analysis on the basis of the initial application. The Department does a cost analysis to verify cost data in the detailed budget. In doing so, it evaluates specific elements of cost, and examines an applicant's proposed costs to determine if they are necessary, reasonable, and allowable under applicable statutes and regulations.

Section 75.253 is amended to make the performance reports due by the dates set by the Secretary (§ 75.253(a)). It is important that recipients understand that performance reports now will be due before the end of the current budget period because this information will be used in lieu of continuation applications in deciding whether to make continuation awards. If a recipient fails to submit a performance report as required by these regulations, the Secretary will not continue funding for the project.

Paragraph (c) of § 75.253 also is amended to clarify the Department's policy regarding funds that remain unobligated by a recipient. The current § 75.253(c) states when the Department would reduce the amount of new funds made available for a continuation award to a recipient. Implicit in the current rule is the policy that the Department would, under certain circumstances, add the unobligated funds to the amount of new funds made available for a continuation award. Consistent with this policy, § 75.253(c) clearly indicates the circumstances under which the Department will add the amount of unobligated funds to the amount of new funds made available for a continuation award, as well as the circumstances under which it will reduce those funds.

Section 75.590 is revised to clarify that the grant recipient's annual evaluation is its performance report. The current regulation in § 75.590 requires a recipient to evaluate the project annually but does not require the recipient to submit the evaluation to the Department. Under this amended regulation, the criteria for the annual evaluation required by § 75.590 is incorporated into the performance report. In this regard, the revised introduction to this section now says that a "recipient shall submit a performance report, or, for the last year of a project, a final report, that evaluates [the project] at least annually * * *." This change is designed to make clear that the performance report required under § 75.117, as amended by these regulations, must meet the standards established in § 75.590. These standards require an evaluation of the recipient's progress in achieving the objectives in its approved application, the effectiveness of the project in meeting the purposes of the program under which it is funded, and the effect of the project on the participants being served by the project. Under the amended §§ 75.590 and 75.117, a recipient will no longer have to submit a continuation application and also prepare a separate evaluation of the project. Instead, a single performance report, meeting the standards of § 75.590 will be submitted. Also, the final report of a project required under §§ 74.82(b) and 80.40(b) must meet the standards in § 75.590.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the Department's programs effectively and efficiently. Burdens, specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1980.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. For the most part these revisions are adopted to streamline the non-competing continuation award process and the process of reviewing requests for the use of unobligated funds carried over from one budget period to the next. The final revisions will not result in major changes in Departmental policy that might have significant economic impact on small entities. Rather, the effect of these rules is to shift the time when certain information is provided to the Department and eliminate the need for cumbersome continuation award applications.

Paperwork Reduction Act of 1980

Sections 75.112, 75.117, 75.118 and 75.590 contain information collection requirements. The information collection requirements for §§ 75.112 and 75.117 have already been approved under the Office of Management and Budget control number 1875–0102.

These regulations affect the following types of entities which are eligible, depending on the individual program, to apply for discretionary grants: State and local governments, nonprofit institutions, institutions of higher education, for profit organizations, and individuals. The Department needs the information in the performance reports to enable the Secretary to determine if the recipient meets the criteria for an additional year of funding. The performance report enables the Secretary to determine if the recipient has made substantial progress toward meeting the objectives in its approved application. Substantial progress is one of the requirements for a recipient to be eligible for continuation funds. Other requirements for continuation are described earlier in this preamble in the discussion regarding 34 CFR 75.253. The annual reporting burden for these collections of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response for 30,000 respondents, for a total annual burden of 525,000 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. (44 U.S.C. 3504(h)).

The revisions to §§ 75.118 and 75.590 have not been approved by OMB under the Paperwork Reduction Act of 1980. The Department of Education will submit a collection submission to the Office of Management and Budget (OMB) for its review of these sections under the law.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

Programs receiving multi-year continuation awards are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. However, for discretionary grants, the non-competing continuations referred to in 34 CFR 79.8 will no longer be required. Therefore, the Secretary will notify the recipient that the performance reports must be submitted for intergovernmental review. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for programs subject to 34 CFR part 75.

Waiver of Proposed Rulemaking

Under 5 U.S.C. 553(b)(A) the Secretary may waive proposed rulemaking for rules of agency procedure. These procedural regulations do not affect the substantive rights of recipients to receive new or continuation awards. The procedures established in these regulations merely reduce and shift burden regarding budget submissions and financial and performance reports. Therefore, the Secretary has decided to waive proposed rulemaking for these procedural regulations so that they may be used in the upcoming funding cycle to inform applicants for new awards what must be included in the application for a new award.

Regarding the amendment to 34 CFR 75.253(c), this amendment merely restates the longstanding current regulation in clearer language. The Department has interpreted the current 34 CFR 75.253 consistent with the language contained in the revised paragraph 75.253(c). 5 U.S.C. 553(b)(A) also provides that an agency may waive proposed rulemaking for interpretative rules. Because the amendment to 34 CFR 75.253(c) is consistent with current interpretation of the existing 34 CFR 75.253(c), the Secretary has decided to waive proposed rulemaking regarding this provision as well. Accordingly, the Secretary waives proposed rulemaking for the amendments to 34 CFR part 75 made in this final rulemaking document.

Invitation To Comment

The amendments to these regulations are procedural in nature and intended to streamline discretionary grants administration. However, interested persons are invited to submit comments and recommendations regarding these final regulations because the Department is always interested in ways it can further improve its discretionary grant management practices. All comments submitted will be considered in further streamlining and refining procedures for processing non-competing continuation awards and requests for the use of funds that remain unobligated by the recipient and are carried over to the next budget period. All comments submitted in response to these final regulations will be available for public inspection, during and after the comment period, in room 3636, Regional Office Building No. 3, Seventh and D Streets SW., Washington, DC, between the hours of 9 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the final regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 75

Education Department, discretionary grant programs, continuation funding, grant administration, reporting and recordkeeping requirements, performance reports, unobligated funds.

Dated: May 10, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary amends part 75 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority for 34 CFR part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, unless otherwise noted.

§ 75.100 [Amended]

2. Section 75.100 is amended by removing paragraph (c).

3. Section 75.112 is amended by revising paragraph (b) and adding an OMB control number to read as follows:

§ 75.112 Include a proposed project period and a timeline.

* * * * *

(b) An application must include a narrative that describes how and when, in each budget period of the project, the applicant plans to meet each objective of the project.

(Approved by the Office of Management and Budget under control number 1875–0102)

* * * * *

4. Section 75.117 is amended by revising paragraph (b), removing paragraph (c) and adding an OMB control number to read as follows:

§ 75.117 Information needed for a multi-year project.

* * * * *

(b) A budget narrative accompanied by a budget form prescribed by the Secretary, that provides budget information for each budget period of the proposed project period.

(Approved by the Office of Management and Budget under control number 1875–0102)

* * * * *

5. Section 75.118 is revised to read as follows:

§ 75.118 Requirements for a continuation award.

(a) A recipient that wants to receive a continuation award shall submit a performance report that provides the most current performance and financial expenditure information, as directed by the Secretary, that is sufficient to meet the reporting requirements of 34 CFR 74.82, 75.590, 75.720, and 80.40.

(b) If a recipient fails to submit a performance report that meets the requirements of paragraph (a) of this section, the Secretary denies continued funding for the grant.

Cross-Reference. See § 75.117 Information needed for a multi-year project, and §§ 75.250 through 75.253 Approval of multi-year projects, § 75.590 Evaluation by the recipient, § 75.720 Financial and performance reports, § 74.82 Performance Reports under nonconstruction grants, and § 80.40 Monitoring and reporting program performance.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

§ 75.232 [Amended]

6. Section 75.232 is amended by adding the word "new" in paragraph (a) before the word "grant".

7. Section 75.253 is amended by removing the word "grantee" and adding, in its place, the word "recipient" in paragraphs (a)(2) and (a)(2)(ii)(B), and by revising paragraphs (a)(3), (c), and (e) to read as follows:

§ 75.253 Continuation of a multi-year project after the first budget period.

(a) * * *

(3) The recipient has submitted all reports as required by § 75.118, and

* * * * *

(c) The Secretary considers any funds remaining unobligated by the recipient at the end of a budget period in determining the amount of new funds to be awarded for the next budget period of the grant as follows:

(1) If the unobligated funds are needed to complete activities that were approved for the budget period that is about to end, the Secretary may add the unobligated funds to the amount of

funds to be approved for the next budget period of the grant.

(2) If the unobligated funds are not needed to complete activities that were approved for the budget period that is about to end, the Secretary may reduce the amount of new funds awarded for the next budget period by the amount of unobligated funds.

* * * * *

(e) Unless prohibited by program regulations, a recipient that is in the final budget period of a project period may seek continued assistance for the project under the procedures for selecting new projects.

8. Section 75.590 is amended by removing the word "grantee" and adding, in its place, the word "recipient" in paragraph (a) and revising the heading and the undesignated introductory text to read as follows:

§ 75.590 Evaluation by the recipient.

A recipient shall submit a performance report, or, for the last year of a project, a final report, that evaluates at least annually—

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[FR Doc. 94-14106 Filed 6-9-94; 8:45 am]
BILLING CODE 4000-01-P

Federal Register

Friday
June 10, 1994

Part VII

Environmental Protection Agency

40 CFR Part 170

Technical Amendment to Early-Entry Prohibition of the Worker Protection Standard; Final Rule

Administrative Exception to Early-Entry Prohibition of the Worker Protection Standard for Harvesting Cut Roses; Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 170

[OPP–300164I; FRL–4866–5]

Technical Amendment, Addition of Table of Exception Decisions to Early-Entry Prohibition, Worker Protection Standard; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In the Notices section of this **Federal Register**, EPA is granting an administrative exception to the general prohibition on early entry into pesticide treated areas for hand labor contained in the Worker Protection Standard (WPS) issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). That exception allows, for a 2-year period, under specified conditions, early entry by workers to harvest greenhouse-grown cut roses. To ensure that the regulated community is aware of that and future administrative exceptions to the early-entry prohibition, EPA is amending the WPS to add a new § 170.122(e)(7) that allows the regulated community to locate **Federal Register** notices that set forth the terms and conditions of the administrative exceptions.

EFFECTIVE DATE: June 10, 1994.

FOR FURTHER INFORMATION CONTACT: Therese Murtagh, Chief, Occupational Safety Branch (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 305–7666.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

EPA issued the WPS on August 21, 1992 (57 FR 38102, 40 CFR Part 170). The WPS includes a prohibition (§ 170.112) against routine early entry into pesticide treated areas to perform hand labor tasks during restricted-entry intervals (referred to as "early entry"). Section 170.112(e) of the WPS provides a process for EPA to consider and grant administrative exceptions to this prohibition on early entry. In the Notice section of this **Federal Register**, EPA is granting the first such administrative exception for early entry to harvest cut roses. To ensure that the regulated community is aware of, and able to locate, that and future administrative exceptions, EPA is amending § 170.112 by adding a new paragraph (e)(7) identifying the **Federal Register** citations and effective dates for administrative exceptions granted under § 170.112(e).

The addition of paragraph (e)(7) to § 170.112 is a technical amendment. It does not make any substantive changes in the WPS or § 170.112. Accordingly, EPA finds that there is good cause to make this amendment effective without notice and opportunity for public comment because they are unnecessary. Under § 170.112(e), EPA provides notice and an opportunity for comment on proposed administrative exceptions. There is no need for separate comment on adding a cross-reference to § 170.112(e) to those published exception decisions. In addition, EPA finds that there is good cause to make this technical amendment effective immediately upon publication so that reference to the cut rose administrative exception, which is itself effective immediately in this **Federal Register**, will appear in the CFR immediately.

II. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51835, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order. Pursuant to the terms of the Executive Order, EPA has determined that this technical amendment is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 650(b)), EPA has determined that this technical amendment will not have a significant impact on a substantial number of small businesses since the technical amendment makes no substantive changes in the WPS.

C. Paperwork Reduction Act

This technical amendment contains no information collection requirements as defined in the Paperwork Reduction Act (44 U.S.C. 3502 et seq.).

List of Subjects in 40 CFR Part 170

Administrative practice and procedure, Labeling, Occupational safety and health, Reporting and recordkeeping requirements.

Dated: June 3, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I, subchapter E, part 170 is amended as follows:

PART 170—[AMENDED]

1. The authority citation for part 170 continues to read as follows:

Authority: 7 U.S.C. 136w.

2. In § 170.112 by adding a new paragraph (e)(7) to read as follows:

§ 170.112 Entry restrictions.

* * * * *

(e) * * *

(7) *List of exceptions granted by EPA.* The following administrative exceptions from the requirements of this section have been granted by EPA. Each exception listed in paragraph (e)(7) of this section contains a reference to the **Federal Register** notice in which EPA has granted the exception and the effective dates of the exception. The terms and conditions of the exception appear in the referenced **Federal Register** notice.

(i) Exception for hand labor to harvest greenhouse-grown cut roses published in the **Federal Register** of June 10, 1994, effective from June 10, 1994, to June 10, 1996.

(ii) [Reserved].

[FR Doc. 94–14179 Filed 6–9–94; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–300164H; FRL–4779–8]

Administrative Exception to Worker Protection Standard Early Entry Prohibition for Harvesting Cut Roses

AGENCY: Environmental Protection Agency (EPA)

ACTION: Administrative Exception decision.

SUMMARY: EPA is granting an administrative exception to the general prohibition on early entry into pesticide treated areas for hand labor contained in the Worker Protection Standard issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The exception allows, for a 2–year period, under specified conditions, early entry to harvest greenhouse-grown cut roses. This exception will provide the cut rose industry additional time to develop and implement safe alternatives to early entry. EPA is denying an exception for other cut flower and cut fern industries at this time.

EFFECTIVE DATE: June 10, 1994.

ADDRESSES: All comments submitted on the proposed exception are available for public inspection in the Office of Pesticide Programs' public docket, room 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Therese Murtagh, Chief, Occupational Safety Branch (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 305–7666.

SUPPLEMENTARY INFORMATION:

I. Background

EPA issued on August 21, 1992, (57 FR 38102) a final rule establishing Worker Protection Standards (WPS) for agricultural pesticides (40 CFR part 170). The WPS includes a prohibition against routine early entry to pesticide treated areas to perform hand labor tasks during restricted-entry intervals (referred to as "early entry"). Section 170.112(e) of the WPS provides a process for considering exceptions to this prohibition against early entry. In the same August 21, 1992 **Federal Register**, EPA proposed to grant an exception to the early-entry prohibition for the cut flower and cut fern industries. Information received from the industry during the comment period for the proposed WPS persuaded EPA that there could be substantial economic repercussions if routine hand labor tasks were prohibited during the restricted-entry interval (57 FR 38175). EPA solicited comments on the proposed exception for the cut flower and cut fern industries and received a wide range of comments both supporting and opposing the proposed exception.

II. EPA's Exception Decision

EPA has reviewed the information received and has decided to grant a modified exception to the early-entry prohibition for harvesting greenhouse-grown cut roses only. The information submitted by the rose industry combined with EPA's knowledge of rose production convinced EPA that rose growers could suffer a substantial economic impact if compliance with the WPS early-entry restrictions were required. EPA is granting a 2–year exception to provide rose growers time to adjust pesticide spray schedules, find early-entry alternatives, and develop technology. The exception is subject to conditions designed to mitigate risk to early-entry workers. EPA believes that early entry under the terms of the exception for the period of 2 years will not pose unreasonable adverse effects to rose harvesters.

EPA believes the economic benefits of a 2–year exception for rose growers may be high and that the conditions of this exception will mitigate workers' risks. EPA does not, however, have sufficient information about the risks and benefits of the exception to grant a broader or longer term exception. If the rose industry determines that it needs an exception beyond 2 years, the industry will need to provide additional information on the economic benefits of an exception, as well as the risks, in a new exception request under §170.112(e)(1). This information should include worker exposure data, poisoning incident data, personal protective equipment feasibility information, and data on the economics of rose production and how WPS early-entry restrictions affect revenues.

EPA has not received sufficient information to warrant an exception to the early-entry prohibition for other cut flower and cut fern producers at this time. Information submitted in some comments suggests that alternatives to early entry exist for these other crops, and that such an early entry prohibition would not cause economic repercussions great enough to outweigh the risk to workers. Growers of other cut flowers and cut ferns who would still like EPA to consider an exception for these crops should submit an exception request which supplies the information outlined in §170.112(e)(1). This includes information on crop production and pesticide use practices, alternative practices, economic data, safety practices, and the costs and feasibility of implementing the conditions under which an exception would be granted.

III. Comments, Summary of Major Issues Raised in the Comments and EPA's Findings

In the WPS, EPA prohibited early entry for hand labor such as harvesting because EPA concluded that entry during a restricted-entry interval (REI) to perform routine hand labor tasks is rarely necessary, that personal protective equipment (PPE) for field workers is impractical because workers may remove it or use it incorrectly, and that PPE may be risk inducing because of heat stress concerns. Here, the rose industry has made a case, at least for the interim, that routine entry during an REI to harvest roses is necessary and that prohibiting such entry could have a substantial economic impact on rose growers.

Therefore, EPA is granting a limited exception to allow workers to harvest greenhouse-grown cut roses to avoid excessive economic burden to rose growers. Under conditions described below, workers may enter treated areas under an REI to harvest roses. EPA believes that in rose greenhouses, the use of PPE, a limitation on worker-exposure time, accessible decontamination facilities, provision of label-specific information to workers, basic pesticide safety training, and shade and mechanical cooling devices will mitigate risks for rose harvesters. The following additional factors contributed to EPA's decision: (1) PPE would be worn for only limited periods of time; (2) greenhouses usually encompass a much smaller area than field crops so that employers should more easily be able to ensure that workers wear the PPE; (3) harvesting could be accomplished in a reasonably efficient manner while wearing the required PPE, including coveralls, chemical-resistant gloves (possibly as liners underneath leather gloves), chemical-resistant footwear and headgear (if the potential for head exposure exists), and protective eyewear; (4) the accessibility, usual in rose greenhouses, of running water and in many cases showers for decontamination and heat-stress alleviation; and (5) the availability, also usual in rose greenhouses, of shade, fans, or other mechanical ventilation to provide some cooling. EPA therefore believes that early entry with PPE would be feasible and provide adequate reduction of risks to rose harvesters. Under the conditions of this exception

there will be less pesticide exposure to rose harvesters than in the past.

However, because of continuing uncertainty about the potential risks to early-entry rose harvesters and about the extent of the economic impact of WPS entry restrictions, and because EPA believes that certain alternative practices will eventually reduce or eliminate the need for early entry for rose harvesting, EPA is limiting the exception to 2 years. Should industry determine it needs an exception beyond 2 years, the industry will need to provide EPA with additional information on risks and benefits to support such an exception request.

A. Economic Need

Comments received from rose growers estimated annual revenue losses from $22,000 to more than $50,000 per acre as a result of restricted-entry intervals imposed by the WPS, should no exception be granted. Roses, Incorporated, a national association representing rose growers, estimated an average annual loss of $35,000 per acre for rose growers nationally. This is based on an estimated loss of the equivalent of 1 day's harvest per week due to the WPS. These figures appear to be based on the frequency at which pesticides are normally applied in rose production, the toxicity categories of the pesticides most commonly used on roses, and the need to harvest roses 2 times per day to ensure the harvested crop will yield a premium price. One comment stated that a rose crop can lose 80 percent of its value in 5 hours if not harvested promptly. Several rose growers commented that, given the practices currently employed on their operations, they would lose from 10 percent to 28 percent of their crop as a result of the WPS prohibition against reentry for harvesting during restricted-entry intervals, which range from 12 to 48 hours. These comments cite an average loss of 1 to 2–days' harvest each week depending on the pesticides applied.

Many growers also cited foreign competition in the rose industry as posing a serious economic threat. According to information submitted, imported roses, which represented less than 10 percent of the domestic market in 1980, now account for approximately 50 percent of the U.S. rose supply. Several comments noted that roses can be produced outside the U.S. with far lower labor costs and fewer government restrictions on chemicals used and on workplace safety. A few comments stated that domestic rose producers have managed to retain an economic edge over their foreign competitors by producing higher quality roses. These comments also noted, however, that quality rose production is dependent on intensive pesticide use to ensure an enhanced cosmetic standard.

Comments opposing the exception noted that the industry's estimates are based on current practices which rely on entry as soon as sprays have dried and dusts have settled. These comments suggested that alternative cultivation practices, such as improved scheduling of pesticide applications around essential work activities and use of nonchemical or less-toxic chemical pesticides, would either greatly reduce or eliminate the need for early entry.

One rose grower also noted that improved worker safety, while important in itself, has economic benefits which would offset some of the costs to employers brought on by the conditions of the exception proposed by EPA.

EPA currently has insufficient information to project quantitatively the economic impacts of not granting an exception to rose growers at this time. Given current practices, it is clear that without an exception to early-entry prohibitions, rose growers would be forced to change their practices. EPA expects that such changes in pesticide-use patterns, harvesting, post-harvest handling, scheduling of activities, or other cultural practices will either decrease growers' revenues, increase costs, or both, thereby decreasing growers' income at least in the short run. Given EPA's knowledge of rose culture, including the high per acre value of rose production, and information presented in comments submitted by rose growers, EPA believes that the impacts of denying the exception at this time could be substantial.

EPA also believes that the entry requirements set out in the terms of the exception will encourage the rose industry to adopt alternative production practices which ultimately will reduce the need for early entry, the toxicity of pesticide used, the frequency of pesticide use, and, eventually, the potential economic losses resulting from WPS entry restrictions.

B. Risk to Workers

Most comments opposing the proposed exception identified risk to workers as a primary concern. These comments observed that the frequency and volume of pesticide use in flower production which is necessary to maintain a high cosmetic standard contributes to worker exposure risk.

Several comments included specific information about injuries and poisonings relating to benomyl use (EPA notes that in 1992 all ornamental uses of benomyl, including use on roses, were voluntarily cancelled. Therefore benomyl should pose no added risk to workers harvesting roses under this exception.)

A number of comments also noted injuries to workers in cut-fern operations and included testimonials from fern workers who suffered pesticide-related illnesses or injuries. Some comments included reference to a study (Brouwer et. al. 1991) which suggested that workers in cut flower cultivation may experience higher exposure than workers who apply the pesticides.

Most comments from growers, on the other hand, noted safety records reflecting few, if any, lost work days as a result of worker exposure to pesticides. Roses, Inc., surveyed its members in 1988 about pesticide safety records and suggested that the survey results supported these comments. However, due to the limited scope of the survey and because the survey to some extent relied on growers' memories for data collection, it is difficult to draw conclusions from the results.

Many growers' comments noted that a factor contributing to rose workplace safety is the relative stability of the work force. Since roses are cultivated year round there is less worker turnover than in other, seasonal crops. Some growers cited an average employment period of 5 years or more per worker, and others added that rose workers are frequently paid by the hour rather than at a piece rate, which may encourage safer work practices. Rose growers also commented that productive workers must be trained and gain experience in cultivation and harvesting techniques. This employer investment also contributes to work force stability and safety.

Employers' Reports of Occupational Injuries, compiled by the California Department of Industrial Relations from 1981 to 1990, indicate that workers in horticultural specialty crops, which include roses, had a slightly higher rate of pesticide poisoning (0.53 poisonings per 1,000 workers per year) than that for agricultural workers in general (0.46 poisonings per 1,000 workers per year). This data, as well as information gathered by Agency experts about intensive pesticide use in rose production, has led EPA to determine that, without PPE and the other protective conditions of this exception, risk is as high or higher for rose harvesters as for workers harvesting outdoor agricultural crops such as strawberries, cotton, leaf crops, etc. EPA believes worker exposure risk is a

serious concern in greenhouse rose production. Certain workplace conditions discussed below, however, increase the likelihood that the conditions of this exception will effectively mitigate worker exposure risk.

The Brouwer study measured pesticide residues collected on hand and arm coverings worn by workers during flower-cultivation activities without any protective clothing or gloves being placed between treated foliage and the residue collectors. Workers in the Brouwer study were not provided with or required to use protective gear and their time in treated areas was not limited. EPA believes the conditions of this exception, which also include training about pesticide hazards and personal safety, and employer-provided PPE and decontamination facilities, will reduce worker exposure during harvesting activities permitted by this exception. Because the rose workforce is comparatively small and stable, EPA believes the conditions placed on this exception will be easier to implement and monitor than for many other agricultural crops.

EPA remains concerned about worker risk in rose cultivation. EPA is gathering the data necessary to establish chemical-specific REIs to ensure workers are adequately protected from risks associated with reentry. As a result of this process, some product-specific REIs appearing on pesticide labels include special restrictions. The exception described in this Notice may be used unless early entry is expressly prohibited in product labeling.

C. Conditions of the Exception

In 1992, EPA proposed to grant this exception subject to the following conditions: (1) The PPE specified on the product labeling for early entry is provided, cleaned, and maintained for the worker by the employer, and measures to prevent heat-related illness are implemented, when appropriate; (2) no entry takes place for the first 4 hours after the application and, thereafter, until any exposure level listed in the labeling has been reached or any ventilation criteria established by the WPS or in the labeling have been met; (3) the time in treated areas for each worker may not exceed 3 hours in any 24–hour period; (4) the required decontamination and change areas are provided; and (5) the required basic training and label-specific information have been furnished. Public comments on these conditions, which are designed to mitigate risk to early-entry workers, are discussed below.

At the time the exception was proposed, EPA expected that the basic provisions of the WPS for all workers would be provided for early-entry workers under this exception. However, since recent legislation has delayed the compliance date of certain WPS provisions, some of those basic protections have been incorporated into the conditions of this exception.

1. *Personal protective equipment (PPE).* Several comments opposing the exception stated that PPE use is not practical or feasible for harvesters. The Farmworker Justice Fund and others noted that often workers are not provided with PPE because it is expensive. Farmworker advocates also commented that PPE is not practical for harvesting cut flowers because it is awkward to use and uncomfortable. This, they argued, is a disincentive for some workers—those paid a piece rate—to use PPE since it could slow their work and thus reduce their pay.

Some comments from rose growers echoed these concerns and recommended EPA permit early entry with normal work attire (long sleeved shirt, long pants, shoes and socks) and leather gloves, expressing fear that a crop could be damaged by PPE-encumbered harvesters. Other rose growers noted that, relative to the value of lost crop without an exception, the cost of PPE is low. Therefore, employers would assume the cost of providing PPE to their workers if it were a condition of the exception. Some growers also commented that rose workers are frequently paid by the hour rather than a piece rate. In such cases, there would be no economic reason for workers to avoid use of PPE.

EPA notes that in most situations—even for toxicity category I pesticides—the most PPE that would be required for early-entry workers will be coveralls over long pants and a long-sleeved shirt, socks, chemical-resistant footwear, and chemical-resistant gloves. If the pesticide is an eye irritant, eye protection also will be required. EPA believes that this level of PPE is not likely to affect workers' mobility or dexterity to the extent that it could lead to a damaged crop or discourage workers from using the required PPE.

The Farmworker Justice Fund and other commenters who opposed the exception questioned the feasibility of PPE for protecting workers. Some comments cited a study evaluating PPE during chemical applications (Fenske, R.A., 1988) which demonstrated certain deficiencies in PPE's protective qualities. These deficiencies included pesticide exposure through seams and openings in protective garments. The study also showed exposure as a result of workers removing gloves because of discomfort.

EPA notes that, while some problems identified in the Fenske study which involved pesticide applicators may also apply to early-entry workers, the potential circumstances of exposure differ. Under this exception, early-entry workers would enter to work in a treated area under an REI only after a minimum of 4 hours have elapsed since the end of an application, while applicators involved in treating the area would have potential for direct exposure to pesticide formulations as they are applied. Additionally, the time in treated areas under this exception would be limited to 3 hours per worker per day. Also, since the Fenske study, several PPE manufacturers have made improvements in their products including better engineered seam closures, lighter-weight materials, and enhanced comfort for workers.

Chemical-resistant gloves and glove liners. If the product label requires chemical-resistant gloves, the WPS allows rose harvesters to use chemical-resistant glove liners under leather gloves in lieu of chemical-resistant gloves because of concern over sharp thorns. (Once leather gloves have been worn for this use, thereafter they may only be worn with chemical-resistant glove liners and for no other use.) Roses, Inc., and other commenters in favor of the exception requested that EPA allow rose harvesters to use leather gloves only in lieu of either chemical-resistant gloves or leather gloves with chemical-resistant glove liners. These comments stated that chemical-resistant gloves that are sufficiently supple and durable for rose harvesting are not yet available. Roses, Inc., after testing some glove options with member growers, added that chemical-resistant glove liners tend to be uncomfortable to wear and cause hands to sweat excessively which may encourage skin and fingernail diseases. One comment suggested permitting the use of cotton glove liners in lieu of chemical-resistant liners.

EPA remains convinced that leather gloves do not sufficiently prevent pesticide exposure, and in many cases may pose a greater hazard than if no gloves at all are worn. Since leather is virtually impossible to decontaminate once impregnated with pesticide residues, workers who wear such gloves are subjecting their hands to uninterrupted contact with residues and are thus at increased risk of pesticide-related problems. Agency experts also doubt the ability of cotton liners to be an effective barrier to residues given the duration and conditions under which

the gloves would likely be worn. EPA notes that obtaining chemical-resistant gloves of a quality and durability appropriate for harvesting thorn-type roses is difficult at present. However, several varieties of lightweight and disposable chemical-resistant gloves and glove liners are currently available which EPA believes, when worn under leather gloves, would not significantly affect a worker's dexterity. EPA therefore continues to require the use of either chemical-resistant gloves or leather gloves over chemical-resistant glove liners under this exception.

Heat stress. Another concern expressed in the comments was that PPE may increase workers' risk of heat stress. Information was presented that suggested heat is a serious health threat to workers, particularly those in fern operations.

Several growers commented that PPE would not pose a significant heat problem for rose workers because of several mitigating factors. These comments noted that temperature must be carefully regulated for successful rose cultivation through use of fans and venting during hot weather. One comment added that it is rare for temperatures in a rose greenhouse to exceed 90 degrees. Comments also added that water for drinking and decontamination is immediately available in virtually all rose greenhouses. EPA believes that such conditions make it likely that PPE will not pose the risk of heat-related illness to be expected for workers in other crops.

Conclusions. EPA recognizes the potential risks of worker exposure and heat stress during early-entry work; however, EPA believes that the PPE required under the exception is feasible and likely to provide adequate reduction of risks to workers in the rose industry. This is based on several factors: PPE would be worn for only limited periods of time; harvesters could work relatively efficiently while wearing the required PPE; water for drinking and decontamination is immediately available in most rose greenhouses; and the usual presence in rose greenhouses of fans or other mechanical ventilation to provide some cooling. Also, that the rose workforce is relatively stable and frequently paid an hourly wage rather than a piece rate, contributes to this determination.

Under this exception, EPA is requiring that early-entry workers wear PPE listed on the pesticide product label for early-entry workers. Early-entry PPE is generally equal to that which would be worn by applicators of the chemical in question (minus respirators, since entry is prohibited until the exposure level listed on the labeling has been reached or any ventilation criteria established by the WPS or in the labeling have been met). Additionally, under the conditions of this exception, early-entry workers would be instructed how to put on, use, and take off early-entry PPE, the importance of washing thoroughly after removing PPE, and how to prevent, recognize, and give first aid for heat-related illness.

2. *4–hour prohibition versus "sprays dried and dusts settled."* Several growers commented that the performance standard of "sprays have dried and dusts have settled" is preferable to EPA's generic entry prohibition of 4 hours after an application. Comments noted that the "sprays dried/dust settled" standard is both more workable for their industry and more protective of workers: sprays usually dry in 2 – 3 hours, but sometimes, in humid greenhouse conditions, may not be dry until after more than 4 hours have elapsed.

Comments, both favoring and opposing the exception, cited California regulations governing re-entry. The California Department of Pesticide Regulation (CDPR) also submitted comments. California's current regulations allow reentry for hand labor activities when sprays have dried and dusts have settled for most toxicity category II and III pesticides, and for six category I pesticides of importance to the greenhouse industry. (These six category I pesticides are skin and eye irritants.) Otherwise, entry is restricted for 24 hours following application of a category I product. According to CDPR, "These reduced entry intervals are based on workers being protected by work clothes and gloves, and instructions to shower at the end of the work period."

EPA adopted the generic 4–hour period of no entry as a means of removing personal judgment from the entry equation. Sprays dry at different rates in different parts of a treated area, depending on greenhouse conditions. Therefore, it is a difficult and subjective decision as to when entry is permissible under a "sprays dried" standard. For this reason, the "sprays dried" standard is also difficult to enforce. EPA continues to believe that there should be no entry into freshly treated areas which would involve contact with treated surfaces until the dusts or sprays have settled and some drying or volatilization of the formulation has taken place—4 hours. Thus, under this exception, EPA prohibits entry to treated areas for the first 4 hours after an application. (Also, entry is not permitted until any exposure level listed on the labeling has been reached or any ventilation criteria established by the WPS or in the labeling have been met. In some cases this will exceed 4 hours.) EPA believes that the conditions of this exception will protect workers from hazardous pesticide exposures regardless of a pesticide's toxicity category.

3. *3 hours per worker per 24 hours limit.* EPA proposed that each worker could not exceed 3 hours of early entry in any 24–hour period. The 3–hour limit was based on comments from Roses, Inc., on the proposed WPS which stated that 3 hours per worker per 24 hours would allow for most harvest needs and would limit worker exposure. Many comments from growers recommended extending the amount of time a worker may spend in a restricted area beyond 3 hours in a 24–hour period.

Several comments from rose growers suggested that normally 3 hours per worker per 24–hour period would be sufficient to carry out necessary harvesting during a restricted-entry interval. Most comments noted, however, that an early-entry worker may need to harvest for more than 3 hours during holiday harvest times. One comment stated that up to 8 hours could be needed. A few comments recommended a weekly standard rather than a 24–hour limit. Roses, Inc., also suggested that, given the proposed PPE conditions, a time limit would not be necessary. Some grower comments, however, indicated that the 3–hour limit would not pose significant problems and that pesticide applications could be scheduled around holiday harvests.

Comments opposing the exception raised the concern of worker non-compliance: if harvesters are paid piece rate they will have a strong economic incentive to exceed the 3–hour limit.

EPA is persuaded of the industry's economic need, given current production practices, to harvest roses during restricted-entry intervals, and recognizes that the time required to harvest roses varies from greenhouse to greenhouse and depends on holiday demand. Based on comments submitted by industry and knowledge of rose cultivation practices, EPA will accept 3 hours to be the amount of time needed to meet most harvest needs.

EPA points out that the effectiveness of PPE, upon which workers will rely to prevent exposure, declines the longer equipment is worn. Chemical resistance also decreases with time. Additionally, the longer a worker wears PPE the more likely it becomes that the worker will remove pieces as the PPE grows less comfortable. EPA believes an individual should not exceed 3 hours of early-entry

rose harvesting in any 24–hour period Therefore, the proposed 3–hour limit remains a condition of the exception. Any employers allowing their workers to exceed the 3–hour limit would be violating the WPS.

4. *Decontamination facilities.* Worker advocates commented that decontamination supplies will be too expensive for many employers to justify. Growers have responded that, like PPE, decontamination supplies are cheap relative to the value of crop lost due to entry restrictions. Employers would therefore assume the cost of decontamination supplies as a condition of the exception. Rose growers also commented that water for drinking and decontamination are immediately available in virtually all rose greenhouses.

EPA has decided that the proposed exception requirements for decontamination should remain a condition of this exception.

5. *Training and label information.* EPA proposed that early-entry workers be given the required basic safety training for workers and be provided with label-specific information before any early-entry work which involved contact with treated surfaces. Some comments submitted by growers stated that the training and communication requirements were extensive, and requested clarification.

EPA notes that the basic safety training for early-entry workers under this exception is identical to the basic safety training for other workers covered by the WPS, but early-entry workers must be trained before the early-entry work. EPA has prepared the basic materials and resources for worker training under the WPS and is currently distributing these widely through the States, USDA Cooperative Extension Service, and other training networks. Additionally, EPA will provide copies of such training resources directly to the rose industry to help facilitate training as required under the exception.

Regarding the provision of label-specific information, EPA believes that workers harvesting roses during an REI should be informed about the hazards associated with the chemicals to which they could be exposed. Early-entry workers may either read the product labeling or the employer may inform the worker of the appropriate labeling requirements. EPA believes this will not be unreasonably burdensome given the potential value of the information to workers, and has decided to maintain this as a condition of the exception.

6. *Time limitation and alternative practices.* Several comments recommended a strict time limit, should an exception be granted, to provide an incentive for developing and implementing alternative practices.

The National Coalition Against the Misuse of Pesticides (NCAMP) stated in their comments that a time limit for an exception "is an appropriate tool to encourage the development and implementation of alternative pest control methods which will result in greater worker safety."

In the preamble to the WPS, EPA stated that the elimination of routine early entry for hand labor activities may "force" the development of technology such as engineering controls, mechanical harvesters, weedecs, and pruners in crops where the timing of such tasks is critical (57 FR 38116–38117, August 21, 1992). This exception is intended as an interim measure which will allow growers time to explore and implement early-entry alternatives which are appropriate for cut rose production.

Several comments from both growers and worker advocates cited the existence of alternatives which should reduce the need for early entry within a few years. Examples of alternatives named in the comments included lower toxicity chemicals with shorter REIs, biological controls, engineering and technological advancements, genetic engineering of resistant rose varieties, and cultural practices (such as scheduling pesticide applications and work activities to avoid conflicts). The key difference between the growers' and the worker advocates' positions on alternatives was the extent to which they believe such alternatives can be quickly and cost-effectively adopted by industry.

The Farmworker Justice Fund presented information suggesting that several alternatives, including biological controls and cultural practices, have been studied and found to be effective in controlling certain rose pests.

In 1988 Roses, Inc., estimated a 5–year to 7–year time frame for the rose industry to develop alternatives to toxicity category I and II pesticides. In 1992, Roses, Inc., commented that:

> While some progress had been made, a lack of research funds and pressures from subsidized and dumped low-cost rose imports have seriously reduced profitability, making research and capital investment funds extremely hard to obtain. Less toxic pesticides are being used. Introduction of new materials is helping.... But, they are still too few to answer our needs and let us rely only on Class III materials.

New rose varieties being developed through genetic manipulation with disease and pest resistance are another possibility cited by Roses, Inc. While progress has been made, here again Roses, Inc., states they are still years away from rose plant introductions with significant engineered insect and disease resistance.

Roses, Inc., noted that while certain biological controls are promising, they often require a grower to make a sizable capital investment to implement. They conclude that these alternatives need more research, time, and money "to let the substitute practices mature as a real answer for our industry."

The Society of American Florists suggested that EPA offer incentives to growers who use less toxic pesticides. The Agency notes that, to a large extent, the provisions of the WPS are the incentive: growers who use primarily toxicity category III and IV products may not need early entry and therefore would not have to provide PPE, etc., for their harvesters.

One grower commented, "With some planning and shifting personnel we could keep early entry to a minimum." EPA lauds this as an immediate, practical alternative. Information about rose cultivation gathered by Agency experts suggests that in some cases roses can be cut early with minimal loss to crop value, if properly stored and handled.

In general, for a complex and highly managed crop such as roses, EPA believes industry will attempt to make adjustments in cultural practices and pesticide use patterns to minimize losses.

A time limit will encourage development and implementation of safer methods of pest control. EPA believes that time and research are needed to develop sustainable alternatives to early entry, but that the industry should aggressively work toward implementation of alternatives that have been proven effective. EPA expects that much early entry can be eliminated immediately through "planning and shifting personnel", and that in 2 years other alternatives to toxicity category I and II pesticides can be implemented.

Finally, while rose growers submitted sufficient information to convince EPA that an early-entry prohibition could have a substantial economic impact, EPA believes that the benefits, based on the limited information presented, only justify an interim period for the growers to adapt to the requirements of the WPS. Therefore, EPA has decided that the exception for early entry for harvesting cut roses will expire 2 years from publication of this Notice.

EPA continues to believe that in most cases the most reliable and effective

means of risk reduction for harvesters is to keep them out of treated areas until the expiration of the REI. However, because of the potentially considerable economic benefits of an exception for the cut rose industry, EPA has decided to grant a temporary exception. Until this exception expires, PPE, safety training and provision of label information, decontamination facilities, and time-in-treated-area limits, etc., will be the primary means of mitigating early-entry workers' pesticide exposure risk.

EPA will consider another exception for roses if the industry submits a request supported by the full set of data required under §170.112(e), including the feasibility of the conditions of this exception, and can clearly demonstrate that an aggressive attempt to develop and implement alternative practices was made during the period of this exception.

D. Activities Not Included in the Exception

Many comments from growers urged the Agency to include tasks such as watering, pruning, and disbudding in this exception, and to clarify whether "passing through" a restricted area would be acceptable.

Farmworker advocates' comments recognized that while industry comments had stated the need to harvest roses twice daily, 365 days per year, insufficient evidence was provided to support early entry for activities other than harvesting.

Sufficient evidence has not been presented to show that pruning and disbudding could not be accomplished outside of normal restricted-entry intervals. EPA believes these tasks can be accomplished without early entry through coordinated planning and scheduling without undue economic hardship for the industry.

In several rose greenhouses, automated or semi-automated irrigation is becoming the norm. In such operations, watering may be accomplished either without entry into the greenhouse or without contact with treated surfaces in the greenhouse; such entry may be permitted under §170.112(b).

EPA expects that passing through a treated area would be permissible, in most cases, under §170.112(b), *Exception for activities with no contact*, as long as the employer ensures the conditions of §170.112(b)(1) and (2) are met, that is, the worker will have no contact with treated surfaces, and no entry is allowed until any inhalation exposure criteria or ventilation criteria have been met.

E. Worker Compliance

As noted above, some comments raised concern over workers' possible failure to observe the requirements of this exception. Comments from growers expressed concern that employers are at risk of enforcement action should their workers fail to follow directions to use the required personal protective equipment or stay out of restricted areas.

EPA notes that responsibility for compliance with the general requirements of the WPS as well as the conditions of this exception rests with employers. While employers are prohibited from taking retaliatory action against employees for attempting to comply with the requirements of the WPS or this exception, the WPS does not prevent an employer from disciplining a worker who fails to observe the employer's instructions to use PPE, stay out of restricted areas, or other directions relating to WPS requirements. Such action in no way alleviates the responsibility of the employer to adhere to the requirements of the WPS.

F. Other Issues

Some comments requested exceptions from provisions which are outside the scope permitted by the exception process in §170.112(e). Such requests included (1) a special exception from oral notification and posting provisions, (2) use of barrier tape in lieu of posting with the WPS warning sign, (3) special minor use registration assistance, and (4) use of the exception process to revise other provisions of the WPS. Since these requests are beyond the scope of §170.112(e), they are not addressed here.

IV. Response to Other Cut Flower and Cut Fern Producers

For other cut flowers and cut ferns, EPA received very limited or no information on (1) projected economic impacts of WPS entry restrictions, (2) technical or financial viability of alternative practices, and (3) the safety and feasibility of an exception. Evidence submitted in some of the comments suggested that alternatives to early entry exist for these other crops, and that an early-entry prohibition would not cause economic repercussions great enough to outweigh the risk to workers. Therefore, EPA has determined that an exception for other cut flower and cut fern producers is not warranted at this time.

V. Terms of the Exception

This exception for harvesting cut roses is narrower than the exception which was proposed by EPA in the August 21, 1992, **Federal Register** (57 FR 38175) in that this exception extends only to harvesting cut roses and expires after 2 years.

In April 1994, Congress enacted legislation which delays the compliance date for some of the basic safety provisions of the WPS until January 1, 1995. This legislation permits entry during an REI for tasks relating to the production of agricultural plants, but explicitly excludes hand labor activities such as harvesting, from the permitted tasks. EPA is including in the terms of this exception for rose harvesting, some basic safety provisions which will be provided to all workers covered by the WPS on January 1, 1995. These include provisions for basic safety training, display of a safety poster, posting of application information, decontamination, and emergency assistance. Notwithstanding the 1994 legislation, agricultural employers taking advantage of the exception announced in this Notice must comply with the conditions of this exception. The 1994 legislation does not affect the terms of this exception.

The terms of the exception are the same as those proposed in the August 21, 1992, **Federal Register** (57 FR 38175), with the exception that a requirement has been added that agricultural employers who make use of this exception inform their early-entry workers about the exception, and that the exception is limited to 2 years. The basic safety provisions described above also have been included.

EPA reserves the right to withdraw exceptions, including the exception for cut roses, in accordance with §170.112(e)(6), *Withdrawing an exception*, if the Agency receives information or any other data that indicate the health risks posed by the exception are unacceptable or if the Agency receives information that indicates the exception is no longer necessary or prudent.

The exception described in this Notice may be used unless early entry is expressly prohibited in product labeling. For example, some labels prohibit entry—including entry that would otherwise be permitted under the WPS and this exception—by any person other than trained and equipped handlers performing handling tasks for specified periods after the application. In such cases, during that period, early entry to harvest roses is not permitted under this exception.

Exception for harvesting roses:

1. *Conditions.* Under this exception, a worker may enter a treated area during a restricted-entry interval to harvest roses if the agricultural employer

ensures that the following requirements are met:

(a) No such entry is allowed for the first 4 hours following the end of the application, and no such entry is allowed thereafter until any inhalation exposure level listed in the labeling has been reached, or any ventilation criteria on the labeling or, after January 1, 1995, established by 40 CFR 170.110(c)(3), have been met.

(b) The time in treated areas during a restricted-entry interval for any worker harvesting roses under this exception does not exceed 3 hours in any 24-hour period.

(c) The agricultural employer ensures that the worker, before entering the treated area, either has read the product labeling or has been informed, in a manner that the worker can understand, of all labeling requirements related to human hazards or precautions, first aid, symptoms of poisoning, personal protective equipment specified for early entry, and any other labeling requirements related to safe use.

(d) The personal protective equipment specified on the product labeling for early entry is provided to the worker. Such personal protective equipment shall conform to the following standards:

(1) Personal protective equipment (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

(2) Long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, socks, and other items of work clothing are not considered personal protective equipment for the purposes of this exception and are not subject to the requirements of this exception, although pesticide labeling may require that such work clothing be worn during some activities.

(3) When "chemical-resistant personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of the pesticide being used through the material during use.

(4) When "waterproof" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(5) When a "chemical-resistant suit" is specified by the product labeling, it shall be a loose-fitting, one- or two-piece, chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(6) When "coveralls" are specified by the product labeling, they shall be a loose-fitting, one- or two-piece garment, such as a cotton or cotton and polyester coverall, that covers, at a minimum, the entire body except head, hands, and feet. The pesticide product labeling may specify that the coveralls be worn over a layer of clothing. If a chemical-resistant suit is substituted for coveralls, it need not be worn over a layer of clothing.

(7) Gloves shall be of the type specified by the product labeling. Gloves or glove linings made of leather, cotton, or other absorbent materials must not be worn for early-entry activities unless these materials are listed on the product labeling as acceptable for such use. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable for tasks with roses or other plants with sharp thorns, leather gloves may be worn over chemical-resistant liners. However, once leather gloves have been worn for this use, thereafter they shall be worn only with chemical-resistant liners and they shall not be worn for any other use.

(8) When "chemical-resistant footwear" is specified by the product labeling, it shall be one of the following types of footwear: chemical-resistant shoes, chemical-resistant boots, or chemical-resistant-shoe coverings worn over shoes or boots. If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable for workers, then leather boots may be worn in such terrain.

(9) When "protective eyewear" is specified by the product labeling, it shall be one of the following types of eyewear: goggles; face shield; safety glasses with front, brow, and temple protection; or a full-face respirator.

(10) When "chemical-resistant headgear" is specified by the product labeling, it shall be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(e) The agricultural employer ensures that:

(1) Workers wear the personal protective equipment correctly for its intended purpose and use personal protective equipment according to manufacturer's instructions.

(2) Before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(3) Personal protective equipment that cannot be cleaned properly is disposed of in accordance with any applicable Federal, State, and local regulations.

(4) All personal protective equipment is cleaned according to manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it shall be washed thoroughly in detergent and hot water.

(5) Before being stored, all clean personal protective equipment is dried thoroughly or is put in a well-ventilated place to dry.

(6) Personal protective equipment contaminated with pesticides is kept separately and washed separately from any other clothing or laundry.

(7) Any person who cleans or launders personal protective equipment is informed that such equipment may be contaminated with pesticides, of the potentially harmful effects of exposure to pesticides, and of the correct ways to handle and clean personal protective equipment and to protect themselves when handling equipment contaminated with pesticides.

(8) All clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(9) Each worker is instructed how to put on, use, and remove the personal protective equipment and is informed about the importance of washing thoroughly after removing personal protective equipment.

(10) Each worker is instructed in the prevention, recognition, and first aid treatment of heat-related illness.

(11) Workers have a clean place away from pesticide-storage and pesticide-use areas for storing personal clothing not in use; putting on personal protective equipment at the start of any exposure period; and removing personal protective equipment at the end of any exposure period.

(12) That no worker is allowed or directed to wear home or to take home personal protective equipment contaminated with pesticides.

(f) When personal protective equipment is required by the labeling of any pesticide for early entry, the agricultural employer ensures that no worker is allowed or directed to perform the early-entry activity (harvest roses) without implementing, when appropriate, measures to prevent heat-related illness.

(g) The agricultural employer: (1) During early entry permitted under this exception, provides early-entry workers with enough water for routine washing and emergency eyeflushing

(2) Ensures that: (i) At all times when the water is available to workers, it shall be of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed.

(ii) When water stored in a tank is to be used for mixing pesticides, it shall not be used for decontamination or eyeflushing, unless the tank is equipped with properly functioning valves or other mechanisms that prevent movement of pesticides into the tank.

(iii) Soap and single-use towels are provided at each decontamination site in quantities sufficient to meet workers' needs.

(iv) To provide for emergency eyeflushing, at least 1 pint of water shall be immediately available to each worker who is harvesting roses if the pesticide labeling requires protective eyewear for the early-entry activity. The eyeflush water shall be carried by the early-entry worker or shall be otherwise immediately accessible.

(v) The decontamination site shall be reasonably accessible to and not more than 1/4 mile from where workers are working.

(vi) The decontamination site shall not be in an area being treated with pesticides.

(vii) The decontamination site shall not be in an area that is under a restricted-entry interval unless the decontamination site would otherwise not be reasonably accessible to those workers.

(3) *Decontamination after early-entry activities.* At the end of any exposure period for early-entry workers, the agricultural employer provides, at the site where the workers remove personal protective equipment, soap, clean towels, and a sufficient amount of water so that the workers may wash thoroughly.

(h) *Posted pesticide safety information.* When early-entry workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by the WPS has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer displays, in accordance with this exception, pesticide safety information.

(1) *Safety poster.* A safety poster is displayed that conveys, at a minimum, the following basic pesticide safety concepts:

(i) Avoid getting on your skin or into your body any pesticides that may be on plants and soil, in irrigation water, or drifting from nearby applications.

(ii) Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.

(iii) Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).

(iv) Wash/shower with soap and water, shampoo hair, and put on clean clothes after work.

(v) Wash work clothes separately from other clothes before wearing them again.

(vi) Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo, and change into clean clothes.

(vii) Follow directions about keeping out of treated or restricted areas.

(viii) There are Federal rules to protect workers and handlers.

(2) *Emergency medical care information.* The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the safety poster, and workers shall be informed promptly of any change to the information on emergency medical care facilities.

(3) *Location.* The information shall be displayed in a central location in the greenhouse where it can be readily seen and read by workers.

(4) *Accessibility.* Early-entry workers shall be informed of the location of the information and shall be allowed access to it.

(5) *Legibility.* The information shall remain legible during the time it is posted.

(i) *Providing specific information about applications.* When early-entry workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by the WPS has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer displays, in accordance with this paragraph, specific information about the pesticide.

(1) *Location, accessibility, and legibility.* The information shall be displayed in the location specified for the pesticide safety poster in paragraph (h)(3) and shall be accessible and legible, as specified in paragraphs (h)(4) and (h)(5).

(2) *Timing.* (i) The information shall be posted before the application takes place if early-entry workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker's first work period involving early entry.

(ii) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier.

(3) *Required information.* The information shall include:

(i) The location and description of the treated area.

(ii) The product name, EPA registration number, and active ingredients of the pesticide.

(iii) The time and date the pesticide is to be applied.

(iv) The restricted-entry interval for the pesticide.

(j) *Notice about the exception for harvesting roses.* The agricultural employer:

(1) Notifies early-entry rose harvesters orally, before such workers enter a treated area, that the establishment is relying on this exception to allow workers to enter treated areas to harvest roses.

(2) Posts information about the terms and conditions of this exception. The posted information shall convey the following information:

(i) The establishment is operating under the conditions of the exception for rose harvesting.

(ii) No entry is allowed for the first 4 hours following an application, and until any exposure level has been reached or any ventilation criteria have been met.

(iii) Time in treated areas for each worker may not exceed 3 hours in any 24–hour period.

(iv) Decontamination and change areas must be provided.

(v) Basic safety training and label-specific information must be provided to early-entry workers.

(vi) The personal protective equipment specified on the product labeling for early-entry must be provided, cleaned, and maintained for early-entry workers.

(vii) Early-entry workers must be instructed in how to put on, use, and remove the personal protective equipment.

(viii) Measures to prevent heat stress must be implemented when appropriate.

(ix) A pesticide safety poster and information about pesticide applications must be displayed in a central location.

(x) The exception expires on June 10, 1996.

(3) *Location, accessibility, and legibility.* The posted information shall be displayed in the location specified for the pesticide safety poster in paragraph (h)(3) and shall be accessible and legible, as specified in paragraphs (h)(4) and (h)(5).

(4) *Timing.* (i) The information shall be posted before early-entry harvesting takes place and shall continue to be

displayed as long as the exception is used on the agricultural establishment.

(k) *Pesticide safety training*— (1) *General requirement.* Before a worker enters a treated area to harvest roses as permitted under this exception, the agricultural employer ensures that the worker has been trained in general pesticide safety according to paragraph (l).

(2) *Exception.* A worker who is currently certified as an applicator of restricted-use pesticides under 40 CFR part 171 or who satisfies the training requirements of part 171 or who satisfies the handler training requirements under 40 CFR 170.230(c) need not be trained under this paragraph.

(l) *Training programs.* (1) General pesticide safety information shall be presented to workers either orally from written materials or audiovisually. The information must be presented in a manner that the workers can understand (such as through a translator) using nontechnical terms. The presenter also shall respond to workers' questions.

(2) The person who conducts the training shall meet at least one of the following criteria:

(i) Be currently certified as an applicator of restricted-use pesticides under 40 CFR part 171; or

(ii) Be currently designated as a trainer of certified applicators or pesticide handlers by a State, Federal, or Tribal agency having jurisdiction; or

(iii) Have completed a pesticide safety train-the-trainer program approved by a State, Federal, or Tribal agency having jurisdiction; or

(iv) Satisfy the training requirements in 40 CFR part 171 or in 40 CFR 170.230(c).

(3) Any person who issues an EPA-approved Worker Protection Standard worker training certificate must assure that the worker who receives the training certificate has been trained in accordance with (l)(4) of this paragraph.

(4) The training materials shall convey, at a minimum, the following information:

(i) Where and in what form pesticides may be encountered during work activities.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes through which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures, including emergency eyeflushing techniques.

(viii) Hazards from chemigation and drift.

(ix) Hazards from pesticide residues on clothing.

(x) Warnings about taking pesticides or pesticide containers home.

(xi) Requirements of 40 CFR part 170 subpart B designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides.

(m) *Verification of training.* (1) Except as provided in paragraph (m)(2), if the agricultural employer ensures that a worker possesses an EPA-approved Worker Protection Standard worker training certificate, then the requirements of paragraphs (k) and (l) will have been met.

(2) If the agricultural employer is aware or has reason to know that an EPA-approved Worker Protection Standard worker training certificate has not been issued in accordance with the conditions described above, or has not been issued to the worker bearing the certificate, a worker's possession of that certificate does not meet the requirements of paragraph (k).

(n) *Emergency assistance.* If there is reason to believe that a person who is or has been harvesting roses as permitted by this exception has been poisoned or injured by exposure to pesticides used on the agricultural establishment, including, but not limited to, exposures from application, splash, spill, drift, or pesticide residues, the agricultural employer shall:

(1) Make available to that person prompt transportation from the agricultural establishment, including any labor camp on the agricultural establishment, to an appropriate emergency medical facility.

(2) Provide to that person or to treating medical personnel, promptly upon request, any obtainable information on:

(i) Product name, EPA registration number, and active ingredients of any product to which that person might have been exposed.

(ii) Antidote, first aid, and other medical information from the product labeling.

(iii) The circumstances of application or use of the pesticide on the agricultural establishment.

(iv) The circumstances of exposure of that person to the pesticide.

II. *Definitions.* The terms used in this exception have the same meanings as they have in the Worker Protection Standard 40 CFR part 170.

III. *Expiration.* This exception expires June 10, 1996.

VI. List of Exceptions in 40 CFR 170.112

In the Final rule section of this **Federal Register**, EPA is amending §170.112 of the WPS by adding a new paragraph (e)(7) identifying the **Federal Register** citation and effective date for this administrative exception for harvesting cut roses. In the future, reference to other exceptions granted under §170.112(e) will also be added to this new paragraph (e)(7) as exceptions are granted. EPA is adding this cross-reference in §170.112(e), and EPA will ensure that the regulated community is aware of, and able to locate, this and future administrative exceptions and is aware of the terms and conditions of the exceptions. The addition of paragraph (e)(7) to §170.112 is a technical amendment. It does not make any substantive changes in the WPS or in §170.112.

List of Subjects

Administratice practice and procedure, Labeling, Occupational safety and health, Pesticides and pest.

Dated: June 3, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–14180 Filed 6–9–94; 8:45 am]
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federal register

Friday
June 10, 1994

Part VIII

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 256
Housing Improvement Program; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 256

Housing Improvement Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice; Extension of Proposed Rule comment period.

SUMMARY: Notice is hereby given that the public comment period of the Notice of Proposed Rulemaking for amendments to 25 CFR part 256, is extended for a period of thirty days. The extension, requested by Indian leadership, will provide sufficient time for contemplation and comment.

DATES: This notice, effective upon publication in the **Federal Register**, will extend the comment period from June 6, 1994 to July 6, 1994.

FOR FURTHER INFORMATION CONTACT: Acting Chief, Division of Housing Assistance, Bureau of Indian Affairs, Mailstop 2525–MIB, 1849 C Street, NW, Washington, DC 20240. Telephone (202) 208–5427.

SUPPLEMENTARY INFORMATION: The Assistant Secretary—Indian Affairs published a Proposed Rule which amends 25 CFR part 256, Housing Improvement Program (59 FR 16726). The Notice of Proposed Rulemaking proposes a revision to the distribution method for Housing Improvement Program (HIP) funds from a housing inventory basis to documented eligible applicants. Based on the total number of eligible applicants submitted by all tribes, the Bureau of Indian Affairs (BIA) will distribute FY 1995 HIP funds proportionally and transfer these funds into the Tribal Priority Allocation (TPA) for each tribe. Beginning in FY 1996, individual tribes will make their own determination of funding levels for HIP within their TPA funding allocation.

A technical correction is also made to eliminate Category C, Downpayments which are inconsistent with the intent of the HIP. The income levels in the January 1992 issue of 25 CFR 256 were established to ensure that the program served truly needy individuals.

A revision is proposed to eliminate individuals who own a home acquired under Federal housing assistance from the Department of Housing and Urban Development (HUD) through an Indian Housing Authority from being served under HIP. They would not meet the eligibility requirements of HIP since they have already been served by a Federal program. Comments and requests received from Indian people indicate that additional time is needed for the public comment period to facilitate adequate and proper review of the Proposed Rule. All comments received during the initial and extended comment period will be given full consideration. We believe that the extended public comment period will provide an adequate opportunity for tribes and tribal organizations to provide comment and input into the final rule.

Dated: May 25, 1995.

Faith Roessel,

Acting Assistant Secretary—Indian Affairs

[FR Doc. 94–13965 Filed 6–9–94; 8:45 am]

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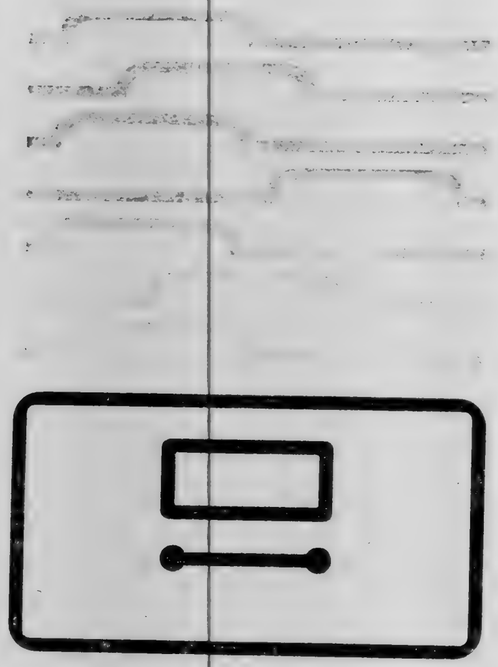
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Monday
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–182–AD; Amendment 39–8932; AD 94–12–04]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires repetitive inspections to detect cracking in certain fuselage skin lap joints, and repair, if necessary. This amendment is prompted by the results of extensive pressure fatigue tests conducted by the manufacturer. The actions specified by this AD are intended to detect and repair fatigue cracking in certain lap joints, which will ensure safe operation of airplanes that have exceeded their economic design goal.

DATES: Effective July 13, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven C. Fox, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2777; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on December 17, 1993 (58 FR 65943). That action proposed to require repetitive high frequency eddy current (HFEC) inspections to detect cracking in certain fuselage skin lap joints, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that Revision 1 of Boeing Service Bulletin 747–53–2367, dated January 27, 1994, be included as an additional source of service information. The FAA concurs. Since the issuance of the proposal, the FAA has reviewed and approved Revision 1 of Boeing Service Bulletin 747–53–2367, dated January 27, 1994, which clarifies the procedures for accomplishment of the inspections described in the Initial Release of the service bulletin, dated December 18, 1991 (which was referenced in the proposal as the sole source of appropriate service information). Therefore, paragraphs (a) and (c) of the final rule have been revised to reference Revision 1 of the service bulletin as an additional source of service information.

This same commenter requests that the proposed rule be revised to include a reporting requirement to keep Boeing and the FAA advised of findings of cracks. The FAA does not concur. The FAA has determined that the unsafe condition addressed by this AD (which is to detect and repair fatigue cracking in certain lap joints) will be adequately addressed by paragraph (a) of the final rule, which requires the inspection of certain lap joints, and paragraph (c) of the final rule, which requires the repair of all cracks found during the inspection. Therefore, since the final rule requires repetitive inspections to detect cracks and repair of all findings of cracks, the FAA finds that a reporting requirement would unduly burden operators.

This commenter further requests that the proposed rule be revised to compensate for operators that fly with cabin pressure differentials of 2.0 psi or less when calculating the number of flight cycles to determine the compliance time. The FAA does not concur. The FAA finds that operating at cabin pressure differentials of 2.0 psi or less is applicable to only one operator. Since there are numerous factors that affect the calculation of flight cycles, such as total number of low pressure cycles, amount of thrust, number of gross weight flight cycles, etc., the FAA has determined that these mitigating factors could be best evaluated through requests for alternative methods of compliance, as provided for in paragraph (d) of the final rule.

One commenter requests that the proposed compliance time of 22,000 flight cycles be extended to 25,000 flight cycles to inspect the lap joints in areas outside of Stringer 14 since data indicate that cracking in these areas did not occur until after 25,000 flight cycles. The FAA does not concur. In developing an appropriate compliance time for this AD, the FAA not only evaluated the fatigue test data that was provided by the manufacturer, but took into consideration the size of the test sample: the test results were based upon just one airplane that had no loads and was not pressurized. Based on this data, the FAA determined that 22,000 flight cycles represented a conservative threshold for initiating inspections so as to ensure that any cracking initiation would be found in a timely manner.

Another commenter requests that the proposed compliance time of 3,000 flight cycles to perform the repetitive inspections be extended to 4,300 flight cycles to coincide with operators' regularly scheduled maintenance periods. The FAA does not concur. The FAA has determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate without compromising safety. In developing this inspection interval, the FAA evaluated the reliability of the inspection method and the results of fatigue test data. The FAA found that extending this interval by more than one-third would allow cracks to propagate undetected, which

would adversely affect the structural integrity of the airplane.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 723 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 183 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $140,910, or $770 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-12-04 Boeing: Amendment 39-8932. Docket 93-NM-182-AD.

Applicability: Model 747-100, -200, -300, 747SP, and 747SR series airplanes, as listed in Boeing Service Bulletin 747-53-2367, dated December 18, 1991, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure in the fuselage due to fatigue cracking in certain lap joints, accomplish the following:

(a) Prior to the accumulation of 22,000 full pressure flight cycles (or, if the external skin panel of an affected lap joint has been replaced: Prior to the accumulation of 22,000 full pressure flight cycles since skin replacement), or within 1,000 landings after the effective date of this AD, whichever occurs later, perform an external surface high frequency eddy current (HFEC) inspection of the skin around the upper row of fasteners in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747-53-2367, dated December 18, 1991; or Revision 1, dated January 27, 1994.

(b) If no crack is found, repeat the inspection at intervals not to exceed 3,000 full pressure flight cycles.

(c) If any crack is found, accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Prior to further flight, perform an open hole HFEC inspection to detect cracking in the upper row fastener holes between the adjacent frames in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747-53-2367, dated December 18, 1991; or Revision 1, dated January 27, 1994. Prior to further flight, repair any crack found in accordance with the 747 Structural Repair Manual, Chapter 53-30-03.

(2) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 3,000 full pressure flight cycles.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections shall be done in accordance with Boeing Service Bulletin 747-53-2367, dated December 18, 1991; or Boeing Service Bulletin 747-53-2367, Revision 1, dated January 27, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 13, 1994.

Issued in Renton, Washington, on May 31, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-13626 Filed 6-10-94; 8:45 am]

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14 CFR Part 39

[Docket No. 93-NM-90-AD; Amendment 39-8933; AD 94-12-05]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes and Model KC-10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-10 series airplanes and Model KC-10A (military) airplanes, that requires inspections to detect cracks in wing stringer number 41; installation of a repair, if necessary; and modification of that stringer. This amendment is prompted by reports of fatigue cracks in outer wing stringer number 41. The actions specified by this AD are intended to prevent reduced structural integrity of the wing.

DATES: Effective July 13, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2-98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5238; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC-10 series airplanes and Model KC-10A (military) airplanes was published in the **Federal Register** on September 24, 1993 (58 FR 49946). That action proposed to require inspections to detect cracks in wing stringer number 41; installation of a repair, if necessary; and modification of that stringer.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the FAA include a flow diagram in the proposal since its provisions are complex. The FAA does not concur. The FAA considers that the requirements of this AD are presented in a reasonably clear manner in the text of the final rule. In addition, McDonnell Douglas DC-10 Service Bulletin 57-114, Revision 1, dated July 26, 1993, which is referenced in the AD as the appropriate source of service information, provides corresponding guidance for accomplishment of the actions required by this AD.

ATA also suggests that, prior to issuance of the final rule, the FAA should verify that the service bulletin will not create problems for operators, and that accomplishment of the service bulletin should be verified by an operator before the AD is finalized. One ATA member experienced difficulty accomplishing the permanent repair specified in the service bulletin because parts listed did not fit, drawings were erroneous, and fastener grip lengths were inadequate for the repair. The FAA concurs with the commenter's request. The FAA has conveyed these concerns to the manufacturer, and has verified that the initial problems expressed by the commenter have been corrected in Revision 1 of the service bulletin. Since Revision 1 of the service bulletin was cited in the proposal as the appropriate source of service information, the FAA finds that no change to the AD is necessary.

One commenter requests that the FAA allow visual inspection methods to be used in lieu of the proposed eddy current inspection methods. The commenter indicates that fastener accessibility enables accomplishment of a visual inspection and provides an equivalent level of crack detection. The FAA does not concur. Based on the results of crack growth analysis, the FAA has determined that a visual inspection of the stringer cannot provide an acceptable level of crack detection. In addition, the FAA based the repetitive inspection intervals on the crack growth analysis results based upon the minimum crack length detectable by eddy current inspection.

The commenter also requests that credit be given for general visual inspections accomplished previously. A second commenter supports the proposed rule, but requests that the AD be revised to state that inspections accomplished within 1,500 landings prior to the effective date of the AD are acceptable in lieu of the initial inspection. The commenters provide no justification for these requests. Since the FAA has determined that a visual inspection of the stringer does not provide an acceptable level of crack detection, as discussed previously, the FAA considers that the requirement for eddy current inspections is appropriate and credit cannot be extended for general visual inspections accomplished previously. However, the phrase "unless accomplished previously," which appears in the "Compliance" paragraph of the final rule, provides credit for operators that have accomplished the required inspection prior to the effective date of this AD in accordance with McDonnell Douglas DC-10 Service Bulletin 57-114, Revision 1, dated July 26, 1993.

One commenter requests that the first inspection accomplished to comply with this AD be required during the airplane's next heavy maintenance visit if a general visual inspection has been accomplished prior to the effective date of the AD. The FAA does not concur. A general visual inspection of the stringer does not provide an acceptable level of crack detection, as discussed previously. In developing an appropriate initial compliance time for this action, the FAA considered the safety implications and normal maintenance schedules for timely accomplishment of the inspection. In consideration of these items, the FAA has determined that 6,500 total landings or 1,500 landings after the effective date of the AD, whichever occurs later, represents the maximum interval of time allowable wherein the inspection can reasonably be accomplished and an acceptable level of safety can be maintained.

The same commenter states that the service bulletin cited in the AD specifies that one reason for accomplishing the actions described in the service bulletin is to prevent unscheduled maintenance downtime for replacement of a cracked stringer; therefore, the commenter questions the need for this AD. The commenter adds that, to date, stringer 41 cracking has not impacted its maintenance due to the viable maintenance program currently in place. The commenter states that imposing an AD at this time would only complicate its maintenance program and would contribute little toward ensuring that the airplane wing structure is operating in good condition.

The FAA does not concur. As explained in the preamble of the proposal, the FAA has received reports of fatigue cracks in outer wing stringer number 41 and, in one case, complete failure of the stringer. Such fatigue cracking presents an unsafe condition in airplanes, since it could eventually lead to failure of the stringer and reduced structural integrity of the wing. The FAA has determined that this unsafe condition could exist or eventually develop on Model DC-10 series airplanes and Model KC-10A (military) airplanes, and that repetitive inspections of the affected area must be mandated to ensure that safety is not degraded. The appropriate vehicle for mandating such action to correct an unsafe condition is the airworthiness directive.

One commenter requests that the proposed compliance time for accomplishment of the initial inspection specified in paragraph (b)(1) of the proposal be changed from "[p]rior to the accumulation of 6,500 total landings, or within 1,500 landings after the effective date of the AD, whichever occurs later," to "[p]rior to the accumulation of 6,500 total landings, or within one year after the effective date of this AD, whichever occurs later." The commenter operates

Model DC–10–40 series airplanes of non-U.S. registry for training flights for cockpit crews. The commenter explains that, during one training flight period of a few weeks, the number of flight cycles accumulated may be more than 1,500 landings. The commenter adds that the proposed inspections and modifications require entry into the fuel tanks; therefore, the commenter plans to accomplish the initial inspections and the modifications during regularly scheduled maintenance.

The FAA does not concur with the commenter's request. Compliance times for AD's are normally based on a parameter related to failure of a particular component. In this case, fatigue cracking in outer wing stringer number 41 and subsequent failure of the stringer are undoubtedly related to the number of landings. The FAA has determined, in this case, that there is no apparent direct relationship between failure of the stringer and calendar time. In light of this, and in consideration of the average utilization rate of the affected U.S. operators and the practical aspects of orderly inspections of the U.S. fleet during regular maintenance periods, the FAA established the compliance times specified in this AD. The FAA maintains that those compliance times are appropriate. However, the FAA would consider a request for adjustment of the compliance time, in accordance with the provisions of paragraph (c) of this AD, provided that, for example, continued operational safety of the airplane could be assured until the required action is accomplished.

One commenter requests that, in order for the AD requirements to align with the actions described in the service bulletin, accomplishment of the preventative modification should be considered optional, and that operators should be permitted to accomplish repetitive inspections at intervals of 4,000 landings in lieu of the preventative modification. The FAA does not concur. The degree of assurance necessary as to the adequacy of inspections needed to maintain the safety of the aging transport airplane fleet, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has caused the FAA to place less emphasis on repetitive inspections and more emphasis on design improvements and material replacement. Thus, in lieu of its previous position of continual inspection, and repair or modification on condition if cracks are found, the FAA has decided to require, whenever practicable, airplane modifications necessary to remove the source of the particular aging phenomena.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 426 Model DC–10 series airplanes and Model KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 121 Model DC–10–10 and –15 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 13.6 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts for Model DC–10–10 and –15 series airplanes will cost approximately $586 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators of Model DC–10–10 and –15 series airplanes is estimated to be $161,414, or $1,334 per airplane.

The FAA estimates that 148 Model DC–10–30 and –40 series airplanes and Model KC–10A (military) airplanes of U.S. registry will be affected by this AD, that it will take approximately 13.6 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts for Model DC–10–30 and –40 series airplanes and Model KC–10A (military) airplanes will cost approximately $1,420 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators of Model DC–10–30 and –40 series airplanes and Model KC–10A (military) airplanes is estimated to be $320,864, or $2,168 per airplane.

Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $482,278. The total cost impact figure is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–12–05 McDonnell Douglas: Amendment 39–8933. Docket 93–NM–90–AD.

Applicability: All Model DC–10–10, –10F, –15, –30, –30F, –40, and –40F series airplanes and Model KC–10A (military) airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing, accomplish the following:

(a) For Model DC–10–10, –10F, and –15 series airplanes: Accomplish paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD in accordance with McDonnell Douglas DC–10 Service Bulletin 57–114, Revision 1, dated July 26, 1993.

(1) Prior to the accumulation of 6,500 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later: Perform an eddy current surface inspection or an eddy current bolt hole inspection to detect cracks on stringer number 41 on the left- and right-hand wings, in accordance with the service bulletin.

(2) If no crack is found, repeat the inspection thereafter at intervals not to exceed 4,000 landings.

(3) If any crack is found, prior to further flight, accomplish paragraph (a)(3)(i), (a)(3)(ii), or (a)(3)(iii) of this AD, as applicable.

(i) If any crack is found that extends upward from the fastener hole, and if that crack is outside the limits specified in Condition 2 of the service bulletin, accomplish a temporary repair in accordance with Condition 2, Phase I of the service bulletin, or a permanent repair in accordance with Condition 2, Phase II of the service bulletin. If the temporary repair is accomplished, prior to the accumulation of 5,000 landings after accomplishing that temporary repair, accomplish the permanent repair in accordance with Condition 2, Phase II of the service bulletin. After accomplishment of the permanent repair, no further action is required by this AD.

(ii) If any crack is found that extends downward from the fastener hole, and if that crack is outside the limits specified in Condition 2 of the service bulletin, accomplish the permanent repair in accordance with Condition 2, Phase II of the service bulletin. After such repair, no further action is required by this AD.

(iii) If any crack is found in a fastener hole, and if that crack is within the limits specified in Condition 2 of the service bulletin, accomplish the preventative modification in accordance with Condition 1, Option II of the service bulletin. If the crack was detected using techniques other than the eddy current bolt hole inspection described in the service bulletin, prior to accomplishing the preventative modification, perform an eddy current bolt hole inspection to detect cracks, in accordance with the service bulletin, and accomplish paragraph (a)(3)(iii)(A), (a)(3)(iii)(B), or (a)(3)(iii)(C) of this AD, as applicable.

(A) If any crack is found that extends upward from the fastener hole, and if that crack is outside the limits specified in Condition 2 of the service bulletin, accomplish the requirements of paragraph (a)(3)(i) of this AD.

(B) If any crack is found that extends downward from the fastener hole, and if that crack is outside the limits specified in Condition 2 of the service bulletin, accomplish the requirements of paragraph (a)(3)(ii) of this AD.

(C) If any crack is found that is within the limits specified in Condition 2 of the service bulletin, accomplish the preventative modification in accordance with Condition 1, Option II of the service bulletin. After accomplishment of the preventative modification, no further action is required by this AD.

(4) Except for airplanes on which the preventative modification (Condition 1, Option II) or the permanent repair (Condition 2, Phase II) has been accomplished, prior to the accumulation of 6,500 total landings, or within 5 years after the effective date of this AD, whichever occurs later: Perform an eddy current bolt hole inspection to detect cracks in the fastener holes in accordance with the service bulletin.

(i) If no crack is found, or if any crack is found that is within the limits specified in Condition 2 of the service bulletin, prior to further flight, accomplish the preventative modification in accordance with Condition 1, Option II of the service bulletin. After accomplishment of the preventative modification, no further action is required by this AD.

(ii) If any crack is found that exceeds the limits specified in Condition 2 of the service bulletin, prior to further flight, accomplish a permanent repair in accordance with Condition 2, Phase II of the service bulletin. After accomplishment of the permanent repair, no further action is required by this AD.

(b) For Model DC–10–30, –30F, –40, and –40F series airplanes and Model KC–10A (military) airplanes: Accomplish paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD in accordance with McDonnell Douglas DC–10 Service Bulletin 57–114, Revision 1, dated July 26, 1993.

(1) Prior to the accumulation of 6,500 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later: Perform an eddy current surface inspection or an eddy current bolt hole inspection to detect cracks on stringer number 41 on the left- and right-hand wings in accordance with the service bulletin.

(2) If no crack is found, repeat the inspection thereafter at intervals not to exceed 3,200 landings.

(3) If any crack is found, prior to further flight, accomplish paragraph (b)(3)(i), (b)(3)(ii), or (b)(3)(iii) of this AD, as applicable.

(i) If any crack is found that extends upward from the fastener hole, and if that crack is outside the limits specified in Condition 2 of the service bulletin, accomplish a temporary repair in accordance with Condition 2, Phase I of the service bulletin, or a permanent repair in accordance with Condition 2, Phase II of the service bulletin. If the temporary repair is accomplished, prior to the accumulation of 5,000 landings after accomplishing that temporary repair, accomplish the permanent repair in accordance with Condition 2, Phase II of the service bulletin. After accomplishment of the permanent repair, no further action is required by this AD.

(ii) If any crack is found that extends downward from the fastener hole, and if that crack is outside the limits specified in Condition 2 of the service bulletin, accomplish the permanent repair in accordance with Condition 2, Phase II of the service bulletin. After such repair, no further action is required by this AD.

(iii) If any crack is found in a fastener hole, and if that crack is within the limits specified in Condition 2 of the service bulletin, accomplish the preventative modification in accordance with Condition 1, Option II of the service bulletin. If the crack was detected using techniques other than the eddy current bolt hole inspection described in the service bulletin, prior to accomplishing the preventative modification, perform an eddy current bolt hole inspection to detect cracks, in accordance with the service bulletin, and accomplish paragraph (b)(3)(iii)(A), (b)(3)(iii)(B), or (b)(3)(iii)(C) of this AD, as applicable.

(A) If any crack is found that extends upward from the fastener hole, and if that crack is outside the limits specified in Condition 2 of the service bulletin, accomplish the requirements of paragraph (b)(3)(i) of this AD.

(B) If any crack is found that extends downward from the fastener hole, and if that crack is outside the limits specified in Condition 2 of the service bulletin, accomplish the requirements of paragraph (b)(3)(ii) of this AD.

(C) If any crack is found that is within the limits specified in Condition 2 of the service bulletin, accomplish the preventative modification in accordance with Condition 1, Option II of the service bulletin. After accomplishment of the preventative modification, no further action is required by this AD.

(4) Except for airplanes on which the preventative modification (Condition 1, Option II) or the permanent repair (Condition 2, Phase II) has been accomplished, prior to the accumulation of 6,500 total landings, or within 5 years after the effective date of this AD, whichever occurs later: Perform an eddy current bolt hole inspection to detect cracks in the fastener holes in accordance with the service bulletin.

(i) If no crack is found, or if any crack is found that is within the limits specified in Condition 2 of the service bulletin, prior to further flight, accomplish the preventative modification in accordance with Condition 1, Option II of the service bulletin. After accomplishment of the preventative modification, no further action is required by this AD.

(ii) If any crack is found that exceeds the limits specified in Condition 2 of the service bulletin, prior to further flight, accomplish a permanent repair in accordance with Condition 2, Phase II of the service bulletin. After accomplishment of the permanent repair, no further action is required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) § 21.197 and § 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections, repairs, and modification shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 57–114, Revision 1, dated July 26, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager.

Technical Administrative Support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 13, 1994.

Issued in Renton, Washington, on May 31, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13627 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–233–AD; Amendment 39–8929; AD 94–12–02]

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires an inspection of the elevator and aileron coves, and further inspections and repair, if necessary. This amendment is prompted by a report of delamination between the composite structure and the aluminum foil on the elevator cove on a Model SAAB SF340B series airplane. The actions specified by this AD are intended to prevent jamming of the aileron or elevator.

DATES: Effective July 13, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on February 4, 1994 (59 FR 5361). That action proposed to require an inspection of the elevator and aileron coves to verify the type of antistatic protection applied to the coves. For coves that are found without conductive paint or expanded aluminum foil, that action proposed to require a detailed visual inspection and delamination tap test to detect aluminum foil delamination on the coves; and either a temporary repair and repetitive detailed visual inspections and delamination tap tests of the coves, or a permanent repair of the coves. Accomplishment of the permanent repair terminates the repetitive detailed visual inspections and delamination tap tests.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 152 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the inspection, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $167,200, or $1,000 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–12–02 SAAB Aircraft AB: Amendment 39–8929. Docket 93–NM–233–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers –004 through –159 inclusive; and Model SAAB 340B series airplanes, serial numbers –160 through –260, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the aileron or elevator, accomplish the following:

(a) Within 500 hours time-in-service or 90 days after the effective date of this AD, whichever occurs first, perform an inspection of the elevator and aileron coves to verify the type of antistatic protection applied to the coves, in accordance with Saab Service Bulletin 340–51–012, dated November 10, 1993.

(b) If a cove has conductive paint or expanded aluminum foil (stretched metal—aluminum net), no further action is required by this AD for that cove.

(c) If a cove does not have conductive paint or expanded aluminum foil (stretched metal—aluminum net), prior to further flight, perform a detailed visual inspection and delamination tap test to detect aluminum foil delamination on the elevator or aileron cove.

in accordance with the Saab Service Bulletin 340–51–012, dated November 10, 1993.

(1) If no delamination is found, repeat the detailed visual inspection and delamination tap test thereafter at intervals not to exceed 800 hours time-in-service in accordance with the service bulletin.

(2) If any delamination is found, prior to further flight, accomplish either paragraph (c)(2)(i) or (c)(2(ii) of this AD.

(i) Perform a temporary repair of the cove in accordance with the service bulletin. Thereafter, repeat the detailed visual inspection and delamination tap test required by paragraph (c) of this AD at intervals not to exceed 800 hours time-in-service. Or

(ii) Perform a permanent repair of the cove in accordance with the service bulletin. Accomplishment of this permanent repair constitutes terminating action for the repetitive inspection required by this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and repairs shall be done in accordance with Saab Service Bulletin 340–51–012, dated November 10, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 13, 1994.

Issued in Renton, Washington, on May 26, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13373 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–63–AD; Amendment 39–8931; AD 94–10–51]

Airworthiness Directives; Airbus Industrie Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T94–10–51 that was sent previously to all known U.S. owners and operators of certain Airbus Model A300, A300–600, and A310 series airplanes by individual telegrams. This AD requires a detailed visual inspection to detect cracks, delamination, or discoloration of the bus bar of certain aft fixed side cockpit windows; and deactivation of the window heating system and repetitive detailed visual inspections, or replacement of the window with a modified window, if necessary. This amendment is prompted by a report of fracture of a fixed cockpit window that led to electrical arcing in the bus bar area of the window heating system on a Model A300 series airplane. The actions specified by this AD are intended to prevent decompression of the fuselage during flight due to failure of a window.

DATES: Effective June 28, 1994, to all persons except those persons to whom it was made immediately effective by telegraphic AD T94–10–51, issued May 3, 1994, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1994.

Comments for inclusion in the Rules Docket must be received on or before August 12, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: On May 3, 1994, the FAA issued telegraphic AD T94–10–51, which is applicable to certain Airbus Industrie Model A300, A300–600, and A310 series airplanes. That action was prompted by a report of fracture of a fixed cockpit window on the right-hand aft side of the cockpit of a Model A300 series airplane. Embrittlement of the fixed cockpit window and simultaneous rupture of the two main plies of the window have been attributed to electrical arcing in the bus bar area of the window heating system. This condition, if not corrected, could result in decompression of the fuselage during flight.

Since the subject windows installed on Model A300–600 and A310 series airplanes are similar in design to those on Model A300 series airplanes, the FAA has determined that these airplanes are also subject to the addressed unsafe condition.

Airbus Industrie has issued All Operators Telex (AOT) 56–01, Revision 1, dated April 29, 1994, that describes procedures for a detailed visual inspection to detect discoloration (black or brown burnt spots) of the bus bar of certain aft fixed side windows; and either deactivation of the window heating system coupled with repetitive detailed visual inspections, or replacement of the window with a modified window, if necessary. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this AOT as mandatory and issued French telegraphic airworthiness directive N 94–104–160(B), dated April 26, 1994, in order to assure the continued airworthiness of these airplanes in France.

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued telegraphic AD T94–10–51 to require a detailed visual inspection to detect cracks, delamination, or discoloration (black or brown burnt spots) of the bus bar of certain aft fixed side windows; and either deactivation of the window heating system and repetitive detailed visual inspections, or replacement of the window with a modified window, if necessary. The actions are required to be accomplished in accordance with the AOT described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on May 3, 1994, to all known U.S. owners and operators of certain Airbus Model A300, A300–600, and A310 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–63–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–10–51 Airbus Industrie: Amendment 39–8931. Docket 94–NM–63–AD.

Applicability: Model A300, A300–600, and A310 series airplanes; as listed in Airbus Industrie All Operators Telex (AOT) 56–01, Revision 1, dated April 29, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent decompression of the fuselage during flight, accomplish the following:

(a) Within 15 days after the effective date of this AD, perform a detailed visual inspection to detect cracks, delamination, or discoloration (black or brown burnt spots) of the bus bar of the aft fixed windows, in accordance with Airbus Industrie AOT 56–01, Revision 1, dated April 29, 1994.

(b) If any crack or delamination is found during the inspection required by paragraph (a) of this AD, prior to further flight, replace the affected window with a modified window, in accordance with Airbus Industrie AOT 56–01, Revision 1, dated April 29, 1994.

(c) If no cracks, delamination, or discoloration is found during the inspection required by paragraph (a) of this AD, accomplish either paragraph (c)(1) or (c)(2) of this AD in accordance with Airbus Industrie AOT 56–01, Revision 1, dated April 29, 1994.

(1) Within 7 days after accomplishing the inspection required by paragraph (a) of this AD, and thereafter at intervals not to exceed 7 days, repeat the inspection required by paragraph (a) of this AD; or

(2) Prior to further flight, deactivate the side window heating system in accordance with the AOT.

(d) If any discoloration is found during the inspections required by paragraph (a) or (c) of this AD, and that discoloration measures less than 10mm in diameter, accomplish paragraphs (d)(1), (d)(2), and (d)(3) of this AD in accordance with Airbus Industrie AOT 56–01, Revision 1, dated April 29, 1994.

(1) Prior to further flight, deactivate the side window heating system on the affected side, in accordance with the AOT.

(2) 7 days after deactivating the window heating system, inspect the affected window to detect cracks or delamination formation around the discolored area, in accordance with the AOT.

(3) If any crack or delamination is found during the repeat inspection required by paragraph (d)(2) of this AD, prior to further flight, replace the window with a modified window, in accordance with the AOT.

(e) If any discoloration is found during the inspection required by paragraph (a) or (c) of this AD, and that discoloration measures 10mm or more in diameter, accomplish paragraphs (e)(1), (e)(2), and (e)(3) of this AD, in accordance with Airbus Industrie AOT 56–01, Revision 1, dated April 29, 1994.

(1) Prior to further flight, deactivate the side window heating system on the affected side, in accordance with the AOT.

(2) Thereafter, at daily intervals, inspect the affected window to detect cracks or delamination formation around the

discoloration area, in accordance with the AOT.

(3) If any crack or delamination is found during the inspections required by paragraph (e)(2) of this AD, prior to further flight, replace the window with a modified window in accordance with the AOT.

(f) Replacement of the aft fixed side window in accordance with Airbus Industrie AOT 56–01, Revision 1, dated April 29, 1994, constitutes terminating action for the requirements of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The inspections, deactivation, and replacement, shall be done in accordance with Airbus Industrie All Operators Telex (AOT) 56–01, Revision 1, dated April 29, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on June 28, 1994, to all persons except those persons to whom it was made immediately effective by telegraphic AD T94–10–51, issued May 3, 1994, which contained the requirements of this amendment.

Issued in Renton, Washington, on May 31, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13625 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–139–AD; Amendment 39–8937; AD 94–12–09]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires inspections to detect fatigue-related skin cracks and corrosion of the skin lap joints in the fuselage upper lobe, and repair, if necessary. This amendment also requires modification of certain lap joints and inspections of modified lap joints. This amendment is prompted by a structural review of Model 747 series airplanes. The actions specified by this AD are intended to prevent rapid decompression of the airplane and the inability to carry fail-safe loads, due to the problems associated with fatigue cracking and corrosion.

DATES: Effective July 13, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven Fox, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2777; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on February 24, 1994 (59 FR 8875). That action proposed to require inspections to detect fatigue-related skin cracks and corrosion of the skin lap joints in the fuselage upper lobe, and repair, if necessary. That action also proposed to require modification of certain lap joints and inspections of modified lap joints.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

One commenter requests that proposed inspection requirements be revised. This commenter requests that, if the visual inspection [proposed in paragraph (a)(1) of the AD] reveals any evidence of corrosion, operators should be allowed to perform a low frequency eddy current (LFEC) inspection of the entire length of the lap joint to determine if corrosion exceeds 10% of the skin thickness. If this LFEC inspection is accomplished, the commenter also requests that the visual inspection repetitive interval specified in paragraph (a)(1) be extended from the proposed 2,000 landings to 3,000 landings so that the interval corresponds with other major structural inspection intervals. The FAA cannot concur with this request, since the commenter provided neither specific inspection instructions nor data to justify the effectiveness of the proposed procedures. Under the provisions of paragraph (i) of the final rule, however, operators may apply for the approval of an alternative method of compliance with the AD, or adjustment of the compliance time, if sufficient justification is presented to the FAA.

Two commenters request that proposed paragraph (a) be clarified with regard to the inspections and inspection interval required after a lap joint has been modified. These commenters request that, for lap joints that have been modified by either the full or partial modification procedures described in the referenced Boeing service bulletin, operators be allowed a period of time during which no inspections are required for those lap joints. The referenced Boeing service bulletin, as well as proposed paragraph (f), state that post-modification inspections are to start at 10,000 cycles, 7,000 cycles, or 5,000 cycles after modification of the skin lap joints, depending upon the type of modification that has been accomplished. However, as worded in paragraph (a) of the proposal, the same inspections meant to detect cracks and corrosion in unmodified skin lap joints would be required to be performed on modified skin lap joints until the inspections specified in proposed paragraph (f) begin. The FAA concurs that clarification of this requirement is necessary. It was not the FAA's intent to require that the initial-type of inspections of unmodified lap joints be performed on modified lap joints. Accordingly, paragraphs (a)(1) and (a)(3) have been revised to indicate that the inspections of the specified lap joints are to continue at repetitive intervals only until the lap joints are modified in

accordance with the requirements of paragraph (e).

Several commenters request that the compliance time for accomplishing the "full" modification on certain lap joints, as specified in paragraph (b)(2), be extended from the proposed 15 months to 18 months. Additionally, these commenters request that the compliance time for a similar requirement specified in paragraph (c)(2) be extended from the proposed 30 months to 36 months. The commenters state that, by extending these compliance times, operators would be able to accomplish the modification during a scheduled maintenance interval ("C" check), and thereby eliminate the need to schedule special times for the accomplishment of this modification, at additional expense. The FAA concurs. It was the FAA's intent that the modification be performed at a main base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. Accordingly, the final rule has been revised to specify compliance times as requested by the commenters. The FAA has determined that this extension will not adversely affect safety since the affected lap joints will be subject to repetitive inspections in the interim.

Two commenters request that paragraph (e) be revised to extend the compliance time for accomplishment of the "full" modification of the specified skin lap joints from the proposed 1,000 cycles (for airplanes that have accumulated nearly or more than 20,000 total flight cycles) to 4 years after the effective date of the final rule. These commenters consider the proposed compliance time to be too short and not consistent with compliance times provided for similar actions in other AD's pertaining to aging aircraft issues. The FAA does not concur. The 1,000 flight cycle compliance time is consistent with the mandatory modification of a lap joint that has been found to have corrosion or cracking, as required by paragraph (b)(2) of this AD. Cold bonded lap joints such as these have a history of numerous findings of fatigue cracks and corrosion. In light of this, and the fact that fatigue cracking is cycle-related, the FAA has determined that modification of these lap joints cannot be delayed any further than 1,000 flight cycles, especially on those airplanes that already have accumulated 20,000 flight cycles, without compromising safety.

One commenter requests that the applicability of proposed paragraphs (f)(1), (f)(2), and (f)(3) be revised to clarify that it is the "lap joint," rather than the "airplane," on which the particular modification has been accomplished. The FAA concurs and has revised wording of the final rule to clarify this point.

One commenter requests that all references in the rule to "landings" be changed to "cycles." The FAA concurs that the reference should be revised. The FAA has reviewed the applicable service information related to this action and finds that the majority of references to recommended compliance times are stated in "flight cycles." Although the FAA normally uses the terms "landings" and "flight cycles" interchangeably, the FAA considers that it is appropriate in this case to change the verbiage of the AD to match that of the cited service bulletins. Therefore, in this final rule, the FAA has substituted the term "flight cycles" for the term "landings."

Another commenter, a non-U.S. operator, requests that the proposed rule be revised to include a provision specifying that pressurization cycles of 2.0 psi or less need not be counted as a flight cycle when determining the number of flight cycles relative to the proposed compliance thresholds. This commenter states that a pressurization cycle of 2.0 psi or less is a typical pressure used during flight training, and causes little fatigue damage of the kind addressed by this AD action. The FAA does not concur. The FAA does not consider it appropriate to include various provisions in an AD applicable to a single operator's unique use of an affected airplane. Paragraph (i) of this AD provides for the approval of alternative methods of compliance to address these types of unique circumstances. Further, this commenter does not compile data for each of its airplanes so that an individual airplane's pressurization cycles could be determined; instead, it uses a fleet average to calculate the equivalent number of pressurization cycles. The FAA does not consider it appropriate to use approximations for determining compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 200 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 116 airplanes of U.S. registry will be affected by this proposed AD.

The required inspections will entail 100 work hours per airplane per inspection, at an average labor rate of $55 per work hour. (This figure does not include the time necessary for gaining access and closing up.) Based on these figures, the total cost impact of this requirement on U.S. operators is estimated to be $638,000, or $5,500 per airplane, per inspection.

The required "full" modification will entail approximately 96 work hours for each 200-inch length of uncracked and uncorroded lap joint, at an average labor rate of $55 per work hour. (This figure does not include the time necessary for gaining access and closing up.) There are 100 lap joint sections per airplane, each with a length of 200 inches. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of this requirement on U.S. operators is estimated to be $61,248,000, or $528,000 per airplane

The initial high frequency eddy current (HFEC) inspection following modification will entail approximately 56 work hours, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of this requirement AD on U.S. operators is estimated to be $357,280, or $3,080 per airplane.

Based upon the figures discussed above, the total cost impact of this AD on U.S. operators is expected to be $62,243,280, or $536,580 per airplane. This total cost figure includes the inspections and modification, for the first year of the average five-year inspection cycle. Additionally, the total cost figure indicated is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a

matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that this cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-12-09 Boeing: Amendment 39-8937. Docket 93-NM-139-AD.

Applicability: Model 747 series airplanes, line positions 001 through 200 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent rapid decompression of the airplane and the inability to carry fail-safe loads, accomplish the following:

(a) Within 1,000 flight cycles after the effective date of this AD, and thereafter at the intervals specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, perform inspections at the upper lobe skin panel lap joints in accordance with Boeing Service Bulletin 747-53-2307, Revision 2, dated October 14, 1993:

(1) Perform a detailed external visual inspection to detect cracks and evidence of corrosion (bulging skin between fasteners, blistered paint, dished fasteners, popped rivet heads, or loose fasteners) in accordance with the service bulletin. Repeat that inspection thereafter at intervals not to exceed 2,000 flight cycles until the modification required by paragraph (e) of this AD is accomplished.

(2) Perform a high frequency eddy current inspection (HFEC) to detect cracks in the skin at the upper row of fasteners of the skin panel lap joints forward of body station (BS) 1000 in accordance with the service bulletin. Repeat that inspection thereafter at intervals not to exceed 4,000 flight cycles until the modification required by paragraph (e) of this AD is accomplished.

(3) Perform a HFEC inspection to detect cracks in the skin at the upper row of fastener holes of the skin panel lap joints aft of BS 1480 to 2360 in accordance with the service bulletin. Repeat that inspection thereafter at intervals not to exceed 6,000 flight cycles until the modification required by paragraph (e) of this AD is accomplished.

(b) If any crack is found during any inspection required by this AD, or if any corrosion is found for which material loss exceeds 10 percent of the material thickness, accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with Boeing Service Bulletin 747-53-2307, Revision 2, dated October 14, 1993.

(1) Prior to further flight, repair any crack or corrosion found, in accordance with the service bulletin.

(2) Within 18 months after accomplishing the repair, accomplish the "full" modification described in the service bulletin for the remainder of any skin panel lap joint in which a crack is found, or in which corrosion is found that exceeds 10 percent of the material thickness.

(c) If no crack is found during any inspection required by this AD, but corrosion is found for which the material loss does not exceed 10 percent of the material thickness: Accomplish paragraph (c)(1) and (c)(2) of this AD for the entire affected skin panel lap joint in accordance with Boeing Service Bulletin 747-53-2307, Revision 2, dated October 14, 1993.

(1) Within 500 flight cycles after accomplishing the inspection during which the corrosion was found, and thereafter at intervals not to exceed 500 flight cycles until the "full" modification required by paragraph (c)(2) of this AD is accomplished: Perform a HFEC inspection to detect cracks of the corroded skin panel lap joint, in accordance with the service bulletin.

(2) Within 36 months after accomplishing the inspection during which the corrosion was found: Accomplish the "full" modification in accordance with the service bulletin.

(d) The inspections required by this AD shall be performed by removing the paint and using an approved chemical stripper; or by ensuring that each fastener head is clearly visible.

(e) Except as provided in paragraph (g) of this AD, prior to the accumulation of 20,000 total flight cycles, or within the next 1,000 flight cycles after the effective date of this AD, whichever occurs later: Accomplish the modification described in the service bulletin as a "full" modification of the skin panel lap joints at the locations specified in paragraphs (e)(1) and (e)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 747-53-2307, Revision 2, dated October 14, 1993. Accomplishment of this modification terminates the repetitive inspection requirements of paragraph (a) of this AD.

(1) For airplane line numbers 001 through 058, inclusive: Modify the skin panel lap joints at Stringer 12 (left and right), station 520 to 1,000; and Stringer 19 (left and right), station 520 to 740.

(2) For airplane line numbers 59 through 200, inclusive: Modify the skin panel lap joints at Stringer 12 (left and right), station 740 to 1,000; and Stringer 19 (left and right), station 520 to 740.

(f) Perform an external HFEC inspection to detect skin cracks of any modified skin panel lap joints at the times specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD, as applicable, in accordance with Boeing Service Bulletin 747-53-2307, Revision 2, dated October 14, 1993. Repeat that inspection thereafter at intervals not to exceed 3,000 flight cycles.

(1) For skin panel lap joints on which the "full" modification has been accomplished: Within 10,000 flight cycles after accomplishment of that modification.

(2) For skin panel lap joints on which the "optional" (partial) modification has been accomplished: Within 7,000 flight cycles after accomplishment of that modification.

(3) For skin panel lap joints having deep countersink fasteners located at Section 42 on which the "full" modification, as described in the original issue of the service bulletin, has been accomplished: Within 5,000 flight cycles after accomplishment of that modification.

(g) In lieu of the "full" modification required by paragraph (e) of this AD, the "optional" (partial) modification described in Boeing Service Bulletin 747-53-2307,

Revision 2, dated October 14, 1993, may be accomplished for skin panels that have an outer thickness of 0.090 inches or less, and that do not have any cracks, corrosion, or an existing structural repair on the skin panel lap joint. The "optional" (partial) modification shall not be accomplished at deep countersink fastener locations.

(h) Accomplishment of the requirements of this AD terminates the requirements of AD 90–15–06, amendment 39–6653.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(j) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(k) The actions shall be done in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on July 13, 1994.

Issued in Renton, Washington, on June 2, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13852 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 94–AWP–9]

Revocation of Class D Airspace; Victorville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class D airspace area at Victorville, CA due to the closure of George AFB. An operational airport traffic control tower is required to retain Class D airspace. The airport traffic control tower is closed, and, therefore, the FAA is revoking this Class D airspace area.

EFFECTIVE DATE: 0901 u.t.c., December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0697.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes the Class D airspace area at Victorville, George AFB, CA. An operational airport traffic control tower is required to retain Class D airspace. The airport traffic control tower is closed. Consequently, the FAA is revoking this Class D airspace area. Because this action is a minor technical amendment in which the public would not be particularly interested, I find that notice and public procedure under U.S.C. 553(b) are unnecessary.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000—General

* * * * *

AWP CA D Victorville, CA [Removed]

Victorville, George AFB, CA
(Lat. 34°35'03" N., long. 117°23'03" W.)

* * * * *

Issued in Los Angeles on May 27, 1994

Richard R. Lien,

Manager, Air Traffic Division.

[FR Doc. 94–14289 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AWP–12]

Revocation and Modification of Class D Airspace; Establishment of Class E Airspace; Imperial County, CA and El Centro NAF, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class D airspace area and establishes a Class E airspace area at Imperial County Airport and modifies the El Centro NAF Class D airspace area. The airspace at Imperial County Airport was inadvertently classified as Class D airspace. Imperial County Airport does not have an airport traffic control tower which is required for Class D airspace, and, therefore, the FAA is revoking this Class D airspace area.

EFFECTIVE DATE: 0901 u.t.c., December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0697.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes the Class D airspace area and establishes Class E airspace at Imperial County Airport, CA. The El Centro NAF, CA, Class D airspace area description is modified to reflect this change. An operational airport traffic control tower is required to retain Class D airspace. Imperial County Airport does not have an airport traffic control tower. Consequently, the FAA is revoking this Class D airspace area. Because this action is a minor technical amendment in which the public would not be particularly interested, I find that notice and public procedure under U.S.C. 553(b) are unnecessary.

The coordinates for this airspace docket are based on North American Datum 83. Class D and Class E airspace designations are published in Paragraphs 5000 and 6002, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000—General

* * * * *

AWP CA D Imperial County, CA [Removed]

Imperial County, CA
(Lat. 32°50'03" N., long. 115°34'43" W.)

* * * * *

AWP CA D El Centro NAF, CA [Revised]

El Centro NAF, CA
(lat. 32°49'45" N., long. 115°40'18"W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of El Centro NAF, excluding that airspace east of long. 115°37'18" W. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

* * * * *

AWP CA E Imperial County, CA [New]

Imperial County, CA
(lat. 32°50'03" N., long 115°34'43" W.)

That airspace extending upward from the surface within a 4-mile radius of the Imperial County Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director

* * * * *

Issued in Los Angeles on May 31, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–14290 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 101, 111, 123, 128, 141, 143, 145, 148, 159

[T.D. 94–51]

RIN 1515–AB53

Express Consignments; Formal and Informal Entries of Merchandise; Administrative Exemptions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: The amendments contained in this document are being published as interim regulations to implement certain statutory amendments to the Customs laws regarding administrative exemptions. These statutory amendments are contained in the Customs modernization provisions of the North American Free Trade Agreement Implementation Act. Also, the interim regulations clarify the procedures for shipments brought into the United States by express consignment operators or carriers and make clear that all shipments carried into the United States by express consignment operators or carriers are required to be entered, unless specifically exempt from entry. These interim regulations also implement the Customs modernization provisions in the North American Free Trade Agreement Implementation Act exempting from entry certain merchandise (undeliverable shipments, railway freight locomotives and cars, and instruments of international traffic).

DATES: Interim rule effective July 28, 1994; comments must be received on or before July 13, 1994.

ADDRESSES: Written comments (preferably in triplicate) must be submitted to U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229, and may be inspected at the Regulations Branch, 1099 14th Street, NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Office of Regulations and Rulings, (202–482–7040).

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the President signed into law Public Law 103–182, the North American Free Trade Agreement Implementation Act (107 Stat. 2057). Title VI of this Act, popularly known as

the Customs Modernization Act (the Act) amended certain Customs laws. Section 651 of the Act amended section 321, Tariff Act of 1930, as amended (19 U.S.C. 1321).

Before its amendment by the Act, section 321 authorized administrative exemptions from duty and taxes on articles such as gifts and personal and household goods, and in certain other situations. Specifically, section 321 authorized the Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected, to disregard a difference of less than $10 between the duty actually due on an entry and the estimated duties deposited. On the same basis, section 321 authorized the Secretary to admit free of duty and tax any article the value of which was less than $50 in the case of bona fide gifts ($100 if the gift was from certain island possessions) sent from persons in foreign countries to persons in the United States. Section 321 authorized the Secretary to admit free of duty and tax any article the value of which was less than $25 in the case of personal or household articles accompanying the traveler. In all other cases (*i.e.*, if not a bona fide gift sent from a person in a foreign country to a person in the United States or a personal or household article accompanying a traveler), the Secretary was authorized to admit free of duty and tax any article the value of which was less than $5.

In the last three cases (*i.e.*, bona fide gifts, personal or household articles, and all other cases), the exemptions were subject to the condition that the aggregate fair retail value in the country of shipment of articles imported by one person on one day could not exceed the authorized amount. Also, the exemptions in these cases were not to be granted in any case in which merchandise covered by a single order or contract was forwarded in separate lots to secure the benefit of the provision.

The Secretary was authorized to prescribe regulations to implement these provisions. Section 321 specifically authorized the Secretary to diminish any of the dollar amounts referred to above.

Section 651 of the Act increased the dollar amounts described and, instead of setting maximum dollar amounts below which the Secretary was authorized to make the exemptions applicable, authorized the Secretary to make the exemptions applicable to an amount to be specified in regulations, but not less than a stated amount. That is, the amended section 321 now provides minimum dollar amounts for the exemptions.

In the case of the difference between duty actually due on an entry and the estimated duties deposited, the dollar amount was increased to a minimum of $20. Also, this provision was changed to authorize Customs to apply the exemption to the total of duties, fees, and taxes, instead of only duties and taxes, as had been the case. In the case of bona fide gifts, personal or household articles, and all other cases, the dollar amounts were respectively increased to $100 ($200, if the gift is from one of the named island possessions), $200, and $200, respectively.

Section 651 removed from § 321 the specific authorization to, by regulation, diminish any of the dollar amounts specified in the provision. Section 651 retained the specific authorization in section 321 for regulations to prescribe exceptions to any exemption whenever the Secretary finds such action is consistent with the purpose of the provisions or is necessary to protect the revenue or to prevent unlawful importations.

The provision in the Customs Regulations containing the authorization to disregard a difference of less than $10 between the duty actually due on an entry and the estimated duties deposited is found in 19 CFR 159.6. The provisions in the Customs Regulations pertaining to the administrative exemption for bona fide gifts are found in 19 CFR 10.152 and 145.32 and the provision for personal or household articles is found in 19 CFR 148.51 (see also §§ 148.12, 148.64). The provisions in the Customs Regulations pertaining to the $5 administrative exemption for all other articles are found in 19 CFR 10.151 and 145.31. Conditions for the exemptions provided for in 19 CFR 10.151 and 10.152 are currently found in 19 CFR 10.153.

Provisions pertaining to the administrative exemptions under section 321 are also found in part 128 of the Customs Regulations, which relates to express consignments. Section 128.24(d) of that part refers to low value shipments (*i.e.*, shipments valued at $5 or less) and provides that such shipments must be segregated from shipments valued at more than $5 when the special informal entry procedures provided for in part 128 are used. This provision was intended to cover articles which could be administratively exempted from duties and taxes under section 321(a)(2)(C) (see T.D. 89–53, published in the **Federal Register** on May 8, 1989 (54 FR 19561)).

These interim regulations conform the Customs Regulations to the changes made to section 321 by section 651 of the Act. In addition, the interim regulations clarify entry procedures applicable to merchandise subject to section 321. The dollar amounts currently provided for in 19 CFR 10.151 through 10.153, 145.31, 145.32, 148.12, 148.51, 148.64 and 159.6 are changed to the minimums provided for in the amended section 321.

The interim regulations amend part 143 to clarify the procedures for entries of shipments qualifying for the administrative exemptions in section 321(a)(2). Shipments covered in section 321(a)(2) are included in the merchandise which may be entered under the procedures provided for by regulation under 19 U.S.C. 1498. That provision authorizes the Secretary of the Treasury to prescribe rules and regulations for the declaration and entry of the merchandise described in the section. Entries which may be provided for by regulation under section 1498 are distinguished from entries which are required to be filed under 19 U.S.C. 1484 (*i.e.*, formal entries). As authorized by section 1498, these amendments provide that the person who may make entry of shipments covered by section 321(a)(2) is the owner, purchaser, or consignee of the merchandise or, when appropriately designated by one of these persons, a Customs broker licensed under 19 U.S.C. 1641. Under the same authority, an amendment to part 143 makes it clear that the person who may make entry of other merchandise (*i.e.*, merchandise not qualifying for the administrative exemptions in section 321(a)(2)) which qualifies for informal entry is the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a Customs broker licensed under 19 U.S.C. 1641.

A corresponding amendment to part 111, concerning Customs brokers, is added to the list of transactions for which a broker's license is not required. The new provision provides that a person entering merchandise qualifying for and entered under the informal entry procedures authorized by 19 U.S.C. 1498 is not required to be licensed as a broker unless required to be so licensed by regulations issued under the authority of section 1498. A reference to the provision included in part 143 is included in the new provision.

Also under the authority of 19 U.S.C. 1498, amendments are made to part 143 to clearly provide the procedures for entries of the merchandise covered in section 321(a)(2). Shipments of such

merchandise may be entered by presenting the bill of lading (or a manifest listing each bill of lading) or other document used to file or support entry. Manifest information is required consisting of the country of origin of the merchandise, shipper name, address and country, ultimate consignee name and address, specific description of the merchandise, quantity, and value. Cross references are provided to section §§ 148.12 and 148.62 to make it clear that entry by oral declaration continues to be allowed.

No amendment to the regulations is being promulgated at this time to implement the new subsection (a)(3) of section 321, added by section 651 of the Act. This provision allows Customs to waive the collection of duties, fees, and taxes due on entered merchandise when such duties, fees, or taxes are less than $20, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected. Regulations implementing this provision are being delayed pending an analysis of the expense and inconvenience to the Government in view of the revenue involved.

Section 159.6, authorizing Customs to disregard a difference of less than $10 (now $20 under the amended section 321(a)(1)) between duties deposited and duties actually due on an entry, is amended to authorize Customs to apply the exemption to the total of duties, fees, and taxes, as provided for in section 321(a)(1), as amended by section 651 of the Act.

Customs also is making amendments to the Customs Regulations in part 128 relating to express consignments. These amendments are intended to make it clear that all shipments carried into the United States by express consignment operators and carriers are required to be entered, unless specifically exempt from entry.

Basically, a 3-tier approach applies to such shipments. That is, shipments valued in excess of $1250 are required to be formally entered, as provided for under 19 U.S.C. 1484 in parts 141, 142, and 143 (except subpart C) of the Customs Regulations. Shipments valued between $200 and $1250 may be entered under the informal entry procedures, as provided for under 19 U.S.C. 1498 (unless the shipments consist of merchandise which may not be entered under those procedures). These procedures consist of the filing of a Customs Form 3461, either modified to cover all importations under the special procedures for express consignment operator or carrier importations or all such importations on a daily or flight basis, and the advance filing of the manifest information provided for in 19 CFR 128.21. This information consists of the country of origin, shipper name, address and country, ultimate consignee name and address, specific description of the merchandise and the tariff classification of the merchandise, quantity, shipping weight, and value. An entry summary (Customs Form 7501) and estimated duties are required to be filed with Customs within 10 days of release of these shipments.

The third tier is for shipments valued at $200 or less. These shipments also may be entered under the informal entry procedures, as provided for under 19 U.S.C. 1498 (unless the shipments consist of merchandise which may not be entered under those procedures). The procedures for these shipments are the same as those for the second-tier shipments (valued between $200 and $1250), except that the tariff classification of the merchandise is not required for the shipments and no entry summary or estimated duties is required to be filed.

An amendment to 19 CFR 101.1, adding a definition of "shipment", makes it clear that the monetary exemption for third-tier shipments is based on the bill of lading or other evidence used to file or support entry, or oral declaration when applicable. For example, if the document used to file or support entry is an individual bill of lading to the ultimate consignee in the United States, the monetary limitation is applied on the basis of the value of the shipment on the individual bill of lading. This is so whether the document used to file or support entry is itself the bill of lading or an advance manifest, as described in 19 CFR 128.21, listing each of the individual bills of lading. On the other hand, if the document used to file or support entry is a master bill of lading (as opposed to each individual bill of lading), the monetary limitation is applied on the basis of the total value of the shipments on the master bill of lading. The same is true of the application of the monetary limitation in section 321(a)(2) for other importations (*i.e.*, those not involving an express consignment entity). This is so because the definition of "shipment" is for general purposes in chapter I of title 19 of the CFR, unless the context of the term requires a different meaning (see 19 CFR 101.1).

As is true generally under these amendments, the person who may make entry for the shipments valued between $200 and $1250 which may be entered under the informal entry procedures is the owner or purchaser of the shipment or, when appropriately designated by the owner, purchaser, or consignee of the shipment, a Customs broker licensed under 19 U.S.C. 1641. The person who may make entry for the shipments valued $200 or less which may be entered under the informal entry procedures is the owner, purchaser, or consignee or, when appropriately designated by one of these persons, a Customs broker licensed under 19 U.S.C. 1641. As discussed above, the authority for this distinction is that these entries are made under 19 U.S.C. 1498 and the Secretary of the Treasury is specifically authorized to prescribe rules and regulations for the declaration and entry of such shipments.

Amendments are also made to part 141. Section 141.4 is amended to clarify that shipments subject to the administrative exemptions under § 321(a)(2) must be entered under special informal entry procedures for lower value shipments. Only merchandise specifically exempt from entry (*i.e.*, so-called intangibles, under General Note 13 (formerly General Note 4), HTSUS, and certain vessels) is exempt from all forms of entry. Also, a conforming amendment to the citation of the General Note in § 141.4 is necessary because of the redesignation of the General Note (*i.e.*, General Note 4, HTSUS, the predecessor to General Note 13, was redesignated as General Note 13; see Presidential Proclamation 6641, December 15, 1993, published in the **Federal Register** on December 20, 1993 (58 FR 67032, 66867)).

Undeliverable Shipments

The North American Free Trade Agreement Implementation Act amended General Note 4 (now General Note 13) by adding other articles which are exempt from entry (section 681 of Pub. L. 103–182). The newly added articles are articles which are returned as undeliverable to the United States within 45 days of their departure from the United States. The articles may not have left the custody of either the carrier or foreign customs service during that time. The departure from the United States of articles for which the exemption is granted may not be treated as satisfying any requirement for exportation in order to receive a benefit from, or meet an obligation to, the United States.

The amendment to § 141.4 implements this provision. The amendment requires the person claiming the exemption to certify that the merchandise complies with the provision. In addition, the amendment requires the person claiming the exemption to provide, upon request by

Customs, any evidence necessary to support the claim.

Other Exemptions From Entry

Section 681 of the Act also added a provision to the tariff schedule exempting from entry and release requirements railway locomotives (provided for in headings 8601 and 8602, HTSUS) and railway freight cars (provided for in heading 8606, HTSUS) on which no duty is owed (Additional U.S. Note 1, Chapter 86, HTSUS). Also, section 681 of the Act provided for the addition of a Note to Chapter 99, HTSUS, under which certain Canadian railway freight cars provided duty-free treatment in subheadings 9905.86.05 and 9905.86.10, HTSUS, are exempt from entry and release requirements. The railway freight cars provided for in subheading 9905.86.05, HTSUS, are those produced before July 1, 1991, or if entered after July 1, 1994, produced not less than 3 years before the date of importation, and provided for in heading 8606, HTSUS. The railway freight cars provided for in subheading 9905.86.10, HTSUS, are those imported for temporary use in transportation in the United States and certified by the importer to be exported within 1 year from the date of importation and provided for in heading 8606, HTSUS. In the case of both Notes (to be added to chapter 86 and 99, HTSUS), the Secretary of the Treasury is authorized by regulation to establish appropriate reporting requirements and to require that a bond be posted to ensure compliance.

The amendment to § 141.4 implements these provisions. In the case of railway locomotives and freight cars which are exempt from entry on the basis that no duty is owed on them and they are classified in headings 8601, 8602, or 8606, HTSUS (*i.e.*, without reference to subheading 9905.86.05 or 9905.86.10, HTSUS), no special evidentiary requirement is imposed because duty-free treatment is not conditioned on any special condition (other than duty-free status because of origin).

In the case of railway freight cars which are exempt from entry by virtue of subheading 9905.86.05 or 9905.86.10, HTSUS, because there are conditions other than the absence of duty being owed on the freight cars, the amendment contains special evidentiary requirements. The requirements, concerning the time of production of the freight car and the duration of the stay in the United States of the freight car, shall be met by a certification (documentary or electronic), subject to Customs verification. In the case of the requirement to export the freight car within 1 year from the date of importation, in subheading 9905.86.10, HTSUS, the amendment specifically provides that a freight car admitted into the United States under this provision which is not exported within the 1 year period becomes subject to entry and the payment of any applicable duties.

As authorized by the statutory provision, the amendment provides that locomotives and freight cars described in Additional U.S. Note 1 of Chapter 86, HTSUS, and freight cars described in subheading 9905.86.05 or 9905.86.10, HTSUS, may be released only after the importer has filed a bond on Customs Form 301, containing either the basic importation and entry conditions (19 CFR 113.62) or the international carrier bond conditions (19 CFR 113.64). Amendments to 19 CFR 123.12 are added concerning the entry of foreign locomotives and equipment in international traffic, to add references to the provisions implementing these provisions.

Instruments of International Traffic

Section 681 of the Act added a provision to the tariff schedule exempting from formal entry procedures instruments of international traffic, such as containers, lift vans, rail cars and locomotives, truck cabs and trailers, etc. The provision also provided for the periodic reporting and payment of fees associated with the importation of such instruments of international traffic.

The exemption from entry for instruments of international traffic is already provided for in the Customs Regulations (see 19 CFR 10.41a). There are no fees associated with the importation of instruments of international traffic. Therefore, no substantive amendment to the Customs Regulations is necessary to implement this provision. However, to alert the public to the exemption from entry for instruments of international traffic, a provision is added referring to this exemption from entry and 19 CFR 10.41a in the list of exceptions from the general rule in § 141.4.

Accordingly, Customs is promulgating on an interim basis amendments as described above and set forth below.

Delayed Effective Date and Public Comment Requirements

The agency intends that these interim regulations become effective on the 45th day following the date of publication, *i.e.*, 15 days after the close of the comment period. The agency believes it has good cause under 5 U.S.C. 553(d) (1) and (3) of the Administrative Procedure Act (APA) (5 U.S.C. 553) to promulgate interim regulations because the regulations provide an immediate benefit to both the Government and the public by increasing exemptions which already exist. These interim regulations are intended to implement Congressional intent embodied in 19 U.S.C. 1321, as amended, that these exemptions, when granted, should exist at statutory minimums.

Furthermore, existing rights and obligations are not otherwise changed. The agency believes the public wants these new statutory minimums to become effective as soon as possible as the public should benefit from the efficiencies and savings resulting therefrom. In addition, the agency does not believe the public needs time to conform its conduct so as to avoid violation of these regulations. The due and timely execution of the agency's responsibilities would be unnecessarily impeded by a time consuming notice and comment period. The agency believes such delay is unnecessary because it does not expect the public to object to the regulations being promulgated as they merely provide the relief that Congress intended.

Even though, based on the discussion set forth above, Customs believes the amendments in this document may be promulgated on an interim basis and could be effective immediately, Customs is providing a 45-day delayed effective date, with a 30 day comment period preceding that effective date. This represents a practical compromise between the need for temporal urgency and the desirability of public participation in the rulemaking process.

In the spirit of the APA, the agency is soliciting public comment regarding its decision to promulgate these interim regulations and in delaying their effective date only for that period of time necessary to review any relevant comments regarding that decision. Unless the comments show that there exists good cause for not making the regulations effective on an interim basis, the regulations will become effective on an interim basis on the 45th day following the date of publication.

Comments

Consequently, the agency hereby solicits comments on both the substance of these regulations and their intended effective date. The comments should clearly state whether they address the substance of the interim rule or the agency's determination to make the rule effective on an interim basis. If, based on the comments, good cause is shown that the regulations should not become effective on an interim basis, a document will be issued withdrawing

the interim regulations before their effective date. If no such good cause is shown, the interim regulations will go into effect. The agency will then be able to gain experience with the interim regulation, fully consider substantive comments, and decide whether the interim regulation needs amendment before its promulgation as a final rule.

Consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. All such comments received from the public pursuant to this notice of rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1099 14th Street, NW., suite 4000, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document is not a "significant regulatory action" under E.O 12866.

Paperwork Reduction Act

The collections of information contained in this interim rulemaking were previously approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 under control numbers 1515–0069 (§§ 128.21, 128.23, 128.24) and 1515–0065 (§§ 141.4, 143.23).

Drafting Information

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Foreign relations, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports.

19 CFR Part 123

Administrative practice and procedure, Aircraft, Bonds, Canada, Customs duties and inspection, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements, Vehicles, Vessels.

19 CFR Part 128

Carriers, Couriers, Customs duties and inspection, Express Consignments, Imports.

19 CFR Part 141

Customs duties and inspection, Entry procedures, Invoices, Reporting and recordkeeping requirements.

19 CFR Part 143

Automated broker interface, Customs duties and inspection, Electronic entry filing, Imports, Invoice requirements.

19 CFR Part 145

Customs duties and inspection, Imports, Postal Service.

19 CFR Part 148

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 159

Liquidation of entries for merchandise, Suspension of liquidation pending disposition of American manufacturer's cause of action.

Amendments

Title 19, chapter I, parts 10, 101, 111, 123, 128, 141, 143, 145, 148, and 159 of the Customs Regulations (19 CFR parts 10, 101, 111, 123, 128, 141, 143, 145, 148 and 159) is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority for part 10 is revised to read as follows, and the specific section authority for §§ 10.152 and 10.153 is removed:

Authority: 19 U.S.C. 66, 1202, 1321, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

2. Part 10 is amended by revising the center heading preceding § 10.151 to read as follows:

Importations Not Over $200 And Bona Fide Gifts

3. Section 10.151 is revised to read as follows:

§ 10.151 Importations not over $200.

Subject to the conditions in § 10.153 of this part, the district director shall pass free of duty and tax any shipment of merchandise, as defined in § 101.1(o) of this chapter, imported by one person on one day having a fair retail value, as evidenced by the bill of lading (or other document filed as the entry) or manifest listing each bill of lading, in the country of shipment not exceeding $200, unless he has reason to believe that the shipment is one of several lots covered by a single order or contract and that it was sent separately for the express purpose of securing free entry therefor or of avoiding compliance with any pertinent law or regulation. Merchandise subject to this exemption shall be entered under the informal entry procedures (see subpart C, part 143, and §§ 128.24, 145.31, 148.12, and 148.62, of this chapter).

4. Section 10.152 is revised to read as follows:

§ 10.152 Bona-fide gifts.

Subject to the conditions in § 10.153 of this part, the district director shall pass free of duty and tax any article sent as a bona-fide gift from a person in a foreign country to a person in the United States, provided that the aggregate fair retail value in the country of shipment of such articles received by one person on one day does not exceed $100 or, in the case of articles sent from a person in the Virgin Islands, Guam, and American Samoa, $200. Articles subject to this exemption shall be entered under the informal entry procedures (see subpart C, part 143, and §§ 145.32, 148.12, 148.51, and 148.64, of this chapter). An article is "sent" for purposes of this section if it is conveyed in any manner other than on the person or in the accompanied or unaccompanied baggage of the donor or donee.

5. Section 10.153 is amended by removing the references to "$50" and "$100" wherever appearing in paragraphs (b), (d)(2), (d)(3) and (f), and by adding in place thereof, respectively, "$100" and "$200".

PART 101—GENERAL PROVISIONS

1. The authority for part 101 is revised to read as set forth below, and the authority citations following §§ 101.1 and 101.4 are removed.

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1623, 1624

2. Section 101.1 is amended by adding a new paragraph (o) to read as follows:

§ 101.1 Definitions.

* * * * *

(o) *Shipment.* "Shipment" means the merchandise described on the bill of lading or other document used to file or support entry, or in the oral declaration when applicable.

PART 111—CUSTOMS BROKERS

1. The general authority for part 111, and the specific section authority for § 111.3, are revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, 1641.

Section 111.3 also issued under 19 U.S.C. 1484, 1498;

* * * * *

2. Section 111.3 is amended by adding a new paragraph (e) to read as follows:

§ 111.3 Transactions for which license is not required.

* * * * *

(e) *Informal entries.* A person entering merchandise qualifying for, and entered under, the informal entry procedures authorized by 19 U.S.C. 1498 is not required to be licensed as a broker, unless required to be so licensed under § 143.26 of this chapter, issued under the authority of 19 U.S.C. 1498.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority for part 123, and the specific section authority for §§ 123.12–123.18, are revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1624;

* * * * *

Sections 123.12 also issued under 19 U.S.C. 1202 (Chapter 86, Additional U.S. Note 1, HTSUS), 1322;

Sections 123.13–123.18 also issued under 19 U.S.C. 1322;

* * * * *

2. Section 123.12 is amended by revising the first sentence, respectively, of paragraphs (a)(1) and (a)(2), and by revising paragraph (b), to read as follows:

§ 123.12 Entry of foreign locomotives and equipment in international traffic.

(a) * * *

(1) *On inward trip.* Unless formally entered and cleared through Customs into the United States, or unless exempt from entry as provided in § 141.4(b)(4) of this chapter, a foreign locomotive shall be used on the inward trip only in connection with taking the inbound train to the last place in a continuous haul, including the switching of cars which it has hauled into the United States. * * *

(2) *On outward trip.* Unless formally entered and cleared through Customs into the United States, or unless exempt from entry as provided in § 141.4(b)(4) of this chapter, foreign locomotives may be used on the outward trip only in connection with through trains crossing the boundary, including switching to make up such trains. * * *

(b) *Admission of empty equipment.* Empty foreign railroad equipment shall be admitted to the United States without formal entry and payment of duty only if:

(1) The passengers or goods to be loaded are to be transported directly to or through a foreign country; or

(2) The equipment is exempt from entry as provided in § 141.4(b)(4) of this chapter.

* * * * *

PART 128—EXPRESS CONSIGNMENTS

1. The authority for part 128 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

2. Section 128.21 is amended by revising paragraph (a)(4) to read as follows:

§ 128.21 Manifest requirements.

(a) *Additional information.* * * *

(4) Specific description of the merchandise, and under the following conditions, the Harmonized Tariff Schedule of the United States (HTSUS) subheading number:

(i) If the merchandise is required to be formally entered as provided in § 128.25; or

(ii) If the merchandise is eligible for, and is entered under, the informal entry procedures as provided in § 128.24, but may not be passed free of duty and tax as consisting of a shipment of merchandise imported by one person on one day having a fair retail value in the country of shipment not exceeding $200, as provided in § 128.24(e).

* * * * *

3. Section 128.23 is revised to read as follows:

§ 128.23 Entry requirements.

(a) *General rule.* Except as provided in paragraph (c) of this section, all articles carried by an express consignment entity shall be entered by a person with the right to file entry.

(b) *Procedures*—(1) *General.* All express consignment entities utilizing the procedures in this part shall comply with the requirements of the Customs Automated Commercial System (ACS). These requirements include those under the Automated Manifest System (AMS), Cargo Selectivity, Statement Processing, the Automated Broker Interface System (ABI), and enhancements of ACS.

(2) *Entry number.* All entry numbers must be furnished to Customs in a Customs approved bar coded readable format in order to assist in the processing of express consignment cargo under the Customs Automated Commercial System (ACS).

(3) *Paper entry document waiver.* The district director is authorized, at the time of entry, to accept the appropriate electronic equivalent in lieu of entry documents for those entries designated as not requiring examination or review when the advance manifest requirements of § 128.21(a) of this part have been met.

(c) *Exception.* Articles specifically exempt from entry by § 141.4(b) of this chapter need not satisfy the general rule as set forth in paragraph (a) of this section.

4. Section 128.24 is amended by revising the last sentence of paragraph (b), and the first sentence of paragraph (c), and by revising paragraphs (d) and (e) to read as follows:

§ 128.24 Informal entry procedures.

* * * * *

(b) *Procedures.* * * * The party who may make entry under § 143.26 of this chapter may submit a copy of the invoice or the advance manifest as described in § 128.21 in lieu of other control documents.

(c) *Alternative procedure.* The party who may make entry under § 143.26 of this chapter may be required to submit an individual Customs Form 3461 covering the eligible shipments on a daily basis or by flight basis. * * *

(d) *Entry summary.* An entry summary (Customs Form 7501) must be presented in proper form, and estimated duties deposited within 10 days of the release of the merchandise under either the regular or alternative procedure described in this section. However, see paragraph (e) of this section if the shipment is valued at $200 or less.

(e) *Shipments valued at $200 or less.* Shipments valued at $200 or less meeting the requirements of § 10.151 of this chapter shall be passed free of duty and tax. Such shipments must be segregated from shipments valued at more than $200 if an advance manifest is used as the entry document, as provided for in § 128.21. If such an advance manifest is used as the entry document, the following are not required to be provided for shipments qualifying under this paragraph:

(1) The Harmonized Tariff Schedule of the United States (HTSUS) subheading number (see § 128.21(a)(4)); and

(2) An entry summary (see paragraph (d) of this section).

5. Section 128.25 is revised to read as follows:

§ 128.25 Formal entry procedures.

Formal entry, as provided for under 19 U.S.C. 1484 in parts 141, 142, and 143 (except for subpart C), of this chapter, is required for all shipments exceeding the monetary limitation for informal entry (see § 128.24) and any shipment for which the informal entry procedures may not be used (see § 128.24).

§ 128.26 [Removed]

6. Section 128.26 is removed.

PART 141—ENTRY OF MERCHANDISE

1. The general authority for part 141 continues to read as follows, and the specific section authority for § 141.4 is revised to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.4 also issued under 19 U.S.C. 1202 (General Note 13; Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1; Chapter 98, Subchapter III, U.S. Note 4; Chapter 99, Subchapter V, U.S. Note 9, Harmonized Tariff Schedules of the United States (HTSUS)), 1498;

* * * * *

2. Section 141.4 is revised to read as follows:

§ 141.4 Entry required.

(a) *General.* All merchandise imported into the United States is required to be entered, unless specifically excepted.

(b) *Exceptions.* The following are the exceptions to the general rule:

(1) The exemptions listed in General Note 13 to the Harmonized Tariff Schedule of the United States (HTSUS).

(2) Vessels (not including vessels classified in headings 8903 and 8907 and subheadings 8905.90.10 and 8906.00.10 or in Chapter 98, HTSUS, such as under subheadings 9804.00.35 or 9813.00.35). See also Chapter 89, Additional U.S. Note 1, HTSUS.

(3) Instruments of international traffic described in § 10.41a of this chapter, under the conditions provided for in that section. See also Chapter 98, Subchapter III; U.S. Note 4, HTSUS.

(4) Railway locomotives classified in heading 8601 or 8602, HTSUS, and freight cars classified in heading 8606, HTSUS, on which no duty is owed (see paragraph (d) of this section). See Chapter 86, Additional U.S. Note 1, HTSUS; Chapter 99, Subchapter V, U.S. Note 9, HTSUS; see also 19 CFR part 123 for reporting requirements for railway equipment brought into the United States from Canada or Mexico.

(c) *Undeliverable articles.* The exemption from entry for undeliverable articles under General Note 13(e), HTSUS, is subject to the following conditions:

(1) The person claiming the exemption must submit a certification (documentary or electronic) that:

(i) The merchandise was intended to be exported to a foreign country;

(ii) The merchandise is being returned within 45 days of departure from the United States;

(iii) The merchandise did not leave the custody of the carrier or foreign customs;

(iv) The merchandise is being returned to the United States because it was undeliverable to the foreign consignee; and

(v) The merchandise was not sent abroad to receive benefit from, or fulfill obligations to, the United States as a result of exportation.

(2) Upon request by Customs, the person claiming the exemption shall provide evidence required to support the claim for exemption.

(d) *Railway locomotives and freight cars.* To be excepted from entry, railway locomotives and freight cars described in Additional U.S. Note 1 of Chapter 86, HTSUS, and railway freight cars from Canada described in subheading 9905.86.05 or 9905.86.10, HTSUS, are subject to the following requirements, as applicable:

(1) For a railway freight car described in subheading 9905.86.05, HTSUS, the importer shall certify, subject to Customs verification, that the freight car was produced before July 1, 1991, or if admitted after July 1, 1994, that the freight car was produced not less than 3 years before the date of importation;

(2) For a railway freight car described in subheading 9905.86.10, HTSUS, the importer shall certify, subject to Customs verification, that the freight car will be exported within 1 year from the date of importation. (Any railway freight car admitted into the United States under this provision which is not exported within the 1-year period becomes subject to entry and the payment of any applicable duties.);

(3) For railway locomotives and freight cars described in Additional U.S. Note 1 of Chapter 86, HTSUS, and railway freight cars described in subheading 9905.86.05 or 9905.86.10, HTSUS, to be released in accordance with paragraph (b)(4) of this section, the importer shall first file a bond on Customs Form 301, containing the bond conditions set forth in either § 113.62 or 113.64 of this chapter.

(e) *Informal entry.* Merchandise qualifying for informal entry by regulation, pursuant to 19 U.S.C. 1498, is exempt from formal entry under 19 U.S.C. 1484 and this part, but must be entered as required under applicable regulations (see part 143, subpart C, and §§ 10.151 through 10.153, 128.24, 145.31, 145.32, 148.12, 148.13, 148.51, and 148.62 of this chapter).

PART 143—SPECIAL ENTRY PROCEDURES

1. The authority for part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

2. Section 143.21 is amended by adding a paragraph (l) to read as follows:

§ 143.21 Merchandise eligible for informal entry.

* * * * *

(l) Shipments of merchandise qualifying for the administrative exemptions under 19 U.S.C. 1321(a)(2) and provided for in—

(1) Section 10.151 or 145.31 of this chapter (certain importations not exceeding $200 in value);

(2) Section 10.152 or 145.32 of this chapter (certain bona-fide gifts not exceeding $100 in value ($200 in the case of articles sent from a person in the Virgin Islands, Guam, or American Samoa)); or

(3) Section 148.51 or 148.64 of this chapter (certain personal or household articles not exceeding $200 in value).

3. Section 143.23 is amended by adding two new paragraphs (i) and (j) to read as follows:

§ 143.23 Form of entry.

* * * * *

(i) A shipment of merchandise not exceeding $1250 in value which is imported by an express consignment operator or carrier and which meets the requirements in § 128.24 of this chapter may be entered as provided in that section.

(j) Except for mail importations (see §§ 145.31 and 145.32 of this chapter), or in the case of personal written or oral declarations (see §§ 148.12, 148.13 and 148.62 of this chapter), a shipment of merchandise not exceeding $200 in value which qualifies for informal entry under 19 U.S.C. 1498 and meets the requirements in § 10.151 or § 10.152 of

this chapter may be entered by presenting the bill of lading or a manifest listing each bill of lading (see §§ 10.151, 10.152 and 128.24(e) of this chapter). The following information is required to be filed as a part of such entry:

(1) Country of origin of the merchandise;

(2) Shipper name, address and country;

(3) Ultimate consignee name and address;

(4) Specific description of the merchandise;

(5) Quantity; and

(6) Value.

4. Section 143.26 is added to read as follows:

§ 143.26 Party who may make informal entry of merchandise.

(a) *Shipments valued between $200 and $1250.* A shipment of merchandise valued between $200 and $1250 which qualifies for informal entry under 19 U.S.C. 1498 may be entered by the owner or purchaser of the shipment or, when appropriately designated by the owner, purchaser, or consignee of the shipment, a Customs broker licensed under 19 U.S.C. 1641.

(b) *Shipments valued at $200 or less.* A shipment of merchandise valued at $200 or less which qualifies for informal entry under 19 U.S.C. 1498 and meets the requirements in 19 U.S.C. 1321(a)(2) (see §§ 10.151, 10.152, 10.153, 145.31, 145.32, 148.51, 148.64, of this chapter) may be entered by the owner, purchaser, or consignee of the shipment or, when appropriately designated by one of these persons, a Customs broker licensed under 19 U.S.C. 1641.

PART 145—MAIL IMPORTATIONS

1. The general authority for part 145 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

2. Section 145.31 is revised to read as follows:

§ 145.31 Importations not over $200 in value.

The district director shall pass free of duty and tax, without preparing an entry as provided for in § 143.12, packages containing merchandise having an aggregate fair retail value in the country of shipment of not over $200, subject to the requirements set forth in §§ 10.151 and 10.153 of this chapter.

3. Section 145.32 is revised to read as follows:

§ 145.32 Bona-fide gifts.

The district director shall pass free of duty and tax, without preparing an entry as provided for in § 145.12, articles sent as bona-fide gifts from persons in foreign countries to persons in the United States having an aggregate fair retail value in the country of shipment not exceeding $100 ($200, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa), subject to the requirements set forth in §§ 10.152 and 10.153 of this chapter.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority for part 148 is revised, and the specific section authority for §§ 148.43, 148.51, 148.63, 148.64 and 148.74 continues, to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS));

* * * * *

Sections 148.43, 148.51, 148.63, 148.64 and 148.74 also issued under 19 U.S.C. 1321;

* * * * *

§§ 148.12, 148.51, 148.64 [Amended]

2. Sections 148.12(b)(2)(ii), 148.51(b)(1), and 148.64(b)(1) are amended by removing the reference to "$25" where appearing therein, and by adding in its place "$200".

PART 159—LIQUIDATION OF DUTIES

1. The authority for part 159 continues to read as follows:

Authority: 19 U.S.C. 66, 1500, 1624. Subpart C also issued under 31 U.S.C. 5151. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

2. Section 159.6 is amended by removing the references to "$10" and "duties" wherever appearing in paragraphs (a), (b) and (c), and by adding in place thereof, respectively, "$20", and "duties, fees, and taxes"; and by revising paragraph (d) to read as follows:

§ 159.6 Difference between liquidated duties and estimated duties.

* * * * *

(d) *Customs duties and fees and internal revenue taxes netted for $20 limit.* The assessments of Customs duties and fees and internal revenue taxes shall be separately stated on the entry at the time of liquidation, but the amounts of any differences shall be netted when applying the $20 minimum for issuance of a bill or refund check.

George J. Weise,

Commissioner of Customs.

Approved: May 26, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–14255 Filed 6–8–94; 4:40 pm]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 660

[FHWA Docket No. 93–16]

RIN 2125–AD13

Forest Highway Portion of Public Lands Highway Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is issuing revised Forest Highway (FH) Program regulations to conform to the requirements of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Section 1032 of the ISTEA amends, among other things, 23 United States Code (U.S.C.) 202 and 204 to combine the FH category with the public lands highway category. The revised regulation will ensure expeditious and proper allocation of funds to provide public road access to the National Forest System (NFS).

EFFECTIVE DATE: July 13, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Allen W. Burden, Chief, Program and Administration Division, Federal Lands Highway Office, (202) 366–9488, Mr. Curtis L. Page, Forest Highway Program Engineer, Federal Lands Highway Office, (202) 366–9489, or Mr. Wilbert Baccus, Office of the Chief Counsel, (202) 366–1396, FHWA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: On December 18, 1991, the President signed the ISTEA, Public Law 102–240, 105 Stat. 1914. Section 1032 of the ISTEA amends 23 U.S.C. 202 and 204 by, among other things, incorporating new planning provisions, including metropolitan and statewide transportation plan requirements; establishing management systems provisions, including highway safety, bridges on and off Federal-aid highways, and highway pavements;

adding and revising definitions for key terms relating to the Federal Lands Highway Program; and modifying existing allocation procedures.

The primary purpose of the Federal Lands Highway Program is to provide public road funding to serve the Federal lands outside State or local government responsibility. Typically, the facilities serve recreational travel and tourism, protect and enhance natural resources, provide sustained economic development in rural areas, and provide needed transportation for Native Americans.

The FHWA's partnership with the Forest Service (FS) began in 1916 when the Federal-Aid Road Act appropriated funds for the construction and maintenance of roads and trails serving the national forests. There are currently over 25,000 miles of FHs, on State and local transportation systems, serving 191 million acres of national forest lands in 40 States plus Puerto Rico. These roads connect to the approximately 370,000 miles of forest development roads that are under the jurisdiction of the FS. The fiscal year 1994 (FY 94) authorization for FHs was $113 million. On October 5, 1993, the FHWA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 51794). The following discussion addresses comments to the NPRM which were provided to the FHWA.

Development of Regulations

The final rule was developed by an interagency task force of the FHWA and the FS. The FHWA and the FS considered the comments received to the Docket for the regulation in developing the revisions to the NPRM for the final rule.

Relationship to Interim Guidance Issued December 26, 1991

On December 26, 1991, the FHWA issued interim guidance to aid States and the FS in complying with the new legislative requirements. The guidance was developed in consultation with FS headquarters staff and published in the **Federal Register** at 57 FR 14880 on April 23, 1992. This interim guidance is superseded by this regulation.

Conformance

This final rule is in accordance with part 450 of this title.

Written Comments Received to the Docket

Six commenters submitted 29 comments to the Docket regarding the NPRM. One Federal agency and five State highway agencies (SHAs) commented on the NPRM. The majority of commenters offered specific suggestions for revisions. Some also offered minor editorial corrections and text enhancements. Most of the significant comments were directed at § 660.105—Planning and route designation—and at § 660.107—Allocations. All comments were considered and have been accommodated to the extent practical. In response to these comments, the FHWA has developed a final rule. A summary of the specific responses to comments raised on individual sections of the NPRM follows:

Section-by-Section Analysis

Section 660.101 Purpose

Comment: One commenter expressed the need to better describe the importance of the FH Program for access to and management of the NFS and its role as an integral part of the Federal Lands Highway Program.

Response: This section was expanded to better describe how the FH Program enhances local, regional, and national benefits of FHs funded under the Public Lands Highway category of the coordinated Federal Lands Highway Program. The FH Program provides safe and adequate transportation access to and through National Forest System (NFS) lands for visitors, recreationists, resource users, and others which is not met by other transportation programs, assists rural and community economic development, and promotes tourism and travel.

Section 660.103 Definitions

Comment: One commenter suggested that the definition of "public authority" be modified so that a public authority would be required to meet all authorities noted in the NPRM definition by changing the "or" condition to an "and" condition regarding the public authority's authority to finance, build, operate, "or" maintain toll or toll-free facilities.

Response: Because this definition is a title 23, U.S.C., definition, it was not revised, even though the "and" condition would make it more restrictive. Regulations may clarify or explain, but cannot revise, a statutory definition.

Comment: Another commenter suggested revising the definition of "forest road" to include a road which provides "access to" the NFS since many FHs in some States do not meet the criteria of a forest road as indicated by the proposed definition.

Response: This is also a title 23, U.S.C., definition and was not revised in the final rule. The present wording for the definition of "forest road," as stated in 23 U.S.C. 101, is: "The term forest road or trail means a road or trail wholly or partly within, or adjacent to, and serving the NFS and which is necessary for the protection, administration, and utilization of the NFS and the use and development of its resources." This definition is adequate because a road which provides access to the NFS is considered to be serving the NFS. Also, the definition for FH allows for roads providing access to the NFS since it refers to forest roads, the definition of which allows access to the NFS.

Comment: One commenter suggested that the definition of "statewide transportation plan" be clarified by adding the phrase "pursuant to the provisions of part 450 of this title" at the end of the definition.

Response: Similar wording was used in the definition of Metropolitan Planning Organization (MPO) in this section. Therefore, the phrase was added to the end of the definition to clarify it. Also, a definition for "metropolitan transportation plan" was added to this section because the term is used in § 660.105 along with the term "statewide transportation plan," which is also defined in this regulation in § 660.103.

Section 660.105 Planning and Route Designation

Comment: Several of the SHAs expressed the need for clarification of who provides transportation planning, FS resource planning, and management systems information to the States and MPOs for incorporation into the MPOs and transportation improvement programs (TIPs).

Response: Some minor wording changes were made to paragraph (a) of this section to reflect the fact that the FS will provide resource planning and related transportation information to the "appropriate" MPO in accordance with part 450 of this title. This clarification was needed because there are numerous MPOs within some States and the FS should direct the information only to the MPO needing the information.

Comment: Two of the SHAs felt that paragraph (b) should be clarified to delineate the reporting responsibilities for management information systems. One felt the final rule should specify that the State would be responsible for pavement, bridge, and safety management systems where the FH is also a State highway and that cities and counties would be responsible for those management systems where FHs are under city or county jurisdiction. The FS would then be responsible for those

management systems on all other applicable roads.

Response: Title 23, U.S.C., 303 requires the States to develop and implement systems for managing highway pavements of Federal-aid highways (pavement management systems), bridges on and off Federal-aid highways (bridge management systems), and highway safety for all public roads (safety management systems). The results of bridge management systems and safety management systems on all FHs and results of pavement management systems for FHs on Federal-aid highways are to be provided by the SHAs for consideration in the development of programs under § 660.109 of this part. The FHWA will provide appropriate pavement management results for FHs which are not Federal-aid highways. The last two sentences in paragraph (b) were reworded to clarify these procedures and be more in concert with 23 U.S.C. 204(a).

Comment: Two SHAs pointed out the inappropriate reference to the "Federal-aid system" in paragraph (b) when describing who reports pavement management systems results for FHs.

Response: The language of the final rule was revised to refer to "forest highways which are not Federal-aid highways" rather than to "forest highways off the Federal-aid system."

Comment: One commenter recommended that paragraph (c)(1) be clarified by adding the word "forest" before the word "roads" to be more consistent with previous definitions and to clarify candidate roads for nomination. This would clarify the fact that the SHA and the FS will nominate "forest" roads, not just any roads, for FH designation. The FH definition also references forest roads.

Response: Paragraph (c)(1) was revised to make this clarification.

Comment: One commenter suggested that the order of the three criteria for designating FHs in paragraph (d)(1) should be revised to add greater emphasis to the serving of access needs of the NFS.

Response: This comment was accepted. The order of the three items was revised.

Section 660.107 Allocations

Comment: One commenter noted the restrictiveness of the NPRM in that it limits the funding of the allocated portion of the Public Lands Highway Program exclusively to FHs. The commenter further pointed out that the 1991 ISTEA amended 23 U.S.C. 202 by striking the subsection that dealt with FHs as a part of the Public Lands Highway Program with the result that, according to the commenter, one-third of the allocated program may be spent on highways other than FHs. Under this broader definition of Public Lands Highways, the States would have the flexibility to spend the allocated portion of PLH funds on all kinds of highways such as the Bureau of Land Management roads and even Indian Reservation Roads. The "equal consideration" language of the ISTEA, in the commenter's view, would allow for at least half of the allocated funds to be spent on such roads while the NPRM language restricts the allocated portion to FHs only.

Response: The conference report on ISTEA states that "Sixty-six percent of the public lands highway account shall be allocated to the Forest Service regional offices for use in 41 States based on the FH criteria. The remaining 34 percent shall be allocated by the Secretary based on national competition for other forest or public lands highways." (H.R. Conf. Rep. No. 404, 102d Cong., 1st Sess. 331 (1991).) Therefore, the interpretation of 23 U.S.C. 202(b) is as follows:

1. Thirty-four percent of the public lands highway funds shall be allocated in a discretionary manner, giving preference to States that contain at least 3 percent of the total public lands in the nation.

2. Sixty-six percent of the public lands highway funds are to be allocated to the FS Regions in accordance with section 134 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) (Pub. L. 100–17, 101 Stat. 132, 173). Section 134 pertained to the allocation of FH funds, which is part of the Public Lands Highway category. Therefore, the language of this section was not changed.

Comment: Two of the SHAs took exception to the fact that this section requires the allocation of Public Lands Highway Funds by FS Region, citing an apparent inconsistency with section 134 of the STURAA which allocates "for expenditure in each State." It was suggested that, for some States which have more than one FS Region, allocation by FS Region potentially creates difficulties, such as competition or conflicts between States, and that FH funds should continue to be allocated as outlined in the STURAA. Also, because the ISTEA requires that all FS projects be included in each State's "Statewide Transportation Improvement Program" (STIP), allocation of funds by State would make it easier for each State to project available funding and projects for inclusion in its STIP.

Response: The NPRM may have given the appearance that the allocation method is being changed. Actually, the NPRM proposed to continue with the same FH allocation method which has been in existence since FY 85. If FH funds were to be allocated to the States, 34 States would have their "hold harmless" funds reduced by an aggregate total of approximately $90 million per year (based on FY 94 allocation amounts). This represents nearly 85 percent of the total FY 94 FH funds allocation. The regulation will continue with the allocation in its present form.

Comment: One commenter suggested that the word "elements," used in the NPRM to state that the allocation of funds for FHs uses values based on relative transportation needs of the various elements of the NFS, should be replaced with the word "resources." The commenter pointed out that the word "element" is used in the definition of renewable resources and could be construed to limit allocations based on renewable resources only. The commenter also believes the term "resources" was defined to include both renewable and nonrenewable resources and is more appropriate to use in defining the allocation process.

Response: This wording was carried forward from the previous wording of the existing regulation. However, the sentence was clarified by deleting the entire phrase "the various elements of," thereby eliminating the need for referring to either "resources" or "elements." It now refers only to "using values based on relative transportation needs of the NFS."

Section 660.109 Program Development

Comment: One commenter proposed that a seventh FH project selection criterion should be added to the existing six criteria in paragraph (a) of this section. The new criterion, which would read: "The results for forest highways from the pavement, bridge, and safety management systems" is needed to comply with § 660.105(b) of this part, which discusses the management systems required under 23 U.S.C. 134 and 135. It would also have to be consistent with any changes made in 23 U.S.C. 105.

Response: Because management systems provide input to transportation planning and the TIP, this seventh criterion was added to the final rule as worded above.

Comment: One of the SHAs noted that the NPRM, in paragraph (a), stated that: "The FHWA will arrange and conduct a conference with the FS and the State Highway Agency (SHA) to jointly select

the projects which will be included in the programs. * * *" The commenter stated that cooperators (agencies) with jurisdiction over the FHs under consideration should be included in this conference to enhance the regional planning aspect for these projects.

Response: Under current procedures, the State represents the interests of the cooperators. The program meetings are always open to interested cooperators who may wish to attend. The States may invite cooperators to the meetings, if they wish. Thus, there is no need to change the wording of the NPRM.

Comment: The previous commenter also called attention to paragraph (a) of the NPRM which stated that the FS and the SHA will "jointly select the projects which will be included in the programs for the current fiscal year and at least the next 4 years." The commenter recommended that, since the projects selected will ultimately be added to the STIP, the planning and selection of FH projects should cover the same timeframe as the STIP.

Response: Generally, at least 5 years are needed to identify early environmental and other preliminary engineering required to ensure meeting the schedule to advance a project to construction. The proposed FH timeframe is consistent with this since the TIP generally shows 3 years of the 5-year FH program. Thus, there is no need to change the wording of the NPRM.

Comment: One commenter requested that, in paragraph (b) of this section, the term "recommended," as used in the first sentence, "The recommended program will be prepared by the FHWA and concurred in by the FS and the SHA," should be replaced with the term "selected." This would more accurately reflect the current procedure, as stated in paragraph (a), that the FHWA, the FS, and the SHA will "jointly select the projects," not just recommend them. One of the SHAs felt the second sentence should be revised to read, "The FHWA will approve the program 'only when there is concurrence by the FS and the SHA.'" Otherwise, the FHWA could conceivably approve the program without waiting for concurrence by the other two agencies.

Response: A review of this section indicated that the wording of the NPRM may still create some confusion, even with the recommended word changes, because the first two sentences of paragraph (b) state that "The recommended program will be prepared by the FHWA and concurred in by the FS and the SHA" and that "The FHWA will approve the program." This would make it appear that the FHWA simply prepares and approves its own program. Consequently, the wording of the first sentence of this paragraph was revised to read: "The recommended program will be prepared and approved by the FHWA with concurrence by the FS and the SHA." The second sentence was deleted.

Comment: One commenter pointed out that the term "incorporate," as used in the third sentence of NPRM paragraph (b), which states that "the SHA shall advise any other cooperators in the State of the projects included in the final program and shall incorporate the approved program into the STIP," seems vague. It appears to imply that the approved FH program is independent of the regional and statewide STIP planning requirements of the ISTEA. The commenter felt that, although this may be the correct way to handle a program of this nature, the process required to "incorporate" the final program into the STIP should be clarified.

Response: This sentence was clarified by adding the following phrase to the end of the sentence: "And shall include the approved program in the State's process for development of the STIP."

Section 660.111 Agreements

Comment: One commenter felt that the 41 statewide FH agreements currently in effect between the FHWA and the States (including Puerto Rico) should be updated and made into tri-party agreements with the FHWA, the FS, and the SHA. This would perpetuate the "partnership" spirit of the ISTEA and facilitate cooperation among the three agencies. It would also eliminate separate agreements between the FS and the SHA and between the FHWA and the SHA in each State. The wording of this section should be revised by inserting the words "the Forest Service" where necessary, such as after the word "FHWA" in paragraph (a), to include the FS as a signatory agency to the agreements.

Response: Because there are some overall FH procedures that not only involve the SHAs, but the FS as well, tri-party agreements among the FHWA, the FS, and the SHA will be a requirement in the final rule. Because the FHWA and the FS already have separate two-party FH program agreements for all 40 States, plus Puerto Rico, and because the FHWA does not want to delay the FH program until all new tri-party agreements are executed, the first sentence of this section of the NPRM was revised to delete the phrase "prior to the expenditure of any funds by the FHWA in the State."

Section 660.112 Project Development

Comment: One commenter suggested that, in the first sentence of paragraph (a), the phrase "or a public authority" should be added after the words "Projects will be administered by the FHWA." This would acknowledge that the FS may, in some cases, administer the design and construction of FH projects. The same commenter also suggested adding the phrase "and procedures documented in the statewide agreement" to the end of the sentence to allow for items included in statewide agreements to supplement Federal-aid procedures, where appropriate.

Response: Because the FS wants to be able to administer FH projects, this sentence was reworded to add the words "or the FS" instead of "or a public authority." Also, the phrase "and procedures documented in the statewide agreement" was added to the end of the sentence. This will allow the parties to determine the procedures to be followed in a State.

Section 660.113 Construction

Comment: One commenter suggested that the words "a public authority" be substituted for "cooperator" in paragraph (b) of this section. This would allow the FS to perform construction, if appropriate. Cooperators would still be included since they are, by definition, a public authority.

Response: Because other public authorities that might potentially be involved in a project would also be cooperators, the word "cooperator" was kept in the sentence in paragraph (b). However, by adding the words "the FS" after FHWA, the FS will be explicitly allowed to perform construction, if appropriate. Also, paragraph (c), which deals with final acceptance of the project, was revised to clarify the intent. The word "construction" was retained in the language to differentiate acceptance of the construction work (for the purpose of releasing the contractor) from that of acceptance of the entire project, including any extra work required to resolve noncontractor-related matters.

Section 660.115 Maintenance

Comment: In dealing with the same issue discussed in the previous section, as to what constitutes final acceptance of a project, it was suggested by one commenter that the word "construction" be deleted to avoid confusion.

Response: The term "construction" is not incorrect in the context of this paragraph, because it describes the type

of acceptance being made. However, the entire sentence was reworded to clarify and minimize possible confusion. By referencing § 660.113(c), which includes the word "construction," the meaning of the term "construction acceptance" was retained.

Section 660.117 Funding, Records and Accounting

Comment: One commenter suggested deleting the phrase "and the SHAs" from paragraph (e).

Response: Because the term "cooperators" includes SHAs, the phrase was considered redundant and, therefore, deleted.

Comment: One commenter suggested adding the word "Generally" at the beginning of the sentence in paragraph (f) to allow for those special cases where cash is not obtained in advance of construction procurement.

Response: Adding the word "generally" to the sentence makes the requirement too much less restrictive. Instead, the following phrase was added to the end of the last sentence: "Unless otherwise specified in a project agreement." Also, the word "shall" was changed to "should" to allow more flexibility.

Rulemaking Analyses and Notices; Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not major within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal; therefore, a full regulatory evaluation is not required. This rule merely requires the States and Federal agencies to conform to the requirements of the ISTEA. The requirements are basically incremental to what the States and Federal agencies are required to do under the new ISTEA provisions, such as incorporating new planning provisions, including metropolitan and statewide transportation plan requirements; and establishing management systems provisions, including highway safety, bridges on and off Federal-aid highways, and highway pavements.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The revised regulation will not directly affect small businesses because the regulation applies only to Federal agency, State, and local government transportation programs. However, a minor positive secondary effect may result from the employment of small businesses, such as engineering consultant firms, to implement some of the planning and management systems required by the ISTEA.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 660

Forest highways, Highways and roads, Public lands highways.

In consideration of the foregoing, the FHWA is amending chapter 1 of title 23, Code of Federal Regulations, part 660, subpart A as set forth below.

Issued on: June 6, 1994.

Rodney E. Slater,

Federal Highway Administrator.

PART 660—SPECIAL PROGRAMS (DIRECT FEDERAL)

1. Part 660, subpart A is revised to read as follows:

Subpart A—Forest Highways

Sec.

660.101 Purpose.
660.103 Definitions.
660.105 Planning and route designation.
660.107 Allocations.
660.109 Program development.
660.111 Agreements.
660.112 Project development.
660.113 Construction.
660.115 Maintenance.
660.117 Funding, records and accounting.

Authority: 16 U.S.C. 1608–1610; 23 U.S.C. 101, 202, 204, and 315; 49 CFR 1.48.

Subpart A—Forest Highways

§ 660.101 Purpose.

The purpose of this subpart is to implement the Forest Highway (FH) Program which enhances local, regional, and national benefits of FHs funded under the public lands highway category of the coordinated Federal Lands Highway Program. As provided in 23 U.S.C. 202, 203, and 204, the program, developed in cooperation with State and local agencies, provides safe and adequate transportation access to and through National Forest System (NFS) lands for visitors, recreationists, resource users, and others which is not met by other transportation programs. Forest highways assist rural and community economic development and promote tourism and travel.

§ 660.103 Definitions.

In addition to the definitions in 23 U.S.C. 101(a), the following apply to this subpart:

Cooperator means a non-Federal public authority which has jurisdiction and maintenance responsibility for a FH.

Forest highway means a forest road under the jurisdiction of, and maintained by, a public authority and open to public travel.

Forest road means a road wholly or partly within, or adjacent to, and serving the NFS and which is necessary for the protection, administration, and utilization of the NFS and the use and development of its resources.

Jurisdiction means the legal right or authority to control, operate, regulate use of, maintain, or cause to be maintained, a transportation facility, through ownership or delegated authority. The authority to construct or maintain such a facility may be derived from fee title, easement, written authorization, or permit from a Federal agency, or some similar method.

Metropolitan Planning Organization (MPO) means that organization designated as the forum for cooperative transportation decisionmaking pursuant to the provisions of part 450 of this title.

Metropolitan Transportation Plan means the official intermodal transportation plan that is developed and adopted through the metropolitan transportation planning process for the metropolitan planning area.

National Forest System means lands and facilities administered by the Forest Service (FS), U.S. Department of Agriculture, as set forth in the Forest and Rangeland Renewable Resource Planning Act of 1974, as amended (16 U.S.C. 1601 note, 1600–1614).

Open to public travel means except during scheduled periods, extreme weather conditions, or emergencies, open to the general public for use with a standard passenger auto, without restrictive gates or prohibitive signs or regulations, other than for general traffic control or restrictions based on size, weight, or class of registration.

Public authority means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

Public lands highway means: (1) A forest road under the jurisdiction of and maintained by a public authority and open to public travel or (2) any highway through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations under the jurisdiction of and maintained by a public authority and open to public travel.

Public road means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

Renewable resources means those elements within the scope of responsibilities and authorities of the FS as defined in the Forest and Rangeland Renewable Resource Planning Act of August 17, 1974 (88 Stat. 476) as amended by the National Forest Management Act of October 22, 1976 (90 Stat. 2949; 16 U.S.C. 1600–1614) such as recreation, wilderness, wildlife and fish, range, timber, land, water, and human and community development.

Resources means those renewable resources defined above, plus other nonrenewable resources such as minerals, oil, and gas which are included in the FS's planning and land management processes.

Statewide transportation plan means the official transportation plan that is: (1) Intermodal in scope, including bicycle and pedestrian features, (2) addresses at least a 20-year planning horizon, and (3) covers the entire State pursuant to the provisions of part 450 of this title.

§ 660.105 Planning and route designation.

(a) The FS will provide resource planning and related transportation information to the appropriate MPO and/or State Highway Agency (SHA) for use in developing metropolitan and statewide transportation plans pursuant to the provisions of part 450 of this title. Cooperators shall provide various planning (23 U.S.C. 134 and 135) information to the Federal Highway Administration (FHWA) for coordination with the FS.

(b) The management systems required under 23 U.S.C. 303 shall fulfill the requirement in 23 U.S.C. 204(a) regarding the establishment and implementation of pavement, bridge, and safety management systems for FHs. The results of bridge management systems and safety management systems on all FHs and results of pavement management systems for FHs on Federal-aid highways are to be provided by the SHAs for consideration in the development of programs under § 660.109 of this part. The FHWA will provide appropriate pavement management results for FHs which are not Federal-aid highways.

(c) The FHWA, in consultation with the FS, the SHA, and other cooperators where appropriate, will designate FHs.

(1) The SHA and the FS will nominate forest roads for FH designation.

(2) The SHA will represent the interests of all cooperators. All other agencies shall send their proposals for FHs to the SHA.

(d) A FH will meet the following criteria:

(1) Generally, it is under the jurisdiction of a public authority and open to public travel, or a cooperator has agreed, in writing, to assume jurisdiction of the facility and to keep the road open to public travel once improvements are made.

(2) It provides a connection between adequate and safe public roads and the resources of the NFS which are essential to the local, regional, or national economy, and/or the communities, shipping points, or markets which depend upon those resources.

(3) It serves:

(i) Traffic of which a preponderance is generated by use of the NFS and its resources; or

(ii) NFS-generated traffic volumes that have a substantial impact on roadway design and construction; or

(iii) Other local needs such as schools, mail delivery, commercial supply, and access to private property within the NFS.

§ 660.107 Allocations.

On October 1 of each fiscal year, the FHWA will allocate 66 percent of Public Lands Highway funds, by FS Region, for FHs using values based on relative transportation needs of the NFS, after deducting such sums as deemed necessary for the administrative requirements of the FHWA and the FS; the necessary costs of FH planning studies; and the FH share of costs for approved Federal Lands Coordinated Technology Implementation Program studies.

§ 660.109 Program development.

(a) The FHWA will arrange and conduct a conference with the FS and the SHA to jointly select the projects which will be included in the programs for the current fiscal year and at least the next 4 years. Projects included in each year's program will be selected considering the following criteria:

(1) The development, utilization, protection, and administration of the NFS and its resources;

(2) The enhancement of economic development at the local, regional, and national level, including tourism and recreational travel;

(3) The continuity of the transportation network serving the NFS and its dependent communities;

(4) The mobility of the users of the transportation network and the goods and services provided;

(5) The improvement of the transportation network for economy of operation and maintenance and the safety of its users;

(6) The protection and enhancement of the rural environment associated with the NFS and its resources; and

(7) The results for FHs from the pavement, bridge, and safety management systems.

(b) The recommended program will be prepared and approved by the FHWA with concurrence by the FS and the SHA. Following approval, the SHA shall advise any other cooperators in the State of the projects included in the final program and shall include the approved program in the State's process for development of the Statewide Transportation Improvement Program For projects located in metropolitan areas, the FHWA and the SHA will work with the MPO to incorporate the approved program into the MPO's Transportation Improvement Program

§ 660.111 Agreements.

(a) A statewide FH agreement shall be executed among the FHWA, the FS, and each SHA. This agreement shall set forth the responsibilities of each party, including that of adherence to the applicable provisions of Federal and State statutes and regulations.

(b) The design and construction of FH projects will be administered by the FHWA unless otherwise provided for in an agreement approved under this subpart.

(c) A project agreement shall be entered into between the FHWA and the cooperator involved under one or more of the following conditions:

(1) A cooperator's funds are to be made available for the project or any portion of the project;

(2) Federal funds are to be made available to a cooperator for any work;

(3) Special circumstances exist which make a project agreement necessary for payment purposes or to clarify any aspect of the project; or

(4) It is necessary to document jurisdiction and maintenance responsibility.

§ 660.112 Project development.

(a) Projects to be administered by the FHWA or the FS will be developed in accordance with FHWA procedures for the Federal Lands Highway Program. Projects to be administered by a cooperator shall be developed in accordance with Federal-aid procedures and procedures documented in the statewide agreement.

(b) The FH projects shall be designed in accordance with part 625 of this chapter or those criteria specifically approved by the FHWA for a particular project.

§ 660.113 Construction.

(a) No construction shall be undertaken on any FH project until plans, specifications, and estimates have been concurred in by the cooperator(s) and the FS, and approved in accordance with procedures contained in the statewide FH agreement.

(b) The construction of FHs will be performed by the contract method, unless construction by the FHWA, the FS, or a cooperator on its own account is warranted under 23 U.S.C. 204(e).

(c) Prior to final construction acceptance by the contracting authority, the project shall be inspected by the cooperator, the FS, and the FHWA to identify and resolve any mutual concerns.

§ 660.115 Maintenance.

The cooperator having jurisdiction over a FH shall, upon acceptance of the project in accordance with § 660.113(c), assume operation responsibilities and maintain, or cause to be maintained, any project constructed under this subpart.

§ 660.117 Funding, records and accounting.

(a) The Federal share of funding for eligible FH projects may be any amount up to and including 100 percent. A cooperator may participate in the cost of project development and construction, but participation shall not be required.

(b) Funds for FHs may be used for:

(1) Planning;

(2) Federal Lands Highway research;

(3) Preliminary and construction engineering; and

(4) Construction.

(c) Funds for FHs may be made available for the following transportation-related improvement purposes which are generally part of a transportation construction project:

(1) Transportation planning for tourism and recreational travel;

(2) Adjacent vehicular parking areas;

(3) Interpretive signage;

(4) Acquisition of necessary scenic easements and scenic or historic sites;

(5) Provisions for pedestrians and bicycles;

(6) Construction and reconstruction of roadside rest areas including sanitary and water facilities; and

(7) Other appropriate public road facilities as approved by the FHWA.

(d) Use of FH funds for right-of-way acquisition shall be subject to specific approval by the FHWA.

(e) Cooperators which administer construction of FH projects shall maintain their FH records according to 49 CFR part 18.

(f) Funds provided to the FHWA by a cooperator should be received in advance of construction procurement unless otherwise specified in a project agreement.

[FR Doc. 94–14224 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–22–P

23 CFR Parts 710, 712, 713, and 720

[FHWA Docket No. 93–7]

RIN 2125–AD09

Removal of Obsolete and Redundant Right-of-Way Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the authority citation in the final rule published on May 16, 1994 at 59 FR 25326. The final rule related to removal of obsolete and redundant right-of-way requirements.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Gerald B. Saunders, Chief, Operations Division, Office of Right-of-Way, HRW–20, (202) 366–0142; or Reid Alsop, Office of Chief Counsel, HCC–31, (202) 366–1371, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

The FHWA hereby corrects the authority citation of 23 CFR part 713 which was published on Monday, May 16, 1994, on page 25327 in FR Doc. 94–11846 to read as follows:

Authority: 23 U.S.C. 101(a), 142(f), 156, and 315; 42 U.S.C. 4633 and 4651–4655; 23 CFR 1.32; 49 CFR 1.48 (b) and (cc), 18.31 and parts 21 and 24.

Issued on: June 6, 1994.

Theodore A. McConnell,

Chief Counsel.

[FR Doc. 94–14225 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 19–1–6225; FRL–4890–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Stage II Vapor Recovery Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires the use of Stage II vapor recovery at gasoline dispensing facilities in ozone nonattainment areas classified as moderate, serious, or severe in the Commonwealth. The effect of this action is to approve, in a limited fashion, the Pennsylvania regulation requiring Stage II vapor recovery gasoline dispensing facilities (Chapter 129.82) and the associated definition of gasoline dispensing facility in Chapter 121.1. It is also the effect of this action to disapprove, in a limited fashion, Pennsylvania regulation, Chapter 129.82. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule will become effective on July 13, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Air and Radiation Docket & Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337.at the EPA Region III address.

SUPPLEMENTARY INFORMATION: On November 29, 1993 (58 FR 62560), EPApublished a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed two actions: (a) A limited approval/limited disapproval of the Pennsylvania Stage II vapor recovery regulation, Chapter 129.82 submitted on March 4, 1992; and (b) approval of Chapter 129.82 as supplemented by section 6.7(b), (c), and (h) and section 17(2) of the Pennsylvania Air Pollution Control Act as amended on June 29, 1992. EPA proposed the approval of Chapter 129.82 as supplemented by sections of the Pennsylvania Air Pollution Control Act in the event that Pennsylvania submitted those sections of the Pennsylvania Air Pollution Control Act as a formal SIP revision.

Since Pennsylvania has not submitted the applicable sections from its Air Pollution Control Act as amended on June 29, 1992. EPA is withdrawing its proposed approval of Chapter 129.82 as supplemented by section 6.7(b), (c), and (h) and section 17(2) of the Pennsylvania Air Pollution Control Act, as amended on June 29, 1992. Therefore, this notice is a final rulemaking action of the March 4, 1992 submittal alone.

Other specific requirements of Pennsylvania's Stage II regulation and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. Only one comment pertaining to the NPR was received. The Pennsylvania Department of Environmental Resources (DER) requested that EPA withhold final action on the Stage II vapor recovery regulation submitted on March 4, 1992 until EPA resolves the issues concerning applicability of Stage II in moderate ozone nonattainment areas. EPA has no issues to resolve concerning Stage II in moderate ozone nonattainment areas. The onboard vapor recovery requirements required to be issued prior to January 22, 1994 do not affect requirements in the Pennsylvania Stage II regulation, Chapter 129.82. States are free to continue to enforce Stage II regulations in moderate ozone nonattainment areas, even after the promulgation of onboard vapor recovery requirements by EPA. Therefore, EPA is finalizing its limited approval/limited disapproval of the Pennsylvania Stage II regulation, Chapter 129.82, and the associated definition of gasoline dispensing facilities located in Chapter 121.1, which is applicable in moderate, serious and severe ozone nonattainment areas in the Commonwealth.

Final Action

EPA is approving the definition of gasoline dispensing facility in Chapter 121 and the Stage II vapor recovery requirements in Chapter 129.82 as a revision to the Pennsylvania SIP. EPA is also disapproving the Stage II vapor recovery requirements in Chapter 129.82 for the limited purpose of allowing Pennsylvania the opportunity to correct the testing and certification requirement deficiencies previously identified by EPA. This final limited disapproval begins the 18 month sanctions clock for the Pennsylvania Stage II regulation.

Because of the previously identified deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3).

However, EPA may grant a limited approval of the submitted rule(s) under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval, due to the fact that the rule does not meet the section 182(b)(3) requirement of part D because of the noted deficiencies. Thus, EPA is approving the Pennsylvania Stage II vapor recovery regulation, Chapter 129.82 submitted under section 110(k)(3) and 301(a) of the CAA for the limited purpose of strengthening the Pennsylvania SIP.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

EPA is also disapproving the Pennsylvania Stage II rule because it contains deficiencies that have not been corrected and, as such, the rule does not fully meet the requirements of section 182(b)(3) of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) begins at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). The 18 month sanctions clock for the Pennsylvania Stage II vapor recovery regulation begins on June 13, 1994.

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. The USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request is still applicable under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the Pennsylvania Stage II regulation, Chapter 129.82, must be filed in the United States Court of Appeals for the appropriate circuit by August 12, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: April 14, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(89) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(89) Revisions to the Pennsylvania Regulations, Chapter 129.82 pertaining to Stage II Vapor Recovery and the associated definition of gasoline dispensing facilities in Chapter 121.1 submitted on March 4, 1992 by the Pennsylvania Department of Environmental Resources:

(i) Incorporation by reference.

(A) Letter of March 4, 1992 from the Pennsylvania Department of Environmental Resources transmitting Chapter 121.1, definition of gasoline dispensing facilities, and Chapter 129.82 pertaining to regulations for Stage II vapor recovery in moderate, serious and severe ozone nonattainment areas in the Commonwealth.

(B) Pennsylvania Bulletin (Vol. 22, No. 8) dated February 8, 1992 containing the definition of gasoline dispensing facility in Chapter 121.1 and the Stage II vapor recovery regulations contained in Chapter 129.82, effective on February 8, 1992.

(ii) Additional material.

(A) Remainder of March 4, 1992 State submittal.

3. Section 52.2023 is amended by adding paragraph (i) to read as follows:

§ 52.2023 Approval status.

* * * * *

(i) Limited approval/limited disapproval of revisions to the Pennsylvania Regulations, Chapter 129.82 pertaining to Stage II Vapor Recovery and the associated definition of gasoline dispensing facilities in Chapter 121.1 submitted on March 4, 1992 by the Pennsylvania Department of Environmental Resources. The Pennsylvania Stage II regulation is deficient in that it does not include the testing and certification procedures contained in EPA's October 1991 Stage II guidance documents (EPA–450/3–91–022a and EPA–450/3–91–022b).

[FR Doc. 94–14244 Filed 6–10–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

Special Industrial Radio Service

CFR Correction

In Title 47 of the Code of Federal Regulations, part 80 to End, revised as of October 1, 1993, on pages 296 and 297, § 90.73, paragraph (c) incorrectly carried the *Manufacturers Radio Service Frequency Table*. Paragraph (c) should have carried the *Special Industrial Radio Service Frequency Table* which reads as follows.

§ 90.73 Special Industrial Radio Service.

* * * * *

(c) *Frequencies available.* * * *

SPECIAL INDUSTRIAL RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Kilohertz:		
2,000 to 25,000	Fixed, base or mobile.	1
2292	Base or mobile	1, 34
2398	do	1, 34
4637.5	do	1, 34
Megahertz		
30.58	do	2
30.60	do	2
30.62	do	2
30.64	do	34
31.28	do	34
31.32	do	29, 34
31.36	do	34
31.40	do	29, 34
31.44	do	29,34
31.48	do	29, 31, 34
31.52	do	29, 31, 34
31.56	do	34
31.60	do	29, 34
31.64	do	29, 31, 34
31.68	do	34
31.72	do	29, 31, 34
31.76	do	29, 31, 34
31.80	do	34
31.84	do	34
31.88	do	34
31.92	do	34
31.96	do	34
33.12	do	3, 34
35.28	do	34
35.32	do	34
35.36	do	34
35.40	do	34
35.44	do	34
35.48	do	29, 34
35.52	do	34
35.74	do	2
35.76	do	2
35.78	do	2
35.80	do	2
35.82	do	2
35.84	do	2
35.86	do	2
43.02	do	31, 34
43.04	do	34
43.06	do	34
43.08	do	34
43.10	do	34
43.12	do	34
43.14	do	34
43.18	do	2
43.28	do	31, 34
43.32	do	34
43.36	do	31, 34
43.40	do	31, 34
43.44	do	34
43.48	do	34
43.52	do	31, 34
47.44	do	2
47.48	do	2
47.52	do	2
47.56	do	2
47.60	do	2
47.64	do	2
47.68	do	2
49.52	do	34
49.54	do	5, 34
49.56	do	2
49.58	do	5, 34
72–76	Operational fixed	6
72.44	Mobile	7
72.48	do	7
72.52	do	7
72.56	do	7
72.60	do	7
75.44	do	7
75.48	do	7
75.52	do	7
75.56	do	7
75.60	do	7
150–170	Base or mobile	35
151.490	do	2, 8
151.505	do	4
151.520	do	2
151.535	do	2
151.550	do	2
151.565	do	2
151.580	do	2
151.595	do	2
152.465	do	2, 28
152.48	do	2, 9

SPECIAL INDUSTRIAL RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
152.870	....do	10, 34
152.885	....do	2
152.900	....do	2, 10
152.915	....do	2
152.930	....do	2, 10
152.945	....do	2
152.960	....do	2, 10
152.975	....do	2
152.990	....do	2, 10
153.005	....do	2
153.020	....do	2, 10
153.035	....do	2, 11
153.050	....do	2, 30, 33
153.125	....do	2, 30, 33
153.335	....do	2, 30
153.350	....do	2, 30
153.365	....do	2, 30
153.380	....do	2, 30
153.395	....do	2, 30
154.45625	Fixed or mobile	12, 13, 15, 25
154.46375	....do	12, 13, 15, 26, 27
154.47125	....do	12, 13, 15, 27
154.47875	....do	12, 13, 15, 25
154.49	Base or mobile	2
154.625	....do	2, 9
157.725	....do	2, 28
157.740	....do	2, 9
158.325	....do	2, 30, 33
158.355	....do	2, 32
158.385	....do	2
158.400	....do	4
158.415	....do	2, 30, 33
158.460	....do	2, 9
159 to 172	Mobile, operational fixed.	14
173.20375	Fixed or mobile	12, 13, 15, 27
173.2100	....do	12, 15, 16, 27
173.2375	....do	12, 13, 15, 25
173.2625	....do	12, 13, 15, 25
173.2875	....do	12, 13, 15, 25
173.3125	....do	12, 13, 15, 25
173.3375	....do	12, 13, 15, 25
173.3625	....do	12, 15, 16, 27
173.3900	....do	12, 13, 15, 27
173.39625	....do	17
216 to 220	Base or mobile	(37)
220 to 222	Base and mobile	14
406–413	Operational fixed	18
450 to 470	Fixed	2
451.725	Base or mobile	2
451.775	....do	4, 19
451.800	Operational fixed, base or mobile.	2
451.825	Base or mobile	2
451.850	....do	2
451.875	....do	2
451.900	....do	2
451.925	....do	2
451.950	....do	2
451.975	....do	2
452.000	....do	2
452.025	....do	2
452.075	....do	2
452.125	....do	2
452.175	....do	2
456.725	Mobile	2
456.775	....do	2
456.800	Operational fixed, base or mobile.	4, 19
456.825	Mobile	2
456.850	....do	2
456.875	....do	2
456.900	....do	2
456.925	....do	2
456.950	....do	2
456.975	....do	2
457.000	....do	2
457.025	....do	2
457.075	....do	2
457.125	....do	2
457.175	....do	2
470 to 512	Base or mobile	20
806 to 821	Mobile	21
851 to 866	Base or mobile	21
896 to 901	Mobile	21
928 and above	Operational-fixed	22
929 to 930	Base only	36
935 to 940	Base or mobile	21
1427 to 1435	Operational-fixed, base or mobile.	17
2450 to 2500	Base or mobile	23
8400 to 8500	....do	24

SPECIAL INDUSTRIAL RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
10,550 to 10,680*	....do	

*The frequencies in the band 10.55–10.68 GHz are available for Digital Termination Systems and for associated intermodal links in the Point-to-Point Microwave Radio Service. No new licenses will be issued under this subpart but current licenses will be renewed.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Ocenic and Atmospheric Administration

50 CFR Part 216

[Docket No. 940667–4167; I.D. 053194B]

RIN 0648–AG34

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; with request for comments.

SUMMARY: NMFS implements provisions of the International Dolphin Conservation Act (IDCA) that make it unlawful, after June 1, 1994, for any person, to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product that is not dolphin safe. The intent of this action is to ensure that the U.S. market does not act as an incentive to the harvest of tuna caught in association with dolphins or with driftnets.

DATES: This rule is effective June 2, 1994. Comments on this rule must be received or postmarked on or before August 12, 1994.

ADDRESSES: Comments should be sent to: Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: LT Dana Wilkes, NMFS, 310–980–4000.

SUPPLEMENTARY INFORMATION:

Background

NMFS is required to monitor the importation of certain fish and fish products to ensure compliance with various provisions of the Marine Mammal Protection Act (MMPA), as amended by the IDCA and the Dolphin Protection Consumer Information Act (DPCIA). The IDCA states, among other things, that "It is the policy of the United States.. to ensure that the market of the United States does not act as an incentive to the harvest of tuna caught in association with dolphins or with driftnets."

The IDCA makes it unlawful, after June 1, 1994, for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product that is not dolphin safe.

Tuna, or a tuna product, is not dolphin safe if it contains tuna that was harvested on the high seas by a vessel engaged in fishing with driftnets 2.5 km or longer in length ("large-scale driftnets"). As of May 31, 1994, the Secretary had not identified any nation whose vessels are engaging in fishing with large-scale driftnets.

Tuna or a product containing tuna that was harvested in the eastern tropical Pacific Ocean (ETP) by a vessel 400 short tons (362.8 metric tons (mt)) carrying capacity or greater, is dolphin safe only if it is accompanied by two written statements: one executed by the captain of the vessel that harvested the tuna, certifying that purse seine nets were not intentionally deployed on or to encircle dolphins at any time during the fishing trip (captain's statement); and the other from a NMFS or Inter-American Tropical Tuna Commission official certifying that there was an approved observer on board the vessel during the entire trip and that purse seine nets were not intentionally deployed during the trip on, or to encircle, dolphins (observer's statement). Both the captain's and the observer's statements must be endorsed in writing by each exporter, importer, and processor of the product.

Tuna or a product containing tuna harvested outside the ETP by a purse seine vessel, is dolphin safe if it is accompanied by a captain's statement, certifying that no purse seine net was intentionally deployed on, or to encircle, dolphins during the particular voyage on which the tuna was harvested.

Tuna or a product containing tuna harvested outside the ETP by a purse seine vessel in a fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on, or to encircle, marine mammals, is dolphin safe if it is accompanied by a captain's statement and an observer's statement. As of May 31, 1994, the Secretary had not made such a determination.

NMFS anticipates that the dolphin-safe documentation requirements of the IDCA and this final rule will primarily affect tuna harvested with purse seine nets outside of the ETP. In accordance with the importation requirements of 50 CFR 216.24(e), all tuna, other than fresh, is required to be accompanied by a NOAA Form 370 "Fisheries Certificate

of Origin" (FCO) upon importation into the United States. NMFS believes that most tuna marketed in the United States (U.S.-harvested, as well as imports) is labeled "dolphin safe" in accordance with DPCIA labeling standards. Therefore, most tuna harvested in the ETP by purse seine vessels 400 short tons (362.8 mt) carrying capacity or greater and sold in the United States meets the dolphin-safe documentation requirements (i.e., it is accompanied by an FCO, as well as captain's and observer's statements and endorsements). For imported tuna harvested outside the ETP by a purse seine vessel, this regulation requires that a captain's statement be attached to the FCO. In addition, for tuna harvested outside the ETP by a U.S. purse seine vessel, this regulation requires a captain's statement. The FCO's must be endorsed by each exporter, importer, and processor of the tuna, as described above.

The U.S. Customs Service (USCS) controls the importation of tuna and tuna products into the United States. USCS will verify that a captain's statement accompanies shipments of tuna and tuna product containing tuna harvested by purse seine outside the ETP, and that a captain's statement and an observer's statement, endorsed in writing by every exporter, importer, and processor, accompany tuna or tuna product containing tuna harvested by purse seine in the ETP.

This rule is codified in 50 CFR 216.24(e)(9). The former text of paragraph 216.24(e)(9) that is replaced by this regulation was effective only through 1986. Therefore, deletion of that language has no regulatory effect

Classification

This rule codifies statutory requirements and prohibitions that became effective pursuant to the IDCA after June 1, 1994. Therefore, under authority set forth at 5 U.S.C. 553(b)(B), good cause exists to waive the notice and comment requirements of the Administrative Procedure Act as such procedures are unnecessary. Further, in that this rule incorporates a statutory requirement already in effect, good cause exists under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

This rule has been determined to be not significant for purposes of E.O. 12866.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collections found at 50 CFR 216.24(e) have been previously approved by the Office of Management and Budget (OMB) under Control Number 0648–0040 for tuna or a tuna product that contains tuna harvested in the ETP by purse seine vessels of 400 short tons (362.8 metric tons) carrying capacity or greater and that is labeled "dolphin safe." The public reporting burden for this collection was previously estimated to be 0.66 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information (56 FR 47418, September 19, 1991). The IDCA now mandates that the same reporting requirement apply to all tuna or tuna products containing tuna harvested by purse seine in the ETP by these vessels, and it is expected that the same reporting burden will apply. In addition, all tuna or tuna products containing tuna harvested by purse seine vessel outside the ETP must now be accompanied by the captain's statement described above. The reporting burden for the completion of the captain's statement for tuna harvested by purse seine outside of the ETP is estimated to be 0.083 hours per response. Also, tuna harvested outside the ETP must now be accompanied by an FCO and captain's statement. Send comments regarding this burden estimate or on any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Southwest Region, NMFS (see ADDRESSES) and to the Office of Management and Budget, Paperwork Reduction Project 0648–0400, Washington, D.C. 20503 (Attn: NOAA Desk Officer).

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: June 6, 1994

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 216.24, the heading of paragraph (e) is revised and paragraph (e)(9) is revised to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(e) *Importation, purchase, shipment, sale and transport.*

(9) *Dolphin safe requirements.* (i) It is unlawful for any person to sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna product that is not dolphin safe.

(ii) For purposes of this section, tuna or a tuna product is dolphin safe if:

(A) It does not contain tuna that was harvested on the high seas by a vessel engaged in large-scale driftnet fishing;

(B) In the case of tuna or tuna product that contains tuna harvested in the ETP by a purse seine vessel, either the purse seine vessel is of less than 400 short tons (362.8 metric tons (mt)) carrying capacity or, if the purse seine vessel is of 400 short tons (362.8 mt) carrying capacity or greater, the tuna or tuna product is accompanied by:

(*1*) A completed Fisheries Certificate of Origin;

(*2*) A written statement by the captain of each vessel that harvested the tuna, certifying that the vessel did not intentionally deploy a purse seine net on, or to encircle, dolphins at any time during the trip; a written statement, signed by either the Secretary or a representative of the Inter-American Tropical Tuna Commission, certifying that an observer employed by or working under contract with the Inter-American Tropical Tuna Commission or the Secretary, was on board the vessel during the entire trip and that the vessel did not intentionally deploy a purse seine net on, or to encircle, dolphin at any time during the trip; and

(*3*) An endorsement on the Fisheries Certificate of Origin by each exporter, importer, and processor certifying that, to the best of his or her knowledge and belief, the Fisheries Certificate of Origin and attached documents, and the statements required by this paragraph (e)(9)(ii) accurately describe the tuna products;

(C) In the case of tuna or a tuna product containing tuna harvested outside the eastern tropical Pacific Ocean by a purse seine vessel, it is accompanied by a written statement, executed by the captain of the vessel, certifying that no purse seine net was intentionally deployed on, or to encircle, dolphins during the particular voyage on which the tuna was harvested; and

(D) In the case of tuna or a tuna product containing tuna harvested outside the ETP by a purse seine vessel in a fishery in which the Secretary has determined that a regular and significant association occurs between

marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on, or to encircle, marine mammals, it is accompanied by a written statement, executed by the captain of the vessel and by an observer, certifying that no purse seine net was intentionally deployed on, or to encircle, marine mammals during the particular voyage on which the tuna was harvested.

(iii) *Submission of documentation.*—(A) *Imported tuna or tuna product.* The documents required by paragraph (e)(9)(ii) of this section must accompany the imported tuna or tuna product until no further endorsements are required on the documentation and the documents have been submitted to officials of the U.S. Customs Service at the time of importation.

(B) *U.S. domestic shipments.* The documents required by paragraph (e)(9)(ii) of this section must accompany tuna or tuna product, other than imported, until no further endorsements are required on the documentation and the documents have been submitted to the Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

* * * * *

[FR Doc. 94–14247 Filed 6–10–94; 8:45 am]
BILLING CODE 3510–22–F

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50 CFR Part 301

[Docket No. 931235–4107; I.D. 060694F]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC),publishes notice of this inseason action pursuant to IPHC regulations approved by the United States Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: May 26, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, telephone 907-586-7221; Gary Smith, telephone 206-526-6140; or Donald McCaughran, telephone 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America (58 FR 17791, April 6, 1993). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1994 Halibut Landing Report No. 3

North Washington Coast Sport Fishery to Close

The north Washington coast (waters west of the Bonilla-Tatoosh line and south to the Queets River) sport halibut harvest through May 22 is 47,699 lb (21.6 mt). It is anticipated that the catch limit of 68,039 lb (30.9 mt) for this area will be reached on May 28. Therefore, the sport halibut fishery in this area will close at 11:59 p.m. on May 28, and remain closed for the remainder of 1994.

Anglers have landed an estimated 6,500 lb (3.0 mt) of Pacific halibut in Neah Bay, WA, that were caught in Canadian waters. Fishing remains open in Canadian waters with a two fish daily bag limit, no size restriction. Anglers desiring to fish in Canadian waters are strongly urged to contact Canada Department of Fisheries and Oceans at (604) 666-0383/0583 for sport fishing information concerning licensing and the nautical description of closed areas.

Dated: June 7, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–14299 Filed 6–10–94; 8:45 am]
BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 931100–4043; I.D. 060894A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Greenland turbot in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catches of Greenland turbot in the BS be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Greenland turbot total allowable catch (TAC) in the BS has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 8, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Greenland turbot TAC for the BS was established by the final 1994 initial specifications of groundfish (59 FR 7656, February 16, 1994) and subsequent apportionment of reserve (59 FR 21673, April 26, 1994) as 4,667 metric tons.

The Director, Alaska Region, NMFS has determined in accordance with § 675.20(a)(9), that the Greenland turbot TAC in the BS has been reached. Therefore, NMFS is requiring that further catches of Greenland turbot in the BS be treated as prohibited species in accordance with § 675.20(c)(3), effective from 12 noon, A.l.t., June 8, 1994, until 12 midnight, A.l.t., December 31, 1994.

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 8, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–14298 Filed 6–8–94; 4:50 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 112
Monday, June 13, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

[Docket No. PRM–9–2]

Ohio Citizens for Responsible Energy, Inc.; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking dated February 10, 1994, which was filed with the Commission by Ohio Citizens for Responsible Energy, Inc. (OCRE). The petition was docketed by the NRC on February 15, 1994, and has been assigned Docket No. PRM–9–2. OCRE filed an amendment to the petition which was docketed by the NRC on April 11, 1994. The petitioner requests, that the NRC amend its regulations to establish public right-to-know provisions that would ensure public access to licensee-held information.

DATES: Submit comments by August 29, 1994. Comments received after this date will be considered if it is practical to do so but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For a copy of the petition, write the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The regulations specified in 10 CFR Part 9 address the public's right of access to information held by NRC. Subpart A prescribes procedures for making NRC agency records available to the public for inspection and copying under the Freedom of Information Act (FOIA) and provides notice of procedures for obtaining NRC records otherwise publicly available. Subpart B implements the provisions of the Privacy Act of 1974 with respect to the procedures by which individuals may determine the existence of, seek access to, and request correction of NRC records concerning themselves. Subpart B also covers the requirements applicable to NRC personnel with respect to the use and dissemination of such records.

The Petitioner

On February 10, 1994, OCRE filed a petition for rulemaking under 10 CFR 2.802 with the NRC. OCRE filed an amendment to the petition on April 11, 1994. The petitioner is a private, not-for-profit organization incorporated under the laws of the State of Ohio. OCRE specializes in research and advocacy on nuclear safety issues and supports the highest standards of safety and environmental protection. OCRE also supports the right of meaningful public participation in the regulation of nuclear facilities. The petitioner was an intervenor in the operating license proceeding for the Perry Nuclear Power Plant and has intervened in three operating license amendment cases regarding Perry.

Reasons for the Petition

According to the petitioner, the purpose of the petition is to request a change to the rules regarding public access to information as stated in 10 CFR part 9, particularly information that is held by licensees but is not submitted to the NRC. OCRE contends that it has observed a trend in the NRC's regulatory practice in the past several years that decreases the amount of information to which the public has access. The petitioner believes that this trend is apparent in NRC bulletins and generic letters issued over the past six years. OCRE states that these documents instruct licensees to send conclusory statements that they have completed the requested actions to the NRC instead of instructing licensees to send the NRC detailed documentation and analyses of their actions. The detailed records are kept at the plant site where they are accessible only to NRC inspectors. The petitioner is particularly concerned because if these materials are never sent to the NRC, they will not get into the Public Document Room and the public will never have access to them. OCRE further states that the materials will not even be obtainable under the FOIA unless an NRC inspector happens to make a copy of the requested documents and the documents are still in the agency's possession at the time the FOIA request is filed.

OCRE refers to the Station Blackout rule in § 50.63(a)(2), which states that "the capability for coping with a station blackout of specified duration shall be determined by an appropriate coping analysis. Utilities are expected to have the baseline assumptions, analyses, and related information used in their coping evaluations available for NRC review." It is not apparent to the petitioner that this material is actually sent to the NRC and made publicly available.

The petitioner believes that other regulatory trends are also decreasing public access to information. OCRE states that the Technical Specification Improvement Program encourages the removal of material from the plant technical specifications and the relocation of it to internal plant documents. The petitioner included a list of recent generic letters that enable licensees to relocate material from the plant technical specifications, a public document, into other plant documents that may not be available to the public. According to the petitioner, about 36 percent of current technical specification material will be relocated to internal plant documents under this program.

The petitioner states that NRC's revised rules of practice place an even greater burden on public petitioners to provide as much documentation and factual basis for contentions as early as possible while the access of petitioners to detailed information is diminishing. The petitioner further states that if detailed information is never submitted to the NRC, and thus never becomes accessible to the public, participants in proceedings will never be able to supply a basis sufficient to support admission of contentions under the new rules of practice.

OCRE believes that lack of public access to information on nuclear regulation undermines public confidence in the NRC's regulatory program and is contrary to the public's statutory right to participate in the NRC regulatory process. The petitioner also states that members of the public cannot fulfill the role of participating in the NRC regulatory process, which Congress has bestowed upon them, without access to the detailed information that current NRC policies are placing beyond the public's reach.

In the amendment to the petition, OCRE cited two additional examples of the lack of public access to licensee-held information. The first example is NRC's proposed rule entitled "Codes and Standards for Nuclear Power Plants; Subsection IWE and Subsection IWL" (59 FR 979, January 7, 1994), which states that "In order to further reduce the burden on licensees and NRC staff, the Subsection IWE and IWL portions of the ISI plan will not have to be submitted to the NRC for approval. Licensees may simply retain their initial Subsection IWE and Subsection IWL plans at the site for audit." The second example is NRC's final rule entitled "Storage of Spent Fuel in NRC-Approved Storage Casks at Power Reactor Sites" (55 FR 29161, July 18, 1990) which does not appear to require nuclear power plant users of the approved storage casks to submit their site-specific evaluations, as required by § 72.212(b)(2), to the NRC. This section states that "A copy of this record must be retained until spent fuel is no longer stored under the general license issued under § 72.210." The petitioner further states that § 72.212(b)(10) only requires that general licensees make records available to the NRC for inspection.

In the amendment to the petition, the petitioner amended the language in its suggested § 9.301(b) to include persons required by the proposed rule entitled "Certification of Gaseous Diffusion Plants," published on February 11, 1994 (59 FR 6792), to obtain NRC certification of gaseous diffusion plants under proposed Part 76 in the definition of "possessor." OCRE requests that the NRC clarify that this proposed definition would include entities authorized to dispose of radioactive materials.

The petitioner recommends a change to Part 9 to establish the public's right-to-know and to provide the public access to copies of internal plant documents, subject to the exceptions necessary to protect sensitive information. The suggested amendment would not require that licensees generate information that does not already exist in response to a request. The petitioner believes that its suggested amendment would strike a proper balance between the public's right to know and the rights of the licensees.

The petitioner's suggested amendment would include appeal procedures. If a requester is not satisfied with a licensee's response to a request for information, the requester could appeal the matter to an Administrative Law Judge on the Atomic Safety and Licensing Board Panel. According to the petitioner, this option is the most appropriate and efficient one for appeals.

OCRE believes that its suggested amendment to Part 9 would impose a minimal burden on licensees and that this minor burden would be justified by the substantial increase in meaningful public participation. According to the petitioner, the proposed amendment to Part 9 would also enhance the public's confidence in the NRC's regulatory program.

The Suggested Amendments

The petitioner requests that the NRC amend 10 CFR Part 9 by adding subpart E to read as follows:

Subpart E—Public Right of Access to Licensee-Held Information

Section 9.300 Scope of Subpart

This subpart establishes the public's right of access to licensee-held information, subject to certain exceptions. This subpart sets forth the procedures to be followed by persons requesting documents held by NRC licensees or applicants and by the licensees or applicants in responding to requests for documents. This subpart also establishes procedures for appealing adverse licensee responses to public requests for records.

Section 9.301 Definitions

As used in this subpart,

(a) "Person" has the meaning given in 10 CFR 2.4.

(b) "Possessor" means any holder of or applicant for any license to possess, use, dispose of, and/or transfer source material, byproduct material, special nuclear material, and/or spent fuel, or to construct, manufacture, possess, own, operate, and/or transfer any production or utilization facility or independent spent fuel storage installation, or any holder of or applicant for any construction permit, or any holder of or applicant for an early site permit under subpart A of 10 CFR part 52, or any holder of or applicant for a standard design certification under subpart B of part 52, or any holder of or applicant for a certificate of compliance or approved compliance plan under part 76.

(c) "Record" means any document, writing, book, data, paper, brochure, photograph, punch card, magnetic tape or disk, paper tape, sound recording, pamphlet, slide, motion picture, map, drawing, graph, correspondence, contract, report, microfilm, microfiche, optical storage medium, or other documentary material, regardless of form or characteristics, made by, in the possession of, or under the control of a possessor.

Section 9.302 Designation of Responsible Official

Each possessor shall designate, by name or title, a responsible official to whom requests for records are to be sent. Each possessor shall report to the NRC the name and/or title of the responsible official so designated. Possessors shall promptly notify the NRC, in writing, of any changes to the name or title of the designated responsible official. The NRC will periodically publish a list of possessors and their designated responsible officials.

Section 9.303 Procedure for Requesting Records

Any person may request any record relevant to NRC-licensed or regulated activities held by a possessor. The request shall be made in writing and sent to the responsible official designated by the possessor. The requester should describe the records sought with reasonable specificity.

Section 9.304 Response by Possessor

(a) A possessor receiving a request for records shall respond to the request within thirty (30) days from the receipt of the request by the designated responsible official.

(b) The possessor's response shall consist of one or more of the following options:

(1) If the records requested do not exist or are not within the possession or

control of the possessor, inform the requester of this fact.

(2) If the records requested are publicly available, inform the requester of this fact and where the records may be obtained.

(3) Place the records requested in the NRC's Public Document Room in Washington, DC, or in a Local Public Document Room near the possessor's facility or convenient to the requester, and inform the requester where the records may be obtained.

(4) Provide the records directly to the requester. The possessor may require the requester to pay reasonable reproduction fees.

(5) The possessor may refuse to disclose the requested records only if one or more of the following criteria are met:

(i) The requested records have absolutely no relevance to any activity, facility, or material licensed or regulated by the NRC.

(ii) The requested records contain personnel or medical files or similar personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. However, records pertaining to the requester shall be disclosed directly to the requester or his or her designated legal representative.

(iii) The requested records contain trade secrets or proprietary information or privileged or confidential commercial or financial information.

(iv) The requested records contain safeguards information, as defined in 10 CFR part 73.

(v) The requested records contain material that has been properly classified in the interests of national defense or foreign policy.

(vi) The requested records contain information that would disclose the identity of a confidential source or reveal information furnished only by a confidential source, the disclosure of which would tend to reveal the source's identity.

(c) Any reasonably segregable portion of a record shall be provided to the requester or placed in the Public Document Room after deletion of the portions that are exempt under paragraph (b)(5).

(d) Unless disclosure of the record is prohibited by law, a possessor may disclose a record containing material exempt under paragraph (b)(5) directly to the requester upon the execution of an appropriate protective agreement.

Section 9.305 Appeals

(a) A requester may appeal a possessor's response for denial of access to the requested records, for charging excessive reproduction fees, or for lack of response by the possessor within the designated time limits.

(b) Appeals shall be made by filing a notice of appeal with the Chairman of the Atomic Safety and Licensing Board Panel. The notice of appeal shall be filed within sixty (60) days of the possessor's final response and shall include:

(i) A copy of the requester's original letter of request;

(ii) a copy of the possessor's response(s), or a statement that the possessor has not responded to the request;

(iii) an explanation of why the possessor's response is inadequate, erroneous, or otherwise unacceptable, or why the reproduction fees charged by the possessor are excessive.

(c) Upon the receipt of a notice of appeal under this section, the Chairman of the Atomic Safety and Licensing Board Panel shall appoint an Administrative Law Judge to consider the appeal. The Administrative Law Judge shall utilize whatever informal procedures are deemed necessary to resolve the matter and may examine in camera the requested records to determine whether such records or any part thereof may be withheld under the exemptions specified in § 9.304(b)(5). The burden of proof is upon the possessor to sustain its actions.

(d) The decision of the Administrative Law Judge shall be binding on the possessor. Decisions of the Administrative Law Judge shall be final and are not subject to further administrative appeals or judicial review.

Section 9.306 Penalties

Refusal of a possessor to comply with an order of the Administrative Law Judge may be subject to enforcement action by the NRC.

Dated at Rockville, Maryland, this 7th day of June, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–14256 Filed 6–10–94; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0839]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for public comment proposed changes to Regulation C (Home Mortgage Disclosure) and to the instructions and reporting forms that financial institutions must use in complying with the annual reporting requirements under the regulation. The principal reasons for the proposed amendments are to respond to the statutory provisions regarding earlier availability of the HMDA disclosure statements to the public; help improve the quality of the HMDA data; and provide clarifications requested by financial institutions that report under HMDA. The amendments would set an earlier deadline for reporting HMDA data to supervisory agencies; require reporting in machine-readable format; require institutions to keep their loan application registers current during the year as data are being collected; and make a number of other changes.

DATES: Comments must be received on or before August 10, 1994.

ADDRESSES: Comments should refer to Docket No. R–0839 and be sent to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street on 20th Street NW (between Constitution Avenue and C Street, NW.) between 8:45 a.m. and 5:15 p.m. weekdays. Comments received will be available for inspection and copying by any member of the public in the Freedom of Information Office, room B–1122 of the Eccles Building, between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or W. Kurt Schumacher, Staff Attorneys, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202/452–2412; for the hearing impaired *only*. contact Dorothea Thompson, Telecommunications Device for the Deaf, at 202/452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Board's Regulation C (12 CFR part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). The regulation requires most mortgage lenders located in metropolitan statistical areas (MSAs) to report annually to federal supervisory agencies, and disclose to the public, information about their home mortgage

and home improvement lending activity. The reports and disclosures cover loan originations, applications that do not result in originations (for example, applications that are denied or withdrawn), and purchases of loans. Information reported includes the location of the property to which the loan or application relates; the race or national origin, gender, and income of the applicant; and the type of purchaser for loans sold in the secondary market. For denied applications, lenders are also permitted to report the reasons for denial.

Lenders are required to report originations, applications, and purchased loans for each calendar year to their supervisory agency by March 1 of the following year. The reports are made on a HMDA Loan/Application Register (HMDA–LAR) in a transaction-by-transaction format; for reports containing more than 100 entries, lenders currently are expected to submit the data in automated form (magnetic tape or diskette). The lender's supervisory agency submits the data to the Federal Reserve Board, which processes the data on behalf of member agencies of the Federal Financial Institutions Examination Council (FFIEC) and the Department of Housing and Urban Development. The Board then prepares public disclosure statements for each reporting lender and aggregate reports covering the data for all lenders in a metropolitan area. The statements are sent to lenders, generally by July or August, and the lenders are required to make the statements available to the public at their home office and at certain branch offices.

Although lenders must make the disclosure statements available within three business days, they have a thirty-day period within which to review the statements prepared by the Board and to report any discrepancies to the agencies. After necessary revisions have been made, the Board prepares and sends disclosure statements for all reporting lenders in each MSA, along with aggregate disclosure tables covering all such lenders, to a central data depository in each MSA. The central depositories are usually public libraries, regional planning agencies, or other public offices; the disclosures are generally sent to the depositories by October.

(2) Explanation of Proposed Amendments

One of the principal reasons the Board is proposing to amend Regulation C is the need to make HMDA data available to the public earlier than has been the case in the past. Statutory amendments to HMDA enacted in 1992 provide that starting with the HMDA reports for calendar year 1994, disclosure statements for individual lenders should be available to the public by July 1 of the following year, and that aggregate tables should be available at the central depositories by September 1.

To meet this timetable, it will be necessary for the agencies to begin processing the raw data earlier than March 1. Therefore, the proposed amendments include a change in the deadline for data submission, requiring lenders to submit their data by February 1 instead of March 1. Some of the other proposed amendments also are intended, in part, to facilitate earlier availability of the data (see discussion concerning the proposed change to § 203.5(a), below).

Another important reason the Board is proposing amendments to Regulation C relates to the accuracy of the HMDA data. The accuracy of the HMDA reports produced under the new data collection system that was instituted in 1990 (following an expansion of the data collected under HMDA) has improved in each succeeding year, but concerns continue to exist about data quality. A major part of what is involved in ensuring data accuracy relates to matters that are in the control of reporting institutions; for example, lending institutions must devote adequate resources to the task of accurately compiling and checking data before reporting it. However, to the extent that any requirements of the regulation are unclear or complicated, consistent and accurate reporting is more difficult. Accordingly, some of the proposed amendments now being published are intended in whole or in part to make the reporting requirements clearer or simpler. In addition, another proposed amendment calls for reporting in machine-readable format; this change also should help improve data quality, as discussed below.

The Board solicits comment generally on other ways in which Regulation C might be changed to better address problems of accuracy of the HMDA data. For example, would allowing or requiring all home equity lines to be reported—rather than only the portion of a line the borrower intends to use for home improvement or home purchase—simplify reporting and bring about greater consistency? Would the same be true for other categories of loans? (On a similar point, refer to the discussion of possible changes in the types of refinancings that should be reported, in section (3), "Other Matters on Which the Board Solicits Comment," below.) Are there areas in which explanations could be made simpler or clearer, thereby facilitating more accurate reporting?

The Board notes its intention to publish within the next several months a proposed staff commentary to Regulation C. The commentary will provide a vehicle for interpretations that would help lenders better understand and comply with the regulation's requirements. The commentary will supplement the detailed instructions provided in appendix A to Regulation C for completion of the HMDA-LAR and in the Guide to HMDA Reporting: Getting It Right, the brochure published by the FFIEC and distributed by the individual agencies. The Board is in the process of drafting the commentary, and solicits comment from lenders identifying specific areas that the commentary should address.

Set forth below is a section-by-section discussion of the proposed amendments to the regulation.

Section 203.2—Definitions

Paragraph (f)—Home Improvement Loan

The proposal would revise the regulation's definition of "home improvement loan" to facilitate compliance. The existing definition sets two conditions: first, that the loan applicant state, at the time of the application, that the loan is for the purpose of repairing, rehabilitating, or remodeling a dwelling; and second, that the loan be classified in the records of the financial institution as a home improvement loan.

One change proposed by the Board relates to the first part of the definition—that the loan be for the purpose of repairing, rehabilitating, or remodeling a dwelling. Questions have arisen about situations in which a loan is made for the purpose of making improvements to the borrower's residential property, but not, strictly speaking, to the "dwelling" as defined under Regulation C. The regulation defines dwelling as a residential structure, whether or not attached to real property. Thus, for example, a dwelling under Regulation C includes a house, apartment building, or mobile home, but not necessarily the land upon which the house or other structure is located. Some institutions have asked whether a loan for building or repairing things such as a detached garage, a driveway, a fence, or landscaping should qualify as a home improvement loan for HMDA purposes.

To avoid technical distinctions based on whether a loan relates to the structure or to the land on which it is situated, the Board proposes to change

the home improvement loan definition to focus primarily on the applicant's statement of purpose for the loan. Thus, a loan would qualify as a home improvement loan for HMDA purposes if the applicant states, at the time of the loan application, that the loan is for "home improvement purposes."

The Board also proposes to eliminate the second part of the definition, which would make the manner in which an institution classifies a loan irrelevant to its treatment for HMDA purposes. This part of the definition was originally intended to minimize the regulatory burden on financial institutions, by not requiring an institution to report a loan as a home improvement loan on its HMDA-LAR if the institution did not record the loan as a home improvement loan for other purposes. Many institutions now indicate that they would like to report loans that in fact are for home improvement purposes, but they find it difficult to do so because the loans may not be "classified" in the institution's records as home improvement loans. Removing the classification test would resolve this problem. However, the Board solicits comment on the extent to which this proposed change would create significant compliance burdens for institutions that do not currently record such loans on the HMDA-LAR but now would be required to do so. Comment is also requested generally on the overall advantages and disadvantages of making this change.

Section 203.4—Compilation of Loan Data

Paragraph (a)—Data Format and Itemization

Maintenance of LARs on a current basis. The regulation currently requires covered institutions to report HMDA data for a given calendar year to supervisory agencies by March 1 of the following year, but does not specify when the data must be recorded on the HMDA–LAR. The Board proposes to require institutions to fully record transactions within one month after final action is taken (such as origination of a loan, or denial or withdrawal of an application). The Board believes this approach would help in improving the accuracy and timeliness of the HMDA data. Current-year registers would be available to examiners so that, if problems were occurring, the supervisory agency could work with the institution to ensure that errors were corrected well before the relatively brief period between the end of the year and the reporting deadline. Another advantage of the proposed change would be that examiners and the institution itself would have ready access to current data that could be helpful in assessing its fair lending and community reinvestment performance.

The Board recognizes that some institutions may compile and geocode transactions (assign MSA, state, county, and census tract codes) on a batch basis, from time to time during the year or at year-end. The Board solicits comment on how burdensome institutions that currently follow this procedure would find it to record all the LAR information, including the geographic codes, on the HMDA–LAR within one month after final action. In addition, comment is requested on the extent to which any burden might be reduced if the requirement were to keep the HMDA–LAR up to date on a quarterly basis, rather than monthly. The Federal Deposit Insurance Corporation imposes a thirty-day requirement on the HMDA-covered institutions it supervises; the Office of the Comptroller of the Currency proposed a similar requirement, and recently adopted a quarterly update requirement instead (see 59 FR 26411, May 20, 1994).

The Board believes that a requirement to update the HMDA—LAR within one month after each transaction would be an important step toward improving the accuracy and timeliness of HMDA data reporting; if the compliance burden appeared to outweigh the advantages, however, the Board would consider alternatives such as quarterly updating.

Reporting income. The Board proposes to revise the regulation to clarify how institutions report applicants' income and eliminate an internal inconsistency that now exists. Currently, § 203.4(a)(7) of Regulation C provides that financial institutions shall collect data on "income relied upon in processing the loan application." The instructions for completing the HMDA–LAR state that if no income is asked for or relied on in the credit decision, the lender may enter NA (not applicable) in this field (appendix A, paragraph V.D.5.c.).

The Board proposes that lenders must report all income reflected on the application, including income of coapplicants, whether or not the lender relies on a particular source of income. If the lender determined, in the course of verifying information, that some portion of the income reported by the applicant was overstated, the lender would enter the verified amount rather than the amount originally reported.

Currently lenders need not report income for streamlined refinancings in which they neither ask for nor rely on income information. In addition, for privacy reasons, an institution need not record applicants' income on the HMDA–LAR for loans made to the institution's own employees. These rules will remain in place.

Section 203.5—Disclosure and Reporting

Paragraph (a)—Reporting to Agency

Change in reporting deadline. Currently, institutions are required to file their HMDA data with supervisory agencies by March 1 following the year to which the data relate. The Board proposes to change the due date to February 1.

Statutory amendments contained in the Housing and Community Development Act of 1992, 106 Stat. 3889, provide that starting with loan and application data for calendar year 1994, the FFIEC shall make "every effort" to ensure that individual lenders' public disclosure statements are available at the lenders' offices before July 1 of the following year. Similarly, the amendments call for the FFIEC to make both the individual disclosures and the aggregate tables available at the central depositories before September 1.

In 1993, the individual lenders' disclosure statements for 1992 lending activity became available to the public the first week of August, and the disclosure statements and aggregate reports became available at central depositories the first week of November. This year, the processing schedule calls for disclosures to be available at institutions in July and at central depositories in October. Thus, progress is being made toward meeting the statutory targets for earlier availability of HMDA data. But given the high volume of data being processed, the Board believes it is necessary to move up the date for submitting the raw data to supervisory agencies.

Reporting in Machine-Readable Format. In processing the HMDA data, the Board and the other agencies use various means to identify and correct data errors. For example, the data are run through computerized edit checks designed to detect errors and omissions in the data fields. Where these are found, the agencies send the reports back to the institution for correction.

Lenders whose HMDA–LAR contains more than 100 line entries are generally expected by the agencies to submit their data in machine-readable format, such as PC diskette or magnetic tape. The Board and the other agencies have encouraged lenders to submit their HMDA–LARs in automated form, and all but one of the agencies provide PC software that can be used to compile

data on diskettes. This software has built-in edit checks for accuracy and is furnished free of charge. Software packages that are widely available from private vendors also contain the computerized edits used by the Board. Nonetheless, many lending institutions still submit their HMDA data in paper form, and the agencies have found that these paper submissions tend to contain a substantially higher number of errors than submissions in machine-readable form.

The Board proposes to require that all institutions report HMDA data in machine-readable form and that they edit their data before submitting it, either using the agency-supplied HMDA software or using the same edits in private vendors' software.

The proposed change would help lenders to ensure submission of accurate data.

The overall accuracy of the data has improved each year since 1990, the first year of expanded reporting under the amendments in the Financial Institutions Reform, Recovery and Enforcement Act of 1989, in part because institutions have increasingly submitted data by diskette, magnetic tape, or Fedline. However, further improvements in data quality are needed, and the pre-edited reporting of data in machine-readable form would help in bringing about such improvements. Machine-readable reporting would also assist the agencies in meeting the new public disclosure deadlines, by reducing the time needed to enter the data from each reporting institution into the HMDA processing database.

The Board recognizes that some financial institutions subject to HMDA might not have the computer capability to compile and report their data in machine-readable form. The Board solicits comment, therefore, on whether requiring machine-readable data submission from all institutions would create a hardship for some, and if so, whether supervisory agencies should have discretion to grant waivers from this requirement on a case-by-case basis. For example, a waiver might be granted in a case where an institution does not itself own or have ready access to a personal computer nor have access through a service provider.

Paragraph (e)—Notice of Availability

The Board proposes to make a technical change to § 203.5(e) concerning the notice of availability that institutions are required to post. Pursuant to amendments contained in the Housing and Community Development Act of 1992, lending institutions must now make available to the public not only their disclosure statements but also their loan/application registers (after deleting certain data fields). These statutory amendments were incorporated into Regulation C in March 1993 (see 58 FR 13403, March 11, 1993).

The proposed change will revise the notice language to reflect that HMDA data in addition to disclosure statements are available from institutions.

Appendix A—Form and Instructions for Completion of HMDA Loan/Application Register

II. Required Format and Reporting Procedures

Paragraph A. The Board proposes to require that all HMDA-covered institutions submit data in machine-readable form, except that supervisory agencies may have discretion to grant relief from this requirement in cases of hardship. See the discussion of this proposed change under § 203.5(a), above.

Paragraph E. A new paragraph II. E. would be added to the HMDA–LAR instructions to reflect the proposed requirement that the HMDA–LAR be kept current within one month of final action during the year as transactions occur. See the discussion under § 203.4(a), above.

III. Submission of HMDA–LAR and Public Release of Data

Paragraph A. The proposal includes a change in the reporting deadline from March 1 to February 1; paragraph III. A. in the instructions would be revised accordingly. See the discussion on this proposed change under § 203.5(a), above.

Paragraphs B and C.— Requirement to report total HMDA–LAR entries on transmittal sheet. The regulation requires that a transmittal sheet accompany an institution's HMDA–LAR data submission, containing general information such as the name, address, and identifying numbers of the institution. Currently, the transmittal sheet does not ask for the total number of transaction line entries contained in the HMDA submission, although the instructions encourage institutions to provide this record count in a cover letter.

The Board proposes to amend Regulation C to require financial institutions to report on the transmittal sheet (in both the paper-copy and machine-readable versions) the total number of line entries included in the data submission. Respondents also will be asked to send a transmittal sheet with any subsequent submission of data, rather than only with the initial submission. An institution will sometimes send HMDA data to its supervisory agency in more than one submission when revisions to the initial submission are necessary, for example, or because transactions were found to have been inadvertently omitted. The count on the transmittal sheet for each submission will help the agencies verify the number of line entries submitted by the institution at that time. This change would help reduce the likelihood of any data being lost during the collection process.

Paragraph G. Posters. The Board is providing suggested language for the notice of availability that lenders are required to post in their home and branch offices in metropolitan areas. The revised notice reflects the fact that HMDA data besides disclosure statements are now available from financial institutions. See the discussion of proposed changes to § 203.5(e), above.

V. Instructions for Completion of Loan/Application Register

A. *Application or loan information.* 5. Explanation of purpose codes. Code 2: Home improvement. The proposal includes changes in the definition of home improvement loans for HMDA reporting purposes. The HMDA–LAR instructions would be revised to reflect the proposed changes. See the discussion of home improvement loan issues under § 203.2(f), above.

8. Loan amount. f. Reporting counteroffers. The proposal clarifies that counteroffers are to be reported as loan denials if the applicant does not accept the counteroffer, not as applications withdrawn or approved but not accepted. This clarification conforms with the treatment of counteroffers in Regulation B (Equal Credit Opportunity).

C. *Property location.* 5. Outside MSA. Financial institutions are encouraged but not required to enter geographic information for loans on property located outside the MSAs in which they have a home or branch office (or outside any MSA). The proposed rule clarifies that, if a lender enters data in the property location fields of the HMDA–LAR for these loans, the data must accurately reflect the location of the property in question.

(3) Other Matters on Which the Board Solicits Comment. In addition to seeking comment on the proposed amendments, the Board solicits comment on other matters related to HMDA reporting: prequalification programs, refinancing transactions, and

the collection of racial or ethnic information, as discussed below.

Prequalification programs. Regulation C requires lenders to compile and report data on applications for loans as well as on loan originations. The Board has received questions about mortgage lenders' prequalification programs, asking whether and when a request for prequalification must be treated as a credit application for purposes of HMDA reporting. The answer depends on the outcome of the prequalification decision.

The definition of application under HMDA is virtually identical to the definition established by the Board's Regulation B (Equal Credit Opportunity). Accordingly, lenders are directed to the guidance provided in the Official Staff Commentary to Regulation B, comments 2(f)–1 through –4, on differentiating between applications and inquiries. The commentary states that if a lender—in giving information to a consumer—evaluates information about the consumer, decides to decline a credit request, and communicates this to the consumer, the creditor has treated that inquiry as an application for credit (by virtue of having made a credit decision). In the case of Regulation B, the creditor must then comply with the notification rules on adverse action.

In regard to HMDA reporting, the same rule applies, and a lender that turns down a prequalification request (because of the homebuyer's poor credit history, for example) must report it as a loan denial on its HMDA–LAR.

Prequalification requests that are approved, on the other hand, will be reported on the HMDA–LAR at a later stage in the process, after homebuyers have found the property they want to purchase and the lender has evaluated a formal loan application, not at the time of the prequalification approval. Thus, the lender will report when: (1) the lender originates a loan; (2) the lender has made a firm loan offer that the applicant does not accept; (3) the applicant expressly withdraws the mortgage application; (4) the lender closes the file for incompleteness; or (5) the lender denies the mortgage loan application.

In some cases, lender decisions on prequalifications that are approved may ultimately not be reported on the HMDA–LAR: if a homebuyer who has been prequalified for credit does not later pursue a formal application for a mortgage loan, the lender has no reporting obligations under HMDA (and no notification requirements under Regulation B).

For denials of prequalification requests that are reportable under HMDA, there are questions about how a lender can comply with the reporting requirements with regard to the loan amount, loan type, and property location data fields on the HMDA–LAR. Generally speaking, a property location will not "exist" at the prequalification stage if the prospective homebuyer does not yet have a purchase contract on, or has not requested financing for, a specific property. Thus, the lender should enter NA (not applicable) in each of the location fields in such instances. For loan amount, if the prospective homebuyer has not requested a particular amount of credit, the regulation currently does not provide any alternative code. The Board requests comment on whether a code such as NA (not applicable) will suffice, or whether a special code—indicating that the transaction is a prequalification—would be more appropriate and useful. Similar issues arise with respect to loan type in cases where prospective borrowers have not specified during the prequalification process the type of loan they are seeking.

The Board requests comment about other compliance issues related to prequalifications, and contemplates that guidance regarding these matters will be provided in the commentary to Regulation C to be issued later this year.

Reporting of refinancings. The regulation requires lenders to report refinancings, which are defined as loans involving the satisfaction of an existing obligation and its replacement by a new obligation undertaken by the same borrower. The Board solicits comment on the reporting of transactions that are not technically refinancings, but that serve as the functional equivalent of refinancings. In some regions, transactions are structured as modifications of existing obligations (sometimes called modification, extension, and consolidation agreements or "MECAs"), rather than as replacements thereof, often in order to reduce borrower costs associated with a refinancing (for example, title insurance fees).

Institutions have inquired whether they should report such transactions, which serve the same purpose as refinancings and normally entail the same underwriting procedures. The Board solicits comment on this matter. The Board also solicits comment on what types of modifications should not be subject to reporting (such as the simple modification of a loan term from 25 to 15 years), as well as the basis for any such distinctions. Other issues on which comment is requested include whether the reporting of such transactions should be limited to cases where a new lender is offering the modification, or should also be available to the original lender.

Another matter on which the Board seeks comment concerns the current exclusion for certain refinancings based on the purpose of the transaction. Under existing Regulation C, a refinancing is to be reported only if the loan being refinanced was a home purchase or home improvement loan, or was a refinancing of such a loan. In addition, a refinancing is reported only if the amount outstanding on the loan being refinanced, plus the amount of any new money for home purchase or home improvement purposes, is equal to more than 50 percent of the total new loan amount. For example, if a borrower refinances a home purchase loan only for the purpose of getting a lower interest rate on the outstanding balance, and therefore does not obtain any new money, the refinancing is reported because the amount outstanding on the original loan is equal to 100 percent of the new loan amount. Similarly, if a borrower refinances a home purchase loan and obtains new money to be used entirely for home improvement purposes, then again the refinancing is reported because here again, the amount outstanding plus new money for "covered purposes" (home improvement and home purchase) is equal to 100 percent of the new loan amount. At the other extreme, if a borrower refinances a loan with an outstanding balance of $20,000 and obtains $40,000 of new money to be used for starting a new business, the refinancing is not reported because the amount outstanding plus new money for "covered purposes" is equal to only one-third of the new loan amount.

This purpose test for determining whether refinancings are to be reported under Regulation C has generated a substantial number of questions from lenders. For example, the purpose of the loan being refinanced may not be clear at the time the borrower applies for the refinancing. In some cases, a loan has been refinanced repeatedly, new money having been obtained each time; and the calculations necessary to determine whether more than 50 percent of the total new loan amount is for covered purposes become difficult. An alternative approach that would be easier to understand and apply would be to treat all refinancings as subject to reporting on the HMDA–LAR. Although such an expansion in coverage would result in the disclosed data's being less tied to the home purchase and home improvement categories, it is not clear that the resulting data would be less

useful. The Board solicits comment on the advantages and disadvantages of these changes, both for reporting institutions and for users of HMDA data.

Collection of racial or ethnic information. Regulation C provides that applicants for mortgage and home improvement loans be requested, but not required, to provide information about their race or national origin, gender, and income. The purpose is to gather data that may help regulatory agencies to gauge whether a lending institution is complying with the fair lending laws. If an applicant chooses not to provide the information on race or national origin and gender, the loan officer is required to enter the information on the basis of visual observation or surname.

Currently, the categories in Regulation C for data collection on race/national origin of applicants are:

- American Indian or Alaskan Native
- Asian or Pacific Islander
- Black
- Hispanic
- White
- Other

The categories that the Office of Management and Budget (OMB) issues for government statistical purposes are substantially the same, except that the "other" category is not included. OMB and others have indicated their belief that the presence of the "other" category undercuts the usefulness of the data, in that a data user has no way of knowing what the category represents.

In adopting the monitoring provisions of Regulation C in 1989, the Board based the categories used on Regulation B, which has contained the "other" category since it was first adopted by the Board in 1976. The Board believed that the "other" category served a useful function. For example, it provides a choice to applicants who do not identify with any of the specifically defined categories; in 1992, the "other" category was used in roughly 45,000 out of 10 million loan records. The Board notes also that OMB is likely in the next few years to propose changing the list of categories for the next decennial census.

Comment is solicited on whether the Board should consider deleting the "other" category. The Board notes that if this change were made for Regulation C, a parallel change would be made in the monitoring provisions of Regulation B.

(4) Economic Impact Statement. The Board's Division of Research and Statistics has prepared an economic impact analysis of the proposed amendments. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, or by telephone at (202) 452-3245.

List of Subjects in 12 CFR Part 203

Banks, banking, Consumer protection, Federal Reserve System, Home mortgage disclosure, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 203 as follows:

(Certain conventions have been used to highlight the proposed changes to the regulation and the instructions. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.)

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. Section 203.2 would be amended by revising paragraph (f) as follows:

§ 203.2 Definitions.

* * * * *

(f) *Home improvement loan* means any loan that [— (1)] is stated by the borrower (at the time of the loan application) to be for ►home improvement purposes.◄ [the purpose of repairing, rehabilitating, or remodeling a dwelling; and (2) is classified by the financial institution as a home improvement loan.]

* * * * *

3. Section 203.4 would be amended by revising the second sentence of paragraph (a) introductory text and paragraph (a)(7) as follows:

§ 203.4 Compilation of loan data.

(a) *Data format and itemization.* * * * These [data shall be presented] ►transactions shall be recorded, within one month of taking final action,◄ on a register in the format prescribed in appendix A ►of this part◄ and shall include the following items:

* * * * *

(7) The race or national origin and sex of the applicant or borrower, and the income ►asked for or◄ relied upon in processing the application.

* * * * *

4. Section 203.5 would be amended by revising paragraphs (a) and (e) as follows:

§ 203.5 Disclosure and reporting.

(a) *Reporting to agency.* By ►February 1◄ [March 1] following the calendar year for which the loan data are compiled, a financial institution shall send [two copies of] its complete loan application register [(if submitted in paper form)] to the agency office specified in appendix A of this [regulation] ►part◄, and shall retain a copy for its records for a period of not less than three years. [A financial institution need only submit one copy when the submission is on computer tape or diskette.]

* * * * *

(e) *Notice of availability.* A financial institution shall post a general notice about the availability of its ►HMDA data◄ [disclosure statement] in the lobbies of its home office and any physical branch offices located in an MSA. Upon request, it shall promptly provide the location of the institution's offices where the statement is available. At its option, an institution may include the location in its notice.

5. Item II. of appendix A to Part 203 would be amended by revising the first sentence of paragraph A., by removing the last 3 sentences of paragraph A., and by adding a new paragraph E., as follows:

Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register

* * * * *

II. Required Format and Reporting Procedures

A. Institutions [are expected to] ►shall◄ submit data to their supervisory agencies in an automated, machine-readable form [unless 100 or fewer application and loan entries are reported]. * * * [An institution that submits its register in nonautomated form must send two copies that are typed or computer printed. You must use the format of the loan/application register but are not required to use the form itself. Each page must be numbered, and the total number of pages must be given (for example, "Page 1 of 3").]

* * * * *

►E. Applications and loans must be fully recorded on your register, including geographic information, within one month of final action (such as the origination, denial or withdrawal of an application, or the purchase of a loan).◄

6. Item III. of appendix A to Part 203 would be amended by revising paragraphs A., B., C., and G., as follows:

* * * * *

III. Submission of HMDA-LAR and Public Release of Data

A. You must submit the data for your institution to the office specified by your supervisory agency no later than ►February 1◄ [March 1] following the calendar year for which the data are compiled. A list of the agencies appears at the end of these instructions.

B. You must submit all required data to your supervisory agency in one complete package, with the prescribed transmittal

sheet. An officer of your institution must certify to the accuracy of [the] data. ►Any additional data submissions that become necessary (for example, because you discover that data were omitted from the initial submission, or because revisions are called for) also must be accompanied by a transmittal sheet.◄

C. ►The transmittal sheet must state the total number of HMDA-LAR line entries included in the accompanying data submission.◄ [You are encouraged to provide in a cover letter an approximate count of the total number of line entries contained in your data submission.] If you are a depository institution, you also are asked to ►provide◄ [include] a list of the MSAs where you have a home or branch office.

* * * * *

G. Posters. Your agency [can] ►may◄ provide [you with] HMDA posters that you can use to inform the public of the availability of your disclosure statement, or you may print your own posters. ►If you print your own, the following language is suggested:

Home Mortgage Disclosure Act Notice

The HMDA data about our residential mortgage lending are available for review. The data show geographic distribution of loans and applications; race, gender, and income of applicants and borrowers; and information about loan approvals and denials. To inspect our HMDA data, inquire at this office.◄

7. Item V. of Appendix A to Part 203 would be amended by revising paragraphs A.5.code 2, A.8.f., and C.5., as follows:

* * * * *

V. Instructions for Completion of Loan/Application Register

A. *Application or loan information*

* * * * *

5. *Explanation of purpose codes*

* * * * *

Code 2: Home Improvement

a. Code 2 applies to loans and applications for loans that [(1)] the borrowers have said will be used for ►home improvement purposes for◄ [repairing, rehabilitating, or remodeling] one- to four-family residential dwellings[, and (2) are recorded on your books as home improvement loans].

* * * * *

8. Loan amount.

* * * * *

f. ►Reporting counteroffers.◄ [If you offered to lend less than the applicant applied for, enter the amount of the loan if the offer was accepted by the applicant. If the offer was not accepted, enter the amount that the applicant applied for.] ►If you make a counteroffer for an amount different from the amount initially applied for, and the counteroffer is accepted by the applicant, report it as an origination for the amount of the loan actually granted. If the applicant turns down the counteroffer or fails to respond, report it as a denial for the amount initially requested. Do *not* report it as a withdrawn application or as an application that was approved but not accepted.◄

* * * * *

C. Property location.

* * * * *

5. Outside-MSA. For loans on property located outside the MSAs in which you have a home or branch office (or outside any MSA), you may enter the MSA, state, county, and census tract numbers or you may enter the code "NA" in each of these columns. ►If you choose to enter the numbers, they must be correct for the property in question.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 7, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–14262 Filed 6–10–94; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 333

RIN 3064–AB44

Mutual-to-Stock Conversions of State Nonmember Savings Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The proposed rule would require FDIC-insured mutual state-chartered savings banks that are not members of the Federal Reserve System (State Savings Banks) to comply with new substantive provisions of the FDIC's regulations when proposing to convert to the stock form of ownership. The intended effect of the proposed rule is to assure that certain aspects of mutual-to-stock conversions of FDIC-regulated institutions do not engender safety-and-soundness concerns, breaches of fiduciary duty or other violations of law.

DATES: Written comments must be received by the FDIC on or before July 13, 1994.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room F–400, 1776 F Street, NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838). Comments will be available for inspection in room 7118, 550 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Robert H. Hartheimer, Acting Director, Division of Resolutions (202/898–8879), John G. Finneran, Jr., Acting Deputy General Counsel, Legal Division (202/898–3766), Robert F. Miailovich, Associate Director, Division of Supervision (202/898–6918), Robert W. Walsh, Manager, Planning and Program Development Section, Division of Supervision (202/898–6911), Joseph A. DiNuzzo, Counsel, Legal Division (202/898–7349), Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review and approval pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments regarding the accuracy of the burden estimate, and suggestions for reducing the burden, should be addressed to the Office of Management and Budget, Paperwork Reduction Project (3064–0117), Washington, DC 20503, with copies of such comments sent to Steven F. Hanft, Assistant Executive Secretary (Administration), room F–400, FDIC, 550 17th St. NW., Washington, DC 20429.

The collection of information in this proposed rule is found in § 333.4(d) and takes the form of materials related to a State Savings Bank's proposed conversion from the mutual to stock form of ownership. The information will be used to enable the FDIC to identify and address issues involved in the proposed conversion relating to the safety and soundness of the bank, any abusive management practices and potential violations of applicable law.

The estimated annual reporting burden for the collection of information requirement in this proposed rule is summarized as follows:

Number of Respondents: 40

Number of Responses per Respondent: 1

Total Annual Responses: 40

Hours per Response: 20

Total Annual Burden Hours: 800

Regulatory Flexibility Act

The Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, the provisions of that Act regarding an initial and final regulatory flexibility analysis (*Id.* at 603 and 604) do not apply here.

II. Recent FDIC Regulatory Initiatives on Mutual-To-Stock Conversions

In recent years numerous mutually owned State Savings Banks have converted to stockholder-owned State Savings Banks. Many of the institutions that converted from mutual to stock form first converted from federal or state mutual savings associations regulated by the Office of Thrift Supervision (OTS) to State Savings Banks. One consequence of these conversions to State Savings Banks is that the FDIC replaces the OTS as the institution's primary federal regulator. Mutual-to-stock conversions of State Savings Banks are generally subject to the rules and entitled to the protections of the applicable state law.[1]

Conversion rules under state law are not identical to and in some cases are less stringent than OTS regulations. The absence of consistent treatment under state laws and the lack of some federal oversight of State Savings Bank mutual-to-stock conversions present an opportunity for inconsistency and abuse.

Because of concerns about prior and potential abuses in the conversion process, on February 1, 1994, the FDIC issued for public comment a proposed policy statement on the conversions of State Savings Banks from mutual to stock ownership (Proposed Policy Statement). 59 FR 4712. The general purpose of the Proposed Policy Statement was to solicit public comment on the issues involved in mutual-to-stock conversions and whether and how the FDIC should regulate this activity. The areas of FDIC concern identified in the Proposed Policy Statement were: (1) Proper appraisal of the institution to be sold; (2) proper pricing of the stock sold in the conversion; (3) fair apportionment of the stock subscription rights; (4) adequate disclosure of information needed to make an informed investment decision; and (5) non-abusive compensation and benefits provided to insiders.

Subsequent to the issuance of the Proposed Policy Statement the Board of Directors of the FDIC (Board) determined that during the pendency of the Proposed Policy Statement it was necessary for the FDIC to review applications filed by State Savings Banks with their respective state banking regulator and any other applicable state and federal banking and/or securities regulators to determine whether the proposed conversions contain any safety and soundness issues and/or issues of insider abuse that reflect negatively on the integrity and competence of the management of the converting institution. The Board's concerns were caused by several recent and pending mutual-to-stock conversions of State Savings Banks that had given rise to questions related to management abuse and excessive enrichment of insiders, fairness to depositors and general safety and soundness concerns. These conversions have recently been the subject of Congressional hearings and numerous news articles and reports. The FDIC also had received (and continues to receive) direct complaints from depositors of State Savings Banks about unfair treatment and insider abuse in mutual-to-stock conversions.

Thus, on February 15, 1994, the FDIC issued an interim final rule adding a new section to Part 303 of the FDIC's regulations (to be published at 12 CFR 303.15) prohibiting State Savings Banks from converting to stock form without complying with the requirements of the interim rule (Interim Rule). 59 FR 7194. The Interim Rule requires State Savings Banks that propose to convert to stock ownership to file with the FDIC a notice of intent to convert to stock form consisting of a description of the proposed conversion accompanied by a copy of all documentation and application materials filed with the applicable state and federal regulators. Pursuant to the Interim Rule, the FDIC currently reviews all conversion materials regarding State Savings Banks with a special interest in: The use of the proceeds from the sale of stock, as prescribed in the business plan; the adequacy of the disclosure materials; the participation of depositors in approving the transaction; the form of the proxy statement required for the vote of the depositors/members on the conversion; any increased compensation and other remuneration (including stock grants, stock option rights and other similar benefits) to be obtained by officers and trustees of the bank in connection with the conversion; the adequacy and independence of the appraisal of the value of the mutual savings bank for purposes of determining the price of the shares of stock to be sold; the process by which the bank's trustees approved the appraisal, the pricing of the stock and the compensation arrangements for insiders; the nature and apportionment of stock subscription rights; and the extent of any existing and planned contributions to or investments in the community. In a proposed merger/conversion, the FDIC pays particular attention to the value offered to depositors of the converting institution and the compensation packages offered to management.

As indicated in the Interim Rule, the FDIC generally expects proposed conversions to substantially satisfy the standards found in the mutual-to-stock conversion regulations of the OTS (12 CFR Part 563b). Any variance from those regulations is closely scrutinized. As also indicated in the Interim Rule, however, compliance with OTS requirements is not necessarily sufficient for FDIC regulatory purposes. The Interim Rule specifies that the FDIC will look to the OTS rules "currently in effect" at the time the FDIC reviews the proposed conversion. As indicated below, the OTS recently revised its mutual-to-stock conversion regulations. Thus, upon the issuance of the OTS revised regulations on May 3, 1994 (59 FR 22725), the FDIC began taking into account the extent to which proposed conversions of State Savings Banks conform with the various provisions of the OTS' revised regulations. The Interim Rule remains effective during the pendency of this proposed rulemaking.

III. Comments Received on the Proposed Policy Statement and Interim Rule

In developing and issuing this proposed rule it was helpful for the FDIC staff and the Board to consider the comments received on the Proposed Policy Statement and the Interim Rule. It is anticipated that the Board will again consider those comments when taking final action on the Proposed Policy Statement and the Interim Rule. Some issues identified and discussed in the comments are not germane to the proposed rule, but may be relevant when the Board takes final action on the Proposed Policy Statement and Interim Rule; thus, although they are mentioned briefly in the summary of comments provided below, those issues are not otherwise discussed in the context of this proposed rulemaking.

In the Proposed Policy Statement and the Interim Rule the FDIC specifically requested comment on, among other issues: What abuses are prevalent in mutual-to-stock conversions and why the FDIC should take action against such abuses; whether federal oversight in conversions of State Savings Banks is necessary; whether the FDIC should issue a regulation closely following the OTS conversion regulations or the FDIC should take a less formal approach; whether the FDIC should seek Congressional action in this area; and

[1] Some federal laws also apply, such as the anti-fraud provisions of the federal securities law. *E.g.*, 15 U.S.C. 78j.

the mechanics and substantive provisions of the Interim Rule.

A summary of the comments received on the Proposed Policy Statement and Interim Rule is provided below.

IV. Need for the Proposed Rule

Recently the OTS revised its mutual-to-stock conversion regulations primarily to address immediate concerns about excessive management remuneration and inadequate depositor participation in conversions of savings associations (59 FR 22725 (May 3, 1994)) (OTS Revisions). In essence, the new regulations attempt to prevent management abuses by strengthening the rights of depositors.

The FDIC believes that the OTS Revisions are a necessary, sound first step in correcting certain abuses stemming from conversions and that the absence of some federal oversight of mutual-to-stock conversions of State Savings Banks presents an opportunity for inconsistency and abuse. Thus, the FDIC thinks it may be necessary and appropriate to adopt regulations similar to the OTS Revisions. For these reasons, as discussed below, the FDIC is issuing this proposed rule.

Because the fundamental problem concerning the distribution of existing economic value in mutual-to-stock conversions is not addressed by the OTS Revisions, however, the Board believes other forms of abuse may still arise. The FDIC believes that it is necessary to re-examine the conversion process to explore whether the existing economic value of a converting mutual institution can be better distributed directly to those who should receive it.

The FDIC is particularly concerned about the appraisals of converting institutions. The FDIC believes that under the current process it may be difficult to prepare an appraisal of a well capitalized mutual institution which accurately reflects "pro forma value" while at the same time reflecting the appraised value cogently in a business plan of the institution. The incidence of significant appreciation in the stock price immediately after the initial public offering, which tends to exceed the stock appreciation of initial public offerings in other industries, suggests that appraisals may be too low. As a possible consequence of underpricing the institution, insiders may be able to acquire more shares than they are entitled to; moreover, a low appraisal may deprive an institution of the additional capital it should receive in the sale of conversion stock.

To address the possible need for fundamental changes to the mutual-to-stock conversions process, concurrently with the publication of this proposed rule, the Board also is publishing a request for comments on ways to address concerns about the overall conversion process (Request For Comments). The Request For Comments is a separate notice contained elsewhere in this issue of the **Federal Register**.

V. Explanation of the Proposed Rule

1. Overview

The proposed rule would impose several specific requirements upon State Savings Banks that propose to undergo mutual-to-stock conversions. The proposed requirements are similar to the OTS Revisions. Currently and during the pendency of this proposed rulemaking, the FDIC intends to continue to use the case-by-case methodology explained in the Interim Rule in reviewing notices of proposed conversions of State Savings Banks. As noted above and in the Interim Rule, this FDIC review includes an analysis of whether the proposed conversion would comply with current OTS mutual-to-stock conversions rules. Subsequent to the adoption of a final rule, the FDIC intends to continue to use a case-by-case approach in reviewing aspects of proposed conversions that are outside the scope of the specific requirements in the proposed rule.

Among other things, the proposed rule also would indicate that the requirements thereof apply, to the extent appropriate, to the reorganization of State Savings banks to the mutual holding company form of ownership. The FDIC also is involved in the mutual holding company reorganizations of federal and state savings associations. That involvement entails FDIC action on the application for deposit insurance required to be filed with the FDIC in such transactions for the *de novo* stock depository institution organized to facilitate the reorganization. In acting on applications for deposit insurance the FDIC must consider the factors listed in section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816), one of which is the "general character and fitness of the management of the depository institution." In the course of that review the FDIC considers, among other things, the same issues of fiduciary duty that it considers in reviewing proposed mutual-to-stock conversions of State Savings Banks.

As discussed below, preliminarily, the FDIC believes that each of the requirements in the proposed rule is necessary to satisfy specific FDIC concerns about safety and soundness and/or breaches of fiduciary duty in connection with mutual-to-stock conversions. At the same time, the FDIC believes that it is essential to consider the existence of state regulation and supervision in determining the proper role in the conversion process for the FDIC as the primary federal regulator of State Savings Banks. As discussed below, many of the comments that the FDIC received on the Proposed Policy Statement and the Interim Rule expressed agreement with the FDIC's federal oversight role in mutual-to-stock conversions of State Savings Banks, but several also suggested that deference be paid to states' rights on issues outside the FDIC's areas of concern.

With the issuance of the proposed rule, the Board is attempting to strike the proper balance in this regard. In particular, the proposed rule includes a provision stating that, in the event that a State Savings Bank proposing to convert determines that compliance with any provision of the proposed rule would be inconsistent or in conflict with applicable state law, the bank may file with the FDIC a written request for waiver of compliance with the provision. The request would have to demonstrate that the requested waiver would not be detrimental to the safety and soundness of the bank, entail a breach of fiduciary duty by the bank's management, or otherwise be detrimental or inequitable to the bank, its depositors, any other insured depository institution(s), the federal deposit insurance funds or the public interest.

As noted above, recently the OTS revised its regulations on mutual-to-stock conversions of savings associations. OTS' concerns about avoiding insider abuses in mutual-to-stock conversions of federal and state savings associations are the same as the FDIC's concerns about insider abuses in conversions of State Savings Banks. Thus, as noted above, to the extent necessary and appropriate, the proposed rule incorporates most of the same requirements recently adopted by the OTS.

The proposed rule would: Require the submission of a full appraisal report, including a complete and detailed description of the elements that make up an appraisal report, justification for the methodology employed and sufficient support for the conclusions reached therein; require a depositor vote on all mutual-to-stock conversions of State Savings Banks and prohibit management's use of previously executed (or "running") proxies to satisfy depositor voting requirements; for one year following the date of the conversion, among other things, require that any management recognition plans

or stock option plans be implemented only after shareholder approval is received, require that stock options (if any) be granted at no lower than the market price at which the stock is trading at the time of grant and prohibit MRP's funded by conversion proceeds; require that the record date for determining depositors eligible to receive rights to participate in the subscription offering of the conversion stock not be less than one year prior to the date of adoption of the plan of conversions by the converting bank's board of trustees; require that the subscription offering provide a preference to eligible depositors and others in the bank's "local community" (as defined in the proposed rule) or within 100 miles of the bank's home office or branch(es); require that employee stock ownership plans (ESOPs) not have a priority over subscription rights of "eligible depositors" (as defined in the proposed rule); require the submission of a business plan, including, among other things, a detailed discussion of how management intends to deploy the capital raised through the sale of stock in the conversion; and prohibit stock repurchases within one year following the conversion.

2. Discussion of Each Proposed Requirement

The following is a discussion of each of the requirements in the proposed rule. Many of the requirements are engendered by the Board's concerns about bank management's proper exercise of its fiduciary duties. As discussed in the preamble to the Interim Rule, the duties and obligations of trustees and officers of mutual savings banks are identical to the responsibilities the FDIC has historically enunciated and enforced concerning directors and officers of commercial banks.[2] The two principal duties of care and loyalty that directors and officers of commercial banks must exercise on behalf of the institution and its constituencies (*i.e.*, depositors, creditors and shareholders) also obligate trustees of mutual savings banks. Both duties have long antecedents in the common law of corporations and financial institutions.[3]

Trustees (as well as officers) of mutual savings institutions are held to the same standard of care and loyalty as directors and officers of stock banks. Thus, the trustees must fulfill their duty of loyalty to the institution by administering its affairs with the utmost candor, personal honesty and integrity. They are prohibited from advancing their own personal or business interests or those of others at the expense of the bank. This general fiduciary duty has been frequently interpreted to include an element of fairness and good faith which, in the context of mutual-to-stock conversions, affords protection to the various stakeholders (particularly depositors) of mutual savings banks.

The FDIC, through the Interim Rule, also requires the trustees of mutual savings banks to adhere to the same standards of loyalty and care that are required of directors and officers of stock institutions in order to prevent insider abuse. Publicized insider abuse (and the lawsuits that such abuses may engender) may have a sufficiently significant impact upon the reputation of a bank to affect its continued viability and, thus, its safety and soundness, resulting in a regulatory violation.

As indicated above, the requirements in the proposed rule are rooted in concerns about safety and soundness, breaches of fiduciary duty and/or other violations of law.

A. Submission of a Full Appraisal Report

The proposed rule would require State Savings Banks that propose to convert to stock ownership to submit to the FDIC, along with the other required materials, a full appraisal report on the value of the converting bank and the pricing of the conversion stock. Many of the states require that a converting mutual savings banks sell its capital stock at a total price equal to its estimated *pro forma* market value, based on an independent valuation. The purpose of this requirement is to assure that the converting institution receives the full value for the conversion stock sold. As indicated above and in the Request For Comments, the FDIC has identified what may be significant problems with the overall conversion process.

As discussed in detail in the Request For Comments, many recent mutual-to-stock conversions have exhibited significant increases in the immediate post-conversion trading market for the stock. The FDIC is concerned that such increases have resulted from appraisal reports (submitted in connection with these recent conversions) that have set the *pro forma* market value significantly below the true value of the converting institution. If an appraisal is too low and the shares of stock are underpriced, the institution receives less of an increase in capital than it should from the sale of conversion stock; in addition, the deposit insurance fund is provided with less of a capital cushion than would have resulted if the stock was based on a proper and adequate appraisal. Also, an underpriced appraisal could entice insiders to undertake a conversion (in order to acquire shares below their fair value) that may not be in the best interests of the institution. Sophisticated investors also are able to benefit, undeservedly, from the sale of underpriced conversion stock.

For these reasons, the proposed rule would require that a full appraisal be provided to the FDIC in a proposed mutual-to-stock conversion of a State Savings Bank. The appraisal report would have to be prepared by an independent appraiser and include a complete and detailed description of the elements that make up the report, justification for the methodology employed and sufficient support for the conclusions reached therein. This would include a full discussion of the applicability of each peer group member and documented analytical evidence supporting any variance (above or below) the converting institution may have from the peer group statistics. The FDIC would require a complete analysis of the institution's *pro forma* earnings which should include the bank's full potential once it fully deploys the new capital pursuant to its business plan. In reviewing appraisal reports the FDIC would continue to consider the appraisal standards and guidelines, if any, of the applicable state and/or the appraisal guidelines issued by the OTS.

The FDIC generally has been disappointed with the appraisal reports it has reviewed in connection with proposed conversions. As noted above, many appraisals have set the *pro forma* market value of the converting institution significantly below the true value of the institution as derived from its peer group. Reasons for this have included inappropriate peer-group selections, inconsistencies between the analysis in the appraisal report and the business plan submitted with the conversion notice and continued unfounded justification for new issue discounts in stock issuances that have been well oversubscribed.

The FDIC has noted that appraisals lack specific detail on the inclusion of peer group members regarding particular information on the markets within which they operate; the adjustments made to normalize their earnings or design comparable *pro*

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[2] *See e.g., Statement Concerning the Responsibilities of Bank Directors and Officers* (FDIC Legal Division, December 3, 1992); Pocket Guide for Directors (FDIC 1988).

[3] *Greenfield Savings Bank v. Abercrombie*, 211 Mass. 252, 97 N.E. 897, 39 L.R.A.n.s. 173 (1912) provides a detailed discussion of liability of trustees of a savings bank.

forma earnings; and the price appreciations experienced by each member since its conversion. Converting institutions are almost always considered inferior to the peer group—a fact which raises questions about the composition of the peer group. Little or no analytical evidence is typically given in appraisals for the discounts suggested for the converting institution compared to the peer members. In addition, every appraisal contains a new issue discount without any analytical support for exactly how much that discount should be or why it is needed. Our analysis indicates market activity where virtually every conversion has traded up over the last few years. Finally, when subscription offerings are completed and oversubscriptions have occurred (in some case, quite substantially) appraisers have not justified why the original appraisal should not be increased beyond the "supermax" but rather in virtually every case confirm the original valuation.

Many appraisals that the FDIC has reviewed contain only cursory analysis of the expected future earnings of the institution. The FDIC believes that buyers of conversion stocks need to analyze institutions with much more financial sophistication than what appears in the appraisal and, therefore, appraisals should be augmented. Earnings rarely reflect a true expected use of conversion proceeds and others are understated by investments in low-rate securities. Earnings are rarely estimated in conjunction with the converting institution's future business plan—a fact that the FDIC finds inconsistent and unacceptable.

During the pendency of this rulemaking and subsequent to the adoption of a final rule, the FDIC will continue to review appraisal reports to ensure that converting institutions and the conversion stock are properly valued. The FDIC will continue to object to proposed conversions supported by unacceptable appraisal reports.

B. Depositor Voting Requirement and Prohibition on the Use of Running Proxies

The Board believes that, in order for a board of trustees of a mutual savings bank to properly exercise its fiduciary responsibilities to the bank and its depositors, the board should obtain a vote of depositors in favor of the proposed conversion before the proposed conversion is completed. Most states, but not all, require a depositor vote for mutual-to-stock conversions. The OTS also requires both federal and state savings associations to obtain a majority vote of association members as one of the pre-conditions to converting. Some states, however, require only that the board of trustees (or similar group) approve the plan of conversion and do not require a vote of members.

As discussed below, several of the comments on the Interim Rule voiced opposition to "voting rights" for depositors in states that do not provide such rights. In preliminary response to those comments, and subject to others that the FDIC hopes to receive on this issue, the Board thinks that it is necessary and appropriate for the FDIC to require a depositor vote on proposed conversions. Such a requirement would not necessarily contradict state laws (that do not require a depositor vote), but supplement the state law by requiring the member vote. The FDIC's concern is with the board of trustees' proper exercise of its fiduciary duties of loyalty and care to the bank and its depositors. Preliminarily, the Board believes that the proper exercise of such duties requires that depositors, as stakeholders of the bank, have the opportunity to approve or disapprove the proposed conversion. This requirement is, in part, rooted in the foregoing concern that bank insiders often benefit personally from bank conversions. This almost inherent conflict of interest (between self interest and the interests of the bank) may be mitigated by the existence of a depositor vote on the proposed conversion. The proposed rule, therefore, would require a depositor vote in favor of the proposed conversion of a State Savings Bank to stock form. Unless otherwise prescribed by the applicable state law, the required vote would be a majority of the bank's depositors and other stakeholders of the bank who the bank's trustees reasonably determine are entitled to vote on the conversion.

In the same vein, the Board believes that a proxy specifically designed for the proposed conversion should be used to obtain a depositor vote on the conversion. In some states the management of converting banks and savings associations, subject to certain conditions, may use so-called "running proxies" (proxies obtained when a depositor opened his or her account with the institution) to vote in favor of the proposed conversion. The former OTS mutual-to-stock conversion regulations also permitted the use of running proxies, under certain circumstances. Running proxies are prohibited by the OTS Revisions.

The FDIC believes, preliminarily, that given the material change in structure represented by the bank's conversion to stock form, it is imperative that depositors be permitted to vote separately on the proposed conversion and that the most effective manner to assure that depositors are fully informed of the proposed conversion and have an opportunity to participate fully in the conversion would be to prohibit the use of running proxies in such transactions. This is in keeping with the FDIC's concern that the management of a State Savings Bank fulfill its fiduciary responsibilities by assuring that the depositors are in agreement with the proposed conversion. Thus, the proposed rule would prohibit the use of running proxies in the mutual-to-stock conversion process.

C. Restrictions on Management Stock Benefit and Recognition Plans (MRPs)

The OTS Revisions prohibit MRPs in conversions of federal and state savings associations. Currently, however, the regulations and policies of some state banking and thrift regulators permit MRPs to purchase a certain percentage of the stock sold in a mutual-to-stock conversion of a bank or savings association depending on the institution's capital position. Under some of these regulations and guidelines, management also may be granted stock options up to a certain percentage of the shares issued in the conversion. Based on a review of numerous proposed conversions, the Board believes that some bank insiders may be sacrificing the interests of their institutions and depositors in order to acquire significant amounts of conversion stock and other benefits more advantageously than depositors. Also, in some instances, the issuance of conversion stock to an MRP decreases the opportunity for depositors to obtain conversion stock. Moreover, the issuance of stock options at the conversion price, rather than at the aftermarket trading price, which in recent years has been substantially higher than the conversion price, creates the impression that insider enrichment may be the main reason for the conversion.

These factors reflect negatively on management's fulfillment of its fiduciary obligations. In fact, it may be an inherent conflict of interest for management to decide to convert the bank to stock form when, as part of the proposed conversion, management will reap significant benefits. Independent business judgment is essential to the proper carrying out of a manager's obligations. This judgment may be severely clouded when MRPs are provided as part of the conversion transaction.

As discussed below, the FDIC received several comments on the Proposed Policy Statement and the Interim Rule about management compensation in the conversion process. Many of these comments argued that the management of converting institutions should benefit from the conversion because such insiders are responsible for the bank's success and will undertake additional and perhaps more difficult challenges upon the bank's conversion to stock form. The Board does not disagree with this general point of view. While the Board believes that management and trustees would have increased responsibilities as a public company, preliminarily, the Board believes that, in most cases, market-based management compensation should be determined by the stockholders after the conversion is completed.

In particular, the proposed rule would provide that no converted savings bank shall, for one year from the date of the conversion, implement a stock option plan or management or employee stock benefit plan, other than a tax-qualified employee stock ownership plan, unless: each of the plans was fully disclosed in the proxy solicitation and conversion stock offering materials; all such plans are approved by a majority of the bank's stockholders, or in the case of a recently formed holding company, its stockholders, prior to implementation and no sooner than the first annual meeting following the conversion; in the case of a savings bank subsidiary of a mutual holding company, all such plans are approved by a majority of stockholders other than its parent mutual holding company prior to implementation and no sooner than the first annual meeting following the stock issuance; for stock option plans, stock options are granted at no lower than the market price at which the stock is trading at the time of grant; and for management or employee stock benefit plans, no conversion stock is used to fund the plans.

The proposed restrictions on MRPs do not include specific percentage limitations. Preliminarily, the FDIC believes that the proposed restrictions would adequately safeguard against potential management self-interest in mutual-to-stock conversions. Also, pursuant to the Interim Rule, the FDIC would continue to look to MRP percentage limitations in the OTS regulations, as well as in the applicable state law and regulations, as a frame of reference for reviewing proposed conversions of State Savings Banks. In addition, the FDIC believes that specific percentage limitations on MRPs may be too rigid and not serve to stem management abuses in every situation. The Board requests specific comments on whether MRP percentage limitations should be specified in the FDIC's regulations and, if so, what those percentages should be.

D. Eligibility Record Date, Priority to Depositors Residing in the Bank's Local Community, Priority of Employee Stock Ownership Plans (ESOPs)

The OTS Revisions require, among other things, that the record date established by a converting institution to determine which depositors will be afforded a priority in obtaining subscription rights in the conversion stock be set at no less than a year prior to the board of director's approval of the conversion. The Board believes, preliminarily, that, in order for a board of trustees of a State Savings Bank to carry out its fiduciary responsibilities to the bank and its depositors, the board must assure an equitable and lawful conversion process. From numerous comments we have received thus far and from our own review of proposed and completed conversions, it is apparent that so-called professional depositors, who place funds in mutual banks and savings associations throughout the country in order to gain a purchase priority if the institution converts to stock form, have reaped substantial profits on conversions of mutual institutions. A proper exercise of fiduciary responsibilities toward the bank and its longer-term depositors dictates that professional depositors not be allowed to experience windfall gains in conversions. Requiring that the eligibility record date be no less than one year prior to the board's adoption of the plan of conversion would help assure that longer-term depositors are more likely than professional depositors to benefit from the stock purchase priority. Thus, the proposed rule would require that the eligibility record date be no less than one year prior to the date the board of trustees approves the plan of conversion. The FDIC requests specific comment on whether the one-year period is sufficient and on whether the date chosen should be based on the board of trustees' first consideration of whether the bank should be converted to the stock form of ownership.

In a further effort to mitigate the exploitation of the mutual-to-stock conversion process by professional depositors, the proposed rule would provide a stock purchase preference to eligible depositors in the bank's "local community" or within 100 miles of a home or branch office of the converting bank. The term "local community" would be defined as all counties in which the converting bank has its home office or a branch office, each county's standard metropolitan statistical area or the general metropolitan area of each of these counties and such other area(s) as provided for in bank's plan of conversion. The Board believes that it is likely that the double requirement (for a stock purchase priority) of having a depositor relationship with the bank for at least one year prior to the date of the board's adoption of the plan of conversion and of having to reside in the bank's local community would decrease the participation of professional depositors in conversions of State Savings Banks.

The Board is mindful, however, that there may be depositors, particularly long-term depositors, of a State Savings Banks who are not "professional depositors," but happen to live outside the "local community" or the 100-mile area designated by the proposed requirement. Thus, the FDIC requests specific comment on whether and how such depositors can be included within the proposed stock purchase preference for "local depositors." One possible alternative would be to expand the definition of "local depositor" to include all depositors who have had a deposit relationship with the bank for, say, three or five years prior to the board of trustees' adoption of the plan of conversion. The Board is interested in comments on all aspects of the proposed priority requirement for local depositors, including views on whether the requirement is necessary, sufficient and/or equitable.

In the same vein, the Board believes that ESOPs (tax-qualified or otherwise) should not be accorded higher purchase priority rights than long-term depositors. The Board believes that general principles of fiduciary duty require that the board of trustees of a State Savings Bank put the interest of long-term depositors ahead of the interests of management and employees. Thus, the proposed rule would require that ESOPs not be accorded a higher subscription right priority than "eligible depositors." The term "eligible depositors" would be defined as a depositor holding qualifying deposits at the bank as of a date designated in the bank's plan of conversion that is not less than one year prior to the date of adoption of the plan of conversion by the converting bank's board of trustees. The FDIC requests specific comment on whether the one-year period is sufficient and on whether the period chosen should be based on the board of trustees' first consideration of whether to convert to stock ownership.

E. Submission of Business Plans

For safety and soundness purposes the FDIC must know the institution's business plan for post-conversion operation, growth and investment of any newly injected capital. The reason is that institutions converting from mutual form undertake a major restructuring that possibly could lead to significant changes in the nature or volume of business conducted. Converted institutions become answerable to shareholders for the first time, and the shareholders are concerned with obtaining a reasonable return on their investment. As discussed in the preamble to the Interim Rule, in the past some institutions, in leveraging capital raised through a conversion and reaching for a return on equity, have vigorously competed for loans and unduly liberalized underwriting standards. Such practices led to loan losses that in many instances depleted more capital than was raised through conversion and, in some cases, failures and losses to the Bank Insurance Fund.

For these reasons, the proposed rule would require State Savings Banks that propose to undergo a mutual-to-stock conversion to submit a business plan including, among other things, a detailed discussion of how management intends to deploy the capital raised through the sale of stock in the conversion, expected returns resulting from the plan, and the justification for any intended stock repurchases.

F. Post-conversion Stock Repurchases

As indicated above, the proposed rule would require that the business plan submitted to the FDIC in connection with a proposed mutual-to-stock conversion include a detailed discussion of how the capital acquired in the conversion will be utilized, including, among other things, a justification for any proposed stock repurchases. The FDIC is concerned that substantial buyback programs begun immediately after the bank's conversion to stock form may not have a legitimate business purpose. Such repurchases also raise issues about whether the conversion stock was appropriately valued. In addition, the FDIC is concerned that a recently converted institution have a capital base adequate to safeguard against possible unexpected losses that may occur under the new organizational structure. To protect against these potential problems, the proposed rule would prohibit stock repurchases for one year following the conversion. Stock repurchases after that period would be considered on a case-by-case basis under section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)(1)) which prohibits state nonmember banks from reducing or retiring capital without the prior consent of the FDIC.

VI. Merger/Conversions

In some cases, mutual institutions convert to stock ownership in the course of a merger or acquisition transaction with another depository institution or holding company. This is generally known as a merger/conversion. In merger/conversions depositors of the converting institutions obtain the right to purchase stock in the acquiring institution and not the converting savings bank. In exercising its fiduciary responsibilities the board of trustees of a State Savings Bank must assure that value of the converting institution is fairly distributed. This means not only guarding the interests of long-term depositors against insiders and professional depositors, but against acquiring institutions. Based on the proposed conversions we have reviewed in the recent past and other merger conversions we have studied, the Board has observed that, in virtually every merger conversion, the acquiring institution captures a large portion of the value of the converting institution. It is also not uncommon in merger/conversions for the management of the converting mutual institution to receive extremely generous compensation and benefit packages. The OTS Revisions prohibit merger/conversions.

As indicated in the preamble to the OTS Revisions, there is an issue whether the management of a mutual institution is opting for a merger/conversion, instead of a standard conversion, based on the best interests of the institution and its depositors or in response to the level of benefits offered to management by the acquiring entity. As noted in the preamble to the Interim Rule, there have been numerous complaints recently by depositors and others that permitting healthy mutual savings banks to be acquired by means of a merger/conversion has resulted in some savings bank insiders putting their interest ahead of the interests of the converting bank and its depositors.

For the foregoing reasons, the Board believes that merger/conversions should, in most cases, be permitted only in situations where a State Savings Bank is "undercapitalized," "significantly undercapitalized" or "critically undercapitalized" as defined in the FDIC's capital maintenance regulations. At this time, however, the Board does not propose to impose a blanket prohibition on non-supervisory merger/conversions. The FDIC will continue to review proposed merger/conversions with an emphasis on whether the fair value of the State Savings Bank would be delivered to the rightful recipients. The FDIC is requesting specific comment on this topic and specifically whether a moratorium should be placed on merger/conversions involving sufficiently capitalized State Savings Banks.

VII. Comparison With OTS Regulations

As noted above, the requirements imposed by the proposed rule would essentially parallel the OTS Revisions. There are numerous other provisions in the OTS' mutual-to-stock conversion regulations (12 CFR part 563b), however, that are not included in either the FDIC Interim Rule or the proposed rule. Those OTS regulations impose upon converting savings associations specific and detailed requirements on, among other things: items to be included in the plan of conversion, stock purchase priorities, percentage limitations on stock purchases and MRPs, proxy solicitation and the form and content of proxy statements, the form and content of offering circulars, accounting rules, liquidation accounts, notices of filing, availability of conversion documents and pricing and sale of securities.

Preliminarily, the FDIC believes that the requirements imposed by the proposed rule, coupled with the requirements of the Interim Rule, would enable the FDIC to monitor the conversions of State Savings Banks for issues involving safety and soundness, fiduciary duty and other violations of law. Pursuant to the Interim Rule, the FDIC uses the OTS regulations as a frame of reference in reviewing proposed mutual-to-stock conversions of State Savings Banks. The FDIC also looks to the applicable state law and regulations in reviewing proposed conversions. To date, the FDIC has not identified a need to adopt a more comprehensive set of regulations addressing all aspects of the mutual-to-stock conversion process. It has been suggested, however, that in order to achieve greater uniformity with the OTS' conversion regulations the FDIC's conversion regulations should be expanded to match the scope and depth of the OTS rules. Thus, the Board specifically requests comment on whether the FDIC's regulations should be expanded to include provisions similar to those of the OTS regulations that are not already included in either the Interim Rule or the proposed rule.

VIII. Convenience and Needs Requirement

The OTS has issued a proposed rule that would add a requirement to its mutual-to-stock conversion regulations that, in determining whether to approve such a conversion transaction, the OTS would consider the convenience and needs of the community served by the converting institution. 59 FR 22764 (May 3, 1994.) The "convenience and needs of the community to be served" by the applicant is one of the statutory factors required to be considered by the Board in acting on applications for deposit insurance (12 U.S.C. 1816). Thus, in connection with the review of mutual holding company reorganizations of insured depository institutions the FDIC already is required to (and does) apply a convenience and needs test. The Board requests comment on whether the FDIC could and should also consider imposing such a requirement in connection with the mutual-to-stock conversions of State Savings Banks.

IX. Summary of Comments on the Proposed Policy Statement and Interim Rule

The FDIC received 85 written comments on the Proposed Policy Statement and Interim Final Rule: 60 from banks, savings banks, cooperative bank and saving associations; 7 from bank and thrift industry trade groups; 6 from state banking and thrift regulators; 5 from individuals; 5 from law firms; 1 from a bank holding company; and 1 from a regulatory "shadow" group.

1. FDIC Oversight Role

The comments did not focus on describing recent abuses in mutual-to-stock conversions. They generally acknowledged that there had been notable examples of insider abuse in the recent past and then suggested how future potential abuses could be avoided. Many of those who commented recommended that the FDIC play an oversight role in the mutual-to-stock conversions of State Savings Banks. One state stock savings bank that is owned by a mutual holding company noted that "present abuses in several recent and proposed conversions have demonstrated the need for the FDIC to maintain oversight of the conversion process, to ensure that issues of both safety and soundness and of fiduciary care are identified and adequately addressed." One state savings association trade group commented that "with recent publicity over some apparent abuses in the [conversion] process and resulting Congressional concerns, * * * it is most appropriate and important for the FDIC to assert regulatory jurisdiction over conversions by state nonmember banks." One state thrift regulator noted that the FDIC had issued an "excellent set of rules" with a "very conservative, realistic approach to a situation which could have gotten out of hand if left to go unchecked." One State Savings Bank said simply that "past abuses [in mutual-to-stock conversions] support the need for FDIC oversight."

Several commenters suggested that the FDIC have oversight authority of State Savings Bank mutual-to-stock conversions, but with prescribed limitations. For example, a national banking industry trade group noted that it "deplores instances in which it can be demonstrated that insiders involved in mutual-to-stock conversions received benefits so large that they bear no reasonable relationship to the institution's performance * * * Unjustifiable windfall profits, depletion of capital without concern for safety and soundness and manipulation of the value of the institution to benefit limited interests are practices that deserve close scrutiny and action by the appropriate authorities * * * In responding to these issues, the FDIC should act quickly and decisively in concert with the state authorities." The trade group further commented that the "cornerstone" for the FDIC's response to issues arising from the mutual-to-stock conversion issue is the state regulatory authorities. One state thrift regulator expressed support for FDIC oversight of conversions if such involvement assures "reasonableness and relative uniformity of benefits for both state- and OTS-regulated institutions * * * and allows state variation from OTS requirements if such variations benefit the institution and the depositors."

One mutual savings bank noted that the FDIC should focus on broad safety-and-soundness issues and that detailed regulations, like the OTS', are not necessary. Another state mutual savings bank said that the FDIC should be involved in conversion oversight, but only in terms of setting minimum standards rather than superseding state regulation. Many savings banks in Massachusetts and a banking trade association in that state commented that the FDIC should issue conversion regulations similar to the OTS and Massachusetts mutual-to-stock conversion regulations, noting that the FDIC has broad statutory authority to regulate issues that affect safety and soundness. They noted that the FDIC's focus should be to eliminate abuses in stock evaluation, depositor disclosures, depositors' ability to purchase stock at conversion and insider compensation programs. They also asserted that state statutory and regulatory conversion rules should not be superseded by federal law. One mutual savings bank noted that promulgating federal laws or regulations "should not be allowed when it is determined that state requirements are generally consistent or more stringent than existing federal rules."

Some commenters contended that state regulation was sufficient in the area of mutual-to-stock conversions and that the Interim Rule is not necessary. One mutual savings bank asserted that the "averments made by the FDIC in support of the Interim Rule that it is needed for safety and soundness reasons and to protect the interest of depositors are without merit and are being offered only to support continued federal intrusion into issues which are primarily the concern of state law and regulation." One state mutual savings bank stated that the "proposed policy statement is overkill" and that "state regulation can handle insider abuse issues." One state banking and thrift regulator asserted that state regulators are not to blame for insider abuses in conversions and that "states' rights should not be tramped on." The regulator suggested that a committee of state and federal regulators work together to address issues and concerns.

All those who commented on the issue expressed objection to Congressional legislation to address current issues in mutual-to-stock conversions. One mutual savings bank commented that "if the FDIC does not act, Congress will—in an uninformed manner." Another mutual savings bank noted that "regulation is far preferable than legislation." A national banking industry trade group noted that the "FDIC has full statutory authority in the conversion area to ensure the integrity of the conversion process and no new legislation is necessary to address these issues."

2. Transferable Subscription Rights

The FDIC received many comments on the issue whether conversion rules should be modified to require converting institutions to provide depositors with transferable subscription rights to purchase the stock issued in the mutual-to-stock conversion. This issue was not addressed in either the Proposed Policy Statement or the Interim Rule. In recent Congressional testimony the FDIC Chairman has indicated that the FDIC may consider whether depositors and other stakeholders of converting

institutions should receive transferable subscription rights so they can participate more equitably in the conversion process and receive benefits from the conversion without having to purchase conversion stock to do so. With one exception, all the comments received on this issue opposed the idea. One mutual savings bank stated that "we are outraged that any governmental body would consider provisions such as depositor subscription rights that could enable speculators to force a mutual bank to convert to a stock bank. Such a provision would not just endanger this bank, but destroy it, along with many other community institutions." A national banking industry trade group echoed these sentiments, noting that "permitting or requiring transferable subscription rights would undermine the integrity of conversions by generating intense pressures to convert mutuals to stock form. All mutuals would be put into play."

Many mutual savings and cooperative banks in Massachusetts expressed their objection to "mandatory depository transferable/saleable subscription rights" noting that "they could subject our depositors to professional flippers [out-of-area depositors who are just interested in short-term investment gains], attorneys and investment firms who may bring pressure to force a mutual-to-stock conversion." A shadow regulatory group expressed the opposite view, arguing that subscription rights should be transferable to provide an incentive for depositors to exercise their subscription rights.

3. Contributions to the Community/FDIC

Most of those who commented on the issue expressed opposition to requiring converting institutions to contribute part of the conversion proceeds directly to their communities. Many noted such a requirement would impose a "social tax" on converting institutions. A state savings bank stated that "a capital giveaway wouldn't further the FDIC's legitimate goal of preserving safety and soundness." Another state savings bank noted that such a "social tax would jeopardize the safety and soundness of the bank and would negatively affect credit availability to local consumers and small businesses. These are not public funds." One of the numerous savings banks in Massachusetts who commented negatively on this issue asserted that "a social tax would replace insider greed with a form of outsider greed."

Some commenters, however, suggested that the FDIC should share in conversion proceeds. A regulatory "shadow" group stated that the FDIC should receive at least 50 percent of [the transferable subscription] rights [issued in a mutual-to-stock conversion], which it would sell in the market. The group argued that: "the taxpayer, through the FDIC, has the strongest claim on the existing surplus of converting mutual institutions. The taxpayer has taken the risk of loss that is usually borne by the stockholder. The public, that had to pay for the loss of failed thrifts, should reap some of the benefits that all usually go to the stockholder." A state bank commented that "windfall appreciation from stock conversions should accrue to the FDIC. The FDIC has provided protection for thrifts over the years and deserves the benefit."

4. Merger/Conversions

An individual who commented on the Proposed Policy Statement and Interim Rule stated that merger/conversions should not be allowed because they "only serve management's interests and not the depositors." He suggested that any merger take place only after an initial "free-standing" standard conversion. A bank holding company commented that merger/conversions are desirable because they increase competition in the industry and support safety and soundness. It noted that state law is the "proper authority" to regulate management compensation issues in merger/conversions. A law firm commented that the problems with merger/conversions could be "reduced substantially if the OTS revised its policy to encourage a discount in the acquirors' stock as offered to depositors of the acquired institution." A state banking and thrift regulator suggested that the FDIC and OTS collaborate in a joint determination on whether merger/conversions will be approved in the future and, if so, adopt specific requirements to provide parity among savings associations and savings banks. A state banking and thrift industry trade group recommended that merger/conversions be permitted only in the case of undercapitalized institutions or at the discretion of the regulators on a case-by-case basis. A national banking and thrift industry trade group said it would not oppose a "regulatory pause by the FDIC to evaluate its rules governing merger/conversions."

5. Depositor Voting/Running Proxies

Several commenters stated that the FDIC should not provide "voting rights" to depositors in connection with conversions of mutual savings banks in states that do not provide such voting rights. One state bank asserted that "voting rights should be left to state law. To impose some sort of depositor approval requirement in a state that does not have depositor voting could lead to expanded ownership claims by depositors that could operate to the detriment of mutuals." One state banking and thrift regulator (of a state that does not provide a depositor voting right) asserted that "any FDIC requirement of a depositor vote in a mutual-to-stock conversion * * * [would be] wholly unsupported by any expressly preemptive federal statute." Many banks in Massachusetts commented that any depositor voting right requirements imposed by the FDIC would put undue pressure on mutuals in that state to convert to stock ownership.

An individual noted that general proxies should be prohibited and that all conversions should be subject to a special proxy, or proxies should be entirely eliminated in favor of a majority-rules scheme. A national banking and thrift industry trade group noted that the use of general proxies is reasonable under the OTS' rules.

6. Management Benefits

Many of the commenters discussed the issue of management benefits in conversions. Several of them stated that insiders should share in the benefits of conversions because the insiders managed the institution in a safe-and-sound manner. One state thrift regulator (and other commenters) suggested that MRPs be based on the size of the institution and not on "straight across-the-board percentages." One national banking and thrift industry trade group noted that "avoiding the use of across-the-board percentages for MRPs and tailoring their availability more to the size of the institution and their specific business plan objectives and needs would be a reasonable approach." One mutual savings bank noted that MRPs, stock option plans and employee stock ownership plans "all encourage more stock ownership and cement an identity among outside shareholders and those who run and work for the company." It also noted that OTS rules are workable in this regard and should be adopted by the FDIC. Another savings association commented that conversions should not be permitted where there is excessive compensation for insiders, but "without benefits to insiders there will be no conversions."

An individual commented that the FDIC should not regulate director remuneration in conversions of healthy mutuals because those conversions do not place the insurance fund at risk and shareholders' votes are dispositive under the "corporate waste" doctrine. A law firm, commenting on behalf of a state thrift industry trade group, also noted that compensation benefits are not a safety-and-soundness concern if the institution meets the applicable capital requirements. In addition, it stated that a "uniformity of benefits between state- and OTS-regulated conversions" is necessary to assure the end of "regulatory arbitrage." A state bank and thrift regulator (and several other commenters) suggested that the FDIC and OTS publish joint MRP guidelines permitting or prohibiting MRPs, along with specific rules therefore. It noted that "proper resolution of the MRP issue will have a substantial impact on fairness to depositors in conversions." One savings bank commented that "when an institution contemplates going public for the right reasons (expansion, market share, competitive advantage) the benefits should go to those willing to risk their careers (board and management team) or their capital (shareholders) not to the faceless non-entity group known as the existing depositors."

7. Appraisals

A state savings association noted that one of the basic problems with conversions is the appraisal of the institution. It stated that "the FDIC needs to be satisfied that the various states are as well equipped [as the "qualified" OTS staff] to perform a definitive analysis of institution appraisals as well as know with certainty that the appraiser is qualified to assess a financial institution's value." The commenter also noted that fairness and moderation are the keys to governing stock conversions. An individual commented that the FDIC should not regulate the offer price for healthy mutuals because those conversions do not place the insurance fund at risk. An individual suggested that the applicable regulator should retain its own appraiser to assure fair valuation of the converting entity. A state bank and thrift regulator stated that appraisal rules required by the FDIC should be specifically stated in the Interim Rule.

8. Other Comments

An attorney commented that the Interim Rule should allow depositors full access to all papers filed in connection with proposed merger/conversions, as well as standard conversions. He also suggested that depositors be permitted to file with the FDIC objections to such proposed transactions.

A few commenters noted that the FDIC should clarify that the Interim Rule applies to mutual holding company formations and merger/conversions.

An individual suggested that, to protect the insurance fund, a converting institution should prepare a business plan regarding the proposed use of the new capital. The plan should be reviewed by the applicable state; however, if the FDIC feels state review will be insufficient, the FDIC is empowered by the Federal Deposit Insurance Act (FDI Act) to assume jurisdiction.

Two law firms suggested that the FDIC's review time on conversion notices be reduced from 60 days to 45 days because of the potential that financial information might become "stale" under rules issued by the Securities and Exchange Commission and the converting institution would have to go through the expense of producing updated financial statements.

Request for Public Comment

The FDIC is hereby requesting comment during a 30-day comment period on all aspects of this proposed rule.

List of Subjects in 12 CFR Part 333

Banks, banking, Corporate powers.

The Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to amend part 333 of title 12 of the Code of Federal Regulations as follows:

PART 333—EXTENSION OF CORPORATE POWERS

1. The authority citation for part 333 is revised to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819 ("Seventh", "Eighth" and "Tenth"), 1828, 1828(m), 1831p-1(c).

2. Section 333.4 is added to read as follows:

§ 333.4 Conversions from mutual to stock form.

(a) *Scope.* This section applies to the conversion of insured mutual state savings banks to the stock form of ownership. It supplements the procedural and other requirements for such conversions in § 303.15 of this chapter. This section also applies, to the extent appropriate, to the reorganization of insured mutual state savings banks to the mutual holding company form of ownership. As determined by the Board of Directors of the FDIC on a case-by-case basis, this section does not apply to mutual-to-stock conversions of insured mutual state savings banks whose capital category under § 325.103 of this chapter is "undercapitalized," "significantly undercapitalized" or "critically undercapitalized." The Board of Directors of the FDIC may grant a waiver in writing from any requirement of this section for good cause shown.

(b) *Conflicts with state law.* In the event that an insured mutual state savings bank that proposes to convert to the stock form of ownership finds that compliance with any provision of this section would be inconsistent or in conflict with applicable state law, the bank may file a written request for waiver of compliance with such provision by the FDIC. In making such request, the bank shall demonstrate that the requested waiver, if granted, would not result in any effects that would be detrimental to the safety and soundness of the bank, entail a breach of fiduciary duty on part of the bank's management or otherwise be detrimental or inequitable to the bank, its depositors, any other insured depository institution(s), the federal deposit insurance funds or to the public interest.

(c) *Definitions.* For purposes of this section:

(1) *Local community* includes all counties in which the converting bank has its home office or a branch office, each county's standard metropolitan statistical area or the general metropolitan area of each of these counties and such other area(s) as provided for in the plan of conversion, acceptable to the FDIC; and

(2) *Eligible depositors* are depositors holding qualifying deposits at the bank as of a date designated in the bank's plan of conversion that is not less than one year prior to the date of adoption of the plan of conversion by the converting bank's board of trustees.

(d) *Requirements.* In addition to other requirements that may be imposed by the applicable state statutes and regulations and other federal statutes and regulations, including § 303.15 of this chapter, an insured mutual state savings bank shall not convert to the stock form of ownership unless the following requirements are satisfied:

(1) The subscription offering of the stock to be offered or sold in the conversion shall provide a stock purchase priority to eligible depositors, other depositors and others entitled to vote on the bank's proposed conversion residing in the bank's local community or within 100 miles of a home office or branch of the converting bank;

(2) Employee stock ownership plans shall not have priority over subscription rights of eligible depositors;

(3) Any direct community offering by the converting bank shall give a purchase priority to natural persons

residing in the bank's local community or within 100 miles of a home office or branch of the bank;

(4) The proposed conversion shall be approved by a vote of at least a majority of the bank's depositors and other stakeholders of the bank who the bank's trustees reasonably determine are entitled to vote on the conversion, unless the applicable state law requires a higher percentage, in which case the higher percentage shall be used. Voting may be in person or by proxy;

(5) Management shall not use proxies executed outside the context of the proposed conversion to satisfy the voting requirement imposed in paragraph (d)(4) of this section; and

(6) In addition to the materials to be submitted to the FDIC pursuant to § 303.15(c) of this chapter, the bank must submit to the FDIC:

(i) A full appraisal report on the value of the converting bank and the pricing of the stock to be sold in the conversion. The report must be prepared by an independent appraiser and must include a complete and detailed description of the elements that make up an appraisal report, justification for the methodology employed and sufficient support for the conclusions reached therein, including a full discussion of the applicability of each peer group member and documented analytical evidence supporting any variance (above or below) the institution proposing to convert may have from the peer group statistics and a complete analysis of the institution's *pro forma* earnings which should include its full potential once the institution fully deploys its new capital pursuant to its business plan; and

(ii) A business plan which must include, in part, a detailed discussion of how the capital acquired in the conversion will be utilized, expected returns resulting from the plan and a justification for any proposed stock repurchases.

(e) *Restriction on repurchase of stock.* An insured mutual state savings bank that has converted from the mutual to stock form of ownership may not repurchase its capital stock within one year following the date of its conversion to stock form. Any stock repurchases after the one year period shall be subject to the requirements of section 18(i)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1828(i)(1)).

(f) *Stock benefit plan limitations.* No converted insured mutual state savings bank shall, for one year from the date of the conversion, implement a stock option plan or management or employee stock benefit plan, other than a tax-qualified employee stock ownership plan, unless each of the following requirements is met:

(1) Each of the plans was fully disclosed in the proxy soliciting and conversion stock offering materials;

(2) All such plans are approved by a majority of the bank's stockholders, or in the case of a recently formed holding company, its stockholders, prior to implementation and no sooner than the first annual meeting following the conversion;

(3) In the case of a savings bank subsidiary of a mutual holding company, all such plans are approved by a majority of stockholders other than its parent mutual holding company prior to implementation and no sooner than the first annual meeting following the stock issuance;

(4) For stock option plans, stock options are granted at no lower than the market price at which the stock is trading at the time of grant; and

(5) For management or employee stock benefit plans, no conversion stock is used to fund the plans.

By the order of the Board of Directors.

Dated at Washington, D.C., this 31st day of May, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–14007 Filed 6–10–94; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WV9–1–6419, WV9–2–6425 FRL–4997–8]

Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Redesignation of the Charleston West Virginia Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 13, 1992, the West Virginia Department of Commerce, Labor & Environmental Resources; Division of Environmental Protection; Office of Air Quality (WVOAQ) submitted a request to EPA to redesignate the Charleston moderate ozone nonattainment area (Kanawha and Putnam Counties) from nonattainment to attainment. On November 13, 1992, the WVOAQ also submitted a maintenance plan for the Charleston area as a revision to the West Virginia State Implementation Plan (SIP). On February 28, 1994, West Virginia submitted an update to its November 13, 1994 submittal. The EPA is proposing to redesignate the Charleston ozone nonattainment area from nonattainment to attainment and proposing to approve the maintenance plan submitted by the WVOAQ as a revision to the West Virginia SIP because the relevant requirements set forth in the Clean Air Act, as amended in 1990, have been met. This proposal to approve the redesignation is contingent upon West Virginia's submittal of a revision to its maintenance plan's provisions for implementation of contingency measures. These actions are being taken in accordance with the Act. The approved maintenance plan will become a federally enforceable part of the SIP for the Charleston area.

DATES: Comments must be received on July 13, 1994.

ADDRESSES: Written comments should be sent to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The state submittal and EPA's Technical Support Document (TSD) prepared on these proposed actions is available for public review at the above address and at the West Virginia Division of Environmental Protection, Office of Air Quality 1558 Washington Street, East Charleston, West Virginia, 25311–2599.

FOR FURTHER INFORMATION CONTACT: Michael Dubowe at (215) 597–1109 or Todd Ellsworth at (215) 597–2906.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act, as amended in 1977 (1977 Act), required areas that were designated nonattainment based on a failure to meet the ozone national ambient air quality standard (NAAQS) to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. (1977 Act, sections 110(a)(1) and 172.) The Charleston, West Virginia nonattainment area was designated under section 107 of the 1977 Act as nonattainment with respect to the ozone NAAQS on September 12, 1978. (40 CFR 81.347) In accordance with section 110 of the 1977 Act, West Virginia submitted a part D ozone SIP on November 15, 1979 which EPA approved as meeting the requirements of section 110 and part D of the 1977 Act. In its SIP, the State of West Virginia projected that the Charleston, West

Virginia nonattainment area would attain the ozone standard by December 31, 1982. The area failed to attain the standard.

On November 15, 1990, the Clean Air Act Amendments of 1990 (hereafter the Act) were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The nonattainment designation of the Charleston, West Virginia area continued by operation of law according to section 107(d)(1)(C)(i) of the Act, furthermore, it was classified by operation of law as moderate for ozone pursuant to section 181(a)(1) of the Act. See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.347.

The Charleston, West Virginia ozone nonattainment area more recently has attained the ozone NAAQS, based on air quality data from 1989 through 1991. In an effort to comply with the Act and to ensure continued attainment of the NAAQS, on November 13, 1992 the WVOAQ submitted an ozone maintenance plan for the Charleston, West Virginia area as a revision to the West Virginia SIP.

On November 13, 1992, the State of West Virginia also requested that EPA redesignate the Charleston, West Virginia area to attainment with respect to the ozone NAAQS. In addition, on February 28, 1994, West Virginia submitted an update to its November 13, 1992 submittal, collectively referred to hereafter as the "State of West Virginia's redesignation request."

II. Evaluation Criteria

According to section 107(d)(3)(E) of the Act, five specific requirements must be met in order for EPA to redesignate an area from nonattainment to attainment:

1. The area must have attained the applicable NAAQS;
2. The area has met all relevant requirements under section 110 and part D of the Act;
3. The area has a fully approved SIP under section 110(k) of the Act;
4. The air quality improvement must be permanent and enforceable; and
5. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

III. Review of West Virginia's Submittal

The State of West Virginia's redesignation request for the Charleston, West Virginia area included information and documentation sufficient for EPA to determine that the five requirements of section 107, noted above have been met. Following is a brief description of how each of these requirements has been fulfilled. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request. A Technical Support Document (TSD) has also been prepared by EPA on these rulemaking actions. That TSD is available for public inspection at the EPA Regional Office listed in the ADDRESSES section of this document.

1. Attainment of the Ozone NAAQS

The submittal contains an analysis of ozone air quality data which is relevant to the maintenance plan and to the redesignation request. Ambient ozone monitoring data for 1989 through 1991 show attainment of the ozone NAAQS in the Charleston, West Virginia area. See 40 CFR § 50.9 and appendix H. The State of West Virginia's request for redesignation included documentation that the Charleston, West Virginia ozone nonattainment area has complete, quality-assured data showing attainment of the standard over the most recent consecutive three calendar year period. Therefore, the Charleston, West Virginia area has met the first statutory criterion for redesignation to attainment of the ozone NAAQS found at section 107(d)(3)(E)(i) of the Act. It is important to note that EPA has also reviewed the ozone data monitored during the 1992 and 1993 ozone seasons in the Charleston area and determined that no violations of the standard were monitored during those years. Therefore, there have been no violations of the ozone standard monitored in the Charleston area since the 1988 ozone season.

2. Meeting Applicable Requirements of Section 110 and Part D

As previously stated, EPA fully approved the State of West Virginia SIP for the Charleston, West Virginia area as meeting the requirements of section 110(a)(2) and part D of the 1977 Act. The amended Act, however, modified section 110(a)(2) and, under Part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, EPA has reviewed the SIP to ensure that it contains all measures that were due under the Act as of November 13, 1992, the date the State of West Virginia submitted its redesignation request.

2.A. Section 110 Requirements

Although section 110 of the 1977 Act was amended in 1990, the Charleston, West Virginia SIP meets the requirements of section 110(a)(2) of the amended Act. A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, See 57 FR 27936 and 23939 (June 23, 1993), many are duplicative of other requirements of the Act. EPA has analyzed the SIP and determined that it is consistent with the requirements of section 110(a)(2) of the Act. It contains enforceable emission limitations, it requires monitoring, compiling, and analyzing ambient air quality data, it requires preconstruction review of new major stationary sources and major modifications to existing ones, it provides for adequate funding, staff, and associated resources necessary to implement its requirements, and requires stationary source emissions monitoring and reporting.

2.B. Part D Requirements

Before the Charleston, West Virginia ozone nonattainment area may be redesignated to attainment, it also must have fulfilled applicable requirements of part D due as of the date of the State's redesignation request. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). The Charleston, West Virginia ozone nonattainment area was classified as moderate. (See 56 FR 56694, codified at 40 CFR 81.347). Therefore, in order to be redesignated to attainment, West Virginia must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176—as well as the applicable requirements of subpart 2 of part D—due as of the date of the State's November 13, 1992 request for redesignation. EPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation request to be approved, the State has met all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. Requirements of the Act that come due subsequently continue to be applicable to the area at those later dates (see section 175A(c)) and, if the redesignation of the area is disapproved, the State remains obligated to fulfill those requirements.

2.B.1. Subpart 1 of Part D—Section 172(c) Provisions

Under section 172(b), the section 172(c) requirements are applicable no later than 3 years after an area has been designated as nonattainment under the Act. EPA has determined that these requirements were not applicable to ozone nonattainment areas on or before

November 13, 1992—the date the State of West Virginia submitted a complete redesignation request and maintenance plan for Charleston. Therefore, the State of West Virginia is not required to meet these requirements for purposes of redesignation. West Virginia has, however, completed and submitted a 1990 base year emissions inventory for its ozone nonattainment areas (including the Charleston area) in accordance with EPA's guidance. It is also important to note that upon redesignation to attainment, the preconstruction new source review requirements for prevention of significant deterioration (PSD) would apply in the Charleston area. EPA approved West Virginia's PSD SIP program on April 11, 1986 (51 FR 12517).

2.B.2. Subpart 1 of Part D—Section 176 Conformity Provisions

Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by States must be consistent with Federal conformity regulations that the Act required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, USEPA's General Preamble for the Implementation of Title I informed States that its conformity regulations would establish a submittal date (see 57 FR 13498, 13557 (April 16, 1992)).

The EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to § 51.396 of the transportation conformity rule and § 51.851 of the general conformity rule, the State of West Virginia is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, West Virginia is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadlines for these submittals have not yet come due, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

2.B.3. Subpart 2 of Part D—Section 182 Provisions for Ozone Nonattainment Areas

The Charleston, West Virginia nonattainment area is classified as moderate and is subject to the requirements of section 182(b) of the Act. As of November 13, 1992, the date West Virginia submitted a complete redesignation request for the Charleston, West Virginia nonattainment area, the Charleston, West Virginia area was required to meet the provisions of section 182(a)(2)(A) to correct its Reasonably Available Control Technology (RACT) requirements in effect prior to enactment of the 1990 amendments to the Act. The State of West Virginia submitted those RACT corrections as SIP revisions to EPA on June 4, 1991. A final rule approving these RACT corrections was published on September 17, 1992 (57 FR 42895).

On January 15, 1993, EPA notified the Governor of West Virginia that it had made a finding that West Virginia had failed to submit either a full or committal SIP revision for a basic inspection and maintenance (I/M) program for its ozone nonattainment areas. On January 18, 1994, EPA notified the Governor of West Virginia that it had made a finding that West Virginia had failed to submit a 15% rate of progress plan SIP revision for its ozone nonattainment areas. Upon the effective date of a final approval by EPA of West Virginia's redesignation request, these findings will be automatically rescinded in the Charleston nonattainment area.

3. Fully Approved SIP Under Section 110(k) of the Act

As stated previously, EPA has approved the RACT corrections noted above. Therefore, the State of West Virginia has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and part D as discussed above. Therefore, the redesignation requirement of section 107(d)(3)(E)(ii) has been met.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the 1977 Act, EPA approved the State of West Virginia SIP control strategy for the Charleston, West Virginia nonattainment area. EPA determined that the rules and the emission reductions achieved as a result of those rules were enforceable. Since enactment of the 1990 amendments, the State of West Virginia submitted corrections to its RACT regulations as identified above. EPA finds that these additional measures contribute to the permanence and enforceability of reductions in ambient ozone levels in the Charleston, West Virginia area.

Between 1988 and 1990, because of permanent and enforceable state and federal provisions, emissions of volatile organic compounds (VOCs) were reduced by 8.14 tons/day and emissions of nitrogen oxides (NO_x) were reduced by 3.1 tons/day in Charleston. Most of the reductions came from mobile sources and gasoline marketing-related activities. The Reid Vapor Pressure (RVP), of gasoline marketed for use in the Charleston, West Virginia area decreased from 10.5 RVP to 9.5 RVP in 1990 and was reduced to 9.0 in 1992. In addition, due to automobile fleet turnover, there was an increase in the percent of automobiles operated in the Charleston area meeting more stringent emission standards as required by the Federal Motor Vehicle Control Program (FMVCP). It must be noted here that since 1992 the federal RVP requirement of 9.0 has been the applicable standard in the Charleston, West Virginia area.

The State of West Virginia maintenance plan requires the continuation of the federal RVP program. These reductions due to lower RVP and more stringent tailpipe standards resulting from the FMVCP were determined using the mobile emission inventory model MOBILE 5.0a and the relevant vehicle miles traveled data.

Permanent and enforceable decreases in VOCs at stationary sources contributed a small amount to the total VOC reduction in the Charleston, West Virginia area. In association with its emission inventory, the State of West Virginia demonstrated that point source VOC emissions were not artificially low due to local economic downturn during the period in which the Charleston, West Virginia area's ambient air quality came into attainment. Reductions due to decreases in production levels or from other unenforceable scenarios such as voluntary reductions were not included in the determination of the emission reductions.

EPA finds that the combination of measures contained in the SIP and federal measures have resulted in permanent and enforceable reductions in ozone precursors that have allowed the Charleston West Virginia area to attain the NAAQS, and therefore, that the redesignation criterion of section 107(d)(3)(E)(iii) has been met.

5. Fully Approved Maintenance Plan Under Section 175A

EPA is proposing approval of the State of West Virginia maintenance plan for the Charleston, West Virginia area because EPA finds that West Virginia's submittal meets the requirements of section 175A of the Act. If EPA determines after notice and comment that it should give final approval to the maintenance plan, the Charleston, West Virginia nonattainment area will have a fully approved maintenance plan in accordance with section 175A of the Act.

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the area is redesignated. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period.

To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

5.A. Emissions Inventory—Base Year Inventory

On November 13, 1992, the State of West Virginia submitted comprehensive inventories of VOC and NO_x emissions from area, stationary, and mobile using 1990 as the base year for calculations to demonstrate maintenance. The 1990 VOC inventory is considered most representative of attainment conditions because no violations occurred in 1990 and it reflects the typical inventory for the three-year period demonstrating attainment of the standard.

The State of West Virginia submittal contains detailed inventory data and summaries by source categories. The State of West Virginia submittal also contains information related to how it comported with EPA's guidance, which model and emission factors were used (note MOBILE 5.0a was used), how Vehicle Miles Travelled (VMT) data was generated, what RVP was considered in the base year, and other technical information verifying the validity of the Charleston West Virginia emission inventory.

The State of West Virginia's submittal contains the detailed inventory data and summaries by source category. This inventory was prepared in accordance with EPA guidances. A summary of the base year and projected maintenance year inventories are shown in the following six tables. The TSD which has been prepared for this action contains more in-depth details regarding the base year for the Charleston area.

SUMMARY OF EMISSIONS FROM THE CHARLESTON NONATTAINMENT AREA FOR 1990

Source category	VOC (tpd)	CO (tpd)	NO_x (tpd)
Area	27.5	83.9	16.9
Point	49.0	27.9	389.2
Highway Mobile	28.5	222.2	27.9
Total Emissions	105.0	334.1	434.0

SUMMARY OF EMISSIONS FROM THE CHARLESTON NONATTAINMENT AREA FOR 1993

Source Category	VOC (tpd)	CO (tpd)	NO_x (tpd)
Area	28.4	84.7	17.0
Point	42.3	27.4	392.7
Highway Mobile	23.8	191.7	27.2
Total Emissions	94.5	303.8	437.0

All Emissions in Tons Per Day (tpd).

SUMMARY OF EMISSIONS FROM THE CHARLESTON NONATTAINMENT AREA FOR 1996

Source category	VOC (tpd)	CO (tpd)	NO_x (tpd)
Area	26.8	85.5	17.1
Point	41.0	27.0	356.0
Highway mobile	23.0	179.9	26.7
Total emissions	90.7	292.5	399.8

SUMMARY OF EMISSIONS FROM THE CHARLESTON NONATTAINMENT AREA FOR 1999

Source Category	VOC (tpd)	CO (tpd)	NO_x (tpd)
Area	27.5	87.0	
Point	39.7	26.8	

SUMMARY OF EMISSIONS FROM THE CHARLESTON NONATTAINMENT AREA FOR 1999—Continued

Source Category	VOC (tpd)	CO (tpd)	NO_x (tpd)
Highway mobile	22.6	171.8	26.3
Total emissions	89.8	235.6	405.6

All Emissions in Tons Per Day (tpd).

SUMMARY OF EMISSIONS FROM THE CHARLESTON NONATTAINMENT AREA FOR 2002

Source category	VOC (tpd)	CO (tpd)	NO_x (tpd)
Area	28.2	87.8	17.5
Point	39.0	26.6	364.2
Highway Mobile	22.4	172.0	26.1
Total emissions	89.6	286.4	407.7

SUMMARY OF EMISSIONS FROM THE CHARLESTON NONATTAINMENT AREA FOR 2005

Source category	VOC (tpd)	CO (tpd)	NO_x (tpd)
Area	29.0	89.3	17.6
Point	37.9	26.2	366.9
Highway Mobile	23.0	179.5	27.0
Total emissions	89.9	295.0	411.5

All Emissions in Tons Per Day (tpd).

5.B. Demonstration of Maintenance—Projected Inventories

In addition to the continued use of lower RVP gasoline (9.0) and fleet turnover to automobiles meeting more stringent emission standards, mobile source emission projections are dependent upon the implementation of the federal reformulated gasoline program. Total VOC and NO_x emissions were projected from the 1990 base year out to year 2005. These projected inventories were prepared in accordance with EPA guidance. The projections demonstrate that the ozone standard will be maintained (i.e., emissions are not expected to exceed the level of the base year inventory during this time period. EPA believes that the emissions projections demonstrate that the area will continue to maintain the ozone NAAQS because this area achieved attainment through VOC controls and reductions.

5C. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Charleston, West Virginia area depends, in part, on the State of West Virginia efforts toward tracking indicators of continued attainment during the maintenance period. The State of West Virginia will track the status and effectiveness of the maintenance plan by periodically updating the emissions inventory every three years. The WVOAQ has committed to perform this tracking on an annual basis in order to enable the State of West Virginia to implement the contingency measures of its maintenance plan as expeditiously as possible.

The State of West Virginia annual update will indicate new source growth, as indicated by annual emission statements. The State of West Virginia will continue to monitor ambient ozone levels by operating its ambient ozone air quality monitoring network in accordance with 40 CFR part 58.

5D. Contingency Plan

The level of VOC and NO_x emissions in the Charleston area will largely determine its ability to stay in compliance with the ozone NAAQS in the future. Despite the State of West Virginia's best efforts to demonstrate continued compliance with the NAAQS, the Charleston area may exceed or violate the NAAQS. Therefore, West Virginia has provided contingency measures with a schedule for implementation in the event of future ozone air quality problems. In the event that exceedances of the ozone NAAQS are measured such that nonattainment is indicated in any of the areas or in the event that periodic emission inventory updates or major permitting activity reveals that excessive or unanticipated growth in ozone precursor emissions has occurred or will occur, the West Virginia will accordingly select and adopt measures including the following to assure continued attainment:

1. Extend the applicability of 45CSR21 (VOC/RACT rule) to include source categories previously excluded.
2. Revised new source permitting requirements requiring more stringent emissions control technology and/or emissions offsets.
3. NO_x RACT requirements.
4. Stage II Vapor Recovery Regulations
5. Regulations to establish plant-wide emission caps (potentially with emissions trading provisions).
6. Implementation of basic (or enhanced) programs for motor vehicle inspection and maintenance.

One or more of these regulatory revisions would be selected within three (3) months after verification of a monitored ozone standard violation and a draft rule submitted to the WVOAQ. Quality assurance procedures must confirm the monitored violation within 45 days of occurrence. The WVOAQ will be requested to adopt the control measure(s) as emergency rule(s) which will be implemented within six (6) months after adoption. EPA's approval of West Virginia's redesignation request is contingent upon West Virginia

promulgating a revision to its contingency plan that includes a schedule for the mandatory implementation of the selected contingency measures.

5E. Subsequent Maintenance Plan Revision

In accordance with section 175A(b) of the Act, the State of West Virginia has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years. EPA has determined that the maintenance plan adopted by the State of West Virginia and submitted to EPA on November 13, 1992, meets the requirements of section 175A of the CAA. Therefore, EPA is proposing to approve the maintenance plan submittal. In addition EPA has determined that upon final approval of the maintenance plan the provisions of section 107(d)(3)(E)(iv) for redesignation will have been met.

Proposed Action

EPA proposes to approve the ozone maintenance plan for the Charleston, West Virginia area submitted by the State of West Virginia on November 13, 1992 as a revision to the West Virginia SIP because it meets the requirements of section 175A. In addition, EPA is proposing to redesignate the Charleston, West Virginia nonattainment area to attainment, subject to final approval of the maintenance plan, because the Agency has determined that the provisions of section 107(d)(3)(E) of the Act for redesignation of nonattainment areas to attainment have been met.

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the person and address listed in the **ADDRESSES** section at the beginning of this document.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements. Ozone State Implementation Plans (SIPs) are designed to satisfy the requirements of part D of the Clean Air Act and to provide for attainment and maintenance of the ozone NAAQS. Today's proposed redesignation action should not be interpreted as authorizing the State of West Virginia to delete, alter, or rescind any of the VOC emission limitations and restrictions contained in the currently approved ozone SIP. Changes to the ozone SIP's regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation under section 173(b) of the Act and in a SIP deficiency call made pursuant to section 110(k)(5).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have any economic impact on any small entities. Redesignation of an area to attainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Accordingly, I certify that EPA's approval of West Virginia's request to redesignate the Charleston ozone nonattainment area to attainment and the associated maintenance plan will not have an impact on any small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

List of Subjects

40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 28, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 94–14286 Filed 6–10–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Docket No. 93–48; DA 94–588]

Children's Television Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; extend comment date.

SUMMARY: The Commission sought comments on the implementation of rules relating to the broadcast of educational and informational programming for children. After a request by several parties, the date for filing comments was extended by one week in order to allow adequate time for parties to prepare their submissions.

DATES: Comments are due June 15, 1994. Reply Comments due July 15, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Larry Miller, (202) 418–1600.

SUPPLEMENTARY INFORMATION:

In the Matter of: Policies and Rules Concerning Children's Television Programming; Revision of Programming Policies for Television Broadcast Stations

Order

Adopted: June 2, 1994.
Released: June 2, 1994.
Comment Date: June 15, 1994.
Reply Comment Date: July 15, 1994

By the Chief, Mass Media Bureau.

1. This action extends the deadline for filing further comments by interested parties and proposed remarks by panelists in the *En Banc* hearing on Children's Television in the above-cited docket (58 FR 14367) pertaining to rules and policies relating to the levels and types of television programming necessary to adequately serve the educational and informational needs of children. The deadline for further comments and proposed remarks by panelists was originally set for June 8, 1994.

2. The Center for Media Education and the American Psychological Association request a one-week extension of the comment period in

order to adequately prepare their presentations for the Commission's hearing.

3. In light of the foregoing, the Bureau finds that good cause exists for an extension. Pursuant to 47 CFR 0.283, the deadline for filing further comments by interested parties and proposed remarks by panelists in the *En Banc* hearing is extended to June 15, 1994. The deadline for filing reply comments remains July 15, 1994.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 94–14215 Filed 6–10–94; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 59, No. 112
Monday, June 13, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Interpreters in Courts of the United States; Announcement of Written Segment of Certification Examination for Spanish, Cantonese, Mandarin, and Korean; and Written Segment of "Otherwise Qualified" Examination for Arabic, Hebrew, Italian, Mien, Polish, and Russian

AGENCY: Administrative Office of the United States Courts.

ACTION: Notice of Written Segment of Certification Examination for Spanish, Cantonese, Mandarin, and Korean; and Written Segment of "Otherwise Qualified" Examination for Arabic, Hebrew, Italian, Mien, Polish, and Russian.

SUMMARY: The Administrative Office of the United States Courts will conduct the written portion of the examination for individuals who desire to be certified (in Spanish, Cantonese, Mandarin, and Korean) or "otherwise qualified" (in Arabic, Hebrew, Italian, Mien, Polish, and Russian) to serve as interpreters in courts of the United States. This is in accordance with the Court Interpreter Amendments Act of 1988, Title VII of Pub. L. 100–702, (28 U.S.C. 1827). To take the examination, an individual must file a written application, or apply by telephone.

DATES: The agency will administer the written portion of the examination August 27, 1994, at 1 p.m. The deadline for filing an application is 4 p.m. on July 15, 1994.

ADDRESSES: Applications, along with an $80 money order, cashiers check, or personal check payable to the University of Arizona are to be sent to the Federal Court Interpreter Certification Project, Modern Languages Building, room 445, University of Arizona, Tucson, Arizona 85721.

FOR FURTHER INFORMATION CONTACT: Dr. Roseann Gonzalez, University of Arizona, (602) 621–3687 (Mountain Time). Fax (602) 624–8130.

SUPPLEMENTARY INFORMATION:

I. Background

The Director of the Administrative Office of the United States Courts (AOUSC) is responsible for the establishment of a program to facilitate the use of certified and otherwise qualified interpreters in courts of the United States. He must prescribe, determine, and certify the qualifications of person who may serve as certified interpreters in bilingual proceedings and proceedings involving the hearing impaired (28 U.S.C. 1827(b)). Whenever an interpreter is required for a person in any criminal or civil action initiated by the United States, the presiding judicial officer must utilize the services of the most available certified interpreter, unless no certified interpreter is reasonably available, or the services of an otherwise qualified interpreter.

The AOUSC will provide the courts with a roster of certified, professionally qualified, and language skilled court interpreters selected on the basis of specific qualification criteria and/or the successful completion of written ad oral examinations.

II. This Examination

For Spanish language interpreter candidates, a comprehensive written Spanish/English examination testing bilingual proficiency in Spanish and English will be administered. For candidates in the Cantonese, Mandarin, and Korean languages, a written English examination testing proficiency in English will be administered. Successful candidates will be invited to sit for the second part of the certification examinations, an oral examination. The oral examination will test, in simulated settings, the applicant's ability to: (1) interpret precisely from source language to English, in consecutive and simultaneous modes; (2) interpret from English to the target language in consecutive and simultaneous modes; and (3) perform sight interpretations. The oral portion of the examination does not necessarily require previous experience in court interpreting. Applicants who successfully complete the written examination will receive notice of the time and place of the oral portion of the examination.

For Arabic, Hebrew, Italian, Mien, Polish, and Russian interpreter candidates, a written English examination testing proficiency in English will be administered. The second part of the qualification process as a professional or language skilled court interpreter will require the candidate to provide additional qualifications and credentials or perform back translation exercises successfully.

All of the examinations are developed and administered under contract by the University of Arizona. The written portion of the examination does not require a special knowledge of legal vocabulary.

Testing Sites

Applicants may schedule the written examination at any of the locations identified below. Applicants must identify the testing location which they desire to use to use for taking the written examinations. The following are the cities where the written test will be administered:

Alaska: Anchorage.
Arizona: Phoenix, Tucson.
California: Fresno, Los Angeles, Monterey, Sacramento, San Diego, San Francisco.
Colorado: Denver.
Connecticut: Hartford.
District of Columbia.
Florida: Miami, Orlando.
Georgia: Atlanta.
Hawaii: Honolulu.
Idaho: Boise.
Illinois: Chicago.
Iowa: Sioux City.
Louisiana: New Orleans.
Massachusetts: Boston.
Minnesota: Minneapolis.
Missouri: Kansas City.
Nevada: Las Vegas, Reno.
New Jersey: Newark, Trenton.
New Mexico: Albuquerque, Las Cruces.
New York: Brooklyn, Buffalo, Manhattan.
Ohio: Cincinnati and Cleveland.
Oregon: Portland.
Puerto Rico: San Juan.
Tennessee: Memphis.
Texas: Brownsville, Corpus Christi, Dallas, Houston, Laredo, San Antonio.
Utah: Salt Lake City.
Washington: Seattle.

Oral testing sites will be announced when the examinations are scheduled.

Filing

Written applications are preferred, but phone applications will be accepted if the fee is received by July 15, 1994. Applicants who do not have an application form should type or print the following information on an 8½×11 paper:

1. Name.
2. Mailing address, including zip code.
3. Daytime telephone number.
4. Evening telephone number.
5. Testing location requested (City and State).
6. Date of birth.
7. Social Security Number.
8. Special arrangements necessary because of physical disability or keeping of the Sabbath.
9. I did/did not take the Spanish written and/or oral examination in 1993.
10. I.D. number of exam (if known).
11. Enclosed money order, cashiers check, or personal check payable to University of Arizona Federal Court Project.

Exam Procedures

Each applicant will receive an admission ticket to the exam shortly before the exam date. It will list the exact location of the exam. Each applicant must present the admission ticket and a photo identification: driver's license, passport, work/student identification, etc., to be admitted to the exam.

III. Qualifications

Sucessful completion of the written examination is the first step in the process of receiving certification or "otherwise qualified" status. There is no formal educational requisite, either in languages or interpreting, for successfully completing the written examinations. However, the difficulty of the written examinations are at the college degree level of proficiency in both English and the target languages. Successful completion of the oral portion of the examination normally would require prior training or professional experience in simultaneous and consecutive interpreting and sight translation. Qualification as "otherwise qualified" will require additional credentials and experience as an interpreter.

IV. Duties

Certification or "otherwise qualified" status will not necessarily lead to full-time employment as a staff or contract interpreter. Most of the requirements for court interpretation services in the Federal courts are met by independent interpreter contractors on an as-needed basis. However, where full-time interpreters are needed, only certified interpreters are eligible for appointment.

As the federal courts require full-time salaried interpreters, these interpreters will be chosen from the eligibility lists. The annual salary range is JSP–10 to JSP–14 ($31,898–$76,733) for full-time salaried interpreters. For certified interpreters who provide services as independent contractors, the fee is $250 per day.

Court interpreters perform all or some of the following duties: (1) Interpret verbatim in simultaneous and consecutive modes a foreign language into English, and vice versa, at arraignments, preliminary hearings, pretrial hearings, trials, and other court proceedings; (2) transcribe and translate electronic sound recordings; and (3) sight translate or translate in written form technical, medical, and legal documents and correspondence for introduction as evidence.

Dated: June 6, 1994.

Robert Lowney,

Acting Chief, District Court Administration Division.

[FR Doc. 94–14219 Filed 6–10–94; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 059–AB47

Animal Damage Management

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy; request for comment.

SUMMARY: The Forest Service gives notice of and requests comment on proposed revisions to its policy on animal damage management to be published in the Forest Service Manual Chapter 2650. This direction would replace current agency procedures for implementing the provisions of a Memorandum of Understanding (MOU) between the Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control unit and the Forest Service. This proposed policy is intended to clarify the role and responsibility of the Forest Service in coordinating with APHIS on animal damage management and in cooperating with APHIS in discharging Federal obligations to manage wild vertebrates causing damage on National Forest System lands under the Animal Damage Control Act of 1931.

DATES: Comments must be received in writing by August 12, 1994.

ADDRESSES: Send written comments to the Director, Wildlife, Fish and Rare Plants Staff (2650), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed policy in the Office of the Director, Wildlife, Fish and Rare Plants Staff, 4th floor, Northwest, Auditor's Building, 205 14th Street, SW., Washington, DC. Those wishing to inspect comments are encouraged to call ahead (202–205–1367) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Tom Darden, Wildlife Program Leader, (202–205–1206).

SUPPLEMENTARY INFORMATION: The Forest Service and APHIS cooperate in discharging Federal obligations under the Animal Damage Control Act of 1931 (7 U.S.C. 426–426b) which governs animal damage management activities on National Forest System lands. These activities include actions to provide wildlife damage management through direct control, as well as technical assistance to achieve desired management objectives. APHIS, in cooperation with the Forest Service and states, carries out animal damage management activities on some National Forest System lands, mostly to minimize livestock losses from predation by coyotes, black bears, and other predators. Under other authorities (e.g., Multiple-Use Sustained-Yield Act of 1960 [16 U.S.C. 528(note), 528–531]), the Forest Service conducts activities to control animal damage caused by small mammals and other animals to National Forest System resources, such as timber stands and roads.

APHIS has responsibility for animal damage management activities, as designated by the Secretary of Agriculture (7 CFR 2.51(41)). The principal change being proposed in existing Forest Service Manual policy (FSM 2650) is the designation of APHIS as the lead agency for preparing environmental documentation on animal damage management activities initiated by APHIS on National Forest System lands. The Forest Service will cooperate with APHIS and the states in environmental analysis and documentation of actions proposed by APHIS that will occur on or affect National Forest System lands and provide mitigation measures needed to ensure that animal damage management activities performed by APHIS are compatible with direction provided in forest land and resource management plans.

The proposed policy would bring the Forest Service Manual provisions into conformance with current field-level animal damage management practice. Current operational procedures for animal damage management activities are outlined in an August 25, 1992 letter to Forest Service Regional Foresters from Deputy Chief James C. Overbay and the subsequent Memorandum of Understanding (MOU) between APHIS and the Forest Service, signed June 18, 1993. Notice of availability of the MOU was published in the **Federal Register** on July 13, 1993 (58 FR 37704).

The 1993 MOU clarifies the role of each Forest Supervisor in cooperating with APHIS and the states in documentation of environmental actions proposed by APHIS, and in providing mitigation measures to ensure that animal damage management activities performed by APHIS are compatible with direction provided in forest plans. The MOU also clarifies that APHIS, in cooperation with the Forest Service, develops work plans for animal damage management activities on National Forest System lands. These plans address control areas, specific control techniques, emergency control procedures, timeframes, and other limitations and restrictions. The MOU recognizes APHIS work plans as the definitive plans for predator control actions on National Forest System lands.

After discussion with the Council on Environmental Quality, the Forest Service has decided to publish this proposed animal damage management policy in the **Federal Register**, inviting public comment on the role and responsibility of the Forest Service in coordinating with APHIS on animal damage management. In the interim, the Forest Service and APHIS will follow procedures outlined in the 1993 MOU for which notice was published in the **Federal Register**.

Environmental Impact

Section 31.1b(2) of Forest Service Handbook 1909.15 (57 FR 43180, Sept. 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Servicewide administrative procedures, program processes, or instructions." This proposed policy would provide administrative instructions to Forest Service field offices on the procedures and processes to follow in the case of coordination with APHIS on animal damage management activities. Accordingly, the agency's preliminary assessment is that this proposed policy falls within this category of action and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final policy.

Controlling Paperwork Burden on the Public

This policy will not result in additional paperwork. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320 do not apply.

Regulatory Impact

This proposed policy has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant policy.

Dated: May 23, 1994.

David A. Harcharik,

Acting Chief.

Proposed Manual Revision

Note: The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Manual that are the subject of this notice are set out here. The audience for this direction is Forest Service employees charged with coordinating with the Animal and Plant Health Inspection Service—Animal Damage Control Unit on animal damage management activities on National Forest System lands.

Forest Service Manual—Chapter 2650—Animal Damage Management

The Forest Service and Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control unit, along with the states, cooperate in discharging the Federal obligations under the Animal Damage Control Act of 1931 to manage animal damage on National Forest System lands. These activities include actions to provide wildlife damage management through direct control, as well as technical assistance to achieve desired management objectives. APHIS carries out animal damage management activities on National Forest System lands, mostly to minimize livestock losses from predation by coyotes, black bears, and other predators. The Forest Service conducts activities to control animal damage caused by small mammals and other animals to National Forest System resources, such as timber stands and roads.

2650.1—Authority. In addition to the authorities listed in FSM 2601, the following authorities govern animal damage management activities on National Forest System lands:

1. The Animal Damage Control Act of March 2, 1931 (7 U.S.C. 426–426b) as amended by the Rural Development, Agriculture, and Related Agencies Appropriations Act of 1988 (Pub. L. 100–202) authorizes the Secretary of Agriculture to provide animal damage management services, to maintain technical expertise for evaluating and recommending animal damage management techniques, and to conduct forest and range animal damage research. The Secretary has delegated this authority to the Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control unit.

2. Executive Order 12342, January 24, 1982, permits the use of chemical toxicants registered by the Environmental Protection Agency for predator damage control on federal lands.

3. Department of Agriculture Regulation (DR) 9500–4 (FSM 2601.2) requires Department of Agriculture programs to include measures to alleviate damage by plant and animal pests; develop new techniques and methodologies through management and research programs to limit damage to agriculture or forestry production; and apply integrated pest management practices, where feasible, in carrying out these responsibilities.

4. A Memorandum of Understanding (MOU) between APHIS and the Forest Service outlines the cooperative approach to animal damage management on National Forest System lands. Both agencies have a joint responsibility for limiting damage caused by wildlife. In this MOU, APHIS and state agencies are recognized as having the authority and expertise to conduct predator control on National Forest System lands, to determine livestock losses, and to determine methodology for animal damage management. See FSM § 1543.14 for the full text of the MOU.

2650.2—Objective. The objective of animal damage management activities is to protect National Forest System resources, to protect activities taking place on National Forest System lands, and to reduce threats to human health and safety.

2650.3—Policy. National Forest System resources must be adequately protected during animal damage management activities authorized by the states and conducted by the states or Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control unit. When the Forest Service conducts animal damage management activities, such as controlling small mammal populations on plantations, the agency must comply fully with state and federal laws. In carrying out animal damage management activities:

1. Rely upon APHIS or the state agencies to provide the expertise and conduct predator control on National Forest System lands, to determine livestock losses, and to determine methodology for animal damage management.

2. Cooperate with APHIS, the lead agency, in preparing environmental documentation for predator control and other animal damage management activities initiated by APHIS on National Forest System lands. The Forest Service shall cooperate to ensure that the animal damage management plans developed by APHIS will provide for protection of National Forest System resources.

3. Cooperate with APHIS in the development of work plans to ensure consistency with forest land and resource management plans.

4. Conduct non-predator animal damage management, such as controlling small mammal populations on plantations, and necessary environmental analysis and disclosure on National Forest System lands consistent with forest plans.

5. Recognize that taking of predators, including removal of depredating animals (for example, removal of a nuisance bear in a high-use recreation area), may be carried out on National Forest System lands by an individual in accordance with state and federal law.

6. Coordinate with the Bureau of Land Management (BLM) and other federal and state agencies to improve effectiveness of control program activities conducted on National Forest System and other public lands.

7. Use an integrated approach to the prevention of animal damage and management of animal damage control programs. Consider a full range of methods, including physical barriers, repellents, habitat manipulation, biological controls, silvicultural methods (for example, fertilizing to improve soil fertility), pesticides, and hunting and trapping. Use licensed hunting, fishing, and trapping as a control technique where practicable.

8. Use only pesticides that are properly registered in accordance with federal and state requirements for animal damage management and that conform to policies on pesticide-use management and coordination (FSM 2150). Follow label directions.

9. Follow direction in FSM 2670. Threatened, Endangered, and Sensitive Plants and Animals, for federally proposed, threatened, endangered, or sensitive species listed by the Forest Service to determine whether proposed control measures conducted by the Forest Service are likely to have an effect on these species. The lead agency for completing environmental documentation (40 CFR 1508.16) is responsible for completion of all Endangered Species Act-mandated interagency consultations (16 U.S.C. 1536.7; FSM 2671.4).

2650.4—Responsibility.

2650.42—Deputy Chief for National Forest System. The Deputy Chief for the National Forest System is responsible for resolving any difficulties arising between Regions and Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control unit that cannot be resolved by Regional Foresters under the Memorandum of Understanding (FSM 1543.14).

2650.42—Regional Foresters. Regional Foresters are responsible for:

1. Reviewing and approving all proposed pesticide uses for animal damage management on National Forest System lands (FSM 2151). Regional Foresters may redelegate this authority to Forest Supervisors; however, only Regional Foresters may approve animal damage management in wilderness (FSM 2323).

2. Establishing or amending existing Memorandums of Understanding between the Region and appropriate state and other federal agencies regarding animal damage management.

3. Reviewing all proposed Forest Service animal damage management activities within areas occupied by and habitat of federally proposed or listed threatened or endangered species and Regional Forester approved sensitive species. Regional Foresters may redelegate this authority to Forest Supervisors.

4. Meeting with state or regional representatives, such as the APHIS Regional Director, as needed to coordinate animal damage management operations. Regional Foresters may designate a representative.

5. Resolving any difficulties arising among APHIS personnel and Forest Supervisors under the Memorandum of Understanding (FSM 1543.14). Or referring them to the Chief for resolution.

2650.43—Forest Supervisors. Forest Supervisors are responsible for:

1. Ensuring appropriate environmental analysis requirements are met for proposed non-predator control activities conducted by the Forest Service and ensuring consistency with forest plan direction.

2. Recommending changes in state hunting, fishing, or trapping regulations to accommodate animal damage management activities on National Forest System lands (FSM 2640).

3. Meeting with APHIS personnel and responsible state agencies to cooperate where proposed predator control is needed to ensure coordination of Forest Service resources or activities on National Forest System lands.

4. Cooperating with APHIS in preparation of environmental documentation for predator control or other animal damage management activities conducted by APHIS on National Forest System lands (40 CFR 1508.15).

5. Referring any difficulties arising from activities with APHIS under the Memorandum of Understanding (FSM 1543.14) for resolution by the Regional Forester.

6. When needed, requesting training in animal damage management techniques by APHIS.

7. Ensuring that licensing and certification of Forest Service personnel performing animal damage management activities comply with applicable federal and state regulations. Only certified pesticide applicators may use or supervise the use of restricted-use pesticides on National Forest System lands (FSM 2150).

2650.6—Cooperation in Animal Damage Management Activities. Both the Forest Service and Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control unit have a responsibility for limiting damage caused by wildlife, consistent with other wildlife values and resource management objectives. APHIS responsibilities are generally directed toward the management and control of animals causing damage to livestock, agriculture, wildlife, human health and safety. Forest service responsibilities are related to the management of National Forest System resources. See FSM § 1543.14 for the text of the Memorandum of Understanding between the Forest Service and APHIS for animal damage management activities.

The role of APHIS (7 CFR 2.51(41)) is as follows:

1. Evaluate animal damage management needs and conduct predator control in cooperation with the Forest Service, state agencies, and permittees.

2. Serve as lead agency for preparing environmental documentation on animal damage management activities initiated by APHIS on National Forest System lands.

3. Develop and update animal damage management work plans in cooperation with the Forest Service and appropriate state and federal agencies, and interested publics to ensure compliance with forest plans.

4. Inform the Forest Service about animal damage management requests, management activities, and results on a timely basis.

5. Provide the Forest Service with technical information on recommended animal damage management tools and techniques.

6. Conduct animal damage management training sessions for Forest Service personnel, when requested.

2651—Wildlife and Fish Damage Management

2651.1—Threatened and Endangered Species. Follow specific species control plans for federally listed species (for example, grizzly bear and wolf) cleared through consultation with the Fish and Wildlife Service and National Marine Fisheries Service.

2651.2—Game and Furbearers. Control damage caused by game animals and furbearers through hunting or trapping, where practicable, in cooperation with the state fish and wildlife agencies, and APHIS, where appropriate.

2651.3—Nongame Species. Control damage caused by nongame species on National Forest System lands in close cooperation with the state fish and wildlife agencies, or other involved state or federal agencies.

2651.4—Birds. Where birds damage reforestation or other resources or where they create health hazards, nonlethal repellents, frightening devices, pesticides, or physical barriers may be used to prevent or reduce resource damage or hazards. Obtain permits from the Fish and Wildlife Service for any lethal control of species protected under the Migratory Bird Treaty Act. Consult the Fish and Wildlife Service for permit requirements and procedures.

2651.5—Fish and Aquatic Animals. States or other responsible agencies have the authority to control undesirable fish and aquatic animals in National Forest System waters. The Forest Service is responsible for coordinating with the responsible agencies to develop a work plan to ensure control activities are consistent with direction provided in forest plans. Control activities conducted by the Forest Service must meet appropriate environmental analysis requirements and be consistent with forest plan direction.

2651.6—Wildlife and Fish Damage Management in Wilderness Areas. Follow direction in FSM 2151, FSM 2323, and FSM 4063 for management of wildlife or fish damage in wilderness and Research Natural Areas. Animal damage management is permitted in wilderness when it was used prior to wilderness designation; when it conforms with direction in FSM 2323.33 on resource management in wilderness; and when it is needed for the recovery of federally listed threatened or endangered species.

2652—Reports. Report pesticide uses annually following direction in FSM 2158.

[FR Doc. 94–14306 Filed 6–10–94; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–812]

Antidumping Duty Order: Calcium Aluminate Flux From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta or Katherine Johnson, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–4929, respectively.

Scope of Order

The product covered by this order is calcium aluminate (CA) flux, other than white, high purity CA flux. This product contains by weight more than 32 percent but less than 65 percent alumina and more than one percent each of iron and silica.

CA flux is currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) subheading 2523.10.0000. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation remains dispositive.

Antidumping Duty Order

In accordance with section 735(d) of the Act, on March 25, 1994 the Department published in the **Federal Register** its final determination that CA flux from France is being sold at less than fair value (59 FR 14136). We amended our final determination on May 9, 1994 (see 59 FR 25446, May 16, 1994) to correct a clerical error. On June 6, 1994, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of CA flux from France materially injure a U.S. industry.

Suspension of Liquidation

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs officers to assess antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of CA flux from France. These antidumping duties will be assessed on all unliquidated entries of CA flux from France entered, or withdrawn from warehouse, for consumption on or after March 25, 1994, the date on which the Department published its final determination notice in the **Federal Register**.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage (percent)
Lafarge Fondu International	37.93
All Others	37.93

This notice constitutes the antidumping duty order with respect to CA flux from France, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: June 8, 1994.

Susan G. Esserman,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–14310 Filed 6–10–94; 8:45 am]
BILLING CODE 3510–DS–P

[A–423–807]

Preliminary Determination of Sales at Less Than Fair Value: Steel Wire Rod From Belgium

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch or Erik Warga, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone (202) 482–3773 or (202) 482–0922.

Preliminary Determination

We preliminarily determine that imports of steel wire rod from Belgium are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on March 7, 1994, (59 FR 11773, March 14, 1994), the following events have occurred:

On March 31, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case.

On April 7, 1994, the Department issued an antidumping duty questionnaire to Forges de Thy-Marcinelle ("Thy-Marcinelle") for the investigation. The questionnaire had four sections: section A, requesting general information; section B, requesting information on U.S. sales; section C, requesting information on home market sales; and section D, requesting information on cost of production and constructed value. In that same month, the Department presented the antidumping duty questionnaire to Thy-Marcinelle, because it represented at least 60 percent of exports to the United States during the POI.

On April 22, 1994, Thy-Marcinelle requested a two-week extension for filing the response to the Department's questionnaire. The Department granted this extension request.

In May 1994, Thy-Marcinelle notified the Department that it would not be participating in this investigation.

Scope of Investigation

The products covered by this investigation are hot-rolled carbon steel and alloy steel wire rod, in coils, of approximately round cross section, between 0.20 and 0.75 inches in solid cross-sectional diameter. The following products are excluded from this investigation:

- Free-machining steel containing 0.03% or more of lead, 0.05% or more of bismuth, 0.08% or more of sulfur, more than 0.4% of phosphorus, more than 0.05% of selenium, and/or more than 0.01% of tellurium;
- Wire rod, which is 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 Mega-Pascals (MPa), and the following chemical content, by weight: carbon greater than or equal to 0.79 percent, aluminum less than or equal to 0.005 percent, phosphorous plus sulfur less than or equal to 0.040 percent and nitrogen less than or equal to 0.006 percent;
- Wire rod, which is 7.9 to 18.0 mm in diameter, containing 0.48 to 0.73 percent carbon by weight and certified as having partial decarburization and seams no more than 0.075 mm in depth; and
- Stainless steel rods, tool steel rods, ball bearing steel and deformed concrete reinforcing bars (as defined in the *Harmonized Tariff Schedule of the United States* (HTSUS)).

The products under investigation are currently classifiable under subheadings 7213.31.3000, 7213.31.6000, 7213.39.0030, 7213.39.0090, 7213.41.3000, 7213.41.6000, 7213.49.0030, 7213.49.0090, 7213.50.0020, 7213.50.0040, 7213.50.0080, 7227.20.000, 7227.90.6000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is September 1, 1993, through February 28, 1994.

Such or Similar Comparisons

We have determined that the merchandise covered by this investigation constitutes a single category of "such or similar" merchandise.

Best Information Available

Because Thy-Marcinelle failed to respond to our questionnaire, we based our determination on best information available (BIA) pursuant to section 776(c) of the Act which provides that the Department shall use BIA when a party refuses to provide requested information.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. According to the Department's two-tiered BIA methodology outlined in the *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium*, 58 FR 37083 (July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (1) The highest margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation. (See *Allied Signal Aerospace Co.* v. *United States*, 996 F. 2d 1185, 1191–92 (Fed. Cir. 1993).) Because there were no cooperative respondents in this investigation, we are assigning to all exporters, as BIA, a margin of 52.34 percent, the highest margin calculated in the petition (adjusted for methodological errors as explained in the initiation notice).

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of steel wire rod from Belgium that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
All Companies	52.34

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than June 28, 1994, and rebuttal briefs, no later than July 1, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on July 7, 1994, at 10 a.m. at the U.S. Department of Commerce, room

3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination within 75 days of the signing of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: June 6, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–14311 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Final Policy Guidance on Public Participation Under § 306(d)(14) of the Coastal Zone Management Act (CZMA)

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Issuance of final policy guidance section 306(d)(14) of the CZMA.

SUMMARY: The Office of Ocean and Coastal Resource Management is issuing final policy guidance on section 306(d)(14) of the Coastal Zone Management Act, which requires that state coastal management programs provide public participation in permitting decisions, consistency determinations, and other similar decisions. This final guidance follows review and consideration of comments of draft guidance issued in the **Federal Register**, Vol. 58, No. 212, Nov. 4, 1993, pp 58840–58841.

DATES: States with approved coastal zone management programs must comply with this guidance June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Elaine Vaudreuil at NOAA/NOS/OCRM, 1305 East-West Hwy, N/ORM4, Silver Spring, MD 20910, by telephone at 301–713–3086, or by FAX at 301–713–4370.

SUPPLEMENTARY INFORMATION:

I. Authority

This guidance is issued pursuant to the authority of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451–1464)

II. Background

The following guidance outlines OCRM standards for states and territories with Federally approved coastal management programs, and those developing management programs, to meet the public participation requirement under the Coastal Zone Management Act section 306(d)(14), as amended by Pub. L. 101–508, the Coastal Zone Act Reauthorization Amendments of 1990. This section states that before approving a management program submitted by a coastal state, the Secretary of Commerce shall find that "[t]he management program provides for public participation in permitting processes, consistency determinations, and other similar decisions."

The scope of this requirement extends to all activities that require specific or general authorization through permitting, consistency review, or other means pursuant to the enforceable policies of the coastal management program, and applicable state law. This guidance applies to all state authorizations subject to the statutory public participation requirement and shall not conflict with existing state or Federal regulations pertaining to Federal permitting processes, state permitting processes, and Federal consistency review of Federally permitted or licensed activities.

NOAA has reviewed public participation opportunities under state coastal zone management programs and has determined that existing public participation procedures under state law satisfy the public participation requirement under section 306(d)(14) for state permits. For applications under state general permits, public participation in the review of administrative procedures or regulations allowing for a general determination of consistency with the Federally approved state coastal management program will satisfy the public participation requirement. NOAA's regulations already require public participation in state Federal consistency reviews of Federally permitted or licensed activities.

Therefore, NOAA finds that section 306(d)(14) imposes a new requirement for effective public participation only on the state's review of Federal agency consistency determinations for direct Federal activities under section 307(c)(1) of the CZMA and any other state coastal management decisions not now covered by an existing public participation procedure.

The following guidance outlines an acceptable standard for meaningful public participation. State coastal zone management programs will have one year to comply with this guidance. Within one year, each state is to: (1) Develop public participation procedures for the review of direct Federal activities under section 307(c)(1) of the CZMA, if necessary, and submit a copy of those procedures to OCRM as a program change or submit documentation that procedures are already incorporated into the approved program and (2) conduct a review to determine if other public participation procedures are necessary. If additional procedures are necessary, the state must submit a copy of the procedures developed to OCRM as a program change. If no further procedures are needed, the state must submit to OCRM a notice that a review has been conducted and that no additional procedures are necessary.

This guidance is sufficiently broad to give states flexibility in developing public participation procedures that meet the intent of section 306(d)(14). OCRM will review each state's procedures during regularly scheduled evaluations of state coastal zone management programs under section 312 of the CZMA for compliance with the public participation requirement under section 306(d)(14), and will recommend procedural changes if necessary to meet OCRM's guidance.

III. Availability of Comments

All comments received in response to the notice of draft policy guidance (58 FR 58840, November 4, 1993) are available for inspection at the Office of Ocean and Coastal Resource Management during normal business hours (8:00 to 4:30 p.m.) in room 11614, 1305 East-West Highway, Silver Spring, Maryland, 20910.

IV. Response to Comments

The following comments were received on the draft policy guidance. NOAA's response appears below:

Comment: The draft language of the Policy Guidance itself does not clearly specify that the procedures apply only to consistency reviews under section 307(c)(1) of the CZMA and other state coastal management decisions not now

covered by an existing public participation procedure, although that fact is stated in the discussion preceding the guidance.

Response: NOAA concurs and has added specific language in the guidance to clarify this point.

Comment: Several states expressed concern that implementing this guidance will add to the state's administrative costs.

Response: NOAA is sensitive to this issue and structured the guidance to provide coastal states with a range options for implementing the requirement in a cost-effective manner.

Comment: NOAA should change the language under (a)(1) to say that "States must issue or cause to be issued, public notice * * *".

Response: Recognizing that this comment is consistent with the provision allowing for joint public notice with Federal agencies, NOAA has clarified this point in the final guidance.

Comment: The use of the word "guidance" coupled with the use of mandatory terms such as "must", "mandatory", and "at a minimum" may be confusing.

Response: This guidance represents NOAA's interpretation of the statutory requirement by outlining what it considers to be effective public public participation. NOAA recognizes that the guidance itself is not the enforceable policy. Rather, the obligation of coastal states to comply rests in the language of section 306(d)(14).

V. Guidance to Implement CZMA Section 306(d)(14)

Section 306(d)(14) imposes a new requirement for effective public participation only on the state's review of Federal agency consistency determinations for direct Federal activities under section 307(c)(1) of the CZMA and any other state coastal management decisions not now covered by an existing public participation procedure. For applications under state general permits, public participation in the review of administrative procedures or regulations allowing for a general determination of consistency will satisfy the public participation requirement. The public should have an opportunity to comment on a project's relationship with the state coastal management program's goals and policies. NOAA interprets the statute to require the following:

(a) States must provide timely public notice.

(1) States must issue, or cause to be issued, public notice at the earliest practicable time after the application and/or consistency determination has been received by the lead state coastal management agency, except in cases where earlier public notice on the consistency determinations by the relevant Federal agency meets OCRM's standards for acceptable public notice listed below.

(2) A public comment period must be provided. The length of the comment period may vary in accordance with state or Federal law, and as appropriate for the type of authorization involved. However, the comment period must be sufficient to give the public a meaningful opportunity to develop and provide comments.

(b) Public participation, at a minimum, must consist of written public notice and solicitation of public comments. Provision for a public hearing or meeting may also be provided. If a state chooses to use public hearings or public meetings to provide for effective public participation, such hearings or meetings should be held in a location accessible to most interested or affected parties to the maximum extent possible.

The written public notice must:

(1) specify that the proposed activity is subject to review for consistency uunder the policies of the state coastal management program;

(2) provide sufficient information to serve as a basis for meaningful comment;

(3) specify a source for additional information; and

(4) specify a contact for submitting comments to the state coastal management program.

(c) At a minimum, the public notice must be provided in the area(s) of the coastal zone likely to be affected by the activity. Procedural options that may be used include, but are not limited to, the options listed below.The use of one or more of the following must also conform with the guidelines set forth in (a) and (b) above.

(1) public notice through an official state gazette;

(2) public notice through a local newspaper serving areas of coastal zone likely to be affected by the activity;

(3) public notice through individual state mailings;

(4) public notice through a state coastal zone management newsletter;

(5) arrangements between a state coastal management program and appropriate Federal agencies for joint public notice to be provided by the state and Federal agency where direct Federal activities under section 307(c)(1) are involved OCRM also encourages other streamlined procedures for providing public participation. Federal agency notice of a proposed activity would suffice if it meets the guidelines set forth in (a) and (b) above.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–14221 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–08–M

[Docket No. 940420–4120]

RIN 0648–ZA05

Announcement of Opportunities for Research Funding in the National Estuarine Research Reserve System for Fiscal Year 1995

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The Sanctuaries and Reserves Division of the Office of Ocean and Coastal Resource Management is soliciting proposals for funding research within the National Estuarine Research Reserve System. The focus of funding for the upcoming annual grant period is the restoration of estuarine and estuarine-like ecosystems. This notice sets forth funding priorities, selection criteria, and procedures for proposal submission.

DATES: All pre-proposals must be postmarked no later than July 15, 1994. Notification regarding the disposition of the pre-proposals will be issued on or about September 1, 1994. Final proposals must be postmarked no later than November 1, 1994.

ADDRESSES: CAPT. Francesca M. Cava, Chief, Sanctuaries and Reserves Division, NOAA/Office of Ocean and Coastal Resource Management, 1305 East-West Highway, SSMC4, #12520, Silver Spring, MD 20910, Attn: FY95 NERRS Research. FAX: 301–713–0404. See Appendix I for National Estuarine Research Reserve addresses.

FOR FURTHER INFORMATION CONTACT: For further information on research opportunities under the National Estuarine Research Reserve System, contact the on-site personnel listed in Appendix I or CAPT. Francesca M. Cava of the Sanctuaries and Reserves Division (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

I. Authority and Background

Section 315 of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1461, establishes the

National Estuarine Research Reserve System (NERRS). 16 U.S.C. 1461 (e)(1)(B) authorizes the Secretary of Commerce to make grants to any coastal state or public or private person for purposes of supporting research and monitoring within a national estuarine reserve that are consistent with the research guidelines developed under subsection (c). This program is listed in the Catalog of Federal Domestic Assistance under "Coastal Zone Management Estuarine Research Reserve," Number 11.420.

II. Information on Established National Estuarine Research Reserves

The NERRS consists of estuarine areas of the United States which are designated, developed, and managed for research and educational purposes. Each National Estuarine Research Reserve (Reserve) within the NERRS is chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921.

Each Reserve is suited to support a wide range of beneficial uses of ecological, economic, recreational, and aesthetic value which are dependent upon maintenance of a healthy ecosystem. Each site provides habitat for a wide range of ecologically and commercially important species of fish, shellfish, birds, and other aquatic and terrestrial wildlife. Each Reserve has been designed to ensure its effectiveness as a conservation unit and as a site for long-term research and monitoring. As part of a national system, the Reserves collectively provide an excellent opportunity to address research questions and estuarine management issues of national significance. For a detailed description of the sites, contact individual site Managers and/or Research Coordinators. The on-site contacts and addresses of the National Estuarine Research Reserves are provided in Appendix I.

III. Availability of Funds

Funds are available on a competitive basis to any public or private university, qualified public or private institution, individual, or coastal state (including Great Lakes States, Puerto Rico, Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands) to conduct research within National Estuarine Research Reserves. Because NOAA has substantial involvement in the research, NERRS research funds are normally awarded through a cooperative agreement. NOAA may be involved in the project in the following manner:

The Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management, reserves the right to immediately halt activity on this project if it becomes obvious that the project is not fulfilling the mission of the National Estuarine Research Reserve System goals. Day-to-day management is the responsibility of the Principal Investigators, however, frequent guidance and direction is provided by the Federal Government for the successful conduct of this project. Non-compliance with a Federally approved management plan may result in immediate halting of the project.

It is our intention to review and approve each stage of work before the next begins to assure quality scientific progression and results that will produce viable information on which to form valid, productive coastal management decisions.

Managers, Research Coordinators, and all other staff at NERRS sites are ineligible to submit competitive research proposals under this Announcement. In FY92 through FY94, SRD provided funding in the amount of approximately $700,000, each year, for research in the NERRS. The approximate range of funding per successful project in recent years has been between $30,000 and $70,000. In FY95, it is expected that approximately $700,000 will be available for funding new one- and two-year projects at similar levels. Federal funds requested must be matched by the applicant by at least 30% of the total cost of the project. For example, it the total project cost is $10,000, the Federal share is $7,000, the non-Federal match is $3,000.

Note: The match requirement was decreased from 50% to 30% by Coastal Zone Act Reauthorization Amendments of 1990.

The required match must be with cash or the value of goods and services directly benefiting the project in accordance with 15 CFR part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments," and OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." It is anticipated that projects receiving funding under this announcement will begin in the spring/summer of 1995. Earliest anticipated start date is May 1, 1995. Applicants not familiar with the requirements of a cooperative agreement or who need additional information on application requirements are encouraged to contact SRD.

IV. Purpose and Priorities

Research funds are used to support management-related projects that will: enhance scientific understanding of Reserve environments; provide information needed by Reserve Managers and coastal zone decision makers; and improve public awareness of estuaries and estuarine management issues. Research projects may be oriented to specific Reserves; however, projects that involve or benefit more than one Reserve in the national system will be given higher priority.

The primary research objective for the NERRS is the study of the causes and effects of natural and anthropogenically-induced change in the ecology of esturaine and estuarine-like ecosystems. All research funded through SRD should be designed to provide information of significant value to the development and implementation of resource management policy governing the U.S. coastal zone, for which NOAA's Office of Ocean and Coastal Resource Management has management and regulatory responsibilities. Beginning in FY93, SRD established a series of two-year research priority categories to serve as foci for the SRD competitive research program (see below). The FY95–96 research priority, which is the subject of this notice, is habitat restoration. Every two years, SRD will review future research needs and establish the next two-year research priority.

NERRS Research Priorities for FY 1993–1998

FY 1993, 1994: Non-point Source Pollution.

FY 1995, 1996: Habitat Restoration.

FY 1997, 1998: Effects of Habitat Alteration on Coastal Biota.

Research proposals for FY95 should be designed to answer some aspect(s) of the following broad management-oriented question: What are the most appropriate methods, experimental designs, models and/or evaluative criteria for restoring estuarine and estuarine-like ecosystems? While this theme is the primary funding priority for SRD in FY95/96, consideration may also be given to other projects of special merit that address other significant coastal management issues (e.g., non-point source pollution) on a regional or national scale. The availability of funding for such projects of special merit will, however, be extremely limited, and will be determined after the primary research priority has been addressed.

Research proposals submitted in response to this announcement must: address coastal management issues identified as having regional or national significance; relate them to the National Research Priority described in this announcement; and be conducted (at least partially) within one or more designated NERRS sites. Research

projects are funded for a duration of either one or two years. Multiple year projects will always be initiated in the first year of a two-year priority. One-year projects may be submitted in either year of a two-year priority. Therefore, proposals submitted under this announcement for FY95 funding may be of one- or two-year duration.

The research topic and the Reserve must be carefully chosen to ensure that the resource management issues of primary concern to the Reserve and the NERRS are addressed. Thus, it is critical that all prospective researchers contact the appropriate Reserve manager or research coordinator before submitting a proposal responding to this announcement.

V. Guidelines for Proposal Preparation, Proposal Review and Evaluation, and Reporting Requirements

Applicants for SRD research funds must follow the guidelines presented herein when preparing pre-proposals and proposals for research in Reserves. Pre-proposals and proposals not following these guidelines will be returned to the applicant without further review.

Proposals for research in the NERRS are solicited annually for award the following fiscal year. Proposal due dates and other pertinent information are contained in this announcement of research opportunities. All proposals sent to SRD must cite and reference this **Federal Register** notice. Proposers must submit an original and two (2) copies of each proposal and all supporting documents (curricula vitae, literature-referenced, etc.).

Each proposal will be reviewed only as a one- or two-year project, as specified by the applicant. Applicants whose pre-proposals are approved for further review must submit an original and two (2) copies of their full proposals as well.

A. Pre-proposals

Pre-proposals will be used by SRD to evaluate the applicability of the research plan with regard to the goals of this announcement. Pre-proposals may not exceed six (6) double-spaced pages including the abstract, introduction, objectives, statement of hypothesis, brief methods description, and discussion of anticipated results and benefits. A discussion of coordination with other research in progress or proposed is encouraged. Each pre-proposal must include a cover page which lists principal investigator(s) name(s), address(es) and telephone number(s), proposal title, name of institution providing matching funds, amount of Federal funds requested and amount of match, requested start date (month), and site(s) where research is to be conducted. Curricula vitae (not to exceed 3 pages each) for each researcher and a detailed budget showing matching funds must be included. The 6 double-spaced page limit does not include budget and budget description, cover page, curriculum vitae, literature cited section, and any tables or figures. No Federal forms need be submitted with a pre-proposal. The pre-proposal and additional sections should be submitted to CAPT Francesca M. Cava at the address provided in the Addresses section. Receipt of all pre-proposals will be acknowledged and a copy sent to the appropriate Reserve Manager. All pre-proposals will be reviewed by SRD research staff, the SRD Headquarters Regional Managers and their staff, an outside technical review panel, and the relevant Reserve Manager, Research Coordinator, and their research advisory committees, where applicable. Pre-proposals will be rated using the criteria listed in section C below, "Proposal Review and Evaluation." Applicants whose research projects are selected for further consideration will be requested to submit full proposal. Applicants whose projects are eliminated at this point will be notified.

Incomplete pre-proposals will be returned to the Principal Investigator without further review.

B. Full Proposals

Full proposals may be submitted only by those individuals requested to do so following review of pre-proposals. Unsolicited full proposals will be returned without review. One (1) original and two (2) copies of the proposal (including all forms, curricula vitae, etc.) must be submitted to the same address as the pre-proposals. The proposal may not exceed 20 double-spaced pages, excluding Federal forms, table of contents, title page, literature cited, curricula vitae, budget, and figures and table. Incomplete proposals will be returned without further review.

An Application Kit will be sent to those individuals who are requested to submit full proposals. This kit will include all required Federal forms, with instructions, as well as SRD guidelines for content and format of the full proposal.

C. Proposal Review and Evaluation

Pre-proposals will be reviewed as outlined in section A, "Pre-proposals," above. All full proposals will be reviewed by: SRD research staff; at least two outside individuals who are acknowledged experts in the particular field represented by the proposal; and an outside panel of experts. Each full proposal is also forwarded to the appropriate SRD Regional, State Coastal Zone Management, and Reserve staffs for comments. Verbatim copies of all peer reviews, excluding the name of the reviewer, will be sent to the applicant. Applicants will have two weeks to address and rebut peer reviews. These rebuttals will be considered by SRD when final funding decisions are made. All recommendations for funding by SRD must be approved by the NOAA Grants Management Division before awards are made.

In order to provide for the fair and equitable selection of the most meritorious research projects for support, SRD has established specific criteria for their review and evaluation. These criteria are intended to be applied to all research proposals in accordance with the SRD Research Priorities set forth in this announcement. The criteria used in both pre-proposal and full proposal review process are listed below, together with the elements that constitute each criterion and their relative weights (in parenthesis):

1. Scientific Merit (40%). This criterion is used to evaluate whether the objectives of the proposal are: important to the field; consistent with the stated national research priorities; and likely to improve the scientific understanding of estuarine processes within the Reserve(s) as well as in other similar estuaries.

2. Technical Approach (40%). This criterion is used to assess: the technical feasibility of the proposed effort; the reasonableness of the hypotheses; the degree to which the proposed timeline is realistic; the appropriateness and scientific validity of the proposed analytical methods; the degree to which the proposal demonstrates an understanding of the Reserve environment and management needs; the current state of knowledge in the particular field of research interest; and the total research requirements.

3. Qualifications of P.I. and Key Personnel (10%). This criterion relates to the experience and past performance of the principal investigator and key personnel, their familiarity with the geographic area of the proposed study, and their publication record.

4. Institutional Support and Capabilities (5%). This criterion relates to the extent of the applicant institution's support for and commitment to the proposed research and what facilities, equipment, and other resources are available to the principal investigator and key person-

from his/her institution for use in accomplishing the proposed work.

5. Budget (5%). This criterion is used to determine whether the budget is realistic and reasonable for accomplishing the proposed tasks.

The external panel will review and rank the proposals based solely on the technical criteria above. The panel will submit its rankings to SRD. In making final funding decisions among qualified proposals ranked highly by the above technical criteria, SRD will also take into consideration the following programmatic policy factors:

Utility to Reserve Management and to Regional Coastal Management Issues. This criterion is used to assess the likelihood that results of this research will support the management of the affected Reserve(s) and will enhance wise coastal resource management within the region(s) of study.

Relevance to National Research Priorities and Utility to National Coastal Management Issues. This criterion is used to assess the relationship between the objectives of the proposed project and the National Research Priorities established by NOAA, and to assess the likelihood that results of this research will be important to national coastal management issues across the NERR System and coastal states.

Consequently, proposals ranked highest on technical criteria will not necessarily receive funding from SRD. Final funding decisions will be made by the Chief of the Sanctuaries and Reserves Division, based upon review panel rankings and programmatic considerations.

VI. Other Requirements

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

All non-profit and for-profit applicants are subject to a name-check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) A negotiated repayment schedule is established and at least one payment is received; or (3) Other arrangements satisfactory to the Department of Commerce are made.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. In addition, any recipients who are past due for submitting acceptable final reports under any previous SRD-funded research will be ineligible to be considered for new awards until final reports are received, reviewed and deemed acceptable by SRD.

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C., 1001.

If an application is selected for funding, the Department of Commerce (DOC) has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC. However, funding priority will be given to the second year of multi-year proposals upon satisfactory completion of the first year of research.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matter; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

5. Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," and disclosure form SF–LLL, "Disclosure of Lobbying Activities." The original form CD–512 is intended for the use of recipients. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products: Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program should be American-made to the extent feasible in accordance with Public Law 103–121, sections 606(a) and (b).

Indirect Costs: The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Preaward Activities: If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

VII. Classification

This notice has been determined to be "not significant" for purposes of E.O. 12866.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This notice contains a collection of information requirement subject to the Paperwork Reduction Act. The

collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0121.

(Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Research Reserves)

Dated: June 1, 1994.

Frank W. Maloney,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management.

Appendix I—Nerrs On-Site Staff

Alabama

Mr. Thomas McAlpin, Manager, Weeks Bay National Estuarine Research Reserve, 10936–B, U.S. Highway 98, Fairhope, AL 36532, (205) 928–9792

California

Mr. Steve Kimple, Manager, Dr. Andrew deVogelaere, Research Coordinator, Elkhorn Slough National Estuarine Research Reserve, 1700 Elkhorn Road, Watsonville, CA 95076, (408) 728–2822

Mr. Ed Navarro, Acting Manager, Tijuana River National Estuarine Research Reserve, 3990 Old Town Ave., Suite 300C, San Diego, CA 92110, (619) 220–5400

Delaware

Mr. Lee Emmons, Manager, Dr. Bill Meredith, Research Coordinator, Delaware NERR, Department of Natural Resources and Environmental Control, P.O. Box 1401, Dover, DE 19903, 302–739–6444

Florida

Mr. Woodard Miley II, Manager, Mr. Lee Edmiston, Research Coordinator, Apalachicola River National Estuarine Research Reserve, 261 7th Street, Apalachicola, FL 32320, (904) 653–8063

Mr. Gary Lytton, Manager, Dr. Thomas Smith, Research Coordinator, Rookery Bay National Estuarine Research Reserve, 10 Shell Island Road, Naples, FL 33942, (813) 775–8845

Georgia

Mr. Buddy Sullivan, Manager, Dr. Stuart Stevens, Research Coordinator, Sapelo Island National Estuarine Research Reserve, Department of Natural Resources, P.O. Box 19, Sapelo Island, GA 31327, (912) 485–2251 (Sullivan), (912) 264–7218 (Stevens)

Hawaii

Mr. William Stormont, Manager, Waimanu Valley National Estuarine Research Reserve, Department of Land and Natural Resources, Division of Forestry & Wildlife, 1151 Punchbowl Street, Honolulu, HI 96813, (808) 587–0051

Note: The State of Hawaii has requested that Waimanu Valley NERR be formally removed from the NERRS. This may affect future research resources and opportunities at this site.

Maine

Mr. James List, Manager, Dr. Michelle Dionne, Research Coordinator, Wells National Estuarine Research Reserve, RR #2, Box 806, Wells, ME 04090, (207) 646–1555.

Maryland

Ms. Mary Ellen Dore, Manager, Chesapeake Bay National Estuarine Research Reserve in Maryland, Dept. of Natural Resources, Tawes State Office Building, B–3, 580 Taylor Avenue, Annapolis, MD 21401, (410) 974–3382

Massachusetts

Ms. Christine Gault, Manager, Dr. Richard Crawford, Research Coordinator, Waquoit Bay National Estuarine Research Reserve, Dept. of Environmental Management, P.O. Box 92W, Waquoit, MA 02536, (508) 457–0495

New Hampshire

Mr. Peter Wellenberger, Manager, Great Bay National Estuarine Research Reserve, New Hampshire Fish and Game Department, 37 Concord Road, Durham, NH 03824, (603) 868–1095

New York

Ms. Elizabeth Blair, Manager, Mr. Chuck Nieder, Research Coordinator, Hudson River National Estuarine Research Reserve, New York State Department of Environmental Conservation, c/o Bard College Field Station, Annandale-on-Hudson, NY 12504, (914) 758–5193

North Carolina

Dr. John Taggart, Manager, Dr. Steve Ross, Research Coordinator, North Carolina National Estuarine Research Reserve, University of North Carolina at Wilmington, 7205 Wrightsville Avenue, Wilmington, NC 28403, (919) 256–3721

Ohio

Mr. Eugene Wright, Manager, Dr. David Klarer, Research Coordinator, Old Woman Creek National Estuarine Research Reserve, 2514 Cleveland Road, East, Huron, OH 44839, (419) 433–4601

Oregon

Mr. Michael Graybill, Manager, Dr. Steve Rumrill, Research Coordinator, South Slough National Estuarine Research Reserve, P.O. Box 5417, Charleston, OR 97420, (503) 888–5558

Puerto Rico

Mr. Ramon Martinez, Manager, Mr. Carlos J. Cianchini, Research Coordinator, Jobos Bay National Estuarine Research Reserve, Dept. of Natural Resources, P.O. Box 1170, Guayama, PR 00655, (809) 864–0105

Rhode Island

Mr. Al Beck, Manager, Narragansett Bay National Estuarine Research Reserve, Dept. of Environmental Management, Box 151 Prudence Island, RI 02872, (401) 683–5061

South Carolina

Mr. Michael D. McKenzie, Manager, Dr. Elizabeth Wenner, Research Coordinator, Ashepoo-Combahee-Edisto (ACE) Basin, South Carolina Wildlife and Marine Resources Department, P.O. Box 12559, Charleston, SC 29412, (803) 762–5052

Dr. Dennis Allen, Manager, Dr. Joe Schubauer-Berigan, Research Coordinator, North Inlet-Winyah Bay, Baruch Marine Field Laboratory, P.O. Box 1630, Georgetown, SC 29442, (803) 546–3623

Virginia

Dr. Maurice P. Lynch, Manager, Dr. Jeffrey Shields, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve in Virginia, Virginia Institute of Marine Science, College of William and Mary, P.O. Box 1347, Gloucester Point, VA 23062, (804) 642–7135

Washington

Mr. Terry Stevens, Manager, Dr. Douglas Bulthuis, Research Coordinator, Padilla Bay National Estuarine Research Reserve, 1043 Bayview-Edison Road, Mt. Vernon, WA 98273, (206) 428–1558

[FR Doc. 94–14222 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 051994B]

Draft National Contingency Plan for Response to Unusual Marine Mammal Mortality Events

AGENCY: National Marine Fisheries Service (NMFS), National Oceanographic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces the availability of the draft National Contingency Plan for Response to Unusual Marine Mammal Mortality Events prepared in accordance with section 404 of Marine Mammal Protection Act.

DATES: Comments on the draft report must be received by September 12, 1994.

ADDRESSES: Written comments and requests for copies of the draft plan should be sent to Dean Wilkinson, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910–3226.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson at (301) 713–2322.

SUPPLEMENTARY INFORMATION: Section 404 of the Marine Mammal Protection Act, as amended (16 U.S.C. *et seq.*) outlines the procedures to be followed if an unusual mortality event affecting marine mammals occurs. An unusual mortality event is defined as an event that: (1) Is unexpected, (2) involves a significant die-off of any marine mammal population, and (3) demands an immediate response.

Section 404 also mandates preparation of a national contingency plan for responding to unusual

mortality events. The plan is to be made available for public comment before being finalized. The plan is to be in place by November 1994. NMFS has prepared a draft plan detailing contacts to be made, sources of information, analyses to be conducted, and the logistics of response. This plan is available to the public (see **ADDRESSES**).

Dated: June 6, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–14249 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–22–F

Advisory Council; Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Monterey Bay National Marine Sanctuary Advisory Council Open Meeting.

SUMMARY: The Advisory Council was established in December 1993 to advise and assist the Secretary of Commerce in the implementation of the management plan for the Monterey Bay National Marine Sanctuary.

TIME AND PLACE: June 24, 1994 from 9 until 12:30. The meeting location will be at the Hilton Park Center, Monterey, California.

AGENDA: General issues related to the Monterey Bay National Marine Sanctuary are expected to be discussed, including the water quality protection program and vessel traffic.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Aaron King at (408) 647–4257 or Elizabeth Moore at (301) 713–3141.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: June 7, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–14287 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 052694C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permit no. 843 (P771 #68).

SUMMARY: Notice is hereby given that the Alaska Fisheries Science Center, NMFS, NOAA, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Bldg. 4, Seattle, WA 98115, has requested a modification to permit No. 843.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to permit No. 843, issued on June 2, 1993 (58 FR 32520), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 843 authorizes the permit holder to conduct aerial, boat, and ground surveys and scat collections for harbor seals (*Phoca vitulina*) at haulouts and rookeries in Alaska over a 4-year period ending in 1997. The permit holder now seeks authorization to capture and radio tag up to 50 harbor seals in order to determine a correction factor to be applied towards the number of seals at sea or moving between haulout sites, and thus missed by aerial surveys. The permittee estimates that up to 200a dditional seals may be disturbed incidental to the capture/tagging activities.

Dated: June 3, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National MarineFisheries Service.

[FR Doc. 94–14250 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 052594A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification No. 1 to scientific research permit No. 868 (P539).

SUMMARY: Notice is hereby given that a request for modification of Scientific Research Permit No. 868 submitted by Dr. Norihisa Baba, Chief, Fur Seal Section, the National Research Institute of Far Seas Fisheries, Fisheries Agency of Japan, 5–7–1 Orido, Shimizu, Shizuoka, 424 Japan, has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

SUPPLEMENTARY INFORMATION: On April 25, 1994, notice was published in the **Federal Register** (59 FR 19695) that a modification of permit No. 868, issued July 16, 1993 (58 FR 39525), had been requested by the above-named individual. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and fur seal regulations at 50 CFR part 215.

Permit No. 868 has been modified to initiate the field season on June 15, 1994, to extend the effective date through September 1996, and to increase the number of fur seals authorized as subjects of the research.

Dated: June 6, 1994.

William W. Fox, Jr., Director,

Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–14300 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 052494A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit (P420C).

SUMMARY: Notice is hereby given that Permit No. 801 issued to Dr. Michael Castellini, Ph.D., Institute of Marine Science, University of Alaska, on October 16, 1992 (57 FR 48312, October 26, 1992) has been modified. The modification becomes effective upon publication in the Federal Register.

ADDRESSES: The Permit, as modified, and associated documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20901 (301/713–2289); and

Director, Alaska Region, National Marine Fisheries Service, Federal Annex, 9109 Mendenhall Mall Road, Suite 6, Juneau, AK 99802 (907/586–7221).

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of §§1A216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the subject Scientific Research Permit authorized harassment of up to 3200 Weddell seals (*Leptonychotes weddellii*), 30 each of crabeater seals (*Lobodon carcinophagus*), leopard seals (*Hydrurga leptonyx*), Ross seals (*Ommatophoca rossii*), Antarctic fur seal (*Arctocephalus gazella*) and southern elephant seal (*Mirounga leonina*) during various scientific experiments, and import specimens from McMurdo Sound, Antarctica.

The Permit has been modified to expand the research protocol on animals already authorized by inserting catheters in six pups. No increase in the total take authority is authorized.

Dated: June 6, 1994.

William W. Fox, Jr., Ph.D.

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–14301 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czech Republic

June 7, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated August 12, 1993 and April 11, 1994, between the Governments of the United States and the Czech Republic establishes limits for the period beginning on June 1, 1994 and extending through May 31, 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 7, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated August 12, 1993 and April 11, 1994, between the Governments of the United States and the Czech Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 15, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in the Czech Republic and exported during the twelve-month period beginning on June 1, 1994 and extending through May 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
410	1,515,000 square meters.
433	5,950 dozen.
435	3,915 dozen.
443	72,533 numbers.
624	1,590,000 square meters.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1994.

Imports charged to these category limits for the period June 1, 1993 through May 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Czech Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–14308 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

June 7, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated August 6, 1993 and October 6, 1993, between the Governments of the United States and the Slovak Republic establishes limits for the period beginning on June 1, 1994 and extending through May 31, 1995.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 7, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated August 6, 1993 and October 6, 1993, between the Governments of the United States and the Slovak Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 15, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Slovak Republic and exported during the twelve-month period which began on June 1, 1994 and extends through May 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
410	395,635 square meters.
433	11,050 dozen.
435	16,691 dozen.
443	92,315 numbers.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1994.

Imports charged to these category limits for the period June 1, 1993 through May 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Slovak Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–14309 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the DIA Performance Review Committee

AGENCY: Defense Intelligence Agency (DoD).

ACTION: Notice of Membership of the DIA Performance Review Committee (PRC).

SUMMARY: This notice announces the appointment of the Performance Review Committee (PRC) of the Defense Intelligence Agency. The PRC's jurisdiction includes the entire Defense Intelligence Senior Executive Service (DISES). Publication of PRC membership is required by 10 U.S.C. 1601 (a)(4).

The PRC provides fair and impartial review of DISES performance appraisals and makes recommendations to the Director, DIA, regarding performance, performance awards, pay adjustments, and at the applicable 3-year cycle, DISES recertification.

EFFECTIVE DATE: 1 July 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Curriden, Office for Human Resources, Defense Intelligence Agency (DAH–1), 3100 Clarendon Boulevard, Arlington, VA 22201–5322, 703–284–1341.

Primary Members

Mr. Dennis M. Nagy, Deputy Director (Chairman)
Mr. A. Denis Clift, Chief of Staff
MG John A. Leide, USA, Director, National Military Intelligence Collection Center
Ms. Dolores D. Greene, Associate Director for Estimates
Mr. Williafn J. Allard, General Counsel

Alternate Members

Ms. Cheryl Roby, Deputy Director for Intelligence Program Evaluation
Ms. Margaret R. Munson, Director of Administration
Mr. Lewis A. Prombain, Comptroller
Mr. William R. Grundmann, Director for Combat Support
Mr. John A. Shackelford, Chief, Functional Management Staff
Mr. John J. Sloan, Director for Policy Support
Mr. John K. Kiehm, Deputy Director for HUMINT Services

Dated: June 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–14273 Filed 6–10–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on the DoD Biological Defense Program

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on the DoD Biological Defense Program will meet in closed session on June 27–29, 1994, at the Joint Program Office for Biological Defense (JPO–BD), Falls Church, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the ongoing Military Departments research,

development, and acquisition programs and provide recommendations to the JPO–BD. The Task Force should also review the biological defense aspects of the medical research and development program to ensure that the scope of the science and technology is adequate.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: June 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–14270 Filed 6–10–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Information Architecture for the Battlefield

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Information Architecture for the Battlefield will meet in closed session on July 11–12 and August 4–5, 1994 at Strategic Analysis, Inc., Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will provide recommendations for implementing an information architecture for commanders and forces at all levels.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: June 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–14272 Filed 6–10–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Joint Advanced Strike Technology Program (JASTP)

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Joint Advanced Strike Technology Program (JASTP) will meet in closed session on June 29–30, July 5–6, and July 19–20, 1994 at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will provide recommendations for implementing a Joint Advanced Strike Technology Program in the FY 95–05 period.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: June 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–14271 Filed 6–10–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Pittsburgh Energy Technology Center; Unsolicited Financial Assistance Award

AGENCY: Pittsburgh Energy Technology Center, DOE.

ACTION: Acceptance of an Unsolicited Proposal Application for a Cooperative Agreement with Southern Company Services, Inc.

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.14 (d) and (e), it intends to award a Cooperative Agreement to Southern Company Services, Inc. for "Generic NO_x Control Intelligent System". The application has been determined to be meritorious in a general evaluation in accordance with 10 CFR 600.14(d) and would not be eligible for financial assistance under a recent, current or planned solicitation and a competitive solicitation would be inappropriate.

ADDRESSES: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940.

FOR FURTHER INFORMATION CONTACT: David L. Hunter, Contract Specialist, 412/892–4524.

SUPPLEMENTARY INFORMATION:

Cooperative Agreement No.

DE–FC22–94PC94253.

Title of Research Effort

Generic NO_x Control Intelligent System.

Awardee

Southern Company Services, Inc.

Term of Assistance Award

6 months.

Cost of Assistance Effort

The total estimated project value is $435,357.

Objective

The objective of this project is to develop a "Generic NO_x Control Intelligent System" that is designed to be an enhancement to a power plant's existing digital control system to allow identification of operating conditions that reduce NO_x emissions while meeting other operational constraints on the unit.

Dated: May 11, 1994.

Richard D. Rogus,

Contracting Officer.

[FR Doc. 94–14302 Filed 6–10–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Cooperative Agreement To University of Illinois

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: DOE announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criteria set forth at 10 CFR 600.7(b)(2)(i) (B), (C), (D) and 600.14(d) to the University of Illinois, Department of the Illinois State Geological Survey (ISGS) under cooperative agreement number DE–FC01–94E124855. The purpose of the proposed agreement is to revise the Energy Information Administration (EIA) demonstrated reserve base (DRB) of coal for the State of Illinois, with new quantity/quality data. This agreement is necessary to achieve program objectives, conserve public funds and is essential to the

public interest. This effort will have a total estimated cost of $83,000 to be provided by the DOE.

The (ISGS) is the State authority on Illinois coal resources. This agreement will assist the State of Illinois in its efforts to continually collect analyses on coal quality and perform geological mapping to determine the quantity and quality of coal reserves in the state.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Shirley A. Jones, HR–531.21, 1000 Independence Ave., SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The cooperative agreement will provide funding for the ISGS to develop Phase I Coal Reserves Data Base (CRDB) coal resource data for updated estimates of the demonstrated reserve base (DRB) and recoverable reserves of coal in Illinois, allocated to specified ranges of sulfur content and heat content. The DRB constitutes the foundation data for coal reserve analyses. Recoverable reserve data derived from the DRB comprise the pivotal data base for analyzing future coal supplies. Data development may include analyses of coal geology, resource quantities, coal quality characteristics, and other factors that affect resource accessibility and minability. Data output must include remaining identified resources, DRB, remaining accessible reserve base, recoverable reserves, allocated by coal rank, type of mining, and (excepting identified resources) heat and sulfur content.

DOE has determined that the proposed agreement meets the criteria set forth at 10 CFR 600.7(b)(2) (B), (C) and (D) in that (1) The activities are being conducted by the applicant using its own resources or these donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity, (2) the ISGS is a unit of state government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity, and (3) the ISGS has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data and technical expertise, or other such unique qualifications.

The ISGS is charged with the responsibility of mapping and estimating the coal resources for the State of Illinois and possesses over 1,300 agency-collected analyses including sulfur contents and heat values. This data, along with data from other sources, will enable them to revise the coal reserves by quality and mining method for Illinois. No other private or government entity is known to have the data and mapping capability required to estimate the coal reserves by quality for the State of Illinois.

Term: The term of the proposed cooperative agreement is expected to be 12 months from the effective date of award.

Issued in Washington, DC on June 6, 1994.

Scott Sheffield,

Director, Headquarters Operations, Division B, Office of Placement and Administration.

[FR Doc. 94–14303 Filed 6–10–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER87–483–005, et al.]

Southern California Edison Co., et al.; Electric Rate and Corporate Regulation Filings

June 6, 1994.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. ER87–483–005]

Take notice that on May 27, 1994, Southern California Edison Company (Edison or Company), tendered for filing its compliance filing in the above-referenced docket.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Virginia Electric and Power Company

[Docket No. ER94–1022–000]

Take notice that on May 31, 1994, Virginia Electric and Power Company, tendered for filing an amendment to its filing in the above-captioned docket. The Power Sales Tariff, which was submitted as an amendment, provides for the sale for resale of Merom unit power, system power, and emergency energy to eligible purchasers under the tariff.

Copies of the filing were served upon intervenors in this docket as well as upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER94–1150–000]

Take notice that on June 1, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing an Amendment to its April 12, 1994, filing of a Control Area Rate Schedule for the City of Redding (Redding) provided by PG&E.

According to PG&E, on May 31, 1994, it reached an interim letter agreement that will make the Western Area Power Administration a "Third Party Provider of Spring Reserve and Regulation services" under the proposed Control Area Rate Schedule. PG&E states that "this event is of great relevance to the Commission's consideration of the [Control Area Rate Schedule]."

Comment date: June 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Services, Inc.

[Docket No. ER94–1306–000]

Take notice that on May 27, 1994, Entergy Services, Inc. (Entergy Services), on behalf of Mississippi Power & Light Company (MP&L), Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, New Orleans Public Service Company (collectively, the Entergy Operating Companies), and itself, filed the Amendment (Amendment) to Interconnection Agreement between MP&L and Municipal Energy Agency of Mississippi (MEAM), effective as of July 1, 1984, as amended (Interconnection Agreement), which is on file with the Commission as MP&L Rate Schedule FERC No. 268. Entergy Services states that the purpose of the Amendment is to set forth how MEAM may use the Entergy Operating Companies Transmission Service Tariff in conjunction with the Interconnection Agreement. Entergy Services asks that the Amendment be made effective on May 17, 1994.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Golden Spread Electric Cooperative, Inc.

[Docket No. ER94–1307–000]

Take notice that on May 27, 1994, Golden Spread Electric Cooperative, Inc. tendered for filing proposed changes to Schedule A of its FERC Electric Service Rate Schedule Nos. 12–22, and in addition filed a related Special Facilities Agreement with one of its members, Midwest Electric Cooperative, Inc.

Golden Spread proposes to amend Schedule A for each Rate Schedule to add a special facilities charge provision

and a Rider A, which contains the formula to be used in calculating the special facilities charge. The special facilities charge will allow Golden Spread to recover costs from a member related to a transmission or distribution facility which that member has requested that Golden Spread acquire, construct, or cause to be constructed. In addition, Golden Spread filed a Special Facilities Agreement with Midwest which provides for the construction by Golden Spread of a nine mile segment of 69 Kv line on the Midwest system, with associated costs being recovered from Midwest under the special facilities charge provision.

Copies of the filing were served upon Golden Spread's jurisdictional customers, the Public Utility Commission of Texas, and the Oklahoma Corporation Commission.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER94–1309–000]

Take notice that on May 31, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing two Service Agreements to provide non-firm transmission service under the NU System Companies' Transmission Service Tariff No. 2 to Central Vermont Public Service Corporation (CVPS) and to city of Holyoke, Massachusetts Gas and Electric Department (Holyoke). NU requests that the Service Agreements become effective on the date of receipt of the filing by the Commission.

NUSCO states that a copy of this information has been mailed to CVPS and Holyoke.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Central Vermont Public Service Corporation

[Docket No. ER94–1310–000]

Take notice that on May 31, 1994, Central Vermont Public Service Corporation (CVPS) tendered for filing the Actual 1993 Cost Report required under Article 2.4 on Second Revised Sheet No. 18 of FERC Electric Tariff, Original Volume No. 3, of Central Vermont under which Central Vermont provides transmission and distribution service to the following Customers: Vermont Electric Cooperative, Inc., Lyndonville Electric Department, Village of Ludlow Electric Light Department, Village of Johnson Water and Light Department, Village of Hyde Part Water and Light Department, Rochester Electric Light and Power Company, Woodsville Fire District Water and Light Department.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service Corporation

[Docket No. ER94–1311–000]

Take notice that on May 31, 1994, Central Vermont Public Service Corporation (CVPS) tendered for filing the Actual 1993 Cost Report required under Article 2.3(A) on Original Sheet No. 21 of FERC Electric Tariff, Original Volume No. 4, of Central Vermont Public Service Corporation (Company) under which the Company provided Unreserved System Power Service to the following Customers: Lyndonville Electric Department, Village of Ludlow Electric Light Department, Village of Johnson Water and Light Department, Village of Hyde Park Water and Light Department.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Central Vermont Public Service Corporation

[Docket No. ER94–1312–000]

Take notice that on May 31, 1994, Central Vermont Public Service Corporation (CVPS) tendered for filing the Actual 1993 Cost Report required under Paragraph Q–1 on Original Sheet No. 18 of the Rate Schedule FERC No. 135 (RS–2 rate schedule) under which Central Vermont Public Service Corporation (Company) sells electric power to Connecticut Valley Electric Company Inc. (Customer). The Company states that the Cost Report reflects changes to the RS–2 rate schedule which were approved by the Commission's June 6, 1989, order in Docket No. ER88–456–000.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. United Illuminating Company

[Docket No. ER94–1313–000]

Take notice that on May 31, 1994, The United Illuminating Company (UI) submitted for informational purposes all individual Purchase Agreements executed under UI's Wholesale Electric Sales Tariff, FERC Electric Tariff, Original Volume No. 2 during the six-month period of November 1, 1993, through April 30, 1994.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER94–1314–000]

Take notice that on May 31, 1994, Niagara Mohawk Power Corporation (Niagara) tendered for filing with the Commission a Transmission Services Agreement (TSA) between Niagara and the New York Power Authority (NYPA) and Supplement No. 1 to the TSA between Niagara, NYPA and the Municipal Electric Utilities Association (MEUA). The TSA provides for firm transmission service from NYPA to its Municipal and Cooperative Customers (M&C Customers) at rates phased-in over five years. Supplement No. 1 to the TSA provides that future changes in the TSA be negotiated prior to filing with the Commission. Niagara Mohawk requests and effective date of August 1, 1994.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Northern States Power Company (Wisconsin)

[Docket No. ER94–1315–000]

Take notice that on May 31, 1994, Northern States Power Company, Wisconsin (NSP–W) filed Amendment No. 1 to its Power and Energy Supply Agreement with the Village of Bloomer. According to the filing utility the Amendment extends the term of the agreement in exchange for a discount on the power and energy supply rate.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14232 Filed 6–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–265–000]

Algonquin LNG, Inc.; Petition for Waiver

June 7, 1994.

Take notice that on May 31, 1994, Algonquin LNG, Inc. (ALNG) filed a request for waiver of § 284.8(b)(3)–(5) of the Commission's Regulations, requiring an electronic bulletin board (EBB), including the Order No. 563 standardization requirements. ALNG states that it will not be able to provide standardized downloadable data sets by June 1, 1994, as required by Order No. 563. ALNG also states that it has concluded that the cost of operating an EBB outweighs the benefits to ALNG's customers. ALNG proposes to provide information concerning the availability of service by means of telephone and facsimile.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14233 Filed 6–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–273–000]

Columbia Gas Transmission Corporation; Compliance Filing

June 7, 1994.

Take notice that Columbia Gas Transmission Corporation (Columbia) on June 1, 1994, tendered for filing a filing in compliance with the Commission's May 31, 1994 Order (Order) in this docket containing support for the reconciliation of transportation and exchange imbalances.

Columbia states that the Order stated that "[i]f Columbia intends to propose recovery of T&E imbalances during the nine-month close-out period [October 31, 1993 to July 31, 1994]. Columbia should provide complete support for such a proposal." (Order, mimeo at p. 7). The nine-month close-out period is specified in section 39 (section 39) of the General Terms and Conditions of Columbia's FERC Gas Tariff, Second Revised Volume No. 1. On May 2, 1994, Columbia filed a request for rehearing of the Order in which, among other things, Columbia indicated that it would make the instant filing in connection with the Commission's statement regarding transportation and exchange imbalances.

In this compliance filing, Columbia is also seeking a waiver of the nine-month close-out period in section 39 that ends July 31, 1994. Specifically, Columbia is requesting that the Commission extend the close-out period for an additional eight months to March 31, 1995.

Columbia states that copies of the filing were served upon each of Columbia's former sales customers and interested State Commissions, and to each of the parties set forth on the Official Service List in these proceedings.

Any person desiring to intervene or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 or 385.214). All such interventions or protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14234 Filed 6–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–582–000]

National Fuel Gas Supply Corp.; Request Under Blanket Authorization

June 7, 1994.

Take notice that on June 2, 1994, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York, 14203, filed in Docket No. CP94–582–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the National Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a delivery point and appurtenant facilities to provide service to an existing firm transportation customer, National Fuel Gas Distribution Corporation (Distribution) under authorization issued in Docket No. CP83–4–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, National proposes to construct and operate a delivery point located in the Town of Clarence, Erie County, New York. The facilities will include valves, regulators, heaters, filters, meters, piping and appurtenant facilities. National indicates that all facilities will be placed in a previously disturbed area.

National indicates that the total volume to be delivered to the customer is estimated to be 250,000 Mcf annually. National states that the total volumes to be delivered to the customer would not exceed the total volume authorized prior to this request. National states that this FERC Gas Tariff does not prohibit the addition of delivery points. National further states that it has sufficient capacity to accomplish the deliveries proposed herein without detriment or disadvantage to its other customers and that this will have a minimal impact on its peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filling a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14235 Filed 6–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–10–59–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 7, 1994.

Take notice that on June 3, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern filed Eleventh Revised Sheet No. 53 to establish the May 1994 Index Price for determining the dollar/volume equivalent for any transportation imbalances that may exist on contracts between Northern and its Shippers.

Northern states that copies of the filing were served upon the company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14236 Filed 6–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–281–000]

Pacific Interstate Transmission Co.; Intent to Recover Costs of Gas Purchase Agreement Restructuring

June 7, 1994.

Take notice that on June 2, 1994, Pacific Interstate Transmission Co., (PITCO) tendered for filing its notice of intention to recover from its sole customer Southern California Gas Company (SoCalGas) on or immediately following August 15, 1994, pursuant to PITCO's cost-of-service tariff, $192 million in payments made to Northwest Alaska Pipeline Company's (Northwest Alaskan) supplier, Pan-Alberta Gas Ltd. (Pan-Alberta) as consideration for revisions to the terms of gas purchase agreements among PITCO and Northwest Alaskan, Northwest Alaskan and Pan-Alberta.

PITCO states that the revised gas purchase agreement's pricing mechanism is designed to assure that PITCO's sales to SoCalGas will be at a market sensitive rate. PITCO further states that the term of the agreement will be reduced by ten years, from a termination date of October 31, 2012 to October 31, 2003.

PITCO states that recovery by PITCO of its payment to Pan-Alberta shall be achieved by a single payment from SoCalGas. SoCalGas, with the prior approval of the California Public Utilities Commission (CPUC) will raise the necessary funds and pursuant to CPCU authorization will recover a portion of its payment to PITCO from its customers over a five-year period.

PITCO states that Northwest Alaskan shall make the necessary tariff filings to reflect the new pricing provisions and terms of the sale agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell

Secretary.

[FR Doc. 94–14237 Filed 6–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–67–011]

Southern Natural Gas Co; GSR Revised Tariff Sheets

June 7, 1994.

Take notice that on June 2, 1994, Southern Natural Gas Company (Southern) filed in accordance with the Commission's Order Accepting in Part and Rejecting in Part Compliance Filings, and Granting and Denying Rehearing in Part and Accepting Tariff Filing Subject to Conditions and Refund issued in Docket Nos. RP94–67–003, et al. RP94–133–001, et al., and RP94–165–001, et al., on May 27, 1994 (May 27 Order) to revise its GSR demand surcharge for May and June 1994. Southern submitted for filing the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, with the indicated proposed effective dates:

Submitted Effective May 1, 1994

First Substitute Seventh Revised Sheet No. 15
First Substitute Seventh Revised Sheet No. 17

Submitted Effective June 1, 1994

First Substitute Eighth Revised Sheet No. 15
First Substitute Eighth Revised Sheet No. 17

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission s Rules of Practice and Procedure. All such protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary,

[FR Doc. 94–14238 Filed 6–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–165–004 and RP94–264–001]

Southern Natural Gas Co.; GSR Revised Tariff Sheets

June 7, 1994.

Take notice that on June 1, 1994, Southern Natural Gas Company (Southern) filed in accordance with the Commission's Order Accepting in Part and Rejecting in Part Compliance Filings, and Granting and Denying Rehearing in Part and Accepting Tariff Filing Subject to Conditions and Refund issued in Docket Nos. RP94–67–003, et al., RP94–133–001, et al., and RP94–165–001, et al., on May 27, 1994 (May 27, Order). Southern submitted for filing the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, with the indicated proposed effective dates:

Submitted Effective April 1, 1994

Second Substitute Fifth Revised Sheet No. 15
Second Substitute Fifth Revised Sheet No. 17
Second Substitute Fifth Revised Sheet No. 18

Withdrawn Effective July 1, 1994

Ninth Revised Sheet No. 15
Ninth Revised Sheet No. 17
Seventh Revised Sheet No. 18
First Alternate Ninth Revised Sheet No. 15
First Alternate Ninth Revised Sheet No. 17
First Alternate Seventh Revised Sheet No. 18

Submitted Effective July 1, 1994

First Substitute Ninth Revised Sheet No. 15
First Substitute Ninth Revised Sheet No. 17
First Substitute Seventh Revised Sheet No. 18

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14239 Filed 6–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–276–000]

Tennessee Gas Pipeline Co.; Proposed Settlement and Proposed Changes in FERC Gas Tariff

June 7, 1994.

Take notice that on May 26, 1994, Tennessee Gas Pipeline Company (Tennessee) filed a Stipulation and Agreement (Stipulation) proposing amendments to its FERC Gas Tariff, Fifth Revised Volume No. 1, pursuant to Rule 602 (18 CFR 385.602). Tennessee has included an appendix with pro forma tariff sheets containing the modifications necessitated by the Stipulation.

The Stipulation effects service changes in three areas: (1) Supply aggregation through pooling; (2) automatic balancing through storage in conjunction with a balancing agreement; and (3) determination and resolution of imbalances. Tennessee states that these service changes are the result of discussions between Tennessee and various groups of customers on its system. Tennessee states that the Stipulation serves to complement the service structure recently implemented pursuant to Order No. 636 so as to provide customers with enhanced services while protecting operational integrity. Tennessee states that the filing has been served on all parties listed in the Docket No. RS92–23 service list.

All parties to the proceedings in Docket No. RS92–23, *et al.* are automatically parties to this proceeding. Any other person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before June 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any persons wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection in the public reference room. Pursuant to Rule 602, initial comments on the proposed Stipulation must be filed on or before June 15, 1994, and reply comments on June 27, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14240 Filed 6–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–43–001]

Williston Basin Interstate Pipeline Co.; Annual Take-or-Pay Reconciliation Filing

June 7, 1994.

Take notice that on June 3, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing a revision to its Annual Take-or-Pay Reconciliation Filing, which was filed May 31, 1994, pursuant to the General Terms and Conditions of its FERC Gas Tariff.

Williston Basin has requested that the Commission accept Substitute First Revised Sheet No. 308 of this filing to become effective July 1, 1994.

Williston Basin states that the substitute tariff sheet is being filed to correct the recalculated fixed monthly surcharges in Docket No. RP90–137–000 to be effective during the period July 1, 1994 through June 30, 1995 pursuant to the procedures contained in Section 36 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14241 Filed 6–10–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4997–5]

Ohio: Final Determination of Adequacy of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy for Ohio's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste will comply with the revised Federal Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the United States Environmental Protection Agency (USEPA) to determine whether States have adequate permit programs for MSWLFs, but does not mandate issuance of a rule for such determinations. The USEPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which the USEPA will approve, or partially approve, State/Tribal MSWLF permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes

may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal MSWLF permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved MSWLF permit programs can use the site-specific flexibility provided by the revised Federal Criteria to the extent the State/Tribe MSWLF permit program allows such flexibility. The USEPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the revised Federal Criteria apply to all permitted and unpermitted MSWLF facilities.

Ohio applied for a determination of adequacy under section 4005 of RCRA. At the same time, Ohio proposed rule revisions that would facilitate full approval of its solid waste program. The proposed rule revisions added definitions and requirements that were no less stringent than portions of the revised Federal Criteria. The USEPA reviewed Ohio's application and tentatively determined that Ohio's existing MSWLF permit program, along with the incorporation of certain portions of the revised Federal Criteria, would be adequate to assure compliance with the revised Federal Criteria. Ohio successfully incorporated the needed portions of the revised Federal Criteria into its MSWLF permit program and the revised regulations are now fully effective. Review of the finalized Ohio Environmental Protection Agency (OEPA) regulations occurred prior to the USEPA's final determination of program adequacy. After consideration of all comments received during the public comment period, the USEPA is today issuing a final determination that the State's program is adequate.

EFFECTIVE DATE: The determination of adequacy for Ohio shall be effective on June 13, 1994.

FOR FURTHER INFORMATION CONTACT: USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Attn: Mr. Andrew Tschampa, mailcode HRP–8J, telephone (312) 886–0976.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, the USEPA promulgated revised Federal MSWLF Criteria (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the revised Federal Criteria. Subtitle D also requires in section 4005 that the USEPA determine the adequacy of State MSWLF permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill these requirements, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The USEPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. The USEPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to the revised Federal Criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, the USEPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authority to take specific action against any owner or operator who fails to comply with an approved MSWLF permit program.

The USEPA Regional offices will determine whether a State/Tribe has submitted an adequate program based on the interpretation outlined above. The USEPA plans to provide more specific criteria for this evaluation when it proposes the STIR. The USEPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF permit program before it gives full approval to a MSWLF permit program.

As provided in the revised Federal Criteria, the USEPA's national subtitle D standards took effect on October 9, 1993. On October 1, 1993, the USEPA published a final ruling which modified the effective date of the landfill criteria for certain classifications of landfills (58 FR 51536). For certain small landfills that accept less than 100 tons of waste per day, the Federal landfill criteria were not effective until April 9, 1994, instead of October 9, 1993. The exact classifications of landfills and details on the effective date extensions are contained in the final rule. See 58 FR 51536 (October 1, 1993).

B. State of Ohio

On October 9, 1993, Ohio submitted an application to obtain a MSWLF program adequacy determination. On January 14, 1994, the USEPA published a tentative determination of adequacy for all portions of the Ohio program. Further background information on the tentative determination of adequacy appears in 59 FR 2406 (January 14, 1994).

The current Ohio regulations, contained in the Ohio Administrative Code (OAC–3745–27), are considered equivalent to the revised Federal Criteria. In its application, Ohio demonstrated that the State's revised permit program would adequately meet all elements of the revised Federal Criteria. The USEPA reviewed the finalized OEPA regulations prior to making today's final determination of program adequacy. The revised Ohio regulations were officially adopted on May 2, 1994, by the Director of the Ohio Environmental Protection Agency (OEPA), and the effective date of the requirements which fully incorporate the revised Federal Criteria was June 1, 1994. The USEPA recognizes the complexity of the rulemaking process in Ohio, and feels that an effective date of June 1, 1994, for revised State rules incorporating the Federal Criteria is adequate. The revised OEPA regulations apply to all existing units designated by the landfill owner or operator, as well as all new units.

Along with the tentative determination, the USEPA announced the availability of the application for public comment and the date of a public hearing on the application. A public hearing was held at the offices of the Ohio Environmental Protection Agency in Columbus, Ohio, on March 1, 1994.

C. Comments

The USEPA received public comment concerning the tentative determination of full program adequacy for Ohio's MSWLF permit program. One commenter suggested that the USEPA approve the State's existing groundwater sampling and analysis procedures with regard to the field filtration requirement currently set forth in 40 CFR 258.53. The revised Federal Criteria require unfiltered groundwater samples to be used in laboratory analysis. Currently, Ohio regulations require sampling and analysis procedures which ensure monitoring results that provide an "accurate representation" of groundwater quality. Because this is currently interpreted to require unfiltered samples, the USEPA is approving this provision of the State's

program. However, the USEPA intends to revisit this issue during a proposed rulemaking. If the proposed rulemaking upholds the ban on field filtering, the State has agreed to continue to incorporate the provisions of 40 CFR 258.53(b) into its policy regarding groundwater sampling and analysis procedures.

One commenter expressed concern about the adequacy of OEPA's MSWLF permit program because it lacked provisions against what the commenter referred to as "strategic lawsuits against public participation." The commenter described such lawsuits as preventing an individual or group from communicating their views to the government on public issues. The revised Federal Criteria require a State/Tribe to provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. The Ohio MSWLF permit program provides three opportunities for public involvement during the permitting process. This process is delineated in the Ohio Revised Code(ORC), section 3734.05(a)(2)(d)–(f). The Ohio MSWLF program further provides a verified complaint procedure, delineated in ORC section 3745.08, for members of the public who are or will be aggrieved or adversely affected by a violation of the Ohio solid waste regulations. In addition, members of the public may commence civil action against any person, the State, or a political subdivision alleged to be in violation of the Ohio regulations by utilizing citizens' suit provisions delineated in ORC section 3734.101(A). It is the opinion of the USEPA that the provisions detailed above and further explained in Ohio's application fulfill the requirements of section 7004(b) of RCRA.

The same commenter also expressed concern regarding the adequacy of various other aspects of the Ohio MSWLF program, such as staff and financial resources for effective implementation, organizational structure of the OEPA to support the program, and administrative costs associated with the MSWLF permitting process. In its application for program approval, Ohio described an organizational structure with staffing and financial resources that the State feels will be appropriate to effectively support the permitting and enforcement activities associated with its MSWLF permitting program. The USEPA feels that Ohio demonstrated that it will be able to provide adequate resources to effectively administer and support its MSWLF permit program. Regarding the administrative costs associated with the MSWLF permitting process, this issue lies outside the scope of the revised Federal Criteria.

Another commenter expressed concern regarding the proper implementation of the location restrictions for wetland areas contained in the revised Federal Criteria (40 CFR 258.12) by the Ohio MSWLF permit program. The commenter acknowledged that the Ohio.regulations incorporating the Federal Criteria for wetlands location restrictions were adequate, however, concern was expressed regarding implementation of this provision in actual practice. The commenter specifically referenced a site located in Richland County, Ohio, where a permit is under consideration by the OEPA for a proposed landfill which is adjacent to the Fowler Woods State Nature Preserve. A portion of the proposed site would displace existing wetlands and be located immediately adjacent to sensitive wetland areas of the nature preserve area. He referred to the application of the wetland restrictions, particularly in this situation, as being arbitrary and subject to political influence. Another commenter noted that the application of the wetland restrictions in this case is inconsistent with the intent of the revised Federal Criteria.

The USEPA agrees with the commenter's opinion that the Ohio regulations, as written, incorporate the wetland restrictions adequately to ensure compliance with the wetlands restrictions contained in the revised Federal Criteria (40 CFR 258.12). In addition, the USEPA shares the concern of the commenter that all portions of the revised Federal Criteria are implemented appropriately and uniformly in actual practice. Since Ohio has properly adopted into regulation the location restrictions for wetland areas contained in the revised Federal Criteria, the USEPA has no reason to not approve this portion of the Ohio MSWLF permit program. However, Ohio has been formally advised of the concerns of the commenter as well as USEPA regarding the proper implementation of the location restrictions for wetlands.

Finally, one commenter expressed concern with the practice of allowing the applicant for a MSWLF permit to demonstrate compliance with the regulations using its own contractors or consultants. The commenter noted the absence of independent or State controlled field analysis of reports and data to confirm the accuracy of the information. The commenter also suggested that the State should choose a consultant or contractor to perform the required demonstrations of compliance with the regulations for individual MSWLF permit applications.

The USEPA shares the concern of the commenter that all information and data submitted to the State which serve to support MSWLF permitting decisions be performed properly and accurately. The USEPA is aware of the State's practice of extensively reviewing all submitted information and data to ensure compliance with all applicable regulations. It is the opinion of the USEPA that the procedures outlined in the Ohio application for adequacy determination will support the effective implementation of the revised Federal Criteria. The issue of requiring independent or State chosen contractors and consultants to provide data and information to support permitting decisions lies beyond the scope of the revised Federal Criteria.

D. Decision

After reviewing the public comment, I conclude that Ohio's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Ohio is granted a determination of adequacy for all portions of its MSWLF permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the revised Federal Criteria independent of any State/Tribal enforcement program. As the USEPA explained in the preamble to the final revised Federal Criteria, the USEPA expects that any owner or operator complying with the provisions in a State/Tribal program approved by the USEPA should be considered to be in compliance with the Federal Criteria See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. The USEPA believes it has good cause under section 553(d) of the Administrative Procedures Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's program are already in effect as a matter of State law. The USEPA's action today does not impose any new requirements with which the regulated community must begin to comply. Nor do these requirements become enforceable by the USEPA as Federal law. Consequently, the USEPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this tentative approval will not have a significant impact on a substantial number of small entities. It does not impose any new burdens on small entities. This proposed notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002, 4005, and 4010(c) of the Solid Waste Disposal Act, as amended; 42 U.S.C. 6912, 6945, 6949a(c).

Dated: June 3, 1994

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 94–14283 Filed 6–10–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

June 6, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3221 NEOB, Washington, DC 20503, (202) 395–3561.

Note: The Commission has requested expedited review of these items by June 29, 1994, under the provisions of 5 CFR 1320.18.

OMB Number: 3060–0563.

Title: Section 76.915, Change in status of cable operator.

Action: Extension of currently approved collection.

Respondents: State or local governments, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 465 responses; 2.39 hours average burden per response; 1,111 hours total annual burden.

Needs and Uses: Section 76.915 is used to determine whether or not a cable television system is subject to effective competition and therefore, not subject to rate regulation under the 1992 Cable Act. If the collection of information was not conducted under §§ 76.915(b) and (d), the potential for franchise authority error in determining the presence of effective competition would be unchecked and could lead to deregulation of cable rates for systems not subject to effective competition in contravention of the 1992 Cable Act. Franchising authority decisions on petitions for change in status must be made within 30 days after the pleading cycle set for in § 76.915(a) closes. Franchising authorities must notify the Commission within ten (10) days of any decision changing status. Unless the Commission receives an opposition to such changes in status, the decision will become final 30 days after adoption by the franchising authority.

OMB Number: 3060–0564.

Title: Section 76.924, Cost accounting and cost allocation requirements.

Action: Revision of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 30,070 recordkeepers; 80 hours average burden per recordkeeper; 2,405,600 hours total annual burden.

Needs and Uses: The requirements of this section are applicable to cable operators for which the basic service tier is regulated by local franchising authorities or the Commission, or, with respect to a cable programming services tier, for which a complaint has been filed with the Commission. The requirements of this section are applicable for purposes of rate adjustments on account of external costs and for cost-of-service showings. Cable operators shall maintain their accounts in accordance with generally accepted accounting principles, except as otherwise directed by the Commission. Cable operators shall maintain accounts in a manner that will enable identification of appropriate costs and application of the Commission's cost assignment and allocation procedures, to cost categories necessary for rate adjustments due to changes in external costs and for cost-of-service showings. Such categories shall be sufficiently detailed and supported to permit verification and audit against the company's accounting records. The Commission determined that it will include a Second Further Notice of Proposed Rulemaking issues pertaining to what cost accounting and cost allocation requirements it should adopt on a permanent basis.

OMB Number: 3060–0565.

Title: Section 76.944, Commission review of franchising authority decisions on rates for the basic service tier and associated equipment.

Action: Extension of a currently approved collection.

Respondents: State or local governments, business or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 2,000 responses; 40 hours average burden per response; 80,000 hours total annual burden.

Needs and Uses: Section 76.944 ensures that any participant at the franchising authority level in a ratemaking proceeding may file an appeal of the franchising authority's decision with the Commission within 30 days of release of the text of the franchising authority's decision. Oppositions may be filed within 15 days after the appeal is filed, and must be served on the party(ies) appealing the rate decision. Replies may be filed 7 days after the last day for oppositions and shall be served on the party(ies) to the proceeding. Commission review of appeals is necessary to ensure uniformity of interpretation of these federal guidelines. Otherwise, rulings by state or local courts in different parts of the country could produce varying and conflicting determinations about Section 623 and the Commission's Rules which could frustrate the purpose of having federal guidelines.

OMB Number: 3060–0569.

Title: Section 76.975, Commercial leased access dispute resolution.

Action: Extension of a currently approved collection.

Respondents: Individuals or households, businesses or other for-profit (including small businesses).

Frequency of Responses: On occasion reporting requirement.

Estimated Annual Burden: 500 responses; 8 hours average burden per response; 4,000 hours total annual burden.

Needs and Uses: Section 76.975 provides that (1) any person aggrieved by the failure or refusal of a cable operator to make commercial channel

capacity available or to charge rates for such capacity may file a petition for relief with the Commission; (2) this petition must state concisely the facts constituting a violation of the FCC's leased access rules and the specific rule or regulation violated, and certify that the petition for relief was served on the cable operator; and (3) any petition for relief must be filed within 60 days of the alleged violation. A cable operator would then have 30 days from the date of filing the petition in which to respond. These requirements are designed to assure that the leased access option brings about the intended diversity of programming and competition in programming delivery. The information will be reviewed by FCC staff to resolved access disputes. These expedited leased access procedures may obviate the need for oral rulings or other emergency processing of leased access disputes.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–14216 Filed 6–10–94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Mutual-to-Stock Conversions of State Nonmember Savings Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice; request for comments.

SUMMARY: As previously indicated in Congressional testimony and in public statements, the FDIC has been at work on a fundamental review of the process by which mutual thrifts convert to stock form. This request for comments reflects that study. The intended effect of this notice is to obtain comments on the suggested approach to resolving fundamental concerns about the current mutual-to-stock conversion process.

DATES: Written comments must be received by the FDIC on or before August 12, 1994.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand-delivered to room F–400, 1776 F Street, NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838). Comments will be available for inspection in room 7118, 550 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Robert H. Hartheimer, Acting Director, Division of Resolutions (202/898–8789), John G. Finneran, Jr., Acting Deputy General Counsel, Legal Division (202/898–3766), Robert F. Miailovich, Associate Director, Division of Supervision (202/898–6918), Robert W. Walsh, Manager, Planning and Program Development Section, Division of Supervision (202/898–6911), Joseph A. DiNuzzo, Counsel, Legal Division (202/898–7349), Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Historical Background

Mutual savings institutions were founded to fill gaps in the market—and for a social purpose. Commercial banks have not always welcomed retail customers as either depositors or borrowers. Mutual savings banks were in many respects charitable organizations designed to encourage and facilitate thrift on the part of urban wage-earners. Their trustees were self-perpetuating groups of leading citizens, some of whom may have contributed the capital to establish the bank in the first place, who took no fees and did no business with the bank. Savings and loan associations were essentially cooperatives. One became a "member" in order to save—in order eventually to borrow the money to build a home. There were limitations on the ability to withdraw one's funds. The right to be the next borrower, when enough funds had accumulated, was often decided by lot. Trustees were elected by the members—and in the early days members were required to attend meetings and take their turn as officers. The notion of "self-help" motivated both sorts of formations. At one time, people spoke of the spread of these institutions as a "movement."

As a legacy of that tradition, today there are approximately 1,100 mutuals in the United States. (Ten years ago there were about 2,500, five years ago 1,775.) From time to time, one or another of them desires to convert to stock form. It may be that they need more capital—in some cases on an urgent basis. It may be that they see expansion opportunities and need a currency (stock) with which to acquire. For many small institutions, it makes sense to join a larger organization, and they often need to convert to be able to do so. Based on our own research and analysis, as well as published cases, there is also little question that some institutions have converted primarily to enrich those who controlled them.

The existing form of transaction by which both federal and state mutuals convert was developed by the Federal Home Loan Bank Board ("FHLBB") in 1974. What happens, essentially, is that the mutual sells itself, for cash, to whoever buys its newly issued stock. Various categories of potential purchasers get priority. In general, depositors stand at the head of the line. To the extent depositors and others with priority rights do not subscribe for stock, an attempt is made to sell it locally. If stock is still left over, it is sold to investors with no particular connection to the converting institution.

The FHLBB was conscious, when it first wrote rules for conversions, that there might be value to the right to subscribe for stock in a conversion. For example, if a mutual with $100 million of net worth raised only $20 million of new capital in converting, whoever got to buy the stock would have a claim on $120 million of net worth. In such a situation, the stock would almost certainly be worth much more than the buyers had paid for it. For about a year, in the early '70s, the FHLBB took the view that rights to buy stock in a converting institution should be distributed to its depositors, who could either exercise and become owners or sell the rights for their intrinsic value.

The FHLBB subsequently abandoned this approach, however, primarily out of concern that depositors would shift funds from association to association, hoping to capture the intrinsic value of the rights when the conversion occurred—and on a scale that could be destabilizing. At the same time, it adopted the current approach, which included an "appraisal" requirement, providing that a converting institution issue and sell its capital stock at a total price equal to the estimated *pro forma* value of such stock in the converted institution.

Because of moratoria imposed in 1973 and 1974, the existing form of transaction was not tested in great numbers until the '80s. At that point, it worked quite well, because many converting institutions had little net worth or economic value, and the market was extremely wary even of those that did. Depositors and other investors who subscribed for stock got securities with a market value approximately equal to what they paid for them.

Problems With the Existing Process

In the last two-plus years, as non-viable institutions have been closed and the industry has returned to health, the existing form of transaction has delivered windfalls to those who

subscribed. In the more than 100 standard conversions in 1992 and 1993, the trading price at the end of the first day has exceeded the subscription price by, on average, 26%. In 40 instances, this price increase (the "pop") has exceeded 30%; in 6 instances it exceeded 50%.

As it has become obvious to everyone familiar with the process that buying stock in a conversion is an easy way to make money, a class of "professional depositors" has emerged—wealthy individuals and investment partnerships with $50 to $500 accounts at literally hundreds of mutuals across the country. Investment banking firms active in the conversion arena advise us that there are perhaps 500 to 1,000 such professional depositors, and that they can take the account list of almost any mutual in the nation and recognize hundreds of names at sight. These professional depositors buy the maximum amount of stock allowed—and consequently the overwhelming majority of the stock issued in almost every conversion. Market participants have told us that in a typical conversion, less than 5% of depositors participate at all—and that the majority of them are professionals or insiders.

Giving depositors the *opportunity* to subscribe for stock has not resulted in broad distribution of stock among them. The vast majority of depositors in mutual savings institutions keep their savings there precisely because they are risk-averse. They are likely to read and ignore or discard the offering circular. The money they keep in a savings institution has been put aside for retirement, or for emergencies, or for the down payment on first house, and cannot be invested in an initial public offering. They do not participate. The existing conversion process does not benefit them at all.

As it has become obvious to everyone who understands the process that the stock of converting institutions often trades up sharply on the first day of issue, those who control mutual institutions have become more and more interested in converting. Managers and even non-executive trustees have been awarded free stock and options (at the subscription price). Employee Stock Ownership Plans ("ESOPs") have been created and given priority in buying stock. These and other devices have resulted in substantial transfers of value.

As it has become clear that most conversions would be oversubscribed, the "allocation" process has clearly been subject to abuse. For example, we have been told that in transactions where allocations were likely to be based on size of deposit because of expected oversubscription, insiders and others in a position to know the relevant record date have been able to transfer large amounts of money into their accounts on that single day. Where the right to subscribe has been limited to long-term depositors, or depositors with local addresses, we are told that professionals are sometimes able to persuade other depositors to "front" for them (despite rules to the contrary).

Problems With Appraisals

As market valuation of thrifts has risen (and as conversions have come to be oversubscribed, with stocks generally trading up), the integrity of the appraisal process has been compromised. The FDIC's experience with appraisals is that they typically follow a certain pattern. A "peer group" of stock savings institutions is identified. (How they were selected out of the much larger universe of potential "peers" typically is not well explained.) The peer group market/book ratio is calculated. It is then stated that the converting institution should be valued (on a pro forma basis) at a discount from that ratio. Two reasons for this are typically given. The first is that the converting mutual is actually inferior to the peer group—which raises the question, why were they chosen as peers in the first place. The second, discussed below, is the need for a "new issue discount." (Price/earnings ratios are also calculated, but there is rarely a cogent analysis of the converting institution's earnings potential once it appropriately deploys its new capital.)

At March 31, 1994, the thrift industry average market/book ratio was 99% and the median was 95%. (At year-end 1993, those figures were five percentage points higher, a year before that 15 percentage points lower.) The market tends to value recently converted institutions below the industry average—primarily, in our judgment, because the return on a newly converted institution's book, or capital, will be low by industry standards until it is able to leverage the new capital it raises in the conversion. During 1992 and 1993 as a whole, the average market/book ratio of a newly converted institution, at the end of the first day of trading, was 72%. To meet the "appraisal" requirement that an institution's stock trade at what it was sold for in a situation where a 72% market/book ratio was a reasonable expectation, a mutual would have to more than triple its capital base. To be precise, a mutual with a $100 million net worth would need to raise $257 million (ignoring expenses and the effects of establishing an ESOP or a management retention plan), since 72% of $357 million (the resulting book value) equals $257. It is extremely hard for a company in a highly competitive industry prudently to employ that much new capital.

What appraisal firms did, in 1992 and 1993, was to "appraise" converted institutions on average at 57% of book. They did this despite the fact that, on average, these institutions traded up the first day by 26%.

Appraisers' principal rationalization for this discrepancy has been that, in the context of an initial public offering, a "new issue discount" is required. While it is certainly true that it is difficult to bring a company public without pricing the shares at a level that stimulates unfilled demand—resulting in a "pop"—we question the magnitude required in an environment where virtually all conversions are trading up. In some circumstances, the need for a "new issue discount" has been asserted in appraisal updates issued *after* the end of the subscription period, and in the face of 100–300% oversubscriptions. We would also observe that the literal language of the OTS regulations and guidelines on conversion appraisals does not allow for a market discount. The question to be answered is: how much stock has to be sold to eliminate any "pop"?

We suspect that the practices we describe developed over time as appraisers, and mutuals and their advisers, attempted to deal in good faith with the inherent contradictions of, on the one hand, a form of transaction perfectly suited to institutions on the brink of failure, or which the market feared, and, on the other, a thrift industry that has returned to health.

As a footnote to the conversions of the 80's, it is worth observing that many institutions which emerged with very high capital ratios were so anxious to earn a good return for their new, demanding stockholders, that they grew their balance sheets more quickly than they should have and took risks they did not fully understand. A total of 77 New England savings banks converted in the years 1984 through 1989; these transactions increased their weighted average capital ratio to 15.2% from 6.6%; 16 of them (or 21%) subsequently failed.[1] In addition, the rush by converted institutions to increase assets quickly tended to reduce credit standards throughout the market, imperiling other institutions.

[1] "Understanding the Experience of Converted New England Savings Banks," Eccles and O'Keefe, FDIC (1994)

Changing the Process

What this history demonstrates is the need for fundamental change:

- The "appraisal" process puts the government in the awkward position of substituting its judgement for that of the market...
- . . . and forces most converting institutions to raise far more capital than they can prudently deploy...
- . . . but still fails to eliminate windfalls.
- This has put well-intended individuals involved in more than a few conversions in the ethically uncomfortable position of pretending the appraisal requirement is met when they know it isn't.
- The required form of transaction transfers the existing value of the mutual to a small group of individuals with the cash, sophistication and risk appetite to buy the stock.
- Because value is being "given away," the process invites insider abuse. And because the value has to go somewhere, the ingenuity of market participants eventually frustrates attempts to eliminate the problem.

We share with others a desire to address problems arising under the existing rules. We do not in any way want to prevent valid conversions from taking place—nor encourage conversions that fail to meet a valid business need. We also desire that our handling of conversions be generally consistent with that of the OTS.

For these reasons we are publishing elsewhere in this issue of the **Federal Register** a proposed rule which: (a) reaffirms our intention to review conversion applications submitted by state-chartered nonmember insured savings banks (and applications for insurance from newly established associations to be owned by mutual holding companies), and (b) explicitly establishes certain criteria which are comparable to those of the OTS.

At the same time, we feel it is only fair to put the public on notice that we believe it may be difficult for a healthy mutual to develop a sound business plan while raising enough new capital to receive a valid appraisal.

The noted investment manager, Peter Lynch, describes this problem, and the existing form of conversion generally, in graphic terms. Buying stock in a converting mutual, he writes, is like going to an automobile dealer to buy a car, giving him a check for the purchase price, and discovering on the way home that the dealer has put your check in the glove compartment of the car. Unless the car is an extraordinary lemon, this is bound to be a good deal. And increasing the size of the check—which is what "disciplining the appraisal process" amounts to—won't make it stop being a good deal.

It is possible that the recent OTS amendments (and the requirements in the FDIC proposed rule mentioned above) which aim to give long-term, local depositors more rights—but within the framework of the existing form of transaction—may produce similarly frustrating results. As noted earlier, "real" depositors are not going to benefit, no matter what priorities they receive, because "real" depositors still may not subscribe in significant numbers.

We believe that "insider abuse," which is the focus of much recent discussion and of several of the OTS amendments and the requirements of the FDIC proposed rule, is only a piece of the problem. In one recent conversion, for example, state authorities forced the institution to rescind stock grants which would have benefited insiders by approximately $40 million.

This was laudable. But the "pop" in the price of the converted institution's shares benefited those who subscribed by more than $200 million on the first day of trading and by $275 million after one month's trading. All who had their subscriptions filled were depositors—but only 5% of all depositors subscribed. We question whether it can be an adequate response to the trustees' fiduciary duty to deliver that much value to the tiny fraction of a mutual institution's depositors with the capacity to line up and collect it.

We continue to believe—as stated in testimony before the Congressional Banking Committees—that the conversion process is fundamentally flawed. Thus, in addition to the proposed rule published elsewhere in this issue of the **Federal Register** (which is intended to address concerns within the existing mutual-to-stock conversion framework) we also are issuing this request for comments seeking views on an approach which might address the basic flaws in the existing scheme.

The (Misguided) Question of "Ownership"

The most vexing question facing everyone who has ever dealt with mutual-to-stock conversions is: "Who owns mutuals?" That may be the wrong way to ask the question. As indicated earlier, mutuals were originally closer to charities or community organizations than to commercial enterprises. As a by-product of doing what they were founded to do, they have accumulated net worth. The trustees hold that value in trust. The right question more likely should be: "If the trustees decide to convert, to whom should that value be delivered?"

We believe there are two ways to answer the question: leaving it to the trustees in the reasonable exercise of their fiduciary duty, or legislation.

Leaving the decision to the trustees is logical, but may be impractical. The best argument in favor of this approach is that the history and circumstances of institutions vary, that boards are designed to balance competing interests and considerations, that existing law should be adequate to prevent abuse, and that the government should not interfere unless it has to. As different boards of trustees wrestle with the issues, a consensus should *tend* to emerge.

The argument against leaving the decision to the trustees is twofold. Taking the positive view of such boards, it places an unfair burden on them and their institutions. They will be lobbied by potential claimants. Someone will object to whatever decision they make. Taking the skeptical view—and there is no question that *some* boards have interpreted their fiduciary responsibilities rather loosely—leaving the decision to the trustees is unwise. The FDIC will in the end have to expend significant resources providing informal guidance to the conscientious and making sure that trustees' determinations *are* reasonable.

Some could well believe that the preferable way to answer the question of "to whom the value should be delivered" would be legislation. In fact, the main purpose of this notice and request for comments is to solicit views from the public on a legislative proposal that the FDIC could prepare and present to the appropriate legislative body(ies). Legislation could take the form of state law, through which each state would decide the question for the mutual banks it charters (or has chartered), or federal legislation, through which the Congress decides the issue on a nationwide basis. Uniformity argues for federal legislation, but questions of federal preemption of state law would have to be considered.

If federal legislation is decided upon, the Congress could either establish in the statute explicit value-distribution rights or authorize the appropriate federal agency (presumably, the FDIC for state savings banks and the OTS for federal and state savings associations) to determine to whom the value of the mutual institution should be delivered.

Who Should Get the Value?

We are aware of at least seven groups (in no particular order) which might lay a claim to a mutual's value:

(1) Depositors.

(2) Other creditors, including holders of subordinated debt.

(3) Borrowers.

(4) Employees—whether through the medium of an ESOP, which acquires shares in the conversion, or other arrangements designed for senior management.

(5) Trustees.

(6) The Bank Insurance Fund or the Savings Association Insurance Fund, the U.S. Treasury or the relevant state government.

(7) Charitable organizations or trusts serving the community and purposes for which the converting institution was originally founded.

The question of who receives the value is primarily a political one. Accordingly, we do not believe the FDIC should be the one to decide among these (or other) claimants. We have a supervisory interest in seeing the question answered, however, and answered in a way that is generally seen to be sensible and fair.[2] To that end, the following comments are intended to focus public discussion of the question.

Taking each of the seven parties in turn, we believe that at least some of the value will have to go to depositors. Although the law of many states implies that they are not "owners" of mutual institutions in the classic sense of the term, and, at least since the creation of the FDIC, they have not borne significant risk, they have supplied the institution with its resources and in many cases have a vote on conversion. Although we have scant sympathy for those professional depositors who have opened small accounts in the expectation of large windfalls and whose hopes would be disappointed by the reforms we propose, it is perhaps the case that some depositors of all types have known that conversion was a possibility, and in a sense may have "bargained for" at least some share of the value of the institution. The fact that existing OTS regulations and most states' laws give savings and loan association depositors preference in subscribing for stock may not create an *entitlement*, but it has probably created an *expectation*—which will probably have to be satisfied to some degree.

Among depositors, there are questions of allocation: by size, by tenure, by address. What is theoretically desirable is often beyond the scope of the converting institution's data processing systems. Attempts to favor "local" depositors can be frustrated in various ways. There is also the question of record date—and the problem of long-term depositors who unwittingly close their accounts shortly before the record date. Our current inclination would be to make the record date fairly recent (as a convenience) and to award one share of the aggregate value going to depositors for each year that each account has been open. We expect that allocating shares to accounts closed prior to the record date, while theoretically equitable, would prove impractical.

In contrast to depositors, creditors are uninsured and do take risk—especially since the adoption of federal depositor preference. On the other hand, most creditors have that status as an incident of some other relationship—*e.g.*, as a supplier of goods and services—and would be surprised (if delighted) to discover that it gave them any claim on the value of the institution, We would therefore expect a consensus to emerge favoring their exclusion.

The argument for giving debtholders part of the value is stronger. They have the position they do because of a conscious financial transaction. In most cases, such debt is subordinated and does represent capital. Debtholders, while subordinating themselves to depositors for a higher rate of return, did not "bargain for" any share of the mutual's net worth—but neither did most depositors. Were it to be established that subordinated debtholders were entitled to a share of the value, it might make it slightly easier for small mutuals to raise debt capital, which has appeal from a safety and soundness standpoint. As an equitable approach and from our perspective as insurer, we would favor giving debtholders some of the value of a converting institution, and we would not expect such a decision to strike people as unreasonable or unfair.

If such a decision is made, we believe the most feasible method of allocation is by size of holding, with debtholders as a whole receiving a share of the value going to debtholders and depositors combined that is proportionate to debt's share of the institution's combined liability to depositors and debtholders. The length of time the debt has been outstanding, or in any particular holder's hands in the case of tradable debt, should not, in our judgement, have bearing.

Federal Home Loan Bank advances are an important part of the liability structure of many banks. The question arises: if other debtholders should receive some of the value of a converting institution, why not the relevant Federal Home Loan Bank? We believe there is a good reason for excluding them: the fact that advances are fully secured, making the Banks effectively senior to depositors.

Although borrowers are technically "members" of some mutual savings institutions, we believe most borrowers think of the institution as having a claim on them, rather than the reverse. During that period when they are borrowers, they are in fact already receiving a benefit. Borrowers are typically required to open deposit accounts as well. Finally, borrowers' loans can be, and often are, sold to third parties; distinguishing their rights from those of borrowers whose loans have not been sold would present formidable legal and logistical challenges. For all these reasons, we do not believe the consensus would be to give them a claim, as borrowers, on the value being transferred.

We would point out, however, that at least some knowledgeable observers view the rights of depositors to a share of the converting institution's value as not really that much stronger than those of borrowers. The vast majority of both groups do business with mutuals on an arms-length basis, at market terms, at no significant risk, and with no expectation of a windfall. In the view of some observers, it is only the absence of any other "owners," the fact that depositors turn up on the side of the balance sheet where stockholders would be if there were any, and the practice of treating depositors as stand-ins for owners that give depositors the presumption of a right to receive value.

Rewarding Employees and Managers

It is sometimes said that managers—and to a lesser degree employees—of mutual institutions enjoy more job security and a less demanding work environment that their counterparts at organizations subject to stockholder discipline, but are in turn less well compensated. Conversion changes their situation. Some argue that these considerations—and years of loyal service—entitle managers to a share of the value. The opposing view is that managers of mutuals chose to work there and "bargained for" whatever pay they got.

We understand both sets of arguments. The no-entitlement view, if

[2] Pending a legislative determination of this question, we also have a supervisory interest in ensuring that the boards of mutual institutions fulfill their fiduciary duties in preserving the value of the institution. Accordingly, the FDIC will continue to review proposed conversion transactions of state mutual savings banks and take appropriate action where the transaction raises fiduciary concerns.

we can call it that, has logical purity. The view that managers deserve part of the value has emotional appeal, especially when they have spent decades at the converting institution. The issue of appropriate treatment of long-serving employees is a good example of the essentially political nature of the value-distribution question.

Were we required to decide this issue without legislative guidance, we would prefer to see all benefits to employees of insured institutions be delivered as *compensation*. We would certainly endorse the creation of an ESOP immediately after conversion. If the conversion process has entailed extra effort on the part of some (or all) employees, they may be entitled to bonuses. And if conversion entails a radical reduction in job security, it may be appropriate to adopt a severance policy consistent with standard industry practice for stock institutions.

Focussing on the top few executives and non-executive trustees, it is certainly the case that their jobs become harder and less secure following conversion. They may be entitled to significant raises. It may be appropriate for a few senior executives to receive employment contracts. Again, all such steps should be evaluated within the context of "compensation." We believe that for individuals who control the conversion transaction to lay any claim, in their capacity as managers and trustees, to a portion of the value being transferred creates a conflict of interest.

It is currently common practice for converting institutions to create stock option plans. We believe it is appropriate for stock institutions to have incentive compensation plans of this type. As indicated in the FDIC proposed rule mentioned above, we agree with the OTS that such plans should, at the earliest, be adopted at the first stockholders' meeting following conversion and that the exercise price for any such options should be set at that time, rather than being based on the conversion price. The latter practice, which had been common, gave those who controlled the transaction an incentive to underprice the shares, and masked transfers of value to those executives receiving options, which, if properly measured, and viewed as compensation, would have been deemed excessive.

A "Government" Share?

Several individuals and organizations have suggested that a share of the existing value of converting mutuals should go to one of the deposit insurance funds, or to the U.S. Treasury, or to the government of the state which chartered the institution. We are uncomfortable with the first suggestion. Converting institutions have been paying premiums, just as stock institutions have. No one would lay claim to a portion of the latter's net worth. The FDIC should not do so with regard to mutuals.

Some have advanced the argument—based on the cost of the savings and loan crisis—that taxpayers generally, through the medium of the Treasury, should get a portion of the value that conversion releases. As a fairness matter, we believe this argument is flawed: Institutions now converting have *not* failed, and have *not* cost taxpayers anything. Most state savings banks, whose conversions fall under our jurisdiction, are insured by the Bank Insurance Fund, which taxpayers have not had to support.

Another argument for conveying the value of converting mutuals to the government—whether state or federal—is that "no one owns them," and that the fairest course is therefore to avoid giving the value to anyone in particular. We will have more to say on this topic later in this Notice, but would observe that if the form of transaction suggested below is adopted, many of those who receive the value of the institution will get cash, and will pay taxes on it as income, giving government its "share."

Fulfilling Mutuals' Original Purpose?

As indicated earlier, mutuals were created for reasons that have now largely disappeared. Ordinary citizens have plenty of places to put their savings. A host of private- and public-sector entities facilitate home-ownership. The trustees of a mutual savings institution having regard for their fiduciary duties might liken their situation to that of the board of the March of Dimes, which had to redefine its mission after polio ceased to be a major threat. From that perspective, it may be appropriate for a portion of the value of a converting mutual to be transferred to one of more community organizations or charities.

This approach raises the question, "*Which* organizations?"—which could be extremely hard to answer. As with the matter of dividing up the value in the first place, leaving the decision to the trustees places a burden on them. Nevertheless, under this approach, the trustees are the ones to decide. If no appropriate vehicles existed, a trust might be established to receive the transferred value and make grants over time. The responsibility for allocating funds is borne by thousands of trustees of colleges and hospitals and foundations and charities all over the country; there are plenty of examples to follow—and laws to prevent abuse.

An alternative to endowing a new or existing charitable organization is for the converted institution to accept special obligations to serve the convenience and needs of the community for banking services. This is a very broad subject, which we are not prepared to explore exhaustively here. We would make three basic points, however. First, while all banks clearly have public obligations, it seems likely that imposing different burdens on institutions which are otherwise direct competitors will ultimately create safety and soundness concerns. For that reason alone we would oppose this approach.

Second, the value transfer inherent in an institution's voluntary acceptance of a special obligation to the community—*e.g.*, a promise to make affordable housing loans, or to open branches in distressed neighborhoods—is difficult to measure against immediately cashable value delivered to depositors or others. We think it would be difficult for trustees to know what they'd actually done.

Third, the history of mutual savings banks does suggest that organizations to which any portion of the value of a converting institution might be transferred should be locally focussed, and should have the encouragement of self-help as a major objective. To give only two of many possible examples, helping to capitalize a community development bank, or establishing a day care facility which permitted single mothers to work, would have satisfying historic resonance.

No Entitlement; No Forced Conversion

The idea that some of the value of a converting institution should be delivered to the "community" it was chartered to serve is as strongly opposed by some as it is supported by others. This is another excellent example of the political (rather than regulatory) character of the issue.

At least two arguments against a "community" share have been advanced. The first is that the "wrong" charities and community organizations would be chosen—wrong from the speaker's point of view, that is—because of their skill and persistence in lobbying the board. The second is that such organizations, seeing latent wealth available, would put pressure on boards to convert.

This second argument is also advanced, as it was in the early '70s, against giving *depositors* transferrable rights: if value is "available," they will put pressure on institutions to convert.

Being *exempt* from constituent "pressure" is unhealthy for any organization. Legislators have to face the voters. Independent agencies are subject to oversight. Stock organizations can be taken over. We do not believe that the trustees of mutuals should be allowed to ignore completely the views of those the institution exists to serve.

Nevertheless, we would emphasize that however one decides the value-distribution issue, that does *not* answer the (misguided) question, "Who owns a mutual?" It does not, in our view, give anyone standing to demand that an institution convert—any more than a group of private citizens could demand that the Red Cross "convert"! Conversion is a decision for the trustees, and until they make such a decision, the FDIC will not get involved—except where inadequate capital makes it desirable from a safety and soundness standpoint. Mutuality has a distinguished history in America. In the aggregate, mutuals have cost the FDIC proportionately less than have stock institutions. We would not endorse a system that compelled mutual institutions to change their character.

New Form of Transaction

Having adopted *an* answer to the question, "Who gets the existing value?", the problem of delivering that value is easier to address. We would suggest the following approach:

- The trustees decide how much capital they need to raise as a business matter. (There is no "appraisal" process.)
- The trustees hire underwriters to conduct an initial public offering—and an escrow agent for the purposes described below.
- Rights to subscribe for the stock of the converted institution are distributed to "rightholders" in accordance with the principles outlined above.
- Each of these rights will have value. For example, if a mutual with $100 million of net worth elected to raise $20 million, and distributed 4 million rights to buy 4 million shares (at $5 each), and the market valued the converted institution at 80% of resulting book (or $96 million), the shares would trade at $24 each, and the right to buy a share for $5 would be worth $19.
- The rights would be "transferrable" only in the sense that, at the end of the subscription period, the escrow agent would exercise on behalf of any rightholder who had not done so, turn the stock over to the underwriter for sale, give $5/share of the proceeds to the company and send the difference to the rightholder.

It is likely, under this form of transaction, that very few rightholders would chose to exercise, and that the underwriters would essentially be selling the whole institution. This gives rise to several questions. For example, wouldn't the transaction costs be awfully high, relative to the amount of new capital being raised? The answer has to be yes—but the cost should be measured relative to the major strategic accomplishment of conversion itself; presumably there was a reason to convert, or the trustees wouldn't have undertaken it. It is also worth observing that the need (opportunity) to sell nearly 100% of the stock will lead many more underwriting firms to compete for the business.

Another question is why not just distribute stock certificates instead of rights? The basic answer is that the selling effort of a public offering is what gets the market to focus on the fair value of the shares, and gets a group of underwriters committed to make a market in them afterwards. A direct distribution of shares could saddle the bank with an uneconomically large number of shareholders. It would leave unsophisticated holders of small numbers of shares in danger of being persuaded to sell at prices below intrinsic value. Finally, to the extent that rights were distributed to a community-oriented charity, a stock sale should probably be required to avoid leaving a controlling block of stock in the hands of a foundation or organization which might be governed by the directors of the converted mutual.

One argument advanced against this form of transaction is that the existing process has raised enormous amounts of money to recapitalize ailing thrifts, and that while the industry is healthy now, we may need to be able to do that again some day. True—but the approach here proposed would be able to do that as well. If a thrift with a low equity ratio wanted to convert, it could distribute rights and hire an escrow agent and an underwriter, just the same. The shares could be priced wherever they had to, to be sold. The rights just wouldn't have much value—but that would appropriately reflect the institution's perilous condition.

Another argument advanced is that the recent market is a highly unusual one, that the embarrassing increases in share price on the day of conversion have already begun to shrink and could soon disappear. They may or may not—and "pops" *per se*, though on a more modest scale, are effectively a requirement of the initial public offering market—but the transactions the existing conversion process requires would still be inefficient to the point of being improper. Under current rules, a well capitalized thrift is only able to avoid a "pop" by increasing its equity ratio to the point where its market/book ratio falls below industry norms—which says that a lot of the new capital will either be underutilized for several years, or used imprudently. What all parties at interest should want is the *highest* market/book ratio that can be obtained, because that suggests the right business judgements have been made regarding capital structure and growth prospects. The elimination of "pops" would suggest a destruction of the value the trustees hold in trust, and a violation of their fiduciary duty of care—regardless of who that duty is owed to.

Merger Conversions

The OTS interim final rule would prohibit merger conversions—whereby a stock institution acquires the assets and assumes the liabilities of a mutual with no significant payment to anyone—except where the survival of the converting institution is in question. The form of transaction we here propose would permit merger conversions, but would make them essentially a purchase of subscription rights by the acquiror, with the value paid for the rights—either in cash or other consideration—going to rightholders. This would have efficiency benefits for those smaller institutions whose decision to convert flowed from a decision to affiliate with a larger organization. Trustees who decided to convert and be acquired would of course have the same obligation to get the best possible price for rightholders.

Mutual Holding Companies

The Competitive Equality Banking Act of 1987 and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 authorized conversion of mutual savings institutions into federal mutual holding companies, which in turn transfer virtually all their assets and liabilities to new, stock savings institutions, part of whose stock is acquired by subscribers in the conversion, with the majority retained by the mutual parent. This structure has the benefit of permitting converting institutions to raise only the amount of new capital they actually need. It has, however, in our view, potential for even a higher level of insider abuse than in standard conversions. We note that many newly formed mutual holding companies propose to refuse dividends declared by their operating subsidiary—with no corresponding change in their

percentage ownership of the subsidiary as dividends flowed to its minority stockholders. It seems to us that this could constitute a breach of fiduciary duty on the part of the trustees—which would be particularly acute were the trustees significant stockholders of the subsidiary. (It is worthy of note that "pops" in conversions involving mutual holding have been in the 40% range, compared to 26% for standard conversions.) As our suggested form of standard conversion would eliminate the need to raise excessive amounts of capital, we believe use of the mutual holding company structure should be discouraged in future conversions.

Summary

As we have studied the mutual-to-stock conversion process, it has become clear that there are two intertwined problems to be solved. One is technical: how to do it? The other is political: who should get the value? The first problem is interesting and challenging, but the second one is fundamental.

Deciding who should get the value makes a lot of people uncomfortable. Almost every answer makes someone angry. As we read the history, the FHLBB settled on the existing form of transaction precisely because it allowed them to avoid answering the value-distribution question. We have come to believe that the primary appeal of some value-distribution schemes—*e.g.*, giving it to depositors or to "the government"—is that they appear to disperse value enough to make the issue moot. As we have discussed the subject over the past two months, we have observed how tempting it is to continue to avoid it. Lawyers and investment bankers and professional depositors with a vested interest have urged us to drop the subject—which is not surprising. But even disinterested individuals wind up asking, "Do we care?"—and they reach that point with remarkable consistency.

We should care. The integrity of a banking system is a national treasure. Careless distribution of the value of converting institutions undermines that integrity. A form of transaction in part designed to avoid the value-distribution question—though it worked well for a while—today forces well-meaning bankers and lawyers and trustees and regulators to wink at polite fictions. Many have suggested that this is hardly a crime, since there is no victim. We disagree. Honor is the victim.

Life is full of compromises. There is no "right" answer to the value-distribution question. But there is a right process for addressing it. We invite broad participation in fashioning a compromise, as only democracy can, with which no one is entirely satisfied, but in which all can take pride.

Questions on Which Comment Is Sought

The FDIC is hereby requesting comment during a 60-day comment period on all aspects of this notice, including the following specific issues:

(1) Should a mutual institution be required, as a threshold issue, to demonstrate a need to convert—or is it sufficient that it provide an adequate business plan for the future?

(2) In the absence of legislation, could and should the FDIC adopt guidelines or set standards for the distribution of the existing value of a converting institution, or could or should the matter be left entirely to the trustees?

(3) Whether it is legislation or the FDIC or the board of trustees that sets standards, what should they be? Who should get some of the value, how much, and how specific should the rules be?

(4) If depositors (or creditors or borrowers or employees) are to receive some of the value, how should it be allocated among them? Should amount of deposit or tenure of association be accorded more weight? Must depositors and debtholders be treated identically? What practical constraints exist, based on mutuals' information systems and resources? What should the record date be?

(5) If charitable organizations or foundations are to receive a portion of the value, how should the suitability of the recipients be determined? Should there be a presumption that the trustees' selection of recipients is reasonable? Do there need to be rules to prevent abuse of such entities—*e.g.*, through "consulting contracts" with trustees? Should such entities be required to sell at the time of conversion, or should they be permitted to diversify over time, in accordance with existing federal tax and banking laws?

(6) Does "pressure to convert" from parties who would receive value if an institution did so represent a legitimate public policy concern? How great might that pressure be? How can trustees of institutions which have not elected to convert be protected from unreasonable litigation?

(7) What potential problems (including tax issues and insider abuses) are there with the proposed new form of transaction, and how can they be avoided or alleviated? On the assumption that the market will gradually improve on any form of transaction, how specific does legislation or regulation need to be in that area?

(8) Should converting institutions (including those doing merger conversions) be required or encouraged to obtain "fairness opinions" from independent financial advisors? Should the FDIC attempt to "police" the market judgements involved in the process in any way?

(9) Should new mutual holding company creations be permitted? If not how should existing ones be regulated?

By the order of the Board of Directors.

Dated at Washington, D.C., this 31 day of May, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–14006 Filed 6–10–94; 8:45am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Banco Bilbao; Acquisition of Company Engaged in Permissible Nonbanking Activities

Banco Bilbao Vizcaya, S.A., Bilbao, Spain (Applicant), a foreign banking organization subject to the Bank Holding Company Act (BHC Act), has applied pursuant to section 4(c)(8) of the BHC Act and § 225.23(a)(2) and (3) of the Board's Regulation Y (12 CFR 225.23(a)(2) and (3)), to retain an interest in its indirect subsidiary, Probursa International Incorporated, New York, New York (Company), and thereby engage in the following securities-related activities:

(1) providing investment advisory services pursuant to § 225.25(b)(4) of the Board's Regulation Y (12 CFR 225.25(b)(4));

(2) providing full service brokerage services pursuant to §§ 225.25(b)(4) and (b)(15) of Regulation Y (12 CFR 225.25(b)(4) and (b)(15)), including exercising investment discretion on behalf of institutional customers;

(3) buying and selling, on the order of customers, all types of securities as a riskless principal; and

(4) engaging in the private placement of all types of securities as agent.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must

determine that the activity is, as a general matter, "closely related to banking." Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may be reasonably be expected to produce public benefits that outweigh possible adverse effects.

The Board previously has determined by regulation that the proposed investment advisory and full-service brokerage activities are closely related to banking under section 4 of the BHC Act. *See* 12 CFR 225.25(b)(4) and (b)(15). Applicant has committed that it will conduct these activities in accordance with the Board's limitations and restrictions on the conduct of such activities. The Board also has previously determined that the proposed riskless principal and private placement activities are closely related to banking, subject to certain prudential limitations on the conduct of such activities which address the potential for conflicts of interest, unsound banking practices, and other adverse effects. *See, e.g., J.P. Morgan & Company Inc.*, 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989). Applicant has committed to conduct the proposed riskless principal and private placement activities subject to the conditions and limitations contained in these and other Board orders approving these activities.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition and by providing a wider range of services and added convenience to Company's customers. Thus, Applicant believes that the proposed activities will result in benefits to the public that would outweigh any adverse effects associated with the proposal.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 6, 1994. Any request for hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14263 Filed 6-10-94; 8:45 am]

BILLING CODE 6210-01-F

BNCCORP, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. BNCCORP, Inc., Bismarck, North Dakota; to engage *de novo* in providing management consulting to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted in North Dakota, South Dakota, Minnesota, and Montana.

Board of Governors of the Federal Reserve System, June 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14264 Filed 6-10-94; 8:45 am]

BILLING CODE 6210-01-F

FirsTier Financial, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 7, 1994.

A. Federal Reserve Bank of Kansas City (Stephen E. McBride, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. FirsTier Financial, Inc., Omaha, Nebraska; to merge with Cornerstone Bank Group, Inc., Council Bluffs, Iowa, and thereby indirectly acquire First National Bank, Council Bluffs, Iowa; Nevada National Bank, Nevada, Iowa; Security Savings Bank, Williamsburg, Iowa; and Valley State Bank, Rock Valley, Iowa.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. D.L. Evans Bancorp, Burley, Idaho; to become a bank holding company by acquiring 100 percent of the voting shares of D.L. Evans Bank, Burley, Idaho.

2. Heritage Oaks Bancorp, Paso Robles, California; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Oaks Bank, Paso Robles, California.

Board of Governors of the Federal Reserve System, June 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14265 Filed 6-10-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Workshop to Assist in Developing Criteria for Establishing Medical Surveillance Programs in Communities Exposed to Hazardous Substances: Meeting

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the following meeting.

Name: Workshop to Assist in Developing Criteria for Establishing Medical Surveillance Programs in Communities Exposed to Hazardous Substances.

Time and Date: 8:30 a.m.–4 p.m., June 23, 1994.

Place: Days Hotel at Lenox, (soon to be Holiday Inn), 3377 Peachtree Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This workshop is to assist ATSDR in developing standardized criteria for recommending the establishment of medical surveillance programs in communities where exposure to hazardous substances has resulted in an increased risk of disease.

Matters To Be Considered: Participants will be divided into the following three workgroups:

Workgroup 1: Exposure Criteria.
Workgroup 2: Outcome Criteria.
Workgroup 3: System Criteria.

Workgroup participants will discuss aspects of the working draft criteria developed by ATSDR and provide individual recommendations regarding the criteria.

Contact Person For More Information: Joyce Smith, Division of Health Studies, ATSDR (MS E31), 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639-6200.

Dated: June 7, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-14251 Filed 6-10-94; 8:45 am]

BILLING CODE 4163-70-M

Centers for Disease Control and Prevention

Notice of Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) will convene the following meeting sponsored by the Division of Environmental Health Laboratory Sciences.

Name: Development of Innovative Technology for Measurement of Lead in Blood; Meeting of Grant Recipients and Cooperative Research and Development Agreement (CRADA) Partners.

Time and Date: 6:30 p.m.–9 p.m., July 19, 1994.

Place: New Orleans Marriott Hotel, 555 Canal Street, Mardi Gras Ballroom Sections F & G, New Orleans, Louisiana 70140.

Status: Open to the public, limited only by space available.

Purpose: The primary of this meeting is to brief the grantees and CRADA partners about CDC expectations for the grant and CRADA program, to encourage collaboration among grantees and CRADA partners and to review progress toward the objectives of the program.

Matters to be Discussed: Topics to be discussed include objectives of the CDC grant and CRADA program for the development of innovative technology for the measurement of lead in blood, impact of the Clinical Laboratory Improvement Act on the Technology; and an overview of each grantee and CRADA organization.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robert L. Jones, Ph.D., Supervisory Research Chemist, Nutritional Biochemistry Branch, Division of Environmental Health Laboratory Sciences, (F18), NCEH, CDC, 4770 Buford Highway, NE, Atlanta, Georgia 30341-3724, telephone 404/488-4367.

Written comments are welcome and should be received by the contact person no later than July 13, 1994. Persons wishing to make oral comments at the meeting should notify the contact person in writing or by telephone no later than July 13, 1994. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Depending on the time available and the number of requests to make oral comments, it may be necessary to limit the time of each presenter.

Dated: June 2, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC)

[FR Doc. 94-14253 Filed 6-10-94; 8:45 am]

BILLING CODE 4163-18-M

Neurobehavioral Health Risks in Farmworkers: Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Neurobehavioral Health Risks in Farmworkers.

Time and Date: 9 a.m.–4 p.m., June 30, 1994.

Place: Robert A. Taft Laboratories, Room B-28, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of the meeting is to review a NIOSH project entitled, "Neurobehavioral Health Risks in Farmworkers." The project will evaluate existing tests and develop new methods that can be caused in agricultural environments for assessing neurobehavioral impairment in groups of agricultural workers or in individual farmers who have been exposed to chemical and physical hazards. Participants will evaluate the scientific and technical dimensions of the project protocol, seek individual suggestions, and identify and address any deficiencies in the experimental study design. Copies of the protocol maybe obtained prior to the meeting from the contact persons listed below. Viewpoints and suggestions from industry, labor, other government agencies, and the public are invited.

Contact Person For Additional Information: Robert B. Dick, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop C-24, Cincinnati, Ohio 45226, telephone 513/533-8383.

Dated: June 2, 1994

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-14252 Filed 6-10-94; 8:45 am]

BILLING CODE 4163-19-M

National Institutes of Health

National Cancer Institute; Meeting (Division of Cancer Treatment Board of Scientific Counselors)

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, National Institutes of Health, June 13–14, 1994, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 13 from 9 a.m. to approximately 4:45 p.m., and again on June 14 from 11 a.m. to approximately 12 p.m., to review program plans, concepts of contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on June 13 from approximately 4:45 p.m. to approximately 5:45 p.m., and again on June 14 from approximately 8 a.m. to approximately 11 a.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Executive Plaza North Building, Room 630, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A44, National Institutes of Health, Bethesda, Maryland 20892 (301–496–4291) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Bruce Chabner (301–496–4291) in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: June 9, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1443 Filed 6–9–94; 2:25 pm]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 59 FR 25952–25953, May 18, 1994) is amended to reflect the reorganization of the nutrition research coordination function within the NIH. The reorganization consists of (1) transferring the functions of the Division of Nutrition Research Coordination (DNRC) from the Office of Disease Prevention (ODP), Office of the Director, NIH (OD/NIH), to the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK); (2) abolishing the DNRC within the ODP, OD/NIH; and (3) establishing the Division of Nutrition Research within the NIDDK. The transfer of the nutrition coordination function is consistent with Title VI of the NIH Revitalization Act of 1993 (Pub.L. 103–43) which reiterates the lead role of the NIDDK in nutrition and obesity research and mandates an expanded NIDDK role in the coordination of trans-NIH nutrition research and translation efforts.

Section HN–B, Organization and Functions, is amended as follows: (1) Under the heading *Office of the Director (HNA), Office of Disease Prevention (HNA2),* delete the title and functional statement of the *Division of Nutrition Research Coordination (HNA24)* in their entirety.

(2) Under the heading *National Institute of Diabetes and Digestive and Kidney Diseases (HNK),* insert the following after the heading *Division of Extramural Activities (HNK7):*

Division of Nutrition Research Coordination (HNK8). (1) Through the NIDDK Director, advises the NIH Director and others on nutrition research issues; (2) coordinates the nutrition research and training activities of the research institutes; (3) works with the NIH organizational components to coordinate the development of RFAs, PAs, and RFPs to enhance the nutritional research activities of the NIH; (4) coordinates the NIH contribution to the Departmental Research Initiative in Nutrition that includes developing the 5-year Plan on Nutrition and Training, and the NIH Program in Biomedical and Behavioral Nutrition Research and Training; (4) inputs and maintains all Federal (NIH, FDA, DOD, etc.) nutrition research into the Human Nutrition Research and Information Management System; (6) represents the NIH and provides liaison at the DHHS and interagency level on various committees on nutrition research and policy issues such as the Interagency Committee on Human Nutrition Research and Nutrition Policy Board; (7) prepares the *Annual Report of the NIH Program in Biomedical and Behavioral Nutrition Research and Training;* and (8) develops and maintains effective liaison with other departments and agencies that have nutrition mechanisms.

Dated: May 25, 1994.

Harold Varmus,

Director, NIH.

[FR Doc. 94–14217 Filed 6–10–94; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health, Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 59 FR 25952–25953, May 18, 1994) is amended to reflect the establishment of the Office of Health Education and Communications (HNW14) within the Office of the Director, NEI (HNW1).

Section HN–B, Organization and Functions, is amended as follows: (1) Under the heading *National Eye Institute (HNW), Office of the Director (HNW1),* insert the following after the *Office of Administrative Management (HNW13):*

Office of Health Education and Communication (HNW14). (1) Plans, implements, and evaluates all activities related to the National Eye Health Education Program—the first Federally sponsored nation-wide eye health education program; (2) plans and directs all special projects related to eye health education; (3) plans, implements, and evaluates nation-wide mass media

campaigns for various aspects of eye disease prevention, early detection, and treatment; (4) plans, designs, carries out, and evaluates a comprehensive scientific and public information program for the Institute to disseminate research results to the public, the media, the biomedical community, Congress, and private health organizations; (5) advises Institute management on all aspects and phases of NEI and NIH scientific reporting, knowledge transfer, health education, public information, and press relations; (6) provides responses to inquiries from the public, patients and families, health professionals, and the media as well as inquiries from the White House, the Department, and Members of Congress; (7) prepares and produces publications, reports, articles, exhibits, displays, and other materials on Institute research, activities, programs, structure, and function; (8) works with voluntary and professional health organizations to exchange information and plan cooperative activities related to the health education and research results; and (9) overseas compliance with the Freedom of Information Act.

Dated: May 24, 1994.

Harold Varmus,

Director, NIH.

[FR Doc. 94–14218 Filed 6–10–94; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

1994 Advisory Council on Social Security; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces a meeting of the 1994 Advisory Council on Social Security (the Council).

DATES: June 24, 1994, 9 a.m. to 5:30 p.m.; June 25, 1994, 9 a.m. to 1 p.m.

ADDRESS: Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC 20036, (202) 939–4123.

FOR FURTHER INFORMATION CONTACT: Dan Wartonick, 1994 Advisory Council on Social Security, room 639H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 205–4861.

SUPPLEMENTARY INFORMATION:

1. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every 4 years. The Council examines issues affecting the Social Security Old-Age, Survivors, and Disability Insurance (OASDI) programs, as well as the Medicare and Medicaid programs, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- Social Security financing issues, including developing recommendations for improving the long-range financial status of the OASDI programs;
- General program issues such as the relative equity and adequacy of Social Security benefits for persons at various income levels, in various family situations, and various age cohorts, taking into account such factors as the increased labor force participation of women, lower marriage rates, increased likelihood of divorce, and higher poverty rates of aged women.

In addressing these topics, the Secretary suggested that the Council may wish to analyze the relative roles of the public and private sectors in providing retirement income, how policies in both sectors affect retirement decisions and the economic status of the elderly, and how the disability insurance program provisions and the availability of health insurance and health care costs affect such matters.

The Council is composed of 12 members in addition to the chairman: Robert Ball, Jean Bok, Ann Combs, Edith Fierst, Gloria Johnson, Thomas Jones, George Kourpias, Sylvester Schieber, Gerald Shea, Marc Twinney, Fidel Vargas, and Carolyn Weaver. The chairman is Edward Gramlich.

The Council is to report to the Secretary, and such reports shall thereupon be transmitted to the Congress and to the Board of Trustees of each of the Trust Funds.

II. Agenda

The Council will discuss:

- Economic well-being of today's elderly and those soon to retire;
- Prognoses for baby-boom cohorts and beyond;
- Issues facing the Social Security program;
- Issues concerning pensions and other retirement saving; and
- Matters relating to technical panels of experts.

The agenda items are subject to change as priorities dictate.

The meeting is open to the public to the extent that space is available, beginning at 1:00 p.m. on June 24, 1994. That day's morning session will deal only with internal personnel and administrative matters of the Council not relating to the substantive purpose of the meeting. Therefore, under the Government in the Sunshine Act (5 U.S.C. 552b(c)(2)), that session is exempt from being open to the public. Interpreter services for persons with hearing impairments will be provided. A transcript of the meeting will be available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Designated Federal Officer of the Council.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance.)

Dated: June 3, 1994.

David Lindeman,

Designated Federal Officer, 1994 Advisory Council on Social Security.

[FR Doc. 94–14056 Filed 6–12–94; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3761; FR–3538–N–01]

NOFA for Vacancy Reduction Program: Technical Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Correction of NOFA

SUMMARY: This notice corrects a NOFA to be published on June 13, 1994, in the **Federal Register**. This correction is necessary because of errors that were discovered in the document after it had been submitted to the **Federal Register** for publication. The correction clarifies that program funds are not intended to be used to support the normal maintenance associated with routine turnover of units.

FOR FURTHER INFORMATION CONTACT: MaryAnn Russ, Director, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., room 4204, Washington, D.C. 20410, telephone (202) 708–1800 or (202) 708–1380 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Accordingly, the NOFA for Vacancy Reduction Program, scheduled for publication in the **Federal Register** on Monday, June 13, 1994, as Part V, is amended as follows:

1. In the Summary, a new sentence is added as the sixth sentence, immediately preceding the sentence

beginning "The NOFA contains information on the following:", to read as follows:

It is still the PHA's responsibility to support the normal maintenance associated with routine turnover of units from operating or other funds.

* * * * *

2. In Section I.D, "Definitions", the word "routine" is removed from the definition of *"Repair"*.

Authority: 42 U.S.C. 1437l and 3535(d).

Dated: June 9, 1994.

Myra L. Ransick,

Assistant General Counsel for Regulations.

[FR Doc. 94–14461 Filed 6–10–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

RIN 1094–AA45

Use of Alternative Dispute Resolution (ADR)

AGENCY: Office of the Secretary.

ACTION: Notice of interim ADR policy and opportunity for comment.

SUMMARY: The Department of the Interior (Department) has developed this two-year interim policy to implement the requirements of the Administrative Dispute Resolution Act (ADR Act), Public Law No. 101–552. This interim policy also addresses the Negotiated Rulemaking Act, Public Law No. 101–648. The Department is adopting this interim policy to allow time to acquire data on the applicability of ADR techniques to selected program disputes. During this interim period, the Department through its bureaus and offices will implement ADR pilot programs and other program initiatives in an effort to establish a baseline of experience in the practical uses of ADR. At the conclusion of this interim phase, the Department will assess the results of the ADR initiatives in conjunction with both external and internal comments received, develop a proposed final policy, allow for public comment, and publish a final ADR policy in the **Federal Register**.

The Department seeks comments from the public, including, among others, those persons whose activities the Department regulates, on any aspect of this interim policy and its implementation, and those persons who have engaged in or may in the future engage in ADR processes with the Department. At the end of the 60 day comment period the Department will consider issues raised by interested persons and may modify the interim policy based on public comment.

DATES: Comments must be received on or before August 12, 1994.

ADDRESSES: Written comments should be mailed or delivered to Philip G. Kiko, Deputy Director, Office of Hearings and Appeals (OHA), U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Philip G. Kiko, Deputy Director and the Alternate Dispute Resolution Specialist, OHA (703) 235–3810.

SUPPLEMENTARY INFORMATION:

I. Administrative Dispute Resolution Act

The Administrative Dispute Resolution Act (ADR Act), Public Law No. 101–552, 5 U.S.C. 581–583, enacted November 15, 1990, authorizes and encourages federal agencies to employ consensual methods of dispute resolution as alternatives to litigation. Under the ADR Act, a federal agency is required: (1) To designate a senior official as a dispute resolution specialist; (2) to establish training programs in the use of dispute resolution methods; (3) to adopt a policy on the use of ADR techniques; and (4) to review the standard language in agency contracts, grants or other agreements, to determine whether to include a provision on ADR. Federal agencies are also required to consult with the Administrative Conference of the United States (ACUS) and the Federal Mediation and Conciliation Service (FMCS) on the development of their ADR policies.

Additionally, section 3(a) of the ADA Act requires the Department to adopt a formal policy as to how it intends to implement the ADR Act in each of the following areas: (a) Formal and informal adjudications; (b) rulemakings; (c) enforcement actions; (d) issuing and revoking licenses or permits; (e) contract administration; (f) litigation brought by or against the Department; and (g) other departmental action.

Congress enacted the ADR Act to reduce the time, cost, inefficiencies and contentiousness that are too often associated with litigation and other adversarial dispute mechanisms. Moreover, experience at other federal agencies shows that ADR can help achieve mutually acceptable solutions to disputes more effectively than either litigation or administrative adjudication. In fact, Vice President Gore recommended in September 1993 that federal agencies "increase the use of alternative means of dispute resolution." National Performance Review, Recommendation REG06 (September 7, 1993).

While ADR techniques have proven to be useful in resolving serious conflicts, the day-to-day operations of the Department's bureaus should provide conflict avoidance methods, where possible. Moreover, the ADR Act, 5 U.S.C. 582(b), specifically cautions that:

An agency shall consider not using a dispute resolution proceeding if—

(1) a definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

(2) the matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

(3) maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) the matter significantly affects persons or organizations who are not parties to the proceeding;

(5) a full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and

(6) the agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement.

The decision whether to use ADR, however, remains within each federal agency's discretion, and participation in ADR processes is by mutual consent of the disputants.

The ADR Act fosters the use of ADR by ensuring appropriate protection of parties' and neutrals' communication. The ADR Act, however, is not a statute exempting disclosure under the Freedom of Information Act (FOIA). To establish a baseline of understanding, concerned parties should establish confidentiality guidelines consistent with FOIA requirements before entering into negotiations.

Within the limitations set forth in the ADR Act, and elsewhere, the Department plans to explore, over the next two years, whether and in which contexts the use of ADR facilitates fairer, faster, or more rational resolutions of disputes than present dispute resolution methods provide. Additionally, the Department will conduct an evaluation of the interim policy. On the basis of this evaluation, the Department will consider modifying any of its current procedures or rules, as

appropriate, to allow for greater use of ADR.

II. Negotiated Rulemaking Act

In enacting the Negotiated Rulemaking Act, Public Law No. 101–648, Congress indicated its concern that traditional notice and comment rulemaking procedures may discourage agreement among the potentially affected parties and the Federal Government. Congress addressed this concern by purposefully designing the Negotiated Rulemaking Act's procedures to facilitate the cooperative development of regulations by interested persons and agencies. Moreover, Vice President Gore's report recently recommended improving agencies' regulatory systems by "[e]ncourag[ing] agencies to use negotiated rulemaking more frequently in developing new rules." National Performance Review, Recommendation REG03.

Negotiated Rulemaking (Reg-Neg) does not replace the traditional notice and comment rulemaking. Rather, Reg-Neg supplements the more traditional process by developing consensus around the candidate proposed rule before an agency publishes it in the **Federal Register.** Combining early consensus-building and information-gathering with an opportunity for broad public consideration, the Reg-Neg process meets the prescription of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, and can facilitate more effective regulatory development and regulations. Moreover, on September 30, 1993, President Clinton issued a Memorandum in conjunction with the issuance of Executive Order 12866 on Regulatory Planning and Review. The Memorandum required each department to identify to the Office of Information and Regulatory Affairs at least one rulemaking within the upcoming year to be developed through negotiated rulemaking or to explain why negotiated rulemaking would not be feasible, 58 FR 52391 (Oct. 7, 1993).

Decisionmakers should view Reg-Neg as one of a variety of information-gathering and consensus-building or consultative processes used to achieve effective, efficient, rational, and fair agency policy. Although the Negotiated Rulemaking Act does not address less formal decisionmaking processes, including, among others, policy roundtables and public meetings, such nonadversarial processes may help gather information to assist the Department in policy development.

Participation in informal regulatory development processes can require significant commitment of resources on the part of all participants, including federal agencies. The Department's experience, however, has shown that consensus-building techniques can result in better policy, reduce the high rate of litigation, and lower the costs of program implementation for the Department's bureaus and the regulated community.

III. Interim Policy

A. Application of the Interim Policy

The Department encourages the effective use of ADR and Reg-Neg to the fullest extent compatible with existing law, and the Department's resources and missions. Based on almost one hundred and fifty years of experience, the Department recognizes that the use of consensus-building techniques and nonadversarial planning processes can increase the wisdom, efficiency, equity, and long-term stability of departmental decisions.

The interim policy is intended to govern both the programmatic side of the Department's broad responsibility, as well as many of the human resources aspects. With regard to human resources, this interim ADR policy embraces the ADR policy of the Department's Office for Equal Opportunity. The use of ADR is expected to be very useful in matters involving equal employment opportunity. Workplace dispute issues outside the jurisdiction of actions governed by regulations issued by the Merit Systems Protection Board will also be governed by this policy. Where the use of ADR would impede effective supervisory action in routine matters of employee discipline or performance appraisal, supervisors may elect not to use ADR.

B. Purpose of the Interim Policy

The Department has developed a two-year ADR interim policy in response to the requirements of the ADR Act. The policy encourages the Department's bureaus to identify disputes amenable to ADR and to use ADR, whenever practicable. After testing ADR methods in a variety of contexts, the Department, through the Interior Dispute Resolution Council, at the conclusion of the two-year interim phase, will assess the appropriateness of the use of ADR and determine which program areas could most benefit from the institutionalization of ADR processes. Existing bureau ADR efforts should continue as this final policy is developed.

The Department's interim ADR policy is also designed to disseminate knowledge about ADR both within the Department and to those whom the Department serves, as well as to introduce new ADR initiatives and to provide guidelines for bureaus to apply in the implementation of ADR pilot programs. These initiatives will produce a baseline of experience that will be used in developing the Department's final ADR policy. Without the full commitment and cooperation of all involved in the two-year interim phase, the Department will lose a valuable opportunity to learn what works, what does not, and how best to capture potential benefits from ADR use.

C. Implementation of Interim Policy

1. Role of the Department's Dispute Resolution Specialist

Pursuant to the ADR Act, the Secretary appointed the Director, Office of Hearings and Appeals (OHA) to serve as the Department's Dispute Resolution Specialist (DRS). This high level, Department official was appointed as the DRS in order: (1) To facilitate intra-departmental coordination and communication; (2) to ensure consistent, quality training; (3) to establish minimum qualifications for mediators, arbitrators, and certain departmental employees with ADR responsibilities; and (4) to reduce administrative redundancy. The DRS will maintain an "open door" policy, welcoming inquiries from and offering assistance to the bureaus and interested persons. During the period that the interim policy is being implemented, ongoing input from the public is encouraged. The DRS will also develop and make available a roster of neutrals who are trained in ADR and who would be available to participate in a dispute resolution proceeding. Despite this focal point for ADR activity, the Department's interim ADR policy is to encourage decentralized decisionmaking to the greatest extent possible.

2. Role of the Interior Department Resolution Council

In order to keep the Department's bureaus informed during the implementation of the interim phase, the DRS shall, 30 days after publication of the Department interim policy, convene the Interior Dispute Resolution Council (IDRC). Composed of the Department's Assistant Secretaries, Solicitor and the Director of the Office of Regulatory Affairs (ORA), or their respective designees, and chaired by the DRS, the IDRC shall monitor and evaluated the Department's use of ADR and Reg-Neg and assist in intradepartmental policy and process coordination. The IDRC shall act as an

information clearinghouse, recommend personnel training courses in ADR techniques and program design, and act as the liaison between the ACUS and FMCS.

Additionally, the IDRC will consider the benefits of appointing a departmental ombudsman and the benefits of appointing an ombudsman for selected departmental bureaus. An ombudsman could serve the following functions: (1) To address specific categories of workplace disputes through the investigation of the circumstances giving rise to the disputes and based on their findings to recommend corrective actions, if appropriate; or (2) to investigate and propose the resolution, if appropriate, of citizen complaints against the Department, including recommendations for changes in agency structure or organization to better address or avoid persistent problems. The IDRC will submit a written report at the end of the Interim period on the use of an ombudsman.

3. Training in ADR

The Department recognizes, consistent with the philosophy of the National Performance Review, that bureaus can best evaluate and develop specific ADR programs and initiatives to meet bureau needs. Therefore, each Bureau Head shall appoint a Bureau Dispute Resolution Specialist (BDRS). The BDRS shall receive training recommended by the DRS in ADR consensus-building techniques, conflict resolution, and program design.

The DRS shall recommend appropriate BDRS training, such training to be completed no later than 60 days following issuance of the interim policy. Additionally, the DRS shall provide ADR training opportunities for selected groups of senior managers of the Department, whose job responsibilities include determining or influencing how disputes will be managed. The DRS will also identify opportunities for advanced training in facilitation and mediation for judges and attorneys within OHA, as appropriate.

4. Development of Bureau Alternative Dispute Resolution Plans

The BDRS shall develop and submit the Bureau's Alternate Dispute Resolution Plan (ADRP) through the Bureau Head to the appropriate Assistant Secretary no later than 60 days following the completion of training. The ADRP shall include at least one category of disputes amenable to ADR methods, and a discussion of how the bureau will implement ADR to address such disputes. Additionally, to facilitate the monitoring and evaluation of the bureau's initiative(s), the ADRP should address, among other topics, the (1) Goals; (2) objectives; (3) timetable; (4) implementation strategy; (5) monitoring criteria; and (6) evaluation methodology. It is permissible if two or more bureaus adopt the same plan or parts of a plan.

In selecting appropriate ADR pilot initiatives, a bureau can focus, for example, on a particular category of dispute (e.g., contract cases), on a variety of disputes involving a particular organizational segment or region of the agency, or on a particular ADR process that would be applied in a variety of disputes across the bureau. In selecting a focus for an ADR pilot initiative, the Department encourages bureaus to consider using some of the disputes that are central to the Department's mission. While a bureau should not avoid identifying personnel and small contract disputes, for example, as candidates for a pilot initiative, a bureau should not focus exclusively on these areas so that the effectiveness of ADR for a bureau can be judged in a programmatic context.

Some offices of the Department, such as the Office of the Solicitor, assist bureaus in carrying out their programs rather than conducting programs of their own. For the purposes of this policy, such offices should assist their client bureaus in implementing ADR in a programmatic context. Nonetheless, such offices should develop an ADRP for internal, human resource management purposes.

Consistent with the many activities and functions of the Department and the Federal Acquisition Regulations' (FAR) recognition of the usefulness of ADR in government contracts, each BDRS, or appointed designees, should review categories of all proposed new and renewal contracts, agreements, permits, memoranda of understanding, and other documents, to determine whether to include ADR provisions. Moreover, the Department encourages the use of ADR in contract disputes prior to these disputes reaching the Interior Board of Contract Appeals. To avoid duplication of effort by bureau personnel, the Office of the Solicitor, working with the Department's Senior Procurement official, will develop standardized ADR-related clauses that bureaus can use in contracts and other documents.

The Department expects, as well, that those bureaus with comparatively more dispute resolution experience will, on a voluntary basis, assist bureaus less familiar with dispute resolution in the development of the ADRP. The Department expects, as well, that inter-bureau initiatives such as "one stop permitting," for example, be coordinated with the BDRSs. Each BDRS and others involved with the implementation of the interim policy are encouraged to consult with other federal agencies, and others in the dispute resolution field in the development of their ADR initiatives. The DRS is available to provide the names of contact persons within various federal agencies who have effectively utilized ADR methods in resolving disputes.

Judges within all boards and divisions of OHA will be encouraged to utilize, where appropriate, ADR methods, including, among others, the use of settlement judges, minitrials, and the referral of litigants to mediation or arbitration in advance of a judge's consideration of a case on the merits. OHA will develop an internal policy for the appointment of settlement judges and will refer litigants to a list of approved mediators and arbitrators.

The appropriate Assistant Secretary or designee shall, upon receipt of a bureau's ADRP, review and approve the ADRP in consultation with the IDRC. Within 30 days after approval of an ADRP, a bureau shall publish its ADRP in the **Federal Register** or otherwise make the ADRP accessible to interested persons.

D. Monitoring and Evaluation

Each BDRS shall monitor the implementation of his or her bureau's dispute resolution initiatives on an ongoing basis, using the criteria developed in their ADRP. Each BDRS shall submit to the IDRC, through the proper Bureau Head and Assistant Secretary, every 180 days, an evaluation of the bureau's progress toward meeting the goals, objectives, and timetables on the basis of the methodology outlined in the ADRP. The evaluation should also discuss any unanticipated issues that each bureau may have encountered and how those issues have been or are being resolved.

The BDRSs in conjunction with the IDRC shall, at the conclusion of the two-year interim phase, catalogue and evaluate the bureaus' respective initiatives and experiences under their ADRPs in a report to the Secretary. This evaluation, coordinated by the DRS, as chair of the IDRC, will focus on the categories of dispute and types ADR methods that were most helpful in achieving resolution of disputes.

Moreover, because the usefulness of ADR to the Department is dependent on the processes' ability to facilitate rational, fair, efficient, and stable

solutions among the Department's bureaus, the regulated community and the public, evaluation of the interim policy should receive the benefit of public public comment and participation.

A concluding section of the evaluation should explain how dispute resolution will be integrated on a permanent basis into each bureau's program offices. This process of review, evaluation, and modification will allow each bureau to systematically and regularly improve its ADR programs.

E. Development of Final ADR Policy

The IDRC in conjunction with the BDRSs, and with the benefit of public comment and participation, will develop a permanent Department ADR policy on the basis of the Department's two-year interim policy experience. The DRS will be responsible for the coordination of the development of the Department's final policy, and shall ensure issuance of that policy no later than 90 days after the conclusion of the interim policy. During the time between conclusion of the interim policy and issuance of the final policy, the interim policy shall remain in effect, as appropriate.

F. Negotiated Rulemaking

Pursuant to Executive Order 12866 and the Presidential Memorandum on Negotiated Rulemaking, issued September 30, 1993, the Department will use, where appropriate, negotiated rulemaking or other consensus-building techniques to develop rules that are fair, technically accurate, and clear. Each bureau will evaluate, prior to drafting or amending any regulation, whether negotiated rulemaking is appropriate for developing or amending that regulation and will explain, on the Regulatory Alert Form submitted to the ORA, the basis for determining whether or not the regulation will be developed or amended using negotiated rulemaking.

In explaining whether negotiated rulemaking should be used for a particular rulemaking, each bureau should address at least the following:

(1) Whether there exists a small and identifiable group of constituents (the "parties") with significant interests in the rulemaking, so that all reasonably foreseeable significant interests can be represented by individuals in the negotiation;

(2) Whether the parties believe it to be in their best interest to enter into a negotiated rulemaking;

(3) Whether the parties are willing and able to enter into negotiated rulemaking in good faith;

(4) Whether any single party has, or is perceived to have, the ability to dominate negotiations, thereby making a compromise solution unlikely;

(5) Whether there are clear and identifiable issues that are agreed to be ripe for a negotiated solution;

(6) Whether a negotiated solution would require one or more parties to compromise a fundamental value;

(7) Whether the use of negotiated rulemaking is reasonably likely to result in an agreement or course of action satisfactory to all parties; and

(8) Whether there are legal deadlines or other legal issues that either mitigate against negotiation or provide incentives to reach a negotiated solution.

If a bureau has decided to enter into a negotiated rulemaking, it will prepare a brief report describing the goals, objectives, anticipated parties, and projected timetables of the negotiation. Throughout the negotiation, the bureau will prepare brief periodic reports discussing the progress toward achieving the goals, objectives, and timetables of the negotiation, and highlighting any successes and unanticipated events or issues encountered during the negotiation. These reports shall be submitted to ORA and the IDRC.

At the end of the two-year interim policy, ORA, the DRS, and IDRC shall prepare a report to the Secretary evaluating the Department's experiences with negotiated rulemaking. This report will focus upon the types of policies, categories of rulemakings, and methods of negotiation that were most successful in achieving customer satisfaction and the cost-effective implementation of mutually agreeable rulemakings. This report will be based upon evaluations conducted by the bureaus and submitted to ORA, IDRC, and the DRS for review and assimilation into the report to the Secretary.

IV. Executive Order 12866

This interim policy was not subject to Office of Management and Budget review under Executive Order 12866.

Dated: June 2, 1994.

Bonnie R. Cohen,

Assistant Secretary, Policy, Management and Budgets.

Appendix I—Glossary of ADR Terms
Appendix II—Examples of ADR Initiatives

Appendix I—Glossary of ADR Terms

The following terms are commonly associated with ADR and negotiated rulemaking and contain many recognized forms of ADR. They are provided for the reader's convenience and have been adapted from the ADR Act, the Negotiated Rulemaking Act, and other sources.

Alternative means of dispute resolution—An inclusive term used to describe a variety of problem-solving processes that are used in lieu of litigation or administrative adjudication to resolve issues in controversy, including but not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, or any combination thereof.

Arbitration—A process, quasi-judicial in nature, whereby a dispute is submitted to an impartial and neutral third party who considers the facts and merits of a case and decides the matter. To be revised consistent with 5 U.S.C. 588, et. seq.

Conciliation—Procedures intended to help establish trust and openness between the parties to a dispute.

Dispute—An issue which is material to a decision concerning an administrative or mission-related program of an agency and with which there is disagreement between the agency and a person or persons who would be substantially affected by the decision.

Dispute resolution communication—Any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes, or work product of the neutral, parties, or nonparty participants. A written agreement to enter into a dispute resolution proceeding, or a final written agreement or arbitration award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication.

Dispute resolution proceeding—Any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate.

Facilitation—Involves the assistance of a third party who is impartial toward the issues under discussion and who works with all participants in a whole group session providing procedural directions on how the group can effectively move through the problem-solving steps of the meeting and arrive at the jointly agreed upon goal.

Fact-finding—Involves the use of neutrals acceptable to all parties to determine disputed facts. This can be particularly useful where disagreements about the need for or the meaning of data are impeding resolution of a dispute, or where the disputed facts are highly technical and would be better resolved by experts. Fact-finding usually involves an informal

presentation of its case by each party. The neutral(s) then provide an advisory opinion on the disputed facts, which can be used by the parties as a basis for further negotiation.

Litigation—A dispute brought in a court of law to enforce a statute, right, or legally created cause of action that will be decided based upon legal principles or evidence presented.

Mediation—Involves the intervention into a dispute of an impartial and neutral third party, who has no decisionmaking authority but who will procedurally assist the parties to reach voluntarily an acceptable settlement of issues in dispute.

Minitrial—A structured settlement process in which the disputants agree on a procedure for presenting their cases in highly abbreviated versions (usually no more than a few hours or a few days) to senior officials for each side with authority to settle the dispute. This process allows those in senior positions to see firsthand the relative strengths and weaknesses of their cases and can serve as a basis for more fruitful negotiations. Often, a neutral presides over the hearing, and may, subsequently, mediate the dispute or help parties evaluate their cases.

Negotiated rulemaking—Rulemaking accomplished through the use of a negotiated rulemaking committee.

Negotiated rulemaking committee—An advisory committee established by an agency in accordance with the Negotiated Rulemaking Act and the Federal Advisory Committee Act to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.

Negotiation—Involves a bargaining relationship between two or more parties who have either perceived or actual conflicts of interest. The participants join voluntarily in a temporary relationship to educate each other about their needs and interests and exchange specific resources or promises that will resolve on or more issues. Almost all of the ADR procedures, in which the parties maintain control over the outcome of the conflict, are variations upon or elaborations of the negotiation process.

Neutral—An individual, who with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy. The individual may be a permanent or temporary officer or employee of the Federal Government, or any other individual who is acceptable to the parties to a dispute resolution proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the dispute, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve.

Ombudsman—A person designated to address selected categories of disputes by investigating the circumstances that gave rise to the matter; and based upon the investigative findings, recommending corrective action, as appropriate.

Roster—A list of persons qualified to provide services as neutrals that is maintained by the agency.

Appendix II—Examples of ADR Initiatives

Various bureaus and offices within the Department have been involved in implementing ADR processes. Some of the more prominent examples of ADR initiatives that reflect the Department's commitment to ADR include:

In 1990, the Department disseminated to each of the Department's bureaus and offices an ADR survey designed to identify program areas that could be amenable to ADR techniques. Among the questions asked were: (1) The categories of disputes in which the organization is typically involved; (2) the number of cases during the prior 2 fiscal years that were (a) docketed, (b) settled, and (c) litigated, and the approximate cost involved; and (3) the organization's experience to date in utilizing ADR techniques.

The Department conducted an orientation program on ADR. Included in the orientation program was Senator Charles Grassley, one of the sponsors of the ADR Act, together with representatives of the Administrative Conference of the United States (ACUS) and the Federal Mediation and Conciliation Service (FMCS).

The Department conducted a one day training program on ADR. The training focused on the various methods of ADR and included representatives from the U.S. Army Corps of Engineers, the Environmental Protection Agency, the Department of Health and Human Services, and the Department of Transportation, each of whom shared their experiences in developing successful ADR programs.

The Department's Office for Equal Opportunity (OEO) provided training in basic and advanced mediation skills for OEO and personnel program officials and Equal Employment Opportunity (EEO) counselors. OEO also issued a directive to bureaus and offices providing guidance on the development and implementation of ADR pilot programs consistent with 29 CFR part 1614. Under this directive each bureau and office is to submit an ADR pilot program plan delineating specific actions to be taken to incorporate ADR techniques into the EEO complaints process.

The Department recently made consideration of the use of ADR in the resolution of discrimination complaints mandatory and has designated a Departmental EEO/ADR Coordinator and directed each bureau to designate a Bureau EEO/ADR Coordinator.

The Department designated the Bureau of Reclamation as a pilot bureau in FY–93 for the purpose of testing the effectiveness of mediation in the resolution of EEO complaints and administrative grievances. The Bureau has relied exclusively on contract neutrals to serve as mediators for all dispute referred for ADR. Mediation has also been utilized by Reclamation in other program areas, including resource management and contract administration. Reclamation is assessing the results of its mediation program to determine whether to expand its usage to other program areas.

The Department's Office of Hearings and Appeals has implemented ADR as an alternative to administrative litigation. The Board of Indian Appeals and the administrative law judges vested with authority for adjudicating Indian probate cases have encouraged the use of settlement agreements to resolve these matters. Under 43 CFR 4.207, administrative law judges have been authorized to effect compromise settlements in probate actions where the parties concerned agree to compromise and where the judge establishes that all necessary conditions have been met. The Board of Contract Appeals has been effectively implementing ADR processes over the last 2 years in its cases. At the time a case is docketed, the Board issues an order notifying the parties to the dispute of the availability and benefits of ADR. Through actively promoting ADR as a viable alternative, the Board has settled a majority of its cases without the need to conduct a hearing.

The Bureau of Land Management (BLM) has recognized the benefits of ADR techniques, and a presentation on the topic was made at the Bureau's Solid Minerals Conference in Albuquerque, New Mexico, in April 1993. The BLM, in partnership with the Bowie State University's Center for Alternative Dispute Resolution, has provided basic Conflict Management ADR training to Personnelists and EEO practitioners, as well as to key management officials. The BLM will continue to work with the Center for ADR and other outside resources to provide training during Fiscal Year 1994.

The Minerals Management Service (MMS) has a rich history of ADR. The MMS's examples include (1) a process targeted at settling outstanding and contentious mineral royalty claims which has reduced appeals and litigation and increased royalty collections, and (2) more than a decade of conflict resolution training for offshore minerals management personnel and establishment and conduct of a joint review panel for constituent review of environmental documents.

The Bureau of Mines (USBM) has recognized the benefits of ADR techniques and has provided training to principal officials in the use of ADR techniques. Training was provided by a contractor for the Directorates of the Bureau on orientation to ADR techniques; Information and Analysis on September 28, 1993; Finance and Management, December 8, 1993; and Research on January 11, 1994. Training will also be provided to EEO Counselors by the EEO Staff and the Federal Mediation and Conciliation Service in June 1994. The Bureau plan to continue the use of ADR for EEO complaints and to expand it to other types of disputes. The EEO Office has used mediation and negotiation for EEO complaints in the precomplaint stage and also the formal complaint stage.

[FR Doc. 94–14288 Filed 6–10–94; 8:45 am]

BILLING CODE 4310–79–M

Bureau of Land Management

[NV–930–04–4210–04; N 57154]

Realty Action; Termination of Segregation and Opening Order, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a segregation of public land which is no longer necessary. The land will be opened to operation of the public lands laws generally, including the mining laws.

EFFECTIVE DATE: The segregation will be terminated and the land opened upon publication of this notice in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The following described public land in Douglas County, Nevada, was proposed for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 11 N., R. 21 E.
Sec. 4: SW¼NW¼SE¼, NW¼SW¼SE¼, N½SW¼SW¼SE¼, N½S½SW¼SE¼, S½SW¼SW¼SW¼SE¼, W½SW¼SE¼SW¼SW¼SE¼;
aggregating approximately 29.0625 acres;

as announced in the Notice of Realty Action published on page 18414 of the April 9, 1993, **Federal Register**. This land is no longer involved in the land exchange proposal. Therefore, the segregation of this land from appropriation under the public land laws, including the mining laws, is now terminated upon publication of this notice in the **Federal Register**. Simultaneously, the land is again open to the operation of the public land laws, including the mining laws.

FOR FURTHER INFORMATION CONTACT: More detailed information is available from the Area Manager or Steep Weiss, Bureau of Land Management, Walker Resource Area, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706; telephone (702) 885–6000.

Dated: June 1, 1994.

John Matthiessen,

Area Manager, Walker Resource Area.

[FR Doc. 92–14260 Filed 6–10–94; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–4210–05; N–48693]

Notice of Realty Action: Lease/Purchase for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and public purpose lease/purchase.

SUMMARY: The following described public land in Henderson, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use the land for a junior high school.

Mount Diablo Meridian, Nevada

T. 22 S., R. 63 E.,
Section 16: E½SE¼SE¼
Containing 20 acres, more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in favor of the City of Henderson for roads, public utilities and flood control purposes as follows. 30 feet in width along the north boundary, 50 feet in width along the east boundary, 40 feet in width along the south boundary, 30 feet in width along the west boundary, together with the following radius curves: NW corner having a 15 foot radius, NE corner having a 25 foot radius, SE corner having a 54 foot radius, and the SW corner having a 20 foot radius.

2. Those rights for power transmission line purposes which have been granted to Nevada Power Company by Permit No. N–33079 the under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/purchase until after the classification becomes effective.

Dated: June 1, 1994.

Gary Ryan,

Acting District Manager, Las Vegas, NV

[FR Doc. 94–14261 Filed 6–10–94; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Thursday, June 23, 1994; 1:30 p.m. until 4:30 p.m.

Address: Kemerer Museum of Decorative Arts, 427 North New Street, Bethlehem, PA 18018.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy, for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Executive Director, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 E. Church Street, room P–208, Bethlehem, PA 18018, (610) 861–9345.

Karen Wade,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 94–14220 Filed 6–10–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 485)]

CSX Transportation, Inc.—Abandonment—Between Lynchburg and Sumter in Lee and Sumter Counties, SC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of findings.

SUMMARY: The Commission has issued a certificate authorizing CSX Transportation, Inc. (CSXT) to abandon 16.01 miles of rail line between milepost AK–313.43 at Lynchburg and milepost AK–329.44 at Sumter, which is located in Lee and Sumter Counties, SC. The abandonment certificate will become effective July 10, 1994, unless the Commission finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer and any requests for a public use condition must be filed with the Commission and CSXT no later than 10 days from the date of publication of this Notice. The following notation shall be typed in bold face in the lower left-hand corner of the envelope containing the offer: "Office of Proceedings, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Dated: June 7, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–14340 Filed 6–9–94; 12:48 pm]

BILLING CODE 7035–01–P

[Finance Docket No. 32517]

Pickens Railway Corporation, Inc.—Acquisition and Operation Exemption—Pickens Railroad Company

Pickens Railway Corporation, Inc., a noncarrier, has filed a notice of exemption to acquire and operate approximately 8 miles of rail line from Pickens Railroad Company. The line extends between milepost 0.0 at Pickens and milepost 8.0 at Easley, in Pickens County, SC. The transaction was expected to be consummated after May 30, 1994, the exemption's effective date.

Any comments must be filed with the Commission and served on: R. Murray Hughes, P. O. Box 1389, 208 Garvin Street, suite G, Pickens, SC 29671.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 7, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary

[FR Doc. 94–14284 Filed 6–10–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTEMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Postponement of Open Meeting

SUMMARY: This notice postpones the June 23, 1994 open meeting of the Glass Ceiling Commission. The notice for this meeting was announced in the **Federal Register** on May 17, 1994 (59 FR 25669). A new date for the Open Meeting will be announced in the future.

FOR FURTHER INFORMATION CONTACT: Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 7th day of June, 1994.

Robert B. Reich,

Secretary of Labor

[FR Doc. 94–14245 Filed 6–10–94; 8:45 am]

BILLING CODE 4510–23–M

Glass Ceiling Commission; Postponement of Open Site Hearing

SUMMARY: This notice postpones the June 24, 1994 Open Site Hearing of the Glass Ceiling Commission. The notice for this Open Site Hearing was announced in the **Federal Register** on May 17, 1994 (59 FR 25670). A new date for the Open Site Hearing will be announced in the future.

FOR FURTHER INFORMATION CONTACT: Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room C–2313, Washington, DC 20210, (202) 219–7342.

Dated: Signed at Washington, DC this 7th day of June, 1994.

Robert B. Reich,

Secretary of Labor

[FR Doc. 94–14246 Filed 6–10–94; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 65th meeting on Wednesday and Thursday

June 29 and 30, 1994, in Room P-110, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 29, 1994—8:30 a.m until 6 p.m.

Thursday, June 30, 1994—8:30 a.m. until 6 p.m.

During this meeting the Committee plans to consider the following:

A. *Proposed Amendments to 10 CFR part 60, on Disposal of High-Level Radioactive Wastes in Geologic Repositories—Design Basis Events for the Geologic Repository Operations Area*—Review the proposed amendments with emphasis on the definition of "important to safety" for certain structures, systems, and components.

B. *Problems in the Siting of the Proposed Low-Level Radioactive Waste Disposal Facility at Martinsville, IL*—Discuss the failed attempt to site a LLW disposal facility at Martinsville, IL with participants in the process, with a focus on lessons learned from the experience.

C. *Substantially Complete Containment*—Hear a briefing by the NRC staff on this topic; interest lies in exploring current views on reliance placed on geologic versus engineered barriers in an HLW repository.

D. *Tectonics of the Proposed HLW Repository at Yucca Mountain*—Hear a briefing from representatives of the State of Nevada on its concerns related to and investigations of tectonic and magmatic processes at the proposed Yucca Mountain site.

E. *Update on the Systematic Regulatory Analysis*—Discuss with the NRC staff the current status of the systematic regulatory analysis and current products from this effort such as the License Application Review Plan and the Standard Format and Content Guide for an HLW Repository.

F. *Compatibility and Adequacy of Agreement States Programs*—Discuss among the ACNW issues associated with the disposal of LLW in Agreement States.

G. *Preparation of ACNW Reports*—Prepare ACNW reports on issues considered during this and previous meetings.

H. *Future Activities*—Discuss topics proposed for consideration by the full Committee and working groups.

I. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACNW executive Director prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACNW Executive Director, Dr. John T. Larkins (telephone 301–492–4516), between 7:30 a.m. and 4:15 p.m. e.s.t.

Dated: June 7, 1994.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 94–14257 Filed 6–10–94; 8:45 am]

BILLING CODE 7590–01–M

Organization of Agreement State Managers' Workshop and Public Meeting on Rulemakings

AGENCY: Nuclear Regulation Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff plans to hold a public workshop for managers of the Organization of Agreement States. The Commission has directed the staff to review and prepare for the Commission's consideration recommendations to improve NRC's Agreement States Program to assure adequate protection of the public health and safety. In this process, the Commission staff has solicited the opinions of those with historical backgrounds in the Agreement State program and representatives of the Agreement States. Topics for discussion at the upcoming workshop include: Open Discussion of Agreement State Issues; New Policy Statement of NRC Agreement States Program; Integrated Materials Performance Evaluation Program; Sealed Source and Device Review; Federal Advisory Committee Act Update; Medical Management Plan; Allegations Received Against Radiation Control Programs; National Data Base for Events Reporting; and OAS Task Force on National Event Data Base. A Session on NRC Rulemakings will be held on the afternoon of July 12, 1994.

DATES: The workshop will be held on July 12–14, 1994. The times are:

Tuesday, July 12, 1994—8:30 a.m.–5 p.m.

Wednesday, July 13, 1994—8:30 a.m.–5 p.m.

Thursday, July 14, 1994—8:30 a.m.–12 noon

ADDRESSES: The workshop will held at the Washington Dulles Marriott Suites, located at 13101 Worldgate Drive, Herndon, Virginia 22070 (703/709–0400).

FOR FURTHER INFORMATION CONTACT: Rosetta Virgilio, Office of State Programs, Mail Stop 3–D–23, U.S. Nuclear Regulatory Commission, Washington, DC 20555 Telephone 301/504–2307.

CONDUCT OF THE MEETING: The workshop will be conducted in a manner that will expedite the orderly conduct of business. A transcript of the workshop will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555 on or about September 15, 1994.

The following procedures apply to public attendance at the workshop:

1. Questions or statements will be entertained as time permits.
2. Seating will be on a first-come, first-served basis.

Dated at Rockville, Maryland this 7th day of June 1993.

For the Nuclear Regulatory Commission

Richard L. Bangart,

Director, Office of State Programs

[FR Doc. 94–14258 Filed 6–10–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. IA-94-011 and ASLBP No. 94-696-05-EA]

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

In The Matter of Dr. James E. Bauer
Enforcement Action IA 94-011

This Board is being established pursuant to the request of James E. Bauer, M.D., in response to an immediately effective order. On May 10, 1994, the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support issued IA 94-011 to Dr. Bauer, entitled "Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)." 59 Fed. Reg. 25673, May 17, 1994. The Order prohibits Dr. Bauer from being named on any NRC license in any capacity and from otherwise performing licensed activities for a period of five years from the date of this order. For an additional two years, Dr. Bauer is required to notify the NRC of any involvement in licensed activities.

Dr. Bauer has been listed as the Radiation Safety Officer and sole authorized user on NRC license No. 37-28179-01 (license) issued to the Indiana Regional Cancer Center (Licensee) located in Indiana, Pennsylvania. By an order Modifying and Suspending License (Effective Immediately), issued November 16, 1993, the license has been modified to prohibit Dr. Bauer from engaging in activities under the license and to suspend the Licensee's authority to receive and use licensed material.

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

G. Paul Bollwerk, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 6th day of June 1994.

B. Paul Cotter, Jr.,
Chief Administrative Judge Atomic Safety and Licensing Board Panel.

[FR Doc. 94-14259 Filed 6-10-94 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34160; File No. SR-MSRB-94-5]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business, and Rule G-8 on Recordkeeping

June 3, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 24, 1994, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The purpose of the proposed rule change is to provide procedures for dealers to seek exemptive relief from rule G-37, in limited circumstances, and to clarify certain definitions in rules G-37 and G-8. The Board has requested accelerated approval of the proposed rule change to facilitate compliance with rule G-37. The Commission is publishing this notice to solicit comments on the propose rule change from interested persons. As discussed below, the Commission finds good cause for granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing the proposed rule change to amend rule G-37 concerning political contributions and prohibitions on municipal securities business, and rule G-8 concerning recordkeeping. The proposed rule change: (i) Provides procedures for dealers to seek exemptive relief from rule G-37's prohibition on business, in limited circumstances; and (ii) clarifies certain definitions in rules G-37 and G-8. The Board has requested accelerated approval of the proposed rule change to facilitate compliance with the rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In response to the Board's initial proposal on political contributions and prohibitions on municipal securities business and its rule G-37 filing with the Commission,[1] the Board received a number of comments recommending that the Board consider providing, in limited instances, a "good faith exemption" to the rule's prohibition on municipal securities business.[2] In light of these comments, the Board has determined to submit the proposed rule change.

A registered securities association or appropriate regulatory agency may exempt a dealer who is prohibited from engaging in municipal securities business with an issuer from such prohibition.

A number of commenters on rule G-37 have expressed concern that imposing a prohibition on municipal securities business may be unfair in certain limited situations when political contributions have been made.[3] For example, a disgruntled municipal finance professional may make a contribution purposely to injure the dealer, its management or employees. Also, a municipal finance professional eligible to vote for an issuer official may make a number of small contributions during an election cycle (*e.g.*, over four years) which, when consolidated, amount to slightly over the $250 *de minimis* exemption (*e.g.*, $255). In both examples, the contributions would trigger the prohibition on business under rule G-37(b), thereby prohibiting the dealer from engaging in municipal

[1] The Commission approved rule G-37 in Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621. Rule G-37 became effective on April 25, 1994.

[2] The Board previously considered and rejected the inclusion of a good-faith exception to the rule. See Securities Exchange Act Release No. 33482 (January 14, 1994), 59 FR 3389.

[3] See rule G-37 approval order, *supra* note 1

securities business with the issuer for two years.

The Board recognizes that in certain circumstances, such as those discussed above, the rule's prohibition on business may be too harsh a consequence for truly inadvertent contributions or the contributions of disgruntled employees. Thus, the Board has determined to add new paragraph (i) to rule G–37 to establish a procedure whereby the National Association of Securities Dealers ("NASD") and the federal bank regulatory agencies (*i.e.*, the Office of Comptroller of the Currency, Federal Reserve Board, and Federal Deposit Insurance Corporation), upon application by a dealer subject to such association's or agency's inspection and enforcement authority, may exempt, conditionally or unconditionally, a dealer who is prohibited from engaging in municipal securities business from such prohibition.[4] In determining whether to grant such an exemption, the proposed rule change would require that the NASD and bank regulatory agencies consider, among other factors, whether:

(i) such exemption is consistent with the public interest, the protection of investors and the purposes of this rule; and

(ii) such dealer (A) prior to the time the contribution(s) which resulted in such prohibition was made, had developed and instituted procedures reasonably designed to ensure compliance with this rule; (B) prior to or at the time the contribution(s) which resulted in such prohibition was made, had no actual knowledge of the contribution(s); (C) has taken all available steps to cause the person or persons involved in making the contribution(s) which resulted in such prohibition to obtain a return of the contribution(s); and (D) has taken such other remedial or preventive measures, as may be appropriate under the circumstances.

The Board believes that a dealer that is subject to the prohibition on business should have to make a substantial effort to be exempted from that prohibition. The proposed rule change would require the dealer to petition the NASD or appropriate bank regulatory agency to seek such an exemption and to provide sufficient evidence to justify an exemption. In making a determination concerning an exemption, the NASD or appropriate bank regulatory agency would then review the facts and circumstances presented by the dealer, as well as the factors set forth in the proposed rule change. The Board would expect that this prohibition exemption not be routinely requested by dealers and that exemptions would be granted by the NASD and the bank regulatory agencies only in limited circumstances. The Board believes that the proposed rule change will offer relief from the prohibition on business in appropriate circumstances without sacrificing the rule's purpose and intent, *i.e.*, to ensure that the high standards and integrity of the municipal securities industry are maintained, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect a free and open market, and to protect investors and the public interest. The Board will seek information from the NASD and bank regulatory agencies regarding the granting of any exemptions in order to monitor the implementation of this provision, and to determine if any changes are necessary.

[4] The NASD and the bank regulatory agencies are statutorily authorized to inspect for compliance with, and to enforce Board rules. See Sections 15A(b)(7), 15B(c)(5), and 15B(c)(7) of the Act: [15 U.S.C. §§ 78o–3(b)(7), 78o–4(c)(5), 78o–4(c)(7)].

Definition of "Official of an Issuer"

An "official of an issuer" is defined in rule G–37(g)(vi) as any incumbent, candidate or successful candidate for elective office of the issuer, which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a dealer for municipal securities business. The definition is intended to include any state or local official or candidate (or successful candidate) who has influence over the awarding of municipal securities business, including certain state-wide executive or legislative officials.

The Board, however, was concerned that because the definition focuses on "an elective office of the issuer," it did not clearly include certain other officials. For example, a state may have certain issuing authorities whose boards of directors are appointed by the governor. Although the governor is an official with influence over the awarding of municipal securities business, the governor, in this illustration, is not an incumbent or candidate for "elective office of the issuer" (*i.e.*, the state authority). Thus, a contribution to the governor would not prohibit a dealer from engaging in business with the state authority. The Board intended to include the governor as an official of the issuer in such circumstances and, therefore, has determined to amend the definition to clarify its intent.

The amended definition of official of an issuer includes any incumbent or candidate "for any elective office of a state or of any political subdivision, which office has authority to appoint any official(s) of an issuer, as defined in [paragraph (g)(vii)(A) of rule G–37]."

Definition of "municipal securities business" does not include competitive financial advisory activities.

The definition of "municipal securities business" in rule G–37(g)(vii) includes certain dealer activities, such as acting as negotiated underwriters, financial advisors and consultants, placement agents, and negotiated remarketing agents. In its rule G–37 filing with the Commission, the Board noted that the rule would not prohibit dealers from acting as competitive underwriters or competitive remarketing agents.[5] The Board is amending this definition to clarify that the rule also would not prohibit dealers from engaging in competitive advisory activities.

Only associated persons come under definition of "municipal finance professional."

The Board determined to amend the definition of "municipal finance professional," as set forth in rule G–37(g)(iv), to clarify that only associated persons would fall within the rule's four categories of municipal finance professionals.[6]

Dealers shall send G–37 Reports to the Board by certified or registered mail or by some other means that provides a record of sending.

Rule G–37(e)(i) currently requires dealers to submit quarterly reports to the Board on Form G–37 concerning political contributions and municipal securities business. The Board is concerned, however, that some confusion could arise over whether particular reports were actually sent and/or lost in the mail. To obviate any such problem, the Board is amending this paragraph to require that dealers send such reports to the Board "by certified or registered mail, or some other equally prompt means that provides a record of sending." This will ensure that dealers have a record of all reports submitted to the Board.

The Board also is amending this paragraph to correct an erroneous cross-reference to rule G–8, which requires dealers to submit to the Board reports on contributions that are required to be recorded pursuant to rule G–8(a)(xvi).

The rule requires, among other things, that dealers disclose the name, company, role and compensation arrangement of any person, other than a municipal finance professional, employed by the dealer to obtain or retain business.

[5] *See supra* note 2.

[6] "Associated persons" is defined in Sections 3(a)(18) and 3(a)(32) of the Act: [15 U.S.C. 78c(a)(18), (32)].

Paragraph (e)(ii) of rule G–37 requires that the reports referred to in paragraph (e)(i) include, among other things, a list of issuers with which the dealer has engaged in municipal securities business, along with the type of municipal securities business and the name, company, role, and compensation arrangement of any person employed by the dealer to obtain or retain municipal securities business with such issuers. The Board intended that this provision apply to persons such as outside consultants that are not municipal finance professionals associated with the dealer. Thus, the amendment clarifies that this requirement does not require the dealer to disclose the name of such municipal finance professionals.

Dealers complying with Commission Rule 17a–3 must maintain the information and records required by Board rule G–37.

Board rule G–8(f) allows dealers, other than bank dealers, who are in compliance with Commission Rule 17a–3, on recordkeeping, to be deemed in compliance with Board rule G–8, on recordkeeping. However, the rule provides that specific information required by rule G–8 must be maintained, even though such information is not required by Rule 17a–3. The Board is amending rule G–8(f) to clarify that dealers complying with Rule 17a–3 are still required to maintain the information and records required by Board rule G–37.[7]

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it will apply equally to brokers, dealers, and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing in the **Federal Register**. The Board believes that accelerated approval of the proposed rule change is necessary to facilitate dealer compliance with rules G–37 and G–8.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board, and, in particular, with Sections 15B(b)(2) (C) and (G) of the Act.[8] Section 15B(b)(2)(C) authorizes the MSRB to adopt rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and, in general, to protect investors and the public interest. Section 15B(b)(2)(G) authorizes the MSRB to adopt rules that prescribe the records to be made and kept by municipal securities dealers and the periods for which such records shall be preserved.

The Commission received several comments to rule G–37 recommending that the rule provide an exemption process, based on the dealer's compliance procedures and supervision, for certain inadvertent violations.[9] The Commission approved the rule and recommended the MSRB separately address these concerns by filing a proposed rule change that provides an exemption process for inadvertent violations. The MSRB's proposal adequately addresses these concerns.[10] The proposal provides procedures for dealers to obtain exemptive relief from rule G–37's prohibition on business where, for example, covered persons inadvertently make contributions that slightly exceed the *de minimis* exemption provided by the rule. The proposal's exemptive relief is based on the dealers' supervision of covered persons, compliance procedures concerning rule G–37, and corrective and remedial action concerning inadvertent violations. The Commission expects that dealers will apply for exemptive relief only in certain, limited situations. Thus, the proposal provides an exemptive process to rule G–37 without providing dealers a "loop-hole" that would frustrate the rule's purpose to, among other things, ensure that high standards and integrity of the municipal securities industry are maintained.

The proposal also clarifies provisions of rules G–37 and G–8. Amendments to rule G–37's definitions of "official of an issuer," "municipal securities business," and "municipal finance professional," as well as amendments to rules G–37 and G–8 disclosure and recordkeeping requirements will facilitate compliance with the rules.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing in the **Federal Register**. Accelerated approval is necessary and appropriate to facilitate compliance with rules G–37 and G–8.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Board. All submissions should refer to File No. SR–MSRB–94–5 and should be submitted by July 5, 1994.

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[7] In addition, the board is amending rule G–8(f) to include appropriate cross-references to rules G–27 on supervision, and G–36 on delivery to the Board of officials statements and advance refunding documents. This amendment, like the proposed rule change, clarifies that dealers complying with Rule 17a–3 must still maintain the information and records required by rules G–27 and G–36. These cross-references were inadvertently omitted when the Board previously amended these rules.

[8] Sections 15B(b)(2)(C), (G); [15 U.S.C. 78o–4(b)(2)(C), (G)].

[9] See *Supra* note 1

[10] Because an exemption to rule G–37 is appropriate in very limited circumstances,

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 U.S.C. 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–14226 Filed 6–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34161; File No. SR–MSRB–94–6]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business

June 6, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 24, 1994, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The purpose of the proposed rule change is to provide interpretative guidance concerning rule G–37 on political contributions and prohibitions on municipal securities business. The Board, pursuant to Section 19(b)(3)(A) of the Act, filed the proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board. This renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing the proposed rule change to provide interpretative guidance concerning rule G–37 on political contributions and prohibitions on municipal securities business.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On April 7, 1994, the Commission approved Board rule G–37, concerning political contributions and prohibitions on municipal securities business.[2] The Board has, and continues to receive, numerous inquiries concerning the application of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with the provisions of the rule, the Board has determined to publish this notice of interpretation which provides, in question-and-answer format, general guidance on rule G–37. The Board will continue to monitor the application of rule G–37, and, from time to time, will publish additional notices of interpretations, as necessary.

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change would apply equally to all brokers, dealers and municipal securities dealers, the Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 thereunder because the rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Board. All submissions should refer to File No. SR–MSRB–94–6 and should be submitted by July 5, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–14227 Filed 6–10–94; 8:45 am]

BILLING CODE 8010–01–M

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[11] 15 U.S.C. 78s(b)(2).

[1] The Board plans to publish the interpretations in the June 1994, MSRB Reports. The interpretations also are available for inspection and copying at the Commission's public reference room, and at the MSRB.

[2] Securities Exchange Act Release No. 33868 (April 7, 1994); 59 FR 17621. The rule applies to contributions made on and after April 25, 1994.

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 3, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49588.

Date Filed: June 1, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 29, 1994.

Description: Application of Air Transport International, Inc., pursuant to section 401(h) of the Act, requests a disclaimer of jurisdiction or, in the alternative, approval of the transfer of its certificates of public convenience and necessity to Air Transport International Limited Liability Company. The transfer of certificates from ATI to ATI LLC is part of a corporate restructuring intended to take advantage of tax and business-related benefits offered by the relatively new limited liability company organizational structure.

Docket Number: 49589.

Date Filed: June 2, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 30, 1994.

Description: Application of Aeroejecutivo, S.A. de C.V., pursuant to section 402 of the Act and subpart Q of the Regulations, applies to amend its foreign air carrier permit issued to engage in scheduled foreign air transportation of persons, property and mail between points in Mexico and points in the United States, and subject to applicable regulations of the Department, between points in the United States and other points worldwide.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–14223 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

RTCA, Inc.; New Document Releases

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for the release of the following new documents:

RCRA DO–221 *Guidance and Recommended Requirements For Airport Surface Movement Sensors,* provides recommended standards for both sensor and system characteristics. The primary purpose for these sensors is to operate stop bars located on taxiways which provide entrance to low visibility runways. The sensors may also be used for other low visibility functions such as taxiway light sequencing, runway exiting notification and presence detection. This document provides guidance to airport system designers, manufacturers, installers and user. The cost of DO–221 is US$50.00 for U.S./Canada/Mexico and US$65.00 for all other countries, plus applicable shipping and handling charges.

RTCA DO–222 *Guidelines on AMS(R)S Near-Term Voice Implementation and Utilization,* contains operational guidelines and recommendations for the implementation and utilization of Aeronautical Mobile Satellite (Route) Services, voice communication functions in the near-term (circa 1993–1996) air traffic environment. It presents a system-level view of how satellite voice services can be implemented and used in the Air Traffic Services (ATS) and Aeronautical Operational Control (AOC) environments inclusive of aircraft installation requirements, ground infrastructure requirements and available AMS(R)S services. This document defines the functions and performance needed to facilitate the development, implementation, certification and operational use of satellite voice in an environment where satellite voice communication is not yet a required capability for air navigation. It uses as its basis the existing standards for satellite avionics and ground equipment. It should be useful to designers, manufacturers, installers and operators of equipment used in AMSS voice service. The cost of DO–222 is US$60.00 for U.S./Canada/Mexico and US$75.00 for all other countries, plus applicable shipping and handling charges.

Dave Ford,

Designated Officer

[FR Doc. 94–14295 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–M

Approval of Record of Decision (ROD) for a Mitigated Finding of No Significant Impact (FONSI); Greater Rockford Airport, Rockford, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) announces that on June 3, 1994, it approved the Mitigated FONSI/ROD on the proposed development at Greater Rockford Airport, Rockford, Illinois. Major development items, proposed to be completed over the next 5 to 10 years, are depicted on the Airport Layout Plan (ALP).

EFFECTIVE DATE: The effective date of the FAA's approval of the Mitigated FONSI/ROD is June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Melissa Wishy, Community Planner, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue; Des Plaines, Illinois, 60018, (708) 294–7524.

SUPPLEMENTARY INFORMATION: The FAA approved the Mitigated FONSI/ROD for proposed development at Greater Rockford Airport. Below is a listing of major, associated and indirect development projects. This listing includes United Parcel Service's (UPS) recent announcement to initiate a cargo hub facility at the airport.

1. Develop the midfield area for aviation-related industrial users.
2. Expand the existing cargo apron and buildings west of the existing terminal building to accommodate a minimum of 26 cargo aircraft.
3. Extend Runway 7/25 to a length of 10,000 feet by constructing a 3,500-foot southwesterly extension with parallel and connecting taxiways and associated lighting and navigation aids. This would include the installation of a CAT II Instrument Landing System (ILS) for Runway 7.
4. Relocate approximately 12,000 feet of Belt Line Road and 9,300 feet of Kishwaukee Road.
5. Expand the existing terminal building and auto parking lot and upgrade the existing airport entrance roadway.
6. Construct a general aviation apron and T-hangars.
7. Close Runway 13/31
8. Remove miscellaneous support buildings.
9. Construct a new 4,000-foot general aviation visual approach runway, parallel to and 5,100 feet southeast of existing Runway 7/25, with associated taxiways and instrumentation
10. Construct and realign various taxiways parallel to Runway 1/19. The majority of the realignment work proposed is adjacent to and west of the approach end of Runway 19.

11. Implement actions recommended in the 1993 Master Drainage/Stormwater Management Plan.

12. Implement actions recommended in the updated Noise Compatibility Plan.

13. Acquire approximately 1,100 acres of land for airfield development. In addition to this acquisition, is the relocation of up to 28 residential dwellings (for noise and floodway mitigation), of which only eleven are considered to be noise impacted and must be acquired and residents relocated prior to the start of any operation resulting from the Proposed Action Alternative. The remaining residential dwellings would be acquired for purposes of airfield development and floodway mitigation. Those dwellings identified as floodway mitigation can be acquired either in fee-simple or through restrictive covenant. (Updated)

14. Compensate for wetland impacts caused by the development of the Proposed Action Alternative through the creation of approximately 25 acres of new wetlands.

15. An additional 1,500 flights annually beyond those originally forecasted but with an greater number of stage three aircraft. This is based on UPS's proposal to initiate an air cargo operation at Greater Rockford Airport.

The FAA issued a **Federal Register** Notice on April 22, 1993 announcing its intent to prepare an Environmental Document (possible Environmental Impact Statement) and to hold a May 26, 1993 scoping meeting. At the scoping meeting no significant impacts were identified. Some concerns were expressed over possible noise, floodplain and wetland impacts. The airport sponsor indicated that any impacts would be mitigated below the level of significance as an integral part of the development.

The FAA issued a subsequent **Federal Register** Notice on February 17, 1994 announcing the availability of the Draft Environmental Document and provided additional opportunity for scoping comments for the refined listing of the major, associated and indirect development projects, incorporating items scoped originally and those newly identified as part of the UPS proposed development. Notice was also given for a March 22, 1994 public hearing with written comments being received until April 6, 1994. Based on the analysis found in the Final Environmental Assessment and the results of the public hearing, the FAA published a May 2, 1994 **Federal Register** Notice that it intended to issue a Mitigated FONSI/ROD for the proposed development depicted on the Airport Layout Plan. The FAA received a letter from the Illinois Department of Agriculture (IDOA) stating their concerns with respect to farmland impacts. The FAA addressed IDOA's concerns in a June 2, 1994 letter. On June 3, 1994, the FAA approved the Record of Decision (ROD).

A copy of the Mitigated FONSI/ROD is available for review at the FAA-Chicago Airports District Office (address identified above). Copies of these documents will also be available for review locally at locations which have not yet been determined. These locations will be specified in a Public Notice or upon request of the Chicago Airports District Office (telephone number identified above).

Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT.

Issued in Des Plaines, Illinois on June 6, 1994.

Louis H. Yates,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 94–14291 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on June 30, 1994, at 9 a.m.

ADDRESSES: The meeting will be held in the Management Operations Center, 10th floor, Headquarters, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vermillion, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on June 30, 1994, at the Federal Aviation Administration Building, Management Operations Center, 10th Floor, 800 Independence Ave., SW., Washington, DC, 20590. The agenda for this meeting will include a final report from the Flight Crewmember Flight/Duty/Rest Requirements Working Group and status reports on the recommendations of the Fuel Requirements Working Group, the Autopilot Working Group, and the Controlled Rest on the Flight Deck Working Group. The agenda will also include an open discussion of possible future tasks. Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading FOR FURTHER INFORMATION CONTACT.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on June 7, 1994.

Quentin J. Smith, Jr.,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–14292 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 162, Twenty-Second Meeting; Aviation Systems Design Guidelines for Open Systems Interconnection (OSI)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 162 meeting to be held August 16–18, starting at 9:30 a.m. The meeting will be held at the National Business Aircraft Association (NBAA) Conference Room, 1200 Eighteenth Street, NW., suite 200, Washington, DC 20036. Phone (202) 783–9000.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of the summary of the twenty-first meeting held March 29–31, 1994. RTCA Paper No. 181–94/SC162–169 (enclosed); (3) Reports of related activities being conducted by other organizations; (4) Report on FAA data link certification planning and documentation; (5) Review and plan the activity of Working Group 1, "ATN MASPS and Router MOPS; (6) Plan the activity of Working Group 2, "Rewrite DO–205, Part 1"; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC

20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 2, 1994.

Dave Ford,

Designated Officer.

[FR Doc. 94–14293 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 181, Fourth Meeting; Aviation Systems Design Guidelines for Open Systems Interconnection (OSI)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 181 meeting to be held June 20–24, starting at 9 a.m. The meeting will be held at the Red Lion Hotel, 300 112th Avenue, SE., Bellevue, Washington, DC: (P) 206–455–1300/Boeing Host: Dave Nakamura (P) 206–4552.

Specific Working Groups Sessions

June 20–21

Working Groups 1 and 3: Meeting space will be provided at the hotel for these sessions.

June 22–24 Plenary Agenda

Note: Committee officers working group chairman, and secretaries will meet at 0800 on June 22 prior to the plenary and again on June 24.

June 22 Morning

(1) Opening remarks/introductions;
(2) Review of the agenda;
(3) Approval of the summary of the third meeting, RTCA Paper No. 219–94/SC181–28 (previously mailed).

Note: Paper number was inadvertently left off of the mailed copy and has been added for filing and reference purposes.

(4) Committee reports: (a) P–RNAV AMJ Editorial Group—Geoff Burtenshaw (b) RTCA Technical Management Committee Briefing—Frank Alexander;

(5) Working Group Reports: (a) Working Group 2—Jim Terpstra (b) Containment Surface Sub-group—Frank Alexander.

Afternoon of June 22 and June 23

Working Group Meetings.

June 24 Morning

(6) Working Group Reports (Working Groups 1 and 3);
(7) Other business;
(8) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 2, 1994

Dave Ford,

Designated Officer.

[FR Doc. 94–14294 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Interagency Committee on Aircraft Noise Meeting Agenda

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public forum.

SUMMARY: The FAA is issuing this notice to advise the public of a forum sponsored by the Federal Interagency Committee on Aircraft Noise (FICAN) to discuss aircraft noise issues.

DATES: The forum will be held on July 27, 1994, at the Richard B. Russel Building.

ADDRESSES: The forum will be held at 75 Spring Street, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Connor, Manager, Technology Division (AEE–100), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, fax (202) 267–5594.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public forum sponsored by the Federal Interagency Committee on Aircraft Noise (FICAN) to be held on July 27, 1994.

On March 16, 1993, representatives of the agencies that participated on the Federal Interagency Committee on Noise (FICON) met and agreed to establish a standing committee to be known as FICAN. The standing interagency committee will provide a permanent aviation noise research and development (R&D) forum, which will assist agencies in providing adequate forums for discussion of public and private proposals, identify needed research, and encouraging R&D efforts in these areas.

The agenda for the meeting will include:

- Presentation of current and future aircraft noise research projects that are funded by the Federal members of FICAN.
- Public concern/discussion and comment period.

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by July 15, 1994, to present oral statements at the forum. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the forum. Written comments should be addressed to the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Comments must be received on or before August 12, 1994.

Thomas Connor,

Manager Technology Division, Office of Environment and Energy.

[FR Doc. 94–13918 Filed 6–10–94, 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

June 2, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision (OTS)

OMB Number: 1550–0025.

Form Number: OTS Form 1314 (Canceled) and OTS Forms 1584 (New), 1585 (New) and 1589 (Replaces OTS Form 1314).

Type of Review: Revision.

Title: Purchase of Branch Office(s)/Transfer of Assets and/or Liabilities.

Description: Information provided to OTS is evaluated to determine whether the proposed assumption of liabilities and/or transfer of assets transactions complies with applicable laws, regulations and policy, and will not have an adverse effect on the risk exposure to the insurance fund.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 135.

Estimated Burden Hours Per Respondent: 4 hours, 2 minutes.

Frequency of Response: Other (Information is submitted each time a transfer of assets and/or liabilities are proposed.)

Estimated Total Reporting Burden: 545 hours.

OMB Number: 1550–0037.
Form Number: OTS Form No. 1240.
Type of Review: Extension.
Title: Trust Powers Application.
Description: 12 CFR 550.2 requires a Federal savings association proposing to exercise fiduciary powers to file an application indicating which trust services it wishes to offer and providing sufficient information for the OTS to approve or deny the application.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 9.
Estimated Burden Hours Per Respondent: 9 hours.
Frequency of Response: Other (Submission is required when Federal association proposes to offer fiduciary services.)
Estimated Total Reporting Burden: 81 hours.

OMB Number: 1550–0060.
Form Number: H-(b)11 Report.
Type of Review: Extension.
Title: Savings and Loan Holding Company Report H-(b)11.
Description: The H-(b)11 Report is used to determine a savings and loan holding company's adherence to the statutes, regulations and conditions of approval to acquire an insured institution and whether any of the company's activities would be injurious to the operation of any subsidiary savings association.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 587.
Estimated Burden Hours Per Respondent: 15 hours, 30 minutes.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 36,394 hours.

Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street, NW., Washington, DC 20552.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 94–14297 Filed 6–10–94; 8:45 am]
BILLING CODE 4810–25–P

Customs Service

Public Meetings on Customs Automated Export System

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: Notice of meetings.

SUMMARY: This notice announces the first of a series of public meetings on the development of the Automated Export System (AES) and advises the public of other locations where additional meetings on this subject will be scheduled at a later date. The purpose of these meetings is: (1) To give Customs managers an opportunity to provide the public with information related to the development of AES and (2) to give attendees an opportunity to ask questions, make suggestions, and provide Customs with informal ideas related to AES design and functionality. The first meeting will be held in Washington, DC on Friday, July 8, 1994, commencing at 9 a.m. in Hearing Room B of the Interstate Commerce Commission Building. Those planning to attend the meeting are requested to so notify Customs in advance. Notice of additional meetings to be held at other locations around the country will be published at a later date.

DATES: July 8, 1994, commencing at 9 a.m.

ADDRESSES: Interstate Commerce Commission Building, Hearing Room B, 12th Street and Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lorna Finley, AES Development Team, U.S. Customs Service, 1301 Constitution Avenue, NW., room 7331, Washington, DC 20229. Phone: 202–927–0280; FAX: 202–927–0742.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 1994, the Commissioner of Customs directed that Customs develop an Automated Export System (AES). This system is being developed as a cooperative team effort involving Customs and the Bureau of the Census.

Since AES is in the very early design stage, the AES Development Team intends to hold a series of public meetings for the purpose of: (1) Giving Customs managers an opportunity to provide the public with information related to the development of AES and (2) giving attendees an opportunity to ask questions, make suggestions, and provide Customs with informal ideas related to AES design and functionality. Each meeting will open with a short presentation on AES, past, present and future, and after this presentation the floor will be open to all attendees for general informal discussion of the AES program.

The first meeting will be held in Washington, D.C. on Friday, July 8, 1994, commencing at 9:00 a.m. in Hearing Room B of the Interstate Commerce Commission Building. In order to ensure that overcrowding does not result, persons planning to attend the meeting are requested to preregister by contacting Lorna Finley, AES Development Team, preferably by FAX (202–927–0742) or, for those without access to FAX equipment, by telephone (202–927–0280).

Additional public meetings on AES are planned for the following locations: Boston, Massachusetts; New York, New York; Houston, Texas; New Orleans, Louisiana; Seattle, Washington; Los Angeles, California; and Portland, Oregon. Appropriate notice will be published in the **Federal Register** when the dates, times and specific locations for these meetings have been established.

Dated: June 8, 1994.

Harvey B. Fox,
Director, Office of Regulations and Rulings.
[FR Doc. 94–14254 Filed 6–10–94; 8:45 am]
BILLING CODE 4820–02–P

Fiscal Service

[Dept. Circ. 570, 1993—Rev., Supp. No. 24]

Surety Companies Acceptable on Federal Bonds Termination of Authority: Omaha Property and Casualty Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Omaha Property and Casualty Insurance Company, of Omaha, Nebraska, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 58, CFR 35809, July 1, 1993.

With respect to any bonds currently in force with Omaha Property and Casualty Insurance Company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from Company. In addition, bonds that are continuous in nature should not be renewed.

Copies of the Circular may be obtained from the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–7116.

Dated: May 25, 1994.

Charles F. Schwan III,
Director, Funds Management Division, Financial Management Service.
[FR Doc. 94–14279 Filed 6–10–94; 8:45 am]
BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 112
Monday, June 13, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, June 16, 1994, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED: The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: June 8, 1994.

Sadye E. Dunn,

Secretary.

[FR Doc. 94-14452 Filed 6-9-94; 3:08 pm]

BILLING CODE 6355-01-M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, June 15, 1994, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. *Baby Bath Rings and Seats*

The Commission will consider options for Commission action to address risks of injury and death associated with baby bath rings and seats.

2. *Fireworks*

The staff will brief the Commission on options for Commission action to address the risk associated with multiple tube mine and shell fireworks devices.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: June 8, 1994.

Sadye E. Dunn,

Secretary.

[FR Doc. 94-14453 Filed 6-9-94; 3:08 pm]

BILLING CODE 5355-01-M

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

DATE AND TIME: June 15, 1994, 10:00 a.m.

PLACE: 825 North Capitol Street N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 611th Meeting—June 15, 1994, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 2471-003, Wisconsin Electric Power Company

CAH-2
Project No. 11465-001, Androscoggin Hydroelectric Company, Inc.

CAH-3
Omitted

CAH-4.
Project No. 9759-011, Centreville Hydro, Inc.

Consent Agenda—Electric

CAE-1
Docket No. ER94-235-000, Northeast Utilities Service Company

CAE-2.
Docket Nos. EF93-2011-001, EF93-2021-001, EF93-2041-001, EF94-2081-001 and EF94-2091-001, Bonneville Power Administration

CAE-3.
Docket No. ER94-1174-000, Florida Power Corporation

CAE-4.
Docket No. ER94-996-000, Elkem Metals Company

CAE-5
Docket No. QF91-40-001, Medina Power Company

CAE-6.
Project No. 432-009, Carolina Power & Light Company
Project No. 2748-002, North Carolina Electric Membership Corporation

CAE-7.
Docket No. ER94-773-001, Long Island Lighting Company

CAE-8.
Docket Nos. ER94-504-001 and ER94-505-001, Public Service Company of Colorado

CAE-9
Docket No. ER93-777-001, Commonwealth Edison Company

CAE-10
Docket No. EG94-29-001, Desarrollo Petrolero, S. De R.L. De C.V.

CAE-11
Docket No. ER90-283-001, Cambridge Electric Light Company

CAE-12
Docket No. ER93-465-001, Florida Power & Light Company

CAE-13
Docket No. EG94-56-000, Entergy Power Asia Ltd.

CAE-14.
Docket No. EG94-57-000, Entergy Power Development Corporation

CAE-15.
Docket No. EG94-52-000, SEI Inversora S.A.

CAE-16
Docket No. EG94-53-000, Cardinal Power of Canada, L.P.

CAE-17.
Docket No. EG94-59-000, Energia De Nuevo Leon, S.A. de C.V.

CAE-18.
Docket No. EG94-58-000, SEI Holdings VIII, Inc.

CAE-19.
Docket No. EG94-60-000, SEI Beteiligungs Gmbh

CAE-20.
Docket No. EG94-54-000, Les Developpements Hydroelectriques CHI International, Inc.

CAE-21.
Docket No. EG94-55-000, Consolidated Hydro, Inc.

CAE-22
Docket No. EL94-2-000, American Municipal Power—Ohio, Inc. v. Dayton Power & Light Company

CAE-23
Docket No. EL94-14-000, Public Service Company of Oklahoma

CAE-24
Docket Nos. EL94-26-000 and QF89-125-005, Cedar Bay Generating Company, Limited Partnership

CAE-25.
Docket No. EL94-57-000, Louisiana Public Service Commission, Attorney General of the State of Mississippi, and the Mississipi Public Service Commission v. Entergy Services, Inc.
Docket No. EL94-13-000, Entergy Services, Inc. and Gulf States Utilities Company

Consent Agenda—Miscellaneous

CAM–1.
Docket No. RM94–16–000, Delegations to the Chief Accountant and the Chief Administrative Law Judge

Consent Agenda—Oil and Gas

CAG–1.
Docket No. RP94–80–003, National Fuel Gas Supply Corporation
CAG–2.
Docket No. RP94–213–000, CNG Transmission Corporation
CAG–3.
Docket No. RP94–251–000, National Fuel Gas Supply Corporation
CAG–4.
Omitted
CAG–5.
Docket No. TM94–5–34–000, Florida Gas Transmission Company
CAG–6.
Docket No. RP94–152–001, Northern Border Pipeline Company
CAG–7.
Docket Nos. RP94–249–000, RP94–87–000, RP94–122–000, RP94–169–000 and RP94–195–000, Natural Gas Pipeline Company of America
CAG–8.
Docket No. RP94–252–000, Natural Gas Pipeline Company of America
CAG–9.
Docket Nos. GT93–48–000, GT94–7–000 and GT94–12–000, Transcontinental Gas Pipe Line Corporation
CAG–10.
Docket No. RP90–137–015, Williston Basin Interstate Pipeline Company
CAG–11.
Docket No. TM90–3–42–009, Transwestern Pipeline Company
CAG–12.
Docket No. PR93–11–000, Northern Illinois Gas Company
CAG–13.
Omitted
CAG–14.
Docket Nos. RP90–81–000, RP88–194–000, RP89–132–000, RP91–26–000, RP91–162–000 and RP92–18–000, El Paso Natural Gas Company
CAG–15.
Docket Nos. RP91–161–012, RP92–3–006, RP90–108–019, RP91–82–010 and RS92–5–003, Columbia Gas Transmission Corporation
Docket Nos. RP91–160–009, RP92–2–006, RP90–107–016 and RS92–6–003, Columbia Gulf Transmission Company
CAG–16.
Docket No. RP94–125–004, Texas Gas Transmission Corporation
CAG–17.
Docket Nos. RP94–182–001, RP94–182–002 and TM94–3–31–001, Arkla Energy Resources Company
CAG–18.
Docket No. GP94–9–001, Oklahoma Corporation Commission, Oil & Gas Conservation Division, Sonat Exploration Company
CAG–19.
Docket No. MG91–1–005, National Fuel Gas Supply Corporation
CAG–20.
Docket Nos. OR92–8–004, OR93–5–002, OR94–3–001 and OR94–4–001, SFPP, L.P.
CAG–21.
Docket No. AC92–143–001, ARCO Pipe Line Company
CAG–22.
Docket Nos. RP91–26–007, RP91–162–002, RP92–18–004, RP88–184–013, RP89–132–014 and RP90–81–006, El Paso Natural Gas Company
CAG–23.
Docket No. RP91–203–038, Tennessee Gas Pipeline Company
CAG–24.
Docket No. RP94–158–001, Columbia Gas Transmission Corporation
CAG–25.
Docket Nos. TA93–1–21–004 and TM93–9–21–002, Columbia Gas Transmission Corporation
CAG–26.
Docket No. RP94–161–001, U–T Offshore System
CAG–27.
Docket No. IS92–25–002, Amoco Pipeline Company
CAG–28.
Docket No. RP93–99–001, Colorado Interstate Gas Company
CAG–29.
Omitted
CAG–30.
Omitted
CAG–31.
Omitted
CAG–32.
Docket No. MG94–3–000, Midwest Gas Storage Company
CAG–33.
Docket No. MG91–7–000, Ozark Gas Transmission System
CAG–34.
Docket No. OR94–5–000, Gaviota Terminal Company
CAG–35.
Docket No. OR94–8–000, All American Pipeline Company
CAG–36.
Docket No. GP94–2–000, Columbia Gas Transmission Corporation
CAG–37.
Omitted
CAG–38.
Omitted
CAG–39.
Docket No. RS92–24–018, Texas Gas Transmission Corporation
CAG–40.
Docket No. CP92–606–002, Great Lakes Gas Transmission Limited Partnership
CAG–41.
Docket No. CP93–501–001, Tennessee Gas Pipeline Company
CAG–42.
Docket Nos. CP93–541–001 and 000, Young Gas Storage Company, Ltd.
CAG–43.
Docket Nos. CP91–780–004 and RP92–112–002, Northwest Pipeline Corporation
CAG–44.
Docket No. CP92–259–003, Sumas International Pipeline, Inc.
Docket Nos. CP92–336–003 and CP92–383–003, Northwest Pipeline Corporation
Docket Nos. CP92–247–002 and 003, Northwest Pipeline Corporation and Washington Water Power Corporation
CAG–45.
Docket No. CP94–166–001, Viosca Knoll Gathering System
CAG–46.
Docket No. CP93–565–000, Texas Eastern Transmission Corporation
CAG–47.
Docket No. CP93–607–000, CNG Transmission Corporation
CAG–48.
Omitted
CAG–49.
Docket No. CP94–161–001, Avoca Natural Gas Storage
CAG–50.
Docket No. CP94–75–000, Koch Gateway Pipeline Company
CAG–51.
Docket No. CP93–716–000, HNG Sulphur Mines Company
CAG–52.
Docket No. CP94–87–000, Great Lakes Gas Transmission Limited Partnership
CAG–53.
Docket No. CP93–198–000, Big Sandy Gas Company
Docket No. CP93–200–000, CNG Transmission Corporation
CAG–54.
Docket No. CP94–146–000, CNG Producing Company
Docket Nos. CP93–340–000 and CP93–596–000, CNG Transmission Corporation
Docket No. CP94–148–000, CNG Transmission Corporation, CNG Producing Company and Otis Petroleum Corporation
Docket No. RP94–96–000, CNG Transmission Corporation
Docket No. RP94–120–000, Koch Gateway Pipeline Company
Docket No. RP94–164–000, Trunkline Gas Company
CAG–55.
Omitted
CAG–56.
Docket No. CP89–460–010, Pacific Gas Transmission Company
CAG–57.
Docket No. CP94–158–000, Pacific Gas and Electric Company
CAG–58.
Docket No. CP93–260–000, Suncor Inc., PanCanadian Petroleum Company and Petro-Canada Hydrocarbons, Inc. v Pacific Ga Transmission Company and Pacific Gas and Electric Company
CAG–59.
Docket Nos. CP93–261–000 and 001, Algonquin Gas Transmission Company

Hydro Agenda

H–1.
Omitted
H–2.
Docket No. RM93–7–000, Charges and Fees for Hydroelectric Project, Final Rule
H–3.
Omitted

Electric Agenda

E–1.
Omitted
E–2.

Omitted

E–3.
Docket No. ER92–592–000, Yankee Atomic Electric Company. Order on initial decision concerning unamortized investment, expenses, and decommissioning costs

E–4.
Omitted

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket Nos. RM94–6–000 and RM87–5–016, Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions. Final Rule

II. Restructuring Matters

RS–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
Reserved
Dated: June 8, 1994

Lois D. Cashell,

Secretary.

[FR Doc. 94–14379 Filed 6–9–94; 11:56 am]

BILLING CODE 6717–01–P

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Audit and Appropriations Committee will meet on June 18, 1994. The meeting will commence at 9 a.m.

PLACE: Washington Court Hotel, 525 New Jersey Avenue, NW., Hermitage Room, Washington, DC 20001, (202) 628–2100.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of May 13, 1994 Meeting.
3. Consideration and Review of Budget and Expenses for Period Ending April 30, 1994.

CONTACT PERSON FOR INFORMATION:
Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: June 9, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–14372 Filed 6–9–94; 11:23 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Presidential Search Committee Meeting

TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors Presidential Search Committee will be held on June 16–17, 1994. The meeting will commence at 9:00 a.m. on June 16, 1994, and at 8:30 a.m. on June 17, 1994.

PLACE: Washington Court Hotel, June 16th: Board Room Lounges, 750 First Street, N.W., Washington, D.C. 20001 June 17th: Montpelier Room, (202) 628–2100.

STATUS OF MEETING: *Open*, except that part of the meeting may be closed on both days pursuant to a vote, to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will, with its Advisory Committee, interview and consider applicants for the position of President of the Corporation. The Committee, with its Advisory Committee, will also consider the qualifications of the applicants interviewed for the position of President of the Corporation, after which the Committee will, alone, consider the recommendations of its Advisory Committee and the qualifications of the applicants interviewed for the position of President of the Corporation and will settle on a recommendation to make to the Board of Directors as to selection of a candidate for the position. In addition, the Committee will consider for approval the minutes of the executive session(s) held on March 12, 1994, April 14, 1994, and May 14, 1994.[1] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2) and (6)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a) and (e)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

June 16, 1994 Agenda

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda
2. Approval of Minutes of May 14, 1994 Meeting.

CLOSED SESSION:

3. Approval of Minutes of March 12, 1994 Executive Session.
4. Approval of Minutes of April 14, 1994 Executive Session.
5. Approval of Minutes of May 14, 1994 Executive Session.
6. Interview and Consider, With Advisory Committee, Applicants for the Position of President of the Corporation.

OPEN SESSION:

8. Consider and Act on Motion to Recess the Executive Session Until June 17, 1994, at 8:30 a.m.

June 17, 1994 Agenda

MATTERS TO BE CONSIDERED:

CLOSED SESSION:

1. Interview and Consider, With Advisory Committee, Applicants for the Position of President of the Corporation.
2. Consider, With Advisory Committee, Qualifications of Applicants Interviewed for the Position of President of the Corporation.
3. Presidential Search Committee's Consideration of the Relative Merits of Applicants Interviewed for the Position of President of the Corporation and Selection of Candidate(s) to Recommend to the Board of Directors for the Position.

OPEN SESSION: (Resumed)

4. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION:
Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: June 9, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–14374 Filed 6–9–94; 11:23 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on June 18, 1994. The meeting will commence at 9:00 a.m.

PLACE: Washington Court Hotel, 525 New Jersey Avenue, NW., Ballroom West, Washington, DC 20001, (202) 628–2100.

STATUS OF MEETING: Open.

[1] As to the Committee's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Committee meeting(s).

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of May 13, 1994 Meeting.
3. Report and Recommendation to the Committee Regarding Monitoring, Evaluation, and Support Functions.
4. Report on Various Activities, Including the Application to the Corporation for National and Community Service and the Law School Clinical Civil Legal Services Grants.
5. Discussion of Issues Related to Program Improvement: Technical Assistance, Training, and Support.
6. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION:
Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: June 9, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–14373 Filed 6–9–94; 11:22 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on June 19–20, 1994. The meeting will commence at 9:00 a.m. on both days. On June 19, 1994, it is anticipated the substantive portion of the open session (i.e., deliberation of agenda item number 5) will commence at approximately 10:00 a.m.

PLACE: Legal Services Corporation, 750 First Street, NE., Board Room, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: *Open*, except that portion of the meeting may be closed pursuant to a vote to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will hear the report of the General Counsel on litigation to which the Corporation is or may become a party. In addition, the Committee will consider and act on internal personnel and operational matters related to the Executive Office, the Office of the General Counsel, the Office of Administration, and the Office of Human Resources/Equal Opportunity, the four offices of the Corporation under the Committee's purview. Finally, the Committee will consider for approval the minutes of the executive session(s) held on May 13, 1994. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c) (2), (6), and (10], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5 (a), (e), and (h)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posed for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

June 19, 1994 Agenda

MATTERS TO BE CONSIDERED

OPEN SESSION:

1. Approval of Agenda.

CLOSED SESSION:

2. Approval of Minutes of May 13, 1994 Executive Session.
3. Consider and Act on General Counsel's Report on Litigation to Which the Corporation is or May Become a Party.
4. Consider and Act on Internal Personnel and Operational Matters.

OPEN SESSION: (Resumed)

5. Approval of Minutes of May 13, 1994 Meeting.
6. Consideration of Update on the Reauthorization Legislative process.
7. Possible Consideration of and Action on Publication of Proposed Revisions to Part 1607 of the Corporation's Regulations in the **Federal Register** for Public Comment.
8. Consider and Act on Proposed Changes to Part 1608 of the Corporation's Regulations.

OPEN SESSION: (Continued)

9. Consider and Act on Proposed Changes to Part 1621 of the Corporation's Regulations.
10. Public Comment.

June 20, 1994 Agenda

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Consider and Act on Proposed Changes to Part 1611 of the Corporation's Regulations.
2. Public comment.
3. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION:
Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: June 9, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–14375 Filed 6–9–94; 11:22 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on June 18, 1994. The meeting will commence at 8:00 a.m.[2]

PLACE: Washington Court Hotel, 525 New Jersey Avenue, NW., Ballroom West, Washington, DC 20001, (202) 628–2100.

STATUS OF MEETING: *Open*, except that a portion of the meeting may be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board will receive the recommendation of its Presidential Search Committee regarding selection of an applicant for the position of President of the Corporation, and may settle on an applicant to fill that position. The Board will also consider and vote to approve draft minutes of executive sessions held on November 8, 1993; December 6, 1993; April 15, 1994; and May 13, 1994. Further, the Board will consult with the Inspector General on internal personnel, operational and investigative matters. The Board will also consult with the President on internal personnel and operational matters. Finally, the Board will deliberate regarding internal personnel and operational matters. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c) (2) (5), (6) and (7)], and the corresponding regulation of the Legal Services Corporation [45 CFR Section 1622.5 (a), (d), (e), and (f)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at

[1] As to the Committee's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Committee meeting(s).

[2] Note that the Board will convene at 8:30 a.m. briefly in open session, but primarily in closed session until approximately 9:00 a.m., at which time the Board will recess the meeting until approximately 11:00 a.m. the same morning. The brief recess will be taken to permit two of the Board's standing committees to meet.

750 First Street, NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.

CLOSED SESSION:

2. Receive and Consider the Report of the Presidential Search Committee.

OPEN SESSION: (Resumed)

3. Receive the Report of the Presidential Search Committee.
4. Consideration of Motion to Select a President of the Corporation.
5. Consideration of Motion to Recess Meeting Until 11:00 a.m.
6. Approval of Minutes of May 13, 1994 Meeting.
7. Chairman's and Members' Reports.
8. President's Report.
9. Ratification of Vote Taken on May 30–31, 1994, Approving the Management Response to the Inspector General's Semiannual Report to Congress for the Period Ending March 31, 1994.
10. Consideration of Issues Related to the Allocation and Distribution of the Corporation's Fiscal Year 1995 Appropriation.
11. Consider and Act on Proposed Changes to the Corporation's Bylaws.
12. Consider and Act on Operations and Regulations Committee Report.
13. Consider and Act on Provision for the Delivery of Legal Services Committee Report.
14. Consider and Act on Audit and Appropriations Committee Report.
15. Inspector General's Report.

CLOSED SESSION:

16. Consider and Act on Draft Minutes of the November 8, 1993 Executive Session.
17. Consider and Act on Draft Minutes of the December 6, 1993 Executive Session.
18. Consider and Act on Draft Minutes of the April 16, 1994 Executive Session.
19. Consider and Act on Draft Minutes of the May 13, 1994 Executive Session.
20. Consultation by Board with the President on Internal Personnel and Operational Matters.
    a. Consideration of the Inspector General's Access to Corporation Documents.
21. Consider and Act on Internal Personnel and Operational Matters.
22. Consultation by Board with the Inspector General on Internal Personnel, Operational and Investigative Matters.
    a. Briefing on the Status of the Internal Investigation Requested by the Board.

OPEN SESSION: (Resumed)

23. Public Comment.
24. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION:
Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: June 9, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–14376 Filed 6–9–94; 11:22 am]

BILLING CODE 7050–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Board of Directors Meeting

TIME AND DATE: Tuesday, June 21, 1994, 1:00 P.M. (Open Portion), 1:30 p.m. (Closed Portion).

PLACE: Office of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting Open to the Public from 1:00 p.m. to 1:30 p.m. Closed portion will commence at 1:30 p.m., (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Approval of 3/22/94 Minutes (Open Portion).
3. Meeting schedule through December 1994.

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 p.m.)

1. Finance Project in Russia.
2. Insurance Project in Russia.
3. Insurance Project in Russia.
4. Insurance Project in Russia.
5. Finance and Insurance Joint Project in India.
6. Insurance Project in Indonesia.
7. Insurance Project in Philippines.
8. Finance Project in Argentina.
9. Insurance Project in Argentina.
10. Insurance Project in Venezuela.
11. Pending Major Projects.
12. Approval of the 3/22/94 Minutes (Closed Portion).

CONTACT PERSON FOR INFORMATION:
Information on the meeting may be obtained from the Corporate Secretary at (202) 336–8403.

Dated: June 9, 1994.

Anne H. Smart,

OPIC Corporate Secretary.

[FR Doc. 94–14460 Filed 6–9–94; 3:29 p.m.]

BILLING CODE 3210–01–M

Corrections

Federal Register
Vol. 59, No. 112
Monday, June 13, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 940-538-4136; I.D. 041994B]

Reef Fish Fishery of the Gulf of Mexico

Correction

In proposed rule document 94-12832 beginning on page 27258 in the issue of Thursday, May 26, 1994, make the following correction:

On page 27258, in the second column, under **DATES**, in the second line, "July 11, 1994" should read "July 7, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BPD-799-FC]
RIN 0938-AG34

Medicare Program; Changes to the Requirement for Annual Physician Acknowledgement of Physician Attestation Responsibilities

Correction

In rule document 94-5315 beginning on page 11000 in the issue of Wednesday, March 9, 1994, make the following corrections:

(1) On page 11000, in the first column, under **DATES**, in the second line "April 18, 1994" should read "April 8, 1994".

(2) On the same page, in the second column, under **ADDRESSES**, in the first line "Room 309-," should read "Room 309-G,".

(3) On page 11001, in the first column, in the second full paragraph, in the penultimate line insert "denial" between "issue" and "determinations".

(4) On page 11002, in the first column, in the penultimate bulleted paragraph, in the fifth line "a" should read "at".

(5) On the same page, in the third column:

(a) In the first paragraph, five lines from the bottom "review of" should read "review to".

(b) In the third paragraph, six lines from the bottom "FRA" should read "RFA".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4]
RIN 0960-AA99

Revised Medical Criteria for Determination of Disability, Cardiovascular System

Correction

In rule document 94-2844 beginning on page 6468 in the issue of Thursday, February 10, 1994, make the following correction:

Appendix 1 to subpart P [Corrected]

On page 6497, in the second column, in Appendix 1 to subpart P, item 5, in the last line, "February 10, 1994" should read "February 10, 1998".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1917, and 1918

[Docket No. S-025]

Longshoring and Marine Terminals

Correction

In proposed rule document 94-13058 beginning on page 28594 in the issue of Thursday, June 2, 1994 make the following corrections:

1. On page 28642, in the second column, in the third full paragraph:

a. In the fifth line, "September 30, 1994" should read "September 20, 1994".

b. Beginning in the sixth line, "October 31, 1994" should read "October 19, 1994".

c. Beginning in the seventh line, "November 29, 1994" should read "July 11, 1994".

2. On the same page, in the same column, in the fourth full paragraph, beginning in the third line, "August 31, 1994" should read "August 24, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09-94-005]

Safety and Security Zone; Lake Michigan - Chicago Harbor - Burnham Park Harbor

Correction

In proposed rule document 94-13090 beginning on page 27515 in the issue of Friday, May 27, 1994, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Jacksonville 93-115]]

Security Zone Regulations; Naval Air Station, Jacksonville, FL

Correction

In proposed rule document 94-11977, beginning on page 26155 in the issue of Thursday, May 19, 1994, in the third column in **DATES:**, insert "Comments must be received on or before " after the colon.

BILLING CODE 1505-01-D

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federal register

Monday
June 13, 1994

Part II

Department of Transportation

Federal Highway Administration

23 CFR Parts 657 and 658

Truck Size and Weight; Restrictions on Longer Combination Vehicles and Vehicles With Two or More Cargo-Carrying Units; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 657 and 658

[FHWA Docket Nos. 90-9 and 92-15]

RIN 2125-AC86

Truck Size and Weight; Restrictions on Longer Combination Vehicles and Vehicles With Two or More Cargo-Carrying Units

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Final rule.

SUMMARY: The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) restricts the operation of longer combination vehicles (LCV's) on the Interstate Highway System and commercial motor vehicle (CMV) combinations with two or more cargo-carrying units on the National Network (NN) to the types of vehicles in use on or before June 1, 1991, subject to whatever State restrictions were in effect on that date. The ISTEA also includes special variances from the June 1 date for Alaska, Ohio, and Wyoming. As required by the ISTEA and based on information provided by the States, industry, and the public, the final rule lists applicable limitations by specific vehicle combination, by State, in effect on June 1, 1991, and does not further restrict the operation of any vehicle in lawful operation on or before June 1, 1991. This rule also establishes criteria for States to make minor adjustments to the list of limitations; defines certain terms, such as "nondivisible load," "beverage container," and "maxi-cube" vehicle; makes technical amendments to the list of federally-designated routes on the NN; and makes other minor changes to conform existing regulations to the ISTEA.

EFFECTIVE DATE: July 13, 1994

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Motor Carrier Information Management, at (202) 366-2212 or Mr. Charles Medalen, Office of the Chief Counsel, at (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Section 1023 of the ISTEA (Pub. L. 102-240, 105 Stat. 1914, 1951, codified at 23 U.S.C. 127(d)) required States, within 60 days of the date of enactment, to submit to the Secretary of Transportation for publication in the **Federal Register** 30 days thereafter a complete list of (1) all operations of LCV's being conducted as of June 1, 1991; (2) State laws, regulations, and any other limitations and conditions, including routing-specific and configuration-specific designations governing the operation of LCV's; and (3) a copy of such laws, regulations, limitations, and conditions. An LCV is defined in the ISTEA as any combination of a truck tractor and two or more trailers or semitrailers which operates on the Interstate System at a gross vehicle weight greater than 80,000 pounds.

Similarly, section 4006 of the ISTEA (49 U.S.C. app. 2311(j)) required the States to submit a complete list of State length limitations applicable to CMV combinations with two or more cargo-carrying units in effect on or before June 1, 1991. This section prohibits States from allowing the operation (by statute, regulation, permit, or other means) of CMV's with cargo-carrying unit lengths that exceed the length, by specific configuration, allowed and in actual, lawful operation on a regular or periodic basis (including continuing seasonal operation) on the NN in that State on or before June 1, 1991. The NN is defined in 23 CFR 658.5, and includes the Interstate System, with minor exceptions, and selected non-Interstate routes. The non-Interstate NN highways are listed in appendix A to part 658.

Sections 1023 and 4006 provide that no statute or regulation shall be included on the list submitted by a State or published by the Secretary merely on the grounds that it authorized, or could have authorized, by permit or otherwise, the operation of LCV or CMV combinations not in actual operation on a regular or periodic basis on or before June 1, 1991.

States may continue to issue special permits, in accordance with applicable State laws, for those vehicles and loads which cannot be easily dismantled or divided. A definition of such nondivisible loads is included in this final rule.

The ISTEA included three narrow exceptions to the June 1, 1991, freeze date. Wyoming would have been able to allow the operation of additional vehicle configurations not in actual operation on June 1, 1991, provided they were authorized by State law not later than November 3, 1992. No additional vehicles were authorized, however, and accordingly no additional vehicles are included in appendix C over those listed in the previous two rulemakings on this issue.

Ohio may allow LCV's with three cargo-carrying units of 28.5 feet each (not including the truck tractor) not in actual operation on June 1, 1991, to be operated within its boundaries on the 1-mile segment of Ohio State Route 7 which begins at, and extends south of, Exit 16 on the Ohio Turnpike. Alaska may continue to allow the operation of CMV's which were not in actual operation on June 1, 1991, but which were in actual operation prior to July 6, 1991.

A preliminary list of the information provided by the States in response to sections 1023 and 4006 was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 20, 1992 (57 FR 9900). A second proposed list of vehicles and restrictions, including corrections, clarifications, and additional material submitted to the docket in response to the NPRM was published as a supplemental notice of proposed rulemaking (SNPRM) on February 25, 1993 (58 FR 11450). In the NPRM the information provided by the States was organized into appendices C and D to part 658; in the SNPRM that information was combined into a single list of vehicles and restrictions and presented as a new appendix C. The format of the SNPRM has been retained for the final rule.

In response to publication of the SNPRM, 154 sets of comments were received from 136 separate entities. The vast majority of those comments deal with specifics on the information published in the SNPRM, and they will be discussed under individual topical headings. Four of the commenters, however, the American Trucking Associations, Inc. (ATA), the Wyoming Trucking Association, Inc. (WTA), the Alaska Department of Transportation and Public Facilities, and the Citizens for Reliable And Safe Highways (CRASH), provided comments concerning the rulemaking in general, and the philosophy used by the FHWA in presenting the information. These particular comments provide an opportunity for the FHWA to explain its approach.

The ISTEA stipulates that the "final list" of LCV operational requirements for each State be published in the **Federal Register** not later than 180 days after the date of enactment. That date was June 15, 1992. The lead comment by the CRASH in its docket submission was that publication of the final list by the FHWA was "long overdue." The CRASH contends that since the freeze does not take effect until the Secretary publishes the final list, the FHWA's delay in publication has prevented the law from taking effect. This in turn means that LCV's may today be operating on highways from which

Congress intended they be barred. It concludes this comment by stating that the review and correction process included with the final rule can be used to make corrections after publication of the rule.

As the FHWA stated in the Supplementary Information section of the SNPRM, the content of the States' original responses to the ISTEA request for LCV operational information covered the full range of what could be supplied, both in terms of items covered and volume of material. The diversity of the contents of the responses was so great that the FHWA determined that before any list could be finalized, increased uniformity both in terms of items covered and the type of information would be necessary. Thus, despite the likelihood that the statutory due date for a final rule might be missed, the FHWA determined that it was in the public's interest to publish a SNPRM soliciting further public comment on revisions to the initial list. The FHWA considered publishing a "final list" without this additional public procedure, but believed that the list published at that stage would have required numerous subsequent changes. We believe that the intent of Congress in including a correction process was to take care of relatively minor single-issue situations which may be discovered after publication of this final rule, not to make wholesale changes in a State's submission without good cause.

The WTA expressed concern that the interpretations used by the FHWA in developing this rule have involved many combination vehicles that, until passage of the ISTEA, were not considered by anyone to be LCV's. In a similar vein, Alaska commented that the SNPRM "seeks to significantly expand the ISTEA legislation and, we believe, severely constrains the states' abilities to legitimately regulate commercial traffic within each state."

This final rule implements two similar, yet separate provisions of the ISTEA. Section 1023, as discussed earlier, involves LCV's and includes an LCV definition. The scope of vehicle combinations covered by this section is narrow. The definition requires that an LCV combination include a truck tractor, which by previous congressional action (section 411(f), Surface Transportation Assistance Act (STAA) of 1982) is defined as a noncargo-carrying power unit and two or more trailers or semitrailers. The combination must operate on the Interstate System, and its gross vehicle weight must be in excess of 80,000 pounds. The vehicles listed in appendix C as a result of this statutory definition include only what might best be described as the "traditional" LCV's, that is, the "Rocky Mountain" and "Turnpike" Doubles and the "Triple." Under the definition of LCV provided by the ISTEA, it is true that the State of Alaska has no LCV's because it has no Interstate System mileage in the sense used in the ISTEA; that is, Alaska does not have Interstate System mileage designated under 23 U.S.C. 103(e), 139(a), or 139(b). Accordingly, all references to LCV's for Alaska have been deleted from this final rule.

Alaska does, however, have mileage that is part of the NN. Section 4006 of the ISTEA requires the FHWA to include in the final list "any commercial motor vehicle combination * * * with 2 or more cargo carrying units." A "cargo-carrying unit" is defined as "any portion of a commercial motor vehicle combination * * * used for carrying cargo, including a trailer, semitrailer, or the cargo carrying section of a single unit truck." While section 1023 is relatively narrow in scope, section 4006 has very widespread applicability. If, as the WTA contends, vehicles not previously considered to be LCV's are covered by this final rule, it is because of section 4006. This section is also the reason that vehicles are listed in appendix C for Alaska. Thus, vehicles not previously considered LCV's are included in this final rule, because the statute applies to more than just LCV's.

The ATA expressed concern that the FHWA's attempt to organize the vehicles subject to the freeze into four basic categories requires the FHWA to go beyond the role established for it in the ISTEA. The ATA contends that the ISTEA limits the role of the Secretary to reviewing for accuracy and publishing State information and that the categorization made by the FHWA involves the interpretation of State laws and regulations. Similarly, Alaska commented that the nomenclature used in designating the four basic categories "is not universally acceptable." The categories used in appendix C, as included in the SNPRM, were (1) Rocky Mountain Doubles, (2) Turnpike Doubles, (3) Triples, and (4) Other. These names were chosen in an attempt to describe the vehicles covered by the freeze in terms commonly used in the trucking industry. Since there is no industry-wide or statutory definition for categories 1, 2, or 3, a degree of confusion remained as to just what vehicle combinations were covered, especially by categories 1 and 2.

The ISTEA required the FHWA to list vehicles by "configuration type" (section 1023) or "specific configuration" (section 4006). In creating the basic configuration categories used in the NPRM and SNPRM, the FHWA believed it had to go beyond just publishing State-submitted information. For example, many States do not differentiate between a "Rocky Mountain" and "Turnpike" Double in the statutes or regulations which authorize their operation. Typically, these States allow a truck tractor-semitrailer-trailer, or a truck tractor and two trailing units where each trailing unit can be up to some maximum length. Interpretations were required to develop the maximum parameters that would apply if the State did differentiate by vehicle type.

The FHWA has re-examined the meaning of "configuration," however, and determined that there is no statutory requirement to classify vehicle combinations according to industry usage.

In order to reduce confusion and simplify the description of vehicles covered by the freeze, the vehicles described in appendix C of this final rule have therefore been regrouped into three categories: (1) Truck tractor and two trailing units, (2) Truck tractor and three trailing units, and (3) Other. This preserves the freeze required by the ISTEA without limiting the discretion allowed by some States before June 1, 1991.

Vehicles Submitted by States but Excepted From or Not Subject to Section 4006 of the ISTEA

In preparing the March 20, 1992, NPRM and the February 25, 1993, SNPRM, the FHWA decided not to include certain vehicle combinations submitted by the States, which it determined Congress did not intend to include in the ISTEA freeze. No additional information regarding conditions, routes, or authority to operate these vehicles was required. In addition to describing the categories of vehicles proposed for exemption, a detailed listing by State of the vehicles submitted but exempted was contained in the SNPRM.

In its comments, the ATA urged the FHWA to include in the regulatory language of the final rule the list of exempted vehicles included in the preamble to the SNPRM. The basis for the ATA's suggestion was "to ensure that only the vehicles intended by Congress are restricted and to help clarify the intent of the restriction for enforcement and judicial purposes." The ATA's proposal was to include the list of excepted vehicles in an expanded definition of LCV in the final rule.

The categories of multiple cargo unit vehicles exempted from coverage by the

freeze include: (1) Truck tractor-semitrailer-trailer and truck tractor-semitrailer-semitrailer combinations with a maximum length of the individual cargo units of 28.5 feet or less, (2) conventional automobile and boat transporters with an overall length of 65 feet or less, (3) stinger-steered automobile and boat transporters with an overall length of 75 feet or less, (4) truck-trailer and truck-semitrailer combinations with an overall length of 65 feet or less, (5) maxi-cubes, (6) most tow trucks with vehicles in tow, and (7) combination vehicles which include a truck tractor containing a dromedary box, deck, or plate, and one semitrailer or trailer. With respect to the dromedary equipped vehicle exclusion, strict interpretation of ISTEA section 4006 would include this equipment under the freeze. By its function, a dromedary box, deck, or plate is a cargo-carrying unit. When combined with a semitrailer, the result is technically a combination with two cargo-carrying units, thus subjecting the combination to the freeze. However, dromedary equipped truck tractors in actual operation on December 1, 1982, are grandfathered under § 658.13(f), causing a combination consisting of one of these units and a semitrailer to be considered as simply a truck tractor-semitrailer under the provisions of part 658. Dromedary equipped semitrailer combinations are a minor segment of the industry which probably escaped the notice of Congress, and which would require a good deal of additional time and effort to list. Should States or carriers try to evade the ISTEA freeze mandate by expanding the size of these unlisted combinations, the FHWA may have to initiate rulemaking to close this loophole.

The exclusion information is codified by this final rule at § 658.23(b)(1) through (b)(5). The list of exempted vehicles by State included in the SNPRM has not been codified, however, because of the likelihood that it is not a complete list. The original instruction to the States about these vehicles was to submit anything they thought might be covered by the freeze. Since the effect of ATA's comment would be to exempt only those vehicle combinations listed, some States could be penalized in terms of allowing certain vehicles simply because they reviewed the guidelines and made a decision that certain vehicles were not involved in the freeze coverage.

The definition of LCV used throughout this proceeding is that established in the ISTEA. In the interest of avoiding confusion with respect to terminology, the FHWA will not amend the LCV definition at this time.

Documentation of Actual Operation

Under the terms of ISTEA section 1023, an LCV may continue to operate only if on or before June 1, 1991, the specific configuration was (1) legally allowed in the State and (2) was in actual lawful operation on a regular or periodic basis. Under section 4006, the overall length of two or more cargo-carrying units used in a specific configuration may not exceed the length allowed by State law, and in actual lawful operation on a regular or periodic basis, on or before June 1, 1991. If a specific multi-trailer configuration was authorized by State statute or regulation, but *not* in actual lawful operation on a regular basis on or before June 1, 1991, it may *not* now be put into service.

All of the vehicles listed in appendix C meet the requirements for continued operation set forth in ISTEA sections 1023 and 4006.

The information on these vehicles which the States supplied in response to the ISTEA, the March 20, 1992, NPRM and the February 25, 1993, SNPRM, satisfies the legal requirement for operation, i.e., authorized by State law. In a similar manner, various commenters, responding to a request contained in the SNPRM, have documented the actual operation on a regular or periodic basis of the vehicle combinations listed.

The SNPRM requested information, from any source, to show the actual operation of vehicles described in appendix C. While a copy of the special permit under which operations occurred was listed as the preferred means of satisfying the documentation requirement, any item which could support operation of these vehicles would be considered as acceptable.

In an early response to the docket, the ATA expressed concern that the FHWA was placing a "tremendous burden on State DOT's and the trucking industry to satisfy a totally new requirement in a very short time period." The SNPRM allowed for a 45-day comment period with April 12, 1993, as the docket closing date. The ATA also stated that "(i)t is unlikely that two year old copies of the actual permit will be available," and that working with the permit issuing offices in each State to locate these records would "no doubt be a very time consuming and cumbersome process." As an alternative, the ATA suggested that the FHWA allow the submission of an affidavit from a carrier and/or State agency to satisfy the documentation requirement, and further that a time extension be granted to allow appropriate review and certification of these documents, if allowed. A request for a time extension for the docket was also received from the WTA and Coastal Chem Sales Company of Cheyenne, Wyoming. The need to accurately comply with the actual operation documentation requirement was given as the reason for the request.

In its comments, the CRASH stated that the proof requirement contained in the SNPRM was "far too broad, and (could) easily lead to mistake or fraud." That organization argued that anything less than "verifiable documentary evidence created and dated on or before June 1, 1991, specifically detailing the vehicle length, weight, configuration and routes traveled" would fail to comply with ISTEA requirements.

In reviewing the time extension requests, the FHWA agreed that more time was needed to help assure that accurate and complete documentation information, including affidavits, was submitted to the docket. On April 14, 1993, a 45-day extension of the comment period, to May 27, 1993, was published in the **Federal Register** at 58 FR 19367. The type of information the CRASH argued the FHWA should require appears to exceed the documentation most States demand of LCV operators. It would distort the purpose of the ISTEA freeze to ban certain vehicles or routes simply because the States lacked the foresight to issue permits that met the maximum possible data requirements of a Federal law not yet enacted.

An affidavit made by an individual familiar with the issue at hand is both reasonable and within the documentation parameters established by the SNPRM. The authenticity of any document proposed as evidence to support activity occurring over 2½ years ago could be challenged by any party. Of the possible items of documentation which could be submitted, a notarized affidavit may be the least susceptible to alteration. It represents an individual's witnessed, sworn statement.

An affidavit could, of course, be fraudulent, and the FHWA would be reluctant to take regulatory action based solely on an affidavit without other support. In fact, however, affidavits are merely one kind of information which the FHWA has combined with other types of documentation to demonstrate the operation of vehicles that State law and/or regulation allows. In addition, section 1023(c) of the ISTEA amended 23 U.S.C. 141(b) by adding at the end the following sentence: "Each State shall also certify that it is enforcing and *complying with* the provisions of section 127(d) of this title and section 411(j) of the Surface Transportation Assistance

Act of 1982 (49 U.S.C. App. 2311(j))" (emphasis added). Additional discussion of the certification change is contained elsewhere in this document. However, for this discussion the statement means that if a State is found not to be complying with the ISTEA LCV requirements, it will be subject to Federal-aid highway funding sanctions involving millions of dollars annually.

Documentation of operation of the vehicles listed in appendix C for each State was provided to the docket by the following sources. All original submissions are filed in docket number 92–15.

Alaska: Five carriers, State Department of Commerce and Economic Development
Arizona: Seven carriers, one shipper, State Department of Transportation (DOT)
Colorado: Seven carriers, State DOT
Florida: Three carriers, three private fleets
Hawaii: One private fleet, State DOT
Idaho: Fifteen carriers, six private fleets, one agricultural cooperative, one owner-operator, State DOT
Indiana: Five carriers, State DOT
Kansas: Five carriers, one private fleet, State DOT, State Turnpike Authority
Massachusetts: Two carriers, State Turnpike Authority
Michigan: State DOT
Mississippi: State DOT
Missouri: Three carriers, State Highway & Transportation Department
Montana: Ten carriers, one shipper, five private fleets, one owner-operator, State DOT
Nebraska: State Department of Roads
Nevada: Thirteen carriers, one shipper, one private fleet, one agricultural cooperative, one owner-operator
New Mexico: One carrier, State Taxation and Revenue Department
New York: Two carriers, State Motor Truck Association, State DOT, State Thruway Authority
North Dakota: Four carriers, four private fleets, State DOT
Ohio: Four carriers, State Turnpike Commission
Oklahoma: Nine carriers, four private fleets
Oregon: Fourteen carriers, three private fleets, one agricultural cooperative, State DOT
South Dakota: Four carriers, one shipper, three private fleets, State Trucking Association, State Highway Patrol, State DOT
Utah: Sixteen carriers, one shipper, three private fleets, one agricultural cooperative, one owner-operator, State Motor Truck Association, State DOT
Washington: Five carriers, one shipper, two private fleets, one agricultural cooperative, one owner-operator, State DOT
Wyoming: Six carriers, two shippers, four private fleets, one owner-operator, three individuals, State DOT

The following vehicle combinations included in the SNPRM, or comments thereto, have *not* been included in appendix C for the reasons given.

California: "Triple," including a 28-foot semitrailer, two 28-foot trailers, an overall length of 107.4 feet, and a maximum gross vehicle weight of 111,000 pounds. "Rocky Mountain Double," including a 48-foot semitrailer, a 28-foot trailer, an overall length of 93.2 feet, and a maximum gross vehicle weight of 106,850 pounds. "Turnpike Double," including a 48-foot semitrailer, a 48-foot trailer, an overall length of 116.7 feet, and a maximum gross vehicle weight of 122,650 pounds.

Two permits were issued by the California Department of Transportation (Caltrans) for "Triples" at the request of the California legislature in 1971 in order to conduct a test to evaluate the possible allowance of "Triples" in California. In 1983, permits were issued to allow the operation of the above described vehicle combinations in order to conduct an over the road test of these vehicles. The State, in its comments, points out that the 1983 tests were conducted, in part, to assist the FHWA in its study of the costs and benefits of a national intercity LCV route network.

Based on these two occurrences, California claims the right to issue permits for good cause for the future operation of these vehicles up to the limits stated.

The FHWA has rejected California's claim because it fails to meet the standard for "regular or periodic" use established by Congress in writing the ISTEA. According to the Conference Report on the ISTEA (H.R. Conf. Rep. No. 404, 102d Cong., 1st Sess. 314 (1991)), "Use of an LCV on only one or two occasions pursuant to a special permit would not provide a basis for satisfactorily certifying grandfather rights or operations under this subsection." Clearly the California situation falls within the scope of the congressional guidance. "Triples" were allowed twice, for very brief periods 12 years apart, the last being more than 10 years ago. "Turnpike Doubles" and "Rocky Mountain Doubles" were authorized only once, over 10 years ago, during a single 5-day period. These occurrences do not constitute "regular or periodic" use.

Connecticut: Vehicle and trailer for carrying poles, lumber, piling, or structural units.

No documentation was received in the docket to support the actual operation of this vehicle on or before June 1, 1991. This vehicle was originally included because it appeared to meet the LCV or extra-length multi-unit commercial vehicle requirements. This vehicle is made up of a truck tractor and a dolly unit. Since the weight of a cargo, for example utility poles, is carried partially by the truck tractor and partially by the dolly unit, the argument might be made that this vehicle has two cargo-carrying units.

In fact, the load and rear dolly combine to create a *de facto* semitrailer. Truck tractor-semitrailers are not subject to the freeze.

Delaware: Truck tractor-semitrailer-trailer, with a cargo-carrying length of 62 feet.

No documentation was received in the docket to support the actual operation of this vehicle on or before June 1, 1991. The initial submission by Delaware, to satisfy the LCV freeze requirements, indicated that the listed combination was allowed by State law wherein each trailing unit could be up to 29 feet long. The 62-foot length was derived by adding 4 feet for interunit spacing to the twin 29-foot dimension. Due to the de-listing of a vehicle combination with twin 29-foot units, the maximum length of any one unit in a multi-unit combination vehicle reverts to 28.5 feet, that allowed by the STAA of 1982.

Louisiana: "Rocky Mountain Double-LCV," with a cargo- carrying length of 75 feet.

No documentation was received in the docket to support the actual operation of this vehicle on or before June 1, 1991. The initial submission by Louisiana, to satisfy the LCV freeze requirements, indicated the listed combination was allowed by State law wherein each trailing unit could be up to 30 feet long. The 75-foot length was derived by adding the maximum interunit spacing allowed by State regulation of 15 feet to the twin 30-foot dimension. Due to the de-listing of a vehicle combination with twin 30-foot units, the maximum length of any one unit in a multi-unit combination vehicle reverts to 28.5 feet, that allowed by the STAA of 1982.

New Hampshire: Truck-trailer combination with a cargo-carrying length of 85 feet.

No documentation was received in the docket to support the actual operation of this vehicle on or before June 1, 1991. The initial submission by New Hampshire, to satisfy the LCV freeze requirements, indicated the listed combination was allowed because State law does not prohibit a straight truck of up to 40 feet long from pulling a trailer that may be up to 48 feet long. Due to the de-listing of the described vehicle combination, the maximum cargo-carrying length of any truck-trailer combination on NN highways reverts to 58 feet. This length is derived by subtracting 7 feet for the cab from the 65-foot overall length for this combination allowed by this rule

without a requirement to document actual operations. Off the NN, the maximum lengths allowed by State law continue to apply.

List of ISTEA Vehicle Operations and Conditions

In addition to the lists of vehicle configurations, the ISTEA also required each State to submit a copy of all its statutes, regulations, limitations, and conditions which apply to the operation of each of the LCV's or extra-length vehicles reported as in use on or before June 1, 1991.

The content of the States' original responses to this request covered the full range of what could be supplied, both in terms of items covered and volume of material. The diversity of the contents of the responses was so great that the FHWA determined that before any list could be finalized, increased uniformity would be necessary. One of the subheadings for each LCV or extra-length vehicle described in the NPRM was "Operational Conditions." The information in the NPRM was taken directly from the initial State responses to the LCV information request contained in the ISTEA, regardless of content. In those cases where another document was referenced, the FHWA attempted to summarize that document. Because of the differences in State-provided responses, there was little consistency as to coverage or depth. Therefore, in addition to asking for comments, the NPRM also asked the States and all other sources, including industry trade groups, either to reformat existing information, or to provide new information following a suggested format. Those States which allow LCV's or extra-length vehicles were requested to provide the operational condition information in the following subheadings: *WEIGHT, DRIVER, VEHICLE, PERMIT,* and *ACCESS.*

The information included in the SNPRM reflected the States' and other responses to the NPRM request.

The SNPRM included specific vehicle descriptions for 30 States. Comments were received concerning those descriptions for 23 States. The vehicle descriptions included in appendix C to part 658 by this final rule have been modified, where appropriate, by comments received and by the change in categories described earlier. Comments, changes, and corrections made to appendix C information will be discussed by State, by subheadings, in the same order that they appear in appendix C:

STATE NAME
COMBINATION:
LENGTH OF THE CARGO-CARRYING UNITS:
MAXIMUM ALLOWABLE GROSS WEIGHT:
OPERATIONAL CONDITIONS:
WEIGHT:
DRIVER:
VEHICLE:
PERMIT:
ACCESS:
ROUTES:
LEGAL CITATIONS:
OTHER COMMENTS:

Other comments considered, that did not result in a change, will be discussed at the end. Any heading not included in the discussion means that the information included in the SNPRM was accurate, and the same information has been included in appendix C as published by this final rule.

Alaska

OPERATIONAL CONDITIONS:

WEIGHT: The State DOT commented that the weight restriction discussion in the SNPRM for Alaska should not apply because the section 1023 freeze applies only to the Interstate System, and Alaska does not have Interstate System mileage designated under 23 U.S.C. 103, 139(a), or 139(b). The FHWA agrees with this comment. Accordingly, the weight condition for each vehicle described has been revised to indicate that a carrier has to be in compliance with State laws and regulations and does not list maximum weight limit values. In addition, because LCV's, as defined in the ISTEA, do not operate in Alaska due to the lack of Interstate System mileage, the "LCV" notation previously included by the combination description has been removed.

VEHICLE: The State indicated that the hours of operation for three trailing unit combinations are established by permit and not by regulation. Accordingly, this has been removed from the "VEHICLE" discussion.

PERMIT: The SNPRM noted that permits were required for divisible loads. The State commented that this was incorrect. Permits are only required for nondivisible loads.

OTHER COMMENTS:

The CRASH stated that Alaska Administrative Permit Manual Section 11.6 provides that "all oversize or overweight vehicles not in convoy shall maintain a minimum distance of 800 to 1,500 feet from any other oversize vehicle or vehicle with load and pilot car traveling in the same direction on the same highway in rural areas." Since Alaska is not contiguous to any other State this type of information would be of little use to any out-of-State trucker. Any vehicle requiring a permit would be subject to the Alaska permit rules which would be given to the driver when the permit was obtained. Therefore, in view of its limited usefulness in terms of general information, we will not add this provision to appendix C.

Section 4006(a) of the ISTEA provides that Alaska "may allow operation of commercial motor vehicle combinations which were not in actual operation on June 1, 1991, but which were in actual operation prior to July 6, 1991." Verification has been furnished that "Triples" with trailers not over 45 feet in length were in actual operation under permit prior to July 6, 1991. The CRASH believes that the operation of "Triples" after June 1, 1991, was authorized only on an experimental basis as provided in 17 AAC 25.106(b)(4). However, the ISTEA allows the continued operation of any combinations put into service between June 2 and July 5, 1991, without further condition. Therefore, "Triples" may continue to operate, as indicated in appendix C.

The State advised that under Alaska regulations, a truck tractor equipped with a dromedary box is defined as not being cargo carrying. Dromedary boxes do in fact carry cargo. However, for the reasons given above, the FHWA has decided for the time being not to list the cargo-carrying length of dromedary tractor-semitrailer combinations.

The State indicated that an additional route, AK–1 from Palmer-Wasilla Highway Junction to Wishbone Hill Coal Access Road, must be added to Alaska's routes chart under the caption for "Rocky Mountain Double-LCV" (58 FR 11467) of the SNPRM. However, this is incorrect because the freeze on vehicle length is applicable only on the NN, and this is not an NN route. The State is free to regulate the size and weight of vehicles off the NN as it sees fit.

ARIZONA

LEGAL CITATIONS:

The CRASH stated that Arizona statute ARS 28–1011.N should not be shown as authority for permitting overweight vehicles on the NN since it only covers the issuance of permits on other than NN routes. We agree, since the provisions of Section 4006 of the ISTEA apply only to vehicles on the NN. Therefore, ARS 28–1011.N has been deleted from the "Legal Citations" for Arizona in appendix C

OTHER COMMENTS:

The CRASH stated that the legal size for "Rocky Mountain Doubles" is 90 feet, and not 92 feet as shown in proposed appendix C contained in the SNPRM. Arizona statute ARS 28–1011.A provides that the Arizona DOT may issue oversize permits for vehicles exceeding otherwise applicable length limits on the State highway system. Further, the change in categories from those listed in the SNPRM makes this a moot point insofar as the final appendix C is concerned.

The CRASH stated that the State may not issue "verbal policy directives" authorizing overlength vehicles. It adds that the State appears to be violating its own statutes. The question cannot be resolved in this proceeding but the FHWA will investigate the issue in connection with Arizona's certification of compliance with 49 U.S.C. app. 2311(j).

The CRASH also stated that weight limits for LCV's on US 89A and I–15 cannot be determined under ARS 28–1011.N. The FHWA agrees. Since the ISTEA freezes the weight of LCV's only on the Interstate System, we will not further consider weight limits on US 89A. The State indicated that the maximum allowable weight limits for all LCV's on the Interstate System is 111,000 pounds, except for "Triples," which it said are subject to a maximum allowable weight of 123,500 pounds. The 111,000-pound maximum weight limits are specifically authorized under ARS 28–1011.M, and higher maximum weights may be authorized under ARS 28–1011.A on the State highway system. Since the State indicated that the highest weight authorized for "Triples" on or before June 1, 1991, was 123,500 pounds, that value is retained in appendix C.

COLORADO

LENGTH OF THE CARGO-CARRYING UNITS:

Appendix C in the SNPRM showed the cargo-carrying length for "Rocky Mountain Doubles" in Colorado as 85 feet, for "Turnpike Doubles" 95 feet, for "Triples" 95 feet, and for truck-trailer combinations as 78 feet. However, on June 1, 1991, the State actually allowed one of the trailing units in "Rocky Mountain Doubles" to be up to 48 feet long and the other up to 28 feet 6 inches long, with not over 15 feet of hitch between the two units, or a total cargo-carrying length of 91.5 feet. The State also allowed "Turnpike Doubles" to have two trailers of approximately equal length, not to exceed 48 feet each, with a hitch not to exceed 15 feet in length. The resulting cargo-carrying length becomes 111 feet. Revised appendix C has been changed to reflect these values.

The State allowed "Triples" to have three trailing units, not to exceed 28.5 feet, with a 15-foot hitch between the trailing units. Appendix C has been changed to a cargo-carrying length of 115.5 feet to reflect this.

OPERATIONAL CONDITIONS:

PERMIT: The State requested that a new sentence be added after the first sentence under the "Permit" provisions for "Rocky Mountain Doubles" in appendix C as follows: "Also, the vehicle must purchase an overweight permit pursuant to C.R.S. 42–4–409(11)(a)(II)(A), (B), or (C), and comply with Rule 4–15 in the rules pertaining to Extra-Legal Vehicles or Loads." The State also commented that the time restrictions on the operation of "Rocky Mountain Doubles" in the next sentence should be changed from 7 a.m. to 6 a.m. and from 4 p.m. to 3 p.m. and that the sentence in parentheses should read as follows: "('Rocky Mountain' doubles not operating at greater than the legal maximum weight of 80,000 pounds are subject to different hours of operation restrictions. Refer to rules pertaining to the Operation of Longer Vehicle Combinations on Designated State Highway Segments)." The CRASH said motor carriers that operate ISTEA vehicles must have an established safety program as provided in Chapter 9 of the Colorado Department of Highways Rules and Regulations for Operation of Longer Vehicle Combinations on Designated State Highway Segments. Elements of the program include compliance with minimum safety standards at 8 CCR 1507–1; hazardous materials regulations at 8 CCR 1507–7, 8, and 9; Colorado Uniform Motor Vehicle Law, Articles 1 through 4 of Title 42, C.R.S., as amended; and Public Utility Commission's regulations at 4 CCR 723–6, 8, 15, 22, and 23. Revised appendix C includes these changes.

ROUTES:

Appendix C in the SNPRM indicated routes on which "Rocky Mountain Doubles" could travel as "National Network routes except that LCV's may not operate on I–70 from Exit 90 to Exit 259." However, the State indicated that they essentially may operate only on the Interstate System. Appendix C has been amended accordingly.

LEGAL CITATIONS:

The State said that in the "Legal Citations" for "Rocky Mountain Doubles," 42–4–407(1)(C)(III)(A), should be corrected by changing the capital "C" to a small "c." It also said that provisions following this citation should be deleted and the following added: "LVC's must comply with Longer Vehicle Combination Rules and the Extra-Legal Vehicles or Load Rules. However, when the rules address the same subject the LVC, since it is operating at greater than 80,000 pounds, must comply with the Extra-Legal Vehicles or Loads Rules. Such rules are: 4–1–2 and 4–1–3 concerning holiday travel restrictions, 4–1–5 concerning hours of operation restrictions, 4–8 concerning minimum distance between vehicles and 4–15 concerning maximum allowable gross weight." These changes have been made.

OTHER COMMENTS:

The State pointed out that no maximum gross weight is shown in connection with the truck-trailer combination listed in appendix C. This is correct because a truck-trailer combination is not an LCV as defined in the ISTEA since it is not a combination of a truck tractor and two or more trailers or semitrailers. Therefore, its maximum weight on the Interstates is not frozen as of June 1, 1991, but remains as provided in 23 U.S.C. 127(a). The listing for this combination has been changed in appendix C by adding "WEIGHT" as a separate category under "Operational Conditions" and indicating that the vehicle must be in compliance with State laws and regulations.

The State also noted that "Rocky Mountain Doubles" could operate from milepoint 8.9 to milepoint 9.7 on State Highway 133 in Delta. However, as this is not on the Interstate System or the NN, the ISTEA freeze provisions do not apply. Accordingly, the route is not listed in the vehicle descriptions. The CRASH said that prior to June 1, 1991, "Rocky Mountain Doubles" could operate on I–70 from the Utah State Line only to State Highway 65 (Exit 49). In fact, the route was extended from State Highway 65 to State Highway 13 (Exit 90) on April 5, 1990. Since this was prior to June 1, 1991, but remains as provided in 23 U.S.C. 127(a). Since this was prior to June 1, 1991, "Rocky Mountain Doubles" may continue to operate from the Utah State Line to State Highway 13 (Exit 90) after that date.

The State also commented that the freeze on the operation of LCV's on the Interstate System and the freeze on the operation of CMV's with two or more cargo-carrying units on the NN may create administrative and enforcement problems. However, it also recognized that this arises from the ISTEA and cannot be changed in this proceeding.

FLORIDA

COMBINATION:

The State commented that Florida law and rules contain no references to "Rocky Mountain Doubles" and that all references to them in appendix C should be deleted. The revision of the categories used in appendix C, as presented by this final rule, addresses the State's concern over nomenclature.

OTHER COMMENTS:

Florida commented that the 106-foot length previously given for "Turnpike Doubles," now shown for a truck tractor and two trailing unit combination, is incorrect. The maximum length should be 116 feet. The 116-foot dimension is the maximum overall vehicle length established by State regulation. Appendix C is a listing which includes maximum cargo-carrying length. The convention used throughout this rulemaking is that, in the absence of any information to the contrary, cargo-carrying length for a truck tractor combination is the maximum overall length minus 10 feet. Thus, 106 feet remains the cargo-carrying length value for Florida's truck tractor and two trailing unit combination.

The State also expressed concern over the fact that the vehicles listed for Florida are not considered LCV's as provided in the ISTEA definition, because the route on which they operate, Florida's Turnpike, is not part of the Interstate System. The State made the point that the twin-trailer combinations which operate on the Florida Turnpike match the configuration and weight criteria for LCV's, and only an administrative action, whether or not the Turnpike is part of the Interstate System, keeps them from being designated as such.

Until the ISTEA was enacted, the meaning of the term LCV differed from one region to another, and sometimes depended on the commodity being transported. By providing a definition of LCV, Congress has provided a basis for describing these combinations on a national basis. Any combination which does not meet all of the criteria, including operation on the Interstate System, is not to be considered an LCV.

IDAHO

OTHER COMMENTS:

The CRASH stated that the SNPRM omitted the provisions for time-of-travel restrictions for overlegal loads published in Idaho Transportation Department Rule 39.C.11.5, and the requirement that an applicant for a permit certify that the load is indivisible. These restrictions apply only to nondivisible loads as indicated in Rule 39.C.11.4.c. There are no time-of-day restrictions for Extra-Length Vehicle Combinations operating under permits issued pursuant to Rule 39.C.22. The CRASH also indicated that time-of-travel restrictions applied to overweight loads under Rule 39.C.11.5. Although the rule is entitled "Time of Travel Restrictions for Overlegal Loads," the text deals only with "oversize" loads. The CRASH said that the SNPRM omitted seasonal weight limits in Rule 39.C.14. The Rule simply provides that such limits will be posted. Therefore, they are in the same category as speed limits or other general restrictions that all vehicles must observe.

The "Dromedary tractor semitrailer" combination listed in the SNPRM has been removed from appendix C due to the exclusion of such combinations from the list as discussed earlier. The "Dromedary tractor semitrailer trailer" combination has also been removed from appendix C due to the dromedary equipment exclusion. This vehicle is covered by the listing for the truck tractor and two trailing unit LCV's.

INDIANA

OPERATIONAL CONDITIONS:

VEHICLE: The CRASH commented that the SNPRM omitted several equipment requirements for all LCV combinations including those for emergency equipment, safety chains, lights, reflectors, and for three trailing unit combinations, spray-suppressant mud flaps. All of these items have been added to appendix C.

PERMIT: The CRASH indicated that maximum speed and the State wind operational restrictions were omitted from the permit discussion. These have been added.

OTHER COMMENTS:

The CRASH also commented that the State 3-inch sway limitation was not included in the SNPRM. The requirement was, in fact, included in the SNPRM and has been retained in this final rule.

KANSAS

MAXIMUM ALLOWABLE GROSS WEIGHT:

The State commented that the maximum allowable gross weight listed for "Triples" in the SNPRM was incorrectly listed as 110,000 pounds and that the value should instead be 120,000 pounds. The 110,000-pound limit applies only to three trailing unit operations on I–70 between the Colorado State Line and Goodland. The Kansas Turnpike allows these combinations to operate at 120,000 pounds. This change has been made in appendix C.

OPERATIONAL CONDITIONS:

Under the Operational Conditions described for "Triple—LCV" in the SNPRM, the phrase at the beginning of the section "called special vehicle combinations (SVC's) in Kansas," has been deleted in appendix C at the request of the State. The term "SVC" applies only to operations on I–70 between the Colorado State Line and Goodland. It does not apply on the Turnpike.

DRIVER: At the request of the State, the wording has been corrected to accurately differentiate between SVC operations and operations on the Turnpike.

VEHICLE: The CRASH commented that vehicle equipment requirements concerning lateral movement in the travel lane and anti-spray devices were not included in the SNPRM for SVC operations. Both items are now included in appendix C.

PERMIT: The CRASH commented that the permit discussion for SVC operations did not include the requirement to have insurance coverage of certain amounts. Appendix C has been changed to reflect the requirement to have insurance coverage, however, the amounts are not included in appendix C. The amount of insurance coverage is not an item that is directly related to the size and weight of LCV's.

ACCESS: SVC access was not included in the SNPRM because SVC operations were not included. Appendix C now includes SVC access provisions according to comments provided by the State.

ROUTES:

I–70 in Western Kansas: Kansas allows SVC's on the short segment of I–70 from Goodland to the Colorado State line. Kansas submitted this information and it was published in the NPRM. The FHWA subsequently learned that SVC operations began on that route only on May 31, 1991, the day before the June 1 freeze date.

The ISTEA provides that LCV's (including SVC's) must have operated "on a regular or periodic basis" on or before June 1, 1991 (23 U.S.C. 127(d)(1)(A)). According to the ISTEA conference report:

To be considered "regular or periodic" use operations must have occurred at recurring intervals over a period of time. Moreover, periodic operations must have occurred on an intermittent but consistent basis. Use of an LCV on only one or two occasions pursuant

to a special permit would not provide a basis for satisfactorily certifying grandfather rights or operations * * *. (H.R. Rep. No. 404, 102d Cong., 1st Sess., at 314 (1991))

Because SVC operations on I–70 did not appear to be "regular or periodic" by this standard, the FHWA revised the SNPRM to remove the Goodland segment from the list of authorized Kansas LCV routes.

Thirty-seven commenters discussed this subject, and all of them favored restoration of the I–70 route. Yellow Corporation, the parent company of Yellow Freight, explained in detail how the problem arose. Yellow Freight uses a hub and spoke system. The company commented that "(w)here distances between hubs do not allow for the journey to be made within the ten-hour federal drivers hours of service limit, Yellow Freight has established driver relay facilities (where) * * * drivers * * * are changed, with the equipment moving on to meet customer service demands." Yellow Freight has for 25 years maintained a driver relay facility at Goodland which serves vehicles moving between its Kansas City and Denver hubs. "Linehaul drivers leave Kansas City westbound to Goodland, layover and return eastbound the next day. Goodland-domiciled linehaul drivers operate a turn between Goodland and the Denver hub."

Colorado authorized triple-trailer and other large combinations in 1989. Unlike competitors with facilities in eastern Colorado, Yellow Freight was unable to use these vehicles between Goodland and Denver because Kansas did not allow them on I–70. Rather than move its relay facility into Colorado or forgo the economic advantages of "Triples," Yellow Freight asked Kansas in September 1989, to allow SVC's on I–70 between Goodland and the Colorado line. The Kansas Department of Transportation (KDOT) announced a rulemaking proposal in January 1990, that would have allowed "Triples" on all Kansas Interstates. The Kansas Railroad Association (KRA) responded by having a bill to ban "Triples" introduced in the legislature; the KDOT withdrew its proposal. Yellow Freight and the KRA negotiated a compromise which, among other things, allowed triple-trailer combinations on the Goodland segment of I–70. The bill was approved on April 12, 1990, and SVC regulations to implement it were promulgated on March 4, 1991. Yellow Freight ran one "Triple" on May 31, 1991, and a second on June 1.

Both Yellow Freight and the KDOT place much of the blame for delays in issuing the permits required to start I–70 operations on the FHWA's failure to clarify its position on the State's grandfather rights in a timely fashion. The FHWA and a number of States—not including Kansas—had long disagreed on the question of whether LCV operations were legitimately grandfathered. One of the purposes of the LCV freeze was to resolve these disputes by ratifying actual operations allowed by State law on June 1, 1991. The KDOT's announced intention to allow SVC's on I–70 was one more indication of the rapid spread of LCV's in States west of the Mississippi. Because of the desirability of a uniform policy toward all States that allowed LCV operations, the FHWA did not immediately address the question of Kansas' grandfather rights. However, on April 8, 1991, just over a month after the KDOT's regulations authorizing SVC permits became effective, the FHWA asked for an opinion by the Kansas Attorney General (AG). The KDOT requested the opinion on April 26, 1991, and the AG replied on May 30, 1991, that the State's grandfather rights were broad enough to encompass SVC operations on I–70. Since the issue here is "regular or periodic" operations, it would serve no purpose to discuss the AG's grandfather claims. The KDOT quickly issued an annual SVC permit to Yellow Freight and operations began the following day.

The State's regulatory process was not completed until March 4, 1991, and the Kansas AG required more than a month to respond to the KDOT's request for an opinion. The FHWA had no part in these delays. It is true, however, that the KDOT made a good faith effort to satisfy the FHWA's legal concerns and postponed the start of SVC operations on I–70 until the deadline included in the draft ISTEA legislation had nearly passed. We do not wish to penalize Kansas simply for cooperating with the FHWA.

Yellow Freight asserted that "(a)s originally drafted, the Federal LCV freeze date would have been April 1, 1991. Senator Dole's office intervened to move that federal freeze date to June 1, 1991, specifically to accommodate the Goodland triples route."

In its comments in response to the SNPRM, the ATA said:

> ATA was deeply involved in the Congressional deliberations leading to the LCV freeze. It is our understanding that the language in the Conference report was designed to preclude establishing LCV operations based on single trip permits for infrequent truck movements. Therefore one or two movements of heavy machinery by a specialized carrier would not create "grandfathered rights."
>
> ATA understands that for Kansas, a single trip permit would normally be issued for "occasional use" purposes. It is clear that the intent of the (SVC) permit was for multiple trip purposes and not occasional "one or two trips." The permit had been applied for long before the freeze language was proposed. It was only a matter of timing that so few trips were made.

There is nothing in the ISTEA legislative history that clarifies the meaning of "regular or periodic basis," but the ATA's interpretation is plausible, especially in view of the Caltrans' response to the SNPRM. The Caltrans stated that it

> [I]ssued two permits, at the request of the California Legislature, allowing two vehicle combinations with three 26.5-foot trailers to operate from October 27 to November 5, 1971. These vehicle combinations had an overall length of 94.25 feet with gross vehicle weights of 76,800 pounds and 90,000 pounds. The 1971 permits were issued to gather information on truck tractor and triple trailer combination operations. The information was used to consider whether triple combination operations should be allowed in California.

In 1983, the Caltrans issued permits for operational tests of (1) a 111,000-pound "Triple" (28-foot trailers) between October 24–28; (2) a 106,850-pound "Rocky Mountain Double" (48-foot semitrailer, 28-foot pup) between November 7–10; and (3) a 122,650-pound "Turnpike Double" (two 48-foot trailers) between November 14–18. The Caltrans argued that

> California retains the right to issue an extralegal permit for good cause to operate a divisible combination of vehicles exceeding the maximum size or weight limits with specific guidance provided by the California Legislature.

The brief tests performed by California one and two decades ago, which never resulted in the authorization of LCV's, are certainly among the minimal operations that the requirement for "regular or periodic" use was intended to exclude. The FHWA has therefore declined to list these vehicles in appendix C.

Kansas and Yellow Freight, on the other hand, clearly expected LCV's to use I–70 routinely and for years to come, and made elaborate preparations on that basis. In addition, the KDOT's efforts to cooperate with the FHWA delayed the issuance of the first permits, which would otherwise have been available in March 1991. On balance, the FHWA believes that the SVC operations on I–70 satisfy the statutory standard. The Goodland route has therefore been restored to appendix C.

The CRASH commented on the accuracy of the lists of routes available

to the different vehicle combinations. Appendix C now reflects the proper route listings. Due to the SVC and Turnpike operations, the truck tractor and three trailing unit combination does have more route mileage available to it than do two trailing unit combinations. The new route lists show that I–70 between the Colorado State Line and Goodland is available only to SVC's with three trailing units and not to LCV combinations with two trailing units.

LEGAL CITATIONS:

One change has been made at the request of the State. KSA–8–1915 has been moved from the list of applicable statutes for two trailing unit combinations to the list for three trailing unit combinations.

MASSACHUSETTS

LENGTH OF THE CARGO-CARRYING UNITS:

The CRASH commented that the cargo-carrying length listed in the SNPRM for the "Turnpike Double—LCV" was incorrectly listed as 114 feet. This figure is the overall length previously allowed for this configuration. Applying the convention for determining cargo-carrying length used throughout this rulemaking, 10 feet will be deducted for the tractor. The cargo-carrying length now shown in appendix C for the truck tractor and two trailing unit combination is 104 feet.

OPERATIONAL CONDITIONS:

VEHICLE: The CRASH pointed out two vehicle requirements missing from the SNPRM, one concerning emergency equipment and the other concerning passing requirements. Both provisions have been added to appendix C.

PERMIT: The CRASH commented that the SNPRM did not include the requirement to have insurance coverage of certain amounts. Appendix C has been changed to reflect the requirement to have insurance coverage, however, the amounts are not included in appendix C. The amount of insurance coverage is not an item that is directly related to the size and weight of LCV's.

MICHIGAN

COMBINATION:

The State commented that the vehicle in question is a truck tractor-semitrailer-trailer where one of the cargo units exceeds 28.5 feet in length. Michigan statutes allow an overall length for the two trailers, as measured from the front of the first trailer to the rear of the second trailer, of 58 feet, including the load. This vehicle configuration was excluded from the original listing of LCV's in the NPRM. The exclusion was based on a definition of excepted combination used in the NPRM (57 FR 9901, March 20, 1992) as follows:

Truck tractor-semitrailer-semitrailer and truck tractor-semitrailer-trailer configurations with a maximum length of cargo-carrying units of 62 feet or less are subject to the provisions of 23 CFR part 658. These are the twin 28-foot units authorized by the STAA, and the 28-foot B-train doubles authorized as specialized equipment by the FHWA.

Michigan contends that the vehicle was correctly excepted in the NPRM since the Michigan vehicle clearly fell within the length parameters of non-LCV vehicles.

The exclusion by the FHWA in the NPRM was erroneous. The vehicle was included in the SNPRM and is now in the final rule since it can consist of a truck tractor and two trailing units and can carry more than 80,000 pounds on the Interstate System.

The State also commented that the "Rocky Mountain Double—LCV" description in the SNPRM was inappropriate for the vehicle in operation in Michigan. The revised combination categories now used in appendix C has alleviated this concern.

MAXIMUM ALLOWABLE GROSS WEIGHT:

The State commented that the table listing vehicle combinations subject to the ISTEA, illustrating a Michigan vehicle listed under "Rocky Mountain Doubles" with a 128,000-pound maximum gross weight, was inappropriate. Michigan, the State argued, is an axle weight State with a grandfather provision and maximum gross weights are determined based on axle and axle group weight limits. Therefore, it would be inappropriate to specify a single maximum gross weight for Michigan. The FHWA does not agree. The table and text have been revised to show a maximum allowable gross weight of 154,000 pounds. The 154,000-pound figure was determined from the maximum axle weight limits for an 11-axle vehicle (the maximum number of axles allowed under State law) with optimum axle spacing and with a combined cargo-carrying box length of 58 feet. Vehicles with fewer axles or less than optimum axle spacing will have a lower allowable gross weight based on State requirements.

OPERATIONAL CONDITIONS:

VEHICLE: Michigan commented that certain statements included in the SNPRM did not apply to the vehicle in question. These statements concerned (1) the overall length of a truck and trailer or semitrailer combination and (2) operational hours for certain vehicles hauling hazardous materials. The appropriate sentences have been removed from the text.

ACCESS: The State commented that "Access" should read "all designated State highways." This change has been made.

ROUTES:

In response to a comment by the State, the "ROUTES" description has been changed to indicate that all Interstate and designated State highways are open to these vehicles.

MISSISSIPPI

COMBINATION:

The State commented that a CMV with two cargo units, subject to the freeze requirements of section 4006 of the ISTEA, originally submitted by the State and included in the NPRM, was inadvertently left out of the SNPRM. The vehicle, which is subject to the freeze because the trailing units may each be up to 30 feet long, has been included in appendix C with the operational information listed as supplied by the State.

MISSOURI

OTHER COMMENTS:

The CRASH claimed that an error in available routes had been made in the SNPRM, and that the SNPRM did not include several items that pertain to permitted loads. The CRASH not only questioned the availability of several Interstate routes in the Kansas City metropolitan area, but also the availability of I–44 in southwest Missouri. It stated that "the only National Network route from which LCV's can enter Missouri is I–70 in Kansas." Several NN routes in Kansas and Oklahoma come up to the Missouri State Line. LCV's are allowed to operate on I–44 in Oklahoma, thus making I–44 available to enter Missouri. In Kansas, LCV's have access to the northeastern end of the Kansas Turnpike, over any route within a 20-mile radius. Within that 20-mile radius in Kansas, several Interstate and other highways, which prior to passage of the ISTEA were designated as Federal-aid Primary highways, come up to the Missouri State Line. LCV's may use any of these routes to reach terminals in Missouri which fall within a 20-mile band of the Kansas State Line.

The CRASH indicated that the State indivisible load requirement had been omitted from the SNPRM. In addition, the CRASH contends that several operational requirements were also

omitted, including those involving time-of-day restrictions, weather requirements, oversize load signs, speed, tractor unit power, and the need for insurance. The State responded that routine overdimension and overweight special permit issuance in Missouri is made in accordance with State Rule 7 CSR 10–2.010 (based on Section 304.200, Revised Statutes of Missouri 1992), which provides for a uniform administration of large and heavy loads.

Although the rule (7 CSR 10–2.010) as originally promulgated by the Missouri Highway and Transportation Commission disallows routing reducible loads (except for farm products) under permit, in July 1986 the State's chief engineer, exercising other authority within the rule, authorized travel for multi-unit LCV's carrying reducible loads. To quote Rule 7 CSR 10–2.010:

[T]he chief engineer of the State Department of Highways and Transportation, for good cause shown and when the public safety or public interest so justifies, shall issue special permits for vehicles or equipment exceeding the limitations on width, length, height, and weight herein specified * * *.

It was determined to be in the public interest to allow LCV operation to relieve economic stress and give motor carriers the incentive to retain terminals in Missouri. Missouri would then be more competitive with adjacent western States which allow LCV operations. The operation of LCV's has gone without reported incident, according to annual documented safety assessments made by the Missouri Highway and Transportation Department, the Missouri State Highway Patrol, the Kansas City Public Works Department, and the Kansas City Police Department.

In response to other items listed, the State made the point that Missouri Revised Statute § 304.200 (1992) gives the chief engineer significant latitude in allowing the operation of LCV's, and that several items including speed and weather restrictions are conditions of the permit issued for the operation of LCV's.

MONTANA

OPERATIONAL CONDITIONS:

PERMIT: The CRASH said that a provision requiring carriers operating vehicles subject to the ISTEA freeze to have "public liability and property damage insurance for the protection of the traveling public as a whole" was omitted from appendix C. Appendix C has been changed to reflect the requirement to have insurance coverage; however, the amounts are not included. The amount of insurance coverage is not an item that is directly related to the size and weight of LCV's.

OTHER COMMENTS:

The CRASH said that Chapter 672 of the Montana Session Laws of 1991, which amended Montana Code Annotated (MCA) section 61–10–124, increased the length of Turnpike Doubles from 95 to 100 feet in length effective January 1, 1992, and, therefore, the cargo-carrying length in appendix C should be based on the shorter length. This is incorrect. Before the change, section 61–10–124 read as follows:

A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in length, * * *.

After the 1992 change, it read as follows, with the additional word underlined.

A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in *combination* length, * * *.

The amendment clarified but did not substantially change the law; term permits could be issued for "Turnpike Doubles" not more than 100 feet long on June 1, 1991.

NEVADA

OPERATIONAL CONDITIONS:

VEHICLE: The CRASH said that the Nevada Department of Transportation Rules and Regulations in Sections 484.400, 484.405(4), 484.425, 484.430, 408.100–4, and 408.100–6(1), primarily dealing with emergency and safety equipment, should be added to the Nevada provisions in appendix C. We concur, and this has been done.

OTHER COMMENTS:

While appendix C has been changed to reflect the requirement to have insurance coverage, the amounts are not included in appendix C. The amount of insurance coverage is not an item that is directly related to the size and weight of LCV's.

NEW MEXICO

LENGTH OF THE CARGO-CARRYING UNITS:

The cargo-carrying length restriction does not apply to two trailing unit combinations. The length of each trailing unit is limited to 28.5 feet. This describes a two trailing unit vehicle whose operation is guaranteed by the STAA regardless of inter-unit-spacing. As long as each trailing unit is 28.5 feet long or less, cargo-carrying length is not restricted. This combination is listed as an LCV because it can exceed the 80,000-pound threshold established in the congressional definition. New Mexico has a grandfathered gross weight limit of 86,400 pounds.

NEW YORK

COMBINATION:

The State submitted an additional vehicle for inclusion in appendix C. It is an STAA Double (twin 28.5-foot units) hauling up to 100,000 pounds under a State DOT permit. As this combination may operate on NN highways in New York, appendix C has been amended to account for its operation. This combination was inadvertently omitted by the State DOT in its previous LCV submissions and docket comments.

OPERATIONAL CONDITIONS:

VEHICLE: The CRASH commented that several items were omitted from the "VEHICLE" discussion in the SNPRM, including the need to carry emergency equipment, mud flaps, safety chains, and a tractor certification identification number. All of these items are now included in appendix C.

The discussion under *DRIVER, VEHICLE,* and *PERMIT* has been revised to note the fact that the New York State Thruway Authority, in addition to its responsibility for the tolled sections of Interstate routes 87, 87/287, 90, 95, and 190 (the original Thruway mainline between New York City and Pennsylvania along with the Berkshire, New England, and Niagara sections), now also has jurisdiction over the full length of I–84, and that portion of I–287 between Thruway exit 8 and I–95. These latter two sections remain toll-free, and the operating rules that apply are the same as those in effect on all other highways in the State that are under the jurisdiction of the New York State DOT.

OTHER COMMENTS:

The CRASH also sought to include the insurance requirements and the amounts. While appendix C has been changed to reflect the requirement to have insurance coverage, the amounts are not included in appendix C. The amount of insurance coverage is not an item that is directly related to the size and weight of LCV's.

In addition to the added combination discussed earlier, the State submitted a second vehicle for inclusion in appendix C. It is a combination which uses twin 28.5-foot units to carry nondivisible loads. This vehicle has not been included as nondivisible loads moving under permit are not subject to the freeze.

OKLAHOMA

LENGTH OF THE CARGO-CARRYING UNITS:

The cargo-carrying unit length for the two trailing unit combination has been listed in this final rule at 110 feet. This length was determined after further review of docket comments submitted by the CRASH, actual operation documentation submitted by various carriers, and the appropriate State statutes and regulations. The composite of the information available leads the FHWA to conclude that on or before June 1, 1991, the longest legally allowed multi-unit combination vehicle in regular or periodic use in the State consisted of a truck tractor-semitrailer-trailer, wherein each of the trailing units was 53 feet long. Combining twin 53-foot units with a 4-foot drawbar results in the 110-foot cargo-carrying length. In the NPRM the cargo-carrying length listed for both the "Rocky Mountain" and "Turnpike" Doubles was 123 feet. In the SNPRM, 123 feet was again listed for the "Turnpike" Double. The 123-foot distance was the result of combining a 4-foot drawbar with twin 59-foot 6-inch units.

For purposes of establishing a cargo-carrying length subject to the freeze provisions of the ISTEA, the State incorrectly interpreted relevant provisions of the STAA of 1982. It appears the State reasoned that since the STAA required (1) that all States allow truck tractor-semitrailer-trailer "Doubles" combinations, and (2) that Oklahoma must allow a 59-foot 6-inch semitrailer to meet the grandfather provisions of the STAA (53 FR 2599, Jan. 29, 1988), it follows that Oklahoma must therefore allow twin 59-foot 6-inch units to operate as part of a multi-unit combination vehicle.

While the STAA does require all States to allow "Doubles," the only applicable length requirement is that each State must allow at least 28.5-foot trailing units. The allowance of any longer unit is at a State's discretion within the parameters established by this final rule. The grandfathered semitrailer length applies only for truck tractor-semitrailer combinations. The STAA requires that each State continue to allow trailers or semitrailers of such dimensions as those that were in actual and lawful use in the State on December 1, 1982. The January 1988 rulemaking referred to earlier established that length as 59 feet 6 inches for Oklahoma.

For purposes of establishing a cargo-carrying length subject to the freeze provisions of the ISTEA, a determination must be made as to the unit lengths comprising combination vehicles authorized by State statute or regulation and in actual operation on a regular or periodic basis on or before June 1, 1991. Re-examination of all submitted material and docket comments resulted in the 110-foot length.

OREGON

LENGTH OF THE CARGO-CARRYING UNITS:

The Oregon Department of Transportation (ODOT) commented that overall length requirements for three trailing unit combinations have a significant impact on public safety and must be retained. The ODOT also said that the length of tractors in combination with three trailing units is not a uniform 10 feet long but can range from 9 to 14 feet.

The freeze does not affect the authority of the ODOT to enforce an overall length limit on triple-trailer combinations. However, it does limit the overall length of the cargo-carrying units to what was authorized and in use on or before June 1, 1991. Although the comment does not specifically indicate that 9-foot-long tractors were in use with "Triples" on or before June 1, 1991, we assume that was the intent. Therefore, appendix C has been changed to correct the cargo-carrying length of three trailing unit combinations from 95 to 96 feet.

OPERATIONAL CONDITIONS:

VEHICLE: The CRASH commented that ORS 818.150(5) provides that any towed vehicles in a combination must be equipped with safety chains or cables to prevent the towbar from dropping to the ground in the event the coupling fails. The chains or cables must have sufficient strength to control the towed vehicle in the event the coupling device fails and must be attached with no more slack than necessary to permit proper turning. However, this requirement does not apply to a fifth-wheel coupling if the upper and lower halves of the fifth wheel must be manually released before they can be separated. Appendix C has been amended accordingly.

ROUTES:

The ODOT indicated that there is no direct relationship between approved routes for three trailing unit combinations and the NN highways. The connection is that the freeze applies only on NN highways. Consequently, truck tractor and three trailing unit combinations may not operate with more than 96 feet of cargo-carrying length on routes shown in appendix C. The State is free to regulate the use of triple-trailer combinations as it sees fit on other highways.

OTHER COMMENTS:

The CRASH also indicated that officials who issue permits may require the applicant to furnish public liability and property damage insurance and establish that the permit vehicle will stay on the right side of the centerline at all times. We do not regard these conditions to be the type which must be published in appendix C since the State has discretion whether or not to apply them.

The ODOT asked for a definition of terms and vehicles used in FHWA rulemakings but did not cite any specific items that should be defined. We are unaware of any items that should be defined or that could be defined without affording interested persons the opportunity to comment on the proposed definitions.

SOUTH DAKOTA

OPERATIONAL CONDITIONS:

VEHICLE: The CRASH said that provisions relating to public liability insurance, the amount of offtracking allowed and the entering of the dimensions used to calculate the offtracking on the permit form should be included in appendix C. We concur, and appendix C has been modified accordingly.

OTHER COMMENTS:

The State said that the maximum weight limit for "Rocky Mountain Doubles" is not "129K" as shown on the table at 58 FR 11465–11466 of the SNPRM but is the "Uncapped Federal Bridge Formula." For LCV's the maximum allowable weight is capped at what was allowed and in actual operation on June 1, 1991. Based on the information submitted by the State, a "Turnpike Double," which must also comply with the Federal Bridge formula, is limited to a maximum of 129,000 pounds. The recategorization of the vehicles subject to the LCV freeze has adopted the 129,000-pound value for the "Turnpike Double" as the maximum for a truck tractor and two trailing units.

The State showed the length of the road tractor-trailer-trailer combination as 80 feet. However, this is the overall length. When the length determination in the SNPRM is used, the cargo-carrying length is the overall length minus 10 feet for the length of the tractor. Therefore, the cargo-carrying length of this combination is shown in appendix C as 70 feet.

The State asked for certain additions and deletions to appendix C. The

recategorization of the vehicles subject to the LCV freeze accounted for most of the changes suggested by the State. The descriptions for South Dakota, which now appear in appendix C, take into account the comments made by the State.

UTAH

OPERATIONAL CONDITIONS:

VEHICLE: The CRASH said that Utah Regulations for Legal and Permitted Vehicles, sections 400.2(8), (12), and (14) pertaining to sway of multiple-trailer vehicles, following distance, and insurance requirements, respectively, should be reflected in appendix C. We concur, and appendix C has been amended accordingly.

ROUTES:

The State clarified the basis for delineating vehicles allowed to operate on divided or nondivided highways from overall length to length of cargo-carrying units. This reformatting did not change the lengths allowed, but simply re-stated the lengths to match the language of the ISTEA.

LEGAL CITATIONS:

The State also corrected the legal citation for truck tractor and two trailing unit combinations and indicated that those for "Triples" should be the same. These changes have been made.

WASHINGTON

COMBINATION:

The State indicated that the listing in the SNPRM for "Dump truck with pup trailers" should be changed to "Truck and trailer." We agree, and this change has been made in appendix C.

OTHER COMMENTS:

The State indicated that the listing in the SNPRM of "truck tractor with dromedary box-semitrailer-trailer" should be changed to read "truck tractor carrying a freight compartment no longer than eight feet-semitrailer-semitrailer or full trailer." As indicated previously, we have decided for the time being not to list dromedary equipment separately. This vehicle is therefore covered by the listing for the truck tractor and two trailing unit LCV which also has a cargo-carrying length of 68 feet.

The State also commented that the length of the cargo-carrying units for "Rocky Mountain Doubles" should indicate that the 68-foot length includes the load. We disagree. The ISTEA limited the length of cargo-carrying units, not loads. If the State wants to prohibit, or allow, cargo overhangs over that length, it is free to do so since it retains all the authority it possessed prior to the ISTEA to regulate cargo overhangs.

WYOMING

Many of the comments made by the WTA and the State DOT involved allowable lengths and weights for what previously had been differentiated as "Rocky Mountain" and "Turnpike" Doubles. The recategorization into truck tractor and two trailing units now used in appendix C, has accommodated many of these comments.

COMBINATION:

On or before June 1, 1991, Wyoming only allowed combination vehicles consisting of not more than three single vehicles. This precluded the operation of triple-trailer combinations which consist of four single vehicles—a truck tractor, a semitrailer, and two trailers. A provision of the ISTEA, in effect, gave the State until the next general election day following enactment (November 3, 1992) to decide whether to allow "Triples." A Statewide referendum to allow their use was defeated in the November 3, 1992, election and, as a result, the ISTEA bars the use of "Triples" in Wyoming.

LENGTH OF THE CARGO-CARRYING UNITS:

Provisions relating to the length of a semitrailer in a truck tractor-semitrailer combination will not be added to appendix C since this vehicle is not subject to the ISTEA freeze. The State DOT argued that its 60-foot semitrailer length limit would apply to automobile and boat transporters with no overall length limit. This is not consistent with the Federal requirement that States must allow standard automobile and boat transporters to have a minimum overall length of 65 feet (75 feet if stinger-steered), with no specific limit on the length of the semitrailer. However, application of the State rule does not conflict with the Federal requirement since, as a practical matter, it only applies to vehicles longer than 65 or 75 feet. Such longer combinations would be subject to the ISTEA freeze. As a result, appendix C has been changed to list the overall length of auto and boat transporters, since cargo is typically carried on a headrack the same length as the tractor, in addition to the cargo on the trailer.

OTHER COMMENTS:

The WTA said that a truck-trailer combination falls under the definition of "any other combination of vehicles" in Wyoming law and, therefore, is limited to a total overall length of 85 feet with no single unit exceeding 60 feet. While the combination is limited to 85 feet, the 60-foot limit applies only to semitrailers in a truck tractor-semitrailer combination. The showing of 78 feet for the length of the cargo-carrying units was based on allowing 7 feet for cab length.

The WTA said that it could not understand why the cargo-carrying length of saddlemount combinations was shown in the SNPRM as 75 feet. Under Wyoming law it would be considered as "any other combination" subject to an overall length of 85 feet. We agree. Since the tractor in a saddlemount combination is part of the cargo being transported, we have changed the length of the cargo-carrying units for this combination to 85 feet.

TOW TRUCK OPERATIONS

The nature of the service provided by wreckers or tow trucks is such that these vehicles need to have immediate access to all roads in a State to remove disabled or abandoned, as well as accident-damaged, vehicles. They are, to that extent, emergency vehicles. There is no evidence that Congress intended to include these operations under the freeze restrictions. Therefore, the FHWA proposed in the SNPRM to exclude emergency towing operations from any of the freeze provisions proposed in appendix C. Comments on this issue were received from the California and Washington DOT's and the California Highway Patrol.

Both of the California agencies recommended that proposed 23 CFR 658.23(b)(5), which would allow tow trucks and vehicles in tow to operate on the NN without regard to the freeze on length, be amended to require a State permit to operate overlength. This is unnecessary since 23 CFR 658.23(b)(5) merely means that they are not limited to whatever length was allowed and in use on June 1, 1991. Since they also are not STAA vehicles, the State may regulate their length in any manner it sees fit, including the requirement for a permit, if it wishes.

The Washington DOT asked if tow truck operations are restricted to the length and weight in effect on June 1, 1991. As stated in the SNPRM, emergency towing operations are excluded from any of the freeze provisions in appendix C. However, the proposed provisions in paragraph (b) of 23 CFR 658.23 only excluded tow trucks from the length provisions of appendix C. In order to fully exclude emergency towing operations from any of the provisions contained in new 23 CFR

658.23, the underlined phrase in paragraph (a)(1) has been added:

(a)(1) Except as otherwise provided in this section and *except for tow trucks with vehicles in tow,* * * *.

Also, in paragraph (b)(5) "with" has been substituted for "and."

Pole Trailers

In the SNPRM the FHWA proposed to list, as the authorized length for expandable trailers used for carrying poles, logs or pipe, etc. (pole trailers), the lengths allowed by State law, even if these limits refer to the cargo rather than the vehicle itself.

Only five sets of comments were received which specifically addressed the issue of pole trailers. The South Dakota DOT supported the position that the State-allowed length of the cargo should be considered the cargo-carrying length of the unit. The State added that the FHWA should establish a national cargo overhang policy similar to that in effect for automobile and boat transporters; that is, 3 feet in front and 4 feet to the rear of the vehicle. The Pennsylvania DOT commented that its special length limitation (70 feet) for any combination transporting nondivisible articles has been in place for over 20 years, and that it should be listed as Pennsylvania's length for these vehicles. The California Highway Patrol provided that State's applicable length limits for pole or log trailers. Taking a different tack, both the ATA and the WTA stated in their comments that pole trailers should not be considered or regulated as LCV's. The ATA stated that the "FHWA is incorrect in believing that establishing length limits for pole trailers is consistent with the purpose of section 4006 of ISTEA." In addition to echoing the ATA's comment, the WTA went on to state that the FHWA's proposal with regard to regulating pole trailers as an LCV, "does not recognize that timber harvesters do not cut logs in the same lengths all the time. Utility poles transported by telephone and power companies are not the same length and neither are the joints of pipe used in oil well drilling, pipe line construction and water and sewer line repair and construction."

The FHWA has re-examined this issue. In the SNPRM, the FHWA admitted that the statutory language concerning the freeze is not readily applicable to such vehicles. The discussion of pole trailers and the inclusion of these vehicles in the SNPRM was based on an interpretation that the two cross-members on which the cargo rests constitute individual cargo-carrying units for purposes of section 4006 of the ISTEA. That argument is difficult to maintain. In fact, the hitch, the load, and rear dolly combine to create a *de facto* semitrailer. The FHWA has decided not to include these vehicles in appendix C, as truck tractor-semitrailers are not subject to the requirements of the freeze. Two separate pole trailers pulled by a tractor, however, must comply with section 4006.

Further Restrictions on ISTEA Vehicles

The ISTEA provides that States may further restrict, or even prohibit, the operation of LCV's or CMV's with two or more cargo-carrying units after June 1, 1991. Such restrictions, however, must be consistent with sections 411, 412, and 416(a) of the STAA. This means that States may not prohibit twin trailer combinations with trailers not over 28 feet long (28.5 feet if grandfathered) from operating on the NN or reasonable access routes. States may not restrict the width of vehicles on the NN or reasonable access routes to less than 102 inches or the metric equivalent, 102.36 inches.

A State must notify the Secretary within 30 days after the imposition of further restrictions or prohibitions on the operation of LCV's or CMV's with two or more cargo-carrying units. The FHWA does not have approval authority over any additional restrictions a State may impose, but is required to publish such restrictions in the **Federal Register**. The FHWA may require further information or clarification before publishing the restrictions in the **Federal Register**.

No additional comments were received on this issue in response to the SNPRM. The proposed regulatory language in the SNPRM directly reflected congressional intent as expressed in the ISTEA. That language has been adopted unchanged by this final rule in § 658.23(e).

Minor Adjustments to Listed Information

Sections 1023 and 4006 of the ISTEA allow States to make minor adjustments of a temporary and emergency nature which will relax route designations and vehicle operating restrictions in effect on June 1, 1991. They also direct the Secretary to issue regulations establishing criteria for the States to follow in making such adjustments.

Minor adjustments must be both temporary and caused by an emergency. According to the Conference Report on the ISTEA (H.R. Conf. Rep. No. 404, 102d Cong., 1st Sess. 314 (1991)), such adjustments are intended to be temporary and limited, e.g., a bridge failure that would require the rerouting of ISTEA vehicles to highways where they would otherwise be prohibited. Since it is impossible to foresee all types of emergencies that might necessitate a minor adjustment, and it is not the intent of the FHWA to establish a burdensome reporting requirement, the proposed regulation would require a State to report the details of an adjustment only if the duration was expected to exceed 30 days. Emergency adjustments with a duration of 30 days or less would not be reported to the FHWA.

The NPRM proposed to cap the duration of minor adjustments at 1 year. Adjustments lasting more than 1 year would not be considered to be of a temporary or emergency nature. Minor adjustments for the same emergency would not be permitted to be broken into periods of less than 1 year to extend the emergency for a period longer than that. Similarly, an emergency would not be permitted to be broken into 30-day or shorter periods to avoid reporting. The FHWA re-examined the issue in light of the comments received to the NPRM docket. Subsequently, the SNPRM removed the NPRM's 1-year maximum duration for a minor adjustment, but clearly spelled out that the FHWA must approve any minor adjustments which exceed 30 days. The SNPRM proposal also clearly spelled out that rejection of a State's request would cause the immediate reimposition of freeze restrictions, with failure to do so putting a State at risk of a funding penalty pursuant to 23 U.S.C. 141.

Two sets of comments to the SNPRM addressed the issue, those of the CRASH and those of the Advocates For Highway and Auto Safety (Advocates). Both organizations objected to the removal of the original 1-year time limit. They feared that under the SNPRM States would be allowed to detour LCV's onto highways less capable of safely accommodating these vehicles for unspecified, indefinite lengths of time. The Advocates also objected to the SNPRM proposal because

It fails to provide any criteria for the states to use in choosing alternate routes. The agency (FHWA) simply asserts that it will exercise its discretion to review and approve or disapprove any state's request for an LCV routing adjustment.

It argues that the FHWA is reserving for itself a power to make decisions on an important issue without publicly available guidelines which have been developed through a rulemaking process.

The criteria represented in the final rule by § 658.23(c) are necessarily

general and rely on the review-and-approval nature of the Federal-State relationship.

It is not practical to develop specific criteria to evaluate requests which might originate for any number of reasons. However, to allay the concerns of both the CRASH and Advocates—that minor adjustments, insofar as alternate routes are concerned, will result in LCV's temporarily operating on highways perceived to be less safe—this final rule includes additional guidance in selecting alternate routes. Section 658.23(c) now provides that in selecting alternate routes, States should, to the extent possible, select routes with geometric and pavement design features equivalent to those of the highway segment which is temporarily unavailable. In addition, each request involving an alternate route should include a discussion of what steps the State will take to mitigate any operational and/or safety problems that may develop.

The operating philosophy of the FHWA with respect to State issues has always been that of individual office autonomy within broad national guidelines. The Division Office of Motor Carriers within each State is in the best position to evaluate requests involving truck issues in the State. However, in order to assure that a degree of uniformity is applied to such requests, the Regional Office of Motor Carriers must be consulted before a decision is made on a State's request. On issues which involve alternate routes for LCV's, the final rule directs the Division Office of Motor Carriers to coordinate with the Division Administrator before consulting with the Regional Office.

Definition of Nondivisible Loads

Background

The definition of a nondivisible vehicle or load included in the NPRM was criticized by many commenters, and the following revised definition was therefore proposed in the SNPRM:

Nondivisible vehicle or load. As used in this part, "nondivisible" means any vehicle or load exceeding applicable length or weight limits which cannot readily be separated into smaller vehicles or loads that comply with such limits without:

(1) Compromising the intended use of the vehicle,

(2) Destroying the value of the load, or

(3) Using expert knowledge or specially designed tools. The intended use of a vehicle would be compromised if separating it into smaller units would make it unable to perform the function for which it was designed. The value of a load would be destroyed if separating it into smaller units would make the load unusable for its intended purpose. Expert knowledge means familiarity with procedures required to dismantle and reassemble a load which are beyond the job requirements typically associated with positions in the motor carrier industry. Specially designed tools means equipment designed and manufactured only for use with the load in question. A State may treat a sealed containerized load moving in international commerce as a nondivisible load.

Many of those who responded to the SNPRM discussed nondivisible loads, but a number of comments suggested that the scope of the definition requires clarification. The definition adopted here (and the others already codified in 23 CFR 658.5) apply, like the ISTEA freeze itself, to the same highways and vehicle characteristics as the underlying Federal law. The following paragraphs explain that principle in more detail.

Weight: As a condition of receiving Federal-aid funds, States are required to enforce Federal weight limits (23 U.S.C. 127) on the Interstate System and on routes providing reasonable access to and from the Interstate. The penalty for failure to do so is the withholding of a State's National Highway System (NHS) apportionment. A State may set any weight limit it wishes on other highways, though many have voluntarily adopted Interstate limits for all roads. States are therefore required to use the FHWA's definition only when considering whether to issue a nondivisible load permit allowing an overweight vehicle to operate on the Interstate System and roads providing reasonable access to and from the Interstate.

Length: Federal laws relating to vehicle length (49 U.S.C. app. 2311 and 23 CFR 658.13, 658.23) apply to the NN of highways—see appendix A to part 658—and routes providing reasonable access to and from the NN (49 U.S.C. app. 2312 and 23 CFR 658.19). The Interstate is part of the larger NN, and reasonable access rights extend the reach of Federal size laws beyond the NN itself. In contrast to Federal weight law, these provisions and the implementing regulations preempt conflicting State laws or regulations.

As a practical matter, the FHWA definition of a nondivisible load will rarely be applied to cargo length because it does not cover straight trucks or single-trailer combinations. It covers only loads on vehicles (1) operating on the NN, and routes providing reasonable access to and from the NN, (2) which have two or more cargo-carrying units, and (3) when the overall length from the front of the first to the rear of the last cargo-carrying unit exceeds the longest such length in actual legal operation for a specific configuration on or before June 1, 1991. There are very few single loads that rest simultaneously on the bed of a straight truck and on a trailer, or on two or more trailers. And even in those cases, the definition would not apply unless the total cargo box length were greater than that allowed by the State in 1991. The definition will apply more often to loads, like entire buildings, that are moved on a series of dollies, each of which is a single cargo-carrying unit. There has been virtually no controversy about these loads, and we expect little in the future.

Width: Federal width law (49 U.S.C. app. 2316 and 23 CFR 658.15), like the length requirements, applies on the NN and reasonable access routes, and it preempts conflicting State laws or regulations. However, the definition of a nondivisible load adopted by this rule does not apply to an overwidth vehicle because Federal law provides that States may issue permits to motor vehicles more than 102 inches wide without regard to divisibility or nondivisibility (49 U.S.C. app. 2316(c)).

Height: The FHWA has no authority to regulate vehicle height; there is no Federal law on this subject.

Comments to the Docket

Containers: The SNPRM proposed to allow States to treat containers moving in international commerce as nondivisible loads. Responses were about equally divided. Three State transportation departments favored the proposal, while two States, the ATA, and the Advocates opposed it.

Missouri said that "(u)niformity among States to issue overweight permits for containerized loads in excess of 80,000 pounds gross weight would be a giant accomplishment."

Connecticut suggested that States be required to treat sealed containerized loads moving in international commerce as nondivisible, subject to maximum dimensions and weights it did not specify. Florida went even further, pointing out that

> no justification is presented in the SNPRM for not affording identical containerized loads in domestic commerce a benefit being afforded such containers in international commerce. Therefore, it is proposed that the final rule make no reference to either international or domestic commerce and the statement in question should be revised to read: A State may treat a sealed containerized load as a nondivisible load.

On the other hand, the Washington State Patrol strongly disagreed with the proposal.

> If that were allowed, the industry could load any container to whatever weight, claim its (sic) moving in international commerce and obtain an overweight permit, without

regard to axle, gross weight or bridge formula requirements * * *.

During a recent "Container Weight" study, conducted by the Washington State Patrol, it was shown that of the 3,100 vehicles transporting containers, which exceeded the legal weight limits, all but one could be transported legally by using vehicles with the proper number of axles and axle spacings.

The Washington State Patrol concluded that "(t)he proposal * * * appears to be in conflict with the 'Intermodal Safe Container Transportation Act of 1992' * * *."

Similarly, the Washington DOT argued that "(r)ather than stating a policy that the FHWA is ambivalent about whether the states allow containerized cargo to be treated as non-divisible, it would seem better to encourage a national policy that they are not. This would alleviate competition on this point among ports to make their services more amenable to haulers and shippers." South Dakota contended that "(j)ust because the container is 'sealed' or is 'moving in international commerce' should not preclude a loaded container from meeting the same size and weight requirements which exists for a load which is loaded in a container, such as a truck box, not 'sealed' and not 'moving in international commerce.'"

The ATA recommended that the proposal to allow containers to be treated as nondivisible loads be dropped and that the issue be addressed in the rulemaking to implement the Intermodal Safe Container Transportation Act.

The Advocates argued that the FHWA had "openly contravened Congressional intent" expressed in section 4006 of the ISTEA "by explicitly endorsing the prospective regular issuance of such permits for any 'sealed containerized cargo in international commerce.'"

FHWA Response: The FHWA agrees that there is a serious question whether the proposal to allow States to treat containers in international commerce as nondivisible loads is consistent with the Intermodal Safe Container Transportation Act of 1992 (Safe Container Act) (Pub. L. 102–548, 106 Stat. 3646, partly codified at 49 U.S.C. 508).

Briefly, the Safe Container Act requires the party tendering a loaded intermodal container or trailer with a cargo weight in excess of 10,000 pounds to provide the initial carrier a written certification of the cargo weight and a reasonable description of the contents. Each carrier in the intermodal chain is required to transmit the certification to the next carrier. Motor carriers are prohibited from hauling loaded intermodal containers or trailers subject to the Safe Container Act without receiving a certification. It is also illegal to coerce a motor carrier to haul such a container or trailer (1) without a certification or (2) when the certified weight would make the combination vehicle exceed applicable State weight limits. There are two statutory options if State enforcement personnel discover an overweight tractor-chassis-intermodal container (or tractor-intermodal semitrailer) combination which is on the highway because the motor carrier relied on a false or erroneous certified weight. First, the State is authorized to assess the overweight fine against the initial tenderer and to impound the container or trailer until that party or the beneficial owner of the cargo has paid the fine. Second, if the State fines the motor carrier instead of trying to collect from the shipper or beneficial owner, the motor carrier has a lien on the contents of the container or trailer equal to the amount of the fine imposed and any additional costs incurred in the incident until it receives payment from the tenderer or beneficial owner. If payment is not made within a reasonable time, the carrier may sell the contents to satisfy the lien. The FHWA's proposed regulations to implement the Safe Container Act were published on July 14, 1993, at 58 FR 37895.

The Safe Container Act imposes administrative requirements and costs on tens of thousands of intermodal shippers around the world, and on the international transportation system, in part to reduce the number of overweight containers operating on the Nation's highways. The Safe Container Act is designed to give U.S. motor carriers enough information about the weight and cargo characteristics of intermodal containers and trailers to enable them to decide whether a particular vehicle can be transported without violating State weight limits. If States were allowed to continue routinely to issue nondivisible load permits for overweight containers, some of the essential purposes of the Safe Container Act would appear to be compromised. There would be little incentive for shippers to load intermodal containers or trailers with U.S. weight limits in mind, little if any reduction in the number of overweight vehicles (even though a permit makes them legal), and little reduction in pavement and bridge damage. Many of the expected benefits of the Safe Container Act would be lost, and the regulatory burdens it entails for shippers and carriers would be pointless, if the FHWA adopted the rule on containers proposed in the SNPRM. The FHWA has therefore decided not to promulgate a final rule dealing with containers, but to treat this subject in a separate notice of proposed rulemaking where the issue can be examined more explicitly and in greater detail. In the meantime, the FHWA's previous policy will remain in effect: the States may continue to issue nondivisible load permits to containers moving in international commerce.

Expert Knowledge or Specially Designed Tools: Many of the comments focused on the third test for nondivisibility proposed in the SNPRM. If "expert knowledge or specially designed tools" were required to dismantle a load, it would be considered nondivisible. Most of the comments were critical.

The Pennsylvania Department of Transportation found the test to be

(1) Vague,

(2) Impractical to measure or verify.

(3) Subject to manipulation by industry,

(4) Subject to subjective factors other than the vehicle or load itself, such as driver knowledge of cargo,

(5) Subject to varying interpretation, and

(6) In reality, a restatement of the initial economic criterion that was deleted from this latest rulemaking * * *.

The members of the Specialized Carriers & Rigging Association (SCRA) often move loads that would qualify as nondivisible by any definition. The SCRA noted that the definition proposed by the SNPRM explained expert knowledge as familiarity with procedures required to dismantle and reassemble a load which are "beyond the job requirements typically associated with positions in the motor carrier industry." The Association argued that because highly specialized skills are typically associated with positions in its segment of the motor carrier industry, the definition would make it impossible for special carriers and riggers to obtain nondivisible load permits.

The Alaska Department of Transportation and Public Facilities also commented that "expert knowledge" means very different things in different parts of the industry. It concluded that "(s)ome further work needs to be done on this definition."

The Caltrans commented that, "(w)hatever definition is finally promulgated, Caltrans is totally opposed to the provisions concerning expert knowledge and specially designed tools."

FHWA Response: The FHWA agrees that a test based on "expert knowledge or specially designed tools" is too complicated and ambiguous to be effective. It has therefore been replaced with a test based on the time required to divide a load. This general approach was suggested by the Oregon DOT in response to the NPRM. The full definition adopted by this rule is as follows:

Nondivisible load or vehicle.

(1) As used in this part, "nondivisible" means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(i) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(ii) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(iii) Require more than 8 workhours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(2) A State may treat emergency response vehicles and casks designed and used for the transport of spent nuclear materials as nondivisible vehicles or loads.

The first two tests proposed in the SNPRM, and adopted here as paragraphs (1)(i) and (1)(ii), have elicited little comment and no controversy. These standards are appropriate but very stringent. The FHWA believes there are loads that could be divided without literally destroying their value, but only after unreasonable delay and expense to the shipper and motor carrier; the States should be allowed to issue nondivisible load permits in those cases. As the Pennsylvania DOT recognized, this is essentially an "economic criterion." Our earlier proposals to codify this idea would have allowed nondivisible load permits if dismantling the load imposed "significant additional costs on the shipper or motor carrier" (NPRM) or required "expert knowledge or specially designed tools" (SNPRM). The final rule uses 8 workhours, i.e., a full working day, as a proxy for nondivisibility. The number of workhours required by the rule is the same no matter how many people are involved; for example, if one person working 8 hours, 2 people working 4 hours each, or 4 people working 2 hours apiece, could not dismantle the load, it would be nondivisible. Most loads that require more than one full workday to dismantle, using appropriate equipment, probably were not designed to be taken apart after leaving the factory. We believe Congress intended to allow the use of nondivisible load permits for cargoes which are theoretically divisible, but so tightly integrated that they cannot be dismantled without excessive cost and delay. On the other hand, the definition sets a standard high enough to keep easily divided overweight machinery and equipment off the highway.

The definition adopted today as paragraph (1)(iii) is more objective than that proposed in the NPRM and less confusing than the amended version included in the SNPRM. It remains complex, however, and disagreements between enforcement officers, motor carriers, and shippers are likely. The rule does not specify how State officials are to determine the length of time required to break down a given load. Manufacturers may sometimes provide the necessary information. The motor carrier itself may have reliable data if it has previously dismantled such cargoes. The rule does not require a carrier or shipper to demonstrate that a given load cannot be broken down in less than 8 workhours, but it would not prohibit a State from requiring such a demonstration either. Enforcement officials may be able to work out other reliable methods in cooperation with motor carriers. Paragraph (1)(iii) requires that "appropriate equipment" be used in an effort to dismantle a cargo. The number of workers involved and the type of equipment used will depend on the load to be moved. A State is not required to grant a permit in any case, and it would certainly be reasonable to deny a permit to a carrier or shipper which makes a perfunctory or deliberately inadequate effort to dismantle a load within 8 workhours.

The FHWA intends to allow the States some latitude in implementing the definition, unless indications of nonenforcement or abuse appear.

Overweight and Overwidth Vehicles: In many cases, nondivisible load permits are likely to be requested for loads which are both overweight and overwidth. The South Dakota DOT favored the definition of a nondivisible load adopted by the Western Association of State Highway Officials (WASHTO), which includes the following:

> Portions of a load can be detached and reloaded on the same hauling unit provided that the separate pieces are necessary to the operation of the machine or equipment which is being hauled, if the arrangement does not exceed permittable limits.

The State explained how this definition would work in case of an overweight, overwidth load.

> For example, suppose that a ten foot wide crawler tractor with a fourteen foot wide dozer is to be moved. This load can be moved two ways, overweight and fourteen feet wide with the dozer and ten feet wide without the dozer. Clearly the safest way to move the load would be legal weight and ten feet wide but separating the dozer from the crawler tractor destroys the unit for its intended use and it requires expert knowledge to take the dozer off.

FHWA Response: The State has misread the FHWA's proposed definition. Although a bulldozer might be temporarily "unusable for its intended purpose" without a blade, that phrase merely clarifies the term "destroy the value of the load." Removing the blade certainly would not destroy the value of the bulldozer. The "expert knowledge" test has been eliminated, but it is unclear whether a blade would require more than 8 workhours to remove.

The flaw in the WASHTO definition is that it allows the separate pieces of an allegedly nondivisible load to be reloaded onto the same vehicle. That defeats the purpose of such a provision, which is to hold down vehicle weights in order to protect the public investment in roads and bridges. The WASHTO definition simply allows a divisible load permit to masquerade as a nondivisible load permit. That is unacceptable.

Overwidth Vehicles: The WTA described a related, but different situation:

> FHWA seems to assume that all overlength (and over-width) loads are also overweight. Much of the equipment used in agriculture is oversize, but not overweight. Allowing the removal of a portion of this type of machinery such as tires and allowing it to be carried on the same trailer is clearly in the public interest, especially when in all respects, the machinery is otherwise eligible for a nondivisible load permit. Requiring a second vehicle to haul the removed part(s) is not smart economics.

FHWA Response: If a piece of farm machinery is overwidth but not overweight, the State may either issue an overwidth permit, make the permit conditional upon the removal of tires but allow them to be carried on the same trailer, or deny a permit. These options are entirely within the discretion of the State. If farm machinery is neither overwidth nor overweight, the question of divisibility would not arise unless two or more cargo-carrying units were needed to transport it, certainly a rare occurrence.

California Policy: The California Highway Patrol also argued that "there

are incidents involving the transportation of some nondivisible loads, when more than one unit is loaded, (and) can be transported safely. To qualify, loads would have to be oversize, rather than overweight in nature. California permit policy allows the transportation of multiple nondivisible pieces together, provided sufficient supporting justification is given." The Caltrans asked for a definition that allows this kind of flexibility.

FHWA Response: States may allow several nondivisible overwidth loads on the same vehicle, as long as the normal weight limits are observed. That appears to be what California authorizes. As mentioned above, Federal law gives the States great discretion in issuing permits for overwidth loads. There would also be no conflict with Federal regulations if a State allowed more than one overlength nondivisible load to be carried on a single trailer vehicle—assuming the vehicle was not overweight—because the FHWA's definition of a nondivisible load applies only to overlength nondivisible loads carried on two or more cargo-carrying units.

Safety: The Wyoming DOT, the WTA, and Black Hills Trucking, Inc., referred to *Rocky Mountain Prestress, Inc.*, v. *Leno Menghini et al.*, No. C79–057B, an unreported 1979 Wyoming Federal district court decision, in support of the proposition that safety should be considered in any definition of nondivisible loads. Rocky Mountain Prestress manufactured concrete panels that were to be mounted, two at a time, on A-frame trailers and transported from Denver to Casper for use in construction projects. Wyoming law allowed special permits for overweight "indivisible loads," but the Highway Department rejected plaintiff's application on the ground that two panels were a divisible load. Plaintiff sued the Chief Engineer of the Department, arguing among other things that Wyoming's permit law violated the Commerce Clause of the Constitution. The court held the law constitutional, but found that it had been applied in an arbitrary and capricious manner which impermissibly burdened interstate commerce. The court explained that:

> Our conclusion is buttressed by the admission of the Defendants that heavy equipment which is being carried by trailer qualifies as an indivisible load even though the parts thereof may be easily dismantled. Such an approach to granting overweight permits signifies that the State Highway Department has previously, as they must in this case, considered circumstances other than the mere physical divisibility of the goods in transit.
>
> * * * * *
>
> We would also observe that forestry goods, baled hay and sugar beets are statutory exceptions to the mandated weight limits. The special interest group exceptions in the Wyoming statutes discriminate against the Plaintiff and others similarly situated who may be equally deserving of exceptions from the weight limitation in view of the safety and economic factors involved. * * *
>
> * * * [T]he State's desire to protect its highways has been severely diluted by the discriminatory granting of overweight permits to special interest groups, as well as by the routine issuance of such permits based on an indivisible load regulatory provision that we believe was arbitrarily and capriciously applied to the Plaintiff.

FHWA Response: The court concluded that "the 'A' frame is the safest * * * mode of transportation for loading and shipping panels," but its evidence on that point was meager. The issue of safe transportation of concrete panels was discussed at some length in the SNPRM (see 58 FR 11455–11457). As we noted there, a single panel, mounted horizontally, would improve the vehicle's braking capability and reduce its susceptibility to side winds. Two such panels obviously constitute a divisible load, and a "safety" rationale for doubling the weight of a divisible load is not persuasive.

Black Hills Trucking now contends that one panel cannot be carried horizontally because it "is not constructed to stand up to forces coming through its sides," or vertically "because it is not heavy enough in proportion to the 'sail' area exposed to side winds which destabilize the load." The apparent fragility of these concrete panels does not make two of them any less divisible. Furthermore, the Great Plains experience winds high enough to overturn tractor trailer combinations and double-stack container trains. The interests of safety are better served by halting trucking operations under those conditions than by doubling the weight of the cargo in an effort to anchor the vehicle.

The *Rocky Mountain Prestress'* decision is not binding on the FHWA. To the extent this rule requires Wyoming to adopt and enforce a new definition for purposes of issuing nondivisible load overweight permits for the Interstate System, it is no longer binding on the State either. The 1979 decision was based upon the State's arbitrary and capricious administration of its own permit law, in particular its failure to apply that law consistently to all motor carriers and commodities. At the time, there was no Federal law on nondivisible loads. Congress enacted nondivisible load provisions for vehicle weight in 1982 and for vehicle length in 1991. Proposed regulations to implement that authority have been subjected to extensive comment and discussion in this rulemaking. Wyoming, like the other States, will be required to adopt the new definition for Interstate operations. That definition will result in greatly increased nationwide uniformity in the treatment of nondivisible loads. Wyoming will have no more administrative discretion than any other State. A judicial challenge to the FHWA's definition of a nondivisible load would therefore confront a legal and factual situation completely different from that which existed in 1979.

Emergency Vehicles: Section 1023(e)(1) of the ISTEA prohibited the FHWA from penalizing States that allow emergency vehicles to use the Interstate at weights in excess of Federal axle and Bridge Formula limits. The exemption was in effect for 2 years after the date of enactment of the ISTEA and expired on December 18, 1993. Section 1023(e) also required a study of State laws and permit practices to determine whether statutory changes were needed to accommodate emergency vehicles.

To carry out the study, the FHWA requested comments on a variety of questions (57 FR 46941, October 13, 1992). The information submitted indicated that most fire trucks exceed the Federal single- and/or tandem-axle weight limits (20,000 and 34,000 pounds, respectively). These vehicles are rarely short enough to violate the Bridge Formula, however, and almost all of them have gross weights under 80,000 pounds. Technological developments in the manufacturing sector combined with the equipment preferences of fire departments are driving up the size and, especially, the weight of fire trucks. On the other hand, tandem and tridem axles are not favored because they reduce the maneuverability these vehicles need to reach burning buildings. Some States exempt fire equipment from normal weight limits, and others issue blanket overweight permits. The Caltrans reached a compromise with fire officials that will require the latter to observe specific axle limits for various types of vehicles and to make purchasing decisions accordingly.

The U.S. DOT's report was transmitted to Congress on September 7, 1993. It recommended that Congress take no further action because the matter could be resolved by an FHWA policy statement. On November 9, 1993, the Federal Highway Administrator informed the FHWA's regional offices.

and through them the States, that "the FHWA will not withhold Federal-aid funds from States which issue nondivisible load permits to emergency vehicles equipped for their intended use. We will not require that the vehicles have a full crew or be operating under emergency conditions. States may set whatever permit terms, conditions, and fees they consider appropriate." The Federal Highway Administrator added that this policy "is compatible with the Agency's draft definition" published on February 25, 1993, in the SNPRM and that if it "in any way conflicts with the definition ultimately adopted through the rulemaking process, appropriate action will be taken to amend or rescind the policy."

The Federal Highway Administrator's decision was based upon conclusions set forth in his November 9, 1993, letter:

> Some States may have refused to issue nondivisible load permits to emergency vehicles because much of their equipment is readily detachable. Fire trucks often carry firefighting teams, water, hoses, axes, respirators and other devices; advanced life-support vehicles typically carry at least two paramedics (one of whom drives), defibrillators, oxygen tanks, stretchers, and medical supplies. In one sense, ancillary equipment and personnel are "divisible" parts of the load, and removing them might lighten an emergency vehicle enough to restore compliance with Interstate weight limits. Doing so, however, would defeat the purpose of these vehicles and make it impossible for them to respond effectively to emergencies. New vehicles may even be overweight as they leave the final stage manufacturing facility, either because the base vehicle is particularly heavy or because ancillary equipment is supplied with it. The equipment that could be removed from emergency vehicles to reduce weight is essential to the services they are designed to perform. These vehicles and loads are functionally if not physically nondivisible and I believe the States should have the option to treat them as such.

In the language of the regulation we are adopting today, requiring an emergency vehicle to unload separable pieces of equipment would "compromise the intended use of the vehicle." Emergency vehicles meet the definition of a nondivisible vehicle or load.

Spent Nuclear Fuel: The Pennsylvania DOT pointed out that the FHWA informed the American Association of State Highway and Transportation Officials several years ago that the FHWA regards overweight casks used to move spent nuclear fuel as nondivisible. This determination was not reflected in the SNPRM. The casks used to transport spent nuclear materials, especially nuclear fuel, are extraordinarily strong and heavy, both to prevent a release in case the transporter vehicle was involved in an accident and to block radiation that would penetrate lighter materials. Some of these containment devices can make a vehicle overweight even before the nuclear materials are loaded. These vehicles cannot be used for any other cargo or reduced to legal weights without frustrating their purpose. A new provision has therefore been added which essentially states that specially designed casks used to move spent nuclear fuel meet the definition of a nondivisible load.

Other Issues: The Pennsylvania DOT suggested that the SNPRM be amended to acknowledge that both the President and State governors

> Have the executive authority to temporarily modify any vehicle size or weight law or regulation, including the nondivisible criteria, in order to provide for emergency relief to promote the general welfare and public safety, without threat of Federal sanction after the emergency.

While the FHWA would not necessarily impose sanctions if weight enforcement suffered during emergencies that threatened public welfare, Federal weight law simply does not authorize waivers of the Interstate limits or regulatory definitions.

The Connecticut DOT suggested that we use the definition of a nondivisible load to establish "an Ultimate Limit or a guideline to be used by manufacturing." Federal size and weight laws confer no authority to regulate manufacturers.

The FHWA mentioned in the SNPRM that bulk commodities such as liquids, grain, and cement are inherently divisible. The CRASH suggested that the definition include "a much more complete listing of loads that are inherently divisible * * *." In view of the enormous variety of products that move by truck, we do not believe divisible loads could reasonably be itemized.

Grove Worldwide, a manufacturer of cranes, proposed that a load be defined as nondivisible if dismantling it would cause a competitive disadvantage, compromise the integrity and safety of the equipment when disassembled, or jeopardize the warranty. The FHWA considers these tests too far removed from the question of physical divisibility to be appropriate.

Procedure to Review and Correct Final List

Sections 1023 and 4006 of the ISTEA provide a review and correction procedure for the final list of ISTEA vehicles, published today as appendix C to 23 CFR part 658. Any person or State may request that the Secretary review the final list to determine if there is cause to believe that it contains a mistake. The Secretary may also initiate the review. If the Secretary believes an error exists, he or she must commence a proceeding to determine if the list should be corrected, and if so, make the correction. Proposed language establishing such a procedure was included in the SNPRM. No comments were received on this issue. Accordingly, that language has been adopted, unchanged, by this final rule in § 658.23(f).

Temporary Exemption for Public Transit Vehicles

Section 1023 of the ISTEA was amended by the Department of Transportation and Related Agencies Appropriations Act for fiscal year (FY) 1993, Public Law 102–388, 106 Stat. 1520. Section 341 added a new subsection (h) which reads in part as follows:

> (h) Public Transit Vehicles.—
> (1) Temporary Exemption.—The second sentence of section 127 of title 23, United States Code, relating to axle weight limitations for vehicles using the Dwight D. Eisenhower System of Interstate and Defense Highways, shall not apply, in the 2-year period beginning on the date of the enactment of this Act, to any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus. The Secretary may extend such 2-year period for an additional year.

This prevents the FHWA from sanctioning States that fail to enforce the Interstate axle-weight limits for public transit vehicles at least until October 6, 1994. If the Secretary exercises the authority to extend the exemption an additional year, it would apply until October 6, 1995. The 2-year exemption was included in the ISTEA to allow States to suspend axle weight enforcement on the Interstate System against public transit vehicles while the Secretary conducts the study called for in section 1023(h)(2). That study, which is currently underway, is to determine whether or not public transit vehicles should be exempted from the requirements of 23 U.S.C. 127, State weight laws, or if such laws should be modified to accommodate these vehicles. The FHWA and the Federal Transit Administration published a joint notice and request for comments on this issue on November 16, 1993 (58 FR 60481). A report on the results of the study, along with recommendations, will ultimately be submitted by the Secretary to Congress.

In a comment to the SNPRM docket, the American Public Transit Association urged that the temporary exemption

language be codified into part 658. The FHWA agrees with this comment. Accordingly, the exemption is codified in this final rule at § 658.17(k).

Temporary Exemption for Emergency Vehicles

Section 1023(e) of the ISTEA added the following exemption from 23 U.S.C. 127:

(1) Temporary Exemption.—The second sentence of section 127 of title 23, United States Code, relating to axle weight limitations and the bridge formula for vehicles using the Dwight D. Eisenhower System of Interstate and Defense Highways, shall not apply, in the 2-year period beginning on the date of the enactment of this Act, to any existing vehicle which is used for the purpose of protecting persons and property from fires and other disasters that threaten public safety and which is in actual operation before such date of enactment and to any new vehicle to be used for such purpose while such vehicle is being delivered to a fire fighting agency. The Secretary may extend such 2-year period for an additional year.

This prevented the FHWA from sanctioning States that failed to enforce the Interstate axle-weight and Bridge Formula limits for fire or emergency vehicles in actual operation on or before December 18, 1991, and for such equipment being delivered from the manufacturer to a fire department. The normal gross weight limit was not affected by the exemption. The exemption remained in effect through December 18, 1993. The SNPRM proposed to codify the exemption at § 658.17(k).

Two comments were received on this issue. The South Dakota DOT expressed its desire to go on record as "not in favor of allowing a temporary or permanent axle weight exemption or bridge formula weight exemption for emergency vehicles." The State contends that "operation of these vehicles overweight threatens the public's safety" and "that emergency vehicles should be designed to operate within legal size and weight limits." The Caltrans objected to the FHWA's interpretation of the law which indicated that the normal gross weight limit (80,000 pounds) remained in effect during the period of the exemption. They contend that gross weight is determined by the Bridge Formula and that our interpretation was contradictory.

The FHWA believes that Congress intended the exemption in section 1023(e)(1) to cover (1) single- and tandem-axle limits, (2) application of the bridge formula to intermediate axles (the inner bridge limits), and (3) application of the Bridge Formula to the overall wheelbase of the vehicle (the outer bridge limit). However, the 80,000-pound maximum gross weight allowed by 23 U.S.C. 127(a) is not inherently part of the Bridge Formula. It is a separate statutory restriction, and we do not believe Congress intended to authorize an exemption to the 80,000-pound limit.

The 2-year exemption was included in the ISTEA to allow States to suspend enforcement action against these vehicles while the Secretary conducted the study called for in section 1023(e)(2). That study has been completed, as indicated above, and the authority of the Secretary to extend the temporary exemption an additional year will not be exercised. The temporary exemption expired December 18, 1993. However, the definition of a nondivisible load adopted in this final rule specifically declares emergency vehicles to be nondivisible. States may therefore issue overweight permits for these vehicles if they wish.

Interstate System Weight Requirements

The first sentence in 23 U.S.C. 127(a) was amended by the STAA of 1982 to require all States to allow the maximum weights permitted by Federal law on the Interstate System. In effect, the weight limits set forth in section 127 became minimums which the States must allow, as well as the maximums the States could allow, on the Interstate System. Since the STAA amendment of section 127 became effective (January 6, 1983), States have occasionally argued that the amendment applied only to the single-axle, tandem-axle, and maximum gross weight limits, and not to gross weights developed by the Bridge Formula. In addition, a degree of confusion regarding applicability has lingered over the years as a result of the regulations issued to implement the STAA (49 FR 23302, June 5, 1984). Although those regulations were published 1½ years after enactment of the STAA, the statutory action making the weight value minimums was not highlighted nor was any regulatory language included.

The SNPRM proposed to clarify and resolve this issue by including a § 658.17(f) as follows.

(f) States may not enforce on the Interstate System vehicle weight limits of less than 20,000 pounds on a single axle, 34,000 pounds on a tandem axle, or the weights derived from the bridge formula, up to a maximum of 80,000 pounds, including all enforcement tolerances.

Comments on this proposal were received from six State Departments of Transportation (Arizona, Montana, Nevada, Oregon, South Dakota, and Washington), as well as from the WASHTO's Subcommittee on Highway Transport. All seven commenters objected to the paragraph as proposed for fear that it would no longer allow the States to further control axle weight using a regulation based on pounds per inch of tire width. Each of the six States providing direct comments currently has this type of weight control regulation in force. The "Guide For Uniform Laws and Regulations Governing Truck Size and Weight Among the WASHTO States," prepared by the WASHTO Subcommittee on Highway Transport and adopted by the WASHTO Policy Committee on June 26, 1993, recommends that all 17 member States adopt a 600-pound/inch tire width weight control.

State tire loading regulations are intended to limit the use of single tires or wheels designed for dual tire applications. This is a practice which results in higher pavement stress and shorter pavement life, and greatly reduces the safety margin provided by dual tires. Depending on the pound-per-inch limit chosen, these regulations may also restrict the use of some "super single" tires. The Washington State DOT included in its docket comments a copy of a report of research on the effects of wide based single tires on flexible pavements conducted by the FHWA at our Pavement Testing Facility during 1989 and 1990. Dual 11R22.5 radial tires, previously identified as one of the most common truck tires in use today, were tested against a 425/65R22.5 wide base single tire. Under a load rating methodology established by the United States Tire and Rim Association, the load ratings for the duals and the single are equivalent; however, the footprint on the pavement is significantly different. The approximate footprint of an 11R22.5 tire is 8.5 inches. Thus, two sets of duals (four tires) can result in approximately 34 inches of tire being available to transmit an axle load to the pavement. For the 425/65R22.5 wide base tire, the footprint is approximately 11 inches, which would make approximately 22 inches available to transmit an axle load to the pavement. The research demonstrated that the 425/65R22.5 wide based single tire was significantly more damaging to conventional flexible pavements than the traditional 11R22.5 dual tires.

The Federal axle weight limits on the Interstate System were adopted to protect the tremendous Federal investment in that System. Restrictions on the weight a tire may carry, based on its width, are consistent with that goal and not forbidden by Federal law. It would be anomalous to adopt axle

weight limits to protect Interstate System pavements and then prevent States from blocking the use of tires so narrow that much of the protection was lost. In addition, a pound-per-inch tire limit does not directly limit the weight that an axle may carry, since additional or wider tires may be utilized. Therefore, unless such restrictions operate so that, as a practical matter, axles cannot be loaded to the Federal weight limits, they are not inconsistent with 23 U.S.C. 127. We believe that laws limiting tire weights as low as 500 pounds per inch width of tire or tread width will allow axles to be loaded to the Federal axle weight limits without particular difficulty.

Steering axles must be treated differently, however, since they cannot always be equipped with wider or additional tires. The FHWA has already recognized a different standard for steering axles by not requiring States to allow truckers to load them to 20,000 pounds when the manufacturer's weight rating is less than that. Therefore, States may not impose pound-per-inch restrictions that would reduce the allowed weight of steering axles on the Interstate System to less than 20,000 pounds or the manufacturer's weight rating, whichever is lower.

Arizona, Montana, and Oregon also suggested that proposed § 658.17(f) be amended to allow temporary weight restrictions based on climatic conditions or emergencies.

Some northern States have for decades enforced lower axle limits during spring thaw. When moisture in a pavement's sub-base, frozen during the winter months, begins to melt, the load-carrying capacity of the pavement structure is reduced until the moisture drains. The degree of reduction is a function of the overall pavement structure thickness, the type of underlying material, amount of moisture, and depth of frost penetration.

Federal weight restrictions apply only to the Interstate System. The standards to which the System has been built include pavement designs developed with the strength to allow maximum legal weights year round. The FHWA does not agree that there is a need to provide regulatory flexibility for climatic conditions. The pavement design parameters of the Interstate System preclude the need for this authority. However, the States do retain the authority to establish such restrictions for highways that are not part of the Interstate System.

"Emergency" weight restrictions requested by States generally are not restrictions at all, but rather the lessening of restrictions to allow heavier weights. For example, when natural disasters occur, carriers, relief agencies, or States would often like to allow trucks carrying relief supplies to exceed normal weight limits. Federal law simply does not allow waivers of this kind. On the other hand, if a flood or earthquake has seriously weakened a bridge or stretch of pavement, it remains within the police powers of the State or municipality to close or limit access to the facility in order to protect the public.

Of the three exceptions to § 658.17(f) sought by commenters, the FHWA agrees that States should retain the authority to enforce the tire loading restrictions, but does not concur in the request to provide climatic or emergency restrictions. Accordingly, § 658.17(f), as proposed in the SNPRM, is amended to read as follows:

§ 658.17 Weight.

* * * * *

(f) Except as provided herein, States may not enforce on the Interstate System vehicle weight limits of less than 20,000 pounds on a single axle, 34,000 pounds on a tandem axle, or the weights derived from the Bridge Formula, up to a maximum of 80,000 pounds, including all enforcement tolerances. States may not limit tire loads to less than 500 pounds per inch of tire or tread width, except that such limits may not be applied to tires on the steering axle. States may not limit steering axle weights to less than 20,000 pounds or the axle rating established by the manufacturer, whichever is lower.

Bus Length and Access

Section 4006(b)(1) of the ISTEA amended section 411(a) of the STAA [49 U.S.C. app. 2311(a)] by inserting "of less than 45 feet on the length of any bus," after "vehicle length limitation."

Section 4006(b)(2) of the ISTEA amended section 412(a)(2) of the STAA [49 U.S.C. app. 2312(a)(2)] by inserting "motor carrier of passengers" after "household goods carriers."

The first provision has the effect of requiring States to allow buses with a length of 45 feet or less on the NN and reasonable access routes. The second provision requires States to allow motor carriers of passengers to have the same access off the NN as household goods carriers, i.e., to "points of loading and unloading." In the SNPRM, the FHWA proposed changes to the "Length" and "Reasonable Access" sections of part 658 to account for these provisions.

Comments on this proposal were received from the Caltrans and the Department of California Highway Patrol. Both agencies recommended that a final rule include definitions of both "bus" and "motor carrier of passengers" to "prevent confusion on the interpretation and application of the regulations." The FHWA agrees with this comment.

The STAA defines a "commercial motor vehicle" in part as "any self-propelled * * * vehicle used on the highways in [interstate] commerce principally to transport passengers * * * (B) if such vehicle is designed to transport more than 10 passengers, including the driver * * *" [49 U.S.C. app. 2301(1)(B)]. While this definition applies only to subchapter I of chapter 32 of title 49, U.S.C., which makes grants available to States that agree to enforce Federal, or compatible State, safety regulations, it is an indication of congressional intent. For purposes of administering the commercial vehicle safety program, "bus" was defined in 49 CFR 390.5 as "any motor vehicle designed, constructed, and or used for the transportation of passengers, including taxicabs." The Motor Carrier Safety Act of 1984 amended the definition of a bus to a "vehicle designed to transport more than 15 passengers, including the driver * * *." [49 U.S.C. app. 2503(1)(B)].

The intent of Congress, as expressed in the ISTEA, is to guarantee national route availability and reasonable access for "buses" not exceeding 45 feet in length. Since virtually all States already allowed 40-foot buses to operate Statewide prior to the ISTEA, the number of passengers the vehicle is designed to carry is not an issue, simply the establishment of a national standard length. Accordingly, this final rule will use the most generic of the definitions already established, that found in 49 CFR 390.5.

While the term "motor carrier of passengers" has not previously been defined, this type of operation can generally be characterized as belonging to at least one of three groups: (1) Common carriers that offer service on regular (and sometimes on irregular) routes, (2) contract carriers that provide charter service to groups, or (3) private carriers that do not serve the public but use buses as part of some other enterprise. Someone who uses a 45-foot bus for recreational or other non-business purposes would not qualify as a motor carrier of passengers. For this final rule "motor carrier of passengers" is defined as follows:

Motor Carrier of Passengers—is a common, contract, or private carrier using a bus to provide commercial transportation of passengers

The list of definitions contained in 23 CFR 658.5 has been amended to include this definition. In addition, the

provisions of § 658.13 (Length) and § 658.19 (Reasonable Access) have been amended to account for these provisions.

Lengths of Trailers and Semitrailers

Fruehauf Trailer Corporation (Fruehauf) commented that the FHWA should clarify the methods by which length is determined for trailers which are part of a multi-unit vehicle subject to the freeze. Because of the attention focused on the LCV length issue by the freeze, Fruehauf contends that it is important that all States (and enforcement agencies) have a uniform understanding of how the length of the individual units is to be determined. Fruehauf's specific concern is with full trailers used in LCV's which are actually made up of a semitrailer and a converter dolly.

In a Notice of Interpretation (NOI) published on March 13, 1987, at 52 FR 7834, the FHWA addressed the issue of trailer or semitrailer length, as part of an overall discussion of length and width exclusive devices. The first length interpretation is relevant here.

1. The length of a semitrailer equipped with an upper coupler (mates with a truck tractor fifth wheel) and a full trailer (with either a permanently mounted dolly or equipped with a converter dolly) is to be measured from the front vertical plane of the foremost transverse load carrying structure to the rear vertical plane of the rearmost transverse load carrying structure. The towbar of a full trailer is excluded from the length measurement (of that trailer) since, technically, it carries no load, but rather it is the means by which the trailer unit is drawn.

The length of any two or more units subject to the freeze requirements of section 4006 is to be measured from the front of the foremost transverse load-carrying structure of the first cargo-carrying unit to the rear of the rearmost transverse load-carrying structure of the last such unit. The upper coupler on a semitrailer is not to be included in the length determination of these units.

National Network—California

This final rule will also amend appendix A to 23 CFR part 658, National Network—Federally-Designated Routes, to reflect the inclusion of the I–580 Richmond-San Rafael Bridge (toll) in the NN. Under the STAA, all Interstate System routes are part of the NN unless deletion is authorized by law. The I–580 Richmond-San Rafael Bridge was withheld from the NN until a direct connection to I–80 from the east end of the bridge could be completed. This condition was reflected in Note 1 to the California listing of NN routes in appendix A. Now that this connection has been completed, the FHWA is amending appendix A by removing Note 1 and redesignating Note 2 as "Note."

This amendment will merely reflect the fact that the I–580 Richmond-San Rafael Bridge is now included in the NN pursuant to the provisions of the STAA. For this reason, and the others set forth above, the FHWA has determined that prior notice and opportunity for public comment on this action are unnecessary. Furthermore, due to the technical nature of this amendment, the FHWA has determined that prior notice and opportunity for comment are not required under the U.S. Department of Transportation's Regulatory Policies and Procedures, as it is not anticipated that such action will result in receipt of useful information.

National Network—Virginia

The ISTEA freeze applies to the operation of specified CMV's on the Interstate and other portions of the NN. The identification of NN routes in Virginia contained in appendix A to 23 CFR part 658 utilizes Interstate System exit numbers to identify the beginning or end of some NN routes. During 1992, the State converted all Interstate System exit numbers from a consecutive number system to a milepost numbering system. In response to this portion of the SNPRM, the State indicated that there appeared to be a discrepancy between what was published in the SNPRM and what the State was considering to be its NN.

The State list not only includes those highway sections designated by the Secretary which comprise appendix A to part 658, but also additional segments which the State has also decided to open to STAA vehicles. Each State retains the authority to open additional mileage, beyond what is listed in appendix A of part 658, to STAA vehicles without the approval of the Secretary. In order to identify NN routes in Virginia which have been federally designated, we are reissuing the State's NN routes in appendix A, 23 CFR part 658, to reflect the new milepost-based exit numbers.

Definition Of Maxi-Cube

Among the vehicles specifically excluded from listing in appendix C, and therefore not subject to the restrictions described in section 4006 of the ISTEA, is the maxi-cube vehicle. "Maxi-Cube" is a registered trademark of LHT Industries, which designed the vehicle, but the maxi-cube regulations adopted in this rule apply to any vehicles that meet their terms.

In 1987, Congress amended the STAA by adopting a definition of a maxi-cube and authorizing the vehicle to operate on the same terms as other STAA vehicles (49 U.S.C. app. 2311(f)(2) and 2311(c), respectively). It soon became apparent that the definition, reproduced below, was flawed:

(2) For purposes of this section, *maxi-cube vehicle* means a truck tractor combined with a semi-trailer and a separable cargo-carrying unit which is designed to be loaded and unloaded through the semi-trailer, except that the entire combination shall not exceed 65 feet in length and the separable cargo-carrying unit shall not exceed 34 feet in length.

49 U.S.C. app. 2311(f)(2).

Although the term maxi-cube was intended to apply to a specific combination of straight truck and trailing unit, the 1987 language described the power unit as a "truck tractor," which the STAA elsewhere defines as "the noncargo carrying power unit that operates in combination with a semitrailer or trailer * * *" (49 U.S.C. app. 2311(f)(1)).

Theoretically, therefore, the maxi-cube is a noncargo-carrying power unit combined with a semitrailer and a separable cargo-carrying unit which is designed to be loaded and unloaded through the semi-trailer. Unfortunately, this vehicle is a chimera. The separable cargo-carrying unit cannot be placed on the "noncargo carrying" power unit, and if it were placed on the semitrailer, the result would seem to be a truck tractor-chassis-intermodal container combination. Container vehicles had long been legal, however, so the 1987 language certainly was not directed at them. In some sense all containers and semitrailers are designed to be loaded and unloaded "through" themselves, but the description does not really fit a combination with only one cargo-carrying unit. The fact is that the definition of the vehicle to be authorized did not correspond to the actual vehicle.

Recognizing the problem, Congress amended the STAA again in 1990 to make maxi-cubes "specialized equipment" and thus eligible for the special regulatory treatment authorized by 49 U.S.C. app. 2311(d). The accompanying report of the House Appropriations Committee said the following:

The bill includes language (Sec. 327) amending section 411(d) of the Surface Transportation Assistance Act of 1982 regarding maxi-cube vehicles. A maxi-cube vehicle is a truck combination consisting of a power unit capable of carrying cargo that pulls a semitrailer. The power unit is a single or tandem axle truck that carries either a

detachable or a permanently attached cargo box or platform. The trailing unit is a semitrailer attached to the front unit by a specially built draw bar which gives the entire combination a single point of articulation. The front of the rear unit is specially designed so cargo may be loaded through the rear unit to the front unit. The length of the trailing cargo unit can be no more than 34 feet excluding the draw bar. The distance from the front of the cargo box on the power unit to the rear of the trailing unit can be no more than 60 feet.

(H.R. Rep. No. 584, 101st Cong. 2d Sess. at 78–79 (1990).)

Although this is an accurate description of a maxi-cube, the flawed definition of the same vehicle in 49 U.S.C. app. 2311(f)(2) was not repealed. In the SNPRM, the FHWA therefore exercised its broad discretionary authority over specialized equipment to propose a definition of the maxi-cube that largely codified the policy guidance of the Committee Report while omitting or modifying the erroneous parts of the statutory definition. We believe this is consistent with the principle that ambiguous or confusing statutes must be interpreted and implemented in a manner that minimizes difficulties and produces the most sensible result.

The definition of a maxi-cube proposed in the SNPRM has been adopted in this final rule, with slight modifications for clarity. It should be noted that the word "semitrailer" used in the statute and Committee Report has been changed to "trailer or semitrailer," since some of the vehicles built as maxi-cubes in recent years are equipped with pintle-hooks, non-load-bearing hitches used for full trailers. Others are equipped with load-bearing fifth-wheel hitches typical of semitrailers. This modification of the definition is well within the FHWA's authority to promulgate rules to accommodate specialized equipment.

The SNPRM also proposed that maxi-cube vehicles should be measured with the adjustable-length drawbar (if so equipped) at its maximum extension, since we assumed that was how the drawbar would be positioned for over-the-road operations. The Pennsylvania DOT supported this proposal in its comments to the docket.

It appears, however, that adjustable drawbars usually are not fully extended when the vehicle is in motion. Magna Van and Coca Cola commented that 24 inches is the normal distance between the first and second units of their maxi-cube vehicles during over-the-road operations, but that longer distances are used for access to driveways and transferring freight in off-road situations. Other information submitted to the docket indicated that 27 inches is probably the longest distance between cargo units for highway travel. However, there are times when a longer drawbar setting may be desirable, such as on rough terrain to keep the cargo boxes from hitting each other; in urban areas while making sharp turns; or while loading and unloading cargo from the front unit while the rear unit is attached. The maximum reported unit separation in these instances is 42 inches.

The FHWA believes Congress intended the maxi-cube length limits to apply to vehicles in their normal operational configuration. We have concluded that the cargo capacity of these vehicles would be needlessly reduced if the rule required length measurements to be made with the drawbar at maximum extension, since that position is used only to assist in low-speed maneuvering or loading and unloading. The last sentence of § 658.13(e)(4) has therefore been modified to read:

If the maxi-cube vehicle is equipped with an adjustable drawbar, the 60- and 65-foot distances shall be measured with a drawbar spacing of not more than 27 inches. The drawbar may be temporarily extended beyond that distance to maneuver or load the vehicle.

The American Movers Conference believes that the load-through feature of the maxi-cube should be made optional. We do not agree. That language is included both in the statutory definition in 49 U.S.C. app. 2311(f)(2) and in the Appropriations Committee report. This feature is one of the primary reasons Congress declared maxi-cubes specialized equipment. Removing the load-through element from the definition would make these vehicles indistinguishable from truck-trailer combinations.

The State of Connecticut asked if the maxi-cube vehicle will be designated as specialized equipment since it will be limited to the NN and reasonable access routes. Maxi-cube vehicles are by statute specialized equipment, and Federal regulations for such equipment apply only on the NN and reasonable access routes.

This action concludes the FHWA rulemaking proceeding that was designated with the regulation identification number 2125–AC65.

Beverage Semitrailers

A rulemaking to designate as specialized equipment the 28-foot van-type, drop-frame beverage semitrailer when it is equipped with an upper coupler plate that extends in front of the semitrailer, has been underway since 1990. The last action on the subject was publication of an NPRM on June 25, 1990, at 55 FR 25850. The final rule was being prepared when the ISTEA was enacted. Since the rulemaking necessary to implement the "LCV-freeze" would, like the beverage semitrailer rule, amend 23 CFR part 658, the decision was made to include both in a single document. Since they amend the same existing regulation, combining them minimizes the number of separate changes made to an already complex regulatory document.

The STAA, codified at 49 U.S.C. app. 2311 *et seq.*, established length and width standards for vehicles using the highways designated as the NN (appendix A to 23 CFR part 658 (1993)). The STAA prohibited any State from enforcing a length limit of less than 28 feet on a semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination on the NN (49 U.S.C. app. 2311 (a)). The STAA, under an equipment grandfather provision, also allows the use of 28.5-foot semitrailers and trailers in truck tractor-semitrailer-trailer combinations if they were actually and lawfully operating on December 1, 1982, within a 65-foot overall length limit in any State. The statute prohibited any State from denying reasonable access to points of loading and unloading for a truck tractor pulling a single 28-foot (28.5-foot if grandfathered) semitrailer that generally operates as part of a truck tractor-semitrailer-trailer combination. In addition, the STAA gave the Secretary authority to exclude from measurement of trailer length and width, devices necessary for the safe and efficient operation of CMV's, provided length exclusive devices did not have, by design or use, the capability to carry cargo (49 U.S.C. app. 2311(h), 2316(b)).

Questions involving permissible vehicle length and length exclusive devices are critical to a new design for 28-foot beverage semitrailers. As used in this proceeding, "beverage" means a liquid for drinking, including water. One new design places the kingpin under the nose of the trailer with a portion of the upper coupler plate extending beyond the front of the vehicle. Since these beverage semitrailers use an enclosed van-type, drop-frame design, mounting the kingpin in this manner allows the drop-frame portion of the semitrailer to be extended forward. The FHWA has issued several NOI of length and width exclusive devices. The most recent was published on March 13, 1987, at 52 FR 7834. That NOI recognized a number of length-exclusive design features, including (1) the pickup plate lip of the upper coupler, and (2) any non-load-

carrying device which falls within the swing radius of the semitrailer (measured from the center line of the kingpin to the front corner of the semitrailer). As applied to the new design described above, these two provisions have proved difficult to administer and have caused confusion and misunderstanding between the FHWA and the industry. The June 25, 1990, NPRM proposed to designate as specialized equipment van-type, drop-frame beverage semitrailers. A 30-day comment period (through July 25, 1990) was provided.

In addition to seeking general comments, the NPRM requested all interested parties to respond to four questions concerning these vehicles.

The FHWA solicited comments on the following questions as well as other comments:

1. Should "beverage trailer" and "beverage semitrailer" be defined in the proposed regulation?

2. Is the proposed length limit for the upper coupler extension of the semitrailer clear?

3. Will the semitrailer, as configured, be as safe as one with the upper coupler plate positioned fully under the semitrailer?

4. Will the position of the center of the kingpin, not more than 28 feet from the rear of the semitrailer, produce offtracking characteristics that are significantly greater than those of conventional 28-foot semitrailers?

Discussion

Eight responses to the June 25, 1990, NPRM were submitted to the docket. The respondents included four State Departments of Transportation: California (Caltrans), Florida (FDOT), Minnesota (MnDOT), and Virginia (VDOT) and the Connecticut Department of Motor Vehicles, the Port Authority of New York and New Jersey, Hinkley and Sons, Inc. (trailer manufacturer), and one individual. Of these respondents, six favored designating the beverage semitrailer as specified equipment, one (Caltrans) opposed, and one (VDOT) was not sure the vehicle could operate on its current system of highways for STAA dimensioned vehicles.

Comments Submitted to Docket 90-9

1. Should "beverage trailer" and "beverage semitrailer" be defined in the proposed regulation?

Six respondents commented on defining the "beverage trailer" and "beverage semitrailer." Two State DOT's (FDOT and VDOT) and the Port Authority requested that the terms "beverage trailer" and "beverage semitrailer" be defined in order to administer the regulation without erroneous interpretations. They see this terminology as a potential enforcement problem. The individual stated that the definition was incomplete as it was now written and should specify that the trailer has side access only for cargo. The trailer manufacturer requested that it not be defined because the trailers are also used for palletized cargo as well. Other types of cargo hauled on this type of trailer include automobile batteries, coin compartments from pay telephones, mushrooms, and nursery plants.

The trailer manufacturer also suggested that the regulation read as follows: "with the center line of the kingpin mounted not more than 28 feet from the rear of the semitrailer * * *." It requested the addition of the words "the center line of" because (1) in the semitrailer design under consideration, every inch is important, (2) this change would provide more swing clearance for the tractor under the gooseneck area of the semitrailer, (3) the length of the trailer body would not be increased, and (4) it is common in the industry to specify kingpin location by kingpin center. Based on these comments, the FHWA has modified the definition to state that the semitrailer have "side access only" and that the cargo be limited to bottled or canned beverages. The definition has also been revised to allow the 28-foot length to be measured from the centerline of the kingpin to the rear of the semitrailer.

2. Is the proposed length limit for the upper coupler extension of the semitrailer clear?

The trailer manufacturer and the individual commented that the proposed length limit of the upper coupler was clear and in a workable location. They did not foresee any possible misinterpretation. The trailer manufacturer responded that by limiting the upper coupler extension to fall within the swing radius of the front corner of the semitrailer it is both clear and very workable. This approach has been allowed for the purpose of excluding other front-mounted items from length measurement and accordingly is to be used for this case as well. The FDOT commented that the proposed length limit was not clear as described in the June 25, 1990, NPRM. The FDOT also suggests that language is needed to assure that the coupler plate does not become a cargo carrier in and of itself and that the device stays reasonable in length. The MnDOT responded that its law currently allows semitrailers of 28.5 feet, in three vehicle combinations, and the proposed design would only minimally exceed the current standard.

In accordance with these comments, the FHWA concludes that not allowing the upper coupler plate extension to extend beyond the swing radius of the semitrailer is a clear and sufficient means to restrict the length of this device. The operational rules have been amended to specify that the upper coupler plate itself cannot be used to carry cargo.

3. Will the semitrailer, as configured, be as safe as one with the upper coupler plate positioned fully under the semitrailer?

The Caltrans, MnDOT, trailer manufacturer, and individual agreed that the configuration would be as safe as the upper coupler positioned fully under the semitrailer. The FDOT commented that the final rule should include requirements similar to those found in 49 CFR part 393, subpart F—Coupling Devices and Towing Methods. These and other Federal regulations continue to apply to beverage trailers and need not be cross-referenced in every other applicable regulation. Due to the specialized nature of the equipment discussed here, however, reference to an applicable provision of 49 CFR part 393 is included.

The trailer manufacturer responded that the configuration would be safe because the maximum kingpin-to-trailer axle span will be 25.5 feet. A single 53-foot semitrailer can have a kingpin-to-center of trailer tandem-axle span of 45.5 feet and still be considered safe. The individual commented that there is no reason to believe that trailers produced to this configuration would be less safe than trailers with upper couplers fully under the trailer. Dump trailers and short container chassis often have configurations that place the kingpin forward of the body

The VDOT commented that demonstrations should be conducted with each type of semitrailer to determine any difference between the two mounting plates. A demonstration is not necessary because this style of trailer has been in operation for several years, and the operating characteristics are known to be compatible to other trailers in current use.

Based on the comments, the FHWA concludes that the semitrailer as configured will be as safe as one with the upper coupler positioned fully under the semitrailer.

4. Will the position of the kingpin, not more than 28 feet from the rear of the semitrailer, produce offtracking characteristics that are significantly greater than those of conventional 28-foot semitrailers?

The Port Authority and the manufacturer responded "no" to the question. The Port Authority commented that it appears to them that the offtracking of the beverage semitrailer combinations set forth in the proposed regulation will not differ significantly from the conventional semitrailer combinations already permitted upon port authority vehicular crossings. The trailer manufacturer used a "sum of squares" method to determine offtracking (Society of Automotive Engineers (SAE) J695) and does not find a great increase in offtracking.

The individual commented that offtracking of these specialized trailers will be greater than conventional 28-foot trailers since the distance from the kingpin to the trailer's axle will increase by up to 3 feet. Also, using the techniques of SAE J695, he calculated the offtracking for conventional and beverage semitrailers as shown in the following table:

COMPARISON OF OFFTRACKING OF SELECTED SEMITRAILERS

Radius conventional curve semitrailer	Conventional 28-foot semitrailer	Beverage semitrailer	48-foot
50 feet	6.86 feet .	8.70 feet .	
120 feet ...	2.55 feet .	3.17 feet .	8.53 feet.

The FDOT responded that the potential of an extra 2 or 3 feet to the kingpin setting may be important with units running as a tandem combination; however, as a single-unit semitrailer, the difference would be insignificant when considering the 41-foot kingpin setting that is being discussed as a *de facto* national limit for such settings.

Based on the comments, the FHWA concludes that the offtracking characteristics of the beverage semitrailer being designated as specialized equipment are not significantly greater than those of conventional 28-foot semitrailers.

5. Other comments.

The Caltrans, FDOT, and MnDOT expressed concerns about future petitions for the FHWA to propose a similar rule for longer beverage semitrailers or semitrailers of a similar design for carrying other goods. The Caltrans' concern is that the beverage semitrailer is another small step toward allowing larger vehicles by means of an exception process. For example, since the weight of the beverage semitrailer and load rest on the upper coupler plate extending from the front of the semitrailer, why not allow the van portion to the semitrailer to be extended over the plate? Also, if a weight supporting upper coupler plate is permitted for a 28-foot beverage semitrailer, is a 48-foot beverage semitrailer next? The possibility of a 48-foot beverage semitrailer raises strong concerns about offtracking. A typical semitrailer has the kingpin located 3 feet from the front of the semitrailer. The Caltrans' evaluation of the State Highway System for designation of terminal access routes is on the basis of a 48-foot trailer with a 43-foot kingpin-to-center of the rearmost axle which is equivalent to the 41-foot kingpin-to-center of tandem axles.

The FDOT responded that the proposed rule needs to be modified to assure that other trailers/semitrailers do not grow in length as a result of this proposed rule. It should be expected that other segments of the industry will seek the same benefits as are being provided to the beverage haulers under this proposed rule. Similarly, the MnDOT would discourage the FHWA from further "piecemeal" exemptions until a comprehensive review of the commercial vehicle length definition is conducted. The State finds that this examination is warranted in light of the recent research from the Roads and Transportation Association of Canada, which demonstrates that the U.S. may in fact be discouraging uniformity and the use of more stable vehicle configurations on U.S. highways, due to current vehicle definitions. The State supported the use of the terms "box length" and uniform "kingpin or wheelbase" for specifying length limits for commercial vehicle equipment. On the other hand, the MnDOT also commented that the configuration under discussion here would not have adverse effects on pavements, bridges, or maneuvering.

The FHWA understands the concerns of these States about its handling of petitions from other segments of the trucking industry for relief similar to that being provided for beverage semitrailers. The FHWA also recognizes that different ways to specify trailer length provisions do exist. Future petitions for similar relief provisions will be evaluated with these concerns in mind.

Finally, the Caltrans commented that the 28-foot beverage semitrailer was not specialized equipment, but rather another attempt to incrementally increase (by regulatory action) the limits set by the STAA. The FHWA disagrees. This equipment as defined by this rulemaking is highly specialized.

Conclusions

In order to remove any doubt about using 28-foot beverage semitrailers with an upper coupler plate that extends beyond the front of the semitrailer on the NN without a special permit, the FHWA is designating them as specialized equipment pursuant to our authority under section 411(d) of the STAA (49 U.S.C. app. 2311(d)).

This designation as specialized equipment applies only to van-type, drop-frame, side-loading only, beverage semitrailers for which the upper coupler plate extends beyond the front of the semitrailer, and the distance from the centerline of the kingpin connection to the rear of the semitrailer is not greater than 28 feet. The rule preempts States from imposing an overall length limit on such vehicles operating in semitrailer or double trailer combinations and guarantees these truck tractor-single beverage semitrailer combinations the same access to points of loading and unloading as 28-foot (28.5-foot if grandfathered) semitrailers in 23 CFR 658.19. After reviewing the comments to the docket, the FHWA has concluded that this action would allow for a productivity gain without adversely effecting public safety. A definition of beverage semitrailer has been added to § 658.5, and regulatory language has been added to § 658.13. This action concludes the FHWA rulemaking proceeding that was designated with the regulation identification number 2125–AC57.

Certification

Section 1023(c) of the ISTEA amended 23 U.S.C. 141(b) by adding a new sentence at the end which reads as follows:

> Each State shall also certify that it is enforcing and complying with the provisions of section 127(d) of this title and section 411(j) of the Surface Transportation Assistance Act of 1982.
> (49 U.S.C. app. 2311(j)).

As implemented by 23 CFR 657.13, 23 U.S.C. 141(b) requires each State to certify annually that it is enforcing its size and weight laws on the Federal-aid Primary System (FAP), Federal-aid Urban System (FAU), Federal-aid Secondary System (FAS), and the Interstate System in accordance with 23 U.S.C. 127.

Under the new ISTEA provision, States must also certify that they are enforcing and complying with the ISTEA freeze on the use of LCV's and other multi-unit vehicles. Failure to certify would subject a State to the penalties provided in 23 U.S.C. 141(c)(2).

The ISTEA, however, effectively replaced the FAP with the NHS, and eliminated the FAU and FAS Systems, without providing a conforming amendment to 23 U.S.C. 141(b). Until 23 U.S.C. 141 is amended to reflect changes in system nomenclature, the FHWA will require the States to certify size and weight enforcement on those routes which, prior to October 1, 1991, were designated as part of the FAP, FAS, or FAU Systems.

The State of Alaska objected to the certification statement proposed in the SNPRM. That statement would require the State to certify that it is enforcing the freeze provisions of 23 U.S.C. 127(d) and that its State laws are consistent with 23 U.S.C. 127 (a) and (h). Alaska asserts that section 127 does not apply to the State because the State does not have any Interstate System mileage as defined in 23 U.S.C. 103, 139(a) or 139(b). The FHWA agrees with this comment.

The same situation with respect to highway system also exists in Puerto Rico, which is considered a "State" for the purposes of title 23, United States Code.

The certification language proposed by the SNPRM has been retained, except that language to recognize the situations in Alaska and Puerto Rico has also been included.

Language describing size and weight enforcement coverage in urban areas has also been clarified in this final rule.

Since its initial publication in 1980 (45 FR 52365), § 657.15 has required that "Urban areas not subject to State jurisdiction shall be identified and the statement shall address total (Federal-aid) mileage involved and an analysis of enforcement efforts in such areas." In practice, the FHWA's interpretation of this requirement over the years has been to focus on those areas over 50,000 population, also called urbanized areas (as determined by the Bureau of the Census). The FHWA recognizes an area as "urban" when the population is 5000 or more. It is not now, nor has it ever been, the intent of the FHWA to require extensive size and weight enforcement activities, or an analysis thereof, in areas with a population between 5,000 and 50,000. The intent of this requirement has always been to ensure that an adequate size and weight enforcement effort be conducted by larger cities, i.e., over 50,000 population, where the State weight enforcement agency does not have legal jurisdiction. Substitution of the word "urbanized" for "urban" (both terms as defined in 23 U.S.C. 101) in the second sentence of § 657.15(h) accomplishes this clarification.

What, prior to October 1, 1991, was Federal-aid system mileage in urban areas of less than 50,000 population, should continue to be covered by the State's overall weight enforcement program. This change in wording does not preclude, nor should it discourage, weight enforcement activity by local jurisdictions. Such activity is encouraged with results to be reported as part of the overall enforcement activity in the State.

Conforming Amendment

ISTEA section 4006(c) consisted of a conforming amendment as follows:

> Section 411(e)(1) of such Act (the STAA of 1982) is amended by striking "those Primary System highways" and inserting "those highways of the Federal-aid primary system in existence on June 1, 1991 * * * "

Section 411(e)(1) of the STAA describes the type of highways that the Secretary shall designate as open to the vehicles described by the STAA. These designated highways, in combination with the Interstate System, have come to be known as the NN. The ISTEA effectively replaced what had been known as the FAP System with the NHS. This conforming amendment corrects the technical problem of designating segments of a highway system (the FAP) which no longer exists. The necessary corrections to the definitions of "Federal-aid Primary System" and "National Network," both found in 23 CFR 658.5, have been made by this final rule.

Operation of Certain Specialized Hauling Vehicles on Interstate Route 68

Section 1023(d) of the ISTEA added 23 U.S.C. 127(e) to read as follows:

> (e) Operation of Certain Specialized Hauling Vehicles on Interstate Route 68 — The single-axle, tandem-axle, and bridge formula limits set forth in subsection (a) (23 U.S.C. 127(a)) shall not apply to the operation on Interstate Route 68 in Garrett and Allegany Counties, Maryland, of any specialized vehicle equipped with a steering axle and a tridem axle and used for hauling coal-logs, and pulpwood if such vehicle is of a type of vehicle as was operating in such counties on United States Route 40 or 48 for such purpose on August 1, 1991.

This exempts the described vehicles with selected cargo from the axle and Bridge Formula weight limits that Maryland must enforce on Interstate Route 68 in Allegany and Garrett Counties. However, the normal gross weight limit (80,000 pounds) remains in effect. This change is adopted by this final rule in § 658.17(j).

Reassignment of Size and Weight Responsibilities Within the FHWA

On October 1, 1991, responsibility for the vehicle Size and Weight and NN Programs in the FHWA's regional and divisional offices was transferred to the Office of Motor Carriers. Revisions to 23 CFR 657.11 and 657.17 were proposed in the SNPRM to reflect this change.

No comments were received on this issue. This final rule includes the changes as proposed.

Size and weight responsibilities in the Washington, DC., Headquarters office remain assigned to the Office of Motor Carriers

Rulemaking Analyses and Notices

This final rule implements sections 1023 and 4006 of the ISTEA, which restrict the operation of LCV's on the Interstate Highway System and CMV combinations with two or more cargo-carrying units on the NN to the type of vehicles in use on or before June 1, 1991, subject to whatever State rules, regulations, or restrictions were in effect on that date.

As noted in the following paragraphs, the FHWA has determined that this rulemaking is: (1) Not a significant regulatory action within the meaning of Executive Order 12866; (2) not a significant action within the meaning of Department of Transportation Regulatory Policies and Procedures; (3) will not have a significant economic impact on a substantial number of small entities; (4) does not require the preparation of a federalism assessment; and (5) does not require the preparation of an environmental impact statement. All of these findings were made and included in the NPRM and again in the SNPRM, in each case after the FHWA had carefully reviewed the applicable Federal statutes and Executive Orders.

The WTA submitted comments to the docket in response to both the NPRM and the SNPRM challenging what it saw as the FHWA's casual dismissal of determinations required by various statutes and Executive Orders. In comments on the NPRM, the WTA argued that a long-term effect of any freeze would be to prohibit the natural evolution of technology in the trucking industry. Such a situation, in time, would be likely to cause major and significant impacts on competing transportation modes, related businesses, and the general public. Accordingly, the WTA insisted that the FHWA conduct (1) a full regulatory evaluation, (2) a full economic assessment, (3) a federalism assessment, and (4) an environmental impact study

Effects on Small Entities and Other Economic Issues

After undertaking the analysis required by the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA reiterated in the SNPRM its conclusion that this rulemaking would not have a significant economic impact on a substantial number of small entities. This conclusion remains unchanged in this final rule. The WTA, responding to an earlier document, stated that "there is no question that the form and substance of this NPRM are clearly harmful to small entities. Most businesses affected in Wyoming are small entities. The few large entities doing business in Wyoming are similarly adversely affected."

This rule in no way restricts the ability of small entities to enter the LCV segment of the motor carrier industry. The LCV segment of the industry can expand as rapidly as it finds customers. Neither the rule nor any State affected by the rule limits the number of LCV's that may be placed in service, or the number of motor carriers that may operate them. The rule does not reduce the highway network on which carriers may run LCV's; it simply lists the routes where the States have decided very large vehicles can operate without seriously damaging pavements and bridges. In Wyoming, that amounts to every NN route in the State.

The WTA seems to be demanding, not better regulatory analyses, but something like a full-scale econometric model of the transportation segment of the economy. The WTA apparently believes that such a model, when run, would demonstrate that the ISTEA freeze is likely to change the competitive balance between railroad and highway transportation, retard the technological development of trucks, reduce employment in the motor carrier industry, and raise freight costs.

Because the LCV freeze includes all State routes currently in use, and because we are not aware that any State wishes to expand its LCV network, we expect that the freeze will have none of the effects predicted by the WTA, at least in the short term. The FHWA believes that the "frozen" LCV Network offers ample opportunity for reasonable growth. Insufficient data exist to evaluate the possible longer-term effects of this rulemaking, and any conclusions presented here would be speculative in nature.

Environmental Issues

In considering this rulemaking action from the perspective of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA), the FHWA has twice found that it would have no effect on the quality of the environment. The WTA disagreed: "A rule which dictates increased use of fuels, a scarce natural resource, affects the quality of the environment in a negative fashion." The rule does not dictate increased use of fuels. If LCV's move freight at a lower fuel or emission cost per ton/mile than other motor vehicles, as the WTA appears to believe, the rule would not prevent LCV's from displacing less efficient vehicles. The FHWA sees no reason to change its conclusion.

Changes to Part 658—National Network

As discussed earlier, this final rule makes two technical amendments to appendix A, 23 CFR part 658, which lists federally-designated routes on the NN. These changes would amend the listings for California, to reflect the inclusion of the I–580 Richmond-San Rafael Bridge in the NN, and also for Virginia, to reflect that State's new milepost-based exit numbering system. For the reasons set forth earlier in this document, the FHWA has determined that prior notice and opportunity for comment are not required for either amendment under the U.S. Department of Transportation's Regulatory Policies and Procedures, as it is not anticipated that such action will result in the receipt of useful information.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation Regulatory Policies and Procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This action merely lists applicable limitations by specific vehicle configuration, by State, in effect on June 1, 1991, and will not further restrict the operation of any vehicle in lawful operation on or before June 1, 1991, which is subject to those limitations.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Although its effect will be to prevent the expansion of the ISTEA vehicle network beyond that which States allowed on June 1, 1991, that is a direct result of the underlying statute. Moreover, there is no indication at this time that the States planned any significant expansion of that network which would be impeded by this requirement. This action merely implements requirements of the ISTEA.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction

This action does not contain an additional or expanded collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Data collection necessary for the States to be able to certify enforcement of State size and weight laws currently operates under OMB approval number 2125–0034.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the NEPA and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Parts 657 and 658

Grant programs—transportation, Highways and roads, and Motor carrier size and weight.

Issued on: May 27, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending 23 CFR, subchapter G, parts 657 and 658 as set forth below.

PART 657—CERTIFICATION OF SIZE AND WEIGHT ENFORCEMENT

1. The authority citation for 23 CFR part 657 is revised to read as follows:

Authority: Sec. 123, Pub. L. 95–599, 92 Stat. 2689; 23 U.S.C. 127, 141, and 315; 49 U.S.C. app. 2311, 2312, and 2316; sec. 1023, Pub. L. 102–240, 105 Stat. 1914; and 49 CFR 1.48(b)(19), (b)(23), (c)(1), and (c)(19).

2. Section 657.11 is revised to read as follows:

§ 657.11 Evaluation of operations.

(a) The State shall submit its enforcement plan or annual update to the Office of Motor Carriers in the FHWA division office by July 1 of each year. However, if a State's legislative or budgetary cycle is not consonant with that date, the FHWA and the State may jointly select an alternate date. In any event, a State must have an approved plan in effect by October 1 of each year. Failure of a State to submit or update a plan will result in the State being unable to certify in accordance with § 657.13 for the period to be covered by the plan.

(b) The Office of Motor Carriers in the FHWA division office shall review the State's operation under the accepted plan on a continuing basis and shall prepare an evaluation report annually. The State will be advised of the results of the evaluation and of any needed changes either in the plan itself or in its implementation. Copies of the evaluation report and subsequent modifications resulting from the evaluation shall be forwarded through the Regional Director of Motor Carriers to the Washington, D.C., Headquarters office.

3. Section 657.13 is revised to read as follows:

§ 657.13 Certification requirement.

Each State shall certify to the Federal Highway Administrator, before January 1 of each year, that it is enforcing all State laws respecting maximum vehicle size and weight permitted on what, prior to October 1, 1991, were the Federal-aid Primary, Secondary, and Urban Systems, including the Interstate System, in accordance with 23 U.S.C. 127. The States must also certify that they are enforcing and complying with the ISTEA freeze on the use of LCV's and other multi-unit vehicles. The certification shall be supported by information on activities and results achieved during the preceding 12-month period ending on September 30 of each year.

4. Section 657.15 is revised to read as follows:

§ 657.15 Certification content.

The certification shall consist of the following elements and each element shall be addressed even though the response is negative:

(a) A statement by the Governor of the State, or an official designated by the Governor, that the State's vehicle weight laws and regulations governing use of the Interstate System conform to 23 U.S.C. 127.

(b) A statement by the Governor of the State, or an official designated by the Governor, that all State size and weight limits are being enforced on the Interstate System and those routes which prior to October 1, 1991, were designated as part of the Federal-aid Primary, Urban, and Secondary Systems, and that the State is enforcing and complying with the provisions of 23 U.S.C. 127(d) and 49 U.S.C. app. 2311(j). Urbanized areas not subject to State jurisdiction shall be identified. The statement shall include an analysis of enforcement efforts in such areas.

(c) Except for Alaska and Puerto Rico, the certifying statements required by paragraphs (a) and (b) of this section shall be worded as follows (the statements for Alaska and Puerto Rico do not have to reference 23 U.S.C. 127(d) in (c)(2), or include paragraph (c)(3) of this section):

I, *(name of certifying official), (position title),* of the State of _____ do hereby certify:

(1) That all State laws and regulations governing vehicle size and weight are being enforced on those highways which, prior to October 1, 1991, were designated as part of the Federal-aid Primary, Federal-aid Secondary, or Federal-aid Urban Systems;

(2) That the State is enforcing the freeze provisions of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 127(d) and 49 U.S.C. app. 2311(j)); and

(3) That all State laws governing vehicle weight on the Interstate System are consistent with 23 U.S.C. 127 (a) and (b).

(d) If this statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor, shall also be included in the certification made under this part.

(e) A copy of any State law or regulation pertaining to vehicle sizes and weights adopted since the State's last certification and an analysis of the changes made. Those laws and regulations pertaining to special permits and penalties shall be specifically identified and analyzed in accordance with section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599).

(f) A report of State size and weight enforcement efforts during the period covered by the certification which addresses the following:

(1) Actual operations as compared with those forecast by the plan submitted earlier, with particular attention to changes in or deviations from the operations proposed.

(2) Impacts of the process as actually applied, in terms of changes in the number of oversize and/or overweight vehicles.

(3) *Measures of activity*—(i) *Vehicles weighed.* Separate totals shall be reported for the annual number of vehicles weighed on fixed scales, on semiportable scales, on portable scales, and on WIM when used for enforcement.

(ii) *Penalties.* Penalties reported shall include citations issued, civil assessments, and incidences of load shifting or off-loading of excess weight categorized as follows: violations of axle and/or gross vehicle weights, or violations resulting from application of the bridge formula.

(iii) *Permits.* The number of permits issued for *overweight* loads shall be reported. The reported numbers shall specify permits for divisible and nondivisible loads and whether issued on a trip or annual basis. Permits issued for excess height, length, or width need not be reported except where issued for the overwidth movement of a divisible load.

5. Section 657.17 is revised to read as follows:

§ 657.17 Certification submittal.

(a) The Governor, or an official designated by the Governor, shall submit the certification to the Office of Motor Carriers in the FHWA division office prior to January 1 of each year.

(b) The Office of Motor Carriers in the FHWA division office shall forward the original certification to the Associate Administrator for Motor Carriers and one copy to the Office of Chief Counsel. Copies of appropriate evaluations and/or comments shall accompany any transmittal.

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH, AND WEIGHT LIMITATIONS

6. The authority citation for 23 CFR part 658 is revised to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. app. 2311, 2312, and 2316; 49 CFR 1.48(b)(19) and (c)(19).

7. Section 658.1 is revised to read as follows:

§ 658.1 Purpose.

The purpose of this part is to identify a National Network of highways available to vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982 (STAA) as amended, and to prescribe national policies that govern truck and bus size and weight.

8. Section 658.5 is amended by removing the arabic letter paragraph designations from all definitions, placing the definitions in alphabetical order, revising two existing definitions, and adding six new definitions in appropriate order. The added and revised definitions read as follows:

§ 658.5 Definitions.

* * * * *

Beverage semitrailer. A van-type, drop-frame semitrailer designed and used specifically for the transport and delivery of bottled or canned beverages (i.e., liquids for drinking, including water) which has side-only access for loading and unloading this commodity. Semitrailer has the same meaning as in 49 CFR 390.5.

* * * * *

Cargo-carrying unit. As used in this part, cargo-carrying unit means any portion of a commercial motor vehicle (CMV) combination (other than a truck tractor) used for the carrying of cargo, including a trailer, semitrailer, or the cargo-carrying section of a single-unit truck.

* * * * *

Federal-aid Primary System. The Federal-aid Highway System of rural arterials and their extensions into or through urban areas in existence on June 1, 1991, as described in 23 U.S.C. 103(b) in effect at that time.

* * * * *

Longer combination vehicle (LCV). As used in this part, longer combination vehicle means any combination of a truck tractor and two or more trailers or semitrailers which operates on the Interstate System at a gross vehicle weight greater than 80,000 pounds.

* * * * *

Maxi-cube vehicle. A maxi-cube vehicle is a combination vehicle consisting of a power unit and a trailing unit, both of which are designed to carry cargo. The power unit is a nonarticulated truck with one or more drive axles that carries either a detachable or a permanently attached cargo box. The trailing unit is a trailer or semitrailer with a cargo box so designed that the power unit may be loaded and unloaded through the trailing unit. Neither cargo box shall exceed 34 feet in length, excluding drawbar or hitching device; the distance from the front of the first to the rear of the second cargo box shall not exceed 60 feet, including the space between the cargo boxes; and the overall length of the combination vehicle shall not exceed 65 feet, including the space between the cargo boxes.

* * * * *

Motor carrier of passengers. As used in this part, a motor carrier of passengers is a common, contract, or private carrier using a bus to provide commercial transportation of passengers. Bus has the same meaning as in 49 CFR 390.5.

* * * * *

National Network (NN). The composite of the individual network of highways from each State on which vehicles authorized by the provisions of the STAA are allowed to operate. The network in each State includes the Interstate System, exclusive of those portions excepted under § 658.11(f) or deleted under § 658.11(d), and those portions of the Federal-aid Primary System in existence on June 1, 1991, set out by the FHWA in appendix A to this part.

* * * * *

Nondivisible load or vehicle.

(1) As used in this part, *nondivisible* means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(i) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(ii) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(iii) Require more than 8 workhours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(2) A State may treat emergency response vehicles and casks designed and used for the transport of spent nuclear materials as nondivisible vehicles or loads.

* * * * *

§§ 658.13 and 658.15 [Amended]

9. In the list below, for each section indicated in the left column, remove the citation indicated in the middle column from wherever it appears in the section, and add the citation indicated in the right column:

Section	Remove	Add
658.13(d)(1)(i) ..	658.5(k)	658.5
658.13(d)(2)(i) ..	658.5(k)	658.5
658.13(e)	658.5(e)	658.5
658.15(b)	658.5(i)	658.5
658.15(c)	658.5(g)	658.5

10. In § 658.13, paragraphs (d), (e), and (f) are redesignated as paragraphs (e), (f), and (g), respectively, a new paragraph (d) is added, and new paragraphs (e)(4) and (e)(5) are added under redesignated paragraph (e) to read as follows:

§ 658.13 Length.

* * * * *

(d) No State shall impose a limit of less than 45 feet on the length of any bus on the NN.

(e) * * *

(4) *Maxi-cube vehicle.* No State shall impose a length limit on a maxi-cube vehicle, as defined in § 658.5 of this part, of less than 34 feet on either cargo box, excluding drawbar or hitching device; 60 feet on the distance from the front of the first to the rear of the second cargo box, including the space between the cargo boxes; or 65 feet on the overall length of the combination, including the space between the cargo boxes. The measurement for compliance with the 60- and 65-foot distance shall include the actual distance between cargo boxes, measured along the centerline of the drawbar or hitching device. For maxi-cubes with an adjustable length drawbar or hitching device, the 60- and 65-foot distances shall be measured with a drawbar spacing of not more than 27 inches. The drawbar may be temporarily extended beyond that distance to maneuver or load the vehicle.

(5) *Beverage semitrailer.* (i) A beverage semitrailer is specialized equipment if it has an upper coupler plate that extends beyond the front of the semitrailer, but not beyond its swing radius, as measured from the center line of the kingpin to a front corner of the semitrailer, which cannot be used for carrying cargo other than the structure of the semitrailer, and with the center line of the kingpin not more than 48 feet from the rear of the semitrailer (exclusive of rear-mounted devices not measured in determining semitrailer length). No State shall impose an overall length limit on such vehicles when operating in a truck tractor-beverage

semitrailer or truck tractor-beverage semitrailer-beverage trailer combination on the NN.

(ii) The beverage trailer referred to in paragraph (e)(5)(i) of this section means a beverage semitrailer and converter dolly. Converter dolly has the same meaning as in 49 CFR 393.5.

(iii) Truck tractor-beverage semitrailer combinations shall have the same access to points of loading and unloading as 28-foot semitrailers (28.5-foot where allowed by § 658.13) in 23 CFR 658.19.

* * * * *

11. In § 658.17, paragraphs (f), (g), and (h) are redesignated as paragraphs (g), (h), and (i), respectively; new paragraphs (f), (j), and (k) are added; and redesignated paragraph (h) is revised. Paragraphs (f) through (k) now read as follows:

§ 658.17 Weight.

* * * * *

(f) Except as provided herein, States may not enforce on the Interstate System vehicle weight limits of less than 20,000 pounds on a single axle, 34,000 pounds on a tandem axle, or the weights derived from the Bridge Formula, up to a maximum of 80,000 pounds, including all enforcement tolerances. States may not limit tire loads to less than 500 pounds per inch of tire or tread width, except that such limits may not be applied to tires on the steering axle. States may not limit steering axle weights to less than 20,000 pounds or the axle rating established by the manufacturer, whichever is lower.

(g) The weights in paragraphs (b), (c), (d), and (e) of this section shall be inclusive of all tolerances, enforcement or otherwise, with the exception of a scale allowance factor when using portable scales (wheel-load weighers). The current accuracy of such scales is generally within 2 or 3 percent of actual weight, but in no case shall an allowance in excess of 5 percent be applied. Penalty or fine schedules which impose no fine up to a specified threshold, i.e., 1,000 pounds, will be considered as tolerance provisions not authorized by 23 U.S.C. 127.

(h) States may issue special permits without regard to the axle, gross, or Federal Bridge Formula requirements for nondivisible vehicles or loads.

(i) The provisions of paragraphs (b), (c), and (d) of this section shall not apply to single-, or tandem-axle weights, or gross weights legally authorized under State law on July 1, 1956. The group of axles requirements established in this section shall not apply to vehicles legally grandfathered under State groups of axles tables or formulas on January 4, 1975.

(j) The provisions of paragraphs (c) through (e) of this section shall not apply to the operation on Interstate Route 68 in Allegany and Garrett Counties, Maryland, of any specialized vehicle equipped with a steering axle and a tridem axle and used for hauling coal, logs, and pulpwood if such vehicle is of a type of vehicle as was operating in such counties on U.S. Routes 40 or 48 for such purposes on August 1, 1991.

(k) Beginning October 6, 1992, and ending October 5, 1994, the provisions of paragraphs (c) through (e) of this section shall not apply to any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus. The Secretary may extend this temporary exemption for an additional year.

12. In § 658.19, paragraph (a) is revised to read as follows:

§ 658.19 Reasonable access.

(a) No State may enact or enforce any law denying reasonable access to vehicles with dimensions authorized by the STAA between the NN and terminals and facilities for food, fuel, repairs, and rest. In addition, no State may enact or enforce any law denying reasonable access between the NN and points of loading and unloading to household goods carriers, motor carriers of passengers, and any truck tractor-semitrailer combination in which the semitrailer has a length not to exceed 28 feet (28.5 feet where allowed pursuant to § 658.13(b)(5) of this part) and which generally operates as part of a vehicle combination described in §§ 658.13(b)(5) and 658.15(a) of this part.

* * * * *

13. Part 658 is amended by adding § 658.23 as follows:

§ 658.23 LCV freeze; cargo-carrying unit freeze.

(a) (1) Except as otherwise provided in this section and except for tow trucks with vehicles in tow, a State may allow the operation of LCV's on the Interstate System only as listed in appendix C to this part.

(2) Except as otherwise provided in this section, a State may not allow the operation on the NN of any CMV combination with two or more cargo-carrying units (not including the truck tractor) whose cargo-carrying units exceed:

(i) The maximum combination trailer, semitrailer, or other type of length limitation authorized by State law or regulation of that State on or before June 1, 1991; or

(ii) The length of the cargo-carrying units of those CMV combinations, by specific configuration, in actual, lawful operation on a regular or periodic basis (including continuing seasonal operation) in that State on or before June 1, 1991, as listed in appendix C to this part.

(b) Notwithstanding paragraph (a)(2) of this section, the following CMV combinations with two or more cargo-carrying units may operate on the NN.

(1) Truck tractor-semitrailer-trailer and truck tractor-semitrailer-semitrailer combinations with a maximum length of the individual cargo units of 28.5 feet or less.

(2) Vehicles described in § 658.13(e) and (g).

(3) Truck tractor-trailer and truck tractor-semitrailer combinations with an overall length of 65 feet or less.

(4) Maxi-cubes.

(5) Tow trucks with vehicles in tow.

(c) For specific safety purposes and road construction, a State may make minor adjustments of a temporary and emergency nature to route designations and vehicle operating restrictions applicable to combinations subject to sections 1023 and 4006 of Pub. L. 102–240 and in effect on June 1, 1991 (July 6, 1991, for Alaska). Adjustments which last 30 days or less may be made without notifying the FHWA. Minor adjustments which exceed 30 days require approval of the FHWA. When such adjustments are needed, a State must submit to the Division Office of Motor Carriers, by the end of the 30th day, a written description of the emergency, the date on which it began, and the date on which it is expected to conclude. If the adjustment involves route designations, the State shall describe the new route on which vehicles otherwise subject to the freeze imposed by sections 1023 and 4006 of Pub. L. 102–240 are allowed to operate. To the extent possible, the geometric and pavement design characteristics of the alternate route should be equivalent to those of the highway section which is temporarily unavailable. Approval or disapproval by Office of Motor Carriers officials of adjustments involving route designations shall be coordinated with the Division Administrator. If the adjustment involves vehicle operating restrictions, the State shall list the restrictions that have been removed or modified. Approval or disapproval of the adjustment by the Division Office of Motor Carriers shall take place only after consultation with the Regional Office of Motor Carriers. If the adjustment is approved, a copy of the approved submission shall be forwarded through the Regional Office of Motor Carriers, to the Associate Administrator for Motor Carriers at Headquarters, who

will publish the notice of adjustment, with an expiration date, in the **Federal Register**. Requests for extensions of time beyond the originally established conclusion date shall be subject to the same approval and publication process as the original request. If upon consultation with the Regional Office of Motor Carriers, a decision is reached that minor adjustments made by a State are not legitimately attributable to road or bridge construction or safety, the Division Office of Motor Carriers will so inform the State, and the original conditions of the freeze must be reimposed immediately. Failure to do so may subject the State to a penalty pursuant to 23 U.S.C. 141.

(d) A State may issue a permit authorizing a CMV to transport an overlength nondivisible load on two or more cargo-carrying units on the NN without regard to the restrictions in § 658.23(a)(2).

(e) States further restricting or prohibiting the operation of vehicles subject to sections 1023 and 4006 of Public Law 102–240 after June 1, 1991, shall notify the FHWA Division Office of Motor Carriers within 30 days after the restriction is effective. The Division Office of Motor Carriers shall forward the information through the Regional Office of Motor Carriers to the Associate Administrator for Motor Carriers at Headquarters. The FHWA will publish the restriction in the **Federal Register** as an amendment to appendix C to this part. Failure to provide such notification may subject the State to a penalty pursuant to 23 U.S.C. 141.

(f) The Federal Highway Administrator, on his or her own motion or upon a request by any person (including a State), shall review the information set forth in appendix C to this part. If the Administrator determines there is cause to believe that a mistake was made in the accuracy of the information contained in appendix C to this part, the Administrator shall commence a proceeding to determine whether the information published should be corrected. If the Administrator determines that there is a mistake in the accuracy of the information contained in appendix C to this part, the Administrator shall publish in the **Federal Register** the appropriate corrections to reflect that determination.

14. Appendix A to part 658 is amended in the entry for the State of California by removing Note 1 and redesignating Note 2, and by revising the entry for the State of Virginia to read as follows:

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY DESIGNATED ROUTES

Route	From	To
US 11	I–81 Exit 195 ..	0.16 Mi. N. of VA 645 Rockbridge Co.
US 11	VA 220 Alt. N. Int.	2.15 Mi. S. of VA 220 Alt. N. Int. Cloverdale.
US 11	VA 100 Dublin	VA 643 S. of Dublin.
US 11	1.52 Mi. N. of VA 75.	US 19 N. Int. Abington.
US 13	MD State Line	I–64 Exit 282 Norfolk.
US 17	US 29 Opal	VA 2/US 17 BR New Post.
US 17	VA 134 York County.	I–64 Exit 258 Newport News.
US 17	BR/SCL Fredericksburg.	US 17 New Post VA 2.
US 19	I–81 Exit 14 (via VA 140) Abington.	US 460 N. Int./ VA 720 Bluefield.
US 23	TN State Line .	US 58 Alt. Big Stone Gap.
US 23	0.33 Mi. N. of US 23 BR Norton.	KY State Line.
US 25E	TN State Line .	KY State Line.
US 29	NC State Line	I–66 Exit 43 Gainesville.
US 33	N. Carlton Street Harrisonburg.	US 340 Elkton.
US 33	I–295 Exit 49 ..	0.96 Mi. W. of I–295 Hanover County.
US 50	VA 259 Gore ..	VA 37 Frederick County.
US 50	Apple Blossom Loop Road Winchester.	I–81 Exit 313 Winchester.
US 58	VA 721 W. of Martinsville.	US 220 BR N. Int Martinsville.
US 58	S. Fairy Street Martinsville.	WCL Emporia
US 58	0.6 Mi. E. of ECL Emporia.	VA 35 S. Int. Courtland.
US 58	US 58 BR E. of Courtland.	US 13/I–264 Bowers Hill.
US 58 Alt . .	US 23 Norton .	US 19 Hansonville.
US 58 Alt	0.4 Mi. W. of US 11.	I–81 Exit 17 [illegible]
US 58 BR	VA 35 Courtland.	US 58 E. of Courtland.
US 58	W. Int. VA 337 Claremont St. Norfolk.	US 460/St. Paul's Blvd Norfolk.
US 60	0.03 Mi. West of VA 887 Chesterfield County.	US 522 Powhatan.

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY DESIGNATED ROUTES—Continued

Route	From	To
US 220	NC State Line	I–581 Roanoke.
US 220	I–81 Exit 150 ..	SCL Fincastle.
US 220 BR	US 220 S. Int.	0.16 Mi. N. of VA 825 S. of Martinsville.
US 220 BR	US 58 N. Int. Martinsville.	US 220 N. Int. Bassett Forks.
US 250	US 340 E. Int. Waynesboro.	VA 254 Waynesboro.
US 250	I–81 Exit 222 ..	VA 261 Statler Blvd. Staunton.
US 258	NC State Line	US 58 Franklin.
US 258	VA 10 Benns Church.	VA 143 Jefferson Ave. Newport News.
US 301	VA 1250 S. of I–295.	I–295 Exit 41 Hanover County.
US 301	US 301 BR N. Int. Bowling Green.	MD State Line.
US 340/ 522.	I–66 Exit 6 Front Royal.	2.85 Mi. N. of I–66.
US 340	VA 7 Berryville	WV State Line
US 360	US 58 South Boston.	VA 150 Chesterfield County.
US 360	I–64 Exit 192 ..	VA 627 Village Richmond.
US 460	VA 67 W. Int. Raven.	US 19 Claypool Hill.
US 460	VA 720 Bluefield.	WV State Line at Bluefield
US 460	WV State Line at Glen Lyn.	I–81 Exit 118 Christiansburg.
US 460	I–581 Roanoke	0.08 Mi. E. of VA 1512 Lynchburg.
US 460	US 29 Lynchburg	1 Mi. W. of VA 24 Appomattox County.
US 460	0.64 Mi. E. of VA 707 Appomattox County.	I–85 Exit 61 Petersburg.
US 460 . ..	I–95 Exit 50 Petersburg.	US 58 Suffolk
US 501	VA 360 S. Int. Halifax.	US 58 South Boston.
US 522	0.6 Mi. S. of US 50.	US 50 Frederick County.
US 522	VA 37 Frederick County	1.07 Mi. N. of VA 705 Cross Junction.
VA 3 . ..	US 1 Fredericksburg.	VA 20 Wilderness
VA 7	I–81 Exit 315 Winchester.	0.68 Mi. W. of WCL Round Hill.

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY DESIGNATED ROUTES—Continued

Route	From	To
VA 10	US 58 Suffolk	VA 666 Smithfield
VA 10	EOI Hopewell	0.37 Mi. W. of W. Int. VA 156 Hopewell.
VA 10	US 1 Chesterfield County	VA 327 W. of Hopewell
VA 20	I–64 Exit 121	Carlton Rd. Charlottesville.
VA 30	I–95 Exit 98 Doswell.	US 1.
VA 33	I–64 Exit 220	VA 30 E. Int West Point.
VA 35	I–95 Exit 52 Petersburg	VA 156 Hopewell.
VA 37	I–81 Exit 310 S. of Winchester	I–81 Exit 317 (via US 11) N. of Winchester.
VA 42	VA 257 S. Int Bridgewater.	VA 290 Dayton.
VA 57	VA 753 Bassett.	US 220 Bassett Forks.
VA 86	US 29 Danville	NC State Line
VA 100	I–81 Exit 98	US 11 Dublin.
VA 105	US 60 Newport News	I–64 Exit 250.
VA 114	US 460 Christiansburg	0.09 Mi. E. of VA 750 Montgomery County.
VA 156	VA 10 W. Int Hopewell	VA 36 Hopewell.
VA 199	US 60 Williamsburg	I–64 Exit 242
VA 207	I–95 Exit 104	0.2 Mi. S. of VA 619 Milford.
VA 220 Alt	US 11 N. Int N. of Cloverdale	I–81 Exit 150/ US 220
VA 277	I–81 Exit 307 Stephens City	6 Mi. E. of I–81 Exit 307
VA 419	I–81 Exit 141 Salem.	Midland Ave Salem.
VA 624	I–64 Exit 96	Old SCL Waynesboro
Commonwealth Blvd. in Marion	Market Street	W. Fairy Street

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY DESIGNATED ROUTES—Continued

Route	From	To
. . .	. . .	. . .
CALIFORNIA		
. . .	. . .	. . .

Note: I–580 Oakland—All vehicles over 4½ tons (except passenger buses and stages) are prohibited on MacArthur Freeway between Grand Avenue and the north city limits of San Leandro. (Excepted under 23 CFR 658.11(f)).

. . .	. . .	. . .
Virginia		

Note 1: I–66 Washington, DC, area—There is a 24-hour total truck ban on I–66 from I–495 Capital Beltway to the District of Columbia. (Excepted under 23 CFR 658.11(f)).

Note 2: I–264 Norfolk—Truck widths are limited to 96 inches for the westbound tube of the Elizabeth River Downtown Tunnel from Norfolk to Portsmouth because of clearance deficiencies.

15. Part 658 is amended by adding appendix C to read as follows:

Appendix C to Part 658—Trucks over 80,000 Pounds on the Interstate System and Trucks over STAA Lengths on the National Network

This appendix contains the weight and size provisions that were in effect on or before June 1, 1991 (July 6, 1991 for Alaska), for vehicles covered by 23 U.S.C. 127(d) (LCV's) and 49 U.S.C. app 2311(j) (commercial motor vehicles (CMV's) with 2 or more cargo-carrying units). Weights and dimensions are "frozen" at the values shown here, which were in effect on June 1, 1991 (Alaska, July 6, 1991). All vehicles are listed by configuration type.

Trucks Over 80,000 Pounds on the Interstate System

In the State-by-State descriptions, CMV combinations which can also be LCV's are identified with the letters "LCV" following the type of combination vehicle. The maximum allowable gross vehicle weight is given in this appendix (in thousands of pounds is indicated by a "K"), as well as information summarizing the . . . operational conditions, routes, and legal citations. The term "Interstate System" as used herein refers to the Dwight D Eisenhower System of Interstate and Defense Highways.

Trucks Over STAA Lengths on the National Network

Listed for each State by combination type is either:

1. The maximum cargo-carrying length (shown in feet); or

2. A notation that such vehicle is not allowed (indicated by a "NO").

CMV's are categorized as follows.

1. A CMV combination consisting of a truck tractor and two trailing units.

2. A CMV combination consisting of a truck tractor and three trailing units.

3. CMV combinations with two or more cargo-carrying units not included in descriptions 1 or 2.

In the following table the top number is the maximum cargo-carrying length measured in feet from the front of the first cargo unit to the rear of the last cargo unit. This distance is not to include length exclusive devices which have been approved by the Secretary or by any State. Devices excluded from length determination shall only include items whose function is related to the safe and efficient operation of the semitrailer or trailer. No device excluded from length determination shall be designed or used for carrying cargo. The number below the length measurement is the maximum gross weight in thousands of pounds that the type of vehicle can carry when operating as an LCV on the Interstate System. For every State where there is a length or weight number in the table that follows, additional information is provided.

VEHICLE COMBINATIONS SUBJECT TO PUB. L. 102–240

State	1 Truck tractor and 2 trailing units	2 Truck tractor and 3 trailing units	3 Other
Alabama	NO	NO	NO
Alaska	95'	110'	83'
Arizona	95' 111K	95' 123.5K	(1)
Arkansas	NO	NO	NO
California	NO	NO	NO

VEHICLE COMBINATIONS SUBJECT TO PUB. L. 102–240—Continued

State	1 Truck tractor and 2 trailing units	2 Truck tractor and 3 trailing units	3 Other
Colorado	111' 110K	115.5' 110K	78'
Connecticut	NO	NO	NO
Delaware	NO	NO	NO
Dist. of Columbia	NO	NO	NO
Florida	106' (2)	NO	NO
Georgia	NO	NO	NO
Hawaii	65' (2)	NO	NO
Idaho	95' 105.5K	95' 105.5K	(1)
Illinois	NO	NO	NO
Indiana	106' 127.4K	104.5' 127.4K	58'
Iowa	NO	NO	NO
Kansas	109' 120K	109' 120K	NO
Kentucky	NO	NO	NO
Louisiana	NO	NO	NO
Maine	NO	NO	NO
Maryland	NO	NO	NO
Massachusetts	104' 127.4K	NO	NO
Michigan	58' 154K	NO	NO
Minnesota	NO	NO	NO
Mississippi	65' (2)	NO	NO
Missouri	109' 120K	109' 120K	NO
Montana	93' 137.8K	100' 131.06K	(1)
Nebraska	95' 95K	95' (2)	68'
Nevada	95' 129K	95' 129K	98'
New Hampshire	NO	NO	NO
New Jersey	NO	NO	NO
New Mexico	86.4K(3)	NO	NO
New York	102' 143K	NO	NO
North Carolina	NO	NO	NO
North Dakota	103' 105.5K	100' 105.5K	103'
Ohio	102' 127.4K	95' 115K	NO
Oklahoma	110' 90K	95' 90K	NO
Oregon	68' 105.5K	96' 105.5K	NO
Pennsylvania	NO	NO	NO
Puerto Rico	NO	NO	NO
Rhode Island	NO	NO	NO
South Carolina	NO	NO	NO
South Dakota	100' 129K	100' 129K	(1)
Tennessee	NO	NO	NO
Texas	NO	NO	NO
Utah	95' 129K	95' 129K	(1)
Vermont	NO	NO	NO
Virginia	NO	NO	NO
Washington	68' 105.5K	NO	68'
West Virginia	NO	NO	NO
Wisconsin	NO	NO	NO
Wyoming	81' 117K	NO	(1)

(1)—State submission includes multiple vehicles in this category—see individual State listings.
(2)—No maximum weight is established as this vehicle combination is not considered an "LCV" per the ISTEA definition. Florida's combination is not allowed to operate on the Interstate System, and the combinations for Hawaii, Mississippi, and Nebraska are not allowed to exceed 80,000 pounds.
(3)—No maximum cargo-carrying length is established for this combination. Because State law limits each trailing unit to not more than 28.5 feet in length, this combination is allowed to operate on all NN routes under the authority of the STAA of 1982, regardless of actual cargo-carrying length. The maximum weight listed is New Mexico's maximum allowable gross weight on the Interstate System under the grandfather authority of 23 U.S.C. 127.

The following abbreviation convention is used throughout the narrative State-by-State descriptions for the captions OPERATIONAL CONDITIONS, ROUTES, and LEGAL CITATIONS: two letter State abbreviation, dash, "TT" for truck tractor, and 2 or 3 for two or three trailing units. For example, the phrase "Arizona truck tractor and 2 trailing units", would be noted as "AZ-TT2"; the phrase "Indiana truck tractor and 3 trailing units" would be noted as "IN–TT3", etc.

STATE: ALASKA

COMBINATION: Truck tractor and 2 trailing units

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

OPERATIONAL CONDITIONS:

WEIGHT: The combination must be in compliance with State laws and regulations. There are no highways in

the State subject to Interstate System weight limits. Therefore, the ISTEA freeze as it applies to maximum weight is not applicable.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: Combinations with an overall length greater than 75 feet, measured bumper to bumper, must display an "OVERSIZE warning sign on the front and rear. In combinations where one cargo-carrying unit is more than 5,000 pounds heavier than the other, the heavier unit shall be placed immediately behind the power unit. Weather restrictions are imposed when hazardous conditions exist, as determined by the Alaska Department of Transportation and Public Facilities (DOT&PF) and the Alaska Department of Public Safety, Division of State Troopers. Time of day travel is not restricted.

PERMIT: None required

ACCESS: Alaska allows reasonable access not to exceed 5 miles to reach or return from terminals and facilities for food, fuel, or rest. The most direct route must be used. The Commissioner of the Alaska DOT&PF may allow access to specific routes if it can be shown that travel frequency, necessity, and route accommodation are required.

ROUTES

	From	To
AK–1	Anchorage (Potter Weigh Station).	Palmer (Palmer Wasilla Highway Junction)
AK–2	Fairbanks (Gaffney Road Junction).	Delta Junction (MP 1412 Alaska Highway)
AK–3	Jct. AK–1	Fairbanks (Gaffney Road Junction).

LEGAL CITATIONS

17 AAC 25, and 35; the Administrative Permit Manual

STATE: ALASKA

COMBINATION: Truck tractor and 3 trailing units

LENGTH OF THE CARGO CARRYING UNITS: 110 feet

OPERATIONAL CONDITIONS

WEIGHT and ACCESS: Same as the AK–TT2 combination

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement. Drivers of this combination must have 10 years of experience in Alaska and certified training in operation of these combinations.

VEHICLE: Individual trailer length in a three trailing unit combination shall not exceed 45 feet. Engine power rating shall not be less than 400 horsepower

These combinations are allowed to operate only between April 15 and September 30 of each year. Weather restrictions are imposed when hazardous conditions exist, as determined by the Alaska DOT&PF and the Department of Public Safety, Division of State Troopers. No movement is permitted if visibility is less than 1,000 feet.

PERMIT: Permits are required with specified durations of not less than 3 months or more than 18 months. There is a fee.

ROUTES

	From	To
AK–1	Anchorage (Potter Weigh Station).	Jct. AK–3
AK–3	Jct. AK–1	Fairbanks (Gaffney Road Junction)

LEGAL CITATIONS: Same as the AK–TT2 combination.

STATE: ALASKA

COMBINATION: Truck-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 83 feet

OPERATIONAL CONDITIONS

WEIGHT, DRIVER, PERMIT, and ACCESS: Same as the AK–tt2 combination.

VEHICLE: Same as the AK–TT2 combination, except that overall combination length may not exceed 90 feet.

ROUTES: Same as the AK–TT2 combination

LEGAL CITATIONS: Same as the AK–TT2 combination.

STATE: ARIZONA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM GROSS VEHICLE WEIGHT 111,000 pounds

OPERATIONAL CONDITIONS

WEIGHT: Single-axle maximum weight limit is 20,000 pounds, tandem axle maximum weight limit is 34,000 pounds, and the gross vehicle weight limit is 111,000 pounds, subject to the Federal Bridge Formula.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement. Drivers must comply with the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation and Title 28, Arizona Revised Statutes.

VEHICLE: This vehicle must be able to operate at speeds compatible with other traffic on level roads and maintain 20 miles per hour speed on grades where operated. A heavy-duty fifth wheel is required. The kingpin must be a solid type, not a screw-out or folding type. All hitch connectors must be of a no-slack type, preferably an air-actuated ram. Axles must be those designed for the width of the body. All braking systems must comply with State and Federal requirements. A brake force limiting valve, sometimes called a "slippery road" valve, may be provided on the steering axle. Mud flaps or splash guards are required. When traveling on a smooth, paved surface, trailers must follow in the path of the towing vehicle without shifting or swerving more than 3 inches to either side when the towing vehicle is moving in a straight line.

PERMITS: Permits are required. Fees are charged. This vehicle is allowed continuous travel, however, the State may restrict or prohibit operations during periods when traffic, weather, or other safety considerations make such operations unsafe or inadvisable. All multiple-trailer combinations shall be driven in the right-hand traffic lane.

Access: Access is allowed for 20 miles from I–15 Exits 8 and 27 or 20 miles from other authorized routes.

ROUTES

	From	To
I–15	Nevada	Utah
US 89	20 miles south of Utah.	Utah
US 160	US 163	New Mexico
US 163	US 160	Utah

LEGAL CITATIONS		
ARS 28–107	ARS 28–1009.	ARS 28–1011.O
ARS 28–103.5	ARS 28–1009.01	ARS 28–1012
ARS 28–108.13	ARS 28–1011.A	ARS 28–1013
ARS 28–108.14.	ARS 28–1011.C	ARS 28–1014
ARS 28–403	ARS 28–1011.F	ARS 28–1031
ARS 28–405	ARS 28–1011.K	ARS 28–1051
ARS 28–1001	ARS 28–1011.L	ARS 28–1052

ROUTES—Continued

	From	To
ARS 28–1004.G. ARS 28–1008.	ARS 28–1011.M.	R17–40–426

STATE: ARIZONA

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 123,500 pounds

OPERATIONAL CONDITIONS:

VEHICLE, and ACCESS: Same as the AZ-TT2 combination.

WEIGHT: Single-axle maximum weight limit is 20,000 pounds, tandem-axle maximum weight limit is 34,000 pounds, and the gross vehicle weight limit is 123,500 pounds, subject to the Federal Bridge Formula.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement. Drivers must comply with the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation and Title 28, Arizona Revised Statutes. Drivers must be trained by an experienced driver of a three trailing unit combination. Training should be through special instructions or by traveling with the new driver until such time as the new driver is deemed adequately qualified by the trainer on the use and operation of these combinations.

PERMIT: Permits are required. Fees are charged. This vehicle is allowed continuous travel, however, the State may restrict or prohibit operations during periods when traffic, weather, or other safety considerations make such operations unsafe or inadvisable. These combinations shall not be dispatched during adverse weather conditions. All multiple-trailer combinations shall be driven in the right-hand traffic lane.

ROUTES: Same as the AZ-TT2 combination.

LEGAL CITATIONS: Same as the AZ-TT2 combination.

STATE: ARIZONA

COMBINATION: Truck-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 69 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, VEHICLE, PERMIT, and ACCESS: Same as the AZ-TT2 combination.

ROUTES: Same as the AZ-TT2 combination.

LEGAL CITATIONS: Same as the AZ-TT2 combination.

STATE: ARIZONA

COMBINATION: Truck-semitrailer-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 98 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, VEHICLE, PERMIT, and ACCESS: Same as the AZ-TT2 combination.

ROUTES: Same as the AZ-TT2 combination.

LEGAL CITATIONS: Same as the AZ-TT2 combination.

STATE: COLORADO

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 111 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 110,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: The maximum gross weight is 110,000 pounds, subject to the formula W=800(L+40) where "W" equals the gross weight in pounds and "L" equals the length in feet between the centers of the first and last axles, or the gross weight determined by the Federal Bridge Formula, whichever is least. A single axle shall not exceed 20,000 pounds and a tandem axle shall not exceed 36,000 pounds.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement. The driver cannot have had any suspension of driving privileges in any State during the past 3 years where such suspension arose out of the operation of a motor vehicle used as a contract or common carrier of persons or property.

The driver must be certified by the motor carrier permit holder's safety office. The certification shall demonstrate that the driver has complied with all written requirements, and that the driver has successfully completed a company-approved road test for each type of combination vehicle operated.

VEHICLE: Vehicles shall not have fewer than six axles or more than nine axles. They shall be configured such that the shorter trailer shall be operated as the rear trailer, and the trailer with the heavier gross weight shall be operated as the front trailer. In the event that the shorter trailer is also the heavier, the load must be adjusted so that the front trailer is the longer and heavier of the two.

Vehicles shall have adequate power to maintain a minimum speed of 20 miles per hour on any grade over which the combination operates and can resume a speed of 20 miles per hour after stopping on any such grade.

Tires must conform to the standards in the Department of Public Safety's (DPS) Rules and Regulations Concerning Minimum Standards for the Operation of Commercial Motor Vehicles, at 8 CCR 1507–1 and C.R.S. 42–4–225 and 42–2–406.

Vehicles are required to have a heavy-duty fifth wheel and equal strength pick-up plates that meet the standards in the DPS Commercial Vehicle Rules. This equipment must be properly lubricated and located in a position that provides stability during normal operation, including braking. The trailers shall follow in the path of the towing vehicle without shifting or swerving more than 3 inches to either side when the towing vehicle is moving in a straight line.

Kingpins must be of a solid type and permanently fastened. Screw-out or folding type kingpins are prohibited.

Hitch connections must be of a no-slack type, preferably air-actuated ram.

Drawbar lengths shall be adequate to provide for the clearances required between the towing vehicle and the trailer(s) for turning and backing maneuvers.

Axles must be those designed for the width of the body of the trailer(s).

Braking systems must comply with the DPS Commercial Vehicle Rules and C.R.S. 42–4–220. Fast air-transmission and release valves must be provided on all trailer(s) and converter dolly axles. A brake force limiting valve, sometimes called a "slippery road" valve, may be provided on the steering axle.

PERMIT: An annual permit is required for which a fee is charged. Also, the vehicle must have an overweight permit pursuant to C.R.S. 42–4–409(11)(a)(II) (A), (B), or (C), and comply with Rule 4–15 in the rules pertaining to Extra-Legal Vehicles or Loads.

A truck tractor and two trailing units wherein at least one of the trailing units exceeds 28.5 feet in length shall not operate on the following designated highway segments during the hours of 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m.,

Monday through Friday, for Colorado Springs, Denver, and Pueblo. (A truck tractor with two trailing units wherein at least one of the trailing units exceeds 28.5 feet in length not operating at greater than the legal maximum weight of 80,000 pounds is subject to different hours-of-operation restrictions. Refer to rules pertaining to Extra-Legal Vehicles or Loads).

Colorado Springs: I–25 between Exit 135 (CO 83 Academy Blvd. So.) and Exit 150 (CO 83, Academy Blvd. No.).

Denver: I–25 between Exit 200 (Jct. I–225) and Exit 223 (CO 128, 120th Avenue),

I–70 between Exit 259 (CO 26/US 40) and Exit 282 (Jct. I–225),

I–76 between Exit 5 (Jct. I–25) and Exit 12 (US 85),

I–225 entire length,

I–270 entire length.

Pueblo: I–25 between Exit 94 (CO 45 Lake Ave.) and Exit 101 (US 50/CO 47).

The holder of a longer vehicle combination (LVC) permit must have an established safety program as provided in Chapter 9 of the "Colorado Department of Highways Rules and Regulations for Operation of Longer Vehicle Combinations on Designated State Highway Segments." Elements of the program include compliance with minimum safety standards at 8 CCR 1507–1, hazardous materials regulations at 8 CCR 1507–7, –8, and –9, Colorado Uniform Motor Vehicle Law, Articles 1 through 4 of Title 42, C.R.S. as amended, and Public Utility Commission regulations at 4 CCR 723–6, –8, –15, –22, and –23.

ACCESS: A vehicle shall not be operated off the designated portions of the Interstate System except to access food, fuel, repairs, and rest or to access a facility. Access to a facility shall be subject to the following conditions:

(1) The facility must:

(a) Be either a manufacturing or a distribution center, a warehouse, or truck terminal located in an area where industrial uses are permitted;

(b) Be a construction site; and

(c) Meet the following criteria:

1 vehicles are formed for transport or broken down for delivery on the premises;

2 adequate off-roadway space exists on the premises to safely maneuver the vehicles; and

3 adequate equipment is available on the premises to handle, load, and unload the vehicle, its trailers, and cargo.

(2) The facility must be located within a maximum distance of 10 miles from the point where the vehicle enters or exits the designated portions of the Interstate System. Such 10-mile distance shall be measured by the actual route(s) to be traveled to the facility, rather than by a straight line radius from the designated Interstate System to the facility;

(3) The access route(s) between the designated Interstate System and the facility must be approved in advance by the public entity (Colorado DOT, municipality, or county) having jurisdiction for the roadway(s) that make up the route(s). Where the State of Colorado has jurisdiction over the access route(s), it will consider the following safety, engineering, and other criteria in determining whether to approve the route(s):

(a) Safety of the motoring public;

(b) Geometrics of the street and roadway;

(c) Traffic volumes and patterns;

(d) Protection of State highways, roadways, and structures;

(e) Zoning and general characteristics of the route(s) to be encountered; and

(f) Other relevant criteria warranted by special circumstances of the proposed route(s).

Local entities, counties, and municipalities having jurisdiction over route(s), should consider similar criteria in determining whether to approve the proposed ingress and egress route(s); and

(4) A permit holder shall access only the facility or location authorized by the permit. If the permit authorizes more than one facility or location, then on any single trip by an LVC from the designated Interstate System the permit holder may access only one facility or location before returning to the designated Interstate System.

ROUTES

	From	To
I–25	New Mexico	Wyoming
I–70	Utah	I–70 Exit 90 Rifle
I–70	I–70 Exit 259 Golden.	Kansas
I–76	Jct. I–70	Nebraska
I–225	Jct. I–25	Jct. I–70
I–270	Jct. I–76	Jct. I–70

LEGAL CITATIONS: Vehicles must comply with all applicable statutes, such as C.R.S. 42–4–402(1), 42–4–404(1), 42–4–407(1)(c)(III)(A), 42–4–409(11)(a)(II) (A), (B) or (C). All LVC's must comply with the Extra-Legal Vehicles and Loads Rules and the Longer Vehicle Combination Rules. However, when the rules address the same subject, the LVC, since it is operating at greater than 80,000 pounds, must comply with the Extra-Legal Vehicles and Loads Rules. Such rules are: 4–1–2 and 4–1–3 concerning holiday travel restrictions, 4–1–5 concerning hours of operation restrictions, 4–8 concerning minimum distance between vehicles and 4–15 concerning maximum allowable gross weight.

STATE: COLORADO

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 115.5 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 110,000 pounds

OPERATIONAL CONDITIONS: Same as the CO–TT2 combination.

ROUTES: Same as the CO–TT2 combination.

LEGAL CITATIONS: Same as the CO–TT2 combination.

STATE: COLORADO

COMBINATION: Truck-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 78 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, VEHICLE, PERMIT, and ACCESS: Same as the CO–TT2 combination.

ROUTES: Same as the CO–TT2 combination.

LEGAL CITATIONS: Same as the CO–TT2 combination.

STATE: FLORIDA

COMBINATION: Truck tractor and 2 trailing units

LENGTH OF THE CARGO-CARRYING UNITS: 106 feet

OPERATIONAL CONDITIONS: All overdimensional and weight regulations of the Florida Turnpike Authority shall apply to such units unless specifically excluded under the terms of the Tandem Trailer Permit or these regulations.

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement. Proposed drivers of tandem-trailer units shall be registered by the Florida Turnpike Authority prior to driving such equipment on the turnpike system. For further information, see Rule 14–62.016 FAC.

VEHICLE: A complete tandem-trailer combination shall consist of a truck tractor, first semitrailer, fifth-wheel converter dolly, and a second semitrailer. The converter dolly may be either a separate unit or an integral component of the first semitrailer. The width shall not exceed 102 inches and the height shall not exceed 13 feet 6 inches. A tractor used in the tandem-trailer operations shall be capable of hauling the maximum gross load to be transported by a permittee at a speed of not less than 40 miles per hour on all portions of the turnpike system excepting that portion of the roadway, as posted in 1988, between mileposts 234 and 238 where a minimum speed of 30 miles per hour will be permitted.

Every tandem-trailer combination shall be equipped with full air brakes or air-activated hydraulic brakes on the tractor and either air or electric brakes on the dolly and trailers.

A tractor, which will be used to haul a complete tandem-trailer combination with a total gross weight of 110,000 pounds or more, shall be equipped with tandem rear axles and driving power shall be applied to all wheels on both axles. When the above tandem-axle tractor is required, a tandem-axle dolly converter must be used.

Every tandem-trailer combination shall be equipped with emergency equipment that equals or exceeds both the equipment requirements and the performance standards cited in Chapter 316, Florida Statutes and subpart H "Emergency Equipment" of 49 CFR 393.95.

A converter (fifth-wheel) dolly used in the tandem-trailer operations may have either single or tandem axles, according to its total gross weight. In addition to the primary towbar(s), the dolly vehicle must be equipped with safety chains or cables for connecting the dolly to the lead semitrailer and must be adequate to prevent breakaway.

Lamps and Reflectors. Each tractor, trailer, and converter dolly in a tandem-trailer combination shall be equipped with electric lamps and reflectors mounted on the vehicle in accordance with Chapter 316, Florida Statutes, and subpart B "Lighting Devices, Reflectors and Electrical Equipment," of 49 CFR 393.9 through 49 CFR 393.33.

Coupling Devices. Coupling devices shall be so designed, constructed, and installed and the vehicles in a tandem-trailer combination shall equal or exceed both the equipment requirements and the performance standards established on 49 CFR 393.70, except that such devices shall be so designed and constructed as to ensure that any such combination traveling on a level, smooth paved surface will follow in the path of the towing vehicle without shifting or swerving from side to side over 2 inches to each side of the path of the vehicle when it is moving in a straight line. (For further information see Rule 14–62.002; 14–62.005; 14–62.006; 14–62.007; 14–62.008; 14–62.009; 14–62.010; 14–62.011; 14–62.012; 14–62.013; and 14–62.015, FAC)

PERMIT: Tandem-trailer units may operate on the turnpike system under a Tandem Trailer Permit issued by the Florida Turnpike Authority upon application, except as provided in subparagraph (2) below.

(1) The Florida Turnpike Authority shall provide a copy of each such permit to the Motor Carrier Compliance Office.

(2) Tandem-trailer trucks of the dimensions mandated by the STAA of 1982 and operating in compliance with Rule Chapter 14–54, FAC, and under the provisions of section 316.515, Florida Statutes shall be exempt from the provisions of this rule chapter to the extent provided in Rule 14–54.0011, FAC.

(For further information see Rules 14–62.001; 14–62.022; 14–62.023; 14–62.024; 14–62.026; 14–62.027, FAC)

ACCESS: Staging. Tandem-trailer combinations shall be made up and broken up only in special assembly (staging) areas as designated for this purpose. For further information, see Rule 14–62.017, FAC. Make-up and break-up of tandem-trailer combinations shall not be allowed on a public right-of-way unless the area is designated for such use or unless an emergency exists.

ROUTES

	From	To
Florida's Turnpike.	South end Homestead Extension at US 1.	Exit 304 Wildwood.

LEGAL CITATIONS: Chapter 14–62, "Regulations Governing Tandem Combinations of Florida's Turnpike," Florida Administrative Code.

STATE: HAWAII

COMBINATION: Truck tractor and 2 trailing units

LENGTH OF CARGO CARRYING UNITS: 65 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: No load may exceed the carrying capacity of the axles specified by the manufacturer and no combination vehicle shall have a total weight in excess of its designed gross combination weight limit.

PERMITS: No permits are required.

ACCESS: Designated routes off the NN.

ROUTES: All NN routes except HI–95 from H–1 to Barbers Point Harbor.

LEGAL CITATIONS: Chapter 291, Section 34, Hawaii Revised Statutes and Chapter 104 of Title 19, Administrative Rules.

STATE: IDAHO

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 105,500 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Single axle: 20,000 pounds, tandem axle: 34,000 pounds, and gross vehicle weight up to 105,500 pounds.

Axle spacing: must comply with Idaho Code 49–1001.

Trailer weights: The respective loading of any trailer shall not be substantially greater than the weight of any trailer located ahead of it in the vehicle combination. Substantially greater shall be defined as more than 4,000 pounds heavier.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: The rules provide that all CMV's with two or more cargo-carrying units (except for truck-trailer combinations which are limited to an 85-foot combination length) are subject to calculated maximum off-tracking (CMOT) limits. The CMOT formula is:

$CMOT = R - [R^2 - (A^2 + B^2 + C^2 + D^2 + E^2)]^{1/2}$

$R = 161$

A, B, C, D, E, etc.=measurements between points of articulation or pivot. Squared dimensions to stinger steer points of articulation are negative.

The power unit of LCV's and extra-length combinations shall have adequate power and traction to maintain a speed of 15 miles per hour under normal operating conditions on any upgrade over which the combination is operated.

Fifth-wheel, drawbar, and other coupling devices shall be as specified by Federal Motor Carrier Safety Regulations, section 393.70.

Every combination operated under special permit authority shall be covered by insurance meeting State and Federal requirements. Evidence of this insurance must be carried in the permitted vehicle.

PERMIT: Permits are required. Permit duration is for 1 year from the date of issuance.

ACCESS: Combinations with a CMOT limit of less than 6.5 feet may use any Interstate or designated highway system interchange for access. Combinations with a CMOT of 6.5 to 8.75 feet may use only the following Interstate System interchanges:

I–15 Exits 58 and 119.

I–84 Exits 3, 49, 50, 52, 54, 57, 95, 168, 173, 182, 208, and 211.

I–86 Exits 36, 40, 56, and 58.

ROUTES: All NN routes.

LEGAL CITATIONS: Other regulations and restrictions that must be complied with are:

Idaho Code 49–1001, –1002, –1004, –1010, and –1011.

Idaho Transportation Department Rules 39.C.01, .06, .08, .09, .10, .11, .15, and .19–.23.

STATE: IDAHO

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 105,500 pounds

OPERATIONAL CONDITIONS: Same as the ID–TT2 combination.

ROUTES: Same as the ID–TT2 combination.

LEGAL CITATIONS: Same as the ID–TT2 combination.

STATE: IDAHO

COMBINATION: Truck-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 78 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, PERMIT, and ACCESS: Same as the ID–TT2 combination.

VEHICLE: Overall combination length limited to 85 feet.

ROUTES: Same as the ID–TT2 combination.

LEGAL CITATIONS: Same as the ID–TT2 combination.

STATE: IDAHO

COMBINATION: Truck-trailer-trailer, and Truck-semitrailer-trailer.

LENGTH OF THE CARGO-CARRYING UNITS: 98 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, PERMIT, and ACCESS: Same as the ID–TT2 combination.

VEHICLE: Overall combination length limited to 105 feet.

ROUTES: Same as the ID–TT2 combination.

LEGAL CITATIONS: Same as the ID–TT2 combination.

STATE: INDIANA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 106 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 127,400 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Single axle=22,400 pounds. Axles spaced less than 40 inches between centers are considered to be single axles.

Tandem axle=36,000 pounds. Axles spaced more than 40 inches but less than 9 feet between centers are considered to be tandem axles.

Gross vehicle weight=90,000 pounds plus 1,070 pounds per foot for each foot of total vehicle length in excess of 60 feet with a maximum gross weight not to exceed 127,400 pounds.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement, and a Toll Road identification card. Drivers must be at least 26 years old, in good health, and with 5 years of experience driving tractor-semitrailers or tandem-trailer combinations. Experience must include driving in all four seasons.

VEHICLE: Lightest trailer to the rear. Distance between coupled trailers shall not exceed 9 feet. The combination vehicle, including coupling devices, shall be designed and constructed so as to ensure that while traveling on a level, smooth paved surface each trailing unit will follow in the path of the towing vehicle without shifting or swerving from side to side more than 3 inches. The combination vehicle must have at least five axles but not more than nine axles and except on ramps be able to achieve and maintain a speed of 45 miles per hour. Following distance is 500 feet, and passing maneuvers must be completed within 1 mile. The truck tractor must be equipped at a minimum with emergency equipment including fire extinguisher, spare fuses, tire chains, tire tread minimums, and disabled vehicle warning devices. Every dolly must be coupled with safety chain directly to the frame of the semitrailer by which it is towed. Each unit in a multi-trailer combination must be equipped at a minimum with electric lights and reflectors mounted on the vehicle.

PERMIT: A free annual tandem-trailer permit must be obtained from the Indiana DOT for loads which exceed 90,000 pounds. A multiple-trip access permit, for which a fee is charged, must also be obtained for access to points of delivery or to breakdown locations. Permission to operate can be temporarily suspended by the Indiana DOT due to weather, road conditions, holiday traffic, or other emergency conditions. Any oversize vehicle whose length exceeds 80 feet shall not be operated at a speed in excess of 45 miles per hour. Oversize loads are not to be operated at any time when wind velocity exceeds 25 miles per hour.

ACCESS: 15 miles from toll gates.

ROUTES

	From	To
I–80/90 (IN Toll Road).	Toll Road Gate 21.	Ohio.
I–90 (IN Toll Road).	Illinois	Toll Road Gate 21.

LEGAL CITATIONS:

Indiana Code 9–8–1–16
Indiana Code 8–15–2
135 Indiana Administrative Code 2

STATE: INDIANA

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 104.5 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 127,400 pounds

OPERATIONAL CONDITIONS:

WEIGHT, DRIVER, PERMIT, and ACCESS: Same as the IN–TT2 combination.

VEHICLE: Semitrailers and trailers shall not be longer than 28.5 feet, and the minimum number of axles for the combination is seven. Three trailing unit combinations must be equipped with adequate spray-suppressant mud flaps which are properly maintained.

ROUTES: Same as the IN–TT2 combination.

LEGAL CITATIONS: Same as the IN–TT2 combination.

STATE: INDIANA

COMBINATION: Combination of three or more vehicles coupled together

LENGTH OF THE CARGO CARRYING UNITS: 58 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: The maximum width is 102 inches, and the maximum height is 13 feet 6 inches.

PERMIT: None required.

ACCESS: Unlimited.

ROUTES: All roads within the State.

LEGAL CITATIONS: Indiana Code 9–8–1–2.

STATE: KANSAS

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 109 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 120,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Combinations consisting of a truck tractor and two trailing units must comply with the Federal Bridge Formula, with maximum weights of 20,000 pounds on a single axle and 34,000 pounds on a tandem axle, and with a maximum gross weight of 120,000 pounds.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: Truck tractor and two trailing unit combinations must meet legal width and height with no time-of-day travel restrictions or other special requirements.

PERMIT: Permits are not required for operation on the Kansas Turnpike. A permit is required for access between the Turnpike and motor freight terminals located within a 10-mile radius of each toll booth, except at the northeastern end of the Turnpike where a 20-mile radius is allowed. Access permits are valid for 6 months.

ACCESS: Turnpike access routes include all routes between the Turnpike and a motor freight terminal located within a 10-mile radius of each toll booth, except at the northeastern end of the Turnpike where a 20-mile radius is allowed.

ROUTES

	From	To
I–35 Kansas Tpk. Authority (KTA).	Oklahoma	KTA Exit 127.
I–70 KTA	KTA Exit 182	KTA Exit 223.
I–335 KTA	KTA Exit 127	KTA Exit 177.
I–470 KTA	KTA Exit 177	KTA Exit 182.
LEGAL CITATIONS:		
Kansas Statutes Annotated (KSA)		
KSA 8–1911 .	KSA 68–2004	KSA 68–2019.
KSA 8–1914 .	KSA 68–2005	KSA 68–2048a.
KSA 68–2003.		

STATE: KANSAS

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 109 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 120,000 pounds

OPERATIONAL CONDITIONS: The operations of triple trailing unit combinations are governed by two sets of criteria: (1) The Turnpike and Turnpike access rules, and (2) the SVC rules which apply off of the Turnpike except in the case of vehicles operating under Turnpike access authority. The Turnpike and Turnpike access rules allow a maximum combination vehicle length of 119 feet overall. The SVC rules require "Triples" to have trailers of no more than 28.5 feet maximum length or a cargo-carrying length of approximately 95 feet.

The Turnpike and Turnpike access rules have no time-of-day travel restrictions or other special requirements.

The SVC rules have several operational conditions. SVC's cannot operate on holidays or during holiday weekends. SVC's cannot be dispatched or operated during adverse weather conditions. SVC's must travel in the right lane, except for passing, and the following distance is 100 feet for every 10 miles per hour. SVC permits can include any restrictions deemed necessary, including specific routes and hours, days, and/or seasons of operation. Rules and regulations can be promulgated regarding driver qualifications, vehicle equipment, and operational standards.

WEIGHT: All triple trailing unit combinations must comply with the Federal Bridge Formula with maximum axle weights of 20,000 pounds on a single axle and 34,000 pounds on a tandem axle. The maximum gross weight is 120,000 pounds on the Turnpike and Turnpike access routes, but the SVC's have a maximum weight of 110,000 pounds.

DRIVER: A commercial driver's license with the appropriate endorsement is required under both Turnpike and SVC rules. In addition, for SVC operation drivers must have completed SVC driver training and a company road test. Drivers must also have 2 years of experience driving tractor-semitrailers and 1 year driving doubles.

VEHICLE: Vehicle requirements apply to the SVC program only. All axles, except steering axles, must have dual wheels, and all vehicles must be able to achieve and maintain a speed of 40 miles per hour on all grades. Antispray mud flaps shall be attached to the rear of each axle except the steering axle. Mud flaps shall have a surface designed to absorb and deflect excess moisture to the road surface. Drop and lift axles are prohibited. Vehicles may have a minimum of six and a maximum of nine axles. The heaviest trailers are to be placed forward. Hazardous cargo is prohibited. Convex mirrors are required on both sides of the cab. Equipment must comply with the requirements of 49 CFR 390–399.

Any SVC shall be stable at all times during normal braking and normal operation. When traveling on a level, smooth paved surface, an SVC shall follow the towing vehicle without shifting or swerving beyond the restraints of the lane of travel.

PERMIT: Same as the KS–TT2 combination on the Turnpike and Turnpike access routes. A fee per company plus a permit fee for each power unit is required for the SVC program, and the SVC permits are valid for 1 year. SVC's operated pursuant to regulation 36–1–33 under an annual permit shall be covered by insurance.

ACCESS: Turnpike access routes include all routes between the Turnpike and a motor freight terminal located within a 10-mile radius of each toll booth, except at the northeastern end of the Turnpike where a 20-mile radius is allowed. SVC access routes include all routes between the Interstate and a motor freight terminal located within 5 miles of the Interstate at Goodland.

ROUTES:

A. For vehicles subject to the Turnpike and Turnpike access rules:

	From	To
I–35 KTA	Oklahoma	KTA Exit 127.
I–70 KTA	KTA Exit 182	KTA Exit 223.
I–335 KTA	KTA Exit 127	KTA Exit 177.
I–470 KTA	KTA Exit 177	KTA Exit 182.

B. For vehicles subject to the SVC rules:

	From	To
I–70	Colorado	I–70 Exit 19 Goodland.

LEGAL CITATIONS: Same as the KS–TT2 combination, plus KSA 8–1915.

STATE: MASSACHUSETTS

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF CARGO-CARRYING UNITS: 104 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 127,400 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Any combination of vehicles may not exceed a maximum gross weight of 127,400 pounds. The maximum gross weight of the tractor and first semitrailer shall not exceed 71,000 pounds. The maximum gross weight of each unit of dolly and semitrailer shall not exceed 56,400 pounds. The maximum gross weight for the tractor and first semitrailer is governed by the formula 35,000 pounds plus 1,000 pounds per foot between the center of the foremost axle and the center of the rearmost axle of the semitrailer. The maximum gross weight on any one axle is 22,400 pounds, and on any tandem axle it is 36,000 pounds. Axles less than 46 inches between centers are considered to be one axle.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement and must be registered with the Massachusetts Turnpike Authority (MTA). Registration shall include all specified driving records, safety records, physical examinations, and minimum of 5 years of driving experience with tractor trailers.

VEHICLE:

(1) Brake Regulation. The brakes on any vehicle, dolly converter, or combination of vehicles used in tandem-trailer operations as a minimum shall comply with Federal Motor Carrier Safety Regulations in 49 CFR part 393. In addition, any vehicle, dolly converter or combination of vehicles used in tandem-trailer operations shall meet the requirements of the provisions of the Massachusetts Motor Vehicle Law. Tandem-trailer combinations certified on or after June 1, 1968, shall be equipped with suitable devices to accelerate application and release of the brakes of the towed vehicle.

(2) Axles. A tractor used to haul a tandem trailer combination with a gross weight of more than 110,000 pounds shall be equipped with tandem rear axles, each of which shall be engaged to bear its full share of the load on the roadway surface.

(3) Tandem Assembly. When the gross weight of the trailers vary by more than 20 percent, they shall be coupled with the heaviest trailer attached to the tractor. Coupling devices and towing devices shall comply with the Federal regulations as stated in 49 CFR part 393. When the distance between the rear of the one semitrailer and the front of the following semitrailer is 10 feet or more, the dolly shall be equipped with a device, or the trailers shall be connected along the sides with suitable material, which will indicate to other Turnpike users that the trailers are connected and are in effect one unit. The MTA shall approve the devices or connections to be used on the semitrailers that would indicate it is one unit. Coupling devices shall be so designed, constructed, and installed, and the vehicles in a tandem trailer combination shall be so designed and constructed to ensure that when traveling on a level, smooth paved surface they will follow in the path of the towing vehicle without shifting or swerving over 3 inches to each side of the path of the towing vehicle when it is moving in a straight line. A tandem trailer unit may pass another vehicle traveling in the same direction only if the speed differential will allow the tandem trailer unit to complete the maneuver and return to the normal driving lane within a distance of 1 mile.

Each truck tractor shall be equipped with at least one spare fuse or other overload protective device, if the devices are not of a reset type, for each kind and size used. The vehicle is to carry at least one set of tire chains for at least one driving wheel on each side between October 15 and May 1 of each year. Each truck tractor shall carry a fire extinguisher which shall have an aggregate rating of 20 BC.

PERMIT: A permittee must demonstrate to the MTA that it has insurance coverage of the type and amounts required by Turnpike regulation. Both the tractor manufacturer and the permittee shall certify to the MTA, prior to the approval of a tractor, that it is capable of hauling the maximum permissible gross load to be transported by the permittee at a speed not less than 20 miles per hour on all portions of the turnpike system. The MTA may revoke or temporarily suspend any permit at will and the instructions of the MTA or Massachusetts State Police shall be complied with immediately.

ACCESS: Makeup and breakup areas. Tandem trailer units shall not leave the Turnpike right-of-way and shall be assembled and disassembled only in designated areas.

ROUTES

	From	To
I–90 Mass Turnpike.	New York State.	Turnpike Exit 18 Boston.

LEGAL CITATIONS:

The MTA, Massachusetts Rules and Regulations 730, and CMR 4.00.

STATE: MICHIGAN

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF CARGO-CARRYING UNITS: 58 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 154,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: The single-axle weight limit for LCV's is 18,000 pounds for axles spaced 9 feet or more apart. For axles spaced more than 3.5 feet but less than 9 feet apart, the single-axle weight limit is 13,000 pounds. The tandem-axle weight limit is 16,000 pounds per axle for the first tandem and 13,000 pounds per axle for all other tandems. Axles spaced less than 3.5 feet apart are limited to 9,000 pounds per axle. Maximum load per inch width of tire is 700 pounds. Maximum gross weight is determined based on axle and axle group weight limits. The maximum practical gross weight is 154,000 pounds.

When restricted seasonal loadings are in effect, load per inch width of tire and maximum axle weights are reduced as follows: Rigid pavements—525 pounds per inch of tire width, 25 percent axle weight reduction; Flexible pavements—450 pounds per inch of tire width, 35 percent axle weight reduction.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: Truck height may not exceed 13.5 feet. There is no overall length for LCV's operating on the Interstate System when semitrailer and trailer lengths do not exceed 28.5 feet. If either the trailer or semitrailer is longer than 28.5 feet, the distance from the front of the first box to the rear of the second box may not exceed 58 feet.

A combination of vehicles shall not have more than 11 axles, and the ratio of gross weight to net horsepower delivered to the clutch shall not exceed 400 to 1.

PERMIT: Permits for divisible loads of more than 80,000 pounds must conform to either Federal or grandfathered axle and bridge spacing requirements.

ACCESS: All designated State highways.

ROUTES: All Interstate routes and designated State highways.

LEGAL CITATIONS:

Michigan Public Act 300, section 257.722
Michigan Public Act 300, section 257.719

STATE: MISSISSIPPI

COMBINATION: Truck tractor and 2 trailing units

LENGTH OF THE CARGO-CARRYING UNITS: 65 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: Each trailing unit may be a maximum of 30 feet long.

PERMIT: None required.

ACCESS: No restrictions, may operate Statewide.

ROUTES: All NN routes.

LEGAL CITATIONS: Section 63–5–19, Mississippi Code, Annotated, 1972.

STATE: MISSOURI

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 109 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 120,000 pounds when entering Missouri from Kansas; 95,000 pounds when entering from Nebraska; 90,000 pounds when entering from Oklahoma.

OPERATIONAL CONDITIONS: Missouri allows vehicles from neighboring States access to terminals in Missouri which are within 20 miles of the Missouri State Line. These vehicles must be legal in the State from which they are entering Missouri.

WEIGHT, DRIVER, VEHICLE: Same conditions which apply to a truck tractor and two trailing units legally operating in Kansas, Nebraska, or Oklahoma.

PERMIT: Annual blanket overdimension permits are issued to allow a truck tractor and two trailing units legally operating in Kansas, Nebraska, or Oklahoma to move to and from terminals in Missouri which are located within a 20-mile band of the State Line for these three States. There is a permit fee per power unit. The permits carry routine permit restrictions, but do not address driver qualifications or any other restrictions not included in the rules and regulations for all permitted movement.

ACCESS: Routes as necessary to reach terminals.

ROUTES: All NN routes within a 20-mile band from the Kansas, Nebraska, and Oklahoma borders.

LEGAL CITATIONS: § 304.170 and § 304.200 Revised Statutes of Missouri 1990.

STATE: MISSOURI

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 109 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 120,000 pounds when entering Missouri from Kansas; 90,000 pounds when entering from Oklahoma.

OPERATIONAL CONDITIONS: Missouri allows vehicles from neighboring States access to terminals in Missouri which are within 20 miles of the Missouri State Line. These vehicles must be legal in the State from which they are entering Missouri.

WEIGHT, DRIVER, VEHICLE: Same conditions which apply to a truck tractor and three trailing units legally operating in Kansas or Oklahoma.

PERMIT: Annual blanket overdimension permits are issued to allow a truck tractor and three trailing units legally operating in Kansas or Oklahoma, to move to and from terminals in Missouri which are located within a 20-mile band of the State Line for these two States. There is a permit fee per power unit. The permits carry routine permit restrictions, but do not address driver qualifications or any other restrictions not included in the rules and regulations for all permitted movement.

ACCESS: Routes as necessary to reach terminals.

ROUTES: All NN routes within a 20-mile band from the Kansas and Oklahoma borders.

LEGAL CITATIONS: § 304.170 & § 304.200 Revised Statutes of Missouri 1990.

STATE: MONTANA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF CARGO-CARRYING UNITS: 93 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 137,800 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Except for vehicles operating under the Montana/Alberta Memorandum of Understanding (MOU), any vehicle carrying a divisible load over 80,000 pounds must comply with the Federal Bridge Formula found in 23 U.S.C. 127.

Maximum single-axle limit: 20,000 pounds
Maximum tandem-axle limit: 34,000 pounds
Maximum gross weight is based upon application of the Bridge Formula.
Maximum weight allowed per inch of tire width is 600 pounds.

WEIGHT, MONTANA/ALBERTA MOU:

Maximum single-axle limit: 20,000 pounds
Maximum tandem-axle limit: 37,500 pounds
Maximum tridem-axle limit:
  Axles spaced from 94″ to less than 118″: 46,300 pounds
  Axles spaced from 118″ to less than 141″: 50,700 pounds
  Axles spaced from 141″ to 146″: 52,900 pounds
Maximum gross weight:
  A-Train: 118,000 pounds
  B-Train (eight axle): 137,800 pounds
  B-Train (seven axle): 124,600 pounds

The designation of "A-Train" or "B-Train" refers to the manner in which the two trailing units are connected.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: No special requirements beyond compliance with Federal Motor Carrier Safety Regulations.

PERMIT: Special permit required for double trailer combinations if either trailer exceeds 28.5 feet. Permits are available on an annual or a trip basis and provide for continuous travel. Statutory reference: 61–10–124, MCA. For vehicles being operated under the Montana/Alberta MOU, operators must have paid gross vehicle weight fees for the total weight being carried. In addition, a term Restricted Route and Oversize Permit for which an annual fee is charged must be obtained. Finally, vehicle operators must secure a single-trip, overweight permit prior to each trip.

ACCESS: Access must be authorized by the Montana DOT. For vehicles

operated under the Montana/Alberta MOU, access routes from I–15 into Shelby are authorized when permits are issued. For vehicles with a cargo-carrying length greater than 88 feet, but not more than 93 feet, a 2-mile access from the Interstate System is automatically granted to terminals and service areas. Access outside the 2-mile provision may be granted on a case-by-case basis by the Administrator of the Motor Carrier Services Division.

ROUTES: Combinations with a cargo-carrying length greater than 88 feet, but not more than 93 feet, are limited to the Interstate System. Combinations with a cargo-carrying length of 88 feet or less can use all NN routes except U.S. 87 from milepost 79.3 to 82.5. For vehicles being operated under the Montana/Alberta MOU, the only route available is I–15 from the border with Canada to Shelby.

LEGAL CITATION:

61–10–124 MCA.	61–10–104 MCA.	ARM 18.8.509(6)
61–10–107 (3) MCA.	61–10–121 MCA.	ARM 18.8.517, 518

Montana/Alberta Memorandum of Understanding
Administrative Rules of Montana

STATE: MONTANA

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 100 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 131,060 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Any vehicle carrying a divisible load over 80,000 pounds must comply with the Federal Bridge Formula found in 23 U.S.C. 127.
Maximum single-axle limit: 20,000 pounds
Maximum tandem-axle limit: 34,000 pounds
Maximum gross weight is based upon application of the Bridge Formula.
Maximum weight allowed per inch of tire width is 600 pounds.

DRIVER: Drivers of three trailing unit combinations must be certified by the operating company. This certification includes an actual driving test and knowledge of Federal Motor Carrier Safety Regulations and State law pertaining to triple vehicle operations. Drivers are also required to have a commercial driver's license with the appropriate endorsement.

VEHICLE: The 100-foot cargo-carrying length is only with a conventional tractor within a 110-foot overall length limit. If a cabover tractor is used, the cargo length is 95 feet within a 105-foot overall length limit. Vehicles involved in three trailing unit operations must comply with the following regulations:

1. Shall maintain a minimum speed of 20 miles per hour on any grade;
2. Kingpins must be solid and permanently affixed;
3. Hitch connections must be no-slack type;
4. Drawbars shall be of minimum practical length;
5. Permanently affixed axles must be designed for the width of the trailer;
6. Anti-sail mudflaps or splash and spray suppression devices are required;
7. The heavier trailers shall be in front of lighter trailers;
8. A minimum distance of 100 feet per 10 miles per hour is required between other vehicles except when passing;
9. Operating at speeds greater than 55 miles per hour is prohibited; and
10. Vehicle and driver are subject to Federal Motor Carrier Safety Regulations.

Reference: 18.8.517 Administrative Rules of Montana.

PERMIT: Special triple vehicle permits are required for the operation of these combinations. Permits are available on an annual or trip basis. Permits are good for travel on the Interstate System only and are subject to the following conditions:

1. Travel is prohibited during adverse weather conditions;
2. Transportation of Class A explosives is prohibited; and
3. Companies operating triple combinations must have an established safety program including driver certifications.

ACCESS: Access is for 2 miles beyond the Interstate System, or further if granted by the Administrator of the Motor Carrier Services Division.

ROUTES: Interstate System routes in the State.

LEGAL CITATION: 18.8.517 Administrative Rules of Montana.

STATE: MONTANA

COMBINATION: Truck-Trailer

LENGTH OF CARGO-CARRYING UNITS: 88 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, and ACCESS: Same as the MT–TT2 combination.

VEHICLE: Same as the MT–TT2 combination, except overall length limited to 95 feet.

PERMIT: Special permit required if overall length exceeds 75 feet. Special permits allow continuous travel and are available on an annual or trip basis.

ROUTES: Same as the MT–TT2 combination.

LEGAL CITATIONS: 61–10–121 and 61–10–124, MCA.

STATE: MONTANA

COMBINATION: Truck-trailer-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 103 feet

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, PERMIT, and ACCESS: Same as the MT–TT2 combination.

VEHICLE: The cargo-carrying unit length is 103 feet with a conventional truck within a 110-foot overall length limit, and 98 feet with a cab-over-engine truck within a 105-foot overall length limit. On two-lane highways the cargo-carrying unit length is 88 feet within a 95-foot overall length limit.

ROUTES: All NN routes except U.S. 87 between mileposts 79.3 and 82.5.

LEGAL CITATIONS:

61–10–124 MCA
61–10–121 MCA
ARM 18–8–509

STATE: NEBRASKA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 95,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: The following conditions are for a truck tractor and 2 trailing units with a length of cargo-carrying units of 65 feet or less.
Maximum Weight:
Single axle = 20,000 pounds
Tandem axle = 34,000 pounds
Gross = Determined by Federal Bridge Formula B, but not to exceed 95,000 pounds.

Truck tractor and 2 trailing unit combinations with a length of cargo-carrying units of over 65 feet are required to travel empty.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement. There are no additional special qualifications where the cargo-carrying unit lengths are 65 feet or less. For cargo-carrying unit lengths over 65 feet, the driver must comply with all State and Federal

requirements and must not have had any accidents while operating such vehicles.

VEHICLE: For combinations with a cargo-carrying length over 65 feet, but not over 85 feet, the semitrailer cannot exceed 48 feet in length and the full trailer cannot be less than 26 feet or more than 28 feet long. The shorter trailer must be placed to the rear. The wheel path of the trailer(s) cannot vary more than 3 inches from that of the towing vehicle.

For combinations with a cargo-carrying length greater than 85 feet, up to and including 95 feet, the trailers must be of approximately equal length.

PERMIT: A weight permit in accordance with Chapter 12 of the Nebraska Department of Roads Rules and Regulations is required for operating on the Interstate System with weight in excess of 80,000 pounds. Combinations with a length of cargo-carrying units over 65 feet are not eligible for the overweight permit. A length permit, in accordance with Chapter 11 of the Nebraska Department of Roads Rules and Regulations, is required for two trailing unit combinations with a length of cargo-carrying units over 65 feet in length. Conditions of the length permit prohibit movements on Saturdays, Sundays, and holidays; when ground wind speed exceeds 25 miles per hour; and when visibility is less than 800 feet. Movement is also prohibited during steady rain, snow, sleet, ice, or other conditions causing slippery pavement. Between November 15 and April 15 permission to move must be obtained from the Nebraska Department of Roads Permit Office within 3 hours of the movement. Between April 16 and November 14 permission to move must be obtained within 3 days of the movement. Fees are charged for the 10-day weight permit and the annual length permit. These permits can be revoked if the terms are violated.

ACCESS: Two trailing unit combinations with a length of cargo-carrying units of not more than 65 feet may operate on all State highways. For two trailing unit combinations with a length of cargo-carrying units over 65 feet, access to and from the Interstate is limited to designated staging areas within 6 miles of I–80 between the Wyoming State Line and Exit 440 (Nebraska Route 50). Except for weather, emergency, and repair, two trailing unit combinations with a length of cargo-carrying units over 65 feet cannot reenter the Interstate after having left it.

ROUTES: Vehicles requiring length permits are restricted to I–80 from Wyoming to Exit 440 (Nebraska Highway 50). There are no route restrictions for vehicles not requiring length permits.

LEGAL CITATIONS:

Nebraska Revised Statutes Reissued 1988

§ 39–6,179 (Double trailers under 65 feet)

§ 39–6,179.01 (Double trailers over 65 feet)

§ 39–6,180.01 (Authorized weight limits)

§ 39–6,181 (Vehicles; size; weight; load; overweight; special permits; etc.)

Nebraska Department of Roads Rules and Regulations, Title 408, Chapter 1 (Double trailers over 65 feet)

STATE: NEBRASKA

COMBINATION: Truck tractor and 3 trailing units

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

OPERATIONAL CONDITIONS:

WEIGHT: A truck tractor and three trailing unit combination is required to travel empty.

DRIVER, PERMIT, and ACCESS: Same as the NE–TT2 combination.

VEHICLE: A three trailing unit combination must have trailers of approximately equal length and the overall vehicle length cannot exceed 105 feet.

ROUTES: I–80 from Wyoming to Exit 440 (Nebraska Highway 50).

LEGAL CITATIONS:

Neb. Rev. Stat. § 39–6,179.01 (Reissue 1988)

Nebraska Department of Roads Rules and Regulations, Title 408, Chapter 1

STATE: NEBRASKA

COMBINATION: Truck-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 68 feet

OPERATIONAL CONDITIONS

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: The overall vehicle length, including load, cannot exceed 75 feet.

PERMIT: No permit is required.

ACCESS: Statewide during daylight hours only.

ROUTES: All NN routes.

LEGAL CITATIONS: Neb. Rev. Stat. § 39–6,179.

STATE: NEVADA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 129,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: The single-axle weight limit is 20,000 pounds, the tandem-axle weight limit is 34,000 pounds, and the gross weight is subject to the Federal Bridge Formula limits, provided that two consecutive tandems with a distance of 36 feet or more between the first and last axle may carry 34,000 pounds on each tandem.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement, be at least 25 years old, and have had a medical exam within previous 24 months. Every operator must be covered by a liability insurance policy with personal injury and property damage limits meeting State requirements.

VEHICLE: No trailer may be longer than 48 feet. If one trailer is 48 feet long, the other trailer cannot exceed 42 feet. Towed vehicles must not shift or sway more than 3 inches to right or left and must track in a straight line on a level, smooth paved highway. Vehicles must be able to accelerate and operate on a level highway at speeds which are compatible with other traffic and with the speed limits and must be able to maintain a minimum of 20 miles per hour on any grade on which they may operate. All vehicles must have safety chains on converter dollies. Vehicles must carry snow chains for each drive wheel.

Vehicle operations may be suspended in adverse weather and high winds, as determined by police or the Nevada DOT.

The shortest trailer must be in the rear of a combination unless it is heavier than the longer trailer.

Brakes must comply with all State and Federal requirements for commercial vehicles including automatic braking for separation of vehicles, parking brakes, and working lights.

Vehicles must not exceed posted speed limits and cannot operate on any highway on which they cannot at all times stay on the right side of the center line. All LCV's must keep a distance of at least 500 feet from each other.

Every full-sized truck or truck tractor used in a combination of vehicles must be equipped with at least the following emergency and safety equipment:

1. One fire extinguisher which meets "Classification B" of the National Fire Protection Association.

2. One spare light bulb for every electrical lighting device used on the rear of the last vehicle in a combination of vehicles.

3. One spare fuse for each different kind and size of fuse used in every vehicle in the combination of vehicles. If the electrical system of any vehicle in the combination contains any devices for protection of electrical circuits from overloading, other than fuses and circuit breakers which can be reset, one spare of each such device must be kept as emergency and safety equipment.

4. Any flares, reflectors or red electrical lanterns which meet State or Federal law or regulation.

Before operating a combination of vehicles on a highway of this State, the owner or operator of the combination shall certify to the Nevada DOT, on a form provided by it, that all vehicles and equipment in the combination meet the requirements of and will be operated in compliance with NAC 484.300 to 484.440, inclusive.

All axles except for steering axles and axles that weigh less than 10,000 pounds must have at least four tires unless the tire width of each tire on the axles is 14 inches or greater.

PERMIT: Permits are required and a fee is charged. They may be revoked for violation of any of the provisions of the legal regulations. The State may suspend operation on roads deemed unsafe or impracticable. Permits must be carried in the vehicle along with identification devices issued by the Nevada Department of Motor Vehicles.

ACCESS: As authorized by the Nevada DOT.

ROUTES: All NN routes, except US 93 from Nevada State route 500 to Arizona.

LEGAL CITATIONS: NRS 484.400, .405(4), .425, .430, .739, 706.100–4, .100–6(a), and 706.531. Also, "Regulations for the Operation of 70 to 105 foot Combinations" (1990).

STATE: NEVADA

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 129,000 pounds

OPERATIONAL CONDITIONS: Same as the NV–TT2 combination.

ROUTES: Same as the NV–TT2 combination.

LEGAL CITATIONS: Same as the NV–TT2 combination.

STATE: NEVADA

COMBINATION: Truck-trailer, and Truck-trailer-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 98 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, VEHICLE, and ACCESS: Same as the NV–TT2 combination.

PERMITS: Same as the NV–TT2 combination, except permits for Truck-trailer, or Truck-trailer-trailer combinations are only required when the overall length is 70 feet or more.

ROUTES: Same as the NV–TT2 combination.

LEGAL CITATIONS: Same as the NV–TT2 combination.

STATE: NEW MEXICO

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: Not applicable

MAXIMUM ALLOWABLE GROSS WEIGHT: 86,400 pounds

OPERATIONAL CONDITIONS: The cargo-carrying length restriction does not apply to this combination. The length of each trailing unit is limited to 28.5 feet. This describes a two trailing unit vehicle whose operation is guaranteed by the STAA of 1982 regardless of inter-unit spacing. As long as each trailing unit is 28.5 feet long or less, cargo-carrying length is not restricted. This combination is listed as a LCV because it can exceed the 80,000-pound threshold established in the Congressional definition. The 86,400-pound gross weight limit is grandfathered for New Mexico.

WEIGHT: Single axle = 21,600 pounds. Tandem axle = 34,200 pounds. Load per inch of tire width = 600 pounds. The total gross weight with load imposed on the highway by any vehicle or combination of vehicles where the distance between the first and last axles is less than 19 feet shall not exceed that given for the respective distances in the following table:

Distance in feet between first and last axles of group	Allowed load in pounds on group of axles
4	34,320
5	35,100
6	35,880
7	36,660
8	37,440
9	38,220
10	39,000
11	39,780
12	40,560
13	41,340
14	42,120
15	42,900
16	43,680
17	44,460
18	45,240

The total gross weight with load imposed on the highway by any vehicle or combination of vehicles where the distance between the first and last axles is 19 feet or more shall not exceed that given for the respective distances in the following table:

Distance in feet between first and last axles of group	Allowed load in pounds on group of axles
19	53,100
20	54,000
21	54,900
22	55,800
23	56,700
24	57,600
25	58,500
26	59,400
27	60,300
28	61,200
29	62,100
30	63,000
31	63,900
32	64,800
33	65,700
34	66,600
35	67,500
36	68,400
37	69,300
38	70,200
39	71,100
40	72,000
41	72,900
42	73,800
43	74,700
44	75,600
45	76,500
46	77,400
47	78,300
48	79,200
49	80,100
50	81,000
51	81,900
52	82,800
53	83,700
54	84,600
55	85,500
56 and over	86,400

The distance between the centers of the axles shall be measured to the nearest even foot. When a fraction is exactly one-half the next larger whole number shall be used.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: No special requirements beyond normal Federal Motor Carrier or State regulations. The maximum length of the trailing units is 28.5 feet.

PERMIT: None Required.

ACCESS: STAA vehicles must be allowed reasonable access in accordance with 23 CFR 658.19.

ROUTES: All Interstate highways.

LEGAL CITATIONS:

66–7–409 NMSA 1978
66–7–410 NMSA 1978

STATE: NEW YORK

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 102 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 143,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: The following information pertains to tandem trailer combinations with either trailer more than 28.5 feet long but not more than 48 feet long. A nine-axle combination vehicle may not exceed a total maximum gross weight of 143,000 pounds. An eight-axle combination vehicle may not exceed a total maximum gross weight of 138,400 pounds. The maximum gross weight that may be carried upon any combination of units is limited by the maximum gross weight that can be carried upon the axles as follows. For a nine-axle combination: Drive axles—36,000 pounds, axles four/five—36,000 pounds, axles six/seven—27,000 pounds, and axles eight/nine—36,000 pounds. A minimum 12-foot axle spacing between the fifth and sixth axles is also required on the nine-axle LCV. For an eight-axle combination: Drive axles—36,000 pounds, axles four/five—36,000 pounds, sixth axle—22,400 pounds, and axles seven/eight—36,000 pounds. The eight-axle LCV has no minimum axle-spacing requirements. For gross weights in excess of 138,400 pounds the combination must include a tandem-axle dolly to meet the nine-axle requirements. Maximum permissible gross weight for B-train combination is 127,000 pounds.

When the gross weight of the two trailers in a tandem combination vary more than 20 percent, the heaviest of the two must be placed in the lead position.

For tandem trailer combinations in which neither trailing unit exceeds 28.5 feet in length the following maximum allowable weights apply: for a single axle—28,000 pounds (except that steering axles may not exceed 22,400 pounds), for a tandem axle—42,500 pounds, for a tri-axle—52,500 pounds The gross weight may not exceed 100,000 pounds or the manufacturers gross weight rating, whichever is lower.

DRIVER: For operation on highways under the jurisdiction of the New York State Thruway Authority (NYSTA), except for the full length of I–84 and that portion of I–287 from Thruway exit 8 to I–95, the driver must have a commercial driver's license with the appropriate endorsement, and hold a Tandem Trailer Driver's Permit issued by the NYSTA. In order to obtain an NYSTA driver's permit, an applicant must (1) hold a valid commercial driver's license with multiple-trailer endorsement; (2) be over 26 years old, in good health, and have at least 5 years of provable experience driving tractor-trailer combinations; and (3) meet all other application requirements with regard to driving history established by the NYSTA. Qualified drivers receive a Tandem Trailer Driver's Permit for Tandem Vehicle Operation which is valid only for the operation of the certified equipment owned by the company to which the permit is issued.

For operation on highways under the jurisdiction of the New York State DOT, cities not wholly included in one county, the full length of I–84 and that portion of I–287 from Thruway exit 8 to I–95, the driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: All vehicles must meet the requirements of applicable Federal and State statutes, rules, and regulations. Vehicles operating on highways under the jurisdiction of the NYSTA, except for the full length of I–84 and that portion of I–287 from Thruway exit 8 to I–95, must also meet the following additional requirements. The tractor manufacturer and the permittee shall certify to the NYSTA prior to the approval of the tractor that it is capable of hauling the maximum permissible gross load at a speed of not less than 20 miles per hour on all portions of the thruway system.

The brakes on any vehicle, dolly converter, or combination of vehicles shall comply with 49 CFR part 393 and, in addition, any vehicle or dolly converter shall meet the provisions of the New York State Traffic Law.

Tandem trailer operations shall be equipped, at a minimum, with emergency equipment as required by 49 CFR part 393, subpart H, as amended, tire chains from October 15 to May 1 of each year, a fire extinguisher with an aggregate rating of 20BC, and each trailer with specific lamps and reflectors.

All tractors certified by the NYSTA for use with tandem trailers will be assigned an identification number by the NYSTA which must be placed on the vehicle. The number must be at least 3 inches in height and visible to a person standing at ground level opposite the driver's position in the cab.

Axle Type. Tractors to be used for hauling 110,000 pounds or more shall be equipped with tandem rear axles, both with driving power. Tractors to be used for hauling 110,000 pounds or less may have a single drive axle. Tandem combinations using single wheel tires commonly referred to as "Super Singles" are required to use triple-axle tractors, dual-axle trailers, and dual-axle dollies.

Dollies. Every converter dolly certified on and after June 1, 1968, used to convert a semitrailer to a full trailer may have either single or tandem axles at the option of the permittee. Single-axle dollies may not utilize low profile tires. Combination vehicles with a gross weight in excess of 138,400 pounds must have a tandem-axle dolly to meet the nine-axle requirement. If the distance between two semitrailers is 10 feet or more, the dolly shall be equipped with a device or the trailers connected along the sides with suitable material to indicate they are in effect one unit. The devices or connection shall be approved by the NYSTA prior to use on a tandem trailer combination. The NYSTA tandem-trailer provisions require that converter dollies shall be coupled with one or more safety chains or cables to the frame or an extension of the frame of the motor vehicle by which it is towed. Each dolly converter must also be equipped with mud flaps. Tandem combinations using a sliding fifth wheel attached to the lead trailer, known as a "B-Train" combination, will require a separate Thruway Engineer Service approval prior to the initial tandem run. Special provisions regarding B-Trains will be reviewed at the time of the application or request for use on the Thruway.

PERMIT: For operation on highways under the jurisdiction of the New York State DOT, cities not wholly included in one county, or the following highway sections under NYSTA jurisdiction; the full length of I–84 and that portion of I–287 from Thruway exit 8 to I–95, a permit to exceed the weight limits set forth in section 385(15) of the New York State Vehicle and Traffic Law must be obtained from the State DOT, city involved, or the NYSTA. A fee is charged for the permit.

For operation on highways under the jurisdiction of the NYSTA, except for the full length of I–84 and that portion of I–287 from Thruway exit 8 to I–95, companies must file an application for a Tandem Trailer Permit with the NYSTA. Permits are issued to such companies upon meeting qualifications, including insurance, for tandem combinations over 65 feet in length. No permit fee is charged; however, Thruway tolls are charged for each use of the Thruway, and the equipment must be certified by the NYSTA annually. The annual re-certification of equipment is handled by: New York State Thruway Authority, Manager of Traffic Safety Services, P.O. Box 189, Albany, New York 12201–0189

Transportation of hazardous materials is subject to special restrictions plus 49 CFR part 397 of the Federal Motor Carrier Safety Regulations.

ACCESS: For tandem trailer combinations with either trailer more than 28.5 feet long but not more than 48 feet long, the following access is available to authorized operating routes.

I–87 (New York Thruway) Access provided at Thruway Exit 21B to or from a point 1,500 feet north of the Thruway on US 9W.

I–90 (NYSTA-Berkshire Section) access provided at:

(1) Thruway Exit B–1 to or from a point 0.8 mile north of the southern most access ramp on US 9.

(2) Thruway Exit B–3 within a 2,000-foot radius of the Thruway ramps to NY 22.

I–90 (New York Thruway) access provided at:

(1) Thruway Exit 28 within a radius of 1,500 feet of the toll booth at Fultonville, New York.

(2) Thruway Exit 32 to or from a point 0.6 mile north of the Thruway along NY 233.

(3) Thruway Exit 44 to or from a point 0.8 mile from the Thruway along NY 332 and Collett Road.

(4) Thruway Exit 52 to or from:

(a) A point 1.7 miles west and south of the Thruway via Walden Avenue and NY 240 (Harlem Road);

(b) A point 0.85 mile east and south of the Thruway via Walden Avenue and a roadway purchased by the Town of Cheektowaga from Sorrento Cheese, Inc.

(5) Thruway Exit 54 to or from a point approximately 2.5 miles east and north of the Thruway via routes NY 400 and NY 277.

(6) Thruway Exit 56 to or from a point approximately 2 miles west and south of the Thruway via NY 179 and Old Mile Strip Road.

I–190 (NYSTA—Niagara Section) access provided at:

(1) Thruway Exit N1 to or from:

(a) A point 0.8 mile west of the Thruway exit along Dingens Street.

(b) A point 0.45 mile from the Thruway exit via Dingens Street and James E. Casey Drive.

(2) Thruway Exit N5 to or from a point approximately 1.0 miles south of the Thruway via Louisiana Street and South Street.

(3) Thruway Exit N15 to or from a point 0.5 mile southeast of the Thruway via NY 325 (Sheridan Drive) and Kenmore Avenue.

(4) Thruway Exit N17 to or from:

(a) A point 1.5 miles north of the Thruway on NY 266 (River Road).

(b) A point approximately 0.4 mile south of the Thruway on NY 266 (River Road).

Tandem trailer combinations in which neither trailing unit exceeds 28.5 feet in length are restricted to the Designated Qualifying and Access Highway System.

ROUTES: For tandem trailer combinations with either trailer more than 28.5 feet long, but not more than 48 feet long, the following routes are available:

	From	To
I–87 (New York Thruway).	Bronx/Westchester County Line.	Thruway Exit 24.
I–90 (New York Thruway).	Pennsylvania.	Thruway Exit 24.
I–90 (New York Thruway Berkshire Section).	Thruway Exit B–1.	Massachusetts.
I–190 (New York Thruway Niagara Section).	Thruway Exit 53.	Int'l Border with Canada.
NY 912M (Berkshire Connection of the New York Thruway).	Thruway Exit 21A.	Thruway Exit B–1

Tandem trailer combinations in which neither trailing unit exceeds 28.5 feet in length may operate on all NN Highways.

LEGAL CITATIONS:

Public Authorities Law—Title 9, sec. 350, et. seq. (section 361 is most relevant)

New York State Thruway Authority Rules & Regulations, sections 100.6, 100.8, and 103.13

New York State Vehicle & Traffic Law, sections 385 and 1630

STATE: NORTH DAKOTA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 103 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 105,500 pounds

OPERATIONAL CONDITIONS:

WEIGHT: The Gross Vehicle Weight (GVW) of any vehicle or combination of vehicles is determined by the Federal Bridge Formula, including the exception for two sets of tandems spaced 36 feet apart.

No single axle shall carry a gross weight in excess of 20,000 pounds. Axles spaced 40 inches or less apart are considered one axle. Axles spaced 8 feet or more apart are considered as individual axles. The gross weight of two individual axles may be restricted by the weight formula. Spacing between axles shall be measured from axle center to axle center.

Axles spaced over 40 inches but less than 8 feet apart shall not carry a gross weight in excess of 17,000 pounds per axle. The gross weight of three or more axles in a grouping is determined by the measurement between the extreme axle centers. During the spring breakup season or on otherwise posted highways, reductions in the above axle weights may be specified.

The weight in pounds on any one wheel shall not exceed one-half the allowable axle weight. Dual tires are considered one wheel.

The weight per inch of tire width shall not exceed 550 pounds. The width of tire shall be the manufacturer's rating.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: The cargo length of a two trailing unit combination may not exceed 100 feet (when the power unit is a truck tractor) or 103 feet (when the power unit is a truck) when traveling on the NN or local highways designated by local authorities.

All hitches must be of a load-bearing capacity capable of bearing the weight of the towed vehicles. The towing vehicle must have a hitch commonly described as a fifth wheel or gooseneck design, or one that is attached to the frame.

The hitch on the rear of the vehicle connected to the towing vehicle must be attached to the frame of the towed vehicle. All hitches, other than a fifth wheel or gooseneck, must be of a ball and socket type with a locking device or a pintle hook.

The drawn vehicles shall be equipped with brakes and safety chains adequate to control the movement of, and to stop and hold, such vehicles. When the drawn vehicle is of a fifth wheel or gooseneck design, safety chains are not required.

In any truck or truck tractor and two trailer combination, the lighter trailer must always be operated as the rear trailer, except when the gross weight differential with the other trailer does not exceed 5,000 pounds.

The power unit shall have adequate power and traction to maintain a minimum speed of 15 miles per hour on all grades.

PERMIT: No permits are required for GVW of 80,000 pounds or less. Single-trip permits are required for GVW exceeding 80,000 pounds. Weather restrictions (37–06–04–06, NDAC), weight distribution on trailers (37–06–04, NDAC), and signing requirements (37–06–04–05, NDAC) are applicable.

Movements of LCV's are prohibited when:

1. Road surfaces, due to ice, snow, slush, or frost present a slippery condition which may be hazardous to the operation of the unit or to other highway users;

2. Wind or other conditions may cause the unit or any part thereof to swerve, whip, sway, or fail to follow substantially in the path of the towing vehicle; or

3. Visibility is reduced due to snow, ice, sleet, fog, mist, rain, dust, or smoke.

The North Dakota Highway Patrol may restrict or prohibit operations during periods when in its judgment traffic, weather, or other safety conditions make travel unsafe.

The last trailer in any combination must have a "LONG LOAD" sign mounted on the rear. It must be a minimum of 12 inches in height and 60 inches in length. The lettering must be 8 inches in height with 1-inch brush strokes. The letters must be black on a yellow background.

Legal width—8 feet 6 inches on all highways.

Legal height—13 feet 6 inches.

ACCESS: Access for vehicles with cargo-carrying length of 68 feet or more is 10 miles off the NN. Vehicles with a cargo-carrying length less than 68 feet may travel on all highways in North Dakota.

ROUTES: All NN routes.

LEGAL CITATIONS: North Dakota Century Code, section 38–12–04; North Dakota Administrative Code, article 37–06.

STATE: NORTH DAKOTA

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 100 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 105,500 pounds

OPERATIONAL CONDITIONS:

WEIGHT, DRIVER, PERMIT, and ACCESS: Same as the ND–TT2 combination.

VEHICLE: Same as the ND–TT2 combination, and in addition, in any combination with three trailing units the lightest trailer must always be operated as the rear trailer. For the first two trailing units the lighter trailer must always be second except when the gross weight differential with the other trailer does not exceed 5,000 pounds.

ROUTES: Same as the ND–TT2 combination.

LEGAL CITATIONS: Same as the ND–TT2 combination.

STATE: NORTH DAKOTA

COMBINATION: Truck-trailer, and Truck-trailer-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 103 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, VEHICLE, PERMIT, and ACCESS: Same as the ND–TT2 combination.

ROUTES: Same as the ND–TT2 combination.

LEGAL CITATIONS: Same as the ND–TT2 combination.

STATE: OHIO

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 102 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 127,400 pounds

OPERATIONAL CONDITIONS: Long double combination vehicles are only allowed on that portion of Ohio's Interstate System which is under the jurisdiction of the Ohio Turnpike Commission (OTC). These same vehicles are not allowed on any portion of the Interstate System under the jurisdiction of the Ohio DOT.

WEIGHT: The OTC has established the following provisions for operation:

Maximum Weight: Single axle = 21,000 pounds; tandem axle spaced 4 feet or less apart = 24,000 pounds; tandem axle spaced more than 4 feet but less than 8 feet apart = 34,000 pounds; gross weight for doubles 90 feet or less in length = 90,000 pounds; gross weight for doubles over 90 feet but less than 112 feet in length = 127,400 pounds.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement, be over 26 years of age, in good health, and shall have not less than 5 years of experience driving tractor-trailer or tractor-short double trailer motor vehicles. Such driving experience shall include experience throughout the four seasons. Drivers must comply with the applicable current requirements of the Federal Motor Carrier Safety Regulations, Federal Hazardous Materials Regulations, and the Economic and Safety regulations of the Ohio Public Utility Commission.

VEHICLE: Vehicles being operated under permit at night must be equipped with all lights and reflectors required by the Ohio Public Utilities Commission and the Federal Motor Carrier Safety Regulations, except that the trailer shall be equipped with two red tail lights and two red or amber stop lights mounted with one set on each side. Trailer and semitrailer length for doubles cannot exceed 48 feet, and mixed trailer length combinations are not allowed for combination vehicles over 90 feet in length. Combined cargo-carrying length, including the trailer hitch, cannot be less than 80 feet or more than 102 feet. The number of axles on a double shall be a minimum of five and a maximum of nine. A tractor used in the operation of a double shall be capable of hauling the maximum weight at a speed of not less than 40 miles per hour on all portions of the Turnpike.

PERMIT: A special permit is required if the vehicle is over 102 inches wide, 14 feet high, or 65 feet in length including overhang. Tractor-semitrailer-semitrailer combinations require a permit if over 75 feet in length, excluding an allowed 3-foot front overhang and a 4-foot rear overhang. For vehicles over 120 inches wide, 14 feet high, or 80 feet long or if any unit of the combination vehicle is over 60 feet in length, travel is restricted to daylight hours Monday through noon Saturday, except holidays and the day before and after holidays. Operators are restricted to daylight driving if the load overhang is more than 4 feet. A "Long Double Trailer Permit" issued by the OTC is required for operation of doubles in excess of 90 feet in length. Towing units and coupling devices shall have

sufficient structural strength to ensure safe operation. Vehicles and coupling devices shall be so designed, constructed, and installed in a double as to ensure that any towed vehicles when traveling on a level, smooth paved surface will follow in the path of the towing vehicle without shifting or swerving more than 3 inches to either side of the path of the towing vehicle when the latter is moving in a straight line. Vehicle coupling devices and brakes shall meet the requirements of the Ohio Public Utilities Commission and Federal Motor Carrier Safety Regulations. The distance between the rearmost axle of a semitrailer and the front axle of the next semitrailer in a coupled double unit shall not exceed 12 feet 6 inches. In no event shall the distance between the semitrailers coupled in a double exceed 9 feet. Double and triple trailer combinations must be equipped with adequate, properly maintained spray-suppressant mud flaps on all axles except the steering axle. In the event that the gross weights of the trailers vary by more than 20 percent, they shall be coupled according to their gross weights with the heavier trailer forward. A minimum distance of 500 feet shall be maintained between double units and/or triple units except when overtaking and passing another vehicle. A double shall remain in the right-hand, outside lane except when passing or when emergency or work-zone conditions exist. When, in the opinion of the OTC, the weather conditions are such that operation of a double is inadvisable, the OTC will notify the permittee that travel is prohibited for a certain period of time.

Class A and B explosives; Class A poisons; and Class 1, 2, and 3 radioactive material cannot be transported in double trailer combinations. Other hazardous materials may be transported in one trailer of a double. The hazardous materials should be placed in the front trailer unless doing so will result in the second trailer weighing more than the first trailer.

ACCESS: Tandem trailer units shall not leave the Turnpike right-of-way and shall be assembled and disassembled only in designated areas located at Exits 4, 7, 10, 11, 13, 14, and 16.

ROUTES

	From	To
I–76 Ohio Turnpike.	Turnpike Exit 15.	Pennsylvania.
I–80 Ohio Turnpike.	Turnpike Exit 8A.	Turnpike Exit 15.
I–80/90 Ohio Turnpike.	Indiana	Turnpike Exit 8A.

LEGAL CITATIONS: Statutory authority, as contained in Chapter 5537 of the Ohio Revised Code, to regulate the dimensions and weights of vehicles using the Turnpike.

STATE: OHIO

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 115,000 pounds

OPERATIONAL CONDITIONS: Same as the OH–TT2 combination, except as follows:

WEIGHT: Gross weight for triples with an overall length greater than 90 feet but not over 105 feet in length = 115,000 pounds.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement, be over 26 years of age, in good health, and shall have not less than 5 years of experience driving double trailer combination units. Such driving experience shall include experience throughout the four seasons. Each driver must have special training on triple combinations to be provided by the Permittee.

VEHICLE: Triple trailer combination vehicles are allowed to operate on the Turnpike provided the combination vehicle is at least 90 feet long but less than 105 feet long and each trailer is not more than 28.5 feet in length. The minimum number of axles on the triple shall be seven and the maximum is nine.

PERMIT: A triple trailer permit to operate on the Turnpike is required for triple trailer combinations in excess of 90 feet in length. There is an annual fee for the permit. Class A and B explosives; Class A poisons; and Class 1, 2, and 3 radioactive material cannot be transported in triple trailer combinations. Other hazardous materials may be transported in two trailers of a triple. The hazardous materials should be placed in the front two trailers unless doing so will result in the third trailer weighing more than either one of the lead trailers.

ACCESS: With two exceptions, triple trailer units shall not leave the Turnpike right-of-way and shall be assembled and disassembled only in designated areas located at Exits 4, 7, 10, 11, 13, 14, and 16. The first exception is that triple trailer combinations are allowed on State Route 21 from I–80 Exit 11 (Ohio Turnpike) to a terminal located approximately 500 feet to the north in the town of Richfield. The second exception is for a segment of State Route 7 from Ohio Turnpike Exit 16 to 1 mile south.

ROUTES

	From	To
I–76 Ohio Turnpike.	Turnpike Exit 15.	Pennsylvania.
I–80 Ohio Turnpike.	Turnpike Exit 8A.	Turnpike Exit 15.
I–80/90 Ohio Turnpike.	Indiana	Turnpike Exit 8A.
OH–7	Turnpike Exit 16.	Extending 1 mile south.

LEGAL CITATIONS: Same as the OH–TT2 combination.

STATE: OKLAHOMA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 110 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 90,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Single axle = 20,000 pounds; tandem axle = 34,000 pounds; gross vehicle weight = 90,000 pounds. The total weight on any group of two or more consecutive axles shall not exceed the amounts shown in Table 1.

TABLE 1.—OKLAHOMA ALLOWABLE AXLE GROUP WEIGHT

Axle Spacing (ft)	Maximum load (lbs) by axle group				
	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles
4	34,000	.....	.....	.....	.....
5	34,000	.....	.....	.....	.....
6	34,000	.....	.....	.....	.....
7	34,000	.....	.....	.....	.....
8	34,000	42,000	.....	.....	.....
9	39,000	42,500	.....	.....	.....
10	40,000	43,500	.....	.....	.....

TABLE 1.—OKLAHOMA ALLOWABLE AXLE GROUP WEIGHT—Continued

Axle Spacing (ft)	Maximum load (lbs) by axle group				
	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles
11	.....	44,000	.....	.....	.....
12	.....	45,000	50,000	.....	.....
13	.....	45,500	50,500	.....	.....
14	.....	46,500	51,500	.....	.....
15	.....	47,000	52,000	.....	.....
16	.....	48,000	52,500	58,000	.....
17	.....	48,500	53,500	58,500	.....
18	.....	49,500	54,000	59,000	.....
19	.....	50,000	54,500	60,000	.....
20	.....	51,000	55,500	60,500	66,000
21	.....	51,500	56,000	61,000	66,500
22	.....	52,500	56,500	61,500	67,000
23	.....	53,000	57,500	62,500	68,000
24	.....	54,000	58,000	63,000	68,500
25	.....	54,500	58,500	63,500	69,000
26	.....	56,000	59,500	64,000	69,500
27	.....	57,500	60,000	65,000	70,000
28	.....	59,000	60,500	65,500	71,000
29	.....	60,500	61,500	66,000	71,500
30	.....	62,000	62,000	66,500	72,000
31	.....	63,500	63,500	67,000	72,500
32	.....	64,000	64,000	68,000	73,500
33	.....	.....	64,500	68,500	74,000
34	.....	.....	65,000	69,000	74,500
35	.....	.....	66,000	70,000	75,000
36	.....	.....	68,000	70,500	75,500
37	.....	.....	68,000	71,000	76,000
38	.....	.....	69,000	72,000	77,000
39	.....	.....	70,000	72,500	77,500
40	.....	.....	71,000	73,000	78,000
41	.....	.....	72,000	73,500	78,500
42	.....	.....	73,000	74,000	79,000
43	.....	.....	73,280	75,000	80,000
44	.....	.....	73,280	75,500	80,500
45	.....	.....	73,280	76,000	81,000
46	.....	.....	73,280	76,500	81,500
47	.....	.....	73,500	77,500	82,000
48	.....	.....	74,000	78,000	82,000
49	.....	.....	74,500	78,500	83,500
50	.....	.....	75,500	79,000	84,000
51	.....	.....	76,000	80,000	84,500
52	.....	.....	76,500	80,500	85,000
53	.....	.....	77,500	81,000	86,000
54	.....	.....	78,000	81,500	86,500
55	.....	.....	78,500	82,500	87,000
56	.....	.....	79,500	83,000	87,500
57	.....	.....	80,000	83,500	88,000
58	.....	.....	.....	84,000	89,000
59	.....	.....	.....	85,000	89,500
60	.....	.....	.....	85,500	90,000

DRIVER: All drivers must have a commercial driver's license with the appropriate endorsement and must meet the requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 390–397). State requirements more stringent and not in conflict with Federal requirements take precedence.

VEHICLE: All vehicles must meet the requirements of applicable Federal and State statutes, rules, and regulations. Vehicle and load shall not exceed 102 inches in width on the Interstate System and four-lane divided highways. Maximum semitrailer length is 59.5 feet.

Multiple trailer combinations must be stable at all times during braking and normal operation. A multiple trailer combination when traveling on a level, smooth paved surface must follow in the path of the towing vehicle without shifting or swerving more than 3 inches to either side when the towing vehicle is moving in a straight line. Heavier trailers are to be placed to the front in multiple trailer combinations.

PERMIT: An annual special authorization permit is required for tandem trailer vehicles operating on the Interstate System having a gross weight of more than 80,000 pounds. A fee is charged for the special authorization permit.

ACCESS: Access is allowed from legally available routes (listed below) to service facilities and terminals within a 5-mile radius.

	From	To
I–40 Bus	I–40 Exit 119	US 81 El Reno.
US 60	I–35 Exit 214	US 177 Ponca City.
US 62	US 69 Muskogee.	OK 80 Ft. Gibson.

	From	To
US 62	I–44 Exit 39A Lawton.	OK 115 Cache.
US 64	I–35 Exit 186 Perry.	US 77 Perry.
US 64	I–40 Exit 325 Roland.	Arkansas.
US 70	OK 76 Wilson	I–35 Exits 31A-B Ardmore.
US 77	I–35 Exit 141 Edmond.	3.5 mi. W of I–35.
US 81	OK 51 Hennessey.	11.5 mi. N of US 412.
US 169	OK 51 Tulsa	OK 20 Collinsville.
US 270	OK 9 Tecumseh.	I–40 Exit 181.
US 412	OK 58 Ringwood.	I–35 Exits 194A-B.
US 412	US 69 Chouteau.	OK 412 B.
OK 3	I–44 Exit 123	Oklahoma/ Canadian County Line.
OK 7	I–44 Exits 36A-B.	OK 65 Pumpkin Center.
OK 7	I–35 Exit 55	US 177 Sulphur.
OK 7	South intersection US 81 Duncan.	7.5 mi. E of US 81.
OK 9	I–35 Exit 108A.	US 77 Norman.
OK 11	I–35 Exit 222	US 177 Blackwell.
OK 33	US 77 Guthrie.	I–35 Exit 157 Guthrie.
OK 51	I–35 Exit 174	US 177 Stillwater.
OK 165	US 64/Bus. US 64 Muskogee.	Muskogee Tpk.

ROUTES: Doubles with 29-foot trailers may use any route on the NN. Doubles which include a grandfathered 59.5-foot semitrailer or trailer are limited to Interstate and four-lane divided highways as shown below:

	From	To
I–35	Texas	Kansas.
I–40	Texas	Arkansas.
I–44	Texas	Missouri.
I–235	Entire length in Oklahoma City.	
I–240	Entire length in Oklahoma City.	
I–244	Entire length in Tulsa..	
I–444	Entire length in Tulsa..	
US 64	Cimarron Turnpike.	I–244/Tulsa.
US 69	Texas	I–44 (Will Rogers Tpk.) Exit 282.
US 75	I–40 Exits 240A-B Henryetta.	I–244 Exit 2 Tulsa.
US 75	I–44 Exits 6A-B Tulsa.	Dewey.
US 81	I–44 (Bailey Tpk.) Exit 80.	South Intersection OK 7 Duncan.
US 270	Indian Nation Tpk. Exit 4.	US 69 McAlester.
US 271	Texas	Indian Nation Tpk. Hugo.
US 412	I–44 Exit 241 Catoosa.	US 69.
OK 3A	OK 3 Oklahoma City.	I–44 Exit 125B Oklahoma City.
OK 11 Tulsa	US 75 Tulsa	I–244 Exit 12B.
OK 51	I–44 Exit 231 Tulsa.	Muskogee Tpk. Broken Arrow.
OK 165	Connecting two sections of the Muskogee Turnpike at Muskogee.	
Cimarron Tpk	I–35 Exit 194	US 64.
Cimarron Tpk. Conn.	US 177 Stillwater.	Cimarron Tpk.
Indian Nation Turnpike.	US 70/271 Hugo.	I–40 Exits 240A–B Henryetta.
Muskogee Tpk.	OK 51 Broken Arrow.	US 62/OK 165 Muskogee.
Muskogee Tpk.	OK 165 Muskogee.	I–40 Exit 286 Webber's Falls.

LEGAL CITATIONS:

Title 47 1981 O.S. 14–101
Title 47 1990 O.S. 14–103, –109, and –116
DPS Size and Weight Permit Manual 595:30.

STATE: OKLAHOMA

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 90,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT and ACCESS: Same as the OK–TT2 combination.

DRIVER: Same as the OK–TT2 combination except that in addition, a driver of a three trailing unit combination must have had at least 2 years of experience driving tractor-trailer combinations.

VEHICLE: All vehicles must meet the requirements of applicable Federal and State statutes, rules, and regulations. Vehicle and load shall not exceed 102 inches in width on the Interstate System and other four-lane divided highways. Maximum unit length of triple trailers is 29 feet. Truck tractors pulling triple trailers must have sufficient horsepower to maintain a minimum speed of 40 miles per hour on the level and 20 miles per hour on grades under normal operation conditions. Heavy-duty fifth wheels, pick-up plates equal in strength to the fifth wheel, solid kingpins, no-slack hitch connections, mud flaps and splash guards, and full-width axles are required on triple trailer combinations. All braking systems must comply with State and Federal requirements.

Multiple trailer combinations must be stable at all times during braking and normal operation. A multiple trailer combination when traveling on a level, smooth paved surface must follow in the path of the towing vehicle without shifting or swerving more than 3 inches to either side when the towing vehicle is moving in a straight line. Heavier trailers are to be placed to the front in multiple trailer combinations.

PERMIT: An annual special authorization permit is required for triple trailer combination vehicles operating on the Interstate System having a gross weight of more than 80,000 pounds. A special vehicle combination permit is required for the operation of triple trailers on the Interstate System and on other four-lane divided primary highways. The permit holder must certify that the driver of a triple trailer combination is qualified. Operators of triples must maintain a 500-foot following distance and must drive in the right lane except when passing or in an emergency.

Speed shall be reduced and extreme caution exercised when operating triples under hazardous conditions such as those caused by snow, wind, ice, sleet, fog, mist, rain, dust, or smoke. When conditions become sufficiently dangerous as determined by the company or driver, operations shall be discontinued and shall not resume until the vehicle can be safely operated. The State may restrict or prohibit operations during periods when, in the State's judgment, traffic, weather, or other safety conditions make such operations unsafe or inadvisable.

Class A and B explosives; Class A poisons; and Class 1, 2, and 3 radioactive material or any other material deemed to be unduly hazardous by the U.S. DOT cannot be transported in triple trailer combinations.

Permit movements are limited to travel from one-half hour before sunrise to one-half hour after sunset, 7 days a week except on specified holidays, beginning at noon the day preceding the

holiday. Specified holidays are: New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day.

A fee is charged for both the special authorization and triple trailer combination permits.

ROUTES: Same as the OK–TT2 combination.

LEGAL CITATIONS:

Title 47 1981 O.S. 14–101

Title 47 1990 O.S. 14–109, –116, –121

OPS Size and Weight Permit Manual 595:30.

STATE: OREGON

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 68 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 105,500 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Maximum allowable weights are as follows: single wheel—10,000 pounds, single axle—20,000 pounds, tandem axle—34,000 pounds Gross vehicle weights over 80,000 pounds must follow the Oregon extended weight table, with a maximum of 105,500 pounds. Weight is also limited to 600 pounds per inch of tire width.

EXTENDED WEIGHT TABLE

Gross weights over 80,000 pounds are authorized only when operating under the authority of a Special Transportation Permit.

MAXIMUM ALLOWABLE WEIGHTS

1. The maximum allowable weights for single axles and tandem axles shall not exceed those specified under ORS 818.010.

2. The maximum allowable weight for groups of axles spaced at 46 feet or less apart shall not exceed those specified under ORS 818.010.

3. The maximum weights for groups of axles spaced at 47 feet or more and the gross combined weight for any combination of vehicles shall not exceed those set forth in the following table:

Axle spacing in feet	Maximum gross weight in pounds on			
	5 Axles	6 Axles	7 Axles	8 or More axles
47	77,500	81,000	81,000	81,000
48	78,000	82,000	82,000	82,000
49	78,500	83,000	83,000	83,000
50	79,000	84,000	84,000	84,000
51	80,000	84,500	85,000	85,000
52	80,500	85,000	86,000	86,000
53	81,000	86,000	87,000	87,000
54	81,500	86,500	88,000	91,000
55	82,500	87,000	89,000	92,000
56	83,000	87,500	90,000	93,000
57	83,500	88,000	91,000	94,000
58	84,000	89,000	92,000	95,000
59	85,000	89,500	93,000	96,000
60	85,500	90,000	94,000	97,000
61	86,000	90,500	95,000	98,000
62	87,000	91,000	96,000	99,000
63	87,500	92,000	97,000	100,000
64	88,000	92,500	97,500	101,000
65	88,500	93,000	98,000	102,000
66	89,000	93,500	98,500	103,000
67	90,000	94,000	99,000	104,000
68	90,000	95,000	99,500	105,000
69	90,000	95,500	100,000	105,500
70	90,000	96,000	101,000	105,500
71	90,000	96,500	101,500	105,000
72	90,000	96,500	102,000	105,500
73	90,000	96,500	102,500	105,500
74	90,000	96,500	103,000	105,500
75	90,000	96,500	104,000	105,500
76	90,000	96,500	104,500	105,500
77	90,000	96,500	105,000	105,500
78	90,000	96,500	105,500	105,500

Distance measured to nearest foot; when exactly one-half foot, take next larger number.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: For a combination which includes a truck tractor and two trailing units, the lead trailing unit (semitrailer) may be up to 40 feet long. The second trailing unit may be up to 35 feet long. However, the primary control is the total cargo-carrying distance which has a maximum length of 68 feet. Any towed vehicles in a combination must be equipped with safety chains or cables to prevent the towbar from dropping to the ground in the event the coupling fails. The chains or cables must have sufficient strength to control the towed vehicle in the event the coupling device fails and must be attached with no more slack than necessary to permit proper turning. However, this requirement does not apply to a fifth-wheel coupling if the upper and lower halves of the fifth wheel must be manually released before they can be separated.

PERMIT: A permit is required for operation if the gross combination

weight exceeds 80,000 pounds. A fee is charged. Permitted movements must have the lighter trailing unit placed to the rear, and use splash and spray devices when operating in rainy weather. Movement is not allowed when road surfaces are hazardous due to ice or snow, or when other atmospheric conditions make travel unsafe.

ACCESS: As allowed by the Oregon DOT.

ROUTES: All NN routes.

LEGAL CITATIONS: ORS 810.010, ORS 810.030 through 810.060, and ORS 818.010 through 818.235.

STATE: OREGON

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 96 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 105,500 pounds

OPERATIONAL CONDITIONS:

WEIGHT, DRIVER, PERMIT, and ACCESS: Same as the OR–TT2 combination.

VEHICLE: Trailing units must be of equal length. The overall length of the combination is limited to 105 feet. Any towed vehicles in a combination must be equipped with safety chains or cables to prevent the towbar from dropping to the ground in the event the coupling fails. The chains or cables must have sufficient strength to control the towed vehicle in the event the coupling device fails and must be attached with no more slack than necessary to permit proper turning. However, this requirement does not apply to a fifth-wheel coupling if the upper and lower halves of the fifth wheel must be manually released before they can be separated.

ROUTES: The following NN routes are also open to truck tractor and three trailing unit combinations.

	From	To
I–5	California	Washington.
I–105	Entire length in the Eugene-Springfield area.	
I–205	Jct. I–5	Washington.
I–405	Entire length in Portland.	
I–82	Washington	Jct. I–84.
I–84	Jct. I–5	Idaho.
US 20	Jct OR 22/OR 126.	US 26 Vale Santiam Junction.
US 20	East Jct OR 99E Albany.	I–5 Exit 233.
US 26	US 101 Cannon Beach Junction.	OR 126 Prineville.
US 20/26	Vale	Idaho.
US 30	US 101 Astoria.	I–405 Exit 3 Portland.
US 95	Nevada	Idaho.
SPUR US 95	OR 201	Idaho.
US 97	California	Washington.
US 101	US 30 Astoria.	US 26 Cannon Beach Jct.
US 101	OR 18 Otis	US 20 Newport.
US 101	Bandon	North city limit Coos Bay.
US 197	I–84 Exit 87 The Dalles.	Washington.
US 395	I–82 Exit 1 Umatilla.	I–84 Exit 188 Stanfield.
US 395	US 26 John Day.	OR 140 Lakeview.
US 730	I–84 Exit 168	Washington.
OR 6	US 101 Tillamook.	US 26 near Banks.
OR 8	OR 47 Forest Grove.	OR 217 Beaverton.
OR 11	Washington	Mission Cutoff near Pendleton.
OR 18	US 101 Otis	OR 99W Dayton.
OR 19	I–84 Exit 137	South 2.5 miles.
OR 22	OR 18 near Willamena.	OR 99E Salem.
OR 22	I–5 Exit 253	Jct US 20/OR 126 Santiam Jct.
OR 31	US 97 La Pine.	US 395 Valley Falls.
OR 34	Jct US 20/OR 99W Corvallis.	I–5 Exit 228.
OR 35	I–84 Exit 64	Mt. Hood Hood River.
OR 39	OR 140 East of Klamath Falls.	California.
OR 58	I–5 Exit 188 Goshen.	US 97 near Chemult.
OR 62	OR 99 Medford.	OR 140 White City.
OR 78	Jct US 20/US 395 Burns.	US 95 Burns Junction.
OR 99	I–5 Exit 58 Grants Pass.	I–5 Exit 48 Rogue River.
OR 99	I–5 Exit 192 Eugene.	Jct OR 99E/OR 99W Junction City.
OR 99E	I–5 Exit 307 Portland.	I–205 Exit 9 Oregon City.
OR 99E	I–5 Exit 233 Albany.	Tangent.
OR 99E	OR 228 Halsey.	Harrisburg.
OR 99W	Jct US 20/OR 34 Corvallis.	I–5 Exit 294 Portland.
OR 126	US 20 Sisters	US 26 Prineville.
OR 138	I–5 Exit 136 Sutherlin.	East 2 miles.
OR 140	OR 62 White City.	Jct US 97/OR 66 Klamath Falls.
OR 201	Jct US 20/US 26.	SPUR US 95 Cairo Junction.
OR 207	I–84 Exit 182	OR 74 Lexington.
OR 207/OR 74	Jct OR 207/OR 74 Lexington.	Jct OR 207/OR 74/OR 206 Heppner.
OR 212	I–205 Exit 12	US 26 Boring.
OR 214	I–5 Exit 271 Woodburn.	OR 99E Woodburn.
OR 217	I–5 Exit 292 Tigard.	US 26 Beaverton.
OR 224	OR 99E Milwaukie.	I–205 Exit 13.

LEGAL CITATIONS: Same as the OR–TT2 combination.

STATE: SOUTH DAKOTA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF CARGO-CARRYING UNITS: 100 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 129,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: For all combinations, the maximum gross weight on two or more consecutive axles is limited by the Federal Bridge Formula but cannot exceed 129,000 pounds. The weight on single axles or tandem axles spaced 40 inches or less apart may not exceed 20,000 pounds. Tandem axles spaced more than 40 inches but 96 inches or less may not exceed 34,000 pounds. Two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each, provided the overall distance between the first and last axles of the tandems is 36 feet or more. The weight on the steering axle may not exceed 600 pounds per inch of tire width.

For combinations with a cargo-carrying length greater than 81.5 feet the following additional regulations also apply. The weight on all axles (other than the steering axle) may not exceed 500 pounds per inch of tire width. Lift axles and belly axles are not considered load-carrying axles and will not count

when determining allowable vehicle weight.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: For all combinations, a semitrailer or trailer may neither be longer than nor weigh 3,000 pounds more than the trailer located immediately in front of it. Towbars longer than 19 feet must be flagged during daylight hours and lighted at night.

For combinations with a cargo-carrying length of 81.5 feet or less, neither trailer may exceed 45 feet, including load overhang. Vehicles may be 12 feet wide when hauling baled feed during daylight hours.

For combinations with a cargo-carrying length over 81.5 feet long, neither trailer may exceed 48 feet, including load overhang. Loading the rear of the trailer heavier than the front is not allowed. All axles except the steering axle require dual tires. Axles spaced 8 feet or less apart must weigh within 500 pounds of each other. The trailer hitch offset may not exceed 6 feet. The maximum effective rear trailer overhang may not exceed 35 percent of the trailer's wheelbase. The power unit must have sufficient power to maintain 40 miles per hour. A "LONG LOAD" sign measuring 18 inches high by 7 feet long with black on yellow lettering 10 inches high is required on the rear. Offtracking is limited to 8.75 feet for a turning radius of 161 feet.

Offtracking Formula = $61-(161^2-L_1^2+L_2^2+L_3^2-L_4^2-L_5^2+L_6^2-L_7^2-L_8^2)^{1/2}$.

Note: L_1 through L_8 are measurements between points of articulation or vehicle pivot points. Squared dimensions to stinger steer points of articulation are negative. For two trailing unit combinations where at least one trailer is 45 feet long or longer, all the dimensions used to calculate offtracking must be written in the "Permit Restriction" area of the permit along with the offtracking value derived from the calculation.

PERMIT: For combinations with a cargo-carrying length of 81.5 feet or less, a single-trip permit is required for movement on the Interstate System if the gross vehicle weight exceeds 80,000 pounds. An annual or single-trip permit is required for hauling baled feed over 102 inches wide.

For combinations with a cargo-carrying length greater than 81.5 feet, a single-trip permit is required for all movements. Operations must be discontinued when roads are slippery due to moisture, visibility must be good, and wind conditions must not cause trailer whip or sway.

For all combinations, a fee is charged for any permit.

ACCESS: For combinations with a cargo-carrying length of 81.5 feet or less, access is Statewide off the NN unless restricted by the South Dakota DOT.

For combinations with a cargo-carrying length greater than 81.5 feet, access to operating routes must be approved by the South Dakota DOT.

ROUTES: Combinations with a cargo-carrying length of 81.5 feet or less may use all NN routes. Combinations with a cargo-carrying length over 81.5 feet, are restricted to the Interstate System and:

	From	To
US 14	W. Jct. US 14 Bypass and US 14 Brookings	So. Jct. US 14 and US 281.
Bypass US 14	I–29 Exit 133 Brookings	W. Jct. US 14 Bypass and US 14 Brookings
US 85	I–90 Exit 10 Spearfish.	North Dakota.
US 281	I–90 Exit 310.	So. Jct. US 14 and US 281
US 281	8th Ave. Aberdeen.	North Dakota
SD 50	Burleigh Street Yankton	I–29 Exit 26

LEGAL CITATIONS: SDCL 32–22–8.1, –38, –39, –41, –42, and –52; and Administrative Rules 70:03:01:37, :47, :48, and :60 through :70.

STATE: SOUTH DAKOTA

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF CARGO-CARRYING UNITS: 100 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 129,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT, DRIVER, PERMIT, and ACCESS: Same as the SD–TT2 combination.

VEHICLE: Same as the SD–TT2 combination, except trailer lengths are limited to 28.5 feet, including load overhang, and the overall length cannot exceed 110 feet, including load overhang.

ROUTES: Same as the SD–TT2 combination with a cargo-carrying length over 81.5 feet.

LEGAL CITATIONS: SDCL 32–22–14.14, –38, –39, –42, and –52; and Administrative Rules 70:03:01:60 through :70

STATE: SOUTH DAKOTA

COMBINATION: Truck-Trailer

LENGTH OF CARGO-CARRYING UNITS: 73 feet

OPERATIONAL CONDITIONS

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, and PERMIT: Same as the SD–TT2 combination.

VEHICLE: Same as the SD–TT2 combination except that in addition, the overall length including load overhang is limited to 80 feet. Trailer length is not limited.

ACCESS: Same as the access provisions for the SD–TT2 combination with a cargo-carrying length of 81.5 feet or less.

ROUTES: Same as the route provisions for the SD–TT2 combination with a cargo-carrying length of 81.5 feet or less.

LEGAL CITATIONS: SDCL 32–22–8.1, –38, –39, –41, –42, and –52; and Administrative Rules 70:03:01:37, :47, and :48.

STATE: SOUTH DAKOTA

COMBINATION: Truck-Trailer

LENGTH OF CARGO-CARRYING UNITS: 78 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight

DRIVER, and PERMIT: Same as the SD–TT2 combination.

VEHICLE: Same as the SD–TT2 combination with a cargo-carrying length over 81.5 feet, except that in addition, the overall length is limited to 85 feet

ACCESS: Same as the access provisions for the SD–TT2 combination with a cargo-carrying length greater than 81.5 feet.

ROUTES: Same as the route provisions for the SD–TT2 combination with a cargo-carrying length greater than 81.5 feet.

LEGAL CITATIONS: SDCL 32–22–38, –39, –42, and –52; and Administrative Rules 70:03:01:60 through :70.

STATE: UTAH

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 129,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Weight limits are as follows:
Single axle: 20,000 pounds
Tandem axle: 34,000 pounds
Gross weight: 129,000 pounds
Vehicles must comply with the Federal Bridge Formula

Tire loading on vehicles requiring an overweight or oversize permit shall not exceed 500 pounds per inch of tire width for tires 11 inches wide and greater, and 450 pounds per inch of tire width for tires less than 11 inches wide as designated by the tire manufacturer on the side wall of the tire. Tire loading on vehicles not requiring an overweight or oversize permit shall not exceed 600 pounds per inch of tire width as designated by the tire manufacturer on the sidewall.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement. Carriers must certify that their drivers have a safe driving record and have passed a road test administered by a qualified safety supervisor.

VEHICLE: While in transit, no trailer shall be positioned ahead of another trailer which carries an appreciably heavier load. An empty trailer shall not precede a loaded trailer. Vehicles shall be powered to operate on level terrain at speeds compatible with other traffic. They must be able to maintain a minimum speed of 20 miles per hour under normal operating conditions on any grade of 5 percent or less over which the combination is operated and be able to resume a speed of 20 miles per hour after stopping on any such grade, except in extreme weather conditions.

Oversize signs are required on vehicles in excess of 75 feet in length on two lane highways.

A heavy-duty fifth wheel is required. All fifth wheels must be clean and lubricated with a light-duty grease prior to each trip. The fifth wheel must be located in a position which provides adequate stability. Pick-up plates must be of equal strength to the fifth wheel. The kingpin must be of a solid type and permanently fastened. Screw-out or folding-type kingpins are prohibited.

All hitch connections must be of a no-slack type, preferably a power-actuated ram. Air-actuated hitches which are isolated from the primary air transmission system are recommended.

The drawbar length should be the practical minimum consistent with the clearances required between trailers for turning and backing maneuvers.

Axles must be those designed for the width of the body.

All braking systems must comply with State and Federal requirements. In addition, fast air transmission and release valves must be provided on all semitrailer and converter-dolly axles. A brake force limiting valve, sometimes called a "slippery road" valve, may be provided on the steering axle. Anti-sail type mud flaps are recommended.

The use of single tires on any combination vehicle requiring an overweight or oversize permit shall not be allowed on single axles. A single axle is defined as one having more than 8 feet between it and the nearest axle or group of axles on the vehicle.

When traveling on a level, smooth paved surface, the trailing units must follow in the path of the towing vehicle without shifting or swerving more than 3 inches to either side when the towing vehicle is moving in a straight line. Each combination shall maintain a minimum distance of 500 feet from another commercial vehicle traveling in the same direction on the same highway. Loads shall be securely fastened to the transporter with material and devices of sufficient strength to prevent the load from becoming loose, detached, dangerously displaced, or in any manner a hazard to other highway users. The components of the load shall be reinforced or bound securely in advance of travel to prevent debris from being blown off the unit and endangering the safety of the traveling public. Any debris from the special permit vehicle deposited on the highway shall be removed by the permittee.

Bodily injury and property damage insurance is required before a special Transportation Permit will be issued.

In the event any claim arises against the State of Utah, Utah Department of Transportation, Utah Highway Patrol, or their employees from the operation granted under the permit, the permittee shall agree to indemnify and hold harmless each of them from such claim.

PERMIT: Permits must be purchased. The Utah DOT Motor Carrier Safety Division will, on submission of an LCV permit request, assign an investigator to perform an audit on the carrier, which must have an established safety program that is in compliance with the Federal Motor Carrier Safety Regulations (49 CFR parts 387–399), the Federal Hazardous Materials Regulations (49 CFR parts 171–178), and a "Satisfactory" safety rating. The request must show a travel plan for the operation of the vehicles. Permits are subject to Highway Patrol supervision and permitted vehicles may be subject to temporary delays or removed from the highways when necessary during hazardous road, weather, or traffic conditions. The permit will be cancelled without refund if violated. Expiration dates cannot be extended except for reasons beyond the control of the permittee, including adverse weather. Permits are void if defaced, modified, or obliterated. Lost or destroyed permits cannot be duplicated and are not transferable.

ACCESS: Routes approved by the Utah DOT plus local delivery destination travel on two-lane roads.

ROUTES: All NN routes, except that, in addition, truck tractor and two trailing unit combinations with a cargo-carrying length of more than 85 feet are restricted to:

	From	To
I–15	Arizona	Idaho.
I–70	Jct. I–15	Colorado.
I–80	Nevada	Wyoming.
I–84	Idaho	Jct. I–80.
I–215	Entire length in the Salt Lake City area.	
UT–201	I–80 Exit 102 Lake Point Jct.	300 West Street Salt Lake City.

LEGAL CITATIONS:

Utah Code 27–12–154 and –155; Utah Administrative Code, Section R–909–1.

STATE: UTAH

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 129,000 pounds

OPERATIONAL CONDITIONS: Same as the UT–TT2 combination.

ROUTES: Same as the UT–TT2 combination with a cargo-carrying length greater than 85 feet.

LEGAL CITATIONS: Same as the UT–TT2 combination.

STATE: UTAH

COMBINATION: Truck-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 88 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws

and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, VEHICLE, PERMIT, and ACCESS: Same as the UT–TT2 combination.

ROUTES: All truck-trailers with a cargo-carrying length of 70 feet or less, and truck-trailers used in hauling bulk gasoline or LP gas with a cargo-carrying length of 78 feet or less, may use all NN routes. Truck-trailers with a cargo-carrying length over 70 feet but not over 78 feet, and those used in hauling bulk gasoline or LP gas with a cargo-carrying length over 78 feet but not over 88 feet, are restricted to the same routes listed for the UT–TT2 combination with a cargo-carrying length greater than 85 feet.

LEGAL CITATIONS: Same as the UT–TT2 combination.

STATE: UTAH

COMBINATION: Truck-trailer-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 88 feet

OPERATIONAL CONDITIONS: Same as the Utah truck-trailer combination.

ROUTES: Same as the UT–TT2 combination with a cargo-carrying length greater than 85 feet.

LEGAL CITATIONS: Same as the UT–TT2 combination.

STATE: UTAH

COMBINATION: Automobile transporter

LENGTH OF THE CARGO-CARRYING UNITS: 105 feet

OPERATIONAL CONDITIONS:

WEIGHT, DRIVER, PERMIT, and ACCESS: Same as the Utah truck-trailer combination.

VEHICLE: The cargo-carrying length of automobile transporters that carry vehicles on the power unit is the same as the overall length.

ROUTES: Automobile transporters with a cargo-carrying length of 92 feet or less may use all NN routes. Automobile transporters with a cargo-carrying length over 92 but not more than 105 feet are restricted to the routes listed for the UT–TT2 combination with a cargo-carrying length greater than 85 feet.

LEGAL CITATIONS: Same as the UT–TT2 combination.

STATE: WASHINGTON

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 68 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 105,500 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Single axle limit=20,000 pounds; tandem axle limit=34,000 pounds; gross weight must comply with the Federal Bridge Formula.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: Operating conditions are the same for permitted doubles as for STAA of 1982 doubles.

PERMIT: Combinations with a cargo-carrying length over 60 feet in length but not exceeding 68 feet must obtain an annual overlength permit to operate. A fee is charged.

ACCESS: All State routes except SR 410 and SR 123 in or adjacent to Mt. Rainier National Park. In addition, restrictions may be imposed by local governments having maintenance responsibilities for local highways.

ROUTES: All NN routes except SR 410 and SR 123 in the vicinity of Mt. Rainier National Park.

LEGAL CITATIONS:
RCW 46.37, 46.44.030, .037(3), .041, and .0941.

STATE: WASHINGTON

COMBINATION: Truck-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 68 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, PERMIT, and ACCESS: Same as the WA–TT2 combination.

VEHICLE: Overall length limited to 75 feet.

ROUTES: Same as the WA–TT2 combination.

LEGAL CITATIONS: Same as the WA–TT2 combination.

STATE: WYOMING

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 81 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 117,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: No single axle shall carry a load in excess of 20,000 pounds. No tandem axle shall carry a load in excess of 36,000 pounds. No triple axle, consisting of three consecutive load-bearing axles that articulate from an attachment to the vehicle including a connecting mechanism to equalize the load between axles having a spacing between the first and third axle of at least 96 inches and not more than 108 inches, shall carry a load in excess of 42,500 pounds. No vehicles operated on the Interstate System shall exceed the maximum weight allowed by application of Federal Bridge Weight Formula B.

No wheel shall carry a load in excess of 10,000 pounds. No tire on a steering axle shall carry a load in excess of 750 pounds per inch of tire width and no other tire on a vehicle shall carry a load in excess of 600 pounds per inch of tire width. "Tire width" means the width stamped on the tire by the manufacturer.

Dummy axles may not be considered in the determination of allowable weights.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: The lead semitrailer can be up to 48 feet long with the trailing unit up to 40 feet long. In a truck tractor-semitrailer-trailer combination, the heavier towed vehicle shall be directly behind the truck-tractor and the lighter towed vehicle shall be last if the weight difference between consecutive towed vehicles exceeds 5,000 pounds.

PERMITS: No permits required.

ACCESS: Unlimited access off the NN to terminals.

ROUTES: All NN routes.

LEGAL CITATIONS:
WS 31–5–1001, –1002, –1004, –1008, and WS 31–17–1–1 through 31–17–117.

STATE: WYOMING

COMBINATION: Truck-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 78 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, PERMIT, and ACCESS: Same as the WY–TT2 combination.

VEHICLE: No single vehicle shall exceed 60 feet in length within an overall limit of 85 feet.

ROUTES: Same as the WY–TT2 combination.

LEGAL CITATIONS:
WS 31–5–1002

STATE: WYOMING

COMBINATION: Automobile/Boat Transporter

LENGTH OF CARGO CARRYING UNITS: 85 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, PERMIT, and ACCESS: Same as the WY–TT2 combination.

VEHICLE: The cargo-carrying length of automobile transporters that carry vehicles on the power unit is the same as the overall length. No single vehicle shall exceed 60 feet in length within an overall limit of 85 feet.

ROUTES: Same as the WY–TT2 combination.

LEGAL CITATIONS: Same as the WY–TT2 combination.

STATE: WYOMING

COMBINATION: Saddlemount Combination

LENGTH OF CARGO CARRYING UNITS: 85 feet

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, PERMIT, and ACCESS: Same as the WY–TT2 combination.

VEHICLE: The cargo-carrying length of saddlemount combinations that carry vehicles on the power unit is the same as the overall length. No single vehicle shall exceed 60 feet in length within an overall limit of 85 feet.

No more than three saddlemounts may be used in any combination, except additional vehicles may be transported when safely loaded upon the frame of a vehicle in a properly assembled saddlemount combination.

Towed vehicles in a triple saddlemount combination shall have brakes acting on all wheels which are in contact with the roadway.

All applicable State and Federal rules on coupling devices shall be observed and complied with.

ROUTES: Same as the WY–TT2 combination.

LEGAL CITATIONS: Same as the WY–TT2 combination.

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Part III

Environmental Protection Agency

40 CFR Parts 280 and 281
Underground Storage Tanks—Lender Liability; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 280 and 281

[FRL–4895–3]

RIN 2050–AD67

Underground Storage Tanks—Lender Liability

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing this rule under the Resource Conservation and Recovery Act (RCRA), Subtitle I—Regulation of Underground Storage Tanks, 42 U.S.C. 6901 *et seq.*, to limit the regulatory obligations of persons maintaining indicia of ownership in a petroleum underground storage tank (UST) or UST system primarily to protect a security interest. The rule is proposed in response to petitions received by the Agency in connection with the rulemaking related to lender liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.* (See 57 FR 18349).

The Agency is proposing conditions under which certain security interest holders may be exempted from the RCRA Subtitle I corrective action, technical, and financial responsibility regulatory requirements that apply to an UST owner and operator. (See 40 CFR part 280.)

DATES: Written comments on this proposed rule must be submitted on or before August 12, 1994.

ADDRESSES: Written comments on today's proposal should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, OUST Docket (5405), 401 M Street, SW., Washington, DC 20460. The Docket is located at 401 M Street, SW., Room 2616. One original and two copies of comments should be sent and identified by regulatory docket reference number UST 3–16. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Docket materials may be reviewed by appointment by calling (202) 260–9720. Copies of docket materials may be made at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For further information about this proposal, contact the RCRA/Superfund Hotline, U.S. Environmental Protection Agency, Washington, DC. 20460, (800) 424–9346 (toll-free) or (703) 412–9810 (local). For the hearing impaired, the number is (300) 553–7672 (toll-free), or (703) 412–3323 (local). For technical information on this proposal, contact Shelley Fudge in the EPA Office of Underground Storage Tanks at (703) 308–8886.

SUPPLEMENTARY INFORMATION: The contents of today's proposed preamble are listed in the following outline:

1. Background
II. Description of the UST Regulatory Program
  A. UST Technical Standards
  1. Leak Prevention
  2. Leak Detection
  3. Release Reporting
  4. Closure
  5. Notification, Reporting, and Recordkeeping
  B. Corrective Action Requirements
  C. Financial Responsibility Requirements
  D. State Program Approval Regulations
  E. Scope of the UST Program
III. The UST Security Interest Exemption and Intent of Today's Proposed Rule
  A. Overview
  B. Legal Authority
  C. Liability of a Holder as an Owner of an Underground Storage Tank or Underground Storage Tank System
  1. Petroleum Production, Refining, and Marketing
  2. Indicia of Ownership
  3. Primarily to Protect a Security Interest
  4. "Holder" of Ownership Indicia
  5. Participating in Management
  D. Liability of a Holder as an Operator of an Underground Storage Tank or Underground Storage Tank System
  1. Pre-Foreclosure Operation
  2. Post-Foreclosure Operation
  3. Lenders in Foreclosure Upon the Effective Date of the Rule
  4. Release Reporting Requirements Following Foreclosure
  E. Actions Taken to Protect Human Health and the Environment
IV. Financial Responsibility Requirements
V. State Program Approval
VI. Economic Analysis
VII. Regulatory Assessment Requirements
  A. Executive Order 12866
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act

I. Background

EPA is proposing to establish regulatory criteria specifying which RCRA Subtitle I requirements are applicable to a secured creditor. Section 9003(h)(9) of RCRA exempts from the definition of "owner," for purposes of section 9003(h)—*EPA Response Program for Petroleum*, those persons who, without participating in the management of the UST or UST system, and who are not otherwise engaged in petroleum production, refining, and marketing, maintain indicia of ownership in an UST or UST system primarily to protect a security interest. Those most affected by this "security interest exemption" include private lending institutions or other persons that guarantee loans secured by real estate containing an UST or UST system, or that acquire title to, or other indicia of ownership in, a contaminated UST or UST system.[1] However, the security interest exemption is not limited solely to lending institutions; it potentially applies to any person whose indicia of ownership in an UST or UST system is maintained primarily to protect a security interest.

The RCRA subtitle I security interest exemption not only affects secured creditors but also UST and UST system owners who seek capital through the private lending market. Today's proposed rule will provide a regulatory exemption from corrective action regulatory requirements for those persons who provide secured financing to UST and UST system owners. EPA expects this rule, in conjunction with the statutory exemption in section 9003(h)(9), to encourage the extension of credit to credit-worthy UST owners. At present, EPA believes that concerns over environmental liability are making a significant number of lenders reluctant to make loans to otherwise credit-worthy owners and operators of USTs. The free flow of credit to UST owners (many of whom are small entities that may rely on secured financing mechanisms for capital) is expected to assist UST owners in meeting their obligations to upgrade, maintain, or otherwise comply with RCRA subtitle I and other environmental requirements. Conversely, the lack of such capital may adversely affect the ability of an UST owner to meet its obligations under Subtitle I, with concomitant adverse environmental impacts from USTs and UST systems that are out of compliance due to the lack of financing for the UST owner and operator. (For a more detailed discussion, please refer to the *Regulatory Background Document* for this proposed rule, located in the OUST Docket at 401 M Street, SW., room 2616, Washington, DC 20460.)

The Agency is also concerned that if otherwise credit-worthy UST owners and operators are unable to obtain financing to perform leak detection tests, or to upgrade or replace deficient tanks, the market for UST equipment could be adversely affected, thereby limiting the availability and/or affecting the cost of such equipment. In addition, a lack of adequate capital could produce a ripple effect which would cut across other portions of the UST-related industrial sector. Based on letters received from UST equipment manufacturers, EPA believes that this sector has suffered as a direct result of the capital squeeze on UST owners and operators. The Agency is further concerned that many UST equipment manufacturers may find it increasingly difficult to sustain their production of UST equipment. Unnecessary constrictions on the free flow of capital for UST compliance and improvements could force companies to abandon their production of UST equipment or to close altogether, and it may have adverse impacts on the environment by making the investment or development of new UST technological innovations more difficult.

The preamble to this proposed rule is structured as follows: The following section briefly describes the UST program. This section is followed by a discussion of this proposed rule, which includes a description of the various options lenders may exercise both pre- and post-foreclosure with respect to regulatory compliance for a secured UST or UST system. Proposed regulatory text concludes this proposed rule.

[1] Under the laws of some states, an interest in real property may include an interest in USTs or UST systems located on that property. See *Sunnybrook Realty Co. Inc. v. State of New York, Kesbec, Inc. v. State of New York*, Claim Nos. 32844, 33125, 15 Misc. 2d 739; 182 N.Y.S. 2d 983. Of course, the loan documents may specifically include or exclude USTs as collateral securing the obligation.

II. Description of the UST Regulatory Program

Based on the Agency's study of the banking community's lending practices and discussions with representatives of both lenders and borrowers, EPA believes that the lending community in general is not particularly familiar with the UST statutory scheme and regulatory program. Because UST and UST systems are likely to be used as collateral in securing loans to borrowers, the Agency believes that it is appropriate and useful to briefly describe the UST program in the preamble of this proposed rule. The following discussion is general in nature and is intended to provide a framework for lenders or others to better understand the scope and intent of the program; it is not intended to be a substitute for the regulations themselves.

Under the Hazardous and Solid Waste Amendments of 1984, Congress responded to the increasing threat to groundwater posed by leaking underground storage tanks by adding subtitle I to the Resource Conservation and Recovery Act. Subtitle I required EPA to develop a comprehensive regulatory program for USTs storing petroleum or hazardous substances. Congress directed the Agency to publish regulations that would require owners and operators of new tanks and tanks already in the ground to prevent and detect leaks, cleanup leaks, and demonstrate that they are financially capable of cleaning up leaks and compensating third parties for resulting damages.

EPA's UST regulations, 40 CFR parts 280 and 281, apply to any person who owns or operates an UST or UST system. The term "owner" is defined in the statute generally to mean any person who owns an UST used for the storage, use, or dispensing of substances regulated under subtitle I of RCRA (which includes both petroleum and hazardous substances) (section 9001(3), 42 U.S.C. 6991(3)). Owners are responsible for complying with the "technical requirements," "financial responsibility requirements," and "corrective action requirements" specified in the statute and regulations. These requirements are intended to ensure that USTs are managed and maintained safely, so that they will not leak or otherwise cause harm to human health and the environment. In addition, should a leak occur, the requirements provide that the owner is responsible for addressing the problem.

These same requirements apply to any person who "operates" an UST system. The term "operator" is very broad and means "any person in control of, or having responsibility for, the daily operation of the underground storage tank" (section 9001(4), 42 U.S.C. 6991(4)). As with owners, there may be more than one operator of a tank at a given time. Each owner and operator has obligations under the statute and regulations. In this respect, it is important to understand that a person may have obligations under subtitle I either as an owner or as an operator, or both.

The following subsections describe briefly each of the major components of the UST regulatory program applicable to persons who own or operate USTs and UST systems.

A. UST Technical Standards

The technical standards of 40 CFR part 280 referred to here include: Subpart B—UST systems: Design, Construction, Installation, and Notification (including performance standards for new UST systems, upgrading of existing UST systems, and notification requirements); Subpart C—General Operating Requirements (including spill and overfill control, corrosion protection, reporting and recordkeeping); Subpart D—Release Detection; § 280.50 (reporting of suspected releases) of Subpart E—Release Reporting, Investigation, and Confirmation; and Subpart G—Out of Service UST Systems (including temporary and permanent closure). These regulations impose obligations upon UST owners and operators, separate from the subtitle I corrective action requirements discussed in Section II. B of this preamble.

1. Leak Prevention

Before EPA regulations were issued, most tanks were constructed of bare steel and were not equipped with release prevention or detection features. 40 CFR 280.21 requires UST owners and operators to ensure that their tanks are protected against corrosion and equipped with devices that prevent spills and overfills no later than December 22, 1998. Tanks installed before December 22, 1988 must be replaced or upgraded by fitting them with corrosion protection and spill and overfill prevention devices to bring them up to new-tank standards. USTs installed after December 22, 1988 must be fiberglass-reinforced plastic, corrosion-protected steel, a composite of these materials, or determined by the implementing agency to be no less protective of human health and the environment and must be designed, constructed, and installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. Piping installed after December 22, 1988 generally must be protected against corrosion in accordance with a national code of practice. All owners and operators must also ensure that releases due to spilling or overfilling do not occur during product transfer and that all steel systems with corrosion protection are maintained, inspected, and tested in accordance with § 280.31.

2. Leak Detection

In addition to meeting the leak prevention requirements, owners and operators of USTs must use a method listed in §§ 280.43 through 280.44 for detecting leaks from portions of both tanks and piping that routinely contain product. Deadlines for compliance with the leak detection requirements have been phased in based on the tank's age: The oldest tanks, which are most likely to leak, had the earliest compliance deadlines.

3. Release Reporting

UST owners and operators must, in accordance with § 280.50, report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency,

the discovery of any released regulated UST substances, or any suspected release. Unusual operating conditions or monitoring results indicating a release must also be reported to the implementing agency.

4. Closure

Owners or operators who would like to take tanks out of operation must either temporarily or permanently close them in accordance with 40 CFR part 280, subpart G—Out-of-Service UST Systems and Closure. When UST systems are temporarily closed, owners and operators must continue operation and maintenance of corrosion protection and, unless all USTs have been emptied, release detection. If temporarily closed for three months or more, the UST system's vent lines must be left open and functioning, and all other lines, pumps, manways, and ancillary equipment must be capped and secured. After 12 months, tanks that do not meet either the performance standards for new UST systems or the upgrading requirements (excluding spill and overfill device requirements) must be permanently closed, unless a site assessment is performed by the owner or operator and an extension is obtained from the implementing agency. To close a tank permanently, an owner or operator generally must: Notify the regulatory authority 30 days before closing (or another reasonable time period determined by the implementing agency); determine if the tank has leaked and, if so, take appropriate notification and corrective action; empty and clean the UST; and either remove the UST from the ground or leave it in the ground filled with an inert, solid material.

5. Notification, Reporting, and Recordkeeping

UST owners who bring an UST system into use after May 8, 1986 must notify state or local authorities of the existence of the UST and certify compliance with certain technical and other requirements, as specified in § 280.22. Owners and operators must also notify the implementing agency at least 30 days (or another reasonable time period determined by the implementing agency) prior to the permanent closure of an UST. In addition, owners and operators must keep records of testing results for the cathodic protection system, if one is used; leak detection performance and upkeep; repairs; and site assessment results at permanent closure (which must be kept for at least three years).

B. Corrective Action Requirements

Owners and operators of UST systems containing petroleum or hazardous substances must investigate, confirm, and respond to confirmed releases, as specified in §§ 280.51 through 280.67. These requirements include, where appropriate: Performing a release investigation when a release is suspected or to determine if the UST system is the source of an off-site impact (investigation and confirmation steps include conducting tests to determine if a leak exists in the UST or UST system and conducting a site check if tests indicate that a leak does not exist but contamination is present); notifying the appropriate agencies of the release within a specified period of time; taking immediate action to prevent any further release (such as removing product from the UST system); containing and immediately cleaning up spills or overfills; monitoring and preventing the spread of contamination into the soil and/or groundwater; assembling detailed information about the site and the nature of the release; removing free product to the maximum extent practicable; investigating soil and groundwater contamination; and, in some cases, outlining and implementing a detailed corrective action plan for remediation.

C. Financial Responsibility Requirements

The financial responsibility regulations (40 CFR part 280, subpart H) require that UST owners or operators demonstrate the ability to pay the costs of corrective action and to compensate third parties for injuries or damages resulting from the release of petroleum from USTs. The regulations require all owners or operators of petroleum USTs to maintain an annual aggregate of financial assurance of $1 million or $2 million, depending on the number of USTs owned. Financial assurance options available to owners and operators include: Purchasing commercial environmental impairment liability insurance; demonstrating self-insurance; obtaining guarantees, surety bonds, or letters of credit; placing the required amount into a trust fund administered by a third party; or relying on coverage provided by a state assurance fund.

D. State Program Approval Regulations

Subtitle I of RCRA allows state UST programs approved by EPA to operate in lieu of the federal program. EPA's state program approval regulations under 40 CFR part 281 set standards for state programs to meet.

E. Scope of the UST Program

There are certain types or classes of tanks that are exempt from all or part of subtitle I's requirements. Specifically excluded by statute are: Farm and residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; tanks used for storing heating oil for consumptive use on the premises where stored; tanks stored on or above the floor of underground areas (such as basements or tunnels); septic tanks; systems for collecting stormwater or wastewater; flow-through process tanks; emergency spill and overfill tanks that are expeditiously emptied after use; and tanks holding 110 gallons or less (42 U.S.C. 6991(1)).

In addition, and of particular importance to today's proposal, the statute excludes one type of potential "owner" from the corrective action requirements applicable to owners. Specifically, the statute excludes from the definition of owner any person "who, without participating in the management of an UST, and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank" (RCRA section 9003(h)(9), 42 U.S.C. 6991b(h)(9)). This statutory provision is intended to exempt from cleanup responsibility a person whose only connection with a tank is as the holder of a security interest; i.e., a bank or other secured creditor who has extended credit to a borrower (commonly the tank's owner) and who has in return secured the loan or other obligation by taking a security interest in the tank. EPA has promulgated regulations governing corrective action under subtitle I. (See 40 CFR part 280, §§ 280.51 through 280.67.) The regulation proposed today addresses the requirements of subtitle I that are applicable to a person who holds a security interest in a tank (a "security holder" or merely "holder") from the time that the person extends the credit up through and including foreclosure and re-sale. As described in this proposed rule, a holder may face obligations either as an owner or as an operator, depending upon the specific activities undertaken by the holder.

III. The UST Security Interest Exemption and Intent of Today's Proposed Rule

A. Overview

The security interest exemption under subtitle I, section 9003(h)(9) of RCRA, 42 U.S.C. 6991b(h)(9), provides:

As used in this subsection, the term "owner" does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank.

Limited legislative history exists concerning the RCRA subtitle I security interest exemption. No guidance or other indication is available concerning the types of activities that Congress considered to be consistent with the subtitle I security interest exemption, or about the types of activities that Congress considered to be impermissible participation in an UST or UST system's management.

The statutory exemption is limited to liability for corrective action at petroleum-contaminated sites. Since the subtitle I security interest exemption applies only to the corrective action requirements for petroleum—Part 280 Subpart F and portions of subpart E, one interpretation of the statute could hold that the holder is not exempt from complying with other portions of the statute and regulations applicable to an "owner" of a tank. These other parts include 40 CFR part 280, subparts B, C, D, E (§ 280.50 only), and G (hereafter referred to as the "UST technical standards" for purposes of this rule), and Subpart H—Financial Responsibility. However, the statute is silent with respect to a holder's liability for these requirements solely as a consequence of having ownership rights in a tank primarily to protect a security interest. The Agency does not believe that these limited ownership rights rise to the level of full "ownership" sufficient to make the holder an "owner" of the tank, as that term is used in section 9001(3) of RCRA subtitle I. Therefore, EPA is proposing, under its broad rulemaking authority in section 9003, that a holder who meets the criteria specified in this proposed rule (i.e., whose only connection with the tank is as the bona fide holder of a security interest in the UST or UST system) is not subject to the UST technical standards and financial responsibility requirements otherwise applicable to a tank owner. EPA believes that this is both appropriate under the Agency's rulemaking authority and consistent with Congressional intent in providing the section 9003(h)(9) exemption for those persons who provide only financing to owners of a tank. Accordingly, a qualifying holder will not be required to comply with the full panoply of EPA regulations implementing subtitle I that apply to tank owners prior to or following foreclosure, provided that the requirements of today's proposed rule are satisfied.

With respect to a holder's potential to be an "operator" of a tank prior to foreclosure, consistent with the provisions of this proposed rule, the holder typically will not be involved in the day-to-day operations of the tank, and will therefore not incur liability as an "operator."[2] By foreclosing, however, the holder takes affirmative action with respect to the tank and displaces the borrower; therefore, by necessity, the holder has taken "control of . . . [and] responsibility for . . ." the tank, and is therefore a tank operator under the definition at 42 U.S.C. 6991(4). However, under today's proposed rule, a foreclosing holder's responsibility for corrective action as an operator is limited in certain circumstances: In general, a holder's obligations would be limited under the provisions of this rule where the foreclosed-on tank is no longer storing petroleum, or where the holder itself empties the tank within a certain time period. In these circumstances, while a holder is an operator and therefore subject to the UST program's technical requirements and other obligations, a holder may remain exempt from the corrective action requirements and satisfy the technical requirements by exercising one of the options for compliance described in Section III. D. 2 of this preamble. These options allow a holder to satisfy its regulatory obligations as an "operator" by undertaking specified minimally burdensome and environmentally protective actions to secure and protect the UST or UST system. On the other hand, a holder who operates a tank by, for example, storing or dispensing product following foreclosure will be subject to the full range of requirements applicable to any person operating a tank (including corrective action requirements).

In developing today's proposal, EPA examined the potential obligations under subtitle I of government entities that act as conservators or receivers of assets acquired from failed lending and depository institutions, such as the Federal Deposit Insurance Corporation (FDIC) and Resolution Trust Corporation (RTC). Where a government entity or its designee is acting as a conservator or receiver, EPA interprets the security interest exemption in RCRA subtitle I section 9003(h)(9) to preclude the imposition of the insolvent estate's liabilities against the government entity acting as the conservator or receiver, and considers the liabilities of the institution being administered to be limited to the institution's assets. The situation of a conservator or receiver of a failed or insolvent lending institution is analogous to that of a trustee (particularly a trustee in bankruptcy) that is administering an insolvent's estate and, in accordance with those principles, the insolvent's liabilities are to be satisfied from the estate being administered and not from the assets of the conservator or receiver. Therefore, satisfaction of an estate's debts or liabilities would not reach the general assets of the FDIC, the RTC, those of any other government entity acting in a similar capacity, or those of a private person acting on behalf of the government conservator or receiver.

B. Legal Authority

The legal basis for this proposed rule is the Agency's broad authority to issue regulations interpreting and implementing the provisions of RCRA subtitle I at issue in this proposal. Section 9003(b), 42 U.S.C. 6991b(b) provides EPA with authority to "promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment."[3]

The Agency is proposing to define the regulatory terms under which a secured creditor may, consistent with the statutory exemption, avoid responsibility for corrective action as an owner and operator of an underground storage tank, as well as proposing an exemption from certain financial responsibility requirements. As discussed elsewhere in this preamble (*See* Section III.D), the statutory exemption from corrective action

[2] Of course, a lender which has control of or responsibility for the daily operation of a tank would be an "operator" under section 9001(4), and therefore subject to all requirements applicable to an operator of a tank, including corrective action. Similarly, such acts may also constitute "participation in the management" of the tank, which would void the section 9003(h)(9) exemption and obligate the lender to comply with these same technical, financial, and corrective action requirements as an owner.

[3] The recent decision by the U.S. Court of Appeals for the D.C. Circuit in *Kelley, et al.* v. *EPA*, No. 93-1312 (Feb. 4, 1994) does not apply to or affect the rule the Agency is proposing today. The *Kelley* decision vacated the Agency's rule on lender liability under CERCLA, which interpreted a statutory exemption under CERCLA which is similar to that under RCRA Subtitle I, because "EPA lack[ed] statutory authority to restrict by regulation private rights of action arising under the statute. . . ." *Kelley*, slip op. at 3. As noted above, § 9003 expressly confers upon EPA a broad rulemaking authority; to the extent that the grants of rulemaking authority were not sufficiently explicit under CERCLA, such is not the case under RCRA Subtitle I

liability addresses only *owners* of underground storage tanks, while the statute and EPA's implementing regulations extend liability to both owners and operators. The Agency believes that without promulgating a rule under EPA's broad grant of rulemaking authority applying the protection found in the statutory security interest exemption to operators as well as owners, the statutory exemption may be rendered virtually meaningless, since an owner of an UST is also typically an UST operator. EPA does not believe that Congress, in creating section 9003(h)(9), intended for an otherwise exempt holder of a security interest to nonetheless fall subject to corrective action obligations as an operator. As such, EPA's exercise of its rulemaking authority in the proposed rule is appropriate and, perhaps, needed to fully effectuate the purpose of the statute.

In addition, the Agency has explicit rulemaking authority to, in its discretion, exempt certain classes of owners and operators from corrective action obligations (*i.e.*, holders of security interests as described in this proposal). Section 9003(b) permits the Agency, in promulgating regulations under subtitle I, to make distinctions in its UST regulations between types or classes of tanks, based upon, *inter alia*, "the technical capability of the owners and operators." Because security interest holders are typically not as a general matter engaged in the operation and maintenance of USTs (and thus do not possess the technical capacity of most UST owners and operators), EPA does not believe that requiring them to comply with highly detailed technical requirements is appropriate where requiring them to do so is not necessary for protection of human health and the environment. Furthermore, the Agency believes an exemption from these regulatory requirements is appropriate in the context of this proposed rule, where an exemption will serve, albeit indirectly, to advance the goals of subtitle I by making credit more available and thus aiding in the implementation of tank upgrade requirements.

However, this authority is not open-ended, as section 9003(a) requires EPA to promulgate regulations that are protective of human health and the environment. Without compromising the level of protectiveness established by the UST program, EPA previously relied on its section 9003(b) authority when it excluded a group of owners and operators from RCRA subtitle I requirements in the final Financial Responsibility Rule (53 FR 43322, Oct. 26, 1988). (In relevant part, the preamble to the final Financial Responsibility Rule states: "The Agency does not interpret the Congressional intent of subtitle I to preclude exempting any class of USTs from otherwise applicable requirements when the Agency has determined that such requirements are not necessary to protect human health or the environment.") That rule exempted states and the federal government from the UST financial responsibility requirements since those entities were, as a class, able to satisfy the purpose of the financial responsibility requirements in the absence of regulation.

Similarly, for purposes of this proposal, EPA believes that it is reasonable, in light of the purposes behind this proposal, to exempt a holder from RCRA subtitle I corrective action requirements as an operator if its USTs are empty and secure (as would be required under today's proposal) or if the holder chooses to also engage in environmentally beneficial activities (as discussed in Section III. E of this preamble). Because of the requirements a holder must meet before enjoying this proposed exemption, EPA's UST regulations will satisfy the statutory requirement that they be protective of human health and the environment.

C. Liability of a Holder as an Owner of an Underground Storage Tank or Underground Storage Tank System

The following sections describe the key terms used in this proposed rule. For the most part, these are also terms used in the section 9003(h)(9) security interest exemption. This section specifies the activities that are not "participating in the management" of a tank and which a holder may under today's proposal, engage in consistent with subtitle I regulatory requirements

1. Petroleum Production, Refining, and Marketing

"Production of petroleum" includes, but is not limited to, activities involved in the production of crude oil or other forms of petroleum, as well as the production of petroleum products from purchased materials, either domestically or abroad. "Refining" includes the processes of cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products. "Marketing" includes the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes. A holder who stores petroleum products in USTs for on-site consumption only, such as to provide heat to an office building or to refuel its own vehicles, is not considered to be engaged in petroleum production, refining, or marketing for the purposes of the UST regulatory program.

2. Indicia of Ownership

EPA is proposing that "indicia of ownership" means ownership or evidence of an ownership interest in a petroleum UST or UST system. EPA is not proposing to limit or qualify type, quality, or quantity of ownership indicia that may be held by a person for the purpose of the regulatory exemption. The nature of the ownership interest may vary according to the type of secured transaction and the nature of the holder's relationship (such as that of a guarantor or surety). Accordingly, indicia of ownership may be evidence of any ownership interest or right to an UST or UST system, such as a security interest, an interest in a security interest, or any other interest in an UST or UST system. For purposes of this proposed rule, examples of such indicia include, but are not limited to, a mortgage, deed of trust, or legal or equitable title obtained pursuant to foreclosure or its equivalents, a surety bond, guarantee of an obligation, or an assignment, lien, pledge, or other right to or form of encumbrance against an UST or UST system. Accordingly, it is not necessary for a person to hold actual title or a security interest in order to maintain some indicia or evidence of ownership in an UST or UST system.

3. Primarily To Protect a Security Interest

EPA is proposing that the term "primarily to protect a security interest" as used in this proposed regulation means a holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation. EPA intends this phrase to require that the ownership interest be maintained primarily for the purpose of, or primarily in connection with, securing payment or performance of a loan or other obligation (a security interest), and not an interest in the UST or UST system held for some other reason.

A security interest may arise pursuant to a variety of statutory or common law financing transactions. While a security interest is ordinarily created by mutual consent, such as a secured transaction within the scope of Article 9 of the Uniform Commercial Code, there are other means by which a security interest may be created, some of which may or may not be the result of a consensual arrangement between the parties to the transaction. In general, a transaction

that gives rise to a security interest within the ambit of this proposed rule is one that provides the holder with recourse against an UST or UST system of the person pledging the security; the purpose of the interest is to secure the repayment of money, the performance of a duty, or of some other obligation. *See generally* J. White & R. Summers, *Handbook on the Uniform Commercial Code* § 22 (2d Ed. 1980); *Restatement of Security* (1941).

As a matter of general law, security interests may arise from transactions in which an interest in an UST or UST system is created or established for the purpose of securing a loan or other obligation, and includes mortgages, deeds of trust, liens, and title held pursuant to lease financing transactions. Security interests may also arise from transactions such as sale-and-leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements or accounts receivable financing agreements, consignments, among others, provided that the transaction creates or establishes an interest in an UST or UST system for the purpose of securing a loan or other obligation.

In contrast, "indicia of ownership" held "primarily to protect [a] security interest" do not include evidence of interests in the nature of an *investment* in the UST or UST system, or an ownership interest held primarily for any reason other than as protection for a security interest. The person holding ownership indicia to protect a security interest may have additional, secondary reasons for maintaining the indicia in addition to protecting a security interest; maintaining indicia for reasons in addition to protecting a security interest may be consistent with the exemption and this proposed rule. However, any such additional reasons must be secondary to protecting a security interest in the secured UST or UST system. EPA recognizes that lending institutions have revenue interests in the loan transactions that create security interests; such revenue interests are not considered to be investment interests, but are considered secured transactions falling within the proposed security interest regulatory exemption.

4. "Holder" of Ownership Indicia

A "holder" as used in this proposed regulation is a person who maintains ownership indicia primarily to protect a security interest, however acquired or held. The term "holder" includes the initial holder (such as the loan originator) and any subsequent holder, such as a successor-in-interest, subsequent purchaser on the secondary market, loan guarantor, surety, or other person who maintains indicia of ownership primarily to protect a security interest. The term also includes any person acting on behalf of or for the benefit of the holder, such as a court-appointed receiver or a holder's agent, employee, or representative.

Finally, it should be noted that lending institutions, which typically hold a large number of security interests, may also act in some trustee, fiduciary, or other capacity with respect to an UST or UST system. However, this rule does not address circumstances in which a lending institution or any person acts as a trustee, or in a non-lending capacity, or has any interest in an UST or UST system other than as provided in this rule. Because this proposed regulation, as well as the exemption in section 9003(h)(9), addresses only persons who maintain a "security interest," any discussion of persons with other interests or involvement in an UST or UST system is beyond the scope of this proposed rule. Of course, a trustee or other fiduciary with respect to an UST or UST system (or any person who independent of the status as trustee or fiduciary) who holds indicia of ownership in the UST or UST system primarily to protect a security interest may fall within this proposed security interest regulatory exemption.

5. Participating in Management

EPA proposes that, as used in this proposed rule, "participation in the management of an UST or UST system" means the actual involvement in the management or control of decisionmaking related to the UST or UST system by the holder. Participation in management does not include the mere capacity or unexercised right or ability to influence UST or UST system operations. This proposal contains a list of activities that is not all-inclusive, but which generally describes activities that are not considered to be evidence that a holder is participating in the management of an UST or UST system. In addition, to address those other activities not specifically listed, a general test of management participation is proposed. The general test specifies that a holder is considered to be participating in management, within the scope of this proposed regulatory exemption, when it exercises decisionmaking control over the borrower's UST or UST system, or where the holder assumes overall management responsibility encompassing decisionmaking authority over the enterprise that includes day-to-day operation of the UST or UST system.

Under the proposed rule, activities that are evidence that a holder is participating in the management of an UST or UST system, and thus acting outside the scope of this proposed regulatory exemption, include: Exercising management control or decisionmaking authority over operational aspects of an UST or UST system, or securing a lease agreement, contractual arrangement, or employee relationship with any other person to manage or operate the UST or UST system. Such activities indicate that a holder is involved in or exercising decisionmaking control of operations of the UST or UST system in which the holder has a security interest.

For purposes of this proposed rule, a holder performing the functions of a plant manager, operations manager, chief operating officer, chief executive officer, and the like, of the facility or business at which the UST is located is considered to be exercising management control or decisionmaking authority over the operational aspects of the UST or UST system and therefore, participating in management, unless the responsibilities for the position specifically exclude all UST responsibilities. Control over the operational aspects of management should not be confused, however, with those activities which constitute administrative or financial management or involvement in non-operational activities. Such activities may be engaged in by a holder in the course of managing a loan portfolio and do not exceed the boundaries of the security interest exemption. Such activities may include providing financial or other assistance, environmental investigations or monitoring of the borrower's business and collateral, engaging in "loan work out" activities, foreclosing on a secured UST or UST system, winding down operations following foreclosure or its equivalents, or divesting itself of the foreclosed-on property containing an UST or UST system. These, as well as other actions related to a holder's financial and administrative obligations, are discussed in more detail in the following section.

a. *General Test of Management Participation.* It is not possible to specifically cover in this proposed rule or any regulation every conceivable situation in which a holder might act, or to make specific provisions for every action that a holder might undertake that might make it ineligible for the protection of the proposed security interest regulatory exemption, voiding

the security interest exemption. A general test or standard of participation in an UST or UST system's management has therefore been formulated to provide a framework within which to assess the consistency of a holder's actions with the limitations of the proposed regulatory exemption.

This proposal's two-prong test or standard of management participation provides that while the borrower is still in possession of an UST or UST system (i.e., pre-foreclosure), a holder participates in the management of an UST or UST system only where the holder either exercises decisionmaking control over the UST or UST system, or where the holder's actions manifest or assume responsibility for the overall management of the UST or UST system's day-to-day operations. The general test adopts a functional approach which focuses on the holder's actual decisionmaking involvement in the operational (as opposed to the financial or administrative) affairs of the borrower's UST or UST system. The first prong looks to whether the holder has exercised decisionmaking control over the borrower's environmental compliance. If so, the holder is "participating in the management" of the UST or UST system as defined in the proposed rule. Similarly, the second prong looks to where the holder is functioning as the overall manager by exercising management at a level encompassing the borrower's environmental obligations, or over all or substantially all of the operational aspects of the borrower's enterprise, regardless of whether decisionmaking control over compliance with the regulations governing the UST or UST system has been explicitly assumed or not. This level of actual involvement in the management of the UST or UST system is sufficient to constitute management participation for purposes of this proposed regulatory exemption.

Under the first prong of the general test, a holder cannot remain within the scope of the exemption if it controls the borrower's environmental compliance activities associated with the UST or UST system. Under the second prong of the general test, the ability to carve out environmental compliance responsibilities from other operational aspects of the borrower's business or enterprise demonstrates that the holder has manifested or assumed operational responsibility at a management level that includes environmental matters, and in doing so is considered to be participating in the UST or UST system's management.

However, management participation does not include the unexercised right to become involved in operational UST or UST system decisionmaking. In other words, if the holder does not exercise its rights to participate in the management of the UST or UST system, it still may qualify for the security interest exemption. Whether the exercise of rights that a holder might have—whether under contract or other agreement (if any) or otherwise, including the enforcement of loan terms and covenants or other rights—rises to the level of participation in the UST or UST system's management is measured by reference to the general test.

b. *Actions that are not participation in management.* Participation in the following activities will not exclusively, in themselves, exceed the bounds of this proposed regulatory exemption: Policing the loan, undertaking financial work out with a borrower where the obligation is in default or in threat of default, undertaking foreclosing and winding up operations (as described later in this proposal), or preparing the UST or UST system for sale or liquidation. In addition, the holder is not considered to be participating in the management of the UST or UST system by monitoring the borrower's business; by requiring or conducting on-site investigations, including site assessments, inspections, and audits, of the environmental condition of the UST or UST system or the borrower's financial condition; by monitoring other aspects of the UST or UST system considered relevant or necessary by the holder; by requiring certification of financial information or compliance with applicable duties, laws, or regulations, or by requiring other similar actions, provided that the holder does not otherwise participate in the management or operation of the UST or UST system, as provided in this proposed regulation. Such oversight and obligations of compliance imposed by the holder are not considered part of the management of an UST or UST system. Although such requirements and oversight may inform and perhaps strongly influence the borrower's management of an UST or UST system, the holder is not considered to be participating in management where the borrower continues to make operational decisions concerning the UST or UST system.

The protected activities of a holder that are specifically identified in this rule are consistent with the language of RCRA section 9003(h)(9) and the overall purpose of subtitle I. Judicial decisions construing the substantially similar language of CERCLA section 101(20)(A) have addressed the issue of the appropriate degree of a holder's involvement at a facility in which it held a security interest (i.e., the standard of "participation in management"). Although the cases articulated the CERCLA standard using different language, these cases generally held that the exemption is abrogated once a holder has divested the borrower or debtor of its management authority prior to foreclosure, such as when the holder becomes involved in the facility's day-to-day operations, where it becomes overly entangled in the affairs of the facility, or where its involvement otherwise affects a facility's hazardous waste practices. See *United States* v. *Maryland Bank & Trust Co.*, 632 F. Supp. 573 (D. Md. 1986); *United States* v. *Mirabile*, 15 Envtl. L. Rep. (Envtl. L. Inst.) 20994 (E.D. Pa. 1985) (participation in financial management insufficient to void the security interest exception to owner liability); *United States* v. *Fleet Factors Corp.*, 901 F.2d 1550 (11th Cir. 1990), cert. denied, 111 S.Ct. 752 (1991).

Other cases interpreting the provisions of CERCLA established that a holder's involvement in financially related matters—such as periodic monitoring or inspections of secured property, loan refinancing and restructuring, financial advice, and similar activities—will not void the exemption. See *Guidice* v. *BFG Electroplating and Manufacturing Co.*, 732 F. Supp. 556 (W.D. Pa. 1989); *United States* v. *Nicolet*, 29 Envtl. Rep. Cas. (BNA) 1851 (E.D. Pa. 1989); *United States* v. *Mirabile*, 15 Envtl. L. Rep. (Envtl. L. Inst.) 20994 (E.D. Pa. 1985) (participation in financial management insufficient to void the security interest exception to owner liability). The variations in the courts' articulations of the standard, however, left unclear the precise degree of involvement that could be undertaken without voiding the CERCLA exemption. See, e.g., *Fleet Factors Corp.*, 901 F.2d at 1557 (secured creditor may incur CERCLA liability by participating in the financial management of a facility to a degree indicating a capacity to influence the corporation's treatment of hazardous waste); In *re Bergsoe Metal Corp.*, 910 F.2d 668 (9th Cir. 1990) ("there must be some actual management of the facility before a secured creditor will fall outside the exception [found in CERCLA section 101(20)(A)]"). However, more recent cases under CERCLA have articulated a standard of management participation that is substantially similar to that in this proposed rule. See *United States* v. *McLamb*, 5 F. 3d 69 (4th Cir. 1993); *Waterville Industries, Inc.* v. *Finance*

Authority of Maine, 984 F 2d. 549 (1st Cir. 1993).

While the cases listed above describe particular activities and draw a line between the actions of a holder that are and are not evidence of management participation for purposes of CERCLA, there remains uncertainty about the effect of activities commonly or routinely undertaken by a holder in the course of managing a loan secured by an UST or UST system. EPA believes that the uncertainty created for holders examining their potential for liability under CERCLA also exist when holders assess their potential obligations under RCRA subtitle I. Therefore, this proposed rule is intended to specify the compliance obligations for lenders when conducting normal business activities and to define with greater precision the point at which a holder's actions pass from loan oversight and advice to actual UST or UST system management.

The following sections discuss and describe the specific activities of a holder that the proposed rule defines as either activities that indicate the holder's participation in the management of an UST or UST system or those that are *not* instances of participation in the management of an UST or UST system by a person holding indicia of ownership primarily to protect a security interest in the UST or UST system.

It bears repeating, however, that the activities identified in this proposed rule do not specify the only activities that may be undertaken by a holder without losing the protection of the proposed security interest regulatory exemption, and one should not infer that activities not specifically mentioned in this rule are automatically considered evidence of participation in an UST or UST system's management—those must be addressed on a case-by-case basis based on the general test provided in this rule.

(1) *Actions at the inception of the loan or other transaction giving rise to a security interest.* Actions undertaken by a holder prior to the inception of a transaction in which indicia of ownership are held primarily to protect a security interest are irrelevant with respect to the general test of participation in management, and thus are not considered evidence of participation in the management of the UST or UST system. Thus, consultation and negotiation concerning the structure and terms of the loan or other obligation, the payment of interest, the payment period, and specific or general financial or other advice, suggestions, counseling, guidance, or other actions at or prior to the time that indicia of ownership are first held are not considered evidence of participation in the management of the UST or UST system for purposes of this proposed rule. Activities that take place *prior* to holding indicia of ownership are not relevant for determining whether the holder has participated in the management of the UST or UST system *after* the time that the holder acquires indicia of ownership.

In addition to such pre-loan involvement, a holder may determine (whether for risk management or any other business purpose) to undertake or require an environmental investigation (which could include a site assessment, inspection, and/or audit) of an UST or UST system securing the loan or other obligation. Such environmental investigation may be undertaken by the holder, for example, or the holder may require one to be conducted by another party (such as the borrower) as a condition of the loan or other transaction. Neither RCRA Subtitle I nor this proposed rule require that such an environmental investigation be undertaken to qualify for the security interest exemption, and the obligations of a holder seeking to avail itself of the exemption cannot be based on or affected by the holder's not conducting or not requiring an environmental investigation in connection with the security interest. Similarly, a holder is not engaged in management participation solely as a result of undertaking or requiring an environmental investigation, and nothing in this proposed rule should be understood to discourage a holder from undertaking or requiring such an environmental investigation in circumstances deemed appropriate by the holder. Because lender-conducted or -required investigations of a borrower's business or collateral are information-gathering in nature, such activities cannot, alone, be considered to be management participation by a holder.

In the event that a pre-loan environmental investigation of a UST or UST system reveals contamination, the holder may undertake any one of a variety of responses that it deems appropriate: For example, the holder may refuse to extend credit or to follow through with the transaction or instead maintain indicia of ownership in other, non-contaminated property as protection for the security interest. Alternatively, a holder may determine that the risk of default is sufficiently slight (or that the extent of contamination is minimal and does not significantly affect the value of the UST or UST system as collateral) to proceed to extend credit and maintain indicia of ownership in the UST or UST system. Additionally, the holder may require the borrower to clean up the contamination as a condition for extending the loan. Such activities are not considered participation in the UST or UST system's management, and a holder that knowingly takes a security interest in contaminated collateral is not subject to compliance with the RCRA Subtitle I corrective action regulatory program solely on this basis.

(2) *Policing the security interest or loan.* A holder may undertake actions that are consistent with holding ownership indicia primarily to protect a security interest which include, but are not limited to, a requirement that the borrower clean up a release from the UST or UST system which may have occurred prior to or during the life of the loan or security interest (as described in the last section); a requirement of assurance of the borrower's compliance with applicable federal, state, and local environmental or other laws and regulations during the life of the loan or security interest; securing authority or permission for the holder to periodically or regularly monitor or inspect the UST or UST system in which the holder possesses indicia of ownership, or the borrower's business or financial condition, or both; or to comply with legal requirements to which the holder is subject; or other requirements or conditions by which the holder is able to police adequately the loan or security interest, provided that the exercise by the holder of such other loan policing activities are not considered evidence of management participation as provided in the proposed rule's "general test" of management participation.

The authority for the holder to take such actions may be contained in contractual (e.g., loan) documents or other relevant documents specifying requirements for financial, environmental, and other warranties, covenants, and representations or promises from the borrower. While the regulatory exemption in this proposed rule requires that the actions undertaken by a holder in overseeing or managing the loan or other obligation be consistent with those of a person whose indicia of ownership in an UST or UST system is held primarily to protect a security interest, a holder is not expected to be an insurer or guarantor of environmental safety or quality at a secured UST or UST system. The inclusion of environmental warranties and covenants is not considered to be evidence of a holder's acting as an insurer or guarantor, and a finding of

"management participation" cannot be premised solely on the existence of such terms or upon the holder's actions that ensure that the UST or UST system is managed in an environmentally sound manner. Since these actions are consistent with holding indicia of ownership primarily to protect a security interest, they are not considered to be participation in management in this proposed rule.

(3) *Loan work out.* The holder may determine that actions need to be taken with respect to the UST or UST system to safeguard the security interest from loss. These actions may be necessary when, for example, a loan is in default or threat of default, and are commonly referred to as "loan work out" activities. "Loan work out" is largely an undefined term but is generally understood in the financial community to mean those activities undertaken to prevent, mitigate, or cure a default by the obligor or to preserve or prevent the diminution of the value of the security. Loan work out activities are recognized by EPA as a common lender undertaking and, as such, these actions will not take a holder outside of the scope of the security interest exemption provided for in this proposed rule, provided that such actions are consistent with the proposed general test of management participation.

When the holder undertakes loan work out activities, provides financial or other advice, or similar support to a financially distressed borrower, the holder will remain within the scope of the proposed security interest regulatory exemption only so long as the holder does not participate in management as provided by this proposed rule's general test. Loan work out actions that are not evidence of "participation in management" include, but are not limited to: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance with regard to the security interest; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(4) *Foreclosure and sale or liquidation.* Foreclosure and possession of property for purposes of sale or liquidation are often the only remedy the holder may have to secure performance of an obligation. The process of foreclosure and sale or liquidation of a foreclosed-on UST or UST system often results in the exclusive possession of the UST or UST system by the holder and may require or result in the holder's taking record title to the UST or UST system under the laws of some states. For purposes of this proposed rule, the term "foreclosure or its equivalents" includes foreclosure, purchase at foreclosure sale, acquisition or assignment of title in lieu of foreclosure, acquisition of a right to possession or title, or other agreement in settlement of the loan obligation, or any other formal or informal manner by which the holder acquires possession of the borrower's collateral for subsequent disposition in partial or full satisfaction of the underlying obligation. These actions are considered to fall within the scope of the proposed regulatory exemption as necessary incidents to holding ownership indicia primarily to protect a security interest. However, a holder is under the coverage of the proposed rule and is not considered an "owner" of a UST or UST system only so long as the holder's acquisition pursuant to foreclosure is reasonably necessary to ensure satisfaction or performance of the obligation, is temporary in nature, and occurs while the holder is actively seeking to sell or otherwise divest the foreclosed-on UST or UST system.

To meet the requirements of the proposed rule's exemption from regulatory compliance as an "owner" following foreclosure, a holder must be acting consistently with the security interest exemption's requirement that the ownership indicia maintained by the holder continue to be held primarily to protect the security interest. Where a holder's actions indicate that it is not seeking to sell or liquidate the secured assets, the exemption is voided because such actions are akin to holding the asset for investment purposes. This proposed regulation describes circumstances under which a holder may avoid being considered an "owner" of property on which it forecloses for purposes of certain Subtitle I regulations. It is only by complying with the provisions of this proposed rule that the limited ownership rights of a security holder do not rise to the level of full "ownership" sufficient to make the security holder an "owner" of the tank, as that term is used in EPA's UST regulations. The proposed rule first provides a set of general criteria for offering an UST or UST system for sale, and when and under what circumstances an offer of purchase may or may not be rejected. In addition, even though a holder is permitted to use whatever means are appropriate and available to sell or otherwise divest itself of foreclosed-on property, as a measure of certainty this proposed rule contains an objective test that, if followed by a holder, establishes that the holder is meeting the general obligation to divest itself of a foreclosed-on UST or UST system in a reasonably expeditious manner. EPA believes that this aspect of the proposed rule is consistent with the RCRA Subtitle I security interest exemption.

In general, under this proposal, a foreclosing holder must, in order to maintain consistency with the security interest exemption, seek to sell or otherwise divest itself of foreclosed-on property in a reasonably expeditious manner using whatever commercially reasonable means are available or appropriate, taking all facts and circumstances into account. A holder cannot, under the terms of the proposed rule, reject or refuse offers for the property that represent fair consideration for the asset and remain within the proposed regulatory exemption. A holder that outbids or refuses offers from parties offering fair consideration for the property establishes that the property is no longer being held primarily to protect a security interest. The terms of the bid are relevant for this purpose, and a holder is not required to accept offers that would require it to breach duties owed to other holders, the borrower, or other persons with interests in the property that are owed a legal duty. In addition, the term "fair consideration" refers to an all cash offer, which is intended to ensure that this proposed rule would not require a holder to accept a bid that contains unacceptable conditions, such as requirements for indemnification agreements, non-cash offers, "bundled" offers, etc. This proposed provision should not be read to require that a holder may accept only cash offers, however; a holder is always free to accept any offer satisfactory to the holder. The exact requirement that would be imposed by this proposed regulation is that a holder may not reject a cash offer of fair consideration for the foreclosed-on property. If it does, or if it outbids others offering fair consideration, then the holder would, under today's proposal, be considered to be an owner of the UST or UST system in the same manner as any other purchaser.

This proposed rule's provisions defining "fair consideration" and specifying when the foreclosing holder may reject or outbid offers for the property are formulated to reflect the amount that the holder may bid at the foreclosure sale, or not reject during the foreclosure sale or thereafter, in order to recover on its loan or other obligation. In addition, there may be multiple security interests in a borrower's property held by secured creditors, which the definition of "fair consideration" must account for. Therefore, for a senior creditor, the term "fair consideration" is proposed to mean a cash amount that represents a value equal to or greater than the outstanding obligation owed to the holder (including the fees, penalties, and other charges incurred by the holder in connection with the property). "Fair consideration" is further proposed to indicate that the amount that will recover the holder's "security interest" in the property may vary depending on the seniority of the loan or other obligation that is being foreclosed upon. Specifically, a junior creditor may be required to outbid senior creditors in order to recover the value of its loan or other obligation. The definition of fair consideration therefore distinguishes between what junior or senior creditors may bid or not reject for purposes of maintaining the exemption. In addition, in order to avoid liability under law (for example, to the borrower), the foreclosing holder may be required to seek an amount at the foreclosure sale that is greater than the outstanding obligation owed to the foreclosing holder, or to sell the property in a different manner; therefore, the proposed rule does not require a holder to accept an offer of "fair consideration" if to do so would subject the holder to liability under federal or state law.

In this way the proposed rule's provisions with respect to the sale or disposition of property will not conflict with the manner in which such sales are required to be conducted under general principles of law applicable to the holder and the disposition of the property including the UST. For purposes of this proposed rule, the definition of "fair consideration" is an objective, "bright-line" test to determine whether the foreclosing holder has an investment or other interest in the property that is not within the exemption, or whether the holder's post-foreclosure activities indicate that it continues to maintain its ownership indicia in the property primarily to protect a security interest, and is therefore within the protective ambit of the proposed rule.

While a holder may use whatever means are reasonable and appropriate for marketing foreclosed-on property to establish that it is seeking to divest itself of property in an expeditious manner, this proposed rule also provides a mechanism by which a holder can definitely establish that it continues to hold indicia of ownership primarily to protect a security interest and is not an "owner," for purposes of complying with the UST regulatory program, of foreclosed-on property. This mechanism is intended to act as another "bright line" to provide clear and unambiguous evidence that a holder is not the UST or UST system's "owner" following foreclosure: A holder choosing to avail itself of this bright line test must, within 12 months following the acquisition of marketable title, list the property with a broker, dealer, or agent who deals with the type of property in question, or advertise the property as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the property in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the property is located. If the holder satisfies these criteria, the holder is considered to have complied with the requirement in the proposed rule that it is seeking to sell or otherwise divest the property in an expeditious manner.

EPA also recognizes that market conditions, the condition of the property, and other factors may mean that despite reasonable efforts to expeditiously sell or divest foreclosed-on property, the property may not be quickly sold. Therefore, this regulation does not impose a time requirement for the ultimate disposition of foreclosed-on property. Provided that the property is being actively offered for sale by the holder and no offers of fair consideration are ignored, outbid, or rejected, foreclosed-on property may continue to be held by the holder without the holder being considered an "owner" of the UST or UST system for purposes of complying with the UST regulatory program, as detailed in this proposed rule.

Regardless of the manner in which the foreclosing holder chooses to market the property, if at any time after six months following the acquisition of marketable title the holder rejects, or does not act upon within 90 days of receipt of, a written, *bona fide*, firm offer of fair consideration for the property, the holder will lose the protection of the proposed rule. Under this proposal, a "written, *bona fide*, firm offer" is a legally enforceable, commercially reasonable, offer, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. Where a holder outbids, rejects, or fails to act upon an offer of fair consideration, the holder is considered, for the purpose of the proposed regulatory exemption, to be maintaining its indicia of ownership in the property as protection for investment purposes, and not as security for the obligation.

The proposed exemption from regulatory compliance would also permit a foreclosing holder to undertake actions with respect to the UST or UST system to protect or preserve the value of the secured asset. For example, a holder may determine that it needs to take certain actions with respect to an UST or UST system's operations in order to preserve the value of the foreclosed-on assets or to prevent a future release (such as by the removal of an UST or UST system's contents as described below), or to otherwise prepare property for safe public access incident to sale or liquidation of assets. Precisely because a holder in charge of an UST or UST system may need to take affirmative action with respect to the UST or UST system incident to foreclosure and with respect to any petroleum products that are known to be present, the proposal provides that such actions of dominion and control over the UST or UST system are considered necessary components of holding ownership indicia primarily to protect a security interest, provided such actions are undertaken to protect the asset's value and are not undertaken for investment purposes. Therefore, under this proposed rule, such mitigative or preventative measures are considered to be actions that are consistent with holding ownership indicia primarily to protect the security interest in the UST or UST system.

(5) Winding up operations after foreclosure. In addition, in the post-foreclosure context, this proposed rule provides that a holder that forecloses on an UST or UST system with ongoing operations may wind up the UST or UST system's operations without also being considered to be participating in management. Winding up is considered a protected activity by a foreclosing holder because, without such protection, foreclosure would not be possible where practical or commercial necessity dictates that the foreclosing holder undertake such actions. "Winding up" in the post-foreclosure context includes those actions that are necessary to close down an UST or UST

system's operations, secure the site, and otherwise protect the value of the foreclosed assets for subsequent sale or liquidation. In winding up an UST or UST system, a holder may undertake all necessary security measures or take other actions that protect and preserve an UST or UST system's assets, including steps taken to prevent or minimize the risk of a release or threat of release of the UST or UST system's contents.

D. Liability of a Holder as an Operator of an Underground Storage Tank or Underground Storage Tank System

Although this proposed rule would be promulgated under authority to write regulations governing UST activities, EPA intends that it be consistent with and further the purposes of the statutory security interest exemption found at Section 9003(h)(9). One critical aspect of the RCRA subtitle I statutory security interest exemption is that while it excludes a holder from the definition of "owner" for corrective action purposes, the statute does not explicitly address a holder's responsibilities as an UST or UST system "operator."[4] The absence of explicit language in the statute regarding operators creates a potential problem for holders, since EPA's UST corrective action regulations (as described in Section II. B of this preamble) apply to both owners and operators of underground storage tanks. Thus, although RCRA subtitle I clearly exempts holders from corrective action liability as "owners" of USTs, the statute does not address whether such otherwise exempt persons face correction action liability as "operators" of USTs. Without clear protection from corrective action liability as potential operators of USTs, EPA believes that lenders will continue to be reluctant to make loans to UST-related businesses due to continued uncertainty about their potential liability for corrective action. This regulatory proposal therefore addresses a holder's potential liability for RCRA subtitle I corrective action as an "operator" of an UST or UST system.

1. Pre-Foreclosure Operation

Prior to foreclosure, a holder who is in control of, or has responsibility for, the daily operation of an UST or UST system is subject to the full range of requirements applicable to operators of USTs. In addition, a holder may also forfeit the protection of the proposed regulatory security interest exemption from compliance with the UST regulatory program as an owner if the holder participates in the management of an UST or UST system as defined in this proposal.

However, a holder will not, as a general matter, have control of, or responsibility for, the daily operation of an UST or UST system prior to foreclosure in its capacity as a secured creditor who holds indicia of ownership primarily to protect a security interest. Prior to foreclosure, a holder is permitted to conduct those activities related to its financial and administrative obligations of managing a loan portfolio. The holder in this position will not lose its ability to take advantage of the proposed regulatory exemption exclusively as a result of engaging in these activities. See Section III.C.5 of this preamble for a more complete discussion of this issue.

2. Post-Foreclosure Operation

If a borrower defaults on its loan obligation and the holder, primarily to protect its security interest, forecloses on the borrower's UST or UST system, the holder is faced with the decision to continue or suspend the storage or dispensing of product from the UST. As with activities prior to foreclosure, a holder who operates an UST following foreclosure (in any manner other than placing the UST in temporary or permanent closure as specified in this proposal) would, under the current regulatory scheme, be an "operator" and subject to all subtitle I requirements. If the holder complies with the requirements of this rule for placing a tank into temporary or permanent closure, a holder, although nevertheless an operator, would be exempt from the subtitle I corrective action regulatory requirements otherwise applicable to operators.

The strategies for complying with the UST technical standards described in this proposal include emptying tanks, leaving vent lines open and functioning, capping and securing lines within 15 days after foreclosure, and performing either temporary or permanent closure of the UST or UST system. Conversely, a foreclosing security holder who exercises some other strategy for complying with the subtitle I technical requirements (or who fails to comply) could be an "operator" under the subtitle I regulations and would therefore be subject to the full panoply of subtitle I regulatory obligations applicable to all operators of tanks including the corrective action regulations.

As long as an UST or UST system continues to store product, future releases are possible. Consequently, EPA believes that the best way to ensure that a holder's tanks will not contribute to contamination after the holder has taken possession of the UST or UST system (particularly if the holder is exempted from EPA's corrective action regulations) is to require the holder to empty its tanks of all petroleum product. An UST or UST system is empty—in accordance with § 280.70—when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight, of the total capacity of the UST system, remain in the system. To ensure that the UST system has been adequately secured, vent lines must be left open and functioning, and all other lines, pumps, manways, and ancillary equipment must be capped and secured (§ 280.70). Under today's proposal, holders who engage in these activities within 15 days after foreclosure will be exempted from the corrective action requirements applicable to "operators." This is a reasonable condition on which to base this exemption since the threat of future contamination will have been effectively abated for the temporary period of time that the property remains in foreclosure by emptying the tank and complying with the other requirements of 40 CFR part 280, as described in this proposed rule. Compliance with these requirements will also satisfy the technical requirements applicable to foreclosing holders as "operators" under the rule proposed today.

EPA is proposing that 15 days be allowed to empty the tank, and cap and secure all lines and equipment based on its familiarity with companies that specialize in providing UST technical services and on the Agency's knowledge of the steps required to properly complete these tasks. Based on this, EPA proposes that 15 days is a reasonable and adequate time frame that limits the period of time during which a tank containing petroleum product may be left largely unattended. However, the Agency is interested in receiving comments from any holders who feel that a 15-day time frame would be inadequate for a holder to arrange for the completion of these tasks. EPA requests comments and data about the adequacy of a 15-day time frame and information supporting an alternative time frame. Information supporting EPA's proposed time frame is available

[4] Under RCRA Subtitle I, being an "operator" is not synonymous with "participating in the management" of an UST or UST system. Section 9001(3)—Definitions and Exemptions—defines the term "operator" to mean "any person in control of, or having responsibility for, the daily operation of the UST system." A person may, without being an "operator" of an UST or UST system, be sufficiently involved so as to be participating in the management (as that term is defined elsewhere in this proposal) of an UST or UST system.

from the Agency OUST docket, reference number UST 3–16.

In addition to emptying and securing the UST or UST system, a holder who wishes to take advantage of the proposed exemption from subtitle I corrective action regulatory requirements as an operator must comply with the subtitle I requirements for either temporary or permanent closure. A holder who chooses to permanently close its UST or UST system, must do so in accordance with §§ 280.71 through 280.74, Subpart G—Out of Service UST Systems and Closure. A holder who chooses to temporarily close its tanks is required, throughout the first 12 months following foreclosure, to maintain corrosion protection and report any known or suspected releases from the UST system. In accordance with § 280.70, release detection is not required as long as the UST system is empty.

If, after 12 months in temporary closure status, the holder possesses an UST or UST system that does not meet either the performance standards in § 280.20 for new UST systems or the upgrading requirements in § 280.21 (excluding the spill and overfill equipment requirements), and the holder has not successfully disposed of the UST or UST system, the holder must either permanently close the UST system in accordance with §§ 280.71 through 280.74 or perform a site assessment in accordance with § 280.72(a) and apply for an extension through the appropriate implementing agency.

A holder will only need to perform a site assessment if it has failed to sell or otherwise divest of its UST or UST system property within 12 months after entering temporary closure and only if the tanks it has acquired have not been upgraded or replaced to meet the requirements of § 280.20 for new UST systems or § 280.21 for upgraded systems. (UST systems that are adequately protected from corrosion and equipped with leak detection devices pose a significantly lower threat to human health and the environment than do substandard tanks.) The site assessment requirement can also be satisfied if one of the external release detection methods allowed in § 280.43(e) or (f) is operating at the end of the 12-month period, and the release detection method operating indicates that no release has occurred. For those who are still in possession of tanks 12 months after foreclosure, many are expected to possess upgraded or replaced tanks since much of the credit that is expected to be extended subsequent to this rule should be used for upgrading or replacing substandard tanks. Under these circumstances, the holder would be allowed to remain in temporary closure indefinitely. Therefore, EPA believes that few situations should call for a site assessment while the holder is in temporary closure. For those cases in which a holder will find it necessary to perform a site assessment and apply for a temporary closure extension, EPA does not believe that such a requirement will pose a significant additional burden upon the holder, since it is increasingly a standard business practice for a site assessment to be conducted upon most transfers of commercial property. (See Guidelines for an Environmental Risk Program, Federal Deposit Insurance Corporation, February 25, 1993.) While in some cases the requirement may oblige a holder to perform a site assessment sooner (within 12 months after foreclosure) rather than later (upon the date of sale or disposition of the UST or UST system), EPA expects that in most cases a site assessment will, in all probability, be performed before the UST or UST system is transferred to a subsequent purchaser.

The purpose of the provision that requires an UST owner and operator to perform a site assessment in order to apply for an extension 12 months after entering temporary closure (if a substandard UST or UST system has not been replaced or upgraded) was to allow a variance mechanism for UST owners to avoid permanent closure of tanks, on a case-by-case basis. The reason for requiring the site assessment before applying for an extension was based on EPA's concerns that prior contamination could have occurred and could continue to spread from a temporarily closed UST system. Although a holder would not be required to comply with EPA's UST corrective action regulations if contamination is discovered (provided, of course, the holder satisfies the requirements of this proposed rule), it would be required to report evidence of the contamination to the implementing agency (as discussed in the following subsection), who can then decide on the appropriate course of action.

Of course, a holder may choose to continue to operate the UST by storing or dispensing product after foreclosure, or otherwise not exercise either of the options described above. The holder may determine that its interests will be best served by forgoing the security interest exemption, continuing operation of the UST system, and perhaps realizing a greater return of capital on the security interest by selling the property with the UST system as a going concern. In such cases, the tank would be regulated in the same manner as a tank operated by any other person, and the holder would be fully responsible as an operator for compliance with RCRA subtitle I regulations, including corrective action, the UST technical standards, and financial responsibility requirements.

EPA believes that the environment is adequately protected where a holder chooses either of the post-foreclosure options described above for complying with the technical requirements of Subtitle I. Where the tank is removed from service and emptied of its contents, the threat of an unknown or undetected leak resulting in environmental contamination is abated; accordingly, the Agency believes it is appropriate to exempt a foreclosing holder from UST corrective action regulatory requirements under these circumstances.

3. Lenders in Foreclosure Upon the Effective Date of the Rule

The Agency recognizes that some lenders may already hold UST properties through foreclosure or its equivalents at the time the final rule is promulgated. Although EPA is primarily concerned about the future availability of capital to UST owners and operators, rather than loans that have already been extended, the Agency recognizes that holders may be concerned about their potential liability associated with current holdings acquired through foreclosure or its equivalents affecting the extension of future UST loans. A holder who possesses an UST property at the time the rule is promulgated may have tanks that still store product. It would be difficult to determine whether or not contamination caused by a release from such tanks had occurred during the time that the holder had possession of the UST property. A holder, therefore, could potentially be held liable as an UST operator if he has possession of a tank at the time the final rule is promulgated.

EPA requests comments on this aspect of today's proposal. We are interested in collecting data that will clarify whether future UST loan decisions would be negatively affected if the security interest exemption is not extended to holders possessing UST properties through foreclosure or its equivalents upon promulgation of this rule. In addition, EPA is interested in comments addressing whether and how an exemption from the UST regulatory requirements could be structured for holders of such tanks. Finally, we are also interested in receiving comments addressing the extent to which such a

regulatory exemption could impact human health and the environment.

4. Release Reporting Requirements Following Foreclosure

Under today's proposal, upon foreclosure, a holder taking advantage of the proposed exemption from corrective action regulations must nevertheless comply with the requirement in § 280.50 that the discovery of any releases from the UST be reported to the implementing agency. Only the reporting requirement must be followed; the holder need not comply with § 280.52, despite the reference to that provision in § 280.50. The release reporting requirement of § 280.50 is part of Subpart E, which details the obligations for reporting known or suspected releases, investigating off-site impacts, confirming that a release has occurred, and cleaning up spills and overfills. While subpart E generally implements Subtitle I's corrective action and site investigation requirements, from which a holder may be excluded under today's proposed rule, § 280.50 has historically been viewed by EPA as part of the UST technical standards.

A holder is responsible, following foreclosure or its equivalents, for reporting to the implementing agency, any discovery of released regulated substances, or any suspected release at an UST site or in the surrounding area. Such reporting is considered necessary to ensure protection of human health and the environment. By informing the implementing agency of a release, the implementing agency can then determine the appropriate response action, if any.

In the absence of today's proposed rule, a holder would have to perform release investigation and confirmation in accordance with §§ 280.51 through 280.53. Under today's proposal, a holder who chooses to take the tank(s) out of service as described in this proposal is required to follow the procedures established in § 280.50 but is not subject to the release investigation and confirmation requirements in §§ 280.51 through 280.53. A holder who elects to keep the tank(s) in operation is obligated to comply with all of the Subpart E requirements, including those related to release investigation and confirmation, and corrective action.

E. Actions Taken to Protect Human Health and the Environment

Because of the special position and role played by bona fide holders, as has been recognized by Congress in creating the statutory exemption from corrective action liability, the Agency believes that it is appropriate to include within the scope of protected UST or UST system activities certain lender actions which protect human health and the environment. EPA believes that there are a number of activities in which a holder may engage after foreclosure which can contribute to the protection of human health and the environment and in which the holder may engage and still meet the terms of the proposed rule's exemption from regulatory requirements. Such activities include: Release response and corrective action for UST systems, permanent or temporary closure of an UST or UST system, tank upgrades or replacements, environmental investigations, maintenance of corrosion protection, and release reporting. The Agency believes that protection of human health and the environment can be advanced by allowing a holder to participate in activities associated with environmental compliance either prior to or following foreclosure on an UST or UST system. Environmental compliance activities are generally considered to be integral to the daily operations of an UST or UST system, and a person who participates in those activities would typically be considered an operator. However, a reasonable holder may also undertake such activities in the course of maintaining its indicia of ownership in the tank to protect its security interest. Therefore, the Agency believes that it is appropriate to propose that environmental compliance activities, if undertaken by a holder, will nevertheless allow the holder to take advantage of the proposed exemption from regulatory requirements. The Agency is not proposing that these activities be required of a holder as a condition for obtaining the security interest exemption as an UST owner, but that holders be able to participate in these activities without losing the protection of the proposed exemption.

Prior to foreclosure, therefore, and where the holder is otherwise permitted,[5] a holder may require the borrower to comply, or itself undertake to ensure compliance, with the subtitle I regulations applicable to the tank owner and operator (typically, the borrower), without being deemed an "operator" under the provisions of this proposed rule. EPA believes that a holder who is ensuring that a tank is operated as specified in 40 CFR part 280 (even if the holder is itself performing the activities authorized or required by part 280) is acting both to preserve the collateral (and therefore acting consistent with its capacity as a security interest holder) and to protect human health and the environment. It is appropriate for a holder to intervene in such circumstances in which human health and the environment are threatened by an UST owner or operator's improper management or operation of its tank(s). However, undertaking activities that bring the tank(s) into compliance (i.e., regulatory compliance actions such as tank testing, leak detection, upgrading, etc.) will not exempt a holder from complying with the UST corrective action regulatory requirements if the holder is otherwise involved in the day-to-day operation of the tank(s). All other acts of operation undertaken by a holder (such as filling the tank(s) with product, selling and/or dispensing tank product, performing overall management functions, etc.) are not shielded activities under this proposed rule because by doing so the holder displaces the borrower as the primary operator of the tank(s).

Furthermore, following foreclosure, where the holder chooses to take advantage of the conditional exemption from the corrective action regulations by emptying and removing the tank from operation, as specified above, the Agency proposes that the holder may—without losing the protection of the proposed rule—undertake cleanup activities consistent with the corrective action requirements of 40 CFR part 280, subpart F at or in connection with the UST or UST system. EPA specifically requests comments on this aspect of today's proposal.

IV. Financial Responsibility Requirements

RCRA section 9003(d), as implemented by EPA at 40 CFR part 280, subpart H—Financial Responsibility, requires owners or operators of petroleum USTs to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental UST releases. As discussed earlier under Section III. A of this proposal, EPA is defining, for purposes of its Subtitle I corrective action and technical requirements, the term "owner" to mean that a holder who maintains ownership rights in an UST or UST system primarily to protect a security interest does not rise to level of a full "owner," and therefore is not subject to compliance with those regulatory requirements. As described earlier, this proposed revision of EPA's corrective action regulatory program is consistent with the Subtitle I statutory security interest exemption. Similarly,

[5] For example, where the lender is permitted pursuant to the loan document or under applicable state laws.

the Agency believes that a holder is not subject to the financial responsibility requirements as an UST owner. The Agency is also proposing to exempt a holder as an UST operator from the financial responsibility requirements.

Before a holder takes possession of an UST or UST system, a holder is not considered an UST operator, for purposes of EPA's technical and financial responsibility regulations, if it is acting merely as a holder and is not in control of the daily operation of the UST or UST system. Therefore, a holder typically is not subject to the UST financial responsibility requirements of 40 CFR part 280, subpart H as an operator prior to foreclosure. EPA is today proposing that a holder be exempted from corrective action as an operator after foreclosure if it ensures that its tanks no longer store petroleum and it complies with the temporary or permanent closure requirements specified in this rule. (See Section III. D. 2 of this preamble). In these situations, where the tanks are empty and pose little threat of release, it would serve no useful purpose to require a holder to demonstrate compliance with the financial responsibility requirements for corrective action. Therefore, the Agency is proposing to exempt holders who satisfy all the other requirements in this proposed rule from demonstrating Subtitle I financial responsibility for UST corrective action.

A holder's responsibility for demonstrating UST financial responsibility for third-party bodily injury and property damage compensation poses a different issue. While RCRA Subtitle I does not include provisions that actually impose third-party liability upon UST owners and operators, it does require UST owners and operators to demonstrate their ability to compensate third parties for bodily injury and property damage caused by accidental releases arising from the operation of an UST or UST system. The Agency believes that a holder who complies with all the conditions set forth in today's proposal should not be required to comply with any of the UST financial responsibility requirements as an owner or operator, including those for both corrective action and third-party liability coverage. EPA has chosen to propose this exemption based on the statutory authority provided in section 9003. The proposed exemption is consistent with the interpretation of that language adopted in the preamble to the UST financial responsibility final rule (53 FR 43323). In that rule, EPA exempted tanks taken out of operation prior to the effective date of the rule from UST financial responsibility compliance. In the preamble to the final rule, EPA recognized that "insurance providers would be extremely reluctant to assure tanks taken out of operation because of the perceived greater uncertainty associated with them" (53 FR 43327). In particular, insurers have indicated that in the case of foreclosed USTs, they would be concerned about vandalism and other threats to USTs at non-operational, unattended gas stations or similar locations with public access. The preamble also states that "even if providers of assurance would assure these tanks, it is unlikely that they would cover leaks which occurred before the effective date of the policy" (53 FR 43327).

A similar situation exists for holders who empty their tanks and enter temporary or permanent closure after foreclosure. EPA has discovered that it is practically impossible to obtain third-party environmental insurance coverage for a new owner of empty tanks. Providers of financial assurance are very reluctant to provide any coverage for tanks that no longer store petroleum product. Further, providers are reluctant to provide coverage for damages that occur after the effective date of the policy for releases that might have occurred prior to the effective date of the policy. Under this proposed rule a holder is required to empty its tanks in order to be exempt from corrective action regulatory requirements. Since providers are unlikely to provide any coverage for empty tanks at non-operational facilities or for releases that occurred prior to foreclosure, and since third-party damages would be extremely unlikely to stem from releases occurring after the holder forecloses on and empties its tanks, the Agency believes it is unnecessary to require third-party liability coverage for such tanks.

RCRA section 9003(c)(6) supports this proposed exemption. That provision emphasizes the connection between the UST financial responsibility requirement and a tank's operational status: "The regulations promulgated pursuant to this section shall include: . . . (6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from *operating* an underground storage tank." [emphasis added.] The Agency believes that since a holder must demonstrate that its tanks are empty and that it is complying with the UST temporary or permanent closure requirements in order to avoid corrective action liability as an operator, there should be no need for a holder who meets these requirements to demonstrate financial responsibility for corrective action or third-party damages. By requiring the holder to empty the tank in order to be exempt from corrective action requirements, EPA is ensuring that damages caused by future releases from that tank will be minimized if not avoided altogether. As a result, EPA is proposing that holders who act in accordance with the requirements described in this proposed rule be exempt from all subtitle I financial responsibility requirements.

V. State Program Approval

RCRA subtitle I section 9004, as implemented by 40 CFR part 281, provides states the ability to operate an UST regulatory program in lieu of the federal program if they first submit the program for review and receive approval from EPA. EPA approval of a state program means that the requirements in the state's laws and regulations will be in effect rather than the federal requirements. Program approval ensures that a single set of requirements (the state's) will be enforced in that state, thus eliminating the duplication and confusion that can result from having separate state and federal requirements. EPA considers state program approval to be an integral part of the UST regulatory program.

EPA's approval review focuses primarily on the basic state authorities (laws and regulations) needed to achieve the underlying objectives of the federal regulations covering the UST technical standards, corrective action, and financial responsibility requirements. The UST state program approval process is also based upon a performance-oriented approach. The statutory test for an approvable state program is that it be "no less stringent" than the federal requirements and include as many categories of UST systems (or be as broad in scope) as the federal requirements. EPA reviews the state's specific statutory and regulatory provisions as well as their interpretation by the attorney general of the state.

Today's proposed rule is not intended to present a barrier for states to receive state program approval. A state is not required to have enacted a security interest exemption in order to receive approval of its program from EPA, since failure to have such a provision would merely make the state program broader in scope than the federal one. However, EPA encourages states to adopt statutory and/or regulatory provisions comparable to the final federal UST lender liability rule so that credit-

worthy UST owners and operators will have access to funds to upgrade or replace their tanks.

If a state program includes an UST security interest exemption, EPA will evaluate it against the criteria in § 281.39, as proposed in this notice. These criteria stem from the key components contained in this proposed rule. A state program that exempts a holder from UST corrective action, financial responsibility, and technical requirements as an owner may be approved if: The holder is maintaining indicia of ownership primarily to protect a security interest in a petroleum UST or UST system; the holder does not participate in the management of the UST or UST system; and the holder does not engage in petroleum production, refining, and marketing. In addition, a state program may be approved if it exempts a holder from corrective action and financial responsibility as an operator and if, in addition to the three previous criteria, it requires the holder to demonstrate that its tanks have been emptied and secured, and that it has either permanently or temporarily closed the UST or UST system.

The state's program application should address the issue of UST lender liability in the "Scope" section of its state program description, under § 281.21(a)(3) of the State Program Approval regulations.

VI. Economic Analysis

As discussed elsewhere in this proposal, EPA believes that concerns over environmental liability are making a significant number of lenders reluctant to make loans to otherwise credit-worthy owners and operators of USTs. A more analytical approach to describing the current lending climate and the potential effects associated with today's proposal is through a discussion of lending rates that UST owners are currently faced with, in comparison to those that may prevail after promulgation of a final rule.

In analytical terms, prior to final promulgation of today's proposed rule, the rate that lenders charge now when considering making an UST-related loan can be described as:

$r_{market} - i = r_b + r_e$

where:

r_{market}=Prevailing interest rate on UST-related loans

i=Risk-free rate of return

r_b=Risk premium banks charge for loans to small businesses. (This factor includes the financial risk for a business with certain assets that is unable to repay its loan.)

r_e=Risk premium charged for UST owners. (This factor includes the financial risk that a lender may have to pay for contamination, or uncertainty regarding the true value of collateral, in the event of contamination.)

Due to the current uncertainty regarding a holder's obligations to comply with the UST regulatory requirements, the risk premium "r_e" that banks have to charge in order to be adequately compensated for their risk in an UST-related loan may often be so high that it effectively precludes lenders from making loans at this level. A related barrier to lending is that since all UST owners bear a systematic risk imposed by government regulations, lenders cannot diversify to substantially reduce or eliminate the UST-related risk premium, r_e, by holding a portfolio of UST-related loans with different characteristics and risks. Since most UST owners and operators are small businesses that cannot self finance, they will either forego or delay UST facility improvements. While many UST-related loans are expected to be used for financing tank upgrades or replacements, these loans may also be used to provide additional services at the facility (e.g., an expanded area for food items at a convenience store). If lenders are precluded from making UST-related loans, both environmental protection and economic growth may suffer.

By providing the exemption for holders from UST regulatory requirements contained in this proposed rule and thus reducing the uncertainty associated with making an UST-related loan, the risk premium is expected to be significantly reduced. The interest rate relationship after final promulgation of today's proposed rule can be described as:

r_{market} (post rule)$= i + r_b + r_e$ (post rule)

where:

r_{market} (post rule)=Prevailing interest on UST-related loans after final promulgation of today's proposed rule

r_e (post rule)=Risk premium charged for UST owners after final promulgation of today's proposed rule

Although r_e (post rule) will still exist, it is expected to be significantly less than r_e. The result would be the reduction of the prevailing interest rate on UST-related loans to a level, r_{market} (post rule), that is both adequate to compensate lenders for their perceived risk and at the same time affordable for credit-worthy UST owners.

There are social costs associated with owners' and operators' inability to use the least costly financial mechanism to comply with the existing UST regulations. By reducing the risk premium to a level at which lenders are both willing and able to make UST-related loans, this proposed regulation is expected to increase the ability of UST owners and operators to comply with subtitle I regulations, thereby reducing these social costs. To the extent that loans are made for environmental compliance purposes, social costs would also be reduced by decreasing the number and severity of releases from old USTs that might otherwise occur in the absence of upgrading or replacing tanks.

The Agency is interested in obtaining comments on how this proposed rule might allow UST owners and operators to use less costly financial mechanisms to comply with UST regulations. Specifically, the Agency requests information from lenders on the current interest rate charged for loans when property with one or more USTs is used as collateral. The Agency also requests information from lenders regarding the extent to which credit might have been extended to UST owners and operators in the past had this proposed rule been in effect.

Further information and a more detailed discussion of the costs and benefits associated with today's proposal is contained in the "Regulatory Background Document" for this proposed rule, located in the OUST Docket at 401 M Street, SW.; room 2616: Washington, DC 20460.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51,735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the U.S. Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is a "significant regulatory action" because it raises policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, agencies must evaluate the effects of a regulation on small entities. If the rule is likely to have a "significant impact on a substantial number of small entities," then a Regulatory Flexibility Analysis must be performed. Because this proposed rule may actually result in cost savings for small entities that hold security interests in USTs or UST systems, EPA certifies that today's proposed rule would not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

This proposed rule does not contain any new information collection requirements under the provision of the *Paperwork Reduction Act*, 44 USC 3501 *et seq.*

To the extent that this proposed rule discusses any information collection requirements imposed under existing underground storage tank regulations, those requirements have been approved by the OMB under the *Paperwork Reduction Act* and have been assigned control number 2050–0068 (ICR no. 1360).

List of Subjects in 40 CFR Parts 280 and 281

Environmental liability, Financial institutions, Ground water, Lender liability, Oil pollution, Petroleum, State program approval, Underground storage tanks, Water pollution control.

Dated: June 3, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I, title I of the Code of Federal Regulations is proposed to be amended as follows:

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (USTs)

1. The authority citation for part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, 6991h.

2. Part 280 is proposed to be amended by adding subpart I consisting of §§ 280.200 through 280.250 to read as follows:

Subpart I—Lender Liability

Sec.

280.200 Definitions.
280.210 Participation in management.
280.220 Ownership of an underground storage tank or underground storage tank system.
280.230 Operating an underground storage tank or underground storage tank system.
280.240 Actions taken to protect human health and the environment under 40 CFR part 180.
280.250 Financial responsibility.

Subpart I—Lender Liability

§ 280.200 Definitions.

(a) *UST technical standards*, as used in this subpart, refers to the UST preventative and operating requirements under 40 CFR part 280, subparts B, C, D, G, and § 280.50 of subpart E.

(b) *Petroleum production, refining, and marketing.*—(1) *Petroleum production* means the production of crude oil or other forms of petroleum (as defined in § 280.12) as well as the production of petroleum products from purchased materials.

(2) *Petroleum refining* means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

(3) *Petroleum marketing* means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

(c) *Indicia of ownership* means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title to real or personal property acquired incident to foreclosure or its equivalents. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), legal or equitable title obtained pursuant to foreclosure, and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

(d) *A holder* is a person who maintains indicia of ownership (as defined in § 280.200(c)) primarily to protect a security interest (as defined in § 280.200(f)(1)) in a petroleum UST or UST system. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

(e) *A borrower, debtor, or obligor* is a person whose UST or UST system is encumbered by a security interest. These terms may be used interchangeably.

(f) *Primarily to protect a security interest* means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

(1) *Security interest* means an interest in a petroleum UST or UST system or in the facility or property on which the UST or UST system is located, created, or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in an UST or UST system or in the facility or property on which the UST or UST system is located, for the purpose of securing a loan or other obligation.

(2) *Primarily to protect a security interest*, as used in this subpart, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership

indicia are held must be as protection for a security interest.

§ 280.210 Participation in management.

The term *participating in the management of an UST or UST system* means that the holder is engaging in acts of petroleum UST or UST system management, as defined herein.

(a) *Actions that are participation in management pre-foreclosure.* Participation in the management of an UST or UST system means, for purposes of this subpart, actual participation in the management or control of decisionmaking related to the UST or UST system by the holder and does not include the mere capacity or ability to influence or the unexercised right to control UST or UST system operations. A holder is participating in management, while the borrower is still in possession of the UST or UST system encumbered by the security interest, only if the holder either:

(1) Exercises decisionmaking control over the borrower's environmental compliance, such that the holder has undertaken responsibility for the borrower's UST or UST system management; or

(2) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decisionmaking of the enterprise with respect to:

(i) Environmental compliance; or

(ii) All, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise other than environmental compliance. Operational aspects of the enterprise include functions such as that of facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include functions such as that of credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions.

(b) *Actions that are not participation in management pre-foreclosure.*

(1) *Actions at the inception of the loan or other transaction.* No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this Subpart. A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the UST or UST system in which indicia of ownership are to be held or requires a prospective borrower to clean up contamination from the UST or UST system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation is not by such action considered to be participating in the UST's or UST system's management.

(2) *Loan policing and workout.* Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this subpart. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and workout activities cover and include all such activities up to foreclosure or its equivalents, exclusive of any activities that constitute participation in management.

(i) *Policing the security interest or loan.* A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not by such actions participate in the management of the UST or UST system as provided in § 280.210(a). Such actions include, but are not limited to, requiring the borrower to clean up contamination from the UST or UST system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the UST or UST system (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(ii) *Loan work out.* A holder who engages in work out activities prior to foreclosure or its equivalents will remain within the exemption provided that the holder does not by such action participate in the management of the UST or UST system as provided in § 280.210(a). For purposes of this rule, *work out* refers to those actions by which a holder, at any time prior to foreclosure or its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(c) *Foreclosure on an UST or UST system and participation in management activities post-foreclosure—(1) Foreclosure.* Indicia of ownership that are held primarily to protect a security interest include legal or equitable title acquired through or incident to foreclosure or its equivalents. For purposes of this subpart, the term *foreclosure or its equivalents* includes purchase at foreclosure sale; acquisition or assignment of title in lieu of foreclosure; termination of a lease or other repossession; acquisition of a right to title or possession; an agreement in satisfaction of the obligation; or any other formal or informal manner (whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower) by which the holder acquires title to or possession of the secured UST or UST system. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease an UST or UST system held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the UST or UST system in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the UST or UST system, taking all facts and circumstances into consideration, and provided that the holder did not participate in management (as defined in § 280.210(a)) prior to foreclosure or its equivalents. For purposes of establishing that a holder is seeking to sell, re-lease an UST or UST system held pursuant to a lease financing

transaction (whether by a new lease financing transaction or substitution of the lessee), or divest an UST or UST system in a reasonably expeditious manner, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the UST or UST system, or may employ the means specified in § 280.210(c)(2). A holder that outbids, rejects, or fails to act upon a written *bona fide*, firm offer of fair consideration for the UST or UST system, as provided in § 280.210(c)(2), is not considered to hold indicia of ownership primarily to protect a security interest.

(2) *Holding foreclosed property for disposition and liquidation.* A holder, who did not participate in management prior to foreclosure or its equivalents, may sell, re-lease an UST or UST system held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), liquidate, wind up operations, and take measures to preserve, protect, or prepare the secured UST or UST system prior to sale or other disposition. The holder may conduct these activities without voiding the exemption, subject to the requirements of this subpart.

(i) A holder establishes that the ownership indicia maintained following foreclosure or its equivalents continue to be held primarily to protect a security interest by, within 12 months following foreclosure, listing the UST or UST system or the facility or property on which the UST or UST system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the UST or UST system as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the UST or UST system in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the UST or UST system is located. For purposes of this provision, the 12-month period begins to run from the time that the holder acquires marketable title, provided that the holder, after the expiration of any redemption or other waiting period provided by law, was acting diligently to acquire marketable title. If the holder fails to act diligently to acquire marketable title, the 12-month period begins to run on the date of foreclosure or its equivalents.

(ii) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the UST or UST system or the facility or property on which the UST or UST system is located establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured UST or UST system are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

(A) *Fair consideration,* in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the UST or UST system, is the value of the security interest as defined in this section. The value of the security interest is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of an UST or UST system subject to a lease financing transaction) pursuant to foreclosure or its equivalents, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure or its equivalents), plus all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure or its equivalents, retention, preserving, protecting, and preparing the UST or UST system prior to sale, re-lease of an UST or UST system held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee) or other disposition, plus environmental investigation and corrective action costs incurred under §§ 280.51 through 280.67; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower subsequent to the acquisition of full title (or possession in the case of an UST or UST system subject to a lease financing transaction) pursuant to foreclosure or its equivalents. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in the preceding sentence.

(B) *Outbids, rejects, or fails to act upon an offer of fair consideration* means that the holder outbids, rejects, or fails to act upon within 90 days of receipt of a written, *bona fide*, firm offer of fair consideration for the UST or UST system received at any time after six months following foreclosure or its equivalents. A "written, *bona fide*, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed UST or UST system, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this provision, the six-month period begins to run from the time that the holder acquires marketable title, provided that the holder, after the expiration of any redemption or other waiting period provided by law, was acting diligently to acquire marketable title. If the holder fails to act diligently to acquire marketable title, the six-month period begins to run on the date of foreclosure or its equivalents.

§ 280.220 Ownership of an underground storage tank or underground storage tank system.

(a) *Ownership of an UST or UST system for purposes of corrective action.* A holder is not an "owner" of a petroleum UST or UST system for purposes of compliance with corrective action requirements under §§ 280.51 through 280.67, provided the person:

(1) Does not participate in the management of the UST or UST system as defined in § 280.210; and

(2) Does not engage in petroleum production, refining, and marketing.

(b) *Ownership of an UST or UST system for purposes of the UST technical standards.* A holder is not an "owner" of a petroleum UST or UST system for purposes of the UST technical standards provided that the holder:

(1) Does not participate in the management of the UST or UST system as defined in § 280.210; and

(2) Does not engage in petroleum production, refining, and marketing.

§ 280.230 Operating an underground storage tank or underground storage tank system.

(a) *Operating an UST or UST system prior to foreclosure.* A holder, prior to foreclosure or its equivalents, is not an "operator" of a petroleum UST or UST system for purposes of compliance with the corrective action requirements of §§ 280.51 through 280.67 and the UST technical standards, provided the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

(b) *Operating an UST or UST system after foreclosure.*

(1) A holder who has not participated in management prior to foreclosure and

who acquires a petroleum UST or UST system through foreclosure or its equivalents is not an "operator" of the UST or UST system for purposes of compliance with the corrective action requirements under §§ 230.51 through 280.67, provided that the holder within 15 days following foreclosure or its equivalents, empties all of its USTs and UST systems so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment.

(2) In addition, the holder must either:

(i) *Permanently close the UST or UST system* in accordance with §§ 280.71 through 280.74, except § 280.72(b); or

(ii) *Temporarily close the UST or UST system* in accordance with the applicable provisions of § 280.70 as follows:

(A) A holder may remain in temporary closure for up to 12 months by:

(*1*) Continuing operation and maintenance of corrosion protection in accordance with § 280.31; and

(*2*) Reporting suspected releases to the implementing agency.

(B) If the UST system is temporarily closed for more than 12 months, the holder must permanently close the UST system if it does not meet either the performance standards in § 280.20 for new UST systems or the upgrading requirements in § 280.21 except that the spill and overfill equipment requirements do not have to be met. A substandard UST system must be permanently closed in accordance with §§ 280.71 through 280.74, except § 280.72(b), unless the implementing agency provides an extension of the 12-month temporary closure period. The holder must complete a site assessment in accordance with § 280.72(a) before such an extension can be applied for.

(3) A holder who acquires a petroleum UST or UST system through foreclosure or its equivalents is not an "operator" of the UST or UST system for purposes of 40 CFR part 280, subparts B, C, and D of the technical standards for the first 15 days following foreclosure or its equivalents, provided the holder complies with § 280.230(b).

§ 280.240 Actions taken to protect human health and the environment under 40 CFR part 280.

A holder is not considered to be an operator of an UST or UST system or to be participating in the management of an UST or UST system solely on the basis of undertaking actions under 40 CFR part 280, subparts B through H, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system. Such actions include, but are not limited to, release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in 40 CFR part 280.

§ 280.250 Financial responsibility.

A holder is exempt from the requirement to demonstrate financial responsibility under subpart H—Financial Responsibility, provided the holder:

(a) Does not participate in the management of the UST or UST system as defined in § 280.210;

(b) Does not engage in petroleum production, refining, and marketing as defined in § 280.200(b); and

(c) Complies with the requirements of § 280.230.

PART 281—APPROVAL OF STATE UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 281 continues to read as follows:

Authority: Sections 2002, 9004, 9005, 9006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6991 (c), (d), (e)).

Subpart C—[Amended]

2. Section 281.39 to added to subpart C to read as follows:

§ 281.39 Lender liability.

(a) A state is not required to have a security interest exemption to obtain or maintain RCRA Subtitle I program approval. If a state enacts a security interest exemption provision, it does not have to be as extensive as the security interest exemption provided for in 40 CFR part 280, subpart I, as defined in §§ 280.200 through 280.250, to obtain or maintain RCRA subtitle I program approval. However, a state's security interest exemption cannot be broader in scope or less stringent than the security interest exemption provided for in 40 CFR part 280, subpart I.

(b) A state program will be considered to be no less stringent than, and as broad in scope as, the federal program provided that the state provision:

(1) Mirrors the security interest exemption provided for in 40 CFR part 280, subpart I; or

(2) Achieves the same effect as provided by the following key criteria:

(i) A holder, meaning a person who maintains indicia of ownership primarily to protect a security interest in a petroleum UST or UST system, who does not participate in the management of the UST or UST system as defined under § 280.210 and who does not engage in petroleum production, refining, and marketing as defined under § 280.200(a) is not:

(A) An "owner" of a petroleum UST or UST system for purposes of compliance with 40 CFR part 280 requirements;

(B) An "operator" of a petroleum UST or UST system for purposes of compliance with 40 CFR part 280 requirements *prior to foreclosure or its equivalents,* provided the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system;

(C) An "operator" of a petroleum UST or UST system for purposes of compliance with 40 CFR part 280 corrective action and financial responsibility requirements *after* foreclosure or its equivalents, provided the holder complies with the requirements of § 280.230(b).

(ii) [Reserved]

[FR Doc. 94–14173 Filed 6–10–94; 8:45 am]
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federal register

Monday
June 13, 1994

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 552

Use of Force and Application of Restraints; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 552

RIN 1120–AA13

Use of Force and Application of Restraints

AGENCY: Bureau of Prisons, Justice.

ACTION: Finalization of interim rule.

SUMMARY: In this document, the Bureau of Prisons is finalizing its interim rule on Use of Force and Application of Restraints. These amendments take note of public comment received and include clarification on confrontation avoidance procedures, provisions for the use of soft restraints and ambulatory restraints, updated provisions for the documentation of incidents, provisions on the role of medical staff, and various editorial amendments. In updating procedures to follow in situations which require the use of force or application of restraints, these amendments are intended to provide for the security of the institution and for the well-being of inmates and staff.

EFFECTIVE DATE: June 13, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is finalizing its interim rule on Use of Force and Application of Restraints, which was published in the **Federal Register** May 17, 1989 (54 FR 21394). A summary of the public comment and agency response follows.

The Bureau received comment regarding paragraphs (c), (e), (f), (g), and (j) of § 552.21, and on §§ 552.22 and 552.23. With respect to § 552.21(c), the commenter stated that there was a lack of specificity as to which institutional regulations could be enforced by the use of restraints and/or force. The Bureau believes, however, that the general guidelines and statement of purpose in revised § 552.20 (discussed below) and the governing principles contained in newly designated § 552.22 adequately acknowledge the serious nature of conditions which authorize the use of force and/or restraints.

With respect to § 552.21(e), the commenter stated that the lifting and carrying of an inmate in restraints could expose the inmate to both malicious and unintentional physical harm by those prison staff carrying the inmate. The commenter further stated that such lifting might also expose staff to injury, and stated that no prisoners should be dragged nor should inmates be enlisted for the purpose of lifting or carrying a restrained inmate because they have not had appropriate training. The Bureau believes that newly designated § 552.22(h) clearly prohibits the infliction of malicious harm. In addition, appropriate training on the use of force and/or restraints and on the lifting and carrying of an inmate in restraints is provided to Bureau staff. The Bureau believes that this training is sufficient to address the commenter's concerns on minimizing the risk of unintentional physical harm to either inmate or staff. Finally, the Bureau wishes to note that its regulations on the use of force and/or restraints are implemented by staff and not by inmates.

With respect to § 552.21(f), the commenter objected to the absence of any reference to maximum time length allowed on the use of restraints. The commenter further noted that medical staff should be consulted when the inmate "is unable to regain his or her self-control within a normal time" and for determining whether continued use of restraints is necessary. The Bureau believes that adequate provision for medical review and/or continuing care is contained in newly designated § 552.26. As noted below, the Bureau is making further amendment to its provisions for the role of medical staff in use of force and application of restraints incidents.

With respect to § 552.21(g), the commenter questioned the use of restraints on an inmate in administrative detention or disciplinary segregation. The Bureau notes that this paragraph (now designated as § 552.22(g)) states that, except when the immediate use of restraints is required for the control of the inmate, application or continued application of restraints on an inmate in administrative detention or disciplinary segregation requires the approval of Warden or designee. The Bureau wishes to note that such application would not be routine, and it believes that requiring approval at this level is sufficient to ensure that such application does accomplish legitimate penological objectives. As noted below, the Bureau is making further amendments to this section.

With respect to § 552.21(j), the commenter noted a discrepancy in that this paragraph provided that all significant incidents involving use of force and application of restraints require documentation, while § 522.26 stated that all incidents involving use of force or restraints be documented. As noted below, newly designated § 552.22(j) is being amended to remove this unintentional discrepancy.

With respect to § 552.22, the commenter objected to exception being made by the Director for use of confrontation avoidance procedures in specific institutions or housing units. As noted below, this section (now designated as § 552.23) is being revised to remove stated exceptions.

With respect to § 552.23, the commenter stated that with the exception of preventing inmate self-injury, it is never necessary to implement four-point restraints. The commenter noted particular objection to paragraph (e), stating that it allows prison staff to deny the inmate in four-point restraints an opportunity to use the toilet if he or she continued to resist or became violent while being released. The commenter believed that any self-destructive behavior exhibited by an inmate in four-point restraint should be reported to medical staff and that control over the use of four-point restraint by medical personnel is essential. The Bureau believes that this section contains sufficient safeguards. As noted below, however, this section (now designated as § 552.24) is being further amended for editorial purposes. The Bureau believes that the editorial restatement of the introductory text clarifies that four-point restraints are to be used when it is determined that they are the only means available to obtain and maintain control over an inmate. The provisions in paragraph (e) are intended to guarantee that the inmate's access to toilet facilities are controlled by the inmate's behavior. The Bureau believes that newly designated §§ 552.24(f) and 552.26 adequately provide for medical review and responsibility.

After due consideration of the comments received, and based upon the experience gained from application of the previously revised regulations, the Bureau makes the following further amendments. For the sake of clarity, the provisions in former § 552.20 are being revised into two separate sections, and former §§ 552.21 through 552.26 are redesignated as §§ 552.22 through 552.27 in order to accommodate the new section. Paragraph codification and cross references in the revised regulations have been adjusted as necessary. In § 552.20, the introductory text (formerly paragraph (a)) is further amended to include a statement that staff are authorized to use force only as a last alternative after all other

reasonable efforts to resolve a situation have failed. Paragraphs (a) and (b) of this section (formerly paragraphs (a) (1) and (2)) are amended for editorial purposes. In paragraph (d) (formerly paragraph (a)(4)) the word "wounds" is revised to read "injury" to describe more accurately conditions which may lead to authorized use of restraints by staff. Because an injury may be of such a nature that it would not by strict definition be considered a wound, the Bureau believes it reasonable to use the broader word "injury." In new § 552.21 on types of force, section headings were added to paragraphs (c) and (d) for the sake of editorial consistency. In addition, paragraph (c) (formerly § 552.20(d)) is amended to include reference to soft and ambulatory (leg) restraints. The use of soft restraints and ambulatory restraints is intended to allow for graduated procedures in applying restraints.

In newly designated § 552.22, paragraph (a) is amended to remove an obsolete cross reference, and paragraph (g) is amended to include reference to graduated procedures in applying restraints. In paragraph (h), introductory text is amended to include an example of restraint equipment, and paragraph (h)(2) is amended to clarify specific situations to help avoid physical problems of an inmate under restraints. Paragraph (j) is amended to remove any inconsistency with the provisions of newly designated § 522.27.

Newly designated § 552.23 is revised to broaden the use of confrontation avoidance procedures. To this effect, paragraph (b), which contained provisions for exception, is removed.

In newly designated § 552.24, introductory text is amended to further clarify when four-point restraints may be used. In paragraph (a), "vinyl" is substituted for "leather." Additional editorial amendments to this section make no change in the intent of the regulation.

Newly designated § 552.25 is amended for editorial purposes. There is no change in the intent of the regulation.

Newly designated § 552.26 is revised to specify the role of medical staff in calculated use of force situations. Paragraph (a) is also amended to include provisions specifically applicable to pregnant inmates.

Newly designated § 552.27 is reworded, although its intent is unchanged.

The Bureau believes that the changes to the interim rule discussed above do not impose additional restrictions on inmates and are necessary in order to provide for the continued protection of inmates, staff, and property. The Bureau therefore finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of further proposed rulemaking, the opportunity for public comment, and delay in effective date for these additional changes.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866; this rule was reviewed by the Office of Management and Budget pursuant to E.O. 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 552

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), the interim rule amending 28 CFR part 552 which was published at 54 FR 21394 on May 17, 1989, is adopted as a final rule with the following change:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 552—CUSTODY

1. The authority citation for 28 CFR part 552 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§§ 552.21 through 552.26 [Redesignated as §§ 552.22 through 552.27]

2. Sections 552.21 through 552.26 are redesignated as §§ 552.22 through 552.27.

3. Section 552.20 is revised to read as follows:

§ 552.20 Purpose and scope.

The Bureau of Prisons authorizes staff to use force only as a last alternative after all other reasonable efforts to resolve a situation have failed. When authorized, staff must use only that amount of force necessary to gain control of the inmate, to protect and ensure the safety of inmates, staff, and others, to prevent serious property damage and to ensure institution security and good order. Staff are authorized to apply physical restraints necessary to gain control of an inmate who appears to be dangerous because:

(a) The inmate assaults another individual;

(b) The inmate destroys government property;

(c) The inmate attempts suicide;

(d) The inmate inflicts injury upon self; or

(e) The inmate becomes violent or displays signs of imminent violence.

This rule on application of restraints does not restrict the use of restraints in situations requiring precautionary restraints, particularly in the movement or transfer of inmates (e.g., the use of handcuffs in moving inmates to and from a cell in detention, escorting an inmate to a Special Housing Unit pending investigation, etc.).

4. A new § 552.21 is added to read as follows:

§ 552.21 Types of force.

(a) *Immediate use of force.* Staff may immediately use force and/or apply restraints when the behavior described in § 552.20 constitutes an immediate, serious threat to the inmate, staff, others, property, or to institution security and good order.

(b) *Calculated use of force and/or application of restraints.* This occurs in situations where an inmate is in an area that can be isolated (e.g., a locked cell, a range) and where there is no immediate, direct threat to the inmate or others. When there is time for the calculated use of force or application of restraints, staff must first determine if the situation can be resolved without resorting to force (see § 552.23).

(c) *Use of Force Team Technique.* If use of force is determined to be necessary, and other means of gaining control of an inmate are deemed inappropriate or ineffective, then the Use of Force Team Technique shall be used to control the inmate and to apply soft restraints, to include ambulatory leg restraints. The Use of Force Team Technique ordinarily involves trained staff, clothed in protective gear, who enter the inmate's area in tandem, each with a coordinated responsibility for helping achieve immediate control of the inmate.

(d) *Exceptions.* Any exception to this rule is prohibited, except where the facts and circumstances known to the staff member would warrant a person with correctional experience to reasonably believe other action is necessary (as a last resort) to prevent serious physical injury, or serious property damage which would

immediately endanger the safety of staff, inmates, or others.

5. In newly designated § 552.22, paragraphs (a), (g), (h) introductory text, (h)(2), (h)(4), and (j) are revised to read as follows:

§ 552.22 Principles governing the use of force and application of restraints.

(a) Staff ordinarily shall first attempt to gain the inmate's voluntary cooperation before using force.

* * * * *

(g) Except where the immediate use of restraints is required for control of the inmate, staff may apply restraints to, or continue the use of progressive restraints on, an inmate while in a cell in administrative detention or disciplinary segregation only with approval of the Warden or designee.

(h) Restraint equipment or devices (e.g., handcuffs) may not be used in any of the following ways:

* * * * *

(2) About an inmate's neck or face, or in any manner which restricts blood circulation or obstructs the inmate's airways.

* * * * *

(4) To secure an inmate to a fixed object, such as a cell door or cell grill, except as provided in § 552.24.

* * * * *

(j) All incidents involving the use of force and the application of restraints (as specified in § 552.27) must be carefully documented.

6. Newly designated § 552.23 is revised to read as follows:

§ 552.23 Confrontation avoidance procedures.

Prior to any calculated use of force, the ranking custodial official (ordinarily the Captain or shift Lieutenant), a designated mental health professional, and others shall confer and gather pertinent information about the inmate and the immediate situation. Based on their assessment of that information, they shall identify a staff member(s) to attempt to obtain the inmate's voluntary cooperation and, using the knowledge they have gained about the inmate and the incident, determine if use of force is necessary.

7. In newly designated § 552.24, the introductory text and paragraph (a) are revised, and paragraph (e) is amended by revising the first sentence to read as follows:

§ 552.24 Use of four-point restraints.

When it is determined that four-point restraints are the only means available to obtain and maintain control over an inmate, the following procedures must be followed:

(a) Soft restraints (e.g., vinyl) must be used to restrain an inmate, unless such restraints previously have proven ineffective with respect to that inmate, or proven ineffective during the initial application procedure.

* * * * *

(e) A review of the inmate's placement in four-point restraints shall be made by a Lieutenant every two hours to determine if the use of restraints has had the required calming effect and so that the inmate may be released from these restraints (completely or to lesser restraints) as soon as possible. * * *

8. Newly designated § 552.25 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 552.25 Use of chemical agents or non-lethal weapons.

The Warden may authorize the use of chemical agents or non-lethal weapons only when the situation is such that the inmate:

(a) Is armed and/or barricaded; or

* * * * *

9. Newly designated § 552.26 is revised to read as follows:

§ 552.26 Medical attention in use of force and application of restraints incidents.

(a) In immediate use of force situations, staff shall seek the assistance of mental health or medical staff upon gaining physical control of the inmate. When possible, staff shall seek such assistance at the onset of the violent behavior. In calculated use of force situations, guidance of medical staff (based on a review of the inmate's medical record) will be sought by the use of force team leader to identify physical or mental problems. When mental health or medical staff determine that an inmate requires continuing care, and particularly when the inmate to be restrained is pregnant, the deciding staff shall assume responsibility for care of the inmate, to include possible admission to the institution hospital or, in the case of a pregnant inmate, restraining her in other than a face down four-point position.

(b) After any use of force or forcible application of restraints, the inmate shall be examined by a member of the medical staff, and any injuries noted, immediately treated.

10. Newly designated § 552.27 is revised to read as follows:

§ 552.27 Documentation of use of force and application of restraints incidents.

Staff shall appropriately document all incidents involving the use of force, chemical agents, or non-lethal weapons. Staff shall also document, in writing, the use of restraints on an inmate who becomes violent or displays signs of imminent violence. A copy of the report shall be placed in the inmate's central file.

[FR Doc. 94–14242 Filed 6–10–94; 8:45 am]
BILLING CODE 4410–05–P

Federal Register

Monday
June 13, 1994

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 968

Vacancy Reduction Program; Final Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 968

[Docket No. R–94–1659; FR–3398–F–02]

RIN 2577–AB26

Vacancy Reduction Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule

SUMMARY: The Department is issuing regulations to implement the Vacancy Reduction Program. The Notice of Funding Availability (NOFA) for the program is published elsewhere in today's **Federal Register**. Under this program, certain Public Housing Agencies (PHAs) are required to develop and submit a plan regarding vacancies in units owned or operated by the PHA. Each plan will be required to include the elements specified in the statute and this rule. In addition, assessment teams have conducted on-site assessments of the vacancy situations of known eligible PHAs and may provide assistance to PHAs in developing their plans. The assistance available under this program is intended to supplement other initiatives of the PHA that will reduce the rate of addressable vacancies in a PHA's inventory.

EFFECTIVE DATE: July 13, 1994.

FOR FURTHER INFORMATION CONTACT: MaryAnn Russ, Director, Office of Assisted Housing, Public and Indian Housing, room 4204, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington DC 20410, telephone (202) 708–1380. Individuals with hearing or speech impairments may call HUD's TDD number: (202) 708–0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Statement

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0181.

Background

On May 21, 1993, the Department published a proposed rule to implement the Vacancy Reduction Program (program). The program was authorized when section 510 of the Cranston-Gonzales National Affordable Housing Act added a new section 14(p) to the United States Housing Act of 1937 (42 U.S.C. 14371) (1937 Act). Recently section 14(p) was amended by section 115 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (1992 Act), and funding was made available for the first time for the program.

Section 14(p) requires any public housing agency (PHA) to participate in the program if the PHA has a vacancy rate that exceeds twice the national average, is designated as troubled under section 6(j) of the 1937 Act, or has been placed under a receiver pursuant to section 6(j)(3) of the 1937 Act. Each PHA participating in the program will be required to develop a vacancy reduction plan that identifies vacant dwelling units in its inventory and the reasons for the vacancies, and describes actions to be taken by the PHA for the following five years to eliminate the vacancies.

In addition, the vacancy situations of every participating PHA will be reviewed on-site by assessment teams consisting of representatives of the Department, independent experts knowledgeable about vacancy problems and management issues relating to public housing, and PHA officials. The assessment teams will submit recommendations to HUD and the PHA, and, at the request of the PHA, may assist the PHA in preparing its vacancy reduction plan.

The plans will be the basis for selecting those PHAs that will receive assistance under the program. For troubled PHAs, funding of vacancy reduction activities will be contingent upon the PHA either making or providing reasonable assurances of substantial progress in remedying any management deficiencies.

Use of Survey to Determine FY 1993 NOFA Threshold Factors

As discussed in the proposed rule, all PHAs where existing data indicated the PHA met the statutory criteria for mandatory participation in the program were surveyed. The results of the survey have been used to define the threshold factors for the NOFA published elsewhere in today's **Federal Register** and are discussed in greater detail in that NOFA. In addition, the Department has conducted assessments at PHAs that the Department believes meet the threshold factors for the NOFA that is published elsewhere in today's **Federal Register**. As explained in the NOFA, any PHA that meets the threshold factors and has not already been assessed should immediately request an assessment by contacting the Department.

Comments on Proposed Rule

Six sets of comments were submitted to the Department on the proposed rule: two from public housing authority (PHA) industry groups and four from local housing authorities. Comments were received from the:

—Council of Large Public Housing Authorities (CLPHA);
—Public Housing Authorities Directors Association (PHADA);
—Chicago Housing Authority (CHA);
—Morgan County (Illinois) Housing Authority (MCHA);
—Los Angeles County Housing Authority (LACHA); and
—Atlanta (Georgia) Housing Authority (AHA).

Discussion of the comments is organized according to the following topics: Eligibility requirements; development of the vacancy reduction plan; assessments; funding of vacancy reduction activities; sanctions; use of NOFAs to convey significant program information; the relationship of the Vacancy Reduction Program to other HUD programs; and miscellaneous comments.

Eligibility Requirements

(1) The rule states that a PHA must participate in the program if a receiver has been appointed for the PHA. The term "receiver" should be clarified, in that HUD has taken actions against PHAs that have resulted in takeovers of programs or operations from PHAs without necessarily having a court-appointed receiver. (CLPHA)

Response: The term is statutory and refers to a receiver appointed by a Federal or State court under section 6(j)(3) of the United States Housing Act of 1937; the term does not include other arrangements.

(2) Benefits of the program should be available to a PHA that does not have a vacancy rate of twice the national average only if the PHA fails the Public Housing Management Assessment Program (PHMAP) standard for vacancies (see 24 CFR part 901). (PHADA) Similarly, program participation should be optional for troubled authorities that do not have a vacancy rate twice the national average (CHA)

Response: As the commenter noted, using the PHMAP standard would require congressional action because the current statute requires participation by PHAs that are troubled or for which receivers have been appointed.

(3) In defining the term "vacant unit", reference is made to an effective lease, which is defined in terms of an eligible family being charged rent. However, because of utility allowances or zero income, many residents do not pay rent for the units they occupy. (CLPHA)

Response: The definition requires that the family have a right to possession of the unit, in addition to being charged rent. The calculation of the rent to be charged by a PHA takes into account income and any utility allowance. As noted by the commenter, as a result of this calculation of rent, the PHA might not actually collect any money from the family having the right to possess a unit (e.g., when the utility allowance equals or exceeds the total tenant payment). However, the lease still obligates the tenant and includes a rental charge that, at least in part, is based on income. Therefore, the elements of the definition are met, even though the actual amount collected by the PHA from the tenant is $0.

(4) A PHA is required to participate in the program if it has a vacancy rate that is twice the national average, regardless of the number of units in the PHA's inventory. Because the vacancy problems of small PHAs, especially, may be due to lack of demand, participation in the program should be optional for PHAs with less than 250 units. (PHADA) For the first year, program participation should be limited to PHAs with 500 or more units. (CHA)

Response: The statute does not discriminate among the causes of vacancies in establishing the participation requirements. However, the extent of participation may be limited to providing documentation of lack of demand or proposals to deprogram units. In awarding funding, the Department will concentrate on PHAs where there is a demand for housing, as reflected in the terms of the NOFA published elsewhere in today's **Federal Register**. Furthermore, because smaller PHAs dependent on CIAP funding often have fewer resources to solve a vacancy problem, these PHAs could realize substantial improvement of their vacancy statistics with a minimal increment of funding. Thus, their selection for funding would serve the statutory purposes of the program, and their exclusion from the initial round of funding could not be justified.

(5) Program participation should be available to any PHA that needs help in addressing its vacancy situation. (MCHA, CHA)

Response: Because current program funding is limited, the Department is concentrating on PHAs that are required to participate.

(6) In the definition of "vacant unit," the proposed rule does not specify a timeframe for determining the existence of a vacancy. Similarly, in calculating a PHA's vacancy rate for purposes of determining program eligibility, the proposed rule does not recognize any normal turnover time, such as the 20-day transition period allowed under PHMAP Indicator 5. (LACHA)

Response: The Department recognizes that the vacancy rate of a PHA is fluid. However, for the purpose of determining eligibility for the program, the Department has decided to use a snapshot approach, i.e., the number of units vacant at the PHA on the appropriate date.

Development of the Vacancy Reduction Plan

(1) The proposed rule provides a number of examples of project-specific activities to eliminate vacancies that a PHA might include in its vacancy reduction plan. The number of examples should be expanded to include such activities as unit redesign or conversion, site reconfiguration, security improvements, and density reductions. These additional examples will serve to give a better idea of the range of acceptable activities. (CLPHA, CHA) Similarly, examples of specific management improvements that should be encouraged include tenant screening, evictions, and marketing and leasing efforts. (CHA)

Response: A number of these examples have been included in § 968.407(b)(3)(i) of the final rule.

(2) If demolition or disposition are selected activities, HUD's review and approval process and replacement housing requirements will make it very difficult for a PHA to provide the required schedule that forecasts when the selected activities would be accomplished. (CLPHA, PHADA (similar comment for other HUD actions)) In addition, participating PHAs need to be able to change their schedules for eliminating vacancies to reflect actual funding. (PHADA)

Response: Sections 968.407(b)(3)(ii) and 968.407(b)(8) have been revised to include language providing that, in developing the required schedule, PHAs should specify action within *x* days from HUD approval or other action, when progress is dependent on HUD action. In addition, a schedule may be revised to reflect the adequacy of funding for proposed activities.

(3) If a PHA needs help in preparing the vacancy reduction plan, the assessment team should be required to assist in the plan development, if requested by the PHA. The proposed rule does not make this assistance mandatory. (PHADA)

Response: Section 968.410(d) has been changed to clarify that, if requested by the PHA, HUD will assist a PHA in preparing its vacancy reduction plan.

(4) The final rule should clarify that participating PHAs do not have to address each single vacant unit separately, but should be permitted to group together vacant units by the cause of vacancy. (PHADA)

Response: In accordance with the statutory requirements, each vacant dwelling unit must be identified. However, vacant units may be grouped together for purposes of explaining the reasons for the vacancies and proposed actions for eliminating the vacancies.

(5) The vacancy reduction plan should include information on turnover problems. (PHADA, AHA) The information should include the number of units vacated and reoccupied during a defined period and any indication of whether the turnover rate is changing. (CHA)

Response: A new paragraph has been added to § 968.407(b) to require that a vacancy reduction plan include certain information on a PHA's turnover rate.

(6) A complete strategy needs to be developed that includes not just rehabilitation work, but tenant screening, eviction, property management, and security measures, as well. (CHA)

Response: The Department and the statute contemplate a complete strategy. A PHA's vacancy reduction plan should include any action to remove the unit from the PHA's inventory of vacant units, including management improvements in each of the specific areas mentioned by the commenter.

Assessments

(1) If funding will be on a "first-come, first served" basis, the sequence of assessment team visits should be by public drawing in order to avoid charges of favoritism. (PHADA)

Response: For the NOFA published today, the Department has decided upon an approach that should provide some funding to all PHAs that meet the eligibility criteria. Each eligible PHA that is a Comprehensive Improvement Assistance Program (CIAP) agency will be funded fully for all eligible units and approved activities, because smaller PHAs dependent on CIAP funding often have fewer resources to solve a vacancy problem. If sufficient funds are available, each PHA that is a Comprehensive Grant Program (CGP) agency will be funded fully; however, if there are not sufficient funds remaining, each CGP agency will be awarded a pro

rata share of the available funding. This pro rata share will be calculated by a method, to be determined by HUD and announced in the NOFA, that will provide funding equitably to those agencies.

(2) When the PHA already is required under PHMAP to have developed a plan to address its vacancy problem, the primary purpose of the Vacancy Reduction Program assessment team should be a validation or critique of the PHA's existing plan, rather than an independent assessment. The intent of the program is to encourage action, not further studies. (PHADA)

Response: The statute requires an on-site assessment of the vacancy situation of each participating PHA, and specifies what is to be included in the PHA's vacancy reduction plan. To the extent that a PHA is able, the Department encourages the PHA to use work that has been done in accordance with PHMAP requirements to comply with the requirements of this program.

(3) PHAs that lend a staff person to an assessment team should be reimbursed for the staff person's salary and benefits during that assignment. (PHADA)

Response: The Department agrees that the statutory provision allowing program funds to be used for travel and administrative expenses of assessment teams, extends to PHA staff. Therefore, PHAs will be reimbursed for the salary and benefits for any staff person that serves on an assessment team. However, this does not apply to staff members of the PHA that is being assessed.

(4) Because the need for these funds is great, the Department should speed up the scheduling of assessments. (MCHA, PHADA)

Response: The Department has assessed all known eligible PHAs.

Funding of Vacancy Reduction Activities

(1) HUD needs to clarify its position regarding the use of program funds for security improvements. (CLPHA)

Response: Where units are vacant because of security problems, HUD will provide funding for physical security improvements, such as improved locks, security screens, additional lighting, and site improvement. As part of management improvements, HUD also will provide funding for security activities over a limited duration, if HUD determines that such funding is likely to result in the reoccupancy and continued occupancy of vacant units. Examples of security activities that could be funded as part of management improvements include:

- Hiring of additional staff to coordinate the provision, by local government or other public and private entities, of appropriate social services, such as drug education and treatment referral programs;
- Hiring of security guards, through individual employment contracts, or guard services, using competitive proposal or small purchase procurement procedures, or contracting with a local police force for security that is in addition to that required under the Cooperation Agreement. As a condition of employment, these security personnel shall be required to meet all relevant State insurance, training, licensing, and other similar requirements;
- Development and implementation of improved screening procedures for prospective residents;
- Development of more timely and effective management techniques for dealing with disruptive residents and drug-related crime;
- Organization and training of unarmed voluntary resident patrols to work cooperatively with the local law enforcement agencies;
- Development and implementation of improved communication and coordination with local law enforcement agencies; and
- Hiring of investigators to investigate drug-related crime in and around the developments or to provide evidence relating to any such crime in any administrative or judicial proceedings.

(2) The minimum housing standards that should be imposed for capital improvements funded under this program are the modernization standards, not the Housing Quality Standards (HQS). Units renovated to the HQS often still need modernization. (CLPHA) In addition, the minimum housing standards should be applied only to the inside of units improved under the program, rather than to common areas and major structural items. (CHA)

Response: Each work item funded under this program must be performed in compliance with modernization standards. However, the vacancy reduction program is an occupancy program, and HQS is a minimum occupancy standard. The goal of the individual work items (performed to modernization standards) is to bring the vacant units into an occupiable condition. Section 968.435 of this rule requires certification that affected vacant units will be brought into compliance with the HQS. As applied in Section I.F(1)(b) of today's NOFA, only aspects of the HQS that pertain to the vacant unit directly are required.

(3) The decision on how to target the initial funding available under this program should be based on the survey responses only and not on any existing data mentioned in the preamble of the proposed rule. (PHADA)

Response: The survey responses were used to determine which PHAs surveyed have vacancy problems and the nature of their problems. Eligibility and final decisions on funding will be based on submitted applications, including the vacancy reduction plans, the number of eligible units, and the assessments.

(4) Funding should not be on a "first-come, first-served" basis, which rewards those able to act the quickest, but should be awarded using a more traditional competitive approach. Criteria that should be used to make awards include: PHA capacity and ability to use the funds effectively and likelihood that additional funds will improve vacancy situation. Severely distressed properties should not be a priority, and funding should be targeted for entire developments, rather than scattered units. (PHADA)

Response: Because the Department would like to fund all PHAs that meet the requirements of the NOFA, it has decided not to include the first-come, first-served limitation. The immediate goal of the Department is to promote the occupancy of the greatest number of units; the problems of severely distressed developments are targeted more directly through other programs and are not priorities of the vacancy reduction program. Similarly, because of funding limitations, the Department believes the program purposes will be promoted best by targeting the elimination of vacant units, rather than the upgrading of entire developments that include occupied units.

(5) Under some circumstances, a PHA may be made eligible for program funds, but restricted in spending the funds until an assessment is performed. If this assessment is not done within 45 days of the fund award, then the PHA should be allowed to expend the funds. (PHADA, CHA)

Response: The Department has already conducted assessments of known eligible PHAs and will complete all assessments in advance of funding decisions. In order to ensure fairness, in the NOFA published elsewhere in today's **Federal Register**, the Department has provided that a PHA for which an assessment has not been conducted but that considers itself eligible under the NOFA, should notify the Department within 15 days of its request for an immediate assessment. In addition, when an approvable plan submitted in response to the NOFA needs improvement or supplementation, the Department will assist the PHA in

revising its plan prior to the execution of the amendment to the Annual Contributions Contract (ACC). Because very few, if any, eligible PHAs will not have had assessments by today's publication of the NOFA, the Department believes that all assessments will be completed on a timely basis in this funding cycle.

(6) Activities that will decrease unit turnover in occupied units (e.g., replacement of appliances) also should be considered eligible for funding under this program. (CHA)

Response: Although the Department recognizes the relationship between turnover and vacancy rates and is sympathetic to this reasonable suggestion, current funding for the vacancy reduction program is limited. Therefore, the Department intends to target funding of unit improvements for currently vacant units or units to become vacant for reconfiguration purposes, where reconfiguration is necessary to reduce the current number of vacancies.

(7) Funding should be guaranteed for a minimum of a three-year period following HUD approval of a five-year vacancy reduction plan, subject to the PHA's continued progress on and adherence to its vacancy reduction plan. (CHA, MCHA)

Response: The Department cannot guarantee funds that have not been appropriated by Congress. Therefore, a PHA's five-year plan should reflect a realistic projection of the actions that can be taken with available or potential resources.

(8) If funded activities require compliance with Housing Quality Standards, the amount of funds may not be sufficient to address problems in areas outside the unit (e.g., hallways, stairways, fire protection systems). HQS standards should apply only to unit interiors. (CHA)

Response: The Department recognizes that current funding available under the Vacancy Reduction Program will not be sufficient to address all problems areas relating to excess vacancies, and it expects to be guided in its funding decisions by the assessment team reports. The vacancy reduction plans and the recommendations of the assessment teams should include all work inside the units, in the hallways, in common areas, on the site, and to the exterior of the buildings necessary to make the units marketable; providing plans and funding for only the interiors of vacant units may not make those units marketable. Individual work items funded under this program must comply with modernization standards and must result in the targeted unit meeting the HQS.

(9) Program funds should not be directed at PHAs that have vacancy problems due primarily to marketing problems or lack of demand. (CHA)

Response: The Department agrees that the limited program funds should be focused on those PHAs whose vacancy situations can actually be improved by additional funding. This factor is accounted for in § 968.413(d)(2) of the rule ("extent to which the proposed activities will improve the PHA's vacancy problem") and in the definition of "eligible unit" set out in the NOFA published elsewhere in today's **Federal Register**.

Sanctions

In the proposed rule, the Department reported that, at this time, it does not intend to implement section 14(p)(3) of the statute, which provides sanctions for the failure to make progress under a plan. However, commenters were invited to submit suggestions on how this portion of the statute could be implemented in the future. Several commenters submitted remarks on this aspect of the current statutory program, as follows: (1) If a withholding action seems likely after 18 months, an assessment team should be sent to the PHA to perform a review and prepare a report. (PHADA) (2) If there is withholding, consideration should be given to forcing a receiver to be used so that the funds can be used. (PHADA, CHA) (3) Withholding of subsidy because of a failure to make progress is contrary to the approach of rewarding PHAs for solving problems. (MCHA)

Response: This final rule does not include provisions implementing the sanctions mandated by section 14(p)(3) of the 1937 Act. However, the Department is continuing to work on those provisions, and will take into consideration the remarks provided by commenters in response to the proposed rule. The Department will comply with the requirements within the applicable statutory timeframe.

Use of NOFAs

(1) HUD is proposing to use NOFAs as the vehicle to convey significant program information to interested PHAs, which defeats the intent of notice-and-comment rulemaking. The proposed rule does not provide sufficient detail on how program funds will be targeted, the format of the vacancy reduction plans, and criteria for determining a PHA's capacity to implement the plan in a timely and effective manner. Use of NOFAs will lead PHAs to try to second-guess HUD on selection criteria and lead to a hit or miss approach on solving the vacancy problem. (CLPHA)

Response: The Department disagrees with this comment. The rule provides the framework for the program and meets or exceeds the requirements of the Administrative Procedure Act and the Department's regulations. The preamble to the proposed rule elaborates on the Department's expectations for targeting funds made available for the program.

The Department views the program as a dynamic tool in the effort to reduce unnecessary vacancies in public housing. Experience with the program and elimination of certain root causes of vacancies will guide the Department in selecting the optimal criteria for any subsequent targeting of program funds. This targeting would be done in compliance with the statutory parameters of the program.

The Department intends to undertake the vacancy reduction effort by providing funding for those vacant units most likely to be turned around quickly, targeting the majority of the funding for units averaging a cost of $8,000 or less, with some funds targeted for units for which a CGP agency can provide the additional funding necessary.

Furthermore, the report of the assessment team is expected to address the capacity of a PHA to implement vacancy reduction activities in a timely and efficient manner. The Department reiterates that the intent of the requirement that participating PHAs submit vacancy reduction plans is to assist in the development of a comprehensive approach to vacancy reduction. As demonstrated by its efforts to solicit the input of industry and PHA representatives during the development of the proposed rule and the initial NOFA, the Department is committed to implementing this program in a constructive way that responds to the needs of PHAs with remediable vacancy problems.

(2) Before the NOFA is published, there should be a meeting with industry groups. The meeting should be used to share survey results and exchange viewpoints. (PHADA)

Response: The Department solicited the input of representatives of the industry, PHAs, and resident organizations during the development of the proposed rule and the initial NOFA. Meetings were held with these representatives on January 28 and July 9, 1993. The Department believes these meetings have been valuable in helping to develop the program, but does not believe that it is necessary to schedule any additional meetings at this time.

The discussions at the previous meetings, along with the written comments received in response to the proposed rule, have provided the Department with a foundation for the policy decisions it has made regarding how to operate this program within the parameters established by Congress. Furthermore, in the NOFA published elsewhere in today's **Federal Register**, the Department discusses the results of the survey, in the context of both general results and specific implications for the program decisionmaking process.

(3) The proposed rule seems to imply that more than one NOFA might be published in a single fiscal year. Only one NOFA should be issued and it should coincide with the Comprehensive Grant Program planning process. (PHADA, CHA)

Response: The language that referred to "periodic" NOFAs in the proposed rule was intended simply to verify that separate NOFAs would be published for any money that is appropriated for the program in subsequent years. This is the common practice of the Department, as established in the HUD Reform Act, but the actual timing of a subsequent NOFA in any fiscal year cannot be predicted. The Department appreciates the commenters' point about the coordination of capital planning programs.

Relationship of the Vacancy Reduction Program to Other HUD Programs

(1) HUD should integrate the approach of the Vacancy Reduction Program into an overall effort to draft a new vacancy rule. The Vacancy Reduction Program itself is insufficient to address problems faced by PHAs with expired Comprehensive Occupancy Plans (COPs); these PHAs still need operating funds to keep vacant units in shape until money is available to make necessary improvements. (CLPHA)

Response: Any new vacancy rule would require substantial time for development and implementation. Meanwhile, the Department is committed to providing assistance currently available under the vacancy reduction program to PHAs with vacancy problems. Changes to the determination of operating subsidy eligibility as proposed by the commentor are outside the scope of this rule.

(2) The Vacancy Reduction Program may duplicate planning requirements of other programs, such as PHMAP and the Comprehensive Grant Program, that also address vacancy problems. (PHADA, CHA)

Response: As noted above, the Department appreciates the commenters' point about the coordination of capital planning programs and will endeavor to integrate the vacancy reduction program with other related programs.

(3) The same format used for the vacancy reduction plan should be used for developing an Improvement Plan under PHMAP if the PHA fails the PHMAP vacancy standard. (PHADA)

Response: The Department intends to coordinate the formats of these plans, to the extent possible.

(4) The restrictions placed on assistance to troubled authorities (see § 968.413(b)) should be made consistent with the language of HOPE VI. (PHADA)

Response: The restrictions are prescribed by the authorizing statute for the program. However, in recognition of the comments requesting coordination of the Department's capital planning programs, the final rule includes new language that cross-references PHMAP indicators and clarifies the evaluation of the progress of troubled PHAs.

(5) If a PHA presents a vacancy reduction plan that HUD approves, the PHA should receive operating subsidy based on its actual occupancy rate, rather than on the current formula rate. (CHA, AHA) How does the Department view this program in the context of the Performance Funding System (PFS) funding of vacant units? (PHADA)

Response: The vacancy reduction program is not intended as a substitute for the vacancy rule or to provide relief for PHAs that do not meet established goals under COPs. However, the vacancy reduction program should improve the revenue situations of participating PHAs in two ways: First, through direct funding of portions of the plans; second, through the increased operating subsidies and rent collections that will result from reoccupancy of those vacant units.

Miscellaneous

(1) The survey results and data developed from analyzing the vacancy reduction plans should be released publicly. (PHADA)

Response: The Department is releasing data from the survey as part of the NOFA published elsewhere in today's **Federal Register**. In addition, the Department intends to develop a report based on data and information provided by the assessment teams in their reports.

(2) The Vacancy Reduction Program should be separately funded, instead of using amounts set aside from regular modernization funding. (PHADA, CHA)

Response: As recognized by the commenters, Congress has authority over the mechanism used for funding the program.

(3) Funding decisions under the program should recognize when a PHA has used existing resources to address its vacancy problem. For example, although a commitment to use a large portion of CGP funds to address vacancies will reduce the need for additional vacancy reduction funds, those CGP funds could have been used to fund other substantial needs of the PHA. (AHA)

Response: When PHAs have other modernization needs that cannot be met by current funding, Vacancy Reduction Program funds may be used instead of CGP funding committed but not yet under contract for vacancy reduction

Section-by-Section Analysis

The Department is establishing the Vacancy Reduction Program as new subpart D in 24 CFR part 968, with conforming amendments made as necessary in other sections of title 24 of the Code of Federal Regulations. The following discussion is a section-by-section description of the rule.

Section 968.103 addresses the allocation of funds under section 14 of the 1937 Act. The Department is amending paragraph (c) to account for the new set-aside for the Vacancy Reduction Program. The new language repeats the statutory scheme for setting aside four percent of the section 14 funds remaining after deducting amounts for emergencies and natural and other disasters. Paragraph (c)(1) provides that 20 percent of these funds will be available for activities under section 6(j) of the 1937 Act, while the remaining 80 percent will be available for the Vacancy Reduction Program, as implemented by this rule. Section 968.103 also is amended to clarify that the Vacancy Reduction Program does not apply to Indian Housing Authorities (IHAs).

Subpart D of part 968, encompassing §§ 968.401–968.425, is added to implement the Vacancy Reduction Program.

Section 968.401 states the policy of the Department with respect to achieving high occupancy rates in public housing, in order to ensure maximum use of available housing resources.

Section 968.403 repeats the statutory definition of PHAs to which the Vacancy Reduction Program is applicable, but clarifies that units not eligible for funding under section 14 of the 1937 Act are excluded from this set-aside program, as well.

Section 968.405 defines terms that are used in subpart D to the extent these

terms are not applicable to the remainder of part 968.

Section 968.407 establishes the requirement that eligible PHAs submit a five-year vacancy reduction plan, and specifies the contents of the plan. For purposes of identifying components of a plan that may be identified as eligible for funding, within the limits of appropriated amounts, each submitted plan must be organized in a manner that facilitates review by the Department. For each action proposed to eliminate vacancies, the plan must include a schedule that shows the number of vacancies that the PHA expects to eliminate by the end of each 12-month period during the five years of the plan.

When components of a plan involve capital improvements to dwelling units, the PHA must ensure that, after the improvements, the units themselves would meet or exceed the Housing Quality Standards set forth in 24 CFR 882.109, as amended by regulatory requirements concerning lead-based paint hazards.

Section 968.410 explains the requirement for an on-site assessment of a participating PHA's vacancy situation, including the composition and responsibilities of the assessment teams and the purpose of the assessments.

Section 968.413 establishes eligible uses and limitations on the use of funds available for the Vacancy Reduction Program. Paragraphs (a), (b), and (c) echo the statute establishing the program, but paragraph (b) includes clarifying language that cross-references PHMAP indicators in measuring the progress required under the statute for troubled PHAs. Paragraph (d) establishes that funding decisions would be through a publicly announced process, on the basis of priorities to be established by the Department.

Section 968.416 provides that the PHA must comply with HUD requirements in requesting funds against the approved modernization budget.

Section 968.419 requires the grantee to be responsible for assuring the quality of work performed using program funds.

Section 968.422 establishes periodic reporting requirements for grantees until activities funded under the vacancy reduction program are completed. This section also specifies a schedule for completion of funded activities.

Section 968.425 details the process for notifying a PHA of any deficiencies in its compliance with program requirements and specifies the nature of the changes and sanctions that may be pursued by HUD.

Section 968.428 establishes requirements to be applied in auditing the grantee's use of funds upon completion of activities funded under the program.

Section 968.435 lists program requirements that apply to the Vacancy Reduction Program in addition to the requirements specified in other sections of subpart D and § 968.110.

Other Matters

Environmental Review

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the initial finding of no significant impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Executive Order 12866

This rule has been reviewed by the Office of Management and Budget under Executive Order 12866. Any changes made in the rule as a result of this review are identified in the docket file of the rule maintained by the Department and available for review at the above address.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements a statutory program that provides funding to PHAs for limited activities designed to reduce the number of vacant dwelling units in their inventories.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The rule merely implements a statutory program that provides funding to PHAs for limited activities designed to reduce the number of vacant dwelling units in their inventories.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as Item 1688 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20470), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 968

Grant programs—housing and community development, Indians, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, part 968 of title 24 of the Code of Federal Regulations is amended as follows.

PART 968—PUBLIC HOUSING MODERNIZATION

1. The authority citation for part 968 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437l and 3535(d).

2. Section 968.103 is amended by revising paragraph (c) to read as follows:

§ 968.103 Allocation of funds under section 14.

* * * * *

(c) *Set-asides.* After deducting amounts for the reserve for natural and other disasters and for emergencies under paragraph (b) of this section, HUD shall set aside from the funds remaining:

(1) *Regarding vacancy reduction,* an amount equal to 4 percent of those funds, to be further allocated as follows:

(i) Twenty percent of this four percent shall be available only for carrying out activities under section (6)(j) of the United States Housing Act of 1937; and

(ii) Eighty percent of this four percent shall be available under the vacancy reduction program (see subpart D of 24 CFR part 968).

(2) *Regarding the comprehensive grant program,* no more than five

percent for the purpose of providing credits to PHAs that were formerly designated as mod troubled agencies under the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901). The purpose of this set-aside is to compensate these PHAs for amounts not allocated by HUD because of a PHA's prior designation as a mod troubled agency.

(3) *Nonapplicability to IHAs.* The Vacancy Reduction Program in subpart D of this part does not apply to IHAs. In addition, because the PHMAP performance indicators under 24 CFR part 901 do not apply to IHAs, these agencies cannot be deemed "mod troubled" for purposes of the CGP and are not eligible for funding under paragraph (c)(1)(i) of this section. Hence, IHAs are not subject to any reduction in funding under section 14(k)(5)(A) of the Act, and IHAs do not participate in the set-aside credits established under paragraph (c)(2) of this section.

* * * * *

3. A new subpart D, consisting of §§ 968.401 through 968.425, is added to read as follows:

Subpart D—Vacancy Reduction Program

Sec.

968.401 Purpose.
968.403 Applicability.
968.405 Definitions.
968.407 Vacancy reduction plan.
968.410 Assessments.
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968.419 Grantee's oversight responsibilities.
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968.428 Program closeout.
968.425 Other program requirements.

§ 968.401 Purpose.

Section 14(p) of the United States Housing Act of 1937 establishes the Vacancy Reduction Program, in conjunction with statutory provisions on public and Indian housing modernization. It is the policy of the Department that public housing agencies should maximize the use of housing resources, using every reasonable means to achieve and maintain high levels of occupancy by eligible families in PHA-owned or -operated housing.

§ 968.403 Applicability.

(a) *Participation.* A PHA shall participate in the vacancy reduction program under this subpart if:

(1) The PHA has a vacancy rate among dwelling units owned or operated by the PHA that exceeds twice the average vacancy rate among all public housing agencies;

(2) The PHA is designated as a troubled or mod troubled agency under section 6(j) of the Act; or

(3) A receiver has been appointed for the PHA pursuant to section 6(j)(3) of the Act.

(b) *Exclusions.* Units owned or operated by a PHA that are not eligible for funding under section 14 of the Act are excluded from coverage under this subpart and shall not be used to calculate the eligibility of a PHA under this subpart.

(c) *Examples of eligibility.* The following are specific examples of eligibility under this program:

(1) All units in the Federal Low-Rent Public Housing Program are eligible;

(2) In the Section 23 program, only those units that are in projects that are bond-financed and for which the PHA would receive clear title at the end of the lease term will be eligible; and

(3) Section 8 projects are not eligible.

§ 968.405 Definitions.

In addition to the definitions applicable under § 968.105, the following definitions apply to this subpart:

Average vacancy rate means the average vacancy rate for all public housing agencies.

NOFA means Notice of Funding Availability. NOFAs announcing available funding under the program will be published in the **Federal Register**, and will set out the application requirements and applicable selection criteria.

Operating subsidy means the annual contribution for operating subsidy made to the PHA by HUD, which is determined in accordance with part 990 of this chapter.

PHA means public housing agency. For purposes of this subpart, the term excludes Indian Housing Authorities.

PHMAP means the Public Housing Management Assessment Program, authorized in 42 U.S.C. 1437d(j) and implemented in 24 CFR part 901, which is designed to allow HUD and the PHA to identify PHA management capabilities and deficiencies and to lead to better overall management of the public housing.

Receiver means a person or entity appointed by a court pursuant to section 6(j)(3) of the United States Housing Act of 1937 to be responsible for the day-to-day operation of a PHA.

Troubled PHA means a public housing agency that has been designated as a troubled agency (including mod troubled) under section 6(j) of the United States Housing Act of 1937.

Vacancy or *vacant unit* means a dwelling unit that is not under an effective lease to an eligible family. An effective lease is a lease under which an eligible family has a right to possession of the unit and is being charged rent, even if the amount of any utility allowance equals or exceeds the amount of a total tenant payment that is based on income and, as a result, the amount paid by the family to the PHA is zero.

Vacancy reduction plan means a plan developed and submitted by a PHA to HUD, regarding vacancies in units owned or operated by the PHA. The plan must meet the criteria established in § 968.407.

§ 968.407 Vacancy Reduction Plan.

(a) *Submission of plan.* Each PHA to which this subpart applies, in accordance with § 968.403, shall submit a vacancy reduction plan. The plan shall contain the elements identified in paragraph (b) of this section, and shall be organized so that each of the elements can be identified, reviewed, and funded separately.

(b) *Contents of plan.* The format of a plan submitted for funding under this program will be defined in NOFAs to be published periodically in the **Federal Register**. Each vacancy reduction plan submitted by a PHA under paragraph (a) of this section shall include statements:

(1) Identifying all vacant dwelling units administered by the PHA, including unmarketable units, and explaining the reasons for the vacancies. Units may be grouped together when explaining the reasons for the vacancies;

(2) A description of the turnover rate of units for the past two years, including the number of units vacated and reoccupied per development per year and the average number of days required to return a unit to occupancy. If the turnover rate is increasing, the plan should identify each cause of the increase.

(3) Describing the actions to be taken by the PHA during the following five years to eliminate the vacancies. The PHA shall:

(i) State project-specific actions that it is taking or intends to take that will eliminate vacancies, such as modernization, demolition, unit redesign or conversion, density reduction, disposition, modification of occupancy policies, site and security improvements, and other physical or management improvements; and

(ii) For each project identified, set out a schedule for completing the actions identified in paragraph (b)(3)(i) of this section and removing the dwelling units from the PHA's inventory of vacant units. If the timing of any action is

dependent upon a HUD approval or decisionmaking process, the schedule for the PHA action may be presented in terms of a specified time period following completion of the HUD process. For each action, the schedule shall include the number of vacancies that will be eliminated by the end of each 12-month period after the PHA begins to receive assistance under this subpart.

(iii) When the PHA has been unable to return units vacated during the last two years to occupancy within an average of 30 days, the plan shall describe actions that the PHA will undertake to achieve at least a 30-day turnover rate.

(4) Identifying any impediments that will prevent elimination of the vacancies within the five-year period;

(5) Identifying any vacant units funded for modernization, major reconstruction, demolition, or disposition activities;

(6) Identifying any vacant dwelling units that are eligible for modernization, major reconstruction, demolition, or disposition, but have not been funded or approved for these activities and are not likely to be funded or approved for at least three years. The statement shall include an estimate of the amount of assistance necessary to complete the modernization, major reconstruction, demolition, or disposition of these units;

(7) Identifying any vacant units not identified under paragraphs (b)(5) and (b)(6) of this section. The statement shall include a description of any appropriate activities relating to elimination of the vacancies in these units and an estimate of the amount of assistance necessary to carry out the activities identified under this paragraph (b)(7);

(8) Setting forth an agenda for implementation of management improvements during the first fiscal year beginning after submission of the plan. If the timing of any improvement is dependent upon a HUD approval or decisionmaking process, the schedule for the improvement may be presented in terms of a specified time period following completion of the HUD process. The agenda should include any management improvements recommended by the assessment team pursuant to § 968.410 and an estimate of the amount of assistance necessary to implement the management improvements; and

(9) Of any other information that the Secretary shall deem appropriate, as provided in the applicable NOFA. Such information may include budget documents, in the case of any PHA that is applying for funds under a NOFA.

(c) *Housing standards.* To the extent that a plan involves modernization, reconstruction, or rehabilitation activities that have not been funded or approved previously and are not planned to be undertaken using Comprehensive Grant Program funds, the plan must reflect cost estimates that, at a minimum, are based on:

(1) For individual work items funded under the program, compliance with modernization standards, as set forth in HUD Handbook 7485.2, as revised; and

(2) For each vacant unit on which funds are expended, compliance of the unit with the Housing Quality Standards, as set forth in 24 CFR 882.109 and as amended by the regulations concerning lead-based paint in public housing in 24 CFR part 35.

(Approved by the Office of Management and Budget under control number 2577–0181)

§ 968.410 Assessments.

(a) *Requirement.* Each PHA participating in the program under this subpart shall cooperate with an onsite assessment of the vacancy situation of the PHA by an assessment team, whose members will be selected by the Secretary in accordance with paragraph (b) of this section. The Secretary will schedule assessments in a priority order, based on:

(1) The nature and extent of each PHA's vacancy problem, and HUD's goal of achieving maximum reoccupancy using the funds available; and

(2) The availability of assessment teams and the expected level of complexity of the assessments to be scheduled.

(b) *Composition of assessment team.* The assessment team shall include representatives of HUD, an equal number of independent experts knowledgeable with respect to vacancy problems and management issues relating to public housing, and officials of the PHA.

(c) *Scope of assessment.* The assessment team shall assess the vacancy situation of the PHA to determine the causes of the vacancies, including any management deficiencies or modernization activities. At least one member of the assessment team shall consult with residents of the PHA's units regarding the vacancy situation of the PHA. The assessment team shall also examine indicators of the management performance of the PHA relating to vacancy, which shall include consideration of the performance of the PHA as measured by the indicators under paragraphs (A) and (E) of section 6(j)(1) of the Act (implemented by 24 CFR 901.10(b)(1) and 901.10(b)(5)).

(d) *Report of assessment team.* The assessment team shall submit to the PHA and the Secretary written recommendations for management improvements to eliminate or alleviate management deficiencies and for strategies to deal with vacant units. If requested by the PHA, HUD will assist the PHA in preparing the vacancy reduction plan under § 968.407, including determining appropriate actions to eliminate vacancies.

§ 968.413 Funding.

(a) *Eligible activities.* Except as provided in paragraph (b) of this section, assistance may be provided under this subpart to PHAs submitting vacancy reduction plans for reasonable costs of the following activities:

(1) Implementing management improvements;

(2) Rehabilitating vacant dwelling units identified in the plan in accordance with § 968.407; and

(3) Carrying out vacancy reduction activities described in the plan in accordance with § 968.407.

(b) *Assistance to troubled PHAs.* Assistance may be provided to a troubled PHA only if the PHA meets either of the conditions described in paragraphs (b)(1) and (2) of this section:

(1) The PHA has demonstrated substantial progress on the following vacancy related Public Housing Management Assessment Plan (PHMAP) indicators: 2 (Modernization), 5 (Unit Turnaround), 6 (Outstanding Work Orders), or 7 (Annual Inspection and Condition of Units and Systems), as demonstrated by a PHMAP score of "C" or better. If the PHA does not have a score of "C" or better on these indicators, substantial progress may be demonstrated as follows:

(i) The PHA, based on current data would qualify for a score of "C" or better on the indicators.

(ii) A statement of alternative arrangements that have been made to assure effective administration of the function covered by the indicator, i.e. rehabilitation and modernization activities (in regard to the units for which funding is requested) and the PHA-wide administration of unit turnaround, work orders, and preventive maintenance.

(2) The PHA has provided reasonable assurances that substantial progress will be made to remedy any management deficiencies identified by the assessment team or any vacancy-related deficiencies identified in HUD reviews and audits, through activities that have already begun or will be initiated.

(c) *Costs of assessment teams.* The Secretary may use amounts appropriated for activities under this subpart for any travel, administrative, and other necessary expenses of assessment teams under § [illegible].410.

(d) *Determination of assistance amounts.* (1) Whether a PHA is to receive assistance, and the amount of any assistance, under this subpart will be determined through a process to be described in detail for each round of funding in Notices of Funding Availability to be published in the **Federal Register**. A portion of a PHA's plan, rather than the entire plan, may be funded, and the Secretary may establish reasonable limits on the funding that will be available under a NOFA for any category of eligible activities or for any PHA.

(2) Prior to determining the amount of any assistance to be awarded to a PHA, HUD will review the PHA's plan and the extent to which it is consistent with the assessment of the PHA, and any other factors that the Secretary finds to be appropriate.

(e) *Revisions.* Funding is expected to be spent to carry out the vacancy reduction activities funded under this program. Should a change in circumstances make a revision necessary, HUD approval is required. The grantee must submit a report that substantiates a need for the revision, along with an account of how the revision affects the funded plan.

§ 968.416 Fund requisitions.

To request funds against the total approved vacancy reduction program budget, a PHA must submit a request to HUD in accordance with HUD requirements.

§ 968.419 Grantee's oversight responsibilities.

Each grantee shall provide, by contract or otherwise, adequate and competent supervisory and inspection personnel to assure work quality and progress during modernization, whether work is performed by contract or force account labor and with or without the services of an architect/engineer.

§ 968.422 Progress reports and completion schedule.

(a) *Reports required.* Until completion of the activities funded under the vacancy reduction program, the grantee shall submit to HUD, in a form and at a time prescribed by HUD, the following:

(1) A report on modernization fund expenditures;

(2) A narrative report that includes an accounting of the grantee's progress against the milestones established in its vacancy reduction plan. The report shall include the number of both funded and regular turn-over units that have been made ready for occupancy; and

(3) Any additional information as HUD may require.

(b) *Completion schedule.* HUD expects that most work items funded under this program will be completed within one year. Work items must be completed within two years from the date of funding, or by some other time as may be specified in the Notice of Funding Availability, unless prior approval is obtained from HUD.

(Approved by the Office of Management and Budget under control number 2577–0181)

§ 968.425 HUD review of grantee performance.

(a) *Performance reviews.* HUD shall carry out such reviews of the performance of each funded PHA as may be necessary or appropriate to determine compliance with the PHA's vacancy reduction plan and related HUD requirements. In these reviews HUD will determine whether the PHA has:

(1) Carried out its vacancy reduction activities in a timely manner and in accordance with its vacancy reduction plan;

(2) Completed, or made reasonable progress toward completing, the physical items funded under the vacancy reduction plan, and whether the work items being carried out conform with the modernization and energy standards in § 968.115 of this chapter;

(3) Implemented, or made reasonable progress toward implementing, the management improvements funded under the vacancy reduction program; and

(4) Made reasonable progress in meeting the goals established in its vacancy reduction plan.

(b) *Notice of deficiency.* If HUD finds any deficiency in a review of a grantee's performance under this part, HUD may issue to the grantee a notice of deficiency stating the specific program requirements that the grantee has violated and requesting the grantee to take corrective action.

(c) *Corrective action order.* (1) *Issuance.* If HUD finds any of the deficiencies listed in paragraph (c)(3) of this section in its review of the grantee's performance, HUD may issue to the grantee a corrective action order, whether or not a notice of deficiency has previously been issued on the specific deficiency. The corrective action order shall notify the grantee of the specific program requirements that the grantee has violated and shall specify the corrective action.

(2) *Consultation with grantee.* Before ordering corrective action, HUD will give the grantee an opportunity to consult with HUD regarding the proposed action.

(3) *Bases for corrective action.* HUD may order a grantee to take corrective action only if HUD determines:

(i) The grantee has not submitted a performance report as required by HUD;

(ii) The grantee has not carried out activities under its vacancy reduction program in a timely manner and in accordance with HUD requirements;

(iii) The grantee does not have continuing capacity to carry out activities in its vacancy reduction plan; or

(iv) An audit conducted in accordance with 24 CFR part 44, or pursuant to other HUD reviews, reveals deficiencies that HUD reasonably believes require corrective action.

(d) *Nature of corrective action.* (1) HUD shall design corrective action to prevent a continuation or recurrence of the same or a similar deficiency or to mitigate to the greatest extent feasible any adverse effects of the deficiency.

(2) HUD may order a grantee to take the corrective action that HUD determines appropriate for carrying out the elements of the vacancy reduction plan. Corrective action may include, but is not limited to, suspension of grantee's authority to incur costs against the vacancy reduction funding and reimbursement, from sources other than HUD funds, of any amount spent improperly.

(e) *Failure to take corrective action.* In cases where HUD has ordered corrective action and the grantee has failed to take the required action within a reasonable time, as specified by HUD, HUD may take one or more of the following steps:

(1) Withhold vacancy reduction funds from the grantee;

(2) Declare a breach of the ACC by the grantee; and

(3) Any other sanctions authorized by law or regulation.

§ 968.428 Program closeout.

(a) *Requirements for grantees.* Upon completion of the activities funded in accordance with this part, the grantee shall submit to HUD, and in a form prescribed by HUD, the actual modernization cost certificate for HUD's review, audit verification, and approval. The grantee shall immediately remit any excess funds provided by HUD. If the audited modernization cost certificate discloses unauthorized expenditures, the grantee shall take such corrective actions as HUD may direct.

(b) *Audit.* The audit shall follow the guidelines prescribed in 24 CFR part 44, Non-Federal Government Audit Requirements.

(Approved by the Office of Management and Budget under control number 2577–0181)

§ 968.435 Other program requirements.

In addition to the program requirements applicable to this subpart under § 968.110, each PHA participating in the vacancy reduction program under this subpart shall:

(a) Certify that any modernization, reconstruction, or rehabilitation activities that are funded under this subpart will be undertaken in accordance with modernization standards, as set forth in HUD Handbook 7485.2, as revised;

(b) Certify that activities undertaken within vacant units will bring the affected vacant units into compliance with the Housing Quality Standards, as set forth in 24 CFR 882.109 and amended by the regulations concerning lead-based paint in public housing at 24 CFR part 35; and

(c) Provide for resident involvement, in a manner to be determined by the Secretary, in the process of applying for any funding available under this part

Dated: June 6, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–14281 Filed 6–10–94; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3761; FR–3538–N–01]

NOFA for Vacancy Reduction Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability.

SUMMARY: This NOFA announces the availability of funding for activities under the Vacancy Reduction Program. Under this program, certain public housing agencies (PHAs) are required to develop and submit a plan regarding vacancies in units owned or operated by the PHA. Assessment teams have conducted on-site assessments of the vacancy situation at known eligible PHAs, and when notified will conduct an assessment at any PHA that meets the eligibility requirements but has not been assessed. In addition, when requested, HUD will provide assistance to any eligible PHA in developing its vacancy reduction plan. Although funds available under this NOFA will be used to implement the plans, these funds are intended to supplement other initiatives of the PHA that will reduce the rate of vacancies in a PHA's inventory. The NOFA contains information on the following:

(a) The purpose of the NOFA, available amounts, and eligibility; and

(b) Application processing, including how to apply, the required content of the application, and how selections will be made.

DATES: An application must be submitted before 4 p.m. (Eastern Standard Time) on July 28, 1994.

Any PHA that considers itself eligible for funding under this NOFA, but that has not yet been scheduled for an assessment under 24 CFR 968.410, must request an assessment before June 28, 1994.

The above-stated deadlines are firm as to date and hour. Applications may be hand-delivered or mailed, but applications sent by facsimile will not be accepted.

ADDRESSES: The original completed application must be submitted to: Attention: Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh St., SW., room 4204, Washington, DC 20410; one copy must be sent to the appropriate HUD Field Office; and a one copy must be sent to each member of the assessment team.

FOR FURTHER INFORMATION CONTACT: MaryAnn Russ, Director, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4204, Washington, DC 20410, telephone (202) 708–1800 or (202) 708–1380 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0181.

I. Purpose and Substantive Description

A. Authority

The funding made available under this Notice of Funding Availability (NOFA) is authorized as a set-aside by section 115(a) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (1992 Act). Section 115(a) requires a percentage of the amounts available under section 14 of the United States Housing Act of 1937 in fiscal years 1993 and 1994 to be set aside for the Vacancy Reduction Program. Final implementing regulations for the Vacancy Reduction Program are published elsewhere in today's **Federal Register**.

In the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Pub. L. 102–389, approved October 6, 1992; 106 Stat. 1582) (1993 Appropriations Act), Congress appropriated $3.1 billion for activities under section 14, and in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (Pub. L. 103–124, approved October 28, 1993 (1994 Appropriations Act), Congress appropriated $3.23 billion for these activities. A total of $202,560,000 in set-asides is available for this program to fund Vacancy Reduction Program activities.

B. Allocation Amounts

A portion of the funds available for this program will be used for travel and administrative expenses of the assessment teams, as authorized by Section 115 of the 1992 Act. Of the remaining amount, no PHA applying for funding under this NOFA may receive more than 15 percent of the total available funds.

Subject to this 15 percent limitation, eligible public housing agencies (PHAs) that are Comprehensive Improvement Assistance Program (CIAP) agencies will be provided funding in the full amounts approved for Vacancy Reduction Program activities. For PHAs that are Comprehensive Grant Program (CGP) agencies, if insufficient funds remain to fund all eligible and approved activities under this NOFA, the amount to be reserved for each CGP agency will be its pro rata share of the total remaining funds available, in accordance with Section I.J(3) of this NOFA.

All units that are funded in whole or in part by the Vacancy Reduction Program must be brought into compliance with the Housing Quality Standards (HQS), as set forth in 24 CFR 882.109, and must be readily marketable when the work is completed.

C. Background

In order to gain greater insight into the vacancy problems of the PHAs required to participate in the Vacancy Reduction Program, the Department sent a survey form on April 2, 1993, to all PHAs that, based on HUD data bases, were troubled or mod-troubled on January 1, 1993, or had a vacancy rate that exceeded 15.9% on that date. Of the 400 identified PHAs, 345 responded to the survey. These PHAs reported a total of 56,324 vacancies, about half of the total vacancies nationally. The responses showed that additional funding was necessary to cure only half of the vacancies in the inventories of the responding PHAs.

Of those vacant units whose occupancy was not dependent upon additional funding, the reasons for and percentages of the total vacancies were as follows:

- Ready, awaiting leasing—5.7%;
- No demand (defined as few or no persons on the waiting list)—3.5%;
- Undesirable (defined as requiring 4 or more offers to obtain a tenant, but not requiring funding)—2.0%;
- Funded under a modernization program—29.7%;
- In litigation—6.5%; and
- Other reason not requiring funding—3.2%.

Of those units in which vacancies could be eliminated with additional funding, the reasons for and percentages of the vacancies were as follows:

- Awaiting demolition—5.4%;
- Needing modernization—30.0%;
- Needing repair—12.8%; and
- Other reason requiring funding—1.1%.

Of the vacant units that would benefit from additional funding, the estimated costs of rehabilitation (exclusive of any

costs for lead-based paint testing and abatement) and percentage of total vacancies were as follows:

- Up to $5,000—4.8%;
- $5,000–10,000—14.8%;
- $10,000–25,000—7.1%; and
- Over $25,000—13.8%.

Thus, almost 20% of all vacancies in these high-vacancy PHAs could be remedied for a cost of $10,000 or less per unit, plus the cost of any lead-based paint activity, essential management improvements, Section 504 (of the Rehabilitation Act of 1973) rehabilitation, or other essential costs.

The Department seeks maximum efficiency in the use of Vacancy Reduction Program funds. To this end, the Department met with public housing interest groups and resident representatives on January 28 and July 9, 1993, to discuss the needs of public housing that might be met by this program. As a result, the Department has decided to focus this NOFA on units that can be rehabilitated for occupancy at a modest cost, and on units with more expensive rehabilitation costs where the PHA has the ability and agrees to provide the remainder of the funding necessary to prepare the property for occupancy. In this way, the Department hopes to house the optimal number of additional families using the available program funds.

The survey has enabled the Department to proceed with vacancy assessments (see 24 CFR 968.410 in the final rule published elsewhere in today's **Federal Register** and the preamble of the proposed rule, published at 58 FR 29728) for those PHAs that responded to the survey and indicated an inventory of unfunded vacant units. Other PHAs that did not receive a survey form or did not respond to the survey, but that believe they are eligible under this NOFA and wish to apply for funding, must notify the Department so that an assessment can be scheduled as indicated under **DATES**, at the beginning of this NOFA.

The Vacancy Reduction Program is not designed to focus solely on the rehabilitation of vacant units; the program also is intended to identify and correct site and management deficiencies as necessary to achieve and sustain occupancy of vacant units. Management problems in some of the high-vacancy PHAs also may be responsible for vacancies. These problems may include high turnover, poor maintenance and security, delays in making units ready for occupancy after they are vacated, delays in placing tenants in units as soon as they are ready, or inability to deal with marketability problems that could be addressed successfully. Therefore, management improvements that are necessary for a PHA to achieve and maintain a high level of occupancy and to manage turnover successfully also will be funded under this NOFA. The vacancy assessments will assist the PHAs and HUD in identifying what actions need to be taken in this regard.

Some PHAs may have difficulty preparing an application, including a vacancy reduction plan. The Department will, on request by the PHA, assist the PHA in preparation of the plan. Such assistance may be requested by telephoning Strategic Resources, Inc. (703) 749–3040. Moreover, if an application submitted in response to this NOFA is technically approvable under the NOFA, but is deemed by HUD to need improvement or supplementation in specific areas of the PHA's plan to increase the potential for success, HUD will require changes in the plan before execution of the amendment of the Annual Contributions Contract (ACC).

D. Definitions

The following definitions apply to this NOFA, in addition to the definitions that apply generally to the program under § 968.405 of the final rule published elsewhere in today's **Federal Register**:

Assistant Secretary means the Assistant Secretary for Public and Indian Housing.

Eligible unit means a dwelling unit that satisfies the conditions under either paragraph (1) or paragraph (2) of this definition, as applicable. The unit must be either:

(1) A *vacant unit* that meets the characteristics of both of the following paragraphs (1) (a) and (b):

(a) The cost of rehabilitation necessary to make the unit available for occupancy and marketable (including development-wide physical improvements and other necessary costs, but not including costs of lead-based paint activity, costs for accessibility for those with disabilities, and management improvement funding) is either:

(i) $8,000 or less, when averaged with other vacant units in the development for which the PHA is applying for this category of funding (i.e., average of not more than $8,000 per unit); or

(ii) More than $8,000, when averaged with other vacant units in the development for which the PHA is applying for this category of funding (i.e., average of more than $8,000 per unit), and the PHA has available funding that it agrees to use to pay the costs in excess of $8,000 per unit. "Available funding" includes funds legally available to the PHA by September 30, 1994; and

(b) The unit will be marketable when it has been made ready for occupancy. Units that cannot be made marketable, for any reason, are not eligible to be funded under this NOFA, and funds should not be requested for them in the application. Such units, however, must be included in the vacancy reduction plan; or

(2) An *occupied unit*, if either:

(a) The unit meets the criteria of paragraphs (1)(a)(i) or (ii) and paragraph (1)(b) of this definition, and either:

(i) In order to address the overall vacancy situation at a PHA, it is necessary to move a resident family to another unit. The unit vacated by that family may then be considered an eligible unit. For example, if a PHA has vacant one-bedroom units for which there is no demand, but also has overhoused families that could be transferred to the one-bedroom units (thus freeing up larger units for which there is a demand), the PHA could request funding under this NOFA for both units; or

(ii) The unit is expected to be vacated under the Moving to Opportunities Program; or

(b) The PHA has fewer vacancies on the date of its application than it had on September 1, 1993, and the PHA had expended funds on rehabilitation of the unit in reasonable anticipation of reimbursement from Vacancy Reduction Program funds. The PHA may be reimbursed for the cost of the rehabilitation only if funds remain available after HUD has funded all other eligible costs at all PHAs applying for funds.

Lead-based paint activity includes lead-based paint risk assessments, risk management (interim containment), testing, and abatement, consistent with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4826) and HUD implementing regulations at 24 CFR parts 35, 965, and 968.

Marketable means that there is a waiting list for units of the applicable size and that either the past experience of the PHA would indicate that the unit should lease reasonably quickly after completion of the work funded under this program, or other available data indicates that physical and management improvements, including more extensive outreach, would likely result in a demand for the units.

Repair includes routine maintenance when essential to the reoccupancy of the eligible vacant units.

Vacancy Reduction Plan means a plan developed by the PHA that includes the following:

(1) The statements required by § 968.407(b) of the final rule (also see Appendix to this NOFA) published elsewhere in today's **Federal Register**;

(2) For all vacant units, reported by development, information on the:

(i) Number and percentage of units vacant at the time of application under this NOFA;

(ii) Number and percentage of units expected to be occupied by each semiannual date after the submission of the PHA's vacancy reduction plan, as provided under paragraph (3) of this definition, including date of full occupancy;

(iii) Source of funding and expected percentage of funds to be obligated and expended by each semiannual date, as provided under paragraph (3) of this definition; and

(iv) Expected date of any demolition or disposition, and the number of units involved in this activity.

(3) A schedule, by chart or time line, indicating milestones for vacancy reduction activities (all vacant units must be included regardless of whether they require funding and whether they have already been funded). The schedule shall indicate all actions that will have been taken as of the end of each semiannual period, either September 30 or March 31.

(i) Actual calendar dates shall be used for units that do not require vacancy reduction program funding, but will be funded from sources within the control of the PHA (e.g., CGP and the operating budget) or have already been funded by another governmental program (e.g., CIAP, the Severely Distressed Public Housing Program).

(ii) For units for which specific calendar dates cannot be given because approval from HUD is a prerequisite to the action, the schedule shall specify semiannual dates from the expected HUD approval (e.g., first semiannual reporting date after approval, second semiannual reporting date after approval, etc.). Such units include those for which the PHA is requesting or intends to request funding under the Vacancy Reduction Program or another HUD program (e.g., CIAP or the Severely Distressed Public Housing Program), or for which approval of demolition/disposition is required but has not yet been granted.

E. PHA Eligibility

(1) Indian Housing Authorities are not eligible for the Vacancy Reduction Program.

(2) To be eligible under this NOFA, a PHA must:

(a) Have had a vacancy rate that exceeded 15.9% on March 30, 1993, the date used in the HUD survey of vacancies;

(b) Have had a receiver appointed for the PHA pursuant to section 6(j)(3) of the United States Housing Act of 1937; or

(c) Have been a designated troubled or mod-troubled PHA any time within the twelve-month period that ended September 1, 1993. Such a PHA must also meet either of the conditions described in paragraphs (i) and (ii) below:

(i) The PHA has demonstrated substantial progress on the following vacancy related Public Housing Management Assessment Program (PHMAP) indicators: 1 (Vacancy Number and Percentage), 2 (Modernization), 5 (Unit Turnaround), 6 (Outstanding Work Orders), or 7 (Annual Inspection and Condition of Units and Systems), as demonstrated by a PHMAP score of "C" or better. If the PHA does not have a score of "C" or better on these indicators, substantial progress may be demonstrated as follows:

(*A*) Evidence that the PHA, based on more recent data would qualify for a score of "C" or better on the indicators; or

(*B*) A statement of alternative arrangements that have been made to assure effective administration of the function covered by the indicator, i.e., rehabilitation and modernization activities (in regard to the units for which funding is requested) and the PHA-wide administration of unit turnaround, work orders, and preventive maintenance; or

(ii) The PHA has provided a reasonable assurance that substantial progress will be made to remedy any management deficiencies identified by the assessment team, or any vacancy-related management deficiencies related to PHMAP indicators 1, 2, 5, 6, and 7, through activities that have already begun or will be initiated in the next six months, including activities to be funded under this NOFA. The assurance may cross-reference management improvement activity described in its vacancy reduction plan.

F. Eligibility of Activities and Costs

(1) *Eligible Activities.* The following activities are eligible for funding to the extent that they are essential to the goal of improving and maintaining a lower vacancy rate at the PHA. The extent to which activities requested for funding are essential to the achievement of this goal will be determined by HUD on the basis of the application and the vacancy assessment.

(a) Management improvements that have the following characteristics:

(i) The management improvements generally may not exceed 25% of the hard costs to be funded (exclusive of costs for lead-based paint abatement and handicapped accessibility), except that higher amounts for management improvements may be approved when such expenditures are deemed by HUD to be critical to the reduction of vacancies in the PHA. Management improvements include, but are not limited to: activities permitted under paragraph 2–3 of CIAP Handbook 7485.1 (Rev. 4); equal opportunity and civil rights training; and the development of appropriate procedures when there are management problems regarding the PHA's administration of equal opportunity requirements; and

(ii) The management improvement costs shall be funded one time only, to cover a period not to exceed three years or, with regard to PHAs with serious management difficulties, such period as is proposed by the PHA and approved by HUD. Where an approved Vacancy Reduction Program includes management improvements that involve ongoing costs, such as security, HUD will not be obligated to provide any continued funding or additional operating subsidy after the funded period. The PHA shall be responsible for finding other funding sources or reducing its ongoing management costs.

(b) Rehabilitation or repair of vacant eligible units to bring the unit at least into compliance with the Housing Quality Standards (HQS), as set forth in 24 CFR 882.109. Correction of HQS deficiencies outside the unit is not required, unless the correction of the HQS deficiencies is essential to the marketability of the vacant units in the development. Any physical component that is replaced must meet the standards for such components set forth in the Public Housing Modernization Standards Handbook, 7485.2 Rev.1.

(c) Costs necessary to provide accessibility in eligible units to persons with disabilities, in accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

(d) Lead-based paint activity, as defined in Section I.D of this NOFA, in eligible units. For lead-based paint (LBP) activities, the PHA is required to comply with 24 CFR part 965, subpart H, and 24 CFR part 35.

(e) Development-wide improvements that are essential to the marketability of the eligible units, such as improvements

made to enhance security or "curb appeal."

(f) Reconfiguration of the interior of buildings or units when there is documentation of significant problems in marketability for the currently available unit size. Documentation for reconfiguration must meet the requirements of HUD Handbook 7465.1 REV. In addition, where reconfiguration is requested, applicants must document that the lack of demand for these units is not compounded by the failure of the PHA to transfer inappropriately housed families. Approval of an application under this NOFA that includes reconfiguration activity will constitute HUD approval of the reconfiguration and no further HUD approval is necessary.

(g) When vacancies are attributable to families being overhoused, activities relating to reassigning those families and repairing of the occupied units made vacant by the reassignment may be included in the PHA request, if the reassignment is essential to correcting the vacancy problem. However, such units will be considered only if the reassignment and repair is likely to result in a decrease of the vacancy rate in the PHA.

(h) Other related activities and improvements eligible under the modernization program (see 24 CFR part 968), such as administrative expenses, fees and costs, nondwelling structures and equipment, and relocation, but only to the extent that such costs are necessary to support activity otherwise eligible and are essential to the achievement and maintenance of a lower vacancy rate.

(i) Demolition of vacant units, when a demolition application has been approved by HUD and the demolition has not been previously funded.

(j) If the PHA has fewer vacancies on the date of its application than it had on September 1, 1993, the PHA will be reimbursed for the costs of rehabilitating the formerly vacant units only if funds remain available after the Department has funded all other eligible costs at all PHAs applying for funds.

(2) *Eligible Costs.* The total amount of funding for which a PHA is eligible is the sum of the following:

(a) For each development, the necessary costs of rehabilitation of eligible units; development-wide physical improvements, including common areas; demolition; or reconfiguration. These costs are not to exceed $8,000 times the number of eligible units in the development at the time of application.

(b) Necessary costs of management improvements, not to exceed 25% of the total hard costs to be funded for all developments (exclusive of costs for lead-based paint abatement and handicapped accessibility), except that the Assistant Secretary may approve higher amounts for management improvements when such expenditures are deemed critical to reduction of vacancies in the PHA;

(c) Other related costs as discussed in paragraph (1)(h) (under "Eligible Activities") of this Section I.F;

(d) Necessary costs for lead-based paint containment or abatement in eligible units; and

(e) Necessary costs for handicapped accessibility for eligible units.

(3) *Ineligible Activities.* Activities are not eligible if the activities are under contract; have been selected for funding from other sources, such as Urban Revitalization Demonstration (URD) grants, CIAP, or State or local funding; or if the PHA has sufficient funds in its operating budget or pursuant to its formula grant under the CGP to fund the activities.

Sufficiency of funds will be determined as follows:

(a) For hard costs, a CGP agency will be deemed to have insufficient funds for the activities if the Assessment of Physical Needs in the Comprehensive Plan shows a need for funds greater than the funds expected to be available to the PHA under the CGP in the next five years.

(b) For management improvements, a CGP agency will be deemed to have insufficient funds if:

(i) For CGP agencies, the Management Needs Assessment in the Comprehensive Plan shows a need for funds greater than 10% of the funds expected to be available to the PHA under its CGP in the next five years; and

(ii) The PHA plans to use at least 10% of its CGP funds for management improvements in each of the next five years.

(c) In addition, for CGP and Comprehensive Improvement Assistance Program (CIAP) agencies, operating funds will be deemed to be insufficient only if the PHA has an operating reserve of less than 75% of the maximum allowable reserve.

G. Resident Involvement

The PHA shall develop a process that assures that residents are fully briefed, have an opportunity to comment on the proposed content of the PHA's application in response to this NOFA, and to be involved in all phases of the process. Particular attention shall be given to opportunities for resident employment. The PHA shall give full consideration to the comments and concerns of residents. The process shall include:

(1) Informing residents of the applicable housing developments about the preparation of the application, including a discussion of the report of the assessment team and actions that will be taken to address any deficiencies;

(2) Once a draft application has been prepared, the PHA shall make a copy available for reading in the management office; provide copies of the draft to any resident organization representing the residents of any development involved; and provide adequate opportunity for comment by the residents of the developments and their representative organizations prior to making the application final;

(3) Providing to HUD and any resident organization representing the development a summary of the resident comments and the PHA's response to them; and notifying residents of the developments that the summary and responses are available for reading in the management office; and

(4) After HUD approval of a grant, notifying residents of the development and any representative organizations of the approval of the grant; providing any resident organization with a copy of the HUD-approved implementation schedule; notifying the residents that the schedule is available in the management office for reading; and developing a system to facilitate regular resident monitoring of the program.

H. Resident Training, Employment, and Contracting

The Vacancy Reduction Program provides an ideal opportunity to enhance resident training, employment, and contracting. In furtherance of HUD goals and priorities, PHAs should, to the greatest extent possible, provide such opportunities for residents under this program, including development of programs under section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3). Section 3 requires best efforts on the part of the PHA to give low- and very low-income persons training and employment opportunities generated by Vacancy Reduction Program assistance, and to award contracts for work to be performed in connection with Vacancy Reduction Program assistance to business concerns that provide economic opportunities for low- and very low-income persons. A PHA shall include in its vacancy reduction plan the projected number of residents the PHA expects to be trained or hired, and the number of business firms that provide economic opportunity to low-

and very low-income persons to be contracted with for vacancy reduction activities, whether directly by the PHA or through business concerns with which the PHA has contracts for vacancy reduction activities.

I. Required Results

(1) Except as provided below, funds provided under this NOFA must be expended and units reoccupied within 24 months from the date of funding, and management improvements must be implemented fully within 3 years from the date of funding. However, the Assistant Secretary for Public and Indian Housing may approve alternative schedules proposed by PHAs with significant management improvement needs. Funds awarded under this program that are not obligated on a timely basis may be recaptured.

(2) During the funding period, move-ins to developments funded under this program must at least equal the number of move-outs plus the number of units funded under this program (excluding units that are vacated for modernization and later reoccupied after modernization). At the end of the funding period, the PHA's current vacancy rate must be reduced to the extent of the number of units funded under this program.

J. Selection and Funding Process

(1) *Sufficiency of Application.* In order to be considered for funding, an application must be complete and consistent with the terms of this NOFA, and the vacancy reduction plan must generally be consistent with the recommendations of the assessment team. The Department recognizes that some variance will exist since some of the assessments already conducted concentrated on units that could be repaired for $10,000 or less. In determining the amount of funds to be reserved for each approvable application, HUD will review the request for consistency with the recommendations of the assessment team and will consider any other information HUD may have available. When an approvable vacancy reduction plan submitted in response to this NOFA needs improvement or supplementation, HUD will require any necessary changes or additions to the plan, and will assist the PHA in revising its plan, before execution of the amendment of the ACC.

(2) *Management Deficiencies.* If a PHA does not adequately address management weaknesses that contribute to its vacancy problem and have been reported by the assessment team, its application will be deemed ineligible for funding.

(3) *Funding Decisions.* When a PHA is requesting funding for eligible units in which rehabilitation costs will exceed an average of $8,000 (see paragraph (1)(a)(ii) in the definition of "eligible unit" in Section I.D of this NOFA), HUD will determine whether the PHA's plan to fund the cost above an average of $8,000 per unit is reasonable. However, no PHA may receive greater than 15 percent of the total amount of funding available.

(a) *CIAP Agencies.* HUD will fully fund all eligible units and associated costs (as defined in Section I.F of this NOFA) for which CIAP agencies apply.

(b) *CGP Agencies.* From the remaining funds HUD will fund eligible applications from CGP agencies to the extent funding is available. Of the total funds remaining available for CGP agencies, 75 percent will be made available for units eligible under paragraph (1)(a)(i) in the definition of "eligible unit" in Section I.D, "Definitions," of this NOFA. The other 25 percent will be made available for units eligible under paragraph (1)(a)(ii) of that definition of "eligible unit".

(i) If the amount of funds available is sufficient to fund fully (including the costs of management improvements, lead-based paint control, and accessibility for the disabled) all CGP agencies in either category of funding, HUD will fund those requests fully.

(ii) If the total funding requested by CGP agencies in any category exceeds the total amount of funds available in that category, the amount to be reserved for each CGP agency will be determined as follows, except that an agency will not be funded at a level exceeding its budget request:

(A) If the amount of available funding is sufficient, each CGP agency will be funded for its eligible costs (exclusive of management improvements and the costs of lead-based paint control and accessibility for the disabled). If funds remain available after funding the requested costs under this paragraph, each CGP agency will receive a pro rated share of the remaining funds, according to the ratio of eligible related costs (i.e., management improvements and the costs of lead-based paint control and accessibility for the disabled) requested by the agency to the total of eligible related costs requested by all CGP agencies.

(B) If the amount of available funding is not sufficient to fund all eligible costs costs under paragraph (3)(b)(ii)(A) of this Section I.J, the funding allocated to each CGP agency will be its pro rata share of funds, determined by using the same ratio as the number of eligible units in the CGP agency in that category for which funding is requested to the total number of eligible units in that category for which funding is requested by all applicant CGP agencies.

(iii) If funds remain available in either category and there are unmet needs in the other category, the excess funds will be reallocated to the category in which additional funding is needed.

(iv) If applications from CGP agencies are not fully funded, those agencies will be required to revise their vacancy reduction plans and budgets to indicate which items will be funded with the amounts reserved for the CGP agency under this program and state alternative plans for unfunded vacancies. To the extent that funds are prorated for its units averaging more than $8,000 in costs, each CGP agency receiving program funds under paragraph (1)(a)(ii) of that definition of "eligible unit" in Section I.D, "Definitions," will be required to commit a portion of the funds the agency had agreed to commit from independent resources if those units had been funded in the full amount requested. This portion will be determined by applying (to the total commitment made in the application) the ratio of funding received for those units to funding requested for those units.

(c) *Remaining funds.* If funds remain available after funding all eligible activities under paragraphs (a) and (b) of Section I.J(3), "Funding Decisions," of this NOFA, a PHA may be reimbursed for costs, or a portion of costs, associated with rehabilitating certain occupied units. The PHA must have fewer vacancies on the date of its application than it had on September 1, 1993, and must have expended funds on those units in reasonable anticipation of reimbursement from Vacancy Reduction Program funds.

K. Implementation of Plan and Other Programs

(a) An applicant's vacancy reduction plan must be approved before an application is funded under this NOFA even though, in most cases, the plan will cover the physical treatment of many units that are not eligible under this NOFA. The PHA is expected to implement the plan using available funds, including the operating budget and CGP funds, and by requesting funds under discretionary programs, including CIAP and the Severely Distressed Public Housing Program. HUD will monitor implementation of the vacancy reduction plan.

(b) Eligible units that a PHA originally planned to fund with CGP funds may

also be funded under this NOFA, as long as they are not currently under contract. The PHA may then reprogram its CGP funds to other work set forth in the Five-Year Action Plan.

II. Application Process

A. Submission of Application

An application must be submitted before 4 p.m. (Eastern Standard Time), July 28, 1994.

An original completed application must be submitted, as follows: (1) One to: Attention: Director, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh St., SW., room 4204, Washington, DC 20410,; (2) one copy to the appropriate HUD Field Office; and (3) one copy to each member of the assessment team. The above-stated deadline is firm as to date and hour. Applications may be hand-delivered or mailed, but applications sent by facsimile will not be accepted.

B. Scheduling of Assessments

Any PHA that considers itself eligible and wishes to apply for funding under this NOFA, but that is not yet scheduled for a vacancy assessment under § 968.410, must notify the Department by June 28, 1994, so that an assessment can be performed.

C. Availability of Funding

CIAP agencies that apply early may receive funding prior to the application deadline. Funding will be provided as soon as the application is approved.

III. Checklist of Application Submission Requirements

The following documents comprise the application:

A. Vacancy Reduction Plan

As defined in Section I.D of this NOFA.

B. Request for Funding

Under this NOFA, including:

(1) Form HUD–52825, CIAP Budget/Progress Report, Part I—Summary, including work to be performed with funds other than VRP funds for units eligible under paragraph (1)(a)(ii) of the definition of "eligible unit" in Section I.E of this NOFA, indicating the source of funds. Do not include non-VRP funds in the totals.

(2) Form HUD–52825, CIAP Budget/Progress Report, Part II—Supporting Pages, include work to be performed with funds other than VRP funds for units eligible under paragraph (1)(a)(ii) of the definition of "eligible unit" in Section I.D of this NOFA, indicating the source of funds. Do not include non-VRP funds in the totals. Note that Form HUD–52825, CIAP Budget/Progress Report, Part III—Implementation Schedule is not required;

(3) For both categories of funding (i.e., units averaging costs of $8,000 or less by development, and units averaging costs of more than $8,000 by development), a statement of the number of eligible units in each development and the average per-unit cost in the development, including the costs for rehabilitation of the units and for any development-wide improvements, but excluding costs for lead-based paint, Section 504 compliance, and management improvements.

(4) Troubled and mod-troubled PHAs must demonstrate eligibility for the program by submission of documentation required under Section I.E(2)(b) of this NOFA.

(5) An administrative plan for carrying out the work.

(6) When funding is requested under Section I.J(3)(c), "Remaining Funds," of this NOFA, statements of the number of vacancies on September 1, 1993, and the total number of vacancies in the PHA at the time of the application under this NOFA.

C. Other Submissions

(1) OMB Standard Form SF–424, Application for Federal Assistance, including SF–424B, Assurances—Non-Construction Programs. On the SF–424, PHAs need to complete only items 2, 5, 12, 13, 14, 15, 17, and 18.

(2) A resolution of the governing board of the PHA, including the following:

(a) A certification that the units for which funding is requested in this application will be readily marketable when they are made ready for occupancy;

(b) Certification of eligibility of the PHA and the proposed activities under sections I.F(1) and (2) of this NOFA;

(c) A certification that the PHA has insufficient funds (as defined in Section I.F(3) of this NOFA) in its operating budget or pursuant to its formula grant under the Comprehensive Grant Program to fund the activities for which funding is sought under this NOFA, and that the activities have not been selected for funding from other sources, such as Urban Revitalization Demonstration (URD) grants, CIAP, or State or local funding.

(3) Form HUD–50070, Certification for Drug-Free Workplace.

(4) Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements, required of PHAs established under State law that are applying for grants exceeding $100,000.

(5) SF–LLL, Disclosure of Lobbying Activities, required of HAs established under State law only when any funds, other than federally appropriated funds, will be or have been used to influence Federal workers or Members of Congress or their staffs regarding specific grants or contracts.

(6) Form HUD–2880, Applicant/Recipient Disclosure/Update Report.

(7) For any unit reconfiguration for which funds are requested under Section I.F(1)(e) of this NOFA, data supporting the eligibility of the conversions.

(8) Certification of the PHA's intent to comply with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Executive Order 11063, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and any implementing regulations.

(9) Certification that the PHA will make best efforts to give low- and very low-income persons training and employment opportunities generated by assistance awarded under this NOFA, and to award contracts for work to be performed in connection with assistance provided under this NOFA to business concerns that provide economic opportunities for low- and very low-income persons, as required by section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u).

IV. Corrections to Deficient Applications

Immediately after the submission of an application, HUD will screen the application to determine whether all items were submitted. If the PHA fails to submit any of the items listed in Section III.C of this NOFA, or the application contains a technical mistake such as an incorrect signatory, HUD will immediately notify the PHA that it has 14 calendar days from the date of HUD's written notification to submit or correct the specified items. If any items are missing and the PHA does not submit them within the 14-day cure period, the application will be ineligible for further processing.

V. Subsequent Revisions of Vacancy Reduction Plan

The intent of the Department is to assist each high vacancy PHA to develop a plan that will assure success in reducing the PHA's vacancy rate and improving management capacity to assure continued progress in reaching high occupancy levels. If a plan submitted in response to this NOFA is

approved under the NOFA, but needs improvement or supplementation, HUD will so advise the PHA. The Department will specify areas in which improvement or supplementation is needed and require that revisions be made prior to execution of the amendment of the ACC. HUD staff will be available to assist the PHA in revising its plan.

VI. Other Matters

A. Environmental Review

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The NOFA merely sets forth funding availability for eligible PHAs that require the assistance to undertake vacancy reduction activities.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the notice is to provide funding to improve housing opportunities by reducing the number of vacant units in the inventories of PHAs, which could benefit some families significantly. However, because the impact on families would be indirect and would be beneficial, no further review is considered necessary.

D. Section 102 of the HUD Reform Act: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Public notice. HUD will include recipients that receive assistance pursuant to this NOFA in its quarterly **Federal Register** notice of recipients of all HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD) (this is not a toll-free number). The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Field Office Counsel or Headquarters counsel for the program to which the question pertains.

F. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b), added by section 112 of the Reform Act, contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of that part.

Any questions about part 86 should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance

exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: 42 U.S.C. 14371 and 3535(d).

Dated: June 6, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix—Requirements for "Vacancy Reduction Plan" in 24 CFR 968.407

Section 968.407—Vacancy Reduction Plan

(a) *Submission of plan.* Each PHA to which this subpart applies, in accordance with § 968.403, shall submit a vacancy reduction plan. The plan shall contain the elements identified in paragraph (b) of this section, and shall be organized so that each of the elements can be identified, reviewed, and funded separately.

(b) *Contents of plan.* The format of a plan submitted for funding under this program will be defined in NOFAs to be published periodically in the **Federal Register**. Each vacancy reduction plan submitted by a PHA under paragraph (a) of this section shall include statements:

(1) Identifying all vacant dwelling units administered by the PHA, including unmarketable units, and explaining the reasons for the vacancies. Units may be grouped together when explaining the reasons for the vacancies;

(2) A description of the turnover rate of units for the past two years, including the number of units vacated and reoccupied per development per year and the average number of days required to return a unit to occupancy. If the turnover rate is increasing, the plan should identify each cause of the increase.

(3) Describing the actions to be taken by the PHA during the following five years to eliminate the vacancies. The PHA shall:

(i) State project-specific actions that it is taking or intends to take that will eliminate vacancies, such as modernization, demolition, unit redesign or conversion, density reduction, disposition, modification of occupancy policies, site and security improvements, and other physical or management improvements; and

(ii) For each project identified, set out a schedule for completing the actions identified in paragraph (b)(3)(i) of this section and removing the dwelling units from the PHA's inventory of vacant units. If the timing of any action is dependent upon a HUD approval or decisionmaking process, the schedule for the PHA action may be presented in terms of a specified time period following completion of the HUD process. For each action, the schedule shall include the number of vacancies that will be eliminated by the end of each 12-month period after the PHA begins to receive assistance under this subpart.

(iii) For units vacated during the last two years, when the PHA has been unable to return these units to occupancy within 30 days from the date the units become vacant, the plan shall describe actions planned to achieve at least a 30-day turnover rate.

(4) Identifying any impediments that will prevent elimination of the vacancies within the five-year period;

(5) Identifying any vacant units funded for modernization, major reconstruction, demolition, or disposition activities;

(6) Identifying any vacant dwelling units that are eligible for modernization, major reconstruction, demolition, or disposition, but have not been funded or approved for these activities and are not likely to be funded or approved for at least three years. The statement shall include an estimate of the amount of assistance necessary to complete the modernization, major reconstruction, demolition, or disposition of these units;

(7) Identifying any vacant units not identified under paragraphs (b)(5) and (b)(6) of this section. The statement shall include a description of any appropriate activities relating to elimination of the vacancies in these units and an estimate of the amount of assistance necessary to carry out the activities identified under this paragraph;

(8) Setting forth an agenda for implementation of management improvements during the first fiscal year beginning after submission of the plan. If the timing of any improvement is dependent upon a HUD approval or decisionmaking process, the schedule for the improvement may be presented in terms of a specified time period following completion of the HUD process. The agenda should include any management improvements recommended by the assessment team pursuant to § 968.410 and an estimate of the amount of assistance necessary to implement the management improvements; and

(9) Of any other information that the Secretary shall deem appropriate, as provided in the applicable NOFA. Such information may include budget documents, in the case of any PHA that is applying for funds under a NOFA.

(c) *Housing standards.* To the extent that a plan involves modernization, reconstruction, or rehabilitation activities that have not been funded or approved previously and are not planned to be undertaken using Comprehensive Grant Program funds, the plan must reflect cost estimates that, at a minimum, are based on:

(1) For individual work items funded under the program, compliance with modernization standards, as set forth in HUD Handbook 7485.2, as revised; and

(2) For each vacant unit on which funds are expended, compliance of the unit with the Housing Quality Standards, as set forth in 24 CFR 882.109 and as amended by the regulations concerning lead-based paint in public housing in 24 CFR part 35.

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Part VI

Department of Agriculture

Forest Service

36 CFR Part 292
Hells Canyon National Recreation Area—Private Lands; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 292

RIN 0596–AA88

Hells Canyon National Recreation Area—Private Lands

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements section 10(a) of the Hells Canyon National Recreation Area Act of 1975. The Act directs the Secretary of Agriculture to promulgate rules and regulations deemed necessary to guide the use and development of private lands within the Hells Canyon National Recreation Area. This rule establishes the baseline standards of private land use and development that are compatible with the purposes of the Act and that, if not met, could result in the Secretary's use of the private land acquisition authority provided by the Act. The intended effect is to ensure that the values of the HCNRA will be protected and preserved, and as envisioned by the Act, that traditional ranching, grazing, farming, timber harvesting, and other uses can be perpetuated.

EFFECTIVE DATE: This rule is effective June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Tom Lennon, Branch Chief, Special Designations, Recreation, Heritage, and Wilderness Resources Staff, Forest Service, (202) 205–1423 or Ed Cole, Area Ranger, (503) 426–4978.

SUPPLEMENTARY INFORMATION:

Background

Congress established the Hells Canyon National Recreation Area (HCNRA) by the Act of December 31, 1975 (the Act) in order to assure that the natural beauty, and historical and archaeological values of the Hells Canyon area are preserved for this and future generations, and that the recreational and ecologic values and public enjoyment of the area are thereby enhanced. Public Law 94–199, 89 Stat. 1117 at Sec. 1 (codified at 16 U.S.C. 460gg et seq.).

Section 10 of the Act directs the Secretary to promulgate such rules and regulations as are deemed necessary to accomplish the purposes of the Act, including standards for the use and development of privately owned property within the HCNRA. Section 10 further provides that the Secretary may use the land acquisition authority in section 9 of the Act to implement the rules and regulations promulgated pursuant to section 10. As for the Snake, Rapid, and Imnaha Wild and Scenic Rivers, the governing authority for land acquisition is found in section 6 of the Wild and Scenic Rivers Act. Both section 9 of the Act and section 6 of the Wild and Scenic Rivers Act restrict the Secretary's condemnation authority; i.e. acquiring land without the consent of the landowner.

On December 14, 1993, the Forest Service published a proposed rule that would establish the standards for the use and development of private lands in the HCNRA (56 FR 65300). The purpose of the proposed regulations was to make clear those circumstances which would trigger possible use of the Secretary's condemnation authority. The proposed rule established categories of private land and standards for the use and development of private land within a given category. Compliance with the standards would generally be deemed consistent with the purposes for which the HCNRA was established. Violation of the standards would generally be deemed inconsistent with the purposes for which the HCNRA was established, and, thus the lands could become the subject of federal acquisition. Thus, the proposed rule sought to make clear to affected landowners those uses that could continue or be undertaken without risk of federal acquisition.

Throughout its efforts to devise regulations applicable to private lands within the HCNRA, the Forest Service has sought to avoid direct regulation of private lands and their uses. Instead, the agency has sought to define those uses of private lands that are consistent with the purposes for which the HCNRA was established, to encourage retention of traditional and valid private land uses as established by the Act, and, thereby, to avoid having to exercise the condemnation authority granted the Secretary by the Act. Under the proposed rule, the Forest Service would not seek to regulate per se or enjoin proposed uses or developments on private land. Rather, the agency chose to set forth in the proposed rule standards for private land use and development, which establish the basis for using the secretary's land acquisition authority in the HCNRA. The proposed rule also established a mechanism by which a landowner could petition for a change in land category assignment and a mechanism by which a landowner could determine whether an existing or proposed land use or development was in compliance with the standards of the rule. The Forest Service may also initiate a noncompliance determination on its own without having first received a landowner request.

Under the proposed rule, the Secretary would not acquire the subject land or interests therein unless it was with the consent of the landowner in those cases where a landowner was in compliance with the applicable standards. If, however, the landowner was not in compliance, the Secretary could acquire a fee simple or lesser interest in the subject land without the landowner's consent. The proposed rule also provided landowners and other interested parties an opportunity to appeal a compliance or noncompliance determination.

Eight letters expressing a variety of viewpoints were received during the 60-day comment period on the proposed rule. These letters contained the views of a power company, a powerboat association, a preservation group, a local county government, another agency of the federal government, an ad hoc citizens river committee, a state agricultural organization, and a local chapter of the same organization. The comments contained in these letters have been carefully considered in the adoption of this final rule. The Department appreciates the time and energy the reviewers invested in preparing these letters and articulating their concerns on the proposed rule.

All comments received are available for review in the Office of the Director, Recreation, Heritage, and Wilderness Resources Staff, Auditors Building, 4th Floor, 201 14th Street SW at Independence Avenue SW., Washington, DC, during regular business hours (8 a.m. to 4:30 p.m.) Monday through Friday.

Analysis of Public Comment

Comments on the proposed rule dealt both with general issues, such as the scope and extent of the Secretary's authority under this rule, as well as discrete issues relating to specific provisions enumerated in the proposed rule. In addition, there were several comments urging that language in the Supplementary Information section of the proposed rule be corrected and/or clarified. A summary of the comments and the Department's response follows.

General Comments

1. Scope and Extent of the Secretary's Authority Under This Rule

Two reviewers raised a number of concerns regarding the use of the Secretary's land acquisition authority to effectuate the standards set out in the rule for private land use and development. The comments reflected

the divergent views of the reviewers and, to some degree, a misunderstanding of the system as envisioned in the proposed rule. The comments received on this issue and the Department's response follow.

Comment: The Secretary is impermissibly engaged in the zoning of private lands in the HCNRA. One reviewer suggested that the process set forth in the proposed rule which establishes land use categories and allowable uses within those categories is "zoning." Further, this same reviewer noted that the acquisition of lands without the landowner's consent is "zoning." Finally, this reviewer noted that using condemnation to ensure compliance is an extreme measure and that the Forest Service should attempt to "work in harmony" with the private landowners in the HCNRA to ensure compliance.

Response. The proposed rule does not vest the Secretary with zoning authority. Zoning is defined as the division of a community into areas in each of which only certain designated uses of land are permitted, so that a community may develop in an orderly manner.

While the end result may be the same in terms of protecting an area against potentially incompatible land uses, there is an important distinction between the exercise of a local government's zoning authority and the federal government's eminent domain authority. Zoning laws are rooted in the exercise of a state's police power (usually delegated to a subdivision of the state) to prevent persons under its jurisdiction from using their property to the detriment of the general welfare. The power of eminent domain, on the other hand, is the power to acquire, or to authorize the acquisition of, private property for a public use or purpose without the owner's consent, conditioned upon the payment of just compensation. Because, zoning laws ordinarily do not constitute a taking of property for public use for which compensation must be paid, they differ substantially from the government's right to determine the use of real estate under the power of eminent domain, which requires just compensation.

In the preamble to the proposed rule, the agency went to great length to explain that the mechanism by which the Secretary would protect the HCNRA from incompatible private land use and development was through acquisition (condemnation) rather than regulation (injunction). In the conclusion to the preamble of the proposed rule [58 FR 65304, Col. 2], the agency expressly stated that: "The proposed regulations have been carefully drafted to avoid any conflict with local zoning authority and any appearance that the Forest Service desires to regulate private land uses." Relying on acquisition authority to enforce zoning ordinances is entirely consistent with sections 9 and 10 of the Act. Moreover, this approach is the least intrusive to the private landowners in the HCNRA, and it will not duplicate the role nor supplant the authority of the local governmental units in the HCNRA.

Finally, the Department agrees with the reviewer's observation that condemnation is an extreme measure to enforce compliance with the standards set out in this rule. As was stated in the conclusion to the preamble to the proposed rule [59 FR 65304, Col. 2], "The agency views the use of condemnation authority as a last resort to protect the HCNRA," to be instituted only where other, more harmonious measures and attempts to cooperate with the landowners do not succeed.

Comment: The Secretary should more actively regulate private lands in the HCNRA. Ironically, while one reviewer asserted that the Forest Service had virtually usurped local zoning authority over the private lands in the HCNRA, another reviewer stated that the Forest Service was obligated to assert a more vigorous regulatory role over these same lands. In particular, this reviewer asserted that relying on the condemnation authority delegated to the Secretary in section 9 of the Act will not adequately protect the HCNRA and that the Forest Service must exercise its "inherent regulatory authority" over private lands that are adjacent to federal lands.

Response: In order to properly respond to this comment, the following two questions must be addressed—(1) Does the Secretary have an "inherent regulatory authority" vis-a-vis private lands in the HCNRA? and (2) If so, is its exercise necessary to comply with the HCNRA Act?

The Department does not dispute the proposition that, pursuant to the Property Clause of the Constitution, Congress has delegated to it the authority to regulate and administer National Forest System lands under the Organic Act; the Multiple-Use, Sustained-Yield Act; the National Forest Management Act; the Forest and Rangeland Renewable Resources Planning Act; the Wilderness Act; the Wild and Scenic Rivers Act; and the HCNRA Act, to name just a few. In furtherance of those enactments, regulations throughout title 36 of the Code of Federal Regulations vest broad authority in the Forest Service to manage National Forest System lands and many of the activities that occur thereon.

However, these authorities are confined to National Forest System lands and do not apply to private lands. The options regarding regulation on private lands are considerably more limited. To begin with, the Forest Service cannot "zone" private lands as that term is commonly understood. "Zoning" is an authority that is reserved to the States and their subdivisions under the Constitution. Congress examined this issue prior to the establishment of the Cape Cod National Seashore many years ago. Their analysis then is instructive today.

> The Federal Government does not have authority to directly enact zoning laws applicable to private property in any of the States. If it had such authority, the task of preserving an area such as lower Cape Cod in such a way as to safeguard the interests of private landowners might be somewhat simplified, for Congress could simply enact a zoning law for the area. However, in the division of powers between the States and the Federal Government, it is wisely left to States to adopt zoning laws * * *
>
> For this reason, [the Act] requires the Secretary of the Interior to issue regulations as soon as possible after the enactment of the bill setting forth the standards which must be met by town zoning bylaws for purposes of suspending his power of eminent domain.

The only regulatory authority that the Forest Service possesses relative to private lands is its authority as a landowner to enjoin activities on adjacent or nearby lands which threaten the National Forest land.

It is the considered judgment of the Department that the acquisition of lands or interests therein, in conjunction with locally established zoning measures, remains the most efficient and viable system to legally control potentially incompatible land use and development in the HCNRA. This is the thrust of this rule. Its success depends on the best efforts of the Forest Service, State and local governments, and landowners in the HCNRA.

However, this rule should not be construed to foreclose the Agency's right to enjoin certain activities which threaten to compromise the values for which the HCNRA was established. Whether such action is warranted would need to be decided on a case-by-case basis. In the event that a nuisance-like activity should arise in the future which threatens the HCNRA, the Forest Service would be fully authorized to exercise its prerogative as a landowner to seek to get the activity terminated or modified so as to eliminate the deleterious effects on National Forest System lands.

Comment: Snake River water rights. One reviewer suggested that the rule should address withdrawals and diversions of water from the Snake River that are used for irrigating traditional farming and ranching activities in and around the HCNRA. This reviewer urged that the rule prescribe: how much water can be diverted, the time and purpose of diversion, and whether the diversion should be phased out so water may be retained in the Snake River.

Response. The use of water from the Snake River is an integral component of many of the traditional farming and ranching operations occurring in the HCNRA. While the reviewer's concern may be legitimate and this rule would present an appropriate vehicle to address these concerns, Section 6 of the Act expressly prohibits the incorporation of these suggestions into this rule as follows: No provision of this Act, nor any regulations issued hereunder, shall in any way limit, restrict, or conflict with present and future uses of the waters of the Snake River and its tributaries upstream from the boundaries of the [HCNRA] created hereby, for beneficial uses, whether consumptive or nonconsumptive, now or hereafter existing, including, but not limited to, domestic, municipal, stockwater, irrigation, mining, power, or industrial uses.

Comments: Access to private land. One reviewer stated that access is an integral part of the traditional uses recognized under the HCNRA Act and should not be arbitrarily limited since such limitations would reduce property value and restrict traditional uses.

Response. While the reviewer did not make clear how the proposed rule would limit access to private lands, nor did the reviewer offer suggestions for addressing the access issue, the Department notes that the proposed rule was silent on the issue of access and nowhere can it be inferred that the rule would permit the Forest Service to arbitrarily limit such access. The Department does not believe that this rule needs to address access, since section 1323 of the Alaska National Interest Lands Conservation Act (ANILCA) requires that access be granted to nonfederally owned lands located within the National Forest System. Agency rules at 36 CFR part 254, subpart E implement section 1323 and already apply to private lands within the HCNRA which are subject to the terms and conditions for reasonable ingress and egress that may be imposed by the Forest Service.

Comment: Monitoring. One reviewer noted that the proposed rule failed to establish a system whereby the use and development of private land in the HCNRA could be monitored by the Forest Service to detect violations. According to this reviewer, the rule is "grossly deficient, and contrary to law in this respect."

Response. While there was no provision for monitoring in the proposed rule, this rule is not somehow legally insufficient as a result. Monitoring by the Forest Service can occur in a number of ways and need not be expressly provided for or authorized in this rule. For instance, monitoring can occur by reviewing the actions of the local government regarding private land use and development issues. The Forest Service also can and does monitor private land use and development through routine aerial photographs for fire prevention and control, forest pest management, and landscape planning and management and on-the-ground observations from adjacent National Forest land. Additionally, where the Forest Service receives permission from the landowner, monitoring could also be accomplished via an on-site investigation.

In the proposed rule, monitoring also would be accomplished through the compliance determination process which is optional on the part of the landowner. Although the Department believes that monitoring was never eliminated from the Forest Service's responsibilities by the proposed rule, it also believes that monitoring is so important that it would like to make clear that the Forest Service may monitor the uses and developments on private lands at any time it believes it has good reason to be concerned about the protection of the values for which the HCNRA was established. To emphasize this point, the final rule adds a new standard in § 292.24, paragraph (b)(2) which states that the Forest Service may initiate the compliance process on its own without having first received a landowner request. This standard clearly shows that the Forest Service may initiate the determination of compliance process, where the agency has reason to believe, based on monitoring or other information, that the landowner may be violating the standards for private land use and development established by this rule.

Specific Comments on Proposed Subpart E of 36 CFR Part 292

The following is a discussion of comments that were received pertaining to specific sections of the proposed rule and the changes, if any, resulting from the comments. No comments were received on § 292.20, Purpose and Scope, or on § 292.25, Information Requirements, and no substantive modifications have been made to the text of these sections, although editing for improved readability and word choice was made. Accordingly, neither section is set out for further discussion.

Section 292.21 Definitions

This section listed and defined special terms used in this subpart.

Comment: "Farm/forest/grazing lands." Two reviewers suggested that the definition of "farm/forest/grazing lands" be modified to eliminate references to watershed protection, fish & wildlife habitat maintenance and recreational activities as purposes for which farm/forest/grazing lands may be used. These reviewers felt that these additional non-farming uses could pose burdensome and expensive requirements on the management of farming or grazing operations.

Response. The reviewers' concern that this definition would result in the imposition of additional requirements on their operations is unfounded. The subject definition is set out in the disjunctive. In other words, farm/forest/grazing lands may be used for farm/forest/grazing purposes or for watershed purposes, or for fish & wildlife purposes, or for recreational purposes, or for a combination of the above. The inclusion of these terms in this definition does not imply that new requirements would be incorporated into ongoing farming and ranching operations in the HCNRA. Of course, these farming and ranching operations are still subject to applicable federal, state, and local laws and ordinances. Therefore, the definition is adopted without change from the proposed rule. However, on consideration of the comments on the term "farm/forest/grazing lands," the Department has determined that the definition of "farm/forest/grazing uses" should be modified so that it more closely parallels the definition of "farm/forest/grazing lands." To that end, a new second sentence has been included in the "farm/forest/grazing use" definition which recognizes that uses related to watershed protection, fish and wildlife habitat maintenance, and recreational activities may also be undertaken on these lands. Again, because these activities may be undertaken does not signify that they must be undertaken. The definition of "farm/forest/grazing use" also has been rearranged for ease of reading and comprehension.

Comment: "Land modification." One reviewer noted that the definition of "land modification" in the proposed

rule included road construction as an example but that the circumstances under which road construction would be accommodated in conjunction with access needs for the purpose of maintaining and constructing utility facilities were unclear.

Response. The Department agrees that the potential applicability of the definition of "land modification" to utility maintenance activities is unclear. Indeed, while "land modification" was included in § 292.21 of the proposed rule, it was not used elsewhere; therefore, it has been deleted from the final rule. Absent this term, the Department construes the standard at § 292.23(a)(4) of the final rule as accommodating reasonable road access to utility facilities provided that such access is associated with the routine and necessary maintenance of these facilities.

In addition, further review of the definition section disclosed that the terms, "Comprehensive management plan," "seasonal feedlots," and "zoning", were not used in the proposed rule; accordingly, those terms have not been retained in the final rule. All other terms and their definitions are retained without change in the final rule.

Section 292.22 Land Category Assignments

The proposed rule established four categories to which private lands in the HCNRA would be assigned and would require that maps showing private lands and the categories to which they have been assigned be on file and available for public inspection at the Ranger's office.

Comment. One reviewer complained that the map identifying the private lands in the HCNRA and the land use category to which they had been assigned was not available for review during the comment period on the proposed rule.

Response. The Department regrets that the map was unavailable, since this could have been of some assistance to the parties in the preparation of their comments on the rule. The Department has modified this section in the final rule to require the map (or maps) to be prepared and available for review not later than 60 days after the effective date of this regulation and also to require the Ranger to give notice of the availability of the maps in the local newspapers of record. If any parties are concerned about a specific land category assignment, they can make their concerns known to the Forest Service at that time, and the Forest Service will consider these concerns prior to the adoption of a final map. No other changes were made to this section.

Section 292.23 Standards of Compatible Land Use and Development

The proposed rule would establish standards of private land use and development that reflect traditional and valid uses of private lands in existence as of December 31, 1975 for four categories of land use. These categories were farm/forest/grazing, mining, residential, and commercial land. The standards for these land categories were intended to guide the Ranger in determining whether uses of a private parcel are compatible with the purposes for which the HCNRA was established. Some standards applied to all categories of private lands, while others were specific only to a particular land category. Standards were prescribed to allow conformity of private land uses and developments with the laws of various jurisdictions. Among other things, the proposed rule set standards for the screening and blending of new and replacement structures, banned solid waste and hazardous substance disposal sites, required utility lines to be buried, disallowed new or replacement structures in wilderness, and provided for the protection of historic and archaeological sites.

Comment: Expense of underground utility installation. One reviewer noted that the standard in § 292.23(a)(4) regarding the placement of new or replacement of existing utility lines underground could be prohibitively expensive and environmentally damaging.

Response. While this standard clearly establishes a preference for underground utility installation wherever feasible, the Department is well aware of the rugged and varied terrain in the HCNRA and the difficulty, if not impossibility, of installing utility lines underground in certain areas. It is for that reason that the standard in the proposed rule regarding underground utility installation included the caveat "where ground conditions and topography permit." Therefore, a change in the final rule was necessary. It is recognized that, by necessity, the evaluation of the location of utility lines must be made on a case-by-case basis.

Comment: Wilderness structures. One reviewer opposed the standard in § 292.23(a)(5) which provided that no new structures could be developed on private lands within the boundaries of the Hells Canyon Wilderness in the HCNRA. This reviewer stated that this standard oversteps the professed bounds of the law. This reviewer further contended that such a restriction should apply only if the structure would be visible from the wilderness, since otherwise there would be no negative effect on anyone's wilderness experience. The reviewer also stated that nothing in the Wilderness Act permitted wilderness visitors to trespass on private lands.

Response. The intent of the rule is, where deemed necessary, to apply the same standards for private land uses and developments to lands within the designated wilderness boundaries, as would be applied outside of wilderness. Under the proposed rule, those lots within wilderness would be classified as farm/forest/grazing lands. Most of the private land parcels within wilderness are less than 160 acres, and so, even without the wilderness lands restriction, the proposed rule would not consider the development of any new residences appropriate.

In developing the proposed rule, the Department determined that the protection of the wilderness resource is paramount. Congress designates wilderness to protect and preserve a variety of natural resource and other values; scenic value is only one of many attributes. Uses and developments on private lands have the potential to impact a full range of wilderness values, including scientific, cultural, historical, and water quality values. One of the most important aspects of the recreational experience within wilderness is the opportunity for solitude and to experience an area where man is only a temporary visitor. A standard which would allow development of new structures so long as they are not visible from the wilderness simply ignores the fact that other, non-visual impacts may result from the construction of new structures. Furthermore, the Forest Service is unaware of any location from which a new structure could be developed within the wilderness and also not be visible because of the area's topography. As noted in the proposed rule, the repair and maintenance of existing structures that may be located on private land within a wilderness is not affected by this standard. Therefore, after considering this comment, no change was made in the final rule regarding the construction of new or replacement structures in wilderness.

Comment: Lack of standards for livestock grazing, timber harvesting, pesticide application, water quality, and ground disturbing activities. One reviewer objected to the lack of standards in the proposed rule for livestock grazing, timber harvesting, pesticide use, water quality protection,

and ground disturbing activities on private lands.

Response. This concern is fully addressed by the proposed rule. In determining what approach it should take to the regulation of private lands, the Forest Service determined that if other federal, state, and local laws and ordinances are enforced, then the HCNRA Act's purposes would be accomplished. Accordingly, in developing the proposed rule, the agency assessed existing ordinances and laws for their capability to protect on private lands the values for which the HCNRA was established. In many instances, the proposed rule expressed these local ordinances as standards.

However, the proposed rule made it very clear that other laws would be enforced; if not by the promulgating government, then, if necessary, by the Forest Service through acquisition (condemnation) action. In § 292.23 paragraph (a)(1), the final rule retains the language of the proposed rule, with minor editing, to make clear that land uses are compatible if they conform to applicable local, state, and federal laws. This provision is intended to cover such matters as those referred to by the reviewer. Examples of the types of ordinances and laws that this clause refers to include the following: Oregon Forest Practices Act; Idaho Forest Practices Act; Idaho Water Quality Standards and Wastewater Treatment Requirements; Oregon Water Quality Standards; and the Idaho Agricultural Pollution Abatement Plan. The Department is not aware of any situation which merits standards different from those currently imposed by other laws. The proposed rule addressed the concerns raised by this reviewer by providing for compliance with environmental and other laws and ordinances. Therefore, no modification has been made in the final rule as a result of this comment.

Additional Changes Adopted in the Final Rule

In the process of reviewing the comments on § 292.23, the Department recognized the need to make two other changes.

1. *Residences on less than 160 acre parcels in farm/forest/grazing lands.* As drafted, the provision at § 292.23(b)(1) that limits residences on farm/forest/grazing lands to minimum lots of 160 acres could be interpreted to mean that an existing house on a lot that is less than 160 acres would prompt the Secretary to exercise the acquisition authority. This is not the Department's intent. It is recognized that some of these smaller parcels have existed with residential developments for years and there is no reason that they should not continue as a recognized nonconforming use. Consequently, the final rule is modified to make clear that nonconforming lots (i.e., less than 160 acres) with permanently affixed residences (i.e., constructed on a foundation or basement), existing on the effective date of the final rule, are in compliance with the Act.

2. *Sites used for the extraction of common mineral materials.* The proposed rule, at § 292.23 (a)(7), would only allowed extraction of common materials for road construction and maintenance and would limit sites to not exceed 5 acres. The use limitation ignored other forms of construction that may also use smaller quantities of materials, such as in the repair or construction of structures. It is impractical to require a landowner to find a gravel source outside of the HCNRA boundaries, when a source may exist already within a mile of his or her property. Upon reconsideration, the 5 acre size limit appears to be excessive for the foreseen uses for this resource and the esthetic concerns for the HCNRA. Therefore, the final rule is modified to eliminate the references to only road construction and maintenance and to decrease the size limit to not exceed 2 acres. As written, the final rule may be more generally applied to the extraction of common mineral materials for construction and maintenance purposes so long as these sites have screening and are less than 2 acres in size.

Section 292.24 Determination of Compliance and Noncompliance

Under the proposed rule, this section provided an optional compliance determination process so that the landowner could obtain assurance from the Ranger that existing or proposed uses of their land are compatible with the Act and thus would not be acquired by the Secretary without their consent. A notice of noncompliance would mean that a proposed or actual land use does not comply with the standards in § 292.23 and thus, could potentially trigger the initiation of the Secretary's land acquisition authority, as authorized by the Act. This section also proposed a process for reviewing a compliance or noncompliance decision.

Comment: Noncompliance results in condemnation. One reviewer thought that the system to determine compliance or noncompliance was flawed because a finding of noncompliance resulted in condemnation.

Response. Condemnation is one option that may be considered in the event of a noncompliance determination. However, it is not the only option. The proposed rule clearly states that if the Forest Service makes a noncompliance determination, it will offer suggestions on how the land use or development could be modified to avoid this result. As noted previously, condemnation is not the tool of choice to enforce compliance with the standards of this rule—it is the last resort. In administering the HCNRA, the Forest Service position has been, and will continue to be, one which favors discussion, negotiation, and cooperation with landowners to reach mutually satisfactory objectives wherever possible.

Comment: Written petition. Three reviewers requested that the procedure to appeal a determination of compliance or noncompliance be modified to exclude "other interested parties." These reviewers felt that the petition process provided by this rule should be strictly limited to the Forest Service and the affected landowner and that the involvement of outside parties would unnecessarily complicate and prolong the process. Another reviewer supported the petition process as set out in the proposed rule.

Response. The Department agrees with the reviewers that requests for reviews of compliance and noncompliance determinations involving "other interested parties" could be unnecessarily cumbersome and time consuming and that the review process should be limited to those directly affected, i.e. the landowner whose property was the subject of the determination. Accordingly, in the final rule, paragraph (c) of § 292.24 has been revised to limit petitions for review to affected landowners.

Comment: Acquiescence to local zoning ordinances and administration. One reviewer felt that the compliance/noncompliance determination procedure should be discarded in favor of a system in which proposals for use and development of private land in the HCNRA would be channeled through the existing local mechanisms provided under the Wallowa County Land Use Development Ordinance and the Wallowa County Comprehensive Land Use Plan. In this alternative, the HCNRA Ranger's role would be limited to that of an interested party who would be able to testify in favor of or in opposition to a proposed use or development. However, if the Ranger opposed the proposal, it would be his or her burden to prove that the proposal is contrary to the County Ordinance and Plan. According to this reviewer, it is only through this mechanism that the

standard of local citizen involvement required by state and local law would be satisfied.

Response. This alternative is not one that the Department can implement and remain consistent with its responsibilities under the HCNRA Act. The federal interest must be protected and cannot be dependent upon, or subservient to, state and local zoning decisions. In effect, this alternative would relegate the Forest Service to the status of an interested party whose comments would be considered by the County in the context of a pending development or use proposal. Forest Service comments would not be binding on the commission, nor would they necessarily even be persuasive. It is difficult to comprehend how the Forest Service could carry out its responsibilities under the HCNRA Act and effectively ensure that activities on the private lands not impair the values for which Congress established the HCNRA under this system.

It is the hope of the Department that the procedures currently in place at the state and local level will suffice to condition, restrict, or preclude many incompatible uses or developments in the HCNRA. The standards adopted by the final rule are from local zoning ordinances and applicable laws that already adequately protect the HCNRA. The County's disposition of pending development proposals should, in most cases, result in decisions that are compatible with the purposes of the HCNRA Act. However, in the event uses or developments are incompatible, or in the event that the County Ordinances and Plan are amended in such a way as to lessen the restrictions on private lands which would thereby increase the potential threat to the HCNRA, then the Forest Service must have the ability to enforce the standards needed to protect the HCNRA. The rule as proposed provides this protection. Therefore, no change was made to § 292.24 in response to this comment.

Finally, the heading for § 292.24 was edited for clarity to read: "Determination of compliance and noncompliance."

Conclusion

Having carefully considered the comments received on the proposed rule, and explained the basis for adopting or not adopting changes proposed by reviewers, the Department hereby adopts a final rule to ensure that the use and development of private lands within the Hells Canyon Recreation Area are compatible with the purposes for which Congress established the Area and its management direction.

The standards established by the final rule are those essential to protection of the Area. The approach adopted is not one of direct federal regulation of private land but rather one of relying, to the greatest extent possible, on local zoning authority. The rule gives private landowners notice of those uses that are compatible with the purposes of the HCNRA, provides a mechanism whereby the landowner and the agency may determine compliance or noncompliance with the standards of the rule and gives constructive notice to private landowners that incompatible uses of private land may trigger the use of the Secretary's condemnation authority. Nevertheless this rule is predicated on the premise that the use of the Secretary's condemnation authority is to be a last resort and that the agency shall make every effort to work harmoniously and cooperatively with private landowners to ensure protection of the HCNRA.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor state or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. To the extent that the rule imposes additional requirements on any small entity, these requirements are the minimum necessary to protect the public interest, are not administratively burdensome or costly to meet, and are well within the capability of small entities to perform.

Takings Implication

Since this rule is premised on the formal exercise of the Secretary's eminent domain authority, it is not an "action" as that term is defined in Section 2(c)(1) of Executive Order 12630. Nonetheless, the Office of General Counsel has reviewed this rule for takings implications and determined that there is no risk of a taking related to this rule or its implementation.

Executive Order 12778, Civil Justice Reform Act

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Accordingly, (1) all state and local laws and regulations that are in conflict with this rule or which impede its full implementation are preempted; (2) no retroactive effect will be given to this rule; and (3) it will not require administrative proceedings before parties could file suit in court challenging its provisions.

Environmental Impact

This rulemaking was discussed as a proposed rule in the final Environmental Impact Statement and Comprehensive Management Plan for the Hells Canyon National Recreation Area, pages 155–158. The analysis completed for the Comprehensive Management Plan was revalidated in April 1990 with the signing of the Wallowa-Whitman National Forest Land and Resource Management (pages 1–2). Information pertaining to the environmental analysis may be obtained by writing or calling the persons or offices listed under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**.

Information collection requirements

As outlined in the rule at § 292.24, a landowner may request an optional compliance determination from the Forest Service. As such, this rule contains information requirements as defined in 5 CFR Part 1320. These information requirements are assigned control number 0596–0135 and are approved for use through March 1997.

List of Subjects in 36 CFR Part 292

Recreation and recreation uses, and National forest.

Therefore, for the reasons set forth in the preamble, part 292 of title 36 of the Code of Federal Regulations, is amended by adding a new subpart E to read as follows:

PART 292—NATIONAL RECREATION AREAS [AMENDED]

Subpart E—Hells Canyon National Recreation Area—Private Lands

Sec.

292.20 Purpose and scope.
292.21 Definitions.
292.22 Land category assignments.

292.23 Standards of compatible land use and development.
292.24 Determination of compliance and noncompliance.
292.25 Information requirements.

Authority: 89 Stat. 1117; 16 U.S.C. 460gg–460gg–13.

Subpart E—Hells Canyon National Recreation Area—Private Lands

§ 292.20 Purpose and scope.

(a) *Purpose.* The Act establishing the Hells Canyon National Recreation Area (hereafter referred to as HCNRA) (16 U.S.C. 460gg–460gg–13) encourages the retention of traditional and valid uses of private land within the HCNRA, such as ranching, grazing, farming, timber harvesting, and the occupation of homes and lands associated therewith, as they existed at the time the HCNRA was established on December 31, 1975. To this end, the Act directs the Secretary of Agriculture to promulgate regulations establishing standards for the use and development of private land within the HCNRA and grants the Secretary limited condemnation authority to address situations where the standards are not met. The purpose of this subpart is to establish standards that would guide the Secretary's consideration of the use of the limited condemnation authority granted by the Act.

(b) *Scope.* The regulations in this subpart establish standards applicable to all private property within the boundaries of the HCNRA, including that within the boundaries of the Rapid, Snake, and Imnaha Wild and Scenic Rivers and the Hells Canyon Wilderness. The regulations in this subpart do not operate to restrict the use and development of private property; rather, they serve to inform the landowner of those uses that are compatible with purposes for which the HCNRA was established. Uses not compatible with these standards could result in the Secretary acquiring land or interests therein without a landowner's consent.

The regulations in this subpart, in and of themselves, do not effect a taking of private property, including valid, existing water rights, nor do the standards established in this subpart limit or restrict a private landowner's property use that is compatible with the purposes of the Act. The Responsible Official may use the regulations in this subpart solely to determine whether private land uses or developments are compatible with the purposes and direction of the Act and, if not, to determine whether the Secretary should consider initiating condemnation proceedings to acquire land or scenic easements.

§ 292.21 Definitions.

For the purposes of this subpart, the following terms are defined:

Act refers to the act of December 31, 1975, which established the Hells Canyon National Recreation Area (89 Stat. 1117; 16 U.S.C. 460gg–460gg–13).

Archaeological sites are those sites containing relics, artifacts, and other evidence of past human cultures including historic properties as defined by the National Historic Preservation Act.

Commercial land is land within the HCNRA developed for commercial purposes as of June 13, 1994 and which is assigned to the commercial land category (§ 292.22).

Condemnation is the acquisition of lands or interests therein by the Secretary without the consent of the owner. In the case of the Act, condemnation is a limited authority that may be exercised by the Secretary only in the event that a standard or standards set forth herein are violated for all private land categories except mining lands. Where mining lands are involved, the Secretary may exercise his or her condemnation authority notwithstanding the fact that the mining land owner has complied with the relevant standards of this section.

Conservation easement or *Scenic easement* as defined in Section 9(d) of the Act "means the right to control the use of land in order to protect aesthetic values for the purposes of this Act, but shall not be acquired without the consent of the owner to preclude the continuation of any farming or pastoral use exercised by the owner as of the date of enactment of this Act."

Dude ranching is a business oriented primarily towards furnishing small groups with an outdoor recreational and educational experience associated with ranching activities and perpetuates the purposes for which the HCNRA was established. Dude ranching is subservient to the primarily recognized ranching operation.

Existing uses are those uses of or developments to private land as of the date of enactment of the Act on December 31, 1975.

Farm/Forest/Grazing lands are those lands used for farm, forest, and grazing purposes, for maintaining watersheds as fish and wildlife habitat, or for providing outdoor recreational activities. All such lands are assigned to the Farm/Forest/Grazing land category in § 292.22.

Farm/Forest/Grazing Use is any traditional agricultural, silvicultural, or livestock management use or combination thereof on farm/forest/grazing lands within the HCNRA. This includes, but is not limited to, truck farming, growing and harvesting of timber, grazing of livestock, horticultural use, animal husbandry use, horse, cattle, and sheep ranching, and preparation and storage of the products raised on farm/forest/grazing land for on-site use or for disposal by marketing or otherwise. Farm/forest/grazing uses may also consist of uses related to and in furtherance of the protection of watersheds, maintenance of fish and wildlife habitat, and the pursuit of recreational activities.

Hazardous substance includes any material so classified under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.).

Mining lands are lands primarily used for mining purposes as of June 13, 1994 and which are assigned to the mining land category in § 292.22.

Outdoor recreational activities are activities such as camping, picnicking, rafting, boating, hiking, rock climbing, fishing, hunting, horseback riding, and the viewing of wildlife or scenery.

Parcel as used in this subpart refers to contiguous tax lots under one ownership. For the purposes of this subpart, rights-of-way do not divide parcels into smaller units.

Partition is the division of land into lots, and which, under county planning ordinances, is identified by a map, drawing, or writing which contains the descriptions, locations, specifications, and dedications for roads, utilities, etc. and which has been properly filed with the County recorder.

Private land is land not in federal, state, or local government ownership.

Proposed uses are those uses of or development to a private land parcel within the HCNRA initiated after June 13, 1994.

Ranger is the HCNRA Area Ranger, Wallowa-Whitman National Forest, with offices located in Enterprise, Oregon, Riggins, Idaho, and Clarkston, Washington, except for the Rapid Wild and Scenic River where the term refers to the Salmon River District Ranger, Nez Perce National Forest, located in Whitebird, Idaho.

Recreational facilities are facilities associated with or required for outdoor recreational activities and include, but are not limited to, parks, campgrounds, hunting and fishing lodges, and interpretive displays.

Residential lands are lands within the HCNRA developed for residential purposes as of June 13, 1994 and which

are assigned to the Residential land category in § 292.22.

Scenic Easement. See *Conservation Easement.*

Screening is the reduction or elimination of the visual impact of any structure or land modification as seen from any public travel route within the HCNRA.

Solid waste is discarded solid materials resulting from mining, industrial, commercial, agricultural, silvicultural, and community activities. This term does not include domestic sewage or pollutants such as silt or dissolved materials in irrigation return flows.

Structure is any permanent building or facility, or part thereof such as barns, outhouses, residences and storage sheds. This includes electric transmission line systems, substations, commercial radio transmitters, relays or repeater stations, antennas, and other electronic sites and associated structures.

Traditional uses are ranching, grazing, farming, timber harvesting and the occupation of homes and land associated therewith within the HCNRA, or other activities including outdoor recreational activities and facilities, which existed on or before December 31, 1975.

Travel route is a route, such as a county or National Forest system road or river or trail, that is open for use by members of the general public.

§ 292.22 Land category assignments.

(a) *Land categories.* (1) All privately owned lands within the HCNRA are to be assigned to one of the following four land categories:

(i) Farm/forest/grazing land.

(ii) Mining land.

(iii) Residential land.

(iv) Commercial land.

(2) Not later than August 12, 1994, a map or maps displaying the privately owned lands within the HCNRA and the land categories to which they have been assigned must be on file and available for public inspection at the Ranger's office. The Ranger shall give notice of the availability of this map or maps in the local newspapers of record.

(b) *Changes in land category assignment.* Lands assigned to the Commercial, Residential, or Mining category may be reclassified as farm/forest/grazing land so long as the intended use or development is consistent with the standards in § 292.23 and the Ranger has given public notice of the proposed change in the local newspaper of record and has notified adjacent landowners and the affected county government at least 30 days prior to any decision on the proposed change.

§ 292.23 Standards of compatible land use and development.

Private land use that conforms to the standards of this section is deemed to be compatible with the purpose for which the HCNRA was established.

(a) *Standards applicable to all private lands.* As of June 13, 1994, the use and development of private lands in all land categories within the HCNRA is deemed compatible with the purposes for which the HCNRA was established, if the use and development of such lands meets the following standards:

(1) Use and development conforms to applicable local, state, and federal environmental, natural resource, cultural resource, and land use development law.

(2) All new or replacement structures are screened and/or constructed of materials that blend with the natural environment, except where structures typify the architectural style and materials of a significant historic era such as pre-World War II. Screening is not required, however, for new or replacement structures that are associated with an existing unscreened structure or structures that were not screened at the time this rule became effective.

(3) No public or commercial solid waste disposal sites or hazardous substance disposal sites are located on private lands within the HCNRA.

(4) All new or replacement utility lines are placed underground where ground conditions and topography permit. This standard does not prevent or impair routine maintenance of utility lines or related structures in existence prior to June 13, 1994.

(5) No new or replacement structures are developed within the boundaries of the Hells Canyon Wilderness, provided that existing structures may be repaired and/or maintained.

(6) Significant historic, archaeologic, or paleontologic sites are protected.

(7) Sites used for the extraction of common mineral materials, such as gravel, for construction and maintenance purposes on all except designated mining lands, are screened where possible, and are not in excess of 2 acres in size.

(8) New recreational facilities enhance and are compatible with the purpose of the Act.

(b) *Farm/forest/grazing lands standards.* The following additional standards are applicable to farm/forest/grazing lands:

(1) Except as otherwise provided in this paragraph, the minimum lot size for residential development is 160 acres. Only residences associated with farm/forest/grazing uses may be developed. Partitions of less than 160 acres may be made to provide for the continuation of existing commercial agriculture, but such partitions may not be developed for residential use. Lots of less than 160 acres existing on June 13, 1994, with residences permanently affixed to a foundation or basement, are considered to be in compliance.

(2) Structures are limited to those necessary to conduct farm/forest/grazing use.

(3) Dude ranching is permitted provided it is compatible with the purpose and direction of the Act and is part of a recognized ranching operation.

(4) New or replacement structures for farm/forest/grazing use are not closer than 25 feet from a property line or 55 feet from the center line of a travel route.

(c) *Mining Lands.* (1) The following standards are applicable to mining lands:

(i) The owner of mining lands must consult with the Ranger concerning proposed mineral development activities prior to submitting a plan of operations to the relevant state or federal agencies.

(ii) Operations comply with Federal and State mining, air quality, water quality, hazardous waste, water disposal and reclamation standards.

(iii) The type and number of structures, including but not limited to residences associated with the mining activity, are limited to the minimum necessary for the use and development of the mining lands.

(iv) No new structures are located closer than 25 feet from a property line or 55 feet from the center line of a travel route.

(v) Mining lands are not partitioned.

(2) Notwithstanding compliance with the standards of paragraph (c)(1) of this section, the Secretary may acquire mineral interests in the HCNRA without the consent of the owner, if the Secretary deems this necessary to meet the purposes for which the HCNRA was established.

§ 292.24 Determination of compliance and noncompliance.

(a) *Compliance.* Landowners may request a determination by the Forest Service as to whether an existing or a proposed use or development complies with the relevant standards set out in this subpart.

(1) Requests for a determination of compliance must be made in writing to the Ranger and include the following information:

(i) The current land category to which the land is assigned (§ 292.23);

(ii) The use of development that exists or that is proposed for the property;

(iii) A statement as to whether a change in the land category assignment will be necessary to accommodate the proposed use or development;

(iv) The timeframe for implementing the proposed use or development; and

(v) A statement as to how the proposed use or development satisfies the relevant standards of § 292.23 of this subpart.

(2) The Ranger shall review the request and notify the landowner in writing within 45 days whether the existing or proposed use or development is in compliance with § 292.23 of this subpart. The Ranger may extend the time for making a compliance determination by 30 days if additional information is needed.

(b) *Noncompliance.* (1) In the event that the Forest Service determines that an existing or proposed use of development is not in compliance with the standards of § 292.23 of this subpart, the Ranger shall give the landowner written notice of the manner and nature of noncompliance. To the extent practicable, the notice will include suggestions for achieving compliance. The notice also must include a statement that the violation of a standard or standards and the failure to cure such violation may result in the initiation of condemnation proceedings by the Secretary.

(2) The Forest Service may initiate a noncompliance determination on its own without having first received a landowner request.

(c) *Written petition.* The landowner may file a written petition with the Forest Supervisor for a review of a decision of compliance or noncompliance. The Forest Supervisor shall render a decision within 30 days of the receipt of the petition. A decision by the Forest Supervisor constitutes the final administrative determination by the Department of Agriculture. Petitions of decisions on lands within the Rapid River Wild and Scenic River Corridor should be addressed to the Forest Supervisor, Nez Perce National Forest, Route 2, P.O. Box 475, Grangeville, Idaho 83450. All other petitions should be addressed to the Forest Supervisor, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814.

§ 292.25 Information requirements.

The information required by § 292.24 of this subpart in order for a landowner to obtain a determination of compliance constitutes an information requirement as defined in the Paperwork Reduction Act (44 U.S.C. 3507) and has been approved for use by the Office of Management and Budget and assigned control number 0596–0135.

Dated: June 6, 1994.

James R. Lyons,

Assistant Secretary, Natural Resources and Environment.

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3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1 1994
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[7] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

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103d Congress, 2d Session, 1994

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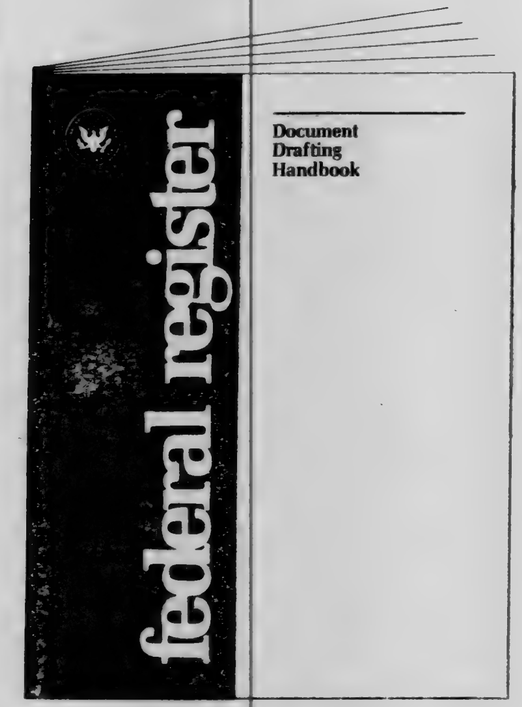
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Vol. 59 No. 113

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Tuesday
June 14, 1994

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Tuesday
June 14, 1994

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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Presidential Documents

Title 3—

The President

Executive Order 12920 of June 10, 1994

Prohibiting Certain Transactions With Respect to Haiti

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the actions and policies of the *de facto* regime in Haiti and the national emergency described and declared in Executive Order No. 12775, it is hereby ordered as follows:

Section 1. The following are prohibited, except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order: (a) Any payment or transfer of funds or other financial or investment assets or credits to Haiti from or through the United States, or to or through the United States from Haiti, except for:

(i) payments and transfers for the conduct of activities in Haiti of the United States Government, the United Nations, the Organization of American States, or foreign diplomatic missions;

(ii) payments and transfers between the United States and Haiti for the conduct of activities in Haiti of nongovernmental organizations engaged in the provision in Haiti of essential humanitarian assistance as authorized by the Secretary of the Treasury;

(iii) payments and transfers from a United States person to any close relative of the remitter or of the remitter's spouse who is resident in Haiti, provided that such payments do not exceed $50 per month to any one household, and that neither the *de facto* regime in Haiti nor any person designated by the Secretary of the Treasury as a blocked individual or entity of Haiti is a beneficiary of the remittance;

(iv) reasonable amounts of funds carried by travelers to or from Haiti to cover their travel-related expense; and

(v) payments and transfers incidental to shipments to Haiti of food, medicine, medical supplies, and informational materials exempt from the export prohibitions of this order;

(b) The sale, supply, or exportation by United States persons or from the United States, or using U.S.-registered vessels or aircraft, of any goods, technology, or services, regardless of origin, to Haiti, or for the purpose of any business carried on in or operated from Haiti, or any activity by United States persons or in the United States that promotes such sale, supply, or exportation, other than the sale, supply, or exportation of:

(i) informational materials, such as books and other publications, needed for the free flow of information; or

(ii) medicines and medical supplies, as authorized by the Secretary of the Treasury, and rice, beans, sugar, wheat flour, cooking oil, corn, corn flour, milk, and edible tallow, provided that neither the *de facto* regime in Haiti nor any person designated by the Secretary of the Treasury as a blocked individual or entity of Haiti is a direct or indirect party to the transaction; or

(iii) donations of food, medicine, and medical supplies intended to relieve human suffering; and

(c) Any transaction by United States persons that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order.

Sec. 2. For the purposes of this order, the definitions contained in section 3 of Executive Order No. 12779 apply to the terms used in this order.

Sec. 3. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by the International Emergency Economic Powers Act and the United Nations Participation Act, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the effective date of this order.

Sec. 4. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 5. (a) This order shall take effect at 11:59 a.m., eastern daylight time on June 10, 1994.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
June 10, 1994.

[FR Doc. 94-14582
Filed 6-10-94; 3:40 pm]
Billing code 3195-01-P

Editorial note: For the President's remarks on these sanctions and his message and memorandum to the Congress on Haiti, see volume 30, issue 23 of the *Weekly Compilation of Presidential Documents*

Rules and Regulations

Federal Register
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Tuesday, June 14, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AG08

Prevailing Rate Systems; Change of Lead Agency Responsibility for the Miami, Florida, Appropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation to transfer lead agency responsibility for the Miami, Florida, appropriated fund Federal Wage System (FWS) wage area from the Department of Defense (DOD) to the Department of Veterans Affairs (VA). The FWS employment at Homestead Air Force Base (AFB), the current host installation for the Miami wage area, has declined since Hurricane Andrew in 1992 and is expected to decline further. The VA Medical center is now the largest single employer of FWS employees in the wage area, has the resources to carry out local wage surveys in the area, and is willing to assume responsibility as lead agency.

DATES: This interim rule becomes effective on June 14, 1994. Comments must be received by July 14, 1994.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Angela Graham Humes, (202) 606-2848.

SUPPLEMENTARY INFORMATION: DOD is the lead agency for the Miami, Florida, appropriated fund FWS wage area, and Homestead AFB is the host activity for the local FWS wage survey. FWS employment at Homestead AFB has declined since the destruction caused by Hurricane Andrew in 1992 and is expected to decline further. The next largest DOD activity is located in Key West, Florida, and is not a practical alternative to function as a host activity. DOD has requested that VA assume lead agency responsibility. The VA Medical Center is now the largest single employer of FWS employees in the appropriated fund wage area and is willing to assume responsibility as lead agency. Both DOD and VA request that the transfer of lead agency responsibility for the Miami appropriated fund wage area become effective as soon as possible. Pre-survey activities for the next full-scale wage survey, scheduled for January 1995, begin in mid-1994. The Federal Prevailing Rate Advisory Committee has reviewed and concurred with this proposed change.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days because pre-survey preparations for the January 1995 wage survey must begin shortly.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Lorraine A. Green,
Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix A to Subpart B [Amended]

2. Appendix A to subpart B is amended for Miami, Florida, by removing the lead agency listing "DOD" and adding in its place "VA".

[FR Doc. 94-14274 Filed 6-13-94; 8:45 am]
BILLING CODE 6325-01-M

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Regional Offices; Jurisdictional Changes

AGENCY: Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority

ACTION: Notice of final amendments to rules and regulations.

SUMMARY: This document amends the rules and regulations of the Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority to provide for changes in the geographical jurisdictions of the seven Regional Directors concerning unfair labor practice charges and representation petitions.

EFFECTIVE DATE: June 20, 1994.

FOR FURTHER INFORMATION CONTACT: David L. Feder, Acting Deputy General Counsel, (202) 482-6680 extension 203

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority and the General Counsel published, at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority and the General Counsel under chapter 71 of title 5 of the United States Code. These rules and regulations are required by title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR part 2400 *et seq.* (1993). Appendix A, paragraph (f) of the rules and regulations sets forth the geographic jurisdictions of the Regional Directors of the Authority.

In the best interest of maximizing the resources within the Office of the General Counsel and efficient and effective case processing, the General Counsel and the Authority published on May 2, 1994 at 49 FR 22537-22538, a proposed rule to realign the

geographical jurisdictions of the Regional Directors to distribute the caseload, based on historic perspective, among the seven Regional Directors so that the seven regional offices have a substantially similar size caseload. No comments were submitted.

The change in geographic jurisdiction is in conjunction with the General Counsel review of regional office staffing patterns with the goal of achieving parity in the number of employees per region. The change will result in equalizing the work per regional office employee. The Office of the General Counsel will transfer cases between regions on a recurring basis, as necessary, based on caseload and staffing so that Office of the General Counsel resources will be utilized to the fullest extent.

Executive Order 12291

This proposed regulation has been reviewed in accordance with Executive Order 12291. It is not classified as major because it does not meet the criteria for major regulations established by the Order.

Regulatory Flexibility Act Certification

The General Counsel has determined that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

The proposed regulation contains no information collection or recordkeeping requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*)

For the reasons set out in the preamble and under the authority of 5 U.S.C. 7134, Appendix A to 5 CFR Chapter XIV is amended by revising paragraph (f) to read as follows:

Appendix A to 5 CFR Chapter XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(f) The geographic jurisdictions of the Regional Directors of the Authority are as follows:

State or other locality	Regional office
Alabama	Atlanta.
Alaska	Denver.
Arizona	Denver.
Arkansas	Dallas.
California	San Francisco.
Colorado	Denver.
Connecticut	Boston.
Delaware	Boston.
District of Columbia	Washington, DC.
Florida	Atlanta.
Georgia	Atlanta.
Hawaii and all land and water areas west of the continents of North and South America (except coastal islands) to long. 90 degrees East.	San Francisco.
Idaho	Denver.
Illinois	Chicago.
Indiana	Chicago.
Iowa	Chicago.
Kansas	Denver.
Kentucky	Chicago.
Louisiana	Dallas.
Maine	Boston.
Maryland	Washington, DC
Massachusetts	Boston.
Michigan	Chicago.
Minnesota	Chicago.
Mississippi	Atlanta.
Missouri, Eastern (Scotland, Knox, Monroe, Audrain, Shelby, Callaway, Maries, Osage, Pulaski, Texas and Howell counties and all counties east thereof).	Chicago.
Missouri, Western (all counties west of Scotland, Knox, Monroe, Audrain, Shelby, Callaway, Maries, Osage, Pulaski, Texas and Howell counties).	Denver
Montana	Denver.
Nebraska	Denver.
Nevada	Denver.
New Hampshire	Boston.
New Jersey	Boston.
New Mexico	Denver.
New York	Boston.
North Carolina	Atlanta.
North Dakota	Denver.
Ohio	Chicago.
Oklahoma	Dallas.
Oregon	San Francisco.
Pennsylvania, Eastern (all counties except Erie, Crawford, Mercer, Lawrence, Beaver, Allegheny, Washington, Greene, Fayette, Somerset, Westmoreland, Warren, Indiana, Butler, Armstrong, Clarion, Venango, Forest, Cambia, Elk and McKean).	Boston.
Pennsylvania, Western (Erie, Crawford, Mercer, Lawrence, Beaver, Allegheny, Washington, Greene, Fayette, Somerset, Westmoreland, Warren, Indiana, Butler, Armstrong, Clarion, Venango, Forest, Cambia, Elk and McKean counties).	Chicago.
Puerto Rico	Atlanta.
Rhode Island	Boston.
South Carolina	Atlanta.
South Dakota	Denver.
Tennessee	Atlanta.

State or other locality	Regional office
Texas	Dallas.
Utah	Denver.
Vermont	Boston.
Virginia	Washington, DC.
Washington	San Francisco.
West Virginia	Chicago.
Wisconsin	Chicago.
Wyoming	Denver.
Virgin Islands	Atlanta.
Panama/limited FLRA jurisdiction	Dallas.
All land and water areas east of the continents of North and South America to long. 90 degrees E., except the Virgin Islands, Panama (limited FLRA jurisdiction), Puerto Rico and coastal islands.	Chicago.

(5 U.S.C. 7134)

For the Authority.

Jean McKee,

Chairman.

Pamela Talkin,

Member.

Tony Armendariz,

Member.

For the General Counsel:

Joe Swerdzewski,

General Counsel.

[FR Doc. 94–14451 Filed 6–13–94; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1755

REA Specification for Terminating Cables

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) amends its regulations on telecommunications standards and specifications for materials, equipment and construction. The revised specification will require that terminating cables comply with Article 800–50 of the 1993 National Electrical Code regarding fire retardancy of these products, include raw material requirements for insulating and jacketing compounds, and update the end product requirements associated with these type cables.

DATES: Effective date: July 14, 1994.

Compliance date: Manufacturers of terminating cables will be allowed until March 14, 1995 to supply borrowers with products already produced or currently in the process of manufacturing under previous Bulletin 345–87.

Incorporation by reference: Incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of July 14, 1994.

FOR FURTHER INFORMATION CONTACT: Garnett G. Adams, Chief, Outside Plant Branch, Telecommunications Standards Division, Rural Electrification Administration, room 2844, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 720–0667.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this final rule will not:

(1) Preempt any State or local laws, regulations, or policies;

(2) Have any retroactive effect; and

(3) Require administrative proceeding before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator of REA has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule involves standards and specifications, which may increase the direct short term costs to REA borrowers. However, the long-term direct economic costs are reduced through greater durability and lower maintenance cost over time.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, information collection and recordkeeping requirements contained in this final rule have been submitted to OMB. Comments concerning these requirements should be directed to the office of Information and Regulator Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503. When OMB has approved the information collection and recordkeeping requirements contained in this final rule, REA will publish an amendment to this final rule to add the OMB control number and statement to the regulatory text.

National Environmental Policy Act Certification

The Administrator of REA has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation that requires intergovernmental consultation with state and local officials. A Notice of Final rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order

Background

REA issues publications titled "Bulletins" which serve to guide borrowers regarding already codified policy, procedures, and requirements needed to manage loans, loan guarantee programs, and the security instruments which provide for and secure REA financing. REA issues standards and specifications for construction of telephone facilities financed with REA loan funds. REA is rescinding Bulletin 345–87, REA Specification for Terminating (TIP) Cable, PE–87, and codifying the revised specification at 7 CFR 1755.870, REA Specification for Terminating Cables.

Terminating cables are used to connect the incoming outside plant cables to the vertical side of the main distributing frame in a telephone central office. Since these cables are installed inside of a building, these cables are required to be listed in accordance with Article 800–50 of the 1993 National Electrical Code (NEC). The current specification does not require these cables to be listed in accordance with Article 800–50 of the 1993 NEC. Therefore, REA is revising the current specification to require these cables to be listed in accordance with Article 800–50 of the 1993 NEC.

The current specification does not include insulation and jacketing raw requirements, because these requirements were previously covered by REA Bulletins 345–21, 345–51, and 345–58 which have since been rescinded. Therefore, revision of the current specification is necessary to incorporate essential jacketing and insulation raw material requirements. By incorporating the raw material requirements which were formerly found in REA Bulletins 345–21, 345–51, and 345–58 into 7 CFR 1755.870, a comprehensive document will be published for the manufacture of terminating cable products.

The current specification contains end product performance requirements that have become outdated for these type cables because of the technological advancements made in the design of terminating cables over the past ten years. Therefore, REA is revising the current specification to update the end product performance requirements associated with these cables to reflect the technological advancements made in the design of these cables.

On November 17, 1993, REA published a proposed rule at 58 FR 220 to rescind REA Bulletin 345–87, REA Specification for Terminating (TIP) Cable, PE–87, and to codify the revised specification at 7 CFR 1755.870, REA Specification for Terminating Cables. Comments on this proposed rule were due by December 17, 1993. Comments and recommendations were received from one company by this due date. The comments, recommendations, and responses are summarized as follows:

The first comment recommended that solid low density polyethylene and expanded polyethylene insulating compounds should also be allowed as an optional primary layer for the dual extruded insulated conductor.

Response: One reason REA 7 CFR 1755.870 requires dual insulated conductors is to provide electrical stability and fire resistance of the insulated conductors. The electrical stability of the insulated conductor is provided by the primary layer which specifies the use of either solid high density polyethylene or solid crystalline propylene/ethylene copolymer insulating compounds. The fire resistance of the insulated conductor is provided by the outer layer or skin which specifies various types of polyvinyl chloride (PVC) insulating compounds. REA chose to limit the primary layer of the dual insulated conductor to either the solid high density polyethylene or the solid crystalline propylene/ethylene copolymer insulating compounds because these insulating compounds have proven histories of providing satisfactory electrical stability of the dual insulated conductor over time. Therefore, REA will not change 7 CFR 1755.870 to allow the use of solid low density polyethylene and expanded polyethylene insulating compounds as primary layers as recommended by the commenter.

The second comment recommended that 7 CFR 1755.870 should allow the use of single insulated conductors using solid PVC insulating compounds in addition to dual insulated conductors.

Response: Another reason REA requires the use of dual insulated conductors for terminating cables is because these terminating cables are presently being spliced to filled outside plant cables at REA borrower construction projects. REA knows that the PVC outer skin of the dual insulated conductor will degrade over time as a result of the PVC's incompatibility with the filling compound used in filled cables. REA also knows that the primary layer of the dual insulated conductor will not degrade because the insulation materials used as the primary layer of the dual insulated conductor are the same insulation materials used as conductor insulations in filled cables which have been proven to be compatible with the filling compound used in filled cables. Since satisfactory signal transmission is dependent upon the integrity of the primary layer of the dual insulated conductor in terminating cables covered by 7 CFR 1755.870, REA must assure that the primary layer will not degrade when these cables are spliced to filled outside plant cables. If REA allowed the use of single insulated conductors using solid PVC insulating compounds, signal transmission on these cables would degrade as a result of the PVC's incompatibility with filling compound when spliced to filled outside plant cables. Based on the above reasons, REA will not allow the use of single insulated conductors using PVC insulating compounds in 7 CFR 1755.870.

The next comment recommended that more restrictive volatile loss requirements should be added to the PVC raw materials used as the outer skin of the dual insulated conductors specified in 7 CFR 1755.870.

Response: The PVC raw materials used as the outer skin of the dual insulated conductor presently specified in 7 CFR 1755.870 have been used in these cables for a number of years with satisfactory results. Since no problems with terminating cables using these PVC raw materials have been encountered. REA will not add the more restrictive volatile loss requirement to the PVC raw materials requirements specified in 7 CFR 1755.870 as recommended by the commenter.

The fourth comment recommended that test method for insulation resistance (IR) specified in the American Society for Testing and Materials (ASTM) D 4566–90 Standard be allowed as an alternative test method for determining the insulation fault rate of the dual insulated conductors.

Response: REA would like to point out that the IR test method for determining the fault rate of the dual insulated conductors specified in 7 CFR 1755.870 is same IR test method as specified in REA Bulletin 345–87. Since manufacturers have been using this IR test method for determining the fault rate of the dual insulated conductors specified in REA Bulletin 345–87 for more than eleven years without any reported problems, REA will not change 7 CFR 1755.870 to allow the alternative IR test method specified in ASTM D 4566–90 as a method for determining the insulation fault of the dual insulated conductors.

The next comment recommended that the dual insulated conductor cold bend test temperature specified in 7 CFR 1755.870 be changed from -40 ± 1 °C to -20 ± 1 °C.

Response: REA would like to point out that the −40 ± 1 °C dual insulated cold bend test temperature specified in 7 CFR 1755.870 is same cold bend test temperature as specified in REA Bulletin 345–87. Since manufacturers have been performing cold bend tests on the dual insulated conductors using the −40 ± 1 °C test temperature specified in REA Bulletin 345–87 for more than eleven years without any reported problems, REA will not change the −40 ± 1 °C cold bend test temperature specified in 7 CFR 1755.870 to the −20 ± 1 °C cold bend test temperature recommended by the commenter.

The sixth comment recommended that the PVC jacket raw material requirements be eliminated from the specification.

Response: REA considers the PVC jacket raw material requirements along with end product PVC jacket requirements to be critical requirements to assure that the PVC jacket will withstand the rigors of installation. Since REA considers PVC jacket raw material requirements as one essential way of assuring that the PVC jacket will withstand the rigors of installation, REA will not eliminate the PVC jacket raw material requirements from 7 CFR 1755.870 as recommended by the respondent.

The seventh comment from the respondent recommended that the thicknesses of the outer jacket should be reduced to coincide with other standards for these type cables.

Response: First, REA knows of no accepted American National Standard for terminating cables. If REA was aware otherwise, REA would reference the jacket thickness requirements of the national standard to assist the industry in providing one cable design that could be used by both REA and non-REA telephone operating companies. Since its REA's knowledge, no accepted national standard exists, REA incorporated the jacket thickness requirements presently specified in REA Bulletin 345–87 into 7 CFR 1755.870 because these thickness requirements have been used for REA terminating cables for over eleven years without any reported field problems. Therefore, REA will not reduce the jacket thickness requirements specified in 7 CFR 1755.870 to the recommendation of the commenter.

The next comment recommended reducing the voice frequency electrical requirements because the respondent feels that the voice frequency electrical requirements specified in 7 CFR 1755.870 are too stringent for voice frequency signal transmission.

Response: The voice frequency electrical requirements specified in 7 CFR 1755.870 were chosen to match voice frequency electrical requirements of outside plant cables to provide satisfactory voice frequency signal transmission. In addition the voice frequency electrical requirements specified in 7 CFR 1755.870 are identical to the voice frequency electrical requirements specified in REA Bulletin 345–87 which has been providing satisfactory voice frequency signal transmission to REA borrowers for the past eleven years. Since REA wanted the voice frequency electrical requirements of terminating cables to match the voice frequency electrical requirements of outside plant cables, REA will not reduce the voice frequency electrical requirements of 7 CFR 1755.870 as recommended by the respondent.

The last comment from the respondent recommended that the test voltages used to test dielectric strength between conductors and dielectric strength between the cable core and shield be changed to coincide with other industry specifications for these type cables.

Response: First, REA knows of no accepted American National Standard for terminating cables. If such a standard did exist, REA would reference the dielectric strength test voltages of the national standard to assist the industry in providing one cable design that could be used by both non-REA and REA telephone operating companies. Since no accepted national standard exists, REA incorporated the dielectric strength test voltages presently specified in REA Bulletin 345–87 into 7 CFR 1755.870 because these dielectric strength test voltages have been used for REA terminating cables for over eleven years without any reported problems. Therefore, REA will not change the dielectric strength test voltages specified in 7 CFR 1755.870 to the commenter's recommendation.

Although REA did not incorporate any of the respondent's recommendations into 7 CFR 1755.870, REA did renumber paragraphs (b)(3)(i) through (b)(12),(e)(2)(i) and (e)(2)(ii) to (b)(3) through (b)(13),(e)(2), and (e)(3), respectively, to make these paragraph numbers more user friendly to interested parties. No changes were made to the technical requirements specified in the above mentioned paragraphs.

List of Subjects in 7 CFR Part 1755

Incorporation by reference, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, REA amends Chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

§ 1755.97 [Amended]

2. Section 1755.97 is amended by removing the entry REA Bulletin 345–87 from the table.

3. Section 1755.870 is added to read as follows:

§ 1755.870 REA specification for terminating cables.

(a) *Scope.* (1) This section establishes the requirements for terminating cables used to connect incoming outside plant cables to the vertical side of the main distributing frame in a telephone central office.

(i) The conductors are solid tinned copper, individually insulated with extruded solid dual insulating compounds.

(ii) The insulated conductors are twisted into pairs which are then stranded or oscillated to form a cylindrical core.

(iii) The cable structure is completed by the application of a core wrap, a shield, and a polyvinyl chloride jacket

(2) The number of pairs and gauge size of conductors which are used within the REA program are provided in the following table:

American Wire Gauge (AWG)	D22	24
Number of Pairs	12	12
	50	50
	100	100
	200	200
	300	300
	400	400
	600	600
	900	900

NOTE: Cables larger in pair sizes from those shown in this table shall meet all the requirements of this section.

(3) All cables sold to REA borrowers for projects involving REA loan funds under this section must be accepted by REA Technical Standards Committee "A" (Telephone). For cables manufactured to the specification of this section, all design changes to an accepted design must be submitted for acceptance. REA will be the sole

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authority on what constitutes a design change.

(4) Materials, manufacturing techniques, or cable designs not specifically addressed by this section may be allowed if accepted by REA. Justification for acceptance of modified materials, manufacturing techniques, or cable designs shall be provided to substantiate product utility and long term stability and endurance.

(5) The American National Standard Institute/Electronic Industries Association (ANSI/EIA) 359–A–84, EIA Standard Colors for Color Identification and Coding, referenced in this section is incorporated by reference by REA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ANSI/EIA 359–A–84 are available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, telephone number (303) 792–2181.

(6) American Society for Testing and Materials Specifications (ASTM) B 33–91, Standard Specification for Tinned Soft or Annealed Copper Wire for Electrical Purposes; ASTM B 736–92a Standard Specification for Aluminum, Aluminum Alloy and Aluminum-Clad Steel Cable Shielding Stock; ASTM D 1248–84 (1989), Standard Specification for Polyethylene Plastics Molding and Extrusion Materials; ASTM D 1535–89, Standard Test Method for Specifying Color by the Munsell System; ASTM D 2287–81 (Reapproved 1988), Standard Specification for Nonrigid Vinyl Chloride Polymer and Copolymer Molding and Extrusion Compounds; ASTM D 2436–85, Standard Specification for Forced-Convection Laboratory Ovens for Electrical Insulation; ASTM D 2633–82 (Reapproved 1989), Standard Methods of Testing Thermoplastic Insulations and Jackets for Wire and Cable; ASTM D 4101–82 (1988), Standard Specification for Propylene Plastic Injection and Extrusion Materials; ASTM D 4565–90a, Standard Test Methods for Physical and Environmental Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable; ASTM D 4566–90, Standard Test Methods for Electrical Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable; and ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications, referenced in this section are incorporated by reference by REA. These incorporations by references were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ASTM standards are available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103–1187, telephone number (215) 299–5585.

(7) American National Standards Institute/National Fire Protection Association (ANSI/NFPA), NFPA 70–1993 National Electrical Code referenced in this section is incorporated by reference by REA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the ANSI/NFPA standard is available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from NFPA, Batterymarch Park, Quincy, Massachusetts 02269, telephone number 1 (800) 344–3555.

(8) Underwriters Laboratories Inc. (UL) 1666, Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts, dated January 22, 1991, referenced in this section is incorporated by reference by REA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the UL standard is available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from UL Inc., 333 Pfingsten Road, Northbrook, Illinois 60062–2096, telephone number (708) 272–8800.

(b) *Conductors and conductor insulation.* (1) Each conductor shall be a solid round wire of commercially pure annealed tin coated copper. Conductors shall meet the requirements of the American Society for Testing and Materials (ASTM) B 33–91 except that requirements for *Dimensions and Permissible Variations* are waived.

(2) Joints made in conductors during the manufacturing process may be brazed, using a silver alloy solder and nonacid flux, or they may be welded using either an electrical or cold welding technique. In joints made in uninsulated conductors, the two conductor ends shall be butted. Splices made in insulated conductors need not be butted but may be joined in a manner acceptable to REA.

(3) The tensile strength of any section of a conductor, containing a factory joint, shall not be less than 85 percent of the tensile strength of an adjacent section of the solid conductor of equal length without a joint.

(4) Engineering Information: The sizes of wire used and their nominal diameters shall be as shown in the following table:

AWG	Nominal diameter	
	Millimeters	(Inches)
22	0.643	(0.0253)
24	0.511	(0.0201)

(5) Each conductor shall be insulated with a primary layer of natural or white solid, insulating grade, high density polyethylene or crystalline propylene/ethylene copolymer and an outer skin of colored, solid, insulating grade, polyvinyl chloride (PVC) using one of the insulating materials listed in paragraphs (b)(5)(i) through (iii) of this section.

(i) The polyethylene raw material selected to meet the requirements of this section shall be Type III, Class A, Category 4 or 5, Grade E9, in accordance with ASTM D 1248–84 (1989).

(ii) The crystalline propylene/ethylene raw material selected to meet the requirements of this section shall be Class PP 200B 40003 E11 in accordance with ASTM D 4101–82 (1988).

(iii) The PVC raw material selected to meet the requirements of this section shall be either Type PVC–64751E3XO, Type PVC–76751E3XO, or Type PVC–77751E3XO in accordance with ASTM D 2287–81 (1988).

(iv) Raw materials intended as conductor insulation furnished to these requirements shall be free from dirt, metallic particles, and other foreign matter.

(v) All insulating raw materials shall be accepted by REA prior to their use.

(6) All conductors in any single length of cable shall be insulated with the same type of material.

(7) A permissible overall performance level of faults in conductor insulation when using the test procedures in paragraph (b)(8) of this section shall average not greater than one fault per 12,000 conductor meters (40,000 conductor feet) for each gauge of conductor.

(8) The test used to determine compliance with paragraph (b)(7) of this section shall be conducted as follows:

(i) Samples tested shall be taken from finished cables selected at random from standard production cable. The samples tested shall contain a minimum of 300 conductor meters (1,000 conductor feet) for cables sizes less than 50 pairs and 1,500 conductor meters (5,000 conductor feet) for cables sizes greater than or equal to 50 pairs. No further sample need be taken from the same cable production run within 6,000 cable meters (20,000 cable feet) of the original test sample from that run.

(ii) The cable sample shall have its jacket, shield, and core wrap removed and its core shall be immersed in tap water for a minimum period of 6 hours. In lieu of removing the jacket, shield, and core wrap from the core, the entire cable may be tested. In this case, the core shall be completely filled with tap water, under pressure; then the cable assembly shall be immersed for a minimum period of 6 hours. With the cable core still fully immersed, except for end connections, the insulation resistance (IR) of all conductors to water shall be measured using a direct current (dc) voltage of 100 volts to 550 volts.

(iii) An IR value of less than 500 megohms for any individual insulated conductor tested at or corrected to a temperature of 23 °C is considered a failure. If the cable sample is more than 7.5 meters (25 feet) long, all failing conductors shall be retested and reported in 7.5 meter (25 foot) segments.

(iv) The pair count, gauge, footage, and number of insulation faults shall be recorded. This information shall be retained on a 6 month running basis for review by REA when requested.

(v) A fault rate, in a continuous length in any one reel, in excess of one fault per 3,000 conductor meters (10,000 conductor feet) due to manufacturing defects is cause for rejection. A minimum of 6,000 conductor meters (20,000 conductor feet) is required to develop a noncompliance in a reel.

(9) Repairs to the conductor insulation during manufacturing are permissible. The method of repair shall be accepted by REA prior to its use. The repaired insulation shall be capable of meeting the relevant electrical requirements of this section.

(10) All repaired sections of insulation shall be retested in the same manner as originally tested for compliance with paragraph (b)(7) of this section.

(11) The colored composite insulating material removed from or tested on the conductor, from a finished cable, shall be capable of meeting the following performance requirements:

Property	Composite insulation
Tensile Strength, Minimum Megapascals (MPa) (Pounds per square inch (psi))	16.5 (2400)
Ultimate Elongation Percent, Minimum	125
Cold Bend Failures, Maximum	0/10
Shrinkback, Maximum Millimeter (mm) (Inches (in.))	9.5 (3/8)
Adhesion, Maximum Newtons (N) (Pound-force (lbf))	13.3 (3)
Compression Minimum, N (lbf)	1780 (400)

(12) *Testing procedures.* The procedures for testing the composite insulation samples for compliance with paragraph (b)(11) of this section shall be as follows:

(i) *Tensile strength and ultimate elongation.* Samples of the insulation material, removed from the conductor, shall be tested in accordance with ASTM D 2633–82(1989), except that the speed of jaw separation shall be 50 millimeters/minute (50 mm/min) (2 inches/minute (2 in./min)).

Note: Quality assurance testing at a jaw separation speed of 500 mm/min (20 in./min) is permissible. Failures at this rate shall be retested at the 50 mm/min (2 in./min) rate to determine specification compliance.

(ii) *Cold bend.* Samples of the insulation material on the conductor shall be tested in accordance with ASTM D 4565–90a at a temperature of −40±1 °C with a mandrel diameter of 6 mm (0.25 in.). There shall be no cracks visible to normal or corrected-to-normal vision.

(iii) *Shrinkback.* Samples of insulation shall be tested for four hours at a temperature of 115±1 °C in accordance with ASTM D 4565–90a.

(iv) *Adhesion.* Samples of insulation material on the conductor shall be tested in accordance with ASTM D 4565–90a with a crosshead speed of 50 mm/min (2 in./min).

(v) *Compression.* Samples of the insulation material on the conductor shall be tested in accordance with ASTM D 4565–90a with a crosshead speed of 5 mm/min (0.2 in./min).

(13) Other methods of testing may be used if acceptable to REA.

(c) *Identification of pairs and twisting of pairs.* (1) The PVC skin shall be colored to identify:

(i) The tip and ring conductor of each pair; and

(ii) Each pair in the completed cable.

(2) The colors used to provide identification of the tip and ring conductor of each pair shall be as shown in the following table:

Pair No.	Color	
	Tip	Ring
1	White	Blue
2	White	Orange
3	White	Green
4	White	Brown
5	White	Slate
6	Red	Blue
7	Red	Orange
8	Red	Green
9	Red	Brown
10	Red	Slate
11	Black	Blue
12	Black	Orange
13	Black	Green
14	Black	Brown
15	Black	Slate
16	Yellow	Blue
17	Yellow	Orange
18	Yellow	Green
19	Yellow	Brown
20	Yellow	Slate
21	Violet	Blue
22	Violet	Orange
23	Violet	Green
24	Violet	Brown
25	Violet	Slate

(3) *Standards of color.* The colors of the insulated conductors supplied in accordance with this section are specified in terms of the Munsell Color System (ASTM D 1535–89) and shall comply with the "Table of Wire and Cable Limit Chips" as defined in ANSI/EIA–359–A–84. (Visual color standards meeting these requirements may be obtained directly from the Munsell Color Company, Inc., 2441 North Calvert Street, Baltimore, Maryland 21218).

(4) Positive identification of the tip and ring conductors of each pair by marking each conductor of a pair with the color of its mate is permissible. The method of marking shall be accepted by REA prior to its use.

(5) Other methods of providing positive identification of the tip and ring conductors of each pair may be employed if accepted by REA prior to its use.

(6) The insulated conductors shall be twisted into pairs.

(7) In order to provide sufficiently high crosstalk isolation, the pair twists shall be designed to enable the cable to meet the capacitance unbalance and the crosstalk loss requirements of paragraphs (h)(2), (h)(3), and (h)(4) of this section.

(8) The average length of pair twists in any pair in the finished cable, when measured on any 3 meter (m) (10 foot

(ft)) length, shall not exceed 152 mm (6 in.).

(d) *Forming of the cable core.* (1) Twisted pairs shall be assembled in such a way as to form a substantially cylindrical group.

(2) When desired for lay-up reasons, the basic group may be divided into two or more subgroups called units.

(3) Each group, or unit in a particular group, shall be enclosed in bindings of the colors indicated for its particular pair count. The pair count, indicated by the color of insulation, shall be consecutive as indicated in paragraph (d)(5) of this section through units in a group.

(4) Threads or tapes used as binders shall be nonhygroscopic and nonwicking. The threads shall consists of a suitable number of ends of each color arranged as color bands. When tapes are used as binders, they shall be colored. Binders shall be applied with a lay of not more than 100 mm (4 in.). The colored binders shall be readily recognizable as the basic intended color and shall be distinguishable from all other colors.

(5) The colors of the bindings and their significance with respect to pair count shall be as shown in the following table:

Group No.	Color of bindings	Group pair count
1	White-Blue	1–25
2	White-Orange	26–50
3	White-Green	51–75
4	White-Brown	76–100
5	White-Slate	101–125
6	Red-Blue	126–150
7	Red-Orange	151–175
8	Red-Green	176–200
9	Red-Brown	201–225
10	Red-Slate	226–250
11	Black-Blue	251–275
12	Black-Orange	276–300
13	Black-Green	301–325
14	Black-Brown	326–350
15	Black-Slate	351–375
16	Yellow-Blue	376–400
17	Yellow-Orange	401–425
18	Yellow-Green	426–450
19	Yellow-Brown	451–475
20	Yellow-Slate	476–500
21	Violet-Blue	501–525
22	Violet-Orange	526–550
23	Violet-Green	551–575
24	Violet-Brown	576–600

(6) The use of the white unit binder in cables of 100 pair or less is optional.

(7) When desired for manufacturing reasons, two or more 25 pair groups may be bound together with nonhygroscopic and nonwicking threads or tapes into super-units. The group binders and the super-unit binders shall be colored such that the combination of the two binders shall positively identify each 25 pair group from every other 25 pair group in the cable.

(8) Super-unit binders shall be of the colors shown in the following table:

SUPER-UNIT BINDER COLORS

Pair No.	Binder color
1–600	White
601–1200	Red

(e) *Core wrap.* (1) The core shall be completely covered with a layer of nonhygroscopic and nonwicking dielectric material. The core wrap shall be applied with an overlap.

(2) The core wrap shall provide a sufficient heat barrier to prevent visible evidence of conductor insulation deformation or adhesion between conductors, caused by adverse heat transfer during the jacketing operation.

(3) Engineering Information: If required for manufacturing reasons, white or uncolored binders of nonhygroscopic and nonwicking material may be applied over the core and/or core wrap.

(f) *Shield.* (1) An aluminum shield, plastic coated on one side, shall be applied longitudinally over the core wrap.

(2) The shield may be applied over the core wrap with or without corrugations (smooth) and shall be bonded to the outer jacket.

(3) The shield overlap shall be a minimum of 3 mm (0.125 in.) for cables with core diameters of 15 mm (0.625 in.) or less and a minimum of 6 mm (0.25 in.) for cables with core diameters greater than 15 mm (0.625 in.). The core diameter is defined as the diameter under the core wrap and binding.

(4) General requirements for application of the shielding material shall be as follows:

(i) Successive lengths of shielding tapes may be joined during the manufacturing process by means of cold weld, electric weld, soldering with a nonacid flux, or other acceptable means;

(ii) The metal shield with the plastic coating shall have the coating removed prior to joining the metal ends together. After joining, the plastic coating shall be restored without voids using good manufacturing techniques;

(iii) The shields of each length of cable shall be tested for continuity. A one meter (3 ft) section of shield containing a factory joint shall exhibit not more than 110 percent of the resistance of a shield of equal length without a joint;

(iv) The breaking strength of any section of a shield tape containing a factory joint shall not be less than 80 percent of the breaking strength of an adjacent section of the shield of equal length without a joint;

(v) The reduction in thickness of the shielding material due to the corrugating or application process shall be kept to a minimum and shall not exceed 10 percent at any spot; and

(vi) The shielding material shall be applied in such a manner as to enable the cable to pass the bend test as specified in paragraph (i)(1) of this section.

(5) The dimensions of the uncoated aluminum tape shall be 0.2030±0.0254 mm (0.0080±0.0010 in.).

(6) The aluminum tape shall conform to either Alloy AA–1100–0, AA–1145–0, or AA–1235–0 as covered in the latest edition of Aluminum Standards and Data, issued by the Aluminum Association, except that requirements for tensile strength are waived.

(7) The single-sided plastic coated aluminum shield shall conform to the requirements of ASTM B 736–92a, Type I Coating, Class 1 or 2, or Type II Coating, Class 1. The minimum thickness of the Type I Coating shall be 0.038 mm (0.0015 in.). The minimum thickness of the Type II Coating shall be 0.008 mm (0.0003 in.).

(8) The plastic coated aluminum shield shall be tested for resistance to water migration by immersing a one meter (3 ft) length of tape under a one meter (3 ft) head of water containing a soluble dye plus 0.25 percent (%) wetting agent.

(i) After a minimum of 5 minutes, no dye shall appear between the interface of the shield tape and the plastic coating.

(ii) The actual test method shall be acceptable to REA.

(9) The bond between the plastic coated shield and the jacket shall conform to the following requirements:

(i) Prepare test strips approximately 200 mm (8 in.) in length. Slit the jacket and shield longitudinally to produce 4 strips evenly spaced and centered in 4 quadrants on the jacket circumference. One of the strips shall be centered over the overlapped edge of the shielding tape. The strips shall be 13 mm (0.5 in.) wide. For cable diameters less than 19 mm (0.75 in.) make two strips evenly spaced.

(ii) Separate the shield and jacket for a sufficient distance to allow the shield and jacket to be fitted in the upper and lower jaws of a tensile machine. Record the maximum force required to separate the shield and jacket to the nearest newton (pound-force). Repeat this action for each test strip.

(iii) The force required to separate the jacket from the shield shall not be less

than 9 N (2 lbf) for any individual strip when tested in accordance with paragraph (f)(9)(ii) of this section. The average force for all strips of any cable shall not be less than 18 N (4 lbf).

(g) *Cable jacket and extraneous material.* (1) The jacket shall provide the cable with a tough, flexible, protective covering which can withstand stresses reasonably expected in normal installation and service.

(2) The jacket shall be free from holes, splits, blisters, or other imperfections and shall be as smooth and concentric as is consistent with the best commercial practice.

(3) The raw material used for the cable jacket shall be one of the following four types:

(i) Type PVC–55554EOXO in accordance with ASTM D 2287–81(1988);

(ii) Type PVC–65554EOXO in accordance with ASTM D 2287–81(1988);

(iii) Type PVC–55556EOXO in accordance with ASTM D 2287–81(1988); or

(iv) Type PVC–66554EOXO in accordance with ASTM D 2287–81(1988).

(4) The jacketing material removed from or tested on the cable shall be capable of meeting the following performance requirements:

Property	Jacket performance
Tensile Strength-Unaged Minimum, MPa (psi)	13.8 (2000)
Ultimate Elongation-Unaged Minimum, Percent (%)	200
Tensile Strength-Aged Minimum, % of original value	80
Ultimate Elongation-Aged Minimum, % of original value	50
Impact Failures, Maximum	2/10

(5) *Testing procedures.* The procedures for testing the jacket samples for compliance with paragraph (g)(4) of this section shall be as follows:

(i) *Tensile strength and ultimate elongation-unaged.* The test shall be performed in accordance with ASTM D 2633–82(1989), using a jaw separation speed of 50 mm/min (2 in./min).

Note: Quality assurance testing at a jaw separation speed of 500 mm/min (20 in./min) is permissible. Failures at this rate shall be retested at the 50 mm/min (2 in./min) rate to determine specification compliance.

(ii) *Tensile strength and ultimate elongation-aged.* The test shall be performed in accordance with paragraph (g)(5)(i) of this section after being aged for 7 days at a temperature of 100±1 °C in a circulating air oven conforming to ASTM D 2436–85.

(iii) *Impact.* The test shall be performed in accordance with ASTM D 4565–90a using an impact force of 4 newton-meter (3 pound force-foot) at a temperature of −10±1 °C. The cylinder shall strike the sample at the shield overlap. A crack or split in the jacket constitutes failure.

(6) *Jacket thickness.* The nominal jacket thickness shall be as specified in the following table. The test method used shall be either the End Sample Method (paragraph (g)(6)(i) of this section) or the Continuous Uniformity Thickness Gauge Method (paragraph (g)(6)(ii) of this section):

No. of pairs	Nominal jacket thickness mm (in.)
25 or less	1.4 (0.055)
50	1.5 (0.060)
100	1.7 (0.065)
200	1.9 (0.075)
300	2.2 (0.085)
400	2.4 (0.095)
600	2.9 (0.115)
800 and over	3.3 (0.130)

(i) *End sample method.* The jacket shall be capable of meeting the following requirements:

Minimum Average Thickness—90% of nominal thickness

Minimum Thickness—70% of nominal thickness

(ii) *Continuous uniformity thickness gauge method.* (A) The jacket shall be capable of meeting the following requirements:

Minimum Average Thickness—90% of nominal thickness

Minimum (Min.) Thickness—70 % of nominal thickness

Maximum (Max.) Eccentricity—55%

Eccentricity=Max. Thickness—Min. Thickness (Average Thickness)×100

(B) *Maximum and minimum thickness values.* The maximum and minimum thickness values shall be based on the average of each axial section.

(7) The color of the jacket shall be either black or dark grey in conformance with the Munsell Color System specified in ASTM D 1535–89.

(8) There shall be no water or other contaminants in the finished cable which would have a detrimental effect on its performance or its useful life.

(h) *Electrical requirements*—(1) *Mutual capacitance and conductance.* (i) The average mutual capacitance (corrected for length) of all pairs in any reel shall not exceed the following when tested in accordance with ASTM D 4566–90 at a frequency of 1.0± 0.1 kilohertz (kHz) and a temperature of 23±3°C:

Number of cable pairs	Mutual capacitance	
	Nanofarad/kilometer	(Nanofarad/mile)
12	52±4	(83±7)
Over 12	52±2	(83±4)

(ii) The root mean square (rms) deviation of the mutual capacitance of all pairs from the average mutual capacitance of that reel shall not exceed 3.0 % when calculated in accordance with ASTM D 4566–90.

(iii) The mutual conductance (corrected for length and gauge) of any pair shall not exceed 3.7 micromhos/kilometer (micromhos/km) (6.0 micromhos/mile) when tested in accordance with ASTM D 4566–90 at a frequency of 1.0±0.1 kHz and a temperature of 23±3°C.

(2) *Pair-to-pair capacitance unbalance.* The capacitance unbalance as measured on the completed cable shall not exceed 45.3 picofarad/kilometer (pF/km) (25 picofarad/1000 ft (pF/1000 ft)) rms when tested in accordance with ASTM D 4566–90 at a frequency of 1.0±0.1 kHz and a temperature of 23±3°C.

(3) *Pair-to-ground capacitance unbalance.* (i) The average capacitance unbalance as measured on the completed cable shall not exceed 574 pF/km (175 pF/1000 ft) when tested in accordance with ASTM D 4566–90 at a frequency of 1 0.1 kHz and a temperature of 23±3°C.

(ii) When measuring pair-to-ground capacitance unbalance all pairs except the pair under test are grounded to the shield except when measuring cable containing super-units in which case all other pairs in the same super-unit shall be grounded to the shield.

(iii) Pair-to-ground capacitance unbalance may vary directly with the length of the cable.

(4) *Crosstalk loss.* (i) The rms output-to-output far-end crosstalk loss (FEXT) measured on the completed cable in accordance with ASTM D 4566–90 at a test frequency of 150 kHz shall not be less than 68 decibel/kilometer (dB/km) (73 decibel/1000 ft (dB/1000 ft)). The rms calculation shall be based on the combined total of all adjacent and alternate pair combinations within the same layer and center to first layer pair combinations.

(ii) The FEXT crosstalk loss between any pair combination of a cable shall not be less than 58 dB/km (63 dB/1000 ft) at a frequency of 150 kHz. If the loss K_o at a frequency F_o for length L_o is known, then K_x can be determined for any other frequency F_x or length L_x by:

$$\text{FEXT loss}\,(K_x) = K_o - 20\log 10\frac{F_x}{F_o} - 10\log 10\frac{L_x}{L_o}$$

(iii) The near-end crosstalk loss (NEXT) as measured within and between units of a completed cable in accordance with ASTM D 4566–90 at a frequency of 772 kHz shall not be less than the following mean minus sigma (M–S) crosstalk requirement for any unit within the cable:

Unit size	M–S decibel (dB)
Within Unit:	
12 and 13 pairs	56
18 and 25 pairs	60
Between Unit:	
Adjacent 13 pairs	65
Adjacent 25 pairs	66
Nonadjacent (all)	81

Where M–S is the Mean near-end coupling loss based on the combined total of all pair combinations, less one Standard Deviation. Sigma, of the mean value.

(5) *Insulation resistance.* Each insulated conductor in each length of completed cable, when measured with all other insulated conductors and the shield grounded, shall have an insulation resistance of not less than 152 megohm-kilometer (500 megohm-mile) at 20±1°C. The measurement shall be made in accordance with the procedures of ASTM D 4566–90.

(6) *High voltage test.* In each length of completed cable, the dielectric strength of the insulation between conductors shall be tested in accordance with ASTM D 4566–90 and shall withstand, for 3 seconds, a direct current (dc) potential whose value is not less than:

(A) 3.6 kilovolts for 22-gauge conductors; or

(B) 3.0 kilovolts for 24-gauge conductors.

(ii) In each length of completed cable, the dielectric strength between the shield and all conductors in the core shall be tested in accordance with ASTM D 4566–90 and shall withstand, for 3 seconds, a dc potential whose value is not less than 10 kilovolts.

(7) *Conductor resistance.* The dc resistance of any conductor shall be measured in the completed cable in accordance with ASTM D 4566–90 and shall not exceed the following values when measured at or corrected to a temperature of 20±1°C:

AWG	Maximum resistance	
	ohms/kilometer	(ohms/1000 ft)
22	60.7	(18.5)
24	95.1	(29.0)

(8) *Resistance unbalance.* (i) The difference in dc resistance between the two conductors of a pair in the completed cable shall not exceed the values listed in this paragraph when measured in accordance with the procedures of ASTM D 4566–90:

AWG	Resistance unbalance	Maximum for any reel
	Average percent	Individual pair percent
22	1.5	4.0
24	1.5	5.0

(ii) The resistance unbalance between tip and ring conductors shall be random with respect to the direction of unbalance. That is, the resistance of the tip conductors shall not be consistently higher with respect to the ring conductors and vice versa.

(9) *Electrical variations.* (i) Pairs in each length of cable having either a ground, cross, short, or open circuit condition shall not be permitted.

(ii) The maximum number of pairs in a cable which may vary as specified in paragraph (h)(9)(iii) of this section from the electrical parameters given in this section are listed in this paragraph. These pairs may be excluded from the arithmetic calculation:

Nominal pair count	Maximum No. of pairs with allowable electrical variation
12–100	1
101–300	2
301–400	3
401–600	4
601 and above	5

(iii) *Parameter variations*—(A) *Capacitance unbalance-to-ground.* If the cable fails either the maximum individual pair or average capacitance unbalance-to-ground requirement and all individual pairs are 3280 pF/km (1000 pF/1000 ft) or less the number of pairs specified in paragraph (h)(9)(ii) of this section may be eliminated from the average and maximum individual calculations.

(B) *Resistance unbalance.* Individual pair of not more than 7 percent for all gauges.

(C) *Far end crosstalk.* Individual pair combination of not less than 52 dB/km (57 dB/1000 ft).

Note: REA recognizes that in large pair count cables (600 pair and above) a cross, short, or open circuit condition occasionally may develop in a pair which does not affect the performance of the other cable pairs. In these circumstances rejection of the entire cable may be economically unsound or repairs may be impractical. In such circumstances the manufacturer may desire to negotiate with the customer for acceptance of the cable. No more than 0.5 percent of the pairs may be involved.

(i) *Mechanical requirements*—(1) *Cable cold bend test.* The completed cable shall be capable of meeting the requirements of ASTM D 4565–90a after conditioning at −20 ± 2 °C except the mandrel diameters shall be as specified below:

Cable outside diameter	Mandrel diameter
<40 mm (1.5 in.)	15x
≥40 mm (1.5 in.)	20x

(2) *Cable flame test.* The completed cable shall be capable of meeting a maximum flame height of 3.7 m (12.0 ft) when tested in accordance with Underwriters Laboratories (UL) 1666 dated January 22, 1991.

(3) *Cable listing.* All cables manufactured to the specification of this section at a minimum shall be listed as Communication Riser Cable (Type CMR) in accordance with Sections 800–50 and 800–51(b) of the 1993 National Electrical Code.

(j) *Sheath slitting cord* (optional). (1) Sheath slitting cords may be used in the cable structure at the option of the manufacturer.

(2) When a sheath slitting cord is used it shall be nonhygroscopic and nonwicking, continuous throughout a length of cable, and of sufficient strength to open the sheath without breaking the cord.

(3) Sheath slitting cords shall be capable of consistently slitting the jacket and/or shield for a continuous length of 0.6 m (2 ft) when tested in accordance with the procedure specified in Appendix B of this section.

(k) *Identification marker and length marker.* (1) Each length of cable shall be permanently identified as to manufacturer and year of manufacture

(2) The number of conductor pairs and their gauge size shall be marked on the jacket.

(3) The marking shall be printed on the jacket at regular intervals of not more than 1.5 m (5 ft).

(4) An alternative method of marking may be used if accepted by REA prior to its use.

(5) The completed cable shall have sequentially numbered length markers in FEET OR METERS at regular intervals of not more than 1.5 m (5 ft) along the outside of the jacket.

(6) The method of length marking shall be such that for any single length of cable, continuous sequential numbering shall be employed.

(7) The numbers shall be dimensioned and spaced to produce good legibility and shall be approximately 3 mm (0.125 in.) in height. An occasional illegible marking is permissible if there is a legible marking located not more than 1.5 m (5 ft) from it.

(8) The method of marking shall be by means of suitable surface markings producing a clear, distinguishable, contrasting marking acceptable to REA. Where direct or transverse printing is employed, the characters should be indented to produce greater durability of marking. Any other method of length marking shall be acceptable to REA as producing a marker suitable for the field. Size, shape and spacing of numbers, durability, and overall legibility of the marker shall be considered in acceptance of the method.

(9) The accuracy of the length marking shall be such that the actual length of any cable section is never less than the length indicated by the marking and never more than one percent greater than the length indicated by the marking.

(10) The color of the initial marking for a black colored jacket shall be either white or silver. The color of the initial marking for a dark grey colored jacket shall be either red or black. If the initial marking of the black colored jacket fails to meet the requirements of the preceding paragraphs, it will be permissible to either remove the defective marking and re-mark with the white or silver color or leave the defective marking on the cable and re-mark with yellow. If the initial marking of the dark grey colored jacket fails to meet the requirements of the preceding paragraphs, it will be permissible to either remove the defective marking and re-mark with the red or black color or leave the defective marking on the cable and re-mark with yellow. No further re-marking is permitted. Any re-marking shall be on a different portion of the cable circumference than any existing marking when possible and have a numbering sequence differing from any other existing marking by at least 5,000.

(11) Any reel of cable which contains more than one set of sequential markings shall be labeled to indicate the color and sequence of marking to be used. The labeling shall be applied to the reel and also to the cable.

(l) *Preconnectorized cable* (optional). (1) At the option of the manufacturer and upon request by the purchaser, cables 100 pairs and larger may be factory terminated in 25 pair splicing modules.

(2) The splicing modules shall meet the requirements of REA Bulletin 345–54, PE–52, REA Specification for Telephone Cable Splicing Connectors (Incorporated by Reference at § 1755.97), and be accepted by REA prior to their use.

(m) *Acceptance testing and extent of testing.* (1) The tests described in Appendix A of this section are intended for acceptance of cable designs and major modifications of accepted designs. REA decides what constitutes a major modification. These tests are intended to show the inherent capability of the manufacturer to produce cable products having long life and stability.

(2) For initial acceptance, the manufacturer shall submit:

(i) An original signature certification that the product fully complies with each section of the specification;

(ii) Qualification Test Data, per Appendix A of this section;

(iii) To periodic plant inspections;

(iv) A certification that the product does or does not comply with the domestic origin manufacturing provisions of the "Buy American" requirements of the Rural Electrification Act of 1938 (7 U.S.C. 901 *et seq.*);

(v) Written user testimonials concerning performance of the product; and

(vi) Other nonproprietary data deemed necessary by the Chief, Outside Plant Branch (Telephone).

(3) For requalification acceptance, the manufacturer shall submit an original signature certification that the product fully complies with each section of the specification, excluding the Qualification Section, and a certification that the product does or does not comply with the domestic origin manufacturing provisions of the "Buy American" requirements of the Rural Electrification Act of 1938 (7 U.S.C. 901 *et seq.*) for acceptance by June 30 every three years. The required data and certification shall have been gathered within 90 days of the submission.

(4) Initial and requalification acceptance requests should be addressed to: Chairman, Technical Standards Committee "A" (Telephone), Telecommunications Standards Division, Rural Electrification Administration, Washington, DC 20250–1500.

(5) *Tests on 100 percent of completed cable.* (i) The shield of each length of cable shall be tested for continuity using the procedures of ASTM D 4566–90.

(ii) Dielectric strength between all conductors and the shield shall be tested to determine freedom from grounds in accordance with paragraph (h)(6)(ii) of this section.

(iii) Each conductor in the completed cable shall be tested for continuity using the procedures of ASTM D 4566–90.

(iv) Dielectric strength between conductors shall be tested to ensure freedom from shorts and crosses in accordance with paragraph (h)(6)(i) of this section.

(v) Each conductor in the completed preconnectorized cable shall be tested for continuity.

(vi) Each length of completed preconnectorized cable shall be tested for split pairs.

(vii) The average mutual capacitance shall be measured on all cables. If the average mutual capacitance for the first 100 pairs tested from randomly selected groups is between 50 and 53 nF/km (80 to 85 nF/mile), the remainder of the pairs need not to be tested on the 100 percent basis. (See paragraph (h)(1) of this section).

(6) *Capability tests.* Tests on a quality assurance basis shall be made as frequently as is required for each manufacturer to determine and maintain compliance with:

(i) Performance requirements for conductor insulation and jacket material;

(ii) Bonding properties of coated or laminated shielding materials;

(iii) Sequential marking and lettering;

(iv) Capacitance unbalance and crosstalk;

(v) Insulation resistance;

(vi) Conductor resistance and resistance unbalance;

(vii) Cable cold bend and cable flame tests; and

(viii) Mutual conductance.

(n) *Summary of records of electrical and physical tests.* (1) Each manufacturer shall maintain a suitable summary of records for a period of at least 3 years for all electrical and physical tests required on completed cable by this section as set forth in paragraphs (m)(5) and (m)(6) of this section. The test data for a particular reel shall be in a form that it may be

readily available to the purchaser or to REA upon request.

(2) Measurements and computed values shall be rounded off to the number of places of figures specified for the requirement according to ASTM E 29–90.

(o) *Manufacturing irregularities.* (1) Repairs to the shield are not permitted in cable supplied to the end user under this section.

(2) No repairs or defects in the jacket are allowed.

(p) *Preparation for shipment.* (1) The cable shall be shipped on reels unless otherwise specified or agreed to by the purchaser. The diameter of the drum shall be large enough to prevent damage to the cable from reeling or unreeling. The reels shall be substantial and so constructed as to prevent damage to the cable during shipment and handling.

(2) A waterproof corrugated board or other means of protection acceptable to REA shall be applied to the reel and shall be suitably secured in place to prevent damage to the cable during storage and shipment.

(3) The outer end of the cable shall be securely fastened to the reel head so as to prevent the cable from becoming loose in transit. The inner end of the cable shall be securely fastened in such a way as to make it readily available if required for electrical testing. Spikes, staples, or other fastening devices which penetrate the cable jacket shall not be used. The method of fastening the cable ends shall be accepted by REA prior to it being used.

(4) Each length of cable shall be wound on a separate reel unless otherwise specified or agreed to by the purchaser.

(5) The arbor hole shall admit a spindle 63 mm (2.5 in.) in diameter without binding. Steel arbor hole liners may be used but shall be acceptable to REA prior to their use.

(6) Each reel shall be plainly marked to indicate the direction in which it should be rolled to prevent loosening of the cable on the reel.

(7) Each reel shall be stenciled or labeled on either one or both sides with the name of the manufacturer, year of manufacture, actual shipping length, an inner and outer end sequential length marking, description of the cable, reel number and the REA cable designation:

Cable Designation

CT
Cable Construction
Pair Count
Conductor Gauge
A = Coated Aluminum Shield
P = Preconnectorized Cable
Example: CTAP 100–22

Terminating Cable, Coated Aluminum Shield, Preconnectorized, 100 pairs, 22 AWG.

(8) When preconnectorized cable is shipped, the splicing modules shall be protected to prevent damage during shipment and handling. The protection method shall be acceptable to REA prior to its use.

Appendix A to 7 CFR 1755.870—Qualification Test Methods

(I) The test procedures described in this appendix are for qualification of initial designs and major modifications of accepted designs. Included in paragraph (V) of this appendix are suggested formats that may be used in submitting test results to REA.

(II) *Sample Selection and Preparation.* (1) All testing shall be performed on lengths removed sequentially from the same 25 pair, 22 gauge jacketed cable. This cable shall not have been exposed to temperatures in excess of 38 °C since its initial cool down after sheathing. The lengths specified are minimum lengths and if desirable from a laboratory testing standpoint longer lengths may be used.

(a) Length A shall be 12 ± 0.2 meters (40 ± 0.5 feet) long. Prepare the test sample by removing the jacket, shield, and core wrap for a sufficient distance on both ends to allow the insulated conductors to be flared out. Remove sufficient conductor insulation so that appropriate electrical test connections can be made at both ends. Coil the sample with a diameter of 15 to 20 times its sheath diameter. Two lengths are required.

(b) Length B shall be 300 millimeters (1 foot) long. Three lengths are required.

(c) Length C shall be 3 meters (10 feet) long and shall be maintained at 23 ± 3 °C for the duration of the test. Two lengths are required.

(2) *Data Reference Temperature.* Unless otherwise specified, all measurements shall be made at 23 ± 3 °C.

(III) *Environmental Tests*—(1) *Heat Aging Test*—(a) *Test Samples.* Place one sample each of lengths A and B in an oven or environmental chamber. The ends of sample A shall exit from the chamber or oven for electrical tests. Securely seal the oven exit holes.

(b) *Sequence of Tests.* Sample B referenced in paragraph (III)(1)(a) of this appendix shall be subjected to the insulation compression test outlined in paragraph (III)(2) of this appendix.

(c) *Initial Measurements.* (i) For sample A, measure the open circuit capacitance and conductance for each odd pair at 1. 150, and 772 kilohertz after conditioning the sample at the data reference temperature for 24 hours. Calculate the average and standard deviation for the data of the 13 pairs on a per kilometer (per mile) basis.

(ii) Record on suggested formats in paragraph (V) of this appendix or on other easily readable formats.

(d) *Heat Conditioning.* (i) Immediately after completing the initial measurements, condition the sample for 14 days at a temperature of 65 ± 2 °C.

(ii) At the end of this period. Measure and calculate the parameters given in paragraph (III)(1)(c) of this appendix. Record on suggested formats in paragraph (V) of this appendix or on other easily readable formats.

(e) *Overall Electrical Deviation.* (i) Calculate the percent change in all average parameters between the final parameters after conditioning with the initial parameters in paragraph (III)(1)(c) of this appendix.

(ii) The stability of the electrical parameters after completion of this test shall be within the following prescribed limits:

(A) *Capacitance.* The average mutual capacitance shall be within 10 percent of its original value;

(B) The change in average mutual capacitance shall be less than 10 percent over the frequency range of 1 to 150 kilohertz; and

(C) *Conductance.* The average mutual conductance shall not exceed 3.7 micromhos/kilometer (6 micromhos/mile) at a frequency of 1 kilohertz.

(2) *Insulation Compression Test*—(a) *Test Sample B.* Remove jacket, shield, and core wrap being careful not to damage the conductor insulation. Remove one pair from the core and carefully separate and straighten the insulated conductors. Retwist the two insulated conductors together under sufficient tension to form 10 evenly spaced 360 degree twists in a length of 100 millimeters (4 inches).

(b) *Sample Testing.* Center the mid 50 millimeters (2 inches) of the twisted pair between two smooth rigid parallel metal plates measuring 50 millimeters (2 inches) in length or diameter. Apply a 1.5 volt direct current potential between the conductors, using a light or buzzer to indicate electrical contact between the conductors. Apply a constant load of 67 newtons (15 pound-force) on the sample for one minute and monitor for evidence of contact between the conductors Record results on suggested formats in paragraph (V) of this appendix or on other easily readable formats.

(3) *Temperature Cycling.* (a) Repeat paragraphs (III)(1)(a) through (III)(1)(c)(ii) of this appendix for a separate set of samples A and B which have not been subjected to prior environmental conditioning.

(b) Immediately after completing the measurements, subject the test samples to 10 cycles of temperature between −40 °C and +60 °C. The test samples shall be held at each temperature extreme for a minimum of 1.5 hours during each cycle of temperature. The air within the temperature cycling chamber shall be circulated throughout the duration of the cycling.

(c) Repeat paragraphs (III)(1)(d)(ii) through (III)(2)(b) of this appendix.

(IV) *Control Sample*—(1) *Test Samples.* One length of sample B shall have been maintained at 23 ± 3 °C for at least 48 hours before the testing.

(2) Repeat paragraphs (III)(2) through (III)(2)(b) of this appendix.

(3) *Surge Test.* (a) One length of sample C shall be used to measure the breakdown between conductors while the other length of C shall be used to measure core to shield breakdown.

(b) The samples shall be capable of withstanding, without damage, a single surge voltage of 20 kilovolts peak between conductors, and 35 kilovolts peak between conductors and the shield as hereinafter described. The surge voltage shall be developed from a capacitor discharge through a forming resistor connected in parallel with the dielectric of the test sample. The surge generator constants shall be such as to produce a surge of 1.5 × 40 microseconds wave shape.

(c) The shape of the generated wave shall be determined at a reduced voltage by connecting an oscilloscope across the forming resistor with the cable sample connected in parallel with the forming resistor. The capacitor bank is charged to the test voltage and then discharged through the forming resistor and test sample. The test sample shall be considered to have passed the test if there is no distinct change in the wave shape obtained with the initial reduced voltage compared to that obtained after the application of the test voltage.

(V) The following suggested formats may be used in submitting the test results to REA:

Environmental Conditioning _____

FREQUENCY 1 KILOHERTZ

Pair No.	Capacitance nF/km (nF/mile)		Conductance micromhos/km (micromhos/mile)	
	Initial	Final	Initial	Final
1				
3				
5				
7				
9				
11				
13				
15				
17				
19				
21				
23				
25				
Average $\bar{x}$				
Overall Percent Difference in Average $\bar{x}$				

Environmental Conditioning _____

FREQUENCY 150 KILOHERTZ

Pair No.	Capacitance nF/km (nF/mile)		Conductance micromhos/km (micromhos/mile)	
	Initial	Final	Initial	Final
1				
3				
5				
7				
9				
11				
13				
15				
17				
19				
21				
23				
25				
Average $\bar{x}$				
Overall Percent Difference in Average $\bar{x}$				

Environmental Conditioning _____

FREQUENCY 772 KILOHERTZ

Pair No.	Capacitance nF/km (nF/mile)		Conductance micromhos/km (micromhos/mile)	
	Initial	Final	Initial	Final
1				
3				
5				
7				
9				
11				
13				

FREQUENCY 772 KILOHERTZ—Continued

Pair No.	Capacitance nF/km (nF/mile)		Conductance micromhos/km (micromhos/mile)	
	Initial	Final	Initial	Final
15				
17				
19				
21				
23				
25				
Average $\bar{x}$				
Overall Percent Difference in.				
Average $\bar{x}$				

	Failures
Insulation Compression:	
Control	
Heat Age	
Temperature Cycling	
Surge Test (kilovolts):	
Conductor-to-Conductor	
Shield-to-Conductors	

Appendix B to 7 CFR 1755.870—Sheath Slitting Cord Qualification

(I) This test procedure described in this appendix is for qualification of initial and subsequent changes in sheath slitting cords.

(II) *Sample selection.* All testing shall be performed on two 1.2 m (4 ft) lengths of cable removed sequentially from the same 25 pair, 22 gauge jacketed cable. This cable shall not have been exposed to temperatures in excess of 38 °C since its initial cool down after sheathing.

(III) *Test procedure.* (1) Using a suitable tool, expose enough of the sheath slitting cord to permit grasping with needle nose pliers.

(2) The prepared test specimens shall be maintained at a temperature of 23 ± 1 °C for at least 4 hours immediately prior to and during the test.

(3) Wrap the sheath slitting cord around the plier jaws to ensure a good grip.

(4) Grasp and hold the cable in a convenient position while gently and firmly pulling the sheath slitting cord longitudinally in the direction away from the cable end. The angle of pull may vary to any convenient and functional degree. A small starting notch is permissible.

(5) The sheath slitting cord is considered acceptable if the cord can slit the jacket and/or shield for a continuous length of 0.6 m (2 ft) without breaking the cord.

Dated: June 2, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–14338 Filed 6–13–94; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1384–92; AG ORDER NO. 1893–94]

RIN 1115–AD18

Adjustment to the Examinations Fee Schedule

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adjusts the Immigration and Naturalization Service (INS) Examinations Fee schedule. The increases are necessary to generate sufficient revenue to recover the costs of providing adjudication and naturalization services. This rule ensures that funds will be available to continue providing services to users while keeping increases as small as possible.

EFFECTIVE DATE: July 14, 1994.

FOR FURTHER INFORMATION CONTACT: Donald L. Lowry, Staff Accountant, Fee Analysis and Operations Branch, Office of Finance; Immigration and Naturalization Service; 425 I Street, NW.; room 6240; Washington, DC 20536–0002; telephone 202–616–2754.

SUPPLEMENTARY INFORMATION:

I. Introduction

The INS published a proposed rule on January 10, 1994, at 59 FR 1308, to adjust the current Examinations Fee schedule. The proposed rule was initially published with a 30-day comment period. To ensure that the public had ample opportunity to review and comment on the proposed rule, the comment due date was extended from February 9, 1994 to March 11, 1994 (59 FR 5740, Feb. 8, 1994).

The fee adjustment is needed to comply with specific Federal immigration laws and the Federal user fee statute and regulations, which require the recipients of special benefits from Government services that are not directed to the public at large to bear the costs to the Government of providing those services. The fees amended in this rule result from an analysis of adjudication and naturalization services and associated costs for fiscal year 1993 and projected costs for fiscal year 1994. The revised fees are calculated to recover the costs of providing these special services and benefits.

Comments were received from 77 commenters, including 46 performing arts organizations, 15 agricultural organizations, 7 employers, 3 attorney organizations, 3 individual attorneys, 2 voluntary service organizations, and 1 member of Congress. The Department carefully considered all comments before preparing this final rule. Following is a discussion of the comments.

II. Summary of Comments

A. Petition for a Nonimmigrant Worker (Form I–129)

Sixty-six commenters, largely performing arts organizations and agricultural organizations, expressed dissatisfaction with the proposed fee schedule for the Petition for a Nonimmigrant Worker (Form I–129). The commenters opposed increasing the minimum fee from $80 ($70 base fee plus $10 fee per beneficiary) to $120 and the per worker fee from $10 to $20. Fifteen of these same commenters questioned the justification for assessing a per-worker fee for petitions with multiple unnamed beneficiaries.

In response to the public's comments, INS is making the following changes: Petitioners with multiple unnamed beneficiaries will no longer be assessed any per worker fee, and the base fee will increase from $70 to $75. The $5 increase is consistent with the general 7.5 percent increase to the current fee schedule, which was discussed in the notice of proposed rule.

On January 11, 1994, INS promulgated a final rule, 59 FR 1455, which allows a worker's dependents to be included in a petitioner's request for an extension of stay or change of status, where there is only one worker in the petition. That provision will go into effect at the time the form providing for this process becomes available. This rule sets a fee of $10 for each dependent included on an extension of stay or change of status request. Dependents of beneficiaries covered by multiple worker petitions must continue to file requests for an extension of stay or change of status on an Application to Extend/Change Nonimmigrant Status (Form I–539).

Accordingly, the new fee structure for the Petition for a Nonimmigrant Worker will be as follows:

Petition With Unnamed Beneficiaries

—Fee of $75 per petition.

Petition With Named Beneficiaries

—Base fee of $75 per petition plus either:
—$10 per worker if requesting consulate or port-of-entry notification for visa issuance or admission;
—$80 per worker if requesting a change of status; or
—$50 per worker if requesting an extension of stay. If filing an extension of stay or change of status for one worker, dependents may be included for a fee of $10 per dependent.

Two additional comments related to I–129 processing were received. One commenter stated that the current procedure includes Consulate or port-of-entry notification for visa issuance or admission purposes and the proposed procedure does not discuss this notification. The commenter questioned whether notification would continue. This rule amends only the Examination Fee schedule and does not change existing procedures; as noted above, this notification will continue.

One commenter also questioned the procedural change related to the $10 fee for each dependent of a beneficiary worker. The commenter stated that the beneficiary worker may be transferred to the United States several months in advance of that person's family members and questioned whether this delay between the two dates would present a problem for Consulate or port-of-entry processing.

Again, this rule only sets the fee for dependents included on an extension of stay or change of status request. The final rule promulgated at 59 FR 1455 provides for dependents to be included on a request for an extension of stay or change of status. An original petition is granted solely on behalf of the worker; the consular officer issues visas to dependents separately. Accordingly, the commenter's concerns are unfounded.

B. Application for Employment Authorization (Form I–765)

One commenter objected to the $10 increase for the employment authorization document (EAD). The commenter stated that EADs for asylum applicants are valid for only 6 months and that it is unfair and unreasonable to require an asylum applicant and dependent family members to pay a $70 fee every 6 months. The commenter suggests that if EAD cards were renewed for a significant period of time, such an increase would not be an unfair burden on the applicant.

The increase in the EAD fee is necessary to recover the costs of adjudicating the application. Under 8 CFR 208.7, an interim EAD for an asylum applicant may be granted for a period not to exceed 1 year. Although INS has the discretion to grant an EAD for a period of 6 months, most asylum EADs are valid for 1 year. Consequently, the situation described by the commenter should not arise frequently.

C. Application to Register Permanent Residence or Adjust Status (Form I–485)

One commenter objected to the $10 increase in fees for filing the I–485 and suggested a family ceiling on the fees charged. The commenter stated that the other costs associated with filing an I–485, such as the required physical examination, make the total costs prohibitive for a family.

The INS recognizes the commenter's concerns. However, it is not possible for INS to set a family ceiling and recover the costs of adjudicating applications through user fees, as required under section 286(m) of the Immigration and Nationality Act (INA). However, the fees for applicants under the age of 14 are $100, an increase of only $5. It should also be noted that fee waivers are available on a case-by-case basis, under 8 CFR § 103.7(c).

D. Application for Naturalization (N–400) and Application for Certificate of Citizenship (N–600)

One commenter criticized INS for increasing naturalization fees. The commenter opposed the increases stating that the income of many immigrant families is relatively low, that increased rates of naturalization are in our national interest, and that concerns about INS financial management and service delivery have yet to be resolved.

The INS recognizes the commenter's concern. However, as stated above, under section 286(m) of the INA, INS is required to recover the costs of adjudicating naturalization applications through user fees. Alternative revenue sources are not available. Increased naturalization fees are necessary to avoid applicants for other benefits paying higher fees to absorb the costs not recovered through the naturalization fees. In order to recover the costs, the naturalization fees must be increased.

E. Meaningful Opportunity To Comment on the Proposed Rule

One commenter stated that the public has been denied a meaningful opportunity to comment on the proposed rule because the proposed rule did not provide sufficient information to do so. The INS believes that sufficient information was provided in the proposed rule. Under the proposed rule, supporting documentation was available upon request and was provided to commenters who requested it. In addition, the comment period was extended an additional 30 days so that the public would have ample opportunity to fully review and comment on the proposed rule.

F. Indirect Costs Charged to the Examinations Fee Account

One commenter stated that certain functions in the legal proceedings program, such as adversary appearances, are not appropriately charged to the Examinations Fee Account. In 1992, INS performed a comprehensive review of the work that should be properly charged to the INS user fee accounts, and concluded that these legal costs are an appropriate and necessary expense of the adjudication and naturalization service process.

The same commenter stated that the proposed rule did not explain what management and administration (M&A) positions and functions are included in indirect costs, so that the commenter could not determine if they were appropriate. The proposed rule used the term management and administrative (M&A) in a descriptive sense. As commonly used, M&A refers to the costs of providing accounting, budget, personnel, equal employment opportunity, contracting and procurement, and general administration services. The proposed rule used the example of the costs of mail processing in discussing how the distribution-key concept works in allocating indirect costs among various accounts. From the example and from the general understanding of the term "M&A," INS believes that sufficient

information was given to allow a fair opportunity to comment on the appropriateness of charging M&A as indirect costs to the Examinations Fee Account.

G. Proportional Assignment of Indirect Costs to Each Examinations Fee

One commenter stated that INS did not explain why indirect costs are assigned in an "across-the-board" manner, rather than apportioning the indirect costs in the same ratio as the direct cost of the application. Various methods for allocating indirect costs exist; INS considers the current method to be reasonable. As INS continues to refine its fee structure, alternative allocation methodologies will be evaluated.

H. Plan to Improve Service

One commenter stated that the proposed rule did not discuss plans to improve service, such as expansion of INS service centers, elimination of backlogs, and acceleration of processing times.

Improvement efforts have been focused on processing more applications at the service centers and reducing the adjudicative work at the district offices. The expansion of centralized processing at the service centers is expected to result in expedited processing of routine cases. The district offices will retain adjudicative responsibilities for applications necessitating an interview or complex or unique adjudications where personal contact is necessary. The INS expects that staff will be shifted among district offices and service centers based on workload requirements.

Implementation of an automated system at district offices and continued improvement of that system for service center operations is also expected to improve productivity. This automated system, called CLAIMS, integrates many of the manual processes or discrete automated processes that adjudicators use now. The CLAIMS system is currently operational in the four INS service centers; in FY 1994, it will be installed at one district office. Plans for expansion to other sites and continued system enhancements are under constant review and dependent upon funding availability.

I. Fee Basis

One commenter stated that the proposed fees appear to be based on faulty or incomplete data and do not appear to be rationally related to the real work required to process any given application. As discussed in the proposed rule, INS examined the relevant costs of the Examinations Fee Account and computed the percentage revenue increase required to cover the costs, and that percentage, with limited exceptions, was applied to the existing fee schedule.

The INS also considered the feasibility of basing the proposed fees on 1992 costs measurements. The INS rejected this approach because of problems with 1992 data caused by the transition to a more automated system of productivity measurement. At this time, the current fee schedule, with specifically identified adjustments, reflects the best available data on costs, which is consistent with Office of Management and Budget and Department of Justice guidance. Future fee adjustments will reflect efforts to refine direct and indirect cost definitions and measurements.

The same commenter stated that the inclusion of inspection costs was not explained in the proposed rule. The costs of the Inspections program attributed to the Examinations Fee Account are exclusively related to examinations work performed by land border inspectors during periods in which they are not performing inspections. This allocation of adjudication workload to inspectors permits more efficient use of resources and results in reduced costs.

III. Fee Adjustments

The fee adjustments, as adopted in this rule, are shown in Exhibit 1.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule adjusts the current Examinations Fee schedule. Its financial impact on users of the services is small. In most cases, the fee increase is $5.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, because approximately 4 million people per annum will be assessed a user fee to recover the costs of providing adjudication and naturalization services.

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Attorney General certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that it will not have a significant negative impact on family well-being.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7, paragraph (b)(1) is amended by revising the entries listed to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–17. For filing an application for school approval, except in the case of a school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof—$140.

Form I–90. For filing an application for Alien Registration Receipt Card

(Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated or destroyed, or in a changed name—$75.

Form I–102. For filing an application (Form I–102) for Arrival-Departure Record (Form I–94) or Crewman's Landing (Form I–95), in lieu of one lost, mutilated, or destroyed—$65.

Form I–129. For filing a petition for a nonimmigrant worker—If a petition with unnamed beneficiaries, a fee of $75 per petition. If a petition with named beneficiaries, a base fee of $75 plus: —$10 per worker if requesting consulate or port-of-entry notification for visa issuance or admission; —$80 per worker if requesting a change of status; or —$50 per worker if requesting an extension of stay. If filing an extension of stay or change of status for one worker, dependents may be included for a fee of $10 per dependent.

* * * * *

Form I–130. For filing a petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act—$80.

Form I–131. For filing an application for issuance of reentry permit—$70.

Form I–140. For filing a petition to classify preference status of an alien on basis of profession or occupation under section 204(a) of the Act—$75.

* * * * *

Form I–192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except, in an emergency case, or where the approval of the application is in the interest of the United States Government—$90.

Form I–193. For filing an application for waiver of passport and/or visa—$95.

Form I–212. For filing an application for permission to reapply for an excluded or deported alien, an alien who has fallen into distress and has been removed as an alien enemy, or an alien who has been removed at Government expense in lieu of deportation—$95.

* * * * *

Form I–360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant—$80, except there is no fee for a petition seeking classification as an Amerasian.

Form I–485. For filing an application for permanent residence status or creation of a record of lawful permanent residence—$130 for an applicant 14 years of age or older; $100 for an applicant under the age of 14 years.

* * * * *

Form I–526. For filing a petition for an alien enterpreneur—$155.

* * * * *

Form I–539. For filing an application to extend or change nonimmigrant status—$75 plus $10 per coapplicant.

* * * * *

Form I–600. For filing a petition to classify orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$155.

Form I–600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.—$155.

Form I–601. For filing an application for waiver of ground of excludability under section 212 (h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those sub-sections.)—$95.

Form I–612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act—$95.

* * * * *

Form I–751. For filing a petition to remove the conditions on residence which is based on marriage—$80.

* * * * *

Form I–765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—$70.

* * * * *

Form I–817. For filing an application for voluntary departure under the Family Unity Program—$80. The maximum amount payable by the members of a family filing their applications concurrently shall be $225.

* * * * *

Form N–300. For filing an application for declaration of intention—$75.

* * * * *

Form N–400. For filing an application for naturalization—$95. For filing an application for naturalization under section 405 of the Immigration Act of 1990, if the applicant will be interviewed in the Philippines—$120.

* * * * *

Form N–470. For filing an application for section 316(b) or 317 of the Act benefits—$115.

Form N–565. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(b) or (d) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(c) of the Act—$65.

Form N–600. For filing an application for certificate of citizenship under section 309(c) or section 341 of the Act—$100.

Form N–643. For filing an application for a certificate of citizenship on behalf of an adopted child—$80.

Form N–644. For filing an application for posthumous citizenship—$80.

* * * * *

Dated: June 8, 1994.

Janet Reno,

Attorney General.

Exhibit 1

Note: The following exhibit will not appear in the Code of Federal Regulations.

EXAMINATIONS FEE ACCOUNT

[Revised Fees]

Form No.	Form name/description	Fee
I–17	Petition for Approval of School for Attendance by Nonimmigrant Students	$140
I–90	Application to Replace Alien Registration Card	75
I–102	Application for Replacement/Initial Nonimmigrant Arrival Departure Document	65
I–129	Petition for a Nonimmigrant Worker	See below.[1]
I–129F	Petition for Alien Finance(e)	75
I–130	Petition for Alien Relative	80
I–131	Application for Travel Document	70
I–140	Immigrant Petition for Alien Worker	75
I–191	Application for Advance Permission to Return to Unrelinquished Domicile	90
I–192	Application for Advance Permission to Enter as Nonimmigrant	90
I–193	Application for Waiver of Passport and/or Visa	95

EXAMINATIONS FEE ACCOUNT—Continued

[Revised Fees]

Form No.	Form name/description	Fee
I–212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	95
I–360	Petition for Amerasian, Widow(er), or Special Immigrant (except for a petition seeking classification as an Amerasian in which case the fee is waived).	80
I–485	Application to Register Permanent Residence or Adjust Status:	
	If 14 years of age or older	130
	If under 14 years of age	100
I–526	Immigrant Petition by Alien Entrepreneur	155
I–539	Application to Extend/Change Nonimmigrant Status	75 plus 10 per coapplicant.
I–600	Petition to Classify Orphan as an Immediate Relative	155
I–600A	Application for Advance Processing of Orphan Petition	155
I–601	Application for Waiver of Grounds of Excludability	95
I–612	Application for Waiver of the Foreign Residence Requirement	95
I–751	Petition to Remove the Condition on Residence	80
I–765	Application for Employment Authorization	70
I–817	Application for Voluntary Departure Under Family Unity Program	80
N–300	Application to File Declaration of Intention	75
N–400	Application for Naturalization	95
N–470	Application to Preserve Residence for Naturalization Purposes	115
N–565	Application for Replacement Naturalization/Citizenship Document	65
N–600	Application for Certificate of Citizenship	100
N–643	Application for Certificate of Citizenship in Behalf of an Adopted Child	80
N–644	Application for Posthumous Citizenship	80

[1] *Petition with Unnamed Beneficiaries:*
—Fee of $75 per petition.
Petition with Named Beneficiaries:
—Base fee of $75 per petition plus either:
—$10 per worker if requesting consulate or port-of-entry notification for visa issuance or admission;
—$80 per worker if requesting a change of status; or
—$50 per worker if requesting an extension of stay. If filing an extension of stay or change of status for one worker, dependents may be included for a fee of $10 per dependent.

[FR Doc. 94–14441 Filed 6–13–94; 8:45 am]
BILLING CODE 4410–01–M

Office of the Attorney General

28 CFR Part 65

[INS No. 1449–92; AG Order No. 1892–94]

RIN 1115–AD40

Emergency Federal Law Enforcement Assistance: Immigration Emergency Fund

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule implements provisions in the Immigration and Nationality Act that establish an "Immigration Emergency Fund" and that provide for assistance to States and local governments for services provided, at the request of the Attorney General, to meet an immigration emergency declared by the President, to aid in the administration of the immigration laws of the United States, or to meet urgent demands arising from the presence of aliens in a State or local jurisdiction. This rule sets forth procedures governing: Requests for a Presidential declaration of an immigration emergency; requests from the Attorney General for state or local government assistance when the President has declared an immigration emergency and in certain other circumstances; and applications from States and local governments for assistance from the Immigration Emergency Fund.

EFFECTIVE DATE: June 14, 1994.

FOR FURTHER INFORMATION CONTACT: Michael J. Coster, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW., room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: The Department of Justice ("Department") promulgated a proposed rule on January 14, 1992, 57 FR 1439, which set forth procedures and requirements for reimbursement from the Immigration Emergency Fund to States and localities for assistance provided in the absence of a Presidential determination that an immigration emergency exists under paragraph (b)(2) of section 404 of the Immigration and Nationality Act ("INA"), 8 U.S.C. 1101, note (b)(2). After receiving several comments, the rule was expanded and amended significantly, and the Department promulgated another proposed rule on November 5, 1993, 58 FR 58994. The proposed rule set forth procedures and requirements for reimbursement from the Immigration Emergency Fund to States and local governments under all the provisions of section 404(b) of the INA as required by section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1992, Public Law 102–140, 105 Stat. 782, 832. The Supplementary Information section of the publication at 58 FR 58994 contains an exhaustive history of the legislation.

The second proposed rule originally required written comments to be submitted by December 6, 1993. On January 5, 1994, at 59 FR 558, the Department extended the comment period to January 26, 1994, and three sets of comments were received. Two were from government entities while the third was from a public policy group. The Department received and evaluated the comments as follows:

Comment: The definition of "assistance" for which the fund could be used to reimburse State and local governments should be expanded to include direct and indirect costs, such as overhead and administrative costs, associated with providing services and resources to aliens, including those illegal aliens incarcerated in jails and prisons for violation of State criminal

laws. Additionally, assistance should also include providing for basic medical, cash, and social service needs in the short run, and housing, education, and human service needs in the longer rule. This type of social service assistance should not be tied to the establishment of large shelter facilities.

Response: These changes have not been adopted. The Immigration Emergency Fund provides only limited resources which must be allocated in a judicious fashion. The Department believes that the use of the funds should be limited to assistance provided to the Attorney General in the enforcement and administration of the immigration laws of the United States. This view is supported by the statutory language, which provides for reimbursement for "assistance as required *by the Attorney General* * * *." 8 U.S.C. 1101, note (b)(2)(A) (emphasis added). The Attorney General's mission does not include providing social services or providing costs of incarcerating persons for violating State criminal laws. Thus, only in limited circumstances do these types of services assist the Attorney General.

Comment: It should be made clear that any denial of funds is without prejudice, and that there may be an opportunity for the States or local governments to renew their request.

Response: This change is unnecessary and has not been adopted. The regulation contains no language which would limit the ability of a State or local government to renew an application.

Comment: For the purpose of determining the increase in the number of asylum applications in an Immigration and Naturalization Service ("INS") district for a given quarter, the number of Cuban nationals who remain in the INS district after the expiration of their visitors visas should be included as *de facto* asylum applicants, whether or not the Cuban nationals have formally applied for asylum.

Response: This change has not been adopted. The suggested method for calculating the number of asylum applications filed in a certain quarter is inconsistent with the plain language of the statute and other portions of the INA. However, the Attorney General may consider the concerns raised by the comment regarding Cubans who remain without filing asylum applications as "other circumstances" justifying access to the fund.

Comment: The definition of "other circumstances" is weak, thus making it difficult to understand what this may cover. This definition should be reconsidered and elaborated upon by the Department before final regulations are published.

Response: This change has not been adopted. The statutory language indicates that Congress intended to give the Attorney General broad discretion in determining which "other circumstances" would justify access to the fund. The regulation should not unnecessarily limit that discretion.

Comment: The regulation concerning application requirements should be more specific. The application process should be triggered by a phone call by the chief executive of the impacted jurisdiction to the Attorney General declaring his or her intention to apply to access the fund. This call would immediately be followed by a facsimile correspondence reiterating the chief executive's intent to apply. Within twenty-four hours of the call and facsimile, the Attorney General and the chief executive or their designees would meet to facilitate the negotiation of the application. The written application would need to be submitted within five calendar days of this meeting and would include: (a) A cover letter from the chief executive; (b) a written narrative of the emergency conditions and listing the state point of contact; (c) a listing of the broad service categories required by the aliens; (d) a description of the services; (e) the number or estimated number of aliens to be served; (f) the cost or estimated cost to be incurred; and (g) time parameters for service provision with a proviso that access to the funds could be extended without formal reapplication in the case of exigent circumstances.

Response: The specific procedures recommended would be a sound and welcome way for a State or local government to present its request for funding, but the regulation has not been amended to require adherence to those specific procedures. The flexible application process prescribed in the regulation is sufficiently specific without being unduly burdensome in the information requirements or overly confining in the formal requirements of the application. The rule has been amended to allow the Attorney General to use the grant or cooperative agreement process to provide funding, in addition to negotiating a separate reimbursement agreement. Accordingly, State and local governments may also use standard grant applications. The informal communication recommended by the commentator is already included in the regulation at § 65.85(b), and is strongly encouraged.

Comment: The regulation is currently promulgated under 28 CFR part 65, which is entitled "Emergency Federal Law Enforcement Assistance." The regulation should be retitled to reflect the overall intent of the statute and the contents of the regulation more accurately.

Response: This change has not been adopted. The regulation remains codified under 28 CFR part 65. However, subpart I is entitled "Immigration Emergency Fund," and the Department will consider redesignating the regulation in the future.

Procedural Matters

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is promulgated in accordance with the principles set forth in Executive Order 12866, and the Department considers the rule a "significant regulatory action" within the meaning of section 3(f) of E.O. 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget ("OMB").

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The information collection requirements contained in this rule have been cleared by OMB under the provisions of the Paperwork Reduction Act. The OMB clearance number is 1115–0184.

List of Subjects in 28 CFR Part 65

Grant programs—law, Law enforcement, Reporting and recordkeeping requirements.

Accordingly, part 65 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 is revised to read as follows:

Authority: The Comprehensive Crime Control Act of 1984, Title II, Chap. VI, Div. I, Subdiv. B, Emergency Federal Law Enforcement Assistance, Pub. L. 98–473, 98 Stat. 1837, Oct. 12, 1984 (42 U.S.C. 10501 et seq.); 8 U.S.C. 1101 note; Sec. 610, Pub. L. 102–140, 105 Stat. 832.

2. Part 65 is amended by adding a new subpart I to read as follows:

Subpart I—Immigration Emergency Fund

65.80 General.
65.81 General definitions.
65.82 Procedure for requesting a Presidential determination of an immigration emergency.
65.83 Assistance required by the Attorney General.
65.84 Procedures for the Attorney General seeking State or local assistance.
65.85 Procedures for State or local governments applying for reimbursement.

Subpart I—Immigration Emergency Fund

§ 65.80 General.

The regulations of this subpart set forth procedures for implementing section 404(b) of the Immigration and Nationality Act ("INA"), 8 U.S.C. 1101 note, by providing for Presidential determinations of the existence of an immigration emergency, and for payments from the Immigration Emergency Fund to State and local governments for assistance provided in meeting an immigration emergency. The regulations of this subpart also establish procedures by which the Attorney General may draw upon the Immigration Emergency Fund, without a Presidential determination that an immigration emergency exists, to provide funding to State and local governments for assistance provided as required by the Attorney General in certain specified circumstances.

§ 65.81 General definitions.

As used in this part:

Assistance means any actions taken by a State or local government directly relating to aiding the Attorney General in the administration of the immigration laws of the United States and in meeting urgent demands arising from the presence of aliens in the State or local government's jurisdiction, when such actions are taken to assist in meeting an immigration emergency or under any of the circumstances specified in section 404(b)(2)(A) of the INA. Assistance may include, but need not be limited to, the provision of large shelter facilities for the housing and screening of aliens, and, in connection with these activities, the provision of such basic necessities as food, water clothing, and health care.

Immigration emergency means an actual or imminent influx of aliens which either is of such magnitude or exhibits such other characteristics that effective administration of the immigration laws of the United States is beyond the existing capabilities of the Immigration and Naturalization Service ("INS") in the affected area or areas. Characteristics of an influx of aliens, other than magnitude, which may be considered in determining whether an immigration emergency exists include: the likelihood of continued growth in the magnitude of the influx; an apparent connection between the influx and increases in criminal activity; the actual or imminent imposition of unusual and overwhelming demands on law enforcement agencies; and other similar characteristics.

Other circumstances means a situation that, as determined by the Attorney General, requires the resources of a State or local government to ensure the proper administration of the immigration laws of the United States or to meet urgent demands arising from the presence of aliens in a State or local government's jurisdiction.

§ 65.82 Procedure for requesting a Presidential determination of an immigration emergency.

(a) The President may make a determination concerning the existence of an immigration emergency after review of a request from either the Attorney General of the United States or the chief executive of a State or local government. Such a request shall include a description of the facts believed to constitute an immigration emergency and the types of assistance needed to meet that emergency. Except when a request is made by the Attorney General, the requestor shall file the original application with the Office of the President and shall file copies of the application with the Attorney General and with the Commissioner of INS.

(b) If the President determines that an immigration emergency exists, the President shall certify that fact to the Judiciary Committees of the House of Representatives and of the Senate.

§ 65.83 Assistance required by the Attorney General.

The Attorney General may request assistance from a State or local government in the administration of the immigration laws of the United States, or in meeting urgent demands where the need for assistance arises because of the presence of aliens in that State or local jurisdiction, and may provide funding to a State or local government relating to such assistance from the Immigration Emergency Fund, without a Presidential determination of an immigration emergency, in any of the following circumstances:

(a) An INS district director certifies to the Commissioner of INS, who shall, in turn, certify to the Attorney General, that the number of asylum applications filed in that INS district during the relevant calendar quarter exceeds by at least 1,000 the number of such applications filed in that district during the preceding calendar quarter. For purposes of this paragraph, providing parole at a point of entry in a district shall be deemed to constitute an application for asylum in the district.

(b) The Attorney General determines that there exist circumstances involving the administration of the immigration laws of the United States that endanger the lives, property, safety, or welfare of the residents of a State or locality.

(c) The Attorney General determines that there exist any other circumstances, as defined in § 65.81 of this subpart, such that it is appropriate to seek assistance from a State or local government in administering the immigration laws of the United States or in meeting urgent demands arising from the presence of aliens in a State or local jurisdiction.

§ 65.84 Procedures for the Attorney General seeking State or local assistance.

(a) When the Attorney General determines to seek assistance from a State or local government under § 65.83 of this subpart or when the President has determined that an immigration emergency exists, the Attorney General shall negotiate the terms and conditions of that assistance with the State or local government, and shall set forth those terms and conditions. Funding related to such assistance can be provided by a reimbursement agreement, grant, or cooperative agreement.

(b) A reimbursement agreement shall contain the procedures under which the State or local government is to obtain reimbursement for its assistance. A reimbursement agreement shall include the title of the official to whom claims are to be submitted, the intervals at which claims are to be submitted, a description of the supporting documentation to be submitted, and any limitations on the total amount of reimbursement that will be provided. Grants and cooperative agreements shall be made and administered in accordance with the uniform procedures in Part 66 of this title.

(c) In exigent circumstances, the Attorney General may agree to provide funding to a State or local government without a written agreement. A reimbursement agreement, grant, or cooperative agreement conforming to the specifications in this section shall be reduced to writing as soon as practicable.

§ 65.85 Procedures for State or local governments applying for funding.

(a) In the event that the chief executive of a State or local government

determines that any of the circumstances set forth in § 65.83 of this subpart exists, he or she may pursue the procedures in this section to submit to the Attorney General an application for a reimbursement agreement, grant, or cooperative agreement as described in § 65.84 of this subpart.

(b) The Department strongly encourages chief executives of States and local governments, if possible, to consult informally with the Attorney General and the Commissioner of INS prior to submitting a formal application. This informal consultation is intended to facilitate discussion of the nature of the assistance to be provided by the State or local government, the requirements of the Attorney General, if any, for such assistance, the costs associated with such assistance, and the Department's preliminary views on the appropriateness of the proposed funding.

(c) The chief executive of a State or local government shall submit an application in writing to the Attorney General, and shall file a copy with the Commissioner of INS. The application shall set forth in detail the following information:

(1) The name of the jurisdiction requesting reimbursement;

(2) All facts supporting the application;

(3) The nature of the assistance which the State or local government has provided or will provide, as required by the Attorney General, for which funding is requested;

(4) The dollar amount of the funding sought;

(5) A justification for the amount of funding being sought;

(6) The expected duration of the conditions requiring State or local assistance;

(7) Information about whether funding is sought for past costs or for future costs;

(8) The name, address, and telephone number of a contact person from the requesting jurisdiction.

(d) If the Attorney General determines that the assistance for which funding is sought under paragraph (c) of this section is appropriate under the standards of this subpart, the Attorney General may enter into a reimbursement or cooperative agreement or may make a grant in the same manner as if the assistance had been requested by the Attorney General as described under § 65.84 of this subpart.

(e) The Attorney General will consider all applications from State or local governments until the Attorney General has expended the maximum amount authorized in section 404(b)(2)(B) of the INA. The Attorney General will make a decision with respect to any application submitted under this section, and containing the information described in paragraph (c) of this section, within 15 calendar days of receipt of such application.

(f) In exigent circumstances, the Attorney General may waive the requirements of this section concerning the form, contents, and order of consideration of applications, including the requirement in paragraph (c) of this section that applications be submitted in writing.

Dated: June 8, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94–14440 Filed 6–13–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 94–007]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between January 1, 1994 and March 31, 1994, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard regulations that become effective and were terminated between January 1, 1994 and March 31, 1994, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander, Thomas R. Cahill, Executive Secretary, Marine Safety Council at (202) 267–1477 between the hours of 8 a.m. and 3 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to assure the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation.

Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. These safety zones, special local regulations and security zones have been exempted from review under E.O. 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period January 1, 1994 and March 31, 1994, unless otherwise indicated.

Thomas R. Cahill,

Lieutenant Commander, Executive Secretary, Marine Safety Council.

QUARTERLY REPORT

Docket No.	Location	Type	Effective date
Baltimore 94–004	Popes Creek, MD	Safety Zone	3/6/94
Charleston 94–012	Socastee, SC	do	2/11/94
Charleston 94–035	Cooper River, Charleston, SC	do	3/23/94
Charleston 94–040	do	do	3/30/94
Corpus Christi 94–001	Gulf Intracoastal Waterway	do	1/5/94
Corpus Christi 94–002	Brownsville Ship Channel, TX	do	1/14/94
Corpus Christi 94–003	do	do	1/17/94
Corpus Christi 94–004	Matagorda Ship Channel, TX	do	1/19/94
Corpus Christi 94–005	Corpus Christi Ship Channel, TX	do	2/3/94
Corpus Christi 94–007	Brownsville Ship Channel, TX	do	2/19/94
Corpus Christi 94–008	Gulf Intracoastal Waterway	do	3/3/94
Huntington 94–001	Ohio River mile 209.0 to 211.0	do	3/11/94
Jacksonville 94–023	Jacksonville, FL	do	3/19/94
Louisville 94–001	Ohio River mile 468.5 to 473.0	do	1/28/94
Miami 93–125	Hollywood to Pompano Beach, FL	do	12/11/93
Miami 94–001	Key West Harbor, FL	do	1/1/94
Miami 94–002	Lake Worth, FL	do	1/3/94
Miami 94–031	Miami, FL	do	3/14/94
Miami 94–032	Fort Lauderdale, FL	do	3/24/94
New Orleans 93–015	Lower Mississippi River	do	9/13/93
New Orleans 94–006	do	do	2/6/94
New Orleans 94–007	do	do	2/9/94
P.W. Sound 94–001	Port Valdez, AK	do	1/3/94
Pittsburgh 94–001	Youghiogheny River	do	1/15/94
Port Arthur 94–001	Upper Calcasieu River	do	2/1/94
Port Arthur 94–002	Port of Beaumont, TX	Security Zone	2/11/94
Port Arthur 94–003	Neches River to Gulf of Mexico	do	2/15/94
San Diego 94–001	San Diego Bay, CA	do	2/22/94
San Francisco Bay 94–006	San Francisco Bay, CA	do	3/5/94
San Juan 94–011	San Juan, P.R.	Safety Zone	2/22/94
San Juan 94–029	do	do	3/18/94
St. Louis 94–002	Upper Mississippi River	do	1/19/94
St. Louis 94–005	do	do	3/11/94
St. Louis 94–006	Missouri River	do	4/7/94.
01–94–003	LPG Vessel MAERSK SUSSEX, NY and NJ	do	1/14/94
01–94–015	East River, NY	do	4/8/94
01–94–024	Scituate, MA	do	3/24/94
01–94–402	Boston, MA	do	3/14/94
02–93–034	Upper Mississippi River	Special Local	1/5/94
07–94–003	Hillsborough Bay, Tampa, FL	do	2/5/94
07–94–036	Intracoastal Waterway, St. Augustine, FL	do	3/27/94

[FR Doc. 94–14448 Filed 6–13–94; 8:45 am]
BILLING CODE 4910–14–M

33 CFR Part 117

[CGD01–94–063]

Drawbridge Operation Regulations; Manchester Harbor, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: Pursuant to 33 CFR 117.43, the Coast Guard is providing notice that it has, at the request of the Town of Manchester, Massachusetts, authorized a temporary deviation for ninety (90) days from the operating regulations governing the Manchester Amtrak Bridge over Manchester Harbor at mile 1.0 in Manchester, Massachusetts.

The permanent regulations are published at 33 CFR 117.603. This deviation authorizes the Manchester Amtrak Bridge to open on signal from June 3, 1994 through August 31, 1994 from 8 a.m. to 9 p.m. At all other times at least 2 hours advance notice is required by calling the number posted at the bridge. This temporary deviation is being implemented to evaluate the effects of the extended operating hours and the impact on marine traffic at the Manchester Bridge. This notice also solicits comments on these changes to the operation of the bridge.

DATES: The deviation is effective for 90 days from June 3, 1994 through August 31, 1994.

Comments on effects of the deviation must be received on or before October 31, 1994.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, room 628 at the Captain John Foster Williams Federal Building, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350. The comments and other materials referenced in this notice will be available for inspection and copying by appointment at the above address. Normal office hours are between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to the above address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Manchester Amtrak Bridge over Manchester Harbor has a vertical clearance of 6′ above mean high water (MHW) and 15′ above mean low water (MLW).

The Town of Manchester has requested a change from the operating regulations governing the Manchester Amtrak Bridge in 33 CFR 117.603 which requires that the Amtrak Bridge open on signal from April 1 to November 1, 9 a.m. to 1 p.m. and 2 p.m. to 6 p.m. This ninety day deviation extends the operating hours to require the bridge to open on signal from 8 a.m. to 9 p.m. from June 3, 1994 to August 31, 1994. This change will allow vessels mooring in Manchester Harbor upstream of the bridge to leave port at a reasonably early time and return to their moorings after their evening racing and sailing. Many vessels were unable to get underway at an early enough time for a day trip and return before the 6 p.m. time period. They were forced to tie up at town facilities or at other moorings until the the bridge was opened. Additionally, the bridge owner (Amtrak) will be required to post regulation signs up and down stream of the bridge indicating the operating hours and the number to call for an off hour opening. The bridge owner will also be required to install and maintain in good condition clearance gages on the up and down stream sides of the bridge. This deviation also requires the bridge to open on signal as soon as possible for vessels of the United States, state and local vessels used for public safety and vessels in distress.

Request for Comments

The Coast Guard encourages interested persons to participate in evaluation of possible changes to the regulations by submitting written data, or arguments for or against this deviation. Persons submitting comments should include their name and address and identify this rulemaking (CGD01–94–063) and the specific section of this deviation to which each comment applies, and give reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period. If it appears appropriate to propose a permanent change to the regulations, the Coast Guard will publish a notice of proposed rulemaking and request additional comments as part of the rulemaking process. All comments received regarding the deviation period will be considered as part of the rulemaking. Persons may submit comments by writing to the Commander (obr), First Coast Guard District listed under **ADDRESSES**.

Notice

Notice is hereby given that:

(1) The Coast Guard has granted the Town of Manchester, Massachusetts, a temporary deviation from the operating requirements listed in 33 CFR 117.603 governing the Manchester Amtrak Bridge over Manchester Harbor.

(2) This deviation from normal operating regulations is authorized in accordance with the provisions of 33 CFR 117.43 for the purpose of evaluating possible changes to the permanent regulations.

(3) The period of deviation is effective June 3, 1994 to August 31, 1994.

(4) During the deviation period the Manchester Amtrak Bridge shall operate as follows:

(i) The bridge shall open on signal 8 a.m. to 9 p.m.

(ii) From 9 p.m. to 8 a.m. the bridge shall open on signal if at least 2 hours advance notice is given by calling the number posted at the bridge.

(iii) The bridge shall open on signal as soon as possible for vessels of the United States, state and local vessels used for public safety and vessels in distress.

Dated: May 31, 1994.

K.W. Thompson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 94–14450 Filed 6–13–94; 8:45 am]
BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–4997–1]

Illinois: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Illinois has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act of 1976 as amended (hereinafter RCRA). The Environmental Protection Agency (EPA) has reviewed Illinois' application and has made a decision, subject to public review and comment, that Illinois' hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Illinois' hazardous waste program revisions, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (hereinafter HSWA). Illinois' application for program revision is available for public review and comment.

EFFECTIVE DATE: Final authorization for Illinois shall be effective August 15, 1994 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Illinois' program revision application must be received by the close of business July 14, 1994. If an adverse comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

ADDRESSES: Copies of Illinois' program revision application are available for inspection and copying, from 9 a.m. to 4 p.m., at the following addresses: Illinois Environmental Protection Agency, 2200 Churchill Road, Springfield, Illinois 62706, contact: Todd Marvel (217) 524–5024; USEPA, Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604, contact: Gary Westefer (312) 886–7450. Written comments should be sent to Mr. Gary Westefer, Illinois Regulatory Specialist, U.S. EPA, Office of RCRA, HRM–7J, 77 W. Jackson Blvd., Chicago, Illinois 60604, phone (312) 886–7450.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Westefer, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60624. Phone: 312/886–7450.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

In accordance with 40 CFR 271.21, revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 266, 268, and 270.

B. Illinois

Illinois initially received final authorization for its program effective January 31, 1986. (51 FR 3778, January 30, 1986). Illinois received authorization for revisions to its program effective on March 5, 1988 (53 FR 126, January 5, 1988), April 30, 1990 (55 FR 7320, March 1, 1990), and June 3, 1991 (56 FR 13595, April 3, 1991). On December 17, 1993, Illinois submitted a program revision application for additional program approvals. Today, Illinois is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Illinois' application, and has made an immediate final decision that Illinois' hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Illinois. The public may submit written comments on EPA's immediate final decision up until July 14, 1994. Copies of Illinois' application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Illinois' program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

On August 15, 1994, Illinois will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program:

Federal requirement	Analogous State authority
HSWA codification rule—delisting correction 1, June 27, 1989, 54 *FR* 27114 [1]	Rules 35 IAC 720.122, effective June 16, 1990.
Listing of spent pickle liquor—correction 2, August 3, 1987, 52 *FR* 28697	Rules 35 IAC 721.132, effective June 16, 1988.
Liability coverage—Corporate guarantee, July 11, 1986, 51 *FR* 25350–25356	Rules 35 IAC 724.247; 724.251; 725.247, effective July 16, 1987.
Amendments to part B information requirements for disposal facilities, June 22, 1987, 52 *FR* 23447–23450. As amended on September 9, 1987, 52 *FR* 33936.	Rules 35 IAC 703.185, effective December 3, 1987.
California list waste restrictions, July 8, 1987, 52 *FR* 23447–23450.[1] As amended on October 27, 1987, 52 *FR* 41295–41296 [1].	Rules 35 IAC 720.111; 722.170; 724.113; 725.113; 728.102; 728.103; 728.104; 728.107; 728.130; 728.132; 728.140; 728.142; 728.150; section 728 appendix C, effective June 16, 1988.
List (phase 1) of hazardous constituents for ground-water monitoring, July 9, 1987, 52 *FR* 25942–25953.	Rules 35 IAC 703.185; 724.198; 724.199; section 724 appendix I, effective June 16, 1988.
Identification and listing of hazardous waste, July 10, 1987, 52 *FR* 26012	Rules 35 IAC721, effective June 16, 1988.
Exception reporting for small quantity generators of hazardous waste, September 23, 1987, 52 *FR* 35894–35899 [1].	Rules 35 IAC 722.142; 722.144, effective June 16, 1988.
Liability requirements for hazardous waste facilities; corporate guarantee, November 18, 1987, 52 *FR* 44314–44321.	Rules 35 IAC 724.247; 725.247, effective June 16, 1988.
HSWA codification rule 2—permit application requirements regarding corrective action, December 1, 1987, 52 *FR* 45788–45799 [1].	Rules 35 IAC 703.185; 703.187, effective June 16, 1988.
HSWA codification rule 2—corrective action beyond the facility boundary, December 1, 1987, 52 *FR* 45788–45799 [1].	Rules 35 IAC 724.200; 724.201, effective June 16, 1988.
HSWA codification rule 2—corrective action for injection wells, December 1, 1987, 52 *FR* 45788–45799 [1].	Rules 35 IAC 704.151; 704.161; 725.101; 703.141, effective June 16, 1988.
HSWA codification rule 2—permit modification, December 1, 1987, 52 *FR* 45788–45799 [1].	Rules 35 IAC 702.184, effective June 16, 1988.
HSWA codification rule 2—permit as a shield provision December 1, 1987, 52 *FR* 45788–45799 [1].	Rules 35 IAC 702.181, effective June 16, 1988.
HSWA codification rule 2—permit conditions to protect human health and the environment, December 1, 1987, 52 *FR* 45788–45799 [1].	Rules 35 IAC 703.181, effective June 16, 1988.
HSWA codification rule 2—post-closure permits, December 1, 1987, 52 *FR* 45788–45799 [1].	Rules 35 IAC 703.120; 703.121; 703.159; 703.160, effective June 16, 1988.
Hazardous waste miscellaneous units, December 10, 1987, 52 *FR* 46946–46965	Rules 35 IAC 703.183; 703.209; 704.161; 720.110; 724.110; 724.115; 724.118; 724.173; 724.190; 724.211; 724.212; 724.214; 724.217; 724.218; 724.244; 724.700; 724.701; 724.702; 724.703, effective June 16, 1988.
Technical corrections; identification and listing of hazardous waste, April 22, 1988, 53 *FR* 13382–13393.	Rules 35 IAC 721.133; section 721, appendix H, effective December 28, 1988.
Identification and listing of hazardous waste; technical correction, July 19, 1988, 53 *FR* 27162–27163 [1].	Rules 35 IAC 721.105, effective December 28, 1988.
Farmer exemptions; technical corrections July 19, 1988, 53 *FR* 27164–27165 [1]	Rules 35 IAC 703.123; 722.110; 724.101; 725.101; 728.101, effective December 28, 1988.
Identification and listing of hazardous waste; treatability studies sample, exemption, July 19, 1988, 53 *FR* 27290–27302.	Rules 35 IAC 720.110; 721.104, effective December 28, 1988.
Land disposal restrictions for first third scheduled wastes, August 17, 1988, 53 *FR* 31138–31222, as amended on February 27, 1989, 53 *FR* 8264–8266.	Rules 35 IAC 724.113; 724.173; 725.113; 725.173; 726.120; 728.101; 728.104; 728.107; 728.108; 728.130; 728.131; 728.132; 728.133; 728.140; 728.141; 728.142; 728.143; 728.150, effective December 28, 1988.
Hazardous waste management system; standards for hazardous waste storage and treatment tank systems, September 2, 1988, 53 *FR* 34079–37087 [1].	Rules 35 IAC 702.110; 720.110; 724.414; 724.290; 724.293; 724.296; 725.210; 725.214; 725.290; 725.293; 725.296; 725.301; effective November 13, 1989.
Identification and listing of hazardous waste; and designation, reportable quantities, and notification, September 13, 1988, 53 *FR* 35412–35421.	Rules 35 IAC 721.132; section 721, appendix G, effective November 13, 1989.

Federal requirement	Analogous State authority
Permit modifications for hazardous waste management facilities, September 28, 1988, 53 *FR* 37912–37942, as amended on September 28, 1988, 53 *FR* 41649.	Rules 35 IAC 702.110; 702.181; 702.149; 703.222; 703.223; 703.230; 703.260; 703.270; 703.271; 703.280; 703.281; 703.282; 703.283; Section 703 Appendix A; 705.128; 724.154; 724.212; 724.218; 725.212; 725.218; effective November 13, 1989.
Statistical methods for evaluating ground-water monitoring data from hazardous waste facilities, October 11, 1988, 53 *FR* 39720–39731.	Rules 35 IAC 724.191; 724.192; 724.197; 724.198; 724.199, effective November 13, 1989.
Identification and listing of hazardous waste; removal of iron dextran from the list of hazardous wastes, October 31, 1988, 53 *FR* 43878–43881.	Rules 35 IAC 721.133; section 721, appendix H, effective November 13, 1989.
Identification and listing of hazardous waste; removal of strontium sulfide from the list of hazardous wastes, October 31, 1988, 53 *FR* 43881–43884.	Rules 35 IAC 721.133; section 721, appendix H, effective November 13, 1989.
Standards for generators of hazardous waste, November 8, 1988, 53 *FR* 45089–45093.	Rules 35 IAC 722.120; section 722, appendix A, effective November 13, 1989.
Hazardous waste miscellaneous units; standards applicable to owners and operators, January 9, 1989, 53 *FR* 615–617.	Rule 35 IAC 703.183, effective November 13, 1989.
Amendment to requirements for hazardous waste incinerator permits, January 30, 1989, 54 *FR* 4286–4288.	Rule 35 IAC 703.225, effective April 16, 1990.
Changes to interim status facilities for hazardous waste management permits; procedures for post-closure permitting, March 7, 1989, 54 *FR* 9596–9609.	Rules 35 IAC 702.122; 703.121; 703.155; 703.157; 703.240; section 703, appendix A; 705.101; 705.201 705.212, effective April 16, 1990.
Land disposal restrictions amendments to first third scheduled wastes, May 2, 1989, 54 *FR* 18836–18838 [1].	Rules 35 IAC 728.143, effective April 16, 1990.
Land disposal restrictions for second third scheduled wastes, June 23, 1989, 54 *FR* 26594–26652 [1].	Rules 35 IAC 728.134; 728.141; 728.142; 728.143, effective August 22, 1990.
Land disposal restrictions; correction to the first third scheduled wastes, September 6, 1989, 54 *FR* 36967,[1] as amended on June 13, 1990, 55 *FR* 23935 [1].	Rules 35 IAC 726.120; 728,101; 728.105; 728.106; 728.107; 728.108; 728.132; 728.133; 728.144; 728.150, effective August 22, 1990 as amended June 17, 1991.
Reportable quantity adjustment methyl bromide production wastes October 6, 1989, 54 *FR* 41402–41408 [1].	Rules 35 IAC 721.132; section 721, appendix C; appendix G, Effective August 22, 1990.
Reportable quantity adjustment, December 11, 1989, 54 *FR* 50968–50979 [1]	Rules 35 IAC 721.131; Section 721, appendix G; appendix H, effective August 22, 1990.
Land disposal restrictions third scheduled wastes, January 31, 1991, 56 *FR* 3864—3928[1].	Rules 35 IAC 721.120; 721.121; 721.122; 721.123; 721.124; 721.131; 721.133; section 721 Appendix G; 722.111; 722.134; 724.113; 724.239; 724.456; 724.381; 724.412; 724.416; 725.101; 725.113; 725.329; 725.356; 725.381; 725.412; 725.416; 728.101; 728.102; 728.103; 728.107; 728.108; 728.109; 728.135; 728.140; 728.141; 728.142; 728.143; section 703 appendix A; section 728 appendix D; appendix E; appendix F; appendix G; appendix H; section 728, table A; table C; table D; table E, effective June 17, 1991.
Land disposal restrictions for third third scheduled wastes, January 31, 1991, 56 *FR* 3864–3928 [1].	Rules 35 IAC 721.103; 172.120; 721.131; 722.111; 722.134; 728.102; 728.107; 728.109; 728.133; 728.135; 728.140; 728.142; 728.143; section 703, appendix A; section 728, appendix D; appendix E; appendix G; appendix H; appendix I; section 728 table A; table B; table C; Table D; table E, Effective June 9, 1992.
Second correction to the third third land disposal restrictions, March 6, 1992, 57 *FR* 8086-8089 [1]	Rules 35 IAC 724.113; 725.113; 728.103; 728.141; section 728, table D, effective March 26, 1993.
Sharing of Information with agency for toxic substances and disease registry, November 8, 1984, SWDA 3019(b).	Statute Ill. rev. stat. 11½, par. 1007, effective January 1, 1985.

[1] Indicates HSWA Provision.

EPA shall administer any RCRA hazardous waste permits or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization, and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA has previously suspended issuance of permits for the other provisions on January 31, 1986, March 5, 1988, April 30, 1990, and June 3, 1991, the effective dates of Illinois' final authorizations for the RCRA base program and for the subsequent program revisions, respectively.

This authorization includes authorization for Illinois to impose certain land disposal prohibitions. Under 40 CFR 268.6, EPA may grant petitions of specific duration to allow land disposal of certain hazardous wastes provided certain criteria are met. States that have authority to impose land disposal prohibitions may ultimately be authorized under RCRA Section 3006 to grant petitions for such exemptions. However, EPA is currently requiring that these petitions be handled at EPA Headquarters. It should be noted that Illinois has its own procedures for petition submission and approval to allow land disposal of a prohibited waste. Therefore, the petitioner must satisfy both Federal and Illinois requirements, and be granted approval by both EPA and the State.

Illinois is not authorized to operate the Federal program on Indian lands.

This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Illinois' application for program revisions meets all of the statutory and regulatory requirements established by RCRA, and its amendments. Accordingly, Illinois is granted final authorization to operate its hazardous waste program as revised. Illinois now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Illinois also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

D. Incorporation by Reference

EPA incorporates by reference, authorized State programs in 40 CFR part 272, to provide notice to the public of the scope of the authorized program in each State. Incorporation by reference of the Illinois program will be completed at a later date.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Illinois' program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 18, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94-14414 Filed 6-13-94; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 272

[FRL-4895-5]

Authorization of State Hazardous Waste Management Program: Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), provides for the U.S. Environmental Protection Agency (EPA) to grant authorization to State agencies to operate their hazardous waste management programs in lieu of the Federal program. The state of Kansas has applied for authorization of revisions to its previously authorized hazardous waste management program under RCRA. The EPA has reviewed the Kansas application and has made a decision, subject to public review and comment, that the Kansas hazardous waste management program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is approving the state's hazardous waste management program revisions. Kansas' application for program revisions is available for public review and comment.

DATES: Final authorization for Kansas shall be effective August 15, 1994 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on the Kansas program revisions application must be received by the close of business July 14, 1994.

ADDRESSES: Copies of the Kansas program revision application are available for inspection and copying during normal business hours at the following addresses: Hazardous Waste Section, Bureau of Waste Management, Kansas Department of Health and Environment, Forbes Field, Topeka, Kansas 66620-0001, 913-296-1600; and, US EPA Region 7, Library, 726 Minnesota Avenue, Kansas City, Kans 66101, 913-551-7241. Written comments should be sent to Gary Bertram, RCRA Branch, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; 913-551-7533.

FOR FURTHER INFORMATION CONTACT: Gary Bertram, (913) 551-7533.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of RCRA (42 U.S.C. 6926) allows EPA to authorize state hazardous waste management programs to operate in the states in lieu of the Federal hazardous waste program. This is done when a state submits to EPA a request for authorization demonstrating that the state hazardous waste program is equivalent, consistent with and no less stringent than the Federal program.

Revisions to state hazardous waste programs are necessary whenever federal or state statutory or regulatory authority is modified or when certain other changes occur. States with final authorization under section 3006(b) of RCRA have a continuing obligation to maintain state programs that are equivalent to, consistent with, and no less stringent than the federal hazardous waste management program. Most commonly, state program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124 and 260 through 271 that require corresponding changes in the state program in order for the state to maintain its authorization.

B. Kansas

Kansas initially received final authorization effective October 17, 1985. Kansas received authorization for revisions to its program effective June 25, 1990. Kansas submitted a draft authorization application on March 1, 1990, and submitted the final revision application on February 24, 1994.

To meet its obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal hazardous waste program, Kansas has submitted a request to be authorized for additional RCRA authorities which have been promulgated by EPA since the Kansas base program approval.

The EPA has reviewed the state's application with respect to the requirements for state authorization contained in 40 CFR part 271 and determined that its hazardous waste program revision satisfies all of the

requirements to qualify for final authorization. Consequently, EPA is granting final authorization for the additional program modifications to Kansas. Today's decision is being published as an "immediate final" rule in accordance with the provisions of 40 CFR 271.21(b)(3). The public may submit written comments on this immediate final decision until the date noted in the "Dates" section of this document. Approval of the Kansas program revision shall become effective 60 days from today unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Those specific RCRA program portions which are being authorized today are listed below by their descriptive names and Federal Register citations.

Federal RCRA Provisions

Dioxin Waste Listing and Management Standards (50 FR 1978, January 14, 1985)
Paint Filter Test (50 FR 18370, April 30, 1985)
Codification Rule (50 FR 28702, July 15, 1985) (Only the following provisions: Household waste; Generator Requirements; Facility Permit Requirements; Permitting Requirements; Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves; Liquids in Landfills; Dust Suppression; Double Liners; Ground-Water Monitoring; Cement Kilns; Fuel Labeling; Pre-construction Ban; Permit Life; Omnibus Provision; Interim Status; Research and Development Permits; Hazardous Waste Exports; and Exposure Information)
Listing of TDI, DNT, and TDA Wastes (50 FR 42936, October 23, 1985)
Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces (50 FR 49164, November 29, 1985, (Amended on November 19, 1986 at 51 FR 41900 and April 13, 1987 at 52 FR 11822))
Listing of Spent Solvents (50 FR 53315, December 31, 1985)
Listing of EDB Wastes (51 FR 5330, February 13, 1986)
Listing of Four Spent Solvents (51 FR 6541, February 25, 1986)
Generators of 100 to 1000 kg Hazardous Waste (51 FR 10174, March 24, 1986)
Codification Rule, Technical Correction (51 FR 19176, May 28, 1986)
Standards for Hazardous Waste Storage and Treatment Tank Systems (51 FR 25470, July 14, 1986)
Exports of Hazardous Waste (51 FR 28686, August 8, 1986)
Standards for Generators—Waste Minimization Certifications (51 FR 55190, October 1, 1986)
Listing of EBDC (51 FR 37725, October 24, 1986)
Land Disposal Restrictions (51 FR 40572, November 7, 1986 (as amended on June 4, 1987, 52 FR 21010))
Revised Manual SW–846; Amended Incorporation by Reference (52 FR 8072, March 16, 1987)
Closure/Post-Closure Care for Interim Status Surface Impoundments (52 FR 8704, March 19, 1987)
Definition of Solid Waste, Technical Corrections (52 FR 21306, June 5, 1987)
Amendments to Part B Information Requirements for Disposal Facilities (52 FR 23447, June 22, 1987 (as amended on September 9, 1987, 52 FR 33936))
List (Phase 1) of Hazardous Constituents for Ground-Water Monitoring (52 FR 25942, July 9, 1987)
Identification and Listing of Hazardous Waste (52 FR 26012, July 10, 1987)
Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee (52 FR 44314, November 18, 1987)
Hazardous Waste Miscellaneous Units (52 FR 46946, December 10, 1987)
Technical Corrections; Identification and Listing of Hazardous Waste (53 FR 13382, April 22, 1988)
Identification and Listing of Hazardous Waste; Technical Correction (53 FR 27162, July 19, 1988)
Farmer Exemptions; Technical Corrections (53 FR 27164, July 19, 1988)
Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption ([53 FR 27290, July 19, 1988)
Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems (53 FR 34079, September 2, 1988)
Permit Modifications for Hazardous Waste Management Facilities (53 FR 37912, September 28, 1988 (as amended on October 24, 1988, 53 FR 41649))
Statistical Methods for Evaluating Ground-Water Monitoring Data from Hazardous Waste Facilities (53 FR 39720, October 11, 1988)
Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes([53 FR 43878, October 31, 1988)
Identification and Listing of Hazardous Waste; Removal of Strontium Sulfide from the List of Hazardous Wastes (53 FR 43881, October 31, 1988)
Standards for Generators of Hazardous Waste (53 FR 45089, November 8, 1988)
Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators (54 FR 615, January 9, 1989)
Amendment to Requirements for Hazardous Waste Incinerator Permits (54 FR 4286, January 30, 1989)
Changes to Interim Status Facilities for Hazardous Waste Management Permits; Procedures for Post-Closure Permitting (54 FR 9596, March 7, 1989)

The state will assume lead responsibility for issuing permits for those program areas authorized today. For those HSWA provisions for which the state is not authorized, EPA will retain lead responsibility. For those permits which will now change to state lead from EPA, EPA will transfer copies of any pending applications, completed permits or pertinent file information to the state within 30 days of the effective date of this authorization. The EPA will be responsible for enforcing the terms and conditions of federally issued permits while they remain in force. The EPA will also be responsible for enforcing the terms and conditions of RCRA permits regarding HSWA requirements until the state has the authority to address the HSWA requirements.

The state has agreed to review all State issued permits and to modify or reissue them as necessary to require compliance with the currently approved state law and regulations. When the state reissues federally issued permits as state permits, the state will take the lead in enforcing such permits, with the exception of those HSWA requirements for which the state has not received authorization.

C. Decision

I conclude that the Kansas application for program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Kansas is granted final authorization to operate its hazardous waste management program, as revised. Kansas now has responsibility for the permitting of treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Kansas also has primary enforcement responsibilities, although EPA retains

the right to conduct inspections under sections 3007, 3013 and 7003 of RCRA.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain federal regulations in favor of the Kansas program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This rulemaking is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended [42 U.S.C. 6912(a), 6926, 6974(b)].

Dated: May 28, 1994.

William Rice,

Regional Administrator.

[FR Doc. 94–14285 Filed 6–13–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR parts 107, 172 and 176

Hazardous Materials

CFR Correction

In title 49 of the Code of Federal Regulations, parts 100 to 177, revised as of October 1, 1993, make the following corrections:

§ 107.502 [Corrected]

1. On page 36, in § 107.502(f)(1), "September 1, 1995" should read "September 1, 1991".

§ 172.420 [Corrected]

2. On page 386, in § 172.420(a), the illustration should be displayed as follows:



§ 172.422 [Corrected]

3. On page 387, in § 172.422(a), the illustration should be displayed as follows:



§ 172.521 [Corrected]

4. On page 397, in § 172.521(a), the illustration should be displayed as follows:



§ 172.546 [Corrected]

5. On page 402, in § 172.546(a), the illustration should be displayed as follows:



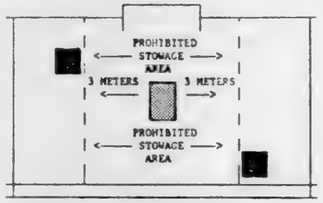
§ 172.556 [Corrected]

6. On page 404, in § 172.556(a), the illustration should be displayed as follows:

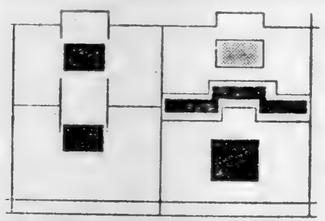


§ 176.83 [Corrected]

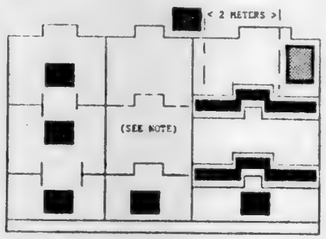
7. On page 711, in § 176.83(c)(2)(ii), the illustration should be displayed as follows:



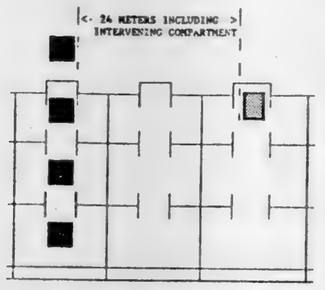
8. On page 711, in § 176.83(c)(2)(iii), the illustration should be displayed as follows:



9. On page 712, in § 176.83(c)(2)(iv), the illustration should be displayed as follows:



10. On page 712, in § 176.83(c)(2)(v), the illustration should be displayed as follows:



[FR Doc. 94–99999 Filed 6–13–94; 8:45 am]

BILLING CODE 1505-01-D

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 826

Equal Access To Justice Act Fees

AGENCY: National Transportation Safety Board.

ACTION: Final rules.

SUMMARY: The NTSB is adopting various housekeeping amendments to its Equal Access to Justice Act (EAJA) rules to reflect current law and practice.

DATES: The new rules will be effective on June 14, 1994.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 382–1952.

SUPPLEMENTARY INFORMATION: The Board hereby adopts five editorial amendments to its rules at 49 CFR 826, each of which is explained below. Because these amendments are intended to make no changes but are intended only to reflect current law and practice; they are being made effective without notice and comment.

1. Section 826.2 is amended to remove outdated information that was responsive to the 1981 extension of EAJA and is no longer relevant.

2. By notice published in the **Federal Register** on April 22, 1992, the Board increased its cap on attorney fees contained at 49 CFR 826.6(b). We adopted a formula tied to the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items, unless a more specific geographic index is published for the locality. This "CPI" is the generally understood "cost of living" index that is widely used as a price inflator in labor and contract matters. The rule contained U.S. City figures through 1992. Our amendment here adds the 1993 figure.

3. In 1985, EAJA was amended (Pub. L. No. 99–80) to reduce limitations on its application. The $1 million/$5 million net worth limits for individuals and businesses, respectively, contained in Title 5 U.S.C. 504(b) (1) were increased to $2 million/$7 million caps. We amended our rules at § 826.4(b) (1) and (2) to reflect this change, but failed to make a similar modification to § 826.21(b). We do so here, reflecting current law.[1]

4. We take this opportunity to codify our ruling in *Administrator* v. *Holloway*, NTSB Order EA–4155 (served May 3, 1994), by amending § 826.24 to indicate that the Board is without authority to grant extensions to file EAJA applications.

5. Lastly, we amend § 826.31 to provide that our rules of practice in part 821 apply to EAJA proceedings, to the extent not inconsistent with other, more specific rules in part 826.

As required by the Regulatory Flexibility Act, we certify that the adopted rules will not have a substantial impact on a significant number of small entities. What effect they may have, however, would be beneficial to small entities by clarifying our procedures. The rules are not major rules for the purposes of Executive Order 12291. We also conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources, nor will this action impose any information collection requirements requiring approval under the Paperwork Reduction Act.

List of Subjects in 49 CFR Part 826

Claims, Equal access to justice, Lawyers.

Accordingly, 49 CFR part 826 is amended as set forth below.

PART 826—RULES IMPLEMENTING THE EQUAL ACCESS TO JUSTICE ACT OF 1980

1. The authority citation for part 826 continues to read as follows:

Authority: Section 203(a)(1) P. L. 99–80, 99 Stat. 186 (5 U.S.C. 504).

2. Section 826.2 is revised to read as follows:

§ 826.2 When the Act applies.

The Act applies to any adversary adjudication identified in § 826.3 as covered under the Act.

3. Section 826.6 is amended by revising paragraph (b)(1) to read as follows:

§ 826.6 Allowable fees and expenses.

* * * * *

(b)(1) No award for the fee of an attorney or agent under these rules may exceed $75 indexed as follows:

$$\frac{X}{\$75/hr} = \frac{CPI_New}{CPI_1981}$$

The CPI to be used is the annual average CPI, All Urban Consumers, U.S. City Average, All Items, except where a local, All Item index is available. Where a local index is available, but results in a manifest inequity vis-a-vis the U.S. City Average, the U.S. City Average may be used. The numerator of that equation is the yearly average for the year(s) the services were provided, with each year calculated separately. If an annual average CPI for a particular year is not yet available, the prior year's annual average CPI shall be used. This formula increases the $75 statutory cap by indexing it to reflect cost of living increases, as authorized in 5 U.S.C. 504(b)(1)(A)(ii). Application of these increased rate caps requires affirmative findings under § 821.6(c) of this chapter. For ease of application, available U.S. City figures are reproduced as follows:

1981	90.9
1982	96.5
1983	99.6
1984	103.9
1985	107.6
1986	109.6
1987	113.6
1988	118.3
1989	124.0
1990	130.7

[1] Lloyd Ericcson has petitioned for this change, which petition we here grant.

1991	136.2
1992	140.3
1993	144.5

* * * * *

4. Section 826.21 is amended by revising paragraph (b) introductory text to read as follows:

§ 826.21 Contents of application.

* * * * *

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

* * * * *

5. Section 826.24 is amended by revising paragraph (a) to read as follows:

§ 826.24 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding, but in no case no later than the 30 days after the Board's final disposition of the proceeding. This 30-day deadline is statutory and the Board has no authority to extend it.

* * * * *

6. Section 826.31 is revised to read as follows:

§ 826.31 Filing and service of documents and general procedures.

The rules contained in 49 CFR part 821 apply to proceedings under the Act, unless they are superseded by or are inconsistent with a provision of this part.

Issued in Washington, DC on this 8th day of June, 1994.

Carl W. Vogt,

Chairman.

[FR Doc. 94–14339 Filed 6–13–94; 8 45 am]

BILLING CODE 7533–01–P

Proposed Rules

Federal Register
Vol. 59, No. 113
Tuesday, June 14, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AF90

Prevailing Rate Systems: Change of Lead Agency Responsibility for the Cleveland, Ohio, Wage Area for Pay-Setting Purposes

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to change the lead agency responsibility for the Cleveland, Ohio, Federal Wage System (FWS) wage area from the National Aeronautics and Space Administration (NASA) to the Department of Veterans' Affairs (VA) for pay-setting purposes. This change would recognize the fact that VA is now the major employer of FWS employees in the Cleveland, Ohio, FWS wage area.

DATES: Comments must be received on or before July 14, 1994.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Mark Allen, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The National Aeronautics and Space Administration (NASA) is the lead agency for the Cleveland, Ohio, Federal Wage System (FWS) wage area, and the NASA Lewis Research Center is the host activity for the local FWS wage survey. FWS employment at the Center has been declining in recent years. NASA has requested that the Department of Veterans' Affairs (VA) assume lead agency responsibility for the Cleveland wage survey. VA now has more FWS employees in the Cleveland wage area than any other agency, has the resources to carry out local wage surveys in the wage area. and is willing to assume responsibility as lead agency effective for the next full-scale wage survey scheduled to begin in the wage area in April 1995. The Federal Prevailing Rate Advisory Committee has reviewed and concurred with this proposed change.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix A to subpart B is amended for Cleveland, Ohio, by removing the lead agency "NASA" and adding in its place "VA".

[FR Doc. 94–14275 Filed 6–13–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Crop Insurance Regulations; Reinsurance Agreement—Standards for Approval

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations, effective for the 1995 and succeeding reinsurance years to revise the general qualifications for being awarded a Standard Reinsurance Agreement. This rule intends to provide additional information so that FCIC can more accurately identify those insurance companies at risk of bankruptcy.

DATES: Written comments pursuant to this rule must be received by June 29, 1994.

ADDRESSES: Comments pursuant to this proposal should be sent to Mari Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250. Hand messenger delivery may be made to, Suite 500, 2101 L Street, NW., Washington, DC. Comments received may be viewed and copied at Suite 503, 2101 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mari Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 254–8450.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of this regulation under those procedures. The sunset review date established for these regulations is March 31, 1999.

This rule has been determined not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This action will not have a significant economic effect on a substantial number of small entities. This action does not increase the paperwork burden on the reinsured company because the reinsured company must already provide the additional information required by this regulation to the state in which it is licensed. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule are not retroactive and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR 400.169, must be exhausted before judicial action may be brought.

Since reinsured companies must already provide the additional information required by the proposed rule to the state which licenses them, this proposed rule does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, the Paperwork Reduction Act.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

The standard requirements for being eligible to obtain a Standard Reinsurance Agreement (Agreement) with FCIC are found in 7 CFR 400, subpart L, and currently require that a reinsured company pass eight out of eleven National Association of Insurance Commissioners (NAIC) Insurance Regulatory Information System (IRIS) ratios. These ratios are meant to be an early warning device, alerting state regulators to insurance companies that may be in financial distress. These ratios are indicators that evaluate changes in an insurance company's financial condition. This rule proposes that FCIC add six additional radios to the current eleven IRIS ratios to improve the overall evaluation of a reinsured company's financial condition, to require the reinsured company to explain discrepancies in all ratios, and to provide a financial plan to overcome each discrepancy. The additional ratios include one new IRIS ratio, Gross Premium to Surplus, three ratios used by A.M. Best (Combined Ratio After Policyholder Dividends, Quick Liquidity, and Return on Surplus) found in *Best's Key Rating Guide*, a Two-Year Change to Surplus Ratio developed by FCIC which calculates the same as the One-Year Change to Surplus IRIS ratio but for a two-year period; and a Net Change in Cash and Short-Term Investments ratio also developed by FCIC to measure net cash flow development.

Thirty-three profitability, leverage, liquidity, and loss reserve ratios were calculated by FCIC for each current reinsured company. These calculations include both (NAIC), (IRIS), and A.M. Best ratios representing the current industry standard with which the reinsured company should be familiar. While it is proposed that only selected ratios will be used to determine eligibility, all ratios are available for financial analysis. The data required to complete the ratio calculations are derived from the Statutory Annual Financial Statement submitted by the reinsured company to the state insurance departments and FCIC. However, FCIC may supplement financial information contained in the Statutory Annual Financial Statement with information obtained from other audited or unaudited financial statements prepared in accordance with Generally Accepted Accounting Principles.

The ratios were evaluated to determine which ratios within each category best represent Multiple Peril Crop Insurance (MPCI) liability and its impact on insurance companies. The selection criteria included factors such as the short-term nature and annual cash flow cycle of MPCI insurance, and the varying size and business mix of the insurance company. For each ratio an acceptable range was established to determine whether a company passed or failed the ratio.

The current surplus requirement utilizes a Minimum Surplus Factor which limits a reinsured company's liability under the MPCI program based on the surplus available to the reinsured company. The liabilities of other lines of business written by the reinsured company are generally not considered. However, if a reinsured company underwrites only MPCI and crop-hail insurance, both liabilities will be considered. Since much of FCIC's MPCI insurance is delivered by insurers that write considerable premium and policies in the crop-hail market, increased evaluation using additional ratios for evaluating and comparing each company's financial integrity is necessary.

Seventeen ratios were selected for the general qualifications, including the eleven present NAIC IRIS ratios. Company profitability is measured by the following six ratios: *Combined Ratio After Policyholder Dividends, Two-Year Overall Operating, One-Year Change in Surplus, Two-Year Change in Surplus, Return on Surplus, and Investment Yield*. The profitability on an MPCI reinsured company is dependent on company underwriting practices, catastrophic loss experience and recovery, and its ability to generate an adequate return on investments.

A reinsured company's liquidity and cash management are measured by the following four ratios: *Agents' Balances to Surplus, Quick Liquidity, Liabilities to Liquid Assets, and Net Change in Cash and Short-Term Investments*. The combination of varying annual loss experience, loss payout to premium collection time frame, and MPCI accounting procedures, require the company maintain sufficient liquidity. Cash and short-term investment management is a key factor in maintaining sufficient liquidity and meeting current obligations.

The four leverage ratios used are: *Gross Premium to Surplus, Net Written Premium to Surplus, Change in Net Writings, and Surplus Aid to Surplus*. These measures will indicate if a reinsured company may be overexposing their surplus to risk variation and reinsurance dependency. The three loss reserve ratios used are: *One-Year Reserve Development to Surplus, Two-Year Reserve Development to Surplus, and Estimated Current Reserve Deficiency to Surplus*. These ratios determine if reserves have been understated to increase surplus and to estimate current reserve adequacy.

Section 400.173 is removed as it is not necessary after revising Subpart L to determine if the insurer is otherwise financially sound. If an insurer does not pass the required ratios and submits a financial plan that does not alleviate discrepancies in the required ratios, the reinsured company will be considered not financially sound and will not be awarded a Standard Reinsurance Agreement.

All participating insurance companies in the crop insurance industry have been fully advised of the content of this proposed rule during the preparation stage and in fact have participated in developing this rule. Since the rule must be effective prior to the effective date of the Standard Reinsurance Agreement (July 1, 1994), it has been

determined that for good cause, a 15 day comment period is sufficient. In May, FCIC held a meeting for the express purpose to introduce and discuss the SRA and its standards for approval prior to its publication. All parties interested in the SRA were invited. Prior to its publication, a copy of this rule was sent to all persons interested in the crop insurance program.

List of Subjects in 7 CFR Part 400

Crop Insurance.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR part 400, subpart L of the General Administrative Regulations effective for the 1995 and succeeding reinsurance years as follows:

1. The authority citation for 7 CFR part 400, subpart L is revised to read as follows:

Authority: 7 U.S.C. 1501–1520.

2. The heading for subpart L is revised to read as follows:

Subpart L—Reinsurance Agreement—Standards for Approval

3. Section 400.161 is amended by removing paragraph (f), redesignating paragraphs (a) through (e) as paragraphs (b) through (f), and adding a new paragraph (a) to read as follows:

§ 400.161 Definitions.

* * * * *

(a) *Annual Statutory Financial Statement* means the annual financial statement of an insurer prepared in accordance with Statutory Accounting Principles and submitted to the state insurance department if required by any state in which the insurer does business, and the subsequent Audited Financial Report filed with the state insurance department as prescribed in the National Association of Insurance Commissioners Property and Casualty Annual State Instructions. These statement are to be audited by an independent Certified Public Accountant.

* * * * *

4. Section 400.162 is revised to read as follows:

§ 400.162 Qualification ratios.

The seventeen qualification ratios include:

(a) Twelve National Association of Insurance Commissioner's (NAIC) Insurance Regulatory Information System (IRIS) ratios found in § 400.170(d)(1) (i) and (ii) and § 400.170(d)(2) (i), (ii), (iii), (vi), (vii), (ix), (xi), (xiii), (xiv), and (xv) and referenced in "Using the NAIC Insurance Regulatory Information System" distributed by NAIC, 120 West 12th St., Kansas City, MO, 64105–1925;

(b) Three ratios used by A.M. Best Company found in § 400.170(d)(2) (v), (viii), and (x) and referenced in *Best's Key Rating Guide*, A.M. Best, Ambest Road, Oldwick, N.J., 08858–0700;

(c) One ratio found in § 400.170(d)(2)(iv) which is formulated by FCIC and is calculated the same as the One-Year Change to Surplus IRIS ratio but for a two-year period; and

(d) One ratio found in § 400.170(d)(2)(xii) which is also formulated by FCIC by dividing the net change in cash and short-term investments by the cash and short-term investment balance for the prior year.

5. Section 400.170 is revised to read as follows:

§ 400.170 General qualifications.

To qualify initially or thereafter for a Standard Reinsurance Agreement with FCIC, an insurer must:

(a) Be a licensed or admitted insurer in any state, territory, or possession of the United States;

(b) Be licensed or admitted, or use as a policy-issuing Company an insurer that is licensed or admitted, in each state from which the insurer will cede policies to FCIC for reinsurance;

(c) Have surplus, as reported in its most recent Annual Statutory Financial Statement, that is at least equal to the MPUL for the gross premium proposed to be reinsured multiplied by the appropriate Minimum Surplus Factor, found in the Minimum Surplus Table. For the purposes of the Minimum Surplus Table, an insurer is considered to issue policies in a state if at least two and one-half percent (2.50%) of all its reinsured gross premium is written in that state;

(d) Have and meet the ratio requirement of Gross Premium to Surplus and Net Written Premium to Surplus and at least ten of the fifteen optional ratios in this section based on the most recent Annual Statutory Financial Statement, and comply with § 400.172:

Ratio	Ratio requirement
(1) Required:	
(i) Gross Premium to Surplus	Less than 900%.
(ii) Net Written Premium to Surplus	Less than 300%.
(2) Optional:	
(i) Two-Year Overall Operating Ratio	Less than 100%.
(ii) Agents' Balances to Surplus	Less than 40%.
(iii) One-Year Change in Surplus	Greater than −10% and less than 50%.
(iv) Two-Year Change in Surplus	Greater than −10%.
(v) Combined Ratio After Policyholder Dividends	Less than 115%.
(vi) Change in Writings	Greater than −33% and less than 33%.
(vii) Surplus Aid to Surplus	Less than 15%.
(viii) Quick Liquidity	Greater than 20%.
(ix) Liabilities to Liquid Assets	Less than 105%.
(x) Return on Surplus	Greater than −5%.
(xi) Investment Yield	Greater than 4.5% and less than 10%.
(xii) Net Change in Cash/Short-Term Investments	Greater than −20%.
(xiii) One-Year Reserve Development to Surplus	Less than 20%.
(xiv) Two-Year Reserve Development to Surplus	Less than 20%.
(xv) Estimated Current Reserve Deficiency to Surplus	Less than 25%.

(e) Submit to FCIC all of the following statements:

(1) Annual Statutory Financial Statements;

(2) Statutory Management Discussion & Analysis;

(3) Most recent State Insurance Department Examination Report;

(4) Actuarial Opinion of Reserves;

(5) Annual GAAP Statement or Form 10K (does not apply to Mutual Insurance Companies);

(6) Audited Annual Report to Shareholders; and

(7) Any other appropriate financial information or explanation of IRIS ratio discrepancies as determined by the company or as requested by FCIC.

6. Section 400.171 is revised to read as follows:

§ 400.171 Qualifying when a state does not require that an Annual Statutory Financial Statement be filed.

An insurer exempt by the insurance department of the state from submitting an Annual Statutory Financial Statement must, in addition to the requirements of § 400.170(a),(b),(c),(d), and (e), submit an Annual Statutory Financial Statement certified by a Certified Public Accountant, which if not exempted, would have been filed with the insurance department of any state in which it does business.

7. Section 400.172 is revised to read as follows.

§ 400.172 Qualifying with less than twelve ratios meeting the specified requirements.

An insurer with less than twelve ratios meeting the requirements contained in § 400.170 may qualify if, in addition to the requirements of § 400.170(a),(b),(c) and (e), the insurer:

(a) Submits a financial management plan, acceptable to FCIC, to eliminate each deficiency indicated by the ratios, or provide an acceptable explanation if any failed ratio is not relevant to the insurer's insurance operations; or

(b) Has a binding agreement with another insurer that qualifies such insurer under this subpart to assume financial responsibility in the event of the reinsured company's failure to meet its obligations on FCIC reinsured policies.

§ 400.173 [Removed]

8. Section 400.173 is removed and reserved.

§ 400.174 [Amended]

9. In Section 400.174, the words "financial statement" are removed and the words "Annual Statutory Financial Statement" are added in their place.

§ 400.175 [Amended]

10. In Section 400.175(a), the words "financial statement" are removed and the words "Annual Statutory Financial Statement or Financial Statement" are added in their place.

Done in Washington, DC on June 2, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94-14296 Filed 6-13-94; 8:45 am]

BILLING CODE 3410-08-M

Federal Crop Insurance Corporation

7 CFR Part 406

Nursery Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Nursery Crop Insurance regulations effective for the 1995 and succeeding crop years, by allowing a six month delay in the payment of premiums. The premium billing date will be extended for up to six months from September 30, to March 31 of the subsequent year insurance attaches.

DATES: Written comments, data, and opinions on this rule must be submitted no later than June 29, 1994, to be sure of consideration.

ADDRESSES: Mari L. Dunleavy, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254-8314. Hand messenger delivery may be made to, Suite 500, 2101 L Street, NW., Washington, DC. Comments received may be viewed and copied at Suite 503, 2101 L. Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, (202) 254-8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12866 and Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the regulations affected by this rule under those procedures. The sunset review date established for these regulations is October 1, 1994.

This rule has been determined to be "not significant" for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

This action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on the producers served by this voluntary crop insurance program because this action liberalizes the terms of the nursery crop insurance contract for the insured. Extending credit to producers may have a minor economic effect on the insurer only if producers do no pay their premium. However, based on past experience, non-payment of nursery crop premiums has been insignificant. For years in which premium payment have been deferred, only two disputes over premium payment have occurred. This represents less than one percent of the total nursery crop policies purchased. As these disputes have not yet been resolved, all premiums may potentially be paid. Further FCIC will administratively extend the date for payment by the reinsured company when necessary to be consistent with the final date the insured is required to submit premium payment. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This amendment does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, the Paperwork Reduction Act.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that the policies and procedures contained in this rule do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures in this rule will not have an increased substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule are not retroactive and will preempt state and local laws to the extent such state and local laws are inconsistent therewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought for actions taken under this policy or before any proceedings for the imposition of civil penalties under 7 U.S.C. 1506 or under the Program Fraud Civil Remedies may be effective.

Because it is urgent that insurance companies and producers be notified as soon as possible, and because of the need to file actuarial tables on time, public comments will be accepted for 15 days after publication of this rule.

Background

The nursery crop insurance policy is the only Federal crop insurance policy that requires premium payment in full prior to insurance attachment. Premium for other Federal crop insurance policies can be paid later, usually at or near harvest. FCIC took such action for the 1993 and 1994 crop years. Discontinuing this practice would be burdensome to the insured, therefore, FCIC intends to continue to allow the later payment of premiums. The insurance premium will be changed from September 30 preceding the crop year, to March 31 of the crop year.

Written comments received pursuant to this proposed rule will be made available for public inspection and copying in suite 500, 2101 L Street, NW., Washington DC during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 406

Crop Insurance, Nursery, Premium deferred.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Nursery Crop Insurance Regulations (7 CFR part 406) effective for the 1995 and subsequent crop years, by amending the provisions for coverage. This rule amends the regulations set forth herein in the following instances:

1. The authority citation for 7 CFR part 406 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 406.7 is amended in the contract by revising subsection 5. (a) to read as follows:

§ 406.7 The application and policy.

* * * * *

5. Annual Premium.

a. The annual premium is earned and payable on or before September 30 preceding each crop year and will be earned in full when the policy becomes effective. The date for payment of the premium will be deferred until March 31 of the crop year.

* * * * *

Done in Washington, DC on June 2, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94-14402 Filed 6-13-94; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 457

Common Crop Insurance Regulations; Regulations for the 1994 and Subsequent Crop Years

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations. The number of years a policy does not earn a premium without policy termination is proposed to be changed from one year to three years. The intended effect of this amendment is to allow a producer to rotate crops without policy cancellation. The arbitration procedures would apply to all disagreements on factual determinations and be in accordance with the rules of the American Arbitration Association. Currently, the arbitration procedures apply only to disagreement on production to be counted. The intended effect of this amendment is to broaden the applicability of arbitration procedures to other possible disagreements under such policies.

DATES: Written comments, data, and opinions on this proposed rule must be submitted no later than August 15, 1994 to be sure of consideration.

ADDRESSES: Written comments on this proposed rule should be sent to Mari L. Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250 or delivered to suite 500, 2101 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, 202-254-8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12866 and Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is November 1, 1999.

A summary of this rule has been submitted to the Office of Management and Budget (OMB) to be determined if it meets the requirements of a "significant regulation" as defined by Executive Order 12866.

Executive Order 12612, Federalism. This proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 through 612) these regulations will not have a significant impact on a substantial number of small entities. The regulatory revision is limited to reinsured companies and their agents and crop producers insured under the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*). Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of General Counsel has certified to OMB that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

List of Subjects in 7 CFR Part 457

Crop insurance.

Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR part 457) as follows:

PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 457.8 is amended by revising subsection 2.(e) and section 17 of the Common Crop Insurance Policy to read as follows:

§ 457.8 The application and policy.

* * * * *

2. Life of Policy, Cancellation, and Termination

* * * * *

(e) Your Policy will terminate if no premium is earned for 3 consecutive years.

* * * * *

17. Arbitration

If you and we fail to agree on any factual determination, disagreement will be resolved, in accordance with the rules of the American Arbitration Association. Failure to agree with any factual determination made by the Federal Crop Insurance Corporation (FCIC) must be resolved through the FCIC appeal regulation at 7 CFR part 400, subpart J.

* * * * *

Done in Washington, DC on May 11, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–14312 Filed 6–13–94; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 94–95]

RIN 1550–AA75

Risk-Based Capital Standards; Bilateral Netting Requirements

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to amend its risk-based capital standards to recognize the risk-reducing benefits of netting arrangements. Under the proposal, savings associations would be permitted to net, for risk-based capital purposes, interest and exchange rate contracts (rate contracts) subject to legally enforceable bilateral netting contracts that meet certain criteria. The OTS is proposing these amendments on the basis of proposed revisions to the Basle Accord which would permit the recognition of such netting arrangements. These amendments parallel recent amendments proposed by the Board of Governors of the Federal Reserve System (FRB) and the Office of the Comptroller of the Currency (OCC). 59 FR 26456 (May 20, 1994). The effect of the proposed amendments would be to allow thrift institutions to net positive and negative mark-to-market values of rate contracts in determining the current exposure portion of the credit equivalent amount of such contracts to be included in risk-weighted assets.

DATES: Comments must be received on or before July 14, 1994.

ADDRESSES: Written comments should be submitted to the Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 94–95. These submissions may be hand delivered at 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late filed, misaddressed or misidentified submissions will not be considered in this notice of proposed rulemaking. Comments will be available for public inspection at 1700 G Street, NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reading Room at established intervals.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Senior Program Manager, Capital Policy (202) 906–6455; Lorraine E. Waller, Counsel (Banking and Finance) (202) 906–6458, Regulations & Legislation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. Background

The international risk-based capital standards (Basle Accord) [1] include a framework for calculating risk-weighted assets by assigning assets and off-balance sheet items, including interest and exchange rate contracts, to broad risk categories based primarily on credit risk. The OTS and the other banking agencies [2] each adopted in 1989 similar frameworks to assess the capital adequacy of the banking organizations under their supervision. Banking organizations and savings associations (institutions) must hold capital against their overall credit risk, that is, generally, against the risk that a loss will be incurred if a counterparty defaults on a transaction.

Under the risk-based capital framework, off-balance sheet items are incorporated into risk-weighted assets by first determining the on-balance sheet credit equivalent amounts for the items and then assigning the credit equivalent amounts to the appropriate risk category according to the obligor, or if relevant, the guarantor or the nature of the collateral. For many types of off-balance sheet transactions, the on-balance sheet credit equivalent amount is determined by multiplying the face amount of the item by a credit conversion factor. For interest and exchange rate contracts however, credit equivalent amounts are determined by summing two amounts: the current exposure and the estimated potential future exposure.[3]

The current exposure (sometimes referred to as replacement cost) of a contract is derived from its market value. In most instances the initial market value of a contract is zero.[4] An institution should mark-to-market all of its rate contracts to reflect the current market value of the transaction in light of changes in the market price of the

[1] The Basle Accord is a risk-based framework that was proposed by the Basle Committee on Banking Supervision (Basle Supervisors' Committee) and endorsed by the central bank governors of the Group of Ten (G–10) countries in July 1988. The Basle Supervisors' Committee is comprised of representatives of the central banks and supervisory authorities from the G–10 countries (Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

[2] The banking agencies are the Office of Thrift Supervision, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation.

[3] Exchange rate contracts with an original maturity of 14 calendar days or less and instruments traded on exchanges that require daily payment of variation margin are excluded from the risk-based ratio calculations.

[4] An options contract has a positive value at inception, which reflects the premium paid by the purchaser. The value of the option may be reduced due to market movements but it cannot become negative. Therefore, unless an option has zero value, the purchaser of the option contract will always have some credit exposure, which may be greater than or less than the original purchase price, and the seller of the option contract will never have credit exposure.

contracts or in the underlying interest or exchange rates. Unless the market value of a contract is zero, one party will always have a positive mark-to-market value for the contract, while the other party (counterparty) will have a negative mark-to-market value.

An institution holding a contract with a positive mark-to-market value is "in-the-money," that is, it would have the right to receive payment from the counterparty if the contract were terminated. Thus, an institution that is in-the-money on a contract is exposed to counterparty credit risk, since the counterparty could fail to make the expected payment. The potential loss is equal to the cost of replacing the terminated contract with a new contract that would generate the same expected cash flows under the existing market conditions. Therefore, the in-the-money institution's current exposure on the contract is equal to the market value of the contract.

An institution holding a contract with a negative mark-to-market value, on the other hand, is "out-of-the-money" on that contract, that is, if the contract were terminated, the institution would have an obligation to pay the counterparty. The institution with the negative mark-to-market value has no counterparty credit exposure because it is not entitled to any payment from the counterparty in the case of counterparty default. Consequently, a contract with a negative market value is assigned a current exposure of zero. A current exposure of zero is also assigned to a contract with a market value of zero, since neither party would suffer a loss in the event of contract termination. In summary, the current exposure of a rate contract equals either the positive market value of the contract or zero.

The second part of the credit equivalent amount for rate contracts, the estimated potential future exposure (often referred to as the add-on), is an amount that represents the potential future credit exposure of a contract over its remaining life. This exposure is calculated by multiplying the notional principal amount of the underlying contract by a credit conversion factor that is determined by the remaining maturity of the contract and the type of contract.[5] The potential future credit exposure is calculated for all contracts, regardless of whether the mark-to-market value is zero, positive, or negative.

The potential future exposure is added to the current exposure to arrive at a credit equivalent amount.[6] Each credit equivalent amount is then assigned to the appropriate risk category, according to the counterparty or, if relevant, the guarantor or the nature of the collateral. The maximum risk weight applied to such rate contracts is 50 percent.

B. Netting and Current Risk-Based Capital Treatment

The banking agencies and the Basle Supervisors' Committee have long recognized the importance and encouraged the use of netting arrangements as a means of improving interbank efficiency and reducing counterparty credit exposure. Netting arrangements are increasingly being used by institutions engaging in rate contracts. Often referred to as master netting contracts, these arrangements typically provide for both payment and close-out netting. Payment netting provisions permit an institution to make payments to a counterparty on a net basis by offsetting payments it is obligated to make with payments it is entitled to receive and, thus, to reduce its costs arising out of payment settlements.

Close-out netting provisions permit the netting of credit exposures if a counterparty defaults or upon the occurrence of another event such as insolvency or bankruptcy. If such an event occurs, all outstanding contracts subject to the close-out provisions are terminated and accelerated, and their market values are determined. The positive and negative market values are then netted, or set off, against each other to arrive at a single net exposure to be paid by one party to the other upon final resolution of the default or other event.

The potential for close-out netting provisions to reduce counterparty credit risk, by limiting an institution's obligation to the net credit exposure, depends upon the legal enforceability of the netting contract, particularly in insolvency or bankruptcy.[7] In this regard, the Basle Accord noted that while close-out netting could reduce credit risk exposure associated with rate contracts, the legal status of close-out netting in many of the G–10 countries was uncertain and insufficiently developed to support a reduced capital charge for such contracts.[8] There was particular concern that a bank's credit exposure to a counterparty was not reduced if liquidators of a failed counterparty might assert the right to "cherry-pick," that is, demand performance on those contracts that are favorable and reject contracts that are unfavorable to the defaulting party.

Concern over "cherry-picking" led the Basle Supervisors' Committee to limit the recognition of netting in the Basle Accord. The only type of netting that was considered to genuinely reduce counterparty credit risk at the time the Accord was endorsed was netting accomplished by novation.[9] Under legally enforceable netting by novation, "cherry-picking" cannot occur and, thus, counterparty risk is genuinely reduced. The Accord stated that the Basle Supervisors' Committee would continue to monitor and assess the effectiveness of other forms of netting to determine if close-out netting provisions could be recognized for risk-based capital purposes.

The banking agencies' risk-based capital standards provide for the same treatment of rate contracts as the Basle Accord, but require that institutions use the current exposure method. The banking agencies, in adopting their

[5] For interest rate contracts with a remaining maturity of one year or less, the factor is 0% and for those over one year, the factor is .5%. For exchange rate contracts with a maturity of one year of less, the factor is 1% and for those over one year the factor is 5%.

Because exchange rate contracts involve an exchange of principal upon maturity and are generally more volatile, they carry a higher conversion factor. No potential future credit exposure is calculated for single-currency interest-rate swaps in which payments are made based on two floating indices (basis swaps).

[6] This method of determining credit equivalent amounts for rate contracts is known as the *current exposure method*, which is used by most international banks. The Basle Accord permits, subject to each country's discretion, an alternative method for determining the credit equivalent amount known as the *original exposure method*. Under this method, the capital charge is derived by multiplying the notional principal amount of the contract by a credit conversion factor, which varies according to the original maturity of the contract and whether it is an interest or exchange rate contract. The conversion factors, which are greater than those used under the current exposure method, make no distinction between current exposure and potential future exposure.

[7] The primary criterion for determining whether a particular netting contract should be recognized in the risk-based capital framework is the enforceability of that netting contract in insolvency or bankruptcy. In addition, the netting contract as well as the individual contracts subject to the netting contract must be legally valid and enforceable under non-insolvency or non-bankruptcy law, as is the case with all contracts.

[8] While payment netting provisions can reduce costs and the credit risk arising out of daily settlements with a counterparty, such provisions are not relevant to the risk-based capital framework since they do not in any way affect the counterparty's gross obligations.

[9] Netting by novation is accomplished under a written bilateral contract providing that any obligation to deliver a given currency on a given date is automatically amalgamated with all other obligations for the same currency and value date. The previously existing contracts are extinguished and a new contract, for the single net amount, is legally substituted for the amalgamated gross obligations. Parties to the novation contract, in effect, offset their obligations to make payments on individual transactions subject to the novation contract with their right to receive payments on other transactions subject to the contract.

standards, generally stated they would work with the Basle Supervisors' Committee in its continuing efforts with regard to the recognition of netting provisions for capital purposes.

C. Basle Supervisors' Committee Proposal

Since the Basle Accord was adopted, a number of studies have confirmed that close-out netting provisions can serve to reduce counterparty risk. In response to the conclusions of these studies, as well as to industry support for greater acceptance of netting contracts under the risk-based capital framework, the Basle Supervisors' Committee issued a consultative paper on April 30, 1993, proposing an expanded recognition of netting arrangements in the Basle Accord.[10] Under the proposal, for purposes of determining the current exposure amount of rate contracts subject to legally enforceable bilateral close-out netting provisions (that is, close-out netting provisions with a single counterparty), an institution could net the contracts' positive and negative mark-to-market values.

Specifically, the Basle proposal states that a banking organization would be able to net rate contracts subject to a legally valid bilateral netting contract for risk-based capital purposes if it satisfied the appropriate national supervisor(s) that:

(1) In the event of a counterparty's failure to perform due to default, bankruptcy or liquidation, the banking organization's claim (or obligation) would be to receive (or pay) only the net value of the sum of unrealized gains and losses on included transactions;

(2) It has obtained written and reasoned legal opinions stating that in the event of legal challenge, the netting would be upheld in all relevant jurisdictions; and

(3) It has procedures in place to ensure that the netting arrangements are kept under review in light of changes in relevant law.

The Basle Supervisors' Committee agreed that if a national supervisor is satisfied that a bilateral netting contract meets these minimum criteria, the netting contract may be recognized for risk-based capital purposes without raising safety and soundness concerns. The Basle Supervisors' Committee proposal includes a footnote stating that if any of the relevant supervisors is dissatisfied with the status of the enforceability of a netting contract under its laws, the netting contract would not be recognized for risk-based capital purposes by either counterparty.

In addition, the Basle Supervisors' Committee is proposing that any netting contract that includes a *walkaway clause* be disqualified as an acceptable netting contract for risk-based capital purposes. A walkaway clause is a provision in a netting contract that permits the non-defaulting counterparty to make only limited payments, or no payments at all, to the estate of the defaulter even if the defaulter is a net creditor under the contract.

Under the proposal, a banking organization would calculate one current exposure under each qualifying bilateral netting contract. The current exposure would be determined by adding together (netting) the positive and negative market values for all individual interest rate and exchange rate transactions subject to the netting contract. If the net market value is positive, that value would equal the current exposure. If the net market value is negative or zero, the current exposure would be zero. The add-on for potential future credit exposure would be determined by calculating individual potential future exposures for each underlying contract subject to the netting contract in accordance with the procedure already in place in the Basle Accord.[11] A banking organization would then add together the potential future credit exposure amount (always a positive value) of each individual contract subject to the netting arrangement to arrive at the total potential future exposure it has under those contracts with the counterparty. The total potential future exposure would be added to the net current exposure to arrive at one credit equivalent amount that would be assigned to the appropriate risk category.

D. Description of the Proposal

The banking agencies concur with the Basle Supervisors' Committee determination that the legal status of close-out netting provisions has developed sufficiently to support the expanded recognition of such provisions for risk-based capital purposes. Therefore, the OTS is proposing to amend its risk-based capital standards in a manner consistent with the Basle Supervisors' Committee's proposed revision to the Basle Accord and the recently proposed amendments by the OCC and the FRB. These proposed amendments would allow institutions to net the positive and negative market values of interest and exchange rate contracts subject to a qualifying, legally enforceable bilateral netting contract to calculate one current exposure for that netting contract.

The proposed amendments would add provisions setting forth criteria for a qualifying bilateral netting contract and an explanation of how the credit equivalent amount should be calculated for such contracts. The risk-based capital treatment of an individual contract that is not subject to a qualifying bilateral netting contract would remain unchanged.

For interest and exchange rate contracts that are subject to a qualifying bilateral netting contract under the proposed standards, the credit equivalent amount would equal the sum of (i) the current exposure of the netting contract and (ii) the sum of the add-ons for all individual contracts subject to the netting contract. (As with all contracts, mark-to-market values for netted contracts would be measured in dollars, regardless of the currency specified in the contract.) The current exposure of the bilateral netting contract would be determined by adding together all positive and negative mark-to-market values of the individual contracts subject to the bilateral netting contract.[12] The current exposure would equal the sum of the market values if that sum is positive, or zero if the sum of the market values is zero or negative. The potential future exposure (add-on) for each individual contract subject to the bilateral netting contract would be calculated in the same manner as for non-netted contracts. These individual potential future exposures would then be added together to arrive at one total add-on amount.

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[10] The paper is entitled "The Prudential Supervision of Netting, Market Risks and Interest Rate Risk." The section applicable to netting is subtitled "The Supervisory Recognition of Netting for Capital Adequacy Purposes." This paper is available for review through the OTS's public information office.

[11] Under the proposal, a banking organization could net in this manner for risk-based capital purposes if it uses, as all U.S. banking organizations are required to use, the current exposure method for calculating credit equivalent amounts of rate contracts. Organizations using the original exposure method would use revised conversion factors until market risk-related capital requirements are implemented, at which time the original exposure method will no longer be available for netted transactions.

[12] For regulatory capital purposes, the agencies would expect that institutions would normally calculate the current exposure of a bilateral netting contract by consistently including *all* contracts covered by that netting contract. In the event a netting contract covers transactions that are normally excluded from the risk-based ratio calculation—for example, exchange rate contracts with an original maturity of fourteen calendar days or less or instruments traded on exchanges that require daily payment of variation margin—institutions may elect to consistently either include or exclude all mark-to-market values of such transactions when determining net current exposures.

The proposed amendments provide that an institution may net, for risk-based capital purposes, interest and exchange rate contracts only under a written bilateral netting contract that creates a single legal obligation covering all included individual rate contracts and that does not contain a walkaway clause. In addition, if a counterparty fails to perform due to default, insolvency, bankruptcy, liquidation or similar circumstances, the institution must have a claim to receive a payment, or an obligation to make a payment, for only the net amount of the sum of the positive and negative market values on included individual contracts.

Today's proposal requires that a savings association obtain a written and reasoned legal opinion(s), representing that an organization's claim or obligation, in the event of a legal challenge, including one resulting from default, insolvency, bankruptcy, or similar circumstances, would be found by the relevant court and administrative authorities to be the net sum of all positive and negative market values of contracts included in the bilateral netting contract.[13] The legal opinion normally would cover (i) the law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities and, if a branch of the counterparty is involved, the law of the jurisdiction in which the branch is located; (ii) the law that governs the individual contracts covered by the bilateral netting contract; and (iii) the law that governs the netting contract. The multiple jurisdiction requirement is designed to ensure that the netting contract would be upheld in any jurisdiction where the contract would likely be enforced or whose law would likely be applied in an enforcement action, as well as the jurisdiction where the counterparty's assets reside.

A legal opinion could be prepared by either an outside law firm or in-house counsel. If a savings association obtained an opinion on the enforceability of a bilateral netting contract that covered a variety of underlying contracts, it generally would not need a legal opinion for each individual underlying contract that is subject to the netting contract, so long as the individual underlying contracts were of the type contemplated by the legal opinion covering the netting contract.

The complexity of the legal opinions will vary according to the extent and nature of the organization's involvement in rate contracts. For instance, an institution that is active in the international financial markets may need opinions covering multiple foreign jurisdictions as well as domestic law. The OTS expects that in many cases a legal opinion will focus on whether a contractual choice of law would be recognized in the event of default, insolvency, bankruptcy or similar circumstances in a particular jurisdiction rather than whether the jurisdiction recognizes netting. For example, a U.S. institution might engage in interest rate swaps with a non-U.S. institution under a netting contract that includes a provision that the contract will be governed by U.S. law. In this case the U.S. institution should obtain a legal opinion as to whether the netting would be upheld in the U.S. and whether the foreign courts would honor the choice of U.S. law in default or in an insolvency, bankruptcy, or similar proceeding.

For a savings association that engages solely in domestic rate contracts, the process of obtaining a legal opinion may be much simpler. For example, for an institution that is an end-user of a relatively small volume of domestic rate contracts, the standard contracts used by the dealer bank may already have been subject to the mandated legal review. In this case the end-user institution may obtain a copy of the opinion covering the standard dealer contracts, supported by the bank's own legal opinion.

The proposed amendments require a savings association to establish procedures to ensure that the legal characteristics of netting contracts are kept under review in the light of possible changes in relevant law. This review would apply to any conditions that, according to the required legal opinions, are a prerequisite for the enforceability of the netting contract, as well as to any adverse changes in the law.

As with all of the provisions of the risk-based capital standards, a savings association must maintain in its files documentation adequate to support any particular risk-based capital treatment. In the case of a bilateral netting contract, a savings association must maintain in its files documentation adequate to support the bilateral netting contract. In particular, this documentation should demonstrate that the bilateral netting contract would be honored in all relevant jurisdictions as set forth in this rule. Typically, these documents would include a copy of the bilateral netting contract, legal opinions, and any related English translations.

The OTS would have the discretion to disqualify any or all contracts from netting treatment for risk-based capital purposes if the bilateral netting contract, individual contracts, or associated legal opinions do not meet the requirements set out in the applicable standards. In the event of such a disqualification, the affected individual contracts subject to the bilateral netting contract would be treated as individual non-netted contracts under the standards.

As a general matter, relevant legal provisions for institutions in the U.S. make it clear that netting contracts with close-out provisions enable such organizations to setoff included individual transactions and reduce the obligations to a single net amount in the event of default, insolvency, bankruptcy, liquidation, or similar circumstances.

Today's proposal provides that netting by novation arrangements would *not* be grandfathered under the standards if such arrangements do not meet all of the requirements proposed for qualifying bilateral netting contracts. Although netting by novation would continue to be recognized under the proposed standards, institutions may not have the legal opinions or procedures in place that would be required by the proposed amendments. The OTS believes that holding all bilateral netting contracts to the same standards will promote certainty as to the legal enforceability of the contracts and decrease the risks faced by counterparties in the event of a default.

E. Request for Comment

The OTS is seeking comment on all aspects of its proposed amendments to the risk-based capital standards. In addition, the OTS notes that under current risk-based capital standards for individual contracts, the degree to which collateral is recognized in assigning the appropriate risk weight is based on the market value of the collateral in relation to the credit equivalent amount of the rate contract. The OTS seeks comment on the nature of collateral arrangements and the extent to which collateral might be recognized in bilateral netting contracts, particularly taking into account legal implications of collateral arrangements (e.g., whether the collateral pledged for

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[13] The Financial Accounting Standards Board (FASB) has issued Interpretation No. 39 (FIN 39) relating to the "Offsetting of Amounts Related to Certain Contracts." FIN 39 generally provides that assets and liabilities meeting specified criteria may be netted under generally accepted accounting principles (GAAP). However, FIN 39 does not specifically require a written and reasoned legal opinion regarding the enforceability of the netting contract in bankruptcy and other circumstances. Therefore, under this proposal a banking organization might be able to net certain contracts in accordance with FIN 39 for GAAP reporting purposes, but not be able to net those contracts for risk-based capital purposes.

an individual transaction would be available to cover the net counterparty exposure in the event of legal challenge) and procedural difficulties in monitoring collateral levels.

F. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS hereby certifies that this proposed rule will not have a significant impact on a substantial number of small business entities. Accordingly, a regulatory flexibility analysis is not required.

The OTS believes that a small institution is more likely than a large institution to enter into relatively uncomplicated transactions under standard bilateral netting contracts and may need only to review a legal opinion that has already been obtained by its counterparties.

G. Executive Order 12866

It has been determined that this proposal is not a significant regulatory action as defined in Executive Order 12866.

List of Subjects in 12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set out in the preamble, part 567, of chapter v, title 12 of the Code of Federal Regulations is proposed to be amended as set forth below.

SUBCHAPTER D—REGULATIONS APPLICABLE TO SAVINGS ASSOCIATIONS

PART 567—CAPITAL

1. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828(note).

2. Section 567.6 is amended by revising paragraph (a)(2)(v) to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

(2) * * *

(v) *Off-balance sheet contracts: interest-rate and foreign exchange rate contracts (Group E)*—(A) *Calculation of credit equivalent amounts.* The credit equivalent amount of an off-balance sheet interest rate or foreign exchange rate contract that is not subject to a qualifying bilateral netting contract in accordance with paragraph (a)(2)(v)(B) of this section is equal to the sum of the current credit exposure, *i.e.*, the replacement cost of the contract, and the potential future credit exposure of the off-balance sheet rate contract. The calculation of credit equivalent amounts must be measured in U.S. dollars, regardless of the currency or currencies specified in the off-balance sheet rate contract.

(*1*) *Current credit exposure.* The current credit exposure is determined by the mark-to-market value of the off-balance sheet rate contract. If the mark-to-market value is positive, then the current credit exposure is equal to that mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. In determining its current credit exposure for multiple off-balance sheet rate contracts executed with a single counterparty, a savings association may net positive and negative mark-to-market values of off-balance sheet rate contracts if subject to a bilateral netting contract as provided in paragraph (a)(2)(v)(B) of this section.

(*2*) *Potential future credit exposure.* The potential future credit exposure on an off-balance sheet rate contract, including contracts with negative mark-to-market values, is estimated by multiplying the notional principal[9] by one of the following credit conversion factors, as appropriate:[10]

Remaining maturity	Interest rate contracts (percents)	Foreign exchange rate contracts (percents)
One year or less	0	1.0
Over one year	0.5	5.0

(B) *Off-balance sheet rate contracts subject to bilateral netting contracts.* In determining its current credit exposure for multiple off-balance sheet rate contracts executed with a single counterparty, a savings association may net off-balance sheet rate contracts subject to a bilateral netting contract by offsetting positive and negative mark-to-market values, provided that:

(*1*) The bilateral netting contract is in writing;

(*2*) The bilateral netting contract creates a single legal obligation for all individual off-balance sheet rate contracts covered by the bilateral netting contract, and provides, in effect, that the savings association would have a single claim or obligation either to receive or pay only the net amount of the sum of the positive and negative mark-to-market values on the individual off-balance sheet rate contracts covered by the bilateral netting contract in the event that a counterparty, or a counterparty to whom the bilateral netting contract has been validly assigned, fails to perform due to any of the following events: default, insolvency, bankruptcy, or other similar circumstances;

(*3*) The savings association obtains a written and reasoned legal opinion(s) that represents that in the event of a legal challenge, including one resulting from default, insolvency, bankruptcy or similar circumstances, the relevant court and administrative authorities would find the savings association's exposure to be the net amount under:

(*i*) The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

(*ii*) The law that governs the individual off-balance sheet rate contracts covered by the bilateral netting contract; and

(*iii*) The law that governs the bilateral netting contract;

(*4*) The savings association establishes and maintains procedures to monitor possible changes in relevant law and to ensure that the bilateral netting contract continues to satisfy the requirements of this section; and

(*5*) The savings association maintains in its files documentation adequate to support the netting of an off-balance sheet rate contract.[11]

(C) *Walkaway clause.* A bilateral netting contract that contains a walkaway clause is not eligible for netting for purposes of calculating the current credit exposure amount. The term "walkaway clause" means a provision in a bilateral netting contract that permits a nondefaulting counterparty to make a lower payment than it would make otherwise under the bilateral netting contract, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate of a defaulter is a net creditor under the bilateral netting contract.

(D) *Risk weighting.* Once the savings association determines the credit equivalent amount for off-balance sheet rate contracts, that amount is assigned to the risk-weight category appropriate to the counterparty, or, if relevant, the nature of any collateral or guarantee. However, the maximum weight that will be applied to the credit equivalent amount of such off-balance sheet rate contracts is 50 percent.

(E) *Exceptions.* The following off-balance sheet rate contracts are not subject to the above calculation, and therefore, are not considered part of the denominator of a savings association's risk-based capital ratio:

(*1*) A foreign exchange rate contract with an original maturity of 14 calendar days or less; and

(*2*) Any interest rate or foreign exchange rate contract that is traded on an exchange requiring the daily payment of any variations in the market value of the contract.

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Dated: June 1, 1994

By the Office of Thrift Supervision

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94-14266 Filed 6-13-94; 8:45 am]

BILLING CODE 6720-01-P

[9] For purposes of calculating potential future credit exposure for foreign exchange contracts and other similar contracts, in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts to each party falling due on each value date in each currency.

[10] No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indices, so-called floating/floating or basis swaps; the credit equivalent amount is measured solely on the basis of the current credit exposure.

[11] By netting individual off-balance sheet rate contracts for the purpose of calculating its credit equivalent amount, a savings association represents that documentation adequate to support the netting of an off-balance sheet rate contract is in the savings association's files and available for inspection by the OTS. Upon determination by the OTS that a savings association's files are inadequate or that a bilateral netting contract may not be legally enforceable under any one of the bodies of law described in paragraph (a)(2)(v)(*3*)(*i*) through (*iii*) of this section, the underlying individual off-balance sheet rate contracts may not be netted for the purposes of this section.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-30-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric CF6 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires inspections of the strut skin in the area of the precooler exhaust vent for cracks on the inboard and outboard struts, and repair, if necessary. This action would require inspections of an expanded area for certain airplanes, and inspections of airplanes on which a skin doubler has been installed as terminating action for the existing AD. This proposal is prompted by reports of strut skin fatigue cracks and heat damage found aft of the edges of skin doublers installed on certain Model 747 series airplanes. The actions specified by the proposed AD are intended to prevent separation of an engine due to overheating and subsequent cracking of the engine strut

DATES: Comments must be received by August 8, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-30-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2776; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-30-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No 94-NM-30-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On January 28, 1987, the FAA issued AD 87-04-21, Amendment 39-5543 (52 FR 3793, February 6, 1987), applicable to certain Boeing Model 747 series airplanes, to require repetitive inspections of the strut skin in the area of the precooler exhaust vent to detect cracks on the inboard and outboard struts, and repair, if necessary. That action also provides for an optional terminating modification (installation of frame stiffeners and skin doublers) for the repetitive inspections. That action was prompted by reports of extensive damage to struts on several airplanes. The requirements of that AD are intended to prevent separation of an engine due to overheating and subsequent cracking of the engine strut.

Since the issuance of that AD, the FAA has received reports of fatigue cracks found in the strut skin and heat damage found aft of the edges of skin doublers. These skin doublers had been installed on certain Model 747 series airplanes as terminating action for certain requirements contained in AD 87-04-21 and AD 90-06-06, amendment 39-6490 (55 FR 8374, March 7, 1990). (AD 90-06-06 requires in part, incorporation of certain structural modifications specified in the original issue, Revision 1, or Revision 2 of Boeing Service Bulletin 747-54-2091.) Further, cracking of the skin doublers and the underlying number 3 stringer also was found on one of these airplanes.

Subsequently, the FAA has reviewed and approved Boeing Service Bulletin 747-54-2091, Revision 5, dated April 26, 1990, that describes procedures for a visual inspection of the strut skin and internal structure in the area of the precooler exhaust vent for cracks, heat discoloration, and wrinkles on the inboard and outboard struts of certain airplanes; and on the outboard struts of certain other airplanes. The service bulletin also describes procedures for

repetitive inspections if no crack, heat discoloration, or wrinkle is found; and installation of a skin doubler if any crack, heat discoloration, or wrinkle is found.

The FAA finds that the inspection areas specified in the Boeing service bulletin must be expanded since cracks and heat damage have been reported in locations beyond those inspection areas.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 87–04–21 to require the following:

1. For airplanes on which a frame stiffener and a skin doubler specified in certain revisions of Boeing Service Bulletin 747–54–2091 have been installed: Repetitive visual inspections to detect cracks, heat discoloration, or wrinkles of the strut skin and internal structure in the area of the precooler exhaust vent from the edge of the skin doubler to nacelle station (NAC STA) 300 on the inboard and outboard struts, and repair, if necessary. This inspection area has been expanded beyond the zone described in Revision 5 of the service bulletin to cover a 30-inch width from the doubler edge to NAC STA 300. (This inspection zone excludes the area covered by the skin doubler.)

2. For airplanes on which a frame stiffener and a skin doubler specified in certain revisions of Boeing Service Bulletin 747–54–2091 have not been installed: Repetitive visual inspections to detect cracks, heat discoloration, or wrinkles of the strut skin and internal structure in the area of the precooler exhaust vent from NAC STA 230 to NAC STA 300 on the inboard and outboard struts, and repair, if necessary. This inspection area has been expanded beyond the zone described in Revision 5 of the service bulletin to cover a 30-inch width from NAC STA 230 to NAC STA 300.

The actions would be required to be accomplished in accordance with procedures described in the service bulletin described previously.

There are approximately 250 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 4 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that were previously required by AD 87–04–21, and retained in this AD, will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of that inspection requirement on U.S. operators is estimated to be $880, or $220 per airplane, per inspection cycle.

The new inspections that would be added by this AD action would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the proposed inspection requirements of this AD on U.S. operators is estimated to be $880, or $220 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5543 (52 FR 3793, February 6, 1987), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 94–NM–30–AD. Supersedes AD 87–04–21, Amendment 39–5543.

Applicability: Model 747 series airplanes equipped with General Electric CF6 series engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of an engine due to overheating and subsequent cracking of the engine strut, accomplish the following:

(a) For airplanes listed in Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984: Prior to the accumulation of 10,000 total hours time-in-service, or within the next 7½ months after March 13, 1987 (the effective date of AD 87–04–21, Amendment 39–5543), whichever occurs later, perform a visual inspection to detect cracks of the strut skin in the area of the precooler exhaust vent on the inboard and outboard struts of Group 1 airplanes, and on the outboard struts of Group 2 airplanes, as defined in the service bulletin, in accordance with Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984; Revision 2, dated March 24, 1988; Revision 3, dated July 27, 1989; Revision 4, dated December 14, 1989; or Revision 5, dated April 26, 1990. After the effective date of this AD, the inspection shall be accomplished in accordance with paragraph (b) of this AD.

(1) If no crack is found, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 15 months, until the inspection required by paragraph (b) or (c) of this AD, as applicable, is accomplished.

(2) If any crack is found, prior to further flight, repair in accordance with FAA-approved data, and repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 15 months, until the inspection required by paragraph (b) or (c) of this AD, as applicable, is accomplished.

(b) For airplanes on which a frame stiffener and a skin doubler have not been installed during production or in accordance with Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984; Revision 2, dated March 24, 1988; Revision 3, dated July 27, 1989; Revision 4, dated December 14, 1989; or Revision 5, dated April 26, 1990: Perform a visual inspection to detect cracks, heat discoloration, or wrinkles of the strut skin and internal structure in the area of the precooler exhaust vent from nacelle station (NAC STA) 230 to NAC STA 300 on the inboard and outboard struts of Group 1 airplanes and on the outboard struts of Group 2 airplanes, in accordance with the inspection procedures described in Figure 3 of Boeing Service Bulletin 747–54–2091, Revision 5, dated April 26, 1990; at the time specified in paragraph (b)(1) or (b)(2) of this AD, whichever occurs later. Accomplishment of this inspection terminates the repetitive inspections required by paragraph (a) of this AD.

(1) Prior to the accumulation of 10,000 total hours time-in-service on the airplane strut, or within 120 days after the effective date of this AD, whichever occurs later. Or

(2) Within 12 months after the immediately preceding inspection accomplished in accordance with paragraph (a) of this AD.

Note 1: Paragraph (b) of this AD specifies an inspection zone that is expanded beyond the zone described in Revision 5 of the service bulletin to cover a 30-inch width from NAC STA 230 to NAC STA 300.

(c) For airplanes on which a frame stiffener and a skin doubler have been installed during production or in accordance with Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984; Revision 2, dated March 24, 1988; Revision 3, dated July 27, 1989; Revision 4, dated December 14, 1989; or Revision 5, dated April 26, 1990: Within 120 days after the effective date of this AD, perform a visual inspection to detect cracks, heat discoloration, or wrinkles of the strut skin and internal structure in the area of the precooler exhaust vent from the edge of the doubler to NAC STA 300 on the inboard and outboard struts of Group 1 airplanes and on the outboard struts of Group 2 airplanes, in accordance with the inspection procedures described in Figure 3 of Boeing Service Bulletin 747–54–2091, Revision 5, dated April 26, 1990.

Note 2: Paragraph (c) of this AD specifies an inspection zone that is expanded beyond the zone described in Revision 5 of the service bulletin to cover a 30-inch width from the doubler edge to NAC STA 300.

(d) If no crack, heat discoloration, or wrinkle is found during the inspection required by paragraph (b) or (c) of this AD, repeat that inspection thereafter at intervals not to exceed 15 months.

(e) If any crack, heat discoloration, wrinkle, or previously stop-drilled crack is found during the inspection required by paragraph (b) or (c) of this AD, prior to further flight, repair using either the small skin doubler and frame stiffener or the large skin doubler and frame stiffener specified in Boeing Service Bulletin 747–54–2901, Revision 5, dated April 26, 1990, in accordance with that service bulletin; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Thereafter, repeat that inspection at intervals not to exceed 15 months.

(f) Installation of a frame stiffener and a skin doubler referred to in Boeing Service Bulletin 747–54–2091 as "terminating action" does not constitute terminating action for the inspection requirements of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 8, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–14362 Filed 6–13–94; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amendments to the Premerger Notification and Report Form that parties to certain mergers or acquisitions are required to file with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice before consummating such transactions. The reporting requirement and the waiting period that it triggers are intended to enable the enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation.

During the fifteen years the rules have been in effect, the Federal Trade Commission, with the concurrence of the Assistant Attorney General in charge of the Antitrust Division, has amended the premerger notification rules several times to improve the program's effectiveness and to lessen the burden of complying with the rules. The present proposed revisions to the Premerger Notification and Report Form (hereinafter "the Form") are also intended to improve the program's efficiency in insuring a prompt, thorough, initial investigation of the competitive implications of proposed acquisitions. The proposed amendments are designed to improve the premerger notification program by requiring persons to submit certain new and more up-to-date information. The proposed revisions will also reduce the burden of compliance by raising the thresholds of several items consistent with the agencies' information needs. The burden reduction proposals will decrease the amount of information that must be provided and the search costs associated with providing that information.

DATES: Comments must be received on or before July 12, 1994.

ADDRESSES: Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, room 136, Washington, DC 20580, and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, room 3214, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Victor L. Cohen, Attorney, or John M. Sipple, Jr., Assistant Director, Premerger Notification Office, Bureau of Competition, room 303, Federal Trade Commission, Washington, DC 20580, Telephone: (202) 326–3100.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

Each of these proposed changes to the Form is designed to improve the effectiveness of the premerger notification program. The Commission has determined that none of the amendments is a major rule, as that term is defined in Executive Order 12291. The amendments will not result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in the domestic market. None of the proposed amendments expands the coverage of the Form in a way that would affect small business. Therefore, pursuant to Section 605(b) of the Administrative Procedure Act, 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96–354 (September 19, 1980), the Federal Trade Commission certifies that these proposals will not have a significant economic impact on a substantial number of small entities. Section 603 of the Administrative Procedure Act, 5 U.S.C. 603, requiring a final regulatory flexibility analysis of some rules, is therefore inapplicable.

Paperwork Reduction Act

The Hart-Scott-Rodino Premerger Notification rules and Form contain information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501–3518. These requirements were reviewed and approved by the Office of Management and Budget (OMB Control No. 3084–0005). Because the proposed

amendments would affect the information collection requirement of the premerger notification program, the proposed amendments have been submitted to OMB for review under § 3504(h) of the Paperwork Reduction Act. These provisions are described more fully in the Notice of Application to OMB under the Paperwork Reduction Act, which also is being published in the **Federal Register** today. Comments on the Commission's submission may be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Trade Commission.

Background

Section 7A of the Clayton Act ("the Act"), 15 U.S.C. 18a, as added by Sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires parties to certain acquisitions of assets or voting securities to notify the Federal Trade Commission (hereafter referred to as "the Commission") and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereafter referred to as "the Assistant Attorney General" or "the Department") before consummating the acquisition. The parties must then wait a certain designated period before the consummation of such acquisition. The transactions to which the advance notice requirement is applicable and the length of the waiting period required are set out respectively in subsections (a) and (b) of Section 7A. This amendment to the Clayton Act does not change the standards used in determining the legality of mergers and acquisitions under the antitrust laws.

The legislative history suggests several purposes underlying the act. Congress wanted to assure that large acquisitions were subjected to meaningful scrutiny under the antitrust laws prior to consummation. To this end, Congress clearly intended to eliminate the large "midnight merger," which is negotiated in secret and announced just before, or sometimes only after, the closing takes place. Congress also provided an opportunity for the Commission or the Assistant Attorney General (which are sometimes hereafter referred to collectively as the "antitrust agencies" or the "enforcement agencies") to seek a court order enjoining the completion of those transactions that either agency deems to present significant antitrust problems. Finally, Congress sought to facilitate an effective remedy when a challenge by one of the enforcement agencies proved successful. Thus, the Act requires that the antitrust agencies receive prior notification of significant acquisitions, provides certain tools to facilitate a prompt, thorough investigation of the competitive implications of these acquisitions, and assures the enforcement agencies an opportunity to seek a preliminary injunction before the parties to an acquisition are legally free to consummate it. The problem of unscrambling the assets after the transaction has taken place is thereby eliminated.

Subsection 7A(d)(1) of the act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, to require that the notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws.

Subsection 7A(d)(2) of the act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority (A) to define the terms used in the act, (B) to exempt from the act's notification and waiting period requirements additional persons or transactions which are not likely to violate the antitrust laws and (C) to prescribe such other rules as may be necessary and appropriate to carry out the purposes of section 7A.

The Commission, with the concurrence of the Assistant Attorney General, promulgated implementing rules ("the rules") and a Notification and Report Form and issued an accompanying Statement of Basis and Purpose, all of which were published in the **Federal Register** of July 31, 1978, 43 FR 33450, and became effective on September 5, 1978.

The rules are divided into three parts, which appear at 16 CFR Parts 801, 802, and 803. Part 801 defines a number of the terms used in the Act and rules, and explains which acquisitions are subject to the reporting and waiting period requirements. Part 802 contains a number of exemptions from these requirements. Part 803 explains the procedures for complying with the act. The Notification and Report Form, which is completed by persons required to file notification, is an appendix to Part 803 of the rules.

Changes of a substantive nature have been made in the premerger notification rules or Form on ten occasions since they were first promulgated. See, 44 FR 60781 (November 21, 1979); 45 FR 14205 (March 5, 1980); 46 FR 38710 (July 29, 1981); 48 FR 34427 (July 29, 1983); 50 FR 38742 (September 24, 1985); 51 FR 10368 (March 26, 1986); 52 FR 7066 (March 6, 1987) (all of these changes included revisions in the Form); 52 FR 20058 (May 29, 1987); 54 FR 21427 (May 18, 1989) and 55 FR 31371 (August 2, 1990).

The current set of proposals to change the Form is designed to improve the program's effectiveness by requiring the submission of certain additional information that will be very useful to the agencies in the performance of their initial antitrust reviews of proposed transactions. The proposals also include several modifications that are intended to reduce the burden of completing the HSR Form consistent with the agencies' antitrust enforcement needs. The Commission invites interested persons to submit comments on the appropriateness of the proposed changes to the Form and its instructions.

Proposed Changes in the Instructions and Form

a. Transactions Subject to the Bankruptcy Code

Section 363(b) of the Bankruptcy Code, 11 U.S.C. 363(b), provides for a waiting period of ten days for transactions in which a trustee in bankruptcy files notification of a proposed acquisition as an acquired person. Since 11 U.S.C. 1107 provides that a debtor-in-possession essentially has the same powers as a trustee in bankruptcy, a debtor-in-possession also may file notification as an acquired person and thereby invoke the ten-day waiting period. Due to the very limited time provided for the initial review of such transactions, it is important that the Commission and the Department quickly and easily identify transactions to which the Bankruptcy Code provisions apply. For this reason, the Commission proposes to modify the preamble found on page one of the Form to include the question:

Is this filing being made as an acquired person by a trustee in bankruptcy or a debtor-in-possession subject to Section 363(b) of the Bankruptcy Code, 11 U.S.C. 363(b)? yes /_____/ no /_____/

b. Notification for an Acquisition That Has Taken Place

Several times each year, persons file premerger notifications for acquisitions that have been consummated prior to filing notification and observing the appropriate waiting period. Usually, such persons call the Commission's Premerger Notification Office ("PNO") promptly after discovering the violation. Many of these violations are determined to be inadvertent, the result of simple negligence. The PNO advises persons who have consummated an acquisition in violation of the Act to file a corrective filing as soon as possible and to submit a detailed, written explanation signed by a company official explaining how the violation occurred and the steps that will be taken to ensure future compliance with the filing requirements. The letter of explanation need not accompany the corrective filing. The submission of a corrective, compliant notification will, in most instances, stop the accruing of civil penalties after the waiting period has expired.

The PNO has established procedures for processing corrective filings and conducting an informal inquiry to determine whether to refer the violation to the appropriate litigation office for investigation and a possible civil penalty action. The PNO procedures are designed to monitor persons who have violated the Act to identify repeat offenders. For this reason, it is important that filings for acquisitions that have already been consummated be easily identified and assigned to the persons who monitor and process such violations. Sometimes, persons who file corrective filings do not identify them as pertaining to an acquisition that has already been consummated. Consequently, their filings are not always assigned to the persons who have the expertise to handle these matters. To identify corrective filings easily to ensure that they are assigned to the appropriate person for review, the Commission proposes to modify the preamble found on page one of the Form to include the question:

Is this filing being made for an acquisition that has already been consummated? yes /_____/ no /_____/

c. Transactions Subject to Foreign Governmental Regulation

To enforce their antitrust statutes, many foreign governments require, or provide for voluntary submission of, premerger notification comparable to that required by the Form. Their thresholds for notification overlap to varying degrees with those of section 7A. Accordingly, parties to a merger or acquisition may file notification with, and need clearance from, more than one sovereign authority. The potential for multiple notifications has grown because of the increase not only in merger enforcement organizations, but also in the number of transactions involving firms based in different countries and/or which do business in more than one country.

Bilateral and multilateral efforts have been undertaken to foster communication and cooperation between antitrust authorities in order to assist them in determining whether proposed acquisitions violate their respective antitrust laws and avoid conflict in enforcement of those laws. Bilateral agreements between the United States and Australia, Canada, the European Commission and Germany provide for, inter alia, timely notification of investigations which involve important interests of the signatories, sharing of non-confidential information, and, where possible, coordination of investigations. A 1986 Recommendation of the Organization for Economic Cooperation and Development (OECD) similarly provides for timely notification and information sharing among the OECD members. Further efforts toward cooperation and even convergence of premerger notification requirements have been recommended by the American Bar Association in the 1991 Report of its special Committee on International Antitrust.

Cooperation and potential coordination may be hindered by the inability of antitrust authorities to learn as early as possible of the fact of the submission of premerger notification to another jurisdiction. This deficiency is complicated by the lack of uniformity among the nations' premerger notification provisions as to the timing of the submission of notification. As a result, submission of notifications to different jurisdictions at different times often occurs.

To provide for timely alert of multiple notifications of a particular transaction in order to foster cooperation between the notified jurisdictions and thereby assist the Commission and the Department in determining whether such transaction would violate the antitrust laws, the Commission proposes to modify the preamble found on page one of the Form to require a listing of the name(s) of any foreign antitrust or competition authority that has been or will be notified of the proposed acquisition. The proposed language reads as follows:

If, to the knowledge or belief of the person filing notification, a foreign antitrust or competition authority has been or will be notified of the proposed acquisition, list the name and country or other jurisdiction of each such authority and the date notification was made or is anticipated to be made:

_____

_____

_____

d. Calculation of the Percentage of Assets in Item 3

At present, the instructions to item 3 require both the acquiring and acquired persons to state the percentage of assets, percentage of voting securities and the aggregate total dollar amount of assets and voting securities that will be held by the acquiring person as a result of the acquisition. Determining the percentage of assets held has proven to be difficult for acquiring persons because they generally are not aware of the book value of the assets or the total book value of the acquired person's assets, which is the information needed to make the required calculation. On the other hand, acquired persons can readily ascertain the percentage of their total assets being acquired. For this reason, the Commission proposes to amend item 3(a) to require only the acquired person to determine the percentage of assets of the acquired person that will be held as a result of the acquisition.

Some filing persons have expressed uncertainty regarding the information that item 3(b) requires. Item 3(b) seeks to obtain information regarding the percentage of voting securities of the issuer or issuers whose voting securities will be held as a result of the acquisition. Thus, if voting securities of more than one issuer will be held as a result of the acquisition, percentages should be provided for each issuer. The Commission proposes to add clarifying language to the instructions in item 3(b).

Accordingly, the Commission proposes to modify the instructions to item 3 to read as follows:

Assets and voting securities held as a result of the acquisition (item 3(a) to be completed by the acquired person only; items 3(b) and 3(c) to be completed by both the acquiring and acquired persons). State:

Item 3(a)—the percentage of assets of the acquired person (see § 801.12(d));

Item 3(b)—the percentage(s) of voting securities of each issuer (see § 801.12(a));

Item 3(c)—the aggregate total dollar amount of assets and voting securities of the acquired person to be held by each acquiring person as a result of the acquisition (see §§ 801.13 and 801.14)

e. Elimination of Document Identification in Item 4(a)

At present, the instructions to item 4(a) of the Form permit filing persons to merely identify documents filed with the Securities and Exchange Commission (SEC) in lieu of their actual submission as attachments to the Form when copies of the documents are not

"readily available." Fortunately, filing persons rarely use this proviso and generally submit the required SEC documents with their Forms. If filing persons failed to submit these documents, it would hinder the ability of the Commission and the Department to complete their antitrust reviews within the limited time periods provided by the act.

Accordingly, the Commission proposes to delete the following instruction presently included as the last sentence in item 4(a):

Alternatively, if the person filing notification does not have copies of responsive documents readily available, identification of such documents and citation to date and place of filing will constitute compliance.

f. Submission of 4(c) Documents Prepared by or for Partners

Item 4(c) of the Form requires reporting persons to submit all studies, surveys, analyses and reports that were prepared by or for any officer or director (or individuals exercising similar functions in the case of an unincorporated entity) for the purpose of evaluating or analyzing the proposed acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or product or geographic market expansion. Item 4(c) also encompasses officers or directors of any entity included within the reporting person. See 43 FR 33450, 33525 (July 31, 1978).

Item 4(c) documents often provide valuable insights into possible product and geographic markets as well as the competitive purposes and projected competitive consequences of the proposed transaction. As such, item 4(c) documents are often essential to Commission and Department attorneys in making preliminary determinations of product and geographic markets and their initial evaluations of the potential competitive effects of a proposed acquisition. In addition, item 4(c) documents also have been very useful to the agencies in preparing requests for additional information and documentary material.

At present, the instructions to item 4(c) require the submission of documents "which were prepared by or for any officer(s) or director(s) (or, in the case of unincorporated entities, individuals exercising similar functions) * * *." Item 4(c) applies to all entities included within the reporting person and, thus, to partnerships. However, it has been argued that partnerships do not have item 4(c) documents because they contain no individuals exercising functions similar to officers or directors (partnership interests generally "do not entitle the owner of that interest to vote for a corporate "director" or "an individual exercising similar functions"). See 16 CFR 801.1(b), example 2, and 52 FR 20058, 20062 (May 29, 1987). The Commission believes that documents prepared by or for partners of a partnership and persons responsible for managing the affairs of a partnership are likely to contain the same types of market information found in documents prepared "by or for officers or directors" of a corporation. For this reason, the Commission proposes to amend item 4(c) to require the submission of documents prepared by or for partners of a partnership. However, the Commission is concerned about the burden that such a requirement may impose on limited partners in a limited partnership. There are often numerous limited partners in a limited partnership, and it is the Commission's understanding that limited partners are principally passive investors because, generally, they must refrain from participation in the conduct of the partnership in order to limit their liability. Uniform Limited Partnership Act (U.L.A.), section 1. Indeed, the Commission has observed that often the limited partners are pension funds, insurance companies and similar types of investors.

In contrast, general partners in a limited partnership and partners in a general partnership are normally the decisionmakers who participate in the day-to-day management of a partnership. Uniform Limited Partnership Act (U.L.A.), section 6. Consequently, they are likely to create, or have created for them, documents that meet the criteria of item 4(c). On the other hand, limited partners in a limited partnership are likely to have in their possession primarily item 4(c) documents which are also within the control of the general partners. The Commission believes that any benefit that may be derived from requiring a search for and submission of item 4(c) documents by limited partners is outweighed by the additional burden that such a requirement would impose.

Accordingly, the Commission proposes to amend item 4(c) to require the submission of documents prepared by or for general partners of a limited partnership and partners of a general partnership. These changes are contained in the proposed item 4(c) language that follows section g.

g. Submission of Documents Relating to Businesses or Products of Parties to the Transaction

The Commission and the Department have received certain types of documents in response to requests for additional information that the Commission believes would be very useful to the agencies in conducting their initial assessment of the possible competitive effects of a proposed transaction. These documents describe or analyze the businesses of, the products manufactured by or the services provided by the parties to the transaction or relate to the possible integration of operations.

In this regard, the Commission's experience with filings has demonstrated that it is sometimes difficult to identify the specific products produced by the filing persons using the information presently required by the Form. The SIC codes do not always provide the specificity needed to determine the products or services of the filing persons. As a result, the agency cleared to review the transaction may spend much of the waiting period trying to determine if the filing persons manufacture products that actually compete. The agency is then left with less time to reach conclusions about other antitrust issues, such as entry, that are necessary to determine whether the acquisition raises serious antitrust concerns. Documents that discuss or analyze the businesses, products or services of the parties to the transaction, if submitted when the filings are made, may, in some cases, obviate the need for the issuance of a request for additional information and documentary materials. Such request would otherwise be needed to resolve the competitive issues that the agency lacked the time to resolve during the initial waiting period.

To provide the agencies with additional documentary material to analyze the competitive effects of a proposed acquisition, to assist the agencies in resolving all competitive issues during the initial waiting period and, in some cases, to eliminate the need to issue a request for additional information and documentary materials, the Commission proposes to modify item 4(c) to require the submission of documents that discuss, describe or analyze (1) the businesses of, the products manufactured or the services provided by the acquiring person and the business enterprise being acquired (as represented by the assets or issuer whose voting securities are being acquired) or (2) the possible integration of the operations of the acquiring person and the business enterprise being

acquired. Documents covered by the change are limited to documents that are considered to be within the traditional criteria of item 4(c) noted above and are prepared by or for any officers or directors (or, in the case of unincorporated entities, individuals exercising similar functions or general partners of a limited partnership and partners of a general partnership) for the purpose of discussing, evaluating or analyzing the proposed acquisition.

Although the amendment expands the categories of documents that filing persons are required to submit, the Commission believes that the documents may help to clarify information that the parties report in item 7(a) concerning the SIC product code overlaps. For transactions that pose no antitrust concerns, these documents are likely to enhance the ability of the agencies to expedite their review and grant early termination of the waiting period when requested.

Accordingly, the Commission proposes to amend item 4(c) of the Form to read as follows:

Item 4(c)—All studies, surveys, analyses, or reports or documents which were prepared by or for any officer(s) or director(s) including officers or directors of any entity within the filing person (or, in the case of unincorporated entities, individuals exercising similar functions or, in the case of a limited partnership, any general partner(s) of such partnership and, in the case of a general partnership, the partners of such partnership) for the purpose of discussing, evaluating or analyzing the acquisition with respect to (i) market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets, (ii) the businesses of, products manufactured by or services provided by the acquiring person and the business enterprise being acquired (as represented by the assets or issuer whose voting securities are being acquired); or (iii) the integration of the operations of the acquiring person and the business enterprise to be acquired

ii. Submission of Solicitation Documents

Pursuant to the requirements of item 4(c), filing persons often submit a variety of documents, including offering memoranda, analyses by investment bankers and similar documents prepared by consultants and investment firms for the purpose of soliciting expressions of interest from prospective purchasers. These documents often provide detailed information on the operations and the market position of the acquired person.

On occasion, counsel for a filing person has contended that investment bankers' books or other types of offering documents prepared by third parties as general selling documents are not covered by item 4(c) because they were not prepared for the specific acquisition for which a filing is being made. This position appears to be based, in part, on the statement in the Statement of Basis and Purpose ("SBP") that the "reporting person must submit only those documents prepared in connection with the reported acquisition." 43 FR 33450, 33525 (July 31, 1978). The Commission did not intend, nor does it interpret, this language to mean that only documents prepared after the acquiror has been identified qualify as item 4(c) documents. Rather, it is the Commission's view that such documents were "prepared in connection with the reported acquisition" even though at the time of preparation the specific acquiror had not been identified. Similarly, if an acquiror is considering a number of acquisition candidates and prepares documents which analyze various aspects of competition prior to making its decision regarding which candidate(s) to pursue, those documents pertaining to the candidate(s) selected are item 4(c) documents.

Counsel for filing persons also have contended that investment bankers' books are not item 4(c) documents because it is not clear that such documents are prepared "by or for any officer(s) or director(s)." The Commission believes that such documents meet this requirement because they are usually prepared at the direction of an officer or director of the acquired person. Moreover, in the Commission's view such documents of the acquiring person qualify as 4(c) documents because they are prepared for the officers or directors—the decision-makers who will determine whether to pursue an acquisition. The fact that investment bankers' books usually are prepared by outside consultants also has no bearing on whether such documents are covered by item 4(c). As the Commission made clear in the SBP when the premerger notification rules were promulgated, item 4(c) documents include "documents prepared by any person, including consultants, for officers and directors." See 43 FR 33450, 33525 (July 31, 1978). The Commission proposes to amend item 4(c) by adding new item 4(c)(ii) which will make clear that the submission of investment bankers' books and similar documents prepared in connection with the sale of the acquired person or any portion of the acquired person is required. However, this new section is not limited to documents "prepared by or for any officer(s) or director(s)" of the acquiring or the acquired person. Documents of this type have provided valuable information to the agencies in connection with their antitrust reviews and the agencies should not be precluded from receiving these documents simply because they were not prepared expressly for officers or directors.

Accordingly, the Commission proposes to add a new subsection to item 4 to be identified as item 4(c)(ii) and to renumber item 4(c) to item 4(c)(i). Proposed item 4(c)(ii) will read as follows:

Item 4(c)(ii)—All investment bankers books, offering memoranda, and similar documents which have been prepared by any person for the purpose of soliciting expressions of interest from prospective purchasers of the assets or entity to be acquired.

i. Submission of an Index for Item 4(c) Documents

At present, persons filing documents required by item 4 of the Form may provide an optional index for the documents submitted. An index to item 4 documents has proven to be valuable to both the Premerger Notification Office staff as well as to litigation staff in expediting their reviews of proposed acquisitions, especially when numerous documents are submitted.

In order to facilitate the review process, the Commission proposes to require the submission of an index of documents submitted in response to items 4(c)(i) and 4(c)(ii). Such indices will better enable the Commission and the Department to keep track of item 4(c) documents. They also will enable the agencies to determine whether filing parties have inadvertently omitted any documents identified as item 4(c) documents.

Accordingly, the Commission proposes to add the following language to the general instructions to item 4, amended to require the submission of an index identifying all item 4(c)(i) and 4(c)(ii) documents:

Persons filing notification must provide an index of documents being submitted pursuant to Items 4(c)(i) and 4(c)(ii). With respect to each document provide the name of the document, the date of preparation, and the name and title of the document's authors and recipients.

j. Acquisition of the Assets of an Insurance Carrier

Item 5 of the Form requires insurance carriers, i.e., persons deriving revenues in 2-digit SIC major group 63, to supply revenue information only for industries not within SIC major group 63 and instructs such persons to complete the Insurance Appendix to the Form when voting securities of an insurance carrier are to be acquired. If the proposed acquisition is not of voting securities but of assets that generate insurance revenues within 2-digit SIC major group 63, the current instructions do not require the filing person to complete either item 5 or the Insurance Appendix. To correct this omission, the Commission proposes to modify item 5 and the Insurance Appendix to require insurance carriers to complete the Insurance Appendix if the acquisition is of assets that generate insurance revenues.

Accordingly, the Commission proposes to revise item 5 and the Insurance Appendix instructions to the Form to read as follows:

Item 5—Insurance Carriers (2-digit SIC major group 63) should supply the information requested only with respect to industries not within SIC major group 63. If voting securities of an insurance carrier or assets that generate insurance revenues in 2-digit SIC major group 63 are being acquired, the filing person should complete the Insurance Appendix to this Form.

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Insurance carriers (2-digit SIC major group 63) are required to complete this Appendix if voting securities of an insurance carrier or assets that generate insurance revenues in 2-digit SIC major group 63 are being acquired directly or indirectly

k. Products Added

Item 5(b)(ii) of the Form requires the filing person to identify (by 7-digit SIC code or in the manner ordinarily used by such person) each product within 2-digit SIC major groups 20–39 (manufactured products) which it has added or deleted subsequent to 1987 (the current base year), indicating the year of addition or deletion and stating the total dollar revenues it derived in the most recent year for each product added. Products added by reason of mergers or acquisitions of entities are not included and are reported in items 5(a) and 5(b)(i).

Some filing persons have asserted that item 5(b)(ii) does not require the inclusion of products added, either through new product innovation or through the purchase of assets including production facilities, after the most recent year for which the filing person reports revenues in item 5(b)(iii). For example, such persons assert that if the revenues reported in item 5(b)(iii) are for calendar year 1992, then they need not report in item 5(b)(ii) any new product developed in 1993 which generated revenues under an SIC code not previously used by the filing person. This interpretation of the current language of item 5(b)(ii) would permit filing persons to omit potentially important information that is not called for elsewhere on the Form. It might allow an SIC code overlap to go unreported, as well as information about the filing person's ability to manufacture the new product.

The Commission believes that the language of item 5(b)(ii) does not permit this limited reading. However, the Commission proposes to amend item 5(b)(ii) to make explicit that all manufactured products added or deleted after the base year must be reported. The amendment will alert filing persons that they must provide the "most current information available" about their production activities to enable the agencies to better assess the competitive effects of a proposed transaction. See 43 FR 33450, 33529 (July 31, 1978).

The Commission also proposes to modify item 5(b)(ii) to clarify the procedure for reporting revenues derived during the base year by entities acquired by filing persons after the base year The current instructions to item 5 require that a filing person report in response to items 5(a)-(c) any revenues derived during the base year by an entity that the filing person later acquires by merger or acquisition. However, the instructions to item 5(b)(ii) require only the reporting of products added by merger or acquisition in item 5(b)(i), which calls for revenues by 7-digit SIC manufacturing product codes, and not item 5(a), which asks for base year revenues by 4-digit SIC manufacturing and non-manufacturing industry codes. The amendment adds language to item 5(b)(ii) to indicate that base year revenues for these added products should be included in response to both items 5(a) and 5(b)(i).

Since the present language in item 5 applies only to the acquisition of an "entity", it does not cover asset acquisitions. However, the Commission's staff has adopted the position that if an asset is acquired after the base year and is accompanied by books and records sufficient to provide responses to items 5 (a) through (c), then such responses must be provided. If such books and records do not accompany the purchased asset, then, if the asset engages in manufacturing, it must be included in the response to item 5(b)(ii) as a product added by the reporting person. The Commission is in agreement with the staff's treatment of asset acquisitions and has modified item 5 to reflect this position.

Accordingly, the Commission proposes to modify the general instructions to item 5 and item 5(b)(ii) to read as follows:

Persons filing notification should include the total dollar revenues for 1987 derived by all entities, or generated by assets (for which books and records necessary to supply such revenues are available) even if such entities or assets have become included within the person since 1987. For example, if the person filing notification acquired assets in 1989, along with the books and records necessary to supply 1987 revenues generated by the assets, it must include those revenues in Item 5(a) and, if a manufactured product, in item 5(b)(i).

Item 5(b)(ii)—Products added or deleted. Within 2-digit SIC major groups 20–39 (manufacturing industries), identify each product of the person filing notification added or deleted subsequent to 1987, including products added after the most recent year for which period revenues are reported in the response to item 5(b)(iii). Indicate the year of addition or deletion and, for products added, state the total dollar revenues derived in the most recent year, and, for products added after the most recent year, for the time period, if any, the product has derived revenues. Also include products added by the acquisition of assets engaged in manufacturing (2-digit SIC major groups 20–39) for which books and records sufficient to provide revenues for the base year were not also acquired. Products added should be identified by the appropriate 7-digit SIC product code unless the person is unsure of the proper code, in which case the person can identify the product in the manner it ordinarily uses.

Do not include products added since 1987 by reason of the acquisition of an entity in operation in 1987 or of assets accompanied by the books and records sufficient to provide 1987 revenues for such assets. Dollar revenues derived from such products should be included in response to Items 5(a) and, if a manufactured product, 5(b)(i). However, if an entity acquired after 1987 by the person filing notification (and now included within the person) itself has added or deleted any manufactured products since 1987, these products should be listed in Item 5(b)(ii).

Products deleted by reason of dispositions of assets or voting securities since 1987 should also be listed in Item 5(b)(ii).

l. Foreign Manufactured Products

Section 803.2(c)(1) of the rules, 16 CFR 803.2(c)(1), instructs filing persons to provide information in response to items 5, 7, 8 and 9 and the Insurance Appendix "with respect to operations conducted within the United States." Areas included in the United States are defined in § 801.1(k), 16 CFR 801.1(k). Filing persons are not required to submit SIC code information on a detailed manufacturing basis for products they manufacture outside the United States even if they sell the products in the United States. For example, if a filing person manufactured a product in 1987 in Canada, imported it into the United States and sold that product at the wholesale or retail level, the filing person would report revenues derived from those sales in item 5(a) using a wholesale or retail 4-digit SIC code. The filing person would not be required to identify in either item 5(a) or item 5(b)(i) the product it manufactured in Canada using the descriptive 4-digit SIC code or the 7-digit SIC product code for manufactured products that would have been required if the product had been manufactured in the United States. Similarly, if the filing person derived revenues in the most recent year from sales of the product in the United States, the person would report those revenues in item 5(c) using the appropriate 4-digit wholesale or retail code. The filing person would not report those revenues in item 5(b)(iii) using the appropriate 5-digit SIC product class code for manufactured products as it would have if the product had been manufactured in the United States.

The 4-digit SIC wholesale and retail codes reported in items 5(a) and 5(c) do not identify the SIC manufacturing codes applicable to the products manufactured abroad that are sold by the manufacturer in the United States. Consequently, the agencies have found it very difficult, using the information presently required by the Form, to determine whether a filing person that manufactures products outside the United States but sells them in the United States may be involved in manufacturing activities similar to those of another party to the transaction.

The Commission believes that 7-digit SIC product code information concerning products manufactured outside the United States that are sold in or into the United States at the wholesale or retail level would be very helpful to the agencies in performing their initial antitrust review. This information has become more important over the last decade as foreign imports and their effect on the nation's economy have increased. For this reason, the Commission proposes to modify the Form to require filing persons to identify the 7-digit SIC product code (manufacturing industries) for each product they manufacture outside the United States and sell in the United States at wholesale or retail. Since this provision requires persons to identify codes and not report revenues, it should only impose a minimal additional burden on filing persons. The proposed revision would require filing persons to identify the 7-digit SIC product codes for such foreign manufactured products only for the most recent year.

Accordingly, the Commission proposes to add a new item 5(c)(ii) to the Form and to change the designation of present item 5(c) to 5(c)(i). New proposed item 5(c)(ii) reads as follows:

Item 5(c)(ii)—Identification of 7-digit SIC product codes for certain foreign manufactured products. Provide the 7-digit SIC product code for each product manufactured outside the United States by the person filing notification for which the person reported revenues in Item 5(c)(i). The 7-digit SIC product codes to be provided are those that the person would use to identify the products if the person had manufactured the product(s) in the United States. Revenues for such 7-digit codes need not be provided

m. Increases in Reporting Thresholds in Items 6(b) and 6(c)

At present, item 6(b) of the Form requires the reporting person to identify shareholders holding five percent or more of the voting stock of any entity included within the reporting person (including the ultimate parent entity) having total assets of $10 million or more. For each shareholder, the reporting person must list the issuer, the class, the number and the percentage of each class of voting securities held. Item 6(c) requires the reporting person to list its minority voting stock holdings of five percent or more in any issuer having total assets of $10 million or more.

Item 6 is designed to obtain information to "alert the enforcement agencies to situations in which the potential antitrust impact of the reported transaction does not result solely or directly from the acquisition, but may arise from direct or indirect shareholder relationships between the parties to the transaction." See 43 FR 33450, 33531 (July 31, 1978). For example, items 6(b) and 6(c) may reveal situations in which "a person known to be a competitor or customer or supplier of one of the parties is also a significant shareholder of the other party, or when the acquiring party holds stock in a competitor or customer or supplier of the acquired company or vice versa." Id

The Commission has reviewed its use of the information submitted in response to items 6(b) and (c) and has determined to propose an increase in the thresholds from five percent to ten percent. Subsection (c)(9) of the Act exempts most acquisitions of ten percent or less of an issuer's voting securities, so long as the acquisition is made solely for the purpose of investment. Although the Commission and the Department of Justice have issued requests for additional information to reporting persons who proposed to acquire less than ten percent of an issuer's voting securities, it does not appear that disclosures of stock holdings of less than ten percent by filing persons in response to items 6(b) and 6(c) of the Form have raised competitive concerns sufficient to result in the issuance of any second requests.

Increasing the reporting thresholds to ten percent is also likely to reduce significantly the compliance burden of certain filing persons, such as nonpublic and foreign firms. Generally, nonpublic and foreign firms are not required to report their holdings regularly as publicly-held companies in the United States are required to do. Consequently such firms appear to have difficulty gathering the information needed to respond accurately to items 6(b) and 6(c) at the five percent thresholds.

Accordingly, the Commission proposes to revise items 6(b) and 6(c) of the Form to read as follows:

Item 6(b)—Shareholders of person filing notification. For each entity (including the ultimate parent entity) included within the person filing notification the voting securities of which are held (See § 801.1(c)) by one or more other persons, list the issuer and class of voting securities, the name and headquarters mailing address of each other person which holds ten percent or more of the outstanding voting securities of the class, and the number and percentage of each class of voting securities held by that person Holders need not be listed for issuers with total assets of less than $10 million.

Item 6(c)—Holdings of person filing notification. If the person filing notification holds voting securities of any issuer not included within the person filing notification, list the issuer and class, the number and percentage of each class of voting securities held, and

(optional) the entity within the person filing notification which holds the securities. Holdings of less than ten percent of the outstanding voting securities of any issuer, and holdings of issuers with total assets of less than $10 million, may be omitted.

n. Reporting of 5-Digit SIC Code Overlaps

At present, item 7 of the Form requires the filing person who has knowledge or belief that it and any other party to the acquisition derived revenues in the most recent year from any of the same 4-digit SIC industry codes to list the overlapping SIC codes and to provide its description. If the transaction involves the formation of a joint venture or other corporation, the filing person must indicate the common 4-digit SIC codes in which it derives revenues and in which the joint venture will derive revenues as well as the common codes it has with other parties to the transaction. The Commission proposes to amend item 7 in two ways.

First, the Commission proposes to require filing persons to identify and provide geographic market information for overlapping 5-digit SIC product class codes as well as 4-digit SIC codes for manufacturing operations (SIC major groups 20–39). The Commission has found that many of the 4-digit SIC codes within SIC major groups 20–39 are too broad for proper product line determinations. Because many products are often included within a particular 4-digit SIC code, it is difficult to determine based on 4-digit information whether the parties to the transaction produce competing products. However, 5-digit SIC codes delineate specific product classes that are less inclusive than the 4-digit SIC codes that classify products by manufacturing industry. Modifying item 7 to include overlapping 5-digit SIC codes will provide more detailed geographic market information about a more narrowly defined class of products that the filing persons produce in common. For example, the 4-digit SIC code, 2834 - Pharmaceutical Preparations, is sub-categorized into nine different 5-digit SIC codes. Thus, for the most part, while the information received in response to item 7 has been very useful, the Commission believes that information regarding geographic markets at the 5-digit SIC code overlap level will improve the agencies' initial antitrust review.

Second, the Commission proposes to amend item 7 to require filing persons to include SIC code overlaps and geographic market information for products added and facilities that began operations after the period for which revenue information was provided in response to items 5(b)(iii) and 5(c). At present, Item 7 requires a filing person to identify overlaps from operations in which it derived revenues "in the most recent year." If a filing person interprets this language narrowly to mean only overlaps for operations in which it reported revenues in items 5(b)(iii) and 5(c) for the most recent year (for which it has compiled twelve months of revenue information), overlaps which exist due to products or facilities added after that period would not be identified. The Commission is aware of at least one instance in which a filing person failed to report geographic market information for a retail establishment it opened and from which it derived revenues after the year for which it reported revenues in item 5(c). The failure to disclose such locations in responding to item 7 compromises the agencies' ability to make a complete assessment of the potential competitive effects of a proposed acquisition. For this reason, the Commission proposes to amend item 7 to clarify that filing persons are required to report product overlap and geographic market information current to the date of filing.

In addition, consistent with the proposal described above, the Commission proposes to amend current item 7(c)(iv), which will be renumbered item 7(c)(v). This item requires filing persons to provide the street addresses, arranged by state, county and city or town, of establishments in certain industries, e.g., retail trade, for which the competitive effects in local geographic markets may be of concern. The Commission proposes to amend renumbered item 7(c)(v) to make clear that the listing of establishments must include establishments acquired or constructed since the end of the most recent year for which period revenues are reported in item 5(b)(iii).

The Commission therefore proposes to amend item 7 to require: (1) The disclosure of SIC code overlaps and geographic market information at the 5-digit product class level as well as the 4-digit industry level in SIC major groups 20–39; (2) the listing of SIC code overlaps and geographic markets resulting from products added or businesses entered into since the end of the most recent year for which revenues are reported in item 5(b)(iii) or item 5(c)(i); and (3) in newly numbered item 7(c)(v), the listing of establishments acquired or constructed since the end of the most recent year for which period revenue information was provided in response to items 5(b)(iii) and 5(c). The proposed amendments read as follows:

Item 7—If, to the knowledge or belief of the person filing notification, the person filing notification derived dollar revenues in the most recent year (and/or in the period from the end of the most recent year to the date of filing of this Notification and Report Form) from any 4-digit SIC code or, within SIC major groups 20–39 (manufacturing industries), from any 4-digit industry or 5-digit product class code in which any other person who is a party to the acquisition also derived dollar revenues in the most recent year or since the end of the most recent year (or in which a joint venture or other corporation will derive dollar revenues), then for each 4-digit (SIC code) industry and each 5-digit (SIC code) product class:

Item 7(a)—List the 4-digit (industry) and 5-digit (product class) SIC codes and the description for the industries and product classes;

Item 7(b)—List the name of each person who is a party to the acquisition who derived dollar revenues in the 4-digit industry and 5-digit product class code;

Item 7(c)(i)—For each 4-digit industry and 5-digit product class code within SIC major groups 20–39 (manufacturing industries) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which, to the knowledge or belief of the person filing notification, the products in that 4-digit industry and 5-digit product class produced by the person filing notification are sold without a significant change in their form, whether they are sold by the person filing notification or by others to whom such products have been sold or resold;

Item 7(c)(v)—For each 4-digit industry within SIC major groups 52–61, 70, 75, 78, and 80 (retail trade, banking, and certain services) listed in Item 7(a) above, provide the street address, arranged by state, county and city or town, of each establishment from which dollar revenues were derived in the most recent year or since the end of the most recent year, including establishments acquired or constructed by the filing person since the end of the most recent year.

o. Submission of Geographic Market Information for Health Care Facilities

At present, item 7 does not always provide the enforcement agencies with the geographic market information needed to assess the potential anticompetitive effects of acquisitions involving health care facilities. The problem results from the use of different 4-digit SIC codes to report the revenues derived from owned versus managed health care facilities. Persons who

their revenues in item 5 under one of six different 4-digit SIC codes in industry groups 805 and 806. In contrast, persons who manage health care facilities but do not own the facility report revenues derived from their management services under 4-digit SIC code 8741–Management Services. Consequently, since filing persons use different 4-digit SIC codes to report revenues derived from owned and managed health care facilities, they are not required to identify these operations as overlaps in item 7(a). Thus, if one party to an acquisition derived revenue from the ownership and operation of a general medical hospital (4-digit SIC code 8062) in the most recent year and the other party derived revenue from the management of a general medical hospital (4-digit SIC code 8741) in the same metropolitan area, the parties would not be required to identify these operations as an overlap in item 7 or to provide geographic market information.

The Commission believes that information concerning the operation of both owned and managed health care facilities is essential to the agencies' ability to perform an initial antitrust review of health care acquisitions. As the Commission found in *Hospital Corporation of America*, 106 F.T.C. 361 (1985), *aff'd, Hospital Corporation of America* v. *Federal Trade Commission*, 807 F.2d 1381 (7th Cir. 1986), *cert. denied*, 481 U.S. 1038 (1987), management contracts greatly enhance the ability of a firm to coordinate behavior between its owned hospitals and the hospitals it manages, thereby increasing the likelihood of anticompetitive consequences. For this reason, the Commission held that including the management contracts to be acquired from Hospital Affiliates within Hospital Corporation of America's market shares presented a more accurate picture of HCA's post-acquisition market power.

The importance of receiving information concerning management contracts in the health care area is further supported by the fact that approximately eight percent of the nation's community hospitals are operated under management contracts, often by hospital companies that both manage hospitals for others as well as operate hospitals which they own. See American Hospital Ass'n, Guide to the Health Care Field (1992) and Hospital Statistics (1992–1993 ed.). However, geographic information for managed health care facilities is not readily available on a current basis from these or any other published sources. Thus, it is important that the enforcement agencies receive with the HSR filing overlap and geographic market information concerning health care facilities that are owned, as well as those that are managed, by the filing parties.

Accordingly, the Commission proposes to amend item 7 to require reporting persons to identify managed and owned health care operations as overlaps and to provide appropriate geographic market information. To accomplish this, the Commission proposes to add a special instruction to item 7 that will treat reporting persons that operated a health care facility under a management contract in the most recent year as having derived revenues from that facility in that facility's 4-digit SIC code. For example, if the acquiring person in a reported transaction owned and operated a general medical hospital in the most recent year and reported revenues under 4-digit SIC code 8062 and the acquired person managed a general medical hospital under a management contract in the most recent year, the parties would be required to identify in item 7(a) an overlap in 4-digit SIC code 8062. In addition, each person would be required to provide, in response to renumbered item 7(c)(v), the street address, arranged by state, county and city or town, for each general medical hospital it owned or managed. This special instruction will apply only to establishments listed within SIC industry group 805, Nursing and Personal Care Facilities, and SIC industry group 806, Hospitals. Accordingly, the Commission proposes to add the following language to the instructions to item 7.

For purposes of Item 7, a person that operates, under a management contract an establishment included within SIC industry group 805, Nursing and Personal Care Facilities, or within industry group 806, Hospitals, shall be deemed to derive revenues from that establishment in the establishment's 4-digit SIC code, whether or not the person is entitled to share in the establishment's revenue, or is otherwise compensated for its management services. An establishment is deemed to be operated under a management contract by a person if that person has been delegated by another person, or governmental unit, the contractual authority and responsibility to administer or supervise the operations of all, or substantially all, of the establishment, whether or not the operator is subject to the supervision of that or any other person or unit.

p. Submission of County Geographic Market Information

Item 7(c)(ii) of the Form requires filing persons to identify the states in which they derive revenues for overlapping 4-digit SIC codes within major groups 01–17 (agriculture, forestry, fishing, mining, construction and transportation industries) and 40–49 (communications, electric, gas and sanitary services). Based on the agencies' review of past transactions in these industries, the Commission has determined that the agencies need more detailed geographic market information for the communications industry (major group 48), which includes cable television services. Many franchises and licenses in the communications industry are issued on a local (county or city) basis rather than on a state-wide basis. Comparison of county services will provide information as to whether competition exists or is likely to exist in this industry. Submission of county information will help the agencies in determining the possible competitive effects of a proposed transaction within the limited time provided by the act.

Accordingly, the Commission proposes that county as well as state information be provided by filing persons whenever a 4-digit SIC code within 2-digit major group 48 has been identified as an SIC code overlap in response to item 7(a) of the Form. To accomplish this, the Commission proposes that item 7(c)(ii) be changed to exclude SIC major group 48 and that (1) a new item 7(c)(iii) be added to the Form to require the filing person to identify the counties and states in which it derived revenues for 4-digit SIC codes in major group 48; and (2) present items 7(c)(iii), 7(c)(iv), 7(c)(v) and 7(c)(vi) be renumbered, respectively, 7(c)(iv), 7(c)(v), 7(c)(vi) and 7(c)(vii). The proposed modification of item 7(c)(ii) and the proposed new item 7(c)(iii) read as follows:

Item 7(c)(ii)—For each 4-digit industry within SIC major groups 01–17, 40–47 and 49 (agriculture, forestry and fishing, mining, construction, transportation, electric, gas and sanitary services) listed in Item 7(a) above, list the states (or, if desired, portions thereof) in which the person filing notification conducts such operations;

Item 7(c)(iii)—For each 4-digit industry within SIC major group 48 (communications) listed in Item 7(a) above, list the states and the counties within such states in which the person filing notification conducts such operations or, if the person filing notification conducts operations in all

counties within a state, the identity of such states.

q. Increase in Reporting Threshold for Vendor-Vendee Relationships

At present, item 8 of the Form requires filing persons that are also vendees to provide certain information if the acquiring and the acquired persons maintained a vendor-vendee relationship during the most recent year with respect to any manufactured product that the vendee either resells, consumes in, or incorporates into, the manufacture of a product. If the proposed acquisition involves the formation of a joint venture or other corporation, item 8 requires each person forming the entity to identify any manufactured product it purchased from any other such person which will be supplied to the joint venture or other corporation. If the aggregate annual sales of the manufactured product do not exceed $1 million, the filing person need not list the product in item 8. The intended purpose of item 8 is to "identify certain instances in which a reported acquisition may result in vertical foreclosure or an increase in vertical integration in an industry." See 43 FR 33450, 33533 (July 31, 1978).

The Commission is aware that the $1 million threshold can make complying with item 8 burdensome. Responding can be particularly difficult for a large firm without a centralized accounting system that tracks the sales and purchases of each of its many divisions and subsidiaries. Consequently, such a firm may need to undertake a significant records check to determine whether it had sales or purchases of over $1 million of product from the other person to the transaction in order to supply the data called for by item 8.

The Commission proposes to increase the threshold in item 8 to require the reporting of vendor-vendee relationships when aggregate annual sales or purchases of a manufactured product during the most recent year exceed $5 million. In 1978, the Commission declined to raise the threshold to $5 or $10 million because it was concerned that a reporting floor higher than $1 million would exclude some highly significant vertical relationships. See 43 FR 33450, 33534 (July 31, 1978). However, the Commission's experience in reviewing filings and investigating proposed transactions in recent years has indicated that acquisitions in which either party makes product purchases from the other party under $5 million rarely, if ever, present risks of vertical foreclosure or increased vertical integration in a given industry. In addition, this threshold should simplify filing persons' reporting obligations because even large firms with numerous operations are likely to be able easily to identify customers that purchase this volume of product. Vendees that must supply the data required by item 8 also will likely know if they acquired products exceeding $5 million from a single source of supply.

Accordingly, the Commission proposes to modify item 8 of the Form to read:

Manufactured products are those within 2-digit SIC major groups 20–39. Any product purchased from the vendor in the aggregate annual amount not exceeding $5 million, or the manufacture, consumption or use of which is not attributable to the assets to be acquired, or to the issuer whose voting securities are to be acquired (including entities controlled by the issuer), may be omitted.

r. Reporting of Prior Acquisitions

At present, item 9 requires the acquiring person to list certain prior acquisitions when both the acquiring person and the acquired issuer or the acquired assets had attributable to them revenues of $1 million or more in the most recent year in the same 4-digit SIC code. The acquiring person is required to list only prior acquisitions made within the previous five years of more than 50 percent of the voting securities or assets of entities which had annual net sales or total assets greater than $10 million in the year prior to the acquisition.

The purpose of item 9 is "to assist the agencies in identifying any prior acquisitions by the acquiring person that may suggest a pattern of acquisitions in a particular industry by that person." 43 FR 33450, 33534 (July 31, 1978). Item 9 has been useful to the agencies in monitoring competition within industries. Responses to this item have provided information relating to acquisitions for which a premerger filing was not made as well as information regarding possible violations of the Act for failure to file notification.

As stated above, item 9 currently requires information regarding prior acquisitions involving common 4-digit SIC codes in which both the acquiring person and the issuer or assets to be acquired derived revenues of $1 million or more in the most recent year. In 1987, the Commission decided not to adopt a suggestion to raise the $1 million threshold to $10 million "because the agencies sometimes find overlaps of less than $10 million in a given 4-digit SIC code to be of significance." 52 FR 7078 (March 6, 1987) The Commission explained that this is particularly true when the parties compete in small local markets and when the acquiror has a large market share. *Id.* However, based on the Commission's experience in reviewing acquisitions since 1987, the Commission has observed that acquisitions in which either party currently derives revenues of less than $5 million in the same 4-digit SIC industry code seldom present competitive concerns. Thus, information about the acquiring person's prior acquisitions involving such industries is of limited value, either in analyzing the transaction for which the acquiring person is currently filing notification, or for monitoring competition in the given industry. For this reason, the Commission proposes to raise the $1 million threshold presently found in item 9 to $5 million.

The Commission also proposes to clarify the language in item 9 which provides that "only acquisitions of more than 50 percent of the voting securities or assets of entities" need be listed. With respect to asset acquisitions, this language has been read to mean that only acquisitions of more than 50 percent of the assets of an entity need be listed. While the more than 50 percent threshold is justified for voting securities acquisitions, it appears to have no basis from an antitrust perspective as applied to assets. In many cases, filing parties often have recognized this incongruity and have included in their response to item 9 acquisitions of assets that did not constitute more than 50 percent of the acquired entity's assets; strict application of the more than 50 percent requirement to assets would permit nearly all prior acquisitions from large, multi-divisional corporations to go unreported in item 9. Accordingly, the Commission proposes to modify the instructions to item 9 to make clear that asset acquisitions are not subject to the 50 percent test.

In addition, the Commission proposes to modify the language of the "more than 50 percent" test as applied to the acquisition of voting securities to a "50 percent or more" test consistent with the Commission's definition of control of an issuer. See 16 CFR 801.1(b).

Accordingly, the Commission proposes that the instructions to item 9 be revised, in part, as follows:

Item 9—Previous acquisitions (to be completed by acquiring persons). Determine each 4-digit (SIC code) industry listed in Item 7(a) above, in which the person filing notification derived dollar revenues of $5 million or more in the most recent year and in which either (1) the issuer to be acquired derived revenue of $5 million or more in the most recent year (or in the case of the formation of a joint venture or other corporation, where the joint venture or other corporation can be expected to derive revenues of $5 million or more), or (2) revenues of $5 million or more in the most recent year are attributable to the assets to be acquired.

For each such 4-digit industry, list all acquisitions made by the person filing notification in the five years prior to the date of filing. List only acquisitions of (1) 50 percent or more of the voting securities of an issuer which had assets or annual net sales of $10 million or more in the year prior to the acquisition or (2) acquisitions of assets valued at $10 million or more at the time of their acquisition.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–14316 Filed 6–13–94; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

Registration of Manufacturers and Importers of Controlled Substances

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: On October 7, 1993, DEA published a notice a proposed rulemaking (NPRM) in the **Federal Register** (58 FR 52246) to amend its regulations to eliminate the mandatory administrative hearing requirement for objections to the registration of certain bulk manufacturers and importers of controlled substances. This SNPRM revises the NPRM by proposing to eliminate the hearing provision relating to bulk manufacturers altogether and leave unaltered the hearing provision relating to registration of importers.

DATES: Written comments and objections to this SNPRM must be received on or before August 15, 1994.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Julie C. Gallagher, Associate Chief Counsel, Diversion and Regulatory Section, Office of Chief Counsel, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–8010.

SUPPLEMENTARY INFORMATION: On October 7, 1993, DEA published a NPRM in the **Federal Register** (58 FR 52246). The DEA proposed to amend two sections of its regulations, specifically 21 CFR 1301.43(a) and 1311.42(a), in which the Administrator is required to hold an administrative hearing on an application for registration to manufacture or import a bulk Schedule I or II controlled substance when requested to do so by any current bulk manufacturer of the substance(s) or by any other applicant for a similar registration. Because the proposals in this SNPRM differ in some respects from the NPRM, DEA encourages interested persons to file comments in response to this SNPRM even if they have already commented on the NPRM. Comments previously received under the NPRM will be considered under the SNPRM to the extent they are relevant to the changes in the SNPRM.

Section 1311.42(a)

In the NPRM, DEA proposed to remove the provision which enabled a person registered as a bulk manufacturer of a controlled substance or applicant thereof to request a hearing on the application of an importer of that controlled substance. As several commentators argued, the proposed amendment to 21 CFR 1311.42, cannot be reconciled with the hearing provisions of 21 U.S.C. 958(i). The relevant portion of 21 U.S.C. 958(i) states: "prior to issuing a registration under this section . . . the Attorney General shall give manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing." In keeping with the above requirement, 21 CFR 1311.42, allows current bulk manufacturer registrants to request an administrative hearing regarding their objections to the registration of certain importers of Schedule I and II controlled substances. With an existing statute in effect, DEA is not empowered to adopt regulations that contravene the express language of that statute. Therefore, based on the hearing provisions under 21 U.S.C. 958(i), 21 CFR 1311.42, Application for importation of Schedule I and II controlled substances, shall remain unchanged.

Section 1301.43(a)

Unlike the registration of importers, the Controlled Substances Act (21 U.S.C. 801, et seq.) does not require that current registrants be allowed to request a hearing on an application for registration as a bulk manufacturer of a controlled substance. The NPRM proposed to modify § 1301.43(a) and provide for a hearing only when "the Administrator determines that a hearing is necessary to receive factual evidence and/or expert testimony with respect to issues raised by the application or objections thereto." The SNPRM goes one step further and eliminates this hearing provision entirely. However, the Administrator would still be required to hold hearings when requested by the applicant pursuant to an order to show cause, § 1301.44, and current registrants and applicants would still be permitted to submit comments or objections concerning an application for registration. In addition, current registrants and applicants would be granted an opportunity to participate in any hearings conducted pursuant to § 1301.44.

DEA recognizes that the antecedent for this hearing provision derives from statutory acknowledgement that limiting the number of registrants may increase the capability to control diversion. The regulations clearly state, however, that the Administrator is not required to limit the number of manufacturers even if the current registrants can provide an adequate supply, as long as DEA can maintain effective controls against diversion. 21 CFR 1301.43(b). In addition, as stated in the NPRM, the Administrator has never denied an application solely on the basis of increased danger of diversion or adverse impact upon domestic competition.

DEA also agrees that current registrants and applicants should be allowed to object to an additional registration by filing comments on grounds that it would adversely affect diversion or competition in a highly regulated industry. But DEA finds that registrants and applicants have abused the mandatory hearing requirement in the past and it remains a future source of abuse where these individuals defer or delay new registrations and retaliate by opposing annual renewals.

Most important, the proposed change as provided herein does not violate statutory intent but instead comports with sound principles of substantive and procedural due process. First, eliminating the hearing requirement except when requested by the applicant after issuance of an order to show cause supports the statutory and regulatory mandate that an applicant for registration as a bulk manufacturer shall have the burden of proof at "any hearing" that the requirements of

registration are met. See 21 CFR 1301.55. The Administrative Procedure Act (APA) which controls these matters further provides that "[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof." See 5 U.S.C. 556(d).

Second, the proposed change eliminates the potential for multiple hearings which not only promotes judicial economy but also avoids the anomalous result of DEA conducting administrative hearings which are not dispositive of the ultimate issue of whether an applicant should be registered. For example, because DEA must issue an order to show cause whenever it takes action to deny an application, 21 U.S.C. 824(c), under the current regulation a second hearing would likely be required when DEA decided to deny an application after a hearing held pursuant to a "third-party" request. Further, this second hearing would involve many of the same issues raised in the prior proceeding.

Finally, the proposed change continues to permit current registrants and applicants to submit written comments and objections concerning an applicant's registration. There is no reason to believe that this procedure does not provide an adequate mechanism for these individuals to convey the substance and criticality of any objections or that DEA would fail to consider such evidence prior to making a final determination. Moreover, these individuals could still participate in any hearing conducted contemporaneous with an application, thereby providing an additional opportunity to present evidence.

Accordingly, the Deputy Assistant Administrator for Diversion Control is proposing to delete the hearing requirement from this regulation. The notice requirement and the opportunity to comment upon and oppose applications shall be retained, while current registrants and other applicants will retain the opportunity to participate in any hearing requested by the Applicant pursuant to an order to show cause.

The Deputy Assistant Administrator hereby certifies that the SNPRM will have no significant impact upon those entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The registrants and applicants who use, or are affected by, the hearing covered by these regulations are typically not small entities.

The proposed rule is not a significant regulatory action pursuant to Executive Order 12866 and therefore, has not been submitted to the Office of Management and Budget centralized review. This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug traffic control and security measures.

Therefore, pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b), as delegated to the Administrator of the Drug Enforcement Administration, and redelegated to the Deputy Assistant Administrator, Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control hereby proposes that part 1301 of Title 21, Code of Federal Regulations be amended as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.43 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1301.43 Application for bulk manufacture of Schedule I and II substances.

(a) In the case of an application for registration or reregistration to manufacture in bulk a basic class of controlled substance listed in Schedule I or II, the Administrator shall, upon the filing of such application, publish in the **Federal Register** a notice naming the applicant and stating that such applicant has applied to be registered as a bulk manufacturer of a basic class of narcotic or nonnarcotic controlled substance, which class shall be identified. A copy of said notice shall be mailed simultaneously to each person registered as a bulk manufacturer of that basic class and to any other applicant therefor. Any such person may, within 30 days from the date of publication of the notice in the **Federal Register**, file with the Administrator written comments on or objections to the issuance of the proposed registration.

* * * * *

3. Section 1301.44 is proposed to be amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 1301.44 Certificate of registration; denial of registration.

* * * * *

(b) If a hearing is requested by an applicant for registration or reregistration to manufacture in bulk a basic class of controlled substance listed in Schedule I or II, any person entitled to file comments or objections to the issuance of the proposed registration pursuant to § 1301.43(a) may participate in the hearing by filing a notice of appearance in accordance with § 1301.54. Notice of the hearing shall be published in the **Federal Register** and shall be mailed simultaneously to the applicant and to all persons to whom notice of the application was mailed. Notice of the hearing shall contain a summary of all comments and objections filed regarding the application and shall state the time and place for the hearing, which shall not be less than 30 days after the date of publication of such notice in the **Federal Register**.

* * * * *

4. Section 1301.54 is proposed to be amended by revising paragraphs (a), (b), (c) and (d) to read as follows:

§ 1301.54 Request for hearing or appearance; waiver.

(a) Any person entitled to a hearing pursuant to §§ 1301.42, 1301.44, or 1301.45 and desiring a hearing shall, within 30 days after the date of receipt of the order to show cause, file with the Administrator a written request for a hearing in the form prescribed in § 1316.47 of this chapter.

(b) Any person entitled to participate in a hearing pursuant to § 1301.44(b) and desiring to do so shall, within 30 days of the date of publication of notice of the hearing in the **Federal Register**, file with the Administrator a written notice of his intention to participate in such hearing in the form prescribed in § 1316.48 of this chapter. Any person filing a request for a hearing need not also file a notice of appearance.

(c) Any person entitled to a hearing or to participate in a hearing pursuant to §§ 1301.42, 1301.44, or 1301.45 may, within the period permitted for filing a request for a hearing or a notice of appearance, file with the Administrator a waiver of an opportunity for a hearing or to participate in a hearing, together with a written statement regarding his position on the matters of fact and law involved in such hearing. Such statement, if admissible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.

(d) If any person entitled to a hearing or to participate in a hearing pursuant to §§ 1301.42, 1301.44, or 1301.45 fails to file a request for a hearing or a notice of appearance, or if he so files and fails to appear at the hearing, he shall be deemed to have waived his opportunity for the hearing or to participate in the hearing, unless he shows good cause for such failure.

* * * * *

5. Section 1301.55 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1301.55 Burden of proof.

(a) At any hearing on an application to manufacture any controlled substance listed in Schedule I or II, the applicant shall have the burden of proving that the requirements for such registration pursuant to section 303(a) of the Act (21 U.S.C. 823(a)) are satisfied. Any other person participating in the hearing pursuant to § 1301.44(b) shall have the burden of proving any propositions of fact or law asserted by him in the hearing.

* * * * *

Dated: May 26, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 94–14333 Filed 6–13–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 880, 881, 883, 884 and 886

[Docket No. R–94–1732; FR–2960–P–01]

RIN 2502–AG05

Drug-Related Rent Adjustments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD regulations to authorize rent adjustments for certain privately owned Section 8 projects to combat drug-related criminal activities.

DATES: Comments due date: August 15, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Facsimile (FAX) are not acceptable. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: James Tahash, Director, Planning and Procedures Division, room 6280, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410–0500; telephone: (voice) (202) 708–3944 and (TDD) (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This proposed rule would amend title 24 of the Code of Federal Regulations by adding new §§ 880.609(c), 881.609(c), 883.210(c), 884.109(d), 886.112(d) and 886.312(d), which would allow HUD to grant additional rental adjustments to privately owned Section 8 projects to combat drug-related criminal activity. The proposed rule would implement section 542 of the Cranston-Gonzalez National Affordable Housing Act, which amended section 8(c)(2)(B) of the U.S. Housing Act of 1937.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

This proposed rule was listed as item 1581 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20446) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. This proposed rule would have a minimal effect on small entities. It would not result in any windfall adjustments for owners because they have to substantiate to HUD the need to combat drug related crime to recoup expenses incurred.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the Order. Specifically, the requirements of this proposed rule are directed to private owners of Section 8 projects and do not impinge upon the relationship between the Federal government and State and local governments.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The proposed rule involves additional rental adjustments which would be provided to private owners of Section 8 projects. Any effect on the family would likely be indirect and insignificant.

List of Subjects

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations, parts 880, 881, 883, 884, and 886, would be amended as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citation for part 880 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

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2. Section 880.609 would be amended by revising the section heading, redesignating the existing paragraph (c) as paragraph (d), and adding a new paragraph (c), to read as follows:

§ 880.609 Rent adjustments.

* * * * *

(c) *Adjustments for drug-related criminal activity.* (1) HUD may (at the discretion of the Secretary and subject to the availability of appropriations), on a project by project basis, approve adjustments to the gross rent, to a level no greater than 120 percent of the monthly gross rents for the project (multiply 1.20 by the current gross rents for each unit size under Housing Assistance Payments Contract) to cover the cost of maintenance, security, capital repairs, and reserves required for the private owner to address the drug-related criminal activity problem.

(2)(i) HUD Field Offices or contract administrators shall approve special rent increases based on a written submission from the owner which is to include all supporting data as may be required by HUD. In order to be eligible for such an adjustment, the project rent increases must be determined by the Annual Adjustment Factors.

(ii) In order to be considered for a special adjustment, owners shall submit sufficient evidence, as required by HUD, to the Field Offices or contract administrator that will allow HUD to determine that:

(A) The project is located in a community where the drug-related criminal activity is community-wide and not project specific; and

(B) The drug-related criminal activity has resulted in substantial increases in the project's operating, maintenance and capital repair expenses.

(iii) Prior to approval of a special adjustment to cover the cost of physical improvements, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(3)(i) The special adjustment remains in effect (subject to the availability of funds) until the security problems at the project are rectified or costs decrease.

(ii) HUD Field Offices or contract administrators are authorized to "back out" the special adjustment when the need for the special rent increase can no longer be justified. Prior to computing an annual adjustment of rents, all special rent increases approved should be reviewed by HUD Field Offices or contract administrators to determine if the special adjustment needs to be "backed out."

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

3. The authority citation for part 881 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

4. Section 881.609 would be amended by revising the section heading, redesignating the existing paragraph (c) as paragraph (d), and adding a new paragraph (c), to read as follows:

§ 881.609 Rent adjustments.

* * * * *

(c) *Adjustments for drug-related criminal activity.* (1) HUD may (at the discretion of the Secretary and subject to the availability of appropriations), on a project by project basis, approve adjustments to the gross rent, to a level no greater than 120 percent of the monthly gross rents for the project (multiply 1.20 by the current gross rents for each unit size under Housing Assistance Payments Contract) to cover the cost of maintenance, security, capital repairs, and reserves required for the private owner to address the drug-related criminal activity problem.

(2)(i) HUD Field Offices or contract administrators shall approve special rent increases based on a written submission from the owner which is to include all supporting data as may be required by HUD. In order to be eligible for such an adjustment, the project rent increases must be determined by the Annual Adjustment Factors.

(ii) In order to be considered for a special adjustment, owners shall submit sufficient evidence, as required by HUD, to the Field Offices or contract administrator that will allow HUD to determine that:

(A) The project is located in a community where the drug-related criminal activity is community-wide and not project specific; and

(B) The drug-related criminal activity has resulted in substantial increases in the project's operating, maintenance and capital repair expenses.

(iii) Prior to approval of a special adjustment to cover the cost of physical improvements, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(3)(i) The special adjustment remains in effect (subject to the availability of funds) until the security problems at the project are rectified or costs decrease.

(ii) HUD Field Offices or contract administrators are authorized to "back out" the special adjustment when the need for the special rent increase can no longer be justified. Prior to computing an annual adjustment of rents, all special rent increases approved should be reviewed by HUD Field Offices or contract administrators to determine if the special adjustment needs to be "backed out."

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

5. The authority citation for part 883 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

6. Section 883.710 would be amended by revising the section heading, redesignating the existing paragraph (c) as paragraph (d), and adding a new paragraph (c), to read as follows:

§ 883.710 Rent adjustments.

* * * * *

(c) *Adjustments for drug-related criminal activity.* (1) HUD may (at the discretion of the Secretary and subject to the availability of appropriations), on a project by project basis, approve adjustments to the gross rent, to a level no greater than 120 percent of the monthly gross rents for the project (multiply 1.20 by the current gross rents for each unit size under Housing Assistance Payments Contract) to cover the cost of maintenance, security, capital repairs, and reserves required for the private owner to address the drug-related criminal activity problem.

(2) (i) HUD Field Offices or contract administrators shall approve special rent increases based on a written submission from the owner which is to include all supporting data as may be required by HUD. In order to be eligible for such an adjustment, the project rent increases must be determined by the Annual Adjustment Factors.

(ii) In order to be considered for a special adjustment, owners shall submit sufficient evidence, as required by HUD, to the Field Offices or contract administrator that will allow HUD to determine that:

(A) The project is located in a community where the drug-related criminal activity is community-wide and not project specific; and

(B) The drug-related criminal activity has resulted in substantial increases in the project's operating, maintenance and capital repair expenses.

(iii) Prior to approval of a special adjustment to cover the cost of physical improvements, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(3) (i) The special adjustment remains in effect (subject to the availability of funds) until the security problems at the project are rectified or costs decrease.

(ii) HUD Field Offices or contract administrators are authorized to "back out" the special adjustment when the need for the special rent increase can no longer be justified. Prior to computing an annual adjustment of rents, all special rent increases approved should be reviewed by HUD Field Offices or contract administrators to determine if the special adjustment needs to be "backed out."

* * * * *

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

7. The authority citation for part 884 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

8. Section 884.109 would be amended by redesignating the existing paragraph (d) as paragraph (e), and adding a new paragraph (d), to read as follows:

§ 884.109 Rent adjustments.

* * * * *

(d) *Adjustments for drug-related criminal activity.* (1) HUD may (at the discretion of the Secretary and subject to the availability of appropriations), on a project by project basis, approve adjustments to the gross rent, to a level no greater than 120 percent of the monthly gross rents for the project (multiply 1.20 by the current gross rents for each unit size under Housing Assistance Payments Contract) to cover the cost of maintenance, security, capital repairs, and reserves required for the private owner to address the drug-related criminal activity problem.

(2) (i) HUD Field Offices or contract administrators shall approve special rent increases based on a written submission from the owner which is to include all supporting data as may be required by HUD. In order to be eligible for such an adjustment, the project rent increases must be determined by the Annual Adjustment Factors.

(ii) In order to be considered for a special adjustment, owners shall submit sufficient evidence, as required by HUD, to the Field Offices or contract administrator that will allow HUD to determine that:

(A) The project is located in a community where the drug-related criminal activity is community-wide and not project specific; and

(B) The drug-related criminal activity has resulted in substantial increases in the project's operating, maintenance and capital repair expenses.

(iii) Prior to approval of a special adjustment to cover the cost of physical improvements, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(3) (i) The special adjustment remains in effect (subject to the availability of funds) until the security problems at the project are rectified or costs decrease.

(ii) HUD Field Offices or contract administrators are authorized to "back out" the special adjustment when the need for the special rent increase can no longer be justified. Prior to computing an annual adjustment of rents, all special rent increases approved should be reviewed by HUD Field Offices or contract administrators to determine if the special adjustment needs to be "backed out."

* * * * *

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS—SPECIAL ALLOCATIONS

9. The authority citation for part 886 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

10. Section 886.112 would be amended by redesignating the existing paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and adding a new paragraph (d), to read as follows:

§ 886.112 Rent adjustments.

* * * * *

(d) *Adjustments for drug-related criminal activity.* (1) HUD may (at the discretion of the Secretary and subject to the availability of appropriations), on a project by project basis, approve adjustments to the gross rent, to a level no greater than 120 percent of the monthly gross rents for the project (multiply 1.20 by the current gross rents for each unit size under Housing Assistance Payments Contract) to cover the cost of maintenance, security, capital repairs, and reserves required for the private owner to address the drug-related criminal activity problem.

(2) (i) HUD Field Offices or contract administrators shall approve special rent increases based on a written submission from the owner which is to include all supporting data as may be required by HUD. In order to be eligible for such an adjustment, the project rent increases must be determined by the Annual Adjustment Factors.

(ii) In order to be considered for a special adjustment, owners shall submit sufficient evidence, as required by HUD, to the Field Offices or contract administrator that will allow HUD to determine that:

(A) The project is located in a community where the drug-related criminal activity is community-wide and not project specific; and

(B) The drug-related criminal activity has resulted in substantial increases in the project's operating, maintenance and capital repair expenses.

(iii) Prior to approval of a special adjustment to cover the cost of physical improvements, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(3)(i) The special adjustment remains in effect (subject to the availability of funds) until the security problems at the project are rectified or costs decrease.

(ii) HUD Field Offices or contract administrators are authorized to "back out" the special adjustment when the need for the special rent increase can no longer be justified. Prior to computing an annual adjustment of rents, all special rent increases approved should be reviewed by HUD Field Offices or contract administrators to determine if the special adjustment needs to be "backed out."

* * * * *

11. Section 886.312 would be amended by redesignating the existing paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and adding a new paragraph (d), to read as follows:

§ 886.312 Rent adjustments.

* * * * *

(d) *Adjustments for drug-related criminal activity.* (1) HUD may (at the discretion of the Secretary and subject to the availability of appropriations), on a project by project basis, approve adjustments to the gross rent, to a level no greater than 120 percent of the monthly gross rents for the project (multiply 1.20 by the current gross rents for each unit size under Housing Assistance Payments Contract) to cover the cost of maintenance, security,

capital repairs, and reserves required for the private owner to address the drug-related criminal activity problem.

(2)(i) HUD Field Offices or contract administrators shall approve special rent increases based on a written submission from the owner which is to include all supporting data as may be required by HUD. In order to be eligible for such an adjustment, the project rent increases must be determined by the Annual Adjustment Factors.

(ii) In order to be considered for a special adjustment, owners shall submit sufficient evidence, as required by HUD, to the Field Offices or contract administrator that will allow HUD to determine that:

(A) The project is located in a community where the drug-related criminal activity is community-wide and not project specific;

(B) The drug-related criminal activity has resulted in substantial increases in the project's operating, maintenance and capital repair expenses.

(iii) Prior to approval of a special adjustment to cover the cost of physical improvements, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(3)(i) The special adjustment remains in effect (subject to the availability of funds) until the security problems at the project are rectified or costs decrease.

(ii) HUD Field Offices or contract administrators are authorized to "back out" the special adjustment when the need for the special rent increase can no longer be justified. Prior to computing an annual adjustment of rents, all special rent increases approved should be reviewed by HUD Field Offices or contract administrators to determine if the special adjustment needs to be "backed out."

* * * * *

Dated: June 7, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–14343 Filed 6–13–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE TREASURY

27 CFR Part 4

[Notice No. 797; Ref: Notice No. 792]

RIN 1512–AB25

Use of the Term "Reserve" on Wine Labels (93F–033P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 792, an advance notice of proposed rulemaking, published in the **Federal Register** on March 17, 1994. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the complex issues addressed in the advance notice.

DATES: Written comments must be received on or before July 15, 1994.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 797.*

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1994, ATF published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** soliciting comments from the public and industry on whether the regulations should be amended to include a definition for the term "reserve" when used on wine labels (Notice No. 792; 59 FR 12566).

The comment period for Notice No. 792 was scheduled to close on June 15, 1994. Prior to the close of the comment period ATF received a request from a national trade association, the National Association of Beverage Importers, Inc. (NABI), to extend the comment period an additional 60 days. NABI, representing the companies that import 90 percent of all alcoholic beverages brought into the U.S., stated that it must coordinate the comments of its members, many of whom are foreign companies importing their products into the U.S. Additional time is needed in order to adequately analyze and communicate the impact that the ANPRM will have on NABI member companies.

In consideration of the above, ATF finds that an extension of the comment period is warranted. However, the comment period is being extended 30 days, until July 15, 1994. The Bureau believes that a comment period totaling 120 days is a sufficient amount of time for all interested parties to respond.

Drafting Information

The principal author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

Authority and Issuance: This notice is issued under the authority in 27 U.S.C. 205.

Signed: June 7, 1994.

Daniel R. Black,

Acting Director.

[FR Doc. 94–14381 Filed 6–13–94; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1926 and 1928

[Docket No. H–122]

RIN 1218–AB37

Indoor Air Quality; Proposed Rule

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of Comment Period and Rescheduling of Public Hearing.

SUMMARY: By this document, the Occupational Safety and Health Administration (OSHA) is extending the comment period and dates for submitting notices of intention to appear, as well as hearing testimony and evidence, and is postponing the public hearing on the proposed rule on indoor air quality which was published on April 5, 1994 (59 FR 15968). The comment period was to end on June 29, 1994; public hearings were scheduled to begin on July 12, 1994. Following publication of the proposal, thirteen written requests to extend the comment period or postpone the public hearing were received. As a result of these requests, OSHA is extending the comment period to August 13, 1994.

Public hearings will be scheduled to begin on September 20, 1994.

DATES: Comments must be postmarked on or before August 13, 1994. Notices of Intention to Appear at the public hearing must be postmarked on or before August 5, 1994. Testimony and evidence to be submitted at the hearing must be postmarked by August 13, 1994. The hearing will begin at 9:30 a.m., Tuesday, September 20, 1994 in Washington, DC.

ADDRESSES: Comments are to be submitted in quadruplicate or 1 original (hard copy) and 1 disk (5–1/4 or 3–1/2) in WP 5.0, 5.1, 6.0 or Ascii to: Docket Office, Docket No. H–122, room N–2625, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 219–7894. Any information not contained on disk, e.g., studies, articles, etc., must be submitted in quadruplicate.

Notices of intention to appear and testimony and evidence are to be submitted in quadruplicate to: Mr. Thomas Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., room N–3649, Washington, DC 20210; Telephone: (202) 219–8615.

The hearing will be held in the auditorium, of the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Public Affairs, Occupational Safety and Health Administration, room N–3649, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 1994, OSHA published a notice of proposed rulemaking on indoor air quality (59 FR 15968 *et seq.*). The proposal covered a broad range of issues falling into two major categories: (1) General indoor air quality as manifested in sick building syndrome and building related illnesses; and (2) environmental tobacco smoke.

Extension of the Comment Period and Re-scheduling of the Public Hearings

Thus far OSHA has receive thirteen written requests to extend the comment period or re-schedule the public hearing to a later date. These requests have been received from: Business Council on Indoor Air (Exh. 9–121), Law firm of Paul, Hastings, Janofsky, and Walker (Exh. 9–2265), National Energy Management Institute (Exh. 9–229), Barrera Associates, Inc. (Exh. 9–539), R. J. Reynolds Tobacco Company (Exh. 9–540), Clean Air Device Manufacturers Coalition (Exh. 9–1610), ICF Kaiser Environment and Energy Group (Exh. 9–1612), Philip Morris (Exh. 9–2202), Total Indoor Environmental Quality Coalition (Exh. 9–541), American Nurses Association (Exh. 9–2263), National Licensed Beverage Association (Exh. 9–2264), United Technologies Carrier (Exh. 9–1613) and United Air Specialists, Inc (Exh. 9–2288). The requesters believe that a number of factors including the amount and complexity of information relied on in the proposal, the desire of interested persons to submit extensive comments and for various trade associations to coordinate among their members justify a modest extension of time. Based on these requests, the Agency has agreed to an extension of the comment period and has re-scheduled the public hearings to allow more time for interested persons to adequately prepare their response to the OSHA proposal. OSHA's rules for participating in its rulemaking were printed in the proposal (59 FR 16034). All persons interested in participating in this proceeding are requested to review these rules in their entirety. For public convenience these procedures are summarized below.

Notice of Intention to Appear at the Informal Hearing

Pursuant to section 6(b)(3) of the OSH Act, an informal public hearing will be held on the IAQ proposal in Washington, DC from September 20 through October 14, 1994. The hearing may be extended if this period is not adequate to accommodate all those filing valid notices of intention to appear at the public hearing or the hearing may be shortened if the schedule is completed earlier.

The hearing will begin at 9:30 a.m. on Tuesday, September 20, 1994 in the auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Persons desiring to participate at the informal public hearing must file a notice of intention to appear by August 5, 1994. The notice of intention to appear must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The issues that will be addressed;
5. A brief statement of the position that will be taken with respect to each issue; and
6. Whether the party intends to submit documentary evidence and, if so, a brief summary of it.

The notice of intention to appear shall be mailed to Mr. Thomas Hall, OSHA Division of Consumer Affairs, Docket No. H–122, U. S. Department of Labor, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 219–8615.

A notice of intention to appear may also be transmitted by facsimile to (202) 219–5986, by the same date, provided that the original and 3 copies are sent to the same address and postmarked by the due date.

Individuals with disabilities wishing to attend the hearing should contact the hearing management officer, Mr. Thomas Hall, to obtain appropriate accommodations at the hearing.

Filing of Testimony and Evidence Before the Hearing

Any party requesting to appear at the hearing or anyone who intends to submit documentary evidence, must provide in quadruplicate the testimony and evidence to be presented at the informal public hearing. One copy shall not be stapled or bound and must be suitable for copying. These materials must be provided to Mr. Thomas Hall, OSHA Division of Consumer Affairs at the address above and must be postmarked no later than August 13, 1994.

Each submission will be reviewed carefully in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact prior to the informal public hearing.

Any party who has not complied with the above requirement may be denied an opportunity to participate or may be requested to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify for no more than 10 minutes as time permits, at the discretion of the Administrative Law Judge, but will not be allowed to question other witnesses. Because of the great amount of interest that the proposal has generated thus far, there may not be enough time to accommodate those individuals wishing to make short presentations who have not filed valid notices of intention to appear; however, efforts will be made to allow such short presentations.

Notices of intention to appear, testimony and evidence will be available for inspection and copying at

the Docket Office at the address noted above.

Conduct and Nature of Hearing

The hearing will begin at 9:30 a.m. on September 20, 1994. At that time, any procedural matters relating to the proceeding will be resolved.

The nature of an informal rulemaking hearing is established in the legislative history of section 6 of the OSH Act and is reflected by OSHA's rules of procedure for hearings (29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, the proceeding is informal and legislative in nature. The Agency's intent, in essence, is to provide interested persons with an opportunity to make effective oral presentation which can proceed expeditiously in the absence of procedural restraints which impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding rather than an adjudicative one. The technical rules of evidence, for example, do not apply. The regulations that govern hearings (29 CFR part 1911) and the pre-hearing guidelines to be issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. These rules and guidelines will be interpreted in a manner that furthers the development of a clear record. Thus, questions of relevance, procedure and participation generally will be decided so as to favor the development of the record.

The hearings will be conducted in accordance with 29 CFR part 1911. It should be noted that § 1911.4 specifies that the Assistant Secretary may, upon reasonable notice, issue alternative procedures to expedite proceedings or for other good cause. The hearing will be presided over by an Administrative Law Judge who makes no decision or recommendation on the merits of OSHA's proposal. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge therefore, will have all powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;

2. To dispose of procedural requests, objections and comparable matters;

3. To confine the presentations to the matters pertinent to the issues raised;

4. To regulate the conduct of those present at the hearing by appropriate means;

5. In the judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and

6. In the Judge's discretion, to keep the record open for a reasonable, stated time to receive written information and additional data, views and arguments from any person who has participated in the oral proceedings.

OSHA recognizes that there may be interested persons or organizations who, through their knowledge of the subject matter or their experience in the field, would wish to endorse or support the whole proposal or certain provisions of the proposal. OSHA welcomes such supportive comments, including any pertinent data and cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

Authority and Signature

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U. S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655).

Signed at Washington, DC, this 6th day of June 1994.

Joseph A. Dear,

Assistant Secretary of Labor

[FR Doc. 94–14323 Filed 6–13–94, 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 71–4–6351; FRL–4997–9]

Approval and Promulgation of Implementation Plans California State Implementation Plan Revision Santa Barbara County Air Pollution Control District San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from polyester resin operations. The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before July 14, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, 2020 L Street, Sacramento, CA 95814.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the California SIP include: Santa Barbara County Air Pollution Control District (SBCAPCD), Rule 349, Polyester Resin Operations; and San Diego County Air Pollution Control District (SDCAPCD), Rule 67.12, Polyester Resin Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on November 18, 1993.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included Santa

Barbara and San Diego Counties. 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Santa Barbara County is classified as moderate and San Diego County is classified as severe;[2] therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on November 18, 1993, including the rules being acted on in this document. This document addresses EPA's proposed action for SBCAPCD's Rule 349, Polyester Resin Operations and SDCAPCD's Rule 67.12, Polyester Resin Operations. SBCAPCD adopted Rule 349 on April 27, 1993 and SDCAPCD adopted Rule 67.12 on April 6, 1993. These submitted rules were found to be complete on December 23, 1993 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and are being proposed for approval into the SIP.

SBCAPCD Rule 349 and SDCAPCD Rule 67.12 control VOC emissions from polyester resin operations. VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). For some source categories, such as polyester resin operations, EPA did not publish a CTG. In such cases, the District may determine what controls are required to satisfy the RACT requirement by reviewing the operations of facilities with the affected source category. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SDCAPCD's Rule 67.12, Polyester Resin Operations, includes the following significant changes from the current SIP:

- A definition for exempt compounds was added and the VOC definition was revised.
- Standards for pigmented and clear gel coats were added.
- The recordkeeping section was revised to include maintenance of records for gel coats used, manufacturer's identification and VOC content of materials used.
- Several new test methods were added to correct previously identified deficiencies.

SBCAPCD's Rule 349, Polyester Resin Operations, is a new rule which was adopted to control VOC emissions from commercial and industrial polyester resin operations. Rule 349 includes:

- The use of control options.
- Requirements for spray equipment.
- Recordkeeping for resins and cleaning materials.
- The use of closed containers to store all unused materials.
- Test methods to determine compliance.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SDCAPCD's Rule 67.12, Polyester Resin Operations and SBCAPCD's Rule 349, Polyester Resin Operations are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post–1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] SBCAPCD and SDCAPCD retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action The CAA forbids EPA to base its actions concerning SIPs on such grounds. T3Union Electric Co. v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons Intergovernmental relations, Ozone Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 6, 1994.

John Wise,

Acting Regional Administrator

[FR Doc. 94–14419 Filed 6–13–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[NH–8–1–5894; A–1–FRL–4998–3]

Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to conditionally approve the State Implementation Plan (SIP) revision submitted by the State of New Hampshire for the purpose of establishing a small business stationary source technical and environmental compliance assistance program. The SIP revision was submitted by the State to satisfy the Federal mandate to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Clean Air Act (CAA). The rationale for the conditional approval is set forth in this proposal; additional information is available at the address indicated in the **ADDRESSES** section.

DATES: Comments must be received on or before July 14, 1994.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environ- mental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Emanuel Souza, Jr., (617) 565–3248

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act Amendments of 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a small business stationary source technical and environmental compliance assistance program (PROGRAM), and submit this PROGRAM as a revision to the SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions

The State of New Hampshire has submitted a SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements: (1) The establishment of a small business assistance program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State small business ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. Small Business Assistance Program

New Hampshire's Small Business Technical Assistance Program (SBTAP) will be located in the Department of Environmental Services (DES). The Program will require coordination with other DES programs to utilize their experience and to assess the potential cross-media impact of compliance alternatives.

Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further comply with the Act. The State has met this requirement by offering a

[1] A seventh requirement of section 507(a) establishment of an Ombudsman office, is discussed in the next section.

proactive and reactive approach to gathering and disseminating information on compliance issues and control technologies. The State expects to use potential resources such as a technical library and an information clearinghouse. Program staff will proactively conduct workshops and presentations for potentially affected small businesses.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement by stating that the SBTAP will work with small businesses to provide general engineering assistance. Pollution prevention efforts will be coordinated with the DES toxic use and waste reduction programs. SBTAP will work proactively to promote awareness of pollution prevention techniques and related issues.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement. The SBTAP will develop materials explaining regulatory and permit requirements for small business stationary sources. Program staff will identify alternative methods and technologies for compliance with specific regulations. This will involve coordination with other DES programs; other state and Federal agencies; and trade associations and professional/ technical societies.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulations or standards issued under the Act. The State has met this requirement by ensuring that small business sources are aware of their rights through outreach materials and ensuring that small businesses understand their rights when individual technical assistance is provided. Additionally, Program staff will ensure that small business stationary sources receive sufficient advance notice of their rights before applicable regulations take effect. The SBTAP will follow applicable Department rules. Program policy will be to provide as much notice as is reasonable and practicable, but never less than 30 calendar days.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The SIP revision states that the Program staff will ensure that small business stationary sources receive sufficient advance notice of their obligations under the Act within 30 days or more. Additionally, the staff will develop a program of qualified auditors to provide compliance assessments for small business stationary sources. This Compliance Assessment Program will provide a source with an on-site determination of whether the facility complies with the applicable air quality regulations. Portions of section (5) of NH's January 12, 1993, SIP revision appeared to provide the State with enforcement discretion to allow small businesses an exemption from enforcement. Pursuant to EPA's request, the State submitted a letter to EPA on May 19, 1994 clarifying and revising this portion of the SIP revision. The letter deletes two portions of section (5) and explains that the portions were originally put into the January 12, 1993 SIP as examples of the type of issues that needed to be addressed, but which would not necessarily become final policies.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance; or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The SIP revision states that the SBTAP, in coordination with other Division staff will develop standardized criteria and administrative procedures for considering requests for modifications, including provisions to ensure that granting such requests will not affect the status of the federally approved SIP and is consistent with applicable requirements of the CAA. The SIP revision lists the information that will be used in developing the criteria and procedures for consideration of requests for modifications of procedures.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the ombudsman for small business stationary sources. The State has partially met this requirement by outlining the responsibilities and duties of the small business ombudsman. The small business ombudsman responsibilities will be assigned to a proposed technical assistance coordinator position. It will be the state's central position for organizing technical assistance for environmental matters. The ombudsman will serve as an advocate for small business stationary sources in investigating and resolving complaints and disputes involving air quality regulations. Other activities of the ombudsman may include reviewing SBTAP services with trade associations and small business representatives. The ombudsman will help disseminate information to small businesses and encourage small businesses to participate in the development of regulations. The ombudsman will be the key contact person for the Governor's office for referrals of complaints and problems.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has not fully met this requirement due to the lack of adequate statutory authority to establish the CAP. However, EPA expects New Hampshire to submit the legislative authority to EPA when it is passed by the New Hampshire legislature.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities for it: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act [2]; (3) to

[2] Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three

Continued

review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements in the SIP revision by authorizing the panel to: evaluate the effectiveness of the SBTAP and the Small Business Ombudsman, and issue advisory opinions to the Air Resources Division and EPA; prepare periodic reports to EPA on the status of the SBTAP with regard to the Paper Work Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act; and review information for small business stationary sources to assure such information is understandable by the layperson. Additionally, the SIP revision states that the SBTAP staff will serve as the administrative staff for the panel.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

New Hampshire's SIP revision states that assistance through the SBTAP will be available to all small business stationary sources, as defined in section 507 of the CAA. No source defined as eligible under the CAA will be excluded from the program without prior consultation with EPA. The SBTAP will also be available to small businesses which need help to comply with state air quality regulations other than Federal CAA requirements.

As allowed under section 507(c)(2) of the CAA, the State program may, under specific conditions listed in the SIP revision, include as a small business stationary source for purposes of receiving assistance a source that does not meet the criteria of subparagraphs (C), (D) or (E) above, provided that the source cannot emit more than 100 tons per year of all regulated pollutants.

Additionally, the State may exclude from assistance any category or subcategory of small business stationary sources, as allowed under section 507(c)(3)(B) of the CAA, which have been determined to have sufficient financial and technical resources to meet their regulatory obligations under the CAA.

III. Proposed Action

The State of New Hampshire has submitted a SIP revision implementing each of the required PROGRAM elements required by section 507 of the CAA. The State expects all the elements of the PROGRAM to be fully operational by November 15, 1994.

The State needs full adequate legal authority to implement the PROGRAM before EPA can fully approve this SIP revision. Therefore, EPA is proposing to conditionally approve the New Hampshire SIP revision for the small business stationary source technical and environmental compliance assistance program, submitted on January 12, 1993 and May 19, 1994, provided that New Hampshire submits in a timely manner the additional legal authority necessary to fully implement the PROGRAM and also submits the documentation designating a state agency to house the small business ombudsman.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

EPA is proposing to conditionally approve the small business stationary source technical and environmental compliance assistance program submitted on January 12, 1993 with revisions on May 19, 1994. The two outstanding issues with this SIP revision concern New Hampshire's lack of a designated state agency to house the small business ombudsman and the lack of adequate legal authority to establish and implement the compliance advisory panel and small business ombudsman. For this reason, EPA is proposing to conditionally approve this SIP revision provided that the State meets its commitment to submit the legislative authority allowing a compliance advisory panel and small business ombudsman to be established and implemented. Additionally, the state must demonstrate through documentation which state agency will house the state small business ombudsman. Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to have the program fully operational by November 15, 1994. If the State fails to do so, this approval will become a disapproval on that date. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved New Hampshire SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new legislative authority. If EPA disapproves the new submittal, the conditionally approved small business program will also be disapproved at that time. If EPA approves the submittal, the small business program will be fully approved in its entirety and replace the conditionally approved program in the SIP.

If EPA determines that it cannot issue a final conditional approval or if the conditional approval is converted to a disapproval, such action will trigger EPA's authority to impose sanctions under section 110(m) of the CAA at the time EPA issues the final disapproval or on the date the State fails to meet its commitment. In the latter case, EPA will notify the State by letter that the conditional approval has been converted to a disapproval and that EPA's sanctions authority has been triggered. In addition, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). Pursuant to section 507(b)(3), EPA will provide for implementation of the program provisions required under section 507(a)(4) in any State that fails to submit such a program under that subsection. Therefore, EPA would have to provide for a compliance assistance program which assists small business stationary sources in determining applicable requirements and in receiving permits under the CAA.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administer for Air and Radiation. A future document will

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Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

inform the general public of these tables. On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By today's action, EPA is conditionally approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being proposed for conditional approval today does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's conditional approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

The Regional Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Small business assistance program.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 6, 1994.

John P. DeVillars,

Regional Administrator, Region III.

[FR Doc. 94–14418 Filed 6–13–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 94–06]

Financial Responsibility Requirements for Nonperformance of Transportation

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: By Notice of Proposed Rulemaking published March 31, 1994 (59 FR 15149), as corrected by notice published April 18, 1994 (59 FR 18443), the Federal Maritime Commission proposed various charges to its passenger vessel financial responsibility requirements for nonperformance of transportation, to ensure that cruise passengers are adequately protected in the event of nonperformance. The Commission subsequently extended the comment period in response to requests from affected parties. The International Council of Cruise Lines now has requested that the comment period be extended further to June 24, 1994. The Delta Queen Steamboat Co. supports this request. The Commission has determined to grant the request.

DATES: Comments due on or before June 24, 1994.

ADDRESSES: Send comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capital St., NW., Washington, DC 20573, (202) 523–5796.

By the Commission.

Joseph C. Poling,

Secretary.

[FR Doc. 94–14353 Filed 6–13–94; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

Underground Storage of Gas and Hazardous Liquids

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: The Research and Special Programs Administration (RSPA) invites representatives of industry, state and local government, and the public to an open meeting on underground storage of gas and hazardous liquids. The purpose of this meeting is to gather information on the extent of current regulation, and to help determine the proper action for RSPA to take regarding federal regulation of underground storage of gas and hazardous liquids, other than in tankage.

DATES: The meeting will be held on July 20, 1994, from 9 a.m until 4 p.m., local time.

ADDRESSES: The meeting will be held in the Doubletree Hotel, Intercontinental Airport, 15747 JFK Boulevard, Houston, Texas 77032 [Telephone 713–442–8000 or 800–810–8001]. The transcript of the meeting will be available for inspection and copying in Room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590 between the hours of 8:30 a.m. and 5 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: Jack Willock, (202) 366–2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366–4453, regarding copies of this notice or other material in the docket that is referenced in this notice.

SUPPLEMENTARY INFORMATION: Approximately 1,400 liquid and 400 natural gas underground storage facilities are located in the contiguous United States. These storage facilities include aquifers, depleted oil and gas fields, and solution mined formations and salt domes. The number of gas facilities in operation is increasing rapidly [mostly in salt domes due to low cost and high gas output from storage (deliverability)]. Many facilities are not regulated by the states.

The hazards of operating such facilities include subsidence, subsurface communication between storage reservoirs, blowouts, fractures, deficient design, improper operation and maintenance, and salt flows. Any of these hazards can result in death, injury, property damage, and environmental damage. For example, 3 people died and 21 were injured in an explosion at a salt dome storage site near Brenham, Texas on April 7, 1992. The National Transportation Safety Board (NTSB) determined that the accident resulted from deficiencies in the design of the Brenham facility, the most important being the lack of a fail-safe cavern shut-down system. NTSB made a broad recommendation that RSPA develop safety requirements for underground storage of gas and highly volatile liquids.

The American Petroleum Institute (API) is developing standards for solution-mined storage caverns, Recommended Practice (RP) 1114, *Design of Solution Mined Underground Storage Facilities*, and RP 1115, *Operation of Solution Mined Underground Storage Facilities*). API anticipates publishing both standards in 1994. The American Gas Association (AGA) is developing a standard, in coordination with API, for other geologic underground facilities.

RSPA is holding a public meeting to seek information and comment from the public for consideration in determining whether rulemaking is needed and, if so, the proper regulatory action to take. Anticipated topics to be discussed by commenters at the meeting include, but are not limited to the following:

1. A description of the types of storage configurations and the problems and risks associated with each.

2. Should federal regulations be issued to address the potential hazards of underground storage of gas and hazardous liquids?

3. Would API RP 1114 and 1115 and other standards under development address the risks and should they be incorporated into federal regulations?

4. If regulations are needed, should these regulations be federal or state? Should the underground storage of both gas and hazardous liquids be regulated?

5. If regulations are needed, should the regulations cover only surface requirements: i.e., equipment, O&M and safety procedures? Or, should both surface and subsurface regulations be issued?

6. Which states have (1) authority to regulate underground storage and (2) regulations covering such storage?

Interested persons are invited to attend the meeting and present oral or written statements on the matters set for the meeting. Any person who wishes to make oral statements at the meeting should notify Daphéne Floyd (202–366–1640) before July 2, 1994, stating the time needed for the statement.

Interested parties that are not scheduled to comment will have an opportunity to comment only after approval of the meeting officer.

(49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.)

Issued in Washington, DC on June 7, 1994.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety

[FR Doc. 94–14341 Filed 6–13–94; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 59, No. 113
Tuesday, June 14, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 94–052–1]

Calgene, Inc.; Receipt of Petition for Determination of Nonregulated Status of Genetically Engineered Canola

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from Calgene, Inc., seeking a determination of nonregulated status for its Laurate canola (*Brassica napus*). In accordance with our regulations, we are soliciting public comments on whether such canola presents a plant pest risk. This action is necessary to enable interested persons to advise APHIS on any plant pest issues raised by this petition.

DATES: Written comments must be received on or before August 15, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94–052–1. A copy of the Calgene petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. Persons wishing access to this room are asked to call in advance of visiting at (202) 690–2817. To obtain a copy of the Calgene petition, contact Ms. Kay Peterson at (301) 436–7601.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Chief, Microorganisms Branch, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: On March 31, 1994, the Animal and Plant Health Inspection Service (APHIS) received a "Petition for Determination of Nonregulated Status under 7 CFR part 340" from Calgene, Inc. (Calgene), of Davis, CA. The Calgene petition seeks a determination that its Laurate canola (*Brassica napus*) is not a "regulated article" under regulations at 7 CFR part 340 (the regulations).

The Calgene petition states that Laurate canola should not be regulated by APHIS because it does not present a plant pest risk. Laurate canola has been defined by Calgene as any *Brassica napus* cultivar or progeny of a *B. napus* line containing the 12:0 ACP thioesterase gene from California bay (*Umbellularia californica*) (bay TE gene) with its associated napin promoter and napin terminator regions. The bay TE gene encodes the 12:0 ACP thioesterase enzyme. Activity of the bay TE enzyme results in the accumulation of the 12 carbon, saturated fatty acid, laurate, in the canola seed. The bay TE gene is controlled by a seed specific, napin promoter from *Brassica rapa*. Laurate canola may also contain the *kan*^{r} gene with its associated 35S promoter and *tml* 3′ terminator, the ori pRi, the left T-DNA border and right T-DNA border, a Tn*5* transposon segment, and a Lac Z′ polylinker sequence. Laurate canola has been field tested since 1992 in 16 field trials under 5 permits granted by APHIS.

Calgene states that laurate (lauric acid) is a major component of consumer products such as laundry detergent and shampoo, and that edible uses of high laurate oils include nondairy coffee whitener and whipped toppings. Current sources of laurate are coconut and palm kernel oils.

Laurate canola is currently considered a regulated article under the regulations because it contains gene sequences (vectors, promoters, and terminators) derived from plant pathogenic sources. In the process of reviewing applications for field trials with Laurate canola, APHIS determined that the vectors and other elements were disarmed and that the trials did not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

Food or animal feed uses of Laurate canola may be subject to regulation by the Food and Drug Administration (FDA) under the authority of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 201 *et seq.*). FDA's policy statement concerning regulation of plants derived from new plant varieties was published in the **Federal Register** on May 29, 1992 (57 FR 22984–23005).

Under § 340.6 of the regulations, any person may submit a petition to seek a determination that a particular regulated article should not be regulated by APHIS. In accordance with the regulations, this notice establishes that comments on the petition will be accepted for a period of 60 days from the date of this notice. After reviewing the data submitted by the petitioner, written comments received during the comment period, and other relevant information, APHIS will prepare a decision document on the regulatory status of Laurate canola.

Authority: 7 U.S.C. 150aa–150jj, 151–167, 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 8th day of June 1994.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–14413 Filed 6–13–94; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 94–048–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that six environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
94–054–06, renewal of permit 93–090–01, issued on 06–14–93	AgrEvo	04–28–94	Sugar beet plants genetically engineered to express tolerance to the herbicide glufosinate.	California, Illinois, North Dakota
94–054–07, renewal of permit 93–049–02, issued on 05–04–93.	University of Idaho	04–28–94	Canola plants genetically engineered to express tolerance to the herbicide glufosinate.	Idaho.
94–055–04, renewal of permit 92–049–02, issued on 06–05–92.	Inter:Mountain Canola	04–28–94	Canola plants genetically engineered to express resistance to the herbicide glyphosate.	Idaho
94–055–05	DuPont Agricultural Products.	04–28–94	Canola plants genetically engineered to express altered fatty acid composition.	Idaho.
94–060–02, renewal of permit 93–074–03, issued on 07–12–93.	Upjohn Company	04–28–94	Cucumber plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Georgia
94–070–01, renewal of permit 93–165–03, issued on 09–28–93.	Betaseed, Incorporated	04–28–94	Sugar beet plants genetically engineered to express resistance to beet necrotic yellow vein virus.	California

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 8th day of June 1994.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–14411 Filed 6–13–94; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 94-049-1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service during the month of April 1994. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of April 1994. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 8th day of June 1994.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-14412 Filed 6-13-94; 8:45 am]

BILLING CODE 3410-34-P

Forest Service

California Spotted Owl EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting in which the public is invited to provide information concerning the effects of the alternatives being considered in the California Spotted Owl Draft Environmental Impact Statement on Small Forest Carnivores (furbearers).

DATES AND TIME: July 6-7, 1994, beginning at 1 p.m.

ADDRESSES: CA Owl EIS Office, 2999 Fulton Ave., Sacramento, CA 95821.

CONTACT PERSON FOR FURTHER INFORMATION: Ed Toth, EIS Team, 2999 Fulton Ave., Sacramento, CA 95821. (916) 978-4304.

SUPPLEMENTARY INFORMATION: The Forest Service is currently preparing a Draft Environmental Impact Statement (DEIS) to amend the Pacific Southwest Regional Guide and Sierran Province Forest Plans with new management direction for the California Spotted Owl. The purpose of this meeting is gather information concerning the effects of the alternatives being considered on small forest carnivores.

The meeting will begin with a brief overview of the DEIS and proposed alternatives. In order to have a productive and meaningful meeting the Forest Service asks that speakers focus their presentations on scientifically-based information. This meeting will not replace the public comment period on the DEIS.

Janice Gauthier,

CA OWL EIS Team Leader

[FR Doc. 94-14355 Filed 6-13-94; 8:45 am]

BILLING CODE 3410-11-M

California Spotted Owl EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting in which the public is invited to provide information concerning the effects of the alternatives being considered in the California Spotted Owl Draft Environmental Impact Statement on individuals or groups of wildlife vertebrate species.

DATES AND TIME: July 19-21, 1994, beginning at 9 a.m.

ADDRESSES: Fountain Suites Hotel, 321 Bercut Dr., Sacramento, CA 95814.

CONTACT PERSON FOR FURTHER INFORMATION: Ed Toth, EIS Team, 2999 Fulton Ave., Sacramento, CA 95821, (916) 978-4304.

SUPPLEMENTARY INFORMATION: The Forest Service is currently preparing a Draft Environmental Impact Statement (DEIS) to amend the Pacific Southwest Regional Guide and Sierran Province Forest Plans with new management direction for the California Spotted Owl. The purpose of this meeting is to gather information concerning the effects of the alternatives being considered on individuals or groups of vertebrate wildlife species.

The meeting will begin with a brief overview of the DEIS and proposed alternatives. The general meeting will then divide into thirteen simultaneous meetings covering the following individuals or groups of vertebrate species: California Spotted Owls, Avian Migrant Species, Avian Cavity Nesters, Raptors, Avian Riparian/Wetland Specialists, Other Avian Specialists, Large Mammals, Small Mammals (except Small Forest Carnivores which will be the subject of a separate meeting), Bats, Anurans, Terrestrial Salamanders, Reptiles, and Fish and Aquatic Species.

In order to have a productive and meaningful meeting the Forest Service asks that participants focus their presentations on scientifically-based information. This meeting will not

replace the public comment period on the DEIS.

Janice Gauthier,

CA OWL EIS Team Leader

[FR Doc. 94–14356 Filed 6–13–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060994E]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of emergency public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will hold an emergency meeting by telephone conference call on June 17, 1994, beginning at 8 a.m. (Pacific Daylight Time) to address a problem with the West Coast groundfish trawl fishery.

Public listening stations will be set up at various ports along the Washington, Oregon, and California coast.

At the April Council meeting, the Groundfish Management Team (GMT) projected that landings of several groundfish species, among these thornyheads and trawl-caught sablefish, were likely to reach their designated harvest guidelines before the end of the year. No action was taken to slow the rate of landings at that time due to uncertainty about the effects of the license limitation program, the Pacific whiting fishery, and the West Coast shrimp fishery. Since the April meeting the landed catch of thornyheads and trawl-caught sablefish has increased substantially, and harvest guidelines are expected to be attained by August 7 (thornyheads) and August 26 (trawl-caught sablefish).

The Council will consider action to slow these rates prior to the regularly scheduled meeting of August 2–5. The GMT will report on projected landings of thornyheads and trawl-caught sablefish and present a list of management options for the Dover sole/thornyhead/trawl-caught sablefish (DTS) complex fishery. The Council will accept comments from its advisors and the public and then adopt a management recommendation which probably will take effect July 1. The Council will review this action at its regularly scheduled meeting August 2–5.

Because of the urgent nature of this issue and the need for the Council to address the matter immediately, this **Federal Register** notice may appear after the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352 at least 5 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 326–6352.

Dated: June 9, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–14462 Filed 6–9–94; 4:25 pm]

BILLING CODE 3510–22–P

[I.D. 051794A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of an Enhancement Permit (P504D), and a Scientific Research Permit (P503M).

On December 16, 1993, notice was published that an application had been filed by the U.S. Army Corps of Engineers (P504D), to collect and transport juvenile Snake River sockeye salmon (*Oncorhynchus nerka*) and juvenile Snake River spring/summer and fall chinook salmon (*O. tshawytscha*) for the purpose of increasing their chances of survival, as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222).

Notice is hereby given that on April 1, 1994, as authorized by the provisions of the ESA, NMFS issued Permit Number 895 for the above taking, subject to certain conditions set forth therein.

On January 26, 1994, notice was published (59 FR 3667) that an application had been filed by Idaho Department of Fish and Game (IDFG) to enumerate and collect length information on adult and juvenile chinook salmon in Chamberlain Creek and West Fork Chamberlain Creek as authorized by the ESA.

Notice is hereby given that on June 2, 1994, as authorized by the provisions of the ESA, NMFS issued Permit Number 909 for the above taking, subject to certain conditions set forth therein.

Issuance of these permits, as required by the ESA, were based on a findings that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of these permits; (3) are consistent with the purposes and policies set forth in section 2 of the ESA. These permits were also issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The applications, permits, and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226 (301–713–2322); and

Environmental and Technical Services Division, NMFS, NOAA, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503-230-5400).

Dated: June 2, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–14328 Filed 6–13–94; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Navy

Intent To Reopen Scoping for an Environmental Impact Statement for Proposed Facilities for Homeporting Up to Three Future Replacement Nimitz-Class Aircraft Carriers at Naval Air Station, North Island, San Diego, CA

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to reopen scoping for an Environmental Impact Statement (EIS) for homeporting up to three future replacement NIMITZ-class aircraft carriers at Naval Air Station (NAS), North Island, San Diego, California.

Dredging requirements for the proposed project have changed since the Notice of Intent (NOI) and Public Scoping Meeting of August 17, 1993, held in Coronado, California. In August 1993, the scope of the EIS was identified

to include dredging the pier areas, the turning basin, and its approach. The purpose of this notice is to identify that the scope of the EIS will include dredging the San Diego Bay channel to a depth greater than the existing −42 feet Mean Lower Low Water (MLLW)

NIMITZ-class aircraft carriers are heavier and draw a deeper draft than the aircraft carriers currently homeported at Naval Air Station (NAS) North Island; therefore, to meet operational considerations, the San Diego Bay channel needs to be dredged to a depth greater than the existing maintained depth of −42 feet MLLW. This requirement is in addition to the dredging identified in the two previous public notices of August 1993 and March 1994.

The maximum dredge depths being considered are −50 feet MLLW for the channel between NAS North Island and Ballast Point and −55 feet MLLW for the channel south of Ballast Point. The supporting technical information for dredging the San Diego Bay channel, including dredge depths, will be included in the EIS being prepared for this project.

In providing an opportunity to comment on this change in scope, the anticipated time for having a Draft EIS available for your review and comment is early October 1994 instead of July 1994.

For more information regarding this project, please call NAS North Island Public Affairs Officer at (619) 545–8167. Please submit written comments regarding this notice no later than July 18, 1994, to: Commanding Officer, NAS North Island (Code 00B), P.O. Box 357033, San Diego, CA 92135–7033.

Dated: June 9, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–14400 Filed 6–13–94; 8:45 am]

BILLING CODE 3810–AE–M

Etrema Products, Inc.; Partially Exclusive Patent

AGENCY: Department of the Navy, DOD

ACTION: Intent to grant partially exclusive patent license; Etrema Products, Inc., a wholly owned subsidiary of Edge Technologies, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Etrema Products, Inc., a wholly owned subsidiary of Edge Technologies Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned inventions described in U.S. Patents No. 4,158,368, entitled "Magnetostrictive Transducer," and 4,375,372, entitled "Use of Cubic Rare Earth-Iron Laves Phase Intermetallic Compounds as Magnetostrictive Transducer Materials".

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: June 9, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–14401 Filed 6–13–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

[Docket No. 6450–01]

Certification of the Radiological Condition of the Granite City Site, Granite City, IL, June 1993

AGENCY: Department of Energy.

ACTION: Notice of certification.

SUMMARY: The Department of Energy (DOE) has completed radiological surveys of the Granite City Site in Granite City, Illinois. The property was found to contain residual quantities of radioactive material from Atomic Energy Commission (AEC) activities. Cleanup activities have occurred at this site sufficient to remediate it to Departmental guidelines.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Fiore, Director, Office of Eastern Area Programs, Office of Environmental Restoration, Mail Stop, EM–42, U.S. Department of Energy, Washington, DC 20585, (301) 903–8141.

SUPPLEMENTARY INFORMATION: The DOE Office of Environmental Restoration, Office of Eastern Area Programs (EM–42), Off-Site/Savannah River Program Division, has conducted a remedial action project at the Granite City Site in Granite City, Illinois (Parcel No. 301–001 filed in Deed/Plat Book 19–24–14, Page 22–1 in the records of Madison County, Illinois), as part of the Formerly Utilized Sites Remedial Action Program (FUSRAP). The objective of the program is to identify and clean up or otherwise control sites where residual radioactive contamination remains from activities carried out under contract to the Manhattan Engineer District (MED) and AEC statutory predecessors to DOE during the early years of the nation's atomic energy program. In September 1992, the Granite City Site was designated for cleanup under FUSRAP.

In the late 1950's and early 1960's, uranium metal bars (uranium-238 ingots) were x-rayed for AEC in the Betatron Building to detect metallurgical flaws. X-ray services were provided by General Steel Castings Corporation (currently Granite City Steel) under purchase orders from Mallinckrodt Chemical Works, a prime AEC contractor. Purchase orders were issued by Mallinckrodt from 1950 to 1966 on an "as required" basis.

At DOE's request, the Oak Ridge National Laboratory conducted a preliminary radiological survey in 1989 to determine whether the site met newer, stricter cleanup guidelines. The survey indicated that the site contained residual radioactive contamination from AEC activities. As a result, on September 25, 1992, the site was designated for inclusion in FUSRAP. In June 1993, Bechtel National, Inc., conducted remedial action in accordance with DOE Orders, at the Granite City Site.

Post-remedial action surveys have demonstrated, and DOE has certified, that the subject property is in compliance with DOE residual radioactive contamination criteria and standards. The standards are established to protect members of the general public and occupants of the site and to ensure that future use of the property will result in no radiological exposure above applicable guidelines. These findings are supported by the DOE Certification Docket for the Remedial Action Performed at the Granite City Site in Granite City, Illinois, June 1993. Accordingly, this property is released from FUSRAP.

The certification docket will be available for review between 9 a.m. and 4 p.m., Monday through Friday (except Federal Holidays), in the DOE Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. Copies will also be available in the DOE Public Document Room, Federal Building, 200 Administration Road, Oak Ridge, Tennessee, and will be provided to the property owner and to appropriate local officials.

DOE, through the Oak Ridge Operations Office, Former Sites

Restoration Division, has issued the following statement:

Statement of Certification: Granite City Site Former AEC Operations

The U.S. DOE, Oak Ridge Operations Office, Former Sites Restoration Division, has reviewed and analyzed the radiological data obtained following remedial action at the Granite City Site (Parcel No. 301–001 filed in Deed/Plat Book 19–24–14, Page 22–1 in the records of Madison County, Illinois). Based on analysis of all data collected, DOE certifies that the following property is in compliance with DOE radiological decontamination criteria and standards. For radiological exposure resulting from past AEC subcontract activities at the site, this certification of compliance provides assurance that future use of the property will result in no radiological exposure above applicable guidelines established to protect members of the general public or site occupants.

Property owned by National Steel Corporation: Granite City Steel Division, 1417 State Street, Granite City, Illinois 62040.

Issued in Washington, DC, on June 7, 1994.

John E. Baublitz,

Acting Deputy Assistant Secretary for Environmental Restoration

[FR Doc. 94–14430 Filed 6–13–94; 8:45 am]

BILLING CODE 6450–01–P

Availability of Draft Strategic Plan for the Office of Energy Efficiency and Renewable Energy

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE

ACTION: Notice.

SUMMARY: This notice announces the availability for public comment of a draft strategic plan for the Office of Energy Efficiency and Renewable Energy (EE). The draft strategic plan presents EE's mission and vision, goals and objectives, and strategies to achieve those goals and objectives.

DATES: Individuals wishing to present their views on the draft report should do so in writing by September 30, 1994.

ADDRESSES: A copy of the draft strategic plan is available for inspection and reproduction at the public reading room of the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC. The public reading room is open from 9 a.m. to 4 p.m.; you may contact reading room staff at (202) 586–6020. If you wish to have a copy of the draft report mailed to you directly, please contact Jerry Dion at the address below.

Written comments should be addressed to Jerry Dion, Office of Planning and Assessment, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., EE–72, Washington, DC 20585. Receipt of comments on diskette, formatted in WordPerfect 5.1, will facilitate the process.

FOR FURTHER INFORMATION CONTACT: Jerry Dion, Office of Planning and Assessment, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., EE–72, Washington, DC 20585, (202) 586–9470.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy is issuing this draft strategic plan for public review and comment. The plan sets forth EE's goals, objectives, and strategies for program implementation. EE will use this draft document to begin a comprehensive planning process involving stakeholders and oriented toward careful identification and thorough analysis of strategic issues. The outcome of the effort will be a final version of the strategic plan and a five-year program plan.

The draft strategic plan is divided into four sections: overview, mission and vision, goals and objectives, and EE strategy. The EE goals and objectives are aligned with those expressed in the Department of Energy's strategic plan, Fueling a Competitive Economy. The strategy section addresses EE's technology, market, and organizational strategies. A series of short appendices is also included in the draft strategic plan: situation analysis, description of EE stakeholder categories, description of EE sectors' individualized missions, and evolution of EE's strategic planning process.

Respondents are welcome to express their views on any aspect of the draft strategic plan. Areas which commenters might want to address include whether the themes and content are aligned with your assessment of EE priorities; whether there are ideas that should be added or receive special emphasis; and what issues require further analysis.

Christine A. Ervin,

Assistant Secretary for Energy Efficiency and Renewable Energy.

[FR Doc. 94–14429 Filed 6–13–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Proposed Decision and Order by the Office of Hearings and Appeals; Week of May 16 Through May 20, 1994

During the week of May 16 through May 20, 1994, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 C.F.R. Part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: June 8, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Wells Oil Co., Tucson, AZ, LEE–0108, Reporting Requirements

Wells Oil Co. filed an Application for Exception from the provisions of the reporting requirement of Form EIA–782B. The exception request, if granted, would permit Wells Oil Co. to stop filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." On May 20, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 94–14436 Filed 6–13–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Proposed Decisions and Orders by the Office of Hearings and Appeals; Week of May 23 Through May 27, 1994

During the week of May 23 through May 27, 1994, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: June 8, 1994

George B. Breznay,

Director, Office of Hearings and Appeals

Consolidated Oil & Gas, Inc., Denver CO LEE–0109, Reporting Requirements

Consolidated Oil & Gas, Inc. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA-23, the "Annual Survey of Domestic Oil and Gas Reserves." In considering this request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the filing requirement. Accordingly, on May 24, 1994, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

Las Energy Corporation, Winter Park, FL LEE–0113, Reporting Requirements

Las Energy Corporation (Las Energy) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The Exception request, if granted, would permit Las Energy to be exempted from filing Form EIA–782B. On May 26, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

[FR Doc. 94–14437 Filed 6–13–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

[Case No. F–070]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Armstrong Air Conditioning Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–070) granting a Waiver to Armstrong Air Conditioning Inc. (Armstrong) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Armstrong's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9138.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–32, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Armstrong has been granted a Waiver for its GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on June 6, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy

Decision and Order

In the Matter of: Armstrong Air Conditioning Inc. (Case No. F–070)

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988) Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the

basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Armstrong filed a "Petition for Waiver," dated March 11, 1994, and the addendum of April 6, 1994, in accordance with section 430.27 of 10 CFR part 430. The Department published in the **Federal Register** on May 3, 1994, Armstrong's petition and solicited comments, data and information respecting the petition. 59 FR 22841. Armstrong also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on April 20, 1994. 59 FR 22841, May 3, 1994.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with the Federal Trade Commission (FTC) concerning the Armstrong Petition. The FTC did not have any objections to the issuance of the waiver to Armstrong.

Assertions and Determinations

Armstrong's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Armstrong requests the allowance to test using a 30-second blower time delay when testing its GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces. Armstrong states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an increase in AFUE of 1.2 percentage points for GUK and GCK condensing gas furnaces, and 0.8 percentage points for GUJ, GCJ, and GHJ non-condensing gas furnaces, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Armstrong indicates that it is unable to take advantage of any of these exceptions for its GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces.

Since the blower controls incorporated on the Armstrong furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Armstrong GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces. Accordingly, with regard to testing the GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces, today's Decision and Order exempts Armstrong from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Armstrong Air Conditioning Inc. (Case No. F–070) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Armstrong Air Conditioning Inc., shall be permitted to test its GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Armstrong Air Conditioning Inc. shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GUK and GCK condensing gas furnaces, and GUJ, GCJ, and GHJ non-condensing gas furnaces manufactured by Armstrong Air Conditioning Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective June 6, 1994, this Waiver supersedes the Interim Waiver granted the Armstrong Air Conditioning Inc. on April 20, 1994. 59 FR 22841, May 3, 1994 (Case No. F–070).

Issued In Washington, DC, June 6, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–14431 Filed 6–13–94; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–071]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Rheem Manufacturing Company

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–071) granting a Waiver to Rheem Manufacturing Company (Rheem) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Rheem Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Rheem has been granted a Waiver for its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on June 6, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

In the Matter of: Rheem Manufacturing Company. (Case No. F–071)

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Rheem filed a "Petition for Waiver," dated March 23, 1994, in accordance with section 430.27 of 10 CFR part 430. The Department published in the **Federal Register** on May 3, 1994, Rheem's petition and solicited comments, data and information respecting the petition. 59 FR 22846. Rheem also filed an "Application for Interim Waiver" under section 430.27(g) which DOE granted on April 19, 1994. 59 FR 22846, May 3, 1994.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the Rheem Petition. The FTC did not have any objections to the issuance of the waiver to Rheem.

Assertions and Determinations

Rheem's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Rheem requests the allowance to test using a 20-second blower time delay when testing its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces. Rheem states that since the 20-second delay is indicative of how these models actually operate and since such a delay results in an average increase in AFUE of 2.0 percentage points, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Rheem indicates that it is unable to take advantage of any of these exceptions for its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces.

Since the blower controls incorporated on the Rheem furnaces are designed to impose a 20-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 20-second blower time delay when testing the Rheem GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces. Accordingly, with regard to testing the GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces, today's Decision and Order exempts Rheem from the existing provisions regarding blower controls and allows testing with the 20-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Rheem Manufacturing Company (Case No. F–071) is hereby granted as set forth

in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Rheem Manufacturing Company, shall be permitted to test its GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Rheem Manufacturing Company shall comply in all respects with the test procedures specified in Appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GDG upflow, GLH downflow, GVH horizontal, and GPH upflow/horizontal gas furnaces manufactured by Rheem Manufacturing Company.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective June 6, 1994, this Waiver supersedes the Interim Waiver granted the Rheem Manufacturing Company on April 19, 1994. 59 FR 22846, May 3, 1994 (Case No. F–071).

Issued In Washington, DC, on June 6, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94–14434 Filed 6–13–94; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–068]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Bard Manufacturing Company

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F–068) granting a Waiver to Bard Manufacturing Company (Bard) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Bard's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its DCC and DCL series central furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9138.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Bard has been granted a Waiver for its DCC and DCL series central furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, June 6, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In The Matter Of: Bard Manufacturing Company. (Case No. F–068)

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate

comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Bard filed a "Petition for Waiver," dated March 8, 1994, in accordance with § 430.27 of 10 CFR part 430. The Department published in the **Federal Register** on April 25, 1994, Bard's petition and solicited comments, data and information respecting the petition. 59 FR 19710. Bard also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on April 1, 1994. 59 FR 19710, April 25, 1994.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the Bard Petition. The FTC did not have any objections to the issuance of the waiver to Bard.

Assertions and Determinations

Bard's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Bard requests the allowance to test using a 60-second blower time delay when testing its DCC and DCL series central furnaces. Bard states that since the 60-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of 0.6 to 1.0 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Bard indicates that it is unable to take advantage of any of these exceptions for its DCC and DCL series central furnaces.

Since the blower controls incorporated on the Bard furnaces are designed to impose a 60-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 60-second blower time delay when testing the Bard DCC and DCL series central furnaces. Accordingly, with regard to testing the DCC and DCL series central furnaces, today's Decision and Order exempts Bard from the existing provisions regarding blower controls and allows testing with the 60-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Bard Manufacturing Company (Case No. F–068) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, Bard Manufacturing Company, shall be permitted to test its DCC and DCL series central furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t–), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Bard Manufacturing Company shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the DCC and DCL series central furnaces manufactured by Bard Manufacturing Company.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective June 6, 1994, this Waiver supersedes the Interim Waiver granted the Bard Manufacturing Company on April 1, 1994. 59 FR 19710, April 25 1994 (Case No. F–068).

Issued In Washington, DC, on June 6, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy

[FR Doc. 94–14432 Filed 6–13–94; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–069]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to DMO Industries

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and order

SUMMARY: Notice is given of the Decision and Order (Case No. F–069) granting a Waiver to DMO Industries (DMO) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting DMO's Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its HDS series gas furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW Washington, DC 20585, (202) 586–9138

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel

Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, DMO has been granted a Waiver for its HDS series gas furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, June 6, 1994.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: DMO Industries. (Case No. F–069)

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

DMO filed a "Petition for Waiver," dated March 4, 1994, in accordance with section 430.27 of 10 CFR Part 430. The Department published in the **Federal Register** on May 3, 1994, DMO's petition and solicited comments, data and information respecting the petition. 59 FR 22844. DMO also filed an "Application for Interim Waiver" under section 430.27(g) which DOE granted on April 20, 1994. 59 FR 22844, May 3, 1994.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." The Department consulted with The Federal Trade Commission (FTC) concerning the DMO Petition. The FTC did not have any objections to the issuance of the waiver to DMO.

Assertions and Determinations

DMO's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. DMO requests the allowance to test using a 30-second blower time delay when testing its HDS series gas furnaces. DMO states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an increase in AFUE of 2.0 percentage points for HDS series gas furnaces, the petition should be granted.

Under specific circumstances, the DOE test procedure contains exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. DMO indicates that it is unable to take advantage of any of these exceptions for its HDS series gas furnaces.

Since the blower controls incorporated on the DMO furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the HDS series gas furnaces. Accordingly, with regard to testing the HDS series gas furnaces, today's Decision and Order exempts DMO from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by DMO Industries (Case No. F–069) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR Part 430, Subpart B, DMO Industries, shall be permitted to test its HDS series gas furnaces on the basis of the test procedure specified in 10 CFR Part 430, with modifications set forth below:

(i) Section 3.0 of Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE Standard 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE Standard 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the

highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, DMO Industries shall comply in all respects with the test procedures specified in Appendix N of 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the HDS series gas furnaces manufactured by DMO Industries

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective June 6, 1994, this Waiver supersedes the Interim Waiver granted the DMO Industries on April 20, 1994. 59 FR 22844, May 3, 1994 (Case No. F-069).

Issued In Washington, DC, June 6, 1994

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 94-14433 Filed 6-13-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Project No. 2666 Maine]

Bangor Hydro-Electric Company; Intent to File an Application for a New License

June 8, 1994.

Take notice that Bangor Hydro-Electric Company, the existing licensee for the Medway Hydroelectric Project No. 2666, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2666 was issued effective April 1, 1962, and expires March 31, 1999.

The project is located on the West Branch of the Penobscot River in Penobscot County, Maine. The principal works of the Medway Project include a 343-foot long, 20-foot high concrete gravity dam with flashboards and with an integral powerhouse containing generating units having an installed capacity of 3,440 Kw; a reservoir with a surface area of 120 acres at a normal pond elevation of 259.3 feet m.s.l.; 46-Kv transmission facilities connecting to the Medway substation; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 33 State Street, P.O. Box 932, Bangor, Maine 04402, telephone (207) 945-5621.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 31, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 94-14346 Filed 6-13-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-168-016]

National Electric Associates Limited Partnership; Informational Filing

June 6, 1994.

Take notice that on April 28, 1994, National Electric Associates Limited Partnership (NEA) filed certain information as required by Ordering Paragraph (L) of the Commission's March 20, 1990, order in this proceeding, 50 FERC ¶ 61,378 (1990). Copies of NEA's informational filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary.

[FR Doc. 94-14347 Filed 6-13-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-47-007, et al.]

National Fuel Gas Supply Corporation; Compliance Filing

June 8, 1994.

Take notice that on June 3, 1994, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, proposed Original Sheet No. 216-A; First Revised Sheet Nos. 213, 214, 215 and 216; Third Revised Sheet No. 222; and Fifth Revised Sheet No. 225, with an effective date of June 4, 1994.

National states that these tariff sheets are filed in compliance with Ordering Paragraph (A) of the Federal Energy Regulatory Commission's May 4, 1994, order in the above-captioned proceeding. National further states that these proposed tariff sheets reflect the allocation of all of the fixed take-or-pay charges billed to it by Tennessee Gas Pipeline Company, and some of the fixed charges billed to it by CNG Transmission Corporation, on the basis of its customers' "Winter Requirements Quantities ("WRQ") determinants.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such protests should be filed on or before June 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-14348 Filed 6-13-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-282-000]

Paiute Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

June 8, 1994.

Take notice that on May 31, 1994, Paiute Pipeline Company (Paiute) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A, First Revised Sheet No. 161, with an effective date of June 1, 1994.

Paiute states that it is submitting the proposed tariff sheet in order to implement an element of a settlement agreement in principle recently reached by the active parties in Paiute's pending general rate case proceeding in Docket No. RP93-6-000. According to Paiute, as part of that resolution, the parties have agreed in principle to a realignment of the summer period billing deterimants over a period of several years, including the summer period for 1994. Paiute indicates, however, that because its customers' monthly billing determinants are treated as their contract demands, the revised billing determinants agreed to by the firm shippers for the 1994 summer period need to be filed and made effective immediately. Paiute states, therefore, that it is submitting the proposed tariff sheet to reflect the agreed-upon billing determinants to be in effect as of June 1994.

Paiute requests that the tendered tariff sheet be accepted for filing to become effective June 1, 1994.

Paiute states that copies of the filing were served upon all of Paiute's customers and interested state regulatory commissions, and upon all parties on the service list in Docket No. RP93–6–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14349 Filed 6–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2017 California]

Southern California Edison Co.; Notice of Intent To File an Application for a New License

June 8, 1994.

Take notice that Southern California Edison Company, the existing licensee for the Big Creek No. 4 Hydroelectric Project No. 2017, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2017 was issued effective March 1, 1949, and expires March 1, 1999.

The project is located on the San Joaquin River in Fresno and Madera Counties, California. The principal works of the Big Creek No. 4 Project include a concrete gravity dam about 228 feet high and about 954 feet long; a reservoir of approx. 11, 275 acre-feet storage; an intake structure to a pressure tunnel about 11,275 feet long; a penstock and surge tank to a powerhouse with 84 MW installed capacity; a substation and 220-kilovolt transmission line connection; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 2244 Walnut Grove Avenue, Rosemead, California 91770, telephone (818) 302–8944.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 1, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14350 Filed 6–13–94; 8.45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–183–001]

Southern Natural Gas Co., South Georgia Natural Gas Co.; Notice of Filing of Revised Tariff Sheets

June 8, 1994.

Take notice that on June 3, 1994, Southern Natural Gas Company (Southern) tendered for filing the tariff sheets to its FERC Gas Tariff, Original Revised Volume No. 2a listed on Exhibit A hereto, to be effective August 1, 1994. Also, South Georgia Natural Gas Company (South Georgia) tendered for filing the tariff sheets to its FERC Gas Tariff, Original Volume No. 2 listed on Exhibit B hereto, to be effective August 1, 1994.

Southern and South Georgia state that the purpose of this filing is to revise the Rate Schedules applicable to the offsystem storage service they provide through use of storage facilities and services rendered by ANR Pipeline Company and ANR Storage Company. The changes to the Rate Schedules on the tariff sheets filed reflect the elimination of the requirement that the customers purchase the gas to be injected into storage from Southern and/or South Georgia. Southern and South Georgia also request the necessary authority to implement the changes under their certificates of public convenience and necessity in Docket No. CP79–374 and Docket No. CP79–382, respectively. Such filing has been made in compliance with the Federal Energy Regulatory Commission's (Commission) order issued on May 4, 1994, in the above captioned proceeding. Southern and South Georgia have requested that the revised tariff sheets be made effective as of August 1, 1994.

Southern and South Georgia state that copies of the filing will be served upon their shippers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

Exhibit A—Southern Natural Gas Company, Docket No., RP94–183–001, June 3, 1994

First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 52
First Revised Sheet No. 53
First Revised Sheet No. 87
First Revised Sheet No. 88
First Revised Sheet No. 89
First Revised Sheet No. 90
First Revised Sheet No. 95
First Revised Sheet No. 96
First Revised Sheet No. 97

Exhibit B—South Georgia Natural Gas Company, Docket No., RP94–183–001, June 3, 1994

First Revised Sheet No. 13
First Revised Sheet No. 42
First Revised Sheet No. 69
First Revised Sheet No. 70
First Revised Sheet No. 72
First Revised Sheet No. 77
First Revised Sheet No. 78
First Revised Sheet No. 79
First Revised Sheet No. 99
First Revised Sheet No. 100
First Revised Sheet No. 102
First Revised Sheet No. 107
First Revised Sheet No. 108
First Revised Sheet No. 109

[FR Doc. 94–14351 Filed 6–13–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–586–000]

Williams Natural Gas Co.; Notice of Request Under Blanket Authorization

June 8, 1944.

Take notice that on June 3, 1994, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP94–586–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a total of approximately 12 miles of 16-inch lateral pipeline, measuring, regulating and appurtenant facilities for the delivery of transportation gas to Empire District Electric Company (Empire) at two locations in Jasper County, Missouri under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that the total projected volume of delivery is estimated to be approximately 9.5 Bcf annually with a total peak day volume estimated to be 30 Mmcf. WNG further states that the estimated cost of construction is $4,315,680 which would be paid with available funds.

WNG says that this charge is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14352 Filed 6–13–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; Week of May 9 Through May 13, 1994

During the week of May 9 through May 13, 1994, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: June 8, 1994

George B. Breznay,

Director, Office of Hearings and Appeals

Fitch Oil Company, Inc., Holly Springs Mississippi, LEE–0101 Reporting Requirements

Fitch Oil Company, Inc., (Fitch) filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Fitch to be exempted from filing Form EIA–782B. In considering the request, the DOE found that the firm was suffering a gross inequity due to the firm's personnel shortage. On May 11, 1994, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part and that Fitch be relieved of the reporting requirement from April 1994 through December 1994.

Saupe' Enterprises, Inc., Fairbanks Alaska, LEE–0105 Reporting Requirements

Saupe' Enterprises, Inc., (Saupe') filed an Application for Exception from the provision of filing Form EIA–782B, entitled "Reseller/Retailer's Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Saupe' to be exempted from filing Form EIA–782B. On May 11, 1994, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 94–14435 Filed 6–13–94; 8.45 am]

BILLING CODE 6450–01–P

Southwestern Power Administration

Integrated System

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of proposed extension of integrated system power rates and opportunities for public review and comment.

SUMMARY: The Current Integrated System Rates were approved by the Federal Energy Regulatory Commission (FERC) on September 18, 1991, [EF91–4011–000, 56 FERC 61, 398]. These rates were effective October 1, 1990, and will expire September 30, 1994. The Administrator, Southwestern, has prepared Current and Revised 1994 Power Repayment Studies for the Integrated System which show the need for a minor rate adjustment of $726,051 (0.8 percent increase) in annual revenues. In accordance with Southwestern's rate adjustment threshold, dated June 23, 1987, the Administrator, Southwestern, may determine, on a case by case basis, that for a revenue decrease or increase in the magnitude of plus-or-minus two percent, deferral of a formal rate filing is in the best interest of the Government. Also, the Deputy Secretary of Energy has the authority to extend rates, previously confirmed and approved by FERC, on an interim basis, pursuant to 10 CFR 903.22(h) and 903.23(a). In accordance with DOE rate extension authority and Southwestern's rate adjustment threshold, the Administrator is proposing that the rate adjustment be deferred and that the current rates be extended for a one-year period effective through September 30, 1995.

DATES: Written comments are due on or before June 29, 1994

ADDRESSES: Written comments should be submitted to the Administrator, Southwestern Power Administration U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: George C. Grisaffe, Assistant Administrator, Office of Administration and Rates, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101 (918) 581–7419.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an

Act of the U.S. Congress, Department of Energy Organization Act, Public Law 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The other two projects (Sam Rayburn and Robert Douglas Willis) are not interconnected with Southwestern's Integrated System. Instead, their power is marketed under separate contracts through which the two customers purchase the entire power output of the projects at the dams.

Following Department of Energy Order Number RA 6120.2, the Administrator, Southwestern, prepared a 1994 Current Power Repayment Study (PRS) using existing system rate schedules. The Study shows the actual status of repayment through FY 1993 at $288,259,891 on a total investment of $971,634,103. The FY 1994 Revised PRS indicates the need for an increase in annual revenues of $726,051, or 0.8 percent, over and above the present annual revenues.

As a matter of practice, Southwestern would defer an indicated rate adjustment that falls within Southwestern's plus-or-minus two percent rate adjustment threshold. The threshold, which was established in 1987, was developed to add efficiency to the process of maintaining adequate rates and is consistent with cost recovery criteria within DOE Order Number RA 6120.2 regarding rate adjustment plans. The Integrated System's FY 1993 (last year's) PRS concluded that the annual revenues needed to be decreased by 1.1 percent. At that time, it was determined prudent to defer the decrease in accordance with the established threshold. As previously cited, the FY 1994 (this year's) PRS indicates that revenues would need to be increased by 0.8 percent, or $726,051 per year. It once again seems prudent to defer a rate adjustment in accordance with Southwestern's rate adjustment threshold and reevaluate the ability of the existing rate to provide sufficient revenues to satisfy costs projected in the FY 1995 (next year's) PRS.

On September 18, 1991, the current rate schedules for the Integrated System were confirmed and approved by the FERC on a final basis for a period that ends on September 30, 1994. In accordance with 10 CFR 903.22(h) and 903.23(a), the Deputy Secretary may extend existing rates on an interim basis beyond the period specified by the FERC. As a result of the benefits obtained by a rate adjustment deferral and the Deputy Secretary's authority to extend a previously approved rate, Southwestern's Administrator is proposing to extend the current Integrated System rate schedules for the one-year period beginning October 1, 1994, and extending through September 30, 1995.

Opportunity is presented for customers and interested parties to receive copies of the study data for the Integrated System. If you desire a copy of the Repayment Study Data Package for the Integrated System, please submit your request to: Mr. George Grisaffe, Assistant Administrator, Office of Administration and Rates, P.O. Box 1619, Tulsa, OK 74101, (918) 581–7419.

Following review of the written comments, the Administrator will submit the rate extension proposal for the Integrated System to the Deputy Secretary of Energy for confirmation and approval.

Issued in Tulsa, Oklahoma, this 6th day of June, 1994.

J. M. Shafer,

Administrator.

[FR Doc. 94–14438 Filed 6–13–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4998–4]

Proposed Settlement Agreement; Refrigerant Recycling Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement agreement concerning litigation instituted against the Environmental Protection Agency ("EPA") regarding refrigerant recycling regulations promulgated by EPA under section 608 of the Clean Air Act. The proposed settlement agreement provides that EPA will undertake rulemaking regarding revisions to provisions of those regulations concerning the repair of leaks of refrigerant from industrial process refrigeration equipment and the identity of persons subject to the technician certification requirements of the regulations. The proposed settlement agreement provides that EPA is to propose certain revisions by September 1, 1994, and take final action on the proposal by June 1, 1995. It also provides that EPA will undertake proceedings regarding the stay of the leak repair regulations as they apply to industrial process refrigeration equipment during the pendency of the rulemaking to revise the regulations.

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the settlement agreement are available from Jerry Ellis, Air and Radiation Division (2344R), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 235–5330. Written comments should be sent to Kevin W. McLean at the above address and must be submitted on or before July 14, 1994.

Dated: June 6, 1994.

Jean C. Nelson,

General Counsel.

[FR Doc. 94–14424 Filed 6–13–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2018]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

June 10, 1994.

Petition for reconsideration has been filed in the Commission rulemaking proceeding listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed June 29, 1994. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an

opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Redevelopment of Spectrum to Encourage Innovation in Use of New Telecommunications Technologies. (ET Docket No. 92–9).

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–14456 Filed 6–13–94: 8:45 am]

BILLING CODE 6712–01–M

[Report No. 2017]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

June 9, 1994.

Petition for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed June 29, 1994. See § 1.4(b) (1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Petition Requesting Changes in Certain Operator Classes in the Amateur Service. (RM–8391).

Number of Petitions Filed: 1.

Subject: Implementation of section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253).

Number of Petitions Filed: 20.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–14457 Filed 6–13–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Updated listing of financial institutions in liquidation.

SUMMARY: The Federal Deposit Insurance Corporation (Corporation) has adopted a policy statement concerning section 219(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. and 28 U.S.C. 2410(c). The policy statement and an initial listing of financial institutions in liquidation were published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). The following is a list of financial institutions which have been placed in liquidation since publication of the last updated list on April 15, 1994 (59 FR 18122).

FEDERAL DEPOSIT INSURANCE CORPORATION ACTIVE INSTITUTIONS IN LIQUIDATION ALPHA LISTING (NAME)

Institution name, city/state	Date closed region	Reference No.
Barbary Coast National Bank, San Francisco, CA.	05/19/94, Western SC.	4609
Commercial Bank & Trust Co., Lowell, MA.	05/06/94, Northeast SC.	4608
Mechanics National Bank, Paramount, CA.	04/01/94, Western SC.	4606
NE Region Servicer-CP, East Hartford, CT.	05/20/94, Northeast SC.	3969
Superior National Bank, Kansas City, KS.	04/14/94, Midwest SC.	4607

Dated: June 7, 1994.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–14342 Filed 6–13–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 94–11]

Trans Ocean-Pacific Forwarding, Inc., Possible Violations of Section 10(b)(1) of the Shipping Act of 1984; Order of Investigation

Trans Ocean-Pacific Forwarding, Inc. ("TOP") is a non-vessel-operating common carrier ("NVOCC") which has a tariff on file at the Federal Maritime Commission ("Commission"). TOP transports property between United States Atlantic and Pacific Coast ports and ports in the Far East, Southeast and Southwest Asia, Europe, the Mediterranean, Australia, New Zealand and Oceania.

Section 10(b)(1) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1709(b)(1), prohibits a common carrier from charging, demanding, collecting or receiving greater, less or different compensation for transportation of property than the rates shown in its tariffs or service contracts. TOP appears to have violated section 10(b)(1) of the 1984 Act by transporting shipments subsequent to September 30, 1990 at rates less than the applicable rates filed in its tariff.

Now therefore it is ordered, That pursuant to sections 10, 11, and 13 of the 1984 Act, 46 U.S.C. app. 1709, 1710 and 1712, an investigation is hereby instituted to determine:

1. Whether TOP violated section 10(b)(1) of the 1984 Act by transporting shipments in connection with which it charged rates less than those filed in its tariff; and

2. Whether, in the event TOP violated section 10(b)(1) of the 1984 Act, civil penalties should be assessed against TOP and, if so, the amount of such penalties; whether a cease and desist order should be issued; or whether TOP's tariff should be suspended:

It is further ordered, That a public hearing will be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge ("ALJ") of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the ALJ in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the ALJ only after consideration has been given by the parties and the ALJ to the use of alternative forms of dispute resolution, and upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Trans Ocean-Pacific Forwarding, Inc. be named a Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file

petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, shall comply with Subpart H of the Commission's Rules of Practice and Procedure, 46 CFR 502.111–119, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the initial decision of the ALJ shall be issued by June 9, 1995, and the final decision of the Commission shall be issued by October 9, 1995.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–14459 Filed 6–13–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 1145
Name: Export Enterprises of N.Y., Inc.
Address: 580 Sylvan Ave., Englewood Cliffs, NJ 07632
Date Revoked: April 22, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 1747
Name: Surface Air International, Inc.
Address: 20 Vesey Street, New York, NY 10007
Date Revoked: April 22, 1994
Reason: Surrendered license voluntarily.

License Number: 3293
Name: Ace Pool Car, Inc. dba A.P.C. International, Inc.
Address: 317 W. Lake Street, Northlake, IL 60164
Date Revoked: April 28, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 3513
Name: Metro Forwarding, Inc.
Address: 8600 SW 161st Terrace, Miami, FL 33157
Date Revoked: April 28, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 1350
Name: N.J. Defonte Co., Inc.
Address: 225 Broadway, New York, NY 10007
Date Revoked: April 29, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 1557
Name: Ted I. Uwahori, Inc.
Address: 1930 West 154th Street, Gardena, CA 90249
Date Revoked: May 1, 1994
Reason: Surrendered license voluntarily.

License Number: 2379
Name: Fabian Forwarding Company, Inc.
Address: P.O. Box 1910, Hawthorne, CA 90251
Date Revoked: May 1, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 2
Name: Barbara Alger dba W. R. Alger Company
Address: 6308 Lark Street, Metairie, LA 70003
Date Revoked: May 5, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 2361
Name: I.S.C. Transport, Ltd.
Address: 71–08 51st Ave., Woodside, NY 11377
Date Revoked: May 5, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 2845
Name: Cobalt, Inc.
Address: 9 South Heights Drive, La Marque, TX 77568
Date Revoked: May 18, 1994
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle, Director,

Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–14354 Filed 6–13–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/address	Date reissued
2561	Fontana International, Inc., 2569 N.W. 74th Ave., Miami, FL 33122	May 5, 1994.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–14363 Filed 6–13–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance of License

By Order of Revocation served September 17, 1993, the ocean freight forwarder license (FMC–1910) of Vene-Embarques, Inc., P.O. Box 521127, Miami, Florida 33152–1127, was revoked because of the licensee's failure to maintain a valid surety bond on file with the Commission. Notice of this action was published on October 4, 1993 at 58 FR 51631.

By letter dated October 14, 1993, the licensee's surety advised the Commission that it had elected to rescind its earlier request to cancel the licensee's surety coverage and that bond No. 2918 was to remain in full force and effect, with no lapse in coverage. Similarly, by letter dated October 14, 1993, Vene-Embarques, Inc. requested that its license be reissued.

Through administrative oversight, notice of the reissuance of the license of Vene-Embarques, Inc. was not published. Therefore, notice is hereby published that the license (FMC–1910) of Vene-Embarques, Inc. was reissued effective September 11, 1993.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–14364 Filed 6–13–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Banco Santander, S.A., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 30, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Banco Santander, S.A., Santander, Spain; to acquire all of the voting stock of First Inter-Bancorp, and its subsidiary, Mid-Hudson Savings Bank FSB both of Fishkill, New York, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National Commerce Bancorporation, Memphis, Tennessee; to acquire NBC Bank, FSB, Knoxville, Tennessee, and thereby engage in operating a federally-chartered savings bank and engage in only those activities permitted to federal savings bank subsidiaries of bank holding companies pursuant to § 225.25(b)(9) of the Board's Regulation Y. **Comments on this application must be received by July 8, 1994.**

Board of Governors of the Federal Reserve System, June 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 94-14365 Filed 6-13-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

BNCCORP, Inc; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novio*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. BNCCORP, INC., Bismarck, North Dakota; to engage *de novo* in providing management consulting to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's regulation Y. These activities will be conducted in North Dakota, South Dakota, Minnesota, and Montana.

Board of Governors of the Federal Reserve System, June 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 94-14366 Filed 6-13-94; 8:45 am]

BILLING CODE 6210-01-F

Ellen L. Munter; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc 94-13643) published on page 29294 of the issue for Monday June 6, 1994.

Under the Federal Reserve Bank of Kansas City heading, the entry for Ellen L. Munter is corrected to read as follows:

1. Ellen L. Munter, and Terry R. Munter, Coleridge, Nebraska; to acquire an additional 17.04 percent of the voting shares of Gray Bancorp, Coleridge, Nebraska, for a total of 67.90 percent, and thereby indirectly acquire Coleridge National Bank, Coleridge, Nebraska.

Comments on this application must be received by June 24, 1994.

Board of Governors of the Federal Reserve System, June 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 94-14367 Filed 6-13-94; 8:45 am]

BILLING CODE 6210-01-F

Northwest Illinois Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted,

these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Northwest Illinois Bancorp, Freeport, Illinois; to acquire 100 percent of the voting shares of Tri-State Bank and Trust Company, East Dubuque, Illinois.

In connection with this application, Applicant also proposes to acquire Tri-State Insurance Agency, Inc., East Dubuque, Illinois, and thereby engage in general insurance agency and underwriting activities pursuant to § 225.25(b)(8)(i), (ii), (iii), and (iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14368 Filed 6-13-94; 8:45 am]

BILLING CODE 6210-01-F

James A. Sigmon; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. James A. Sigmon, Cumberland Gap, Tennessee; to retain 5.07 percent of the voting shares of Commercial Bancgroup, Inc., Harrogate, Tennessee, and thereby indirectly acquire Commercial Bank, Harrogate, Tennessee.

Board of Governors of the Federal Reserve System, June 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14369 Filed 6-13-94; 8:45 am]

BILLING CODE 6210-01-F

SouthTrust of Mississippi, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 8, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SouthTrust of Mississippi, Inc., Biloxi, Mississippi; to become a bank holding company by acquiring 96.38 percent of the voting shares of The Jefferson Bank, Biloxi, Mississippi.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First of America Bank Corporation, Kalamazoo, Michigan, and First of America Acquisition Company, Park Ridge, Illinois; to acquire 100 percent of the voting shares of First Park Ridge Corporation, Chicago, Illinois, and thereby indirectly acquire Bank of Buffalo Grove, Buffalo Grove, Illinois, and First State Bank & Trust Company of Park Ridge, Park Ridge, Illinois. In connection with this application, First of America Acquisition Company has also applied to become a bank holding company.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Heritage Eagle Corp., Red Oak, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Bank, Red Oak, Texas.

2. Jones Partners, Ltd., La Feria, Texas; to become a bank holding company by acquiring 85.82 percent of the voting shares of Lower Rio Grande Valley Bancshares, Inc., La Feria, Texas, and thereby indirectly acquire First National Bank of La Feria, La Feria, Texas.

Board of Governors of the Federal Reserve System, June 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14370 Filed 6-13-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Rules, Regulations, Statements and Interpretations Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976

AGENCY: Federal Trade Commission.

ACTION: Notice of application of OMB under the Paperwork Reduction Act (44 U.S.C. 3501–3522) for clearance of information collection requirements contained in proposed changes to the Antitrust Improvements Act

Notification and Report Form that implements the notification requirement contained in the premerger notification rules and Section 7A of the Clayton Act ("the Act").

SUMMARY: The FTC is seeking OMB clearance for information collection requirements contained in proposed changes to the Antitrust Improvements Act Notification and Report Form ("the Form"). Under the Clayton Act and its associated rules, certain parties contemplating acquisitions of a specified size must notify the FTC and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice and wait for 30 days (or, in the case of a cash tender offer, 15 days) before consummating the transaction. The FTC has established the Form as the means for accomplishing the notification mandated by the Act. The Form provides the Commission and the Antitrust Division ("the enforcement agencies") with the information needed to make a prompt, preliminary determination of the antitrust implications of the reported transactions.

DATES: Comments on this application must be submitted on or before July 12, 1994.

ADDRESSES: Send comments to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, ATN: Desk Officer for the Federal Trade Commission and to the Office of the General Counsel, Federal Trade Commission, Washington, DC 20580. Copies of the submission to OMB, including the application, may be obtained from the Public Reference Section, room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Victor Cohen, Office of Premerger Notification, Federal Trade Commission, Washington, DC 20580 (202) 326–2849.

SUPPLEMENTARY INFORMATION:

Estimate of Information Collection Burden

For the most part, the burden of completing the Form should remain the same for the majority of respondents. The changes that require the submission of more information will be offset by the changes that require less information. The burden of reporting for a particular respondent will vary depending on factors such as the extent of the respondent's U.S. operations and whether the respondent has previously filed. Thus, while in some instances, particular respondents may have an increase or a decrease in reporting burden, overall, the reporting requirements should remain unchanged. Much of the required information is kept by filers in the ordinary course of business and burden for OMB purposes is defined to exclude any effort that would be expended regardless of any regulatory requirements. See 5 CFR 1320.7(b)(1). Thus, as indicated in the application, no "recordkeeping burden" would be imposed by the proposed changes. Further, in a "collection of information" such as this, the total burden figure fluctuates from year to year according to the number of respondents, a number which is controlled by the marketplace, not by the Commission. Thus, any increase or decrease in burden hours from previous FTC estimates is a function of the number of filers, and not a result of the proposed changes to the Form.

Based on our experience with the program's requirements and discussions with attorneys who prepare Forms for various clients, we believe that the time needed to complete the Form varies from as little as 8 hours to as much as 160 hours. On average, it appears to take about 39 hours to complete the Form. In certain circumstances, only an index or copies of filings made with a regulatory agency need be submitted (in lieu of the Form). We estimate that reporting in such cases usually requires about 2 hours.

In fiscal year 1993, 1,529 transactions were reported under the premerger notification program, resulting in a total of 2,914 filings. Of these transactions, 153 required only one party to file, because they were regulated by other federal agencies. In those cases, an index or copies of filings made to the regulatory agency were submitted in place of the Form. Using the previous estimates of 39 hours for filings that required a complete Form and 2 hours for filings that required only an index or copies of materials, we estimate the total burden of completing the Form during fiscal year 1993 to have been 107,985 hours (2751 × 39 = 107,679) + (153 × 2 = 306). Accordingly, we propose a current burden estimate of 107,985 hours.

Donald S. Clark,

Secretary.

[FR Doc. 94–14317 Filed 6–13–94; 8:45 am]

BILLING CODE 6750–01–M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 051694 AND 052794

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Continental Grain Company, Southland Foods, Inc. Southland Foods, Inc	94–1222	05/16/94
First Chicago Corporation, AlliedSignal Inc., AlliedSignal Inc	94–1245	05/16/94
CAMCEM, S.A. DE C.V., "Holderbank" Financiere Glaris Ltd., Holnam Inc	94–1249	05/16/94
Citicorp, Windmill Holdings Corp., Frozen Specialties, Inc	94–1256	05/16/94
Royal Dutch Petroleum Company, Agip S.p.A. Agip Petroleum Co., Inc	94–1273	05 /16/94
Inchcape plc, Hogg Group PLC Hogg Group PLC	94–1278	05/16/94
Deaconess Health Services Corporation, Metropolitan Medical Center, Metropolitan Medical Center	94–1279	05/16/94
Alco Standard Corporation, Richard J. Williams, Paul B. Williams, Inc	94–1280	05/16/94

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 051694 AND 052794—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
PhyCor, Inc. Lexington Clinic, P.S.C., Lexington Clinic, P.S.C	94-1281	05/16/94
Omnicom Group, Inc., Thomas L. Griffin, Griffin Bacal Inc	94-1282	05/16/94
Cardinal Health, Inc., Humiston-Keeling, Inc., Humiston-Keeling, Inc	94-1283	05/16/94
Henry L. Hillman, Metrocall, Inc., Metrocall, Inc	94-1285	05/16/94
Wasserstein Perella Partners, L.P. ("WPLP"), Bradley J. Wechsler (Mr. Wechsler) Imax Corporation	94-1287	05/16/94
Wasserstein Perella Partners, L.P., Richard L. Gelfond ("Mr. Gelfond"), Imax Corporation	94-1288	05/16/94
Owens-Corning Fiberglas Corporation, UC Industries, Inc., UC Industries, Inc	94-1291	05/16/94
Wassall PLC, General Cable Corporation, General Cable Corporation	94-1298	05/16/94
Skanska AB, Larry L. Gellerstedt, Jr., Beers, Inc	94-1305	05/16/94
Office Depot, Inc., Douglas and Mary Johnson, Midwest Carbon Company	94-1306	05/16/94
Corporate Partners, L.P., Tyco Toys, Inc. Tyco Toys, Inc	94-1307	05/16/94
Masco Corporation, Julian Rubinstein, American Shower & Bath Corporation	94-1242	05/18/94
Jordan Industries, Inc., MSB Family Trust, Pamco Printed Tape and Label Co., Inc	94-1284	05/18/94
GranCare, Inc., Lawrence H. Gratoni, Long Term Care Pharmaceutical Services Corporation	94-1293	05/18/94
Amorim investimentos e Participacoes, SGPS, SA, Henry Fleck, Badger Cork and Manufacturing Company	94-1304	05/18/94
Michael J. Cudahy, American Home Products Corometrics Medical Systems, Inc	94-1230	05/19/94
Panhandle Eastern Corporation, George P. Mitchell, Winnie Pipeline Company	94-1255	05/19/94
Mr. Pierre Peladeau, c/o Quebecor Inc., Pentoga Partners, Arcata Corporation	94-1268	05/19/94
James R. and Carolyn L. Davis, The Edward W. Scripps Trust, United Feature Syndicate, Inc	94-1272	05/19/94
FMC Corporation, Abex Inc., Pneumo Abex Corporation assets and vs of Jetway subs	94-1320	05/19/94
General Electric Company, Preston Oil Company Limited Partnership, Preston Oil Company Limited Partnership	94-1226	05/20/94
Henry Crown and Company, Peter Kiewit Sons', Inc., Commonwealth Cellular Telephone Services, Inc	94-1267	05/20/94
Tamara L. Hughes, Storage Equities, Inc., Storage Equities, Inc	94-1290	05/20/94
BellSouth Corporation, Estate of John F. Uihlein, PLUS Cellular Corp	94-1297	05/20/94
The Atlantic Foundation, Policy Management Systems Corp., Policy Management Systems Corp	94-1302	05/20/94
The Estate of James Campbell, Carena Holdings, Inc., HNH Associates L.P	94-1317	05/20/94
Capital Cities/ABC, Inc., Mr. Gene Autry, Golden West Broadcasters	94-1318	05/20/94
Potomac Hotel Limited Partnership, California Federal Bank, FSB, Raleigh Marriott Crabtree Valley Hotel	94-1334	05/20/94
BioChem Pharma Inc., Ares-Serono S.A., Ares-Diagnostics (Holdings), B.V	94-1336	05/20/94
Westinghouse Electric Corp., United Technologies Corporation, Norden Systems, Inc	94-0964	05/23/94
Idex Corporation, Hale Products, Inc., Hale Procucts, Inc	94-1321	05/23/94
Parker & Parsley Petroleum Company, Bridge Oil Limited, Bridge Oil Limited	94-1335	05/24/94
American Safety Razor Company, Robert W. Bender, Megas Beauty Care, Inc	94-1364	05/24/94
Petropinho Participacaos S.A. (a Brazilian company), The Lamson & Sessions Co. Midland Steel Products Co	94-1324	05/25/94
Household International, Inc., Hyperion Partners L.P., Cardholder Partners L.P	94-1343	05/25/94
Host Marriott Corporation, Health and Rehabilitation Properties Trust, Health and Rehabilitation Properties Trust	94-1348	05/25/94
Fresenius Atktiengesellschaft, Dr. Myron Wentz, Gull Laboratories, Inc	94-1365	05/25/94
The Loewen Group Inc., Eagan Holding Company, Inc., Eagan Holding Company, Inc	94-1292	05/26/94
Fay's Incorporated, WSR Corporation, Whitlock Corporation, National Auto Stores, Corp	94-1325	05/26/94
BCE Inc. (a Canadian Company) Glenn R. Jones, Jones Education Networks, Inc	94-1344	05/26/95
Cawsl Corp., OESI Power Corporation, OESI Power Corporation	94-1338	05/27/94
Veritus Inc. d/b/a Blue Cross of Western Pennsylvania, Connecticut Mutual Life Insurance Company, GroupAmerica Insurance Company	94-1353	05/27/94
Sage Technologies, Inc., SBC Technologies, Inc., SBC Technologies, Inc	94-1367	05/27/94
Apollo Real Estate Investment Fund, L.P., Milton Fine, Troy Park Associates Limited Partnership	94-1368	05/27/94
O. Gene Bicknell, PepsiCo, Inc., Pizza Hut, Inc	94-1370	05/27/94
PepsiCo Inc., O. Gene Bicknell, National Pizza Company	94-1371	05/27/94
Chemical Banking Corporation, Margaretten Financial Corporation, Margaretten Financial Corporation	94-1389	05/27/94
Britton Group PLC, NMC Group PLC, NMC Group PLC	94-1391	05/27/94
Outback Steakhouse, Inc., Hugh H. Connerty, Jr., San Jose Outback, Inc	94-1392	05/27/94

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-14318 Filed 6-13-94; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting of the Commission on Research Integrity

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Commission on Research Integrity, on Monday, June 20, from 9 a.m. to 5 p.m., in the Hubert H. Humphrey Building, room 800, 200 Independence Avenue SW., Washington, DC 20201. The meeting will be open to the public.

The mandate of the Commission is to develop recommendations for the Secretary of Health and Human Services and the Congress on the administration of Section 493 of the Public Health Service Act as amended by and added to by Section 161 of the NIH Revitalization Act of 1993.

The purpose of this inaugural meeting will be to review the history of scientific misconduct issues in the Public Health Service (PHS) and to develop an approach to satisfy the mandate of the Commission. Discussion items may include but will not be limited to the definition of scientific misconduct, conclusions of the Advisory Committee on Research Integrity, the role of the Office of Research Integrity, and related issues.

Henrietta D. Hyatt-Knorr, Executive Secretary, Commission on Research Integrity, Office of Research Integrity, Division of Policy and Education, Rockwall II, suite 700, 5515 Security Lane, Rockville MD 20852, (301) 443-5300, will furnish the meeting agenda, the Committee charter, and a roster of the Committee members upon request. Members of the public wishing to make presentations should contact the Executive Secretary. Depending on the number of presentations and other considerations, the Executive Secretary will allocate a time frame for each speaker.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 94-14325 Filed 6-13-94; 8:45 am]

BILLING CODE 4160-17-M

Centers for Disease Control and Prevention

[Announcement Number 459]

RIN 0905-ZA58

National Institute for Occupational Safety and Health; Health and Safety Interventions in the Construction Industry

Introduction

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement program to create health and safety interventions in the construction industry. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering Healthy People 2000 see the section "Where To Obtain Additional Information.")

Authority

This program is authorized under section 20 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669). Applicable program regulations are found in 42 CFR part 87—National Institute for Occupational Research and Demonstration Grants.

Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Applications may be submitted by public and private, nonprofit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $1,400,000 will be available in FY 1994 to fund one award. The award is expected to begin on or about September 30, 1994, for a 12-month budget period within a project period of up to five years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this cooperative agreement is to develop and implement a nationally coordinated construction industry health and safety intervention program for the building trades.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC/NIOSH shall be responsible for the activities under B., below:

A. Recipient Activities

Sector Specific Interventions

1. Develop, implement and evaluate intervention initiatives targeted at specific industry sectors and/or operations within individual sectors.

2. Identify supporting data to target interventions; develop detailed plans for the introduction of interventions based on data, including sites for pilot and support from employers and unions representing workers; evaluate the pilot; and, based on results, include detailed approach for the implementation of the effective intervention throughout the targeted industry sector in future years of the cooperative agreement.

Targeted Hazards

1. Identify hazard(s) that account for injury/illness across many industry sectors, whereby a successful intervention for a particular exposure/hazard in one sector can be applied to other industry sectors and/or operations.

2. Develop a detailed plan for the development of interventions targeting specific hazards, with a focus on the implementation and evaluation of developed, hazard specific interventions.

Innovative Pilots

1. Develop and introduce an innovative pilot in order to evaluate their effectiveness in reducing injury/illness in construction.

2. With evidence of strong industry support, pilot possible interventions that include the introduction of new technologies, tools, equipment or materials on the job site, or the introduction of control strategies targeting hazards known to cause injury/illness.

3. Based on the evaluation of pilots, include plans for the introduction of successful interventions to the construction industry.

Conference

1. Convene a national conference for the purpose of sharing information, establishing priorities, and facilitating joint approaches in the development of construction industry interventions. Participants will include construction unions, employers, owners, government, insurance and academia engaged in construction-related safety and health activities.

2. Develop a national, industry-wide intervention program for construction based on recommendations from the conference.

Economic Analysis

Conduct research efforts designed to characterize the industry economically, and demonstrate how the adoption of safety and health interventions will increase profits through the reduction of injury/illness rates.

Joint Labor/Management Initiatives

1. Recipient's program should focus on the development and implementation of joint labor/management safety and health intervention approaches and should include evaluation of joint activities, from the evaluation of joint job site safety and health committees to the development of standardized training or the success of voluntary construction industry compliance standards.

2. As part of this activity, recipient should have direct access to a joint labor/management advisory group representing industry employers and employee representatives.

Safety and Health Training

Working in cooperation with labor and management, assess the state of existing training programs and/or develop standardized safety and health training for the industry, targeting either specific trades, groups of workers or issues of concern.

B. CDC/NIOSH Activities

1. Provide technical assistance through site visits and correspondence in the areas of program development, implementation, maintenance, and priority setting related to the cooperative agreement.
2. Provide collaboration for appropriate aspects of the program as requested by the grantee.
3. Assist in the dissemination of relevant health and safety information to the employers and employees involved in construction work.

Evaluation Criteria

The applications will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the purpose of the cooperative agreement program, including the applicant's understanding of the purpose of the cooperative agreement and the relevance of the proposal to the purpose of the cooperative agreement. (20%)
2. Feasibility of meeting the proposed goals of the cooperative agreement including the proposed schedule for initiating and accomplishing each of the activities and the proposed methods for evaluating the accomplishments. (20%)
3. Strength of the program design in addressing the distinct characteristics and needs of construction workers. (30%)
4. Efficiency of resources and novelty of program including the efficient use of existing and proposed personnel with assurances of a major time commitment of the Project Director to the program and the novelty of the program approach. (20%)
5. Training and experience of Program Director and staff with training or experience sufficient to accomplish the proposed program. (10%)
6. The budget will be evaluated to the extent to which it is reasonable, clearly justified, and consistent with the use of funds. (Not Scored)

Executive Order 12372 Review

This program is not subject to review by Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for this program is 94 262.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any Native American community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, on or before July 25, 1994.

1. Deadline

Applicants shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applicants

Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures, and business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, or by calling (404) 842–6630. Programmatic technical assistance may be obtained from Melvin L. Myers, Office of the Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, Mailstop D–26, Atlanta, Georgia 30333, or by calling (404) 639–1530.

Please refer to Announcement Number 459 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: January 8, 1994.

Richard A. Lemen,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–14358 Filed 6–13–94; 8:45 am]

BILLING CODE 4163–19–P

[Announcement No. 101A]

Addendum to Announcement 101; Hepatitis B Vaccination Demonstration Projects in Asian/Pacific Island Children

Introduction

The Centers for Disease Control and Prevention (CDC), through the National

Immunization Program (NIP) and the National Center for Infectious Diseases (NCID), announces the availability of supplemental funds to demonstrate the most effective method of providing hepatitis B vaccine to children 2–13 years of age in the Asian and/or Pacific Island (API) populations within the United States. This is an addendum to Program Announcement Number 101.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of "Healthy People 2000," see the section entitled WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Section 317 of the Public Health Service Act (42 U.S.C. 247b), as amended. Regulations governing the implementation of this legislation are covered under 42 CFR part 51b, subparts A and B.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants for these supplemental funds are the official public health agencies who are current recipients of project grants for Preventive Health Services—Immunization.

Availability of Funds

Approximately $500,000 will be available in fiscal year (FY) 1994 to fund up to five demonstration projects through supplemental grant awards to current recipients of immunization project grants. These demonstration projects are expected to begin on or about September 30, 1994, for a twelve-month activity period within a twenty-four-month period of performance. Funding estimates may vary and are subject to change. Continuation award(s) within the project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of the hepatitis B vaccination (HBV) demonstration projects in API children is to demonstrate the most effective method of providing hepatitis B vaccine to children 2–13 years of age in the API populations within the United States and create a practical model to be considered for implementation nationwide.

The goals of this demonstration project are:

A. To demonstrate and compare the effectiveness (including cost-effectiveness) of different methods of providing hepatitis B vaccine to API children age 2–13 years by: (1) Conducting baseline assessments of vaccination rates (coverage), (2) developing and applying the interventions, and (3) measuring the effectiveness of the interventions.

B. To determine the factors that are most predictive of acceptance/completion and the barriers associated with non-acceptance/non-completion of the hepatitis B vaccination series in a defined target group of API children age 2–13 years.

Program Requirements

To achieve the purpose of this demonstration the successful applicant(s) will show in their proposal that they have the following:

A. A population of at least 10,000 API people within a community or geographic area that is well defined and can be approached in total with an immunization outreach program.

B. Established links to the target population (including culturally appropriate and sensitive outreach methods).

C. A history of successful completion of research projects (by the Immunization Project or through sub-contracts they have made with outside contractors) in medical or public health outreach programs within the API communities.

D. Established and effective perinatal and universal infant hepatitis B vaccination programs within the target population.

In addition, the successful applicant(s) shall be responsible for conducting the following activities:

A. Adhere to the detailed time-line provided by the recipient and approved by CDC which includes each step necessary to accomplish the recipient activities listed below.

B. Divide the target API community of at least 10,000 people in which effective fully operational perinatal hepatitis B and universal infant hepatitis B vaccination programs are being conducted into two groups—a study and comparison group—that are similar on all relevant characteristics such as demographic, geographic, social economic status, and health care profiles.

C. Follow published scientifically valid methods of sample size and power calculations, sample selection, survey design, data collection, data management and data analysis.

D. After completing the design, pretest and approval phases, conduct a baseline survey of health care providers serving the target population to measure knowledge, attitudes, practices and barriers related to hepatitis B vaccination of API children age 2–13.

E. After completing the design, pretest and approval phases, conduct the baseline household survey to measure hepatitis B vaccination coverage and knowledge, attitudes, behaviors, and barriers related to hepatitis B vaccination in the target population.

F. Effectively inform all individuals in the target group, their parents, and their medical care providers of the availability of free hepatitis B vaccinations for all API children age 2–13.

G. Provide effective culturally appropriate education on the risks of HBV infection and benefits of hepatitis B vaccination to all individuals in the target group, their parents, and their medical care providers. Through development and/or use during this demonstration project effective information materials will be available for use in similar populations throughout the United States.

H. Devise and implement an enhanced campaign in the study group within the target population. This enhancement should include outreach efforts in addition to those in the basic campaign which have been shown in the literature to be effective in the target population. The enhancement may cost more but must (1) have a strong chance of being more cost effective, and (2) be practical for other comparable immunization projects or communities to implement across the United States.

I. Properly provide the federally required hepatitis B vaccine Important Information Statement (IIS) (consent form) and obtain informed consent signatures prior to administration of each dose of hepatitis B vaccine.

J. Deliver hepatitis B vaccine to all eligible API children age 2–13 within the target communities through a network which may include public and private clinics, hospitals, and private doctors offices; Women Infant Children (WIC) and Aid to Families with

Dependent Children (AFDC) sites as well as in day care centers, pre-schools, and elementary and high school based clinics; religious and community organizations; and in-home visitation and mobile vans.

K. Utilize a computerized tracking, reminder and recall system in the entire target population but add an enhanced system of tracking, follow-up and reminder/recall in the study group, including, for example, more personnel contact and additional home visits and incentives.

L. After completing the design, pretest and approval phases, conduct post intervention Knowledge Attitudes and Practices (KAP) surveys of medical care providers in each comparison group.

M. At the conclusion of the first 12 months of funding determine within each comparison group what proportion of eligible API children age 2–13 who were not vaccinated with at least one hepatitis B vaccine dose, who received only dose 1 or doses 1 and 2, and who completed the series (dose 3).

N. At the conclusion of the first 12 months of funding, after completing the design, pretest and approval phases, conduct post intervention surveys of a sample in each comparison group of those who did not accept the hepatitis B vaccine, those that accepted dose 1 or doses 1 and 2 only, and those who accepted dose 3. The survey will be designed to provide a demographic and hepatitis B vaccination related knowledge, attitude, behavior, and barrier profile for children and parents.

CDC will provide consultation and technical assistance in planning, conducting and evaluating this project. CDC will assist with data management analysis and writing the final reports.

Review and Evaluation Criteria

The application will be evaluated according to the following criteria:

A. The applicant's understanding of the purpose of the study and the feasibility of producing the required results.

B. The extent to which background information and other data demonstrate that the applicant has the appropriate organizational structure, administrative support and accessibility to an adequate number of participants in the target populations to accomplish study objectives, including culturally appropriate outreach activities.

C. The degree to which the applicants's plan is consistent with study goals and is realistic, specific, measurable and time-phased.

D. The quality of the plan of operation for conducting the proposed activities and the degree to which the plan covers the "Program Requirements" and specifies the what, who, where, how, and the timing for start and completion of each.

E. The degree to which the applicant's plan will be able to achieve the goals and the quality of the methods and instruments to be used.

F. The extent to which methods and strategies proposed are financially feasible.

G. The extent to which qualified and experienced personnel are available to carry out the proposed activities.

Site visits may be conducted before final funding decisions are made by CDC. Only the organizations with high ranking applications will be visited. During the visit, CDC staff will ensure that all necessary components for start up of the project are in place. This meeting will be conducted by the NIP/NCID representatives with participation of the appropriate regional program consultant, project coordinator, local staff and others who may have interest in this project. Visits will be made to the local medical care providers, local public health departments, administrators of WIC and AFDC, local clinics, schools, and with community leaders. Periodic site visits will be held thereafter to monitor progress and problems.

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order (E.O.) 12372, Intergovernmental Review of Federal Programs. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. A current SPOC list is included in the application kit. The SPOC should send any State process recommendations to Ms. Elizabeth M Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–16, Room 300, Atlanta, GA 30305, no later than 60 days after the application deadline. CDC does not guarantee to "accommodate or explain State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this project grant is 93.268, Preventive Health Services—Childhood Immunization Grants.

Other Requirements

Paperwork Reduction Act

Projects that involve collection of information from 10 or more individuals and funded by the grant will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided which demonstrates that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Application Submission and Deadline

The applicant must submit an original and two copies of the application form PHS–5161–1 (including forms SF 424 and SF 424a), on or before July 8, 1994, to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–16 Atlanta, GA 30305.

A. *Deadline:* Applications will meet the deadline if they are:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time to submit the application to an independent objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

B. *Late Applications:* Late applications will not be considered in the current funding cycle and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, information on application procedures

an application package, and business management technical assistance may be obtained from Eddie L. Wilder, Senior Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–16, Atlanta, GA 30305, telephone (404) 842–6805. Programmatic technical assistance may be obtained from Dennis O'Mara, Chief, Program Operations Section, National Immunization Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–52, Atlanta, GA 30333, telephone (404) 639–8215, or Edith Gary, Hepatitis B Prevention Coordinator, National Immunization Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–52, Atlanta, GA 30333, telephone (404) 639–8222, or Gary L. Euler, Dr.P.H., Epidemiologist, Surveillance, Investigations and Research Branch, National Immunization Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–61, Atlanta, GA 30333, telephone (404) 639–8257.

Announcement number 101A, "Supplemental Funds for Hepatitis B Vaccination Demonstration Projects in Asian/Pacific Island Children," must be referenced in all requests for information for these projects.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report; Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report; Stock No. 017–001–00473–1) referenced in the introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: June 7, 1994

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–14357 Filed 6–11–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 94N–0203]

Animal Drug Export; Hyaluronate Sodium Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that GP Associates, Inc., has filed an application requesting approval for export of the bulk animal drug Hyaluronate Sodium Injection to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of nonfood animal drugs under the Drug Export Amendments of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Gregory S. Gates, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that GP Associates, Inc., 22 Bucknell Dr., RD 9, Bethlehem, PA 18015, has filed application number 8584 requesting approval for the export of the bulk animal drug Hyaluronate Sodium Injection to Canada. The drug will be used for the treatment of equine carpal and fetlock joint dysfunction caused by traumatic and/or degenerate joint disease of mild to moderate severity. The application was received and filed in the Center for Veterinary Medicine on May 31, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 24, 1994 and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: June 3, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–14314 Filed 6–13–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94F–0185]

Great Lakes Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Great Lakes Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1-bromo-3-chloro-5,5-dimethylhydantoin as a slimicide for use in the manufacture of paper and paperboard intended to contact food.

DATES: Written comments on the petitioner's environmental assessment by July 14, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4B4418) has been filed by Great Lakes Chemical Corp., P.O. Box 2200, West Lafayette, IN 47906–0200. The petition proposes to amend the food additive regulations in § 176.300 *Slimicides* (21 CFR 176.300) to provide

for the safe use of 1-bromo-3-chloro-5,5-dimethylhydantoin (CAS Reg. No. 16079–88–2) as a slimicide in the manufacture of paper and paperboard intended to contact food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before July 14, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 2, 1994.

Janice F. Oliver,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–14371 Filed 6–13–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93E–0099]

Determination of Regulatory Review Period for Purposes of Patent Extension; Mycobutin™; Correction

AGENCY: Food and Drug Administration. HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of April 15, 1994 (59 FR 18133), that announced its determination of the regulatory review period for purposes of patent extension for Mycobutin™ (rifabutin). The document was published with some mathematical errors. The document incorrectly stated, "FDA has determined that the applicable regulatory review period for Mycobutin™ is 2,831 days. Of this time, 2,124 days occurred during the testing phase of the regulatory review period, while 707 days occurred during the approval phase." It should have stated, "FDA has determined that the applicable regulatory review period for Mycobutin™ is 2,469 days. Of this time, 2,127 days occurred during the testing phase of the regulatory review period, while 342 days occurred during the approval phase." This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

In FR Doc. 94–9099, appearing on page 18133 in the **Federal Register** of April 15, 1994, the following corrections are made: On page 18134, in the first column, in the second complete paragraph, in line 3, "2,831" is corrected to read "2,469"; in line 4, "2,124" is corrected to read "2,127"; and in line 6, "707" is corrected to read "342".

Dated: June 8, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–14446 Filed 6–13–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94M–0180]

Sigmedics, Inc.; Premarket Approval of Parastep® I System

AGENCY: Food and Drug Administration. HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Sigmedics, Inc., Northfield, IL, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Parastep® I System. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 20, 1994, of the approval of the application.

DATES: Petitions for administrative review by July 14, 1994.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marie A. Schroeder, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration,1390 Piccard Dr., Rockville, MD 20850, 301–594–1296.

SUPPLEMENTARY INFORMATION: On September 30, 1992, Sigmedics, Inc., One Northfield Plaza, suite 410, Northfield, IL 60093–3016, submitted to CDRH, an application for premarket approval of the Parastep® I System. The device is a noninvasive functional neuromuscular stimulator for ambulation and is indicated for enabling appropriately selected skeletally mature spinal cord injured patients (levels C6–T12) to stand and to attain limited ambulation and/or take steps, with assistance if required, following a prescribed period of physical therapy training in conjunction with rehabilitation management of spinal cord injury.

On August 19, 1993, the Orthopedic and Rehabilitation Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 20, 1994, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and

information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 14, 1994, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 31, 1994.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 94-14315 Filed 6-13-94; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93E-0290]

Determination of Regulatory Review Period for Purposes of Patent Extension; Reality™ Female Condom

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Reality™ Female Condom and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well a any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Reality™ Female Condom. The Reality™ Female Condom is indicated for use to help prevent pregnancy and sexually transmitted diseases, including the human immunodeficiency virus (HIV) infection, during vaginal intercourse. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for the Reality™ Female Condom (U.S. Patent No. 4,735,621) from Chartex International Plc, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated August 10, 1993, advised the Patent and Trademark Office that this medical device had undergone a regulatory review period, and that the approval of the Reality™ Female Condom represented the first commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Reality™ Female Condom is 2,017 days. Of this time, 1,460 days occurred during the testing phase of the regulatory review period, while 557 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date on which the first clinical trial on the device was begun:* October 31, 1987. The clinical trial cited by the applicant was conducted outside the United States and was not subject to FDA's requirement for an investigational device exemption (IDE) under section 520(g) of the Federal Food, Drug and Cosmetic Act (the act) nor FDA's requirement for an institutional review board (IRB) approval under section 520(g) (3) of the act. Therefore, the testing phase begins on the date the device is first used with human subjects as part of a clinical investigation to be filed with FDA to secure premarket approval of the device (21 CFR 60.22(c)(1)(iii)). The applicant has stated that the date on which the device was first used with human subjects as part of a clinical investigation to be filed with FDA to secure premarket approval of the device was October 31, 1987. Because of the circumstances previously described for the clinical trial cited by the applicant, FDA has no record in which to review this date (21 CFR 60.20(c)(6)). Although FDA cannot, therefore, confirm that testing began as stated by the applicant, FDA is using this date as the start of the testing phase.

2. *The date the application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act:* October 29, 1991. FDA has verified the applicant's claim that the premarket approval application (PMA) for the Reality™ Female Condom (PMA P910064) was initially submitted on October 29, 1991.

3. *The date the application was approved:* May 7, 1993. FDA has verified the applicant's claim that PMA P910064 was approved on May 7, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 762 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before August 15, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before December 12, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 8, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–14445 Filed 6–13–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel

Dates of Meeting: June 28, 1994

Time of Meeting: 8 a.m. until adjournment.

Place of Meeting: Bethesda Marriott, Bethesda, MD.

Agenda: Review of Small Grant applications.

Contact Person: Dr. Mary Nekola, Scientific Review Administrator, NIDCD/SRB, Executive Plaza South, room 400C, Bethesda, Maryland 20892, (301) 496–8683.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: June 6, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–14442 Filed 6–13–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Name of SEP: Behavioral and Neurosciences.

Date: July 18, 1994.

Time: 8 a.m.

Place: Sheraton City Centre, Washington, DC.

Contact Person: Dr. Bob Weller, Scientific Review Administrator, 5333 Westbard Avenue, room 307, Bethesda, MD 20892, (301) 594–7340.

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 6, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–14443 Filed 6–13–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3739; FR–3640–N–02]

Amendment to Notice of Funding Availability (NOFA) for Comprehensive Improvement Assistance Program (CIAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Amendment to notice of funding availability for fiscal year (FY) 1994.

SUMMARY: This Notice informs Public Housing Agencies (PHAs) with less than 250 units under the jurisdictions of the Houston and Ft. Worth, Texas Field Offices that the deadline date for CIAP Application submission has been extended from June 20 to July 6, 1994. Applications are due on or before 3 p.m. local time on July 6, 1994. This extension does not apply to PHAs or Indian Housing Authorities under the jurisdictions of other HUD Field Offices.

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4140, Washington, DC 20410. Telephone (202) 708–1800; TDD (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The CIAP NOFA, published April 19, 1994, at 59 FR 18642, stated that of the $291,925,067 available for Public Housing CIAP, 1 percent, or $2,919,251, had been set aside to carry out goals related to pending civil rights litigation (e.g., Young v. *Cisneros*), which is subject to judicial oversight. The Department wishes to clarify that these funds will be used to fund eligible work at the 64 CIAP eligible PHAs involved in *Young* v. *Cisneros*, C.A. No. P–80–8–CA (E.D. Tex.), as well as at the CIAP eligible PHA involved in *NAACP* v. *Housing Authority of City of Commerce*, C.A. No. CA–3–88–0154–R (N.D. Tex.). In order to give the 64 PHAs involved in *Young* v. *Cisneros* additional time to include in their CIAP Applications work items proposed in their revised desegregation plans submitted to the court on February 4, 1994, the Department is extending the deadline for CIAP Application submission to all PHAs under the jurisdictions of the Houston and Fort Worth, Texas Field Offices. The application deadline is

extended from June 20, 1994 to July 6, 1994.

The 64 PHAs involved in *Young* v. *Cisneros* shall identify, in their CIAP Applications, those work items which are included in their revised desegregation plans. These 64 PHAs shall submit one CIAP Application, which may include both work items included in their revised desegregation plans and other work items not related to *Young* v. *Cisneros*.

All CIAP Applications received (including those limited to work items related to the specified civil rights cases) will be processed in accordance with the April 19, 1994 NOFA; i.e., completeness review, eligibility review, technical review (rating and ranking) and selection for Joint Review. The application from the Housing Authority of the City of Commerce will be considered for funding from the set-aside. Then the highest ranked of the 64 PHAs involved in *Young* v. *Cisneros* which apply for work items included in their revised desegregation plans will be funded from the set-aside for those items. To the extent that the set-aside cannot fund all proposed work related to the specified civil rights cases, the Field Office shall merge the rankings of any of the 65 PHAs with work items remaining unfunded from the set-aside and/or with work items not related to the set-aside, with the rankings of other PHAs to create one ranking list for purposes of Joint Review selection and funding from the Field Office's regular subassignment of CIAP funds.

Dated: June 8, 1994.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–14345 Filed 6–13–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management Alaska

[AK–964–4230–05P]

Notice for Publication F–14869–B and F–14869–D Alaska Native Claims Selections

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Inalik Native Corporation for approximately 7,117.46 acres. The lands involved are in the vicinity of Little Diomede, Alaska, within T. 1 S., R. 41 W. and Tps. 1 and 2 N., Rs. 42 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 [(907) 271–5960].

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 14, 1994 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

Ana M. Stafford,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 94–14324 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–JA–P

[CO–070–94–4333–04]

Temporary Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure of public lands in Mesa County to parking for longer than thirty minutes, camping and shooting from midnight June 19, 1994 until midnight June 27, 1994.

SUMMARY: Notice is hereby given that effective midnight June 19, 1994, public lands described below are closed to: (1) "Parking for longer than 30 minutes", except at the designated Loma Boat Launch and Trailhead parking area (for river-related and trail use activities), (2) camping, and (3) shooting. This action is under the authority and requirement of 43 Code of Federal Regulations 8364 part 1 (a) and (d) and in conformance with the principles established by the National Environmental Act of 1969 and the Federal Land Policy Management Act of 1976. The restrictions affect public lands in Mesa County located in:

T. 10 S., R. 103 W., 6th PM, Secs. 3, 4, 5, 8, 9, 10;
T. 2 N., R. 3 W., Ute PM Secs. 30, 31, 32;
T. 1 N., R. 3 W., Ute PM Secs. 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16.

The closure and restriction orders are to protect persons, property, and public lands and resources. These restrictions do not apply to emergency, law enforcement and Federal, State or other government personnel who are in the area for official or emergency purposes and who are expressly authorized or otherwise officially approved by BLM. Any person who fails to comply with this closure order may be subject to the penalties provided by 43 CFR 8360.0–7 which includes fines not to exceed $1000 and/or imprisonment not to exceed 12 months. Notice of this closure will be posted at the described area and at the Grand Junction District Office.

DATES: This temporary closure is in effect from midnight June 19, 1994 until midnight June 27, 1994.

ADDRESSES: Comments can be directed to the Area Manager, Bureau of Land Management, Grand Junction Resource Area, 2815 H Road, Grand Junction, CO 81506 or District Manager, Bureau of Land Management, Grand Junction District, 2815 H Road, Grand Junction, CO 81506.

FOR FURTHER INFORMATION CONTACT: Brian Hopkins, Outdoor Recreation Planner, Bureau of Land Management, Grand Junction District, 2815 H Road, Grand Junction, Colorado 81506; (303) 244–3000.

Dated: June 1, 1994.

Catherine Robertson,

Resource Area Manager.

[FR Doc. 94–14378 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–JB–P

[WY–040–04–4110–03]

Environmental Impact Statement; Enron Burly Field Enhanced Oil Recovery Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Enron's Burley Field Enhanced Oil Recovery Project Abbreviated Final Environmental Impact Statement and Record of Decision.

SUMMARY: The Bureau of Land Management announces the availability of the abbreviated Final Environmental Impact Statement and Record of Decision for Enron Burly Field Enhanced Oil Recovery Project. The proposed project area is located in Sections 18, 19, 20, and 29 of Township 28 North, Range 133 West, 6th Principal Meridian, Sublette County, Wyoming.

DATES: If an appeal is filed, your Notice of Appeal must be filed within 30 days of the date that the Environmental Protection Agency publishes their notice in the **Federal Register** to the address listed below.

ADDRESSES: If an appeal is filed, your Notice of Appeal must be filed with the State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Arlan Hiner, Area Manager, Pinedale Resource Area, 432 E. Mill Street, P.O. Box 768, Pinedale, Wyoming 82941, telephone 307–367–4358.

SUPPLEMENTARY INFORMATION: This abbreviated Final Environmental Statement contains copies of substantive comments received on the draft, responses to those comments, and an errata section with specific modifications and corrections to the Draft Environmental Impact Statement in response to comments received. No rewriting or reprinting of the Draft Environmental Statement is necessary.

Given the low level of comment and the lack of controversy or opposition to the project expressed during public scoping and the comment period on the Draft Environmental Impact Statement, BLM has decided to issue the Record of Decision concurrent with the Final Environmental Impact Statement. Concurrent filing is provided for in 40 CFR 1506.10(b)(2). The Record of Decision outlines the decision and rationale including key management consideration for Enron's Burly project.

Dated: June 7, 1994.

Robert A. Bennett,

Acting State Director.

[FR Doc. 94–14359 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–22–M

[CO–920–94–4110–03; COC47428 and COC55420]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Leases

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas leases COC47428 and COC55420, Rio Blanco County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from August 1, 1993, the date of termination.

No valid leases have been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for each lease and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of each lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the leases effective August 1, 1993, subject to the original terms and conditions of each lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239–3783.

Dated: June 1, 1994.

Joan E. Gilbert,

Land Law Examiner; Lease Closure Team

[FR Doc. 94–14329 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–JB–M

[CO–017–94–4210–05; COC–55577]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of notice of realty action classifying lands as suitable for conveyance under the Recreation and Public Purpose Act.

SUMMARY: This correction changes the Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Colorado published Monday, May 23, 1994 (59 FR 98; pp. 26669–26670). In column one, eleventh line up from the bottom of page 26669, "T. 2 N., T. 97 W.," is changed to "T. 2 N., R. 97 W.,"

Dated: June 6, 1994.

Robert Schneider,

Associate District Manager.

[FR Doc. 94–14386 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–JB–M

[OR–942–00–4730–02: G4–179]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 4 S., R. 4 E., accepted April 14, 1994
T. 39 S., R. 18 E., accepted March 28, 1994
T. 5 N., R. 43 E., accepted May 3, 1994
T. 5 N., R. 44 E., accepted May 3, 1994
T. 15 S., R. 46 E., accepted April 29, 1994
T. 23 S., R. 3 W., accepted May 11, 1994
T. 20 S., R. 4 W., accepted May 12, 1994
(Sheets 1 & 2)
T. 21 S., R. 6 W., accepted April 29, 1994
T. 30 S., R. 6 W., accepted May 11, 1994
T. 27 S., R. 12 W., accepted April 11, 1994

Washington

T. 2 N., R. 1 E., accepted April 18, 1994

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 N.E. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision. For further information contact: Bureau of Land Management, 1300 N.E. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: May 25, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–14393 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–33–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the information collection requirement and related explanatory material may be obtained by contacting Jeane Kalas at (303) 231–3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below, and to the Office of Management and Budget Paperwork Reduction Project, Washington, DC, 20503, telephone (202) 395–7340.

Title: Dual Accounting Information Collection.

OMB Approval Number: None.

Abstract: The Minerals Management Service (MMS), acting as agent of the United States Government, has a trust responsibility in the administration of Indian oil and gas leases. In carrying out this trust responsibility the MMS is conducting an inquiry into compliance with dual accounting requirements contained in regulations at 30 CFR 206.155. These regulations require that, where lease terms provide, accounting for comparison (dual accounting) must be performed in determining the value of natural gas production for royalty purposes. The inquiry will initially involve approximately 90 lessees and royalty payors on leases on Jicarilla Apache Tribal lands. Royalty payors on these leases will be required to submit a statement that as a matter of actual practice and company policy, company personnel did or did not each year since March 1, 1988, compare the value of unprocessed wet gas with the combined value of dry methane and extracted products derived from processing, less the allowed cost of processing, compare those values with gross proceeds accruing from disposition of production, and then select the highest of these measures as the value of production on which the company paid royalties. Upon conclusion of this inquiry, MMS may undertake further audit or other investigation of company records.

Frequency: One time only.

Description of Respondents: 90 Indian lease royalty payors.

Estimated Completion Time: 5 hours.

Estimated Responses: 90.

Estimated Burden Hours: 450.

Bureau Clearance Officer: Arthur Quintana (703) 787–1101.

Dated: May 5, 1994.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 94–14331 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–MR–M

Minerals Management Service (MMS)

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0030); Washington, DC 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR part 250, subpart A, General.

OMB Approval Number: 1010–0030.

Abstract: The MMS proposes to amend the regulations at 30 CFR part 250 by adding a proposed section, § 250.27, Safety of operations communication. This proposed requirement will require operators of offshore production platforms to notify incoming or new personnel arriving on the platform of the status of repairs of process equipment, safety systems, or other systems that are out of service. This will require operators to maintain records of all communications.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Federal Outer Continental Shelf oil and gas lessees.

Estimated Completion Time: 27.41 hours (rounded).

Annual Responses: 4,605 (rounded).

Recordkeeping Hours: 8,738.

Annual Burden Hours: 13,343.

Bureau Clearance Officer: Arthur Quintana (703) 787–1239.

Dated: May 12, 1994.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 94–14330 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Change for the Management and Operation of the Presidio Child Development Center

AGENCY: National Park Service, Interior.

NOTICE: Notice of change.

In February the National Park Service released a notice of its intent to issue a Prospectus for a Concessions Contract to operate the Presidio Child Development Center located in the Golden Gate National Recreation Area. In place of the Prospectus a *Request for Proposal (RFP)* for the operation of the facility under a Special Use Permit will be released. The *RFP* will be the initial process where by organizations wishing to operate the Presidio Child Development Center will be reviewed in regards to their capabilities and prior experience. From the results of the *RFP* the National Park Service will enter into negotiations with the most qualified respondent for the management of the facility.

If you responded to our initial notice you do not need to respond to this change. We will be sending you the *RFP* in the near future.

If you did not respond to the original notice, and wish to receive a copy of the *RFP*, please write to the address below. You may also call to add your name to the list.

National Park Service, Office of the General Manager, Attention: Child Development Center RFP, Main Post, Building 102, P.O. Box 29022, Presidio of San Francisco, California 94129–0022, or call: (415) 556–1388.

Please distribute this notice to others who may have an interest in this project.

Dated: June 2, 1994.

Patricia Neubacher,

Acting Regional Director, Western Region.

[FR Doc. 94–14313 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 4, 1994. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by June 29, 1994.

Beth M. Boland,

Acting Chief of Registration, National Register.

FLORIDA

Sarasota County

Thoms House, 5030 Bay Shore Rd., Sarasota, 94000666.

GEORGIA

Morgan County

Susie Agnes Hotel, Main St., Bostwick, 94000664.

Muscogee County

Wereeobe—St. Elmo Historic District, Roughly bounded by 13th and Virginia Sts. 13th, 15th, 16th and Cherokee Ave. and Talbotton Rd., Muscogee, 94000665

IDAHO

Bonner County

Priest River Experimental Forest, Idaho Panhandle NF, Sandpoint vicinity, 94000661

KANSAS

Leavenworth County

Western Branch, National Home for Disabled Volunteer Soldiers Historic District, Roughly bounded by US 73, Missouri Pacific Railroad and Missouri R., Limit St. and US 5, Leavenworth, 94000671

LOUISIANA

Terrebonne Parish

Argyle, 3315 Bayou Black Dr., Houma, 94000667

MICHIGAN

Jackson County

Kentucky Homestead, 6744 Kentucky Ave, Columbia Township, Clark Lake, 94000664

Wayne County

Detroit Naval Armory, 7600 E. Jefferson Ave, Detroit, 94000662

MISSISSIPPI

Montgomery County

Winona Commercial Historic District, Roughly bounded by Magnolia, St., Central Ave., Carrollton St. and Sterling Ave., Winona, 94000659

NEBRASKA

Boone County

Cedar Rapids City Hall and Library, 423 W Main St., Cedar Rapids, 94000654

Douglas County

Gallagher Building, 1902–1906 S. 13th St, Omaha, 94000653

Hall County

Huff, Lee, Apartment Complex, 213–215 1/2 S. Walnut St., 324 W. Koenig St., 316–318 1/2 W. Koenig St., Grand Island, 94000652

Lancaster County

Arens, Jacob, Farmstead, House, 6232 Holdrege St., Lincoln, 94000651

Pawnee County

Little Red Public Square Historic District, Roughly bounded by Pennsylvania, Nebraska, Luzerne and Houston Sts., Table Rock, 94000655

NEW YORK

Montgomery County

Amsterdam (46th Separate Company) Armory (Army National Guard Armories MPS), Jct. of Florida Ave. and Dewitt St., SW corner, Amsterdam, 94000658

PENNSYLVANIA

Delaware County

Weiss House and Weiss Summer House, Veterans Administration Medical Center, Lebanon, 94000673

TEXAS

McLennan County

Veterans Administration Hospital Historic District, 4800 Memorial Dr., Waco, 94000672

VIRGINIA

Hampton Independent City

Hampton Veterans Affairs Medical Center (preferred), Roughly bounded by John's Cr., Hampton Roads, Hampton R., Jones Cr., Hampton University and Martin Luther King Blvd., Hampton, 94000675

WASHINGTON

Spokane County

Kemp & Hebert Building, 404 W. Main Ave, Spokane, 94000660

WISCONSIN

Door County

FRANK O'CONNOR (bulk carrier) (Great Lakes Shipwrecks MPS), Address Restricted, North Bay vicinity, 94000656

Milwaukee County

Northwestern Branch, National Home for Disabled Volunteer Soldiers Historic District, Roughly bounded by W. Blue Mound Rd, Mitchell Blvd., US 94 and the Veterans Affairs Medical Center, Milwaukee, 94000667

Parking Lot Site (Milwaukee VA MPS), Address Restricted, Milwaukee vicinity, 94000670

Soldier's Home Roof, 5000 W. National Ave, Milwaukee, 94000674

Tire Swing Site (Milwaukee VA MPS), Address Restricted, Milwaukee vicinity, 94000669

Train Trestle Site (Milwaukee VA MPS), Address Restricted, Milwaukee vicinity, 94000668

[FR Doc. 94–14380 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32509]

Luzerne County Rail Corporation—Lease, Operation, and Acquisition Exemption—Certain Rail Lines and Operating Rights of F&L Realty and Pocono Northeast Railway, Inc.

Luzerne County Rail Corporation (LCRC), a noncarrier subsidiary of the Redevelopment Authority of Luzerne County, has filed a notice of exemption to lease and operate certain rail lines owned by Pocono Northeast Railway, Inc. (PNER) and F&L Realty (F&L) in Luzerne and Lackawanna Counties, PA as follows: (1) The Dunmore Secondary Track, between milepost 6.5, at Avoca and milepost 8.6 at Rocky Glen, a distance of about 2.1 miles; (2) The Avoca Industrial Track, between milepost 1.8, at No. 7 Junction, and milepost 6.5 at Avoca, a distance of 4.7 miles, including the connection with the track of CR, between "LB" Junction and the switch of the Dunmore Secondary Track, a distance of 0.123 miles, and the Langcliff Connecting Track, between milepost 0.0, at Duryea and the connection with DH in the middle of York Avenue, at milepost 0.867, a distance of 0.867 miles; (3) The West Pittston Running Track, between milepost 0.0 at West Pittston, and milepost 3.0, at Harding, a distance of 3.0 miles, and between milepost 186.4 at West Pittston, and milepost 194.4 in Kingston, a distance of 0.2 miles; (4) The Suscon Running Track, between milepost 154.5 at Suscon, and milepost 156.6, at Suscon, a distance of 2.1 miles; (5) The Wilkes-Barre Secondary, between milepost 169.2, at Ashley, and milepost 185.5, at Pittston, a distance of 16.3 miles; (6) The Nanticoke Industrial Track, between milepost 0.0 at Ashley and milepost 2.6 at Central Scrap, a distance of 2.6 miles; (7) The Harry E. Breaker Spur, between milepost 0.1, at Maltby Junction, and milepost 0.5, a distance of 0.4 miles; (8) The APC line, between milepost 0.0 and milepost 0.6 in Wilkes-Barre, a distance of 0.6 miles; (9) The Brownsville Industrial Track, between milepost 0.0 at Hillside, and milepost 1.0 at Brownsville, a distance of 1.0 miles; (10) The Wilkes-Barre Industrial Track, between milepost 59.9 at Ferry Street, and milepost 62.9, at Wilkes-Barre, a distance of 3.0 miles; (11) The Miner's Mills Industrial Track between milepost 173.6, at N. Wilkes-Barre, and Milepost 176.1 at Hudson, a distance of 2.5 miles; (12) The Pettibone Branch, between milepost 0.0 and milepost 0.759, at Dorranceton, a distance of 0.759 miles; (13) The Kingston Industrial Track, between milepost 142.7, at Pittston Junction, and Railroad Station 8594+58, a distance of 8.1 miles; and (14) The DH Wilkes-Barre Connector, from milepost A–208.08, Hudson Yard, to Conyngham Avenue, City of Wilkes-Barre, a distance of 2.5 miles.[1]

LCRC also will acquire PNER's operating rights over two segments of rail line owned by Greater Wilkes-Barre Partnership, Inc. (GWBP), and IR, Inc. (IR): (1) GWBP's Hanover Industrial Track, between milepost 0.0 at Ashley, and milepost 0.5, at Hanover Industrial Park, a distance of 0.5 miles; and (2) IR's Suscon Industrial Track, between milepost 154.5 at Suscon, and milepost 158.7, at Hillside, a distance of 4.2 miles.

The rail line LCRC will lease and operate totals approximately 55.55 miles.

LCRC expected to consummate its lease of the involved lines on May 26, 1994. As part of the transaction, LCRC will acquire an option to acquire the leased lines (except those owned by GWBP and IR), and it expects to exercise that option by September 1, 1994.

This proceeding is related to *Delaware-Lackawanna Railroad Co., Inc.—Trackage Rights Exemption—Luzerne County Rail Corporation,* Finance Docket No. 32510, wherein D-L has concurrently filed a notice of exemption under 49 CFR 1180.2(d)(7) regarding its acquisition of local trackage rights over the 16 segments described herein.

Any comments must be filed with the Commission and served on: Kevin M. Sheys, Oppenheimer, Wolff & Donnelly, 1020 19th Street, NW, Suite 400, Washington, DC 20036.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 6, 1994.

[1] The described lines are among those previously operated by PNER, which ceased all rail operations on September 17, 1993. Pursuant to *Delaware-Lackawanna Railroad Company, Inc.—Directed Service—Pocono Northeast Railway, Inc.,* Directed Service Order No. 1513 (ICC served Sept. 28 and Nov. 26, 1993), Delaware-Lackawanna Railroad Company, Inc. (D-L) performed interim uncompensated directed service over the described lines and other PNER/F&L lines between September 29, 1993, and May 23, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–14404 Filed 6–13–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32510]

Delaware-Lackawana Railroad Co., Inc.—Trackage Rights Exemption—Luzerne County Rail Corporation

Luzerne County Rail Corporation (LCRC) has agreed to grant local trackage rights to Delaware-Lackawanna Railroad Co., Inc. (D-L) to operate over the following segments of line in Luzerne and Lackawanna Counties, PA: (1) The Dunmore Secondary Track, between milepost 6.5, at Avoca, and milepost 8.6 at Rocky Glen, a distance of about 2.1 miles; (2) The Avoca Industrial Track, between milepost 1.8, at No. 7 Junction, and milepost 6.5 at Avoca, a distance of 4.7 miles, including the connection with the track of CR, between "LB" Junction and the switch of the Dunmore Secondary Track, a distance of 0.123 miles, and the Langcliff Connecting Track, between milepost 0.0, at Duryea, and the connection with DH in the middle of York Avenue, at milepost 0.867, a distance of 0.867 miles; (3) The West Pittston Running Track, between milepost 0.0 at West Pittston, and milepost 3.0, at Harding, a distance of 3.0 miles, and between milepost 186.4, at West Pittston, and milepost 194.4 in Kingston, a distance of 0.2 miles; (4) The Suscon Running Track, between milepost 154.5 at Suscon, and milepost 156.6, at Suscon, a distance of 2.1 miles; (5) The Wilkes Barre Secondary, between milepost 169.2, at Ashley, and milepost 185.5, at Pittston, a distance of 16.3 miles; (6) The Nanticoke Industrial Track, between milepost 0.0 at Ashley, and milepost 2.6 at Central Scrap, a distance of 2.6 miles; (7) The Harry E. Breaker Spur, between milepost 0.1, at Maltby Junction, and milepost 0.5, a distance of 0.4 miles; (8) The APC line, between milepost 0.0 and milepost 0.6 in Wilkes-Barre, a distance of 0.6 miles; (9) The Brownsville Industrial Track, between milepost 0.0 at Hillside, and milepost 1.0 at Brownsville, a distance of 1.0 miles; (10) The Wilkes-Barre Industrial Track, between milepost 59.9, at Ferry Street, and milepost 62.9, at Wilkes-Barre, a distance of 3.0 miles; (11) The Pettibone Branch, between milepost 0.0 and milepost 0.759, at Dorranceton, a distance of 0.759 miles; (12) The Kingston Industrial Track, between milepost 142.7, at Pittston Junction, and Railroad Station 8594+58 a distance of 8.1 miles; (13) The DH Wilkes-Barre Connector, from milepost A–208.08, Hudson Yard, to Conyngham Avenue, City of Wilkes-Barre, a distance of about 2.5 miles; (14) The Hanover Industrial Track, between milepost 0.0, at Ashley, and milepost 0.5, at Hanover Industrial Park, a distance of 0.5 miles; and (15) The Suscon Industrial Track, between milepost 154.5 at Suscon, and milepost 158.7, at Hillside, a distance of 4.2 miles. The trackage rights were to become effective on or after May 26, 1994.

This proceeding is related to *Luzerne County Rail Corporation—Lease, Operation, and Acquisition Exemption—Certain Rail Lines and Operating Rights of F&L Realty and Pocono Northeast Railway, Inc.,* Finance Docket No. 32509, wherein LCRC has concurrently filed a notice of exemption under 49 CFR 1150.31 regarding its lease, operation, and acquisition of certain rail lines including those involved here.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert R. Wimbish, Gerst & Heffner, 1700 K Street, NW, Suite 301, Washington, DC 20006.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: June 6, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–14405 Filed 6–13–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 as Amended

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a proposed settlement agreement in In re Valley Steel Products

Company, Inc., No. 92–40778–293, (Bankr. E.D. Mo.) was lodged on June 2, 1994 with the United States Bankruptcy Court for the Eastern District of Missouri. The agreement resolves claims of the United States against Debtor Valley Steel Products Company, Inc. ("Valley Steel") in the above-referenced bankruptcy under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and under the Resource Conservation and Recovery Act ("RCRA") for contamination at Valley Steel's former manufacturing facility in Louisiana, Missouri (the "Site"). In the proposed settlement agreement Valley Steel agrees to give the United States an allowed general unsecured pre-petition claim of $1,900,000 in settlement of the United States' claims for response costs incurred or to be incurred by the Environmental Protection Agency at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to In re Valley Steel Products Company, Inc., No. 92–40778–293, DOJ Ref. #90–11–2–298B.

The proposed settlement agreement may be examined at the Office of the United States Attorney, 1114 Market Street, St. Louis, Missouri, 63101; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas, 66101; and the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed settlement agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden, Chief,

Environmental Enforcement Section, Environment and Natural Resources Division

[FR Doc. 94–14332 Filed 6–13–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. Pilkington plc and Pilkington Holdings Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Arizona at Tucson in *United States* v. *Pilkington plc and Pilkington Holdings Inc.*, Civil No. *94–345 TUC–WDB* as to both defendants.

The Complaint alleges that the defendants violated Sections 1 and 2 of the Sherman Act by restraining exports of float glass design and construction services by enforcing territorial and other restraints in license agreements entered into long ago that are now unjustified by sufficiently valuable intellectual property rights. Most of the agreements are more than 20 years old.

The proposed Final Judgment enjoins defendants from enforcing license provisions that restrain their United States-based licensees' freedom to use float glass technology anywhere in the world, and from enforcing license restrictions against their other licensees that restrain the licensees' freedom to use float glass technology in the United States. It also enjoins defendants from asserting any proprietary know-how rights in such technology against individuals or firms in the United States who are not licensees.

Float glass technology is used to make over 90 percent of the glass used for windows, windshields, architectural panels, and mirrors.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gail Kursh, Chief, Professions and Intellectual Property Section, room 9903, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Washington, DC 20001 (telephone: 202/307–5799).

Constance K. Robinson,

Director of Operations, Antitrust Division

United States District Court for the District of Arizona

United States of America, Plaintiff, v. *Pilkington plc and Pilkington Holdings Inc.*, Defendants. Civil Action No. 94–345. Filed May 25, 1994. Judge Browning

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Arizona;

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that Plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court; and

3. Defendants agree to be bound by the provisions of the proposed Final Judgment pending its approval by the Court. If the Plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

Dated this 25th day of May, 1994.

For Plaintiff The United States of America

Robert E. Litan,

Deputy Assistant Attorney General

Mark C. Schechter,

Deputy Director of Operations,

Gail Kursh,

Chief, Professions & Intellectual Property Section,

David C. Jordan,

Assistant Chief Professions & Intellectual Property Section,

K. Craig Wildfang,

Special Counsel to the Assistant Attorney General, Antitrust Division,

Kurt Shaffert,

Thomas H. Liddle,

Molly DeBusschere,

John B. Arnett, Sr.

M. Lee Doane,

Attorneys, U.S. Dep't. of Justice, Antitrust Division, room 9903, J.C.B. 555 4th Street, N.W., Washington D.C. 20001, 202/307–0467

For the Defendants:

Rober E. Leverton,

Chief Executive, Pilkington plc,

Peter H. Grunwell,

Director, Plikington Holdings Inc.

John H. Shenefield,

Counsel for Defendants, Pilkington plc and Pilkington Holdings, Inc

United States District Court for the District of Arizona

United States of America, Plaintiff, v. *Pilkington plc; and Pilkington Holdings Inc.*, Defendants. Civil Action No. 94–345. Filed: May 25, 1994, Judge Browning.

Final Judgment

Plaintiff, the United States of America, having filed its Complaint on May 25, 1994, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and before the taking of any testimony in this action, and without this Final Judgment constituting any evidence against or an admission by any defendant to any such issue;
And defendants having agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Therefore, before the taking of any testimony and without trial or adjudication of any such issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED, and DECREED as follows:

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against defendants under sections 1, 2 and 6a of the Sherman Antitrust Act, 15 U.S.C. 1, 2, 6a.

II

Definitions

As used in this Final Judgment:

A. "Agreement" means any contract, agreement or understanding, whether oral or written, or any term or provision thereof.

B. "Confidentiality" means the non-disclosure of information under an agreement, undertaking or obligation arising under applicable law to maintain its secrecy and/or limit its use.

C. "Fees" means money paid to the defendants for the right to use FLOAT TECHNOLOGY, including, but not limited to, royalties, lump sum payments and line fees.

D. "Final Award" means the Final Award dated August, 1992 in the arbitration proceedings between PPG Industries, Inc. and PILKINGTON.

E. "Flat Glass" means glass formed in a flat shape and glass formed flat and then bent or curved.

F. "Float Glass" means FLAT GLASS manufactured by floating molten glass on the surface of a bath of molten metal.

G. "Float Technology" means float process technology in existence on or before the date of the STIPULATION that is appropriate and useful for the design, construction, and/or operation of a float bath used in making FLOAT GLASS.

H. "Foreign Licensee" means any LICENSEE that is not a U.S. LICENSEE.

I. "Licensee" means any person, company, or entity that has entered into a LICENSE AGREEMENT with PILKINGTON.

J. "License Agreement" means any AGREEMENT, whether or not denominated as such, in being as of the date of the STIPULATION, that provided or provides for, or acknowledges or recognizes, the licensing of, or the right to use, FLOAT TECHNOLOGY for the manufacture of FLOAT GLASS, including, without limitation, any AGREEMENT (i) For sublicensing or (ii) for settling any dispute regarding rights to FLOAT TECHNOLOGY.

K. "Limitations" means: (1) Any limitation, or restriction of territories, fields, markets, or customers for the design and construction, or supervision of construction, of FLOAT GLASS plants, or the manufacture of FLOAT GLASS; and/or (2) any restriction or limitation, or purported restriction or limitation of the use of FLOAT TECHNOLOGY, whether the result of an affirmative prohibition or a limited authorization.

L. "Non-licensee" means any person, company, or entity which has not entered into a LICENSE AGREEMENT with PILKINGTON.

M. "North America" means the United States of America, Canada and the Republic of Mexico.

N. "Pilkington" means Defendant Pilkington plc.

O. "Stipulation" means the stipulation entered into by the parties to this action dated May 25, 1994.

P. "Subject Float Technology" means FLOAT TECHNOLOGY that in relation to any given LICENSEE was disclosed to that LICENSEE under its LICENSE AGREEMENT other than FLOAT TECHNOLOGY disclosed by PILKINGTON to any U.S. LICENSEE while PILKINGTON owned 50% or more of that U.S. LICENSEE.

Q. "U.S. Licensee" means any LICENSEE that was or is incorporated in the United States or had or has its principal place of business in the United States, but shall not include any subsidiaries, affiliates or parents of any such LICENSEE nor any person while it is a subsidiary, affiliate or parent of any defendant. For purposes of this definition, an "affiliate" is an entity in which a person has an equity interest, directly or indirectly, of 50% or less; a "subsidiary" is an entity in which a person has an equity interest, directly or indirectly, of more than 50%; a "parent" is an entity that has, directly or indirectly, more than 50% of the equity interest of another entity.

R. "U.S. Non-Licensee" means any NON-LICENSEE that is domiciled or incorporated in the United States and that has its principal place of business in the United States.

III

Applicability

This Final Judgment applies to defendants and to each of their officers, directors, agents, employees, subsidiaries, successors and assigns; and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Injunction

Defendants are enjoined and prohibited as follows:

A. U.S. Licensees

1. Except as provided in subparagraph A.4. hereof, no defendant shall enter into, maintain, enforce or claim any right under any AGREEMENT to the extent such AGREEMENT requires, or purports to require, any U.S. LICENSEE to pay FEES, observe LIMITATIONS, or maintain CONFIDENTIALITY (subject to subparagraph A.3.) with respect to the use or sublicensing of any SUBJECT FLOAT TECHNOLOGY.

2. Except as provided in subparagraph A.4. hereof, no defendant shall assert against any U.S. LICENSEE any proprietary FLOAT TECHNOLOGY know-how rights (including any claim of CONFIDENTIALITY, subject to subparagraph A.3.) that it may have or claim with respect to any:

(a) Subject Float Technology; or

(b) FLOAT TECHNOLOGY not disclosed directly to that U.S. LICENSEE but otherwise in the possession of that U.S. LICENSEE unless for each item or combination of items thereof

(i) it has a good faith argument that such item, or combination of items, is a trade secret under applicable law, and

(ii) it has a good faith argument that it has been acquired in breach of CONFIDENTIALITY or otherwise unlawfully.

3. Defendants may assert against U.S. LICENSEES a claim of breach of CONFIDENTIALITY in respect of SUBJECT FLOAT TECHNOLOGY, but only if the claim is made as to that which is a trade secret under applicable law and is either:

(a) Based upon a U.S. LICENSEE's failure to make lawful and commercially reasonable efforts to preserve the CONFIDENTIALITY of SUBJECT FLOAT TECHNOLOGY; or

(b) Based upon a U.S. LICENSEE'S failure to include in any AGREEMENT transferring FLOAT TECHNOLOGY a lawful and commercially reasonable provision requiring the transferee to maintain the CONFIDENTIALITY of the transferred FLOAT TECHNOLOGY.

4. The provisions of subparagraphs A.1. and A.2. hereof shall not preclude in any way defendants from pursuing fully any claims for an account of profits, damages or any other monetary relief based on conduct occurring before the date of the STIPULATION in any proceedings instituted before that date.

B. U.S. Non-Licensees

1. No defendant shall enter into or enforce any AGREEMENT with any employee, contractor, supplier, consultant, or the like who is a U.S. NON-LICENSEE that contains any obligation of CONFIDENTIALITY to or for the benefit directly or indirectly of PILKINGTON with respect to FLOAT TECHNOLOGY, or any covenant to refrain from competing or engaging in any line of business relative to FLOAT TECHNOLOGY, that is of longer duration or greater scope than permitted under applicable law, provided that plaintiff agrees that defendants shall not be in contempt of this Final Judgment if they enter into or seek to enforce any such AGREEMENT based on a good faith argument that such AGREEMENT is permitted by applicable law.

2. No defendant shall assert against U.S. NON-LICENSEES (other than in respect of AGREEMENTS referred to in subparagraph B.1. above) any proprietary FLOAT TECHNOLOGY know-how rights (including any claim of CONFIDENTIALITY) that it may have or claim with respect to any FLOAT TECHNOLOGY disclosed by PILKINGTON to any U.S. LICENSEE, unless for each item or combination of items thereof:

(a) Defendant has a good faith argument that such item, or combination of items, is a trade secret under applicable law;

(b) Defendant has a good faith argument that such item, or combination of items, has been acquired in breach of CONFIDENTIALITY or otherwise unlawfully;

(c) Defendant has, within fourteen (14) days after any such assertion:

(i) Made a showing in writing to the Department of Justice, Antitrust Division in support of the arguments described in subparagraphs 2(a) and 2(b), above;

(ii) Identified, enumerated, and described such item or combination of items (in sufficient detail and with sufficient clarity to distinguish them from information not a trade secret under applicable law) on a list submitted to the Antitrust Division and to the U.S. NON-LICENSEE against whom such right is asserted; and

(d) Such U.S. NON-LICENSEE is unwilling to make lawful and commercially reasonable efforts to maintain the CONFIDENTIALITY of any such item or combination of items for which it has received actual notice of a defendant's claim of proprietary rights therein pursuant to subparagraph 2(c)(ii), above, and for which a defendant has made the requisite showing pursuant to subparagraph 2(c)(i), above.

C. Agreements with Foreign Licensees

No defendant shall enter into, maintain, enforce or claim any right under any AGREEMENT to the extent such AGREEMENT contains any LIMITATIONS on a FOREIGN LICENSEE regarding its use or sublicensing of any FLOAT TECHNOLOGY that would have the effect of prohibiting or limiting the manufacture of FLOAT GLASS in NORTH AMERICA, provided that defendants may charge commercially reasonable and non-discriminatory FEES for the use or sublicensing of FLOAT TECHNOLOGY other than that disclosed by PILKINGTON to a U.S. LICENSEE; and provided further that a defendant may enforce CONFIDENTIALITY against any FOREIGN LICENSEE for use of FLOAT TECHNOLOGY, but, with respect to FLOAT TECHNOLOGY disclosed by PILKINGTON to a U.S. LICENSEE, only to the extent that the defendant has a good faith argument that the items or combination of items of such FLOAT TECHNOLOGY involved are trade secrets under applicable law.

D. Exports to the United States

No defendant shall, with the intent of restraining or limiting the amount of exports of FLOAT GLASS to the United States:

1. assert any proprietary FLOAT TECHNOLOGY know-how rights with respect to SUBJECT FLOAT TECHNOLOGY or

2. enter into, maintain, enforce or claim any right under any AGREEMENT with any LICENSEE.

E. Price of Float Technology

No defendant shall enter into, maintain or enforce any AGREEMENT that fixes, maintains or stabilizes the price to be charged for the use of any FLOAT TECHNOLOGY in the United States.

F. Representations

With respect to all FLOAT TECHNOLOGY disclosed by PILKINGTON to any U.S. LICENSEE, no defendant shall represent to any person anywhere in the world that the person will or may incur liability to any defendant as a result of that person using, or contracting for the use of, or financing, facilitating, or promoting another person's use of such FLOAT TECHNOLOGY insofar as the same is acquired directly from any U.S. LICENSEE or any U.S. NON-LICENSEE provided that nothing shall limit or restrict any defendant from representing, claiming or enforcing any right to which either defendant may now or hereafter be entitled other than as is expressly enjoined by this Final Judgment.

G. Public Domain

1. Within sixty (60) days of the entry of this Final Judgment, PILKINGTON shall identify the FLOAT TECHNOLOGY found to be public knowledge in the FINAL AWARD to the Department of Justice, Antitrust Division; to all U.S. LICENSEES; and to all U.S. NON-LICENSEES who shall request the same in writing.

2. In the event that SUBJECT FLOAT TECHNOLOGY is: (a) Formally acknowledged in writing by PILKINGTON to be in the public domain, or (b) is determined to be in the public domain in a final award in any arbitration proceedings to which PILKINGTON is a party or (c) is held to be in the public domain in any proceedings to which PILKINGTON is a party conducted in a court of competent jurisdiction and provided that any such determination or holding is an essential relevant part of a final non-appealable decision or judgment binding upon PILKINGTON, then within sixty (60) days of such acknowledgment, award for judgment PILKINGTON shall send notice thereof identifying such public domain FLOAT TECHNOLOGY to the Department of Justice, Antitrust Division; to all U.S. LICENSEES; and to all U.S. NON-LICENSEES who previously made a request pursuant to subparagraph G.1. above.

H. Patents

Nothing in this Paragraph IV shall be construed to apply to any lawful use of any patent or any patent right to which defendants may now or hereafter be entitled.

I. Construction

Nothing in this Paragraph IV shall be considered by implication either to permit or to prohibit any agreements, conduct or practices not expressly covered by this Final Judgment. Nothing in this Paragraph IV shall be construed as permission to engage in conduct that is not lawful, or as legalizing otherwise unlawful conduct nor as a determination that any conduct affected or subject to this Paragraph IV is unlawful. The legality or illegality of any conduct not expressly covered by this Final Judgment is left unaffected by the entry of this Final Judgment.

J. Records

During the term of this Final Judgment defendants shall maintain a file in the United States at the offices of defendant Pilkington Holdings Inc. containing the documents created or received after the date of this Final Judgment and identified further in this paragraph and during the term of this Final Judgment shall produce the same to the Department of Justice, Antitrust Division within sixty (60) days of a written request given to defendants at the principal office of Pilkington Holdings Inc., subject to any lawful privilege:

1. A copy of each LICENSE AGREEMENT entered into or amended;

2. A copy of each complaint (or its equivalent) filed in any proceeding, and each other document in which defendants asserted against any U.S. LICENSEE or U.S. NON-LICENSEE any proprietary FLOAT TECHNOLOGY know-how rights (including any claim of CONFIDENTIALITY);

3. A copy of each document constituting or containing a determination in any proceeding, or any acknowledgement by defendants that any item or combination of items of FLOAT TECHNOLOGY is, or has become, publicly known.

4. A copy of each document constituting or containing: (a) Any request for the communication of FLOAT TECHNOLOGY or a grant of rights to FLOAT TECHNOLOGY for the manufacture of FLOAT GLASS or sublicensing from any U.S. LICENSEE or U.S. NON-LICENSEE, and (b) defendant's response to any such request.

V

Notification

Within sixty (60) days after the entry of this Final Judgment, defendants shall either: (a) Deliver by certified or registered mail to each person to whom it has granted a LICENSE, or with whom it has entered into any confidentiality agreement pertaining to FLOAT GLASS, including without limitation equipment fabricators, suppliers, and employees a copy of this Final Judgment and the accompanying Competitive Impact Statement; or (b) cause to be published in one or more journals a copy of this Final Judgment or a summary of this Final Judgment, which journals and summary shall be agreed upon by plaintiff and defendants, and defendants shall promptly certify in writing to plaintiff the fact of their compliance with this provision.

VI

Reporting

A. To determine or secure compliance with this Final Judgment, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to defendants at their principal office, subject to any lawful privilege, be permitted:

1. Access during normal office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession, custody, or control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment. PILKINGTON may elect, with respect to any such materials as may be located outside the United States of America at the time it receives such notice, to provide such access at a location within the United States that is reasonably acceptable to the duly authorized representative in lieu of providing access at the situs of the materials.

2. Subject to the reasonable convenience of defendants and without restraint or interference from it, to interview officers, employees, or agents of defendants, who may have counsel present, regarding any matters contained in the Final Judgment. PILKINGTON may elect to make available for such interviews those of its officers, employees, or agents whose regular work station is outside the United States of America at a location within the United States that is reasonably acceptable to the duly authorized representative.

B. Upon written request of the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice given to defendants at their principal office, subject to any lawful privilege, defendant shall submit such written reports, under oath if requested, with respect to any matters contained in this Final Judgment.

C. No information or documents obtained by the means provided by this Section VI shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States government, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or document to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days' notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) which defendant is not a party.

VII

Further Elements of Judgment

A. This Final Judgment shall expire on the tenth anniversary of its entry.

B. Jurisdiction is retained by this Court over this action and the parties thereto for the purpose of enabling any of the parties thereto to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

VIII

Public Interest

Entry of this Final Judgment is in the public interest.

Entered:_____

_____

UNITED STATES DISTRICT JUDGE

United States District Court for the District of Arizona

United States of America, Plaintiff, v. *Pilkington plc and Pilkington Holdings Inc.*, Defendants. Civil Action No. 94–345. Filed: May 25, 1994, Judge Browning.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)), the United States of America hereby files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry against Pilkington plc ("Pilkington") and Pilkington Holdings Inc., Pilkington's indirectly, wholly-owned American subsidiary, in this civil antitrust action.

I

Nature and Purpose of the Proceeding

A. The Complaint

The government filed this civil antitrust suit on May 25, 1994, alleging that defendants violated Sections 1 and 2 of the Sherman Act by enforcing and maintaining agreements and understandings that unreasonably restrain interstate and foreign trade in the construction and operation of float glass plants and in float glass process technology, and by monopolizing the world market for the design and construction of float glass plants. Specifically, the Complaint alleges that, without sufficiently valuable intellectual property rights and through a network of bilateral patent and know-how license agreements and various understandings with most other float glass manufacturers in the world, defendants:

(a) Allocated and divided territories for, and limited the use of, float glass technology worldwide;

(b) Interpreted and enforced the territorial and use restrictions in the license agreements so that their combined effect prevented competitors from using or developing competing float glass technology;

(c) Required competitors to prove that all of the licensed technology had become publicly known before being relieved of the territorial and use restrictions;

(d) Imposed and enforced restrictions on competitors' ability to sublicense float glass technology;

(e) Imposed and enforced reporting and grant-back provisions in the license agreements;

(f) Imposed and enforced restrictions on exports of glass by licensees from and to the United States; and

(g) Continued enforcement of the territorial, use, and sublicense restrictions indefinitely, even after no further licensing royalties were payable and the licensed patents had expired.

The Complaint also alleges that Pilkington has monopolized the world market for the design and construction of float glass plants through license agreements that impose unreasonable restrictions on licensees and by other predatory and exclusionary conduct. Finally, the Complaint alleges that the conduct described above has had and continues to have direct, substantial, and reasonably foreseeable adverse effects on U.S. export trade and commerce in providing services and related equipment and materials for the design and construction of float glass plants outside the United States.

The prayer for relief seeks: (1) A declaration that the provisions in Pilkington's license agreements with float glass manufacturers that have the purpose or effect of limiting or restricting: (a) The territory in which a manufacturer may make or sell float glass, or (b) the use of float glass technology Pilkington originally disclosed to that manufacturer, or derived therefrom, are illegal and unenforceable; (2) an injunction against defendants' enforcing any such provisions; (3) an injunction against defendants' (a) interfering with the efforts of any person (i) in this country to provide or perform services for the design or construction of float glass plants anywhere in the world, or (ii) anywhere in the world to provide or perform services for the design or construction of float glass plants in the United States (including representing that such services would violate or infringe defendants' intellectual property rights, (b) interfering with the design, construction, or operation of any such plant or the sale or shipment of glass from those plants, or (c) monopolizing or attempting to monopolize the market for the design and construction of float glass plants; and (4) costs.

B. The Technology Market Involved

Flat glass includes glass formed in a flat shape or bent or curved for further fabrication and is used principally for windows in dwellings and commercial buildings, automobile windshields and other glass parts, architectural products, and mirrors. Almost all flat glass currently sold worldwide is made by the "float" process, which involves floating molten glass on the surface of a bath of molten metal, usually tin, which is sealed with a protective atmosphere. In a continuous process, molten glass is delivered to one end of the tin bath and is removed at the opposite end as a continuous ribbon of flat glass after cooling until it is rigid enough to retain its shape during removal.

Commercial float glass manufacture requires relatively large-scale, single-purpose plants that are not efficiently convertible to other uses; and other manufacturing facilities are not efficiently convertible to float glass production. The cost of designing and constructing a typically-sized float glass plant, including equipment, materials, and construction labor, is in the range of $100 to $150 million. During the years 1984–91, 55 new float plants were designed, built, and placed in service worldwide; of those, nine are in North America, including seven in the United States.

Between now and the end of the century, 30 to 50 new float glass plants are planned or projected worldwide, amounting to expenditures of as much as $5 billion. Many are expected to be built in developing countries, where contracts are likely to be awarded to outside bidders for plant design, engineering, construction, and construction supervision services. Such services often include the specifying, ordering, or procuring of process equipment and materials used in such plants.

Persons in the United States would compete, if not restrained, for the award of contracts to provide float glass design and construction services. To the extent such persons successfully compete for contracts to design and construct float glass plants to be built outside the United States, the resulting U.S. export trade or commerce would generate substantial domestic economic activity, including substantial opportunities for domestic providers of engineering and design services, equipment fabricators, and materials suppliers. It is estimated that, when a U.S. firm designs and supervises construction of a foreign plant costing roughly $100 million, approximately $35 to $50 million of that total eventually flows into the United States' economy in orders for domestic materials, equipment, and services. It is further estimated that, if not restrained, U.S. exporters of float glass technology may be expected to obtain between 10 percent and 50 percent of the 30 to 50 new plants planned or projected over the next several years. Thus, potential U.S. export sales for contractors, fabricators, and suppliers could amount to $500 million to $2.5 billion.

II

The Practices and Events Giving Rise to the Alleged Sherman Act Violations

A. Licensing Scheme

1. Background

Virtually all commercial flat glass was produced either by the old sheet glass process or the old plate glass process until 1962. In the late 1950s, Pilkington developed the first commercially successful float process for making flat glass, which eventually replaced both plate and sheet processes.[1] Pilkington obtained hundreds of patents worldwide covering its version of the float process and developed a considerable body of related know-how.

Beginning in 1962, Pilkington entered into patent and know-how license agreements with all its principal competitors. Now, over 90% of flat glass worldwide is manufactured under a Pilkington license agreement. Eight licenses were granted in the United States to: AFG Industries, Inc. ("AFG"); Combustion Engineering, Inc. (now AFG); Ford Motor Co. ("Ford"); Fourco Glass Co. (also now AFG); Guardian Industries Corp. ("Guardian"); Pennsylvania Float Glass, Inc. (now Guardian); PPG Industries, Inc. ("PPG"); and Libbey-Owens-Ford Co. ("LOF") (now owned 80% by Pilkington and 20% by Nippon Sheet Glass Co. Ltd.).

2. The Agreements

The Pilkington float license agreements typically: (a) Provided for Pilkington to disclose all "float process"[2] know-how it owned or controlled at the time, and (b) granted non-exclusive licenses under (i) patents and patent applications of a specified country or countries, (ii) the "float process" know-how to be disclosed to the licensee under the agreement, and (iii) all patented and unpatented "float process" improvements Pilkington owned, controlled, or developed within a certain time period. Most licenses did not grant the right to sublicense. Also, improvement exchange provisions of the agreements required the licensee to grant-back to Pilkington (*i.e.*, disclose and license) all patented and unpatented "float process" improvements the licensee owned, controlled, or discovered during the exchange period. The license agreements required both lump-sum payments and continuous royalties, and virtually all of them required that any disputes be settled by arbitration in London under the law of England.

The agreements imposed territorial and other use limitations by, in effect, "authorizing" each licensee to practice the licensed patents and use the licensed know-how only in a specified country or countries (usually the licensee's own domestic market), and only to make and sell flat glass.[3] The license agreements also imposed restraints on exports of glass from the specified territories. Those restraints applied to some U.S. licensees as well as to certain foreign licensees exporting to the United States. Export waivers have been granted by Pilkington in some cases, but were often limited as to time, location, and output.

Finally, the agreements imposed confidentiality and nondisclosure obligations on the licensees for all the know-how disclosed, unless and until the information or know-how becomes public knowledge. In practice, Pilkington placed the burden on the licensee to make any showing of public knowledge.

Today, virtually all of the original float license agreements themselves, as well as their improvement exchange and disclosure requirements, have terminated; the royalty obligations thereunder have become fully paid up; Pilkington's principal float glass patents have expired; and a substantial portion of its related know-how has become publicly known. Yet, the territorial and use restrictions, the confidentiality and nondisclosure obligations, the prohibition on sublicensing, and the arbitration clause and choice of law provision remain in full force and effect insofar as they apply to both licensed original know-how and unpatented improvements, most of which the world's flat glass producers have been using for decades.

As a result of the continuing restrictions in the agreements, existing licensees, including those in the United States, cannot design and build new float plants, or sublicense independent third parties to do so, outside their licensed "territories" without Pilkington's permission. Moreover, innovations in designs and technology that improve float process efficiency and float glass quality are important advantages in competing for contracts to design and construct (or supervise construction of) float glass plants; thus, geographically limiting the opportunities for economic exploitation of such innovations not only reduces the effectiveness of such competition but also reduces the incentives for innovation.

The adverse impact of the continuing license restrictions is substantial. Since Pilkington has no intellectual property rights of substantial value, the restraints are neither ancillary nor reasonably necessary to any legitimate purpose or transaction, and are, therefore, unreasonable restraints on trade within the meaning of Section 1 of the Sherman Act, 15 U.S.C. 1.

3. Current Status of Licenses

There are over 60 Pilkington float licenses agreements. Most of therm contain no authorization for the licensee to manufacture or sublicense outside its original territory now or at any time in the future.

A small number of agreements provide that "the territorial and other limitations on use cease to apply" after a period of time (usually 30 years after commencement of royalty payments but, in any case, not before the agreement terminates and the licenses granted thereunder become paid up) Such licenses are held by just three companies (other than Pilkington and its subsidiaries or affiliates). In the absence of the stipulated Final Judgment, after 1996, only these three companies will have worldwide rights to manufacture on their own and to sublicense more than 50 percent-owned subsidiaries without any additional royalty or lump-sum payment to Pilkington.[4]

In sum, in the absence of the stipulated Final Judgment, the vast majority of current and former Pilkington licensees (who together make up the bulk of those competitors capable of providing float glass plant design and construction services) continue to be restrained from either manufacturing glass or sublicensing (selling) glass

[1] Pilkington's float process substantially reduced capital and operating costs, when compared with the plate process, by eliminating the need for grinding and polishing, but was not at first cost competitive with the sheet process. By 1970, float glass had almost completely replaced plate glass and, because of quality improvements and cost reductions, was competitive with sheet glass.

[2] The license agreements very broadly defined "float processes" as "all processes * * * used for * * * production of flat glass * * * with the aid of a bath of molten material * * * with which the glass is in contact at any stage during its production," but exclusing everything (i) prior to delivery of the glass to the bath, and (ii) after its emergence from the lehr (where it undergoes controlled cooling).

[3] While most agreements contained no express, contractual prohibitions against manufacturing in any particular country outside the specified, licensed countries, the grants are all limited licenses, "authorizing" manufacture of float glass only in the specified countries.

[4] But absent the stipulated judgment, even these rights will not allow these three companies to compete effectively in most developing countries where the future market is for new float plants because of ownership limitations there that require, as a legal or practical matter, a domestic company to have majority ownership of new manufacturing ventures.

technology outside their original territories.

B. Litigation

Pilkington has routinely used litigation, and threats of litigation, to enforce its anticompetitive license restrictions. On several occasions, Pilkington has actually sued or brought arbitration proceedings against its American float glass licensees. In 1983, Pilkington sued its U.S. licensee, Guardian Industries, alleging that Guardian had improperly used and disclosed Pilkington's proprietary know-how in building a float glass plant in Luxembourg. After an adverse preliminary ruling by the court, Pilkington agreed to settle its claims on terms favorable to Guardian, permitting Guardian to construct float glass plants outside its previously-prescribed territory in return for Guardian's agreement to preserve the confidentiality of Pilkington's float technology.

Pilkington more successfully asserted claims against PPG in 1979 and again in 1985. In a 1985 arbitration concluded in 1992, Pilkington was able to enforce its 1962 license agreement with PPG and to recover damages from PPG stemming from PPG's construction of a float glass plant in China in the early 1980s. The arbitrators determined that, while much of Pilkington's alleged secret know-how was publicly known by 1985, PPG had failed to prove that 45 specific items were publicly known. The arbitrators did not consider the question of whether any of those items were valid trade secrets.

Also in the early 1980's Pilkington sued U.S. licensee AFG over unpaid royalties relating to AFG's operation of float glass plants constructed using AFG's own technology. The case was settled in 1985, resulting in substantial limitations on AFG's ability to use and sell the disputed technology.

C. Other Exclusionary Conduct

The evidence demonstrates that Pilkington acted to restrict competition and control output. Pilkington licensed its principal competitors, which had the effect of minimizing the likelihood of their developing competing float glass technologies. At the same time, Pilkington turned down requests for float glass licenses from persons who were not already flat glass producers. The territories to which each licensee was limited by its float license agreement generally corresponded to the territories in which it operated prior to entering into that agreement. Thus, Pilkington's network of bilateral patent and know-how licenses, containing territorial and other use limitations, as well as confidentiality obligations, provided a framework for Pilkington to control the worldwide market for float glass plant design and construction services. The evidence also indicates Pilkington's effort to coordinate activities of certain of its licensees, and reflects a shared or common interest among certain licensees to limit entry by competing technologies.

Pilkington exercised its right to grant or deny licenses not only in its own self-interest to avoid direct competition, but also in ways designed to benefit licensees in their territories. When Pilkington did grant float licenses, it frequently did so only to firms controlled by an existing licensee or to a joint venture of existing licensees.

One of Pilkington's goals in deciding whether to license, and in imposing territorial/export restraints when it did, was to control price, capacity, and output of flat glass. Pilkington sometimes reached separate understandings with licensees who exceeded, or threatened to exceed, the territorial or other limitations imposed by their licenses. By discouraging or challenging the construction of new float plants outside any licensee's original, assigned territory, Pilkington sought to maintain control over glass output and the sale or disclosure of float technology, for its own benefit, as well as that of the other licensees. Pilkington also tried to dissuade flat glass distributors and suppliers of materials and equipment used in building float plants from dealing with non-licensees and threatened reprisals if they did.

Pilkington reserved for itself certain markets, and turned down requests for licenses in those markets, including requests from existing float licensees, for the two-fold purpose of exploiting those markets itself, and controlling exports from those markets to other parts of the world. Pilkington attempted to achieve this goal by coordinating the shipment of glass to specific customers through certain licensees and indirectly, its U.S. subsidiary LOF.

III

Explanation of the Proposed Final Judgment and Its Anticipated Effect on Competition

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgment at any time after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the Court finds entry is in the public interest. Section VIII of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment provides for affirmative and injunctive relief, which is expected to eliminate any residual anticompetitive effects of the restrictive license agreements and other conduct challenged by the Complaint. Specifically, consistent with the United States' antitrust jurisdiction under the Foreign Trade Antitrust Improvements Act of 1982, 15 U.S.C. 6a, the Final Judgment would eliminate all territorial and use limitations Pilkington imposed on its U.S. licensees and allow them to manufacture on their own or sublicense any third party to do so anywhere in the world, free of charge, using the float technology disclosed and licensed to those licensees. Such manufacturing and sublicensing rights would be subject only to limited confidentiality obligations imposed under certain narrow and specific conditions.

The Judgment also would provide, in effect, a similar "safe harbor" for any other American individual or firm who is not a Pilkington float glass licensee to use any float technology in its possession without liability to Pilkington. Further, the Judgment would enjoin certain conduct having the purpose or effect of restricting exports of float glass to the United States or limiting the use of float technology or manufacture of float glass in North America. Finally, the Judgment would enjoin the defendants from making certain adverse representations about U.S. licensees or non-licensees and would require the defendants to disclose to those American entities the results of any adjudication of Pilkington's alleged trade secrets.

A. Section IV.A.: U.S. Licensees

The injunctive provisions of this subsection apply to Pilkington's U.S. float glass licensees, defined as any person or entity incorporated or having its principal place of business in the United States and having entered into any agreement with Pilkington prior to the stipulation date for the licensing of or the right to use float glass technology. It does not apply to any subsidiary (at least 50 percent owned), affiliate (less than 50 percent owned), or parent of any U.S. licensee,[5] or to any person

[5] This exclusion is designed to prevent a foreign entity from claiming the benefits of specific provisions of the proposed Final Judgment designed for U.S. entities simply by acquiring, being acquired by, or becoming affiliated with any American entity. United States and foreign entities are treated differently under the proposed Judgment (see

while it is a subsidiary, affiliate, or parent of any defendant.

Specifically, subject to a narrow exception and certain conditions noted below, subsection IV.A.1. would prohibit defendants from entering into, maintaining, enforcing, or claiming any right under any agreement or understanding that restrains in any way a U.S. licensee from using or sublicensing anywhere in the world the float glass technology Pilkington disclosed and licensed to it, or that requires such licensee to pay royalties or lump sum or line fees for such use or sublicensing. Also, subject to the same exception and conditions, subsection IV.A.2. would prohibit defendants from asserting against a U.S. licensee any alleged proprietary know-how rights in the same float technology disclosed and licensed to that licensee.

The exception and conditions mentioned above are contained in subsections IV.A.3. and IV.A.4. Subsection IV.A.3. provides that defendants may assert a breach of confidentiality claim against a U.S. licensee concerning licensed technology, only if the claim (i) pertains to a trade secret under applicable law, and (ii) is based on the U.S. licensee's failure either to make lawful and commercially reasonable efforts itself to maintain confidentiality or to require by contract anyone to whom it transfers such technology to do so. Subsection IV.A.4. specifically preserves whatever claim a defendant may have for an account of profits, damages, or any other monetary relief asserted in any proceedings begun before the stipulation date and based on conduct occurring before that date. However, this exception does not allow defendants to bring future actions for monetary relief, whether or not based on prior conduct.

Finally, subsection IV.A.2., again subject to the same exception and conditions described above, also prohibits defendants from asserting against a U.S. licensee any alleged proprietary know-how rights in float technology acquired from any source other than Pilkington, unless defendant have a good faith argument that each item, or combination of items, of such technology: (i) Is a trade secret under applicable law, and (ii) has been acquired in breach of confidentiality or otherwise unlawfully.

B. Section IV.B.: U.S. Non-Licensees

The injunctive provisions of this subsection apply to any person or entity domiciled or incorporated in the United States and having its principal place of business here, but who has not entered into a float glass license agreement with Pilkington. Such persons or entities fall into two general categories: (i) Non-licensees who are nevertheless under some contractual confidentiality or noncompete obligation for Pilkington's benefit (e.g., employees, contractors, suppliers, consultants, etc.), and (ii) persons who are not under any such obligation.

As to the first category, subsection IV.B.1. of the proposed Judgment prohibits defendants from entering into or enforcing any agreement containing such a confidentiality obligation or covenant not to compete that is longer in duration or greater in scope than permitted under applicable law. That subsection, however, provides that entering into or enforcing such an agreement will not constitute contempt of the Judgment if defendants have a good faith argument that it is permitted by applicable law.

Subsection IV.B.2. of the proposed Final Judgment applies to all U.S. non-licensee competitors and potential entrants into the float glass technology market. It prohibits defendants from asserting against such a person alleged proprietary know-how rights in float glass technology disclosed and licensed by Pilkington to any U.S. licensee, unless each of several specific conditions are met. First, defendants must have a good faith argument that each item, or combination of items, of such technology asserted (i) is a trade secret under applicable law, and (ii) has been acquired in breach of confidentiality or otherwise unlawfully. Second, within 14 days after any such assertion, defendants must (i) make a written showing to the Department of Justice supporting both arguments referred to above, and (ii) enumerate and describe each such item or combination of items asserted, to distinguish them from information not a trade secret, on a list submitted to both the Department and the U.S. non-licensee against whom they are asserted. Finally, in order for Pilkington to assert a claim, such U.S. non-licensee must be unwilling to make lawful and commercially reasonable efforts to maintain the confidentiality of those items or combination of items for which it has received actual notice of defendants' claim, and for which they have made the requisite showing.

C. Section IV.C.: Foreign Licensees

Subject to two conditions noted below, subsection IV.C. of the proposed Judgment prohibits defendants from entering into, maintaining, enforcing, or claiming a right under any agreement or understanding that in any way restrains a foreign float glass licensee from using or sublicensing float glass technology in North America. Further, defendants may not charge any fees for the use or sublicensing in North America of float glass technology disclosed by Pilkington to any U.S. licensee, and may not enforce any confidentiality claims for the use or sublicensing of such technology, unless defendants have a good faith argument that each item or combination of items of such technology involved is a trade secret. However, defendants may enforce confidentiality claims against foreign licensees' use or sublicensing in North America of float glass technology not disclosed to any U.S. licensee, and may charge them commercially reasonable and non-discriminatory fees for the use of such technology.

D. Other Provisions

Subsection IV.D. of the proposed Judgment prohibits defendants from asserting any proprietary know-how rights or enforcing any agreements with the intent of restraining or limiting the amount of exports of float glass to the U.S. Subsection IV.E. prohibits defendants from entering into, maintaining, or enforcing any agreement that fixes, maintains, or stabilizes prices for the use of float glass technology in the U.S. Subsection IV.F. prohibits defendants for representing to any person anywhere in the world that the person's own use, or its financing, promoting, or facilitating another person's use, of float glass technology acquired directly from any U.S. licensee or U.S. non-licensee would result in any liability to defendants.

Subsection IV.G. requires defendants to identify to the Department, and to all U.S. licensees and all U.S. non-licensees who request it, the float glass technology found to be public knowledge in the arbitration proceedings concluded in August 1992 between Pilkington and PPG. This subsection requires a similar identification for any such technology disclosed and licensed to any U.S. licensee that Pilkington acknowledges in writing to be in the public domain or that is so held to be in any arbitration or court proceeding to which Pilkington is a party.

E. Effect on Competition

The relief in the proposed Final Judgment is designed to ensure that: (1) Pilkington's U.S. licensees, principally PPG, Ford, Guardian, and AFG, will be free of the territorial and use restrictions

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Section IV.C.) because the jurisdictional reach of the U.S. antitrust laws is limited

in their 20 to 30-year-old license agreements to compete for the design and construction of float glass plants abroad as well as in the U.S.; and (2) U.S. firms with the requisite expertise that never were Pilkington licensees but currently are attempting to enter the market will be free to do so without unreasonable restraint or interference. The effective removal of the license restrictions and the "safe harbor" provided by the proposed Final Judgment should encourage and facilitate others with the requisite expertise, including former employees of Pilkington and its licensees, to enter the market. It is expected that the combination of unrestrained existing manufacturers and new entrants will result in improved glass processes at lower prices.

IV

Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against the defendants in this matter.

V

Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Gail Kursh, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., room 9903, Washington, DC 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to a stipulation signed by the United States and defendants, to withdraw its consent to the proposed Judgment at any time prior to entry. Section I of the proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Final Judgment.

VI

Determinative Materials/Documents

No materials or documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment.

VII

Alternative to the Proposed Final Judgment

The alternative to the proposed Final Judgment is a full trial on the merits. That alternative was rejected because the relief provided in the proposed Judgment will fully and effectively open the market to competition, as well as eliminate any residual effects of the alleged violations, and would produce immediate positive competitive impact; litigation would involve obvious risks as well as substantial costs to the United States; and preparing the case for trial, trying it, and disposing of appeals after trial might delay obtaining any relief for several years.

Dated: May 25, 1994.

Respectfully submitted,

K. Craig Wildfang,

Special Counsel to the Assistant Attorney General, Antitrust Division.

Kurt Shaffert,

Thomas H. Liddle,

Molly L. DeBusschere,

John B. Arnett, Sr.,

M. Lee Doane,

Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Room 9903 JCB, Washington, D.C. 20001, 202/307-0467

Certificate of Service

The undersigned hereby certifies that on this day of May, 1994 he caused true and correct copies of the foregoing Complaint, Stipulation, Competitive Impact Statement, and Government's Motion Under Local Rule 1.2(e)(1) To Assign This Case With Above-Named Related Cases to be served by mail upon the following:

John H. Shenefield, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036—Attorney for Defendants Pilkington plc, Pilkington Holdings Inc., and Libbey-Owens-Ford Co. in CIV 92–752–TUC–WDB, CIV 93–552–TUC–WDB, and CIV 94–TUC–WDB.

Thomas D. Barr, Esq., Cravath, Swayne & Moore, Worldwide Plaza, 825 Eighth Avenue, New York, NY 10019—Attorney for Plaintiff PPG Industries, Inc. in CIV 92–775–TUC–WDB.

Kenneth C. Anderson, Esq., 685 Third Avenue, New York, NY 10017—Attorney for Plaintiff International Technologies Consultants, Inc. in CIV–93–552–TUC–WDB.

Jeffrey Willis, Esq., Streich Lang, 33 N. Stone Avenue, Tucson, AZ 85701—Attorney for Defendant Guardian Industries Corporation in CIV–93–552–TUC–WDB.

Donald A. Wall, Esq., Squire, Sanders & Dempsey, Two Renaissance Square, 40 North Central Avenue, Suite 2700, Phoenix, AZ 85004–4441—Attorney for Defendant AFG Industries, Inc. in CIV–93–552–TUC–WDB.

K. Craig Wildfang,

Attorney for the United States.

[FR Doc. 94–14046 Filed 6–13–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 21, 1994, and published in the **Federal Register** on April 1, 1994 (59 FR 15458), Knight Seed Company, Inc., 151 W. 126th Street, Burnsville, Minnesota 55337, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: May 25, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–14334 Filed 6–13–94; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 93–21]

Wilbert McClay, Jr., M.D.; Revocation of Registration

On November 24, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Wilbert McClay, Jr., M.D. (Respondent), of Baton Rouge, Louisiana, proposing to revoke his DEA Certificate of Registration, AM3221708, and deny any pending applications for registration as a practitioner. The statutory basis for seeking the revocation of the Certificate of Registration was that Respondent's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in New Orleans, Louisiana on August 10, 1993. On October 6, 1993, in his findings of fact, conclusions of law, and recommended ruling, the administrative law judge recommended a suspension of Respondent's DEA registration, to run concurrently with the suspension of his medical license by the Louisiana State Board of Medical Examiners, as well as the concurrent indefinite suspension of his Schedule II privileges.

On October 18, 1993, the Government filed exceptions to Judge Tenney's opinion, and on November 8, 1993, the administrative law judge transmitted the record to the then-Acting Administrator. The Deputy Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that in August 1984, a hearing was held before the Louisiana State Board of Medical Examiners (Board) to determine whether Respondent prescribed legally controlled substances in other than a legal or legitimate manner, and to allow him to respond to charges of "medical incompetency" under the Louisiana State Medical Practice Act. The charges were based on an investigation conducted by the Louisiana Division of Narcotics and Dangerous Drugs. The investigation revealed that from January 1979 through October 1982, Respondent prescribed a number of Schedule II controlled substances.

Following the hearing, the Board issued a decision on January 31, 1985, in which it found that Respondent had issued prescriptions without a legitimate medical purpose and ordered that Respondent's license to practice medicine be suspended for three months, followed by a three-year period of probation. The Board further ordered that Respondent surrender his state and Federal permits to handle Schedule II and Schedule III controlled substances. After the three year probation period, the Board reinstated Respondent's Schedule III privileges, however, his Schedule II privileges remained suspended indefinitely.

In April 1988, the Respondent contacted the Board's Executive Secretary concerning his probationary status. The Executive Secretary erroneously advised the Respondent that because he had successfully completed his probation, his medical license and controlled substances privileges were unrestricted.

In addition, the Executive Secretary mistakenly mailed a notification letter to the Louisiana Department of Health and Human Resources, Division of Licensing and Certification, informing them that Respondent's Schedule II controlled substances privileges were no longer restricted. Upon discovering the error, the Executive Secretary attempted unsuccessfully to telephone the Respondent. Following Respondent's probation period, DEA issued Respondent a Certificate of Registration limited to Schedules IV and V, and in reliance on the Board's incorrect information, Respondent's DEA registration was modified to include Schedule II and III in June 1988. The registration was renewed on March 3, 1990, in Schedules II–V.

On July 29, 1988, the Board's Executive Secretary sent a letter to the Respondent advising him that she had misread the Board's 1985 order and that the Respondent remained without Schedule II privileges. On August 1, 1988, the Program Manager for the Division of Licensing and Certification at the Louisiana Department of Health and Human Resources sent Respondent a copy of his state controlled substances license and informed the Respondent that since his medical license had been restricted by the Board, his controlled substances license must also be restricted.

After receiving erroneous information from the Board that Respondent had an unrestricted medical license, the Division of Licensing and Certification sent a second letter to the Respondent on August 19, 1988, with an enclosed unrestricted state controlled substances license.

When the Board was informed that Respondent had been issued an unrestricted state controlled substances license, the Board again wrote to the Respondent on September 12, 1988, advising him that he had been mistakenly issued an unrestricted controlled substances registration and that his Schedule II privileges remained suspended.

On September 29, 1988, the Respondent appeared before the Board to request that the Board lift the restrictions that had been placed on his medical license and prescribing privileges. The Board informed the Respondent that his schedule II privileges would remain suspended.

In July 1991, the Board received information that the Respondent had written three prescriptions in 1991 for Schedule II controlled substances. On July 2, 1991, DEA contacted the Respondent by telephone, requesting that he surrender his registration so that it could be modified to reflect an authorization to handle Schedules III–V. Respondent informed DEA that it received incorrect information from the Board, and that Respondent was, in fact, permitted to prescribe Schedule II controlled substances. The DEA also sent Respondent a letter dated July 23, 1991, requesting the voluntary surrender of his Schedule II and IIN privileges. Shortly thereafter, the Respondent notified DEA in writing of his refusal to voluntarily surrender his Schedule II privileges.

The Respondent testified at the administrative hearing that because of his relocation to another office, he did not receive the August 1, 1988 notice from the Program Manager for the Division of Licensing and Certification regarding the restrictions that were placed on his medical license and controlled substances license until the summer of 1992. The Respondent also testified that although he received the September 12, 1988 letter from the Board advising him that he had been mistakenly issued an unrestricted controlled substances registration and that his Schedule II privileges remained suspended, he did not read it because, in his opinion, "the letter was * * * moot." The administrative law judge found Respondent's testimony in this regard not credible, since the Respondent implicitly demonstrated knowledge of the contents of the letters by appearing before the Board in September 1988 to request that the restrictions be removed from his medical license.

The Respondent also admitted at the administrative hearing that he wrote three prescriptions for Schedule II controlled substances in 1991 and that he was unaware of any restriction that would have prohibited him from prescribing these controlled substances. Respondent further testified that DEA did not ask him to surrender his DEA registration.

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In December 1991, Respondent appeared before the Board to respond to charges that he prescribed Schedule II controlled substances in violation of the restrictions placed on his license by the Board in January 1985. On January 9, 1992, the Board issued its decision and order and found that Respondent was at all times aware of the restrictions placed on his license by the order of January 31, 1985. As a result, effective April 1, 1992, the Board suspended Respondent's medical license for six months, and continued the indefinite suspension of his Schedule II prescribing privileges.

In June 1992, the Civil District Court for the Parish of New Orleans, State of Louisiana, granted Respondent's motion for stay of the Board's order of suspension of his medical license. On November 12, 1992, the court denied Respondent's appeal from the decision of the Board. Respondent has been granted a second stay of the suspension of his medical license, pending the outcome of his appeal filed with the Fourth Circuit of the State of Louisiana.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4) the Deputy Administrator may revoke a registration and deny any application for such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Deputy Administrator may properly rely on any one or a combination of the factors and give each factor the weight he deems appropriate. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989).

In considering whether grounds exist to revoke Respondent's registration pursuant to 21 U.S.C. 824(a)(4), the administrative law judge found factors one, two, four and five listed in section 823(f) relevant. Factor one is applicable by virtue of the fact that the Louisiana State Board of Medical Examiners suspended Respondent's Schedule II prescribing privileges indefinitely. Factors two, four and five are applicable based upon Respondent's abuse of his Schedule II prescribing privileges during the period of January 1979 and October 1982, and his unauthorized prescribing of Schedule II controlled substances on three occasions in 1991.

Respondent argued that he believed that he was in full compliance with State and Federal law since he had a Certificate of Registration from both the State of Louisiana and the DEA. The administrative law judge concluded that Respondent's reliance upon these mistakenly issued documents was unreasonable. Respondent was notified on several occasions by both letter and telephone conversations that his Schedule II controlled substances privileges had been erroneously reinstated.

The administrative law judge recommended a suspension of Respondent's DEA Certificate of Registration to run concurrently with the suspension of Respondent's medical license by the Board. The administrative law judge further recommended that the suspension of the Respondent's Schedule II privileges be continued for the period of the State's suspension, which is currently indefinite.

The Government filed exceptions to the administrative law judge's recommendation of a suspension of Respondent's DEA registration to run concurrently with the state's suspension, since the record was not clear as to whether the Respondent has already served the six month suspension of his state license in view of the various appeals and stays of the Board's decision. The Government also took exception to the administrative law judge's recommendation that the suspension of the Respondent's DEA Schedule II privileges coincide with the state's indefinite suspension of those privileges. The Government argued that Respondent's flagrant disregard for the rules and regulations pertaining to controlled substances warranted, at the very least, revocation of his Schedule II privileges.

The Deputy Administrator having considered the entire record adopts the administrative law judge's findings of fact and conclusions of law, however, disagrees with both aspects of the recommended ruling of a suspension of Respondent's DEA registration. The record is clear that Respondent issued controlled substance prescriptions without legitimate medical purpose and not in the good faith administration of bona fide treatment. The Respondent lost all of his controlled substance privileges on two, albeit short, occasions in 1985 (three months) and 1992 (six months). It is uncontroverted that Respondent lost his Schedule II privileges in January 1985, and they were never restored. Despite these prohibitions, he prescribed Schedule II controlled substances on at least three occasions in 1991, and although he was notified on several occasions that the reinstatement of his Schedule II privileges was erroneous, he refused to surrender any of his registrations. Respondent has shown repeated disregard for the rules and regulations relating to controlled substances.

The Deputy Administrator concludes that a suspension of Respondent's DEA Certificate of Registration to run concurrent with the Louisiana Board's six month suspension is minimal and ineffective. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AM3221708, issued to Wilbert McClay, Jr., M.D., be and it hereby is, revoked, however, after one year, favorable consideration will be given to an application for a limited registration. This order is effective July 14, 1994.

Dated: June 6, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–14335 Filed 6–13–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated March 21, 1994, and published in the **Federal Register** on April 1, 1994, (59 FR 15459), Stepan Chemical Company Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

Comments were received, however, no written request for a hearing was received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 16, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–14336 Filed 6–13–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

- The Agency of the Department issuing this recordkeeping/reporting requirement.
- The title of the recordkeeping/reporting requirement.
- The OMB and/or Agency identification numbers, if applicable.
- How often the recordkeeping/reporting requirement is needed.
- Whether small businesses or organizations are affected.
- An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
- The number of forms in the request for approval, if applicable.
- An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–7316).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Employment and Training Administration
Contributions Operations
1205–0178; ETA 581
Quarterly
State or local governments
53 respondents; 8 hours per response; 1,696 total hours; 1 form

Provides quarterly data on State agencies' volume and performance in wage processing, number and promptness of liable employer registrations, number delinquent in filing contribution reports, number and extent of tax delinquencies and results of field audit program.

Reinstatement

Occupational Safety and Health Administration
Ionizing Radiation
1218–0103
On occasion
Businesses or other for-profit; small businesses or organizations
48 respondents; 2 hours per response; 96 total hours

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Ionizing Radiation. The standard requires that employers notify the Occupational Safety and Health Administration of Ionizing Radiation overexposure.

Signed at Washington, DC this 9th day of June, 1994.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 94–14406 Filed 6–13–94; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 24, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 24, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 31st day of May, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Fruit of The Loom (Wkrs)	Osceola, AR	05/31/94	04/15/94	29,912	Tee Shirts.
Western Consultants, Inc. (Wkrs)	Denver, CO	05/31/94	04/20/94	29,913	Oil and Gas.
Valdese Textiles, Inc. (Co)	New York, NY	05/31/94	05/23/94	29,914	Polyester Woven and Jacquards Fabric.
Sportswear Associates, Inc. (Wkrs)	Lafayette, TN	05/31/94	05/13/94	29,915	Ladies Sportswear
Smith Equipment Co., Inc. (Wkrs)	Clifton, NJ	05/31/94	05/16/94	29,916	Smoking Ovens.
Smith Megapak, Inc. (Wkrs)	Clifton, NJ	05/31/94	05/16/94	29,917	Smoking Ovens.
Sharp Electronics Corp. (Wkrs)	Mahwah, NJ	05/31/94	05/12/94	29,918	Consumer Electronic Servicing.
Pennzoil Products Co. (IUE)	Bradford, PA	05/31/94	05/17/94	29,919	Crude Oil.
Goody Products, Inc. (Wkrs)	Kearny, NJ	05/31/94	05/18/94	29,920	Barrettes.
Douglas & Lomason Co. (Co)	Phenix City, AL	05/31/94	04/29/94	29,921	Auto Trim.
CINCH Connectors (Wkrs)	New Hope, MN	05/31/94	05/20/94	29,922	Electrical Connectors.
Chock Full O'Nuts (Co)	Linden, NJ	05/31/94	05/13/94	29,923	Coffee.
Breckenridge (ILGWU)	Boston, MA	05/31/94	05/16/94	29,924	Ladies Dresses and Sportswear.
Bill's Well Service (Wkrs)	St. Codell, KS	05/31/94	04/30/94	29,925	Fix Oil Wells.
Armco Corp/Empire Detroit Steel (USWA).	Mansfield, OH	05/31/94	05/05/94	29,926	Steel.
Walker Manufacturing Co. (UAW)	Hebron, OH	05/31/94	05/20/94	29,927	Exhaust Systems.
True Temper Hardware Co. (Wkrs)	Anderson, SC	05/31/94	05/12/94	29,928	Cutting Tools.
District No. 4, NMU/MEBA (NMU)	Port Arthur, TX	05/31/94	05/09/94	29,929	Petroleum Products.
Lou Levy & Son (ILGWU)	Jersey City, NJ	05/31/94	05/13/94	29,930	Ladies' Coats.
Guiberson AVA (Co)	Dallas, TX	05/31/94	05/20/94	29,931	Oilfield Services.
Lou Levy & Son (ILGWU)	New York, NY	05/31/94	05/13/94	29,932	Ladies' Coats.

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Public Law 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than June 24, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than June 24, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 6th day of June, 1994.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
DeSoto, Inc. (Wkrs)	Stone Mountain, GA	05/24/94	NAFTA–00119	Liquid soap for automatic dishwashers.
Walker Manufacturing Company; Newark Plant (UAW).	Hebron, OH	05/26/94	NAFTA–00120	Exhaust systems; manufacturing of welded assemblies including pipes, flanges, mufflers, and resonators.
Kayser-Roth Corporation; No Nonsense Factory Outlet, Inc. (Wkrs).	Greensboro, NC	05/31/94	NAFTA–00121	Panty hose and socks.
Pacific Sound Resources Inc.; Seattle and Bainbridge Island (AFL–CIO).	Seattle, WA	05/31/94	NAFTA–00122	Pressure preserved lumber, poles and pilings.
Safeway, Inc.; M.I.S. (Wkrs)	Oakland, CA	05/31/94	NAFTA–00123	Programming services (ie: MIS systems).
S & H Fabricating and Engineering, Inc. (GMP).	Sanford, FL	06/01/94	NAFTA–00124	Air conditioners for automobiles.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received at Governor's office	Petition No.	Articles produced
Wells Lamont Corp.; Portland Glove Company (ACTWU).	Carlton, OR	05/24/94	NAFTA–00125	Leather gloves.
Xentek, Inc. (Co.)	San Marcos, CA	05/27/94	NAFTA–00126	Electric transformers manufacturing.

[FR Doc. 94–14408 Filed 6–13–94; 8:45 am]
BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,508; J & R Wood Products, Inc., Roseburg, OR

TA–W–29,574; Martin Marietta Magnesia Specialties, Inc., Manistee, MI

TA–W–29,496; Electronix Servicenter, Irving, TX

TA–W–29,708; Ottenheimer & Co., Rocky Mount, VA

TA–W–29,805; Radform Tool Co., East McKeesport, PA

TA–W–29,413 & TA–W–29,414; Adobe Mining Co., Kittanning, PA and Midland, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–29,448; Ingersoll-Dresser Pump Co., Phillipsburg, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,562; Hembree Well Service, Inc., Ellis, KS

The workers' firm does not produce an article as required for certifiction under Section 222 of the Trade Act of 1974.

TA–W–29,537; Hembree Well Service, Inc., Ness City, KS

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,626; Jockey Int'l, Inc., Distribution Center, Kenosha, WI

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,664; Bristol Consolidators, Inc., Greenville, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,699; Weyerhaeuser Co., Klamath Falls, OR

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,733; Potomac Mine Island Creek Coal Co., Bayard, WV

U.S. imports of coal were negligible in 1992 and 1993.

TA–W–29,727; Navaro Mining, Inc., Bluefield, VA

U.S. imports of coal were negligible in 1992 and 1993.

TA–W–29,788; Gerber Products Co., Inc., Gerber Baby Care, Reedsburg, WI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA-W-29,747; Heater Wire, El Paso, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

Affirmative Determinations for Worker Adjustment Assistance

TA-W-29,629; W & F Products, Inc., Buffalo, NY

A certification was issued covering all workers separated on or after March 3, 1993.

TA-W-29,609; Lucas Aerospace Applied Technology Div., City of Industries, CA

A certification was issued covering all workers separated on or after March 24, 1993

TA-W-29,486; Magnesium Corp. of America, Salt Lake City, UT

A certification was issued covering all workers separated on or after February 14, 1993.

TA-W-29,634; International Women's Apparel, Easton, PA

A certification was issued covering all workers separated on or after February 1, 1993.

TA-W-29,639; Gould Shawmut, Marble Falls, TX

A certification was issued covering all workers separated on or after October 1, 1993.

TA-W-29,630; Dezurik—La Grange, La Grange, GA

A certification was issued covering all workers separated on or after March 9, 1993.

TA-W-29,655; Elkem Metals Co., Ashtabula, OH

A certification was issued covering all workers separated on or after March 22, 1993.

TA-W-29,766; USA Enterprises of Georgia, Conyers, GA

A certification was issued covering all workers separated on or after March 24, 1993.

TA-W-29,802; Western Geophysical Co., Houston, TX

A certification was issued covering all workers separated on or after April 25, 1993.

TA-W-29,686 & TA-W-29,687; Hesteco Manufacturing Co, #1, Elizabeth, PA & Hesteco Manufacturing Co., #4, Hummelstown, PA

A certification was issued covering all workers separated on or after March 24, 1993.

TA-W-29,651; Southern Illinois Oil Producers, Olney, IL

A certification was issued covering all workers separated on or after March 16, 1993.

TA-W-29,588; Cooper Power Industries, Inc., Cooper Power Systems, Cannonsburg, PA

A certification was issued covering all workers separated on or after March 1, 1993.

TA-W-29,748, TA-W-29,749 & TA-W-29,750; Fisher Price, Murray, KY, Medina, NY and East Aurora, NY

A certification was issued covering all workers separated on or after April 5, 1993.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of May, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased,

(c) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA-TAA-00069; Rudolph Miles Personnel, Inc., El Paso, TX

The investigation revealed that workers of the subject firm do not produce an article within the meaning of the Act. The Department of Labor has consistently determined that the performance of services does not constitute production of an article as required by the Trade Act of 1974.

NAFTA-TAA-00089; Lyons Falls Pulp & Paper, Inc., Lyons Falls, NY

The investigation revealed that criterion (3) & criterion (4) were not met. A survey conducted with a sample of customers of Lyons Pulp & Paper, Inc. revealed that respondents either did not import chlorine-free paper from Canada/Mexico or their imports were not an important proportion of the survey sample's business with the subject firm.

NAFTA-TAA-00105; Fruit of The Loom, Osceola, AR

The investigation revealed that criterion (3) and criterion (4) were not met. Employment declines among workers producing long sleeve tee shirts at the Osceola, AR plant resulted from a company decision to consolidate its two-plant production of long sleeve tee shirts at one domestic plant of Fruit of The Loom. Sales for this product line did not decline.

NAFTA-TAA-00090; Kraft General Foods, Avon, NY

The investigation revealed that criterion (3) and criterion (4) were not met. Production of frozen novelty products was discontinued at the subject plant at the end of 1993. A survey conducted with customers purchasing frozen novelty products from the subject firm revealed that customers did not import these products from Canada or Mexico.

NAFTA-TAA-00085; Beaver Dam Products Corp., A Div. of Chrysler Corp., Beaver Dam, WI

The investigation revealed that criterion (3) and criterion (4) were not met. Sales and production increased in 1993 compared to 1992. The subject plant will be closing in 1994. A survey of major customers revealed that customers did not import marine or industrial engines and parts from Canada or Mexico in the relevant time period.

NAFTA-TAA-00087; Howes Leather Co., Ashland Hide Co., Ashland, KY

The investigation revealed that criteria (3) and criteria (4) were not met. The subject firm produced leather for its parent company, Howes Leather Co. Howes Leather Company does not import leather, and a survey of its customers revealed that either customers did not import leather from Canada or Mexico or they relied on imports from Canada/Mexico for a very small proportion of their total purchases during the relevant time period.

NAFTA-TAA-00088; Andrea Manufacturing, Decatur, IL

The investigation revealed that criteria (3) and criteria (4) were not met.

A survey conducted with the manufacturer for whom Andrea Manufacturing produced women's sportswear revealed that the manufacturer did not import women's sportswear from Mexico or Canada or contract work with firms in Mexico or Canada. A survey was also conducted with customers of Andrea's manufacturer revealing that respondents purchasing women's sportswear did not import women's sportswear from Mexico or Canada.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00093; Millinckrodt Medical, Inc., Mallinckrodt Anethesiology, New Athens, IL

A certification was issued covering all workers of Millinckrodt Medical, Inc., Mallinckrodt Anethesiology, New Athens, IL separated on or after December 8, 1993.

NAFTA-TAA-00091; L. Grief Companies, Shippensburg, PA

NAFTA-TAA-00099; The Grief Companies, Lehigh Valley, PA

A certification was issued covering all workers of L. Grief Companies, Shippensburg, PA and The Grief Companies, Lehigh Valley, PA separated on or after December 8, 1993.

NAFTA-TAA-00098; Waynesboro Apparel, Inc., Waynesboro, GA

A certification was issued covering all workers of Waynesboro Apparel, Inc., Waynesboro, GA separated on or after December 8, 1993.

NAFTA-TAA-00106; Viskase Corp., Osceola, AR

A certification was issued covering all workers engaged in employment related to the shirring operations at Viskase Corp., Osceola, AR separated on or after December 8, 1993.

NAFTA-TAA-00081; Allied Signal Safety Restraints, El Paso, TX

A certification was issued covering all workers engaged in employment related to the engineering and quality control stages of production at Allied Signal Safety Restraints, El Paso, TX separated on or after December 8, 1993.

NAFTA-TAA-00082; Otis Elevator Co., Tucson, AZ

A certification was issued covering all workers engaged in employment related to the purchasing stage of production at Otis Elevator Co., Tucson, AZ separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of May, 1994. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 7, 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-14409 Filed 6-13-94; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for Documentation Preparation Assistance

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for technical assistance to "Arts Plus" grantees on how to document their activities so that others interested in adapting a project or approach could easily examine and understand the development, results, and impact of the project. It is anticipated that the Cooperative Agreement will result in a documentation preparation handbook. Those interested in receiving the Solicitation package should reference Program Solicitation PS 94-12 in their written request and include two (2) self-addressed labels. verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 94-12 is scheduled for release approximately June 28, 1994 with proposals due July 28, 1994.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW. Washington, DC 20506 (202/682-5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 94-14394 Filed 6-13-94; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

License Termination for the Amax Site, Parkersburg, WV

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license termination.

This notice is to inform the public that the United States Nuclear Regulatory Commission (the Commission) is terminating the Material License No. SMB-1418 issued to Amax, Inc., for rare earth recovery operations near Parkersburg, WV. On March 24, 1993, the Commission published in the **Federal Register** (58 FR 1588) its intention to terminate the license upon receipt of appropriate closing or conveyance documents from the Department of Energy (DOE). Receipt of the documents will result in the site being transferred to DOE under authority of the Nuclear Waste Policy Act (NWPA) section 151(c). The Amax, Inc. site is listed in the Commission's Site Decommissioning Management Plan.

The Amax, Inc. site is subject to a provision of NWPA that requires DOE to assume title and custody of low-level radioactive waste that originated in the processing of zirconium, hafnium, or rare earth ores. The legislation stipulates that DOE assume title and custody of the site, since the owner of the site requests transfer, the site is "decontaminated and stabilized" in accordance with the Commission requirements, and the owner has made financial arrangements, approved by the NRC, for the "long-term maintenance and monitoring" of the site.

The conditions have been satisfied. The Commission has received notification from DOE that it has assumed custody of the site and that the title to the site has been transferred to the United States of America.

This termination will be reopened only if additional contamination, or noncompliance with the decommissioning plan is found indicating a significant threat to public health and safety. Noncompliance would occur if the licensee had not complied with an approved decommissioning plan or had provided false information.

Dated at Rockville, MD this 8th day of June 1994.

For the Nuclear Regulatory Commission

John H. Austin,

Chief, Low-Level Waste and Decommissioning Project Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94-14383 Filed 6-13-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (the licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would revise the Technical Specification (TS) Surveillance Requirement 4.2.2.1.2, "Power Distribution Limits;" TS Section 5.3.1, "Fuel Assemblies," Administrative TS Section 6.9.1.9.b, "Analytical Methods Used;" and the associated Bases sections. These changes to the TS will allow the Haddam Neck Plant to load up to 5.0 weight percent nominal fuel into the reactor.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 13, 1994, the licensee may file a request for a hearing with respect to issuance of the amendemnt to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Docket Room, the Gelman Building, 2120 L Street, NW., Washington, DC 2055, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 17, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 3rd day of June 1994.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–14384 Filed 6–13–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289]

GPU Nuclear Corporation; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–50, issued to GPU Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 1 located in Dauphin County, Pennsylvania.

The proposed amendment would revise the plant Technical Specifications (TS) to change the limit on control rod drop time for 12 control rods from 1.66 seconds to 2.11 seconds. The change would only be in effect for the remainder of the present operating cycle and could be necessary to allow continued plant operation. The reason for the increased drop time for the 12 rods referenced in the licensee's request is buildup of corrosion products in certain portions of the control rod drive mechanisms (CRDMs). The licensee conducted control road testing on June 1, 1994, and removed four CRDMs for inspection to confirm the root cause of the slow drop times.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 13, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 248–5100 (in Missouri 1 (800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it

publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 20, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 7th day of June 1994.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–14385 Filed 6–13–94, 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Information Collection Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed information collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (chapter 35 of title 44, United States Code), this notice announces a request submitted by the Office of Personnel Management (OPM) to the Office of Management and Budget (OMB) for clearance of two information collections: Nonforeign Area Cost-of-Living Allowance Background Survey and Nonforeign Area Cost-of-Living Allowance Price Survey. These information collections will be used for annual living cost surveys and for background surveys that will be conducted approximately once every 5 years to evaluate the program. Selected retail, service, realty, and other businesses and local governments will be surveyed in nonforeign allowance areas and in the Washington, DC, area to obtain living cost data. OPM will use these data to develop cost-of-living allowances as authorized by section 5941 of title 5, United States Code. Approximately 300 establishments will be contacted in the background survey, and approximately 4,000 establishments will be contacted in the price survey. OPM estimates that the survey interviews will take approximately 480 hours annually. For a copy of this proposal call C. Ronald Trueworthy on 703–908–8550.

DATES: Comments on this proposal should be received within 30 days after the date of this notice.

ADDRESSES: Send or deliver comments to:

Allan G. Hearne, Chief, Methodology Development Branch, Salary Systems Division, U.S. Office of Personnel Management, 1900 E Street, NW., room 6H31, Washington, DC 20415; and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Allan G. Hearne (202) 606–2838, Office of Personnel Management.

James B. King,

Director.

[FR Doc. 94–14276 Filed 6–13–94, 8:45 am]

BILLING CODE 6325–01–M

Federal Salary Council; Meetings

AGENCY: Office of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. (92–463), notice is hereby given that the thirty-sixth and thirty-seventh meetings of the Federal Salary Council will be held at the times and place shown below. At the meetings the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meetings are open to the public.

DATES: July 19, 1994, at 10 a.m.: August 23, 1994, at 10 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–14277 Filed 6–13–94, 8:45 am]

BILLING CODE 6325–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, June 21–22, 1994, at the Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Full Commission will convene at 9 a.m. on each day in Executive Chambers 1, 2 and 3.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 94–14395 Filed 6–13–94; 8:45 am]

BILLING CODE 6820–BW–M

RESOLUTION TRUST CORPORATION

Warranted Contracting Officer Program

AGENCY: Resolution Trust Corporation.

ACTION: Notice of availability.

SUMMARY: The Resolution Trust Corporation (RTC) hereby notifies the public that it has revised its program under which only RTC employees designated by the RTC as "warranted contracting officers," or managing agents of savings associations under the conservatorship of the RTC, may execute contracts on behalf of the RTC. The Statement of Qualifications to be, and Authority of, an RTC Warranted Contracting Officer (Statement), is being amended accordingly, and is available for distribution to the public.

ADDRESSES: The Statement may be obtained from the RTC Public Reading Room, 801 17th Street, NW., Washington, DC 20434, phone number (202) 416–6940, fax (202) 416–2076 (These are not toll-free numbers), and from the RTC Public Service Centers: Atlanta PSC, Marquis One Tower, suite 1100, 245 Peachtree Center Avenue, NE., Atlanta, GA. 30303, phone number (404) 225–5069 or (800) 628–4362, fax (404) 225–5081; Dallas PSC, Reverchon Plaza, suite 130, 500 Maple Avenue, Dallas, TX 75219, phone number (214) 443–4860 or (800) 782–4674, fax (214) 443–4875; Denver PSC, 1111 15th Street, Suite 101, Denver, CO 80202, phone number (303) 556–6400 or (800) 542–6135, fax (303) 556–6430; Kansas City PSC, 4900 Main Street, Suite 200, Kansas City, KS 64112, phone number (816) 968–7184 or (800) 365–3342, fax (816) 531–7251; Newport Beach PSC, 4000 MacArthur Blvd., suite 4100, West Tower, Newport Beach, CA 92660, phone number (714) 263–4953 or (800)

283–9288, fax (714) 852–7674; and Valley Forge PSC, 1000 Adams Avenue, Norristown, PA 19403, phone number (215) 650–8500 or (800) 782–6326, fax (215) 650–6168.

EFFECTIVE DATE: The requirements described in this notice became effective on May 16, 1994.

FOR FURTHER INFORMATION CONTACT: Carl Gold, Counsel, RTC Division of Legal Services, (202) 763–0728. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Resolution Trust Corporation Completion Act (RTCCA), Public Law 103–204, was enacted on December 17, 1993. Section 30 of the RTCCA added a new subsection (y) to section 21A of the Federal Home Loan Bank Act, 12 U.S.C. 1441a. Section 30 of the RTCCA provides that a person may execute or modify a contract for goods or services on behalf of the RTC only if the person is a warranted contracting officer appointed by the RTC or a managing agent of a savings association under the conservatorship of the RTC. Section 30 further provides that each such person must provide appropriate certification to parties contracting with the RTC, and that each contract must contain certain notices to the other contracting party regarding the requirements for appointment as a warranted contracting officer and the nature and extent of the warranted contracting officer's or managing agent's authority. Finally, Section 30 provides that any contract that fails to meet these requirements shall be null and void and shall not be enforced against the RTC or its agents by any court.

The requirements to be a warranted contracting officer, and the nature and extent of the contracting authority exercised by any warranted contracting officer or managing agent, are set forth in the publicly available Statement. These may be adjusted from time to time, as published in the RTC's Contract Policies and Procedures Manual (CPPM), the relevant portions of which will be contained in the Statement, which shall also be amended as the parameters are amended.

On January 21, 1994, the RTC published a Notice of Availability in the **Federal Register** [59 FR 3382], in which it summarized the parameters of the warranted contracting officer program as it existed on that date. Subsequently, the RTC has issued Revision 7 of its CPPM, which contains, among other things, revisions to the parameters of the warranted contracting officer program. As revised in Revision 7 of the CPPM, the key points of the program are as follows:

There are three levels of warranted contracting officer, with Level III being the highest. In brief summary, the requirements to be appointed as, and to remain, a warranted contracting officer are a combination of experience, training, and general and specific education. These have been somewhat modified by Revision 7 to the CPPM. The Revised Statement will reflect these modifications. The higher the level, the more stringent the requirements, and concomitantly, the greater authority exercised.

The amounts of authority granted to each level of warranted contracting officer are as follows:

Level I: On a per contracting action basis, to:

a. Execute contracts with total estimated fees up to the limit of Simplified Contracting as defined by Chapter 5 of Revision 7 of the CPPM;

b. Execute task orders with total fees up to $100,000 under pre-established task order agreements;

c. Execute delivery orders under GSA Federal Supply Schedules or RTC, or other government agency's contracts;

d. Execute purchase orders with total estimated fees up to $100,000;

e. Execute contract administrative changes or modifications on contracts with total cumulative value up to $100,000; and

f. Approve invoices for contracts, task orders, purchase orders, or delivery orders for which they have contracting officer responsibility.

Level II: Level II contracting officers now are appointed to Step A, Step B, or Step C.

Level II, Step A contracting officers, when assigned responsibility for a specific contract, have authority to:

a. Execute contracts with total estimated fees (including options) up to $1,000,000;

b. Execute individual task orders with total estimated fees up to $1,000,000;

c. Execute delivery orders under GSA Federal Supply Schedules or RTC, or other government agency's contracts;

d. Execute purchase orders with total estimated fees up to $200,000;

e. Execute changes to contracts, task order agreements, task orders, and contract modifications where the fees for the change or modification result in the modified contract not exceeding $1,000,000;

f. Execute contract terminations with total fees up to $1,000,000;

g. Execute contract claim settlements with payments up to $100,000; and

h. Approve invoices for contracts or task orders for which they have contracting officer responsibility.

Level II, Step B contracting officers, when assigned responsibility for a specific contract, have authority to:

a. Execute contracts with total estimated fees (including options) up to $2,500,000;

b. Execute individual task orders with total estimated fees up to $2,500,000;

c. Execute delivery orders under GSA Federal Supply Schedules or RTC, or other government agency's contracts.

d. Execute purchase orders with total estimated fees up to $100,000;

e. Execute changes to contracts, task order agreements, task orders, and contract modifications where the fees for the change or modification result in the modified contract not exceeding $2,500,000;

f. Execute contract terminations with total fees up to $2,500,000;

g. Execute contract claim settlements with payments up to $250,000; and

h. Approve invoices for contracts or task orders for which they have contracting officer responsibility.

Level II, Step C contracting officers, when assigned responsibility for a specific contract, have authority to:

a. Execute contracts with total estimated fees (including options) up to $5,000,000;

b. Execute individual task orders with total estimated fees up to $5,000,000;

c. Execute delivery orders under GSA Federal Supply Schedules or RTC, or other government agency's contracts;

d. Execute purchase orders with total estimated fees up to $100,000;

e. Execute changes to contracts, task order agreements, task orders, and contract modifications where the fees for the change or modification result in the modified contract not exceeding $5,000,000;

f. Execute contract terminations with total fees up to $5,000,000;

g. Execute contract claim settlements with payments up to $500,000; and

h. Approve invoices for contracts or task orders for which they have contracting officer responsibility.

Level III: There are also 3 Steps of Level III warranted contracting officers. The authority of each level is as follows:

Level III, Step A contracting officers have authority to:

a. Execute contracts and task order agreements with total estimated fees (including options) up to $10 million per year for SAMDA asset management, loan servicing, and indemnification of loan servicing; execute all other contracts and task order agreements with total estimated fees (including options) up to $5 million;

b. Execute delivery orders under GSA Federal Supply Schedules or RTC, or other government agency's contracts;

c. Execute purchase orders with total estimated fees up to $500,000;

d. Execute changes to contracts, task order agreements, task orders, and modifications to those documents including changes in the delivery, cost or schedule, where the fees for the change or modification result in the modified contract not exceeding $5 million ($10 million per year for SAMDA, asset management, loan servicing, and indemnification of loan servicing);

e. Execute contract terminations with fees defined in paragraph (a) of this level;

f. Execute contract claim settlements with payments up to $750,000; and

g. Approve invoices up to the limit of their execution authority or the contract value, whichever is less.

Level III, Step B contracting officers have authority to:

a. Execute contracts, task order agreements, and task orders with total estimated fees up to $10,000,000 ($10 million per year for asset management, loan servicing, and indemnification of loan servicing);

b. Execute delivery orders under GSA Federal Supply Schedules or RTC, or other government agency's contracts;

c. Execute purchase orders with total estimated fees up to $10 million;

d. Execute changes and modifications to contracts, task order agreements, and task orders where the fees for the change or modification result in the modified contract not exceeding $10,000,000 ($10 million per year for asset management loan servicing and indemnification of loan servicing);

e. Execute contract terminations with total fees up to $10,000,000;

f. Execute contract claim settlements with payments up to $1,000,000; and

g. Approve invoices up to the limit of their execution authority or the contract value, whichever is less.

Level III, Step C contracting officers have unlimited authority to:

a. Execute contracts including task order agreements;

b. Execute task orders;

c. Execute delivery orders;

d. Execute purchase orders;

e. Execute administrative changes to contracts, task order agreements, task orders, and contract modifications thereof;

f. Execute contract terminations;

g. Execute contract claim settlements; and

h. approve invoices.

These changes affect only contracts for services other than legal services. In addition, no change has been made to the authority of managing agents to contract on behalf of associations under the conservatorship of the RTC.

Warranted contracting officers and managing agents are given a certificate of appointment, showing the level of the warrant. The certificate shall be signed by the RTC's Director, Office of Contract Policy and Major Dispute Resolutions. This certificate or a copy must be presented prior to executing a contract or taking one of the other actions listed above.

Dated at Washington, DC, this 8th day of June 1994.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 94-14403 Filed 6-13-94; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Incorporated

June 8, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Albermarle Corporation
Common Stock, $.01 Par Value (File No. 12518)
CFX Corporation
Common Stock, $1.00 Par Value (File No. 12519)
Emerging Mexico Fund, Inc.
Rights to Subscribe, No Par Value (File No. 7-12520)
NorAm Energy Corp.
Common Stock, $.62 ½ Par Value (File No. 7-12521)
NorAm Energy Corp.
$3.00 Conv. Exch. Pfd., $.10 Par Value (File No. 7-12522)
Nova Corporation
Common Stock, No Par Value (File No. 7-12523)
Zapata Corporation
Common Stock, $.25 Par Value (File No. 7-12524)
Kenneth Cole Production, Inc.
Class A Common Stock, $.01 Par Value (File No. 7-12525)
Mikasa, Inc.
Common Stock, $.01 Par Value (File No. 7-12526)
Maso-Tech, Inc.
$1.20 Conv. Preferred, $1.00 Par Value (File No. 7-12527)
Beacon Properties Corporation
Common Stock, $.01 Par Value (File No. 7-12528)
Blyth Industries, Inc.
Common Stock, $.02 Par Value (File No. 7-12529)
Freeport McMoran Copper & Gold, Inc.
Pfd. A, $1.25 Cum. Conv. Dep. Pfd., $.10 Par Value (File No. 7-12530)
Glendale Federal Bank
Pfd. E, Non Cum. Pfd. E 8.75%, $1.00 Par Value (File No. 7-12531)
Morgan Stanley Global Opportunities Bond Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-12532)
Grupo Industrial Maseca S.A. de C.V.
American Depositary Shares (each Representing 15 Series B, Common Stock, No Par Value (File No. 7-12533)
Banco O'Higgins
American Depositary Shares (each Representing 6 Shares of Common Stock, No Par Value (File No. 7-12534)
Pennsylvania Enterprises, Inc.
Common Stock, No Par Value (File No. 7-12535)
Tosco Corporation
Pfd. F $4.375 Cum. Conv., $1.00 Par Value (File No. 7-12536)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 29, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94-14396 Filed 6-13-94; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

June 8, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder

for unlisted trading privileges in the following securities:

Consumers Power Co.
$2.08 Class A Pfd. Cm., No Par Value (File No. 7–12537)
Advocate, Inc.
Common Stock, $.01 Par Value (File No. 7–12538)
Albermarle Corp.
Common Stock, No Par Value (File No. 7–12539)
Alliance Entertainment Corp.
Common Stock, $.0001 Par Value (File No. 7–12540)
American Eagle Group, Inc.
Common Stock, $.01 Par Value (File No. 7–12541)
Beacon Properties Corp.
Common Stock, $.01 Par Value (File No. 7–12542)
Bush Boake Allen, Inc.
Common Stock, $1.00 Par Value (File No. 7–12543
Ceridian Corp.
5.50% Cm. Cv. Dep. Exch. Pfd., $1.00 Par Value (File No. 7–12544)
ConAgra Capital, L.C.
9% Ser. A Cm. Pfd. Sec. (File No. 7–12545)
Cooker Restaurant Corp.
Common Shares, No Par Value (File No. 7–12546)
Crescent Real Estate
Common Stock, $.01 Par Value (File No. 7–12547)
East Group Properties
Shares of Beneficial Interest, $1.00 Par Value (File No. 7–12548)
Financial Security Assurance Holdings Ltd.
Common Stock, $.01 Par Value (File No. 7–12549)
Kemper Strategic Income Fund
Shares of Beneficial Interest, $.01 Par Value (File No. 7–12550)
Rayonier, Inc.
Common Stock, No Par Value (File No. 7–12551)
RJR Nabisco Holdings Corp.
Ser. C Dep. Shs. (rep. 1/10 Sh. Ser. C Cv. Pfd. Stock) ("PERCS") (File No. 7–12552)
Royal Bank of Scotland Group PLC
Exch. Cap. Sec., Ser. A ("X–CAP's") (File No. 7–12553)
Star Banc Corp.
Common Stock, $5.00 Par Value (File No. 7–12554)
Tele Danmark A.S.
American Depositary Shares (rep. ½ Class B sh., DKK 10 Par Value) (File No. 7–12555)
Templeton Emerging Markets Appreciation Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12556)
Tricon Capital Corp.
Common Stock, $.01 Par Value (File No. 7–12557)
U.S. Delivery Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–12558)
Banco O'Higgins
American Depositary Shares (rep. 6 shs. Common Stock, No Par Value (File No. 7–12559)
Blyth Industries, Inc.
Common Stock, $.02 Par Value (File No. 7–12560)
Capital Holding LLC
8⅞% Cm. Mthly. Inc. Pfd. shs. ("MIPS") (File No. 7–12561)
Chase Manhattan Corp.
Pfd. Stk. Adj. Rate Ser. N Cum., No Par Value (File No. 7–12562)
Grupo Industrial Maseca, S.A. de C.V.
American Depositary Shares.(rep. 15 Ser. B Cm. shs., No Par Value (File No. 7–12563)
Morgan Stanley Global Opportunity Bond Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12564)
Pennsylvania Enterprises, Inc.
Common Stock, No Par Value (File No. 7–12565)
Santa Fe Energy Resources, Inc.
Ser. A Cv. Pfd. Stk. (Div. Enh. Cv. Stk.—"DECS"), $.01 Par Value (File No. 7–12566)
Viacom, Inc.
Class A Stock, $.01 Par Value (File No. 7–12567)
Viacom, Inc.
Class B Stock, $.01 Par Value (File No. 7–12568)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 29, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions unlisted trading privileges pursuant to such applications are of consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–14397 Filed 6–13–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34167; File No. SR–NYSE–93–45]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Specialist Combination Review Policy

June 6, 1994.

I. Introduction and Summary

On December 3, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new set of guidelines for reviewing combinations among specialist units known as the Exchange's Specialist Combination Review Policy (the "Policy").

The proposed rule change was published for comment in Securities Exchange Act Release No. 33475 (January 13, 1994), 59 FR 3145 (January 20, 1994). No comments were received on the proposal.

The Exchange's current Policy was first approved by the Commission on a six-month pilot basis in 1987.[3] It was subsequently extended and then granted interim effectiveness until such time as the Commission makes a final determination on permanent approval.[4]

The proposed rule change will continue to authorize the Quality of Markets Committee ("QOMC") to review certain proposed combinations that, in the Exchange's view, may lead to undue concentration within the specialist community. The current combination review policy calls for an Exchange review of a potential combination under a two tier system where the combined unit exceeds any one of the four specified concentration measures.[5] A tier I QOMC review occurs whenever a proposed combination would result in a specialist organization specializing in securities which exceed

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See Securities Exchange Act Release No. 24411 (April 29, 1987), 52 FR 17870 (May 12, 1987).

[4] See Securities Exchange Act Release No. 25481 (March 17, 1988), 53 FR 9554 (March 23, 1988).

[5] The concentration measures include specialist share of:

- allocation (*i.e.* designation as registered specialist) for all listed common stocks
- allocation (*i.e.* designation as registered specialist) for the 250 most active listed common stocks
- total share volume of stock trading on the Exchange
- total dollar value of stock trading on the Exchange.

5% of any one of four concentration measures. A tier II review occurs whenever a proposed combination would result in a specialist organization exceeding 10% of any concentration measure. The tier II review differs from the tier I review in that the presumption is against approval of the proposed combination.[6] The proposed new Policy establishes a three tier system of review for combinations. The four concentration measures that trigger a combination review under the various tiers, however, will remain unchanged.

The proposed rule change does not affect the role of the Exchange's Market Performance Committee ("MPC"), acting under delegated authority from the QOMC, of conducting a preliminary review of all proposed combinations to determine the effects of the proposed combination on market quality. If the MPC concludes that the proposed combination will erode significantly market quality, it informs the constituent units of its concern. If the constituent units persist in their plans, the MPC can inform them that some or all of the affected stocks may be put up for reallocation.[7]

II. Description of the Proposal

The proposed rule change modifies the NYSE's mechanism of monitoring the level of concentration within the Exchange specialist community. The proposal establishes a three tier system of review whereby the QOMC will be authorized to review proposed specialist combinations that raise concentration-related issues.

A tier I QOMC review is triggered, both currently and under the proposal, whenever a proposed combination involves or would result in a specialist organization exceeding 5% of any concentration measure.[8] In a tier I review, the QOMC reviews the proposed combination with the following considerations in mind: (a) Specialist performance and market quality in the stocks subject to the proposed combination;

(b) The effects of the proposed combination in terms of the following criteria: (i) Strengthening the capital base of the resulting specialist organization;

(ii) Minimizing both the potential for financial failure of the new unit and the negative consequences of any such failure on the specialist system as a whole; and

(iii) Maintaining or increasing operational efficiencies within the resulting specialist organization;

(c) The commitment to the Exchange market, focusing on whether the constituent specialist organizations have worked to support, strengthen and advance the Exchange, its agency/auction market and its competitiveness in relation to other markets; and

(d) The effect of the proposed combination on overall concentration of specialist organizations.

When a combination involves an entity that is not an existing specialist unit (*e.g.*, if a third party's contemporaneous purchase of two or more units creates a combination exceeding the five percent threshold), the application of the "commitment to the Exchange market" criterion to the non-specialist organization will be based upon an assessment of whether the organization will work to support, strengthen and advance the Exchange, its agency/auction market and its competitiveness in relation to other markets.

Moreover, the criterion relating to the "commitment to the Exchange market" under a tier I review is designed to require the QOMC to look to a variety of factors that extend beyond compliance with the Exchange's requirements for providing sufficient capital, talent and order handling services. Specifically, the Committee will review and assess each constituent unit's past conduct on the Exchange relating to such items as:

(a) Participation upon request in the Exchange's FACTS program,[9] in its marketing seminars, in sales calls and in other of its marketing initiatives seeking to attract order flow and new listings.

(b) Acceptance of innovations in order-routing and other trade-support systems and willingness to make optimal use of the systems once they become fully operational.

(c) Willingness to apply for allocations of stocks that are less lucrative from the standpoint of profitability to the specialist.

(d) Assistance to other units by providing capital and personnel in unusual market situations, such as "breakouts" and difficult openings.

(e) Efforts at customers' relations with both listed companies and order providers, as evidenced by personal contact, return of telephone calls, prompt resolution of complaints, assessment of customer needs and anticipation of customer problems.

(f) Efforts to streamline the efficiency of its own operations and its competitive posture.

The QOMC will continue to approve or disapprove a particular proposed specialist unit combination based on its assessment of the concentration and other considerations described above. In addition, the QOMC will retain the ability to condition its approval, under any level of review, upon compliance by the resulting specialist organization with any steps specified by the QOMC to address particular concerns in regard to the considerations above.

Once the proposed combination potentially exceeds 10% of any concentration measure, the QOMC will give primary weight to the effect of the proposed combination on the overall concentration of specialist organizations. Moreover, the Policy places an affirmative obligation upon the proponents of the combination to make certain representations regarding the proposed combination in order to obtain QOMC approval. The breadth of the evidentiary showing required depends upon whether the proponents are subject to a tier II or tier III QOMC review.

A tier II QOMC review will be triggered whenever a proposed combination involves or would result in a specialist organization exceeding 10%, up to and including 15%, of any of the four concentration measures. In a tier II review, the burden of proof will then be on the constituent specialist organizations to prove, by a preponderance of the evidence, that the proposed combination:

(1) Would not create or foster concentration in the specialist business detrimental to the Exchange and its markets; and

(2) Would foster competition among specialist organizations; and

(3) Would enhance the performance of the constituent specialist organization and the quality of the markets in the stocks; and

(4) Would otherwise be in the public interest.

Absent such a showing, the QOMC will disapprove the proposed combination.

A tier III QOMC review will be triggered whenever a proposed combination involves or would result in

[6] The burden of proof is on the proponents of the combination to show, by clear and convincing evidence, that the proposed combination would not result in undue concentration and would promote competition among the specialist units.

[7] If the proposed combination is under 5%, then the MPC is in effect the governing body and its decision is appealable through the Exchange's rules relating to hearings and appeals. If, however, the proposed combination would exceed one of the thresholds, then the MPC's determination would be taken under advisement by the QOMC in conducting its review pursuant to the Policy; in this case it would be the QOMC's decision that would be appealable. See NYSE Constitution, Article IV, Section 14.

[8] See note 6, *supra*.

[9] The FACTS program is used to introduce member firms and other interested persons to the operations of the Exchange.

a specialist organization exceeding 15% of any of the four concentration measures. In a tier III review, the proponents must present clear and convincing evidence demonstrating that, if approved, the proposed combination would satisfy requirements 1–4 enumerated above.

The proposed rule change defines a "proposed combination" subjected to the Policy to include:

(a) A merger of specialist organizations or an acquisition of one organization by another;

(b) The formation of a joint account involving two or more existing organizations;

(c) The "split-up" of an existing organization (including an organization operating under a joint account) and recombination with another organization;

(d) An individual specialist leaving an existing organization and proposing to take stocks with him to join another existing organization; and

(e) Any other arrangement that would result in previously separate organizations operating under common control.

The NYSE also has informed the Commission of how it intends to address three specific situations involving the purchase of specialist units by an entity other than a specialist firm. First, when a non-specialist entity purchases a single specialist unit, the acquisition will not be reviewable under the Policy regardless of whether or not the specialist unit has a concentration level of 5% or more at the time of purchase. The Policy only applies to combinations of specialist units that involve or would result in a unit exceeding 5%, 10%, or 15% of a concentration measure. Second, if a non-specialist entity proposes to purchase two or more specialist units that, combined into one unit, account for more than 5%, 10%, or 15% of a concentration measure, the acquisition will be reviewable under the Policy. Finally, a non-specialist entity's purchase of two or more specialist units which are kept operationally separate, but when viewed together would cross a 5%, 10%, or 15% concentration measure, will be reviewable under the Policy.[10] In this latter example, the QMOC will seek information as to what the acquiror's intentions are with respect to the specialist units and whether or not a combination is anticipated. In sum, any time a threshold may be exceeded as a direct result of a potential combination made possible by an acquisition, it will be subject to review.[11]

The Exchange has previously stated, with respect to the Policy,[12] that the Policy is designed to provide the Exchange with a mechanism for reviewing proposed mergers, acquisitions and other combinations between or among specialist units that may lead to a level of concentration within the specialist community that is detrimental to the Exchange and the quality of its markets. The Exchange expressed its belief that undue concentration may undermine its agency/auction process, accentuate specialist complacency, and damage the public's perception of the Exchange as a free market environment. Specifically, the Exchange's principal concern from a concentration standpoint was that the transformation of the specialist community into fewer and larger units might vitiate the competition among existing specialist units and present a significant barrier to new entrants to the specialist business, all to the detriment of the competition for the allocation of new listings. In implementing a policy to address these concerns, the Exchange sought to strike an appropriate balance between the perceived harm from undue concentration and the need for some specialist organizations to grow and attract capital through combinations. The instant modification strengthens this balance by adding a middle level of review at which the proponents of the combination are held to a less burdensome standard.

III. Discussion

The Commission recognizes the NYSE's concerns that undue concentration can result in various negative effects on market quality. The Commission also believes that in many situations consolidations among specialist units can be beneficial for the units themselves, particularly for those units with limited capital and resources, as well as for the quality of the market.

The Commission has previously indicated its belief that it is appropriate for the NYSE to adopt a policy that authorizes it to monitor specialist combinations to determine their impact upon the competitive environment necessary to maintain an orderly market.[13] Further, the Commission continues to believe the concentration factors identified by the NYSE are adequately designed to result in approval of proposed combinations which will not have an adverse impact on market quality or result in undue concentration, and at the same time will enable the NYSE to identify those combinations that can be potentially harmful to market quality and actually decrease competition.

The Commission has carefully reviewed the NYSE's Policy, placing particular emphasis on its differences with respect to the existing pilot procedure. The Commission previously expressed concern, due to the ability of the NYSE to disapprove proposed combinations based upon their potential concentration effects, as to whether the thresholds identified by the NYSE are appropriate measures of potentially harmful concentration. In particular, the Commission was concerned with the 10% threshold, where the constituent firms would have to overcome the presumption that the proposed combination would result in a level of business harmful to the specialist community.[14] Although the instant Policy retains this presumption, the burden of proof placed upon the proponents under a tier II review is being decreased from a clear and convincing to a preponderance standard. The clear and convincing standard will now only apply to a tier III review. The Commission believes that this intermediary level of review, along with the lower evidentiary standard, will make it less likely that potentially beneficial mergers will be erroneously blocked, consistent with the Act and the goals of the Exchange.

Accordingly, in light of the legitimate concentration concerns the NYSE has identified, the Commission believes that it is consistent with the Act for the NYSE to have a permanent review mechanism for proposed specialist combinations. Further, the Commission believes that the threshold levels identified by the NYSE in the Policy are reasonable in relation to the current distribution of the four concentration measures among specialist units on the NYSE.

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[10] The NYSE states that such a review is initiated because of the introduction of the element of common ownership even if the units are to be kept separate.

[11] For example, if a full service broker-dealer bought two specialist units, one with 4% of all allocations and the other with 3%, this would constitute a combination subject to review. Likewise, if a full service broker-dealer that already owned one specialist unit with 7% of all allocations bought another unit having 2% of all allocations, this would be reviewable under the Policy because it is a combination of specialist units crossing the 5% threshold. In contrast, if a full service broker-dealer that had no affiliated specialist unit bought a unit having 11% of all allocations, this purchase would not be reviewable under the Policy.

[12] See Securities Exchange Act Release No. 24411 (April 29, 1987) 52 FR 17870 (May 12, 1987).

[13] See Securities Exchange Act Release No. 24411 (April 29, 1987). 52 FR 17870 (May 12, 1987).

[14] The Commission notes that to date the NYSE QOMC has only conducted two tier II reviews, both of which have been approved, despite the current high level of burden of proof.

Finally, the Commission notes that the QOMC acts on behalf of the Board of Directors and consists of at least three Directors that are representatives of the public. Currently only one member of the eight-member committee represents a specialist unit. The Commission would be concerned if specialist representation of the QOMC were substantially increased to more than a minor representation by specialists when determining the outcome of a proposed specialist combination, as this could appear to cause a conflict of interest. In such circumstance, the Commission will review this Policy for continued consistency with the Act.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b).[15] In this regard, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, in that it identifies specific levels of review for combinations that could potentially impair market quality and hinder competition to the detriment of investors and the public interest while ensuring that combinations that are beneficial to the market place will not be prohibited. The Commission also believes that the proposal does not impose any unnecessary or inappropriate burden on competition under Section 6(b)(8) of the Act in that it establishes review procedures to prevent undue concentration of specialist units that could potentially hinder market quality. Although the Commission recognizes that the Policy can result in prohibiting certain combinations from occurring, the Commission believes the considerations outlined in the Policy in conducting a combination review under the various tiers will help to ensure that combinations that are beneficial to the market will be permitted, while prohibiting those combinations that may have a negative impact on market quality. Accordingly, any potential burden on competition resulting from the Policy is, in the Commission's view, justified as necessary and appropriate under the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSE–93–45) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–14337 Filed 6–13–94; 8:45 am]

BILLING CODE 8010–01–M

[15] 15 U.S.C. 78f(b) (1988).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Inc.

June 8, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Hanson PLC

Class B Warrants Expiring 9/30/97 (File No. 7–12569)

This security is listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 29, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–14398 Filed 6–13–94; 8:45 am]

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[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 35–26063]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 7, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 1, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of any attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CINergy Corp. (70–8427)

CINergy Corp. ("CINegy"), 139 East Fourth Street, Cincinnati, Ohio 45202, a Delaware corporation not currently subject to the Act, has filed an application-declaration under sections 5, 6(a), 7, 9(a)(1), 9(a)(2), 10, 13(b) and rules 80–91 and 93–94 thereunder.

The application-declaration seeks approvals relating to the proposed combination of Cincinnati Gas & Electric Company ("CG&E"), an Ohio combination electric and gas public-utility holding company exempt from registration under section 3(a)(2) of the Act pursuant to rule 2, and PSI Resources, Inc. ("PSI"), an Indiana public-utility holding company exempt from registration under section 3(a)(1) of the Act pursuant to rule 2, by which CG&E and PSI's electric public-utility subsidiary, PSI Energy, Inc. ("Energy"), would become wholly owned subsidiaries of CINergy. Following the transaction, CINergy would register with the Commission under Section 5 of the

Act. CINergy also seeks approvals in connection with services to be rendered by CINergy Services, Inc. ("Services"). CINergy's newly formed service company subsidiary, the formation of a new CINergy subsidiary that will hold certain of the CINergy system's non-utility assets, and the issuance of shares of CINergy common stock for CINergy's dividend reinvestment and employee benefit plans.

CG&E and its public-utility subsidiary companies are primarily engaged in providing electric and gas service in the southwestern portion of Ohio and adjacent areas in Kentucky and Indiana.[1] The service area covers approximately 3,000 square miles has an estimated population of 1.8 million, and includes the cities of Cincinnati and Middletown in Ohio, Covington and Newport in Kentucky, and Lawrenceburg in Indiana. As of February 28, 1994, there were 88,458,656 shares of CG&E common stock, par value $8.50 per share, and 3,300,000 shares of CG&E cumulative preferred stock (400,000 of which were redeemed on April 1, 1994) outstanding. CG&E's principal executive office is located in Cincinnati, Ohio. On a consolidated basis, for the year ended December 31, 1993, CG&E's operating revenues were approximately $1.75 billion with consolidated assets of approximately $5.1 billion, consisting of $3.28 billion in electric utility property, plant, and equipment and $504 million in gas utility property, plant, and equipment, and $1.36 billion in other corporate assets.

PSI owns all the issued and outstanding common stock of Energy, an Indiana corporation engaged in the production, transmission, distribution, and sale of electric energy in north central, central, and southern Indiana.[2] Energy services a population of approximately 1.9 million in 69 counties in Indiana. As of February 28, 1994 there were 57,114,573 shares of PSI common stock outstanding. PSI has no shares of preferred stock outstanding. As of February 28, 1994, there were 5,118,335 preferred shares of Energy outstanding. PSI's principal corporate office is located in Plainfield, Indiana. On a consolidated basis, for the year ended December 31, 1993, PSI's operating revenues were approximately $1.1 billion, and its total assets were approximately $2.7 billion, of which $2.2 billion was electric utility plant.

CINergy was incorporated in Delaware on June 30, 1993 to become a holding company over CG&E and Energy following the proposed merger. At present, the common stock of CINergy, which consists of 100 issued and outstanding shares, is owned by PSI and by Tri-State Improvement Company, a wholly owned non-utility subsidiary of CG&E. Each company owns 50 shares.

CINergy Sub, Inc. ("CINergy Sub"), a subsidiary of CINergy, was incorporated under the laws of Ohio on July 1, 1993. The authorized capital stock of CINergy Sub consists of 100 shares of common stock, no par value. CINergy has entered into a subscription agreement for all such shares. No shares of CINergy Sub common stock have been issued. CINergy Sub has and prior to the closing of the proposed merger will have, no operations other than the activities necessary to accomplish the proposed combination of CINergy Sub and CG&E as described below.

Pursuant to an Agreement and Plan of Reorganization, dated as of December 11, 1992, as amended and restated on July 2, 1993 and as of September 10, 1993 ("Merger Agreement"), PSI will be merged with and into CINergy, with CINergy as the surviving corporation ("PSI Merger"), and CINergy Sub will be merged with and into CG&E, with CG&E as the surviving corporation ("CG&E Merger"). As a result of the PSI Merger and the CG&E Merger, CG&E and Energy will become operating subsidiaries of CINergy, and CINergy will be a holding company under section 2(a)(7) of the Act.

Specifically, upon consummation of the proposed transaction: (1) Each issued and outstanding share of CG&E common stock (other than treasury and certain other shares which will be

[1] CG&E wholly owns four public-utility subsidiary companies—The Union Light, Heat and Power Company, an electric and gas subsidiary company, Miami Power Corporation, a subsidiary which owns a 138 kV transmission line, The West Harrison Gas and Electric Company, an electric subsidiary company, and Lawrenceburg Gas Company, a gas subsidiary company. In addition, CG&E owns 9% of Ohio Valley Electric Corp., an electric subsidiary company.

CG&E directly or indirectly owns all the issued and outstanding common stock in five non-utility companies and minority interests in five limited partnerships. Three are direct subsidiaries—Tri-State Improvement Company, a real estate development company formed to acquire and hold property for use in CG&E's utility operations, CGE Corp., formed to hold CG&E's non-utility interests, and KO Transmission Company, used to acquire an interest in an interstate natural gas pipeline.

CGE Corp. has three wholly owned non-utility subsidiaries—Enertech Associates International, Inc. ("Enertech"), CG&E Resource Marketing, Inc. ("Resource Marketing"), and CGE ECK, Inc. ("CGE ECK"). Enertech provides, among other things, consulting, fuel brokering, operation and maintenance services, and demand-side management services worldwide and also pursues investment opportunities worldwide. Resource Marketing holds CG&E's 25% interest in U.S. Energy Partners, a gas marketing partnership that will compete with traditional regulated merchant service and will broker gas to industrial and large commercial customers. CGE ECK holds CG&E's 30–45% interest in a Czech limited liability company which will own and operate a Czech generating [illegible].

The limited partnerships are North Rhine I Limited Partnership (CG&E has a $300,000 commitment representing a 10.91% limited partnership interest), North Rhine II Limited Partnership (CG&E has a $300,000 commitment representing a 5.61% limited partnership interest), Franciscan Homes II Limited Partnership (CG&E has a $300,000 commitment representing a 2.07% limited partnership interest), Blue Chip Capital Fund (CG&E has a $1 million commitment representing 2.3% of the fund), and Blue Chip Opportunity Fund (CG&E has a $500,000 commitment representing 4.1% of the fund). North Rhine I and II and Franciscan Homes II Limited Partnerships provide low income housing in CG&E's service territory. Blue Chip Capital and Opportunity Funds promote community development through investment in female and [illegible]% owned businesses in CG&E territory.

[2] Energy has two subsidiaries, PSI Energy Argentina, Inc. and South Construction Company, a company used to own real estate and interests in real estate which are either not used and useful in the conduct of Energy's business or which have some defect in title which is unacceptable to Energy.

PSI either directly or indirectly owns PSI Argentina, Inc. ("PSI Argentina") and Costanera Power Corp. Through these subsidiaries, PSI is a 10% shareholder of Argelec S.A., a 6% shareholder of Central Costanera S.A., an Argentine electric generating company, and an 8% shareholder in Distrilec Inversora S.A. ("Distrilec"). Distrilec owns 51% of Edesur S.A., an electric distribution system. PSI Argentina also wholly owns an inactive subsidiary, Energy Services Inc. of Buenos Aires, formed to provide operating and consulting services to foreign utilities.

PSI wholly owns three active non-utility subsidiaries, PSI Recycling, Inc. (which recycles material from Energy and other sources), PSI Investments, Inc. ("Investments") (which oversees investments in nonregulated businesses), and PSI Argentina. Investments has two active subsidiaries, Power Equipment Supply Co. (which sells equipment among other things) and Wholesale Power Services, Inc. ("WPS") (which activities include, among others, power brokering, electricity futures, consulting services in wholesale power related markets). WPS, also through a division, formed International Power Exchange, an electronic bulletin board for the bulk power market.

Investments has five inactive subsidiaries—PSI Power Resource Operations Inc. and PSI Power Resource Development, Inc. (which develop, construct, operate, maintain, and own independent power producer/cogeneration projects), PSI Environmental Corp. (which provides environmental services), PSI International, Inc., and PSI Sunnyside, Inc. (both formed to develop, construct, operate, and own cogenerating or power production facilities).

PSI also holds minority interests in five limited partnerships—CID Partnership, L.P. ($350,000 investment at year-end 1993), CID Ventures, L.P. (a 7% interest with a $1 million investment at year-end 1993), CID Equity Capital III, L.P. (a 8.2% interest with a $800,000 investment at year-end 1993), Cambridge Ventures, L.P. (a 7.6% interest with a $250,000 investment at year-end 1993), and Circle Centre Mall (a $1.2 million commitment to be invested in mid-1994 representing a 4.2 [illegible] interest). CID Equity Partners is a private venture capital partnership dedicated to building successful companies through long-term investments in growing Indiana and other midwestern businesses. Circle Centre Mall is a 700,000 square foot shopping mall under construction in downtown Indianapolis

cancelled, and shares held by holders who dissent in compliance with Ohio law) will be converted into the right to receive one share of CINergy common stock, par value $.01 per share ("CG&E Conversion Ratio"); (2) each issued and outstanding share of PSI common stock (other than treasury and certain other shares which will be cancelled, and shares held by holders who dissent in compliance with Indiana law) will be converted into the right to receive that number of shares of CINergy common stock obtained by dividing $30.69 by the average closing sale price of the CG&E common stock for the 15 consecutive trading days preceding the fifth trading day prior to the PSI Merger; provided that, if the actual quotient obtained thereby is less than .909, the quotient shall be .909, and if the actual quotient obtained thereby is more than 1.023, the quotient shall be 1.023 ("PSI Conversion Ratio"); (3) the aggregate of all shares of CINergy Sub common stock issued and outstanding prior to the transaction will be converted into the right to receive that number of shares of CG&E common stock equivalent to the aggregate number of shares of CG&E common stock issued and outstanding immediately prior to the transaction; and (4) all shares of capital stock of CINergy issued and outstanding immediately prior to the transaction will be cancelled. Holders of PSI common stock entitled to receive fractional shares of CINergy common stock will receive a cash payment in lieu of such fractional shares. These cash payments will be determined by multiplying the fractional share interest by the average of the last reported sales price per share of CG&E common stock on the consolidated tape for the ten business days prior to and including the last business day on which CG&E common stock was traded on the New York Stock Exchange, without any interest thereon.[3] The outstanding shares of preferred stock of CG&E and Energy will not be affected. CINergy states that the transaction is expected to be tax-free to CG&E, PSI, and Energy shareholders (except as to dissenters' rights and fractional shares). Based on the capitalization of PSI and CG&E on February 28, 1994 and PSI Conversion Ratio of 1.023, the shareholders of PSI and CG&E would own securities representing approximately 40% and 60%, respectively, of the outstanding voting power of CINergy. CINergy states that the proposed merger is a pure stock-for-stock exchange and qualifies for treatment as a pooling of interests.

Following the merger, CG&E's utility subsidiaries will remain subsidiaries of CG&E, the non-utility subsidiaries of PSI will become subsidiaries of CINergy, and the non-utility subsidiaries of CG&E will remain subsidiaries of CG&E. The Merger Agreement provides that CINergy's principal corporate office will be in Cincinnati, Ohio. CINergy's board of directors, which will be classified into three classes, will consist of a total of 19 directors, 10 of whom will be designated by CG&E and 9 of whom will be designated by PSI.

CINergy requests authority to form a new subsidiary ("Holding Company Sub") to hold certain of the CINergy system's non-utility interests. It is anticipated that Holding Company Sub will be incorporated in Delaware, and that its capitalization will consist of 100 shares of common stock, par value $.01 per share, all of which will be issued to, and acquired by, CINergy at a price not more than $1 per share. CINergy expects that Holding Company Sub will acquire all the outstanding capital stock of some or all of the following non-utility subsidiaries: Enertech, Resource Marketing, CGE ECK, PSI Recycling, Inc., PSI Argentia, Power Equipment Supply Company, WPS, PSI Power Resource Development, Inc., PSI Power Resource Operations Inc., PSI Environmental Corp., PSI International, Inc., and PSI Sunnyside, Inc.

CINergy also requests authorizations with respect to the activities of Services, which was incorporated in Delaware on February 23, 1994 to serve as the service company for the CINergy system after the proposed merger. CINergy proposes that Services provide companies in the CINergy system with a variety of administrative, management, and support services. It is anticipated that Services will be staffed by transfer of personnel from the current employee rosters of CG&E, PSI, and their subsidiaries. CINergy states that Services' accounting and cost allocation methods and procedures will comply with the Commission's standards for service companies in registered holding-company systems, and that Services' billing system will use the Commission's "Uniform System of Accounts of Mutual Service Companies and Subsidiary Service Companies." Services' service agreement calls for pre-filing review by state commissions of any amendment to its service agreement. For CINergy's utility subsidiaries, Services proposes to provide services at cost. For CINergy's non-utility subsidiaries, Services proposes that charges be at fair market value and requests an exemption from the "at cost" requirements of section 13(b).

In addition, CINergy requests authority through December 31, 1995 to issue and/or acquire in open market transactions an aggregate amount up to 10 million shares of CINergy common stock for CINergy's shareholder dividend reinvestment, stock purchase plan, stock-based employee benefit plans, and the CG&E and Energy 401(k) plans. CINergy has not finalized its dividend reinvestment plan ("CINergy DRIP") but anticipates that the terms will be the following. All holders of record of shares of CINergy common stock, Energy cumulative preferred or preference stock or CG&E cumulative preferred stock will be eligible to participate in the CINergy DRIP. Full investment of funds will be possible under the CINergy DRIP, subject to a minimum of $25 and a maximum of $100,000 purchase limits. There will be no brokerage or other fees on purchases. All costs of administration of the CINergy DRIP will be paid by CINergy; however, charges will be incurred by participants who direct the plan administrator to sell their shares on withdrawal.

The shares of additional common stock purchased under the CINergy DRIP with optional cash payments and reinvested dividends, if any, may be, in the discretion of CINergy, authorized but unissued CINergy common stock or shares of CINergy common stock purchased on the open market by the plan administrator. CINergy will not change the source of shares of common stock to open-market purchases unless capital needs or market conditions warrant. When purchases of shares of CINergy common stock under the CINergy DRIP come from authorized but unissued shares, the purchase price of such shares will be the average of the high and low prices (computed to four decimal places) of CINergy common stock, as reported in the New York Stock Exchange Composite Transactions section of The Wall Street Journal, for the appropriate investment date, or if no trading in CINergy common stock occurs on such date, the next preceding date on which such trading occurred. When CINergy common stock purchased for each investment date comes from purchases on the open market, the purchase price will be the weighted average price (computed to four decimal places), excluding brokerage commissions, of such shares

[3] Fractional shares of CG&E and PSI common stock held in accounts under the dividend reinvestment plans, the 401(k) savings plans, and the employee benefit plans of CG&E and PSI will be converted into the applicable number of shares (or fractional shares) of CINergy common stock under the corresponding plans of CINergy, CG&E, or PSI, in accordance with the appropriate CG&E or PSI Conversion Ratio.

acquired for the plan. CINergy will pay all administrative costs of acquisition, including brokerage fees and commissions. It is anticipated that there will be no discount program under the CINergy DRIP.

A participant may sell or withdraw all or a portion of his/her shares at any time. Sales of shares through the CINergy DRIP will not be "matched" with other participants' purchases, but will be executed without regard to such purchases. Proceeds from any sale, less applicable brokerage commission, will be remitted to a participant following settlement through the independent agent.

Whether the participant requests to sell the shares in his/her account or elects to receive certificates for the full shares in his/her account, the participant's interest in fractional shares will be paid in cash on the basis of the price paid to the participant for his/her whole shares. A participant will be entitled to request in writing and receive a certificate representing the full shares of CINergy common stock credited to his/her account.

CINergy proposes to use the proceeds from the sale of the newly-issued shares of additional common stock for the repayment of indebtedness, for working capital, or for other general corporate purposes. CINergy will not, however, use such proceeds to acquire the securities of or any interest in any exempt wholesale generators or in any foreign utility company until such time as such investment shall be approved by order or by regulation of the Commission, to the extent such approval is required under the Act.

CG&E and PSI will discontinue their respective dividend reinvestment plans following the consummation of the proposed merger.

CINergy proposes to adopt four stock-based plans—CINergy Stock Option Plan ("Stock Option Plan"), CINergy Emplyee Stock Purchase and Savings Plan ("ESOP"), CINergy Performance Shares Plan ("Performance Plan"), and CINergy Directors' Deferred Compensation Plan ("Directors' Plan"). Although the final terms of these plans have not been established, the anticipated terms are set forth below.

The Stock Option Plan is a plan by which non-employee directors, officers of CINergy or any of its subsidiaries, and employees who are executive employees, employed in a significant executive supervisory, administrative, operational or professional capacity, or who have the potential to contribute to the future success of any participating employer, may be granted incentive stock options, nonqualified stock options, stock appreciation rights and/or cash awards granted in connection with nonqualified stock options to reimburse an optionee for the income taxes imposed upon the exercise of such an option. Each outside director will receive an automatic grant of nonqualified stock option to purchase 12,500 shares of CINergy common stock. This grant vests at the rate of 20% per year beginning with the first anniversary of the date of the grant.

The option price must be no less than 100% of the fair market value of CINergy common stock on the date of the grant. The terms of incentive stock options may not exceed ten years from the date of grant. Each grantee will receive an agreement setting out the terms and conditions of the grant. The Stock Option Plan will be administered by the compensation committee of the CINergy board, which committee will consist of outside directors.

Upon the consummation of the proposed merger, the PSI Stock Option Plan will be merged into the Stock Option Plan.

The ESOP is an employee stock purchase plan in which eligible employees of CINergy and its subsidiaries may be granted options to purchase shares of CINergy common stock. All employees of CINergy or its subsidiaries will be eligible to participate in the ESOP, except part-time employees, employees who have not been employed by CINergy or, in the case of the first offering, by Energy or CG&E, for at least nine months as of the first date of the offering and any full officer of Energy, CG&E, or any other participating employer.

Each offering under the plan consists of an offering period of 26 months. During the offering period, plan participants may make after-tax contributions to a savings account under the plan in an aggregate amount to up to ten percent of the participant's annual base salary multiplied by 26/12ths. Amounts contributed to the savings account will earn interest. The employee may terminate participation at any time, but cannot renew participation prior to a new offering period. At the end of the offering period, a participant may exercise his/her option to purchase shares of CINergy common stock at a five percent discount from the fair market value of the shares on the first day of the offering period, receive the cash held in his/her savings account, or receive a combination of both.

Upon consummation of the proposed merger, the PSI Stock Purchase and Savings Plan will be merged into the ESOP.

The Performance Plan is a long-term incentive compensation plan. Officers of CINergy or any of its subsidiaries, and employees who are executive employees, employed in a significant executive supervisory, administrative, operational or professional capacity, or who have the potential to contribute to the future success of any participating employer, may participate in the plan.

Employees who participate in the Performance Plan will be granted awards payable in a combination of shares of CINergy common stock and cash. The awards will be payable in two equal annual installments following the end of a performance period. Awards will be based on a percentage of a participant's annual base salary and the attainment of the individual, group, and corporate goals established by each participating employer's board of directors.

Upon consummation of the proposed transaction, the PSI and Energy Performance Shares Plans will be merged into the Performance Plan.

The Director's Plan will allow each director of CINergy or any of its subsidiaries to defer fees for serving as a director and to have them accrued either in terms of cash or in terms of theoretical units of shares of CINergy common stock. If deferred in theoretical units of stock, the stock will be distributed to the director at the time he/she retires from the appropriate board. Amounts deferred in cash will be paid at the same time.

Upon the consummation of the proposed merger, the PSI Directors' Deferred Compensation Plan will be merged into this plan. Directors currently participating in that plan will make new elections prior to such time to participate in, and transfer therein deferrals to, the Directors' Plan.

In addition, CINergy proposes to maintain on substantially the same terms, the CG&E and PSI 401(k) plans, except that shares of CINergy common stock will be used instead of CG&E common stock and Energy common stock. The CG&E plans are known as the savings Incentive Plan ("CG&E SIP") and the Deferred Compensation and Investment Plan ("CG&E DCIP") and are mirror 401(k) plans with savings features. All non-exempt full-time employees of CG&E with one year of service are eligible to participate in the CG&E SIP. All full-time exempt employees of CG&E DCIP.

Both the CG&E SIP and the CG&E DCIP accept before-tax and after-tax contributions from employees. Employee contributions are invested according to employee instructions. CG&E matches $.55 per dollar of

employee contributions, through the first five percent of the employee's salary. This match is made solely in CG&E common stock. Shares acquired under the CG&E SIP and the CG&E DCIP are placed at the average high and low price on the New York Stock Exchange on the trading day immediately preceding their acquisition.

Energy has 401(k) plans for all of its eligible employees which allow employees to make both before-tax and after-tax contributions. Eligible employees can save up to 10% of their before-tax eligible compensation and up to 10% of their after-tax compensation. The company matches, in PSI common stock, employees' before-tax contribution in two components: (1) A base match equal to $.70 for every dollar an eligible employee contributes, up to the first four percent of compensation; and (2) a potential incentive match equal to $.10 to $.30 for each dollar contributed, up to the first four percent of compensation. The amount of the incentive match depends on the level of corporate goals achieved.

Shares may be purchased in the open market or may be issued by PSI and are priced based on the closing price of PSI common stock as set forth in the New York Stock Exchange Composite Transactions section of the *Wall Street Journal* for the date on which the contributions are invested.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–14399 Filed 6–13–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Plans for Establishment of Land Transportation Standards Subcommittee

AGENCY: Office of International Transportation and Trade, Office of the Secretary, Department of Transportation.

ACTION: This notice announces the Department of Transportation's (DOT) plans for establishing the Land Transportation Standards Subcommittee (LTSS) required in the North American Free Trade Agreement (NAFTA). It also describes the LTSS' scope of work, notifies the public of upcoming meetings, and invites interested parties to write to DOT, by July 20, 1994, to be included in the Department's distribution list for LTSS reports and related information.

SUMMARY: The United States, Canada, and Mexico intend to work to develop more compatible land transportation standards through the LTSS in accordance with a timetable set in the NAFTA. Five working groups of federal and state government technical experts from the three countries will accomplish this work under the direction of the LTSS. While the working groups will be comprised of government officials only, the U.S. delegation to the LTSS will include federal and state government officials, as well as representatives from industry, labor, and safety advocacy groups. The LTSS is scheduled to hold its first plenary session on July 12, 1994, in Cancun, Mexico. Several working groups may meet on July 11, 1994 at the same location. Agendas for the meetings are yet to be determined. In the future, the Department intends to publish in advance the schedules and agendas for LTSS and working group meetings, and to distribute regularly relevant information to individuals and organizations on its mailing list. Public briefings will also be scheduled as appropriate to provide updated information. Respondents are requested to send a post card with their full names and addresses to DOT, specifying the group(s) about which they would like to receive information.

BACKGROUND: The NAFTA establishes a Committee on Standards-Related Measures, and requires that it create a subcommittee to seek, to the extent practicable, compatibility of land transportation standards among the United States, Canada, and Mexico. Annex 913.5.a–1 of the NAFTA sets forth the work program that the LTSS will follow for seeking compatibility of the countries' standards-related measures for bus and truck operations, rail personnel standards that are relevant to cross-border operations, and the transportation of hazardous materials.

Land Transportation Standards Subcommittee: The LTSS will meet once a year chaired, on the U.S. side, by the Director of the Office of International Transportation and Trade, Office of the Secretary of Transportation. The chair will give general guidance and direction to U.S. working group heads, establish the parameters for participation of U.S. delegates in delegation and trilateral meetings, and prepare policy recommendations for the Secretary of Transportation's consideration. U.S. participants to the LTSS will include: (1) Federal officials from the Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Research and Special Programs Administration (RSPA), the U.S. Department of State, the Office of the U.S. Trade Representative, and other federal agencies as appropriate; (2) state policy-makers identified by the National Governors' Association; (3) trade association representatives for the truck, bus, and rail industries, shippers transportation labor unions, brokers, and shippers; and (4) public safety advocates.

Working Groups: Five working groups, comprised of federal, state, and provincial officials from the three countries, will be established. In the United States, each working group will operate under the leadership of a DOT official. By invitation, representatives of state government organizations such as the Association of American Motor Vehicle Administrators, the Commercial Vehicle Safety Alliance, the International Association of Chiefs of Police, the National Association of State Regulatory Utility Commissioners, the Cooperative Hazardous Materials Enforcement Development Program, and others may also be part of the U.S. delegation. Individual working groups will determine the frequency of meetings depending on the scope of work and the time-frame established in the NAFTA for seeking compatibility for the specific standards under each group's jurisdiction. The groups and chairs are listed below.

1. Working Group 1—This group will consider medical and non-medical standards-related measures for drivers, including age and language requirements. It will also review measures with respect to vehicles such as tires, brakes, parts and accessories, cargo securement, maintenance and repair, inspections, and emissions and environmental pollution levels not covered by the Automotive Standards Council's work program established under Annex 913.5.a–3 of the NAFTA. In addition, the group will examine standards related to the supervision of motor carrier safety compliance. For information call Tom Kozlowski, Chief, Standards Development Division/ FHWA, at (202) 366–2981.

2. Working Group 2—This group will analyze the development of more compatible vehicle weights and dimensions standards. For information call Susan Binder, Chief, Office of Industry and Economic Analysis/ FHWA, at (202) 366–9230.

3. Working Group 3—This group will be responsible for seeking compatibility of standards-related measures relating t

road signs. For information call Rudolph Umbs, Acting Chief, Safety Management Division/FHWA, at (202) 366–0411.

4. Working Group 4—This group will consider compatibility of standards related to rail operating personnel that are relevant to cross-border operations, and standards related to locomotives and other rail equipment. For information call Jane Bachner, Director, Office of Economic Analysis/FRA, at (202) 366–0344.

5. Working Group 5—This group will be responsible for seeking compatibility of standards related to the transportation of hazardous materials. For information call Frits Wybenga, International Standards Coordinator for Hazardous Materials/RSPA, at (202) 366–0656.

MEETINGS: The LTSS is scheduled to meet for the first time in plenary session on July 12, 1994, in Cancun, Mexico. Several working groups may also meet at the same location on July 11, 1994. Agendas for the July sessions are not immediately available, but may be obtained by calling the individuals listed on this notice the week of June 27. Schedules and agendas for future meetings will be published in advance.

FOR FURTHER INFORMATION: Contact David DeCarme, Chief, Maritime and Surface Division, Office of International Transportation and Trade, Office of the Secretary of Transportation, at (202) 366–2892.

ADDRESS AND DEADLINE: Individuals and organizations interested in being placed on the mailing list for receiving LTSS-related information are requested to send, by July 20, 1994, a post card indicating the complete name and address where the information should be sent, and specifying the group or groups about which information is desired. Mail post cards to David DeCarme, U.S. Department of Transportation, OST/X–20, room 10300, 400 Seventh Street SW., Washington, DC 20590.

Dated: June 9, 1994.

Arnold Levine,

Director, Office of International Transportation and Trade.

[FR Doc. 94–14392 Filed 6–13–94; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

June 8, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Office of Thrift Supervision (OTS)

OMB Number: 1550–0023

Form Number: OTS Form 1313; Monthly Cost of Funds Survey Systems Worksheet; Officer's Certification

Type of Review: Extension

Title: Thrift Financial Report (TFR)

Description: The Office of Thrift Supervision (OTS) collects financial data from insured institutions and their subsidiaries in order to assure their safety and soundness as depositories of the personal savings of the general public. The OTS monitors financial positions and interest-rate risk so that adverse conditions can be remedied promptly. The respondents are savings associations.

Respondents: Businesses or other for-profit, savings institutions

Estimated Number of Respondents/ Recordkeepers: 1,788

Estimated Burden Hours Per Respondent/Recordkeeper: 20 hrs. 41 mins.

Frequency of Response: Monthly, quarterly

Estimated Total Reporting/ Recordkeeping Burden: 365,215 hours

Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street, NW., Washington, DC 20552.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 94–14410 Filed 6–13–94; 8:45 am]

BILLING CODE 4810–25–P

UNITED STATES INFORMATION AGENCY

Convention on Cultural Property Implementation Act (Pub. L. 97–446); Import Restriction on Archaeological Material of the Moche Period From the Sipan Archaeological Region, Peru

AGENCY: United States Information Agency.

ACTION: Determination to Extend Emergency Restriction on Moche Material from the Sipan Archaeological Region, Peru.

Pursuant to the authority vested in me under Executive Order 12555 and Delegation Order No. 86–3 of March 18, 1986 (51 FR 10137),

I find:

Pursuant to the requirements of section 304(c) (3) of the Act, 19 U.S.C. 2603(c)(3), with respect to the extension of an emergency import restriction on Moche artifacts from the Sipan Archaeological Region, Peru, and pursuant to the emergency provisions under section 304, subsections (a)(2) and (a)(3); and pursuant to a unanimous favorable recommendation from the Cultural Property Advisory Committee,

(1) That the material is archaeological and is identifiable as coming from sites in the Sipan Archaeological Region, an area recognized to be of high cultural significance, for it contains evidence of the Moche culture at the apogee of its development; that an ambience conducive to further pillage continues to exist in this region causing continued jeopardy from pillage, dismantling, dispersal, or fragmentation which is, of threatens to be, of crisis proportions;

(2) That the material is part of the remains of the Moche culture (approximately A.D. 100–800) which did not develop a writing system and about which little is known except from scientific excavation of intact remains; that an ambience conducive to further pillage continues to exist relative to these remains of the Moche culture, the record of which continues to be in jeopardy from pillage, dismantling, dispersal, or fragmentation which is, or threatens to be, of crisis proportions;

(3) That the application of the import restriction set forth on a temporary basis would continue, in whole or in part, to reduce the incentive for pillage, for it has been established that the emergency import restriction in place since 1990 has resulted in a diminution to systematic clandestine pillage of the sites in the Sipan Archaeological Region.

Determination

Therefore, in accordance with the aforementioned authority vested in me, and pursuant to section 304(c)(3) of the Act, 19 U.S.C. 2603(c)(3), and consistent with a favorable recommendation from the Cultural Property Advisory Committee, I determine:

(1) That the emergency condition continues to apply with respect to Moche artifacts from the Sipan Archaeological Region in the Lambayeque Valley of northern Peru.

(2) That the emergency import restriction that went into effect on May 7, 1990, is extended for a period of three more years effective June 15, 1994.

Dated: June 9, 1994.

Penn Kemble,

Deputy Director, United States Information Agency.

[FR Doc. 94–14458 Filed 6–13–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 113

Tuesday, June 14, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 20, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–14580 Filed 6–10–94; 3:10 pm]

BILLING CODE 6210–01–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–94–20]

TIME AND DATE: June 20, 1994 at 10:30 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future.
2. Minutes.
3. Ratification List.
4. Inv. No. 303–TA–25 (Preliminary) and Inv. No. 731–TA–700–701 (Preliminary) (Disposable Lighters from China and Thailand)—briefing and vote.
5. Outstanding action jacket: None.

In accordance with Commission policy, subject matter listed above not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: June 7, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–14551 Filed 6–10–94; 2:41 pm]

BILLING CODE 7020–02–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Tuesday, June 21, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6167A—Railroad Accident Report: Derailment of Amtrak Train 2, the Sunset Limited, on CSXT Big Bayou Canot Bridge, Mobile, Alabama, September 22, 1993.

NEWS MEDIA CONTACT: Telephone: (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: June 10, 1994.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 94–14498 Filed 6–10–94; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 13, 20, 27, and July 4, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of June 13

Thursday, June 16

10:30 a.m.
Discussion of Personnel Matters (Closed—Ex. 2 and 6)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule on "Timeliness in Decommissioning of Materials Facilities" (Tentative)
(Contact: Mary Thomas, 301–492–3886)
b. Motion to Quash OI Subpoenas Issued to Henry Allen, Diane Marrone, and Susan Settino in the Five Star Products Investigation (Tentative)
(Contact: Charles Mullins, 301–504–1606)

Week of June 20—Tentative

Monday, June 20

10:00 a.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)

Thursday, June 23

2:00 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities
(Contact: Victor McCree, 301–504–1711)
4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 27—Tentative

There are no meetings scheduled for the Week of June 27.

Week of July 4—Tentative

Thursday, July 8

11:30 a.m.
Affirmation/discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: June 9, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–14543 Filed 6–10–94; 12:16 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 13, 20, 27, and July 4, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 13

Thursday, June 16

10:30 a.m.
Discussion of Personnel Matters (Closed—Ex. 2 and 6)

Friday, June 17

2:45 p.m.
Affirmation/Discussion and Vote (Public Meeting)

a. Final Rule on "Timelines in Decommissioning of Materials Facilities" (Tentative)
(Contact: Mary Thomas, 301–492–3886)
b. Motion to Quash OI Subpoenas Issued to Henry Allen, Diane Malrone, and Susan Settino in the Five Star Products Investigation (Tentative)
(Contact: Charles Mullins, 301–504–1606)

Week of June 20—Tentative

Monday, June 20

10:00 a.m.
Discussion of Management Issues (Closed—Ex. 2 and 6)

Thursday, June 23

2:00 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities
(Contact: Victor McCree, 301–504–1711)
4:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 27—Tentative

There are no meetings scheduled for the Week of June 27.

Week of July 4—Tentative

Thursday, July 8

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill—(301) 504–1661.

Dated: June 10, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–14567 Filed 6–10–94; 2:41 am]

BILLING CODE 1590–01–M

Federal Register

Tuesday
June 14, 1994

Part II

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Amendment to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Amendment to the Gaming Compact Between the Chitimacha Tribe of Louisiana and the State of Louisiana, which was executed on May 16, 1994.

DATES: June 14, 1994.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4068.

Dated: June 3, 1994.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 94–14322 Filed 6–13–94; 8:45 am]

BILLING CODE 4310–02–P

Federal Register

Tuesday
June 14, 1994

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Notice of Funding Availability for Preservation Support Grants and Notice of Paperwork Submission

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–94–3762; FR–3613–N–01]

NOFA for Preservation Support Grants and Notice of Paperwork Submission

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability and paperwork submission.

SUMMARY: This NOFA announces the availability of up to $6 million in funding for Preservation Support Grants, to promote the ability of residents of eligible low-income housing to: (1) Participate meaningfully in the preservation process established by the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) and the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA); and (2) affect decisions about the future of their housing. This NOFA also serves to assist the Secretary in discharging the obligation to notify qualified purchasers of the availability of properties for sale and otherwise facilitate the coordination and oversight of the preservation program. A portion of the unobligated funds from the Preservation Technical Assistance NOFA published September 3, 1992 (57 FR 40570), is made available under this NOFA.

Eligible applicants may apply for a Preservation Support Grant in one of two categories. First, Outreach and Training Grants are available to resident-controlled or community-based nonprofit organizations with experience in resident education and organizing to conduct community-, city-, or county-wide outreach to identify, organize, and deliver training to residents of eligible low-income housing. Second, Preservation Activity Grants are available to State and local government agencies and nonprofit intermediaries to perform activities that further the preservation program in their jurisdictions. These activities may include outreach, training, and organizational development of unorganized tenants. In a separate NOFA, the Department has solicited applications from intermediaries to administer direct technical assistance grant funds to resident and community groups (FR–3473, published April 6, 1994, at 59 FR 16366).

This document includes information about eligible applicants, the level of funding available, and HUD's processing of applications, as well as the selection criteria for grant applicants.

DATES: The expedited deadline for submission of comments on the paperwork burden associated with this NOFA is: June 24, 1994.

The deadline for submission of applications is August 15, 1994. Applications must be physically received in the Preservation Division, Department of Housing and Urban Development, room 6284, 451 Seventh Street, SW., Washington, DC 20410, by 4:30 p.m., EST, on or before the due date.

ADDRESSES: Comments on the information collection requirments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Upon request, Preservation Support Grant application packages may be obtained from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone number: 1–800–955–2232. Please refer to FR–3613 when requesting an application package.

FOR FURTHER INFORMATION CONTACT: Frank Malone, Director, Office of Preservation and Property Disposition, Department of Housing and Urban Development, room 6284, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3555. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY (1–800–877–8339) or 202–708–9300. (Except for the TDD number, telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been submitted, for expedited processing, to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Any applicant that completes an application before the OMB control number is assigned may have to modify that application in accordance with changes in the application package that are requested by OMB and agreed to by HUD.

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, by June 24, 1994, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

Introduction

On July 13, 1993, the Department published a draft Notice of Funding Availability (58 FR 37819), specifically inviting public comments on the Department's proposed methodology for implementing the provisions of section 312 of the Housing and Community Development Act of 1992 (1992 HCDA), which added sections 251–257, the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA). The comment period expired on August 28, 1993. The Department received a total of 26 comments. Two comments were from legal/advocacy organizations, eight from low income housing organizations which are involved in development of and advocacy for affordable housing, nine were from tenant organizations, three were from community development corporations, two from community service organizations, one from a local agency and one from an individual housing consultant.

This NOFA addresses section 254 of LIHPRHA. Comments received relating to the other added sections were addressed in an earlier NOFA directed at those sections and published on April 6, 1994 (59 FR 3473). The first section of this NOFA is a discussion of the public comments on the section 254 aspects of the draft NOFA and of modifications made in response to the comments and as a result of additional HUD consideration. The actual NOFA follows the discussion of public comments and begins with the section

designated "II. Purpose and Substantive Description."

I. Public Comments

A. Priorities

Five commenters recommended that local resident-controlled groups with experience in organizing receive highest funding priority. The rationale behind these comments was that assistance to organize by a tenant-led coalition at the local level enables tenants to share experiences and provide peer support. Also, one commenter stressed that organizing and training sponsored by local tenant coalitions protect against "sham" nonprofit purchasers. The Department agrees with these comments and is giving preference to local resident-controlled groups. Organizations that receive Outreach and Training grants are required to demonstrate that they have at least two years experience in resident organizing and education. Under the Preservation Activity Grant category, the Department also will give priority consideration to State and local government agencies and intermediaries that propose to provide outreach and training and organizational development to unorganized tenants.

One commenter suggested that in awarding Outreach and Training grants, HUD should give priority to the local nonprofit entity most trusted or most likely to be trusted by the tenants. Factors cited by the commenter that could be used as a measure of trust included languages spoken by staff, ethnicity, positive history in the immediate neighborhood, and whether the nonprofit entity has a rural/urban/suburban focus. The Department believes that establishing a trusting relationship between recipients and providers of the activity is an important aspect of a program. However, assessing the level of trust is judgmental and requires an insight about the relationship between a nonprofit organization and tenants that would be difficult for HUD staff to readily discern. The Department believes that a trusting relationship will evolve when the parties become acquainted, begin to work together, and plan successful programs.

Two commenters suggested that under the Outreach and Training grants, organizing should be given priority over education and training. However, if the purpose of the application is to provide training, one commenter suggested that preference should be given to applicants planning training for resident groups and community-based nonprofit purchasers (as opposed to owner entities, appraisers, and financial institutions), because resident groups and community-based nonprofit purchasers generally have fewer resources. Also, it was suggested that this preference be implemented through a point system published in the NOFA. Under the Outreach and Training grant category, HUD will require that successful applicants restrict provision of training to resident groups and community-based nonprofit purchasers. However, under the Preservation Activity Grants category, grantees may use funds to train and educate other groups, such as appraisers, financial institutions, and owners.

B. Allocation of Funds

The Department received eleven comments recommending that a majority of the Preservation Support Grant funds be set aside for resident outreach and training that would involve leadership development, training, and ongoing support instead of for the provision of information on LIHPRHA and ELIPHA (without organizational development, training, and support). Eight commenters suggested that, at a minimum, 60 percent of the funds should be reserved for outreach and training. Another commenter advised that the Department allocate 50 percent for each type of Preservation Support Grant, with a mid-year review for reallocation.

The Department will allocate 50 percent of the Preservation Support Grant funds to Outreach and Training grants and 50 percent to Preservation Activity grants. This equal division of the allocation will maximize opportunities for the Department to produce newly organized tenant groups, because HUD will give preference, under the Preservation Activity grant program, to State or local government agencies or intermediaries that submit applications for outreach and training and the organizational development of tenants. By including outreach and training and organizational development for tenants as preferred activities under Preservation Activity grants, the Department will be able to ensure that unorganized tenants will be reached if they live in areas where eligible local tenant controlled groups or community-based nonprofit organizations do not exist.

One commenter suggested that Outreach and Training grants be allocated in the $50,000 to $150,000 range annually for up to three years. The Department agrees that grant amounts should be limited. The Department will award Outreach and Training grants commensurate with the scope and size of the market served and the level of outreach and training described in the application. The maximum amount an applicant may receive for an Outreach and Training grant will be $150,000 annually, up to a maximum, if warranted, of $450,000 over a three-year period.

The Preservation Activity grant will be available for, among other activities, outreach and training and organizational development for tenants who live in areas where community-based nonprofit organizations or local resident-controlled groups do not exist. Because applicants applying for Preservation Activity Grants may propose an activity that is regional or national in scope and that would require a high level of funding to be effective, the Department believes that the maximum amount an applicant may receive for a Preservation Activity Grant should be $500,000 for proposals that are national in scope, and $250,000 for proposals aimed at the regional, State or local level. This NOFA addresses funding levels in detail for each category in Section II.D.

Two commenters stated that HUD should have two funding rounds annually for Preservation Support Grants, with one-year grant awards renewable for up to three years. The Department has determined that the size of Preservation Support Grants does not merit the task of scoring, ranking, and awarding grants biannually; it is more cost-effective to announce the availability of funds on an annual basis. Further, Preservation Support Grants are awarded on a competitive basis and cannot be renewed without a new round of competition. However, HUD will accept Outreach and Training grant applications that propose activities designed to be completed over a three-year period. Such proposals, if funded, would receive incremental funding as described in Section II.C of the NOFA.

Six commenters claimed that basing fund allocation solely on active Notices of Intent (NOIs) and Plans of Action (POAs) is skewed because this basis does not directly correlate with preservation sales activity. Another commenter claimed that HUD's records are not fully accurate because the basis for the allocation is program volume—specifically, the sum of "active Notices of Intent plus the number of Plans of Action submitted for the State"—so allocations may be distorted. HUD will allocate grant funds in accordance with the selection process described in Section IV of this NOFA. The number of active Notices of Intent and Plans of Action will not be the determining factor.

Another commenter stated that the allocation under this NOFA should be made according to eligible projects, not by activity level. However, HUD will award grants based on proposed activities, not according to eligible projects. The commenter further stated that the allocation should include transition rule project owners who have not filed an NOI. This comment relates to Title II projects, where owners were not required to file NOIs prior to the 1992 HCDA. Such projects will be eligible under the provisions of this NOFA.

C. Eligible Activities

One commenter suggested that organizations applying for Preservation Activity Grants should not be limited by the definition of eligible intermediaries in the NOFA. The commenter claimed that preservation activities, such as LIHPRHA training, technical assistance, data gathering, and clearinghouse functions, can be performed by an organization that does not have experience in grant allocation and administration and has not previously served a wide geographic area. Community-based nonprofits with experience in education on LIHPRHA and ELIPHA, for example, would be competent to perform these activities. The Department will limit eligibility for Preservation Activity Grants to eligible intermediaries and will adhere to the definition of intermediary used in the July 13, 1993, NOFA, because it is consistent with section 255(d) of the 1992 HCDA.

This commenter also stated that while preference should be given to locally based groups, it should be possible for community-based groups to apply for resident outreach and training grants for a multicounty area, if a local group is not available. The Department agrees and has indicated in Section III.C of the NOFA that priority will be given to established local resident-controlled groups. Next in order of preference will be established community-based nonprofit organizations, and, thirdly, city-wide, county-wide or multi-county coalitions of resident groups applying for Outreach and Training Grants. Further, community action, legal service, and fair housing counseling agencies; State and local government agencies; and intermediaries that apply for Preservation Activity Grants to initiate outreach and training and the organizational development of tenants will receive priority funding under that category.

This commenter also stated that organizations should be able to do both resident organizing and preservation activities, and that the eligible activities should include legal and financial research on properties. The Preservation Activity Grants, which will provide funding for legal and financial research studies on eligible properties, also will include outreach and training and organizational development training for tenants as an eligible and priority activity. If all funds are not awarded to eligible applicants in one grant category, the Department will utilize unused funds from one grant category to fund acceptable applications for the other, as indicated in Section III.A of the NOFA.

Four commenters suggested that the Department clarify that Outreach and Training Grants are available to support residents in projects where the owner is not selling. Two commenters want Outreach and Training Grants available where an owner has made no decision yet, but is eligible under ELIPHA or LIHPRHA. The Department agrees, and has stated in Section III.D of this NOFA, that eligible projects include any Preservation property, regardless of whether an owner has filed a Notice of Intent.

A commenter proposed that HUD fund the production of information materials, such as pamphlets, posters, displays, and videos that can be used for resident outreach and training. The commenter said that some of these materials already exist, having been produced in States with a high level of activity. However, HUD could make them widely available to assistance providers. This would avoid potentially duplicative efforts nationwide and will assure distribution of accurate information. The Department accepted this proposal and has included a provision under the Preservation Activity Grant program for creating informational materials about the Preservation process for nationwide distribution as an eligible activity. (See Section III.F of the NOFA for further details.)

D. Other

Nineteen commenters stated that because of the size of the Outreach and Training Grant program, and because the activities should be nonproject specific, HUD should administer that program. The Department agrees and will administer the awarding and monitoring of both categories of the Preservation Support Grants program.

One commenter recommended that the Department eliminate the set-aside for Preservation Support Grants and allow intermediaries to apply for an amount up to the entire State allocation to be used for Direct Assistance or Preservation Support Grants, with a maximum of $60,000 for training, outreach, and preservation activities. Beyond that, the commenter suggested that intermediaries be allowed to propose activities most appropriate for their jurisdictions. The law provides for two separate grant categories under Preservation Support Grants and identifies specific purposes for each one. The intent of the statute is to allow interested resident groups an opportunity to participate in the preservation process. While the point raised here is valid, the Department must adhere to the specifics of the law. Also, the opportunity for a resourceful resident-controlled group, which may have access to other supplemental funds to combine with a HUD award to organize and educate tenants, should not be thwarted by the elimination of the set-aside for Preservation Support Grants.

One commenter said that HUD should change the Outreach and Training applicant definition to include a network of advocacy people or other qualified organizations, not just resident-controlled or resident-based nonprofits. They stressed that the requirement that the applicant be a resident-controlled or community-based group was too restrictive and would prohibit certain tenant groups from participating in the preservation process. They further questioned the need for the applicant's board to be resident-controlled and recommended that the requirement be deleted. The Department appreciates the concerns expressed; however, the requirement is statutory and cannot be deleted.

One commenter proposed that the NOFA add criteria to ensure that each community-based organization applicant has an established mechanism to guarantee responsiveness to tenants. The Department rejects this suggestion because it believes it would be a burdensome requirement and difficult to implement and measure. The same commenter suggested that tenants and other organizations working on these issues in the community also should have a chance for input on the application and award. The Department disagrees with this comment. It is unclear how and when the commenter intended that tenants and other organizations would comply with this requirement. Also, it is illegal for HUD to disclose advance information about the applicants in a competitive grant process.

Finally, this commenter suggested that HUD, as grant administrator, should provide notice of the application to all nonprofit and tenant organizations working on preservation in the relevant jurisdiction and to national and regional groups, and that there should be a limited time period for other qualified groups to submit a competing application. The Department believes that this recommendation will delay decisionmaking and create excessive administrative burdens. However, under section 102 of the HUD Reform Act, HUD will publish the names of the recipients of assistance under this NOFA in the Federal Register.

One commenter stated that this NOFA should have similar accountability language in Outreach and Training Grant applications as in the Direct Assistance Grant applications. The Department has modified the language defining eligible applicants for Outreach and Training Grants and Preservation Activity grants. The eligibility requirements now reflect accountability similar to that expected of Direct Assistance Grant applicants.

Three commenters stated that because the best Outreach and Training providers will not always be local entities and the statute requires local entities, the NOFA should be clear that Preservation Activity Grants should be available for Outreach and Training by regional/statewide providers. The commenter added that Statewide organizations should be eligible to receive Outreach and Training grants where there is a lack of local activity.

The Department is limiting applicants applying for Outreach and Training grants to local resident-controlled, community-based, city-wide, county-wide, or multi-county providers, which is consistent with the statute. However, community action, legal service, and fair housing counseling agencies; State or local government agencies; and local, regional, State, and national intermediaries can apply for a Preservation Activity Grant to conduct outreach and training and organizational development training for tenants where no local resident-controlled group or community-based organization exists. With respect to awards made under this category, the Department will give preference to eligible regional, State, and local intermediaries over national nonprofit organizations.

Three commenters stated that HUD should more clearly define what are eligible activities for State and local governments and nonprofit intermediaries using Preservation Support Grants. In addition, commenters suggested that the term "deemed appropriate" should be clarified. Another commenter stated that the NOFA should contain a broader list of specific activities or examples of "other activities" that further the intent of the preservation programs. The Department agrees with this comment and, in Section III.F of the NOFA, has clarified and broadened the list of eligible activities for Preservation Activity grants.

One commenter offered that HUD should clarify that resident-controlled and community-based nonprofits are treated equally. Three commenters stated that an overwhelming majority of funding for Preservation Support Grants should be made available to resident-controlled organizations. The Department is giving priority to local resident-controlled groups that apply for Outreach and Training grants, because the statute clearly indicates tenants/residents as the intended beneficiaries of this assistance. In cases where no experienced local resident-controlled group or community-based nonprofit organization exists, or where one exists, but does not apply or has applied, but its application was disapproved, then community action, legal service, and fair housing counseling agencies; State and local government agencies; or national nonprofit intermediaries may apply for a Preservation Activity Grant and receive priority consideration to conduct outreach and training and organizational development of the tenants.

Five commenters stated that HUD should give preferences to Outreach and Training applicants in the following order: applicants in which the decisionmaking body is made up entirely of HUD-assisted residents, those with a majority of HUD-assisted residents, those with a majority of low-income community members, community-based applicants, and regionally based applicants. Organizations with no direct experience should be acceptable where there is no other applicant. One commenter stated that HUD should spell out a clear priority to maximize funds to resident-controlled coalitions. Another commenter said that priority should be for groups with at least three years of organizing experience demonstrating board and staff accountability to resident groups. The Department will give preference for Outreach and Training grants to local resident-controlled groups with at least two years of organizing experience. The priorities will be reflected in the rating process described in Section IV.C of the NOFA.

One commenter said that Outreach and Training grants should be reviewed and selected separately from Preservation Activity grants, with separate allocations. The Department agrees and has developed a separate selection process for each of the Preservation Support Grant categories. This commenter also recommended that intermediaries administering Direct Assistance Grants should also be able to apply to do Other Purpose activities; this is especially important in geographic areas where there are not many experienced entities.

Intermediaries that are eligible to apply to administer Direct Assistance Grants are also eligible to apply for Preservation Activity grants. However, intermediaries selected to administer Direct Assistance Grants, by statute, "may not provide other services to grant recipients that are the subject of the grant application and may not receive payment, directly or indirectly, from the proceeds of grants they have approved." Therefore, administering intermediaries may not also apply to perform outreach and organizational development activities for resident groups that may receive technical assistance funds through the Resident Capacity or Predevelopment Grants that the intermediary is administering.

Another commenter contended that potential purchasers should be able to receive these grants when no other qualified applicant has expressed an interest in the activity. In other words, potential purchasers would be considered grantees of last resort. The Department believes that the statute clearly identifies eligible applicants for Preservation Support grants; the program is not opened to potential purchasers.

Two commenters stated that Outreach and Training recipients should not be able to seek an ownership interest in the project. They claim that such a policy would avoid conflicts of interest with potential landlords, while enabling residents to organize independently. The Department agrees with this comment and believes that such a policy would restrict grantees from also benefitting as potential purchasers who could receive a direct assistance grant, and certain incentives under ELIPHA or LIHPRHA, thereby becoming a double recipient of HUD's Preservation program.

One commenter stated that HUD should allocate unused funds from the 1992 NOFA according to the 90/10 percent formula: i.e., 90 percent to Direct Assistance Grants and 10 percent to Preservation Support grants. Another commenter suggested that HUD clarify the exact amount of funds available from the 1992 NOFA and how they will be divided. The Department has divided the allocation of unused funds from the 1992 NOFA according to the 90/10 percent formula: 90 percent to

Technical Assistance Grants and 10 percent to Preservation Support Grants.

Three commenters said that more of the unused funds from the 1992 NOFA should be available for Outreach and Training Grants. Another suggested that all unobligated 1992 NOFA funds be allocated to Outreach and Training grants. The Department will allocate the portion of the unused 1992 NOFA funds designated for Preservation Support Grants using a 50/50 percent formula: 50 percent for Outreach and Training grants and 50 percent for Preservation Activity grants. Again, the reason for the equal allocation is to allow the Department to maximize the level of assistance to, and expand the number of, newly organized tenant groups, through the provision of outreach and training and organizational development under Preservation Activity grants. One commenter also suggested that HUD issue a separate NOFA for Outreach and Training Grants. The Department is publishing one NOFA for both categories of Preservation Support Grants because it is more cost-effective and efficient.

One commenter contended that more money should be made available for Preservation Support Grants because a great majority of at-risk projects in the commenter's State are not organized. Some residents are even unaware that they live in HUD-assisted buildings; few have heard of LIHPRHA or ELIHPA and even fewer are aware of HUD's Technical Assistance Grants.

The statute provides that of any amount made available for these purposes in any appropriations act, 90 percent shall be set aside for use in accordance with Direct Assistance Grants and 10 percent shall be set aside for use in accordance with Preservation Support Grants. However, the Department will give preference to a Preservation Activity Grant applicant that shows it will take specific steps to inform and organize potential eligible low-income tenants who are unlikely to be unaware of the Preservation program (see Section IV.C(2) of this NOFA).

One commenter objected to large national contracts for Outreach and Training grants. The commenter suggested that $5 million currently set aside for additional national training should be put into Outreach and Training grants and administered in a separate NOFA, stating that a previous contract of $1.5 million to provide training around the country was ineffective and that small, local contracts are much better than a large national contract. The commenter further contended that most resident learning is hands-on, not in hotel workshops. The Department will administer the Preservation Support Grant program and will award Outreach and Training grants only to local resident-controlled or community-based nonprofit organizations that demonstrate their experience and ability to organize and educate the residents, or to city, county, or multi-county providers. Where no local resident-controlled or community-based nonprofit organizations exists, or where one exists, but does not apply or has applied, but its application was disapproved, HUD will accept applications to conduct outreach and training from community action, legal service, and fair housing counseling agencies; State and local government agencies; nonprofit intermediaries; or other groups that can demonstrate that they have three or more years of experience dealing with tenant issues and a capacity to undertake organizing unorganized tenants.

II. Purpose and Substantive Description

A. Authority and Background

The funding made available under this NOFA is authorized by section 312 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (1992 HCDA), in order to provide outreach and training to eligible resident groups and to assist the Department in carrying out its responsibilities under the Emergency Low-Income Housing Preservation Act of 1987 (Pub. L. 100–242, section 201 of the Housing and Community Development Act of 1987, approved Feb. 5, 1988) (ELIHPA) or the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (Pub. L. 101–625, section 601 of the National Affordable Housing Act (NAHA), approved November 28, 1990) (LIHPRHA). This NOFA combines funding authorized for FY 1993 and FY 1994 in section 312 of the 1992 HCDA. Funds announced by this NOFA will include amounts authorized in 1992 that remain unobligated from the Preservation Technical Assistance Grant Program, resulting in up to a total of $6 million available under this NOFA.

The origins of LIHPRHA are in ELIHPA. The purpose of ELIHPA was to preserve low-income affordability restrictions on certain HUD-insured or assisted multifamily projects. ELIHPA authorized the use of incentives to encourage owners to retain low-income affordability restrictions or to transfer the property to purchasers who would agree to retain those restrictions. The fundamental principles underlying ELIHPA were that the low-income housing should be preserved for the intended beneficiaries and that owners should be guaranteed a fair and reasonable return on their investments.

ELIHPA was intended to be a temporary measure that would allow Congress time to fashion a permanent program for the preservation of existing low-income housing projects. This permanent program is LIHPRHA, which replaced ELIHPA except to the extent that section 604 of NAHA provides a transition option for certain owners. The Department's regulations implementing these statutory provisions were published as an interim rule at 57 FR 11992 (April 8, 1992), and were revised in interim rules at 57 FR 57312 (December 3, 1992), 58 FR 4870 (January 15, 1993), and 58 FR 3384 (July 13, 1993, including requirements in this NOFA that were imposed by Title III of the 1992 HCDA). All references in this NOFA to sections 248.1 through 248.183 are to those sections as set out in these interim rules.

B. Allocation Amounts

The purpose of this NOFA is to make $6 million in grant funds available to eligible applicants to perform resident outreach and training, organizational development, education activities, and preservation assistance activities. These funds will be allocated equally between Outreach and Training Grants and Preservation Activity Grants. One million dollars ($1 million) of these grant funds are from unobligated funds from fiscal year 1992 Preservation Technical Assistance Grant funds. Both grant categories are described below.

C. Grant Categories

There are two types of Preservation Support Grants: (1) Outreach and Training Grants; and (2) Preservation Activity Grants.

Outreach and Training Grants are available for established community, city-wide, county-wide, or multi-county coalitions of resident-controlled groups or community-based nonprofit organizations with experience in resident education and organizing, to identify and organize residents of eligible low-income housing.

Preservation Activity Grants are available to community action, legal service, and fair housing counseling agencies; State and local government agencies; and State, regional, or national nonprofit intermediaries, for the purpose of conducting outreach and training and organizational development for unorganized tenants or carrying out other proposed activities, described in Section III.F of this NOFA.

that further the preservation program in their jurisdictions.

D. Grant Amounts

(1) *Outreach and Training Grants.* HUD will accept Outreach and Training applications that propose a term of from one to three years. The Department will limit the grant amount to $450,000 for successful applications that propose three-year activities. The maximum annual distribution for such grants will be $150,000, which must be obligated or expended by the grantee prior to the distribution of additional funds. Day-to-day draw-down limits and procedures will be described in the application package.

Outreach and Training grants will be awarded in amounts reflective of the overall program design, capacity, and need, as measured by the criteria in Section IV.C of this NOFA.

(2) *Preservation Activity Grants.* At the regional, State, and local levels, the Department will make a one-time award, not to exceed $250,000, for proposals designed to address outreach and training and organizational development for tenants or other types of Preservation activities. Applicants applying for Preservation Activity grants that propose outreach and training and organizational development for tenants, or other eligible preservation activities that are national in scope and require a high level of funding to be effective, may receive a one-time award in an amount not to exceed $500,000. However, the Department will give preference to eligible regional, State, and local intermediaries over national nonprofit organizations. A national nonprofit organization must document its ability to accomplish proposed tasks on a national level and describe what resources it has to carry out the activity effectively and with success. Grantees in receipt of Section 254 funds may not use these funds to replace local or regional, public or private funding initiatives that are already in place.

The level of funding will be commensurate with the described level of complexity of activities, geographic scope, and number of potential participants. Activities must be completed in a timely manner and may not, in any case, exceed a three-year period.

The Department may terminate the grant if a grantee fails to complete the task within a reasonable time period. In determining the reasonableness of the time period, HUD will consider the complexity of the activity and the resources available to accomplish the task.

III. Eligibility Information

A. General

Preservation Support Grants are meant to fund activities that will further the Preservation process and are carried out by: local resident-controlled or community-based nonprofit organizations, in the case of Outreach and Training grants; and community action, legal service, and fair housing counseling agencies; State and local government agencies; and State, regional or national intermediaries, in the case of Preservation Activity grants. Resident-controlled groups are comprised primarily of residents living in HUD-assisted projects.

Outreach and Training grant applications will be reviewed separately from Preservation Activity grant applications. However, if all funds are not awarded to eligible applicants in one grant category, the Department will have the option to utilize unused funds from that grant category to fund acceptable applications for the other. The Department will give priority to resident-controlled and community-based organizations that apply for Outreach and Training Grants. In competitive situations where resident outreach and training activities are proposed under both categories of the Preservation Support Grant (e.g., a local government or non-community-based nonprofit organization proposing a resident outreach and training program within the same jurisdiction as the resident-controlled group), applications from a Preservation Activity Grant applicant will only be considered in the balance of a jurisdiction not served by an Outreach and Training Grant recipient.

Grantees will be selected based on eligibility thresholds; applicant type, capacity, and experience; and jurisdictional needs, as described below in this NOFA.

B. Eligible Recipients

Eligible recipients of Outreach and Training and Preservation Activity grants will be tenants living in eligible Title II or Title VI projects. In addition, funds provided in this NOFA may be available to provide assistance to tenants living in property disposition projects that are subject to section 203(c)(2)(D) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11), as amended by section 101(b) of the Multifamily Housing Property Disposition Reform Act of 1994 (108 Stat. 342; Pub. L. 103–233, approved April 11, 1994).

C. Eligible Applicants—Outreach and Training Grants

An organization applying to do resident outreach and training must demonstrate that it is a nonprofit organization, has at least two years of experience in resident organizing and education, and is either resident-controlled with a majority of the board consisting of residents of HUD-assisted housing or is a community-based organization (CBO) that meets the definition of a CBO in 24 CFR 248.101, with a majority of its activities taking place at the community level. Applications from newly formed resident-controlled groups and CBOs that have applied for tax-exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application may be considered as long as the organization is approved before the effective date of the grant agreement. Also, newly formed and otherwise eligible organizations may submit joint applications with eligible organizations that are tax-exempt.

Priority will be given to local resident-controlled groups. Next in order of preference will be established community-based organizations and, thirdly, city-wide, county-wide, or multi-county coalitions of resident groups with a majority (51 percent or more) of Board participation by HUD tenants and that can provide documentation that they have experience working with ELIPHA and/or LIHPRHA programs. Where there is no application from such groups, community action, legal service, and fair housing counseling agencies; State and local government agencies; and intermediaries may apply for Preservation Activity grants to initiate outreach and training and the organizational development of tenants.

D. Eligible Activities—Outreach and Training Grants

Outreach and Training Grants are available for the following activities:

- Identifying residents and resident groups living in eligible preservation projects. Eligible projects include any property that is or could become available for sale and meeting the definition of "eligible low-income housing" at 24 CFR 248.101 or 248.201, regardless of whether an owner has filed a Notice of Intent.
- Providing outreach and training to tenants identified by local Field Offices where HUD staff may not be available to perform such tasks due to budgetary constraints. These activities could include attending Preservation Capital Needs Assessment (PCNA) exit

conferences, obtaining translation of the owner's Notice of Intent, providing other service where needed for PCNA exit conferences, or attending other resident meetings.

• Organizing residents of eligible low-income housing to participate effectively in the preservation process.

• Performing outreach, training, and counseling, which may include sound housing management, maintenance, and financial management, to residents and resident groups living in eligible preservation projects.

• Delivering project-based, community-, city-, or county-wide training programs on ELIHPA, LIHPRHA, resident participation, and forms of resident homeownership options.

E. Eligible Applicants—Preservation Activity Grants

(1) *Description of applicants.* HUD will accept applications from community action, legal service, and fair housing counseling agencies; regional, State, and local government agencies; nonprofit intermediaries; or other groups that can demonstrate that they have both three or more years of experience dealing with tenant issues and a capacity to undertake organizing unorganized tenants. A national nonprofit organization must have at least five years of similar experience. Eligible applicants fall into one of the following categories:

(1) *State and local housing agencies.* This category includes public housing agencies, community redevelopment agencies, other agencies that administer a community's Comprehensive Housing Affordability Strategy (CHAS), and State housing finance authorities.

(2) *Regional, State, and local nonprofit organizations* that must have been in existence for at least three years prior to the date of application and either are classified as exempt organizations under section 501(c)(3) of the Internal Revenue Code of 1986 or are otherwise a tax-exempt entity.

(3) *National nonprofit intermediaries* that have been in existence for at least five years prior to the date of application and are classified as exempt organizations under section 501(c)(3) of the Internal Revenue Code of 1986. An intermediary applying for Preservation Activity Grant funds must:

• Have as a central purpose of its organization the preservation of low-income housing and the prevention of displacement of low- and moderate-income residents;

• Not receive direct Federal appropriations for operating support;

• Meet the standards of fiscal responsibility established in OMB Circulars A–110 and A–122 or, if a State or local agency, 24 CFR part 85 and OMB Circular 87; and

• Have a record of service to low-income individuals or community-based nonprofit housing developers in multiple communities.

(2) *Limitations on Intermediaries.* Intermediaries that are eligible to apply to administer Technical Assistance Grants may be eligible to apply for a Preservation Activity Grant pursuant to the following prohibition. Intermediaries selected to administer Technical Assistance Grants, pursuant to Section 255(a) of the 1992 HCDA, "may not provide other services to grant recipients that are the subject of the grant application and may not receive payment, directly or indirectly, from the proceeds of grants they have approved." Therefore, administering intermediaries may not also apply to perform outreach and organizational development for tenants, or other types of Preservation support activities for resident groups that receive technical assistance funds through the Resident Capacity or Predevelopment Grants that the intermediary is administering.

Also, unlike intermediaries that are eligible to administer Direct Assistance grants, those intermediaries applying for Preservation Activity Grants may not serve as pass-through intermediaries. That is, they are limited to using grant funds to carry out eligible grant activities and may not administer the allocation of HUD grant or loan funds.

F. Eligible Activities—Preservation Activity Grants

Preservation Activity grants will be available to:

• Provide outreach and training and organizational development for "unorganized" tenants, as provided by resident-controlled groups and CBOs under the Outreach and Training category in Section III.C of this NOFA, if no experienced local resident-controlled group or community-based nonprofit organization exists or one exists, but does not apply or has applied, but HUD disapproved its application;

• Provide outreach and training to tenants identified by local Field Offices where HUD staff may not be available to perform such tasks due to budgetary constraints. These activities could include attending Preservation Capital Needs Assessment (PCNA) exit conferences, obtaining translation of the owner's Notice of Intent, providing other service where needed for PCNA exit conferences, or attending other resident meetings.

• Undertake pilot programs that assist HUD field staff to expedite the preservation process or otherwise conserve staff resources;

• Streamline the preservation process via the activities described in this Section;

• Educate parties outside the Department (including, but not limited to appraisers, financial institution officials, State and local government officials, community groups, and owner entities) about the preservation process;

• Establish preservation clearinghouses as a resource to resident organizations, community groups, and potential purchasers;

• Create informational materials about the preservation process for nationwide distribution;

• Perform legal and financial research studies on eligible properties; and

• Provide support activities that would otherwise further the Preservation program established under ELIHPA and LIHPRHA.

G. Ineligible Activities—Both Categories

Activities ineligible for funding under either category (Outreach and Training or Preservation Activity) of Preservation Support grants include:

• Purchase of land or buildings or any improvements to land or buildings;

• Entertainment, including associated costs such as food and beverages, but not including refreshments and supplies for organizational meetings;

• Payments of fees for lobbying services;

• Activities funded from other sources;

• Activities already being performed outside the scope of this NOFA; and

• Activities completed prior to the date funding is approved under this NOFA.

IV. Selection Process

A. Screening

The Multifamily Preservation Division staff in Headquarters will screen each application to determine whether it meets the technical requirements for application submission contained in this NOFA and the application package. If the application meets the technical requirements, it will be reviewed and ranked according to the selection criteria in Section IV.C of the NOFA. After screening the application, the Preservation Division will fax information about the applicant and application, such as name, project number, and experience the applicant identifies it has with HUD and the Preservation Program, to the Chief, Loan Management Division, in the HUD Field Office with jurisdiction over the applicant's geographical area. The Loan Management staff will review the information and provide comments about the information and the extent of its experience, if any, with the organization. Within sixty days from the application deadline, the Preservation Division will notify an applicant of its selection or rejection. Grantees will be required to sign a grant agreement.

B. Threshold Review—Correction of Deficient Applications

(1) *Threshold Review.* The Department will perform a threshold review of the applications to ensure completeness and will request applicants to correct any nonsubstantive deficiencies. Nonsubstantive deficiencies are those that are not integral to the application's review, such as a certification.

(2) *Revisions.* If an application is found to be deficient in a nonsubstantive manner, the Department will inform the applicant of such deficiency within 15 days after the application deadline and the applicant will have seven days to submit revisions. If an application is substantively deficient at the time of application deadline, the application will be rejected.

C. Selection Criteria

HUD will review each Preservation Support Grant application and assign up to 100 points in each category (Outreach and Training Grants and Preservation Activity Grants), in accordance with the criteria described in this Section.

In competitive situations where resident outreach and training activities are proposed under both categories of Preservation Support Grants (e.g., a local government or non-community-based nonprofit organization proposing a resident outreach and training program within the same jurisdiction as the resident-controlled group), applications from a Preservation Activity Grant applicant will only be considered in any part of a jurisdiction not served by an Outreach and Training Grant recipient.

After rating, the Department will rank the applications according to score and will fund them in rank order, reserving the option, if needed, to establish a minimum score of 60 points for funding. Grants will be awarded based upon the highest scores, which represent the best overall assessment of the potential of the proposed work activities for achieving the principal objective of this competition: to promote the ability of residents to participate meaningfully in the preservation process and to enable State or local housing agencies or intermediaries to conduct outreach and training and organizational development for unorganized tenants and undertake other activities that further preservation programs.

Applications that pass the technical threshold review will be rated as follows:

(1) *Outreach and Training Grants.* Under this category, the Department will require successful applicants to restrict provision of outreach and training to resident groups and community-based nonprofit purchasers. In addition, local resident-controlled groups will receive priority rating over community-based organizations and city-wide, county-wide, or multi-county coalitions of resident groups.

(a) *Capacity* is reflected in the qualifications or capabilities of the applicant (maximum points: 50). The capability of the applicant to conduct community-, city-, or county-wide outreach and training programs to identify and organize residents of eligible low-income housing within a reasonable time period, within budget, and in an effective manner, as demonstrated through past performance. In assigning points for this criterion, HUD will consider:

• *Direct Experience.* An applicant under this category must provide documentation that they have experience working with ELIPHA and/or LIHPRHA programs. The applicant or key staff must show that it has at least two years of experience in this area of work to receive points under this criterion. An applicant also may demonstrate this experience by the participation of or affiliation with board members or consultants. The Department will rate the application according to the degree to which the applicant describes its ability to organize residents and conduct educational workshops or describe how it will obtain such experience. This criterion will be measured by previous experience and success in outreach, recruitment, counseling, organizational development, and training (* * * up to 20 points).

• *Preservation Experience.* The degree of knowledge, experience, and expertise the applicant can show that it has, or will obtain, with ELIHPA and/or LIHPRHA programs, to ensure compliance with relevant program requirements and to enable newly organized tenant groups to participate in these Preservation programs. This criterion will be measured by previous experience (* * * up to 20 points).

• *Management Capacity.* The extent to which the applicant can ensure through its organization and management plans that the activity for which it applied will be well-managed; carried out in a timely manner; and protected from waste, fraud, or other abuse of funds, based on past performance with similar programs (* * * up to 5 points).

• *Fiscal Responsibility.* The ability of the applicant or key staff to handle, manage, and account adequately for financial resources and to use acceptable financial control procedures, demonstrated through past performance of the applicant entity or key staff with Federal, State, or local funds, or an explanation of how such capability will be obtained (* * * up to 5 points).

(b) *Level of Resident Participation in the Organization.* Priority will be given to established resident-controlled groups and nonprofit community-based organizations that have a majority (51 percent or more) of Board participation by tenants in HUD-assisted project(s) (maximum points: 20). HUD will rate the applications on a scale that gives the highest number of points to organizations with the highest number of HUD-assisted tenants on the Board.

(c) *Need.* The degree of need for the proposed outreach and training programs to identify and organize tenants of eligible low-income housing, demonstrated by the number of eligible projects in the community (maximum points: 15). In measuring this criterion, HUD will consider the number of eligible projects in the area and the number of tenants that the applicant identifies that would benefit from the activity.

(d) *Program Quality and Feasibility.* The comprehensiveness of the proposed plan and the potential of the applicant for developing a successful and effective program (maximum points: 15). HUD will consider the extent to which the proposed program represents a sound, comprehensive, and responsive plan for developing outreach and training efforts; organizing tenants, and providing housing counseling. Program quality will be evaluated in terms of whether the proposed program activities meet the Outreach and Training program objective.

(2) *Preservation Activity Grants.* Under this category, the Department will give preference to eligible regional, State, and local intermediaries over national nonprofit organizations. Also, the Department will give priority to any applicant that shows its intention to initiate outreach and training and the organizational development of low-income tenants where no resident-

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controlled or community-based organization exists. Organizations such as community action, legal service, and fair housing counseling agencies must demonstrate that they have three or more years experience dealing with tenants and the capacity to undertake tenant organization. Regional, State, and local government agencies will be required to document their ability to implement the proposed activity on a regional level, and intermediaries that propose to undertake outreach and training and organizational development for tenants or carry out other proposed support activities on a national level must demonstrate their ability to accomplish such tasks.

(a) *Capacity* is the qualification or capabilities of the applicant to develop and implement: Successful and effective outreach and training and organizational development for tenants; and other Preservation support activities, as described in Section III of this NOFA (maximum points: 50).

• *Preservation Experience.* The degree of knowledge, experience, and expertise the applicant can show that it has, or will obtain, with ELIHPA and/or LIHPRHA programs, to ensure compliance with relevant program requirements and enable newly organized tenant groups to participate in these preservation programs. This criterion will be measured by previous experience (* * * up to 20 points).

• *Direct Experience.* The applicant or key staff must show that it has at least three years of experience in the area of work for which it is applying, or describe how it will obtain such experience. This criterion will be measured by previous experience and success in the applicable activity (* * * up to 20 points).

• *Management Capacity.* The extent to which the applicant can ensure through its organization and management plans that the activity for which it applied will be well-managed; carried out in a timely manner; and protected from waste, fraud, or other abuse of funds, based on past performance with similar programs (* * * up to 5 points).

• *Fiscal Responsibility.* The ability of the applicant or key staff to handle, manage, and account adequately for financial resources and to use acceptable financial control procedures, demonstrated through past performance of the applicant entity or key staff with Federal, State, or local funds, or an explanation of how such capability will be obtained (* * * up to 5 points).

(b) *Jurisdictional Needs.* This criteria will be based on the Department's determination of how well the applicant addresses specific unmet needs in the jurisdiction. This assessment will be based on the number of current preservation cases in the Multifamily Preservation Processing System (MPPS). The Department will also take into consideration the number of applications received from that jurisdiction. This assessment may include availability of Department-sponsored or other training for residents and other groups (maximum points: 20 points).

(c) *Program Quality and Feasibility.* The comprehensiveness of the proposed plan and the potential of the applicant for developing a successful and effective program (maximum points: 30). HUD will evaluate the extent to which the proposed program: represents a sound, comprehensive, and responsive plan for developing any of the activities described in Section III.F of this NOFA and meets the Preservation Activity Grant Program objective.

• *Commitment.* The extent of the applicant commitment and responsiveness to the needs and problems of the tenants (* * * up to 10 points).

• *Outreach, Recruitment, and Selection Activities.* The level, nature, and comprehensiveness of proposed outreach, recruitment (including specific steps to be taken to attract potential eligible participants who are unlikely to be aware of the program), and selection strategies, as measured by: (i) the extent to which the applicant has developed special outreach efforts to recruit eligible low-income tenants; and (ii) the extent to which the proposed participant selection system supports these efforts (* * * 20 points).

V. Grant Application Process

A. Application Packages

Upon request, Preservation Support Grant application packages are available from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone number: 1–800–955–2232. Please refer to FR–3613 when requesting an application package.

For other questions about the Preservation program, please contact the Preservation Division, Room 6284, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–2300, or the contact numbers at the beginning of this NOFA.

B. Deadline for Submission

Applications for Preservation Support Grants must be physically received by the Multifamily Preservation Division no later than 4:30 p.m. (EST), on August 15, 1994. No facsimiles will be accepted. Any application received after that time will not be accepted for processing and will be returned to the applicant. Any revisions made in accordance with Section IV.B(2) of this NOFA may be transmitted by facsimile; however, the original revision must be subsequently submitted by mail or in person.

C. Submission Requirements

An applicant must provide a completed application, including the following, as applicable:

(1) OMB Standard Forms 424 and 424B;

(2) Summary of proposed activities and jurisdiction;

(3) Information about the applicant, including its history, its staff and qualifications, and its experience;

(4) Summary of plan to carry out proposed activities;

(5) Evidence of tax-exempt status, if applicable;

(6) Certification that assistance provided under this NOFA will not be used to supplant or duplicate other resources for the proposed activities. For purposes of this paragraph, "other resources" means resources provided from any source other than under this NOFA;

(7) Other disclosures, certifications, and assurances (including Drug-Free Workplace certification), as required under the law and this NOFA;

(8) Certification that the applicant and any of its affiliates do not have, and will not seek, an ownership interest in any developments that are to be assisted with these funds; and

(9) Other information and materials as may be described in the application kit.

VI. Other Matters

Public Reporting Burden

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following provisions contain information collection requirements.

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
120		1		6		720

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures contained in this notice relate only to technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, this notice is not subject to review under the Executive Order 12612.

Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this notice, as those policies and programs related to family concerns.

Section 102 of the HUD Reform Act: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, for further information on these disclosure requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 of the Reform Act

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3537b). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be directed to the: Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients

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and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: 42 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

Dated: May 24, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–14344 Filed 6–13–94, 8:45 am]

BILLING CODE 4210–27–P

federal register

Tuesday
June 14, 1994

Part IV

Environmental Protection Agency

40 CFR Part 710

Partial Updating of TSCA Inventory Data Base; Production and Site Reports; Technical Amendment; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[OPPTS-62140; FRL-4869-7]

Partial Updating of TSCA Inventory Data Base; Production and Site Reports; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This document announces the 1994 reporting period for the Inventory Update Rule, and amends the rule to update the reporting address.

DATES: This document is effective June 14, 1994. The 1994 reporting period is from August 25, 1994 to December 23, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 12, 1986 (51 FR 21438), EPA promulgated a rule (40 CFR part 710, subpart B), referred to as the Inventory Update Rule (IUR), under the authority of section 8(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(a), requiring manufacturers and importers of certain chemical substances included on the TSCA Chemical Substance Inventory to report current data on the production volume, plant site, and site-limited status of the substances. After the initial reporting during 1986, recurring reporting is required every 4 years. A second reporting cycle took place in 1990. The third reporting period will be in 1994.

II. 1994 Reporting Period

The initial reporting period was August 25, 1986 to December 23, 1986. Reporting periods recur every 4 years from August 25 to December 23, so that the next reporting period is August 25, 1994 to December 23, 1994. Persons subject to the rule must submit the required information during this period.

III. Update of the Information

A. The TSCA Chemical Substance Inventory

As an aid to submitters reporting during 1986, EPA published a 1985 edition of the TSCA Chemical Substance Inventory. This publication, available from the Government Printing Office (GPO), superseded the 1979 edition and supplements prior to 1985. To aid reporters during 1990, EPA published a 1990 supplement to the 1985 edition. Copies of both the "TSCA Chemical Substance Inventory: 1985 Edition" and the "TSCA Chemical Substance Inventory: 1990 Supplement" may still be obtained by writing or calling: Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238. The 1990 Supplement costs $15.00 in the U.S., $18.75 outside the U.S., and should be ordered by its Document Control Code, S/N 055-000-00361-1. The 1985 Edition costs $161.00 ($201.00 outside the U.S.), and its Document Control Code is S/N 055-000-00254-1.

In support of the 1994 reporting, EPA is publishing a revised TSCA Chemical Substances Inventory in a set of floppy diskettes for use in a personal computer instead of the hard copy form. These diskettes will contain information for all nonconfidential chemical substances added to the TSCA Inventory data base before May 1, 1994. The types of information contained in the diskettes will be similar to that found in the computer tape form of the TSCA Inventory that EPA has been disseminating to the public biannually through the National Technical Information Service (NTIS). Specifically, each of the chemical substances included in the diskettes is identified by a Chemical Abstracts (CA) Index or Preferred Name, the corresponding Chemical Abstracts Service (CAS) Registry Number, molecular formula, and if applicable, the chemical definition and appropriate EPA special flags as found in the printed Inventory. The substances are sequenced in ascending order of the corresponding CAS Registry Numbers. The diskettes will not include chemical synonyms that are copyrighted by the Chemical Abstracts Service. Furthermore, generic names or EPA Accession Numbers for substances with confidential chemical identities will not be included.

The diskette version includes over 62,000 records and requires 12 megabytes of disk space for installation. Installation software that will automatically uncompress the file is included with the diskettes. However, users will have to furnish their own data base management software to perform searches. Both tapes and diskettes will be available for sale from: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4650 or (800) 553-NTIS. The diskettes cost $195.00 in the U.S., Canada, and Mexico, and $390.00 for all other addresses. The NTIS Order Number for the diskettes is PB94-501731GEI. The tapes cost $360.00 in the U.S., Canada, and Mexico, and $720.00 for all other addresses. The NTIS Order Number for the tapes is PB94-501749GEI.

B. Reporting Address and Instructions

40 CFR 710.39 is being amended to reflect new addresses and telephone numbers, as follows:

Reporting Packages Address: TSCA Hotline (7408), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, ATTN: Inventory Update Rule.

Mailing Address for Completed Forms: Document Control Officer (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: Inventory Update Rule.

EPA will automatically mail out a reporting package to those facilities that reported in 1990. This package will include the manual entitled "Instructions for Reporting for the Partial Updating of the TSCA Chemical Inventory Data Base," a new Form U, and a copy of the **Federal Register** Notice. If you did not report in 1990, but need to report in 1994, the reporting package will be available from the TSCA Hotline at the address referenced above. Additional reporting forms will also be available from the TSCA Hotline.

IV. Reporting Form

Section 710.39 requires submitters to report using EPA's Form U. In 1990, EPA made changes in the form to assist submitters in completing it and facilitate processing of the form; none of the changes resulted in substantive revisions to the reporting requirements of the rule. New printed forms will be made available for reporting during 1994. Neither the 1986 nor the 1990 form is acceptable for 1994 reporting.

A. Reporting Errors

Several types of reporting errors occurred frequently enough in the past to merit discussion. One of the most frequent type of errors concerns the submitter reported Dun & Bradstreet number. Numerous submitters reported numbers with extra or missing digits, numbers which belonged to their parent companies (rather than the Dun & Bradstreet number assigned to the plant site for which the submitter was

reporting), or no number at all. This problem required EPA to send a large number of requests to the submitters for correction of submitter error. To avoid this error, all submitters should verify the accuracy of the Dun & Bradstreet number they are reporting. Those plant sites without Dun & Bradstreet numbers may obtain them, free of charge, by calling their local Dun & Bradstreet office.

Reporting of substances that are not required to be reported is another common error. Polymers, inorganics, microorganisms, and naturally occurring chemical substances are generally excluded from the reporting requirements. This exclusion does not however apply if the chemical substance is the subject of a rule proposed or promulgated under section 4, 5(a)(2), 5(b)(4), or 6 of TSCA or is the subject of an order issued under section 5(e) or 5(f) of TSCA or is the subject of relief that has been granted under a civil action under section 5 or 7 of TSCA. See § 710.26. Hydrates of chemicals which are on the TSCA Inventory in the anhydrous form are not reportable; however, the corresponding anhydrous form is subject to the reporting requirements. Furthermore, substances that have been delisted from the TSCA Inventory should not be reported.

Another significant source of errors is the manner in which chemical identifying numbers and names are entered in the reporting forms. Several types of identifying numbers (e.g., Chemical Abstracts Service Registry Numbers, Premanufacture Notification Numbers, and Accession Numbers) are allowed for reporting. Confusion on the appropriate way to identify a chemical substance and report an identifier has created many problems in the past. Note that the correct format for any CAS Registry Number being reported is six digits, hyphen, two digits, hyphen, one digit, e.g., XXXXXX–XX–X. Leading zeros on the left may be omitted. If the chemical identifier is a CAS Registry Number (ID Code = C), then this format must be used.

If the chemical substance name extends beyond the space provided on the report line, do not continue the name on the following report line. Instead, truncate the name at the end of the line with a series of three dots (ellipsis) or continue the name on a separate sheet of paper. This avoids the insertion of a new reporting line without a production volume.

When reporting the production volume, report the amount to the nearest whole number. Do not include decimal points. Scientific notation is also unacceptable.

A large number of errors are made in plant site and technical contact information. Please make sure that the correct information goes in the correct box. One common mistake is the lack of a signature in the signature box. The Form U will be returned if the signature is missing. In addition, the signature must match the name of the person in the Name/Title Field.

Lastly, persons who export chemicals found on the TSCA Chemical Substance Inventory are reminded that they may have reporting obligations under this rule. Section 12(a) of TSCA provides that chemicals manufactured for export are subject to the requirements of TSCA section 8. Persons who manufacture a chemical substance on the TSCA Inventory solely for export, are considered a manufacturer and are subject to all IUR requirements of the rule.

B. Confidentiality Claims

Since 1990, EPA has allowed submitters to report both confidential and nonconfidential substances on the same form, and to indicate which substances on a form have confidential identities. However, note that a submitter may only claim the identity of a chemical substance as confidential if that substance is already included on the TSCA Inventory with a confidential chemical identity. Furthermore, no confidentiality claim for chemical identity will be accepted unless accompanied by a separate written substantiation for the individual chemical substance claimed as confidential, with detailed answers to the 11 questions prescribed in § 710.38 of the Inventory Update Rule. As provided in § 710.38(d), failure to provide the necessary substantiation at the time of filing may result in the chemical identity reported being made available to the public without further notice to the submitter.

V. Electronic Reporting

Section 710.32(b) provides that magnetic media submitted in response to the IUR must meet the EPA specifications, as described in the "Instructions for Reporting for the Partial Updating of the TSCA Chemical Inventory Data Base" available from the TSCA Hotline. In the 1986 rule, submitters were to report by paper or computer tape. Because of the ready availability of microcomputers, in 1990 EPA modified this section of the Instructions to allow reporting using floppy diskettes. The major change in 1994 is that magnetic tape submissions will not be accepted. For the 1994 reporting period, ASCII diskette submissions from IBM and compatible personal computers are permissible. EPA's specifications for the format and detailed instructions for electronic reporting can be found in "Instructions for Reporting for the 1994 Partial Updating of the TSCA Chemical Inventory Data Base." Because of TSCA security considerations, reporting via telecommunication lines is not accepted.

The 1986 rule required that chemical substances whose identities are confidential be reported by hard copy means only. This was amended in 1990 to allow reporting of such substances via magnetic media. In the 1994 reporting period, chemical substances whose identities are confidential may again be reported via magnetic media

VI. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned control number OMB No. 2070–0070.

This collection of information has an estimated reporting/recordkeeping burden averaging 1.2 hours per chemical report per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information

Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to Chief, Information Policy Branch (Mail Code 2136); U.S. Environmental Protection Agency; 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 710

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 6, 1994.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 710 is amended as follows:

PART 710—[AMENDED]

1. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. Section 710.39 is revised to read as follows:

§ 710.39 Instructions for submitting information.

(a) All persons submitting written information in response to the requirements of this subpart must use original copies of Form U available from EPA at the address set forth in paragraph (b) of this section.

(b) Complete instructions for completing the reporting form and preparing a magnetic media report are given in the EPA publication entitled "Instructions for Reporting for 1994 Partial Updating of the TSCA Chemical Inventory Data Base." Reporting forms and instruction booklets may be obtained from the following address: TSCA Hotline (7408), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: Inventory Update Rule, (202) 554–1404.

(c) Completed reporting forms and magnetic media must be submitted to: Document Control Officer (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: Inventory Update Rule.

[FR Doc. 94–14415 Filed 6–13–94; 8:45 am]

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federal register

Tuesday
June 14, 1994

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 810
Medical Device Recall Authority; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 810

[Docket No. 93N–0260]

Medical Device Recall Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing a proposed regulation to establish procedures to implement the new medical device recall authority provided in the Safe Medical Devices Act of 1990 (the SMDA). This new statutory authority protects the public health by permitting FDA to remove dangerous devices from the market promptly. This authority adds to other remedies already available to the agency, including notification, repair, replacement, and refund.

DATES: Written comments by September 12, 1994. FDA intends that any final rule that may issue based on this proposal become effective July 14, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John H. Samalik, Center for Devices and Radiological Health (HFZ–121), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850. 301–594–4595.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative History

On November 28, 1990, the SMDA, which amended the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), became law. The purpose of the new law was to improve the Medical Device Amendments of 1976 (Pub. L. 94–295) (the 1976 amendments), which had amended the act by establishing a comprehensive framework to regulate medical devices intended for human use in order to ensure their safety and effectiveness. The SMDA includes provisions designed to expand and strengthen FDA's authority to ensure that devices entering the market are safe and effective, to learn quickly about serious problems associated with medical devices, and to remove dangerous and defective devices from the market promptly.

The 1976 amendments provided FDA with various premarket controls over medical devices (e.g., classification, premarket notification, and premarket approval). The 1976 amendments also broadened the postmarket controls available to FDA with respect to medical devices, giving FDA the authority to require patient notification, repair, replacement or refund; medical device reporting and recordkeeping; compliance with current good manufacturing practices; and restrictions on the distribution of certain devices.

In 1990, Congress concluded, based on hearings and investigations, that the regulatory scheme established in the 1976 amendments was inadequate to protect the public health (H. Rept. 808, 101st Cong., 2d sess. 13–14 (1990)). The SMDA was enacted to enhance that regulatory scheme. Thus, the legislative intent of the SMDA in general was to streamline and strengthen the premarket and postmarket controls available to FDA with respect to medical devices.

In drafting the SMDA, both the House of Representatives and the Senate focused considerable attention on the implementation and enforcement of section 518 of the act (21 U.S.C. 360h) since its enactment in the 1976 amendments. This section, added by the 1976 amendments and amended by the Medical Device Amendments of 1992 (Pub. L. 102–300), authorizes FDA to require notification of a risk to health presented by a medical device, or to require repair, replacement, or refund of the purchase price of a device. The remedies provided in sections 518(a), (b), and (c) of the act are available where the agency has determined that the device presents an unreasonable risk of substantial harm to the public health.

The House Report accompanying H.R. 3095 states that:

> [E]ven when the FDA has discovered a serious health hazard associated with a medical device, the Agency faces a unique barrier to enforcing important administrative remedies. Unlike other health and safety agencies, FDA may not take administrative action to order a defective device recalled unless it can show that the device did not meet the state-of-the-art at the time it was designed and manufactured.

(H. Rept. 808, 101st Cong., 2d sess. 14 (1990).

Section 8 of the SMDA amended section 518 of the act by adding a new subsection (e) entitled "Recall Authority." The mandatory recall authority in section 518(e) of the act complements existing provisions in sections 518(a), (b), and (c) of the act. Section 518(e) provides that, if FDA finds that there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, FDA may order the appropriate person(s) to immediately cease distribution of the device, to immediately notify health professionals and device user facilities of the order, and to instruct such professionals and facilities to cease use of the device. Section 518(e) of the act also states that, after providing an opportunity for an informal hearing, FDA may amend the cease distribution and notification order to require a recall of the device. This new authority protects the public health by permitting FDA to ensure the prompt removal of dangerous and defective devices from the market.

Congress explained that "a 'reasonable probability' of an event is where it is more likely than not that the event will occur," and that FDA "will have considerable discretion in determining whether it is more likely than not that the continued distribution of a device would cause serious, adverse health consequences or death." (S. Rept. 513, 101st Cong., 2d sess. 19 (1990)).

The legislative history also makes clear that the term "serious, adverse health consequences" is intended to mean:

> Any significant adverse experience attributable to a device, including those which may be either life threatening, or involving permanent or long-term injuries, but excluding those non-life-threatening injuries which are temporary and reasonably reversible. In other words, injuries attributable to a device that are not significant in nature and are treatable and reversible by standard medical techniques, proximate in time to the injury, are not included within the term's definition.

Section 518(e) of the act is self-executing and does not require rulemaking before the authority granted may be exercised. FDA is issuing this proposed rule, however, pursuant to its authority to promulgate regulations under section 701(a) of the act (21 U.S.C. 371(a)), to establish publicly the procedures that will be followed when FDA exercises its recall authority. FDA has already found the new authority in section 518(e) of the act useful in securing the prompt removal from the market of several devices that presented a risk to the public health under the statutory standard. The experience gained to date has been useful to the agency in developing the proposed rule

II. Statutory Requirements

Section 518(e) of the act sets out a three-step procedure for the issuance of a mandatory medical device recall order. First, after finding that there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, FDA may issue a cease

distribution and notification order requiring the appropriate person to immediately: (1) Cease distribution of the device, (2) notify health professionals and device user facilities of the order, and (3) instruct these professionals and facilities to cease use of the device.

Second, FDA will provide the person named in the cease distribution and notification order with the opportunity for an informal hearing on whether the order should be modified, vacated, or amended to require a mandatory recall of the device.

Third, after providing the opportunity for an informal hearing, FDA may issue a mandatory recall order if the agency determines that such an order is necessary.

As stated above, FDA will provide the person named in a cease distribution and notification order with an opportunity for an informal hearing. The hearing is to be held not later than 10 days after the date of issuance of the order. If a hearing is requested, the device still may not be distributed and health professionals and device user facilities must still be notified.

The language of the statute makes clear that there is to be only one opportunity for a hearing, and that the purposes of any hearing that is held are both to address the actions required by the cease distribution and notification order *and* to determine whether the order should be amended to require a recall. The legislative history of section 518(e) of the act, as reflected in the conference report, also clearly demonstrates congressional intent that there be one, and only one, opportunity for a hearing following the cease distribution order, and that it is at this hearing that the person named in the order may present data and information showing why the order should not be amended to require a recall:

> The conference agreement requires [FDA], after making an appropriate finding, to issue an initial order providing for the immediate cessation of distribution and use of the device, with an informal hearing to follow within 10 days to determine whether to vacate the order *or* whether to amend the order to require a recall. [Emphasis added.] (Conf. Rept. 959, 101st Cong., 2d sess. 25 (1990).

Congress intended that the informal hearing "would be analogous to the judicial hearing that is held prior to granting a temporary restraining order. Where circumstances require expedited action, a motion for a temporary restraining order can result in notice, a hearing and a judicial decision in a single day." (H. Rept. 808, 101st Cong., 2d sess. 29 (1990)).

III. Scope of the Proposed Regulation

The proposed regulation implementing section 518(e) of the act, if made final, would be set out in new 21 CFR Part 810—Medical Device Recall Authority. The regulation would establish the procedures that FDA would follow in conducting medical device recalls under section 518(e) of the act. FDA believes that the proposed regulation realizes congressional intent to allow for prompt action by the agency to protect the public health, while ensuring the rights of persons subject to a cease distribution and notification order or mandatory recall order. (S. Rept. 513, 101st Cong., 2d sess. 20 (1990)).

IV. Definition of Terms, Computing of Time, and Service of Orders

Proposed § 810.2 defines certain terms used in the proposed regulation. To ensure consistency in application, to the extent practicable, the proposed definitions of these terms are similar to definitions used in FDA's recall guidelines (part 7; subpart C (21 CFR part 7, subpart C)) or in proposed regulations to implement other provisions of the SMDA. Thus, the definitions of "cease distribution and notification strategy," "mandatory recall strategy," "consignee," and "correction," are based on definitions in § 7.3. The definition of "device user facility" is the same as that used in the medical device reporting tentative final rule (56 FR 60024, November 26, 1991).

The definitions of "reasonable probability" and "serious, adverse health consequences" are consistent with congressional use of these terms in the legislative history. (S. Rept. 513, 101st Cong., 2d sess. 19 (1990)).

Proposed § 810.3 provides that, in computing any period of time prescribed or allowed by the proposed regulation, the following rules would apply. First, the day of the act or event from which the designated period of time begins to run would not be included: "Day 1" would be the day *after* the act or event. Second, all calendar days would be included in the computation, including the last day of the period, unless the last day is a Saturday, Sunday, or Federal legal holiday, or, when the act to be done is the filing of a document with the agency, a day on which weather or other conditions have made the agency office to which such a filing is to be made inaccessible. In those cases, the period would run until the end of the next day which is not one of the days described above. For example, if a person named in a cease distribution and notification order receives the order on Friday, November 1, and a request for an informal hearing is required to be submitted to FDA within 3 days, the request would need to be submitted to FDA by the close of business on Monday, November 4. If the FDA office to which the request is to be submitted were closed on Monday, November 4, because of weather conditions, the request would be required to be submitted by close of business on Tuesday, November 5, or the next day on which the FDA office was open for business.

V. Procedures

Proposed § 810.10(d) describes certain information that FDA may require the person named in a cease distribution and notification order to submit to the agency. This information is similar to the information that firms which initiate voluntary recalls are now asked to submit to FDA under § 7.46. The reason for requiring submission of this information is to enable FDA to monitor compliance with the cease distribution and notification order and to determine whether additional action is necessary.

Under section 518(e)(1), FDA will provide the person named in a cease distribution and notification order with an opportunity for an informal hearing, to be held not later than 10 days after the date of issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall. The term "informal hearing" is defined in section 201(y) of the act (21 U.S.C. 321(y)). In the **Federal Register** of August 20, 1976 (41 FR 35282 at 35289), FDA interpreted the "informal hearing" provisions of section 201(y) of the act as the "functional equivalent of FDA's regulatory hearing" described in 21 CFR part 16.

Proposed § 810.11(a)(1) provides that the person named in a cease distribution and notification order may, within the timeframe specified in the order, submit a written request to FDA for a regulatory hearing. The request must be addressed to the agency employee identified in the order. Ordinarily, FDA will require that the person named in the cease distribution and notification order submit the hearing request within 3 days of receipt of the order. Where warranted, however, FDA may require that the hearing request be submitted in less than 3 days, possibly even on the same day on which the person receives the order. These procedures reflect congressional intent that the hearing be analogous to a hearing on a temporary restraining order, where notice, a hearing, and a judicial decision may all

occur in a single day. (H. Rept. 808, 101st Cong., 2d sess. 29 (1990)).

Under 21 CFR 16.26(b), after the hearing commences, the presiding officer may issue a summary decision on any issue in the hearing if he or she determines that there is no genuine and substantial issue of fact respecting that issue.

Although not required by section 518(e) of the act, FDA is proposing an alternative review process for persons who do not want to make an appearance before the agency, but who do wish to challenge a cease distribution and notification order. Accordingly, under proposed § 810.12(a), the person named in a cease distribution and notification order may, in lieu of requesting a regulatory hearing under proposed § 810.11, submit a written request to FDA asking that the order be modified or vacated. The written request must be addressed to the agency employee identified in the order and must be submitted within the timeframe specified in the order.

FDA recognizes that, in the time immediately following the issuance of a cease distribution and notification order, sufficient information may not be available to the agency to enable it to determine whether the actions being taken by the person named in the order are adequate to protect the public health. For example, where the person named in the order elects to recall the device voluntarily, it is possible that FDA may determine later that the voluntary recall is inadequate to protect individuals from the risks associated with use of the device. Thus, FDA may find it necessary to amend the cease distribution and notification order to include a mandatory recall even where, at an earlier time, voluntary efforts appeared to be adequate.

If FDA initially determines that a cease distribution and notification order need not be amended to require a mandatory recall, but subsequently finds that the person named in the order has failed to comply with the requirements of the order, FDA may amend the order by issuing a mandatory recall order under proposed § 810.13.

VI. Enforcement Provisions

The failure to comply with a cease distribution and notification order issued under proposed § 810.10 or a mandatory recall order issued under proposed § 810.13 renders a device misbranded under section 502(t)(1) of the act (21 U.S.C. 352(t)(1)). A misbranded device is subject to seizure under section 304 of the act (21 U.S.C. 334) and its introduction into interstate commerce is a prohibited act under sections 301(a), (b), (c), (g), and (k) of the act (21 U.S.C. 331(a), (b), (c), (g), (k)). Any person who fails or refuses to comply with any requirement of a cease distribution and notification order or a mandatory recall order has committed a prohibited act under section 301(q) of the act.

A firm in violation of section 301 of the act may be enjoined under section 302 of the act (21 U.S.C. 332) and any person responsible for the violation is subject to criminal penalties under section 303(a) of the act (21 U.S.C. 333(a)). In addition, any person who violates a requirement of the act with respect to a device is also subject to civil penalties under section 303(f) of the act.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (e)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency believes that only a small number of firms will be affected by this proposal. The recall authority would be invoked by the Center for Devices and Radiological Health (CDRH) in those instances that match very closely the definition of a class I recall; where there is a strong likelihood that the use of or exposure to a device would cause serious adverse health consequences or death. Thus, the agency believes that this new authority will not be used frequently. While both the number of class I recalls per year, and the costs associated with those recalls vary quite widely, the greatest number of such recalls in 1 year to date has been 36, and the average over the last 5 fiscal years has been 19 per year. Thus, the agency expects that no more than one or two recalls per year would be ordered that would not have occurred without this regulation. Although the agency does not have a cost figure for a recall, it is likely that the cost would be under $2 million. Because of these reasons, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

An assessment of the economic impact of any final rule based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

IX. Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Ch. 35). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: "Recall Authority" is intended to protect the public health by permitting FDA to ensure the prompt removal of dangerous and defective devices from the market under Pub. L. 101–629.

Description: FDA is publishing a proposed regulation to establish procedures to implement the new medical device recall authority provided in the SMDA of 1990. In accordance with that authority, FDA may issue an order requiring appropriate persons to cease distribution of a medical device and to notify health professionals and device user facilities of the order and instruct them to cease use of the device, if the agency finds that there is a reasonable probability that the device would cause serious adverse health consequences or death. After providing the person subject to the order with an opportunity for an informal hearing, FDA may amend the order to require a mandatory

recall of the device. This authority is in addition to other remedies already available to the agency, including notification, repair, replacement, refund, and reimbursement.

ESTIMATED ANNUAL REPORTING BURDEN

Section	Annual Number of Responses	Average Burden Per Response (hours)	Total Annual Burden (hours)
§ 810.13(b)(3)	2	480	960

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals wishing to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burden, should direct comments to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, D.C. 20503, Attn: Desk Officer for FDA.

X. Request for Comments

Interested persons may, on or before September 12, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 810

Administrative practice and procedure, Cease distribution and notification orders, Mandatory recall orders, Medical devices, Recordkeeping and reporting requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that new part 810 be added to read as follows:

PART 810—MEDICAL DEVICE RECALL AUTHORITY

Subpart A—General Provisions

Sec.

810.1 Scope.
810.2 Definitions.
810.3 Computation of time.
810.4 Service of orders.

Subpart B—Mandatory Medical Device Recall Procedures

810.10 Cease distribution and notification order.
810.11 Regulatory hearing.
810.12 Written request for review of cease distribution and notification order.
810.13 Mandatory recall order.
810.14 Cease distribution and notification or mandatory recall strategy.
810.15 Communications concerning a cease distribution and notification or mandatory recall order.
810.16 Cease distribution and notification or mandatory recall order status reports.
810.17 Termination of a cease distribution and notification or mandatory recall order.
810.18 Public notice.

Authority: Secs. 201, 301, 302, 303, 304, 501, 502, 518, 701, 705 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 332, 333, 334, 351, 352, 360h, 371, 375).

Subpart A—General Provisions

§ 810.1 Scope.

Part 810 describes the procedures that the Food and Drug Administration will follow in exercising its medical device recall authority under section 518(e) of the Federal Food, Drug, and Cosmetic Act.

§ 810.2 Definitions.

As used in this part:

(a) *Act* means the Federal Food, Drug, and Cosmetic Act.

(b) *Agency* or *FDA* means the Food and Drug Administration.

(c) *Cease distribution and notification strategy* or *mandatory recall strategy* means a planned, specific course of action to be taken by the person named in a cease distribution and notification order or in a mandatory recall order, which addresses the extent of the notification or recall, the need for public warnings, and the extent of effectiveness checks to be conducted.

(d) *Consignee* means any person or firm that has received, purchased, or used a device that is subject to a cease distribution and notification order or a mandatory recall order.

(e) *Correction* means repair, modification, adjustment, relabeling, or inspection (including patient monitoring) of a device, without its physical removal from its point of use to some other location.

(f) *Device user facility* means a hospital, ambulatory surgical facility, nursing home, or outpatient treatment or diagnostic facility that is not a physician's office.

(g) *Health professionals* means practitioners, including physicians, nurses, pharmacists, dentists, respiratory therapists, physical therapists, technologists, or any other practitioners or allied health professionals that have a role in using a device for human use.

(h) *Reasonable probability* means that it is more likely than not that an event will occur.

(i) *Serious, adverse health consequence* means any significant adverse experience, including those which may be either life threatening or involve permanent or long-range injuries, but excluding non-life-threatening injuries that are temporary and reasonably reversible. Injuries attributable to a device that are treatable and reversible by standard medical techniques, proximate in time to the injury, are not included within the term's definition.

(j) *Recall* means the correction or removal of a device for human use where FDA finds that there is a reasonable probability that the device would cause serious, adverse health consequences or death.

(k) *Removal* means the physical removal of a device from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection.

§ 810.3 Computation of time.

In computing any period of time prescribed or allowed by this part, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or Federal legal holiday, or, when the act to be done is the filing of a document with the agency, a day on which weather or other conditions have made the agency office to which such a filing is to be made inaccessible, in which event the period

runs until the end of the next day which is not one of the aforementioned days.

§ 810.4 Service of orders.

Orders issued under this part will be served in person by a designated employee of FDA, or by registered mail, to the named person or designated agent at the named person's or designated agent's last known address in FDA's records.

Subpart B—Mandatory Medical Device Recall Procedures

§ 810.10 Cease distribution and notification order.

(a) If FDA finds that there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, the agency may issue a cease distribution and notification order requiring the person named in the order to immediately:

(1) Cease distribution of the device;

(2) Notify health professionals and device user facilities of the order; and

(3) Instruct these professionals and facilities to cease use of the device.

(b) FDA will include the following information in the order:

(1) The requirements of the order relating to cessation of distribution and notification of health professionals and device user facilities.

(2) Pertinent descriptive information to enable accurate and immediate identification of the device subject to the order, including, where known:

(i) The brand name of the device;

(ii) The common name, classification name, or usual name of the device;

(iii) The model, catalog, or product code numbers of the device; and (iv) The manufacturing lot numbers or serial numbers of the device or other identification numbers.

(3) A statement of the grounds for FDA's finding that there is a reasonable probability that the device would cause serious, adverse health consequences or death.

(c) FDA may also include in the order a model letter for notifying health professionals and device user facilities of the order and a requirement that notification of health professionals and device user facilities begin and be completed within a specified timeframe.

(d) FDA may also require that the person named in the cease distribution and notification order submit any or all of the following information to the agency by a time specified in the order:

(1) The total number of units of the device produced and distributed and the timespans of the production and distribution.

(2) The total number of units of the device estimated to be in distribution channels.

(3) The total number of units of the device distributed to health professionals and user facilities.

(4) The total number of units of the device in the hands of home users.

(5) Distribution information, including the names and addresses of all direct consignees.

(6) A copy of any written communication used by the person named in the order to notify health professionals and user facilities.

(7) The proposed strategy for complying with the cease distribution and notification order.

(8) Progress reports to be made at specified intervals, showing the names and addresses of health professionals and user facilities that have been notified, names of specific individuals contacted within user facilities, and the dates and times of such contacts.

(9) The name and address of any health professional or user facility that refuses to comply with the notification instructions.

(10) The name, address, and telephone number of the person who should be contacted concerning implementation of the order.

(e) FDA will provide the person named in a cease distribution and notification order with an opportunity for a regulatory hearing on the actions required by the cease distribution and notification order and on whether the order should be modified, vacated, or amended to require a mandatory recall of the device.

(f) FDA will also provide the person named in the cease distribution and notification order with an opportunity, in lieu of a regulatory hearing, to submit a written request to FDA asking that the order be modified or vacated.

(g) FDA will include in the cease distribution and notification order the name, address, and telephone number of an agency employee to whom any request for a regulatory hearing or agency review is to be addressed.

§ 810.11 Regulatory hearing.

(a) Any request for a regulatory hearing shall be submitted in writing to the agency employee identified in the order within the timeframe specified by FDA.

(b) The regulatory hearing shall be limited to:

(1) Reviewing the actions required by the cease distribution and notification order and determining whether FDA should affirm, modify, or vacate the order; and

(2) Determining whether FDA should amend the cease distribution and notification order to require a recall of the device that was the subject of the order.

(c) Any hearing requested by the person named in a cease distribution and notification order will be conducted in accordance with the procedures set out in section 201(y) of the act (21 U.S.C. 321(y)) and part 16 of this chapter, except that the order issued under § 810.10, rather than a notice under § 16.22(a) of this chapter, provides the notice of opportunity for a hearing and is part of the administrative record of the regulatory hearing under § 16.80(a) of this chapter. As provided in § 16.60(h) of this chapter, if FDA believes that immediate action is necessary to protect the public health, the agency may waive, suspend, or modify any procedure in part 16 pursuant to § 10.19 of this chapter.

(d) If the person named in the cease distribution and notification order does not request a regulatory hearing within the timeframe specified by FDA in the cease distribution and notification order, that person will be deemed to have waived his or her right to a hearing.

(e) The presiding officer will hold any regulatory hearing requested under paragraph (a) of this section not later than 10 days after the date of issuance of the cease distribution and notification order, unless FDA and the person named in the order agree to a later date.

§ 810.12 Written request for review of cease distribution and notification order.

(a) In lieu of requesting a regulatory hearing under § 810.11, the person named in a cease distribution and notification order may submit a written request to FDA asking that the order be modified or vacated. Such person shall address the written request to the agency employee identified in the order and shall submit the request within the timeframe specified in the order.

(b) A written request for review of a cease distribution and notification order shall identify each ground upon which the requestor relies in asking that the order be modified or vacated.

(c) The agency official who issued the cease distribution and notification order shall provide the requestor written notification of his or her decision to affirm, modify, or vacate the order within a reasonable time after completing the review of the request. The agency official will include in this written notification:

(1) A statement of the grounds for the decision to affirm, modify, or vacate the order; and

(2) The requirements of any modified order.

§ 810.13 Mandatory recall order.

(a) If the person named in a cease distribution and notification order does not request a regulatory hearing or submit a request for agency review of the order, or, if after conducting a regulatory hearing or completing agency review of a cease distribution and notification order pursuant to § 810.11 or § 810.12, FDA determines that the order should be amended to require a recall of the device with respect to which the order was issued, FDA shall amend the order to require such a recall.

(b) In a mandatory recall order, FDA may:

(1) Specify that the recall is to extend to the wholesale, retail, or user level.

(2) Specify a timetable in accordance with which the recall is to occur and be completed.

(3) Require the person named in the order to submit to the agency a proposed recall strategy, as described in § 810.14, and periodic reports describing the progress of the mandatory recall, as described in § 810.16.

(4) Provide the person named in the order with a model recall notification letter.

(c) FDA will not include in a mandatory recall order a requirement for:

(1) Recall of a device from individuals; or

(2) Recall of a device from device user facilities, if FDA determines that the risk of recalling the device from the facilities presents a greater health risk than the health risk of not recalling the device from use, unless the device can be replaced immediately by the recalling firm with an equivalent device (which may be a competitor's product).

(d) FDA will include in a mandatory recall order provisions for notice to individuals subject to the risks associated with use of the device. If a significant number of such individuals cannot be identified, FDA may notify such individuals pursuant to section 705(b) of the act.

(e) If FDA initially determines that a cease distribution and notification order need not be amended to require a mandatory recall, but subsequently finds that the person named in the order has failed to comply with the requirements of the order, or that the actions taken are not adequate to protect individuals from the risks associated with use of the device, FDA may amend the order to require a recall of the device.

§ 810.14 Cease distribution and notification or mandatory recall strategy.

(a) *General.* The person named in a cease distribution and notification order issued under § 810.10, or a mandatory recall order issued under § 810.13, shall develop a strategy for complying with the order that is appropriate for the individual circumstances and that takes into account the following factors:

(1) The nature of the serious, adverse health consequences related to the device;

(2) The ease of identifying the device;

(3) The extent to which the risk presented by the device is obvious to a health professional or user facility;

(4) The extent to which the device is used by health professionals and user facilities; and

(5) The extent to which efforts to notify health professionals and user facilities and to instruct such professionals and facilities to cease use of the device have been successful.

(6) The person named in the order shall submit a copy of the proposed strategy to the agency within the timeframe specified in the order.

(7) The agency will review the proposed strategy and make any changes to the strategy it deems necessary. The person named in the order shall act in accordance with a strategy determined by FDA to be appropriate, but shall initiate the strategy as soon as submitted to the agency unless notified not to do so.

(b) *Elements of the strategy.* A proposed strategy shall meet all of the following requirements:

(1)(i) The person named in the order shall specify the level in the chain of distribution to which the cease distribution and notification order or mandatory recall order is to extend as follows:

(A) Consumer or user level, e.g., health professional, consignee, or user facility level, including any intermediate wholesale or retail level; or

(B) Retail level, to the level immediately preceding the consumer or user level, and including any intermediate level; or

(C) Wholesale level.

(ii) The person named in the order shall not recall a device from individuals; and

(iii) The person named in the order shall not recall a device from user facilities if FDA notifies the person not to do so because of a risk determination under § 810.13(c)(2).

(2) The person named in a recall order shall ensure that the strategy provides for notice to individuals subject to the risks associated with use of the recalled device. The notice may be provided through the individual's health professional if FDA determines that such consultation is appropriate and would be the most effective method of notifying patients.

(3) Effectiveness checks by the firm are required to verify that all health professionals, user facilities, consignees, and individuals, as appropriate, have been notified of the cease distribution and notification order or mandatory recall order and have taken appropriate action. The person named in the cease distribution and notification order or the mandatory recall order shall specify in the strategy the method(s) to be used, i.e., personal visits, telephone calls, letters, or a combination thereof, and the level of the effectiveness checks that will be conducted, i.e., the percent of the total number of health professionals, user facilities, consignees, and individuals, as appropriate, to be contacted. The agency may conduct additional (FDA) audit checks where appropriate.

§ 810.15 Communications concerning a cease distribution and notification or mandatory recall order.

(a) *General.* The person named in a cease distribution and notification order issued under § 810.10 or a mandatory recall order issued under § 810.13 is responsible for promptly notifying each health professional, user facility, consignee, or individual, as appropriate, of the order. The purpose of the communication is to convey:

(1) That FDA has found that there is a reasonable probability that use of the device would cause a serious, adverse health consequence or death;

(2) That the person named in the order has ceased distribution of the device;

(3) That health professionals and user facilities must cease use of the device immediately;

(4) Where appropriate, that the device is subject to a mandatory recall order; and

(5) Specific instructions on what should be done with the device.

(b) *Implementation.* The person named in a cease distribution and notification order or a mandatory recall order shall notify the appropriate persons(s) of the order by written communication, e.g., telegram, mailgram, fax, or first class letter. The written communication and any envelope in which it is sent or enclosed shall be conspicuously marked, preferably in bold red ink: "URGENT—[DEVICE CEASE DISTRIBUTION AND NOTIFICATION ORDER] or [MANDATORY DEVICE RECALL ORDER]." Telephone calls or other

personal contacts may be made in addition to, but not as a substitute for, the written communication, and shall be documented in an appropriate manner.

(c) *Contents.* The person named in the order shall ensure that the notice of a cease distribution and notification order or mandatory recall order:

(1) Is brief and to the point;

(2) Identifies clearly the device, size, lot number(s), code(s), or serial number(s) and any other pertinent descriptive information to facilitate accurate and immediate identification of the device;

(3) Explains concisely the serious, adverse health consequences that may occur if use of the device were continued;

(4) Provides specific instructions on what should be done with the device; and

(5) Provides a ready means for the recipient of the communication to confirm receipt of the communication and to notify the person named in the order of the actions taken in response to the communication. Such means may include, but are not limited to, the return of a postage-paid, self-addressed post card or a toll-free call to the person named in the order.

(6) Does not contain irrelevant qualifications, promotional materials, or any other statement that may detract from the message.

(d) *Follow-up communications.* The person named in the cease distribution and notification order or mandatory recall order shall ensure that follow-up communications are sent to all who fail to respond to the initial communication.

(e) *Responsibility of recipient.* Health professionals, user facilities and consignees that receive a communication concerning a cease distribution and notification order or a mandatory recall order should immediately follow the instructions set forth in the communication. Where appropriate, these recipients should immediately notify their consignees of the order in accordance with paragraphs (b) and (c) of this section.

§ 810.16 Cease distribution and notification or mandatory recall order status reports.

(a) The person named in a cease distribution and notification order issued under § 810.10, or a mandatory recall order issued under § 810.13, shall submit periodic status reports to FDA to enable the agency to assess the person's progress in complying with the order. The frequency of such reports and the agency official to whom such reports shall be submitted will be specified in the order.

(b) Unless otherwise specified in the order, each status report shall contain the following information:

(1) The number and type of health professionals, user facilities, consignees, or individuals notified of the order and the date and method of notification;

(2) The number and type of health professionals, user facilities, consignees, or individuals that have responded to the communication and the quantity of the device on hand at these locations at the time the communication was received;

(3) The number and type of health professionals, user facilities, consignees, or individuals that have not responded to the communication;

(4) The number of devices returned or corrected by each health professional, user facility, consignee, or individual contacted, and the quantity of products accounted for;

(5) The number and results of effectiveness checks that have been made; and

(6) Estimated time-frames for completion of the requirements of the cease distribution and notification order or mandatory recall order.

(c) Submission of status reports will be discontinued when the agency terminates a cease distribution and notification order or recall order in accordance with § 810.17.

§ 810.17 Termination of a cease distribution and notification or mandatory recall order.

(a) The person named in a cease distribution and notification order issued under § 810.10 or a mandatory recall order issued under § 810.13 may request termination of the order by submitting a written request to FDA. The person submitting a request shall certify that he or she has complied in full with all of the requirements of the order and shall include a copy of the most current status report submitted to the agency under § 810.16. A request for termination of a recall order shall include a description of the disposition of the recalled device.

(b) FDA may terminate a cease distribution and notification order issued under § 810.10 or a mandatory recall order issued under § 810.13 when the agency determines that the person named in the order:

(1) Has taken all reasonable efforts to ensure that all health professionals, user facilities, consignees, and, where appropriate, individuals have been notified of the cease distribution and notification order and have complied with the instructions to cease use of the device; or

(2) Has removed the device from the market or has corrected the device so that use of the device would not cause serious, adverse health consequences or death.

(c) FDA will provide written notification to the person named in the order when a cease distribution and notification order or a mandatory recall order has been terminated or when a request for termination has been denied.

§ 810.18 Public notice.

The agency will make available to the public in the weekly FDA Enforcement Report a descriptive listing of each new mandatory recall issued under § 810.13. The agency will delay public notification of orders where the agency determines that such notification may cause unnecessary and harmful anxiety in individuals and that initial consultation between individuals and their health professionals is essential.

Dated: June 7, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–14444 Filed 6–13–94; 8:45 am]

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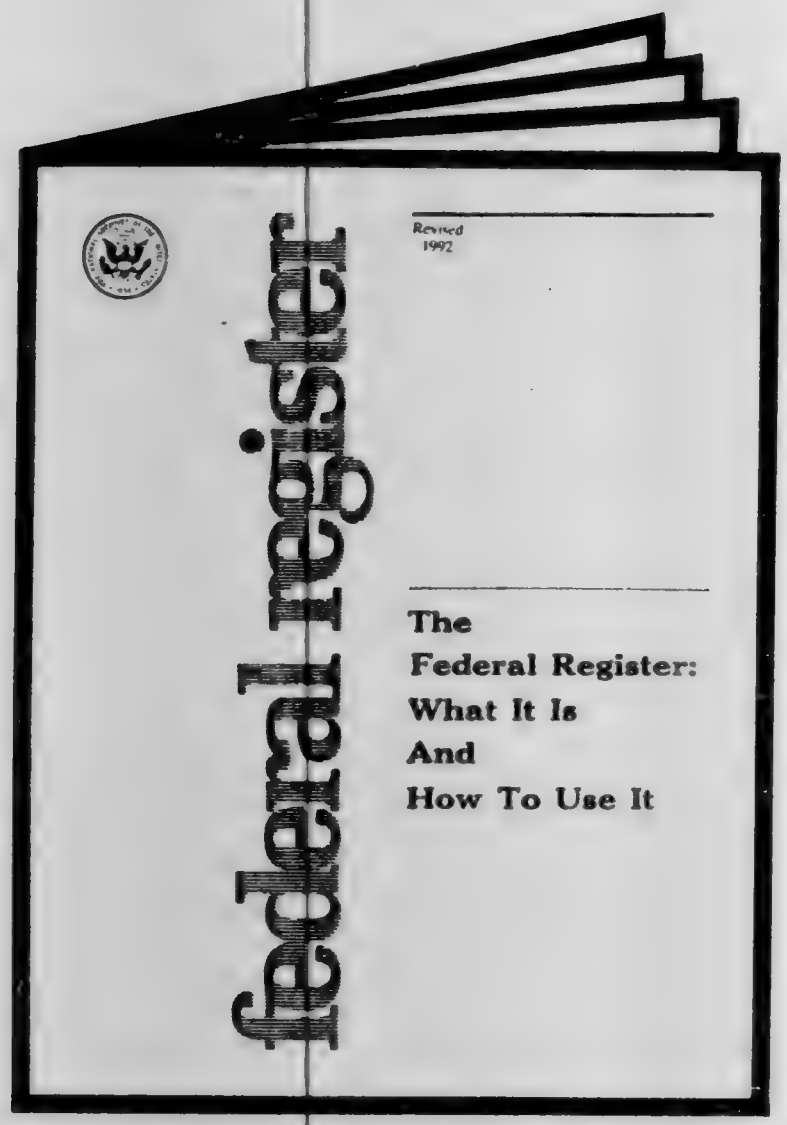
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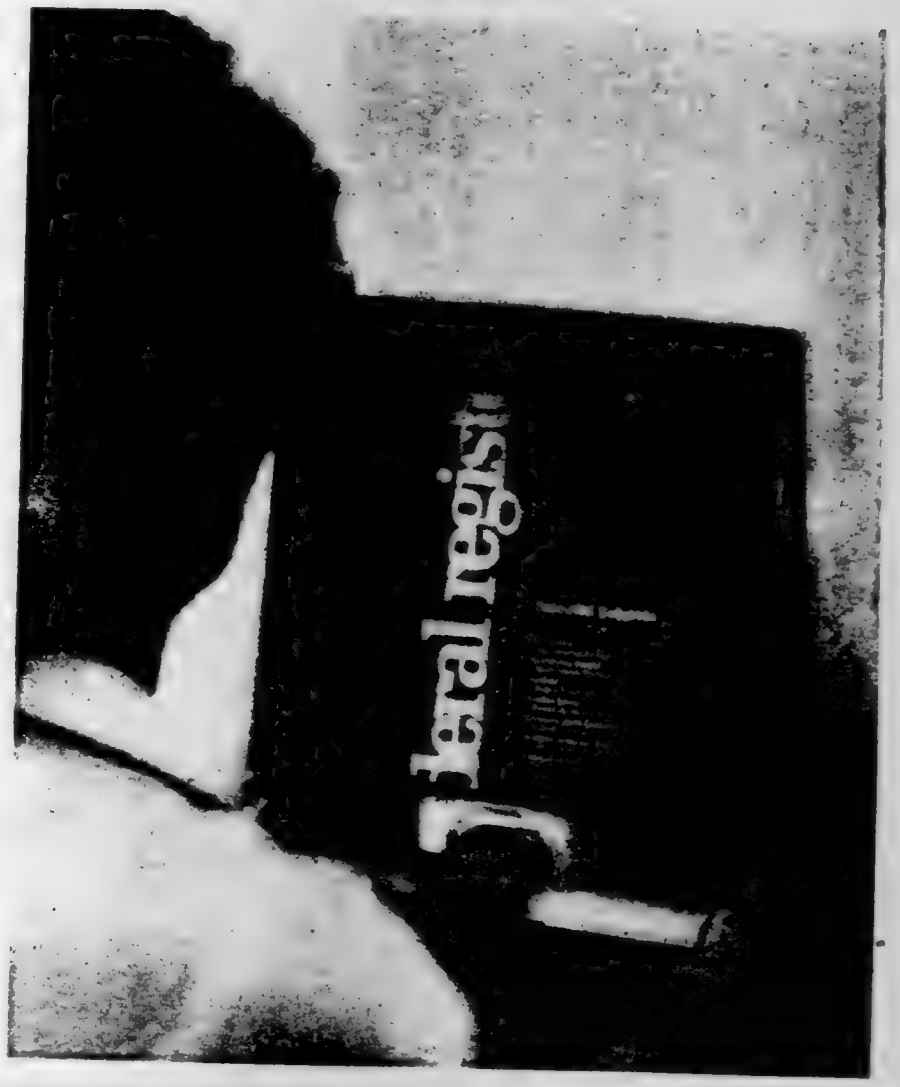
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Federal Register

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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Proclamation 6699 of June 10, 1994

Flag Day and National Flag Week, 1994

By the President of the United States of America

A Proclamation

In this week we salute the flag of the United States of America: our history's proud pennant; noble banner of freedom, liberty, opportunity, and independence; and the glorious emblem of our national pride and patriotism.

Woven into the Stars and Stripes and into the fabric of our Nation is the legacy of our Founders, who crafted a government built on a revolutionary respect for the rights of individuals. Coming ashore on this new continent, they had fled the tyranny of sovereigns: "We the People" were to be sovereigns of this new land.

On June 14, 1777, the Continental Congress established the design of a flag for the new Republic so that we might bestow our loyalty, not to kings, but to countrymen, all of us created equal. Eleven years later, the Constitutional Convention placed a written rule of law at the symbolic head of government, and we have since pledged our allegiance not only to the Stars and Stripes, but also "to the Republic for which it stands." We salute the achievement and wisdom of our Founders, embodied in our flag, and we honor all of the men and women who have upheld and defended the ideals stitched into its billowing folds.

Our flag's bright stars, ancient symbols of dominion and sovereignty, represent the constellation of States in our federal system of government—its stripes, the first States born of the original thirteen colonies. Its bright colors embody the essence of our American heritage: red, for valor; white, for hope and purity; and blue, the color of loyalty, reverence, justice, and truth. Witness to our past, it holds aloft the promise of our future.

"Old Glory," as it was nicknamed in 1831 by Navy Captain William Driver, was first carried into conflict at the Battle of Brandywine on September 11, 1777. As the Nation now observes the 50th anniversary of the Battle of Normandy, we honor the courageous Americans who carried our standard into the infernos of war at all of our history's most critical crossroads. It has saluted the final resting places of lives lost in the defense of liberty, from the beaches of Normandy to the jungles of Vietnam and the deserts of Iraq and Somalia.

Our flag has been borne aloft into the heavens by our gallant astronauts and has been worn bravely on the shoulders of those who each day risk their lives to protect the public safety. It flies freely from its place of honor in classrooms, churches, businesses, government buildings, and is proudly displayed by Americans serving their Nation in distant points across the globe. Its silent, solemn presence makes each of those places "home" and keeps the spirit of liberty alive in the hearts of Americans wherever they may be.

To commemorate the adoption of our flag, the Congress, by a joint resolution approved August 3, 1949 (63 Stat. 492), designated June 14 of each year Flag Day and requested the President to issue an annual Proclamation calling for its observance and for the display of the Flag of the United States on all Government buildings. The Congress also requested the President, by joint resolution approved June 9, 1966 (80 Stat. 194), to issue annually

a Proclamation designating the week in which June 14 occurs as National Flag Week, and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim June 14, 1994, as Flag Day and the week beginning June 12, 1994, as National Flag Week. I direct the appropriate officials of the Government to display the Flag of the United States on all Government buildings during that week. I urge all Americans to observe Flag Day, June 14, and Flag Week by flying the Stars and Stripes from their homes and other suitable places.

I also call upon the American people to observe with pride and all due ceremony those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to celebrate our heritage in public gatherings and activities and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of June, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94-14720
Filed 6-13-94; 3:38 pm]
Billing code 3195-01-P

Presidential Documents

Proclamation 6700 of June 10, 1994

National Men's Health Week, 1994

By the President of the United States of America

A Proclamation

As this great country moves forward in its commitment to address the many concerns related to the delivery of health care, we set aside this week to give special attention to those issues that affect the health of American men. We have made enormous progress in medical technology and research, yet the goal of extending human life expectancy will not be fully realized until information on prevention, detection, and treatment of disease reaches all men and is used by all men.

Tobacco use is the single most important preventable cause of death in the United States, and currently 24 million American men smoke. It is a major risk factor for diseases of the heart and lungs and doubles the risk of stroke among men. The risk of dying from lung cancer is 22 times higher for men who smoke. Those who continue to smoke place themselves and those around them at great peril. It is imperative for this country to focus its efforts on eliminating the use of tobacco products through education and treatment programs.

In the past decade, public awareness has also been increased regarding the dangers of alcohol consumption and its impact on the health of American men. Alcohol abuse is, more frequently than not, a related factor in motor vehicle fatalities, homicides, and suicides. It is becoming a special problem for the young men in this country. Let us not falter in our progress—the time has come for us to demand better access to treatment programs, stronger and better enforced laws related to drunk driving, policies to reduce minors' access to alcohol, and greater involvement of primary care providers in dealing with this problem.

Among older men, prostate cancer is a serious enemy. It is estimated that in 1994, in America alone, prostate cancer will affect 200,000 men, and 38,000 will die. Prostate cancer strikes men almost as often as breast cancer strikes women, yet reluctance to discuss this disease has left its research largely under funded. However, what we do know gives us hope. In addition to physical detection, doctors can now use a blood test to determine the presence of this cancer. Furthermore, there are several available forms of effective treatment. We must ensure that all men over the age of 50 have access to screening for and treatment of this disease, while we simultaneously push for affordable medical care for all Americans.

Even in the face of better, more accessible detection and prevention programs, we need men to recognize and adopt healthier lifestyles. No health care policy can replace the benefits that American men would reap from this change.

The Congress, by Senate Joint Resolution 179, has designated the week of June 12 through June 19, 1994, as "National Men's Health Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week of June 12, 1994, as National Men's Health Week. I invite the Governors of the 50 States and the Commonwealth of Puerto Rico, the Mayor of the District of Columbia, and the appropriate officials of all other areas under the American flag to issue similar proclamations. I also ask health care professionals, private industry, community groups, insurance companies, and all other interested organizations and individual citizens to unite to publicly reaffirm our Nation's continuing commitment to men's health.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of June, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94-14721
Filed 6-13-94; 3:36 pm]
Billing code 3195-01-P

Presidential Documents

Executive Order 12921 of June 13, 1994

Amendment to Executive Order No. 12864

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to provide for the appointment of up to 37 members to the United States Advisory Council on the National Information Infrastructure, it is hereby ordered that section 1(a) of Executive Order No. 12864, as amended, is further amended by deleting the number "30" and inserting the number "37" in lieu thereof.

William J. Clinton

THE WHITE HOUSE,
June 13, 1994.

[FR Doc. 94-14728
Filed 6-13-94; 4:09 pm]
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Rules and Regulations

Federal Register
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Wednesday, June 15, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week

ARMED FORCES RETIREMENT HOME

5 CFR Part 2100

Armed Forces Retirement Home Privacy Program

AGENCY: Armed Forces Retirement Home (AFRH).

ACTION: Final rule; request for comments.

SUMMARY: The Armed Forces Retirement Home, which includes the U.S. Soldiers' and Airmen's Home (USSAH) and the U.S. Naval Home (USNH) is publishing its Privacy Program procedural rules in accordance with the Privacy Act of 1974, 5 U.S.C. 552a, as amended.

DATES: *Effective:* This rule is effective July 15, 1994. Written comments regarding this rule must be received on or before July 15, 1994, to be considered by the agency.

ADDRESSES: Written comments may be sent to Mrs. Doris Montgomery, Administrative Officer, Resource Management Directorate, U.S. Soldiers' and Airmen's Home, 3700 N. Capitol Street, NW., Washington, DC 20317–0002, (202) 722–3230.

SUPPLEMENTARY INFORMATION: The enactment of the Armed Forces Retirement Home Act of 1991, 24 U.S.C. 401–441 (Pub. L. 101–510), effective November 5, 1991, incorporated the U.S. Soldiers' and Airmen's Home and the U.S. Naval Home into an independent establishment in the Executive Branch of the Federal Government to be known as the Armed Forces Retirement Home. Systems of records formerly under the cognizance of the individual facilities (USSAH and USNH) are now to be incorporated into the procedural rules of the AFRH.

List of Subjects in 5 CFR Part 2100

Privacy.

For the reasons set forth above, 5 CFR Ch. XI is amended by adding part 2100 to read as follows:

Ch. IX—Armed Forces Retirement Home

PART 2100—ARMED FORCES RETIREMENT HOME PRIVACY ACT PROCEDURES

Sec.

2100.1 Purpose.
2100.2 Definitions.
2100.3 Procedure for requesting information.
2100.4 Requirements for identification.
2100.5 Access by subject individuals
2100.6 Schedule of fees.
2100.7 Request for correction or amendment.
2100.8 Review of request for amendment.
2100.9 Appeal of denial to grant access or to amend records.
2100.10 Conditions of disclosure and accounting of certain disclosures.
2100.11 Penalties.
2100.12 Accounting of disclosure.
2100.13 Specific exemptions.

Authority: Public Law 93–579, 88 Stat. 1896, 5 U.S.C. 552a(f).

§ 2100.1 Purpose.

Pursuant to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, the following rules of procedures are established with respect to access and amendment of records maintained on the individual subjects of these records by the Armed Forces Retirement Home, which includes the continuing care retirement communities of the U.S. Soldiers' and Airmen's Home and the U.S. Naval Home. These rules do not apply to civilian employees' records maintained by the individual facilities which are covered by the Office of Personnel Management systems of records.

§ 2100.2 Definitions.

(a) All terms used in this part which are defined in 5 U.S.C. 552a, as amended, shall have the same meaning herein.

(b) *Agency*, as used in this part, means the Armed Forces Retirement Home (AFRH).

(c) *Facility* or *facilities* refers to the continuing care retirement communities of the U.S. Soldiers' and Airmen's Home (USSAH) and the U.S. Naval Home (USNH), which are incorporated within the Armed Forces Retirement Home (AFRH).

(d) *Access* means providing a copy of a record to, or allowing review of the original record by, the individual or the individual's authorized representative, legal guardian or conservator.

§ 2100.3 Procedure for requesting information.

Individuals shall submit written inquiries regarding all AFRH records to the appropriate facility at the following addresses: Associate Director, Resource Management, U.S. Soldiers' and Airmen's Home, 3700 N. Capitol Street, NW., Washington, DC 20317–0002; or, Administrative Services, U.S. Naval Home, 1800 Beach Drive, Gulfport, Mississippi 39507–1597. All personal (walk-in) requests will require some form of common identification.

§ 2100.4 Requirements for identification.

Only upon proper identification will any individual be granted access to records which pertain to him/her. Identification is required both for accurate record identification and to avoid disclosing records to unauthorized individuals. Individuals must provide their full name and as much information as possible in order that a proper search for records can be accomplished. Requests made by mail shall be signed by the individual requesting his/her records. Inclusion of a telephone number for the requester is recommended to expedite certain matters. Requesters applying in person must provide an identification with photograph, such as a driver's license, military or annuitant identification card, or any official document as acceptable identification validation. Personal requests can only be accepted on regularly scheduled workdays (Monday through Friday, excluding Federal holidays) between the hours of 7:30 a.m. and 3:30 p.m.

§ 2100.5 Access by individuals.

(a) No individual will be allowed access to any information compiled or maintained in reasonable anticipation of civil actions or proceedings, or otherwise exempt under § 2100.12. Requests for pending investigations will be denied and the requester instructed to forward another request giving adequate time for the investigation to be completed. Requesters shall be provided the telephone number so they can call and check on the status in order to know when to resubmit the request.

(b) Any individual may authorize the facility to provide a copy of his/her records to a third party. This authorization must be in writing and shall be provided to the facility with the initial request.

(c) Access to records may be authorized to the legal guardian or conservator acting on behalf of an individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(d) When an individual requesting access to his/her record wishes to be accompanied by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record, a signed statement authorizing that person access to the record.

(e) If medical records are requested and a USSAH or USNH practitioner believes that access to the records by the subject could harm that person's mental or physical health, the requester will be asked to name a practitioner to receive the records. If this requirement poses a hardship on the individual, he/she will be offered the service of an USSAH or USNH practitioner other than the one who provided treatment. If the individual refuses to name a recipient, the record will not be released.

§ 2100.6 Schedule of fees.

(a) Individuals will not be charged for:

(1) The search and review of the record.

(2) Copies of the record produced as a necessary part of the process of making the record available for access; or,

(3) Copies of the requested record when it has been determined that access can only be accomplished by providing a copy of the record through the mail.

(b) Waiver. The official having operational control at the appropriate facility may at no charge, provide copies of a record if it is determined the production of the copies is in the interest of the Government.

(c) Fee Schedule and method of payment. With the exception of paragraphs (a) and (b) of this section, fees will be charged as indicated below:

(1) Records will be duplicated at a rate of $.10 per page for all copying of 5 pages or more. There is no charge for duplication of 4 or fewer pages.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than $30.00, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will exceed $30.00, an advance deposit may be required. The notice or request for advance deposit shall extend an offer to the requester in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of the requester.

(3) Fees should be paid in full prior to issuance of requested copies. In the event the requester is in arrears for previous requested copies, no subsequent request will be processed until the arrears have been paid in full.

(4) Remittances shall be in the form either of a personal check, bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the facility to which the request is being made, and mailed or delivered to the appropriate facility (see § 2100.3 of this part).

(5) A receipt for fees paid will be given upon request.

§ 2100.7 Request for correction or amendment.

(a) Requests to correct or amend a file shall be addressed to the system manager in which the file is located. The request must reasonably describe the record to be amended, the items to be changed as specifically as possible, the type of amendment (e.g., deletion, correction, amendment), and the reason for the amendment. The request should also include the reasons why the requester believes the record is not accurate, relevant, timely, or complete. The burden of proof will be upon the individual to furnish sufficient facts to persuade the change of the record of the inaccuracy, irrelevancy, timeliness, or incompleteness of the record. Normally all documents submitted, to include court orders, shall be certified. Amendments under this part are limited to correcting factual matters and not matters of official judgement or opinions.

(b) Requirements of identification as outlined in § 2100.4 apply to requests to correct or amend a file.

(c) Incomplete requests shall not be honored, but the requester shall be contacted for the additional information needed to process the request.

(d) The amendment process is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Any amendments or changes to these records normally are made through the specific procedures established for the amendment of such records.

(e) When records sought to be amended are actually covered by another issuance, the administrative procedures under that issuance must be exhausted before using the procedures under the Privacy Act.

§ 2100.8 Review of request for amendment.

(a) A written acknowledgement of the receipt of a request for amendment of a record will be provided to the requester within 10 working days, unless final action regarding approval or denial will constitute acknowledgment.

(b) Where there is a determination to grant all or a portion of a request to amend a record, the record shall be promptly amended and the requesting individual notified. Individuals, agencies or components shown by disclosure accounting records to have received copies of the record, or to whom disclosure has been made, will be notified of the amendment by the system manager in which the file is located.

(c) Where there is a determination to deny all or a portion of a request to amend a record, a designated official will promptly advise the requesting individual of the specifics of the refusal and the reasons; and inform the individual that he/she may request a review of the denial(s).

§ 2100.9 Appeal of denial to grant access or to amend records.

(a) All appeals of denial to grant access or to amend records should be addressed to the appropriate facility at the following addresses: Associate Director, Resource Management, U.S. Soldiers' and Airmen's Home, 3700 N. Capitol Street, NW., Washington, DC 20317–0002; or, Administrative Services, U.S. Naval Home, 1800 Beach Drive, Gulfport, Mississippi 39507–1597. The appeal should be concise and should specify the reasons the requester believes that the initial action was not satisfactory. If an appeal is denied, the designated official will notify the requester of the reason for denial and of the right to judicial review pursuant to 5 U.S.C. 552a(g). If an initial denial of a request to amend records is upheld, the requestor will also be advised of his or her right to file a statement of dispute disagreeing with the denial and such statement will be provided to all future users of the file.

(b) If the designated official decides to amend the record, the requester and all previous recipients of the disputed information will be notified of the amendment. If the appeal is denied, the designated official will notify the requester of the reason of the denial, of the requester's right to file a statement of dispute disagreeing with the denial, that such statement of dispute will be retained in the file, that the statement

will be provided to all future users of the file, and that the requester may file suit in a Federal district court to contest the decision not to amend the record.

(c) The designated official will respond to all appeals within 30 working days or will notify the requester of an estimated date of completion if the 30 day limit cannot be met.

§ 2100.10 Conditions of disclosure and accounting of certain disclosures.

No record containing personally identifiable information within an AFRH system of records shall be disclosed by any means to any person or agency outside the AFRH, except by written request or prior written consent of the individual subject of the record, or as provided for in the Privacy Act of 1974, as amended, unless when such disclosure is:

(a) To those officers and employees of the agency which maintains the record and who have a need for the record in the performance of their duties;

(b) Required under 5 U.S.C. 552;

(c) For a routine use of the record compatible with the purpose for which it was collected;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to 13 U.S.C.;

(e) To a recipient who has provided the AFRH with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government or for evaluation by the Archivist of the United States, or his/her designee, to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality, has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(k) Pursuant to the order of a court of competent jurisdiction; or

(l) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

§ 2100.11 Penalties.

(a) An individual may bring a civil action against the AFRH to correct or amend the record, or where there is a refusal to comply with an individual request or failure to maintain any record with accuracy, relevance, timeliness and completeness, so as to guarantee fairness, or failure to comply with any other provision of the Privacy Act. The court may order correction or amendment of records. The court may enjoin the AFRH from withholding the records and order the production of the record.

(b) Where it is determined that the action was willful or intentional with respect to 5 U.S.C. 552a(g)(1)(C) or (D), the United States may be liable for the actual damages sustained.

(c) Criminal penalties may be imposed against an officer or employee of the USSAH or USNH who discloses material, which he/she knows is prohibited from disclosure, or who willfully maintains a system of records without compliance with the notice requirements.

(d) Criminal penalties may be imposed against any person who knowingly and willfully requests or obtains any record concerning another individual from an agency under false pretenses.

(e) All of these offenses are misdemeanors with a fine not to exceed $5,000.

§ 2100.12 Accounting of disclosure.

(a) The AFRH or agency will maintain a record of disclosures in cases where records about the individual are disclosed from a system of records except—

(1) When the disclosure is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended; or

(2) When the disclosure is made to those officers and employees of the AFRH who have a need for the record in the performance of their duties.

(b) This accounting of the disclosures will be retained for a least 5 years or for the life of the record, whichever is longer, and will contain the following information:

(1) A brief description of the record disclosed;

(2) The date, nature, and purpose for the disclosure; and,

(3) The name and address of the person, agency, or other entity to whom the disclosure is made.

(c) Except for the accounting of disclosure made to agencies, individuals, or entities in law enforcement activities or disclosures made from the AFRH exempt systems of records, the accounting of disclosures will be made available to the data subject upon request in accordance with the access procedures of this part.

§ 2100.13 Specific exemptions.

Subsection (k) of 5 U.S.C. 552a authorizes the AFRH to adopt rules designating eligible system of records as exempt from certain requirements of 5 U.S.C. 552a. To be eligible for a specific exemption under the authority of 5 U.S.C. 552a(k), the pertinent records within a designated system must contain one or more of the following:

(a) Investigative records compiled for law enforcement purposes. If this information has been used to deny someone a right however, the AFRH must release it unless doing so would reveal the identify of a confidential source ((k)(2) exemption).

(b) Records used only for statistical, research, or other evaluation purposes, and which are not used to make decisions on the rights, benefits, or privileges of individuals, except as permitted by 13 U.S.C. 8 (Use of census data) ((k)(4) exemption).

(c) Data compiled to determine suitability, eligibility, or qualifications for Federal service, Federal contracts, or access to classified information. This information may be withheld only if disclosure would reveal the identity of a confidential source ((k)(5) exemption).

(d) Test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process ((k)(6) exemption).

Dennis W. Jahnigen,

Chair, Armed Forces Retirement Home Board, Chief Executive Officer, Armed Forces Retirement Home.

[FR Doc. 94–14516 Filed 6–14–94, 8:45 am]

BILLING CODE 8250–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. FV94-922-11FR]

Apricots Grown in Designated Counties in Washington; Revision in Container Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises container regulations for apricots shipped to fresh market outlets under Marketing Order No. 922. This rule gives handlers greater flexibility in selecting containers to meet their packaging needs by eliminating the inside dimension requirements on each type of container that has a minimum apricot net weight requirement. The rule eliminates reference to the obsolete lidded four-basket crate, and replaces the term "closed L.A. lugs and equivalent cartons" with the term "closed containers" to simplify wording and improve clarity. This rule also includes a correction to the container regulations which had previously appeared in the **Federal Register** as a final rule, but did not appear in the annual Code of Federal Regulations.

DATES: This interim final rule becomes effective: June 15, 1994. Comments which are received by July 15, 1994, will be considered prior to any finalization of the interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456 or by FAX at (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mark J. Kreaggor, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127; or Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, OR 97204; telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 922 [7 CFR part 922], regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary will rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 55 handlers of Washington apricots that are subject to regulation under the marketing order. In addition, there are approximately 400 producers in the regulated area. Small agricultural service firms, which include producers of Washington apricots, have been defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A majority of these handlers and producers may be classified as small entities.

Section 922.52 [7 CFR 922.52] authorizes the issuance of regulations for grade, size, quality, maturity, pack, markings, and container for any variety or varieties of apricots grown in any district or districts of the production area. Section 922.53 [7 CFR 922.53] authorizes the modification, suspension, or termination of regulations issued under section 922.52.

Container regulations are currently in effect under section 922.306. This rule eliminates references to inside dimensions for each type of container that has a minimum apricot net weight requirement. This rule also removes references to the obsolete lidded four-basket crate and replaces the term "closed L.A. lugs and equivalent cartons" with the term "closed containers."

This rule was recommended by the Washington Apricot Marketing Committee (committee), which works with the Department in administering the marketing order.

The committee met on December 15, 1993, and unanimously recommended elimination of inside dimension requirements for each type of container that has a minimum apricot net weight requirement. The committee also unanimously recommended deleting reference in the container regulation to the lidded four-basket crate, and that the term "closed L.A. lugs and equivalent cartons" be replaced with the term "closed containers."

Handlers have experienced difficulty in packing many of the new, larger varieties of apricots, particularly in row-faced and tray-packed containers because of the inside dimension requirements in effect. Container height limits, for example, can cause a higher incidence of compression damage in large apricots that are row-faced or tray-packed. In addition, the inside dimension requirements have prevented handlers from using many generic containers used in other fruit and vegetable industries.

This rule deletes references to designated container dimensions for each type of container that has a minimum apricot net weight requirement. The committee believes that continued standardization of the minimum net weight requirements of

the authorized containers is needed to prevent market confusion resulting from the use of deceptive containers.

This rule will allow handlers greater flexibility in packaging. By allowing different container dimensions, as long as the minimum weight requirements are met, handlers will have the flexibility to use containers commonly used in other fruit and vegetable industries, to use different containers for different varieties of apricots, and to develop new containers.

This rule will remove authority for the use of the obsolete lidded four-basket crate. The rule will also remove reference in the regulation to the term "closed L.A. lugs and equivalent cartons" replacing it with the term, "closed containers." This change is intended only to simplify wording and improve clarity.

This rule also corrects the container regulations in the Code of Federal Regulations for Apricots Grown in Designated Counties in Washington [7 CFR Part 922]. Changes to the container requirements appeared in the **Federal Register** [44 FR 37598, June 28, 1979] [Apricot Regulation 6, Amendment 4], but did not correspondingly appear in the annual Code of Federal Regulations.

Based on the above information, the Administrator of the AMS has determined that this interim final rule will not have a significant impact on a substantial number of small entities and that the action set forth herein will benefit producers and handlers of apricots grown in designated counties in Washington State.

After consideration of all available information, it is found that the revision of the container regulations, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1993–94 marketing year begins June 1, 1994, and the container regulations established herein should apply to all apricots produced in the production area and need to be in place before the beginning of the marketing year; (2) handlers are aware of this rule, which was recommended at an open committee meeting, and need no additional time to comply with these regulations which are a relaxation; and (3) the rule provides a 30-day comment period, and any comments timely received will be considered prior to finalization of this interim final rule.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 922.306 is revised to read as follows:

§ 922.306 Apricot Regulation 6.

(a) No handler shall handle any apricots unless such apricots are:

(1) In open containers or telescope fiberboard cartons and the net weight of the apricots is not less than 28 pounds; or

(2) In closed containers containing not less than 14 pounds, net weight, of apricots: *Provided,* That when the apricots are packed in such containers they are row-faced or tray-packed; or

(3) In closed containers that are marked "12 pounds net weight" and contain not less than 12 pounds, net weight, of apricots which are of random size and are not row-faced; or

(4) In closed containers in which the apricots are row-faced or tray-packed: *Provided,* That apricots may be packed loose in such containers if a top pad is used and the net weight of the apricots therein is not less than 24 pounds; or

(5) If exported to Canada, in any of the containers specified in this paragraph (a) or in containers having inside dimensions of 16⅛ x 11½ inches with 4¾-inch end pieces and 3¾-inch side pieces.

(b) Notwithstanding any other provisions of this section, any individual shipment of apricots which, in the aggregate, does not exceed 500 pounds, net weight, may be handled without regard to the requirements specified in this section or in §§ 922.41 or 922.55.

(c) All apricots handled are also subject to all applicable grade, size, quality, maturity and pack regulations which are in effect pursuant to this part.

(d) The terms "handler", "handle" and "apricots" shall have the same meaning as when used in the amended marketing agreement and order.

Dated: June 9, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–14586 Filed 6–14–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–81–AD; Amendment 39–8939; AD 94–12–11]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 747–400 series airplanes. This action requires revising the Airplane Flight Manual to include procedures that will enable the flight crew to identify fuel system leaks and to take appropriate action to prevent further fuel loss. This amendment is prompted by reports that flight crew procedures related to fuel system leaks are not defined adequately in the FAA-approved AFM for these airplanes. The actions specified in this AD are intended to ensure that the flight crew is advised of the potential hazard related to fuel exhaustion due to undetected leakage, and the procedures necessary to address it.

DATES: Effective June 30, 1994.

Comments for inclusion in the Rules Docket must be received on or before August 15, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–81–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Information concerning this rulemaking action may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2687; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On March 21, 1994, a Boeing Model 747–400

diverted from its intended destination airport because of indications that insufficient fuel remained to complete the scheduled leg of the flight. During landing and rollout, a large amount of fuel was spilled on the runway; additionally, during application of reverse thrust, fuel sprayed on the airplane. With such fuel leakage, the potential for a large fire existed during and after landing; however, the fuel did not ignite and no injuries occurred.

Investigation of this incident revealed that a major fuel leak had developed much earlier in the flight, and that approximately 35,000 lbs. of fuel had been lost. The operator of the incident airplane pointed out that, had a similar scenario occurred on the same flight leg in the opposite direction, the airplane's fuel supply would have been exhausted prior to reaching a suitable airport.

The fuel apparently had leaked from a cracked fuel tube within the engine nacelle. The cause of the cracking currently is under investigation by the engine manufacturer (and may be the subject of future rulemaking, if warranted). The fuel leak was located upstream of the fuel flow meter. Under these circumstances, sufficient fuel may still be supplied to the engine, and the engine may operate normally. In this particular incident, the flight crew received no immediate indication of abnormal fuel flow (i.e., excessive fuel flow on one engine) from the fuel flow meter. The "FUEL DISAGREE—PROG 2/2" Flight Management System—Control Display Unit (FMS–CDU) message and the "FUEL IMBALANCE" Engine Indication and Crew Alerting System (EICAS) message were displayed some time after the fuel began leaking. However, because there currently are no explicit instructions in the Airplane Flight Manual (AFM) or the Operations Manual relative to actions that should be taken during situations such as these, the flight crew did not initiate procedures to isolate the leak and retain the remaining fuel on the airplane.

If the flight crew fails to detect a fuel leak, appropriate action would not be taken to prevent further fuel loss. This condition, if not corrected, could result in fuel exhaustion due to undetected fuel leakage.

In light of this information, the FAA finds that certain procedures should be included in the FAA-approved AFM for Model 747–400 series airplanes to enable the flight crew to detect fuel system leaks and to take appropriate action. The FAA has determined that such procedures currently are not defined adequately in the AFM for these airplanes.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747–400 series airplanes of the same type design, this AD is being issued to ensure that flight crews are advised of the potential hazard related to a significantly reduced or exhausted airplane fuel supply, and of the procedures necessary to address it. This AD requires revising the Non-Normal Procedures Section of the AFM to include procedures that will enable the flight crew to identify fuel system leaks and to take appropriate action to prevent further fuel loss.

The applicability of this AD action is limited to only Model 747–400 series airplane. While Model 747–100, –200, –300, SP, and SR series airplanes have a similar fuel delivery system to that of the Model 747–400, the indication systems and flight crew procedures for monitoring fuel usage are significantly different for these models. These models were designed to be operated by three flight crew members and, in the event of a similar fuel leak on one of these airplanes, the flight engineer would detect the fuel leak and recommend shutdown of the appropriate engine prior to the loss of such a large quantity of fuel.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–81–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–12–11 Boeing: Amendment 39–8939. Docket 94–NM–81–AD.

Applicability: All Model 747–400 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is advised of the potential hazard associated with fuel exhaustion due to undetected fuel leakage, and of the procedures necessary to address it, accomplish the following:

(a) Within 60 days after the effective date of this AD, revise the Non-Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures, which will enable the flight crew to identify fuel system leaks and to take appropriate action to prevent further fuel loss. This may be accomplished by inserting a copy of this AD in the AFM.

In-Flight Fuel Leak

If the Flight Management Computer System (FMCS) message "FUEL DISAGREE—PROG 2/2" or "INSUFFICIENT FUEL" is displayed:

Compare the Fuel Quantity Indicating System (FQIS) total fuel quantity and the FMC calculated fuel remaining (based on fuel flow) with estimated fuel usage data.

If a fuel leak is suspected, turn off the stabilizer tank pump switches, if installed, the center wing tank pump switches, and the tank 2 and 3 override pump switches, and close all crossfeed valves (tank-to-engine fuel feed configuration). Watch for any unusual decrease in fuel tank quantity and/or a fuel imbalance to determine if fuel is being lost.

If an engine fuel leak is confirmed (either visually or by flight deck indications), shut down the affected engine to stop the leak and retain the remaining fuel. After shutdown of the affected engine, resume normal fuel management procedures. All remaining fuel can be used for the operating engines. Use FQIS to determine fuel remaining."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on June 30, 1994.

Issued in Renton, Washington, on June 8, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–14360 Filed 6–14–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 97

[Docket No. 1604; Amdt. No. 27779]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the

remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on June 3, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective August 18, 1994

Chandler, AZ, Chandler Muni, VOR RWY 4L, Amdt. 5
Rio Vista, CA, Rio Vista Muni, VOR–A, Amdt. 3, CANCELLED
Sanford, ME, Sanford Muni, NDB RWY 7, Amdt. 1
Sanford, ME, Sanford Muni, ILS RWY 7, Amdt. 2
Chandler, OK, Chandler Muni, NDB RWY 17, Amdt. 3, CANCELLED
Chandler, OK, Chandler Muni, NDB RWY 35, Orig
Clinton, OK, Clinton-Sherman, VOR RWY 35L, Amdt. 11
Clinton, OK, Clinton-Sherman, NDB RWY 17R, Amdt. 10
Clinton, OK, Clinton-Sherman, ILS RWY 17R, Amdt. 7
Prague, OK, Prague Muni, NDB RWY 17, Amdt. 1
Bolivar, TN, William L. Whitehurst Field, NDB RWY 1, Amdt. 3
Houston, TX, Sugar Land Muni/Hull Field, NDB RWY 17, Amdt. 8
Houston, TX, Sugar Land Muni/Hull Field, NDB RWY 35, Amdt. 4
Houston, TX, Sugar Land Muni/Hull Field, ILS RWY 35, Amdt. 2
Houston, TX, Sugar Land Muni/Hull Field, VOR/DME RNAV RWY 17, Amdt. 6
Houston, TX, Sugar Land Muni/Hull Field, VOR/DME RNAV RWY 35, Amdt. 7
Wendover, UT, Wendover, VOR/DME OR TACAN–A, Amdt. 2
Grantsburg, WI, Grantsburg, VOR/DME–A, Amdt. 1

. . . Effective July 21, 1994

Madison, IN, Madison Muni, VOR/DME RWY 3, Amdt. 7
Madison, IN, Madison Muni, NDB RWY 3, Amdt. 3
Red Oak, IA, Red Oak Muni, VOR/DME–A, Amdt. 4
Red Oak, IA, Red Oak Muni, NDB/RWY 17, Amdt. 7
Webster City, IA, Webster City Muni, VOR/DME OR GPS RWY 14, Amdt. 3
Webster City, IA, Webster City Muni, NDB OR GPS RWY 32, Amdt. 7
Bedford, PA, Bedford, VOR/DME–A, Amdt. 3, CANCELLED
Philadelphia, PA, Philadelphia Intl, ILS RWY 27L, Amdt. 6
Philadelphia, PA, Philadelphia Intl, RWY 27R, Amdt. 7
Providence, RI, Theodore Francis Green State, VOR RWY 5, Amdt. 12

. . . Effective June 23, 1994

Moline, IL, Quad-City, LOC RWY 27, Amdt. 7, CANCELLED
Moline, IL, Quad-City, ILS RWY 27, Orig
Auburn-Lewiston, ME, Auburn-Lewiston Muni, VOR–A, Amdt. 1 CANCELLED
Auburn-Lewiston, ME, Auburn-Lewiston Muni, VOR–DME–A, Orig
Auburn-Lewiston, ME, Auburn-Lewiston Muni, NDB RWY 4, Amdt. 10
Auburn-Lewiston, ME, Auburn-Lewiston Muni, ILS RWY 4, Amdt. 9
Portland, ME, Portland Intl Jetport, NDB RWY 11, Amdt. 15
Portland, ME, Portland Intl Jetport, ILS RWY 11, Amdt. 20
Portland, ME, Portland Intl Jetport, ILS RWY 29, Amdt. 3, CANCELLED
Portland, ME, Portland Intl Jetport, ILS/DME RWY 29, Orig
Portland, ME, Portland Intl Jetport, RADAR 1, Amdt. 4
St. James, MI, Beaver Island, NDB RWY 27, Orig
Warrensburg, MO, Skyhaven, VOR/DME RWY 13, Amdt. 4, CANCELLED
Oklahoma City, OK, Sundance Airpark, LOC RWY 17, Orig

. . . Effective Upon Publication

Newark, NJ, Newark Intl, VOR RWY 11, Amdt. 1
Burlington, NC, Burlington-Alamance Regional, VOR RWY 10, Amdt. 7

Note: Burbank, CA—Burbank-Glendale-Pasadena . . . The FAA published an ILS RWY 8 Amdt. 36 and LOC RWY 8 Amdt. 2 in TL 94–11, Page 6, dated May 6, 1994, under the Effective Date of 23 JUN 94 . . . These amendments are hereby revoked.

[FR Doc. 94–14574 Filed 6–14–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 1606; Amdt. No. 27781]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and4mpractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on June 3, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective August 18, 1994

Bethel, AK, Bethel, VOR or GPS RWY 18, Amdt. 8
Bethel, AK, Bethel, VOR or GPS RWY 36, Amdt. 7
Deadhorse, AK, Deadhorse, NDB or GPS–A, Amdt. 2
Deadhorse, AK, Deadhorse, VOR/DME or TACAN or GPS RWY 22, Orig.
Deadhorse, AK, Deadhorse, VOR/DME or TACAN or GPS RWY 4, Amdt. 3
Kenai, AK, Kenai Muni, NDB or GPS–A, Amdt. 3
Kenai, AK, Kenai Muni, VOR or GPS RWY 19, Amdt. 15
Kenai, AK, Kenai Muni, VOR/DME or GPS RWY 1, Amdt. 5
Bay Minette, AL, Bay Minette Muni, VOR or GPS RWY 8, Amdt. 6
Bessemer, AL, Bessemer, VOR or GPS RWY 5, Amdt. 5
Brewton, AL, Brewton Muni, VOR/DME or GPS RWY 30, Amdt. 6
Centre, AL, Centre Muni, VOR/DME or GPS RWY 27, Amdt. 1A
Huntsville, AL, Huntsville Intl-Carl T. Jones Field, NDB or GPS RWY 18R, Amdt. 13
Huntsville, AL, Huntsville Intl-Carl T. Jones Field, VOR or GPS–A, Amdt. 11
Carlisle, AR, Carlisle Muni, VOR/DME or GPS RWY 9, Orig. A
Decatur, AR, Crystal Lake, VOR/DME or GPS RWY 13, Amdt. 8
Fayetteville, AR, Drake Field, VOR or GPS–A, Amdt. 24
Fayetteville, AR, Drake Field, VOR/DME or GPS RWY 34, Orig.
Morrilton, AR, Morrilton Muni, NDB or GPS RWY 27, Orig.
Morrilton, AR, Petit Jean Park, NDB or GPS RWY 2, Amdt. 2
Pocahontas, AR, Nick Wilson Field, VOR or GPS RWY 36, Amdt. 6

Chandler, AZ, Stellar Airpark, VOR or GPS–A, Amdt. 1
Flagstaff, AZ, Flagstaff Pulliam, VOR or GPS–A, Amdt. 3
Flagstaff, AZ, Flagstaff Pulliam, VOR/DME or GPS RWY 21, Orig.
Arcata/Eureka, CA, Arcata, NDB or GPS–A, Amdt. 7
Arcata/Eureka, CA, Arcata, VOR or GPS RWY 14, Amdt. 7
Arcata/Eureka, CA, Arcata, VOR/DME or GPS RWY 2, Amdt. 7
Blythe, CA, Blythe, VOR/DME or GPS RWY 26, Amdt. 5
Blythe, CA, Blythe, VOR or GPS–A, Amdt. 6
Davis, CA, University, VOR or GPS RWY 16, Amdt. 1
Lincoln, CA, Lincoln Muni, VOR or GPS RWY 15, Amdt. 3
Los Banos, CA, Los Banos Muni, VOR/DME or GPS RWY 14, Amdt. 3
Los Banos, CA, Los Banos Muni, VOR/DME or GPS RWY 32, Amdt. 4
Oakdale, CA, Oakdale, VOR or GPS RWY 10, Amdt. 5A
Santa Rosa, CA, Sonoma County, VOR or GPS RWY 32, Amdt. 19
Santa Rosa, CA, Sonoma County, VOR/DME or GPS RWY 14, Amdt. 2
Upland, CA, Cable, VOR or GPS RWY 6, Amdt. 7
Akron, CO, Akron-Washington County, VOR or GPS RWY 29, Orig.
Fort Collins/Loveland, CO, Fort Collins-Loveland Muni, VOR/DME or GPS–A, Amdt. 6A
Fort Collins/Loveland, CO, Fort Collins-Loveland Muni, VOR/DME RNAV or GPS RWY 33, Amdt. 5A
Fort Collins/Loveland, CO, Fort Collins-Loveland Muni, VOR/DME RNAV or GPS RWY 15, Amdt. 4B
Danbury, CT, Danbury Muni, VOR or GPS–A, Amdt. 7
Danbury, CT, Danbury Muni, VOR/DME RNAV or GPS RWY 26, Amdt. 4
Washington, DC, Washington National, RNAV or GPS RWY 3, Amdt. 6
Washington, DC, Washington National, RNAV or GPS RWY 33, Amdt. 5
Laurel, DE, Laurel, VOR/DME or GPS RWY 32, Orig.
Daytona Beach, FL, Daytona Beach Regional, VOR or GPS RWY 16, Amdt. 17A
Daytona Beach, FL, Daytona Beach Regional, NDB or GPS RWY 7L, Amdt. 23
Fort Lauderdale, FL, Fort Lauderdale Executive, RNAV or GPS RWY 8, Amdt. 2
Jacksonville, FL, Jacksonville Intl, NDB or GPS RWY 7, Amdt. 9
Jacksonville, FL, Jacksonville Intl, VOR or GPS RWY 31, Orig.
Orlando, FL, Orlando Intl, VOR/DME or GPS RWY 18L, Amdt. 5
Orlando, FL, Orlando Intl, VOR/DME or GPS RWY 18R, Amdt. 5
Orlando, FL, Orlando Intl, VOR/DME or GPS RWY 36L, Amdt. 4
Orlando, FL, Orlando Intl, VOR/DME or GPS RWY 36R, Amdt. 9
Athens, GA, Athens/Ben Epps, VOR or GPS RWY 2, Amdt. 10
Athens, GA, Athens/Ben Epps, NDB or GPS RWY 27, Orig.
Athens, GA, Athens/Ben Epps, RNAV or GPS RWY 20, Amdt. 2
Athens, GA, Athens/Ben Epps, RNAV or GPS RWY 9, Amdt. 1
Cochran, GA, Cochran, VOR/DME or GPS RWY 5, Amdt. 5
Covington, GA, Covington Muni, VOR/DME or GPS RWY 9, Amdt. 2
Covington, GA, Covington Muni, NDB or GPS RWY 27, Orig.
Newnan, GA, Newnan-Coweta County, VOR/DME or GPS–A, Amdt. 5
Newnan, GA, Newnan-Coweta County, NDB or GPS RWY 32, Amdt. 1
Honolulu, HI, Honolulu Intl, VOR/DME or TACAN or GPS–B, Amdt. 2
Honolulu, HI, Honolulu Intl, NDB or GPS RWY 8L, Amdt. 19
Honolulu, HI, Honolulu Intl, VOR or TACAN or GPS RWY 4R, Orig.
Honolulu, HI, Honolulu Intl, VOR or TACAN or GPS–A, Amdt. 1
Ames, IA, Ames Muni, VOR or GPS RWY 31, Amdt. 8A
Cedar Rapids, IA, Cedar Rapids Muni, RNAV or GPS RWY 31, Amdt. 7
Cedar Rapids, IA, Cedar Rapids Muni, VOR or GPS RWY 27, Amdt. 11
Cedar Rapids, IA, Cedar Rapids Muni, VOR or GPS RWY 9, Amdt. 16
Cedar Rapids, IA, Cedar Rapids Muni, RNAV or GPS RWY 13, Amdt. 8
Muscatine, IA, Muscatine Muni, NDB or GPS RWY 5, Amdt. 12
Ottumwa, IA, Ottumwa Industrial, VOR/DME or GPS RWY 13, Amdt. 6A
Ottumwa, IA, Ottumwa Industrial, VOR or GPS RWY 31, Amdt. 14A
Ottumwa, IA, Ottumwa Industrial, RNAV or GPS RWY 22, Amdt. 3
Osceola, IA, Osceola Muni, VOR/DME or GPS RWY 18, Orig.
Pella, IA, Pella Muni, NDB or GPS RWY 34, Amdt. 6
Caldwell, ID, Caldwell Industrial, NDB or GPS RWY 30, Amdt. 3A
Pocatello, ID, Pocatello Regional, VOR or TACAN or GPS RWY 3, Amdt. 15
Carbondale/Murphysboro, IL, Southern Illinois, VOR or GPS–A, Amdt. 5A
Champaign/Urbana, IL, University of Illinois-Willard, VOR/DME or GPS RWY 22R, Amdt. 7
Champaign/Urbana, IL, University of Illinois-Willard, VOR or GPS RWY 4L, Amdt. 10
Danville, IL, Vermilion County, VOR/DME or GPS RWY 3, Amdt. 11
Danville, IL, Vermilion County, VOR or GPS RWY 21, Amdt. 13
Effingham, IL, Effingham County Memorial, VOR or GPS RWY 1, Amdt. 9
Frankfort, IL, Frankfort, VOR or GPS RWY 27, Amdt. 3
Robinson, IL, Robinson Muni, VOR or GPS RWY 27, Amdt. 4
Robinson, IL, Robinson Muni, VOR or GPS RWY 17, Amdt. 4
Alexandria, IN, Alexandria, VOR or GPS RWY 27, Amdt. 8
Bloomington, IN, Monroe County, VOR or GPS RWY 6, Amdt. 16
Bloomington, IN, Monroe County, VOR or GPS RWY 24, Amdt. 10
Bloomington, IN, Monroe County, VOR or GPS RWY 17, Amdt. 11
Brazil, IN, Brazil Clay County, VOR or GPS RWY 9, Amdt. 6
Evansville, IN, Evansville Regional, VOR or GPS RWY 4, Amdt. 5
Fort Wayne, IN, Fort Wayne International, VOR or GPS RWY 14, Amdt. 15
Fort Wayne, IN, Fort Wayne International, VOR or TACAN or GPS RWY 23, Amdt. 11
Fort Wayne, IN, Fort Wayne International, VOR or TACAN or GPS RWY 5, Amdt. 18
Fort Wayne, IN, Smith Field, VOR or GPS RWY 13, Amdt. 7
Frankfort, IN, Frankfort Muni, NDB or GPS RWY 9, Orig.
Atchison, KS, Amelia Earhart, VOR/DME RNAV or GPS RWY 16, Amdt. 3
Atchison, KS, Amelia Earhart, VOR/DME or GPS–A, Amdt. 3
Augusta, KS, Augusta Muni, VOR/DME RNAV or GPS RWY 36, Orig. A
Augusta, KS, Augusta Muni, VOR or GPS–A, Orig.
Clay Center, KS, Clay Center Muni, NDB or GPS RWY 35, Amdt. 1
Coffeyville, KS, Coffeyville Muni, VOR/DME or GPS–A, Amdt. 5
Coffeyville, KS, Coffeyville Muni NDB or GPS RWY 35, Orig.
Salina, KS, Salina Muni, VOR or GPS RWY 17, Orig.
Salina, KS, Salina Muni, NDB or GPS RWY 35, Amdt. 15
Campbellsville, KY, Taylor County, NDB or GPS RWY 23, Amdt. 2
Campbellville, KY, Taylor County, VOR/DME or GPS–A, Amdt. 4
Elizabethtown, KY, Addington Field, VOR or GPS–A, Amdt. 2
Elizabethtown, KY, Addington Field, RNAV or GPS RWY 5, Amdt. 2
Alexandria, LA, Alexandria Esler Regional, VOR or GPS RWY 32, Amdt. 13B
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, VOR or GPS RWY 4L, Amdt. 15
Baton Rouge, LA, Baton Rouge Metropolitan, Ryan Field, NDB or GPS RWY 13, Amdt. 23
Jennings, LA, Jennings, VOR/DME or GPS RWY 8, Orig.
Lake Charles, LA, Lake Charles Regional, RNAV or GPS RWY 5, Amdt. 3
Lake Charles, LA, Lake Charles Regional, RNAV or GPS RWY 23, Amdt. 3A
Bedford, MA, Laurnce G Hanscom Fld, NDB or GPS RWY 29, Amdt. 5A
Bedford, MA, Laurence G Hanscom Fld, VOR or GPS RWY 23, Amdt. 8A
Hyannis, MA, Barnstable Muni-Boardman/Polando Field, VOR or GPS RWY 6, Amdt. 6A
Northampton, MA, Northampton, VOR or GPS–A Amdt. 2
Baltimore, MD, Martin State, NDB or GPS RWY 15, Amdt. 7A
Baltimore, MD, Martin State, NDB or GPS RWY 33, Amdt. 7A
Augusta, ME, Augusta State, VOR or GPS RWY 35, Amdt. 5
Sanford, ME, Sanford Muni, VOR or GPS RWY 7, Amdt. 3A
Wiscasset, ME, Wiscasset, NDB or GPS RWY 25, Amdt. 4
Alpena, MI, Alpena County Regional, VOR or GPS RWY 19, Amdt. 14
Alpena, MI, Alpena County Regional, NDB or GPS RWY 1, Amdt. 6
Benton Harbor, MI, Ross Field-Twin Cities, VOR or RWY 9, Amdt. 8
Escanaba, MI, Delta County, VOR or GPS RWY 9, Amdt. 13

Escanaba, MI, Delta County, VOR or GPS RWY 18, Amdt. 7
Escanaba, MI, Delta County, VOR or GPS RWY 27, Amdt. 11
Jackson, MI, Jackson County-Reynolds Field, VOR or GPS RWY 24, Amdt. 21
Jackson, MI, Jackson County-Reynolds Field, VOR or GPS RWY 6, Amdt. 19
Kalamazoo, MI, Kalamazoo/Battle Creek Intl, VOR or GPS RWY 17, Amdt. 17
Kalamazoo, MI, Kalamazoo/Battle Creek Intl, VOR or GPS RWY 35 Amdt. 16
Port Huron, MI, Saint Clair County Intl, VOR/DME RNAV or GPS RWY 22, Amdt. 1
Austin, MN, Austin Muni, VOR or GPS RWY 18, Orig. A
Austin, MN, Austin Muni, VOR or GPS RWY 36, Orig. B
International Falls, MN, Falls Intl, VOR or GPS RWY 13, Amdt. 12A
International Falls, MN, Falls Intl, NDB or GPS RWY 31, Amdt. 7A
Little Falls, MN, Little Falls-Morrison County, NDB or GPS RWY 30, Amdt. 4
Minneapolis, MN, Minneapolis-St Paul Intl (Wold Chamberlain), NDB or GPS RWY 4, Amdt. 17
Minneapolis, MN, Minneapolis-St Paul Intl (Wold Chamberlain), NDB or GPS RWY 29L, Amdt. 22
Montevideo, MN, Montevideo-Chippewa County, VOR or GPS RWY 14, Amdt. 4
Moose Lake, MN,, Moose Lake Carlton County, NDB or GPS RWY 4, Orig.
Kansas City, MO, Kansas City Intl, VOR or GPS RWY 27, Amdt. 14
Kansas City, MO, Kansas City Intl, NDB or GPS RWY 9, Amdt. 8
Kirksville, MO, Kirksville Regional, VOR/DME RNAV RWY 18, Amdt. 6
Kirksville, MO, Kirksville Regional, VOR/DME RNAV RWY 36 Amdt. 7
Moberly, MO, Omar N. Bradley, RNAV or GPS RWY 31, Amdt. 1
Moberly, MO, Omar N. Bradley, VOR/DME or GPS–A, Amdt. 3
Moberly, MO, Omar N. Bradley, RNAV or GPS RWY 13, Amdt. 1
Indianola, MS, Indianola Muni, NDB or GPS RWY 35, Amdt. 4
Indianola, MS, Indianola Muni, NDB or GPS RWY 17, Amdt. 4
Jackson, MS, Hawkins Field, RNAV or GPS RWY 16, Amdt. 4
Mc Comb, MS, Mc Comb-Pike County-John E. Lewis Field, RNAV or GPS RWY 33, Amdt. 6
Meridian, MS, Key Field, RNAV or GPS RWY 19, Amdt. 3
Oxford, MS, University-Oxford, RNAV or GPS RWY 9, Amdt. 2
Oxford, MS, University-Oxford, RNAV or GPS RWY 27, Amdt. 2
Lewistown, MT, Lewistown Muni, VOR or GPS RWY 7, Amdt. 14
Sidney, MT, Sidney-Richland Muni, NDB or GPS RWY 1, Amdt. 1
Sidney, MT, Sidney-Richland Muni, NDB or GPS RWY 19, Amdt. 3
Asheville, NC, Asheville Regional, NDB or GPS RWY 34, Amdt. 18
Fayetteville, NC, Fayetteville Regional/Grannis Field, VOR or GPS RWY 28, Amdt. 7
Greensboro, NC, Piedmont Triad Intl, NDB or GPS RWY 14, Amdt. 15
Greensboro, NC, Piedmont Triad Intl, VOR or GPS RWY 5, Amdt. 12
Greensboro, NC, Piedmont Triad Intl, VOR/DME or GPS RWY 23, Amdt. 9
Greensboro, NC, Piedmont Triad Intl, VOR/DME or GPS RWY 32, Amdt. 3
Louisburg, NC, Franklin County, VOR/DME–A, Orig. A
Rocky Mount, NC, Rocky Mount-Wilson, NDB or GPS RWY 4, Amdt. 8
Rocky Mount, NC, Rocky Mount-Wilson, VOR/DME or GPS RWY 22, Amdt. 1
Rutherfordton, NC, Rutherford County, VOR or GPS RWY 36, Amdt. 4
Williston, ND, Sloulin Field Intl, VOR or GPS RWY 11, Amdt. 12A
Williston, ND, Sloulin Field Intl, VOR/DME or GPS RWY 29, Amdt. 3A
Aurora, NE, Aurora Muni, NDB or GPS RWY 16, Amdt. 2
Bassett, NE, Rock County, NDB or GPS RWY 31, Amdt. 2
Beatrice, NE, Beatrice Muni, VOR or GPS RWY 35, Amdt. 5
Beatrice, NE, Beatrice Muni, VOR or GPS RWY 13, Amdt. 15
Holdrege, NE, Brewster Field, NDB or GPS RWY 18, Amdt. 6
Holdrege, NE, Brewster Field, VOR/DME or GPS–A, Amdt. 2
Wahoo, NE, Wahoo Muni, NDB or GPS RWY 20, Amdt. 2
Rochester, NH, Skyhaven, NDB or GSP RWY 33, Amdt. 4
Rochester, NH, Skyhaben, VOR/DME or GPS–A, Amdt. 1
Atlantic City, Atlantic City Muni/Bader Field, VOR or GPS RWY 11, Amdt. 4
Atlantic City, Atlantic City Muni/Bader Field, VOR or GPS–A, Amdt. 4
Atlantic City, Atlantic City Muni/Bader Field, VOR or GPS–B, Amdt. 1
Morristown, NJ, Morristown Muni, NDB or GPS RWY 23, Amdt. 6B
Morristown, NJ, Morristown Muni, NDB or GPS RWY 5, Amdt. 11
Alamogordo, NM, Alamogordo-While Sands Regional, VOR or GPS RWY 3, Orig.
Farmington, NM, Four Corners Regional, VOR or GPS RWY 25, Amdt. 8
Farmington, NM, Four Corners Regional, VOR/DME RWY 7, Amdt. 3
Battle Mountain, NV, Battle Mountain, VOR/DME or GPS RWY 3, Amdt. 4
Battle Mountain, NV, Battle Mountain, VOR or GPS–A, Amdt. 3
East Hampton, NY, East Hampton, RNAV or GPS RWY 28, Amdt. 1
East Hampton, NY, East Hampton, VOR or GPS–A, Amdt. 9
East Hampton, NY, East Hampton, RNAV or GPS RWY 10, Amdt. 4
Montgomery, NY, Orange County, VOR or GPS RWY 8, Amdt. 7
Monticello, NY, Monticello, VOR/DME or GPS RWY 1, Amdt. 2A
Monticello, NY, Sullivan County Intl, NDB or GPS RWY 15, Amdt. 6
New York, NY, John F. Kennedy Intl, VOR/DME or TACAN or GPS RWY 22L, Amdt. 4
New York, NY, John F. Kennedy Intl, VOR or GPS RWY 4L/R, Amdt. 15
New York, NY, John F. Kennedy Intl, VOR or GPS RWY 13L/13R, Amdt. 17
New York, NY, John F. Kennedy Intl, VOR/DME or GPS RWY 31L, Amdt. 11
Cleveland, OH, Cleveland-Hopkins Intl, VOR/DME RNAV or GPS RWY 10, Amdt. 11
Cleveland, OH, Cleveland-Hopkins Intl, VOR/DME RNAV or GPS RWY 18, Amdt. 10
Cleveland, OH, Cleveland-Hopkins Intl, NDB or GPS RWY 23L, Amdt. 1
Cleveland, OH, Cleveland-Hopkins Intl, NDB or GPS RWY 5R, Amdt. 5
Cleveland, OH, Cleveland-Hopkins Intl, VOR/DME RNAV or GPS RWY 36, Amdt. 10
Dayton, OH, James M Cox Dayton Intl, VOR/DME RNAV or GPS RWY 6R, Amdt. 8
Dayton, OH, James M Cox Dayton Intl, NDB or GPS RWY 6L, Amdt. 5
New Philadelphia, OH, Harry Clever Field, VOR/DME or GPS–B, Amdt. 2
Painesville, OH, Concord Airpark, VOR/DME or GPS–A, Amdt. 1
Youngstown, OH, Youngstown Elser Metro, VOR or GPS–C, Orig. A
Zanesville, OH, Zanesville Muni, VOR or GPS RWY 22, Amdt. 3
Zanesville, OH, Zanesville Muni, NDB or GPS–A, Amdt. 1
Zanesville, OH, Zanesville Muni, VOR or GPS RWY 4, Amdt. 6
Altus, OK, Altus Muni, RNAV or GPS RWY 17, Orig.
Altus, OK, Altus Muni, VOR or GPS–A, Amdt. 4
Buffalo, OK, Buffalo Muni, NDB or GPS–A, Amdt. 1
Chickasha, OK, Chickasha Muni, NDB or GPS RWY 17, Orig.
Chickasha, OK, Chickasha Muni, RNAV or GPS RWY 35, Orig.
Chickasha, OK, Chickasha Muni, VOR/DME or GPS–A, Orig.
Pauls Valley, OK, Pauls Valley Muni, NDB or GPS RWY 35, Amdt. 2
Perry, OK, Perry Muni, VOR/DME or GPS RWY 17, Amdt. 1A
Okmulgee, OK, Okmulgee Muni, NDB or GPS RWY 17, Amdt. 3
Okmulgee, OK, Okmulgee Muni, VOR or GPS RWY 22, Amdt. 1
Baker, OR, Baker City Muni, VOR/DME or GPS RWY 12, Amdt. 10
Baker, OR, Baker City Muni, VOR or GPS–A Orig.
North Bend, OR, North Bend Muni, VOR or GPS–A, Amdt. 28
North Bend, OR, North Bend Muni, NDB or GPS RWY 4, Amdt. 28
North Bend, OR, North Bend Muni, VOR/DME or GPS–B, Amdt. 3
Butler, PA, Butler County/K W Scholter Field, RNAV or GPS RWY 26, Amdt. 2
Butler, PA, Butler County/K W Scholter Field, VOR or GPS–A, Amdt. 5
Du Bois, PA, Du Bois-Jefferson County, RNAV or GPS RWY 7, Amdt.
Corry, PA, Corry-Lawrence, NDB or CPS RWY 14, Amdt. 4
Langhorne, PA, Buehl Field, VOR or GPS–A, Orig.
Latrobe, PA, Westmoreland County, NDB or GPS RWY 23, Amdt. 12
Reading, PA, Reading Regional/Carl A Spaatz Field, RNAV or GPS RWY 13, Amdt. 7
Reading, PA, Reading Regional/Carl A Spaatz Field, RNAV or GPS RWY 18, Amdt. 7
West Chester, PA, Brandywine, VOR or GPS–A, Amdt. 2

Providence, RI, Theodore Francis Green State, VOR/DME or GPS RWY 16, Amdt. 4
San Juan, PR, Luis Munoz Marin Intl, VOR or GPS RWY 26, Amdt. 18
Bennettsville, SC, Marlboro County, NDB or GPS RWY 6, Amdt. 3
Clemson, SC, Clemson-Oconee County, VOR/DME or GPS RWY 25, Orig.
Manning, SC, Santee Cooper Regional, NDB or GPS RWY 2, Amdt. 2
Manning, SC, Santee Cooper Regional, VOR/DME or GPS–A, Amdt. 4
Marion, SC, Marion County, NDB or GPS RWY 4, Amdt. 3
Spartanburg, SC, Spartanburg Downtown Memorial, RNAV or GPS RWY 4, Amdt. 6A
Belle Fourche, SD, Belle Fourche Municipal, NDB or GPS RWY 31, Orig.
Britton, SD, Britton Muni, NDB or GPS RWY 13, Amdt. 3
Chattanooga, TN, Lovell Field, VOR or GPS RWY 33, Amdt. 16
Knoxville, TN, McGhee-Tyson, VOR or GPS RWY 23L, Amdt. 4
Knoxville, TN, McGhee-Tyson, VOR or GPS RWY 23R, Amdt. 6
Nashville, TN, Nashville International, VOR/DME or GPS RWY 13, Amdt. 12
Oneida, TN, Scott Muni, NDB or GPS RWY 23, Amdt. 4
Rockwood, TN, Rockwood Muni, VOR/DME or GPS RWY 22, Amdt. 5
Union City, TN, Everett-Stewart, NDB or GPS RWY 1, Amdt. 5
Alice, TX, Alice Intl, VOR or GPS RWY 31, Amdt. 11
Amarillo, TX, Amarillo Intl, VOR or GPS RWY 22, Amdt. 25
Amarillo, TX, Tradewind, RNAV or GPS RWY 35, Amdt. 7
Bay City, TX, Bay City Muni, VOR/DME or GPS–A, Amdt. 4
Beaumont/Port Arthur, Jefferson County, VOR/DME or TACAN or GPS RWY 34, Amdt. 6
Brownfield, TX, Terry County, NDB or GPS RWY 2, Amdt. 1
Brownsville, TX, Brownsville/South Padre Island Intl, RNAV or GPS RWY 17, Amdt 3
Brownsville, TX, Brownsville/South Padre Island Intl, RNAV or GPS RWY 35, Amdt 3
Coleman, TX, Coleman Muni, NDB or GPS RWY 15, Amdt. 1
College Station, TX, Easterwood Field, VOR/DME or GPS RWY 28, Amdt. 1
Conroe, TX, Montgomery County, RNAV or GPS RWY 32, Orig.
Corpus Christi, TX, Corpus Christi Intl, VOR or TACAN or GPS RWY 17, Amdt. 1
Corsicana, TX, C David Campbell Field-Corsicana Muni, NDB or GPS RWY 14, Amdt. 2
Corsicana, TX, C David Campbell Field-Corsicana Muni, NDB or GPS RWY 32, Amdt. 1
Dallas, TX, Addison, VOR/DME RNAV or GPS RWY 33, Amdt. 2
Dallas, TX, Redbird, VOR or GPS RWY 31, Amdt. 1
Dallas, TX, Redbird, NDB or GPS RWY 35, Amdt. 8
Dallas, TX, Redbird, VOR/DME or GPS RWY 17, Orig.
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, NDB or GPS RWY 35R, Amdt. 8
Dumas, TX, Moore County, VOR/DME or GPS–A, Amdt. 5
Dumas, TX, Moore County, NDB or GPS RWY 1, Amdt. 3
Dumas, TX, Moore County, VOR/DME RNAV or GPS RWY 19, Amdt. 3
Decatur, TX, Decatur Muni, VOR or GPS–A, Amdt. 4
El Paso, TX, El Paso Intl, VOR or GPS RWY 26L, Amdt. 2
Fort Worth, TX, Fort Worth Spinks, RNAV or GPS RWY 35 L, Amdt. 1A
Georgetown, TX, Georgetown Muni, NDB or GPS RWY 18, Amdt. 4A
Price, UT, Carbon County, VOR or GPS RWY 36, Orig.
Provo, UT, Provo Muni, VOR or GPS RWY 13, Orig.
Manassas, VA, Manassas Regional/Harry P Davis Field, NDB or GPS–A, Amdt. 8
Manassas, VA, Manassas Regional/Harry P Davis Field, VOR/DME RNAV or GPS RWY 16R, Amdt. 7
Newport News, VA, Newport News/Williamsburg Intl, NDB or GPS RWY 2, Amdt. 4
Newport News, VA, Newport News/Williamsburg Intl, NDB or GPS RWY 20, Amdt. 3A
Richmond/Ashland, VA, Hanover County Muni, NDB or GPS RWY 16, Amdt. 1
South Hill, VA, Mecklenburg-Brunswick Regional, NDB or GPS RWY 1, Amdt. 1
Springfield, VT, Hartness State (Springfield), NDB or GPS–A, Amdt. 4
Tacoma, WA, Tocoma Narrows, NDB or GPS RWY 35, Amdt. 6
Walla Walla, WA, Walla Walla Regional, VOR or GPS RWY 2, Amdt. 10
Walla Walla, WA, Walla Walla Regional, NDB or GPS RWY 20, Amdt. 5
Walla Walla, WA, Walla Walla Regional, VOR or GPS RWY 16, Amdt. 11
Appleton, WI, Outagamie County, VOR/DME or GPS RWY 21, Orig.
Eagle River, WI, Eagle River Union, VOR/DME or GPS RWY 4, Amdt. 1
Fond Du Lac, WI, Fond Du Lac County, VOR/DME or GPS RWY 18, Amdt. 6
Kenosha, WI, Kenosha Regional, VOR or GPS RWY 24R, Orig.
Kenosha, WI, Kenosha Regional, VOR or GPS RWY 14, Orig.
La Crosse, WI, La Crosse Muni, VOR or GPS RWY 36, Amdt. 2
Lone Rock, WI, Tri-County Regional, RNAV or GPS RWY 27, Amdt. 6
Madison, WI, Dane County Regional-Truax Field, VOR or TACAN or GPS RWY 31, Amdt. 24
Madison, WI, Dane County Regional-Truax Field, VOR or TACAN or GPS RWY 13, Amdt. 23
Merrill, WI, Merrill Muni, NDB or GPS RWY 7, Amdt. 2
Charleston, WV, Yeager, VOR/DME RNAV or GPS RWY 15, Amdt. 2
Charleston, WV, Yeager, VOR/DME RNAV or GPS RWY 33, Amdt. 2
Cowley-Lovell-Byron, WY, North Big Horn County, NDB or GPS RWY 9, Amdt. 1
Pinedale, WY, Ralph Wenz Field, NDB or GPS RWY 29, Orig.
Powell, WY, Powell Muni, NDB or GPS RWY 31, Amdt. 1

The following are *connected* procedure titles adding "or GPS" published in Transmittal Letter 94–10.

Daggett, CA, Barstow-Daggett, VOR or TACAN or GPS RWY 22, Amdt. 8
New Haven, CT, Tweed-New Haven, VOR or GPS–A, Amdt. 2A.
Louisville, KY, Bowman Field, NDB or GPS RWY 32, Amdt. 15
Louisville, KY, Bowman Field, VOR or GPS RWY 14, Amdt. 9
Cleveland, OH, Burke Lakefront, NDB or GPS RWY 24R, Amdt. 1
Aguadilla, PR, Rafael Hernandez, VOR/DME or GPS RWY 8, Amdt. 1
Manitowoc, WI, Manitowoc County, VOR or GPS RWY 17, Amdt. 14
Manitowoc, WI, Manitowoc County, VOR or GPS RWY 35, Amdt. 13

Effective Upon Publication

Moultrie, GA, Moultrie Muni, VOR or GPS RWY 22, Amdt. 11A

[FR Doc. 94–14576 Filed 6–14–94; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 1605; Amdt. No. 27780]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:
1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports.

All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034 February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on June 3, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective Upon Publication . . .

FDC date	State	City	Airport	FDC No.	SIAP
05/22/94 ...	NY	Cortland	Cortland County-Chase Field	FDC 4/2325	VOR–A Orig A...
05/23/94 ...	OK	Alva	Alva Muni	FDC 4/2341	NDB Rwy 35 Amdt 4...

FDC date	State	City	Airport	FDC No.	SIAP
05/24/94 ...	MN	South St. Paul	South St. Paul Muni-Richard E Fleming Field.	FDC 4/2368	ND–B Amdt 3A...
05/24/94 ...	SC	Orangeburg	Orangeburg Muni	FDC 4/2366	NDB OR GPS Rwy 5 Orig...
05/26/94 ...	MD	Gaithersburg	Montgomery County Airpark	FDC 4/2437	NDB Rwy 14, Orig...
05/27/94 ...	NV	Tonopah	Tonopah	FDC 4/2455	VOR–A Amdt 3...

Gaithersburg

Montgomery County Airpark
Maryland
NDB RWY 14, ORIG...
FDC Date: 05/26/94

FDC 4/2437/GAI/ FI/P Montgomery County Airpark, Gaithersburg, MD. NDB Rwy 14, Orig... Add Note... If ALSTG not received, use Baltimore-Washington Intl and increase all MDA's 120 ft. This becomes NDB Rwy 14, Orig-A.

South St. Paul

South St. Paul Muni-Richard E. Fleming Field
Minnesota
NDB–B AMDT 3A...
FDC Date: 05/24/94

FDC 4/2368/D97/ FI/P South St. Paul Muni-Richard E. Fleming Field, South St. Paul, MN. NDB–B Amdt 3A... Terminal Route FGT VORTAC to PPI NDB 2800. This is NDB–B Amdt 3B.

Tonopah

Tonopah
Nevada
VOR–A AMDT 3...
FDC Date: 05/27/94

FDC 4/2455/TPH/ FI/P Tonopah, Tonopah, NV. VOR–A Amdt 3... Delete ALSTG Note. This becomes VOR–A Amdt 3A.

Cortland

Cortland County-Chase Field
New York
VOR–A ORIG A...
FDC Date: 05/22/94

FDC 4/2325/NO3/ FI/P Cortland County-Chase Field, Cortland, NY. VOR–A Orig A... Circling CAT D NA. This is VOR–A Orig. B.

Alva

Alva Muni
Oklahoma
NDB RWY 35 AMDT 4..
FDC Date: 05/23/94

FDC 4/2341/3K1/ FI/P Alva Muni, Alva, OK. NDB Rwy 35 Amdt 4... Trml Rte Caron Int to Alva /AVK/ NDB ALT 4000. Chg Proc Turn Alt to 3100*. Add Note... *Maintain 4000 or above until established outbound for Proc turn. Chg missed approach to read... Climb to 3000 then climbing left turn to 4000 direct /AVK/ NDB and hold. This is NDB Rwy 35 Amdt 4A.

Orangeburg

Orangeburg Muni
South Carolina
NDB OR GPS RWY 5 ORIG...
FDC Date: 05/24/94

FDC 4/2366/OGB/ FI/P Orangeburg Muni, Orangeburg, SC. NDB or GPS Rwy 5 Orig... terminal route... Van Vortac to OYI NDB 267.71/23.20. This becomes NDB or GPS Rwy 5 Orig A.

[FR Doc. 94–14575 Filed 6–14–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 771, and 775

[Docket No. 940533–4133]

RIN 0694–AA79

Exports to Argentina: Establishment of Import Certificate/Delivery Verification (IC/DV) Procedure, Shorter Processing Time Frames and General License GCG

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: As part of the Department of Commerce initiative to streamline export licensing requirements for exports to countries that are demonstrating increased ability to safeguard reexports of U.S.-origin strategic goods and technology, the Bureau of Export Administration (BXA) is extending to Argentina export licensing benefits available under the provisions of section 5(k) of the Export Administration Act of 1979, as amended (EAA).

This action will lessen the administrative burden on U.S. exporters and their foreign customers.

Specifically, BXA is:

- Providing shorter processing times for license applications for Argentina; and
- Amending General License GCG to authorize certain shipments of U.S.-origin commodities to Argentina;

This rule also amends the Export Administration Regulations (EAR) to include new requirements based on the implementation of Import Certificate/Delivery Verification (IC/DV) procedures for Argentina.

DATES: *Effective Date:* This rule is effective June 15, 1994.

Grace Period: In lieu of the 45 day grace period provided in 15 CFR 775.10(c)(2), a 90 day grace period will apply to the requirement to obtain the Argentine Import Certificate to support an export license application. During the grace period, applications will be accepted whether or not supported by an Argentine Import Certificate.

FOR FURTHER INFORMATION CONTACT: David Schlechty, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, Telephone: (202) 482–4253.

SUPPLEMENTARY INFORMATION: The Bureau of Export Administration (BXA) requires a foreign importer to file an International Import Certificate (IC) in support of individual validated license applications to export certain commodities controlled for national security reasons to specified destinations. The commodities are identified by the code letter "A" following the Export Control Classification Number on the Commerce Control List, which identifies those items subject to Department of Commerce export controls. An IC is an undertaking by the government of the country of ultimate destination to exercise legal control over the disposition of those commodities covered by an IC.

BXA also requires a Delivery Verification Certificate (DV) on a selective basis, as described in 15 CFR 775.3(i). A DV is issued by the government of the country of ultimate destination after the exported commodities have either entered the export jurisdiction of that country or are otherwise accounted for by the importer.

New documentation practices adopted by Argentina warrant the inclusion of that country in the IC/DV procedure. This rule amends the EAR by adding Argentina to the list of countries that issue Import Certificates and by adding the name and address of the Argentina authorities to the list of foreign offices that administer the IC/DV systems.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget (OMB) under control numbers 0694–0001, 0694–0005, 0694–0007, 0694–0010, and 0694–0016. Licensing requirements under OMB control numbers 0694–0005, 0694–0007, and 0694–0010 will be reduced as a result of this rule, while there will be a small increase under 0694–0001 and 0694–0016, thereby reducing overall the paperwork burden on the public.

The Import Certificate requirements set forth in § 775.3 supersede the exclusion for Argentina, as a member of Country Group T, from the requirement for supporting documents for export license applications. The Import Certificate issued by the Government of Argentina does not constitute a collection of information under the Paperwork Reduction Act of 1980.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is issued in final form. However, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Parts 771 and 775

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 770, 771, and 775 of the Export Administration Regulations are amended as follows:

1. The authority citation for 15 CFR parts 770, 771, and 775 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

PART 770—[AMENDED]

§ 770.14 [Amended]

2. Section 770.14 is amended by adding the word "Argentina," immediately before "Austria," in the introductory text of paragraph (a) and in paragraph (a)(3)(ii).

PART 771—[AMENDED]

§ 771.14 [Amended]

3. In § 771.14, paragraph (b) is amended by adding the word "Argentina," immediately before the word "Austria,".

PART 775—[AMENDED]

4. In § 775.1, paragraph (a) is amended by revising the fifth sentence to read as follows:

§ 775.1 Introduction.

(a) * * * Supporting documents are not required for Country Group T, unless specifically required by this part or if the Office of Export Licensing specifically requests a supporting document.

* * * * *

5. The table in § 775.1 is amended by adding "Argentina," immediately before "Australia," in the column titled "and the country of destination is:".

6. The list of countries in § 775.3(b) is amended by adding "Argentina" immediately before "Australia".

7. Supplement No. 1 to part 775 is amended by adding a new entry for "Argentina" in alphabetical order to read as follows:

SUPPLEMENT NO. 1.—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM IN FOREIGN COUNTRIES [1]

[See footnotes at end of table]

Country	IC/DV authorities	System administered [2]
Argentina	Secretaria Ejecutiva de la Comision Nacional de Control de Exportaciones, Sensitivas y Material Belico, Balcarce 362—1er. piso—Capital Federal—CP 1064, Buenos Aires, Tel. 334–0738, Fax 331–1618.	IC/DV

SUPPLEMENT NO. 1.—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM IN FOREIGN COUNTRIES [1]—Continued

[See footnotes at end of table]

Country	IC/DV authorities	System administered [2]
.	.	.

[1] Facsimiles of Import Certificates and Delivery Verifications issued by each of these countries may be inspected at the Bureau of Export Administration Western Regional Office, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660–3198 or at any U.S. Department of Commerce District Office (see listing in Commerce Office Addresses section of these regulations) or at the Office of Export Licensing, Room 1099D, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.
[2] IC—Import Certificate and/or DV—Delivery Verification.

Dated: June 9, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–14482 Filed 6–14–94; 8:45 am]

BILLING CODE 3510–DT–P

15 CFR Parts 771, 773, 779, 785, 786, and 799

[Docket No. 940672–4172]

RIN 0694–AA99

Exports to South Africa; Removal of Foreign Policy Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On May 25, the United Nations Security Council (UNSC) passed Resolution 919 lifting the arms embargo against South Africa, and withdrawing their recommendation for other voluntary restrictions on sales to the South African military and police. The UNSC took this action at the request of the new South African Government, which was sworn in on May 10 following that nation's first all-race elections. With the end of the apartheid era in South Africa, the justification for maintaining the arms embargo and other restrictions no longer exists.

In recognition of the UNSC action and the installation of a democratically elected, nonracial government in South Africa, the Department of Commerce's export control regulations are hereby amended to eliminate controls established to implement an arms embargo, and to remove specific controls on exports to the South African military and police.

EFFECTIVE DATE: This rule is effective May 25, 1994.

FOR FURTHER INFORMATION CONTACT: David Schlechty, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 482–4252.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0002, 0694–0005, 0694–0006, 0694–0007, 0694–0010, 0694–0015, 0694–0038, 0694–0047 and 0694–0048.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Hillary Hess, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Parts 771, 773 and 786

Exports, Reporting and recordkeeping requirements.

15 CFR Part 779

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

15 CFR Part 785

Exports.

15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

1. The authority citation for 15 CFR parts 771, 786 and 799 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40), sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

2. The authority citation for 15 CFR parts 773, 779 and 785 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1992 (57 FR 53979, November 13, 1992); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); and E.O. 12868 of September 30, 1993 (58 FR 51749, October 4, 1993).

PART 771—[AMENDED]

§ 771.2 [Amended]

3. Section 771.2 is amended by removing and reserving paragraph (c)(11).

§ 771.4 [Amended]

4. Section 771.4 is amended by removing and reserving paragraph (b)(3).

PART 773—[AMENDED]

§ 773.1 [Amended]

5. Section 773.1 is amended by removing and reserving paragraph (a).

§ 773.2 [Amended]

6. Section 773.2 is amended by removing and reserving paragraph (b)(1).

7. Section 773.3 is amended by removing paragraph (d)(3)(ii)(E)(*3*) and revising paragraph (b)(1) to read as follows:

§ 773.3 Distribution license.

* * * * *

(b) *Ineligible or restricted commodities.*

(1) *Ineligible commodities.* All commodities listed in the Commerce Control List (Supplement No. 1 to § 799.1 of this subchapter) will be considered for eligibility under the Distribution License procedure, except commodities listed in Supplement No. 1 to part 773. Software and technology are not eligible for this procedure. Ineligible items require an individual validated license or written reexport authorization, except when the items are otherwise eligible for a general license or permissive reexport authorization.

* * * * *

8. Section 773.7 is amended:

a. By revising paragraph (b);

b. By revising paragraphs (d)(1)(ii)(C) and (d)(1)(ii)(D);

c. By removing paragraph (d)(1)(ii)(E); and

d. By revising the introductory text of paragraph (d)(3)(ii), to read as follows:

§ 773.7 Service Supply Procedure.

* * * * *

(b) *Ineligible or restricted commodities.* All commodities listed in the Commerce Control List (Supplement No. 1 to § 799.1 of this subchapter) will be considered for eligibility under the Service Supply Procedure, except:

(1) Parts to service arms, ammunition or implements of war referred to in Supplement No. 2 to Part 770; and

(2) Commodities listed in Supplement No. 1 to Part 773 and any parts to service such commodities.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(C) Form BXA–6026P, Service Supply (SL) License Statement By U.S. Exporter; and

(D) Comprehensive narrative statement by the exporter.

* * * * *

(3) * * *

(ii) *Application.* Each application for reexport by a foreign manufacturer shall include the documents specified in paragraphs (d)(3)(ii)(A) and (B) of this section:

* * * * *

PART 779—[AMENDED]

9. Section 779.4 is amended by removing and reserving paragraph (e), and by revising paragraph (a) to read as follows:

§ 779.4 General license GTDR: Technical data under restriction.

* * * * *

(a) *Country restrictions.* General license GTDR with written assurance may not be used for export to Country Groups Q, W, Y, S, and Z, the People's Republic of China, Iran, or Syria. General License GTDR without written assurance (GTDU) may not be used for exports to Country Groups S and Z, Iran or Syria of software available at retail outlets as described in the General Software Note (Supplement No. 2 to § 799.1 of this subchapter). General License GTDR without written assurance (GTDU) as described in any entry on the Commerce Control List (Supplement No. 1 to § 799.1 of this subchapter) may not be used for exports to Country Groups S and Z. This General License is subject to the prohibitions described in § 771.2(c) of this subchapter.

* * * * *

Supplement No. 2 to Part 779 [Removed and Reserved]

10. Supplement No. 2 to part 779 is removed and reserved.

PART 785—[AMENDED]

§ 785.4 [Amended]

11. Section 785.4 is amended by removing and reserving paragraph (a).

Supplement No. 1 to Part 785 [Removed]

12. Supplement No. 1 to Part 785 is removed.

Supplement No. 2 to Part 785 [Removed]

13. Supplement No. 2 to Part 785 is removed.

PART 786—[AMENDED]

14. Section 786.6 is amended by revising paragraph (a) and the introductory text of paragraph (c) to read as follows:

§ 786.6 Destination control statements.

(a) *Requirement for destination control statement.* When required by this § 786.6(a), an appropriate destination control statement is required to be entered on all copies of the bill of lading, the air waybill, and the commercial invoice covering an export from the United States. The same statement shall appear on all copies of all such shipping documents that apply to the same shipment. At the discretion of the exporter or his agent, a destination control statement may be entered on the shipping documents for exports for which no destination control statement is required. For exports to all destinations, one of the three destination control statements described in § 786.6 (c) and (d) is required for an export under—

(1) A validated license;

(2) General License GLV, GTF-US, G-TEMP, GLR, GFW, GNSG or GCT.

* * * * *

(c) *Statement to be used.* For exports to all destinations, one of the three destination control statements set forth in § 786.6(d) below may be used, as follows:

* * * * *

PART 799—[AMENDED]

15. Section 799.1 is amended by revising paragraph (b)(4) to read as follows:

§ 799.1 The Commerce Control List and how to use it.

* * * * *

(b) * * *

(4) The four digit number will be followed by a code letter. This code letter is a key to the documentation requirements of part 775 of this subchapter, and is used by many

exporters as a data processing code to indicate the country group level of control for CCL entries. The letters used and the respective letter country controls are as follows:

Code letters	Country groups for which a validated license is required
A[1]	QSTVWYZ (Cooperating countries).
B	QSTVWYZ (Other).
C	QSTVWYZ, except specified countries.
D	QSTVWYZ and Canada.
E	SZ and countries listed in certain supplements to the EAR.
F	SZ and certain other specified countries.
G	SZ.
H	Z.
I	None.

[1] Only "A" level items are subject to the IC/DV procedures (see § 775.3).

* * * * *

16. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1, Materials, a new 1C92F is added and 1C93F is revised to read as follows:

1C92F Oil Well Perforators.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: Number
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

List of Items Controlled

a. Shaped charges specially designed for oil well operations, utilizing one charge functioning along a single axis, that upon detonation produce a hole, and:

a.1. Contain any formulation of RDX, PYX, PETN, HNS or HMX; and

a.2. Have only a uniformly shaped conical liner with an included angle of 90 degrees or less; and

a.3. Have a total explosive mass of no more than 90 grams; and

a.4. Have a diameter not exceeding three inches.

1C93F Fibrous and filamentary materials, not controlled by 1C10 or 1C50, for use in composite structures and with a specific modulus of 3.18 x 10^6 m or greater and a specific tensile strength of 7.62 x 10^4 m or greater.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: Kilograms
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

Supplement No. 1 to § 799.1 [Amended]

17. In Supplement No. 1 to § 799.1 (the Commerce Control List), the entries listed below are amended by revising the Requirements Section for each entry:

A. In Category 1, Materials: ECCNs 1A96G, 1B96G, 1C94F, 1C96G, 1D93F, 1D94F, 1D96G, 1E02A, 1E94F and 1E96G;

B. In Category 2, Material Processing: ECCNs 2A94F, 2A96G, 2B85F, 2B91F, 2B92F, 2B93F, 2B94F, 2B96G, 2D92F, 2D93F, 2D94F, 2D96G, 2E93F, 2E94F, and 2E96G;

C. In Category 3, Electronics: ECCNs 3A92F, 3A93F, 3A94F, 3A96G, 3B91F, 3B96G, 3C96G, 3D94F, 3D96G, 3E94F and 3E96G;

D. In Category 4, Computers: ECCNs 4A94F, 4A96G, 4B94F, 4B96G, 4C94F, 4C96G, 4D92F, 4D93F, 4D94F, 4D96G, 4E92F, 4E93F, 4E94F and 4E96G;

E. In Category 5, Telecommunications and "Information Security": ECCNs 5A90A, 5A91F, 5A92F, 5A93F, 5A94F, 5A95F, 5A96G, 5B94F, 5B96G, 5C96G, 5D90F, 5D91F, 5D92F, 5D93F, 5D94F, 5D95F, 5D96G, 5E90F, 5E91F, 5E92F, 5E93F, 5E94F, 5E95F and 5E96G;

F. In Category 6, Sensors: 6A90F, 6A92F, 6A93F, 6A94F, 6A96G, 6B96G, 6C96G, 6D90F, 6D92F, 6D93F, 6D94F, 6D96G, 6E90F, 6E92F, 6E93F, 6E94F and 6E96G;

G. In Category 7, Avionics and Navigation: ECCNs 7A94F, 7B94F, 7D94F and 7E94F;

H. In Category 8, Marine Technology: 8A92F, 8A93F, 8A94F, 8A96G, 8B96G, 8C96G, 8D92F, 8D93F, 8D96G, 8E92F, 8E93F and 8E96G;

I. In Category 9, Propulsion Systems and Transportation Equipment: 9A90F, 9A91F, 9A92F, 9A93F, 9A94F, 9A96G, 9B94F, 9B96G, 9D90F, 9D91F, 9D93F, 9D94F, 9D96G, 9E90F, 9E91F, 9E93F, 9E94F and 9E96G; and

J. In Category 0, Miscellaneous: 0A18A, 0A84C, 0A86F, 0A95H, 0A96G, 0E18A, 0E84C and 0E96G.

1A96G Other materials, n.e.s.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

1B6G Other test, inspection, and production equipment for materials.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

1C94F Fluorocarbon electronic cooling fluids.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: Kilograms
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

* * * * *

1C96G Other materials for production of Category 1 items, n.e.s.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

1D93F "Software" specially designed for the "development", "production", or "use" of fibrous and filamentary materials controlled by 1C50.b or 1C93F.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

1D94F "Software" specially designed for the "development" or "production" of fluorocarbon electronic cooling fluids controlled by 1C94F.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

1D96G Other software specially designed or modified for the "development", "production", or "use" of equipment controlled by Category 1, n.e.s.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

1E02A Other technology.

Requirements

Validated License Required:
QSTVWYZ
Reason for Control: NS
GTDR: Yes, except Iran and Syria
GTDU: No

* * * * *

1E94F Technology for the "development", "production", or "use" of fibrous and filamentary materials controlled by 1C93F or fluorocarbon electronic cooling fluids controlled by 1C94F.

Requirements

Validated License Required: SZ, Iran, Syria
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

1E96G Other technology, n.e.s., for the "development", "production", or "use" of items controlled by Category 1.

Requirements

Validated License Required: SZ
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2A94F Portable electric generators and specially designed parts.

Requirements

Validated License Required: SZ, Iran
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

2A96G Other equipment, assemblies, and components in Category 2A, n.e.s.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

2B85F Equipment specially designed for manufacturing shotgun shells; and ammunition hand-loading equipment for both cartridges and shotgun shells.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

2B91F "Numerical control" units for machine tools and numerically controlled machine tools, n.e.s.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: Number
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

* * * * *

2B92F Manual dimensional inspection machines with two or more axes, and measurement uncertainty equal to or less (better) than (3 + L/300) micrometer in any axes (L measured length in mm).

Requirements

Validated License Required: SZ, Iran, Syria
Unit: Number
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

2B93F Gear making and/or finishing machinery not controlled by 2B03A capable of producing gears to a quality level of better than AGMA 11.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

2B94F Robots not controlled by 2B07A that are capable of employing feedback information in real-time processing from one or more sensors to generate or modify "programs" or to generate or modify numerical program data.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

2B96G Other test, inspection, and production equipment in Category 2B, n.e.s.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

2D92F "Software" specially designed for the "development" or "production" of portable electric generators controlled by 2A94F.

Requirements

Validated License Required: SZ, Iran
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under Validated License Required

2D93F "Software" specially designed for the "development" or "production" of manual dimensional inspection machines controlled by 2B92F.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2D94F "Software" specially designed for the "development", "production", or "use" of "numerical control" units and numerically controlled machine tools controlled by 2B91F, gear making and/or finishing machinery controlled by 2B93F, or robots controlled by 2B94F.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2D96G "Software", n.e.s., for the "development", "production", or "use" of commodities controlled under Category 2.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2E93F—Technology for the "development", "production", or "use" of portable electric generators controlled by 2A94F.

Requirements

Validated License Required: SZ, Iran
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2E94F Technology for the "development", "production", or "use" of "numerical control" units and numerically controlled machine tools controlled by 2B91F, manual dimensional inspection machines controlled by 2B92F, gear making and/or finishing machinery controlled by 2B93F, or robots controlled by 2B94F.

Requirements

Validated License Required: SZ, Iran, Syria
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

2E96G Technology, n.e.s., for the "development", "production", or "use" of commodities controlled under Category 2.

Requirements

Validated License Required: SZ.
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

3A92F Electronic devices and components not controlled by 3A01

Requirements

Validated License Required: SZ, Iran, Syria
Unit: Number
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

* * * * *

3A93F Electronic test equipment in Category 3A, n.e.s.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GLV: $1,000 for Syria only
GCT: No
GFW: No

3A94F General purpose electronic equipment not controlled by 3A02.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: Number
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

* * * * *

3A96G Other equipment, assemblies, and components in Category 3A, n.e.s.

Requirements

Validated License Required: SZ.
Unit: Number
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

3B91F Equipment not controlled by 3B01 for the manufacture or testing of electronic components and materials, and specially designed components and accessories therefor.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: Number
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

* * * * *

3B96G Other test, inspection, and production equipment in Category 3B, n.e.s.

Requirements

Validated License Required: SZ.
Unit: Number
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

3C96G Other materials in Category 3C, n.e.s.

Requirements

Validated License Required: SZ.
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

3D94F "Software" specially designed for the "development", "production", or "use" of electronic devices or components controlled by 3A92, electronic test equipment controlled by 3A93, general purpose electronic equipment controlled by 3A94, or manufacturing and test equipment controlled by 3B91.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

3D96G "Software", n.e.s., for the "development", "production", or "use" of commodities controlled under Category 3.

Requirements

Validated License Required: SZ.
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

3E94F Technology for the "development", "production", or "use" of electronic devices or components controlled by 3A92, electronic test equipment controlled by 3A93, general purpose electronic equipment controlled by 3A94, or manufacturing and test equipment controlled by 3B91.

Requirements

Validated License Required: SZ, Iran, Syria
Reason for Control: FP
Unit: $ value
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

3E96G Technology, n.e.s., for the "development", "production", or "use" of commodities controlled under Category 3.

Requirements

Validated License Required: SZ.
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

4A94F Computers, "assemblies" and related equipment not controlled by 4A01, 4A02, or 4A03, and specially designed components therefor

Requirements

Validated License Required: SZ, Iran, Syria
Unit: Computers and Peripherals in Number, parts and accessories in $ value
Reason For Control: FP
GLV: $0
GCT: No
GFW: No

* * * * *

4A96G Other computer equipment, "assemblies" and components, n.e.s

Requirements

Validated License Required: SZ.
Unit: Computers and Peripherals in Number, parts and accessories in $ value
Reason For Control: FP
GLV: $0
GCT: No
GFW: No

4B94F Equipment for the "development" and "production" of magnetic and optical storage equipment, as described in this entry.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

* * * * *

4B96G Computer test, production and inspection equipment, n.e.s.

Requirements

Validated License Required: SZ
Unit: $ value
Reason For Control: FP
GLV: $0
GCT: No
GFW: No

4C94F Materials specially formulated for and "required" for the fabrication of head/disk assemblies for controlled magnetic and magneto-optical hard disk drives.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

4C96G Materials, n.e.s., specially formulated for and "required" for the fabrication of computer equipment, "assemblies" and components.

Requirements

Validated License Required: SZ
Unit: $ value
Reason For Control: FP
GLV: $0
GCT: No
GFW: No

4D92F "Software" specially designed or modified for the "development", "production", or "use" of equipment controlled by 4B94 and materials controlled by 4C94.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

4D93F "Program" proof and validation "software", "software" allowing the automatic generation of "source codes", and operating systems not controlled by 4D03 that are specially designed for "real time processing" equipment.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

* * * * *

4D94F "Software" specially designed for the "development", "production", or "use" of "digital computers", "assemblies" and related equipment therefor controlled by 4A94.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

4D96G "Software", n.e.s., specially designed or modified for the "development", "production", or "use" of computer equipment or materials controlled by 4A, 4B, or 4C, and other "software", n.e.s.

Note: Certain "software" must also be evaluated against the performance characteristics of the telecommunications or "information security" entries in Category 5. See Notes 1 and 2 following the heading of Category 4.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

4E92F Technology for the "development", "production", or "use" of equipment controlled by 4B94, materials controlled by 4C94, or "software" controlled by 4D92, 4D93, or 4D94.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

4E93F Technology for the "development" or "production" of graphics accelerators or equipment designed for "multi-data-stream processing" and technology "required" for the "development" or "production" of magnetic hard disk drives.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

* * * * *

4E94F Technology for the "development", "production", or "use" of "digital computers", "assemblies" and related equipment therefor controlled by 4A94F.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

4E96G Technology, n.e.s., for the "development", "production", or "use" of items controlled by Category 4.

Note: Technology for certain equipment or "software" must also be evaluated against the performance characteristics of the telecommunications or "information security" entries in Category 5. See Notes 1 and 2 following the heading of Category 4.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5A90A Any type of telecommunications equipment, not controlled by 5A01, specially designed to operate outside the temperature range from 219 K (−54° C) to 397 K (124° C).

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

5A91F Transmission equipment, not controlled by 5A02, containing items set forth below.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

* * * * *

5A92F Mobile communications equipment, n.e.s., and "assemblies" and components therefor.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

5A93F Radio relay communications equipment designed for use at frequencies equal to or exceeding 19.7 GHz and "assemblies" and components therefor, n.e.s.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason For Control: FP
GLV: $0
GCT: No
GFW: No

5A94F "Data (message) switching" equipment or systems designed for "packet-mode operation" and assemblies and components therefor, n.e.s.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason For Control: FP
GLV: $0
GCT: No
GFW: No

Notes: "Data (message) switching" is defined as the technique for:

(a) Accepting data groups (including messages, packets, or other digital or telegraphic information groups) transmitted as a composite whole);

(b) Storing (buffering) data groups as necessary;

(c) Processing part of all the data groups, as necessary, for the purpose of:

(1) Control (routing, priority, formatting, code conversion, error control, retransmission or journaling);

(2) Transmission; or

(3) Multiplexing; and

(d) Retransmitting (processed) data groups when transmission or receiving facilities are available.

5A95F "Information security" equipment, n.e.s. (e.g., cryptographic, cryptoanalytic, and cryptologic equipment, n.e.s.), and components therefor.

Requirements

Validated License Required: SZ, Iran
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

5A96G Telecommunications equipment, "assemblies", and components, n.e.s.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

5B94F Telecommunications test equipment, n.e.s.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

Note: General License G-DEST is available for shipment to Syria valued at $1,000 or less

5B96G Telecommunications and "information security" production equipment, n.e.s.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

5C96G Other materials required for the manufacture of telecommunications or "information security" equipment, "assemblies" and components, n.e.s

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

5D90F "Software" specially designed or modified for the "development", "production", or "use" of equipment controlled by 5A90 or 5A91.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5D91F "Software" specially designed or modified for the "development", "production", or "use" of telecommunications test equipment controlled by 5B94.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5D92F "Software" specially designed or modified for the "development", "production" or "use" of mobile communications equipment controlled by 5A92.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5D93F "Software" specially designed or modified for the "development", "production" or "use" of radio relay communication equipment controlled by 5A93.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5D94F "Software" specially designed or modified for the "development", "production" or "use" of "data (message) switching" equipment controlled by 5A94.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No

GTDU: Yes, except destinations listed under *Validated License Required*

5D95F "Software", n.e.s., specially designed or modified for the "development", "production", or "use" of "information security" or cryptologic equipment (e.g., equipment controlled by 5A95).

Requirements

Validated License Required: SZ, Iran
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5D96G "Software", n.e.s., specially designed or modified for the "development", "production", or "use" of telecommunications equipment.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5E90F Technology for the "development", "production", or "use" of equipment controlled by 5A90 or 5A91 or "software" controlled by 5D90.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5E91F Technology for the "development", "production", or "use" of telecommunications test equipment controlled by 5B94, or "software" controlled by 5D91.

Requirements

Validated License Required: SZ, Iran, Syria
Reason for Control: FP
Unit: $ value
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5E92F Technology for the "development", "production" or "use" of mobile communications equipment controlled by 5A92, or "software" controlled by 5D92.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5E93F Technology for the "development", "production" or "use" of radio relay communication equipment controlled by 5A93, or "software" controlled by 5D93.

Requirements

Validated License Required: SZ, Iran, Syria
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5E94F Technology for the "development", "production" or "use" of "data (message) switching" equipment controlled by 5A94, or "software" controlled by 5D94.

Requirements

Validated License Required: SZ, Iran, Syria
Reason for Control: FP
Unit: $ value
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5E95F Technology, n.e.s., for the "development", "production", or "use" of "information security" or cryptologic equipment (e.g., equipment controlled by 5A95), or "software" controlled by 5D95.

Requirements

Validated License Required: SZ, Iran
Reason for Control: FP
Unit: $ value
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

5E96G Technology, n.e.s., for the "development", "production", or "use" of telecommunications equipment.

Requirements

Validated License Required: SZ
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6A90F Airborne radar equipment, n.e.s., and specially designed components therefor.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

6A92F Gravity meters (gravimeters) not controlled by 6A07A.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

* * * * *

6A93F "Magnetometers" having a "noise level" (sensitivity) lower (better) than 1.0 nT rms per square root Hz, but no lower than 0.05 nT rms per square root Hz.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

6A94F Marine or terrestrial acoustic equipment, n.e.s., capable of detecting or locating underwater objects or features or positioning surface vessels or underwater vehicles; and specially designed components, n.e.s.

Requirements

Validated License Required: SZ, Iran
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

6A96G Other equipment in Category 6A, n.e.s.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

6B96G Other test, inspection, and production equipment in Category 6B, n.e.s.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

6C96G Other materials in Category 6C, n.e.s.

Requirements

Validated License Required: SZ
Unit: $ value

Reason for Control: FP
GLV: $0
GCT: No
GFW: No

6D90F "Software" specially designed for the "development", "production", or "use" of airborne radar equipment controlled by 6A90F.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6D92F "Software" specially designed for the "development", "production", or "use" of gravity meters (gravimeters) controlled by 6A92.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6D93F "Software" specially designed for the "development", "production", or "use" of "magnetometers" controlled by 6A94.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6D94F "Software" specially designed for the "development", "production", or "use" of marine or terrestrial acoustic equipment controlled by 6A94.

Requirements

Validated License Required: SZ, Iran
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6D96G "Software", n.e.s., specially designed for the "development", "production", or "use" of equipment described in Category 6

Requirements

Validated License Required: SZ.
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6E90F Technology for the "development", "production", or "use" of airborne radar equipment controlled by 6A90F.

Requirements

Validated License Required: SZ, Iran, Syria
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6E92F Technology for the "development", "production", or "use" of gravity meters (gravimeters) controlled by 6A92F.

Requirements

Validated License Required: SZ, Iran, Syria
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6E93F Technology for the "development", "production", or "use" of "magnetometers" controlled by 6A93F.

Requirements

Validated License Required: SZ, Iran, Syria
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6E94F Technology for the "development", "production", or "use" of marine or terrestrial acoustic equipment controlled by 6A94F.

Requirements

Validated License Required: SZ, Iran
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

6E96G Technology, n.e.s., for the "development", "production", or "use" of equipment, materials or "software" controlled under Category 6.

Requirements

Validated License Required: SZ.
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

7A94F Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems, and other avionic equipment, including parts and components, n.e.s.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ Value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

Note: Global Positioning Satellite receivers having the following characteristics are under the jurisdiction of the Department of State, Office of Defense Trade Controls:

a. Designed for encryption or decryption (e.g., Y-code) of GPS precise positioning service (PPS) signal;

b. Designed for producing navigation results above 60,000 feet altitude and at 1,000 knots velocity or greater;

c. Specifically designed or modified for use with a null-steering antenna or including a null-steering antenna designed to reduce or avoid jamming signals; or

d. Designed or modified for use with unmanned air vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km. (GPS receivers designed or modified for use with military unmanned air vehicle systems with less capability are considered to be specially designed, modified or configured for military use and therefore covered under Category XV, paragraph (c), of the ITAR).

N.B.: Manufacturers or exporters of equipment under DOC jurisdiction are advised that the U.S. Government does not assure the availability of the GPS P-code for civil navigation.

7B94F Other equipment for the test, inspection, or production of navigation and avionics equipment.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ Value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

7D94F "Software", n.e.s., for the "development", "production", or "use" of navigation, airborne communication, and other avionics equipment.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

7E94F Technology, n.e.s., for the "development", "production", or "use" of navigation, airborne communication, and other avionics equipment.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No

GTDU: Yes, except destinations listed under *Validated License Required*

8A92F Other underwater camera equipment, n.e.s.; other submersible systems, n.e.s.; and specially designed parts therefor.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

8A93F Self-contained underwater breathing apparatus (scuba gear) and related equipment.

Requirements

Validated License Required: SZ, Iran
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

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8A94F Boats, n.e.s., including inflatable boats; marine engines (both inboard and outboard) and submarine engines, n.e.s.; and specially designed parts therefor, n.e.s.

Requirements

Validated License Required: SZ, Iran
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

8A96G Other marine equipment, "assemblies" and components, n.e.s.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

8B96G Production and test equipment for marine equipment, "assemblies" and components, n.e.s.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

8C96G Materials for manufacture of marine equipment, "assemblies" and components, n.e.s

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

8D92F "Software" specially designed or modified for the "development", "production" or "use" of commodities controlled by 8A92.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

8D93F "Software" specially designed or modified for the "development", "production" or "use" of commodities controlled by 8A93 or 8A94.

Requirements

Validated License Required: SZ, Iran
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

8D96G "Software", n.e.s., specially designed or modified for the "development", "production", or "use" of marine equipment or materials.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

8E92F Technology for the "development", "production" or "use" of commodities controlled by 8A92.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

8E93F Technology for the "development", "production" or "use" of commodities controlled by 8A93 or 8A94.

Requirements

Validated License Required: SZ, Iran
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

8E96G Technology, n.e.s., for "development", "production" or "use" of items controlled by Category 8.

Requirements

Validated License Required: SZ
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9A90F Diesel engines, n.e.s., for trucks, tractors, and automotive applications of continuous brake horsepower of 400 BHP (298 kW) or greater (performance based on SAE J1349 standard conditions of 100 kPa and 25°); pressurized aircraft breathing equipment, n.e.s.; and specially designed parts therefor, n.e.s.

Requirements

Validated License Required: SZ, Iran
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

9A91F Other aircraft and certain gas turbine engines.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: Number
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

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9A92F Off highway wheel tractors of carriage capacity 9t (10 tons) or more; and parts and accessories, n.e.s.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: Tractors in number; parts and accessories in $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

9A93F On-Highway tractors, with single or tandem rear axles rated for 9t (20,000 lbs.) or greater and specially designed parts.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: Tractors in number; parts and accessories in $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

Note: This entry controls highway tractors only. It does not control solid chassis

vehicles such as dump trucks, construction equipment, or panel/van type trucks.

9A94F Aircraft parts and components, n.e.s.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

9A96G Other propulsion and transportation equipment, n.e.s.

Requirements

Validated License Required: SZ.
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

9B94F Vibration test equipment and specially designed parts and components, n.e.s.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ Value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

9B96G Other test, inspection, and production equipment for propulsion systems and transportation equipment, n.e.s.

Requirements

Validated License Required: SZ.
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

9D90F "Software", n.e.s., for the "development" or "production" of diesel engines and pressurized aircraft breathing equipment controlled by 9A90F.

Requirements

Validated License Required: SZ, Iran
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9D91F "Software", n.e.s., for the "development" or "production" of "aircraft" and aero gas turbine engines controlled by 9A91F or aircraft parts and components controlled by 9A94F.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9D93F "Software" for the "production" or "development" of off-highway wheel tractors controlled by 9A92F or on-highway tractors controlled by 9A93F.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9D94F "Software" for the "development", "production", or "use" of vibration test equipment controlled by 9B94F.

Requirements

Validated License Required: SZ, Iran, Syria
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9D96G "Software", n.e.s., specially designed or modified for the "development", "production", or "use" of propulsion systems or transportation equipment.

Requirements

Validated License Required: SZ.
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9E90F Technology, n.e.s., for the "development", "production", or "use" of diesel engines and pressurized aircraft breathing equipment controlled by 9A90F.

Requirements

Validated License Required: SZ, Iran
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9E91F Technology, n.e.s., for the "development", "production", or "use" of "aircraft" and aero gas turbine engines controlled by 9A91F or aircraft parts and components controlled by 9A94F.

Requirements

Validated License Required: SZ, Iran, Syria
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9E93F Technology for the "production", "development", or "use" of off-highway wheel tractors controlled by 9A92F or on-highway tractors controlled by 9A93F.

Requirements

Validated License Required: SZ, Iran, Syria
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9E94F Technology for the "development", "production", or "use" of vibration test equipment controlled by 9B94F.

Requirements

Validated License Required: SZ, Iran, Syria
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

9E96G Technology, n.e.s., for the "development", "production", or "use" of items controlled by Category 9.

Requirements

Validated License Required: SZ.
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

0A18A Items on the International Munitions List.

Requirements

Validated License Required: QSTVWYZ
Unit: 0A18.a through .c: § value; 0A18.d through .f: number
Reason for Control: NS, FP (see Notes)
GLV: 0A18.a and .b: $5000; 0A18.c: $3000 0A18.d through .f: $1500
GCT: No
GFW: No

Notes: 1. FP controls for regional stability apply to 0A18.c, except to NATO, Japan, Australia, and New Zealand.

2. Licenses for export to Iran and Syria will generally be denied.

* * * * *

0A84C Shotguns, barrel length 18 inches or over; buckshot shotgun shells; and arms, discharge type (for example, stunguns, shock batons, electric cattle prods, immobilization guns and projectiles, etc.) except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s., including optical sighting devices for firearms.

Requirements

Validated License Required:
QSTVWYZ, except for Australia, Japan, New Zealand, and members of NATO (see Notes)
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

Notes: 1. Shotguns with a barrel length 24 inches or over require a validated license for shipment to:

a. Country Groups QSWYZ, regardless of end-user;

b. Other destinations in Country Groups T & V, except for Australia, Japan, New Zealand, and members of NATO, *only* if for sale or resale to police or law enforcement agencies.

2. Shotguns with a barrel length of at least 18 inches but less than 24 inches require a validated license to all destinations except Australia, Japan, New Zealand, and members of NATO, regardless of end-user.

3. Shotguns with a barrel length of less than 18 inches are controlled by the Office of Defense Trade Control, Department of State.

0A86F Shotgun shells, except buckshot shotgun shells, and parts.

Requirements

Validated License Required: SZ.
Unit: $ value
Reason for Control: FP (see Note)
GLV: $0
GCT: No
GFW: No

0A95H Food, medicines, medical supplies, and agricultural commodities.

Requirements

Validated License Required: Z.
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

0A96G Other commodities, n.e.s.; and parts and accessories, n.e.s.

Requirements

Validated License Required: SZ.
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

0E18A Technology for the "development," "production," or "use" of items controlled by 0A18.b through 0A18.e.

Requirements

Validated License Required:
QSTVWYZ
Unit: $ value
Reason for Control: NS, FP
GTDR: Yes
GTDU: No

0E84C Technology for the "development" or "production" of shotguns controlled by 0A84 and shotgun shells.

Requirements

Validated License Required: SZ
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

0E96G Technology for the "development," "production," or "use" of items controlled by Category 0, n.e.s.

Requirements

Validated License Required: SZ.
Unit: $ value
Reason for Control: FP
GTDR: No
GTDU: Yes, except destinations listed under *Validated License Required*

Dated: June 9, 1994

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94–14486 Filed 6–14–94, 8:45 am]
BILLING CODE 3510–DT–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Part 1260

[Docket No. 93–8; Notice 4]

RIN 2127–AE52

Certification of Speed Limit Enforcement; Revision of Procedures

AGENCY: Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice amends 23 CFR 1260 by establishing additional sanctions against a State having a compliance score exceeding the national maximum speed limit (NMSL) compliance score for any consecutive year after a year of non-compliance. The purpose of this revision is to encourage non-complying States to make efforts to reduce their scores in years succeeding any year in which they exceed the NMSL compliance score.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: In FHWA, Julie Anna Cirillo, Chief, Information Management and Analysis Branch, 202–366–2170. In NHTSA, J. Michael Sheehan, Chief, Police Traffic Services Division, 202–366–4295.

SUPPLEMENTARY INFORMATION:

Background

The 55 mph NMSL was first instituted in 1974. FHWA and NHTSA have shared responsibility for the enforcement of the NMSL. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) required the Secretary of Transportation to change the regulation governing the NMSL. Because of this statutory mandate, FHWA and NHTSA published a notice of proposed rulemaking (NPRM) to amend this regulation in the **Federal Register** on January 4, 1993 (58 FR 186).

ISTEA required that the new rule establish speed limit compliance requirements on 65 mph roads, in addition to 55 mph roads, and include a formula for determining compliance by the States with such requirements.

On October 22, 1993, NHTSA and FHWA published a final rule in the **Federal Register** (58 FR 54812), which revised the NMSL procedures in 23 CFR 1260 to provide that the penalty transfer of highway construction funds to 23 U.S.C. § 402 programs would not exceed the greater of (i) one and one-half percent of the construction funds, or (ii) the total section 402 apportionment for the applicable fiscal year. A subsequent year penalty was not proposed in the NPRM and, therefore, was not incorporated into the final rule.

Some commenters, in response to the NPRM, objected to the absence of incentives in the NPRM for States to seek improvement in their NMSL compliance scores. One commenter suggested that a subsequent year penalty for non-compliance could provide such incentives.

As adopted, the regulation provided that a non-complying State would transfer the same amount of funds year after year, which would have a minimal impact, especially in view of the graduated penalty categories that were

utilized. The agencies therefore published a Supplemental Notice of Proposed Rulemaking which was published in the **Federal Register** on October 22, 1993 (58 FR 54832) (the SNPRM) on the same day as the final rule (58 FR 54812), to propose to add subsection (d) to 23 CFR § 1260.19, which would impose an additional one percent penalty on States that failed to comply in successive years. This change to the regulation would have the effect of transferring a maximum of two and one-half percent of the funds apportioned to the State for Federal-aid highways and highway safety construction programs under section 104(b) of Title 23, United States Code (other than paragraph (5)) to the State's apportionment under 23 U.S.C. 402 for the fiscal year.

Under the SNPRM, the maximum amount would be transferred if such State (1) was in the highest penalty category pursuant to § 1260.19(c) (i)–(iv) in the immediately previous fiscal year and (2) did not improve its score in the current fiscal year so as to be within the range of scores for the applicable second highest penalty category established in § 1260.19(c) (i)–(iv). A non-complying State could avoid the additional one percent penalty transfer if it improved its score into a lower penalty category. Such a State would then be subject only to the amount of penalty for that category under § 1260.19(c). If a non-complying State remained in its former penalty category, or had a worse score which moved it into a higher category, the State's penalty transfer would be the transfer amount for that category plus the additional one percent penalty.

The agencies also proposed to make a minor revision to § 1260.21(c) to clarify that the 23 U.S.C. § 402 apportionment amount could be exceeded for successive year penalty transfers.

Discussion of Comments

The agencies received responses from eleven commenters. Some of the comments concerned matters that were not specifically related to the subsequent year penalty issue and had been resolved in the final rule published on October 22, 1993. For example, comments from the Michigan State Police, the Department of California Highway Patrol and the Illinois Department of Transportation opposed altogether the imposition of economic sanctions. These commenters expressed the belief that these sanctions are counterproductive and misdirect excessive attention to speed compliance issues. As the agencies explained in their October 22, 1993 final rule, the requirement that sanctions be imposed to encourage speed limit control on NMSL roadways is statutorily mandated.

Similarly, Advocates for Highway and Auto Safety (Advocates) and the Michigan State Police recommended that transferred funds should be designated for a limited number of purposes. The agencies had proposed, in the January 3, 1993 NPRM that transferred funds would be used principally for speed limit enforcement, but decided in the October 1993 final rule, for the reasons described therein, not to specify the use of funds for speed limit enforcement or any other specific highway safety program.

The Michigan State Police also made a number of suggestions regarding the speed compliance criteria to be used to determine whether States would be subject to penalties. For example, Michigan recommended that the nationwide compliance threshold be revised to reflect the 85th percentile speed, that no transfer should take place if a State's fatal accident rate is below the national average, and that the agencies consider whether a State's noncompliance rate contributed to the State's fatality rate. Persons interested in reviewing a full discussion regarding the speed compliance criteria that the agencies decided to adopt, and the reasons for this decision, should read the October 22, 1993 final rule.

Among the commenters responding to the issues raised by the SNPRM, the Alaska Department of Public Safety, the California Highway Patrol, the Indiana Department of Transportation, the Nevada Department of Transportation and others opposed additional penalties for successive year non-compliance. The Virginia State Police questioned the use of the words "improvement incentive" to describe what the agencies had proposed in the SNPRM. These commenters argued that the final rule had already gone too far, and that additional sanctions were unnecessary and inappropriate.

The National Association of Governors' Highway Safety Representatives (NAGHSR) commented that the SNPRM was necessary to prevent States from being terminally out of compliance, and Advocates said the SNPRM didn't go far enough to penalize non-complying States.

The Indiana Department of Transportation, the Alaska Department of Public Safety and the Virginia State Police commented that additional funding sanctions would only serve to pit State road construction departments against the various State safety agencies.

Amount of Transfer and Section 402 Apportionment

The Department of California Highway Patrol, NAGHSR, the New York State Police and Advocates for Highway and Auto Safety had various views of the Congressional intent concerning the amount of the transfer to the section 402 apportionment being used as an additional penalty for successive year NMSL non-compliance. The Nevada Department of Transportation and others stated that a transfer of too much money could overburden and render ineffective a State's highway safety program.

Advocates proposed that the imposition of additional penalties should not be limited to successive year non-compliance. They recommended additional funds transfer penalties for any subsequent year non-compliance, and suggested that the penalties should accumulate, up to a maximum of ten percent of a State's Federal highway construction funds apportioned under 23 U.S.C. § 104(b). The California Highway Patrol commented that the preamble to the SNPRM seemed to indicate that the successive year sanctions would not accumulate, but expressed concerned that the proposed regulatory language could be read to provide for a penalty that exceeds two and one-half percent and requested clarification on this issue.

As explained in the SNPRM, section 1029(c)(1)(A) of ISTEA provides "* * * for the transfer of apportionments under section 104(b) of Title 23, United States Code (other than paragraph (5)), if a State fails to enforce speed limits in accordance with this section, [and the implementing regulation]." However, the legislation did not specify the amount of the apportionments to be transferred.

The House bill had provided that the amount to be transferred would range from one to five percent of the designated apportionments for the first year of non-compliance and from two to ten percent for two or more consecutive years of non-compliance. The amounts were to be transferred to the highway safety grant programs authorized under 23 U.S.C. § 402. The Senate bill did not provide for a transfer of apportionments. In adopting the House's transfer penalty without the House language pertaining to amounts, the conferees included the following statement on page 328 of the report accompanying the conference bill:

The Conference Substitute applies that same reprogramming provision and Secretarial discretion with regard to the

percentage transferred as in the House bill.

In reviewing the range of transfers in the House bill for the purpose of proposing a reasonable amount to be utilized by a non-complying State, the agencies determined that one and one-half percent of the designated apportionment for each State approximated the total amount of its 402 program. The NPRM therefore proposed a one and one-half percent transfer to the section 402 program, with the funds to be used principally for speed limit enforcement. In the final rule the agencies adopted the one and one-half percent transfer, but decided not to specify the use of funds for speed limit enforcement or any other specific highway safety program.

Since the final rule provided additional flexibility to States to use the transferred funds for speed enforcement and other highway safety activities, the agencies reconsidered their proposal to limit the amount transferred, and requested comments in the SNPRM about revising the regulation to provide that the amount transferred may exceed the total § 402 program fiscal year apportionment in years successive to a year in which a State's compliance score is greater than the maximum allowable compliance score. The agencies stated that this kind of penalty transfer, which would permit an increase to as high as two and one-half percent of the funds apportioned for highway construction, would more closely follow the intent of the House bill for States that fail to comply in successive years.

As proposed, the agencies have decided to impose an additional one percent penalty on any State that is out of compliance and does not make sufficient improvement to reduce its penalty in two or more consecutive years. The agencies believe that limiting the additional penalty to consecutive year non-compliance also closely follows Congressional intent.

The maximum penalty that could be imposed would be two and one-half percent of the funds apportioned to the State for Federal-aid highways and highway safety construction programs under section 104(b) of Title 23, United States Code (other than paragraph (5)). The additional one percent penalty would not accumulate from year to year.

Based on the arguments of some of the commenters regarding the amount of money that may be meaningfully spent on highway safety in any given year, the agencies have decided that the transferred funds in any fiscal year shall not exceed one and one-half times the total section 402 apportionment for that fiscal year. Increasing the penalty beyond this amount for subsequent year non-compliance could overwhelm any State's section 402 budget.

For example, if the penalty were not subject to a limitation, States like Connecticut and Wyoming could be subject to withholdings that amount to as much as 2.2 and 2.3 times their section 402 budget, respectively (based on fiscal year 1992 funding levels). By limiting the amount of the penalty to one and one-half times the State's section 402 apportionment, the maximum subsequent year penalty for these States would be 1.7 percent of highway construction fund apportionments and 1.6 percent, respectively (based on fiscal year 1992 funding levels). In order to avoid penalty funding levels that cannot be effectively spent on safety programs, the agencies have amended § 1260.21(c) to cap any subsequent year penalty transfer at one and one-half times the total section 402 apportionment.

The SNPRM contained a typographical error in the last line of § 1260.19(d), which referred to "(a)(1)" instead of "(c)(1)." This notice corrects the error.

Proportionate Penalty Reduction

The SNPRM solicited comments on whether States should be provided some relief from additional penalties if they show a specific amount of improvement in their compliance score even though their compliance score might not place them in a lower category. NAGHSR and the Illinois Department of Transportation generally supported this concept. However, other commenters did not express opinions about this approach. The Department of California Highway Patrol proposed Federal-State negotiations rather than a mathematical formula.

However, the agencies prefer a formula which avoids discretionary decisions and clearly shows the States what the result of non-compliance will be.

After considering an even more graduated penalty strategy, as suggested by NAGHSR and the Illinois Department of Transportation, the agencies have decided to reject the creation of additional categories, particularly since the current range between penalty categories approximates only 10 percent of the total score. The agencies have neither received nor seen any evidence that additional graduations in the categories would make the current scheme more fair, and further mathematical complications are therefore unnecessary.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures: NHTSA and FHWA have considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." This final action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures. The agencies prepared an addendum to the Final Regulatory Evaluation (AFRE) in June, 1993, for the SNPRM, and made it available in the public docket. A copy of the Final Regulatory Evaluation (FRE) and the AFRE may be obtained by writing to Docket 93–8, HCC–10, Federal Highway Administration, room 4232, 400 Seventh Street SW., Washington, DC 20590.

The FRE indicates that at least three States (Connecticut, Massachusetts and Wyoming) could be subject to the subsequent year penalty if they are not able to improve their compliance scores during subsequent years. The SNPRM proposed to establish a maximum penalty transfer of 2.5 percent for a non-complying State in a subsequent year. Under this final rule, any subsequent year penalty cannot exceed one and one-half times the 23 U.S.C. 402 apportionment of a non-complying State for that fiscal year. Based on fiscal year 1992 funding levels and the final rule, the maximum subsequent year penalty for that year would be 1.7 percent of highway construction fund apportionments for Connecticut, 2.5 percent for Massachusetts, and 1.6 percent for Wyoming. There would, of course, be no impact on complying States

Regulatory Flexibility Act: NHTSA and FHWA have also considered the impacts of this final rule under the Regulatory Flexibility Act. We hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. The FRE concludes that there is no significant impact on small businesses since the portion of the highway construction funds going to noncomplying States is not lost, but only transferred to highway safety programs. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act: The requirement relating to this proposal, that each State must submit speed data

and related certification information necessary to calculate its compliance score, is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

Accordingly, this information collection requirement has been previously submitted to and approved by OMB, pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501, et seq.). The requirement has been approved through January 31, 1996, with the OMB control number 2125–0027. This revision to the regulation contains no additional information collection requirement.

National Environmental Policy Act: The agencies have analyzed this action for the purpose of compliance with the National Environmental Policy Act and have determined that it does not have a significant effect on the human environment.

Executive Order 12612 (Federalism): This action has been analyzed in accordance with Executive Order 12612, concerning Federalism. The rule's provisions are likely to affect the allocations of States' resources, the way they measure their success in traffic law enforcement, relationships among State agencies, and the distribution of Federal funds between States' highway construction and safety programs. All of these effects may fairly be regarded as Federalism impacts. However, the basic requirements of the rule (i.e., the potential redistribution of Federal funds) are mandated by statute, so the agencies do not have discretion to mitigate these impacts. The agencies have carefully considered the comments of State agencies in shaping the details of the rule.

Civil Justice Reform: This change to the regulation does not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather encourages States to consider enacting and enforcing legislation requiring speed limits and speed limit enforcement through the potential redesignation of Federal highway construction funds to safety programs. Any redesignation of funds would not take place until FY 1997. If a non-complying State (1) submits data showing that its highway speeds are below certain national levels, and (2) a certification from the Governor reporting that the State is enforcing the speed limits on public highways in accordance with 23 U.S.C. 154, then it shall not be subject to the proposed subsequent year sanction which redesignates an additional amount of funds to the State's apportionment of safety grant programs. The transfer amount for first year non-compliance could be as high as two and one-half percent of a State's apportionment for Federal-aid highways and highway safety construction programs. However, any subsequent year penalty cannot exceed one and one-half times the 23 U.S.C. 402 apportionment of a non-complying State for that fiscal year. The authorizing legislation for the proposed rule does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

List of Subjects in 23 CFR Part 1260

Grant programs—Transportation, Highways and roads, Motor vehicles, Reporting and recordkeeping requirements, Speed limit, Traffic regulations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

PART 1260—CERTIFICATION OF SPEED LIMIT ENFORCEMENT

In consideration of the foregoing, 23 CFR 1260 is amended to read as follows:

1. The authority citation for part 1260 continues to read as follows:

Authority: 23 U.S.C. 118, 141, 154, 315 and delegations of authority at 49 CFR 1.48 and 1.50.

2. Paragraph (d) is added to § 1260.19 as follows:

§ 1260.19 Effect of failure to certify or to meet compliance standards.

* * * * *

(d) An additional one percent of the funds apportioned to the State under 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(3), 104(b)(4) and 104(b)(6) shall be transferred pursuant to subsection (b) of this section to the State's highway safety grant program fund under 23 U.S.C. 402 for the fiscal year subsequent to the fiscal year in which the State submitted its compliance score if the Secretary determines that the State's compliance score calculated pursuant to § 1260.15(d) is in the same or a higher penalty category as the State's compliance score submitted in the prior fiscal year, as provided by paragraphs (c) (1) through (4) of this section.

* * * * *

3. Section 1260.21 is amended by revising paragraph (c) as follows:

§ 1260.21 Penalty reduction and notification of noncompliance.

* * * * *

(c) The State shall expend any transferred funds pursuant to §§ 1260.19(b) and 1260.19(d) for section 402 programs within that State. In no instance shall the transfer under § 1260.19(b) exceed the total section 402 apportionment for that fiscal year, prior to any penalty reduction, and in no instance shall the total transferred funds under §§ 1260.19(b) and 1260.19(d) exceed one and one-half times the total section 402 apportionment for any fiscal year.

* * * * *

Issued on: June 9, 1994.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Christopher A. Hart,

Deputy Administrator, National Highway Traffic Safety Administration.

[FR Doc. 94–14463 Filed 6–14–94; 8:45 am]

BILLING CODE 4910–22–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in July 1994, and to multiemployer plans with valuation dates in July 1994. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation,

1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the July 1994 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulations. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during July 1994 and multiemployer plans that have undergone mass withdrawal and have valuation dates during July 1994.

For annuity benefits, the interest rates will be 6.90% for the first 25 years following the valuation date and 5.25% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.50% for the period during which benefits are in pay status, 4.75% during the seven years directly preceding the benefit's placement in pay status, and 4.0% during any other years preceding the benefit's placement in pay status. (ERISA section 205(g) and Internal Revenue Code section 417(e) provide that private sector plans valuing lump sums not in excess of $25,000 must use interest assumptions at least as generous as those used by the PBGC for valuing lump sums (and for lump sums exceeding $25,000 must use interest assumptions at least as generous as 120% of the PBGC interest assumptions).) The above annuity interest assumptions represent an increase (from those in effect for June 1994) of .20 percent for the first 25 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions represent an increase (from those in effect for June 1994) of .25 percent for the period during which benefits are in pay status and the seven years directly preceding that period; they are otherwise unchanged.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during July 1994, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during July 1994, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, and environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 9 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0 \leq n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the

values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
• •	•	•	•	•	•	•	•	•
9	7–1–94	8–1–94	5.50	4.75	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{o\leq n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
• • • •	•		•		•	
July 1994	.0690	1–25	.0525	>25	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 9 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{o\leq n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I
[Lump Sum Valuations]

Rate set	For plans with valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
9	7–1–94	8–1–94	5.50	4.75	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{x \leq n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_{11} prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_j) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II
[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_j are:					
	i_1	for t=	i_2	for t=	i_3	for t=
July 1994	.0690	1 – 25	.0525	>25	N/A	N/A

Issued in Washington, DC, on this 9th day of June 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–14564 Filed 6–14–94; 8:45 am]

BILLING CODE 7708–01–M

POSTAL SERVICE

39 CFR Part 111

Indemnity Claims

AGENCY: Postal Service.

ACTION: Final rule; correction.

SUMMARY: This notice corrects a typographical error in Domestic Mail Manual (DMM) Issue 47, issued on April 10, 1994. A typographical error was made in section S010.2.12a(3) of DMM Issue 47 which caused that section, as written, to incorrectly identify the maximum indemnity in the event of loss or damage to nonnegotiable documents that cannot be reconstructed (provided the sender establishes the value of the documents) as $50,000. Consistent with postal standards published in prior issues of the DMM, section S010.2.12a(3) should have shown the maximum indemnity is $5,000.

EFFECTIVE DATE: April 10, 1994.

FOR FURTHER INFORMATION CONTACT: Margaret Falwell, (202) 268–2472.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. The Domestic Mail Manual is corrected as follows:

S010 Indemnity Claims

* * * * *

2.0 GENERAL FILING INSTRUCTIONS

* * * * *

2.12 Payable Express Mail Claims

In addition to the payable claims in 2.11, the following is payable for Express Mail:

a. For the purpose of insurance coverage for Express Mail, "document" is defined in S500. Indemnity for document reconstruction is paid as follows:

* * * * *

(3) Loss or damage to nonnegotiable documents that cannot be reconstructed, providing the sender establishes the value of the documents. Payment may not exceed $5,000.

* * * * *

A transmittal letter making the changes in the pages of the Domestic Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–14562 Filed 6–14–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI32-01-5763a; FRL-4891-5]

Approval and Promulgation of Implementation Plan; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: United States Environmental Protection Agency (USEPA) approves Wisconsin's 1990 base year ozone (O_3) emission inventory as a revision to the Wisconsin State Implementation Plan (SIP) for O_3. The inventory was submitted by the State of Wisconin to satisfy a Federal requirement that those States containing O_3 nonattainment areas (NAAs) classified as marginal to extreme submit inventories of actual O_3 season and emissions from all sources in accordance with USEPA guidance. Wisconsin's O_3 NAAs are the counties of Walworth, Door, Kewaunee, Manitowoc, Sheboygan, and the six county Milwaukee area (counties Washington, Ozaukee, Waukesha, Milwaukee, Racine, and Kenosha). The rationale for the approval is set forth in this final rule; additional information is available at the address indicated below in the supporting Technical Support Document (TSD).

DATES: This final rule will be effective August 15, 1994, unless notice is received by July 15, 1994, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in Federal Register.

ADDRESSES: Copies of the SIP revision and USEPA's analyses are available for inspection at the following address: (It is recommended that you telephone Charles Hatten at (312) 886-6031 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments can be mailed to Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J). United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illionis 60604.

FOR FURTHER INFORMATION CONTACT:

Charles Hatten (312) 886-6031.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Clean Air Act as amended (including the 1990 Amendments) (the Act), States have the responsibility to inventory emissions contributing to the National Ambient Air Quality Standards nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. Section 182(b) of the Act, 42 U.S.C. 7511a(b)(1), requires States with O_3 NAA's designated as moderate, serious, severe, and extreme to submit a plan within 3 years of 1990 to reduce VOC emissions by 15 percent with 6 years after 1990. The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the base year inventory to exclude biogenic emissions and to exclude certain emission reductions not creditible towards the 15 percent. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress (RFP) projection inventory, and the modeling inventory are derived. See General Preamble to title I, 57 FR 13502 (April 16, 1992). Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, (March 1991).

The air quality planning requirements for marginal to extreme O_3 NAAs are set out in section 182(a)-(e) of the Act. The General Preamble to title I of the 1990 Amendments to the Act describes the bases for reviewing SIP revisions submitted under title I of the 1990 Amendments, including requirements for the preparation of the 1990 base year inventories. *See* 57 FR 13502 (April 16, 1992) and 57 FR 18070 (April 28, 1992). A more detailed discussion of the interpretations of title I of the 1990 Amendments to the Act, as well as detailed policy guidance on the development of the emission inventory is contained in the General Preamble. See 57 FR 18070, appendix B (April 28, 1992).

Those States containing O_3 NAAs classified as marginal to extreme are required under section 182(a)(1) of the Act to submit a final, comprehensive, accurate, and current inventory of the actual O_3 season and weekday emissions from all sources within 2 years of enactment (November 15, 1992). The inventory must include both anthropogenic (man-made) and biogenic (natural) sources of volatile organic compound (VOC), nitrogen oxides (NO_X), and carbon monoxide (CO). The inventory is to address actual VOC, NO_X, and CO emissions for the area during peak O_3 season, which is generally comprised of the summer months. All stationary point and area sources, as well as highway mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble. See 57 FR 13498 (April 16, 1992).

Summary of the SIP Revision and Criteria for This Action

A. Procedural Background

USEPA must determine whether a submittal is complete and therefore warrants further USEPA review and action. See section 110(k)(1) and 57 FR 13565 (April 16, 1992). USEPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). USEPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by USEPA 6 months after receipt of the submission.

USEPA reviewed Wisconsin's emission inventory to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). USEPA found the January 15, 1993, submittal to be complete on March 16, 1993, and sent a letter dated March 24, 1993 to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

The Act requires States to observe certain procedural requirements in developing emission inventory submissions to USEPA. Section 110(a)(2) of the Act provides that each emission inventory submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(a)(2) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.[2]

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[1] Also, section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[2] Memorandum from John Calcagni, Director, Air Quality Management Division, and William Laxton, Director, Technical Support Division, to Regional

The State of Wisconsin held public hearings on January 12 and 13, 1993, to hear public comment on the 1990 base year emission inventory for all six areas in Wisconsin designated nonattainment for O_3. Following the public hearing, the inventory was adopted by the State and signed by the Governor's Designee, Donald F. Theiler, Director, Bureau of Air Management, Wisconsin Department of Natural Resource (WDNR) on January 15, 1993, and submitted to USEPA as a formal request for revision to the SIP.

WDNR sent supplemental information to USEPA on July 21, 1993 and December 10, 1993, in response to USEPA's preliminary comments on the inventory.

When reviewing the final inventory, USEPA used the Level I, II, and III, O_3 nonattainment inventory quality review checklists provided by the OAQPS to determine the acceptance and approvability of the final emission inventory.

USEPA's initial Level I review determined whether the basic inventory requirements set forth in the "Emission Inventory Requirements for Ozone State Implementation Plans," EPA–450/4–91–010 (March 1991) were present. The Level II review evaluated the emission inventory in more detail expanding on many of the questions found in the Level I review for each of the four general source types: stationary point and area sources, highway and non-highway (or non-road) mobile sources. USEPA's Level II review evaluated the level of supporting documentation provided by the State for completeness, procedures and consistency for each of the emission source types according to current USEPA guidance, as well as data quality. A more detailed discussion of USEPA's Level I and II review findings are presented in the TSD.[3]

The Level III review process outlined below consists of ten points that the inventory must include.[4] For a base year emission inventory to be approvable it must pass all the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) was provided and the Quality Assurance (QA) Program contained in the IPP implemented was performed and its implementation documented.

2. Adequate documentation was provided that enabled the reviewer to determine the estimation procedures and data sources used to develop the inventory.

3. The point source inventory must be complete.

4. Point source emissions must have been prepared or calculated according to USEPA guidance.

5. The area source inventory must be complete.

6. The area source emissions must have been prepared or calculated according to USEPA guidance.

7. Biogenic emissions must have been prepared according to current EPA guidance or another approved technique.

8. The method (e.g., Highway Performance Monitoring System (HPMS) or a network transportation planning model) used to develop VMT estimates must follow EPA guidance, which is detailed in the document, "Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources", U.S. Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992. The VMT development methods were adequately described and documented in the inventory report.

9. The MOBILE model (or EMFAC model for California only) was correctly used to produce emission factors for each of the vehicle classes.

10. Non-road mobile emissions were prepared according to current EPA guidance for all of the source categories.

Based on USEPA's level III review findings, WDNR has satisfied all of USEPA's requirements for purposes of providing a comprehensive, accurate, and current inventory of actual emissions in the O_3 NAA. A summary of USEPA's Level III findings is given below:

1. The IPP and QA program have been approved and implemented. These were approved by a August 28, 1992, letter from Gary Gulezian, Region 5 to Larry Bruss, WDNR.

2. The documentation was adequate for all emission types (stationary point and area sources, and mobile sources) for the reviewer to determine the estimation procedures and data sources used to develop the inventory.

3. The point source inventory was found to be complete.

4. The point source emissions were estimated according to USEPA guidance.

5. The area source inventory was found to be complete.

6. The area source emissions were estimated according to USEPA guidance.

7. The biogenic emissions were estimated using the BIOgenic Model for Emissions (BIOME), an equivalent technique approved by USEPA.

8. The method used to development VMT estimates was adequately described and documented.

9. The MOBILE model was used correctly.

10. The non-road mobile emission estimates were correctly prepared according to current EPA guidance.

B. Emission Inventory

The State of Wisconsin has met the requirements of section 182(a)(1) of the Act by submitting a O_3 SIP revision that includes a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the NAAs, classified marginal to extreme. This section of the notice describes the adequacy of Wisconsin's inventory of actual emissions as required by section 182(a)(1).

The State of Wisconsin Department of Natural Resources (WDNR) submitted a 1990 base year emission inventory for six areas designated nonattainment for O_3. Wisconsin's six areas designated nonattainment for O_3 include a total of eleven (11) counties: Walworth (marginal), and Door (rural transport) counties; Kewaunee, Manitowoc, and Sheboygan counties (moderate); and the Milwaukee area which include the counties of Washington, Ozaukee, Waukesha, Milwaukee, Racine, and Kenosha (severe). The nonattainment boundaries for these areas are described in **Federal Register** notices dated November 6, 1991 (56 FR 56852), and November 30, 1992 (57 FR 56778).

The emissions inventory contains stationary point and area sources, highway and non-highway (or non-road) mobile source, and biogenic sources within the NAA. Emissions from these groupings of emission source types for the six O_3 NAAs are presented below in the following tables, by pollutant (VOC, CO, and NO_X), in units of tons per summer weekday:

Air Directors, Region I–X, "Public Hearing Requirements for 1990 Base-Year Emission Inventories for Ozone and Carbon Monoxide Nonattainment Areas," (September 29, 1992).

[3] See USEPA guidance document, "Quality Review Guidelines for 1990 Base Year Emissions Inventories," Office of Air Quality Planning and Standards (OAQPS), Research Triangle Park, NC, August 1992.

[4] Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Region I–X, "Emission Inventory Issues," June 24, 1993

VOC EMISSIONS FROM ALL SOURCES—TONS/SUMMER WEEKDAY

Ozone NAA	Point source emissions	Area source emissions	Highway mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
Door	0.00	5.62	2.35	4.24	26.02	38.23
Kewaunee	0.85	1.76	1.33	0.83	20.97	25.75
Manitowoc	1.16	8.82	5.71	2.54	33.69	51.92
Sheboygan	6.74	9.69	6.11	3.07	26.76	52.37
Milwaukee	40.38	133.39	147.22	39.86	68.98	429.83
Walworth	1.51	7.59	8.16	3.99	11.06	32.31
Total Emissions	50.65.	166.87	170.88	54.53	187.48	630.14

DAILY CO EMISSIONS FROM ALL SOURCES—TONS/SUMMER WEEKDAY

Ozone NAA	Point source emissions	Area source emissions	Highway mobile emissions	Non-road mobile emissions	Total emissions
Door	0.00	1.8	18.56	20.53	40.17
Kewaunee	0.02	0.66	9.02	4.66	14.36
Manitowoc	1.16	2.50	51.58	15.95	71.19
Sheboygan	10.51	3.42	52.47	19.17	85.57
Milwaukee	20.26	35.52	976.31	300.12	1,332.21
Walworth	0.19	2.15	64.39	22.35	89.08
Total Emissions	32.14	45.33	1172.33	382.78	1,632.58

DAILY NO_x EMISSIONS FROM ALL SOURCES—TONS/SUMMER WEEKDAY

Ozone NAA	Point source emissions	Area source emissions	Highway mobile emissions	Non-road mobile emissions	Total emissions
Door	0.00	0.33	4.20	1.45	5.98
Kewaunee	0.03	0.14	1.85	0.93	2.95
Manitowoc	3.20	0.98	11.48	3.84	19.50
Sheboygan	56.35	1.37	11.12	5.20	74.04
Milwaukee	130.51	19.09	111.98	42.15	303.73
Walworth	0.54	0.78	8.19	3.68	13.19
Total Emissions	190.63	22.69	148.82	57.25	419.39

In developing of these emission estimates, WDNR closely followed methodologies recommended by USEPA for the preparation of O_3 inventories. A more detailed discussion of how emission estimates were derived for the above groupings of emission source type is presented in the supporting TSD and inventory documentation.

II. Final Rulemaking Action

USEPA approved the 1990 base year O_3 emission inventory as meeting the requirements of section 182(a)(1) of the Act, as a revision to the O_3 State Implementation Plan (SIP) for all areas in Wisconsin designated as nonattainment, classified marginal to extreme. These areas include counties of the Walworth, Door, Kewaunee, Manitowoc, Sheboygan, and the six county Milwaukee area (which includes Washington, Ozaukee, Waukesha, Milwaukee, Racine, and Kenosha).

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on August 15, 1994. However, if we receive adverse comments by July 15, 1994, then USEPA will publish:

(1) A document that withdraws the action; and

(2) Address the comments received in a subsequent final rule based on the proposal for approval of the requested SIP revision in the proposed rules section of this **Federal Register**. The public comment period will not be extended or reopened.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et al.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On

January 6, 1989 the OMB waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time of USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291, on September 30, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: May 11, 1994.

Michelle D. Jordan,

Acting Regional Administrator.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2585 is amended by adding paragraph (e) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(e) Approval—On January 15, 1993, the Wisconsin Department of Natural Resources submitted a revision to the ozone State Implementation Plan for the 1990 base year inventory. The inventory was submitted by the State of Wisconsin to satisfy Federal requirements under section 182(a)(1) of the Clean Air Act as amended in 1990 (the Act), as a revision to the ozone State Implementation Plan (SIP) for all areas in Wisconsin designated nonattainment, classified marginal to extreme. These areas include counties of Walworth, Door, Kewaunee, Manitowoc, Sheboygan, and the six county Milwaukee area (counties of Washington, Ozaukee, Waukesha, Milwaukee, Racine, and Kenosha).

* * * * *

[FR Doc. 94–14533 Filed 6–14–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7597]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an

appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Regular Program Conversions				
Region I:				
Maine:				
Augusta, city of, Kennebec County	230067	May 16, 1974, Emerg.; April 1, 1981, Reg.; June 15, 1994, Susp.	6–15–94	June 15, 1994.
Chelsea, town of, Kennebec County	230234	October 1, 1975, Emerg.; June 4, 1980, Reg.; June 15, 1994, Susp.	6–15–94	Do.
Strong, town of, Franklin County	230061	August 21, 1975, Emerg.; July 2, 1980, Reg.; June 15, 1994, Susp.	6–15–94	Do.
Region II				
New York:				
Hebron, town of, Washington County	361443	February 2, 1976, Emerg.; April 17, 1985, Reg.; June 15, 1994, Susp.	6–15–94	Do.
Dexter, village of, Jefferson County	360333	May 27, 1975, Emerg.; June 5, 1985, Reg.; June 15, 1994, Susp.	6–15–94	Do.
Region V:				
Michigan: Kalamazoo, town of, Kalamazoo County.	260429	December 27, 1977, Emerg.; June 15, 1982, Reg.; June 15, 1994, Susp.	6–15–94	Do.
Region VII:				
Iowa: Remsem, city of, Plymouth County	190480	November 4, 1982, Emerg.; August 1, 1986, Reg.; June 15, 1994, Susp.	8–1–86	Do.
Region X:				
Washington:				
Benton County, unincorporated areas	530011	August 2, 1974, Emerg.; August 15, 1979, Reg.; June 15, 1994, Susp.	6–15–94	Do.
Kennewick, city of, Benton County	530237	April 11, 1974, Emerg.; July 19, 1982, Reg.; June 15, 1994, Susp.	6–15–94	Do.
Region I:				
Maine:				
Hartford, town of, Kennebec County	230334	May 21, 1976, Emerg.; November 1, 1985, Reg.; July 5, 1994, Susp.	7–5–94	July 5, 1994.
Randolph, town of, Kennebec County	230244	August 5, 1975, Emerg.; September 5, 1979, Reg.; July 5, 1994, Susp.	7–5–94	Do.
Region II:				
New York: New York, city of, Bronx, Queens, Kings, New York and Richmond.	360497	April 8, 1975, Emerg.; November 16, 1983, Reg.; July 5, 1994, Susp.	7–5–94	Do.
Region IV:				
Mississippi: Flowood, town of, Rakin County.	280289	May 28, 1975, Emerg.; December 15, 1982, Reg.; July 5, 1994, Susp.	7–5–94	Do.
North Carolina: Monroe, city of, Union County.	370236	April 21, 1975, Emerg.; January 19, 1983, Reg.; July 5, 1994, Susp.	7–5–94	Do.
Region VI:				
Texas: Hardin County, unincorporated areas.	480284	November 12, 1973, Emerg.; September 29, 1978, Reg.; July 5, 1994, Susp.	7–5–94	Do.
Region I:				
Maine:				
Gardiner, city of, Kennebec County	230068	February 27, 1975, Emerg.; May 15, 1980, Reg.; July 18, 1994, Susp.	7–18–94	July 18, 1994.

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Hallowell, city of, Kennebec County	230069	January 13, 1975, Emerg.; November 15, 1979, Reg.; July 18, 1994, Susp.	7–18–94	Do.
Region V:				
Minnesota:				
Ada, city of, Norman County	270323	April 30, 1974, Emerg.; August 2, 1982, Reg.; July 18, 1994, Susp.	7–18–94	Do.
Hendrum, city of, Norman County	270325	July 5, 1974, Emerg.; December 18, 1979, Reg.; July 18, 1994, Susp.	7–18–94	Do.
Norman County, unincorporated areas	270322	January 23, 1974, Emerg.; September 2, 1981, Reg.; July 18, 1994, Susp.	7–18–94	Do.
Minnesota:				
Perley, city of, Norman County	270326	April 26, 1974, Emerg.; June 15, 1999, Reg.; July 18, 1994, Susp.	7–18–94	Do.
Shelly, city of, Norman County	270327	August 16, 1974, Emerg.; September 2, 1981, Reg.; July 18, 1994, Susp.	7–18–94	Do.
Region VIII				
Wyoming: Baggs, town of, Carbon County	560009	December 16, 1975, Emerg.; August 16, 1988, Reg.; July 18, 1994, Susp.	8–16–88	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No 83.100, "Flood Insurance.")

Issued: June 6, 1994

Richard T. Moore,

Associate Director for Mitigation

[FR Doc. 94–14280 Filed 6–14–94; 8:45 am]

BILLING CODE 6718–21–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 95 and 205

Elimination of Enhanced Funding for Family Assistance Management Information Systems

AGENCY: Administration for Children and Families, HHS.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the Omnibus Budget Reconciliation Act of 1993 (OBRA–93), which eliminate enhanced Federal funding for Family Assistance Management Information Systems (FAMIS). Technical changes are also made to update the list of automated systems subject to enhanced funding and to provide the current title of the agency.

DATES: *Effective Date:* April 1, 1994. For States whose legislatures meet biennially and do not have a regular session scheduled in calendar year 1994, this final rule applies no later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature convening after August 10, 1993.

FOR FURTHER INFORMATION CONTACT: Bill Davis, State Data Systems Staff, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone (202) 401–6404.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This final rule does not contain any information collection activities and, therefore, no approvals are necessary under section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Statutory Authority

These regulations are published under the general authority of section 1102 of the Social Security Act (the Act) which requires the Secretary to publish such rules and regulations as may be necessary for the efficient administration of the functions for which she is responsible under the Act.

Justification for Dispensing With Notice of Proposed Rulemaking and 30-Day Delayed Effective Date Requirement

The amendments to these regulations are being published in final form. The Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that if the Department has good cause for finding that a Notice of Proposed Rulemaking is unnecessary, impracticable or contrary to the public interest, it may dispense with such notice if it incorporates a brief statement in the final regulation of the reasons for doing so. Section 553(d)(3) of the APA permits the Department to bypass a 30-day waiting period prior to a rule's effective date for similar reasons.

The Department finds that there is good case to dispense with Notice of Proposed Rulemaking and a 30-day waiting period with respect to the current regulatory changes. A notice and comment period and a 30-day waiting period are unnecessary as the amendments simply implement statutory provisions and do not involve administrative discretion. Moreover, the States have previously been notified by the Department (via ACF–AT–93–16 issued November 1, 1993) that OBRA–93 has eliminated enhanced Federal funding for FAMIS, and that the lower Federal funding rate is effective, in most cases, on April 1, 1994.

Background and Description of Regulatory Provisions

Section 13741 of OBRA–93 amended section 403 of the Social Security Act by eliminating enhanced Federal financial funding for certain categories of AFDC expenditures, including AFDC program expenditures pertaining to the planning, design, and development or installation of an approved Family Assistance Management Information System (FAMIS).

The current enhanced Federal matching rate for FAMIS is 90 percent. This rate is reduced to 50 percent under OBRA–93. Accordingly, the funding provisions at 45 CFR 205.38(a) are revised to stipulate that the availability of 90 percent funding is terminated effective March 31, 1994, after which time the rate is reduced to 50 percent.

While 50 percent is the only Federal financial participation rate available for FAMIS activities beginning April 1, 1994, those system developments efforts

already in progress and approved at the enhanced rate continue to be subject to the requirements of § 205.35 through § 205.38 until the system is completed and certified by the Administration for Children and Families. The Department will continue to recover pursuant to section 402(e)(2)(C) of the Social Security Act the 40 percent incentive portion of Federal financial participation expended should the state fail to meet the statewide implementation date specified in its approved Advance Planning Document.

We have also made technical changes to reflect a 1991 agency reorganization by replacing references to the "Family Support Administration (FSA)" with "the Administration for Children and Families (ACF)" each time they appear in § 205.35 through § 205.38.

Conforming changes have also been made to 45 CFR part 95, subpart F, Automatic Data Processing Equipment and Services—Conditions for Federal Financial Participation, § 95.605 (pertaining to definitions) and §§ 95.611 and 95.625 (pertaining to FFP) to remove references to the availability of enhanced funding under title IV–A. At the same time, we are adding references in §§ 95.611 and 95.625 to title IV–E relevant to the availability of enhanced funding since section 13713 of OBRA–93 made such funding available for Statewide Automated Child Welfare Information Systems from October 1, 1993 through September 30, 1996 (see 58 FR 67939, December 22, 1993).

Technical changes have also been made to this section to reflect the current agency designation as explained above and to correct a typographical error. The reference at 45 CFR 96.625(b), with respect to regulations governing title XIX should be 42 CFR part 433, subpart C, rather than 45 CFR part 433, subpart C.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. No costs are associated with this rule as it merely ensures consistency between the statute and regulations.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (Pub. L. 96–354) which requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities, the Secretary certifies that this rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

List of Subjects

45 CFR Part 95

Claims, Computer technology, Grant programs—health, Grant programs, Social programs, Social security.

45 CFR Part 205

Computer technology, Grant programs—social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

(Catalog of Federal Domestic Assistance Program Numbers 13.645 Child Welfare Services—State Grants; Foster Care Maintenance; 13.659, Adoption Assistance; 13.679, Child Support Enforcement Program; 13.174, Medical Assistance Program; 13.808, Assistance Payments—Maintenance Assistance; 13.810, Assistance Payments—State and Local Training)

Dated: April 1, 1994.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: June 5, 1994.

Donna E. Shalala,

Secretary.

PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS (PUBLIC ASSISTANCE AND MEDICAL ASSISTANCE)

1. The authority citation for part 95 continues to read as follows:

Authority: Secs. 402(a)(5), 452(a)(1), 1102, and 1902(a)(4) of the Social Security Act, 42 U.S.C. 602(a)(5), 652(a)(1), 1302, 1396a(a)(4); 5 U.S.C. 301 and 8 U.S.C. 1521.

2. Section 95.605 is amended by revising the definition of "Enhanced matching rate" to read as follows:

§ 95.605 Definitions.

* * * * *

Enhanced matching rate means the higher than regular rate of FFP authorized by Title IV–D, IV–E, and XIX of the Social Security Act for acquisition of services and equipment that conform to specific requirements designed to improve administration of the Child Support Enforcement, Foster Care and Adoption Assistance, and Medicaid programs.

* * * * *

3. Section 95.611 is amended by revising paragraphs (a)(2) and (a)(5) to read as follows:

§ 95.611 Prior approval conditions.

(a) * * *

(2) A State shall obtain prior written approval from the Department as specified in paragraph (b) of this section, when the State plans to acquire ADP equipment or services with proposed FFP at the enhanced matching rate authorized by 45 CFR part 307, 45 CFR 1355.55 or 42 CFR part 433, subpart C, regardless of the acquisition cost, except as specified in paragraph (a)(3) of this section.

* * * * *

(5) Except as provided for in paragraph (a)(6) of this section, the State shall submit requests for Department approval, signed by the appropriate State official, to the Director, Administration for Children and Families, Office of Information Management Systems. The State shall send to ACF one copy of the request for each HHS component, from which the State is requesting funding, and one for the State Data Systems Staff, the coordinating staff for these requests. The State must also send one copy of the request directly to each Regional program component and one copy to the Regional Director.

* * * * *

4. Section 95.625 is revised to read as follows:

§ 95.625 Increased FFP for certain ADP systems.

(a) *General.* FFP is available at enhanced matching rates for the development of individual or integrated systems and the associated computer that support the administration of State plans for Titles IV–D, IV–E and/or XIX provided the systems meet the specifically applicable provisions referenced in paragraph (b) of this section.

(b) *Specific reference to other regulations.* The applicable regulations for the Title IV–D program are contained in 45 CFR part 307. The applicable regulations for the Title IV–E program are contained in 45 CFR 1355.55. The applicable regulations for the Title XIX program are contained in 42 CFR part 433, subpart C.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

1. The authority citation for part 205 continues to read as follows:

Authority: 42 U.S.C. 602, 603, 606, 607, 611, 1302, 1306(a), 1320b–7.

§ 205.35 [Amended]

2. Section 205.35 is amended by removing in the introductory text "Family Support Administration (FSA)." and adding, in its place "Administration for Children and Families (ACF)."

§ 205.37 [Amended]

3. Section 205.37 is amended by revising the heading of the section to read: "Responsibilities of the Administration for Children and Families (ACF).", and by removing the initials "OFA" in the third sentence of paragraph (a)(5) and adding in its place, the initials "ACF".

4. Section 205.38 is amended by revising paragraph (a) to read as follows:

§ 205.38 Federal financial participation (FFP) for establishing a statewide mechanized system.

(a) Effective July 1, 1981 through March 31, 1994, FFP is available at 90 percent of expenditures incurred for planning, design, development or installation of a statewide automated application processing and information retrieval system which are consistent with an approved APD. (Beginning April 1, 1994 the match rate available for development of Title IV–A automated systems is 50 percent.) The 90 percent FFP includes the purchase or rental of computer equipment and software directly required for and used in the operation of this system.

* * * * *

§§ 205.37 and 205.38 [Amended]

5. In addition to the amendments set forth above, in 45 CFR part 205 remove the initials "FSA" and add, in its place, the initials "ACF" in the following places:

(a) Section 205.37(a), (b), (c), (d) and (e); and

(b) Section 205.38(b), (c) and (e).

[FR Doc. 94–14326 Filed 6–14–94; 8:45 am]

BILLING CODE 4110–60–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2525, 2526, 2527, 2528, and 2529

National Service Trust

AGENCY: Corporation for National and Community Service.

ACTION: Interim final rule.

SUMMARY: The Corporation for National and Community Service (the Corporation) is issuing this interim final rule implementing requirements of subtitle D of the National and Community Service Act of 1990 (the Act). This rule describes the following: the National Service Trust (the Trust); who is eligible to receive education awards from the Trust; how the amount of the education awards is determined; the purposes for which the education awards may be used; and the circumstances under which AmeriCorps participants will receive forbearance and payment of interest expenses on qualified student loans. This rule is intended to allow for the provision of educational benefits to AmeriCorps participants.

DATES: Interim rule effective June 15, 1994; comments must be received on or before August 1, 1994.

ADDRESSES: Comments must be mailed to the Corporation for National and Community Service, P.O. Box 34680, Washington, DC 20034–4680 or hand delivered to the Office of the General Counsel, room 9200, 1100 Vermont Avenue, Washington, DC 20525. Comments received may be inspected at the Corporation for National and Community Service, Office of the General Counsel, room 9200, 1100 Vermont Avenue NW., Washington, DC 20525, between 9 a.m. and 5 p.m. Eastern daylight savings time.

FOR FURTHER INFORMATION CONTACT: Terry Russell, (202) 606–4949 (Voice) or (202) 606–5256 (TDD), between the hours of 9 a.m. and 6 p.m. Eastern daylight savings time. For individuals with disabilities, information will be made available in alternative formats upon request.

SUPPLEMENTARY INFORMATION: The Corporation has published this rule as an interim final rule rather than as a proposed rule pursuant to 44 U.S.C. 553(b)(3)(B). The Corporation is making grants to AmeriCorps programs that will operate over the summer of 1994 and whose participants will need to receive education awards under the terms and conditions of this rule. Since it would be contrary to the public interest to publish this rule as a proposed rule, it is published as an interim final rule to take effect immediately.

On March 23, 1994, the Corporation published final regulations governing the Corporation's grantmaking programs and various support and investment activities authorized by the Act (59 FR 13772). This rule establishes regulations to implement sections 145 through 148 of subtitle D of the Act, which requires the Corporation to make payments from the National Service Trust for education awards for AmeriCorps participants and for interest expenses that accrue on qualified student loans for which participants have obtained forbearance during a term of service in an AmeriCorps program.

Overview of This Interim Final Rule and Discussion of Policy Decisions

In general, this rule incorporates, without substantive change, the statutory requirements regarding the eligibility of AmeriCorps participants to receive and use education awards, the standards for determining the amount of the education award, the possible uses of and procedures for using education awards, the procedures for obtaining forbearance in repaying qualified student loans while serving in an AmeriCorps program, and the procedures for making interest payments from the National Service Trust.

Some sections of the regulations interpret and elaborate on provisions in the statute. Those sections are discussed below.

AmeriCorps participants who are released for cause are not eligible to receive any portion of the education award. However, participants who are released for compelling personal circumstances, at the discretion of their respective programs, either may have their service suspended and return at a later date to complete their terms or may receive a pro-rated education award. Sections 2526.20 and 2527.10 of this rule set some guidelines for programs to make these determinations.

First, the corporation encourages programs—whenever possible and appropriate—to suspend a participant's term of service rather than offer a pro-rated education award. The intent is to always encourage participants to complete their terms of service if at all possible. Second, the regulations further clarify that participants who are released for compelling personal circumstances only may receive a pro-rated education award if they have completed at least 15% of their terms of service. There are a number of reasons for this policy. From a logistical standpoint, 15% of a full-time term of service equates to approximately six weeks; similarly, programs are allowed to fill an approved AmeriCorps position left vacant due to attrition only within the first six weeks of a term of service. Programs that offered pro-rated education awards within this first six weeks would forfeit those AmeriCorps positions—an outcome that is desirable neither for the programs nor for the Corporation. From an economic standpoint, the value of a pro-rated education award for significantly less than 15% of a term of service would be insufficient to pay for most educational expenses and, in many cases, would be less than the administrative costs of providing that award. Finally, the Corporation did not set the limit at a higher percentage because it recognizes that there may be compelling cases in which participants legitimately would be unable to continue service even after

a period of suspension but would benefit from and should receive a relatively small, pro-rated education award.

Section 2526.50 clarifies that the suspension of an individual's eligibility to use an education award as a result of the conviction of the possession or sale of a controlled substance does not constitute a valid reason for the extension of the seven-year period for using an education award.

The sections in part 2528 describe the uses of and the procedures for using education awards. The regulations in these sections are designed to ensure that the necessary documentation and verification are obtained at each stage of the process without imposing too great a burden on holders of qualified student loans, institutions of higher education, participants, or the Corporation.

Part 2529 describes the procedures for participants to obtain forbearance in the repayment of qualified student loans and for the Corporation to pay interest expenses that accrue during such periods of forbearance. Similar to the regulations in part 2528, the regulations in this part are designed to ensure that the necessary documentation and verification is obtained while minimizing administrative burdens. Section 2529.20 clarifies that individuals who are eligible for a pro-rated education awards or for pro-rated Stafford Loan Forgiveness also are eligible for pro-rated payments of interest expenses based on the portion of the term of service that was completed. The Corporation will not, however, pay interest expenses that accrue during a period of suspension of a term of service. Section 2529.30 clarifies that different repayment requirements apply to VISTA volunteers.

Invitation to Comment

The Corporation invites written comments on the text of this interim final rule and requests that the comments identify the specific sections of the regulations to which they relate and provide reasons for any suggested changes.

Miscellaneous Requirements

Interested parties should be advised that because the assistance provided under the authority of this rule constitutes Federal financial assistance for the purposes of title VI of the Civil Rights Act of 1964 (which bars discrimination based on race, color, or national origin), title IX of the Education Amendments of 1972 (which bars discrimination on the basis of gender), the Rehabilitation Act of 1973 (which bars discrimination on the basis of disability), and the Age Discrimination Act of 1975 (which bars discrimination on the basis of age), grantees will be required to comply with the aforementioned provisions of Federal law.

Grant recipients will be expected to expend Corporation grants in a judicious and reasonable manner, consistent with pertinent provisions of Federal law and regulations. Grantees must keep records according to Corporation guidelines, including records that fully disclose the amount and disposition of the proceeds of a Corporation grant. The Inspector General of the Corporation (or other authorized official) shall have access, for the purpose of audit and examination, to the books and records of grantees that may be related or pertinent to the Corporation grant.

Grantees should further be advised that Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and Administrative Requirements for Grants and Cooperative Agreements to other than State and Local Governments, as well as regulations for the Privacy Act, freedom of Information Act, Sunshine Act, Government-wide Debarment and Suspension, and Government-wide Requirements for Drug-Free Workplace will also be published.

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

As required by the Paperwork Reduction Act of 1980, the Corporation will submit the information collection requirements contained in this rule to the Office of Management and Budget for its review (44 U.S.C. 3504(h)). The information collection requirements are needed in order to provide assistance to parties affected by these regulations, in accordance with statutory mandates.

(Catalog of Federal Domestic Assistance Numbers: 94.003 for State Commissions, Alternative Administrative Entities, and Transitional Entities; 94.004 for K–12 Service-Learning Programs; 94.005 for Higher Education Service-Learning Programs; 94.006 for AmeriCorps Programs; 94.007 for Investment for Quality and Innovation Programs)

List of Subjects

45 CFR Part 2525

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2526

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2527

Grant programs—social programs, Student aid, Volunteers.

45 CFR Part 2528

Grant programs—social programs, Student aid, Volunteers

45 CFR Part 2529

Grant programs—social programs Student aid, Volunteers

Dated: June 7, 1994

Terry Russell,

General Counsel.

Accordingly, the Corporation amends title 45, chapter XXV of the Code of Federal Regulations by adding parts 2525 through 2529 to read as follows:

PART 2525—NATIONAL SERVICE TRUST: PURPOSE AND DEFINITIONS

Sec.

2525.10 What is the National Service Trust?
2525.20 Definitions.

Authority: 42 U.S.C. 12601–12604

§ 2525.10 What is the National Service Trust?

The National Service Trust is an account in the Treasury of the United States from which the Corporation makes payments of education awards, Stafford loan forgiveness awards, and pays interest that accrue on qualified student loans for AmeriCorps participants during terms of service in approved AmeriCorps positions.

§ 2525.20 Definitions.

In addition to the definitions in § 2510.20 of this chapter, the following definitions apply to terms used in parts 2525 through 2529 of this chapter:

Approved school-to-work program. The term *approved school-to-work program* means a school-to-work program officially approved by the Secretaries of the Departments of Education and Labor.

Cost of attendance. The term *cost of attendance* has the same meaning as in title IV of the Higher Education Act of 1965, as amended (20 U.S.C. 1070 et. seq.).

Education award. The term *education award* means the financial assistance available under parts 2526 through 2528 of this chapter for which an individual in an approved AmeriCorps position—except for an individual in a Stafford Loan Forgiveness program (SLF program)—may be eligible.

Holder. The term *holder* means—

(1) The original lender; or

(2) Any other entity to whom a loan is subsequently sold, transferred, or assigned if such entity acquires a legally

enforceable right to receive payments from the borrower.

Institution of higher education. For the purposes of parts 2525 through 2529 of this chapter, the term *institution of higher education* has the same meaning given the term in section 481(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 1088(a)).

Qualified student loan. The term *qualified student loan* means any loan made, insured, or guaranteed pursuant to title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et. seq.), other than a loan to a parent of a student pursuant to section 428B of such Act (20 U.S.C. 1078–2), and any loan made pursuant to title VII or VIII of the Public Service Health Act (42 U.S.C. 292a et. seq.).

Term of service. The term *term of service* means—

(1) For AmeriCorps participants other than VISTA volunteers, any of the terms of service specified in § 2522.220 of this chapter; and

(2) For VISTA volunteers, not less than a full year of service as a VISTA volunteer.

PART 2526—ELIGIBILITY TO RECEIVE AND USE EDUCATIONAL BENEFITS

Sec.

2526.10 What types of AmeriCorps educational benefits are available?
2526.20 Who is eligible to receive a full education award from the National Service Trust?
2526.30 Who is eligible to receive a full Stafford loan forgiveness award from the National Service Trust?
2526.40 Is an AmeriCorps participant who does not complete a term of service eligible to receive a pro-rated education or Stafford loan forgiveness award?
2526.50 What conditions must an AmeriCorps participant who has received an education award meet in order to use that education award?
2526.60 How do convictions for the possession or sale of controlled substances affect an education award recipient's ability to use that award?
2526.70 What is the time period during which an individual must use an education award?
2526.80 How many education or Stafford loan forgiveness awards may an individual receive?
2526.90 May an individual receive an education or Stafford loan forgiveness award and loan cancellations for the same service?
2526.100 How are education and Stafford loan forgiveness awards treated in determining eligibility for financial assistance under the Higher Education Act of 1965, as amended?

Authority: 42 U.S.C. 12601–12604.

§ 2526.10 What types of AmeriCorps educational benefits are available?

Individuals serving in approved AmeriCorps positions may be eligible to receive either AmeriCorps education awards or Stafford loan forgiveness awards, but may not receive both awards for the same term of service.

§ 2526.20 Who is eligible to receive a full education award from the National Service Trust?

(a) *General.* To receive a full education award from the National Service Trust, an AmeriCorps participant must meet the eligibility requirements for, and successfully complete the required term of service in, an approved AmeriCorps position, including approved AmeriCorps positions in the VISTA program established by the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et. seq.) and the National Civilian Community Corps program established by the National and Community Service Act of 1990.

(b) *Conditions.* (1) For any term of service, a VISTA Volunteer who successfully completes his or her required term of service is only eligible to receive an education award from the National Service Trust if he or she does not accept the postservice stipend authorized under section 105(a)(1) of the Domestic Volunteer Service Act of 1973.

(2) For any term of service, a National Civilian Community Corps participant who successfully completes his or her required term of service is only eligible to receive an education award from the National Service Trust if he or she does not accept the alternative benefit described in section 158(g) of the National and Community Service Act of 1990.

§ 2526.30 Who is eligible to receive a full Stafford loan forgiveness award from the National Service Trust?

An individual who successfully completes a term of service in an approved AmeriCorps position in a Stafford Loan Forgiveness program is eligible to receive a full Stafford loan forgiveness award.

§ 2526.40 Is an AmeriCorps participant who does not complete a term of service eligible to receive a pro-rated education or Stafford loan forgiveness award?

(a) An individual who is released from a term of service for compelling personal circumstances, in accordance with § 2522.230(a) of this chapter, is eligible to receive a pro-rated education or Stafford loan forgiveness award as determined according to § 2527.10(d)(1) of this chapter if—

(1) The individual completed at least fifteen percent of his or her required term of service prior to the release; and

(2) The program chooses to provide the individual with a pro-rated education or Stafford loan forgiveness award pursuant to § 2522.230(a)(1) of this chapter rather than permitting the individual to complete the remainder of the term of service after a temporary suspension of service pursuant to § 2522.230(a)(2) of this chapter.

(b) Programs are encouraged, when appropriate, to suspend service rather than offer prorated educational benefits.

(c) An individual who is released from a term of service for cause in accordance with § 2522.230(b) of this chapter is not eligible for any portion of an education or Stafford loan forgiveness award.

(d) A VISTA volunteer who does not complete a term of service as a result of the early closure of the project in which he or she is serving is eligible to receive a pro-rated education award as determined according to § 2527.10(d)(1) of this chapter.

§ 2526.50 What conditions must an individual who has received an education award meet in order to use that education award?

An individual who receives an education award is eligible to use the award if the individual—

(a) Has received a high school diploma or its equivalent, is enrolled at an institution of higher education, or has received a waiver based on an individual education assessment conducted by the AmeriCorps program in which the individual participated;

(b) Is a citizen, national, or permanent resident alien of the United States; and

(c) Is not eligible to use the education award under § 2526.40 as a result of a conviction of the possession or sale of a controlled substance.

§ 2526.60 How do convictions for the possession or sale of controlled substances affect an education award recipient's ability to use that award?

(a) Except as provided in paragraph (b) of this section, a recipient of an education award who is convicted under pertinent Federal or State law of the possession or sale of a controlled substance is not eligible to use his or her education award from the date of the conviction until the end of a specified time period, which is determined based on the type of conviction as follows:

(1) For conviction of the possession of a controlled substance, the ineligibility periods are—

(i) One year for a first conviction;

(ii) Two years for a second conviction; and

(iii) For a third or subsequent conviction, indefinitely, as determined by the Corporation according to the following factors—

(A) Type of controlled substance;

(B) Amount of controlled substance;

(C) Whether firearms or other dangerous weapons were involved in the offense;

(D) Nature and extent of any other criminal record;

(E) Nature and extent of any involvement in trafficking of controlled substances;

(F) Length of time between offenses;

(G) Employment history;

(H) Service to the community;

(I) Recommendations from community members and local officials, including experts in substance abuse and treatment; and

(J) Any other relevant aggravating or ameliorating circumstances.

(2) For conviction of the sale of a controlled substance, the ineligibility periods are—

(i) Two years for a first conviction; and

(ii) Two years plus such additional time as the Corporation determines as appropriate for second and subsequent convictions, based on the factors set forth in paragraphs (a)(1)(iii) (A) through (J) of this section.

(b) (1) If the Corporation determines that an individual who has had his or her eligibility to use the education award suspended pursuant to paragraph (a) of this section has successfully completed a legitimate drug rehabilitation program, or in the case of a first conviction that the individual has enrolled in a legitimate drug rehabilitation program, the individual's eligibility to use the education award will be restored.

(2) In order for the Corporation to determine that the requirements of paragraph (b)(1) of this section have been met—

(i) The drug rehabilitation program must be recognized as legitimate by appropriate Federal, State or local authorities; and

(ii) The individual's enrollment in or successful completion of the legitimate drug rehabilitation program must be certified by an appropriate official of that program.

§ 2526.70 What is the time period during which an individual must use an education award?

(a) *General requirement.* An individual must use an education award within seven years of the date on which the individual successfully completes a term of service, unless the individual applies for and receives an extension in accordance with the requirements of paragraph (b) of this section.

(b) *Extensions.* In order to receive an extension of the seven-year time period for using an education award, an individual must apply to the Corporation for an extension prior to the end of that time period. The Corporation will grant an application for an extension under the following circumstances:

(1) If the Corporation determines that an individual was performing another term of service in an approved AmeriCorps position during the seven-year period, the Corporation will grant an extension for a time period that is equivalent to the time period during which the individual was performing the other term of service.

(2) If the Corporation determines that an individual was unavoidably prevented from using the education award during the seven-year period, the Corporation will grant an extension for a period of time that the Corporation deems appropriate. An individual who is ineligible to use an education award as a result of the individual's conviction of the possession or sale of a controlled substance under § 2526.40 is not considered to be unavoidably prevented from using the education award for the purposes of this paragraph.

§ 2526.80 How many education or Stafford loan forgiveness awards may an individual receive?

An individual may receive an education or Stafford loan forgiveness award for each of up to two terms of service. For the purposes of this section, full-time, part-time and reduced part-time terms of service described in § 2522.220 of this chapter are each considered terms of service.

§ 2526.90 May an individual receive an education or Stafford loan forgiveness award and loan cancellations for the same service?

No. Although an education award may be used to repay qualified student loans pursuant to § 2528.20 of this chapter, an individual may not receive an education or Stafford loan forgiveness award for a term of service and have that same service credited toward repayment of other student loans.

§ 2526.100 How are education and Stafford loan forgiveness awards treated in determining eligibility for financial assistance under the Higher Education Act of 1965, as amended?

Institutions of higher education shall consider education and Stafford loan forgiveness awards neither as income in calculating expected family contributions nor as estimated financial assistance in packaging assistance under the Higher Education Act of 1965, as amended (20 U.S.C. 1070 et seq.).

PART 2527—AMOUNT OF AMERICORPS EDUCATIONAL BENEFITS

Sec.

2527.10 How are the amounts of the education and Stafford loan forgiveness awards determined?

Authority: 42 U.S.C. 12601–12604

§ 2527.10 How are the amounts of the education and Stafford loan forgiveness awards determined?

(a) *Education awards for full-time service.* The education award for full-time service is equal to 90 percent of—

(1) One-half of an amount equal to the aggregate basic educational assistance allowance provided in 38 U.S.C. 3015(b)(1) (as in effect on July 28, 1993), for the period referred to in 38 U.S.C. 3013(a)(1) (as in effect on July 28, 1993), for a member of the Armed forces who is entitled to such an allowance under 38 U.S.C. 3011 and whose initial obligated period of active duty is two years; less

(2) One-half of the aggregate basic contribution required to be made by the member in 38 U.S.C. 3011(b) (as in effect on July 28, 1993).

(b) *Stafford loan forgiveness awards for full-time service.* The Stafford loan forgiveness award for a full-time participant in a Stafford Loan Forgiveness program is equal to 15 percent of that greater of—

(1) That participant's current Stafford loan obligations that were incurred during the final two years of that participant's undergraduate education; or

(2) That participant's current Stafford loan obligations that were incurred during the most recent two years of that participant's graduate education in a teaching program.

(c) *Part-time service.* The education and Stafford loan forgiveness awards for part-time terms of service are equal to one-half of the corresponding full-time education and Stafford loan forgiveness awards described in paragraphs (a) and (b) of this section.

(d) *Incomplete or reduced terms of service.* (1) The education or Stafford loan forgiveness awards for individuals who are released from a term of service for compelling personal circumstances and are eligible for a pro-rated full- or part-time education or Stafford loan forgiveness award in accordance with the requirements in § 2526.40 of this chapter, or for VISTA volunteers who

are released due to the early of a project, are equal to the product of—

(i) The ratio of the portion of the term of service completed to the required term of service; and

(ii) The amount of the full- or part-time education award available for that term of service as determined pursuant to paragraph (a), (b) or (c) of this section.

(2) The education award for individuals serving in a reduced part-time term of service described in § 2522.220 of this chapter is equal to the product of—

(i) The ratio of the number of hours of service required for the reduced part-time term of service to 900; and

(ii) The amount of the part-time education or Stafford loan forgiveness award as determined pursuant to paragraph (c) of this section.

(e) *Authority to aggregate awards.* An individual who serves two terms of service in a Stafford loan forgiveness program(s) may elect (prior to the end of the first such term of service) to aggregate the two Stafford loan forgiveness awards that the individual receives such that the individual receives a single Stafford loan forgiveness award at the end of the second term of service that is equal to the sum of the awards for each of the terms. An individual who wishes to aggregate his or her Stafford loan forgiveness awards must comply with the procedural requirements of § 2528.60 of this chapter.

PART 2528—USES OF AND PROCEDURES FOR USING EDUCATIONAL BENEFITS

Sec.

2528.10 For what purposes may education awards be used?
2528.20 What are the procedural requirements for using education awards to repay qualified student loans?
2528.30 What are the procedural requirements for using education awards to pay for all or part of the cost of attendance at an institution of higher education or to pay for expenses incurred in participating in an approved school-to-work program?
2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for a given period of enrollment?
2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education or school-to-work program for which the Corporation has disbursed all or part of that individual's education award?
2528.60 What are the procedural requirements for using a Stafford loan forgiveness award to repay Stafford loans?

Authority: 42 U.S.C. 12601–12604.

§ 2528.10 For what purposes may education awards be used?

(a) Education awards may be used—

(1) To repay qualified student loans or portions thereof in accordance with § 2528.20;

(2) To pay all or part of the cost of attendance at an institution of higher education in accordance with §§ 2528.30 through 2528.50; and

(3) To pay expenses incurred in participating in approved school-to-work programs in accordance with § 2528.60.

(b) Education awards are divisible and may be applied to any combination of those loans, costs and expenses described in paragraph (a) of this section.

§ 2528.20 What are the procedural requirements for using education awards to repay qualified student loans?

(a) In order to use an education award to repay qualified student loans, the recipient of the award must submit an application to the Corporation, in a manner prescribed by the corporation that:

(1) Identifies, or permits the Corporation to identify, the holder or holders of the loans;

(2) Indicates, or permits the Corporation to determine, the amounts of principal and interest outstanding on the loans;

(3) Specifies, if the outstanding balance of the principal on the loans is greater than the amount to be disbursed by the Corporation, which of the loans the individual prefers to have paid; and

(4) Contains whatever other information the Corporation may require.

(b) Upon receipt of an application under paragraph (a) of this section, the Corporation will notify each holder of a loan that has been designated for payment in the individual's application and will identify any information or documentation that the holder must provide to the corporation before the Corporation will make payment.

(c) When the Corporation receives all required information from the holder of the loan, the Corporation will pay the holder of the loan in accordance with the instructions in the application of the education award recipient and will notify the recipient of the payment.

(d) The Corporation may establish procedures to aggregate payments to holders of loans for more than a single individual.

§ 2528.30 What are the procedural requirements for using education awards to pay for all or part of the cost of attendance at an institution of higher education or to pay for expenses incurred in participating in an approved school-to-work program?

(a) In order to use an education award to pay for the cost of full-time or part-time attendance at an institution of higher education or to pay for expenses incurred in participating in an approved school-to-work program, the recipient of an award must submit an application to the institution of higher education or school-to-work program in which the individual is or will be enrolled, on a form prescribed by the Corporation, that contains such information as the Corporation may require to verify that the individual is a recipient of and eligible to use an education award.

(b) An institution of higher education or approved school-to-work program that receives one or more applications submitted in accordance with the requirements of paragraph (a) of this section shall submit to the Corporation, in a manner prescribed by the Corporation, a statement that—

(1) Identifies each eligible individual filing an application;

(2) Specifies the amounts for which such eligible individuals are qualified;

(3)(i) For institutions of higher education, certifies that—

(A) The institution of higher education has in effect a program participation agreement under section 487 of the Higher Education Act of 1965;

(B) The institution's eligibility to participate in any of the programs under title IV of such Act has not been limited, suspended, or terminated; and

(C) Individuals using education awards to pay for the cost of attendance at that institution do not comprise more than 15 percent of the total student population of the institution;

(ii) For school-to-work programs, certifies that the program has been approved by the Departments of Education and Labor;

(4) Indicates the costs of attendance or participation for any period(s) of enrollment for which the individual(s) are applying the education award(s); and

(5) Contains such provisions concerning financial compliance as the Corporation may require in the application.

(c) When the Corporation receives a statement from an institution of higher education or a school-to-work program in accordance with the requirements of paragraph (b) of this section, the Corporation will pay a first installment for the first period of enrollment, which

shall be not more than half of the total monetary value of the education awards that the individuals identified on the institution's statement are scheduled to receive. The Corporation will pay installments for each subsequent period of enrollment upon receipt of statements updating the information required under paragraph (b) of this section for the relevant period of enrollment.

§ 2528.40 Is there a limit on the amount of an individual's education award that the Corporation will disburse to an institution of higher education for a given period of enrollment?

Yes. The Corporation's disbursement from an individual's education award for any period of enrollment may not exceed the difference between—

(a) The individual's cost of attendance for that period of enrollment, determined in accordance with section 472 of the Higher Education Act of 1965; and

(b) The sum of—

(1) The student's estimated financial assistance for that period under part A of title IV of such Act; and

(2) The student's veterans' education benefits, determined in accordance with section 480(c) of such Act.

§ 2528.50 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education or school-to-work program for which the Corporation has disbursed all or part of that individual's education award?

(a) (1) An institution of higher education or school-to-work program that receives a disbursement of education award funds from the Corporation must have in effect a fair and equitable refund policy that includes procedures for providing a refund to the Corporation if an individual for whom the Corporation has disbursed education award funds withdraws or otherwise fails to complete the period of enrollment at that institution or program for which the assistance was provided.

(2) (i) For purposes of this section, an institution of higher education's refund policy is deemed "fair and equitable" if it is consistent with the requirements of paragraphs (b) and (c) of section 484B of the Higher Education Act of 1965, as amended.

(ii) For the purposes of this section, a school-to-work program's refund policy is deemed "fair and equitable" if it complies with any standards that may be developed by the Departments of Education and Labor.

(b) The Corporation credits to the individual's education award allocation in the National Service Trust the amount of any refund received for that individual under paragraph (a) of this section.

§ 2528.60 What are the procedural requirements for using a Stafford loan forgiveness award to repay Stafford loans?

(a) In order to apply a Stafford loan forgiveness award to the repayment of a Stafford loan(s), a participant in an AmeriCorps Stafford Loan Forgiveness program must submit an application to the Corporation that—

(1) Identifies the holder or holders of the participant's Stafford loans as described in § 2527.10(b) of this chapter;

(2) Indicates the amounts of outstanding principal and the rates of interest on those loans;

(3) Indicates, where appropriate, to which of the loans the individual would prefer to apply the Stafford loan forgiveness award;

(4) If the participant serves two terms of service in a Stafford Loan Forgiveness program, indicates whether the participant wishes to aggregate the Stafford loan forgiveness awards pursuant to § 2527.10(e) of this chapter; and

(5) Contains whatever other information the Corporation may require.

(b) When a participant receives a Stafford loan forgiveness award, the Corporation will notify each holder of a Stafford loan identified in the participant's application of the portion of the loan that the Corporation will repay and will identify any information or documentation that the holder must provide to the Corporation.

(c) When the Corporation receives all required information from the holder of the loan(s) pursuant to paragraph (b) of this section, the Corporation will pay the holder(s) an amount determined according to § 2527.10 of this chapter and will notify the participant of the payment.

(d) The Corporation may establish procedures to aggregate payments to holders of Stafford loans for more than one individual.

PART 2529—FORBEARANCE AND INTEREST PAYMENT PROCEDURES

Sec.

2529.10 What are the procedural requirements for obtaining forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?
2529.20 What are the procedural requirements for using National Service Trust funds to pay interest that accrues on a qualified student loan for which an individual has obtained forbearance?
2529.30 What additional student loan forbearance benefits are available for VISTA volunteers?

Authority: 42 U.S.C. 12601–12604.

§ 2529.10 What are the procedural requirements for obtaining forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?

(a) In order to obtain forbearance in the repayment of a qualified student loan during a term of service in an approved AmeriCorps position, an individual, other than a VISTA volunteer, must submit a written request to the holder of the loan.

(b) Upon receipt of a request under paragraph (a) of this section, the holder of a qualified student loan must contact the Corporation to verify that the individual is serving in an approved AmeriCorps position and to determine the period for which the holder must grant forbearance.

(c) The holder shall grant forbearance in the repayment of a qualified student loan for the period of an individual's required term of service after obtaining the verification required under paragraph (b) of this section.

(d) The holder shall promptly report to the Corporation each individual and loan for which it grants forbearance, the period for which it has granted forbearance, and the projected amount of interest that will accrue on the loan during the period of forbearance.

(e) If an individual who has obtained forbearance on a qualified student loan(s) does not complete his or her term of service, or if that individual's term of service is suspended, the Corporation will promptly notify the holder(s) of that loan(s).

(f) The holder is not required to grant forbearance in the repayment of qualified student loans for any period during which an individual's service in an approved AmeriCorps position has been suspended.

§ 2529.20 What are the procedural requirements for using National Service Trust funds to pay interest that accrues on a qualified student loan for which an individual has obtained forbearance?

The Corporation will make payments from the National Service Trust for interest that accrues on qualified student loans for which an individual, other than a VISTA volunteer, has obtained forbearance under § 2529.10 in accordance with the following requirements:

(a) *Completed terms of service.* (1) If an individual successfully completes a term of service, the Corporation will notify the holder of the individual's loan of the date of completion; the holder shall document the accrued interest expense to the Corporation; and the Corporation will pay all or a portion of the accrued interest and notify the individual and the holder of the loan of the payment.

(2) The percentage of the accrued interest that the Corporation will pay pursuant to paragraph (a)(1) of this section is equal to the lesser of—

(i) The product of—

(A) The required number of hours for the term of service divided by the total number of days for which forbearance was granted; and

(B) 365 divided by 17; and

(ii) 100.

(b) *Incomplete terms of service.* (1) If an individual does not successfully complete a term of service, but is eligible for a pro-rated educational benefits under § 2527.10(c) of this chapter or pro-rated Stafford Loan Forgiveness under § 2522.650(c) of this chapter, the Corporation will notify the holder of the loan if the date of the individual's release, the holder of the loan shall document to the Corporation the amount of accrued interest as of the date of the release, and the Corporation will pay all or a portion of such interest and notify the individual and the holder of the loan of the payment.

(2) The percentage of the accrued interest that the Corporation will pay pursuant to paragraph (b)(1) of this section is equal to lesser of—

(i) The product of—

(A) The number of hours of service completed divided by the number of days for which forbearance was granted; and

(B) 365 divided by 17; and

(ii) 100.

(3) The individual is responsible for the repayment of any accrued interest that is not paid by the Corporation pursuant to paragraph (b)(2) of this section.

(4) If the individual does not successfully complete the required term of service and is not eligible for a pro-rated education award under § 2527.10(c) of this chapter or pro-rated Stafford Loan Forgiveness under § 2522.605(c) of this chapter, the Corporation will notify the holder of the loan of the circumstances and date of the individual's release but will pay no portion of the accrued interest.

(c) *Suspended service.* The Corporation will not pay any interest expenses that accrue on an individual's qualified student loan(s) during a period of suspended service.

§ 2529.30 What additional student loan forbearance benefits are available for VISTA volunteers?

(a) VISTA volunteers may be eligible to have periodic installment payments of principal deferred for up to three years during periods of economic hardship, in accordance with the Higher Education Act of 1965, as amended.

(b) VISTA volunteers also may qualify for interest benefits on Stafford loans from the Department of Education under 34 CFR 682.301.

[FR Doc. 94–14231 Filed 6–14–94; 8:45 am]
BILLING CODE 6820–BA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 940663–4163; I.D. 040694A]

Designated Critical Habitat; Steller Sea Lion

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS announces a technical amendment to the final rule that designated Steller sea lion critical habitat under the Endangered Species Act (ESA). The technical amendment revises regulations by changing the name of one designated haulout site from Ledge Point to Gran Point and by correcting the longitude and latitude of 12 haulout sites, including Gran Point. The purpose of this action is to correct errors in the published regulations. These corrections are consistent with the goals and objectives of the ESA.

EFFECTIVE DATE: June 14, 1994.

FOR FURTHER INFORMATION CONTACT: Susan Mello, Protected Resources Management Division, Alaska Region, NMFS; (907) 586–7235.

SUPPLEMENTARY INFORMATION:

Background

In late 1990, NMFS listed Steller sea lions as a threatened species under the ESA because of a drastic population decline (55 FR 49204, November 26, 1990). Coincident with, and subsequent to, the listing, NMFS implemented protective regulations under the ESA and the Magnuson Fishery Conservation and Management Act to aid recovery of the species. On August 27, 1993, NMFS designated critical habitat for Steller sea lions, which includes all rookeries within U.S. borders, major haulouts in Alaska, aquatic areas associated with these terrestrial habitats, and aquatic foraging habitats in waters off Alaska (58 FR 53138).

The purpose of this technical amendment is to correct earlier transcription errors in the regulations, and to incorporate improved locational data from NMFS and Alaska Department of Fish and Game surveys.

Revisions to 50 CFR part 226 regulations include:

1. Changing the name of one designated haulout site from Ledge Point to Gran Point.

2. Correcting the latitude and longitude of Seguam Island-South, Bird Island, Ushagat Island, Cape Fairweather, Graves Rock, Biorka Island, Cape Addington, Cape Cross, Cape Ommaney, Coronation Island, Gran Point, and Lull Point haulout sites.

Classification

This technical amendment makes minor corrections to existing rules. Therefore, notice and public comment thereon and a delay in making these corrections effective would serve no purpose. Accordingly, under 5 U.S.C. 553(b)(3)(B), notice and public comment thereon are unnecessary. In addition, under 5 U.S.C.(d), good cause exists to waive a delay in the effective date

This technical amendment is being issued without prior comment. It is not subject, therefore, to the Regulatory Flexibility Act requirement for a regulatory flexibility analysis and none has been prepared.

This technical amendment makes minor corrections to a rule that has been determined to be "not significant" for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: June 6, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–14468 Filed 6–14–94; 8:45 am]
BILLING CODE 3510–22–P

For the reasons set out in the preamble, 50 CFR part 226, is amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Table 2 to part 226 is amended by revising the following entries and footnote 2, and by removing the entry for "Ledge Point" under "Southeast Alaska" and adding in its place the entry for "Gran Point", to read as follows:

* * * * *

TABLE 2 TO PART 226

State/region/site	Boundaries to—			
	Latitude	Longitude	Latitude	Longitude
Alaska:				
* * * *	*	*	*	
Central Aleutians:				
* * * *	*	*	*	
Seguam I:				
South [1]	52°19.5N	172°18.0W	52°15.0N	172°37.0W
* * * *	*	*	*	
Western Gulf of Alaska:				
Bird I [1]	54°40.5N	163°18.0W		
* * * *	*	*	*	
Central Gulf of Alaska:				
* * * *	*	*	*	
Ushagat I [1]	58°55.0N	152°22.0W		
Eastern Gulf of Alaska:				
Cape Fairweather	58°47.5N	137°56.3W		
* * * *	*	*	*	
Graves Rock	58°14.5N	136°45.5W		
* * * *	*	*	*	
Southeast Alaska:				
* * * *	*	*	*	
Biorka I	56°50.0N	135°34.0W		
Cape Addington	55°26.5N	133°49.5W		
Cape Cross	57°55.0N	136°34.0W		
Cape Ommaney	56°10.5N	134°42.5W		
Coronation I	55°56.0N	134°17.0W		
Gran Point	59°08.0N	135°14.5W		
Lull Point	57°18.5N	134°48.5W		
* * * *	*	*	*	

[1] Includes an associated 20 nm aquatic zone.
[2] Associated 20 nm aquatic zone lies entirely within one of the three special foraging areas.

[FR Doc. 94–14468 Filed 6–14–94; 8:45 am]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 114
Wednesday, June 15, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206–AG06

Time-In-Grade Rule Eliminated

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing to abolish the time-in-grade restriction on advancement to positions in the General Schedule. This proposal would implement recommendations of the President's National Performance Review and National Partnership Council. Abolishment of the restriction would eliminate the 1-year service requirement for promotions (but employees would have to meet qualification requirements).

DATES: Written comments will be considered if received no later than July 15, 1994.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, room 6F08, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Leota Shelkey Edwards on 202–606–0830 (FAX 202–606–2329).

SUPPLEMENTARY INFORMATION: Since the early 1950's, Federal employees in General Schedule positions at GS–5 and above have been required to serve at least 1 year in grade before being promoted. The restriction originated in statute with the "Whitten Amendment," a series of controls on expansion of the Federal work force during the Korean conflict. The intent of the restriction was to prevent excessively rapid promotions. Since expiration of the Whitten Amendment in 1978, OPM has continued the time-in-grade restriction in regulation but limited its application to General Schedule positions in the competitive service.

In its report *From Red Tape to Results: Creating a Government That Works Better & Costs Less*, the National Performance Review (NPR) recommended abolishing the time-in-grade restriction. The restriction can limit open competition by eliminating candidates who have the proven ability to perform the duties of higher grade positions, but have not served at least one year in lower graded Government positions.

The National Partnership Council, established by Executive Order 12871 of October 1, 1993, was responsible for developing legislative proposals for the President to implement the NPR recommendations. The Council, too, recommended abolishing the time-in-grade restriction (see *A Report to the President on Implementing Recommendations of the National Performance Review by the National Partnership Council, January 1994*). The Council further recommended that, as a condition of employment, the current time-in-grade requirement remain in effect for bargaining unit employees until the parties agree to modify it through either consensus or collective bargaining.

This document proposes to implement the NPR and Council recommendations and abolish the time-in-grade restriction. Eliminating the restriction would mean that employees' promotion eligibility will be based on their meeting qualification requirements. Also, agencies no longer would need OPM approval of training agreements that provide for consecutive accelerated promotions, as discussed in former Federal Personnel Manual subchapter 7, chapter 338 (provisionally retained through December 31, 1994, in the FPM Sunset Document.)

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because if affects only certain Federal employees.

List of Subjects in 5 CFR Part 300

Government employees, Personnel Management Office.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 300, as follows:

PART 300—EMPLOYMENT (GENERAL)

The authority citation for part 300 is revised to read as follows:

Authority: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. secs. 7201, 7204, 7701; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. secs. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Subpart F—[Removal and Reserved]

2. In Part 300, Subpart F, consisting of §§ 300.601 through 300.606, is removed and reserved.

[FR Doc 94–14519 Filed 6–14–94; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1942, 1948, 1951, and 1980

RIN 0575–AB77

Loans and Grants to Rural Associations and Public Bodies

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to increase the loan size threshold for requiring interim financing, clarify instructions governing the preparation of Community Program notes and bonds, modify the procedures for monitoring graduation of existing borrowers to other credit, clarify procedures for servicing loans to borrowers whose loans were sold in the 1987 Community Program Asset Sale, implement use of an applicant's Internal Revenue Service (IRS) Taxpayer Identification Number (TIN), and provide consistency in docket preparation through the use of a checklist. This action is necessary to reduce the burden on the public, comply with the OMB Circular A–129 and simplify procedures for the agency's field staff.

The intended effect of this change is to bring the agency in compliance with OMB Circular A–129, and to clarify and

simplify the agency regulations to provide better service to the public.

In the Food, Agriculture, Conservation and Trade Act of 1990, Congress transferred certain community and business programs administered by FmHA to the newly created Rural Development Administration (RDA). Until further notice, RDA programs continue to be administered under FmHA programs regulations.

DATES: Comments must be submitted on or before August 15, 1994.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250–0700. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Bill Barrett, Senior Loan Specialist, Community Facilities Division, Rural Development Administration, U.S. Department of Agriculture, room 6310, South Agriculture Building, 14th Street and Independence Avenue SW., Washington DC 20250–0700, telephone (202) 720–1498.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The reporting and recordkeeping requirements contained in these regulations have been submitted to the Office of Management and Budget for review under section 350(h) of the Paperwork Reduction Act of 1980. The public reporting burden for this collection of information is estimated to vary from 10 minutes to 15 hours per response, with an average of 2.47 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Attention: Desk Officer for Farmers Home Administration, Washington, DC, 20503.

Classification

We are issuing this proposed rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information compiled by the Department, we have determined that this proposed rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Intergovernmental Review

The programs/activities are listed in the Catalog of Federal Domestic Assistance under numbers 10.764, Resource Conservation and Development Loans; 10.760, Water and Waste Disposal Systems for Rural Communities; 10.770, Water and Waste Disposal Loans and Grants (Section 306C); 10.766, Community Facilities Loans; and 10.434, Nonprofit National Corporation Loan and Grant Program. The Section 601—Energy Impacted Area Development Assistance Program is not in the Catalog of Federal Domestic Assistance because it is not funded. All programs listed are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instructions 1901–H and 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined this action does not constitute a major Federal action significantly affecting the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Compliance with Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR Part 1900 Subpart B must be exhausted prior to filing suit.

The Agency regulations require the use of interim construction financing for all Community Program loans of $50,000 or more to encourage the participation of local lenders and to reduce the need for multiple draws of FmHA loan funds. Interim financing is not cost effective for very small loans and for those projects that have a short construction period due to the duplication of much of the financing costs for the two issues. The Agency proposes to raise the loan size threshold from $50,000 to $100,000 to reduce the burden on smaller issues, and give the State Director additional authority to waive the interim financing requirement for larger issues, projects with a construction period of 6 months or less, and under other circumstances when the cost is considered prohibitive.

1. The proposed changes will assist FmHA field employees, attorneys, and bond counsel in preparing promissory notes and bonds for Community Programs loans. The section of the regulations used by bond counsels and others in drafting debt instruments for Community Programs loans has been found to be incomplete, vague, or poorly organized.

2. FmHA proposes to amend its regulations to incorporate and require the use of Guide 28, "Community Programs Lender Contact Worksheet," of subpart A of part 1942, and exhibit D, "Community Programs Thorough Review Worksheet," of subpart F of part 1951 to strengthen the documentation on which loanmaking and graduation review decisions are made. FmHA regulations require that applicants who may be able to finance projects through commercial sources be referred to those sources. In addition, when it appears that a borrower can refinance its loan(s) (graduate), the borrower will be required to seek other financing. Exhibit D will provide a systematic method to evaluate each thorough review conducted during the graduation review process regarding the borrower's ability to refinance its loan(s). This action is needed to encourage stronger documentation on which decisions are made by FmHA during loanmaking and graduation reviews.

The proposed changes will provide a system for collecting and evaluating lending, applicant, and borrower data, and a basis for referring applicants and borrowers to other lending sources. The new Guides 28 and 29 of subpart A of part 1942 and Exhibit D of subpart F of part 1951 are available in any FmHA Office but are not published in the Federal Register.

The Office of Inspector General (OIG) Review of FmHA Graduation of Community Programs Loans to Commercial Lenders, dated June 22, 1989, found, in part, that State and District Office surveys of lender refinancing criteria were not always adequate. (Guide 28 will be used to record the lending criteria of commercial lenders and serve as a basis for applicant referrals to other sources of credit, as well as resource material for requesting a borrower to refinance.) The OIG report also found that inadequate or poorly documented graduation reviews were performed and recommended that a guide be developed to serve as a basis for making decisions.

3. OMB Circular A–129 requires Federal agencies to obtain the IRS TIN from all applicants to assist in debt collection. The Agency proposes to amend its regulations to require the use of the applicant's TIN as part of its case number.

4. In accordance with the loan sale agreements for the 1987 Community Programs Asset Sale, applicants whose loans were sold are required to obtain consent from the purchaser of the loans whenever additional financing is requested. The Agency proposes to incorporate the purchaser's requirements into its regulations to assist applicants and FmHA field offices in the orderly processing of such requests for consent. The proposed Guide 29 of subpart A of part 1942 will provide detailed and complete instructions to loan applicants and FmHA field offices to ensure the orderly processing of requests for consent.

5. Community Programs regulations currently include the use of Forms FmHA 1942–39, FmHA 1942–40, and Guide 15 of subpart A of part 1942 to assist in orderly project development, which have been found to be ineffective. FmHA proposes to replace Forms FmHA 1942–39, FmHA 1942–40, and Guide 15 with a comprehensive loan processing checklist. A general lack of consistency in docket preparation has been observed. The checklist will provide additional guidance to field offices and loan/grant applicants in orderly docket preparation and improve the consistency and quality of Community Programs loans. The revised Guide 15 of subpart A of part 1942 is not published in the Federal Register, but is available in any State and District Office.

List of Subjects

7 CFR Part 1942

Business and industry, Community facilities, Fire prevention, Loan programs—housing and community development, Loan programs—natural resources, Reporting and recordkeeping requirements, Rural areas, Soil conservation, Waste treatment and disposal, Water supply.

7 CFR Part 1948

Coal, Community facilities, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1951

Accounting, Agriculture, Community facilities, Credit, Housing, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1980

Administrative practice and procedure, Business and industry, Community facilities, Credit, Loan programs—agriculture, loan programs—business, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005; 7 CFR 2.23 and 2.70.

Subpart A—Community Facility Loans

2. Section 1942.2 is amended by revising paragraphs (a)(2)(i) and (c)(3) to read as follows:

§ 1942.2 Processing applications.

(a) * * *

(2) * * *

(i) State Directors should maintain files containing criteria from commercial lenders to be used in determining the preapplications which should be referred to those lenders. In order to provide a basis for such referrals, State and District Directors should maintain liaison with representatives of banks, bond dealers, financial consultants, and other lender representatives who are interested in financing Water and Waste and Community Facility projects. State Directors will contact lenders having potential statewide or multidistrict interest in Community Programs lending. District Directors will contact lenders having a potential interest in Community Programs lending primarily within their District. Guide 28 (available in any State and District Office), or other locally developed worksheet containing similar information, will be used to document the contacts with commercial lenders. The State and District Directors will keep each other informed of lender criteria by forwarding copies of completed Guide 28 and/or worksheets to each other.

* * * * *

(c) * * *

(3) When an applicant is notified to proceed with an application, the District Director should arrange for a conference with the applicant to provide copies of appropriate appendices and forms; furnish guidance necessary for orderly application processing; and to initiate a processing checklist for establishing a time schedule for completing items. Guide 15 (available in any State or District Office) will be used by the State Director to develop a processing checklist that includes all applicable items in the guide and any other items that may be unique to the individual State. The checklist will be updated during the application conference based upon decisions reached with the applicant. The District Director will give the applicant a copy and explain the updating process. The original will be retained in the District Office official file and will be updated as the application is processed and the project develops to completion. A copy will be sent to the State Program Chief who is responsible for keeping the copy current. The District Director will arrange for additional conferences with the applicant as needs arise. The applicant's copy of the processing checklist should be updated during these meetings.

* * * * *

3. Section 1942.5 is amended by adding paragraph (d)(8) to read as follows:

§ 1942.5 Application review and approval.

* * * * *

(d) * * *

(8) The case number will be the applicant's or transferee's Internal Revenue Service TIN, preceded by State and county code numbers. Only one case number will be assigned to each applicant regardless of the number of loans or grants or number of separate facilities, unless an exception is authorized by the National Office. When an applicant has not received a TIN, the State Office will assign a temporary identification number. See the Forms Manual Insert for Form FmHA 1940–1

for specific instructions. Any temporary number assigned must be replaced with the TIN prior to loan or grant closing unless prior approval of the National Office is received.

4. Section 1942.17 is amended by adding paragraph (m)(8) and by amending the introductory text in paragraph (n)(3) by revising "$50,000 to "$100,000" in the first sentence, by adding the words "(available in any State or District Office)" between the words "Guide 1a" and the comma in the second sentence, and by adding a new sentence after the first sentence, to read as follows:

§ 1942.17 Community facilities.

* * * * *

(m) * * *

(8) *Applicants indebted to the Community Programs Loan Trust 1987–A (Trust).* Applicants indebted to the Trust must obtain consent from the Trust prior to incurring additional debt. Guide 29 (available in any State or District Office) outlines the information normally required by the Trust.

* * * * *

(n) * * *

(3)

(3) * * * However, the State Director may authorize exceptions when the cost of issuance of both temporary and permanent debt instruments is considered prohibitive, or the planned construction period does not exceed 6 months. * * *

* * * * *

5. Section 1942.19 is revised to read as follows:

§ 1942.19 Information pertaining to preparation of notes or bonds and bond transcript documents for public body applicants.

(a) *General.* This section includes information for use by public body applicants in the preparation and issuances of evidence of debt (bonds, notes, or debt instruments, herein referred to as bonds) and other necessary loan documents.

(b) *Policies related to use of bond counsel.* The applicant is responsible for preparation of bonds and bond transcript documents. The applicant will obtain the services and opinion of recognized bond counsel experienced in municipal financing with respect to the validity of a bond issue, except as provided in paragraphs (b)(1) through (3) of this section. Bond counsel services may be obtained either directly or through the applicant's local counsel.

(1) *Issues of $50,000 or less.* With prior approval of the FmHA State Director, the applicant may elect not to use bond counsel. Such issues will be closed in accordance with the following:

(i) The applicant must recognize and accept the fact that application processing may require additional legal and administrative time;

(ii) It must be established that not using bond counsel will produce significant savings in total legal costs;

(iii) The local attorney most be able and experienced in handling this type of legal work;

(iv) The applicant must understand that it will likely have to obtain an opinion from bond counsel at its expenses if FmHA requires refinancing of its loan pursuant to statutory refinancing requirements;

(v) Bonds will be prepared in accordance with this regulation and conform as closely as possible to the preferred methods of preparation stated in paragraph (e) of this section; and

(vi) Specific closing instructions must be issued by OGC.

(2) *Issues of over $50,000 to $250,000.* The applicant may elect to use bond counsel only to issue a final opinion, and not to prepare the bond transcript and other documents, when the applicant, FmHA, and bond counsel agree in advance on the method of preparing the bond transcript documents. In such circumstances, the applicant will be responsible for preparation of the bond transcript.

(3) *Issues of over $250,000 to $500,000.* The applicant may elect not to use bond counsel in a straight note and mortgage situation if competitive bidding is not required for the sale unless a complicated financial situation exists. If there is a known backlog in the OGC Regional Office, FmHA will advise the applicant and suggest that using bond counsel may be more expeditious. If bond counsel is not used, the applicant must comply with paragraphs (b)(1)(iii) through (vi) of this section.

(c) *Bond transcript documents.* Any questions relating to FmHA requirements should be discussed with FmHA representatives. Bond counsel or local counsel, as appropriate, must furnish at least two complete sets of the following to the applicant, who will furnish one complete set to FmHA:

(1) Copies of all organization documents;

(2) Copies of general incumbency certificate;

(3) Certified copies of minutes or excerpts from all meetings of the governing body at which action was taken in connection with authorizing and issuing the bonds;

(4) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding a bond election, if one is necessary.

(5) Certified copies of resolutions, ordinances, or other documents such as bond authorizing resolutions or ordinance and any resolution establishing rates and regulating use of the facility, if such documents are not included in the minutes furnished;

(6) Copies of the official Notice of Sale and the affidavit of publication of the Notice of Sale when State statute requires a public sale;

(7) Specimen bond, with any attached coupons;

(8) Attorney's no-litigation certificate;

(9) Certified copies of resolutions or other documents pertaining to the bond award;

(10) Any additional or supporting documents required by bond counsel;

(11) For loans involving multiple advances of FmHA loan funds, a preliminary approving opinion of bond counsel, or local counsel if no bond counsel is involved, if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered at or before the time of the first advance of funds. It will state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan, subject only to changes during the advance of funds, such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates; and

(12) Preliminary approving opinion, if any, and final unqualified approving opinion of bond counsel, or local counsel if no bond counsel is involved, including an opinion as to whether interest on bonds will be exempt from Federal and State income taxes. With approval of the Administrator, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such options to contain:

(i) Language referring to the last sentence of section 306(a)(1) or to section 309A(h) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(1) or 1929a(h)); or

(ii) Language providing that, if the bonds are acquired by the Federal Government and sold on an insured basis from the Agriculture Credit Insurance Fund or the Rural Development Insurance Fund, interest on such bonds will be included in gross income for the purpose of Federal income tax statutes.

(d) *Interim construction financing from commercial sources for loans of*

$100,000 or more. When funds can be borrowed from commercial sources on an interim basis at reasonable interest rates, such interim financing will be obtained so as to preclude the necessity for multiple advances of FmHA funds. The State Director may authorize exceptions when:

(1) The cost of issuance of both temporary and permanent debt instruments is considered prohibitive; or

(2) The planned construction period does not exceed 6 months.

(e) *Permanent instruments for FmHA loans.* FmHA loans will be evidenced by an instrument determined legally permissible and in accordance with the following order of preference:

(1) *First preference—Form FmHA 440–22.* Refer to paragraph (e)(2) of this section for methods of various frequency payment calculations.

(2) *Second preference—single instruments with amortized installments.* A single instrument providing for amortized installments which follows Form FmHA 440–22 as closely as possible. The full amount of the loan must show on the face of the instrument, and there must be provisions for entering the date and amount of each advance on the reverse or an attachment. When principal payments are deferred, the instrument will show that "interest only" is due on interest-only installment dates, rather than specific dollar amounts. The payment period including the "interest only" installment cannot exceed 40 years, the useful life of the facility, or State statute of limitations, whichever occurs first. The amortized installment, computed as follows, will be shown as due on installment dates thereafter.

(i) *Monthly payments.* Multiply by twelve the number of years between the due date of the last interest-only installment and the final installment to determine the number of monthly payments. When there are no interest-only installments, multiply by twelve the number of years over which the loan is amortized. Then multiply the loan amount by the amortization factor and round to the next higher dollar:

Example of Computation of Monthly Payment:
Date of Loan Closing.....7–5–1986
Loan Amount.....$100,000.00
Interest Rate.....5%
Amortization Period.....40 years
Interest Only.....7–5–1987 and 7–5–1988 Installments
First Regular Installment.....7–5–1989
Final Installment.....7–5–2026
Computation: 2026–1988 *38 × 12 = 456* monthly payments
$100,000.00 × .00491 = $491.00 monthly payment due

(ii) *Semiannual payments.* Multiply by two the number of years between the due date of the last interest-only installment and the due date of the final installment to determine the correct number of semiannual periods. When there are no interest only installments, multiply by two the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor:

Example:
Date of Loan Closing.....7–5–1986
Loan Amount.....$100.000.00
Interest Rate.....5%
Amortization Period.....40 years
Interest Only Installments.....7–5–1987 and 7–5–1988
First Regular Installment.....7–5–1989
Final Installment.....7–5–2026
Computation: 2026–1988=38 × 2 = 76 semiannual periods
$100,000.00 × .02952 = $2,950.00 semiannual payment due

(iii) *Annual payments.* Subtract the due date of the last interest-only installment from the due date of the final installment to determine the number of annual payments. When there are no interest-only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor and round to the next higher dollar:

Example:
Date of Loan Closing.....7–5–1986
Loan Amount.....$100,000.00
Interest Rate.....5%
Amortization Period.....40 years
Interest Only Installments.....7–5–1987 and 7–5–1988
First Regular Installment.....7–5–1989
Final Installment.....7–5–2026
Computation: 2026–1988=38 annual payments
$100,000.00 × .05929 = $5,929.00 annual payment due

(3) *Third preference-single instrument with installments of principal plus interest.* If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the principal balance. For bonds with semiannual interest and annual principal, the interest is calculated by multiplying the principal balance times the interest rate and dividing this figure by two. Principal installments are to be scheduled so that total combined interest and principal payments closely approximate amortized payments.

(i) The repayment terms concerning interest-only installments described in paragraph (e)(2) of this section apply.

(ii) The instrument shall contain in substance provisions indicating:

(A) Principal maturities and due dates;

(B) Regular payments shall be applied first to interest due through the next principal and interest installment due date and then to principal due in chronological order stipulated in the bond; and

(C) Payments on delinquent accounts will be applied in the following sequence:

(*1*) Billed delinquent interest;

(*2*) Past due interest installments;

(*3*) Past due principal installments;

(*4*) Interest installment due; and

(*5*) Principal installment due.

(4) *Fourth preference—serial bonds with installments of principal plus interest.* If instruments described under the first, second, and third preferences are not legally premissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be numbered consecutively and delivered in chronological order. Such bonds will conform to the minimum requirements of paragraph (h) of this section. Provisions for application of payments will be the same as those set forth in paragraph (e)(3)(ii) (B) and (C) of this section.

(5) *Coupon bonds.* Coupon bonds will not be used unless required by State statute. Such bonds will conform to the minimum requirements of paragraph (h) of this section. Provisions for application of payments will be the same as those set forth in paragraph (e)(3)(ii) (B) and (C) of this section.

(i) To compute the value of each coupon when the bond denomination is consistent:

(A) Multiply the amount of the loan or advance by the interest rate and divide the product by 365 days to determine the daily accrual factor;

(B) Multiply the daily accrual factor by the number of days from the date of advance or last installment date to the next installment date; and

(C) Divide the interest computed in paragraph (e)(5)(i)(B) of this section by the number of bonds securing the advance to determine the individual coupon amount.

(ii) To compute the value of each coupon when the bond denomination varies:

(A) Multiply the denomination of the bond by the interest rate and divide the product by 365 days; and

(B) Multiply the daily accrual factor by the number of days from the date of advance or last installment date to the next installment due date; to determine the individual coupon amount.

(f) *Multiple advances of FmHA funds using permanent instruments.* Where interim financing from commercial

sources is not used, FmHA loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed the amount needed during the 30-day periods.

(g) *Multiple advances of FmHA funds using temporary debt instruments.* When none of the instruments described in paragraph (e) of this section are legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advances of FmHA loan funds and will be for the full amount of the FmHA loan. The instrument will be prepared by bond counsel, or local counsel if bond counsel is not involved, and approved by the State Director and OGC. At the same time FmHA delivers the last advance, the borrower will deliver the permanent bond instrument and the canceled temporary instrument will be returned to the borrower. The approved debt instrument will show at least the following:

(1) The date from which each advance will bear interest;

(2) The interest rate as determined by § 1942.17(f)(1) of this subpart;

(3) A payment schedule providing for interest on outstanding principal at least annually; and

(4) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instrument(s) and no longer than the 40-year statutory limit.

(h) *Minimum bond specifications.* The provisions of this paragraph are minimum specifications only and must be followed to the extent legally permissible.

(1) *Type and denominations.* Bond resolutions or ordinances will provide that the instrument(s) be either a bond representing the total amount of the indebtedness or serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than $1,000). Single bonds may provide for repayment of principal plus interest or amortized installments. Amortized installments are preferred by FmHA.

(2) *Bond registration.* Bonds will contain provisions permitting registration for both principal and interest. Bonds purchased by FmHA will be registered in the name of "United States of America, Farmers Home Administration," and will remain so registered at all times while the bonds are held or insured by the Government. The FmHA address for registration purposes will be that of the Finance Office.

(3) *Size and quality.* Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

(4) *Date of bond.* Bonds will normally be dated as of the day of delivery. However, the borrower may use another date if approved by FmHA. Bonds may or may not be delivered at the same time funds are delivered; however, loan closing is the date of delivery of the bonds or the date of delivery of the first fond when utilizing serial bonds, regardless of the date of delivery of the funds. The date of delivery will be stated in the bond if different from the date of the bond. In all cases, interest will accrue from the date of delivery of the funds.

(5) *Payment date.* Loan payments will be scheduled to coincide with income availability and be in accordance with State law.

(i) If income is available monthly, monthly payments will be required unless precluded by State law. If income is available quarterly or otherwise more frequently than annually, payments must be scheduled on such basis. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used.

(ii) The payment schedule will be enumerated in the evidence of debt, or if that is not feasible, in a supplemental agreement.

(iii) Unless infeasible, the first payment will be scheduled one full month, or other period as appropriate, from the date of loan closing or any deferment period. Due dates falling on the 29th, 30th, or 31st day of the month will be avoided. When principal payments are deferred, interest-only payments will be scheduled at least annually.

(6) *Extra payments.* Extra payments are derived from the sale of basic chattel or real estate security, refund of unused loan funds, cash proceeds of property insurance as provided in § 1806.5(b) of this chapter (paragraph V.B. of FmHA Instruction 426.1), and similar actions which reduce the value of basic security. At the option of the borrower, regularly facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be applied as follows:

(i) For loans with amortized debt instruments, extra payments will be applied first to interest accrued through the date of receipt of the payment and second to principal last to become due.

(ii) For loans with debt instruments with P&I installments, the extra payment will be applied to the final unpaid principal installment.

(iii) For borrowers with more than one loan, the extra payment will be applied to the account secured by the lowest priority of lien on the property from which the extra payment was obtained. Any balance will be applied to other FmHA loans secured by the property from which the extra payment was obtained.

(iv) For assessment bonds, see paragraph (h)(13) of this section.

(7) *Place of payment.* Payments on bonds purchased by FmHA are to be submitted to the FmHA District Office. The District Office will process payments in accordance with part 1951, subpart B, of this chapter.

(8) *Redemptions.* Bonds will normally contain customary redemption provisions. However, no premium will be charged for early redemption on any bonds held by the Government.

(9) *Additional revenue bonds.* Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless acceptable documentation is provided establishing that net revenues for the fiscal year following the year in which such bonds are to be issued will be at least 120 percent of the average annual debt service requirements on all bonds outstanding, including the newly-issued bonds. For purposes of this section, net revenues are, unless otherwise defined by State statute, gross revenues less essential operation and maintenance expenses. This limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then-outstanding principal indebtedness. Junior and subordinate bonds may be issued in accordance with the loan agreement.

(10) *Scheduling of FmHA payments when joint financing is involved.* When FmHA participates with another lender in joint financing of the project, the FmHA principal and interest payments should approximate amortized installments.

(11) *Precautions.* The following types of provisions in debt instruments should be avoided:

(i) Provisions for the holder to manually post each payment to the instrument;

(ii) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than FmHA, may post the date and amount of each advance or repayment on the instrument; or

(iii) Provisions that amend covenants contained in Forms FmHA 1942–47 or FmHA 1942–9.

(12) *Defeasance provisions in loan or bond resolutions.* When a bond issue is defeased, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes FmHA from requiring graduation before the final maturity date, it represents a violation of the statutory refinancing requirement; therefore, it is disallowed. No loan shall include a provision of defeasance.

(13) *Assessment bonds.* When security includes special assessment to be collected over the life of the loan, the instrument should address the method of applying any payments made before they are due. It may be desirable for such payments to be distributed over remaining payments due, rather than to be applied in accordance with normal procedures governing extra payments, so that the account does not become delinquent.

(14) *Multiple debt instruments.* The following will be adhered to when preparing debt instruments:

(i) When more than one loan type is used in financing a project, each type of loan will be evidenced by a separate debt instrument or series of debt instruments;

(ii) Loans obligated in different fiscal years and those obligated with different terms in the same fiscal year will be evidenced by separate debt instruments;

(iii) Loans obligated in for the same loan type in the same fiscal year with the same terms may be combined in the same debt instrument;

(iv) Loans obligated in the same fiscal year with different interest rates that can be closed at the same interest rate may be combined in the same debt instrument.

(i) *Bidding by FmHA.* Bonds offered for public sale shall be offered in accordance with State law and in such a manner to encourage public bidding. FmHA will not submit a bid at the advertised sale unless required by state law nor will reference to FmHA's rates and terms be included. If no acceptable bid is received, FmHA will negotiate the purchase of the bonds.

Subpart C—Fire and Rescue Loans

6. Section 1942.111 is amended by revising paragraph (b) to read as follows:

§ 1942.111 Applicant eligibility.

* * * * *

(b) *Credit elsewhere determination.* District Directors should maintain files with criteria from commercial lenders to be used in determining the preapplications which should be referred to those lenders. If credit elsewhere is indicated, the District Director should inform the applicant and recommend that they apply to commercial sources for financing. In order to provide a basis for such referrals, District Directors should maintain liaison with representatives of banks, bond dealers, financial consultants, and other lender representatives who are interested in receiving applicant referrals. State Directors will contact lenders having a potential statewide or multidistrict interest in Community Programs lending. District Directors will contact lenders having a potential interest in Community Programs lending primarily within their District. Guide 28 (available in any State or District Office) or locally developed worksheet containing similar information will be used to document the contacts with commercial lenders. The State Director and District Director will keep each other informed of lender criteria by forwarding copies of completed Guide 28 and/or worksheets to each other.

* * * * *

Subpart I—Resource Conservation and Development (RCD) Loans and Watershed (WS) Loans and Watershed Advances

7. Section 1942.419 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1942.419 Approval, closing, and cancellation.

(a) Approval and closing actions will be taken in accordance with the applicable provisions of FmHA regulations including part 1901, subpart A, of this chapter and §§ 1942.5, 1942.6, 1942.7, 1942.8, and 1942.12, of subpart A of this part, and the following:

* * * * *

PART 1948—RURAL DEVELOPMENT

8. The authority citation for part 1948 is revised to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23 and 2.70.

Subpart B—Section 601 Energy Impacted Area Development Assistance Program

9. Section 1948.92 is amended by removing paragraphs (d) through (g) and revising paragraph (c) to read as follows:

§ 1948.92 Grant approval and fund obligation.

* * * * *

(c) Grants must be approved and obligated in accordance with § 1942.5(d) of this chapter.

§ 1948.94 [Amended]

10. Section 1948.94 (b) is amended in the second sentence by revising the reference "FmHA Instruction 402.1 (available in any FmHA Office)" to part 1902, subpart A, of this chapter".

PART 1951—SERVICING AND COLLECTIONS

11. The authority citation for part 1951 is revised to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

12. Subsection 1951.230 (c)(3) is amended by revising the last sentence to read as follows:

§ 1951.230 Transfer of security and assumption of loans.

* * * * *

(c) * * *

(3) * * * If applicable, 1942.19 (h)(14) of this chapter will govern the preparation of any new debt instruments required.

* * * * *

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

13. Section 1951.261 is amended by revising the fourth and fifth sentences of the introductory text of paragraph (c), and by adding two new sentences at the end of paragraph (e)(5) to read as follows:

§ 1951.261 Graduation of FmHA borrowers to other sources of credit.

* * * * *

(c) * * * (The servicing official, in lieu of writing a narrative for all programs, may use Exhibit A for Farmer Program loans, Exhibit B for Rural Housing loans, and Guide 28 (available in any State or District Office) for Community Programs loans.) For Community Programs, the servicing official will request the assistance of the State Director pursuant to § 1942.2(a)(2)(i) of this chapter. * * *

* * * * *

(e) * * *

(5) * * * Exhibit D "Community Programs Thorough Review Worksheet" (available in any State or District Office) will be completed for each Community Programs borrower for whom a thorough review is conducted. The original will be placed in the borrower's file and a copy will be forwarded to the State Director for each borrower recommended for graduation.

* * * * *

PART 1980—GENERAL

14. The authority citation for part 1980 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; Pub. L. 100–387, 102 Stat 924; Pub. L. 101–82, 103 Stat 564 (7 U.S.C. 1421 Note); 7 CFR 2.23 and 2.70.

Subpart A—General

15. Section 1890.12 is revised to read as follows:

§ 1980.12 Case and identification (ID) numbers.

(a) *Case number.* The case number will be the proposed borrower's or transferee's Social Security or Internal Revenue Service (IRS) Taxpayer Identification Number (TIN), whichever is appropriate, preceded by State and County code numbers. The County Supervisor will provide the lender with these numbers, except for Business and Industry and Community Programs cases where the State Director or District Director, respectively, will provide them. Only one case number will be assigned to each borrower regardless of the number of loans or grants or number of separate facilities, unless an exception is authorized by the National Office.

(1) If such party is an individual, his or her Social Security number will be used. If such party is husband and wife, the Social Security number of either one, as designated by the spouses, will be used.

(2) If such party is a legal entity, its TIN will be used.

(b) *Temporary ID numbers.* When a proposed borrower has not received a TIN, the State Office will assign a temporary ID number. See the Forms Manual Insert for Form FmHA 1940–3, "Request for Obligation of Funds," for specific instructions. Any temporary ID number assigned must be replaced with the TIN prior to issuing the Loan Note Guarantee unless prior approval of the National Office is received.

(c) *ID number of lender and holder.* The lender's and holder's IRS TIN will be used as its ID number in correspondence and FmHA forms relating to the guarantee.

Subpart I—Community Programs Guaranteed Loans

16. Section 1980.856 is amended by adding paragraph (i) to read as follows:

§ 1980.856 Conditions precedent to issuance of the Loan Note Guarantee (Form FmHA 449–34).

* * * * *

(i) *Proposed borrowers indebted to the Community Program Loan Trust 1987–A (Trust).* Proposed borrowers indebted to the Trust must obtain consent from the Trust prior to incurring additional debt. Guide 29 (available in any State or District Office) outlines the information normally required by the Trust.

Dated: December 9, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–13743 Filed 6–14–94; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 35

RIN 3150–AE41

Criteria for the Release of Patients Administered Radioactive Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations concerning the criteria for the release of patients administered radioactive material. The new criteria for patient release would be dose-based rather than activity-based and would be consistent with the recommendations of the International Commission on Radiological Protection (ICRP). The proposed rule would require the licensee to maintain a record for 3 years if the quantity of radioactive material is likely to result in an annual total effective dose equivalent to an individual exposed to the patient that exceeds 1 millisievert (0.1 rem) from a single administration. The proposed rule responds to two petitions for rulemaking regarding the criteria for release of patients administered radioactive material.

DATES: The comment period expires August 29, 1994. Comments received after this date will be considered if it is practicable to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attn: Docketing and Service Branch.

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. Federal workdays.

Examine comments received, the environmental assessment and finding of no significant impact, and the regulatory analysis at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Obtain single copies of the environmental assessment and finding of no significant impact and the regulatory analysis (NUREG–1492) from: Jayne McCausland, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–6219.

Obtain single copies of the draft regulatory guide, "Release of Patients Administered Radioactive Material," which is related to this rulemaking, by writing to: Distribution and Mail Services Section, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Stewart Schneider, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6225.

SUPPLEMENTARY INFORMATION:

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I. Background

Each year in the United States, radioactive pharmaceuticals or radioactive implants are administered to approximately 8 to 9 million patients for the diagnosis or treatment of disease (hereinafter this group will be referred to as patient(s)). These patients can expose others around them to radiation until the radioactive material has been excreted from their bodies or has decayed away. As discussed below, most of these exposures would be much less than 1 millisievert (0.1 rem) total effective dose equivalent per year.

NRC's current patient release criteria in 10 CFR 35.75, "Release of patients containing radiopharmaceuticals or permanent implants," are as follows: "(a) A licensee may not authorize release from confinement for medical care any patient administered a radiopharmaceutical until either: (1)

The measured dose rate from the patient is less than 5 millirems per hour at a distance of one meter; or (2) The activity in the patient is less than 30 millicuries; (b) A licensee may not authorize release from confinement for medical care of any patient administered a permanent implant until the measured dose rate is less than 5 millirems per hour at a distance of one meter."

On May 21, 1991 (56 FR 23360), the NRC published a final rule that amended 10 CFR part 20, "Standards for Protection Against Radiation." The rule contained limits on the radiation dose for members of the public in 10 CFR 20.1301. However, when 10 CFR part 20 was issued, there was no discussion in the supplementary information on whether or how the provisions of 10 CFR 20.1301 were intended to apply to the release of patients, thereby creating the need to address this issue.

To determine the potential number of patients that could be affected by this issue, the NRC performed a screening analysis to determine how many patients administered radioactive materials could cause the exposure of an individual to a dose exceeding 1 millisievert (0.1 rem) total effective dose equivalent in a year if there were no restrictions on patient release. The screening analysis indicated that none of the diagnostic administrations were likely to result in a dose to an individual exposed to the patient exceeding 1 millisievert (0.1 rem), except for a few diagnostic procedures using iodine-131. The therapeutic administrations that the screening analysis indicated needed consideration were: (1) The treatment of hyperthyroidism with iodine-131 (50,000 per year); (2) the treatment of thyroid cancer with iodine-131 (10,000 per year); and (3) the treatment of a variety of cancers (e.g., prostate cancer) with the permanent implantation of iodine-125 seeds (2,000 per year). Other radionuclides may also warrant consideration. For example, doses to individuals exposed to a patient administered ytterbium-169 and gold-198 for therapy might result in radiation exposures exceeding 1 millisievert (0.1 rem) to individuals exposed to the patient. However, these radionuclides are seldom used. In addition, procedures involving radiolabeled antibodies might result in doses exceeding 1 millisievert (0.1 rem), although no such procedures using byproduct material are yet approved for routine use. (For further information see the regulatory analysis for the proposed rule. Single copies of the draft regulatory analysis are available as indicated in the **ADDRESSES** heading.)

II. Petitions for Rulemaking

Because some licensees were uncertain about what effect the revised 10 CFR part 20 would have on patient release criteria, two petitions were received on the issue.

On June 12, 1991 (56 FR 26945), the NRC published in the **Federal Register** a notice of receipt of, and request for comment on, a petition for rulemaking (PRM–20–20) from Dr. Carol S. Marcus. In addition, Dr. Marcus submitted a letter dated June 12, 1992, further characterizing her position. Dr. Marcus requested that the NRC amend the revised 10 CFR part 20 and 10 CFR part 35 to—

(1) Raise the annual radiation dose limit in 10 CFR 20.1301(a) for individuals exposed to radiation from patients receiving radiopharmaceuticals for diagnosis or therapy from 1 millisievert (0.1 rem) to 5 millisieverts (0.5 rem).

(2) Amend 10 CFR 35.75(a)(2) to retain the 1,110-megabecquerel (30-millicurie) limit for iodine-131, but provide an activity limit for other radionuclides consistent with the calculational methodology employed in the National Council on Radiation Protection and Measurements (NCRP) Report No. 37, "Precautions in the Management of Patients Who Have Received Therapeutic Amounts of Radionuclides." [1]

(3) Delete 10 CFR 20.1301(d) which requires licensees to comply with provisions of Environmental Protection Agency's environmental regulations in 40 CFR part 190 in addition to complying with the requirements of 10 CFR part 20.

On March 9, 1992 (57 FR 8282), the NRC published a notice of receipt and request for comment in the **Federal Register** on another petition for rulemaking (PRM–35–10) on patient release criteria from the American College of Nuclear Medicine (ACNM). On May 18, 1992 (57 FR 21043), the NRC published in the **Federal Register** notice of an amendment submitted by the ACNM to its original petition (PRM–35–10A). In addition, the ACNM submitted two letters dated September 24, 1991, and October 8, 1991, on the issues in their petition. The ACNM requested (considering the contents of all four letters) that the NRC revise 10 CFR part 35 to—

[1] National Council on Radiation Protection and Measurements (NCRP), "Precautions in the Management of Patients Who Have Received Therapeutic Amounts of Radionuclides," NCRP Report No. 37 (October 1, 1970). (Available for sale from the NCRP, 7910 Woodmont Avenue, suite 800, Bethesda, MD 20814–3095.)

(1) Adopt a dose limit of 5 millisieverts (0.5 rem) for individuals exposed to patients who have been administered radiopharmaceuticals.

(2) Permit licensees to authorize release from hospitalization any patient administered a radiopharmaceutical regardless of the activity in the patient by defining "confinement" to include not only confinement in a hospital, but also confinement in a private residence.

Because the petitions submitted by Dr. Marcus and the ACNM both address the patient release criteria set forth in 10 CFR 35.75, the NRC has decided to resolve both petitions with this single rulemaking. The proposed actions, if adopted in final form, would constitute the partial granting of these petitions as set forth in this notice. All other portions of petitions PRM–20–20 and PRM–35–10 would be denied.

III. Public Comments Received on the Petitions

There were 140 comment letters received on PRM–20–20 and 88 comment letters on PRM–35–10 and PRM–35–10A. Commenters represented hospitals and clinics, professional associations, citizens' groups, Agreement States and Government agencies, State radiation advisory boards, universities, consulting firms, public utilities, a utility association, and a labor union. The majority of the commenters were physicians who expressed concerns primarily related to the cost of hospitalization. Other commenters included health and medical physicists, pharmacists, nuclear medicine technicians, professors, and one former nuclear medicine patient. Overall, the majority of all comments supported a dose limit of 5 millisieverts (0.5 rem) for individuals exposed to patients released with radioactive material.

IV. Coordination with NRC Agreement States

The NRC conducted a public workshop with representatives of the Agreement States on July 15 and 16, 1992, to discuss a variety of medical issues, including the proposals for amending 10 CFR parts 20 and 35. The workshop was held in Atlanta, Georgia. Twenty-one of the Agreement States were represented, as well as a representative from the City of New York. The major recommendations on the rule provided by the representatives may be summarized as follows:

(1) Revise 10 CFR part 20 to exclude doses to individuals exposed to patients released under 10 CFR 35.75.

(2) In 10 CFR 35.75, retain the dose rate limit of 0.05 millisievert (5

millirems) per hour at a distance of 1 meter and add a dose limit of 5 millisieverts (0.5 rem) in 1 year for individuals exposed to patients.

(3) Retain the current 1,110-megabecquerel (30-millicurie) activity limit for iodine-131 but provide activity limits for other radionuclides based on the recommendations of NCRP Report No. 37, "Precautions in the Management of Patients Who Have Received Therapeutic Amounts of Radionuclides."

(4) Do not define "confinement" in 10 CFR part 35 because the present wording gives regulatory agencies the prerogative to confine patients by means other than hospitalization.

(5) Require that written instructions on how to maintain doses to other individuals as low as reasonably achievable be given to the released patient and any individual likely to spend significant time in close proximity with the patient.

The NRC staff presented a status report on the requirements of the proposed rule to the Agreement States at another public meeting in October 1993, in Tempe, Arizona. The Agreement States were generally supportive of the approach in this proposed rule. Transcripts of both meetings have been placed in and are available for examination at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

In addition, in July 1993, the NRC requested the Agreement States to provide comments on a previous version of the proposed rule. Of those responding, 14 Agreement States were generally supportive of the approach in this proposed rule, one was in opposition, and one was uncertain of its support without further study. The Agreement State that opposed the annual dose limit of 5 millisieverts (0.5 rem) (total effective dose equivalent) believed that instructions on how to maintain doses as low as reasonably achievable to household members and other individuals would not be followed, radioactive contamination would be a problem, and permanent implants could dislodge.

V. Coordination With the Advisory Committee on Medical Uses of Isotopes

The NRC staff presented their suggestions for a proposed rule to the Advisory Committee on Medical Uses of Isotopes (ACMUI) during a public meeting held in Rockville, Maryland, on October 22 and 23, 1992. The ACMUI is an advisory body established to advise the NRC staff on matters that involve the administration of radioactive material and radiation from radioactive material. The major ACMUI recommendations on the proposed rule were to—

(1) Add a dose limit of 5 millisieverts (0.5 rem) in 1 year for individuals exposed to a patient released with radionuclides.

(2) Retain both the 1,110-megabecquerel (30-millicurie) activity limit and the maximum dose rate of 0.05 millisieverts (5 millirems) per hour for patient release in 10 CFR 35.75 because they are a simple means to show compliance without assumptions or calculations.

(3) Develop a regulatory guide that includes a set of standardized calculations with factors (e.g., occupancy factor) for licensees to determine compliance with patient release criteria on an individual basis. Provide tables of acceptable release activities that are radionuclide specific, based on exposure at 1 meter for routine patient releases, with built-in safety factors to avoid doses to individuals near the 5-millisievert (0.5-rem) limit.

(4) Require that written instructions on how to maintain doses to other individuals as low as reasonably achievable be provided to the patient upon release from confinement.

The NRC staff presented status reports on the requirements of the proposed rule to the ACMUI at two other public meetings in May 1993, in Bethesda, Maryland, and in November 1993, in Reston, Virginia. The ACMUI was generally supportive of the approach in this proposed rule. Transcripts of all meetings have been placed in and are available for examination at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

VI. Issues and Their Resolution

There are seven issues that arise in responding to the two petitions. These issues and their resolution are discussed below.

Issue 1: Should the limits in 10 CFR 35.75 or in 20.1301(a) govern patient release? The petitioners requested an annual dose limit of 5 millisieverts (0.5 rem) for individuals exposed to radiation from a released patient.

Supporting Comments

The majority of commenters favored a dose limit of 5 millisieverts (0.5 rem) per year for individuals exposed to released patients rather than the 1 millisievert (0.1 rem) in 10 CFR 20.1301(a). The representatives from Agreement States who attended the public meeting held in Atlanta, Georgia, on July 15 and 16, 1992, and the ACMUI public workshop held in October 1992 in Rockville, Maryland, also favored the 5-millisievert (0.5-rem) limit. Some commenters stated that a dose limit of 5 millisieverts (0.5 rem) per year for individuals exposed to a patient is in line with the recommendations of the ICRP and the NCRP.

Some commenters believed that the 5-millisievert (0.5-rem) limit is beneficial to both the patient and the family because patients are able to return home earlier than would be permitted if a 1-millisievert (0.1-rem) limit were used. One commenter believed that the case could be made that no limit should be applied to the patient's family, just maintain doses as low as reasonably achievable, because there is a benefit to the family from the patient's being home. A physician commented that many patients come from homes in which no member of the family is under the age of 30, and therefore, contended that there was less risk from radiation exposure. Other comments in favor included: (1) Hospitalization can be a distressing experience for many cancer patients; (2) patients can develop hospital acquired infections if kept in the hospital too long; and (3) confining patients in a hospital until the release criteria are met increases the dose to hospital personnel and other patients.

Controlling the cost of medical care was one of the most cited reasons in favor of the 5-millisievert (0.5-rem) limit. Concern was expressed that the costs to all parties involved (i.e., patients, hospitals, insurance companies, etc.) would dramatically rise if a 1-millisievert (0.1-rem) limit were used. Commenters said a 1-millisievert (0.1-rem) limit would require longer periods of hospitalization, that many outpatients would become inpatients, and that this would be extremely expensive.

Comments from nuclear power utilities supported the 5-millisievert (0.5-rem) limit requested by PRM–20–20. These commenters stated further that if the limit for annual dose to the public exposed to patients were 5 millisieverts (0.5 rem), then the dose limit should be 5 millisieverts (0.5 rem) for all exposures to the public, including those from nuclear power plants, because no demonstrable health effects have been observed at chronic exposure levels of 5 millisieverts (0.5 rem).

Opposing Comments

A citizens' group commented that any amount of radiation, no matter how small, carries a risk to the recipient. Thus, decisions that affect the public health should be made strictly on the basis of health, not economic considerations. A second citizens' group expressed similar concerns.

A few commenters stated that the licensee already has the requested relief because the Commission has made provision in 10 CFR 20.1301(c) for approval of a licensee's request to increase the annual dose limit to 5 millisieverts (0.5 rem) for individuals exposed to a patient.

Response

The NRC has determined that patient release should be governed by 10 CFR 35.75, not 10 CFR 20.1301(a). 10 CFR 35.75 of the NRC's regulations adopted in 1986 (51 FR 36932; October 16, 1986) prohibits an NRC licensee from authorizing patient release until the measured dose rate from the patient is less than 0.05 millisievert (5 millirems) per hour at 1 meter or the activity in the patient is less than 1,110 megabecquerels (30 millicuries). 10 CFR 20.1301(a) of the revised standards for protection against radiation, adopted in 1991 (56 FR 23360; May 21, 1991), requires a licensee to limit the radiation dose of any individual member of the public from licensed activities to less than 0.1 rem (1 millisievert) (total effective dose equivalent) in a year.

The NRC's view that 10 CFR 35.75 governs patient release represents a reasonable interpretation of the Commission's regulations on this subject. As a general rule, requirements in 10 CFR part 35 are "in addition to," rather than "in substitution for," compliance with other NRC requirements including 10 CFR part 20. However, in this case, the dose limit of 10 CFR 20.1301(a), if it were interpreted to apply to patient release, could require a license to continue confinement of a patient whose release would be permitted under 10 CFR 35.75. The NRC will not adopt this interpretation because that would make 10 CFR 35.75 essentially meaningless.

When the NRC proposed 10 CFR 35.75 (50 FR 30627; July 25, 1985), it said, "The Commission believes that either limit (i.e., 30 millicuries of activity or the 6 milliroentgen per hour exposure rate at 1 meter) provides an adequate measure of safety for the general public and that further reductions in public exposure are not reasonably achievable considering the cost and potential for detrimental effect from an unnecessarily long hospital confinement." Further, when it approved 10 CFR 35.75 in final form, the NRC again said, "The NRC believes that a 30-millicurie release limit provides an adequate measure of public health and safety." See 51 FR 36932. The NRC's conclusion was based on an independent NRC public health and safety judgement that is specific to patient release. This conclusion was neither tied to nor designed to implement the more general considerations in the 10 CFR part 20 dose limits that had already been proposed when the conclusion of adequacy was reached.

The NRC maintains that the public health and safety judgement specific to patient release in 10 CFR part 35 should prevail over the more general 10 CFR part 20. The criterion in the proposed 10 CFR part 35, 5 millisieverts (0.5 rem) total effective dose equivalent per year, excluding background or any occupational exposure, is consistent with: The Commission's provision in 10 CFR 20.1301(c) for authorizing a licensee to operate up to this limit for limited periods of time; the recommendations of the International Commission on Radiological Protection (ICRP) in ICRP Publication 60,[2] "1990 Recommendations of the International Commission on Radiological Protection;" and the recommendations of the National Council on Radiation Protection and Measurements (NCRP) in NCRP Report No. 116,[3] "Limitation of Exposure to Ionizing Radiation." Each of these provides a basis for allowing individuals to receive annual doses up to 5 millisieverts (0.5 rem) under certain circumstances. Both the ICRP and NCRP recommend that an individual be allowed to receive a dose up to 5 millisieverts (0.5 rem) in a given year in situations where exposure to radiation is not expected to result in doses above 1 millisievert (0.1 rem) per year for long periods of time, as would be the case for doses from released patients. The recommendations of the ICRP and NCRP are based on their findings that annual exposures in excess of 1 millisievert (0.1 rem) to a small group of people, provided that they do not occur often to the same group, need not be regarded as especially hazardous. Therapeutic treatments with radioactive materials are limited to a relatively small proportion of the population and are not often repeated for the same patient.

Although the NRC adopted 10 CFR 20.1301(a) after 10 CFR 35.75, it did not intend to supersede 10 CFR 35.75. There is no indication in the associated statements of consideration or response to comments that NRC intended to supersede 10 CFR 35.75 criteria when 10 CFR part 20 was amended. Because the NRC finalized 10 CFR 35.75 after proposing revisions to 10 CFR part 20 in 1986, the NRC's silence should indicate that it did not intend the revised standards for protection against radiation to supersede either 10 CFR 35.75 or the NRC's underlying adequacy judgement.

As reflected in the above discussion, the NRC's finding of adequacy with respect to patient release criteria does not apply to or set a precedent for the operations of nuclear power plants. The basis for the limit for patient release is justified by the considerations that specifically apply to patient release.

To codify the policy regarding the issue of the applicability of 10 CFR 20.1301 to patient release, the NRC is proposing to amend 10 CFR 20.1301(a)(1) to explicitly exclude doses to individuals exposed to released patients. In addition, 10 CFR 20.1301(a)(2) would be amended by adding the words "exclusive of the dose contributions from patients administered radioactive material and released in accordance with § 35.75" to make it clear that the limit on dose in unrestricted areas does not include dose contributions from patients administered radioactive material and released in accordance with 10 CFR 35.75.

Issue 2: Should the patient release criteria in 10 CFR 35.75 be expressed as a dose-based limit instead of being expressed in terms of activity retained in the patient and dose rate at 1 meter from the patient?

Supporting Comments

While the choice of a dose-based vs. an activity-based limit was not presented as an issue in the petitions, many commenters supported a dose-based limit of 5 millisieverts (0.5 rem), although those same commenters also generally supported retaining an activity limit.

Some commenters and the ACNM discussed the inadequacy of the current activity-based limit in 10 CFR part 35 to deal with new techniques such as the use of radiolabeled antibodies.

Supporting Comments

PRM–20–20 requested that patients given 1,110 megabecquerels (30 millicuries) of iodine–131, or more, be hospitalized and released in accordance with the guidelines of NCRP Report No. 37, and that the maximum activity that a patient can be released with for a specific nuclide be consistent with the calculations methodology of NCRP Report No. 37. Many commenters and

[2] International Commission on Radiological Protection (ICRP), "1990 Recommendations of the International Commission on Radiological Protection," ICRP Publication No. 60 (November 1990). Available for sale from Pergamon Press, Inc., Elmsford, NY 10523.

[3] National Council on Radiation Protection and Measurements, "Limitation of Exposure to Ionizing Radiation," NCRP Report No. 116 (March 31, 1993). Available for sale from the NCRP, 7910 Woodmont Avenue, suite 800, Bethesda, MD 20814–3095.

representatives from the Agreement States that attended the public workshop held in Atlanta, Georgia, on July 15 and 16, 1992, also agreed with this request.

Opposing Comments

No comments opposing the methodology in NCRP Report No. 37 were received.

Response

The NRC agrees that the calculational methodology of NCRP Report No. 37 can be used to calculate external doses from patients. Although NCRP Report No. 37 is dated, it still contains an appropriate method to calculate the integrated dose at 1 meter from a patient following administration of certain radionuclides. This methodology is modified in the draft regulatory guide to calculate activities to meet the 5-millisievert (0.5-rem) (total effective dose equivalent) limit.

Opposing Comments

Several commenters, as well as representatives from the Agreement States and the ACMUI, noted that the 1,110-megabecquerel (30-millicurie) activity limit is a simple method to demonstrate compliance with NRC regulations and should be retained.

PRM–20–20 requested that the NRC specify an activity for each specific radionuclide consistent with the calculational methodology of NCRP Report No. 37, "Precautions in the Management of Patients Who Have Received Therapeutic Amounts of Radionuclides."

Response

The NRC's primary concern is the public's health and safety. Doses are a measure of degree of protection, whereas activity of different radionuclides is not related in any consistent way to the level of protection. For this reason, the NRC proposes to establish a dose limit as the only patient release criterion in 10 CFR 35.75. The proposed dose limit is 5 millisieverts (0.5 rem) total effective dose equivalent in a year. This dose limit is consistent with the underlying risk basis of the current 10 CFR 35.75 (50 FR 30627), the recommendations of the ICRP, and the provisions in 10 CFR 20.1301(c), pertaining to temporary situations in which there is requisite justification for a dose limit higher than 1 millisievert (0.1 rem).

Unlike the current 10 CFR 35.75, the proposed 10 CFR 35.75 does not specify an activity or dose rate for authorizing patient release. The 1,110-megabecquerel (30-millicurie) requirement was not retained because the doses from a released patient are different for different radionuclides that have the same activity. Likewise, a release criterion based on dose rate from the patient is not a uniform indicator of dose because the total dose depends on the effective half-life of the radioactive material in the body of the patient and other factors, which will differ for different materials.

In most cases, the dose received by an individual exposed to the patient will be from external exposure. However, in the case of a breast-feeding mother, the infant could be exposed following ingestion of breast milk. In this case, the 5-millisievert (0.5-rem) limit applies to the infant as the individual likely to receive the highest exposure.

To help licensees easily determine if they may authorize the release of a patient, a draft regulatory guide, published concurrently with this proposed rule, contains a table that specifies the activity of commonly used radionuclides with which a patient can be released in compliance with the proposed dose limit. The table in the draft guide provides a simple method to demonstrate compliance that assumes no biological elimination of the radioactive material. For example, in the case of iodine-131, the value specified is 1,200 megabecquerels (33 millicuries). The draft regulatory guide also offers guidance for the licensee who chooses to calculate activities at which patient release may be authorized based upon case specific information. Single copies of the draft regulatory guide are available as indicated in the **ADDRESSES** heading.

The 0.05 millisievert (5 millirems) per hour at 1 meter dose rate limit was not retained in the regulation because, in essence, consideration of the dose rate is included in calculating the activity for each of the radionuclides specified in the draft regulatory guide. In addition, the draft regulatory guide now relates the dose rate with the release criteria in the proposed 10 CFR 35.75.

Newer techniques, such as the therapeutic use of radiolabeled antibodies, involve the administration of perhaps as much as several gigabecquerels (hundreds of millicuries). These newer techniques require that a patient remain under the control of the licensee for a much longer period of time before the current release criteria can be met. By changing the basis for the release of patients in the proposed rule to an annual dose limit, the activity or resulting dose rate are no longer the only limiting factors upon which a patient release is based. Under the proposed rule, the dose would be the determining criteria, irrespective of the amount of radioactive material administered or the potential pathways of exposure of individuals as a result of contact with the patient. This is particularly important for proper control of some types of materials, such as strong beta emitters, which do not pose a large external dose hazard. In these cases, dose through inhalation or ingestion of contamination could be significant pathways and must be accounted for in a calculation for compliance. To demonstrate compliance with the proposed rule in this situation, the optional calculational method described in the draft regulatory guide could be used, potentially resulting in an earlier patient release than would otherwise have been allowed, while still providing the specified level of protection.

Issue 3. Should the calculational methodology in NCRP Report No. 37, "Precautions in the Management of Patients Who Have Received Therapeutic Amounts of Radionuclides," be an acceptable means to demonstrate compliance with the proposed rule?

Issue 4. Should, as the ACNM requested, the word "confinement" be defined to include confinement in a private residence?

Supporting Comments

The ACNM petitions stated that 10 CFR 35.75 seems to mandate hospitalization as the only place of confinement for patients receiving radiopharmaceutical therapy for compliance with 10 CFR 35.75. The ACNM petitions also stated that 10 CFR 35.75 overlooks the merits of a necessary option, temporary home confinement, for outpatient radiopharmaceutical therapy at levels exceeding 1,110 megabecquerels (30 millicuries). This petition further stated that patients containing quantities up to 14,800 megabecquerels (400 millicuries) of iodine-131 could be confined in a private residence, as justified by published scientific papers that contend that home confinement of such patients would not adversely affect public health and safety.

Another commenter supported home confinement because it would greatly improve patient comfort while reducing medical expenditures by a considerable amount, and that this can be accomplished without any significant risk to the public. Some commenters believed that patients confined at home with as much as 14,800 megabecquerels (400 millicuries) of iodine-131 would not create a safety hazard to the public if simple precautions were followed.

Several commenters believed that they had been told by the NRC that the use of the term confinement in 10 CFR 35.75 provided for a nonhospital option.

A couple of commenters suggested that if a patient is medically capable of self-care, informed and cooperative, release in amounts greater than 1,110 megabecquerels (30 millicuries) is sensible.

Opposing Comments

The Conference of Radiation Control Program Directors (CRCPD) commented that confinement should not be defined in 10 CFR part 35 because the present wording already provides the option to confine patients by means other than hospitalization.

An Agreement State representative remarked that it is not realistic to believe that a person will go home and lock themselves in a room for two to three days with limited contact with family and friends. Another Agreement State representative maintained it is difficult to control actions of an ambulatory patient and difficult to ensure that the patient has remained in confinement. This commenter also noted that the ACNM definition does not address transportation to a confined area in a private residence that would prohibit a patient from using public transportation.

A former radiopharmaceutical therapy patient opposed the changing of the existing requirements. He said that cutting hospital costs by releasing highly radioactive patients may afford short-term economic benefits for health care providers but it carries serious health and safety risks to the family and the public. He also indicated that some people would have a difficult time following the extensive advice that is given as to the precautions to be taken on returning home.

Some commenters expressed the belief that release from a hospital with activities as high as 14,800 megabecquerels (400 millicuries) of iodine-131 is dangerous to public health and safety

Response

The NRC has decided that the term "confinement" should be deleted from the proposed revision to 10 CFR 35.75. Instead, the proposed rule language now uses the phrase "licensee control." The NRC believes that the phrase "licensee control" more clearly reflects the NRC's intent.

The phrase "licensee control" refers to the ability of the licensee to demonstrate that it can control doses to other individuals from the patient, as well as the spread of radioactive material. The licensee maintains control both from the location of patients and by the actions the licensee takes to control doses. Although licensee control does not necessarily restrict a patient to a hospital, the location of the patient must be listed as a place of use on the license or a license amendment must be issued pursuant to 10 CFR 35.13(e). Additional choices would be available (e.g., hospices or nursing homes) as long as the licensee can demonstrate that it can control doses to other individuals as well as the spread of radioactive material.

The NRC believes that there is a distinct difference between a patient being "confined" in a hospital and "confined" in a home. In hospital confinement, the licensee has control over access to the patient as well as having trained personnel and instrumentation available for making radiation measurements not typically available at the patient's home. In addition, while under licensee control, a licensee has control over the dose by limiting the amount of time that individuals are in close proximity to the patient. Therefore, as a general practice, the NRC does not want licensees to use a patient's home for the purpose of confining the patient.

Issue 5. Should 10 CFR 20.1301(d) require compliance with Environmental Protection Agency (EPA) regulations? PRM–20–20 stated that compliance with the EPA's Clean Air Act air effluent standards would cost medical facilities $100,000,000 per year, which would be added to national health care costs.

Supporting Comments

Most comments from physicians and medical associations expressed concern over redundant NRC and EPA regulations contained in 40 CFR 61 resulting from the EPA's limitation on air effluent from NRC-licensed facilities.

Opposing Comments

No opposing comments were received.

Response

The EPA regulations referenced in 10 CFR 20.1301(d) are contained in 40 CFR part 190, which deals only with doses and airborne emissions from uranium fuel cycle facilities. 40 CFR part 190 does not apply to hospitals or to the release of patients. Furthermore, 10 CFR 20.1301(d) does not incorporate the EPA's Clean Air Act standards in 40 CFR part 61 that apply to hospitals. The NRC is separately pursuing actions with the EPA to minimize the impact of dual regulation under the Clean Air Act.

Because the reference to EPA regulations in 10 CFR 20.1301(d) has nothing to do with the patient release issue and has no impact on the petitioner, the NRC will not grant this request of the petitioner.

Issue 6. Should the regulations require that patients, upon release, receive written instructions on how to maintain doses to other individuals as low as reasonably achievable?

Supporting Comments

PRM–20–20 recommended education of the patient and the care provider. Some commenters supported written instructions for the patient upon release. Representatives from the Agreement States who attended the public workshop held in Atlanta, Georgia, on July 15 and 16, 1992, and the ACMUI public workshop held in October 1992 in Rockville, Maryland, also agreed with this concept.

Opposing Comments

A physician stated that instructions regarding patient activities significantly increase apprehension needlessly.

Response

The NRC agrees that written instructions on how to maintain doses as low as reasonably achievable to people exposed to released patients should be provided. These written instructions would specify what actions should or should not be taken by the released patients and by the individuals potentially exposed. In fact, written instructions are already required under 10 CFR 35.315(a)(6) and 35.415(a)(5). Under the proposed 10 CFR 35.75(b), when the total effective dose equivalent to any individual other than the released patient is likely to exceed 1 millisievert (0.1 rem) from a single administration, the licensee would be required to provide written instructions to the patient on how to maintain doses as low as reasonably achievable to household members and other individuals. If the dose to any individual exposed to the patient is not likely to exceed 1 millisievert (0.1 rem), instructions are not required but the physician could give any instructions that he or she considers desirable.

Written instructions provide an available reference after the patient's release, if questions regarding patient care arise. Written instructions reduce the chance of misunderstanding the licensee's instructions as verbal instructions may not be properly conveyed to persons not present at the time of release. The NRC also believes that providing written instructions will

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help relieve apprehensions of the patient, primary care-giver, and family.

The draft regulatory guide published concurrently with this proposed rule includes recommended contents of the written instructions. The instructions should be specific to the type of treatment given, such as radioiodine for hyperthyroidism or thyroid carcinoma, or permanent implants; and may include additional information regarding individual situations. The instructions should include a contact and phone number in case the patient has any questions. Written instructions should include, as appropriate: (1) maintaining distance from individuals, including sleeping arrangements and the need to avoid public transportation; (2) the need to stop breast-feeding if appropriate; (3) avoidance of public places (such as grocery stores, shopping centers, theaters, restaurants, and sporting events); (4) hygiene; and (5) the length of time precautions should be taken. Not all of these precautions are necessary for every patient; therefore, patients should be given specific instructions that are applicable to their situation.

Issue 7. Should records of patients released containing radioactive materials be required?

Although the issue of records did not arise in the petitions or the comments on the petitions, proposed 10 CFR 35.75(b) would require the licensee to maintain a record of the basis for the patient's release and the calculations performed to determine the total effective dose equivalent if an individual is likely to receive a dose in excess of 1 millisievert (0.1 rem) in a year from a single administration. It is anticipated that this requirement will be met by either a notation, such as a reference to the Regulatory Guide, or calculation(s) to be retained in the patient's file. This record would provide a basis for assuring that the maximum dose to an individual exposed to the patient is below 5 millisieverts (0.5 rem) for any single administration. This record also provides the basis for ensuring that doses from multiple administrations greater than 1 millisievert (0.1 rem) each do not total more than 5 millisieverts (0.5 rem) in any year.

The 1-millisievert (0.1-rem) threshold for recordkeeping is based on the public dose limit of 1 millisievert (0.1 rem) specified in 10 CFR part 20. This threshold would not result in an undue recordkeeping burden for the majority of diagnostic administrations because these administrations are well below 1-millisievert (0.1-rem). Based on the regulatory analysis, the majority of administrations requiring records involve iodine-131 therapeutic administrations and a few diagnostic procedures using iodine-131. Recordkeeping would affect less than one percent of all administrations. (For further information, see the regulatory analysis for the proposed rule. Single copies of the draft regulatory analysis are available as indicated in the **ADDRESSES** heading.)

The proposed record retention period of 3 years is consistent with similar recordkeeping requirements in 10 CFR parts 20 and 35.

VII. Summary of the Proposed Changes

This section summarizes the regulation changes that are being proposed. The NRC proposes to amend 10 CFR 20.1301(a)(1) to specifically state that the dose to individual members of the public from a licensed operation does not include doses received by individuals exposed to patients who were released by the licensed operation under the provisions of 10 CFR 35.75. This is not a substantive change but clarifies the NRC policy that patient release is governed by 10 CFR 35.75, not 10 CFR 20.1301, as discussed above under Issue 1.

The NRC proposes to amend 10 CFR 20.1301(a)(2) to specifically state that the limit on dose in unrestricted areas does not include dose contributions from patients administered radioactive material and released in accordance with 10 CFR 35.75. The purpose of this change is to clarify that licensees are not required to control areas, such as a waiting room, simply because of the presence of a patient released pursuant to 10 CFR 35.75. If a patient is not required to be confined pursuant to 10 CFR 35.75, licensees are not required to limit the radiation dose to members of the public (e.g., visitor in a waiting room) from a patient to 0.02 millisievert (2 millirems) in any one hour. Patient waiting rooms or hospital rooms need only be controlled for those patients not meeting the release criteria in 10 CFR 35.75.

The NRC proposes to adopt a new 10 CFR 35.75(a) to change the patient release criteria from 30 millicuries of activity in a patient or a dose rate of 5 millirems per hour at 1 meter from a patient to a dose limit of 5 millisieverts (0.5 rem) in any one year, excluding background or any occupational exposure, to an individual from exposure to a released patient. The reasons for this change were discussed above under Issue 2. In brief, a dose-based limit provides a single limit that can be used to provide an equivalent level of risks from all radionuclides. Also, the proposed changes are supported by the recommendations of the ICRP and NCRP that an individual can be allowed to receive an annual dose up to 5 millisieverts (0.5 rem) in temporary situations where exposure to radiation is not expected to result in doses above 1 millisievert (0.1 rem) for long periods of time.

Doses among individuals who may come in contact with a released patient are highly variable and reflect the crucial, but difficult to define, parameters of time, distance, and shielding. Although all members of society have the potential for exposure to a released patient, based on time and distance considerations, it is reasonable to conclude that for the overwhelming majority of released patients, the maximally exposed individual is likely to be one who is aware of the patient's condition such as the primary care-giver, a family member, or any other individual who spends significant time close to the patient.

The NRC proposes to adopt a new 10 CFR 35.75(b)(1) to require that the licensee provide released patients with written instructions on how to maintain as low as reasonably achievable doses to other individuals if the total effective dose equivalent to any individual other than the released patient is likely to exceed 1 millisievert (0.1 rem) in any one year. A requirement for written instructions for certain patients was already contained in 10 CFR 35.315(a)(6) and 35.415(a)(5). The proposed requirement would add approximately 50,000 patients per year who are administered iodine-131 for the treatment of hyperthyroidism. The purpose of the written instructions is to maintain as low as reasonably achievable doses to individuals exposed to patients, as discussed in more detail under Issue 6.

The NRC proposes to revise 10 CFR 35.75(b)(2) to require that licensees maintain a record of the basis for the patient's release for three years. These records must include the calculations performed to determine the total effective dose equivalent of the individual likely to receive the highest dose if the total effective dose equivalent to any individual other than the released patient is likely to exceed 1 millisievert (0.1 rem) in a year from a single administration. It is anticipated that this requirement will be met by either a notation, such as a reference to the applicable regulatory guide or calculation(s) to be retained in the patient's file. The major purpose of the change is to provide the basis for controlling the dose to individuals exposed to a patient who may receive more than one administration in a year, as discussed above under Issue 7.

Finally, the NRC proposes to amend its requirements on written instructions in 10 CFR 35.315(a)(6) and 35.415(a)(5). These regulations already required written instructions in certain cases, but the phrase "if required by § 35.75(b)" was added. The purpose of this change was to ensure internal consistency within 10 CFR part 35 on when written instructions must be provided.

VIII. Consistency with 1979 Medical Policy Statement

On February 9, 1979 (44 FR 8242), the NRC published a Statement of General Policy on the Regulation of the Medical Uses of Radioisotopes. The first statement of this policy states that, "The NRC will continue to regulate the medical uses of radioisotopes as necessary to provide for the radiation safety of workers and the general public." The proposed rule is consistent with this statement because its purpose is to provide for the safety of individuals exposed to patients who are administered radioactive materials.

The second statement of the policy states that, "The NRC will regulate the radiation safety of patients where justified by the risk to patients and where voluntary standards, or compliance with these standards, are inadequate." This statement is not relevant to the proposed rule because the proposed rule does not affect the safety of patients themselves but affects the safety of individuals exposed to patients.

The third statement of the policy states that, "The NRC will minimize intrusion into medical judgements affecting patients and into other areas traditionally considered to be a part of the practice of medicine." The proposed rule is consistent with this statement because it places no requirements on the administration of radioactive materials to patients and because the release of patients administered radioactive materials has long been considered a matter of regulatory concern rather than solely a matter of medical judgement.

Thus, the proposed rule is considered to be consistent with the 1979 medical policy statement.

IX. Issue of Compatibility for Agreement States

The NRC believes that the proposed modifications to 10 CFR 20.1301(a) and 10 CFR 35.75 should be Division 1 and 2 items of compatibility, respectively, because the patient release criteria required by the rule are the minimum requirements necessary to ensure adequate protection of public health and safety. However, representatives of the Agreement States who attended the public workshop held in Atlanta, Georgia, on July 15 and 16, 1992, have recommended that the proposed changes to 10 CFR part 35 should not be a matter of compatibility (i.e., Division 3) for the Agreement States. In addition, two Agreement States in their written comments on the draft rule reviewed in July 1993 addressed the issue of patient release under 10 CFR part 35 as a Division 3 matter. Under Division 2 status, the Agreement States must address the changes and may adopt more stringent requirements, but may not adopt less stringent provisions

X. Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that the proposed amendments, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required. The proposed amendment would clarify the pertinent regulatory language to reflect explicitly the relationship between 10 CFR part 20 and part 35 with respect to release of patients, and revise the release criteria for patients receiving radioactive material for medical use from an activity-based standard to a dose basis. Because the risk basis of the current regulation remains unchanged, it is expected that there would be no significant change in radiation dose to the public as a result of the revised regulation.

The draft environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft environmental assessment and the finding of no significant impact are available as indicated in the **FOR FURTHER INFORMATION CONTACT** heading.

XI. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for this collection of information is estimated to average 0.42 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0010), Office of Management and Budget, Washington, DC 20503.

XII. Regulatory Analysis

The NRC has prepared a regulatory analysis (NUREG–1492) for the proposed amendment. The analysis examines the benefits and impacts considered by the NRC. The regulatory analysis is available for inspection at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC. Single copies are available as indicated under the **FOR FURTHER INFORMATION CONTACT** heading.

XIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC certifies that, if adopted, this proposed rule would not have a significant economic impact on a substantial number of small entities. As a result of the revised regulation, the impact would not be significant because the revised regulation basically represents a continuation of current practice.

The NRC is seeking public comment on the initial regulatory flexibility certification. The NRC is particularly seeking comment from small entities as defined under the NRC's size standards published on November 6, 1991 (56 FR 56672), as to how the regulations will affect them and how the regulations may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Any small entity subject to this regulation who determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should offer comments that specifically discuss the following items:

(a) The licensee's size and how the proposed regulation would result in a significant economic burden or whether the resources necessary to implement this amendment could be more effectively used in other ways to

optimize public health and safety, as compared to the economic burden on a larger licensee;

(b) How the proposed regulation could be modified to take into account the licensee's differing needs or capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulation were modified as suggested by the licensee;

(d) How the proposed regulation, as modified, could more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group; and

(e) How the proposed regulation, as modified, would still adequately protect the public health and safety.

The comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

XIV. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

XV. List of Subjects

10 CFR part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recording requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR part 35

Byproduct material, Criminal penalty, Drugs, Health facilities, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR parts 20 and 35.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 is revised to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (U.S.C. 5841, 5842, 5846).

2. In § 20.1301, paragraph (a) is revised to read as follows:

§ 20.1301 Dose limits for individual members of the public.

(a) Each licensee shall conduct operations so that—

(1) The total effective dose equivalent to individual members of the public from the licensed operation does not exceed 0.1 rem (1 mSv) in a year, exclusive of the dose contributions from the licensee's disposal of radioactive material into sanitary sewerage in accordance with § 20.2003 and from patients administered radioactive material and released in accordance with § 35.75, and

(2) The dose in any unrestricted area from external sources, exclusive of the dose contributions from patients administered radioactive material and released in accordance with § 35.75, does not exceed 0.002 rem (0.02 mSv) in any one hour.

* * * * *

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

3. The authority citation for part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat 1242, as amended (42 U.S.C. 5841).

4. In § 35.8, paragraph (b) is revised to read as follows:

§ 35.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 35.12, 35.13, 35.14, 35.21, 35.22, 35.23, 35.27, 35.29, 35.13, 35.50, 35.51, 35.53, 35.59, 35.60, 35.61, 35.70, 35.75, 35.80, 35.92, 35.204, 35.205, 35.310, 35.315, 35.404, 35.406, 35.410, 35.415, 35.606, 35.610, 35.615, 35.630, 35.632, 35.634, 35.636, 35.641, 35.643, 35.645, and 35.647.

* * * * *

5. Section 35.75 is revised to read as follows:

§ 35.75 Release of patients containing radiopharmaceuticals or permanent implants.

(a) A licensee may authorize release from licensee control any patient administered radiopharmaceuticals or permanent implants containing radioactive material if the total effective dose equivalent to an individual from exposure to the released patient is not likely to exceed 5 millisieverts (0.5 rem) in any one year.

(b) If the total effective dose equivalent to any individual other than the released patient is likely to exceed 1 millisievert (0.1 rem) in a year from a single administration, upon release the licensee shall:

(1) Provide the patient with written instructions on how to maintain doses to other individuals as low as reasonably achievable; and

(2) Maintain, for three years, a record of the released patient and the calculated total effective dose equivalent to the individual likely to receive the highest dose.

6. In § 35.315, paragraph (a)(6) is revised to read as follows:

§ 35.315 Safety precautions.

(a) * * *

(6) Provide the patient with radiation safety guidance, if required by § 35.75(b), that will help to keep radiation dose to household members and the public as low as reasonably achievable before authorizing release of the patient.

* * * * *

7. In § 35.415, paragraph (a)(5) is revised to read as follows:

§ 35.415 Safety precautions.

(a) * * *

(5) Provide the patient with radiation safety guidance, if required by § 35.75(b), that will help to keep radiation dose to household members and the public as low as reasonably achievable before releasing the patient if the patient was administered a permanent implant.

* * * * *

Dated at Rockville, MD, this 9th day of June, 1994.

For the Nuclear Regulatory Commission

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–14544 Filed 6–14–94; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 423

Request for Comments Concerning Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods ("the Care Labeling Rule" or "the Rule"). The Commission is requesting comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides. The Commission also is requesting comment on whether the Rule should be modified so as to (1) permit the use of care symbols in lieu of words; (2) revise the requirements for care instructions in order to provide consumers with information about whether a garment can be both washed and dry cleaned; and (3) clarify the "reasonable basis" requirements of the Rule. All interested persons are hereby given notice of the opportunity to submit written data, views and arguments concerning this proposal.

DATES: Written comments will be accepted until August 15, 1994.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580. Comments about the Care Labeling Rule should be identified as "16 CFR Part 423—Comment."

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326–2966.

SUPPLEMENTARY INFORMATION: The Commission has determined, as part of its oversight responsibilities, to review Rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's Rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying Rules and guides that warrant modification or rescission.

The Commission is also seeking comment on several issues specific to the Care Labeling Rule. The North American Free Trade Agreement (NAFTA) has created industry interest in being permitted to use symbols in lieu of words to provide care instructions, and the Commission seeks comment on the costs and benefits of such a change. In addition, there is currently interest by the Environmental Protection Agency (EPA) and others in reducing the use of dry cleaning solvents, because some evidence indicates that the solvents may be damaging to the environment. The Care Labeling Rule currently only requires either a washing instruction or a dry cleaning instruction; it does not require both. Thus, some garments that are labeled "dry clean" also may be washable, although the Commission does not know the incidence of such labeling. If the Rule required both washing and dry cleaning instructions for such garments, consumers and professional cleaners could make more informed choices. The Commission seeks comment on the desirability of such a change and, in general, on the extent to which the current Rule is consistent with the goal of reducing the use of dry cleaning solvents. The Commission also seeks comment on whether it is desirable to clarify the "reasonable basis" provision of the Rule. Finally, the Commission seeks comment on the extent to which garments are being sold with incorrect or incomplete care instructions.

A. Background

The Rule was promulgated by the Commission on December 16, 1971, 36 FR 23883 (1971), and amended on May 20, 1983, 48 FR 22733 (1983). The Rule makes it an unfair or deceptive act or practice for manufacturers and importers of textile wearing apparel and certain piece goods to sell these items without attaching care labels stating "what regular care is needed for the ordinary use of the product." (16 CFR 423.6(a) and (b)) The Rule also requires that the manufacturer or importer possess, prior to sale, a reasonable basis for the care instructions. (16 CFR 423.6(c))

B. Issues for Comment

The Care Labeling Rule currently requires that care instructions be stated in "appropriate terms," though it also states that "any appropriate symbols may be used on care labels or care instructions, *in addition to the required appropriate terms* so long as the terms fulfill the requirements of this regulation." 16 CFR 423.2(b) (emphasis added). Although the Rule does not specifically state that the instructions must be in English, they usually are in English. The goal of the North American Free Trade Agreement (NAFTA) is to establish a trade zone in which goods can flow freely between Canada, Mexico, and the United States. However, Canada requires that garments containing instructions in English also contain instructions in French, and Mexico requires that they also contain instructions in Spanish. Members of the textile industry are concerned that care labels in three languages would be too lengthy. Although manufacturers could separately label inventory destined for each of the three countries, this would increase costs and reduce the advantages to be gained from a large free trade zone.

The Commission solicits comment on whether it is desirable to allow the use of symbols in lieu of written language on care labels. However, the Commission recognizes that consumer use and acceptance of symbols may not be feasible without consumer education about the meaning of the symbols, which also would impose costs. Moreover, there are several existing systems of care symbols, and various issues arise concerning what system would be most feasible and appropriate.[1] The Commission requests comment on the costs and benefits of allowing the use of care symbols in lieu of words and of the specific systems of care symbols currently in existence.

Second, the Care Labeling Rule currently only requires either a washing instruction or a dry cleaning instruction; it does not require both. Thus, although garments that are labeled "dry clean" also may be washable, consumers and professional cleaners cannot be certain that items labeled "dry clean" can be washed without damage. If the Rule required both washing and dry cleaning instructions for such garments, consumers would be informed that they have a choice between these cleaning methods.

Perchloroethylene (PCE) is the most commonly used dry cleaning solvent.

[1] *E.g.*, a system developed by the International Association for Textile Care Labeling ("Ginetex") and adopted by the International Standards Organization as International Standard 3758, system developed by the American Society for Testing and Materials (ASTM) and designated as ASTM D5489 Guide to Care Symbols for Care Instructions on Consumer Textile Products. Some of the symbols in the Ginetex system are trademarked. One issue to be resolved is what payment, if any, United States companies would have to make if the Commission were to approve the Ginetex system for use in the United States and what payment, if any, United States companies would have to make if they exported goods with these symbols to European countries. The ASTM system uses the same basic symbols as the Ginetex system but provides more detail. (For example, the ASTM system provides a symbol for non-chlorine bleach, while the Ginetex system does not.) However, because some of the basic symbols used in the ASTM system are trademarked by Ginetex, United States companies may not be able to export goods using these symbols to certain European countries.

PCE has been designated as a hazardous air pollutant under section 112 of the Clean Air Act and under many state air toxics regulations. On September 15, 1993, the EPA set national emission standards for new and existing dry cleaning facilities using PCE. EPA's Office of Pollution Prevention and Toxics has been working with the dry cleaning industry to reduce exposure to PCE. As part of this process, EPA has published a summary of a process referred to as "Multiprocess Wet Cleaning." In this summary, EPA stated that it has "formed a partnership with the dry cleaning industry to compare the costs and performance of a potential alternative cleaning process that relies on the controlled application of heat, steam and natural soaps to clean clothes that are typically dry cleaned."[2]

Amendment of the Care Labeling Rule to require that care instructions state both whether a garment can be washed as well as whether it can be dry cleaned might enable both consumers and professional cleaners to choose options that would reduce risks to the environment. The Commission does not know the extent to which such labeling currently occurs. However, such a change might impose increased costs on manufacturers and importers. The Commission solicits comment on whether it is desirable to require that care instructions be provided for both washing and dry cleaning on garments where either method is appropriate.

Finally, the Commission solicits comment on the reasonable basis requirement of the Rule. The Rule now says that a reasonable basis can consist of "(1) Reliable evidence that the product was not harmed when cleaned reasonably often according to the instructions * * * (2) Reliable evidence that the product or a fair sample of the product was harmed when cleaned by methods warned against on the label * * *. (3) Reliable evidence, like that described in paragraph (c)(1) or (2) of this section, for each component part * * * (4) Reliable evidence that the product or a fair sample of the product was successfully tested * * *; (5) Reliable evidence of current technical literature, past experience, or the industry expertise supporting the care information on the label; or (6) Other reliable evidence." 16 CFR 423.6(c). The intent of this provision is to make clear that a variety of types of evidence, alone or in combination, might provide a reasonable basis in specific instances.[3] At the same time, however, the Statement of Basis and Purpose to the Care Labeling Rule does not indicate that this provision is meant to suggest that a seller will be deemed to possess a reasonable basis whenever it possesses evidence of any one type of basis. In some instances, testing of garments may be the only acceptable basis, for example. This must be determined case-by-case, just as the minimum "reasonable basis" in advertising substantiation cases must be determined case-by-case.[4]

Accordingly, the Commission solicits comment on whether it is desirable to change the Rule itself to clarify that the criteria used to determine the level of substantiation required under the FTC Policy Statement on Advertising Substantiation are applicable in the care labeling context as well.[5] The Commission also solicits comment on whether the definition of a "reasonable basis" in the Rule should be changed to provide members of the industry with additional guidance about the level of substantiation required in specific circumstances. In particular, the Commission solicits comment on whether the existing Rule needs to be clarified to indicate that in certain circumstances test results may be the only way to establish a reasonable basis for care instructions because of the peculiarity of some components of the garment or because reliable expert testimony states that such tests are necessary.

C. Request for Comment

At this time, the Commission solicits written public comments on the following questions:

(1) Is there a continuing need for the Rule?

(a) What benefits has the Rule provided to purchasers of the products or services affected by the Rule?

(b) Has the Rule imposed costs on purchasers?

(2) What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers?

(a) How would these changes affect the costs the Rule imposes on firms subject to its requirements?

(3) What significant burdens or costs, including costs of compliance, has the Rule imposed on firms subject to its requirements?

(a) Has the Rule provided benefits to such firms?

(4) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements?

(a) How would these changes affect the benefits provided by the Rule?

(5) Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

(7) Should the Commission amend the Rule to allow care symbols to be used in lieu of language in care instructions? If so, is there an existing set of care symbols that would provide all or most of the information required by the current Rule? What are the advantages and disadvantages of the existing systems of care symbols?

(a) In particular, what are the advantages and disadvantages of the system of care symbols developed by the International Association for Textile Care Labeling ("Ginetex") and adopted by the International Standards Organization as International Standard 3758?

(b) What are the advantages and disadvantages of the system of care symbols developed by the American Society for Testing and Materials (ASTM) and designated as ASTM D5489 Guide to Care Symbols for Care Instructions on Consumer Textile Products?

(8) Does the current Rule pose an impediment to the EPA's goal of reducing the use of dry cleaning solvents? What is the actual incidence of labeling that fails to include both washing and dry cleaning instructions? With regard to a garment that can be

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[2] EPA Document 744–R–93–004, "Multiprocess Wet Cleaning: Cost and Performance Comparison of Conventional Dry Cleaning and an Alternative Process," Executive Summary, pp. ES–i and ES–ii.

[3] In the Statement of Basis and Purpose accompanying the publication of the amended Rule on May 20, 1983, the Commission indicated that it viewed the reasonable basis requirement for care labeling claims to be the same as the reasonable basis requirement for any claim. It described the reasonable basis requirement as "implicit but not directly stated" in the original rule. 48 FR 22736. It also stated that it believed that an explicit reasonable basis requirement "may benefit consumers to the extent that manufacturers are not already aware of their obligation to have a reasonable basis for care instructions." 48 FR 22740. The Commission also stated that the enumeration in the amended Rule of types of evidence that can constitute a reasonable basis would "enable manufacturers to adopt *efficient, as well as effective* methods of obtaining a reasonable basis for care instructions." *Id.* (Emphasis added.)

[4] In the *FTC Policy Statement Regarding Advertising Substantiation*, 104 F.T.C. 839 (1984), the Commission set forth criteria to consider in establishing the minimum required basis for objective advertising claims, where no specific basis was stated or implied: "These factors include: The type of claim, the product, the consequences of a false claim, the benefits of a truthful claim, the cost of developing substantiation for the claim, and the amount of substantiation experts in the field believe is reasonable." 104 F.T.C. at 840.

[5] See 48 FR 22733, 22737 (May 20, 1983).

either washed or dry cleaned, should the Commission amend the Rule to require that care instructions be provided for both washing and dry cleaning? What are the costs and benefits, including environmental benefits, of such an amendment?

(9) Should the Commission amend the Rule to specify under what conditions a manufacturer or importer must possess a particular type of basis among those listed in § 423.6(c) of the Rule, such as test results? Should the "reasonable basis" requirements of the Rule be modified in any other way?

(10) Are there garments in the marketplace that contain inaccurate or incomplete care instructions?

(a) To what extent is this a problem with respect to washing instructions?

(b) To what extent is this a problem with respect to dry cleaning instructions?

(c) To what extent are there problems with respect to shrinkage?

(d) To what extent are there problems with respect to colorfastness?

(e) Are there any other significant problems that occur because of inaccurate or incomplete care label instructions?

List of Subjects in 16 CFR Part 423

Care labeling of textile wearing apparel and certain piece goods; Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–14523 Filed 6–14–94; 8:45 am]

BILLING CODE 6750–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1640

Upholstered Furniture; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Based on currently available information, the Commission finds that a new flammability standard or other regulation may be needed for products of upholstered furniture and for fabrics and related materials used in, or intended for use in, upholstered furniture, to protect the public against the unreasonable risk of fire leading to death, personal injury, or significant property damage. The specific risk of fire is from the ignition of upholstered furniture from small open-flame sources.

This advance notice of proposed rulemaking ("ANPR") initiates a rulemaking proceeding under the authority of the Flammable Fabrics Act ("FFA"). One result of the proceeding could be the promulgation of a standard or other regulation mandating performance and/or labeling requirements for these products. Another possible outcome could be a voluntary standard that adequately addresses the identified risk of injury.

The Commission solicits written comments from interested persons concerning the risk of injury and death associated with the ignition of upholstered furniture from small open flames, data on small open-flame testing of upholstered furniture, the regulatory alternatives discussed in this notice, other possible means to address these risks, and the economic impacts of the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risk of injury described in this notice.

DATES: Written comments and submissions in response to this notice must be received by the Commission by August 15, 1994.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 502, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800.

FOR FURTHER INFORMATION CONTACT: Dale R. Ray, Directorate for Economic Analysis, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0962, ext. 1323.

SUPPLEMENTARY INFORMATION:

A. Background

1. *The Petition.* In 1993, the National Association of State Fire Marshals ("NASFM") petitioned the Commission (Petition FP 93–1) to issue a flammability standard for upholstered furniture incorporating the requirements of three standards now in effect in the State of California. Specifically, the petition urged the Commission to issue a flammability standard incorporating the requirements of Technical Bulletins 116, 117, and 133, issued by the Bureau of Home Furnishings and Thermal Insulation of the State of California.

These standards specify tests to measure the (a) resistance of components of upholstered furniture to ignition by small open-flame sources and cigarettes; (b) resistance of finished items of upholstered furniture to ignition by cigarettes; and (c) resistance of finished items of furniture to ignition from large open-flame sources. The California standards also contain labeling requirements.

In support of the petition, NASFM provided information about deaths and injuries from fires involving upholstered furniture in California and in the rest of the United States. The petition asserted that although deaths and injuries from fires involving upholstered furniture in the United States declined appreciably from 1980 through 1989, during the same period the numbers of deaths and injuries from upholstered furniture fires declined at a much faster rate in California.

The petitioner provided data showing that the rate of fire deaths associated with upholstered furniture in the United States, excluding California, decreased from 4.97 per million people in 1980 to 3.04 per million in 1989, a decline of 39 percent. By comparison, in 1980 the rate of fire deaths associated with upholstered furniture in California was 1.14 per million people and in 1989 it was 0.41 per million, a decline of 64 percent.

The Commission published a notice in the **Federal Register** on August 9, 1993 (58 FR 42301), announcing that the submission from NASFM had been docketed as a petition and soliciting written comments on the petition from all interested parties. Seventy-two comments were received in response to that notice. The Commission staff prepared a briefing package on the petition discussing information relevant to the decision to grant or deny the petition. The briefing package, dated April 8, 1994, contains a discussion of the comments received and other relevant information. It is available upon request from the Office of the Secretary of the Commission. The staff presented an oral briefing to the Commission on the petition on May 3, 1994.

2. *Commission Action.* At a decision meeting on May 12, 1994, the Commission voted 2–1 to grant that part of the petition requesting development of a flammability standard to address risks of death, injury, and property damage from small open-flame ignition of upholstered furniture.[1] The Commission also voted (unanimously) (i) to defer action on that part of the

[1] Commissioner Gall dissented from this vote.

petition requesting development of a flammability standard addressing risks of death, injury, and property damage from cigarette ignition of upholstered furniture, and (ii) to direct the staff to conduct an additional, limited investigation of the cigarette ignition issue. Finally, the Commission voted 2–1 to deny that portion of the petition requesting development of a flammability standard to address risks of death, injury, and property damage from large open-flame ignition of upholstered furniture.[2]

The information presently available to the Commission demonstrates that in 1991 approximately 150 deaths, 580 injuries, and $66 million in property losses resulted from the ignition of upholstered furniture by small open flames. Although the upholstered furniture industry has implemented a voluntary program to improve the resistance of upholstered furniture to ignition by cigarettes, that program has no provisions to address risks of small open-flame ignition.

The State of California enforces mandatory requirements for upholstered furniture components. These requirements are intended to improve resistance of upholstered furniture to ignition by small open-flame sources. Information available to the Commission indicates that almost all of the furniture produced for sale in California meets that State's mandatory requirements to address risks of small open-flame ignition of upholstered furniture. This information suggests that a Federal standard to address those risks may be effective and technologically and economically practicable.

As noted, the Commission unanimously voted to defer a decision on the part of the petition dealing with cigarette ignition of upholstered furniture. Despite a significant number of reported incidents, since 1980, deaths associated with upholstered furniture fires ignited by cigarettes have declined by almost 60 per cent. As noted above, the upholstered furniture industry has implemented a voluntary plan to improve resistance of upholstered furniture to cigarette ignition. However, the Commission has not assessed the resistance of currently-produced upholstered furniture to cigarette ignition or determined the extent to which upholstered furniture conforms to the industry voluntary program.

If most currently manufactured upholstered furniture resists cigarette ignition, the benefits to be derived from issuing mandatory requirements to address that risk may be small. However, if a large proportion of currently manufactured upholstered furniture can be ignited by a smoldering cigarette, a mandatory standard to address that risk may be needed.

For these reasons, the Commission decided to defer a decision on that portion of the petition requesting development of a mandatory standard to address risks of death, injury, and property damage associated with upholstered furniture ignited by cigarettes until the staff obtains certain additional information. This may include the extent to which currently manufactured upholstered furniture resists cigarette ignition and conforms to the industry's voluntary plan.

After examining all available information about deaths, injuries, and property losses associated with fires resulting from ignition of upholstered furniture, the Commission voted to deny that portion of the petition requesting development of a flammability standard to address risks of death, injury, and property damage associated with ignition of upholstered furniture by large open-flame sources. The State of California enforces a flammability standard to address risks of large open-flame ignition of upholstered furniture used in public occupancies without automatic sprinkler systems. However, that standard does not apply to furniture intended for residential use. Therefore, the Commission has no specific information about the extent to which a Federal flammability standard similar to the California large open-flame requirements could be expected to reduce deaths, injuries, or property damage from residential fires originating with ignition of upholstered furniture by a large open-flame source.

The Commission also considered information indicating that if the California requirements intended to address large open-flame ignition of upholstered furniture were applicable to all residential furniture sold in the United States, the total annual cost of compliance could exceed $2 billion, and could add an estimated $75 to the average price of items of upholstered furniture.

In view of the absence of information indicating the likelihood of a substantial reduction in deaths, injury, and property damage from large open-flame ignition of upholstered furniture, and estimates of substantial costs resulting from the imposition of requirements to address risks from upholstered furniture fires ignited by large open-flame sources, the Commission decided to deny that portion of the petition requesting issuance of a standard to address those risks.

B. Statutory Authority

This proceeding is conducted under provisions of the FFA, 15 U.S.C. 1191–1204. An item of upholstered furniture is a "product" of "interior furnishing" as those terms are defined in sections 2(e) and (h) of the FFA. 15 U.S.C. 1191(e) and (h). The Commission has authority under section 4(a) of the FFA to issue a "flammability standard or other regulation, including labeling," for a product of interior furnishing if the Commission determines that such a standard "is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage." 15 U.S.C. 1193(a).

A proceeding to promulgate a regulation establishing a flammability standard for upholstered furniture begins by publication of this advance notice of proposed rulemaking as provided in section 4(g) of the FFA. 15 U.S.C 1193(g). If the Commission decides to continue the rulemaking proceeding after considering responses to the ANPR, the Commission must publish the text of the proposed rule, along with a preliminary regulatory analysis, in accordance with section 4(i) of the FFA. 15 U.S.C. 1193(i).

If the Commission then wishes to issue a final rule, it must publish the text of the final rule and a final regulatory analysis that includes the elements stated in section 4(j)(1) of the FFA. 15 U.S.C. 1193(j)(1). Before the Commission may issue a final regulation, it must make findings concerning voluntary standards, the relationship of the costs and benefits of the rule, and the burden imposed by the regulation. FFA section 4(j)(2), 15 U.S.C. 1193(j)(2).

C. The Product

The items within the scope of this ANPR include: (1) Products of interior furnishing that are used in homes, offices, and other places of assembly and public accommodation that consist in whole or in part of resilient materials (such as polyurethane foam, cotton batting, or related materials) enclosed within a covering consisting of fabric or related materials, and (2) fabric or related materials used or intended for use in the production of upholstered furniture.

D. The Upholstered Furniture Industry

The Commission estimates that there are over 1,000 manufacturers, and a small number of importers, of upholstered furniture in the United States, accounting for an estimated 25–30 million pieces shipped annually.

[2] Chairman Brown dissented from this vote.

Shipments are concentrated among the major producers; the 50 largest firms reportedly account for over half of all upholstered furniture sales. Most of the remaining manufacturers are small firms, none of which accounts for a significant proportion of sales.

E. Risks of Injury and Death

In 1991, about 16,600 residential fires involving ignition of upholstered furniture resulted in 700 deaths, over 2,000 injuries and nearly $300 million in property damage in the United States. Two-thirds (470) of the deaths and more than half (1,160) of the injuries resulted from smoldering-ignition smoking fires; about one-fifth (150) of the deaths and one-fourth (580) of the injuries resulted from open-flame-ignition fires (often identified as involving matches and lighters). Nearly half ($137 million) of the property damage was from smoking fires; about one-fifth ($66 million) was from open-flame fires. The total annual societal cost of upholstered furniture fire losses is estimated at about $2 billion, including about $1.25 billion from smoking fires and nearly $0.5 billion from open-flame fires.

Since 1980, total furniture fire deaths in the United States declined by slightly over half. Smoking fire deaths declined by 59 percent, while open-flame fire deaths declined by 25 percent. Injuries and property damage also declined by 34 and 28 percent, respectively.

A number of factors probably contributed to the decrease in furniture fire losses over time. These factors may include the use of more ignition-resistant fabrics and filling materials (due in part to or accelerated by the adoption of voluntary and mandatory safety standards); reductions in smoking, and accompanying reductions in the use of small open-flame sources (e.g., lighters and matches); improvements in fire fighting methods, response times, and equipment; and increases in the use of smoke detectors and sprinklers.

The above data indicate that the injury, death, and property losses attributable to both cigarette-ignition and open-flame-ignition of upholstered furniture remain very large. Although significant reductions in fire losses associated with ignition of upholstered furniture have occurred in recent years, particularly in the area of cigarette-ignition, the opportunity to achieve substantial, further reductions remains. While this proceeding is limited to risks from open-flame ignitions, the Commission can reassess the scope of its inquiry if it determines that further action may be warranted.

F. Existing Standards

The Commission is aware of some existing standards that may be relevant to this proceeding. These standards are described below.

1. *California standards.* The Bureau of Home Furnishings & Thermal Insulation in California's Department of Consumer Affairs began developing upholstered furniture and mattress flammability standards in the early 1970's, at approximately the same time as federal government efforts were initiated. Three standards—Technical Bulletins 116, 117, and 133—apply to upholstered furniture offered for sale in California. These standards contain labeling requirements and performance tests to measure the resistance to cigarette and open-flame ignition of components (TB–117) and finished items (TB–116 for cigarettes and TB–133 for open flames). TB–117 is mandatory for all upholstered furniture offered for sale in California; TB–116 is a voluntary standard routinely used for compliance screening tests; and TB–133 is mandatory only for items of upholstered furniture intended for use in public occupancies (excluding residences) not protected by automatic sprinklers.

This proceeding is limited to small open-flame ignitions. Thus, it does not cover TB–116 or TB–133, which apply respectively to cigarette ignition and large open flames. The standard relevant to this proceeding, TB–117, measures flammability performance by char length, flame spread, or weight loss, when a lit cigarette or a small open flame is applied to test surfaces of filling components. Under TB–117, upholstery fabrics must also meet the flaming ignition requirements of the CPSC's general wearing apparel regulations, which are codified at 16 CFR part 1610. (Virtually all upholstery materials comply with this provision.) Fire retardant-treated foam—so-called "California Foam"—is used to meet TB–117. There is no California standard for small open flames incorporating a composite test for finished items or full-scale mockups.

2. *Other Standards.* The Upholstered Furniture Action Council ("UFAC") adopted, in 1978, a Voluntary Action Program and voluntary test method, which incorporates cigarette ignition tests for furniture components. In addition, ASTM, Inc.—formerly the American Society for Testing & Materials—and the National Fire Protection Association ("NFPA") have adopted elements of a previously-developed draft CPSC standard and the UFAC cigarette ignition test methods. Neither organization, however, has adopted standards for small open-flame ignitions, the subject of this ANPR.

Other existing standards include those promulgated in 1988 by the British government, known as the "Furniture and Furnishings (Fire) (Safety) Regulations 1988 (Amended 1989)." These regulations supplemented a 1980 cigarette ignition regulation by adding a series of open-flame performance requirements. In addition, the regulations essentially banned all polyurethane foams—other than highly ignition-resistant "combustion-modified" foams—for use as filling materials in residential upholstered furniture. The regulations apply to most used upholstered furniture manufactured after 1950 as well as to new items.

G. Regulatory Alternatives Under Consideration

The Commission will consider the following alternatives to reduce the number of injuries and deaths and the amount of property damage from fires associated with small open-flame ignition of upholstered furniture.

1. *Flammability Standard.* If the Commission finds that a standard is needed to adequately protect the public against an unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, it may promulgate a flammability standard. Any such standard would be stated in objective terms that are reasonable, technologically practicable, and appropriate. It would also be limited to such fabrics, related materials, or products which have been determined to present the unreasonable risk found to exist.

2. *Labeling Regulation.* Either separately or as part of a flammability standard, the Commission may consider issuance of a labeling regulation as part of this proceeding.

3. *Voluntary standards.* The Commission could terminate this proceeding and rely upon a voluntary standard submitted in response to this notice if the standard would likely result in the elimination or adequate reduction of the risk of injury identified in the notice, and if there would likely be substantial compliance with such standard.

H. Solicitation of Information and Comments

Based on information currently available to the Commission from investigations, research, and other sources, the Commission, in accordance with section 4(a) of the FFA, 15 U.S.C. 1193(a), finds that a new flammability standard, or other regulation, may be

needed for products of upholstered furniture made from fabrics and related materials, and for fabrics and related materials used in, or intended for use in upholstered furniture, to protect the public against the unreasonable risk of the occurrence of fire leading to death, personal injury, or significant property damage. The specific risk of the occurrence of fire is from the ignition of upholstered furniture from small open-flame sources.

This ANPR is the first step of a proceeding which could result in a mandatory flammability standard and/or labeling regulation, or a voluntary standard, for upholstered furniture that presents an unreasonable risk of the occurrence of fire leading to death or personal injury or significant property damage. To assist the Commission in reaching an informed decision in this matter, the Commission invites all interested persons to submit to the Commission their comments on any aspect of the alternatives discussed above. Specifically, in accordance with section 4(g) of the FFA, the Commission solicits:

(1) Written comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered (including the potential effectiveness and economic impacts of such alternatives), and other possible alternatives for addressing the risk.

(2) Any existing standard or portion of a standard which could be issued as a proposed regulation.

(3) A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan to do so.

In addition, the Commission would like to receive from interested parties data on open-flame ignition tests of upholstered furniture.

Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–0800. All comments and submissions should be received no later than August 15, 1994.

Dated: June 9, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–14573 Filed 6–14–94; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

Exemption of Agents and Employees; Affiliated Practitioners

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed rule.

SUMMARY: DEA proposes to amend the language under title 21, Code of Federal Regulations (21 CFR) regarding the exemption of agents and employees from the requirement for individual registration when administering, dispensing, or prescribing controlled substances in the course of their official duties or business. The amendments will make the exemption granted to agents and employees of a registrant more consistent with the recent regulatory changes involving Mid-Level Practitioners (MLP) and the fee exemption for practitioners employed by Federal, state and local government hospitals or other institutions.

DATES: Written comments or objections must be received on or before August 15, 1994.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: DEA is proposing to amend the language under 21 CFR, § 1301.24 regarding the circumstances under which agents or employees of a DEA registrant may administer, dispense, or prescribe controlled substances in the course of their official duties or business without being required to obtain an individual registration. Specifically, § 1301.24(b) is proposed to be amended to allow that an individual practitioner who acts as an agent or employee of another individual practitioner, other than a mid-level practitioner (MLP), may administer and dispense (other than by prescription) controlled substances in the normal course of his/her official duties or business under the registration of the employer or principal practitioner.

Section 1301.24(c) is proposed to be amended to allow an individual practitioner who is an agent or employee of a hospital or other institution to administer, dispense, or prescribe controlled substances under the registration of the hospital or other institution in lieu of becoming individually registered. The provisions outlined under § 1301.24(c)(1) through (c)(6) set forth the procedures under which an individual practitioner could prescribe utilizing the hospital or other institution's registration number.

These changes are being proposed to make the circumstances under which agents or employees of a DEA registrant may administer, dispense, or prescribe controlled substances more consistent with recent developments with respect to MLPs and Federal, state or local government practitioners. During and immediately following the development of regulatory revisions concerning MLPs and persons exempt from the registration or reregistration application fees, DEA received a number of comments and questions from both individual practitioners and associations regarding the exemption of agents and employees of other DEA registrants. The comments and questions made it apparent that the current language in § 1301.24 is not entirely consistent with the intent of the new developments. The proposed revisions to § 1301.24 will allow that, (1) an individual practitioner who acts as an agent or employee of another individual registered practitioner (other than an MLP) may administer or dispense controlled substances, to the extent authorized under the laws of the jurisdiction in which he or she practices, under the registration of the principal practitioner, in lieu of being registered him/himself; and (2) an individual practitioner who is an agent or employee of a hospital or other institution which is registered with DEA may administer, dispense, or prescribe controlled substances under the registration of the hospital or other institution in lieu of being registered individually, provided that the requirements regarding prescribing as set forth in § 1301.24(c)(1) through (c)(6) are complied with.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this proposed rulemaking will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This proposed rule expands an existing regulatory provision to accommodate recent changes regarding MLPs and government practitioners. This proposed rule is not a significant regulatory action and therefore has not

been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug Enforcement Administration, Drug Traffic Control, Security measures.

For reasons set out above, it is proposed that 21 CFR part 1301 be amended as follows:

PART 1301—[AMENDED]

1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.24 is proposed to be amended by revising paragraphs (b), (c) introductory text and (c)(5) to read as follows:

§ 1301.24 Exemption of agents and employees; affiliated practitioners.

* * * * *

(b) An individual practitioner, as defined in § 1304.02 of this chapter, who is an agent or employee of another individual practitioner (other than a mid-level practitioner) registered to dispense controlled substances may, when acting in the normal course of business or employment, administer or dispense (other than by issuance of prescription) controlled substances if and to the extent that such individual practitioner is authorized or permitted to do so by the jurisdiction in which he or she practices, under the registration of the employer or principal practitioner in lieu of being registered him/herself.

(c) An individual practitioner, as defined in Section 1304.02 of this chapter, who is an agent or employee of a hospital or other institution may, when acting in the normal course of business or employment, administer, dispense, or prescribe controlled substances under the registration of the hospital or other institution which is registered in lieu of being registered him/herself, provided that:

* * * * *

(5) The hospital or other institution authorizes the individual practitioner to dispense or prescribe under the hospital registration and designates a specific internal code number for each individual practioner so authorized. The code number shall consist of numbers, letters, or a combination thereof and shall be a suffix to the institution's DEA registration number, preceded by a hyphen (e.g., AP0123456–10 or AP0123456–A12; and

* * * * *

Dated: June 6, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 94–14470 Filed 6–14–94; 8:45 am]

BILLING CODE 4410–09–M

POSTAL SERVICE

39 CFR Parts 262 and 266

Conforming Postal Regulations to the Computer Matching and Privacy Protection Act of 1988

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend its Privacy Act regulations to incorporate changes made by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503). That Act amended the Privacy Act of 1974 to establish procedures affecting agencies' use of Privacy Act records in performing certain types of computerized matching programs. The proposed rules follow the guidelines issued by the Office of Management and Budget (54 FR 25818, June 19, 1989).

DATES: Comments must be received on or before July 15, 1994.

ADDRESSES: Comments may be mailed or delivered to: Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., room 8831, Washington, DC 20260–5240. Comments may also be delivered to Room 8831 at the above address between 8:15 a.m. and 4:45 p.m., Monday through Friday. Copies of all written comments will be available for inspection and photocopying during the above hours in Room 8831.

FOR FURTHER INFORMATION CONTACT: Sheila Allen, (202) 268–4869.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988 requires an agency to meet certain procedural requirements when using one or more of its Privacy Act systems of records in conducting computer matching programs. Included is the requirement that an agency Data Integrity Board review and approve certain computer matching activities of the agency. The following changes define computer matching under the Act; incorporate some of the Act's procedural requirements, including **Federal Register** publication, submission of matching proposals to the Postal Service, and execution of matching agreements; and describe the responsibilities and makeup of the USPS Data Integrity Board.

List of Subjects in 39 CFR Parts 262 and 266

Definitions, Privacy, Records and information management.

For the reasons set out in this notice, the Postal Service proposes to amend parts 262 and 266 of Title 39 of the Code of Federal Regulations as follows:

PART 262—RECORDS AND INFORMATION MANAGEMENT

1. The authority citation for part 262 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a

2. Paragraphs (c) and (d) are added to § 262.5 as follows:

§ 262.5 Systems (Privacy).

* * * * *

(c) *Computer matching program.* A "matching program," as defined in the Privacy Act, 5 U.S.C. 552a(a)(8), is subject to the matching provisions of the Act, published guidance of the Office of Management and Budget, and these regulations. The term "matching program" includes any computerized comparison of:

(1) A Postal Service automated system of records with an automated system of records of another Federal agency, or with non-Federal records, for the purpose of:

(i) Establishing or verifying the eligibility of, or continuing compliance with, statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of, services with respect to cash or in-kind assistance or payments under Federal benefit programs; or

(ii) Recouping payments or delinquent debts under such Federal benefit programs;

(2) A Postal Service automated personnel or payroll system of records with another automated personnel or payroll system of records of the Postal Service or other Federal Agency or with non-federal records.

(d) *Other computer matching activities.* (1) The following kinds of computer matches are specifically excluded from the term "matching program":

(i) Statistical matches whose purpose is solely to produce aggregate data stripped of personal identifiers.

(ii) Statistical matches whose purpose is in support of any research or statistical project.

(iii) Law enforcement investigative matches whose purpose is to gather evidence against a named person or persons in an existing investigation.

(iv) Tax administration matches.

(v) Routine administrative matches using Federal personnel records, provided that the purpose is not to take any adverse action against an individual.

(vi) Internal matches using only records from Postal Service systems of records: provided that the purpose is not to take any adverse action against any individual.

(vii) Matches performed for security clearance background checks or for foreign counterintelligence.

(2) While these and other matching activities that fall outside the definition of "matching program" are not subject to the matching provisions of the Privacy Act or OMB guidance, other provisions of the Act and of these regulations may be applicable. No matching program or other matching activity may be conducted without the prior approval of the Records Officer.

* * * * *

PART 266—PRIVACY OF INFORMATION

3. The authority citation for part 266 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

§ 266.2 [Amended]

4. Section 266.2 is amended by removing "and" before "(f)" and the period at the end of the paragraph and adding ", and (g) of the establishment or revision of a computer matching program."

5. Paragraph (d) is added to § 266.3 as follows:

§ 266.3 Responsibility.

* * * * *

(d) *Data Integrity Board*—(1) *Responsibilities.* The Data Integrity Board oversees Postal Service computer matching activities. Its principal function is to review, approve, and maintain all written agreements for use of Postal Service records in matching programs to ensure compliance with the Privacy Act and all relevant statutes, regulations, and guidelines. In addition, the Board annually reviews matching programs and other matching activities in which the Postal Service has participated during the preceding year to determine compliance with applicable laws, regulations, and agreements; compiles a biennial matching report of matching activities; and performs review and advisement functions relating to records accuracy, recordkeeping and disposal practices, and other computer matching activities.

(2) *Composition.* The Privacy Act requires that the senior official responsible for implementation of agency Privacy Act policy and the Inspector General serve on the Board. The Records Officer, as administrator of Postal Service Privacy Act policy, serves as Secretary of the Board and performs the administrative functions of the Board. The Board is composed of these and other members designated by the Postmaster General, as follows:

(i) Vice President/Controller (Chairman).

(ii) Chief Postal Inspector in his or her capacity as Inspector General.

(iii) Vice President, Employee Relations.

(iv) General Counsel.

(v) Records Officer (Secretary).

6. Paragraph (b)(6) is added to § 266.4 as follows:

§ 266.4 Collection and disclosure of information about individuals.

* * * * *

(b) * * *

(6) *Computer matching purposes.* Records from a Postal Service system of records may be disclosed to another agency for the purpose of conducting a computer matching program or other matching activity as defined in paragraphs (c) and (d) of § 262.5, but only after a determination by the Data Integrity Board that the procedural requirements of the Privacy Act, the guidelines issued by the Office of Management and Budget, and these regulations as may be applicable are met. These requirements include:

(i) *Routine use.* Disclosure is made only when permitted as a routine use of the system of records. The USPS Records Officer determines the applicability of a particular routine use and the necessity for adoption of a new routine use.

(ii) *Notice.* Publication of new or revised matching programs in the **Federal Register** and advance notice to Congress and the Office of Management and Budget must be made pursuant to paragraph (f) of § 266.5.

(iii) *Computer matching agreement.* The participants in a computer matching program must enter into a written agreement specifying the terms under which the matching program is to be conducted (see § 266.10). The Records Officer may require that other matching activities be conducted in accordance with a written agreement.

(iv) *Data Integrity Board approval.* No record from a Postal Service system of records may be disclosed for use in a computer matching program unless the matching agreement has received approval by the Postal Service Data Integrity Board (§ 266.10). Other matching activities may, at the discretion of the Records Officer, be submitted for Board approval.

* * * * *

7. Paragraph (f) is added to § 266.5 as follows:

§ 266.5 Notification.

* * * * *

(f) *Notification of computer matching program.* The Postal Service publishes in the **Federal Register** and forwards to Congress and the Office of Management and Budget advance notice of its intent to establish, substantially revise, or renew a matching program, unless such notice is published by another participant agency. In those instances in which the Postal Service is the "recipient" agency, as defined in the Act, but another participant agency sponsors and derives the principal benefit from the matching program, the other agency is expected to publish the notice. The notice must be published at least 30 days, and sent to Congress and OMB 40 days, prior to (1) initiation of any matching activity under a new or substantially revised program, or (2) expiration of the existing matching agreement in the case of a renewal of a continuing program.

8. Paragraph (e) is added to § 266.8 as follows:

§ 266.8 Schedule of fees.

* * * * *

(e) The Postal Service may, at its discretion, require reimbursement of its costs as a condition of participation in a computer matching program or activity with another agency. The agency to be charged is notified in writing of the approximate costs before they are incurred. Costs are calculated in accordance with the schedule of fees at § 265.9.

* * * * *

9. Section 266.10 is added as follows:

§ 266.10 Computer matching.

(a) *General.* Any agency or Postal Service component that wishes to use records from a Postal Service automated system of records in a computerized comparison with other postal or non-postal records must submit its proposal to the USPS Records Officer. Computer matching programs as defined in paragraph (c) of § 262.5 must be conducted in accordance with the Privacy Act, implementing guidance issued by the Office of Management and Budget and these regulations. Records

may not be exchanged for a matching program until all procedural requirements of the Act and these regulations have been met. Other matching activities must be conducted in accordance with the Privacy Act and with the approval of the Records Officer. See paragraph (b)(6) of § 266.4.

(b) *Procedure for submission of matching proposals.* A proposal must include information required for the matching agreement discussed in paragraph (d)(1) of this section. The Inspection Service must submit its proposals for matching programs and other matching activities to the USPS Records Officer through:

Independent Counsel, Inspection Service, U.S. Postal Service, 475 L'Enfant Plaza SW., Rm. 3417, Washington DC 20260–2181.

All other matching proposals, whether from postal organizations or other government agencies, must be mailed directly to:

USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Rm. 8831, Washington DC 20260–5240.

(c) *Lead time.* Proposals must be submitted to the USPS Records Officer at least 3 months in advance of the anticipated starting date to allow time to meet Privacy Act publication and review requirements.

(d) *Matching agreements.* The participants in a computer matching program must enter into a written agreement specifying the terms under which the matching program is to be conducted. The Records Officer may require similar written agreements for other matching activities.

(1) *Content.* agreements must specify:

(i) The purpose and legal authority for conducting the matching program;

(ii) The justification for the program and the anticipated results, including, when appropriate, a specific estimate of any savings in terms of expected costs and benefits, in sufficient detail for the Data Integrity Board to make an informed decision;

(iii) A description of the records that are to be matched, including the data elements to be used, the number of records, and the approximate dates of the matching program;

(iv) Procedures for providing notice to individuals who supply information that the information may be subject to verification through computer matching programs;

(v) Procedures for verifying information produced in a matching program and for providing individuals an opportunity to contest the findings in accordance with the requirement that an agency may not take adverse action against an individual as a result of information produced by a matching program until the agency has independently verified the information and provided the individual with due process;

(vi) Procedures for ensuring the administrative, technical, and physical security of the records matched; for the retention and timely destruction of records created by the matching program; and for the use and return or destruction of records used in the program;

(vii) Prohibitions concerning duplication and redisclosure of records exchanged, except where required by law or essential to the conduct of the matching program;

(viii) Assessments of the accuracy of the records to be used in the matching program; and

(ix) A statement that the Comptroller General may have access to all records of the participant agencies in order to monitor compliance with the agreement.

(2) *Approval.* Before the Postal Service may participate in a computer matching program or other computer matching activity that involves both USPS and non-USPS records, the Data Integrity Board must have evaluated the proposed match and approved the terms of the matching agreement. To be effective, the matching agreement must receive approval by each member of the Board. Votes are collected by the USPS Records Officer. Agreements are signed on behalf of the Board by the Chairman. If a matching agreement is disapproved by the Board, any party may appeal the disapproval in writing to the Director, Office of Management and Budget, Washington, DC 20503–0001, within 30 days following the Board's written disapproval.

(3) *Effective dates.* No matching agreement is effective until 40 days after the date on which a copy is sent to Congress. The agreement remains in effect only as long as necessary to accomplish the specific matching purpose, but no longer than 18 months, at which time it expires unless extended. The Data Integrity Board may extend an agreement for one additional year, without further review, if within 3 months prior to expiration of the 18-month period it finds that the matching program is to be conducted without change, and each party to the agreement certifies that the program has been conducted in compliance with the matching agreement. Renewal of a continuing matching program that has run for the full 30-month period requires a new agreement that has received Data Integrity Board approval

Stanley F. Mires,

Legislative Division.

[FR Doc 94–14561 Filed 6–14–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI32–01–5763b; FRL–4892–2]

Approval and Promulgation of Implementation Plan; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: United States Environmental Protection Agency (USEPA) proposes full approval of Wisconsin's 1990 base year ozone (O_3) emission inventory as a revision to the Wisconsin State Implementation Plan (SIP) for O_3. The inventory was submitted by the State of Wisconsin to satisfy a Federal requirement that those States containing O_3 nonattainment areas (NAAs) classified as marginal to extreme submit inventories of actual O_3 season emissions from all sources in accordance with USEPA guidance. In the final rules section of this **Federal Register**, USEPA is approving the State's SIP revision as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received on this direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. USEPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time

DATES: Comments on this proposed rule must be received before July 15, 1994

ADDRESSES: Written comments can be mailed to Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the SIP revision and USEPA's analyses are available for inspection at the following

address: (It is recommended that you telephone Charles Hatten at (312) 886–6031 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Charles Hatten (312) 886–6031.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 18, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–14534 Filed 6–14–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MI19–01–5990; FRL–4999–2]

Disapproval of Clean Air Act PM Implementation Plan for Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The USEPA today proposes disapproval of the State Implementation Plan (SIP) submitted by the State of Michigan for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM), because USEPA finds unapprovable provisions in the consent orders submitted as part of the SIP revision. The implementation plan was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment area PM SIP for Wayne County, Michigan.

DATES: Comments on this proposed action must be received in writing by July 15, 1994.

ADDRESSES: Comments should be addressed to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: (It is recommended that you telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 353–8328.

SUPPLEMENTARY INFORMATION:

I. Background

Michigan was previously required to modify its particulate matter SIP by the Clean Air Act Amendments of 1977. On May 22, 1981 (46 FR 27923), USEPA conditionally approved portions of Michigan's part D Total Suspended Particulates (TSP) SIP. In response to USEPA's conditional approval the Michigan Department of Natural Resources (MDNR) submitted on May 17, 1985 revised rules, which were effective at the State level on February 22, 1985 to control TSP from iron and steel sources and from other sources in the State.

On August 7, 1987 (52 FR 29383), USEPA categorized areas of the Nation into three groups based on the likelihood that protection of the PM NAAQS would require revision of the existing SIP. The USEPA identified the entire Wayne County, Michigan area as a PM "Group I" area of concern, i.e., an area with a strong likelihood of violating the PM NAAQS and requiring substantial SIP revision. This Group I area was reduced in size on October 31, 1990 and was subsequently designated nonattainment for PM (55 FR 45799), and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (November 6, 1991).

On June 11, 1992 (57 FR 24752), USEPA published a final rule which approved certain sections of the State's May 17, 1985 submittal, because the submittal represented an overall strengthening of the existing Michigan SIP and would contribute to general improvement of ambient air quality statewide, and disapproved other sections.

The amended Act required moderate PM nonattainment area SIP submittals by November 15, 1991. On November 19, 1991 USEPA received revisions to the Michigan SIP for the Wayne County PM nonattainment area. The USEPA reviewed the submittal for completeness and found the submittal to be incomplete. The USEPA made a finding pursuant to section 110(k)(1)(C) of the Act that the State failed to submit a complete SIP and notified the Governor in a letter dated December 17, 1991. See 57 FR 19906 (May 8, 1992). The USEPA's finding of incompleteness activated the 18-month clock which could have resulted in the imposition of sanctions pursuant to section 179 of the Act. On June 11, 1993 the State submitted to USEPA new revisions for the Wayne County PM nonattainment area SIP. The submittal was found to be complete pursuant to section 110(k)(1) of the Act and USEPA notified the State accordingly. This completeness determination corrected the State's deficiency under section 179 of the Act and, therefore, discharged the 18-month sanctions clock.

On April 7, 1994 the State submitted to USEPA a SIP revision for the Marblehead Lime Company, River Rouge, Michigan. This submittal supersedes the portion of the June 11, 1993 Wayne County PM nonattainment area SIP submittal applicable to the Marblehead Lime, River Rouge facility.

The air quality planning requirements for moderate PM nonattainment areas are set out in subparts 1 and 4 of title I of the Act.[2] The USEPA has issued a "General Preamble" describing USEPA's preliminary views on how USEPA intends to review SIP's and SIP revisions submitted under title I of the Act, including those State submittals containing moderate PM nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because USEPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on the Michigan moderate PM SIP, USEPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, USEPA will consider any timely

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[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM-10 nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

submitted comments before taking final action on today's proposal.

Those States containing initial moderate PM nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1992;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM also apply to major stationary sources of PM precursors except where the Administrator determines that such sources do not contribute significantly to PM levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions were due at a later date. States with initial moderate PM nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM by June 30, 1992 (see section 189(a)). Such States also were to submit contingency measures by November 15, 1993 which become effective without further action by the State or USEPA, upon a determination by USEPA that the area has failed to achieve RFP or to attain the PM NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543–13544. These provisions will be addressed in separate rulemaking actions.

II. In This Action

Section 110(k) of the Act sets out provisions governing USEPA's review of SIP submittals (see 57 FR 13565–13566). In this action, USEPA is proposing to disapprove the SIP revision submitted by the State of Michigan to USEPA on June 11, 1993 which completed the attainment plan for Wayne County, because it does not meet all of the applicable requirements of the Act. The USEPA will consider any comments submitted during the public comment period before taking final action on today's proposal.

A. Analysis of State Submission

The State's June 11, 1993 submittal consisted primarily of 31 consent orders between the State and PM sources. The air quality dispersion modeling conducted is based upon control measures, limitations, and conditions contained in these orders. The USEPA is proposing to disapprove the State's submittal because USEPA finds unacceptable language in the consent orders submitted for approval into the Michigan SIP. If the State removes the unacceptable language, or replaces it with the previously approved version as detailed below, and submits revised consent orders, the proposed disapproval will be changed to an approval when USEPA takes final action on this submittal.

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] See also section 110(l) of the Act. The USEPA also must determine whether a submittal is complete and therefore warrants further USEPA review and action (see section 110(k)(1) and 57 FR 13565). The USEPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The USEPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by USEPA 6 months after receipt of the submission.

The State of Michigan held a public hearing on March 30, 1993 to receive public comment on the implementation plan for the Wayne County nonattainment area. Following the public hearing the plan was adopted by the State and signed by the Governor's designee and submitted to USEPA on June 11, 1993 as a proposed revision to the SIP.

The SIP revision was reviewed by USEPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete and a letter dated June 30, 1993 was forwarded to the Director, Michigan Department of Natural Resources, indicating the completeness of the submittal and the next steps to be taken in the review process. The State's submittal of a complete SIP stopped the sanctions clock triggered by USEPA's December 17, 1991 finding that Michigan's November 15, 1991 submittal was incomplete. As noted in today's action USEPA proposes to disapprove the Michigan PM SIP submittal for Wayne County.

In addition, the State of Michigan held a public hearing on February 16, 1994 to receive public comment on the implementation plan revision for the Marblehead Lime Company, River Rouge, Michigan. Following the public hearing the plan was adopted by the State and signed by the Governor's designee and submitted to USEPA on April 7, 1994 as a proposed revision to the June 11, 1993 SIP submittal applicable to the Marblehead Lime, River Rouge facility.

2. Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of such inventories are necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission (see 57 FR 13539).

The State provided thorough documentation of its emissions estimates for all sources in the nonattainment area for a 1985 base year. The Wayne County area was shown to include 31 facilities. The allowable emission rates were calculated based on limits contained in Michigan's part 3 Air Pollution Particulate Regulations, limits contained in State permits, and limits contained in State consent orders. Emissions from roadways and other area source types are estimated in accordance with procedures specified in AP–42 and USEPA's guidance document, "Control of Open Fugitive Dust Sources", using inputs that are judged to provide reasonable estimates of these emissions.

[3] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

The significant sources in the nonattainment area are: (1) Stack sources; (2) process fugitive emissions; and (3) area sources such as roadways and storage piles. The majority of the facilities in the nonattainment area were able to demonstrate attainment of the PM NAAQS with RACT level of control. For facilities where this RACT level of control was insufficient to demonstrate attainment, certain limits were lowered, and various operating conditions were modified to secure enough additional reductions to demonstrate attainment. Refinements to existing fugitive dust plans were made according to the control efficiencies predicted by USEPA's "Open Fugitive Dust Source Computer Model". These emission limits, production limits, and fugitive dust plans are incorporated into the consent orders submitted for approval into the Michigan SIP. For further details see the Technical Support Document (TSD).

The USEPA finds that the emissions inventory generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act. [4]

3. RACM (Including RACT)

As noted, the initial moderate PM nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of USEPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561).

The USEPA has previously judged that existing TSP regulations applicable to point sources and contained in part 3 of Michigan's Air Pollution Control Commission Rules provide for RACT and have already been incorporated into the Michigan SIP (57 FR 24752, June 11, 1992). The attainment needs of this area are such that additional measures as provided in the current submittal may be considered reasonably available. At the same time, further controls beyond those required in the submittal and necessary for assuring attainment would not be considered reasonable, unless those measures would provide for earlier attainment. (See the General Preamble at 57 FR 13560).

For fugitive dust sources, generic RACT control efficiencies were applied to potential emissions based on whether a facility had, and was implementing, a fugitive dust plan submitted to and approved by the Air Pollution Control Commission [5]. The generic RACT efficiencies and their percent control, as recommended by the Wayne County Air Pollution Control Division, are: unpaved roads and lots, 75 percent; paved roads and lots, 35 percent; and storage piles and storage pile activities, 50 percent.

The USEPA has reviewed the State's explanation and associated documentation and concluded that it adequately justifies the control measures to be implemented. The consent orders in Michigan's submittal provide for compliance by October 1, 1993 and the implementation of the nonattainment plan control strategy will result in the attainment of the PM NAAQS by December 31, 1994, therefore satisfying the requirements of sections 172(c)(1) and 189(a)(1)(C) of the Act.

4. Demonstration of Attainment

As noted, the initial moderate PM nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (See section 189(a)(1)(B) of the Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable.

The MDNR conducted an attainment demonstration using dispersion modeling for the Wayne County nonattainment area. This demonstration indicates that the NAAQS for PM will be attained by 1994 in Wayne County and maintained in future years. The 24-hour PM NAAQS is 150 micrograms/cubic meter ($\mu g/m^3$), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ is equal to or less than one. See 40 CFR 50.6. The annual PM NAAQS is 50 $\mu g/m^3$, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu g/m^3$. The dispersion modeling in the demonstration predicted 146.3 $\mu g/m^3$ as the 24-hour design concentration, thus demonstrating attainment of the 24-hour PM NAAQS. The dispersion modeling in the demonstration predicted 49.5 $\mu g/m^3$ as the annual design concentration, thus demonstrating attainment of the annual PM NAAQS. The control strategy used to achieve these design concentrations is summarized in the section titled "RACM (including RACT)".

Several factors help assure that the Wayne County nonattainment area will maintain as well as attain the standard. First, a substantial majority of emissions in the area are from industrial sources and were modeled either with maximum allowable emissions (for point sources) or with emissions at the sources' full capacity operation (for area sources). Thus, the only opportunities for growth in the inventory beyond the modeled inventory are new source construction and growth in public area sources. The new source review program assures that new sources will not create violations of the air quality standards. For public area source emissions, the Southeast Michigan Council of Governments (SEMCOG) compiled estimates of daily vehicle miles traveled (VMT) in Wayne County for a 1985 base year. To account for VMT growth in Wayne County, SEMCOG reran their transportation models for the year 2005. The resulting VMT projections were compared to the 1985 base year case and showed a net increase in PM emissions. The increase in emissions, however, has already been accounted for in the attainment demonstration. Michigan's modeling analysis, reflecting emissions in 2005, yielded a design value of 146.3 $\mu g/m^3$. Extrapolating back to 1994 would yield a design value of 146.1 $\mu g/m^3$. Therefore, the State of Michigan has demonstrated maintenance of the air quality standard of 150 $\mu g/m^3$ through the year 2005. See the TSD for a more detailed description of the attainment demonstration and the control strategy used.

5. PM Precursors

The control requirements which are applicable to major stationary sources of PM, also apply to major stationary sources of PM precursors unless USEPA determines such sources do not contribute significantly to PM levels in excess of the NAAQS in that area (see section 189(e) of the Act).

An analysis of air quality and emissions data for the Wayne County nonattainment area indicates that exceedances of the NAAQS are attributable solely to direct PM emissions from stack sources, process fugitive emissions, and area sources such as roadways and storage piles, and not sources of PM precursors. Consequently, USEPA is proposing to find that major sources of precursors of

[4] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM–10 SIP Development Guideline. The guidance provided in this document appears to be consistent with the Act.

[5] Michigan eliminated the Air Pollution Control Division in a recent reorganization. MDNR now handles the responsibilities of the former division.

PM do not contribute significantly to PM levels in excess of the NAAQS. The consequences of this finding are to exclude these sources from the applicability of PM nonattainment area control requirements. Note that while USEPA is making a general finding for this area, today's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area The USEPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). Reasonable further progress is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

As discussed in the General Preamble (57 FR 13539), attainment plans for moderate areas which demonstrate attainment by December 31, 1994 will satisfy the initial quantitative milestone requirement. The consent orders included in Michigan's SIP submittal require compliance by October 1, 1993. Given this requirement and the fact that Wayne County demonstrates attainment by 1994, USEPA believes the State's submission clearly satisfies the initial quantitative milestone requirement and demonstrates RFP.

7. Enforceability Issues

Sections 110(a)(2)(A) and 172(c)(6) of the Act, 42 U.S.C. 7410(a)(2)(A) and 7502(c)(6), require that each SIP include emission limitations and other control measures, means or techniques, and schedules or timetables for compliance which are enforceable by the State and by USEPA. See also 57 FR 13556. In addition, States must include in their nonattainment area SIPS a program to provide for the enforcement of the measures described in the SIP. 42 U.S.C. 7410(a)(2)(C). The USEPA criteria addressing the enforceability of SIPs and SIP revisions were provided in a September 23, 1987 memorandum (with attachments) from Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541).

The State of Michigan identified in its submittal particular control measures for stack sources, process fugitive dust emissions, and area sources such as roadways and storage piles. These control measures are addressed in the section entitled "RACM (including RACT)," above. In its submittal, the State specifies how each control measure or limit is made enforceable. The majority of the control measures are contained in the existing TSP regulations and, therefore, are enforceable as part of the existing Michigan SIP. Some of the control measures and applicable recordkeeping requirements, particularly those dealing with area sources of PM, are contained in the 31 consent orders which the State has requested that USEPA approve as part of the Michigan SIP.

The USEPA finds the consent orders are not approvable as part of the Michigan SIP for two reasons. First, each of the 31 consent orders contains a provision (paragraph 11) which allows for the substitution of "equivalent" particulate and fugitive dust control measures. The consent orders provide that a company subject to an order may revise the control programs contained in the order provided that, among other things, neither MDNR nor USEPA objects to the revision within 45 days of receipt of the proposal. The USEPA finds that this means of modifying the control requirements contained in a consent order, which would also (if approved) become part of the Michigan SIP, is inappropriate because it bypasses the Act's substantive and procedural requirements for SIP revisions. See sections 110(a)(2) and 110(i) of the Act, 42 U.S.C. 7410(a)(2) and 7410(i).[6]

By letter dated October 5, 1992 USEPA Region 5 informed MDNR that it could provide sources some flexibility by revising paragraph 11 to permit use of those measures specifically outlined in USEPA's PM–10 Open Fugitive Dust Source Computer Model Package (EPA–450/3–90–010). More details on this mechanism are provided in the October 5, 1992 letter and USEPA's TSD. In its submission, however, Michigan did not revise the orders to include this suggested approach.

Consistent with the above, if, during the public comment period, MDNR revises paragraph 11 to delete the provision for substitution of "equivalent" measures, this portion of the consent orders may be approved. In the alternative, MDNR may permit the use of the measures identified in the Agency's fugitive dust model, in lieu of the provision for substitution of "equivalent" measures, in accordance with USEPA's October 5, 1992 letter.

In addition, each of the 31 consent orders provides for termination upon the issuance of an operating permit pursuant to title V of the Act (paragraph 12). Each title V operating permit, however, must include all Clean Air Act provisions necessary to assure compliance with the applicable requirements of the Act, including those in the SIP. See 42 U.S.C. 7661c(a). Therefore, the requirements contained in the title V operating permit are to be those substantive requirements applicable under other provisions of the Act, such as the SIP. For that reason, the consent orders must not expire, even following issuance of the operating permits.[7] The TSD contains further information on the enforceability of the consent orders.

8. Lignin sulfonate Dust Suppressant

As stated earlier, MDNR used USEPA's "Open Fugitive Dust Source Computer Model" to determine control efficiencies for various combinations of chemical application rates and treatment frequencies applicable to fugitive dust roadway emissions. The model lists watering or chemical suppressants as two possible control options for unpaved roads. Average efficiency curves were generated for four chemical dust suppressants and, because there was little data available at the time, the program was designed to be very general without any reference to a specific chemical or brand name. The model allows for comparisons between watering and chemicals, and between the chemicals originally considered in the generation of the model, but not for the substitution of suppressants other than the four types originally considered by the model. Lignin sulfonate was not one of the four chemicals originally evaluated by USEPA's model.

[6] It should be noted that USEPA regulations promulgated pursuant to title V of the Act contain provisions under which alternative, equivalent emission limits may be incorporated in a title V permit. See 40 CFR 70.6(a)(iii). However, these provisions are applicable solely in the context of title V permits, and then only if the specific requirements in that rule have been met. The USEPA further notes that Michigan does not presently have a federally approved title V program.

[7] The USEPA would not consider a valid termination of the consent orders included in the SIP to have occurred unless and until: The State issues a title V permit that contains the provisions in the consent order; the State submits to USEPA a SIP revision providing for replacement of the consent order with the substitute permit; and USEPA approves the permit provisions as a SIP revision.

Ligninsulfonate has been utilized as a dust suppressant since the early 1900's in Sweden and its use in this country dates to the 1940's. Only one company in the nonattainment area (Levy, at five locations) currently uses ligninsulfonate for dust suppression. The MDNR investigated the relationship between the control efficiencies for lignin suppressants relative to the ones considered in the computer model to correlate the use of lignins to the use of the original four suppressants. MDNR determined that if lignins are applied at a chemical rate 2.3 times that of the chemicals considered in USEPA's computer model, then the efficiency predicted by the model can be applied to uncontrolled emission rates from unpaved roads being treated with ligninsulfonate given equal treatment frequencies. The USEPA believes that the data that has been submitted by the State of Michigan is comparable to the original data used to determine the control efficiencies of the dust suppressants included in the model, and, therefore, is adequate to technically support the use of ligninsulfonate as an alternative suppressant. See the TSD for further details.

9. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures. See generally 57 FR 13543–13544. These measures should consist of other available measures that are not part of the area's control strategy and must take effect without further action by the State or USEPA, upon a determination by USEPA that the area has failed to make RFP or attain the PM NAAQS by the applicable statutory deadline. As noted, States with initial moderate nonattainment areas were not required to submit the contingency measures required in section 172(c)(9) until November 15, 1993. The USEPA will determine the adequacy of such submittal as appropriate in a separate rulemaking.

III. Implications of This Action

The USEPA is proposing to disapprove in its entirety the SIP revision submitted by the State of Michigan on June 11, 1993 for the Wayne County PM nonattainment area because USEPA finds unapprovable provisions in each of the 31 consent orders submitted as part of the SIP revision. If the State removes the unacceptable language in paragraph 11, or replaces it with the previously approved version mentioned above, and removes paragraph 12 in each of the 31 consent orders, and submits revised consent orders which USEPA finds acceptable, the proposed disapproval would be changed to an approval when USEPA takes final action on this submittal. If finalized, this disapproval would constitute a disapproval under section 179(a)(2) of the Act (see generally 57 FR 13566–13567). As provided under section 179(a) of the Act, the State of Michigan would have up to 18 months after a final SIP disapproval to correct the deficiency that is the subject of the disapproval before USEPA is required to impose either the highway funding sanction or the requirement to provide two-to-one new source review offsets. If the State has not corrected its deficiency within 6 months thereafter, USEPA must impose the second sanction. Any sanction USEPA imposes must remain in place until USEPA determines that the State has come into compliance.

IV. Request for Public Comments

The USEPA is requesting comments on all aspects of today's proposal, including USEPA's proposed decision to impose the two to one new source review offset requirement as the first sanction should USEPA ultimately disapprove this submittal in whole or in part and the State fails to timely remedy the deficiency. As indicated at the outset of this document, USEPA will consider any comments received by July 15, 1994.

V. Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Office of Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. OMB has exempted this regulatory action from E.O. 12866 review.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The USEPA's disapproval of the State request under section 110 and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not impose any new Federal requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 2, 1994.

Michelle D. Jordan,

Acting Regional Administrator

[FR Doc. 94–14538 Filed 6–14–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[OPP–300339/FRL–4780–6]

RIN No. 2070–AC18

Definitions and Interpretations; Oriental Radish

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that 40 CFR 180.1(h) be amended to add EPA's interpretation for the application of tolerances and exemptions from the requirement of a tolerance established for pesticide chemicals in or on the raw agricultural commodity oriental radish. The proposed amendment to 40 CFR 180.1(h) is based, in part, on recommendations of the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [OPP-300339], must be received on or before July 15, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: Paragraph (h) of 40 CFR 180.1 provides a listing of general commodity terms and EPA's interpretation of those terms as they apply to tolerances and exemptions from the requirement of a tolerance for pesticide chemicals under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a. General commodities are listed in column A of 40 CFR 180.1(h), and the corresponding specific commodities, for which tolerances and exemptions from the requirement of a tolerance established for the general commodity apply, are listed in column B. The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has requested that 40 CFR 180.1(h) be amended to add the commodity term "oriental radish (root and tops)" to the general category of commodities in column A and to add the corresponding specific commodities "*Raphanus sativus* var. *longipinnatus* (root and tops), including Chinese or Japanese radish (both white and red), winter radish, daikon, lobok, lo pak, and other cultivars and/or hybrids of these" to column B.

The amendment is being requested to establish a commodity definition for oriental radishes for tolerance-setting purposes and to identify the specific commodities which comprise the general category of oriental radishes. In February 1990, in response to a request from the Hawaii Department of Agriculture for EPA to establish a commodity definition for radish to include Japanese and other oriental radishes, the Agency determined that tolerances set for the common radish will not apply to oriental radishes but that it would be appropriate to add a general commodity definition for "oriental radish" for tolerance purposes to cover the wide variety of forms and cultivars which constitute oriental radishes.

The crop group regulations in 40 CFR 180.34(f) enable the establishment of tolerances for a group of related crops. Once the crop group tolerance is established, the tolerance level applies to all raw agricultural commodities within the group, unless a crop is specifically excluded. Currently, Japanese radish (daikon) is included in the Root and Tuber Vegetables group (40 CFR 180.34(f)(9)(i)) and in the Leaves of Root and Tuber Vegetables group (40 CFR 180.34(f)(9)(ii)), but is not covered by individual tolerances for radishes. If this proposed action to amend 40 CFR 180.1(h) is finalized, EPA will initiate revisions to 40 CFR 180.34(f)(9)(i) and (ii) and to any existing tolerance regulations for Chinese or Japanese radishes to reflect the change in nomenclature to "oriental radish."

EPA has completed an evaluation of the proposed amendment and concludes that pesticide residues in the various cultivars of *Raphanus sativus* var. *longipinnatus* are expected to be similar when equal amounts of pesticide are applied for control of a common pest. Radishes are generally affected by the same pest and disease problems as other members of the mustard (Cruciferae) family, such as the cabbages. The major insect pest of radishes is root maggots that attack the roots.

All radishes are forms and species of the genus *Raphanus* and members of the Cruciferae family. Radishes are cool season crops grown as annuals. Seeds are planted in the fall, and the roots enlarge in the cool months.

Most oriental radishes have roots weighing between 3 and 5 pounds; however, Japanese radishes may produce large roots up to 40 to 50 pounds, and their leafy tops can spread to more than 2 feet. They also require a longer growing season (50 to 60 days) than the common radish.

Chinese radish roots can weigh up to 100 pounds, but most are 10 to 20 pounds at maturity, and in Florida the average is 20 pounds. Other oriental radishes have an average weight of 1 to 2-1/2 pounds. Roots range in length from 18 to 24 inches and vary in shape from round to elongated and cylindrical. Colors include white, pink, red, purple, black, and occasionally dark brown

Cultivars of radishes are classified into three types, depending on the number of days it takes the root to mature: (1) spring cultivars, ready to harvest in 20 to 30 days; (2) summer cultivars, ready to harvest in 35 to 40 days; and (3) winter cultivars, ready to harvest in 50 to 60 days and as high as 90 days.

Oriental radishes are usually available all year, mostly from Hawaii and California, with smaller amounts from Florida. The fall and winter roots are milder than the spring and summer radish production which are more pungent. The oriental radishes are eaten fresh (raw) or pickled like cucumbers or grated, chopped, or sliced for use in stir-fry or sushi dishes. Leaves are used like turnip tops as a salad or soup green.

At present, the most common type of oriental radish planted in the U.S. is the daikon or Japanese radish. There are presently many cultivars, plus several new and improved cultivars and hybrids being developed for increased disease resistance, earlier production, and better winter hardiness that will give the grower several options to respond to consumer demand.

Based on the above information, the Agency concludes that it is appropriate that the general commodity "oriental radish (root and tops)" should be interpreted for tolerance purposes to include the corresponding specific commodities "*Raphanus sativus* var. *longipinnatus* (root and tops), including Chinese or Japanese radish (both white and red), winter radish, daikon, lobok, lo pak, and other cultivars and/or hybrids of these." Therefore, it is proposed that the changes to 40 CFR 180.1(h) be made as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300339]. All written comments filed in response to this proposal will be available in the Public Response and Program Resources Branch, at the address given above from

8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Although this regulation does not establish or raise a tolerance level or establish an exemption from the requirement of a tolerance, the impact of the regulation would be the same as establishing new tolerances or exemptions from the requirement of a tolerance. Therefore, the Administrator concludes that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 31, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1(h) is amended by adding and alphabetically inserting the general commodity "oriental radish (root and tops)" in column "A" and the corresponding specific commodities "*Raphanus sativus* var. *longipinnatus* (root and tops), including Chinese or Japanese radish (both white and red), winter radish, daikon, lobok, lo pak, and other cultivars and/or hybrids of these" in column "B" to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
. .	. . . . .
Oriental radish (root and tops)	*Raphanus sativus* var. *longipinnatus* (root and tops), including Chinese or Japanese radish (both white and red), winter radish, daikon, lobok, lo pak, and other cultivars and/or hybrids of these.
. .	. . . . .

* * * * *

[FR Doc. 94-14421 Filed 6-14-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 2E4070/P581; FRL-4780-5]

RIN 2070-AC18

Pesticide Tolerances for Benomyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to recodify tolerances for combined residues of the fungicide benomyl and its metabolites in or on the raw agricultural commodities avocado, dandelion, and papaya. This amendment, which was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4), would establish tolerances for regionally restricted registration of the pesticide on these commodities.

DATES: Comments, identified by the document control number [PP 2E4070/P581], must be received on or before July 15, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 2E4070 to EPA on behalf of the Agricultural Experiment Stations of Florida and Puerto Rico. This petition requests that EPA recodify tolerances established pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), for combined residues of the fungicide benomyl, methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate, and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the raw agricultural commodities avocado and papaya at 3 parts per million (ppm) and dandelion at 10 ppm. Specifically, IR-4 proposes that EPA remove the tolerances for avocado, dandelion, and papaya from 40 CFR 180.294(a) and insert these tolerances under 40 CFR 180.294(b), which lists tolerances established in support of regional registration. This amendment would regionally restrict registration for use of benomyl on dandelion and papaya to Florida and use on avocado to Florida and Puerto Rico.

IR-4's request is in response to EPA's reregistration review of benomyl, which determined that the available residue data are adequate to support continued registration for use of benomyl on dandelion and papaya in Florida and

avocado in Florida and Puerto Rico. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed action include:

1. Metabolism studies in mice indicate that benomyl is primarily metabolized to methyl 2-benzimidazole carbamate (MBC), which is converted to 2-aminobenzamidole and 5-OH-MBC. Elimination of metabolites occurs rapidly in urine and feces, with no unusual localization of benomyl or its metabolites in animal tissues.

2. A 2-year feeding study in dogs with a no-observed-effect level (NOEL) of 500 ppm (equivalent to 12.5 milligrams (mg)/kilogram (kg)/day. Biochemical changes, hepatic cirrhosis, decreased weight gain and lower food consumption were observed at a feeding level of 2,500 ppm (equivalent to 125 mg/kg/day).

3. A three-generation reproduction study with rats fed diets containing 0, 100, 500, or 2,500 ppm (equivalent to 0, 5, 25, or 125 mg/kg/day) with a NOEL of 100 ppm based on decreased pup weanling weights at the 500 ppm and 2,500 ppm feeding levels.

4. Benomyl and MBC have been shown to cause developmental toxicity in rats. The most common abnormality in studies with rats was microphthalmia. With benomyl, anomalies observed in mice included short and/or kinky tail, fused vertebrae, fused ribs, and cleft palate. NOEL's for developmental toxicity are established at 30 mg/kg/day for rats and 50 mg/kg/day for mice for benomyl. For MBC the NOEL for developmental toxicity in rats is established at 10 mg/kg/day.

5. Mutagenicity studies indicate that benomyl and MBC have weak mutagenic activity that is primarily attributable to adverse effects on the cellular spindle apparatus. Both compounds produced positive effects in tests to assess structural chromosome aberrations, which is consistent with a cellular spindle effect. Equivocal results were obtained in studies performed to assess gene mutation, while tests for other genotoxic effects were negative.

6. A 2-year feeding/carcinogenicity study with rats fed diets containing 0, 100, 500, or 2,500 ppm of benomyl with a NOEL of 2,500 ppm (equivalent to 125 mg/kg/day). There were no carcinogenic or systemic effects observed under the conditions of the study.

7. A 2-year carcinogenicity study with rats fed diets containing 0, 100, 500, 2,500/10,000 or 5,000 ppm of MBC (equivalent to 0, 5, 25, 125/500 or 250 mg/kg/day). There were no carcinogenic effects observed under the conditions of the study.

8. Carcinogenicity studies for benomyl and MBC were conducted with CD-1 mice fed diets containing 0, 500, 1,500 or 7,500/5,000 ppm benomyl or 0, 500, 1,500, 7,500 (females) or 7,500/3,750 (males) ppm MBC. The high dose for benomyl was reduced to 5,000 ppm at 37 weeks in males and females due to weight loss, and the high dose for MBC was reduced to 3,750 at 66 weeks in males due to increased mortality; all males were sacrificed at 73 weeks. Both studies resulted in an increased incidence of benign or combined malignant and benign tumors of the liver. The tumorigenic responses were found to be compound related, e.g., they occurred with significant positive trends, and the elevated incidences exceeded historical rates for these tumor responses. The responses were also associated with foci of cellular alterations that are considered preneoplastic and imply that there is a progression of hepatic lesions.

9. Carcinogenicity studies for MBC were also conducted with Swiss SPF mice and HOE NMRKf mice. Liver tumors were observed in studies using Swiss SPF mice, but there were no carcinogenic effects observed with HOE NMRKf mice.

The Agency has classified benomyl and MBC as Group C carcinogens (possible human carcinogens). This classification is based on the Agency's "Guidelines for Carcinogen Risk Assessment," published in the **Federal Register** of September 24, 1986 (51 FR 33992). The decision supporting classification of benomyl and MBC as possible carcinogens (Group C) rather than probable carcinogens (Group B) is based primarily on the following:

1. The 2-year carcinogenicity study with rats was negative for carcinogenic effects.

2. The carcinogenic responses observed with benomyl and its metabolite MBC were confined to the mouse liver.

3. The liver tumors produced by benomyl and MBC were observed in two genetically related strains of mice (CD-1 and SPF Swiss), which are known to have high background incidence rates of liver tumors; there was no increased incidence of liver tumors observed in HOE NMRKf mice.

4. Benomyl produced weak mutagenic effects consistent with cellular spindle poison activity rather than gene mutation. This pattern of mutagenic activity correlates with the observed developmental toxicity of benomyl.

EPA announced in the **Federal Register** of December 6, 1977 (42 FR 61788), that a Special Review for benomyl had been initiated based on information indicating that benomyl posed risks of mutagenicity (point mutation and chromosomal aberrations), spermatogenic depression and teratogenic effects, acute toxicity to aquatic organisms, and significant population reduction in nontarget organisms.

In the **Federal Register** of August 30, 1979 (44 FR 51166), the Agency issued a Preliminary Notice of determination, which concluded that benomyl continued to pose the risks noted above with the exception of point mutations and significant population reductions in nontarget organisms. In the Notice and the accompanying Position Document 2/3, the Agency weighed the risks and benefits of use together and determined that certain modifications to the terms and conditions of use were necessary to reduce the risks to applicators.

Prior to the publication of the final benomyl regulatory decision, the Agency received new studies (the mice carcinogenicity studies discussed above), indicating that benomyl and its major metabolite MBC are carcinogenic. The Agency's position concerning the Special Review for benomyl was published in the **Federal Register** of October 20, 1982 (47 FR 46747). In the Notice of Determination Concluding the Special Review for benomyl, the Agency determined that the benefits exceed the risk from use of benomyl products if a dust mask is used when mixing and loading for aerial application. Registrants were required to amend their product labels to require use of a dust mask for persons who mix and load benomyl for aerial application.

More recently, dietary risk assessments have been conducted for benomyl in association with the requested recodification of tolerances for avocado, dandelion, and papaya. These risk assessments were conducted for MBC since benomyl readily hydrolyzes to MBC. Dietary risk assessments were conducted based on percent of the Reference Dose (RfD) utilized, carcinogenicity, and developmental toxicity. The results of these risk assessments are as follows:

Percent RfD utilized

An RfD for MBC was calculated of 0.033 mg/kg bwt/day by dividing the benomyl RfD of 0.05 mg/kg body weight (bwt)/day by 1.53, the ratio of the molecular weight of benomyl to the

molecular weight of MBC. The benomyl RfD is based on a NOEL of 5 mg/kg bwt/day from the three-generation rat reproduction study and an uncertainty factor of 100.

Available information on anticipated residues and percent of crop treated was incorporated into this analysis to estimate the Anticipated Residue Contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance-level residues and 100 percent crop treated. The ARC from existing tolerances (including avocado, dandelion, and papaya) is estimated at 0.000248 mg/kg bwt/day and utilizes 0.8 percent of the RfD. The ARC for children aged 1 through 6 years old (the subgroup most highly exposed) utilizes 1.4 percent of the RfD.

Cancer Risk Assessment

The upper-bound carcinogenic risk from benomyl-derived MBC for the U.S. population from existing tolerances is estimated at 1×10^{-6}. The carcinogenic risk assessment was based on an upper-bound potency estimator (Q^*) for MBC of $4.2 \times 10^{-3*}$ and assumes a 70-year lifetime exposure. This estimate is within the range of carcinogenic risk that EPA generally considers negligible.

Developmental toxicity

The population group of interest for this assessment is females aged 13 and above, the subgroup that most closely approximates women of child-bearing age. EPA divided the calculated exposure of the highest exposed individual in this population subgroup (0.1 mg/kg bwt/day) into the developmental NOEL for MBC of 10 mg/kg bwt/day to get a Margin of Exposure of 100. This means that the persons most highly exposed to benomyl-derived MBC in their diet would receive 1/100 the dose that represents the NOEL from rat studies for developmental toxicity for MBC. Less than 1 percent of the population of females 13 or older are exposed through the diet to MBC at 0.1 mg/kg bwt/day or higher. For developmental toxicity, the Agency is not generally concerned unless the Margin of Exposure is below 100.

An adequate analytical method is available for enforcement purposes. The analytical method for enforcing this tolerance is available in the Pesticide Analytical Manual, Vol. II (PAM II).

There is no reasonable expectation that secondary residues will occur in milk, eggs, or meat of livestock and poultry since there are no livestock feed items associated with this action.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 2E4070/P581]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental Protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 31, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.294, by amending paragraph (a) in the table therein by removing the commodities avocado, dandelion, and papaya and by amending paragraph (b) by adding and alphabetically inserting the same commodities, to read as follows:

§ 180.294 Benomyl; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
Avocado	3
Dandelion	10
Papaya	3

* * * * *

[FR Doc. 94-14422 Filed 6-14-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 3E4255/P583; FRL-4866-4]

RIN 2070-AC18

Pseudomonas Fluorescens Strain NCIB 12089; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish an exemption from the requirement of a tolerance for residues of *Pseudomonas*

fluorescens in or on the raw agricultural commodity mushrooms. This exemption from the requirement of a tolerance was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 3E4255/P583], must be received on or before July 15, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 3E4255 to EPA on behalf of the State Agricultural Experiment Stations and the United States Department of Agriculture. This petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), establish an exemption from the requirement of a tolerance for residues of the biological pesticide *Pseudomonas fluorescens* strain NCIB 12089, in or on the raw agricultural commodity mushrooms. The proposed use of the biological pesticide is to control bacterial blotch of cultivated mushrooms.

Pseudomonas fluorescens is a naturally occurring bacterium, is the dominant microflora found in mushroom caps, and is found in tap and fresh water, marine environments, and plants. It is reasonable to assume that most people are exposed daily to this bacterium. *Pseudomonas fluorescens* has been marketed for several years in Australia for mushroom blotch control.

The scientific data submitted in the petition and all other relevant material have been evaluated. An acute oral toxicity test indicated that *Pseudomonas fluorescens* strain NCIB 12089 was not toxic or pathogenic to rats by the oral route of exposure. Tests of various *Pseudomonas* strains closely related to those considered in the petition have been conducted. Acute oral, acute injection, and acute inhalation tests indicated that the related strains tested were not lethal or toxic to rats. Primary eye and primary dermal studies in rabbits using closely related strains showed no significant irritation effects.

Growth temperature studies were conducted for *Pseudomonas fluorescens* strain NCIB 12089 between 25 degrees and 37 degrees Centigrade (C). These studies demonstrated that this bacterial strain does not thrive at mammalian body temperatures (above 35 degrees C). This information, along with the toxicity infectivity tests, indicates that this organism is not a human pathogen. None of the members of this biotype of *Pseudomonas fluorescens* have been shown to be involved in mammalian pathogenicity or capable of forming toxic or sensitizing substances.

Reference Dose (RfD) considerations are not relevant to this petition; the available data indicate that this biological agent is not toxic to humans. Since no tolerance level will be set for this microbial control agent, the requirement for an analytical method for enforcement purposes is not applicable to this exemption from the requirement of a tolerance.

Based on the information and data considered, the Agency has determined that a tolerance is not needed to protect the public health. Therefore, it is proposed that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3E4255/P583]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612) the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 30, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371

2. By adding new § 180.1129 to subpart D, to read as follows:

§ 180.1129 Pseudomonas fluorescens strain NCIB 12089; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biological pesticide *Pseudomonas fluorescens* strain NCIB 12089 in or on mushrooms.

[FR Doc. 94–14423 Filed 6–14–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 300

[FRL–4894–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Yakima Plating from the National Priorities List Update: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 announces its intent to delete the Yakima Plating Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Washington Department of Ecology (Ecology) have determined that the site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this site may be submitted on or before July 15, 1994.

ADDRESSES: Comments may be mailed to:

Sean Sheldrake, Environmental Protection Agency, 1200 Sixth Avenue, Mail Stop: HW–113, Seattle, Washington 98101.

Comprehensive information on this site is available through the Region 10 public docket which is available for viewing at the Yakima Site information repositories at the following locations:

Yakima Valley Regional Library, Attn. Cynthia Garrick, 102 N. Third Street, Yakima, WA 98901.

United States Environmental Protection Agency, Region 10 Hazardous Waste Division–Records Center, Attn: Lynn Williams, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Sean Sheldrake, U.S. EPA Region 10, 1200 Sixth Avenue, Mail Stop: HW–113, Seattle, Washington 98101, (206) 553–1220.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region 10 announces its intent to delete a site from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Contingency Plan (NCP), 40 CFR part 300, and requests comments on this deletion. EPA identifies sites on the NPL that appear to present a significant risk to human health or the environment. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions.

EPA plans to delete the Yakima Plating Site at 1804 ½ South Third Avenue, Yakima, Washington 98902, from the NPL.

EPA will accept comments on the plan to delete this site for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Yakima Plating Site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. In the case of this site, where plating related hazardous substances are not above health based levels and future access does not require restriction, operation and maintenance activities and five-year reviews will not be conducted. However, if new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site: (1) EPA Region 10 issued preliminary and final close out reports which documented the achievement of cleanup goals; (2) Ecology concurred with the proposed deletion decision; (3) A notice has been published in the local newspaper and has been distributed to appropriate Federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's notice of intent to delete; and (4) All relevant documents have been made available for public review in the local site information repositories.

Deletion of the site from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management. As mentioned in Section II of this notice, 40 CFR 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For deletion of this site, EPA's Regional Office will accept and evaluate public comments on EPA's notice of intent to delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary if any significant public comments are addressed.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register.** Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the intention to delete this site from the NPL.

A. Site Background

Yakima Plating was an electroplating facility located within the southern city limits of Yakima, at 1804 1/2 South Third Avenue in Yakima County, Washington. The area surrounding the site is primarily mixed residential and light commercial property.

B. History

The facility conducted plating operations of automobile bumpers from the early 1960's until 1990. During its operation, the facility discharged a number of plating wastes to an on-site sedimentation tank and drain field. These wastes contained a variety of metals including nickel, cadmium, and chromium.

In 1986, an EPA site investigation found evidence of heavy metals in the groundwater at Yakima Plating. On March 31, 1989, the site was placed on the NPL.

EPA completed the RI/FS and Human Health Risk Assessment in August, 1991. A Record of Decision (ROD) for the site was signed on September 30 1991. The major components of the selected remedy included:

- Liquids and sludges that were in tanks and containers would be removed, treated, and disposed of off-site at a permitted RCRA hazardous waste facility.
- Underground tanks (sedimentation and septic tanks) would be excavated and decontaminated.
- Contaminated soils above cleanup levels would be excavated, treated, and disposed of.
- Institutional controls would be implemented.
- A groundwater monitoring program would be implemented until contaminant levels in all wells allowed for unlimited use and unrestricted exposure.

C. Characterization of Risk

Prior to remediation, the preliminary environmental pathways of concern related to the plating wastes were groundwater, on-site soils and possibly surface water.

To facilitate site remediation, a removal was formally initiated on June 15, 1992, and consisted of the following activities:

- Excavating 2,567 cubic yards of contaminated soil, gravels, and the drain field pipe to the cleanup levels specified in the ROD, followed by off-site disposal to a hazardous waste landfill.
- Excavation and removal to a hazardous waste landfill of three sedimentation tanks.
- Removal of three on-site buildings.
- Neutralization, and containerization of approximately 34 drums of miscellaneous plating-derived waste for off-site disposal.

Analytical data based on five quarters of groundwater monitoring following the completion of the removal indicate concentrations of plating related contamination do not exceed health-based criteria or ROD cleanup levels. Removal of soils, the source of contamination, has assured surface water quality as well.

In addition, no environmental risk has been identified for this site. For example, no critical habitats or endangered species or habitats of endangered species have been identified.

Confirmational monitoring of soil and groundwater demonstrate that no significant risk to public health or the environment is posed by residual materials remaining at the site, and operation and maintenance activities are not required. Based on the removal of contaminated equipment and excavation of contaminated soil, EPA and Ecology believe that hazardous substances have been removed from the site so as to allow for unlimited use and unrestricted exposure within the site, that the site is protective of public health and the environment, and that no further remedial action or institutional controls are needed at the site. Accordingly, EPA will not conduct "five-year reviews" at this site.

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if "all appropriate Fund financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate." EPA, with concurrence of Ecology, believes that this criterion for deletion has been met. The groundwater and soil data confirm that the ROD goals have been met. It is concluded that there is no significant threat to public health or the environment and, therefore, no further remedial action is necessary Subsequently, EPA is proposing deletion of this site from the NPL.

Documents supporting this action are available from the docket.

Dated: April 26, 1994

Jane S. Moore,

Acting Regional Administrator, Region 10

[FR Doc. 94–14417 Filed 6–14–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 455

[FRL–4998–7]

RIN 2040–AC21

Pesticide Chemicals Category, Formulating, Packaging and Repackaging Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period for the Pesticide Formulating, Packaging and Repackaging proposed effluent limitations guidelines and standards by 30 days. EPA has received numerous comments requesting an extension of the comment period.

DATES: Comments on the proposed rule must be received in writing by July 13, 1994.

ADDRESSES: Send comments in writing to Ms. Janet Goodwin, Engineering & Analysis Division (4303), U.S. EPA, 401 M Street SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: For additional technical information write Ms. Shari Zeskin at the above address or call at (202) 260–7130. For additional information on the economic impact analyses contact Dr. Lynne Tudor at the above address or by calling (202) 260–5934.

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking on April 14, 1994 (59 FR 17850), EPA proposed effluent limitations guidelines and standards for the control of wastewater pollutants from the Pesticide Formulating, Packaging and Repackaging (PFPR) industry and provided a 60 day comment period. Today's notice extends the comment period by 30 days to July 13, 1994. EPA has received numerous comments requesting an extension of the comment period. EPA recognizes that trade associations and individual PFPR facilities may need additional time to gather substantive data on the expanded scope of pesticide active ingredients

(i.e., the "non-272" PAIs). In particular, facilities may need time to gather data on or conduct treatability studies with the non-272 PAIs. In addition, many of the PFPR facilities are small business and are presently entering their busy-season. EPA recognizes that these facilities may have limited resources (i.e., manpower) and may not be able to comment as effectively as possible within the 60-day comment period. Further, EPA acknowledges that some PFPR facilities use contractor or toll formulating facilities and may need additional time to acquire technical/economic data from their contract facilities. In addition, for some facilities, in particular the agricultural chemical refilling establishments, there may be resource constraints due to the timing of two proposed regulations (i.e., the Office of Water's PFPR Effluent Guidelines and the Office of Pesticide Programs' Pesticide Container and Containment Rule) with overlapping comment periods. EPA believes that an additional 30 days will allow facilities to provide more meaningful and substantive comments.

EPA cannot extend the comment period for a time greater than 30 days because of a court-ordered date of August 1995 for promulgating a final rule. 57 FR 41000 (September 8, 1992) (Effluent Guidelines Plan for complying with consent decree in *NRDC* v. *Reilly*, Civ. No. 89-2980 (D.D.C. 1992)). Those persons who believe that they will be unable to submit comments by the new July 13, 1994 date should contact the Agency through the EPA personnel listed above in the **ADDRESSES** section. EPA will attempt to review such late comments as it can. Due to the scheduling constraints under the *NRDC* v *Reilly* consent decree, however, EPA cannot guarantee that it will be able to consider any information which is submitted beyond July 13, 1994.

Dated: June 9, 1994.

Robert Perciasepe,

Assistant Administrator for Water

[FR Doc. 94-14420 Filed 6-14-94; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61, 64 and 69

[CC Docket No. 92-77, FCC 94-117]

Billed Party Preference for 0+ InterLATA Calls

AGENCY: Federal Communications Commission [FCC].

ACTION: Notice of proposed rulemaking.

SUMMARY: This Further Notice of Proposed Rulemaking seeks further comment on whether the Commission should mandate a system of "billed party preference (BPP)," whereby 0+ interLATA calls—that is, calls made by entering a "0" followed by a long distance number—would be routed automatically to the operator services provider preferred by the party to be billed for the call. While the Commission found that the available evidence indicated that the benefits of BPP—in the form of more competitive service of consumers by operator service providers—outweighed its costs, the Commission also found that some of the data underlying its cost/benefit analysis were not as precise or as current as it desired. Therefore, the Commission seeks additional updated data and further comment on its analysis, as well as on a number of aspects of how BPP might be implemented.

DATES: Interested parties may file comments on the Commission's billed party preference proposal on or before July 8, 1994 and reply comments on or before July 29, 1994.

ADDRESSES: Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mark S. Nadel, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-1301.

SUPPLEMENTARY INFORMATION:

Background

In 1992, the Commission adopted Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77, Notice of Proposed Rulemaking, 7 FCC Rcd 3027, 57 FR 24574 (June 10, 1992), initiating a rulemaking proceeding to consider the merits of an automated "billed party preference" (BPP) routing methodology for 0+ interLATA traffic. The Commission tentatively concluded that BPP is, in concept, in the public interest, but sought comments on the costs and benefits of BPP as well as on a number of aspects of how BPP might be implemented.

Summary of Further Notice of Proposed Rulemaking

This is a summary of the Commission's Further Notice of Proposed Rulemaking in Billed Party Preference, CC Docket No. 94-77; FCC 94-117, adopted May 19, 1994, and released June 6, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, (202)-857-3800, 2100 M St., NW., suite 140, Washington, DC 20037.

Currently, interstate 0+ calls—that is, interstate calls that are made by entering a "0" followed by a telephone number—are routed to the operator services provider (OSP) selected by either the premises owner or the provider of the phone. Under a system of Billed Party Preference (BPP), such calls would be automatically routed to the OSP preferred by the party to be billed for the call. While the Commission found that the available evidence indicated that the benefits of BPP outweighed its costs, the Commission also found that some of the data underlying its cost/benefit analysis were not as precise or as current as it desired. Therefore, the Commission seeks further comment on BPP.

The Commission found that BPP would provide three principal benefits. First, it would facilitate access to the telephone network by simplifying operator service calling, while guaranteeing that calls are carried by the billed party's preferred carrier. Callers who currently use access codes would no longer need to do so. Callers who do not use access codes would no longer face the risk that their call would be carried by an unfamiliar operator service provider with rates considerably higher than the industry average. Based on data in the Commission's November 1992 report issued pursuant to the Telephone Operator Consumer Services Information Act, the Commission estimated that BPP would likely enable consumers to save about $280 million per year by avoiding operator service providers with rates higher than the AT&T/MCI/Sprint average.

Second, the Commission found that BPP would force OSPs to refocus their competitive efforts toward serving consumers rather than serving aggregators, such as premises owners or payphone providers. The Commission recognized that such a shift in competitive focus would almost certainly eliminate the commissions that OSPs now pay to aggregators for directing 0+ calls to them. Based on the available data, it estimated that the elimination of commissions could save operator service providers about $340 million per year on interLATA 0+ calls, thereby offsetting a substantial portion of the costs of BPP. The Commission found, further, that a shift in competitive focus could also foster lower prices and better service for consumers.

Third, the Commission noted that BPP would eliminate certain AT&T advantages in the operator services market. For example, it would enable AT&T's competitors to offer end users the same 0+ access as AT&T. Finally, the Commission observed that BPP would reduce regulatory costs, likely decrease the cost of collections and uncollectables, and enhance the communications infrastructure.

On the other hand, the Commission also noted that BPP is an expensive technology. It found that available data indicated that the net cost of BPP for local exchange carriers (LECs) would be approximately $380 million on an amortized unseparated cost basis, with an additional estimated $35 million per year for OSP expenses. It observed, however, that this estimate was based on data that was not as precise as it could be.

Therefore, the Commission seeks comment on this analysis and asks parties to submit additional, updated data to corroborate or refute it. In addition, the Commission seeks comment on whether some or all of the benefits of BPP could be achieved through alternative, less costly measures.

The Commission also addressed how BPP should be implemented in the event the Commission decides to mandate it. It tentatively concluded that, if ordered, BPP should generally apply on a nationwide basis to all interLATA 0+ and 0− calls. It seeks comment on the options available to independent LECs for participating in BPP and on the costs of such options. It also seeks additional comment on whether to exempt all inmate telephones from BPP or at least those OSPs serving inmate phones and charging rates below some designated level. It also asks whether those providing LIDB queries should be required to tariff some form of anti-fraud service.

The Commission continues to believe that BPP should be treated as a new service for the purposes of price caps, but it seeks further comments on whether the costs of BPP should be recovered solely from BPP calls or all operator services calls.

The Commission tentatively concluded that if BPP is implemented each LEC would be required to notify its subscribers of their right to choose a 0+ carrier and to provide all subscribers with ballots for doing so. Furthermore, it stated that it would permit such notification to be made by either a separate mailing or a prominent billing insert. It also tentatively concluded that customers who did not return a ballot would be defaulted to their 1+ carrier, although it seeks comments on this matter, particularly from consumers and their representatives. The Commission seeks further information and comment on how secondary carrier arrangements should be handled under BPP and how call branding requirements should apply in a BPP environment.

With respect to line number calling cards, the Commission stated that it would not be in the public interest to adopt a BPP design that gave LECs or OSPs the exclusive ability to issue line number cards. It seeks comment on the relative costs and benefits of permitting BPP to employ a shared line number card option that only required 10-digit screening in LIDB, versus a design that required 14-digit screening.

Finally, the Commission tentatively concluded that, if BPP is implemented, it should accommodate commercial credit cards. It also seeks comments on how soon BPP could be implemented if a final decision mandating BPP is adopted.

List of Subjects in 47 CFR Parts 61, 64 and 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–14454 Filed 6–14–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 194

[Docket PS–130B; Notice 2]

RIN 2137–AC34

Environmentally Sensitive Areas

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: RSPA invites representatives of industry, state and local government, and the public to an open meeting on "environmentally sensitive areas." The purpose of this meeting is to gather information which will allow RSPA to establish criteria for the identification of environmentally sensitive areas on or near hazardous liquid pipelines. Such criteria are needed to carry out the requirements of the Oil Pollution Act and the Pipeline Safety Act of 1992.

DATES: The meeting will be held on June 28, 1994, from 9:00 a.m.—4:00 p.m. Persons unable to attend may submit written comments in duplicate by August 1, 1994. Interested persons should submit as part of their written comments all of the material that is considered relevant to any statement of fact or argument made.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation, Nassif Building, 400 Seventh Street SW., Room 2230, Washington, DC. Non-federal employee visitors are admitted into the DOT headquarters building through the southwest quadrant entrance at Seventh and E Streets.

Written comments must be submitted in duplicate and mailed or hand delivered to the Dockets Unit, Room 8421, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Please identify the docket and notice numbers stated in the heading of this notice.

All comments and materials cited in this document will be available for inspection and copying in room 8421 between 8:30 a.m. and 4:30 p.m. each business day. The transcript of the meeting will be available approximately three weeks after the meeting.

FOR FURTHER INFORMATION CONTACT: Christina Sames, (202) 366–4561, regarding the subject matter of this notice, or the Dockets Unit, (202) 366–5046, regarding copies of this notice or other material referenced in this notice.

SUPPLEMENTARY INFORMATION:

The Oil Pollution Act of 1990

On January 5, 1993, RSPA published an Interim Final Rule (IFR) ("Response Plans for Onshore Oil Pipelines;" 58 FR 244; Docket No. PS–130; 49 CFR part 194), to implement the requirements of the Oil Pollution Act of 1990 (Pub. L. No. 101–380; 104 Stat. 484; OPA). The IFR requires operators of onshore pipelines that handle, store, or transport oil and, because of their location, could reasonably be expected to cause "substantial harm" or "significant and substantial harm" to the environment by discharging oil into or on any navigable waters or adjoining shorelines, to prepare and submit oil spill response plans for a worst case discharge or the substantial threat of a worst case discharge. The purpose of these requirements is to improve response capabilities and to reduce the environmental impact of oil discharged from onshore oil pipelines.

The IFR requires operators to identify the areas potentially affected by their pipeline which are of greatest

vulnerability to an oil discharge, including navigable waters, public drinking water intakes, and environmentally sensitive areas. The IFR defined environmentally sensitive areas as "an area of environmental importance which is in or adjacent to navigable waters." The IFR stated these areas may include wetlands, national parks, wilderness and recreational areas, wildlife refuges, marine sanctuaries, and conservation areas.

RSPA received ten comments to the docket on the part 194 definition of environmentally sensitive areas. The American Petroleum Institute submitted a proposed definition for environmentally sensitive areas. Three commenters requested that RSPA revise the part 194 definition to be consistent with definitions used elsewhere. Three commenters requested that RSPA revise the part 194 definition to define environmentally sensitive areas as areas where a release has the potential to cause significant long-term environmental harm or represents an imminent threat to human health. Two commenters requested that the definition of environmentally sensitive areas be more specific, and another commenter requested that RSPA broaden the definition to include wildlife habitats.

The Pipeline Safety Act of 1992

Section 202(a) of the Pipeline Safety Act of 1992 (Pub. L. 102–508; October 24, 1992; PSA) requires the Secretary, in consultation with the Administrator of the Environmental Protection Agency, to issue regulations establishing criteria for the identification, by operators of pipeline facilities and gathering lines, of all pipeline facilities and gathering lines that are located in an area that is "unusually sensitive to environmental damage in the event of a pipeline accident." In describing areas that are unusually sensitive to environmental damage, the Secretary is to consider including earthquake zones and areas subject to substantial ground movements, such as landslides; areas where ground water contamination would be likely in the event of the rupture of a pipeline facility; freshwater lakes, rivers, and waterways; and river deltas and other areas subject to soil erosion or subsidence from flooding or other water action, where pipeline facilities are likely to become exposed or undermined.

Section 202 of the PSA directs the Secretary to issue regulations requiring operators to carry out these identifications of environmentally sensitive areas through maps and a pipeline inventory. RSPA has scheduled a separate rulemaking on the creation of such inventories and maps (see Unified Agenda; 59 FR 20662; April 25, 1994).

Revised Definition: In view of the comments we received on the IFR and in view of the requirements of the PSA, RSPA invites comments on the following definition of an environmentally sensitive area:

"Environmentally sensitive area" means any of the following areas where the release of a hazardous liquid from a pipeline could create significant long-term environmental harm or represents an imminent threat to human health:

A. Community water intakes as defined by the Safe Drinking Water Act regulations, 40 CFR 141.2;

B. Freshwater lakes, rivers and waterways;

C. State or Federal wetlands, parks, natural areas, wilderness areas, wild or scenic rivers, wildlife refuges or wildlife sanctuaries specifically designated, identified, and located by the Area Contingency Plans; or

D. River deltas and other areas subject to soil erosion or subsidence from flooding or other water action, where pipeline facilities are likely to become exposed or undermined.

A public meeting will be held to collect information on any of the matters described above. RSPA is particularly requesting comment on the following questions:

(1) Is the above definition adequate for use under part 194?

(2) If the definition is not adequate, what other criteria should be used to identify environmentally sensitive areas?

(3) Would a definition adopted for use under part 194 be adequate for use in amending the requirements of 49 CFR part 195, as required under § 202 of the PSA?

(4) Are there standards, tests, or guidelines available to rank environmentally sensitive areas in terms of the risks posed to those areas by a release of a hazardous liquid ?

(5) Would the above definition change the cost of compliance with part 194? If yes, by what amount?

Interested persons are invited to attend the meeting and present oral or written statements on the matters set for the meeting. Any person who wishes to speak should notify Christina Sames at the above address and phone number. Please estimate the time that will be needed to speak. RSPA requests the right to limit the time of each speaker, if necessary, to ensure that everyone who requests an opportunity to speak is given one. Interested persons that are not scheduled to comment will have an opportunity to comment only after approval of the meeting officer. Written comments may be submitted either at the meeting or by mail to the above address.

Since this meeting concerns an open rulemaking on part 194, RSPA will consider all comments in developing a final definition of "environmentally sensitive areas" for part 194. The meeting is not intended to reopen the docket for comment on other subjects.

Issued in Washington, DC on June 9, 1994.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 94–14465 Filed 6–14–94; 8:45 am]

BILLING CODE 4910–60–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88–06, Notice 23]

RIN: 2127–AE49

Federal Motor Vehicle Safety Standards; Side Impact Protection—Light Trucks, Buses and Multipurpose Passenger Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to extend Standard No. 214's dynamic side impact protection requirements to multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. These proposed amendments would require that each of these vehicles must protect its occupants in a full-scale dynamic crash test in which the vehicle is struck on either side by a moving deformable barrier simulating another vehicle. The occupants would be represented by instrumented test dummies. The dummies would be positioned in the target vehicle to measure the potential for injuries to an occupant's thorax and pelvis. Given the differences between these vehicles and passenger cars and their respective crash experiences, the agency is proposing possible modifications in the test procedure for these vehicles.

DATES: Comments must be received on or before August 15, 1994.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–366–4924).

SUPPLEMENTARY INFORMATION:

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I. Background

IA. Existing Side Impact Requirements

NHTSA's side impact protection requirements are set forth in Federal Motor Vehicle Safety Standard No. 214, Side Impact Protection. The standard specifies two sets of requirements: (1) Quasi-static side door strength requirements for passenger cars and for "LTVs" (trucks, buses and multipurpose passenger vehicles (MPVs) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less), and (2) dynamic requirements for passenger cars.

Standard No. 214's quasi-static side door strength requirements seek to mitigate occupant injuries in side impacts by reducing the extent to which the side structure of a vehicle is pushed into the occupant compartment during a side impact. Under the requirements, side doors must resist crush forces that are applied against the door's outside surface in a laboratory test. The requirements have applied to passenger cars since January 1, 1973, and were extended to LTVs by a final rule published in the **Federal Register** (56 FR 27427) on June 14, 1991. A phase-in for the extension of the requirements to LTVs began on September 1, 1993.

NHTSA added Standard No. 214's dynamic requirements for passenger cars in a final rule published in the **Federal Register** (55 FR 45722) on October 30, 1990. Under the requirements, a passenger car must provide protection to occupants' thoracic and pelvic regions as measured by the accelerations registered on instrumented side impact dummies (SID) in a full-scale crash test. In the test, the car (known as the "target" car) is struck in the side by a moving deformable barrier (MDB) simulating another vehicle. A phase-in for these new requirements also began on September 1, 1993.

The MDB specified in Standard No. 214's dynamic test procedure weighs about 3,000 pounds, and it is 33 inches high (measured from the ground to the top edge of the barrier face). Under the test procedure, the front and rear wheels of the MDB are "crabbed" at an angle of 27 degrees. With the MDB face oriented at a right angle to the target car, the MDB moves at an angle of 27 degrees and at a speed of 33.5 mph into the side of the target car. These aspects of the procedure were selected so that the test simulates the vehicle kinematics and crash forces in the struck car in a real world side crash in which a vehicle traveling at 30 mph perpendicularly strikes the side of a vehicle traveling at 15 mph. The agency determined that the 30 mph/15 mph combination represents the threshold speed of serious chest injury, and that countermeasures designed for the 30 mph/15 mph condition are likely to be effective in reducing chest injury potential over most of the range of impact speeds encountered in side crashes.

Standard No. 214's dynamic test procedure includes placing instrumented SIDs in the outboard front and rear seats on the struck side of the target car. For the thorax, the performance limit is expressed in terms of an injury criterion known as the Thoracic Trauma Index (dummy) or TTI(d). This injury criterion represents the average of peak acceleration values measured on the lower spine and the greater of the acceleration values of the upper and lower ribs of the test dummy. For the pelvis, the performance limit is specified in terms of the peak acceleration measured on the pelvis of the test dummy.

IB. Statutory Requirements

This notice is being issued pursuant to the NHTSA Authorization Act of 1991. Section 2503 of that Act requires the agency to address, through rulemaking, the possible extension of Standard No. 214's dynamic side impact protection requirements for passenger cars to MPVs and trucks with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. These vehicles comprise a large majority of LTVs. Under section 2502 of the Act, the rulemaking must be conducted under the general provisions of the National Traffic and Motor Vehicle Safety Act concerning safety standards.

Section 2502 required NHTSA to publish, by a specified date, either an advance notice of proposed rulemaking (ANPRM) or an NPRM concerning the extension of Standard No. 214's dynamic side impact requirements to LTVs. In accordance with this requirement, on June 5, 1992, NHTSA published in the **Federal Register** (57 FR 24009) an ANPRM on this subject.

Section 2502 also provides that this rulemaking action must be completed within 26 months of publishing the ANPRM. The rulemaking is considered completed when NHTSA either promulgates a final rule or decides not to promulgate a rule. In either case, the agency must publish its decision in the **Federal Register**.

IC. The June 1992 ANPRM

In the June 1992 ANPRM, NHTSA estimated that the number of LTV fatalities in side impact crashes will rise by about 11 percent between 1989 and the mid-1990's, with front seat fatalities totaling 1,683 to 1,753 annually, and rear seat fatalities totaling 58. The agency indicated that approximately 16 percent of the fatalities are expected to occur in heavy vehicle (GVWR above 10,000 pounds)-LTV side crashes, 39 percent in light vehicle (GVWR of 10,000 pounds or less)-LTV side crashes, and 45 percent in single vehicle LTV crashes. For the multi-vehicle side impacts, approximately 71 percent of the LTV fatalities and 78 percent of serious injuries are caused by passenger cars and LTVs, with LTVs being the dominant striking vehicles. A much smaller percentage of passenger car fatalities and injuries is caused by heavier vehicles in the light-duty vehicle fleet, in multi-vehicle side impacts.

NHTSA explained that the possible extension of Standard No. 214's dynamic requirements to LTVs would primarily address LTV occupant fatalities and serious injuries which result from contacts between the side interior of LTVs and the shoulder, chest, abdomen, back and pelvis of an occupant. The agency estimated that by the mid-1990's, this portion of the side impact problem will account for about 245 LTV occupant fatalities and an additional 825 non-fatal serious injuries (AIS–3 or greater) annually.

NHTSA stated that it believes that the same types of countermeasures that reduce the probability of these types of thoracic and pelvic injuries in passenger cars, i.e., the use of structural modifications in combination with padding or the use of padding alone,

can provide safety benefits for LTVs. The agency also indicated its belief that the approach used in Standard No. 214 for passenger cars of requiring a vehicle to protect its occupants in a full-scale side impact crash test, utilizing an MDB and instrumented test dummies, may be appropriate for LTVs.

The agency emphasized, however, that the possible extension of Standard No. 214's dynamic side impact requirements to LTVs presents the issue of whether those requirements should be extended with or without modification. Given the differences between passenger cars and LTVs and their crash experiences, changes in the dynamic test procedure might be desirable to make it more appropriate for LTVs. NHTSA requested responses to a number of questions in the ANPRM, including whether the weight and height of contact surface of the MDB for side impact testing of passenger cars should be modified to be more representative of the vehicles that cause injuries and fatalities in LTVs.

NHTSA also noted that it had conducted two series of LTV side impact tests similar to the dynamic Standard No. 214 passenger car test. In the first test series, the agency tested seven LTVs using an MDB that was modified to make it more representative of crash conditions causing fatalities and serious injuries in light trucks. The weight of the MDB was increased to 4,000 pounds, and the height of the barrier face was raised between four and 10 inches. In the second test series, NHTSA tested three small LTVs and a fourth vehicle representative of a small LTV, using the current dynamic test procedure, including the 3,000 pound MDB, specified in Standard No. 214 for passenger cars. (The fourth vehicle was a passenger car version of a vehicle which was then marketed in a four-wheel drive version as an LTV. The agency believes that both versions of the vehicle provide similar side impact protection.) The agency noted that the data from the two test series indicate that many current LTVs, especially heavier ones, already meet the performance criteria specified for passenger cars.

III. Comments on the ANPRM

The three large domestic auto manufacturers were opposed to extending Standard No. 214's dynamic requirements to LTVs. General Motors (GM) stated that it is clear, from the examination of field accident data, that LTVs offer side impact protection superior to that of passenger cars. GM also argued that a dynamic side impact test for LTVs would address a very small percentage of LTV occupant serious injuries and an even smaller percentage of total passenger car and LTV occupant harm. GM believed that side impact resources would be diverted from passenger cars where they can be most productive to an area that would result in little benefit to LTV occupants and society in general.

Ford stated that it strongly believes that the dynamic side impact requirements should not be extended to LTVs. That company argued that such an extension would not meet the need for motor vehicle safety. Ford stated that real world traffic accident data show that LTV occupants are safer than passenger car occupants (1.01 fatalities per 1000 crashes for LTVs compared to 2.05 fatalities per 1000 crashes for passenger cars) for non-ejected, near-side occupants in vehicle-to-vehicle side impacts. That company noted that NHTSA research has found that the majority of LTVs tested to the passenger car dynamic side impact procedure would pass the passenger car requirements, supporting the field experience. Ford concluded that extending the dynamic side impact requirements to LTVs would represent rulemaking without any substantiated safety benefit. Ford also argued that the car test procedures define a scenario that applies to less than one percent of LTV fatalities, or about 0.2 percent of all motor vehicle occupant fatalities. That company argued that the use of scarce engineering resources to implement a rule with the potential to affect only about 0.2 percent of fatalities is not justified, even if proposed countermeasures were 100 percent effective in every crash.

Chrysler stated that it does not believe that there is support for the extension of the existing passenger car dynamic side impact requirements to LTVs, much less for the alternative of a more stringent test requirement. That company argued that NHTSA has failed to show that there would be a significant safety benefit from applying a dynamic side impact requirement to LTVs.

Mitsubishi also questioned the need for dynamic side impact requirements for LTVs. It argued that: (1) These vehicles are generally heavier and have higher sill structures which provide substantial side impact protection, (2) many of the larger LTVs probably already comply with such requirements without the need for any countermeasures, and (3) the recent extension of quasi-static side door strength requirements will provide improved side impact protection for LTVs.

Other vehicle manufacturers recommended that NHTSA extend Standard No. 214's dynamic requirements for passenger cars to LTVs but not adopt more stringent requirements. Toyota stated it believes the agency's regulations should require, when necessary and practical, equal levels of safety performance regardless of vehicle category. That company stated that while there are some LTVs whose construction allows them to comply already with the passenger car requirements, this is not true for all LTVs. According to Toyota, there are LTVs whose construction is similar to that of passenger cars that do not now comply with the passenger car requirements. Toyota stated that it believes that the effectiveness of extending the passenger car requirements to LTVs would be greater than the agency estimates. That company stated, however, that if the agency were to adopt a more stringent requirement for LTVs, e.g., by specifying a higher, heavier MDB, it would impose an unreasonable burden on manufacturers. Toyota also argued that if the agency were to adopt an LTV rule more stringent than that applicable to passenger cars, those LTVs whose construction is similar to passenger cars could be eliminated from the U.S. market.

Volkswagen stated that the dynamic side impact requirements should be extended to LTV class vehicles under 10,000 pounds GVWR. That company stated that the barrier was originally specified to represent the stiffness of light trucks, and that it should therefore remain as currently specified in Standard No. 214.

Nissan stated that it believes Standard No. 214's passenger car dynamic test procedure can be applied to LTVs, and that there is no need to establish a unique test procedure. That manufacturer stated that data indicate that the incidence of LTVs being struck by passenger cars is similar to the incidence of side impacts of passenger cars by other passenger cars. It stated further that these incidence rates indicate that the mass and dimensions of the MDB currently specified in Standard No. 214 realistically represent the majority of the striking vehicle population for both passenger cars and LTVs.

Two trade associations, the National Truck Equipment Association (NTEA) and the Recreation Vehicle Industry Association (RVIA) expressed concern about extending the applicability of Standard No. 214's dynamic requirements in light of potential impacts on their members, which include final stage manufacturers and alterers of certified vehicles. NTEA stated that it is concerned that the small businesses which produce work-related vehicles in multiple stages would not be able to conduct the dynamic test which may be proposed. It requested that the agency not propose extending the dynamic requirements to work-related multi-stage produced vehicles which are not able to pass through an incomplete vehicle manufacturer's certification or which cannot be completed within the guidelines provided for completion by the incomplete vehicle manufacturer. RVIA urged NHTSA to exclude motor homes, van conversions and other altered vehicles and otherwise limit the scope of the proposed requirements to those vehicle types that have a poor side impact injury record.

The Insurance Institute for Highway Safety (IIHS) argued that extension of Standard No. 214's dynamic test requirements to LTVs is an obvious necessity after the decade-long growth of this vehicle class as a means of daily private transportation. IIHS stated that it disagrees strongly with the notion that there is no need to require that all vehicles in the LTV class provide a minimum level of protection to occupants if many vehicles in the class already provide that protection. That organization stated that such partial availability demonstrates that the proposed protection is feasible, practical, and easily implemented, and that it should encourage, not discourage, the extension of the test requirements to LTVs.

IIHS argued, however, that the ease with which LTVs are likely to be able to meet the current requirements for cars does suggest that the injury criteria should be different for them. That organization stated that the agency had adopted the existing TTI(d) and pelvic g limits because lower maximum accelerations might be difficult to achieve in the car fleet. IIHS argued that while it does not accept the premise that lower acceleration criteria are not achievable in passenger cars, the agency's concern about passenger cars in this area is not relevant to LTVs. IIHS urged the agency to adopt appropriate lower TTI(d) and pelvic g limits for LTVs.

With respect to the height and weight of the MDB, IIHS stated that it does not believe that the agency should specify different dynamic test conditions for cars and LTVs at this time. That organization stated that the goal of the current rulemaking should be to ensure that all vehicles likely to be used as light-duty passenger vehicles, whether cars or LTVs, meet a common, minimum standard of occupant protection in the crashes to which such vehicles are likely to be exposed. While IIHS stated that it does not believe that the test barrier specifications for cars and LTVs should differ at this time, it suggested that the current barrier (3,000 pounds) may be improperly specified for both types of vehicles. That organization stated that with increasing numbers of LTVs in the light vehicle fleet, many light vehicles struck in the side will be struck by other light vehicles weighing in excess of 3,000 pounds. IIHS stated that NHTSA should consider increasing the weight of the MDB to make it more representative of the vehicle fleet.

The Advocates for Highway and Auto Safety (Advocates) stated that it supports dynamic side impact requirements for LTVs. That organization emphasized, however, that it is convinced that the agency must (1) raise the bumper height of the LTV MDB face above 30 inches, (2) raise the weight, and commensurate mass, of the LTV MDB to 5,000 pounds or more, and (3) increase the test speed of impacts above median levels to represent more of a worst case impact of a LTV by larger, heavier vehicles and some fixed objects. Advocates also argued that the agency should adopt lower TTI(d) and pelvic g limits than it established for cars, a quantified maximum intrusion standard, and coordinate this rulemaking with ones on rollover, roof strength and head injury.

II. Overview of Proposal

After considering the comments on the ANPRM and other available information, NHTSA has decided to propose extending Standard No. 214's dynamic side impact protection requirements to LTVs with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. Given the differences between passenger cars and LTVs and their crash experiences, the agency is proposing possible modifications in the test procedure that would make it more representative of the crash conditions causing fatalities and serious injuries in LTVs.

NHTSA is proposing two possible modifications: (1) Raising the height of the MDB, and (2) increasing the weight of the MDB. The agency is proposing to specify the MDB height within a range of 33 inches to 45 inches as measured from the ground to the top edge of the barrier face. This would represent up to a 12-inch increase in MDB height as compared to the height specified for passenger car testing.

Within the 33 inch to 45 inch proposed range, NHTSA is proposing two alternative methods for specifying MDB height, one of which would be selected by the agency for a final rule. Under the first method, the MDB height would be raised to match the driver H-point of the tested vehicle. Under the second method, the MDB height would be at the same level for all LTVs, or at the same level for all LTV's within a particular sub-group, e.g., pickups, vans and utility vehicles, with different levels specified for different sub-groups. The agency is proposing to specify the MDB's weight within a range of 3,000 pounds, the current weight, and 3,800 pounds.

Under the proposal, LTVs, like passenger cars, would be required to meet specified TTI(d) and pelvic acceleration limits. NHTSA is proposing to specify a TTI(d) limit of 85 g and a pelvic acceleration limit of 130 g. In considering a possible extension, NHTSA is considering whether the requirements should apply to the front and rear seats of these additional vehicles (as is the case for passenger cars), or whether they should apply to the front seats only of these vehicles.

To provide manufacturers with sufficient leadtime to design their LTVs to meet the proposed performance requirements, NHTSA is proposing two compliance schedules, the choice of which would be at the option of the manufacturer. Under the first schedule, the standard would be phased-in in accordance with the following implementation schedule:

- 10 percent of all LTVs manufactured during the first full production year (September 1 to August 31) beginning approximately two years after the issuance of a final rule;
- 25 percent of all LTVs manufactured during the second full year after that two-year period;
- 40 percent of all LTVs manufactured during the third full year after that two-year period; and
- 100 percent of all LTVs manufactured on or after the beginning of the fourth full year after that two-year period.

Under the second schedule, no compliance would be required during the annual production period beginning approximately two years after the issuance of a final rule, but full implementation would be required beginning with the next production period.

The agency is proposing to exclude walk-in vans, motor homes, tow trucks, dump trucks and ambulances, and is requesting comments on whether to exclude other special types of vehicles

from the dynamic requirements. NHTSA is also proposing a phase-in exclusion for vehicles manufactured in two or more stages and for altered vehicles.

III. The Safety Problem

NHTSA has separately analyzed the fatality and injury experience of LTV occupants involved in side impact crashes. As discussed in the Preliminary Economic Assessment (PEA) accompanying this NPRM, the agency estimates that, by the mid-1990's, side impacts will result in 1763 fatalities for LTV occupants sitting in the front or second seat, annually. Front seat occupants will account for 1705 of the fatalities, with occupants of the second seat accounting for 58 fatalities. Approximately 16 percent of the LTV side impact occupant fatalities are expected to occur in heavy vehicle-LTV side crashes, 39 percent in light vehicle-LTV side crashes, and 45 percent in single vehicle LTV side crashes. (All of the figures in this paragraph and those in the next several paragraphs take into account the safety benefits of side door guard beams installed pursuant to the quasi-static requirements.)

Side impacts are also expected to account for about 6,000 serious but non-fatal (AIS 3–5) injuries to occupants sitting in the front or second seat, annually.

The extension of Standard No. 214's dynamic requirements to LTVs would primarily address LTV occupant fatalities and serious injuries which result from contacts between the side interior of LTVs and the shoulder, chest, abdomen, back and pelvis of the occupants. NHTSA estimates that by the mid-1990's, this portion of the side impact problem will account for 245 LTV occupant fatalities and an additional 970 serious (AIS 3–5) injuries annually. All of the estimated fatalities would result from thorax injuries. Of the 970 AIS 3–5 injuries, 857 would be thoracic injuries and 113 pelvic injuries. Looking solely at multi-vehicle side impacts between LTVs and other light vehicles, approximately 78 percent of the LTV fatal "trunk" injuries are caused by LTV's, and only 22 percent by passenger cars.

The agency notes that the fatality rate for occupants of LTVs in side impact crashes is slightly less than half of that for occupants of passenger cars. The LTV occupant side impact fatality rate per million registered vehicles is 25.7, as compared to 53.3 for passenger cars. The occupant fatality rates for various LTV categories are as follows: Small pickups, 30.1; large pickups, 19.0; utility vehicles 16.0; small vans, 19.3, and large vans, 9.7.

IV. Rulemaking Rationale

In multi-vehicle side impact crashes where fatalities and serious injuries result from contacts between the occupant and the interior side of the vehicle, the same basic chest injury causing dynamic event occurs regardless of whether the occupant is in a passenger car or LTV. The striking vehicle crushes the door of the target vehicle, from outside to inside. The inside door panel of the struck vehicle moves toward the occupant seated next to it, and strikes the occupant's thorax. Depending on the structure of the struck vehicle, the velocity of impact can be as high as the impact speed of the striking vehicle. The occupant's thorax is rapidly deformed as a result of the impact, resulting in injuries to the shoulder, chest, abdomen, back and/or pelvis. A similar event occurs in single vehicle side impacts with stationary objects, except that the injury mechanism is more likely to be related to intrusion than door contact velocity, i.e., the occupant's thorax is likely to experience more concentrated loading.

LTV occupants generally face a smaller risk of side impact thoracic injury than passenger car occupants because seating differences between LTVs and passenger cars make it less likely for the thoracic-injury-producing dynamic event described above to occur for LTVs than for passenger cars. LTV occupants typically sit several inches higher from the ground than passenger car occupants. If a passenger car strikes another passenger car in a side impact, the striking vehicle typically pushes the inside door panel of the struck vehicle directly into the thorax of an occupant sitting next to the door. However, if a passenger car strikes an LTV in a side impact, the primary part of the side structure that is pushed inward is more likely to be below the thorax of an adjacent occupant, thereby resulting in smaller injury-producing loads to the occupant's thorax. Further, the typically higher sill and side structure of LTV's offers significant resistance such that smaller crash loads are transmitted through the door structure to the occupant.

While the thoracic side impact problem is not so great for LTVs as it is for passenger cars, it is nonetheless a significant problem which merits attention. As indicated above, NHTSA estimates that by the mid-1990's, this portion of the side impact problem will account for 245 LTV occupant fatalities and an additional 970 serious (AIS 3–5) injuries annually. The bulk of these fatalities and serious injuries occur in side impacts with LTVs, heavy vehicles, and fixed objects, rather than in side impacts with passenger cars.

Given that the same basic dynamic event causes serious thoracic injuries and fatalities to both passenger car and LTV occupants in side impacts, i.e., medium to high velocity contact between the inside door panel and the thorax of the occupant, NHTSA believes that the same countermeasures developed for improved passenger car side impact protection are also appropriate for LTVs. There are two basic options to improve the side impact protection of a vehicle. It may be possible to increase the stiffness of the side of the vehicle and thereby reduce the velocity with which the vehicle side door interior strikes the occupant. However, given the limited available area along the side of a vehicle in which structure may be added and the enormous mass of a striking vehicle, the ability to improve safety by this means may be somewhat limited. The other available means of improving side impact protection is to cushion the impact between the side of the vehicle and the occupant, such as by adding padding to the side of the vehicle.

In the rulemaking establishing dynamic side impact requirements for passenger cars, NHTSA determined that the risk of thoracic injury can be substantially reduced by the addition of padding, or a combination of padding and structure, to the side of a vehicle. For example, the agency determined, for the driver seating position, that padding is approximately 21 percent effective (i.e., padding reduces TTI(d) by 21 percent), that structure and padding is about 30 percent effective, and that heavyweight structure and padding is 43 percent effective. As discussed in that rulemaking, NHTSA expected manufacturers to meet the dynamic side impact requirements for passenger cars primarily by adding padding.

NHTSA believes that the addition of padding, or the addition of padding and structure, can produce significant safety benefits for LTV occupants in side impacts. The agency notes that it is intuitively obvious that it is better for an occupant to be struck by a padded door than the same door unpadded. In agency research, the addition of three inches of padding in three LTV's reduced driver TTI(d) by 19.4, 28.6 and 35.0 percent. Pelvic g's were reduced by 24.5, 30.1 and 43.8 percent in the same vehicles.

Given the thoracic side impact problem that exists for LTV occupants and the fact that this countermeasure is readily available, NHTSA is currently not accepting the notion that it should decline to establish dynamic side impact requirements for LTVs simply because the type of dynamic event causing serious thoracic injuries to occupants of struck vehicles occurs less frequently for LTVs than for passenger cars.

The purpose of a dynamic side impact protection requirement is to ensure that vehicles provide side impact protection to their occupants in a simulated crash that is representative of a typical real-world crash with serious-injury-causing potential. In its dynamic side impact protection rulemaking for passenger cars, the agency developed an appropriate test procedure and performance requirements for passenger cars. In this rulemaking, NHTSA is addressing whether those requirements should be extended to LTVs. Since this rulemaking is based, in large part, on the passenger car rulemaking, the agency encourages interested persons to examine the record for that rulemaking.

As part of considering the possible extension of Standard No. 214's dynamic side impact protection requirements to LTVs, the agency has conducted several series of LTV dynamic side impact tests. The tests employed the dynamic procedure specified by Standard No. 214 for passenger cars, except that the height and mass of the MDB were varied.

As explained more fully in the PEA, NHTSA has tentatively concluded, based on the results of these tests, that a simple extension of Standard No. 214's dynamic side impact protection requirements to LTVs would result in few, if any, safety benefits. Since the height and weight of the MDB specified by Standard No. 214 are representative of passenger cars, the test essentially replicates a crash in which a passenger car is the striking vehicle. The tests confirm what is already apparent from the real-world crash data: LTV occupants face a very small risk of serious thoracic injury in side impacts by striking passenger cars. As indicated above, this is largely because, given the relatively high seating position of LTV occupants, if a passenger car strikes an LTV in a side impact, the primary part of the side structure of the LTV that is pushed inward is likely to be below the thorax of an adjacent occupant.

It could be argued that, notwithstanding the lack of benefits that would result from a simple extension of Standard No. 214's dynamic requirements to LTVs, NHTSA should adopt that approach to ensure that all light vehicles provide the same minimum level of side impact protection to their occupants. It could also be argued that such an approach would be appropriate because passenger cars and LTV's are operated in the same traffic environment. However, a significant concern about such a regulatory approach, particularly in the context of a requirement incorporating a full-scale dynamic test, is that it would result in significant compliance costs without concomitant benefits. Moreover, such an approach would leave unaddressed the risk of thoracic injury that LTV occupants do face in side impacts with vehicles other than passenger cars.

A second regulatory approach would be to develop a test procedure that simulates the crash conditions that produce serious thoracic injuries in the real world. In developing Federal motor vehicle safety standards, NHTSA focuses on reducing the number of serious injuries and fatalities that are occurring in the real world. The agency has tentatively concluded that this approach is appropriate with respect to dynamic side impact protection requirements for LTVs. However, comments are invited on both regulatory approaches.

V. Proposal

The agency has decided to propose extending Standard No. 214's dynamic side impact protection requirements to LTVs, with possible modifications in the test procedure to make it more representative of a typical real-world crash with serious-injury-causing potential to LTV occupants. The agency is considering two possible modifications: (1) Raising the height of the MDB, and (2) increasing the mass of the MDB. In considering a possible extension, NHTSA is considering whether the requirements should apply to the front and rear seats of these additional vehicles (as is the case for passenger cars), or whether they should apply to the front seats only of these vehicles.

VA. Possible Test Procedure Modifications

NHTSA tentatively concludes that the height of the MDB should be increased because use of this test device with its current height would not create a dynamic event that is representative of the ones likely to cause serious chest injuries to LTV occupants in real world crashes. In particular, with the MDB at a height which is representative of a passenger car, the primary part of the side structure of the LTV that is pushed inward is below the thorax of the adjacent LTV occupant. However, in real world side impact crashes in which LTV occupants are likely to experience serious chest injuries, the side structure of the LTV is typically pushed inward at a height near that of the occupant's thorax. This typically occurs as a result of the LTV being struck in the side by a vehicle other than a passenger car. Vehicles other than passenger cars are, of course, typically higher than passenger cars.

There are a number of possible approaches to determining how much to raise the height of the MDB, assuming that it needs to be raised. One approach is to focus on the struck vehicle. The agency notes that, unlike passenger cars for which vehicle and seating height are very similar, the height of LTVs and LTV seating positions vary considerably. Since the primary relevant safety problem is an impact in which the side structure of the vehicle directly adjacent to an occupant is pushed inward at the height of the thorax of the occupant, the height of the MDB could be based on the H-point of the struck vehicle. This approach would ensure that LTVs provide thoracic side impact protection when they are struck in the side by another LTV of a height that pushes the side door structure inward toward adjacent occupants.

Another approach is to focus on striking vehicles. The agency notes that the two types of striking vehicles that are most likely to cause severe chest injuries in side impacts are standard pickups and compact pickups. These vehicles cause 26 percent and 16 percent of all such injuries, respectively. Thus, MDB height could be based on the heights of the front ends of these vehicles, which are considerably higher than passenger cars.

NHTSA notes that since the heights of the front ends of LTVs and even of pickup trucks vary, specifying a single height that is equally representative of all LTVs does not appear to be possible. The agency also notes that specifying a single height could raise practicability concerns, depending on the height selected. In addition to being concerned that a test procedure simulates conditions representative of real world crashes, the agency must also ensure that its safety standards are practicable. One concern about a test procedure that specifies a single MDB height that is representative of large pickup trucks is whether a requirement based on that procedure is practicable for compact LTVs that have much lower seating heights than the front end heights of large pickup trucks.

NHTSA is proposing to specify an MDB height within a range of 33 inches to 45 inches as measured from the ground to the top edge of the barrier face. By way of comparison, the MDB height for passenger car testing is 33 inches.

Within the proposed range, the agency is proposing two alternative methods for specifying MDB height, one of which would be selected by the agency for a final rule. Under the first method, the MDB height might be raised, as compared to the current height for passenger car testing, to match the driver H-point of the tested LTV (or possibly the front passenger H-point for testing the side of the vehicle away from the driver).

One example of such an approach would be to raise the barrier height by the amount that the H-point height of the tested vehicle exceeds 21 inches. Barrier heights would be raised in one-inch increments up to a maximum of 12 inches. A maximum would be established to ensure that the barrier face top edge would not be above the window of the struck vehicle.

Another example, which uses driver H-point ranges for setting barrier height, would be as follows. For driver H-points 25 inches or lower, the MDB height would be raised four inches. For driver H-points higher than 25 inches but lower than 29 inches, the MDB height would be raised seven inches. For driver H-points at least 29 inches high but lower than 31 inches, the MDB height would be raised nine inches. For driver H-points 31 inches or higher, the MDB would be raised 11 inches.

Under the second method, the MDB height would be raised either to the same level for all LTV's, or to the same level for all LTV's within a particular sub-group, e.g., pickups, vans and utility vehicles, with different levels specified for different subgroups. The level could correspond to the average H-point height of the LTV population as a whole or to the average H-point height of each LTV sub-group.

NHTSA requests comments on these approaches, and on the appropriate vehicle groupings and MDB heights to select under such approaches.

If the agency adopts a methodology in which the MDB height is based on the height of the driver H-point of the tested vehicle, it would be necessary to specify a method for determining that H-point. The agency would contemplate adopting, for purposes of a final rule, an approach based on procedures specified in S4, H-Point Machine, of SAE Standard J826 (May 1987), Devices for Use in Defining and Measuring Vehicle Seating Accommodation. NHTSA requests comments on such an approach.

In addition to proposing to raise the height of the MDB for LTV testing, the agency is also considering increasing its weight. NHTSA derived the weight of the current barrier from the median curb weight of passenger cars (3,181 pounds in 1989) and light trucks (3,958 pounds in 1989). This resulted in a weighted average of 3,423 pounds, which was adjusted downward to account for the then-projected lower weight of vehicles in the 1990's. Based on these considerations, NHTSA derived a barrier weight of 3,000 pounds. Since the late 1980's, however, the sales weighted average curb weight of the passenger car and LTV fleet has been increasing, and is now about 3,310 pounds. The average curb weight of passenger cars is now 2,970 pounds, and the average curb weight of LTVs is about 3,900 pounds. The above weights were derived from the sales weighted EPA test weight for 1993 passenger cars and LTV's, minus 300 pounds.

The agency is proposing to specify the MDB's weight within a range of 3,000 pounds to 3,800 pounds. The lower end of the range is the current weight of the MDB, as specified by Standard No. 214 for passenger car testing. The upper end of the range is based on the average weight of striking vehicles in LTV crashes where an LTV occupant had an AIS ≥ 3 torso injury, as observed in 1988–91 NASS data. NHTSA is not proposing an MDB weight above 3,800 pounds because of concerns about practicability. In particular, the agency believes that as MDB weight is increased much above 3,600 pounds, there are increasing concerns about the feasibility of smaller LTV's meeting the dynamic test requirements with such a barrier.

Although NHTSA is proposing alternative approaches for specifying MDB height and weight, it believes it is desirable, to facilitate more focused comments, to specifically request comments on certain options, considering the pros and cons of those options.

There are several possible advantages in specifying a single height and weight for the barrier. Specification of a single height and a single weight would result in a simpler test procedure. For example, there would be no need to determine the precise H-point height or to adjust the height and weight of the MDB for testing different vehicles.

The agency believes that the combination of raising the MDB to a height in the middle portion of the proposed range, e.g., seven to nine inches above the passenger car barrier height, and increasing its weight to 3600 pounds would be sufficient to create a dynamic event that is representative of the ones likely to cause serious chest injuries to occupants in the most vulnerable LTVs in real world crashes. In particular, the MDB with that combination of height/weight would, in a dynamic test, push the side structure of the vast majority of LTV's inward at a level near that of the occupant's thorax.

In addition, assuming that a single height and a single weight were selected, the agency is concerned that raising the MDB height to a level above the middle portion of the proposed range and/or increasing its weight above 3600 pounds could raise practicability problems for compact LTV's whose H-points are typically only a few inches higher than passenger cars.

One possible concern about specifying a single height would be whether some manufacturers might raise occupant seating height to more easily meet the requirements. Moving the seat too high could increase the vehicle's propensity to rollover.

Other possible options are to specify the height of the MDB to match the H-point of the test vehicle individually or select a setting that would best match the H-point heights of a group of vehicles belonging to a particular type. Specifying the height of the MDB to match the H-point height would result in a test that is similar to that for passenger cars in that the impact of the barrier relative to the occupant's position would be similar. Manufacturers could not avoid the need to add padding simply by raising seating height.

While this would simulate an accident severity that is likely to be experienced by an occupant in that vehicle for thoracic injuries, there may be practical difficulties encountered in conducting side impact tests in that manner. When the MDB height is set to match the H-point of the test vehicle, structurally identical models with different suspension systems that cause changes in H-point heights, would be tested at different severities, resulting in the possibility of requiring different countermeasures for what is essentially the same vehicle. Also, the added step of determining H-point height could introduce variability in test results.

The agency seeks comments on the proposal for a single height and for multiple height settings for the MDB in LTV testing.

The increases in MDB height and weight are the primary test procedure changes that NHTSA believes may be needed in extending Standard No. 214's dynamic requirements to LTV's. The agency does not believe that any changes are needed in the speed or angle of the MDB, and believes that only minor adjustments may be necessary with respect to point of impact.

The specified point of impact for passenger cars is generally 37 inches forward of the center line of the wheelbase of the struck vehicle. However, for cars with wheelbases greater than 114 inches, the point of impact is 20 inches behind the front axle. This ensures that the impact point for cars with very long wheelbases is not so far toward the rear of the car that the front seat dummy does not experience a full impact. The agency is proposing, with one exception, the same impact point for LTVs. To ensure that the impact point is not too far forward for LTVs with very short wheelbases, the agency is proposing that for LTVs with wheelbases of 98 inches or less, the impact point would be 12 inches rearward of vehicle's front axle centerline. This would ensure that the MDB would not likely bridge across the front and rear axles in short wheelbase LTVs.

NHTSA notes that GM expressed concern that specification of impact point based on wheelbase could result in the possibility of having to impact two structurally identical LTV's at two different locations. This is because manufacturers sometimes offer the same LTV with several different wheelbases. The agency requests comments on whether the specified impact point should be adjusted to eliminate this possibility. For example, should the agency either specify impact point based on driver H-point instead of wheelbase or provide a manufacturer option in this area?

The agency also requests comments on whether any other changes should be made in any part of Standard No. 214's dynamic test procedure, in order to make it appropriate for LTV's.

The proposed changes in the regulatory text of Standard No. 214 are set forth at the end of this notice. NHTSA notes that the specifications for the side impact MDB are set forth in part 587. While the agency is not setting forth specific changes to part 587, it would, for purposes of a final rule, specify any necessary changes to reflect the possibly higher, heavier MDB for LTV testing.

NHTSA notes that the weight of the MDB is adjustable by means of removable ballast plates located over the rear axle and directly rearward of the front axle of the carriage (See Figure 2 of Standard No. 214). The weights are placed such that the weight distribution front-to-rear remains as close to the weight distribution in the standard 3000 pound barrier as possible.

The agency notes that the barrier face is vertically adjustable using the hole patterns on the standard passenger car MDB carriage front. The hole patterns currently permit the barrier to be raised 4.0 inches, 7.25 inches, 9.25 inches, and 11.25 inches above the standard passenger car barrier height of 33 inches. (See NHTSA Side Impact Moving Deformable Barrier Drawing No. DSL–1281, page 5.)

Depending on the height specification that might be adopted in a final rule, there could be a need to modify the positions of the holes on the frame. There may also be a need to extend the height of the frame to provide adequate support for the raised barrier plate. The agency has conducted its research tests using a barrier modified in this way.

The agency would also, for purposes of a final rule, make any necessary conforming changes to Figure 2 of Standard No. 214. This figure shows the side impact MDB.

VB. Performance Requirements

Standard No. 214 specifies TTI(d) limits of 85 g for 4-door cars and 90 g for 2-door cars. The standard specifies a pelvic acceleration limit of 130 g for all cars. NHTSA is proposing to specify a TTI(d) limit of 85 g, the same limit as applies to 4-door passenger cars, and a pelvic acceleration limit of 130 g, the same level as applies to all passenger cars.

While some commenters suggested that LTVs might be able to meet even more stringent TTI(d) and pelvic acceleration limits than cars, the agency notes that safety standards are not based on the criterion of maximum feasible safety. The agency believes that TTI(d) and pelvic acceleration limits of 85 g and 130 g, respectively, will make a significant contribution to improve side impact protection for LTVs. This is particularly true given the fact that the agency is considering adjusting the passenger car test procedure, making it more stringent in the case of LTVs, so that it better reflects the types of crashes that result in serious injuries to LTV occupants.

NHTSA notes that, in establishing a slightly higher TTI(d) limit of 90 g for 2-door passenger cars, it explained that it is generally more difficult for manufacturers to achieve lower TTI(d) for two-door cars than four-door cars, given that the door on a two-door model is typically wider than on a four-door model. The reason two-door cars usually have wider doors is to provide occupant access to the rear seat. Two-door LTV's do not typically have wider doors, since the front doors do not provide occupant access to a rear seat. Moreover, many LTVs generally have stiffer side structures than small and medium passenger cars, especially those LTV's equipped with side door beams. Therefore, the agency believes that the 85 g limit can be specified for all LTV's. NHTSA requests comment on this issue.

VC. Rear Seat Requirements

As part of considering an extension of Standard No. 214's dynamic side impact requirements to LTVs, NHTSA is considering whether the requirements should apply to the front and rear seats of these additional vehicles (as is the case for passenger cars), or whether they should apply to the front seats only of these vehicles.

On the subject of whether the requirements should apply to the rear seats of LTVs, NHTSA wishes to call attention to the cost assessment in the PEA for this proposal which raises concerns about the cost effectiveness of requiring the second row of seats in LTVs to meet these proposed requirements. For instance, Tables VIII–6 and VIII–7 of the PEA show the "costs per equivalent life saved" from covering the second row of seats are up to 43 times greater than the costs per equivalent life saved from covering the front seats. These additional costs would be incurred to achieve much lesser benefits. NHTSA estimates that only 4 to 15 percent of all potential benefits would accrue to occupants of rear seats. However, the costs to cover the rear seats range from 23 percent to as high as 74 percent of the total cost of this rulemaking, depending on the option.

The agency is very interested in public comments addressing whether, in view of these cost-effectiveness estimates, second seats in LTVs should be covered by these requirements. In addition, the agency is interested in knowing what provision light truck manufacturers would make for rear-seat occupants if the final rule were limited to the front seats.

The agency notes that the occupants of second seats are very often children, especially in minivans, which constitute the majority of LTVs with more than one row of seats. Thus, a decision to apply the dynamic side impact requirements to second seats would ensure that children riding in these seating positions in vehicles designed and sold for family transportation are afforded the same level of protection offered to adults in the front seats.[1]

[1] NHTSA's analysis (PEA, pp. V–[illegible] and V–26) indicates that, depending on the alternative, application of the requirements to second seats would prevent an additional 4 to 6 fatalities and 7 to 14 serious injuries annually. About ⅓ of these benefits would accrue to children under the age of 15.

NHTSA notes that while the regulatory text set forth in this document does not apply the dynamic side impact requirements to the second seats of LTVs, the agency may, depending on the comments, apply the requirements to second seats in a final role.

NHTSA notes that many LTVs have an aisle between one of the rear outboard seating positions and the side of the vehicle. The agency does not believe there would be any reason to apply the proposed requirements to such seating positions, since they are far enough away from the side of the vehicle that occupants are not likely to experience thoracic injuries in a side impact. Therefore, if NHTSA were to cover rear outboard seating positions where the outermost edge of the rear seat cushion is more than 10 inches away from the interior surface of the side door or wall.

VI. Vehicles Covered by Proposal

As indicated above, the NHTSA Authorization Act of 1991 required the agency to address, through rulemaking, the possible extension of Standard No. 214's dynamic side impact requirements for passenger cars to MPVs and trucks with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. The agency has considered whether the requirements should also be applied to vehicles with a GVWR greater than 8,500 pounds but less than 10,000 pounds, as well as whether some vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less should be excluded.

Based on its test series, NHTSA believes that larger, heavier LTVs already meet the proposed dynamic requirements, even with the higher, heavier MDB. Therefore, the agency believes there is no reason to apply the requirements to LTVs with a GVWR above 8,500 pounds.

The agency believes that it may be appropriate to exclude some LTVs with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. NHTSA is proposing to exclude motor homes, walk-in vans, tow trucks, dump trucks, ambulances, and vehicles which have no doors or exclusively have doors that are designed to be easily attached or removed so the vehicle can be operated without doors.

Many motor homes, walk-in vans, tow trucks, dump trucks and ambulances would already be excluded from the proposed requirements because they have a GVWR greater than 8,500 pounds. Moreover, most that are not excluded would likely already meet the proposed requirements since they would still tend to be among the larger, heavier LTV's. NHTSA is proposing to exclude these categories of vehicles because of the combination of two factors: (1) The likelihood that they already comply with the proposed requirements, and (2) many vehicles within these categories tend to have unusual side structures and are often produced in small volumes, making it potentially very expensive, on a per vehicle basis, to confirm compliance for purposes of certification.

The agency is proposing to exclude vehicles which have no doors, or exclusively have doors that are designed to be easily attached or removed so the vehicle can be operated without doors, because it would be impracticable for such vehicles to meet the proposed requirements.

There is a specialized class of small businesses involved in the final stage manufacture of vehicles manufactured in two or more stages, and/or in the conversion or alteration of new vehicles. In several recent rulemakings, including those extending Standard No. 214's quasi-static side door strength requirements and Standard No. 208's automatic crash protection requirements to LTVs, NHTSA has addressed at length the issue of compliance by these "final-stage manufacturers."

The agency believes that the extension of Standard No. 214's dynamic requirements to LTVs raises the same basic issues concerning final stage manufacturers as the earlier rulemakings on Standards No. 214 and No. 208. NHTSA has tentatively concluded that the proposed requirements would not pose an unreasonable burden on final stage manufacturers, since they have the same means for certifying compliance as they do for Standard No. 208's automatic crash protection requirements and Standard No. 214's quasi-static side door strength requirements.

In many cases, final stage manufacturers can certify compliance simply by staying with limits set by the incomplete vehicle manufacturer. Some final stage manufacturers build their own vehicle body structures. However, these manufacturers are generally larger than most final stage manufacturers, and have greater engineering and testing expertise. Final stage manufacturers can also band together to sponsor testing and/or engineering analysis.

For a full discussion of these issues, see 56 FR 12472, 12477–80, March 26, 1991 (final rule extending Standard No. 208's automatic protection requirements to LTVs); 57 FR 26609, 26612–17, June 15, 1992 (response to petitions for reconsideration of extension of Standard No. 208's automatic protection requirements to LTVs); 56 FR 27427, 27435–36, June 14, 1991 (final rule extending Standard No. 214's quasi-static side door strength requirements to LTVs); 58 FR 19628–31, April 15, 1993 (response to petition concerning the extension of Standard No. 214's quasi static side door strength requirements to LTVs).

NHTSA requests comments on the proposed exclusions discussed above and on whether any other LTVs should be excluded. NHTSA notes that buses within the specified weight limits are covered by the proposal. Some vans are classified as buses. While most such vans have a GVWR above 8,500 pounds there may be some smaller ones with a lower GVWR. The agency is aware that some small buses have an unusual side structure, in that the passenger portion of the bus is wider than the portion which includes the driver seat. NHTSA specifically requests comments on whether any such buses have a GVWR of 8,500 pounds or less and, if so, whether the proposed test procedure would be appropriate for vehicles with that type of side structure. NHTSA also specifically requests comments on the ability of manufacturers of LTVs designed to be driven by persons with disabilities to comply with the proposed requirements.

VII. Benefits

NHTSA's analysis of benefits is presented in the PEA. As discussed in that document, estimated benefits would vary depending on the barrier weight and height specified in a final rule. All LTV's are believed to meet the proposed requirements using the barrier specified by Standard No. 214 for passenger car testing. Thus, benefits would be negligible for that option. The benefits would increase as barrier weight and height increase.

The PEA provides estimates of benefits for six different barrier height alternatives, with the barrier weight at 3,000 and 3,600 pounds. The height of the barrier varies between 35 inches and 45 inches for these alternatives. The estimates of benefits cited below reflect those alternatives.

If the dynamic side impact requirements were extended to the front seat only, with a barrier weight of 3,000 pounds, the agency estimates that there would be 1 to 63 fewer fatalities and 13 to 287 fewer AIS 2–5 injuries annually, depending on the height of the barrier. With a barrier weight of 3,600 pounds, NHTSA estimates that there would be 32 to 116 fewer fatalities and 122 to 472 fewer AIS 2–5 injuries annually, depending on the height of the barrier

If the requirements were extended to the front and rear seats, with a barrier weight of 3,000 pounds, the agency estimates that there would be 5 to 69 fewer fatalities and 20 to 301 fewer AIS 2–5 injuries annually. With a barrier weight of 3,600 pounds, NHTSA estimates that there would be 36 to 122 fewer fatalities and 129 to 486 fewer AIS 2–5 injuries annually.

As discussed in the PEA, there are a number of assumptions underlying these estimates, including the assumption that 12 light truck make/models for which the agency has test data are representative of vehicles in their body style/size class. Another assumption is that either padding or a combination of padding and structure would be employed as countermeasures.

VIII. Costs

The PEA also presents the agency's analysis of costs. As with benefits, estimated costs would vary depending on the barrier weight and height specified in a final rule. Since all LTV's are believed to meet the proposed requirements using the barrier specified by Standard No. 214 for passenger car testing, vehicle costs would be negligible for that option. However, there would be testing costs.

Costs would increase as barrier weight and height increase. The PEA provides estimates of costs for the same barrier height/weight alternatives as for benefits. The estimates of costs cited below reflect those alternatives.

While some LTVs already meet the proposed requirements and would not require any changes, NHTSA believes that all other LTVs could be brought into compliance either by the addition of three inches or less of padding to the door or side of the vehicle adjacent to each outboard occupant's thorax, or by the addition of a combination of padding and structure.

If the dynamic side impact requirements were extended to the front seat only and assuming that the appropriate countermeasures were added to those vehicles requiring changes, NHTSA estimates the average cost per LTV of adding the countermeasure to be $5.55 to $37.07, depending on the weight and height specified for the barrier. (The average cost per LTV is based on the costs for all LTVs, including those which would not require the addition of countermeasures.) The addition of the lifetime fuel costs of carrying the extra weight of the padding/structure increases the average cost per LTV to $7.91 to $65.90. Another possible cost relates to secondary weight, i.e., weight increases in other parts of the vehicle which might be made to compensate for the additional weight of the padding/structure. With the addition of secondary weight and the lifetime fuel costs of carrying the secondary weight, the average cost per LTV would be $10.47 to $97.22.

If the proposed requirements were extended to the front and rear seats, NHTSA estimates the average cost per LTV of adding the countermeasure to be $7.33 to $55.18. The addition of the lifetime fuel costs of carrying the extra weight of the padding/structure increases the cost per LTV to $10.59 to $98.69. With the addition of secondary weight and the lifetime fuel costs of carrying the secondary weight, the average cost per LTV would be $14.13 to $145.96.

As with its estimates of benefits, NHTSA's costs estimates are based on a number of assumptions which are discussed in the PEA.

IX. Leadtime/Phase-In

NHTSA believes that the extension of the dynamic side impact requirements to LTVs would require a similar leadtime to that provided for passenger cars, since the countermeasures and testing needs are the same. The agency is therefore proposing to establish the same phase-in options as it provided for passenger cars.

More specifically, to provide manufacturers with sufficient leadtime to design their LTVs to meet the proposed performance requirements, NHTSA is proposing two compliance schedules, the choice of which would be at the option of the manufacturer. Under the first schedule, the standard would be phased-in in accordance with the following implementation schedule:

- 10 percent of all LTVs manufactured during the first full production year (September 1 to August 31) beginning approximately two years after the issuance of a final rule;
- 25 percent of all LTVs manufactured during the second full year after that two-year period;
- 40 percent of all LTVs manufactured during the third full year after that two-year period; and
- 100 percent of all LTVs manufactured on or after the beginning of the fourth full year after that two-year period.

Under the second schedule, no compliance would be required during the production period beginning approximately two years after the issuance of a final rule, but full implementation would be required beginning with the next production period.

X. Reporting Requirements

Whenever the agency specifies a phase-in of some performance requirement, it is necessary for enforcement of that phase-in to require manufacturers to report, at the end of each production period during the phase-in, its total production of vehicles and the number of such vehicles that are certified as complying with the relevant performance requirement. While the agency is not setting forth specific regulatory text concerning reporting in this NPRM, it would, for purposes of a final rule, establish essentially the same side impact reporting requirements for LTV manufacturers as it established in part 586 for passenger car manufacturers.

XI. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the costs and other impacts that would be associated with this proposal if it were adopted as a final rule. This rulemaking document was reviewed under Executive Order 12866, "Regulatory Planning and Review." This rulemaking action is considered significant under that executive order and the DOT Regulatory Policies and Procedures because it could have an annual effect on the economy of $100 million or more. The agency's analysis of costs and benefits is presented in the Preliminary Economic Assessment, which is being placed in the docket. A summary of costs and benefits is presented earlier in this notice.

Regulatory Flexibility Act

NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

The primary cost effect of the proposed requirements would be on incomplete vehicle manufacturers, which are not small entities. Although many final stage manufacturers are small businesses, NHTSA estimates that the vast majority of those businesses would not be significantly affected by the proposed requirements. Final stage manufacturers would have the same means for certifying compliance as they do for Standard No. 208's automatic crash protection requirements and Standard No. 214's quasi-static side door strength requirements. In many cases, final stage manufacturers can

certify compliance simply by staying with limits set by the incomplete vehicle manufacturer. Some final stage manufacturers build their own vehicle body structures. However, these manufacturers are generally larger than most final stage manufacturers, and have greater engineering and testing expertise. Final stage manufacturers can also band together to sponsor testing and/or engineering analysis.

Small organizations and governmental units should not be significantly affected since the potential cost impacts associated with this proposed action should only slightly affect the purchase price of new motor vehicles.

National Environmental Policy Act

NHTSA has analyzed this rulemaking for the purposes of the National Environmental Policy Act. The addition of padding and structure would result in increased material usage by manufacturers, primarily plastic and metal. There could also be increased material usage associated with possible secondary weight. The agency estimates that LTVs could increase in average curb weight by 0.07 percent to 1.25 percent. Such added weight would result in a very slight increase in fuel consumption. After considering these impacts, the agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

The agency has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this proposed rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. Chapter 35 under OMB No.: 2127–0558. ADMINISTRATION: National Highway Traffic Safety Administration; TITLE: Production Reporting System for Side Impact Protection Compliance (49 CFR part 586); NEED FOR INFORMATION: To assess compliance with dynamic side impact protection phase-in requirements; PROPOSED USE OF INFORMATION: To determine if manufacturers are complying with the dynamic side impact protection phase-in schedule; FREQUENCY: Annually; BURDEN ESTIMATE: 384 hours; RESPONDENTS: 16; FORM(S): None; AVERAGE BURDEN HOURS FOR RESPONDENT: 24 hours.

FOR FURTHER INFORMATION CONTACT: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735, or Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340.

Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

XII. Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50

2. Section 571.214 would be amended by revising S2, adding S3(f) through S3(h), revising S5.1, S6.1, S6.11, and S7 and adding S8.5 through S8.9.3, to read as follows:

§ 571.214 Standard No. 214, Side Impact Protection.

* * * * *

S2 This standard applies to passenger cars. Effective September 1, 1993, sections S3(a), S3(e), S3.1 through S3.2.3, and S4 of the standard apply to multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 pounds or less, except for walk in vans. Effective September 1, 1996 sections S3(f) through S3(h) and S5 of the standard apply to multipurpose passenger vehicles, trucks and buses with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, except for walk-in vans, motor homes, tow trucks, dump trucks, ambulances, and vehicles which have no doors or exclusively have doors that are designed to be easily attached or

removed so the vehicle can be operated without doors.

* * * * *

S3* * *

(f) When tested according to the conditions of S6, each multipurpose passenger vehicle, truck and bus manufactured on or after September 1, 1999 shall meet the requirements of S5.1, S5.2, and S5.3 in a 33.5 miles per hour impact in which the vehicle is struck on either side by a moving deformable barrier. A part 572, subpart F test dummy is placed in the front outboard seating position on the struck side of the vehicle.

(g) Except as provided in paragraph (h) of this section, from September 1, 1996 to August 31, 1999, a specified percentage of each manufacturer's combined yearly production of multipurpose passenger vehicles, trucks and buses with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, as set forth in S8, shall, when tested under the conditions of S6, meet the requirements of S5.1, S5.2, and S5.3 in a 33.5 miles per hour impact in which the vehicle is struck on either side by a moving deformable barrier. A part 572, subpart F test dummy is placed in the front outboard seating position on the struck side of the vehicle.

(h) A manufacturer may, at its option, comply with the requirements of this paragraph instead of paragraph (g) of this section. When tested under the conditions of S6, each multipurpose passenger vehicle, truck and bus with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured from September 1, 1997 to August 31, 1999 shall meet the requirements of S5.1, S5.2, and S5.3 in a 33.5 miles per hour impact in which the vehicle is struck on either side by a moving deformable barrier. A part 572, subpart F test dummy is placed in the front outboard seating position on the struck side of the vehicle.

* * * * *

S5.1 *Thorax.* The Thoracic Trauma Index (TTI(d)) shall not exceed 85 g for passenger cars with four side doors, shall not exceed 90 g for passenger cars with two side doors, and shall not exceed 85 g for multipurpose passenger vehicles, trucks, and buses, when calculated in accordance with the following formula:

$TTI(d)=1/2\ (G_R+G_{LS})$

The term "G_R" is the greater of the peak accelerations of either the upper or lower rib, expressed in g's and the term "G_{LS}" is the lower spine (T12) peak acceleration, expressed in g's. The peak acceleration values are obtained in accordance with the procedure specified in S6.13.5.

* * * * *

S6.1 *Test weight.* Each vehicle is loaded to its unloaded vehicle weight, plus 300 pounds or its rated cargo and luggage capacity (whichever is less), secured in the luggage or load-carrying area, plus the weight of the necessary anthropomorphic test dummies. Any added test equipment is located away from impact areas in secure places in the vehicle. The vehicle's fuel system is filled in accordance with the following procedure. With the test vehicle on a level surface, pump the fuel from the vehicle's fuel tank and then operate the engine until it stops. Then, add Stoddard solvent to the test vehicle's fuel tank in an amount which is equal to not less than 92 percent and not more than 94 percent of the fuel tank's usable capacity stated by the vehicle's manufacturer. In addition, add the amount of Stoddard solvent needed to fill the entire fuel system from the fuel tank through the engine's induction system.

* * * * *

S6.11 *Impact reference line.* For passenger cars with a wheelbase of 114 inches or less and for other vehicles with a wheel base of greater than 98 inches but not greater than 114 inches, on the side of the vehicle that will be struck by the moving deformable barrier, place a vertical reference line which is 37 inches forward of the center of the vehicle's wheelbase. For vehicles with a wheelbase greater than 114 inches, on the side of the vehicle that will be struck by the moving deformable barrier, place a vertical reference line which is 20 inches rearward of the centerline of the vehicle's front axle. For vehicles other than passenger cars, with a wheelbase of 98 inches or less, on the side of the vehicle that will be struck by the moving deformable barrier, place a vertical reference line, which is 12 inches rearward of the centerline of the vehicle's front axle.

* * * * *

S7 *Positioning procedure for the Part 572 Subpart F Test Dummy.* Position a correctly configured test dummy, conforming to subpart F of part 572 of this chapter, in the front outboard seating position on the side of the test vehicle to be struck by the moving deformable barrier and, if the vehicle is a passenger car, position another conforming test dummy in the rear outboard position on the same side of the vehicle, as specified in S7.1 through S7.4. Each test dummy is restrained using all available belt systems in all seating positions where such belt restraints are provided. In addition, any folding armrest is retracted.

* * * * *

S8.5 *Multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 1996 and before September 1, 1997.*

S8.5.1 The combined number of multipurpose passenger vehicles, trucks and buses with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less complying with the requirements of S3(g) shall be not less than 10 percent of:

(a) the average annual production of multipurpose passenger vehicles, trucks and buses with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1993, and before September 1, 1996, by each manufacturer, or

(b) the manufacturer's annual production of multipurpose passenger vehicles, trucks and buses with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the period specified in S8.5.

S8.6 *Multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 1997 and before September 1, 1998.*

S8.6.1 The combined number of multipurpose passenger vehicles, trucks and buses with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less complying with the requirements of S3(g) shall be not less than 25 percent of:

(a) the average annual production of multipurpose passenger vehicles, trucks and buses with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1994, and before September 1, 1997, by each manufacturer, or

(b) the manufacturer's annual production of multipurpose passenger vehicles, trucks and buses with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the period specified in S8.6

S8.7 *Multipurpose passenger vehicles, trucks and buses manufactured on or after September 1, 1998 and before September 1, 1999*

S8.7.1 The combined number of multipurpose passenger vehicles, trucks and buses with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less complying with the requirements of S3(g) shall be not less than 40 percent of:

(a) the average annual production of multipurpose passenger vehicles, trucks and buses with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1994, and before September 1, 1997, by each manufacturer, or

(b) the manufacturer's annual production of multipurpose passenger vehicles, trucks and buses with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the period specified in S8.7.

S8.8 Walk-in vans, motor homes, tow trucks, dump trucks, ambulances, and vehicles which have no doors or exclusively have doors that are designed to be easily attached or removed so the vehicle can be operated without doors may be excluded from all calculations of compliance with S8.5.1, S8.6.1 and S8.7.1.

S8.9 *Multipurpose passenger vehicles, trucks and buses produced by more than one manufacturer.*

S8.9.1 For the purposes of calculating average annual production of multipurpose passenger vehicles, trucks and buses with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less for each manufacturer and the number of multipurpose passenger vehicles, trucks and buses with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured by each manufacturer under S8.5.1, S8.6.1 and S8.7.1, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S8.9.2:

(a) A vehicle which is imported shall be attributed to the importer;

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer which markets the vehicle.

S8.9.2 A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR part 586, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S8.9.1.

S8.9.3 Each multipurpose passenger vehicle, truck and bus with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that is manufactured in two or more stages or that is altered (within the meaning of § 567.7 of this chapter) after having previously been certified in accordance with part 567 of this chapter is not subject to the requirements of S3(g).

Issued on: June 10, 1994

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94-14578 Filed 6-14-94; 8:45 am]

BILLING CODE 4910-59-P

Notices

Federal Register
Vol. 59, No. 114
Wednesday, June 15, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Voluntary Foreign Aid Advisory Committee; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on:

Date: Wednesday, June 29, 1994 9 a.m. to 5 p.m.

Location: Dean Acheson Auditorium, U.S. Department of State, Washington, DC

During the meeting, USAID Administrator J. Brian Atwood and other speakers from USAID and the PVO community will discuss USAID policies that affect the U.S. private and voluntary community.

The meeting is free and open to the public. However, notification by Friday, June 24, 1994, through the Advisory Committee's office is required.

Persons wishing to attend the meeting must call Theresa Oakley (703) 351–0243 or FAX (703) 351–0212. Persons attending must include their name, organization, birth date and social security number for security purposes.

Dated: June 6, 1994.

Louis C. Stamberg,

Office Director, Office of Private and Voluntary Cooperation, Bureau for Humanitarian Assistance.

[FR Doc. 94–14481 Filed 6–14–94; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.

Title: Short Supply Regulations — Unprocessed Western Red Cedar.

Agency Form Number: None but requirements are found at Section 777.7 of the Export Administration Regulations.

OMB Approval Number: 0694–0025.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 30 minutes.

Number of Respondents: One.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Export Administration Act prohibits the export of most unprocessed western red cedar harvested from State or Federal lands, except for unprocessed western red cedar harvested under contracts entered into before 1979. The information is collected as supporting documentation for license applications to enforce the Export Administration Act's prohibition.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Agency: Inspector General's Office.

Title of Survey: Applicant for Funding Assistance.

Agency Form Number: CD–346.

OMB Approval Number: 0605–0001.

Type of Request: Reinstatement of a previously approved collection.

Burden: 240 hours.

Number of Respondents: 960.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The information provided is used to check the good character of individuals or organizations receiving grants, loans or loan guarantees from the Department of Commerce.

Affected Public: Individuals, businesses or other for–profit institutions, small businesses or organizations, non–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Agency: National Institute of Standards and Technology.

Title: Malcolm Baldrige Quality Award Application.

Agency Form Number: None.

OMB Approval Number: 0693–0006

Type of Request: Revision of a currently approved collection.

Burden: 10,000 hours.

Number of Respondents: 100.

Avg Hours Per Response: 100.

Needs and Uses: The Malcolm Baldrige Quality Management Act of 1987 established an annual U.S. National Quality Award. The purposes of the Award are to promote quality awareness, recognize quality achievements of U.S. companies, and to publicize successful quality strategies. The information collected from applicants will be used to conduct evaluations and determine who will receive the Awards.

Affected Public: Businesses or other for–profit institutions, small businesses or organizations, non–profit institutions.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785, Room 3235, New Executive Office Building, Washington, D. C. 20503.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NOAA's Teacher At Sea Program.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: Existing collection in use without an OMB approval number.

Burden: 180 hours.

Number of Respondents: 240.

Avg Hours Per Response: Varies but generally 1 hour for applications and 2 hours for the final report requirement.

Needs and Uses: NOAA provides educators with an opportunity to gain first–hand experience with field research activities through the Teacher at Sea Program. Through this program, educators spend up to 3 weeks at sea on a NOAA research vessel, participating in an on–going research project with NOAA scientists. Information provided through the application process is used in evaluating and selecting applicants. Participants also must provide a final report.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340, Room 3208, New

Executive Office Building, Washington, D.C. 20503.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fisheries Certificate of Origin and ICATT Bluefin Statistical Document.

Agency Form Number: NOAA Form 370.

OMB Approval Number: 0648–0040.

Type of Request: Revision of a currently approved collection.

Burden: 5,133 hours.

Number of Respondents: 583 (over 20 responses per respondent).

Avg. Hours Per Response: Ranges between 20 and 40 minutes.

Needs and Uses: The United States is a member of the International Commission for the Conservation of Atlantic Tunas (ICATT). To comply with a 1992 recommendation of this organization, the United States needs to document bluefin tuna shipments that are imported into or exported from the United States. The Bluefin Tuna Statistical Document will be a condition for import, export, or re–export of fresh or frozen bluefin tuna. This request also covers the requirements of the International Dolphin Conservation Act. This law requires the Secretary to ensure that any tuna or tuna product entering the commerce of the U.S. is dolphin safe.

Affected Public: Small businesses or organizations.

Frequency: Upon import or export, on occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Agency: Technology Administration.

Title: Application for Manufacturing Technology Fellowship.

Agency Form Number: None assigned.

OMB Approval Number: 0692–0002.

Type of Request: Revision of a currently approved collection.

Burden: 5,400 hours.

Number of Respondents: 200.

Avg Hours Per Response: 27.

Needs and Uses: The information provided is used to determine qualifications of applications for the Manufacturing Technology Fellowship Program. This program gives manufacturing engineers the opportunity to spend up to one year in Japan learning Japanese manufacturing techniques, culture, and language.

Affected Public: Individuals, businesses or other for–profit institutions, small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Copies of the above information collection proposals can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective Desk Officer listed above.

Dated: June 9, 1994

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–14579 Filed 6–14–94; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with May anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews. The Department also received a request to revoke in part a countervailing duty order.

EFFECTIVE DATE: June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with 19 C.F.R. 353.22(a) and 355.22(a) (1993), for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with May anniversary dates. The Department also received a timely request to revoke in part the countervailing duty order on ceramic tile from Mexico.

Initiation of Reviews

In accordance with sections 19 CFR 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than May 31, 1995.

	Period to be reviewed
Antidumping Duty Proceedings	
Brazil:	
Frozen Concentrated Orange Juice, A–351–605: Branco Peres Citrus, S.A. CTM Citrus, S.A	05/01/93–04/30/94
Japan:	
Gray Portland Cement and Clinker, A–588–815: Onoda Cement Co., Ltd.	05/01/93–04/30–94
The People's Republic of China:	
Iron Construction Castings, A–570–502: China National Machinery Import and Export Corporation/Liaoning Branch	05/01/93–04/30/94
All other exporters of iron construction castings are conditionally covered by this review.	
Axes/Adzes; Bars/Wedges; Hammers/Sledges and Picks/Mattocks A–570–803: Fujian Machinery & Equipment Import & Export Corporation (FMEC): Shandong Machinery Import & Export Corporation (SMC)	02/01/93–01/31/94

	Period to be reviewed
All other exporters of hand tools are conditionally covered by this review.*	
*This is an amendment of the February 17, 1994 initiation notice covering axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks from the People's Republic of China.	
The Republic of Korea:	
Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit, A–580–812: Goldstar Electron Co., Ltd., Hyundai Electronic Industries Co., Ltd., Teijin Shoji Co., Ltd., Actor Inc./AGM, Ark Corporation, Samsung Electronics Co., Ltd., Atomco, First International, Kaitec Corp., Katsuki Co., Ltd., Kawano Electric Co., Ltd., KT Technology c/o Lambda Tech, Lets Corporation, Nambu Syokai Co., Ltd., Nichinan Electronics, Nippon Micro Devices, Suntec Japan Corp, and Tokyo Circuits	10/29/92–04/30/94
Turkey:	
Welded Carbon Steel Standard Pipe and Tube Products, A–489–501: Borusan Group, Mannesmann-Sumerbank Boru Endustrisi T.A.S.; Yucelboru Ihracat, Ithalat ve Pazarlama A.S./Cayirova Boru Sanayi ve Ticaret A.S	05/01/93–04/30/94
Countervailing Duty Proceedings	
Mexico:	
Ceramic Tile, C–201–003	01/01/93–12/31/93
Singapore:	
Ball Bearings, C–559–802	01/01/93–12/31/93
Cylindrical Bearings, C–559–802	01/01/93–12/31/93
Needle Roller Bearings, C–559–802	01/01/93–12/31/93
Spherical Plain Bearings, C–559–802	01/01/93–12/31/93
Spherical Roller Bearings, C–559–802	01/01/93–12/31/93
Thailand:	
Ball Bearings and Parts Thereof, C–549–802	01/01/93–12/31/93
Venezuela:	
Ferrosilicon, C–307–808	08/25/92–12/31/93

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b) and 355.34(b).

These initiatives and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1), 355.22(c)(1), and 355.25(c)(2).

Dated: June 10, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–14681 Filed 6–14–94; 8:45 am]

BILLING CODE 3510–DS–M

U.S.-South African Business Development Committee: Membership

ACTION: Notice of Membership Opportunity.

SUMMARY: On June 4, 1994, Secretary of Commerce Ronald H. Brown and South African Minister of Trade and Industry Trevor Manuel signed the document creating the U.S.-South Africa Business Development Committee ("BDC"). The purpose of the BDC will be to provide a forum through which U.S. and South African private sector representatives can furnish advice and guidance to their governments, and in which governments can exchange information, solve problems, and more effectively work together on issues relating to the following important areas:

—Resolving obstacles to trade and investment;
—Developing problem-solving approaches in areas where government action/inaction is affecting a commercial project;
—Improving commercial activity in both countries;
—Implementing promotional programs;
—Identifying further steps to facilitate and encourage the development of commercial expansion between the two countries.

The U.S. private sector side of the BDC will consist of 20 members representing the diversity of American business, with emphasis on: finance and investment, infrastructure, technical assistance, and market access. The Commerce Department is currently seeking nominations of outstanding individuals or companies to serve on the BDC.

In order to meet eligibility requirements for membership, potential candidates must be:

—A U.S. citizen residing in the United States;
—A CEO or other top management level employee of a U.S. company or organization involved with South Africa in the trade and investment fields;
—Not a registered Foreign Agent.

In reviewing eligible candidates, the Commerce Department will consider such selection factors as:

—Experience in the South African market;
—Industry or service sector represented;
—Export/investment experience;
—Contribution to diversity based on industry sectors, company size, location, and demographics.

To be considered for membership, please provide the following: name and title of at least two individuals requesting consideration; name and address of the company or organization sponsoring each individual; company's product or service line; size of the company; export experience/foreign investment experience and major markets; a brief statement of why each candidate should be considered for membership on the BDC; the particular segment of the business community each candidate would represent; and a personal resume.

DATES: In order to receive full consideration, requests must be received no later than: Wednesday, July 20, 1994.

ADDRESS: Please send your requests for consideration to Mrs. S.K. Miller, Director, Office of Africa, either by fax on (202) 482–5198 or by mail at Room 3317, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mrs. S.K. Miller of the Office of Africa, Room 3317, U.S. Department of Commerce, Washington, DC 20230.

Sally K. Miller,

Director, Office of Africa.

[FR Doc. 94–14524 Filed 6–14–94; 8:45 am]

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National Oceanic and Atmospheric Administration

[Docket No. 940666-4166; I.D. 052094A]

North Pacific Scallop Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of control date.

SUMMARY: NMFS announces a control date of April 24, 1994, after which scallop harvests made in the exclusive economic zone (EEZ) off Alaska may not apply as catch history for purposes of any future individual fishing quota (IFQ) or licenses in anticipation of a future limited-access program for this fishery. This notice is to notify the public of possible eligibility criteria for future access to the scallop resources in the EEZ off Alaska. The intended effect of announcing this control date is to provide the public with information for making future business decisions.

EFFECTIVE DATE: April 24, 1994.

FOR FURTHER INFORMATION CONTACT: Chris Oliver, 907-271-2809, or David Ham, 907-586-7229.

SUPPLEMENTARY INFORMATION: The scallop fisheries off Alaska are managed by the State of Alaska (State). Access to these fisheries is not limited or controlled by the State at this time. State regulations governing fishing for scallops off Alaska are set forth in the Alaska Administrative Code, Title 5, Chapter 38.

At its meeting of April 19-24, 1994, the North Pacific Fishery Management Council (Council) approved a motion to develop and implement a Fishery Management Plan (FMP) for scallops in the EEZ off Alaska. The proposed FMP would include all scallop species and would be implemented cooperatively by State and Federal agencies. A 3-year moratorium on the entry of new vessels into the scallop fisheries is also included in the proposed FMP, and would be implemented through the issuance of Federal scallop vessel permits. The intent of the proposed vessel moratorium is to stabilize the size and harvesting capacity of the scallop fleet while the Council considers other limited access alternatives for this fishery.

The Council requested NMFS to publish a document in the **Federal Register** announcing that scallop harvests made in the EEZ off Alaska after April 24, 1994, may not apply as catch history for purposes of any future limited access program that may follow the moratorium. The intended effect of announcing this control date is to discourage speculative entry into the scallop fisheries for the purposes of qualifying for a future IFQ program or license limitation program and to discourage increased fishing effort and accumulation of catch history in anticipation of a possible IFQ program in the future.

Fishermen or vessels who made landings prior to this date are not necessarily guaranteed access under any future limited access program developed by the Council or NMFS. This announcement does not prevent any other date for eligibility in these fisheries or another method of controlling fishing effort from being proposed and implemented by NMFS. The Council may recommend additional criteria for qualifying fishermen or vessels as participants in these fisheries.

This notifies current and future participants in these fisheries that the Council has begun deliberations that may affect the success of investments in these fisheries. This announcement does not commit the Council or NMFS to any particular management regime or priority criteria for access to the scallop fisheries in the EEZ off Alaska. Additionally, the Council may choose to take no action to control entry or access to these fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 9, 1994

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94-14469 Filed 6-14-94; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 052794C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of a Second Modification to Permit 817 (P45K), and Issuance of a Scientific Research Permit 905 (P45L).

On March 9, 1994, notice was published (59 FR 11050) that an application had been filed by the National Biological Survey for a modification to Permit 817 (P45K) to take listed Snake River fall chinook salmon (*O. tshawytscha*) for migration study as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222).

Notice is hereby given that on June 3, 1994, as authorized by the provisions of the ESA, NMFS issued a second modification to Permit Number 817 for the above taking, subject to certain conditions set forth therein.

On March 9, 1994, notice was published (59 FR 11050) that an application had been filed by the National Biological Survey, to take listed juvenile Snake River fall chinook salmon (*O. tshawytscha*) as authorized by the ESA to study migration and spawning and rearing habitats.

Notice is hereby given that on June 6, 1994, as authorized by the provisions of the ESA, NMFS issued Permit Number 905 for the above taking, subject to certain conditions set forth therein.

Issuance of this modification and this permit, as required by the ESA, was based on a finding that such modification and permit: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of this modification and permit; (3) are consistent with the purposes and policies set forth in section 2 of the ESA. This modification and this permit were also issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

The applications, permits, modifications, and supporting documentation are available for review by interested persons in the following offices, by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910-3226 (301-713-2322); and

Environmental and Technical Services Division, NMFS, NOAA, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503-230-5400).

Dated: June 8, 1994

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-14525 Filed 6-14-94; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 060694C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification No. 1 to scientific research permit No. 840 (P531D).

SUMMARY: Notice is hereby given that a request for modification of scientific research permit No. 840 submitted by Mr. Craig Matkin, North Gulf Oceanic Society, Merimac Drive, Mile 10.5 East Road, Homer, AK 99603, has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713-2289); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668 (907/586-7221).

SUPPLEMENTARY INFORMATION: On April 19,1994, notice was published in the **Federal Register** (59 FR 18522) that a modification of permit No. 840, issued May 25, 1993 (59 FR 31370), had been requested by the above-named individual. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 840 has been modified to authorize biopsy of up to 94 killer whales (*Orcinus orca*) that are part of a long-term photo-identification study.

Dated: June 8, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-14527 Filed 6-14-94; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 060694E]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit No. 925 (P771#70).

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, Alaska Fisheries Science Center, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115, has been issued a permit to biopsy humpback (*Megaptera novaeangliae*) and killer whales (*Orcinus orca*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668 (907/586-7221); and

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526-6150).

SUPPLEMENTARY INFORMATION: On April 1, 1994, notice was published in the **Federal Register** (59 FR 15380) that a request for a scientific research permit to biopsy humpback (*Megaptera novaeangliae*) and killer whales (*Orcinus orca*) had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C.

1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Dated: June 8, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-14526 Filed 6-14-94; 8:45 am]

BILLING CODE 3510-22-F

National Telecommunications and Information Administration (NTIA)

RIN 0660-AA05

Spectrum User/Government Public Meeting Concerning the Preliminary Spectrum Reallocation Report

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of a Spectrum user/government meeting to answer questions concerning the preliminary Spectrum Reallocation Report which identifies 200 Megahertz for public use.

SUMMARY: In accordance with the provisions of the Omnibus Budget Reconciliation Act of 1993, Title VI, Communications Licensing and Spectrum Allocation Improvement, NTIA will hold a meeting to answer questions from commercial representatives and the public concerning the Preliminary Spectrum Reallocation Report on June 24, 1994, from 9:30 am to 11:30 am. The meeting will be held in room 4830 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties are invited to submit questions as soon as possible. Questions can be provided in written form, via the NTIA bulletin board, or via Internet E-mail to "NSCHROEDER@NTIA.DOC.GOV". The report and public comments already received are available now at NTIA in hard copy form and on NTIA's Bulletin Board at (202) 482-1199.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Federal Information Relay Service (FIPS) on 1-800-877-8339.

FOR FURTHER INFORMATION CONTACT: The person to contact to obtain copies of the report and provide written comments is: Norbert Schroeder, Program Manager, Spectrum Openness, National Telecommunications and Information Administration, room 4092, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Telephone: (202) 482-3999, Fax: (202) 482-4396.

Dated: June 10, 1994.

Norbert Schroeder,

Program Manager, Spectrum Openness, NTIA.

[FR Doc. 94-14592 Filed 6-14-94; 8:45 am]

BILLING CODE 3510-60-M

Patent and Trademark Office

Extension of Existing Interim Orders Granting Protection Under the Semiconductor Chip Protection Act of 1984 for Nationals, Domiciliaries and Sovereign Authorities of Certain Countries To Which Interim Protection Has Been Extended

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: Pursuant to section 914 of the Semiconductor Chip Protection Act of 1984 (SCPA), 17 U.S.C. 914, and the guidelines issued by the Patent and Trademark Office, 49 FR 44517 (Nov. 7, 1984), the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks has determined that existing interim orders under which protection under the SCPA is made available to foreign mask work owners should be extended in duration for nationals, domiciliaries and sovereign authorities of Japan, Sweden, Australia, the Member States of the European Community, Canada, Switzerland, Finland, and Austria under section 914 of the SCPA.

EFFECTIVE DATE: This order is effective on June 30, 1994.

TERMINATION DATE: This order will terminate on July 1, 1995.

ADDRESSES: Address correspondence to Michael S. Keplinger, Office of Legislative and International Affairs, United States Patent and Trademark Office, Box 4, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Michael S. Keplinger, Office of Legislative and International Affairs, United States Patent and Trademark Office, Box 4, Washington, DC 20231, phone (703) 305–9300.

SUPPLEMENTARY INFORMATION: When Congress enacted the Semiconductor Chip Protection Act of 1984 (SCPA), it established an entirely new category of intellectual property that did not fall under the Paris Convention for the Protection of Industrial Property, the Universal Copyright Convention of the Berne Convention for the Protection of Literary and Artistic Works. The Congress created a balanced intellectual property regime for the protection of layout-designs of semiconductor chips that provided a level of protection that was satisfactory to meet the needs of the U.S. public and the domestic semiconductor chip industry. At the same time, Congress was also aware of the need of U.S. chip producers for protection in foreign markets, of the need of foreign chip producers for protection here in the United States and that there was no international treaty for the protection of chips. Faced with this dilemma, Congress created an innovative mechanism to encourage the rapid building of a worldwide consensus on an appropriate regime of intellectual property protection for chip layout-designs that would be compatible with U.S. law and would encourage the development of the international market for semiconductor chip products. To achieve these goals, Congress established a two-tiered system for protecting foreign works in the United States. Section 914 of the CPA permits the Secretary of Commerce to extend interim access to protection under the CPA for foreign chip creators if certain criteria are met, and section 902 permits the President to proclaim indefinite access to protection under the SCPA for foreign creators from countries that protect U.S. works. This system has laid the groundwork for establishing a technology-specific, carefully tailored and balanced regime of mask work protection in other chip-producing countries.

Section 902 of the SCPA sets out the criteria under which foreign works are eligible for protection in the United States. Section 902(a)(1) provides generally that a mask work fixed in a semiconductor chip product, by or under the authority of the owner of the mask work, may be protected under the SCPA if certain criteria are met.

The first of these is that when registration is sought or the mask work is first commercially exploited anywhere in the world, the owner of the mask work is (1) a U.S. national or domiciliary, (2) a national, domiciliary or authority of a foreign country that belongs to a treaty to which the United States also belongs that protects mask works, or (3) a stateless person regardless of where that person may be domiciled. Protection is also available if the mask work is first commercially exploited in the United States, or when the mask work comes within the scope of a Presidential proclamation issued under the SCPA.

The SCPA sets out the statutory criteria against which foreign laws are to be evaluated before issuing a Presidential proclamation. It provides substantially that when the President concludes that a foreign country grants U.S. mask work owners protection substantially the same protection that it grants its own nationals and domiciliaries, or on substantially the same basis as under the SCPA, the President may extend protection under this chapter to mask works of owners who are nationals, domiciliaries, or authorities of that country, or to mask works which are first commercially exploited in that country.

In 1987 the Chairman of the then House Subcommittee on Courts, Civil Liberties and the Administration of Justice noted that the transition provisions in section 914 of the SCPA were "intended to encourage the rapid development of a new worldwide regime for the protection of semiconductor chips." 133 Cong. Rec. E1283 (daily ed. April 6, 1987). These transitional provisions empowered the Executive to use the issuance of interim protection orders under section 914 of the SCPA as a means to encourage other nations to move speedily to establish substantially similar systems of protection These provisions originally were set to expire three years after the date of the enactment of the SCPA, November 7, 1987.

The Congress has twice extended the authority to issue interim orders in the belief that this process is promoting the protection of U.S. mask works abroad and that the speedy enactment of laws in other countries that are patterned after U.S. law is progress. H.R. Rep. 100–388, 100th Cong., 1st Sess. (1987). Under the SCPA, the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks has been delegated the tasks of determining when and under what conditions foreign mask works will be eligible for interim protection. To become eligible, a foreign government must demonstrate that it is making good faith efforts toward establishing a regime of protection in its territory that is substantially similar to that which is provided in the United States under the SCPA.

The countries to which interim protection has been extended (the Member States of the European Community, Australia, Austria, Canada, Finland, Japan, Sweden, and Switzerland) cooperated with the United States to try to establish a treaty for the adequate and effective protection of mask works in the World Intellectual Property Organization (WIPO). A Diplomatic Conference for the negotiation of a Treaty on the Protection of the Layout-Designs of Integrated Circuits (IPIC Treaty) was held in Washington during the month of May 1989. The IPIC Treaty adopted at the conclusion of the Conference did not meet the needs of either Japan or the United States. No developed country has thus far signed the Treaty, and it is yet to come into force.

Subsequent to the Diplomatic Conference, the United States has continued to work to conclude a multilateral agreement for the adequate and effective protection of semiconductor integrated circuit layout-designs. The Agreement on the Trade Related Aspects of Intellectual Property (TRIPs) that was adopted on December 15, 1993, in the Uruguay Round of Trade negotiations in the General Agreement on Tariffs and Trade contains a section that will require such protection. It builds upon the substantive provisions of the IPIC Treaty and adds the missing features deemed necessary to provide an adequate level of protection. It permits compulsory licensing of semiconductor technology only for public non-commercial uses or to remedy an adjudicated antitrust violation, it requires innocent infringers to pay reasonable royalties after notice, and it provides that products that include infringing chips fall within its scope of protection. Thus the TRIPs Agreement provides the level of protection in an internationally recognized text that is fully consistent with the U.S. SCPA and meets, or exceeds, the levels of protection provided in other countries' chip protection laws. The countries to which interim protection has been extended to all worked closely with the United States to achieve this goal. However, the TRIPs Agreement has not yet been implemented by the United States, and the presently issued interim orders will

expire on July 1, 1994, before the implementation of the TRIPs agreement.

The combination of the standards set out in section 902 and the process established to implement section 914 clearly appear to have satisfied the Congressional intent behind this unprecedented process. In 1984, only the United States had specific legislation in place for the protection of chips, while today such protection is in place in all of the countries to which interim protection has been extended. U.S. semiconductor chip layout-designs enjoy protection in all of those countries today. In some, the protection is enjoyed on the basis of national treatment and in some on the basis of reciprocity.

Since the interim orders were last extended, no complaints about the adequacy of the mask work protection laws in any of the countries to which interim protection has been extended have been received. Should such complaints arise in the future, they can be taken into account in determining whether a particular interim order should be rescinded prior to its scheduled termination.

Because of this favorable environment, and in order to ensure the continuing protection of U.S. layout-designs in foreign markets, I have determined that extending the present interim orders will provide the time needed for the final implementation of the TRIPs Agreement which will provide the basis for an adequate and effective muiltinational system for the protection for semiconductor mask works. In light of this, I am extending the interim orders for Japan, Sweden, Australia, the Member States of the European Community, Canada, Switzerland. Finland and Austria under Section 914 of the SCPA. These orders will expire on July 1, 1995.

Dated: May 26, 1994.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 94–14520 Filed 6–14–94; 8:45 am]

BILLING CODE 3510–16–M

COMMODITY FUTURES TRADING COMMISSION

The National Futures Association's Proposed Requirements for Break-Even Analyses in Commodity Pool Disclosure Documents

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed registered futures association rule change.

SUMMARY: The National Futures Association ("NFA") has submitted to the Commodity Futures Trading Commission ("Commission") for its approval, pursuant to section 17(j) of the Commodity Exchange Act ("Act"), a proposed amendment to Compliance Rule 2–13 and a proposed Interpretive Notice to Compliance Rule 2–13. The proposal would establish requirements regarding the use of break-even analyses in commodity pool disclosure documents. The Commission has determined that publication of NFA's proposal is in the public interest, will assist the Commission in considering the views of interested persons and is consistent with the purposes of the Act.

DATES: Comments must be received by July 15, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letters dated March 15, 1994 and March 30, 1994, the NFA submitted to the Commission for its approval, pursuant to section 17(j) of the Act, a proposed amendment and Interpretive Notice to NFA Compliance Rule 2–13. The proposal would establish various requirements regarding the use of break-even analyses in commodity pool disclosure documents. NFA's submission indicated that it intended to make the proposed amendment and interpretive notice effective upon receipt of notice of Commission approval.

II. Description of NFA's Proposal

The NFA is proposing an amendment and an associated Interpretive Notice to its Compliance Rule 2–13. Specifically, the amendment to Rule 2–13, a new subsection (b), would require member commodity pool operators ("CPOs") to include a tabular analysis of a pool's "break-even point" in the pool's disclosure document. The break-even analysis would take into account any anticipated fees and expenses and would indicate how much trading profits would have to be achieved in the first year of trading to recoup the customer's initial investment.[1]

The proposed amendment to Compliance Rule 2–13 states that this analysis must be "presented in the manner prescribed by NFA's Board of Directors." In this connection, NFA's proposed Interpretive Notice to Compliance Rule 2–13 would establish guidelines for the determination of a break-even point and the preparation of break-even analyses for pool disclosure documents.

In order to determine a pool's break-even point, the soliciting CPO first would have to calculate the amount of basic fees and expenses which the pool would be expected to incur during its first year and itemize them in tabular form within the disclosure document.[2] The CPO would be required to calculate this fee and expense amount for the pool based upon his actual knowledge or experience, and if not known, the CPO must present a good faith estimate. If any fees were dependent on the amount of funds that the pool raised, an assumed funding level could be stated, but the analysis also would have to indicate alternative break-even points using the minimum and maximum amount of funds the pool could raise.

Second, as part of the required break-even analysis the CPO would have to subtract from the pool's fee and expense total the amount of interest income the CPO expected the pool to earn in its first year. This calculation would produce a "gross trading profits before incentive fees" figure, or preliminary gross trading profits, which the pool would have to earn in its first year to retain its initial net asset value.

Third, the proposed interpretive notice would require a CPO to determine the amount of additional trading profits that would have to be earned to offset the amount of incentive fees which the CPO would charge in managing the pool. This additional trading profit figure would be calculated by determining the incentive fees which would be charged if a pool earned the preliminary gross trading profits amount, and then dividing that amount by one minus the incentive fee percentage rate.[3]

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[1] Commission Regulation 4.21 requires that CPOs must deliver a disclosure document to prospective pool participants. Commission Regulation 4.21(a)(1) through (18) mandates the content of any such disclosure document.

[2] If the pool had any redemption fees, they would have to be clearly shown and included in the fees and expenses calculation. The pool's incentive fees would not be included in this calculation.

[3] The proposed Interpretive Notice also would require that any break-even analysis particularly

Continued

Finally, under the proposal a CPO would be required to calculate the total amount of trading income which his pool must earn for the pool's net asset value per unit to equal its initial selling price per unit after one year. The break-even analysis also would have to express this amount as a percentage of the pool's initial selling price per unit.

The NFA believes that its proposed tabular presentation of break-even analysis for pools would be an effective means of providing useful information to prospective pool participants when they make their investment decision. The NFA indicates that its proposed form of break-even analysis already is used widely throughout the commodity pool industry.

III. Request for Comments

The Commission requests public comment on NFA's proposed amendment and Interpretive Notice to Compliance Rule 2–13. Copies of NFA's proposed rule amendment and Interpretive Notice will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, except to the extent that the proposal may be entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314.

Any person interested in submitting written data, views or arguments on NFA's proposed rule amendment or Interpretive Notice or with respect to other materials submitted by the NFA in support of the proposal should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on June 9, 1994.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–14479 Filed 6–14–94; 8:45 am]

BILLING CODE 6351–01–P

The National Futures Association's Proposed Restriction on the Use of Hypothetical Trading Results in Promotional Materials

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed registered futures association rule change.

SUMMARY: The National Futures Association ("NFA") has submitted to the Commodity Futures Trading Commission ("Commission") for its approval, pursuant to Section 17(j) of the Commodity Exchange Act ("Act"), a proposed amendment to NFA Compliance Rule 2–29. The proposal would establish various restrictions on the usage of hypothetical trading results in promotional materials. The Commission has determined that publication of the NFA's proposal is in the public interest, will assist the Commission in considering the views of interested persons and is consistent with the purposes of the Act.

DATES: Comments must be received by July 15, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated March 15, 1994, and received by the Commission on March 17, 1994, the NFA submitted to the Commission for its approval, pursuant to Section 17(j) of the Act, a proposed amendment to NFA Compliance Rule 2–29. NFA's submission indicated that it intended to make the proposed amendment effective upon receipt of notice of Commission approval.

II. Description of NFA's Proposal

NFA's proposed amendment to Compliance Rule 2–29 would establish various requirements on the use of hypothetical trading results in promotional materials. NFA members often use hypothetical trading results in their promotional materials to describe how their trading programs would have performed in the past based upon historical price movements. Current NFA Compliance Rule 2–29(b)(4) specifies that members who use hypothetical trading results in their promotional material must include the disclaimer language of Commission Regulation 4.41(b)(1),[1] NFA's Compliance Rules do not otherwise establish any specific content requirements or restrictions with respect to hypothetical results.

The NFA contends that hypothetical trading results in promotional material can be misleading to customers and in many cases a vehicle for customer abuse. Accordingly, the NFA has proposed to amend its Compliance Rule 2–29 to establish various restrictions on the use of such hypothetical results.

Under the proposal, NFA members who referred to hypothetical trading results in their promotional materials would be required to include comparable information regarding their actual trading results. Advertising members with over a year's experience directing customer accounts would have to include the prior performance results for all such accounts over the past five years or the entire performance history, whichever was less. If a member using hypothetical results in his promotional material had less than one year's experience directing customer accounts, the advertising member would have to include, in addition to the entire performance history for customer accounts, the past performance results of his proprietary trading over the prior five years or the entire performance history, whichever was less.

Under the NFA's proposal, amended Compliance Rule 2–29 would continue to require that promotional material containing hypothetical trading results include the disclaimer language required by Commission Regulation 4.41(b)(1). The proposal's restrictions would not apply to promotional material which was directed exclusively to persons who were Qualified Eligible Participants under Commission Regulation 4.7.

The NFA believes that its proposed amendment would ensure that customers will be provided with practical information with which to assess hypothetical trading results as customers would be able to take into account a member's actual trading results when evaluating a member's preferred hypothetical results.

III. Request for Comments

The Commission requests public comment on NFA's proposed amendment to Compliance Rule 2–29.

Copies of NFA's proposed rule amendment will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, except to the extent that the proposal may be entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314.

Any person interested in submitting written data, views or arguments on NFA's proposed rule amendment or with respect to other materials submitted by the NFA in support of the proposal should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on June 9, 1994.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–14478 Filed 6–14–94; 8:45 am]

Billing Code 6351–01–P

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title: National Security Education Program (NSEP) Grants to Institutions for Higher Education.

Type of Request: New collection.

Number of Respondents: 260.

Responses per Respondent: 1.25.

Annual Responses: 250.

Average Burden per Response: 8 hours.

Annual Burden Hours: 2,000.

Needs and Uses: The information collected hereby, will be used by independent panels of reviewers to decide the relative merit of proposals submitted for grants under the Program.

Affected Public: Businesses or other for-profit, non-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: June 9, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–14466 Filed 6–14–94; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title and Applicable OMB Control Number: Defense FAR Supplement, 227, Patents, Data and Copyrights; OMB Control Number 0704–0240.

Type of Request: Extension of a previously approved collection.

Average Burden Hours/Minutes per Response: 79 hours and 28 minutes.

Responses per Respondent: 1.

Number of Respondents: 16,560.

Annual Burden Hours (Including Recordkeepng): 2,307,240.

Annual Responses: 16,560.

Needs and Uses: This request concerns information collection and recordkeeping requirements related to Technical Data, Software, Copyrights, and Contracts.

Affected Public: Businesses or other for-profit, non-profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondents Obligation: Required to obtain or retain a benefit.

Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia, 22202–4302.

Dated: June 9, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–14467 Filed 6–14–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 6–7 July 1994.

Time of Meeting: 0800–1730 (classified).

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to discuss advanced and novel technology forecasts, operational/analytical models and methodologies, strategic mobility/deployment, operational enhancements of digitization, and future force structure concepts. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781

Sally A. Warner,

Administrative Officer, Army Science Board

[FR Doc. 94–14549 Filed 6–14–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 30 June 1994.

Time of Meeting: 0800–1500.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Independent Assessment of "Missile Shelf Life" will meet for discussion focused on the review of previously collected data concerning missile shell life, meet with the sponsor to discuss

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state this incentive fee amount in terms of a percentage of profits.

[1] Commission Regulation 4.41(b)(1)'s required disclaimer states: Hypothetical or simulated performance results have certain inherent limitations. Unlike an actual performance record, simulated results do not represent actual trading. Also, since the trades have not actually been executed, the results may have under-or-over compensated for the impact, if any, of certain market factors, such as lack of liquidity. Simulated trading programs in general are also subject to the fact that they are designed with the benefit of hindsight. No representation is being made that any account will or is likely to achieve profits or losses similar to those shown.

their findings to date, and work towards a final report. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 94–14550 Filed 6–14–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Naval Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Modeling and Simulation will meet on June 21, 22 and 23, 1994. The meeting will be held at The Center for Naval Analyses Corporation, 4401 Ford Avenue, Alexandria, Virginia. The first session will commence at 8 a.m. and terminate at 5:30 p.m. on June 21; the second session will commence at 8 a.m. and terminate at 5 p.m. on June 22; and the third session will commence at 8 a.m. and terminate at 3 p.m. on June 23, 1994. All sessions of the meeting will be open to the public.

The purpose of the meeting is to provide the Department of the Navy with an assessment of the importance of high fidelity models and Advanced Distributed Simulation technologies to enhance Department of the Navy test and evaluation, and acquisition programs. The panel will review current utilization of modeling and simulation/Advanced Distributed Simulation; identify key areas that would benefit from an investment in modeling and simulation/Advanced Distributed Simulation; identify candidate demonstration projects to evaluate modeling and simulation/Advanced Distributed Simulation utility; evaluate the strengths and weaknesses of modeling and simulation/Advanced Distributed Simulation technologies from a Department of the Navy perspective; and recommend specific research areas related to modeling and simulation/Advanced Distributed Simulation technologies that warrant investments by the Department of the Navy.

The meeting will include briefings and discussions relating to U.S. Navy and Marine Corps operational and developmental test and evaluation processes and case studies; and applications of modeling and simulation from industry and U.S. Army perspectives.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

For further information concerning this meeting contact: CAPTAIN Michael Brinkac, USN, Office of Naval Research, Ballston Center Tower One, 800 North Quincy Street, Arlington, VA 22217–5660, Telephone Number: (703) 696–4870.

Dated: June 10, 1994.

Lewis T. Booker, Jr.,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–14598 Filed 6–14–94; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by June 17, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–8196.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: June 10, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Expedited.

Title: Application and Continuation Application, Reports, and Recordkeeping for the National Science Scholars Program.

Abstract: Individuals use the selection criteria to apply for a Federal scholarship. State Nominating Committees use the information to evaluate the applications and nominate scholars. Institutions use the forms to apply for continuation awards for continuing scholars and to report on the status of the program.

Additional Information: ED is requesting an Expedited approval by OMB in order to announce the competition for FY 1995. This application is currently approved, but a resubmission is necessary in order to comply with a White House mandate to request additional information. The normal clearance process under the Paperwork Reduction Act will not allow the applicants the required time to complete the application process prior to the October 31, 1994 closing date. ED has requested an OMB approval of June 17, 1994.

Frequency: Annually.

Affected Public: Individuals or households; State or local governments; non-profit institutions.

Reporting Burden: Responses: 22,841; Burden Hours: 367,493.

Recordkeeping Burden: Recordkeepers: 56; Burden Hours: 168.

[FR Doc. 94–14589 Filed 6–14–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act: Record of Decision for Continued Operation of Naval Petroleum Reserve No. 1 (Elk Hills), Tupman, CA

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: Pursuant to the Council on Environmental Quality regulations (40 CFR parts 1500–1508), which implement the procedural provisions of the National Environmental Policy Act (NEPA), and the U.S. Department of Energy National Environmental Policy Act regulations (10 CFR part 1021), the Department of Energy, Office of Fossil Energy, is issuing a Record of Decision on the continued operation of Naval Petroleum Reserve No. 1, Kern County, California. The Department of Energy has decided to continue current operations at Naval Petroleum Reserve No. 1 and implement additional well drilling, facility development projects and other activities necessary for continued production of Naval Petroleum Reserve No. 1 in accordance with the requirements of the Naval Petroleum Reserves Production Act of 1976 (Pub. L. 94–258). The final Supplemental Environmental Impact Statement, entitled "Petroleum Production at Maximum Efficient Rate, Naval Petroleum Reserve No. 1 (Elk Hills), Kern County, California (DOE/SEIS–0158)," was released on September 3, 1993.

ADDRESSES: To receive a copy of the final Supplemental Environmental Impact Statement or Record of Decision, please contact Mr. James C. Killen, Director, Planning, Analysis, and Program Support Division, U.S. Department of Energy, Naval Petroleum Reserves in California, Tupman, California, 93276, (805) 763–6038.

FOR INFORMATION ON THE NATIONAL ENVIRONMENTAL POLICY ACT PROCESS: Contact Ms. Carol M. Borgstrom, Director, Office of National Environmental Policy Act Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–4600, or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Naval Petroleum Reserve No. 1 (NPR–1) is a large oil and gas field of approximately 74 square miles (47,409 acres) located about 25 miles southwest of Bakersfield in Kern County, California. NPR–1, which was established by Executive Order in 1912 for National defense purposes, is jointly owned and operated by the Federal Government under the jurisdiction of the Department of Energy (DOE), and Chevron U.S.A. Inc. pursuant to a Unit Plan Contract that became effective in 1944. The Government has a 78 percent interest (approximately) in NPR–1 hydrocarbon production and Chevron's interest is approximately 22 percent. Currently, the Government's share of NPR–1 oil production is sold on the open market, with proceeds deposited in the U.S. Treasury, and/or transferred to the U.S. Strategic Petroleum Reserve for storage as protection against future oil supply disruptions. NPR–1 natural gas production is either processed into natural gas liquids for sale on the open market, or reinjected into NPR–1 hydrocarbon reservoirs for pressure maintenance and/or enhanced oil recovery.

NPR–1 was maintained in essentially a shut-in reserve status until the mid-1970's when Congress, in response to the Arab Oil Embargo of 1973, passed the Naval Petroleum Reserves Production Act of 1976 (Pub. L. 94–258), which directed that NPR–1, the adjacent NPR–2, and NPR–3 in Wyoming, be produced for an initial period of 6 years at the maximum efficient rate. Under the Act, maximum efficient rate means the maximum rate of hydrocarbon production that optimizes economic return and ultimate hydrocarbon recovery. Public Law 94–258 also provided the President with the authority to continue production from the Reserves beyond the initial 6 years for an additional and unlimited number of increments of up to three years each. For each added period of production, the President must certify to Congress that it remains in the National interest to continue producing the Reserves. Currently, the Naval Petroleum Reserves are authorized for maximum efficient rate production through April 5, 1997.

Approximately 700 million barrels of oil and 200 million gallons of natural gas liquids have been produced from NPR–1 hydrocarbon reservoirs since the field was opened up to full development in 1976. In 1992, NPR–1 became only the 13th domestic oil field to produce a cumulative total of 1 billion barrels of oil since its initial development began in 1912. Since 1976, revenues in excess of $15 billion have been deposited into the U.S. Treasury from NPR–1 operations. In 1988, NPR–1 hydrocarbon reserves were estimated to be approximately 524–831 million barrels of oil and 1,790–2,497 billion cubic feet of natural gas.

In 1979, DOE published an Environmental Impact Statement (EIS) (DOE/EIS–0012) which described the existing environment at NPR–1 and analyzed the petroleum development activities that were anticipated at that time. The development activities described and evaluated included the drilling of approximately 350 new oil, gas and water wells; construction of two new Lease Automatic Custody Transfer facilities; construction of two gas facilities to process up to 700 million cubic feet per day of wet natural gas; construction of wastewater facilities capable of disposing of approximately 30,000 barrels per day of produced water; and construction of an additional 40,000 square feet of building space for administration and other support facilities. Implementation of these activities increased NPR–1's oil production to a peak level of approximately 181,000 barrels per day by July, 1981. Oil production at NPR–1 has declined since then to the current level of approximately 65,000 barrels per day. NPR–1 currently produces approximately 299–320 million cubic feet per day of natural gas and processes 379,000–456,000 gallons per day of natural gas liquids (propane, butane and natural gasoline).

In an Environmental Assessment prepared in 1985 (DOE/EA–0261), DOE described the potential environmental impacts that could result from implementation of a pilot steamflood project of the Shallow Oil Zone at NPR–1. The Shallow Oil Zone pilot steamflood project subsequently was implemented and a large expansion of this project is proposed and analyzed in the final Supplemental Environmental Impact Statement (SEIS). In 1987, DOE prepared another Environmental Assessment (DOE/EA–0334) which described the potential impacts that could result from the divestiture of NPR–1 and NPR–3. Implementation of this action would require a Congressional directive, which has not occurred.

Primarily as a result of the need to drill additional oil, gas, and water wells at NPR–1, expand the Shallow Oil Zone steamflood project, expand natural gas operations, and reduce power costs and air pollution emissions by constructing

a cogeneration facility, the decision was made to prepare a Supplement to the 1979 EIS to analyze the environmental impact of these and other proposed actions. Accordingly, DOE published a Notice of Intent announcing its decision in the **Federal Register** on April 4, 1988 (53 FR 10922). Pursuant to the Notice of Intent, three public scoping meetings were held in April 1988 and the issues and concerns raised by the public were used in the development of the SEIS. The basis for the SEIS is the April 1989 NPR–1 Long Range Plan, which describes a myriad of planned operations and development projects, maintenance activities, and environmental protection initiatives over the next 25–30 years. A description and evaluation of the existing NPR–1 environment also was provided in the SEIS to assess the level of impacts, if any, that resulted from the NPR–1 activities that were implemented following publication of the 1979 EIS.

In May 1992, DOE published and distributed approximately 200 copies of the draft SEIS. A Notice of Availability of the draft SEIS and an announcement of a public hearing in Bakersfield, California on June 24, 1992 was published in the **Federal Register** on June 5, 1992 (57 FR 24038). Only one speaker provided oral testimony at the public hearing. DOE received 122 written comments from 13 government agencies and interested individuals during the 55-day comment period following publication of the Notice of Availability. DOE considered and responded to all comments on the draft SEIS in the development of the final SEIS. A transcript of the public hearing and all written comments on the draft SEIS were included in the final SEIS.

The final SEIS on the proposed action was released in August 1993. A Notice of Availability of the document was published in the **Federal Register** on September 3, 1993 (58 FR 46969) which announced an incorrect due date for comments of October 18, 1993. An amended Notice of Availability subsequently was published in the **Federal Register** on September 17, 1993 (58 FR 48650) revising the due date to October 5, 1993. Of eight comment letters received on the final SEIS, only the Environmental Protection Agency (EPA) and a local consultant commented on substantive issues. EPA reiterated concerns about the method used to compare impacts of the proposed action and alternatives, completion of the final Biological Opinion for the proposed action, ingestion of oil field chemicals by site wildlife, waste minimization, wetlands delineation, air quality, and sump closures, and recommended deferring expanding operations that may impact groundwater quality in the northeast portion of the site. EPA also recommended discussing in the Record of Decision the feasibility of re-entering shut-in wells as an option to drilling new wells to increase production. Michael R. Rector, a local water resources consultant, raised concerns about groundwater mining and commented that groundwater downdip from site produced water disposal wells should be analyzed for the presence of benzene, toluene and xylenes.

With the exception of the comments regarding comparison of alternative action impacts, deferring operations in the northeast portion of the site, and the feasibility of re-entering shut-in wells, all concerns have been addressed in this Record of Decision under *Major Environmental Impacts and Mitigation Action Plan*.

With regard to the comparison of alternatives, EPA commented that it stands by its earlier comment on the draft SEIS that impacts associated with the no action alternative should be the basis for the comparison of alternative action impacts. DOE maintains that the methodology used in the SEIS is the same, substantively, as that advocated by EPA. This is explained as follows. It is EPA's opinion that in comparing impacts between alternatives, the no action alternative should be the baseline for the comparison. For example, if no action has an impact of X, and the proposed action has an impact of X+Y, then comparisons of these two alternatives should state that the impacts of the proposed action are Y greater than no action. In contrast, the SEIS sometimes makes this comparison by stating that no action has an impact that is X less than the proposed action. DOE believes that either comparison satisfies the requirement under 40 CFR 1502.14 "* * *" to present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining issues "* * *". Impacts from existing operations comprising no action are presented in detail in § 3.0, "Existing Environment." Impacts of the proposed action and the modified proposed action are presented in detail in § 4.0, "Environmental Impacts of the Proposed Action and Alternatives." A summary of the elements and impacts of no action; the proposed action, and the modified proposed action are presented in comparative form by Tables 2.0–1 and 2.0–2 in § 2.0, "Alternatives." These tables, together with supporting text, result in a form that sharply contrasts differences between alternatives, as required.

Regarding the comment on the northeast portion of the site, DOE is not proposing to expand operations that may impact groundwater quality in that area. The only activities planned in this area are remediation or facility repair and replacement projects that are designed to enhance the level of environmental protection. These projects are routinely evaluated for environmental impacts, including groundwater impacts, as a matter of standard practice prior to their implementation.

The use of existing shut-in oil production wells for other purposes such as waterflood, gas injection or in the development of underlying/overlying oil or gas zones can provide a significant capital savings and, therefore, is always given serious consideration at NPR–1. Prior to the formal abandonment of any shut-in wells, a determination is made that the well cannot serve any other useful purpose. Table 1.2–3 of the final SEIS indicates that 382 new wells would be completed through the year 2025 under the proposed action. In comparison, for this same time period, the proposed action would involve a total of 571 conversions of existing wells to a different use.

Alternatives Considered

Three alternatives were evaluated in the SEIS: Proposed Action, No Action (Alternative 1), and Modified Proposed Action (Alternative 2). In addition, Alternative 3 (Nonsteamflood Tertiary Oil-Recovery Strategies) and two other alternatives were initially considered and dismissed from further evaluation.

Proposed Action

The proposed action is to continue operating NPR–1 in accordance with the requirements of the Naval Petroleum Reserves Production Act of 1976 by implementing the activities described in the 1989 NPR–1 Long Range Plan. This includes the operation and maintenance of all existing facilities; a program to drill, redrill, or deepen approximately 382 wells; 148 of which would be for the phased 500-acre, 625 million British thermal units per hour Shallow Oil Zone steamflood project; a program to perform approximately 2,663 well remedial jobs as needed to ensure efficient operation and maintenance of approximately 2,697 wells; a program to recycle produced water to the maximum extent technically and economically feasible for use as source water for waterflood operations; a program to abandon approximately 1,080 wells; construction and operation of approximately 46,250 horsepower of additional gas compression for gas-lift and gas-injection projects (37,500 horsepower gas; 8,750 horsepower electric); construction and operation of compression and processing facilities to compress, transport and process up to an additional 100–150 million cubic feet per day of gas (fourth gas plant); construction of new facilities and increased use of existing facilities to expand waterflood operations by approximately 106,000 barrels per day; construction and operation of a 42-megawatt cogeneration facility; construction and operation of a 170,000–220,000 gallon per day butane isomerization facility; a program to investigate, remediate, or otherwise manage numerous old inactive waste sites; a program to reclaim by 1998 approximately 1,045 acres of disturbed lands not needed for current or future NPR–1 operations; the permitting of third parties to construct, operate and maintain pipelines, conduct geophysical surveys and perform other necessary oil-field related activities on NPR–1; and the continued implementation of a comprehensive environmental protection program.

Alternative 1: No Future Development (No Action)

This alternative provides for continued production of NPR–1 by operating and maintaining existing wells and facilities only. It does not include any new development projects needed to enhance efficiency or off-set natural production declines (no new drilling, enhanced recovery, cogeneration, etc.). It does include all maintenance projects, facility development projects and environmental protection initiatives included in the proposed action that are necessary for maintaining the safety and quality of the NPR–1 environment.

Alternative 2: Proposed Action Excluding the Shallow Oil Zone Steamflood Expansion, Gas Processing Expansion, and Cogeneration Project (Modified Proposed Action)

This alternative provides for all activities included in the proposed action, except that the 148-well, 500-acre Shallow Oil Zone steamflood expansion would not be implemented; expansion of NPR–1's gas processing capacity by 100–150 million cubic feet per day (fourth gas plant) would not be undertaken; and the 42-megawatt cogeneration plant would not be constructed.

Alternative 3: Nonsteamflood Tertiary Oil-Recovery Strategies

This alternative provides for all of the activities included in the proposed action and implementation of nonsteamflood tertiary recovery techniques that have been carried out on a limited basis at other oil fields. Examples of these techniques include alkali surfactant polymer injection, micellar polymer injection, carbon dioxide injection and in-situ combustion. Although these techniques may have potential in the long term, their implementation in NPR–1 hydrocarbon reservoirs cannot be considered by decision-makers in the reasonably foreseeable future due to limited technical data and unfavorable current and projected future economic conditions. For this reason, studies were not completed to scope these programs to the level of detail needed to address potential environmental impacts. Accordingly, this alternative was dismissed from further consideration in the SEIS.

Divestiture

The possibility of selling the Government's interest in NPR–1 (divestiture) was initially announced in the Notice of Intent to prepare this SEIS as an alternative in the context of continued operations and future development (53 FR 10922, April 4, 1988). Analysis of this alternative would have expanded on the 1987 Environmental Assessment of Divestiture (DOE/EA–0334). This alternative is considered highly speculative in the absence of Congressional action and, therefore, was not developed in the SEIS.

EPA's Proposed Alternative (No Action followed by Proposed Action)

In its comments on the draft SEIS, EPA recommended analysis of an additional alternative that would involve implementing the no action alternative for the near term and then proceeding with the proposed action at a later date. A brief analysis of this alternative was included in the final SEIS. The analysis indicated that ultimate hydrocarbon recovery losses of approximately 66 million barrels of oil and 132 billion cubic feet of natural gas would occur by deferring development activities at NPR–1 for a period of 10 years. Because this alternative would not allow DOE to meet the purpose and need for the proposed action, which is to produce NPR–1 at the maximum efficient rate in accordance with the Naval Petroleum Reserves Production Act of 1976, it was dismissed from further consideration in the final SEIS.

Environmentally Preferred Alternative

The environmentally preferred alternative is the no action alternative (Alternative 1). Habitat disturbance associated with this alternative is significantly less than for all other alternatives analyzed in the SEIS. Future impacts associated with continued NPR–1 operations would diminish more rapidly under this alternative as NPR–1's economic life would be reached much sooner than would occur under other alternatives (approximately 2000–2010). This alternative would require legislative redirection of DOE's current mission to produce NPR–1 in accordance with the Naval Petroleum Reserves Production Act of 1976.

Decision:

DOE has decided to continue current NPR–1 operations and implement additional well drilling, facility development projects and other activities necessary for continued production of NPR–1 in accordance with the requirements of the Naval Petroleum Reserves Production Act of 1976 (Pub. L. 94–258).

Discussion and Justification of Decision

Pursuant to the Naval Petroleum Reserves Production Act of 1976 and subsequent Presidential certifications, DOE is required to produce NPR–1 at the maximum efficient rate through April 5, 1997. To continue to meet this mandate, continued and enhanced NPR–1 operations are necessary.

The decision to produce the Naval Petroleum Reserves at the maximum efficient rate was initially authorized by Congress in 1976 to address emergency energy needs in response to the Arab oil embargo of 1973–1974. At that time, the Naval Petroleum Reserves were administered by the Secretary of the Navy. Effective October 1, 1977, the DOE Organization Act (Pub. L. 95–91) transferred jurisdiction of the Naval Petroleum Reserves to the new DOE. NPR–1 oil production since 1976 has either been sold on the open market, transferred to the Department of Defense for national security purposes, or transferred to the Strategic Petroleum Reserve for storage in the event of future oil supply disruptions.

In recent years, Congress has recognized other significant reasons for continued maximum efficient rate production of the Naval Petroleum Reserves. In addition to military preparedness and National defense reasons, the following issues were

considered in the most recent extension of the Naval Petroleum Reserves Production Act:

1. National economic impacts, including the direct effect on net Federal revenues and the broader effects on the economy;

2. National energy strategy, reflecting the effects of oil import requirements in the absence of an extension; and

3. Local and regional concerns, involving the effects of operating the Naval Petroleum Reserves on local economies and on upstream and downstream elements of the petroleum industry in the areas served by the Naval Petroleum Reserves.

Selection of the no action alternative (Alternative 1) would not allow DOE to meet the statutory mandate to produce NPR–1 at the maximum efficient rate, and would result in ultimate recovery losses of up to 500 million barrels of oil and more than 250 billion cubic feet of natural gas reserves. This represents a reduction of 58 percent of the remaining oil reserves and 20 percent of the remaining gas reserves, respectively. Under this alternative, the economic return on NPR–1 investment would be greatly diminished in comparison to that of the proposed action.

Selection of the modified proposed action alternative (Alternative 2) would eliminate important facility projects including Shallow Oil Zone steamflooding, expanded gas processing, and cogeneration power production that are needed to ensure continued maximum efficient rate production at NPR–1, as required by the Naval Petroleum Reserves Production Act of 1976. As in the case of Alternative 1, implementation of Alternative 2 would not allow DOE to meet its statutory mandate.

Major Environmental Impacts and Mitigation Action Plan

The environmental impacts that could result from implementation of the proposed action were summarized in Table 2.0–2 and analyzed in detail in Section 4.0 of the final SEIS. DOE believes that most of these impacts can either be eliminated or reduced to acceptable levels. Accordingly, a total of 88 mitigation commitments were made in the final SEIS to ensure impact levels would be minimized to the maximum extent possible. These mitigation commitments form the basis of the NPR–1 Mitigation Action Plan to reduce potential impacts from proposed action activities. The NPR–1 Mitigation Action Plan provides detailed activities, implementing organizations, activity milestone dates and mitigation monitoring protocol. Upon publication of the Record of Decision in the **Federal Register**, the Mitigation Action Plan will be made available for public review in reading rooms at the offices of the Naval Petroleum Reserves in California and DOE Headquarters in Washington, DC. The plan will also be provided to local libraries.

As noted earlier, EPA and a private water resources consultant provided substantive comments on the final SEIS. EPA encouraged DOE to continue ongoing efforts to identify wetland resources on NPR–1. As detailed in the Mitigation Action Plan, a formal wetland delineation study of potential wetlands on NPR–1 will be conducted in 1994. This study will be coordinated with both the U.S. Army Corps of Engineers and EPA. If jurisdictional wetlands are identified, DOE will comply with the provisions of the Clean Water Act regarding wetland disturbances.

As indicated in the final SEIS and associated Mitigation Action Plan, DOE is committed to remediating all inactive sumps and managing active sumps in accordance with Waste Discharge Requirements issued by the State of California's Central Valley Regional Water Quality Control Board. DOE is actively proceeding with plans to continue the remediation of historic produced water sumps. The Mitigation Action Plan also provides details (Mitigation Nos. WG–30 and WR–9) of a site-wide sump closure plan that was approved in 1991 by the Central Valley Regional Water Quality Control Board. EPA will be provided a copy of this closure plan as suggested in their comment. DOE is permitted to sump wastewater at NPR–1 by Waste Discharge Requirements #58–491 and #68–262, which prohibit the release of wastewater into unlined sumps located on alluvial soils if the wastewater exceeds 1,000 parts per million total dissolved solids. Accordingly, wastewater sumps on or near alluvial soils have been lined or taken out of service. DOE will continue to ensure the integrity of the liners at these locations.

DOE will complete a Groundwater Management Protection Plan for NPR–1 in 1994. The management plan will include, among other components, a site-wide Groundwater Monitoring Plan. On September 28, 1993 DOE briefed the California Department of Water Resources, the California Central Valley Regional Water Quality Control Board and the Kern County Water Agency on the development of these groundwater plans. DOE acknowledged the need to better characterize groundwater in the northeast portion of NPR–1 due to its proximity to a subsurface water bank under development by the water agencies. DOE facilitated a discussion of their respective interests regarding the development of NPR–1 groundwater plans. Future data review and exchange activities were discussed, which DOE will honor. Continued interactions with these agencies will be given a high priority by DOE.

The Groundwater Protection Management Plan will also address concerns raised by Mr. Rector regarding the withdrawal of waterflood source water and produced water injection activities on the south flank of NPR–1. DOE regularly monitors the quality of the source well water, including tests for volatile organics such as benzene, toluene, and xylenes as Mr. Rector suggested in his comment. Potential adverse impacts to the NPR–1 aquifer from groundwater withdrawal will continue to be monitored as well.

Other concerns raised by EPA regard issues with the potential for major environmental impacts. Acknowledgement of these concerns is included in the following discussion of the major environmental impacts associated with the proposed action and the principal mitigation measures planned to minimize the impacts.

1. Potential Erosion from Construction Disturbances to 1,569 Acres On and Off NPR–1

Soil Conservation Service erosion control/site-rehabilitation measures will be implemented in planning, design, and operational activities.

2. Slight Possibility of Subsidence and Induced Seismicity Due To Increased Withdrawal of Source Water From the Tulare Formation and Oil and Gas Withdrawal From Deep Producing Formations

NPR–1 facilities will be designed in accordance with the latest edition of the Uniform Building Code and the recommendations of the NPR–1 Geotechnical and Earthquake Engineering Study.

3. Production of Drilling Wastes Associated With A 382-Well Drilling Program, 2,663 Remedials, and 1,080 Abandonments

Drilling fluid additives utilized at NPR–1 will be limited to those that are included on the list of approved nonhazardous drilling fluid additives issued by the California Department of Health Service in 1982.

4. 100,000–181,000 Barrels Per Day of Produced Wastewater Would Require Recycling or Disposal

To the extent technically and economically feasible, produced water will be recycled for use as source water for waterflood operations.

5. Nonhazardous Solid Waste Quantities from Construction and Operations Would Increase Above the Current Volume of 24,000 Cubic Yards Per Year

NPR–1 will establish and implement a waste minimization program to reduce the volume of all nonhazardous solid wastes.

6. Hazardous Waste From Construction and Operations Would Increase Slightly Above the Current Level of Approximately 19,800 Pounds Per Year

Hazardous waste minimization reviews will be conducted for all proposed facility projects. State of California regulatory requirements, such as the Hazardous Waste Reduction and Management Review Act of 1989 (SB 14) will be followed. In addition, NPR–1 will comply with Executive Order 12856 (Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements) which was signed on August 3, 1993. This order requires Federal agencies to the maximum extent possible to reduce, recycle and treat toxic chemical waste. As required by the Order, NPR–1 will report in a public manner toxic chemicals entering any wastestream from the facility, and will improve local emergency planning, response and accident notification procedures.

7. Fugitive Particulate Emissions from Construction Activities and Seismic Survey Disturbances on Approximately 8,349 Acres

NPR–1 will develop and implement a particulate matter control plan.

EPA also recommended that measures be implemented to ensure compliance with the requirements of EPA's emissions trading policy. It should be noted that all air permitting operations at NPR–1 are closely coordinated with the San Joaquin Valley Unified Air Pollution Control District to ensure compliance with applicable regulations. Accounting of emission reductions is a District staff function. These issues are closely monitored by the California Air Resources Board and Region IX of EPA.

8. Increases in Current Operational Emissions By A Maximum of Approximately 133.6, 124.2, 367.0, 0.7, 5.8, and 85.8 Pounds Per Hour of Reactive Organic Gas, Nitrogen Oxide, Carbon Monoxide, Sulfur Dioxide, Total Suspended Particulate, and Particulate Matter With Aerodynamic Diameters Less Than 10 Microns, Respectively, As the Result of Proposed New Sources

New compressor engines will be equipped with low nitrogen oxide emission precombustion chambers. Steam generators, heaters, and cogenerators also will be equipped with appropriate low nitrogen oxide combustion technology. Anode beds will be watered frequently to reduce reactive organic gas emissions.

EPA also inquired if, in the absence of a State Implementation Plan, whether the impacts of continued and proposed NPR–1 operations would be in conformity with the provisions of the Federal Clean Air Act. NPR–1 will operate either under locally mandated New Source Review regulations if the State Implementation Plan is approved by EPA, or under Federally mandated New Source Review regulations if the plan is not approved. Further, operations regulated under New Source Review would be exempt from the conformity provisions as outlined in the March 1993 draft Rule (55 FR 13866). It should also be pointed out that in 1994, EPA will review the local Air Pollution Control District's proposed Federal operating permit program. Even if EPA approves the operating permit program, EPA would still retain the authority to veto permits that are not issued in accordance with the approved program.

9. Oils, Chemical, and Produced Waters Could Inadvertently Spill and Degrade Groundwater

All spills will be cleaned up as they are identified in accordance with the NPR–1 Spill Prevention, Control, and Countermeasure Plan.

10. Development of 1,569 Acres of Wildlife Habitat On and Off NPR–1 and Potential for Adverse Impacts To Wildlife From Inadvertent Harassment, Vehicle Mortality and Contact With Hydrocarbons and/or Oil-Field Chemicals

Preactivity surveys will be conducted by qualified personnel prior to any construction, maintenance, clean-up, or other ground disturbance in undeveloped areas to minimize the amount of habitat disturbed and to avoid protected species and their habitat to the maximum extent possible. Disturbed habitats will be revegetated as part of an ongoing habitat reclamation program.

In 1987, the U.S. Fish and Wildlife Service rendered a non-jeopardy Biological Opinion for the continued operation and development of NPR–1 at the maximum efficient rate of production. On October 9, 1991, consultation for maximum efficient rate production was reinitiated by DOE for the SEIS, and by letter dated May 28, 1993 (received by DOE on June 7, 1993), the U.S. Fish and Wildlife Service issued a draft Biological Opinion for this action which also concluded non-jeopardy. This consultation is still in progress, and when it is completed DOE will comply with the requirements contained in the new Biological Opinion. The U.S. Fish and Wildlife Service indicated by letter dated April 12, 1993, that the 1987 Biological Opinion will remain in effect for all activities specifically described therein until the current consultation is complete. DOE will continue to comply with the requirements of the 1987 Biological Opinion until such time as they are superseded by new requirements in subsequent Biological Opinions.

Most impacts associated with the proposed action of the SEIS and the 1993 draft Biological Opinion (including those associated with no action) were addressed in the 1987 Biological Opinion. For those proposed new activities that were not so addressed, DOE will not make any irreversible or irretrievable commitments of resources which would foreclose the formulation or implementation of any reasonable and prudent alternatives needed to avoid violating section 7(a)(2) of the Endangered Species Act until the impacts of these new activities have been subjected to review under section 7 of the Endangered Species Act. EPA recommended that no Record of Decision be issued until a new final Biological Opinion had been issued, and discussed the need to prepare additional National Environmental Policy Act documentation should the final Biological Opinion require modified operations not evaluated in the SEIS. DOE believes that the limitation on proceeding with new activities pending receipt of a final Opinion assures compliance with the Endangered Species Act. Furthermore, DOE commits to completing such documentation if required by the new Opinion.

EPA also questioned what steps DOE will take to prevent ingestion of chemicals by threatened, endangered and other animal species on NPR–1. DOE has in place a comprehensive

program to prevent the ingestion of oil field chemicals by wildlife. This program includes, but is not limited to, adherence to the facility Spill Prevention Control and Countermeasure Plan; proper storage, handling and disposal of chemical containers; procuring bulk chemicals whenever possible to eliminate storage in the field; proper management of hazardous wastes in conforming 90-day storage facilities; prompt evacuation of oily fluids from structures; managing current waste disposal sites in accordance with permit requirements; and remediating historical waste disposal sites. These standard management practices all provide protection from ingestion of oil field chemicals by wildlife.

To further reduce the potential for adverse impacts to listed species, DOE agrees to implement the following mitigation activities addressed in the May 28, 1993 draft Biological Opinion:

a. Continue to implement an endangered species program, including the NPR–1 Wildlife Management Plan;

b. Continue to conduct the endangered species worker education/training program;

c. Continue to conduct preactivity surveys as appropriate to minimize habitat disturbances and harm or mortality to listed species;

d. To the extent feasible, avoid sensitive habitats such as San Joaquin kit fox dens, giant and Tipton kangaroo rat burrows, and burrows potentially utilized by blunt-nosed leopard lizards;

e. Refrain from destroying San Joaquin kit fox dens that cannot be avoided until approval is obtained from the U.S. Fish and Wildlife Service;

f. Continue to implement a habitat reclamation program to reclaim disturbed areas that are no longer needed for oil-field operations;

g. Minimize off-road vehicle travel;

h. Prohibit employees from bringing pets onto NPR–1;

i. Clean up oil and chemical spills in accordance with the Spill Prevention Control and Countermeasure Plan.

j. Continue to evaluate sumps and catch basins to identify potential hazards to wildlife and remediate these hazards to the extent feasible;

k. Continue to evaluate and, to the extent feasible, remediate well cellar covers posing hazards to wildlife; and

l. Continue to report to the U.S. Fish and Wildlife Service on an annual basis on the status of the endangered species program.

11. Potential Disturbance of Cultural Resources From Development of 1,569 Acres On and Off NPR–1

NPR–1 will develop and implement a cultural resource management plan for the protection of cultural resources.

12. Potential for Well Blowouts and Gas Explosions From Closed Compressor Facilities

DOE will continue to conduct internal safety appraisals of all NPR–1 facilities.

Unavoidable Adverse Impacts

The unavoidable adverse impacts resulting from the proposed action that cannot be fully mitigated are as follows:

1. Some soil erosion would occur, especially in areas of new construction if major storms occur before soil stabilization measures take effect.

2. There is some potential for subsidence as the result of oil, gas, and water withdrawals from underlying geologic structures.

3. Inadvertent releases of oil or other oil field chemicals that are not entirely recovered on a timely basis could, over a period of time, migrate into and degrade groundwater aquifers.

4. Small net increases in the NPR–1 emissions of carbon monoxide and particulate matter could occur, resulting in minor increases in ambient concentrations of these pollutants in western Kern County.

5. There would be unavoidable, long-term adverse impacts to a net of 74 acres of wildlife habitat on and off NPR–1 as a result of permanent construction disturbances. (See Table 2.2–1 on page 2–11 of the final SEIS.)

6. The loss of habitat, potential exposure to hydrocarbons or other oil field chemicals and site activities may result in the death, injury and displacement of some plants and animals, including threatened and endangered species.

7. There is a very small potential that produced wastewater disposed of into disposal wells and sumps might degrade off-site groundwaters.

8. Increased consumption of energy and fresh water supplies would occur.

Conclusion

The production of NPR–1 in accordance with the Naval Petroleum Reserves Production Act of 1976 continues to serve a vital role in National defense, U.S. Treasury revenues, and local, regional, and National economics. Until Congress and the President modify the mission of DOE with respect to the Naval Petroleum Reserves, DOE will continue to produce NPR–1 in the most efficient and environmentally responsible manner possible.

Issued at Washington DC, this 25th day of February, 1994.

Marvin I. Singer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 94–14553 Filed 6–14–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Floodplain and Wetlands Involvement for Hydrogeological Characterization Studies at the Pantex Plant, Amarillo, TX

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: DOE proposes to conduct hydrogeological characterization studies, some of which would be within floodplains and wetlands within the borders of or surrounding the Pantex Plant in Carson County, 17 miles northeast of Amarillo, Texas. In accordance with 10 CFR part 1022, DOE will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

DATES: Comments on the proposed action must be received by June 30, 1994.

ADDRESSES: Comments concerning this Notice should be addressed to: Floodplain and Wetlands Comments, Tom Walton, Public Affairs Office, U.S. Department of Energy, Amarillo Area Office, P.O. Box 30020, Amarillo, Texas 79177, (806) 477–3120, (806) 477–3185 (Fax).

Information on this proposed action, including a map of proposed sampling locations, is also available.

FOR FURTHER INFORMATION CONTACT: Information on general DOE floodplain and wetlands environmental review requirements is available from: Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600, (800) 472–2756.

SUPPLEMENTARY INFORMATION: DOE proposes to conduct a hydrogeological characterization study within floodplains and wetlands on and surrounding the Pantex Plant. The characterization studies would be conducted in support of the Permit for Industrial Solid Waste Management Site issued by the Texas Water Commission (now known as the Texas Natural Resources Conservation Commission) as part of DOE's effort to determine the nature and extent of any environmental contamination resulting from Pantex operations. On-site activities would occur within Solid Waste Management Units (SWMU) 6 (Playa Basin 1), SWMU 7 (Playa Basin 2), SWMU 8 (Playa Basin 3), SWMU 9 (Playa Basin 4), and SWMU 10 (Pantex Lake). Off-site activities would occur at Playa 5, located 2 miles southwest, and the Playa owned by the Texas Department of Criminal Justice, located 4.5 miles northeast of the Pantex Plant. On- and off-site activities would be conducted by the State of Texas under an Agreement in Principle with the DOE. The characterization studies occurring near or in the floodplain and wetlands would include:

1. Drilling boreholes for the purpose of collecting core samples from the playa basins.

2. Routine sampling, downloading, and maintenance of installed instrumentation.

3. Conducting soil gas surveys in and near the floodplain and wetlands.

4. Seismic survey activities to define playa basin geologic structure.

5. Trenching in or near the floodplain and wetlands for the installation of soil moisture instrumentation such as: thermocouple psychrometers, tensiometers, and Time Domain Reflectometers (TDR).

6. Trenching in and near the floodplain and wetlands to perform chemical (food coloring) tracer tests.

7. Surveying activities to define playa basin topography.

A more specific description of the seven activities listed above follows:

1. Borehole drilling would involve driving a drilling rig and a portable core sample laboratory to the site, drilling the boreholes, and collecting the core samples as the drilling progresses. The boreholes would be either closed by back-filling with the cuttings, or completed as soil solution sampling wells or neutron probe access tubes. The core sample borings will not exceed 120 feet in depth and the soil solution sampling wells and neutron probe access tubes would not exceed a maximum depth of 80 feet. Because the playa basin is ephemeral, drilling activities would only occur during the dry cycle of the playa.

2. The routine sampling, downloading, and maintenance of installed instrumentation would involve driving a utility vehicle to the site. Some instrumentation would be installed in the wetland and would involve entering the playa during the wet season to take samples and download data. Personnel entering wet areas of the playa would enter on foot to avoid undue impact to the floodplain and wetlands.

3. Soil gas surveys would be conducted during both dry and wet seasons in the playas and would involve driving a utility vehicle near the playa floor to download soil gas to a portable gas chromatograph. Personnel entering wet areas of the playa would enter on foot to avoid undue impact to the floodplain and wetlands.

4. Seismic survey activities would involve driving two utility vehicles and a trailer mounted weight-drop unit, used as an energy source, into the playa basin. This activity involves driving across the playa floor and can only be accomplished when the playa is completely dry, to minimize undue impact to the floodplain and wetlands.

5,6. Trenching in or near the floodplain and wetlands would involve driving a truck (larger than ton) and trailer mounted backhoe into the wetland areas to excavate the trenches. The trenches for the tracer tests would not exceed 3 meters in depth and would be the appropriate length and width to satisfy OSHA requirements. The trenches would remain open as long as the tracer tests are ongoing, and then would be backfilled and leveled. The trenches for the installation of the soil moisture instrumentation would not exceed 4.5 feet in depth and would involve installing TDR and psychrometer probes into the sidewall and endwall of the trench. These instrument trenches would be backfilled immediately after the probes are installed. Clean Water Act Section 404 permit authorization has been received for the trenching in these areas.

7. Surveying activities would involve driving a utility vehicle carrying equipment into the playa basin. The surveying would be done by personnel on foot to minimize any potential impact to the floodplain and wetlands.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), DOE will prepare a floodplains and wetlands assessment for this proposed DOE action which may be incorporated into the appropriate National Environmental Policy Act documentation. After DOE issues the assessment, a floodplain statement of findings will be published in the Federal Register.

Ralph G. Lightner,

Director, Office of Southwestern Area Programs, Environmental Restoration.

[FR Doc. 94–14552 Filed 6–10–94; 2:00 pm]

BILLING CODE 6450–01–P

Energy Information Administration

Forms; Availability, etc.: Coordinated Regional Bulk Power Supply Program Report

AGENCY: Energy Information Administration (EIA), DOE.

ACTION: Solicitation of comments on proposed revisions to Form OE–411 "Coordinated Regional Bulk Power Supply Program Report," and its filing frequency.

SUMMARY: EIA, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Public Law No. 96–511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of data collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning proposed revisions to the Form OE–411, "Coordinated Regional Bulk Power Supply Program Report" and its filing cycle.

Any changes to Form OE–411, determined to be necessary, based on evaluation of comments received in response to this notice will be reflected in and apply to the data submission scheduled for April 1, 1995.

DATES: Written comments must be submitted on or before July 15, 1994. If you anticipate that you will submit comments, but cannot do so within the period of time allowed by this notice, please advise the contact listed below. An additional 30 days may be allowed.

ADDRESSES: Send comments to Dennis K. Taillie, Director, Office of Emergency Planning, 1000 Independence Avenue SW., Washington, DC 20585 (Phone number (202) 586–3271, FAX (202) 586–1737).

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE EXISTING FORM AND INSTRUCTIONS: Requests for additional information or copies of the form and instructions should be directed to Mr. Taillie at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

II. Current Actions

III. Request for comments

I. Background

Among the documents currently used to collect U.S. electric power system data is Form OE–411 (Coordinated Regional Bulk Power Supply Program Report). Formerly, authority for the Form OE–411 data collection was delegated to the Office of Emergency Planning and Operations (OE) within the Department of Energy. The OE organization no longer exists, but its functions relevant to the Form are now in the Office of Emergency Planning, Assistant Secretary for Policy, Planning, and Program Evaluation; and the Office of Emergency Management, Director of Nonproliferation and National Security.

EIA also has functions relevant to the Form. In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275), and the Department of Energy Organization Act (Pub. L. No. 95–91), EIA is obliged to carry out a central, comprehensive, and unified energy data and information program. This program will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Form annually collects data needed to assess the adequacy and reliability of U.S. bulk power supply for a 10-year advance period. This assessment is necessary for DOE to fulfill the requirements of section 202(a) of the Federal Power Act, as amended.

Supplemented by additional reports published by the North American Electric Reliability Council (NERC), EIA and others, the data in the Form enable DOE to perform its assigned tasks, which include:

- Assessment of the adequacy of the U.S. electric power supply;
- Assessment of the vulnerability of the U.S. electric power supply to disruptions from all causes, and evaluation of the risks of such disruptions; and
- Energy-related support activities designated by the Federal Response Plan (the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–228, as amended).

The supplemental additional reports noted above include NERC's 10 year forward reliability assessment and its yearly pre-season and post-season summer and winter operations assessments.

The Form is filed with the DOE annually on April 1 by each of the Regional Electric Reliability Councils of NERC in the United States. There are nine Councils in the contiguous U.S. and one in Alaska. No Council has been established by the electric utilities in Hawaii. Each Council files Form OE–411 with DOE and provides copies to the Federal Energy Regulatory Commission and to the Public Service Commission of each State that is wholly or partly within the Council's boundaries. The DOE makes the OE–411 reports available to the public for inspection and copying in its Office of Freedom of Information Reading Room at its Washington, DC, headquarters, 1000 Independence Avenue, SW., Washington, DC 20585.

The Form collects numerical and descriptive information concerning regional electric power supply systems. The numerical information consists of historic data and data projected for a 10-year advance period. The descriptive data consist of each Council's assessment of the projected reliability of the bulk power supply in its region over the next five years, and material concerning planning and operating practices of the Council.

Form OE–411 originated as "Appendix A" of Order 383–2, issued by the then Federal Power Commission on April 10, 1970. Since then, the Form has been incrementally revised from time-to-time and transferred to the jurisdiction of several groups within DOE, being variously designated as ERA–411, EP–411, IE–411 and currently OE–411. The title "Coordinated Regional Bulk Power Supply Program Report" has not been changed, as it reflects the continuing focus and purpose of the document.

The concept of regional electric power supply, coordinated for the purposes of reliability and adequacy on a regional scale by electric utilities working in the cooperative setting provided by the Regional Councils, was developed by the industry and the Federal Power Commission in the aftermath of the November 9, 1965, Northeast Blackout. That event made clear the need for neighboring interconnected electric utilities to coordinate their planning and operation in the interests of electric power supply reliability. Accordingly, the electric power industry, with the assistance and encouragement of the Federal Power Commission, organized Regional Electric Reliability Councils to improve inter-utility coordination of system planning and operation. These Councils provide an institutional mechanism for the activities needed to assure region-wide planning and operation of power system facilities, establishment of appropriate standards for the improvement of interconnected system operation and response to contingencies, and other relevant matters.

Form OE–411 provides a mechanism for recording in a single compact volume the basic data and practices resulting from regionally coordinated efforts by electric utilities to assure adequate, continuous and reliable electric power supply. The Form annually provides, in convenient, form basic information needed by the Federal government, State agencies, electric utilities and the public to assess the reliability and adequacy of electric bulk power supply as projected for a decade ahead.

II. Current Actions

Since the predecessor of Form OE–411 was initiated in 1970, significant changes have occurred in the technology of electric power generation, transmission, distribution and use which have been accompanied by reduced growth of electric demand. Coupled with changes in the national economy, the structure of the electric power industry, new Federal energy legislation and changes in Federal and State regulatory practices, it is appropriate to reconsider Form OE–411 at this time with respect to: Frequency of reporting, scope and content, duplicate reporting of data, and administrative arrangements.

Administrative Arrangements

The Survey Management Division, Office of Coal, Nuclear, Electric and Alternate Fuels of the EIA is assuming responsibility for administration of the Form. EIA will be responsible for preparing the blank Form, sending it to the Reliability Councils (in hard copy, diskette or by other means), receiving the completed Form from each Council, entering the data into an electronic database readily accessible to government agencies and the public, and providing a hard copy of each Council's Form to the DOE Freedom of Information Reading Room for inspection and copying by the public.

EIA also will be responsible for making changes to the Form, if revisions are found to be needed, after consultation with DOE's Office of Emergency Planning and Office of Emergency Management, the North American Electric Reliability Council (acting for the Regional Councils) and other interested parties. If this change in administrative responsibility is implemented, the designation of the Form will become EIA–411. Response to Form OE–411 and its predecessors was voluntary. It is now proposed that response to Form EIA–411 will be mandatory.

Frequency of Reporting

The Department of Energy is considering reducing the filing frequency for the new Form (EIA–411) to biennially instead of annually. Accordingly, the 1995 filing would be required, but the next filing would not be due until 1997. When the Form's predecessor was initiated in 1970 the demand for electric power was exhibiting a high rate of annual increase and the planning and construction of electric system facilities was correspondingly rapid. Annual reporting was appropriate at that time so that assessment of reliability could be based on the latest data, which changed rapidly. The present annual growth rate of electricity demand is approximately half of what it was in the late 1960's and early 1970's. It appears probable that the growth rate will not increase greatly in the foreseeable future. The pace of facilities construction has slowed correspondingly and it seems appropriate to reduce the frequency of data reporting.

Biennial preparation of Form EIA–411 will reduce the reporting burden on the utility industry (which provides the data to the Councils) and on the Councils (which aggregate the data, prepare the response and make distribution to the Department of Energy, the Federal Energy Regulatory Commission and State Public Service Commissions). Since year-to-year changes are smaller than previously, the validity of adequacy assessments based on the biennial reports is not likely to be affected significantly.

Elimination of Duplication

Some data on utility-owned generating units are currently reported by utilities twice: To EIA on Form EIA–860 (Annual Electric Generator Report) and also on Form OE–411. Currently, data on the mode of transportation of fuel to these units are reported on Form OE–411 but not on Form EIA–860; however, EIA intends to modify Form EIA–860 to include reporting of the fuel transportation data. Also, electric utility, unauthorized planned new generators are reported on Form OE–411 but not on Form EIA–860. EIA will modify Form EIA–860 to include electric utility, unauthorized planned new generators. Once this is done, Form EIA–860 will include all of the utility-owned generating unit data required, and the duplicative work of the Councils in preparing a separate list of utility-owned generating unit data (including mode of fuel transportation) for Form EIA–411 will become unnecessary.

However, complete and accurate generating unit data will be needed in Form EIA–411 to make it a "stand-alone" document. Therefore, EIA will furnish to each Council the data (reported on Form EIA–860) concerning the utility-owned units in that Council, to be incorporated by the Council in its response to Form EIA–411. The procedure to do this will be developed jointly by EIA and the Councils to assure that the data reported in Form EIA–411 are complete, accurate and correctly reflect the generating capacity owned by utilities and non-utility generators (NUGs) within the Council boundaries. Data concerning non-utility generating capacity will be obtained by utilities as is done currently, will be reported by the utilities to the Councils and will be reported by each Council in its response to Form EIA–411.

Content of Proposed Form EIA–411

The following discussion lists items being considered for inclusion in proposed Form EIA–411. A brief justification for each proposed change from Form OE–411 is also provided.

Item No.

1. Projected energy and peak demand for ten years and actual data for the previous year.

No change is proposed for this item.

2A. Existing generating capacity.

No change is proposed for the content of this item. The method by which the data are to be obtained is discussed above under the heading "Elimination of Duplication."

2B. Projected Generating Capacity Installations, Changes and Removals.

No change is proposed for this item. The method by which the data are to be obtained is discussed above under the heading "Elimination of Duplication."

2C. Projected capacity purchases and sales.

It is proposed to add to this item, for the peak hour of each month of the preceding year, the actual purchases and sales of capacity resulting from transactions with sources external to the Council area.

Justification: For some Councils, purchased capacity is a significant portion of the total available and significantly affects the adequacy of regional power supply. No means now exist for tracking this information in Form OE–411.

3A. Projected capacity and demand for ten years.

No change is proposed for this item.

3B. Five-year assessment of adequacy by the Council.

No change is proposed for this item.

3C. Regional generating capacity unavailability.

Only data on utility-owned generating capacity are currently reported. It is proposed that unavailability data for non-utility (NUG) generator capacity be added to this item to the extent that it is made available by NUG entities

Justification: As NUG capacity becomes a larger portion of total installed capacity in a Council area, it becomes more important to be able to assess its reliability.

New Item 3D. Regional Demand Projections.

Discuss the forecasting method and basic assumptions employed by the Council in reaching aggregate demand and energy projections, tabulated in Item 3A, for normal weather. Also discuss how the Council plans to meet contingencies caused by extreme weather.

Justification: The discussion will provide a basis, not currently available, for understanding the forecasts.

4A. Bulk Power Transmission System Maps.

No change is proposed for this item.

4B. Projected Bulk Power Transmission Line Additions.

No change is projected for this item.

5A. Near-term Transmission Adequacy.

No change is projected for this item.

5B. Future Critical Bulk Power Transmission Facilities That Will Not Be In Service When Required.

It is proposed to replace this item by a new item 5B requesting:

(1) Summary data on actual inter-Council purchase and sale transactions which took place during the seasonal (summer and winter) peak load periods of the preceding year and (2) a discussion of the extent to which the magnitude of these transactions approached the transfer capacity of the inter-Council transmission facilities under conditions then existing.

Justification: Industry reports claim that some U.S. transmission facilities are approaching their capacity transfer limits but do not support these claims with quantitative information. The data requested will provide an understanding of the ability of transmission facilities to transfer the capacity purchases and sales reported in item 3A among Councils.

5C. System Evaluation Criteria.

It is proposed to enlarge this item to include discussion of the effects of non-utility generating sources and increased access by independent power producers to transmission facilities as they specifically relate to reliability of supply in the Council's area.

Justification: Increasing non-utility generation and the issues associated with integrating that generation into the utility network may have effects on system reliability that are not thoroughly explored elsewhere.

6A. Coordination of Operations.

No change is proposed for this item.

6B. Load preservation program.

It is proposed to add to this item requests for: (1) description of the voltage reduction procedures employed by the utilities in the Council area, their effectiveness in reducing peak demands and the effects on customer equipment; and (2) discussion of conditions and practices related to reduction of peak demand under control of or at the request of the system operator. These practices are usually described by such terms as "direct load control," "interruptible load," or "load management." The terminology used should be defined.

Justification: Load preservation practices and procedures differ among Councils. Further information is necessary to understand their potential for preserving load.

7. Additional Information

No change is proposed for this item.

III. Request for Comments

Prospective respondents and other interested parties are requested to comment on the proposed revisions discussed above and to propose such other modifications as they deem useful. The following general questions are provided to assist in the preparation of responses:

For the potential respondent and user:

A. Are current instructions and definitions in Form OE–411 clear and sufficient? If not, what changes do you suggest?

B. Can the information requested be submitted consistent with the existing definitions? (Note: It is intended to adopt, if possible, the definitions in the "Glossary of Terms For NERC Publications" to be published by the North American Electric Reliability Council on June 9, 1994.)

C. Can the information requested be submitted within the response time specified in the instructions?

D. For Form OE–411 as currently constituted, public reporting burden is estimated to average 13 hours per response for the utilities that provide the basic information and 1000 hours for each Reliability Council respondent. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate would be required to complete Form EIA–411 if it should be promulgated as proposed in this Notice?

E. What specific changes do you suggest?

F. If you know of any Federal, State or local governmental agency that collects identical data in the same single volume format, specify the agency and a reference citation.

G. For what purposes would you use the EIA–411 report? Please be specific.

H. What are the deficiencies and strengths of any alternate source of numerical and descriptive information that you use?

EIA also is interested in receiving comments regarding the need for the information provided in Form OE–411 (existing) or Form EIA–411 (proposed).

Comments will become a matter of public record.

The Office Of Emergency Planning and EIA will review and evaluate all comments received as a result of this Notice in the context of best serving the interests of the public, the electric utility industry, State governments and the Federal government. A statement will be prepared integrating the views expressed above with the comments received in response to this notice. If appropriate after review by these offices, the Office of Management and Budget (OMB) will be requested to authorize use of Form EIA–411 for the period 1995–1997.

Statutory Authorities: Sec. 2(a) of the Paperwork Reduction Act of 1980, (Public Law No. 96–511), which amended Chapter 35 of Title 44 United States Code. [See 44 U.S.C. 3506(a) and (c)(1)].

Issued in Washington, DC June 9, 1994.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 94–14554 Filed 6–14–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. QF87–422–005]

Indeck-Corinth Limited Partnership; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

June 9, 1994.

On June 8, 1994, Indeck-Corinth Limited Partnership (Indeck-Corinth) of 1130 Lake Cook Road, suite 300, Buffalo Grove, Illinois 60089, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the natural gas-fueled cogeneration facility is located in Corinth, New York. The Commission previously certified the capacity of the facility to be 36.65 MW. The facility was to consist of a combustion turbine generator and a heat recovery boiler. Thermal energy recovered from the facility was to be used in paper manufacturing processes. The instant application for recertification is submitted to report the addition of an extraction/condensing steam turbine generator and an approximately 3.5-mile, 115 kV transmission line to the facility. Furthermore, the application reflects an increase in the facility's maximum net electric power production capacity to 137.4 MW, use of thermal energy output for space heating, and the transfer of ownership from International Paper Company to Indeck-Corinth.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–14488 Filed 6–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL94–65–000, et al.]

Consumers Power Company, et al.; Electric Rate and Corporate Regulation Filings

June 8, 1994.

Take notice that the following filings have been made with the Commission:

1. Consumers Power Co.

[Docket No. EL94–65–000]

Take notice that on May 4, 1994, Consumers Power Company tendered for filing a Petition for waiver of policy statement regarding post-employment benefits other than pensions.

Comment date: June 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Louis Dreyfus Electric Power Inc.

[Docket No. ER92–850–006]

Take notice that on May 2, 1994, Louis Dreyfus Electric Power Inc.

(Dreyfus) filed certain information as required by the Commission's December 2, 1992 letter order in this proceeding. 61 FERC ¶ 61,303 (1992). Copies of Dreyfus' informational filing are on file with the Commission and are available for public inspection, with the exception of certain data which Dreyfus claims is privileged pursuant to Section 388.112 of the Commission's Rules of Practice and Procedure.

3. PSI Energy, Inc.

[Docket No. ER94–533–000]

Take notice that PSI Energy, Inc. (PSI) and Indiana Municipal Power Agency on May 13, 1994, tendered for filing amended Service Schedules in the FERC Filing in Docket No. ER94–533–000 to comply with a FERC Staff request.

Copies of the filing were served on Indiana Municipal Agency and the Indiana Utility Regulatory Commission.

Comment date: June 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Western Resources, Inc.

[Docket No. ER94–1010–000]

Take notice that on May 25, 1994, Western Resources, Inc. tendered for filing additional information to its March 2, 1994 filing in the above-referenced docket.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Public Service Co.

[Docket No. ER94–1093–000]

Take notice that on June 1, 1994, Southwestern Public Service Company tendered for filing an amendment to its March 28, 1994 filing in the above-referenced docket.

Comment date: June 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. The Montana Power Co.

[Docket No. ER94–1189–000]

Take notice that on May 27, 1994, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an amendment to its filing in the above referenced docket. Said amendment was filed so as to provide the Commission with a Certificate of Concurrence from Enron Power Marketing, Inc. (Enron).

A copy of the filing was served upon Enron and Lassen Municipal Utility District.

Comment date: June 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Atlantic City Electric Co.

[Docket No. ER94–1316–000]

Take notice that on May 31, 1994, Atlantic City Electric Company (ACE) tendered for filing a Letter Agreement between ACE and Baltimore Gas & Electric Company (BG&E). Pursuant to the Letter Agreement, ACE has agreed to sell to BG&E PJM firm installed capacity credits pursuant to the current PJM Interconnection Agreement Schedule 4.01.

ACE requests waiver of the notice requirements in order that the Letter Agreement may become effective as of June 1, 1994.

Copies of the filing have been served on New Jersey Board of Regulatory Commissioners, the Maryland Public Service Commission, and Baltimore Gas & Electric Company.

Comment date: June 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Co., Central Maine Power Co.

[Docket No. ER94–1317–000]

Take notice that on May 31, 1994, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO), Holyoke Water Power Company (HWP), Holyoke Power and Electric Company (HP&E) and Public Service Company of New Hampshire (PSNH) along with Central Maine Power Company (CMP) tendered for filing a capacity exchange agreement dated May 15, 1994 between NUSCO and CMP.

NUSCO states that a copy of this information has been mailed to CMP and the Maine Public Utilities Commission, Connecticut Department of Public Utility Control, Massachusetts Department of Public Utilities and New Hampshire Public Service Commission.

Comment date: June 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Co.

[Docket No. ER94–1318–000]

Take notice that on May 27, 1994, Northeast Utilities Service Company (NUSCO) submitted for filing, on behalf of the Northeast Utilities (NU) System Companies, a System Power Sales Agreement between NUSCO and Bozrah Light and Power Company (Bozrah) and a Service Agreement between NUSCO and the NU System Companies for service under NUSCO's Transmission Tariff No. 5 (Service Agreement). NUSCO requests that the Agreement and the Service Agreement be permitted to become effective May 1, 1994.

Comment date: June 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. The Washington Water Power Co.

[Docket No. ER94–1320–000]

Take notice that on May 31, 1994, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 revisions to the borderline transmission service provided by WWP to the Bonneville Power Administration (Bonneville) under terms of the WWP/Bonneville General Transfer Agreement.

A copy of this filing has been served upon Bonneville, the Idaho Public Utilities Commission, and the Washington Utilities and Transportation Commission.

Comment date: June 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Green Mountain Power Corp.

[Docket No. ER94–1321–000]

Take notice that on May 31, 1994, Green Mountain Power Corporation (GMP) tendered for filing a Service Agreement and Certificate of Concurrence for Consolidated Edison under FERC Electric Tariff No. 2, known as GMP's Opportunity Transaction Tariff (Tariff). The Service Agreement is intended to supersede the unexecuted Service Agreement for Consolidated Edison, identified as Rate Schedule No. 19 under the Tariff. The Service Agreement and Certificate of Concurrence will allow Consolidated Edison to enter into transactions, including exchange unit transactions, in accordance with the Tariff. No terms or conditions of the Tariff are affected by the form of Service Agreement.

Comment date: June 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Central Maine Power Co.

[Docket No. ER94–1323–000]

Take notice that on June 1, 1994, Central Maine Power Company (CMP), tendered for filing a Settlement Agreement between CMP and New England Power Company (New England Power), dated as of June 1, 1994 (Agreement). In accordance with the terms of the Agreement, CMP will provide New England Power with two cash payments, and a CMP system energy sale of capacity and associated energy for the months of August and September 1994 priced at CMP's projected incremental cost of production.

Comment date: June 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Co. (Minnesota)

[Docket No. ER94–1324–000]

Take notice that on June 1, 1994, Northern States Power Company (Minnesota) tendered a Relocation Agreement between NSP and City of Chaska.

NSP requests that the Commission disclaim jurisdiction over this Agreement. If the Commission claims jurisdiction over this Agreement, NSP alternatively requests that the Commission accept for filing the attached Agreement effective as of May 23, 1994, and requests waiver of any applicable Commission Notice Requirements under Part 35.

Comment date: June 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Edison Co., Madison Gas & Electric Co.

[Docket No. ER94–1325–000]

Take notice that on June 2, 1994, Commonwealth Edison Company (Edison) submitted a Service Agreement, dated June 1, 1994, establishing Madison Gas & Electric Company (MG&E) as a customer under the terms of Edison's Power Sales Tariff PS–1 (PS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2. Edison and MG&E also submitted for filing a Letter Agreement, dated June 1, 1994, whereby Edison and MG&E agree to cancel an existing Letter Agreement, dated February 1, 1990, and a Notice of Cancellation with respect to the MG&E rate schedule.

Edison requests an effective date of June 1, 1994, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon MG&E, the Public Service Commission of Wisconsin, and the Illinois Commerce Commission.

Comment date: June 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Texas-New Mexico Power Co.

[Docket No. ER94–1326–000]

Take notice that on June 2, 1994, Texas-New Mexico Power Company tendered for filing Amendment No. 1 of a certain agreement between TNP and El Paso Electric Company (EPE) pertaining to communication facilities at Long Ridge Electronic Site.

Asserting that the agreement does not provide for TNP either to sell electric power at wholesale or to perform a wheeling service, TNP requests that the Commission disclaim jurisdiction and reject the tender for filing. If the Commission does not disclaim jurisdiction, TNP requests that the Commission waive its notice requirements and accept such Amendment effective as of June 1, 1994.

TNP asserts that the filing has been served on EPE, the New Mexico Public Utility Commission, and the Public Utility Commission of Texas.

Comment date: June 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Orange and Rockland Utilities, Inc.

[Docket No. ER94–1327–000]

Take notice that on June 2, 1994, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988, in Docket No. ER88–112–000, an executed Service Agreement between Orange and Rockland and Chromalloy Wallkill Corporation.

Comment date: June 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. CMEX Energy, Inc.

[Docket No. ER94–1328–000]

Take notice that on June 2, 1994, CMEX Energy, Inc. (CMEX) tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective August 2, 1994.

CMEX intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where CMEX sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither CMEX nor any of its affiliates are in the business of generating, transmitting, or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Comment date: June 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14487 Filed 6–14–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 6624–099 New York]

Alfred D. Huey; Availability of Environmental Assessment

June 9, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) reviewed site restoration measures for the removal of a powerhouse at the Tyrone Project. The removal of the powerhouse is required in the termination of the exemption (license).[1] The project is located on Big Tobehanna Creek near the Village of Tyrone in Schuyler County, New York.

The staff of OHL's Division of Project Compliance and Administration prepared on Environmental Assessment (EA), for the proposed action. In the EA, the staff concludes that the licensee's proposals would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NE, Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–14489 Filed 6–14–94; 8:45 am]

BILLING CODE 6717–01–M

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[1] See 64 FERC ¶ 61,356.

[Project No. 8864–009 Washington]

Weyerhaeuser Co; Availability of Environmental Assessment

June 9, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application to change the design of the transmission line for the Calligan Creek Project. The proposed 2.5 mile long transmission line would be buried for its entire length in the shoulder of a Weyerhaeuser Company logging road. No other private or residential landowners would be affected.

The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that the licensee's proposals would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–14490 Filed 6–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–10–23–001]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 9, 1994.

Take notice that on June 1, 1994, Eastern Shore Natural Gas Company (ESNG) tendered for filing certain revised tariff sheets included in Appendix A attached to the filing. Such tariff sheets are proposed to be effective May 1, 1994.

On May 2, 1994, ESNG filed revised tariff sheets pursuant to § 154.309 of the Commission's regulations and §§ 21.2 and 21.4 of ESNG's General Terms and Conditions. ESNG states that the filing reflected a decrease in ESNG's Commodity and Demand sales rates, as compared to rates filed in Docket No. TQ94–5–23–000, et al. It has recently come to ESNG's attention that the storage tracker component of its GSS–1 Storage Service rates for: (1) Excess Delivery From Buyer's Storage Gas Balance Charge, and (2) Excess Delivery Not Reducing Buyer's Storage Gas Balance Charge were incorrectly calculated. ESNG states that the instant filing is being tendered in order to correct the GSS–1 General Storage Service rates involved.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–14491 Filed 6–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–268–000]

Energy Production Corporation v. Koch Gateway Pipeline Company; Compliant

June 9, 1994.

Take notice that on May 31, 1994, Energy Production Corporation (EPCo), pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, and Section 1b.8 of the Commission's general rules, 18 CFR 1b.8, submits for filing its formal complaint against Koch Gateway Pipeline Company (Koch).

EPCo requests the Commission utilize its power under the Natural Gas Act to issue a show cause order against Koch for charging rates in excess of the maximum allowed for open access transportation under its rate schedule in violation of the Natural Gas Act and to order Koch to refund any charges in excess of the maximum allowed for open access transportation and to take any and all necessary actions to prohibit Koch from continuing to charge a gathering rate for service that is clearly transmission and to refund any gathering rate charges that have been improperly collected.

EPCo respectfully requests that the Commission act promptly to (a) order Koch to refund all gathering fees improperly collected and (b) to cease collecting any new gathering fees on gas delivered through such meter point.

EPCo requests immediate action in this matter to avoid the imminent and irreparable competitive harm associated with application of the illegal rate. EPCo states that it has been required to deliver gas through an adjoining pipeline facility at a higher pressure which other facility may not be available to it in the future.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before July 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before July 11, 1994.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–14492 Filed 6–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–187–000, et al.]

Equitrans, Inc.; Informal Settlement Conference

June 9, 1994.

Take notice that an informal conference will be convened in this proceeding on Wednesday, June 15, 1994, at 10 a.m., for the purpose of exploring the possible settlement of the above-referenced docket. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street NE. Washington, DC, 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis J. Alpert at (202) 208–0783 or Arnold H. Meltz at (202) 208–2161.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 94–14493 Filed 6–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–231–001]

Panhandle Eastern Pipe Line Company; Amended Filing of FERC Gas Tariff

June 9, 1994.

Take notice that on June 6, 1994, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following substitute tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, pertaining to the flow through mechanism for the recovery of Dakota Gasification Transition Costs billed to Panhandle by ANR Pipeline Company (ANR). Panhandle proposes that the substitute tariff sheets become effective June 1, 1994:

Substitute Second Revised Sheet No. 11
Substitute Second Revised Sheet No. 12
Substitute Second Revised Sheet No. 13
Substitute First Revised Sheet No. 14

The Commission approved the implementation of a mechanism to flow through the Dakota Gasification Transition Costs, subject to refund and subject to the ultimate disposition of proceedings in Docket No. RP94–150–000, by order dated May 27, 1994. Panhandle states that the substitute tariff sheets should be accepted for filing because Panhandle has not actually been billed for the transition costs by ANR for the first quarter. Consequently, the substitute tariff sheets reduce the surcharge associated with the Dakota Gasification Transition Costs to zero. Panhandle also states that it reserves its right to file subsequently under Section 18.11 of the General Terms and Conditions of its Tariff to implement the flow through cost recovery mechanism as may be necessary in the future.

Panhandle requests that the Commission grant all necessary waivers of the Regulations so as to place the instant substitute tariff sheets and attendant surcharge into effect on June 1, 1994.

Panhandle states that a copy of this tariff filing is being served on all affected customers and state commissions.

Any person desiring to protest the said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 94–14494 Filed 6–14–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. GT94–42–000]

Texas Eastern Transmission Corp.; Refund Report

June 9, 1994.

Take notice that on May 10, 1994, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report summarizing a flow-through refund from Transcontinental Gas Pipe Line Corporation (TGPL) in Docket No. RP92–137. The refunds, plus interest, are being flowed through pursuant to Section 15.2(D) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1.

Texas Eastern states that the refund amounts are based on each customer's charges under the applicable Stranded Account No. 858 Costs filing in Dockets Nos. RP93–204 and RP94–99 for the periods June 1, 1993 through August 31, 1993 and September 1, 1993 through October 31, 1993, respectively. For these two periods, Texas Eastern reports principal refund amounts totalling $78,938.55 plus interest of $2,230.47 from TGPL. Texas Eastern included additional interest $761.32 in the amounts flowed through to its affected customers to cover the period from March 14, 1994 to May 10, 1994, the date of refund.

Texas Eastern states that a copy of the refund summary schedule and detailed calculations was sent to each of Texas Eastern's affected customers, and a copy of the refund summary was sent to the respective state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 94–14495 Filed 6–14–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. GT94-43-000]

Transcontinental Gas Pipe Line Corp.; Refund Report

June 9, 1994.

Take notice that on May 17, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report summarizing its flow-through of a refund received from CNG Transmission Corporation (CNG). The report states that on May 13, 1994, TGPL refunded $46,614.45, including $3,558.53 in interest, to its LSS customers in accordance with section 4 of its Rate Schedule LSS. The report shows the computation of the refund amounts for the period January 10, 1991 through July 31, 1992, pursuant to the settlement of CNG's rate case in Docket No. RP92-14.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 94-14496 Filed 6–14–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP92–137–204]

Transcontinental Gas Pipe Line Corp.; Refund Report

June 9, 1994.

Take notice that on March 10, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing with the Federal Energy Regulatory Commission (Commission) a report summarizing refunds disbursed on

March 8, 1994 to certain sales, storage and transportation customers. On December 16, 1993, TGPL filed a request to accelerate partial refunds in advance of the date provided under Article IV of the settlement approved by the Commission of November 4, 1993, in Docket No. RP92–137–015. The request was granted by the Commission on February 14, 1994 in Docket Nos. RP92–137–021, *et al.* subject to TGPL making refunds to all affected parties.

TGPL states that the refunds were calculated for the locked-in period from September 1, 1992 through October 31, 1993 based on the difference between the amounts billed and the amounts computed using the settlement rates. TGPL's report shows refunds totalling $99,202,619.93, including $5,067,299.00 in interest; however, TGPL notes that the refund calculations for Panda Energy Corporation, Baltimore Gas & Electric, New York Power Authority, and South Jersey Energy Corporation indicate that additional amounts are due TGPL as a result of an increase in rates for service provided under Rate Schedule FT–NT.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before June 16, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–14497 Filed 6–14–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/NO(SW)–22, for the transfer of 3 rod segments from Sweden to Norway for testing in the Halden reactor. The segments contain 900 grams of uranium containing 2 grams of the isotope uranium-235 and 8 grams of plutonium. After testing at Halden, the segments are to be returned to Sweden.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on June 10, 1994.

Edward T. Fei,

Acting Director, Division of International and Regional Security; Office of Arms Control and Nonproliferation.

[FR Doc. 94–14556 Filed 6–14–94; 8:45 am]

BILLING CODE 6450–01–M

Southwestern Power Administration

Sam Rayburn Dam Project and Robert D. Willis Hydropower Project

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Proposed Sam Rayburn Dam and Robert Douglas Willis power rates and opportunities for public review and comment.

SUMMARY: The Administrator, Southwestern, has prepared Current and Revised 1994 Power Repayment Studies for the Sam Rayburn Dam (Rayburn) project and the Robert Douglas Willis (Willis) Hydropower project which indicate the need for rate adjustments at both projects to meet cost recovery criteria. These rate adjustments are needed primarily to recover estimated increases in Corps of Engineers' operation and maintenance expenses at the two hydropower projects. The proposed rate for Rayburn increases annual revenue requirements approximately 4.4 percent from $2,076,444 to $2,168,136, beginning October 1, 1994. The proposed rate for the Willis project increases annual revenue requirements approximately 3.6 percent from $284,580 to $294,696, beginning October 1, 1994. The Administrator has developed proposed rate schedules for the Rayburn and Willis projects to recover the required revenues.

DATES: A Public Information Forum will be held July 7, 1994, in Tulsa, Oklahoma. A Public Comment Forum will be held August 1, 1994, in Tulsa, Oklahoma. Written comments are due on or before August 15, 1994. Revised rates for Sam Rayburn Dam and Robert D. Willis projects are calculated based on an October 1, 1994, implementation date. Therefore, to provide opportunities for public consultation and comment while also meeting the October 1, 1994, date for implementation, Southwestern is conducting a 60 day public notice and comment period (10 CFR 903.14(d)). This public participation period is reduced since there is only a single customer for each project and those two customers directly impacted have been informed of the impending rate increases; any comments from the customers are expected to be developed well within the 60 day period; coordination, if needed, can be accomplished within that same period. In addition, Southwestern does not expect much, if any, interest in these proceedings from any other entity. [Note: The proposed rate change for the Willis project is classified as a minor rate adjustment and does not require any comment period to exceed 30 days (10 CFR 903.14).]

ADDRESSES: Written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Grisaffe, Assistant Administrator, Office of Administration and Rates, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101 (918) 581–7419.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) was created by an Act of the U.S. Congress, Department of Energy Organization Act, Pub. L. 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of Interior to the DOE, effective October 1, 1977. Guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2, Power Marketing Administration Financial Reporting. Procedures for Public Participation in Power and Transmission Rate Adjustments of the Power Marketing Administrations are found at Title 10, Part 903, Subpart A of the Code of Federal Regulations (10 CFR 903).

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers (Corps). These projects are located in the States of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise the Integrated System and are generally interconnected through Southwestern's transmission system and exchange agreements with other utilities. The power produced by the remaining two hydroelectric generating projects, Rayburn and Willis, is marketed by Southwestern under separate contracts through which two customers purchase the entire power output at each of the two projects. The Rayburn project, located on the Angelina River within the Neches River Basin, in eastern Texas, consists of two hydroelectric generating units with a total capacity of 52.0 megawatts (MW). The Willis project is located on the Neches River downstream from the Rayburn project and has two hydroelectric generating units with a total capacity of 7.4 MW. The two customers, Sam Rayburn Dam Electric Cooperative, Inc. (SRDEC) and the Sam Rayburn Municipal Power Agency (SRMPA), currently receive the entire output of the Rayburn and Willis projects, respectively. In the case of Willis, SRMPA receives the entire electrical output of the project as a result of its non-federally funding the construction of the hydroelectric facilities at the project. SRDEC receives the entire electrical output of the Rayburn project through a contract that provides for an isolated rate. These projects are not currently interconnected with Southwestern's Integrated System. A separate power repayment study is prepared for each project and both have special rates based on their non-interconnected operations. Following DOE Order No. RA 6120.2 guidelines, the Administrator, Southwestern, prepared a Current Power Repayment Study for both the Rayburn and Willis projects using existing rates.

Both Current Power Repayment Studies indicated that the legal requirement to repay the power-related costs, with interest, will not be met without additional revenue. This revenue need results primarily from increased annual operation and maintenance expenses projected by the Corps. The Revised Power Repayment Study for Rayburn shows that additional annual revenue of $91,692 (a 4.4 percent increase), beginning October 1, 1994, is needed to satisfy repayment criteria. This would increase revenues received from the Rayburn project customer (SRDEC) from the current $2,076,444 to $2,168,136 annually. The Revised Power Repayment Study for Willis shows that additional annual revenue of $10,116 (a 3.6 percent increase), would provide sufficient revenues for repayment of the projected expenses within the required period. This would increase revenues received from the Willis project customer (SRMPA) from the current $284,580 to $294,696 annually, beginning October 1, 1994.

Opportunity is presented for customers and other interested parties to receive copies of the Rayburn and Willis studies and the proposed rate schedules. If you desire a copy of the Power Repayment Study Data Package for either or both projects, submit your request to Mr. George C. Grisaffe at the address cited above.

A Public Information Forum will be held at 1 p.m., Thursday, July 7, 1994, in Southwestern's offices, Room 1402, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma, to explain to customers and interested parties the proposed rates and supporting studies. The Forum will be conducted by a chairman who will be responsible for orderly procedure. Questions concerning the rates, studies and information presented at the Forum may be submitted from interested persons and will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing, except that questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices. Persons interested in attending the Public Information Forum should indicate in writing by Monday, July 4, 1994, their intent to appear at such Forum. Accordingly, if no one so indicates their intent to attend, no such Forum will be held.

A Public Comment Forum will be held at 1 p.m., Monday, August 1, 1994, at the same location established for the Public Information Forum. At the Public Comment Forum, interested persons may submit written comments or make oral presentations of their views and comments. This Forum will also be conducted by a chairman who will be responsible for orderly procedure. Southwestern's representatives will be present, and they and the chairman may ask questions of the speakers. Persons interested in attending or speaking at the Public Comment Forum should indicate in writing (use same address as used for submitting comments) by Wednesday, July 27, 1994, their intent to appear/speak at such Forum. Accordingly, if no one so indicates their intent to attend, no such Forum will be held. The chairman may allow others to speak if time permits.

A transcript of each Forum will be made. Copies of the transcripts may be obtained from the transcribing service. Copies of all documents introduced will be available from Southwestern upon request, for a fee. Written comments on the proposed rates for either project are due on or before August 15, 1994. Written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

Following review of the oral and written comments and the information gathered in the course of the proceedings, the Administrator will submit the rate proposals, and Power Repayment Studies in support of the proposed rates, to the DOE Deputy Secretary for confirmation and approval on an interim basis, and to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increases before making a final decision.

Issued in Tulsa, Oklahoma, this 9th day of June, 1994.

Dallas Cooper,

Acting Administrator.

[FR Doc. 94-14555 Filed 6-14-94; 8.45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4998-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 15, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy

of the ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Milk Cow and Population Survey (EPA No. 1221.04; OMB No. 2080–0017).

Abstract: This ICR is a renewal of an existing information collection. Under 44 U.S.C. 3501(1)(3), the EPA conducts an annual or biennial survey of dairy farms and ranches within a 300 kilometer radius of the Nevada Test Site (NTS). The information collected includes the location of dairy farms and ranches, and the diet and number of milk-producing livestock at these farms and ranches. The EPA compiles this information in a directory that is used, along with other data, to predict radiation exposure levels outside of the NTS. The directory may also be used by the EPA to develop a sampling strategy following a release of radioactivity from the NTS.

Burden Statement: Public reporting burden for this collection of information is estimated to average 30 minutes per response including reviewing instructions, searching existing information sources, maintaining records, and completing and reviewing the collection of information.

Respondents: Farms.

Estimated Number of Respondents: 565.

Frequency of Collection: Annual.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 283 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 25 17th Street, NW., Washington, DC 20503.

Dated: June 9, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–14539 Filed 6–14–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5000–1]

Clean Air Act Committee; Meeting

ACTION: Clean Air Act Advisory Committee Notice of Meeting.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990 to provide independent advice and counsel to EPA on policy issues associated with the implementation of the Clean Air Act of 1990. The charter for the CAAAC was reissued and the Committee was authorized to be extended until November 19, 1994 under regulations established by the Federal Advisory Committee Act (FACA).

OPEN MEETING NOTICE: Notice is hereby given that the reauthorized Clean Air Act Advisory Committee will hold its next open meeting on Tuesday, July 12, 1994 from 8:30 a.m. to 4 p.m., at the Omni Shoreham Hotel, 2500 Calvert Street, NW. in Washington, DC. Seating will be available on a first come, first served basis.

The meeting will include reports from the first meetings of the subcommittees, as well as a discussion of sanctions and attainment demonstration issues and a discussion of the linkages between transportation, energy and air quality issues, including Employee Commute Option Programs.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the CAAAC meeting minutes will be available for public inspection in EPA Air Docket Number A–94–34 in room 1500 of EPA Headquarters, 401 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION: Concerning this meeting of the CAAAC please contact Karen Smith, Office of Air and Radiation, US EPA (202) 260–6379, FAX (202) 260–5155, or by mail at US EPA, Office of Air and Radiation (Mail Code 6101), Washington, DC. 20460.

Dated: June 7, 1994.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 94–14540 Filed 6–14–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30367; FRL–4873–5]

Aankill Inc.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register the pesticide product Aankill, containing active ingredients not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by July 15, 1994.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30367] and the file symbol (63709–R), attention Product Manager (PM) 18, Registration Division, to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. a copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: PM 18, Phil Hutton, Rm. 213, CM #2, (703–305–7690).

SUPPLEMENTARY INFORMATION: EPA received an application from Aankill 44, Inc., 3121 S. Eastman Rd., P.O. Box 7426, Longview, TX 75607–7426, to register the pesticide product Aankill (File Symbol 63709–R). This product which contains the ingredients turpentine and ammonia, is being considered for registration as an insecticide. Aankill would be used to control fire ants by applying it onto fire ant mounds. The product contains active ingredients not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of the application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product wil be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: June 9, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–14669 Filed 6–14–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180933; FRL–4771–9]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the seven States as listed below. Three crisis exemptions were initiated by various States and one was subsequently revoked. A quarantine exemption was also granted to the Guam Department of Agriculture, Office of the Governor and the United States Department of Agriculture. These exemptions, issued during the months of January and February 1994, except for the one in November 1993, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied three specific exemption requests. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, and quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of benomyl on artichokes to control ramularia leaf spot; February 7, 1994, to December 31, 1994. A notice of receipt published in the **Federal Register** of December 23, 1993 (58 FR 68144). Ramularia leaf spot has recently developed as a serious disease of artichokes, resulting in an urgent nonroutine situation. Without benomyl, a significant economic loss is expected. The use of benomyl will not cause unreasonable adverse effects on human health or the environment. Benomyl was also the subject of Special Review from 1977 to 1982. (Susan Stanton)

2. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of fenamiphos on broccoli and cauliflower to control nematodes; February 14, 1994, to February 13, 1995. California had initiated a crisis exemption for this use which was later inactivated. (Libby Pemberton)

3. Florida Department of Agriculture and Consumer Services for the use of avermectin on peppers to control melon thrips; February 15, 1994, to February 14, 1995. (Andrea Beard)

4. Florida Department of Agriculture and Consumer Services for the use of imidacloprid on peppers to control melon thrips; February 15, 1994, to February 14, 1995. A notice of receipt published in the **Federal Register** of January 19, 1994 (59 FR 2849); no comments were received. The application proposed use of a new chemical. The situation was determined to be an emergency, since the melon thrip was recently discovered in Florida and has since developed into a devastating pest. Significant economic losses could occur if this pest is not adequately controlled and the registered pesticides appear to be ineffective. Imidacloprid is authorized to be used at transplanting. Since it is a systemic, it will be taken up by the developing seedlings and protect them during this vulnerable stage of development. (Andrea Beard)

5. Florida Department of Agriculture and Consumer Services for the use of imidacloprid on citrus to control the citrus leafminer; February 15, 1994, to February 14, 1995. (Andrea Beard)

6. Louisiana Department of Agriculture and Forestry for the use of paraquat on rice to control weeds; February 17, 1994, to June 15, 1994. (Susan Stanton)

7. New Mexico Department of Agriculture for the use of propazine on sorghum to control pigweed; January 27, 1994, to August 1, 1994. A notice of receipt published in the **Federal Register** of December 29, 1993 (58 FR 68908); no comments were received. The applicant requested use of an active ingredient not contained in any registered product. The situation was determined to be urgent and nonroutine and significant economic losses could occur without the use of propazine. (Andrea Beard)

8. Oregon Department of Agriculture for the use of fenoxycarb on pears to control pear psylla; February 14, 1994, to May 1, 1994. (Andrea Beard)

9. Oregon Department of Agriculture for the use of sethoxydim on canola to control volunteer grains and grasses.; January 31, 1994, to December 31, 1994. (Susan Stanton)

10. Oregon Department of Agriculture for the use of chlorothalonil on hazelnuts to control eastern filbert blight; January 31, 1994, to May 30, 1994. (Susan Stanton)

11. Texas Department of Agriculture for the use of esfenvalerate on kale and mustard greens to control cabbage loopers; February 16, 1994, to November 30, 1994. (Libby Pemberton)

12. Texas Department of Agriculture for the use of propazine on sorghum to control pigweed; January 27, 1994, to August 1, 1994. A notice of receipt published in the **Federal Register** of December 29, 1993 (58 FR 68908); no comments were received. The applicant requested use of an active ingredient not contained in any registered product. The situation was determined to be urgent and nonroutine and significant economic losses could occur without the use of propazine. (Andrea Beard)

13. Texas Department of Agriculture for the use of bifenthrin on cucurbits (cucumbers, melons, and squash) to control the sweet potato whitefly; January 21, 1994, to January 20, 1995. (Andrea Beard)

14. Texas Department of Agriculture for the use of imidacloprid on cucurbits (cucumbers, melons, and squash) to control the sweet potato whitefly; January 21, 1994, to January 20, 1995. A notice of receipt published in the **Federal Register** of January 7, 1994 (59 FR 1018); no comments were received. The situation was determined to be urgent and nonroutine and the currently

available pesticides and practices are not providing adequate control; without adequate control of the sweet potato whitefly significant economic losses are expected. (Andrea Beard)

15. Washington Department of Agriculture for the use of fenoxycarb on pears to control pear psylla; February 14, 1994, to May 1, 1994. A notice of receipt published in the **Federal Register** of December 29, 1993 (58 FR 68907); no comments were received. The situation was determined to be urgent and nonroutine and significant economic losses are expected without the use of fenoxycarb. (Andrea Beard)

Crisis exemptions were initiated by the:

1. Illinois Department of Agriculture on Janury 14, 1994, for the use of sodium chlorite on inlet pipe at the Illinois Power Company to control Zebra mussels. This program has ended. (Libby Pemberton)

2. Oklahoma Department of Agriculture on November 1, 1993, for the use of metolachlor on spinach to control sibara. This program has ended. (Margarita Collantes)

3. Puerto Rico Department of Agriculture (PRDA) on January 8, 1994, for the use of avermectin on tomatoes to control leafminers. PRDA's crisis exemption and authority to issue crisis exemptions for this use were revoked on February 28, 1994. (Lawrence Fried)

Quarantine exemptions were granted to the:

1. Guam Department of Agriculture, Office of the Governor for the use of methyl bromide on letuce, celery, spinach, broccoli, and cauliflower imported from the United States mainland for consumption in Guam to control western flown thrips and cabbage aphids; February 28, 1994, to February 27, 1997. (Libby Pemberton)

2. United States Department of Agriculture for the use of quaternary ammonium compound on farm equipment to control witchweed in North and South Carolina; February 22, 1994, to February 21, 1997. (Margarita Collantes)

EPA has denied a specific exemption request from the:

1. Arkansas State Plant Board for the use of pyrithiobac sodium on cotton to control cocklebur and morningglory. (Susan Stanton)

2. Georgia Department of Agriculture for the use of iprodione on tobacco to control target spot. A notice of receipt published in the **Federal Register** of January 19, 1994 (59 FR 2851); no comments were received. This specific exemption was denied because of inadequate progress toward registration. (Susan Stanton)

3. Mississippi Department of Agriculture and Commerce for the use of pyrithiobac sodium on cotton to control common cocklebur. A notice of receipt published in the **Federal Register** of December 29, 1993 (58 FR 68909). This specific exemption was denied because an emergency condition does not exist and it was not possible to determine whether the proposed use would cause unreasonable adverse effects. The Agency could not evaluate the risks associated with the proposed use because studies submitted to EPA in support of a Temporary Tolerance and Experimental Use Permit have not been fully reviewed.(Susan Stanton)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: May 31, 1994.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 94–14426 Filed 6–14–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30339A; FRL–4865–6]

Miles Inc.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Miles Inc., to conditionally register seven pesticide products containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis Edwards, Product Manager (PM) 19, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of July 15, 1992 (57 FR 31369), which announced that Miles Inc., 8400 Hawthorn Road, Kansas City, MO 64120-0013, had submitted five applications to conditionally register the pesticide products BAY NTN 33893 Technical, BAY NTN 33893 75% Concentrate, NTN 33893 0.62% Granular, BAY NTN 33893 2.5% Granular, and BAY NTN 33893 2 Systemic (File Symbols 3125–URU, 3125–URL, 3125–URA, 3125–URT, and 3125–URI), containing the active ingredient imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine at 94, 75, 0.62, 2.5, and 21.4 percent respectively, an active ingredient not included in any previously registered products.

The company amended the name of three of their products as applied and they are now known as Merit 0.62% Granular (3125–URA), Merit 2.5 Granular (3125–URT), and Merit 2 Systemic (3125–URI).

The Agency also received applications from Miles Inc., to conditionally register pesticide products Merit 75 WP (3125–UER) and Merit 75 WSP (3125–UGO), containing the active ingredient imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine at 75 percent. However, since the notice of receipt of application to register these pesticide products as required by section 3(c)(4) of FIFRA, as amended was inadvertently omitted in the notice of July 15, 1992 (57 FR 31369), interested parties may submit comments within 30 days from the date of publication of this notice for these two products only.

The following applications were approved on March 18, 1994, except for the product Merit 75 WSP which was approved on March 22, 1994, as listed below:

1. BAY NTN 33893 Technical for use in the manufacture of insecticides (EPA Reg. No. 3125–414).

2. BAY NTN 33898 75% Concentrate for use in the manufacture of insecticides (EPA Reg. No. 3125–415).

3. Merit 0.62% Granular for insect control in ornamentals (EPA Reg. No. 3125–416).

4. Merit 2.5 Granular for insect control in ornamental crops (EPA Reg. No. 3125–417).

5. Merit 2 Systemic for insect control in turfgrass and ornamentals (EPA Reg. No. 3125–418).

6. Merit 75 WP for insect control in turfgrass, landscape ornamentals, and interior plantscapes (EPA Reg. No. 3125–421).

7. Merit 75 WSP for insect control in turfgrass, landscape ornamentals, and interior plantscapes (EPA Reg. No. 3125–439).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that

use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of imidacloprid, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of imidacloprid during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in a Chemical Fact Sheet on imidacloprid.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: June 1, 1994.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 94–14427 Filed 6–14–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–210014A; FRL–4775–2]

Rodenticide Bait Stations; Availability of Draft PR Notice and Technical Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In previous notices, EPA announced its intention to hold hearings on the use of bait stations, as required by rodenticide labeling, when baits are to be applied in locations accessible to children, pets, domestic animals, or wildlife. EPA held two sessions of public hearings to obtain information and to determine whether future actions were needed. In this document, EPA is announcing the availability of a draft PR Notice to manufacturers, formulators, registrants, and users of pesticides regarding the label improvement program for the revision of use directions for commensal rodenticides and the Agency's policies and conclusions regarding the use of rodenticide bait stations.

DATES: Written comments, identified by the docket control number [OPP–210014A], must be submitted to: Public Response and Program Resources Branch, Field Operations Division (address below), on or before August 15, 1994.

ADDRESSES: By mail, submit written requests for draft PR notice and technical report to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5805.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed text and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: William W. Jacobs, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 255, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-6406.

SUPPLEMENTARY INFORMATION: In PR Notice 83-5 (August 16, 1983), EPA presented its policies and criteria concerning tamper-proof bait stations." In the **Federal Register** of October 20, 1983 (48 FR 48711), EPA announced a schedule of hearings to provide interim guidance to rodenticide users and to gather information on the use of bait stations. The hearings were held under authority of section 21(b) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136s(b)).

Subsequent to the hearings, the Agency has developed a Draft Notice to manufacturers, formulators, and registrants and users of pesticides regarding its label improvement program for the revision of use directions for commensal rodenticides and a statement of the Agency's policies on the use of rodenticide baits stations. This Notice requires registrants of certain pesticide products claimed to control commensal rodents and registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) to revise the label of such products to bear certain statements concerning "tamper-resistant bait stations."

This Notice also informs rodenticide registrants, applicants, and other interested persons of EPA's continued concern for the safe use of rodenticides. This Notice outlines EPA's current policies regarding the isolation of commensal rodenticides from children, dogs, other pets, domestic animals, and nontarget wildlife. For purposes of this Notice, product labels, and EPA's policies, the term "commensal rodents" includes the following species: Norway rats (*Rattus norvegicus*), roof rats (*R. rattus*), and/or house mice (*Mus musculus*).

For certain rodenticide baits with labels not now in compliance with this Notice, registrants would have to submit an application for amended registration. The products affected include: (1) ready-to-use solid bait formulations (e.g., pellets, meal, paraffinized block, etc.); (2) liquid baits; (3) concentrates with labels bearing directions for preparing and applying solid or liquid baits; and (4) tracking powders for which current labeling permits use in "tamper-proof bait boxes," other protective structures, or other locations accessible to children or nontarget animals. Amended registration applications for such products would be required to include proposed amended labeling revised as indicated in this Notice. Within 90 days of receipt of this Notice, all registrants of products affected by this Notice would have to submit five copies of revised labeling for each affected product.

The new labeling requirements for baits and concentrates from which users prepare baits are listed under the heading "Required Label Statements" in the Notice. The types of label statements that must be deleted from labels for tracking powders are discussed in the Notice. Any registrant who wishes to modify the label statements prescribed by the Notice must include with the application for an amended registration a statement of each specific modifiction sought and the reasons why each modification is believed to be justified. Alternative text would not be accepted if EPA determines that it is not consistent with the intent of the Notice. All affected products released for shipment after 18 months from the issuance date must bear labeling in compliance with the Notice.

Dated: May 31, 1994.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–14428 Filed 6–14–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34057; FRL 4865–1]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on September 13, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the nine pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before September 13, 1994, to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Delete From Label
000241–00343	TRI-4 HF Herbicide	Mint
000264–00465	MOCAP 10% Granular Nematicide Insecticide	Sod farms
000279–01254	Ethion 4 Miscible Miticide/Insecticide	Bulb vegetables (onions), legume vegetables (beans), fruiting vegetables (eggplants, peppers, pimentos & tomatoes), cucurbit vegetables (cucumbers, melons & squash), pome fruits (apples & pears), stone fruits (apricots, cherries, nectarines, peaches, prunes & plums), small fruits & berries (grapes & straw berries), tree nuts (almonds, chestnuts, filberts, pecans & walnuts), cereal grains (corn & sorghum), alfalfa, peanuts, cotton, tea, terrestrial non-food crops (bermuda- grass, junipers, ornamental evergreens, pine trees, lawns, ornamental turf & ornamental plants), greenhouse non-food crops (ornamental plants), domestic outdoors uses (domestic dwellings & lawns)
00279–02280	FMC Ethion Technical Insecticide	Bulb vegetables (onions), legume vegetables (beans), fruiting vegetables (eggplants, peppers, pimentos & tomatoes), cucurbit vegetables (cucumbers, melons & squash), pome fruits (apples & pears), stone fruits (apricots, cherries, nectarines, peaches, prunes & plums), small fruits & berries (grapes & strawberries), tree nuts almonds, chestnuts, filberts, pecans & walnuts), cereal grains (corn & sorghum), alfalfa, peanuts, cotton, tea, terrestrial non-food crops (bermuda- grass, junipers, ornamental evergreens, pine trees, lawns, ornamental turf & ornamental plants), greenhouse non-food crops (ornamental plants), domestic outdoors uses (domestic dwellings & lawns)

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Registration No.	Product Name	Delete From Label
000464–00070	DOWICIDE 1 Antimicrobial	Postharvest uses on Apples, cantaloupes, carrots, cherries, cucumbers, kiwifruit, kumquats, nectarines, peppers (bell), peaches, pineapples, plums (fresh prunes), sweet potatoes, tomatoes, aquatic uses (swimming pools)
001386–00626	Fruit Spray Powder	Apples
004787–00010	Cheminova Ethion Technical Insecticide	Bulb vegetables (onions), legume vege tables (beans), fruiting vegetables (eggplants, peppers, pimentos & tomatoes), cucurbit vegetables (cucumbers, melons & squash), pome fruits (apples & pears), stone fruits (apricots, cherries, nectarines, peaches, prunes & plums), small fruits & berries (grapes & strawberries), tree nuts (almonds, chestnuts, filberts, pecans & walnuts), cereal grains (corn & sorghum), alfalfa, peanuts, cotton, tea, terrestrial non-food crops (bermuda- grass, junipers, ornamental evergreens, pine trees, lawns, ornamental turf & ornamental plants), greenhouse non-food crops (ornamental plants), domestic outdoors uses (domestic dwellings & lawns)
050383–00014	Malathion 50% Insect Spray	Apples, pears, plums, around animal quarters
051036–00186	Dylonate 2-G	Beans (green & dry), beans (lima), cole crops (broccoli, brussels sprouts, cabbage, cauliflowers), mint (peppermint & spearmint), bulb onions, peanuts, potatoes (irish), strawberries, sugar beets, table beets, tomatoes
058266–00004	Technical Chloropicrin	Aquatic, forestry, post-harvest uses

The following Table 2 includes the names and address of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000241	American Cyanamid Co., Agricultural Research Div., P.O. Box 400, Princeton, NJ 08543.
000264	Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709.
000279	FMC Corporation, Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 19103.
001386	Universal Cooperatives, Inc., 7801 Metro Parkway, P.O. Box 460, Minneapolis, MN 55440.
004787	Cheminova Agro A/S, 1700 Route 23, Suite 210, Wayne, NJ 07470.
051036	Micro Flo. Co., P.O. Box 5948, Lakeland, FL 33807.
050383	Wilson Laboratories, Inc., 150–152 Mason St., Greenwich, CT 06830.
058266	Shadow Mountain Products Corp., P.O. Box 1327, Hollister, CA 95024.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: June 3, 1994.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 94–14425 Filed 6–14–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–011353–006.

Title: Caribbean and Central American Credit Agreement.

Parties:

A.P. Moller-Maersk Line
Consorsio Naviero Occidente, C.A.
Crowley American Transports, Inc.
Kirk Line
Puerto Rico Maritime Shipping Authority
Seaboard Marine, Ltd.
Sea-Land Service, Inc.
Venezuela Container Service

Synopsis: The proposed Agreement (1) modifies the scope of the Agreement; (2) changes the name of the Agreement to the "Credit Agreement"; and (3) restates the Agreement.

Agreement No.: 202–011456.

Title: South Europe American Conference.

Parties:

Evergreen Marine Corporation (Taiwan) Ltd.
"Italia" di Navigazione, S.P.A.
Lykes Bros. Steamship Co., Ltd.
A.P. Moller-Maersk Line
Nedlloyd Lijnen B.V.
P&O Containers Limited
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed Agreement authorizes the parties to discuss and agree upon rules, rates, charges and other transportation matters pertaining to the movement of cargo between, on the one hand, United States Atlantic and Gulf coast ports and points via such ports and, on the other hand, Italian ports, French Mediterranean ports, Spanish ports, and Portuguese ports, including ports on Madeira Island and the Azores Islands and points in Continental Europe (excluding points in the former Yugoslav Republic of Macedonia, Bosnia and Herecegovina, Croatia, Slovenia, and Serbia) via such ports.

Agreement No.: 202–011457.

Title: Ediship Agreement.

Parties:

Andrew Weir Shipping Ltd.
Compagnie Generale Maritime (Holdings) PLC
Hapag-Lloyd Ag
A.P. Moller-Maersk Line
Nedlloyd Lijnen B.V.
P&O Containers Limited
Sea-Land Service, Inc.
NYK Line (Europe) Ltd.
Orient Overseas Container Line (UK) Ltd.

Synopsis: The proposed Agreement provides for the parties to cooperate in the promotion of technological innovation and economic efficiencies through development and utilization of common of compatible information systems to facilitate access by customers and other third parties in Europe to the parties' common carrier services between all United States ports and points and all foreign ports and points.

Dated: June 10, 1994.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc 94–14522 Filed 6–14–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First American Bank Group, Ltd.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First American Bank Group, Ltd., Fort Dodge, Iowa; to acquire 81 percent of the voting shares of Hill Investment Company, Jewell, Iowa, and thereby indirectly acquire Farmers State Bank, Jewell, Iowa; 97 percent of the voting shares of Story County Bancorporation, Jewell, Iowa, and thereby indirectly acquire American State Bank, Ames, Iowa; and 82 percent of the voting shares of Agri Bancorporation, Webster City, Iowa, and thereby indirectly acquire Farmers Bank & Trust, Webster City, Iowa.

In connection with this application, Applicant also proposes to acquire 88 percent of the voting shares of First American Credit Corporation, Fort Dodge, Iowa, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1); and 88 percent of the voting shares of Hill Land Company, Fort Dodge, Iowa, and thereby engage in investing in corporations or projects engaged in community development pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–14506 Filed 6–14–94; 8:45 am]

BILLING CODE 6210–01–F

KeyCorp; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such

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as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. KeyCorp, Cleveland, Ohio; to acquire through its subsidiary, Society National Bank, Cleveland, Ohio, Society Interim Savings Bank, Toledo, Ohio, which will merge with State Home Savings Bank FSB, Bowling Green, Ohio, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 9, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–14507 Filed 6–14–94; 8:45 am]

BILLING CODE 6210–01–F

Old National Bancorp; Notice of Application to Engage de novo in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 94-11061) published on page 23860 of the issue for Monday, May 9, 1994.

Under the Federal Reserve Bank of St. Louis heading, the entry for Old National Bancorp is corrected to read as follows:

1. Old National Bancorp, Evansville, Indiana; to engage *de novo* through its' subsidiary The ONB Trust Company, N.A., Terre Haute, Indiana (Trust Company), and through two operating subsidiaries of Trust Company, The ONB Trust Company, N.A. - Kentucky, Morganfield, Kentucky, and The ONB Trust Company, N.A. - Illinois, Mt. Carmel, Illinois, in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Comments on this application must be received by July 10, 1994.

Board of Governors of the Federal Reserve System, June 9, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–14508 Filed 6–14–94; 8:45 am]

BILLING CODE 6210–01–F

Edwin Edward Walpole, III; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Edwin Edward Walpole, III, Ft. Pierce, Florida; to retain 15.44 percent of the voting shares of Big Lake Financial Corporation, Okeechobee, Florida, and thereby indirectly acquire Big Lake National Bank, Okeechobee, Florida.

Board of Governors of the Federal Reserve System, June 8, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–14509 Filed 6–14–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Establishment of an Advisory Committee on Services for Families With Infants and Toddlers

AGENCY: Administration on Children, Youth, and Families, ACF, DHHS.

ACTION: Notice of the establishment of an Advisory Committee on Services for Families with Infants and Toddlers.

SUMMARY: Pursuant to Public Law 92–463, the Federal Advisory Committee Act, the Department of Health and Human Service (DHHS) announces the establishment by the Secretary of the Advisory Committee on Services for Families with Infants and toddlers.

The Committee shall advise the Secretary and Assistant Secretary for Children and Families on the development of program approaches for the initiative for families with infants and toddlers that will address the parenting and child development needs of low-income parents and their infants and toddlers. In doing so, the Committee will pay particular attention to the key principles and array of models of effective culturally and developmentally appropriate service delivery.

The Committee shall terminate on September 30, 1994.

FOR FURTHER INFORMATION CONTACT: David Siegel, 370 L'Enfant Promenade, SW., 7th Floor, Washington, DC 20447 (202) 401–9215.

Dated June 10, 1994.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 94–14557 Filed 6–14–94; 8:45 am]

BILLING CODE 4110–60–M

Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act (44 U.S.C. Chapter 35), the Administration for Children and Families (ACF) requests approval of a new information collection entitled: "Quality Control—AFDC, Food Stamps, and Adult Assistance Negative Case Action Review Schedule," Form ACF–6402. This request for clearance is made by the Office of Family Assistance (OFA) of the Administration for Children and Families (ACF). The purpose of the Negative Case Action (NCA) review is to assure that individuals are not being denied assistance for which they are eligible.

ADDRESSES: Copies of the Information Collection request may be obtained from Edward E. Saunders of the Office of Information Systems Management, ACF, by calling (202) 205–7921.

Written comments and questions should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Quality Control—AFDC, Food Stamps, and Adult Assistance Negative Case Action Review Schedule, Form ACF–6402.

OMB No.: New Request.

Description: This information collection is authorized by Sections 2(a)(6), 408(a), 1002(a)(6), 1402(a)(6), and 1602(a)(6) of the Social Security Act, and required under regulatory authority found at 45 CFR 205.40 (a)(2). The purpose of this collection of information is to assure that individuals are not being denied categories of Federal assistance for which they are eligible and to take necessary corrective measures to reduce the incidence of improperly authorized or denied assistance. Specifically, categories of assistance covered by this collection of information are Aid to Families With Dependent Children (AFDC) in all States and jurisdictions, and Adult Assistance Programs under titles I, X, XIV, and XVI of the Social Security Act in Guam, Puerto Rico, and the Virgin Islands.

This collection of information was jointly designed and will be used by the Food and Nutrition Service and the Administration for Children and Families both of the Department of Health and Human Services and the Department of Agriculture.

The Quality Control Negative Case Action system is a joint State/Federal effort to obtain data on the correctness of State actions to deny or terminate AFDC/Adult financial assistance or Food and Nutrition Service. This information is utilized in determining the principal causes of incorrect actions and in developing appropriate corrective action. The Quality Control Negative Case Action system promotes proper State administration of their AFDC and adult programs by helping to assess performance in the denial or termination of benefits. Negative case action quality control therefor provides: (a) Continuous review of a statistically reliable statewide samples of negative actions; and (b) periodic compilation and analysis of findings to determine the incidence of incorrect actions. The Negative Case Action review supplements the Quality Control review of active cases and, thus, provides a balanced quality control system capable of measuring overall program performance.

Annual Number of Respondents: 18,947

Annual Frequency: 1

Average Burden Hours Per Response: 1

Total Burden Hours: 18,947

Dated: June 2, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94–14480 Filed 6–14–94; 8:45 am]

BILLING CODE 4184–01–M

Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), we have submitted to the Office of Management and Budget (OMB) a request sponsored by the National Center on Child Abuse and Neglect (NCCAN), a component of the Administration on Children, Youth and Families (ACYF) at the Administration for Children and Families (ACF) for the reinstatement of an information collection titled: "ACF Program Instruction: Children's Justice Act." This information collection was previously approved under OMB control number 0980–0196.

ADDRESSES: Copies of this information collection may be obtained from Edward E. Saunders of the Office of Information Systems Management, ACF, by caliing (202) 205–7921.

Written comments and questions regarding this information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: ACF Program Instruction: Children's Justice Act.

OMB No.: 0980–0196.

Description: The Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 *et. seq.* and CFDA No. 13.699) was amended by the Children's Justice and Assistance Act of 1986 (Pub. L. 99–401) to establish two new programs of grants to States. Sections 109(a) of Title I of the Child Abuse Prevention and Treatment Act, as amended, authorizes grants to States that meet specified eligibility requirements for the purpose of assisting States in developing, establishing, and operating programs designed to improve:

(1) The handling of child abuse and neglect cases, particularly cases of child sexual abuse and exploitation, in a manner which limits additional trauma to the child victim;

(2) The handling of cases of suspected child abuse or neglect related fatalities; and

(3) The investigation and prosecution of cases child abuse and neglect, particularly child sexual abuse and exploitation.

Applications will be reviewed by ACF staff against requirements contained in the statute to determine the States eligibility for Children's Justice Act grants.

Annual Number of Respondents: 57

Annual Frequency: 1

Average Burden Hours Per Response: 80

Total Burden Hours: 4,560

Dated: June 2, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94–14483 Filed 6–14–94; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 88F–0322]

Nippon Gohsei (U.S.A) Co., Ltd.; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by Nippon Gohsei (U.S.A.) Co., Ltd., to indicate that the petitioned additive, a polyester resin prepared from terephthalic acid, isophthalic acid, succinic anhydride, ethylene glycol, diethylene glycol, and 2,2-dimethyl-1,3-propanediol as a component of polymeric coatings, is also intended for use in contact with aqueous foods. The previous filing notice stated that the additive was intended for use only in contact with alcoholic foods.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 4, 1988 (53 FR 44670), corrected on December 23, 1988 (53 FR 51950), FDA announced that a food additive petition (FAP 7B4017) had been filed by Nippon Gohsei (U.S.A.) Co., Ltd., 747 Third Ave., New York, NY 10017, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of a polyester resin prepared from terephthalic acid, isophthalic acid, succinic anhydride, ethylene glycol, diethylene glycol, and 2,2-dimethyl-1,3-propanediol as a

component of polymeric coatings intended to contact alcoholic foods:

Upon further review of the petition, the agency notes that the petitioner had requested use of the additive in contact with aqueous foods also. Therefore, FDA is amending the filing notice of November 4, 1988, to state that the petitioner requested that the food additive regulations be amended to provide for the safe use of a resin prepared from terephthalic acid, isophthalic acid, succinic anhydride, ethylene glycol, diethylene glycol, and 2,2-dimethyl-1,3-propanediol as a component of polymeric coatings intended to contact aqueous and alcoholic foods.

Dated: June 3, 1994.

Janice F. Oliver,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94-14571 Filed 6-14-94; 8:45 am]

BILLING CODE 4160-01-F

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Dental Products Panel of the Medical Devices Advisory Committee, which is scheduled for June 28 and 29, 1994. This meeting was announced in the **Federal Register** of May 23, 1994 (59 FR 26650 at 26652). The amendment is being made to add an agenda item for discussion in the open portion of the meeting. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Carolyn A. Tylenda, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-594-3090.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 23, 1994, FDA announced that a meeting of the Dental Products Panel would be held on June 28 and 29, 1994. On page 26652, in the second column, under "*Open committee discussion*" the agenda for this meeting is amended to read as follows:

Open committee discussion. The committee will discuss classification of bone filling and augmentation materials, classification of dental amalgam, proposed reclassification of dental mercury, and dental device ingredient labeling.

Dated: June 10, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94-14570 Filed 6-14-94; 8:45 am]

BILLING CODE 4160-01-F

Public Health Service

[GN 2254]

Orphan Products Board; Public Meeting

AGENCY: Office of the Assistant Secretary for Health, DHHS.

ACTION: Notice of public meeting; Orphan Products Board.

SUMMARY: The Department of Health and Human Services and the Office of the Assistant Secretary for Health announce that a public meeting of the Orphan Products Board will be held on June 29, 1994 in Washington, DC. During the session there will be an opportunity for interested persons to present information and views on the issue of orphan products development. The meeting will be chaired by the Assistant Secretary for Health and Chairman, Orphan Products Board. It will commence at 1 p.m., in room 729-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

ADDRESSES: Written requests to participate should be sent to Dr. Richard J. Bertin, Executive Secretary, Orphan Products Board, Food and Drug Administration (HF-35), Room 8-73, 5600 Fishers Lane, Rockville, Maryland 20857, and should be received by June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Richard J. Bertin, Executive Secretary, Orphan Products Board, Food and Drug Administration (HF-35), 5600 Fishers Lane, Rockville, Maryland 20857. (301) 443-4903.

SUPPLEMENTARY INFORMATION: An orphan drug is a drug for the treatment of a rare disease or condition which either (1) has a prevalence in the United States of Under 200,000 persons or (2) has a higher prevalence and for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug. The Orphan Drug Act, Public Law 97-414 enacted on January 4, 1983, as amended, established a number of incentives to encourage the development and marketing of orphan drugs.

The act also established an Orphan Products Board to promote the development of drugs and devices for rare diseases or conditions and to assure appropriate coordination among all interested Federal agencies, manufacturers, and organizations representing patients with rare diseases.

The Orphan Products Board is chaired by the Assistant Secretary for Health. The Board is composed of representatives from the Department of Health and Human Services (DHHS), the Department of Veterans Affairs (DVA), The National Institute for Disability and Rehabilitation Research (NIDRR), and the Department of Defense (DoD). Within DHHS, representatives from the Agency for Health Care Policy and Research (AHCPR), the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), the Health Care Financing Administration (HCFA), the National Institutes of Health (NIH), the Office of the Assistant Secretary for Health (OASH), and the Social Security Administration (SSA), serve on the Board. This public meeting will have two purposes.

1. An update will be provided on the activities of the Orphan Products Board, and members of the Board will discuss their agencies' recent orphan product development activities.

2. In keeping with its mandate to foster actions within the Department to facilitate the research, development, and approval of orphan products and to coordinate government activities with the private sector in order to achieve these goals, the Board encourages presentations by members of the public on any issues involving the development and availability of orphan products. Those persons wishing to make a presentation at the meeting, should submit a written request for a time slot to the Executive Secretary of the Orphan Products Board, the request for participation should be submitted by June 22, 1994, and should include:

a. Name, address, and telephone number of the person desiring to make a presentation;

b. Affiliation, if any;

c. A summary of the presentation; and

d. The approximate amount of time required for the presentation (no more than 10 minutes, unless more time can be justified.)

Individuals and organizations with common interests or proposals are urged to coordinate or consolidate their presentations. Joint presentations may be required of persons or organizations with a common interest. The time available will be allocated among the individuals who request an opportunity for a presentation. Formal written statements or extension of remarks (five copies may be presented to the Chairman on the day of the meeting for inclusion in the record of the meeting. At the discretion of the Chairman, and as time permits, any person in attendance may be heard. This time will, most likely, be at the end of the scheduled session. For those unable to attend the meeting; comments may be sent to the Executive Secretary of the Orphan Products Board at the address listed above.

Dated: May 31, 1994.

Phillip R. Lee,

Assistant Secretary for Health.

Orphan Products Board Public Meeting, Wednesday, June 29, 1994, 1:00 p.m.-3:00 p.m., Room 729-G, Hubert Humphrey Building

Agenda

1:00-1:20 p.m.—Welcome and Introductory Remarks
Presiding: Philip R. Lee, M.D., Assistant Secretary for Health, Chairman
Secretary, Orphan Products Board
Richard J. Bertin, Ph.D., Executive Secretary, Orphan Products Board
1:20-2:10 p.m.—Presentations by Members of the Orphan Products Board
(Dr. Bertin, Presiding)
Agency for Health Care Policy and Research
Centers for Disease Control and Prevention
Food and Drug Administration
National Institutes of Health
Health Care Financing Administration
Department of Veterans Affairs
Department of Defense
National Institute on Disability and Rehabilitation Research
Social Security Administration
2:10-2:20 p.m.—Break
2:20-3:30 p.m.—Public Comments and Responses
(Dr. Haffner, Presiding)

[FR Doc. 94-14518 Filed 6-14-94; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-94-3691; FR-3348-N-08]

State and Local Fair Housing Laws: Notice of Initial Determination Concerning Substantial Equivalency of Fair Housing Laws of the States of Massachusetts and Nebraska

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice and request for comments.

SUMMARY: In accordance with 24 CFR 115.6(c), this notice announces the Department's initial determination that the fair housing laws of the States of Massachusetts and Nebraska are substantially equivalent, on their face, to the Fair Housing Act. This notice solicits comments from the public on the initial determinations made with respect to each State. This notice also solicits comments on the Department's proposed determinations that the present practices and past performance of the agency enforcing the fair housing law of the State of Massachusetts and the agency enforcing the fair housing law of the State of Nebraska demonstrate that, in operation, the fair housing laws of these two States provide rights and remedies that are substantially equivalent to those available under the Fair Housing Act.

DATES: Comment Due Date: July 15, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Marcella O. Brown, Director, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., room 5234, Washington, DC 20410, telephone (202) 708-0455 (voice/TDD). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Under the Fair Housing Act (42 U.S.C. 3600-3619), the Department is authorized to investigate complaints alleging discrimination in housing. (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, is cited as the "Fair Housing Act.") Section 810(f) of the Fair Housing Act requires the Department to refer complaints to State and local agencies that have "substantially equivalent" fair housing standards, as determined and certified by the Department. Part 115 of the Department's regulations (24 CFR part 115) contain the certification standards and the procedures for certifying State and local fair housing laws that provide substantive rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Fair Housing Act.

On July 23, 1993 (58 FR 39561), the Department published the annual notice required by 24 CFR 115.6, which announced, among other things, the updated, consolidated list of all certified agencies, and a list of agencies with which an agreement for interim referrals or other utilization of services had been entered into under 24 CFR 115.11. In the July 23, 1993 notice, the Department listed thirty-four jurisdictions, among which were the States of Massachusetts and Nebraska, that had entered into agreements with the Department, subsequent to September 12, 1988, for interim referrals. These thirty-four jurisdictions were considered to have interim certification in accordance with section 810(f)(4) of the Fair Housing Amendments Act of 1988 (hereafter the "Act"). (The Fair Housing Amendments Act of 1988 was enacted on September 13, 1988.)

Announcement of Initial Determinations and Solicitation of Comments

In accordance with 24 CFR 115.6(c)(1), this notice announces that the fair housing laws of the States of Massachusetts and Nebraska have been determined by the Assistant Secretary of Fair Housing and Equal Opportunity to be substantially equivalent, on their face, to the Fair Housing Act. The Assistant Secretary has determined, after application of the criteria set forth in 24 CFR 115.3 and 115.4, that the fair housing laws for the States of Massachusetts and Nebraska provide, on their face, substantive rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Fair Housing Act.

Following, a review of performance standards and other materials pertaining to the fair housing laws of the States of Massachusetts and Nebraska, the Department expects to make final determinations that the laws of each State, in operation, provide rights and remedies that are substantially equivalent to those available under the Fair Housing Act. The Department intends to execute a Memorandum of Understanding with the agency charged with enforcement of the fair housing law of each State in accordance with 115.6(c).

In accordance with 24 CFR 115.6(b), the public is invited to submit written comments on this notice. Specifically, the Department requests written comments on the proposed determinations that the current

practices and past performance of the State agencies charged with administration and enforcement of the fair housing laws of the States of Massachusetts and Nebraska demonstrate that, in operation, these laws provide substantive rights and remedies that are substantially equivalent to the Fair Housing Act. This notice also invites comments from the public on the Department's determination that the fair housing laws of the States of Massachusetts and Nebraska are, on their face, substantially equivalent to the Fair Housing Act. In commenting on this notice, the Department requests that commenters identify the State for which comments are submitted.

Dated: June 6, 1994.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94-14500 Filed 6-14-94; 8:45 am]

BILLING CODE 4210-28-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-04-4120-03, WYW132663]

Coal Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Coal Exploration License.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted as 43 CFR subpart 3410, all interested parties are hereby invited to participate with Antelope Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Converse and Campbell Counties, Wyoming:

T. 40 N., R. 71 W., 6th P.M., Wyoming
Sec. 5: Lots 5 thru 20;
Sec. 6: Lots 8 thru 23;
Sec. 7: Lots 5 thru 13, 17, 18;
Sec. 8: Lots 1 thru 16;
T. 41 N., R. 71 W., 6th P.M., Wyoming
Sec. 14: Lots 3 thru 6, 10 thru 15;
Sec. 15: Lots 1 thru 16;
Sec. 19: Lots 9, 10, 13 thru 19.
Sec. 20: Lots 9 thru 16;
Sec. 21: Lots 7 thru 16;
Sec. 22: Lots 4 thru 7;
Sec. 23: Lots 2 thru 4, 6, 7;
Sec. 28: Lots 1 thru 8, 10 thru 15;
Sec. 29: Lots 1 thru 16;
Sec. 30: Lots 5 thru 16;
Sec. 31: Lots 5 thru 20;
Sec. 32: Lots 1 thru 16;
Sec. 33: Lots 4, 5, 12, 13;
T. 40 N., R. 72 W., 6th P.M., Wyoming
Sec. 1: Lots 5, 12, 13.

Containing approximately 7,814.04 acres.

All of the coal in the above-described land consists of unleashed Federal coal within the Power River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to conduct off-lease exploration by drilling.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW132663): BLM, Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, WY 82003; and, BLM, Casper District Office, 1701 East 'E' Street, Casper, WY 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in the Douglas Budget of Douglas, WY, once each week for two consecutive weeks beginning the week of June 15, 1994, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the BLM and Antelope Coal Company no later than thirty (30) days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Antelope Coal Company, Attn: John Trummel, Caller Box 3009, Gillette, WY 82717-3009, and the BLM, Wyoming State Office, Chief, Branch of Mining Law and solid Minerals, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2-1(c)(1).

Lynn E. Rust,

Chief, Branch of Mining Law & Solid Minerals.

[FR Doc. 94-14177 Filed 6-14-94; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT-781217

Applicant: The Chambers Group, Inc., Irvine, CA

The applicant requests an amendment to their current permit to include take (nest monitoring) of Least Bell's vireo (*Vireo bellii pusillus*) for the purpose of enhancement of the survival of the species.

PRT-791144

Applicant: Michael Dowd, Pueblo, CO

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by the Ciskei Government, at Tsolwana Game Reserve, P.O. Box 1424, Queenstown, Ciskei, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-790766

Applicant: National Zoological Park, Washington, DC,

The applicant requests a permit to import blood, milk, and tissue samples from live toque macaques (*Macaca sinica sinica*) and tissue samples from opportunistically obtained macaque carcasses as part of a long-term study at Polonnaruwa Nature Sanctuary, Sri Lanka, for scientific research to enhance the survival of the species.

PRT-791161

Applicant: Zoological Society of San Diego, San Diego, CA,

The applicant requests a permit to import 6 male and 9 female Philippean deer (*Cervus porcinus calamianensis*) from the managed population in Calauit Island Game Preserve and Wildlife Sanctuary, Palawan Province, Philippines, for the purpose of enhancement of propagation of the species.

PRT-791106

Applicant: Exotic Feline Breeding Compound, Rosamond, CA,

The applicant requests a permit to import one captive-bred female Chinese leopard (*Panthera pardus japonensis*) from the Menagerie Du Jardin Des Plantes, Paris, France, for the purpose of enhancement of survival of the species through breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the

following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 10, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–14505 Filed 6–14–94; 8:45 am]

BILLING CODE 4310–55–P

Wild Bird Conservation Act (WBCA) of 1992; Petition for a Moratorium on Imports of Wild Birds From Guyana Into the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition receipt.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the receipt of a petition to impose a moratorium on the imports of wild birds from Guyana into the United States under the Wild Bird Conservation Act of 1992. The petition has been found to present sufficient information indicating that imposing a moratorium on the imports of wild birds from Guyana may be warranted under the WBCA, and that the trade in wild birds from Guyana may be detrimental to species' survival. Through the issuance of this notice, the Service requests additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning trade in, and the status of, wild bird species in Guyana.

DATES: The Fish and Wildlife Service (Service) will consider comments and information received by September 13, 1994 in making a final decision on this petition.

ADDRESSES: Comments and information should be sent to: Director, U.S. Fish and Wildlife Service, c/o Mr. Marshall P. Jones, Chief, Office of Management Authority, 4401 N. Fairfax Dr., Room 420 C, Arlington VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, Office of Management Authority, at the above address, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION: On October 23, 1992, the Wild Bird Conservation Act (WBCA) was signed into law. The purposes of the WBCA include promoting the conservation of exotic birds by: ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment; and assisting wild bird conservation and management programs in countries of origin.

Pursuant to Section 108(a)(2)(B), "Moratoria for species not covered by Convention" of the WBCA, the Secretary of the Interior (Secretary) is authorized to establish a moratorium on the importation of all species of exotic birds from a particular country, if the Secretary determines that:

1. The country has not developed and implemented a management program for exotic birds in trade generally, that ensures both the conservation and the humane treatment of exotic birds during capture, transport, and maintenance; and

2. The moratorium or quota is necessary for the conservation of the species or is otherwise consistent with the purpose of the WBCA.

This notice is based on various documents, including published and unpublished studies, and agency documents. These documents are on file in the Service's Office of Management Authority, and are available on request.

On August 30, 1993, the Animal Welfare Institute, Defenders of Wildlife, and the Environmental Investigation Agency submitted a petition (AWI petition) to the Department of the Interior requesting that the Secretary impose a moratorium on the import of wild exotic birds from Guyana under the WBCA.

Guyana is slightly smaller in size than the state of Idaho, measuring 214,970 km^2 and 63% of this acreage is forest habitat. Its rainforests contain much biodiversity and an abundance of wildlife, although the number of bird species found in Guyana is presently unknown (WCMC 1992). Guyana has been one of the major exporters of neotropical birds (Mulliken et al. 1992).

The majority of birds exported from Guyana have been psittacines, including Amazon parrots, macaws, and a variety of conures and parakeets. Between 1983 and 1989, 172,557 specimens of 31 species of wild-caught psittacines were exported from Guyana (Edwards 1992). Due to mortalities in capture, holding, and transport, far more were removed from the wild during the same period.

The European Community (EC) banned imports from Guyana in 1986 and in response, Guyana imposed a nine-month suspension of exports in 1986–87. Guyana reopened bird exports in 1987 and instituted an export quota system, although that quota system was not based on scientific analyses. The number of birds exported in 1988 was 19,641 and in 1989 was 15,325 (Edwards 1992). In May of 1993, Guyana temporarily suspended the export of wildlife, including birds until further notice. That trade suspension is still in effect.

The capture and trade of wild birds in Guyana is regulated by the Wildlife Services Division, Department of Crops and Livestock, Ministry of Agriculture, which serves as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Management Authority for Guyana. Within this Division, the day-to-day administration is the responsibility of the Assistant Chief Crops and Livestock Officer who serves as head of the Wildlife Services Division. The National Research Council of Guyana is the designated CITES Scientific Authority, although it has been inactive and has made no recommendations in the establishment of wildlife trade quotas (Edwards 1992) The Service is not aware of any scientific research having been carried out by or in conjunction with the National Research Council of Guyana.

The Wild Birds Protection Act of 1919, as amended in 1969, is the only Guyana law specific to wildlife (Edwards 1992). In 1977, Guyana became a signatory to CITES, and the Wildlife Services Division presently operates under an 'Administrative Agreement' with the Senior Minister of Agriculture to implement CITES. Actions taken by the Division, including the issuance or termination of export licenses, assignment of quotas, and establishment of export levies are all undertaken within the framework of this Administrative Agreement (Edwards 1992). Information available to the Service does not indicate that Guyana has comprehensive CITES-implementing legislation.

The export of wild birds from Guyana is regulated by a system of quotas. This system was established in 1987 in response to the 1986 EC ban on wildlife imports from Guyana. The EC initiated that ban on the grounds that Guyana lacked a proper management program for psittacine exports. The EC lifted the import ban following implementation of the 1987 quota system.

The Wildlife Services Division of Guyana assigns quotas for each species at levels below those which they believe may threaten wild populations (Edwards 1992). Following the assignment of species' quotas, the Wildlife Services Division establishes individual quotas for each exporter. In the absence of any population surveys or scientific data, export quotas are calculated on the basis of exporters'

previous trade levels (Edwards 1992). The Division has reduced or eliminated the quota for certain species upon advice from the CITES Secretariat. The species quotas have remained unchanged since 1990.

The government of Guyana has not undertaken any field surveys of wild bird species in trade (Edwards 1992) nor is the Service aware of any demographic studies of wild bird populations being undertaken. In the absence of such studies, there is insufficient scientific information on which to base the sustainable management of wild bird populations in Guyana and to determine that such trade is not detrimental to the species. Lastly, export quotas that do not incorporate capture quotas make no provision for mortalities during capture, transport, and maintenance, with further potential detriment to species in the wild.

The AWI petition claimed that export quotas for macaws and Amazon parrots were exceedingly high in the absence of scientific information. These are K-selected species which are long-lived, have delayed sexual maturity, and exhibit low reproductive rates in the wild. Guyana is South and Central America's largest exporter of macaws and export quotas for 1991 included 6,000 macaws of the following species: Blue and Gold macaw (*Ara ararauna*), Green-winged macaw (*Ara chloroptera*), Red-bellied macaw (*Ara manilata*), and Red-shouldered macaw (*Ara nobilis*).

In addition to psittacine exports, Guyana has been one of the largest exporters of toucans to the United States. Very little scientific information exists on the status of wild populations of toucans, and the Service is not aware of any scientific assessment of the sustainable utilization of toucans.

No records on the domestic trade in Guyana of wild birds are available (Edwards 1992) and this trade is neither monitored nor regulated. Many species of macaws and toucans are used in subsistence hunting by Amerindians. The effects of the domestic trade and subsistence use on wild bird populations remain unknown.

The AWI petition provided information on the alleged illegal trade in psittacines from Venezuela to Guyana. Desenne and Strahl (1991) reviewed the current status of psittacine populations in Venezuela and concluded that the smuggling of birds illegally taken in Venezuela and exported from Guyana was a conservation threat to wild parrot populations in Venezuela, particularly those in the Orinoco Delta region. In October of 1991, the Sociedad Conservacionista Audubon de Venezuela (Venezuela Audubon Conservation Society) expressed its concern to the CITES Secretariat on the illegal trade in birds from Venezuela and cited recent law enforcement seizures of illegal birds by the Venezuelan Fish and Wildlife Service and National Guard in the Orinoco Delta.

There appear to be no measures to ensure the humane treatment of wild birds during capture, transport and maintenance in Guyana, in spite of relevant CITES requirements. The AWI petition provided unpublished data extracted from analyses of U.S. Department of Agriculture Quarantine Forms which show that transport mortality for Guyanese birds is relatively high.

After a review of the petition and other information available to it, the Service concludes that imposing a moratorium on the imports of wild birds from Guyana may be warranted under the WBCA, and that the trade in wild birds from Guyana may be detrimental to species' survival. The information available indicates that Guyana has been unable to implement a management program for wild birds in trade that ensures both the conservation of the species and the humane treatment of birds during capture, trade and maintenance.

On November 16, 1993, the Service published a final rule (in 50 CFR Part 15) in the **Federal Register** (58 FR 60524), that established the prohibitions and requirements of the WBCA, and permit issuance procedures for four types of permits established by the WBCA. No CITES-listed birds can be imported into the United States, including from Guyana, unless they are accompanied by an import permit issued by the Office of Management Authority of the Service, or are on an approved list. The approved list has not yet been finalized. It will contain exclusively captive-bred species (wherein all birds in trade are bred in captivity), approved breeding facilities, and species with approved management plans for wild caught birds. The Service's proposed regulations for implementing these approvals were published in the **Federal Register**, March 17, 1994 (59 FR 12784), and included criteria for the approval of scientifically-based sustainable use management plans, as required by the WBCA. The Service will consider all comments and information received by May 16, 1994 in formulating a final decision for these approvals, except for scientifically-based sustainable use management plans for which the Service will consider comments and information received by June 15, 1994 in formulating a final decision.

Therefore, although the importation of CITES-listed exotic bird species from Guyana is currently prohibited, non-CITES-listed birds can be imported into the United States from Guyana. If, at the close of the comment period, information received in response to this notice and other information available in the administrative record supports action under § 108 of the WBCA, the Service may grant the petition and propose a suspension in trade in all wild exotic birds from Guyana.

Public Comments Solicited

The Service intends that any final decision resulting from its evaluation of this petition will be as accurate and as effective as possible. Therefore, any comments or data from the public, other concerned governmental agencies, the scientific or conservation communities, trade organizations, or any other interested party concerning any aspect of the wild bird trade in Guyana are hereby solicited. The Service is particularly interested in receiving information on the status and any population data on the psittacines of Guyana, including the *Ara* and *Amazona* species.

References Cited

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World Conservation Monitoring Centre (WCMC). 1992. Global biodiversity: status of the earth's living resources. Chapman and Hall, New York.

Dated: June 1, 1994.

Bruce Blanchard,

Deputy Director.

[FR Doc. 94–14504 Filed 6–14–94; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–645 (Final)]

Calcium Aluminate Flux From France

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from France of calcium aluminate (CA) flux,[3] provided for in subheading 2523.10.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines, pursuant to 19 U.S.C. § 1673d(b)(4)(B), that it would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

Background

The Commission instituted this portion of its investigation effective March 23, 1994, following a final determination by the Department of Commerce that imports of CA flux from France were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 28, 1994 (59 FR 14425). The hearing was held in Washington, DC, on March 31, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Vice Chairman Watson and Commissioner Crawford dissenting. Commissioner Bragg did not participate in the Commission's determination.

[3] CA flux is used primarily as a desulfurizer and/or cleaning agent in the steel manufacturing process. Like CA cement (CAC) clinker, the CA flux that is subject to investigation contains by weight more than 32 percent but less than 65 percent alumina and more than one percent each of iron and silica. However, CA flux has a chemical composition distinct from CAC clinker. CAC clinker contains the hydraulic mineral mono-calcium aluminate, which gives it a molar ratio of lime to alumina of approximately 1:1. In contrast, CA clinker sold as a flux does not contain mono-calcium aluminate; it contains the complex mineral $C_{12}A_7$(12CaO * $7Al_2O_3$), which gives it a molar ratio of lime to alumina of approximately 2:1.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 6, 1994. The views of the Commission are contained in USITC Publication 2780 (June 1994), entitled "Calcium aluminate flux from France: Investigation No. 2780 (Preliminary)."

Issued: June 8, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–14558 Filed 6–14–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–651 (Final)]

Silicon Carbide From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from the People's Republic of China of silicon carbide,[2] provided for in subheadings 2849.20.10 and 2849.20.20 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[3]

Background

The Commission instituted this investigation effective December 8, 1993, following a preliminary determination by the Department of Commerce that imports of silicon carbide from the People's Republic of China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 26, 1994 (59 FR 3735). The hearing was held in Washington, DC, on May 2, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The imported merchandise covered by this investigation is silicon carbide, regardless of grade or form, containing by weight from 20 to 98 percent, inclusive, silicon carbide and with a grain size coarser than size 325 F (as set by the American National Standards Institute), and inclusive of split sizes. Silicon carbide covered by this investigation typically contains additional impurities: iron, aluminum, silica, silicon, and carbon, as well as calcium and magnesium.

[3] Commissioner Lynn M. Bragg did not participate in the determination in this investigation.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 6, 1994. The views of the Commission are contained in USITC Publication 2779 (June 1994), entitled "Silicon Carbide from the People's Republic of China: Investigation No. 731–TA–651 (Final)."

Issued: June 7, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–14559 Filed 6–14–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Judith Groves, Interstate Commerce Commission, Section of Environmental Analysis, room 3219, Washington, DC 20423, (202) 927–6203 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

NO. AB–290 (SUB–NO. 142X), NORFOLK AND WESTERN RAILWAY COMPANY—ABANDONMENT—AT TOLEDO, OHIO. EA available 5/3/94.

AB–412X INDIANA SOUTHERN RAILROAD, INC.—ABANDONMENT EXEMPTION—IN DAVIESS AND GREENE COUNTIES, INDIANA. EA available 6/3/94.

NO. AB–167 (SUB–NO. 1121X), CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN CLARK COUNTY, OHIO. EA available 6/10/94.

Comments on the following assessment are due 30 days after the date of availability:

NO. AB–55 (SUB–NO. 380X), CSX TRANSPORTATION, INC.—

ABANDONMENT EXEMPTION—IN ALLEGHENY COUNTY, PA. EA available 5/31/94.

NO. AB–55 (SUB–NO. 485), CSX TRANSPORTATION, INC.—ABANDONMENT—IN LEE AND SUMTER COUNTIES, SOUTH CAROLINA. EA available 5/31/94.

NO. AB–55 (SUB–NO. 484X), CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION IN THE CITY OF SUFFOLK, VIRGINIA. EA available 6/3/94.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–14563 Filed 6–14–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 29009 (Sub-No. 6)]

Norfolk Southern Railway Company—Amended Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT), has agreed to grant approximately 28.59 miles of overhead trackage rights to Norfolk Southern Railway Company (NSR) between milepost 1.08 at Glasgow, VA, via the Glasgow Industrial Track, and milepost 174.89 at Balcony Falls, VA, a point of connection with CSXT's main line, and between milepost 174.89 at Balcony Falls, VA, and milepost 147.38 at Lynchburg, VA, in Rockbridge, Amherst, and Bedford Counties, and the City of Lynchburg, VA.[2] The trackage rights will facilitate more economic and efficient operations by providing an alternative route for NSR traffic to Hagerstown, MD, particularly during peak periods. NSR's existing route to Hagerstown includes a single-track branch line between Manassas and Front Royal, VA. The proposed consummation date is on or after June 15, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: James R. Paschall, Three Commercial Place, Norfolk, VA 23510–2191.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 10, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–14636 Filed 6–14–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32511]

Norfolk Southern Railway Company—Trackage Rights Exemption—Norfolk and Western Railway Company

Norfolk and Western Railway Company (NW) has agreed to grant to its corporate parent, Norfolk Southern Railway Company (NSR), overhead trackage rights over approximately 134.1 miles of rail line, between NW's milepost H–63, near Front Royal, VA, and milepost H–197.1, near Glasgow, VA.[1] NSR's trackage rights will permit direct movement of NSR trains via Lynchburg and Glasgow to and from the interchange with Conrail at Hagerstown, MD. The trackage rights are to become effective on June 15, 1994.

This notice is filed under 49 CFR 1180.2(d)(7).[2] If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 10, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–14635 Filed 6–14–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–12 (Sub-No. 158X)]

Southern Pacific Transportation Company—Discontinuance of Service Exemption—San Bernardino County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.* the discontinuance of service by Southern Pacific Transportation Company over a 15.70-mile portion of the Baldwin Park Branch between milepost 519.80, at or near the Upland rail station and milepost 535.50, at or near the Rialto rail station, in San Bernardino County, CA, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file a financial assistance offer has been received, this exemption will be effective on July 15, 1994. Formal expressions of intent to file financial assistance offers[1] under 49 CFR 1152.27(c)(2) must be filed by June 24, 1994. Petitions to stay must be filed by June 30, 1994. Petitions to reopen must be filed by July 11, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB–12 (Sub-No. 158X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: June 6, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–14583 Filed 6–14–94; 8:45 am]

BILLING CODE 7035–01–P

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[1] This notice adds operations by Norfolk Southern Railway Company (NSR), the parent of Norfolk and Western Railway Company (NW), to an existing trackage rights agreement between NW and the Chesapeake and Ohio Railway Company (C&O), the predecessor of CSX Transportation, Inc., that was the subject of an application in *Norfolk and Western Railway Company Trackage Rights over the Chesapeake and Ohio Railway Company between Glasgow and Lynchburg, in Rockbridge, Amherst and Bedford Counties, VA, and in the City of Lynchburg, VA*, Finance Docket No. 29009 (Sub-No. 6), that was subsequently consolidated in a control proceeding and approved in *CSX Corp.-Control-Chessie and Seaboard C.L.I.*, 363 I.C.C. 521 (1980). This amended notice is issued under the same docket number assigned to the original NW–C&O trackage rights notice of exemption.

[2] In a notice of exemption concurrently filed on May 26, 1994, in *Norfolk Southern Railway Company—Trackage Rights Exemption—Over Norfolk and Western Railway Company—Between Glasgow, VA, and Front Royal, VA*, in Finance Docket No. 32511, NW has agreed to grant to its parent, NSR, overhead trackage rights over approximately 134.1 miles of NW's line of railroad between milepost H–63, near Front Royal, VA, and milepost H–197.1 near Glasgow, VA. This will complete NSR's route to Hagerstown, MD.

[1] By notice of exemption in *Norfolk Southern Railway Company—Trackage Rights Exemption—Norfolk and Western Railway Company*, Finance Docket No. 31283 (Sub–No. 1) (ICC served June 17, 1991), NW was granted overhead trackage rights over a 63-mile line of railroad between milepost H–63, at Front Royal, VA, and milepost H–0, at Hagerstown, MD. In a concurrently filed notice of exemption in *Norfolk Southern Railway Company—Amended Trackage Rights Exemption—CSX Transportation, Inc.*, Finance Docket No. 29009 (Sub–No. 6), NSR has applied for overhead trackage rights over approximately 28.59 miles of CSX Transportation, Inc.'s (CSXT) rail line between milepost 1.08 at Glasgow, VA, via the Glasgow Industrial Track and milepost 174.89 at Balcony Falls, VA, a point of connection with CSXT's main line and between milepost 174.89 and milepost 147.38 at Lynchburg, VA. The trackage rights in this notice will connect these two lines and complete NSR's alternate route to Hagerstown. NSR's existing route to Hagerstown includes a single-track branch line between Manassas and Front Royal, VA.

[2] NW and NSR indicate that this transaction is within a corporate family and, thus, also exempt under 49 CFR 1180.2(d)(3).

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, suite 850, WCTR, Washington, DC 20530.

New Collection

(1) Community Relations Service Customer Satisfaction Feedback Plan.

(2) Community Relations Service.

(3) On occasion, annually.

(4) Individuals or households, State or local governments, Federal agencies or employees, non-profit institutions, and small businesses or organizations. The Community Relations Service seeks to survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing services. Based on the information collected, the Community Relations Service may change policies or procedures to enhance or streamline CRS's overall operation.

(5) 2,153 respondents @ .137 hours per response.

(6) 294 annual burden hours.

(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: June 10, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–14513 Filed 6–14–94; 8:45 am]

BILLING CODE 4410–17–M

National Institute of Corrections

Solicitation for a Cooperative Agreement: Design, Development and Implementation of Community Corrections Options

June 1, 1994.

This solicitation requests grant proposals for a cooperative agreement to conduct a training and technical assistance project aimed at increasing the effectiveness of community corrections programs by supporting purposeful design, development and implementation efforts in state and local agencies. The Project will be a collaborative venture with NIC's Community Corrections Division. Funding for the project is $180,000, which will support one cooperative agreement for a 15 month period.

Background

Corrections is expressing enormous interest in experimentation with community sanctions. Agencies are struggling to provide a more diverse array of sanctions, higher quality supervision, and more accountability for a growing number of offenders—all at a time when resources are decreasing for many agencies. Recent literature on the development of community corrections programs has focused attention on the critical need for more purposeful and disciplined program design, implementation, and evaluation if community sanctions are to achieve clearly defined and measurable results.

A continued interest of the Community Corrections Division is to provide assistance to agencies in the early stages of program design and implementation. In 1990, the Division supported a program design workshop for community corrections practitioners. Three-person teams from five jurisdictions participated in two, intensive 1-week seminars, which were separated by a period for program design work at their home agencies. The workshop was conducted by the Crime and Justice Foundation, Boston, Massachusetts, under a $90,000 cooperative agreement with NIC.

The Division subsequently allocated additional resources to this project and revised the strategy to include one seminar, preceded by substantial on-site work with each jurisdictional team; greater attention to the development of a sound information base for program design; and more attention to the organizational climate in which the program changes would occur. In fiscal years 1993 and early 1994, project services were provided by Temple University, Department of Criminal

Justice, under a $150,000 cooperative agreement grant. Five sites were selected in March 1993; the seminar was held in mid-July; and services will be provided through June, 1994.

The next round of project services also will be provided by a grantee agency under the terms of a cooperative agreement. The Division will be actively involved in all aspects of the work, including the selection of participating agencies and the design and delivery of project services. NIC will retain the authority to approve the final selection of participating jurisdictions.

Scope

The goal of the project is to improve program effectiveness by supporting careful program development and more complete implementation of program changes through an integrated program of training and technical assistance. Project services will be provided to teams of community corrections executives and key staff from five agencies/jurisdictions seeking to introduce, modify, or expand community sanctions for adult offenders.

The project assumes that for community corrections programs to succeed they must be well designed and fully implemented. This requires agencies to engage in a rational development process that includes articulation of clear policy on the goals, outcomes, intervention approaches and target populations of the proposed program. Agencies need to weigh the impact of proposed changes on other parts of the criminal justice system, carefully target offender populations, consider cost implications and build external and internal support among major stake holders and implementers.

The project intends to help community corrections agencies do a better job of designing and implementing whatever changes in program or procedures are important to them in order to achieve their defined outcomes. It will in no way direct or coerce agencies toward specific program choices or activities. It also is important to distinguish this project from the policy development assistance offered by such efforts as the joint NIC/State Justice Institute's Intermediate Sanctions Project. This is not primarily a policy development project. We expect that agencies will be proceeding with the program development tasks of this project within the context of an articulated policy direction.

In sum, the project offers an opportunity to slow down the development process, resist the often extreme pressure to adopt a "quick fix" or model solution, and to plan a rational and practical approach.

Agencies Targeted To Receive Project Services

The grantee and NIC will work with five state, county, and large city, adult community corrections agencies (probation, parole, or other community-based agencies) with sufficient staff and financial resources to support the planning process. Agencies selected must demonstrate a strong interest and commitment to implementing the proposed change in their sanctioning and supervision practices. They also need to supervise a large enough population so that the proposed change will impact a significantly sized offender group. They should propose a three person team with the experience and authority to succeed in the program development effort (e.g., the chief administrator, principal planner, and/or key staff responsible for program implementation). The team may also include senior managers or officials, from any branch of government (e.g., a funding agency), who are critical to the successful design and implementation of the program.

Project Activities

A former announcement of project services will be developed by NIC's Community Corrections Division and the grantee. The announcement will describe fully the project approach and services, application requirements, selection criteria, and the deadline for the receipt of applications.

Prior to selecting the five agencies for this project, telephone interviews and, in some cases, on-site visits should be conducted with promising candidates to assess both the internal, organizational climate and external factors which may indicate whether the agency is in a good position to engage in program change or innovation at this time.

Project activities should begin with on-site work by the local agency teams, assisted by project (grantee and NIC) staff. The initial work should focus on such issues as the level of support for proposed changes among significant stake holders, the quality of data with which to engage the program development process, and the capacity of the agency to conduct the effort including any organizational issues which should be addressed.

Several months after project initiation, a three to five day seminar will be offered to participating teams. The seminar should provide a common framework for program development and implementation, offer hands-on experience with some critical aspects of the work, offer opportunities for peer consultation, and result in a work plan for each agency for pursuing its program development objectives, including further technical assistance needs from the project.

Technical assistance, tailored to the specific needs of each jurisdiction, should be provided for the duration of the project. Participating agencies must make a commitment to attend the seminar and participate in the entire, fifteen month project.

Expenses for travel, lodging, meals and seminar materials will be covered by the project for up to three members of each agency team. Additional team members may attend the seminar at the expense of the jurisdictions, however, such additional participation will depend on the seminar goals and approach.

Application Requirements

For the total 15 month project, applicants are expected to define the conceptual framework(s) which best applies to this project, discuss the varying purposes of technical assistance to support the work of the five, participating teams, and define the likely content and timing for the seminar. Recognizing the various kinds of experts required by the project, applicants are to identify the principal members of the applicant team and their specific, relevant expertise. Because this is a cooperative venture with the Community Corrections Division, applicants also should address how they would perform the project tasks in collaboration with NIC.

At a minimum, applications must address:

- The development and implementation of a plan: To publicize the project and solicit applications from eligible community corrections agencies; develop selection criteria; screen applications with telephone calls and, in some cases, on-site visits; and select five sites. As stated earlier, NIC will retain the authority under the cooperative agreement to approve final participant selections.
- The planning, delivery and management of an integrated, technical assistance project, consisting of preliminary on-site work with the participating agencies, a 3 to 5 day seminar, and follow-on technical assistance activities. Efforts should be made to include community corrections practitioners as peer consultants, where appropriate.
- Preparation of a report which summarizes the activities of the participating agencies and results achieved, and makes recommendations

concerning ways to improve program development and implementation in community corrections agencies. While NIC is interested in summarizing the practical learning from this effort, the primary purpose of the project is to maximize the delivery of technical assistance services to participating agencies (bullet above).

Applicaton Procedures

Funding for this project has been set at $180,000. This amount will support one cooperative agreement award. Project activities must be completed within a 15 month period. The following criteria will be used to evaluate applications:

1. The applicant's understanding of the concepts and critical issues in (a) the design, implementation and evaluation of community corrections programs; (b) planned change in a criminal justice system context; and (c) organizational development and management to support major program changes.

2. The applicant's demonstrated capacity to collaborate with other organizations on such efforts.

3. The applicant's experience, both in terms of key project staff and the organization, in working with community corrections agencies on program design issues, planning and conducting training for community corrections practitioners, and delivering and managing technical assistance programs.

4. The soundness of the proposed project objectives and methodology, including the approach to publicizing the program, selecting participants, providing integrated technical assistance services, and planning and conducting the seminar.

5. The feasibility of the proposed management plan, the specificity of the proposed tasks, the nature of the proposed roles and responsibilities relating to collaboration with NIC, and the identification of realistic milestones and task completion dates.

6. The reasonableness and clarity of the proposed budget and budget narrative.

Applications should not exceed twenty-five, double-spaced, typed pages in length, not including standard grant forms, attachments and appendices. This is a technical assistance award. Applicants must submit a copy of their proposal to the state "single point of contact," where applicable, simultaneously with submitting six copies to the Community Corrections Division, National Institute of Corrections, 320 First Street NW., Washington, DC 20534, no later than 4 p.m., Eastern time, Friday, July 15, 1994. The street address for overnight mail or hand delivery of applications is 500 First Street, NW., room 700, Washington, DC 20534.

If you have any questions regarding the solicitation, please write or call Phyllis Modley, (202) 307–3995, extension 133. Applicants interested in obtaining a packet of material on the current project, may write or call the Project Director, Dr. Alan Harland, Temple University, Department of Criminal Justice, 5th Floor, Gladfelter Hall, Philadelphia, PA 19122; telephone (215) 204–1506 or 7918.

Dated: June 9, 1994.

Larry B. Solomon,

National Institute of Corrections.

[FR Doc. 94–14565 Filed 6–14–94; 8:45 am]

BILLING CODE 4410–36–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter maybe obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The Museums Evaluation Advisory Panel will meet on June 27, 1994, in room 415 of the Old Post Office Building, 1100 Pennsylvania Avenue NW., Washington, DC. The meeting is scheduled from 8:30 a.m. to 5 p.m. and is open to the public. Advance notice of any special needs or accommodations is appreciated.

The purpose of this meeting is to provide consultation to the Humanities Projects in Museums and Historical Organizations Program on issues relating to project evaluation. Consultation will focus on ways in which the Division can enhance applicants, grantees and the Endowment's ability to measure the educational effectiveness of public projects in the humanities, submitted to the Division of Public Programs.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 94–14517 Filed 6–14–94; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. M–48, 70–7001 and 70–7002]

U.S. Enrichment Corporation; Intent To Establish Local Public Document Rooms

Notice is hereby given that the Nuclear Regulatory Commission (NRC) intends to establish two (2) local public document rooms (LPDRs) to maintain the publicly available records pertaining to the U.S. Enrichment Corporation's (USEC) operation of Department of Energy Gaseous Diffusion Plants to enrich uranium located in Paducah, Kentucky, and Piketon, Ohio. One LPDR will be set up for each location.

Among the factors the NRC will consider in selecting locations for the LPDR collections are:

(1) Whether the institution is an established document repository with a history of impartially serving the public;

(2) The physical facilities available, including shelf space, patron work space, and copying and mircographic equipment;

(3) The willingness and ability of the library staff to maintain the LPDR collection and assist the public in locating records;

(4) The public accessibility of the library, including parking, ground transportation, and hours of operation, particularly evening and weekend hours;

(5) The accessibility of the library to the handicapped;

(6) The proximity of the library to the Gaseous Diffusion Plants in Paducah, Kentucky, and Piketon, Ohio.

Public comments are requested on libraries in the vicinity of the Paducah, Kentucky, and Piketon, Ohio, sites that might be considered for selection as the locations for these LPDRs.

The comment period expires July 15, 1994. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

Written comments may be submitted to Mr. David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U S Nuclear Regulatory

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Commission, Washington, DC 20555–0001.

For further information you may contact Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information Act/Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone 301–415–7170 or Toll-Free 1–800–6.8–8081.

Dated at Rockville, Maryland, this 10th day of June, 1994.

For the Nuclear Regulatory Commission.

Walter E. Oliu,

Acting Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 94–14545 Filed 6–14–94; 8:45 am]

BILLING CODE 7590–01–M

Issuance of Amendment 21 to Source Material License SUA–917 Amending License Condition (LC) 55 for Atlas Corporation's (ATLAS') Uranium Mill Facility at Moab, UT

AGENCY: Nuclear Regulatory Commission.

ACTION: Amendment 21 to Source Material License SUA–917, issued May 23, 1994, amends LC 55 to change the date for completion of placement of the interim cover on the tailings pond from April 30, 1994, to February 15, 1995.

SUMMARY: On May 11, 1994, NRC noticed in the **Federal Register**; receipt of a request from Atlas to amend Source Material License SUA–917 to extend the completion dates by one year for all site reclamation milestones. Atlas indicated that due to seasonal precipitation and the relative impermeability of the fine tailings in the central portion of the tailings pile, a pond of approximately five acres in size and one to two feet in depth exists on the tailings pile. This situation prevented Atlas' contractor from placing the remainder of the interim cover over the tailings area by April 30, 1994, as required by LC 55 A.(2). Atlas has been placing the interim cover as the pile dried sufficiently to allow equipment to work. At present, approximately 80 percent of the tailings pile has the interim cover in place. The remainder will be placed as soon as the water evaporates and the tailings are dry enough to support equipment. Radon emissions from the uncovered portion of the pile are attenuated by the pond and will reduced by the high moisture content of the tailings after the pond evaporates such that there should be no public health risk during the time prior to completion of the interim cover. The license was amended to change the date for completion of placement of the interim cover from April 30, 1994 to February 15, 1995.

Atlas also requested extensions of one year on completion of the reclamation milestones in LC 55 A.(1) and (3), and LC 55 B.(1) and (2), which relate to placement of windblown tailings on the pile, placement of the final radon cover, placement of erosion protection, and completion of groundwater corrective actions. The extension request was attributed by Atlas to NRC's decision to prepare an Environmental Impact Statement (EIS) for the revised reclamation plan. Although the time required to complete the EIS (April 1995) and the subsequent deferral on approval of the revised reclamation plan will impact the cited dates, the license is not being amended for these milestones until such time as the schedule can be better determined.

FOR FURTHER INFORMATION CONTACT: Allan Mullins, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, Telephone: 301–415–6693.

Dated at Rockville, Maryland, this 1st day of June, 1994.

Joseph J. Holonich,

Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–14546 Filed 6–14–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–397]

Washington Public Power Supply System; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 123 to Facility Operating License No. NPF–21, issued to the Washington Public Power Supply System (licensee), which changed the operating license of the WNP–2 nuclear plant located in Benton County, Washington. The amendment is effective as of the date of issuance.

The amendment allows the licensee to upgrade the plant analog main steam line (MSL) radiation monitors to digital monitors.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on March 10, 1994 (59 FR 11334). No request for hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (59 FR 28432).

For further details with respect to the action see (1) the application for amendment dated November 30, 1993, (2) Amendment No. 123 to License No. NPF–21, (3) the Commission's related Safety Evaluation dated June 2, 1994, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland this 2nd day of June 1994.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate IV–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–14547 Filed 6–14–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Reclearance of Form RI 30–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for a reclearance of an information collection. Form RI 30–1, Request to Disability Annuitant for Information on Physical Condition and Employment, is used by persons who are not yet age 60 and who are receiving disability annuity and are subject to inquiry as to their medical condition as OPM deems reasonably necessary. RI 30–1 collects information as to whether the disabling condition has changed.

There are estimated to be 8,000 respondents for RI 30–1. It takes approximately 60 minutes to complete RI 30–1. The combined annual burden is 8,000 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before July 15, 1994.

ADDRESSES: Send or deliver comments to:

Lorraine E. Dettman, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW. room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis and Design, (202) 606–9623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–14387 Filed 6–14–94; 8:45 am]

BILLING CODE 6325–01–M

Request for Clearance of a Revised Information Collection Form RI 25–15

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title, 44 U.S. Code, chapter 35), this notice announces a request for clearance of a revised information collection. Form RI 25–15, Survey of Student's Eligibility to Receive Benefits, is used to collect sufficient information from adult children of deceased Federal employees or annuitants to assure that the child continues to be eligible for payments from OPM.

Approximately 12,000 RI 25–15 forms are completed annually. It takes approximately 15 minutes to complete this form. The total annual burden is 3,000 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before July 15, 1994.

ADDRESSES: Send or deliver comments to—

Lorraine E. Detterman, Chief, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis & Design, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–14388 Filed 6–14–94; 8:45 am]

BILLING CODE 6325–01–M

Request for Clearance of a Revised Information Collection Form RI 30–10

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of a revised information collection. Form RI 30–10, Disabled Dependent Questionnaire, is used to collect sufficient information about the medical condition and earning capacity for OPM to be able to determine whether a disabled adult child is eligible for health benefits coverage and/or survivor annuity payments under the Civil Service Retirement System/Federal Employees Retirement System.

Approximately 2,500 RI 30–10 forms are completed annually. The form requires approximately 30 minutes to complete. The annual burden is 1,250 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before July 15, 1994.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief, Forms Analysis & Design, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–14389 Filed 6–14–94; 8:45 am]

BILLING CODE 6325–01–M

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606–0940.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on May 23, 1994 (FR 26680). Individual authorities established or revoked under Schedules A and B and established under Schedule C between April 1 and April 30, 1994, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, 1994, will also be published.

Schedule A

No Schedule A authorities were established or revoked during April 1994.

Schedule B

Department of Defense

Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744. Effective April 12, 1994.

Schedule C

Consumer Product Safety Commission

Executive Assistant to the Commissioner. Effective April 20, 1994.

Corporation for National and Community Service

Executive Assistant to the Managing Director. Effective April 20, 1994.

Legislative and Intergovernmental Specialist to the Director, Congressional and Intergovernmental Affairs. Effective April 29, 1994.

Department of Agriculture

Staff Assistant to the Assistant Secretary for Economics. Effective April 5, 1994.

Confidential Assistant to the Administrator, Rural Electrification Administration. Effective April 7, 1994.

Confidential Assistant to the Director/Press Secretary, Office of Public Affairs. Effective April 13, 1994.

Confidential Assistant to the Administrator, Farmers Home Administration. Effective April 13, 1994.

Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service. Effective April 15, 1994.

Staff Assistant to the Assistant Secretary for Administration. Effective April 15, 1994.

Confidential Assistant to the Administrator, Food Safety and Inspection Service. Effective April 20, 1994.

Speech Writer to the Director/Press Secretary, Office of Public Affairs. Effective April 26, 1994.

Confidential Assistant to the Administrator, Farmers Home Administration. Effective April 26, 1994.

Special Assistant to the Chief of the Soil Conservation Service. Effective April 28, 1994.

Northeast Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service. Effective April 29, 1994.

Confidential Assistant to the Secretary of Agriculture. Effective April 29, 1994.

Department of Commerce

Director of Congressional Affairs to the Assistant Secretary for Economic Development, Economic Development Administration. Effective April 6, 1994.

Director of Special Projects to the Chief of Staff, Office of the Secretary. Effective April 20, 1994.

Confidential Assistant to the Assistant to the Deputy Secretary. Effective April 20, 1994.

Confidential Assistant to the Director, Office of External Affairs, Office of the Secretary. Effective April 20, 1994.

Special Assistant to the Deputy Under Secretary for Export Administration, Bureau of Export Administration. Effective April 29, 1994.

Confidential Assistant to the Assistant Secretary for Export Administration, Bureau of Export Administration. Effective April 28, 1994.

Director of Advance to the Director, Office of External Affairs. Effective April 29, 1994.

Department of Defense

Staff Specialist to the Principal Deputy Assistant Secretary for Dual Use Technology and International Programs. Effective April 12, 1994.

Paralegal Specialist to the Judge, United States Court of Military Appeals. Effective April 15, 1994.

Paralegal Specialist to the Judge, United States Court of Military Appeals. Effective April 15, 1994.

Paralegal Specialist to the Chief Judge, United States Court of Military Appeals. Effective April 15, 1994.

Paralegal Specialist to the Judge, United States Court of Military Appeals. Effective April 15, 1994.

Special Assistant for Demand Reduction to the Deputy Assistant Secretary of Defense (Drug Enforcement Policy and Support). Effective April 28, 1994.

Department of Education

Special Assistant to the Assistant Secretary, Office of Legislation and Congressional Affairs. Effective April 7, 1994.

Confidential Assistant to the Assistant Secretary, Office of Civil Rights. Effective April 8, 1994.

Confidential Assistant to the Director, State, Local and Regional Services Staff, Intergovernmental and Constituent Services. Effective April 12, 1994.

Confidential Assistant to the Director, Community Field Services Staff, Community Reform Initiatives Services. Effective April 18, 1994.

Confidential Assistant to the Director, Intergovernmental and Constituent Service, Office of Intergovernmental and Interagency Affairs. Effective April 18, 1994.

Confidential Assistant to the Director, Community Development Field Service Staff, Community Reform Initiatives Services. Effective April 19, 1994.

Confidential Assistant to the Chief of Staff, Office of the Deputy Secretary. Effective April 18, 1994.

Confidential Assistant to the Chief of Staff, Office of the Secretary. Effective April 20, 1994.

Special Assistant to the Director, Policy Development Staff. Effective April 29, 1994.

Special Assistant to the Deputy Secretary. Effective April 29, 1994.

Department of Energy

Confidential Assistant to the General Counsel. Effective April 20, 1994.

Executive Assistant to the Chief of Staff. Effective April 20, 1994.

Executive Assistant to the Secretary of Energy. Effective April 20, 1994.

Legislative Affairs Specialist to the Deputy Assistant Secretary for Senate Liaison, Office of Congressional and Intergovernmental Affairs. Effective April 21, 1994.

Staff Assistant to the Assistant Secretary of Energy, Efficiency and Renewable Energy. Effective April 29, 1994.

Department of Health and Human Services

Special Assistant to the Deputy Assistant Secretary for Policy and External Affairs, Administration for Children and Families. Effective April 12, 1994.

Special Assistant to the Assistant Secretary, Administration for Children and Families. Effective April 15, 1994.

Confidential Assistant to the Executive Secretary. Effective April 22, 1994.

Department of Housing and Urban Development

Special Assistant (Advance) to the Assistant Secretary for Administration, Office of Executive Scheduling. Effective April 8, 1994.

Special Assistant to the Director, Office of Distressed and Troubled Housing Recovery. Effective April 8, 1994.

Director, Policy and Planning Division to the Director, Office of Distressed and Troubled Housing Recovery. Effective April 8, 1994.

Staff Assistant (Advance) to the Assistant Secretary for Administration, Office of Executive Scheduling. Effective April 8, 1994.

Staff Assistant (Advance) to the Assistant Secretary for Administration, Office of Executive Scheduling. Effective April 12, 1994.

Special Assistant to the Deputy Assistant Secretary for Distressed and Troubled Housing. Effective April 25, 1994.

Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity. Effective April 25, 1994.

Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations, Office of Congressional and Intergovernmental Relations. Effective April 26, 1994.

Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs. Effective April 29, 1994.

Department of the Interior

Special Assistant to the Deputy Director, Minerals Management Service. Effective April 15, 1994.

Chief, Congressional and Legislative Affairs Division to the Director of Policy and External Affairs, Bureau of Reclamation. Effective April 15, 1994.

Department of Justice

Special Assistant to the Assistant Attorney General, Environmental and Natural Resources Division. Effective April 7, 1994.

Secretary (OA) to the United States Attorney, Eastern District of Michigan. Effective April 8, 1994.

Special assistant to the Assistant Attorney General (Legislative Affairs). Effective April 15, 1994.

Staff Assistant to the Attorney General. Effective April 22, 1994.

Special Assistant to the Deputy Attorney General. Effective April 25, 1994.

Counsel to the Deputy Attorney General. Effective April 25, 1994.

Confidential Assistant to the Assistant Attorney General, Civil Rights Division. Effective April 29, 1994.

Department of Labor

Special Assistant to the Assistant Secretary for Public Affairs. Effective April 6, 1994.

Special Assistant to the Assistant Secretary for the American Workplace. Effective April 13, 1994.

Secretary's Representative, Philadelphia, PA, to the Associate Director, Office of Congressional and Intergovernmental Affairs. Effective April 20, 1994.

Confidential Assistant to the Secretary of Labor. Effective April 21, 1994.

Secretary's Representative, New York, NY, to the Associate Director, Office of Intergovernmental Affairs. Effective April 29, 1994.

Department of Transportation

Director, Office of Public and Consumer Affairs to the Deputy Administrator, National Highway Transportation Safety Administrator. Effective April 20, 1994.

Special Assistant for Scheduling to the Special Assistant for Scheduling and Advance. Effective April 28, 1994.

Department of the Treasury

Public Affairs Specialist to the Director, Office of Public Affairs. Effective April 15, 1994.

Confidential Assistant to the Commissioner, Internal Revenue Service, Effective April 28, 1994.

Staff Assistant to the Assistant Secretary (Economic Policy). Effective April 28, 1994.

Department of Veterans Affairs

Special Assistant to the Assistant Secretary for Congressional Affairs. Effective April 26, 1994.

Environmental Protection Agency

Director, Policy Development to the Assistant Administrator. Effective April 20, 1994.

Special Assistant to the General Counsel. Effective April 29, 1994.

Equal Employment Opportunity Commission

Communications and Legislative Specialists to the Director, Office of Communications and Legislative Affairs. Effective April 22, 1994.

Federal Communications Commission

Special Assistant to the Deputy Chief, Cable Services Bureau. Effective April 20, 1994.

Interstate Commerce Commission

Congressional Affairs Advisor to the Chairman. Effective April 25, 1994.

Confidential Assistant to a Commissioner. Effective April 26, 1994.

National Labor Relations Board

Confidential Assistant to the Chairman, Effective April 12, 1994.

Office of Science and Technology Policy

Confidential Secretary to the Director, Office of Science and Technology Policy. Effective April 29, 1994.

President's Commission on White House Fellowships

Associate Director to the Director. Effective April 7, 1994.

Small Business Administration

Press Secretary to the Associate Administrator for Communications and Public Liaison. Effective April 14, 1994.

Special Assistant to the Associate Administrator for Communications and public Liaison. Effective April 14, 1994.

U.S. International Trade Commission

Executive Assistant to a Commissioner. Effective April 29, 1994.

United States Information Agency

Staff Assistant to the Director, Office of Public Liaison. Effective April 4, 1994.

Confidential Assistant to the Director, Voice of America, Bureau of Broadcasting. Effective April 12, 1994.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–14390 Filed 6–14–94; 8:45 am]

BILLING CODE 6325–01–M

Privacy Act of 1974; Amendment to Existing Notices of Systems of Records

AGENCY: Office of Personnel Management.

ACTION: Notice of updates of existing systems of records.

SUMMARY: OPM proposes to add new routine uses of disclosure to four existing record systems, and expand the purpose for which one of the systems collects information.

DATES: The changes will become effective without further notice on July 15, 1994, unless comments are received that dictate otherwise.

ADDRESSES: Written comments should be sent to C. Ronald Trueworthy, Chief, Information Policy Branch, room CHP 500, Plans and Policies Division, Office of Information Resources Management, Administration Group, Office of Personnel Management, 1900 E Street NW., Washington DC 20415.

FOR FURTHER INFORMATION CONTACT: Leslie Crawford, 703–908–8550.

SUPPLEMENTARY INFORMATION: This notice is being published under the authority of 5 U.S.C. 552a(e)(4) and (11), which provide that the public be given a 30-day period to comment on any new routine uses of a system of records. The Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires a 40-day period to review the reported changes. A report of these changes has been provided to OMB and Congress.

OPM's Internal and Central system notices were previously published in the **Federal Register** in full on April 12, 1993 (58 FR 19154–19191). OPM's Governmentwide system notices were last published in full on August 10, 1992 (57 FR 35698), with a correction published on November 30, 1992 (57 FR 56733).

The Office of Personnel Management (OPM) is establishing new routine uses for OMP/Internal–6 and OPM/Internal–11 to allow for the disclosure of information to contractors/grantees/volunteers performing a service for the Federal government.

A new routine use is being added to OPM/Central–10 to allow disclosure of Federal Executive Alumni (FEI) directory information to FEI alumni.

In OPM/Central–11, Presidential Management Intern Program Records, the entries detailing the categories of individuals and records included the system are being updated for accuracy. The Purpose section is being expanded to include the facilitation of interaction between PMIP participants and alumni. The Routine Uses section is being modified to add a new routine use to allow the disclosure of names and home addresses to other PMIP participants and alumni.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Revision of existing system notices:

OPM/INTERNAL–6

SYSTEM NAME:

Appeal and Administrative Review Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

m. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

OPM/INTERNAL–11

SYSTEM NAME:

Administrative Grievance Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

l. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

OPM/CENTRAL–10

SYSTEM NAME:

Directory of Federal Executive Institute Alumni.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

m. To disclose information to FEI alumni to maintain contact with other alumni and to provide them with information to continue their educational experiences.

* * * * *

OPM/CENTRAL–11

SYSTEM NAME:

Presidential Management Intern Program Records.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former PMI's and students pursuing graduate degrees who have been nominated by their universities for consideration for the PMI program.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about the covered individuals relating to name, Social Security Number, date of birth, race/national origin, academic background, home address and telephone number, employment history, business address and telephone number, veteran preference, and other personal history information needed during the evaluation and selection process. This system will also contain evaluation statements from the nominating universities and confidential information developed during the regional screening process and final panel evaluations.

* * * * *

PURPOSE:

* * * * *

d. To facilitate interaction and communication between PMIP participants and alumni.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

n. To provide information to current and former PMIP participants to foster interaction and communication to continue educational experiences and promote intergovernmental cooperation.

[FR Doc. 94–14391 Filed 6–14–94; 8:45 am]

BILLING CODE 6325–01

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34189; File No. SR–DTC–94–06]

Self-Regulatory Organizations; The Depository Trust Company; Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Enhancements to the Reorganization and Deposit Services

June 9, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 25, 1994, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–DTC–94–06) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of enhancements to the reorganization and deposit services of DTC.

II. Self-Regulatory Organization's Statement of the Propose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit DTC to enhance its reorganization and deposit services. DTC-eligible securities may become the subject of reorganization activities including maturities, full and partial calls, and mandatory actions such as mergers and reverse splits. When a security becomes the subject of a reorganization, DTC presents the certificates for that security on deposit at DTC to the issuer's agent and collects the proceeds of the reorganization activity (either cash or new securities) for credit participants' accounts.

Under its current procedures, DTC ceases to accept deposits of a security when it becomes the subject of a reorganization activity. For example, deposit services terminate upon DTC's receipt of a notice of a full call or thirty business days prior to the maturity date of a debt issue. After DTC's deposit services terminate for a security which is the subject of a reorganization activity, participants sometimes receive certificates for the security from their customers. The participants must then bear the operational burden of presenting the certificates to the issuer's agent and collecting the proceeds.

DTC is enhancing its reorganization and depository services in order to offer its participants the Reorg Deposits Service. The Reorg Deposits Service will enable participants to deposit at DTC certificates for securities for up to two years after the reorganization activity and to have DTC collect the proceeds on their behalf. Cash proceeds will be credited to participants upon DTC's receipt of the funds. Proceeds which are a DTC-eligible security usually will be credited to participants at the time of deposit.

The Reorg Deposits Service will be implemented first for full calls and maturing securities and later for partial calls and mandatory actions. A separate fee for the Reorg Deposits Service may be established in the future.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change will contribute to efficiencies in the handling of securities which are the subject of reorganization activities. The proposed rule change is consistent with DTC's obligation to safeguard securities and funds in its custody or control or for which it is responsible because the proposed rule change will be implemented consistently with DTC's other safeguarding procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

DTC has discussed and tested the proposed rule change with a small number of participants. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to Section 19(b)(3)(A)(iii)[2] of the Act and pursuant to Rule 19b–4(e)(4)[3] promulgated thereunder because the proposed rule change effects a change in an existing service at DTC that does not adversely affect DTC's obligation to safeguard securities and funds and does not significantly affect the rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–94–06 and should be submitted by July 6, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–14528 Filed 6–14–94; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[3] 17 CFR 240.19b–4(e)(4) (1993).

[4] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–34187; File No. SR–MCC–93–09]

Self-Regulatory Organizations; Midwest Clearing Corporation; Order Approving Proposed Rule Change Amending the Definition of Settlement Price

June 9, 1994.

On December 23, 1993, the Midwest Clearing Corporation ("MCC") filed a proposed rule change (File No. SR–MCC–93–09) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposals was published in the **Federal Register** on March 7, 1994.[2] No comments were received by the Commission. This order approves the proposal.

I. Description of the Proposal

The rule change amends MCC's definition of the term "settlement price," which is set forth in Article I, Rule 1 of MCC's Rules. In essence, the amended rule now provides that the settlement price shall be the closing price or the last sale price on the business day prior to the day such price is used, but where no closing price or last sale price is available for the prior business day, the settlement price shall be a price which MCC deems appropriate.

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with Section 17A of the Act.[3] Section 17A(b)(3)(F) of the Act requires that the rules of clearing agencies be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national market system for the clearance and settlement of securities transactions.[4]

The term settlement price is used by MCC and other clearing agencies to determine daily mark-to-market credits or debits and to value settling trades. Accordingly, the definition of settlement price should be uniform among clearing corporations in order for interfaces between them to function smoothly in the settlement of transactions. This rule change, in conjunction with a recent rule change to the rules of the National Securities Clearing Corporation ("NSCC"), will conform MCC's definition of settlement price to NSCC's definition of that term.[5] Consequently, the Commission believes that this technical rule change will foster cooperation and coordination and will help perfect the national clearance and settlement system and, therefore, is consistent with the Act.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 33685 (February 25, 1994), 59 FR 10685

[3] 15 U.S.C. 78q–1 (1988).

[4] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[5] Securities Exchange Act Release No. 34040 (M[illegible] 11, 1994), 59 FR 25975 (File No. SR–NSCC–94–05 (notice of filing and immediate effectiveness of a proposed rule change)

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly with Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the above-mentioned proposed rule change (File No. SR–MCC–93–09) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–14529 Filed 6–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34188; File No. SR–MSTC–93–13]

Self-Regulatory Organizations; Midwest Securities Trust Company; Order Approving Proposed Rule Change to Rescind Signature Distribution and Signature Guarantee Programs

June 9, 1994.

On December 15, 1993, the Midwest Securities Trust Company ("MSTC") filed a proposed rule change (File No. SR–MSTC–93–13) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on March 3, 1994, to solicit comments from interested persons.[2] No comments have been received by the Commission. This order approves the proposal.

I. Description of the Proposal

On January 6, 1992, the Commission promulgated Securities Exchange Act Rule 17Ad–15.[3] That rule permits transfer agents to reject signature guarantees from eligible guarantor institutions if the eligible guarantor institutions are not part of a signature guarantee program, as defined in Rule 17Ad–15. Additionally, the new rule renders obsolete the MSTC's existing Signature Guarantee Program (MSTC Rules, Article III, Rule 5, Section 1) and MSTC's existing Signature Guarantee Program (MSTC Rules, Article III, Rule 5, Section 2). Therefore, to avoid costs that produce no benefits, MSTC seeks to eliminate its Signature Distribution and Signature Guarantee Programs and to delete from its Rules Article III, Rule 5, Sections 1 and 2 which govern these programs.

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with Section 17A of the Act.[4] Sections 17A(b)(3)(A) and (F) of the Act[5] require that a clearing agency be organized and its rules be designed to facilitate the prompt and accurate clearance and settlement of securities transactions. Moreover, Section 17A(a)(1) of the Act[6] calls for the use of efficient, effective, and safe procedures in the clearance and settlement of securities transactions.

The proposed rule change rescinds MSTC's Signature Distribution and Signature Guarantee Programs, two programs which have been rendered obsolete by the Commission's adoption of Rule 17Ad–15. The Commission agrees with MSTC that it would be wasteful and inefficient for a clearing agency to have to maintain such obsolete programs. The Commission believes that MSTC's rescission of the two programs and their related rules will facilitate prompt and accurate clearnace and settlement of securities transactions by making MSTC, its rules, and its procedures more efficient and effective.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly with those of Section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the above-mentioned proposed rule change (File No. SR–MSTC–93–13) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–14530 Filed 6–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34178; File No. SR–PTC–94–02]

Self-Regulatory Organizations; Participants Trust Company; Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Modification of Fees

June 8, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 3, 1994, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–PTC–94–02) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change reduces fees for four PTC services. The modified fees will be effective July 1, 1994.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend PTC's schedule of fees to reduce fees for four PTC services specifically Account Maintenance, Book-entry Delivery and Receipt of Securities and Funds, Repo Movements, and Deposits. The modified fees will be effective July 1, 1994.

PTC believes that the amounts of the fees are appropriate based on PTC's projected earnings and expenses and its program to provide rebates to participants to the level required to

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[1] 15 U.S.C. 78s(b)(2) (1988).

[2] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 33669 (February 23, 1994), 59 FR 10189.

[3] 17 CFR 240.17Ad–15 (1993).

[4] 15 U.S.C. 78q–1 (1988).

[5] 15 U.S.C. 78q–1(b)(3)(A) and (F) (1988).

[6] 15 U.S.C. 78q–1(a)(1) (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

cover the variability in transaction volume.

PTC believes that the proposed rule change is consistent with Section 17A(B)(3)(D) of the Act,[2] and the rules and regulations thereunder, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its participants.

(B) Self-Regulatory Organization's Statements on Burden on Competition

PTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

PTC has not solicited comments with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder, because the proposed rule change establishes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR–PTC–94–02 and should be submitted by July 6, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–14475 Filed 6–14–94; 8:45 am]

BILLING CODE 8010–01–M

[2] 15 U.S.C. 78q-1(b)(3)(D) (1988).

[Release No. 34–34180; File No. SR–PHLX–94–27]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Revised Index Option Transaction Value Charges

June 8, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 25, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX") or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission in publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, the option transaction value charge for customer orders with options premiums of less than $1.00 is $.15 per contract and $.30 per contract for customer orders with premium values of $1.00 or more. The option transaction value charge for firms is $.06 per contract. The PHLX proposes to amend its schedule of dues, fees, and charges for options transactions to provide the following index option transaction value charges: $.20 per contract for customer orders with premium values of less than $1.00; $.40 per contract for customer orders with premium values of $1.00 or more; and $.10 per contract for firms. The revised index option transaction value charges do not apply to Value Line Index ("VLE") options.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

[3] 17 C.F.R. 200.30–3(a)(12).

II. Self-Regulatory Organizations: Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposed to amend its schedule of dues, fees and charges for the transaction of business on the PHLX's options floor, specifically the index option transaction value charge. Effective at the opening of business on Tuesday, May 31, 1994, the PHLX proposes to adopt the following index option transaction value charges; $.20 per contract for customer orders with premium market values of less than $1.00; $.40 per contract for customer orders with premium market values of $1.00 or more; and $.10 per contract for firms. The revised schedule does not apply to VLE options.

The PHLX states that the revised index option transaction value charges are more reflective of the PHLX's cost of conducting business, including the support of the computation and dissemination of respective index values to market participants. The PHLX states that the proposal presents a fee structure designed to be more reflective of the actual cost of supporting the index options traded on the PHLX. In addition, the PHLX states that the revised index option transaction value charges are competitive with the rates charged by the other options market centers and substantially correspond to the existing charges for PHLX VLE options.

The PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(B)(4), in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the Exchange's facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph(e) of rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 6, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

[1] 17 CFR 200.30–3(a)(12) (1993).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94–14531 Filed 6–14–94; 8:45 am]
BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 9, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule12f-1 thereunder for unlisted trading privileges in the following securities:

Stephan Company
Common Stock, $.01 Par Value (File No. 7–12503)
NorAm Energy Corporation
$3.00 Conv. Exchangeable Preferred Stock, Series A (File No. 7–12504)
Blyth Industries, Inc.
Common Stock, $.02 Par Value (File No. 7–12505)
Grupo Industrial Maseca S.A. de C.V.
American depositary Shares, No Par Value (File No. 7–12506)
Morgan Stanley Global Opportunities Bond Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12507)
Beacon Properties Corporation
Common Stock, $.01 Par Value (File No. 7–12508)
Republic New York Corporation
Dep. Shares each Representing ¼th of a share of Adj. Rate Cum. Pfd. Stock Series D (File No. 7–12509)
Mikasa, Inc.
Common Stock, $.01 Par Value (File No. 7–12510)
Alert Centre, Inc.
Common Stock, $.01 Par Value (File No. 7–12511)
Alert Centre, Inc.
Purchase Warrants (File No. 7–12512)
Atlantis Group, Inc.
Class A Common stock, $.01 Par Value (File No. 7–12513)
Banco O'Higgins
American Depositary Shares Each Representing Six Shares of Common Stock, No Par Value (File No. 7–12514)
U.S. Delivery Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–12515)
Digital Communications Technology Corporation
Common stock, $.01 Par Value (File No. 7–12516)
Citicorp
Dep. Shares Each Representing 1/10th of a share of Adj. Rate Cum. Pfd. Stock (File No. 7–12517)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 30, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 94–14532 Filed 6–14–94; 8:45 am]
BILLING CODE 8010–01–M

[Rel. No. IC-20347; 812-8956]

Liberty All-Star Equity Fund, et al.; Notice of Application

June 8, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Liberty All-Star Equity Fund ("All-Star") and Liberty Asset Management Company ("LAMCO"), on behalf of themselves and present and future sub-advisers of All-Star.

RELEVANT ACT SECTIONS: Conditional order required under section 6(c) for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order amending an existing order that permits LAMCO to hire and fire sub-advisers for All-Star, and delay shareholder approval of the subadvisory contracts until All-Star's next annual meeting of shareholders. The amended order would extend that relief so that, in the event of an "assignment," as that term is defined in section 2(a) (4) of the Act, of a subadvisory agreement, the parties could enter into a new subadvisory agreement and delay shareholder approval until All-Star's next annual meeting of shareholders.

FILING DATE: The application was filed on April 25, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 5, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Federal Reserve Plaza, Boston, Massachusetts, 02210.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney, at (202) 942-0570, or C. David Messman, Branch Chief, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applications' Representations

1. All-Star is a closed-end diversified management investment company. LAMCO is a registered investment adviser and an indirect wholly-owned subsidiary of Liberty Financial Companies, Inc. ("LFC"). LFC is an indirect wholly-owned subsidiary of Liberty Mutual Insurance Company.

2. All-Star employs a multi-manager methodology of portfolio management. It allocates its investment portfolio on an approximately equal basis among several independent investment management firms ("Sub-Advisers") selected and recommended by LAMCO based on specific criteria, including a sufficient diversity and breadth of investment styles. None of the Sub-Advisers have any affiliation with All-Star or LAMCO other than as Sub-Adviser.

3. All-Star and LAMCO received an order that permits LAMCO to hire and fire Sub-Advisers for All-Star and to delay shareholder approval of such subadvisory agreements until All-Star's next annual meeting of shareholders ("Order").[1] Applicants reaffirm all of the representations made in the original application, as amended, for the Order.

4. All-Star and LAMCO seek to amend the Order so that, in addition to the relief granted by the Order, in the event of a sale of assets, merger or transfer of voting securities of a Sub-Adviser or other transaction constituting an "assignment," as that term is defined in section 2(a)(4) of the Act, of All-Star's subadvisory agreement with that Sub-Adviser, All-Star, LAMCO, and that Sub-Adviser or its successor could enter into a new subadvisory agreement and delay shareholder approval of such agreement until All-Star's next annual meeting of shareholders.

Applicants' Legal Analysis

1. Section 15(a) makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract, whether with such registered company or with an investment adviser of such registered company, which has been approved by the vote of a majority of the outstanding voting securities of such registered company and which precisely describes all compensation to be paid thereunder.

2. Section 15(a) (4) also requires that the investment advisory contract provide, in substance, for its automatic termination in the event of its assignment. "Assignment" is defined in section 2 (a) (4) to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

3. Rule 15a–4 permits an investment adviser to an investment company to act under an agreement not approved by shareholders for up to 120 days after the terminations of an investment advisory agreement by an event (other than by an assignment by an investment adviser in connection with which such investment adviser, or a controlling person thereof, directly or indirectly receives money or other benefit) described in paragraphs (3) and (4) of section 15(a) of the Act or by failure to renew such contract. Rule 15a-4 does not provide adequate relief to All-Star because All-Star is seeking to delay a shareholder vote in the event that a change in a Sub-Adviser occurs as the result of an "assignment" in which an investment adviser (*i.e.*, the Sub-Adviser) receives an economic benefit.

4. Applicants assert that because of the lack of affiliation between LAMCO and the Sub-Advisers (unlike conventionally structured single-manager investment companies), LAMCO has no interest other than the efficient and effective functioning of All-Star's multi-manager methodology and the enhancement of All-Star's investment performance when recommending the replacement or addition of a Sub-Adviser. Applicants represent that neither LAMCO nor any of its affiliates will be parties to the acquisition or other transaction giving rise to the termination and assignment of the subadvisory agreement or receive any economic benefit in connection with such transaction.

5. Applicants believe that the SEC excluded assignments in which the investment adviser receives an economic benefit from the exemption provided by rule 15a–4 because such assignments are reasonably foreseeable. Applicants state that LAMCO has no affiliation with All-Star's Sub-Advisers and has no control or influence over the timing of possible transfers of controlling interests in them or other transactions that may result in technical assignment and termination of their subadvisory agreements with All-Star.

6. Section 6(c) authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that such exemptions are appropriate in the public interest and consistent with the protection of investors and the policies and purposes fairly intended by the policies and provisions of the Act. Applicants submit that the requested amendment to the exemption from section 15(a) of the Act granted by the existing Order would be consistent with the standards set forth in section 6(c) of the Act and would be in the best interests of All-Star and its shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each new subadvisory agreement will be submitted for ratification and approval to the vote of All-Star's shareholders no later than at the regularly scheduled annual meeting of shareholders of All-Star next following the effective date of the new agreement, and its continuance after such meeting will be conditioned on approval by the required majority vote of such shareholders.

2. All-Star will continue to hold annual meetings of its shareholders, whether or not required to do so by the rules of the New York Stock Exchange, Inc. or otherwise.

3. The trustees of All-Star, in addition to approving the new subadvisory agreement in accordance with the requirements of section 15(c) of the Act, will specifically determine that entering into a subadvisory agreement with the new or additional Sub-Adviser in advance of the next regular annual meeting of shareholders of All-Star and

[1] Investment Company Act Release Nos 19436 (April 27, 1993) (notice) and 19491 (May 25, 1993) (order).

without prior shareholders approval is in furtherance of All-Star's multi-manager methodology and is in the best interest of All-Star and its shareholders.

4. The new subadvisory agreement involved will, when entered into, affect no more than 25% of All-Star's assets.

5. The new Sub-Adviser will have no affiliation with All-Star or LAMCO other than as Sub-Adviser, and will have no duties or responsibilities with respect to All-Star beyond the investment management of the portion of All-Star's portfolio assets allocated to it by LAMCO from time to time and related record keeping and reporting.

6. The new subadvisory agreement will provide for a subadvisory fee no higher than that provided in All-Star's existing subadvisory agreements, and, except for the provisions relating to shareholder approval referred to in condition 1, will be on substantially the same other terms and conditions as such existing agreements, and, if the new subadvisory agreement provides for subadvisory fees at rates less than those provided in the existing subadvisory agreements, the difference will be passed on to All-Star and its shareholders through a corresponding voluntary reduction in the fund management fee payable by All-Star to LAMCO.

7. The appointment of the new Sub-Adviser will be announced by press release promptly following the trustees' action referred to in condition 3 above, and a notice of the new subadvisory agreement, together with a description of the new Sub-Adviser, will be included in All-Star's next report to shareholders.

8. LAMCO will provide general management and administrative services to All-Star, including overall supervisory responsibility for the general management and investment of all of All-Star's securities portfolio subject to All-Star's investment objectives and policies and any directions of All-Star's Trustees. In particular, LAMCO will (i) provide overall investment programs and strategies for All-Star, (ii) recommend to All-Star's Trustees investment management firms for appointment or replacement as All-Star Sub-Advisers, (iii) allocate and reallocate All-Star's portfolio assets among the Sub-Advisers, and (iv) monitor and evaluate the investment performance of the Sub-Advisers, including their compliance with All-Star's investment objectives, policies and restrictions.

9. LAMCO or the Sub-Adviser (or successor Sub-Adviser) will pay the incremental cost of including the proposal to approve or disapprove the new subadvisory agreement in the proxy material for the next annual meeting of All-Star's shareholders.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-14476 Filed 6-14-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-20345; 812-8270]

The Variable Annuity Life Insurance Company et al.

June 8, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Variable Annuity Life Insurance Company ("VALIC"), Separate Account A of The Variable Annuity Life Insurance Company (the "Account"), any other separate account established by VALIC in the future to support certain variable annuity contracts issued by VALIC ("Other Account"; together with the Account, the "Separate Account," unless the context otherwise requires), and The Variable Annuity Marketing Company ("VAMCO").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) under the 1940 Act for exemptions from sections 22(e), 26(a)(2)(C), 27(c)(1), 27(c)(2), and 27(d).

SUMMARY OF APPLICATION: Applicants seek an order to permit (a) the deduction of a mortality and expense risk charge from the assets of the Account in connection with the offering of certain variable annuity contracts and from any Other Account that offers variable annuity contracts that are similar in all material respects to contracts offered by the Account, and (b) the Account and the Other Accounts to comply with redeemability restrictions imposed by the Optional Retirement Program of the State University System of Florida ("Florida ORP") as administered by the Division of Retirement of the Florida Department of Management Services ("Retirement Division"), in connection with the proposed offering of certain variable annuity contracts by the Account and the proposed offering by any Other Account of contracts similar in all material respects to those offered by the Account.

FILING DATES: The application was filed on February 14, 1994 and amended on April 20, 1994 and June 3, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on July 5, 1994, and must be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 2929 Allen Parkway, P.O. Box 3206, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, at (202) 942-0670, or Michael V. Wible, Special Counsel, at (202) 942-0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. VALIC is a stock life insurance company organized under the laws of the State of Texas as the successor to Variable Annuity Life Insurance Company of America, a District of Columbia life insurance company organized in 1955. VALIC transacts business in all 50 states and the District of Columbia, and has total assets exceeding $20 billion. VALIC is an indirect wholly-owned subsidiary of American General Corporation, a Texas corporation. VALIC serves as sponsor and depositor of the Account. It also serves as the investment adviser of American General Series Portfolio Company (the "Series Company"), a diversified, open-end management investment company registered under the 1940 Act. Shares of the Series Company are purchased by divisions of the Account. VALIC may establish one or more Other Accounts in the future, for which it will serve as sponsor and depositor.

2. The Account is a segregated asset account of VALIC. It was established under the Texas Insurance Code on April 18, 1979, pursuant to a resolution of VALIC's Board of Directors. The Account is registered with the Commission as a unit investment trust. That portion of the assets of the Account equal to the reserves and other contract liabilities of the Account is not chargeable with liabilities arising out of any other business VALIC may conduct. Any income, gains or losses, realized or unrealized, from assets allocated to the Account are credited to or charged against the Account without regard to other income, gains or losses of VALIC. The Account currently funds forms of variable annuity contracts that are offered by VALIC (the "Existing Contracts"). VALIC recently registered certain new forms of variable annuity contracts (the "Account Contracts") funded by the Account. The exemptions requested with respect to the operation of the Florida ORP and the mortality and expense risk charge would apply to the Account Contracts issued by the Account, to contracts offered by the Account on a basis that is similar in all material respects to the basis on which the Account Contracts are offered (the "Other Contracts"; together with the Account Contracts, the "Contracts," unless the context otherwise requires), and to Other Contracts issued by Other Accounts.

3. The Account is subdivided into several divisions, each of which invests, or will invest, solely in the shares of a mutual fund. In each case, the mutual fund will be a diversified, open-end, management investment company registered under the 1940 Act, shares of which are registered under the Securities Act of 1933. VALIC serves as investment adviser to the Series Company but does not advise certain other underlying mutual funds that sell their shares to the Account. At a later date, VALIC may determine to create one or more additional or replacement divisions of the Account to invest in mutual funds or portfolios thereof that may now or in the future be available. Similarly, divisions may be combined or eliminated from time-to-time. Applicants request that any order the Commission issues in response to this Application be deemed to apply under any such circumstances.

4. VAMCO is a wholly-owned subsidiary of VALIC. It will be the principal underwriter of the Account Contracts. VAMCO is the principal underwriter of the Existing Contracts. VAMCO may act as principal underwriter for any Other Contracts issued by VALIC in the future. VAMCO is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

5. The Contracts are designed to provide benefits under retirement programs that qualify for favorable tax deferred treatment under the Internal Revenue Code of 1986, as amended (the "Code"); they may also be used to provide retirement benefits on a non-tax deferred basis. The Contracts will be offered in group and individual form, on an immediate and deferred annuity basis. The initial and subsequent purchase payments for a periodic payment Contract must be at least $30. For single payment Contracts, the minimum purchase payment is $1,000 for each annuitant. VALIC may waive these minimum payment requirements where one purchaser, such as an employer, purchases a number of Contracts. Purchase payments under the Contracts are accumulated before retirement, and annuity benefits are received after retirement, on a variable basis through use of the Separate Account.

6. VALIC proposes to receive compensation for assuming certain mortality and expense risks under the Account Contracts by deducting, from the assets of the Separate Account, daily asset charges for such risks. VALIC will assume several mortality risks under the Account Contracts. First, VALIC will assume a mortality risk by its contractual obligation to pay a death benefit to the beneficiary if the annuitant under an Account Contract dies during the accumulation period. Generally speaking, the Account Contracts provide a death benefit that is guaranteed to be the greater of the accumulation value under the Account Contract or the sum of the purchase payments, less withdrawals, plus, if the annuitant dies before age 70, interest at an annual rate of 3%. Thus, VALIC assumes the risk that the annuitant may die during the accumulation period at a time when the death benefit guaranteed by the Account Contract may be higher than the accumulation value. Second, VALIC will assume a mortality risk arising from the fact that the Account Contract does not impose any surrender charge on the death benefit. Third, VALIC will assume an additional mortality risk by its contractual obligation to continue to make annuity payments for the entire life of the annuitant under annuity options involving life contingencies. This assures each annuitant that neither the annuitant's own longevity nor an improvement in life expectancy generally will have an adverse effect on the annuity payments received under an Account Contract and relieves the annuitant from the risk of outliving the amounts accumulated for retirement. At the same time, VALIC assumes the risk that annuitants as a group will live a longer time than VALIC's annuity tables predict, which would require VALIC to pay out more in annuity income than it planned. Fourth, VALIC will assume an additional mortality risk under its annuity purchase rate tables which are guaranteed for the life of an Account Contract. The tables contained in the Account Contracts are based on the 1983 TABLE A annuity table and, for variable annuity options, assumed interest rates of 3%, 3½%, 4½% and 5%, respectively.

7. In addition to mortality risks, VALIC will assume an expense risk under the Account Contracts. This is because the maintenance charge, described below, deducted under the Account Contracts to cover administrative expenses is not expected to be sufficient to cover the expenses actually incurred. Administrative expenses include such costs as processing purchase payments, annuity payments, surrenders and transfers; furnishing confirmation notices and periodic reports; calculating mortality and expense risk charges; preparing voting materials and tax reports; updating the registration statement for the Account Contracts; and actuarial and other expenses.

8. In order to receive compensation for assuming these mortality and expense risks, VALIC will assess each division of the Account a daily charge for mortality and expense risks at an annual aggregate rate of not less than 1.00% nor more than 1.25%. Under the Account Contracts, .80% of the annual charge will, in the case of each division, be allocated to the mortality risks that VALIC will assume. With respect to divisions that purchase shares of an investment portfolio of the Series Company, for which VALIC serves as investment adviser ("Inside Funds"), the expense risk component of that charge is .20%; as to divisions that purchase shares of a mutual fund, or a series thereof, for which VALIC does not serve as investment adviser ("Wrapped Funds"), the expense risk component is .45%. VALIC earns an advisory fee in connection with its responsibilities as investment adviser to the Series Company, the proceeds of which are deposited in VALIC's general account. General obligations of VALIC, including any expenses incurred for administering the Account Contracts that exceed revenues from the fixed maintenance charge, are funded from VALIC's general account. The additional revenues generated from VALIC's investment advisory activities with regard to the

Inside Funds thereby reduce the magnitude of risk that VALIC's expenses of administering the Account Contracts will exceed revenues. This additional source of revenue is not available for investments in divisions investing in Wrapped Funds. Because VALIC experiences less risk to the extent it can depend on revenues from its investment advisory activities, with regard to investments in divisions investing in Inside Funds, it is able to impose a lower expense risk charge to those divisions than to the divisions investing in Wrapped Funds.

9. Under the terms of the Account Contracts, the mortality and expense risk charge is fixed and may not be increased by VALIC. The group Account Contract provides that it may be changed by VALIC, subject to applicable regulatory requirements, upon written notice to the owner of the Account Contract. However, any change will only apply to individuals who become participants under the group Account Contract after the effective date of a change. Purchase payments received by VALIC from participants or owners existing on the effective date of a change would not be affected by the change, and would continue to be subject to the same charges as were applicable prior to the change. Thus, VALIC will continue to assume the mortality and expense risks, described above, based on the charge in effect before the change. Although the group Account Contract also provides that VALIC may, at its discretion and upon notice, curtail or prohibit new participants, VALIC will continue to assume the mortality and expense risks, described above, with respect to existing participants and their purchase payments, including future purchase payments, held under a group Account Contract.

10. If the mortality and expense risk charge is insufficient to cover the expenses and costs assumed, the loss will be borne by VALIC. Conversely, if the amounts deducted from the mortality and expense risk charge prove more than sufficient, the excess will be profit to VALIC. VALIC does not expect to earn a profit from that portion of the mortality and expense risk charge which is for the expense risk. It does, however, expect to derive a profit from the mortality risk charge. To the extent that the surrender charge, described below, is insufficient to cover the actual costs of distribution, the expenses will be paid from VALIC's general account assets, which will include profit, if any, derived from the mortality and expense risk charge.

11. No front-end sales charge will be imposed when purchase payments are applied under the Account Contracts. However, a surrender charge may be assessed if the Account Contract is surrendered, or a partial surrender or withdrawal is made. The surrender charge is 5% of (a) the amount of the preceding 60 months' purchase payments being withdrawn, or (b) the amount withdrawn, whichever is less. For purposes of the charge, withdrawals are treated as withdrawals of purchase payments before any earnings, and the most recent purchase payments are treated as being withdrawn first. The amounts obtained from the surrender charge will be used to help defray expenses incurred in of the sale of the Account Contracts, including commissions and other promotional or distribution expenses associated with the printing and distribution of prospectuses and sales literature. The surrender charge is waived under certain circumstances.

12. The maintenance charge to be assessed under each Account Contract will be an annual charge of $15, deducted in quarterly installments in each quarter during which amounts are credited to any variable investment option. The charge will be deducted at the end of the calender quarter, and at the time of any surrender of the Account Contract or transfer of all of such accumulation values to a fixed interest option. The maintenance charge may be waived or reduced uniformly on all Account Contracts issued under certain plans or arrangements which are expected to result in administrative cost savings. The maintenance charge is guaranteed not to increase over the life of an Account Contract.

13. Under Contracts subject to a premium tax, the amount of the tax may be deducted, either from purchase payments when received, or from the amount applied to effect any annuity at the time annuity payments commence, depending on applicable law. Premium taxes ranging from zero to 3% are currently imposed by certain states and municipalities on purchase payments made under the Contracts. VALIC will not make a profit on premium taxes.

14. The Florida ORP is a defined contribution plan designed to provide retirement and death benefits to participants through individual or group annuity contracts, which may be fixed or variable, or combination fixed and variable. The Florida ORP is available to certain faculty members within the State University System of Florida (the "Florida University System"), as well as to persons holding certain administrative and professional staff positions within the Florida University System (collectively, "Eligible Employees" or "Participants"). The Florida ORP is an alternative to the Florida Retirement System, a defined benefit retirement plan, and Eligible Employees have the option of participating in the Florida Retirement System or the Florida ORP. A statutory presumption deems any employee who becomes eligible to participate on or after January 1, 1993 to have elected to participate in the Florida ORP, unless such employee specifically elects membership in the Florida Retirement System.

15. Under the Florida ORP, the universities in the Florida University System provide for employee retirement benefits by contributing a percentage of each Participant's gross compensation regardless of service to purchase an annuity when the employee retires. The Retirement Division designates companies from which annuity contracts may be purchased under the Florida ORP.

16. Participants in the Florida ORP may themselves contribute, by way of salary reduction, a percentage of their respective gross compensation (not to exceed the percentage amount contributed by the employer). Payments of Participant contributions are made by the financial officer of the employer to the Retirement Division, which in turn forwards the contributions to the designated company or companies contracting for payment of benefits for the Participant under the Florida ORP.

17. The Retirement Division prohibits distributions of employer contributions under the Florida ORP to a Participant on a lump sum basis (other than upon the Participant's death) or exclusively on the basis of a period certain. These restrictions apply only to employer contributions and do not limit access to Participant contributions. Participants are also free to transfer both employer and Participant contributions among the available fixed or variable investment options and to substitute entirely a qualified contract offered by any of the other companies designated under the Florida ORP.

18. In order to offer the Contracts under the Florida ORP, the Contracts, with respect to accumulations based on employer contributions, will provide that: (a) Benefits based on employer contributions are payable only upon the Participant's death, retirement or termination of employment (as defined in Section 121.021(3) of the Florida Statutes); (b) benefit payments will not be made based solely on a period certain; (c) accumulations based on employer contributions are not subject to withdrawal or surrender and may not be rolled over other than to a designated company or companies contracting for payment of benefits under the Florida ORP; and (d) accumulations are not subject to loan, assignment, execution or attachment.

Applicants' Legal Analysis

1. Applicants respectfully request that the Commission, pursuant to section 6(c) of the 1940 Act, grant the exemptions from (a) sections 26(a)(2)(C) and 27 (c)(2) of the 1940 Act in connection with Applicants' assessment of a charge for mortality and expense risks under the Contracts, and (b) sections 22(e), 27(c)(1), and 27(d) to the extent necessary to permit compliance with the Florida ORP as administered by the Retirement Division, with respect to the Contracts. Applicants believe, based on the grounds set out below, that the requested exemptions meet the standards of section 6(c) of the 1940 Act. Applicants believe that the terms of the relief requested with respect to any Other Contracts funded by the Account or any Other Account, in the future, are consistent with the standards enumerated in section 6(c) of the 1940 Act. Without the requested relief, Applicants would have to request and obtain exemptive relief in connection with Other Contracts to the extent required. Any such additional request for exemption would present no issues under the 1940 Act that have not already been addressed in this Application. Applicants submit that the requested relief is appropriate in the public interest, because it would promote competitiveness in the variable annuity contract market by eliminating the need for VALIC to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to repeatedly seek expemptive relief would impair VALIC's ability to effectively take advantage of business opportunities as they arise.

2. Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If VALIC were required to repeatedly seek exemptive relief with respect to the same issues addressed in this Application, investors would not receive any benefit or additional protection thereby. Indeed, they might be disadvantaged as a result of VALIC's increased overhead expenses. Thus, Applicants believe that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust, and any depositor thereof or principal underwriter thereof, from selling periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are deposited with a trustee or custodian having the qualifications prescribed by section 26(a)(1) of the 1940 Act and are held under an agreement that provides that no payment to the depositor or principal underwriter shall be allowed except as a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services.

4. VALIC proposes to assess each division of the Separate Account with a daily charge for mortality and expense risks at the aggregate annual rates of not less than 1.00% nor more than 1.25%. Applicants represent that the levels of the mortality and expense risk charges are within the range of industry practice for comparable annuity contracts. Applicants state that they have reviewed publicly available information regarding products of other companies taking into consideration such factors as minimum death benefit guarantees, guaranteed annuity purchase rates, administrative fees, and the existence of charge level guarantees. Based upon this review, Applicants have concluded that the mortality and expense risk charge is within the range of charges determined by industry practice for comparable products. VALIC represents that it will maintain at its principal office, and make available on request to the Commission and its staff, a memorandum setting forth in detail the variable annuity products analyzed and the methodology and results of the aforesaid comparative review.

5. Applicants acknowledge that the surrender charge may be insufficient to cover all costs relating to the distribution of the Contracts and that, if a profit is realized from the mortality and expense risk charges, all or a portion of such profit may be offset by distribution expenses not reimbursed by the surrender charge. In such circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, VALIC has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Separate Account and Contract owners. VALIC represents that it will maintain at its principal office, and make available on request to the Commission and its staff, a memorandum setting out the basis for such conclusion.

6. Moreover, VALIC represents that the Separate Account will invest only in an underlying mutual fund that undertakes, in the event it should adopt any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the 1940 Act.

7. Section 22(e) of the 1940 Act provides that "[n]o registered investment company shall suspend the right of redemption, or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption," except in certain prescribed circumstances. Section 27(c)(1) of the 1940 Act makes it unlawful "for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless such certificate is a redeemable security." Section 27(d) of the 1940 Act makes it unlawful "for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the certificate provides that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the certificate" and receive a specified amount.

8. Applicants request the exemptive relief from sections 22(e), 27(c)(1) and 27(d) of the 1940 Act to the extent necessary to permit compliance with the Florida ORP, as administered by the Retirement Division with respect to the Contracts.

9. The exemptive relief requested herein is consistent with Rule 6c–7 under the 1940 Act, which provides exemptions from sections 22(e), 27(c)(1) and 27(d) of the 1940 Act for registered separate accounts, and depositors of or underwriters for such separate accounts, to the extent necessary to permit compliance with certain restrictions on redemptions involving variable annuity contracts issued to certain employees participating in the Texas Optional Retirement Program ("Texas ORP").

10. The exemptive relief requested herein is also consistent with the position taken by the Commission staff in a letter to the American Council of Life Insurance ("ACLI") advising that the staff would not recommend enforcement action to the Commission if the registered separate accounts issuing variable annuity contracts as funding vehicles for retirement plans meeting the requirements of section 403(b) of the Code comply with the restrictions imposed by subsection (11) of that Section.

11. The Retirement Division's administration of the Florida ORP, and its requirement that annuity contracts specifically restrict certain rights of redemption, present a direct conflict with the 1940 Act's redemption provisions discussed above. The terms of the Contracts to be offered under the Florida ORP, as required by the Retirement Division, clearly permit payment of employer-contributed contract benefits only in the event of death, retirement, or termination of employment, and are substantially identical to the Texas ORP limitations.

12. The legislative purpose of the Florida ORP is similar to that of the statutes discussed above. In each case, the constraints on redeemability are designed to ensure that the annuity contract is used for the principal purpose of long-term retirement accumulation. Thus, without the exemptive relief requested, persons participating in the Florida ORP would be denied the opportunity to select the Contracts as a funding medium for their retirement benefits. Furthermore, the limited restrictions on redemption would be voluntarily assumed by Participants (*i.e.*, eligible Employees may elect not to participate in the Florida ORP), were not formulated or suggested by Applicants, and are reasonable in light of the benefits of participating in the Florida ORP. In addition, consistent with the precedents cited above, Participants are able to transfer their account values among the investment alternatives available under the Contracts (including the fixed alternative funded through the general account of VALIC) and to qualified contracts of other companies designated under the Florida ORP.

13. As explained above, the requested exemptive relief is substantially identical to that requested and obtained in connection with similar constraints on redeemability imposed by other governing authorities. Applicants submit that the relief requested herein raises no novel issues of law or fact.

14. Applicants will ensure that appropriate disclosure is made to Eligible Employees, informing them of the restrictions stated in the Florida ORP Contracts. Applicants represent that they will:

a. Include appropriate disclosure regarding the restrictions on redemption imposed by the Retirement Division in each registration statement, including the prospectus, relating to the Contracts issued in connection with the Florida ORP;

b. Include appropriate disclosure regarding the restrictions on redemption imposed by the Retirement Division in any sales literature used in connection with the offer of Contracts to Eligible Employees;

c. Instruct salespeople who solicit Eligible Employees to purchase the Contracts specifically to bring the restrictions on redemption imposed by the Retirement Division to the attention of the Eligible Employees;

d. Obtain from each Participant in the Florida ORP who purchases a Contract, prior to or at the time of such purchase, a signed statement acknowledging the Participant's understanding: (i) of the restrictions on redemption imposed by the Retirement Division, and (ii) that other investment alternatives are available under the Florida ORP, to which the Participant may elect to transfer his or her Contract values; and

e. Include in any registration statement filed in connection with the Contracts a representation that this exemptive application is being relied upon and that the provisions of paragraphs (a) through (d) above have been complied with.

Applicants' Conclusion

Applicants request exemptions, pursuant to section 6(c) of the 1940 Act, from (a) sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the assessment of the mortality and expense risk charges and (b) sections 22(e), 27(c)(1) and 27(d) to permit compliance with the Florida ORP as administered by the Retirement Division, with respect to the Contracts as discussed herein. Applicants submit, based on the grounds stated herein, that their exemptive request meets the standards set out in section 6(c) of the 1940 Act and that the Commission, therefore, should grant the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-14477 Filed 6-14-94; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06-0292]

Ford Capital, Ltd.; Surrender of License

Notice is hereby given that Ford Capital, Ltd. (Ford Capital), 200 Crescent Court, suite 1350, Dallas, TX 75201 has surrendered its License to operate as a small business investment company under the Small Business Act of 1958, as amended (Act). Ford Capital was licensed by the Small Business Administration on October 6, 1986.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the License was accepted on May 27, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 7, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94-14471 Filed 6-14-94; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 99000122]

First Commerce Capital, Inc.; Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by First Commerce Capital, Inc. at Suite 1027, 821 Gravier Street, New Commerce Capital, Inc. at Suite 1027, 821 Gravier Street, New Orleans, LA 70119, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated thereunder.

First Commerce Capital, Inc. will be managed by Mr. William J. Harper, President and CEO, and Mr. Paul F. Griffin, Senior Vice President, First Commerce Corporation, a Louisiana bank holding company, will own 100% of the common stock of First Commerce Capital, Inc. The officers and directors of First Commerce Capital, Inc. are:

Name	Title
Ian Arnof	Director.
Ashton J. Ryan	Director.

Name	Title
Joseph V. Wilson III ..	Director.
Michael A. Flick	Director.
William J. Harper	Director, President, and CEO.
Paul F. Griffin	Senior Vice President.
Michael P. Kirby	Vice President.
Elizabeth W. Storms .	Secretary.
Jane B. Truett	Treasurer.

All outside directors are officers of First Commerce Corporation.

The applicant will have Regulatory Capital of $5.0 million in the first year rising to $24.0 million in year five. It will be a source of debt and equity financing for qualified small business concerns throughout the United States concentrating primarily in states around the Gulf of Mexico.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in New Orleans, Louisiana.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment companies)

Dated: June 6, 1994.

[FR Doc. 94–14473 Filed 6–14–94; 8:45 am]

BILLING CODE 8025–01–M

[Application Number: 99000107]

Chesapeake Capital Lending Fund, L.P.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a limited partnership small business investment company (SBIC) under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661, *et seq.*) has been filed by Chesapeake Capital Lending Fund, L.P. ("Applicant"), 629 E. Main Street, suite 1200, Richmond, Virginia 23219, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1994).

The partners and their respective partnership interest in the Applicant are as follows:

Name and address	Title	Partnership interest (percent)
Several Unidentified Corporations and/or Individuals.	Limited Partners (no limited partner will have greater than 10% interests).	70
CCLF, L.C., 629 E. Main Street, Suite 1200, Richmond, VA 23219.	General Partner	30

The proposed members and officers of CCLF, L.C., a limited liability company, are as follows:

Name and address	Position	Percentage of ownership
Charles E. Coudriet, 10221 Navarre Court, Richmond, VA 23233.	Member, President and Chief Executive Officer.	50
Carter Kaplan & Company, L.P. 629 E. Main Street, Suite 1200, Richmond, VA 23219.	Member	50
Robert R. Kaplan, 3808 Old Gun Road, West, Midlothian, VA 23113.	Chairman	0
William P. Carter, 2902 Fincastle Court, Midlothian, VA 23113.	Secretary-Treasurer.	0

CKC Advisors, L.C. is proposed to be the Applicant's Investment Advisor. The proposed members and officers of CKC Advisors, L.C., also a limited liability company, are as follows:

Name and address	Position	Percentage of ownership
Charles E. Coudriet, 10221 Navarre Court, Richmond, VA 23233.	Member, President and Chief Executive Officer.	50
Carter Kaplan & Company, L.P. 629 E. Main Street, Suite 1200, Richmond, VA 23219.	Member	50
Robert R. Kaplan, 3808 Old Gun Road, West, Midlothian, VA 23113.	Chairman	0
William P. Carter, 2902 Fincastle Court, Midlothian, VA 23113.	Executive Vice President.	0

The Applicant proposes to begin operations with a capitalization of $10,000,000 and will be a source of long-term loan funds for qualified small business concerns.

The Applicant intends to conduct its business operations primarily in the States of Maryland, North Carolina, Virginia and the District of Columbia.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the Applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication shall be addressed to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of this notice will be published in a newspaper of general circulation in Richmond, Virginia.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 7, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–14472 Filed 6–14–94; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000093]

SBIC Partners, L.P.; Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by SBIC Partners, L.P., 201 Main Street, suite 2302, Fort Worth, Texas 76102, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et seq.*), and the Rules and Regulations promulgated thereunder. SBIC Partners, L.P. is a Texas limited partnership.

SBIC Partners, L.P. will have two general partners: Forrest Binkley & Brown Venture Co., the managing general partner, located at 201 Main Street, Fort Worth, Texas 76102; and FW–SBIC, Inc. located at 201 Main Street, Forth Worth, Texas 76102. The officers, directors, and owners of Forrest Binkley & Brown Venture Co. are:

Name	Title	Ownership (percent)
Gregory J. Forrest.	Co-President and Chairman.	33.3
Nicholas B. Binkley.	Co-President and Director.	33.3
Jeffrey J. Brown	Co-President, Secretary, and Director.	33.3

All these officers and directors have offices at 201 Main Street, Fort Worth, Texas 76102.

The officers, directors, and owners of FW–SBIC, Inc. are:

Name	Title	Ownership (percent)
William Hallman, Jr..	President and Director.	50
Peter Sterling ...	Chairman	50
W.R. Cotham ...	Vice President, Secretary, and Treasurer.	0

All these officers and directors have offices at 201 Main Street, Fort Worth, Texas 76102.

The following limited partners own or control 10 percent or more of the proposed SBIC's Regulatory Capital:

Name	Percentage of ownership
Michael Eisner, 500 South Buena Vista Street, Burbank, California 91521	27.2
Lee M. Bass, 201 Main Street, suite 3200, Fort Worth, Texas 76102	17.1
Alamo Partners, 201 Main Street, suite 3200, Fort Worth, Texas 76102	10.5

The following investor owns or controls 10 percent or more of the applicant's private capital: William Hallman, Jr., 201 Main Street, suite 3200, Fort Worth, Texas 76102.

The applicant has total committed capital of $30.0 million. It will be a source of debt and equity financings for qualified small business concerns, and will invest primarily in the states of Texas and California.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Fort Worth, Texas.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: June 8, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–14474 Filed 6–14–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Modesto City-County Airport (MOD) Modesto, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Noise Compatibility Program that was submitted by the City of Modesto for Modesto City-County Airport (MOD), Modesto, California, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150. This program was submitted subsequent to a determination by the FAA that associated Noise Exposure Maps submitted under 14 CFR part 150 for Modesto City-County Airport were in compliance with applicable requirements effective February 26, 1993. The proposed Noise Compatibility Program will be approved or disapproved on or before November 23, 1994.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the Noise Compatibility Program is May 27, 1994. The public comment period ends July 26, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph B. Rodriguez, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303, Telephone: (415) 876–2805. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for Modesto City-County Airport which will be approved or disapproved on or before November 23, 1994. This notice also announces the availability of this program for public review and comment.

An airport who has submitted Noise Exposure Maps are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a Noise Compatibility Program for the FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the Noise Compatibility Program for Modesto City-County Airport, effective on May 27, 1994. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under

Section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 23, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 615, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, 15000 Aviation Boulevard, room 3012, Hawthorne, California, Mail: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009

Mr. Howard L. Cook, AAE/CAE, Airport Manager, Modesto City-County Airport, 617 Airport Way, Modesto, California 95354–3916.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on May 27, 1994.

Herman C. Bliss,

Manager, Airport Division, Western-Pacific Region.

[FR Doc. 94–14577 Filed 6–14–94; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 93–48; Notice 3]

Cosco, Inc.; Appeal of Denial of Petition for Determination of Inconsequential Noncompliance

Cosco, Inc. (Cosco), of Columbus, Indiana, has appealed a decision by the National Highway Traffic Safety Administration (NHTSA) that denied Cosco's petition that its noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," be deemed inconsequential as it relates to motor vehicle safety (Docket No. 93–48, Notice 2; 59 FR 14443; March 28, 1994).

This notice of receipt of Cosco's appeal is published in accordance with NHTSA regulations (49 CFR 556.7 and 556.8) and does not represent any agency decision or other exercise of judgment concerning the merits of the appeal.

Paragraph S5.7 of FMVSS No. 213 states that "[e]ach material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 ["Flammability of Interior Materials"] (571.302)." Paragraph S4.3(a) of FMVSS No. 302 states that "[w]hen tested in accordance with S5, material described in S4.1 "[W]hen tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute."

Cosco determined that some of its child safety seats failed to comply with FMVSS No. 213, and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Cosco petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (Act) (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published in the **Federal Register** on July 7, 1993 (58 FR 36510). On March 28, 1994, NHTSA published a notice in the **Federal Register** denying Cosco's petition, stating that the petitioner had not met its burden of persuasion that the noncompliance is inconsequential as it relates to motor vehicle safety. The reader is referred to these notices for a further discussion of the noncompliance and the agency's rationale in denying the petition.

In Cosco's original petition and part 573 report, it stated that it produced 133,897 child restraint seats with shoulder harness straps that do not comply with the flammability requirements of FMVSS No. 213. In its appeal it states that, due to an error in its data processing system, this number was incorrect. The correct number of seats covered by the noncompliance determination is 23,449.

In its appeal, Cosco contends that it is extremely unlikely that straps of its child restraints would ignite independently of an interior fire that was already in progress from another source. It argues that NHTSA based its denial of the petition on hypothetical situations rather than confirmed reports of child restraint fires.

Interested persons are invited to submit written data, views, and arguments on the appeal of Cosco, described above. Comments should refer to the docket and notice number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. All comments received after the closing date will also be filed and will be considered to the extent feasible. When the appeal is granted or denied, notice will be published in the **Federal Register**.

Comment closing date: July 15, 1994.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50.

Issued on: June 9, 1994

Barry Felrice,

Associate Administrator for Rulemaking

[FR Doc. 94–14521 Filed 6–14–94; 8:45 am]

BILLING CODE 4910–59–M

Corrections

Federal Register
Vol. 59, No. 114
Wednesday, June 15, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-4210-05; N-57882]

Notice of Realty Action; Lease/ Purchase for Recreation

Correction

In notice document 94-4687 appearing on page 9963, in the issue of Wednesday, March 2, 1994, make the following correction:

In the first column, in the land description, in Sec. 26, the second line should read "N½SE¼NE¼NW¼,".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1306

Prescriptions—Transmission by Facsimile

Correction

In rule document 94-12173 beginning on page 26109 in the issue of Thursday, May 19, 1994 make the following corrections:

§ 1306.11 [Corrected]

1. On page 26111, in the third column, in § 1306.11, paragraph (a), in the third line, insert "a" after "is".

2. On page 26112, in the first column, in the same section, in paragraph (f), in the second line, "§ 1304.05" should read "1306.05".

§ 1306.31 [Corrected]

3. On page 26112, in the second column, in § 1306.31, paragraph (c), in the fifth line from the bottom, insert "individual" before "practitioner".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-94-018]

Special Local Regulations for Marine Events; Norfolk Haborfest 1994; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

Correction

In rule document 94-11982 appearing on page 26120, in the issue of Thursday, May 19, 1994, the docket number should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 Part 71

[Airspace Docket No. 93-AWP-21]

Modification of Class D Airspace; Mojave, CA

Correction

In rule document 94-6101 beginning on page 12159 in the issue of March 16, 1994, make the following correction:

§ 71.1 [Corrected]

On page 12160, in the second column § 71.1, *paragraph 5000*, under **AWP CA D Mojave, California [Revised]**, in the second line, "(lat. 35°03'30" N, long. 118°90'03"W)" should read "(lat. 35°03'30" N, long. 118°09'03"W)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94-ASO-11]

Proposed Amendment of Class E Airspace; Nashville, TN

Correction

In proposed rule document 94-13446 beginning on page 28498 in the issue of Thursday, June 2, 1994 make the following correcttions:

§ 71.1 [Corrected]

On page 28499, in the third column, in § 71.1, *paragraph 6005*, in the last paragraph, in the second line "minute" should read "mile" and in the fourth line "90" should read "9".

BILLING CODE 1505-01-D

Federal Register

Wednesday
June 15, 1994

Part II

Department of Labor

Office of Labor-Management Standards

29 CFR Part 452

Eligibility Requirements for Candidacy for Union Office; Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 452

RIN 1294–AA09

Eligibility Requirements for Candidacy for Union Office

AGENCY: Office of Labor-Management Standards, Labor.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Office of Labor-Management Standards is requesting comments from the public on how its interpretative regulations on labor organization officer elections should be modified. The regulations may need to be modified in order to accommodate a decision of the Court of Appeals for the District of Columbia Circuit regarding the reasonableness of meeting attendance requirements set by labor organizations for eligibility for union office.

DATES: Interested parties may submit comments on or before August 15, 1994.

ADDRESSES: Written comments should be submitted to Edmundo A. Gonzales, Deputy Assistant Secretary for Labor-Management Standards, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, D.C. 20210, (202) 219–7373. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), sets forth standards and requirements for the election of labor organization officers. Section 401(e), 29 U.S.C. 481(e), provides in part that every member in good standing has the right to be a candidate subject "to reasonable qualifications uniformly imposed."

The Department is responsible for enforcing LMRDA title IV. After receipt of a timely complaint from a member and a finding that a violation may have affected the outcome of an officer election, the Secretary brings civil action in U.S. district court where the union is located seeking a new election supervised by the Secretary.

The Department does not have formal rulemaking authority to set standards and requirements regarding LMRDA title IV. However, the Department has issued interpretative regulations, 29 CFR part 452, in order to provide the public with information as to the Secretary's "construction of the law which will guide him in performing his [enforcement] duties." 29 CFR 452.1.

Two provisions in the Department's interpretative regulations regarding LMRDA title IV discuss in general terms the issue of reasonable candidate qualifications, and one provision deals specifically with meeting attendance requirements. The first general provision on candidate qualifications, 29 CFR 452.35, provides that although labor organizations may have a legitimate interest in setting minimum standards for office-holding, a basic principle of the free and democratic elections which the LMRDA is intended to ensure is that members will exercise good judgment and common sense in voting for officers. Consequently, qualifications for candidacy must be closely scrutinized to determine that they serve union purposes of such importance, in terms of protecting the union as an institution, as to justify subordinating the right of the individual member to seek office and the interest of the membership in a free, democratic choice of leaders.

The second general provision dealing with reasonable candidate qualifications is 29 CFR 452.36. Section 452.36(a) states that although the question of whether a qualification is reasonable is not subject to precise definition and will ordinarily depend on the facts of each case, court decisions furnish some general guidelines. In particular, § 452.36(a) cites *Wirtz v. Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492 (1968), in which the Supreme Court stated that the term "'reasonable qualifications uniformly imposed' should not be given a broad reach," *Id.*, at 499, and "Congress' model of democratic elections was political elections in this country." *Id.*, at 502. Consequently, § 452.36(a) states that

> [U]nion qualifications for office should not be based on assumptions that certain experience or qualifications are necessary * * * and a qualification may not be required without a showing that citizens assumed to make discriminating judgments in public elections cannot be relied on to make such judgments when voting as union members.

29 CFR 452.36(b) goes on to enumerate five factors to be considered in determining whether a qualification for candidacy is reasonable: (1) The relationship of the qualification to the union's legitimate needs and interests; (2) the relationship of the qualification to the demands of the union office; (3) the impact of the qualification in reducing the number of eligible members in light of the LMRDA's purpose in fostering membership participation in union affairs; (4) the appropriateness of the qualification in view of requirements prescribed by other unions; and (5) the difficulty in meeting the qualification.

In addition to the general discussions of candidate qualifications in 29 CFR 452.35 and § 452.36, 29 CFR 452.38 deals specifically with meeting attendance requirements. This provision states that it may be reasonable to require attendance at a certain number of meetings immediately preceding an officer election in order to insure that candidates have an interest in and familiarity with the union's affairs, and that the reasonableness of a meeting attendance requirement must be gauged in light of all the circumstances of the particular case, including not only the frequency of meetings, the number of meetings which must be attended and the period of time over which the requirement extends, but also such factors as the nature, availability and extent of excuse provisions, whether all or most members have the opportunity to attend meetings, and the impact of the rule, i.e., the number or percentage of members who would be rendered ineligible by its application.

Sections 452.38(a–1) and 452.38(b) cite a number of specific court decisions which provide guidance on the type of meeting attendance requirements that would be held unreasonable. § 452.38(a–1) discusses the Supreme Court decision in *Steelworkers, Local 3489 v. Usery*, 429 U.S. 305 (1977). The Court held that a candidate qualification requiring attendance at half the meetings for three years preceding the election which made 96.5% of the members ineligible was unreasonable. The Court also stated that the standard set forth in § 452.38(a) for determining the reasonableness of meeting attendance eligibility requirements is the type of flexible rule which Congress contemplated in using the word "reasonable" in LMRDA § 401(e).

Finally, § 452.38(b) cites four court decisions which held the meeting attendance requirement at issue unreasonable because of several of the factors cited in the standard established in § 452.38(a). One candidate qualification required attendance at one meeting each quarter for three years prior to the election and disqualified 99% of the membership. Another candidate qualification required attendance at 75% of the meetings for two years before the election, had a very limited excuse provision, and disqualified 97% of the members. A third candidate qualification required attendance at all of the eight meetings between the nomination and the election, which were held at widely scattered locations in the state. The final candidate qualification discussed in § 452.38(b) required attendance at six meetings per year for two years before the election, which would require that a member decide to be a candidate at least 18 months before the election.

In summary, §§ 452.35 and 452.36 discuss the basic issues involved in reviewing all types of qualifications for candidacy for union office, and § 452.36 in particular lists five factors to be considered in making determinations. Section 452.38 deals specifically with meeting attendance requirements. It states at the outset that this type of qualification may serve legitimate union purposes. It then sets forth a flexible standard, which elaborates upon the factors established in § 452.36, for determining whether a meeting attendance requirement is unreasonable: (1) The terms of the requirement itself, i.e., whether it requires a member to decide to meet the qualification in order to be a candidate an excessively long period in advance of the election, (2) the difficulty of meeting the requirement, i.e., the opportunity to attend meetings held at times and places that are not excessively inconvenient and the availability of excuse provisions, and (3) the impact of the requirement.

These regulations may need to be revised as a result of the ruling of the United States Court of Appeals for the District of Columbia Circuit in *Doyle v. Brock*, 821 F.2d 778 (D.C. Cir. 1987). *Doyle* deals with a case in which the Secretary, after investigating a complaint filed by a member regarding his union's meeting attendance requirement, decided not to bring civil action against the union even though the requirement (half the meetings during the year prior to the election) disqualified 97% of the members. The Secretary's position, relying on the "all the circumstances" language set forth in 29 CFR 452.38, was that since the requirement was not on its face unreasonable (i.e., it did not require a member to decide to become a candidate an excessively long period before the election) and it was not difficult to meet (i.e., the meetings were held at convenient times and locations and the union provided liberal excuse provisions), the large impact of the requirement was not by itself sufficient to render it unreasonable.

The member then filed suit against the Secretary in the U.S. District Court for the District of Columbia, in accordance with the Supreme Court's decision in *Dunlop v. Bachowski*, 421 U.S. 560 (1975). (In *Bachowski*, the Court held that judicial review of the Secretary's decision not to bring litigation in LMRDA title IV cases is available under the Administrative Procedure Act.) The district court held that the Secretary's decision not to bring litigation against the union was arbitrary and capricious, *Doyle v. Brock*, 641 F. Supp. 223 and 632 F. Supp. 256 (D.D.C. 1986).

The court of appeals in *Doyle* affirmed the district court's decision. It rejected the Secretary's position summarized above, emphasizing the importance of the impact of the requirement in this case in disqualifying 97% of the membership.

There is no basis, in [the Supreme Court's decision in *Steelworkers, Local 3489*] or in any other case, for the notion that an attendance requirement that has a large antidemocratic effect can be reasonable on its face, and that some additional factor is necessary to find the requirement violative of the LMRDA. *Id.*, at 785.

The court of appeals also rejected the Secretary's reliance on the fact that the Supreme Court in *Steelworkers, Local 3489* (where 96.5% of the membership was disqualified by the requirement to attend half of the meetings in the preceding three years) did not adopt a per se rule based on impact, but in fact cited with approval the flexible standard set forth in 29 CFR § 452.38. The court stated that

> [I]t is true that *Steelworkers* did not adopt a *per se* effects test. Nonetheless, it came "close to doing so. The fact that 96.5% of Local 3489's members chose not to comply with its rule was given controlling weight." [Quoting from the dissenting opinion in *Steelworkers, Local 3489*; citations omitted.] Thus, although one must read *Steelworkers* as holding that attendance requirements are to be subjected to a case-by-case analysis, the analysis is limited to determining only if "the anti-democratic *effects* of the meeting-attendance rule outweigh the *interests* urged in its support." [Quoting from *Steelworkers, Local 3489*; citations omitted.] * * * In fact, it appears that the "all the circumstances" language is included to help assess the reasonableness of a requirement in which the antidemocratic effect is not as dramatic as the one in *Steelworkers* or the instant case. *Id.*, at 785.

The court of appeals, again citing the Supreme Court decision in *Steelworkers, Local 3489*, also rejected "the argument that the reasonableness of a requirement is to be judged by the burdensomeness of compliance." *Id.*, at 784. Candidacy qualifications must be judged by their effect on free and democratic elections.

The court of appeals further stated that only a demonstration that a rule serves important union interests can justify a candidate qualification having a large antidemocratic effect. The union's interest cited in *Doyle* (encouraging participation in union affairs by potential candidates) has not been served by the meeting attendance requirement, and the existence of liberal excuse provisions "severely *undercuts* both the legitimacy of the claim and the effectiveness of the provision in achieving its alleged objective." *Id.*, at 786.

In summary, the court emphasized the importance of the impact of meeting attendance requirements, especially where the number of members excluded results in a "large" antidemocratic effect. The court's discussion also raised questions about the relevance of other factors such as the availability of excuse provisions and the difficulty of complying with meeting attendance requirements.

After the *Doyle* decision was issued, the union did not apply the meeting attendance requirement in the next (1987) regularly scheduled election, and it subsequently eliminated the requirement. Nonetheless, the interpretative regulations may need to be modified in order to be consistent with the court's holdings in *Doyle*. The provision of the regulations which is most directly affected by *Doyle* is 29 CFR 452.38. In addition, *Doyle* and its construction of *Steelworkers, Local 3489* may have implications for 29 CFR 452.35 and 452.36, which deal generally with candidate qualifications and the factors to be considered in determining whether they are reasonable.

II. Request for Comments

There are several general ways in which the regulations can be modified in light of *Doyle*. The option which would require the greatest change in the regulations is to hold that meeting attendance requirements are per se unreasonable. The basis for this position would be that this type of qualification does not serve union interests of such importance to justify limiting the rights of members to be candidates and vote for candidates of their choice, and/or that this type of qualification often excludes large numbers of members.

This option provides the simplest resolution (in that case-by case determinations would not be necessary), results in no uncertainty (in that unions

and members would know in advance that the Department will challenge all meeting attendance requirements), and is most consistent with the free and open elections which the LMRDA is intended to foster; it would also eliminate any perceived advantage of incumbent officers who attend meetings as part of their duties. A disadvantage of this option is that adopting a flat prohibition in place of the current case-by-case approach may be too broad a reading of *Doyle*, and would eliminate a rule which may provide some benefits to unions and their members.

The option which would require the least change in the regulations would retain language to the effect that the reasonableness of a meeting attendance requirement is determined by reviewing a number of factors on a case-by-case basis, and add a statement to the effect that there is an inverse relationship between the portion of the membership that is disqualified by the requirement and the probability that the requirement will be considered reasonable. That is, the greater the portion of the membership that is disqualified by a meeting attendance requirement, the less likely the union will be able to justify the requirement.

The advantages of this option are that it is intended to closely follow the court decisions in *Doyle* and it retains the case-by-case approach approved by the Supreme Court in *Steelworkers, Local 3489*. A disadvantage is that it provides little guidance to labor organizations and members as to whether a particular rule will be considered unreasonable. (In this connection, however, it should be noted that the Supreme Court in *Steelworkers, Local 3489* recognized that a flexible rule, which "Congress clearly contemplated" in using the word "reasonable," leads to uncertainty. The Court also stated that the "contention that [one would have] no way of knowing that a rule disqualifying 90% of a local's members from office would be regarded as unreasonable in the absence of substantial justification is unpersuasive." 429 U.S. 305, at 313–4 (1977).)

A third option, actually a combination of the first two, would be to generally retain the case-by-case analysis of multiple factors, but add a statement to the effect that once the portion of the disqualified membership reaches a certain percentage (such as 50%, 75%, or 90%), the meeting attendance rule will be considered unreasonable per se. The advantages of this approach are that it retains the case-by-case approach as in the second option but provides more guidance. The disadvantage is that any particular number which is chosen would be somewhat arbitrary.

Specific comments are requested on the merits of each of these three options for revising § 452.38, as well as suggestions for other options. Most helpful would be comments, especially by those unions which have meeting attendance requirements, providing detailed information and data on

—The nature and importance of the union interests which are claimed to be served by meeting attendance requirements,

—Whether (and if so, how) those interests have in fact been served by the requirements,

—The impact of those requirements on the percentage of members disqualified from candidacy, especially with regard to non-incumbents, and

—With regard to the third option, what the appropriate threshold percentage of disqualified members should be for the qualification to be considered unreasonable.

Comments are also specifically requested on whether changes are necessary and/or appropriate to make §§ 452.35 and 452.36 consistent with *Doyle*, particularly in connection with the references in those provisions to factors to be considered in assessing the reasonableness of a qualification for candidacy such as

—The impact of candidate qualifications,

—The difficulty in meeting a candidate qualification, and

—The candidate requirements of other unions.

Finally, suggestions are requested for the specific language of revised § 452.38 and, if appropriate, §§ 452.35 and 452.36.

III. Administrative Notices

A. Executive Order 12866

The Department of Labor has determined that this rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 in that it will not (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act

The Agency Head has certified that any revision to the regulations considered in this rulemaking process will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. Any regulatory revision will only apply to labor organizations, and the Department has determined that labor organizations regulated pursuant to the statutory authority granted under the LMRDA do not constitute small entities. Therefore, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

This rule contains no information collection requirements for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects Affected in 29 CFR Part 452

Labor unions.

Signed in Washington, DC, this 9th day of June 1994.

Martin Manley,

Assistant Secretary for the American Workplace.

[FR Doc. 94–14542 Filed 6–14–94; 8:45 am]

BILLING CODE 4510–86–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tunica-Biloxi Indian Tribe of Louisiana Liquor Control Code

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. § 1161. I certify that Resolution No. 05–94, A Resolution to Enact the Tunica-Biloxi Liquor Control Code was duly adopted by the Tunica-Biloxi Indian Tribe of Louisiana on March 6, 1994. The Ordinance provides for the regulation of the activities of the manufacture, distribution, sale, and consumption of liquor within the exterior boundaries of the Tunica-Biloxi Reservation under the jurisdiction of the Tunica-Biloxi Indian Tribe of Louisiana.

DATES: This Ordinance is effective as of June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street N.W., MS 2611–MIB, Washington, D.C. 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Tunica Biloxi Liquor Control Code of the Tunica-Biloxi Indian Tribe of Louisiana, Resolution No. 05–94, is to read as follows:

Tunica-Biloxi Liquor Control Ordinance

Article 1. The Tunica-Biloxi Tribe and the State of Louisiana possess concurrent power and jurisdiction to control alcoholic beverages within the Tunica-Biloxi Reservation.

Article 2. All persons, entities, or corporations who desire to sell alcoholic beverages within the exterior boundaries of the Tunica-Biloxi Reservation must first secure a license to sell alcoholic beverages from the State of Louisiana before making application to the Tribe for the sale of alcoholic beverages.

Article 3. The sale of intoxicating liquor or alcoholic beverages within the gaming facility on [of] the Tunica-Biloxi Tribe, or within such ancillary facilities for the service of food or beverages as are located in the same or adjoining buildings as the gaming facility shall be subject to the provisions of the Indian Gaming Regulatory Act and the Compact between the Tunica-Biloxi Tribe and the State of Louisiana.

Article 4.

A. An application to sell alcoholic beverages within the exterior boundaries of the Tunica-Biloxi Reservation shall be submitted to the Tunica-Biloxi Tax Commission, in triplicate, and shall consist of the following:

(1) A valid license from the state;

(2) the applicant's full name, address, telephone number and social security number;

(3) a fee of five hundred dollars;

(4) location of premises where the sale of alcoholic beverages is to take place;

(5) types of alcoholic beverages to be sold.

B. The Tax Commission shall consider and decide whether to grant or deny a license. The applicant has the right to request a hearing before the Tax Commission. Upon an unfavorable determination by the Tax Commission, the applicant may appeal for a rehearing. The applicant shall notify the Commission of his intention to appeal within 30 days of the Commission's initial determination.

Article 5. The license to purchase alcoholic beverages shall be publicly exhibited on the premises where the alcoholic beverages are to be sold.

Article 6. Failure to abide by any tribal or state law shall be punished by revocation of the license, and where appropriate, exclusion from the Reservation. Appeal from any action taken to suspend or revoke a license shall be as in Article 4(B).

Article 7. The duration of each license shall be one year, beginning on January 1st. Applications shall be filed with the Tax Commission on or before November 15th.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–14514 Filed 6–14–94; 8:45 am]

BILLING CODE 4310–02–P

Federal Register

Wednesday
June 15, 1994

Part IV

Department of Education

Training in Early Childhood Education and Violence Counseling, Grants Availability; Notices

DEPARTMENT OF EDUCATION

Training in Early Childhood Education and Violence Counseling

AGENCY: Department of Education.

ACTION: Notice of Final Priorities for Fiscal Year 1994.

SUMMARY: The Secretary announces final priorities for the Training in Early Childhood Education and Violence Counseling program to ensure effective use of program funds and to direct funds to areas of identified need during fiscal year 1994. The notice includes an absolute priority, two invitational priorities, and a competitive preference. The absolute priority would ensure that trainees would be prepared for work in economically disadvantaged areas. The invitational priorities express the Secretary's particular interest in funding projects that target Federal financial resources on several categories of disadvantaged students who are seeking careers in early childhood development or violence counseling, and increase the likelihood that the disadvantaged students would be retained in the training program. The competitive preference would increase the likelihood that applicants address the critical need for individuals trained to provide counseling to young children who have been affected by violence and to adults who work with these young children.

EFFECTIVE DATE: These priorities take effect 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Alexander, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 4400, Portals Building, Washington D.C., 20202–2641. Telephone: (202) 260–0994. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Training in Early Childhood Education and Violence Counseling program provides assistance to institutions of higher education to establish innovative programs to recruit and train students for careers in early childhood development and care, or preschool programs; or providing counseling to young children from birth to 5 years of age who have been affected by violence and to adults who work with these children. The statute gives priority in granting funds to institutions that prepare students for work in economically disadvantaged areas; plan to focus their recruitment, retention, and training efforts on disadvantaged students; and have demonstrated effectiveness in providing the type of training for which the institution seeks assistance.

On February 10, 1994, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (59 FR 6249).

The purpose of these priorities is to advance the National Education Goals by improving early childhood education and child care services in disadvantaged areas, providing training opportunities to adults in order that they may possess the skills necessary to compete in a global economy, and enhancing the ability of educators and others to help young children and their families cope with violence.

Analysis of Comments and Questions

In response to the Secretary's invitation in the notice of proposed priorities, 11 parties submitted comments. An analysis of the comments and of the changes in the proposed priorities follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: Nine commenters indicated that the proposed absolute priority, which would have required that the training program result in a two-year certificate or degree, would be unduly restrictive.

Discussion: The proposed priority was not intended to limit the kind of training grantees could provide only to courses of study resulting in a two-year certificate or degree. It was intended to permit institutions of higher education to provide a range of training opportunities—including a Child Development Associate certificate, Head Start's training certificate, and masters' and doctoral degrees as part of an articulated system or continuum of training so long as one of the credentials offered for the career ladder was a two-year degree or certificate. The Secretary believes that the inclusion of shorter term entry level training, as one of the components of a training continuum can lead to fulfilling jobs and meaningful career and higher education opportunities for many individuals. Two-year degrees or certificates are often offered by institutions of higher education either directly or indirectly through partnerships with community colleges or other training sources.

Changes: In response to the concern about requiring a course of study leading to a two-year degree or certificate, the Secretary has changed the absolute priority to an invitational priority. The phrase "either directly or through a partnership with a community college or other training source," has been added after institution of higher education (IHE) and the word "primary" modifying "component" has been deleted.

Comment: Five commenters believed the proposed absolute priority defining several groups of disadvantaged individuals to be targeted for training to be overly prescriptive. One commenter objected to giving priority to welfare recipients and not to other poverty-level individuals who are not welfare recipients.

Discussion: The Act itself requires projects to target services on disadvantaged students. The intent of the proposed priority was to further clarify the term "disadvantaged" in order to develop successful training models for these populations, not to exclude students who are not disadvantaged from participation in the training program.

Changes: In response to the concern about requiring projects to target recruitment and training primarily on certain categories of disadvantaged individuals, the Secretary has eliminated the word "primarily" and changed the priority from absolute to invitational. The invitational priority expresses the Secretary's interest in funding projects that target recruitment and training on individuals living in poverty and graduating high school students who have been eligible for free or reduced price lunch.

Comment: Three commenters recommended deletion of the proposed absolute priority requiring students to engage in field experience in communities where there is highly concentrated poverty, a high incidence of violence, or both, as either unnecessary or, in combination with the other two proposed absolute priorities, unduly restrictive.

Discussion: The Secretary considers field experience to be an essential component of a successful training program—not just to increase employability and the likelihood that students will return to disadvantaged areas for employment, but also to improve student retention during the training experience.

Changes: None.

Comment: Four commenters said that giving competitive preference for applicants whose proposed projects include training and field experience in

violence counseling gives the impression that training in violence counseling is merely an "add-on" component.

Discussion: On the contrary, it is the intention of the competitive preference to emphasize training in violence counseling and ensure that projects funded under the program address issues of violence as a core part of the program and not as an optional "add-on." Under the statute, training may be in "early childhood development and care, or preschool programs; or providing counseling to young children from birth to 6 years of age who have been affected by violence and to adults who work with such children." Thus, applicants have the option of addressing either one or both components. The Secretary recognizes the importance of meaningful training for all early childhood professionals to assist them in helping children, their parents, and other caregivers who have been victims of violence or who live in violent environments.

Changes: None.

Absolute Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to and will fund only those applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Background: Under this absolute priority, all individuals served by the proposed project must receive substantial field experience in early childhood development and care, preschool education, or violence counseling.

Research in adult learning emphasizes the need to link training to practical issues in participants' lives—often through the use of concurrent hands-on practice. This is especially important for trainees who will be working in disadvantaged areas. Coursework alone is insufficient to prepare trainees for work in the childcare field; the curriculum should relate closely to real-world issues and include practical experience. Students need experience working with children in appropriate high-quality settings where they can observe other teachers and practice what they have learned through coursework.

Training programs in early childhood education and violence counseling that include concurrent classroom training and field experience components are not only more likely to retain students, but may result in higher employability following the training and increase the likelihood that students will return to disadvantaged areas for employment.

Priority

All individuals served by the proposed project must receive substantial field experience in early childhood development and care, preschool education, or violence counseling. The field experience must be in communities where there is highly concentrated poverty, a high incidence of violence, or both.

Competitive Preference

Under 34 CFR 75.105(c)(2)(i) the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards 10 points to an application that meets this priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program.

Background: Each day in American communities, children are witnesses to violent acts or are victims of abuse or personal assault. Recent studies report high percentages of young children witnessing shootings and stabbings at home and on the street. Other studies show an alarming increase in the numbers of pediatric firearm deaths and injuries.

Some experts describe the impact of violence on many children as "post-traumatic stress disorder." Research has found that chronic exposure to violence can have serious developmental consequences for children, including psychological disorders, grief and loss reactions, impaired intellectual development and school problems, truncated moral development, pathological adaptation to violence, and identification with the aggressor. Furthermore, research demonstrates that the younger the child, the greater the threat of exposure to violence is to healthy development.

Most teachers and childcare providers have not been trained to help children cope with the effects of violence. Given the national epidemic of violence, there is a responsibility to enhance the ability of educators to help young children and their families cope with violence and promote their resilience. There is also a need to train additional service providers to address the developmental impact of exposure to violence on young children and to support families in their efforts to protect their children's physical and emotional well-being. The purpose of this competitive preference is to provide a strong incentive for all applicants to include a course of study in violence counseling in their proposed projects.

Priority

Competitive preference will be given to applicants whose proposed project includes training and field experience leading to a degree or certificate in violence counseling for some or all of the participants.

Invitational Priority 1—Focusing Training and Recruitment on Certain Categories of Disadvantaged Students

Background: There is a growing need for well-qualified early childhood educators and childcare providers, especially by parents who are on public assistance and seeking employment. Studies demonstrate that more than 11 million children are involved in early care and education outside their homes, including approximately 60 percent of children in families with incomes of $10,000 or less. The quality of the services these children receive will depend on the knowledge and skills of the people who care for and teach them.

The statute requires grantees to focus their recruitment, retention, and training efforts on disadvantaged individuals. Under this invitational priority, the Secretary encourages each IHE to include in its application a plan for targeting its recruitment, retention, and training efforts, at least in part, toward one or more of the following categories—(1) Individuals who are living in poverty; (2) graduating high school seniors who are eligible for free or reduced priced lunch; (3) individuals who lack a postsecondary degree and are currently working in a Chapter 1 Head Start or Even Start program or other Federal, State, or local program primarily serving disadvantaged young children; or (4) individuals who lack a postsecondary degree and are parents of children participating in Chapter 1 Head Start or Even Start programs or another Federal, State, or local programs primarily serving disadvantaged young children.

Invitational Priority

The Secretary is especially interested in funding applicants that include a plan demonstrating that their recruitment, retention and training efforts will be targeted, at least in part, toward one or more of the following categories:

(1) Individuals living in poverty.

(2) Graduating high school seniors who are eligible for free or reduced priced lunch.

(3) Individuals who lack a postsecondary degree and are currently working in a Chapter 1 Head Start or

Even Start program or other Federal, State, or local programs primarily serving disadvantaged young children.

(4) Individuals who lack a postsecondary degree and are parents of children participating in Chapter 1 Head Start or Even Start programs or another Federal, State, or local program primarily serving disadvantaged young children.

Invitational Priority 2—Training Programs Resulting in a Two-Year Certificate or Degree

Background: The typical lead teacher in non-school sponsored early childhood classrooms has completed high school and has had some postsecondary education. In Head Start, for example, one study found that 56.5 percent of lead teachers had a high school diploma, or equivalent, or a Child Development Associate (CDA) certificate (Observational Study of Early Childhood Programs), but had not completed a formal education program at the postsecondary level. The same study showed that 63.2 percent of the teaching assistants or aides in school-sponsored preschool programs had not completed any formal education beyond high school and most lacked specific training in early childhood education.

Childcare workers have one of the highest turnover rates of all occupations. During the past decade, staff turnover in child care centers nearly tripled. Some of the reasons often cited for this high turnover rate are low pay, lack of benefits, stressful working conditions, and lack of training in critical job safety skills, and child development knowledge. Under this invitational priority, the Secretary encourages each IHE to include in its application plans for a curriculum that would include a course of study leading to a two-year certificate or degree in early childhood development and care, preschool education, or violence counseling.

Earning a two-year degree can enhance the career opportunities and improve the retention for individuals working in programs serving low-income children. At the same time, institutions that offer a two-year degree, either directly or through a partnership with a community college, can attract and retain low-income individuals for whom a four-year degree may initially seem out of reach.

Invitational Priority

In addition to funding applications that include training leading to four-year and graduate degrees, the Secretary is especially interested in funding applications that include as one component of the proposed project a course of study leading to a two-year certificate or degree in early childhood development and care, preschool education, or violence counseling. The course of study could be offered either directly by the applicant institution, or through a partnership with a community college or other educational agency or training source.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide notification of the Department's specific plans and actions for this program.

(Catalog of Federal Domestic Assistance Number 84.266, Early Childhood Education and Violence Counseling Program.)

Dated: June 7, 1994.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 94–14484 Filed 6–14–94; 8:45 am]

BILLING CODE 4000–01–P

CFDA No: 84.266

Training in Early Childhood Education and Violence Counseling

AGENCY: Department of Education.

ACTION: Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To enable institutions of higher education to establish innovative programs to recruit and train students for careers in: (1) Early childhood development and care or preschool programs; or (2) providing counseling to young children from birth to six years of age who have been affected by violence and to adults who work with such young children.

Eligible Applicants: Institutions of higher education.

Deadline for Transmittal of Applications: July 27, 1994.

Deadline for Intergovernmental Review: September 25, 1994.

Available Funds: $9,040,000.

Range of Awards: Minimum $500,000; maximum $1,000,000 for each year of the project. Applicants must request awards within this range.

Estimated Average Size of Awards: $750,000.

Estimated Number of Awards: 12.

Note: This Department is not bound by any estimates in this notice.

Project Period: 3–5 years.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 82 (New Restrictions on Lobbying), Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), and Part 86 (Drug-Free Schools and Campuses).

Description of Program: Section 596 of the Higher Education Amendments of 1992 (Pub. L. 102–325) authorizes grants to institutions of higher education (IHEs) to enable them to establish innovative programs to recruit and train students for careers in one or both of the following:

(1) Early childhood development and care or preschool programs; or

(2) Providing counseling to young children from birth to six years of age who have been affected by violence and to adults who work with these children.

Applications: A grant may be made only to an IHE that submits an application to the Secretary. The application must—

(1) Describe the activities and services for which assistance is sought;

(2) Contain a comprehensive plan for the recruitment, retention, and training of students for careers in early childhood development or violence counseling;

(3) Demonstrate that the institution has the capacity to implement the plan; and

(4) Provide assurances that the plan was developed in consultation with agencies and organizations that will assist the institutions in carrying out the plan.

The comprehensive plan must include a description of—

(1) Specific strategies for reaching students at secondary schools, community colleges, undergraduate institutions, or other agencies and institutions from which students are to be drawn for participation in the program, including any partnerships with the institutions;

(2) Specific strategies for retaining students in the program such as summer sessions, internships, mentoring, or other activities;

(3) Methods that will be used to ensure that students trained pursuant to the plan will find employment in early childhood education, development and care, or violence counseling;

(4) The goals, objectives, and timelines to be used in assessing the success of the plan and the activities assisted under the grant award;

(5) The curriculum and training leading to the degree or credential that prepares students for the careers described in the plan;

(6) The special plan, if any, to ensure that students trained pursuant to the plan will be prepared for serving in economically disadvantaged areas; and

(7) Sources of financial aid to ensure that the training program is available to all qualified students.

Priorities

The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, apply to this competition.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for grants under this competition.

(2) The maximum score for all of these criterion is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

The regulations in 34 CFR 75.210 (a) and (c) provide that the Secretary may award up to 100 points for the selection criteria including distribution of an additional 15 points among the criteria in 34 CFR 75.210(b). For this competition the Secretary distributes the additional 15 points as follows: 5 points to selection criterion 34 CFR 75.210(b)(2) (Extent of need for the project) for a possible total of 25 points; 5 points to selection criterion 34 CFR 75.210(b)(3) (Plan of operation) for a possible total of 20 points); and 5 points to selection criterion 34 CFR 75.210(b)(6) (Evaluation) for a possible total of 10 points).

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of section 596 of the Higher Education Amendments of 1992, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (25 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the authorizing statute, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (7 points) (i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately Contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on May 3, 1994 (59 FR 22904–22905).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in the notice to the following address: The Secretary, E.O. 12372, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as for applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please Note That the Above Address Is Not the Same Address as the One to Which the Applicant Submits Its Completed Application. *Do Not Send Applications to the Above Address. Instructions for Transmittal of Applications:*

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA #84.266),
Washington, DC 20202–4725

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA # 84.266), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I—Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II—BUDGET INFORMATION—NON-CONSTRUCTION PROGRAMS (STANDARD FORM 424A) AND INSTRUCTIONS

PART III—Application Narrative

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Alexander, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 4400, Portals Building, Washington, D.C. 20202–6132. Telephone: (202) 260–0994. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: Public Law 102–325, Higher Education Amendments of 1992, section 596.

Dated: June 7, 1994.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

BILLING CODE 4000-01-P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 6 6
TITLE: Training in Early Childhood Education and Violence Counseling

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
U.S. Department of Education

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7 Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

INSTRUCTIONS FOR PART III APPLICATION NARRATIVE:

Before preparing the Application Narrative an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should--

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

'The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 double-spaced, typed (on one side only) pages, although the Secretary will consider applications of greater length. The Department has found that successful applications for similar programs generally meet this page limit.

INSTRUCTIONS FOR ESTIMATED PUBLIC REPORTING BURDEN

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project OMB control number 1810-0562, Washington, D.C. 20503.

(Information collection approved under OMB control number 1810-0562; Expiration date: 4/30/96).

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:
(attach Continuation Sheet(s) SF-LLL-A, if necessary)	
11. Amount of Payment *(check all that apply)*: $ _____ ☐ actual ☐ planned	13. Type of Payment *(check all that apply)*: ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*	
15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4000-01-C

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF–LLL–A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number, the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF–LLL–A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

BILLING CODE 4000–01–P

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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BILLING CODE 400-01-C

Important Notice to Prospective Participants in USDE Contract and Grant Programs

Grants

Applicants for grants from the U.S. Department of Education (USDE) have to compete for limited funds.

Deadlines assure all applicants that they will be treated fairly and equally, without last minute haste.

For these reasons, USDE must set strict deadlines for grant applications. Prospective applicants can avoid disappointment if they understand that—

Failure to meet a deadline will mean that an applicant will be rejected without any consideration whatever.

The rules, including the deadline, for applying for each grant are published, individually, in the **Federal Register.** A one-year subscription to the **Register** may be obtained by sending $340.000 to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20202–9371. (Send check or money order only, no cash or stamps.)

The instructions in the **Federal Register** must be followed exactly. Do not accept any other advice you may receive. No USDE employee is authorized to extend any deadline published in the **Register.**

Questions regarding submission of applications may be addressed to:

U.S. Department of Education, Application Control Center, Washington, DC 20202–4725

Contracts

Competitive procurement actions undertaken by the USDE are governed by the Federal Procurement Regulations and implementing ED Procurement Regulations.

Generally, prospective competitive procurement actions are synopsized in the Commerce Business Daily (CBD). Prospective offerors are therein advised of the nature of the procurement and where to apply for copies of the Request for Proposals (RFP).

Offerors are advised to be guided solely by the contents of the CBD synopsis and the instructions contained in the RFP. Questions regarding the submission of offers should be addressed to the Contracting Specialist identified on the face page of the RFP.

Offers are judged in competition with others, and failure to conform with any substantive requirements of the RFP will result in rejection of the offer without any consideration whatever.

Do not accept any advice you receive that is contrary to instructions contained in either the CBD synopsis or the RFP. No USDE employee is authorized to consider a proposal which is non-responsive to the RFP.

A subscription to the CBD is available for $208.00 per year via second class mailing or $261.00 per year via first class mailing. Information included in the Federal Acquisition Regulations is contained in Title 48, Code of Federal Regulations, Chapter 1 ($49.00). The forgoing publication may be obtained by sending your check or money order only, no cash or stamps, to:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9371.

In an effort to be certain this important information is widely disseminated, this notice is being included in all USDE mail to the public. You may, therefore, receive more than one notice. If you do, we apologize for any annoyance it may cause you.

[FR Doc. 94–14485 Filed 6–14–94; 8:45 am]

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Wednesday, June 15, 1994

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H.R. 3863/P.L. 103–265

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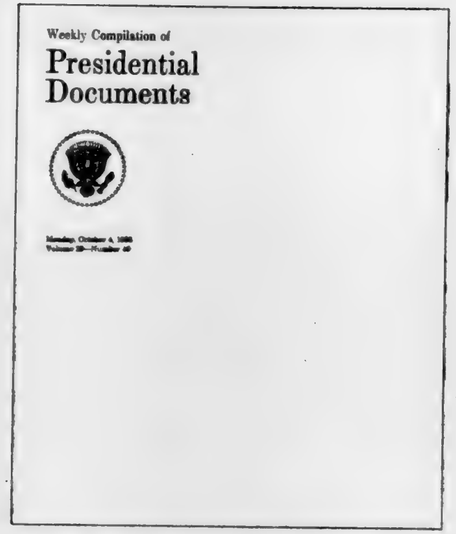
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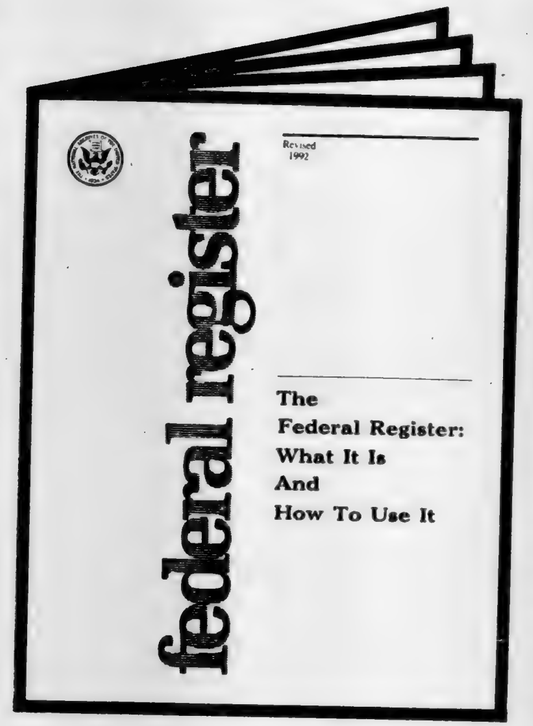
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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Rules and Regulations

Federal Register
Vol. 59, No. 115
Thursday, June 16, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Board is amending its practices and procedures to identify the evidence which an agency must provide to show compliance with an interim relief order and to provide for enforcement of interim relief in circumstances where the sanction of dismissing the agency's petition for review is ineffective. This amendment revises the Board's regulation to more precisely reflect the language of the Whistleblower Protection Act of 1989, 5 U.S.C. 7701(b)(2)(A).

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, (202) 653–7200.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 7701(k), the Board is authorized to prescribe regulations to carry out the purpose of 5 U.S.C. 7701(b)(2). An appellant who is the prevailing party in an initial decision under 5 U.S.C. 7701(b)(1) may be entitled to interim relief pending the outcome of any petition for review under 5 U.S.C. 7701(e). In *Ginocchi v. Department of the Treasury*, 53 M.S.P.R. 62, 68 n.4 (1992), the Board ruled that it would not entertain motions for compliance with an order of interim relief and that the appellant's remedy for an agency's failure to provide the ordered interim relief would be a motion to dismiss the agency's petition for review. However, this sanction is an ineffective means to obtain compliance in cases where the appellant or an intervenor petitions for review of a decision entitling the appellant to interim relief, such as a decision mitigating the penalty imposed by the agency. The new § 1201.115(c) implements the Board's determination that in such cases the appropriate enforcement mechanism is the Board's authority to order withholding of the salary of the agency official responsible for complying with the interim relief order.

Under § 1201.115(b)(1), a petition for review or cross petition for review by the agency must be accompanied by evidence that the agency has provided any interim relief ordered (or by the evidence relating to an "undue disruption" determination which is specified in § 1201.115(b)(2)). New § 1201.116(a) implements *Ginocchi, supra*, by providing that the appellant may request dismissal of the agency's petition for failure to provide the required interim relief (or the required alternative evidence). It clarifies that dismissal may be sought in either the appellant's response to the agency's petition or in a later motion to dismiss provided the latter is based on information not readily available before the time limit for responding to the agency's petition for review. New § 1201.116(b) provides for petitions for enforcement of interim relief when such relief is still due after issuance of the final decision (e.g., a final pay check or a lump sum payment of unused annual leave earned during the interim period) and the relief sought is not available through a petition for enforcement of the final decision because the appellant is not the prevailing party.

The Board is publishing this rule as a final rule pursuant to 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Government employees.

Accordingly, the Merit Systems Protection Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701 unless otherwise noted.

2. In § 1201.115, paragraph (c) is redesignated as paragraph (d) and paragraphs (b)(1) and (b)(2) are revised and a new paragraph (c) is added to read as follows:

§ 1201.115 Contents of petition for review.

* * * * *

(b)(1) If the appellant was the prevailing party in the initial decision, and the decision granted the appellant interim relief, any petition for review or cross petition for review filed by the agency must be accompanied by evidence that the agency has provided the interim relief required, except when the agency has made a determination as described in paragraph (b)(2) of this section. The agency may comply by submitting an SF 50 or SF 52, a letter from an agency official directing the appellant to return to work and informing the appellant of his or her reinstatement as of the date of the initial decision, or an affidavit or declaration specifying the manner of the agency's compliance. The interim relief must be effected retroactively to the date of the initial decision. Cancellation of the appealed action or relief effected retroactively to the date of the action will result in dismissal of the agency's petition for mootness.

(2) Under 5 U.S.C. 7701(b)(2), if the initial decision provides interim relief which requires that the appellant be returned to his or her place of employment pending the outcome of any petition for review and the agency determines that the return or presence of the appellant will be unduly disruptive to the work environment, the agency must notify both the appellant and the judge in writing. The agency must also provide evidence of such notification to the Board at the time of filing a petition or cross petition for review. The evidence must show that the agency has provided that the appellant will receive appropriate pay, compensation, and all other benefits as terms and conditions of employment from the date of the initial decision until a final decision is issued.

* * * * *

(c) If an appellant or an intervenor files a petition or cross petition for review of an initial decision ordering interim relief, upon order of the Clerk of the Board the agency must submit evidence that it has provided the interim relief required (or, where applicable, the evidence specified in paragraph (b)(2) of this section), *and* it must submit the name of the official responsible for compliance. The agency's failure to submit acceptable evidence of compliance with the interim relief order is a basis for the Board to order the withholding of the salary of

the responsible official pursuant to 5 U.S.C. 1204(e)(2)(A) and 5 CFR 1201.183(c). This sanction is in addition to the dismissal of an agency petition or cross petition for review provided for in paragraph (b)(4) of this section.

* * * * *

3. Sections 1201.116 through 1201.119 are redesignated as §§ 1201.117 through 1201.120, and a new § 1201.116 is added to read as follows:

§ 1201.116 Appellant requests for enforcement of interim relief.

(a) *Before a final decision is issued.* If the agency files a petition for review or a cross petition for review and has not provided required interim relief, the appellant may request dismissal of the agency's petition. Any such request must be filed with the Clerk of the Board within 25 days of the date of service of the agency's petition. A copy of the response must be served on the agency at the same time it is filed with the Board. The agency may respond with evidence and argument to the appellant's request to dismiss within 15 days of the date of service of the request. If the appellant files a motion to dismiss beyond the time limit, the Board will dismiss the motion as untimely unless the appellant shows that it is based on information not readily available before the close of the time limit.

(b) *After a final decision is issued.* If the appellant is not the prevailing party in the final Board order, and if the appellant believes that the agency has not provided full interim relief, the appellant may file an enforcement petition with the regional office under § 1201.182. The appellant must file this petition within 20 days of learning of the agency's failure to provide full interim relief. If the appellant prevails in the final Board order, then any interim relief enforcement motion filed will be treated as a motion for enforcement of the final decision. Petitions under this subsection will be processed under § 1201.183

Dated: June 10, 1994

Robert E. Taylor,

Clerk of the Board

[FR Doc. 94-14590 Filed 6-15-94; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amendment No. 355]

RIN 0584-AB79

Food Stamp Program: Utility Reimbursement Exclusion

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim Rule and request for comments.

SUMMARY: This action excludes certain utility reimbursements made by the Department of Housing and Urban Development (HUD) and Farmers Home Administration (FmHA) from income consideration in determining Food Stamp Program eligibility and benefits. This action will result in increased benefits to households that receive the reimbursements, a consistent nationwide policy, greater consistency in the treatment of housing and energy assistance payments, and more consistency with the Aid to Families with Dependent Children (AFDC) Program.

DATES: This rule is effective and must be implemented no later than August 1, 1994. Comments must be received on or before August 15, 1994 to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be datafaxed to the attention of Ms. Seymour at (703) 305-2454. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding the proposed rulemaking should be addressed to Ms. Seymour at the above address or by telephone at (703) 305-2496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

The Food and Nutrition Service is issuing this interim rule in conformance with Executive Order 12866 and it has been designated "economically significant."

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). Ellen Haas, the Assistant Secretary for Food and Consumer Services, has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Regulatory Impact Analysis

Need for Action

This rule is required to eliminate inconsistent policies resulting from litigation, promote equity in the treatment of housing and energy assistance, and increase consistency with the Aid to Families with Dependent Children program.

Benefits

This action increases benefits to low-income households responsible for paying utility expenses separately from their rent who receive utility reimbursements from HUD and FmHA.

Costs

It is estimated that this action will increase the cost of the Food Stamp Program by approximately $13 million for each month of its implementation in FY 1994 and $160 million in FY 1995.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive

effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 284 (for rules related to QC liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Public Participation and Effective Date

The provisions of this rulemaking are required to be effective and implemented no later than August 1, 1994. Because of the need to establish a consistent nationwide policy with respect to the treatment of the specified utility reimbursements, Ellen Haas, Assistant Secretary for Food and Consumer Services, has determined, pursuant to 5 U.S.C. 553, that public comment on this rulemaking prior to implementation is impracticable. However, because we believe that the administration of the rule may be improved by public comment, comments are solicited on this rule for 60 days. All comments will be analyzed, and any appropriate changes to the rule will be incorporated in the subsequent publication of a final rule.

Background

The HUD utility reimbursements excluded from Food Stamp Program (Program) income consideration by this rule are provided pursuant to the United States Housing Act of 1937 (the Housing Act), 42 U.S.C. 1437, to comply with a provision of the Housing Act (42 U.S.C. 1437a(a)(1)) that requires HUD to limit the shelter costs of tenants in Federally assisted housing to 30 percent of their income. In calculating a tenant's rent payment, HUD has interpreted the term "rent" to include the cost of utilities and other services, including electricity, gas, heating fuel, water and sewerage, and trash and garbage collection (24 CFR 813.102, 965.472, 965.476). In some housing, utilities are included in the tenant's rent. In units in which the utilities are paid directly by the tenant, HUD permits a deduction to be made from the rent paid to the owner on account of the separate payment being made to the utility supplier. This deduction, provided for in 24 CFR 813.102 and 913.102, for the estimated value of utilities and charges for other housing services payable directly by the family is called a "utility allowance." The amount of the utility allowance is based, not on an individual family's expenses, but on a community-wide standard. Therefore, the tenant's actual utility costs may be more or less than the allowance.

For most tenants, the amount of the utility allowance is less than the amount they are required to pay toward their rent including utilities. In most cases, the utility allowance involves no direct payment to the household, but is merely a credit reducing the household's contribution to the landlord. If the utility allowance exceeds the rent that can be charged for a dwelling, the excess is paid in the form of a "utility reimbursement" or rebate to the household.

Similar reimbursements are made to some rural low-income households by the Farmers Home Administration (FmHA) of the Department of Agriculture as part of its Rental Assistance Program which provides, pursuant to 7 CFR pt. 1930, subpt. C; pt. 1944, subpt. E, loans for housing in rural areas. Under the FmHA Program, the borrower (the owner of the property) may apply for Rental Assistance for each tenant in the project who meets the eligibility criteria. The Rental Assistance payment equals the difference between 30 percent of the household's income and the sum of the rent plus the utility allowance for the project. If the tenant pays the utilities, the total Rental Assistance payment from FmHA is made to the owner, who is obligated to pass on to the tenant the portion allocated to utilities. When FmHA's utility allowance is more than 30 percent of the household's adjusted income, the landlord is obligated to forward the difference to the tenant as a utility reimbursement.

Under section 5(d) of the Food Stamp Act of 1977 (7 U.S.C. 2014(d)), any income received by the household directly or indirectly must be counted in determining the household's eligibility and benefits, except for the exclusions listed in the Act. Neither the Food Stamp Act nor current regulations specifically address the treatment of HUD and FmHA utility reimbursements. It is clear that Federal energy assistance payments are excluded by section 5(d)(11) of the Food Stamp Act. However, the HUD and FmHA reimbursements are not provided specifically for energy assistance alone. Current policy requires counting these HUD utility reimbursements as income. This policy is applicable nationwide except in jurisdictions in which the reimbursements are excluded by judicial decision.

In the past, it was our policy that utility reimbursements did not qualify as energy assistance. In response to questions concerning the payments, we issued Policy Memo 90–6 addressing HUD payments and Policy Memo 3–91–04 regarding FmHA payments. Policy Memo 90–6 provides that any amount paid by HUD directly to the household as a utility reimbursement or indirectly to the utility provider must be counted as income to the household. Under Policy Memo 3–91–04, the utility reimbursement paid by the landlord to the tenant is counted as income to the household.

This policy has been maintained over several years and has been successfully defended in court on a number of occasions. While we believe the current policy is a permissible interpretation of the statute, we believe it is not in the best interest of the Program to continue to litigate this issue. In reexamining the policy, we have determined that there are several compelling reasons to change the policy so as to exclude the utility reimbursements in the future.

First, although the HUD and FmHA utility reimbursements are not provided specifically for energy assistance, a substantial portion of a household's utility expense is for heating and cooling. A change in policy to exclude the utility reimbursements is not inconsistent with the specific exclusion in section 5(d)(11) of the Food Stamp Act and 7 CFR 273.9(c)(11) for Federal energy assistance. Excluding the utility reimbursements under the existing regulatory provision would achieve consistency in the treatment of Federal energy assistance.

Second, the current policy is inconsistent with the policy of the Aid to Families with Dependent Children (AFDC) Program in most States. Increasing consistency between the Food Stamp and AFDC Programs is a Department priority because it makes the Programs simpler to administer and more understandable to households.

Maintaining the current policy also causes inconsistent treatment of households in subsidized housing between those in traditional housing whose utilities are included in their rent and households who are responsible for paying their own utility expenses. Excluding the utility reimbursements would provide greater consistency in treatment of various forms of housing assistance.

Finally, a change in policy eliminates the need to maintain at least two distinct and conflicting policies for the foreseeable future because courts in some jurisdictions have affirmed the current policy and others have found it insupportable.

Therefore, this rule amends 7 CFR 273.9(c)(11) to provide that payments or allowances made for the purpose of providing energy assistance under any Federal law, including HUD and FmHA reimbursements, are excluded from income. We are making a conforming amendment to 7 CFR 273.10(d)(1)(i) to provide that a utility expense which is reimbursed or paid by an excluded payment, including HUD or FmHA utility payments, shall not be deductible. In accordance with Section 5(e) of the Act, 7 U.S.C. 2014(e), households that receive these payments will be entitled to use a standard utility allowance that includes a heating or cooling component only if they incur heating or cooling costs that exceed the amount of the excluded payment.

Implementation

This rule is effective and must be implemented no later than August 1, 1994. For quality control purposes, any variances resulting from the implementation of the rule shall be excluded from error analysis for 120 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii), as modified by section 13951(c)(2) of Pub. L. 103-66. Section 13951(c)(2) extended the variance exclusion period of Section 16(c)(3)(A) of the Act, 7 U.S.C. 2025 (c)(3)(A), from a maximum of 90 days to 120 days. The provisions must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits back to the required implementation date. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application, whichever is later.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR parts 272 and 273 are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(134) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(134) *Amendment No. 355.* The provisions of Amendment No. 355 are effective and must be implemented on August 1, 1994. Any variance resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii) as modified by section 13951(c)(2) of Pub. L. 103–66. The provisions must be implemented for all households that newly apply for Program benefits on or after the required implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and the State agency must provide restored benefits back to the required implementation date. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application, whichever is later.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.9 [Amended]

3. In 273.9, the first sentence of paragraph (c)(11) introductory text is amended by adding the words ", including utility reimbursements made by the Department of Housing and Urban Development and the Farmers Home Administration" before the period.

4. In 273.10, paragraph (d)(1)(i) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.*

* * *

(1) *Disallowed expenses.*

(i) * * * A utility expense which is reimbursed or paid by an excluded payment, including HUD or FmHA utility reimbursements, shall not be deductible.

* * * * *

Dated: June 13, 1994.

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 94–14713 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Parts 915 and 944

[Docket Nos. FV93–915–2FR and FV91–288–FR]

Avocados Grown in South Florida and Imported Avocados; Changes to Maturity and Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises minimum maturity requirements and suspends certain reporting requirements for avocados grown in South Florida. This rule is designed to ensure that only mature fruit is shipped to the fresh market, thereby improving grower and importer returns and promoting orderly marketing conditions. For avocados imported into the United States, this final rule reinstates maturity requirements with certain revisions; adds an exemption for certain avocado varieties; removes the exemption for avocados grown in the southern hemisphere; and adds exemptions from maturity requirements for avocados imported for certain uses. This rule is needed so that imported avocados meet the same minimum size and color maturity requirements as those established for avocados under the Federal marketing order covering Florida avocados, consistent with section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: June 20, 1994.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5127; or Aleck J. Jonas, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 915 (7 CFR part 915), as amended, regulating the handling of avocados grown in South Florida, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities, including avocados, imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities, under Federal marketing orders. The Secretary has determined that the maturity requirements for imported avocados should be the same as those established for avocados grown in South Florida under the order.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the import rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are about 65 avocado handlers subject to regulation under the marketing order covering avocados grown in Florida and about 95 avocados producers in South Florida. There are about 20 avocado importers who will be subject to the avocado import maturity requirements. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $500,000, and small agricultural service firms, which include avocado handlers and importers, have been defined by the Small Business Administration as those having annual receipts of less than $5,000,000. The majority of the Florida avocado handlers and producers, and avocado importers may be classified as small entities.

This rule finalizes two proposed rules: the first proposed revisions in the maturity and reporting requirements for avocados grown in Florida; the second proposed reinstatement and revision of maturity requirements for imported avocados. Both proposed rules were published in the April 4, 1994, **Federal Register** [59 FR 15658 and 15661] and provided 30 days to interested persons to file comments. No comments were received. However, several typographical and printing errors were identified in both proposed rules as published. This final rule corrects the errors in Table I of both rules: (1) For the Booth 8 variety after October 10, the minimum diameter is changed from 3 3/16 to 3 1/16 inches; (2) for the Chica variety after October 3, the minimum diameter is changed from 3 1/16 to 3 3/16 inches.

The Avocado Administrative Committee (committee) works with the Department in administering the order, and it meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados.

The committee met December 8, 1993, and unanimously recommended that the shipping schedules for avocados be revised and that certain reporting requirements be temporarily suspended. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations, information submitted by the committee and other information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Maturity requirements for avocados grown in Florida, based on minimum weights, diameters, and skin color, are specified in § 915.322 [7 CFR 915.322], and are in effect on a continuous basis. These maturity requirements specify minimum weights and diameters for specific shipping periods for some 60 varieties of avocados, and color specifications for those varieties which turn red or purple when mature. The maturity requirements for the various varieties of avocados are different, because each variety has different characteristics. The maturity requirements for each avocado variety are based on maturity test results.

These maturity requirements are designed to prevent shipments of immature avocados to the fresh market, especially during the early part of the harvest season for each variety. Providing fresh markets with mature fruit is an important aspect of creating consumer satisfaction and is in the interest of both producers and consumers. Fresh shipments of Florida avocados usually begin with light shipments of early varieties in May, and they continue until the following March or April, with heaviest shipments occurring from July through December.

This final rule revises the shipping schedules for the avocado varieties specified in Table I of paragraph (a)(2) of § 915.322 (7 CFR part 915.322) to synchronize those schedules with any calendar year. The previous schedules needed to be adjusted to each new year to ensure that dates and weekdays conformed to each new year. The schedules in Table I are similar to previous calendars, except that the maturity schedules have fixed dates, which become effective on the Monday nearest the date specified in Table I. The new schedules are expected to conform more closely to the needs of the industry. This final rule also exempts from maturity requirements the Hass, Fuerte, Zutano, and Edranol varieties of avocados, since these varieties of avocados are not commercially grown in the production area in Florida.

A minimum grade requirement of U.S. No. 2 currently in effect on a continuous

basis for avocados grown in Florida under § 915.306 (7 CFR part 915.306), and for avocados imported into the United States under § 944.28 (7 CFR part 944.28) remains in effect unchanged by this action.

Florida avocado handlers may ship, exempt from the minimum grade, size, and maturity requirements effective under the order, up to 55 pounds of avocados during any one day under a minimum quantity provision, and up to 20 pounds of avocados as gift packs in individually addressed containers. Also, avocados grown in Florida utilized for commercial processing are not subject to the grade, size, and maturity requirements under the order.

Paragraph (d) of § 915.150 (7 CFR part 915.150), currently requires that each handler, at the end of the day's operation, report to the committee the number of containers (¼ Bushel, ½ Bushel, and ⅘ Bushel) of avocados sold and delivered within the State of Florida. This final action suspends paragraph (d) of § 915.150 for the next two seasons, through March 31, 1996. This temporarily suspends the requirement that handlers file the "Avocado Handler Daily Size Report Form" which takes about 0.083 hours to complete for each report. The committee has determined that information needed for operations, marketing policies, and compliance, could sufficiently be obtained from inspection certificates collected on a daily basis by program staff, and that information collected on the "Avocado Handler Daily Size Report Form" will not be needed for the next two seasons. Further, Hurricane Andrew reduced avocado production by almost half, and this has reduced assessment collections, resulting in a need to reduce staff and administration costs.

This rule is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities imported into the United States, including avocados, that are the same as, or comparable to, those imposed upon the domestic commodities under Federal marketing orders.

Minimum size (weight and diameter) and skin color maturity requirements for imported avocados in § 944.31 (7 CFR 944.31) were continuously in effect for several years prior to their suspension by a final rule issued May 15, 1991 (56 FR 23009, May 20, 1991). The avocado import maturity requirements were temporarily suspended to provide the United States Trade Representative (USTR) adequate time to review contemplated changes in those requirements, as required by section 8e of the Act. Suspension of the avocado import maturity requirements became necessary when the Florida avocado maturity requirements in § 915.332 (7 CFR 915.332), upon which the avocado import maturity requirements were based, were revised on May 15, 1991 (56 FR 23005, May 20, 1991). This revision was finalized on September 4, 1991 (56 FR 46224, September 11, 1991). Section 915.332 was most recently amended to make calendar date adjustments in the shipping schedule for several varieties of Florida avocados on June 29, 1993 (58 FR 34684, June 29, 1993), and that rule was finalized on October 4, 1993 (58 FR 46759, September 3, 1993).

Prior to suspension, the avocado import maturity requirements were based on minimum weights and diameters applied to avocados grown in all foreign countries, except for those grown in southern hemisphere countries. Such requirements were applied to each variety for a specific time period during the first part of the shipping period. The minimum weights or diameters were not applied to avocados grown in southern hemisphere countries, such as Chile, where practically all imported southern hemisphere avocados have originated in recent years, because the southern hemisphere's avocado growing season and various shipping periods differ from those in Florida. The import maturity requirements based on minimum weights or diameters were applied to avocados grown in northern hemisphere countries, such as those in the Bahamas and the Dominican Republic, where practically all northern hemisphere imported avocados have originated in recent years, because their growing season and various shipping periods are similar to those in Florida.

The avocado import maturity requirements based on skin color for certain varieties of avocados which turn red, purple or black when mature were applied to avocados imported from all foreign countries in both the southern and northern hemispheres. Such requirements applied to all avocados grown in both hemispheres, because all such avocados turn color when mature regardless of where they are grown.

This final rule also reinstates the minimum size (weight and diameter) requirements for avocados and the skin color maturity requirements for avocados imported from all foreign countries by lifting the suspended provisions of § 944.31. However, this final rule exempts the Hass, Fuerte, Zutano, and Edranol varieties of avocados from such import maturity requirements, because such varieties are not grown in commercial quantities in Florida and regulated under the Florida avocado maturity requirements in § 915.332.

This final rule obviates the need for exempting avocados imported from the southern hemisphere, since the major varieties imported from the southern hemisphere are the Hass, Fuerte, Zutano, and Edranol varieties.

This final rule also adds language to § 944.31 to cite the minimum size (weight and diameter) and skin color maturity requirements, and define the term "diameter".

This final rule also exempts imported avocados under § 944.31 from minimum weight, diameter, and color maturity requirements if they are to be used in certain specified outlets. Similar exemptions from grade requirements established for imported avocados under § 944.28 were implemented by an interim final rule published in the **Federal Register** [58 FR 69182, December 30, 1993], with an effective date of January 1, 1994.

The avocado import maturity regulation [7 CFR 944.31] is based on the maturity requirements in effect for avocados grown in Florida under the order throughout the year. Under the order, any person may handle avocados without regard to established grade, size, quality, or maturity requirements provided that such avocados are handled for (1) consumption by charitable institutions; (2) distribution by relief agencies; (3) commercial processing into products; (4) seed; or (5) individual shipments of up to 55 pounds. Prior to issuance of this rule, the only exemption allowed under the avocado import regulation was that for individual shipments of up to 55 pounds. Thus, this final rule adds consumption by charitable institutions, distribution by relief agencies, seed, and commercial processing into products to the list of exemptions allowed under the avocado import regulation.

To ensure that imported avocados exempt from the maturity requirements are utilized in exempt outlets, this rule states that such avocados be subject to the safeguard procedures for imported fruit established in § 944.350 [58 FR 69182, December 30, 1993].

Under these procedures, an importer wishing to import avocados covered herein for uses in other than regulated commercial channels, must complete in triplicate, prior to importation, an "Importer's Exempt Commodity Form." One copy will notify the Marketing Order Administration Branch (MOAB) of the Fruit and Vegetable Division, AMS, and the second copy will notify the U.S. Customs Service of the importer's intent to import a commodity under an exemption. The third copy will accompany the exempt lot to the receiver.

The form may be obtained from either the inspection or customs offices serving the port of entry. The form may also be obtained from the MOAB in Washington, DC or from its Marketing Field Offices in Fresno, California; Portland, Oregon; McAllen, Texas; or Winter Haven, Florida.

The form must be completed at the time the commodity enters the United States. Copies are to be returned to the U.S. Customs Service at the time the commodity is offered for importation and to MOAB within 15 days after completion of the form. Information called for on the "Importer's Exempt Commodity Form" includes:

(1) The commodity and the variety (if known) being imported,
(2) The date and place of inspection, if applicable,
(3) Identifying marks or numbers on the containers,
(4) Identifying numbers on the railroad car, truck or other transportation vehicle transporting product to the receiver,
(5) The name and address of the importer,
(6) The place and date of entry,
(7) The quantity imported,
(8) the name and address of the intended receiver (eg. processor, feeder, charity, or other exempt receiver),
(9) Intended use of the exempt commodity,
(10) The U.S. Customs Service entry number and harmonized tariff code number, and
(11) Such other information as may be necessary to ensure compliance with this regulation.

For purposes of this regulation, a lot is considered to be imported when it is released by the Customs Service for entry into commercial markets or other channels. Lots that are exempt from maturity requirements of the import regulations are not subject to the inspection and certification requirements in such regulations. An imported lot intended for normal commercial channels, or any portion of such a lot, that fails established maturity requirements, could be disposed of in exempt outlets, as specified in the pertinent avocado import requirements.

The third copy of the form will accompany the exempt lot to its intended destination. The receiver will then certify that the lot has been received and it will be utilized in an exempt outlet. After the certification is signed by the receiver, the form is to be returned to MOAB by the receiver, within 15 days of receipt of the lot.

The information collection requirements contained in this final rule have been previously approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35], and have been assigned OMB numbers 0581–0078 for avocados grown in South Florida and 0581–0167 for imported avocados.

In accordance with section 8e of the Act, the USTR has concurred with the issuance of this final rule.

This final rule reflects the committee's and the Department's appraisal of the need to make the specified changes. The Department's view is that this action will have a beneficial impact on producers and handlers since it will help ensure that only mature avocados are shipped to fresh markets. The committee considers that maturity requirements for Florida grown avocados are necessary to improve grower returns and promote orderly marketing conditions. Although compliance with these maturity requirements will affect costs to handlers, these costs will be offset by the benefits of providing the industry and consumers with mature avocados.

This final rule also reflects the Department's appraisal of the need to reinstate the suspended avocado import maturity requirements, with the specified revisions, as hereinafter set forth, in accordance with section 8e of the Act.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that this final rule as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The shipping season for South Florida avocados is expected to begin in late May; (2) avocado handlers are aware of this action which was unanimously recommended by the committee; (3) notice of the proposed rules were published in the **Federal Register**, and no comments were received during the 30-day comment period.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 915 and 944 are amended as follows:

1. The authority citation for 7 CFR parts 915 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

2. Section 915.332 is revised to read as follows:

§ 915.332 Florida avocado maturity regulation.

(a) No handler shall handle any variety of avocados, except Hass, Fuerte, Zutano, and Edranol, grown in the production area unless:

(1) Any portion of the skin of the individual avocados has changed to the color normal for that fruit when mature for those varieties which normally change color to any shade of red or purple when mature, except for the Linda variety; or

(2) Such avocados meet the minimum weight or diameter requirements for the Monday nearest each date specified, through the Sunday immediately prior to the nearest Monday of the specified date in the next column, for each variety listed in the following TABLE I: *Provided*, that avocados may not be handled prior to the earliest date specified in column A of such table for the respective variety; *Provided further*, There are no restrictions on size or weight on or after the date specified in column D; *Provided further*, That up to a total of 10 percent, by count to the individual fruit in each lot may weigh less than the minimum specified or be less than the specified diameter, except that no such avocados shall be over 2 ounces lighter than the minimum weight specified for the variety: *Provided further*, That up to double such tolerance shall be permitted for fruit in an individual container in a lot.

Table I

Variety	A date	Min. wt.	Min. diam.	B date	Min. wt.	Min. diam.	C date	Min. wt.	Min. diam.	D date
Dr. Dupuis #2	5–30	16	3 7/16	6–13	14	3 5/16	7–04	12	3 2/16	7–18
Simmons	6–20	16	3 9/16	7–04	14	3 7/16	7–18	12	3 1/16	8–01
Pollock	6–20	18	3 11/16	7–04	16	3 7/16	7–18	14	3 4/16	8–01
Hardee	6–27	16	3 2/16	7–04	14	2 14/16	7–11	12	.....	7–25
Nadir	6–27	14	3 3/16	7–04	12	3 1/16	7–11	10	2 14/16	7–18
Ruehle	7–04	18	3 11/16	7–11	16	3 9/16	8–01	12	3 5/16	8–15
				7–18	14	3 7/16	8–08	10	3 3/16	.....
Bernecker	7–18	18	3 6/16	8–01	16	3 5/16	8–15	14	3 4/16	8–29
Miguel (P)	7–18	22	3 13/16	8–01	20	3 12/16	8–15	18	3 10/16	8–29
Nesbitt	7–18	22	3 12/16	8–01	16	3 5/16	8–08	14	3 3/16	8–22
Tonnage	8–01	16	3 6/16	8–15	14	3 4/16	8–22	12	3 0/16	8–29
Waldin	8–01	16	3 9/16	8–15	14	3 7/16	8–29	12	3 4/16	9–12
Tower	8–01	14	3 6/16	8–15	12	3 4/16	.....	.....	.....	9–05
Beta	8–08	18	3 6/16	8–15	16	3 5/16	.....	.....	.....	9–05
Lisa (P)	8–08	12	3 2/16	8–15	11	3	.....	.....	.....	8–22
Black Prince	8–15	28	4 1/16	8–29	23	3 14/16	9–12	16	3 9/16	10–03
Loretta	8–22	30	4 3/16	9–05	26	3 15/16	.....	.....	.....	9–26
Booth 8	8–29	16	3 9/16	9–12	14	3 6/16	9–26	12	3 3/16	10–24
							10–10	10	3 1/16	
Booth 7	8–29	18	3 13/16	9–12	16	3 10/16	9–26	14	3 8/16	10–10
Booth 5	9–05	14	3 9/16	9–19	12	3 6/16	.....	.....	.....	10–03
Choquette	9–26	28	4 4/16	10–17	24	4 1/16	10–31	20	3 14/16	11–14
Hall	9–26	26	3 14/16	10–10	20	3 9/16	10–24	18	3 8/16	11–07
Lula	10–03	18	3 11/16	10–10	14	3 6/16	10–31	12	3 3/16	11–14
Monroe	11–07	26	4 3/16	11–21	24	4 1/16	12–05	20	3 14/16	1–02
							12–19	16	3 9/16	.....
Arue	5–16	.....	16	5–30	14	3 3/16	.....	.....	.....	7–04
Donnie	5–23	16	3 5/16	6–06	14	3 4/16	.....	.....	.....	7–04
Fuchs	6–06	14	3 3/16	6–20	12	3 9/16	.....	.....	.....	7–04
K–5	6–13	18	3 5/16	6–27	14	3 3/16	.....	.....	.....	7–11
West Indian Seedling[1]	6–20	18	.....	7–18	16	.....	8–22	14	.....	9–19
Gorham	7–04	29	4 5/16	7–18	27	4 3/16	.....	.....	.....	8–15
Biondo	7–11	13	.....	.....	.....	.....	.....	.....	.....	8–15
Petersen	7–11	14	3 9/16	7–18	12	3 5/16	7–25	10	3 2/16	8–08
232	7–18	14	.....	8–01	12	.....	.....	.....	.....	8–15
Pinelli	7–18	18	3 12/16	8–01	16	3 10/16	.....	.....	.....	8–15
Trapp	7–18	14	3 10/16	8–01	12	3 7/16	.....	.....	.....	8–15
K–9	8–01	16	.....	.....	.....	.....	.....	.....	.....	8–22
Christina	8–01	11	2 14/16	.....	.....	.....	.....	.....	.....	8–22
Catalina	8–15	24	.....	8–29	22	.....	.....	.....	.....	9–19
Blair	8–29	16	3 8/16	9–12	14	3 5/16	.....	.....	.....	10–03
Guatemalan Seedling[2]	9–05	15	.....	10–03	13	.....	.....	.....	.....	12–05
Marcus	9–05	32	4 12/16	9/19	24	4 5/16	.....	.....	.....	10–31
Brooks 1978	9–05	12	3 4/16	9–12	10	3 1/16	9–19	8	2 14/16	10–10
Rue	9–12	30	4 3/16	9–19	24	3 15/16	10–03	18	3 9/16	10–17
Collinson	9–12	16	3 10/16	.....	.....	.....	.....	.....	.....	10–10
Hickson	9–12	12	3 1/16	9–26	10	3 0/16	.....	.....	.....	10–10
Simpson	9–19	16	3 9/16	.....	.....	.....	.....	.....	.....	10–10
Chica	9–19	12	3 7/16	10–03	10	3 4/16	.....	.....	.....	10–17
Leona	9–26	18	3 10/16	.....	.....	.....	.....	.....	.....	10–10
Herman	10–03	16	3 9/16	10–17	14	3 6/16	.....	.....	.....	10–31
Pinkerton (CP)	10–03	13	3 3/16	10–17	11	3 0/16	10–31	9	.....	11–14
Taylor	10–10	14	3 5/16	10–24	12	3 2/16	.....	.....	.....	11–07
Ajax (B–7)	10–10	18	3 14/16	.....	.....	.....	.....	.....	.....	10–31
Booth 3	10–10	16	3 8/16	10–17	14	3 6/16	.....	.....	.....	10–31
Booth 1	11–14	16	3 12/16	11–28	12	3 6/16	.....	.....	.....	12–12
Zio (P)	11–14	12	3 1/16	11–28	10	2 14/16	.....	.....	.....	12–12
Gossman	11–28	11	3 1/16	.....	.....	.....	.....	.....	.....	12–26
Brookslate	12–05	18	3 13/16	12–12	16	3 10/16	1–02	12	3 5/16	1–30
				12–19	14	3 8/16	1–16	10		
Meya (P)	12–12	13	3 2/16	12–26	11	3 0/16	.....	.....	.....	1–09
Reed (CP)	12–12	12	3 4/16	12–26	10	3 3/16	1–09	9	3 9/16	1–23

[1] Avocados of the West Indian type varieties and seedlings not listed elsewhere in Table I.
[2] Avocados of the Guatemalan type varieties and seedlings, hybrid varieties and seedlings, and unidentified seedlings not listed elsewhere in Table I.

(b) The term diameter means the greatest dimension measured at a right angle to a straight line from the stem to the blossom end of the fruit.

PART 944—FRUITS; IMPORT REGULATIONS

3. The suspension of § 944.31 is removed and the section is revised to read as follows:

§ 944.31 Avocado import maturity regulation.

(a) Pursuant to section 8e [7 U.S.C. 608e–1] of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601–674], and Part 944—Fruits; Import Regulations, the importation into the United States of any avocados, except the Hass, Fuerte, Zutano, and Edranol varieties, is prohibited unless:

(1) any portion of the skin of the individual avocados has changed to the color normal for that fruit when mature for those varieties which normally change color to any shade of red or purple when mature, except for the Linda variety; or

(2) Such avocados meet the minimum weight or diameter requirements for the Monday nearest each date specified, through the Sunday immediately prior to the nearest Monday of the specified date in the next column, for each variety listed in the following Table I: Provided, that avocados may not be handled prior to the earliest date specified in column A of such table for the respective variety; Provided further, There are no restrictions on size or weight on or after the date specified in column D; Provided further, That up to a total of 10 percent, by count to the individual fruit in each lot may weigh less than the minimum specified or be less than the specified diameter, except that no such avocados shall be over 2 ounces lighter than the minimum weight specified for the variety: Provided further, That up to double such tolerance shall be permitted for fruit in an individual container in a lot.

TABLE 1

Variety	A date	Min. wt.	Min. diam.	B date	Min. wt.	Min. diam.	C date	Min. wt.	Min. diam.	D date
Dr. Dupuis #2	5–30	16	3 7/16	6–13	14	3 5/16	7–04	12	2 2/16	7–18
Simmons	6–20	16	3 9/16	7–04	14	3 7/16	7–18	12	3 1/16	8–01
Pollock	6–20	18	3 11/16	7–04	16	3 7/16	7–18	14	3 4/16	8–01
Hardee	6–27	16	3 2/16	7–04	14	2 14/16	7–11	12	.....	7–25
Nadir	6–27	14	3 3/16	7–04	12	3 1/16	7–11	10	2 14/16	7–18
Ruehle	7–04	18	3 1/16	7–11	16	3 9/16	8–01	12	3 5/16	8–15
				7–18	14	3 7/16	8–08	10	3 3/16	
Bernecker	7–18	18	3 6/16	8–01	16	3 5/16	8–15	14	3 4/16	8–29
Miguel (P)	7–18	22	3 13/16	8–01	20	3 12/16	8–15	18	3 10/16	8–29
Nesbitt	7–18	22	3 12/16	8–01	16	3 5/16	8–08	14	3 3/16	8–22
Tonnage	8–01	16	3 6/16	8–15	14	3 4/16	8–22	12	3 0/16	8–29
Waldin	8–01	16	3 9/16	8–15	14	3 7/16	8–29	12	3 3/16	9–12
Tower	8–01	14	3 6/16	8–15	12	3 4/16	.....	.....	.....	9–05
Beta	8–08	18	3 8/16	8–15	16	3 5/16	.....	.....	.....	9–05
Lisa (P)	8–08	12	3 2/16	8–15	11	3 0/16	.....	.....	.....	8–22
Black Prince	8–15	28	4 1/16	8–29	23	3 14/16	9–12	16	3 9/16	10–03
Loretta	8–22	30	4 3/16	9–05	26	3 15/16	.....	.....	.....	9–26
Booth 8	8–29	16	3 9/16	9–12	14	3 6/16	9–26	12	3 3/16	10–24
							10–10	10	3 1/16	
Booth 7	8–29	18	3 13/16	9–12	16	3 10/16	9–26	14	3 8/16	10–10
Booth 5	9–05	14	3 9/16	9–19	12	3 6/16	.....	.....	.....	10–03
Choquette	9–26	28	4 4/16	10–17	24	4 1/16	10–31	20	3 14/16	11–14
Hall	9–26	26	3 14/16	10–10	20	3 9/16	10–24	18	3 8/16	11–07
Lula	10–03	18	3 11/16	10–10	14	3 6/16	10–31	12	3 3/16	11–14
Monroe	11–07	26	4 3/16	11–21	24	4 1/16	12–05	20	3 14/16	1–02
							12–19	16	3 9/16	
Arue	5–16	16	.....	5–30	14	3 3/16	.....	.....	.....	7–04
Donnie	5–23	16	3 5/16	6–06	14	3 4/16	.....	.....	.....	7–04
Fuchs	6–06	14	3 3/16	6–20	12	3 0/16	.....	.....	.....	7–04
K–5	6–13	18	3 5/16	6–27	14	3 3/16	.....	.....	.....	7–11
West Indian Seedling [1]	6–20	18	.....	7–18	16	.....	8–22	14	.....	9–19
Gorham	7–04	29	4 5/16	7–18	27	4 3/16	.....	.....	.....	8–15
Biondo	7–11	13	.....	.....	.....	.....	.....	.....	.....	8–15
Petersen	7–11	14	3 6/16	7–18	12	3 5/16	7–25	10	3 2/16	8–08
232	7–18	14	.....	8–01	12	.....	.....	.....	.....	8–15
Pinelli	7–18	18	3 12/16	8–01	16	3 10/16	.....	.....	.....	8–15
Trapp	7–18	14	3 10/16	8–01	12	3 7/16	.....	.....	.....	8–15
K–9	8–01	16	.....	.....	.....	.....	.....	.....	.....	8–22
Christina	8–01	11	2 14/16	.....	.....	.....	.....	.....	.....	8–22
Catalina	8–15	24	.....	8–29	22	.....	.....	.....	.....	9–19
Blair	8–29	16	3 8/16	9–12	14	3 5/16	.....	.....	.....	10–03
Guatemalan Seedling [2]	9–05	15	.....	10–03	13	.....	.....	.....	.....	12–05
Marcus	9–05	32	4 13/16	9–19	24	4 5/16	.....	.....	.....	10–31
Brooks 1978	9–05	12	3 4/16	9–12	10	3 1/16	9–19	8	2 14/16	10–10
Rue	9–12	30	4 3/16	9–19	24	3 15/16	10–03	18	3 9/16	10–17
Collinson	9–12	16	3 9/16	.....	.....	.....	.....	.....	.....	10–10
Hickson	9–12	12	3 1/16	9–26	10	3 0/16	.....	.....	.....	10–10
Simpson	9–19	16	3 9/16	.....	.....	.....	.....	.....	.....	10–10
Chica	9–19	12	3 7/16	10–03	10	3 4/16	.....	.....	.....	10–17
Leona	9–26	18	3 10/16	.....	.....	.....	.....	.....	.....	10–10
Herman	10–03	16	3 2/16	10–17	14	3 6/16	.....	.....	.....	10–31

TABLE 1—Continued

Variety	A date	Min. wt.	Min. diam.	B date	Min. wt.	Min. diam.	C date	Min. wt.	Min. diam.	D date
Pinkerton (CP)	10–03	13	3 3/16	10–17	11	3 0/16	10–31	9	.....	11–14
Taylor	10–10	14	3 6/16	10–24	12	3 2/16	.....	.....	.....	11–07
Ajax (B–7)	10–10	18	3 14/16	.....	.....	.....	.....	.....	.....	10–31
Booth 3	10–10	16	3 8/16	10–17	14	3 6/16	.....	.....	.....	10–31
Booth 1	11–14	16	3 12/16	11–28	12	3 6/16	.....	.....	.....	12–12
Zio (P)	11–14	12	3 1/16	11–28	10	2 14/16	.....	.....	.....	12–12
Gossman	11–28	11	3 1/16	.....	.....	.....	.....	.....	.....	12–26
Brookslate	12–05	18	3 13/16	12–12	16	3 10/16	1–02	12	3 5/16	1–30
				12–19	14	3 8/16	1–16	10		
Meya (P)	12–12	13	3 2/16	12–26	11	3 0/16	.....	.....	.....	1–09
Reed (CP)	12–12	12	3 4/16	12–26	10	3 3/16	1–09	9	3 0/16	1–23

[1] Avocados of the West Indian type varieties and seedlings not listed elsewhere in Table 1.
[2] Avocados of the Guatemalan type varieties and seedlings, hybrid varieties and seedlings, and unidentified seedlings not listed elsewhere in Table I.

(b) The term diameter means the greatest dimension measured at a right angle to a straight line from the stem to the blossom end of the fruit.

(c) The term importation means release from custody of the United States Customs Service. The term commercial processing into products means the manufacture of avocado product which is preserved by any recognized commercial process, including canning, freezing, dehydrating, drying, the addition of chemical substances, or by fermentation.

(d) Any person may import up to 55 pounds of avocados exempt from the requirements specified in this section.

(e) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of avocados imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of avocados, is required on all such imports. The inspection and certification services will be available upon application in accordance with the Regulations Governing Inspection, Certification and Standards of Fresh Fruits, Vegetables, and Other Products (7 CFR part 51), and in accordance with the regulation designating inspection services and procedure for obtaining inspection and certification (7 CFR 944.400).

(f) Any avocados which fail to meet the import requirements prior to or after reconditioning and which are not being imported for purposes of consumption by charitable institutions, distribution by relief agencies, seed, or commercial processing into products may be reconditioned or exported, or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such avocados borne by the importer.

(g) The size, weight, diameter, and color maturity requirements of this section shall not be applicable to avocados imported for consumption by charitable institutions, distribution by relief agencies, seed, or commercial processing into products, but shall be subject to the safeguard provisions contained in § 944.350.

Dated: June 9, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–14588 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 926

[Docket No. FV94–926–1IFR]

Tokay Grapes Grown in San Joaquin County, California; Expenses and Assessment Rate for 1994–95 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate for the Tokay Grape Industry Committee (committee) under Marketing Order (M.O.) No. 926 for the 1994–95 fiscal year. Authorization of this budget enables the committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning April 1, 1994, through March 31, 1995. Comments received by July 18, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456. Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456, telephone:(202) 720–5127; or Peter I. Parks, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 926 [7 CFR Part 926] regulating the handling of Tokay grapes grown in San Joaquin County, California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Tokay grapes grown in California are subject to assessments. It is intended that the assessment rate specified herein

will be applicable to all assessable Tokay grapes handled during the 1994–95 fiscal year, beginning April 1, 1994, through March 31, 1995. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are three handlers of Tokay grapes regulated under the marketing order each season and approximately 15 Tokay grape producers in San Joaquin County, California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

The Tokay grape marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable grapes handled from the beginning of such year. Annual budgets of expenses are prepared by the committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the committee are grape handlers and producers. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing the anticipated expenses by expected shipments of grapes. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the committee's expected expenses.

The committee met on April 29, 1994, and unanimously recommended total expenditures of $5,150 with an assessment rate of $0.07 per carton for the 1994–95 fiscal year. In comparison, the expenditure amount and the assessment rate are remaining unchanged from the 1993–94 fiscal year.

Funds in the reserve at the end of the 1994–95 fiscal year, estimated at $4,500, will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the committee began April 1, 1994, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable grapes handled during the fiscal year; (3) handlers are aware of this action which was unanimously recommended by the committee at a public meeting and which is similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 926

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 926 is amended as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CA

1. The authority citation for 7 CFR Part 926 continues to read as follows:

Authority: 7 U.S.C. 601–674

2. A new § 926.233 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 926.233 Expenses and assessment rate.

Expenses of $5,150 by the Tokay Grape Industry Committee are authorized and an assessment rate of $0.07 per carton of assessable grapes is established for the fiscal year ending March 31, 1995. Unexpended funds may be carried over as a reserve.

Dated: June 9, 1994

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division

[FR Doc. 94–14587 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 932

[Docket No. FV93–932–4FIR]

Olives Grown in California; Expenses and Assessment Rate for 1994 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule that authorized expenditures and established an assessment rate for the California

Olive Committee (Committee) under Marketing Order (M.O.) No. 932 for the 1994 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: January 1, 1994, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 720–5127; or Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 148 and Marketing Order No. 932 (7 CFR Part 932), as amended, regulating the handling of olives grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, olives grown in California are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable olives handled during the 1994 fiscal year, beginning January 1, 1994, through December 31, 1994. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5 handlers of olives regulated under the marketing order each season and approximately 1,350 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. None of the handlers may be classified as small entities. The majority of the producers may be classified as small entities.

The marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable olives handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of California olives. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of olives. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The California Olive Committee met on December 14, 1993, and unanimously recommended a total expense amount of $3,748,290, for its 1994 budget. This is $928,530 more in expenses than the previous year. The increase is primarily due to additional funding for market development.

The Committee also unanimously recommended an assessment rate of $27.21 per ton for the 1994 fiscal year, which is $1.46 more in the assessment rate from the 1993 fiscal year. The assessment rate, when applied to anticipated shipments of 101,000 tons, would yield $2,748,210 in assessment income. This, along with approximately $1,000,000 from the Committee's authorized reserves will be adequate to cover estimated expenses.

Major expense categories for the 1994 fiscal year include $1,150,000 for the market expansion program, $990,860 for consumer affairs, and $173,730 for salaries. Funds in the reserve at the end of the fiscal year, estimated at $300,000 will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

An interim final rule was published in the **Federal Register** (59 FR 12526, March 17, 1994) and provided a 30-day comment period for interested persons. No comments were received.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994 fiscal year for the program began January 1, 1994. The marketing order requires that the rate of assessment apply to all assessable olives handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a

public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Accordingly, the interim final rule adding § 932.227 which was published at 59 FR 12526, is adopted as a final rule without change.

Dated: June 9, 1994.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 94–14585 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–02–P

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 94–018N]

Nutrition Labeling of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of extension of compliance date.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing an extension of the date for enforcing compliance with its nutrition labeling regulations. The effective date of the final nutrition labeling regulations published on January 6, 1993, will remain July 6, 1994. However, FSIS will not take enforcement action on such meat and poultry product labeling until August 8, 1994. In addition, FSIS is providing notice that temporary label approvals, granted by the Food Labeling Division in conjunction with the July 6, 1994, rule, will now expire on August 8, 1994.

DATES: Although the effective date of the final nutrition labeling regulations remain July 6, 1994, FSIS will not take enforcement action on such meat and poultry product labeling until August 8, 1994.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION: On January 6, 1993, FSIS published in the **Federal Register** a final rule titled "Nutrition Labeling of Meat and Poultry Products" (58 FR 638). Corrections and technical amendments to this final rule were published on August 18, 1993 (58 FR 43787), and on September 10, 1993 (59 FR 47624), respectively. The technical amendments, which were issued as an interim final rule, were confirmed as final on March 16, 1994 (59 FR 12157). The effective date of the final rule is July 6, 1994.

The final rule amends the Federal meat and poultry products inspection regulations to permit voluntary nutrition labeling on single-ingredient, raw meat and poultry products, and establishes a mandatory nutrition labeling program for all other meat and poultry products, with certain exceptions. FSIS's nutrition labeling regulations are designed to parallel, to the extent possible, the nutrition labeling regulations issued by the Food and Drug Administration (FDA) for all other foods. Both agencies cooperated closely in the development and timeframe for implementation of their respective rules.

FDA's final nutrition labeling regulations became effective on May 8, 1994. However, Congress recently amended the Nutrition Labeling and Education Act of 1990 (NLEA) to extend the compliance date for certain FDA-regulated food products packaged prior to August 8, 1994, to comply with the nutrition labeling requirements. The legislation (S. 2087) was passed by both houses of Congress, and signed into law by the President on May 27, 1994. Although it is not subject to the NLEA, FSIS has decided not to take any enforcement action on nutrition labeling of meat and poultry products until August 8, 1994. FSIS believes that this date is reasonable and practical, and reflects its continued cooperation with FDA on nutrition labeling issues. FSIS also believes that the extended timeframe further minimizes the cost of complying with the regulations and allows for a more orderly and uniform compliance implementation for nutrition labeling of all foods.

In anticipation of the July 6, 1994, effective date, the Food Labeling Division has granted temporary label approvals under 9 CFR 317.4(d) and 381.132(b) of the regulations. These temporary approvals were granted for labels which comply with current regulations, but which would not comply with the regulations when the final rule issued on January 6, 1993, is effective. These temporary approvals are automatically extended until August 8, 1994.

FSIS encourages manufacturers to revise their labels as soon as possible. On and after August 8, 1994, products with labeling that does not comply with the nutrition labeling regulations will be misbranded and subject to enforcement action by FSIS.

Dated: June 10, 1994.

William J. Hudnall,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 94–14569 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed program amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment 93–5) consists of changes to the Indiana Administrative Code (IAC) rules at 310 IAC 12. The proposed amendment pertains to definitions of terms used in the Indiana program. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Mr Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of Amendment
III. Director's Findings.
IV. Summary and Disposition of Comments

V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32071). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated July 2, 1993 (Administrative Record Number IND–1272), the Indiana Department of Natural Resources (IDNR) submitted proposed program amendment number 93–5. Program amendment 93–5 consists of proposed changes to the Indiana program definitions at 310 IAC 12–0.5.

OSM announced receipt of the proposed amendment in the August 5, 1993, **Federal Register** (58 FR 41669), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on September 7, 1993. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment to the Indiana program. Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Indiana's Rules That Are Substantively Identical to the Corresponding Federal Regulations

State regulation	Subject	Federal counterpart
310 IAC 12–0.5–23	Coal Mine Waste	30 CFR 701.5
310 IAC 12–0.5–55	Half-Shrub	30 CFR 701.5
310 IAC 12–0.5–64	Impounding Structure	30 CFR 701.5
310 IAC 12–0.5–104	Reference Area	30 CFR 701.5

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Indiana's proposed rules are no less effective than the Federal regulations.

B. Revisions to Indiana's Rules That Are Not Substantively Identical to the Corresponding Federal Regulations

1. 310 IAC 12–0.5–6 Affected Area

In the introductory paragraph, Indiana has deleted the word "each" and added the word "any" in its place. With this change, Indiana has clarified that "affected area" means any one or more of the specified examples at subsection 6 (1) through (7). The Director finds that the proposed change is substantively identical to the counterpart Federal regulations at 30 CFR 701.5 concerning the definition of "affected area." The Director notes that the Indiana definition of "affected area" continues to be the subject of a required program amendment codified at 30 CFR 914.16(n) (see 58 FR 43260, August 16, 1993).

2. 310 IAC 12–0.5–53 Ground Cover

The term *ground cover* is defined to mean the area of ground which is covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as percentage of the total area of measurement. At least 95 percent of the species present must be species listed in the revegetation plan.

The first sentence of the proposed definition is substantively identical to the Federal definition of "ground cover" at 30 CFR 701.5. Indiana added the second sentence to establish a standard guideline for all to follow. The Director finds that the second sentence is not inconsistent with SMCRA and the Federal regulations.

3. 310 IAC 12–0.5–139 Valid Existing Rights (VER)

Indiana has proposed the following language for the definition of VER:

(a) *Valid existing rights* means, for the purposes of 310 IAC 12–1–1, 310 IAC 12–2–1, and 310 IAC 12–2–5 the following:

(1) Except for haul roads:

(A) Those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which authorized the applicant to conduct surface coal mining operations; and

(B) The person proposing to conduct surface coal mining operations on such lands:

(i) Had been validly issued or exercised good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct operations on those lands;

(ii) Can demonstrate to the director that the coal is both needed for and immediately adjacent to, an ongoing surface mining operation for which all permits were obtained prior to August 3, 1977; or

(iii) Can demonstrate that the operation was in existence or operation at the time an area became protected under IC 13–4.1–14–1 or at the time of the coming into existence, within the prohibited distance of a structure, road, cemetery, or other activity listed in IC 13–4.1–14–1.

(2) For haul roads:

(A) A recorded right-of-way, recorded easement, or a permit for a coal haul road recorded as of August 3, 1977;

(B) Any other road in existence as of August 3, 1977; or

(C) Any haul road that was in existence or operating at the time an area became protected under IC 13–4.1–14–1, or at the time of the coming into existence, within the prohibited distance of a structure, road, cemetery, or other activity listed in IC 13–4.1–14–1.

(b) The interpretation of the terms of a document used to establish a valid existing right is based upon the common law concerning the interpretation of documents conveying mineral rights. If there is no applicable common law, the interpretation is based upon the following:

(1) The usage and custom at the time and place where a document came into existence.

(2) A showing by the applicant that the parties to the document contemplated the right to conduct the same underground or surface activities for which the applicant claims a valid existing right.

(c) "Valid existing rights" does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining. Examples of rights which alone do not constitute valid existing rights include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or where a person has only applied for a federal or state permit.

(d) If an area comes under the protection of IC 13–4.1–14–1 after August 3, 1977, valid existing rights are present if a validly authorized surface coal mining operation exists on that area on the date the protection comes into existence.

The Federal definition of VER at 30 CFR 761.5 has been affected by judicial decision and parts have been suspended by OSM (see 51 FR 41954, November 20, 1986). Specifically, 30 CFR 761.5 paragraphs (a) and (c) are suspended, and subparagraph (d)(2) is suspended insofar as it incorporates the takings test of suspended paragraph (a). Additionally, OSM has proposed that the Federal VER definition be amended (see 56 FR 33152, July 18, 1991).

In the November 20, 1986, **Federal Register** notice which suspended 30 CFR 761.5(a), OSM stated that the suspension of 30 CFR 761.5(a) has the effect of undoing that provision and leaving in its place the VER test in use before the suspended language was promulgated (the 1979 test) (51 FR 41954). That 1979 test consists of language approved on March 13, 1979 (44 FR 15342). A suspension and interpretation of the 1979 test was published in the August 4, 1980, **Federal Register** (45 FR 51547). This suspension resulted from judicial review of the 1979 test, wherein the court remanded to the Secretary that portion of the 1979 test which required the property owner to have obtained all permits necessary to mine ("all permits" test, 30 CFR 761.5(a)(2)(i)). [In Re: Permanent Surface Mining Regulation Litigation, No. 79–1144 (D.D.C. 1980)]. Specifically, the court indicated that a good faith attempt to obtain all permits before the August 3, 1977, cut-off date should suffice for meeting the "all permits" test. In Re: Permanent (I), Mem. op. at 20. To comply with the court's 1980 opinion, OSM suspended the definition only insofar as it required that to establish VER, all permits must have been obtained prior to August 3, 1977. (45 FR 51547, 51548, August 4, 1980)

The November 20, 1986, notice of suspension restated OSM's position that, pending further rulemaking, OSM would interpret the regulation as including the court's suggestion that a good faith effort to obtain all permits would establish VER. Consequently, in Federal program States and on Indian lands, OSM will make VER determinations on a case-by-case basis, and will consider property rights in existence on August 3, 1977, the owner of which by that date had made a good faith effort to obtain all permits, as one class of circumstances which would invariably entitle the property owner to VER. This is referred to as the 1980 test. VER would also exist when there are property rights in existence on August 3, 1977, the owner of which can demonstrate that the coal is both needed for and immediately adjacent to a mining operation in existence prior to August 3, 1977 (51 FR 41954, 41955).

Indiana's proposed VER language at subsection 139(a)(1)(A) and (B)(i) and (ii) is substantively identical to the two classes of VER contained in the 1979 rule, at former 30 CFR 761.5(a)(1) and (2). Because these portions of the 1979 rule, including the "good faith, all permits" interpretation of the "all-permits test" contained in former 30 CFR 761.5(a)(2)(i) have been upheld by the court, the Director is approving the proposed language at subsection 139(a)(1)(A) and (B)(i) and (ii).

The proposed language at subdivision 139(a)(1)(B)(iii) is substantively identical to the Federal language at 30 CFR 761.5(d)(1). The Director notes, however, that the proposed language at subdivision 139(a)(1)(B)(iii) duplicates the intent of the proposed language at subdivision 139(d). In response to a comment from OSM about this duplication, Indiana stated the duplicative language at subdivision 139(a)(1)(B)(iii) will be deleted at the next available opportunity. The Director agrees that, for clarity, the duplicative language should be removed at Indiana's earliest opportunity. The Director finds that the proposed language at subdivision 139(A)(1)(B)(iii), while duplicative, is no less effective than the Federal regulations.

The Director finds the proposed provisions for haulroads at subdivisions 139(a)(2) (A) and (B) are substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 761.5(b) (1) and (2). The proposed provision at subdivision 139(a)(2)(C) does not have a direct Federal counterpart. The Director finds the Indiana language to be consistent with the Federal provision at 30 CFR 761.5(d)(1) which provides for VER if, on the date an area comes under protection pursuant to section 522(e) of SMCRA, a validly authorized surface coal mining operation exists on that area. The Director is, therefore, approving the proposed language at subdivision 139(a)(2).

The proposed Indiana language at subdivisions 139(b) and (b)(1) is similar to the counterpart Federal language at 30 CFR 761.5(e). The Federal language, however, provides that the interpretation of the terms of the document relied upon to establish the VER shall be based on either applicable State statutory or case law concerning interpretation of documents conveying mineral rights. Also, the Federal language provides that where no applicable State law exists, the interpretation of the terms of the document relied upon to establish VER shall be based upon the usage and custom at the time and place that it came into existence. The counterpart Indiana language at subdivision 139(b) is silent concerning applicable State statutory law. The proposed language only provides that if there is no applicable common law the provisions at subdivisions 139(b) (1) and (2) apply. Therefore, the Director finds the proposed language at subdivision 139(b) no less effective than the counterpart Federal regulations at 30 CFR 761.5(e) except to the extent that the proposed Indiana rule is silent concerning the applicability of State statutory law. In addition, the Director is requiring that Indiana further amend 310 IAC 12–0.5–139(b) to provide that the interpretation of the terms of the document used to establish a valid existing right shall be based either upon applicable State statutory or case law concerning interpretation of documents conveying mineral rights, or where no applicable State statutory or common law exists, the interpretation is based upon the provisions at subdivisions 139(b) (1) and (2).

Proposed subdivision 139(b)(2), concerning a required showing by the applicant that the parties to the document contemplated the right to conduct the same mining activities for which the applicant claims VER, has no direct Federal counterpart.

The proposed language, however, is not inconsistent with the Federal requirements contained in the 1979 VER rule, at former 30 CFR 761.5(c) and is, therefore, approved.

Proposed subsection 139(c) has no direct Federal counterpart. The Director finds the proposed language to be a valuable clarification of VER and not inconsistent with SMCRA and the Federal VER regulations. In addition, the language is substantively identical to the language contained in the 1979 VER rule at former 30 CFR 761.5(d)

Therefore, proposed subsection 139(c) is approved.

Proposed subsection 139(d) is substantively identical to the counterpart Federal regulations at 30 CFR 761.5(d)(1) and is, therefore, approved.

The Director finds the proposed definition of VER, except as discussed above, to be consistent with an no less effective than the Federal regulations at 30 CFR 761.5 and the 1980 test (the 1979 VER rule with the "good faith, all permits test" interpretation) as discussed in the November 20, 1986, **Federal Register** (51 FR 41954).

C. Revisions to Indiana's Regulations With No Corresponding Federal Regulations

1. 310 IAC 12–0.5–72 Litter

The term *litter* is defined to mean the detached recognizable portions of the plants under evaluation that cover the ground surface. The Federal regulations use the term *litter* in definition of *ground cover*, but a Federal definition of the term *litter* is not provided. In its submittal of this amendment, Indiana stated that its definition of the term *litter* is based on the terms *litter* and "crop residue found in the "Resource Conservation Glossary," Third edition, Soil Conservation Society of America, 1982, page 188, and the needs and conditions of the Indiana program. The Director finds the proposed definition to be consistent with and no less effective than the Federal use of the term *litter* as it appears in the definition of "ground cover" at 30 CFR 701.5.

2. 310 IAC 12–0.5–111 Shelter Belt

This term is defined to mean an area used for protection from wind or snow and which is subject to proof-of-productivity standards for fish and wildlife habitat. In its submittal of this definition, Indiana stated that its definition of the term *shelter belt* is modeled after the definition of the same term as found in the "Resource Conservation Glossary," Third edition, Soil Conservation Society of America, 1982, page 145. There is no direct Federal counterpart to this definition. However, the Federal regulations at 30 CFR 816/817.116(b)(3) use the term "shelter belts" in the regulations for the standards for success for postmining land use of fish and wildlife habitat. The Director finds the proposed definition to be consistent with and no less effective than the Federal use of the term "shelter belts" at 30 CFR 816/817.116(b)(3).

3. 310 IAC 12–0.5–116 Soil Productivity

This term is defined to mean the capacity of a soil for producing a specified plant or sequence of plants under a physically defined set of management practices. In its submittal of this definition, Indiana stated that its definition of the term "soil productivity" is modeled after the definition of the same term as found in the "Resource Conservation Glossary," Third edition, Soil Conservation Society of America, 1982, page 159. There is no direct Federal counterpart to this definition. However, the Federal regulations at 30 CFR 823.15 use the term soil productivity in the regulations on prime farmland revegetation and restoration. The Director finds the proposed definition to be consistent with the Federal use of the term "soil productivity" at 30 CFR 823.15.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. No agency comments were received on the proposed amendments.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the August 5, 1993, **Federal Register** (58 FR 41669). The comment period closed on September 7, 1993. No comments were received during the comment period, and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

V. Director's Decision

Based on the above findings, and except as noted below, the Director is approving Indiana's proposed amendment 93–5 as submitted by Indiana on July 2, 1993. As discussed in Finding B–3, the Director is approving 310 IAC 12–0.5–139(b) except to the extent that the proposed language is silent concerning the applicability of State statutory law. In addition, the Director is requiring that Indiana further amend 310 IAC 12–0.5–139(b) to provide that the interpretation of the terms of the document used to establish a valid existing right shall be based either upon applicable State statutory or case law concerning interpretation of documents conveying mineral rights, or where no applicable State statutory or common law exists, the interpretation is based upon the provisions at subdivisions 139(b)(1) and (2).

The Federal regulations at 30 CFR 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

VI. Procedural Determinations

Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory

programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 9, 1994.

Robert J. Biggi,

Acting Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 914.15, is amended by adding a new paragraph (zz) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(zz) The following amendment (Program Amendment Number 93–5) submitted to OSM on July 2, 1993, is approved, except as noted below, effective June 16, 1994: Definitions to the Indiana program at 310 IAC 12–0.5–6 concerning *affected area*; 310 IAC 12–0.5–23 concerning *coal mine waste*; 310 IAC 12–0.5–53 concerning *ground cover*; 310 IAC 12–0.5–55 concerning *half-shrub*; 310 IAC 12–0.5–64 concerning *impounding structure*; 310 IAC 12–0.5–72 concerning *litter*; 310 IAC 12–0.5–104 concerning *reference area*; 310 IAC 12–0.5–111 concerning *shelter belt*; 310 IAC 12–0.5–116 concerning *soil productivity*; and 310 IAC 12–0.5–139 concerning *valid existing rights* except to the extent that subdivision 139(b) is silent concerning the applicability of State statutory law.

3. In section 914.16, paragraph (ee) is added to read as follows:

§ 914.16 Required program amendments.

* * * * *

(ee) By July 1, 1994, Indiana shall amend 310 IAC 12–05.–139(b) to provide that the interpretation of the terms of the document used to establish a valid existing right shall be based either upon applicable State statutory or case law concerning interpretation of documents conveying mineral rights, or where no applicable State statutory or common law exists, the interpretation is based upon the provisions at subdivisions 139(b) (1) and (2).

[FR Doc. 94–14634 Filed 6–15–94; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

FRA Docket No. ROS–2, Notice No. 4

RIN 2130–AA91

Bridge Worker Safety Rules

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final Rule; correction and petition for reconsideration.

SUMMARY: On June 24, 1992, FRA published safety standards for the protection of those who work on railroad bridges (49 CFR Part 214). FRA now corrects certain sections of that regulation, and changes or clarifies certain requirements in response to a petition for reconsideration filed by the Association of American Railroads (AAR). First, three sections have been corrected by adding citations to reflect the most recent American National Standards Institute (ANSI) standards for personal protective equipment. Second, the rule now sets forth conditions under which employees specially-designated as bridge inspectors may work without fall protection. Third, the rule no longer requires toeboards on walkways, and in certain instances permits work without fall protection on roadways attached to a railroad bridge. Finally, FRA clarifies that railroads and their contractors must require the use of protective footwear, but need not necessarily furnish it, which reflects current practice in the railroad, construction, and other industries where such equipment is necessary.

DATES: *Effective Date:* The effective date of this regulation is on July 18, 1994. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of July 18, 1994.

ADDRESSES: Any petition for reconsideration should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW. Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: William O'Sullivan, Chief, Office of Safety Track Division, 400 Seventh Street, SW., Washington, DC 20590 (Telephone: 202–366–0499), Gordon Davids, Office of Safety Enforcement, FRA, 400 Seventh Street, SW., Washington, DC 20590 (Telephone: 202–366–0499), or Christine Beyer, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (Telephone: 202–366–0621).

SUPPLEMENTARY INFORMATION: On June 24, 1992, FRA published the Bridge Worker Safety Rules (57 FR 28116) that established requirements for the protection of those railroad and railroad contractor employees who work on railroad bridges. The rule included provisions for personal fall arrest systems, safety nets, personal protective equipment (head, face, eye, and foot equipment), contingencies for working adjacent to water, and standards for walkways, railings, and scaffolds. The regulations went into effect on September 24, 1992. However, in order to provide the industry additional time to obtain complying equipment and adequately train workers, FRA suspended the effective date of the sections requiring fall protection (*i.e.*, sections 214.103 and 214.105) until November 24, 1992. (57 FR 45326.)

On August 10, 1992, the AAR filed a petition seeking reconsideration (petition) of the bridge worker safety rules. In that petition, the AAR sought reconsideration of 49 CFR 214.101(d), 214.103(b), and 214.103(c). After careful consideration and for the reasons set forth below, FRA denied the AAR's request with respect to section 214.101(d), partially granted the request with respect to section 214.103(b), and granted the request with respect to section 214.103(c). (FRA formally responded to the petition by letter to the AAR dated January 11, 1993, a copy of which is in the docket of this matter.)

The AAR petition first suggests that section 214.101(d) violates the Rail Safety Improvement Act of 1988 (RSIA) and the Administrative Procedure Act (APA), and therefore should be withdrawn. Section 214.101(d) states that "[A]ny working conditions involving the protection of railroad employees working on railroad bridges not within the subject matter addressed by this Chapter" shall be governed by the regulations of the Occupational Safety and Health Administration (OSHA). This section is merely a restatement of the law as it stands with respect to occupational safety and health matters in the railroad environment, and was added to the final rule in order to alleviate the jurisdictional confusion expressed by rail labor and management prior to promulgation of the rule. FRA has explained the complementary jurisdiction it shares with OSHA with respect to health and safety matters in the railroad industry in its Statement of Policy (Policy Statement) (43 FR 10583) published in 1978, more recently in the Notice of Proposed Rulemaking (NPRM) (56 FR 3434) in this proceeding, and on numerous other occasions. However, a discussion of the statutory jurisdiction each agency possesses and the exercise of that authority is necessary to explain the basis for FRA's response to this aspect of the AAR's petition.

The Occupational Safety and Health Act (OSH Act) vests OSHA with responsibility for promulgating and enforcing workplace safety and health standards. However, in recognition that other Federal agencies possess parallel, industry-specific authority over occupational safety and health, section 4(b)(1) provides that no OSHA rules

> shall apply to working conditions of employees with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

29 U.S.C. § 653(b)(1). The exercise of authority contemplated by this provision is one that results in a Federal regulation for on-the-job protection of worker safety or health or a determination that a particular form of regulation is not appropriate.

The Federal Railroad Safety Act of 1970 ("FRSA") grants FRA broad authority to prescribe standards in "all areas of railroad safety." 45 U.S.C. § 431(a). Pursuant to that authority, in 1975, FRA published an advance notice of proposed rulemaking indicating its intention to develop its own set of occupational safety and health standards that would, *in toto*, displace OSHA's regulatory program. 40 FR 10693 (March 7, 1975). After consideration of the record developed, however, FRA reduced the scope of its efforts.

In 1976, FRA published in that docket a notice of proposed rulemaking stating its intention to issue specific occupational safety and health standards on only three subjects for railroad employees (egress from structures, general environmental controls, and fire protection) that would displace otherwise applicable OSHA standards. 41 FR 29153 (July 15, 1976). FRA also indicated its intention to incrementally issue a comprehensive code of such standards for railroad employees that would gradually displace OSHA standards. FRA contemplated that these FRA standards would apply on a territorial instead of a hazard-specific basis.

In 1978, FRA sharply changed course: it terminated the regulatory proceeding and issued a Policy Statement instead of pursuing a comprehensive code of FRA occupational safety and health standards. 43 FR 10583 (March 14, 1978). In explaining its action, FRA stated:

> * * * Written comments in response to [the 1976] proposal were received, and a public hearing was conducted. The FRA has reviewed not only these comments, but also the entire original concept as to the adoption of a comprehensive code of occupational safety and health standards for the railroad industry paralleling the existing OSHA regulations.
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> * * * * *
>
> * * * [G]iven the present staffing level for field investigation and inspection, the FRA has determined that, at this time, it would not be in the best interests of the public and of railroad safety for this agency to become involved extensively in the promulgation and enforcement of a complex regulatory scheme covering in minute detail as do the OSHA standards, working conditions which, although located within the railroad industry, are in fact similar to those of any industrial workplace. Rather, we believe that the proper role for FRA in the area of occupational safety in the immediate future is one that will concentrate our limited resources in addressing hazardous working conditions in those traditional areas of railroad operations in which we have special competence.

Id. at 10584–85.

Thus, contrary to its original intent, FRA's determination in 1978 was generally to leave OSHA standards in place in the railroad industry.

The Policy Statement defined "railroad operations" as the "movement of equipment over rails" (*Id.*), and rejected a "territorial" approach to delineating those working conditions over which FRA would exercise its jurisdiction from those that would remain under OSHA's control. *Id.* at 10587. FRA did not want to duplicate capabilities "already possessed by OSHA" and stated:

> FRA recognizes that OSHA is not precluded from exercising jurisdiction with respect to conditions not rooted in railroad operations nor so closely related to railroad operations as to require regulation by FRA in the interest of controlling predominant operational hazards.

Id. Therefore, until FRA exercises its statutory authority with respect to given working conditions through promulgation of a standard or through an expression that regulation is unnecessary or would be counterproductive, existing OSHA standards apply in the railroad workplace.

In support of its claim to withdraw section 214.101(d), the AAR alleges that because section 19 of the RSIA requires FRA to issue rules, as necessary, for the protection of maintenance-of-way employees on railroad bridges, FRA is the exclusive Federal agency to regulate this subject matter. Also, the AAR states that FRA does not have the discretion "to delegate to OSHA a portion of its

responsibility to regulate bridge worker safety." FRA has not delegated any authority to OSHA through publication of section 214.101(d); characterizing section 214.101(d) as a delegation is simply a misstatement of FRA's relationship with OSHA and OSHA's existing authority to regulate occupational safety and health matters in every American workplace. Rather, FRA has purposefully chosen not to exercise its authority over certain working conditions that OSHA also has the authority to regulate, and over which OSHA has comprehensively exercised its authority.

The AAR also argues that FRA violated the APA by not seeking public comment on section 214.101(d), and that this section represents "a radical departure" from the NPRM and long-standing policy. On the contrary, this section accurately reflects an extensive discussion in the preamble of the NPRM and its inclusion in the rule text is in direct response to written comments submitted to the docket during the rulemaking. Clearly, those commenters knew the matter was at issue. Notice and comment would be required if section 214.101(d) represented a new regulatory scheme for the enforcement of occupational safety and health standards in the railroad workplace. Clearly, that is not the case. Section 214.101(d) is a statement of FRA's interpretation of the law and is wholly consistent with FRA's previous interpretive statements.

From as long ago as publication of the Policy Statement in 1978, FRA has stated that it will exercise authority over working conditions intrinsic to or closely related to railroad operations requiring FRA's unique expertise, and has exercised its authority in some of those areas. All other occupational safety and health matters continue to be governed by OSHA where that agency has exercised its authority over a specific working condition. The AAR concludes that the Policy Statement makes "the regulation of areas along railroad operating rights-of-way * * * exclusively the province of FRA." This conclusion is incorrect, as it embodies the very "territorial" approach to jurisdiction FRA rejected in 1978. The AAR chooses to misconstrue the functional distinction drawn by the Policy Statement as a territorial division of jurisdiction ("fixed facilities such as offices and shops" as OSHA's versus "areas along railroad operating rights-of-way" as FRA's), which it explicitly is not. For instance, as the NPRM in this proceeding clearly states (56 FR 3435), the Policy Statement divested OSHA of authority to regulate the *surfaces* on railroad bridges, such as track and signal structures, but did not oust OSHA entirely from regulating any working condition that arises on a railroad bridge, as the AAR argues. Also, the plain language of the Policy Statement left the regulation of personal protective equipment with OSHA until FRA chose to exercise its authority in that regard. 43 FR 10583, 10588 (March 14, 1978).

In promulgating the initial final rule, FRA methodically considered the hazards bridge work poses; exercised its authority to regulate the use of certain personal protective equipment; and left other working conditions (for instance, exposure to airborne toxins and attendant respirator use) under existing applicable OSHA standards. The areas left to OSHA are those in which FRA neither has, nor can quickly acquire, the expertise necessary for effective implementation of relevant standards. Were FRA to include such matters within its rule without the ability to enforce the relevant standards, it would, as a practical matter, be creating a gap in the protection of railroad workers, which it does not want to do. Moreover, but for respiratory protection, which FRA proposed to include in its rule but ultimately decided to leave to OSHA, FRA never even proposed standards on the matters section 214.101(d) specifies as being included within the areas left to OSHA (*i.e.*, hazard communications, hearing protection, welding and lead exposure standards).

Section 214.101(d) merely states the relationship between FRA's substantive standards and OSHA's; it does not impose a new substantive burden. Whatever substantive burdens OSHA's rules place on railroads are the result of OSHA's exercise of its authority prior to issuance of FRA's rule. This section only attempts to clarify which of those pre-existing standards still apply even after the issuance of FRA's final rule, which displaces some of them. Section 214.101(d) imposes no new substantive burdens and, accordingly, notice and comment was not necessary prior to issuance of this essentially interpretive rule.

Nevertheless, there can be no doubt that the NPRM invited comment on where the jurisdictional lines should be drawn and demonstrated FRA's intent to clarify it. FRA stated:

> Thus, one question is whether the occupational safety issues presented by work on railroad bridges are so inherent to the railroad environment that FRA alone should regulate them, or whether they cut across industry lines without raising special concerns in the railroad context and thus are properly addressed by general OSHA standards.

56 FR 3434. FRA noted that there was considerable confusion about which OSHA standards applied and that it had placed in the docket various legal memoranda from railroads and railroad associations on this issue. FRA then stated: "[T]he appropriate federal standards for personal protection, and the identity of the agency responsible for their enforcement, must be crystal clear." 56 FR 3435. No participant in the rulemaking can be heard to complain about FRA's having provided the clarification it promised. Therefore, although notice of this interpretive rule was not required, it was effectively provided.

Section 214.101(d) does not reverse long-standing policy or law, does not violate the RSIA or APA and, therefore, will not be withdrawn.

Second, the AAR's petition asserts that the exemption in section 214.103(b) for instances where the installation of fall protection poses a greater risk than working without protection should be expanded to include instances where the installation and use of fall protection poses a greater risk. FRA does not believe there are compelling reasons to enlarge this exception to the fall protection requirement with respect to all railroad bridge workers. The examples cited by the AAR in their petition (fire fighting, re-railing cars, working with moving equipment) as instances where the use of fall protection equipment may pose a greater risk than completing the work without fall protection are not persuasive. FRA believes that for each of these situations installation of fall protection equipment is the most difficult part of the process, and that once installed does not interfere in the work to be done. In other words, if installation can be accomplished, the duties to be performed once protection is in place can also be accomplished. The AAR states that workers need to be able to move away from these hazards quickly and easily. However, once installed, safety nets, walkways, and fall arrest systems provide ample freedom of movement. The only fall protection device that may present questions in this regard is the personal fall arrest system, and given new designs that encompass the peculiarities of railroad bridge structures and points of attachment, these devices can be installed to allow prompt and careful movement. Therefore, FRA is not willing to expand the fall protection exception set out in section 214.103(b) for all bridge workers. However, FRA does believe that this exception should be broadened to permit railroad bridge inspectors to work without installing or

using fall protection systems, so long as certain criteria are met.

Employees performing inspections of railroad bridges must climb to all points above and below the bridge deck, as well as along the deck, and must be free to reach points on the structure that are accessed infrequently and with difficulty, and then only for inspection purposes. FRA believes that in some instances the use of fall protection could heighten the chance of injury for the inspector. Also, a blanket fall protection requirement could result in incomplete bridge inspections, a fact that raises additional safety concerns for fellow employees and the public. Therefore, persons who are capable of climbing on bridges, and who have been specifically qualified and designated by the railroad or railroad contractor, may perform bridge inspections without the installation and use of fall protection required under this regulation, provided the conditions set forth below are met.

In order to qualify for the installation and use exception now set forth in section 214.103(b)(2), the railroad or contractor using the exception must have a comprehensive written program in place that addresses pertinent climbing techniques and applicable safety equipment. The employee to whom the exception applies must be trained and qualified according to that program to conduct bridge inspections. Also, this employee must be formally designated by the railroad or contractor as one who will perform bridge inspections and voluntarily accepts the designation. The reason for this requirement is to prevent an employer from maintaining an informal bridge inspection program typified by on-the-spot designations of employees who lack training and who are uncomfortable working at heights without protection. Section 214.103(b)(2)(D) requires that the employee must actually be engaged in the inspection of the bridge or its components while the exception applies. Should this employee move to another duty on the bridge, fall protection would be required. Finally, the employee to whom the exception applies must be familiar with the appropriate climbing technique needed to scale safely the structure involved, and must be provided any generic, alternative or specialized equipment needed to complete the climb efficiently and safely. For instance, some railroads are training their bridge inspectors in rock climbing techniques and systems. If rock climbing techniques are used by a bridge inspector during the inspection, the appropriate equipment must also be provided.

The AAR also requests that FRA eliminate the requirement of toeboards on bridge walkways found in section 214.103(c). In support of its request, the AAR states that toeboards are not normally found on railroad bridges, and because they would permit snow, ice, and debris to accumulate on walkways, will present tripping or falling hazards. FRA agrees, and is removing the toeboard requirement from section 214.103(c). Therefore, fall protection will no longer be required where a bridge is equipped with secure walkways and railings that meet the remaining criteria set forth in section 214.103(c). Toeboards are used traditionally as a method to prevent tools from falling rather than as a fall protection device. Recognizing that falling tools present hazards to those who work at levels below the walkway, FRA believes that the dangers created by the presence of toeboards exceed those associated with not requiring them. Also, nearly all railroad bridges equipped with secure walkways and railings do not also possess toeboards. Therefore, the substitution of walkways for personal fall arrest systems and safety nets permitted by section 214.103(c) as originally written is largely unusable.

FRA also makes a clarification with respect to walkways in section 214.103(c). Many railroad bridges now include vehicular roadways replacing second or multiple railroad tracks that have been removed. For the purposes of this rule, FRA views these roadways as walkways. These roadways are at least as stable as the typical walkway built beside track on a railroad bridge, and footing and movement on these roadways is as secure as on a walkway or on the track portion of the railroad bridge. Because of these safety factors, FRA believes that employees working or moving at least six feet from the edge of such a roadway are not at risk of falling over the side of the bridge. Therefore, where employees are six or more feet from the edge of a vehicle roadway, fall arrest systems, safety nets, railings and handrails are not required. Section 214.103(c)(2) now permits work without fall protection on roadway bridges so long as employees remain at least six feet from the edge of the roadway.

Also, FRA is clarifying the rule with respect to personal protective equipment. FRA has received questions from the regulated community concerning the interplay of sections 214.111 and 214.115. To alleviate any confusion, section 214.111 has been clarified by stating that railroads and their contractors must require the use of protective footwear, but need not necessarily furnish that equipment. As written, section 214.115 of the final rule clearly states that employers must require workers to wear foot protection, but does not contain the requirement present in the other personal protective equipment sections stating the "employees shall be provided" such equipment. Section 214.111, which sets out personal protection standards generally, appears to contradict section 214.115 by stating that the railroads and contractors "must provide and require the use of" the equipment required by Subpart B of the rule, including footwear. That contradiction is now removed. The practical difference involved here, as in other industries, is that footwear is a personal item that the employer cannot reasonably be required to retain in stock, while other safety items are easily supplied with a store of backup units should they be required. Therefore, section 214.111 is amended to exclude protective footwear from the group of personal protective devices that the railroads and their contractors must provide. This change reflects the status of protective footwear in the railroad, construction, and other industries where the equipment is needed, reiterates FRA's original intent, and does not in any way interfere with collective bargaining agreements that address who ultimately bears the expense for personal protective equipment.

Finally, FRA is correcting sections 214.113, 214.115, and 214.117 by replacing outdated ANSI references with the most recent standards for head, foot, and eye and face protection. As noted by commenters to the NPRM, these new standards were generally used in industry when the NPRM and final rule were published, but FRA erroneously printed outdated standards.

Regulatory Impact

E.O. 12866 and DOT Regulatory Policies and Procedures

This correction of the final rule has been evaluated in accordance with existing policies and procedures and is not considered significant under Executive Order 12866 or under DOT policies and procedures. The minor technical changes made in this amendment will not increase the costs or alter the benefits associated with this regulation to any measurable degree.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. This amendment to the final rule removes a requirement originally

placed on railroads and their contractors and clarifies an existing requirement. The changes will have no new direct or indirect economic impact on small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

There are no paperwork requirements associated with this amendment of the final rule.

Environmental Impact

FRA has evaluated this amendment in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. The amendment meets criteria establishing this as a nonmajor action for environmental purposes.

Federalism Implications

This amendment will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 214

Bridges, Incorporation by reference, Occupational safety and health, Personal protective equipment, Railroad operating practices, Railroad safety, Scaffolding.

The Final Rule

In consideration of the foregoing, Part 214, Title 49, Code of Federal Regulations is amended as follows:

1. The authority for this part continues to read as follows:

Authority: 45 U.S.C. 431, 438, as amended; 49 CFR 1.49(m).

2. By amending § 214.103 to revise paragraphs (b) and (c) to read as follows:

§ 214.103 Fall protection, generally.

* * * * *

(b)(1) This section shall not apply if the installation of the fall arrest system poses a greater exposure to risk than the work to be performed. In any action brought by FRA to enforce the fall protection requirements, the railroad or railroad contractor shall have the burden of proving that the installation of such device poses greater exposure to risk than performance of the work itself.

(2) This section shall not apply to employees engaged in inspection of railroad bridges conducted in full compliance with the following conditions:

(i) the railroad or railroad contractor has a written program in place that requires training in, adherence to, and use of safe procedures associated with climbing techniques and procedures to be used;

(ii) the employee to whom this exception applies has been trained and qualified according to that program to perform bridge inspections, has been previously and voluntarily designated to perform inspections under the provisions of that program, and has accepted the designation;

(iii) the employee to whom this exception applies is familiar with the appropriate climbing techniques associated with all bridge structures the employee is responsible for inspecting;

(iv) the employee to whom this exception applies is engaged solely in moving on or about the bridge or observing, measuring, and recording the dimensions and condition of the bridge and its components; and

(v) the employee to whom this exception applies is provided all equipment necessary to meet the needs of safety, including any specialized or alternative systems required.

(c) This section shall not apply where employees are working on a railroad bridge equipped with walkways and railings of sufficient height, width, and strength to prevent a fall, provided that the employee does not work beyond the railings, over the side of the bridge, on ladders or other elevation devices, or where gaps or holes exist through which a body could fall. Where used in place of fall protection as provided for in § 214.105, this paragraph (c) is satisfied by:

(1) Walkways and railings meeting the standards set forth in the American Railway Engineering Association's Manual for Railway Engineering; and

(2) Roadways attached to railroad bridges, provided that employees on the roadway deck work or move at a distance of six feet or more from the edge of the roadway deck, or from an opening through which a person could fall

* * * * *

3. By revising § 214.111 to read as follows:

§ 214.111 Personal protective equipment, generally.

With the exception of foot protection, the railroad or railroad contractor shall provide and the employee shall use all appropriate personal protective equipment described in this subpart in all operations where there is exposure to hazardous conditions, or where this subpart indicates the need for using such equipment to reduce hazards to railroad employees. The railroad or railroad contractor shall require the use of foot protection when the potential for foot injury exists.

4. By amending § 214.113 to revise paragraph (b) to read as follows and by removing paragraph (c):

§ 214.113 Head protection.

* * * * *

(b) Helmets for the protection of railroad employees against impact and penetration of falling and flying objects, or from high voltage electrical shock and burns shall conform to the national consensus standards for industrial head protection (American National Standards Institute, American National Standard Z89.1–1986, Protective Headwear for Industrial Workers). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 11 West 42nd Street, New York, NY 10036. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 400 7th Street, SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

5. By amending § 214.115 to revise paragraph (b) to read as follows:

§ 214.115 Foot protection.

* * * * *

(b) Safety-toe footwear for railroad employees shall conform to the national consensus standards for safety-toe footwear (American National Standards Institute, American National Standard Z41–1991, Standard for Personal Protection—Protective Footwear). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 11 West 42nd Street, New York, NY 10036. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 400 7th Street, SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC

6. By amending § 214.117 to revise paragraph (b) to read as follows:

§ 214.117 Eye and face protection.

* * * * *

(b) Eye and face protection equipment required by this section shall conform to the national consensus standards for occupational and educational eye and face protection (American National Standards Institute, American National Standard Z87.1–1989, Practice for Occupational and Educational Eye and Face Protection). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 11 West 42nd Street, New York, NY 10036. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 400 7th Street, SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued this 8th day of June, 1994.

Jolene M. Molitoris,

Administrator.

[FR Doc. 94–14377 Filed 6–15–94; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 59, No. 115
Thursday, June 16, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Risk Assessment for Holding Company Systems

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 1, 1994, The Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a request for public comment on proposed rules to implement the risk assessment provisions of the Futures Trading Practices Act of 1992. 59 FR 9689 (March 1, 1994). The original comment period, which would have expired on May 2, 1994, was extended by the Commission for a period of sixty days Thus, the extended comment period expires on July 1, 1994. 59 FR 22145 (April 29, 1994). However, in order to assure a full opportunity for comment on the issues, the Commission has determined to provide an additional sixty-day extension of the comment period with respect to those provisions of the proposed rules concerning the maintenance and filing of information concerning the futures commission merchant's ("FCM") noncustomer accounts and those provisions requiring the maintenance and reporting of financial information concerning an FCM's Material Affiliated Persons ("MAPs") required to be provided on proposed Form 1.15A.

DATES: Written comments for those provisions subject to the extension, as set forth above, must be received on or before September 1, 1994. Comments concerning all other provisions of the proposed rules must be received on or before July 1, 1994.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to "Proposed Risk Assessment Rules."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Lawrence T. Eckert, Attorney Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955

SUPPLEMENTARY INFORMATION: The comment period on proposed rule 1.14 §§ (a)(1)(v)–(a)(1)(x), proposed rule 1.15 §§ (a)(1)(iii), (a)(2)(iii), (a)(3) and (a)(4) and proposed Form 1.15A is hereby extended for an additional sixty days, to September 1, 1994. The comment period for all other provisions of the proposed rules, including, but not limited to, the provisions concerning maintenance and filing of an FCM's organizational chart, information concerning risk management policies, procedures and systems, and consolidated and consolidating financial statements, as well as the proposed requirements with respect to providing notice to the Commission upon the occurrence of certain events, are not extended and the comment period thereon will expire on July 1, 1994.

Issued in Washington, DC, on June 10, 1994, by the Commission

Jean A. Webb,

Secretary of the Commission

[FR Doc. 94–14515 Filed 6–15–94; 8:45 am]

BILLING CODE 6351–01–M

LEGAL SERVICES CORPORATION

45 CFR Part 1607

Governing Bodies

AGENCY: Legal Services Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation would amend the Legal Services Corporation's ("LSC" or "Corporation") regulations, relating to governing bodies of recipients of LSC funds. Many of the revisions are simply intended to clarify current Corporation policy or to interrelate this part to other LSC regulations. However, a number of the proposed revisions represent changes in Corporation policy or interpretations with respect to issues that arise under the regulation. The proposal also includes a number of technical revisions to make the rule easier to apply and use.

DATES: Comments should be received by August 15, 1994.

ADDRESSES: Comments should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Victor Fortuno, General Counsel, Office of the General Counsel (202) 336–8810.

SUPPLEMENTARY INFORMATION: The Operations and Regulations Committee of the LSC Board of Directors ("Committee") held public hearings on April 15, 1994, in Washington, DC and on May 13, 1994, in Atlanta, Georgia, to consider drafts of proposed revisions to 45 CFR part 1607, LSC's regulation on recipient governing bodies. At the meeting in Atlanta, the Committee approved a draft to be published in the **Federal Register** as a proposed rule for public comment.

The Corporation is extending the customary 30-day comment period to 60 days in order to allow bar associations and other organizations with a specific interest in this rule sufficient time to comment. Bar associations play a substantial role in the appointment of recipient board members, and the Committee encourages their involvement in this rulemaking process.

The Committee recognizes that reauthorization of the Corporation is presently under consideration by Congress. Whenever Congress does reauthorize the Corporation, the Corporation's regulations will be revisited and revised accordingly.

This proposed rule is intended to amend 45 CFR part 1607 and to supersede part 1607's interpretive guideline published at 48 FR 36820 (August 15, 1983).

Section 1607.1 Purpose

No change is proposed for this section.

Section 1607.2 Definitions

Most of the changes proposed for this section are technical and clarifying in nature. The section was reordered to put the definitions in alphabetical order. Also, definitions found in other parts of the regulations, but applicable to this part are included here for easier reference. In addition, language found in other sections of this part that, in fact, constitute definitions of terms are included here both for easier reference

and to treat similar terms similarly. Some of the language has been clarified to make it consistent with past and current LSC interpretations.

Section 1607.2(a). The definition of *attorney member* was added to make it clear that national support center board members do not have to be admitted to practice in a state where the center actually provides legal assistance.

Section 1607.2(c). The definition of *eligible client member* has been changed in two principal ways. First, the language has been revised to make it clear that client board members must be eligible at the time of their appointment to each term of office. Thus, a client member who is financially eligible for services when first appointed to a recipient's board may not be reappointed to a second or subsequent term if, at the time of reappointment, the client board member is no longer financially eligible for LSC-funded services. However, nothing in the rule would require a client board member to resign during the course of a term if the client became ineligible subsequent to appointment. Second, language was added to deal with two additional, distinct issues. The proposed rule now makes it clear that the recipient should decide how client board member eligibility is determined. The proposed rule also makes it clear that the recipient should decide whether it or a particular group should make the determination, and that the recipient could decide, for some groups, the recipient will make the determination and for others it will leave the determination up to the appointing group.

The Committee considered and decided not to expand the definition of *eligible client member* to include individuals who are eligible for non-LSC-funded services provided by the recipient, because it wished to insure that the focus of the legal services program remains on the poor community.

Section 1607.2(d). The proposal revises the definition of *governing body* to clarify that, in addition to the governing bodies of recipients who have as a primary purpose the provision of legal assistance to eligible clients, it also applies to the governing bodies or policy boards created pursuant to § 1607.6(e).

Section 1607.2(e). This definition of *recipient* appears in 45 CFR part 1600, but is repeated here for clarity in interpreting this part.

Section 1607.3 Composition

Section 1607.3(a). The proposal includes general language, applicable to all categories of board membership, that requires board members to be supportive of the purposes of the LSC Act, and to be interested in and knowledgeable about the delivery of quality legal services to the poor. The current regulation does not include any similar requirement for client board members, but does include similar, although not identical, requirements for attorney and "other" board members. The proposal removes the reference to the board reflecting "the characteristics" of the client community, in part because it is not clear what that language means and in part because it could be construed to be inconsistent with diversity requirements that are included later in the rule for each category of board membership.

Section 1607.3(b). With respect to attorney board members, the proposal revises the language of the rule that is based on the requirements of the McCollum Amendment, which require a majority of the board members to be appointed by state, county and municipal bar associations. The revision clarifies that the appointments can be made by one or more such bar associations, so long as those bar associations collectively represent a majority of attorneys practicing law in the recipient's service area. If there are minority or gender-based bar associations that represent attorneys practicing in a particular locality, those bar associations may be included in the mix of bar associations that make appointments of attorneys to a recipient's board, especially if their inclusion would help to insure that there is appropriate diversity among the attorney members of the board. In addition, although the rule, consistent with the language of the McCollum Amendment, states that the appointments are to be made by the "governing bodies" of the bar associations, the Committee recognizes that different bar associations should be free to exercise their appointment responsibility in a manner consistent with their own policies, procedures and practices. The McCollum Amendment does not direct LSC to impose any particular method of appointment on a bar association.

The proposed rule also adds language which is based on part of the McCollum amendment that makes it clear that national support centers are not required to use the American Bar Association ("ABA") or a collection of all state bars to appoint their attorney members, simply because they provide service nationally. The proposed rule also recognizes that some recipients, especially Native-American or migrant programs, may have offices in one state, but also provide services in one or more adjacent or nearby states. The language is intended to permit those programs, if they so decide, to have the bar associations of the other states in which they provide service make appointments as well as the bar of the state in which their principal office is located.

In addition, the proposed rule explicitly states what is implicit in the language of the current regulation, i.e., that the additional ten percent of the board members who must be attorneys, but who are not covered by the McCollum amendment, may be selected by the recipient's governing body, if it so chooses. The proposed rule does change current law with respect to the additional ten percent of attorney board members in one respect, however. Under the current regulation, the additional attorneys must be representatives of bar associations or other legal organizations, e.g., law schools. This requirement is not contained in the LSC Act. Under the proposed regulation, the recipient may select attorneys who are not representatives of any particular bar or legal organization, or may select attorneys who are affiliated with non-legal organizations, as long as they are admitted to practice in a state within the recipient's service area, and as long as the organization has an interest in the delivery of legal services to the poor. Thus, the recipient would be able to select lawyers who represent the business community or the United Way and may be helpful in fundraising, or lawyers who provide substantial pro bono services to the client community and may be helpful in designing a recipient's private attorney involvement program.

Finally, the proposed regulation revises and relocates the section that relates to diversity among attorney board members. This provision is a variation of the language previously found in § 1607.3(c). It is revised to incorporate a more current statement of the concerns addressed by that subsection, but no substantive change is intended. While the language of the proposed rule specifically mentions race, ethnicity and gender, it also includes a reference to other factors that may be relevant in a particular legal community and population of the area served by the recipient, including, for example, age, physical abilities and religious belief.

Section 1607.3(c). The proposal includes a number of changes in the language that relates to client board members. The principal revision addresses an issue that has remained

ambiguous under the language of the current regulation and has caused problems for some LSC recipients. The proposed revision would codify the current LSC interpretation of the language to require that client board members be selected by client groups that have been designated by the recipient. This proposal also adds language that more accurately reflects the kind of groups or organizations that would be appropriate client groups for purposes of eligible client member selection. In addition, the proposal adds a diversity goal for client board members that is similar to the requirement for attorney board members.

Section 1607.3(d). With respect to the "other" board members, i.e., those that are neither attorney members nor eligible client members, the proposal makes it clear that recipient boards are permitted to fill the remaining "other" slots. This gives recipients flexibility to include board members who can help them with fundraising, community relations, coordination with other social service providers, or any other locally identified need. Law school professors who cannot count as "attorney members" because they are not admitted to practice in a state within the recipient's service area, could be selected for this category of membership. Although there is no comparable language in the current regulation, this provision is consistent with longstanding LSC interpretations. In addition, the proposal includes language that makes it clear that "other" board members should be selected with the goals of diversity in mind.

Section 1607.3(e). This proposal adds language to the "domination" provision in the current regulation to make it clear that the provision was not intended to prevent recipients from designating a single regional or statewide client council as the appointing organization for client board members, so long as that client council represents numerous smaller client groups.

Section 1607.3(f). The proposal deletes language which could be incorrectly interpreted to give LSC authority to veto particular methods of selecting local board members. In addition, the proposal states affirmatively that recipients may recommend names to and consult with bar associations and other appointing groups to insure that appropriate appointments are made. This revision recognizes that bar associations or other groups may request information on who would make a good legal services program board member and may rely on input from the recipients in making the appointments.

Section 1607.3(g). The proposed rule includes a new provision that is intended to establish standards for dealing with recipient board vacancies. It establishes a standard of reasonable and good faith efforts to insure that governing body vacancies are filled promptly, but recognizes that recipients often have no control over the appointment process other than to change the groups that they have designated to make the appointments if a particular group fails to make an appointment in a timely manner. In order to avoid the creation of vacancies, recipients, through their own by-laws or board policies, could take a number of actions when appointing organizations are slow in making appointments, refuse to make them, or are unable to make them for whatever reason. For example, a recipient's board could permit its members to hold over until replacements are appointed, or could make short-term interim appointments, if necessary, until regular appointments can be made.

Section 1607.3(h). The proposed regulation includes a new provision that grants the recipient the authority to reject an appointment of a board member when the recipient determines that the person who has been appointed does not meet the criteria set out in the regulation, including financial eligibility for client board members, or where the person appointed has a significant individual or institutional conflict of interest with the recipient or its client community. The ABA's Standards for Providers of Legal Services to the Poor states, in Standard 7.2–5, that "governing body members should not knowingly attempt to influence any decisions in which they have a conflict of interest with provider clients" and Standard 7.2–6 states that "members should not be selected by * * * any institution or agency which is in conflict with the provider or its clients." The Commentary to those standards contains discussions of both institutional and individual conflicts of interest and suggests that when such conflicts arise with respect to a sitting board member, the member and the recipient should be guided by laws of the jurisdiction regarding disclosure and recusal. While the Standards state an absolute rule prohibiting appointments by institutions or agencies that have a conflict with the recipient or its clients (e.g. a welfare department or county attorney's office should not make appointments to a recipient's board), they also note that:

> If a person is employed by or is otherwise significantly connected with an institution that is in conflict with the provider's clients, generally that person should not serve on the governing body. That person may serve, however, if there is evidence * * * that the particular individual is not in actual conflict * * *.

Thus, the question of whether it is appropriate for government attorneys or other public employees or elected officials, or attorneys representing finance companies or real estate developers, to serve on recipient governing bodies as members appointed by a bar association as its representative is a factual issue. The Commentary recognizes that:

> (c)onflicts may arise in the representation by attorney board members of institutions or individuals who are in conflict with provider clients. Concern about the risks associated with conflicts should not exclude from the governing body every person identified with an institution or individual with an adverse interest. A strict rule could exclude persons with skills and experience of benefit to the provider and could inhibit development of an effective relationship between the provider and the private bar. In rural areas particularly, where the pool of potential members is relatively small, it may be impossible to avoid all conflicts. The provider, however, should assure that the presence of members with potential conflicts does not inhibit forceful representation of clients.

The proposed provision suggests a way that, under appropriate circumstances, the recipient can assure that individuals with clear and substantial conflicts of interest do not serve on its governing body, while permitting it to seat other individuals who may have a less substantial or merely potential conflict, and leaving it to the guidance of the applicable rules of professional responsibility when actual conflicts arise.

Section 1607.4 Functions of a Governing Body

Section 1607.4(a). This proposal deletes the requirement for "effective" prior public notice, which has proven to be a difficult concept to enforce and may be very fact-specific. The Committee felt that truly effective public notice is virtually impossible to achieve, even if a recipient spent huge amounts of money on advertising. The Corporation does not wish to promote such wasteful expenditures or assume that the efforts were not "effective" simply because few members of the public showed up at a board meeting. Instead, the standard should be that of "reasonable" prior public notice, so that recipients would only be required to do

what is reasonable under the specific local circumstances.

The Committee also considered whether it should include within the regulation specific guidance as to what kinds of matters were properly discussed in executive session. Instead, it decided to recommend that recipients look to the kinds of matters described in the LSC bylaws and Sunshine Act regulation (45 CFR part 1622), state Sunshine Act provisions, or other provisions in state non-profit corporation law for guidance as to the kinds of matters that should appropriately be discussed out of the public eye. A recipient should determine, based on that review and local circumstances, how it should conduct its business.

Section 1607.4(b). The proposed regulation includes new language to make it clear that recipient governing bodies have, in addition to the specific functions described in the regulation, the authority and responsibility inherent in their status as boards of non-profit corporations. The Committee felt that the current regulatory language did not grant the governing body the general authority, for example, to hire and fire a program's executive director, and there should be language that granted such authority.

In addition, there is new language that was added to make the section consistent with ABA opinions on the role of governing bodies of legal assistance programs under the Model Rules, especially with respect to the governing bodies' interference with an attorney's representation of a client or with the conduct of any ongoing representation. The Committee wished to make clear that while Board members were prohibited from such interference, the Board as a whole should be encouraged to adopt policies to guide the executive director's actions when he or she discovers that the recipient has undertaken representation in a case that is inappropriate under the restrictions of the LSC Act or regulations.

Section 1607.4(c). This new provision is intended to make it clear that it is up to recipients to design their own bylaws. The Corporation would have authority to review a program's bylaws, as well as any revisions that are made in them, for the purpose of ensuring that they comply with the LSC Act and regulations.

Section 1607.5 Compensation

Section 1607.5(a). The proposed regulation makes two significant changes in the current rule dealing with recipient board member compensation. First, since the provision of the LSC Act that prohibits compensation applies only to attorney board members, it would be consistent with the Act to permit a recipient to pay compensation to a client or other non-attorney board member for board service or other service to the recipient. The regulation was revised to make it consistent with the restriction in the Act.

Second, this proposal reverses the policy decision made by the LSC Board in 1988, which interpreted the language of the LSC Act to prohibit a recipient board member from receiving compensation from any recipient, not just the one on whose board the member sat. The effect of the 1988 revision was to prohibit field program staff from sitting on state and national support center boards, and vice versa. It prevented support centers from being accountable through their boards to the programs that they were intended to serve. This proposed language restores and clarifies the prior LSC policy that was in existence from 1975 to 1988 and which reflects the intent of Congress. Both the Legal Services Corporation Reauthorization bill that passed the House in 1992 (H.R. 2039) and the bill that was approved by the Senate Committee on Labor and Human Resources the same year (S. 2870) would have amended the LSC Act in a manner consistent with the proposed revision.

In addition, the proposal clarifies that all board members may receive a per diem payment for expenses in lieu of actual expense reimbursements, so long as such a payment is reasonable in light of actual average costs. Such a per diem may be easier for programs to administer and may encourage board members to save money on items such as meals and lodging by setting the per diem at a relatively low rate. The last phrase of the sentence was deleted to make it clear that reimbursement could be made for expenses incurred by recipient board members, on the same terms and conditions that are applicable to non-board members when such board members are involved in other program activities not directly related to their board membership or service, e.g., attorney board members who volunteered to drive a program client to a meeting or a hearing could receive reimbursement for automobile expenses, or attorney board members who did pro bono work on behalf of the program could receive reimbursement for travel expenses for attending an out-of-town settlement conference.

Sections 1607.5 (b) and (c). The proposal includes two new provisions that clarify how the compensation prohibition relates to a recipient's private attorney involvement program. One provision makes it clear that the Corporation could partially waive the compensation prohibition for those rural programs that operate in areas where there are so few attorneys that it is difficult or impossible to find attorneys willing to serve on program boards if that means that their partners and associates are barred from participating in judicare or other compensated PAI activities. The second provision was added to clarify that attorney board members can receive referrals of fee-generating cases and participate freely in the recipient's pro bono PAI programs on the same terms as any other attorney. This is particularly important for rural areas where there are few private attorneys.

Section 1607.6 Waiver

Section 1607.6(a). There is no change in this waiver provision which was designed to cover those programs, primarily reservation-based Native-American programs, that existed prior to the creation of the Corporation and had nonattorney majorities on their boards. In lieu of attorneys, most of those programs include tribal advocates who practice in tribal courts.

Section 1607.6(b). This new provision was added to permit the Corporation president the discretion to waive the requirement of one-third client membership when the president has determined that a recipient, like the National Clearinghouse for Legal Services or the Food Research & Action Center ("FRAC"), does not have as a primary purpose the provision of legal assistance to clients. The waiver provision requires a specific determination by the Corporation president, rather than a self-determination by the recipient, and does not permit waiver of the client board member requirement so long as the recipient has as a primary purpose the provision of legal assistance to clients. Such a waiver does not conflict with the statutory provision governing client membership because that provision applies only to those recipients that are organized "solely for the provision of legal assistance to eligible clients." It is anticipated that this waiver will be used sparingly for exceptional circumstances.

Section 1607.6(c). This provision was revised to clarify that the Corporation president could waive any provisions of the regulation, as long as the waiver conforms with applicable law. It also allows partial waivers to be granted. In addition, language was added to make it clear that the nature of the legal community could be considered as a basis for a waiver, as well as

requirements of state law. The Committee recognized that there may be programs, especially in rural areas, where there are peculiar problems or situations within the legal community that may make it necessary or desirable to permit the recipient to have a governing board that varies from the normal. An example would be for those programs that serve native-American populations and practice in tribal courts. The president, through the waiver authority, could permit the recipient to substitute one or more tribal advocates for attorney board members. In addition, this provision could be used as authority for partial waiver of the compensation prohibition, to permit a recipient to adopt policies that would allow partners or associates of a board member to participate in compensated PAI activities supported by the recipient.

Section 1607.6(d). The only change made in this subsection was a reference to the previous subsection.

Section 1607.6(e). This new provision was added to permit the LSC president to require an organization that is not principally a legal assistance organization but gets an LSC grant for legal assistance activities, to set up a policy board, similar to those established for several of the Delivery Systems Study programs during the late 1970's, to govern the activities covered by the LSC grant.

Deletion of Section 1607.7 Compliance

The compliance section of the current regulation is no longer applicable, since it refers to the changes that were made in the regulation in 1983. None of the proposed revisions would require programs to change anything about their board structures in order to come into compliance, although they would permit programs to make numerous changes and still remain in compliance with the regulation. Therefore the Committee proposal deletes the provisions on compliance. The Corporation should insure compliance with the new regulation in the same manner as it insures compliance with the other regulations.

List of Subjects in 45 CFR Part 1607

Legal services.

For the reasons set forth in the preamble, LSC proposes to amend 45 CFR part 1607 as follows:

PART 1607—GOVERNING BODIES

1. The authority citation for part 1607 is revised to read as follows:

Authority: 42 U.S.C. 2996f(c).

2. Section 1607.1 is revised to read as follows:

§ 1607.1 Purpose.

This part is designed to insure that the governing body of a recipient will be well qualified to guide a recipient in its efforts to provide high-quality legal assistance to those who otherwise would be unable to obtain adequate legal counsel, and to insure that the recipient is accountable to its clients.

3. Section 1607.2 is revised to read as follows:

§ 1607.2 Definitions.

(a) *Attorney member* as used in this part means a board member who is an attorney admitted to practice in a State within the recipient's service area.

(b) *Board member* refers to a member of a recipient's governing body.

(c) *Eligible client member* as used in this part means a person who is eligible to receive legal assistance under the Act at the time of appointment to each term of office to the recipient's governing body, without regard to whether the person actually has received or is receiving legal assistance at that time. Eligibility of client members shall be determined by the recipient or, if the recipient so chooses, by the appointing organization(s) or group(s), in accordance with policies adopted by the recipient.

(d) *Governing body* refers to the board of directors or other governing policy board or body of a recipient receiving funds under section 1006(a)(1)(A) of the Act.

(e) *Recipient* refers to any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the Act.

4. Section 1607.3 is revised to read as follows:

§ 1607.3 Composition.

(a) A recipient shall be incorporated in a State in which it provides legal assistance, and shall have a governing body that reasonably reflects the interests of the eligible clients in the area served and consists of members, each of whom is supportive of the purposes of the Act and has an interest in, and knowledge of, the delivery of quality legal services to the poor.

(b) At least sixty percent (60%) of a governing body shall be attorney members.

(1) A majority of the members of the governing body shall be attorney members appointed by the governing body(ies) of one or more State, county or municipal bar associations, the membership of which represents a majority of attorneys practicing law in the localities in which the recipient provides legal assistance.

(i) Appointments may be made either by the bar association which represents a majority of attorneys in the recipient's service area or by bar associations which collectively represent a majority of the attorneys practicing law in the recipient's service area.

(ii) Recipients that provide legal assistance in more than one State may provide that appointments of attorney members be made by the appropriate bar association(s) in the State(s) or locality(ies) in which the recipient's principal office is located or in which the recipient provides legal assistance.

(2) Any additional attorney members may be selected by the recipient's governing body or may be appointed by other organizations that are designated by the recipient and have an interest in the delivery of legal services to the poor.

(3) Appointments shall be made so as to insure that the attorney members reasonably reflect the diversity of the legal community and the population of the areas served by the recipient, including race, ethnicity, gender and other factors.

(c) At least one-third of the members of a recipient's governing body shall be eligible clients when appointed. The members who are eligible clients shall be appointed by a variety of appropriate groups designated by the recipient that may include, but are not limited to, client and neighborhood associations and community-based organizations which advocate for or deliver services or resources to the client community served by the recipient. Recipients shall designate groups in a manner that reflects, to the extent possible, the variety of interests within the client community, and eligible client members should be selected so that they reasonably reflect the diversity of the eligible client population served by the recipient, including race, gender, ethnicity and other factors.

(d) The remaining members of a governing body may be appointed by the recipient's governing body or selected in a manner described in the recipient's bylaws or policies, and the appointment or selection shall be made so that the governing body as a whole reasonably reflects the diversity of the areas served by the recipient, including race, ethnicity, gender and other factors.

(e) The nonattorney members of a governing body shall not be dominated by persons serving as the representatives of a single association group or organization, except that eligible client members may be selected from client organizations that are composed of coalitions of numerous

smaller or regionally based client groups.

(f) Members of a governing body may be selected by appointment, election, or other means consistent with this part and with applicable State law. Recipients may recommend candidates for governing body membership to the appropriate bar associations or other appointing groups and may consult with appointing organizations to insure that appointments are made consistent with the provisions of this part.

(g) Recipients shall make reasonable and good faith efforts to insure that governing body vacancies are filled as promptly as possible.

(h) A recipient may reject the appointment of a board member if the recipient determines that:

(1) The person does not meet the criteria for board membership set out in this part, including financial eligibility for persons appointed as eligible client members, or

(2) The person has an actual and significant individual or institutional conflict of interest with the recipient or the recipient's client community that could influence the person's ability to exercise independent judgment as a member of the recipient's governing body.

5. Section 1607.4 is revised to read as follows:

§ 1607.4 Functions of a governing body.

(a) A governing body shall have at least four meetings a year. A recipient shall give timely and reasonable prior public notice of all meetings, and all meetings shall be public except for those concerned with matters properly discussed in executive session.

(b) In addition to other powers and responsibilities that may be provided for by state law, a governing body shall establish and enforce broad policies governing the operation of a recipient, but neither the governing body nor any member thereof shall interfere with any attorney's professional responsibilities to a client or obligations as a member of the profession or interfere with the conduct of any ongoing representation.

(c) A governing body shall adopt bylaws which are consistent with State law and the requirements of this part. Recipients shall submit a copy of such bylaws to the Corporation and shall give the Corporation timely notice of any changes in such bylaws.

6. Section 1607.5 is revised to read as follows:

§ 1607.5 Compensation.

(a) While serving on the governing body of a recipient, no attorney member shall receive compensation from that recipient, but any member may receive a reasonable per diem expense payment or reimbursement for actual expenses for normal travel and other reasonable out-of-pocket expenses.

(b) Pursuant to a waiver granted under § 1607.6(c)(1), a recipient may adopt policies that would permit partners or associates of attorney members to participate in any compensated private attorney involvement activities supported by the recipient.

(c) A recipient may adopt policies that permit attorney members, subject to terms and conditions applicable to other attorneys in the service area, (1) to accept referrals of fee-generating cases under part 1609 of this chapter, (2) to participate in any uncompensated private attorney involvement activities supported by the recipient, (3) to seek and accept attorneys' fees awarded by a court or administrative body or included in a settlement in cases undertaken pursuant to paragraphs (c)(1) and (2) of this section, and (4) to receive reimbursement from the recipient for out-of-pocket expenses incurred by the attorney member as part of the activities undertaken pursuant to paragraph (c)(2) of this section.

7. Section 1607.6 is revised to read as follows:

§ 1607.6 Waiver.

(a) Upon application, the president shall waive the requirements of this part to permit a recipient that was funded under section 222(a)(3) of the Economic Opportunity Act of 1964 and, on July 25, 1974, had a majority of persons who were not attorneys on its governing body, to continue such nonattorney majority.

(b) Upon application, the president may waive § 1607.3(c) for those recipients which the president has determined do not have as a primary purpose the provision of legal assistance to clients.

(c) Upon application, the president may grant any waivers of the requirements of this part which are permitted by applicable law if a recipient demonstrates that it cannot comply with them because of (1) the nature of the population, legal community or area served, or (2) special circumstances, including but not limited to, conflicting requirements of the recipient's other major funding source(s) or State law.

(d) A recipient seeking a waiver under paragraph (c) of this section shall demonstrate that it has made diligent efforts to comply with the requirements of this part.

(e) As a condition of granting a waiver under paragraph (c) of this section, the president may require that a recipient establish a policy board or body, whose membership is selected consistent with the requirements of § 1607.3, to establish and enforce policy, consistent with the provisions of § 1607.4, with respect to the services provided under any grant or contract made under the LSC Act.

Dated: June 10, 1994

Victor M. Fortuno,

General Counsel.

[FR Doc. 94–14566 Filed 6–15–94; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 94–46, FCC 94–113]

Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This rule making proceeding proposes to allow transmitters authorized under part 22 to be concurrently licensed and used for both common carrier and private carrier operations. The purpose of this proposed rule is to promote economic efficiencies for carriers in providing paging services. This proposed action will lead to more effective use of carrier resources without undermining the Commission's rules.

DATES: Comments must be submitted on or before July 11, 1994. Reply comments must be submitted on or before July 26, 1994.

FOR FURTHER INFORMATION CONTACT: Dan Abeyta, Common Carrier Bureau, Mobile Services Division, (202) 632–6450.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order (NPRM and Order) in CC Docket 94–46, adopted May 13, 1994 and released June 9, 1994. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Paperwork Reduction

The proposed action does not impose a paperwork burden on the public.

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, the Commission's initial regulatory flexibility analysis follows:

Reasons for Action and Objective

This rule making proceeding is initiated to obtain comment regarding changes in the provision of common carrier and private carrier paging services through the use of a single transmitter. The purpose of the proposed rule is to promote economic efficiencies for carriers in providing paging services.

Legal Basis

The proposed action is authorized under Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j), 303(r).

Reporting, Recordkeeping and Other Compliance Requirements

None.

Federal Rules Which Duplicate or Conflict With These Rules

None.

Description, Potential Impact, and Number of Small Entities Involved

A rule change in this proceeding would benefit providers of common carrier and private carrier paging services by reducing costs. A number of these providers are small entities.

Any Significant Alternative Minimizing the Impact on Small Entities Consistent with the Stated Objectives

We have determined no specific alternative. The Chief Counsel for Advocacy of the Small Business Administration will be served with a copy of this Notice of Proposed Rule Making and Order in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

Synopsis of NPRM and Order

By this NPRM and Order, the Commission proposes to delete 22.119 of the Rules, which prohibits the concurrent licensing and use of transmitters for common carrier and non-common carrier purposes. In this regard, the Commission notes that several factors make it appropriate to reevaluate the § 22.119 prohibition and to propose deleting or modifying the rule. First, advances in technology, such as improved digital transmission techniques and store and forward technology, have resulted in dramatically increased capacity, thus reducing the need for a transmitter to be devoted on a full-time basis to common carrier uses. Second, licensees providing wider-area service could achieve substantial economies of scale by sharing transmitters when building out a regional or nationwide system without diminishing the licensee's current quality of service. Third, the Omnibus Budget Reconciliation Act of 1993 (1993 Budget Act) enacted by Congress amends Section 3(n) and Section 332 of the Communications Act of 1934 to create a comprehensive framework for all mobile services. The Commission has initiated several rulemakings to implement the provision of Section 3(n) and 332 of the Act, as amended by the 1993 Budget Act. Lastly, increased competition in the industry provides an assurance that service to existing customers will not suffer from joint use of transmitters when the carriers are offering distinct services on different frequencies. Because of these factors, the NPRM and Order tentatively concludes that permitting a single transmitter to operate on both common carrier and private channels will cause no disruption or impairment of service to existing part 22 subscribers. Nevertheless, the NPRM and Order seeks comment on whether the proposed rules should be limited to circumstances where the joint use will facilitate the provision of national and or regional service as an overly to local paging service or where the part 22 licensee is utilizing batched paging.

Ordering Clauses

Accordingly, *it is ordered* that pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j), 303(r), this Notice of Proposed Rule Making is issued.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Adoption of Rule Change

Title 47 of the Code of Federal Regulations, part 22, is proposed to be amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for part 22 continues to read as follows:

Authority: Sections 4 and 303 of the Communications Act of 1934, as amended. 47 U.S.C. 154 and 303.

§ 22.119 [Removed and Reserved]

2. Section 22.119 is removed and reserved.

[FR Doc. 94–14646 Filed 6–15–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–49, RM–8446]

Radio Broadcasting Services; Commerce, Oklahoma and Neosho, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KBTN, Inc. requesting the allotment of Channel 259A to Neosho, Missouri, as that community's first local FM broadcast service. The coordinates for Channel 259A are 36–46–56 and 94–23–17. There is a site restriction 10 kilometers (6.2 miles) south of the community. To accommodate Channel 259A at Neosho, KBTN, Inc. has also requested the substitution of Channel 282A for vacant Channel 259A at Commerce, Oklahoma, at coordinates 37–00–24 and 94–48–54. There is a site restriction 9.4. kilometers (5.9 miles) northeast of the community. However, if no interest is expressed in retaining a channel in Commerce during the comment cycle, the channel will be deleted.

DATES: Comments must be filed on or before August 1, 1994, and reply comments on or before August 16, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John M Pelkey, Haley, Bader & Potts, 4350 North Fairfax Drive, suite 900, Arlington, Virginia 22203–1633.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–48, adopted May 25, 1994, and released June 10, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the

Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–14643 Filed 6–15–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 22

RIN 1018 AB81

Eagle Transportation Permits for American Indians and Public Institutions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to revise the general eagle permit restrictions applicable to American Indians and public institutions. The Service proposes to issue permits of limited duration and conditions, for the transportation into and out of the United States of eagle parts, nests or eggs or articles containing such parts, nests or eggs of the bald eagle (*Haliaeetus leucocephalus*) or the golden eagle (*Aquila chrysaetos*) that are lawfully possessed by American Indians and public institutions.

The proposed regulation will provide for eagle permits to be issued only for transportation into and out of the United States when the eagle parts have religious significance or value, or are being transported by a public institution for scientific or exhibition purposes. The Service makes this proposal in order to address the concerns which have been expressed by American Indians and public institutions who have sought the Service's permission for the international travel of lawfully possessed eagle parts or other articles containing eagle parts.

DATES: Comments must be submitted on or before August 15, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203–3247. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, room 500, Arlington, Virginia, between the hours of 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Frank Shoemaker, Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of Interior, Washington, DC 20240, Telephone Number (703) 358–1949.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The golden eagle and most notably the bald eagle are proud symbols of our nation's natural beauty, our democratic form of government and our national heritage. The bald eagle was selected by the Continental Congress in 1782 as our national symbol and was given special protection by Congress in the Eagle Act of June 8, 1940. The Act as originally enacted provides that the Secretary of Interior may permit the taking and possession of bald eagle specimens for the scientific or exhibition purposes of public museums, scientific societies, and zoological parks.

The Eagle Act was amended by Congress on October 24, 1962 (16 U.S.C. 668a) to include the golden eagle within its provisions and to permit the taking, possession, and transportation of eagle specimens for the religious purposes of Indian tribes.

Summary of Comments and Information Received

On Thursday, November 14, 1991, the Service published in the **Federal Register** a Notice of Intent to Review 50 CFR part 22 (56 FR 57872). In this notice the Service requested that all interested parties submit written comments. In response to this request the Service received six comments pertaining to 50 CFR part 22. The Service has carefully considered all comments received in response to the November 14, 1991, **Federal Register** notice in proposing these changes to part 22.

In making this proposal the Service has carefully considered the recommendations made by commentaries in response to the Notice of Intent to Review published on Thursday November 14, 1991, **Federal Register** (56 FR 57872). The Service invites comments on this proposed rule and on all comments pertaining to Part 22, summarized herein, submitted in response to the Notice of Intent to Review.

Comments Pertaining to Section 22.21. Permits for Scientific or Exhibition Purposes

Several comments were received on the proposed revision of Section 22.21. One recommendation was that § 22.21, Permits for Scientific or Exhibition Purposes, limiting possession of bald or golden eagles to museums, public scientific societies and zoological parks, should be amended to allow eagles to be placed in private institutions. The commenter noted that there has been an increased number of birds that are for various reasons non-releasable and hard to place into public institutions. The Service does not anticipate changing the current regulations to allow for the placement of eagles with private institutions. The Service has been successful in placing non-releasable birds in public institutions in the past and expects the availability of these types of placements to continue. Public institutions have been the placement of preference for such birds because they usually provide a greater opportunity for the citizens of the United States to enjoy the rare beauty of these birds.

Comments Pertaining to Section 22.22. Permits for Indian Religious Purposes

One commenter requested that the Service include language within the regulations that would make it easier for tribal members to obtain eagle feathers. The Service has striven to make its current procedures as fair and equitable as possible in light of the limited supply and the increasing demand for eagle feathers. The Service is working with the tribal entities to make substantive changes in its policies.

Another recommendation was that Service procedures be revised to allow American Indians who find dead eagles to have the same eagle they found returned, because of what was termed, the found eagle's "spiritual and cultural" significance to individual American Indians. The Service recognizes and has carefully considered the concern raised. The Service is presently reviewing its policies and procedures to provide for this special need and allow American Indians to pick up and keep eagles found dead on tribal lands. The Service is also making administrative changes to allocate more resources to the National Eagle Repository and to simplify the entire eagle permit process for the religious use of American Indians. The Service will continue to work with tribal entities to develop recommendations to enhance these initial efforts.

Another recommendation was to revise the applicant certification requirement and permit issuance criteria set out in § 22.22. The Service has traditionally followed, as a matter of policy, guidelines established by the Bureau of Indian Affairs (Bureau) in reviewing such matters. These same guidelines are used by the Bureau to determine the status of an individual seeking federal assistance. The Bureau's certification simply indicates that an applicant is a member of a federally-recognized tribe in good standing. The establishment of an additional set of guidelines for the sole purpose of the allocation of eagles feathers would be redundant and inconsistent with the equitable standards set out by the Bureau. The Service, therefore, will continue to defer to the Bureau's criteria and anticipates no changes in the current certification requirements.

A recommendation was also made to include language allowing tribal members who lack proper paperwork to prove that they have permission from the Service to possess eagle feathers. Under current regulations, bald eagle parts, nests, or eggs lawfully acquired prior to June 8, 1940, and golden eagles parts, nests or eggs lawfully acquired prior to October 24, 1962, may be possessed, or transported within the United States without a Federal permit. Except for the above stated exceptions, a valid permit for American Indian religious purposes is required. No change in these provisions are anticipated at this time.

Comments Pertaining to Section 22.23. Permits to Take Depredating Eagles

Another recommendation relating to part 22 was the suggestion that the Service should include within the current issuance criteria required for Permits to take depredating eagles, in § 22.23(a), an additional permit criteria requiring the applicant to provide documentation of other methods that were attempted to reduce depredations. The Service anticipates no changes in the permit criteria for permits to take depredating eagles at this time. The Service considers the factual inquiry already required under existing application criteria to be sufficient to assure the continued protection of wild eagle populations.

Comments were also received on the subject of the use of eagles in falconry. Specific comments were that the Service should relax and simplify the requirements necessary for obtaining permits for golden eagles used in falconry for falconers who want to fly eagles. The Service considers current permit requirements as generally necessary and proper in order to assure the safety and welfare of both the eagle and the falconer. In the Service's considered view, any relaxation of these standards to allow other than master class falconers to possess golden eagles for falconry could be detrimental to the bird and the handler. Therefore, no changes to this effect are anticipated within the regulation at this time.

Another commenter recommended that eagles taken under permits, pursuant to § 22.23(b)(3), Permits to take depredating eagles, should be made available for scientific purposes, including deposition in a museum. In the Service's experience, the demand for eagles and eagle parts by American Indians is greater than the supply. The Service, therefore, has an obligation to fulfill the religious needs of the American Indian before alternative depositions are considered. Therefore, the Service does not anticipate making any changes at this time.

Need for Proposed Rulemaking

The Fish and Wildlife Service proposes to amend the regulations restricting the issuance of eagle permits, in order to respond to the particular needs of American Indians and public institutions. In order to assist the legitimate needs of American Indians and public institutions for bald or golden eagle feathers and other parts, the Service currently provides for the issuance of permits to American Indians and public institutions to possess bald and golden eagle feathers or parts. Under the permit system the possession and transportation within the United States of eagle feathers and parts is legal, but they may not be imported, exported, purchased, sold, traded, bartered or offered for purchase, sale, trade or barter. The Service has established an eagle repository for eagle parts at the Clark R. Bavin National Fish and Wildlife Forensic Laboratory in Ashland, Oregon, where American Indians through the permit process may lawfully obtain feathers and other parts, nests or eggs of eagles.

American Indians and representatives of public institutions in the past have sought the Service's permission to travel internationally with their lawfully possessed bald or golden eagle feathers, parts, eggs, nests or other articles which may contain eagle parts. A change in the permit requirements was necessitated because the regulations, as they currently exist, do not authorize the transportation into or out of the United States of religiously significant bald or golden eagle parts or articles containing such parts, nests or eggs by American Indians, or the transportation into or out of the United States or bald or golden eagle parts or articles containing such parts, nests or eggs for scientific or exhibition purposes. The Service, therefore, proposes to make accommodations for the religious needs of the American Indian community and for public institutions by making changes in the eagle permit regulations that generally prohibit all imports and exports of eagle parts, nests or eggs and do not differentiate between transportation within and transportation outside the United States.

The Service proposes to amend the regulations to provide for the issuance of eagle permits when the parts are lawfully possessed by American Indians and public institutions for the transportation into and out of the United States. The intent or the end result of the transportation into and out of the United States by American Indians and public institutions shall not be, under any circumstance, for the purchase, sale, barter or trade of bald eagle or golden eagle parts, nests or eggs.

The Service proposes to provide that eagle permits of limited duration may be issued under substantially the same general requirements and conditions applicable to the domestic possession and transportation of such articles by American Indians and public institutions. The Service hopes that this revision of the regulation will facilitate the international travel of American Indians and representatives of public institutions. The Service believes that it can serve its mandate to protect and preserve the viability of bald eagle or golden eagle populations and at the same time provided for a reasonable and proper balance of regulations which address the legitimate needs of the American Indian community and public institutions. In addition to the above changes, several references within the Sections have been updated or more clearly stated.

Required Determinations

Note. This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. The Department of the Interior (Department) certifies that this proposed rule will not have

a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This action is not expected to have significant taking implications, as per Executive Order 12630. The only effect of this rule will be to make it easier for American Indians and public institutions to travel or move internationally with lawfully possessed articles containing bald or golden eagle parts. This proposed rule does not contain any additional information collection requirements, beyond those approved under OMB approval Number 1018–0022, that would require the approval of the Office of Management and Budget under the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq.*). This action does not contain any federalism impacts as described in Executive Order 12612. These proposed changes in the regulations in Part 22 are regulatory and enforcement actions which are covered by a categorical exclusion from National Environmental Policy Act procedures under 516 Departmental Manual. An Environmental Action Memorandum is on file at the U.S. Fish and Wildlife Service Office in Arlington, Virginia. The determination has been made pursuant to Section 7 of the Endangered Species Act that the proposed revision to Part 22 will not effect a federally listed species.

Civil Justice Reform—Executive Order 12778

In revising these regulations the Service has made every reasonable effort in formulating these proposals to ensure that these regulations:

(A) Have no preemptive effects upon other regulations not being revised herein.

(B) The major effects upon Federal regulations is to provide eagle permits for the transportation into and out of the United States with lawfully obtained bald and golden eagle parts, nests, and eggs, for American Indian tribe religious use and public institutions for scientific and exhibition purposes.

(C) The standards proposed in this proposed revision are intended to articulate a precise and understandable criterion of what transportation into and out of the United States is being regulated and how the affected interests may conform their activities and comply with applicable eagle permit regulations. This standard will promote regulatory simplification and burden reduction upon affected interests by providing notice:

(1) That members of American Indian tribes and public institutions may now take their lawfully obtained eagle parts, nests, eggs, or items containing such with them when they travel outside the territory of the United States;

(2) That, a Service eagle permit is required in order to transport eagle parts, nests, or eggs into or out of the United States;

(3) That the Service will issue such permits under specified permit "Issuance criteria" stated in 50 CFR 22.22(c);

(4) That permits for the transportation of eagle parts, nests, or eggs into and out of the United States will be of certain and limited duration; and

(5) That the import, export purchase, sale, barter, or trade, of eagle parts, nests, or eggs shall remain prohibited by regulation.

(D) These proposed changes to the regulations in title 50 CFR part 22 are intended to have no retroactive effect directly or indirectly.

(E) The Service Administrative procedures for permit application, issuance, revocation, denial, and appeal are set out in title 50 CFR part 13. No additional Administrative procedures are anticipated for exhaustion of remedies.

(F) All key terms have been defined within the CFR.

Author

The originator of this proposed rule is Law Enforcement Specialist Paul McGowan, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, DC.

List of Subjects in 50 CFR Part 22

Exports, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, title 50, chapter I, subschapter B of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: Sec. Eagle Protection Act of June 8, 1940, Chapter 278, 54 Stat. 251; Pub. L. 87–884, 76 Stat. 1246; sec 2, Pub. L. 92–535, 86 Stat 1065; sec 9, Pub. L. 95–616, 92 Stat. 3114 (16 U.S.C. 668a).

2. Section 22.1 is revised to read as follows:

§ 22.1 Purposes of regulations.

The regulations contained in this Part govern the taking possession, transportation within the United States of bald and golden eagles for scientific, educational, depredation control purposes and for the religious purposes of Indian tribes, and the transportation into and out of the United States under permit of bald and golden eagles for scientific, educational, and Indian religious purposes. The import, export, purchase, sale, or barter of bald or golden eagles, their parts, nests, or eggs is not permitted by any regulation of this subchapter B.

3. Section 22.2 is amended by revising paragraph (a) to read as follows:

§ 22.2 Scope of regulations.

(a) Bald eagles, alive or dead, or their parts, nests, or eggs lawfully acquired prior to June 8, 1940, and golden eagles, alive or dead, or their parts, nests, or eggs lawfully acquired prior to October 24, 1962, may be possessed, or transported within the United States without a Federal permit, but may not be transported into or out of the United States, imported, exported, purchased sold, traded, bartered, or offered for purchase, sale, trade, or barter; and all shipments containing such birds, parts, nests, or eggs must be marked as provided by 16 U.S.C. 3372(b) and § 14.81 of this chapter: Provided, That no exemption from any statute or regulation shall accrue to any offspring of such birds.

* * * * *

4. Section 22.3 is amended by adding in alphabetical order definitions for "export," "import," and "transportation into and out of the United States" to read as follows:

§ 22.3 Definitions.

* * * * *

Export for the purpose of this Part does not include the transportation out of the United States pursuant to a valid transportation permit.

* * * * *

Import for the purpose of this Part does not include the transportation of eagle parts into the United States pursuant to a valid transportation permit.

* * * * *

Transportation into or out of the United States means that the item or items being transported into or out of the United States do not change ownership at any time, they are not transferred from one person to another in the pursuit of gain or profit, and are being transported into or out of the United States for Indian religious purposes, or scientific or exhibition purposes.

§ 22.11 [Amended]

5. Section 22.11 is amended by removing the term "(*Aquilachrysaetos*)" and adding in its place "(*Aquila chrysaetos*)" every where it appears.

6. Section 22.12 is revised to read as follows:

§ 22.12 General restrictions.

No person shall sell, purchase, barter, trade or offer for sale, purchase, barter or trade, export or import, at any time or in any manner, any bald eagle (*Haliaeetus leucocephalus*), or any golden eagle *Aquila chrysaetos),* or the parts, nests , or eggs of such birds, and no permit will be issued to authorize such acts. Permits may be issued pursuant to the provision of this part and parts 13, 17, 21 and 23 of this chapter, however, to allow the transportation into and out of the United States of lawfully possessed parts, nests or eggs of such birds for Indian religious purposes, or for scientific or exhibition purposes, subject to the conditions of the permit.

7. Section 22.21 is amended by revising the introductory text to the Section, paragraph (a) introductory text, paragraph (b), and paragraph (c) introductory text, to read as follows:

§ 22.21 Permits for scientific or exhibition purposes.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this Section, issue a permit authorizing taking, possession, transportation within the United States, or transportation into and out of the United States of bald eagles or golden eagles, or their parts, nests, or eggs for the scientific or exhibition purposes of public museums, public scientific societies, or public zoological parks.

(a) *Application procedure.* Applications for permits to take, possess, transport within the United States, or transport into and out of the United States bald or golden eagles, their parts, nets or eggs for scientific or exhibition purposes shall be submitted to the appropriate Assistant Regional Director—Law Enforcement (See: § 13.11(b) of this chapter). Each such application must contain the general information and certification required by § 13.12(a) of this chapter plus the following information:

* * * * *

(b) *Additional permit conditions.* In addition to the general conditions set forth in Part 13 of this chapter, permits to take, possess, transport within the United States, or transport into and out of the United States bald or golden eagles for scientific or exhibition purposes, shall be subject to the following condition: In addition to any reporting requirement set forth in the permit, the permittee shall submit a report of activities conducted under the permit to the Assistant Regional Director—Law Enforcement within 30 days after expiration of the permit.

(c) *Issuance criteria.* The Director shall conduct an investigation and not issue a permit to take, possess, transport within the United States, or transport into and out of the United States bald or golden eagles for scientific or exhibition purposes unless he has determined that such taking, possession, or transportation is compatible with the preservation of the bald or golden eagle. In making such determination, the Director shall consider, among other criteria, the following:

* * * * *

8. Section 22.22 is amended by revising the introductory text to the Section, paragraph (a) introductory text, paragraph (a)(5), paragraph (b) introductory text, paragraph (b)(2), paragraph (c) introductory text and paragraph (d) to read as follows:

§ 22.22 Permits for Indian religious purposes.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this Section, issue a permit authorizing the taking, possession, transportation within the United States, and transportation into and out of the United States, of bald or golden eagles, or their parts, nets, or eggs for the religious use of Indians.

(a) *Application procedure.* Applications for permits to take, possess, transport within the United States, and transport into and out of the United States bald or golden eagles, their parts, nests, or eggs for the religious use of Indians shall be submitted to the appropriate Assistant Regional Director—Law Enforcement (See: § 13.11(b) of this chapter). Only applications from individual Indians will be accepted. Each such application must contain the general information and certification required by § 13.12(b) of this chapter plus the following additional information:

* * * * *

(5) Applicant must attach a certificate from the Bureau of Indian Affairs that the applicant is a member of an Indian tribe listed in the Federal Register notice published in accordance with 25 CFR 83.6(b).

* * * * *

(b) *Additional permit conditions.* In addition to the general conditions set forth in part 13 of this chapter, permits to take, possess, transport within the United States, and transport into and out of the United States bald or golden eagles, their parts, nests or eggs, for the religious use of Indians shall be subject to the following conditions:

* * * * *

(2) Permittees shall make such reports or submit inventories of eagle feathers or parts on hand as may be requested by the Assistant Regional Director—Law Enforcement.

(c) *Issuance criteria.* The Director shall conduct an investigation and not issue a permit to take, possess, and transport within the United States, and transport into and out of the United States bald or golden eagles, their parts, nests or eggs, for the religious use of Indians unless he has determined that such taking, possession, and transportation is compatible with the preservation of the bald or golden eagle. In making such determination, the Director shall consider, among other criteria, the following:

* * * * *

(d) *Tenure of permits.* Any permit issued pursuant to this Section under which the applicant is authorized to take eagles shall be valid during the period specified on the face thereof, which shall in no case be longer than 1 year from the date of issue. Any permit issued pursuant to this Part which authorizes the permittee to transport within the United States and possess eagles or their parts shall be valid for the life of the permittee unless sooner revoked. Any permit issued pursuant to this Part which authorizes the permittee to transport into or out of the United States eagle parts shall be valid for a period of 30 days or the date designated on the face of the permit unless amended or revoked.

9. Section 22.23 is amended by revising paragraph (a) introductory text, and paragraph (b)(4) to read as follows:

§ 22.23 Permits to take depredating eagles.

* * * * *

(a) *Application procedure.* Applications for permits to take depredating bald or golden eagles shall be submitted to the appropriate Assistant Regional Director—Law Enforcement (See § 13.11(b) of this chapter). Each such application must contain the general information and certification required by § 13.12(a) of this chapter plus the following additional information:

* * * * *

(b) * * *

(4) In addition to any reporting requirement set forth in the permit, the permittee shall submit a report of activities conducted under the permit to the Assistant Regional Director—Law Enforcement within 10 days following completion of the taking operations or the expiration of the permit whichever occurs first.

* * * * *

10. Section 22.25 is amended by revising paragraph (a) introductory text to read as follows:

§ 22.25 Permits to take golden eagle nests.

* * * * *

(a) *Application procedure.* Applications for permits to take golden eagle nests must be submitted to the appropriate Assistant Regional Director—Law Enforcement (see § 13.11(b) of this chapter) Applications are only accepted from persons engaged in a resource development or recovery operation, including the planning and permitting stages of an operation. Each application must contain the general information and certification required by § 13.12(a) of this chapter plus the following additional information:

* * * * *

Dated: May 9, 1994

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–14597 Filed 6–15–94; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 940538–4138; I.D. 100893B]

RIN 0648–AF74

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes modifications to NOAA Form 370, Fisheries Certificate of Origin (FCO), to allow that form to also serve as a Bluefin Tuna Statistical Document (BSD), and proposes amendments to the regulations governing the Atlantic and Pacific bluefin tuna fisheries to require: An appropriately completed, approved BSD as a condition for import, export, or re-export of fresh or frozen bluefin tuna into or from the United States; a Federal permit for all dealers that export Pacific bluefin tuna; preparation and submission of a biweekly report on exports of Pacific bluefin tuna by permitted dealers; and affixation of an identification tag to fresh or individually frozen Pacific bluefin tuna sold for export.

The amendments would enable the United States to assist the International Commission for the Conservation of Atlantic Tunas (ICCAT) in accounting for all bluefin tuna entering into commerce or international trade and would bring the United States into compliance with the 1992 recommendation of ICCAT and the Atlantic Tunas Convention Act (ATCA).

DATES: Comments are invited and must be received by July 18, 1994.

ADDRESSES: Comments on the proposed revisions to NOAA Form 370 and on the proposed rule should be sent to, and copies of supporting documents, including an Environmental Assessment and Regulatory Impact Review, are available from, Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. NOAA Form 370, as proposed to be revised, bluefin tuna dealer permit application, biweekly bluefin tuna dealer report, and tuna identification tags may be obtained from NMFS, Northeast Region, Fisheries Management Division, 1 Blackburn Drive, Gloucester, MA 01930–2298, or NMFS, Southwest Region, Fisheries Management Division, 501 W. Ocean Blvd. Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301–713–2347; Kevin B. Foster, 508–281–9260; or Patricia J. Donley, 310–980–4033.

SUPPLEMENTARY INFORMATION: The Atlantic tuna fisheries are managed under regulations at 50 CFR part 285 issued under the authority of ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to implement regulations as may be necessary to carry out the recommendations of ICCAT. The authority to implement ICCAT recommendations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

Purpose

Parties to the Eighth Special Meeting of ICCAT held in Madrid, Spain, on November 8–12, 1992, adopted a recommendation to implement a statistical documentation program to collect more complete information on the catch of, and trade in, Atlantic bluefin tuna. That recommendation, which this proposed rule would implement, requires Contracting Parties to implement a statistical documentation program whereby any bluefin tuna imported into the territory of a Contracting Party or at the first entry into a regional economic organization must be accompanied by an appropriately completed BSD. The ICCAT recommendation is based on the need to improve the reliability of statistical information on worldwide harvests of bluefin tuna, particularly western Atlantic bluefin tuna, which is an overexploited stock.

Without statistical documentation and differentiation with respect to ocean area of catch, ICCAT cannot determine the total harvest of Atlantic bluefin tuna. While the primary market for bluefin tuna is Japan, which is a member country of ICCAT, the origin of all bluefin tuna on the international market cannot be ascertained without documentation of the flag state of harvesting vessels and ocean areas of catch. Some vessels that harvest bluefin tuna are registered to nations not affiliated with ICCAT and are not subject to ICCAT quota constraints; some of these nations have difficulty in obtaining information on the catches of vessels under their flag and therefore do not report catches to ICCAT.

The documentation requirement would facilitate accounting for all fresh or frozen shipments of bluefin tuna into Japan and other ICCAT countries, by both member and non-member ICCAT countries. This information would be used by ICCAT for Atlantic bluefin tuna stock assessments, to develop management policies, and to help determine compliance with its conservation program for Atlantic bluefin tuna.

In addition to the proposed BSD requirement, NMFS proposes to require a Federal permit for each dealer who exports Pacific bluefin tuna. NMFS also proposes to require these dealers to complete a biweekly report on bluefin tuna exports and to affix a tag on all fresh or individually frozen Pacific bluefin tuna sold for export. When combined with the existing permitting and reporting requirements for Atlantic bluefin tuna dealers, this would give NMFS the ability to track all bluefin tuna shipments imported into, exported, or re-exported from the United States.

NMFS has determined that these additional requirements would bring the United States into compliance with the 1992 ICCAT recommendation that all bluefin tuna (Atlantic and Pacific) imported into ICCAT countries be required to be accompanied by a BSD. ICCAT has determined that inclusion of Pacific bluefin is necessary due to the similarity of appearance of the two subspecies. Without Pacific bluefin tuna dealer permits, bi-weekly reports and tags for exports, the United States could not assure compliance with the documentation requirement for Pacific bluefin.

Bluefin Tuna Statistical Document

The proposed rule would require a completed, approved BSD as a

condition for the import, export, or re-export of all bluefin tuna shipments into or from the United States. The BSD would be required to accompany each fresh or frozen shipment along with other shipping documentation ordinarily required for international trade. Consistent with the ICCAT recommendation and subsequent agreements with Japan and Canada, the BSD would be required for all bluefin tuna beginning June 1, 1994.

The BSD would be required for all fresh or frozen bluefin tuna products that are exported from or imported into the United States and identified by Harmonized Tariff Schedule (HTS) numbers for fresh or chilled bluefin tuna, excluding fillets and other fish meat—0302.39.00.20; and frozen bluefin tuna, excluding fillets—0303.49.00.20.

Contents of Document

NMFS proposes to modify the FCO (NOAA Form 370) so that it can also serve as the BSD. Interested persons may obtain copies of the proposed combined form from NMFS (see **ADDRESSES**).

In order to be considered appropriately completed, the approved BSD accompanying each shipment would have to provide all of the required information indicated in the proposed regulatory text for § 285.202 and be certified by the exporter, importer, and government official, as applicable.

Validation

The completed, approved BSD would have to be validated by a responsible government official of the country whose flag vessel harvested the tuna regardless of where the bluefin tuna is first landed, unless the AA waives the validation requirement for that country because the AA finds, based on information from ICCAT, that: (1) All fresh or individually frozen bluefin tuna available for sale from that country are tagged, or included in an ICCAT-accepted logbook or ICCAT-accepted information retrieval system; (2) all information relating to the tag, the ICCAT-accepted logbook, or the ICCAT-accepted information retrieval system is compiled by the government of that country and includes the name of the country issuing the document, the name of the exporter and the importer, the name of the harvesting vessel and the area of harvest, the gear utilized, the type of product and total weight, and the point of export; and (3) the compiled information is provided in a timely fashion to ICCAT. Validation requirements would be waived for all but bulk-frozen shipments upon publication in the **Federal Register** of a finding and waiver by the AA.

Dolphin-Safe Tuna Designation

Under the Marine Mammal Protection and International Dolphin Conservation Acts and their implementing regulations, only dolphin-safe tuna may be purchased, sold, transported, or shipped in the United States after June 1, 1994 (16 U.S.C. 1417). All shipments of tuna and tuna products, except fresh tuna, from all countries must be accompanied by an appropriately completed FCO (NOAA Form 370). As proposed to be revised, NOAA Form 370 would serve as an FCO/BSD and appropriately completing the form would satisfy both FCO requirements and, if bluefin tuna, BSD requirements.

All fresh tuna and other fresh fish products are presumed to be captured by dolphin-safe methods and do not require an appropriately completed FCO (NOAA Form 370) for lawful importation to the United States. In addition, imports of certain fish and fish products other than tuna, except fresh fish, as specified at 50 CFR 216.24(e), from countries having registered vessels that use large-scale driftnets (no countries so designated at this time) must be accompanied by an appropriately completed FCO (NOAA Form 370). Although an FCO is not required for fresh tuna or any other fresh fish products, under the proposed rule an appropriately completed BSD (NOAA Form 370 as proposed to be revised) would be required for all bluefin tuna, fresh or frozen, that enters or exits the United States. Exhibit 1 below summarizes when a completed FCO or BSD, that is, an appropriately completed NOAA Form 370, as proposed to be revised, is required.

EXHIBIT 1.—REQUIREMENTS FOR THE PROPOSED REVISED NOAA FORM 370

Product form	Bluefin tuna	Other tunas	Certain other fish
Fresh	Imports—BSD; Exports—BSD	Not applicable	Not applicable.
Frozen	Imports—BSD/FCO; Exports—BSD.	Imports—FCO	Imports from countries using large-scale driftnets—FCO.
Canned	No HTS code for canned bluefin; requirements for other tunas apply.	Imports—FCO	Imports from countries using large-scale driftnets—FCO.
Any non-fresh form labeled "Dolphin-Safe".	Exports—FCO	Exports—FCO	Not applicable.

Responsible Parties

For the purposes of the exporter's certification, the exporter would be considered the person or company that first exported the shipment from the country where the fish is first landed.

For the purposes of the importer's certification, intermediate country importer(s) would be the person(s) or company(ies) that transship(s) the product through an intermediate country(ies). An intermediate country would be a country from which bluefin tuna or bluefin tuna products that were previously imported (i.e., not harvested or landed) by that country are exported to the United States. An intermediate country for the purposes of these proposed 50 CFR part 285 regulations is distinct from an intermediary nation as defined in section 3 of the Marine Mammal Protection Act and its implementing regulations at 50 CFR part 216. Shipments of bluefin tuna or bluefin tuna products through a nation on a through bill of lading, or in any other manner that does not enter the products into that country's customs territory as an import, would not make that country an intermediate country under this definition.

For the purposes of the importer's certification, the final destination importer would be the person or company that is the recipient of the product at its final destination (i.e., country of consumption).

Pacific Bluefin Tuna Dealer Requirements

Permit Requirements

Dealers purchasing or receiving Pacific bluefin tuna for export would be required to possess a valid bluefin tuna dealer permit and comply with all applicable reporting requirements.

Tagging Requirements

The proposed rule would require that identification tags be placed on all bluefin tuna, except bulk-frozen bluefin, landed by U.S. vessels and exported from the United States, regardless of ocean area of catch. Similar to the NMFS Northeast Region program for dealers purchasing Atlantic bluefin tuna, the Director, Southwest Region, NMFS (Regional Director) would issue numbered tags to each person receiving a dealer's permit for exporting Pacific bluefin tuna. Such tags would not be transferable. A dealer or agent would be required to affix a tag to each fresh or individually frozen Pacific bluefin tuna purchased, or received, for export, except bulk-frozen Pacific bluefin tuna, immediately upon its offloading from a vessel. The tag would be required to be affixed between the fifth dorsal finlet and the keel.

Individual Pacific bluefin tuna carcasses that are landed in bulk-frozen form would not be required to be tagged for export. A tagging requirement for individual fish frozen in bulk would be difficult to implement and enforce, and would require a drastic change in current handling practice. However, exported bulk-frozen shipments would be accompanied by a completed BSD.

A tag affixed to any Pacific bluefin tuna would have to remain on the tuna until the tuna is cut into portions, which NMFS understands may occur on occasion. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number would be required to be written legibly and indelibly on the outside of any package or container. Tag numbers would be required to be recorded on any document accompanying shipment of bluefin tuna for U.S. commercial use or export.

Reporting Requirements

Pacific bluefin tuna dealers would be exempted from the requirement at 50 CFR 285.29(a) to record and report bluefin tuna landings via the Daily Dealer Report Card. However, they would be required to submit biweekly reports on exports of bluefin tuna to the Regional Director. The report would have to be postmarked and mailed within 10 days after the end of each 2-week reporting period in which Pacific bluefin tuna were exported. The biweekly reporting periods would be defined as the first day to the fourteenth day of each month and the fifteenth day to the last day of the month. Each report would have to specify accurately and completely for each tuna or each shipment of bulk-frozen tuna exported: Date of landing or import; any tag number (if so tagged); and weight in pounds (specify if round or dressed).

Dealers would be required to allow an authorized officer, or any employee of NMFS designated by the Regional Director for this purpose, to inspect and copy any records of transfers, purchases, or receipts of Pacific bluefin tuna. Finally, the dealer would be required to maintain a copy of each biweekly report for a period of 6 months from the date on which it was submitted to the Regional Director.

Ports of Entry

To facilitate enforcement, the AA may, in the future, designate ports of entry. If ports of entry are designated, all bluefin tuna shipments entering the United States would be restricted to the designated ports of entry, which would be published in the **Federal Register**.

Enforcement

Any fresh or frozen bluefin tuna product identified by the HTS item numbers referred to previously that is unaccompanied by a completed, approved BSD would be considered unlawful for importation into the United States. If the AA has designated ports of entry for shipments of bluefin tuna or bluefin tuna products, any shipment arriving at non-designated ports of entry would be considered unlawful and the importer would be subject to penalties under ATCA.

When a bluefin tuna is presented for entry into the customs territory of the United States and is found to be without a completed, approved BSD, U.S. Customs would suspend entry authorization, notify the importer of record of the documentation deficiency, notify NMFS enforcement agents of the deficiency, and offer the importer of record the opportunity to cure the defect. If the importer of record cannot cure the defect within 8 hours (justified by perishable nature of product), the importer could withdraw the product from U.S. Customs territory (i.e., re-export within 24 hours under Customs supervision); place the product into a bonded warehouse; post a bond to release the product; or abandon the product (Customs takes custody), whereupon the product would be disposed of under Customs laws and regulations, as long as that disposition does not result in its introduction into the United States.

In the event the importer can cure the defect within 8 hours, the fish would be released for importation and no penalties would be incurred under ATCA. If, within 10 days of fish being placed into a bonded warehouse, the Regional Director notifies the District Director of Customs that complete, approved documentation for that fish has been received, the fish would be allowed to be entered into the United States; otherwise, it would be disposed of as allowed under Customs laws and regulations. If, within 10 days of fish being released under bond, the Regional Director does not receive complete, approved documentation for that fish, the importer or consignee would be notified to redeliver or cause to be redelivered to the District Director of Customs those fish that were released under bond. In the event that any such fish is not redelivered within 3 days following the notification, without impairment in value, liquidated damages would be assessed in the full amount of the bond given. The importer would remain liable for any expenses incurred in the storage and/or disposal of bluefin tuna refused admission under these regulations. In addition, if the fish is refused entry into the United States or if the importer abandons the product, the importer would be subject to the civil and criminal penalties and the forfeiture provisions provided for under ATCA.

Scenarios

The following are five examples of use of the BSD under the proposed rule in which shipments of bluefin tuna are imported into and/or exported from the United States:

1. Exports from a country for which the AA has not waived validation requirements:

A BSD from a country for which the AA has not waived validation requirements would have to be validated by a responsible government official for that country. The export, exporter certification, and description of shipment (excluding the country-issued tag number) sections on the BSD would be completed by the exporter. The exporter then would submit the original of the BSD for validation by the designated government official. A copy would be submitted to the domestic fisheries agency and the original BSD would accompany the shipment into the United States.

If the U.S. importer re-exports the fish, the import section (naming the United States as the intermediate country) and the importer's certification section of the BSD would be completed by the importer. The original BSD, with the importer's entries and certification, would accompany the shipment to the final destination, and a completed copy

would be submitted to NMFS within 24 hours of the time of re-export.

If the U.S. importer sells the fish for consumption in the domestic market, the import section (naming a United States state and city as the final point of import) and the importer's certification section of the BSD would be completed by the importer. The original BSD with the importer's entries and certification would be submitted to NMFS within 24 hours of the time of import.

2. Exports from a country for which the AA has waived validation requirements:

If the AA has waived validation requirements for a country, a BSD, except for bulk-frozen shipments, would not have to be validated by a government official of that country. The export, exporter's certification, and description of shipment (excluding the country-issued tag number) sections on the BSD would be completed by the exporter. A copy would be submitted to the domestic fisheries agency and the original BSD would accompany the shipment into the United States.

If the U.S. importer re-exports the fish, the import section (naming the United States as the intermediate country) and the importer's certification section of the BSD would be completed by the importer. The original BSD with the importer's entries and certification would accompany the shipment to the final destination, and a completed copy would be submitted to NMFS within 24 hours of the time of re-export.

If the U.S. importer sells the fish for consumption in the domestic market, the import section (naming a United States state and city as the final point of import) and the importer's certification section of the BSD would be completed by the importer. The original BSD with the importer's entries and certification would be submitted to NMFS within 24 hours of the time of import.

3. Export of U.S.-caught bluefin tuna:

Since the United States has a tagging requirement for individually exported Atlantic bluefin tuna, and this proposed rule would implement such a tagging requirement for Pacific bluefin tuna exported from the United States, the BSD would not have to be validated by a government official (except for bulk-frozen shipments, which would not be tagged and would be accompanied by a validated BSD). The export, exporter certification, and description of shipment (including the country-coded tag number) sections on the BSD would be completed by the exporter. The original BSD with the exporter's entries and certification would accompany the shipment to the final destination, and a completed copy would be submitted to NMFS within 24 hours of the time of export.

4. Import of bulk-frozen shipments to the United States:

For a bulk-frozen import, the export, exporter's certification, and description of shipment (excluding the country-issued tag number) sections on the BSD would be completed by the foreign exporter. The exporter would then submit the BSD to a responsible government official of the country of the flag vessel harvesting the tuna for validation, even if validation requirements have been otherwise waived for that country. The exporter would then submit and/or retain copies of the document as required by the regulations of the country, and the original document would accompany the shipment into the United States.

If the U.S. importer re-exports the fish, the import section (naming the United States as the intermediate country) and the importer's certification section of the BSD would be completed by the importer. The original BSD with the importer's entries and certification would accompany the shipment to the final destination, and a completed copy would be submitted to NMFS within 24 hours of the time of re-export.

If the U.S. importer sells the fish for consumption in the domestic market, the import section (naming a U.S. state and city as the final point of import) and the importer's certification section of the BSD would be completed by the importer. The original BSD with the importer's entries and certification would be submitted to NMFS within 24 hours of the time of import.

5. Export of bulk-frozen shipments from the United States:

For a bulk-frozen export, the export, exporter's certification, and description of shipment (excluding the country-issued tag number) sections on the BSD would be completed by the U.S. exporter. The exporter would submit the original to the designated NMFS official for validation, then submit a copy of the completed document to NMFS (see **ADDRESSES**) within 24 hours of the time of export. The original completed document would accompany the shipment to any intermediate countries, if applicable, and to the country of final destination.

Classification

This proposed rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq.* The AA has preliminarily determined that this proposed rule is necessary to implement the recommendation of ICCAT and is necessary for management of the bluefin tuna fisheries.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because the estimated annual cost to all respondents in the aggregate would be less than $56,000. Approximately 230 bluefin dealers would be affected. This proposed rule has been determined to be not significant for purposes of E.O. 12866.

This proposed rule contains new and revised collection-of-information requirements subject to review under the Paperwork Reduction Act. It modifies and renews requirements that were approved by the Office of Management and Budget (OMB) under OMB control numbers 0648–0040, 0648–0204 and 0648–0239. The public reporting burden for completing an application for a Federal permit for dealers that export or re-export Pacific bluefin tuna is estimated at 0.08 hours (5 minutes) per response. The public reporting burden for these dealers for collection-of-information on dealer reports is estimated at 0.20 hours (12 minutes) per response for the biweekly dealer reports and affixing tags, and 0.33 hours (20 minutes) per response for all bluefin tuna dealers for completing a BSD. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and the Office of Management and Budget, Paperwork Reduction Project (0648–0040), Washington, D.C. 20503.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties

Dated: June 10, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 285 is proposed to be amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.2, definitions of "bluefin tuna", "intermediate country", and "Pacific bluefin tuna" are added in alphabetical order; the definition of "Atlantic bluefin tuna" is revised; in the definition of "owner", paragraphs (a) through (c) are redesignated paragraphs (1) through (3), respectively; and in the definition of "Regional Director", paragraphs (a) and (b) are redesignated paragraphs (1) and (2), respectively, and redesignated paragraph (1) is revised to read as follows:

§ 285.2 Definitions.

* * * * *

Atlantic bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus thynnus* that is found in the Atlantic Ocean. Size classes for Atlantic bluefin tuna are defined in § 285.26.

* * * * *

Bluefin tuna means the fish species *Thunnus thynnus* that is found in any ocean area.

* * * * *

Intermediate country means a country from which bluefin tuna or bluefin tuna products that were previously imported by that nation are exported to the United States. Shipments of bluefin tuna or bluefin tuna products through a country on a through bill of lading or in another manner that does not enter the shipments into that country as an importation do not make that country an intermediate country under this definition.

* * * * *

Pacific bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus orientalis* that is found in the Pacific Ocean.

* * * * *

Regional Director means

(1) For the purposes of Atlantic bluefin dealers, the Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–3799 and for the purposes of Pacific bluefin dealers, the Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd. Suite 4200, Long Beach, CA 90802-4213.

* * * * *

3. In § 285.30, the section heading and paragraph (d) are revised to read as follows:

§ 285.30 Tags.

* * * * *

(d) *Removal of tags.* A tag affixed to any Atlantic bluefin tuna under paragraph (c)(1) of this section or under § 285.202(a)(5)(ii) must remain on the tuna until the tuna is cut into portions. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container. Tag numbers must be recorded on any document accompanying shipment of bluefin tuna for commercial use or export.

4. In § 285.31, paragraph (a)(19) is revised to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(19) Remove any tag affixed to an Atlantic bluefin tuna under § 285.30(c)(1) or under § 285.202(a)(5)(ii), before removal is allowed under § 285.30(d), or fail to write the tag number on the shipping package or container as prescribed by that section;

* * * * *

5. New subparts F and G are added to part 285 to read as follows:

Subpart F—Pacific Bluefin Tuna

Sec.

285.150 Dealer permits.

285.151 Dealer recordkeeping and reporting.

285.152 Tags.

285.153 Prohibitions.

Subpart G—Bluefin Tuna Statistical Documentation

285.200 Species subject to statistical documentation requirements.

285.201 Documentation requirements.

285.202 Contents of documentation.

285.203 Waiver of validation requirements.

285.204 Enforcement.

285.205 Ports of entry.

285.206 Prohibitions.

Subpart F—Pacific Bluefin Tuna

§ 285.150 Dealer permits.

(a) *General.* A dealer purchasing, or receiving, Pacific bluefin tuna for export must have a valid permit issued under this section.

(b) *Application.* A dealer must apply for a permit in writing on an appropriate form obtained from the Regional Director. The application must be signed by the dealer and be submitted to the Regional Director at least 30 days before the date upon which the dealer desires to have the permit made effective. The application must contain the following information: Company name, principal place of business, owner or owners' names, applicant's name (if different from owner or owners) and mailing address and telephone number, and any other information required by the Regional Director.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section is valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit that is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit is not considered a new application.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) *Inspection.* The dealer must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by the Regional Director for such purpose.

(i) *Sanctions.* The Assistant Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the dealer issued a permit must report the change to the Regional Director in writing. The permit is void if any change in information is not reported within 15 days.

§ 285.151 Dealer recordkeeping and reporting.

Any person issued a dealer permit under § 285.150:

(a) Must submit to the Regional Director a biweekly report on bluefin exports on forms supplied by NMFS.

(1) The report required by this paragraph (a) must be postmarked and mailed within 10 days after the end of each 2-week reporting period in which Pacific bluefin tuna were exported. The biweekly reporting periods are defined as the first day to the fourteenth day of each month and the fifteenth day to the last day of the month.

(2) Each report must specify accurately and completely for each tuna or each shipment of bulk-frozen tuna exported: Date of landing or import; any tag number (if so tagged); weight in pounds (specify if round or dressed); and any other information required by the Regional Director. At the top of each form, the company's name, license number, and the name of the person filling out the report must be specified. In addition, the beginning and ending dates of the 2-week reporting period must be specified by the dealer and noted at the top of the form.

(b) Must allow an authorized officer, or any employee of NMFS designated by the Regional Director for this purpose, to inspect and copy any records of transfers, purchases, or receipts of Pacific bluefin tuna.

(c) Must retain at his/her place of business a copy of each biweekly report for a period of 6 months from the date on which it was submitted to the Regional Director.

§ 285.152 Tags.

(a) *Issuance of tags.* The Regional Director will issue numbered tags to each person receiving a dealer's permit under § 285.150.

(b) *Transfer of tags.* Tags issued under this section are not transferable.

(c) *Affixing tags.* A dealer or agent must affix a tag to each fresh or individually frozen Pacific bluefin tuna purchased or received for export, except bulk-frozen Pacific bluefin tuna purchased or received for export, prior to its packaging for export. The tag must be affixed between the fifth dorsal finlet and the keel.

(d) *Removal of tags.* A tag affixed to any Pacific bluefin tuna under § 285.152(c) or under § 285.201(a)(5)(ii) must remain on the tuna until the tuna is cut into portions. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container. Tag numbers must be recorded on any document accompanying shipment of bluefin tuna for commercial use or export.

§ 285.153 Prohibitions.

It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Purchase or receive Pacific bluefin tuna for export without a valid dealer permit issued under § 285.100.

(b) Fail to affix an individually numbered bluefin tuna identification tag as specified in § 285.152.

(c) Remove any tag affixed to a Pacific bluefin tuna under § 285.152(c) or under § 285.201(a)(5)(ii), before removal is allowed under § 285.152(d), or fail to write the tag number on the shipping package or container as specified in § 285.152(d).

(d) Falsify or fail to make, keep, maintain, or submit any reports or other record required by this subpart.

(e) Refuse to allow an authorized officer or employee of NMFS designated by the Regional Director to make inspections for the purpose of checking any records relating to the catching, harvesting, landing, purchase, or sale of any Pacific bluefin tuna required of this subpart.

(f) Make any false statement, oral or written, to an authorized officer or employee of NMFS designated by the Regional Director to make inspections concerning the catching, harvesting, landing, purchase, sale, or transfer of any Pacific bluefin tuna.

Subpart G—Bluefin Tuna Statistical Documentation

§ 285.200 Species subject to statistical documentation requirements.

Imports into the United States and exports or re-exports from the United States of bluefin tuna or bluefin tuna products identified by the following item numbers from the Harmonized Tariff Schedule are subject to the documentation requirements of § 285.201:

(a) Fresh or chilled bluefin tuna, excluding fillets and other fish meat, No. 0302.39.00.20.

(b) Frozen bluefin tuna, excluding fillets, No. 0303.49.00.20.

§ 285.201 Documentation requirements.

(a) Bluefin imports. (1) Dealers importing bluefin tuna into the United States beginning June 1, 1994, must obtain from the shipment of tuna upon its receipt a completed approved Bluefin Tuna Statistical Document with the information and exporter's certification specified in § 285.202(a)(1) through (7). Such information must be validated as specified in § 285.202(a)(8) by a responsible government official of the country whose flag vessel caught the tuna (regardless of where the fish are first landed), unless the Assistant Administrator has waived validation requirements for the country pursuant to § 285.203 and such shipment is not frozen in bulk but is comprised of fresh or individually frozen bluefin tuna.

(2) Bluefin tuna imported into the United States from a country requiring a tag on all such tuna available for sale must be accompanied by the appropriate tag issued by that country, and said tag must remain on any tuna until it reaches its final point of import. If the point of final import is the United States, the tag must remain on the tuna until it is cut into portions. If the tuna portions are subsequently packaged for domestic commercial use or export, the tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(3) Dealers selling bluefin tuna that was previously imported into the United States for domestic commercial use in the United States must provide on the Bluefin Tuna Statistical Document the correct information and importer's certification specified in § 285.202(a)(4) and (9). The original of the completed Bluefin Tuna Statistical Document must be submitted to the Regional Director within 24 hours of the time the tuna was imported into the United States.

(b) Bluefin exports. (1) Dealers exporting bluefin tuna that was harvested by U.S. vessels and first landed in the United States must provide on the Bluefin Tuna Statistical Document the correct information and exporter certification specified in § 285.202(a)(1) through (7). If such tuna is frozen in bulk (not individually tagged pursuant to § 285.152), such information must be validated as specified in § 285.202(a)(8) by an official of the U.S. Government authorized to validate Bluefin Tuna Statistical Documents. A list of such officials may be obtained by contacting the Office of Fisheries Conservation and Management, NMFS, Silver Spring, MD (301–713–2347), or the nearest NMFS Enforcement Office. NMFS Enforcement Offices are located at: Portland, ME (207–780–3241); Otis Air Force Base, MA (508–563–5721); Brielle, NJ (908–528–3315); Atlantic Beach, NC (919–247–4549); Brunswick, GA (912–265–0108); Miami, FL (305–361–4224); St. Thomas, U.S. Virgin Islands (809–774–5226); San Juan, Puerto Rico (809–782–8686); St. Petersburg, FL (813–893–3145); St. Joseph, FL (904–227–1879); Corpus Christi, TX (512–888–3362);

Juneau, AK (907–586–7225); Anchorage, AK (907–271–5006); Dutch Harbor, AK (907–581–2061); Seattle, WA (206–526–6133); and Los Angeles, CA (310–980–4050). The original of the completed Bluefin Tuna Statistical Document must accompany the shipment of tuna to its export destination. A copy of the completed Bluefin Tuna Statistical Document must be submitted to the Regional Director within 24 hours of the time of export.

(2) U.S. dealers re-exporting bluefin tuna that was previously imported into the United States must provide on the Bluefin Tuna Statistical Document the correct information and intermediate importer's certification specified in § 285.202(a)(9). The original of the completed Bluefin Tuna Statistical Document must accompany the shipment of bluefin tuna to its re-export destination. A copy of the completed Bluefin Tuna Statistical Document must be submitted to the Regional Director within 24 hours of the time the tuna was re-exported from the United States.

(c) Dealers must retain at their place of business a copy of each Bluefin Tuna Statistical Document required to be submitted to the Regional Director pursuant to this section for a period of 6 months from the date on which it was submitted to the Regional Director.

§ 285.202 Contents of documentation.

(a) A Bluefin Tuna Statistical Document, to be deemed complete, must:

(1) Have a document number assigned by the country issuing the document;

(2) State the name of the country issuing the document, which is the country whose flag vessel harvested the bluefin tuna, regardless of where the tuna is first landed;

(3) State the exporter and point of export, which is the city, state or province, and country from which the bluefin tuna is first exported;

(4) State the importer and point of import, which is the city, state or province, and country into which the bluefin tuna is first imported;

(5) State the following specified information about the shipment:

(i) U.S. Tariff Schedule Number and species description;

(ii) The identifying tag number, if landed by vessels from countries with tagging programs;

(iii) The product type (fresh or frozen) and product form (round, dressed, fillet);

(iv) The weight of each fish (in kilograms for same product form previously specified);

(v) The ocean area where caught (by region, e.g., Western Atlantic);

(vi) The method of fishing (purse seine, trap, rod & reel, etc.);

(vii) The flag state of the vessel that harvested the bluefin;

(viii) The fishing trip dates; and

(ix) The name of the vessel that caught the fish;

(6) If frozen, have the appropriate box checked to indicate that the bluefin tuna was captured in a manner that is dolphin-safe as defined under 50 CFR part 247;

(7) State the name and license number of, and be signed and dated in the exporter's certification block by, the exporter;

(8) If applicable, state the name and title of, and be signed and dated in the government's validation block by, the responsible government official of the country whose flag vessel caught the tuna (regardless of where the tuna are first landed), with official government seal affixed, thus validating the information on the Bluefin Tuna Statistical Document; and

(9) As applicable, state the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by, each intermediate and the final importer.

(b) An approved Bluefin Tuna Statistical Document (NOAA Form 370) may be obtained from the Regional Director to accompany exports of bluefin tuna from the United States. Bluefin tuna dealers in countries that do not provide an approved Bluefin Tuna Statistical Document to exporters may obtain an approved Bluefin Tuna Statistical Document (NOAA Form 370) from the Regional Director to accompany exports to the United States.

(c) A country exporting bluefin tuna to the United States may use the approved Bluefin Tuna Statistical Document (NOAA Form 370) obtainable from the Regional Director or its own document, if that country submits a copy to the Assistant Administrator and the Assistant Administrator determines that the document meets the information requirements of this section. In such case, the Assistant Administrator will publish a finding to that effect and an approval of the document in the **Federal Register**. Effective upon the date of publication of such finding in the **Federal Register**, shipments of bluefin tuna or bluefin tuna products offered for importation from said country may be accompanied by either that country's approved Bluefin Tuna Statistical Document or by the Bluefin Tuna Statistical Document provided to the exporter by the Regional Director.

§ 285.203 Waiver of validation requirements.

(a) The approved Bluefin Tuna Statistical Document accompanying any import of bluefin tuna that is not frozen in bulk from any country, whether or not that country is a member of ICCAT, is not required to be validated by a government official from that country if the Assistant Administrator waives the validation requirement for that country. Such a waiver does not apply to shipments of tuna frozen in bulk.

(b) The Assistant Administrator shall publish such finding and waiver in the **Federal Register** upon finding that:

(1) All fresh or individually frozen bluefin tuna available for sale from a country are tagged, or included in an ICCAT-accepted logbook or ICCAT-accepted information retrieval system;

(2) All information relating to the tag, the ICCAT-accepted logbook, or the ICCAT-accepted information retrieval system is compiled by the government of that country and includes the name of the country issuing the document, the name of the exporter and the importer, the name of the harvesting vessel and the area of harvest, the gear utilized, the type of product and total weight, and the point of export; and

(3) The compiled information is provided in a timely fashion to ICCAT.

§ 285.204 Enforcement.

(a) *Bluefin tuna refused entry.* If a shipment containing bluefin tuna or bluefin tuna products is denied entry under the provisions of § 285.200, the District Director of Customs shall refuse to release the fish for entry into the United States and shall issue a notice of such refusal to the importer or consignee, and to NMFS Enforcement.

(b) *Disposition of bluefin tuna not accompanied by required documentation.* (1) Bluefin tuna that is offered for importation without the required Bluefin Tuna Statistical Document must be either:

(i) Exported under Customs supervision within 24 hours;

(ii) Released under bond as provided for in paragraph (c) of this section;

(iii) Placed in a bonded warehouse; or

(iv) Disposed of under Customs laws and regulations, as long as that disposition does not result in its introduction into the United States.

(2) The importer remains liable for any expenses incurred in the storage and/or disposal of bluefin tuna refused admission under these regulations. If, within 24 hours of fish being placed in a bonded warehouse, the Regional Director notifies the District Director of Customs that approved documentation for that fish has been received, the fish will be allowed to be entered into the United States; otherwise it will be disposed of as set out in paragraph (b)(1)(i) or paragraph (b)(1)(iv) of this section.

(c) *Release under bond.* (1) Bluefin tuna or bluefin tuna products not accompanied or covered by the required documentation or certification when offered for entry may be entered into the United States if the importer or consignee gives a bond on Customs Form 7551, 7553, or 7595 for the production of the required documentation or certification. The bond shall be in the amount required under 19 CFR 25.4(a).

(2) Within 24 hours after such Customs entry, or such additional period as the District Director of Customs may allow for good cause shown, the importer or consignee shall deliver an original or copy, as required, of the Bluefin Tuna Statistical Document to the Regional Director, who will notify the District Director of Customs that the fish is covered by an approved Bluefin Tuna Statistical Document. If such notification is not delivered to the District Director of Customs for the port of entry of such fish within 24 hours of the time of Customs entry or such additional period as may have been allowed by the District Director of Customs for good cause shown, the importer or consignee shall, by a specified date, redeliver or cause to be redelivered to the District Director of Customs those fish that were released in accordance with this paragraph (c).

(3) In the event that any such fish is not redelivered without impairment in value by the date specified in paragraph (c)(2) of this section, liquidated damages shall be assessed in the full amount of bond given on Form 7551. When the transaction has been charged against a bond given on Form 7553 or 7595, liquidated damages shall be assessed in the amount that would have been demanded under this paragraph (c)(3) under a bond given on Form 7551.

(4) Fish released for entry into the United States through use of the bonding procedure provided in this paragraph (c) shall be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act if the required Bluefin Tuna Statistical Document is not delivered to the Regional Director within 24 hours of the time of Customs entry, or such additional period as may have been allowed by the District Director of Customs for good cause shown.

(5) Fish refused entry into the United States shall also be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act.

§ 285.205 Ports of entry.

The Assistant Administrator shall monitor the importation of bluefin tuna into the United States. If the Assistant Administrator determines that the diversity of handling practices at certain ports at which bluefin tuna is being imported into the United States allow for circumvention of the Bluefin Tuna Statistical Document requirement, he/she may designate, after consultation with the U.S. Customs Service, those ports at which Pacific or Atlantic bluefin tuna may be imported into the United States. The Assistant Administrator shall announce in the **Federal Register** the names of ports so designated.

§ 285.206 Prohibitions.

It is unlawful for any person to do any of the following:

(a) Import or attempt to import any bluefin tuna into the United States without an accompanying approved Bluefin Tuna Statistical Document correctly completed with the appropriate certification.

(b) Import any bluefin tuna into the United States from a country that requires all such tuna to be tagged, without said tag accompanying the bluefin tuna.

(c) Remove a tag from any bluefin tuna imported into the United States accompanied by a tag, prior to its being cut into portions for a destination in the United States or for export.

(d) Fail to write legibly and indelibly, on the outside of any package containing a part or parts of a bluefin tuna that was imported into the United States accompanied by a tag, the tag number and the issuing country.

(e) Export or re-export from the United States any bluefin tuna without an accompanying approved Bluefin Tuna Statistical Document correctly completed with the appropriate certification.

(f) Fail to provide in a timely manner any copies of Bluefin Tuna Statistical Documents required to be submitted to the Regional Director pursuant to § 285.201.

(g) Falsify or modify any Bluefin Tuna Statistical Document required by this subpart.

(h) Fail to maintain any copies of a Bluefin Tuna Statistical Document that is required by § 285.202.

(i) Import any Pacific or Atlantic bluefin tuna at any port other than a port designated pursuant to § 285.205.

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BILLING CODE 3510–22–F–P

50 CFR Part 644

[I.D. 051794D]

Atlantic Billfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Atlantic billfishes; notice of additional scoping meetings and extension of comment period.

SUMMARY: NMFS has previously announced scoping meetings for Atlantic billfish. The purpose of the scoping meetings is to receive comments concerning the Atlantic billfish fishery from fishery participants and other members of the public regarding: A definition of overfishing; reducing fishing mortality; reporting requirements; and other issues. This notice announces additional scoping meetings and extends the comment period for the billfish scoping meetings.

DATES: Written scoping comments must be received by August 15, 1994. The scoping meetings will be held on August 4, August 10, August 11, August 14, and August 15, 1994.

ADDRESSES: Written scoping comments should be sent to Richard B. Stone, Chief, Highly Migratory Species Management Division (F/CM4), Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, Room 14853, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Atlantic Billfish Scoping Comments." Input for the issues/options statement may also be provided to the same address, or by sending a fax to C. Michael Bailey at 301–713–1035. The scoping meetings will be held in Savannah, GA; Houston, TX; New Orleans, LA; Cape May, NJ; and Morehead City, NC.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, 301–713–2347 or fax: 301–713–1035.

SUPPLEMENTARY INFORMATION:

Scoping Meeting

Depending upon the interest of the audience, the Meeting Officer may increase the length of the meeting. Additional meetings will be announced at a later date. NMFS is also soliciting written comments on issues of concern

in this fishery. NMFS requests input at any time during the scoping process, by mail or by fax. An issues/options statement was prepared for the initial hearing and revised, based on written and oral comments, for subsequent hearings. This hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Richard B. Stone by July 29, 1994 (see **ADDRESSES**). NMFS previously announced scoping meetings on February 9, 1994 (59 FR 5978), March 1, 1994 (59 FR 9720) and April 5, 1994 (59 FR 15862). The scoping meetings will be held at the following locations:

August 4, 1994, Savannah, GA, 7 to 10 p.m.

Holiday Inn MidTown
7100 Abercorn Street
Savannah, GA 31406

August 10, 1994, Houston, TX, 7 to 10 p.m.

Days Inn - Hobby Airport
8611 Airport Blvd.
Houston, TX 77061

August 11, 1994, New Orleans, LA, 7 to 10 p.m.

World Trade Center Building
Suite 1830, Crescent City Room
#2 Canal Street
New Orleans, LA 70130

August 14, 1994, Cape May, NJ, 10 a.m. to 12 noon

Canyon Club Resort Marina,
900 Ocean Highway
Cape May, NJ 08204

August 15, 1994, Morehead City, NC, 7 to 10 p.m.

Carteret Community College
Joslyn Hall
3505 Arendale Street
Morehead City, NC 28557–2989

Dated: June 9, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–14674 Filed 6–15–94; 8:45 am]
BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 59, No. 115
Thursday, June 16, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Agreement for Consideration of Historic Properties in Surface Coal Mining and Reclamation Operations

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of availability and request for comments.

SUMMARY: The Advisory Council on Historic Preservation (Council) and the Office of Surface Mining Reclamation and Enforcement (OSM), are inviting written comments from the public on a proposed Programmatic Agreement (PA) among OSM, the Council, and the National Conference of State Historic Preservation Officers (NCSHPO), that would set forth OSM procedures for taking into account the effects of surface coal mining and reclamation operations on historic properties.

The Council and OSM have jointly developed the proposed PA with NCSHPO, pursuant to § 800.13 of the Council's regulations (36 CFR part 800). The PA sets forth proposed procedures for meeting the requirements of section 106 of the National Historic Preservation Act of 1966 (Pub. L. 89–665) (NHPA or the Act) and other provisions of the Act as amended in 1992 (Pub. L. 102–575).

The Council is an independent Federal agency that advises the President and Congress on matters of historic preservation. OSM is the Federal agency within the Department of the Interior created by the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to implement SMCRA's requirements concerning the regulation of surface coal mining and reclamation operations and the reclamation of abandoned mine lands. OSM's SMCRA responsibilities include conducting oversight of State administration of approved State regulatory programs in the 24 primacy States and providing regulatory grants to primacy States to administer and enforce their regulatory programs.

OSM initiated consultation with the Council in April 1993 to explore options for implementing its responsibilities under the 1992 Amendments to the NHPA, particularly in relation to State permitting actions and related activities. Over the past year, the Council, OSM, and NCSHPO have been working together to develop the proposed PA as a potential compliance mechanism for implementing OSM's responsibilities under the 1992 NHPA Amendments and the 1991 judicial decision in Indiana Coal Council, Inc. v. Lujan (744 F. Supp. 1385 (D.DC. 1991)). A PA is one of the options set forth in the Council's regulations at § 36 CFR section 800.13 for a Federal agency to tailor section 106 review procedures to meet its historic preservation obligations in lieu of the standard process set forth at 36 CFR § 800.4–6. The 1992 amendments to the Act clarified that State regulatory programs administered pursuant to a delegation or approval by a Federal agency, such as OSM's approval of State programs and delegation of surface coal mining regulation to State Regulatory Authorities (SRAs), are Federal undertakings subject to section 106 of the Act. Therefore, OSM is now responsible for ensuring that the effects on historic properties of each State permitting action are appropriately considered. Each SRA must assist OSM in fulfilling its NHPA responsibilities as a standard condition of each regulatory grant.

The proposed PA sets forth procedures for implementing OSM's NHPA section 106 responsibilities as an alternative to the standard section 106 review process. The PA covers State permitting activities in the 24 primacy States and on Federal lands in cooperative agreement States, where the States exercise regulatory jurisdiction over such lands. The PA also covers OSM permitting actions in Federal program States, and on Federal lands in non-cooperative agreement States, where OSM is the regulatory authority. The terms of the PA do not apply to OSM's regulatory activities on Indian lands or where National Historic Landmark properties may be affected. In these situations, the standard process at 36 CFR § 800.4–6, applies. In contrast to the standard section 106 review process, the PA is intended to expedite and streamline the process by granting more decisionmaking and implementation authority to the States. The proposed PA provides for Council and OSM involvement in a proposed surface coal mining permitting action only if disputes arise that are unresolvable at the State level or if a member of the public requests such involvement. The PA also encourages SRAs and State Historic Preservation Officers to develop and formalize their own State-specific procedures based on those contained in the PA. Finally, the PA establishes a monitoring and reporting system whereby OSM can ensure compliance with section 106 requirements.

Publication of this proposed PA and request for comments on its scope, efficacy, and adequacy is part of the public participation process as set forth at 36 CFR § 800.13(c) of the Council's regulations with the purpose of gathering information, comments, and suggestions on the proposed PA

FOR COPIES OF THE PROPOSED PA CONTACT: Thomas M. McCulloch, Office of Education and Preservation Assistance, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave. NW., suite 803, Washington, DC 20004 (202–606–8520).

COMMENTS DUE: Written comments on the proposed PA should be submitted to the Council, at the address given above, by 5 p.m. Eastern time on the 15th of August, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas M McCulloch, Office of Education and Preservation Assistance, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave. NW., suite 803, Washington, DC 20004 (202–606–8520) OR Suzanne Hudak, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Washington, DC 20240 (202–208–2700).

Dated: June 7, 1994.

Robert D. Bush,

Executive Director.

[FR Doc. 94–14653 Filed 6–15–94; 8:45 am]

BILLING CODE 0000–00–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 10, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;
(2) Title the information collection:
(3) Form number(s), if applicable:
(4) How often the information is requested:
(5) Who will be required or asked to report:
(6) An estimate of the number of responses;
(7) An estimate of the total number of hours needed to provide the information:
(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250. (202) 690–2118.

Revision

• Cooperative State Research Service
Grant Application Kit—Facilities Program
Forms CSRS–850, –851, –852, –853, –854, –860, and environmental assessment
On occasion; Annually
Non-profit institutions; 77 responses; 727 hours
Evelyn J. O'Connor-Miller, (202) 401–6466

Farmers House Administration

7 CFR 1940–T, System for Delivery of Certain Rural Development Programs
Recordkeeping; On occasion; Quarterly
State or local governments; 340 responses; 567 hours
Jack Holston, (202) 720–9736

Extension

• Agricultural Marketing Service
Grapes Grown in a Designated Area of Southeastern California, Marketing Order No. 925
FV–74, FV–77, FV–78, and FV–78–A
On occasion; Annually; Every six years
Farms; Businesses or other for-profit; Small Businesses or organizations; 507 responses; 39 hours
Charles Rush, (202) 690–3670

• Agricultural Marketing Service
Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County—Marketing Agreement and Order No. 947
FV–79, FV–79–A, and FV–80
Recordkeeping: On occasion; Weekly; Monthly; Annually; Biennially
Farms; Businesses or other for-profit; 2,461 responses; 267 hours
Robert F. Matthews, (202) 690–0464

• Agricultural Marketing Service
Onions Grown in South Texas, Marketing Order No. 959
FV–89; FV–90; and FV–94
Recordkeeping; On occasion; Monthly; Annually
Farms; Businesses or other for-profit; Small businesses or organizations; 915 responses; 68 hours
Robert F. Matthews, (202) 690–0464

• Foreign Agricultural Service
Licensing of Sugar Free From Quota
FAS–947
Recordkeeping; On occasion
Businesses or other for-profit; 545 responses; 1,000 hours
Fred Kessel, (202) 720–5676

• Forest Service
Free Use Permit—Timber—36 CFR 223.5–223.13
FS–2400–8
Recordkeeping; On occasion; Annually
Individuals; 50,000 responses; 10,000 hours
Michael T. Miller, (202) 205–0854

• Federal Crop Insurance Corporation
Planting Record Fresh Sweet Corn—Planting Record Peppers—Planting Record Tomatoes
FCI–527, FCI–528, & FCI–529
On occasion
Individuals or households; Farms: 1,374 responses; 2,061 hours
Bonnie Hart, (202) 254–5046

• Federal Crop Insurance Corporation
Macadamia Tree Worksheet and Macadamia Tree Worksheet Continuation Form
FCI–74–A (2)
On occasion
Individuals or households; Farms; 3,000 responses; 3,000 hours
Bonnie L. Hart, (202) 254–8393

• Federal Crop Insurance Corporation
Statement of Facts
FCI–6
On occasion
Individuals or households; Farms; 75,000 responses; 75,000 hours
Bonnie L. Hart, (202) 254–5046

Larry K. Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 94–14684 Filed 6–15–94; 8:45 am]
BILLING CODE 3410–01–M

Cooperative State Research Service

Forestry Research Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1987 (Pub L. 92–463, 86 Stat. 770–776), U.S. Department of Agriculture announces the following meeting:

Name: Forestry Research Advisory Council.
Date: July 14–15, 1994.
Time: 8:30 a.m.–5 p.m.
Place: Room 338B & 338C Aerospace Center, 901 D Street SW., Washington, DC
Type of Meeting: Open to the public. Persons may participate in the meeting if time and space permit.
Comments: The public may file written comments before or after the meeting by contacting the person below.
Purpose: The council will be deliberating agenda topics that include: federal science planning as it relates to forestry and natural resources: implementation of the National Research Council report: Forestry Research A Mandate for Change; joint planning and priority setting by forestry research cooperators: review of the Cooperative Forestry Research Program (McIntire-Stennis); and other current research issues
Contact Person for Agenda and More Information: Peter A. Muscato, Cooperative State Research Service, Room 329, Aerospace Building, U.S. Department of Agriculture, Washington, DC 20250–2210; telephone (202) 401–4555.

Dated: June 8, 1994

John Patrick Jordan,
Administrator, Cooperative State Research Service.

[FR Doc. 94–14683 Filed 6–15–94; 8:45 am]
BILLING CODE CSRS–3410–22M

Forest Service

Angeles National Forest; Proposed Pacific Pipeline Project EIS/SEIR; Notice of Intent

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The California Public Utilities Commission (CPUC) and the United States Forest Service, Angeles National Forest (ANF) will direct the preparation of a joint Environmental Impact Statement (EIS) and a Subsequent Environmental Impact Report (SEIR) referred to as an EIS/SEIR for the Pacific

Pipeline Project proposed by Pacific Pipeline System, Inc. (PPSI). Aspen Environmental Group, a third-party contractor, under the direction of the CPUC, as the lead California State agency, and the USFS/ANF, as the lead Federal agency will prepare a draft and final EIS/SEIR to comply with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

On October 10, 1991, PPSI filed an Application with the CPUC for authorization to issue capital stock and other indebtedness to fund development of a proposed pipeline to transport offshore Santa Barbara crude oil to Los Angeles area refineries. At the same time, PPSI submitted a Proponent's Environmental Assessment (PEA) pursuant to the provisions of CEQA. The CPUC conducted comprehensive scoping meetings and solicited public and agency comments on the scope of the EIR. The CPUC selected a third party contractor (Aspen Environmental Group) to independently prepare an Environmental Impact Report (EIR) pursuant to their responsibility as a lead agency under CEQA.

The project, as proposed at that time, was a 171-mile long, 20-inch insulated pipeline with a capacity to transport 130,000 barrels per day (bpd) of crude oil. This originally proposed pipeline would have extended from Gaviota Marine Terminal in Santa Barbara County to oil refinery destinations in the Los Angeles Basin. The pipeline would have traversed across Santa Barbara and Ventura Counties, and enter Los Angeles County near Santa Clarita. For much of its length, the proposed pipeline would have been buried in the Southern Pacific Transportation Company railroad right-of-way (ROW). In Los Angeles County the pipeline would have continued southeasterly, mostly parallel to Interstate 5(I–5) to near Glendale and then south to Watts. At the Watts Junction the pipeline would have split into two pipelines, each leading to a refinery destination. One pipeline would continue to the Chevron Refinery in El Segundo, and the other would continue south to both Texaco's Wilmington refinery and the GATX oil distribution facility. This originally proposed project also included five pump/pressure reduction stations along its route.

A comprehensive EIR was prepared for this originally proposed project. Five workshops and five public hearings were conducted and significant public comments were received on the Draft EIR and incorporated into the Final document. In addition to the comprehensive EIR, an Executive Summary was prepared and made available to the public in both English and Spanish language versions. The Final EIR (FEIR) was Certified by the CPUC in 1993, indicating that in their view, the EIR had adequately identified the potential impacts of the Proposed Project and contained the information required for making their final decision on the project, which would be reached after conducting evidentiary hearings and upon the receipt of staff recommendations. However, due to project changes announced by PPSI after certification, evidentiary hearings were not held, nor was a decision made on the Proposed Project by the CPUC.

In December of 1993, PPSI filed an Amended Application with the CPUC. Later, in early 1994, PPSI also filed this Amended Application with the ANF. This Amendment was based on an Agreement reached by major potential users of the Proposed Pipeline (Santa Barbara offshore producers) and the All American Pipeline Company (AAPL). The producers agreed that the only means of transporting their oil out of Santa Barbara County by pipeline will be through use of the existing AAPL, which can transport all produced oil in this area to Kern County, and ultimately, to Texas, if requested by producers. However, producers have informed agencies and the public that the preferred destination for the majority of their heavy offshore production is the Los Angeles area refineries. Currently there are no existing pipelines with adequate capacity to transfer crude oil from the Southern Kern County to the Los Angeles area.

Thus, PPSI proposed to modify their project to comply with recent agreements and respond to this demand.

The Amendment filed with the ANF differs from the original proposal in the following manner:

- The origination point of the pipeline would be at an existing Texaco oil facility in Emidio, Kern County, an area adjacent to the All American Pipeline, which would enable the transfer of Santa Barbara offshore crude oil from the AAPL to the Pacific Pipeline.
- From this origination point a proposed 20-inch pipeline segment will continue for 62 miles to Castaic Junction, at which point, it would join the originally proposed project as applied for by PPSI. The 62-mile pipeline ROW would be generally parallel to I–5, and will traverse through the National Forest System land administered by the ANF. This newly proposed 62 miles from Emidio to Castaic Junction would replace the 104 miles of previously proposed pipeline from the Gaviota Marine Terminal to the Castaic Junction.
- The replacement of the previously proposed Gaviota to Castaic Junction pipeline with the new 62-mile pipeline would result in the following changes in ancillary facilities:

—five of the pump/pressure reduction stations required previously in Santa Barbara, Ventura, and Los Angles Counties would be replaced by three new pump/pressure reduction stations in Kern and Los Angeles Counties

—the proposed Control Center for the pipeline would be located in Taylor Yard (Los Angeles) instead of Ventura County, as originally proposed.

- The Amendment also requires consideration of three additional refinery/terminal destinations in Los Angeles County (retaining the previous three destinations). These three destinations are:

—Unocal Refinery in Carson
—Chemoil Terminal in Carson
—Ultramar Refinery in Wilmington.

These newly proposed destinations would require installations of an additional 3.3 miles of 16-inch pipeline that was not considered in the FEIR. Considering these additional connecting lines, the total length of the proposed pipeline would be approximately 132 miles (versus 171 miles for the originally Proposed Project).

The Amended Application also refers to a future scenario in which Mobil would obtain a permit and would produce up to 40,000 bpd of oil at their Santa Barbara Clearview Project. The Applicant suggests that the previously proposed pipeline between Ellwood to Castaic Junction might be reconsidered for this potential scenario.

The cumulative impacts associated with this uncertain scenario were identified in the original FEIR. The EIS/SEIR will consider this potential scenario and alternatives to it in the alternatives analysis section of the document.

Project Alternatives

Possible alternatives to the project would include:

- No action or not constructing the pipeline.
- Any reasonable project that can achieve the objectives of the Proposed Action, with lower overall impacts to the environment.
- Route alternatives identified as a result of project scoping.

Supplementary Information

A number of documents providing general information about the ANF have already been issued. These documents include the ANF Land and Resources Management Plan, FEIS and Record of Decision. These documents allow, under certain conditions, the issuance of special use permits for pipelines.

Because of the magnitude of the changes made to the project and its potential significant impacts on the environment, an initial study was not prepared. The originally submitted and newly amended PEAs provided by PPSI in its Application, as well as the Pacific Pipeline FEIR and Executive Summary were used to determine the need for the EIS. These documents are available for review at the following locations:

California Public Utilities Commission (L.A. Office). 107 South Broadway, Los Angeles, CA, Contact: Public Advisor, (213) 897–3544

U.S. Forest Service, Angeles National Forest, 701 N. Santa Anita Ave., Arcadia, CA, Contact: Rich Borden, (818) 574–5255

Carson Regional Library, 151 East Carson Street, Carson, CA, Contact: Gilbert Acuna, (310) 830–0901

Ray D. Prueter Library, 510 Park Avenue, Port Hueneme, CA, Contact: Lori Karns, (805) 486–5460

Santa Barbara City Library, 40 East Anapamu, Santa Barbara, CA, Contact: Evelyn Rickey, (805) 962–7653

Valencia Library, 23743 Valencia Blvd., Valencia, CA, Contact: Rita Lance, (805) 259–8332

If necessary, responsible Federal agencies may request a copy of PPSI's application and/or PEA by contacting Tom Rooney at: Pacific Pipeline System, Inc., 101 South First Street, Burbank, CA 91502, (818) 556–2744

The EIS/SEIR Process

As indicated in the project description, the newly proposed segment of the pipeline traverses the National Forest System land administered by the ANF. Thus, the Applicant will require right-of-way authorization and special use permits from the ANF. In order to consider issuance of these permits, and based on potential impacts identified in the Applicant's PEA, ANF will prepare an EIS pursuant to NEPA requirements.

The Draft EIS (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and should be available for public review by November of 1994. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the DEIS will be 60 days from the date the EPA's notice appears in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the Final EIS (FEIS), *Wisconsin Heritages, Inc.* v. *Harris* 490 F. Supp. 1334 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that the substantive comments and objectives are made available to the Forest Service. This is to ensure that substantive comments and objections are made available when the USFS can meaningfully respond to them in the FEIS. Comments on the DEIS should be specific and should address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA at 40 CFR 1503.3). It is also helpful if comments refer to specific pages or chapters of the DEIS.

After the end of the DEIS comment period, comments will be analyzed and considered by the USFS in preparing the FEIS. The FEIS is scheduled to be completed by April of 1995. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official (Mike Rogers, Forest Supervisor, ANF, Arcadia, CA) will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 215.

Proposed Scope of the EIS/SEIR

The EIS/SEIR will present the analysis of the environmental impacts of the proposed Pacific Pipeline Project and comparative environmental effects of the alternatives, and will identify mitigation measures for potentially significant impacts. The EIS will address the Project from Emidio to the Ultramar refinery in Wilmington. However, for the segment from Castaic to Texaco's Wilmington refinery the EIS will, primarily, rely on the existing FEIR. The joint document will contain a separate section in which the conclusions stated in the FEIR will be summarized. The potential for construction and operation of the segment of the project which was previously proposed between Santa Barbara and Castaic Junction will be considered in the alternatives analysis section of the document.

The EIS/SEIR will address all issue areas for which potential significant impacts are anticipated. These issue areas include:

- Air Quality. Construction and operation emissions and effects.
- Biological Resources. Effects on native habitats that support rare, threatened, or endangered species; impacts on sensitive habitats or species downslope from the ROW as a result of sedimentation or erosion; damage to native plant habitats due to construction; loss of habitat due to vegetation removal; and effects of noise disturbance on nesting and foraging of wildlife species.
- Cultural Resources. Construction effects on prehistoric sites, structures, regional districts or other physical evidence associated with human activity; disturbance during erosion control program excavation, illicit artifact collection by pipeline workers and construction equipment and oil spill containment encroachment in sensitive areas; Impacts on Native American values.
- Environmental Contamination. Effects of disturbance from trench excavation to contaminated sites along the ROW on pipeline workers; migration of contaminants via surface ground water runoff; and pipeline passage through oil fields with abandoned wells.
- Geology. Slope stability and seismic impacts associated with fault rupture and liquefaction/lateral spreading; and damage to above ground structures from earthquake-induced ground shaking.
- Hydrology. Flood-related impacts due to diversion of stream flows during construction; erosion and scour impacts due to pipeline rupture and oil contamination of streams;
- Land Use and Public Recreation. Construction effects on agricultural and recreational uses; disruptions to public services and access roads in residential areas; and potential for long-term safety risks to existing or planned uses in project vicinity.
- Noise. Construction effects on sensitive receptors.
- Paleonotology. Project impacts on the fossil evidence of inorganic plant

and animal remains over 11,000 years old.

■ Public Services. Effects of project construction and population growth.

■ Public Utilities and Energy. Construction disruption to utilities due to collocation accident.

■ Socioeconomics. Construction disruption to commercial sites; construction and operation effects on employment and population growth; and oil spill effects on local business, temporary housing and tourism.

■ Soils. Effects of soil corrosivity on project design; effects of expansive soils on foundations of above-ground structures; and fugitive dust emissions.

■ System Safety. Oil spill impacts from land-based oil spills, risk of oil spill ignition, and exposure to resulting fire. Impacts to creeks, riverbeds and native habitat; and effects of oil spills on sensitive receptors.

■ Transportation and Traffic. Construction effects on project study area's transportation system, traffic congestion, pedestrian circulation and emergency access.

■ Visual Resources. Construction and operation effects on visual resources resulting from presence of equipment, materials, workers, and above-ground facilities.

■ Cumulative and Growth Inducing Impacts.

Project Scoping Process

The EIS/SEIR on the Proposed Pacific Pipeline Project will focus on significant environmental effects. The process of determining the focus and content of the EIS/SEIR is known as scoping (40 CFR 1501.7). Scoping helps to identify the range of actions, alternatives, environmental effects, and mitigation measures to be analyzed in depth, and eliminates from detailed study those issues that are not pertinent to the final decision on the Proposed Project. The USFS will be seeking information, comments, and assistance from Federal, State, and local agencies, the proponent and other individuals or organizations who may be interested in, or affected by the proposed action. Significant issues may be identified through public and agency comments.

Scoping, however, is not conducted to resolve differences concerning the merits of the project or to anticipate the ultimate decision on the proposal. Rather, the purpose of scoping is to help ensure that a comprehensive and focused EIS/SEIR will be prepared that provides a firm basis for the decision-making process. The scoping process includes:

■ Identifying potential issues.

■ Identifying issues to be analyzed in depth.

■ Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.

■ Exploring additional alternatives.

■ Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

■ Determining potential cooperating agencies and task assignments.

Public and agency scoping sessions will be held in the following areas:

Vista Del Lago Visitor Center, Vista Del Lago Exit (ten miles north of Castaic Junction), Interstate 5, June 27, 1994, 7 p.m.

Aragon Elementary School, 1118 Aragon Avenue, Los Angeles, CA 90065, June 28, 1994, 7 p.m.

Wilmington Boys and Girls Club, Multi-Purpose Room, 1444 West "Q" Street, Wilmington, CA 90744, June 29, 1994, 7 p.m.

City of San Fernando, Council Chambers, 117 McNeil Street, San Fernando, CA 91340, June 30, 1994, 7 p.m.

Agency Comments

Notice has been sent to responsible Federal Agencies, the State, and the **Federal Register**. Also State responsible and trustee agencies and the State Clearinghouse have been notified. We need to know the views of your agency as to the scope and content of the environmental information which reflects your agency's statutory responsibilities in connection with the proposed project. Once again, responses should identify the issues to be considered in the Draft EIS/SEIR, including significant environmental issues, alternatives, mitigation measures, and whether the responding agency will be responsible State of Federal agency or a state trustee agency.

Due to the time limits mandated by State and Federal Laws, your response must be sent at the earliest possible date but no later than 30 days after publication of this notice. Please send your response to: Richard Borden (ANF), c/o Aspen Environmental Group, 30423 Canwood Street, suite 218, Agoura Hills, CA 91301.

For further information write to: Richard Borden, ANF, 701 North Santa Anita Avenue, Arcadia, CA 91006–2799, (818) 574–5255.

Dated: June 8, 1994.

Mike Wickman,

District Ranger, Saugus Ranger District, Angeles National Forest.

[FR Doc. 94–14501 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–11–M

Joseph Creek Wild and Scenic River Management Plan Environmental Assessment, Wallowa-Whitman National Forest, Wallowa County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: On June 7, 1994, Wallowa-Whitman Forest Supervisor, R.M. Richmond, signed a Decision Notice which adopted into the Forest Plan the Joseph Creek Wild and Scenic River Management Plan which required an amendment to the Wallowa-Whitman Forest Plan.

This management plan outlines use levels, development levels, resource protection measures, and outlines a general management direction for the river corridor. This amendment is necessary to implement the Wild and Scenic Rivers Act which required the Forest Service to develop a management plan for Joseph Creek. Interim direction was identified in the Forest Plan as Management Area 7 (Wild and Scenic Rivers). The environmental assessment documents the analysis of alternatives to managing the Joseph Creek Wild and Scenic River in accordance with the Wild and Scenic Rivers Act.

This decision is subject to appeal pursuant to Forest Service regulations 36 CFR part 217. Appeals must be filed within 45 days from the date of publication in the Baker City Herald. Notices of Appeals must meet the requirement of 36 CFR 217.9.

The environmental assessment for the Joseph Creek Wild and Scenic River Management Plan is available for the public review at the Wallowa-Whitman National Forest Supervisor's Office in Baker City, Oregon.

EFFECTIVE DATE: Implementation of this decision shall not occur within 30 days following publication of the legal notice of the decision in the Baker City Herald

FOR FURTHER INFORMATION:

For further information, contact Steve Davis, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814 or phone (503) 523–1316.

Dated: June 7, 1994

R.M. Richmond,

Forest Supervisor

[FR Doc. 94–14627 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Municipal Interest Rates for Third Quarter of 1994

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the third quarter of 1994.

SUMMARY: REA hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the third calendar quarter of 1994.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning July 1, 1994, and ending September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2230-s, 14th Street & Independence Avenue SW., Washington, DC 20250–1500. Telephone: 202–720–0736. FAX: 202–720–4120.

SUPPLEMENTARY INFORMATION: Pursuant to REA regulations at 7 CFR 1714.5, the interest rates on advances of funds from municipal rate loans are based on indexes published in the "Bond Buyer" for the four weeks prior to the first Friday of the last month before the beginning of the quarter. In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin any time during the third calendar quarter of 1994.

Interest rate term ends in (year)	Interest rate (0.000 percent)
2015 or later	6.125
2014	6.125
2013	6.125
2012	6.000
2011	6.000
2010	6.000
2009	5.875
2008	5.875
2007	5.750
2006	5.625
2005	5.500
2004	5.375
2003	5.375
2002	5.250
2001	5.125
2000	5.000
1999	4.875
1998	4.750
1997	4.625
1996	4.375
1995	3.750

Dated: June 10, 1994.

Wally Beyer,

Administrator.

[FR Doc. 94–14680 Filed 6–15–94; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will be convened at 2 p.m. and adjourn at 6 p.m. on Wednesday, July 13, 1994, at the Marriott Hotel, Washington room, Charles and Orms Streets, Providence, Rhode Island 02904. The purpose of the meeting is to update Committee members on the Commission and to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Sarah A. Murphy, 401–455–3880 or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 8, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–14652 Filed 6–15–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 23–94]

Foreign-Trade Zone 172—Oneida County, NY; Application for Subzone Oneida Ltd. (Tableware) Sherrill and Oneida, NY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the County of Oneida, New York, grantee of FTZ 172, requesting special-purpose subzone status for the manufacturing facilities of Oneida Ltd. in Sherrill and Oneida, New York. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 7, 1994.

The Oneida facilities involve three sites in Sherrill (Oneida County) and Oneida (Madison County), New York: Site 1 (116 acres)—Main Plant, East Seneca Street and Route 5, Sherrill; Site 2 (63 acres)—Knife Plant, Kenwood Avenue, Sherrill; and Site 3 (0.5 acres)—warehouse facility (D.J. Warehouse), Wilson Street, Oneida. The facilities (2500 employees) are used to manufacture a full line of stainless steel, silverplated and sterling silver flatware (knives, forks and spoons) as well as certain hollowware (tea services, bowls, trays, cups). The facilities are also used to warehouse/package/distribute porcelain, chinaware, crystal and miscellaneous giftware. Certain finished and semi-finished items, accounting for up to 15 percent of sales, are sourced from abroad to fill out product lines. (Stainless steel mill products are sourced domestically.) Oneida is requesting to use zone procedures only for silverplating of foreign-sourced stainless steel tableware and for warehousing and packaging of finished products.

Zone procedures would exempt Oneida from Customs duty payments on foreign items that are exported. On domestic sales, the company would be able to choose the duty rates that apply to the finished silverplated products (4.5 to 6.0%). The duty rates on foreign-sourced stainless steel tableware items used in the silverplating activity range from 6 to 17 percent. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 15, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to Tuesday, August 30, 1994).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Syracuse Hancock

International Airport, Air Cargo Building, P.O. Box 7256, Syracuse, NY 13261

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: June 7, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–14622 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–25–P

International Trade Administration

[A–570–827]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Kristin Heim, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4087 or (202) 482–3798, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that certain cased pencils (pencils) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on November 29, 1993 (58 FR 64548, December 8, 1993), the following events have occurred.

On December 27, 1993, the U.S. International Trade Commission (ITC) notified us of its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of pencils from the PRC that are alleged to be sold at less than fair value.

On January 5, 1994, we sent a survey to the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and certain companies in the PRC requesting information on production and sales of pencils exported to the United States. The names of the companies were found in the petition and in data supplied by the Port Import-Export Reporting Service (PIERS). We requested MOFTEC's assistance in forwarding the survey to all exporters and producers of pencils and submitting complete responses on their behalf. On January 14, the survey was sent to the Asia Pencil Association.

On January 31, 1994, responses to the survey were received from the China First Pencil Co., Ltd. (China First), an exporter and producer; Shanghai Foreign Trade Corp. (SFTC), an exporter; Shanghai Lansheng Corp. (Shanghai Lansheng), an exporter; Shanghai Machinery & Equipment Import & Export Corp. (Shanghai Machinery), an exporter; and Shanghai Three Star Stationery Industry Corp. (Three Star), a producer and domestic reseller. Shanghai Machinery reported that while it had exported pencils in the past, it did not make any sales to the United States during the POI.

On February 9, 1994, four more companies responded to our survey: Songnan Pencil Factory, a producer; Xinbang Joint Venture Factory, a producer; Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. (Guangdong), an exporter; and Anhui Stationery Company (Anhui), a producer.

On February 16, 17, and 23, 1994, all PRC producers and exporters identified in the course of this proceeding, *i.e.*, through the petition, in PIERS data, in letters of appearance and as provided by MOFTEC, for which we had addresses were sent full questionnaires. During the month of March, in response to our questionnaire, we received letters from a number of companies stating that they either did not export cased pencils to the United States during the POI or acted merely as freight forwarders.

On March 8, 1994, we postponed the preliminary determination in this investigation (see 59 FR 10784, March 8, 1994).

SFTC requested on March 24, 1994, that it not be required to submit sales and factors of production information for certain pencils it exported to the United States during the POI. On April 4, 1994, SFTC amended its request. Because the sales and factor of production information covered a small percentage of SFTC's sales to the United States, we granted SFTC's amended request (see Memorandum from E. Graham to B. Stafford, April 7, 1994, on file in the Central Records Unit in room B–099 of the Main Commerce Building).

On May 10, 11, and 25, 1994, petitioner submitted information concerning the costs of certain raw materials which are used in the production of pencils but that were not specifically addressed in the petition. Petitioner also requested that the Department recalculate the petition margins based on the information in its submission of May 25, 1994.

Between June 3, 1994, and this preliminary determination, respondents submitted updated and additional information. Given the late dates on which this information was provided, we found it administratively infeasible to use this information (with the exception of company-specific conversion factors) in our preliminary determination.

Scope of Investigation

The products covered by this investigation are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, or chalks.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Class or Kind of Merchandise

At the time of our initiation, we solicited comments from interested parties on whether all cased pencils constitute one class or kind of merchandise. Respondents have argued that raw pencils/pencil blanks and semi-finished pencils constitute a separate class or kind of merchandise apart from finished pencils. Based on the information provided, we find that these products do not constitute a separate class or kind of merchandise. (See memorandum from E. Graham to B. Stafford, April 15, 1994.) In a submission dated June 2, 1994, respondents argued that the merchandise subject to this investigation comprises four separate classes or kinds of merchandise. While this argument was made too late to be considered for our preliminary determination, we will address this in our final determination.

The Asia Pencil Association argued that specialty pencils (*e.g.*, carpenter and art pencils) should constitute a separate class or kind of merchandise. However, the information submitted in support of their claim was insufficient to allow us to make a determination that specialty pencils are a separate class or kind of merchandise.

Period of Investigation

The POI is June 1, 1993, through November 30, 1993.

Separate Rates

China First, Guangdong, SFTC, and Shanghai Lansheng have each requested a separate rate. Guangdong's and SFTC's business licenses each indicate that they are owned "by all the people." As stated in the *Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, 22586 (May 2, 1994)) (*"Silicon Carbide"*) "ownership of a company by all the people does not require the application of a single rate." Accordingly, Guangdong and SFTC are eligible for consideration for separate rates.

Shanghai Lansheng has reported that, for the majority of the POI, it was owned "by all the people" and that it was later reorganized as a shareholding company. It has indicated that its shares are traded on the Shanghai stock exchange. In the *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Paper Clips from the People's Republic of China* (*"Paper Clips"*) (59 FR 25885, 25887, May 18, 1994) the Department stated that "a 'municipal government' owns 70 percent of [Shanghai Lansheng's] shares." There is no evidence on the record that this municipality controls other exporters of cased pencils that made sales to the United States during the POI. We will, however, evaluate this issue carefully during verification.

Since ownership by all the people (the situation applicable to Shanghai Lansheng during the majority of the POI) "does not require the application of a single rate" and there was no central government ownership during the later part of the POI, Shanghai Lansheng is eligible for consideration for a separate rate.

China First has reported that it is a shareholding company and has provided a list of its shareholders. According to China First, the shareholders elect the board of directors which, in turn, appoints the general manager. Its questionnaire response states that there are three types of shares: A shares held by Chinese legal persons, B shares held by non-Chinese legal persons and Enterprise shares. We do not have on the record any information addressing the similarities or differences in rights accruing to the various types of shares.

Based on our examination of the information provided regarding the shareholder identities and the ownership structure of China First, we have determined that we do not have enough information on the record to grant it a separate rate at this time. Due to the proprietary nature of the information, we are not able to discuss the ownership structure of China First in further detail in this notice; however, there is a proprietary decision memorandum regarding this issue on the record (see Decision Memorandum of June 8, 1994). We are assigning China First the PRC country-wide rate for purposes of this preliminary determination.

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*"Sparklers"*) and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates only where respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

Three PRC laws that have been placed on the record in this proceeding indicate that the responsibility for managing enterprises "owned by all of the people" is with the enterprises themselves and not with the government. These are the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 (*"1988 Law"*); "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 (*"1992 Regulations"*); and the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992 (*"Export Provisions"*).

The *1988 Law* and *1992 Regulations* shifted control from the government to the enterprises themselves. The *1988 Law* provides that enterprises owned "by the whole people" shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers and purchase their own goods and materials. The *1988 Law* also has other provisions which indicate that enterprises have management independence from the government. The *1992 Regulations* provide that these same enterprises can, for example, set their own prices (Article IX); make their own production decisions (Article XI); use their own retained foreign exchange (Article XII); allocate profits (Article II); sell their own products without government interference (Article X); make their own investment decisions (Article XIII); dispose of their own assets (Article XV); and hire and fire their employees without government approval (Article XVII).

The *Export Provisions* list those products subject to direct government control. Pencils do not appear on the *Export Provisions* list and are not, therefore, subject to the export constraints.

The existence of these laws indicates Guangdong, SFTC and Shanghai Lansheng are not *de jure* subject to central government control. However, there is some evidence that the provisions of the above-cited laws and regulations have not been implemented uniformly among different sectors and/or jurisdictions in the PRC (see "PRC Government Findings on Enterprise Autonomy," in *Foreign Broadcast Information Service—China–93–133* (July 14, 1993). Therefore, the Department has determined that an analysis of *de facto* control is critical to determining whether respondents are, in fact, subject to governmental control

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide*).

Guangdong, SFTC and Shanghai Lansheng have each asserted that (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) its management operates with a high degree of autonomy and there is no information on the record that suggests central government

control over selection of management; and (4) it retains the proceeds of its export sales, and has the authority to sell its assets and to obtain loans. In addition, company-specific pricing during the POI does not suggest any coordination among exporters (*i.e.*, the prices for comparable products appear to differ among companies). This information supports a preliminary finding that there is a *de facto* absence of governmental control of export functions.

Consequently, Guangdong, SFTC and Shanghai Lansheng have preliminarily met the criteria for the application of separate rates. We will examine this issue in detail at verification and determine whether the questionnaire responses are supported by verifiable documentation.

There is an additional issue relating to governmental control that we will consider further for purposes of our final determination. Guangdong and SFTC have indicated that the appointments of their general managers are subject to approval by the local Commission on Foreign Trade and Economic Cooperation (COFTEC) office. While the significance of this is unclear, the evidence cited above indicates that the COFTEC offices do not control the key functions of the enterprises. However, we will examine at verification the precise nature of the authority that the COFTEC offices exercise over the enterprises.

Nonmarket Economy

The PRC has been treated as a nonmarket economy (NME) in past antidumping investigations. (See, *e.g.*, *Final Determination of Sales at Less than Fair Value: Sebacic Acid from the People's Republic of China* (54 FR 28053 (May 31, 1994)). No information has been provided in this proceeding that would lead us to overturn our former determinations. Therefore, in accordance with 771(18)(c) of the Act, we have treated the PRC as an NME for purposes of this investigation.

Where the Department is investigating imports from an NME, section 772(c)(1) of the Act directs us to base FMV on the NME producers' factors of production, valued in a comparable market economy that is a significant producer of the merchandise. Section 773(c)(2) of the Act alternatively provides that where available information is inadequate for using the factors of production methodology, FMV may be based on the export prices for comparable merchandise from market economy countries at a comparable level of economic development.

In this investigation, the respondents have urged the Department to make use of the alternative methodology provided in section 773(c)(2) of the Act. In particular, they have argued that the primary input into PRC pencils, lindenwood, cannot be valued elsewhere. Petitioner has also questioned the Department's ability to value certain inputs using publicly available published information (PAPI) from India, as Indian input statistics cover broader product categories. Petitioner does not request that the Department use the alternative methodology for FMV. Instead, it suggests that U.S. producers' costs be used to value these inputs.

For purposes of the preliminary determination, we have relied on the methodology provided by section 773(c)(1) of the Act to determine FMV. The sources of individual factor prices are discussed under the FMV section, below. However, as a result of the comments made by petitioner and respondents on the relevance of factor prices in India, we will be seeking additional data on factor values and on export prices that could also be used under the alternative methodology provided in section 773(c)(2) of the Act for possible use in our final determination.

Surrogate Country

As discussed above, section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country, and that are significant producers of comparable merchandise. The Department has determined that India and Pakistan are the countries most comparable to the PRC in terms of overall economic development. (*See* memorandum from the Office of Policy to the file, dated March 18, 1994.) In addition, there is evidence on the record that pencils are produced in India.

Although India is the preferred surrogate country for purposes of valuing the factors of production used in producing the subject merchandise, we have resorted to Pakistan and Indonesia for certain surrogate values where Indian values were either unavailable or significantly outdated. We have obtained and relied upon PAPI wherever possible.

Fair Value Comparisons

To determine whether sales of pencils from the PRC to the United States by Guangdong and Shanghai Lansheng were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Because all of SFTC's responses were not received in time for consideration in this preliminary determination and, therefore, we had only partial information for calculating FMV, we have based SFTC's margin on the best information available (BIA). (*See* "Best Information Available" section of this notice.)

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the Chinese exporters to unrelated parties in the United States prior to importation into the United States.

For those exporters that responded to the Department's questionnaire and were found to be eligible for a separate rate, we calculated purchase price based on packed, FOB foreign-port prices to unrelated purchasers in the United States. We made deductions for containerization, loading, port handling expenses and foreign inland freight valued in a surrogate country.

Foreign Market Value

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for the three exporters. The factors used to produce pencils include materials, labor, and energy. We made adjustments to materials costs for the resale of scrap materials, where applicable.

In determining which surrogate value to use for valuing each factor of production, we selected, where possible, the PAPI value which was: (1) An average non-export value; (2) representative of a range of prices within the POI if submitted by an interested party, or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive.

We used surrogate transportation rates to value inland freight between the source of the production factor and the pencil factories, and between factories, where appropriate. In those cases where a respondent failed to provide any information on transportation distances and modes, we applied, as best information available, the most expensive distance/modes combination (*i.e.*, the longest truck rates) that was available from the surrogate information we had selected. For two modes of transportation (man-drawn carts, inland

water transport), we were unable to obtain PAPI or cable information in time for this preliminary determination. To value these two modes of transportation, we assumed that these forms competed effectively with an alternate form of transportation over similar distances and used the applicable rates for the alternate form.

To value the raw materials and packing materials, we used PAPI. Our sources included: Indian Import Statistics for 1989, 1991 and 1992; and Indonesian Import Statistics for 1989.

To value wood slats, we used the Asian market price for jelutong wood in the sawn form during the POI as reported in the Market News Service Report for Tropical Timber and Timber Products dated November 1993. To value wood logs, we used Indian import statistics for a group of woods in rough form which included jelutong wood. The record in this proceeding shows that jelutong wood is used in pencil production and is similar to lindenwood, the input used by the PRC producers. For ferrules we used Indian import statistics for a basket aluminum category and for paint we used the import statistics category identified by respondents.

To value electricity, we used PAPI from the Asian Development Bank. To value coal and natural gas, we used Indian Import Statistics for 1992 and the Monthly Statistics of Mineral Production, Indian Bureau of Mines dated November 1992, respectively. To value water, we used a public cable from the U.S. consulate in Pakistan which was originally provided in the investigation of *Sulfanilic Acid From the PRC* because we could not locate a value for water in any Indian or Pakistani publication.

For all material and energy prices that were for a period prior to the POI, we adjusted the factor values to account for inflation between the time period in question and the POI using wholesale price indices published in *International Financial Statistics (IFS)* by the International Monetary Fund.

To value labor amounts, we used the International Labor Office's *1993 Yearbook of Labor Statistics*. To determine the number of hours in an Indian workday, we used the *Country Reports: Human Rights Practices for 1990*. We adjusted the factor values to account for inflation between the time period in question and the POI using the consumer price indices published in *IFS*.

To value factory overhead, we calculated percentages based on elements of industry group income statements from *The Reserve Bank of India Bulletin (RBI)*, December 1992. We based our overhead percentage calculations on the RBI data, adjusted to reflect an energy-exclusive overhead percentage. For selling, general and administrative (SG&A) expenses, we calculated percentages based on the RBI data. We used the calculated SG&A percentages because they were greater than the ten percent statutory minimum. We also used the calculated profit percentage because it was greater than the statutory minimum of eight percent of materials, labor, factory overhead, and SG&A expenses.

We made no adjustments for selling expenses. We added surrogate freight costs for the delivery of packing materials to the factories producing pencils.

Best Information Available

Because information has not been presented to the Department to prove otherwise, any PRC companies not participating in this investigation are not entitled to separate dumping margins. Potential exporters identified by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) have failed to respond to our questionnaire. In the absence of responses from these and other PRC exporters during the POI, we are basing the PRC country-wide rate on BIA. As discussed above, we are also applying BIA to SFTC.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and more adverse margins for those respondents which did not cooperate in an investigation. As outlined in the *Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina ("Argentina Steel")*, 58 FR 7066, 7069, 7070 (February 4, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. Here, since some PRC exporters failed to respond to our questionnaire, we are assigning to them the highest margin in the petition, as recalculated by the Department for the initiation and for this determination using petitioner's updated information submitted May 1994. This rate applies to all exporters other than those responding exporters which have shown their independence from central government control.

Since SFTC has been cooperative in this proceeding, and since we have preliminarily determined it is eligible for a separate rate, we are assigning a margin based on the highest calculated rate for any respondent in the investigation (see *Argentina Steel*).

Verification

As provided in section 776(b) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of pencils from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Guangdong	58.34
SFTC	100.98
Shanghai Lansheng	100.98
PRC country-wide rate*	107.63

*Including China first.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 8, 1994, and rebuttal briefs, no later than August 12, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be

held at 10 a.m. on August 15, 1994, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by August 22, 1994.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: June 8, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–14624 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–549–808]

Preliminary Determination of Sales at Less Than Fair Value: Certain Cased Pencils From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 16, 1994.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Thomas McGinty, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone (202) 482–2815 or 482–5055.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain cased pencils from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on November 30, 1993, (58 FR 64548, December 8, 1993), the following events have occurred:

On December 27, 1993, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case (Investigation Nos.–731–TA–669–670 (Preliminary) (Publication 2713).

On January 5, 1994, the Department of Commerce (the Department) delivered antidumping duty questionnaires to Aruna Company, Ltd. (Aruna) and Nan Mee Industry Co., Ltd. (Nan Mee). At the time a questionnaire was sent to Nan Mee, we did not know that Aruna accounted for over 60 percent of exports of the subject merchandise to the United States. On January 14, 1994, Nan Mee informed the Department that it had no sales for export to the United States during the period of investigation (POI). Based on import statistics obtained from the U.S. Customs Service, we determined that Aruna accounted for at least 60 percent of exports of the subject merchandise to the United States during the period of investigation (POI). These statistics also confirmed that Nan Mee had no exports to the United States during the POI. On January 28, 1994, Aruna notified the Department that it would not participate in this investigation. No questionnaire response was filed by Aruna.

On March 29, 1994, at the request of petitioner, the Department postponed the preliminary determination until June 8, 1994, in accordance with section 733 of the Act.

Scope of Investigation

The products covered by these investigation are certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to these investigations are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS").

Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, or chalks.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is June 1, 1993, through November 30, 1993.

Best Information Available

Because Aruna failed to respond to our questionnaire, we based our preliminary determination on best information available (BIA) in accordance with section 776(c) of the Act. Section 776(c) states that the Department may use BIA where a company has refused to provide information requested in the form required, or has otherwise significantly impeded the Department's investigation.

In determining what rate to use as BIA when a party refuses to provide requested information, the Department follows a two-tiered methodology. *See, Final Determination of Sales at Less than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium*, 58 FR 37083, (July 9, 1993). Under this methodology, the Department uses as BIA the higher of (1) the margin alleged in the petition; or (2) the highest calculated rate of any respondent in the investigation. Since there is no calculated rate in this investigation, we have assigned to Aruna and all other exporters the highest rate contained in the petition with one adjustment. Petitioner based the highest rate on a comparison of average U.S. prices from import statistics with the highest of four home market price quotes as the basis for foreign market value (FMV). Rather than use the highest home market price quote as FMV, we have used an average of the four home market price quotes. We have made this adjustment because the petitioner used an average price derived from import statistics as U.S. price. On this basis we have calculated a BIA rate of 48.3 percent.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain cased pencils from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Producer/Manufacturer/Exporter	Margin percentage
All companies	48.3

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than July 1, 1994, and rebuttal briefs, no later than July 8, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on July 12, 1994, at 10:00 a.m. at the U.S. Department of Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by August 22, 1994.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: June 8, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–14625 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–DS–P

Travel and Tourism Administration

Travel and Tourism Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on July 19, 1994, at 9 a.m. at the Boston Back Bay Hilton, 40 Dalton Street, Boston, Massachusetts.

Established March 19, 19982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the International Travel Act, as amended, and provide guidance to the Under Secretary for Travel and Tourism.

Agenda items are as follows:

I. Call to Order
II. Roll Call
III. Administrative Details
IV. Current Legislative Issues
V. Tourism Policy Council and White House Conference on Tourism
VI. USA Marketing Council Report
VII. USTTA Program Planning
VIII. Miscellaneous
IX. Adjournment

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the public forum and meeting. To the extent time is available, the presentation or oral statements will be allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, room 1860, U.S. Department of Commerce, Washington, DC 20230 (telephone 202–482–1904) will respond to public requests for information about the meeting.

Greg Farmer,

Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 94–14667 Filed: 6–15–94; 8:45 am]

BILLING CODE 3510–11–M

International Trade Administration

Brandeis University, et al.; Notice of Consolidated Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 93–129. *Applicant:* Brandeis University, Waltham, MA 02254-9110. *Instrument:* Safe Start Xenon Arc Lamp, Model HB 4060. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* See notice at 58 FR 59012, November 5, 1993. *Advice Received From:* National Institutes of Health, March 31, 1994.

Docket Number: 93–140. *Applicant:* Rutgers University, Piscataway, NJ 08854. *Instrument:* High Intensity Light Source Attachment. *Manufacturer:* Hi-Tech Scientific Limited, United Kingdom. *Intended Use:* See notice at 58 FR 65157, December 13, 1993. *Advice Received From:* National Institutes of Health, April 21, 1994.

Docket Number: 93–156. *Applicant:* University of Arizona, Tucson, AZ 85721. *Instrument:* Automated Microvolume Inlet System. *Manufacturer:* Finnigan MAT GmbH, Germany. *Intended Use:* See notice at 59 FR 5178, February 3, 1994. *Advice Received From:* National Institutes of Health, April 21, 1994.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. *Reasons:* These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. The National Institutes of Health advises that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–14699 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–DS–F

Mount Sinai Medical Center, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 93–136. *Applicant:* Mount Sinai Medical Center, New York, NY 10029. *Instrument:* Cytovision Ultra Analysis System. *Manufacturer:* Applied Imaging International, United Kingdom. *Intended Use:* See notice at 58 FR 63924, December 3, 1993. *Reasons:* The foreign instrument provides: (1) combined automated karyotyping and fluorescence in-situ hybridization (FISH) analysis and (2) high resolution monochrome CCD camera. *Advice Received From:* National Institutes of Health, April 21, 1994.

Docket Number: 94–007. *Applicant:* Occidental College, Los Angeles, CA 90041. *Instrument:* Multi-Mixing Rapid Kinetics Accessory with Pneumatic Attachment, Model SFA-12MX. *Manufacturer:* Hi-Tech, United Kingdom. *Intended Use:* See notice at 59 FR 6621, February 11, 1994. *Reasons:* The foreign instrument provides customized compatibility with the flow cell holder and the data system of a Hitachi F4500 spectrofluorimeter. *Advice Received From:* National Institutes of Health, May 6, 1994.

Docket Number: 94–015. *Applicant:* Rice University, Houston, TX 77005. *Instrument:* Mass Spectrometer, Model MAT 95. *Manufacturer:* Finnigan, Germany. *Intended Use:* See notice at 59 FR 12893, March 18, 1994. *Reasons:* The foreign instrument provides: (1) resolution to 60 000, (2) mass range to 17 500 amu and (3) scan rate to 0.1 second per decade. *Advice Received From:* National Institutes of Health, May 6, 1994.

Docket Number: 94–016. *Applicant:* Penn State University, Hershey, PA 17033. *Instrument:* Rapid Kinetics Spectrometer Accessory, Model RX 1000. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* See notice at 59 FR 12893, March 18, 1994. *Reasons:* The foreign instrument may be used with a circular dichroism spectrometer. *Advice Received From:* National Institutes of Health, May 6, 1994.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Pamela Woods,

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–14698 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–DS–F

USDA-Agricultural Research Service, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–001. *Applicant:* USDA-Agricultural Research Service, Prosser, WA 99350. *Instrument:* Electron Microscope, Model JEM-1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 59 FR 6621, February 11, 1994. *Order Date:* September 27, 1993.

Docket Number: 94–003. *Applicant:* The Ohio State University, Columbus, OH 43210. *Instrument:* Electron Microscope, Model CM 200 LaB_6. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 59 FR 6621, February 11, 1994. *Order Date:* November 13, 1993.

Docket Number: 94–005. *Applicant:* The Pennsylvania State University, University Park, PA 16802. *Instrument:* Electron Microscope, Model JEM-2000EXII/SEG/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 59 FR 6621, February 11, 1994. *Order Date:* October 7, 1993.

Docket Number: 94–011. *Applicant:* Texas Children's Hospital, Houston, TX 77030. *Instrument:* Electron Microscope, Model JEM-1210. *Manufacturer:* JEOL, Japan . *Intended Use:* See notice at 59 FR 9964, March 2, 1994. *Order Date:* May 27, 1993.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–14697 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–DS–F

Texas A&M University, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Docket Number: 94–020. *Applicant:* Texas A&M University, College Station, TX 77843. *Instrument:* Isotope Ratio Mass Spectrometer with Accessories, Model MAT 252 GC. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 59 FR 12893, March 18, 1994. *Reasons:* The foreign instrument provides: (1) an absolute sensitivity of 1000 molecules CO_2 per mass 44 ion at the collector and (2) an internal precision of 0.005 per mil for 3 bar µl samples of CO_2.

This capability is pertinent to the applicant's intended purpose and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–14623 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–DS–F

Minority Business Development Agency

Business Development Center Applications; San Jose, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from November 1, 1994 to October 31, 1995, is estimated at $333,125. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, clients fees, in-kind contributions or combinations thereof. The MBDC will operate in the San Jose, California Geographic Service Area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is July 25, 1994.

Applications must be postmarked on or before July 25, 1994. The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744–3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, July 1, 1994 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application for Federal financial assistance is

grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to application/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: June 9, 1994.

Melda Cabrera,

Regional Director, San Francisco Regional Office.

[FR Doc. 94–14584 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 060994J]

Gulf of Mexico Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of its Louisiana/Mississippi Habitat Advisory Panel on June 30, 1994, from 9:00 a.m. until 3:00 p.m., to review and discuss a marine fishery habitat model for the Pascagoula River, Mississippi water withdrawals, Louisiana coastal restoration plans, the Bonnet Carre water diversion project, the Corps of Engineers Environmental Impact Statement (EIS) for marsh management, the Terrebonne Parish Flood Control Study, and a wetland restoration project for an oil well blowout in Timbalier Bay.

The meeting will be held at the Ramada Inn Downtown, 1480 Nicholson Drive, Baton Rouge, LA.

FOR FURTHER INFORMATION CONTACT: Richard J. Hoogland, Biologist, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Julie Krebs at the above address by June 23, 1994.

Dated: June 10, 1994

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–14616 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 060994I]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of change of start time and date for public meeting.

SUMMARY: The meeting date and time of the Pacific Fishery Management Council's Groundfish Permit Review Board, as published June 2, 1994 (59 FR 28512), has been changed from June 17, 1994, to June 16–17, 1994. The meeting will begin at 7:00 p.m. on June 16, convening at the Meeting Plaza at Westgate Plaza, 3800 SW Cedar Hills Boulevard, Beaverton, OR. The meeting will recess late that evening and reconvene on June 17 at 8:00 a.m. in the Conference Room at the NMFS Technical Service Division, 911 NE 11th Avenue, Portland, OR 97232. The purpose of the meeting is to review appeals on denied applications for West Coast groundfish limited entry permits. Appellants affected by the change in start time and date have been directly notified of the change.

FOR FURTHER INFORMATION CONTACT: Peter Fricke, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; telephone: (206) 526–6140.

Dated: June 10, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–14615 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 060994H]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish Management Team will hold a public meeting at the Oregon Department of Fish and Wildlife Building, 2501 SW First Avenue, Director's Conference Room, Fourth Floor, beginning at 1:00 p.m. on July 11, and at 8:00 a.m. on July 12 and July 13, 1994. The meetings on July 11 and 12 will not adjourn until the business for each day is completed. The

Wednesday meeting will adjourn by 3:30 p.m.

The purpose of this meeting is to review groundfish stock assessment documents and preliminary acceptable biological catch recommendations, the sablefish individual quota/trip limit analysis, and the draft groundfish observer/date collection program.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352 at least 5 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator, Pacific Fishery Management Council, 2000 SW First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 326–6352.

Dated: June 10, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–14614 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 10, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: June 17, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has agreed to increase the Designated Consultation Level for Category 669–P for the current agreement period.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 31190, published on June 1, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: June 13, 1994

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 10, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 25, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1993 and extends through June 30, 1994.

Effective on June 17, 1994, you are directed to amend further the directive dated May 25, 1993 to increase the limit for Category 669–P [1] to 1,250,000 kilograms.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–14682 Filed 6–15–94; 8:45 am]

BILLING CODE 3510–DR–M

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting in the Lower Level Hearing Room (B–1) at the Commission's Washington, DC headquarters located at 2033 K Street, NW., Washington, DC 20581, on July 14, 1994, beginning at 1:30 p.m. and lasting until 5 p.m. The agenda will consist of:

Agenda

1. Presentation by GAO staff on the GAO Derivatives Report;

2. Panel Discussion by the staff of the Senate and House Committee on Agriculture of OTC Derivatives Issues and GAO Report;

3. Presentation/Discussion of Financial Accounting Standards Board (FASB) Exposure Draft on Disclosure of Derivative Financial Instruments;

4. Panel Discussion of OTC Derivatives Issues from the Perspective of End-Users; and

5. Wrap-up; discussion of other committee business and future agenda items.

The purpose of this meeting is to solicit the views of the Committee on these agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on the assessment of issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission. The purposes and objectives of the Advisory Committee are more fully set forth in the April 23, 1993 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, CFTC Commissioner Shelia C. Bair, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Kristyn H. Burnett, 2033 K Street NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Burnett in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

[1] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[2] The limit has not been adjusted to account for any imports exported after June 30, 1993.

Issued by the Commission in Washington, DC., on June 10, 1994.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–14621 Filed 6–15–94; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Assistance to Local Educational Agencies (LEAs)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of a program for providing financial assistance to LEAs.

SUMMARY: Pursuant to section 386 of Public Law No. 102–484, as amended by section 373 of Public Law 103–160, the "National Defense Authorization Act for Fiscal Year 1994," November 30, 1993, notice is hereby given of a program to provide financial assistance to eligible LEAs. Section 386(b) of Public Law No. 102–484, as amended, requires DoD to assist an LEA that cannot, without such aid, "provide [its]students . . . with a level of education that is equivalent to the minimum level of education available in schools of the other local educational agencies of the same State," provided that the LEA meets one of the three criteria established by section 386(c). For the purpose of this notice, the term "military dependent student" has the same meaning as in section 386(h)(2) of Public Law 102–484, as amended. In making the necessary determination under section 386(b), the Secretary of Defense must consult the Secretary of Education.

DATES: June 16, 1994.

ADDRESSES: Deputy Assistant Secretary of Defense (Personnel Support, Families & Education), room 3E784, The Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Dr. Hector O. Nevarez or Mr. John B. Shaver, Section 6 Schools, 4040 North Fairfax Drive, Arlington, VA 22203–1635; telephone (703) 696–4354 or 4361; facsimile number (703) 696–8920.

SUPPLEMENTARY INFORMATION: During fiscal year (FY) 1994, the Department of Defense shall provide 40 million dollars to assist LEAs that meet criteria in section 386 of Public Law 102–484, as amended. (For the purposes of this program, DoD shall rely on data from the Department of Education).

Pursuant to subsection 386(c)(1) of Public Law No. 102–484, as amended, an LEA is eligible for assistance under this program if it satisfies subsection 386(b) and "at least 30 percent (as rounded to the nearest whole percent) of the students in average daily attendance in the schools of that agency in that fiscal year are military dependent students counted under subsection (a) or (b) of section 3 of the Act of September 30, 1950 (Pub. L. 874, Eighty-first Congress; 20 U.S.C. 238)."

Pursuant to subsection 386(c)(2) of Public Law No. 102–484, as amended, an LEA is eligible for assistance under this program if it satisfies subsection 386(b) and its average daily attendance (ADA) of military dependent students increased by at least 300 or more students from FY 1993 to FY 1994 as a result of "a relocation of Armed Forces personnel or civilian employees of the Department of Defense or as a result of a realignment of one or more military installations." Such 300 or more students must equal an increase in the ADA of military dependent students of at least 10 percent or more from FY 1993 to FY 1994.

An alternate way of achieving eligibility for assistance is prescribed under subsection 386(c)(3) of Public Law No. 102–484, as amended. To qualify, the LEA must satisfy subsection 386(b) and "by reason of consolidation or reorganization of local educational agencies be a successor of [an LEA] that for fiscal year 1992," was eligible to receive payments under DoD Instruction 1342.18, dated June 3, 1991 (32 CFR part 240, 56 FR 28821), and satisfy the requirements in subsection 386(a)(1) or subsection 386(c)(2).

For the purposes of this program, the following definitions are applicable:

(a) Applicant. Any LEA requesting assistance under this notice.

(b) Current Expenditures. "[E]xpenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and expenditures to cover deficits for food services and student body activities. The term does not include expenditures for community services, capital outlay, debt service, or any expenditures made from funds granted for the purpose of chapter 1 and 2 of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701–2976). An expenditure for the replacement of equipment is considered to be either a current expenditure or capital outlay, whichever is in accordance with State accounting guidelines, law, or practice." 34 CFR § 222.3.

(c) DoD Contribution. The amount of financial assistance an applicant shall receive under this notice.

(d) Federal Property. Real property that because of Federal law, agreement, or policy is exempt from taxation by a State or political subdivision of a State and that the United States owns in fee simple or leases from another party.

(e) Local Education Agency (LEA). A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(f) Military Dependent Student. A student that is a dependent child of a member of the Armed Forces or a dependent child of a civilian employee of the Department of Defense.

(g) Military Personnel. Members of the Armed Forces serving on active duty.

(h) Military 3(a) Student. A child who attends the school(s) of a LEA that provides free public education and who while attending such school(s) of the LEA, resides on Federal property and has a parent who is on active duty in the Armed Forces (as defined in section 101(4) of 10 U.S.C.).

(i) Military 3(b) Student. A child who attends the schools of a LEA that provides a free public education and who, while attending such school(s), has a parent who is on active duty in the Armed Forces (as defined in 10 U.S.C. 101(4)) but such child does not reside on Federal property.

(j) Parent. The biological father or mother of a child; a person who, by order of a court of competent jurisdiction, has been declared the father or mother of a child by adoption, the legal guardian of a child; or a person in whose household a child resides, provided that such person stands in loco parentis to that child and contributes at least one-half of the child's support.

(k) Per-Pupil Expenditure (PPE). The average current expenditure for an individual student.

The Department of Defense shall provide 40 million dollars to assist the LEAs that satisfy the requirements of this notice This money shall be used only to supplement funding for the eligible LEAs operating schools that provide free public education to military dependent students for whom:

(1) For the prior and current FYs, the LEA has applied for and received, or shall receive, financial assistance from all regular Federal and State educational aid programs available to it, including the Impact Aid Program (Pub. L. No. 81–874, section 3, as amended); (2) the eligibility of the LEA under State law for State aid for free public education and the amount of that aid are no different than the eligibility and amounts received by LEAs in that State without military dependent students; and (3) the LEA files with the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) a letter of application (see Sample Letter at the end of this notice) and a copy of an independently audited financial report of the applicant LEA for the second preceding FY.

The eligible LEAs under this notice insofar as it implements subsection 386(c)(1) and subsection 386(c)(2) shall receive financial assistance for military dependent students. The eligible LEAs under this notice insofar as it implements subsection 386(c)(3) shall receive financial assistance only for military section 3(a) students. Applications for financial assistance must be received no later than June 30, 1994.

The amount of assistance (the DoD contribution) for the eligible LEAs under this notice may not exceed the amount derived from the following formula:

(1) Of the 40 million dollars available:

(i) Amounts of 27,000,000 dollars shall be obligated for military section 3(a) students to those eligible LEAs whose per-pupil expenditure (PPE) for the second preceding FY was less than the average PPE in the State for the second preceding FY.

(ii) Amounts of 2,250,000 dollars shall be obligated for military section 3(b) students and for those students who are the dependent children of civilian employees of the Department of Defense to those eligible LEAs, whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY.

(iii) Amounts of 9,000,000 dollars shall be obligated for military section 3(a) students to those eligible LEAs whose PPE for the second preceding FY was equal to, or greater than the average PPE in the State for the second preceding FY.

(iv) Amounts of 750,000 dollars shall be obligated for military section 3(b) students and for those students who are the dependent children of civilian employees of the Department of Defense to those eligible LEAs whose PPE for the second preceding FY was equal to, or greater than the average PPE in the State for the second preceding FY.

(v) Amounts of 1,000,000 dollars shall be obligated to those eligible LEAs whose ADA of military dependent students increased by 300 or more students from FY 1993 to FY 1994 as a result of "a relocation of Armed Forces personnel or civilian employees of the Department of Defense or as a result of a realignment of one or more military installations."

(2) For military section 3(a) students in those eligible LEAs, whose average PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY, the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military section 3(a) ADA for SY 1993–1994.

(ii) Multiplied by the quotient of the funds available to those LEAs, whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY (27,000,000 dollars).

(iii) Divided by the sum of the ADAs for SY 1993–1994 of military section 3(a) students of those same eligible LEAs.

(3) For military section 3(b) students and for those students who are the dependent children of civilian employees of the Department of Defense in those eligible LEAs whose average PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY, the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military section 3(b) and dependent children of a civilian employee of the Department of Defense ADA for SY 1993–1994.

(ii) Multiplied by the quotient of the funds available to those LEAs whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY (2,250,000 dollars).

(iii) Divided by the sum of the ADAs for SY 1993–1994 of military section 3(b) and dependent children of civilian employees of the Department of Defense students of those same eligible LEAs.

(4) For military section 3(a) students in those eligible LEAs whose PPE for the second preceding FY was equal to, or greater than the average PPE in the State for the second preceding FY, the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military section 3(a) ADA for SY 1993–1994.

(ii) Multiplied by the quotient of the funds available to those LEAs whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY (9,000,000 dollars).

(iii) Divided by the sum of the ADAs for SY 1993–1994 of military section 3(a) students of those same eligible LEAs.

(5) For military section 3(b) students and for the students who are the dependent children of civilian employees of the Department of Defense in those eligible LEAs whose PPE for the second preceding FY was equal to, or greater than the average PPE in the State for the second preceding FY, the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military section 3(b) and dependent children of a civilian employee of the Department of Defense ADA for SY 1993–1994.

(ii) Multiplied by the quotient of the funds available to those LEAs whose PPE for the second preceding FY was less than the average PPE in the State for the second preceding FY (750,000 dollars).

(iii) Divided by the sum of the ADAs for SY 1993–1994 of military section 3(b) students and dependent children of civilian employees of the Department of Defense of those same eligible LEAs.

(6) For those military dependent students in those eligible LEAs whose ADA of military dependent students increased by 300 or more students from FY 1993 to FY 1994 as a result of "a relocation of Armed Forces personnel or civilian employees of the Department of Defense or as a result of a realignment of one or more military installations," the LEA shall receive an amount, as follows:

(i) Equal to the LEA's military dependent student ADA for SY 1993–1994.

(ii) Multiplied by the quotient of the funds available to those LEAs (1,000,000 dollars).

(iii) Divided by the sum of the ADAs for SY 1993–1994 of military dependent students of those same LEAs.

The USD(P&R) shall calculate the proposed contribution. The contribution may be used for all students in the LEA, at the discretion of the appropriate officials in the LEA. The USD(P&R) shall ensure the implementation of these policies and procedures and provide assistance, as required, to the potentially eligible LEAs. The General Counsel of the Department of Defense shall provide legal advice for the implementation of this program.

An applicant requesting assistance under this notice shall submit a letter of application (see sample letter at end of this notice) and a copy of an independently audited financial report of the applicant LEA for the second preceding FY, requesting a DoD contribution and assuring the USD(P&R) that the LEA has applied for, has received or shall receive all financial assistance from other sources for which it is qualified. Letters of application must be addressed as follows: Under Secretary of Defense (Personnel and Readiness), 4000 Defense Pentagon, Washington, DC 20301–4000.

The applicant shall also file a copy of the letter of application for financial assistance and required supportive information with the State educational agency (SEA). The SEA may submit comments on the LEA's application to the Department of Defense (at the above address) by July 8, 1994. Such comments shall be considered when applications are reviewed by the OSD. The LEA's application and all required supporting information must reach the USD(P&R) no later than June 30, 1994.

Sample Letter of Application for Financial Assistance

Under Secretary of Defense,
(Personnel and Readiness), 4000 Defense Pentagon, Washington, DC 20301–4000.

Dear Mr. Under Secretary: Pursuant to this "Notice of a Program for Providing Financial Assistance to LEAs," _____ **Federal Register** _____ (_____, 1994), the (name of the local educational agency (LEA)) requests financial assistance for the LEA for school year 1993–1994. We certify that the LEA has applied for financial assistance from all sources, including the State/Commonwealth of (name). We understand that funds available for that purpose shall be paid on a per-pupil basis for military section 3(a) and military section 3(b) students and for those students who are the dependent children of civilian employees of the Department of Defense, as these terms are defined in the "Notice of a Program for Providing Financial Assistance to LEAs." Enclosed find a copy of our independent audit "(Title)" prepared by (name of firm or agency). We have submitted a complete and timely application for section 3 impact aid assistance to the Secretary of Education. A copy of this letter, with the above supporting information, is being submitted to the State educational agency.

Sincerely,

(Authorized LEA Official)

Dated: June 13, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–14665 Filed 6–15–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 29 June 1994.

Time of Meeting: 1200–1500 (classified).

Place: Pentagon, Washington, DC.

Agenda: The Threat Team III of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Analytical Efforts Status Report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board

[FR Doc. 94–14731 Filed 6–15–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 28 June 1994.

Time of Meeting: 0830–1100 (classified).

Place: McLean, VA.

Agenda: The Threat Team I of the Army Science Board's 1994 Summer Study on "Capabilities Needed to Counter Current and Evolving Threat" will meet to receive an Intelligence Support Status Report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–14729 Filed 6–15–94; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 28–30 June 1994.

Time of Meeting: 0900–1700.

Place: Army Research Office, Raleigh-Durham, NC, (28–29 June), Army Topographic Engineering Ctr., Ft Belvoir, and Pentagon, Washington, DC. (30 June)

Agenda: The Army Science Board's Ad Hoc Study on "Aided Target Recognition (ATR) will meet to discuss research efforts aided and automatic target recognition. Also the ATR panel will review military aided target acquisition projects and results, and receive briefings on operational requirements. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., appendix 2 subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board

[FR Doc. 94–14732 Filed 6–15–94; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Sandstone Project, Carbon County, WY

AGENCY: U.S. Army Corps of Engineers, Omaha District.

SPONSOR: Wyoming Water Development Commission, Cheyenne, Wyoming.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The proposed action is to construct a roller compacted concrete dam on Savery Creek, with a storage capacity of 23,000 acre-feet. The project would provide late season irrigation water to approximately 12,000 acres of lands in the Little Snake River Valley. The project would also provide secondary recreation benefits. The proposed project is located in Carbon County, Wyoming, approximately 10 miles north of Savery, Wyoming.

2. Alternatives being evaluated by the applicant include:

a. Construction of a new reservoir (several alternate sites).

b. Use of groundwater resources.

c. Conservation.

d. No action.

Alternatives available to the Corps of Engineers include:

a. Approve the permit application

b. Denial of the permit.

c. Approve the permit with some modification.

3. Other applicable and pertinent environmental review and consultation requirements will be undertaken

simultaneously with the NEPA process, including requirements of the National Historic Preservation Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, section 404 of the 1977 Clean Water Act, Clean Air Act, Executive Order 11988 on flood plains, and Executive Order 11990 on wetlands.

4. A public scoping meeting for the DEIS will be held on Wednesday, July 13, 1994, at 7 p.m. at the Little Snake River School at Meeker & High Streets, Baggs, Wyoming. The participation of the public and all interested Government agencies is invited.

5. The Omaha District estimates that the DEIS will be released for public review in June 1995.

ADDRESS: Questions about the proposed action, DEIS, or scoping meetings should be directed to Richard Gorton; Chief, Environmental Analysis Branch; Planning Division, U.S. Army Corps of Engineers, 215 North 17th Street, Omaha, Nebraska 68102–4978. Telephone: 402–221–4598.

Dated: June 7, 1994.

Kenneth S. Cooper,

Chief, Planning Division Omaha District.

[FR Doc. 94–14620 Filed 6–15–94; 8:45 am]

BILLING CODE 3710–62–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, June 22, 1994. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 2:00 p.m. in the Flying Bridge Room of the Harbour League Club at 800 Hudson Square, Camden, New Jersey.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11, and/or Section 3.8 of the Compact

1. *Delaware County Solid Waste Disposal Authority D–89–18 CP.* An application for construction of an on-site wastewater treatment facility to process up to 0.08 million gallons per day (mgd) of sanitary landfill leachate and non-hazardous liquid waste generated by facilities within the Delaware River Basin. After tertiary treatment, the effluent will be conveyed by pipeline from the existing Colebrookdale Landfill and discharged to Manatawny Creek in Oley Township, Berks County, Pennsylvania. The existing landfill project has no on-site treatment facilities and has been trucking collected leachate off-site for processing and disposal at two municipal sanitary treatment plants. The site is located along Schenkel Road in Earl Township, Berks County, Pennsylvania.

2. *American Telephone and Telegraph (AT&T) D–91–79.* AT&T proposes to expand the rating of its existing 3.0 mgd capacity industrial wastewater treatment plant (IWTP) to handle approximately 3.6 mgd. In addition, AT&T has requested a determination of the allowable limit for the concentration of total dissolved solids in the treated effluent, which will continue to discharge to Spring Run, a tributary of the Lehigh River. The project IWTP serves only the AT&T's electronic components manufacturing operation located at the plant site just north of Union Boulevard and east of the Lehigh River, in the City of Allentown, Lehigh County, Pennsylvania.

3. *Hoffmann-LaRoche Inc. D–93–7.* A project to improve the treatment capability of the applicant's existing 3.0 mgd capacity IWTP by constructing an additional secondary clarifier. The IWTP is located approximately 3000 feet north of the Town of Belvidere in White Township, Warren County, New Jersey. The IWTP will continue to serve the applicant's vitamin production facilities and discharge to the Delaware River via its existing outfall in Water Quality Zone 1D.

4. *Borough of Woodstown D–93–17 CP.* An application for approval of a ground water withdrawal project to supply up to 8.9 million gallons (mg)/30 days of water to the applicant's distribution system from new Well No. 4, and to increase the existing withdrawal limit of 12 mg/30 days from all wells to 18.1 mg/30 days. The project is located in Woodstown Borough, Salem County, New Jersey.

5. *E. I. DuPont deNemours and Company, Inc. D–93–19.* An application for approval of numerous ground water projects and a surface water withdrawal project to supply up to 540.14 mg/30 days of water from 14 production wells and 14 ground water remediation wells, and to supply up to 892.8 mg/30 of water for production purposes from the Salem Canal. The purpose is to consolidate the applicant's numerous existing and new withdrawals from the ground water and the Salem Canal for production and remediation purposes into one comprehensive docket. The project is located in Carneys Point Township, Salem County, New Jersey.

6. *GROWS Inc. D–94–17.* A project to withdraw up to 0.4 mgd on an average monthly basis from the tidal portion of the Delaware River to provide water primarily for dust control at the Eastern Expansion of the applicant's landfill facilities. The withdrawal will be located southeast of the GROWS landfill and across from Newbold Island on the Delaware River in Falls Township, Bucks County, Pennsylvania.

7. *Moyer Packing Co. D–94–20.* An application for approval of an expanded ground water withdrawal project to supply up to 1.51 mg/30 days of water from existing Well No. 1, and 5.4 mg/30 days from existing Well No. 2 to the applicant's Souderton Rendering (Division 1) Facility, and to limit the withdrawal from all wells to 6.57 mg/30 day. The project is located in Franconia Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: June 7, 1994.

Susan M. Weisman,

Secretary.

[FR Doc. 94–14613 Filed 6–15–94; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 18, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., room 3208, New Executive Office Building, Washington, DC 20503.

Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: June 10, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Postsecondary Equation

Type of Review: Extension.
Title: Certification of Project Costs for College Facilities Programs.
Frequency: One time.
Affected Public: Non-profit institutions.
Reporting Burden: Responses: 50. *Burden Hours:* 50.
Recordkeeping Burden: Recordkeepers: 0. *Burden Hours:* 0.

Abstract: The collected information is used to determine the eligibility of costs claimed in conjunction with construction projects supported by the various college facilities construction programs. Without this information, the federal government cannot appropriately limit the amount of legitimate costs incurred under these programs. The information is necessary to determine the final approval amount of the loan or grant to protect the federal interest.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Performance Report for the Robert C. Byrd Honors Scholarship Program.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden: Responses: 59. *Burden Hours:* 59.
Recordkeeping Burden: Recordkeepers: 59. *Burden Hours:* 89.

Abstract: This performance report is used by State educational agencies that have participated in the Robert C. Byrd Honors Scholarship Program. The Department will use the information to assess the accomplishments of project goals and objectives and to aid in effective program management.

Office of the Under Secretary

Type of Review: New.
Title: Direct Loan Program Evaluation.
Frequency: Annually.
Affected Public: State or local governments; Non-profit institutions; Small businesses or organizations.
Reporting Burden: Responses: 104. *Burden Hours:* 52.
Recordkeeping Burden: Recordkeepers: 0. *Burden Hours:* 0.

Abstract: This survey will allow for the identification of baseline performance indicators and measures. The Department will use the information to report to Congress.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Reinstatement.
Title: Application for Continuation Grants Under Bilingual Education Programs.
Frequency: Annually.
Affected Public: State or local governments; Non-profit institutions.
Reporting Burden: Responses: 975. *Burden Hours:* 39,000.
Recordkeeping Burden: Recordkeepers: 0. *Burden Hours:* 0.

Abstract: This form will be used by State Educational agencies to apply for funding under the Bilingual Education Programs. The Department will use the information to make grant awards.

[FR Doc. 94–14595 Filed 6–15–94; 8.45 am]
BILLING CODE 4000–01–M

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Amendment of notice of partially closed meeting.

SUMMARY: This notice amends the notice published on June 9, 1994, Volume 59, page FR29786. The purpose of this amendment is to open the Board meeting on June 28 from 9 a.m. to 5 p.m. to the public. The location and the agenda are not changed.

DATES AND TIMES: June 27, 1994 from 9 a.m. to 5 p.m. (closed), and on June 28, 1994 from 9 a.m. to 5 p.m. (open).

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets, SW., Washington, DC 20202. Telephone: (202) 708–5750.

Dated: June 10, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–14640 Filed 6–15–94; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP94–292–000]

Riverside Gas Storage Co.; Intent To Prepare an Environmental Assessment for the Proposed Riverside Gas Storage Field Project and Request for Comments on Environmental Issues

June 10, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts of the construction and operation of facilities proposed in the Riverside Gas Storage Field Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether or not to approve the project.

Summary of the Proposed Project

Riverside Gas Storage Company (Riverside) wants Commission

[1] Riverside Gas Storage Company's (Riverside) application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

authorization to construct and operate a new underground natural gas storage field in Greene and Fayette Counties, Pennsylvania. Riverside proposes to convert a nearly depleted gas field to gas storage use. The proposed storage facility would have 5.1 billion cubic feet (BCF) of storage capacity (3.1 BCF working gas capacity). To develop the Riverside Gas Storage Field, Riverside would:

- Recomplete 21 existing wells as injection/withdrawal wells;
- Recomplete one existing well as an observation well;
- Plug and abandon 9 existing gas wells (all remaining wells in field);
- Construct 3.42 miles of 12-inch-diameter gathering pipeline;
- Construct 2.44 miles of 6-inch-diameter pipeline (22 segments of various lengths to attach wells to the gathering pipeline);
- Construct a new 3,150-horsepower compressor station; and
- Construct ancillary facilities at the compressor station including meters, dehydrator trains, storage tanks for oil and glycol, access roads, and water and electric utilities.

The general location of these facilities is shown in appendix 1.[2]

Land Requirements for Construction

Riverside would use 101.3 acres of land for the Riverside Gas Storage Field Project. Of this total, 10 acres would be used for the compressor station, 43.4 acres would be associated with well pads (1.4 acres per well) and 47.9 acres would be associated with the right-of-way for the storage pipelines.

Following completion of construction, approximately 12.6 acres associated with the nine plugged and abandoned wells would be allowed to revert to the land use desired by the property owner.

Riverside proposes to use a an 85-foot-wide construction right-of-way for its 12-inch-diameter pipeline and a 50-foot-wide construction right-of-way for its 6-inch-diameter pipeline. Riverside proposes to use an 85 to 100-foot-wide right-of-way for construction across streams.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA.

The EA will discuss impacts that *could* occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources;
- Vegetation and wildlife;
- Pipeline safety;
- Land use;
- Cultural resources;
- Air quality and noise.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several environmental issues that we think deserve attention based on a preliminary review of the proposed facilities and the information provided by Riverside. Keep in mind that this is a preliminary list. The list of issues will be added to, subtracted from, or changed based on your comments and our analysis.

The list of environmental issues:

- Riverside would recomplete 22 existing wells in Greene and Fayette Counties, Pennsylvania: one observation well and 21 injection/withdrawal wells. These wells and drilling operations have potential groundwater impacts.
- Riverside may affect up to five wetlands in the project area while constructing its pipelines.
- There may be noise concerns at residences surrounding Riverside's new compressor station.
- There may be federally listed threatened or endangered species in the project area.
- The Pennsylvania State Historic Preservation Officer indicated there is potential cultural resources sites in the project area and requested a survey.
- Existing and future coal mining operations and the Riverside Gas Storage Field Project may affect each other.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be.

Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, DC 20426;
- Reference Docket No. CP94–292–000;
- Send a copy of your letter to: Mr. Steven G. Grape, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St. NE., room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before July 11, 1994.

If you wish to receive a copy of the EA, you should request one from Mr. Grape at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional Questions?

Additional information about the proposed project is available from Mr. Steven G. Grape, EA Project Manager, at (202) 208–1046.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14650 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–P

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street NE., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[Docket No. CP94–329–000, et al.]

El Paso Natural Gas Company, et al.; Natural Gas Certificate Filings

June 9, 1994.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP94–329–000]

Take notice that a technical conference has been scheduled in the above-captioned proceeding for 10 a.m. on August 11, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. The purpose of the conference is to discuss matters of interest and concern relating to El Paso Natural Gas Company's (El Paso) proposal to construct and operate the North/South Transfer Project. All interested parties are invited to attend. For additional information, interested parties may call Whit Holden at (202) 208–1118.

2. Natural Gas Pipeline Company of America

[Docket No. CP94–577–000]

Take notice that on June 1, 1994, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP94–577–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for authorization of the abandonment of facilities, and the construction and operation of new facilities. This proposal is part of Applicant's Amarillo Upgrade program, which began in 1982.

According to applicant the purpose of the Amarillo Upgrade Program is to increase the reliability of Applicant's services and reduce operating costs by eliminating or replacing parts of the system that are obsolete and require high operation and maintenance costs.

Specifically, Applicant requests authority to abandon the following:

(1) 8.57 miles of the original 24-inch Amarillo No. 1 mainline in Hutchinson County, Texas;

(2) One 12,000 HP engine at intermediate Compressor Station 196 in Otoe County, Nebraska;

(3) One 12,000 HP engine at intermediate Compressor Station 198 in Marion County, Iowa.

Applicant also seeks authority to construct and operate the following:

(1) 7.27 miles of 30-inch pipeline loop in Hutchinson County, Texas;

(2) 3.16 miles of 36-inch loop in Edwards County, Kansas;

(3) 10.64 miles of 36-inch pipeline loop in Jefferson County, Nebraska;

(4) One 5,500 HP compressor at Compressor Station 102 in Beaver, County, Oklahoma;

(5) One 14,500 HP compressor (by means of retrofitting an existing 12,000 HP engine to 14,500) at Compressor Station 196;

(6) One 14,500 HP compressor (by means of retrofitting an existing 12,000 HP engine to 14,500 HP at Compressor Station 198.

The total cost of construction is estimated to be $36,657,000. Abandonment is estimated to cost $998,000.

Comment date: June 30, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP94–581–000]

Take notice that on June 2, 1994, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP94–581–000, an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon certain underground natural gas storage field facilities at two locations in Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In its application, National proposes to abandon Well 2314 and its Well Line Q–W2314 located in National's Queen Storage Field in Hickory Township, Forest County, Pennsylvania. National states that after the field was converted to gas storage, Well 2314 was used as a storage observation well and that its present condition is such that it must be reworked or plugged. National proposes to abandon Well 2314 at an estimated total cost of $20,000.

National also proposes to abandon Wells 412–P, 413–P and 415–P, and Well Lines S–W413, S–W415, S–W416 and S–W418, all located in National's Swede Hill Storage Field in Hamilton Township, McKean County, Pennsylvania. National states that these wells and lines are located in a poor deliverability area of the Swede Hill reservoir and are no longer being utilized. National estimates the total cost of this abandonment to be $75,000.

National states that services to its customers and the performance of these storage fields would not be diminished by these abandonments.

Comment date: June 30, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should, on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14649 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–284–000]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

June 10, 1994.

Take notice that on June 8, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet, with an effective date of July 1, 1994:

First Revised Sheet No. 97A

Algonquin states that the purpose of this filing is to provide for the recovery of certain transition costs associated with upstream capacity retained by Algonquin. Specifically, Algonquin seeks to recover gas supply realignment costs billed to Algonquin by Texas Eastern Transmission Corporation (Texas Eastern). Algonquin requests that the Commission waive § 154.22 of the Commission's regulations to the extent that may be necessary to place the tariff sheet into effect as requested.

Algonquin states that copies of this filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211 1993. All such motions or protests should be filed on or before June 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to becoming a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14602 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–150–000]

ANR Pipeline Company; Technical Conference

June 10, 1994.

In the Commission's order issued on March 30, 1994, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Thursday, July 7, 1994, at 1:30 p.m. in a room to be designated at the Offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426

All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14603 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–221–000]

ANR Pipeline Company; Technical Conference

June 10, 1994.

In the Commission's order issued on May 26, 1994, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Thursday, July 7, 1994, at 9:30 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE. Washington, DC 20426.

All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14604 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11303–000 Pennsylvania]

Beltzville Hydro Associates; Surrender of Preliminary Permit

June 10, 1994.

Take notice that Beltzville Hydro Associates, permittee for the Beltzville Project No. 11303, located on the Pohopoco Creek, Carbon County, Pennsylvania, has requested that its preliminary permit be terminated. The preliminary permit was issued on October 13, 1992, and would have expired on September 30, 1995. The permittee states that the project would be economically infeasible.

The permittee filed the request on June 7, 1994, and the preliminary permit for Project No. 11303 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14601 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER–1319–000]

Delmarva Power & Light Co.; Notice of Filing

June 10, 1994.

Take notice that on May 16, 1994 Delmarva Power & Light Company (Delmarva) tendered for filing a rate schedule providing for Partial Requirements Service to Old Dominion Electric Cooperative (ODEC). Delmarva states that the rate schedule is being filed to accommodate ODEC's termination of full requirements service and its purchase of a portion of its capacity and energy from Public Service Electric and Gas Company (PSE&G). Delmarva states that, consistent with the Settlement Agreement with ODEC in Docket No. ER93–96–000, the non-fuel revenues under the Partial Requirements rate schedule are no greater than the non-fuel revenues under the superseded Full Requirements rate schedules.

Delmarva requests that the Partial Requirements rates become effective on July 15, 1994 and suspended until January 1, 1995, when ODEC is scheduled to begin purchasing power and energy from PSE&G.

Delmarva states that a copy of the filing has been posted as required by the Commission's regulations, and a copy has been mailed to each of the customers affected by the proposed changes and to the Public Service Commissions of the States of Delaware and Maryland and the Virginia State Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 20, 1994. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14651 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–50–000]

East Tennessee Natural Gas Company; Filing of Refund Report

June 10, 1994.

Take notice that on June 7, 1994 East Tennessee Natural Gas Company (East Tennessee) filed its report of refunds reflecting refunds to jurisdictional customers. East Tennessee states that the purpose of these refunds was to flow through to its jurisdictional customers refunds received from its former upstream supplier, Tennessee Gas Pipeline Company (Tennessee). East Tennessee received on June 3, 1994 from Tennessee a refund of amounts paid under its former CD–1 and SS contracts with Tennessee. Tennessee effectuated the refund pursuant to Article I of the Stipulation and Agreement (Stipulation) filed on June 2, 1993, as approved by the Federal Energy Regulatory Commission's (Commission or FERC) order issued on April 5, 1994 in Docket No. RP91–203 et al.

On June 3, 1994, East Tennessee states that it commenced disbursement of the refunds to its jurisdictional customers totaling $8,233,226.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before June 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14605 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–283–000]

Gas Research Institute; Annual Application

June 10, 1994.

Take notice that on June 8, 1994, Gas Research Institute (GRI) filed an application requesting advance approval of its 1995–1999 Five-Year Research, Development and Demonstration (RD&D) Plan, 1995–1996 RD&D Program, and the funding of its R&D activities for 1995, pursuant to the Natural Gas Act and the Commission's Regulations, particularly 18 CFR 154.38(d)(5).

In its application, GRI proposes to increase its contract obligations to $210.4 million in 1995, an increase of 4.3% over the authorized 1994 obligations budget. GRI seeks to collect $191,688,000 through jurisdictional rates and charges during the twelve months ending December 31, 1995. This $191.7 million, plus additional funds collected on intrastate transactions, will provide the necessary cash to fund the 1995 RD&D program.

GRI proposes to fund the first year of the 1995–1996 R&D program through the following surcharges: (1) A demand/reservation surcharge on two-part rates of 21.8 cents/Dth-mo. for "high load factor customers"; (2) a demand/reservation surcharge on two-part rates of 13.4 cents/Dth-mo. for "low load factor customers"; (3) a volumetric commodity/usage surcharge of 0.85 cents for firm services involving two-part rates, and for one-part interruptible rates; (4) a special "small customer" surcharge of 2.0 cents/Dth; and (5) a surcharge of 1.57 cents/Dth-mo. for one-part, firm service outside the "small customer" class. GRI asserts that these surcharges comply with the Commission's March 22, 1993 "Order on Contested Settlement" approving, without modification, the "Stipulation and Agreement concerning Post-1993 GRI Funding Mechanism".

The Commission Staff will analyze GRI's application and prepare a Commission Staff Report. This Staff Report will be served on all parties and filed with the Commission as a public document by July 28, 1994. Comments on the Staff Report and GRI's application by all parties, except GRI, must be filed with the Commission on or before August 12, 1994. GRI's reply comments must be filed on or before August 26, 1994.

Any person desiring to be heard or to protest GRI's application, except for GRI members and state regulatory commissions, who are automatically permitted to participate in the instant proceedings as intervenors, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 24, 1994. All comments and protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party, other than a GRI member or a state regulatory commission, must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14606 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–40–000]

Transcontinental Gas Pipe Line Corporation; Refund Report

June 10, 1994

Take notice that on May 4, 1994 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report showing a refund received from Penn-York Energy Corporation (Penn-York) and flowed through to its LSS customers in accordance with section 4 of Transco's Rate Schedule LSS. The report states that on April 29, 1994, Transco refunded $65,835.04, including $462.00 in interest, due its LSS customers for the period December 1, 1992 through November 30, 1993. The report summarizes Transco's computation of the refund pursuant to the requirements of Subsection 17.1(c) of Penn-York's FERC Gas Tariff, Third Revised Volume No. 1 dated December 1, 1992 in Docket No. RP91–68–017.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14607 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–49–000]

Transcontinental Gas Pipe Line Corporation; Refund Report

June 10, 1994.

Take notice that on May 4, 1994, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Refund Report showing a refund received from Penn-York Energy Corporation (Penn-York) and flowed through to its SS–2 customers in accordance with section 4 of Transco's Rate Schedule SS–2. The report states that on April 29, 1994, Transco refunded $144,130.54, including $1,011.65 in interest, due its SS–2 customers for the period December 1, 1992 through November 30, 1993. The report summarizes Transco's computation of the refund pursuant to the requirements of Subsection 17.1(c) of Penn-York's FERC Gas Tariff, Third Revised Volume No. 1 dated December 1, 1992 in Docket No. RP91–68–017.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14608 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–285–000]

Williston Basin Interstate Pipeline Company; Tariff Revisions

June 10, 1994.

Take notice that on June 6, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

First Revised Sheet No. 249
Second Revised Sheet No. 250
Original Sheet No. 250A

Based on its experience since implementing Order No. 636 on its pipeline system, Williston Basin is submitting the above tariff sheets which reflect revised language relaxing the tolerance levels for its variance penalties.

Williston Basin respectfully requests that the above tariff sheets be made effective July 1, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14609 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF94–112–000]

Yale University; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

June 10, 1994.

On June 2, 1994, Yale University (Applicant), of 20 Ashmun Street, New Haven, Connecticut 06520–8297, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located on the campus of Yale University in New Haven, Connecticut, and will consist of 3 combustion turbine generators and heat recovery boilers, 5 diesel generators and boilers. Steam recovered from the facility will be used in the campus. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be approximately 21 MW. Installation of the facility began in July 1, 1993.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14600 Filed 6–15–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 5000–6]

Notice and Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Negotiated Rulemaking on Small Nonroad Engine Regulations.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of the next meeting of the Advisory Committee to negotiate a rule to reduce air emissions from small nonroad engines. The meeting is open to the public without advance registration. Agenda items for the meeting include reports from the 3 task groups and discussions of engine classification, air toxics data, and the small engine industry, and review of a draft "single text" strawman.

DATES: The committee will meet on July 26, 1994, from 11 a.m. to 6 p.m., and on July 27, 1994, from 8 a.m. to 4 p.m.

ADDRESSES: The location of the meeting will be the South Wing Conference Center, Kentucky Fair and Exposition Center, 937 Phillips Lane, Louisville, KY, 40209, (502) 367–5000.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Betsy McCabe, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, Michigan 48105, (313) 668–4344. Persons needing further information on committee procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street SW. Washington, DC 20460, (202) 260–5495, or the Committee's facilitator's, Lucy Moore or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, New Mexico, 87501, (505) 982–9805.

Dated: June 13, 1994.

Deborah Dalton,

Designated Federal Official.

[FR Doc. 94–14670 Filed 6–15–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5000–4]

Risk Assessment and Management Commission

ACTION: Notice of open meetings.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Risk Assessment and Management Commission, established as a Presidential Advisory Committee under section 303 of the Clean Air Act Amendments of 1990, will meet on the following dates: June 30; July 29; September 9, 1994. The June 30 and July 29 meetings will be held at the Hyatt Regency Hotel at 400 New Jersey Avenue, Washington, DC 20001. For the September 9 meeting location, please call Joanna Foellmer, 202–260–5881. The meetings are open at the public, and will begin at 9 a.m. and end no later than 5:30 p.m. Seating at the meeting will be on a first come basis.

Background

The Risk Assessment and Management Commission held its first meeting on May 16, 1994 (**Federal Register** 59/FR22615/Vol. 59, No. 83, May 2, 1994.) The Commission was established by Congress to make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws to prevent cancer and other chronic human health effects which may result from exposure to hazardous substances

It is expected that the Commission members will review and discuss the National Academy of Sciences/National Research Council/Committee on Risk Assessment of Hazardous Air Pollutants report entitled Science and Judgment in Risk Assessment (1994) during the next three meetings. If you would like a copy of this document, please write to Dr. James Reisa at the National Academy of Sciences, 2101 Constitution Avenue, NW., Washington, DC 20007. The Commission will address its scope of work, its relevance to various agencies and statutes, and various organizational matters.

For information about the Commission and copies of the agenda, please call Joanna Foellmer at 202–260–5881.

Dated: June 9, 1994.

Mary D. Nichols,

Assistance Administrator, Office of Air and Radiation.

[FR Doc. 94–14671 Filed 6–15–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4999–7]

Notice of a Final List of Water Quality Limited Waterbodies in the State of Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Notice of a final Clean Water Act section 303(d) list for the State of Minnesota.

SUMMARY: The purpose of this notice is to announce the United States Environmental Protection Agency's (USEPA) final decision with respect to the list required of the State of Minnesota, under section 303(d) of the Clean Water Act (CWA). On December 8, 1993, the USEPA published (58 FR 64584) a proposed list of waterbodies, subsequent to its disapproval, on August 9, 1993, of portions of the list prepared by the State of Minnesota. A total of 72 waterbodies have been identified as appropriate waterbodies for the development of total maximum daily loads (TMDLs), pursuant to section 303(d), 40 CFR part 130, and USEPA guidance, as resources permit. An additional number of waterbodies have been identified, for which implementation of a TMDL will be dependent on a variety of events or actions outside the control of the State of Minnesota. Copies of the lists may be obtained at the address provided in the addresses section.

ADDRESSES: Persons wishing to obtain a copy of the lists may do so by contacting Mr. Robert F. Pepin, U.S. Environmental Protection Agency, Region 5, Water Division, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–1505; or Mr. Greg Gross, Division of Water Quality, Minnesota Pollution Control Agency, 520 Lafayette Road, St Paul, Minnesota 55155, telephone (612) 296–7213.

FOR FURTHER INFORMATION CONTACT: Mr Robert F. Pepin or Mr. Greg Gross at the above addresses or telephone numbers

SUPPLEMENTARY INFORMATION: Section 303(d) of the CWA requires that the States identify lists of waterbodies for which TMDL development is appropriate. Further, section 303(d) requires that the lists developed by the States be submitted to the USEPA for review and approval or disapproval. To the extent that the USEPA disapproves a State submittal, section 303(d) of the CWA requires that the USEPA develop and publish the list. The USEPA must also assure that public participation in the formulation of a list of waterbodies is consistent with 40 CFR part 25, and may publicly notice a State submittal for that purpose as well.

The State of Minnesota had prepared several lists for the USEPA review, and had submitted and subsequently withdrawn several of these. On July 6, 1993, the USEPA received from Minnesota, a proposed list, which contained some, but not all of the waterbodies which the USEPA believed should be included on the list applicable to the State of Minnesota. As a result, the USEPA issued, on August 9, 1993, a partial approval of the list submitted by the State, approving the list to the extent that it did include waterbodies which were appropriately included on the list, but disapproving the submission in that it did not include all waterbodies which would be subject to the requirements of section 303(d).

Subsequently, USEPA developed a list of additional waterbodies which it believed were subject to the requirements of section 303(d), and published a notice to that effect on December 8, 1993 (58 FR 64584). The USEPA received written comments from

four commenters, including the Minnesota Pollution Control Agency (MPCA). These comments are available for public inspection at the address listed above.

(A) Responses to Comments

In making its final determination, the USEPA has carefully considered all comments received, and has revised its lists accordingly. In particular, changes have been made based upon the following.

(1) The MPCA commented that 23 stream segments were not identified on the proposed list, and should be included.

In alternate years, the State of Minnesota, pursuant to section 305(b) of the CWA, provides a report to Congress, on the health of waters within the State. In its 1992 report, Minnesota had identified the 23 stream segments in question, as impaired, however, the USEPA had not included these segments on its proposed list, believing the data to be old and somewhat unreliable. Upon further review, however, it is apparent that these segments are contiguous with other waterbodies included upon the USEPA's proposed list, and that these other waterbodies are scheduled for TMDL development within the next few years. As MPCA intends to develop these TMDLs for the whole waterbody, the MPCA believes that the 23 segments the USEPA had originally proposed to exclude should also be listed. The USEPA agrees.

(2) The MPCA commented that 65 segments that were identified by the USEPA in the proposed list should not be included because the data used to support listing does not reflect current conditions.

The information provided by the commenter indicates that of the 65 segments, remedial actions have been taken on 51 segments. In addition, exceedences of water quality standards were infrequent for five of the 65 segments, and did not support a conclusion that the waterbodies were impaired. Finally, the impairment determination for nine segments was based on data that were typically five to 10 years of age, and was not thought to be indicative of current conditions. The USEPA agrees that these waterbodies should not be listed pursuant to section 303(d).

(3) The MPCA commented that nine waterbodies that were identified in the proposed list should not be listed because the stated impairment is due to ubiquitous metals, for which there is no evidence, based upon biological sampling, that designated uses are impaired.

For each of these waterbodies, the MPCA provided documentation that the impairments described were based upon one or more of the following: Rare excursions of the water quality standards; ambient levels of the various constituents higher than expected for the ecoregion, but no water quality standards exceedences measured; or misinterpretation by the USEPA of the data provided in the 305(b) report. The USEPA agrees with the MPCA that cause does not exist for listing these waterbodies.

(4) The MPCA commented that approximately 245 segments of waterbodies which were included on the proposed USEPA list, should be excluded for a variety of reasons.

All of the identified segments are segments which were listed because of the presence of a fish consumption advisory for mercury or polychlorinated biphenyls (PCBs). The MPCA commented that the sole, or primary source of mercury or PCBs to these waterbodies is airborne deposition, and that where control of these sources is outside the State, the State is unable to develop a TMDL. These segments, therefore, are not appropriate candidates for TMDL development at this time. The USEPA agrees that technology based standards imposed under the Clean Air Act which affect sources external to the State of Minnesota may obviate the future need for TMDL development in these waterbodies. A separate list of these waterbody segments can be obtained by contacting the USEPA at the address provided above.

It is important to note that not all waterbodies for which fish consumption advisories exist fall into the category discussed above. There are certain waterbodies with fish consumption advisories, and for which TMDLs have been, or can be successfully developed at this time. These are not included in the 245 waterbodies on which the MPCA provided comments.

(5) Two other commenters believed that the proposed list is inadequate because it fails to identify all water quality limited segments within the State of Minnesota. Where the State has failed to do so, one of the commenters stated there is a mandatory duty to identify all water quality-limited segments, and include them on the list of waterbodies for which TMDL development is appropriate.

The USEPA interprets section 303(d) to require the identification of water quality-limited waterbodies for which TMDLs are appropriate. Such identification is to be based on existing and readily available data (40 CFR 130.7(b)(5)); consequently, there are no requirements within the Statute for additional monitoring or analysis. Since 40 CFR 130.7(d)(1) requires the biennial submission of revised section 303(d) lists to the USEPA for approval, this provision recognizes, that information will become available in the future, which can be used to revise and update the decisions made under section 303(d). This provision supports the USEPA's position that current listings should be based on currently available information. The submission every 2 years of a section 303(d) list addresses this issue by allowing changes to the lists to reflect additional identification of impaired waterbodies, and allows for removal of waterbodies once standards are attained or TMDLs developed.

Pursuant to section 305(b) of the CWA, States must prepare, on a biennial basis, a report to Congress which assesses the status of State waters. 40 CFR 130.7(b)(5) explicitly states that the section 305(b) report should be considered when developing the section 303(d) list. In preparation of the December 8, 1993, proposed list, Minnesota's 1992 305(b) report was extensively used. All waterbodies listed as impaired in Appendix 1 of that report were considered for listing. For reasons provided in the December 8, 1992, FR notice, specific comments received in response to that notice, and elsewhere in this notice some waterbodies that were listed as impaired in the Fiscal Year 1992 section 305(b) report were not included in today's list.

(6) One commenter stated that even if the only available data are older than five years, if those data indicate water quality impairments, then the subject waterbodies should be listed on the section 303(d) list.

Throughout its regulations and guidance the USEPA has consistently stated that all information should be used to develop a section 303(d) list. In using available information, however, it is imperative to consider its accuracy in order to assure that technically defensible determinations can be developed. The USEPA believes that data that are older than five years, or impairment assessments based on a subjective analysis, carry a large degree of uncertainty as to whether the impairment is still valid. As such information of this kind must be considered in light of all available information and cannot represent a prima facie basis for listing.

(7) One commenter stated that the USEPA must actively solicit all interested parties for information on which to develop a section 303(d) list.

Regulations governing the solicitation of public comment may be found at 40 CFR part 25. The USEPA believes that the publication of the proposed list in the December 8, 1993, FR notice fulfilled those requirements, and served as adequate solicitation of comment of all interested parties. In response to that publication the USEPA received four comment letters, one by a State agency and three by public interest groups. These comments have been thoroughly considered in the development of the final list.

(8) One commenter stated that the proposed list does not meet the requirements of section 303(d) because it does not contain specific, calculated TMDLs for each waterbody listed.

Section 303(d)(1)(A) requires the development of a list of waterbodies for which technology-based effluent limits are not stringent enough to achieve water quality standards. Section 303(d)(1)(C) requires the development of TMDLs for the waters listed pursuant to section 303(d)(1)(A). The USEPA has interpreted the Act to require the development of the section 303(d) list prior to actually establishing TMDLs. The USEPA believes that to delay listing until the TMDLs are all completed would either lead to deceptively short lists of waterbodies, or would delay the process indefinitely. Because TMDL development can be a complex activity, involving many years of effort particularly in cases where specific stream conditions must be analyzed, or model development and calibration must be achieved, only a few TMDLs can be developed at any particular time. Even so, it is also recognized that remedial actions can take place before a TMDL is developed, therefore the Agency believes that the listing process should go forward as the initial step in order to encourage action even though actual TMDL development may take place later. It is reasonable, therefore, to conclude that development of individual TMDLs must follow list development.

(9) One commenter stated that the proposed list does not contain any schedule for TMDL development for the next two years, and that the criteria by which the USEPA prioritized waters on the proposed list should focus on the protection human health.

The December 8, 1993, Federal Register notice announced as being available for public review and comment a proposed section 303(d) list for Minnesota consisting of 447 water quality-limited segments. The notice further provided that the priority for TMDL development reflects that contained in the September 16, 1993, section 303(d) list submitted by the Minnesota Pollution Control Agency. In that submittal, the TMDLs identified for development through April 1994 were the Minnesota River and the Redwood River. These waterbodies continue to be listed as high priority for TMDL development. Because the prioritization of TMDLs as well as the resources and personnel to develop them are largely under the control of the State, the USEPA believes it is appropriate to defer to this State prioritization. It should be noted that these priorities are subject to annual review by the USEPA and the State in the annual program planning process under 40 CFR part 130 and as a result of the biennial updates of the 305(b) lists required under 40 CFR part 131 and section 305(b) of the CWA.

(10) One commenter stated that the Mississippi River from the Minneapolis/St. Paul metropolitan area downstream to the Iowa border should be listed as high priority.

The USEPA agrees that this waterbody is an important resource. In compliance with requirements of an National Pollutant Discharge Elimination System permit issued to the Metropolitan Waste Control Commission (MWCC), studies of phosphorus, the identified pollutant of concern, are being conducted by both the MWCC and the Minnesota Pollution Control Agency on the waterbody to define better the sources of the impairments and to ascertain needed remedial actions. Current information suggests that much of the loading of phosphorus is originating in the Minnesota River basin, which is high priority for TMDL development. It is anticipated that remedial actions in the Minnesota River basin will have significant positive impact on magnitude of impairments in the Mississippi River. It is anticipated that upon the completion of the studies and implementation of additional controls required through the NPDES permit and the results of the TMDL being developed for the Minnesota River, downstream impacts on the Mississippi River will be reduced such that this portion of the River does not meet the requirements for listing under section 303(d). Therefore, this waterbody continues to be listed as low priority on the section 303(d) list.

(11) One commenter questioned why only two waterbodies were listed on the section 303(d) list.

In the December 8, 1993, FR notice, USEPA proposed a list of 447 waterbody segments. This was in addition to the two waterbodies which the State of Minnesota has identified as appropriate for TMDL development. While the USEPA agrees with the State of Minnesota, that those two waterbodies warrant listing pursuant to 303(d), the USEPA also believes, that additional waterbodies should be listed, and for that reason has proceeded with today's notice.

(12) One commenter recommended that the following waterbodies be listed on the section 303(d) list as high priority for TMDL development.

—All Minnesota Outstanding Resource Value Waters
—All Minnesota designated trout streams and trout lakes
—All Minnesota designated canoe trails
—All Federal or Minnesota designated wild, scenic, and recreational rivers
—All waterbodies within any National Wildlife Refuge
—The entire length of the Mississippi River (presumed to include sections both upstream and downstream of the Minneapolis/St. Paul metropolitan area
—Lake Superior

As stated above, the resources and personnel necessary to develop TMDLs are largely under the control of the State. In addition, the State's proximity to its public allows it to evaluate priorities in light of the public need more readily than USEPA. Consequently the USEPA believes it is appropriate to defer to the State in the matter of prioritization of waterbodies for TMDL development.

(B) Revisions to the Proposed Notice

As a result of the public comments received and continuing review of the proposed notice by the USEPA, the following changes have been made to the final identification of the section 303(d) water quality-limited segments for the State of Minnesota:

(1) The final list of waterbodies for which TMDL development would be appropriate has been revised to include the 23 additional steam segments which the State has requested be included on the list, due to proximity to, and influence upon, other waterbodies for which TMDLs are being developed

(2) Waterbodies for which fish consumption advisories exist, and for which remedial measures lie outside the control of the State of Minnesota have been separately identified.

(3) The final list of waterbodies for which TMDL development is appropriate excludes 65 stream segments included in the proposed list, for which the State has provided documentation that the information leading to the USEPA's decision to include these segments on the proposed

list was not based on the most current information, and the more current information reveals that TMDLs are no longer appropriate.

(4) The final list excludes nine stream segments identified in the State's comments which were described as meeting the designated uses, since the exceedences of numeric water quality criteria noted by the USEPA as the basis for our proposal to include these segments on the 303(d) list were due to naturally occurring background concentrations.

(C) Final Notice

This notice is being issued pursuant to section 303(d)(2) of the CWA. Under this section, the USEPA is required to publish an identification of water quality-limited segments if a state submission is disapproved. The disapproval of the Minnesota submission occurred on August 9, 1993.

This notice identifies 72 water quality limited waterbodies for which TMDL development is appropriate and further identifies three waterbodies for which TMDL development is scheduled to be initiated over the next two years. This notice further identifies 245 waterbodies for which TMDL development is not feasible at this time. This constitutes USEPA's final determination.

Dated: June 2, 1994.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 94–14536 Filed 6–15–94; 8:45 am]

BILLING CODE 6050–60–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

June 9, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, Room 3221 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: None.

Title: Section 76.922, Rates for the basic service tier and cable programming services tiers.

Action: Existing collection in use without OMB approval.

Respondents: State or local governments, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 300 responses; 12 hours average burden per response; 3,600 hours total annual burden.

Needs and Uses: Section 76.922 provides: (1) An eligible small system that elects to use the streamline rate reduction process must implement the required rate reduction and provide written notice of such reductions to local subscribers, the local franchising authority and the Commission; (2) the system must notify the franchising authority and its subscribers in writing that it is electing to set its regulated rates by the streamlined rate reduction process; (3) the system must provide a one month notice; (4) the rates must be implemented within thirty days after the written notification has been provided to subscribers and the local franchising authority; (5) if a complaint has been filed against the small system, they must provide a written notice stating the required rate reductions; and (6) a small system is required to give written notice of, and to implement, the rates that are produced by the streamlined rate reduction process only once. The information will be used by the Commission to determine whether or not small systems are eligible to use the streamlined rate reduction process and if so that they are in compliance with the rules and regulations of the FCC.

OMB Number: None.

Title: Section 76.934(d), Petition for extension of time.

Action: Existing collection in use without an OMB control number.

Respondents: State or local governments, businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 100 responses; 4 hours average burden per response; 400 hours total annual burden.

Needs and Uses: Section 76.934(d) states that small systems may obtain an extension of time to establish compliance with rate regulations provided they can demonstrate that timely compliance would result in severe economic hardship. The information will be used by the FCC and local franchise authorities to grant temporary relief to small systems who demonstrate a need for an extension of time to come into compliance with rate regulation.

OMB Number: None.

Title: Section 76.958, Notice to Commission of rate change while complaint pending.

Action: Existing collection in use without an OMB control number.

Respondents: State or local governments, businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 2,560 responses; .30 hours average burden per response; 768 hours total annual burden.

Needs and Uses: Section 76.958 states that a regulated cable operator that proposes to change any rate while a cable service tier complaint is pending before the Commission shall provide the Commission at least thirty days notice of the proposed change. The information will be used by FCC staff to determine whether or not a regulated cable operator carried out the correct procedures to propose change in any rate while a cable service their complaint is pending before the Commission.

OMB Number: None.

Title: Section 76.964(b), Notice to subscribers.

Action: Existing collection in use without an OMB control number.

Respondents: State or local governments, businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 400 responses; 1 hour average burden per response; 400 hours total annual burden.

Needs and Uses: Section 76.964(b) requires cable systems: (1) To give a thirty day written notice to both subscribers and local franchising authorities before implementing any rate or service change; (2) a notice stating the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change; (3) in addition to or deleting channels, each channel must be separately identified and a notice must be sent to subscribers informing them of their rights to file complaints about changes in cable programming service tier rates and services to the Commission within forty-five days. The information will be used by FCC staff to determine whether or not cable systems

are in compliance with the rules and regulations before implementing any rate or service change.

OMB Number: None.

Title: Section 76.986, "A la carte" offerings.

Action: Existing collection in use without an OMB control number.

Respondents: State or local governments, businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 44,800 responses; 1 hour average burden per response; 44,800 hours total annual burden.

Needs and Uses: Section 76.986 (1) that local franchising authorities may make initial decisions addressing whether a collective offering of "a la carte" channels will be treated as an unregulated service or a regulated tier. (2) franchising authority may make this initial decision within the thirty day period established for review of basic cable rates and equipment costs or within the first sixty days of an extended 120 day period; (3) franchising authority shall provide notice of its decision to the cable system and shall provide public notice of its initial decision within seven days pursuant to local procedural rules for public notice and; (4) operators or consumers may make an interlocutory appeal of the initial decision to the Commission within 14 days of the initial decisions. The information will be used by FCC staff and local franchising authorities to determine which channels a cable operator is offering on an individual, unregulated basis.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–14642 Filed 6–15–94; 8:45 am]

BILLING CODE 6712–01–M

Schedule for en banc Hearing Children's Television Programming

June 9, 1994.

The schedule for the Commission's June 28, 1994, *en banc* hearing on Children's Television, MM Docket No. 93–48, is as follows:

The moderator for all of the panels is Linda Ellerbee, host of Nick News.

9:00–9:15 a.m. *Opening Statements By Commissioners*

9:15–10:45 a.m. *Panel 1: Educational & Informational Programming: Will We Know It When We See It?*

Children's Television Workshop—David Britt and Sheldon Turnipseed
Capital Cities/ABC, Inc.—Jeanette Trias
Children Now—James Steyer
Walt Disney Television—Ken Werner and Bill Nye
Fox Children's Network—Margaret Loesch
National Broadcasting Company, Inc.—Dr. Karen Hill-Scott
National Education Association—Dr. Gary Watts
World Africa Network—Phyllis Jackson
National PTA—Catherine Belter

11:00 a.m.–12:30 p.m. *Panel 2: Educational & Informational Programming: How Much Is Enough?*

American Psychological Association—Dr. Dale Kunkle
National Association of Broadcasters—Paul La Camera
Peggy Charren, Founder of ACT
Millicient Green—Correspondent for Children's Express
Interfaith Broadcasting Commission—Dr. Richard McCartney
Maryland Campaign For Kid's TV—Charlene Hughins Uhl
National Association of Television Program Executives—Bruce Johansen
Rushnell Communications and Publishing—Squire Rushnell

12:30–1:45 p.m. Lunch Break

1:45–3:15 p.m. *Panel 3: The Economics Of Providing Educational & Informational Programming For Children*

KIDSNET—Karen Jaffe
CBS, Inc.—Jonathan Rodgers
Center For Media Education—Dr. Kathryn Montgomery
Corporation For Public Broadcasting—Sheila Tate
Hastings College—Dr. Ronald Davis & Dr. James Wiest
Association of Independent Television Stations—Peter Walker
Nickelodeon—Geraldine Laybourne
Shari Lewis—Producer and Entertainer
Univision Network—Jaime Davila

The hearing will take place in the Commission Meeting Room (Room 856), Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, and is open to the public. George Mason University's Microwave Television, "The Capitol Connection," will carry the hearing in its entirety beginning at 9 a.m. The hearing will also be available via satellite on Telestar 302 located at 85 degrees west: The downlink frequency is 4140 MHz and the transponder is 11 horizontal which is channel 22. Further inquiries should be directed to Ms. Julia Morelli, "The Capitol Connection," at (703) 323–3585. For the hearing impaired, an ASL interpreter will translate the hearing and the video feed will be closed captioned. Video tapes and written transcripts of the hearing will be available for a fee.

For further information about the hearing, please contact Larry Miller at (202) 418–1600. The contacts for media coverage are Maureen Peratino and Audrey Spivack at (202) 418–0500.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc 94–14641 Filed 6–15–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Royal Cruise Line Limited and Kloster Cruise Limited, One Maritime Plaza, Suite 1400, San Francisco, California 94111.
Vessel: Star Odyssey.
Dated: June 13, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–14637 Filed 6–15–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

All-Ways Forwarding Int'l. Inc., Hemisphere Center, Routes 1 & 9 South, Newark, New Jersey 07114, Officers: Solomon Weber, President, Paul Jeka, Vice President

Romi's Express, Inc., 420 South Hindry Ave., Unit F, Inglewood, CA 90301, Officers: Rosalba Gil, President, Isabel C. Montejo, Vice President

Action Cargo International, 2510 Magnet Street, Houston, TX 77054, Bobby (Robert H.) Wayne, Sole Proprietor

A Active Freezone Cargo Inc., 2305 N.W. 107 Ave., Miami, FL 33172, Officers: Carlos de Corral, President, Maria del Carmen del Corral, Director, German Leiva, Sen. V. President, Maria Camila Leiva, Secretary

JoAnn Czop-Alcala, 4705 Bay Point Road, Miami, FL 33137, Sole Proprietor

Southern Cargo Logistics Inc., 3535–3 Baymeadows Road, Ste. 116, Jacksonville, FL 32256, Officers:

Lowell Oswald, Jr., President, Mary C. Oswald, Vice President

Consolidated Incorporated of Orlando, 701b L.F. Roper Parkway, Ocoee, FL 34761, Officer: Mona El Tagi, President

Manuela Rivadeneira, 601 E. Linden Ave., Linden, NJ 07036, Sole Proprietor

Blasi Forwarders & Services, Inc., 1325 N.W. 93rd Ct., suite B–1112, Miami, FL 33172, Officers: Inaldis E. Sibilla, President, Rebeca Bianco, Vice President.

Dated: June 13, 1994.

By the Federal Maritime Commission

Joseph C. Polking,

Secretary.

[FR Doc. 94–14638 Filed 6–15–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Alliance Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 11, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Alliance Bancorp, Inc., Marietta, Georgia; to acquire 80 percent of Interim Alliance Corporation D/B/A Alliance Finance, Smyrna, Georgia, and thereby engage in consumer finance activities pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–14632 Filed 6–15–94; 8:45 am]

BILLING CODE 6210–01–F

Thomas Luther Lovett; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 6, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Thomas Luther Lovett, Wrightsville, Georgia; to retain an additional 0.6 percent of the voting shares of Wrightsville Bancshares, Inc., Wrightsville, Georgia, for a total of 13.05 percent, and thereby indirectly acquire Bank of Wrightsville, Wrightsville, Georgia.

Board of Governors of the Federal Reserve System, June 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–14631 Filed 6–15–94; 8:45 am]

BILLING CODE 6210–01–F

SouthTrust Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 11, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama, and SouthTrust of Mississippi, Inc., Birmingham, Alabama; to merge with First Jefferson Corporation, Biloxi, Mississippi, and thereby indirectly acquire The Jefferson Bank, Biloxi, Mississippi.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Citizens State Bank Employee Stock Ownership Plan, Buffalo, Texas; to become a bank holding company by acquiring 38.1 percent of the voting shares of Citizens State Bank, Buffalo, Texas.

Board of Governors of the Federal Reserve System, June 10, 1994

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–14633 Filed 6–15–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 485]

Improving Performance in Physicians' Office Laboratories

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement to improve the quality of laboratory testing in physicians' office laboratories (POLs). The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Clinical Preventive Services. (For ordering a copy of "Healthy People 2000," see the section "WHERE TO OBTAIN ADDITIONAL INFORMATION.")

Authority

This program is authorized under section 317(k)(2)(D) of the Public Health Service Act [42 U.S.C. 247b(k)(2)(D)], as amended.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants are limited to non-profit professional clinical or laboratory organizations whose focus is to improve the quality of laboratory testing in POLs. Applicants must be able to demonstrate that:

1. They are laboratory medicine oriented;
2. A goal of their organization is to improve the quality of laboratory testing in POLs;
3. They have a long-standing interest in improving the performance of laboratory testing; and
4. They have a strong, specific interest in providing professional information to private practitioners with laboratories, thereby striving to improve the quality of laboratory testing in POLs

Availability of Funds

Approximately $100,000 is available in FY 1994 to fund one cooperative agreement. It is expected that the award will begin on or about September 1, 1994, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change. Continuation awards within the project period may be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this cooperative agreement is to develop and provide professional and technical information and education to private practitioners with POLs, thereby helping improve the quality of laboratory testing available to the American public.

Program Requirements

In conducting the activities to achieve the purpose of the program, the recipient will be responsible for those activities listed under A. (Recipient Activities), and CDC will be responsible for those activities under B. (CDC Activities).

A. Recipient Activities

1. Nationally, provide to POL physicians training that has been designed to improve laboratory performance. In the first budget year develop training modules related to the standards as set forth in the Clinical Laboratory Improvement Amendments (CLIA), designed to train POL staff.
2. Develop and implement mechanisms for communicating information directly to POLs relating to CLIA. These communications will provide accurate, concise, and rapid information that will give physicians access to new and/or revised CLIA regulatory provisions. In the first budget year, using the laboratory test categorization computerized database established by CDC, develop an interactive software program which is user friendly and can be queried by physicians for specific tests.

B. CDC Activities

1. Provide scientific and technical expertise related to distance-based training and provide technical assistance in the development of training modules and courses related to the CLIA standards.
2. Collaborate in the development of mechanisms to communicate current and updated information relating to CLIA to POLs.
3. Provide scientific and technical assistance relating to the test categorization database and laboratory standards, and collaborate in the development of more user friendly and interactive databases for use by POLs.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the objectives of the cooperative agreement including: (a) Applicant's understanding of the objectives of the proposed cooperative agreement; and (b) the relevance of the proposal to the stated objectives. (25 points)
2. Ability to provide staff, knowledge, and other resources required to perform the applicant's responsibilities in this project. The qualifications and time allocations of key personnel to be assigned to this project and the facilities, equipment, and other resources available for performance of this project. (25 points)
3. Methods to be used in carrying out the responsibilities of this project. Steps to be taken in planning and implementation of this project. (20 points)
4. Schedule for accomplishing the activities to be carried out in this project and methods for evaluating the accomplishments. (20 points)
5. Percentage of the U.S. POL community that can be reached by the applicant organization. (10 points)
6. Budget evaluation to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored)

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Application Submission and Deadline

The original and two copies of the application, PHS Form 5161–1 (Revised 7.92, OMB Control Number 0937–0189), must be submitted to Elizabeth M. Taylor, Grants Management Officer,

Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E16, Atlanta, Georgia 30305, on or before July 15, 1994.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the independent review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications that do not meet the criteria in 1.A. or 1.B. are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 485 and contact Manuel Lambrinos, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E16, Atlanta, Georgia 30305, telephone (404) 842–6777, for business management technical assistance. Programmatic technical assistance may be obtained from Katherine A. Kelley, Dr.P.H., Chief, Training Branch, Centers for Disease Control and Prevention (CDC), Public Health Practice Program Office, Division of Laboratory Systems, 4770 Buford Highway, NE., Mailstop A16, Atlanta, Georgia 30341–3724, telephone (404) 488–7675.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "Introduction" may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: June 10, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–14628 Filed 6–15–94, 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain device panels of the Medical Devices Advisory Committee and on the Technical Electronic Product Radiation Safety Standards Committee in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and for those that will or may occur through February 28, 1995.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically disabled candidates.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nominations and curricula vitae for the panels should be sent to Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850.

All nominations and curricula vitae for the Technical Electronic Product Radiation Safety Standards Committee should be sent to Kay A. Levin (address below).

FOR FURTHER INFORMATION CONTACT: Kay A. Levin, Center for Devices and Radiological Health (HFZ–10), Food and Drug Administration, 12720 Twinbrook Pkwy., Rockville, MD 20857, 301–443–9422.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members for vacancies listed below.

1. *Anesthesiology and Respiratory Therapy Devices Panel:* Six vacancies immediately, one vacancy occurring November 30, 1994; general anesthesiologists, anesthesiologists with a specialty in regional anesthesia, physicians having expertise in ventilatory support, or nurse anesthetist.

2. *Clinical Chemistry and Clinical Toxicology Devices Panel:* Three vacancies immediately, one vacancy occurring February 28, 1995; doctors of medicine or philosophy with experience in clinical chemistry, clinical toxicology, clinical pathology, clinical laboratory medicine, or oncology.

3. *Dental Products Panel.* One vacancy immediately, two vacancies occurring October 31, 1994; individuals with expertise in lasers for dental use, dental endosseous implants, temporomandibular joint implants, or bone physiology as it applies to the oral and maxillofacial area.

4. *Ear, Nose, and Throat Devices Panel:* One vacancy occurring October 31, 1994; audiologist, otolaryngologist, neurophysiologist, statistician, or electrical or biomedical engineer.

5. *Gastroenterology and Urology Devices Panel:* Three vacancies immediately, one vacancy occurring December 31, 1994; gastroenterologists, nephrologists, or urologists with expertise in pediatrics or lithotripsy, or experience in diagnosis and treatment of impotence, incontinence, and prostatism.

6. *General and Plastic Surgery Devices Panel:* Two vacancies occurring August 31, 1994; general surgeons.

7. *General Hospital and Personal Use Devices Panel:* One vacancy immediately; experts in pediatrics, internal medicine, neonatology, gerontology, infection control, or biomedical engineering.

8. *Hematology and Pathology Devices Panel:* One vacancy immediately, three vacancies occurring February 28, 1995; cytopathologists.

9. *Immunology Devices Panel:* One vacancy immediately, two vacancies occurring February 28, 1995; oncologists, medical or surgical oncologists with experience with tumor markers, or clinical immunologists.

10. *Microbiology Devices Panel:* One vacancy occurring February 28, 1995; an infectious disease clinician or expert in antimicrobial susceptibility testing devices, and/or virology testing devices, and/or biotechnology; or clinical oncologist with experience with tumor markers.

11. *Neurological Devices Panel:* Seven vacancies immediately; neurologists, biomedical engineers, interventional neuroradiologists, neurosurgeons with interest in medical devices, or persons experienced with neurological devices

with a strong background in biostatistics.

12. *Obstetrics and Gynecology Devices Panel*: Four vacancies immediately, two vacancies occurring January 31, 1995; experts in endoscopy, electrosurgery, laser surgery, and assisted reproductive technologies, contraception, and/or instrumentation used during these procedures, or reproductive endocrinology.

13. *Orthopedic and Rehabilitation Devices Panel*: One vacancy occurring August 31, 1994; orthopedic surgeon with expertise in joint structure and function, prosthetic ligament devices, joint biomechanics and implants, or spinal instrumentation; physical therapist with expertise in spinal cord injuries, neurophysiology, electrotherapy, and joint biomechanics; rheumatologist; or biomedical engineer.

14. *Radiological Devices Panel*: Four vacancies immediately, two vacancies occurring January 31, 1995; physicians and scientists with expertise in nuclear medicine, diagnostic or therapeutic radiology, mammography, thermography, transillumination, hyperthermia, bone densitometry, magnetic resonance, computed tomography, or ultrasound.

15. *Technical Electronic Product Radiation Safety Standards Committee*: One vacancy immediately, three vacancies occurring December 31, 1994; employees of governmental agencies, including State or Federal Government.

Functions

Medical Device and Dental Products Panels

The functions of the panels are to: (1) Review and evaluate available data concerning the safety and effectiveness of marketed and investigational devices; (2) advise the Commissioner of Food and Drugs regarding recommended classification of these devices into one of three regulatory categories; (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category; (4) advise on any possible risks to health associated with the use of devices; (5) advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category; (6) review classification of devices to recommend changes in classification as appropriate; (7) recommend exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; (8) advise on the necessity to ban a device; and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

The Dental Products Panel will also function at times as a drug advisory panel. As such, the panel reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed dental drug products for human use, the adequacy of their labeling, and advises the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded. The panel also evaluates and recommends whether various prescription drug products should be changed to over-the-counter status. The panel also evaluates data and makes recommendations concerning the approval of new dental drug products for human use.

Technical Electronic Product Radiation Safety Standards Committee

The function of the Technical Electronic Product Radiation Safety Standards Committee is to provide advice and consultation on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products. The committee may recommend electronic product radiation safety standards for consideration.

Qualifications

Medical Device and Dental Products Panels

Persons nominated for membership on the panels shall have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The particular needs at this time for each panel are shown above. The term of office is up to 4 years, depending on the appointment date.

Technical Electronic Product Radiation Safety Standards Committee

Persons nominated for the Technical Electronic Product Radiation Safety Standards Committee must be technically qualified by training and experience in one or more fields of science or engineering applicable to electronic product radiation safety. The particular needs for this committee are identified above. The term of office is up to 4 years, depending on the appointment date.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory panels or committees. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: June 10, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–14647 Filed 6–15–94; 8:45 am]

BILLING CODE 4160–01–F

Request for Nominations for Representatives of Consumer and Industry Interests on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for consumer representatives and an industry representative to serve on certain device panels of the Medical Devices Advisory Committee and consumer representatives for the Technical Electronic Product Radiation Safety Standards Committee in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and for those that will or may occur through February 28, 1995.

FDA has a special interest in ensuring that women, minority groups, individuals with disabilities, and small businesses are adequately represented on advisory committees and, therefore,

extends particular encouragement to nominations for appropriately qualified female, minority, and physically disabled candidates, and nominations from small businesses that manufacture medical devices subject to the regulations.

DATES: Nominations should be received by August 15, 1994 for vacancies listed in this notice.

ADDRESSES: All nominations and curricula vitae for consumer representatives for the medical device panels should be sent to Susan Meadows (address below).

All nominations and curricula vitae (which includes nominee's office address and telephone number) for the industry representative for the Obstetrics and Gynecology Devices Panel and the consumer representatives for the Technical Electronic Product Radiation Safety Standards Committee should be sent to Kay Levin (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding consumer interests for the medical device panels: Susan K. Meadows, Office of Consumer Affairs (HFE–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

Regarding industry interests for the Obstetrics and Gynecology Devices Panel and the consumer interests for the Technical Electronic Product Radiation Safety Standards Committee: Kay A. Levin, Food and Drug Administration, Center for Devices and Radiological Health (HFZ–10), 12720 Twinbrook Pkwy Rockville, MD 20857, 301–443–9422.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members representing consumer and industry interests for the vacancies listed below

Committee or Panel	Approximate Date Representative is Needed	
	Consumer	Industry
Circulatory System	July 1, 1994	NV
Gastroenterology and Urology	Jan. 1, 1995	NV
General Hospital and Personal Use	Jan. 1, 1995	NV
Immunology	Mar. 1, 1995	NV
Obstetrics and Gynecology	NV	Feb. 1, 1995
Technical Electronic Product Radiation Safety Standards	IMMED (3)	NV
	Jan. 1, 1995 (1)	NV

NV = No vacancy
IMMED = Immediate vacancy

Functions

Medical Device Panels

The functions of the medical device panels are to: (1) Review and evaluate data on the safety and effectiveness of marketed and investigational devices; (2) advise the Commissioner of Food and Drugs regarding recommended classification of these devices into one of three regulatory categories; (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category; (4) advise on any possible risks to health associated with the use of devices; (5) advise on formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category; (6) review classification of devices to recommend changes in classification as appropriate; (7) recommend exemption to certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act (the act); (8) advise on the necessity to ban a device; and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

Technical Electronic Product Radiation Safety Standards Committee

The function of the Technical Electronic Product Radiation Safety Standards Committee is to provide advice and consultation on technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products. The committee may recommend electronic product radiation safety standards for consideration.

Consumer and Industry Representation

Medical Device Panels

Section 513 of the act, as amended by the Medical Device Amendments of 1976 (21 U.S.C. 360c), provides that each medical device panel include as members one nonvoting representative of consumer interests and one nonvoting representative of interests of the medical device manufacturing industry.

Technical Electronic Product Radiation Safety Standards Committee

Section 534(f) of the act, as amended by the Safe Medical Devices Act of 1990 (21 U.S.C. 360kk(f)), provides that the Technical Electronic Product Radiation Safety Standards Committee include five members from governmental agencies, including State or Federal Governments, five members from the affected industries, and five members from the general public, of which at least one shall be a representative of organized labor.

Nomination Procedures

Consumer Representatives

Any interested person may nominate one or more qualified persons as a member of a particular advisory committee or panel to represent consumer interests as identified in this notice. Self-nominations are also accepted. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or panel or in any advisory committee or panel. The term of office is up to 4 years, depending on the appointment date.

Industry Representative for the Obstetrics and Gynecology Devices Panel

Any organization in the medical device manufacturing industry (industry interests) wishing to participate in the selection of an appropriate member of a particular panel may nominate one or more qualified persons to represent industry interests. Persons who nominate themselves as industrial representatives for the panels will not participate in the selection process. It is, therefore, recommended that all nominations be made by someone with an organization, trade association, or firm who is willing to participate in the selection process.

Nominees shall be full-time employees of firms that manufacture products that would come before the panel, or consulting firms that represent manufacturers. Nominations shall include a complete curriculum vitae of each nominee. The term of office is up to 4 years, depending on the appointment date.

Selection Procedures

Consumer Representatives

Selection of members representing consumer interests is conducted through procedures which include use of a consortium of consumer organizations which has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Industry Representative for the Obstetrics and Gynecology Devices Panel

Regarding nominations for members representing the interests of industry on the Obstetrics and Gynecology Devices Panel, a letter will be sent to each person that has made a nomination, and to those organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that it is the responsibility of each nominator or organization indicating an interest in participating in the selection process to consult with the others in selecting a single member representing industry interests for the panel within 60 days after receipt of the letter. If no individual is selected within 60 days, the agency will select the nonvoting member representing industry interests.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: June 10, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations

[FR Doc. 94–14648 Filed 6–15–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS), has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* New; *Title of Information Collection:* Evaluation of Medicare SELECT Amendments; *Form No.:* HCFA–R–164; *Use:* This is a telephone survey of Medicare beneficiaries in six states, some of whom have purchased Medicare SELECT policies. There is also a mail survey of non-SELECT Medigap insurers in the 15 States where Medicare SELECT policies may be sold; *Frequency:* One time data collection; *Respondents:* Businesses or other for-profit; *Estimated Number of Responses:* 10,288; *Average Hours Per Response:* 15 minutes (telephone interview) 30 minutes (questionnaire); *Total Estimated Burden Hours:* 4035.

2. *Type of Request:* Revision; *Title of Information Collection:* Hospital and Hospital Health Care Complex Cost Report; *Form No.:* HCFA–2552; *Use:* This form is used by Hospital Health Care Complexes to report their Health Care costs to determine amounts reimbursable for the services furnished to Medicare Beneficiaries; *Frequency:* Annually; *Respondents:* Businesses or other for-profit, Nonprofit institutions, Small businesses or organizations; *Estimated Number of Responses:* 380,560; *Average Hours Per Response:* 1 hr; *Total Estimated Burden Hours:* 380,560 (reporting) 4,053,000 (recordkeeping) 4,433,560.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 3001, Washington, DC 20503

Dated: June 10, 1994.

John A. Streb,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 94–14675 Filed 6–15–94; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Institute on Drug Abuse; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the review committees of the National Institute on Drug Abuse for July 1994.

These meetings will be open to the public for approximately one-half hour at the beginning of the first day of the meeting for announcements and reports of administrative, legislative, and program development. Attendance by the public will be limited to space available.

As indicated below in accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, these meetings will be closed to the public for the review, discussion, and evaluation of individual grant applications on the dates indicted below. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443–2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Biobehavioral/Clinical Subcommittee, Drug Abuse AIDS Research Review Committee.

Meeting Date: July 12–13, 1994.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: July 12, 9 a.m. to 9:30 a.m.

Closed: 9:30 a.m., July 12, to adjournment on July 13.

Contact: Mary Custer, Ph.D., room 10–42, Parklawn Building, Telephone (301) 443–2620.

Committee Name: Sociobehavioral Subcommittee, Drug Abuse AIDS Research Review Committee.

Meeting Date: July 12–14, 1994.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: July 12, 9 a.m. to 9:30 a.m.

Closed: 9:30 a.m., July 12, to adjournment on July 14.

Contact: H. Noble Jones, room 10–22, Parklawn Building, Telephone (301) 443–9042.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contract the contact persons named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: June 10, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–14617 Filed 6–15–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Extramural Science Advisory Board, National Institute on Drug Abuse on July 18–19, 1994, from 9 a.m. to 5 p.m. at the Marriott Suites Hotel, 6711 Democracy Blvd., Bethesda, Maryland 20817.

The Extramural Science Advisory Board will discuss NIDA's program areas and extramural programs. This meeting will be open to the public on the dates indicated above; however, attendance by the public will be limited to space available.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institutes of Health, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–2755).

Substantive program information may be obtained from Ms. Jacqueline P. Downing, room 10A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301/443–1056).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

Dated: June 10, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–14618 Filed 6–15–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–94–3791]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 6, 1994.

John T. Murphy,

Director, IRM Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Floodplain Management (FR–865).

Office: Community Planning and Development.

Description of the Need For the Information and Its Proposed Use: 24 CFR part 55 prescribes decisionmaking procedures that applicants and grantees in certain programs must comply with before HUD assistance can be used for projects that may effect floodplains. Records must be kept and maintained by the recipients to document compliance of projects with the Executive Orders.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	3,200		1		.40		1,280

Total Estimated Burden Hours: 1,280.
Status: New.
Contact: Truman Goins, HUD, (202) 708–3947, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 6, 1994.

[FR Doc. 94–14686 Filed 6–15–94; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–94–3792]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 26, 1994.

John T. Murphy,
Director, IRM Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Performance Funding System: Energy Conservation Savings (FR–3387).

Office: Public and Indian Housing.

Description of the Need For the Information and Its Proposed Use: The information collection is needed so that Housing Authorizes may apply for increased operating subsidy payments due to: (1) Sharing of energy rate reductions, (2) non-HUD financing of energy conservation, or (3) units lost through combining of units into larger units. The information is needed to calculate the operating subsidies under the Performance Funding System.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	200		1		Varies		2,615
Recordkeeping	200		1		4		800

Total Estimated Burden Hours: 3,415.
Status: Reinstatement with changes.
Contact: John Comerford, HUD, (202) 708–1872, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 26, 1994.

[FR Doc. 94–14687 Filed 6–15–94; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–94–3790]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments must be received within thirty (30) days from the date of this notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of

an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 2, 1994.

John T. Murphy,

Director, IRM Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Analysis of Proposed Main Construction Contract.

Office: Public and Indian Housing.

Description of the Need For the Information and Its Proposed Use: Form HUD–52396 is a comparison of actual bid cost on a conventionally developed public housing project to the approved pre-bid estimates. The form is prepared by the PHA and submitted to HUD when requesting approval for the award of the construction contract.

Form Number: HUD–52396.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	96		1.15		2		220
Recordkeeping	110		1		.25		28

Total Estimated Burden Hours: 248.

Status: Reinstatement, no changes.

Contact: William C. Thorson, HUD, (202) 708–4703, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 2, 1994.

Proposal: HOME Program Evaluation—Round II Data Collection.

Office: Policy Development and Research.

Description of the Need For the Information and Its Proposed Use: The evaluation will identify the effects of the HOME program's requirements on its implementation, including how the program is being administered and which housing units, households, and neighborhoods are being assisted. This second phase of data collection will involve telephone interviews to state and local participating jurisdictions and to non-profit participants, and will focus on the use of Community-based Housing Development Organizations (CHDOs) in the HOME program.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: One-Time.

Reporting Burden:

	Number of respondents	×	Freuency of response	×	Hours per response	=	Burden hours
Evaluation	530		1		.75		398

Total Estimated Burden Hours: 398.

Status: New.

Contact: Ruth Alahydian, HUD, (202) 708–0574, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: June 2, 1994.

Proposal: Characteristics of Good HUD Multifamily Management Agents.

Office: Inspector General.

Decription of the Need For the Information and Its Proposed Use: HUD seeks to identify measurable or quantifiable characteristics of good multifamily management agents. HUD would use any identified characteristics to approve and monitor agents who manage HUD-insured and HUD held multifamily projects.

Form Number: None.

Respondents: Businesses or Other For-Profit and Small Businesses or Organizations.

Frequency of Submission: One-Time

Reporting Burden:

	Number of respondents	×	Freuency of response	×	Hours per response	=	Burden hours
Information Collection	80		1		.5		40

Total Estimated Burden Hours: 40.

Status: New.

Contact: Robert G. King, HUD, (602) 379–4681, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 27, 1994.

Proposal: Recertification of Family Income and Composition—section 235 (b).

Office: Housing.

Description of the Need For the Information and Its Proposed Use: The forms are submitted by homeowners to mortgagees to determine their continued eligibility for assistance and to determine the amount of assistance a homeowner is to receive. The forms are also used by mortgagees to report statistical and general program data to HUD.

Form Number: HUD–93101 and 93101–A.

Respondents: Individuals or Households and Businesses or Other For-Profit.

Frequency of Submission: On Occasion and Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–93101	50,000		1.25		1		187,500
HUD–93101–A	962		12		.17		1.962

Total Estimated Burden Hours: 189,462.

Status: Extension, no changes.

Contact: Theodore Green, HUD (202) 708–1719, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 27, 1994.

Proposal: Definition of Income, Rents and Recertification of Family Income for the Rent Supplement, section 236 and section 8 Special Allocation Programs.

Office: Housing.

Description of the Need For the Information and Its Proposed Use: The information will be used by the project owners to advise HUD and request approval of new utility allowances when the utility rate change results in a cumulative increase of 10 percent or more. If periodic adjustments to the utility allowance are not made, tenants would be required to pay a larger total tenant payment than is permissible.

Form Number: None.

Respondents: State or Local Governments, Businesses or Other For—Profit, and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Periodic requests	1,200		1		0.5		500

Total Estimated Burden Hours: 600.

Status: Extension, no changes.

Contact: James J. Tahash, HUD, (202) 708–3944, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 26, 1994.

Proposal: Community Development Block Grants: State's Program.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: Section 104 (A) and (D) of the Housing Community Development Act of 1974, as amended, requires states to submit to HUD a final statement and a performance and evaluation report annually concerning the use of funds made available under Section 106 of the Act for HUD to determine statutory compliance.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Report	49		2		308		30,184
Recordkeeping	49		1		6,120		299,880

Total Estimated Burden Hours: 330,064.

Status: Revision.

Contact: Richard J. Kennedy, HUD, (202) 708–1322, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 23, 1994.

Proposal: Preservation—Sales and Resident Homeownership.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The form will assist grant recipients in receiving grant funds through the Department's automated Line of Credit System. The form will also assist HUD in reviewing and verifying payment of grant funds.

Form Number: HUD–9739.

Respondents: Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–9739	25		5		.25		31

Total Estimated Burden Hours: 31.

Status: New.

Contact: Arlene Halfon, HUD, (202) 708–1142, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 23, 1994.

Proposal: Previous Participation Certificate Joint HUD and USDA-Farmer's Home Administration Forms.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The information collected will be used to evaluate the feasibility of applications for multifamily projects with respect to previous track and experience records of the applicants as owners, managers, consultants, general contractors, and nursing home operators and administrators.

Form Number: HUD–2503 and USDA Farmer's Home 1944–37.

Respondents: Individuals or Households and Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	11,250		1		0.6197		6.972

Total Estimated Burden Hours: 6.972.
Status: Extension with changes.
Contact: Thomas H. Hitchcock, HUD, (202) 708–3776, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 23, 1994.

Proposal: Transmittal of Form HUD–50058.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The form HUD–50060 allows the Department to establish appropriate management control procedures to assure complete and accurate reporting of information contained on form HUD–50058 submittals.

Form Number: HUD–50060.

Respondents: State or Local Governments.

Frequency of Submission: Monthly and Quarterly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–50060	4,500		8.3		.05		1,867

Total Estimated Burden Hours: 1,867.
Status: Reinstatement, no changes.
Contact: Earl Simons, HUD, (202) 708–0744, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 23, 1994.

[FR Doc. 94–14685 Filed 6–15–94; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–4230–05–P; AA–6677–A]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Koniag, Inc., Regional Native Corporation for 140.00 acres. The lands involved are in the vicinity of Larsen Bay, Alaska.

U.S. Survey No. 9458, Alaska

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 18, 1994, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,
Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 94–14668 Filed 6–15–94; 8:45 am]
BILLING CODE 4310–JA–P

[AZ–020–04–7122–02–5491]

Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Department of Interior, Bureau of Land Management.

ACTION: Notice of Intent to prepare an environmental impact statement; Cyprus Bagdad Copper Mine, Bagdad, Arizona.

SUMMARY: The Bureau of Land Management, Phoenix District Office, is preparing an Environmental Impact Statement for the construction of a tailings facility expansion and south waste rock disposal facility for the existing open pit copper mine at Cyprus Bagdad. The mine is located near the Town of Bagdad, in Yavapai County, Arizona. Cyprus Bagdad Copper Corporation has submitted a proposed Mine Plan of Operations to the Bureau of Land Management, as required under the Code of Federal Regulations and title V of the Federal Land and Policy Management Act (FLPMA) of 1976. The Bureau of Land Management has responsibility for analysis, review, and approval of the mining plan. Preparation of the Environmental Impact Statement will follow the Code of Federal Regulations, title 40, subpart 1500.

The mine plan proposes the expansion of the existing Mammoth tailings impoundment, the development of the Upper Mammoth tailings impoundment, and the expansion of the south waste rock disposal facility to continue mineral and mining operations at Cyprus Bagdad. The public is invited to participate in the NEPA process beginning with scoping and the identification of issues in July 1994.

DATES: Public Scoping Meetings to identify issues will be held as follows:

Tuesday, July 12 (7–9 p.m.)
Holiday Inn
3100 Andy Devine
Meeting room C
Kingman, AZ

Wednesday, July 13 (7–9 p.m.)
Yavapai College
1100 E. Sheldon St.
Bldg. 3, room 133
Prescott, AZ

Written comments relating to the identification of issues will be accepted until August 13, 1994.

ADDRESSES: Send comments to: Bureau of Land Management, Phoenix District Office, Attn: Mary Johnson, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

FOR FURTHER INFORMATION CONTACT: Mary Johnson, Project Manager, Bureau of Land Management, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027 (Phone: (602) 780–8090).

SUPPLEMENTARY INFORMATION: Cyprus Bagdad Copper Mine is located near the Town of Bagdad, about 60 miles northwest of Wickenburg on State Highway 96. The existing mine is an open pit copper mine with flotation mill

tailings, low grade dump leaching, and a solvent extraction-electro winning plant.

Two tailings facilities currently contain mill wastes. The current tailings facilities are nearing capacity and will need to be closed and expanded in two years.

The expansion of the Mammoth tailings would disturb approximately 410 additional acres. The Upper Mammoth tailings impoundment would disturb approximately 1,440 acres. The south waste rock disposal area would be located in Bevering Gulch and its tributaries, and the south fork of Mineral Creek, and disturb approximately 660 acres. Planned activities would take place on a combination of lands including public and private surface and mineral lands. The proposed action involves a total of approximately 305 acres of federal surface overlying federal minerals lands, and 705 acres of state surface overlying federal minerals lands.

Potential issues include surface and groundwater quality, air quality, cultural resources, biological resources, visual resources, and mine reclamation.

The Environmental Impact Statement (EIS) will be developed by a third party contractor who has been approved by the Bureau of Land Management. The contractor will use an interdisciplinary team to develop the document. The Bureau of Land Management will have the responsibility for the review of the EIS.

Complete records of all phases of the environmental documentation process will be available for public review at the Bureau of Land Management, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027, and at the Bureau of Land Management, Kingman Resource Area, 2475 Beverly Ave., Kingman, Arizona 86401.

Dated: June 9, 1994.

David J. Miller,

Acting District Manager.

[FR Doc. 94–14626 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–32–M

[AZ–040–4350–01]

Availability of An Environmental Assessment for the Land Tenure Amendment to the Safford District Resource Management Plan, Safford District, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of environmental assessment.

SUMMARY: The Safford District, United States Department of Interior, Bureau of Land Management has prepared an Environmental Assessment of a proposed amendment to the Safford District Resource Management Plan. The amendment proposes the following changes: 1. Modify the land tenure decisions for public lands within the District made in the Safford District Resource Management Plan. Specifically this amendment will identify additional lands for potential disposal, lands for retention, lands desired for acquisition and delete some lands previously identified for acquisition. 2. Incorporate and/or modify decisions in the Phoenix District Resource Management Plan, pertaining to lands transferred to Safford District, into the Safford District Resource Management Plan. 3. Include land tenure decisions for lands in the proposed Cienega Creek Long Term Management Area. 4. Consolidate and update decisions made in the Safford and Phoenix District RMPs concerning right-of-ways, access, communication sites, utility corridors, public land withdrawals, and hazardous materials.

DATES: Comments on the environmental assessment will be accepted until July 18, 1994.

ADDRESSES: 711 14th Avenue, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Mike McQueen, Planning and Environmental Coordinator, Safford District Office, 711 14th Avenue, Safford, Arizona 85546. Telephone (602) 428–4040.

SUPPLEMENTARY INFORMATION: The need for this amendment to the Safford District Resource Management Plan is generated by the creation of a third resource area, changes in District boundaries, adjustment of resource area boundaries, designation of wilderness areas, consideration of rivers and streams for Wild and Scenic designation and tentative proposals by the private sector to acquire or exchange lands within the District.

Dated: June 8, 1994.

Melanie J. Rohrer,

Acting District Manager.

[FR Doc. 94–14654 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–32–M

[WY–920–41–5700; WYW113114]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

June 9, 1994.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW113114 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of the **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW113114 effective October 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 94–14655 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–22–M

[CA–010–4212–14, CACA 34312]

Realty Action; Direct Sale of Public Land, Placer County, CA

SUMMARY: The following described public land is being considered for direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

Placer County, California

T. 14N., R. 10E, M.D.M.,
Sec. 23: all Federal land (includes lots 16, 17, and 18);
Sec 34: lot 4 and all Federal land in N½N½.

Comprising 49-acres, more or less.

The above tracts are a irregularly-shaped remnants of public land that lack public access and are difficult to manage in Federal ownership; they are surrounded entirely by private land and would be sold to adjacent landowner Donald Ryan *et al* at fair market value. An additional $50.00 non-returnable mineral conveyance processing fee is required.

The tract would be transferred subject to a reservation to the United States for a right-of-way for ditches and canals. Also any rights-of-way of record would be identified as prior existing rights. All necessary clearances including clearances for archeology and for rare plants and animals would be completed prior to any conveyance of title by the United States. The proposal is consistent with the Bureau's land use

plans that support the disposal of small difficult to manage tracts.

The above described land is hereby segregated from settlement, location and entry under the public land laws and the mining laws for a period of 270 days from the date of publication of this notice in the Federal Register.

ADDRESSES: Interested parties may submit comments to the District Manager, c/o Folsom Resource Area Manager, 63 Natoma Street, Folsom, California 95630; comments must be received within 45 days from publication of this notice in the Federal Register.

FOR ADDITIONAL INFORMATION: Contact Mike Kelley at the above address or by phone at (916) 985–4474.

D.K. Swickard,

Area Manager.

[FR Doc. 94–14656 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–03–4210–05; N–53092]

Notice of Realty Action, Direct Sale of Public Land, Pershing County, NV

SUMMARY: The following described land has been found suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719), at not less than fair market value:

Mount Diablo Meridian, Nevada

T. 28 N., R. 38 E.,
Sec. 1, S½S½NE¼, N½S½SE¼, SE¼SE¼NW¼, NE¼NE¼SW¼.
T. 28 N., R. 39 E.,
Sec. 5, Lot 4;
Sec. 6, Lots 8, 13, and 14, S½NW¼NE¼, S½NW¼NE¼.
T. 29 N., R. 39 E.,
Sec. 32, S½SW¼SW¼, S½NW¼SW¼, NE¼SW¼SW¼.

Containing approximately 319.86 acres.

The lands are not required for Federal purposes. Disposal is consistent with the Bureau's planning for this area and would be in the public's interest. This land is being offered by direct sale to Mr. Robert Vesco. It has been determined that the subject parcel contains no known mineral values, except geothermal steam and related geothermal resources and oil and gas. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests having no known value. The applicant will be required to pay a $50.00 non-refundable filing fee for conveyance of the said mineral interests.

The land will not be offered for sale until at least 60 days after publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ken Detweiler, Realty Specialist, 705 East 4th Street, Winnemucca, NV 89445, telephone (702) 623–1500.

SUPPLEMENTARY INFORMATION: The public lands are being offered to Mr. Robert Vesco for agricultural purposes. Part of the subject lands are adjoining Mr. Vesco's private land and the subject lands are contiguous. The soils have been determined to be suitable for agricultural purposes. Mr. Vesco has applied to the State Water Engineer for excess surface water to irrigate the subject parcels.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes, for 270 days from the date of publication of this notice, or until title transfer is completed or the segregation is terminated by publication in the Federal Register, whichever occurs first.

A patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).
2. The geothermal steam, oil and gas in the land so patented.

And will be subject to:

Those rights for highway purposes granted to Pershing County for Crass Valley Road, N–53032, under the authority of Revised Statute 2477 (43 U.S.C. 932). For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Winnemucca District Office, Bureau of Land Management, 705 East 4th Street, Winnemucca, NV 89445. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: June 7, 1994.

Robert J. Neary,

Acting District Manager.

[FR Doc. 94–14657 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–HC–M

[OR 50847; OR–080–04–4210–04; G4–190]

Reality Action; Proposed Exchange; Oregon

June 7, 1994

United States Department of the Interior, Bureau of Land Management, Salem District Office, Santiam Resource Area, 1717 Fabry Road SE, Salem, Oregon 97306.

Notice is hereby given that the Bureau of Land Management is considering a proposal to exchange lands pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended. The exchange has been proposed by Seneca Jones Timber Company, P.O. Box 10265, Eugene, OR 97440.

The following-described public lands are being considered for transfer out of Federal ownership (the "Selected Land"):

Tsp.	Rng	Sec	Subdivision	Acres
12 S.	3 E	23	SE¼SW¼, SW¼SE¼	80.00
12 S.	3 E	27	N½NW¼SE¼, SW¼NW¼SE¼	30.00

In exchange, the United States would acquire the following-described lands from Seneca Jones Timber Company (the "Offered Land"):

Tsp.	Rng.	Sec.	Subdivision	Acres
12 S.	3 E.	33	N½NE¼;	80.00
12 S.	3 E.	34	NW¼ (portion);	50.00

Subject to valid existing rights, the above-described public lands have been segregated from appropriation under the public land laws and mineral laws for a period of five years beginning June 2, 1994.

More detailed information concerning the proposed exchange may be obtained from John Radosta, Realty Specialist,

Bureau of Land Management, Salem District Office, 1717 Fabry Road SE., Salem, OR (telephone: (503) 375–5664)

Interested parties may submit comments concerning the proposed exchange to the Santiam Area Manager at the above address. In order to be considered in the environmental assessment of the proposal, comments must be in writing to the Area Manager and be postmarked or delivered by July 29, 1994.

Paul Jeske,

Santiam Area Manager

[FR Doc. 94–14610 Filed 6–15–94, 8:45 am]

BILLING CODE 4310–33–M

[OR–943–4210–05; GP4–188; OR–50354 (WASH)]

Withdrawal of Application for the Conveyance of Federally-Owned Mineral Interests; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the voluntary withdrawal of an application filed for the conveyance of the Federally-owned mineral estate by the surface estate owner and terminates the segregative effect as to the mineral interests from appropriation under the public land laws including the mining laws. The application was published in the **Federal Register** on February 25, 1994 (59 FR 9237).

EFFECTIVE DATE: July 22, 1994.

FOR FURTHER INFORMATION CONTACT: Pamela Chappel, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7170.

SUPPLEMENTARY INFORMATION: Notice is hereby given that Willene E. Minnier, surface owner, Kettle Falls, Washington, has voluntarily withdrawn her application to purchase the Federally-owned mineral estate in the land described below:

Willamette Meridian

T. 33 N., R. 38 E.,
Sec. 7, lots 14–16.

The areas described aggregate 32.10 acres in Stevens County, Washington.

At 8:30 a.m., on July 22, 1994, the mineral interests described above will be open to appropriation under the public land laws including the mining laws.

Dated: June 7, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–14659 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–33–P

[CA–065–94–4333–04]

Rand Mountains—Fremont Valley Management Plan and Environmental Assessment in the California Desert District—Ridgecrest Resource Area Kern County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the final approval, availability and implementation of the Rand Mountains—Fremont Valley Management Plan in eastern Kern County, California.

SUMMARY: Notice is hereby given that the Rand Mountains—Fremont Valley Management Plan has been approved by the Bureau of Land Management (BLM), California Department of Fish and Game (CDFG) and U.S. Fish and Wildlife Service (USFWS). This plan covers a 65,020 acre area in eastern Kern County which is important habitat for the federally listed threatened desert tortoise. This plan was necessitated by the requirements of the Endangered Species Act (EPA) to protect a threatened species in an area subject to conflicting uses.

The plan has 88 major management decisions which put restrictions on all uses in the area for the purpose of protecting the native desert tortoise population, its habitat and the area's ecosystem. These plan use restrictions include restricting off-highway vehicle (OHV) use to a maximum of 129 miles of designated vehicular routes, restricting overnight camping to designated campsites, prohibiting all competitive OHV events and restricting use of firearms except for the lawful taking of upland game birds within an area identified for such use. The existing West Rand ACEC area will be expanded by 13,120 acres and changed from a Moderate to a Limited Multiple-Use Class under the California Desert Plan. A total of 32,590 acres of the plan area will be withdrawn from mineral entry. The plan designates 44,800 acres as category 1 desert tortoise habitat. USFWS consultations will be required pursuant to section 7 of the ESA when processing any new project proposals allowed under the plan which could impact the desert tortoise.

This plan covers all public lands in the Rand Mountains-Fremont Valley Management Area which is generally bounded by the community of Randsburg, CA and U.S. Highway 395 on the east, the Garlock and Randsburg-Red Rock Roads on the north, the western edge of Koehn Dry Lake and the Desert Tortoise Natural Area on the west, and private lands encompassed by the incorporated city limites of California City, CA on the south.

ORDER: Notice is hereby given that effective July 18, 1994, the following use restrictions will be in effect on public lands in the Rand Mountains-Fremont Valley Management Area.

1. No person may use, drive or otherwise operate a motorized vehicle except on those designated routes of travel that are identified by open route signs.

2. No person may discharge a firearm at any time except shotguns and then only from September 1 through January 31st for the lawful taking of upland game birds in the upland and mountains portion of the area as identified in the plan.

3. Camping is prohibited except in the eastern portion of the management area at sites identified in the plan.

Exemptions to this order include any otherwise authorized activity or as approved by the California Desert District Manager or the Ridgecrest Area Manager. Maps identifying the plan area, plan use restrictions, and the network of designated vehicular routes of travel are available from the Ridgecrest Resource Area office.

Authority for these plan restrictions is found in 43 CFR 8364.1. Violation of these restrictions is punishable by a fine not to exceed $1,000 and/or 12 months in jail.

SUPPLEMENTARY INFORMATION: The purpose of this plan and use restrictions is to provide increased protection for the desert tortoise populations and its habitat in an important part of its range. The desert tortoise was listed as a threatened species under the ESA in 1989 and is afforded increased protection under terms of the Act and this plan. During the interim while this plan was developed, the Bureau initiated a 14 month temporary closure for the plan area and then reopened the area on November 22, 1990 to restricted use pending approval of the final plan. Since November 22, 1990, Bureau personnel along with a large group of California Off-Road Vehicle Association volunteers have worked to implement the plan decisions on an interim basis as approved through a consultation with the USFWS and January 23, 1991 **Federal Register** notice. This interim FR notice will expire upon publication of this FR notice.

A formal section 7 consultation on this plan was conducted with the USFWS and a non-jeopardy biological opinion was issued on March 10, 1993. This opinion provided additional terms and Conditions which were incorporated into the plan. The opinion

determined that this plan would result in management actions that would greatly reduce the existing magnitude of adverse impacts to the desert tortoise and its habitat.

A 10 member volunteer Technical Review Team (TRT) was instrumental in the development of this plan. Team members represented all primary interest groups, the CDFG and California City. They met regularly for three years to evaluate available data and made management recommendations for the plan. The TRT is continuing to assist in reviewing procedures for implementing the plan decisions and evaluating the plan effectiveness in protecting the plan areas desert tortoise populations.

EFFECTIVE DATE: The decision is effective July 18, 1994. This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained 43 CFR, part 4. If an appeal is taken, your notice must be filed at the Ridgecreat Resource Area office (address below) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision they have appealed is in error.

FOR FURTHER INFORMATION: Copied of the final Rand Mountains-Fremont Valley Management Plan and Environmental Assessment are available from the Bureau of Land Management, Ridgecrest Resource Area, 300 South Richmond Road, Ridgecrest, CA 93555, 619–375–7125. Specific questions concerning this plan should be directed to Staff Chief Steve Smith.

Dated: June 2, 1994.

Henri R. Bisson,

District Manager.

[FR Doc. 94–14611 Filed 6–15–94, 8:45 am]

BILLING CODE 4310–40–M

[CA–940–4210–10; CACA 8046, CALA 0170921, CALA 0165034, CAS 048741, CAS 063413, CAS 070413, CAS 080047]

Notice of Proposed Continuation of Withdrawal; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has proposed to continue withdrawals on 4679.48 acres for 20 years and 3400.00 acres for 50 years within the Sierra National Forest. The segregative effect on these withdrawals remains unchanged.

DATES: Comments should be received on or before September 14, 1994.

ADDRESSES: Comments should be sent to the California State Director, BLM, 2800 Cottage Way, Room E–2845, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, BLM California State Office, 916–978–4820.

SUPPLEMENTARY INFORMATION:

1. CACA 8046

The land is described as follows:

Mount Diablo Meridian, T. 6 S., R. 24 E., sec. 28, SW¼NW¼SW¼, NW¼SW¼SW¼; sec. 29, SE¼NE¼SE¼, NE¼SE¼SE¼.

The area described contains 40 acres in Madera County.

The purpose of this withdrawal is to protect the Placer Administrative Site.

2. CALA 0170921

The land is described as follows:

Mount Diablo Meridian, T. 11 S., R. 27 E., sec. 35, S½SE¼SE¼, sec. 36, SW¼. T. 12 S., R. 27 E., sec. 1, lots 3 and 4, N½SE¼NW¼; sec. 2, lot 1.

The area described contains 345.42 acres in Fresno County.

Mount Diablo Meridian, T. 23 S., R. 33 E., sec. 7, lot 4, SE¼SW¼.

The area described contains 80.85 acres in Tulare County.

The purpose of the withdrawal is to protect Kings Cavern Geologic Area.

3. CALA 0165034

The land is described as follows:

Mount Diablo Meridian, T. 11 S., R. 27 E., sec. 15, SW¼; sec. 16, S½NE¼, W½, SE¼; sec. 17, ALL; sec. 20, E½, E½W½, W½NW¼; sec. 21, ALL; sec. 22, W½; sec. 27, N½NW¼; sec. 28, N½N½; sec. 29, N½NE¼.

The area described contains 3200.00 acres in Fresno County.

The purpose of this withdrawal is to protect the Teakettle Experimental Forest.

4. CAS 048741

The land is described as follows:

Mount Diablo Meridian, T. 6 S., R. 22 E., sec. 4, W½SW¼; sec. 5, lots 3 and 4, S½NW¼, S½; sec. 6, lots 1,2, E½ lot 3, S½NE¼, E½SE¼NW¼, E½E½SW¼, SE¼; sec. 7, SE¼NE¼; sec. 8, N½SW¼.

The area described contains 1384.56 acres in Madera County.

Mount Diablo Meridian, T. 8 S., R. 25 E., sec. 12, N½N½. sec. 16, N½SE¼, N½NW¼SW¼SE¼, SW¼NW¼SW¼SE¼, SE¼SW¼SW¼SE¼, S½SE¼SW¼SE¼, E½SE¼SE¼, E½W½SE¼SE¼, SW¼SW¼SE¼SE¼. T. 8 S., R. 26 E., sec. 5, SW¼; sec. 6, lots 6 and 7, E½SW¼, SE¼; sec. 17, ALL; sec. 18, lots 1 to 4 inclusive, E½, E½W½; sec. 19, lots 1 and 2, NE¼, E½NW¼; sec.20, N½

The area described contains 2,693.65 acres in Fresno County.

The purpose of the withdrawal is to protect campgrounds, mature Giant Sequoia trees, and assorted recreational facilitites.

5. CAS 063413

The land is described as follows:

Mount Diablo Meridian, T. 10 S., R. 26 E., sec. 26, SW¼SE¼; sec. 35, NW¼NE¼, NE¼NW¼, NE¼SW¼, NW¼SE¼.

The area described contains 200.00 acres in Fresno County.

The purpose of the withdrawal is to protect the McKinley Big Tree Grove Recreation Area.

6. CAS 070413

The land is described as follows:

Mount Diablo Meridian, T. 10 S., R. 25 E., sec. 21, SE¼SE¼SE¼; sec. 22, SW¼SW¼SW¼; sec. 27, NW¼NW¼NW¼; sec. 28, NE¼NE¼NE¼.

The area described contains 40.00 acres in Fresno County.

7. CAS 080047

The land is described as follows:

Mount Diablo Meridian, T. 5 S., R. 24 E., sec. 10, SE¼SW¼NE¼, SW¼SE¼NE¼, NW¼NE¼SE¼, NE¼NW¼SE¼.

The area described contains 40.00 acres in Madera County.

Mount Diablo Meridian, T. 38 N., R. 12 W., sec. 9, SE¼NE¼, NE¼NE¼SE¼, N½NW¼NE¼SE¼.

The area described contains 55.00 acres in Siskiyou County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed continuation of withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 94–14612 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–40–P

[MT–930–4210–06–P; MTM 924, MTM 27963, MTM 83069]

Proposed Withdrawal; Opportunity for Public Meeting; Extended Comment Period for Previously Proposed Withdrawals; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 1,800.10 acres of National Forest System lands for 20 years to protect the Cave Mountain Research Natural Area (RNA). This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands. This notice also provides an additional 60 days in which to comment on previously filed withdrawal applications for Cottonwood Creek RNA, Trapper Creek Charcoal Kilns, and Canyon Creek Charcoal Kilns.

DATES: Comments and requests for a public meeting relating to the Cave Mountain RNA should be received on or before September 14, 1994. Comments and requests for a public meeting relating to Cottonwood Creek RNA, Trapper Creek Charcoal Kilns, and Canyon Creek Charcoal Kilns should be received on or before August 15, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, 406–255–2949.

SUPPLEMENTARY INFORMATION:

1. On May 27, 1994, the Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2), subject to valid existing rights:

Principal Meridian, Montana

Beaverhead National Forest—Cave Mountain RNA

T. 10 S., R. 1 W.,
Sec. 31, lots 3 and 4, E½ and S½SW¼;
Sec. 32, NE¼, W½, NE¼SE¼, and W½SE¼.
T. 11 S., R. 1 W.,
Sec. 5, W½NE¼ and NW¼;
Sec. 6, N½ and N½S½.

The areas described aggregate 1,800.10 acres in Madison County.

The purpose of this withdrawal is to protect a study plot for vegetative research.

2. The comment periods are being extended for an additional 60 days for three previously filed Department of Agriculture withdrawal applications for the public lands described in the Notices of Proposed Withdrawal published December 1, 1966, in 31 FR 15098, and April 10, 1974, in 39 FR 13902.

3. For a period of 90 days from the date of publication of this notice for lands described in paragraph 1 and 60 days from the date of publication of this notice for lands described in paragraph 2, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal in may present their views in writing to the Montana State Director of the Bureau of Land Management.

4. Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawals. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director within 90 days from the date of publication of this notice for lands described in paragraph 1 and 60 days from the date of publication of this notice for lands described in paragraph 2. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

5. The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

6. For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands described in paragraph 1 will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are those currently allowed on the existing study plot.

Dated: June 7, 1994

Dee L. Baxter,

Chief, Lands Adjudication Section.

[FR Doc. 94–14658 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–706 (Preliminary)]

Canned Pineapple Fruit From Thailand; Import Investigations

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–706 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. section 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Thailand of canned pineapple fruit,[1] provided for in subheading 2008.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 25, 1994.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 8, 1994.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

[1] For purposes of this investigation, canned pineapple fruit is defined as pineapple, otherwise prepared or preserved, that is cored and sliced into one of several product forms, including rings, pieces, chunks, tidbits, and crushed, and is packed into metal cans; either pineapple juice or sugar (heavy) syrup is added.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on June 8, 1994, by Maui Pineapple Company, Ltd.; Kahului, Hawaii.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under An Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 29, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brad Hudgens (202–205–3189) not later than June 27, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 5, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII, the Tariff Act of 1930, as amended. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 13, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–14700 Filed 6–15–94; 8:45 am]

BILLING CODE 7020–02–P

[332–355]

North American Free-Trade Agreement: Probable Economic Effect on U.S. Industries and Consumers of Accelerated Elimination of U.S. Tariffs on Certain Articles From Mexico and Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt on May 26, 1994, of a request from the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332–355 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to advise the President, with respect to each dutiable article listed in Annex I of the USTR's notice published in the **Federal Register** of May 23, 1994 (59 FR 26686), as further identified in the supplemental document prepared by USTR, of its judgment as to the probable economic effect of the immediate elimination of the U.S. tariff, under the North American Free-Trade Agreement (NAFTA), on domestic industries producing like or directly competitive articles, and on consumers.

USTR asked that the Commission provide its advice not later than 90 days after the Commission received the request, or in this case by August 24, 1994. USTR has indicated that it may classify all or part of the Commission's report.

EFFECTIVE DATE: June 10, 1994.

FOR FURTHER INFORMATION CONTACT: The project leader, Mr. Carl Seastrum (202–205–3493), Minerals, Metals, and Miscellaneous Manufactures Division, Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel (202–205–3091). The media should contact Ms. Peg O'Laughlin, Director of Public Affairs (202–205–1819). For information on a product basis, contact the appropriate member of the Commission's Office of Industries, as follows:

(1) Agricultural and forest products, Mr. Rick Rhodes (202–205–3322)
(2) Chemical, energy-related, textile, apparel, and footwear products, Mr. Lee Cook (202–205–3471)
(3) Machinery and transportation, Ms. Kathy Lahey (202–205–3409)
(4) Minerals, metals, and miscellaneous manufactures, Ms. Gail Burns (202–205–2501)
(5) Electronic products, Mr. Andrew Malison (202–205–3391)

Hearing-impaired persons can obtain information on this study by contacting our TDD terminal on (202–205–1810).

Background: The USTR stated in his letter that the Governments of the United States, Mexico, and Canada have agreed to enter into consultations to consider acceleration of the elimination of the import duty on certain articles. The USTR further stated that the President is authorized by section 201(b) of the North American Free Trade Agreement Implementation Act of 1993, subject to the consultation and lay-over requirements of section 103 of the Act, to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States, Mexico, and Canada under Article 302(3) of the NAFTA. One of the requirements set out in section 103 is that the President obtain advice regarding the proposed action from the United States International Trade Commission.

Public Hearing: A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington,

DC, beginning at 9:30 a.m. on July 27, 1994, and continuing, as required, on July 28. All persons will have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear not later than July 15, 1994. Prehearing briefs (original and 14 copies) should also be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, not later than 5 p.m., July 18, 1994. Any post-hearing briefs must be filed by August 2, 1994.

Written Submissions: Interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on August 2, 1994. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Issued: June 13, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–14701 Filed 6–15–94, 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-No. 360X)]

Burlington Northern Railroad Company—Abandonment Exemption—in Buffalo County, NE

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Burlington Northern Railroad Company of 3.86 miles of rail line extending between milepost 20.53 and milepost 24.39 near Kearney in Buffalo County, NE, subject to standard labor protective conditions and a public use condition. Interim trail use has been approved.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 16, 1994. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 24, 1994; petitions to stay must be filed by July 1, 1994; and petitions to reopen must be filed by July 11, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB–6 (Sub-No. 360X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Forth Worth, TX 76102–5384.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: June 10, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 94–14793 Filed 6–15–94; 8:45 am]

BILLING CODE 7035–01–P

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Notice of Consent Judgment Pursuant to the Clean Air Act

In accordance with Departmental Policy, 28 CFR § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *179 South Street Venture, et al.*, (D. N.J.), Civil Action No. 90–4310 (JWB), was lodged with the United States District Court for the District of New Jersey on May 25, 1994. The proposed consent decree requires the Defendants to pay a civil penalty of $74,000 jointly for violations of the Clean Air Act, 42 U.S.C. section 7401 *et seq.* (the "Act") (as amended 1977), and the National Emission Standards for Hazardous Air Pollutants for Asbestos ("Asbestos NESHAP"), 40 CFR part 61, subpart M during the removal of asbestos from pipes and a boiler in an apartment complex in East Orange, N.J. The proposed Consent Decree also provides for the following injunctive requirements: Prior to any future demolition or renovation of facilities owned or operated by Defendants, Defendants must (1) survey any facility to determine the presence of regulated asbestos containing materials ("RACM"); (2) notify EPA of any RACM, (3) establish an internal program to assure compliance with asbestos NESHAP and designate an asbestos control officer for the project; and (4) all contractors and employees who participate in demolition or renovation involving RACM must successfully complete an EPA approved course.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to United States v. 179 South Street Venture, *et al.*, D.O.J. Ref. No. 90–5–2–1–1494.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Jersey Federal Building, room 502, 970 Broad Street, Newark, New Jersey 07102 (c/o Susan Handler-Menahem); at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, room No. 437, New York, New York 10278; and at the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $4.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division

[FR Doc. 94–14660 Filed 6–15–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Consent Decree in Action Brought Under the Clean Air Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a consent decree in *United States* v. *Lafarge, et al.*, Civil Action No.

4–94CV–356Y, was lodged with the United States District Court for the Northern District of Texas on May 25, 1994. This Consent Decree resolves a Complaint filed by the United States against Lafarge pursuant to section 113 of the Clean Air Act, 42 U.S.C. section 7413.

The United States Department of Justice brought this action on behalf of the U.S. Environmental Protection Agency, seeking to recover a civil penalty against defendant Lafarge for alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for asbestos ("the asbestos NESHAP") during the 1989 demolition of a mill building at Lafarge's Fort Worth cement manufacturing and distribution facility. As part of the settlement in this case, defendant Lafarge will pay the United States a civil penalty of $10,000 and will conduct future demolition and renovation operations in compliance with the inspection, notification, and work practice requirements of the asbestos NESHAP.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to United States v. Lafarge *et al.*, DOJ number 90–5–2–1–1865.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Texas, 801 Cherry Street, suite 1700, Forth Worth, Texas 76102–3697, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region VI, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the proposed Consent Decree may also be obtained from the Consent Decree Library, 1120 G Street, NW., Fourth floor, Washington DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the Consent Decree, please enclose a check in the amount of $2.50 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–14661 Filed 6–15–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Application Correction—the PF Laboratories, Inc.

In the **Federal Register** (FR Doc. 94–10678) Vol. 59, No. 85 at page 23083, May 4, 1994, the statement after the listing of controlled substances should read, "The firm plans to manufacture the listed bulk substances for its own production of commercial controlled drug products and for other manufacturers," for the PF Laboratories, Inc., 700 Union Blvd., Totowa, New Jersey 07512.

Dated: June 6, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–14673 Filed 6–15–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,394]

Martin Marietta Projection Display Products, Syracuse, NY; Notice of Affirmative Determination Regarding Application for Reconsideration

On May 25, 1994, after being granted a filing extension, the company requested administrative reconsideration of the Department's denial notice for workers at the subject firm. The notice was issued on March 30, 1994 and was published in the **Federal Register** on April 13, 1994 (59 FR 17570).

The company indicated that the Department's original survey was inadequate and submitted a supplemental list of bid loss customers accounting for a major portion of its 1993 sales decline.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 8th day of June 1994.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–14695 Filed 6–15–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,842]

Thomas Cort, Inc., Philadelphia, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 13, 1993, applicable to all workers of the subject firm. The certification notice was published in the **Federal Register** on October 29, 1993 (58 FR 58187).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. A few workers were laid off prior to the Department's impact date of June 24, 1993. The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending the certification with a new impact date of January 1, 1993.

The amended notice applicable to TA–W–28,842 is hereby issued as follows:

All workers of Thomas Cort, Inc., Philadelphia, Pennsylvania engaged in the production of women's leather footwear who became totally or partially separated from employment on or after January 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 3rd day of June 1994.

Violet L. Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–14696 Filed 6–19–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL LABOR RELATIONS BOARD

National Labor Relations Board Advisory Committee on Agency Procedure; Meetings

AGENCY: National Labor Relations Board.

ACTION: Notice of meetings.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2 (1972), and 29 CFR § 102.136 (1993), the National Labor Relations Board has established a National Labor Relations Board Advisory Committee on Agency Procedure, the purpose of which is to provide input and advice to the Board and General Counsel on changes in Agency procedures that will expedite

case processing and improve Agency service to the public. A notice of the establishment of the Advisory Committee was published in the **Federal Register** on May 13, 1994 (59 FR 25128).

As indicated in that notice, the Committee consists of two Panels which will meet separately, one composed of Union-side representatives and the other of Management-side representatives. Pursuant to section 10(a) of FACA, the Agency hereby announces the first meetings of the Advisory Committee Panels on June 27, 1994 (Union-side), and June 29, 1994 (Management-side).

TIME AND PLACE: The meeting of the Union-side Panel of the Advisory Committee will be held at 10 a.m. on Monday, June 27, 1994, at the National Labor Relations Board, 1099 14th Street, NW., Washington, DC, in the Board Hearing Room, room 11000. The meeting of the Management-side Panel of the Advisory Committee will be held at 10 a.m. on June 29, 1994, at the same location.

AGENDA: The agenda at the meetings of both Advisory Committee Panels will be: (1) How the performance of the NLRB Administrative Law Judges can be enhanced; and (2) the issue of postal or mail ballots in NLRB elections.

PUBLIC PARTICIPATION: The meetings will be open to the public. As indicated in the Agency's prior notice, within 30 days of adjournment of the later of the Advisory Committee Panel meetings, any member of the public may present written comments to the Committee on matters considered during the meetings. Written comments should be submitted to the Committee's Management Officer and Designated Federal Official, Miguel A. Gonzalez, Executive Assistant to the Chairman, National Labor Relations Board, 1099 14th Street, NW., suite 11104, Washington, DC 20570–0001; telephone: (202) 273–2864.

FOR FURTHER INFORMATION CONTACT: Advisory Committee Management Officer and Designated Federal Official, Miguel A. Gonzalez, Executive Assistant to the Chairman, National Labor Relations Board, 1099 14th Street, NW., suite 11104, Washington, DC 20570–0001; telephone: (202) 273–2864.

Dated: June 10, 1994.

By direction of the Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 94–14672 Filed 6–15–94; 8:45 am]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (#1205).

Date and Time: July 7 & 8 1994; 8:30 a.m. to 5 p.m.

Place: NSF, rm. 530, 4201 Wilson Blvd., Arlington, VA 22230.

Contact: Dr. Oscar W. Dillon/Dr. William A. Spitzig, Program Directors, (703) 306–1361.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 13, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–14639 filed 5–15–94; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Notice of Availability

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Notice of availability of the Procurement Regulatory Activity Report, Number 10.

SUMMARY: Subsections 25(g) (1) and (2) of the Office of Federal Procurement Policy (OFPP) Act, as amended by Public Law 100–679, codified at 41 U.S.C. section 421(g), require the Administrator for Federal Procurement Policy to publish a report within six months after the date of enactment and every six months thereafter relating to the development of procurement regulations.

Accordingly, OFPP has prepared this report, which is designed to satisfy all aspects of subsections 25(g) (1) and (2) of the OFPP Act, and includes information on the status of each regulation; a description of those regulations required by statute; a description of the methods by which public comment was sought; regulations, policies, procedures, and forms under review by the OFPP; whether the regulations have paperwork requirements; the progress made in promulgating and implementing the Federal Acquisition Regulation; and such other matters as the Administrator determines to be useful.

ADDRESSES: Those persons interested in obtaining a copy of the Procurement Regulatory Activity Report may contact the Executive Office of the President Publications Service, room 2200, 725 17th Street NW., Washington, DC 20503 or phone 202–395–7332.

ADDITIONAL INFORMATION: For additional information write the Office of Federal Procurement Policy, 725 17th Street NW., Washington, DC 20503 or call 202–395–6803.

Dated: June 13, 1994.

Steven Kelman,

Administrator.

[FR Doc. 94–14662 Filed 6–15–94; 8:45 am]

BILLING CODE 3110–01–M

PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT

Comment on Draft Vision, Statement and Principles of Sustainable Development for the United States

SUBJECT: The President's Council on Sustainable Development (PCSD) seeks public comment on draft vision statement and principles of sustainable development for the United States.

SUMMARY: The President's Council on Sustainable Development has released its long-term vision of sustainable development and the working draft of defining principles to the public. The 15 principles are designed to give perspective on how our Nation can couple the development of a healthy economy with the preservation of our cultural and natural resources.

The PCSD is inviting interested individuals and organizations to submit comments and suggestions on the draft vision statement and principles. Public comment would enhance and assist in the process of defining what a sustainable United States will look like in the year 2050 and beyond.

The President's Council on Sustainable Development is a cooperative partnership between industry, labor, government and environmental organizations, not-for-profit groups and civil rights

organizations. To obtain a copy of the draft vision statement and principles and a public comment form, please write to the PCSD at the contact address.

CONTACT: President's Council on Sustainable Development, MS 7456–MIB, 1849 C Street, NW., Washington, DC 20240, attn: Principles.

Molly Harriss Olson,

Executive Director, President's Council on Sustainable Development.

[FR Doc. 94–14105 Filed 6–15–94; 8:45 am]

BILLING CODE DD1100R14–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34179; File No. SR–GSCC–94–03]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Minimum Financial Standards for Bank Netting System Members

June 8, 1994.

On April 18, 1994, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–94–03) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change lowers the minimum shareholders' equity standard for GSCC bank netting system members. The Commission published notice of the proposed rule change in the **Federal Register** on May 9, 1994.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change allows GSCC to change the minimum shareholders' equity standard for bank netting system members. In 1989, prior to the commencement of GSCC's netting system, a minimum admission and continuance standard of $250 million in shareholders' equity was established for banks or trust companies ("banks") that are, or are applying to become, members of GSCC's netting system.[3] This level was chosen because, at the time, it encompassed roughly the one hundred largest banks in the United States and, thus, reflected GSCC's initial focus on providing its netting and attendant risk protection services to only the largest market participants.

The proposed rule change, however, lowers the minimum shareholders' equity standard for bank netting members to $100 million. This standard will help ensure that each bank netting member, while not necessarily among the largest banks in the country, is still a sizable one.

II. Discussion

The Commission believes that GSCC's proposed rule change is consistent with section 17A of the Act,[4] and in particular, sections 17A(b)(3) (A) and (F) of the Act. Sections 17A(b)(3) (A) and (F) require that a clearing agency be so organized and that its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or control or for which it is responsible. The Commission believes that GSCC's proposal is consistent with these goals.

The Commission believes that the proposal will facilitate broader access to the government securities market. Specifically, it will allow a greater number of banks that are active participants in the government securities market to receive the benefits of GSCC's services.

The Commission also believes that GSCC has established reasonable financial and operational requirements for the admission of bank applicants. In addition to the minimum shareholders' equity standard, GSCC will explicitly impose in its rules an additional standard on all bank netting system applicants and members. The capital ratios (*i.e.*, total risk-based ratio, tier 1 risk based ratio, and tier 1 leverage ratio) of all bank netting system applicants and members must meet the minimum levels specified by the applicable bank regulatory agency. In conjunction with this change, each bank netting member would be required to report periodically to GSCC each of its capital ratios for which its appropriate regulatory authority has established standards (or the capital ratios that it would be required to report to the Board of Governors of the Federal Reserve System ("Fed") if it were a Fed member bank).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with section 17A of the Act, and with the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–GSCC–94–03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–14663 Filed 6–15–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Intelligence and Research

[Public Notice 2019]

Announcement of FY 1994 Russian, Eurasian and East European Studies Grant Recipients

On March 12, 1994, the U.S. Department of State approved the December 3, 1993, recommendations o the Russian, Eurasian and East European Studies Advisory Committee for awards in the competition which ended October 1, 1993.

1. American Council of Teachers of Russian/American Council for Collaboration in Education and Language Study

Grant: $370,000

Purpose: To provide fellowships for in-country training through the Academic Year and Semester language programs and the Combined Research and Language Training program in Russian, Eurasian and East European languages.

Contact: Dan E. Davidson, Director, ACTR/ACCELS, 1776 Massachusetts Avenue NW., Suite 700, Washington, DC 20036 (202) 833–7522

2. Council on International Educational Exchange

Grant: $160,000

Purpose: To support fellowship programs for in-country advanced Russian; and Russian for Social Science, Business and Science Students.

Contact: Damon B. Smith, Deputy Executive Director, Cooperative Russian Language Program/CIEE, 205 East 42nd Street, New York, NY 10017 (212) 661–1414

3. Hoover Institution on War, Revolution and Peace at Stanford University

Grant: $200,000

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[1] 15 U.S.C. section 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 33981 (April 28, 1994), 59 FR 23906.

[3] See Securities Exchange Act Release No. 27006 (July 14, 1989), 54 FR 29798.

[4] 15 U.S.C. section 78q–1 (1988).

[5] 15 U.S.C. section 78s(b)(2) (1988).

[6] 17 CFR § 200.30–3(a)(12).

Purpose: To support postdoctoral fellowships (6–12 months duration) and summer grants for individual research projects on Russia, Eurasia and East Europe at Hoover.
Contact: Richard F. Staar, Senior Fellow, Hoover Institution, Stanford, CA 94305–6010, (415) 723–1348

4. University of Illinois at Urbana-Champaign

Grant: $174,577
Purpose: To provide partial funding for the University's Summer Research Laboratory, and the Slavic Reference Service.
Contact: Diane P. Koenker, Program Administrator, Russian and East European Center, University of Illinois at Urbana-Champaign, 104 International Studies Building, 910 South Fifth Street, Champaign, IL 61820, (217) 333–1244

5. Institute on International Education

Grant: $150,000
Purpose: To support approximately 12–13 Professional Development Fellowships for one year for advanced graduate students and junior faculty in professional fields for research on policy analysis of East Central Europe and Eurasia.
Contact: Theresa Granza, Institute of International Education, 809 United Nations Plaza, New York, NY 10017–3580, (212) 883–8200, Fax (212) 984–5452

6. International Research and Exchanges Board

Grant: $2,250,000
Purpose: To support a variety of programs facilitating American scholarly access to Russia, Eurasia and East Europe: individual field research exchanges; predeparture orientation; long-term individual research fellowships for American graduate students; short-term travel grants; special projects; research residencies; and dissemination of field results.
Contact: Robert T. Huber, Vice President, IREX, 1616 H Street NW., Washington, DC 20006, (202) 628–8188

7. Joint Committee on Eastern Europe

Grant: $1,200,000
Purpose: To support fellowship for advanced graduate training, dissertation completion, pre- and postdoctoral research; individual and institutional language training grants; US centers in East Europe, research conferences; and the Junior Scholars' Training Seminar.
Contact: Jason Parker, Executive Associate, JCEE/American Council of Learned Societies, 228 East 45th Street, New York, NY 10017–3398 (212) 697–1505 (ext. 134/135)

8. Joint Committee on the Soviet Union and its Successor States

Grant: $1,785,980
Purpose: To support a national fellowship program for graduate training, dissertation completion, and postdoctoral research, including a professional development and retraining program; an annual workshop in underepresented fields; institutional grants for intensive training in Russian and non-Russian languages of the former Soviet Union; a research & development program; and support for the *American Bibliography for Slavic and East European Studies* (ABSEES).
Contact: Susan Bronson, Staff Associate, JCSSS/Social Science Research Council, 605 Third Avenue, New York, NY 10158 (212) 661–0280

9. National Academy of Sciences

Grant: $125,000
Purpose: To support a postdoctoral fellowship program for collaborative research between American specialists and their colleagues in the fields of public policy in the former Soviet Union and Central Europe.
Contact: Gary R. Waxmonsky, Acting Director, Office for Central Europe and Eurasia, National Academy of Sciences/National Research Council, 2101 Constitution Avenue NW., (FO 2014), Washington, DC 20418 (202) 334–2644

10. National Council for Soviet and East European Research

Grant: $2,460,000
Purpose: To conduct a national competition among American institutions of higher education and non-profit corporations in support of postdoctoral research projects on Russia, Eurasia, and East Europe.
Contact: Robert Randolph, Executive Director, NCSEER, 1755 Massachusetts Avenue NW., Suite 304, Washington, DC 20036 (202) 387–0168

11. The Woodrow Wilson Center for International Scholars

Grant: $1,109,443 ($704,440 to Kennan; $405,003 to EES)
Purpose: To support the fellowships, meetings, and publications programs of the Kennan Institute for Advanced Russian Studies and the East European activities of the East and West European Program, including the annual Junior Scholars' Training Seminar.
Contact: Blair Ruble, Director, Kennan Institute or John Lampe, Director, East European Studies, East and West European Program, The Wilson Center, 370 L'Enfant Promenade, Suite 704, Washington, DC 20024–2518 (202) 287–3400.

Dated: May 31, 1994.

Kenneth E. Roberts,

Executive Director, Russian, Eurasian and East European Studies Advisory Committee.

[FR Doc. 94–14619 Filed 6–15–94; 8:45 am]

BILLING CODE 4710–32–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 93–79; Notice 3]

Fisher-Price, Inc.; Notice of Appeal of Denial of Petition for Determination of Inconsequential Noncompliance

Fisher-Price, Inc. (Fisher-Price), of East Aurora, New York, has appealed a decision by the National Highway Traffic Safety Administration (NHTSA) that denied Fisher-Price's petition that its noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," be deemed inconsequential as it relates to motor vehicle safety (Docket No. 93–79; Notice 2, 59 FR 23253; May 5, 1994).

This notice of receipt of Fisher-Price's appeal is published in accordance with NHTSA regulations (49 CFR 556.7 and 556.8) and does not represent any agency decision or other exercise of judgment concerning the merits of the appeal.

Paragraph S5.7 of FMVSS No. 213 states that "[e]ach material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 ('Flammability of Interior Materials') (571.302)." Paragraph S4.3(a) of FMVSS No. 302 states that "[w]hen tested in accordance with S5, material described in S4.1 and S4.2 shall not burn, nor transmit a flame front across its surface, at a rate of more than 4 inches per minute."

As noted in Notice 1 (58 FR 59511, November 9, 1993) of Docket No. 93–79, Fisher-Price determined that some of its child safety seats failed to comply with FMVSS No. 213, and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Fisher-Price petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (Act) (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is

inconsequential as it relates to motor vehicle safety.

On May 5, 1994, NHTSA published a notice in the **Federal Register** denying Fisher-Price's petition, stating that the petitioner had not met its burden of persuasion that the noncompliance is inconsequential as it relates to motor vehicle safety. The reader is referred to that notice for a further discussion of the noncompliance and the agency's rationale in denying the petition.

On May 6, 1994, Fisher-Price submitted an appeal of the agency's decision to deny its petition. The appeal contains an analysis of the agency's decision, a summary of the supplemental information Fisher-Price submitted (which is described below), and the affidavit of Gail E. McCarthy, Ph.D, P.E., of Failure Analysis Associates (FaAA).

SUPPLEMENTARY INFORMATION: Notice 1 to this docket established a 30-day public comment period, which expired on December 9, 1993. Nevertheless, Fisher-Price submitted additional information related to its petition on three occasions: February 25, 1994, March 17, 1994, and March 24, 1994. Fisher-Price also submitted additional information with its May 6, 1994, appeal. These materials are available for public review in the NHTSA docket.

The March 17, 1994, document contained research conducted by FaAA for Fisher-Price, including burn tests and a search of the literature and accident data regarding child seat fires The submission also included a calculation of an alleged incremental risk associated with a recall of the noncompliant seats.

The March 24, 1994, document, entitled "Supporting Documentation for Evaluation of the Fire Safety of Fisher-Price, Inc. Child Restraint Shoulder Harness Webbing," contains the detailed data and test results on which the material in the March 17, 1994, document was based.

Fisher-Price's May 6, 1994, appeal raised the following points: (1) In the notice of denial, NHTSA stated that Fisher-Price "determined" that some of its child restraints failed to comply with FMVSS No. 213; Fisher-Price states that it has yet to make this determination. (2) In the notice of denial, NHTSA stated that it believes flammability requirements for child restraints should be strictly adhered to; Fisher-Price believes that NHTSA should not hold child restraints to what it perceives to be a stricter standard than is stated in the Act. (3) Fisher-Price cites the grant by NHTSA of a petition for inconsequentiality filed by PACCAR, Inc. in which tape edging on a mattress had failed FMVSS No. 302 requirements (57 FR 45868; October 5, 1992). The petition was granted by NHTSA based in part on the fact that the tape edging was a very small portion of the mattress. It also cites an appeal to a petition filed by the American Honda Motor Co., Inc. (Honda) (49 FR 15046; April 16, 1984) which was granted. The agency's rationale for granting the appeal was based in part on the fact that Honda had not received any complaints regarding the noncompliance. (4) Fisher-Price claims that the data it submitted in support of its contention that children's clothing poses a much greater risk to safety than the noncompliant webbing were not adequately refuted.

In the affidavit submitted with the appeal, Dr. McCarthy argues that: (1) The shoulder belt webbing should properly be viewed as meeting the requirements of FMVSS No. 302; (2) any noncompliance that might be deemed to exist has no impact on motor vehicle safety; and (3) possible remedial measures would create substantially greater risk of injury to children than that presented by the webbing.

Interested persons are invited to submit written data, views, and arguments on the appeal of Fisher-Price, described above. Comments should refer to the docket and notice number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. All comments received after the closing date will also be filed and will be considered to the extent feasible. When the appeal is granted or denied, notice will be published in the **Federal Register**.

Comment closing date: July 18, 1994.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50)

Issued on: June 10, 1994

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94-14676 Filed 6-15-94; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Regional Scholar Exchange Program

ACTION: Notice—Request for Proposals (RFP).

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. not-for-profit organizations engaged in international exchange programs to conduct research exchanges in the humanities and social sciences of pre- and/or post-doctoral students and scholars with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzia, Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Exchange programs must recruit nationally and select participants through an open merit-based competitive process. Only organizations with at least four years of experience in international exchange activities are eligible to apply. Both existing and new projects are eligible. These exchanges are subject to the availability of funding for Fiscal Year 1995.

Support is offered for two categories: Category A, Short-term (defined as being less than six months or the equivalent of one academic year), and/or Long-term (the equivalent of at least six months or one academic year) Research Exchanges with Armenia, Azerbaijan*, Belarus, Georgia, Kazakhstan, Kyrgyzia, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan; and Category B, Short-term (defined as being less than six months or the equivalent of one academic year), and/or Long-term (the equivalent of at least six months or one academic year) Research Exchanges with Estonia, Latvia and Lithuania.

Each category has separate conditions and requirements which are stated in this announcement. Institutions may address one or both categories, but must submit a separate proposal for each category. Proposals for Category A may include all 12 countries, a regional grouping of countries, or one country. Proposals for Category B may include one, two or three of the listed countries The goal of the program is to ensure the broadest geographic distribution in the New Independent States, the Baltics, and the U.S. Programs should be for two-way exchanges, although they do not need to be evenly reciprocal. Organizations may request funding for one or both sides of the exchange. Proposals for programs that do not fit into either Category A or B will be considered technically ineligible.

* *Please note*: Programs with Azerbaijan are subject to the restrictions of Section 907 of the Freedom Support Act of 1992: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation and no U.S. participant overseas may work for the Government of Azerbaijan or any of its instrumentalities.

In addition, the Government of Azerbaijan and/or its instrumentalities will have no control in the actual selection of participants

DATES: Deadline for proposals: One original and 9 copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Monday, August 1, 1994. Faxed documents will not be accepted, nor will documents postmarked on August 1, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the above deadline.

Grants awarded to organizations through this competition should begin no earlier than October 1, 1994 and may extend through September 30, 1996, but must be completed by December 31, 1996. Proposals for exchanges ending after December 31, 1996 will be considered technically ineligible.

DURATION: Proposals for both categories must provide for at least three-month programs for participants, but should not exceed one year.

ANNOUNCEMENT NUMBER: E/AEE–95–02. Applications submitted under this RFP must indicate the appropriate program name, category, and the above-referenced number. This announcement number must also appear in any correspondence concerning this application.

ADDRESSES: The original and 9 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Reference: Regional Scholar Exchange Program, E/AEE–95–02, Grants Management Division, E/XE, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Kniker at the U.S. Information Agency, 301 4th Street, SW., Academic Exchanges Division, European Branch E/AEE, room 246, Washington, DC 20547; telephone (202) 619–5341, to request detailed application packages, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement." Pursuant to the Bureau of Educational and Cultural Affairs' authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Diversity should be interpreted in the broadest sense and encompass differences including but not limited to ethnicity, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle throughout the proposed program and within their own operations.

Overview

The Regional Scholar Exchange Program is intended to promote scholarly research by funding U.S academic exchanges of pre- and postdoctoral students and scholars (including graduate students, junior faculty, and senior scholars) with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzia, Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Participants must be citizens of the United States, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzia, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan (Category A) or citizens of the United States, Estonia, Latvia, or Lithuania (Category B). Within the spirit of the Mutual Education and Cultural Exchange Act of 1961, the purposes of the Regional Scholar Exchange Program are (1) to provide access by U.S. scholars to research sources in the countries listed above, (2) to provide access by scholars from these countries to research sources in the United States, and (3) to encourage scholarly cooperation in the humanities and social sciences.

Guidelines

Language Qualifications

For both categories, foreign participants must have sufficient fluency in English and U.S. participants must have sufficient fluency in the language of the host country to be able to conduct research. Escort-interpreters will not be provided, nor funded by USIA.

Institutional Commitment

Proposals must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign partners' directors, or in the form of a signed agreement by the same persons. Letters of endorsement must describe each institution's or organization's commitment and make specific reference to the proposed program, each institution's activities in support of that program, and each institution's ability to provide access to archival or manuscript repositories. Documentation of support from governmental ministries or academies will be acceptable when appropriate, replacing individual documentation from each foreign educational institution involved. Applicants must submit this documentation as part of the completed application; letters and agreements will not be accepted if sent separately to USIA. Applying institutions are expected to make their own arrangements with the appropriate foreign institutions. National ministries of educational and culture and academies of science are included as eligible foreign partner institutions.

Authorization to work in archives manuscript repositories, and to use research materials is critical for U.S scholars. Proposals should include evidence of such authorization.

Proposal Narrative

The proposal narrative describing the program must conform to the Guidelines dated April 1993 and must include any subgrants to be issued. All narratives must describe in detail the abilities of the participating organizations to adapt to the changing exchanges environments in the countries eligible for participation in this program.

Participant Selection

The proposal must include detailed descriptions of the selection processes of participants, both foreign and American. This must include procedures by which selecting officials are named. A goal for this program is to select students and scholars from geographically diverse backgrounds in the home country and place them in wide geographic distribution in the host country.

Categories A and B (Short and Long-term Research Exchange): All scholars, at a minimum, must be Ph.D. candidates and currently enrolled at or affiliated

with a university. Applicants should not have travelled on a similar grant in the last five years, or should have little opportunity to travel unless as a participant of this program. Applying organizations must demonstrate the ability to conduct competitive award programs that are national in scope. Programs must be based on an open, nationwide competition, incorporating peer group review mechanisms.

The selection process for U.S. participants must be merit based. Selection criteria for the U.S. participants must be based on: (1) Academic rigor of the participant's proposed project, including a demonstration of the need to study abroad; (2) feasibility of the participant's proposed project, including time-frame and methodology; (3) language proficiency in the language of the host country by the participant; and (4) a solid foundation of background knowledge and research through general literature available in Western repositories.

The selection process for foreign researchers should be merit based and the result of a country-wide or multi-country wide competition. Selection criteria for the foreign participants should be based on: (1) Academic rigor of the participant's proposed project, including a demonstration of the need to study abroad; (2) feasibility of the participant's proposed project, including time-frame and methodology; (3) English language proficiency by the participant; and (4) a solid foundation of background knowledge and research through general literature available in the repositories of the foreign region. Although not a requirement, preference should be given to junior faculty holding lecturing positions.

Orientation Programs

Participants should be provided with a substantive and comprehensive orientation to the countries of their visits, and proposals should describe these orientation programs, including costs, in detail.

Alumni Activities

USIA recognizes the contributions of alumni to the goals of the program and the goals of the Mutual Educational and Cultural Exchanges Act. Priority will be given to proposals which include detailed and comprehensive alumni tracking and networking plans. Electronic mail access and training may be included in any such plans.

Proposed Budget

Funding anticipated for Category A is estimated at $1,300,000, which includes all program and administrative costs. Funding anticipated for Category B is estimated at $240,000, which includes all program and administrative costs.

The following budgetary guidance applies to both Categories A and B: Project awards to U.S. organizations will be made in a wide range of amounts. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. All organizations must submit a comprehensive line-item budget, the details and format of which are contained in the application packet. The budget should list all sources of support for the program fiscal year 1995 including both cash and in-kind contributions.

Allowance Costs

Grant-funded items of expenditure may include, but are not limited to, the following categories:

Categories A and B:

—International Travel (via American flag carrier);
—Domestic travel;
—Maintenance (lodging, meals, incidental expenses, etc.);
—Stipend (not to exceed $250 per month);
—Academic program costs (e.g. book allowance);
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);
—Cultural enrichment expenses (admissions, tickets, etc.; limited to $150 per participant);
—Conference and/or other travel and lodging for cultural enrichment (not to exceed $400.00 per participant);
—Administration (salaries, benefits, communications, other direct costs and indirect costs), including administration of tax withholding and reporting as required by federal, state and local authorities and in accordance with relevant tax treaties.*;
—Taxes and visa fees;
—Application should demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including tuition waivers and overseas partner contributions.

**Please Note:* It is required that requested administrative funds, including indirect costs and administrative expenses for orientation, not exceed 20 percent of the total amount requested from USIA; administrative expenses should be cost-shared. (See the accompanying guidelines for complete cost-sharing and auditing requirements.)

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application package, including the Guidelines for Preparing Proposals. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant assistance resides with USIA's grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of Program Plan

Including academic rigor and excellence, thorough conception of project, demonstration of meeting participants' needs, contributions to understand the partner country, proposed follow-up, and qualifications of program staff and participants.

b. Reasonable, Feasible, and Flexible Objectives

The capacity of the organization to conduct the program. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. Track Record

Relevant Agency and outside assessments of the organization's experience with international programs; for organizations that have not worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier Effect/Impact

The positive effect of the program on long-term mutual understanding, the inclusion of maximum sharing of information, and the establishment of long-term institutional and individual linkages.

e. Value of U.S.-Partner Country Relations

The assessment by USIA's geographic area office of the need, potential impact, and significance of the project with the partner country.

f. Cost Effectiveness

Greatest return on each grant dollar, degree of cost-sharing exhibitied.

g. Diversity and Pluralism

Preference will be given to proposals that demonstrate efforts to include participants from diverse regions, and of different socio-economic and ethnic backgrounds, to the extent feasible for the applicant institutions.

h. Adherence

Of proposed activities to the criteria and conditions described above

i. Institutional Commitment

As demonstrated by financial and other support to the program.

j. Follow-On Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

k. Evaluation Plan

Proposals should provide a plan for evaluation by the grantee institution

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this request for proposals does not constitute an award commitment on the part of the government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified in writing of the results of the review process on or about September 23, 1994 All funded proposals will be subject to periodic reporting and evaluation requirements.

Options for Renewal (All Categories)

Subject to the availability of funding for FY 1996 and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewals of awards.

Dated: June 11, 1994.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–14690 Filed 6–15–94; 8:45 am]

BILLING CODE 8230–01–M

Undergraduate and Graduate Student Exchanges With the Baltic Countries, the New Independent States, and Central and Eastern Europe

ACTION: Notice—Request for Proposals (RFP).

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit organizations to conduct exchanges of college students with Albania, Armenia, Azerbaijan*, Belarus, Bulgaria, Croatia, the Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzia, Latvia, Lithuania, Macedonia, Moldova, Poland, the Republic of Slovakia, Romania, the Russian Federation, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. These exchanges represent part of the activities of the Presidents' University Student Exchange (the 1000–1000 Student Exchange) and the Samantha Smith Memorial Exchange Program and are subject to the availability of funding. Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office of Academic Programs, Academic Exchanges Division, European Branch or submitting their proposals. After the RFP deadline, the European Branch may not discuss this competition in any way with applicants until the final decisions are made.

Support is offered for three categories of exchange programs:

Category A: The Presidents' University Student Exchange Program (the 1000–1000 Student Exchange) with Armenia, Azerbaijan*, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzia, Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan;

Category B: The Samantha Smith Memorial Exchange with Armenia, Azerbaijan*, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzia, Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan; and,

Category C: The Samantha Smith Memorial Exchange with Albania, Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Poland, the Republic of Slovakia, Romania, and Slovenia.

*Please note: Programs with Azerbaijan are subject to the restrictions of Section 907 of the Freedom Support Act of 1992. Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation and no U.S. participant overseas may work for the Government of Azerbaijan or any of its instrumentalities. In addition, the Government of Azerbaijan and/or its instrumentalities will have no control in the actual selection of participants.

Each category has separate conditions and requirements, which are stated in this announcement. Organizations may compete in one, two or three of the categories, but must submit a separate proposal and budget for each category. If an institution submits proposals in more than one category which appear to be identical or nearly identical in content, the Agency reserves the right to consider only one of the proposals.

Organizations applying under any or all categories must follow the requirements stipulated in this RFP, the application guidelines, and any additional material specific to a given category. Failure to do so may result in a proposal being deemed technically ineligible. Programs and projects must conform with all Agency requirements and guidelines, and are subject to final review by a USIA grants officer. Proposals must be for study programs for which academic credit is given. While programs may include internships, the focus of projects should be classroom work or research. Programs designed specifically for foreign participants to teach their native language or area studies in American institutions are ineligible for support.

Eligible Applicants: Applications under Categories A, B or C for substantive academic exchanges will be accepted from accredited, degree-granting U.S. universities or colleges, including two-year community colleges university systems, and not-for-profit organizations engaged in international educational exchange programs.

DATES: Deadline for proposals: September 28, 1994. All copies of proposals for Categories A, B and C must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on September 28, 1994. Faxed documents will not be accepted nor will documents postmarked on September 28, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that its proposals are received by the appropriate deadline. No funds may be expended until the grant agreement is signed with USIA's Office of Contracts.

Announcement Number: E/AEE–95–01. Applications submitted under this RFP must indicate the appropriate program name, category, and the above-referenced number. This announcement number must also appear in any correspondence concerning this application.

ADDRESSES: The original and nine (9) complete copies of the application,

including required forms, should be addressed as follows:

U.S. Information Agency,
Reference: _____
(Program Title)
Category _____
(A, B or C)

Announcement number: E/AEE–95–01, Office of Grants Management, E/XE Room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Ms. Effie Wingate or Mr. Ted Kniker, U.S. Information Agency, 301 4th Street SW., European Branch, Academic Exchanges Division, E/AEE Room 246, Washington, DC 20547; telephone (202) 205–0525. To request detailed application packages, which include award criteria additional to this announcement, all necessary forms, formats, guidelines for preparing proposals, and for other technical information please call (202) 619–5341. The application package will be mailed to you via regular mail. USIA will not fax the application packet or send it via express mail, nor will USIA staff accept requests to send application packets via express carriers using non-USIA account numbers.

SUPPLEMENTARY INFORMATION: Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchanges; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement." Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. It should be noted that a greater emphasis is being placed on promoting diversity in Bureau programs. Diversity should be interpreted in the broadest sense and encompass differences including but not limited to ethnicity, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle throughout the proposed program and within their own operations.

Application Notice (All Categories)

Please be advised: Proposals submitted by the same institution under Categories A, B, and C for this or previous years' competitions may not be duplicative or identical. If an organization submits more than one proposal, each proposal must sponsor different students and employ separate budgets. If organizations have been funded under previous competitions, the new proposal(s) may not be identically written to previous submissions, but should include the most recent program information. Proposals not adhering to these restrictions will be deemed technically ineligible and will not be reviewed for funding. Organizations applying for exchanges with the New Independent States are encouraged to submit only under one category, A or B.

General Requirements (All Categories)

(1) Institutional Commitment

Proposals must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign institutions' directors, or in the form of a signed agreement by the same persons. Letters of endorsement must describe each institution's or organization's commitment and make specific reference to the proposed program and each institution's activities in support of that program. Documentation of support from governmental ministries or academies will be acceptable when appropriate, replacing individual documentation from each foreign educational institution involved. Applicants must submit this documentation as part of the completed application. Applying institutions are expected to make their own arrangements with the appropriate foreign institutions.

(2) Orientation Programs

Participating students should be provided with a substantive and comprehensive orientation to the country where they will be studying, and proposals should describe these programs, including cost, in detail.

(3) Visas

All foreign participants must be sponsored under an Exchange Visitor Program on a J visa. Programs must comply with J visa regulations and should reference this adherence in the proposal narrative. Applicants should demonstrate tax regulation adherence in the proposal narrative and budget notes.

(4) Taxes

Administration of the grant awards must be in compliance with reporting and withholding regulations for federal, state, or local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

(5) Participant Tracking

Proposals should provide a plan showing how organizations will track participants after their return to their home countries upon completion of the program. Organizations should chart the progress of the program's alumni in their academic and professional careers and establish a system for distributing periodic updates of such information among both current participants and alumni of the program.

(6) Budget

All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application package. The Agency reserves the right to increase, decrease or revise proposal budgets in accordance with the needs of the program. Grant-funded items of expenditure may include, but are not limited to, the following categories:

Program Costs

—Round trip travel to and from their home city to international point of departure (if applicable);
—International Travel (via American flag carrier);
—Domestic travel to and from host institution;
—Excursionary travel and lodging for cultural enrichment (not to exceed $200.00 per participant);
—Maintenance and per diem;
—Academic program costs (e.g. tuition, book allowance);
—ESL training (if necessary);
—Travel and maintenance costs for accompanying faculty or resident directors; for no more than one program supervisor per ten students;
—Participant recruitment costs;
—Orientation costs (speaker honoraria are not to exceed $150 per day per speaker);
—Cultural enrichment expenses (admissions, tickets, etc., limited to $150 per participant);
—Medical insurance for participants (participants are covered by the Agency's self-insurance policy when USIA is funding over fifty percent of the total cost of the projects);
—Withholding for taxes; and
—Visa fees.

Administrative Costs—Not To Exceed 20% of the Requested Budget

—Salaries and benefits;
—Communications (e.g. fax, telephone, postage);
—Office Supplies;
—Administration of tax withholding and reporting as required by Federal, State and local authorities and in accordance with relevant tax treaties; recipient organization should demonstrate tax regulation adherence in the proposal narrative and budget;
—Other Direct Costs;
—All Indirect Costs.

Please note: It is required that requested administrative funds, including indirect costs and administrative expenses for orientation, not exceed 20 percent of the total amount requested from USIA; administrative expenses should be cost-shared.

Applications should demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including tuition waivers and overseas partner contributions. (See the accompanying guidelines for complete cost-sharing and auditing requirements.)

Additional Criteria for Category A

President's University Student Exchange Program (the 1000–1000 Student Exchange) With the Baltic Countries and the New Independent States

Grant funding under this category is intended to enhance and expand the scope of U.S. academic exchanges with undergraduate and graduate students from Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyia, Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. For accident year 1995–96 the intention is to exchange 1,000 students in each direction. Priority will be given to applications from international exchange organizations and consortia of universities that have a demonstrated ability to exchange students from multiple countries in the former USSR. Preference will then be given to applications from single institutions for programs outside the Russian Federation. For projects in the Russian Federation, preference will be given to applications involving multiple foreign partner institutions, especially outside of Moscow and St. Petersburg. Both existing and new projects are eligible.

(1) Awards

Project awards to U.S. organizations will be made in a wide range of amounts. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000, and proposed budgets should not exceed this amount.

(2) Participants

Participants must be citizens either of the U.S. or of the host country. Undergraduate students are defined as students who have not received their baccalaureates prior to participation in this program. Graduate students for this program should be studying at the equivalent of the Master's degree level. Doctoral candidates are not eligible. Students in all academic fields are eligible; students of agricultural are especially encouraged to apply (please note special conditions for agricultural programs below). Projects that include graduate students must delineate between the number of graduate and undergraduate participants, separately describe the academic programs, and include for each a separate line item in the budget. All projects must include undergraduate students. It is important that the selection process ensure equal opportunities for both male and female students.

(3) Language Qualifications

Students should have sufficient fluency in the institutional language of the host country to be able to pursue university study in that language and to be able to converse with the citizens of the country without the aid of interpreters. Generally, the equivalent of two years of college-level study is considered the minimum.

(4) Duration

Applications will be accepted for projects with durations of at least eight weeks to no more than one year, including programs lasting an academic quarter, trimester, or semester. Exchanges of less than eight weeks duration or more than one year will be considered technically ineligible. Although grant awards may begin earlier, the actual exchange of participants may not begin before February 1, 1995, and must be completed by December 31, 1996. Programs for exchanges in subsequent academic years will be considered technically eligible.

(5) Preference Factors

a. Preference will be given to proposals in which incoming students study in the U.S. for a full academic year.

b. Preference will be given to programs that reflect wide geographic distributions in recruitment of participants.

c. Preference will be given to programs that recruit foreign and U.S. participants through merit-based, open competition.

(6) Reciprocity

Proposals should be reciprocal, but not necessarily equal in numbers. In cases where political or practical circumstances do not allow for the placement of U.S. students, one-way programs will be considered. The proposal should provide detailed information on the activities in both the U.S. and the partner country.

(7) Internships

While programs may include internships, the focus of projects should be classroom work or research. If internships are included in the exchange experience, students should have completed at least one semester of classroom work. The duration of the internship should not exceed the duration of the classroom work. Institutions are encouraged to grant academic credit for the internship experience.

(8) Special Allowances for Agriculture Programs

In order to give added encouragement to the participation of students of agriculture as provided for in the bilateral agreement, language standards may be modified for participating students of agriculture. Programs including agriculture students need not exchange agriculture students in both directions.

Additional Criteria for Categories B and C

Category B: Samantha Smith Memorial Exchange With the Baltic Countries and the New Independent States

Grant funding is intended to enhance and expand the scope of academic exchanges with Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzia, Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan for undergraduate students under the age of 26. Participants must be citizens either of the U.S. or of the host country. Programs designed specifically for foreign participants to teach their native

language or area studies in American institutions are ineligible for support.

Priority for Category B

For FY 1995 priority will be given to applications from community colleges, two-year colleges, non-profit organizations working specifically with community colleges and/or two-year colleges, and institutions that have not received funding under this program in previous competitions.

Category C: Samantha Smith Memorial Exchange With Central and Eastern Europe

Grant funding under this category is intended to enhance and expand the scope of academic exchanges with Albania, Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Poland, the Republic of Slovakia, Romania, and Slovenia for undergraduate students under the age of 26. Participants must be citizens either of the U.S. or of the partner country. Programs designed specifically for foreign participants to teach their native language or area of studies in American institutions are ineligible for support.

(1) Language Qualification

It is desirable, but not required, that exchange students have sufficient fluency in the language of the country to be visited for the pursuit of university study in the language and to converse with citizens of the country without the aid of interpreters. Generally, the equivalent of two years of college-level language study is considered the minimum. The two-year language minimum will be waived for community colleges, two-year colleges, and non-profit organizations working specifically with community colleges and/or two-year colleges in order to encourage their participation.

(2) Duration

Applications will be accepted for projects with duration of at least eight weeks including programs lasting one academic quarter, trimester, semester or a full year. Projects of less than eight weeks duration will be considered technically ineligible. Grants generally will be made for exchanges occurring within a 12-month period, but requests for two-year programs will be considered. Proposals for two-year programs should submit one budget that covers the entire two-year period. The total award (one-or two-year) may not exceed $80,000.

(3) Reciprocity

It is desirable, but not required, that programs are reciprocal and the number of U.S. and foreign participants be nearly equal. The proposal should provide detailed information on the activities in both the U.S. and the partner country.

(4) Awards

Project awards will be made in a wide range of amounts up to $80,000. The Agency reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000 and proposed budgets should not exceed this amount. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet.

(5) Preference Factors

a. Preference will be given to programs in which U.S. participants will have had a minimum of two years of relevant language study.

b. Preference will be given to proposals in which incoming students study in the U.S. for a full academic year.

c. Preference will be given to reciprocal exchanges.

Review Process (All Categories)

USIA will acknowledge receipt of all proposals and will review them for technical eligibility.

Please note: Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Package, including the Guidelines for Preparing Proposals.

Eligible Proposals

Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts office. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's grants officer.

Review Criteria (All Categories)

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of Program Plan

Academic rigor, thorough conception of project, demonstration of meeting student needs, contributions to understanding the partner country, proposed follow-up, and qualifications of program staff and participants.

b. Feasibility of the Program Plan

Capacity of the organization to conduct the exchange. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. Track Record

Revelant Agency and outside assessments of the organization's experience with international exchanges; for organizations that have not worked with USIA before, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier Effect/Impact

The impact of the exchange activity on the wider community and on the development of continuing ties, as well as the contribution of the proposed activity in promoting mutual understanding.

e. Value of U.S.—Partner Country Relations

The assessment by USIA's geographic area office of the need, potential impact, and significance of the project with the partner country.

f. Cost-Effectiveness

Greatest return on each grant dollar. A key measure of cost-effectiveness is the unit cost to the Agency. This is the total request of USIA monies divided by the number of exchangees (people moved). The Agency also reviews the ratio of cost-sharing exhibited. Cost-sharing through other financial support as well as institutional direct and in kind funding contributions is strongly encouraged.

g. Diversity and Pluralism (for Student Programs)

Preference will be given to proposals that demonstrate efforts to provide for the participation of students with a variety of major disciplines, from diverse regions, and of different socio-economic and ethnic backgrounds, to the extent feasible for the applicant institutions.

h. Adherence of Proposed Activities

To the criteria and conditions described above.

i. Institutional Commitment

Demonstrated by financial and other support to the program, including the provision for adequate and appropriate personnel and institutional resources to achieve the program goals.

j. Follow-on Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA-supported programs are not isolated events.

k. Evaluation Plan

Proposals should provide a plan for evaluation by the grantee institution to determine the success of the project.

l. Geographic Diversity

The Agency will seek to achieve maximum geographic diversity in selection and placement of participants through its award of grants.

Application Disclaimer (All Categories)

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of this request for proposals does not constitute an award commitment on the part of the government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants for Categories A, B, and C will be notified in writing of the results of the review process on or about February 1, 1995. All funded proposals will be subject to periodic reporting and evaluation requirements.

Options for Renewal (All Categories)

Subject to the availability of funding for FY 1995 and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewals of awards.

Dated: June 11, 1994

Barry Fulton,

Deputy Associate Director for Bureau of Educational and Cultural Affairs.

[FR Doc. 94-14691 Filed 6-15-94; 8:45 am]

BILLING CODE 8230-01-M

International Creative Arts Exchanges for Public and Private Non-Profit Organizations

ACTION: Request for proposals

SUMMARY: The Creative Arts Exchanges Division of the U.S. Information Agency's [USIA] Office of Arts America announces a program of awards to private, non-profit organizations to support projects for artists and arts administrators. These will consist of residencies and/or study tours in which artists from the United States and other countries work and learn together. Interested applicants are invited to request and read the complete **Federal Register** announcement before submitting their proposals.

DATES: This action is effective from the publication date of this notice through September 21, 1994, for projects whose activities will begin between February 1, 1995, and June 30, 1995. All applications must be received at the U.S. Information Agency by 5 p.m. Washington DC time on Wednesday, September 21, 1994. Faxed documents will not be accepted, nor will documents postmarked on September 21, 1994, but received at a later date.

For projects that begin after June 30, 1995, competition details will be announced in the **Federal Register** on or about December 1, 1994. Inquiries concerning technical requirements are welcome prior to submission of applications.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: E/DE Discretionary Grant Competition, Grants Management Division (E/XE), E/DE-95-01, room 336, 301 4th Street, SW., Washington, DC 20547. Awards are contingent upon the availability of funds.

FOR FURTHER INFORMATION AND APPLICATION PACKAGES, CONTACT: The Creative Arts Exchanges Division of the U.S. Information Agency's Office of Arts America, 301 4th Street, SW., Washington, DC 20547; telephone (202) 619-5338.

SUPPLEMENTARY INFORMATION: The Creative Arts Exchanges Division works with U.S. non-profit organizations on cooperative international group projects that introduce American and foreign participants to each other's cultural and artistic life and traditions. It supports international projects in the United States or overseas involving composers, choreographers, filmmakers [see guidance below], playwrights, theater designers, writers and poets, visual artists, museum professionals [see guidance below], managers and administrators of arts institutions and organizations [see guidance below].

We particularly seek projects with organizations with expertise in the arts as well as broad outreach and networking capabilities into American arts activities nationwide. Overseas USIA offers prospective applicants its network of U.S. Information Service [USIS] posts located in American embassies, consulates and cultural centers around the world. Proposals making imaginative and substantive use of this USIS network will have a decided advantage in the competition. Proposed projects should support the USIA mission to increase mutual understanding between the United States and other countries and to promote international cooperation in educational and cultural fields. USIS role in such projects should be integral and not purely facilitative.

Common Provisions

Projects supported by these awards share some or all of the following features:

1. An international exchange of professionals in the fields listed above.
2. The development of institutional linkages between American organizations and their counterparts in other countries.
3. Travel to or from the United States, preferably in both directions.
4. Competition in which USIS posts nominate foreign candidates for awards, while the American arts organizations select the award-winners.
5. Assurances of quality, fairness, balance and openness in the selection of American project participants.
6. A non-political character reflective of the diversity of American political, social and cultural life.

Special Conditions

1. Proposals should involve more than one country. However, single-country projects that have strong USIS-post support and clearly demonstrate the potential for creating and strengthening linkages between foreign and U.S. institutions are also welcome.
2. Proposals are subject to review and comment by the USIS posts in the relevant countries.
3. Proposals involving foreign organizations should identify them and clearly define their role in the project. Prospective applicants would do well to consult with USIS posts regarding such organizations prior to submitting their proposals.
4. Proposals centering on films or videos must deal with the creative aspects of film or video making. They should be written for professional partners, not for amateur or student groups. Projects may include story development, other aspects of the creative processes, or management issues like funding and distribution. They should not include film or video festivals, installations, seminars, competitions, full scale film production or distribution, or any other type of project prohibited in this announcement.
5. Proposals centering on arts presenters, administrators, and managers should feature exchanges

involving these professionals exclusively.

6. Arts America is the major supporter of the American Association of Museums [AAM] International Partnerships Among Museums [IPAM] program. Museums interested in international projects should address queries to the Office of International Programs, American Association of Museums, 1225 Eye Street, NW., Washington, DC 20005; telephone: [202] 289–1818; FAX: [202] 289–6578. We will not accept direct applications from museums for international projects [see Program Exclusions, below].

7. Proposals for projects in Eastern Europe and/or the Newly Independent States of the ex-Soviet Union should focus on the exchange of arts administrators or professionals dealing in theatrical arts. Proposals should clearly demonstrate knowledge of host country environment and its institutional partner in that country and provide evidence of long-term commitment to project goals.

Program Exclusions

1. Projects should be artistic, intellectual, and cultural, not technical. Vocational and technical training projects are ineligible for support.

2. Scholarship programs or proposals for long-term academic study or training are ineligible for support.

3. Speaking tours, conferences or seminars, research projects, research for project development purposes, youth or youth-related activities (participants' age under 25), publications, student and/or faculty exchanges, or projects for the exchange of amateurs or semi-professionals are all ineligible.

4. Arts America does not accept proposals to support performing arts productions or tours, film or video festivals, film/video installations, full-scale film production or distribution, international arts competitions, community-level arts presentations or festivals for general audiences, visual arts exhibits, museum projects except for those under the AAM/IPAM program [see above], or projects in the fields of historical and cultural conservation and preservation.

5. USIA is a major supporter of Sister Cities International and Partners of the Americas. It has agreed to fund administrative expenses of these organizations' national offices, but will not fund projects arising from sister city and partner state relationships once they are established.

Budgetary Requirements

1. There must be minimum of 33% cost sharing of the project cost. Cost sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed to be its contribution to cost participation, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E—Cost Sharing and Matching—and should be described in the proposal. In the event the recipient does not provide a minimum of 33% cost sharing following the award, the Agency's contribution will be reduced in proportion to the recipient's contribution.

2. Administrative costs must be no more than 20% of the total amount requested from USIA.

3. Awards are limited to $200,000. We will consider requests for $100,000 or more only for projects that are internationally regional, multi-regional or worldwide in scope. Awards are limited to $60,000 for organizations with less than four years' experience in conducting international exchange programs.

4. Allowable costs are those defined in the application package, which is available upon request.

5. To calculate the costs per participant, divide the project total by the number of participants who will be funded under the terms of the award.

Definition of Administrative Costs

Administrative costs are defined as salaries, benefits and other direct and indirect costs incurred. Important note for universities: The U.S. Information Agency defines American faculty salaries as an administrative expense, regardless of how the faculty time is to be used.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines in the application package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate USIA geographic area officers, and budget and contract offices. Proposals may also be reviewed by the Agency's General Counsel. Review criteria are listed in the application package, which is available upon request. Funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for awards resides with USIA's contracting officer.

Review Criteria

Proposals are reviewed for adherence to legal and budgetary requirements by USIA offices responsible for these functions and for artistic/organizational rigor, program content and cost-effectiveness.

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of Program Plan

Which includes how your project would meet the Creative Arts Exchanges Program goals, artistic/organizational planning of the highest caliber, why the participants would be appropriate for this project, how the project would contribute to a higher awareness of other countries, a proposed followup, and the qualifications of program staff and participants.

b. Feasibility of the Program Plan

And the capacity of the organization to conduct the exchange. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. Track Record

Included are the past successes of the organization in previous USIA programs and assessments of the organization's experience with international exchanges. For organizations that have not worked with USIA, they will be evaluated by their demonstrated potential to achieve their program goals

d. Multiplier Effect/Impact

The ability of the organization to affect the wider community as well as developing continuing ties in the country. The proposal must also promote mutual understanding between the two groups.

e. Value to U.S.—Partner Country Relations

The Agency assesses the need, the potential impact, and the significance of the project with the partner country.

f. Cost-Effectiveness

The organization should exhibit a wise budgetary policy including cost-sharing. A key measure of cost-effectiveness is the cost per participant.

g. Diversity and Pluralism

Preference will be given to proposals that demonstrate efforts to provide for the participation of artists from diverse regions, socio-economic and ethnic backgrounds; but only to the extent feasible for the applicant institutions

h. Institutional Commitment

As demonstrated through use of personnel, resources and funding.

i. Follow-up Activities

Proposals should provide a plan for later continuation of contact (without USIA support), which ensures that USIA-supported programs are not isolated events.

j. Evaluation Plan

Proposals should provide a plan for your own evaluation of the project.

Technical Requirements

Proposals can only be accepted for review when they are fully in accord with the terms of this request for proposals, as well as with requirements stipulated in the application package.

Notice

The terms and conditions published in the request for proposals are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of request for proposals does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about January 4, 1995. Awards will be subject to periodic reporting and evaluation requirements.

Dated: June 10, 1994.

John P. Loiello,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc 94–14692 Filed 6–15–94; 8:45 am]

BILLING CODE 8230–01–M

International Educational and Cultural Activities Discretionary Grant Program

ACTION: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award program. Public or private non-profit organizations meeting the provisions described in IRS regulation 501 (c) (3) may apply to develop projects that link their international exchange interests with counterpart institutions/groups in ways supportive of the aims of the Bureau of Educational and Cultural Affairs.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries. . . .; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations.* * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." Programs and projects must conform with Agency requirements and guidelines outlined in the Application Package. USIA projects and programs are subject to the availability of funds.

Interested applications should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until after the Bureau program and project review process has been completed.

ANNOUNCEMENT NUMBER: All communications concerning this announcement should refer to the Fall Discretionary Grant Program. The announcement number is E/P–95–1. Please refer to title and number in all correspondence or telephone calls to USIA.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, September 16, 1994. Faxed documents will not be accepted, nor will documents postmarked on September 16, 1994, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. This action is effective from the publication date of this notice through September 16, 1994, for projects where activities will begin between January 1, 1995 and June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen Exchanges, E/PL, room 216, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619–5326, to request detailed application packets, which include award criteria, all application forms; and guidelines for preparing proposals, include specific criteria for preparation of the proposal budget. Please specify the USIA Program Officer Laverne Johnson on all inquiries and correspondences.

ADDRESSES: Applicants must follow all instruction given in the Application Package and send only complete applications to: U.S. Information Agency, REF: E/P–95–1 Fall Discretionary Grant Competition, Grants Management Division (E/XS), 301 4th Street, SW., room 336, Washington, DC 20547.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle.

Overview: The Office of Citizen Exchanges works with U.S. private sector non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' social, economic, and political structures; and international interests. The Office supports international projects in the United States or overseas involving leaders or potential leaders in the following fields and professions: Urban planners, jurists, specialized journalists (specialists in economics, business, political analysis, international affairs), business professionals, NGO leaders, environmental specialists, parliamentarians, educators, economics planning, and other government officials.

Guidelines: Applicants should carefully note the following restrictions/recommendations for proposals in specific geographical areas:

The Newly Independent States: USIA and other agencies of the U.S. government have numerous programs in the countries of the NIS (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan). As such, the amount of funds for that part of the world in this competition will be extremely limited. Proposals which would normally be considered for other USIA grant competitions will not be

accepted. E/P encourages organizations to seek clarification on these points before presenting a proposal.

Europe, Eastern Europe, and the Baltics (EU): Projects are encouraged involving Western Europe. Due to the fact that the office has or is in the process of conducting specific competitions in Eastern Europe and the Baltics, we will not accept proposals for youth exchange programs or for programs in the following thematic areas: public administration, business management, independent media development, journalism training, and local government administration and municipal management. Priority will be given to projects relating to conflict resolution, tolerance, and diversity.

East Asia and the Pacific (EA): Priority consideration will be given to the following: (1) Projects for journalists (print or electronic). Priorities are projects for Hong Kong and Singapore combined or for Thailand on press freedom, the press/government relationship, and the role of a free press in society. Other projects for journalists include regional/subregional projects that focus on APEC-related economic and trade issues and policies or regional/subregional projects that focus on security issues. The projects may consist of but are not limited to workshops, site tours, seminars and discussions and internships. (2) Projects concerned with the strengthening of democracy in Cambodia, with priority given to projects that focus on education and representative government. (3) Projects concerned with the organization, management, and administration of citizen action groups or other non-governmental organizations in the Peoples' Republic of China and Southeast Asian countries. Priority will be given to subject areas, such as grass roots democracy, the environment, and human rights.

American Republics (AR): Priority will be given to projects in the following areas: Good governance, public administration, decentralization of government, judicial reform, and the protection/promotion of minority and indigenous rights.

Africa (AF): While proposals in all fields are encouraged, emphasis will be given to proposals which focus on strengthening democratic institutions. Proposals involving South Africa are encouraged.

North Africa, Near East and South Asia (NEA): Priority will be given to projects which promote democratization, economic reform, free markets, tolerance and pluralism, conflict resolution, and Israeli and Palestinian understanding. The Office of Citizen Exchanges strongly encourages the coordination of activities with respected universities, professional associations, and major cultural institutions in the U.S. and abroad, but particularly in the U.S. Projects should be intellectual and cultural, not technical. Vocational training (an occupation other than one requiring a baccalaureate or higher academic degree; i.e., clerical work, auto maintenance, etc. and other occupations requiring less than two years of higher education) and technical training (special and practical knowledge of a mechanical or a scientific subject which enhances mechanical, narrowly scientific, or semi-skilled capabilities) are ineligible for support. In addition, scholarship programs are ineligible for support.

The Office does not support proposals limited to conferences or seminars (i.e., one to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are part of a larger project in duration and scope which is receiving USIA funding from this competition. USIA-supported projects may include internships; study tours; short-term, non-technical training; and extended, intensive workshops taking place in the United States or overseas.

The themes addressed in exchange programs must be of long-term importance rather than focused exclusively on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project, including where applicable the expected yield of any associated conference.

No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; neither is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. The Office of Citizen Exchanges strongly recommends that applicants consult with host country USIS post, prior to submitting proposals.

Section of Participants

All grant proposals should clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that programs in support of U.S. internships include letters tentatively committing host institutions to support the internships.

In the selection of foreign participants, USIA and USIS posts retain the right to nominate all participants and to accept or deny participants recommended by grantee institutions. However, grantee institutions are often asked by USIA to suggest names of potential participants. The grantee institution will also provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously travelled to the United States.

Additional Guidance

The Office of Citizen Exchanges offers the following additional guidance to prospective applicants:

1. The Office of Citizen Exchanges encourages project proposals involving more than one country. Pertinent rationale which links countries in multi-country projects should be included in the submission. Single-country projects that are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions are also welcome.

2. Proposals for bilateral programs are subject to review and comment by the USIS post in the relevant country, and pre-selected participants will also be subject to USIS post review.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

4. The Office of Citizen Exchanges will consider proposals for activities which take place exclusively in other countries when USIS posts are consulted in the design of the proposed program and in the choice of the most suitable venues for such programs.

5. Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical or vocational subjects, or for research projects, for publications funding, for student and/or teacher/faculty exchanges, for sports and/or sports related programs. Nor does this office provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the **Federal Register**.

For projects that would begin after July 1, 1995, competition details will be announced in the **Federal Register** on or about December 1, 1994. Inquiries

concerning technical requirements are welcome prior to submission of applications.

Funding

Although no set funding limit exists, proposals for less than $150,000 will receive preference. Organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. While an all-inclusive budget must be provided with each proposal, separate component budgets are optional. Competition for USIA funding support is keen.

The selection of grantee institutions will depend on program substance, cross-cultural sensitivity, and ability to carry out the program successfully. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support.

The Recipient must provide a minimum of 33 percent cost sharing of the total project cost. Cost sharing may be in the form of allowable direct or indirect costs. The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E-Cost Sharing and Matching and should be described in the proposal. In the event the Recipient does not provide a minimum of 33 percent cost sharing, the Agency's contribution will be reduced in proportion to the Recipient's contribution. Proposals with cost sharing of less than 33 percent of the total project cost will be considered ineligible. The recipient's proposal shall include the cost of an audit that: (1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed. The audit costs shall be identified separately for: (1) Preparation of basic financial statements and other accounting services; and (2) preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation. The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the U.S. program, organizations have the option of using a flat $140/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. NOTE: U.S. escorting staff must use the published Federal per diem rates, not the flat rate.

3. Interpreters: If needed, interpreters for the U.S. program are provided by the U.S. State Department Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

4. Book and cultural allowance: Participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. staff do not get these benefits.

5. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

6. Room rental, which generally should not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop, and translate materials for participants.

8. One working meal per project. Per capita costs may not exceed $5–$8 for a lunch and $14–$20 for a dinner; excluding room rental. The number of invited guests may not exceed participants by more than a factor of two to one.

9. A return travel allowance of $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. All USIA-funded delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

11. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package. Note: the 20 percent limitation of "administrative costs" included in previous announcements does not apply to this RFP. Please refer to the Application Package for complete budget guidelines.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the budget and contract offices, as well as the USIA geographic regional office and the USIS post overseas, where appropriate. Proposals may also be reviewed by the USIA's Office of General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. *Quality of Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to the Agency mission.

2. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substance undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the institution will meet the program objectives and plan.

4. *Multiplier Effect:* Proposed programs should strengthen long-term

mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Value to U.S.—Partner Country Relations:* Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner.

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goal.

7. *Institution Reputation/Ability:* Proposal should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. *Evaluation Plan:* Proposals should provide a plan for a thorough and objective evaluation of the program/project by the grantee institution.

10. *Cost-Effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Support of Diversity:* Proposal should demonstrate the recipients' commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation (such as a written statement or account) summarizing past and/or on-going activities and efforts that further the principle of diversity within both their organization and their activities.

Notice

The need of the program may require the award to reduced, revised, or increased. The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by the Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about December 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: June 8, 1994.

John P. Loiello,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–14510 Filed 6–15–94; 8:45 am]

BILLING CODE 8230–01–M

Public and Private Nonprofit Organizations in Support of International Educational and Cultural Activities—Professional Development in English Language Teaching: Israel, et al.

ACTION: Notice—request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the United States Information Agency's Bureau of Educational and Cultural Affairs announces a competitive grant program for nonprofit organizations to conduct a project for enhancing professional development in English language teaching at the secondary level in Israel (both Arab and Jewish communities), Gaza, and the West Bank. Participants will be professionals responsible for developing effective English language teaching programs; emphasis will be on curriculum development, teaching methodology, production of classroom-appropriate material, and organizing professional associations and networks.

A second, underlying, agenda of this project is to convene, on an egalitarian basis and on neutral territory, a group of Israeli Jews, Israeli Arabs, and Palestinians who will work together within a professional discipline—in this case, English language teaching—and who will, upon returning to their own communities, both maintain professional, mutually supportive contact and represent, within those communities, the feasibility of collegial relationships between Jews, Israeli Arabs, and Palestinians.

The program will be conducted in English.

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. After the RFP deadline, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the final decisions are made.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P–94–31.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m., Washington, DC time on August 2, 1994. Faxed documents will not be accepted, nor will documents postmarked August 2, 1994 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by this deadline.

ADDRESSES: The original and 14 copies of the completed application and required forms should be submitted by the deadline to: U.S. Information Agency, Ref: E/P–94–31, Office of Grants Management (E/XE), 301 Fourth Street SW.—room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact the Office of Citizen Exchanges (E/P), room 224, USIA, 301 Fourth Street SW., Washington, DC 20547, fax (202) 619–4350, tel. (202) 619–5319, to request detailed application packages which include all necessary forms and guidelines for proposals, including specific budget preparation. Please specify the name of USIA Program Specialist Thomas Johnston on all inquiries and correspondence.

Background/Objectives of This Program

There is a strong need and desire among educational professionals in Gaza, the West Bank, Israeli Arab communities, and selected Israeli Jewish communities for assistance in the development of an effective, comprehensive program of English language teaching at the secondary level. Concomitantly, there is an even greater imperative for members of the diverse communities within Israel and for Palestinians from both Gaza and the West Bank to meet and work together in a professional, non-politically charged context.

One goal of this project is to prepare Israeli and Palestinian participants—individuals active in setting the agenda for high school and/or community-based English Language teaching programs—to implement state-of-the-art TESOL curriculum design, teaching methodology, and material/text development in an effort to enhance English teaching and learning in their respective communities.

The second goal is to develop a situation in which professionals from the diverse communities may meet and work together in an egalitarian, mutually supportive way.

American organizations are invited to submit proposals for a project to bring 12 English teaching professionals to the United States for a period of four or five weeks.

Participants should become thoroughly conversant with state-of-the-art theory and practice of teaching English as a second language. They should observe and participate in classroom and language lab instruction, become involved in the complexities of curriculum development, and produce guidelines for and examples of classroom-appropriate teaching material. In addition, they should be introduced to professional associations and networks of teachers, curriculum developers, and education officials, providing them models of professional cooperation and information exchange which will be useful in establishing cross-cultural professional linkages in the region.

The second phase of the project should take place over a period of approximately six months and should entail the travel at approximately eight-to-ten-week intervals, of four American specialists/consultants. Each specialist will conduct a series of two-to-three-day workshops on one or more of the key issues addressed in the initial phase of the exchange (e.g., curriculum development; teaching methodology; in-service training), in each of the locations in Israel, Gaza, and the West Bank from which participants in the original phase were drawn.

Participants

Participants' professional titles will vary from community to community, given the independent development of educational supervisory/oversight institutions in Israel, Gaza, and the West Bank. They might be drawn from the Ministry of Education, the ranks of consultants to the educational establishment, teachers' unions, professional committees, or teacher training institutions. All will be responsible, in some capacity, for the development of effective English language teaching programs. Participants will be selected by United States Information Service officers (The United States Information Agency's overseas contingent is officially called the United States Information Service) serving in the American Embassy in Tel Aviv and the American Consulate in Jerusalem. Individuals may also be recommended for participation by the grantee institution, but selection will be made only in close consultation with USIS officers. American consultants who will travel abroad during the second phase of this exchange program will be selected by the grantee institution in consultation with USIA.

USIA officers in participating countries will facilitate the issuance of visas and other program-related material.

Programmatice Considerations

Thematically, the project should:

—Consider the current status of English Language instruction in the communities represented by the participants and determine, in conjunction with USIS posts in Israel and Jerusalem and with the educators selected as participants, the needs to be addressed by the project;

—Provide the participants both a general and specific overview of English Language education—focussing specifically on teaching English as a second language—as it is practiced in the United States, in the context of a socially diverse country;

—Be organized, to the extent possible, around open seminar/discussions, participant observation, and hands-on, experiential learning;

—Introduce participants to the organization and workings of professional associations of educators and other means of information exchange, such as internet, which would provide continued access to diverse ideas, publications, etc.;

—And include, if feasible, attendance at the TESOL international convention in Long Beach, California, March 28–April 1, 1995.

Pursuant to the legislation authorizing the Bureau of Educational and Cultural Affairs, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social, and cultural life.

Beyond the immediate goals of this program, USIA is interested in supporting programs which will lay the groundwork for new and continuing links among American, Israeli, and Palestinian institutions and professional organizations and which will encourage the further growth and development of democratic structures.

The grantee will be responsible for most arrangements associated with this program. These include organizing a coherent progression of activities, providing international and domestic travel arrangements for all participants, making lodging and local transportation arrangements for visitors, orienting and debriefing participants, preparing any necessary support material, and working with host institutions and individuals to achieve maximum program effectiveness.

To prepare the foreign educators for this project prior to their arrival in the United States, E/P encourages the grantee organization to develop material that would be sent to USIS offices overseas for distribution to participants. This material might include a tentative project outline and suggested goals and objectives, relevant background information, and information about American institutions and individuals involved in the project.

At the beginning of the program, the grantee organization should conduct an orientation session for the visiting participants which addresses administrative details of the program and provides general information about American society and culture which will facilitate the participants' understanding of and adjustment to daily life in the United States.

At the conclusion of the program, the group should meet in a symposium to review what has been presented to and experienced by the participants and to consider how that which has been learned can most effectively be applied upon the participants' return to their home countries.

Additional Guidelines

Program monitoring and oversight will be provided by appropriate USIA elements. Per Diem support from host institutions during an internship component is strongly encouraged. However, for all programs which include internships, a nonprofit grantee institution which receives funds from corporate or other co-sponsors should then use those funds to provide food, lodging, and pocket money for the participants. In no case could the intern receive a wage or "be hired" by the sponsoring institution.

Internships should also have an American studies/values orientation component at the beginning of the program. The American grantee institutions should try to maximize cost-sharing in all facets of the program, and to stimulate U.S. private sector (foundation and corporate) support.

Proposals incorporating internships will be more competitive if letters committing prospective host institutions to support these efforts are provided.

Funding

Competition for USIA funding support is keen. The final selection of a

grantee institution will depend on assessment of proposals according to the review criteria delineated below.

The amount requested from USIA for this program should not exceed $135,000. However, organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000.

While applicants must provide an all-inclusive budget with the proposal, they are also encouraged to include separate sub-budgets for each program component, phase, location or activity.

The recipient's proposal shall include the cost of an audit that: (1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions; (2) complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and (3) includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for: (1) Preparation of basic financial statements and other accounting services; and (2) preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

USIA will consider funding the following project costs:

1. International and domestic air fares; visas; transit costs (e.g., airport taxes); ground transportation costs.

2. *Per diem*: For the U.S. program, organizations have the option of using a flat $140/day for international participants or the published Federal Travel Regulations per diem rates for individual American cities.

Note: U.S. escorting staff must use the published federal per diem rates, not the flat rate. For activities in the Middle East the Standard Government Travel Regulations per diem rates must be used.

3. *Book and cultural allowance*: Participants are entitled to a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. Escorts are reimbursed for actual expenses up to $150. U.S. staff do not get these benefits.

4. *Consultants*: May be used to provide specialized expertise or to make presentations. Honoraria should not exceed $250 per day. Subcontracting organizations may also be used, in which case the written contract(s) must be included in the proposal.

5. *Room rental (for meeting or conference rooms)*: Generally should not exceed $250 per day.

6. *Material development*: Proposals may contain costs to purchase, develop and translate material for participants. USIA reserves the rights to this material for future use.

7. *One working meal per project*: Per capita cost may not exceed $5–8 per lunch and $14–20 per dinner, excluding room rental. The number of invited guests may not exceed the number of participants by a factor of more than two to one.

8. *Return travel allowance*: $70 for each participant which is to be used for incidental expenditures incurred during international travel.

9. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in application package.

Note: the 22% limitation of "administrative costs" included in previous announcements does NOT apply to this RFP

E/P encourages cost-sharing, which may be in the form of allowable direct or indirect costs. E/P would be especially interested in proposals which demonstrate a program vision which goes well beyond that which can be supported by the requested USIA grant and which would try to use a USIA grant to leverage additional funding from other sources to support elements of the broader program plan.

The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E, "Cost-sharing and Matching," and should be described in the proposal. In the event the Recipient does not meet the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Please Note all delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the Application Package. Confirmation letters from U.S. and foreign co-sponsors noting their intention to participate in the program will enhance a proposal.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Package.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals will be reviewed by USIS posts and by USIA's Office of Near Eastern, North African, and South Asian Affairs. Proposals may also be reviewed by the Office of the General Counsel or other Agency elements. Funding is at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for granting awards resides with USIA's contracting officer. The awarding of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent the awarding of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the following criteria:

1. Quality of Program Idea

Proposals should exhibit substance, originality, rigor, and relevance to the Agency mission. They should demonstrate the matching of U.S. resources to a clearly defined need.

2. Institutional Reputation/Ability

Institutions should demonstrate their potential for effective program design and implementation and provide, if available, evidence of having conducted successful programs. If an applicant has previously received a USIA grant, responsible fiscal management and full compliance with all reporting requirements for past Agency grants, as determined by USIA's Office of Contracts (M/KG), will be considered. Evaluations of previous projects may also be considered in this assessment.

3. Project Personnel

Information provided regarding the thematic and logistical expertise of project personnel should be relevant to the proposal at hand. In addition to English teaching specialists, applicants

for this grant should have involved, on a consultative basis, individuals with Middle Eastern and conflict resolution expertise. Resumes or C.V.s should be summaries appropriate to the specific proposal and should not exceed two pages each.

4. Program Planning

A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. Thematic Expertise

The proposal should demonstrate the organization's expertise in the subject area and its ability to share information effectively.

6. Cross-Cultural Sensitivity/Area Expertise

Evidence should be provided of sensitivity to historical, linguistic, religious, and other cross-cultural factors, as well as relevant knowledge of the target geographic area/country.

7. Ability To Achieve Program Objectives

Objectives should be realistic and feasible. The proposal should clearly demonstrate how the grantee institution will meet program objectives.

8. Multiplier Effect

Proposed programs should strengthen mutual understanding and should contribute to maximum sharing of information and the establishment of long-term institutional and individual ties.

9. Cost-Effectiveness

Costs to USIA per exchange participant (American and foreign) should be kept to a minimum, and all items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. Cost-Sharing

Proposals should maximize cost-sharing through private sector support as well as through direct funding contributions and/or in-kind support from the prospective grantee organization and its partners.

11. Follow-On Activities

Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USIA-supported programs are not isolated events.

12. Project Evaluation

Proposals should include a plan to evaluate the project. USIA recommends that the applicant discuss the evaluation methodology chosen and the techniques which will be employed to assess the effectiveness of the project and the correspondence between observable outcomes and original project objectives. Grantees will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative.

Explanatory information provided by the Agency which contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the American Government. Awards cannot be made until funds have been fully appropriated by Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about September 16, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: June 11, 1994.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–14693 Filed 6–15–94; 8:45 am]

BILLING CODE 8230–01–M

Freedom Support Act—Secondary School Initiative for Short Term Exchange Projects

ACTION NOTICE: Request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions to conduct exchanges of young persons between the ages of 14 and 17 years of age with the twelve Newly Independent States (NIS) of the former Soviet Union; viz., Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. These exchanges represent part of the activities of the Secondary School Student Exchange Initiative as included in the FREEDOM Support Act of 1992 and are subject to the availability of funding for the Fiscal Year 1995 program. This is a request for proposals for short term thematic exchanges. Requests for proposals in support of other programs under the aegis of the FREEDOM Support Act are being published separately.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency in Washington, DC by 5 p.m. on Friday, September 2, 1994. Faxed documents will not be accepted, nor will documents postmarked on or before September 2, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Subject to availability of funds, notification of awards will be announced on or after February 1, 1995 for exchanges to begin on or after May 1, 1995.

ANNOUNCEMENT NUMBER: This Announcement number is E/P–95–02. Please refer to this number in all correspondence or telephone calls to USIA.

ADDRESSES: The original, plus three fully tabbed copies and 10 partial copies (Tabs A–D) of the completed application, including required forms, should be submitted in the format described in the Bureau's application package and mailed to: U.S. Information Agency, Ref: F.S.A. E/P–95–02, Division of Grants Management, E/XE, 301 4th St. SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations and institutions should contact Steven Lauterbach, NIS Youth Exchange, U.S. Information Agency, room 314, Washington, DC 20547, (202) 619–6299, FAX (202) 619–5311, to request detailed application packages which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. Overall authority for these programs is contained in the Mutual Education and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act).

Overview:

Grant funding is intended to promote the exchange of secondary school students, from 14 to 17 years of age, between the United States and the NIS (Newly Independent States) of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Limited funding is also available to support leadership development and training for adults in NIS non-governmental

organizations who work with youth, when such an activity is coupled with a youth exchange program. The Agency's main objectives are to foster interaction between American and foreign youth, to promote democratic values and the development of democratic institutions, and to build sustainable partnerships between organizations in the United States and organizations in the former Soviet Union. It is important that all projects make interaction between the American and NIS participants a central focus of their activities. Proposals should demonstrate how American and foreign participants will interact in a substantive way that encourages the exchange of ideas, culture, values, and information.

Four different program designs will be utilized in the NIS Secondary School Initiative: (A) An academic year program, (B) a semester exchange program (C) a school-to-school linkage program, and (D) a short-term exchange program. This RFP describes the short-term program. Other RFPs will be published separately soliciting proposals for the other three programs.

Guidelines for Short-Term Exchanges

Grants will be awarded to support programs of a three to eight week duration. Programs should have a thematic focus. Proposals which address civics education and the American political system are encouraged. Other eligible foci may include, but are not limited to: The arts; language and culture; science; computer technology; leadership training; conservation and the environment; journalism; social and economic issues; agriculture; business administration/management (including enterprise promotion); and homestay programs under the title "American Community Experience," which should include local programming in such areas as state and municipal government, regional culture, etc. Proposals should provide detailed information on activities planned in both the U.S. and the partner country. It is important for program activities to be of a substantive nature. These may include excursions, cultural activities, and opportunities to experience community life. It is very desirable for each group of NIS students to have a segment of their program in Washington, DC or a state capital. Care should be taken to avoid proposing a program which is too heavily weighted toward "touristic" activities.

One-for-one reciprocity is not a requirement, but is encouraged. Proposals should also provide written evidence that the U.S. organization has the commitment of a reliable counterpart organization in the partner country willing and able to engage in the proposed activities. Homestays are desirable. The minimum stay in country for all programs is three weeks.

The core of the proposal narrative should articulate the purposes of the project, as they relate to the objectives stated above in the "Overview," and should describe the program elements. Guidelines for preparing the narrative are available from USIA (address and telephone number provided above).

Projects requesting support for tours of performing arts groups or sports teams are eligible only if the primary purpose of the program is mutual education and there is extensive structured interaction and cultural exchange between international participants and their hosts. Tours of performing arts groups or sports groups for whom the primary activity is performance or competition will not be eligible. Outdoor camping projects must have a thematic focus. Proposals must include a plan for evaluating the program in terms of its value to the participants. Unless there are extenuating circumstances, programs should maintain a ratio of not more than one adult per every ten young people. (If fewer than ten students are being sent on either side of an exchange, those students are entitled to one adult escort). Programs requesting an exception to the 1/10 ratio must provide a justification. One justifiable exception would be for those projects that include leadership development and training for adult leaders. Organizations wishing to pay for additional escorts from their own funds are free to do so.

Grantee organizations are responsible for developing a sustainable partnership with an organization in the NIS; designing and implementing the components of the exchange; managing all travel arrangements, logistics, insurance coverage, passports, visas, etc; and disbursing and accounting for funds.

Budget

The organization must submit a comprehensive line item budget. Costs for US and NIS students are to be listed separately. Details are available in the application packet. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Organizations should be familiar with grant regulations described in OMB circulars A110, A122, and A133.

Cost sharing is encouraged. Cost sharing may be in the form of allowable direct or indirect costs. The grant recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E—Cost Sharing and Matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated will be reduced in proportion to the recipient's contribution.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographical office of the U.S. Information Agency, and the Agency's budget and contract offices. Proposals may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director of Education and Cultural Affairs. Final technical authority for grant awards resides with the Agency's Office of Contracts.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality of the Program Idea

Proposals should exhibit originality, substance, rigor, and adherence to the criteria and conditions described above.

2. Reasonable, Feasible, and Flexible Objectives

Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual linkages. A program is also considered to have a strong "multiplier effect" if it affects a significant number of persons in addition to the actual program participants. For example, a group of high school students may have

extensive interaction with community groups.

4. Value to U.S.—Partner Country Relations

Assessments by USIA's geographic area desk, and USIS officers overseas of the need, potential, impact, and significance in the partner country(ies), as demonstrated by a sustainable partnership with an organization in the former Soviet Union.

5. Cost Effectiveness

The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should to the extent possible maximize cost-sharing through other private sector support as well as institutional direct funding contributions. Other things being equal, a proposal with a low cost per participant and/or a low cost per participant program day will have a competitive advantage.

6. Institutional Capacity

The proposed personnel and institutional resources of both the U.S. applicant and the NIS partner organization should be adequate and appropriate to achieve the program or project's goals.

7. Proposals Should Demonstrate Potential for Program Excellence and/or Track Record of Applicant Institution

The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants. A documented record of successful exchange programs, whether USIA financed or not, is one way in which an applicant may demonstrate strength in this area.

8. Follow-On Activities

In accordance with the stated objective of a sustainable partnership with an organization in the former Soviet Union, proposals should provide a plan for continued follow-on activity which ensures that USIA supported programs are not isolated events.

9. Evaluation Plan

Proposals should provide a thoughtful and comprehensive description of how the project will be evaluated in terms of meeting the objectives listed above and how such an evaluation would present quantitative data on participants, contacts, interactions, activities, achievements, etc., as well as qualitative appraisals of successes and shortcomings and suggestions for program improvement.

10. Selection Process

All participants must be between the ages of 14 and 17 at the time they begin the program. In all cases, selection should be merit-based. Selection criteria should include actual or potential leadership qualities, and may also include some or all of the following: Maturity, academic achievement, interest in the program, motivation, recommendations of teachers, and language ability, although no participant should be chosen solely on the basis of his or her language ability. As far as possible, participants should reflect the diversity of the communities from which they come. Ability to pay should not be a determining factor for either American or foreign participants.

11. Geographic Diversity

To the extent possible, the Agency will seek to fund programs from different geographic areas within the former Soviet Union and within the United States.

12. Participant Diversity

Programs should strive for a diversity of participants and include members of underrepresented groups; e.g., racial and ethnic minorities and persons with disabilities.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. A final award cannot be made until funds have been fully appropriated by Congress, allocated, and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about March 1, 1995. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: June 8, 1994.

John P. Loiello,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–14511 Filed 6–15–94; 8:45 am]

BILLING CODE 8230–01–M

Samantha Smith Memorial Exchange Program—Youth Exchanges

ACTION: Request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions to conduct exchanges of youth under the age of 21 with Central and Eastern Europe: Albania, Croatia, Slovenia, Bosnia-Hercegovina, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and The Former Yugoslav Republic of Macdeonia, or the Newly Independent States (NIS) of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Proposals may address more than one country in each area but cannot combine NIS countries with those of Central and Eastern Europe. However, organizations may submit two different proposals for these two geographic areas. These exchanges represent part of the activities of the Samantha Smith Memorial Exchange Program and are subject to the availability of funding for the Fiscal Year 1995 program. A request for proposals in support of exchanges of college and university undergraduate students under the AEGIS of the Samantha Smith program will be published separately by the office of Academic Exchanges.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency in Washington, DC by 5 p.m. EST on Friday, September 2, 1994. Faxed documents will not be accepted, nor will documents postmarked on a September 2 but received at a later date. It is the responsibility of each grant applicant to ensure that complete proposals are received by the above deadline. Grant funds are unlikely to be available before February 1, 1995.

ANNOUNCEMENT NUMBER: This Announcement number is E/P–95–03. Please refer to this number in all correspondence or telephone calls to USIA.

ADDRESSES: One complete signed original, three complete, fully tabbed copies, and ten partial copies (parts A through D only), not bound, must be submitted before the deadline to: U.S. Information Agency, Ref: E/P–95–03, Office of Grants Management, E/XE, room 336, 301 4th St. SW., Washington, DC, 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations and institutions should write or fax: U.S. Information Agency, Office of Citizen Exchanges, E/PY, room 314, 301 4th St., SW., Washington, DC 20547, FAX for NIS (202) 619–5311, for Central and Eastern Europe FAX (202) 619–4350 to request

detailed application packages, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information. Questions may be directed to E/PY (202) 619–6299 (NIS) or E/PN (202) 619–5348 (Central and Eastern Europe).

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. Overall authority for these programs is contained in the Mutual Education and Cultural Exchanges Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act).

Overview

Grant funding is intended to promote the exchange of young people 21 years of age or younger between the U.S. and the Newly Independent States (NIS) or Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan, and the Central and Eastern European countries of Albania, Bosnia-Hercegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, and the Former Yugoslav Republic of Macedonia. Proposals may address more than one country in each area, for example, a project with Bulgaria, Latvia, and Slovenia, or Belarus, Moldova, and Kyrgyzstan. Proposals cannot combine NIS countries with those of Central and Eastern Europe. The Agency's main objective is to foster interaction between American and foreign youth. Consequently, extensive interaction is a requirement. Proposals should demonstrate how American and foreign youth will interact in a way that encourages the exchange of ideas, values, culture, and information.

This competition will give priority consideration to projects taking place in Russia in areas other than Moscow and St. Petersburg, and to projects taking place outside of capital cities in all the eligible countries.

Twenty-five percent (25%) of the available funds will be reserved for organizations that have not received Samantha Smith grants in the past year. Grants are awarded to expand or enhance existing exchange programs or to encourage the development of new exchanges. Programs may involve the U.S. organization in a partnership with organizations in one or more countries. The minimum length of stay in country for a project should be three weeks.

Two categories of grants are being offered.

Category A—School-to-School Exchanges

A school-to-school exchange is one that involves a direct linkage between a U.S. and a Central and Eastern European or NIS elementary, middle, or high school, or a two-year college. (4-year colleges and universities are not eligible under this competition). An applicant must be a school, school district, or two-year college. The maximum grant for this category is $15,000. The exchange program activity should be reciprocal and permit students to live in each other's countries during the academic year when schools are in session. (This would include officially-sponsored summer school sessions). The proposal should provide detailed information on the classroom and other activities in both the U.S. and the partner country. The duration of the projects may be one academic year, one semester, or short-term (generally understood to mean three to eight weeks). Organizations which are receiving funding under other USIA grants for youth exchanges must insure that proposals submitted under this solicitation do not duplicate or overlap with programs already being funded by USIA.

Category B—General Youth Exchange

This category includes all other projects, which will be eligible for grants of up to $75,000. Semester and year-long high school or two-year college study programs conducted by exchange organizations may fall within this category, as may projects involving the annual exchange of groups of students and teachers among several linked schools for short-term stays during the academic year. (4-year colleges and universities are not eligible under this competition). For short-term (3–8 weeks) exchanges, preference is given to projects with a thematic focus. Eligible foci may include, but are not limited to: The arts (theater, dance, music, fine arts, literature, folklore, and film/video); language and culture; science, technology, and mathematics; conservation and the environment; historic preservation; museum training; social, political, and economic issues; agriculture; business and administration/management (including enterprise promotion). While a thematic focus is not an absolute requirement, care should be taken to avoid proposing a program which is too heavily weighted toward "touristic" activities and lacking in substance. Projects requesting support for tours of performing arts groups or sports teams are eligible if the primary purpose of the program is interaction among international participants and their hosts. Tours of performing arts groups or sports groups where the primary activity is performance or competition are not eligible.

Reciprocity is not a requirement for this category, but in general, USIA gives preference to proposals for reciprocal exchanges. The proposal should provide detailed information on the activities in both the U.S. and the partner country. The number of U.S. and foreign participants should be roughly equal. Such proposals must provide written evidence of the commitment of a counterpart organization in the partner country willing and able to engage in the proposed activities. In most cases the counterpart organization should assume a significant portion of the cost of hosting the American participants in the reciprocal portion of the program.

Guidelines

All categories of proposals must include: Participant selection criteria and a description of the selection process. All participants must be under the age of 21 at the time they begin the program. In all cases, selection should be merit-based. Selection criteria should include actual or potential leadership qualities, and may also include some or all of the following: maturity, academic achievement, interest in the program, motivation, recommendations of teachers, and language ability, although no participant should be chosen solely on the basis of language ability. As far as possible, participants should reflect the diversity of the communities from which they come. Ability to pay should not be a determining factor for either American or foreign participants.

Description of Orientation Programs

There should be ample introduction to the program theme, administrative procedures, basic historical, cultural, and social information, and substantive issues likely to be raised by their U.S. or foreign counterparts. The orientation program should help minimize the "culture shock" of the participants when they are in the partner country.

Information Concerning Stays in the Host Country

Preference is generally given to longer stays in-country. The proposal should describe in detail the selection and orientation processes for both U.S. and host families and institutions. Consideration will be given to those projects which for reasons or requirements of the partner country(ies) are of short duration, but the length of stay in country should be a minimum of three weeks.

Information Concerning Language Qualifications

Speaking ability in the language of the host country for both American and foreign participants is preferred, but not required. It is recognized that relatively few American young people will speak the languages of the host countries, given the fact that relatively few American schools teach these languages. Ideally, some participants in each incoming delegation should be conversant in English, and some participants in each outgoing delegation should be conversant in the host country language. However, no participant should be selected solely on the basis of his or her language ability.

Details on Planning

The proposal should show evidence of adequate lead/planning time to ensure a successful exchange program. A proposed time frame should also be included, as should provisions for monitoring and evaluating the program.

Proposed Budget

Organizations must submit a comprehensive line item budget for which specific details are available in the application packet.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Organizations should be familiar with grant regulations described in OMB circulars A110, A122, and A133.

Cost sharing is encouraged. Cost sharing may be in the form of allowable direct or indirect costs. The grant recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E—Cost Sharing and Matching, and should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution.

Allowable Costs

Grant-funded expenditures will generally be limited to the following categories:

—In-country travel and per diem; i.e., lodging, meals, clothing, maintenance, and incidentals, or stipends.

—Orientation, honoraria, or preparation costs; briefing materials. Honoraria is limited to $150/day/speaker.

—Educational and cultural enrichment activities up to a limit of $150 per program youth participant.

—Tuition, conference/seminar registration fees, and other program admission fees.

—International travel, normally limited to partial support for Americans traveling to the NIS, Baltic Republics, or Central and East Europe, and Central and East Europeans traveling to the U.S. The American participants and/or the American organization should be encouraged to fund a portion of the Americans' travel costs, although full funding of participants from economically disadvantaged backgrounds is encouraged. The NIS partner organizations should also be encouraged to make a contribution toward international travel, but in this regard one should avoid a situation in which participants are chosen largely or wholly on the basis of their ability to pay, thus creating an unrepresentative group. In some cases 100% of the travel costs for NIS participants will be paid from USIA funds.

—Proposals should demonstrate substantial cost sharing in both program and administrative expenses.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein and in the application package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA's grants officer.

Review Criteria

Technically eligible applications will be reviewed according to the following criteria in addition to what has been outlined already in this RFP:

1. Quality of Program Idea

Quality of the program plan and adherence of proposed activities to the criteria and conditions described above.

2. Reasonable, Feasible, and Flexible Objectives

Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual linkages. A program is also considered to have a strong "multiplier effect" if it affects a significant number of persons in addition to the actual program participants. For example, a group of high school students may have extensive interaction with community groups.

4. Value to U.S.—Partner Country Relations

Assessments by USIA's geographic area desk, and overseas officers of the need, potential, impact, and significance in the partner country(ies).

5. Cost Effectiveness

The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. Proposals which utilize grant funds for program rather than administrative costs will, in general, be more favorably reviewed. All other items should be necessary and appropriate. Proposals should to the extent possible maximize cost-sharing through other private sector support as well as institutional direct funding contributions. Other things being equal, a proposal with a low cost per participant and/or a low cost per participant program day will have an advantage.

6. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Track Record/Ability

Proposals should demonstrate potential for program excellence and/or the track record of applicant institution. The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants. A documented record of successful exchange programs, whether USIA financed or not, is one way in

which an applicant may demonstrate strength in this area.

8. Follow-on Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

9. Evaluation Plan

Proposals should provide a plan for evaluation of the program by the grantee institution.

10. Participant Diversity

Programs should strive for a diversity among participants and include members of underrepresented groups; e.g., racial and ethnic minorities and persons with disabilities.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process by February, 1995. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: June 8, 1994.

John P. Loiello,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–14512 Filed 6–15–94; 8:45 am]

BILLING CODE 8230–01–M

Freedom Support Act—Youth With Disabilities

ACTION: Request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural and other not-for-profit institutions to provide materials, training and facilitative support on programming for youth with disabilities for USIA grantee organizations administering international exchanges. This program is sponsored under the Secondary School Exchange Initiative as originally authorized under the Freedom Support Act of 1992. Funding for this program is subject to the availability of a Congressional authorization and appropriation.

DATES: Deadlines for proposals: All copies of proposals for grants under this request must be received at the U.S. Information Agency in Washington, DC, by 5 PM EST, on September 30, 1994.

Faxed documents will not be accepted, nor will documents postmarked by 30 September but received at a later date. It is the responsibility of each grant applicant to ensure that its proposal is received by the above deadline. Grant funding should be available after 1 February, 1995 for a grant program beginning in May, 1995.

ANNOUNCEMENT NUMBER: This announcement number is E/P–95–04. Please refer to this number in all correspondence or telephone calls to USIA.

ADDRESSES: The original, 3 fully tabbed copies and 10 copies (Tabs A–D) of the completed application, including required forms, should be submitted in the format described in the Bureau's application package and mailed to: U.S. Information Agency, Ref: E/P–95–04, Grants Management, E/XE, 301 4th Street rm. 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Robert Persiko, Secondary School Initiative, E/PY, rm. 314 (202) 619–6299; Fax (202) 619–5311, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Overall authority for NIS Secondary School exchanges is contained in the Freedom Support Act (Pub. L. 102–391).

Overview

Grant funding is intended to assist one organization over a one-year period to provide training, materials and facilitative support about programming of people with disabilities for organizations funded by the NIS Secondary School Initiative. The purpose of the training is to promote access to Initiative programs for youth with disabilities. Materials should support the training and supplement this goal where training is unfeasible. Facilitative support should foster connections between secondary school exchange organizations in the US with organizations serving persons with disabilities; also promote links with similar organizations in the following countries with organizations recruiting students for NIS–US exchange programs: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kryrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan. This grant is not intended to sponsor the actual exchange of students.

Students selected for exchanges under the NIS Secondary School Initiative are aged 14 to 17 years old. Proposals should focus on increasing access to exchange opportunities by participants within this age range.

A maximum of one grant will be awarded for this project.

Guidelines

The components of this program and their respective purposes are:

(1) Training

To enlighten organizations that recruit, select, place and educate students supported under the Freedom Support Act Secondary School Exchange Program about the importance of integration of participants with disabilities into their programs; to train these organizations in the logistics of handling the needs of a participant with a disability and provide supporting materials needed for training; to provide materials needed for continued training within organizations.

(2) Materials

To provide reference materials for organizations which do not participant in the above-mentioned training; to compile information about accessible educational facilities abroad, and;

(3) Facilitative Assistance

To facilitate connections between organizations to the NIS which provide support for persons with disabilities and the organizations which recruit, select and place students participating in NIS–US exchange programs; to facilitate connections between organizations in the US that provide support for persons with disabilities and organizations in the US which recruit, select, and place students participating in US–NIS exchange programs.

The following factors should be considered in preparing proposals.

—The Secondary School Initiative funds programs administered by over 50 different organizations in the United States. It is anticipated that this training will involve many, but not all, of these organizations. The final number of trainees is subject to the

availability of funding. Budgets should outline both general costs associated with development of training and materials and specific costs for these services on a per-organization basis.

—Interested organizations must submit a proposal to administer all components of this program.

—Proposals under the facilitative assistance component of this program must demonstrate the organization's connections to U.S. and NIS based organizations in support of people with disabilities.

Proposals should include a description of the process your organization would use to train organizations about the need to integrate persons with disabilities in programs and the type of logistical education necessary to facilitate integration.

The grantee organization should describe the process by which the information about accessible educational facilities in the NIS will be gathered, organized and distributed.

The grantee organizations should also demonstrate a plan for connecting US based organizations in support of disabled persons and US organizations administering grant money for student exchange. In addition, the organization should describe a culturally-sensitive plan for linking NIS organizations in support of persons with disabilities to secondary school exchange organizations.

Proposed Budget

Organizations must submit a comprehensive line item budget. Details are available in the application packet. Organizations should be familiar with OMB circulars A110, A122, and A133 on cost accounting principles.

Cost sharing is encouraged. Cost sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the federal government. Such records are subject to audit.

The basis for determining the value of cash and in-kind contributions must be in accordance with OMB circular A110, Attachment E. Cost sharing and Matching should be described in the proposal. In the event the organization does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the participant's contribution.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts office. Proposals may also be reviewed by the Agency's Office of General Counsel.

Funding decisions are at the discretion of the Associate Director of Educational and Cultural Affairs.

Final technical authority to grant awards resides with the Agency's Office of Contracts.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality of the Program Idea

Proposals should exhibit originality, substance, rigor, and relevance to Agency mission and adherence to the criteria and conditions described above and in application packet guidelines.

2. Reasonable, Feasible, and Flexible Objectives

Proposals should clearly demonstrate how the institution will meet the program's purposes as outlined in this RFP.

3. Multiplier Effect

Proposals should demonstrate how the programs will encourage continuation of the training objectives beyond the training period and beyond the training population.

4. Cost Effectiveness

The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

5. Institutional Capacity and Track Record

The organization should have demonstrated experience in the aspects of the program which they propose to administer. Proposals benefit by displaying a record of successful programs, including responsible fiscal management and full compliance with past Agency grants.

6. Follow-Up Activities

Proposals should present a plan to track the effectiveness of the training on following year exchange programs.

7. Evaluation Plan

Proposals should provide a plan for evaluation of the program by the grantee institution.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until the funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about 15 December 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: June 11, 1994.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–14694 Filed 6–15–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 115
Thursday, June 16, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: June 28, 1994, 2:00 p.m. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW, Washington, DC. 20507.

STATUS: Part of the Meeting will be open to the public and part of the Meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes
2. Proposed Enforcement Guidance on *Hazen Paper Co.* v. *Biggins*
3. Proposed Guide on Communicating & Interacting with People who have Disabilities

Closed Session

Litigation Authorization; General Counsel Recommendations.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4077 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

This Notice Issued June 14, 1994.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 94–14866 Filed 6–14–94; 3:24 pm]

BILLING CODE 6750–06–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 94–14152.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 16, 1994, 10 a.m.

Meeting Open to the Public.

The following item was deleted from the agenda:

Advisory Opinion 1994–14: Scott Lehman on behalf of Tsakanikas for U.S. Congress

DATE AND TIME: Wednesday, June 22, 1994 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, June 23, 1994 at 2 p.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1994–4: Judith K. Richmond on behalf of the U.S. Chamber of Commerce
Advisory Opinion 1994–15: The Honorable Leslie L. Byrne
Advisory Opinion 1994–16: Carlyle C. Ring, Jr. on behalf of the Atlantic Research Corporation PAC
Advisory Opinion 1994–14: Scott Lehman on behalf of Tsakanikas for U.S. Congress Committee (tentative only)
Announcement of Effective Date for the Final Rule on Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees (11 CFR 102.14)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant

[FR Doc. 94–14861 Filed 6–14–94; 3:05 pm]

BILLING CODE 6715–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 16, 1994.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Basin Resources, Inc.*, Docket No. WEST 92–340, etc. (Issues include whether Basin Resources violated 30 C.F.R. § 75.316 in two instances, whether the violations were of substantial nature and the result of Basin's unwarrantable failure, and whether a mine manager violated Section 110(c) of the Mine Act)
2. In re: *Contests of Respirable Dust Sample Alteration Citation*, Master Docket 91–1. (Consideration of issue concerning stay of proceedings).

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d)

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/800–877–8339 Toll Free

Dated: June 9, 1994.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94–14799 Filed 6–14–94; 1:07 pm]

BILLING CODE 6735–01–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 9–94

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Wed., June 29, 1994 at 10:30 a.m.—Consideration of Proposed Decisions on claims against Iran

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC on June 14, 1994

Judith H. Lock,

Administrative Officer.

[FR Doc. 94–14837 Filed 6–14–94; 2:18 pm]

BILLING CODE 4410–01–M

federal register

Thursday
June 16, 1994

Part II

Department of the Interior

Bureau of Indian Affairs

Environmental Impact Statement, Rosebud and Cheyenne River Sioux Reservations, SD; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement (DEIS) for Livestock Grazing and Prairie Dog Management for the Rosebud and Cheyenne River Sioux Reservations in South Dakota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that a Draft Environmental Impact Statement (DEIS) is available for public review and that public hearings will be held regarding this document. This proposal is for the development of a plan to manage prairie dogs and livestock grazing on the Rosebud and Cheyenne River Reservations.

DATES: Two public hearings on the DEIS will be held. The first hearing will be held on Wednesday, July 20, 1994, at 7:00 p.m. The second hearing will be held on Thursday, July 21, 1994, at 7:00 p.m. Written comments should be received on or before August 22, 1994, at the address listed below.

ADDRESSES: Comments and participation at the public hearing are invited. Written comments should be directed to Mr. Donald Whitener, Acting Area Director, Bureau of Indian Affairs, Aberdeen Area Office, 115 4th Avenue, SE, Aberdeen, South Dakota, 57401, Phone: (605) 226–7343, Fax: (605) 226–7446. The first public hearing will be held Wednesday, July 20, 1994, at 7:00 p.m. at the Rosebud Sioux Tribal Council Chambers, Rosebud, South Dakota, 57570. The second public hearing will be held Thursday, July 21, 1994, at 7:00 p.m. at the Cheyenne River Sioux Tribal Council Chambers, Eagle Butte, South Dakota, 57625.

Copies of the DEIS and/or Summary of the DEIS have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies of the document. Persons wishing copies of this DEIS should immediately contact Ken Parr at the address below.

FOR FURTHER INFORMATION CONTACT: Ken Parr, Bureau of Indian Affairs, Aberdeen Area Office, 115 4th Avenue SE, Aberdeen, South Dakota, 57401, Phone: (605) 226–7621, Fax: (605) 226–7358.

SUPPLEMENTAL INFORMATION: This DEIS includes two proposals, one for each reservation. The proposals are for developing grazing management systems and for implementing varying levels of prairie dog poisoning on trust lands within the reservations. The proposals are intended to maintain or improve range condition to appropriate levels to sustain reservation carrying capacities for livestock grazing. This notice is required by the National Environmental Policy Act (NEPA) Regulations (40 CFR part 1503) to obtain comments on the DEIS from agencies and the public.

The Bureau of Indian Affairs (BIA), Department of the Interior, in cooperation with the Rosebud and Cheyenne River Sioux Tribes, has prepared a DEIS on the proposed management of prairie dogs and livestock grazing on trust lands on the Rosebud and Cheyenne River Sioux Reservations. The alternatives for each reservation include varying levels of prairie dog poisoning and grazing management systems.

The purpose and need for these actions is to maintain or improve range condition to meet tribal objectives to sustain reservation carrying capacities for livestock grazing and, therefore, increase tribal income. The Tribal Councils feel that some grazing lands are degraded and many perceive that prairie dogs compete with livestock for forage, causing economic losses to the tribes and tribal members.

The preferred alternative (Alternative 3) for the Rosebud Reservation would implement extensive range improvements and conduct chemical treatment of prairie dogs on all trust lands outside the 7,400-acre Corn Creek Management Area (CCMA, located on the western boundary of the reservation). This alternative would meet tribal grazing objectives and maintain the untreated CCMA for ecosystem biodiversity. Other alternatives considered were: continuing current grazing management program with no prairie dog treatment; implementing extensive range improvements and treating prairie dogs on all trust lands, with follow-up treatment for at least 90 percent control; and implementing extensive range improvements and treating prairie dogs on all trust lands once, with follow-up treatments only on trust lands outside the CCMA.

The preferred alternative for the Cheyenne River Reservation is the Prairie Management Plan (Alternative 2) developed by the Tribe in May 1992. The plan proposes extensive range improvements with prairie dog treatment conducted only under limited circumstances, such as in cemeteries and on powwow grounds. This alternative would meet tribal grazing objectives and maintain ecosystem biodiversity. Other alternatives considered were: continuing the current grazing management program with no prairie dog treatment on trust lands, implementing extensive range improvements on trust lands, conducting no prairie dog treatment within the 10,000 acre prairie dog complex along the Moreau River, conducting prairie dog treatment on varying proportion of the remaining trust lands (25 percent treatment to 100 percent treatment); and conducting treatment of prairie dogs on 50 percent of all trust lands, including those within the prairie dog complex along the Moreau River.

Agencies and individuals are urged to provide comments on this DEIS as soon as possible. All comments received by the dates given above will be considered in preparation of the final EIS. Comments made at the public hearings will not be considered comments on the DEIS unless they are submitted in writing.

This notice is published pursuant to Sec. 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.); Department of the Interior Manual (516 DM 1–7); and the Bureau of Indian Affairs guidelines (30 BIAM Supplements 1, 2, and 3.)

Dated: June 9, 1994

John W. Tippiconnic,

Acting Assistant Secretary—Indian Affairs

[FR Doc. 94–14596 Filed 6–15–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
June 16, 1994

Part III

Federal Communications Commission

47 CFR Parts 0 and 1

Implementation of Section 9 of the Communications Act—Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year and Amendment of the Schedule of Application Fees; Rules

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[MD Docket No. 94–19; FCC 94–140]

Implementation of Section 9 of the Communications Act—Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted rules to implement section 9 of the Communications Act of 1934 to provide for the annual assessment and collection of regulatory fees. For fiscal year 1994, the Commission is required to utilize the Schedule of Regulatory Fees that Congress established in section 9(g) of the Act. The implementation of regulatory fees will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: H. Walker Feaster, Office of Managing Director at (202) 632–0923.

SUPPLEMENTARY INFORMATION:

Report and Order

Adopted: June 3, 1994.
Released: June 8, 1994.

By the Commission: Commissioner Quello issuing a statement; Commissioners Ness and Chong not participating.

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I. Introduction

1. By this *Report and Order*, the Commission adopts rules to implement section 9 of the Communications Act, as amended, 47 U.S.C. 159, providing for the annual assessment and collection of regulatory fees by the Commission.[1] The *Report and Order* establishes the amounts of the regulatory fees for Fiscal Year (FY) 1994 and the rules for the payment of such fees for fiscal years 1994 and thereafter.[2] Also, we are amending several of the rules governing the collection of the fees to be filed with applications and other filings pursuant to section 8 of the Communications Act, as amended, 47 U.S.C. 158.[3]

2. The rules we adopt below are designed to ensure that (1) collection of fees does not adversely affect the Commission's regulatory activities, (2) the most effective means possible are employed in the collection and deposit of fees, and (3) the paperwork (and financial burden) on the public resulting from our collection process is kept to an absolute minimum. The accomplish this goal, we have, to the extent possible, modeled our regulatory fee rules upon the rules that we previously established to govern the collection of fees filed with applications and other filings. See 47 CFR 1.1101 *et seq*. Moreover, in the course of fashioning rules to govern regulatory fees, we have revised several rules in order to improve the collection process related to these fees and, wherever possible, to ease the burden on those entities subject to the payment of these fees. Implementation of rules governing the collection of regulatory fees also furthers the National Performance Review goals of reinventing government by requiring beneficiaries of the Commission's services to pay the costs associated with these activities.

II. Background

3. Section 9(a) of the Communications Act requires the Commission to collect regulatory fees to recover the annual cost of its enforcement activities, policy and rulemaking activities, user information services, and international activities. 47 U.S.C. 159(a). 47 U.S.C. 159(b)(1)(A). The Schedule of Regulatory Charges sets forth in section 9(g) the categories of regulated entities subject initially to the regulatory fee requirement and designates the fees to be collected for each subject category of regulatee. 47 U.S.C. 159(g). The Schedule of Fees sets forth annual regulatory fees for specific categories of regulatees in Private Radio, Mass Media, Common Carrier and Cable Services.[4]

4. Section 9(f)(1) requires the Commission to adopt rules to implement the assessment and collection of the annual regulatory fees. 47 U.S.C. 159(f)(1). On March 4, 1994, we adopted a *Notice of Proposed Rulemaking* (*"NPRM"*) to implement section 9 of the Act.[5] In the *NPRM*, we concluded that Congress intended the Commission to rely upon the Schedule of Regulatory Fees enacted in section 9(g) to recover costs for FY 1994.

5. In addition, the *NPRM* proposed rules providing for: (1) Exemptions from

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[1] Section 9 of the Act was added by section 6002(a) of the Omnibus Budget Reconciliation Act of 1993 (hereinafter "1993 Budget Act"). See Pub. L. No. 103–66, Title VI, 6002(a), 107 Stat. 397 (approved August 10, 1993). Section 9 is codified at 47 U.S.C. section 159.

[2] As discussed below, we will establish the accounting systems necessary to make adjustments in the Schedule of Regulatory Fees required for the assessment of fees in future years in a subsequent and separate rulemaking proceeding. See 47 U.S.C. 159(b)(3), (i).

[3] 47 U.S.C. § 158. See generally 47 CFR part 1, subpart G; *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947 (1987) (hereinafter "*Fees 1*"), *recon. gmnted in part*, 3 FCC Rcd 5987 (1988) (hereinafter "*Fees 1 Reconsideration*"); *Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989*, 5 FCC Rcd 3558 (1990) (hereinafter "*Fees II*"), *recon. granted in part*, 6 FCC Rcd 5919 (1991) (hereinafter "*Fees II Reconsideration*"). See also section 6003(a)(2) of the 1993 Budget Act, Pub. L. 103–66, Title VI, § 6003(a)(2), 107 Stat. 401 (1993) (making conforming amendments to section 8).

[4] Congress included the regulatory fees for cable services in the Schedule of Regulatory Fees as a subpart of the fees established to recover appropriations related to the regulation of mass media services. 47 U.S.C. 159(g). Because we recently established a Cable Services Bureau to administer the regulation of cable television operations, we have amended our rules to set forth separately the regulatory fees applicable to cable services. See section 1.1155, 47 CFR 1.1155.

[5] *See Notice of Proposed Rulemaking in the Implementation of Section 9 of the Communication Act*, FCC 94–46, released March 11, 1994.

the regulatory fee requirements for governmental entities, nonprofit entities, amateur licensees, noncommercial educational broadcasters, and licensees in the public safety services, (2) standards for waiver, reduction and deferment of regulatory fees, (3) procedures for the payment of regulatory fees, including the timing and method of payments, and the location for submission of payments, and (4) procedures to assure timely payment of regulatory fees, including announcements in the **Federal Register** of the filing times for the fee payments, and penalties for late payment and nonpayment of fees.

III. Discussion

A. Assessment of Regulatory Fees for FY 1994

6. The *NPRM* proposed that for FY 1994, the Commission would utilize the Schedule of Regulatory Fees established by Congress in section 9(g) of the Act. 47 U.S.C. 159(g). In response to this proposal, several commenters suggest that we amend the Schedule of Fees for FY 1994. They contend that fees in the Schedule are too high, that the schedule provides the wrong mechanism for assessing fees, and that additional services should be included in the fee schedule.

7. In particular, Fireweed Communications Corp.[6] (Fireweed) argues that the regulatory fees impose an unfair and confiscatory financial burden on broadcast stations in small markets, and impinge on the constitutional right of freedom of speech of Fireweed and its listeners. Fireweed contends that the financial burden imposed by the regulatory fee would cause it to reduce its programming or even to cease its operations. The Joint Commenters, consisting of several cable television interests,[7] argue that we have authority to modify the Fee Schedule for FY 1994, to add classes of services that Congress did not include in section 9(g)'s fee schedule. In addition, the Joint Commenters assert that the Commission is authorized to modify the fee schedule for FY 1994 because section 9(b)(3), which governs permissive adjustments to the fee schedule, including addition of services to the schedule, does not restrict our authority for making changes to fiscal years after 1994. In particular, the Joint Commenters contend that Direct Broadcast Satellite, if available later this fiscal year, Instructional Television Fixed Service, if used for commercial purposes, and Multi-channel Multipoint Distribution Services, because it is not expressly enumerated as a service subject to the fee requirement, should be added to the fee schedule and assessed a fee for FY 1994. The Joint Commenters also assert that adopting a fee requirement for these services in this proceeding will avoid the necessity for immediately initiating a new rulemaking to include these services in the fee schedule for FY 1995 and thereafter.

8. Other parties including Sprint, the Cellular Telephone Industry Association (CTIA), Comsat, and the Utilities Telecommunications Counsel (UTC), support our conclusion in the *NPRM* that Congress intended that the Schedule set forth in section 9(g) would govern the assessment and collection of fees for FY 1994. UTC states that Congress' inclusion in section 9(g) of the fee schedule, as well as other language in the Act, clearly demonstrates that Congress did not intend that the Commission revise the fee schedule so soon after its enactment.

9. We are not persuaded by the arguments urging a reduction in the statutory fees or amendment of the service categories subject to the regulatory fees. In the *NPRM*, we concluded that Congress did not intend that we change the amounts or the services established by the statutory fee schedule for 1994. Our conclusion is supported by the Conference Report, which states that we have authority to review and adjust the fees after one year.[8] Congress also enacted the fee schedule after reviewing information that we provided concerning the services subject to the fees. We do not believe that Congress would have enacted section 9(g) intending that we immediately amend the service classifications or fee amounts in its schedule.

10. In addition, other provisions of section 9 support our interpretation. Section 9(i) requires that, before making adjustments to the services included in the fee schedule, we must develop accounting systems and provide an opportunity for public comments on proposed cost allocations. *NPRM* para. 9. Section 9(b)(4)(B) requires that any amendment to the services contained in the statutory fee schedule not be effective until 90 days after Congress is notified of those revisions. See 47 U.S.C. 159. As a practical matter, the Commission could not possibly meet these requirements in time to permit section 9 fee collections in FY 1994. Given these statutory requirements, we conclude that Congress did not intend that we make any changes to the services subjected to the regulatory fee requirement or the amounts contained in the schedule for FY94.[9]

11. Also, we do not agree with Joint Commenters that this is the appropriate proceeding to amend the Schedule of Fees for future years. Such amendments would be premature because we do not now have the information necessary to establish regulatory fees for FY 1995. As we stated in the *NPRM*, we intend to commence a separate proceeding in connection with the assessment of fees for FY 1995. We will seek in that proceeding comment concerning the allocation of costs of our enforcement, policy and rulemaking, information services, and international services, including any necessary adjustments to the classes of services set forth in section 9(g)'s fee schedule. See 47 U.S.C. ¶ 159(i).

12. Therefore, as we proposed in the *NPRM*, in order to meet the congressional directive to implement the collection of regulatory fees in Fiscal Year 1994, we are adopting without modification the Schedule of Regulatory Fees enacted by Congress in section 9(g). See 47 U.S.C. 159(b)(1)(C). The Schedule provides a listing of the specific categories of regulatees in the Private Radio, Mass Media, Common Carrier and Cable services that are required to pay a regulatory fee. We have incorporated the schedule into our rules and we have established separate sections of the rules to provide the payment schedules for the Private Radio

[6] Fireweed filed its comments late. It argues that the Commission failed to provide proper notice to interested parties and asserts that we failed to publish the *NPRM* "in publications likely to be obtained by small entities" or to "conduct open conferences and public meetings" concerning our proposals as provided in 5 U.S.C. § 609 (2) and (4). However, section 609 requires only that we "assure that small entities have been given an opportunity to participate in the rulemaking" through means "such as" those enumerated in section 609. 5 U.S.C. § 609. We have met that requirement. The *NPRM* was published and distributed pursuant to section 1.412 of our rules and was distributed to over 100 members of the trade press, newspapers, wire services, broadcasters, and magazines, including those dealing with consumer, minority and small business issues. In addition, the Commission's Daily Digest, which included notice of the *NPRM*, was published on Internet. We will also accept and give full consideration to the arguments in Fireweed's comments even though they were untimely filed. Further, we will accept the late filed comments of MCI Telecommunications Corporation.

[7] The Joint Commenters are Blade Communications, Inc., Cablevision Industries Corp., Crown Media, Inc., Multivision Cable TV Corp., Parcable, Inc., Providence Journal Company, Summons Communications, Inc., and Star Cable Associates.

[8] H.R. Rep. No. 213, 103 Cong., 1st Sess. 499 (1993) (Conference Report).

[9] In view of our conclusion that Congress did not intend us to make any changes to its Schedule of Fees for FY 1994, we will not at this time assess fees on lifetime restricted radiotelephone and radio operator applicants and permittees.

Services (§ 1.1152), Mass Media Services (§ 1.1153), Common Carrier Services (§ 1.1154) and Cable Services (§ 1.1155). In Appendix A of this *Report and Order*, we have included guidelines for the payment of fees for each service subject to the regulatory fee requirement.

B. Exemptions From Regulatory Fees

13. In the *NPRM*, we proposed to exempt certain discrete categories of regulatees from the requirement of file annual regulatory fees. Section 9(h) explicitly provides and exemption from the fees for governmental entities, nonprofit entities and amateur radio licensees. 47 U.S.C. 159(h). We concluded that Congress also intended to exempt all public safety licensees and noncommercial educational broadcasters from the regulatory fee requirements. In the paragraphs below, we review each of these categories and consider the comments that address each exemption.

1. Governmental Entities

14. As provided in section 9(h) and proposed in the *NPRM*, governmental entities will exempt from the regulatory fee requirement. As proposed, our rule implementing the governmental exemption will conform to existing § 1.1112(f) of the rules, which provides an exemption for governmental entities from the fee requirements for applications and other filing fees. See 47 CFR 1.1112(f); see *also* 47 U.S.C. 158(d)(1) (A), (B). Section 1.1112(f) broadly defines the term 'governntental entity" to include "any state, possession, city, county, town, village, municipal corporation or similar political organization or subpart controlled by publicly elected officials exercising sovereign direction and control over their respective communities or programs." The comments generally support our proposals with regard to the exemption for governmental entities.

15. Cellular Communications of Puerto Rico (CCPR) contends that we should limit the government exemption so that only usual and customary governmental functions would be exempt. In particular, CCPR argues that the Puerto Rico Telephone Company (PRTC) which is controlled by the Commonwealth of Puerto Rico and operates a cellular telephone system, should be required to pay a regulatory fee to the extent that it engages in for profit or competitive operations. Further, CCPR argues that exempting PRTC from the regulatory fees for cellular telephone systems would give PRTC an unfair competitive advantage. In opposition, PRTC argues that Congress did not distinguish between different activities, and that as a result all of its operations are subject to the governmental exemption.

16. The governmental exemption is mandated by Congress. Congress did not distinguish between various governmental functions, nor did it restrict the exemption's availability for any specific governmental entities. Therefore, we do not accept CCPR's proposal.

2. Nonprofit Entities

17. Section 9(h) also exempts nonprofit entities from the requirement to file regulatory fees. In the NPRM, we tentatively found that Congress intended its exemption for nonprofit entities to cover any entity possessing nonprofit, tax exempt status pursuant to section 501 of the Internal Revenue Code, 26 U.S.C. 501. Congress' exemption of nonprofit entities from regulatory fees is substantially broader than the limited exemption from the payment of application filing fees that Congress afforded in section 8(d)(1) to nonprofit entities licensed in the Public Safety Radio Services and tax exempt under section 501(c)(3). See 47 U.S.C. 158(d)(1); see also 47 CFR 1.1112(b). The comments generally support our interpretation of the exemption, and we will adopt the exemption as proposed in the *NPRM*. The nonprofit exemption will be available only to those licensees who have established their nonprofit status under section 501.

3. Amateur Licensees

18. Pursuant to section 9(h), we proposed to establish an exemption from regulatory fees for amateur radio operators licensed under part 97 of our rules. However, Congress included in the Schedule of Fees an annual regulatory fee covering vanity call signs, and we proposed to establish a fee for amateur vanity call signs. We proposed that this fee would be assessed if our proposed rules to establish vanity call signs become effective. See *Notice of Proposed Rulemaking*, 9 FCC Rd 105 (1993).

19. We will adopt the exemption for amateur licensees as set forth in *NPRM*. If our proposal to issue vanity calls signs is adopted, we will also assess a regulatory fee in FY 1994 upon persons filing applications, pursuant to the charges listed in Congress' fee schedule.[10]

[10] The American Radio Relay League, Incorporated asserts that it has requested Congress to change the vanity call sign annual regulatory fee to a one time application fee. We, of course, will modify our fee schedule to be consistent with any congressional amendment of the fees.

4. Noncommercial Educational Broadcasters

20. In the NPRM, we concluded that regulatory fees are not applicable to noncommercial educational broadcasters. Congress included commercial television and AM and FM radio broadcast licensees and permittees in its Schedule of Fees. In contrast, Congress omitted the noncommercial educational stations from the category of stations subject to the regulatory fee. In addition, and consistent with existing section 1.1112(d) of the rules governing application fees, we proposed to exempt from the regulatory fee requirement any secondary and auxiliary broadcast services, such as low power television ("LPTV") stations, television translators and boosters, remote pickup stations and intercity relay stations and other Mass Media, Common Carrier, and Private Radio facility authorizations used with noncommercial radio, television and instructional services qualifying for the exemption. See 47 CFR 1.1112(d). The comments supported the exemption for nonprofit educational broadcast stations and we will adopt the exemption as set forth in the *NPRM*.

21. Further, we affirm the tentative conclusion of the *NPRM* that noncommercial international short-wave will be subject to the regulatory fees. Congress did not provide an express exemption for these stations and none of the commenters urged us to exempt the international short-wave stations. In addition, unlike noncommercial LPTV and translator stations, the government does not provide financial support to noncommercial international short wave stations through the Corporation for Public Broadcasting (CPB) or the National Telecommunications and Information Administration (NTIA). Thus, the considerations that led us to conclude that Congress intended to exempt noncommercial educational LPTV and translator stations are not present with respect to international short-wave stations. See *Fee Collection Program*, 6 FCC Rcd 5919, 5925 (1991).

5. Public Safety Services

22. We have received no comments opposing our proposal to exempt all licensees in the Special Emergency Radio and Public Safety Radio services from regulatory fees even where the licensee does not qualify for an exemption as a governmental or nonprofit entity. In the *NPRM*, we noted that the legislative history states that

Congress intended to exempt public safety licensees from regulatory fees. APCO, in supporting our proposal, urges that we limit the public safety exemption to entities eligible for Public Safety Radio Service licenses pursuant to the provisions of part 90, subpart B, and not exempt licensees merely because they are authorized to operate on a public safety channel. We agree with APCO that only entities eligible to operate as public safety licensees should be entitled to an exemption. Therefore, we will restrict the public safety exemption to entities eligible to operate in the Special Emergency Radio or Public Safety Radio Services.[11] Under this definition, the fact that a licensee is authorized to use a frequency allocated to these services is insufficient to gain an exemption as a public safety entity.

6. Certification of Exempt Status

23. In order to implement our congressional mandate concerning exemptions, the *NPRM* asked the parties to comment on the appropriate method for establishing exemptions from regulatory fees. Our goal is to minimize the burden on applicants and licensees seeking exemption from the regulatory fees. See *NPRM* at ¶¶ 13, 16, and 21. The commenters supported our efforts and urged reporting and exemption certifications designed to minimize their paperwork burdens.

24. Forest Industries Telecommunications (FIT) proposed that the Commission allow nonprofit entities to establish their exempt status by submitting a Determination Letter issued by the Internal Revenue Service (IRS) stating that the applicant has qualified for tax exempt status under Section 501 of the Internal Revenue Act. The Utilities Telecommunications Council (UTC) urges that we reduce the burden on entities seeking to obtain a nonprofit exemption by requiring only that they file their employer identification numbers (EINs). UCC asserts that EINs are sufficient to permit verification of an entity's nonprofit status. The National Telephone Cooperative Association (NTCA) urges that we also exempt entities that have applied for IRS Determination Letters so that IRS administrative delays do not result in the denial of exemption from the regulatory fee requirement. NTCA requests that our determination of nonprofit status remain effective until a change in such status is determined by the IRS.

25. PRTC urges us to rely upon existing exemptions from application fee payments held by governmental entities rather than require these entities to provide additional certifications to obtain exemptions from the regulatory fee requirement. Similarly, UCC contends that no additional certification of exempt status should be required from governmental applicants in the Private Radio services since applications for these services require information disclosing their exempt status.

26. We agree with PRTC and UCC that we can rely on the data in private radio service applications and in the Commission's files to determine a regulatee's exempt status. Further, licensees and other regulatees for whom we have such data will not be required to file documentation to support their exempt status. If, after reviewing the information already on file, we are unable to determine a regulatee's exempt status we will issue a request that an applicant or licensee further document its claim of exempt status. With respect to amateur, noncommercial educational broadcast stations and public safety licensees, we do not anticipate any problem in establishing their eligibility for exempt status because their exempt status is based on the nature of their licenses.

27. When our records contain no evidence of a governmental entity's exempt status, we will accept a certification of its governmental status. Nonprofit licensees may submit section 501 Determination Letters. Because these documents are readily available in the files of nonprofit entities, we decline at this time to establish a mechanism to verify nonprofit status through EINs. We will also require that an entity with a pending request for an IRS Determination Letter submit a regulatory fee because the IRS may deny the request for tax exempt status. However, we will refund the fee for the period covered by a subsequently issued Determination Letter.[12]

28. We caution that we expect regulatees to act in good faith. In any instance in which payment is overdue, and the licensee or permittee cannot establish its entitlement to an exemption, we will assess a 25 percent penalty for late payment as authorized by Congress.

C. Waivers, Reductions and Deferments

29. Section 9(d) provides that "[t]he Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. 159(d). Section 9(d) is similar to, if not identical with section 8(d)(2) of the Act related to waivers and deferments of application fees. 47 U.S.C. 158(d)(2). Pursuant to section 8(d)(2), we have permitted waivers only on a case-by-case basis following a demonstration that the public interest clearly overrides the private interest of the requester. Thus, in our *NPRM*, we proposed to restrict similarly waivers to encompass only those requests unambiguously articulating "extraordinary and compelling circumstances" outweighing the public interest in recouping the cost of the Commission's regulatory services from a particular regulatee.

30. For those entities required to file regulatory fees with their applications, such as licensees in the private radio service, we proposed procedures for filing waiver, deferral and reduction requests similar to those we have fashioned for application fee waiver requests. See 47 CFR 1.1115(e). Persons seeking waiver or reduction of a regulatory fee would submit the required fees and forms along with their requests for waiver or reduction. We noted that this procedure assures efficient collection of necessary fees and avoids the possible imposition of a late fee in the event that the licensee's request for waiver or reduction is denied. In the case of standard regulatory fees, we further proposed that the required fee accompany any request for waiver or reduction. In either case, we proposed to return or modify the tendered fee upon grant of the waiver or reduction request. Finally, we proposed that a request for deferred payment of the required fee should be submitted 60 days in advance of the date established for the payment of the fee in order to permit review and action prior to the fee's due date.

31. Several state broadcasting associations (State Broadcasters) in their joint comments, suggest that the public interest would be served by granting permanent or temporary waivers or reduction or deferment of fees to Mass Media licensees who can demonstrate that payment of the fees would impair their service to the public. The State Broadcasters contend that our authority to waive, reduce or defer fee payments

[11] Moreover, we will not assess a regulatory fee upon Emergency Broadcast Service (EBS) licenses for auxiliary service facilities that use government-provided equipment because these stations are dedicated for EBS and are used solely for public safety purposes.

[12] To obtain a refund a regulatee must demonstrate that the period covered by the Determination Letter's finding of tax exempt status includes the date that we established for the calculation of its fee in the fiscal year for which the refund is requested. Further, an entity will be subject to a regulatory fee for the fiscal year that the IRS terminates its tax exempt status if the termination is made prior to the date for calculating its fees.

in such cases is clear if a showing is made that payment of the fee would result in degradation of service to the public, citing *NBC* v. *United States*, 319 U.S. 190 (1943); *FCC* v. *Sanders Bros. Radio Station*, 309 U.S. 470 (1940). In order to demonstrate financial hardship, the State Broadcasters urge that they be allowed to submit any relevant evidence, including tax records, unaudited balance sheets or any other financial statements. Further, the State Broadcasters argue that the fee should be automatically waived if a Mass Media licensee is in bankruptcy, receivership or trusteeship because this status is a clear signal of financial hardship.

32. The Broadcasters, joined by the National Association of Broadcasters (NAB), contend further that the requirement to file the regulatory fee payment with a request for waiver is irrational where the basis for the waiver request is the financial hardship of the licensee. Further, the NAB states that it will be impossible to dispose of waiver requests before the fee payments are due for FY 1994 because of the short period between the completion of this proceeding and the date for submission of fees. Moreover, the NAB stresses that Congress contemplated that there would be situations where the financial burden imposed by the fee requirement would be so onerous that payment should be waived. According to the NAB, if Congress' purpose in providing for waiver, reduction or deferment is to have any practical effect, according to NAB, we should not require applicants requesting waivers for financial hardship to suffer additional financial burden that they cannot afford.

33. We are not persuaded that we should modify our proposal to generally require the filing of the regulatory fee with each waiver or reduction request. Rather, we continue to believe that our current procedure will help ensure efficient collections.

34. Nevertheless, we recognize that there may be exceptional instances in which requiring payment of the regulatory fee along with a waiver or reduction request could result in the reduction of service to a community or other financial hardship to the licensee or other regulatee. In those instances, the licensee should submit, together with its waiver request, a petition to defer payment until the waiver request is resolved. In order to reduce the burden on regulatees, we will accept petitions for waiver, reduction and deferment so long as they are filed no later than by the date payment is due. The filing of the deferment request will toll the requirement to pay the regulatory fee until disposition of the deferment request.[13]

35. Petitioners seeking a waiver, deferral or reduction of a regulatory fee based upon financial hardship may submit any relevant information in support of their request. We will review the supporting documents and base our ruling upon the information submitted and any additional information available in our records. If a petitioner presents a compelling case of financial hardship, no payment of the regulatory fee will be due. If the supporting materials do not present sufficient evidence of hardship, we will deny the petition. If the fee has not already been submitted, the petitioner will then have 30 days to file its regulatory fee in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.

D. Procedures for Payment

1. Categories of Payors

36. Pursuant to section 9(f), we proposed to establish three classes of regulatory fee payments, standard, small and large, based upon the size of the payment required by the Schedule. The time for submitting the fee would be determined by the class of fee payment. Persons making "large" fee payments for Fiscal Year 1994 would be eligible to complete their fee payment in two installments. Moreover, we stated that consideration would be given to allowing four installment payments for Fiscal Year 1995 and thereafter. We proposed, however, that small fee payments be remitted when an application for a license of a facility subject to the fee is filed and the payment amount is the fee due for the entire term of the license or other authorization. We proposed that regulatees subject to a standard fee are to submit the fee in a single, annual payment. The specific date for the payment of a standard fee would be announced by public notice and published in the **Federal Register** well before the payment's due date.[14]

37. Brown and Schwaninger (B&S) states that Congress intended to establish only two, not three, categories of regulatory fees—large fees and small fees—because section 9(f) enumerates only two such categories of fee payments. B&S contends that Congress would have included in section 9 explicit authority to establish a third category if it had intended to provide such authority. In the absence of any language in section 9 indicative of a third category, B&S contend that we are precluded from adopting a standard fee category and collecting standard fees. Instead, B&S reasons that our authority under section 9 is limited to determining that a particular fee is either large, and establishing an installment plan, or the fee is small and collecting it in advance for a number of years not to exceed the term of the license.

38. We reject B&S's interpretation of section 9(f). In section 9(a), the general authority provision, Congress broadly empowered us "to assess and collect regulatory fees. . . ." Subsection 9(f) requires only that our rules include specific provisions providing for advance payments in the case of small fees and installment payments for larger ones. Nothing in that section, or in logic, compels a conclusion that every fee must necessarily fall within a category of either "large" or "small." Section 9(f) is simply silent regarding any other substantive aspect of our fee collection system, including whether other categories of fee payments may be established. Moreover, our conclusion that some regulatees are subject to payment of neither large nor small fees and, consequently, are only subject to a single annual regulatory "standard" fee payment, in no way conflicts with Congress' directive to include specific consideration of those payors of large and small fees. Therefore, we adopt our proposal to establish three categories of regulatory fees.

2. Installment Payments

39. In the NPRM, we proposed that some fees would be classified as "large" fees and, therefore, eligible for payment by installment. For FY 1994, we identified the following fee amounts in the specified categories as eligible for payment on the installment plan.

Regulatory fee category	Large fee
VHF and UHF Commercial Television Station.	Above $12,000.
Cable Television System .	Above $18,500.

[13] We deny NABER's request that we modify the fee that Congress required for filing a petition for waiver of a private radio service rule. Section 8 of the Communications Act empowers us only to adjust fees for applications and other filings based upon changes in the Consumer Price Index.

[14] GTE has urged that we allow licensees that transfer or assign licenses during FY 1994 to prorate their fee payments for the subject licenses on the basis of the amount of time the license was held by each party. The law authorizing section 9 was enacted in August 1993 and we believe that the negotiation between the parties to a transfer or assignment that occurred this fiscal year would ordinarily have included consideration of expenses related to the payment of regulatory fees. The party holding the license on the date the fees are due will be the party responsible for its payment.

Regulatory fee category	Large fee
Inter-Exchange Carrier	Above $500,000.
Local Exchange Carrier ...	Above $700,000.

40. Several parties urge that we expand significantly our proposed installment payment eligibility standards. GTE and Sprint request that we establish an installment fee benchmark of $250,000 for all classes of services that are not allowed to make installment payments under our proposal. The Broadcasting Association argues that all mass media licensees should be eligible for installment payments and the New Jersey Broadcasting Association (New Jersey Association) argues that all radio broadcasting licensees, or in the alternative, licensees encountering financial hardship should be permitted to make installment payments. GE American Communications, Inc. contends that licensees of satellite space stations should be afforded installment payment eligibility.

41. For FY 1994, we intend to permit installment payments by a reasonable number of regulatees whose fees greatly exceed the average fee in a particular service category. Through this means we can ensure that we are able to structure a fee collection system that can be fairly and efficiently administered, given our available resources and our relative inexperience with the regulatory fee program and its installment component.[15]

42. Since little time is left in which to collect fees for FY 1994, the practical impact of permitting licensees to make installment payments this year should be minimal in any event. In these circumstances, we thus find it both fair and prudent to decline to expand significantly installment payment eligibility for FY 1994. Also, we decline to permit installment payments for radio licensees, since no fee greater than $900.00 is imposed on these licensees.

43. As we gain experience with the regulatory fee program and, in particular, with its installment payment component, we will consider increasing eligibility to make installment payments. Therefore, with a limited exception, we will adopt our proposed installment fee standards. As discussed above, if a licensee concludes that payment of a fee in its entirety would constitute a financial hardship or if it cannot otherwise submit a full payment, the licensee may submit a partial payment of the fee with a petition to defer payment of the remaining portion of the fee. Interested parties may renew their arguments for increased installment opportunities in their comments concerning the assessment and collection of regulatory fees for 1995.

44. Notwithstanding our decision not to expand significantly installment payment eligibility this year, we have decided to permit space station and system licensees to submit their fees in installments. These licensees are relatively few in number, and the uniform fee structure for this service does not lend itself to the mechanism we used to establish installment payments in categories of services with progressive fee structures. Thus, we will permit licensees of geosynchronous satellite space stations and low earth orbit satellite systems to file their fee payments in installments.

45. As proposed, regulatees qualifying for installment payments for FY 1994 may make their fee payments in two separate and equally divided payments with the first payment due on the date set for paying standard annual fees. The date for each installment will be announced by Public Notice and in the **Federal Register**. For future fiscal years, we plan to permit four installments annually. We have decided not to impose an administrative fee with each installment payment. However, any late filed installment payment will be subject to a 25 percent late fee and the payment of interest for the delinquent amount. Further, any regulatee paying its fees by installment will automatically lose its eligibility to pay by installments if it fails to make any of its payments in a timely fashion.

3. Advance Payments

46. FIT and UTC support our proposal to require that regulatory fee payments in the Private Radio services be made in advance. We will require that full payment for Private Radio service regulatory fees due over the entire term of the authorization be submitted at the time an applicant in the Private Radio service submits its new, renewal or reinstatement application.[16] For example, regulatees in the private, shared use services would submit a one time regulatory fee of $35.00 per license to cover the entire five-year term of their license or authorization. Moreover until expiration of that authorization, we will not subject regulatees submitting advance fee payments to submit another (supplementary) fee payment for the same authorization until expiration of that authorization, notwithstanding any subsequent increase in the applicable annual fee. In instances in which a license is transferred to another service and, therefore, becomes subject to a different annual fee, as in the case of Private Radio licensees as they become Commercial Mobile Radio Service licensees, we have generally decided to apply any advance payment to the new annual fee requirement resulting from that reclassification. Thus, the licensee would become subject to payment of the difference between its initial fee payment and the amount required under the fee schedule for its new service.

47. For FY 1994, no Mass Media or Common Carrier regulatory fees will be subject to collection as small fees. However, in future years, we may decide to collect advance payments of fees in these services in the event that we conclude that the fee required is small and our experience shows that it is inefficient to collect the fee on an annual basis.

4. Timing of Payment

48. As noted, the date for payment of standard fees will be announced by public notice and published in the **Federal Register**. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media and Cable Services whose fees are not based on a subscriber, line or circuit count, fees should be submitted for any authorization held as of October 1, 1993. We have selected October 1 as the date for calculating these fees since October 1 is the first day of the fiscal year and, therefore, current licensees subject to the fees would have benefited from out regulatory activities since the beginning of the period covered by their payment.[17]

49. In the case of regulatees whose fee payments are based upon a subscriber, line or circuit count, we have decided that the number of a regulatee's subscribers, lines or circuits on December 31, 1993 will be used to calculate the fee. We have selected the last date of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of the last day of the calendar year for internal purposes. Therefore, calculation of the subscriber fee as of that date will facilitate both an entity's computation of its fee payment

[15] Because our fee collection program is not yet capable of accounting for installment payments aggregated on other than a single service basis, regulatees must pay their fee payments on a service by service basis.

[16] Regulatory fee payments submitted with applications that are subsequently dismissed or denied will be returned upon request.

[17] In light of this decision, the comments by Orbital Communications Corporation, GE American Communications, Inc. and Starsys Global Positioning, Inc. concerning appropriate payments for satellites that became operational after commencement of the fiscal year are moot.

and our verification that the correct fee payment has been submitted. Cable systems should calculate their FY 1994 regulatory fees using the subscriber data that was provided to the Commission for the 1993 Annual Report of Cable Television Systems (FCC Form 325A) submission. Accordingly, the number of subscribers will not necessarily be based on December 31, 1993, but rather on "a typical day in the last full week of December 1993." (*See* FCC Form 325 Instructions at page 1). Finally, since entities in the Private Radio services pay their fees when applying for an new, renewal or reinstatement license, we will require Private Radio applicants to submit a regulatory fee with new, renewal and reinstatement applications filed following the effective date of these rules.

5. Method and Location of Payment

50. We proposed to adopt generally the same methods of payment for regulatory fees as we established for application fees. See 47 CFR 1.1108(a). In addition, we proposed to establish a process to permit the electronic filing of fee payments, initially on an experimental basis. Further, we proposed to permit payment of fees by credit card (VISA and Mastercard) in some circumstances subject to the requirement that, when a credit card payment is made, the entire fee payment must be made in a single credit card transaction.

51. Several parties have requested clarification of our requirements for multiple fee payments by Private Radio licensees.[18] Other parties support our proposals concerning payment methods, particularly our decision to accept credit cards and electronic payments.[19]

52. We have designed FCC Forms 159 (Remittance Advice) and 159–C (Continuation sheet) to replace Form 155. We are satisfied that the forms, and our rules, provide sufficient clarification of our requirements concerning multiple fee payments. These forms are to be submitted with any regulatory fee payment in the mass media, common carrier and cable services. Payors, in the Private Radio services making a single regulatory fee payment, other than by electronic means or credit card, are not required to file a Form 159 as long as their accompanying application form provides the information necessary to accomplish the payment.

6. Multiple Payments

53. Generally, we will permit any entity, including licensees in the private radio services, to make multiple section 9 regulatory (and section 8 application) fee payments within the same lockbox, including, where applicable, installment payments. Under this procedure, a single payment form and a single instrument of payment may be used to cover multiple regulatory fee payments.[20] A multiple regulatory fee payment also may cover payments by more than a single regulatee. Regulatees making combined payments of regulatory fees and application fees within the same lockbox for the Private Radio services may make payment with a single payment instrument and are to submit with the multiple payment a Form 159 and, if needed, a Form 159–C. Also, any regulatee making payment by credit card, including licensees in the private radio services, must submit a Form 159. See the specific instructions concerning the use of Forms 159 and 159–C. A copy of the forms and instructions may be obtained from the Federal Communications Commission, Forms Distribution Center, 2803 52d Avenue, Hyattsville, MD 20781.

54. Each regulatee will remain solely responsible for assuring that its applications and authorizations are properly accounted for and listed, and for submitting the full, cumulative payment covering each of its licenses and authorizations.[21] As described below, payment deficiencies could lead to penalty charges, dismissal of applications and revocation of authorizations.

55. As proposed in our *NPRM*, we are establishing a single lockbox at our lockbox bank for the receipt of mass media, common carrier and cable regulatory fees. The single lockbox will accept Mass Media, Common Carrier and Cable Services regulatory fee payments, and will enable regulatees to submit fee payments for these services to the same lockbox and to combine their fee payments for these service categories. However, Private Radio fees will not be accepted at this lockbox and, instead, should be submitted to the lockbox designated for application fees covering the category of license or authorization for which the payment is made. See sections 1.1152 through 1.1155 for the address, including lockbox number regarding payment of regulatory fees for the specific categories of service.

7. Electronic Payments

56. We have decided to proceed cautiously with our implementation of electronic fee payments. We require that regulatees intending to make fee payments electronically submit a written request to the Managing Director and obtain his written authorization or that of his designee prior to making their initial electronic payment.[22] Following authorization by the Office of the Managing Director, a payor may either instruct its bank to make payment of a regulatory fee directly to our lockbox bank or authorize us to direct our lockbox bank to withdraw funds directly from the payor's bank account. It is the responsibility of the entity subject to the regulatory fee payment to assure compliance with our electronic payment procedures. We will announce specific procedures for electronic payment by public notice. Failure to comply with these procedures will result in the return of the fee payment and a penalty of 25 percent if the subsequent refiling of the payment is late. Any late payment resulting from a failure to comply with our electronic fee payment procedures will also subject the payor to the penalties set forth in § 1.1163 of the rules.

57. Credit card payments may be made only with Mastercard and Visa since at this time these are the only credit cards authorized for payments to the United States Treasury. Credit card payments must be accompanied by a Form 159. Failure to accurately enter an authorized signature and the credit card name, number and date of expiration in blocks 22 and 23 of Form 159 will result in the return of the credit card payment and any associated filing.

E. Enforcement

58. As provided in section 9(c) of the Act, we proposed to enforce payment of regulatory fees by: (1) Assessing monetary penalties for late payment, (2) dismissal of applications and, (3) in egregious cases, revocation of existing licenses and authorizations. 47 U.S.C. 159(c). In addition, we proposed to pursue delinquent regulatees under the Debt Collection Act, 31 U.S.C. 3711 *et seq.*, and related statutory provisions.

[18] See comments filed by FIT, Naber and UTC.

[19] See comments filed by SWB and Bell Atlantic.

[20] Payors of regulatory fees for vanity call signs must submit a Form 159 with their applications.

[21] Payment of a regulatory fee may be made by a third party, as NABER and NECA request. However, the entity subject to the requirement to pay the fee will remain responsible for ensuring correct and timely payment.

[22] NYNEX has suggested that responsibility for recommending rules and procedures relating to the electronic payment of regulatory fees by common carriers be given to the proposed advisory committee that would be established to assist the Common Carrier Bureau in the development and implementation of an electronic filing system. See Public Notice, 9 FCC Rcd 1293 (1994). Since our system for the electronic payment of fees will soon be operational, we decline to combine these tasks into a single project. However, the Commission staff involved in these undertakings will closely coordinate their activities.

1. Penalties for Late Payment

59. Any regulatee that fails timely to pay its regulatory fee or make an installment payment shall be assessed a 25 percent penalty. See 47 U.S.C. 159(c)(1). A regulatory fee is untimely paid when it is not received at the lockbox bank by the date we establish for payment.[23] A fee payment is also considered late filed if an instrument of payment is not collectible. A 25 percent penalty will be assessed against any outstanding amount due on a fee, including any amount past due on an installment payment.

2. Dismissal of Application

60. We will dismiss any application, group of applications or other filings in the private radio services when a regulatee fails timely to submit any regulatory fee or associated penalty. 47 U.S.C. 159(c)(2). A fee payment will be considered to be late filed if a timely filed instrument of payment is uncollectible and the deficiency is not the result of bank error.[24] Thus, an application required to be submitted with a regulatory fee will be returned without action if the fee is not filed with the application. Moreover, if the returned application is mutually exclusive and must be filed by a date certain (or is required to be filed by a date certain for any other reason), the application will be dismissed as untimely if resubmitted subsequent to the filing deadline.[25]

3. Revocation

61. Section 9(c)(3) provides the Commission with authority to revoke an existing license or other authorization for nonpayment of a regulatory fee. 47 U.S.C. 159(c)(3). We proposed to reserve our revocation remedy for egregious cases of nonpayment. Section (9)(c)(3) does not require a finding of "willful or repeated" failure to make payment before a license or authorization may be revoked. Further, the section affords the right to a hearing only if a regulatee's response to our notice of revocation presents a "substantial and material question of fact."

62. Consistent with the statutory framework for revocation, any revocation hearing will be resolved by written evidence only and the burden of proceeding and the burden of proof will be on the respondent. As proposed, we will provide a period of 60 days for a regulatee to respond to our notice of revocation in order to assure that the subject regulatee will have a full opportunity to obtain the funds needed to make payment and to prepare its case. Further, we will assess the regulatee for the costs for the conduct of any revocation proceeding unless the regulatee "substantially" prevails at the hearing. 47 U.S.C. 159(c)(3). Finally, pursuant to section 9(c)(3), an order of revocation will not become final until the respondent regulatee has had an opportunity to exhaust its rights to judicial review under section 402(b)(5) of the Act. 47 U.S.C. 402(b)(5).

63. MCI recognizes that we should use our authority to revoke licenses and assess penalties as tools to enforce payment of fees. However, MCI urges that we restrict their use to cases where a licensee "willfully" has acted in bad faith in not paying the required fee. MCI states that this is particularly important for licensees with large and complex operations in services where licensing information currently is not included in our records since licensees with numerous authorizations may have no other way to confirm existing licenses. In these instances, according to MCI, we should attempt to resolve nonpayment issues informally since most fee payment disputes should be quickly and easily resolved.

64. We agree with MCI that our revocation powers should not be lightly invoked. We stated in the NPRM that we would reserve the right to revoke licenses held by a delinquent regulatee, but that we did not foresee the need for revocation, except in egregious circumstances. We will not consider a failed payment to be egregious as long as the regulatee demonstrates that its deficiency was not due to gross neglect in maintaining its records or in preparing to meet its obligation to make the fee payments. However, we intend to automatically assess delinquent payors a 25 percent penalty for late or missing payments, and such assessments will be strictly enforced.

4. Debt Collection Act Remedies

65. In addition to those specific remedies for nonpayment or untimely payment of regulatory fees provided in section 9, we will invoke our powers under the Debt Collection Act against any regulatee failing to pay a regulatory fee. See 31 U.S.C. 3711 *et seq.* We will afford a regulatee a 30-day period to respond to our notice of delinquency before invoking the procedures provided in the Debt Collection Act. Moreover, when necessary, we will refer outstanding debts of delinquent regulatees to the Internal Revenue Service for offset. See 31 U.S.C. 3720A. Included in the recovery of any delinquent fee will be an assessment of interest on the debt due, a penalty for nonpayment, and the allowable cost incurred due to the federal government in the collection process. See 31 U.S.C. 3717.

IV. Regulatory Fee Categories

66. In our NPRM, we provided an explanation of the regulatory fee categories subject to the payment of a fee under the schedule established by Congress. 47 U.S.C. 159(g). Where a regulatory fee category required additional interpretation or clarification, we relied on the legislative history of section 9 and our experience in establishing and regulating the various services. The categories and amounts set out in the schedule may, by the next fiscal year and in subsequent fiscal years, be amended, adjusted, or modified to reflect changes in our appropriations, costs and changes in the nature of our regulated services. See 447 U.S.C. 159(b) (2), (3).

67. Several parties have submitted comments regarding the regulatory fee categories. Generally, the comments addressed issues concerning possible adjustment of the required fees, the absence of certain services from the fee schedule, and definitions of terms important to payment of the fees. We address these comments below. In certain instances, we have clarified our explanation of a fee category based upon the comments of the parties. See Appendix B.

A. Private Radio Services

68. The two basic levels of statutory fees allocated for Private Radio Services, exclusive use and shared use services, were established on the premise that those licensees who generally receive a higher quality communications channel, due to exclusive or lightly shared frequency assignments, will pay a higher fee than those who share

[23] The NAB and the Society of Broadcast Engineers have proposed that we consider a regulatory fee payment to be timely submitted if the payment is postmarked by the date it is due. At least for FY 1994, we have decided to continue our practice of requiring fee submissions to be received by the date due. We believe retention of this practice for regulatory fee payments for FY 1994 is necessary to enable us to process these payments efficiently.

[24] As noted in the NNPRM, we will not accept instruments of payment other than cashier's checks for payors who are notified that payment will not be accepted by other payment methods. Of course, while we discourage the use of cash for the payment of fees generally, payment by cash is permissible. See 31 U.S.C. 5193. We will not be responsible for cash lost or stolen in the process of delivery to our lockbox bank.

[25] In any case in which a fee payor believes that a monetary or other penalty has been wrongfully imposed, the fee payor may file a petition requesting that the penalty be set aside.

channels of marginal quality.[26] *House Report* at 17. In addition, because of the relatively small fee amounts levied in the Private Radio Services, as we proposed in the Notice, applicants for new licenses, reinstatement and renewal licenses will be required to pay a regulatory fee covering an entire license term. Applications for modification or assignment of an existing authorization do not require payment of a regulatory fee since the expiration date of modified or assigned licenses will not reflect a new license term.

1. Exclusive Use

69. B&S disputes our interpretation of the fee schedule's requirement for Private Radio Service fees. Essentially, B&S contends that the term "shared use services," as it appears in the Schedule of Regulatory Fees, applies to systems that share use of their licensed facilities with others. According to B&S, an 800 MHz Specialized Mobile Radio Service licensee providing service to end users is an example of a shared use service because the SMRs customers are sharing the same base station facility. B&S argues that their analysis is consistent with 47 CFR 90.179 and precedent interpreting that provision of our rules. According to B&S, it follows that "exclusive use services" are comprised of licensed facilities that are used only by the licensee. An example of what B&S considers an exclusive use service is a licensee in the Taxicab Radio service that operates an internal communications system in the 470–512 MHz band.

70. B&S confuses the concept of shared use of a particular licensed facility with that of shared channel assignments. Under 47 CFR 90.179, a licensee or group of licensees may choose to share base station facilities on a non-profit or not-for-profit basis. In contrast, shared channel assignments require licensees to be licensed for the same channel for the same geographic area, and it is this latter concept that the Schedule of regulatory fees clearly addresses. As we have recently explained in our *Notice of Proposed Rulemaking* in PR Docket No. 92–235,[27] the private land mobile radio services licensed below 470 MHz [28] do not enjoy exclusive use of their channel assignments in a particular geographic area, and must accept a greater degree of co-channel interference.[29] In contrast, channel assignments above 470 MHz, including the SMR service, are granted on either an exclusive basis, with no other co-channel use authorized in a geographic area, or are licensed on an "earned exclusivity" basis, where co-channel use is capped. Thus, licensees of services above 470 MHz enjoy a lesser degree of interference than those below 470 MHz, and, accordingly, are required to pay the higher regulatory fee. To accept B&S's interpretation would ignore the established demarcation point between "shared" and "exclusive" channel assignments that 470 MHz represents.

71. RAM Mobile Data USA Limited Partnership (RMD) states that 900 MHz SMR licensees should be required to pay a fee based upon their total number of licensed Designated Filing Areas (DFA) rather than their number of base station and frequencies individually licensed with a DFA. RMD contends that an assessment based upon total DFAs licensed is more consistent with Congress' intention that regulatory fees be "reasonably related to the benefits provided to the payor of the fee by the Commission's activities." 47 U.S.C. 159(b)(1)(A). Further, RMD states that section 9(g)'s fee requirements will compel a consolidation of its licenses in order to minimize its fee payments. Similarly, the Utilities Telecommunications Council (UTC) objects to the requirement that 220 MHz licensees submit fees on a per license basis.

72. We decline to consider amending the section 9(g) fee schedule for FY 1994. As we have stated, Congress did not intend that we adjust any aspect of the fee schedule for FY 1994. RMD and UTC may submit their proposals for amending the fee schedule in our proceeding to establish regulatory fees for FY 1995.[30]

Of course, RMD and any other licensee may surrender or modify their licenses and other authorizations in order to minimize their regulatory fee burden.

2. Marine (Coast and Ship Stations)

73. Numerous formal and informal commenters, including the United States Coast Guard, raise concerns about our proposal to collect a regulatory fee from licensees in the marine service, including licensees using radio equipment voluntarily installed on small vessels, such as recreational boats.[31] These parties contend that a waiver, or exemption, for vessels that voluntarily carry radio equipment would enhance maritime safety and promote the public interest. As support, the parties state that marine radio provides a vital link between recreational boaters and emergency safety entities, as well as an important source for weather and navigational information. Further, they contend that the regulatory fee, added to the existing application fee, will act as a substantial disincentive for recreational boaters to carry, maintain and operate marine communications equipment.

74. We recognize that radio communication between recreational boaters and various emergency safety entities provides an important public service. However, our authority to waive a fee requirement is limited to "narrow" and "compelling circumstances." 2 FCC Rcd 947, 961 (1987); H.R. 3128, H.R. Rep. No. 453, 99th Cong., 1st Sess. 39–42, 423 (1985). In view of this strict Congressional limitation, we do not believe that a "blanket waiver" granted to boaters operating marine radios is permissible, absent legislative amendment.

3. General Mobile Radio Service

75. The Personal Radio Steering Group (PRSG) requests that we lower the annual fee for licensees in the General Mobile Radio Service (GMRS). PRSG states that, because the Schedule of Regulatory Fees does not explicitly include a fee for GMRS, we have authority to reduce its fee. Moreover, PRSG contends that the service should be subject to a lower fee than that for other shared use services because it is intended primarily for personal communications, similar to the Amateur Radio Service.

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[26] As noted, for FY 1994, we will not impose a regulatory fee upon applicants for lifetime restricted radiotelephone permits and radio operator licenses.

[27] 8 FCC Rcd 8105, paras 11–13 (1992).

[28] The 220–222 MHz band is the sole exception, where we have created exclusive use channels below 470 MHz.

[29] While there may be rare instances where a particular licensee below 470 MHz does not share its channel assignment with other licensees in a geographic area, these licensees have no ability to preclude new licensees from requesting the same channel assignment.

[30] RMD asks that we waive our requirement that SMR licensees pay their fees in advance and, instead, permit them to submit these fees on an annual basis. RMD contends that the overall fees that may be imposed on SMR systems are not "small" and, therefore, fall outside the category of fees that Congress authorized us to collect in advance. We decline to allow RMD to pay its fees on an annual basis because Congress specifically indicated that fees for private radio services licensees, including licensees of SMR systems, would be considered small and subject to the payment of fees in advance. See H.R. Rep. No. 207, 102d Cong., 1st Sess. 11 (1991).

[31] In addition to the USCG, the commenters include the National Marine Electronics Association, Radio Technical Commission for Maritime Services, State of Nevada, Division of Wildlife and the United States Power Squadrons. We also received and considered informal comments filed by numerous parties concerned about the regulatory fee required from recreational boaters.

76. We agree with PRSG that section 9(g)'s fee schedule contains no explicit terms regarding the GMRS. However, that section does require the payment of a fee by "shared use" services in the private radio service. GMRS is within that category of service and was explicitly mentioned in the House Report as a service that would be subject to a fee. Therefore, we conclude that GMRS licensees are subject to a $7.00 fee for each year of the license term, payable in advance upon the filing of a GMRS application. We decline to rule on the merits of PRSG's argument that its fees should be lowered because, as discussed above, we conclude that Congress for FY 1994 intended us to assess fees in accordance with its Schedule.

B. Mass Media Services

1. Broadcast Stations

77. The regulatory fees in the Schedule for Mass Media services generally include broadcast licensees, permittees and other regulatees. As discussed above, we have exempted noncommercial educational broadcasters from regulatory fees. To the extent possible, we intend to use the Bureau's computer data bases to verify the identity of regulatees subject to regulatory fees in the Mass Media services.

78. Several commenters contend that the statutory fee schedule is unfair to certain categories of licensees in the Mass Media services and complain that the schedule fails to impose a fee on other categories of regulatees. De La Hunt Broadcasting Corporation and the Broadcasting Associations believe that radio broadcaster licensees should be assessed regulatory fees on a market-size basis, in a manner similar to the fees mandated for television stations. The NAB urges that we adjust the schedule for radio broadcast licensees when we consider appropriate fees for future years. Further, the Broadcasting Associations contends that we should not include a television station as being in a major market unless that station serves the metropolitan area of that particular market.

79. We decline to consider any adjustments to the schedule for FY 1994 for radio and television stations. As we explained above, we believe that Congress did not intend that we adjust any aspect of the fee schedule it established for FY 1994. Interested parties may submit comments, however, addressed to modifying the method for assessment of radio and television broadcasting fees at the time we issue our proposed schedule of fees for FY 1995.

2. Television Stations

80. Section (9)(g) provides that the regulatory fee charged a television licensee will be determined by the size of its market. We recognized in our *NPRM* that Arbitron no longer provides television rating information. However, no party has proposed that we rely on another mechanism for determining market size. Therefore, we will utilize Arbitron's ADI rankings for 1993–1994 for the determination of television markets for assessing our FY 1994 regulatory fees since it appears, at this time, that these are the most familiar and readily available tools for determining the relative ranking of television markets.

81. KBS License L.P. (KBS) and the NAB argue that satellite television stations should not be subject to the same regulatory fee payment as fully powered television stations. The NAB contends that satellite television stations should be assessed as if they were television translator stations. KBS argues that our proposal to assess fees for satellite stations at the same level as full powered stations is inconsistent with section 9. First, in KBS's view, Congress established regulatory fees for commercial television stations, and did not set any fee requirement for satellite television stations. Second, according to KBS, Congress intended the Commission to charge licensees fees based on the regulatory burden they impose, yet satellite stations require much less regulatory oversight than full powered stations. Also, KBS contends that the fee would place an unfair and illogical burden on small market licensees who use satellite television stations to reach remote areas in their markets.

82. Section 9(g)'s fee schedule establishes specific fees for commercial television stations. These fees are to be assessed against a licensee solely on the basis of the market in which the station operates. The text of the schedule makes no distinction between commercial stations that are fully operational and those that are satellite stations. It is also clear that these satellite stations are not "translator stations," which are also listed in the schedule. TV translator stations are low-powered facilities that rebroadcast the signals of a full service television broadcast station, including a satellite station, and are afforded secondary status vis-a-vis full service television stations. Also, unlike satellite stations, they are not subject to the technical, operational and program service obligations that are imposed on all full service broadcast stations, including satellite stations.[32] Consequently, we find that in establishing fees for commercial stations, Congress assessed the same fee for both commercial fully operational and commercial satellite television stations. We therefore reject KBS's argument that Congress failed to establish a fee for television satellite stations. However, there are anomalies concerning the treatment of satellite stations that are a matter of concern to us and that we believe would be appropriate for consideration on a case-by-case basis. First, where a licensee would be required under the fee schedule to pay a higher fee for its satellite station than for the parent station, we will entertain petitions to reduce the satellite station's fee to the same amount as the fee due for the parent station. In such a case, the licensee would be required to submit with its request an amount no greater than the fee due from the parent station. Second, in any situation in which payment of the fee would cause a diminishment of a licensees ability to continue to serve the public, we will entertain requests for waiver or reduction of the fee upon an appropriate showing. In this instance, the licensee would not be obligated to pay the fee until resolution of its waiver request.

83. KBS and the NAB may submit comments in our future proceeding to establish regulatory fees for FY 1995, supporting their positions concerning the need to distinguish between satellite and fully operational stations when assessing regulatory fees. As explained above, for FY 1994, we shall make no adjustments to Congress' fee schedule pursuant to section 9(b).

3. Broadcast Auxiliary Stations

84. The Society of Broadcast Engineers, Inc. (SBE) believes that broadcast auxiliary facilities, such as remote pick-up stations, and aural, television and low power auxiliary stations, should not be subject to any regulatory fee. SBE explains that there is no justification to apply a regulatory fee to these facilities since they are essentially self-regulating and impose little burden on our resources. As indicated above, we shall not modify any of section 9(g)'s fee requirements for FY 1994, but SBE may raise these issues in future proceedings.

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[32] Unlike other full service television broadcast stations, satellite stations have not been subject to the Commission's multiple ownership restrictions However, that distinction is currently under review in our *Second Further Notice of Proposed Rulemaking* in MM Docket No. 87–8, 6 FCC Rcd 5010 (1991).

4. ITFS and DBS

85. Finally, the Joint Parties contend that we should amend the fee schedule to add several services not subject to fees for FY 1994. These services include the commercial offering of Instructional Television Fixed Services (ITFS) and Direct Broadcast Satellite Service (DBS). We decline the Joint Parties' request to add these services to the schedule for 1994 since Congress did not provide us the authority to add any service to the schedule for FY 1994. Moreover, we are aware that ITFS is a predominantly nonprofit service with limited commercial use and, further, that DBS is not expected to become operational prior to the time for calculating fee payments for FY 1994.[33] To the extent that the Joint Parties wish to renew their arguments concerning the inclusion of these services for future years, they may do so when we consider our fee payment schedule for FY 1995.

C. Common Carrier Bureau

86. Most common carrier regulatory fees are based on the size of a regulatee's communications operation as determined by its number of stations, subscribers, access lines, or antennas. We intend to rely upon the Common Carrier Bureau's licensing data bases to confirm the identity and fee amount for most radio common carriers to the extent possible. We also intend to perform periodic, random audits to determine whether individual regulatees have reported the correct multiplier.

1. Cellular and Public Mobile Licensees

87. The Personal Communications Industry Association (PCIA) states that we should define the term "subscriber" as it applies to Part 22 and personal communications services licensees. PCIA suggests that we require Part 22 licensees to pay their fees based on the number of customers on their billing lists and urges that we permit Part 22 licensees to submit their fee payments pursuant to systemwide aggregations of subscribers. Also, PCIA contends that we should permit paging licensees to calculate their fees by aggregating their total subscribers, rather determining their fee payments by call sign, as required by section 9(g), and to submit one instrument of payment per carrier system.[34]

88. Our rules do not define a mobile service subscriber. For purposes of calculating regulatory fees, we will define a subscriber to a mobile service as an individual or entity authorized by the mobile service provider to operate under its blanket license in exchange for monetary consideration. Further, any Part 22 licensee may submit a single, aggregate payment to cover the regulatory fees due for each of its individual systems. However, each individual system and service should be clearly enumerated on the payor's FCC Form 159 accompanying the fee payment. PCIA may submit its proposal to modify the method for calculating fee payments by paging licensees in our proceeding for establishing fees for FY 1995.

2. Air-Ground Radiotelephone Service

89. Claircom Communications Group, L.P., GTE and In-Flight Phone Corporation request clarification of the definition of "subscriber" in section 9(g) when applied to the payment of regulatory fees for the Air-Ground Telephone Service. Unlike conventional telephone service, subscribers to that service, usually operators of commercial aircraft, lease their service for the purpose of making it available to their own customers. There is no contractual relationship between the air-ground service operator and the end user of its service. Consequently, as suggested by the parties, we will treat the operator of an aircraft in which its service is installed as the subscriber to the service and charge the fee based upon the number of transceivers leased by the operator. Similarly, licensees in the air-ground service should include in their total fee a payment on a transceiver basis for service they provide to users other than commercial aircraft, such as private aircraft.

3. Space Stations

90. Comsat General Corporation (Comsat); GE American Communications, Inc. (GE American), Orbital Communications Corporation (Orbital), PanAmSat, L.P. (Panamsat) and Starsys Global Postioning, Inc. (Starsys) have submitted comments addressed to our proposals concerning the requirements of satellite licensees to submit regulatory fees. Comsat and GTE state that the regulatory fee for a geosynchronous orbit space station is excessive. Comsat argues that the fee requirement should be lowered for FY 1994 because these systems no longer require the regulatory attention they received in their earlier developmental stage. It argues that the fee also is a disincentive to maintaining older and underutilized satellites in orbit for back-up purposes and is anticompetitive and anticonsumer. As we have stated earlier, we shall not adjust the schedule of fees that Congress has enacted for the assessment of fees for FY 1994. Comsat may submit its comments in the future proceeding that we will initiate in order to establish appropriate fees for FY 1995.

91. We also received comments from Orbital and a reply comment from Starsys concerning when a satellite space station becomes subject to the fee requirement. Section 9(g) requires that the payment of a regulatory fee by the operator of any "operational" space station in geosynchronous orbit. We agree with the commenters that a satellite does not become "operational" immediately upon its launch. Therefore, as proposed by the commenters, we will consider a space station in geosynchronous orbit to be subject to the fee when it has been certified by its operator to be operational in accordance with section 25.120(d) of the rules. This certification indicates that the satellite has been placed in its authorized orbit and is operating in the authorized frequency bands at the authorized power levels. Similarly, a space station or system will be considered to have terminated its operation when its licensee certifies to us that the satellite has ceased to operate.

92. Also, we will consider a space system in low earth orbit (LEO) subject to the fee payment when its first satellite becomes operational even though all its space stations are not yet operational. Similar to our treatment of geosynchronous satellites, the system will become subject to a fee payment upon the certification by the licensee that the operations of the first satellite in its system conform to the terms and conditions of its authorization pursuant to 47 CFR 25.120(d).

4. Earth Stations

93. AMSC Subsidiary Corporation contends that no payment of regulatory fees for earth stations and mobile terminals should be required until their related satellite system is operational.[35] However, we observe that the licensing

[33] The Joint Parties point out that the fee schedule contains no explicit fee requirement for Multipoint Distribution Service (MMDS). However, our schedule, modeled on the schedule contained in section 9(g) of the Act, explicitly requires the payment of a regulatory fee by Domestic Public Fixed licensees, operating under Part 21 of our rules. Since MMDS is a Part 21 service, it is fully subject to the regulatory fee prescribed for Part 21 licensees.

[34] PCIA also requests that we recalculate the regulatory fee for CMRS for FY 1995. PCIA may submit its comments regarding the fee for CMRS in the proceeding we establish to prescribe fees for FY 1995.

[35] AMSC states that its satellite will be launched in December 1995, but that its earth and mobile stations will likely be licensed before September 1994.

of satellite earth stations is entirely separate from the licensing of space stations and that fixed-satellite earth stations are generally licensed to operate with any and all domestic satellite systems located in that portion of the geostationary orbit for which the earth station has been frequency coordinated. It is common practice for a satellite system to provide preliminary service via unrelated space stations before its own stations are launched and operational.

94. We will require the licensee of an earth station to pay a fee once it has certified that the earth station's construction is completed. However, in those rare instances in which a license limits an earth station's operational authority to a particular satellite system and that system is not operational on the date for calculating the fee, the fee will not be due until the first satellite of the related system becomes "operational" within the meaning of our fee rules.

5. Interexchange and Local Exchange Services

95. Generally, the comments of local exchange carriers (LECs) and interexchange carriers (IXCs) raise issues concerning the basis upon which they are to calculate their fee payments, the need for a definition of the term "subscriber," and a date for calculating their fee payments.[36]

96. We will adopt our proposal to permit the holding company of local exchange carriers to aggregate fee payments due by its operating companies and submit a single payment to cover the fee requirements of its subsidiaries.[37] We have considered the proposals of several commenters, including Ameritech, Nynex and SWB, that LECs submit fees based upon ARMIS data. However, ARMIS data is required from comparatively few LECs and we would still need a mechanism to calculate the fees due from the vast majority of LECs. Therefore, we have decided that all LECs are to calculate the amount of their regulatory fees based upon the number of working loops as described in section 36.611 of our rules, governing the submission of Information to the National Exchange Carrier Association (NECA).[38] We believe that this definition will be simple to administer since the LECs currently compile subscriber loop data, and it will provide a consistent formulation for the assessment of fees from all LECs.[39] As noted, for FY 1994, we will require LECs to calculate their fee payments for FY 1994 as of December 31, 1993.[40]

97. In the *NPRM*, we invited comments concerning section 9(g)'s assessment of regulatory fees from IXCs on a subscriber basis. In response, AT&T, opposed by Wiltel, Inc., argues that fee payments by IXCs should be based on gross revenues, not by the number of a carrier's subscribers. We decline to reach the merits of AT&T's argument at this time because, as indicated above, we shall not adjust the fee schedule for FY 1994. Any reformulation of the basis upon which IXCs are to base their fee payments would constitute a substantial adjustment to the fee schedule that Congress enacted. IXCs shall file fees based on the total number of common lines presubscribed to that IXC as determined pursuant to section 69.116 of the rules. 47 C.F.R. § 69.116. AT&T may submit its views concerning the appropriate method of assessing fees from IXCs in our proceeding to establish regulatory fees for FY 1995.

6. International Bearer Circuits

98. Panamsat requests clarification concerning the assessment of regulatory fees for international circuits. Section 9(g)'s Schedule provides that the fee is to be computed "per 100 active 64 KB circuits or equivalent." The fee is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Private submarine cable operators also are to pay fees for circuits sold on an indefeasable right of use (IRU) basis or leased in their private submarine cables to any customer of the private cable operator. In the *NPRM*, we stated that the fee would be based upon active 64 KB circuits, or equivalent circuits. Under this formulation, 64 KB circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 KB circuit equivalent of larger bit stream circuits. For example, the 64 KB circuit equivalent of a 2.048 MB circuit is 30 64 KB circuits. Analog circuits such as 3 and 4 KHz circuits used for international services are also included as equivalent 64 KB circuits. However, circuits derived from 64 KB circuits such as circuits derived by the use of digital circuit multiplication systems are not equivalent 64 KB circuits. Such circuits are not subject to fees. Only the 64 KB circuit from which they have been derived will be subject to payment of a fee.

For analog television channels we will assess fees as follows:

Analog television channel size in MHz	Number of equivalent 64 KB circuits
36	630
24	288
18	240

D. Cable Services

99. Several commenters contend that the fee prescribed for cable television services should be paid on an exact per subscriber count rather than per 1,000 subscribers, as we proposed.[41] These commenters argue that the latter formulation would cause small cable systems to pay a disproportionately high regulatory fee. For example, a cable system with 100 subscribers would be subject to the same fee as a system with 1,000 subscribers.

100. The text of section 9(g)'s fee schedule provides for the assessment of a fee for cable television systems at the rate of $370.00 per 1,000 subscribers. Upon further consideration, we agree with the commenters that Congress did

[36] Allnet and MCI point out that resellers and pay telephone operators are not among those regulatees listed in the fee schedule. We will review whether these entities should be directly subject to a fee payment in the course of our proceeding to determine regulatory fees for FY 1995.

[37] We agree with Allnet that entities operating as both LECs and IXCs are subject to a regulatory fee for both categories of service. However, as GTE suggests, we will require a carrier to submit only a single payment when a single commonly-owned line serves as both a presubscribed line and an access line.

[38] NECA has proposed to process regulatory fees on behalf of its pooling exchange carriers and to submit their consolidated fees to our lockbox bank in a single instrument of payment. We have no objection to NECA's submission of the fee on behalf of its pooling exchange carriers or others. However, we remind entities subject to the payment of a regulatory fee that the regulatee, not an agent, such as NECA, is responsible for ensuring that the payment is made that it is subject to penalty for failure to submit the entire fee due in a timely manner. LECs will be expected to pay their fees based upon the number of access lines as determined by NECA. In case of a dispute between a carrier and NECA concerning the carrier's line count as of December 31, 1993, NECA will certify its calculation of the carrier's line count and the basis for its calculation.

[39] We expect competitive access providers (CAPs) to submit fee payments based upon their line count as required under section 9(g). Ameritech, GTE and other interested parties may submit their views on the proper method of assessing regulatory fees for CAPs in our proceeding to establish fees for FY 1995.

[40] Several LECs, including Ameritech, GTE, NYNEX and Bell South, opposed by Allnet, contend that their regulatory fee payments qualify for exogenous treatment under the price cap rules and ask that we allow their regulatory fee expense to be charged directly to their subscribers. Their request is beyond the scope of this proceeding. LECs seeking to charge their regulatory fees directly to subscribers should petition for a waiver of the Commission's rules.

[41] These commenters include the United States Small Business Administration, Cable Services, Inc., the Cable Telecommunications Association, the National Cable Television Associations, Nationwide Communications, Inc. and the Small Cable Business Association.

not intend that this provision required that a system pay its fee as if it served 1,000 subscribers when in fact it provides services to fewer than 1,000 subscribers.[42] Following this formulation to its logical extreme would impose on small cable systems a disproportionate burden of the aggregate cable service regulatory fee since it would result in the assessment of larger fees upon small systems, particularly those with fewer than 1,000 subscribers. Thus, we believe Congress' purpose was to require cable systems to formulate their fee based on the schedule's assessment of $370.00 per 1000 subscribers, but to pay the fee on an exact per subscriber count. Payment of the cable fee on the basis of the exact count of a system's subscribers will eliminate the inequity perceived by the commenters.

101. NCTA and Nationwide support our proposal to permit cable systems to submit their regulatory fees on the basis of the aggregate fee payable by commonly owned systems.[43] Therefore, we will permit commonly-owned cable systems to combine their fee payments for submission to our lockbox bank. Finally, for purposes of calculating the fee due from cable operators, we will adopt the definition of a cable subscriber, including bulk rate subscriber, used for FCC Form 325. See FCC Form 325 Instructions (Page 3).

V. Amendments to Application Fee Rules

102. In addition to the new rules for regulatory fees, we are revising several sections of our rules governing fees associated with applications and other filings. Filing fees are required pursuant to section 8 of the Communications Act and are administered separately from the regulatory fees authorized under section 9.[44]

[42] We reject the Joint Commenters' argument that the regulatory fee for cable systems be reduced when any of a system's channels are made available to competitors pursuant to 47 U.S.C. § 532. Congress has based the regulatory fee for cable systems upon the number of subscribers served, not the number of a system's channels available for the system's direct use.

[43] NCTA, the Joint Commenters and Continental request authority for cable systems to pass through their regulatory fees to cable television subscribers as extenal costs. Only those items currently itemized in the rule as external costs may be passed through to cable subscribers. Regulatory fees are not among the enumerated items and the pass through process is not the subject of this proceeding. Therefore, this matter should be addressed separately.

[44] We will publish in the FCC Record actions, including actions taken on delegated authority, related to the application and regulatory fee rules that have precedential value.

A. Fees for Resubmitted Applications

103. We have amended § 1.1107(d) of the rules, as proposed. Section 1.1107(d) governs fee payments relating to applications and other filings when resubmitted in the appropriate timeframe following a staff request for additional or corrected information. We have amended § 1.1107(d) to require persons submitting applications or other filings that have been returned for additional information or corrections and that do not require any additional fees to submit these applications and other filings directly to the Bureau/Office making the request. Applications requiring additional fees must be filed at our lockbox bank with the remittance for the entire additional amount due. In the event that the staff discovers, within 30 days after the resubmission, that the additional fee payment was not submitted, the application or other filing will be dismissed as deficient and the previously submitted section 8 fee payment will be retained under this proposal. A new fee payment (covering the entire amount of the revised fee) will be required with any future filing of the application or other filing. However, if the staff discovers the fee payment deficiency more than thirty days subsequent to the resubmission, the application or other filing will be retained, but a 25 percent late fee will be assessed on the deficient amount even if we have completed our action on the application or other filing involved.

B. Stale Checks

104. Our lockbox bank will not process a personal or business check dated more than six months prior to its submission. Therefore, we have revised § 1.1108(a) of the rules to make clear that these "stale" checks will not be accepted as fee payments. Under this revision, we will not accept any instrument of payment dated more than six months prior to the date of its filing with the lockbox bank, and we will return to the filer any application or other filing submitted with a stale payment instrument. Further, we will not accept any third party checks (*i.e.*, checks with the name of any third party as the maker or endorser).

C. Receipts

105. Our practice with regard to stamped receipts for application fee payments is to furnish receipts only upon specific request of the submitter rather than to provide receipts automatically for all fee payments received. We are clarifying these procedures by amending § 1.1108 of the rules. In order to obtain a receipt for a fee payment, section 1.1108 will require that the application and fee package include a copy of the first page of the application or other filing, clearly marked "copy," submitted expressly for the purpose of serving as a receipt of the filing. The copy should be the top document in the fee payment package. The staff will date-stamp the copy immediately and provide it to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the date-stamped copy of the application. We will provide a receipt for regulatory fee payments, upon request, if we are furnished with a copy of Form 159 or the first page of an application in the private radio services accompanying the fee payment and the request otherwise conforms with the procedures we have adopted for receipts of application fees.

D. Electronic Application Fee Payments

106. We are adopting rules regarding the submission of regulatory fee payments by electronic means. Revised §§ 1.1107 and 1.1108 of the rules allow the payment of application and other filing fees by electronic means, although our system for electronic payment is not yet fully in place. In our *NPRM*, we stated our concern about matching electronically paid fees with submitted hard-copy applications.[45] If a party chooses to pay its application filing fee electronically, we will require that the entity follow existing procedures for filing its application at the lockbox bank. However, in lieu of the current payment methods, the party will indicate on its remittance advice (FCC Form 159 or the underlying application form with fee information incorporated therein) that payment is being sent to the bank electronically. The electronic payment must be made on or before the day the application is filed. Upon receipt of an application, the bank will confirm that a fee payment has been received electronically. If the electronic payment is not received on the filing date, the application or request will be returned without processing. We believe these procedures are necessary to ensure the most efficient processing of electronic fee payments (when authorized) and applications or other filings. Finally, during the pilot phase of our electronic payment program, regulatees will be required to obtain our prior authorization before making

[45] We note that some parts of the Commission are currently experimenting with electronic filing of applications.

electronic fee payments. (See paragraphs 56 and 57, above.)

E. One Check/One Application Rule

107. We are modifying our rules to allow the use of a single payment instrument or method to cover multiple applications for the same or different applicants, so long as all the applications are filed at the same time at the same lockbox. Any applicant desiring to pay for multiple regulatory/application filings in the same lockbox with a single payment instrument, or when paying by credit card, must also complete FCC Form 159, FCC Remittance Advice. Each item must be listed separately on the form with its own Payment Type Code. If another space is needed for multiple filings, the applicant must use FCC Form 159–C, FCC Remittance Advice Continuation Sheet.[46]

F. Payment by Cashier's Check

108. To ensure that payment instruments will result in a final payment being made to the Commission, we believe that our cashier's check safeguard should be strengthened. Accordingly, as proposed, when a person or organization has, on one or more occasions, submitted a payment instrument on which final payment is not received (and is not excused by bank error), we will immediately notify the party that future fee payments must be made by cashier's check until further notice. If, subsequent to such notice, payment is not made by a cashier's check (or cash), that party's other payment instrument will not be accepted and its application or other filing will be returned. 47 CFR 1.1108(d)(1)(i); see also 47 CFR 1.1110(a).

G. Filing Locations for Petitions and Applications for Review

109. We have revised §§ 1.1109(a)(3) and 1.1115 to clarify that any petition for reconsideration, application for review, and any petition for waiver or deferral of a fee payment, accompanied by an application or regulatory fee payment, must be submitted to our lockbox bank. If no fee payment is required and the matter is within the scope of either the application or regulatory fee rules, the request should be filed with the Secretary and clearly marked to the attention of the Managing Director.

[46] All non-private radio section 9 regulatory fee payors must use FCC Form 159/159C when submitting single or multiple regulatory fees.

VI. Confidentiality

110. The Cellular Telecommunications Industry Association, GTE and Southwestern Bell Corporation urge that we amend § 0.457 of our rules to safeguard the confidentiality of data submitted with regulatory fees, including fee amounts that are calculated on a per line or subscriber basis. 47 CFR 0.457. At this time, we will not amend our rules to include a provision affording automatic confidentiality for information submitted with regulatory fees. Generally, regulatees are required to submit very little data with their fee payments and it is premature for us to determine whether the disclosure of any information submitted, including the fee amounts calculated on a per subscriber basis, will warrant the protection afforded by § 0.457. Payments of regulatory fees may be accompanied by requests for confidentiality pursuant to § 0.459 of the Commission's rules. 47 CFR 0.459.

VII. Final Regulatory Analysis

111. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

A. Need and Purpose of This Action

112. This *Report and Order* adopts the Schedule of Regulatory Fees enacted by Congress for the assessment and collection of the Commission's regulatory fees for FY 1994 and adopts rules to govern the assessment and collection of regulatory fees for FY 1994 and future years. The rules, as required by Congress, include provisions for the advance payment of small fees, the payment of large fees by installment, and procedures for waiver, reduction and deferral of fees by regulatees that demonstrate that payment of the fee would be a financial hardship, as well as penalties for late or nonpayment of fees.

B. Summary of Comments Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

113. The Chief Counsel for Advocacy of the United States Small Business Administration (SBA) filed comments urging that cable television system operators be permitted to pay their fees on a per subscriber basis ($.37) rather than in increments of 1,000 subscribers ($370.00) or any portion thereof. The *Report and Order* adopts the SBA's proposal.

C. Significant Alternatives Considered

114. The *Notice of Proposed Rulemaking* in this proceeding offered many proposals, including reliance on the Schedule of Regulatory Fees as established by Congress in section 9(g) of the Communications Act, 47 U.S.C. 159(g), exemptions from regulatory fees, installment payments for large fees, advance payments for small fees, payment procedures, including payment by electronic transfer and credit card, procedures for waiver, reduction and deferment of fees, and penalties for late or nonpayment of fees. Our proposals to adopt the service categories and fee amounts in Congress' fee schedule and for waiver, reduction and deferment of fees were discussed by many commenters. Fireweed and the Joint Commenters urged that we amend the fee schedule to reduce the fees and add services subject to a fee payment. NAB and the State Broadcasters urged that we modify our proposed procedures for requesting a waiver, reduction or deferment of a fee payment. Upon review, we affirmed that Congress intended that we utilize section 9(g)'s fee schedule for FY 1994. However, we adopted more flexible procedures for obtaining a waiver, reduction or deferment of the fees in order to afford more regulatees the opportunity to obtain a waiver, reduction or deferment of the fees and we clarified the showing required for adjustment of a fee based on financial hardship.

VIII. Ordering Clauses

115. Accordingly, *it is ordered* that the rule changes as specified below *are adopted.*

116. *It is further ordered* that the rule changes made herein will become effective 30 days after publication in the **Federal Register**. This action is taken pursuant to sections 4(i), 4(j), 8, 9, and 303(r) or the Communications Act, as amended, 47 U.S.C. §§ 154(i) 154(j), 158, 159, 303(r).

List of Subjects

47 CFR Part 0

Authority delegations (Government agencies), Freedom of information, Government publications, Reporting and recordkeeping requirements.

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Investigations, Penalties, Radio Reporting and recordkeeping requirements, Telecommunications, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

47 CFR Parts 0 and 1 are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read:

Authority: Sec. 5, 48 Stat. 1068, as amended, 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.231 is amended by revising paragraph (a) to read as follows:

§ 0.231 Authority delegated.

(a) The Managing Director, or his designee, upon securing concurrence of the General Counsel, is delegated authority to act upon requests for waiver, reduction or deferment of fees, establish payment dates, and issue notices proposing amendments or adjustments to the fee schedules established under part 1, subpart G, of this chapter.

* * * * *

3. Section 0.406 is amended by revising paragraph (b)(2) to read as follows:

§ 0.406 The rules and regulations.

* * * * *

(b) * * *

(2) *Part 1 of this chapter, practice and procedure.* Part 1, subpart A, of this chapter contains the general rules of practice and procedure. Except as expressly provided to the contrary, these rules are applicable in all Commission proceedings and should be of interest to all persons having business with the Commission. Part 1, subpart A of this chapter also contains certain other miscellaneous provisions. Part 1, subpart B, of this chapter contains the procedures applicable in formal hearing proceedings (see § 1.201 of this chapter). Part 1, subpart C, of this chapter contains the procedures followed in making or revising the rule or regulations. Part 1, subpart D, of this chapter contains rules applicable to applications for licenses in the Broadcast Radio Services, including the forms to be used, the filing requirements, the procedures for processing and acting upon such applications, and certain other matters. Part 1, subpart E, of this chapter contains general rules and procedures applicable to common carriers. Additional procedures applicable to certain common carriers by radio are set forth in Part 21 of this chapter. Part 1, subpart F, of this chapter contains rules applicable to applications for licenses in the Private Radio Services, including the forms to be used, the filing requirements, the procedures for processing and acting on such applications, and certain other matters. Part 1, subpart G, of this chapter contains rules pertaining to the application processing fees established by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272, 100 Stat. 82 (1986)) and also contains rules pertaining to the regulatory fees established by the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 397 (1993)). Part 1, subpart H, of this chapter, concerning ex parte presentations, sets forth standards governing communications with commission personnel in hearing proceedings and contested application proceedings. Part 1, subparts G and H, of this chapter will be of interest to all regulatees, and Part 1, subpart H, of this chapter will, in addition, be of interest to all persons involved in hearing proceedings.

* * * * *

PART 1—PRACTICE AND PROCEDURE

4. The authority citation for Part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j), unless otherwise noted.

5. Section 1.742 is revised to read as follows:

§ 1.742 Place of filing, fees and number of copies.

All applications which do not require a fee shall be filed at the Commission's main office in Washington, DC., Attention: Office of the Secretary. Hand-delivered applications will be dated by the Secretary upon receipt (mailed applications will be dated by the Mail Branch) and then forwarded to the Common Carrier Bureau. All applications accompanied by a fee payment should be filed with the Commission's lockbox bank in accordance with § 1.1105, Schedule of Fees. The number of copies required for each application and the nonrefundable processing fees and any applicable regulatory fees (see subpart G of this part) which must accompany each application in order to qualify it for acceptance for filing and consideration are set forth in the rules in this Chapter relating to various types of applications. However, if any application is not of the type covered by this Chapter, an original and two copies of each such application shall be submitted.

5a. Sections 1.1106 through 1.1117 are redesignated as §§ 1.1107 through 1.1118, respectively.

5b. In the list below, for each newly designated section indicated in the left column, remove the reference indicated in the middle column everywhere it appears, and add the reference indicated in the right column:

Section	Remove	Add
1.1107	§ 1.1105	§ 1.1106.
1.1107	§ 1.1111	§ 1.1112.
1.1113 introductory text.	§ 1.1105	§ 1.1106.
1.1113(d) and (e) introductory text.	§ 1.1112(c) ...	Paragraph (c) of this section.
1.1113(e)(3) .	§ 1.1112(e)(2)	Paragraph (e)(2) of this section.
1.1114(a)	§ 1.1105	§ 1.1106.
1.1115(a)	§ 1.1107(b) ...	§ 1.1108(b).
1.1116(e)	§ 1.1107	§ 1.1108.
1.1118(b)	§ 1.1110	§ 1.1111.

6. Newly designated § 1.1108 is amended by revising paragraphs (a) through (d) to read as follows:

§ 1.1108 Payment of charges.

(a) Electronic fee payments do not require the use of a FCC Form 159, Remittance Advice. An electronic fee payment must be made on or before the day the application and appropriate processing form are filed.

(b) The schedule of fees for applications and other filings lists those applications and other filings that must be accompanied by a FCC Form 159, Remittance Advice. A separate FCC Form 159 will not be required once the information requirements of that form (payor information) is incorporated into the underlying application form.

(c) Applications and other filings that are not submitted in accordance with these instructions will be returned as unprocessable.

Note: This requirement for the simultaneous submission of fee forms with applications or other filings does not apply to the payment of fees for which the Commission has established a billing process. See § 1.1118 of this subpart.

(d) Applications returned to applicants for additional information or corrections will not require an additional fee when resubmitted, unless the additional information results in an increase of the original fee amount. Those applications not requiring an additional fee should be resubmitted directly to the Bureau/Office requesting the additional information. The original fee will be forfeited if the additional information or corrections are not resubmitted to the appropriate Bureau/

Office by the prescribed deadline. If an additional fee is required, the original fee will be returned and the application must be resubmitted with a new remittance in the amount of the required fee to the Commission's lockbox bank. Applicants should attach a copy of the Commission request for additional or corrected information to their resubmission.

(1) If the Bureau/Office staff discovers within 30 days after the resubmission that the required fee was not submitted, the application will be dismissed.

(2) If after 30 days the Bureau/Office staff discovers the required fee has not been paid, the application will be retained and a 25 percent late fee will be assessed on the deficient amount even if the Commission has completed its action on the application. Any Commission actions taken prior to timely payment of these charges are contingent and subject to recession.

* * * * *

7. Newly designated § 1.1109 is amended by revising paragraphs (a), (d) and (f) to read as follows:

§ 1.1109 Form of payment.

(a) Fee payments should be in the form of a check, bank draft, on money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by a Visa or MasterCard credit card. No other credit card is acceptable. Fees for applications and other filings paid by credit card will not be accepted unless the credit card section of FCC Form 159 is completed in full. The Commission discourages applicants from submitting cash and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient. Third party checks (*i.e.*, checks with a third party as maker or endorser) will not be accepted.

(1) Specific procedures for electronic payment will be announced by Public Notice. Applicants must submit a written request to the Commission for authorization to make electronic payments of a fee for applications and other filings, as follows.

(2) No electronic payment of an application fee will be accepted unless the payor has obtained the written authorization of the Commission to submit application fees electronically. It is the responsibility of the payor to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures will result in the return of the application or other filing and the fee payment.

(3) Payments by wire transfer will be accepted. Prior to making a payment by wire, the payor shall obtain the approval of the Managing Director or his designee. A completed FCC Form 159 shall be submitted to the Managing Director or his designee prior to initiating the wire transfer.

* * * * *

(d) The Commission may require payment of fees with a cashier's check upon notification to an applicant or filer or prospective group of applicants under the conditions set forth below in paragraphs (d) (1) and (2) of this section.

(1) Payment by cashier's check may be required when a person or organization has made payment, on one or more occasions with a payment instrument on which the Commission does not receive final payment and such failure is not excused by bank error.

(2) The Commission will notify the party in writing that future payments must be made by cashier's check until further notice. If, subsequent to such notice, payment is not made by cashier's check, the party's payment will not be accepted and its application or other filing will be returned.

* * * * *

(f) The Commission will furnish a stamped receipt of an application only upon request. In order to obtain a stamped receipt for an application (or other filing), the application package must include a copy of the first page of the application, clearly marked "copy", submitted expressly for the purpose of serving as a receipt of the filing. The copy should be the top document in the package. The copy will be date-stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the date stamped copy of the application. No remittance receipt copies will be furnished.

8. Newly designated § 1.1110 is amended by revising paragraph (a) to read as follows:

§ 1.1110 Filing locations.

(a) Except as noted in this section applications and other filings, with attached fees and FCC Form 159, must be submitted to the locations and addresses set forth in §§ 1.1102 through 1.1106.

(1) Tariff filings shall be filed with the Secretary, Federal Communications Commission, Washington, DC 20554. On the same day, the filer should submit a copy of the cover letter, the FCC Form 159, and the appropriate fee to the Commission's lockbox bank at the address established in § 1.1105.

(2) Bills for collection will be paid at the Commission's lockbox bank at the address for the appropriate service as established in §§ 1.1102 through 1.1106, as set forth on the bill sent by the Commission. Payments must be accompanied by the bill and a FCC Form 159 to ensure proper credit.

(3) Petitions for reconsideration or applications for review of fee decisions pursuant to § 1.1117(b) of this subpart must be accompanied by the required fee for the application or other filing being considered or reviewed.

(4) Applicants claiming an exemption from a fee requirement for an application or other filing under 47 U.S.C. 158(d)(1) or § 1.1113 of this subpart shall file their applications in the appropriate location as set forth in the rules for the service for which they are applying, except that request for waiver accompanied by a tentative fee payment should be filed at the Commission's lockbox bank at the address for the appropriate service set forth in §§ 1.1102 through 1.1105.

* * * * *

9. Newly designated § 1.1116 is amended by revising the section heading and paragraph (c) to read as follows:

§ 1.1116 Petitions and applications for review.

* * * * *

(c) Petitions for waivers, deferrals, fee determinations, reconsideration and applications for review will be acted upon by the Managing Director. Petitions and applications for review submitted with a fee must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in §§ 1.1102 through 1.1105. If no fee payment is required, and the matter is within the scope of the fee rules in this subpart, the petition or application for review should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director. Requests for deferral of a fee payment for financial hardship must be accompanied by supporting documentation.

* * * * *

10. Section 1.1151 is added to read as follows:

§ 1.1151 Authority to prescribe and collect regulatory fees.

Authority to impose and collect regulatory fees is contained in title VI.

section 6002(a) of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 397), enacting section 9 of the Communications Act, 47 U.S.C. 159, which directs the Commission to prescribe and collect annual regulatory fees from designated regulatees in order to recover the costs of certain of its regulatory activities in the private radio, mass media, common carrier, and cable television services.

11. Section 1.1152 is added to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for private radio service.

Services	Fee amount	Address
Exclusive use services (per license)		
1. Land Mobile (Above 470 MHZ, Base Station and SMRS) (47 CFR Part 90).	$16.00	FCC, Land Mobile, P.O. Box ____ [1] Pittsburgh, PA 15251–5——
2. Microwave (47 CFR Part 94).	16.00	FCC, Microwave, P.O. Box ____ [1] Pittsburgh, PA 15251–5——
3. Interactive Video Data Service.	16.00	FCC, IVDS, P.O. Box ____ [1] Pittsburgh, PA 15251–5——
Shared Use Services.	7.00	FCC, Shared Use Services, P.O. Box ____ [1] Pittsburgh, PA 15251–5——
Amateur Vanity Call Signs.	7.00	FCC, Amateur Vanity Call Signs, P.O. Box ____ [1] Pittsburgh, PA 15251–5——

Note 1: Refer to Private Radio Service Fee Filing Guide for appropriate Post Office Box. Fee Filing Guides may be obtained by writing to the Federal Communications Commission, Public Service Division, room 154, Washington, DC 20554.

12. Section 1.1153 is added to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

Services	Fee amount	Address
AM Radio (47 CFR Part 73):		
1. Class D Daytime.	$250.00	FCC, AM Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Class A Fulltime.	900.00	
3. Class B Fulltime.	500.00	
4. Class C Fulltime.	200.00	
5. Construction Permits.	100.00	
FM Radio (47 CFR Part 73):		
1. Classes C, C1, C2, B.	900.00	FCC, FM Branch, P.O. Box 358835, Pittsburgh, PA 15252–5835.
2. Classes A, B1, C3.	600.00	
3. Construction Permits.	500.00	
TV (47 CFR Part 73) VHF Commercial:		
1. Markets 1 thru 10.	18,000	FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25.	16,000	
3. Markets 26 thru 50.	12,000	
4. Markets 51 thru 100.	8,000	
5. Remaining Markets.	5,000	
6. Construction Permits.	4,000	
UHF Commercial:		
1. Markets 1 thru 10.	14,400	FCC, UHF Commercial, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25.	12,800	
3. Markets 26 thru 50.	9,600	
4. Markets 51 thru 100.	6,400	
5. Remaining Markets.	4,000	
6. Construction Permits.	3,200	
Low Power TV, TV Translator, and TV Booster (47 CFR Part 74).	135	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Broadcast Auxiliary.	25	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA 15251–5835.
International (HF) Broadcast.	200	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.

13. Sec. 1.1154 is added to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

Services	Fee amount	Address
Radio Facilities:		
1. Cellular Radio (per 1,000 subscribers).	$60	FCC, Cellular, P.O. Box 358835, Pittsburgh, PA 15251–5835
2. Personal Communications.	60	
3. Space Station (geo orbit).	65,000	
4. Space Station (low earth).	90,000	
5. Public Mobile (per 1,000 subscribers).	60	
6. Domestic Public Fixed.	55	
7. International Public Fixed.	110	
Earth Stations:		
1. VSAT and Equivalent C-Band antennas (per 100 antennas).	6	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Mobile Satellite Earth Stations (per 100 antennas).	6	
3. Less than 9 meters (per 100 antennas).	6	

Services	Fee amount	Address
4. 9 Meters or More Transmit/ Receive and Transmit Only (per meter).	85	
Receive Only (per meter).	55	
Carriers:		
1. Inter-Exchange Carrier (per 1,000 presubscribed lines).	60	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Local Exchange Carrier (per 1,000 access lines).	60	
3. Competitive Access Provider (per 1,000 subscribers).	60	
4. International Circuits (per 100 active 64 KB circuit or equivalent).	220	

14. Sec. 1.1155 is added to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services

Services	Fee amount	Address
1. Cable Antenna Relay Service.	$220	FCC, Cable, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Cable TV System (per 1,000 subscribers).	370	

15. Section 1.1156 is added to read as follows:

§ 1.1156 Payment of charges for regulatory fees.

Payment of a regulatory fee, required under §§ 1.1152 through 1.1155, shall be filed in the following manner:

(a) Payments of regulatory fees shall be submitted with the filing of any application for a new, renewal or reinstatement of a license or other authorization in the private radio services.

(1) Any regulatory fee submitted with an application in the private radio services shall include an advance payment of the total annual regulatory fee payment due for the entire term of the license or other authorization. The amount of the regulatory fee payment due with any application in the private radio service shall be the multiple of the number of years in the entire term of the requested license or other authorization multiplied by the annual fee payment required in the Schedule of Regulatory Fees, effective at the time the application is filed. Except as set forth in § 1.1159, advance payments shall be final and shall not be readjusted during the term of the license or authorization, notwithstanding any subsequent increase or decrease in the annual amount of a fee required under the Schedule of Regulatory Fees.

(2) Failure to file the appropriate regulatory fee with an application in the private radio service will result in the return of the accompanying application, including an application for which the Commission has assigned a specific filing deadline.

(b)(1) Payments of standard regulatory fees, applicable to mass media, common carrier and cable services, shall be filed in full on an annual basis at a time announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the **Federal Register.**

(2) Large regulatory fees, as annually defined by the Commission, may be submitted in installment payments.

(i) For Fiscal Year 1994, large regulatory fees may be submitted in two (2) equal installment payments at times announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the **Federal Register.**

(ii) For Fiscal Year 1994, installment payments may be submitted for:

(A) VHF and UHF Commercial Television Stations with a fee requirement above $12,000;

(B) Cable Television Systems whose 'community units' fee payments total more than $18,500;

(C) Inter-Exchange Carriers with a fee requirement above $500,000;

(D) Local Exchange Carriers or Holding Companies with a fee requirement above $700,000; and

(E) Space Stations with a fee of $65,000 or above.

(iii) Beginning in Fiscal Year 1995, payors of a large standard regulatory fee, as annually defined by the Commission, may submit their fee payments in four (4) equal installments at times to be announced by the Commission or by the Managing Director, pursuant to delegated authority, and published in the **Federal Register.**

(c) Standard regulatory fee payments, as well as any installment payment, must be filed with a FCC Form 159, FCC Remittance Advice, and a FCC Form 159C, Remittance Advice Continuation Sheet, if additional space is needed. Failure to submit a copy of FCC Form 159 with a standard regulatory fee payment, or an installment payment, will result the return of the submission and a 25 percent penalty if the payment is resubmitted after the date the Commission establishes for the payment of standard regulatory fees and for any installment payment.

(1) Any late filed regulatory fee payment will be subject to the penalties set forth in § 1.1163.

(2) If one or more installment payments are untimely submitted or not submitted at all, the eligibility of the subject regulatee to submit installment payments may be cancelled and the regulatee required to pay its fee in a single annual payment.

16. Section 1.1157 is added to read as follows:

§ 1.1157 Form of payment for regulatory fees.

Any regulatory fee payment must be submitted in the form of a check, bank draft or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by Visa or Mastercard credit cards only. The Commission discourages applicants from submitting cash payments and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient.

(a) Upon authorization from the Commission following a written request, electronic payment of a regulatory fee may be made as follows:

(1)(i) The payor may instruct its bank to make payment of the regulatory fee directly to the Commission's lockbox bank; or

(ii) The payor may authorize the Commission to direct its lockbox bank to withdraw funds directly from the payor's bank account.

(2) No electronic payment of a regulatory fee will be accepted unless the payor has obtained the written authorization of the Commission to submit regulatory fees electronically. Procedures for electronic payment of regulatory fees will be announced by Public Notice. It is the responsibility of the payor to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's

procedures for electronic fee payment will result in the return of the fee payment, and a penalty fee of 25 percent if the subsequent refiling of the fee payment is late. Failure to comply will also subject the payor to the penalties set forth in section 1.1163.

(b) Multiple payment instruments for a single regulatory fee are not permitted, except that the Commission will accept multiple money orders in payment of any fee where the fee exceeds the maximum amount for a money order established by the issuing entity and the use of multiple money orders is the only practicable means available for payment.

(c) Payment of multiple standard regulatory fees (including an installment payment) due on the same date, may be made with a single payment instrument and cover mass media, common carrier and cable service fee payments. Each regulatee is solely responsible for accurately accounting for and listing each license or authorization and the number of subscribers, access lines, or other relevant units on the accompanying FCC Form 159 and, if needed, FCC Form 159C and for making full payment for every regulatory fee listed on the accompanying form. Any omission or payment deficiency of a regulatory fee will result in a 25 percent penalty of the amount due and unpaid.

(d) Any regulatory fee payment (including a regulatory fee payment submitted with an application in the private radio service) made by credit card or money order must be submitted with a completed FCC Form 159. Failure to accurately enter the credit card number and date of expiration and the payor's signature in blocks number 22 and 23 of FCC Form 159 will result in rejection of the credit card payment.

17. Section 1.1158 is added to read as follows:

§ 1.1158 Filing locations and receipts for regulatory fees.

(a) Regulatory fee payments must be directed to the location and address set forth in sections 1.1152 through 1.1155 for the specific category of fee involved. Any regulatory fee required to be submitted with an application must be filed as a part of the application package accompanying the application. The Commission will not take responsibility for matching fees, forms and applications submitted at different times or locations.

(b) Petitions for reconsideration or applications for review of fee decisions submitted with a standard regulatory fee payment pursuant to §§ 1.1153 through 1.1155 are to be filed with the Commission's lockbox bank in the manner set forth in §§ 1.1153 through 1.1155 for payment of the fee subject to the petition for reconsideration or the application for review. Petitions for reconsideration and applications for review that are submitted with no accompanying payment should be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, DC 20554.

(c) Any request for exemption from a regulatory fee shall be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, DC 20554, except that requests for exemption accompanied by a tentative fee payment shall be filed at the lockbox set forth for the appropriate service in §§ 1.1152 through 1.1155.

(d) The Commission will furnish a receipt for a regulatory fee payment only upon request. In order to obtain a receipt for a regulatory fee payment, the package must include an extra copy of the Form FCC 159 or, if a Form 159 is not required with the payment, a copy of the first page of the application or other filing submitted with the regulatory fee payment, submitted expressly for the purpose of serving as a receipt for the regulatory fee payment and application fee payment, if required. The document should be clearly marked "copy" and should be the top document in the package. The copy will be date stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the receipt document.

18. Section 1.1159 is added to read as follows:

§ 1.1159 Refunds of regulatory fees.

(a) Regulatory fees will be refunded, upon request, only in the following instances:

(1) When no regulatory fee is required or an excessive fee has been paid. In the case of an overpayment, the refund amount will be based on the applicants', permittees', or licensees' entire submission. All refunds will be issued to the payor named in Block Number 3 of the FCC Form 159.

(2) In the case of advance payment of regulatory fees, subject to § 1.1152, a refund will be issued based on unexpired full years:

(i) When the Commission adopts new rules that nullify a license or other authorization, or a new law or treaty renders a license or other authorization useless;

(ii) When a licensee in the private radio service surrenders the license or other authorization subject to a fee payment to the Commission; or

(iii) When the Commission declines to grant an application submitted with a regulatory fee payment.

(3) When a waiver is granted in accordance with § 1.1165 of this subpart.

(b) No pro-rata refund of an annual fee will be issued.

(c) No refunds will be issued based on unexpired partial years.

(d) No refunds will be processed without a written request from the applicant, permittee, licensee or agent.

19. Section 1.1160 is added to read as follows:

§ 1.1160 Conditional license grants and delegated authorizations.

(a) Grant of any application or an instrument of authorization or other filing, for which a regulatory fee is required to accompany the application or filing, will be conditioned upon final payment of the regulatory fee. Final payment shall mean receipt by the U.S. Treasury of funds cleared by the financial institution on which the check, bank draft, money order, credit card, wire or electronic payment is drawn.

(1) If, prior to a grant of an instrument of authorization, the Commission is notified that final payment of the regulatory fee has not been made, the application or filing:

(i) Will be dismissed and returned;

(ii) Shall lose its place in the processing line; and

(iii) Will not be treated as timely filed if resubmitted after the relevant filing deadline.

(2) If, subsequent to a grant of an instrument of authorization or other filing, the Commission is notified that final payment has not been made, the Commission will:

(i) Automatically rescind that instrument of authorization;

(ii) Notify the grantee of this action; and

(iii) Treat as late filed any application resubmitted after the original deadline for filing the application.

(3) Upon receipt of a notification of rescission of the authorization, the grantee will immediately cease operations initiated pursuant to the authorization.

(b) In those instances where the Commission has granted a request for deferred payment of a regulatory fee, further processing of the application or filing or the grant of authority shall be

conditioned upon final payment of the regulatory fee and any required penalties for late payment prescribed by the deferral decision. Failure to comply with the terms of the deferral decision shall result in the automatic dismissal of the submission or rescission of the Commission authorization. Further, the Commission shall:

(1) Notify the grantee that the authorization has been rescinded. Upon such notification, the grantee will immediately cease operations initiated pursuant to the authorization; and

(2) Treat as late filed any application resubmitted after the original deadline for filing the application.

(c) Where the procedures described in paragraphs (a) and (b) of this section would not provide a meaningful incentive to pay a regulatory fee that is due or would not be a meaningful sanction for failure to pay such a fee, the Commission may, in its discretion, whether the regulatory fee is required to be paid with an application for an instrument of authorization or otherwise, withhold processing and/or grant of any application or filing made by a person or organization who has failed to make full payment of any regulatory fee due.

(1) Before taking such action, the staff will make a written request for the fee, together with any penalties that may be rendered under this subpart. Such request shall inform the regulatee that failure to pay may result in the Commission withholding action on any application or request filed by the applicant. The staff shall also inform the regulatee of the procedures for seeking Commission review of the staff's fee determination.

(2) If, after final determination that the fee is due, payment is not made in a timely manner, the staff may terminate processing and/or withhold any grant or petition requested by the person or organization subject to the fee payment requirement, until the matter is resolved.

20. Section 1.1161 is added to read as follows:

§ 1.1161 General exemptions from regulatory fees.

No regulatory fee established in §§ 1.1152 through 1.1155 of this subpart, unless otherwise qualified in this section shall be required for:

(a) Applicants, permittees or licensees in the Amateur Radio Service, except that any person requesting a vanity call-sign, following July 18, 1994 shall be subject to the payment of a regulatory fee, as prescribed in § 1.1152 of this Subpart.

(b) Applicants, permittees, or licensees who qualify as government entities. For purposes of this exemption, a government entity is defined as any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

(c) Applicants, permittees or licensees who qualify as nonprofit entities. For purposes of this exemption, a nonprofit entity is defined as an organization possessing nonprofit, tax exempt status under section 501 of the Internal Revenue Code, 26 U.S.C. 501.

(d) Applicants, permittees or licensees in the Special Emergency Radio and Public Safety Radio services.

(e) Applicants, permittees or licensees of noncommercial educational broadcast stations in the FM or TV services, as well as AM applicants permittees or licensees operating in accordance with § 73.503 of this chapter.

(f) Applicants, permittees or licensees qualifying under § 1.1161(e) requesting Commission authorization in any other mass media radio service (except the international broadcast (HF) service), private radio service, or common carrier communications service requiring payment of a regulatory fee, if the service is used in conjunction with their noncommercial educational broadcast station on a noncommercial educational basis.

(g) Other applicants, permittees or licensees providing, or proposing to provide, a noncommercial educational or instructional service, but not qualifying under § 1.1161(e), may be exempt from regulatory fees, or be entitled to a refund, in the following circumstances:

(1) The applicant, permittee or licensee is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in conjunction with the organization on a noncommercial educational basis;

(2) An applicant, permittee or licensee of a translator or low power television station operating proposing a noncommercial educational service who, after grant, provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission; or

(3) An applicant, permittee, or licensee provided a fee refund under § 1.1159 and operating as a noncommercial education station, is exempt from fees for broadcast auxiliary stations (Part 74, Subparts D, E, and F, of this chapter) or stations in the private radio or common carrier services where such authorization is to be used in conjunction with the noncommercial educational translator or low power station.

(h) An applicant, permittee or licensee that is the licensee of an instructional television fixed station is exempt from regulatory fees where the authorization requested will be used by the applicant in conjunction with the provision of the instructional service.

(i) Applications filed in the private radio service for the sole purpose of modifying an existing authorization (or a pending application for authorization). However, if the applicant also requests a renewal or reinstatement of its license or other authorization for which the submission of a regulatory fee is required, the appropriate regulatory fee for such additional request must accompany the application.

21. Section 1.1162 is added to read as follows:

§ 1.1162 Adjustments to regulatory fees.

(a) For Fiscal Year 1994, the amounts assessed for regulatory fees are set forth in §§ 1.1152 through 1.1155.

(b) For Fiscal Year 1995 and thereafter, the Schedule of Regulatory Fees, contained in §§ 1.1152 through 1.1155, may be adjusted annually by the Commission pursuant to section 9 of the Communications Act. 47 U.S.C. 159. Adjustments to the fees established for any category of regulatory fee payment shall include of projected cost increases or decreases of the in volume of licensees or units upon which the regulatory fee is calculated.

(c) The fees assessed shall:

(1) Be derived by determining the full-time equivalent number of employees performing enforcement activities, policy and rulemaking activities, user information services, and international activities within the Private Radio Bureau, Mass Media Bureau, Common Carrier bureau, Cable Services Bureau and other offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service coverage area, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest;

(2) Be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of the activities described in paragraph (c)(1) of this section.

(d) The Commission shall by rule amend the Schedule of Regulatory Fees by proportionate increases or decreases that reflect, in accordance with paragraph (c)(2) of this section changes in the amount appropriated for the performance of the activities described in paragraph (c)(1) of this section for such fiscal year. Such proportionate increases or decreases shall be adjusted to reflect unexpected increases or decreases in the number of licensees or units subject to payment of such fees and result in collection of an aggregate amount of fees that will approximately equal the amount appropriated for the subject regulatory activities.

(e) The Commission shall, by rule, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (c)(1) of this section. In making such amendments, the Commission shall add, delete or reclassify services in the Schedule to reflect additional deletions or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.

(f) In making adjustments to regulatory fees, the Commission will round such fees to the nearest $5.00 in the case of fees under $1,000.00, or to the nearest $25.00 in the case of fees of $1,000.00 or more.

22. Section 1.1163 is added to read as follows:

§ 1.1163 Penalties for late or insufficient regulatory fee payments.

Any late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee or installment payment which was not paid in a timely manner. A timely fee payment or installment payment is one received at the Commission's lockbox bank by the due date specified by the Commission or by the Managing Director. A payment will also be considered late filed if the payment instrument (check, money order, bank draft or credit card) is uncollectible.

(a) The Commission may, in its discretion, following one or more late filed installment payments, require a regulatee to pay the entire balance of its regulatory fee by a date certain, in addition to assessing a 25 percent penalty.

(b) In cases where a fee payment fails due to error by the payor's bank, as evidenced by an affidavit of an officer of the bank, the date of the original submission will be considered the date of filing.

(c) If a regulatory fee is not paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.

(d)(1) Where a regulatee's new, renewal or reinstatement application is required to be filed with a regulatory fee (as is the case with private radio services), the application will be dismissed if the regulatory fee is not included with the application package. In the case of a renewal or reinstatement application, the application may not be refiled unless the appropriate regulatory fee plus the 25 percent penalty charge accompanies the refiled application.

(2) If the application that must be accompanied by a regulatory fee is a mutually exclusive application with a filing deadline, or any other application that must be filed by a date certain, the application will be dismissed if not accompanied by the proper regulatory fee and will be treated as late filed if resubmitted after the original date for filing the application.

(e) Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.

(f) In instances where the Commission may revoke an existing instrument of authorization for failure to file a regulatory fee, the Commission will provide prior notice to the regulatee of such action and shall allow the licensee no less than 60 days to either pay the fee or show cause why the payment assessed is inapplicable or should otherwise be waived or deferred.

(1) An adjudicatory hearing will not be designated unless the response by the regulatee to the Order to Show Cause presents a substantial and material question of fact.

(2) Disposition of the proceeding shall be based upon written evidence only and the burden of proceeding with the introduction of evidence and the burden of proof shall be on the respondent regulatee.

(3) Unless the regulatee substantially prevails in the hearing, the Commission may assess costs for the conduct of the proceeding against the respondent regulatee. See 47 U.S.C. 402(b)(5).

(4) Any regulatee failing to submit a regulatory fee, following notice to the regulatee of failure to submit the required fee, is subject to collection of the fee, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to section 3720A of the Internal Revenue Code, 31 U.S.C. 3720A and to the provisions of the Debt Collection Act, 31 U.S.C. 3711. See 47 CFR 1.1901–1.1952. The debt collection processes described may proceed concurrently with any other sanction in this section.

23. Section 1.1164 is added to read as follows:

§ 1.1164 Payment by cashier's check for regulatory fees.

Payment by cashier's check may be required when a person or organization makes payment, on one or more occasions, with a payment instrument on which the Commission does not receive final payment and such error is not excused by bank error.

24. Section 1.1165 is added to read as follows:

§ 1.1165 Waivers, reductions and deferrals of regulatory fees.

The fees established by §§ 1.1152 through 1.1155 of this subpart may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. Requests for waivers, reductions or deferrals of regulatory fees for entire categories of payors will not be considered.

(a) Requests for waivers, reductions or deferrals will be acted upon by the Managing Director with the concurrence of the General Counsel. If the request for waiver, reduction or deferral is accompanied by a fee payment, the request must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in § 1.1152 through 1.1155 of this subpart. If no fee payment is submitted and the matter is within the scope of the fee rules in this subpart the request should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(b) Deferrals of fees will be granted for a period of six months following the date that the fee is initially due.

(c) Petitions for waiver of a regulatory fee must be accompanied by the

required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

(d) Petitions for reduction of a fee must be accompanied by the full fee payment less the amount of the requested reduction and FCC Form 159. Petitions for reduction accompanied by a fee payment must be addressed to the Federal Communications Commission, Post Office Box 358835, Pittsburgh, Pennsylvania, 15251–5835.

25. Section 1.1166 is added to read as follows:

§ 1.1166 Error claims related to regulatory fees.

(a) Challenges to determinations of an insufficient regulatory fee payment should be made in writing. Challenges submitted with a fee payment must be submitted to the same location as the original fee payment, marked "Attention: Fee Supervisor". Challenges not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(b) The filing of a petition for reconsideration or an application for review of a fee determination will not toll the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. Petitions for reconsideration and applications for review submitted with a fee payment must be submitted to the same location as the original fee payment. Petitions for reconsideration and applications for review not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(1) Failure to submit the fee by the date required will result in the assessment of a 25 percent penalty.

(2) If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.

Note: These appendices will not appear in the Code of Federal Regulations

Appendix A

Guidelines for Regulatory Fee Categories

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9(g) of the Communications Act. 47 U.S.C. 159(g). Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of Section 9, our own experience in establishing and regulating the various services subject to a fee requirement and the comments of the parties in our proceeding to adopt fees for Fiscal Year 1994 and establish rules to implement the regulatory fee program. The categories and amounts set out in the schedule might, by the next fiscal year and in subsequent fiscal years, be amended, adjusted, or modified to reflect changes in the Commission's appropriations, our costs of providing the regulatory services to be recovered by the fee program, and additions, reductions and changes in the services subject to the fee requirement. See 47 U.S.C. 159(b) (2), (3).

1. Private Radio Bureau

2. The two levels of statutory fees for Private Radio services, exclusive use service and shared use services, were established on the basis that those licensees who generally receive a higher quality communications channel, due to exclusive or lightly shared frequency assignments, will pay a higher fee than those who share marginal quality channels. House Report at 17. In addition, because of the relatively small annual fee amounts in the Private Radio Services, applicants for new licenses and reinstatements and for renewal of their current licenses will be required to pay a regulatory fee covering an entire license term, with only a percentage of all licensees paying a regulatory fee in any one year.

3. Applications for modification or assignment of an existing authorization do not require payment of a regulatory fee. The expiration date of these authorizations will not reflect a new license term when either modifications or assignments are processed. In an effort to reduce public confusion, the Commission has provided separate post office box addresses for these actions.

a. Exclusive Use Services

4. *Land Mobile.* Regulatees covered under this category include those authorized under Part 90 of the Commission's Rules to provide limited access private radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS). These land mobile licensees are subject to a regulatory fee of $16 per license per year. They will pay either a $80 or $160 regulatory fee (depending whether their license term is 5 or 10 years).[1]

5. *Microwave.* Private microwave systems, authorized under part 94 of the Commission's Rules, provide telecommunications services between fixed points and are often used to relay data and to control railroad, pipeline and utility equipment. Microwave licensees are required to pay the total regulatory fee for the entire term of their license when filing their initial or renewal application. The annual fee is $16 for a total of $80 to be filed with the application.

6. *Interactive Video Data Service (IVDS).* IVDS is a two-way point-to-multi-point radio service which provides information about products and services, and allows subscribers to respond through their television sets. IVDS is offered on a private carrier basis and is authorized under Part 95, Subpart F of the Commission's Rules. IVDS licensees will be assessed a regulatory fee of $80 per license to cover each five year license term ($16 per year).

b. Shared Use Services and Other Authorizations

7. The specific categories of shared-use services listed below are not on the statutory schedule but were listed in the House Report. As discussed above, we propose that emergency and public safety services would be exempted from regulatory fees.

8. *Aviation (Aircraft and Ground Stations).* The aircraft radio service provides communications between aircraft or from aircraft to ground stations and includes frequencies used to communicate with air traffic control facilities. See generally 47 CFR Part 87. Aviation aircraft transceiver stations are subject to a regulatory fee of $7 per year per station (the total fee of $70 per station for ten year license term is to be paid at the time a renewal or new application is filed). Aviation ground stations provide communications to aircraft for weather or landing information, or for logistical support to aircraft operations. These stations are subject to a regulatory fee of $7 per year per license (the total fee of $35 per license for five year license term is to be paid at the time a renewal or new application is filed).

9. *Marine (Coast and Ship Stations).* Marine coast stations are land-based stations in the maritime services, authorized under Part 80 of our rules, which provide communications services to ships and other watercraft in coastal and inland waterways. Coast stations are subject to a $35 regulatory fee for each license, covering the five year license term ($7 per year). Marine ship stations, also authorized under Part 80, provide telecommunications between watercraft or between watercraft and shore-based stations. Shipboard radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. Ship stations are assessed a $70 regulatory fee per station, covering the ten year license term ($7 per year) and is to be paid at the same time a license renewal application or new application is filed.

10. *General Mobile Radio Service (GMRS).* GMRS, authorized under Part 95 of the Rules, is a land mobile radio service that provides personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications. Each GMRS license is subject to a $35 regulatory fee, which covers the five year license term ($7 per year) and is to be paid at the same time a license

[1] Some of these services may be reclassified when the Commission implements the recent amendments to section 332 governing the provision of mobile radio services. See n. 11.

renewal application or new application is filed.

11. *Other Land Mobile.* Licensees in the land mobile services not covered in the exclusive use category provide one or two way communications between vehicles, persons or to fixed stations on a shared basis. These services, authorized under Part 90 of the Rules, include radiolocation services, private carrier paging, industrial radio services and land transportation radio services. Regulatory fees will be assessed on a per license basis with the $35 fee covering the five year license term ($7 per year) and is to be paid at the same time a license renewal application or new application is filed.

c. Amateur Vanity Call-Signs

12. If Part 97 of the Rules is amended by the Commission to authorize the use of vanity call-signs, amateur radio operators would be able to request a specific call-sign. *See Notice of Proposed Rule Making* in PR Docket No. 93–305, 9 FCC Rcd 105 (1993). Each amateur licensee with a vanity call-sign will be assessed a regulatory fee of $7 per year. The total fee of $70 will cover the ten year license term during which the call sign will be in use. The first 10-year fee must be paid at the time a request for a vanity call-sign(s) is made. If a requested vanity call-sign is not available or otherwise cannot be issued to the requestor, the regulatory fee will be refunded since amateurs are expressly exempt under the statute from regulatory fees, unless they have received their vanity call-sign.

2. Mass Media Bureau

13. The regulatory fees for Mass Media services generally apply to broadcast licensees and permittees and to other regulatees.[2] We have exempted noncommercial educational broadcasters from regulatory fees.

a. AM Radio Stations

14. *Class A.* Class A AM radio stations are unlimited time stations operating on a clear channel and designed to render primary and secondary service over an extended service area and at relatively long distances from their transmitters. Class A stations' primary service areas are protected from objectionable interference from other stations on the same and adjacent channels, with secondary service areas protected from interference from other stations on the same channel. The operating power shall not be less than 10 kW nor more than 50 kW. For FY 1994, each licensee of a Class A AM station will be assessed a $900 annual regulatory fee.[3]

15. *Class B.* Class B AM radio stations are unlimited time stations rendering service only over a primary service area. These stations are authorized to operate with a minimum power of 0.25 kW (or, if less than 0.25 kW, an equivalent RMS antenna field of at least 141 mV/m at 1 km) and a maximum power of 50 kW (or 10kW for stations that are authorized to operate in the 1605–1705 kHz band). For FY 1994, each licensee of a Class B AM station will be assessed a $500 annual regulatory fee.

16. *Class C.* Class C AM radio stations operate on local channels and are designed to render service only over a primary service area that may be reduced as a consequence of interference. These stations are authorized to operate at not less than 0.25 kW, nor more than 1 kW. Class C stations that were previously licensed to operate with 0.1 kW may continue to do so under our rules. For FY 1994, each licensee of a Class C AM station will be assessed a $200 annual regulatory fee.

17. *Class D.* Class D AM radio stations operate either daytime, limited time or unlimited time with nighttime power less than 0.25 kW and an equivalent RMS antenna field of less than 141 mV/m at one km. Class D stations operate with daytime powers not less than 0.25 kW nor more than 50 kW. Nighttime operations of Class D stations are not afforded protection and must protect all Class A and Class B operations during nighttime hours. For FY 1994, each licensee of a Class D AM station will be assessed a $250 annual regulatory fee.

18. *AM Construction Permits.* For FY 1994, persons holding a construction permit for a any class of a new am station are subject to a $100 annual regulatory fee for each outstanding permit. Upon issuance of an operating license to cover the construction permit, this fee is no longer applicable. Instead, licensees will pay a regulatory fee amount based upon the designated class of the licensed station, as described above, as of the date the regulatory fee payment is due.

b. FM Radio Stations

19. *Licensed Stations.* FM radio stations must meet the location, power and antenna height requirements for stations designated as Classes C, C1, C2, or B, as set forth in sections 73.205, 73.210 and 73.211 of the Commission's Rules. For FY 1994, each commercial licensee of a Class C, C1, C2, or B FM station will be assessed a $900 annual regulatory fee per license. FM radio stations meeting the location, power and antenna height requirements for stations designated as Classes A, B1, or C3, as set forth in the Commission's rules, have a smaller coverage area. Thus, for FY 1994, each commercial licensee for a Class A, B1, or C3 FM Station will be assessed a $600 annual regulatory fee per license.

20. *FM Construction Permits.* Persons holding a construction permit for any class of a new FM station, except Class D, are subject to a $500 annual regulatory fee per outstanding permit in FY 1994. Upon issuance of an operating license to cover the construction permit, this fee is no longer applicable. Instead licensees will pay a regulatory fee based upon the designated class of the licensed station, as described above, as of the regulatory fee payment is determined.

c. Television Stations

21. *VHF and UHF Commercial Licenses.* Commercial VHF and UHF television licensees, including licensees of satellite stations, will be assessed a regulatory fee amount based on the ranking of the station's market. Specifically, for FY 1994 these annual regulatory fees are as follows:

VHF Commercial:	
Markets 1 through 10	$18,000.00
Markets 11 through 25	16,000.00
Markets 26 through 50	12,000.00
Markets 51 through 100	8,000.00
Remaining Markets	5,000.00
UHF Commercial:	
Markets 1 through 10	14,400.00
Markets 11 through 25	12,800.00
Markets 26 through 50	9,600.00
Markets 51 through 100	6,400.00
Remaining Markets	4,000.00

Stations authorized as "satellite" television stations pursuant to note 5 of Section 73.3555 of the Commission's Rules (47 CFR 73.3555 note 5) will be assessed a fee on the same basis as other full power stations in the same market.

23. Television licensees subject to a regulatory fee above $12,000 will be automatically eligible to make two equal installment payments.

24. We have decided to rely upon the latest Arbitron market data to determine a television station's market ranking for purposes of assessing regulatory fees. These rankings may be found in the Television and Cable Factbook published by Warren Publishing. Changes in market rankings may affect regulatory fee amounts for the following fiscal year.

25. *Television Construction Permits.* For FY 1994, persons holding a construction permit for a new VHF television station, in any size market, are subject to a $4,000 annual regulatory fee per outstanding permit. UHF construction permits for stations in any size market will be assessed a $3,200 annual regulatory fee. Upon issuance of an operating license to cover the construction permit, this construction permit fee is no longer applicable. Instead, licensees will pay a regulatory fee amount based upon the licensed station's market ranking, as described above.

d. Low Power TV, TV Translator, and TV Booster Stations

26. Under Part 74 of the Commission's Rules, low power UHF and VHF TV stations operate with a transmitter power output limited to 0.01kw for a UHF facility and, generally, 1kw for a VHF facility, and may retransmit the programs and signals of a full-power TV broadcast station, originate

[2] We note that some Mass Media services, such as the direct broadcast satellite service ("DBS"), the Instructional Television Fixed Service ("ITFS"), and FM translators and boosters were not specifically listed in the statutory schedule. We believe that ITFS was excluded because of its general educational noncommercial status. We also believe that the omission of DBS and FM translators and boosters was inadvertent and that Congress did not intend to exempt all DBS permittees and licensees and licensees of FM translators and boosters from regulatory fees as these services result in the Commission incurring costs for necessary regulatory functions. Since these services are not on the statutory schedule, we have not assessed fees for these services during the 1994 fiscal year. However, pursuant to our authority in section 9(b)(3) to modify the schedule, we intend to add regulatory fee categories for DBS licenses and for FM translators and boosters to be assessed and collected during the 1995 fiscal year.

[3] Regulatees are to pay the fee to which their facility is subject on the date the fee is due.

programming, and/or operate as a subscription service. TV translator stations are authorized to retransmit the programs and signals of TV broadcast stations without significantly altering the characteristic of the original signal other than its frequency and amplitude, for the purpose of providing TV reception to the general public.

27. TV booster stations are operated by the licensee of a full service TV broadcast station to retransmit the programs and signals of the licensee's station by amplifying and reradiating such signals, without significantly altering the characteristics of the original signal other than its amplitude. For FY 1994, licensees of these secondary television broadcast stations will be assessed a $135 annual regulatory fee per license.

e. Broadcast Auxiliary Stations

28. Licensees of remote pickup stations, aural broadcast auxiliary stations, television broadcast auxiliary stations, and low power auxiliary stations, authorized under Part 74 of the Commission's Rules, will be assessed a $25 per license annual regulatory fee for FY 1994. These auxiliary stations are associated with a particular television or radio broadcast station. Hence, those licensees will be required to pay the required regulatory fees for each auxiliary license they hold. Individual users under 47 CFR subpart D, F and H will similarly have to pay the required regulatory fee for each auxiliary license they hold.

f. International (HF) Broadcast Stations

International broadcast stations are licensed to operate on frequencies in the 5,950 khz to 26,100 khz band to provide service to the general public in foreign countries. For FY 1994, each international broadcast licensee will be assessed an annual regulatory fee of $200 per license.

3. Cable Services Bureau

a. Cable Antenna Relay Service

30. Cable television antenna relay service ("CARS") stations are used to transmit television and related audio signals, signals of AM and FM broadcast stations and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by cable television systems. *See* 47 C.F.R. Part 78. For FY 1994, each CARS licensee will be assessed an annual regulatory fee of $220 per license.

b. Cable Television Systems

31. For FY 1994, each cable television system, as that term is defined in section 76.5 of our rules, will be assessed an annual regulatory fee of $.37 per subscriber.[4]

32. We will allow installment payments for these regulatory fees if the annual fee of a cable television system or a group of commonly owned systems aggregating their regulatory fees exceeds $18,500.

4. Common Carrier Bureau

32. Most common carrier regulatory fees are based on the size of a regulatee's communication operation as determined by number of stations, subscribers, access lines, or antennas.

[4] The term "subscriber" is defined in § 76.5 of the Commission's Rules, 47 CFR 76.5.

a. Mobile Services

33. *Cellular and Public Mobile Licensees.* Under Part 22 of our rules, common carriers are authorized to offer land-based or air-to-ground mobile telephone or paging services to the public. In addition to cellular telephone service, these services include those using radio to provide telephone services at fixed locations, such as Basic Exchange Telecommunications Radio Services, Rural Radio and Offshore Radio. For FY 1994, each common carrier license authorized under Part 22 will be assessed an annual regulatory fee of $.06 per subscriber.

34. *Personal Communications Services.* Licensed personal communications services ("PCS") will consist of a wide variety of commercial or private mobile communications services, including advanced paging, microcellular telephone communications, portable facsimile and other video and data transmission services. See generally, *First Report and Order*, Gen. Docket No. 90–314 and ET Docket No. 92–100, 8 FCC Rcd 7162 (1993) (narrowband PCS); *Second Report and Order*, Gen. Docket No. 90–314, 8 FCC Rcd 7700 (1993) (broadband PCS). The statutory Schedule of Regulatory Fees enacted in the 1993 Budget Act established an annual fee of $60 per 1,000 subscribers for PCS licensees. At the same time, the 1993 Budget Act recognized that PCS licenses have not yet been issued. In particular, Congress directed the Commission to conclude its PCS rulemaking proceedings (Gen. Docket No. 90–314 and ET Docket No. 92–100) by February 6, 1994, and to commence the PCS licensing process by May 7, 1994.[5] In addition, our new PCS service rules provide licensees five years to meet minimum construction requirements.[6] Accordingly, since it is unlikely that any PCS licensee will have a significant number of subscribers in the immediate future, no regulatory fees will be collected from PCS licensees during the 1994 fiscal year. We intend to begin assessing and collecting regulatory fees for PCS in the 1995 fiscal year.

b. Space Stations

35. *Space Stations in Geosynchronous Orbit.* Domestic and international satellites, positioned in orbit to remain approximately fixed relative to the earth, are authorized to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 1994, entities authorized to operate these space stations in accordance with § 25.120(d), will be assessed an annual regulatory fee of $65,000 for each operational station in geosynchronous orbit on the date for calculating fees. 47 CFR 25.120(d). Payment may be made in two installments.

36. *Space Stations in Low-Earth Orbit.* Domestic and international non-geostationary satellites, positioned in a low-earth orbit ("LEO"), may be authorized to transmit to satellites and fixed or mobile earth stations.

[5] Section 6002(d)(2), 1993 Budget Act. See *Second Report and Order* in Docket 93–252, FCC–94–31, adopted February 3, 1994.

[6] See *First Report and Order*, at ¶ 37; *Second Report and Order*, at ¶ 134 (petitions for reconsideration pending).

These services include the new non-voice, non-geostationary mobile-satellite service, see *Report and Order*, CC Docket No. 92–76, 8 FCC Rcd 8450 (1993). Entities authorized to operate LEO systems will be assessed an annual regulatory fee of $90,000 for each such system. For purposes of assessing regulatory fees, a LEO operator is required to submit its annual regulatory fees in the fiscal year in which it commences operating its first satellite, pursuant to § 25.120(d), even though all the space stations specified in its application or instrument of authorization have not become operational. 47 CFR 25.120(d). While it appears unlikely that a LEO system will be operational by the date for calculating fees for the 1994 fiscal year,[7] should a LEO system be operational on the date for calculating fees during that period, we will require payment of a regulatory fee for such operational systems. The entire annual fee amount will be required. Payment may be made in two installments.

c. Public Fixed Radio Services

37. *Domestic Public Fixed Services.* Licensees in the Domestic Public Fixed Services are authorized to use microwave frequencies for video and data distribution communications within the United States. These services, authorized under Part 21 of the Rules, include the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, Multipoint Distribution Service (single-channel and multichannel) and Digital Electronic Message Service. For FY 1994, these licensees will be assessed an annual regulatory fee of $55 per call-sign.

38. *International Public Fixed Service.* Licensees in the International Public Fixed Service are authorized as common carriers to provide radio communications between the United States and a foreign point via microwave, HF, troposcatter systems (other than satellites and satellite earth stations). This does not include service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. See 47 CFR part 23. For FY 1994, these licensees will be assessed an annual regulatory fee of $110 per call-sign.

d. Earth Stations

39. *VSAT and Equivalent C-Band Antennas.* Earth station systems comprising very small aperture terminals make up authorized networks operating in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. Each system, authorized pursuant to blanket licensing procedures in Part 25 of the Rules, consists of a network of technically-identical small fixed-satellite earth stations which often includes a larger hub station. For FY 1994, entities holding VSAT authorizations will be assessed an annual regulatory fee of $.06 per antenna. Entities with less than 100 antennas will be subject to a minimum $6 fee.

40. *Mobile Satellite Earth Stations.* Under Part 25 of the Rules, mobile satellite service

[7] See *Report and Order*, at ¶ 18 (a permittee must begin construction of its first two satellites of its system within one year of grant of its construction permit).

providers operate under blanket licenses for mobile antennas (transceivers), which are smaller than one meter and provide voice or data communications, including position location information, for mobile platforms such as cars, buses or trucks. For FY 1994, licensees will be assessed an annual regulatory fee of $.06 per antenna. Entities with fewer than 100 antennas will be subject to a minimum $6 fee.

41. *Earth Station Antennas Less Than 9 Meters.* Persons authorized or registered under Part 25 to operate fixed-satellite earth station antennas that are less than 9 meters in diameter are private and public carriers that provide telephone, television, data, and other forms of communications. This category includes antennas used to transmit and receive, transmit only, or receive only. Also included in this category are telemetry, tracking and control (TT&C) earth stations. For FY 1994, we will assess an annual regulatory fee of $.06 per antenna. Entities with less than 100 antennas will be subject to a minimum $6 fee.

42. *Earth Station Antennas 9 Meters or Greater.* This category covers fixed-satellite earth station antennas authorized under Part 25 that are equal to or greater than 9 meters in diameter. These earth stations are operated by private carriers and common carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking, and control (TT&C) earth stations equal to or greater than 9 meters in diameter. For FY 1994, persons authorized to operate transmit/receive and transmit-only antennas will be assessed an annual regulatory fee of $85 per meter; receive-only antennas will be assessed a regulatory fee of $55 per meter. All measurements will be to the tenth of a meter.

e. Interexchange and Local Exchange Carriers

43. For FY 1994, interexchange carriers (long distance telephone companies) ("IXCs") will be assessed an annual regulatory fee of $.06 per presubscribed line. Similarly, local exchange carriers (local telephone operating companies) ("LECs") will be assessed an annual regulatory fee of $.06 per access line. A holding company may combine the fee payments of its operating companies and pay their fees for a particular service in a single combined payment or by installments, if the aggregate of their fees in a single service qualifies the holding company to make installment payments. For IXCs we have identified regulatory fee payment amounts greater than $500,000 as large. For LECs, we have identified $700,000 as a large amount. Thus, we will permit IXCs whose annual regulatory fee exceeds $500,000 and LECs whose fee payments exceed $700,000 to make installment payments.

f. Competitive Access Providers

44. Competitive access providers ("CAPs") are companies, other than the traditional local telephone companies, that provide interstate access services to long distance carriers and other companies. For FY 1994, each CAP will be assessed an annual regulatory fee of $.06 per subscriber.

g. International Bearer Circuits

45. The Schedule of Regulatory Fees provides that the fee for international bearer circuits is to be computed "per 100 active 64 KB circuits or equivalent." The fee is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Private submarine cable operators also are to pay fees for circuits sold on an indefeasible right of use (IRU) basis or leased in their private submarine cables to any customer of the private cable operator. The fee is based upon active 64 KB circuits, or equivalent circuits. Under this formulation, 64 KB circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 KB circuit of larger bit stream circuits. For example, the 64 KB circuit equivalent of a 2.048 MB circuit is 30 64 KB circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as equivalent 64 KB circuits. However, circuits derived from 64 KB circuits by the use of digital circuit multiplication systems are not equivalent 64 KB circuits. Such circuits are not subject to fees. Only the 64 KB circuit from which they have been derived will be subject to payment of a fee. For analog television channels we will assess fees as follows:

Analog television channel size in MHz	No. of equivalent 64 KB circuits
36	630
24	480
18	240

Appendix B

Formal Comments[1] were filed by:

Government Agencies

United States Coast Guard
Small Business Administration

Private Radio Parties

Association of American Railroads
Association of Public-Safety Communications Officials-International, Inc.
American Radio Relay League, Incorporated
Dennis C. Brown and Robert H. Schwaninger
Forest Industries Telecommunications
Industrial Telecommunications Association, Inc.
National Association of Business and Educational Radio, Inc.
State of Nevada, Division of Wildlife
National Marine Electronics Association
National Marine Manufacturers
Personal Communications Industry Association
Personal Radio Steering Group, Inc.
Radio Technical Commission for Maritime Services
Ram Mobile Data USA
Utilities Telecommunications Council

Mass Media Parties

Association of America's Public Television Stations
Carnegie-Mellon Student Government Corporation
De La Hunt Broadcasting Corporation
Fireweed Communications Corp.
KBS License, L.P.
National Association of Broadcasters
New Jersey Broadcasters Association
Society of Broadcast Engineers
Joint Filing by Named State Broadcasters Associations

Cable Service Parties

Joint Filing by Blade Communications, Inc., Cablevision
Industries Corp, Crown Media, Inc., Multivision Cable TV
Corp., Parcable, Inc., Providence Journal Company, Sammons Communications, Inc., and Star Cable Associates
Cable Services, Inc.
Cable Telecommunications Association
Continental Cablevision, Inc.
Leonard Communications
Nationwide Communications, Inc.
National Cable Television Association
Pepper & Corrazzini
Small Cable Business Association

Common Carrier Parties

Allnet Communications Services, Inc.
American Telephone and Telegraph Company
Ameritech
AMSC Subsidiary Corporation
Bell Atlantic
BellSouth Telecommunications, Inc.
Claircom Communications Group
Cellular Communications of Puerto Rico
Cellular Telecommunications Industry Association
Comsat General Corporation
GE American Communications, Inc.
GTE Service Corporation
In-Flight Phone Corporation
MCI Telecommunications Corporation
National Exchange Carriers Association, Inc.
National Telephone Cooperative Association
NYNEX Corporation
Orbital Communications Corporation
PanAmSat, L.P.
Puerto Rico Telephone Company
Southern Bell Corporation
Sprint Corporation

Formal Reply Comments were filed by:

Ameritech
GTE Service Corporation
McCaw Cellular Communications, Inc.
MCI Telecommunications Corporation
National Telephone Cooperative Association
Puerto Rico Telephone Company
RAM Mobile Data USA
Southwestern Bell Corporation
Sprint Corporation
STARSYS Global Positioning, Inc.
Wireless Cable Association International, Inc.
Wiltel, Inc.
Young & Jatlow

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BILLING CODE 6712-01-M

[1] Numerous informal comments were also filed. Although the informal commenters have not been listed, full consideration has been given to their filings.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket 86-285; FCC 94-141]

Amendment of the Schedule of Application Fees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended its Schedule of Application Fees to adjust the fees for processing applications and other filings. Section 8(b) of the Communications Act requires the Commission to adjust its application fees every two years after October 1, 1991 to reflect the net change in the Consumer Price Index for all Urban Consumers (CPI-U). The increased fees reflect the net change in the CPI-U of 14.8 percent, calculated from December 1989 through August 1993.

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Regina Dorsey, Office of Managing Director at (202) 632-0241.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of: Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1105 of the Commission's Rules.

Adopted: June 6, 1994;
Released: June 8, 1994.

By the Commission: Commissioners Ness and Cheng not participating.

1. By this action, the Commission amends its Schedule of Application Fees, 47 CFR 1.1102 *et seq.*, to adjust the fees for processing applications and other filings. Section 8(b) of the Communications Act requires that the Commission adjust its application fees every two years after October 1, 1991. 47 U.S.C. 158(b). The increased fees reflect the net change in the Consumer Price Index for all Urban Consumers (CPI-U) of 14.8 percent, calculated from December 1989 through August 1993. The adjustments to the fee schedule comport with the statutory formula set forth in section 8(b). Consistent with section 8(b), the Commission transmitted to Congress notification of the fee adjustments on December 23, 1993. Congress has interposed no objection to the increases in the fees.

2. Accordingly, it is ordered, That the Schedule of Application Fees, 47 CFR 1.1102 *et seq.*, is amended as set forth below, effective thirty days after publication in the **Federal Register**.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Investigations, Penalties, Radio, Reporting and recordkeeping requirements, Telecommunications, Television.

Federal Communications Commission
William F. Caton,
Acting Secretary.

46 CFR Part 1 is amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.1102 is revised to read as follows:

§ 1.1102 Schedule of charges for applications and other filings in the private radio services.

Action	FCC form No.	Fee amount	Fee type code	Address
1. Land Transportation:				
a. New, Renewal, Reinstatement	574	80	PALR	Federal Communications Commission, Land Transportation, P.O. Box 358215, Pittsburgh, PA 15251-5215.
b. Modification, Assignment, Nonprofit	574	45	PALM	Federal Communications Commission, Land Transportation, P.O. Box 358730, Pittsburgh, PA 15251-5730.
2. Business:				
a. New, Renewal, Reinstatement	574	80	PALR	Federal Communications Commission, Business, P.O. Box 358220, Pittsburgh, PA 15251-5220.
b. Modification, Assignment, Non-profit	574	45	PALM	Federal Communications Commission, Business, P.O. Box 358735, Pittsburgh, PA 15251-5735.
3. Other Industrial:				
a. New, Renewal, Reinstatement	574	80	PALR	Federal Communications Commission, Other Industrial, P.O. Box 358225, Pittsburgh, PA 15251-5225.
b. Modification, Assignment, Non-profit	574	45	PALM	Federal Communications Commission, Other Industrial, P.O. Box 358740, Pittsburgh, PA 15251-5740.
4. GMRS:				
a. New, Renewal, Reinstatement	574	80	PALR	Federal Communications Commission, GMRS, P.O. Box 358230, Pittsburgh, PA 15251-5230.
b. Modification	574	45	PALM	Federal Communications Commission, GMRS, P.O. Box 358745, Pittsburgh, PA 15251-5745.
5. 800 MHz:				
a. New, Renewal, Reinstatement	574	125	PALS	Federal Communications Commission, 800 MHz, P.O. Box 358235, Pittsburgh, PA 15251-5235.

Action	FCC form No.	Fee amount	Fee type code	Address
b. Modification, Assignment, non-profit	574	45	PALM	Federal Communications Commission, 800 MHz, P.O. Box 358750, Pittsburgh, PA 15251–5750.
6. 900 MHz:				
a. New, Renewal, Reinstatement	574	125	PALS	Federal Communications Commission, 900 MHz, P.O. Box 358240, Pittsburgh, PA 15251–5240.
b. Modification, Assignment, Non-profit	574	45	PALM	Federal Communications Commission, 900 MHz, P.O. Box 358755, Pittsburgh, PA 15251–5755.
7. BUS, OI, LT, GMRS, PS,SE, 470–512, 800, 900, 220, 220 NAT (Renewal) Renewal (Non-Profit).	574R or 405A	45	PALM	Federal Communications Commission, BUS, OI, LT, GMRS, P.O. Box 358245, Pittsburgh, PA 15251–5245.
8. IVDS (Renewal) Renewal (Non-Profit)	574 or 405A	45	PAIM	Federal Communications Commission, IVDS, P.O. Box 358245, Pittsburgh, PA 15251–5245.
9. BUS, OI, LT, GMRS, (Renewal) Renewal	574 or 405A	80	PALR	Federal Communications Commission, BUS, OI, LT, GMRS P.O. Box 358245, Pittsburgh, PA 15251–5245.
10. 470–512, 800, 900, 220 (Renewal) Renewal.	574 or 405A	125	PALS	Federal Communications Commission, 470–512, 800, 900, 220, P.O. Box 358245, Pittsburgh, PA 15251–5245.
11. 220 Nationwide (Renewal) Renewal	574R or 405A	265	PALT	Federal Communications Commission, 220 Nationwide, (Renewal) P.O. Box 358245, Pittsburgh, PA 15251–5245.
12. IVDS (Renewal) Renewal	574R or 405A	125	PAIR	Federal Communications Commission, IVDS, P.O. Box 358245, Pittsburgh, PA 15251–5245.
13. Microwave:				
a. New, Renewal	402	260	PEOR	Federal Communications Commission, Microwave, P.O. Box 358250, Pittsburgh, PA 15251–5250.
b. Modification, Assignment, Non-profit	402	180	PEOM	Federal Communications Commission, Microwave, P.O. Box 358760, Pittsburgh, PA 15251–5760.
14. Microwave (Renewal):				
a. Renewal	402R	260	PEOR	Federal Communications Commission, Microwave (Renewal), P.O. Box 358255, Pittsburgh, PA 15251–5255.
b. Renewal (Non-profit)	402R	180	PEOM	Federal Communications Commission, Microwave (Renewal), P.O. Box 358255, Pittsburgh, PA 15251–5255.
15. Ground:				
a. New, Renewal, Reinstatement	406	120	PBVR	Federal Communications Commission, Ground, P.O. Box 358260, Pittsburgh, PA 15251–5260.
b. Modification, Assignment, Non-Profit	406	85	PBVM	Federal Communications Commission, Ground, P.O. Box 358765, Pittsburgh, PA 15251–5765.
c. Ground (Renewal) Non-Profit	452R	85	PBVM	Federal Communications Commission, Ground, P.O. Box 358270, Pittsburgh, PA 15251–5270.
d. Ground (Renewal) Non-Profit	452R	120	PBVR	Federal Communications Commission, Ground, P.O. Box 358270, Pittsburgh, PA 15251–5270.
16. Coast:				
a. New, Renewal, Reinstatement	503	120	PBMR	Federal Communications Commission, Coast, P.O. Box 358265, Pittsburgh, PA 15251–5265.
b. Modification, Assignment	503	85	PBMM	Federal Communications Commission, Coast, P.O. Box 358770, Pittsburgh, PA 15251–5770.
c. Renewal (Non-Profit)	452R	85	PBMM	Federal Communications Commission, Coast (Renewal), P.O. Box 358270, Pittsburgh, PA 15251–5270.
d. Renewal	452R	120	PBMR	Federal Communications Commission, Coast (Renewal), P.O. Box 358270, Pittsburgh, PA 15251–5270.
17. Ship:				
a. New, Renewal	506	115	PASR	Federal Communications Commission, Ship, P.O. Box 358275, Pittsburgh, PA 15251–5275.

Action	FCC form No.	Fee amount	Fee type code	Address
b. Modification, Non-Profit	506	45	PASM	Federal Communications Commission, Ship, P.O. Box 358775, Pittsburgh, PA 15251–5775.
c. Ship (Renewal) Non-Profit	405B	45	PASM	Federal Communications Commission, Ship, P.O. Box 358290, Pittsburgh, PA 15251–5290.
d. Ship (Renewal)	405B	115	PASR	Federal Communications Commission, Ship, P.O. Box 358290, Pittsburgh, PA 15251–5290.
18. Aircraft:				
a. New, Renewal	404	115	PAAR	Federal Communications Commission, Aircraft, P.O. Box 358280, Pittsburgh, PA 15251–5280.
b. Modification, Non-Profit	404	45	PAAM	Federal Communications Commission, Aircraft, P.O. Box 358780, Pittsburgh, PA 15251–5780.
c. Aircraft (Renewal) Non-Profit	405B	45	PAAM	Federal Communications Commission, Aircraft, (Renewal), P.O. Box 358290, Pittsburgh, PA 15251–5290.
d. Aircraft (Renewal)	405B	115	PAAR	Federal Communications Commission, Aircraft, (Renewal), P.O. Box 358290, Pittsburgh, PA 15251–5290.
19. Public Safety & Special Emergency	574	45	PALM	Federal Communications Commission, Public Safety, P.O. Box 358285, Pittsburgh, PA 15251–5285.
20. Restricted Permit	753	150	PARR	Federal Communications Commission, RP, P.O. Box 358295, Pittsburgh, PA 15251–5295.
21. Waiver	Corr & 159	125	PDWM	Federal Communications Commission, Waiver, P.O. Box 358300, Pittsburgh, PA 15251–5300.
22. Correspondence (Finders Preference)	Corr & 159	125	PDXM	Federal Communications Commission, FP, P.O. Box 358305, Pittsburgh, PA 15251–5305.
23. STA (Common Carrier)	Corr & 159	85	CEP	Federal Communications Commission, STA, P.O. Box 358305, Pittsburgh, PA 15251–5305.
24. STA (Common Carrier)	Corr & 159	85	CEL	Federal Communications Commission, STA, P.O. Box 358305, Pittsburgh, PA 15251–5305.
25. STA (BAPS)	Corr & 159	115	MGA	Federal Communications Commission, STA, P.O. Box 358305, Pittsburgh, PA 15251–5305.
26. STA (IVDS)	Corr & 159	45	PAIM	Federal Communications Commission, STA, P.O. Box 358305, Pittsburgh, PA 15251–5305.
27. STA (Coast)	Corr & 159	115	PCMM	Federal Communications Commission, STA, P.O. Box 358305, Pittsburgh, PA 15251–5305.
28. STA (Ground	Corr & 159	115	PCVM	Federal Communications Commission, STA, P.O. Box 358305, Pittsburgh, PA 15251–5305.
29. STA (Microwave)	Corr & 159	45	PAOM	Federal Communications Commission, STA, P.O. Box 358305, Pittsburgh, PA 15251–5305.
30. STA (LM, GMRS)	Corr & 159	45	PALM	Federal Communications Commission, STA, P.O. Box, 358305, Pittsburgh, PA 15251–5305.
31. Corres (Duplicate)	Corr & 159, 753, 755, 756.	45	PADM	Federal Communications Commission, Duplicate, P.O. Box 358305, Pittsburgh, PA 15251–5305.
32. Corres (Hearing)	Corr & 159	7,765	PFHM	Federal Communications Commission, Hearing, P.O. Box 358305, Pittsburgh, PA 15251–5305.
33. Corres (Wait List)	Corr & 159	45	PAWM	Federal Communications Commission, Wait List, P.O. Box 358305, Pittsburgh, PA 15251–5305.
34. Corres (Blanket Renewal) (Land Mobile, Non-Profit)	Corr & 159	45	PALM	Federal Communications Commission, Blanket Renewal, P.O. Box 358305, Pittsburgh, PA 15251–5305.
35. Corres (Blanket Renewal) (IVDS, Non-Profit)	Corr & 159	45	PAIM	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.

Action	FCC form No.	Fee amount	Fee type code	Address
36. Corres (Blanket Renewal) Microwave, Non-Profit	Corr & 159	180	PEOM	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
37. Corres (Blanket Renewal) Ground, Non-Profit	Corr & 159	85	PBVM	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
38. Corres (Blanket Renewal) Coast, Non-Profit	Corr & 159	85	PBMM	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
39. Corres (Blanket Renewal) Aircraft, Non-Profit	Corr & 159	45	PAAM	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
40. Corres (Blanket Renewal) Ship, Non-Profit	Corr & 159	45	PASM	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
41. Corres (Blanket Renewal) BUS, OI, LT, GMRS	Corr & 159	80	PALR	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
42. Corres (Blanket Renewal) 470–512, 800, 900, 220	Corr & 159	125	PALS	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
43. Corres (Blanket Renewal) 220 Nationwide	Corr & 159	205	PALT	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
44. Corres (Blanket Renewal) IVDS	Corr & 159	125	PAIR	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
45. Corres (Blanket Renewal) Microwave	Corr & 159	260	PEOR	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
46. Corres (Blanket Renewal) Ground	Corr & 159	120	PBVR	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
47. Corres (Blanket Renewal) Coast	Corr & 159	120	PBMR	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
48. Corres (Blanket Renewal) Aircraft	Corr & 159	115	PAAR	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
49. Corres (Blanket Renewal) Ship	Corr & 159	115	PASR	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
50. Corres (Blanket Renewal) Common Carrier	Corr & 159	180	CJP	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
51. Corres (Blanket Renewal) Common Carrier	Corr & 159	180	CJL	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
52. Corres (Blanket Renewal) (BAPS)	Corr & 159	45	MAA	Federal Communications Commission, Blanket, P.O. Box 358305, Pittsburgh, PA 15251–5305.
53. Transfer of Control	703	45	PATM	Federal Communications Commission, Transfer, P.O. Box 358310, Pittsburgh, PA 15251–5310.
54. Billing	Invoice	Various	Various	Federal Communications Commission, Billings, P.O. Box 358325, Pittsburgh, PA 15251–5325.
55. 220 MHz:				
a. New, Renewal, Reinstatement	574	125	PALS	Federal Communications Commission, 220 MHz, P.O. Box 358360, Pittsburgh, PA 15251–5360.
b. Modification, Assignment Non-Profit	574	45	PALM	Federal Communications Commission, 220 MHz, P.O. Box 358790, Pittsburgh, PA 15251–5790.
56. IVDS:				
a. New, Renewal, Reinstatement	574	125	PAIR	Federal Communications Commission, IVDS, P.O. Box 358365, Pittsburgh, PA 15251–5365.
b. Modification Non-Profit	574	45	PAIM	Federal Communications Commission, IVDS, P.O. Box 358795, Pittsburgh, PA 15251–5795.

Action	FCC form No.	Fee amount	Fee type code	Address
b. Modification, Assignment Non-Profit	574	45	PALM	Federal Communications Commission, 220 MHz, P.O. Box 358790, Pittsburgh, PA 15251–5790.
57. Common Carrier:				
a. New, Modification	494	180	CJP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
b. Construction	494A	180	CJP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
c. Renewal	405	180	CJP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
d. Ext. Construct	701	65	CCP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
e. Assignment	702	65	CCP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
f. Transfer of Control	704	65	CCP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
g. Additional Stations	702	45	CAP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
h. Additional Stations	704	45	CAP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
i. Waiver	Corr & 159	85	CEP	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
j. New, Modification	494	180	CJL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
k. Construction	494A	180	CJL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
l. Renewal	405	180	CJL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
m. Ext. Construction	701	65	CCL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
n. Assignment	702	65	CCL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
o. Transfer of Control	704	65	CCL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
p. Additional Stations	702	45	CAL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
q. Additional Stations	704	45	CAL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
r. Construction Waiver	Corr & 159	85	CEL	Federal Communications Commission, CCB, P.O. Box 358680, Pittsburgh, PA 15251–5680.
58. Mass Media (BAPS):				
a. New, Modification	313	100	MEA	Federal Communications Commission, MMB, P.O. Box 358700, Pittsburgh, PA 15251–5700.
b. Renewal	313R	45	MAA	Federal Communications Commission, MMB, P.O. Box 358700, Pittsburgh, PA 15251–5700.
59. Commercial:				
a. New	756	105	PACQ	Federal Communications Commission, FOB, P.O. Box 358725, Pittsburgh, PA 15251–5725.
b. New	756	35	PACR	Federal Communications Commission, FOB, P.O. Box 358800, Pittsburgh, PA 15251–5800.

Action	FCC form No.	Fee amount	Fee type code	Address
c. Renewal	756	80	PACS	Federal Communications Commission, FOB, P.O. Box 358805, Pittsburgh, PA 15251–5805.
60. 470–512:				
a. New, Renewal, Reinstatement	574	125	PALS	Federal Communications Commission, 470–512, P.O. Box 358810, Pittsburgh, PA 15251–5810.
b. Modification, Assignment, Non-Profit	574	45	PALM	Federal Communications Commission, 470–512, P.O. Box 358815, Pittsburgh, PA 15251–5815.
61. 220 Nationwide:				
a. New, Renewal, Reinstatement	574	205	PALT	Federal Communications Commission, 220 Nationwide, P.O. Box 358820, Pittsburgh, PA 15251–5820.
b. Modification, Assignment, Non-Profit	574	45	PALM	Federal Communications Commission, 220 Nationwide, P.O. Box 358825, Pittsburgh, PA 15251–5825.
62. Amateur C/S		70	PBAR	Federal Communications Commission, Amateur, P.O. Box 358830, Pittsburgh, PA 15251–5830.
63. Electronic Filing:				
a. New, Renewal, Reinstatement	ELT	80	PALR	Federal Communications Commission, ELT P.O. Box 358994, Pittsburgh, PA 15251–5994.
b. Modification, Assignment, Non-Profit	ELT	45	PALM	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
c. New, Renewal, Reinstatement	ELT	1125	PALS	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
d. New, Renewal, Reinstatement	ELT	205	PALT	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
e. New, Renewal, Reinstatement	ELT	125	PAIR	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
f. Modification, Non-Profit	ELT	45	PAIM	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.

3. Section 1.1103 is revised to read as follows:

§ 1.1103 Schedule of charges for equipment authorization, experimental radio services, ship inspections and international telecommunications settlements.

Action	FCC form No.	Fee amount	Fee type code	Address
1. Certification:				
a. Receivers (except TV and FM receivers)	731	330	EEC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
b. All Other Devices	731	845	EGC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
c. Modifications and Class II Permissive Changes.	731	45	EAC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
d. Request for Confidentiality	731 or Corr & 159.	125	EBC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
2. Type Acceptance:				
a. All Devices	731	425	EFT	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
b. Modifications and Class II Permissive Changes.	731	45	EAT	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
c. Request for Confidentiality	731 or Corr & 159.	125	EBT	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.

Action	FCC form No.	Fee amount	Fee type code	Address
3. Type Approval (There are no longer any radio frequency devices subject to Type Approval):				
4. Notifications (All Devices)	731	135	ECN	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
5. Advance Approval for Subscription TV System.	Corr & 159	2,590	EIS	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
a. Request for Confidentiality	Corr & 159	125	EBS	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
6. Assignment of Applicant Code:				
a. New applicants for all application types except Subscription TV.	Corr & 159	45	EAG	Federal Communications Commission, Experimental Radio Service, P.O. Box 358315, Pittsburgh, PA 15251–5315.
7. Experimental Radio Service:				
a. New Construction Permit and Station Authorization (per application).	442	45	EAE	Federal Communications Commission, Experimental Radio Service, P.O. Box 358320, Pittsburgh, PA 15251–5320.
b. Modification to Existing Construction Permit and Station Authority (per application).	442	45	EAE	Federal Communications Commission, Experimental Radio Service, P.O. Box 358320, Pittsburgh, PA 15251–5320.
c. Renewal of Station Authorization (per application).	405	45	EAE	Federal Communications Commission, Experimental Radio Service, P.O. Box 358320, Pittsburgh, PA 15251–5320.
d. Assignment or Transfer of Control (per application).	702 or 703	45	EAE	Federal Communications Commission, Experimental Radio Service, P.O. Box 358320, Pittsburgh, PA 15251–5320.
e. Special Temporary Authority (per application).	Corr & 159	45	EAE	Federal Communications Commission, Experimental Radio Service, P.O. Box 358320, Pittsburgh, PA 15251–5320.
f. Additional fee required for any of the above applications that request confidentiality.	Corr & 159	45	EAE	Federal Communications Commission, Experimental Radio Service, P.O. Box 358320, Pittsburgh, PA 15251–5320.
Ship Inspections:				
a. Inspection of Oceangoing Vessels Under Title III, Part II of the Communications Act (per inspection).	801	715	FFS	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110
b. Inspection of Passenger Vessels Under Title III, Part III of the Communications Act (per inspection).	801	370	FCS	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110.
c. Inspection of Vessels Under the Great Lakes Agreement (per inspection).	801	90	FDS	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110.
d. Inspection of Vessels Under the Safety of Life at Sea (SOLAS) Convention (per inspection).	801	620	FES	Federal Communications Commission, P.O Box 358110, Pittsburgh, PA 15251–5110.
e. Temporary Waiver of Inspection	159	70	FBS	Federal Communications Commission, P.O. Box 358110, Pittsburgh, PA 15251–5110.
9. International Telecommunications Settlements Administrative Fee for Collections (per line item).	99	2	IAT	Licensees will be billed.

4. Section 1.1104 is revised to read as follows:

§ 1.1104 Schedule of charges for applications and other filings in the mass media services.

Action	FCC form N No.	Fee amount	Fee type code	Address
1. Commercial TV Stations:				
a. New and Major Change Construction Permits.	301	2,915	MVT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
b. Minor Change	301	650	MPT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
c. Hearing (Major/Minor Change, Comparative New, or Comparative Renewal).	N/A	7,765	MWT	Federal Communications Commission, Mass Media Bureau, P.O. Box 358170, Pittsburgh, PA 15251–5165.
d. License	302	200	MJT	Federal Communications Commission, Mass Media Bureau, P.O. Box 358170, Pittsburgh, PA 15251–5165.

Action	FCC form N No.	Fee amount	Fee type code	Address
e. Assignment or Transfer:				
(i) Long Form (per station)	314, 315	650	MPR	Federal Communications Commission, Mass Media Bureau, P.O. Box 358350, Pittsburgh, PA 15251–5165.
(ii) Short Form (per station)	316	95	MDR	
f. Renewal	303–S	115	MGT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
g. Call Sign (New or Modification)	NA	65	MBT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
h. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	N/A	115	MGT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
i. Extension of Time to Construct or Replacement of CP.	307	230	MKT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
j. Permit to Deliver Programs to Foreign Broadcast Stations.	308	65	MBT	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
k. Petition for Rulemaking for New Community of License.	301, 302	1,800	MRT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
l. Ownership Report (per station)	323	45	MAT	Federal Communications Commission, Mass Media Services, P.O. Box 358180, Pittsburgh, PA 15251–5180.
2. Commercial Radio Stations:				
a. New and Major Change Construction Permit:				
(i) AM Station	301	2,590	MUR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
(ii) FM Station	301	2,335	MTR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
b. Minor Change:				
(i) AM Station	301	650	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
(ii) FM Station	301	650	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
c. Hearing (Major/Minor Change, Comparative New, or Comparative Renewal).	N A	7,765	MWR	Federal Communications Commission, Mass Media Bureau, P.O. Box 358170, Pittsburgh, PA 15251–5170.
d. New License:				
(i) AM	302	425	MMR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
(ii) FM	302	135	MHR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
(iii) AM Directional Antenna	302	490	MOR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
(iv) FM Directional Antenna	302	410	MLR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
(v) AM Remote Control	301 or 301A	45	MAR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
e. Assignment or Transfer:				
(i) Long Form (per station)	314, 315	650	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358350 Pittsburgh, PA 15251–5350.
(ii) Short Form (per station)	316	95	MDR	
f. Renewal:				
(i) AM	303–S	115	MGR	Federal Communications Commission, Mass Media Bureau, P.O. Box 358190, Pittsburgh, PA 15251–5190.

Action	FCC form N No.	Fee amount	Fee type code	Address
(ii) FM	303–S	115	MGR	Federal Communications Commission, Mass Media Bureau, P.O. Box 358195, Pittsburgh, PA 15251–5195.
g. Call sign (New Or Modification)	N/A	65	MBR	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
h. Special Temporary Authority (other than to remain silent):				
(i) AM	N/A	115	MGR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
(ii) FM	N/A	115	MGR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
i. Extension of Time to Construct or Replacement of CP:				
(i) AM	307	230	MKR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
(ii) FM	307	230	MKR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
j. Permit to Deliver Programs to Foreign Broadcast Stations.	308	65	MBR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
k. Petition for Rulemaking for New Community License or Higher Class Channel.	301, 302	1,800	MRR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
l. Ownership report (per station)	323	45	MAR	Federal Communications Commission, Mass Media Services, P.O. Box 358180, Pittsburgh, PA 15251–5180.
3. FM Translators:				
a. New or Major Change Construction Permit.	349	490	MOF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
b. License	350	100	MEF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
c. Assignment or transfer (per station)	345, 316	95	MDF	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
d. Renewal	348 & 159	45	MAF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
e. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	N/A	115	MGF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
4. TV Translators and LPTV Stations:				
a. New or Major Change Construction Permit.	346	490	MOL	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
b. License	347	100	MEL	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
c. Assignment or Transfer (per station)	345, 316	95	MDL	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
d. Renewal	348	45	MAL	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
e. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	N/A	115	MGL	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
5. Auxiliary Services (Includes Remote Pickup stations, TV Auxiliary Broadcast stations, Aural Broadcast STL and Intercity Relay stations, and Low Power Auxiliary stations):				
a. Major Actions	313	100	MEA	Federal Communications Commission, Mass Media Services, P.O. Box 358700, Pittsburgh, PA 15251–5700.
b. Renewals	313–R	45	MAA	Federal Communications Commission, Mass Media Services, P.O. Box 358700, Pittsburgh, PA 15251–5700.

Action	FCC form N No.	Fee amount	Fee type code	Address
c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	N/A	115	MGA	Federal Communications Commission, Mass Media Services, P.O. Box 358700, Pittsburgh, PA 15251–5700.
6. FM Boosters:				
a. New or Major Change Construction Permits.	349	490	MOF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
b. License	350	100	MEF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
c. Special Temporary Authority (other than to remain silent or extent an existing STA to remain silent).	N/A	115	MGF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
7. TV Boosters:				
a. New or Major Change Construction Permits.	346	490	MOF	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
b. License	347	100	MEF	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	Corr & 159	115	MGF	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
8. International Broadcast Station:				
a. New Station and Facilities Change CP	309	1,960	MSN	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
b. License	310	445	MNN	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
c. Assignment or Transfer (per station)	314, 315, 316	70	MCN	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
d. Renewal	311	110	MFN	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
e. Frequency Assignment and Coordination (per frequency hour).	N/A	45	MAN	Federal Communications Commission, Mass Media Services, P.O. Box 358175, Pittsburgh, PA 15251–5175.
f. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	N/A	115	MGN	Federal Communications Commission, Mass Media Services, P.O. Box 358175, Pittsburgh, PA 15251–5175.
9. Direct Broadcast Satellite:				
a. New or Major Change Construction Permit:				
(i) Application for Authorization to Construct a Direct Broadcast Satellite.	N/A	2,335	MTD	Federal Communications Commission, Mass Media Services, P.O. Box 358210, Pittsburgh, PA 15251–5210.
(ii) Issuance of Construction Permit & Launch Authority.	N/A	22,630	MXD	Federal Communications Commission, Mass Media Services, P.O. Box 358210, Pittsburgh, PA 15251–5210.
(iii) License to Operate Satellite	N/A	650	MPD	Federal Communications Commission, Mass Media Services, P.O. Box 358210, Pittsburgh, PA 15251–5210.
b. Hearing (Comparative New, Major/Minor Modifications, or Comparative Renewal).	N/A	7,765	MWD	Federal Communications Commission, Mass Media Services, P.O. Box 358170, Pittsburgh, PA 15251–5170.
c. Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	N/A	115	MGD	Federal Communications Commission, Mass Media Services, P.O. Box 358210, Pittsburgh, PA 15251–5210.

5. Section 1.1105 is revised to read as follows:

§ 1.1105 Schedule of charges for applications and other filings in the common carrier services.

Action	FCC form No.	Fee amount	Fee type code	Address
1. All Common Carrier Services:				
a. Hearing (Comparative New or Major/Minor Modifications).	Corr & 159	7,765	BHZ	Federal Communications Commission, Common Carrier Hearing, P.O. Box 358125, Pittsburgh, PA 15251–5125.

Action	FCC form No.	Fee amount	Fee type code	Address
b. Development Authority (Same Charge as regular authority in service unless otherwise indicated):				
c. Formal Complaints and Pole Attachment Complaints Filing Fee.	Corr & 159	140	CIZ	Federal Communications Commission, Common Carrier Enforcement, P.O. Box 358120, Pittsburgh, PA 15251–5120.
2. Domestic Public Land Mobile Stations (includings Base, Dispatch, Control & Repeater Stations):				
a. New or Additional Facility (per transmitter).	401 & 159	265	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Major Modifications (per transmitter)	401 & 159	265	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Fill in Transmitters (per transmitter)	401 & 159 or 489.	265	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Major Amendment to a Pending Applications (per transmitter).	401 & 159	265	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Assignment or Transfer:				
(i) First Call Sign on Application	490 & 159	265	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Each Additional Call Sign	490 & 159	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130 Pittsburgh, PA 15251–5130.
f. Partial Assignment (per call sign)	401 & 159, 490 & 155.	265	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Renewal (per call sign)	405	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130 Pittsburgh, PA 15251–5130.
h. Minor Modification (per transmitter)	489	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
i. Special Temporary Authority (per frequency/per location).	Corr & 159	230	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Extension of Time to Construct (per application).	489	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130 Pittsburgh, PA 15251–5130.
k. Notice of Completion of Construction (per application).	489	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
l. Auxiliary Test Station (per transmitter)	401 & 159	230	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130 Pittsburgh, PA 15251–5130.
m. Subsidiary Communications Service (per request).	401 & 159	115	CFD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
n. Reinstatement (per application)	401 & 159 or 489.	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
o. Combining Call Signs (per call sign)	489	230	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
p. Standby Transmitter (per transmitter/per location).	401 & 159	230	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
q. 900 MHz Nationwide Paging:				
(i) Renewal:				
(1) Network Organizer	405	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
r. Air-Ground Individual License (per station):				
(i) Initial License	409 & 159	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC form No.	Fee amount	Fee type code	Address
(ii) Renewal of License	409 & 159	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(iii) Modification of License	409 & 159	45	CAD	Federal Communications Commission, Cellular systems, P.O. Box 358130, Pittsburgh, PA 15251–5130.
3. Cellular Systems (per system):				
a. New or Additional Facilities	401 & 159	265	CMC	Federal Communications Commission, Cellular systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
b. Major Modification	401 & 159	265	CMC	Federal Communications Commission, Cellular systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
c. Minor Modification	489	70	CDC	Federal Communications Commission, Cellular systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
d. Assignment or Transfer (including partial).	490 & 159	265	CMC	Federal Communications Commission, Cellular systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
e. Renewal	405	45	CAC	Federal Communications Commission, Cellular systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
f. Extension of Time to Complete Construction.	489	45	CAC	Federal Communications Commission, Cellular systems, P.O. Box 358135, Pittsburgh, PA 15251–5135.
g. Special Temporary Authority (per system).	Corr & 159	230	CLC	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358135, Pittsburgh, PA 15251–5135.
h. Combining Cellular Geographic Service Areas (per system).	Corr & 159	60	CBC	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358135, Pittsburgh, PA 15251–5135.
4. Rural Radio (includes Central Office, Inter-office, or Relay Facilities):				
a. New or Additional Facility (per transmitter).	401 & 159	125	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Major Modifications (per transmitter)	401 & 159	125	CGR	Federal Communications Commission, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Major Amendment to Pending Application (per transmitter).	401 & 159	125	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Minor Modification (per transmitter)	489	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Assignment or Transfer:				
(i) First Call Sign on Application	490 & 159	125	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Each Additional Call Sign	490 & 159	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(iii) Partial Assignment (per call sign)	401 & 159, 490 & 159.	125	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Renewal (per call sign)	405	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Extension of Time to Complete Construction (per application).	489	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Notice of Completion of Construction (per application).	489	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
i. Special Temporary Authority (per frequency/per location).	Corr & 159	230	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Reinstatement (per application)	401 & 159 or 489.	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
k. Combining Call Signs (per call sign)	489	230	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC form No.	Fee amount	Fee type code	Address
l. Auxiliary Test Station (per transmitter)	401 & 159	230	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
m. Standby Transmitter (per transmitter/per location).	401 & 159	230	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130. Pittsburgh, PA 15251–5130.
5. Offshore Radio Service (Mobile, Subscriber and Central Stations)				
a. New or Additional Facility (per transmitter).	401 & 159	125	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130. Pittsburgh, PA 15251–5130.
b. Major Modifications (per transmitter)	401 & 159	125	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130. Pittsburgh, PA 15251–5130.
c. Fill in transmitters (per transmitter)	401 & 159 or 489.	125	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130. Pittsburgh, PA 15251–5130.
d. Major Amendment to Pending Application (per transmitter).	401 & 159	125	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130. Pittsburgh, PA 15251–5130.
e. Minor Modification (per transmitter)	489	45	CAF	Federal Communications Commission. Common Carrier Land Mobile, P.O. Box 358130. Pittsburgh, PA 15251–5130.
f. Assignment or Transfer:				
(i) First Call Sign on Application	490 & 159	125	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130. Pittsburgh, PA 15251–5130.
(ii) Each Additional Call Sign	490 & 159	45	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130 Pittsburgh, PA 15251–5130.
(iii) Partial Assignment (per call sign) ..	401 & 159, 490 & 159.	125	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130. Pittsburgh, PA 15251–5130.
g. Renewal (per call sign)	405 & 159	45	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Extension of Time to Complete construction (per application).	489	45	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
i. Reinstatement	401 & 159 or 489.	45	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Notice of Completion of Construction (per application).	489	45	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
k. Special Temporary Authority (per frequency/per location).	Corr & 159	230	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
l. Combining Call Signs (per call sign)	489	230	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130. Pittsburgh, PA 15251–5130.
m. Auxiliary Test Station (per transmitter) ..	401 & 159	230	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
n. Standby Transmitter (per transmitter/per location.	401 & 159	230	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358680. Pittsburgh, PA 15251–5680.
6. Point-to-Point Microwave and Local Television Transmission Service:				
a. Conditional License (per station)	494	180	CJP	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
b. Major Modifications of Conditional Licenses or License Authorization (per station).	494	180	CJP	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
c. Certification of completion of Construction (per station).	494–A	180	CJP	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
d. Renewal (per licensed station)	405	180	CJP	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.

Action	FCC form No.	Fee amount	Fee type code	Address
e. Assignment or Transfer:				
(i) First Station on Application	702 or 704	65	CCP	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
(ii) Each Additional Station	702 or 704	45	CAP	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
f. Extension of Construction Authorization (per station).	701	65	CCP	Federal Communications Commission, Feeable Correspondence, P.O. Box 358680, Pittsburgh, PA 15251–5680.
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request).	Corr & 159	85	CEP	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358305, Pittsburgh, PA 15251–5305.
7. Multipoint Distribution Service (including multichannel MDS):				
a. Conditional License (per station)	494	180	CJM	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
b. Major Modification of Conditional Licenses or License Authorization (per station).	494	180	CJM	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
c. Certification of Completion of Construction (per channel).	494–A	525	CPM	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
d. Renewal (per licensed station)	405	180	CJM	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
e. Assignment or Transfer:				
(i) First Station on Application	702 & 704	65	CCM	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
(ii) Each Additional Station	704 & 704	45	CAM	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
f. Extension of Construction Authorization (per station).	701	130	CHM	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request).	Corr & 159	85	CEM	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358155, Pittsburgh, PA 15251–5155.
8. Digital Electronic Message:				
a. Conditional License (per nodal station)	494	180	CJL	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
b. Modification of Conditional License or License Authorization (per nodal station).	494	180	CJL	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
c. Certification of Completion of Construction (per nodal station).	494–A	180	CJL	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
d. Renewal (per licensed nodal	405	180	CJL	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
e. Assignment or Transfer:				
(i) First Station on Application	702 or 704	65	CCL	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
(ii) Each Additional Station	702 or 704	45	CAL	Federal Communications Commission, Common Carrier Dom. Radio, P.O. Box 358680, Pittsburgh, PA 15251–5680.
f. Extension of Construction Authorization (per station).	701	65	CCL	Federal Communications Commission, Feeable Corr, P.O. Box 358305, Pittsburgh, PA 15251–5305.
g. Special Temporary Authority or Request for Waiver of Prior Construction Authorization (per request).	Corr & 159	85	CEL	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
9. International Fixed Public Radio (Public and control Stations):				
a. Initial Construction Authorization (per station).	407 & 159	590	CSN	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.

Action	FCC form No.	Fee amount	Fee type code	Address
b. Assignment or Transfer (per application)	702 or 704	590	CSN	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. Renewal (per license)	405	425	CON	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
d. Modification (per station)	403	425	CON	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Extension of Construction Authorization (per station).	701	215	CKN	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358115, Pittsburgh, PA 15251–5115.
f. Special Temporary Authority or Request for Waiver (per request).	Corr & 159	215	CKN	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358115, Pittsburgh, PA 15251–5115.
10. Fixed Satellite Transmit/Receive Earth Stations:				
a. Initial Application (per station):				
(i) Domestic	493 & 159	1,755	BAX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	493 & 159	1,755	BAX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Modification of License (per station):				
(i) Domestic	493 & 159	125	CGX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	493 & 159	125	CGX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. Assignment or Transfer:				
(i) First Station on application:				
(1) Domestic	702 or 704	345	CNX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(2) International	702 or 704	345	CNX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) Each Additional Station:				
(1) Domestic	702 or 704	115	CFX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(2) International	702 or 704	115	CFX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
d. Developmental Station (per station):				
(i) Domestic	493 & 159	1,150	CWX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	493 & 159	1,150	CWX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Renewal of License (per station):				
(i) Domestic	405	125	CGX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	405	125	CGX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
f. Special Temporary Authority or Waivers of Prior Construction Authorization (per request):				
(i) Domestic	Corr & 159	125	CGX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	125	CGX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
g. Amendment of Application (per station):				
(i) Domestic	Corr & 159	125	CGX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.

Action	FCC form No.	Fee amount	Fee type code	Address
(ii) International	Corr & 159	125	CGX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
h. Extension of Construction Permit (per station):				
(i) Domestic	701	125	CGX	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	701	125	CGX	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
11. Fixed Satellite Small Transmit/Receive Earth Stations (2 meters or less and operating in the 4/6 GHz frequency band):				
a. Lead Application	493 & 159	3,885	BDS	Federal Communications Commission, Common Carrier International, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Routine Application (per station)	493 & 159	45	CAS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Modification of License (per station)	493 & 159	125	CGS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Assignment or Transfer				
(i) First Station on Application	702 & 704	345	CNS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) Each Additional Station	702 or 704	45	CAS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Developmental Station (per station)	493 & 159	1,150	CWS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Renewal of License (per station)	405	125	CGS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Special Temporary Authority or Waivers of prior construction authorization (per request).	Corr & 159	125	CGS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Amendment of Application (per station)	Corr & 159	125	CGS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
i. Extension of Construction Permit (per station).	701	125	CGS	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
12. Receive only Earth Stations:				
a. Initial Application for Registration:				
(i) Domestic	493 & 159	265	CMO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	493 & 159	265	CMO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Modification of License or Registration (per station):				
(i) Domestic	493 & 159	125	CGO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	493 & 159	125	CGO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. Assignment or Transfer:				
(i) First Station on Application:				
(1) Domestic	702 or 704	345	CNO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(2) International	702 or 704	115	CNO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) Each Additional Station:				
(1) Domestic	702 or 704	115	CFO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.

Action	FCC form No.	Fee amount	Fee type code	Address
(2) International	702 or 704	115	CFO	Federal Communications Commission, International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
d. Renewal of License (per station):				
(i) Domestic	405	125	CGO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	405	125	CGO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Amendment of Application (per station):				
(i) Domestic	Corr & 159	125	CGO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	125	CGO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
f. Extension of Construction Permit (per station):				
(i) Domestic	701	125	CGO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	701	125	CGO	Federal Communications Commission, Common Carrier International, P.O. Box 358115 Pittsburgh, PA 15251–5115.
g. Waivers (per request):				
(i) Domestic	Corr & 159	125	CGO	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) International	Corr & 159	125	CGO	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
13. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems:				
a. Initial Application (per system)	493 & 159	6,465	BGV	Federal Communications Commission, Common Carrier Dom. Earth Station, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Modification of License (per system)	493 & 159	125	CGV	Federal Communications Commission, Common Carrier Dom. Earth Station, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Assignment or Transfer of System	702 or 704	1,730	CZV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Developmental Station	493 & 159	1,150	CWV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Renewal of License (per system)	405	125	CGV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Special Temporary Authority or Waivers of Prior Construction Authorization (per request).	Corr & 159	125	CGV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Amendment of Application (per system)	Corr & 159	125	CGV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Extension of Construction Permit (per system).	701	125	CGV	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
14. Mobile Satellite Earth Stations:				
a. Initial Application of Blanket Authorization.	493 & 159	6,465	BGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Initial Application for Individual Earth Station.	493 & 159	1,550	CYB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Modification of License (per system)	493 & 159	125	CGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Assignment or Transfer (per system)	702 or 704	1,730	CZB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.

Action	FCC form No.	Fee amount	Fee type code	Address
e. Developmental Station	493 & 159	1,150	CWB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Renewal of License (per system)	405	125	CGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Special Temporary Authority of Waivers of Prior Construction Authorization (per request).	Corr & 159	125	CGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Amendment of Application (per system)	Corr & 159	125	CGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
i. Extension of Construction Permit (per system).	701	125	CGB	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
15. Radio Determination Satellite Earth Station:				
a. Initial Application of Blanket Authorization.	495 & 159	6,465	BGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Initial Application for Individual Earth Station.	493 & 159	1,550	CYH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Modification of License (per system)	493 & 159	125	CGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Assignment or Transfer (per system	702 or 704	1,730	CZH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Developmental Station	493 & 159	1,150	CWH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Renewal of License (per system)	405	125	CGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Special Temporary Authority or Waivers of Prior Construction Authorization (per request).	Corr & 159	125	CGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Amendment of Application (per system)	Corr & 159	125	CGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
i. Extension of Construction Permit (per system).	701	125	CGH	Federal Communications Commission, Common Carrier Dom. Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
16. Space Stations:				
a. Application for Authority to Construction:				
(i) Domestic	Corr & 159	2,330	BBY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	2,330	BBY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Application for Authority to Launch & Operate:				
(i) Initial Application:				
(1) Domestic	Corr & 159	80,360	BNY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(2) International	Corr & 159	80,360	BNY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) Replacement Satellite:				
(1) Domestic	Corr & 159	80,360	BNY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(2) International	Corr & 159	80,360	BNY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. Assignment or Transfer (per satellite):				
(i) Domestic	702 or 704	5,740	BFY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.

Action	FCC form No.	Fee amount	Fee type code	Address
(ii) International	702 or 704	5,740	BFY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
d. Modification:				
(i) Domestic	Corr & 159	5,740	BFY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	5,740	BFY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request):				
(i) Domestic	Corr & 159	575	CRY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	575	CRY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
f. Amendment of Application:				
(i) Domestic	Corr & 159	1,150	CWY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	1,150	CWY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
g. Extension of Construction Permit/Launch Authorization (per request):				
(i) Domestic	Corr & 159	575	CRY	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	575	CRY	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
17. Space Stations (Low Orbit):				
a. Application for Authority to Construction:				
(i) Domestic	Corr & 159	6,890	CZW	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	6,890	CZW	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Application for Authority to Launch & Operate:				
(i) Domestic	Corr & 159	241,080	CLW	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	241,080	CLW	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. Assignment or Transfer (per satellite):				
(i) Domestic	702 or 704	6,890	CZW	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) International	702 or 704	6,890	CZW	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Modification (per request):				
(i) Domestic	Corr & 159	17,220	CGW	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) International	Corr & 159	17,220	CGW	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request):				
(i) Domestic	Corr & 159	1,725	CXW	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	1,725	CXW	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.

Action	FCC form No.	Fee amount	Fee type code	Address
f. Amendment of Application:				
(i) Domestic	Corr & 159	3,445	CAW	Federal Communications Commission, Common Carrier Dom. Satellites, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) International	Corr & 159	3,445	CAW	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
g. Extension of Construction Permit/Launch Authorization (per request):				
(i) Domestic	Corr & 159	1,725	CXW	Federal Communications Commission, Common Carrier. Dom. Satellites, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) International	Corr & 159	1,725	CXW	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
18. Section 214 Applications:				
a. Overseas Cable Construction	Corr & 159	10,480	BIT	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Cable Landing License:				
(i) Common Carrier	Corr & 159	1,180	CXT	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 51251–5115.
(ii) Replacement Satellite	Corr & 159	11,655	BJT	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 51251–5115.
c. Domestic Cable Construction	Corr & 159	705	CUT	Federal Communications Commission, Common Carrier Dom. Services, P.O. Box 358145, Pittsburgh, PA 51251–5145.
d. All other 214 Applications:				
(i) Domestic	Corr & 159	705	CUT	Federal Communications Commission, Common Carrier Dom. Services, P.O. Box 358145, Pittsburgh, PA 51251–5145.
(ii) International	Corr & 159	705	CUT	Federal Communications Commission, Common Carrier Dom. Services, P.O. Box 358115, Pittsburgh, PA 51251–5115.
e. Special Temporary Authority (all services):				
(i) Domestic	Corr & 159	705	CUT	Federal Communications Commission, Common Carrier Dom. Services, P.O. Box 358145, Pittsburgh, PA 51251–5145.
(ii) International	Corr & 159	705	CUT	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 51251–5115.
f. Assignments or Transfers (all services):				
(i) Domestic	Corr & 159	705	CUT	Federal Communications Commission, Common Carrier Dom. Services, P.O. Box 358145, Pittsburgh, PA 51251–5145.
(ii) International	Corr & 159	705	CUT	Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 51251–5115.
19. Recognized Private Operating Status (per application).	Corr & 159	705	CUT	Federal Communications Commission, Common Carrier, International, P.O. Box 358115, Pittsburgh, PA 51251–5115.
20. Telephone Equipment Registration	Corr & 159	180	CJQ	Federal Communications Commission, Dom. Services, P.O. Box 358145, Pittsburgh, PA 15251–5145.
21. Tariff Filings:				
a. Filing Fees	Corr & 159	565	CQK	Federal Communications Commission, Tariff filings, P.O. Box 358150, Pittsburgh, PA 15251–5150.
b. Special Permission Filing (per filing) Waiver of any Rule in Part 61 of the Commission's Rules).	Corr & 159	565	CQK	Federal Communications Commission, Tariff filings, P.O. Box 358150, Pittsburgh, PA 15251–5150.
22. Accounting and Audits:				
a. Field Audit	N/A	71,510	N/A	Federal Communications Commission, Accounting & Audits, P.O. Box 358340, Pittsburgh, PA 15251–5340.
b. Review of Attest Audit	N/A	39,030	N/A	Federal Communications Commission, Accounting & Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140.

Action	FCC form No.	Fee amount	Fee type code	Address
c. Review of Depreciation Update Study (Single State).	Corr & 159	23,750	BKA	Federal Communications Commission, Accounting & Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140.
(i) Each Additional State	Corr & 159	785	CVA	Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140.
d. Interpretation of Accounting Rules (per request).	Corr & 159	3,315	BCA	Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140.
e. Petition for Waiver (per petition) (Waiver of Part 69 Tariff Rules & Parts 36, 63 & 69 Accounting Rules).	Corr & 159	5,350	BEA	Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140.

6. Section 1.1106 is added to read as follows:

§ 1.1106 Schedule of charges for applications and other filings in the cable television services.

Action	FCC form No.	Fee amount	Fee type code	Address
1. Cable Television Service:				
a. Cable Television Relay Service:				
(i) Construction Permit	327 & 159	180	TIC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
(ii) Assignment or Transfer	327 & 159	180	TIC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
(iii) Renewal	327 & 159	180	TIC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
(iv) Modification	327 & 159	180	TIC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
(v) Special Temporary Authority (other than to remain silent or extend an existing STA to remain silent).	327 & 159	115	TGC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
b. Cable Special Relief Petition	N/A	910	TQC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
c. 76.12 Registration Statement (per statement).	N/A	45	TAC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
d. Aeronautical Frequency Usage Notifications (per notice).	N/A	45	TAC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
e. Aeronautical Frequency Usage Waivers (per waiver).	N/A	45	TAC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.

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Part IV

Department of Education

National Workplace Literacy Program; Proposed Priority; Notice

DEPARTMENT OF EDUCATION

RIN 1830–ZA00

National Workplace Literacy Program

AGENCY: Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Secretary proposes an absolute priority to focus fiscal year 1995 funds for new workplace literacy projects on communities that have been designated as Empowerment Zones or Enterprise Communities authorized under section 1391 of the Internal Revenue Code, as amended by title XIII of the Omnibus Budget Reconciliation Act of 1993. Under the proposed absolute priority, funds under this competition would be reserved only for projects that provide workplace literacy services to Empowerment Zones or Enterprise Communities through partnerships eligible for funding in the National Workplace Literacy Program.

DATES: Comments must be received on or before July 18, 1994.

ADDRESSES: All comments concerning the proposed priority must be addressed to Mr. Ronald S. Pugsley, U.S. Department of Education, 400 Maryland Avenue SW., room 4428–MES, Washington, DC 20202–7240.

FOR FURTHER INFORMATION CONTACT: Sarah Newcomb, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW., room 4417–MES, Washington, DC 20202–7240. Telephone (202) 205–9872 or Jeanne Williams, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW., room 4513–MES, Washington, DC 20202–7327. Telephone (202) 205–5977. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background on Empowerment Zone and Enterprise Community Initiative

The Empowerment Zone and Enterprise Community program is a critical element of the Administration's community revitalization strategy. The program is a first step in rebuilding communities in America's poverty-stricken inner cities and rural heartlands. It is designed to empower people and communities by inspiring Americans to work together to create jobs and opportunity.

Under this program, the Federal Government will designate up to nine areas as Empowerment Zones and up to 95 areas as Enterprise Communities in accordance with Internal Revenue Code section 1391, as amended by title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). To be eligible for designation, an areas must be nominated by one or more local governments and the State or States in which it is located or by a State-Chartered Economic Development Corporation. A nominated area must be one of pervasive poverty, unemployment, and general distress, and must have a poverty rate of not less than the level specified in section 1392 of the Internal Revenue Code.

In the Empowerment Zone and Enterprise Community program, communities are invited to submit strategic plans that comprehensively address how the community would link economic development with education and training as well as how community development, public safety, human services, and environmental initiatives will together support sustainable communities. Empowerment Zones and Enterprise Communities will be designated by the Department of Agriculture and the Department of Housing and Urban Development (HUD) based on the quality of their strategic plans. Designated areas will receive Federal grant funds and substantial tax benefits and will have access to other Federal programs. (For additional information on the Empowerment Zone and Enterprise Community program, contact HUD at 1–800–998–9999.)

The Department of Education is supporting the Empowerment Zone and Enterprise Community initiative in a variety of ways. It is encouraging Empowerment Zones and Enterprise Communities to use funds they already receive from Department of Education programs (including Chapter 1 of Title I of the Elementary and Secondary Education Act, the Drug-Free Schools and Communities Act, the Adult Education Act, and the Carl D. Perkins Vocational and Applied Technology Education Act) to support the comprehensive vision of their strategic plans. In addition, the Department of Education intends to give preferences to Empowerment Zones and Enterprise Communities in a number of discretionary grant programs that are well suited for inclusion in a comprehensive approach to economic and community development. In addition to the National Workplace Literacy Program described in this notice in which the Department intends to give an absolute preference, the Department intends to give competitive preferences to Empowerment Zones and Enterprise Communities in the Urban Community Service program, the Rehabilitation Act Projects with Industry program, Rehabilitation Act Special Demonstration Projects program, the Parent Training program and Early Childhood Education program under the Individuals With Disabilities Education Act, and a variety of discretionary programs under the Elementary and Secondary Education Act. Notices concerning those programs will be published at a later date.

Background on National Workplace Literacy Program

The National Workplace Literacy Program is ideally suited to play a key role in the Empowerment Zone and Enterprise Community program because it links economic development and education and training efforts. The program, which makes discretionary grants of up to three years in length, supports demonstration projects that teach literacy skills needed in the workplace through exemplary education partnerships. The partnerships are established between a business, industry, or labor organization or a private industry council and an educational organization to support work-related basic skills training. The National Workplace Literacy Program funds may be used, among other things, to update or upgrade the skills of workers in line with changes in production processes or technology. For example, basic skill levels that formerly were adequate for assembly line production are inadequate for employees faced with sophisticated quality control systems, flexible production, team-based work, and participatory management practices.

National Workplace Literacy projects can improve the human resources of Empowerment Zones and Enterprise Communities, increase the productivity of businesses located in Empowerment Zones and Enterprise Communities, and help attract new businesses to these needy areas. Further, an amendment to the program, contained in the National Literacy Act of 1991, establishes a statutory priority for serving small businesses. This is the type of business most likely to be found in the zones.

In addition, the National Workplace Literacy Program is an important vehicle for achieving the National Education Goal that by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program helps further this goal by improving approaches and methods used in meeting the literacy needs of

adults in the workplace, including those with limited English proficiency. The National Workplace Literacy Program will also benefit by establishing an absolute priority related to Empowerment Zones and Enterprise Communities. Communities receiving these designations will already have demonstrated a capacity for the type of cooperative planning that is critical to a successful workplace literacy partnership. Projects funded under the priority will provide models for partnerships in other distressed areas and show how the National Workplace Literacy Program furthers the National Education Goal that every adult American will be literate and able to compete in the global economy.

Note: This notice of proposed priority does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that are otherwise eligible for funding under the National Workplace Literacy Program and that meet the following priority. The Secretary may implement this priority for fiscal year 1995 and for any later fiscal year:

Projects that provide workplace literacy services only for (a) persons who reside in and work in Empowerment Zones and Enterprise Communities; (b) persons who work in Empowerment Zones and Enterprise Communities although they do not reside there; or (c) persons who reside in Empowerment Zones and Enterprise Communities and who may work outside the Empowerment Zone or Enterprise Community. If necessary to the proper functioning of a project serving a substantial number of persons in category (c), services may also be provided to a small number of their coworkers who neither work nor reside in an Empowerment Zone or Enterprise Community.

The proposed project under the National Workplace Literacy Program must contribute to the strategic plan of the Empowerment Zone or Enterprise Community and be made an integral component of the Empowerment Zone or Enterprise Community activities.

In providing workplace literacy services, partnerships must develop curricula related to work or use or modify curricula developed by successful workplace literacy partnerships. For competitions under this absolute priority, the Secretary will waive the selection criterion "Evaluation Plan" in 34 CFR 472.22(f) and the evaluation requirements in 34 CFR 472.31 and, in their place, conduct a national evaluation of projects serving Empowerment Zones and Enterprise Communities. The purpose of the waiver is to allow Empowerment Zone and Enterprise Community projects to focus maximum resources on the provision of quality services and to further a Federal evaluation study that particularly can benefit other distressed areas.

Additional Factor the Secretary Considers

After evaluating each application according to the proposed selection criteria, the Secretary may select for funding one or more applications of high quality, other than the most highly rated applications, if the Secretary concludes that this selection would improve the distribution of grants among applicants serving urban and rural areas.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, the Secretary has determined that the benefits of the proposed priority justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from this proposed priority without impeding the effective and efficient administration of the program.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 4428, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week, except Federal holidays.

Applicable Program Regulations: 34 CFR Part 472.

(Catalog of Federal Domestic Assistance Number 84.198B National Workplace Literacy Program)

Program Authority: 20 U.S.C. 1211(a).

Dated: June 2, 1994.

Augusta Souza Kappner,

Assistant Secretary, Office of Vocational and Adult Education.

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Part V

Department of Housing and Urban Development

24 CFR Part 9

Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Housing and Urban Development; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 9

[Docket No. R–94–1510; FR–2163–F–05]

RIN 2501–AB04

Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Housing and Urban Development

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final a proposed rule published on May 30, 1991 which proposed to amend title 24 of the Code of Federal Regulations to create a new part 9, that would provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in programs or activities conducted by HUD. The rule at 24 CFR part 9 is distinguished from the rule at 24 CFR part 8, which applies to private, State or local programs or activities receiving Federal financial assistance from HUD. This final rule at 24 CFR part 9 establishes standards for what constitutes discrimination on the basis of mental or physical disabilities; provides definitions for "individuals with disabilities" and "qualified individuals with disabilities"; establishes a complaint procedure for resolving allegations of discrimination; and also incorporates additional changes to reflect regulatory implementation of the Americans with Disabilities Act.

EFFECTIVE DATE: July 18, 1994.

FOR FURTHER INFORMATION CONTACT: Elizabeth Ryan, Office of Fair Housing and Equal Opportunity, room 5214, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–5000, telephone (202) 708–2333 (voice/TDD). (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 504 of the Rehabilitation Act of 1973, as amended (section 504), states in pertinent part that:

No otherwise qualified individual with disabilities in the United States, * * * shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.* (29 U.S.C. 794 (1978 amendment italicized)).

On May 30, 1991 (56 FR 24604), HUD published a proposed rule that would amend title 24 of the Code of Federal Regulations to create a new part 9, that would provide for the enforcement of section 504 as it applies to programs or activities conducted by HUD (i.e., HUD conducted programs or activities). The part 9 rule is distinguished from the rule at 24 CFR part 8, which applies to private, State or local programs or activities receiving Federal financial assistance from HUD (HUD assisted programs or activities). However, the substantive nondiscrimination obligations of the agency as set forth in the part 9 rule are adapted from, and are very similar to, those contained in the part 8 rule. (See 24 CFR part 8; see also 28 CFR part 41, which is the section 504 coordination regulation for federally assisted programs issued by the Department of Justice (DOJ).) This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in House floor debate, including its sponsor, U.S. Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some differences between this part 9 rule and the DOJ section 504 coordination regulations for federally assisted programs, as well as many other agencies' implementing regulations. Many of these changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979) [*Davis*], and the subsequent circuit court decisions interpreting *Davis* and section 504. These differences were discussed in detail in the preamble to the part 9 proposed rule at 56 FR 24604–24605. There are also differences between the part 9 proposed rule and the part 9 final rule. These differences are discussed in the following section.

II. Differences Between Part 9 Proposed Rule and Part 9 Final Rule

The Department invited public comment on the part 9 proposed rule. During the public comment period, which expired July 29, 1991, the Department received seven comments. The commenters included: One state agency for the visually impaired; a not-for-profit law firm that specializes in disability and health law; an organization representing the interests of senior citizens; two legal service organizations; and two disability advocacy organizations.

Following careful consideration of the issues raised by the commenters, and further consideration of the part 9 rule in light of regulatory implementation of the Americans with Disabilities Act (Pub.L. 101–336, approved July 26, 1990) (ADA), the Department has decided to adopt the part 9 proposed rule substantially as published on May 30, 1991. However, the Department has made some changes to the proposed rule in response to certain issues raised by the commenters, and in response to the final rules published on July 26, 1991, implementing titles I, II, and III of the ADA, which address, respectively, equal employment opportunity for individuals with disabilities (title I); nondiscrimination on the basis of disability in State and local government services (title II); and nondiscrimination on the basis of disability by public accommodations and in commercial facilities (title III). (See 29 CFR part 1630, 56 FR 35726 (title I); 28 CFR part 35, 56 FR 35694 (title II); and 28 CFR part 36, 56 FR 3544 (title III).

A change in terminology that has been made in the part 9 final rule (and which also will be made to the rule in 24 CFR part 8) is replacement of the term "handicap" with "disability." The Rehabilitation Amendments of 1992 (Pub.L. 102–569, approved October 29, 1992) amended the Rehabilitation Act of 1973 to replace "handicap" with "disability."

The additional changes made to the part 9 proposed rule by this final rule include the following.

Applicable Accessibility Standards

The final rule provides that HUD will follow the Uniform Federal Accessibility Standards (UFAS), except where the accessibility standards issued under the ADA provide for greater accessibility than the UFAS. The accessibility standards issued under the ADA are referred to as the ADA Accessibility Guidelines (ADAAG), and

are set forth in appendix A to 39 CFR part 1191.

The UFAS implements the accessibility standards required by the Architectural Barriers Act (42 U.S.C. 4151–4157) (Barriers Act), and these standards are set forth in 24 CFR part 40, appendix A for residential structures, and in 41 CFR 101–19.600 to 101.607 for non-residential structures.

The DOJ, by memorandum dated June 30, 1993, advised all Federal agencies that at a recent meeting, the ATBCB adopted a resolution urging Federal agencies to follow the ADAAG whenever it provides equal or greater accessibility than UFAS. The DOJ has requested that Federal agencies which have not issued their final rules implementing section 504 in Federally-conducted programs and activities comply with the ATBCB's request. The DOJ notes that from a legal point of view, current section 504 regulations do not prohibit implementation of such a policy because the regulations do not require compliance with UFAS, but, rather they simply state that compliance with UFAS is deemed to be compliance with section 504 new construction and alteration requirements.

Accordingly, this final rule provides that HUD will follow the ADAAG whenever it provides greater accessibility than the UFAS. Additionally, the terms "UFAS" and "ADAAG" will be added to the definition section of the part 9 rule—§ 9.103.

Revised Definition of "Accessible"

A minor revision is made to each of the definitions of *accessible* in § 9.103. Each definition includes the phrase "complies with applicable accessibility standards" to clarify that the design, construction or alteration undertaken must comply with applicable accessibility standards.

Revised Definition of "Accessible Route"

This final rule revises the definition of *accessible route*. The definition of *accessible route* in the part 9 proposed rule was modeled on the definition of *accessible route* in 24 CFR part 8. However, on further consideration, the Department finds the part 8 definition to be too limited for purposes of part 9.

Part 8 applies solely to HUD-assisted programs. The majority of these programs are concerned with assisting individuals and families to obtain decent and affordable housing by providing financial assistance (through rental subsidies or for the development and operation of public housing), or by endorsing a mortgage on a house or the mortgage note on a housing project (or both) for insurance. Thus, the part 8 definition of *accessible* route reflects part 8's focus on housing facilities.

Part 9, however, applies to all programs or activities conducted by HUD. These programs and activities, as noted in the preamble to the part 9 proposed rule (56 FR 24605), consist of the following: (1) Employment; (2) HUD's contact with the general public as part of ongoing agency operations; and (3) those HUD programs directly administered by HUD for program beneficiaries and participants. Activities within category 2 include communications with the public (telephone contacts, office walk-ins or interviews) and the public's use of the agency facilities. Activities within category (3) include programs that provide Federal services or benefits (e.g., housing facilities in HUD's Property Disposition Program, training at both HUD and outside facilities, contracting and policy-development). These activities involve many types of buildings and facilities, not just housing facilities.

Accordingly, the definition of *accessible route* route in part 9 is revised by replacing it with the definition of *accessible route* route used in the ADAAG. The definition of *accessible route* route in the ADAAG includes examples of interior accessible route routes and exterior accessible route routes.

Revised Definition of "Adaptability"

The definition of adaptability is also revised by this final rule. The definition of *adaptability* in the proposed part 9 rule was based on the definition of adaptability in 24 CFR part 8. The part 8 definition is solely concerned with adaptability in dwelling units, and, therefore, inappropriate for part 9, for the same reasons stated under the discussion of the revised definition of *accessible route* route. Accordingly, the Department is adopting the definition of *adaptability* based on the definition of *adaptability* provided in the UFAS and ADAAG, which provide the same definition for this term.

As revised in this final rule, adaptability will mean the ability of certain elements of a dwelling unit, such as kitchen counters, sinks and grab bars, to be added or altered so as to accommodate the needs of individuals with or without disabilities or to accommodate the needs of persons with different types or degrees of disability. This definition differs from the definition in the part 9 proposed rule in that it refers to "building spaces and elements" instead of "certain elements of a dwelling unit." Both UFAS and ADAAG use the phrase "building spaces and elements."

Replacement of Definition of "Agency-Owned Housing Facility" With "PDP Housing Facility"

The final rule replaces the term "agency-owned housing facility" with *PDP housing facility*. PDP refers to HUD's Property Disposition Program, and a definition is also included for this term. (See discussion below.) Since the only HUD-owned housing facilities are those in the Property Disposition Program, the Department believed use of the term "PDP housing facility" is a more accurate term.

Revised Definition of "Alteration"

The part 9 final rule replaces the definition of *alteration* set forth in the May 30, 1991 proposed rule with that definition provided in the ADAAG. This definition is more detailed and therefore provides more guidance on what constitutes, and what does not constitute, an alteration.

Revised Definition of "Facility"

The part 9 final rule also replaces the definition of *facility* in the May 30, 1991 proposed rule with that definition provided in the ADAAG. As with the definition of *alteration*, the ADAAG definition of *facility* is more detailed and therefore more helpful than the definition provided in the part 9 proposed rule.

Revised Definition of "Individual With Disabilities"

The definition of *individual with disabilities* (formerly, "individual with handicaps") is also revised by this rule.

Paragraph (a), which defines the term "physical and mental impairment" is revised to include the human immunodeficiency virus disease.

A new paragraph (b) is added to this definition to incorporate the provisions of former § 9.131 in the proposed rule, which addressed applicability of section 504 to current and former illegal use of drugs. The DOJ and the Equal Employment Opportunity Commission (EEOC) which reviewed the part 9 rule in accordance with Executive Order 12067 (see Section IV of this preamble) suggested that the exclusion of individuals currently engaged in the illegal use of drugs from the protection provided by section 504, and the inclusion of individuals undergoing, or having successfully completed, drug rehabilitation, are more appropriately addressed in the definition of "*individual with disabilities.*" Section 9.131 of the proposed rule has been

removed as a result of incorporation of its provisions in the definition of *individual with disabilities*.

Former paragraph (b) (paragraph (b) in the part 9 proposed rule), which addressed impairments that are not included in the definition of "physical or mental impairment" is redesignated as paragraph (c) in this final rule, and is revised to address what is excluded from the definition of *individual with disabilities* for purposes of employment.

In the part 9 proposed rule, paragraph (b) provided that the term "physical or mental impairment" did not include (1) an individual who has a currently contagious disease or infection and who, by reasons of such disease or infection, would constitute a direct threat to the health or safety of other individuals, and (2) an individual who is an alcoholic and whose current use of alcohol prevents the individual from performing the duties of the job in question. Although these exclusions are appropriate for inclusion under the definition of *individual with disabilities*, they are not appropriate for inclusion in the definition of "physical or mental impairment."

Accordingly, new paragraph (c) of the definition of *individual with disabilities* clarifies that the contagious disease and alcohol abuse exclusions are part of the definition of "individual of disabilities" and also clarifies that these exclusions are limited to the employment context, in accordance with section 504 which imposes this limitation.

New Definition for "Property Disposition Program"

As noted above, the final rule provides a definition for this term. *Property Disposition Program* is defined to mean the HUD program under which HUD administers the group of housing facilities that are either owned by the Secretary or where, even though the Secretary has not obtained title, the Secretary is mortgagee-in-possession. Such properties are deemed to be in the possession or control of the agency.

Direct Threat Standard—New § 9.131

The part 9 final rule adds a new § 9.131 to implement section 302(b)(3) of the ADA, which addresses the issue of "direct threat to the health or safety of others." Section § 9.131 provides that the agency (HUD) is not required to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of the agency where the individual poses a direct threat to the health or safety of others. Section 9.131 is similar to § 36.208 of the final rule implementing title III of the ADA, published on July 26, 1991 (56 FR 35544) and codified at 28 CFR part 36. New § 9.131 is not intended to imply that individuals with disabilities pose risks to others. It is intended to address concerns that may arise in this area, and to establish a strict standard that must be met before denying service to an *individual with disabilities* or excluding that individual from participation in the programs or activities conducted by the agency.

Paragraph (b) of this section defines "direct threat" to mean a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids and services. This paragraph codifies the standard first applied by the Supreme Court in *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987), in which the Court held that an individual with a contagious disease may be an *individual with disabilities* under section 504. In *Arline*, the Supreme Court recognized that there is a need to balance the interests of people with disabilities against legitimate concerns for public safety. Although individuals with disabilities are generally entitled to the protection of part 9, a person who poses a significant risk to others may be excluded if reasonable modifications to the agency's policies, practices, or procedures will not eliminate or reduce that risk (i.e., reduce it so that it is below the level of direct threat). The determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability. This determination must be based on an assessment of that individual that conforms to the requirements of paragraph (c) of § 9.131.

Paragraph (c) of § 9.131 establishes the test to be used in determining whether an individual poses a direct threat to the health or safety of others. The agency is required to make an individualized assessment, based on reasonable judgment that relies on current medical evidence, or on the best available objective evidence to determine: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices or procedures will mitigate the risk. This is the test established by the Supreme Court in *Arline*. This type of inquiry is essential if section 504 is to achieve its goal of protecting individuals with disabilities from discrimination based on prejudice, stereotypes, or unfounded fear, while giving appropriate weight to legitimate concerns, such as the need to avoid exposing others to significant health and safety risks. Making this assessment will not usually require the services of a physician. Sources for medical knowledge include guidance from public health authorities, such as the U.S. Public Health Service, the Centers for Disease Control, and the National Institutes of Health, including the National Institute of Mental Health.

Additional Changes

In addition to the above changes, and as discussed in further detail in Section III of this preamble, the final rule also revises § 9.170, which concerns the part 9 compliance procedure. A hearing procedure is not mandated by statute, and the Department has concluded that the compliance procedure set forth in § 9.170 provides an adequate remedy. Certain editorial changes were made to § 9.152 to clarify the extent of the agency's responsibility to modify existing housing.

II. Discussion of Public Comments

The revisions to the part 9 proposed rule discussed in section II above are further addressed in this section III, which addresses the issues raised by the public commenters.

Relationship of Section 504 to the Fair Housing Act and the Americans With Disabilities Act

Comment. Six of the commenters stated that the part 9 proposed rule did not incorporate the standards and requirements that appear in the Fair Housing Act [1] or in title II of the ADA. Two commenters expressed concern that the part 9 rule proposes to implement less stringent standards than the Fair Housing Act, and requested that the part 9 final rule conform to the Fair Housing Act requirements; thus, eliminating any conflict in program regulations. Another commenter stated that the ADA requires HUD's regulations to "refer to the ADA so that when HUD assumes responsibility for housing enforcement under the public services section (title II of the ADA), HUD will be better able to ensure consistency among all of its enforcement responsibilities."

Response. As noted in the preamble discussion under Section II, which discusses changes made to the part 9 proposed rule, HUD does, in several places in the final rule, incorporate the standards and requirements of the ADA. However, it is important to note that in

[1] Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988 is referred to as the "Fair Housing Act."

enacting the Fair Housing Act and the ADA, the Congress did not override the specific provisions of section 504. While all three statutes (the Fair Housing Act, the ADA, and section 504) provide certain civil rights protection to individuals with disabilities, the scope and mandate of each statute is different.

Section 504 is concerned with discrimination against individuals with disabilities in federally assisted and federally conducted programs and activities. Federal programs or activities subject to section 504 include those in the areas of employment, education, health, social services, housing and agency facilities. Under section 504, the mandate that a federally assisted or conducted program or activity be "accessible" to individuals with disabilities does not, in every case, require structural changes. Moreover, when compliance with the "program accessibility" of section 504 does require structural changes, structural changes are not required to the same extent as required under the Fair Housing Act. Under section 504, accessibility is defined in broader terms, as discussed in the preamble to HUD's part 8 interim rule implementing section 504 for HUD assisted programs and activities:

For example, even though a facility in which a federally assisted program is conducted is free of architectural barriers and thus meets requirements for facility accessibility, the program is not accessible if management policies and procedures effectively bar [individuals with disabilities] from participating in or otherwise benefiting from the program or activity. On the other hand, a program which is conducted in an inaccessible existing facility can be made accessible without altering the facility, where the program or activity can be delivered or otherwise be made available to a [disabled] beneficiary without loss of essential program benefits.

(*See* preamble to part 8 interim rule published on May 6, 1983, 48 FR 20638 at 20640)

The Fair Housing Act is concerned with discriminatory housing practices, and its provisions apply to all housing, not just federally-assisted or federally-owned housing. The Fair Housing Act is also concerned with structural accessibility. The Fair Housing Act establishes accessible design and construction requirements for certain new multifamily dwellings for first occupancy on or after March 13, 1991. These requirements, however, do not extend to existing facilities (i.e., alterations to existing facilities are not required).

The ADA is concerned with discrimination on the basis of disability in the areas of employment, public accommodations, State and local government services, and telecommunications. With respect to structural accessibility, title II of the ADA requires that newly constructed or newly altered State or local government facilities be designed and constructed or altered so as to be readily accessible to and usable by persons with disabilities. (*See* 56 FR 35574.)

The different mandates and scopes of section 504, the Fair Housing Act and the ADA limit the extent to which the regulations promulgated under these statutes can be uniform. Additionally, HUD's section 504 regulations are subject to the coordinating authority of the DOJ under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298.) The purpose of DOJ's coordinating authority is to ensure that, to the greatest extent possible, there is uniformity in the implementation of section 504 by all Federal agencies. Accordingly, HUD's section 504 regulations are obliged to adhere, as closely as possible, to DOJ's prototype section 504 regulations for these types of programs, and to such other guidance as DOJ may provide in the issuance of section 504 regulations (for example, see the discussion concerning applicable accessibility standards in Section II of the preamble).

With respect to any conflict among the requirements or the accessibility standards of section 504, the Fair Housing Act and the ADA, and their respective regulations, HUD notes that an individual or entity that is subject to the provisions (including regulatory provisions) of more than one of these statutes must comply with the provisions that provide for the greater substantive rights or the more stringent accessibility standards.

Definition of "Accessible" (§ 9.103)

Comment: Definition Requires Clarification. Two commenters stated that the definition of "accessible" in the part 9 proposed rule lacks the specific guidance provided by the definition for this term in § 100.201 of HUD's Fair Housing Act regulations (24 CFR 100.201). One of the commenters stated that the part 9 definition of "accessible" with respect to individual dwelling units requires that a unit be designed to meet the specific needs of a qualified individual's particular disability or impairment. The commenter requested that HUD clarify that for a unit to be counted toward a program's five percent requirement for accessible units, all the accessibility requirements for dwelling units, as provided in 24 CFR part 40, must be met and not just those which might be adequate to meet the needs of the individual's specific disability.

Response. As discussed above, section 504 and the Fair Housing Act have different purposes. The Fair Housing Act's design and construction accessibility standards apply only to certain new multifamily housing. Section 504 is concerned with overall "program" accessibility, which includes accessibility standards for multifamily housing and other types of facilities, including Federal Government buildings. Additionally, the Fair Housing Act, unlike section 504, does not impose accessibility standards on alterations to existing housing and facilities. Accordingly, the definition of "accessible" in HUD's Fair Housing Act regulations is not sufficiently broad for section 504 purposes. However, as noted in Section II of this preamble, which discusses changes made to the proposed rule, the Department did make some modification to the definitions of "accessible" for purposes of clarity.

With respect to the question of whether an individual dwelling unit, that is altered to be accessible to a qualified individual with a specific disability, counts toward the program's five percent requirement, the Department notes that this issue is addressed by § 9.152 of the rule. Section 9.152 provides that if HUD undertakes alterations to a PDP multifamily housing project, that is subject to the accessibility requirements of § 9.152, a minimum of five percent of the total dwelling units, or at least one unit, whichever is greater, must be made accessible for persons with *mobility* impairments. (Emphasis added.) Section 9.152 also provides that if the unit is on an accessible route and is adaptable and otherwise in compliance with § 9.152(d) (which requires compliance with the definitions, requirements and standards of the UFAS, except where the ADAAG provides for greater accessibility) the unit is accessible for purposes of § 9.152. Section 9.152 further provides that an additional two percent of the units (but not less than one unit) in the project must be made accessible for persons with *hearing or vision impairments*. (Emphasis added.) Thus, whether an individual dwelling unit, which is altered for a specific qualified individual with disabilities, counts toward the program's five percent or two percent requirement depends upon the nature of the alterations undertaken to address the individual's disability.

Definition of "Accessible Route" (§ 9.103)

Comment: Definition Lacks Specific Guidance. Two commenters stated that the definition of "accessible route" as set forth in HUD's Fair Housing regulations provides more guidance than the definition in the part 9 proposed rule, and urged the Department to adopt the definition in the Fair Housing Act regulation.

Response. As discussed in the previous response, the differences between the mandate and scope of the Fair Housing Act and the mandate and scope of section 504 render the definition of "accessible route" in HUD's Fair Housing Act regulations inappropriate for section 504 purposes. However, as noted in section II of this preamble, the Department has revised the definition of "accessible route" to require compliance with the ADAAG. The Department believes that the ADAAG definition of "accessible route" provides more guidance than the definition of "accessible route" in the part 9 proposed rule, and should address the commenters' concerns.

Comment: Definition Should Reference Architectural Barriers Act. One commenter stated that the definitions of "accessible," "accessible route," and "adaptability" should reference the Barriers Act, which imposes access requirements on all HUD-owned, leased, and managed properties.

Response. As discussed in section II of this preamble, the definitions of "accessible route" and "adaptability" were revised in this final rule to adopt the standards of the ADAAG or UFAS, as applicable. Also, §§ 9.151 and 9.152 of the proposed rule, and of this final rule, which establish the requirements for new construction and alterations to existing facilities, provide that the definitions, requirements, and standards of the UFAS apply to facilities covered by this rule, except where the ADAAG may provide for greater accessibility.

Comment: Definition Should Provide Accessibility For Persons Who Are Hearing and Sight Impaired. One commenter stated that the definition of "accessible route" in the part 9 rule provides that "an accessible route that serves only accessible units occupied by persons with hearing or vision impairments would not be required to comply with those requirements intended to effect accessibility for persons with mobility impairments." The commenter requested that HUD revise this definition to include persons who are visually impaired, blind, or deaf and blind. The commenter stated that moving about safely in one's environment can be a major obstacle to independent living for individuals with these disabilities.

Response. HUD agrees with the commenter and believes that the revision made to the definition of "accessible route" by this final rule, which is to adopt the ADAAG definition of "accessible route," addresses the commenter's concern.

Definition of "Adaptability" (§ 9.103)

Comment: HUD Should Adopt the Definition of Adaptability Used in Fair Housing Regulations. Two commenters urged the Department to adopt the definition of "adaptability" in the Fair Housing Act regulations (24 CFR 100.205), and stated that the part 9 rule should not use a different definition than that contained in the Fair Housing Act regulations.

Response. The more explicit description of "adaptability" in the Fair Housing Act regulations results from the fact that the statutory language of the Fair Housing Act is explicit as to what constitutes accessibility and adaptability under the Act. The language in § 100.205(c) of HUD's Fair Housing Act regulations is taken directly from section 804(f)(3)(C) of the Fair Housing Act. However, the features of adaptable design and construction described in § 100.205(c) do not include all the features that may be required under part 9. For example, the accessibility/adaptability requirements of the Fair Housing Act do not require adjustable cabinetry, fixtures and plumbing. (*See* discussion of this issue in the preamble to the Fair Housing Accessibility Guidelines codified at 24 CFR, Ch. I, Subch. A, App. III.) Additionally, the Fair Housing Act does not require accessible/adaptable features for individuals with hearing or vision impairments. The section 504 definition of "adaptability" includes adjustable cabinetry and fixtures, and design features for persons with impaired hearing and vision. Thus, the Fair Housing Act definition of adaptability, which is directed largely to individuals with mobility impairments, is inappropriate for section 504 purposes.

Definition of "Auxiliary Aids" (§ 9.103)

Comment: Definition Should Include Devices for Persons With Impaired Cognitive Skills. Two commenters stated that the definition of "auxiliary aids" in the part 9 rule limits these aids to persons with impaired sensory, manual or speaking skills. The commenters stated that auxiliary aids and services should not exclude individuals with mental disabilities, and suggested that the definition be revised as follows: "Auxiliary aids means services or devices that enable persons with impaired sensory, manual, cognitive, interpersonal, or speaking skills to have equal opportunity . . . ."

Response. HUD's definition of auxiliary aids and services is consistent with the DOJ's definition for these terms. The DOJ interprets auxiliary aids and services as those aids and services designed to provide effective communication, e.g., making aurally and visually delivered information available to persons with hearing, speech and vision impairments. This interpretation was recently reiterated in DOJ's final rules implementing title II and title III of the ADA. (*See* 28 CFR part 35 (title II); and 28 CFR part 36 (title III); see, especially discussion in preamble to title III final rule at 56 FR 35565). To the extent that individuals with cognitive or learning disabilities have impaired sensory, manual, or communication skills, these individuals are covered by the definition of auxiliary aids and services.

Definition of "Individuals With Disabilities" (§ 9.103)

Comment: Definition Omits the Human Immunodeficiency Virus. Four commenters stated that the definition for "individuals with disabilities" in the part 9 rule omits from the list of physical and mental impairments the human immunodeficiency virus (HIV). The commenters stated that it is important to clarify that individuals who test positive for the HIV are covered because subsection (b) of the definition for "individuals with disabilities" excludes individuals who currently have contagious diseases and who pose a direct health and safety threat to others, or who, by reasons of the disease, cannot perform the duties of the job.

Response. As noted in section II of this preamble, HUD has revised the definition of "individuals with disabilities" in the final rule to clarify that persons with the human immunodeficiency virus disease (symptomatic or asymptomatic) are covered.

Comment: Direct Threat Standard Excludes Reasonable Accommodation Requirement. One commenter stated that the "direct threat to the health or safety of others" exclusion derives from the case of *School Board of Nassau County v. Arline*, 107 S.Ct. 1123 (1987), but fails to include the essential caveat that "the direct threat not be capable of elimination by reasonable accommodation". The commenter stated that the Congress, in its discussion of this direct threat exclusion in the legislative history of the Fair Housing Act, was careful to note the reasonable accommodation requirement. The commenter requested that the reasonable accommodation requirement be explicitly acknowledged in the part 9 final rule.

Response. As discussed in section II of this preamble, the Department has added a new § 9.131 to address the issue of "direct threat to the health or safety of others." This new section provides that the agency must determine whether reasonable modifications of its policies, practices or procedures will mitigate the risk posed by the individual determined to present a direct threat to the health or safety of others. Although the commenter uses the term "reasonable accommodation," which is the appropriate term within the context of the Fair Housing Act, the appropriate comparable term for section 504, generally, is "reasonable modification," which reflects section 504's application to a broader range of programs and activities. However, reference to reasonable accommodation is appropriate when discussing section 504's application to the employment.

Comment: Delete Reference to "Inability to Perform the Essential Elements of Job or Activity." One commenter stated that the exclusion from the definition of "individuals with disabilities" of the following phrase—"persons with a contagious disease who are unable to perform the duties of the job"—was unwarranted. The commenter stated that inquiries as to whether an individual with disabilities is able to perform the duties of a job or activity are relevant only with respect to whether the individual is "qualified"—and then only if the individual is unable to perform the essential duties, not all duties, of the job or activity. The commenter stated that reasonable accommodation must be provided, if necessary, to assist the individual in performing the essential duties. The commenter further stated: "Because this subsection involves the definition of 'individual with disabilities,' rather than 'qualified individual with disabilities,' the reference to inability to perform the duties of job should be deleted."

Response. The Department agrees with the commenter's statement that without reference to the essential duties and reasonable accommodation aspects of the analysis, this particular provision of the definition is misleading. Accordingly, the Department has revised paragraph (c)(1)(ii) of the definition of "individuals with disabilities" to include the following language: "An individual * * * is unable to perform the essential duties of the job, with or without reasonable accommodation."

Definition of "Multifamily Housing Project" (§ 9.103)

Comment: Multifamily Dwellings Covered by Section 504 Should Be the Same as Those Covered by the Fair Housing Act. Three commenters noted that the part 9 rule defined "multifamily housing project" to mean "a project containing five or more dwelling units," while the Fair Housing regulations define covered multifamily dwellings to mean buildings consisting of four or more dwelling units, if such buildings have one or more elevators, and ground floor units in other buildings consisting of four or more units. The commenters stated that the dwellings covered by the section 504 regulations should mirror those of the Fair Housing Act.

Response. The definition of "covered multifamily dwelling" found in the Fair Housing Act regulations is consistent with the definition of this term in the Fair Housing Act. The definition of "multifamily housing project" in the part 9 rule is consistent with the definition of this term in section 207(c) of the National Housing Act (12 U.S.C. 1713), and is the definition with which HUD program participants are familiar. The definition is also consistent with HUD's section 504 regulations for federally assisted activities. (*See* 24 CFR 8.3) Since section 504 extends only to federally assisted and federally conducted programs and activities, the Department believes that the definition of multifamily housing project, as set forth in the National Housing Act, which pertains to Federal housing programs, is the appropriate definition for HUD's section 504 regulations.

Comment: All HUD Housing Should Be Covered by Section 504, Including Single Family Homes. One commenter stated that the occupancy classification provision of the UFAS defines multifamily housing as apartment buildings, without reference to a number of units, and the residential section of the UFAS occupancy classification refers to one and two family dwellings. The commenter stated that the inclusion of the classification of one and two family dwellings in the UFAS indicates that these dwellings are also subject to the Barriers Act. The commenter requested that HUD make all of its housing, including single family homes, subject to the requirements of the Barriers Act.

Response. The fact that the UFAS contains provisions applicable to one or two family dwellings is not determinative of whether one or two family dwellings are subject to the requirements of the Barriers Act. Whether one or two family dwellings are covered by the Barriers Act depends upon whether a statute subjects these types of dwellings to the requirements of Barriers Act. One or two family dwellings are subject to the requirements of section 504, and possibly the UFAS, to the extent that they are part of a HUD conducted program and meet the requirements of 24 CFR 9.150(e).

Definition of "Qualified Individuals With Disabilities" (§ 9.103)

Comment: Eliminate Definition. Five commenters stated that the definition for "qualified individuals with disabilities" should be removed from the part 9 rule. One commenter stated that HUD concedes in the preamble to the proposed part 9 rule that housing programs do not require a definition of qualified individual with disabilities (56 FR 24606). The commenter stated that HUD included this definition so that the part 9 rule will cover all programs or activities conducted by HUD now and in the future, and so that HUD's regulation will be consistent with the DOJ's prototype regulation and the regulations of other Federal agencies (56 FR 24606). The commenter stated that HUD could achieve its purpose through other ways, such as explicitly describing the HUD programs or the kinds of HUD programs to which the definition applies, or explaining that this term does not apply to housing consumers

Response. The term "qualified individual with disabilities" is taken directly from the language of section 504. The protection afforded by section 504 is restricted to "qualified" individuals with disabilities. As noted in the preamble to the part 9 proposed rule, HUD does not conduct programs under which a person is required to perform services or achieve a level of accomplishment as a part of his or her participation in a particular program or activity (e.g., educational programs) (56 FR 24606). Notwithstanding this fact, HUD determined, as also noted in the preamble to the part 9 proposed rule, that it is important to include a definition for this term so that HUD's regulation will cover all programs or activities conducted by HUD now and in the future, and so that its section 504 regulation for federally conducted programs will be consistent with DOJ's prototype regulation. However, the fact that section 504 applies only to "qualified individuals with disabilities" makes it important to include a

definition for this term in HUD's section 504 regulations.

The purpose in defining the term "qualified individuals with disabilities" is to establish a uniform standard by which an individual with disabilities is determined to be "qualified" to participate in a federally assisted or federally conducted program. The standard, as established by DOJ on the basis of Federal case law concerning section 504, is whether, with appropriate modifications, an individual with disabilities is able to participate in, or achieve the purpose of a federally assisted or federally conducted program or activity. To be considered qualified, however, the modifications required for the individual with disabilities may not be those which would result in a fundamental alteration in the nature of the program. (*See* preamble to DOJ's coordination regulation for federally conducted programs codified at 28 CFR part 39, Editorial Note, 415–429 (1991) at 418; and preamble to proposed part 9 rule at 56 FR 24606.) HUD's definition of "qualified individuals with disabilities" incorporates this basic test established by DOJ and Federal case law and is consistent with the DOJ's definition of "qualified individual with disabilities" in its section 504 prototype regulation for federally conducted programs.

Comment: Eliminate Language Concerning Essential Eligibility Requirements

Five commenters objected to the language concerning "essential eligibility requirements" set forth in paragraph (b) of the definition. One commenter stated that the essential eligibility requirement language included "implicit" eligibility requirements.

Response. In defining "qualified individual with disabilities," HUD adheres to DOJ's guidance on the meaning and interpretation of this term, which guidance is set forth in DOJ's preamble to the final rule implementing its section 504 prototype regulation for federally conducted programs, codified at 28 CFR part 39, Editorial Note, 415–429 (1991). In this preamble, DOJ advises that the concept of "qualified individual with disabilities" includes the notion of "essential eligibility requirements". (*Id* at 419). Under section 504, a qualified individual with disabilities must be able to meet the essential eligibility requirements of a federally assisted or federally conducted program, with the recognition that reasonable modification may need to be made to the program for the individual with disabilities to meet the essential eligibility requirements of the program.

The inclusion of the term "implicit requirements" in the definition is to clarify that the essential eligibility requirements do not include only stated program eligibility requirements, but also those requirements that are inherent in the nature of the program. However, in including implicit requirements in the definition, HUD does not intend a program's eligibility requirements to include requirements that are not intrinsic to the program or that are applied solely to individuals with disabilities—and not to other tenants.

Comment: "All Obligations of Occupancy" Are Not Essential. One commenter stated that the "essential eligibility requirements" include the requirement to comply with "all obligations of occupancy." The commenter stated that all obligations of occupancy cannot possibly be essential. The commenter stated: "Rather than clarifying the obligations of program operators under section 504, this definition will mislead operators into believing that they can exclude any individual with disabilities who cannot fully satisfy every term of the lease, however incidental or unimportant."

Response. The phrase "all obligations of occupancy," as with the phrase "implicit eligibility requirements" discussed above, is intended to refer only to those requirements or obligations that are imposed on all tenants or residents, regardless of whether the tenants or residents are individuals with disabilities. The Department believes that it is important to retain the phrase "all obligations of occupancy" within the definition of "qualified individual with disabilities" because it is embodied in the concept of "essential eligibility requirements". To be eligible to participate in a HUD housing program, an applicant must be able to comply with all obligations of occupancy. Typical occupancy obligations include those related to rent, security deposits, use of premises, subletting, and utility charges. It is inappropriate for the Department to list in a regulation which obligations constitute "important" obligations of occupancy, because of the difficulty in ensuring the comprehensiveness of such a list, and because certain multifamily housing projects as a result of their location or use may require the inclusion of obligations (or terms) that are not generally found in leases for other multifamily housing projects. For the foregoing reasons, the Department declines to state which obligations of occupancy are those with which an individual with disabilities must comply.

Comment: Definition Fails to Note the Obligation of HUD to Provide Reasonable Accommodations. Two commenters stated that the definition fails to note the obligation of HUD to provide reasonable accommodation to individuals who would be able to satisfy essential program requirements with such assistance.

Response. HUD's definition of "qualified individual with disabilities" is consistent with the definition for this term found in DOJ's section 504 prototype regulation for federally conducted programs and in the section 504 regulations of other Federal agencies. The fact that the definition of qualified individual with disabilities does not explicitly refer to the "reasonable modification" requirement does not mean that the requirement is inapplicable to Federal programs covered by section 504. As noted earlier in this preamble, reasonable modification is required under section 504. The reasonable modification requirement, although not explicitly referred to in the definition of "qualified individual with disabilities," is referred to in the definition of "individual with disabilities" and is implicitly referenced in the language of the definition of "qualified individual with disabilities" that provides that modifications in the program or activity, which result in a fundamental alteration in the nature of the program, are not required. Conversely, modifications to the program that would not result in a fundamental alteration in the nature of the program are required.

Comment: Definition Should Include Direct Threat Standard and Eliminate Standard of Significant Risk of Substantial Interference with the Safety of Others. Five commenters supported incorporating the "direct threat" standard that is included in the Fair Housing Act, rather than the standard of "significant risk of substantial interference with the safety or enjoyment of others or with his own health or safety," as set forth in the part 9 rule. One commenter stated that it was absolutely improper to permit evaluation of whether an individual is a potential risk to his or her own health or safety. The commenter stated that: "In the housing context, such a concern can never be related to an essential eligibility requirement. Where an individual may pose a risk to him or herself and to others, the Fair Housing Act standard of direct threat to the health and safety of others is adequate."

Response. As discussed in section II of this preamble, the Department has

added a new § 9.131, which addresses the direct threat standard.

Self-Evaluation (§ 9.110)

Section 9.110(a) provides that HUD shall, within one year of the effective date of the part 9 final rule, evaluate its current policies and practices, and the effects of those policies and practices, including regulations, handbooks, notices and other written guidance, that do not or may not meet the requirements of part 9, and, to the extent modification of any such policies is required, HUD shall take the necessary corrective actions.

Comment: Self-Evaluation Section Should Be Delayed by Final Rule Deadlines. Two commenters suggested that this section be revised to state that remedial actions, which HUD has begun or is planning, will not be delayed by the "deadlines in this section." One of the commenters stated that the part 9 final rule should clearly state that HUD will complete the self-evaluation of its policies and practices within one year of the effective date of the final rule.

Response. The Department periodically reviews the requirements of its various programs, and the policies and practices of these programs, to ensure that all HUD programs, both HUD assisted and HUD conducted, reflect existing statutory requirements. Given this periodic review process, the Department does not intend or foresee any delay in the evaluation of HUD conducted programs to ensure that these programs meet the requirements of part 9, as required by § 9.110.

Comment: HUD Should Review Its Federal Preference Criteria, As Part of Its Self-Evaluation Process. One commenter urged the Department to review its Federal preference criteria for housing programs funded by the Department. The commenter stated that the current criteria are not clear on the definition of what is not a "regular sleeping accommodation" and that Federal preferences should be revised to give top preference to individuals released from institutions, such as hospitals, nursing homes and rehabilitation facilities.

Response. A review of Federal preference criteria for housing programs is not appropriate in connection with the development and implementation of this part 9 rule. This rule is concerned with the implementation of section 504 solely as it applies to HUD conducted programs. Federal preferences in housing affect all HUD housing programs, not only housing owned by HUD. Any changes to the list of individuals that should be given preferences in federally-assisted or federally-conducted housing is more appropriate for proposed rulemaking that provides for advance notice to, and solicitation of comment from, the public.

Comment: Expand Public Participation in the Self-Evaluation Process to Include Comments on Fair Housing Issues. Section 9.110(b) of the part 9 rule provides that HUD shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments, both oral and written. One commenter recommended that HUD expand this section of the self-evaluation process to include fair housing issues that relate to people with disabilities.

Response. As discussed throughout this preamble, the mandate and the scope of the Fair Housing Act and section 504 are different. Accordingly, it is inappropriate for issues specifically related to the Fair Housing Act to be included in the section 504 self-evaluation process. However, to the extent that section 504 incorporates or overlaps with the Fair Housing Act, these issues may be raised in connection with the self-evaluation process.

Comment: Files Should Be Maintained Permanently. Section 9.110(c) of the part 9 rule provides that HUD shall, for a period of at least three years following the completion of the self-evaluation, maintain on file and make available for public inspection: (1) A list of interested persons; (2) a description of the areas examined and any problems identified; and (3) a description of any modifications made or to be made. Two commenters recommended that HUD maintain this file permanently. The commenters stated that HUD may make progress in the implementation and enforcement of section 504 if HUD's efforts are permanently catalogued, and that this progress is more important than maintaining consistency with the DOJ's coordination regulation.

Response. The Department believes that successful implementation and enforcement of section 504 will not be hindered by the rule's requirement to maintain the "self-evaluation" files for a period of three years. The Department notes that under § 9.110, HUD is not required to discard the self-evaluation files after the three year period has expired. Rather, HUD is required to maintain these files for a period of at least three years following the completion of the self-evaluation. HUD may maintain these files permanently or indefinitely. Accordingly, the Department believes that the minimum three-year requirement is sufficient.

Notice (§ 9.111)

Comment: This Section Should Clarify How HUD Will Communicate with People with Disabilities. Section 9.111 provides that HUD shall make available to employees, applicants, participants, beneficiaries, and other interested persons, information regarding the provisions of part 9. One commenter stated that although the preamble to the part 9 proposed rule indicated that certain HUD materials will be made available on tape and in Braille, nothing in the regulation makes that clear. The commenter requested that the part 9 proposed rule describe the specific ways in which HUD will communicate effectively with applicants, participants, personnel or other Federal entities, and members of the public who have disabilities.

Response. To make available to individuals with disabilities the information required by § 9.111, HUD will use, to the extent necessary, the auxiliary aids and services described in § 9.103. The definition of "auxiliary aids" in § 9.103 provides in relevant part as follows: "Although auxiliary aids are required explicitly only by § 9.160(a)(1), they may also be necessary to meet other requirements of the proposed regulation."

General Prohibitions Against Discrimination (§ 9.130)

Section 9.130 lists the general prohibitions against discrimination under section 504. Subsection (b)(vi) of § 9.130 states that it is discriminatory to:

"Deny a dwelling to an otherwise qualified buyer or renter because of a disability of that buyer or renter or a person residing or intending to reside in that dwelling after it is sold, rented or made available." (§ 9.130(b)(vi))

Comment: § 9.130 Should Include Relatives, Friends and Associates of Individuals with Disabilities. Three commenters stated that this paragraph was similar to language in the Fair Housing Act, except that the Fair Housing Act adds a third category of discrimination—"or because of a disability of any person associated with that person." The commenters urged adoption of this category of individuals so that the section 504 regulations, like the Fair Housing regulations (24 CFR 100.202), will prohibit discrimination against buyers and renters who have relatives, friends or associates who have disabilities.

Response. The Fair Housing Act prohibits, *inter alia*, discrimination

against any person on the basis of disability, whether or not it is the aggrieved persor or an associate or relative of that person who is disabled. Because of differences in the language and structure of the Fair Housing Act and section 504, the Fair Housing Act language is not necessarily transferable to section 504.

Comment: This Section Should Incorporate Language Concerning Reasonable Accommodation. One commenter requested that HUD incorporate the language of § 100.204 of the Fair Housing Act regulations concerning reasonable accommodation in the part 9 rule's provision establishing the general prohibitions against discrimination under section 504.

Response. HUD's Fair Housing Act regulation concerning reasonable accommodation is not appropriate for the section 504 regulations. The reasonable accommodation requirements of the Fair Housing Act are narrower than the "reasonable modification" requirements of section 504, because the Fair Housing Act requirements only refer to reasonable modifications and the rules, policies, practices or services associated with a dwelling unit. (*See* 24 CFR 100.204.) Under section 504, reasonable modifications will vary in the context of each Federal program or activity. Accordingly, it is important that the interpretation of reasonable modification with respect to a program or activity covered by section 504 not be limited to the interpretation provided by HUD's Fair Housing Act regulations. Additionally, as noted previously, the term, "qualified individuals with disabilities," used throughout the part 8 and part 9 rules implicitly incorporates the concept of reasonable accommodation or reasonable modification.

Program Accessibility: Existing Facilities (§ 9.150)

Comment: The Department Should Consider the Impact of the Americans with Disabilities Act on Existing Facilities. Section 9.150(b) provides that HUD is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Three commenters stated that HUD should consider the impact of the ADA on HUD programs and activities. Two commenters stated that it would be helpful both to consumers and to HUD and Justice enforcement personnel if these regulations referred to the ADA and to the ADA title II regulations and standards.

Response. In developing this final rule, the Department in consultation with the DOJ and EEOC, has considered the impact of the ADA on HUD conducted programs and activities, and where appropriate, incorporated those requirements of the ADA that are applicable to these programs and activities.

Comment: Section 9.150(e) Should Clarify HUD's Responsibility to Make Reasonable Modifications in Housing Sold to Buyers with Disabilities. Section 9.150(e) provides that HUD is not required to make alterations to existing facilities that are part of HUD's Property Disposition Programs, unless such alterations are necessary to meet the needs of a current or prospective tenant during the time when the Department expects to retain legal possession of the facilities and there is no alternative method to meet the needs of that tenant. Section 9.150(e) further provides that nothing in this section shall be construed to require alterations to make facilities accessible to persons with disabilities who are expected to occupy the facilities only after HUD relinquishes legal possession.

One commenter stated that this section relieves HUD of all responsibility to make any modifications for buyers with disabilities who purchase housing through HUD's Property Disposition Program. The commenter stated that § 9.150(e) should be revised to clarify HUD'S responsibility to make reasonable modifications in housing sold to buyers with disabilities.

Another commenter stated that the part 9 final rule should be revised to provide that HUD will exert its best efforts to assist a purchaser in obtaining the funding and expertise that HUD is able to provide in making the building usable for tenants and owners with disabilities.

Response. Section 9.150 requires the housing provider to demonstrate that physical alterations to make a unit accessible would result in a fundamental alteration in the nature of the program or activity or in an undue financial and administrative burden. This section requires that where physical alterations would result in a fundamental alteration or undue financial and administrative burden, alternative action must be taken that would not result in such an alteration or such burdens, but nevertheless would ensure that individuals with disabilities receive the benefits and services of the program or activity.

In the preamble to the part 9 proposed rule, HUD explained why the traditional approach to program accessibility with respect to existing facilities is not appropriate for the Property Disposition Programs because HUD holds the properties only temporarily and for an unpredictable amount of time (56 FR 24611). Since HUD does not know how long it will be in possession of the property, the agency cannot identify a time period within which it can assess the needs of those who might wish to live there in the future. However, HUD recognizes that during the time that the agency retains possession of a housing property under this program, HUD provides a housing service to the residents and also has a section 504 obligation to those who apply for housing in the facility.

Program Accessibility: Alterations of Property Disposition Program Multifamily Housing Facilities (§ 9.152)

Section 9.152 imposes accessibility requirements on HUD when HUD undertakes alterations to multifamily housing facilities that are part of HUD's Property Disposition Program. This section would require that once HUD undertakes alterations that cost 75 percent or more of the replacement value of the building, HUD must make at least five percent of the units accessible to tenants with mobility disabilities and two percent of the units accessible to tenants with sight and hearing disabilities.

Comment: Section 9.152 Should Include the Fair Housing Act Standards for New Construction. One commenter stated that HUD adopted the 75 percent figure for its section 504 federally assisted regulations, because it purposely wanted the level of alterations to "be tantamount to new construction" (53 FR 20224). The commenter stated that the Department is now required to meet the Fair Housing Act new construction standards when altering housing facilities. The commenter further stated that this section requires the five percent/two percent standard only in buildings with 15 or more units that are undergoing significant alteration, and that this requirement conflicts with HUD's UFAS standards for federally owned residential property which has no minimum 15 unit requirement.

Response. As previously discussed, it is inappropriate for HUD to incorporate the standards and requirements of the Fair Housing Act in a regulation implementing section 504 because the purposes and goals of these two statutes are not identical. To the extent that newly constructed HUD multifamily housing is subject to the requirements of the Fair Housing Act and section 504,

HUD will adhere to the standards that provide for greater accessibility.

The UFAS standards were promulgated under the Barriers Act. (*See* 24 CFR part 40, App. A, 4.1; 49 FR 31528; 53 FR 20228.) Because section 504 requires compliance with accessibility standards in certain circumstances, the DOJ recommended that Federal agencies provide that new construction and alterations comply with the ADAAG or the UFAS (that is, compliance with the ADAAG whenever the ADAAG provides for greater accessibility than the UFAS). Compliance with the UFAS or the ADAAG therefore is deemed to be compliance with section 504. The DOJ recommended the UFAS and the ADAAG as the applicable accessibility standards for section 504 to reduce potential conflict between standards enforced under the Barriers Act and section 504. However, the degree of accessibility required by the Barriers Act and that required by section 504 are not identical, and the regulations and standards promulgated under section 504 and the Barriers Act reflect these differences.

Comment: Replacement Cost Cap of Section 9.152 Should Be Lowered from 75 percent to 50 percent. One commenter recommended lowering the replacement cost cap in § 9.152 because many states and cities nationwide have a lower triggering percentage. The commenter stated that HUD projects should not be allowed to remain inaccessible until a renovation totals 75 percent of replacement cost when private buildings are subject to a more stringent standard.

Response. The 75 percent replacement cost cap set forth in § 9.152 is also contained in § 8.23 of HUD's section 504 regulation for HUD assisted programs. The replacement cost cap issue was carefully considered by the Department during development of the final part 8 rule. The Department received 290 comments on this issue following publication of the proposed part 8 rule (53 FR 20224). In the preamble to the final part 8 rule, the Department explained in detail the reasons behind its decision to retain the 75 percent replacement cost cap. (*See* 53 FR 20224.) The comment made by the commenter on this issue in the context of the part 9 rule has not persuaded the Department to revise its initial decision that the 75 percent replacement cost cap is an appropriate standard for section 504 purposes. The Department points out, however, that HUD projects in jurisdictions which impose more stringent accessibility standards, than those prescribed in HUD's section 504 regulations, must comply with the more stringent requirements.

Comment: Section 9.152(b) is Unclear As to When Responsibility to Modify Existing Housing Ends. One commenter stated that paragraph (b) of § 9.152 is confusing. The commenter stated that housing providers who read the regulation do not understand when their responsibility to modify existing housing ends. The commenter stated that paragraph (b) should be revised to clarify that each time a building is altered, accessibility requirements apply.

Response. The Department believes that part of the confusion concerning § 9.152 results from the fact that the subheadings were inadvertently omitted at the time of publication of the part 9 proposed rule. Paragraph (a) of § 9.152 should be titled "Substantial Alterations," and paragraph (b) of this section should be titled "Other Alterations." The final rule includes these subheadings which indicates the extent of the provider's responsibility to modify existing housing. The Department believes that no further revisions to this section are necessary. The issue raised by the commenter, like the issue in the preceding comment, was the subject of considerable public comment at the time of publication of the proposed part 8 rule. (*See* 24 CFR 20224.) The Department believes that the lack of substantial public comment on § 9.152(b), which is identical to § 8.23(b), indicates that the provisions of this section are not confusing for the majority of HUD program participants. Accordingly, except for the inclusion of the subheadings, the Department declines to amend the language in this section.

Distribution of Accessible Dwelling Units (§ 9.153)

This section requires accessible units to be distributed throughout projects "to the maximum extent feasible and subject to reasonable health and safety requirements".

Comment: Eliminate Language Concerning "To the Maximum Extent Feasible". Two commenters recommended that the Department delete the language beginning "to the maximum extent feasible." The commenters stated that the Fair Housing Act prohibits segregating all tenants with disabilities into one area or into one part of a building.

Response. The language in § 9.153 is identical to the language in § 8.26 of HUD's section 504 regulation for federally assisted programs. Section 8.26 was the subject of considerable public comment following publication of the part 8 proposed rule. (*See* 53 FR 20226.) The commenters on the part 8 rule expressed concerns similar to those expressed by the commenters on this rule. In the preamble to the part 8 proposed rule, the Department stated that this provision does not allow "the unnecessary segregation of qualified individuals with disabilities" (53 FR 20226). The Department reaffirms that prohibition here, and notes that this prohibition is contained in § 9.130(b)(1)(iv), which prohibits the agency from providing different or separate housing, aid, benefits, or services to individuals with disabilities, or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with housing, aid, benefits, or services that are as effective as those provided to others.

Occupancy of Accessible Dwelling Units (§ 9.154)

Section 9.154(b) provides that when offering an accessible unit to an applicant who is not disabled and does not require the accessibility features of the unit, the Department may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

Comment: Department Should Require All Leases to Incorporate "Agreement to Move" Clause as Standard Practice. One commenter recommended that the Department incorporate this provision in the lease as standard practice.

Response. The Department believes that it is unnecessary to require that this provision be incorporated in the lease as standard practice. The Department believes that the language in § 9.154, which provides that this provision may be incorporated in the lease is adequate. The Department notes that this language was contained in § 8.26 of HUD's part 8 interim rule published on May 6, 1983 (48 FR 20655) and was retained in § 8.27(b) of the part 8 final rule, published on June 2, 1988 (53 FR 20240). Because this provision has been in HUD's section 504 regulations for approximately 10 years, the Department believes that HUD managers are aware that they are legally empowered to—and will—require an applicant without disabilities to agree to move to a non-accessible unit when one becomes available.

Housing Adjustments (§ 9.155)

This section requires the Department to modify its housing policies and practices to ensure that they do not limit

the participation of tenants with disabilities.

Comment: New Housing Policies Implemented In Response to Fair Housing Act Should be Included in § 9.155. One commenter stated that since the passage of both section 504 and the Fair Housing Act, HUD has changed some of its housing policies, as for example, making FHA mortgages available to non-profit organizations for the purchase of single-family homes that are to be used by groups of unrelated tenants with disabilities. The commenter recommended that these new policies be listed in the regulation.

Response. The Department does not believe that the part 9 rule is the proper place to enunciate any policy revisions resulting from the Fair Housing Act. All new policies have been or will be announced in a more appropriate forum.

Comment: Section 9.155(a) Should Include Reference to Reasonable Accommodation. Four commenters stated that the last sentence of § 9.155(a) discusses fundamental alterations and undue financial and administrative burdens but not reasonable accommodation, which indicates that HUD has no duty to reasonably accommodate an individual's disability.

Response. Again, the appropriate term, generally, for purposes of section 504 is "reasonable modification." The reasonable modification issue has been raised in connection with other sections of the part 9 rule. The Department refers the commenters to its previous response on this issue as set forth in this preamble.

Communications (§ 9.160)

Section 9.160 would require HUD to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants and members of the public.

Comment: Section 9.160 Should Address the Communication Needs of Individuals with Impaired Cognitive Skills. One commenter stated that this section focuses on individuals with hearing and sight disabilities, and excludes individuals with impaired cognitive skills.

Response. The provisions of this section are not intended to exclude individuals who have disabilities other than hearing and vision impairments. Because hearing and vision impairments present easily identifiable communication difficulties, a number of auxiliary aids and services have been designed to overcome these communication difficulties, and serve as clear examples of how effective communication may be achieved under the requirements of section 504. However, the provisions of § 9.160 clearly provide that HUD shall, where necessary, furnish the auxiliary aid appropriate to an individual's disability, and in determining what type of auxiliary aid is necessary, shall give primary consideration to the request of the individual with disabilities.

Compliance Procedures (§ 9.170)

Section 9.170 would establish the procedures for processing complaints arising under section 504. In the preamble to the proposed rule, the Department specifically solicited comment on whether the compliance procedures for part 9 should include a hearing before an Administrative Law Judge. (See 56 FR 24613.)

Comment: Procedures Should Include Full Evidentiary Hearing Before an Administrative Law Judge. One commenter recommended that HUD provide complainants with the opportunity for a full evidentiary hearing before an Administrative Law Judge in appeals from the Assistant Secretary's determination.

Response. The issue of whether the part 9 rule should provide for an administrative law judge was carefully considered by the Department during development of the proposed part 9 rule, and again, after receiving this comment. The Department has concluded that the complaint processing procedure set forth in § 9.170 will provide for an adequate remedy, and therefore, it is not necessary to provide for a hearing before an administrative law judge. Accordingly, the "right to request a hearing" has been deleted from § 9.170 of the final rule.

IV. Other Matters

Coordination. This final rule has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies. This final rule also has been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

Environmental Impact. At the time of development of the proposed part 9 rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. That Finding of No Significant Impact remains applicable to this final rule and is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

Impact on Small Entities. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication, and by approving it, certifies that this rule does not have a significant economic impact on small entities. The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973 as it applies to programs or activities conducted by HUD.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule would not, if implemented, have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this rule are directed to HUD programs and activities, and do not impinge upon the relationship between the Federal government and State and local governments. Accordingly, the rule is not subject to review under the Order.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule establishes requirements prohibiting discrimination against individuals with disabilities in programs and activities conducted by HUD.

Semiannual Agenda of Regulations. This rule was listed as sequence number 1528 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20434) pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 9

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal buildings and facilities, Government employees, Persons with disabilities.

Accordingly, title 24 of the Code of Federal Regulations is amended by adding a new part 9, consisting of §§ 9.101 through 9.170, to read as follows:

PART 9—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec.
9.101 Purpose.
9.102 Applicability.
9.103 Definitions.
9.110 Self-evaluation.
9.111 Notice.
9.112—9.129 [Reserved]
9.130 General prohibitions against discrimination.
9.131 Direct threat.
9.132—9.139 [Reserved]
9.140 Employment.
9.141—9.148 [Reserved]
9.149 Program accessibility: discrimination prohibited.
9.150 Program accessibility: existing facilities.
9.151 Program accessibility: new construction and alterations.
9.152 Program accessibility: Alterations of Property Disposition Program multifamily housing facilities.
9.153 Distribution of accessible dwelling units.
9.154 Occupancy of accessible dwelling units.
9.155 Housing adjustments.
9.160 Communications.
9.170 Compliance procedures.

Authority: 29 U.S.C. 794; 42 U.S.C. 3535(d).

§ 9.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 9.102 Applicability.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with disabilities in the United States.

§ 9.103 Definitions.

For purposes of this part:

Accessible: (1) When used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit, means that the facility or portion of the facility when designed, constructed or altered, complies with applicable accessibility standards and can be approached, entered, and used by individuals with physical disabilities. The phrase "accessible to and usable by" is synonymous with accessible.

(2) When used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route and, when designed, constructed, altered or adapted, complies with applicable accessibility standards, and can be approached, entered, and used by individuals with physical disabilities. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 9.151 is "accessible" within the meaning of this definition. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified individual with disabilities (e.g., a current occupant of such unit or of another unit under the control of the same agency, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps and lifts.

ADA means the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 through 12213)

ADA Accessibility Guidelines (ADAAG) means the Accessibility Guidelines issued under the ADA, and which are codified in the Appendix to 39 CFR part 1191.

Adaptability means the ability of certain building, spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered, to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a person with impaired hearing, the wiring for visible emergency alarms may be installed but the alarms need not be installed until such time as the unit is made ready for occupancy by a person with impaired hearing.

Agency means the Department of Housing and Urban Development.

Alteration means a change to a building or facility or its permanent fixtures or equipment that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangements of the structural parts and changes or rearrangements in the plan configuration of walls and full-height partitions. Normal maintenance, re-roofing, painting, or wallpapering or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Assistant Secretary means the Assistant Secretary of Housing and Urban Development for Fair Housing and Equal Opportunity.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or communication skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Facility means all or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, rolling stock or other conveyances, or

other real or personal property located on a site.

Historic properties means those properties that are listed or are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with disabilities means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus disease (symptomatic or asymptomatic), mental retardation, emotional illness, drug addiction and alcoholism.

(2) The term "individual with disabilities" does not include:

(i) An individual who is currently engaging in the illegal use of drugs, when the agency acts on the basis of such use. This exclusion, however, does not exclude an individual with disabilities who—

(A) Has successfully completed a supervised drug rehabilitation program, and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully, and is no longer engaging in such use;

(B) Is participating in a supervised rehabilitation program, and is no longer engaging in such use; or

(C) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(ii) Except that it shall not violate this part for the agency to adopt or administer reasonable policies and procedures, including but not limited to drug testing, designed to ensure than an individual described in paragraphs (2)(i)(A) and (B) of this definition is no longer engaging in the illegal use of drugs.

(iii) Nothing in paragraph (2) of this definition shall be construed to encourage, prohibit, restrict or authorize the conduct of testing for illegal use of drugs.

(iv) The agency shall not deny health services provided under titles I, II and III of the Rehabilitation Act of 1973 (29 U.S.C. 701 through 777f) to an individual with disabilities on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(3) For purposes of employment, the term "individual with disabilities" does not include:

(i) An individual who has a currently contagious disease or infection and who, by reason of such disease or infection—

(A) Has been determined, in accordance with the provisions of § 9.131, to pose a direct threat to the health or safety of other individuals, which threat cannot be eliminated or reduced by reasonable accommodation, or

(B) Is unable to perform the essential duties of the job, with or without reasonable accommodation; or

(ii) An individual who is an alcoholic and whose current use of alcohol prevents him or her from performing the duties of the job in question or whose employment would constitute a direct threat to the property or the safety of others by reason of his or her current alcohol abuse.

(4) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(5) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(6) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Multifamily housing project means a project containing five or more dwelling units.

Official or Responsible Official means the Assistant Secretary of HUD for Fair Housing and Equal Opportunity.

PDP housing facility means a housing facility administered under HUD's Property Disposition Program.

Project means the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single mortgage or contract or otherwise treated as a whole by the agency for processing purposes, whether or not located on a common site.

Property Disposition Program (PDP) means the HUD program which administers the housing facilities that are either owned by the Secretary or where, even though the Secretary has not obtained title, the Secretary is mortgagee-in-possession. Such properties are deemed to be in the possession or control of the agency.

Qualified individual with disabilities means:

(1) With respect to any agency non-employment program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with disabilities who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other agency non-employment program or activity, an individual with disabilities who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) "Essential eligibility requirements" include stated eligibility requirements such as income, as well as other explicit or implicit requirements inherent in the nature of the program or activity, such as requirements that an occupant of a PDP multifamily housing facility be capable of meeting selection criteria and be capable of complying with all obligations of occupancy with or without supportive services provided by persons other than the agency.

(4) "Qualified person with disabilities" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 9.140.

Replacement cost of the completed facility means the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities and administrative costs for project development activities.

Secretary means the Secretary of Housing and Urban Development.

Section 504 means section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794). As used in this part, section 504 applies only to programs or activities conducted by the agency and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

UFAS means the Uniform Federal Accessibility Standards, which implement the accessibility standards required by the Architectural Barriers Act (42 U.S.C. 4151 through 4157), and which are established at 24 CFR part 40, Appendix A for residential structures, and 41 CFR 101–19.600 through 101–19.607, and Appendix A to these sections, for non-residential structures.

§ 9.110 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects of those policies and practices, including regulations, handbooks, notices and other written guidance, that do not or may not meet the requirements of this part. To the extent modification of any such policies is required, the agency shall take the necessary corrective actions.

(b) The agency shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of interested persons;

(2) A description of the areas examined and any problems identified; and

(3) A description of any modifications made or to be made.

§ 9.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency. The agency shall make such information available to such persons in such manner as the Secretary finds necessary to apprise them of the protections against discrimination assured them by section 504 and this part. All publications and recruitment materials distributed to participants, beneficiaries, applicants or employees shall include a statement that the agency does not discriminate on the basis of disability. The notice shall include the name of the person or office responsible for the implementation of section 504.

§§ 9.112–9.129 [Reserved]

§ 9.130 General prohibitions against discrimination.

(a) No qualified individual with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b) (1) The agency, in providing any housing, aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with disabilities the opportunity to participate in or benefit from the housing, aid, benefit, or service;

(ii) Afford a qualified individual with disabilities an opportunity to participate in or benefit from the housing, aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with disabilities with any housing, aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate housing, aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with housing, aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with disabilities the opportunity to participate as a member of planning or advisory boards;

(vi) Deny a dwelling to an otherwise qualified buyer or renter because of a disability of that buyer or renter or a person residing in or intending to reside in that dwelling after it is sold, rented or made available; or

(vii) Otherwise limit a qualified individual with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the housing, aid, benefit, or service.

(2) For purposes of this part, housing, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with disabilities and for persons without disabilities, but must afford individuals with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

(3) The agency may not deny a qualified individual with disabilities the opportunity to participate in programs or activities that are not separate or different, despite the existence of programs or activities that are permissibly separate or different for persons with disabilities.

(4) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(6) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(7) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may the agency establish requirements for the programs or activities of licensees or certified

entities that subject qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) (1) Notwithstanding any other provision of this part, persons without disabilities may be excluded from the benefits of a program if the program is limited by Federal statute or Executive order to individuals with disabilities. A specific class of individuals with disabilities may be excluded from a program if the program is limited by Federal statute or Executive order to a different class of individuals.

(2) Certain agency programs operate under statutory definitions of "persons with disabilities" that are more restrictive than the definition of "individual with disabilities" contained in § 9.103. Those definitions are not superseded or otherwise affected by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e) The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement that, based on disability, imposes inconsistent or contradictory prohibitions or limits upon the eligibility of qualified individuals with disabilities to receive services or to practice any occupation or profession.

(f) The enumeration of specific forms of prohibited discrimination in paragraphs (b) and (d) of this section does not limit the general prohibition in paragraph (a) of this section.

§ 9.131 Direct threat.

(a) This part does not require the agency to permit an individual to participate in, or benefit from the goods, services, facilities, privileges, advantages and accommodations of that agency when that individual poses a direct threat to the health or safety of others.

(b) "Direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(c) In determining whether an individual poses a direct threat to the health or safety of others, the agency must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

§§ 9.132—9.139 [Reserved]

§ 9.140 Employment.

No qualified individual with disabilities shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613 (subpart G), shall apply to employment in federally conducted programs or activities.

§§ 9.141—9.148 [Reserved]

§ 9.149 Program accessibility: discrimination prohibited.

Except as otherwise provided in § 9.150, no qualified individual with disabilities shall, because the agency's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 9.150 Program accessibility: existing facilities.

(a) *General.* Except as otherwise provided in paragraph (e) of this section, the agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This section does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) In the case of historic properties, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 9.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, also shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of July 18, 1994 except that where structural changes in facilities are undertaken, such changes shall be made within three years of July 18, 1994, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of July 18, 1994, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

(e) The requirements of paragraphs (a), (b), and (c) of this section shall apply to the Property Disposition Programs. However, this section does not require HUD to make alterations to existing facilities that are part of the Property Disposition Programs unless such alterations are necessary to meet the needs of a current or prospective tenant during the time when HUD expects to retain legal possession of the facilities, and there is no alternative method to meet the needs of that current or prospective tenant. Nothing in this section shall be construed to require alterations to make facilities accessible to persons with disabilities who are expected to occupy the facilities only after HUD relinquishes legal possession.

§ 9.151 Program accessibility: new construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered and provide emergency egress so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and accessibility standards that apply to buildings covered by this section are those contained in the UFAS, except where the ADAAG provides for greater accessibility for the type of construction or alteration being undertaken, and in this case, the definitions, requirements and standards of the ADAAG shall apply.

§ 9.152 Program accessibility: alterations of Property Disposition Program multifamily housing facilities.

(a) *Substantial alteration.* If the agency undertakes alterations to a PDP multifamily housing project that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the project shall be designed and altered to be readily accessible to and usable by individuals with disabilities. Subject to paragraph (c) of this section, a minimum of five percent of the total dwelling units, or at least one unit, whichever is greater, shall be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in paragraph (d) of this section is accessible for purposes of this section. An additional two percent of the units (but not less that one unit) in such a project shall be accessible for persons with hearing or vision impairments. If state or local requirements for alterations require greater action than this paragraph, those requirements shall prevail.

(b) *Other alteration.* (1) Subject to paragraph (c) of this section, alterations to dwelling units in a PDP multifamily housing project shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with disabilities. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph. Once two percent of the dwelling units in a project are readily accessible to or usable by individuals with hearing or vision impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph.

(2) Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities, shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with disabilities.

(c) The agency may establish a higher percentage or number of accessible units than that prescribed in paragraphs (a) or (b) of this section if the agency determines that there is a need for a higher percentage or number, based on census data or other available current data. In making such a determination, HUD shall take into account the expected needs of eligible persons with and without disabilities.

(d) The definitions, requirements, and accessibility standards that apply to PDP multifamily housing projects covered by this section are those contained in the UFAS, except where the ADAAG provides for greater accessibility for the type of alteration being undertaken, and, in this case, the definitions, requirements and standards of the ADAAG shall apply.

(e) With respect to multifamily housing projects operated by HUD, but in which HUD does not have an ownership interest, alterations under this section need not be made if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project

§ 9.153 Distribution of accessible dwelling units.

Accessible dwelling units required by § 9.152 shall, to the maximum extent feasible, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified individual with disabilities' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same agency conducted program. This provision shall not be construed to require (but does allow) the provision of an elevator in any multifamily housing project solely for the purpose of permitting location of accessible units above or below the accessible grade level.

§ 9.154 Occupancy of accessible dwelling units.

(a) The agency shall adopt suitable means to assure that information regarding the availability of accessible units in PDP housing facilities reaches eligible individuals with disabilities, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the agency (or its management agent) before offering such units to an applicant without disabilities shall offer such unit:

(1) First, to a current occupant of another unit of the same project, or comparable projects under common control, having disabilities requiring the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such occupant exists, then

(2) Second, to an eligible qualified applicant on the waiting list having a

disability requiring the accessibility features of the vacant unit.

(b) When offering an accessible unit to an applicant not having disabilities requiring the accessibility features of the unit, the agency may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

§ 9.155 Housing adjustments.

(a) The agency shall modify its housing policies and practices as they relate to PDP housing facilities to ensure that these policies and practices do not discriminate, on the basis of disability, against a qualified individual with disabilities. The agency may not impose upon individuals with disabilities other policies, such as the prohibition of assistive devices, auxiliary aids, alarms, or guides in housing facilities, that have the effect of limiting the participation of tenants with disabilities in any agency conducted housing program or activity in violation of this part. Housing policies that the agency can demonstrate are essential to the housing program or activity will not be regarded as discriminatory within the meaning of this section if modifications would result in a fundamental alteration in the nature of the program or activity or undue financial and administrative burdens.

(b) The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

§ 9.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with disabilities.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries or members of the public by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with § 9.160 would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

§ 9.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Responsible Official shall coordinate implementation of this section.

(d) Persons may submit complete complaints to the Assistant Secretary for Fair Housing and Equal Opportunity, 451 Seventh St., SW., Washington, DC 20410, or to any HUD Area Office. The agency shall accept and investigate all complete complaints for which the agency has jurisdiction. All complete complaints shall be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause. For purposes of determining when a complaint is filed, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the agency. The agency shall acknowledge all complaints, in writing, within ten (10) working days of receipt of the complaint.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), is not readily accessible to and usable by individuals with disabilities. The agency shall delete the identity of the complainant from the copy of the complaint.

(g)(1) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Office of Fair Housing and Equal Opportunity shall complete the investigation of the complaint, attempt informal resolution, and if no informal resolution is achieved, issue a letter of findings. If a complaint is filed against the Office of Fair Housing and Equal Opportunity, the Secretary or a designee of the Secretary shall investigate and resolve the complaint through informal agreement or letter of findings.

(2) If a complaint is resolved informally, the terms of the agreement

shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant and the agency. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and the respondent have agreed.

(3) If a complaint is not resolved informally, the Office of Fair Housing and Equal Opportunity or a person designated under this paragraph shall notify the complainant of the results of the investigation in a letter containing—

(i) Findings of fact and conclusions of law;

(ii) A description of a remedy for each violation found;

(iii) A notice of the right to appeal to the Secretary;

(h)(1) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 9.170(g). The Assistant Secretary or the person designated by the Secretary to decide an appeal of a complaint filed against the Office of Fair Housing and Equal Opportunity may extend this time for good cause.

(2) Timely appeals shall be accepted and processed by the Assistant Secretary. Decisions on an appeal shall not be issued by the person who made the initial determination.

(i) The Assistant Secretary or the person designated by the Secretary to decide an appeal of a complaint filed against the Office of Fair Housing and Equal Opportunity shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(j) The time limits cited in paragraphs (g) and (i) of this section may be extended with the permission of the Assistant Attorney General.

(k) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

Dated: June 9, 1994

Henry G. Cisneros,

Secretary.

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June 16, 1994

Part VI

Department of Labor

Office of Labor-Management Standards

29 CFR Part 417

Local Labor Organization Officers; Procedure for Removal; Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 417

RIN 1294–AA10

Procedure for Removal of Local Labor Organization Officers

AGENCY: Office of Labor-Management Standards, Office of the American Workplace, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor is proposing to amend the regulation pertaining to the procedure for removal of local labor organization officers pursuant to section 401(h) of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). Section 417.16 presently gives the Secretary of Labor the authority to bring suit against a union after a member has filed a complaint with the Secretary alleging that the local labor organization has failed to follow the officer removal procedures contained in the organization's constitution and bylaws. This proposed rule deletes that language, which purports to give the Secretary general authority to bring suit against a union for failing to follow its officer removal procedures even if the inadequacy of the procedure has not been established. This change will bring the regulation into conformity with a court of appeals decision that held that the Secretary lacks such authority.

DATES: Interested parties may submit written comments on this proposal. All comments must be submitted by August 15, 1994.

ADDRESSES: Written comments should be submitted to Edmundo Gonzales, Deputy Assistant Secretary for Labor-Management Standards, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–5605, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–5605, Washington, DC 20210; (202) 219–7373. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), governs the election and removal of labor organization officers. Section 401(h) of the LMRDA (29 U.S.C. 481(h)) provides that if the Secretary of Labor, upon application of a member of a local labor organization, finds after a hearing in accordance with the Administrative Procedure Act, that the constitution and bylaws of the labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of Title IV of the LMRDA.

The Department has interpreted section 401(h); when read in conjunction with section 402(a), as additionally granting the Secretary of Labor the authority to file suit against a union for failure to follow removal procedures whose adequacy has not been challenged. Section 402(a) states in part that "(a) a member of a labor organization: (1) Who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or (2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation, may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (*including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers*) (emphasis added) * * *." Subpart B of 29 CFR part 417 implements this interpretation.

In *Donovan* v. *Hotel, Motel & Restaurant Employees Local 19*, 700 F.2d 539 (9th Cir. 1983), however, the court held, after examining the legislative history of the Act, that the LMRDA does not authorize the Secretary to bring civil action against a union for failure to follow its concededly adequate officer removal procedure. *Local 19* rejected the Secretary's reliance on section 402(a) as a basis for extending his authority under section 401(h) to intervene in officer removal proceedings where an adequate removal procedure exists. The court concluded that those regulations found in subpart B of 29 CFR part 417 which purport to give the Secretary general authority to intervene in union affairs upon a finding that a union has failed to follow its adequate removal procedures are void for lack of statutory authority.

Local 19 is the only judicial decision that addresses this issue, and the Department has determined, upon review, that the holding of the court in *Local 19* is correct. The Department therefore proposes to delete the language in subpart B of 29 CFR part 417 granting the Secretary authority to file suit against a union for failure to follow its adequate officer removal procedures.

Administrative Notices

A. Executive Order 12866

The Department of Labor has determined that this rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 in that it will not: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act

The Agency Head has certified that this proposed rule, if issued, will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. The proposed rule will only apply to local labor organizations and would decrease the regulation of such labor organizations. However, the Department has determined that labor organizations regulated pursuant to the statutory authority granted under the LMRDA do not constitute small entities. Therefore, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

This rule contains no information collection requirements. Therefore, the Paperwork Reduction Act of 1980, as amended, is not applicable.

List of Subjects in 29 CFR Part 417.

Labor unions

Text of Proposed Rule

In consideration of the foregoing, the Department of Labor proposes that subpart B of part 417 of title 29, Code of Federal Regulations, be amended as follows:

PART 417—PROCEDURE FOR REMOVAL OF LOCAL LABOR ORGANIZATION OFFICERS

In the authority citation for part 417 continues to read as follows:

Authority: Secs. 401, 402, 73 Stat. 533, 534 (29 U.S.C. 481, 482); Secretary Order No. 2–93 (58 FR 42578).

2. The heading part 417, subpart B, is revised to read as follows:

Subpart B—Procedures Upon Failure of Union to Act Following Subpart A Procedures

3. 29 CFR 417.16 is revised to read as follows:

§ 417.16 Initiation of proceedings.

(a) Any member of a local labor organization may file a complaint with the Office of Labor-Management Standards alleging that following a finding by the Assistant Secretary pursuant to Subpart A that the constitution and bylaws of the labor organization pertaining to the removal of officers are inadequate, or a stipulation of compliance with the provisions of section 401(h) of the Act reached with the Director in connection with a prior charge of the inadequacy of a union's constitution and bylaws to remove officers, as provided in subpart A of this part, the labor organization: (1) Has failed to act within a reasonable time, or (2) has violated the procedures agreed to with the Director, or (3) has violated the principles governing adequate removal procedures under § 417.2(b)

(b) The complaint must be field pursuant to section 402(a) of the Act within one calendar month after one of the two following conditions has been met: (1) The member has exhausted the remedies available to him under the constitution and bylaws of the organization, or (2) the member has invoked such remedies without obtaining a final decision within three calendar months after invoking them.

Signed in Washington, DC this 9th day of June, 1994.

Martin Manley,

Assistant Secretary for the American Workplace.

[FR Doc. 94–14541 Filed 6–15–94; 8:45 am]

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Federal Register

Thursday
June 16, 1994

Part VII

Department of Education

34 CFR Part 386

Rehabilitation Training: Rehabilitation Long-Term Training; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 386

RIN 1820–AB21

Rehabilitation Training: Rehabilitation Long-Term Training

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing grants for long-term training to implement the Rehabilitation Act Amendments of 1992 and the Technology-Related Assistance for Individuals With Disabilities Act Amendments of 1994. The Rehabilitation Long-Term Training program is authorized by section 302 of Title III of the Rehabilitation Act of 1973, as amended (the Act). The purpose of this discretionary grant program is to fund projects to provide academic training in areas of personnel shortages identified by the Secretary.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Richard Melia, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3324 Switzer Building, Washington, DC 20202–2649. Telephone (202) 205–9400. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These final regulations implement changes made by the Rehabilitation Act Amendments of 1992 (Pub. L. 102–569) and the Technology-Related Assistance for Individuals With Disabilities Act Amendments of 1994 (Pub. L. 103–218). These amendments direct the Secretary to issue regulations, as appropriate, to carry out the provisions of the Rehabilitation Act of 1973, as amended.

This program supports the National Education Goal that, by the year 2000, every adult American be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The Department supports a variety of training activities for vocational rehabilitation personnel so that they may assist individuals with disabilities in gaining the knowledge and skills to obtain employment and compete in a global economy.

On October 8, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for the Rehabilitation Long-Term Training program in the **Federal Register** (58 FR 52606). The major issues related to this program are discussed in the preamble to the NPRM. Significant changes resulting from public comment since publication of the NPRM include—(1) A waiver provision for part of the non-Federal share of the cost of a project if an applicant demonstrates that it does not have sufficient resources for the entire match; (2) An exemption for existing projects from the requirement to direct 75 percent of the total award to scholarships; and (3) A broadening of the term "deaf" to include individuals who are "hard of hearing" and of the term "blind" to include individuals who have "vision impairment."

In addition, after the NPRM was published, the Technology-Related Assistance for Individuals With Disabilities Act Amendments of 1994 (Pub. L. 103–218) was enacted. Those amendments included a technical change to the Rehabilitation Act of 1973, as amended, in the area of rehabilitation training. That statutory change has been incorporated into these regulations by adding the use, applications, and benefits of assistive technology devices and assistive technology services to the list of areas of personnel shortages identified in § 386.1.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 386 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Other substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes are not addressed.

General Comments

Intent of Change in Long-Term Training Regulations

Comment: A commenter expressed the opinion that since university programs have long been addressed in the long-term category, the change in regulations appears to be intended to eliminate any training that results in less than an academic degree.

Discussion: Approximately 70 percent of grants under the Rehabilitation Long-Term Training program are currently for academic training. The 30 percent that are non-academic are concentrated in several areas: Administration, prosthetics and orthotics, community rehabilitation personnel, mental illness, independent living, client assistance program, supported employment, and deafness. The intent is not to eliminate any training for less than an academic degree, but to clarify and focus the specific mission of each training authority to improve program management. Regulations that accurately reflect the program purpose of providing academic training in areas of personnel shortages identified by the Secretary permit targeted allocations of funds to specific personnel needs, facilitate pertinent outcome measures, and ensure that administrative requirements relating to proposal evaluations, scholarships, recordkeeping, matching, and reporting are appropriate.

Changes: None.

Insufficient Public Input in the Regulations Development Process

Comments: There were a number of comments stating that the proposed regulations were developed without participation of the rehabilitation field.

Discussion: The Secretary agrees that open and extensive public participation strengthens the regulations process. In fact, extensive public input was obtained when the Rehabilitation Services Administration (RSA) convened a public meeting on rehabilitation training and published a notice requesting written public comments in May 1991. Comments received provided useful information that was considered in crafting the regulations. Also, training meetings were held throughout the United States in 1993 on the Rehabilitation Act Amendments.

Changes: None.

The Department Should Conduct a Needs Assessment Before Enacting New Regulations That Reduce or Eliminate Post-Employment Training for Rehabilitation Personnel

Comments: Most of the comments calling for needs assessments were from direct service providers who were concerned that the academic program emphasis in the Rehabilitation Long-Term Training program would reduce or eliminate crucial training for current service delivery personnel.

Discussion: The Department has conducted needs assessments of the training needs of personnel providing vocational rehabilitation services to individuals with disabilities since 1983 and will continue to do so in the future, as the authorizing statute requires it.

Changes: None.

Funding Post-Employment Training if Long-Term Training Regulations Are Enacted

Comments: A number of commenters expressed concern that there appears to be no money to provide post-employment training under training authorities other than long-term training. Commenters requested that, if the Rehabilitation Long-Term Training program is to be substantially changed, new regional networks of community-based continuing education units be established. These units would be similar to the Rehabilitation Continuing Education Programs and would be focused on individuals at the front lines of service delivery. Several commenters suggested that separate regulations could be developed for university and non-university grant recipients.

Discussion: The Secretary agrees that post-employment training needs of community rehabilitation training providers should be addressed, in part, by a network of regional continuing education programs. The Secretary annually allocates funds to address personnel shortages of qualified rehabilitation personnel. These funds are targeted to address training needs by professional discipline and rehabilitation jobs. The Secretary submits an annual report to the Congress containing and justifying rehabilitation training allocations in detail. The Secretary has authority to allocate funds from the long-term training area to continuing education or other short-term or specialized training for post-employment training of community rehabilitation personnel.

Changes: None.

Specific Comments by Section

The Program Purpose of Rehabilitation Long-Term Training (§§ 386.1 and 386.20(g)(2)

Comments: A number of commenters supported inclusion of academic training as the primary purpose of the Rehabilitation Long-Term Training program. They stated that the emphasis on academic outcomes is consistent with the requirements of the Rehabilitation Act Amendments of 1992 (1992 Amendments) to the Rehabilitation Act, which stress the use of "qualified" personnel. However, a number of other commenters asked about the statutory authority for funding only academic programs and excluding continuing education programs under the Rehabilitation Long-Term Training program. These commenters argued that there is no justification in the Rehabilitation Act for stating that the purpose of RSA's Long-Term Training program is to provide "academic" training.

Discussion: Section 302 of the Rehabilitation Act, as amended, is the statutory basis for the rehabilitation training programs. Except for the in-service training program, which now is included in the Act, the specific rehabilitation training programs, including the Rehabilitation Long-Term Training program, are established in regulations issued by the Secretary based on the statutory authority in section 302. The Secretary establishes programs so that each has a specific mission defined in regulations with appropriate outcome measures. The Secretary believes that the long-term training program should be focused on academic training.

Changes: None

Client Assistance Program (CAP) (§ 386.1)

Comments: Several commenters observed that preparation for employment in client assistance programs is not currently offered in academic training settings and that CAP training should continue to be provided under long-term training.

Discussion: The Secretary agrees that no current academic training exists for preparing individuals to work in client assistance programs and that there is a demonstrated need for continued post-employment training of CAP personnel. Existing CAP training projects will continue to be funded until their current grant periods end. The Secretary plans to invite future applications for CAP training under the provisions in section 302 of the Act and in the general regulations for Rehabilitation Training in 34 CFR part 385. Future CAP training notices will be targeted to specific needs for training and technical assistance and published for public comment before applications are solicited.

Changes: None.

Fields of Study Under the Rehabilitation Long-Term Training Program (§ 386.1)

Comments: Several commenters suggested revisions in the listing of fields of study to conform with the listing of fields of study in section 302(b)(1)(B) of the Rehabilitation Act and to include additional, specific fields, such as vision therapy and rehabilitation computer systems.

Discussion: The listing of fields in the Rehabilitation Act does not provide enough detail. For example, a specific category is needed for the Secretary to target training resources for the preparation of specialized personnel for individuals who are blind or have vision impairment. The list of 30 areas established in regulations builds upon the listing in the Act by using areas that have been included in past long-term training competitions because they are areas where needs assessments show continuing needs. The Secretary has the authority under § 386.1(b)(30) of the regulations to invite applications in other fields, such as vision therapy and rehabilitation computer systems, contributing to the rehabilitation of individuals with disabilities. Also, the Experimental and Innovative Training program (34 CFR part 387) offers opportunities for submittal of proposals to develop new types of training programs for rehabilitation personnel.

Changes: None.

Use of the Term "Blind" and the Term "Deaf" (§ 386.1)

Comments: One commenter suggested that the term "blind" be eliminated because it connotes the absence of vision, and the vast majority of individuals who are targeted for rehabilitation under this category have residual vision (i.e., are partially sighted). Another commenter suggested substituting a broader category that would include blind individuals as well as other individuals with visual impairment. One Commenter suggested elimination of the term "deaf" as it connotes the absence of hearing, and many individuals served under the Rehabilitation Act have partial hearing loss. The commenter suggested use of a more inclusive phrase, such as persons with hearing loss.

Discussion: The Secretary agrees that a change is needed in the identification of these categories of training. In the past, the Act included specialized personnel in providing services to individuals who are blind and to individuals who are deaf among the targeted areas of personnel shortages to which training projects might be directed. The terms "blind" and "deaf" were not specifically defined, but were broadly interpreted to include individuals with partial or total vision or hearing loss. The 1992 Amendments removed the terms "blind" and "deaf" from the listing of training areas in section 302(b)(1) and substituted training of personnel to provide services to individuals with specific disabilities

Since the regulations in 34 CFR part 386 provide the basis for specific allocations of training funds to targeted areas of personnel shortages, it is particularly important that the listing of targeted areas be as specific and inclusive as possible.

Changes: The Secretary has included "specialized personnel for rehabilitation of individuals who are blind or have vision impairment" and "specialized personnel for rehabilitation of individuals who are deaf or hard of hearing" as targeted areas within § 386.1 for training allocations.

Lack of Academic Training in Guam (§ 386.1)

Comment: One commenter expressed concern that rehabilitation training in Guam, which in the past has been provided through continuing education projects under the long-term training program, will no longer be available.

Discussion: The Secretary recognizes the need for improved access to rehabilitation training for Guam and other remote and isolated areas. The Secretary believes that these needs will be met, in part, by distance learning training, which was first funded in fiscal year 1993 as a result of the 1992 Amendments (section 803(a) of the Rehabilitation Act of 1973, as amended).

Changes: None.

Eligibility of State Agencies and Other Public or Nonprofit Agencies and Organizations, Including Institutions of Higher Education, Under the Rehabilitation Long-Term Training Program (§ 386.2)

Comment: One commenter noted that, since State agencies and other public or nonprofit agencies do not offer degrees or certificates, maintaining those organizations as eligible applicants implies the intent to continue non-academic long-term training.

Discussion: Section 302(a) of the Act establishes the broad eligibility criteria for applicants under the Rehabilitation Long-Term Training program. The Secretary is aware of the rapidly changing auspices and circumstances under which specialized academic and certificate training is offered in the field of rehabilitation. Consortia and partnerships of States, public or nonprofit private agencies and organizations, and institutions of higher education may be formed to address rehabilitation training needs. The Secretary encourages those efforts and desires regulations that will facilitate new approaches through flexibility in eligibility requirements.

Changes: None.

Professional Corporation or Professional Practice (§ 386.4)

Comment: One commenter wrote in support of the provisions in the regulations that define professional corporation or professional practice.

Discussion: The Secretary appreciates the support for the definition of professional corporation or professional practice.

Changes: None.

Related Agency (§ 386.4)

Comment: One commenter suggested substituting the legislative definition of "community rehabilitation program" in place of the language proposed in § 386.4(b) describing related agencies that are not American Indian rehabilitation programs.

Discussion: Section 7(25) of the Act includes an expanded definition of "community rehabilitation program." The Secretary reviewed the definition of community rehabilitation program in preparing regulations implementing the Rehabilitation Act Amendments of 1992. There is not an exact match between the expanded definition of community rehabilitation program in Title I of the Act and the legislative definition of related agency in Title III. Therefore, "community rehabilitation program" was not used in the definition of related agency.

Changes: None.

Including Specific References to Culturally Diverse Populations in Appropriate Sections of the Regulations (§§ 386.1, 386.20, 386.33, and 386.40)

Comments: Several commenters felt that, although individuals who are unserved or underserved by programs under the Act are specifically referenced in the description of the Rehabilitation Long-Term Training program, policies and procedures to include culturally diverse recruitment and retention efforts should be implemented for all 30 categories of rehabilitation training. Selection criteria should be modified to give credit for program development related to culturally diverse populations.

Discussion: The Secretary agrees that it is essential that all requirements in the Rehabilitation Act of 1973, as amended, are implemented to ensure equal access and outreach for traditionally underserved populations, including minorities. At present, the primary method for directing rehabilitation training program grantees to meet those requirements is through the assurances mandated for each applicant. The Department is currently working to implement section 21 of the Act, including outreach services and other related activities, to enhance the capacity of minority institutions to compete for grants, contracts, and cooperative agreements. In the future, the Department may propose specific priorities or selection criteria that address needs of traditionally underserved populations across the range of rehabilitation discretionary programs.

Changes: None.

Minimum 10 Percent Matching Requirement (§ 386.30)

Comments: Many comments were received objecting to the requirement that the Federal share of an award may not be more than 90 percent of the total cost of a project under this program. A number of commenters pointed out that the eight percent indirect costs currently allowed by the Department on training awards do not cover current administrative costs. Concern was expressed that many universities would not provide a 10 percent match. Some commenters observed that the present negotiated system offers flexibility. Many commenters pointed out that post-employment training programs for community rehabilitation personnel would have difficulty with the 10 percent required match. Some university commenters indicated that their institutions face substantial resource problems. Other commenters asked if the match could be in-kind. One commenter wrote that the limitation of 90 percent Federal support for proposed projects is fair and reasonable.

Discussion: The Rehabilitation Act of 1973, as amended, requires a matching component for rehabilitation training grants. The Secretary believes that, if the Department states the minimum matching amount in advance of negotiations, the award process is more understandable and efficient. Most current academic grantees under the Rehabilitation Long-Term Training program have negotiated awards with a match in excess of 10 percent. The Secretary is aware that a number of non-academic, post-employment training grantees under this program have experienced difficulty meeting even a 10 percent matching requirement. This problem will be solved, in part, by funding some future awards with a post-employment focus under the Rehabilitation Continuing Education program in which the current matching requirement as presented in recent closing date announcements is four percent. In all instances, the applicant share may be in-kind. As a result of a recent program audit that identified

problems in the use of faculty time for in-kind matching, the Secretary prefers that the applicant share in the Rehabilitation Long-Term Training program by directly funding student scholarship assistance as the designated match.

Changes: The 10 percent matching requirement remains, but a new provision has been added indicating that the Secretary may waive part of the non-Federal share of the cost of the project if the applicant demonstrates during the negotiations process that it does not have sufficient resources to contribute the entire match.

Requirements for Directing Grant Funds: Adverse Impact of the Requirement That a Grantee Must Use at Least 75 Percent of Total Award for Scholarships as Defined in § 386.4 (§ 386.31)

Comments: Numerous commenters, primarily from community rehabilitation programs and related personnel training programs, expressed concern that the proposed 75 percent scholarship requirement would limit access of community rehabilitation program personnel to needed continuing education programs.

Discussion: The Secretary agrees that personnel employed in community rehabilitation programs should continue to receive short-term, continuing rehabilitation training. This will be accomplished by offering that training under other, more appropriate Rehabilitation Training program categories, including 34 CFR part 389 (Rehabilitation Continuing Education Programs) and 34 CFR part 390 (Rehabilitation Short-Term Training). The Secretary believes that the availability of needed post-employment training for community rehabilitation personnel will be provided through regional continuing education programs. However, the Secretary wants to ensure that all currently funded multi-year long-term training projects continue for the remainder of their project period.

Changes: A new provision has been added (§ 386.31(c)) stating that the requirement for a grantee to use at least 75 percent of the total award for scholarships does not apply for the remainder of the project period for multi-year projects in existence as of October 1, 1994.

Comments: One commenter expressed concern that directing long-term training programs to use at least 75 percent of their total award for scholarships will reduce cross-training of professionals who work with individuals with disabilities.

Discussion: The Secretary believes that rehabilitation short-term, continuing education, and in-service training programs offer excellent opportunities for cross-training of rehabilitation professionals. In addition, the Secretary believes that existing professional program accreditation processes and individual licensure and certification procedures by national, State, and professional organizations are attentive to cross-training needs.

Changes: None.

Comments: Several commenters observed that scholarships are not needed in a prosthetic or orthotic curriculum because programs attract more than enough qualified students. Moreover, it was noted that prosthetic and orthotic programs are costly to operate. Students attend labor intensive lab classes with a low student to instructor ratio. Although programs are making changes that will reduce expenses, supply and equipment costs are high, and without additional Federal support, it would be difficult to operate them. Many students now take loans to pay for their education, are supported by employers, or are self-supporting. Supplementation of these resources with direct student support from RSA could be useful, but the commenters do not feel this should be the primary method of support.

Discussion: The Secretary acknowledges that prosthetics and orthotics (P & O) rehabilitation training is highly individualized and often requires intensive lab supervision and high equipment costs. The Secretary will take these unique circumstances, to the extent that they are supported with evidence in the proposal, into consideration in reviewing the requirement to direct at least 75 percent of the total award for scholarships. The Secretary is concerned by the argument that scholarships are not needed in P & O because the field attracts more than enough students. The purpose of the Rehabilitation Long-Term Training program is to provide academic training in areas of personnel shortages identified by the Secretary. P & O has been identified as an area with personnel shortages, and providing students with scholarships ensures that the work-or-repay provisions of the Rehabilitation Act will direct graduates to service in support of State rehabilitation agencies in areas of personnel shortages.

Changes: None.

Comments: A number of commenters requested that the current regulations be maintained to address specialized nonacademic programs in deafness, blindness, mental illness, independent living, and in vocational evaluation because unique, one-of-a-kind projects currently funded under long-term training would no longer be eligible for support under the new regulations.

Discussion: The Secretary believes that the Rehabilitation Long-Term Training program cannot be expected to meet all specialized training needs, particularly in nonacademic areas. The Secretary plans to make greater use of the extensive flexibility provided by section 302 of the Act and the six specific rehabilitation training programs to ensure that specialized training needs are addressed.

Changes: None.

Comments: Several representatives of tribal-controlled colleges commented that, because of support that they receive from the Bureau of Indian Affairs for each Native American student, there is less need for stipends and scholarships as student incentives. Tribal-controlled colleges, however, need greater levels of financial support to maintain national and regional networks through faculty travel, for supervision at internship sites, for course development, and for materials development. Commenters were concerned that the 75 percent limit would hurt program growth and quality and would be detrimental to undergraduate rehabilitation programs in rural regions where graduates work with American Indian clients.

Discussion: The Secretary agrees that tribal-controlled colleges and other training programs for Native Americans often conduct rehabilitation training under unique circumstances. Under § 386.31(b), the Secretary may award grants that use less than 75 percent of the total award for scholarships based on the unique nature of the project. It will be particularly important for applicants to document the unique circumstances that apply in their proposals to assist the Secretary in making this determination.

Changes: None.

Comments: Two commenters observed that, if a quantitative requirement regarding the percentage of funds directed to scholarships is necessary, there should be a reduction in the limit and a broadening of the unique circumstances under § 386.31(b) if less than 75 percent of the funds are devoted to scholarships. The Department should provide examples of circumstances of projects funded with less than 75 percent in scholarships. In addition, projects should be approved that demonstrate that the shortage they intend to meet is best met by funding training program resources such as faculty and equipment. Many traditional degree or certificate granting disciplines, such as physical medicine

and rehabilitation and its residency programs, are limited because of the lack of adequate numbers of faculty and, therefore, programs. Also, there should be an exception for training programs in newly emerging areas, such as independent living, that do not have degrees or certificates.

Discussion: The Secretary believes that a quantitative limit is necessary to establish clear standards for all applicants. Current long-term training grants average over $100,000 per year; therefore, a grant with 75 percent of the award targeted for scholarships will still have more than $25,000 for other related costs. Broadening the circumstances under which unique projects may be supported that use less than 75 percent of the total award for scholarships is not consistent with the overall objective of the long-term training program.

Changes: None.

Comments: Many commenters from university rehabilitation training programs expressed concern that programs at their institutions might be discontinued if Federal funds were required to be directed to student support rather than for paying for instructional costs.

Discussion: Existing regulations require academic training projects with a multi-year project period to increase the grantee's share of teaching costs progressively in each succeeding year so that total personnel costs are fully absorbed by the grantee at the termination of the project period. The 75 percent requirement provides greater latitude than existing regulations.

Changes: None.

Requirements for Directing Grant Funds: The Department of Education Should Target Priorities To Require Grantees To Award Specific Degrees or Certificates (§ 386.31).

Comments: One commenter requested that the Secretary use program announcements to target programs on degrees and certificates in appropriate areas. Two commenters requested that the Secretary be sensitive to individual student preferences for attending degree or certificate programs.

Discussion: The Secretary believes that current professional accreditation by the designated accrediting agency in the professional field in which grant support is being provided is adequate assurance that an academic program offers an appropriate degree. From time to time, the Secretary may assign an absolute priority to proposals offering a specific degree or certificate if the Secretary has determined that personnel shortages in the professional field require that preference. Those priorities will be presented for public comment before applications are solicited. The Secretary agrees that, to the extent possible in responding to personnel shortages, a wide range of degree and certificate programs offering Federal rehabilitation scholarship assistance should be available to facilitate student choice. However, no change in the regulations is required.

Changes: None.

Exclusion of Federal Employees From Receiving Training Scholarships (§ 386.33(a)(2))

Comment: One commenter protested that this is not a fair regulation because it discriminates against a group of people—Federal employees. The example was a full-time GS–7 Federal correctional officer enrolled in a rehabilitation counseling program at a university with an RSA grant.

Discussion: The Secretary agrees that the limitation on Federal employees serves no useful purpose.

Changes: The restrictive language has been dropped.

Grantee Disbursement and Scholarship Assurance Provisions (§§ 386.33 Through 386.43)

Comments: Several commenters called for a less adversarial phrasing of scholarship conditions to enhance recruitment of trainees. Other suggestions included placing the burden on the scholar (at the time of the exit interview) to report to the grantee using a packet containing several change-of-address forms, change-of-employment forms, and a completion of work obligation form. Another commenter stated the belief that any tracking or reporting activities pursuant to payback obligations are the exclusive responsibility of the granting agency.

Discussion: The regulations describe conditions that must be met by a grantee after award in subpart D and conditions that must be met by a scholar in subpart E. No adversarial system of grantee vs. scholar or Federal agency vs. grantee is implied or intended. The intent is to clearly identify the responsibilities of all parties. Tracking and recordkeeping, which can be facilitated by change-of-address and change-of-employment forms, are not excessively burdensome for the numbers of students supported by the average grant under the Rehabilitation Long-Term Training program.

Changes: None.

Work-or-Repay Requirements for Certificate Programs (§§ 386.4 and 386.34)

Comment: One commenter asked for assurances that the work-or-repay provisions will be applied to all academic degree pre- or post-employment programs as well as to non-degree awarding, certificate granting continuing education programs.

Discussion: The Secretary agrees that the work-or-repay provision applies to each individual who receives a scholarship, whether for a degree or a certificate program. The term "certificate" is defined in § 386.4 of the regulations. Examples of certificate programs that offer scholarships and are subject to the work-or-repay provision include post-baccalaureate training in allied health areas, such as occupational therapy, physical therapy, and prosthetics and orthotics. The Secretary believes that the work-or-repay provision does not apply to certificate programs in non-academic or emerging areas because no scholarship assistance is provided to individuals. Assistance in the form of per-diem expenses for short-term training is not considered to be scholarship assistance subject to the work-or-repay provision. It would be burdensome and inappropriate to enforce a work-or-repay provision for that assistance. The Secretary believes that confusion about the different types of certificates and the applicability of repayment will be resolved by focusing the Rehabilitation Long-Term Training program on academic scholarship training (degree and certificate) subject to the work-or-repay provision and using other more appropriate training authorities for non-academic, non-scholarship, post-employment training.

Changes: None.

Stricter Standards for Work-or-Repay Provision (§ 386.34)

Comment: One commenter suggested that grantees be required to arrange for all scholars to attend an extensive pre-enrollment work-or-repay seminar series at which participating agencies in the city or State (along with the grantee) would provide clearly detailed information regarding job opportunities for and subsequent responsibilities of scholars.

Discussion: The Secretary agrees that a job seminar would be valuable for many scholarship recipients and potential rehabilitation employers. Such an activity, however, should be at the discretion of the grantee and not a regulatory requirement.

Changes: None.

Flexibility in Future Applications of Work-or-Repay Requirements (§ 386.34)

Comment: One commenter encouraged flexibility in the application of this requirement to emerging fields like independent living.

Discussion: The Secretary agrees that the work-or-repay provision should apply only to academic training and that fields such as independent living (IL) do not currently provide academic training subject to the work-or-repay provision. The Secretary plans to support future post-employment training grants in IL under training authorities that are not subject to the work-or-repay provision. However, it appears likely that research and curriculum development advances will soon make academic training, particularly in community colleges, possible. Therefore, in anticipation of the need to provide academic or certificate training opportunities, the Secretary has also retained IL as a Rehabilitation Long-Term Training program field.

Changes: None.

Work-or-Repay Tracking Systems (§ 386.34(g))

Comments: Several commenters expressed concern that the proposed regulations inappropriately place grantee institutions in watch-dog roles. In particular, there was objection to the requirement for documentation that the grantee has checked for addresses of missing scholars with alumni organizations.

Discussion: The Secretary does not believe that the requirement that the grantee check with university-sponsored alumni organizations if it is experiencing difficulty in locating a scholar is inappropriate. The regulations do not constitute a basis for forcing disclosure of records from any private organization. If a grantee cannot document, because of the inability to locate a scholar who has graduated, that requirements of the work-or-repay provision have been met by an individual, the grantee will be responsible for reporting to the Secretary that the individual has not completed the requirement. The Secretary will then initiate enforcement actions as outlined in § 386.43. The intent of the regulations is to have the grantee exhaust all possibilities to locate and contact the individual before the matter is referred to the Secretary.

Changes: None.

Work-or-Repay Records (§ 386.34(h))

Comments: Two commenters expressed concern that the proposed regulations inappropriately obligate grantee institutions to perform time-consuming and expensive database creation, maintenance, updating, and reporting functions for as many as six years for which the grantee receives no compensation from the Federal Government.

Discussion: The Secretary believes that the work-or-repay provision is a partnership between grantees and the Federal Government. Grantees are closest to the individuals and are in the best position to advise, assist, and admonish scholars on matters related to their work-or-repay requirements. The Secretary believes that administrative costs for these activities are minimal and are not feasible for line itemization. Instead, the Secretary sees these costs as subsumed under grantee indirect costs. The regulations have been written to state clearly that the responsibility for recordkeeping extends until the repayment period has ended for all students provided scholarships.

Changes: None.

June 1, 1992, Effective Date for New Work-or-Repay Provisions (§ 386.34)

Comment: A commenter expressed concern that this requirement is being imposed a full five months before the 1992 Amendments to the Rehabilitation Act were even approved. The commenter asked how, if these proposed regulations are in response to the 1992 Amendments, can this date be required since it predates the amendments?

Discussion: The June 1992 effective date was set retroactively in the Rehabilitation Act Amendments of 1992.

Changes: None.

Payback Requirements for Scholars Who Become University Educators (§ 386.34)

Comments: Two commenters observed that the proposed regulations do not permit graduate and doctoral level scholarship recipients to meet the work-or-repay provision by teaching at a university unless the university has a formal agreement with the State agency identifying the university as a "related agency."

Discussion: The identification of a "related agency" derives from the Rehabilitation Act of 1973, as amended. Educators whose college or university employer meets the definition of a related agency (§ 386.4) by providing services to individuals with disabilities under an agreement with a designated State agency and who are employed in the area of specialty for which Federal support for their training was provided will have no problem meeting the requirement. Examples of acceptable arrangements include educators who have agreements to supervise field placements of students in training at State agencies and related agencies, who serve as advisors or consultants to State agencies and related agencies, and who provide direct services through their universities, including the instruction of individuals with disabilities. The key to meeting the work-or-repay requirement through employment in an educational institution is that the institution have an appropriate agreement with the designated State agency and that the scholar work in his or her specialty area.

Changes: None.

Proposed Six-Year Repayment Period (§ 386.34)

Comment: One commenter expressed concern that, after completing a two-year graduate program, a scholar will have only six years for repayment instead of the current ten-year repayment period.

Discussion: The time limits are set in the Rehabilitation Act Amendments of 1992.

Changes: None.

Work-or-Repay Provisions for Scholars Receiving Federal Benefits (§ 386.43)

Comment: One commenter suggested that the deferral of repayment due to disability be modified to exclude circumstances under which the individual achieves Social Security Disability Insurance (SSDI) earned income status.

Discussion: The Secretary does not believe that there is a need to distinguish the repayment status of scholars by the type of disability benefits a scholar may be receiving.

Changes: None.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the language added in § 386.1(b)(30) merely incorporates into the regulations a statutory change made by the Technology-Related Assistance for Individuals With Disabilities Act Amendments of 1994 to the Rehabilitation Act of 1973, as amended, and does not implement substantive policy. Therefore, the Secretary has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment on the change in the regulations is unnecessary and contrary to the public interest.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 386

Grant programs, Rehabilitation training. Reporting and recordkeeping requirements.

Dated: June 9, 1994.

(Catalog of Federal Domestic Assistance Number 84.129, Rehabilitation Training: Rehabilitation Long-Term Training)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 386 to read as follows:

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

Subpart A—General

Sec.

386.1 What is the Rehabilitation Long-Term Training program?
386.2 Who is eligible for an award?
386.3 What regulations apply?
386.4 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

386.20 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

386.30 What are the matching requirements?
386.31 What are requirements for directing grant funds?
386.32 What are allowable costs?
386.33 What are the requirements for grantees in disbursing scholarships?
386.34 What assurances must be provided by a grantee that intends to provide scholarships?
386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?

Subpart E—What Conditions Must Be Met by a Scholar?

386.40 What are the requirements for scholars?
386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?
386.42 What must a scholar do to obtain a deferral or exception to performance or repayment under a scholarship agreement?
386.43 What are the consequences of a scholar's failure to meet the terms and conditions of scholarship agreement?

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

Subpart A—General

§ 386.1 What is the Rehabilitation Long-Term Training program?

(a) The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in one of those fields of study identified in paragraph (b) of this section;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in one of those fields of study identified in paragraph (b) of this section; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

(b) The Rehabilitation Long-Term Training program is designed to provide academic training in areas of personnel shortages identified by the Secretary and published in a notice in the **Federal Register**. These areas may include—

(1) Vocational rehabilitation counseling;

(2) Rehabilitation technology;

(3) Rehabilitation medicine;

(4) Rehabilitation nursing;

(5) Rehabilitation social work;

(6) Rehabilitation psychiatry;

(7) Rehabilitation psychology;

(8) Rehabilitation dentistry;

(9) Physical therapy;

(10) Occupational therapy;

(11) Speech pathology and audiology;

(12) Physical education;

(13) Therapeutic recreation;

(14) Community rehabilitation program personnel;

(15) Prosthetics and orthotics;

(16) Specialized personnel for rehabilitation of individuals who are blind or have vision impairment;

(17) Rehabilitation of individuals who are deaf or hard of hearing;

(18) Rehabilitation of individuals who are mentally ill;

(19) Undergraduate education in the rehabilitation services;

(20) Independent living;

(21) Client assistance;

(22) Administration of community rehabilitation programs;

(23) Rehabilitation administration;

(24) Vocational evaluation and work adjustment;

(25) Services to individuals with specific disabilities or specific impediments to rehabilitation, including individuals who are members of populations that are unserved or underserved by programs under this Act;

(26) Job development and job placement services to individuals with disabilities;

(27) Supported employment services, including services of employment specialists for individuals with disabilities;

(28) Specialized services for individuals with severe disabilities;

(29) Recreation for individuals with disabilities;

(30) The use, applications, and benefits of assistive technology devices and assistive technology services; and

(31) Other fields contributing to the rehabilitation of individuals with disabilities.

(Authority: 29 U.S.C. 711 and 771a)

§ 386.2 Who is eligible for an award?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: 29 U.S.C. 771a(a))

§ 386.3 What regulations apply?

The following regulations apply to the Rehabilitation Training: Rehabilitation Long-Term Training program:

(a) The regulations in this part 386.

(b) The regulations in 34 CFR part 385.

(Authority: 29 U.S.C. 771a)

§ 386.4 What definitions apply?

The following definitions apply to this program:

(a) Definitions in 34 CFR 385.4.

(b) *Other definitions.* The following definitions also apply to this part:

Academic year means a full-time course of study—

(1) Taken for a period totaling at least nine months; or

(2) Taken for the equivalent of at least two semesters, two trimesters, or three quarters.

Certificate means a recognized educational credential awarded by a grantee under this part that attests to the completion of a specified series of courses or program of study.

Professional corporation or professional practice means—

(1) A professional service corporation or practice formed by one or more individuals duly authorized to render the same professional service, for the purpose of rendering that service; and

(2) The corporation or practice and its members are subject to the same supervision by appropriate State regulatory agencies as individual practitioners.

Related agency means—

(1) An American Indian rehabilitation program; or

(2) Any of the following agencies that provide services to individuals with disabilities under an agreement with a designated State agency in the area of specialty for which training is provided:

(i) A Federal, State, or local agency.

(ii) A nonprofit organization.

(iii) A professional corporation or professional practice group.

Scholar means an individual who is enrolled in a certificate or degree granting course of study in one of the areas listed in § 386.1(b) and who receives scholarship assistance under this part.

Scholarship means an award of financial assistance to a scholar for training and includes all disbursements or credits for student stipends, tuition and fees, and student travel in conjunction with training assignments.

State rehabilitation agency means the designated State agency.

(Authority: 29 U.S.C. 711(c))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 386.20 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Plan of operation.* (30 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(a).

(b) *Quality of key personnel.* (10 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(b).

(c) *Budget and cost effectiveness.* (10 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(c).

(d) *Evaluation plan.* (5 points) The Secretary evaluates each application on the basis of the criterion in § 385.32(d).

(e) *Adequacy of resources.* (5 points) The Secretary evaluates each application on the basis of criterion in § 385.32(e).

(f)(1) *Evidence of need.* (10 points) The Secretary reviews each application for information that shows that the need for the training project has been adequately justified.

(2) The Secretary looks for information that shows that the need for the training project has been established in terms of rehabilitation supply and demand for qualified rehabilitation personnel and includes an assessment of how the project will respond to personnel needs established in local, State, or national studies.

(g)(1) *Relevance to State-Federal rehabilitation service program.* (10 points) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either to increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of individuals with physical or mental disabilities through degree or certificate granting programs, or to improve the skills and quality of professional personnel in the rehabilitation field in which the training is to be provided through the granting of a degree or certificate.

(h)(1) *Nature and scope of curriculum.* (20 points) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that ensure student involvement in the provision of vocational rehabilitation, supported employment, or independent living rehabilitation services to individuals with disabilities, especially individuals with severe disabilities;

(iv) The coursework includes student exposure to vocational rehabilitation, supported employment, or independent living rehabilitation processes, concepts, programs, and services; and

(v) If applicable, there is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 711(c) and 771a)

Subpart D—What Conditions Must Be Met After an Award?

§ 386.30 What are the matching requirements?

The Federal share may not be more than 90 percent of the total cost of a project under this program. The Secretary may waive part of the non-Federal share of the cost of the project after negotiations if the applicant demonstrates that it does not have sufficient resources to contribute the entire match.

(Authority: 29 U.S.C. 711(c))

§ 386.31 What are the requirements for directing grant funds?

(a) A grantee must use at least 75 percent of the total award for scholarships as defined in § 386.4.

(b) The Secretary may award grants that use less than 75 percent of the total award for scholarships based upon the unique nature of the project, such as the establishment of a new training program or long-term training in an emerging field that does not award degrees or certificates.

(c) For multi-year projects in existence on October 1, 1994, the requirements of paragraph (a) of this section do not apply for the remainder of the project period.

(Authority: 29 U.S.C. 711(c) and 771a)

§ 386.32 What are allowable costs?

In addition to those allowable costs established in the Education Department General Administrative Regulations in 34 CFR 75.530 through 75.562, the following items are allowable under long-term training projects:

(a) Student stipends.

(b) Tuition and fees.

(c) Student travel in conjunction with training assignments.

(Authority: 29 U.S.C. 711(c) and 771a)

§ 386.33 What are the requirements for grantees in disbursing scholarships?

(a) Before disbursement of scholarship assistance to an individual, a grantee—

(1)(i) Shall obtain documentation that the individual is—

(A) A U.S. citizen or national; or

(B) A permanent resident of the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, or the Commonwealth of the Northern Mariana Islands; or

(ii) Shall confirm from documentation issued to the individual by the U.S. Immigration and Naturalization Service that he or she—

(A) Is a lawful permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; and

(2) Shall confirm that the applicant has expressed interest in a career in clinical practice, administration, supervision, teaching, or research in the vocational rehabilitation, supported employment, or independent living rehabilitation of individuals with disabilities, especially individuals with severe disabilities;

(3) Shall have documentation that the individual expects to maintain or seek employment in a designated State rehabilitation agency or in a nonprofit rehabilitation, professional corporation, professional practice group, or related agency providing services to individuals with disabilities or individuals with severe disabilities under an agreement with a designated State agency;

(4) Shall reduce the scholarship by the amount in which the combined awards would be in excess of the cost of attendance, if a scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV of the Higher Education Act, would otherwise exceed the scholar's cost of attendance;

(5) Shall limit scholarship assistance to the individual's cost of attendance at the institution for no more than four academic years except that the grantee may provide an extension consistent with the institution's accommodations under section 504 of the Act if the grantee determines that an individual has a disability that seriously affects the completion of the course of study; and

(6) Shall obtain a Certification of Eligibility for Federal Assistance from each scholar as prescribed in 34 CFR 75.60, 75.61, and 75.62.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 711(c) and 771a(b))

§ 386.34 What assurances must be provided by a grantee that intends to provide scholarships?

A grantee under this part that intends to grant scholarships for any academic year beginning after June 1, 1992, shall provide the following assurances before an award is made:

(a) *Requirement for agreement.* No individual will be provided a scholarship without entering into a written agreement containing the terms and conditions required by this section. An individual will sign and date the agreement prior to the initial disbursement of scholarship funds to the individual for payment of the individual's expenses, such as tuition.

(b) *Disclosure to applicants.* The terms and conditions of the agreement that the grantee enters into with a scholar will be fully disclosed in the application for scholarship.

(c) *Form and terms of agreement.* Each scholarship agreement with a grantee will be in the form and contain the terms that the Secretary requires, including at a minimum the following provisions:

(1) The scholar will—

(i) Maintain employment—

(A) In a nonprofit rehabilitation agency or related agency or in a State rehabilitation agency or related agency, including a professional corporation or professional practice group through which the individual has a service arrangement with the designated State agency;

(B) On a full- or part-time basis; and

(C) For a period of not less than the full-time equivalent of two years for each year for which assistance under this section was received, within a period, beginning after the recipient completes the training for which the scholarship was awarded, of not more than the sum of the number of years required in this paragraph and two additional years; and

(ii) Repay all or part of any scholarship received, plus interest, if the individual does not fulfill the requirements of paragraph (c)(1(i) of this section, except as the Secretary by regulations may provide for repayment exceptions and deferrals.

(2) The employment obligation in paragraph (c)(1) of this section as applied to a part-time scholar will be based on the accumulated academic years of training for which the scholarship is received.

(3) Until the scholar has satisfied the employment obligation described in paragraph (c)(1) of this section, the scholar will inform the grantee of any change of name, address, or employment status and will document employment satisfying the terms of the agreement.

(4) Subject to the provisions in § 386.41 regarding a deferral or exception, when the scholar enters repayment status under § 386.43(e), the amount of the scholarship that has not been retired through eligible employment will constitute a debt owed to the United States that—

(i) Will be repaid by the scholar, including interest and costs of collection as provided in § 386.43; and

(ii) May be collected by the Secretary in accordance with 34 CFR Part 30, in the case of the scholar's failure to meet the obligation of § 386.43.

(d) *Executed agreement.* The grantee will provide an original executed agreement upon request to the Secretary.

(e) *Standards for satisfactory progress.* The grantee will establish, publish, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution's program of study, if the institution's program of study is accredited by such an agency, and if the agency has those standards;

(2) For a scholar enrolled in an eligible program who is to receive assistance under the Rehabilitation Act, are the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under the Rehabilitation Act; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum timeframe in which the scholar shall complete the scholar's educational objective, degree, or certificate.

(iii) Consistent application of standards to all scholars within categories of students; e.g., full-time, part-time, undergraduates, graduate students, and students attending programs established by the institution.

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(v) Specific procedures for appeal of a determination that a scholar is not making satisfactory progress and for reinstatement of aid.

(f) *Exit certification.* The grantee has established policies and procedures for

receiving written certification from scholars at the time of exit from the program acknowledging the following:

(1) The name of the institution and the number of the Federal grant that provided the scholarship.

(2) The scholar's field of study.

(3) The number of years the scholar needs to work to satisfy the work requirements in § 386.34(c)(1)(i)(C).

(4) The total amount of scholarship assistance received subject to the work-or-repay provision in § 386.34(c)(1)(ii).

(5) The time period during which the scholar must satisfy the work requirements in § 386.34(c)(1)(i)(C).

(6) All other obligations of the scholar in § 386.34.

(g) *Tracking system.* The grantee has established policies and procedures to determine compliance of the scholar with the terms of the agreement. In order to determine whether a scholar has met the work-or-repay provision in § 386.34(c)(1)(i), the tracking system must include for each employment position maintained by the scholar—

(1) Documentation of the employer's name, address, dates of the scholar's employment, and the position the scholar maintained;

(2) Documentation of how the employment meets the requirements in § 386.34(c)(1)(i); and

(3) Documentation that the grantee, if experiencing difficulty in locating a scholar, has checked with existing tracking systems operated by alumni organizations.

(h) *Reports.* The grantee shall make reports to the Secretary that are necessary to carry out the Secretary's functions under this part.

(i) *Records.* The grantee shall maintain the information obtained in paragraphs (g) and (h) of this section for a period of time equal to the time required to fulfill the obligation under § 386.34(c)(1)(i)(C).

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 711(c) and 771a(b))

§ 386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?

A grantee that is an institution of higher education provided assistance under this part shall cooperate with the following requests for information from a designated State agency:

(a) Information required by section 101(a)(7) of the Act which may include, but is not limited to—

(1) The number of students enrolled by the grantee in rehabilitation training programs; and

(2) The number of rehabilitation professionals trained by the grantee who graduated with certification or licensure, or with credentials to qualify for certification or licensure, during the past year.

(b) Information on the availability of rehabilitation courses leading to certification or licensure, or the credentials to qualify for certification or licensure, to assist State agencies in the planning of a program of staff development for all classes of positions that are involved in the administration and operation of the State agency's vocational rehabilitation program.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 711(c) and 771a)

Subpart E—What Conditions Must Be Met by a Scholar?

§ 386.40 What are the requirements for scholars?

A scholar—

(a) Shall receive the training at the educational institution or agency designated in the scholarship; and

(b) Shall not accept payment of educational allowances from any other Federal, State, or local public or private nonprofit agency if that allowance conflicts with the individual's obligation under § 386.33(a)(4) or § 386.34(c)(1).

(c) Shall enter into a written agreement with the grantee, before starting training, that meets the terms and conditions required in § 386.34;

(d) Shall be enrolled in a course of study leading to a certificate or degree in one of the fields designated in § 386.1(b); and

(e) Shall maintain satisfactory progress toward the certificate or degree as determined by the grantee.

(Authority: 29 U.S.C. 711(c) and 771a(b))

§ 386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?

A deferral or repayment exception to the requirements of § 386.34(c)(1) may be granted, in whole or part, by the Secretary as follows:

(a) Repayment is not required if the scholar—

(1) Is unable to continue the course of study or perform the work obligation because of a disability that is expected to continue indefinitely or result in death; or

(2) Has died.

(b) Repayment of a scholarship may be deferred during the time the scholar is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Serving as a volunteer under the Peace Corps Act;

(4) Serving as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973;

(5) Temporarily totally disabled, for a period not to exceed three years; or

(6) Unable to secure employment as required by the agreement by reason of the care provided to a disabled spouse for a period not to exceed 12 months.

(Authority: 29 U.S.C. 771(c) and 771a(b))

§ 386.42 What must a scholar do to obtain a deferral or exception to performance or repayment under a scholarship agreement?

To obtain a deferral or exception to performance or repayment under a scholarship agreement, a scholar shall provide the following:

(a) *Written application.* A written application must be made to the Secretary to request a deferral or an exception to performance or repayment of a scholarship.

(b) *Documentation.* (1) Documentation must be provided to substantiate the grounds for a deferral or exception.

(2) Documentation necessary to substantiate an exception under § 386.41(a)(1) or a deferral under § 386.41(b)(5) must include a sworn affidavit from a qualified physician or other evidence of disability satisfactory to the Secretary.

(3) Documentation to substantiate an exception under § 386.41(a)(2) must include a death certificate or other evidence conclusive under State law.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 711(c) and 771a)

§ 386.43 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

In the event of a failure to meet the terms and conditions of a scholarship agreement or to obtain a deferral or an exception as provided in § 386.41, the scholar shall repay all or part of the scholarship as follows:

(a) *Amount.* The amount of the scholarship to be repaid is proportional to the employment obligation not completed.

(b) *Interest rate.* The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(c) *Interest accrual.* (1) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (e) of this section.

(2) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(3) No interest is charged for the period of time during which repayment has been deferred under § 386.41.

(d) *Collection costs.* Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(e) *Repayment status.* A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(1) The date the scholar informs the Secretary he or she does not plan to fulfill the employment obligation under the agreement.

(2) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the employment obligation within the number of years required in § 386.34(c)(1).

(f) *Amounts and frequency of payment.* The scholar shall make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(Authority: 29 U.S.C. 711(c) and 771a(b))

[FR Doc. 94–14594 Filed 6–15–94; 8:45 am]

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Federal Register

Thursday
June 16, 1994

Part VIII

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

Notice of Funding Availability for the Affirmative Fair Housing Marketing Reinvention Lab Project; Competitive Solicitation

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–94–3765; FR–3650–N–01]

NOFA for the Affirmative Fair Housing Marketing Reinvention Lab Project; Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This NOFA announces the availability of up to $1.0 million of FY 1993 Fair Housing Initiatives Program funding for a special project to be carried out in the Chicago, Illinois metropolitan area. The purposes of this project, which is part of the overall effort to reinvent the way the Department carries out its civil rights mission, are (1) to test the effectiveness of a metropolitan areawide affirmative fair housing marketing plan and associated activities to be administered by a central clearinghouse, especially in terms of generating increased housing choice and opportunity for eligible assisted and insured housing applicants; (2) to determine the potential savings in administrative costs for both housing providers and the Department if the clearinghouse concept were to be implemented permanently; and (3) to determine whether eligible applicants for federally-assisted and/or insured private rental or sales housing would be better served by the clearinghouse in terms of the support services performed during the mortgage loan evaluation and rental application processes.

In the body of this document is information concerning the purpose of the NOFA, eligibility, available amounts, selection criteria, how to apply for funding, and how selections will be made.

DATES: An application for funding under this Notice will be available following publication of the Notice. The actual application due date and time will be specified in the application kit. In no event, however, will the application be due before August 15, 1994.

ADDRESSES: To obtain a copy of the application kit, please write the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850 or call the toll-free number 1–800–343–3442.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Director, Office of Program Standards and Evaluation, (202) 708–0288, or William Dudley Gregorie, Director, Program Standards Division, Office of Fair Housing and Equal Opportunity, room 5226, 451 Seventh Street SW., room 5224, Washington, DC 20410, (202) 708–2287. A telecommunications device (TDD) for hearing- and speech-impaired persons is available at (202) 708–2287. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

Application requirements associated with this program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2529–0033.

I. Purpose and Substantive Description

(a) Authority

(1) The Fair Housing Act

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, advertising or financing of housing. The Fair Housing Act also directs the Secretary to cooperate with State and local agencies administering fair housing laws, and to cooperate with and render technical assistance to State, local and other public or private entities carrying out programs to prevent and eliminate discriminatory housing practices. The Act also directs the Secretary to administer the Department's housing and urban development programs in a manner affirmatively to further the objectives of the Act.

In addition to the Affirmative Fair Housing Marketing requirements described below, the Department has since 1971 attempted to translate the affirmatively furthering mandate through policy mechanisms such as the Site and Neighborhood Standards, Tenant Selection and Assignment and Equal Housing Opportunity Plans, and other program and project-specific strategies. In recent months the Department has recognized that these project and program-specific mechanisms do not fully address the broad-based fair housing problems which actually exist. The Department has also identified the problem of concentration of persons by race and income as a major barrier to the achievement of the objectives of fair housing in the United States. The Department is in the process of formulating appropriate responses that will be tested in the near future through special demonstration projects similar to this lab, including the feasibility of implementing a metropolitan areawide affirmative fair housing marketing plan through a clearinghouse mechanism.

(2) The FHIP Program

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established as a demonstration program the Fair Housing Initiatives Program (FHIP) to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enforce and enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

Three general categories of activities were established at 24 CFR part 125 for FHIP funding under section 561 of the Housing and Community Development Act of 1987: The Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative. Section 905 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992), amended section 561 by adding specific eligible applicants and activities to the Education and Outreach and Private Enforcement Initiatives, as well as an entirely new Fair Housing Organization Initiative. Section 905 also gave the program permanent status.

The regulations at 24 CFR part 125, subpart C, describe the purpose and eligible activities under the Education and Outreach Initiative, the segment of the FHIP program under which the activity proposed in this NOFA is to be funded. Section 125.303(b) describes eligible outreach projects that may be funded under this initiative, including but not limited to the following:

"(1) Developing national, regional and local media campaigns;

(2) Bringing housing industry and civic or fair housing groups together to identify illegal real estate practices and to determine how to correct them;

(3) Designing specialized outreach projects to inform all persons of the availability of housing opportunities;

(4) Developing and implementing a response to new or more sophisticated housing practices that may result in discriminatory housing practices; and

(5) Developing mechanisms for the identification of and quick response to housing discrimination cases that involve physical harm."

The activities set forth in this NOFA are eligible activities under the Education and Outreach Initiative of the FHIP program, since they relate to various eligible activities of this initiative. Other sections of this NOFA will specifically illustrate how this relationship is facilitated.

(3) Affirmative Fair Housing Marketing Requirements

The Fair Housing Act states that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. The Act also states at Section 808(e)(5) that the Department of Housing and Urban Development shall administer its programs in a manner affirmatively to further the objectives of the Fair Housing Act. Affirmative Fair Housing Marketing has, since 1972, been one of the means by which the Department has carried out Section 808(e)(5) of the Act through the programs it has administered. The purpose of Affirmative Fair Housing Marketing as stated in the regulations at 24 CFR 200.600, is to "achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion, sex, handicap, familial status or national origin." These regulations also apply to all applicants for participation in HUD insured subsidized or unsubsidized housing programs whose applications are approved for:

Multifamily projects and manufactured home parks of five or more lots, units or spaces, and initial submissions by a lender for an application for mortgage insurance on a single family property, where the property is located in a subdivision and the builder or developer intends to sell five or more properties in the subdivision;[1] and dwelling units when the applicant's participation would exceed five or more HUD-insured single-family homes within the preceding twelve-month period. Such participants are required to develop an affirmative marketing program on a HUD-approved form. The regulations describe the specific components of an Affirmative Fair Housing Marketing Plan (AFHM) at 24 CFR 200.620.

The Department reviews and evaluates these affirmative marketing plans submitted on Form HUD–935.2 (see attachment) as part of an applicant's request for funding under a number of single-family and multifamily mortgage insurance and subsidy programs. These reviews and evaluations, as well as the monitoring of the implementation of these Affirmative Marketing Plans, are conducted under procedures outlined in HUD Handbook 8025.1 REV–2, Implementation of Affirmative Fair Housing Marketing Requirements. The Department also conducts compliance-related activities under the regulations at 24 CFR Part 108, Affirmative Fair Housing Marketing Compliance Regulations.

A number of evaluations of both the administration of affirmative fair housing marketing and the underlying objectives of the policy conducted since 1974 have raised questions about AFHM's effectiveness and results, especially in terms of its effects on racial housing patterns within housing market areas. These evaluations and recent assessments of how the review of Affirmative Fair Housing Marketing (AFHM) Plans fits into the overall workload of the Field Office FHEO Divisions and Program Operations Divisions in the Regional Offices have also raised questions about the overall cost-effectiveness and efficiency of the review process itself. The 1990 evaluation of AFHM performed by the Office of Program Standards and Evaluation recommended that the Department pilot test the use of a third party to accept applications, check references, and provide an applicant a list of all available housing opportunities under HUD-assisted and insured single-family and multifamily programs. The evaluation also recommended that the Department conduct studies of the manner in which various groups search for rental and sales housing and the costs and benefits of various marketing techniques. The activities described in this NOFA address these recommendations in large part.

(b) Allocation Amounts

For FY 1993, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (approved October 6, 1992, Pub. L. 102–389), (93 Appropriations Act) appropriated $10.6 million for the FHIP program. Of this amount, $1 million of Education and Outreach Initiative funds is made available under this NOFA to carry out an affirmative fair housing marketing "lab" experiment. The balance of $9.6 million in FY 1993 funds was made available in a NOFA published on December 22, 1993 (58 FR 68000) and amended on February 25, 1994 (59 FR 9235).

The Department estimates that the affirmative fair housing marketing lab project will function approximately 18 months at a cost to the federal government not to exceed $1.0 million dollars. The final cost will depend upon submissions from eligible applicants. In no case will the cost to the federal government for implementing the project under this NOFA exceed $1.0 million dollars. The continuing operation of the clearinghouse following completion of the lab will depend entirely on the income generated from fees and other funding sources.

(c) Project Objectives

As a means of implementing the Department's strong commitment to administer its programs affirmatively to further fair housing, the Department seeks to implement an affirmative fair housing marketing lab. This lab will test an areawide affirmative marketing approach intended to expand affordable housing opportunities for those persons identified as least likely to apply for the housing because of where it is located. The specific objectives of this lab are:

(1) To promote greater awareness and acceptance on the part of housing providers and the entire community of the need to market assisted housing on a nondiscriminatory basis throughout the metropolitan area to increase housing choice and advance equal housing opportunity;

(2) To develop a model for the use of metropolitan areawide affirmative marketing as an effective tool to affirmatively further fair housing and provide greater affordable housing choice and opportunity throughout a metropolitan area;

(3) To determine whether use of a clearinghouse is an effective method over the long-term for assisted and insured multifamily housing providers and builders and developers of HUD-insured single-family housing to carry out their responsibilities under the Affirmative Fair Housing Marketing Regulations; and

(4) To test ways for metropolitan areawide affirmative marketing clearinghouses to become and remain financially self-supporting.

(d) Eligible Applicants

The following entities, either individually or in combination, are eligible to apply for funding under this

[1] See the **Federal Register** of August 3, 1993 HUD Systems for Approval of Single-Family Subdivisions. This Final Rule included amendments to the Affirmative Fair Housing Marketing Regulations that added handicap and familial status as protected classes under these Regulations.

NOFA: Non-profit civil rights and housing organizations; organizations representing segments of the housing or mortgage lending industries; higher education institutions with expertise in civil rights and housing. While location within the Chicago metropolitan area would be highly desirable, it is not required.

(e) Project Components

HUD seeks to implement a fair housing marketing lab to examine new methods for offering privately operated federally assisted and insured multifamily housing, within the Chicago metropolitan area to all eligible residents of the area. For the purpose of this NOFA, the Chicago metropolitan area includes the City of Chicago and Cook, DuPage, Will, Kane, McHenry and Lake Counties. This area was selected because of its extensive past experience in implementing areawide interjurisdictional programs to promote fair housing and increased housing choice and because of the existing infrastructure for carrying out such programs. It is hoped that a new approach to affirmative fair housing marketing will result in a breakdown of jurisdictional barriers to housing opportunities and promote initiatives that diminish residential segregation and encourage residential diversity. The $1 million offered through this NOFA will be targeted toward affirmative fair housing marketing activities affecting either multifamily housing alone, single-family housing alone, or both simultaneously. In addition, an applicant may focus its proposed activities on either the entire metropolitan area or specific target areas which it may designate.

The Affirmative Fair Housing Marketing Lab involves three distinct elements:

(1) The first element of the lab entails the establishment of a metropolitan areawide clearinghouse that will:

(i) Develop and administer a metropolitan areawide affirmative fair housing marketing plan affecting participating privately-owned federally assisted and insured multifamily housing. A complete description of this Plan is found at Section IV (a)(2) of this NOFA. The plan would not include assisted housing owned by the public housing authorities in the Chicago metropolitan area, since at this time the Department's Affirmative Fair Housing Marketing Regulations do not apply to PHA-operated housing. Furthermore, the Department plans to conduct similar, larger-scale experiments on metropolitan-wide strategies which will combine both privately-operated and PHA-operated housing.

(ii) Develop and maintain the following databases:

(A) A metropolitan areawide database of all families eligible for privately operated HUD-assisted (including insured) multifamily housing who have used the services offered by the clearinghouse. The database would be compiled through any of the following methods:

(*1*) Encouraging families already on waiting lists of participating projects to take advantage of the housing opportunities offered by the clearinghouse. Under this concept, the project manager would notify in writing all families on his or her individual project waiting list of the existence of the clearinghouse and the availability of both the services and the expanded housing choices it will offer. The notice would also say that any family which was found to be eligible for any housing opportunity offered by the clearinghouse would not lose its position on the individual project's waiting list and would in fact be "crosslisted" for all projects for which the family was eligible.

Note: A participant may opt to continue to maintain its own project waiting list while using the other application intake services.

(*2*) Recruiting families who respond to advertisements placed in various media as part of the proposer's metropolitan areawide affirmative marketing plan;

(B) An areawide list of housing opportunities offered by managers of participating multifamily projects subject to AFHM requirements. These housing opportunities may be categorized by jurisdiction within the Chicago metropolitan area, by neighborhood within the City of Chicago, by assisted or insured housing program, and by bedroom size;

(C) The demographics of each development and the neighborhoods in which the assisted and insured housing opportunities are located must be included and updated as turnover occurs. Information on the social services, transportation, schools, churches, employment opportunities and other facets of the community must also be included.

(iii) Carry out a major effort to secure voluntary participation in the clearinghouse by a significant number of housing providers subject to AFHM requirements that do business within the area designated by the applicant. For purposes of this NOFA, housing providers include corporations, individuals, or other entities who own and/or operate apartment complexes of 10 or more units (including the Illinois Housing Development Authority which operates Section 8 Housing projects subject to AFHM requirements), realty companies and home builders who build, rehabilitate or sell 10 or more new single-family homes annually, and financial institutions involved in the making of loans on residential property. This effort shall include outreach and education programs targeted at apartment managers, real estate sales organizations and housing industry professionals, and shall describe the roles of the clearinghouse and the providers in helping individual families take advantage of expanding affordable housing choices throughout the Chicago metropolitan area. These outreach activities should be targeted especially toward those housing professionals that do business outside of racially-impacted, ethnically-impacted and lower-income impacted neighborhoods and are willing to attract applicants to those areas in which their race does not predominate. Such activities should also be targeted to housing professionals who do business in predominantly minority areas and are willing to attempt to attract non-minority applicants.

The clearinghouse operator will have to explain the financial benefits and obligations of participating in the clearinghouse, which can include the participants' being relieved of their AFHM and eligibility determination responsibilities. To encourage participation by housing providers, HUD will waive the AFHM requirements and, as necessary to permit participation, other regulatory and contractual requirements pertaining to tenant selection and assignment that are not required by statute throughout the period of the lab. These waivers would affect those who would otherwise be subject to the waived programmatic requirements (i.e., all persons approved for the development or rehabilitation of single-family subdivisions, multifamily projects of 10 or more units, and all other persons subject to AFHM Plan requirements in Departmental programs). This affirmative fair housing marketing lab will not alter in any way the requirement for Public Housing Authorities to develop and submit an Equal Housing Opportunity Plan (EHOP) for Section 8 existing housing.

(iv) Operate a one-stop metropolitan areawide housing center which shall perform the following services:

(A) Processing applications for participating federally-assisted and/or insured privately-owned and operated multifamily housing submitted by families who desire to investigate housing opportunities offered by participating owners, managers and real estate brokers. While making applicants aware of all housing opportunities in the area designated by the applicant, the office shall emphasize housing opportunities within areas in which the applicant is least likely to apply for the housing without special outreach activities, because of where the housing is located, and offer additional fair housing counseling for those persons desiring to relocate within such areas. The clearinghouse shall also encourage the creation of housing opportunities within predominantly minority sections of the lab area, so that applicants regardless of race or ethnicity may take advantage of them. The clearinghouse shall also make available information on transportation, schools, social services, employment opportunities and other facets of living in the area selected by the applicant.

For all families that have not previously been on an assisted project's waiting list, the clearinghouse could review for eligibility, perform income and employment verification, secure all information necessary to determine federal or local preferences, and automatically crosslist the applicant for each type of housing project within the program for which he or she is eligible. For example, if a family were to apply for a Section 221(d)(3) unit and were to be found eligible under that program, the family would be crosslisted for all of that program's projects which were participating in the clearinghouse.

(B) Conduct testing and other related activities, particularly in the event that an applicant served by the clearinghouse appears to have encountered discrimination on the basis of race, color, religion, sex, national origin, handicap or familial status or other prohibited conduct that may violate the Fair Housing Act or Executive Order 11063. However, testing for enforcement purposes may be funded only from sources other than this NOFA, and the proposer shall indicate clearly the purpose of any testing and the source and amount of funding devoted to this purpose. Testing, if carried out for educational purposes only, may be funded through this NOFA.

(C) Provide escort and other services to families willing to explore housing opportunities in neighborhoods where their race or ethnic group does not predominate and where they would have been least likely to apply without special outreach.

(v) The applicant can also propose any of the following activities affecting FHA-insured, VA or conventionally financed single-family housing which is affordable for low-income families. These activities may be funded either exclusively from this NOFA, exclusively from sources other than this NOFA or from both federal and non-federal sources:

(A) An areawide affirmative fair housing marketing plan which emphasizes the single-family market;

(B) An areawide list of single-family homeownership opportunities generated from financial institutions, realty companies and local governments. These entities may refer prospective home purchasers to the clearinghouse upon request, so that such purchasers can avail themselves of the homeownership opportunities listed by the clearinghouse; and

(C) A campaign that targets: (*1*) Realty companies and home builders who build, rehabilitate or sell 10 or more new single-family homes annually, and (*2*) financial institutions involved in the making of loans on residential property through the outreach program to housing providers contained in the proposed areawide affirmative marketing plan.

(2) The second element of the lab consists of an evaluation of the clearinghouse concept. The evaluation shall address:

(i) How the clearinghouse concept compares with the present system of HUD review of individual affirmative marketing plans and with the participation by local affiliates of the National Association of Realtors, the National Association of Homebuilders, the National Association of Real Estate Brokers and several other major national real estate industry organizations in the Voluntary Affirmative Marketing Agreement Program, in terms of cost-effectiveness; and

(ii) How effective the clearinghouse is in creating greater housing choice and opportunity and in affecting change in a community's housing occupancy and homeownership patterns.

The Department has decided that the evaluation of the activities conducted under this NOFA will be conducted by an independent contractor prior to the end of the project.

(3) The third element of the lab requires the development of new ways to:

(i) Identify groups within the eligible population that are less likely to apply for housing without special outreach;

(ii) Encourage those groups to take advantage of housing opportunities in nontraditional areas;

(iii) Identify effective advertising methods;

(iv) Increase awareness of nondiscriminatory tenant selection and application processing; and

(v) Test other ways to implement affirmative fair housing marketing.

(f) Selection Criteria/Ranking Factors

(1) Selection Criteria for Ranking Applications for Assistance

All proposals submitted in response to this NOFA will be ranked on the basis of the following selection criteria:

(i) *The anticipated impact of the proposal on the concerns identified in the application.* (25 points). In determining the anticipated impact of each proposal, HUD will evaluate whether the proposal is well-conceived and likely to be successful if implemented, and will consider the degree to which the proposal addresses the significant fair housing issues affecting the Chicago metropolitan area which had been identified in the fair housing analysis required under this NOFA. Particular emphasis will be placed on how the proposer describes the potential impact of the proposed plan on the fair housing environment. This criterion will be judged on the basis of the applicant's submissions in response to Paragraphs IV (a)(1), (a)(2) and (a)(6) of this NOFA under the heading "Checklist of Application Submission Requirements".

(ii) *The extent to which the proposal will provide benefits in support of fair housing after the lab has been completed.* (25 points) In determining the extent to which the proposal will continue providing benefits after funded activities have been completed, HUD will consider the degree to which the concept can be used as a model for similar metropolitan areawide affirmative marketing clearinghouses in other parts of the country. HUD will also evaluate how the applicant plans to insure the long-term financial viability of the clearinghouse fundraising from public and private sources or other means. This criterion will be judged on the basis of the applicant's submissions in response to Paragraphs IV (a)(1), (a)(2), (a)(5), and (a)(8) of this NOFA under the heading "Checklist of Application Submission Requirements".

(iii) *The extent to which the project will provide the maximum benefits in a cost-effective manner* (20 points). In determining the extent to which the proposal will provide the maximum benefit for the metropolitan area covered by this NOFA in a cost-effective manner, HUD will consider the quality and reasonableness of the proposed statement of work, and the timeline and

budget for implementation and completion of the lab.

HUD will consider as well the adequacy and clarity of proposed procedures to be used by the proposer for monitoring the progress of the lab and ensuring its timely completion. These procedures may consist of a system for checking whether or not the milestones established are being met.

The applicant's capability in handling financial resources (e.g., adequate financial control and accounting procedures) demonstrated through previous project management experience will be taken into account as part of the assessment. HUD will also consider the degree to which the applicant proposes to use funds for program costs as opposed to administrative costs. This criterion will be judged on the basis of the proposer's submissions in response to Paragraphs IV(a)(3), (a)(5) and (a)(7) of this NOFA under the heading "Checklist of Application Submission Requirements".

(iv) The *extent to which the applicant's professional and organizational experience will further the achievement of the proposal's goals* (20 points). In determining the extent to which the applicant's professional and organizational experience are likely to further the achievement of the proposal's goals, HUD will consider the applicant's experience in formulating and carrying out programs to prevent or eliminate discriminatory practices, including the applicant's management of past or current projects, including projects that have addressed the problem of providing housing on a nondiscriminatory basis to minorities, women, the disabled and other protected classes.

HUD will also consider these qualifications in the context of the applicant's overall knowledge of the fair housing environment in the Chicago metropolitan area. It will also consider the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff that will be hired, including subcontractors and consultants. This criterion will be judged on the basis of the proposer's submissions in response to Paragraph IV(a)(3) of this NOFA under the heading "Checklist of Application Submission Requirements".

(v) *The extent to which the project will utilize other public or private resources that may be available* (10 points). The applicant shall describe whether in addition to the $1.0 million provided by this NOFA it plans to use other public or private resources. The other resources must be clearly and specifically targeted for this project and must be over and above the resources available to the applicant as part of its present, non-project operations for such expenses as salaries, equipment, supplies and rent. This criterion will be judged on the basis of the applicant's response to Paragraph IV (a)(4) of this NOFA under the heading "Checklist of Application Submission Requirements".

(vi) *Minority Business Enterprise/ Women-Owned Business Enterprise* (5 points). The applicant shall also describe its experience in Minority Business Enterprise/Women-Owned Business Enterprise contracting. The applicant shall provide a summary of the total amount awarded in each of the two categories for the previous three years and the percentage that amount represents of the total contracts awarded by the applicant in the relevant time period.

(2) Selection Process. Each application for funding will be evaluated competitively and awarded points based on the General Selection Criteria identified in the previous section. The final decision rests with the Assistant Secretary or her designee. After eligible applications are evaluated against the factors for award and assigned a score, they will be organized by rank order.

(3) Cost factors. The Department expects to fund one proposal as a result of this NOFA. It is possible, however, that two or more complete and eligible applications, after evaluation against the Selection Criteria, may be considered equal in technical merit. Should that occur, their relative evaluated cost will become the deciding factor. Furthermore, an applicant's proposal will not be funded whose costs are determined to be unrealistically low or unreasonably high.

(f) Applicant Notification and Award Procedures

(1) Notification

No information will be available to applicants during the period of HUD evaluation, except for notification in writing to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. The Selectee will be announced by HUD upon completion of the evaluation process, subject to final negotiations and award.

(2) Negotiations

After HUD has ranked the applications and made an initial determination of applicants whose scores are within the funding range (but before the actual award), HUD may require that applicants in this group participate in negotiations to determine the specific terms of the grant agreement. In cases where it is not possible to conclude the necessary negotiations successfully, awards will not be made. If an award is not made to an applicant whose application is in the initial funding ranking because of an inability to complete successful negotiations, and if funds are available to fund any applications that may have fallen outside the initial funding ranking, HUD will select the next highest ranking applicant and proceed as described in the preceding paragraph.

(3) Funding Instrument

HUD expects to award a cost reimbursable or fixed-price cooperative agreement to the successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be appropriate after negotiations with the applicant.

(4) Reduction of Requested Grant Amounts and Special Conditions

HUD may approve an application for an amount lower than the amount requested, withhold funds after approval, and/or the grantee will be required to comply with special conditions added to the grant agreement, in accordance with 24 CFR 85.12, the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more of the components of the proposal is unreasonable or unnecessary.

(ii) The applicant has demonstrated an inability to manage HUD grants;

(iii) For any other reason where good cause exists.

(5) Performance Sanctions

A recipient failing to comply with the procedures set forth in its grant agreement will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in FHIP, and denial of further participation in programs of the Department or of any federal agency.

III. Application Process

An application kit is required as the formal submission to apply for funding. The kit includes information on the Statement of Work and Budget for activities proposed by the applicant. An application may be obtained by writing the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850, or by calling the toll-free number 1–800–343–3442. To

ensure a prompt response, it is suggested that requests for application kits be made by telephone.

Completed applications are to be submitted to Laurence D. Pearl, Director, Office of Program Standards and Evaluation, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, room 5224, 451 Seventh Street SW., Washington, DC 20410. The application due date and time will be specified in the application kit. In no event, however, will the application be due before August 15, 1994. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A transmission by facsimile machine ("FAX") will not constitute delivery.

IV. Checklist of Application Submission Requirements

(a) General Requirements

The application kit will contain a checklist of application submission requirements to complete the application process. Each proposal submitted under this NOFA must contain the following items:

(1) A metropolitan areawide analysis of the impediments to fair housing choice faced by individual homeseekers within the Chicago metropolitan area, taking into account any of the institutional problems involving the major segments of the real estate and lending industries. This analysis must include a discussion of the problems which specifically relate to the marketing of single-family and multifamily housing to all segments of the population, with particular emphasis on marketing to persons considered protected under the Fair Housing Act and other statutes. The analysis must also discuss the connections between the effectiveness of marketing and the processes of selecting tenants for multifamily projects and evaluating the creditworthiness of applicants for home mortgages. The analysis must also address how its proposed clearinghouse concept will (i) address any and all impediments identified, (ii) help effect change in the current racial and income related housing patterns within the Chicago metropolitan area affected by this NOFA, and (iii) help increase the awareness of all participants in the housing process, especially participants from the real estate industry, of their obligations under fair housing statutes.

(2) A metropolitan areawide affirmative fair housing marketing plan with the following components:

(i) A description of an overall advertising campaign targeted toward groups identified as least likely to apply for assisted housing located within areas for reasons such as the race or national origin of the persons in the area, the lack of units that are accessible to physically disabled persons in the area and the absence of significant numbers of families with children in the area. The campaign may be organized to reach the entire area affected by this NOFA or may be segmented to reach particular jurisdictions, sections within individual jurisdictions or particular segments of the eligible population. The plan shall describe the media to be used, including minority media, community organizations and contacts, referral services that assist disabled persons, and other tactics. The objective of this part of the plan is to encourage prospective renters and home purchasers to use the services of the clearinghouse in their housing searches, especially those services that will support their searches within non-traditional areas.

(ii) A campaign to involve the various provider communities in the clearinghouse on a voluntary basis, *e.g.*, assisted multifamily housing managers, local boards of realtors, home builders associations and individual home builders. The plan shall describe the methods to be used to recruit within the provider community, and how it plans to describe the incentives and obligations (both financial and otherwise) for participation in the clearinghouse. All such financial and other incentives and obligations shall be reviewed and approved by the Department prior to the implementation of this lab. The plan shall also describe any and all training programs to be presented to clearinghouse participants on their obligations under federal, state and local fair housing laws.

(iii) A fair housing counseling program to be given all prospective renters and homebuyers who use the clearinghouse's services to search for dwellings located within areas in which their race or ethnic group does not predominate and in areas where they would be otherwise least likely to apply for housing without special outreach activities due to factors pertaining to the racial or ethnic composition of the neighborhood.

(iv) A goals statement on ensuring increased housing choice and causing deconcentration by race and income in different sections of the community. These goals may be stated in terms of achieving socio-economic changes, *e.g.*, in the racial/ethnic composition of particular neighborhoods or projects, or of getting individual homeseekers to feel that their housing options were increased by availing themselves of the services offered by the clearinghouse. The goals can also be stated in terms of bringing about changes in the attitudes and practices of financial institutions, real estate offices, apartment management companies and other entities that make decisions about their customers' housing choices.

(v) Description of the structure of a consolidated areawide database for multifamily housing units offered by the clearinghouse's fair housing center. This database can be generated from applicants who avail themselves of the services offered by the fair housing center after it opens, or from the waiting lists maintained by the individual participating private owners or management companies prior to the center's opening. The proposer shall also describe the mechanics of actual tenant selection, *e.g.*, selection by the fair housing center staff or by the individual apartment management company or landlord; the procedures to be used by the clearinghouse in processing applications from individual apartment seekers and the arrangements to be made with participating multifamily project managers with respect to referrals from the clearinghouse and the actual selection of tenants;

(vi) Descriptions of activities appropriate to the single-family market, to be included by applicants who wish to emphasize marketing to the prospective home purchaser. Such activities may include:

(A) Testing appropriate methods of involving local financial institutions under the aegis of the fair housing center in activities which will increase the sensitivity and awareness of such institutions and their professional staff about the impact of their lending and mortgage credit review practices upon properties and individuals located in lower-income and racially and ethnically impacted neighborhoods;

(B) Testing new methods of marketing to nontraditional home purchasers, *e.g.*, low-income families, persons with disabilities, and first-time home purchasers who desire to increase their knowledge of the responsibilities of homeownership;

(C) Testing a clearinghouse system geared toward referring prospective home purchasers to real estate

professionals who will assist them in navigating the home purchase process.

(3) A statement of work, a budget—which must include a realistic amount, not to exceed $2,000, in travel costs for financial management training sponsored by the Department—and a timeline for the implementation of the proposed activities, consisting of a description of the specific activities to be conducted with these funds, the geographic areas to be served by the activities, the cost of each proposed activity and a schedule for the implementation and completion of the activities.

(4) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices or in implementing other civil rights programs, the experience and qualifications of existing personnel identified for key positions, or a description of the qualifications of new staff to be hired, including subcontractors/consultants.

(5) A description of the financial mechanisms to be used by the clearinghouse operator in addition to the federal funds to make the clearinghouse self-sustaining. Such a mechanism shall be reviewed and approved by the Department prior to the implementation of this lab.

(6) A description of the procedures to be used by the applicant for monitoring the progress of the proposed activities.

(7) A description of the fair housing benefits that successful completion of the project will produce, and the indicators by which these benefits are to be measured. These possible benefits can include changes in racial, ethnic and income-related housing patterns that may have taken place during the testing period, increases in awareness and changes in lending, or sales and rental practices which result in fairer treatment for persons protected by civil rights statutes. Particular emphasis must be placed on measuring and comparing the costs and the benefits of the present system of HUD AFHM Plan processing and the clearinghouse concept being tested under this NOFA.

(8) A description of how the clearinghouse will be of continuing use in dealing with housing discrimination after the completion of the demonstration. In this section, the proposer shall explain how the clearinghouse plans to continue its existence after the expiration of this grant, describing the public and private sources of financing and the services which are both similar to and different from the services to be offered during the period of this grant.

(9) HUD Form 2880, Applicant Disclosures.

(10) The applicant must submit a certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule at 24 CFR part 87, published in the **Federal Register** on February 26, 1990 (55 FR 6736). This statute generally prohibits recipients and subrecipients of federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive and Legislative Branches of the federal government in connection with a specific contract, grant, or loan. If warranted, the applicant should include the Disclosure of Lobbying Activities Form (SF–LLL).

V. Corrections to Deficient Applications

Applicants will not be disqualified from being considered for funding because of technical deficiencies in their application submission, e.g., an omission of information such as regulatory/program certifications, inadequate budget data, or incomplete signatory requirements for application submission.

HUD will notify an applicant in writing of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency.

The 14-day correction period pertains only to non-substantive, technical deficiencies or errors. Technical deficiencies relate to items that:

(a) Are not necessary for HUD review under selection criteria/ranking factors; and

(b) Would not improve the substantive quality of the proposal.

VI. Other Matters

Section 504 Requirements

Recipients will be expected to comply with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and 24 CFR part 8. Section 504 prohibits discrimination based on handicap in federally assisted programs.

Prohibition Against Lobbying

On February 26, 1990, at 55 FR 6736, the Department joined in the issuance of a government-wide interim rule advising recipients and subrecipients of federal contracts, grants, cooperative agreements and loans exceeding $100,000 of a new prohibition against use of appropriated funds for lobbying the Executive or Legislative Branches of the federal government in connection with a specific contract, grant, or loan. In general, this rule prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of fair housing policies is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of federal agencies to certify that they will provide drug-free workplaces. Thus, each applicant must certify that it will comply with drug-free

workplace requirements in accordance with 24 CFR part 24, subpart F.

Section 102 HUD Reform Act Documentation and Public Access Requirements; Applicant/Recipient disclosures

Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case generally for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Authority: Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note); Title VIII, Civil Rights Act of 1968, as amended (42 U.S.C. 3601–3619); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 10, 1994.

Paul Williams,

General Deputy, Assistant Secretary for Fair Housing and Equal Opportunity.

BILLING CODE 4210–28–P

Affirmative Fair Housing Marketing Plan

U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity

Attachment

OMB Approval No. 2529-0013 (exp. 10/31/93)

1a. Applicant's Name, Address (including city, State and zip code) & Phone Number:

1c. Project/Application Number | 1d. Number of Units | 1e. Price or Rental Range From $ To $

1f. For Multifamily Housing Only: ☐ Elderly ☐ Non-Elderly

1g. Approximate Starting Dates: Advertising: Occupancy:

1b. Project's Name, Location (including city, State and zip code):

1h. County: | 1i. Census Tract:

1j. Managing/Sales Agent's Name & Address* (including city, State and zip code)

2. **Type of Affirmative Marketing Plan:** (mark only one)
☐ Project Plan ☐ Minority Area ☐ White (non-minority) Area
☐ Mixed Area (with _____ % minority residents)
☐ Annual Plan (for single-family scattered site units) **Note:** A separate Annual Plan must be developed for each type of census tract in which the housing is to be built.

3. **Direction of Marketing Activity:** (indicate which group(s) in the housing market area are least likely to apply for the housing because of its location and other factors without special outreach efforts)
☐ White (non-Hispanic) ☐ Black (non-Hispanic) ☐ Hispanic
☐ American Indian or Alaskan Native ☐ Asian or Pacific Islander

4a. **Marketing Program: Commercial Media:** (Check the type of media to be used to advertise the availability of this housing)
☐ Newspapers/Publications ☐ Radio ☐ TV ☐ Billboards ☐ Other (specify)

Name of Newspaper, Radio or TV Station	Racial/Ethnic Identification of Readers/Audience	Size/Duration of Advertising

4b. **Marketing Program: Brochures, Signs, and HUD's Fair Housing Poster:**
(1) Will brochures, letters, or handouts be used to advertise? ☐ Yes ☐ No If "Yes", attach a copy or submit when available
(2) For project site sign, indicate sign size _____ x _____; Logotype size _____ x _____. Attach a photograph of project sign or submit when available.
(3) HUD's Fair Housing Poster must be conspicuously displayed wherever sales/rentals and showings take place. Fair Housing Posters will be displayed in the:
☐ Sales/Rental Office ☐ Real Estate Office ☐ Model Unit ☐ Other (specify)

4c. **Community Contacts.** To further inform the group(s) least likely to apply about the availability of the housing, the applicant agrees to establish and maintain contact with the groups/organizations listed below that are located in the housing market area or SMSA. If more space is needed, attach an additional sheet. Notify HUD-FHEO of any changes in this list. Attach a copy of correspondence to be mailed to these groups/organizations. (Provide all requested information.)

Name of Group/Organization:	Racial/Ethnic Identification	Approximate Date	Person Contacted or to be Contacted

Address & Phone Number	Method of Contact	Indicate the specific function the Group/Organization will undertake in implementing the marketing program:

5. **Future Marketing Activities** (Rental Units Only). Mark the box(s) that best describe marketing activities to fill vacancies as they occur after the project has been initially occupied.
☐ Newspapers/Publications ☐ Radio ☐ TV ☐ Brochures/Leaflets/Handouts
☐ Site Signs ☐ Community Contacts ☐ Other (specify)

6. **Experience and Staff Instructions:** (See instructions)
6a. Staff has experience. ☐ Yes ☐ No
6b. On separate sheets, indicate training to be provided to staff on Federal, State and local fair housing laws and regulations, as well as this AFHM Plan. Attach a copy of the instructions to staff regarding fair housing.

7. **Additional Considerations.** Attach additional sheets as needed.

8. **Changes and Revisions:** By signing this form, the applicant agrees, after appropriate consultation with HUD, to change any part of the plan covering a multifamily project to ensure continued compliance with Section 200.620 of HUD's Affirmative Fair Housing Marketing Regulations.

Signature of Person Submitting this Plan & Date of Submission	For HUD-FHEO Use Only: Approval By: Signature & Date	Disapproval By: Signature & Date
Name (type or print)	Name (type or print)	Name (type or print)
Title & Name of Company	Title	Title

Previous Editions are Obsolete

form HUD-935.2 (10/92)
ref. Handbook 8025.1

Public Reporting Burden for this collection of information is estimated to average 0.75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2529-0013), Washington, D.C. 20503. Do not send this completed form to either of the above addressees.

Instructions

Send the Completed form to: Your Local HUD Office, Attention: Fair Housing and Equal Opportunity Director/Specialist

The Affirmative Fair Housing Marketing Regulations require that each applicant subject to these regulations carry out an affirmative program to attract prospective buyers or tenants of all minority and non- minority groups in the housing market area regardless of race, color, religion, sex or national origin. These groups include Whites (Non-Hispanic) and members of minority groups: Blacks (Non-Hispanic), American Indians/Alaskan Natives, Hispanics and Asian/Pacific Islanders in the Standard Metropolitan Statistical Areas (SMSA) or housing market area who may be subject to housing discrimination on the basis of race, color, religion, sex or national origin. The applicant shall describe on this form the activities it proposes to carry out during advance marketing, where applicable, and the initial sales or rent-up period. The affirmative program also should ensure that any group(s) of persons normally NOT likely to apply for the housing without special outreach efforts (because of existing neighborhood racial or ethnic patterns, location of housing in the SMSA price or other factors), know about the housing, feel welcome to apply and have the opportunity to buy or rent.

Part 1 - Applicant and Project Identification. The applicant may obtain Census Tract location information, item 1i, from local planning agencies, public libraries and other sources of Census Data. For item 1g, specify approximate starting date of marketing activities to the groups targeted for special outreach and the anticipated date of initial occupancy. Item 1j is to be completed only if the applicant is not to implement the plan on its own.

Part 2 - Type of Affirmative Marketing Plan. Applicants for multifamily and subdivision projects are to submit a Project Plan which describes the marketing program for the particular project or subdivision. Scattered site builders are to submit individual annual plans based on the racial composition of each type of census tract. For example, if a builder plans to construct units in both minority and non- minority census tracts, separate plans shall be submitted for all of the housing proposed for both types.

Part 3 - Direction of Marketing Activity. Considering factors such as price or rental of housing, the racial/ethnic characteristics of the neighborhood in which housing is (or is to be) located, and the population within the housing market area, public transportation routes, etc., indicate which group(s) you believe are least likely to apply without special outreach.

Part 4 - Marketing Program. The applicant shall describe the marketing program to be used to attract all segments of the eligible population, especially those groups designated in the Plan as least likely to apply. The applicant shall state: the type of media to be used, the names of newspapers/call letters of radio or TV stations; the identity of the circulation or audience of the media identified in the Plan, e.g., White (Non-Hispanic), Black (Non-Hispanic), Hispanic, Asian-American/Pacific Islander, American Indian/ Alaskan Native, and the size or duration of newspaper advertising or length and frequency of broadcast advertising. Community contacts include individuals or organizations that are well known in the project area or the locality and that can influence persons within groups considered least likely to apply. Such contacts may include, but need not be limited to: neighborhood, minority and women's organizations, churches, labor unions, employers, public and private agencies, and individuals who are connected with these organizations and/or are well-known in the community.

Part 5 - Future Marketing Activities. Self-Explanatory.

Part 6 - Experience and Staff Instructions.

a. Indicate whether the applicant has previous experience in marketing housing to group(s) identified as least likely to apply for the housing.

b. Describe the instructions and training given to sales/rental staff. This guidance to staff must include information regarding Federal, State and local fair housing laws and this AFHM Plan. Copies of any written materials should be submitted with the Plan, if such materials are available.

Part 7 - Additional Considerations. In this section describe other efforts not mentioned previously which are planned to attract persons in either those groups already identified in the Plan as least likely to apply for the housing or in groups not previously identified in the Plan. Such efforts may include outreach activities to female-headed households.

Part 8 - The applicant's authorized agent signs and dates the AFHM Plan. By signing the Plan, the applicant assumes full responsibility for its implementation. The Department may at any time monitor the implementation of the Plan and request modification in its format or content, where the Department deems necessary.

Notice of Intent to Begin Marketing. No later than 90 days prior to the initiation of sales or rental marketing activities, the applicant with an approved Affirmative Fair Housing Marketing Plan shall submit notice of intent to begin marketing. The notification is required by the Affirmative Fair Housing Marketing Plan Compliance Regulations (24 CFR Part 108.15). It is submitted either orally or in writing to the FHEO Division of the appropriate HUD Office serving the locality in which the proposed housing is located. OMB approval of the Affirmative Fair Housing Plan includes approval of this notification procedure as part of the Plan. The burden hours for such notification are included in the total designated for this Affirmative Fair Housing Marketing Plan form.

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Federal Register

Thursday
June 16, 1994

Part IX

Department of Education

34 CFR Part 682
Federal Family Education Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840–AB62

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL Program consists of the Federal Stafford, Federal Supplemental Loans for Students (SLS), Federal PLUS, and the Federal Consolidation Loan programs. These amendments are needed to implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1992 (Pub. L. 102–325). Public Law 102–325 added new section 428J to the HEA which authorizes the Secretary to establish a demonstration program for loan forgiveness for certain types of professional or public service. Under section 428J of the HEA, the Secretary is authorized to forgive portions of Federal Stafford Loans incurred by a student borrower who performs volunteer service or works in certain teaching or nursing areas. Minor changes to section 428J were made by the National and Community Service Trust Act of 1993 (Pub. L. 103–82). Section 428J was also recently amended by the Higher Education Technical Amendments of 1993 (Pub. L. 103–208). Those additional statutory changes are also reflected in these regulations. This program is not currently funded.

EFFECTIVE DATE: Pursuant to section 482(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1089(c)), these regulations take effect July 1, 1995, with the exception of the information collection requirements in § 682.215. The information collection requirements in § 682.215 will become effective on July 1, 1995, or after these requirements have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, whichever is later. A document announcing the effective date will be published later in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Barbara Bauman, Program Specialist, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U. S. Department of Education, 400 Maryland Avenue SW. (room 4310, ROB–3), Washington, DC 20202–5449. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: New section 428J of the HEA authorizes the Secretary to promulgate regulations to establish a loan forgiveness demonstration program in the Federal Stafford Loan Program. The purpose of the demonstration program is to encourage individuals to enter the teaching and nursing professions and to perform national and community service by offering partial Federal Stafford loan forgiveness. If funding is provided, the loan forgiveness program is available only to new borrowers who, as of October 1, 1989, had no outstanding debt on a FFEL Program loan.

On February 25, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for part 682 in the **Federal Register** (59 FR 9376). The NPRM included a discussion of the major issues surrounding the proposed changes which will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues may be found:

- Eligibility requirements for a borrower who wishes to qualify for loan forgiveness (page 9378);
- Application procedures for loan forgiveness (page 9378);
- Limitations of the loan forgiveness program (page 9378);
- Requirements for borrowers desiring loan forgiveness under the teaching, volunteer service or nursing categories (pages 9378–9379);
- Percentages of loan amounts eligible for forgiveness based on year of service completed (page 9379).

Substantive Revisions to the Notice of Proposed Rulemaking

Section 682.215(c) Application

- The Secretary has defined September 1 as the earliest date in which a borrower can apply for loan forgiveness in addition to the October 1 deadline for submitting applications.
- The Secretary has clarified that borrowers who submit incomplete and inaccurate loan forgiveness applications will not be considered for loan forgiveness unless and until a completed application is submitted.

Section 682.215(i) Definitions

- The Secretary has expanded the definition of both "elementary school" and "secondary school" to include nonprofit private day or residential schools to be consistent with the definition for these terms in the Perkins Loan Program definitions.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 14 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes made to the regulations as a result of those comments follows.

Major issues are grouped according to subject. Technical and other minor changes, and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority, are not addressed.

Section 682.215(a) General

Comment: Some commenters noted that there is no formal method specified in the regulations to inform borrowers about the loan forgiveness program. The commenters recommended that details be provided to borrowers in the application/promissory note or the disclosure statement. The commenters did not believe that lenders should be required to do a special mailing.

Discussion: The Secretary will ensure that guaranty agencies take steps to inform borrowers about the loan forgiveness program should the program be funded. These methods may include mention in the application/promissory note or disclosure statement or in public documents such as the Student Guide. Lenders will not be expected to publicize the program through a special mailing.

Change: None.

Comment: A commenter recommended that the definition of eligible borrower be clarified to convey that a borrower who had paid off an outstanding debt under the FFEL programs prior to October 1, 1989 would be eligible for the forgiveness program if the borrower became a "new" borrower with their first disbursement of a new FFEL program loan on or after October 1, 1989.

Discussion: The Secretary believes that the regulations convey that a borrower who has no outstanding debt under the FFEL programs as of October 1, 1989 would qualify as an eligible borrower.

Change: None.

Comment: A commenter asked if lenders would be required to produce a new repayment schedule for a borrower each year loan forgiveness is granted. The commenter also suggested that the percentages of loan forgiveness should

have no effect on the borrower's current payments.

Discussion: The Secretary does not believe that it is necessary for a lender to provide new repayment schedules to borrowers who receive loan forgiveness. The Secretary expects that the reduction of the loan amount owed by a borrower as a result of the loan forgiveness will most likely result in a reduction of the number of payments to be made by the borrower.

Change: None.

Comment: A commenter asked if all Federal Stafford loans were eligible for forgiveness under this demonstration program.

Discussion: The Secretary agrees that the regulations should be clarified to explain that subsidized, unsubsidized, and nonsubsidized Federal Stafford loans will be eligible for forgiveness under § 682.215.

Change: The final regulations have been revised to incorporate this clarification.

Comment: One commenter urged the Secretary to include loans made under the Federal Direct Student Loan Program to be eligible for the forgiveness program. The commenter believed that since the Omnibus Budget Reconciliation Act of 1993 stated that all terms and conditions under the Federal Stafford Loan Program, which include cancellation, deferment and other provisions, also apply to the Federal Direct Student Loan Program, Congress intended for the loan forgiveness program to be included as well.

Discussion: The Secretary agrees with the commenter that loans made under the Federal Direct Student Loan Program are eligible for the forgiveness program. Direct Loan regulations will specify Direct Loan borrowers' eligibility for loan forgiveness under this program.

Change: None.

Comment: Some commenters believed that the Secretary should provide timeframes and procedures by which to notify borrowers of their approval or denial of loan forgiveness eligibility. The commenters were also interested in knowing the timeframes and procedures that the Secretary will adopt to notify the holder regarding which borrowers will receive forgiveness and when the holder will be given the appropriate funds.

Discussion: The borrower will be informed of his or her eligibility for loan forgiveness by the Secretary in a timely manner. The Secretary will take appropriate steps to inform holders of proper procedures. However, the Secretary notes that without knowing the amount of appropriations, if any, that might be available for the forgiveness program and the potential number of recipients, it is impossible to define those methods in these regulations.

Change: None.

Comment: Some commenters expressed concern about borrower confusion regarding the borrower's repayment obligation if the borrower is eligible for loan forgiveness. The commenters were worried about the period of time between when a borrower applies for loan forgiveness and the holder's receipt of the loan forgiveness payment from the Secretary. The commenters wanted to know how the servicer would be notified that the borrower's loan or loans are eligible for loan forgiveness and whether the borrower would be required to continue to make regular monthly payments in the time period between the loan forgiveness application submission and payment from the Secretary.

Discussion: The Secretary recognizes the potential problems created by this structure. Because this program is not an entitlement, the Secretary cannot promise an otherwise eligible borrower that funding will be available to award a percentage of loan forgiveness. Therefore, the Secretary reminds the commenters that the borrower is still in repayment on his or her loan, regardless of eligibility for the loan forgiveness unless he or she is in an authorized deferment or forbearance period.

Change: None.

Comment: One commenter wanted to know if a borrower could participate in both a state forgiveness program as well as this demonstration program.

Discussion: Although the National and Community Service Act of 1990 (42 U.S.C. 12571 *et seq.*) precludes a borrower from receiving a loan cancellation benefit under both that program and this loan forgiveness program, the Secretary believes that a borrower participating in the loan forgiveness program under § 682.215 is eligible to participate in state forgiveness programs, where allowable by the state.

Change: None.

Section 682.215(b)

Comment: Some commenters believed that in the instances where a defaulted borrower made satisfactory repayment arrangements on the loans in default, a borrower should be allowed to have those defaulted loans forgiven as well. The commenters believed that if the motivation behind the demonstration program was to encourage borrowers to enter into public service, then defaulted borrowers could be further enticed into public service by being allowed to "work off" their defaulted loans as well as those not in default.

Discussion: This issue was thoroughly discussed at the negotiated rulemaking sessions that preceded publication of the NPRM. Given that there may be limited or no funding for this program, the Secretary felt that it would be inappropriate to provide this benefit on loans that are still in default.

Change: None.

Comment: A commenter recommended that the Secretary and the guaranty agencies establish a way to easily verify that satisfactory repayment arrangements had been made on a loan that is to be considered eligible for loan forgiveness.

Discussion: The Secretary encourages guaranty agencies to provide appropriate information to lenders regarding a borrower's loan status. Additionally, the Secretary anticipates that the National Student Loan Data System will assist in providing this type of information.

Change: None.

Comment: Two commenters recommended that the Secretary should encourage guaranty agencies to consider those borrowers who have defaulted on their loans but are likely to be eligible for loan forgiveness to be good candidates for a rehabilitated loan.

Discussion: The Secretary believes that it is illogical to conclude that eligibility for one program assures eligibility for another. The loan rehabilitation program has specific requirements separate from the forgiveness program.

Change: None.

Comment: One commenter requested that the Secretary clarify that defaulted loans that have been rehabilitated should be eligible for forgiveness.

Discussion: The Secretary agrees with the commenter. Once a loan has been rehabilitated it is no longer in default and is therefore considered to be eligible for forgiveness under this program.

Change: The final regulations have been revised to incorporate this clarification.

Section 682.215(c)

Comment: Three commenters urged the Secretary to develop a standardized loan forgiveness application form that includes such data items as borrower dates of service, loan balance information, eligibility, and interest amounts in order to simplify the process.

Discussion: The Secretary agrees and is committed to consulting with FFEL participants to develop a standardized

application form pursuant to the requirements of section 432(1) of the HEA.

Change: None.

Comment: One commenter questioned to whom the term "designee" in § 682.215(c) refers. The commenter also recommended that the Secretary provide the designee with a means by which to identify and verify that a certain type of facility, tax-exempt organization or teacher shortage area meets the criteria of § 682.215. The commenter suggested that a more suitable alternative would be to require the certifying official to certify that the organization meets the requirements of § 682.215.

Discussion: The term "designee" refers to the departmental official assigned with implementing this program. The Secretary will provide the designee with all necessary information at the appropriate time if necessary. The Secretary notes that the NPRM provided that the certifying official in each category of forgiveness certify that the borrower's service meets the requirements of § 682.215.

Change: None.

Comment: In considering the October 1 deadline for submitting forgiveness applications, some commenters recommended that the regulations define a specific timeframe as to the earliest date an application for forgiveness may be received. They reasoned that since funding for this program may be limited and will be awarded on a first-come, first-served basis, applicants should be informed of the first date upon which they can apply. The commenters also wished to know whether a borrower need complete the service prior to applying for forgiveness or merely have completed service before the October 1 deadline.

Discussion: The Secretary agrees with the commenters that a borrower should be informed of the first date on which a forgiveness application can be received. A borrower's application for forgiveness should be postmarked no earlier than September 1 of each year that forgiveness is requested. The Secretary has chosen the September start date in order to be fair to all categories of borrowers, since certain professions have more definitive begin and end dates or terms that may end in June or July that would give them an advantage over other borrowers if the earliest date to apply was July or August. The Secretary also believes that it is appropriate to require that the service be completed prior to the borrower's submission of an application for forgiveness. This would result in fair treatment to the greatest number of borrowers and would eliminate the need to confirm that the borrower completed the service.

Change: The final regulations have been revised to include September 1 as the earliest date for forgiveness applications to be received.

Comment: A commenter asked if applications for forgiveness should be routed through the lender or guaranty agency or directly to the Secretary.

Discussion: Applications for loan forgiveness should be directed to the Secretary.

Change: None.

Comment: Some commenters felt that there should be a provision whereby a borrower who qualified for forgiveness one year but did not receive it due to limited funding should be first to be considered for forgiveness the following year. The commenters also wanted to know if a borrower who qualified and received the forgiveness one year would be automatically eligible for the following year's forgiveness.

Discussion: This approach was discussed at the negotiated rulemaking sessions. The Secretary believes that given the limited amount of funding, there is no statutory basis to allow eligible applicants from one year to automatically qualify for the next year. Similarly, borrowers who were denied forgiveness due to lack of funding one year will not be given priority over the next year's applicants. Borrowers are required to reapply for each year for which they wish to receive the forgiveness benefit.

Change: None.

Comment: Some commenters wanted to know how to treat a borrower's incomplete forgiveness application. The commenters asked whether a borrower should be disqualified, or if allowed to provide the missing information, how much time should a borrower have to submit the information. They also wanted to know if the borrower's first-come, first-served status would be affected by submitting an incomplete application.

Discussion: An incomplete or inaccurate application will not qualify a borrower for receiving loan forgiveness. However, the Secretary will attempt to notify the borrowers who submit inaccurate or incomplete applications so that they will have an opportunity to complete and submit a complete application by the October 1 deadline.

Change: None.

Comment: A number of commenters expressed confusion over the treatment of borrowers with regard to forbearance. Some commenters questioned whether forbearance for eligible borrowers under the forgiveness program was necessary or administratively feasible.

Discussion: The Secretary reminds the commenters that all borrowers who request forbearance while they are serving in areas that would qualify for forgiveness are entitled to forbearance as stated in section 428J. The ability to obtain forbearance is based on the borrower's being engaged in qualifying service and is not dependent on whether the borrower actually receives the loan forgiveness.

Change: None.

Comment: Some commenters asked when a borrower could request forbearance since the borrower does not apply for forgiveness until after the year of service has been completed. The commenters questioned whether forbearance would be granted retroactively at the time the borrower applied for forgiveness or if the lender or servicer would be expected to grant forbearance to a borrower the year prior to application while the borrower was serving in an eligible position. The commenters felt that the wording of the NPRM regarding forbearance may be confusing for a borrower who may think that payments do not have to be made during the period of service. The commenters also wished to know if the forbearance applied only to the loans eligible for forgiveness or on all loans.

Discussion: The Secretary wishes to emphasize that the holder or servicer is to grant forbearance to a borrower upon the borrower's request while the borrower is serving in one of the categories of service eligible for forgiveness under § 682.215. A borrower shall receive forbearance while serving regardless of whether sufficient funding is available for forgiveness at the end of that year of service. The forbearance will apply to all loans held by the borrower that would normally be entitled to forbearance. A borrower who is not in an authorized deferment or forbearance status while serving is expected to follow the terms of the promissory note regarding repayment.

Change: None.

Comment: Some commenters recommended that all borrowers in qualifying service that wish to apply for forbearance be given explicit instruction as to the terms of the forbearance and the fact that receiving forbearance for service under § 682.215 was not related to receiving loan forgiveness for performing qualifying service. The commenters were concerned that a borrower would be incurring additional costs with a forbearance with the potential of not receiving the loan forgiveness benefit for performing qualifying service.

Discussion: The Secretary shares the concerns of the commenters and expects holders to provide information on the option of forbearance under this program as is required under the FFEL programs. The holders will inform borrowers that funding, if available for this program, is limited and that receiving a forbearance during qualifying service does not guarantee loan forgiveness under this program and as such may result in additional costs to the borrower.

Change: None.

Section 682.215 (e), (f), and (g)

Comment: Some commenters asked that the Secretary clarify that a borrower must apply for forgiveness each year following the year of qualifying service in the teaching, volunteer and nursing categories.

Discussion: The Secretary anticipates that some eligible borrowers may have completed qualifying service in previous years that would not be immediately preceding the time in which they apply for this program. In this situation, the Secretary envisions that a borrower would need to indicate the begin and end date of the year of service, as all other eligible borrowers are required to do. Loan forgiveness, if funding is available, would be at the level based on which year the borrower last received forgiveness. For example, a borrower who qualified and received the benefit for the first year of service, but not the second year, who now qualifies for forgiveness for the third year of service would receive the benefit as a second year participant in the forgiveness program.

Change: The final regulations have been revised to clarify that a borrower must apply each year to obtain loan forgiveness under this demonstration program.

Section 682.215(h)

Comment: Some commenters asked whether all Federal Stafford loans are eligible for loan forgiveness. They recommended that if all Federal Stafford loans are eligible the Secretary should specify how the holder should apply the forgiveness amounts.

Discussion: The Secretary clarifies that unsubsidized, subsidized and nonsubsidized Federal Stafford loans are eligible for this forgiveness program and that the holder should apply the forgiveness amounts first to the unsubsidized portion, followed by the subsidized and then the nonsubsidized portion of the loans.

Change: The final regulations have been revised in both § 682.215(a) and § 682.215(h) to incorporate this clarification.

Comment: Some commenters are worried that holders and servicers do not link individual loans to the specific academic years when the borrower was in school and will therefore be unable to identify which years constitute the borrower's last two years of undergraduate education or two-year period when the borrower was obtaining a post graduate teaching or additional teaching certificate.

Discussion: The Secretary believes that holders and servicers are able to track loan amounts for this purpose because numerous existing program requirements already require such tracking. Loans are made based on statutory annual loan limits for applicable undergraduate and post baccalaureate academic levels. This data is available on a loan-by-loan basis for each borrower in lender and guaranty agency systems and should be sufficient for purposes of implementing these provisions.

Change: None.

Section 682.215(h)(5)

Comment: A commenter objected to the provision in the NPRM that states that payments eligible for forgiveness under this program that were already repaid by the borrower will not be refunded. The commenter noted that a prudent borrower may choose not to risk the additional costs of forbearance given the questionable funding for this program and continue to repay the loan, perhaps resulting in paying a loan amount that could have been forgiven but is now not eligible.

Discussion: The statute does not authorize the refunding of any repayment of a Federal Stafford loan.

Change: None.

Section 682.215(i)

Comment: A commenter recommended that the term "secondary school" should not include education beyond the twelfth grade. The commenter stated that this definition conflicts with the commonly recognized definition of postsecondary education in many states and thus may confuse those involved in postsecondary education.

Discussion: This definition was taken from already existing FFEL program regulations.

Change: None.

Comment: One commenter objected to the Secretary limiting the teaching forgiveness provision to borrowers who teach in public elementary and secondary schools. The commenter pointed out that section 428J provides forgiveness for those borrowers who teach full time in a school that qualifies under section 462(a)(2)(A) of the HEA for loan cancellation for Perkins loan recipients. The commenter noted that under the Perkins Loan Program, cancellation is provided for full-time teachers in nonprofit private elementary schools as well. The commenter requested that the Secretary make the definitions of elementary school and secondary school consistent with the Perkins definitions.

Discussion: The Secretary agrees with the commenter.

Change: The final regulations have been revised to include nonprofit private schools in the elementary school and secondary school definitions. This change allows those serving in these types of schools to be eligible under the teaching forgiveness category of § 682.215(e).

Comment: A commenter suggested that the Secretary expand the definitions that pertain to the nursing category of loan forgiveness. The commenter asked that the Secretary broaden the eligibility of sites to encourage more nursing graduates to participate in the forgiveness program.

Discussion: The Secretary consulted with the Secretary of Health and Human Services (HHS) in determining the definitions that would apply to the facilities described in section 428J in which a borrower would be employed full-time as a nurse. These definitions were taken from HHS and other existing regulations. The statute indicates that the Secretary is to rely on the expertise of HHS in these areas. Accordingly, there will be no change.

Change: None.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: May 10, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

The Secretary amends part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. A new § 682.215 is added to read as follows:

§ 682.215 Federal Stafford Loan forgiveness demonstration program.

(a) *General.* The Federal Stafford Loan forgiveness demonstration program is intended to encourage individuals to enter the teaching and nursing professions and to perform national and community service. Under this demonstration program, the Secretary repays portions of unsubsidized, subsidized and nonsubsidized Federal Stafford obligations that were incurred by a borrower during the borrower's last two years of undergraduate education if that borrower worked in those professions or performed that service. For purposes of this section, an eligible borrower is a borrower who, as of October 1, 1989, had no outstanding debt under the FFEL programs.

(b) *Borrower eligibility; requirements for qualification.* A borrower may obtain loan forgiveness under this program if he or she was employed as a full-time teacher in certain elementary and secondary schools teaching certain subjects or as a full-time nurse in certain types of hospitals or health care centers, or was serving as a volunteer under the Peace Corps Act or under the Domestic Volunteer Service Act of 1973, or was performing comparable service as a full-time employee of a tax exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986. For purposes of this section, *full-time* means the standard used by a State or profession in defining full-time employment. For a borrower serving in more than one organization, the determination of "full-time" is based on the combination of all qualifying employment. A borrower who is in default on a FFEL loan and has not made satisfactory repayment arrangements is not eligible for forgiveness. However, if a borrower has made satisfactory repayment arrangements on the loan or loans in default, the forgiveness applies only to the loan or loans held by the holder that are not in default. Federal Stafford loans that have been rehabilitated are eligible for forgiveness.

(c) *Application.* To qualify for the forgiveness program, an eligible borrower shall apply to the Secretary each year following a completed year of service, but no earlier than September 1 and no later than October 1 of a given year. The application must be in writing, on a form provided by the Secretary and according to procedures established by the Secretary. An eligible borrower must complete a year of service prior to filing a loan forgiveness application with the Secretary. Eligible borrowers are chosen on a first-come, first-served basis to participate and must receive forbearance upon request for each year of service for which forgiveness is requested. An eligible borrower must reapply each year to receive the forgiveness benefit. Incomplete or inaccurate applications are not considered in the first-come, first-served process. If a borrower initially submits an incomplete or inaccurate application, the borrower must provide a completed application to the Secretary or his designee prior to consideration in the selection process.

(d) *Limitation; Stafford forgiveness recipients.* The total amount of loans forgiven is limited to the amount of funds appropriated for the fiscal year for the demonstration program.

(e) *Borrower eligibility; teaching forgiveness.* (1) To qualify for teaching loan forgiveness under this section, a borrower must have taught full-time for a year (as defined by the jurisdiction in which the borrower is employed) in a teacher shortage area as certified by the authorizing official. For purposes of this paragraph a teacher has taught in a teacher shortage area if—

(i) The teacher taught in a school that satisfied the criteria in section 465(a)(2)(A) of the Act for loan cancellation for Perkins loan recipients who teach in those schools; and

(ii) The teacher taught mathematics, science, foreign languages, special education, bilingual education or in any other field of expertise where the State educational agency determined there was a shortage of qualified teachers.

(2) The borrower, in the time frame provided under paragraph (c) of this section, for the year of service for which forgiveness is requested, must provide to the Secretary or his designee—

(i) A statement by the chief administrative officer of the public elementary or secondary school in which the borrower was teaching—

(A) Certifying the year that the borrower was employed as a full-time teacher;

(B) Certifying which subject area listed in paragraph (e)(1)(ii) of this section or designated by the State educational agency the borrower taught; and

(C) Verifying that the borrower taught in a school that satisfies the requirements of paragraph (e)(1)(i) of this section.

(f) *Borrower eligibility; volunteer service forgiveness.* (1)(i) To qualify for the volunteer service loan forgiveness under this paragraph, a borrower must have served as a full-time volunteer for at least a year (defined as twelve consecutive months) under—

(A) The Peace Corps Act; or

(B) The Domestic Volunteer Service Act of 1973 (ACTION programs).

(ii) A borrower may also qualify for the volunteer service loan forgiveness if the borrower performed service comparable to service provided under paragraph (f)(1) of this section as a full-time employee of an organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, if the borrower did not receive compensation that exceeds the greater of—

(A) The minimum wage rate described in section 6 of the Fair Labor Standards Act of 1938; or

(B) An amount equal to 100 percent of the poverty line for a family of two as defined in section 673(2) of the Community Services Block Grant Act.

(2) To qualify under this paragraph, the borrower must—

(i) Have worked for an organization that provides services to low income persons and their communities to assist

them in eliminating poverty and poverty-related human, social, and environmental conditions; and

(ii) Not, as part of his or her duties, have given religious instruction, conducted worship services, engaged in religious proselytizing, or engaged in fund-raising to support religious activities.

(3) The borrower, in the time frame provided under paragraph (c) of this section, for the year of service for which forgiveness is requested under paragraphs (f)(1), (f)(2), or (f)(3) of this section must provide to the Secretary or his designee a statement from an authorized official of the organization or agency for whom the borrower worked certifying—

(i) That the borrower served in a job that satisfies the requirements of this paragraph;

(ii) The date on which the borrower's service began; and

(iii) The date on which the borrower completed the year of service.

(g) *Borrower eligibility; nursing profession loan forgiveness.* (1) To qualify for the nursing profession loan forgiveness under this paragraph, a borrower must have been employed as a full-time nurse for a public hospital, a rural health clinic, a migrant health center, an Indian Health Service Health Center, an Indian Health Center, a Native Hawaiian Health Center or for an acute care or long-term care facility.

(2) To qualify for loan forgiveness under this paragraph, a borrower, in the time frame provided under paragraph (c) of this section, for the year of service for which forgiveness is requested, must provide to the Secretary or his designee—

(i) A statement from an authorized official where the borrower was employed certifying that the borrower was employed as a full-time nurse for a facility described in this section and served for the term of at least one year (defined as twelve consecutive months);

(ii) The date on which the borrower's service began; and

(iii) The date on which the borrower's year of service ended.

(h) *Forgiveness amounts.* (1) The Secretary repays the holder a percentage of the total amount of Stafford loans owed by the eligible borrower for—

(i) The borrower's last 2 years of undergraduate education; or

(ii) The 2 academic years in which a borrower who was not already participating in loan repayment pursuant to this section returned to an institution of higher education for the purpose of obtaining a post graduate teaching certificate or additional teacher certification.

(2) The Secretary repays loans on the following basis:

(i) 15 percent of the total original principal amount of Federal Stafford loans for each of the first two years in which the borrower is awarded the benefit and meets the requirements of this section.

(ii) 20 percent of the total original principal amount for each of the third and fourth years.

(iii) 30 percent of the total original principal amount for the fifth year.

(3) The Secretary repays the holder for the amount of interest, including capitalized interest, which accrued on the loan or loans subject to forgiveness over the year.

(4) Payments made by the Secretary must be applied first to the unsubsidized Federal Stafford portion of the loan, followed by the subsidized Federal Stafford portion, and then the nonsubsidized Federal Stafford portion.

(5) The amount of payments made by the Secretary under paragraphs (h)(2)(i), (h)(2)(ii), and (h)(2)(iii) of this section may not exceed the sum of the outstanding principal balance of the loan or loans subject to forgiveness plus all interest payments made in accordance with paragraph (h)(3) of this section.

(6) Payments received from a borrower who qualifies for loan forgiveness under this section may not be refunded.

(i) *Definitions.* The following definitions apply to this section:

Acute care facility means either a short-term care hospital in which the average length of patient stay is less than 30 days, or a short-term care hospital in which over 50% of all patients are admitted to units where the average length of patient stay is less than 30 days.

Elementary school means a public or nonprofit private day or residential school that provides elementary education, as determined under State law.

Indian Health Service Health Center means a health care facility (whether operated directly by the Indian Health Service or operated by a tribal contractor or grantee under the Indian Self-Determination Act), that is physically separated from a hospital and that provides one or more clinical treatment services, such as physician, dentist or nursing services, available at least 40 hours a week for outpatient care to persons of Indian or Alaska Native descent.

Long-term care facility means a facility that offers services designed to provide diagnostic, preventive, therapeutic, rehabilitative, supportive and maintenance services for individuals who have chronic physical or mental impairments.

This facility may have a variety of institutional and non-institutional health settings, including the home, and the goal of the service is to promote the optimum level of physical, social and psychological functioning.

Native Hawaiian Health Center means an entity (as defined in section 8 of the Native Hawaiian Health Care Act of 1988 (Pub.L. 100–579)—

(1) That is organized under the laws of the State of Hawaii;

(2) That provides or arranges for health care services through practitioners licensed by the State of Hawaii, if licensure requirements are applicable;

(3) That is a public or private nonprofit entity; and

(4) In which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

Public hospital means a facility (as defined in 24 CFR 242.1)—

(1) Owned by a State or unit of local government or by an instrumentality thereof, or owned by a public benefit corporation established by a State or unit of local government or by an instrumentality thereof;

(2) That provides community services for inpatient medical care of the sick or injured (including obstetrical care);

(3) Where not more than 50 percent of the total patient days during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis; and

(4) That is licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located).

Rural Health Clinic means an entity (as defined under section 1861(aa)(2) of the Social Security Act and in 42 CFR 491.2 that—

(1) Is primarily engaged in furnishing to outpatients, physicians' services and services furnished by a physician assistant or by a nurse practitioner, as well as those services and supplies covered under sections 1861(s)(2)(A) and 1961(s)(10) of the Social Security Act;

(2) In the case of a facility that is not a physician-directed clinic, has an arrangement (consistent with the provisions of State and local law relative to the practice, performance, and delivery of health services) with

one or more physicians under which provision is made for the periodic review by those physicians of covered services furnished by physician assistants and nurse practitioners, the supervision and guidance by such patients as may be necessary, and the availability of those physicians for advice and assistance in the management of medical emergencies, and in the case of the physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;

(3) Maintains clinical records on all patients;

(4) Has arrangements with one or more hospitals, having agreements in effect under section 1866 of the Social Security Act, for the referral and admission of patients requiring inpatient services or diagnostic or other specialized services as are not available at the clinic;

(5) Has written policies, that are developed with the advice of (and with provision of review of those policies from time to time by) a group of professional personnel, including one or more physicians and one or more physician assistants or nurse practitioners, to govern those services which it furnishes;

(6) Has a physician assistant or nurse practitioner responsible for the execution of policies described in paragraph (5) of this definition and relating to the provision of the clinic's services;

(7) Directly provides routine diagnostic services, including clinical laboratory services, as prescribed in 42 CFR 491.2, and has prompt access to additional diagnostic services from facilities meeting requirements under title 42;

(8) In compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and biologicals as are determined under 42 CFR 491.2 to be necessary for the treatment of emergency cases and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(9) Has appropriate procedures for review of utilization of clinic services to the extent that the Secretary determines to be necessary and feasible; and

(10) Meets other requirements as the Secretary of Health and Human Services may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

Secondary school means a public or nonprofit private day or residential school that provides secondary education, as determined under State law. In the absence of applicable State law, the Secretary may determine, with respect to that State, whether the term "secondary school" includes education beyond the twelfth grade.

State education agency means the agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

Teacher means a professional who provides direct and personal services to students for their educational development through classroom teaching.

(Authority: 20 U.S.C. 1071 to 1087–2)

[FR Doc. 94–14593 Filed 6–15–94; 8:45 am]

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Federal Register

Thursday
June 16, 1994

Part X

Department of the Interior

Bureau of Indian Affairs

Plan for the Use of the Gila River Indian Community Indian Judgment Funds in Docket No. 236–N Before the United States Court of Federal Claims; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use of the Gila River Indian Community Indian Judgment Funds in Docket No. 236–N Before the United States Court of Federal Claims

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

EFFECTIVE DATE: This plan was effective as of May 9, 1994.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Division of Tribal Government Services, 2611 MS/MIB, 1849 C Street NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on January 25, 1993 in satisfaction of the award granted to the Gila River Indian Community before the United States Court of Federal Claims in Docket 236–N. The plan for the use of the funds was submitted to Congress with a letter dated January 24, 1994 and was received (as recorded in the Congressional Record) by the Senate on February 7, 1994 and by the House of Representatives on January 25, 1994. The plan became effective May 9, 1994 as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan

for the Use of the Gila River Indian Community Judgment Funds in Docket No. 236–N before the United States Claims Court

The funds appropriated January 25, 1993 in satisfaction of the award granted in Docket No. 236–N to the Gila River Indian Community before the U.S. Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows:

Per Capita Aspect

The Secretary of the Interior ("Secretary") shall make a per capita distribution of eighty percent (80%) of the principal, interest, and investment income accrued, in a sum as equal as possible, to each member of the Gila River Pima-Maricopa Indian Community, born on or prior to and living on the effective date of this plan. Any remaining amount, after the per capita payment to the members, shall revert to the tribe for use in the programming aspect of this plan.

Programming Aspect

Twenty percent (20%) of the principal, interest and investment income accrued shall continue to be invested with the interest to be available to the community's general fund on an annual budgetary basis to be used for operation of community programs.

If at some future date, the Gila River Indian Community decides to amend this Plan, the Plan may be amended with the approval of the Secretary.

General Provisions

The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR part 4, subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512.

None of the funds made available under this plan for programming or per capita distribution shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources, nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for any per capita shares in excess of $2,000, any Federal or federally assisted programs.

Hilda A. Manuel,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 94–14630 Filed 6–15–94; 8:45 am]

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federal register

Thursday
June 16, 1994

Part XI

Department of the Interior

Fish and Wildlife Service

50 Part 17

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 222

Endangered and Threatened Wildlife and Plants; Remove the Eastern North Pacific Population of the Gray Whale From the List of Endangered Wildlife; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 101–8AC38

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 921233–2333; I.D. 011394B]

Endangered and Threatened Wildlife and Plants; Final Rule to Remove the Eastern North Pacific Population of the Gray Whale From the List of Endangered Wildlife

AGENCIES: Fish and Wildlife Service (Service), Interior, and National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The Service is amending the List of Endangered and Threatened Wildlife and Plants (List) by revising the entry for the gray whale (*Eschrichtius robustus*) to remove the eastern North Pacific (California) population from the List while retaining the western North Pacific (Korean) population as endangered. In addition, the NMFS is amending its list of endangered species under NMFS jurisdiction. These actions correspond to a determination by NMFS, and concurrence by the Service, that the eastern North Pacific population of the gray whale should be removed from the List. The eastern North Pacific population has recovered to near its estimated original population size and is neither in danger of extinction throughout all or a significant portion of its range, nor likely to again become endangered within the foreseeable future throughout all or a significant portion of its range. The Service and NMFS believe that the western North Pacific gray whale population, which is geographically isolated from the eastern population, has not recovered and should remain listed as endangered.

EFFECTIVE DATE: June 16, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, at the above NMFS address (telephone 301/713–2055), or Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ–452, Washington, D.C. 20240 (telephone 703/358–2171).

SUPPLEMENTARY INFORMATION: The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), is administered jointly by the Service and NMFS. NMFS has jurisdiction over most marine species, including whales, and makes determinations under section 4(a) of the Act as to whether a species should be listed as endangered or threatened. Reclassification of listed species from endangered to threatened and removal of species from the List require concurrence by the Service with the NMFS determination. The Service maintains and publishes the List, codified at 50 CFR 17.11 and 17.12, for all species determined by the Service or NMFS to be endangered or threatened.

On January 7, 1993 (58 FR 3121), NMFS published a final notice of determination that the eastern North Pacific (California) stock (population) of gray whale has recovered to near its estimated original population size and, while individual and cumulative impacts may have the potential to adversely affect the eastern population, that population is neither in danger of extinction throughout all or a significant portion of its range, nor likely to again become endangered within the foreseeable future throughout all or a significant portion of its range. NMFS determined, therefore, that the eastern North Pacific population of the gray whale should be removed from the List under the Act. NMFS also determined that the western North Pacific gray whale stock, which is geographically isolated from the eastern population, has not recovered and should remain listed as endangered.

NMFS conducted a comprehensive evaluation of the status of the species in terms of the factors contained in section 4(a)(1) of the Act for listing and delisting actions, and provided an extensive public comment period on its proposed determination (56 FR 58869; November 22, 1991). The Service has reviewed the complete administrative record regarding this action and finds that the determination is well based and concurs that the eastern North Pacific population should be removed from the List. Therefore, in accordance with section 4(a)(2) of the Act, the Service is amending the List by revising the entry for the gray whale to remove the eastern North Pacific (California) population, while retaining the western North Pacific (Korean) population as endangered. A list of endangered species under the jurisdiction of NMFS is contained in 50 CFR part 222. Therefore, concurrent with the Service's regulatory action, NMFS is amending § 222.23(a) to correspond with the amendment of § 17.11(h).

This final rule is issued under 50 CFR parts 17 and 222 and is not subject to Office of Management and Budget review under E.O. 12866. Because this rule implements a determination previously subject to notice and comment and will relieve an existing restriction, the Service Director and the Assistant Administrator for Fisheries, NOAA, under section 553(b)(B) and (d) of the Administrative Procedure Act (5 U.S.C. 553 *et seq.*), for good cause, find that it is unnecessary to provide additional notice and public comment on this rule or to delay for 30 days its effective date.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act (NEPA) of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. A notice outlining the reasons for this determination was published by the Service in the **Federal Register** on October 25, 1983 (48 FR 49244).

As amended in 1982 (Public Law 97–304), the Act, in section 4(b)(1)(A), restricts the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F.2d 829 (6th Cir., 1981), NMFS has categorically excluded all endangered species listings from environmental assessment requirements of NEPA (48 FR 4413, February 6, 1984).

List of Subjects in 50 CFR Parts 17 and 222

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, and part 222, subchapter C of chapter II, title 50 of the Code of Federal Regulations, are amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by revising the table entry for "Whale, gray" in the "Species" column under the heading for MAMMALS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
.	.	.	.	.	.	.	.
Whale, gray	*Eschrichtius robustus.*	North Pacific Ocean: coastal and adjacent seas. Formerly North Atlantic Ocean.	Entire, except eastern North Pacific Ocean: coastal and Bering, Beaufort, and Chukchi Seas.	E	3,536	NA	NA
.	.	.	.	.	.	.	.

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1544.

§ 222.23 [Amended]

2. Section 222.23(a) is amended by removing the words "Gray whale (*Eschrichtius robustus* (*glaucus, gibbosus*))" in the second sentence and adding in their place the words "Western North Pacific (Korean) gray whale (*Eschrichtius robustus*)".

Dated: February 28, 1994

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service, Department of the Interior

Dated: March 9, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 94–14113 Filed 6–15–94; 8:45 am]

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Federal Register

Thursday
June 16, 1994

Part XII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Temporary Flight Restrictions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26605; Notice No. 91–14]

RIN 2120–AD–55

Temporary Flight Restrictions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); withdrawal.

SUMMARY: This document withdraws a proposal to amend the Federal Aviation Regulations to require the operator of an aircraft used in conducting authorized news-gathering operations in an area covered by temporary flight restrictions (TFR) to contact the official in charge of the on-scene emergency response activities for the purpose of obtaining information about current and forecasted disaster relief aircraft activities. The objective of the NPRM was to increase the level of safety afforded aircraft used in conducting rescue or disaster relief operations. The FAA has carefully considered all of the comments received in response to the NPRM and as a result has concluded that safety in TFR's can be increased through procedural versus regulatory means. Accordingly, the NPRM is being withdrawn.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Crum, Air Traffic Rules Branch, ATP–230, Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1991, the FAA published Notice No. 91–14 (56 FR 34000). The NPRM proposed amending § 91.137(c)(5) of the Federal Aviation Regulations (FAR) to require that: (1) All pilots of aircraft carrying properly accredited media personnel initially contact the official in charge of on-scene emergency response activities to ascertain the routes, altitudes, and operating areas in use by disaster relief aircraft; and (2) the aircraft be operated clear of all disaster relief aircraft operations identified by the official in charge. Currently, when TFR's are established for the purpose of providing a safe environment for the operation of disaster relief aircraft, aircraft carrying properly accredited newspeople may enter the prescribed area without prior approval, provided a flight plan has been filed. However, the aircraft must be operated above the altitude(s) being used by rescue or disaster relief aircraft. The process a pilot uses to determine which altitudes are being utilized is not prescribed in the current regulation.

Discussion of Comments

Thirty-one comments were received in response to the NPRM (the comment period closed September 23, 1991). Most commenters supported the goal of the NPRM to promote increased air traffic safety in TFR's; however, the best means to accomplish this was disputed.

Several commenters recommended that a common disaster frequency be established for all aircraft. Other commenters expressed concern over the potential inability of media aircraft to communicate with emergency ground officials, suggesting that on-scene ground officials be required to possess an aircraft compatible two-way radio. Suggestions were made to require pilot monitoring of the frequency while in the disaster area. Finally, suggestions were made to incorporate this proposed rule into the Airman's Information Manual rather than add it to the FAR.

The FAA recognizes the potential merit of this proposal and acknowledges the validity of the express concerns. Since this NPRM was published, the FAA has been reviewing regulations and procedures currently utilized for temporary flight restrictions.

In addition to aircraft carrying news media encountering difficulties in determining the altitude being used by disaster relief aircraft, other TFR problems have been cited. These problems include pilots being unable to receive the location of a TFR area in a timely manner; aircraft on instrument flight rules (IFR) flight plans and military aircraft on IFR training routes intruding into the TFR; the large number of aircraft in TFR's implemented for an incident or event generating a high degree of public interest; and the untimely process used to put TFR's in place, particularly when they involve critical situations such as toxic spills. In addition, of the 13 documented incidents in TFR's, only 2 were confirmed to be aircraft carrying news media. The other incidents involved general aviation aircraft or military aircraft that inadvertently penetrated the TFR's. The reason most often given was lack of information about the existence of the TFR and the inability to positively identify the TFR location.

Reasons for Withdrawal

Based on the comments received in response to Notice No. 94–14, and the additional data as stated above, the FAA has determined that there is inadequate justification to pursue further this regulatory action. The FAA has determined that additional study of current TFR procedures, which may include parts of Notice No. 91–14, is necessary. Therefore, it is in the best interest of all concerned to withdraw Notice No. 91–14.

The Decision and Withdrawal

Accordingly, the FAA concludes that further rulemaking on Notice No. 91–14 should not proceed at this time. Therefore, Notice No. 91–14 is withdrawn. This action does not preclude the FAA from considering similar proposals in the future or commit it to any further or future course of action on this subject.

The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 31(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq: E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Issued in Washington DC on June 8, 1994.

Harold W. Becker,

Acting Director, Air Traffic, Rules and Procedures Service.

[FR Doc. 94–14679 Filed 6–15–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Thursday
June 16, 1994

Part XIII

The President

Proclamation 6701: Father's Day, 1994

Presidential Determination No. 94–26: Determination Under Section 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority (China)

Presidential Determination No. 94–27: Determination Under Section 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority (Former Eastern Bloc States)

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Presidential Documents

Title 3—

The President

Proclamation 6701 of June 14, 1994

Father's Day, 1994

By the President of the United States of America

A Proclamation

June conjures up memories of sunny days, backyard cookouts, relaxing vacations, lush gardens in bloom, and on the third Sunday of the month, the celebration of Father's Day. This is a time set aside by tradition to pay tribute to fathers across our land and to thank them for their unconditional love, for their belief in their children's potential, and for their vital parental role. Their profound influence on their sons and daughters—on society itself—is incalculable.

The loving concern of fathers in raising, protecting, educating, encouraging, and providing direction for their children shapes our national character, as well as our children's. The positive interaction of fathers who responsibly welcome the challenges of guiding their children is immeasurable. Through the nurturing support of such parents, competent, caring, and resilient generations of citizens develop and thrive. These fathers, whether biological, foster, or adoptive, deserve our honor and gratitude.

All fathers in our society today must reinvest in supplying emotional and financial support for their children. It is never too late to assume the responsibility for meeting a child's needs. To do so, despite personal and economic hardship, is to help our children transcend adverse circumstances and to earn the love, respect, and appreciation that will become a legacy of devotion for generations long after ours.

Our Nation is becoming increasingly aware that a father's acceptance and support are powerful motivators. It is most fitting that we recognize our fathers' contributions today and every day—that we express, through word or deed, our appreciation to them and that we remember their love, their friendship, and their faith in us.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972 (36 U.S.C. 142a), do hereby proclaim, Sunday, June 19, 1994, as "Father's Day." I invite the States, communities and people of the United States to observe this day with appropriate ceremonies as a mark of appreciation and affection for our fathers.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of June, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94-14921
Filed 6-15-94; 10:52 am]
Billing code 3195-01-P

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Presidential Documents

Presidential Determination No. 94–26 of June 2, 1994

Determination Under Section 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93–618, 88 Stat. 1978 (hereinafter "the Act"), I determine, pursuant to section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waiver applicable to the People's Republic of China will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 2, 1994.

FR Doc. 94–14925
Filed 6–15–94; 11:49 am]
Billing code 4710–10–M

Editorial note: For the President's letter to Congress on the renewal of this most-favored-nation trade status for China, see page 1203, issue 22 of the *Weekly Compilation of Presidential Documents*.

Presidential Documents

Presidential Determination No. 94–27 of June 2, 1994

Determination Under Section 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to section 402(d)(1) of the Trade Act of 1974, as amended ("the Act"), I determine that the further extension of the waiver authority granted by section 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waivers applicable to Albania, Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Romania, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 2, 1994.

[FR Doc. 94–14924
Filed 6–15–94; 11:48 am]
Billing code 4710–10–M

Editorial note: For the President's letter to Congress on the renewal of this most-favored-nation trade status for these former Eastern Bloc states, see page 1203, issue 22 of the *Weekly Compilation of Presidential Documents*

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LIST OF PUBLIC LAWS

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H.R. 1632/P.L. 103–266

To amend title 11, District of Columbia Code, and Part C of title IV of the District of Columbia Self-Government and Governmental Reorganization Act to remove gender-specific references. (June 13, 1994; 108 Stat. 713; 9 pages)

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